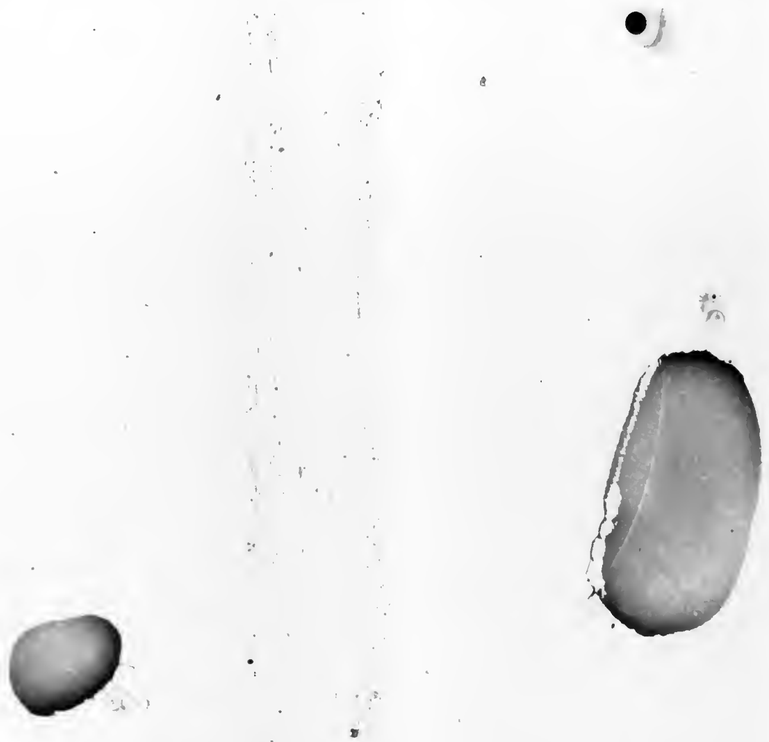
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV97–993–1 FIR]

Dried Prunes Produced in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which increased the assessment rate for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1997–98 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 crop year covers the period August 1 through July 31. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, or Diane Purvis, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule was reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein be applicable to all assessable dried prunes beginning August 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the assessment rate of $1.60 per salable ton of dried prunes established for the Committee for the 1997–98 and subsequent crop years. The assessment rate had been $1.50 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 24, 1997, and unanimously recommended 1997–98 expenditures of $331,960 and an assessment rate of $1.60 per salable ton of dried prunes. In comparison, last year's budgeted expenditures were $283,500; and the assessment rate was $1.50 per salable ton. The 1997–98 crop year assessment rate is increased $0.10. The primary reason for the higher budget is a comprehensive acreage survey of all California's producing counties. This acreage survey will help the industry estimate dried prune production and fulfill marketing plans.

The major expenditures recommended by the Committee for the 1997–98 crop year include: $176,300 for salaries, wages, and benefits; $30,000 for research and development; $23,000 for office rent; $21,000 for travel; $20,000 for acreage survey; $8,060 for the reserve for contingency; $5,000 for office supplies; $9,000 for rental of equipment; and $8,000 for data processing. Budgeted expenses for major items in 1996–97 were $142,120,

$30,000, $22,000, $20,000, $11,000, $8,430, $6,500, $3,800, and $6,500, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by its estimate of assessable California dried prunes for 1997–98. Assessable tonnage for the year is estimated at 207,475 salable tons which should provide $331,960 in assessment income. Income derived from handler assessments and interest income will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget was approved by the Department on August 4, 1997, and those for subsequent crop years will be reviewed each year and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,400 producers of dried prunes in California and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Currently, as a percentage, about 34 percent of the handlers shipped over $5,000,000 worth of dried prunes and 66 percent of the handlers shipped under $5,000,000 worth of prunes. In addition, based on acreage, production, producer prices provided by the Committee, and the total number of dried prune producers, the average annual producer revenue is approximately $136,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule continues the assessment rate of $1.60 per salable ton for the 1997–98 and subsequent crop years. The Committee unanimously recommended 1997–98 expenditures of $331,960 and an assessment rate of $1.60 per salable ton of California dried prunes. The assessment rate of $1.60 is $0.10 more than the 1996–97 rate. The Committee estimated assessable dried prunes in 1997–98 at 207,475 salable tons. Thus, the prior crop year assessment rate of $1.50 would only have provided $311,212 in revenue, which would not have been adequate to meet the Committee's 1997–98 budgeted expenses. The $1.60 rate should provide $331,960 in assessment income and be adequate to meet this year's expenses.

The Committee's increase from $283,500 to $331,960 in budgeted expenses for 1997–98 results primarily from increases in the following line item categories—total personnel (salaries, wages, and benefits), rental of equipment, data processing, and acreage survey. Expenses for these items for 1997–98, with last year's budgeted expenses in parenthesis, are: total personnel—$176,300 ($142,120); rental of equipment—$9,000 ($3,800); data processing—$8,000 ($6,500); and acreage survey—$20,000 ($11,000). The increase will provide wage and benefit increases for the staff. The increase in acreage survey will allow the Committee to conduct a more comprehensive dried prune acreage survey than last year. The Committee considered the alternative of conducting a smaller scale survey at less cost, but decided that a survey of all California's producing counties was needed to help the industry make production and marketing plans. The Committee feels that all of the expense levels are appropriate and reasonable.

Recent price information indicates that the grower price for the 1997–98 season should average $800 per salable ton of dried prunes. Based on estimated shipments of 207,475 salable tons, the estimated assessment revenue for the 1997–98 crop year is less than 1 percent of the total expected grower revenue.

Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

While this rule imposes some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 24, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule does not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

An interim final rule concerning this action was issued by the Department on July 29, 1997, put on display at the Office of the Federal Register on August 3, 1997, and published in the **Federal Register** on August 4, 1997 (62 FR 41808). Copies of the rule were mailed or sent via facsimile to all Committee members and dried prune handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period was provided. No comments on the interim rule were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Dried prunes, Marketing agreements, Reporting and recordkeeping requirements.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 993 which was published at 62 FR 41808 on August 4, 1997, is adopted as a final rule without change.

Dated: September 17, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–25275 Filed 9–23–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Service

Consolidated Farm Service Agency

7 CFR Part 1924

Construction and Repair

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 1900 to 1939, revised as of January 1, 1997, make the following correction:

1. On page 97, in § 1924.5(h), in the fourth line, "103–354ing" should read "103–354, prior to beginning".

BILLING CODE 1505-01-D

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB75

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Cumulative Voting

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), through the FCA Board (Board), issues a final rule amending § 615.5230 of its regulations to provide that a Farm Credit Bank (FCB or bank) may eliminate cumulative voting in director elections with the consent of 75 percent of the bank's association shareholders. This rule is necessary because the existing requirement of unanimous consent was unduly burdensome, complicated, and provided questionable benefits. The effect of this rule is to ease the unanimous consent requirement while maintaining significant protection for the minority interests.

DATES: This regulation shall become effective October 24, 1997, during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Gaylon J. Dykstra, Policy Analyst, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The FCA proposed to amend § 615.5230 of its regulations on April 25, 1997 (62 FR 20131), to provide that an FCB may eliminate the cumulative voting requirement for the election of directors by a vote of 75 percent of the bank's association shareholders.[1] The proposed rule was in response to petitions from several Farm Credit System (System) institutions requesting that the FCA revise the existing unanimous consent requirement for eliminating cumulative voting. The 30-day comment period expired on May 27, 1997.

The FCA received a total of eight comment letters. Five of the letters represented seven associations [some commented jointly). The other three were from the FCB of Wichita (transmitting comments of 10 of its affiliated associations); the FCB of Texas; and the Tenth District Federation of Production Credit Associations (Federation), whose members are affiliated with the FCB of Texas.

Nine associations and the Federation supported the proposed amendment; seven associations opposed the proposed amendment. One association requested that the FCA reconsider the recommendation of a two-thirds majority made by several petitioners but supported the proposed amendment if the FCA could not support the two-thirds majority. The FCB of Texas stated that it believed that a simple majority vote of all associations should control cumulative voting, but that alternatively, the supermajority requirement should be based on the number of associations that actually vote. Two institutions specifically endorsed the proposal to accord each association one vote in a vote to eliminate cumulative voting.

The associations that supported the proposed amendment generally commented that the existing regulation was unduly burdensome, complicated, and provided questionable benefits. One commenter stated that the current regulation "allows only one vote to void the wishes of the remainder of the District who support a less restrictive consent for change."

Four associations that opposed the proposed amendment supported the continuation of the existing regulation. They commented that the original intent of the regulation was to provide smaller associations a meaningful vote by allowing them to cumulate their votes in elections and that this is now even more paramount because of the mergers, consolidations, and proposed joint management agreements at the district level. They further stated that it was important for all stockholders in the district banks to have the maximum opportunity to voice their respective votes and that there was "no valid reason for an association located in a smaller geographic size to forfeit this right."

After careful consideration of the comments, the FCA adopts the rule as proposed. The FCA continues to believe that cumulative voting provides important protection to minority interests and, consequently, should not be subject to elimination by a two-thirds majority. The 75-percent supermajority provides the proper balance among the differing opinions by easing the unanimous requirement for eliminating cumulative voting while maintaining significant protection for the minority interests.

As noted above, one commenter stated that a supermajority requirement should be a percentage of only the shareholders that participate in the vote, rather than the total number of voting shareholders. The effect of such a change would be the possibility that a smaller number of shareholders would be able to eliminate cumulative voting if some shareholders abstain. The FCA is not persuaded that such a change is appropriate.

[1] Farm Credit System associations that are shareholders of an FCB include Federal land bank associations, Federal land credit associations; production credit associations; and agricultural credit associations.

One respondent requested that the FCA clarify whether a 75-percent vote is needed to reinstate cumulative voting. The FCA does not require a supermajority to reinstate cumulative voting. The FCA believes that such a vote should be subject to the amendment procedures established by the FCB's bylaws.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart I—Issuance of Equities

2. Section 615.5230 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 615.5230 Implementation of cooperative principles.

(a) * * *

(2) * * *

(ii) Have the right to vote in the election of each director and be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion, except that cumulative voting for directors may be eliminated if 75 percent of the associations that are shareholders of the Farm Credit Bank vote in favor of elimination. In a vote to eliminate cumulative voting, each association shall be accorded one vote.

* * * * *

Dated: September 16, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–25262 Filed 9–23–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

Indirect Food Additives: Polymers

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 170 to 199, revised as of April 1, 1997, make the following correction:

On page 263, in § 177.1520, in the paragraph (b) table, the third entry under the heading "Substance" is corrected to read "Polymethylsilsesquioxane (CAS Reg. No. 68554–70–1)".

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Oregon State Plan; Approval of Plan Supplements; Changes in Level of Federal Enforcement, Including Umatilla Indian Reservation

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: This document gives notice of the approval of a State-initiated plan change and assumption of Federal OSHA enforcement authority in the State of Oregon over all private sector establishments, including tribal and Indian-owned enterprises, on all Indian and non-Indian lands within the currently established boundary of the Umatilla Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of the Umatilla (Umatilla Tribes). Oregon OSHA will retain its enforcement jurisdiction over public sector (State and local government) employees working on these lands.

This document also gives notice of the approval of several other changes in the level of Federal enforcement in the State of Oregon. A 1991 addendum to Oregon's operational status agreement contained four changes to the circumstances under which Federal enforcement jurisdiction may be exercised within the State, including situations where Oregon is refused entry to an establishment. In addition, Oregon has assumed responsibility for worker protection at Superfund sites (except on military bases) and with regard to private contractors working on U.S. Army Corps of Engineers dam construction projects, as reflected in a 1992 Memorandum of Understanding between Federal OSHA and the State of Oregon.

OSHA is hereby amending its regulation on approved plans to reflect these changes to the level of Federal enforcement authority in Oregon, and correcting a few typographical errors.

EFFECTIVE DATE: September 24, 1997.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Public Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. State plan approval occurs in stages which include initial approval under section 18(c) of the Act and, ultimately, final approval under section 18(e). In the interim, between initial approval and final approval, there is a period of concurrent Federal/State jurisdiction within a State operating an approved plan. See 29 CFR 1954.3 for guidelines and procedures.

The Oregon Occupational Safety and Health State plan was approved under section 18(c) of the Act and part 1902 of this chapter on December 28, 1972 (37 FR 28628). On January 23, 1975, OSHA and the State of Oregon entered into an Operational Status Agreement which suspended the exercise of Federal concurrent enforcement authority in all except specifically identified areas. The agreement was amended on December 12, 1983 and on November 27, 1991. Except for this last amendment, the pertinent provisions concerning level of Federal enforcement in Oregon are codified at 29 CFR 1952.105.

By letters of April 29, 1997 and July 14, 1997 from Peter DeLuca, Administrator, Oregon Occupational Safety and Health Division (OR–OSHA) to Richard Terrill, Acting Regional Administrator, the State of Oregon has requested that Federal OSHA assume enforcement authority in Oregon over all private sector establishments, including tribal and Indian-owned enterprises, on all Indian and non-Indian lands within the currently established boundary of the Umatilla Indian Reservation, and on lands outside the reservation that are held in trust now and in the future by the Federal government for the Confederated Tribes of the Umatilla. These Umatilla Tribes trust lands currently include the Conforth Ranch near Umatilla, Oregon, lands located outside the currently established reservation boundary yet inside the 1871 Surveyed Treaty Boundary, and some parcels located outside the surveyed treaty boundary in the Indian Lakes Area of Umatilla County, Oregon. These trust lands are established on a map developed by the tribal planning office and updated periodically. Any acquisitions by the Umatilla Tribes of fee lands outside the reservation boundary that are converted in the future to trust land will be documented by the legal description in the formal request for conversion to trust land that is filed with the county. In its letters the State indicated that it will continue to provide consultation, training and technical services to all these employers and employees after the jurisdiction change. In addition, OR–OSHA will maintain enforcement jurisdiction over public sector (State and local government) employees working on these lands. Oregon also noted in its letters that Tribal or Indian-owned enterprises operating outside the established boundary of the Umatilla Indian Reservation or off tribal trust lands will also remain under OR–OSHA's enforcement jurisdiction. The State of Oregon made this request because of problems regarding the exercise of Oregon's occupational safety and health enforcement authority on Umatilla lands.

This document also gives notice of several other changes in the level of Federal enforcement in the State of Oregon. A November 27, 1991 addendum to Oregon's operational status agreement provides that Federal OSHA retains enforcement responsibility for (1) new Federal standards not yet adopted by the State; (2) situations where the State is refused entry and is unable to obtain a warrant or enforce the right to entry; (3) enforcement of unique and complex standards as determined by the Assistant Secretary; and (4) situations where the State is unable to exercise its enforcement authority fully or effectively.

In addition, OR–OSHA has assumed jurisdiction for both private and public sector employees at Superfund sites in the State of Oregon (except those on U.S. military reservations), and for private contractors working on U.S. Army Corps of Engineers dam construction projects; including reconstruction of docks and other appurtenances. Federal OSHA retains jurisdiction over all other worksites, including Superfund sites, that are located within the borders of U.S. military reservations in Oregon. These changes in the level of Federal enforcement have been clarified in an October 20, 1992 Memorandum of Understanding between Federal OSHA and the State of Oregon. The Superfund changes resulted from OSHA Instruction CPL 2, February 8, 1988, which required States with OSHA-approved State plans to cover Superfund sites.

B. Decision

After careful consideration, OSHA is approving under part 1953 of this chapter the Oregon State-initiated plan changes described above. Concurrently, OSHA is announcing its assumption of Federal enforcement authority in Oregon concerning the Confederated Tribes of the Umatilla, as specified above. OSHA is hereby amending 29 CFR part 1952 to reflect these changes in the level of Federal enforcement, correct a few typographical errors, and revise the format.

C. Location of Supplements for Inspection and Copying

A copy of the plan supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, Room N–3700, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; and the Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, 350 Winter Street, N.E., Room 430, Salem, Oregon 97310. For electronic copies of this **Federal Register** notice, contact OSHA's WebPage at http://www.osha.gov/.

D. Public Participation

OSHA is amending 29 CFR part 1952 to reflect changes to the level of Federal enforcement described above. In light of the discussions with the Umatilla Tribes and the State on the resumption of Federal enforcement authority concerning the Umatilla Tribes, OSHA believes that further public participation regarding this amendment to part 1952 would be unnecessary. Regarding the other amendments to the level of Federal enforcement in Oregon, these changes are procedural in nature and were effected in 1991 and 1992 upon signature of the parties; accordingly, further public participation regarding these additional amendments to part 1952 would also be unnecessary.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

This document was prepared under the direction of Greg Watchman, Acting Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR part 1902, and Secretary of Labor's Order No. 1–90 (55 FR 9033).

Signed at Washington, DC, this 5th day of September 1997.

Greg Watchman,

Acting Assistant Secretary of Labor.

For the reasons set out in the preamble, 29 CFR part 1952, subpart D (Oregon), is hereby amended as set forth below.

PART 1952—[AMENDED]

1. The authority citation of part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

Subpart D—Oregon

2. Section 1952.105 is amended by revising paragraph (a) to read as follows:

§ 1952.105 Level of Federal enforcement.

(a) Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter under which an operational status agreement has been entered into with Oregon, effective January 23, 1975, and as amended, effective December 12, 1983 and November 27, 1991; and based on a determination that Oregon is operational in the issues covered by the Oregon occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act, 29 U.S.C. 667(c), will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR parts 1910, 1926 and 1928 except as provided in this section. The U.S. Department of Labor will continue to exercise authority among other things with regard to:

(1) Complaints filed with the U.S. Department of Labor alleging

discrimination under section 11(c) of the Act (29 U.S.C. 680(c));

(2) Standards in the maritime issues covered by 29 CFR parts 1915, 1917, 1918, and 1919 (shipyards, marine terminals, longshoring, and gear certification), and enforcement of general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in these employments, which have been specifically excluded from coverage under the plan;

(3) Enforcement of new Federal standards until the State adopts a comparable standard;

(4) Enforcement in situations where the State is refused entry and is unable to obtain a warrant or enforce its right of entry;

(5) Enforcement of unique and complex standards as determined by the Assistant Secretary;

(6) Enforcement in situations when the State is unable to exercise its enforcement authority fully or effectively;

(7) Enforcement of occupational safety and health standards at worksites located within the Warm Springs Indian Reservation;

(8) Enforcement of occupational safety and health standards at all private sector establishments, including tribal and Indian-owned enterprises, on all Indian and non-Indian lands within the currently established boundary of the Umatilla Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of the Umatilla;

(9) Enforcement of occupational safety and health standards at worksites located within Federal military reservations, except private contractors working on U.S. Army Corps of Engineers dam construction projects, including reconstruction of docks or other appurtenances; and,

(10) Investigations and inspections for the purpose of the evaluation of the plan under sections 18 (e) and (f) of the Act (29 U.S.C. 667 (e) and (f)).

* * * * *

3. Section 1952.107 is amended by adding paragraph (f) to read as follows:

§ 1952.107 Changes to approved plans.

* * * * *

(f) Oregon's State plan changes excluding coverage under the plan of all private sector employment (including tribal and Indian-owned enterprises) on Umatilla Indian reservation or trust lands, by letters of April 29 and July 14, 1997 (see §§ 1952.105); extending coverage under the plan to Superfund sites and private contractors working on U.S. Army Corps of Engineers dam construction projects, as noted in a 1992 Memorandum of Understanding; and specifying four (4) unusual circumstances where Federal enforcement authority may be exercised, as described in a 1991 addendum to the State's operational status agreement, were approved by the Acting Assistant Secretary on September 24, 1997.

[FR Doc. 97-25307 Filed 9-23-97; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

New Mexico State Plan; Approval of Plan Supplement; Change in Level of Federal Enforcement: Military Facilities and Indian Reservations

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document gives notice of the approval of a State-initiated plan change and resumption of Federal enforcement responsibility in the State of New Mexico over private sector employment on military facilities and bases, and, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation or lands under the control of a tribal government.

OSHA is hereby amending its regulations on approved plans to reflect this change to the level of Federal enforcement authority in New Mexico.

EFFECTIVE DATE: September 24, 1997.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room, N-3637, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219-8148.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (The Act), 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards, may do so by submitting, and obtaining Federal approval of, a State plan. State plan approval occurs in stages which include initial approval under section 18(c) of the Act and, ultimately, final approval under section 18(e). In the interim, between initial approval and final approval, there is a period of concurrent Federal/State jurisdiction within a State operating an approved plan. See 29 CFR 1954.3 for guidelines and procedures.

The New Mexico Occupational Health and Safety State plan was approved under section 18(c) of the Act of 1970 and part 1902 of this chapter on December 10, 1975 (40 FR 57455), and certified by OSHA as having completed all of its developmental steps on December 4, 1984 (49 FR 48915). On December 5, 1981, OSHA and the State of New Mexico entered into an Operational Status Agreement which suspended the exercise of Federal concurrent enforcement authority in all except specifically identified areas. The pertinent provisions concerning the level of Federal enforcement in the State are codified at 29 CFR 1952.365.

By letter dated January 3, 1997, from Sam A. Rogers, Bureau Chief, Occupational Health and Safety Bureau, New Mexico Environment Department, to OSHA Regional Administrator Emzell Blanton, Jr., the State of New Mexico has requested that Federal OSHA to resume enforcement authority over private sector employment on military facilities and bases and, over tribal or private sector employment within any Indian reservation or lands under the control of a tribal government. After extensive research which identified numerous problems with regard to the exercise of New Mexico occupational health and safety enforcement authority, the State of New Mexico, for administrative convenience, will exclude coverage of all private sector employment on Federal military lands and facilities, including but not limited to Kirkland Air Force Base, Fort Bliss Military Reservation, White Sands Missile Range Military Reservation, Holloman Air Force Base, Cannon Air Force Base, Fort Wingate Military Reservation, Fort Bayard Veterans' Hospital, Albuquerque Veterans' Hospital, Santa Fe National Cemetery, etc., from under its State plan. In addition, since all of New Mexico's Indian tribes have treaties with the Federal Government and the applicability of State laws and jurisdiction on tribal reservations and other Indian owned land have been questionable at best, New Mexico will also exclude tribal or private sector employment within any Indian reservation or lands under the control of a tribal government from coverage under its State plan.

B. Location of Supplement for Inspection and Copying

A copy of the plan supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor-OSHA, 525 Griffin Street, Room 602, Dallas, Texas 75202; Office of the Secretary, Environment Department, 1190 St. Francis Drive, Room 2200-North, Santa Fe, New Mexico 87503; and the Office of State Programs, 200 Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210. For electronic copies of this notice, contact OSHA's WebPage at http://www.osha.gov/.

C. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. To assure worker protection under the OSH Act, the Assistant Secretary finds that New Mexico's State-initiated plan change requesting that Federal OSHA resume enforcement authority in New Mexico over private sector employment on military facilities and bases, and, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation or lands under the control of a tribal government, is consistent with Federal requirements, and with commitments contained in the plan and previously made available for public comment. Good cause is therefore found for approval of this plan supplement, and further public participation is unnecessary.

D. Decision

After careful consideration, OSHA is approving under Part 1953 of this chapter, the New Mexico State-initiated plan change concerning the level of Federal enforcement authority, as described in the 1981 New Mexico Operational Status Agreement. Concurrently, OSHA is announcing its resumption of Federal enforcement authority in New Mexico over the coverage of private sector employment on Federal military facilities and bases, and, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation or lands under the control of a tribal government. OSHA is hereby amending 29 CFR part 1952, Subpart DD, to reflect this change in the level of Federal enforcement and to revise the format.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

This document was prepared under the direction of Greg Watchman, Acting Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR part 1902, and Secretary of Labor's Order No. 1-90 (55 FR 9033).

Signed at Washington, DC, this 18th day of September 1997.

Greg Watchman,

Acting Assistant Secretary of Labor.

For the reasons set out in the preamble 29 CFR part 1952, Subpart DD (New Mexico) is hereby amended as set forth below:

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

1. The authority citation for Part 1952 continues to read as follows:

Authority: Sec. 18, 84, Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1-90 (55 FR 9033).

Subpart DD—New Mexico

2. Section 1952.365 is revised to read as follows:

§ 1952.365 Level of Federal enforcement.

(a) Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter, under which an operational status agreement has been entered into between OSHA and New Mexico, effective October 5, 1981, and based on a determination that New Mexico is operational in issues covered by the New Mexico occupational health and safety plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR parts 1910, 1926 and 1928 except as provided in this section. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to:

(1) Complaints filed with the U.S. Department of Labor alleging discrimination under section 11(c) of the Act (29 U.S.C. 660(c));

(2) Enforcement with respect to private sector maritime employment including 29 CFR parts 1915, 1917, 1918, 1919 (shipyard employment; marine terminals; longshoring and gear certification), and general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in these employments, which issues have been specifically excluded from coverage under the State plan;

(3) Enforcement in situations where the State is refused and is unable to obtain a warrant or enforce its right of entry;

(4) Enforcement of new Federal standards until the State adopts a comparable standard;

(5) Enforcement of unique and complex standards as determined by the Assistant Secretary;

(6) Enforcement in situations when the State is unable to exercise its enforcement authority fully or effectively;

(7) Enforcement of occupational safety and health standards at all Federal and private sector establishments on military facilities and bases, including but not limited to Kirkland Air Force Base, Fort Bliss Military Reservation, White Sands Missile Range Military Reservation, Holloman Air Force Base, Cannon Air Force Base, Fort Wingate Military Reservation , Fort Bayard Veterans' Hospital, Albuquerque Veterans' Hospital, Santa Fe National Cemetery;

(8) Enforcement of occuaptional safety and health standards, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation and lands under the control of a tribal government; and

(9) Investigations and inspections for the purpose of the evaluation of the New Mexico plan under sections 18 (e) and (f) of the Act (29 U.S.C. 667 (e) and (f)).

(b) The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in New Mexico.

3. Section 1952.367 is amended by adding paragraph (b) to read as follows:

§ 1952.367 Changes to approved plans.

* * * * *

(b) In accordance with Subpart E of part 1953 of this chapter, New Mexico's State plan amendment, dated January 3, 1997, excluding coverage of all private sector employment on Federal military facilities and bases (see § 1952.365), and, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation and lands under the control of a tribal government, from its State plan was approved by the Acting

Assistant Secretary on September 24, 1997.

[FR Doc. 97–25306 Filed 9–23–97; 8:45 am]
BILLING CODE 4510–26–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 343

[Department of the Treasury Circular, Public Debt Series No. 3–68]

Regulations Governing the Offering of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Department) or (Treasury) is issuing in final form an amendment to its regulations governing United States Mortgage Guaranty Insurance Company Tax and Loss Bonds, referred to as tax and loss bonds. These securities are available for purchase only by companies organized and engaged in the business of writing mortgage guaranty insurance within the United States. Previously, these securities were issued in definitive (paper) form. They were only available in a ten year maturity. The Department has determined that maintaining and servicing these securities in definitive form is not cost-effective. The Department had also received many requests to offer a twenty year maturity. This final rule will reduce administrative overhead and costs by providing that on or after the effective date of the regulation, the securities will only be offered in book-entry form and that the securities may, at the option of the holder, be converted to book-entry form. It will also provide for maturities of either ten or twenty years. Minor changes to redemption notices have been added and all addresses have been updated.

EFFECTIVE DATE: September 24, 1997.

ADDRESSES: Copies are available for downloading from the Bureau of the Public Debt home page at: http://www.publicdebt.treas.gov/or may be obtained from the Division of Special Investments, 200 3rd St., P.O. Box 396, Parkersburg, WV 26106–0396.

FOR FURTHER INFORMATION CONTACT: Howard Stevens, Director, Division of Special Investments, at 304–480–7752, or Edward C. Gronseth, Deputy Chief Counsel, at 304–480–5192 or Jim Kramer-Wilt, Attorney/Adviser, Office of the Chief Counsel, at 304–480–5190.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Treasury, Bureau of the Public Debt, is providing for the voluntary conversion of outstanding definitive tax and loss securities to book-entry form and further providing for the issuance of only book-entry securities. This conversion will improve the cost-effectiveness of this program and the ease of administering transactions involving these securities.

II. Section-by-Section Summary

Subpart A—General Information

Provisions included in the general information paragraph apply to the offering of these securities. Part 343 has been substantially rewritten. Changes from the 1968 regulations are as follows:

(1) Paragraph 343.1—This paragraph has been renumbered from 343.6.

(2) Paragraph 343.1(a)—This paragraph has been renumbered from 343.6(a). It is amended to state that copies of 31 CFR part 306 may be obtained from the Division of Special Investments.

(3) Paragraph 343.1(b)—This is a new paragraph titled Issuance. It states that on or after the effective date of this regulation, tax and loss bonds will be issued only in book-entry form on the books of the Treasury Department. The bonds will now be issued with ten or twenty year maturities designated by the purchaser and are non-interest bearing. Transfer by sale, exchange, assignment, pledge, or otherwise is prohibited. The bonds may be reissued as provided in paragraph 343.4.

(4) Paragraph 343.1(c)—This paragraph has been renumbered from 343.6(b). It is amended to state that selected Federal Reserve Banks and branches, as fiscal agents of the United States, may be designated to perform such services requested of them by the Secretary of the Treasury in connection with purchases, transactions and redemptions of these bonds.

(5) Paragraph 343.1(d)—This is a new paragraph titled Debt limit contingency. It states that the Department of the Treasury reserves the right to change or suspend the terms and conditions of the offering of tax and loss securities. This right includes provisions relating to the purchase and redemption of these bonds and any related notices. This may be done at any time the Secretary determines that the issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit. Announcement of such changes shall be provided by such means as the Secretary deems appropriate.

(6) 343.1(3)—This paragraph has been renumbered from 343.3. It is amended to state that upon maturity of a bond, the Department will make payment of the principal amount due to the owner. A bond scheduled for maturity on a non-business day will be redeemed on the next business day with the same force and effect as if made on the maturity date.

(7) Paragraph 343.1(f)—This paragraph is titled Reservations. It includes language of the former paragraph 343.3. It is revised to state that the Secretary of the Treasury may supplement or amend the terms of this circular or any related amendments and supplements. Transaction requests, including purchases or redemptions of bonds, are not acceptable if unsigned, inappropriately completed, or not timely submitted. The non-acceptance of inappropriate transaction requests is final. The authority of the Secretary to waive regulations under 31 CFR 306.126 applies to part 343.

(8) Paragraph 343.1(g)—This is a new paragraph titled Forms and additional information. It states that PD Form 3871 "Application for Issue of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds", Fedwire instructions and other information will be furnished by the Division of Special Investments upon request. Interested parties may write to the Division of Special Investments or may telephone at (304) 480–7752. Application forms may also be downloaded from the Internet at Public Debt's home page at: http://www.publicdebt.treas.gov/.

Subpart B—Tax and Loss Bonds

This is a new subpart which includes information on the issue date, purchase, redemption, reissue and taxation of these bonds.

(9) Paragraph 343.2—This paragraph has been renumbered. It combines the former paragraphs 343.1(c) and 343.2. This paragraph is revised to state that the issue date must be a business day. The securities will also be issued as of the date of receipt of Form PD F 3871, along with remittance of funds for the full amount of the bond(s). Applications under this offering must be submitted to the Division of Special Investments. An application may be submitted by fax at (304) 380–7786 or (304) 480–6818, by mail or by other carrier. Applications submitted by mail should be sent by certified or registered mail.

(10) Paragraph 343.2(b)—This paragraph has been renumbered from 343.2. It is revised to state that tax and loss bonds may be purchased only from the Division of Special Investments.

(11) Paragraph 343(a)—This subparagraph has been renumbered from 343.3. It has been revised to state that partial redemptions of bonds may be requested in any whole dollar amount; however, an account balance of less that $1,000 will be redeemed in total. The address to which redemptions are sent is changed to the address now listed in paragraph 343.3(d).

(12) Paragraph 343.3(b)—This subparagraph has been renumbered from 343.3. This paragraph has been revised to state that payment will be made by the Automated Clearing House (ACH) method to the owner's account at a financial institution designated by the owner. To the extent applicable, provisions of Paragraph 357.26 on "Payments", and provisions of 31 CFR part 370, shall govern ACH payments made under this offering. The Department of the Treasury may employ alternate payment procedures, in lieu of ACH, in any case or class of cases where operational considerations require such action.

(13) Paragraph 343.3(c)—This is a new paragraph titled Book-entry. It states that bonds will be redeemed automatically upon maturity. Payment will be made in accordance with the ACH payment instructions on file. Redemptions prior to maturity will be made upon receipt of a redemption request. Notice of redemption prior to maturity must be submitted by letter, on company letterhead, to the Division of Special Investments or faxed to (304) 480–7786 or (304) 480–6818.

The notice must be received by the Division of Special Investments not less than three business days prior to the requested redemption date. It must contain the owner's name and Tax Identification Number, the requested redemption date, any changed payment routing instructions, the case number(s) to be redeemed, including original issue date(s) and the amount to be redeemed.

(14) Paragraph 343.3(d)—This is a new paragraph titled Registered and provides for the redemption of a registered tax and loss bond. The bond(s) with the assignment for redemption properly completed and executed must be presented to the Division of Special Investments. Payment routing instructions must also be included with the bond(s) at redemption. Upon partial redemption of a registered bond, the remaining balance will be reissued in book-entry form with the original issue and maturity date.

(15) Paragraph 343.4—This paragraph has been renumbered from 343.5.

(16) 343.4(a)—This paragraph has been renumbered from 343.5(a). It is revised to state that reissues must be sent to the Division of Special Investments. It also states that a bond will only be reissued in book-entry form but will continue to bear the same issue date and maturity as the original bond.

(17) 343.4(b)—This paragraph has been renumbered from 343.5(b).

(18) 343.4(c)—This paragraph has been renumbered from 343.5(c).

(19) 343.4(d)—This paragraph has been renumbered from 343.5(d).

(20) 343.4(e)—This is a new paragraph titled Conversion to book-entry. It provides that any owner of tax and loss bonds held in registered form after the effective date of this regulation may submit the bonds to the Division of Special Investments for conversion to book-entry.

(21)—Paragraph 343.5—This paragraph has been renumbered from 343.4.

Procedural Requirements

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, an assessment of anticipated benefits, costs and regulatory alternatives is not required.

This final rule relates to matters of public contract. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

Because, as stated above, this regulation is being issued without prior notice and public procedure, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507 (j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1535–0127. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning the collection of information should be directed to OMB, Attention: Desk Officer for the Bureau of the Public Debt, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Bureau of the Public Debt, Office of Administration, Graphics, Printing and Records Branch, Room 301, 200 Third Street, Parkersburg, WV 26106. Any such comments should be submitted not later than November 24, 1997. Comments are specifically requested concerning:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of the Public Debt, including whether the information will have practical utility;

2. The accuracy of the estimated burden associated with the proposed collection of information (see below);

3. How to enhance the quality, utility and clarity of the information to be collected;

4. How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and

5. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this regulation is in 31 CFR 343.2, 343.3 and 343.4. This information is required to establish and maintain accounts for holding Mortgage Guaranty Insurance Company Tax and Loss Bonds. This information will be used to issue a Statement of Account to the entity, establish issue and maturity dates for the bonds, and provide electronic payment routing instructions for the proceeds. The collection of information is required to obtain a benefit. The likely respondents are companies engaged in the business of writing mortgage guaranty insurance with the United States.

The estimated total annual reporting burden: 20 hours.

The estimated average annual burden hours per respondent: 15 minutes.

The estimated number of respondents: 37 respondents.

The estimated annual frequency of responses: 2.16 times.

List of Subjects in 31 CFR Part 343

United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Dated: September 19, 1997.

Gerald Murphy,

Fiscal Assistant Secretary.

For the reasons set forth in the preamble, part 343 of Title 31 of the Code of Federal Regulations is revised to read as follows:

PART 343—REGULATIONS GOVERNING THE OFFERING OF UNITED STATES MORTGAGE GUARANTY INSURANCE COMPANY TAX AND LOSS BONDS

Subpart A—General Information

Sec.
343.0 Offering of bonds.
343.1 General provisions.

Subpart B—Tax and Loss Bonds

343.2 Issue date and purchase.
343.3 Redemption.
343.4 Reissue.
344.5 Taxation.

Authority: 5 U.S.C. 301; 26 U.S.C. 832; 31 U.S.C. 3102.

Subpart A—General Information

§ 343.0 Offering of bonds.

The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, and pursuant to paragraph 832(e) of the Internal Revenue Code of 1954, offers for sale only to companies organized and engaged in the business of writing mortgage guaranty insurance within the United States, bonds of the United States designated as Mortgage Guaranty Insurance Company Tax and Loss Bonds, hereinafter referred to as tax and loss bonds. The bonds are issued in a minimum amount of $1,000 or in any larger amount, in increments of not less than $1.00. This offering will continue until terminated by the Secretary of the Treasury.

§ 343.1 General provisions.

(a) *Regulations.* Tax and loss bonds are subject to the general regulations with respect to United States securities, which are set forth in the Department of the Treasury Circular No. 300 (31 CFR part 306), to the extent applicable. Copies of the circular may be obtained from the Bureau of the Public Debt, Division of Special Investments, Room 309, 200 Third St., P.O. Box 396, Parkersburg, WV 26106–0396 or downloaded from Public Debt's home page on the Internet at: http://www.publicdebt.treas.gov/.

(b) *Issuance.* Tax and loss bonds are issued in book-entry form on the books of the Treasury that are maintained by the Division of Special Investments. The bonds are issued with 10 or 20 year maturities as designated by the purchaser. These bonds are non-interest bearing. Any transfer by sale, exchange, assignment, pledge or otherwise, is prohibited. The bonds may be reissued as provided in § 343.4.

(c) *Fiscal agents.* Selected Federal Reserve Banks and Branches, as fiscal agents of the United States, may be designated to perform such services requested of them by the Secretary of the Treasury in connection with the purchase, redemption and other transactions involving these bonds.

(d) *Debt limit contingency.* The Department of the Treasury reserves the right to change or suspend the terms and conditions of this offering, including provisions relating to the purchase of, and redemption of, the bonds as well as notices relating hereto, at any time the Secretary determines that the issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit. Announcement of such changes shall be provided by such means as the Secretary deems appropriate.

(e) *General redemption provisions.* A bond may not be called for redemption by the Secretary of the Treasury prior to maturity. When the bond matures, payment will be made of the principal amount due to the owner. A bond scheduled for maturity on a non-business day will be redeemed on the next business day.

(f) *Reservations.* The Secretary of the Treasury may at any time, or from time to time, supplement or amend the terms of this circular or any related amendments or supplements. Transaction requests, including purchases or redemptions of bonds, are not acceptable if unsigned, inappropriately completed, or not timely submitted. Any of these actions shall be final. The authority of the Secretary to waive regulations under 31 CFR 306.126 applies to part 343.

(g) *Forms and additional information.* The application form for subscriptions, Fedwire instructions and other information will be furnished by the Division of Special Investments upon request by writing to the Division of Special Investments or by calling (304) 480–7752. Application forms may also be downloaded from the Internet at Public Debt's home page at: http://www.publicdebt.treas.gov/.

Subpart B—Tax and Loss Bonds

§ 343.2 Issue date and purchase.

(a) *Issue date.* The issue date must be a business day. The bonds will be issued as of the date of receipt of Form PD F 3871 "Application for Issue of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds" and receipt of the remittance of funds for the full amount of the bond(s). Applications under this offering must be submitted to the Division of Special Investments. An application may be submitted by fax at (304) 480–7786 or (304) 480–6818, by mail, or by other carrier. Applications submitted by mail should be sent by certified or registered mail.

(b) *Purchase.* Tax and loss bonds may only be purchased from the Division of Special Investments. The purchaser will instruct their financial institution to submit the exact amount of funds on the requested issue date to the Division of Special Investments via the Fedwire funds transfer system, with credit directed to the Treasury's General Account, according to wire instructions obtained from the Division of Special Investments (see § 343.1(g)). Full payment should be submitted by 3:00 P.M. Eastern time to ensure that settlement of the transaction occurs.

[Approved by the Office of Management and Budget under control number 1535–0127.]

§ 343.3 Redemption.

(a) *General.* Tax and loss bonds may not be called for redemption by the Secretary of the Treasury prior to maturity, but may be redeemed in whole or in part at the owner's option at any time after three months from issue date. The Director of the Internal Revenue Service District in which the owner's principal place of business is located will be given notice of all redemptions. Partial redemptions of bonds may be requested in any whole dollar amount; however, an account balance of less than $1,000 will be redeemed in total.

(b) *Method of payment.* Payment will be made by the Automated Clearing House (ACH) method for the owner's account at a financial institution designated by the owner. To the extent applicable, provisions of § 357.26, Payments, and provisions of 31 CFR part 370, shall govern ACH payments made under this offering. The Department of the Treasury may employ alternate payment procedures in lieu of ACH in any case or class of cases where operational considerations require such action.

(c) *Book-entry.* Bonds will be redeemed automatically upon maturity. Payment will be made in accordance with the ACH payment instructions on file. Redemptions prior to maturity will be made upon receipt of a redemption request. Notice of redemption prior to maturity must be submitted in writing on company letterhead to the Division of Special Investments, or faxed to (304) 480–7786 or to (304) 480–6818. The notice must be received by the Division of Special Investments not less than three business days prior to the requested redemption date. It must contain the owner's name and Tax Identification Number, the requested redemption date, any changed payment routing instructions, the case number(s) to be redeemed, including original issue date(s), and the amount to be redeemed.

(d) *Registered.* To obtain redemption, a bond with the assignment for redemption properly completed and executed must be presented to the Division of Special Investments. Payment routing instructions must also be included with the bond at redemption. Upon partial redemption of a registered bond, the remaining balance will be reissued in book-entry form with the original issue and maturity date.

[Approved by the Office of Management and Budget under control number 1535–0127.]

§ 343.4 Reissue.

(a) *General.* Reissue of a tax and loss bond may be made only under the conditions specified in this paragraph. A request for reissue must be made by an officer of the beneficial owner who is authorized to assign the bond for redemption. The request must be submitted to the Division of Special Investments. A bond will only be reissued in book-entry form and will bear the same issue date and maturity as the original bond.

(b) *Correction of error.* The reissue of a bond may be made to correct an error in the original issue upon an appropriate request, supported by satisfactory proof of the error.

(c) *Change of name.* An owner whose name is changed in any legal manner after the issue of the bond should submit the bond with a request for reissue, substituting the new name for the name inscribed on the bond. The signature on the request for reissue should show the new name, the legal reason which caused the change to be made and the former name. It must be supported by satisfactory proof of the change of name.

(d) *Legal succession.* A bond registered in the name of a company which has been succeeded by another company as the result of a merger, consolidation, incorporation, reincorporation, conversion, reorganization, or which has been lawfully succeeded in any manner whereby the business or activities of the original organization are continued without substantial change, will be paid to or reissued in the name of the successor upon an appropriate request on its behalf, supported by satisfactory evidence of successorship.

(e) *Conversion to book-entry.* Although not required, any owner of tax and loss bonds held in registered form after the effective date of this regulation, may submit those bonds to the Division of Special Investments, for conversion to book-entry form.

[Approved by the Office of Management and Budget under control number 1535–0127.]

§ 343.5 Taxation

Tax and loss bonds will be exempt from all taxation now or hereafter imposed on the principal by any state or any possession of the United States or of any local taxing authority.

[FR Doc. 97–25450 Filed 9–22–97; 12:17 pm]
BILLING CODE 4810–39–P

POSTAL SERVICE

39 CFR Part 20

Implementation of Global Package Link Service

AGENCY: Postal Service.

ACTION: Interim rule with request for comments.

SUMMARY: Global Package Link Service (GPL) is an international mail service designed for mailers sending merchandise to other countries. To implement an agreement previously entered into with the postal administration of Hong Kong Special Administrative Region (Hong Kong), Hong Kong is now being added as a destination country. This action is consistent with the Postal Service's original plan to add destination countries as mailer needs dictate (59 FR 65961; December 22, 1994). GPL Service previously has been made available to Brazil, Canada, Chile, China, France, Germany, Japan, Mexico, Singapore, and the United Kingdom (U.K.). To use GPL Service, a mailer must mail at least 10,000 GPL packages a year and agree to link its information systems with the Postal Service's so that the Postal Service can extract certain information about the contents of the mailer's packages for customs clearance and other purposes. Initially, one level of service to Hong Kong will be offered to mailers. Interim regulations have been developed and are set forth below for comment and suggested revision prior to adoption in final form.

DATES: The interim regulations take effect September 24, 1997. Comments must be received on or before October 24, 1997.

ADDRESSES: Written comments should be mailed or delivered to Global Package Link Service, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 370 IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying at the above address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Michelson at the above address. Telephone: (202) 268–5731. Marc Solnick at the above address. Telephone: (202) 268–3916.

SUPPLEMENTARY INFORMATION:

I. Introduction

One of the most important goals of the Postal Service's international mission is developing services that enhance the ability of U.S. mailers to do business in other countries. This responsibility was delineated in 39 U.S.C. 403(b)(2) which makes it the obligation of the Postal Service "to provide types of mail service to meet the needs of different categories of mail and mail users." GPL is designed to more closely meet the needs of mailers who send merchandise packages from the United States to multiple international addressees by simplifying the process mailers use to prepare their packages for mailing and by reducing the costs those mailers incur in mailing merchandise to other countries.

In late 1994, with implementation of International Package Consignment Service, later renamed Global Package Link, to Japan (59 FR 65961; December 22, 1994), the Postal Service announced that, when feasible, it would expand this service to other destination countries based on mailer requests. Consistent with this policy, the Postal Service later expanded GPL by adding Canada and the United Kingdom as destination countries for qualifying mailers (61 FR 13765; March 28, 1996), subsequently expanded GPL further by announcing Brazil, Chile, and Germany as GPL destinations (62 FR 17072; April 9, 1997), added the People's Republic of China as a GPL destination (62 FR 25515; May 9, 1997), added Mexico and Singapore as GPL destinations (62 FR 45160; August 26, 1997), and added France as a GPL destination (62 FR 47558; September 10, 1997). The USPS is hereby further expanding GPL by adding Hong Kong as a GPL destination for qualifying mailers. This action implements an agreement with the postal administration of Hong Kong dated August 29, 1997.

II. GPL to Hong Kong Special Administrative Region

A. Qualifying Criteria

A mailer who wants to use GPL to Hong Kong must enter into a service agreement with the Postal Service providing for the following. First, the mailer must commit to mail at least

10,000 GPL packages per year (volumes to any GPL country may be counted toward this minimum). Second, the mailer must designate the Postal Service as its carrier of choice to Hong Kong. Third, the mailer must agree to link its information systems with the Postal Service's so that the Postal Service and the mailer can exchange data on the mailer's packages, and the Postal Service can extract, on an as-needed basis, certain information about the package by scanning the mailer-provided barcode on each package.

In general, the information that must be made available to the Postal Service includes: the order number; the package identification number; the buyer's name and address; the recipient's name and address; the total weight of the package; the total value of the package contents; the number of items in the package; and, for each item in the package, its SKU number, its value, and its country of origin. In practice, this requirement means that the mailer will have to begin the necessary systems work by the time it begins using GPL, and then will have to assist the Postal Service in completing and maintaining the information systems linkages. The Postal Service will use the extracted information to prepare the necessary customs forms and package labels and to provide user-friendly tracking and tracing.

In addition to these required commitments, which must appear in all GPL service agreements, arrangements between the Postal Service and the mailer that are technical in nature also may appear in the GPL service agreement. For instance, the service agreement may describe the electronic data interface (EDI) or proprietary file format that will be used to transmit data between the mailer and the Postal Service, as well as the frequency and schedule of transmissions. Similarly, the service agreement may describe the formats and frequencies for any exception and performance reports that the Postal Service will provide to the mailer.

B. Processing and Acceptance

If the plant at which the mailer's GPPL packages originate is located within 500 miles of a GPL processing facility, the Postal Service will verify and accept the packages at the mailer's plant and transport them to the GPL processing facility according to a schedule agreed to by the Postal Service and the mailer.

If the mailer's plant from which the GPL packages will originate is located more than 500 miles from a GPL processing facility, the mailer may choose one of two processing options:

Option One

The mailer will be required to present the packages to the Postal Service for verification at the mailer's plant and transport them as a drop shipment to a GPL processing facility according to a schedule agreed to by the Postal Service and the mailer.

Option Two

The mailer will process the packages using Postal Service-provided computer system workstations and sort and prepare the packages as required by the Postal Service. Then, the Postal Service will verify and accept the packages at the mailer's plant according to a schedule agreed to by the Postal Service and the mailer and will transport the packages to a GPL processing facility for dispatch.

C. Customs Forms

Normally, all customs forms will be automatically generated by the Postal Service computer workstations. Packages mailed to Hong Kong through a GPL facility are not required to bear customs forms when they are tendered to the Postal Service. After scanning the mailer-printed barcode on each package and correlating it with the package-specific information transmitted by the mailer, the Postal Service will print the necessary customs forms and then affix them to the mailer's packages as part of the processing operation at the GPL processing facility. If the mailer is more than 500 miles from a designated GPL facility and chooses option two, then the customs/GPL label will be affixed by the mailer using Postal Service-provided workstations.

D. Customs Clearance

The Postal Service has developed the Customs Pre-Advisory System (CPAS) as part of GPL processing. This electronic system collects package-specific data to satisfy customs requirements as packages are processed using the USPS computer workstations located at a GPL facility. The system electronically advises the USPS delivery agent and customs of the contents of each package mailed. Since this advisory information arrives before the mail, CPAS facilitates and simplifies customs clearance. Electronic pre-notification of the package contents and automatic preparation of required customs declarations assures the fastest clearance through customs in Hong Kong and reduces costs for the mailer and the Postal Service. To use CPAS, recipients of merchandise must designate the Postal Service and its customs broker as their agents for customs clearance.

Any customs duties and taxes for Hong Kong will be collected from the package recipient upon delivery in Hong Kong.

E. Delivery Options

Hong Kong

The Postal Service will offer one delivery option in Hong Kong: Premium Service. Premium Service shall receive a level of service comparable to Express Mail International Service (EMS) service in Hong Kong. It will include track and trace for individual packages and delivery throughout Hong Kong within 1 to 2 business days after clearing customs. Premium Service includes insurance, as provided under DMM S500, at no additional cost.

The Postal Service will transport Premium Service packages from the mailer's plant or designated GPL processing facility to Hong Kong via airlift. Packages will be dispatched to flights either the evening that processing is complete or the next morning. Arrival in Hong Kong is expected within 36 hours after dispatch.

F. Rates

Hong Kong

The base rates for GPL service to Hong Kong are set forth below. The Postal Service will charge the base rates, in 1-pound increments, for the first 100,000 packages mailed in a 12-month period. Once the mailer has mailed 100,000 packages, postage for the next packages mailed by the mailer in the same 12-month period will be reduced by 3% from the base rates.

GLOBAL PACKAGE LINK TO HONG KONG

Weight not over (pounds)	Annual volume first 100,000 packages—no discount premium service (dollars)
1	15.55
2	18.75
3	22.00
4	25.20
5	28.45
6	31.65
7	34.90
8	38.10
9	41.35
10	44.55
11	47.80
12	51.00
13	54.25
14	57.45
15	60.70
16	63.90

GLOBAL PACKAGE LINK TO HONG KONG—Continued

Weight not over (pounds)	Annual volume first 100,000 packages—no discount premium service (dollars)
17	67.15
18	70.35
19	73.60
20	76.80
21	80.05
22	83.25
23	86.50
24	89.70
25	92.90
26	96.15
27	99.35
28	102.60
29	105.80
30	109.05
31	112.25
32	115.50
33	118.70
34	121.95
35	125.15
36	128.40
37	131.60
38	134.85
39	138.05
40	141.30
41	144.50
42	147.75
43	150.95
44	154.20

Number of pieces in contract year	Discount
1–100,000	None.
100,001+	3 percent of base rate.

III. Conclusion

Accordingly, the Postal Service hereby adopts GPL service to Hong Kong Special Administrative Region, on an interim basis, at the rates set forth in the schedules above. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning this interim rule.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Effective on September 24, 1997, subchapter 620 and the Individual Country Listing pages for Hong Kong in the International Mail Manual are amended as follows:

6 Special Programs

* * * * *

621.3 Availability

Global Package Link service is available only to Brazil, Canada, Chile, People's Republic of China, France, Germany, Hong Kong Special Administrative Region, Japan, Mexico, Singapore, and the United Kingdom.

* * * * *

623 General

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623.3 Size and Weight Limits

[Replace first sentence in paragraph with:]

The weight limits for Global Package Link service are 70 pounds for Chile, China, and Germany; 66 pounds for Brazil, Canada, France, Singapore, and the United Kingdom; 64 pounds for Mexico; and 44 pounds for Japan and Hong Kong Special Administrative Region.

[Replace second sentence in paragraph with:]

The maximum length of GPL packages is 60 inches and the maximum length and girth combined is 108 inches, with the following exceptions: Maximum size for Germany is length 47 inches, height 23 inches, width 23 inches; maximum size for the People's Republic of China and Hong Kong Special Administrative Region for any one dimension is 59 inches; the sum of the length and the greatest circumference measured in a direction other than the length shall not exceed 118 inches; Japan Standard packages weighing less than 1 pound, the maximum length is 24 inches with a height and depth and length combined maximum of 36 inches.

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626 Services Available

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626.4 Customs

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626.43 Payment of Customs Duty

626.431 All Countries Except Japan, the People's Republic of China, Hong Kong Special Administrative Region, and Singapore

For all countries except Japan, the People's Republic of China, Hong Kong Special Administrative Region, and Singapore, the Postal Service will arrange payment of customs duty on behalf of the recipient at the time the merchandise enters the country of destination. Any banking costs or foreign exchange fees applicable to the customs payments will be charged back to the mailer. The Postal Service will notify the mailer electronically of the amount of duty and fees paid and the mailer will reimburse the Postal Service in a manner and within a time frame agreed to by the mailer and the Postal Service. Because of the need to have funds available for customs at the time of clearance in Brazil, Chile, and Mexico, mailers must make an advance deposit prior to first mailing to cover anticipated duties and taxes in addition to postage. For subsequent mailings, this account must be replenished by the mailer after the actual amount of duties and taxes is assessed. The mailer is responsible for collecting duties and taxes from the recipient (this can be done when payment for the order is made). For Mexico, GPL mailers will pay customs the day after the shipments arrive in customs, through a pre-authorized Automated Clearing House (ACH) debit program. GPL mailers must agree to allow the USPS to debit their designated bank account through the ACH debit program to pay these charges.

626.432 Japan, the People's Republic of China, Hong Kong Special Administrative Region, and Singapore

In Japan, the People's Republic of China, Hong Kong Special Administrative Region, and Singapore, any customs duties and fees will be collected from the recipient at the time of delivery.

* * * * *

Individual Country Listing for Hong Kong:

[Add the rate chart below.]

GLOBAL PACKAGE LINK SERVICE TO HONG KONG

Weight not over (pounds)	Annual volume first 100,000 packages—no discount, premium service (dollars)
1	15.55

GLOBAL PACKAGE LINK SERVICE TO HONG KONG—Continued

Weight not over (pounds)	Annual volume first 100,000 packages—no discount, premium service (dollars)
2	18.75
3	22.00
4	25.20
5	28.45
6	31.65
7	34.90
8	38.10
9	41.35
10	44.55
11	47.80
12	51.00
13	54.25
14	57.45
15	60.70
16	63.90
17	67.15
18	70.35
19	73.60
20	76.80
21	80.05
22	83.25
23	86.50
24	89.70
25	92.90
26	96.15
27	99.35
28	102.60
29	105.80
30	109.05
31	112.25
32	115.50
33	118.70
34	121.95
35	125.15
36	128.40
37	131.60
38	134.85
39	138.05
40	141.30
41	144.50
42	147.75
43	150.95
44	154.20

Number of pieces in contract year	Discount
1–100,000	None
100,001+	3 percent of base rate.

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Stanley F. Mires,

Chief Counsel Legislative.

[FR Doc. 97–25356 Filed 9–23–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300545; FRL–5741–2]

RIN 2070–AB78

Maneb; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of maneb (manganous ethylenebisdithiocarbamate), calculated as zinc ethylenebisdithiocarbamate, and its metabolite ethylenethiourea in or on walnuts. This action is in connection with a crisis exemption declared by the state of California under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticides on walnuts in California. This regulation establishes a maximum permissible level for residues of maneb in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on June 15, 1998.

DATES: This regulation is effective September 24, 1997. Objections and requests for hearings must be received by EPA on or before November 24, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300545], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300545], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300545]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9364, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the fungicide maneb (manganous ethylenebisdithiocarbamate), calculated as zinc ethylenebisdithiocarbamate and its metabolite ethylenethiourea, in or on walnuts at 0.05 part per million (ppm). This tolerance will expire and is revoked on June 15, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Maneb on Walnuts and FFDCA Tolerances

On February 24, 1997, the California Department of Pesticide Regulation availed itself of the authority to declare the existence of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of maneb on walnuts for control of bacterial blight. Currently, copper based bactericides are the only registered products for control of this disease. The increase of walnut blight since 1992 is attributed to the development of a tolerance to copper based bactericides. The state has demonstrated that copper resistant bacteria have become economically important, with a potential 55,000 acres affected. EPA has authorized under FIFRA section 18 the use of maneb on walnuts for control of bacterial blight in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of maneb (calculations based on its metabolite ethylenethiourea) and its metabolite in or on walnuts. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on June 15, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on walnuts after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether maneb meets EPA's registration requirements for use on walnuts or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of maneb by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for maneb, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute", "short-term", "intermediate term", and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants (<1 year old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of maneb and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of maneb (manganous ethylenebisdithiocarbamate) calculated as zinc ethylenebisdithiocarbamate and its metabolite ethylenethiourea on walnuts at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by maneb (based on calculations on its metabolite, ethylenethiourea) are discussed below.

1. *Acute toxicity.* The acute dietary risk assessment is being conducted for ethylenethiourea (ETU) rather than maneb, since the NOEL for acute dietary risk for ETU is 4 times lower (5 mg/kg/day) than the NOEL for acute dietary risk for maneb (20 mg/kg/day). Therefore, an acceptable MOE for ETU will also be protective of exposure to maneb. The oral developmental NOAEL (No-observed-adverse-effect-level) in rats for ETU is 5 mg/kg/day, based on a threshold finding of delayed ossification in the fetal skeletal structures at the NOAEL. The NOEL is more correctly identified as a slightly lower dose level which is close to a threshold NOAEL in the developmental study. The EDBC PD-4 stated that MOEs could be calculated from the 5 mg/kg/day NOAEL, which was close to the NOEL, and was the lowest dose tested.

2. *Short - and intermediate - term non-dietary toxicity.* OPP recommends use of the systemic NOEL of 100 mg/kg/day from the 3-week dermal toxicity study in rabbits. At the LOEL of 300 mg/kg/day, there were slightly increased thyroid weights and follicular cell hypertrophy of the thyroid.

3. *Chronic toxicity.* EPA has established the RfD for ETU at 0.00008 milligrams/kilogram/day (mg/kg/day). This RfD is based on the LOEL of 0.25 mg/kg/day due to thyroid hyperplasia in a 2-year rat feeding study, with an uncertainty factor of 3,000. The uncertainty factor of 3,000 was based on a factor of 3 for absence of a NOEL for ETU, a factor of 10 for data gaps for ETU, and a factor of 100 to take into accoutn inter- and intra-species variability.

4. *Carcinogenicity.* Maneb has been classified as a Group B2, probable human carcinogen, based on evidence of thyroid tumors in rats and liver tumors. The Q1.* for quantitation of human oral risk is 0.0601 $(mg/kg/day)^{-1}$ for the carcinogenic metabolite, ETU.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.110) for the residues of maneb (manganous ethylenebisdithiocarbamate), calculated as zinc ethylenebisdithiocarbamate, in or on a variety of raw agricultural commodities, including almonds at 0.1 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from and maneb as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The high end dietary exposure for the population subgroup of concern, females 13+ years old, is 0.000036 mg/kg/day, which results in an MOE of 5,000. Maximum field trial residue data values were used to calculate the MOE. This is considered a partially refined risk estimate.

ii. *Chronic exposure and risk.* The chronic exposure estimate for the general population is 0.000020 mg/kg/day and the anticipated residue contribution (ARC) as apercentage of the RfD is 24.4%.

2. *From drinking water.* There is no established Maximum Concentration Level (MCL) for residues of maneb in drinking water. No drinking water health advisory levels have been established for maneb. Environmental fate studies suggest that maneb is moderately persistent and has moderate potential to leach into ground water. Maneb could potentially leach to groundwater and run off to surface water under certain environmental conditions.

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause maneb to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with maneb in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Maneb is currently registered for use on the following residential non-food sites: turf, lawn, trees, and shrubs.

i. *Acute exposure and risk.* EPA generally will not include residential or other non-dietary exposure as a component of the acute exposure assessment. Theoretically, it is also possible that a residential, or other non-dietary, exposure could be combined with the acute total dietary exposure from food and water. However, the Agency does not believe that aggregating multiple exposure to large amounts of pesticide residues in the residential environment via multiple products and routes for a one day exposure is a reasonably probable event. It is highly unlikely that, in one day, an individual would have multiple high-end exposures to the same pesticide by treating their lawn and garden, treating their house via crack and crevice application, swimming in a pool, and be maximally exposed in the food and water consumed. Additionally, the concept of an acute exposure as a single exposure does not allow for including post-application exposures, in which residues decline over a period of days after application. Therefore, the Agency believes that residential exposures are more appropriately included in the short-term exposure scenario discussed below.

ii. *Chronic exposure and risk.* The Agency has concluded that a chronic residential exposure scenario does not exists for non-occupational uses of maneb.

iii. *Short- and intermediate-term exposure and risk.* There are residential uses of maneb and EPA acknowledges that there may be short and intermediate-term non-occupational exposure scenarios. The EPA has identified a toxicity endpoint for short and intermediate term non-occupational risks. However, no acceptable reliable exposure data to assess the potential risks are available at this time. Based on the level of the short and intermediate-term endpoints, the Agency does not expect the short and intermediate-term aggregate risk to exceed the level of concern.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common

mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether maneb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, maneb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that maneb has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The MOE for females 13+ years was calculated to be 5,000. Therefore, aggregate acute risk estimates do not exceed the Agency's level of concern.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to maneb from food will utilize 24.4% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (<1 year old) discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to maneb in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to maneb residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

The MOE for the U.S. population exceeds the desired MOE, therefore, EPA has no short- and intermediate-term aggregate risk concerns.

D. Aggregate Cancer Risk for U.S. Population

The aggregate dietary cancer risk for ETU was calculated to be 1.2×10^{-6} for all the published and pending uses for maneb including this section 18 use and for all commodities which contain ETU as a result of the use of EDBC compounds. In EPA's best scientific judgement, additional potential exposure from residues in water would not increase cancer risk estimates above the Agency's level of concern.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of maneb, EPA considered data from developmental toxicity studies in the rat and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies.* From the rat developmental study for ETU, the oral developmental NOEL is 5 mg/kg/day, based on a threshold finding of delayed ossification in the fetal skeletal structures at the NOEL.

iii. *Reproductive toxicity study.* There is no reproduction study with ETU available. In the rat reproduction study for maneb, the parental (systemic) NOEL was 6.0 mg/kg/day, based on decreased body weight and food consumption at the LOEL of 25 mg/kg/day. The developmental (pup) NOEL was 6.0 mg/kg/day, based on increased startle response at the LOEL of 25 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* The rat developmental study with ETU demonstrated a special prenatal sensitivity for infants and children. The results of the rat reproduction study with maneb do not demonstrate any additional special post-natal sensitivity for infants and children, since the NOEL and LOEL for parental toxicity and pup toxicity occur at the same doses and the pup effects are not of unusual concern.

v. *Conclusion.* In the absence of a complete data base for ETU, EPA is assuming an additional tenfold safety factor to account for the possibility of special prenatal sensitivity for infants and children.

2. *Acute risk.* The acute dietary risk assessment for ETU residues demonstrated an MOE of 5,000 based on the NOEL of 5 mg/kg/day in the rat developmental study. Therefore, this calculated MOE for ETU for females 13+ years of age shows that the MOEs for this population subgroup are far in excess of the required dietary MOE of 1,000 due to ETU data gaps. Therefore, the acute dietary risks for ETU to females 13+ years of age are below EPA's level of concern. The RfD for ETU incorporates an uncertainty factor of 3,000. The uncertainty factor was based on a factor of 3 for absence of a NOEL for ETU, a factor of 10 for data gaps needed to assess extra sensitivity to infants and children for ETU, and the normal factor of 100 for converting between and within species (EBDC PD/4, 3/2/92).

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to maneb from food will utilize 78.4% of the RfD for non-nursing infants (<1 year old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to maneb in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to maneb residues.

4. *Short- or intermediate-term risk.* The MOEs for infants and children exceed the desired MOE, therefore, EPA has no short- and intermediate-term aggregate risk concerns.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood. The residues of concern are the fungicide maneb, calculated as zinc ethylenebisdithiocarbamate, and its metabolite ethylenethiourea. Secondary residues are not expected in animal commodities as no feed items are associated with this use.

B. Analytical Enforcement Methodology

Adequate enforcement methodology is available for maneb in the Pesticide Analytical Manual (PAM) II Method III. Prior to publication in PAM II, additional enforcement methodology is available in the interim to anyone who is interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-5805.

C. Magnitude of Residues

Residues of maneb (manganous ethylenebisdithiocarbamate) calculated as zinc ethylenebisdithiocarbamate and its metabolite ethylenethiourea are not expected to exceed 0.05 ppm in or on walnuts as a result of this proposed use. Secondary residues are not expected in animal commodities as no feed items are associated with this use

D. International Residue Limits

No Codex, Canadian or Mexican maximum residue levels have been established for residues of maneb in/on walnuts.

VI. Conclusion

Therefore, the tolerance is established for residues of maneb (manganous ethylenebisdithiocarbamate), calculated as zinc ethylenebisdithiocarbamate, and its metabolite ethylenethiourea in walnuts at 0.05 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 24, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300545] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section

408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180.

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 29, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.110 is revised to read as follows:

§ 180.110 Maneb; tolerances for residues.

(a) *General.* Tolerances for residues of the fungicide maneb (manganous ethylenebisdithiocarbamate), calculated as zinc ethylenebisdithiocarbamate, are established in or on raw agricultural commodities in the following table:

Commodity	Parts per million	Expiration/Revocation Date
Almonds	0.1	None
Apples	2	None
Apricots	10	None
Bananas (not more than 0.5 part per million) shall be in the pulp after peel is removed and discarded (preharvest application only).	4	None
Beans (dry form)	7	None
Beans (succulent form)	10	None
Broccoli	10	None
Brussels sprouts	10	None
Cabbage	10	None
Carrots	7	None
Cauliflower	10	None
Celery	5	None
Chinese cabbage	10	None
Collards	10	None
Cranberries	7	None
Cucumbers	4	None
Eggplants	7	None
Endive (escarole)	10	None
Figs	7	None
Grapes	7	None
Kale	10	None
Kohlrabi	10	None
Lettuce	10	None
Melons	4	None
Mustard greens	10	None
Nectarines	10	None
Onions	7	None
Papayas	10	None
Peaches	10	None
Peppers	7	None
Potatoes	0.1	None
Pumpkins	7	None
Rhubarb	10	None
Spinach	10	None
Sugar beet tops	45	None

Commodity	Parts per million	Expiration/Revocation Date
Summer squash	4	None
Sweet corn (kernels plus cob with husk removed)	5	None
Tomatoes	4	None
Turnip roots	7	None
Turnip tops	10	None
Winter squash	4	None

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for residues of the fungicide maneb (manganous ethylenebisdithiocarbamate), calculated as zinc ethylenebisdithiocarbamate, and its metabolite ethylenethiourea in connection with use of the pesticide under a section 18 emergency exemption granted by EPA. The tolerance will expire and is revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/Revocation Date
Walnuts	0.05	6/15/98

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–25097 Filed 9-23-97; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[OPP–300544; FRL–5740–8]

RIN 2070–AB78

Endothall; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of endothall in or on canola seed. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on canola in Minnesota. This regulation establishes a maximum permissible level for residues of endothall in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on August 31, 1998.

DATES: This regulation is effective September 24, 1997. Objections and requests for hearings must be received by EPA on or before November 24, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300544], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300544], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300544]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9356, e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the herbicide endothall, in or on canola seed at 0.3 part per million (ppm). This tolerance will expire and is revoked on August 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency

exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Endothall on Canola and FFDCA Tolerances

The Applicant states that over the past several years, unusually cool and wet weather during the early part of the year has delayed planting of canola which allows smartweed to become established in fields, both competing with the canola plants and then contaminating the seed. The smartweed seed, about the same size as canola seed, cannot be removed using standard grain cleaning equipment. Increasing levels of conspicuous admixture result in lower grading of the canola seed, and thus lower prices for producers. In 1995, nearly all Minnesota canola was excluded from the export market due to dockage attributable to high contamination with smartweed and wild buckwheat, which significantly reduced grower revenues. The Applicant states that there are no other products registered for this use, nor are there effective alternative control measures available. The Applicant estimates that significant economic losses will be suffered by canola growers if endothall is not available for control of smartweed. EPA has authorized under FIFRA section 18 the use of endothall on canola for control of smartweeds in Minnesota. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of endothall in or on canola seed. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on August 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on canola seed after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether endothall meets EPA's registration requirements for use on canola or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of endothall by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Minnesota to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for endothall, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses

the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute", "short-term", "intermediate term", and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (Children 1 - 6 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of endothall and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of endothall on canola seed at 0.3 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the

toxic effects caused by endothall are discussed below.

1. *Acute toxicity.* An acute dietary risk endpoint has not been identified, and an acute risk assessment is not required.

2. *Short - and intermediate - term toxicity.* For dermal short- and intermediate- term MOE calculations, the NOEL of 40.0 mg/kg/day (no effects seen at this, the Highest Dose Tested) was chosen from the 21-day dermal toxicity study in rats.

3. *Chronic toxicity.* EPA has established the RfD for endothall at 0.02 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 2-year feeding study in dogs with an NOEL of 2.0 mg/kg/day, using an uncertainty factor of 100. At the lowest observed effect level (LOEL) of 6.0 mg/kg/day, increased relative and absolute weight of the stomach and small intestine was observed.

4. *Carcinogenicity.* Endothall has not yet been reviewed by the Cancer Peer Review Committee. However, review of available data indicate that tumors observed in both the rat and the mouse studies are within the historical control range for these species. Thus, there is no concern for carcinogenic effects at this time.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.293) for the residues of endothall, in or on a variety of raw agricultural commodities, including rice grain and straw, potatoes, hops, cottonseed at levels from 0.05 to 0.1 ppm; and 40 CFR 180.319, interim tolerance for sugarbeets at 0.2 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from endothall as follows:

Chronic exposure and risk. In conducting this chronic dietary risk assessment, refinements used included percent of crop treated figures for all crops except canola and sugar beets. Aside from this, the conservative assumptions were made that 100% of the crops would have residues at tolerance levels. Using these conservative assumptions, the ARC estimates occupy the following percentages of the RfD: Overall U.S. Population, 1.1%; Nursing Infants <1 Year Old, 0.6%; Non-Nursing Infants <1 Year Old, 1.5%; Children Age 1-6 Years (highest exposed subgroup), 2.1%; and Children 7-12 Years Old, 1.6%. Although these estimates are well below levels of concern, additional refinement using anticipated residue levels and percent of crop treated information for all crops would result in much lower dietary exposure estimates.

2. *From drinking water.* There is an interim tolerance for residues of endothall in potable water at 0.2 ppm, and EPA has also established a Maximum Contaminant Level (MCL) for water at 0.1 mg/L.

Chronic exposure and risk. Chronic exposure levels for the U.S. population and children were calculated assuming concentrations at the MCL of 100.0 µg/L in drinking water; adult and child body weights of 70 and 10 kg, respectively; and adult and child drinking water consumption of 2 and 1 L per day, respectively. Based on these assumptions, adult exposure was calculated to be 2.9×10^{-3} mg/kg/day, and child exposure to be 1.0×10^{-2} mg/kg/day. These exposure values correspond to 14.3% of the RfD for adults, and 50.0% of the RfD for children.

3. *From non-dietary exposure.* Endothall is currently registered for use on the following residential non-food sites: Granular formulations of endothall are applied to lakes and ponds that have recreational uses. Concentrations of endothall ranging from 0.5 to 5 mg/L are used to control various aquatic weeds.

i. *Chronic exposure and risk.* Chronic non-dietary exposure is not expected with this use. Therefore, it is not necessary to conduct a chronic risk assessment, in association with the non-dietary exposure, which is expected to be short- and intermediate-term. This risk is discussed in the following paragraph.

ii. *Short- and intermediate-term exposure and risk.* The non-dietary swimmer exposure of a child (1-6 years), while swimming in water treated with this chemical is estimated as follows: Dermal Exposure = (Concentration of endothall) x (Surface area of child) x (hours exposed) x (body weight (kg)). Assumptions were used of 0.5 - 5 mg/L endothall concentrations in the water, surface area and body weight of the child 9,000 cm^2 and 22 kg, respectively. Based upon these assumptions, dermal exposure is estimated at a range of 0.0044 to 0.044 mg/kg/day. Oral Exposure = (Concentration of endothall) x (Ingestion rate of water) x (exposure time) / (body weight(kg)). Assumptions were 0.05 L/hr ingestion, 5 hr/day exposure time, and 22 kg bodyweight. Based on these assumptions, oral exposure is estimated at a range of 0.0057 to 0.057 mg/kg/day. Total Exposure, both dermal and oral, for a child 1-6 years old, is estimated at 0.01 to 0.1 mg/kg/day. From these exposure estimates, the MOE for short-term and intermediate-term exposure is calculated to be a range of 400 to 4,000.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabollte (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether endothall has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA cannot at this time determine whether endothall produces a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that endothall has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to endothall from food and drinking water will utilize 15.4% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is Children 1 to 6 Years Old, discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to endothall from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from acute aggregate exposure to endothall residues.

2. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Based upon assumptions given above, the MOEs for adults from exposures contributed by food plus drinking water plus swimming exposure, range from 384 to 3,033. For children, the MOEs range from 359 to 1,950. Since these MOEs are well above the acceptable level of 100, EPA concludes that there is reasonable certainty that no harm will result from short- and intermediate-term exposure to endothall residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of endothall, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies.* In the developmental study in rats, the maternal (systemic) NOEL was 12.5 mg/kg/day, based upon decreased body weight gain at the LOEL of 25.0 mg/kg/day. The developmental (fetal) NOEL was 25.0 mg/kg/day, the highest dose tested.

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOEL was not determined since there were proliferative lesions of the gastric epithelium in both sexes at the lowest dose tested (2.0 and 2.3 mg/kg/day for males and females respectively). The developmental/reproductive (pup) NOEL was 9.4 mg/kg/day, based on decreased pup body weights (both sexes) at the LOEL of 60.0 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* The available developmental and reproductive toxicity data available do not indicate that there are pre- or post-natal toxicity concerns for infants and children.

v. *Conclusion.* Based on the currently available developmental and reproductive toxicity studies discussed above and best scientific judgment of EPA scientists, there does not appear to be an extra sensitivity for pre- or post-natal effects, and an additional tenfold safety factor is not warranted.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to endothall from food and drinking water will utilize 52.1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to endothall from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to endothall residues.

3. *Short- or intermediate-term risk.* Granular formulations of endothall are applied to lakes and ponds that have recreational uses. Concentrations of endothall ranging from 0.5 to 5 mg/L are used to control various aquatic weeds.

Short- and intermediate-term exposure and risk. The non-dietary swimmer exposure estimate for a child (1-6 years), while swimming in water treated with this chemical, through both dermal and oral exposure, results in MOEs from 400 to 4,000 (further discussed above).

V. Other Considerations

A. Metabolism In Plants and Animals

The qualitative nature of the residues of endothall in plants appears to be adequately understood; the nature of the residue in animals is adequately understood based on acceptable studies with lactating goats and laying hens. The residue to be regulated is endothall *per se*, as stated in 40 CFR 180.293 .

B. Analytical Enforcement Methodology

Adequate analytical methods are available for tolerance enforcement in plant commodities (a GC method with nitrogen detection is available in the Pesticide Analytical Manual (PAM) Vol. II, as Method I.) No tolerances have been established for animal commodities, or are required with this section 18 use; therefore, no analytical methods are required for livestock commodities.

C. Magnitude of Residues

Residues of endothall are not expected to exceed 0.3 ppm in canola and in its processed products canola oil and meal, as a result of this use. Secondary resides are not expected in animal commodities.

D. International Residue Limits

There are no Codex, Canadian, or Mexican Maximum Residue Levels (MRLs) established for endothall on canola.

E. Rotational Crop Restrictions

There are no rotational crop restrictions with this use or on the federal label for endothall.

VI. Conclusion

Therefore, the tolerance is established for residues of endothall in canola seed at 0.3 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 24, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300544] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 180 and 185

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 12, 1997.

Daniel Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.293:

i. By designating the existing text as paragraph (a)(1) and adding a heading to paragraph (a).

ii. By adding paragraph (b).

iii. By adding and reserving paragraphs (c) and (d).

Section 180.293, as amended, reads as follows:

§ 180.293 Endothall; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the residues of the herbicide endothall, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire on the dates specified in the following table:

Commodity	Parts per million	Expiration/ Revocation Date
Canola, seed ...	0.3	8/31/98

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.2650 [Removed]

b. In § 185.2650:

i. By designating the existing text as paragraph (a)(2) to § 180.293.

ii. By removing § 185.2650.

[FR Doc. 97–25236 Filed 9-23-97; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300556; FRL–5745–6]

RIN 2070–AB78

Fenarimol; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of fenarimol in or on hops . This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on hops. This regulation establishes a maximum permissible level for residues of fenarimol in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1998.

DATES: This regulation is effective September 24, 1997. Objections and requests for hearings must be received by EPA on or before November 24, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300556], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300556], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300556]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Olga Odiott, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9363, e-mail: odiott.olga@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide fenarimol, in or on hops at 5 part per million (ppm). This tolerance will expire and is revoked on December 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–55729).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the

pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Fenarimol on Hops and FFDCA Tolerances

The States of Washington, Oregon and Idaho availed themselves of the authority to declare a crisis exemption to use fenarimol for control of the Powdery mildew (*Sphaeroteca macularis*) in hops. Powdery mildew is a serious hop disease in many hop growing areas in the world. The elimination of commercial hop production in New York during the early part of this century is largely blamed on this disease. Since this disease has not been observed in the Pacific Northwest until very recently, no effective fungicides are registered to control it. Sulfur is the only pesticide available, but does not provide effective control. The pathogen is airborne and spreads very quickly, primarily during the months of July and August, which are critical to hop production. EPA has authorized under FIFRA section 18 the use of fenarimol on hops for control of powdery mildew in Washington, Oregon and Idaho. After having reviewed their submissions, EPA concurs that emergency conditions exist for these States .

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fenarimol in or on hops. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on hops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether fenarimol meets EPA's registration requirements for use on hops or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fenarimol by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Washington, Oregon and Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fenarimol, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty facfor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute", "short-term", "intermediate term", and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants < 1 year old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fenarimol and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of fenarimol on hops at 5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenarimol are discussed below.

1. *Acute toxicity.* The Agency determined that the NOEL of 13 mg/kg/day, based on hydronephrosis at the lowest effect level (LEL) of 35 mg/kg/day, from a developmental study in rats should be used to assess acute dietary risks from residues of fenarimol. This risk assessment will evaluate risk to females 13+ years old, the population subgroup of concern.

2. *Short - and intermediate - term toxicity.* The Agency determined that the NOEL of 13 mg/kg/day from the rat developmental study should be used to assess risks from short- and intermediate-term exposures to residues

of fenarimol. At the LEL of 35 mg/kg/day, there was hydronephrosis.

3. *Chronic toxicity.* EPA has established the RfD for fenarimol at 0.065 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 2 year rat feeding study with a NOEL of 6.5 mg/kg/day and an uncertainty factor of 100 based on fatty change in the liver at the LEL of 13 mg/kg/day.

4. *Carcinogenicity.* The Agency's Carcinigenicity Peer Review Committee (CPRC) has classified fenarimol as a Group E (non-carcinogenic in humans) chemical.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.421) for the residues of fenarimol (alpha-(2 chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol), in or on a variety of raw agricultural commodities at levels ranging from 0.003 ppm in milk to 0.1 ppm in apples, pears and pecans. Tolerances have also been established (40 CFR 180.421(b)) for residues of fenarimol and its metabolites (alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol, and 5-[2-chlorophenyl)-(4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2- chlorophenyl)-(4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidine (calculated as fenarimol)) ranging from 1.0 ppm for cherries to 0.02 ppm for grapes. For this Section 18 only, the Agency determined that the residue of concern in hops is parent fenarimol. Risk assessments were conducted by EPA to assess dietary exposures and risks from fenarimol as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary (food only) risk assessment used TMRC estimates. The resulting high-end exposure estimate of 0.01 mg/kg/day results in a dietary (food only) MOE of 1300 for females 13+ years. This MOE should be viewed as a conservative risk estimate. Refinement of the risk assessment using anticipated residue values and percent crop-treated data would result in a lower acute dietary risk estimate.

ii. *Chronic exposure and risk.* For the chronic dietary (food only) risk assessment, the Agency assumed that 100% of hops and all other commodities having fenarimol tolerances will contain fenarimol residues and those residues would be at the tolerance level. These assumptions result in an over estimate of human dietary exposure. Thus, in making a safety determination for this tolerance, HED is taking into account this conservative exposure assessment. The existing fenarimol tolerances (published and pending, and including the necessary Section 18 tolerance) result in a TMRC that is equivalent to percentages of the RfD that range from 1% for the U.S. population to 3% for non-nursing infants < 1 year old.

2. *From drinking water.* Based on available data used in EPA's assessment of environmental risk, fenarimol is not expected to leach to groundwater. Information on its persistence is inconclusive. There is no information on the persistence/mobility of fenarimol metabolites/degradates. There are no established Maximum Contaminant Levels for residues of fenarimol in drinking water and no Health Advisory Levels for this active ingredient in drinking water have been issued.

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause fenarimol to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with fenarimol in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Fenarimol is currently registered for use on the following residential non-food sites: ornamentals, turf and lawns. There are no indoor residential uses for fenarimol. Based on the nature of the outdoor residential uses, the EPA concludes that chronic residential exposure scenarios do not exist for fenarimol. Short and/or intermediate term exposure scenarios may exist. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including fenarimol.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether fenarimol has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that fenarimol has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the population subgroup of concern, females 13+ years, the Agency estimated an MOE value of 1300 for the acute aggregate dietary (food only) risk from exposures to fenarimol residues. Despite the potential for exposure to fenarimol in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed the Agency's level of concern.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to fenarimol from food will utilize 1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants < 1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenarimol in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenarimol residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Based on the registered uses of fenarimol short and/or intermediate term exposure scenarios may exist. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including fenarimol.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fenarimol, EPA considered data from developmental toxicity studies in the rat and rabbit and a 3-generation reproduction study in the rat and reproduction studies in mice and guinea pigs. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies*— *Rats*: The maternal (systemic) NOEL was 13 mg/kg/day, based on decreased weight gain at the lowest observed effect level (LOEL) of 35 mg/kg/day. The developmental (fetal) NOEL was 13 mg/kg/day based on hydronephrosis at the LOEL of 35 mg/kg/day.

Rabbits: The maternal (systemic) NOEL was 35 mg/kg/day, the highest dose tested (HDT). The developmental (fetal) NOEL was 35 mg/kg/day (HDT).

iii. *Reproductive toxicity study*— *Rats*: In a 3-generation rat reproduction study, the maternal (systemic) NOEL was 5.0 mg/kg/day, based on increased gestation time, and delayed onset of parturition at the LOEL of 17.5 mg/kg/day. The developmental (pup) NOEL was 5.0 mg/kg/day, based on decreased pup survival and hydronephrosis at the LOEL of 17.5 mg/kg/day. The reproductive NOEL was 2.5 mg/kg/day, based on anti-fertility effects in males, and dystocia in females at the LEL of 5.0 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* Based on the developmental toxicity studies discussed above, for fenarimol there does not appear to be a special sensitivity for pre-natal effects. However, based on the developmental finding of hydronephrosis in the rat study, an acute dietary risk assessment was performed for females 13+ years of age.

Based on the reproductive toxicity studies discussed above and other reviewed data for fenarimol, there does not appear to be a special sensitivity for post-natal effects. The major reproductive findings in the rat (post-natal male infertility and dystocia and related effects in females) were concluded to be species-specific findings by the Agency. Reproduction studies in mice, rabbits, and guinea pigs did not demonstrate the reproductive concerns. Mechanistic data also substantiate the species-specific conclusion.

v. *Conclusion.* The EPA concludes that reliable data support use of the standard 100-fold margin of exposure/uncertainty factor and that an additional margin/factor is not needed to protect infants and children.

2. *Acute risk.* The acute dietary MOE (food only) was calculated to be 1300 for females 13+ years (accounts for both maternal and fetal exposure). These MOE calculations were based on the developmental NOEL in rats of 13 mg/kg/day. This risk assessment assumed 100% crop-treatment with tolerance level residues on all treated crops consumed, resulting in an over-estimate of dietary exposure. The large acute dietary MOE calculated for females 13+ years provides assurance that there is a reasonable certainty of no harm for females 13+ years. Despite the potential for exposure to fenarimol in drinking water, the Agency does not expect the aggregate exposure (food plus water) to exceed the Agency's level of concern for acute dietary exposure.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to fenarimol from food will utilize a percentage of the RfD that ranges from 1% for children (1-6 yrs.), up to 3% for non-nursing infants <1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenarimol in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from

chronic aggregate exposure to fenarimol residues.

4. *Short- or intermediate-term risk.* Based on the registered uses of fenarimol short and/or intermediate term exposure scenarios may exist. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including fenarimol.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue of fenarimol in hops has not been directly determined. Metabolism studies with fenarimol in apples and cherries indicate that the parent compound is the only significant residue. For the purpose of this tolerance, EPA will translate these data to hops. For this tolerance only, EPA concludes that the residue of concern in hops is parent fenarimol. According to Table 1 (OPPTS 860.1000), there are no livestock feedstuffs derived from hops. Thus, the livestock metabolism and magnitude of residues in meat, milk, poultry and eggs are not a concern for this Section 18 .

B. Analytical Enforcement Methodology

Analytical methodology exists for the enforcement of currently established tolerances for fenarimol. The method (GC/ECD) is published in PAM vol II (Method R039). For the purposes of this tolerance, Method R039 may be used to enforce the required tolerance for fenarimol in hops.

C. Magnitude of Residues

Residues of fenarimol are not expected to exceed 5 ppm in/on dried hop cones as a result of this Section 18 use.

D. International Residue Limits

There are no Mexican or Canadian Maximum Residue Limits (MRL) for fenarimol in/on hops. Thus, harmonization with Mexico and Canada is not an issue for this Section 18. A CODEX MRL of 5 ppm is established for fenarimol *per se* in/on hops. As EPA has concluded that a tolerance level of 5 ppm should be established for residues of fenarimol in/on hops as a result of this Section 18 exemption, harmonization with CODEX is not an issue.

VI. Conclusion

Therefore, the tolerance is established for residues of fenarimol in hops at 5 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 24, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300556] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: September 16, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.421 is amended as follows:

i. By adding a heading to paragraph (a) and designating the existing text as paragraph (a)(1).

ii. By redesignating paragraph (b) as paragraph (a)(2) and by adding a new paragraph (b).

iii. By adding and reserving paragraphs (c) and (d).

Section 180.421, as amended, reads as follows:

§ 180.421 Fenarimol; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for residues of the fungicide fenarimol in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance will expire and be revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/Revocation Date
Hops	5	December 31, 1998

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.3200 [Removed]

b. In § 185.3200:

i. The entries in the table are transferred and alphabetically added to the table in paragraph (a)(2) of § 180.421.

ii. The remainder of § 185.3200 is removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 701.

§ 186.3200 [Removed]

b. In § 186.3200:

i. The entry in the table of paragraph (a) is transferred and alphabetically added to the table in paragraph (a)(1) of § 180.421.

ii. The entries in the table of paragraph (b) are transferred and alphabetically added to the table in paragraph (a)(2) of § 180.421.

iii. The remainder of § 186.3200 is removed.

[FR Doc. 97–25235 Filed 9-23-97; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 473

[BPD–453–CN]

RIN 0938–AG18

Medicare Program; Medicare Appeals of Individual Claims; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction to final regulation.

SUMMARY: In the May 12, 1997 issue of the **Federal Register**, we published a regulation titled, "Medicare Appeals of Individual Claims, BPD–453–FC." That final rule concerned individual claims appeals under part A and part B. We made an error in that regulation and this document corrects that error.

EFFECTIVE DATES: This correction is effective June 11, 1997.

FOR FURTHER INFORMATION CONTACT: Morton Marcus, (410) 786–4477.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1997 (62 FR 25844) we published a final rule with comment period that expanded our regulations to recognize the right of Medicare Part B appellants to a hearing before an administrative law judge (ALJ) for claims if at least $500 remains in dispute and the right to judicial review of an adverse ALJ decision if at least $1,000 remains in controversy. That rule also codified limitations on the review by ALJs and the courts of certain national coverage determinations and the statutory authority for an expedite appeals process under part A and part B. Finally, we made a number of technical conforming amendments.

Need for Correction

On page 25855, in the second and third columns we provided a number of technical amendments. Amendment number 8, beginning at the bottom of column 2, was intended to correct wording in § 473.38 which concerns Peer Review Organization reconsidered decisions. Amendment 8(b) incorrectly calls for deletions of a phrase from paragraph (a) of § 473.38, whereas the phrase actually occurs in the undesignated introductory material of that section. Accordingly, we are making the following correction to document 97–12263 appearing in the **Federal Register** of May 12, 1997.

§ 473.38 [Corrected]

On page 25855 the first two lines of column 3 are corrected to read as follows:

"(b) In the undesignated introductory material, the words 'final and' are removed."

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 18, 1997.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resource Management.

[FR Doc. 97–25344 Filed 9–23–97; 8:45 am]

BILLING CODE 4120–01–M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 650

Minor Amendments To Rule on Inventions and Patents Resulting From Grants, Cooperative Agreements, and Contracts

AGENCY: National Science Foundation.

ACTION: Final rule with request for comments.

SUMMARY: This action amends the NSF Patents regulation to permit grantee to use an electronic reporting and management system for inventions made with NSF assistance.

DATES: This revision is effective September 24, 1997. Comments, however, are welcome and will be considered in making future revisions.

ADDRESSES: All comments should be addressed to: NSF Patent Assistant, Office of the General Counsel, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hamm-Wooten, NSF Patent Assistant, on (703) 306–1060 (voice), (703) 306–0149 (facsimile), or *patents@nsf.gov*.

SUPPLEMENTARY INFORMATION: This amendment revises the current NSF patent regulation published as part 650 of title 45 of the Code of Federal Regulations to permit NSF grantees to use the Edison Invention Information Management System maintained by the National Institutes of Health to handle NSF-assisted inventions. The only change for grantees who do not choose to use Edison is that they will be required to submit to the NSF Patent Assistant a copy of the page of the United States patent application that contains the Federal support clause required by paragraph (f)(4) of the standard Patent Rights clause in section 650.4(a) along with a confirmation of the Government license instead of being required to provide a copy of the entire patent when it issues. That change is being made (1) to conform the Foundation's reporting requirement to those of the National Institutes of Health and (2) because the availability of searchable on-line patent databases has eliminated the need for the Foundation to have paper copies of patents issued on NSF subject inventions.

Determinations

I have determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. I also certify, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, that none of the changes made by this rule will have a significant economic impact on any small entities. Finally, I have reviewed this rule in light of section 2 of Executive Order 12778 and certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 650

Government procurement, Grant programs—science and technology, Inventions and patents, Nonprofit organizations, Small businesses.

Lawrence Rudolph,

General Counsel.

Accordingly, Title 45 of the Code of Federal Regulations part 650 is amended as follows:

PART 650—PATENTS

1. The authority citation for Part 650 continues to read as follows:

Authority: 35 U.S.C. 200–212; 42 U.S.C. 1870(e) and 1871; and the Presidential Memorandum entitled "Government Patent Policy", issued February 18, 1983.

§ 650.4 [Amended]

2. The Patent Rights clause set forth in § 650.4(a) is amended:

A. By replacing "APRIL, 1992" in its heading with "SEPTEMBER, 1997";

B. By adding between the words "Government" and "within" the phrase "and the page of a United States patent application that contains the Federal support clause" in paragraph (f)(5); and

C. By removing paragraph (f)(6).

3. The following new § 650.19 is added:

§ 650.19 Electronic invention handling.

(a) Grantees are encouraged to use the Edison Invention Information Management System maintained by the National Institutes of Health to disclose NSF subject inventions. Detailed instructions for use of that system are provided at http://era.info.nih.gov/Edison/ and should be followed for NSF subject inventions except that:

(1) All written communications required should be addressed to the Patent Assistant, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

(2) NSF does not require either an Annual Utilization Report or a Final Invention Statement and Certification.

(b) Questions on use of Edison may be sent to the NSF Patent Assistant at patents@nsf.gov.

[FR Doc. 97–25120 Filed 9–23–97; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Chapter III, Parts 365, 366, 372, 375, 387, and 390

RIN 2125–AE23

Motor Carrier Transportation; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document makes technical amendments to FHWA's regulations regarding motor carrier transportation. The technical amendments are necessary to correct references within several parts and one of the appendices to subchapter B. These technical amendments will provide accurate references within the parts that were published on October 21, 1996, at 61 FR 54706, which transferred and redesignated certain motor carrier transportation regulations from 49 CFR Chapter X to the FHWA in 49 CFR Chapter III.

EFFECTIVE DATE: September 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Falk, Office of the Chief Counsel, Motor Carrier Law Division, (202)366–1384, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On October 21, 1996, at 61 FR 54706, the FHWA and the Surface Transportation Board (STB) transferred and redesignated certain motor carrier transportation regulations from 49 CFR Chapter X to the FHWA in 49 CFR Chapter III. No substantive changes were made to the regulations. On April 1, 1997, at 62 FR 15417, the FHWA made technical amendments to former Interstate Commerce Commission (ICC) regulations which were transferred to the FHWA in accordance with section 204 of the ICC Termination Act of 1995 (ICCTA), Pub. L. 104–88, 109 Stat. 803. Additionally, final amendments to part 372 were published on July 16, 1997, at 62 FR 38035, which removed the notice filing requirements for agricultural cooperative associations which conduct compensated transportation operations for nonmembers.

This document merely makes technical amendments to 49 CFR parts 365, 366, 372, 375, 387, 390, and appendix F to subchapter B in order to update outdated statutory references and internal redesignated regulation citations. Since all of these rules are in the review process, other necessary nomenclature and technical changes will be published at a later date. There are no substantive amendments being made at this time.

Rulemaking Analyses and Notices

This document makes only minor, non-substantive technical corrections to existing regulations. The rule replaces outdated statutory references and internal regulatory citations with the correct references. Therefore, the FHWA finds good cause to adopt the rule without prior notice or opportunity for public comment (5 U.S.C. 553(b)). The DOT's regulatory policies and procedures also authorize promulgation of the rule without prior notice because it is anticipated that such action would not result in the receipt of useful information. The FHWA is making the rule effective upon publication in the **Federal Register** because it imposes no new burdens and merely corrects existing internal references to regulations (5 U.S.C. 553(d)).

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this rulemaking action makes only technical corrections to the current regulations it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, and since this rulemaking action makes only technical corrections to the current regulations, the FHWA hereby certifies that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Highways and roads, Motor carriers.

49 CFR Part 366

Administrative practice and procedure, Brokers, Freight forwarders, Highways and roads, Motor carriers.

49 CFR Part 372

Agricultural commodities, Buses, Commercial zones, Freight forwarders, Highways and roads, Motor carriers of property, Reporting and recordkeeping requirements.

49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Insurance, Motor

carriers, Moving of household goods, Reporting and recordkeeping requirements.

49 CFR Part 387

Hazardous materials transportation, Highways and roads, Insurance, motor carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 390

Highway safety, Highway and roads, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

Issued on: September 17, 1997.

S. Reid Alsop,

Special Assistant to the Chief Counsel.

In consideration of the foregoing and under the authority of 49 U.S.C. 104 and 322, the FHWA amends title 49, Code of Federal Regulations, Chapter III, as set forth below:

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

1. The authority citation for part 365 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.48.

2. In part 365, in the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
365.101(e)	49 U.S.C. 10922(c)(2)(A)	49 U.S.C. 13902(b)(3).
365.101(f)	49 U.S.C. 10922(c)(2)(B)	49 U.S.C. 13902(b)(3).
365.107(c)	49 U.S.C. 10922(c)(2)(A)	49 U.S.C. 13902(b)(3).
365.107(e)(2)	49 U.S.C. 10101	49 U.S.C. 13101.
365.205(d)	§ 1160.4	§ 365.107.
365.405(a)(2)	1043	387, subpart C.
365.405(a)(2)	1044	366.
365.405(b)(1)(vii)	49 U.S.C. 10927	49 U.S.C. 13906.
365.405(b)(1)(viii)	§ 1181.4	§ 365.409.
365.405(b)(2)(ii)	49 U.S.C. 11343	49 U.S.C. 14303.
365.409(a)	49 U.S.C. 11343	49 U.S.C. 14303.
365.409(c)	§ 1181.2	§ 365.405.
365.413(a) intro	1181	365, subpart D.

PART 366—DESIGNATION OF PROCESS AGENT

3. The authority citation for part 366 is revised to read as follows:

Authority: 49 U.S.C. 13303, 13304, and 14704; 49 CFR 1.48.

4. In part 366, in the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
366.1	49 CFR 1043.10(a)	49 CFR 387.319(a).
366.3	49 U.S.C. 10102(18)	49 U.S.C. 13102(16).
366.6	§ 1044.4	§ 366.4.

PART 372—EXEMPTIONS, COMMERCIAL ZONES, AND TERMINAL AREAS

5. The authority citation for part 372 continues to read as follows:

Authority: 49 U.S.C. 13504 and 13506; 49 CFR 1.48.

6. In part 372, in the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
372.109 intro	§ 1047.22	§ 372.111.
372.111(b)(8)	49 U.S.C. 10526(a)(5)	49 U.S.C. 13506(a)(5).
372.111(b)(9)(iii)	§ 1047.21(a)	§ 372.109(a).
372, subpt C, note	[Remove note in its entirety]	None.

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

7. The authority citation for part 375 is revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 13301 and 14104; 49 CFR 1.48.

8. In part 375, in the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
375.2(a) intro	§ 1056.1(b)(1)	§ 375.1(b)(1).

Section	Remove	Add
375.2(a)(2)	49 U.S.C. 11711	49 U.S.C. 14708.
375.2(a)(3)	§ 1056.18	§ 375.18.
375.2(b)(2)	49 CFR part 1056	49 CFR part 375.
375.3(a)	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.3(b)	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.4(a)	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.5(a) intro	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.6(a)	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.6(a)	§ 1056.6(b)	§ 375.6(b).
375.6(b)(4)	§ 1056.9(b)	§ 375.9(b).
375.7(a) intro	§ 1056.1(b)(4)	§ 375.1(b)(4).
375.8(a)(1)	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.8(a)(1)	§ 1056.1(b)(2)	§ 375.1(b)(2).
375.8(a)(3)	§ 1056.5(b)	§ 375.5(b).
375.11(a)	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.12(a)	§ 1056.11(a)	§ 375.11(a).
375.12(a)	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.13(a)	§ 1056.1(a)	§ 375.1(a).
375.15(a)	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.15(b)	part 1005	part 370.
375.15(b)	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.16(a) intro	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.16(b)	§ 1056.15	§ 375.15.
375.17(a)	§ 1056.1(b)(3)	§ 375.1(b)(3).
375.17(c)	§ 1056.1(b)(1)	§ 375.1(b)(1).
375.17(c)	§ 1056.1(b)(3)	§ 375.1(b)(3).
375.18(a)	§ 1056.1(b)	§ 375.1(b).
375.19	49 CFR 1056(b)(1)	49 CFR 375.1(b)(1).

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

9. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.48.

10. In part 387, in the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
387.301(a)(1)	§ 1043.2	§ 387.303.
387.301(a)(1)	§ 1043.2(b)(2)	§ 387.303(b)(2).
387.301(a)(2)	§ 1043.2(b)(2) [in 2 places]	§ 387.303(b)(2) [in 2 places].
387.301(b)	§ 1043.2	§ 387.303.
387.303(b)(1)	§ 1043.1(a)(1)	§ 387.301(a)(1).
387.303(b)(1)(i)	§ 1043.2(b)(2)(d)	§ 387.303(b)(2).
387.303(b)(2)	§ 1043.1(a)(2)	§ 387.301(a)(2).
387.303(b)(2) table note	§ 1043.2(b)(2)(d)	§ 387.303(b)(2).
387.303(b)(4)	49 U.S.C. 10530 and 49 CFR part 1171	49 U.S.C. 13902(c) and 49 CFR part 368.
387.303(b)(4)	49 CFR 1043.8	49 CFR 387.315.
387.303(b)(4)	§ 1043.1(a)(1)	§ 387.301(a)(1).
387.303(b)(4)	§ 1043.7(a)(6)	§ 387.313(a)(6).
387.303(b)(4)	§ 1043.7(d)	§ 387.313(d).
387.309(a)(2)	§ 1043.2	§ 387.303.
387.309(b)	49 U.S.C. 10927	49 U.S.C. 13906.
387.311(a)	§ 1043.2(b)(1) [in 4 places]	§ 387.303(b)(1) [in 4 places].
387.311(a)	§ 1043.2(b)(2) [in 3 places]	§ 387.303(b)(2) [in 3 places].
387.311(a) note	§ 1043.2(b)(1)	§ 387.303(b)(1).
387.311(b)	§ 1043.2(c) [in 2 places]	§ 387.303(c) [in 2 places].
387.313(a)(2)	§ 1043.2(b)(1)	§ 387.303(b)(1).
387.313(a)(2)	§ 1043.2 (b)(1) or (b)(2)	§ 387.303 (b)(1) or (b)(2).
387.313(a)(2)	§ 1043.2(c)	§ 387.303(c).
387.313(a)(2)	§ 1043.2(b)(4)	§ 387.303(b)(4).
387.313(a)(2) note	§ 1043.6 [in 2 places]	§ 387.311 [in 2 places].
387.313(a)(2) note	1043.7	387.313.
387.313(a)(3)	§ 1043.2(b)(1) or (b)(2) [in 2 places]	§ 387.303(b)(1) or (b)(2) [in 2 places].
387.313(a)(3)	§ 1043.2(b)(4)	§ 387.303(b)(4).
387.313(a)(4)	§ 1043.2 (b)(1) or (b)(2)	§ 387.303 (b)(1) or (b)(2).
387.313(a)(4)	§ 1043.2(b)(1)	§ 387.303(b)(1).
387.313(d)	49 U.S.C. 10927	49 U.S.C. 13906.

Section	Remove	Add
387.317	§ 1043.1(d)	§ 387.301(d).
387.321	§ 1043.2(b)	§ 387.303(b).
387.321	§§ 1043.5, 1043.6, 1043.7, 1043.8, 1043.9 and 1043.10	§§ 387.309 through 387.319.
387.321	§ 1043.8(a)	§ 387.315(a).
387.321	49 U.S.C. 10523 and 10526	49 U.S.C. 13503 and 13506.
387.323(c)	§ 1043.2(b)(1)	§ 387.303(b)(1).
387.323(c)	§ 1043.2(b)(2)	§ 387.303(b)(2).
387.403(a)	§ 1084.3	§ 387.405.
387.403(b)	§ 1084.3	§ 387.405.
387.403(b)	49 CFR 1043.2(b)(2)	49 CFR 387.303(b)(2).
387.405	49 CFR 1043.2	49 CFR 387.303.
387.407(a)	§ 1084.3	§ 387.405.
387.407(a)	49 CFR part 1043	49 CFR part 387, subpart C.
387.411(b)	49 U.S.C. 10927(c)	49 U.S.C. 13906(c).
387.413(a)	49 CFR part 1043	49 CFR part 387, subpart C.
387.417(a)	49 CFR 1043.10(a)	49 CFR 387.319(a).
387.417(b)	§ 1084.7(d)	§ 387.413(d).
387.419	49 CFR 1043.12	49 CFR 387.323.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

11. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31138, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941; 49 U.S.C. 201 note; and 49 CFR 1.48.

12. In part 390, in the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
390.5, Exempt intracity zone	ICC in 49 CFR part 1048, revised as of October 1, 1975	FHWA in 49 CFR part 372, subpart B.
390.21(a)	49 CFR part 1058	49 CFR part 390, subpart D.
390.401(a)	§ 1058.2	§ 390.403.

Appendix F to Subchapter B—Commercial Zones

13. In subchapter B, appendix F, in the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
Appendix F:		
Intro Note	49 CFR part 1048	49 CFR part 372, subpart B.
Sec. 1(a)	§ 1048.101	§ 372.241.
Sec. 5(a)	§ 1048.101	§ 372.241.
Sec. 11(a)	§ 1048.101	§ 372.241.
Sec. 11(b)	§ 1048.1(b)(1) [in 2 places]	§ 372.201 [in 2 places].
Sec. 12(a)	§ 1048.101	§ 372.241.
Sec. 12(b)	§ 1048.1(b)(1) [in 2 places]	§ 372.201 [in 2 places].
Sec. 34	§ 1048.101	§ 372.241.
Sec. 38(a)	§ 1048.101	§ 372.241.
Sec. 39(a)	§ 1048.101	§ 372.241.
Sec. 45 intro	§ 1048.101	§ 372.241.

[FR Doc. 97–25204 Filed 9–23–97; 8:45 am]
BILLING CODE 4910–22–P

Proposed Rules

Federal Register
Vol. 62, No. 185
Wednesday, September 24, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 932 and 933

[No. 97–61]

RIN 3069–AA41

Membership Eligibility

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend the definition of the term "State" in its Membership Regulation to include the U.S. Territory of American Samoa (American Samoa) and the U.S. Commonwealth of the Northern Mariana Islands (the Northern Mariana Islands). Institutions organized under the laws of American Samoa and the Northern Mariana Islands, therefore, will be eligible to apply for Federal Home Loan Bank (Bank) membership. In accordance with these changes, the Finance Board also is proposing to clarify in its regulations that the Seattle Bank District includes American Samoa and the Northern Mariana Islands. In addition, the Finance Board is proposing to designate Hawaii as the State in which members with a principal place of business in American Samoa, the Northern Mariana Islands, or Guam, shall be deemed to be located for purposes of election of Bank directors.

DATES: Comments on this proposed rule must be received in writing on or before October 24, 1997.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Sharon B. Like, Senior Attorney-Adviser, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. Membership Eligibility Requirement—Definition of State

Under the Federal Home Loan Bank Act (Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks, which provide advances and other financial services to their member institutions. *See* 12 U.S.C. 1422a(a). Institutions may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Act and the Finance Board's implementing Membership Regulation. *See id.* §§ 1424, 1426, 1430(e)(3); 12 CFR part 933.

Specifically, under the Act and the Membership Regulation, applicants for Bank membership must satisfy, among other requirements, the requirement that they are "duly organized under the laws of any State or of the United States." *See* 12 U.S.C. 1424(a)(1)(A); 12 CFR 933.6(a)(1), 933.7. Section 2(3) of the Act defines the term "State" as follows:

The term *State* includes the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

See 12 U.S.C. 1422(3). Guam and the U.S. Virgin Islands are U.S. Territories, while Puerto Rico is a U.S. Commonwealth.

Section 933.1(cc) of the Finance Board's Membership Regulation implements the statutory definition by defining the term *State* as follows:

State means a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

See 12 CFR 933.1(cc). The regulatory definition does not specifically include any other U.S. Territories, Commonwealths or Dependencies within the meaning of *State*. Therefore, financial institutions organized under the laws of such other jurisdictions currently are not eligible for Bank membership, unless other specific laws or agreements executed by the United States and these jurisdictions make the Act applicable to such jurisdictions.

The Finance Board believes that the term *State* under the Membership Regulation should be defined comprehensively to include all other U.S. Territories, Commonwealths and Dependencies that share a political status similar to that of the specified entities in the statute, *i.e.*, Guam, the U.S. Virgin Islands, and Puerto Rico. In addition, if any specific laws or agreements executed by the United States and particular jurisdictions make the Act applicable to such jurisdictions, then the regulatory definition of the term *State* should be amended to include those jurisdictions, consistent with the laws or agreements.

Accordingly, the Finance Board undertook a broad analysis of existing and former U.S. Territories, Commonwealths and Dependencies to determine whether any of the jurisdictions satisfy the above requirements. The research revealed that only American Samoa and the Northern Mariana Islands meet the requirements, as further discussed below. Therefore, the Finance Board is proposing to amend § 933.1(cc) of the Membership Regulation to include American Samoa and the Northern Mariana Islands in the definition of *State*. In order to ensure that all eligible jurisdictions are included in the revised definition of *State* for membership purposes, the Finance Board requests commenters to identify any other jurisdictions not included in proposed § 933.1(cc) that have U.S. Territory, Commonwealth, or Dependency status, or that have laws or agreements with the United States that make the Act applicable to such jurisdictions.

B. Designation of Member's State Location for Purposes of Election of Bank Directors

The Act sets forth specific procedures for the election of directors by the members to the boards of the Banks. *See* 12 U.S.C. 1427; 12 CFR 932. Each elective directorship is designated by the Finance Board as representing the members located in a particular State. *See* 12 U.S.C. 1427(b). If the principal place of business of a member is located in a *State* as defined in section 7(e) of the Act, the Finance Board must designate such State as the State in which the member is located for director election purposes. *See id.* § 1427(c). Section 7(e) defines *State*, for purposes of section 7, as "the States of the Union, the District of Columbia, and the Commonwealth of Puerto Rico." *See id.* § 1427(e). For members whose principal place of business is not located in a *State* as defined in section 7(e), the Finance Board is required to designate a State in which such

members shall be deemed to be located for director election purposes. *See id.* § 1427(c).

American Samoa and the Northern Mariana Islands are not included in the section 7(e) definition of *State*. Accordingly, the Finance Board is required to designate a *State* where members with a principal place of business located in American Samoa or the Northern Mariana Islands shall be deemed to be located. The Finance Board is proposing to amend § 932.11(b) of its regulations to designate Hawaii as that State.

II. Analysis of Proposed Rule

A. American Samoa—§ 933.1(cc)

American Samoa is a Territory of the United States that is administered by the U.S. Department of Interior, and which has enacted its own banking laws. *See* 48 U.S.C. 1661; Executive Order No. 10264, 16 FR 6419 (June 29, 1951); Title 28, American Samoa Code Ann. (Book 1988). As a U.S. Territory, American Samoa has a political status similar to that of the U.S. Territories of Guam and the U.S. Virgin Islands, which are included as *States* under the Act and the current Membership Regulation. *See* 12 U.S.C. 1422(3); 12 CFR 933.1(cc).[1] Moreover, the Finance Board recently has been urged by a number of parties to expand the definition of *State* in the Membership Regulation to include American Samoa, so that financial institutions organized under the laws of American Samoa would be eligible for Bank membership. In particular, an American Samoan bank, whose deposits are insured by the Federal Deposit Insurance Corporation, has expressed interest in becoming a member of the Seattle Bank. In addition, bills currently are being considered in Congress that would achieve this same result legislatively. Acordingly, the Finance Board is proposing to amend § 933.1(cc) of the Membership Regulation to include American Samoa in the definition of *State*.

B. The Northern Mariana Islands—§ 933.1(cc)

The Northern Mariana Islands is a former U.S.-administered Trust Territory that is now a Commonwealth of the United States. As a U.S. Commonwealth, the Northern Mariana Islands has a political status similar to that of the Commonwealth of Puerto Rico, which is included as a *State* under the Act and the current Membership Regulation. *See id.* Moreover, specific provisions of the Covenant Agreement executed by the United States and the Northern Mariana Islands already make the Act applicable to the Northern Mariana Islands. *See* "Covenant To Establish A Commonwealth Of The Northern Mariana Islands In Political Union With The United States Of America," §§ 502(a)(1), 502(a)(2) (1986); "The Second Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States," at 278–79 (Aug. 1985); Presidential Proclamation No. 5207, 49 FR 24365 (June 7, 1984) (set forth at 48 U.S.C. 1681 note). Accordingly, the Finance Board is proposing to amend § 933.1(cc) of the Membership Regulation to include the Northern Mariana Islands in the definition of *State*.

C. Other Pacific Islands

The Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau were once U.S.-administered Trust Territories in the Pacific, but now have the status of independent, self-governing foreign nations. Nor do there appear to be any laws or contractual provisions in the Compacts of Free Association executed by the United States and these nations, respectively, that make the Act applicable to these nations. Accordingly, these nations are not included in proposed § 933.1(cc).

Other existing U.S. Pacific Island Territories generally are either uninhabited or contain tiny, nonpermanent military populations closed to the public. Thus, the Act would not be applicable to such Territories.

D. Inclusion of American Samoa and the Northern Mariana Islands in the Seattle Bank District—Appendix to Subpart A of Part 900

The Appendix to Subpart A of Part 900 of the Finance Board's regulations lists the States which comprise each of the 12 Bank Districts, with a reference to "Pacific Islands" included under Federal Home Loan Bank District 12 (the Seattle Bank District). *See* Appendix to Subpart A of Part 900—Federal Home Loan Banks. Consistent with the proposed amendments discussed above, the Finance Board is proposing to amend the Appendix by replacing the reference to the "Pacific Islands" under the Seattle Bank District with specific references to American Samoa and the Northern Mariana Islands.

E. Designation of State Location for Members With Principal Place of Business in American Samoa, the Northern Mariana Islands, or Guam—§ 932.11(b)

For the reasons discussed above, the Finance Board is proposing to amend § 932.11(b) of its regulations to provide that members with a principal place of business located in American Samoa or the Northern Mariana Islands shall be deemed to be located in Hawaii for purposes of election of Bank directors. The proposed rule also codifies the Finance Board's existing designation of Hawaii as the State where members with a principal place of business in Guam are deemed to be located for director election purposes.

III. Regulatory Flexibility Act

The proposed rule implements statutory requirements binding on all Banks and on all applicants for Bank membership, regardless of their size. The Finance Board is not at liberty to make adjustments to those requirements to accommodate small entities. The proposed rule does not impose any additional regulatory requirements that will have a disproportionate impact on small entities. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, *see* 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 900

Organizations and functions (Government agencies).

12 CFR Part 932

Conflict of interests, Federal home loan banks.

12 CFR Part 933

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby proposes to amend title 12, chapter IX, parts 900, 932 and 933, *Code of Federal Regulations*, as follows:

[1] There do not appear to be any laws or contractual provisions in the cession agreements executed by the United States and American Samoa making the Act applicable to American Samoa.

PART 900—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

1. The authority citation for part 900 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1422b(a), 1423.

2. The appendix to subpart A of part 900 is designated as appendix A to subpart A of part 900, the appendix heading is revised, and the parenthetical under FEDERAL HOME LOAN BANK DISTRICT 12 is revised to read as follows:

Appendix A to Subpart A of Part 900—Federal Home Loan Banks

* * * * *

Federal Home Loan Bank District 12

(Alaska, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Montana, Oregon, Utah, Washington, Wyoming)

* * * * *

PART 932—ORGANIZATION OF THE BANKS

3. The authority citation for part 932 is revised to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1426, 1427, 1432; 42 U.S.C. 8101 *et seq.*

4. Section 932.11 is amended by revising paragraph (b) to read as follows:

§ 932.11 Location of member.

* * * * *

(b) For purposes of this part, members with a principal place of business located in the Virgin Islands of the United States shall be deemed to be located in Puerto Rico, and members with a principal place of business located in American Samoa, the Commonwealth of the Northern Mariana Islands, or Guam, shall be deemed to be located in Hawaii.

PART 933—MEMBERS OF THE BANKS

5. The authority citation for part 933 is revised to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

6. Section 933.1 is amended by revising paragraph (cc) to read as follows:

§ 933.1 Definitions.

* * * * *

(cc) *State* includes a State of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, or the Virgin Islands of the United States.

Dated: September 15, 1997.

* * * * *

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 97–25304 Filed 9–23–97; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–28–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) GE90–76B Model Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) GE90–76B model turbofan engines. This proposed AD would require reduced life limits for certain rotating components installed in GE90–76B engines. This proposal is prompted by the results of a refined life analysis performed by the manufacturer which revealed minimum calculated low cycle fatigue lives lower than the published low cycle fatigue retirement lives for certain rotating components installed in the GE90–76B engines. If not corrected, this condition could result in a low cycle fatigue failure of a rotating component and possibly an uncontained engine failure.

DATES: Comments must be received by November 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–28–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments also may be submitted to the Rules Docket by using the following Internet address: "9-ad-engineprop@faa.dot.gov". All comments must contain the Docket No. in the subject line of the comment. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Company Technical Services, Attention: Leader for distribution/microfilm, 10525 Chester Road, Cincinnati, OH 45215, telephone (513) 672–8400 Ext. 114, Fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: John Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; Telephone (617) 238–7135, Fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–28–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–28–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

As part of the substantiation for the Federal Aviation Administration's (FAA) certification of the GE90–92B engine, GE submitted an analysis to the

FAA defining the low cycle fatigue life of GE 90 rotating components. The analysis included an updated material property data base and other refinements that resulted in a reduction of the published low cycle fatigue retirement life limit for certain rotating components. The FAA has determined that this AD is necessary to mandate reduced life limits for certain rotating components installed in GE90–76B engines. If not corrected, this condition could result in a low cycle fatigue failure of a rotating component and possibly an uncontained engine failure.

The FAA has reviewed and approved the technical contents of General Electric Company GE90 Alert Service Bulletin (ASB) No. 72–A318, dated June 27, 1997, that describes reduced life limits for certain rotating components. Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require reduced life limits for certain rotating components. The actions would be required to be accomplished in accordance with the ASB described previously.

There are approximately twenty-five engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are currently no engines installed on aircraft of U.S. registry that would be affected by this proposed AD. Therefore, there is no associated cost impact on U.S. operators as a result of this proposed AD.

The FAA estimates that the most representative engines would have four of the seven life-limited-reduced components installed. Assuming the four components are the High Pressure Compressor Rotor (HPCR) 2–6 spool, HPCR stage 7 disk, HPCR CDP seal and the Low Pressure Turbine cone shaft and that the parts cost is proportional to the reduction of the low cycle fatigue retirement lives, the required parts would cost approximately $189,123 per engine. Based on these figures, the FAA estimates the total cost impact of this proposed AD would be $189,123 per engine.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the rules docket. A copy of it may be obtained by contacting the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 97–ANE–28–AD.

Applicability: General Electric Company (GE) GE90–76B model turbofan engines installed on but not limited to Boeing 777 aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a low cycle fatigue failure of a rotating component and possibly an uncontained engine failure, accomplish the following:

(a) Remove from service those components listed in Table 1 of GE Alert Service Bulletin (ASB) No. 72–A318, dated June 27, 1997, and replace with a serviceable component, prior to exceeding the new cyclic life limits established in paragraph (d) of ASB No. 72–A318, dated June 27, 1997.

Note 2: These revised component life limits will be added to the GE90 Engine Manual, Chapter 05–11–00, Life Limits 001 in the August 1, 1997, Revision.

(b) Except as provided in paragraph (c) of this AD, no replacement times may be approved for these parts.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on September 18, 1997.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–25312 Filed 9–23–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 97N–0030]

Investigational New Drug Applications; Proposed Amendment to Clinical Hold Regulations for Products Intended for Life-Threatening Diseases

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the provisions of its regulations governing investigational new drug applications (IND's) to permit FDA to place a clinical hold on one or more studies under an IND involving a drug that is intended to treat a life-threatening disease affecting both genders if men or women with reproductive potential who have the disease and are otherwise eligible but are excluded from participation in an investigation only because of a risk or potential risk of reproductive or developmental toxicity from use of the investigational drug. Women have been excluded in the past from early clinical trials because of a risk or potential risk of reproductive or developmental toxicity. Therefore, the primary goal of this proposed amendment is to ensure that women with reproductive potential who have a life-threatening disease are not automatically excluded in the future for that reason. The proposed rule would not impose requirements to enroll or recruit a specific number of men or women with reproductive potential.

The proposal would implement a recommendation of both the National Task Force on AIDS Drug Development (the AIDS Task Force) and the Presidential Advisory Council on Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS).

DATES: Submit written comments by December 23, 1997. FDA proposes that any final rule that may issue based on this proposal become effective 60 days after its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Derr, Center for Drug Evaluation and Research (HFD–5), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400, FAX 301–594–6197.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 19, 1995, the AIDS Task Force made a series of recommendations related to women's participation in the drug development process, including the recommendation that women with reproductive potential not be excluded from studies of drugs being tested for use against life-threatening diseases, particularly HIV- and AIDS-related diseases. This recommendation was based, in part, on data provided by the HIV Law Project of the AIDS Service Center (Ref. 1). The data demonstrated that participation of women in AIDS clinical drug trials was low.[1]

In the view of members of the AIDS Task Force, this low rate of participation raised doubts as to whether a sufficient number of women were being included in these clinical trials to provide clinically meaningful information about the effects of HIV and AIDS drugs in the women who would be using them. These data also raised questions and concerns among women with HIV regarding their ability to participate in trials for promising new experimental therapies. On December 8, 1995, the Presidential Advisory Council on HIV/AIDS adopted the AIDS Task Force's recommendation that FDA amend its regulations to prevent the exclusion of women who have a life-threatening disease from any phase of clinical investigations for that disease because of their reproductive potential. If adopted, this proposed rule would implement that recommendation.

FDA's policies regarding the participation of women in clinical investigations have evolved over time. The agency now believes it is important to codify its policies regarding the participation of women with reproductive potential in clinical investigations of drug products intended to treat life-threatening diseases. The proposed amendments to the clinical hold regulations address the exclusion from clinical trials of members of either gender who have a life-threatening disease. The primary intent, however, is to ensure that women who have a life-threatening disease are not automatically excluded from investigational trials of drug products for that disease due to a perceived risk or potential risk of reproductive or developmental toxicity from the use of the investigational drug. The proposal would not apply to clinical studies conducted: (1) Exclusively in healthy volunteers; (2) under special circumstances, such as studies of a single-gender population (e.g., studies evaluating the excretion of a drug in semen or its effects on menstrual function); or (3) in men, as long as a study that does not exclude subjects with reproductive potential has been planned or is being conducted in women. For the purposes of this rulemaking, FDA does not intend the phrase "women with reproductive potential" to include pregnant women. The agency acknowledges the need for more information on the safety and effectiveness of drugs and biological products in pregnant women and is continuing to explore this complex issue in other forums.

II. Clinical Hold Regulations

A clinical hold is an order, under § 312.42 (21 CFR 312.42), that FDA may issue to a sponsor to delay a proposed clinical investigation or to suspend an ongoing investigation for the development of a new drug, antibiotic drug, or biological product. A clinical hold may apply to one or more of the investigations under an IND. When FDA places a proposed study on clinical hold, subjects in that study may not be given the investigational drug. When FDA places an ongoing study on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug; subjects already in the study should be taken off the therapy involving the investigational drug unless FDA specifically permits continuation of the therapy in the interest of patient safety.

FDA may place a clinical hold on a proposed or ongoing phase 1, phase 2, or phase 3 investigation (§§ 312.42(b)(1) and (b)(2)), a proposed or ongoing treatment IND or treatment protocol (§ 312.42(b)(3)), or any investigation that is not designed to be adequate and well controlled (§ 312.42(b)(4)). Generally, FDA will attempt to discuss and resolve the matter with the sponsor before issuing a clinical hold order unless subjects are exposed to immediate and serious risk (§ 312.42(c)). When the deficiency that prompts a clinical hold is corrected by the sponsor, the investigation generally may resume (§ 312.42(e)).

III. Evolution of FDA Policy Regarding Participation of Women in Clinical Investigations

Although the proposed amendments to the clinical hold regulations address the exclusion from trials for drug products to treat a life-threatening disease of members of either gender who have the disease, the primary intent of the proposed amendments is to ensure that women who have a life-threatening disease are not excluded from clinical trials solely because of their reproductive potential. Since 1977, when FDA first issued guidance on the participation of women in clinical trials; women with reproductive potential often have been excluded from early clinical trials due to the perceived risk or potential risk of reproductive or developmental toxicity. As the following discussion shows, however, views on the participation of women, as well as corresponding FDA guidance and regulations pertaining to clinical trials of investigational drugs, reflect a

[1] As of January 1992, 14,799 participants were enrolled in U.S. AIDS Clinical Trial Group studies sponsored by the National Institute of Allergy and Infectious Diseases, of whom only 1,151 were adult women. (Pearl, M., et al., "Women in U.S. Government Clinical Trials," VIII International Conference on AIDS, 8(2: B235, 1992.)

In 1993, 21,598 participants were enrolled, while only 1,952 were adult women. (Korvick, J.A., "Trends in Federally Sponsored Clinical Trials," in *Until the Cure: Caring for Women With HIV*, A. Kurth, editor, pp. 94–103, 1993).

significant evolution of thought during the past two decades within the agency and the scientific community. In addition, during this period considerable public attention has been paid to questions about the participation of women in general in clinical trials. The following background information highlights key FDA statements on the inclusion of women, especially women with reproductive potential, in the clinical drug testing process. Throughout, the phrase "reproductive toxicity" refers to toxicities to reproductive organs, while the term "developmental toxicity" refers to toxicities to potential offspring.

The agency first provided formal guidance on the participation of women with reproductive potential in clinical trials in a 1977 guideline entitled "General Considerations for the Clinical Evaluation of Drugs" (the 1977 guideline). Developed within the protective environment brought on by the thalidomide experience a decade earlier, the 1977 guideline stated that women of childbearing potential should not be included in phase 1 and early phase 2 trials because of the potential for reproductive or developmental toxicity. Women with childbearing potential could be included in later phase 2 and phase 3 studies, as long as animal teratogenicity and the female part of animal fertility studies had been completed and there was some evidence of effectiveness from earlier studies. The 1977 guideline made an exception to this recommendation for early trials involving drug products intended to treat life-threatening diseases, even in the absence of adequate reproduction studies in animals. Despite this exception, however, the exclusion of women of reproductive potential from early trials was in some cases applied to trials for drug products to treat life-threatening diseases.

Since the 1977 guideline was issued, views have evolved about the participation of women in clinical trials. Views also have evolved about informed individuals assuming the risks of investigational products. Recognition has increased in the agency and among the public that patients, especially those with a life-threatening disease, are willing to accept considerable risks to participate in studies that may benefit them. There is increased public recognition of ethical issues such as fairness and an individual patient's ability to participate in decisions that involve personal risk. There is growing understanding that information about population subgroups, e.g., subsets grouped by age, gender, or race, is needed to evaluate the safety and effectiveness of therapies and to refine labeling, patient selection, and dose selection in those groups. Failure to obtain such information may limit the usefulness of a treatment or expose a segment of the population to risk. These perspectives have influenced FDA policy since the early 1980's.

In the **Federal Register** of July 22, 1993 (58 FR 39406), FDA issued a "Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs" (the 1993 guideline). That guideline revoked the 1977 guideline's recommendation regarding restrictions on the participation of women with reproductive potential in early clinical trials, including clinical pharmacology studies (e.g., dose tolerance, bioavailability, and mechanism of action studies) and early therapeutic studies. The 1993 guideline left the determination about whether the risks and benefits support the participation of women with reproductive potential to patients, investigators, sponsors, and institutional review boards (IRB's).

Although the 1993 guideline does not require participation of women in any particular trial, it sets forth FDA's general expectations regarding the inclusion of both women and men in drug development, analyses of clinical data by gender, assessment of potential pharmacokinetic differences between genders, and conduct of specific additional studies in women, where indicated. The 1993 guideline is consistent with an earlier guideline, issued in 1988 and entitled, "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications" published in the **Federal Register** of October 7, 1988 (53 FR 39524), in which FDA advised that new drug applications (NDA's) should include analyses of data for population subsets, including age, gender, and race, to identify subgroup differences in effectiveness and adverse reactions to investigational drugs. The 1993 guideline notes that participants in clinical studies should, in general, reflect the population that will receive the drug once it is marketed and encourages the participation of women, whether or not they have a serious disease, in early phases of all clinical trials. It points out that including women early is particularly important when a drug is intended for a serious disease and may become available rapidly, for example, through distribution under a treatment IND (§§ 312.34 and 312.35 (21 CFR 312.34 and 312.35)), or marketing under subpart E of part 601 (21 CFR part 601) and consisting of §§ 601.40 through 601.46 or subpart H of part 314 (21 CFR part 314) and consisting of §§ 314.500 through 314.560. (See section IV.A. of this document for a description of these procedures.)

FDA has long recognized the importance of gender data in evaluating the safety and efficacy of a drug. This is reflected in other FDA guidances issued in 1993 ("New Drug Evaluation Guidance Document: Refusal to File" and "Center for Biologics Evaluation and Research (CBER): Refusal to File (RTF) Guidance for Product License Applications (PLA's) and Establishment License Applications (ELA's)" (58 FR 38770, July 20, 1993). These documents state that FDA may refuse to file an application if it contains inadequate evaluation of the safety and/or effectiveness of a drug, biological therapeutic, or vaccine in specific populations, such as in women, intended to use the product.

FDA also recently proposed a rule that would codify expectations regarding presentation in NDA's of safety and effectiveness data by gender as described in the 1993 guideline. Although it would not require the inclusion of women with reproductive potential in clinical investigations, the rule would require the presentation in NDA's of certain data by specific population subgroups, including women, who are likely to receive the drug once it is marketed (60 FR 46794, September 8, 1995).

The 1977 guideline never recommended excluding women with reproductive potential from trials for drugs to treat life-threatening diseases. Moreover, the 1993 guideline recommended that the exclusion of such women be removed from all trials. Nevertheless, a recent limited agency review of clinical trial protocols dealing with antiviral drugs revealed that women with reproductive potential are still being excluded from some protocols of some investigational trials for drug products intended to treat HIV, a life-threatening disease. The agency believes that this violates ethical principles and in some cases could lead to inadequate data on use in women prior to wide availability of the drug. The agency has concluded that women with reproductive potential who have a life-threatening disease should no longer be excluded from investigational clinical trials for drug products to treat that disease because of a risk or potential risk of reproductive or developmental toxicity from use of the investigational drug, as long as patient volunteers are fully informed of the risks, in compliance with informed consent regulations in part 50 (21 CFR part 50).

IV. Rationale for the Proposed Rule

In the past, women with a life-threatening disease who have reproductive potential often have been excluded from early investigational clinical trials for that disease because of the potential risk of reproductive or developmental toxicity. As a result, although it applies to the exclusion of either gender, the primary goal of this proposed rule is to ensure that women who have a life-threatening disease are not excluded from investigational drug studies for that disease because of their reproductive potential.

In lengthy discussions with representatives of industry and the public during the development of this proposal (Ref. 2), the view was expressed that many early clinical studies involving life-threatening diseases offer the potential for therapeutic benefit. In some cases, for example, participation in an early clinical study is a prerequisite for enrollment in later studies. Based on these discussions, FDA has concluded that all trials involving patients with life-threatening diseases should, for purposes of this proposed rule, be considered to have therapeutic potential and that this proposal would apply to studies in any phase of a clinical investigation that enroll participants with a life-threatening disease.

In developing this proposal, FDA focused on four important factors: (1) FDA is committed to expanding access to and accelerating approval of new therapies for life-threatening diseases; (2) important ethical principles underlie the belief that neither gender should be excluded from early clinical trials involving a life-threatening disease because of their reproductive potential; (3) the mechanisms are in place, or are available, to protect individuals who participate in clinical trials from potential risks; and (4) FDA is committed to expanding the collection of gender-specific data on investigational therapies, especially for those populations who ultimately will be using the therapies. These four factors are discussed in detail in the following sections of this document.

A. Expanding Access and Accelerating Approval

FDA is committed to expanded patient access to potentially beneficial therapies for life-threatening and serious diseases, such as cancer and AIDS, through the IND process. Mechanisms for expanding access include treatment IND's (§§ 312.34 and 312.35), parallel track protocols (57 FR 13250, April 15, 1992), and other open-label protocols either for groups of patients or for one patient. Tens of thousands of patients have received promising pharmaceuticals under expanded access mechanisms.

In many cases, the risk-benefit assessment for investigational drugs for life-threatening or even serious diseases differs from that for investigational drugs for treating diseases not considered life-threatening or serious. In establishing procedures for the investigation of drugs for life-threatening diseases, FDA has recognized that physicians and patients are generally willing to accept greater risks or side effects from these medical products than they would accept from products that treat less serious diseases (53 FR 41516 at 41518, October 21, 1988).

FDA also is committed to expediting the approval of investigational drugs for treatment of life-threatening and serious diseases. The agency has issued regulations for the expedited development of new therapies intended to treat persons with life-threatening or severely debilitating diseases (subpart E of part 312 (21 CFR part 312) procedures in §§ 312.80 through 312.88), especially where no satisfactory alternative therapies exist. In addition, FDA has issued regulations for the accelerated approval of certain new drugs (subpart H of part 314 procedures in §§ 314.500 through 314.560) and biological products (subpart E of part 601 procedures in §§ 601.40 through 601.46) for serious or life-threatening diseases. For instance, accelerated approval can be based on a surrogate endpoint that reasonably suggests clinical benefit or on evidence of the drug's effect on a clinical endpoint other than survival or irreversible morbidity. On March 29, 1996, President Clinton announced a major initiative undertaken by FDA to make promising new therapies available sooner to American cancer patients with intractable or unresponsive malignancies. Under this initiative, FDA proposes, among other things, to shorten approval times for cancer treatments by recognizing that tumor shrinkage is often an early indication of a treatment's effectiveness and by basing approval of investigational drugs for refractory tumors on evidence of tumor shrinkage.

In view of the agency's commitment to provide expanded access to and accelerated approval of new therapies for life-threatening and serious diseases, this proposed rule is intended to ensure that women with reproductive potential who have a life-threatening disease are not excluded from volunteering for and being included in clinical investigational trials for drug products intended to treat their disease. Although a risk or potential risk of reproductive or developmental toxicity might exist, FDA recognizes that the potential benefits that may be accrued by these women from participation in a study for their disease may outweigh such risks and that the availability of certain safeguards can reduce these risks. (See section IV.C. of this document for a discussion regarding minimizing risks.)

B. Ethical Principles

In developing this proposal, FDA has carefully considered the evolution of thought within the agency and the scientific community and among the public regarding the participation of women in clinical trials and the related risks or potential risks. The agency also has considered the basic ethical principles that underlie clinical research. Current FDA and Department of Health and Human Services regulations related to informed consent and IRB's are based, in large part, on the three ethical principles relevant to human subject research discussed in the Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (the Belmont Report) (44 FR 23192, April 18, 1979). These principles include respect for persons, beneficence, and justice.

The principle of respect for persons usually is cited within the context of being certain that individuals are included in clinical research voluntarily after being fully informed. The principle recognizes the ability of autonomous individuals to make their own decisions about participating in clinical research.

The principle of beneficence requires that the risks associated with a clinical research activity be reasonable in the light of expected benefits. Beneficence also requires that the chance for benefits from participation be maximized, and the risk of possible harms be minimized, consistent with sound research design. In weighing risks and benefits, beneficence also recognizes the results of research as a potential benefit, so long as the rights of research participants are protected.

The principle of justice requires that the burdens and benefits of participation in clinical research be equitably distributed across the entire population in the place or region where the clinical research is conducted. In general, racial, ethnic, gender, and economic status should not be used as a basis for excluding participation in clinical research. Furthermore, persons who are eligible for participation in the

clinical research because of their disease or condition should be provided a reasonable opportunity to be included in the research until the research cohort is fully recruited..

An Institute of Medicine committee recently examined the issue of women in health research (Ref. 3). As part of their deliberations, they highlighted the ethical principle of justice and recommended that the scientific community and the institutions that support it ensure that scientific advances in medicine and public health fairly benefit all people, regardless of gender, race, ethnicity, or age. The committee concluded that clinical trials should be conducted consistent with the principle that medical research promotes the health and well-being of both women and men. This proposed rule would help achieve that goal by ensuring that women with a life-threatening disease are not denied the opportunity to contribute to the body of scientific knowledge about their disease and its manifestations in women.

The proposed rule is consistent with the three ethical principles in the Belmont Report and would help to ensure that women with reproductive potential who suffer from a life-threatening disease are no longer excluded from early clinical research.

C. Informed Consent and Other Mechanisms for Protecting People With a Life-Threatening Disease in Early Clinical Trials

A number of mechanisms are in place to protect participants in early clinical trials, including requirements for sound study design, the use of sound research procedures, and the proper use of the informed consent process. In addition to the sponsors, who have the responsibility of designing safe clinical trials, and the investigators, who carry them out, institutional review boards (IRB's) play an important role in ensuring participant safety in clinical trials. It is the responsibility of the involved IRB to determine that specific criteria for the protection of study participants are met before approving research subject to the IND regulations (§ 56.111(a) (21 CFR 56.111(a))). For example, the IRB must determine that risks to study participants are minimized by the use of procedures consistent with sound research design and that risks to study participants are reasonable in relation to anticipated benefits (§ 56.111(a)(1) and (a)(2)). The IRB also is responsible for ensuring that information given to study participants as part of the informed consent process is in accordance with FDA's regulations under part 50 (see § 56.111(a)(4)).

Elements of informed consent require that potential study participants be adequately informed that the study involves research (§ 50.25(a)(1)) and of any foreseeable risks or discomforts (§ 50.25(a)(2)). In addition, prospective study participants must be informed, when appropriate, of certain unforeseeable risks, including potential risks to the embryo or fetus, should a female study participant become pregnant (§ 50.25(b)(1)). As FDA noted in the 1993 guideline, if animal reproductive toxicity studies are complete, the results and an explanation of their significance in humans should be presented as part of the informed consent process (58 FR 39406 at 39411). If these studies are not complete, that fact should be communicated along with any other pertinent information, such as a general assessment of reproductive and fetal toxicity associated with other drugs that have related chemical structures or pharmacological effects. If no relevant information is available, the informed consent should explicitly state that fact and make clear that the potential exists for reproductive risks and/or developmental risks to a fetus. If needed, the IRB should require that a specific period of time lapse between when the potential study participants receive relevant information and when they must decide whether to participate in the study. If in the IRB's judgment, additional information to that required by § 50.25 would add meaningfully to the protection of the rights and welfare of study participants, the IRB may require the imparting of that information to the study participants (21 CFR 56.109(b)).

It is also the responsibility of the IRB to determine that the study is designed in such a way as to minimize the risk of fetal exposure to possibly harmful agents. Developmental toxicity has been linked to maternal exposure to certain drugs. Although a link between paternal drug exposure and developmental toxicity has not been conclusively established, results of some studies suggest that paternal exposure to certain drugs might be associated with developmental toxicity (Ref. 4). In particular, low-level, chronic genotoxic exposures that maintain fertility might lead to fetal developmental abnormalities, particularly when there is exposure of post-stem cell stages of spermatozoal development. Although the agency has not issued formal guidance on this issue, in such cases, it might be prudent to take precautions to prevent impregnation of women by men participating in such investigational studies.

The risk of fetal exposure can be eliminated by preventing pregnancy (except in those studies designed to test a drug's effect during pregnancy). The risk of fetal exposure also can be minimized by sponsors and IRB's, who can require the use of pregnancy testing to detect unsuspected pregnancy prior to initiation of study treatment or at intervals during the course of drug exposure. When the study design permits, sponsors can minimize potential developmental risks by short-term timing of studies to coincide with the early follicular phase of the menstrual cycle. Thus, in most of these short-term studies, the investigational agent would be eliminated from a woman's body prior to conception, should she inadvertently become pregnant. When the teratogenic effects of a drug are well established, the agency, sponsor, or IRB may require the use of contraception to prevent pregnancy in sexually active individuals of childbearing potential.

Women and men can eliminate the possibility of pregnancy through abstinence and reduce the possibility of pregnancy through the use of contraception for the duration of drug exposure (which may exceed the length of the study). In part because the cooperation of the individual's sexual partner may be needed to ensure that abstinence occurs, or that appropriate contraceptive methods are used, it is important for potential study participants to be provided with an opportunity to discuss their involvement in a clinical trial with their sexual partner prior to deciding whether to participate in the study.

The agency believes that, through the proper use of the informed consent process and the use of other study design mechanisms, risks to participants in early clinical trials can be reduced. When deciding whether to participate in a clinical trial for an investigational drug, potential participants should be able to weigh, in consultation with their spouse or partner, their health care provider, and their researcher, the potential risks of their participation.

D. Expanding the Collection of Gender-Specific Data

As noted previously, the need for gender specific data was the subject of guidances developed by the agency in 1988 and 1993 and was addressed in a proposed rule issued in 1995. Recently, medical and scientific issues related to gender analyses were the subject of an FDA-sponsored workshop on "Gender Studies in Product Development: Scientific Issues and Approaches" held from November 6 to 7, 1995 (Ref. 5). Workshop participants, including representatives from industry, academia, government agencies, consumer groups, and patient communities, concluded that women should be included in all stages of drug development to fully characterize the safety and efficacy profile of the product. It was noted by numerous participants that use of gender-specific data from early trials may improve the efficiency of phase 3 trials by aiding in the interpretation of expected variations among gender groups.

In the 1993 guideline, FDA acknowledged that although drugs often behave similarly in demographic (age, gender, race) and other (concomitant disease, concomitant drugs) subsets of the population, there are many differences within such subsets, for example, in dose-response, in maximum size of effect, or in the risk of an adverse effect (58 FR 39406 at 39409). To identify such potential differences and to help refine labeling information, patient selection, and dose selection, the agency believes that it is important that those women who are likely to use an investigational agent once it is marketed be included in clinical investigations that may identify potential gender differences. In the case of HIV and AIDS, many of the women who are affected are young women with reproductive potential. Therefore, early participation by these women in clinical trials for such diseases will help ensure that needed gender-specific safety and effectiveness data are available for the women affected by the disease (Ref. 6).

V. Legal Authority

Section 505(i) (21 U.S.C. 355(i)) of the Federal Food, Drug, and Cosmetic Act (the act) confers broad authority upon the Secretary of Health and Human Services (the Secretary) (and by delegation to FDA) to issue regulations governing the clinical investigation of new drugs to protect the rights, safety, and welfare of human subjects (including through informed consent provisions) and otherwise to protect the public health. In addition, section 701 of the act (21 U.S.C. 371) provides that the Secretary has authority to issue regulations for the efficient enforcement of the act (including the drug-related provisions, such as the misbranding and approval provisions of sections 502 (21 U.S.C. 352) and 505 of the act.

The proposed amendment to the clinical hold regulations is intended to protect human subjects against being categorically excluded, based on reproductive potential, from the opportunity to participate in clinical trials investigating potentially beneficial treatments for a life-threatening disease. In addition, the proposed amendment would enhance public health protection by expanding opportunities to generate data concerning the safety and efficacy of investigational drugs for the treatment of life-threatening diseases.

The agency believes that prohibiting the exclusion of women with reproductive potential who have a life-threatening disease from clinical trials also is consistent with congressional efforts to prevent unwarranted discrimination against women. In the employment context, for example, the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act (42 U.S.C. 2000e(k), 2000e–2(e)(1)) and as interpreted by the U.S. Supreme Court in the landmark case of *International Union, United Automobile, Aerospace and Agricultural Implement Workers, UAW* v. *Johnson Controls, Inc.*, 111 S.Ct. 1196 (1991), prohibits the exclusion of women with childbearing capacity from jobs they are qualified to perform solely because the working conditions of those jobs pose potential risks to exposed fetuses. Although the Court did not consider or hold that the Civil Rights Act applies to clinical drug trials, which are manifestly different in nature and purpose from private employment, FDA believes it is appropriate to consider the Court's opinion when developing policy on the eligibility of women with reproductive potential for participation in clinical trials for a life-threatening disease.

VI. Description of the Proposed Rule

Current § 312.42(b)(1) identifies the grounds for placing a clinical hold on proposed or ongoing phase 1 studies under an IND, and current § 312.42(b)(2) identifies the grounds for placing a clinical hold on proposed or ongoing phase 2 or phase 3 studies. FDA is proposing to amend §§ 312.42(b)(1) and (b)(2) to provide an additional ground for placing a phase 1, phase 2, or phase 3 study under an IND on clinical hold. Under proposed §§ 312.42(b)(1)(v) and (b)(2)(i), FDA may issue a clinical hold on any proposed or ongoing clinical trial for a life-threatening illness or disease that affects both genders if men or women with reproductive potential who have the disease being studied are excluded from eligibility in any phase of clinical investigation because of a risk or potential risk of reproductive toxicity (i.e., toxicity to reproductive organs) or developmental toxicity (i.e., toxicity to potential offspring) from use of the investigational drug. FDA believes that such risks would be outweighed by the potential benefits that may be accrued by participants in a study for the treatment of their disease and that fully informed potential participants should be able to make their own risk-benefit determination. FDA also believes that, in the case of developmental toxicity, potential risks can be minimized by the prevention of pregnancy through contraception or abstinence.

The clinical hold under proposed §§ 312.42(b)(1)(v) and (b)(2)(i) would not apply to clinical studies conducted: (1) Exclusively in healthy volunteers; (2) under special circumstances, such as studies of a single-gender population (e.g., studies evaluating the excretion of a drug in semen or its effects on menstrual function); or (3) in men, as long as a study that does not exclude subjects with reproductive potential has been planned or is being conducted in women.

The phrase "women with reproductive potential" as used in the proposed rule does not include pregnant women. The proposed rule also would not impose requirements to enroll or recruit a specific number of men or women with reproductive potential.

As is true for clinical holds on any basis, FDA ordinarily would issue a clinical hold only after attempts to convince the sponsor to remove an exclusion had failed (§ 312.42(c)).

Under proposed § 312.42(b)(1)(v), "life-threatening illnesses or diseases" are defined as "diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted." The proposed definition is consistent with the definition of "life-threatening" in the IND regulations governing drugs intended to treat life-threatening illnesses (21 CFR 312.81(a)(1)).

The proposed definition of life-threatening illnesses or diseases is intended to include those fatal diseases where death itself may not be imminent, but where treatment is necessary to prevent premature death. For example, an anti-retroviral drug might be found, on the basis of phase 2 studies, to delay progression from the asymptomatic state to the symptomatic state and then to AIDS when used early after infection with HIV. Although this progression ordinarily would take more than 12 months to occur in most patients, this condition would be within the definition of life-threatening. Other examples of life-threatening illnesses include cancer, certain cardiac arrhythmias, intracranial hemorrhage, or amyotrophic lateral sclerosis.

The exclusion of subjects with reproductive potential addressed by this proposed rule not only includes explicit

exclusion but also de facto exclusion. For example, a de facto exclusion might result from setting study entry criteria that require sterilization and would have the effect of precluding enrollment of participants with reproductive potential. De facto exclusions also might result from setting criteria that are inherently difficult for subjects to meet, such as weight, or other physical requirements that generally differ between women and men.

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

This proposed rule does not contain any information collection provisions that would be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

IX. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options if the proposed rule is expected to have a significant impact on a substantial number of small entities.

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). This proposed rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $100,000,000 or more. The data for the impacts analysis were developed by FDA's Economics Staff, Office of Management and Systems, Office of Planning and Evaluation, and their full report is on file at the Dockets Management Branch (address above).

A. Costs

Implementation of this proposed rule could impart additional direct costs to the industry in one area—the cost associated with testing for pregnancy in women with reproductive potential who volunteer to participate in clinical trials that would have previously excluded them.

As fully described in its detailed study (Ref. 7), FDA estimated the direct cost in the following manner. Using an FDA protocol database, the agency estimated the number of clinical trials for drug products for life-threatening diseases from which women with reproductive potential are being excluded. The agency then determined the total number of subjects recruited for those clinical trials. Using published information, the agency estimated the relative incidence among women with reproductive potential for the specific life-threatening diseases compared to the incidence in the general population. Using the estimates of relative incidence among women with reproductive potential for the specific disease, it was estimated how many women would be participating in clinical trials for the specific disease, were they not being excluded. Finally, using the approximate length of each phase of clinical trials (phases 1, 2, and 3), the agency calculated the number of pregnancy tests that would be necessary to test for pregnancy in this volunteering population subset.

FDA conducted its analysis using data extracted from the majority of the clinical trial protocols submitted to four review divisions in the Center for Drug Evaluation and Research (CDER) during a 20-month period between August 1, 1993, and March 31, 1995: Cardio-Renal; Anti-Viral; Medical Imaging, Surgical and Dental; and the former Pilot Drug Evaluation. The protocol data base includes information on the phase of the studies (whether they are phase 1, 2, or 3), the planned size of the trials, and the indications for which the therapies are being studied. Data from this data base were analyzed to estimate how many protocols were submitted to these four FDA divisions involving life-threatening illnesses that excluded women with reproductive potential. Forty-three protocols involving life-threatening illnesses and excluding women with reproductive potential were identified as having been submitted to FDA during this 20-month period.

Projecting the number of submissions from the four review divisions across the entire agency required additional analysis because it could not be assumed that all review divisions receive protocols for life-threatening diseases at the same rate. To adjust for the difference from division to division, the agency calculated the number of NDA approvals that were granted in each division for drugs to treat life-threatening and severely debilitating illnesses under the accelerated approval procedures of subpart E of part 312. Using the results of this analysis and the annualized numbers from the four analyzed review divisions, it was possible to calculate approximately how many protocols for life-threatening diseases that exclude women are submitted to individual review divisions each year. It was projected that approximately 62 protocols are submitted to FDA per year for life-threatening diseases that exclude women with reproductive potential.

Next it was assumed that, once they are no longer excluded, women with reproductive potential would enter clinical trials in proportion to the relative incidence of the disease occurrence in that population at diagnosis. Using published data on the relative incidence among women with reproductive potential at diagnosis of AIDS, HIV, and coronary heart disease and the number of protocols submitted to the four divisions projected across the entire agency and annualized, the agency estimated how many women (ages 13 to 49 years) are excluded per year from phase 1, phase 2, and phase 3 clinical studies in the United States. The results showed that approximately 90 women with reproductive potential are excluded from phase 1 studies, 266 from phase 2 studies, and 40 from phase 3 studies annually in the United States.

If one assumes further that phase 1 studies last approximately 2 weeks, phase 2 studies approximately 3 months, and phase 3 studies about a year, the costs for pregnancy testing can be assessed. During phase 1 studies, approximately 1 pregnancy test would be required for each woman with reproductive potential entering the study; during phase 2 studies, approximately 3 tests would be required; and, during phase 3 studies, approximately 12 tests would be required. At a cost of $30 per test, the annual cost to industry is estimated to be at most about $41,000. This estimate is summarized in Table 1.

TABLE 1.—ESTIMATED ANNUAL COSTS OF TESTING FOR PREGNANCY IN WOMEN WITH REPRODUCTIVE POTENTIAL IN U.S. CLINICAL TRIALS FOR THERAPIES FOR LIFE-THREATENING ILLNESSES

Study Phase	Tests Required per Woman	Estimated Number of Women Annually	Cost per Test	Annual Costs
1	1	90	$30	$2,700
2	3	266	$30	$23,940
3	12	40	$30	$14,400
Totals		396		$41,040

The largest cost encountered in the 43 analyzed protocols was a phase 2 trial from which an estimated 45 women with reproductive potential were excluded. The cost of pregnancy testing for this trial, if women with reproductive potential had been included, would have been about $4,050. Of the 43 protocols analyzed, 6 had estimated costs of pregnancy testing exceeding $1,000.

The agency is aware of industry's concerns about the liability exposure associated with the inclusion of women with reproductive potential in clinical trials, particularly prior to completion of animal reproductive studies. FDA believes, however, that the inclusion in investigational studies of women with reproductive potential who have a life-threatening disease and who have given informed consent is not likely to lead to increased liability. Informed consent means that a study participant has agreed to participate despite recognition and appreciation of known or potential risks, an agreement that should minimize the legal risks associated with drug development. Careful use of study design and informed consent is likely to minimize exposure to liability (Refs. 8 and 9). There is, of course, no way to guarantee this, but there have been few instances of liability assessed against drug manufacturers for the conduct of clinical trials.

As already stated, if a deficiency exists in a clinical investigation that may be grounds for the imposition of a clinical hold, FDA will generally attempt to discuss and satisfactorily resolve the matter with the sponsor before issuing the clinical hold order (§ 312.42(c)). An IND would be placed on clinical hold for specifically excluding women with reproductive potential only as a last resort. Only for those few protocols could there be an increase in cost, due primarily to a delay in starting the clinical trials.

The agency believes that the societal benefits more than outweigh the potential minimal additional costs because a considerable patient population (women with reproductive potential who have a life-threatening disease) could receive a potentially beneficial new therapy.

B. Small Entities

The protocol analysis identified protocols sponsored by small businesses. The largest additional pregnancy testing cost incurred by a small business in the reviewed protocols under the proposed rule was $990. Projected across all CDER/CBER review divisions and annualized, we expect no more than nine protocol submissions per year from small businesses that might incur additional costs under the proposed rule. Few small firms are likely to be affected in any given year and most of these would incur no significant additional costs. Therefore, under the Regulatory Flexibility Act, the Commissioner of Food and Drugs certifies that this rule will not have a significant effect on a substantial number of small entities.

X. Request for Comments

Interested persons may, on or before December 23, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

XI. References

Copies of the following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. McGovern, T., "Proposal to Eliminate Obstacles Facing Women in the Drug Development Process: A Recommendation to the National Task Force on AIDS Drug Development," HIV Law Project of the AIDS Service Center, June 30, 1994.

2. Transcript of the meeting of the National Task Force on AIDS Drug Development, October 28, 1994 (see discussion on pp. 25 to 70).

3. Mastroianni, A. C., R. Faden, and D. Federman, editors, *Women and Health Research: Ethical and Legal Issues of Including Women in Clinical Studies*, Vol. 1, National Academy Press, Washington, pp. 75–83, 1994.

4. DeLap, R. J., J. L. Fourcroy, and G. A. Fleming, "Fetal Harm Due to Paternal Drug Exposure: A Potential Issue in Drug Development," *Drug Information Journal*, 30:359–364, 1996.

5. Transcript of the FDA workshop "Gender Studies in Product Development: Scientific Issues and Approaches," November 6–7, 1995.

6. Sherman, L. A., R. Temple, and R. B. Merkatz, "Women in Clinical Trials: An FDA Perspective," *Science*, 269:793–795, 1995.

7. Food and Drug Administration, Office of Management and Systems, Office of Planning and Evaluation, *Impacts of Not Excluding Women with Reproductive Potential Who Have Life-threatening Illnesses from Clinical Trials*, January 10, 1997.

8. Flannery, E., and S. N. Greenberg, "Liability Exposure for Exclusion and Inclusion of Women as Subjects in Clinical Studies," in *Women and Health Research: Ethical and Legal Issues of Including Women in Clinical Studies*, Vol. 2, edited by A. C. Mastroianni, R. Faden, and D. Federman, National Academy Press, Washington, pp. 96–97, 1994.

9. Clayton, E. W., "Liability Exposure When Offspring Are Injured Because of Their Parents' Participation in Clinical Trials," in *Women and Health Research: Ethical and Legal Issues of Including Women in Clinical Studies*, Vol. 2, edited by A. C. Mastroianni, R. Faden, and D. Federman, National Academy Press, Washington, pp. 108–109, 1994.

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 312 be amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug,

and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

2. Section 312.42 is amended by adding new paragraph (b)(1)(v) and by revising paragraph (b)(2)(i) to read as follows:

§ 312.42 Clinical holds and requests for modification.

* * * * *

(b) * * *

(1) * * *

(v) The IND is for the study of an investigational drug intended to treat a life-threatening illness or disease that affects both genders, and men or women with reproductive potential who have the disease being studied are excluded from eligibility in any phase of clinical investigation because of a risk or potential risk of reproductive (i.e., toxicities to reproductive organs) or developmental (i.e., toxicities to potential offspring) toxicity from use of the investigational drug. The phrase "women with reproductive potential" does not include pregnant women. For purposes of this paragraph, "life-threatening illnesses or diseases" are defined as "diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted." The clinical hold would not apply under this paragraph to clinical studies conducted:

(A) Under special circumstances, such as studies of a single-gender population (e.g., studies evaluating the excretion of a drug in semen or the effects on menstrual function); or

(B) In men, as long as a study that does not exclude subjects with reproductive potential has been planned or is being conducted in women.

(2) * * *

(i) Any of the conditions in paragraphs (b)(1)(i) through (b)(1)(v) of this section apply; or

* * * * *

Dated: September 16, 1997.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 97–25268 Filed 9–23–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE30

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Comment Period on Proposed Endangered Status for Keck's Checker-Mallow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of a public hearing and extension of the comment period on the proposed endangered status for *Sidalcea keckii* (Keck's checker-mallow). The comment period is extended to accommodate a public hearing that was requested by California Assemblyman Roy Ashburn, Thirty-Second District.

DATES: The public hearing will be held on Tuesday, October 21, from 6:00 p.m. to 8:00 p.m. in Visalia, California. The comment period closes November 10, 1997.

ADDRESSES: The public hearing will be held at the Visalia Convention Center, 303 East Acequia Street, Visalia, California. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Fuller of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section) at (916) 979–2120.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1997, the Service published a rule proposing endangered status for *Sidalcea keckii* in the **Federal Register** (62 FR 40325). The original comment period was to close on September 26, 1997. Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. In response to a request for a public hearing from California Assemblyman Roy Ashburn, a public hearing will be held in Visalia, California on October 21, 1997, at the Visalia Convention Center. Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comments period now closes on November 10, 1997. Written comments should be submitted to the Service in the **ADDRESSES** section.

Sidalcea keckii is an annual plant that is known from one population in the hilly annual grasslands of south-central Tulare County. The plant is threatened by agricultural land conversion, urban development, and naturally occurring events. Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species listed above;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population sizes of the species; and

(4) Current or planned activities in the subject area and their possible impacts on the species.

Author

The primary author of this notice is Ken Fuller (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 16, 1997.

Cynthia Barry,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–25061 Filed 9–23–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 185
Wednesday, September 24, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA–97–10]

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed collection, comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Reporting Requirements Under Regulations Governing Inspection and Grading Services of Manufactured or Processed Products.

DATES: Comments on this notice must be received by November 24, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Branch, Room 2750–South Building, P.O. Box 96456, Washington, D.C. 20090–6456; Tel: (202) 720–9381, Fax: (202) 720–2643.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements Under Regulations Governing Inspection and Grading Services of Manufactured or Processed Products.

OMB Number: 0581–0126.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The dairy grading program is a voluntary user fee program. In order for a voluntary inspection program to perform satisfactorily with a minimum of confusion, there must be written requirements and rules for both Government and industry. The information collections are essential to carry out and administer the inspection and grading program. The information requested is used to identify the product offered for grading, to identify and contact the party responsible for payment of the grading fee and expense, and to identify persons who are responsible for administering the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .048 hours per response.

Respondents: Distributors, manufacturers and packagers of butter and cheese.

Estimated Number of Respondents: 319.

Estimated Number of Responses per Respondent: 3.97.

Estimated Total Annual Burden on Respondents: 383 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should reference OMB No. 0581–0126 and the Dairy Inspection and Grading Program and be sent to the Office of the Director, USDA/AMS/Dairy Division, Room 2968–S, P.O. Box 96456, Washington, D.C. 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at 14th and Independence Ave. S.W., Washington, D.C., Room 2968 South Building.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 17, 1997.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 97–25276 Filed 9–23–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–97–008]

Pasteurized Shell Eggs (Pasteurized In-shell Eggs)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The purpose of this notice is to inform interested persons that the Agricultural Marketing Service (AMS) intends to approve the official identification of pasteurized shell eggs (in-shell eggs) on a tentative basis. Such shell eggs will be required to be subjected to a pasteurization process deemed acceptable to the Food and Drug Administration (FDA). Additionally, AMS advises all interested parties that it will not develop grade standards for pasteurized shell eggs at this time.

DATES: This tentative approval period begins September 24, 1997 and extends until AMS makes a final determination regarding the official identification of pasteurized shell eggs. Comments should be submitted on or before November 24, 1997.

ADDRESSES: Written comments may be sent to Douglas C. Bailey, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0259, 1400 Independence Avenue, SW, Washington, DC 20250–0259. Comments may be inspected at this location between 8 a.m. and 4:00 p.m., Eastern time, Monday through Friday, except holidays. State that your comments refer to Docket No. PY–97–008.

COMMENTS: Commenters are invited to provide specific information during the comment period on the Agency's tentative approval to officially identify pasteurized shell eggs.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, Poultry Division, 202–720–3271.

SUPPLEMENTARY INFORMATION:

Background

The Agricultural Marketing Act of 1946, as amended (AMA) (7 U.S.C. 1621 *et seq.*), authorizes the Secretary of Agriculture to set standards for agricultural products and, on a voluntary basis, inspect and certify conformity of agricultural products to such standards to assist in their orderly marketing.

The voluntary shell egg grading program (7 CFR Part 56) administered under the AMA provides that any interested party may make an application with USDA to determine the class, quality, quantity, condition, of shell eggs.

Moreover, USDA may authorize the applicant to officially identify such commodities after they have been graded by a representative of the Secretary and meet the requirements of the authorizing regulations, standards, or specifications.

Grade Standards

On June 18, 1996, the Agricultural Marketing Service (AMS) published a notice in the **Federal Register** (61 FR 30851) advising interested persons that grade standards currently applicable to shell eggs are not appropriate for pasteurized shell eggs. The notice also solicited comments on the need for USDA grade standards for pasteurized shell eggs. AMS received 5 comments during the comment period. Two commenters were not in favor of grade standards for pasteurized shell eggs and 3 commenters addressed issues that were outside the scope of the notice. AMS reviewed this issue and does not plan to develop grade standards for pasteurized shell eggs at this time.

Tentative Official Identification of Pasteurized Shell Eggs

AMS has been requested to permit the official identification of pasteurized shell eggs (in-shell eggs). Pasteurized shell eggs are shell eggs of the domesticated chicken which have been subjected to a process to destroy harmful viable microorganisms. Such processes shall meet the criterion for pasteurization set forth by FDA.

Since FDA is responsible for the definitions and standards or descriptions of foods such as eggs, shell egg processors must first receive FDA authorization to use the term "pasteurized" in conjunction with its shell egg labels. All such labeling must also comply with the Federal Food, Drug and Cosmetic Act; Fair Packaging and Labeling Act; and Nutrition Labeling and Education Act; and their associated regulations.

The FDA criterion for pasteurization is a 5 log reduction in Salmonella count after introducing a mixture of Salmonella organisms containing *Salmonella enteritidis* into the intact egg. Processors must demonstrate the effectiveness of their pasteurization process by obtaining and providing FDA data which show that their process resulted in the required reduction in Salmonella count. An evaluation of the pasteurization process will include not only a review of the time/temperature data necessary to achieve a 5 log reduction in Salmonella count, but will also include an evaluation of survival and growth of bacteria from eggs held for 30 days at 41 °F after pasteurization. Additionally, processors will also be required to demonstrate that product integrity can be ensured after pasteurization. This may be done by the marking and/or packaging of the pasteurized eggs to ensure that unpasteurized eggs are not substituted in the containers after processing.

After processors have submitted appropriate data acceptable to FDA for use of the term "pasteurized," AMS will consider their requests to permit official identification of the pasteurized shell eggs.

Processors would be authorized to state that USDA certifies the shell eggs as pasteurized when a representative of the Secretary monitors the pasteurization process to ensure it is conducted in accordance with appropriate requirements. Additionally, processors would be authorized to officially identify pasteurized shell eggs with a shield-shaped certified as pasteurized symbol if the eggs certified as pasteurized were produced from eggs which had been officially graded and identified as U.S. Consumer Grade A or Grade AA. An official identification symbol that does not include the shield could also be developed to identify ungraded pasteurized shell eggs if there is sufficient interest in the use of such a symbol.

AMS recognizes that appropriate investigation is needed before amending current regulations to establish an authority for a new official identification. As part of this investigation, AMS is tentatively authorizing the official identification of pasteurized shell eggs to determine industry and consumer acceptance of such a practice, and to permit the collection of other necessary data. Current regulations (7 CFR 56.3) provide AMS the flexibility needed to permit such experimentation. After AMS has evaluated the results of the tentative authorization of official identification for pasteurized shell eggs, it will determine if the current shell egg grading regulations should be amended, through notice and comment rulemaking, to include authorization to identify shell eggs as certified as pasteurized.

Tentative Requirements for Official Identification of Pasteurized Shell Eggs

Identifying and Marking Products.

Use of USDA Certified as Pasteurized Statement.

1. During the tentative approval period, processors may state on labels, containers, or packaging material that USDA certifies shell eggs as pasteurized in accordance with the following requirements:

a. Acceptance of the efficacy of the pasteurization process by FDA.

b. Use of a grader to monitor the pasteurization process to ensure it is conducted in accordance with prescribed parameters.

Use of USDA Certified as Pasteurized Official Identification Symbol.

2. During the tentative approval period, processors may use the USDA official symbol certifying shell eggs as pasteurized on labels, containers, or packaging material in accordance with the following requirements:

a. Acceptance of the efficacy of the pasteurization process by FDA.

b. Use of a grader to monitor the pasteurization process to ensure it is conducted in accordance with prescribed parameters.

c. Use of eggs officially graded and identified as U.S. Consumer Grade A or Grade AA to produce pasteurized shell eggs.

Design of Certified as Pasteurized Official Identification Symbol for Graded Eggs.

3. Except as otherwise authorized, the shield set forth in Figure 1 containing the letters "USDA" shall be the official identification symbol to identify cartons of shell eggs which are officially graded and pasteurized. The shield shall be of sufficient size so that the print and other information contained therein is distinctly legible and in approximately the same proportion as shown in Figure 1.

BILLING CODE 3410-02-P



Figure 1

BILLING CODE 3410-02-C

Authority: 7 U.S.C. 1621 *et seq.*

Dated: September 18, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97-25277 Filed 9-23-97; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97-083-1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations to prevent the introduction of exotic Newcastle disease in birds and poultry and chlamydiosis in poultry.

DATES: Comments on this notice must be received by November 24, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97-083-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please send an original and three copies, and state that your comments refer to Docket 97-083-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding exotic Newcastle disease in birds and poultry and chlamydiosis in poultry, contact Dr. Karen James, Senior Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737-1231, (301) 734-8240, or e-mail kjames@aphis.usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Jenkins, Information Collection Coordinator, at (301) 734-5360.

SUPPLEMENTARY INFORMATION:

Title: Exotic Newcastle Disease in Birds & Poultry; Chlamydiosis in Poultry.

OMB Number: 0579-0116.

Expiration Date of Approval: April 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for preventing the spread of contagious, infectious, or communicable diseases of animals and poultry from one State to another, and for eradicating such diseases from the United States when feasible.

In connection with this mission, APHIS regulates the interstate movement of certain poultry, birds, and other items from premises and areas quarantined because of exotic Newcastle disease or chlamydiosis. These regulations enable us to prevent infected or exposed birds from coming into contact with healthy ones.

Regulating the interstate movement of birds, poultry, and other items (such as eggs, carcasses, vehicles, containers, and coops) requires the use of certain information gathering activities, including the completion of documents attesting to the health of the birds or poultry being moved, the number and types of birds or poultry being moved in a particular shipment, the shipment's point of origin, the shipment's destination, and the reason for the interstate movement.

These documents also provide useful "traceback" information in the event that poultry or birds are infected and an investigation must be launched to determine where the birds or poultry originated.

The information provided by these documents is critical to our ability to prevent the interstate spread of exotic Newcastle disease and chlamydiosis, which are highly contagious and capable of causing significant economic harm to the U.S. poultry industry.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .46 hours per response.

Respondents: U.S. producers and shippers, State animal protection authorities.

Estimated number of respondents: 45.

Estimated number of responses per respondent: 1.

Estimated annual number of responses: 45.

Estimated total annual burden on respondents: 21 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per respondent.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of September 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25326 Filed 9–23–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–078–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the State-Federal Brucellosis Eradication Program.

DATES: Comments on this notice must be received by November 24, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–078–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–078–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the State-Federal Brucellosis Eradication Program, contact Dr. James Davis, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 43, Riverdale, MD 20737–1236, (301) 734–5970. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, Agency Support Service Specialist, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: State-Federal Brucellosis Eradication Program.

OMB Number: 0579–0047.

Expiration Date of Approval: January 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The State-Federal Brucellosis Eradication Program is a national program to eliminate this serious disease of livestock. Brucellosis also affects humans through contacts with infected animals or their byproducts. The program is conducted under the various States' authorities, and by Federal authorities regulating interstate movement of affected animals.

Uniform program standards (Brucellosis Eradication Recommended Uniform Methods and Rules) are developed by organizations representing the livestock industry, State animal health agencies, and the U.S. Department of Agriculture (USDA). Recommendations affecting the program standards are submitted by the executive committee of the U.S. Animal Health Association for consideration and approval by USDA. If the recommendations are accepted as part of the program standards, the Brucellosis Eradication Recommended Uniform Methods and Rules (UMR) are amended to incorporate the change.

The UMR forms the basis for the program in each State. The UMR states, in part, that a "concerted effort through effective screening programs and extensive epidemiologic investigations to locate infection and to eradicate the disease is required." A national epidemiology form is needed to fulfill an individual State's commitment to report and review epidemiologic data.

The information for report forms is obtained from State veterinarians, livestock inspectors, and herd owners. The information obtained is used to continue the search for other infected herds, maintain identification of livestock, monitor deficiencies in identification of animals for movement, and monitor program deficiencies in suspicious and infected herds. This information is used to determine brucellosis area status and aids herd owners by speeding up the detection and elimination of serious disease conditions in their herds.

In most instances, information is collected at the time of testing, herd tagging, or branding of infected animals.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: Public reporting burden for this collection of information is estimated to average .00855 hours per response.

Respondents: State veterinarians, livestock inspectors, and herd owners.

Estimated number of respondents: 7,278.

Estimated number of responses per respondent: 858.5119.

Estimated annual number of responses: 6,248,250.

Estimated total annual burden on respondents: 52,395 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of September 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25327 Filed 9–23–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–089–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Pseudorabies Eradication Program.

DATES: Comments on this notice must be received by November 24, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–089–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–089–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the Pseudorabies Eradication Program, contact Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 37, Riverdale, MD 20737–1231, (301) 734–4916; or e-mail Ataft@aphis.usda.gov. For copies of more detailed information on the information collection, contact Mr. Gregg Ramsey, Agency Support Service Specialist, at (301) 734–5582.

SUPPLEMENTARY INFORMATION:

Title: Pseudorabies.

OMB Number: 0579–0070.

Expiration Date of Approval: April 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for preventing the spread of contagious, infectious, or communicable animal diseases from one State to another, and for eradicating such diseases from the United States when feasible.

In connection with this mission, APHIS regulates the interstate movement of swine in order to carefully control the movement of swine that are infected with or exposed to pseudorabies. The most common method of pseudorabies transmission is the movement of infected swine from one herd to another.

Regulating the interstate movement of these animals requires the use of certain information gathering activities, including the completion of documents attesting to the health status of the swine being moved, the number of swine being moved in a particular shipment, the shipment's point of origin, and the shipment's destination.

With this information we are able to carefully monitor the location of infected or exposed animals and prevent them from coming into contact with healthy animals.

These documents also provide useful "traceback" information in the event an infected animal is discovered and an investigation must be launched to determine where the animal originated, as well as the number and location of other animals with which it may have had contact during its interstate movement.

The information provided by these documents is critical to our ability to prevent the interstate spread of pseudorabies, and therefore plays a vital role in our Pseudorabies Eradication Program.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: Public reporting burden for this collection of information is estimated to average .0208 hours per response.

Respondents: U.S. producers, shippers, State animal protection authorities.

Estimated number of respondents: 30,050.

Estimated number of responses per respondent: 2.6689.

Estimated annual number of responses: 80,200.

Estimated total annual burden on respondents: 1,668 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of September 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25328 Filed 9–23–97; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Privacy Act of 1974; System of Records

AGENCY: Commission on Civil Rights.

ACTION: Amendment of system of records to include new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the U.S. Commission on Civil Rights (USCCR) is issuing notice of our intent to amend the system of records entitled the Personnel Records—CRC–007 to include new routine uses. We invite public comment on this publication.

DATES: The changes will become effective as proposed, on October 1, 1997, unless comments which would warrant our preventing the changes from taking effect are received on or before 30 days from the date of this notice.

ADDRESSES: Interested individuals may comment on this publication by writing to Myrna Hernandez—U.S. Commission on Civil Rights—624 9th Street NW., Suite 510, Washington, DC 20425. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT:

Myrna Hernandez, U.S. Commission on Civil Rights, 624 9th Street NW., Suite 510, Washington, DC 20425.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Changes to Routine Use

Pursuant to the Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the U.S. Commission on Civil Rights will disclose data from its USDA Payroll Personnel System-National Finance Center to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. Information on this system was last published at 61 FR 38754, July 25, 1996.

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support.

Effective October 1, 1997, the FPLS will be enlarged to include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. Effective October 1, 1998, the FPLS will be expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

The data to be disclosed by the U.S. Commission on Civil Rights to the FPLS include: name, address, social security number and name and address of the agency.

In addition, names and social security numbers submitted by the U.S. Commission on Civil Rights to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct.

The data disclosed by the U.S. Commission on Civil Rights to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

II. Compatibility of Proposed Routine Uses

We are proposing these routine uses in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a "compatible" use is a use which is necessary and proper. *See* OMB Guidelines, 51 FR 18982, 18985 (1986). Since the proposed uses of the data are required by Pub. L. 104–193, they are clearly necessary and proper uses, and therefore "compatible" uses which meet Privacy Act requirements.

III. Effect of the Proposed Changes on Individuals

We will disclose information under the proposed routine uses only as required by Pub. L. 104–193 and as permitted by the Privacy Act.

Accordingly, the Personnel Records system notice originally published at FR vol. 40, no. 171, September 3, 1975, is amended as set forth below.

CRC–007

SYSTEM NAME:

Personnel Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action.

(2) To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

(3) To Office of Child Support Enforcement for release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment on a tax return.

* * * * *

Ruby G. Moy,

Staff Director.

[FR Doc. 97–25273 Filed 9–23–97; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091597C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1067).

SUMMARY: Notice is hereby given that the California Department of Fish and Game in Sacramento, CA (CDFG) has applied in due form for a permit that would authorize takes of a threatened species for scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before October 24, 1997.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707 575–6066).

Written comments or requests for a public hearing should be submitted to the Protected Species Division in Santa Rosa, CA.

SUPPLEMENTARY INFORMATION: CDFG requests a five-year permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227), for takes of adult and juvenile, threatened, central California coast coho salmon (*Oncorhynchus kisutch*) associated with fishery studies in drainages throughout the Evolutionarily Significant Unit. Five CDFG workplans are defined in this application. These

cummulative studies consist of: (1) juvenile coho salmon distribution and abundance surveys; (2) habitat typing; (3) spawner surveys; (4) out-migrant studies; and (5) the acquisition of tissue/scale samples for genetic studies. ESA-listed juvenile fish are proposed to be observed or captured, anesthetized, handled (weighed, measured, sampled for tissues and/or scales, and fin-clipped), allowed to recover from the anesthetic, and released. ESA-listed adult fish carcasses are proposed to be collected, handled (measured and sampled for tissues and/or scales), and returned to the water at the collection site. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

Those individuals requesting a hearing on this request for a permit should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: September 18, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–25302 Filed 9–23–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091697D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1089).

SUMMARY: Notice is hereby given that Entrix Inc. At Walnut Creek, CA has applied in due form for a permit authorizing takes of an endangered species for scientific research purposes.

DATES: Written comments or requests for a public hearing on this application must be received on or before October 24, 1997.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

Written comments or requests for a public hearing should be submitted to the Protected Species Division in Santa Rosa, CA.

SUPPLEMENTARY INFORMATION: Entrix Inc. requests a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Entrix Inc. requests a five-year permit for takes of adult and juvenile, endangered, southern California coast steelhead (*Oncorhynchus mykiss*) associated with fish population and habitat studies in the Santa Ynez, Santa Clara and Ventura Rivers and their tributaries within the Evolutionarily Significant Unit. The studies consist of five assessment tasks for which ESA-listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, (3) spawner surveys, (4) genetic sampling, and (5) habitat quality evaluation. ESA-listed fish are proposed to be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. ESA-listed adult and juvenile salmon indirect mortalities associated with the research are also requested.

Those individuals requesting a hearing on this request for a permit should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above permit application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: September 17, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–25303 Filed 9–23–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Department of Defense M256A1 Outreach.

Type of Request: New collection; Emergency Processing requested with a shortened public comment period ending October 1, 1997. An approval date of October 8, 1997 is requested.

Number of Respondents: 777.

Responses Per Respondent: 1.

Annual Responses: 777.

Average Burden Per Response: 45 minutes.

Annual Burden Hours: 583 hours.

Needs and Uses: The information collection is necessary to facilitate the investigation of possible, positive M256A1 chemical warfare agent detections at different dates and locations in the Kuwait Theater of Operations. The information collected will be used to determine which Gulf War units and veterans may have further information about these incidents, discover if there were any other observed detections, contribute to a better understanding of the events during and after the Gulf War, and encourage enrollment in a DoD or VA clinical program. Respondents are Gulf War veterans who are not serving on active duty and whose units were in the vicinity of the detection.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Office for DoD, room 10235, New Executive Office Building, Washington, DC 20503, or via facsimile at (202) 395–6974.

DOD Clearance Officer: Mr. Robert Cushing.

Requests for copies of the information collection proposal should be sent to Mr. Cushing at OSD/WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, or via facsimile at (703) 604–6270, or requested telephonically at (703) 604–4582.

Dated: September 18, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–25270 Filed 9–23–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Institutional Quality and Integrity. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: November 19–21, 1997, 8:00 a.m. until 6:00 p.m.

ADDRESSES: The Latham Hotel, 3000 M Street, N.W., Washington, D.C. 20007. The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an accommodation to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested accommodations may not be available because of insufficient time to arrange it.

FOR FURTHER INFORMATION CONTACT: Carol F. Sperry, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, 7th & D Street, SW, Room 3082, ROB 3, Washington, DC. 20202–7592, telephone: (202) 260–3636. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Institutional Quality and Integrity is established under Section 1205 of the Higher Education Act (HEA) as amended by Public Law 102–325 (20 U.S.C. 1145). The Committee advises the Secretary of Education with respect to the establishment and enforcement of the criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA, the recognition of specific accrediting agencies or associations, the preparation and publication of the list of nationally recognized accrediting agencies and associations, and the eligibility and certification process for institutions of higher education under Title IV, HEA. The Committee also develops and recommends to the Secretary standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are not recognized accrediting agencies, associations, or State agencies, in order to establish eligibility for such institutions on an interim basis for participation in federally funded programs.

Agenda

The meeting on November 19–21, 1997 is open to the public. The following agencies will be reviewed during the November 1997 meeting of the Advisory Committee:

Petitions for Renewal of Recognition—1. Accreditation Board for Engineering and Technology, Inc. (Scope of recognition: the accreditation of basic (baccalaureate) and advanced (master's) level programs in engineering, associate and baccalaureate degree programs in engineering technology, and engineering-related programs at the baccalaureate and advanced degree level).

2. Accrediting Council for Continuing Education and Training (Scope of recognition: the accreditation of institutions of higher education that offer non-collegiate continuing vocational education programs and higher education programs of non-collegiate continuing vocational education).

3. American Optometric Association, Council on Optometric Education (Scope of recognition: the accreditation and preaccreditation ("Reasonable Assurance/Preliminary Approval" (for professional degree programs) and "Candidacy Pending" (for optometric residency programs in facilities of Veterans' Administration)) of professional optometric degree programs, optometric residency programs, and optometric technician programs).

4. Association for Clinical Pastoral Education, Inc., Accreditation Commission (Scope of recognition: the accreditation and preaccreditation ("Candidacy for Accredited Membership") of basic, advanced, and supervisory clinical pastoral education programs).

5. Commission on Opticianry Accreditation (Scope of recognition: the accreditation of two-year programs for the ophthalmic dispenser and one-year programs for the ophthalmic laboratory technician).

6. National Association of Schools of Art and Design, Commission on Accreditation (Scope of recognition: the accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in art, design, and art/design-related disciplines).

7. National Association of Schools of Dance, Commission on Accreditation (Scope of recognition: the accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in dance and dance-related disciplines).

8. National Association of Schools of Music, Commission on Accreditation, Commission on Non-Degree-Granting Accreditation and Commission on Community/Junior College Accreditation (Scope of recognition: the accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in music and music-related disciplines, including community/junior colleges and independent degree-granting and non-degree-granting institutions).

9. National Association of Schools of Theater, Commission on Accreditation (Scope of recognition: the accreditation of institutions and units within institutions offering degree-granting and non-degree-granting programs in theater and theater-related disciplines).

10. New England Association of Schools and Colleges (Scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of non-degree granting postsecondary vocational, technical and career institutions and degree-granting institutions of higher education awarding an associate degree in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont).

11. North Central Association of Colleges and Schools, Commission on Institutions of Higher Education (Scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming).

12. Northwest Association of Schools and Colleges, Commission on Colleges (Scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of institutions of higher education in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington).

13. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (Scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of community and junior colleges in California, Hawaii, American Samoa, Guam, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands).

Petitions for Renewal of Recognition and Expansion of Scope—1. merican Psychological Association, Committee on Accreditation (Current scope of recognition: the accreditation of doctoral programs in clinical, counseling, school, and combined professional-scientific psychology, and predoctoral internship training programs in professional psychology). (Requested expansion of scope: the accreditation of post-doctoral residency programs in professional psychology).

2. American Speech-Language-Hearing Association (Current scope of recognition: the accreditation of Master's degree programs in speech-language pathology and audiology). (Requested expansion of scope: the accreditation and preaccreditation ("Candidacy") of graduate educational programs that provide for entry-level professional preparation with a major emphasis in audiology and/or speech-language pathology.)

3. Council on Occupational Education (Current scope of recognition: the accreditation and preaccreditation ("Candidate for Accreditation") of non-degree granting postsecondary occupational/vocational institutions and those postsecondary occupational/vocational education institutions currently accredited by the Council that either have state authorization to grant the applied associate degree in specific vocational/occupational fields or that receive such authorization during the Council's current recognition period). (Requested expansion of scope: the accreditation and preaccreditation ("Candidate for Accreditation") of postsecondary, prebaccalaureate, degree-granting and non-degree-granting vocational education institutions nationwide.)

Interim and Progress Reports (Interim and Progress reports are follow-up reports on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar

2. Middle States Association of Colleges and Schools, Commission on Higher Education.

3. National Environmental Health Science and Protection Accreditation Council.

4. New York State Board of Regents.

5. Southern Association of Colleges and Schools, Commission on Colleges.

6. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

Progress Report—1. National League for Nursing Accrediting Commission.

State Agency Recognized for the Approval of Public Postsecondary Vocational Education

Interim Report—1. New York State Board of Regents, Vocational Education.

State Agency Recognized for the Approval of Nurse Education

Interim Report—1. New York State Board of Regents, Nursing Education Unit.

Federal Agency Seeking Degree-Granting Authority

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree-Granting Authority—1. U.S. Army War College, Carlisle, PA (request to award a master's degree in Strategic Studies).

A request for comments on agencies that are being reviewed during this meeting was published in the Federal Register on July 2, 1997.

This notice invites third-party oral presentations before the Advisory Committee. It does not constitute another call for written comment. Requests for oral presentation before the Advisory Committee should be submitted in writing to Ms. Sperry at the address above by October 20, 1997. Requests should include the names of all persons seeking an appearance, the organization they represent, and a brief summary of the principal points to be made during the oral presentation. Presenters are requested not to distribute written materials at the meeting. Presenters who wish to provide the Advisory Committee with written copies of their proposed testimony or with documents directly, but briefly (no more than 6 pages maximum), illustrating the main points of their oral testimony may submit them to Ms. Sperry by October 20, 1997 (one original and 25 copies). Documents submitted after that date will not be distributed to the Committee. Presenters are reminded that this call for third-party oral testimony does not constitute a call for additional written comment.

At the conclusion of the meeting, attendees may, at the discretion of the Committee chair, be invited to address the Committee briefly on issues pertaining to the functions of the Committee, as identified in the section above on Supplementary Information. Attendees interested in making such comments should inform Ms. Sperry before or during the meeting.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 7th and D Streets, SW, room 3082, ROB 3, Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Authority: 5 U.S.C. Appendix 2.

Dated: September 19, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–25321 Filed 9–23–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–172–007]

ANR Storage Company; Notice of Compliance Filing

September 18, 1997.

Take notice that on September 15, 1997, ANR Storage Company (ANR Storage) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

ANR Storage states that the tariff sheets listed on Appendix A are being filed in compliance with the Commission's Order issued on June 27, 1997 in the above captioned docket. The filing incorporates modifications to the GISB standards as proposed by Order 587–C, effective November 1, 1997.

ANR states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25289 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–170–007]

Blue Lake Gas Storage Company; Notice of Compliance Filing

September 18, 1997.

Take notice that on September 15, 1997, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

Blue Lake states that the tariff sheets listed on Appendix A are being filed in compliance with the Commission's Order issued on June 27, 1997 in the above captioned docket. The filing incorporates modifications to the GISB standards as proposed by Order 587–C, effective November 1, 1997.

Blue Lake states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25299 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–120–001]

Carnegie Interstate Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

September 18, 1997.

Take notice that on September 12, 1997, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing to be part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, with an effective date of October 1, 1997:

Sub. Fourteenth Revised Sheet No. 7

CIPCO states that the above tariff sheet has been revised to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to CIPCO. The Annual Charge Unit Surcharge authorized by the Commission for fiscal year 1998 is $0.0022 per Dth.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25288 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–97–001]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1997.

Take notice on September 12, 1997, Chandeleur Pipe Line Company (Chandeleur) amends its August 22, 1997 filing on the following tariff sheet to become effective October 1, 1997:

Substitute Seventh Revised Sheet No. 5

Chandeleur is amending its rates from $0.0021 per Dth to $0.0022 per Dth to reflect the Federal Energy Regulatory Commission's Correction for Annual Charges Unit Charge FY 1997 of natural gas pipeline companies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25295 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4422–000]

Cinergy Services, Inc.; Notice of Filing

September 18, 1997.

Take notice that on August 29, 1997, Cinergy Services, Inc. (Cinergy) tendered for filing on behalf of its operating companies, PSI Energy Inc. (PSI) a change to the rate for wheeling service pursuant to the Interconnection Agreement (Agreement) between PSI, Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier Energy) and Southern Indiana Gas and Electric Company.

The file change modifies PSI's rate for wheeling service to Hoosier Energy under Service Schedule F—Wheeling of the Agreement.

PSI has requested a waiver of the Commission's Rules and Regulations to permit this proposed rate for service to become effective November 1, 1997.

Copies of the filing were served on Hoosier Energy Rural Electric Cooperative, Inc., Southern Indiana Gas and Electric Company and the Indiana Utility Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25286 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–752–000]

Distrigas of Massachusetts Corporation; Notice of Application

September 18, 1997.

Take notice that on September 12, 1997, Distrigas of Massachusetts Corporation (DOMAC), 75 State Street, Boston, Massachusetts, 02109, filed in Docket No. CP97–752–000 an application for a limited-term certificate of public convenience and necessity, for the period commencing on November 1, 1997 and ending on March 31, 1999, requesting authority to install certain temporary air injection equipment at its liquefied natural gas (LNG) terminal in Everett, Massachusetts.

DOMAC states that there are likely to be several instances during the period from November 1, 1997 through March 31, 1999 when it will be necessary to air stabilize higher than usual BTU content LNG cargoes through the use of additional air injection facilities. According to DOMAC, there are limits to the amount of higher-BTU content LNG that it can stabilize using its existing permanent air injection capacity, particularly when a higher-BTU cargo is received followed at a short interval by a subsequent cargo. Accordingly, DOMAC seeks authority to install and operate temporary air injection facilities in preparation for such expected receipts.

DOMAC states that the limited-term certificate requested in this application will neither affect, nor require modification to, its August 1, 1990, Operating Agreement with Commonwealth Gas Company and Algonquin Gas Transmission Company.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 9, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its review of the matter finds that permission and approval for the proposed abandonment and grant of certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for DOMAC to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25281 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3715–000]

Duke Power Company; Notice of Filing

September 18, 1997.

Take notice that on August 28, 1997, Duke Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25283 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–46–001]

Kentuky West Virginia Gas Company, L.L.C.; Notice of Proposed Change in FERC Gas Tariff

September 18, 1997.

Take notice that on September 12, 1997, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective October 1, 1997:

Substitute Fourth Revised Sheet No. 4
Substitute Fourth Revised Sheet No. 5

On August 21, 1997, Kentucky West made its 1997 Annual Charge Adjustment (ACA) filing to incorporate the unit surcharge of $0.0021 consistent with the invoice received on August 6, 1997. After the filing was made, a revised invoice was received on August 26, 1997 which changed the ACA unit surcharge to $0.0022. This revised filing

is being made to reflect the August 26, 1997 ACA unit surcharge. Consistent with the August 21, 1997 filing, minor typographical changes were made on Sheet Nos. 4 and 5 to capitalize the "C" in customer.

Pursuant to Section 154.207 of the Commission's Regulations, Kentucky West requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective October 1, 1997.

Kentucky West states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25293 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–99–001]

Kern River Gas Transmission Company; Notice of Proposed Change in FERC Gas Tariff

September 18, 1997.

Take notice that on September 12, 1997, Kern River Gas Transmission (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1997:

Substitute Ninth Revised Sheet No. 5
Substitute Ninth Revised Sheet No. 6

Kern River states that this filing updates Kern River's tariff to reflect a $.0022 per Dth Annual Charge Adjustment (ACA) surcharge to be effective for the twelve-month period beginning October 1, 1997 pursuant to Section 154.402 of the Commission's regulations. The ACA surcharge of $.0022 per Dth specified by the Commission is an increase of $.0003 per Dth from Kern River's current ACA surcharge.

Kern River also states that on August 29, 1997, it submitted a tariff filing in Docket No. TM98–1–99 to reflect a $.0021 per Dth ACA surcharge to be effective for the twelve-month period beginning October 1, 1997. The $.0021 per Dth factor was based on the Commission's August 1, 1997 Statement of Annual Charges. However, on August 20, 1997, the Commission issued a correction of the ACA unit surcharge from $.0021 per Dth to $.0022 per Dth. Accordingly, Kern River states that it is requesting to withdraw the tariff sheets submitted in its August 29, 1997 filing and is submitting the instant filing to reflect the revised ACA surcharge.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25296 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–124–001]

Michigan Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1997.

Take notice that on September 12, 1997, the Michigan Gas Storage Company, (MGS) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub. Sixth Revised Sheet No. 5, to be effective October 1, 1997.

MGS states that the purpose of its filing is to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing. The Annual Charge Unit Surcharge authorized by the Commission for fiscal year 1998 is $0.0022 per Dth, which is an increase of $0.0002 per dth over the previous surcharge.

MGS states that copies of this filing were served on all firm customers, interested state commissions and all current interruptible customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25300 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–47–001]

MIGC, Inc.; Notice of Compliance Filing

September 18, 1997.

Take notice that on September 12, 1997, MIGC, Inc. (MIGC) tendered for filing to as part of its FERC Tariff, First Revised Volume No. 1, Substitute Fifth Revised Sheet No. 4, to become effective October 1, 1997.

MIGC states that the instant filing is being submitted to reflect Annual Charge Adjustment unit charges applicable to transportation services during the fiscal year commencing October 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25294 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–100–001]

Nora Transmission Company; Notice of Proposed Change in FERC Gas Tariff

September 18, 1997.

Take notice that on September 12, 1997, Nora Transmission Company (Nora), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to be effective October 1, 1997:

Fourth Revised Sheet No. 4

On August 21, 1997, Nora made its 1997 Annual Charge Adjustment (ACA) filing to incorporate the unit surcharge of $0.0021 consistent with the invoice received on August 6, 1997. After the filing was made, a revised invoice was received on August 26, 1997 which changed the ACA unit surcharge to $0.0022. This revised filing is being made to reflect the August 26, 1997 ACA unit surcharge.

Pursuant to Section 154.207 of the Commission's Regulations, Nora requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective October 1, 1997.

Nora states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25297 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–528–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1997.

Take notice that on September 15, 1997, NorAm Gas Transmission Company ("NGT") tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 1997:

Fifth Revised Sheet No. 1
Second Revised Sheet No. 34
First Revised Sheet No. 161
Third Revised Sheet No. 162
Third Revised Sheet No. 167
Second Revised Sheet No. 167A
Fourth Revised Sheet No. 169
Third Revised Sheet No. 169A
Third Revised Sheet No. 172
Second Revised Sheet No. 196A
Third Revised Sheet No. 205
Third Revised Sheet No. 233A

NGT states that the tariff sheets are being filed to correct administrative errors which occurred during its numerous GISB filings, as well as to make minor housekeeping changes.

Any person desiring to be heard or protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or as provided in Section 154.210 of the Commission's regulations. The protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25292 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–116–001]

OkTex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 18, 1997.

Take notice that on September 12, 1997, OkTex Pipeline Company (OkTex) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of October 1, 1997:

Substitute Tenth Revised Sheet No. 5

OkTex states that the Substitute Tenth Revised Sheet No. 5 increases the OkTex Annual Charge Adjustment Clause (ACA) from $0.0020 to $0.0022 per Dekatherm.

OkTex states that copies of the filing were served upon the Company's jurisdictional customers and upon interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25298 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4293–000]

San Diego Gas & Electric Company; Notice of Filing

September 18, 1997.

Take notice that on August 22, 1997, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.13, Service Agreements (Service Agreements) with the following entities for Point-To-Point Transmission Service under SDG&E's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888:

1. Engage Energy US, L.P.
2. NP Energy Inc.
3. San Diego Gas & Electric Co. (Energy Trading)

SDG&E filed the executed Service Agreements with the Commission in compliance with applicable Commission regulations. SDG&E also provided Sheet No. 114 (attachment E) to the Tariff, which is a list of concurrent subscribers. SDG&E requests waiver of the Commission's notice requirement to permit an effective date as specified in the Attachment E to the Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25285 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4243–000]

Southern Company Services, Inc.; Notice of Filing

September 18, 1997.

Take notice that on August 18, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies") filed forty-four (44) service agreements for firm point-to-point transmission service and two (2) service agreements for non-firm point-to-point transmission service under Part II of the Open Access Transmission Tariff of Southern Companies. Six (6) firm agreements are between SCS, as agent for Southern Companies, and Aquila Power Corporation; six firm agreements are between SCS, as agent for Southern Companies, and Electric Clearinghouse, Inc.; three (3) firm agreements are between SCS, as agent for Southern Companies, and Sonat Power Marketing L.P.; seventeen (17) firm service agreements are between SCS, as agent for Southern Companies, and Southern Wholesale Energy, a Department of SCS; four (4) firm service agreements are between SCS, as agent for Southern Companies, and Tennessee Valley Authority; two (2) firm service agreements are between SCS, as agent for Southern Companies, and Tennessee Valley Authority; two (2) firm service agreements between SCS, as agent for Southern Companies, and Virginia Electric & Power Company; and three (3) firm service agreements are between SCS, as agent for Southern Companies, and Vitol Gas & Electric. The other three (3) firm service agreements are between SCS, as agent for Southern Companies, and (i) Entergy Service, Inc., (ii) Federal Energy Sales, Inc., and (iii) Koch Energy Trading, Inc. The two non-firm point-to-point transmission service agreements are between SCS, as agent for Southern Companies, and (i) Commonwealth Edison Company, and (ii) Orlando Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25284 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–177–0906]

Steuben Gas Storage Company; Notice of Compliance Filing

September 18, 1997.

Take notice that on September 15, 1997, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

Steuben states that the tariff sheets listed on Appendix A are being filed in compliance with the Commission's Order issued on June 25, 1997 in the above Captioned docket. The filing incorporates modifications to the GISB standards as proposed by Order 587–C, effective November 1, 1997.

Steuben states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25290 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–434–001]

Transwestern Pipeline Company; Notice of Compliance Filing

September 18, 1997.

Take notice that on September 15, 1997, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to become effective on September 1, 1997:

Substitute Original Sheet No. 37E

Transwestern states that this filing is to comply with the Commission's August 29, 1997 Order in Docket No. RP97–434–000 pertaining to Transwestern's new interruptible Park 'N Ride Service under Rate Schedule PNR. The August 29 Order requires Transwestern to revise Section 9.1 of its tariff to provide that notice be given to Buyers via telephone and the Electronic Bulletin Board (EBB) for notices issued after business hours for the next calendar day.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25291 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–745–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

September 18, 1997.

Take notice that on September 11, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP97–745–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate new metering and associated appurtenant facilities in North Dakota, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The proposed facilities will be used to provide delivery of transportation service gas to Bear Paw Energy, Inc. (Bear Paw). Williston Basin states that Bear Paw has requested installation of this metering facility to allow Williston Basin to make deliveries of up to 714 Mcf per day to be used to fuel a field compressor. The facilities to be constructed at the proposed metering facility will consist of a meter, regulator and miscellaneous piping, gauges and values, all of which will be enclosed within a small pipe fence. The proposed metering facility will be constructed on existing pipeline right-of-way at the terminus of Williston Basin's 6-inch True Oil lateral line in Section 26, T154N, R102W, Williams County, North Dakota. The estimated cost is $6,600 and 100% reimbursable by Bear Paw. The addition of the proposed facilities will have no significant effect on Williston Basin's peak day or annual requirements and the total volumes delivered will not exceed total volumes authorized prior to this request. Williston Basin also states that its existing tariff does not prohibit the addition of new delivery points and that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25282 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–54–000, et al.]

Soyland Power Cooperative, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 17, 1997.

Take notice that the following filings have been made with the Commission:

1. Soyland Power Cooperative, Inc.

[Docket No. EC97–54–000]

Take notice that on September 10, 1997, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission an Application for Approval of Disposition of Jurisdictional Facilities. Soyland proposes to sell to Southwestern Electric Cooperative, Inc. (Southwestern), a non-jurisdictional distribution cooperative that has withdrawn from membership in Soyland, the metering facilities that served Southwestern.

Soyland states that a copy of the filing was served upon Southwestern.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Soyland Power Cooperative, Inc.

[Docket No. EC97–55–000]

Take notice that on September 19, 1997, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission an application for Approval of Disposition of Jurisdictional Facilities. Soyland proposed to sell to Corn Belt Electric Cooperative Inc. (Corn Belt), a non-jurisdictional distribution cooperative that has withdrawn from fill membership in Soyland, the metering facilities that served Corn Belt.

Soyland states that a copy of the filing was served upon Corn Belt.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Indeck North American Power Fund, L.P.

[Docket Nos. EL97–55–000; QF93–29–005; QF92–166–006; and QF92–167–006]

Take notice that on August 22, 1997, Indeck North American Power Fund,

L.P., Indeck Auburndale and Indeck Gordonsville (collectively Indeck) tendered for filing a Petition for Declaratory Order Concerning the Qualifying Status of the Auburndale and Gordonsville Cogeneration facilities.

Indeck contends that the proposed exercise of a contractual option by Edison Mission Energy Company and its affiliates (Edison Mission) to designate a third-party purchaser for non-utility interests in those facilities in place of Indeck would violate the Commission's qualifying facility ownership requirements. Indeck seeks an Order declaring the exercise of the option as proposed would violate the Public Utilities Regulatory Policies Act (PURPA) and Commission provisions concerning ownership of qualifying cogeneration facilities. Indeck also seeks a declaration that Edison Mission's exercise of the option will cause the Auburndale and Gordonsville Cogeneration facilities to lose their qualifying status.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Cities of Anaheim and Riverside, California v. Deseret Generation & Transmission Cooperative

[Docket No. EL97–57–000]

Take notice that on September 2, 1997, The Cities of Anaheim and Riverside, California (Cities) tendered for filing a complaint against Deseret Generation & Transmission Cooperative. The Cities request that the Commission: (1) Rule that the rates Deseret charges the Cities under FERC-jurisdictional contracts are unjust, unreasonable, unduly discriminatory and unduly preferential, (2) rule that the contracts are contrary to the public interest, (3) establish a refund effective date no later than November 1, 1997, and (4) determine the just and reasonable rates to be thereafter observed.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before October 17, 1997.

5. Rayburn Country Electric Cooperative, Inc.

[Docket No. ER97–1903–000]

Take notice that Rayburn Country Electric Cooperative, Inc., tendered for filing on September 5, 1997, an amendment in the above-referenced docket.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER97–2593–000]

Take notice that on August 26, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing an amendment to the service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Montaup Electric Company.

Change the effective date to one day after the effective date of the modification to the Tariff.

Copies of the filing were served on Energy Services, Inc., Washington Utilities and Transportation Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Cleveland Electric Illuminating Company

[Docket No. ER97–3597–000]

Take notice that on August 20, 1997, Cleveland Electric Illuminating Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Great Bay Power Corporation

[Docket No. ER97–3890–000]

Take notice that on August 18, 1997, Great Bay Power Corporation tendered for filing a revised summary of activity for the quarter ending June 30, 1997.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Sigma Energy, Inc.

[Docket No. ER97–4145–000]

Take notice that on August 28, 1997, Sigma Energy, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. 3E Energy Services, L.L.C.

[Docket No. ER97–4183–000]

Take notice that on September 11, 1997, 3E Energy Services, LLC (3E) filed an amendment to its application for market-based rates as power marketer. The amended information makes correction to the application relevant to: (1) Removal of natural gas, (2) removal to any indication of affiliates to 3E, (3) includes owner names.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Interstate Power Company

[Docket No. ER97–4355–000]

Take notice that on August 26, 1997, Interstate Power Company (IPW) tendered for filing a Transmission Service Agreement between IPW and MidCon Power Services Corporation (MidCon). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to MidCon.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER97–4371–000]

Take notice that on August 27, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Northern Indiana Public Service Company (NIPSCO).

Cinergy and NIPSCO are requesting an effective date of July 29, 1997.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER97–4372–000]

Take notice that on August 27, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Vitol Gas & Electric L.L.C. (Vitol).

Cinergy and Vitol are requesting an effective date of August 15, 1997.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER97–4373–000]

Take notice that on August 27, 1997, New England Power Company filed a Service Agreements and Certificates of Concurrence with Tractebel Energy Marketing, Inc., under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. ProMark Energy, Inc.

[Docket No. ER97–4374–000]

Take notice that on August 27, 1997, ProMark Energy, Inc., tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between ProMark Energy, Inc., and Long Island Lighting Company under ProMark's Market-Based Rate Tariff.

ProMark Energy, Inc. requests an effective date of August 28, 1997.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. UtiliCorp United Inc.

[Docket No. ER97–4375–000]

Take notice that on August 27, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with ConAgra Energy Services, Inc., for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ER97–4376–000]

Take notice that on August 27, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Constellation Power Source, Inc., for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. UtiliCorp United Inc.

[Docket No. ER97–4377–000]

Take notice that on August 27, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with The Energy Authority, Inc., for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER97–4378–000]

Take notice that on August 27, 1997, PECO Energy Company (PECO) filed a Service Agreement dated August 25, 1997 with Horizon Energy, a wholly-owned affiliate of PECO (Horizon) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Horizon as a customer under the Tariff.

PECO requests the Commission to waive the 60-day notice requirement and an effective date of October 1, 1997, for the Service Agreement, or alternatively, an effective date 60 days from the date of this filing.

PECO states that copies of this filing have been supplied to Horizon and to the Pennsylvania Public Utility Commission.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Public Service Co. of Oklahoma Southwestern Electric Power Company

[Docket No. ER97–4379–000]

Take notice that on August 27, 1997, Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) each tendered for filing Service Agreements establishing Texas-New Mexico Power Company as a customer under the terms of PSO and SWEPCO's respective CSRT–1 Tariff.

PSO and SWEPCO request an effective date of August 14, 1997, for the service agreements and, accordingly, seek waiver of the Commission's notice requirements. Copies of this filing were served on the new customer, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Central Power and Light Company, West Texas Utilities Company Public, Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER97–4380–000]

Take notice that on August 27, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) submitted for filing service agreements under which the CSW Operating Companies will provide transmission and ancillary services to Brazos Electric Power Cooperative, Inc. (Brazos), Tenaska Power Services Company (Tenaska), Kansas City Power & Light Company (KCPL) and Southwestern Public Service Company (SPS) in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of this filing has been served Brazos, KCPL, SPS and Tenaska.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Central Illinois Light Company

[Docket No. ER97–4382–000]

Take notice that on August 28, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for three new customers.

CILCO requested an effective date of August 6, 1997.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Pacific Gas and Electric Company

[Docket No. ER97–4383–000]

Take notice that on August 28, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing revised tariff pages for PG&E Rate Schedule FERC Nos. 88, 91, 136, 138 and 176 with the Sacramento Municipal Utility District (SMUD), PG&E Rate Schedule FERC No. 142 with the Northern California Power Agency (NCPA), PG&E Rate Schedule FERC No. 147 with the Western Area Power Administration (WAPA) and the U.S. Department of Energy, San Francisco Field Office (DOE/SF) on behalf of the Lawrence Livermore Laboratory and itself, and PG&E Rate Schedule FERC No. 149 with Lassen Municipal Utility District (Lassen). The filing is in response to the Commission's July 16, 1997, Order Approving Disposition of Jurisdictional Facilities and Indirect Merger of Jurisdictional Facilities and Accepting for Filing Proposed Changes to Market-Based Rate Schedule in FERC Docket Nos. EC97–22–000 and ER97–1847–000, 80 FERC ¶61,041. In this Order the Commission directed PG&E to file, within thirty days of the closing of the merger approved in the Order, revisions to any customer's rate schedule that contains an Annual Transmission Rate Adjustment Factor (ATRAF) mechanism. Those changes are intended to incorporate certain ratepayer protections and add language which clearly permits the customer to protest and challenge rate changes under the ATRAF. PG&E is requesting any necessary waivers.

Copies of this filing have been served upon the California Public Utilities Commission, SMUD, NCPA, WAPA–DOE/SF and Lassen.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Additional Signatory to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER97–4384–000]

Take notice that on August 27, 1997, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the LLC, membership application of Coral Power., L.L.C. and DuPont Power Marketing Inc. PJM requests an effective date of August 27, 1997.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Duke Power Company

[Docket No. ER97–4385–000]

Take notice that on August 28, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and PECO Energy Company (Transmission Customer), dated as of July 30, 1997 (TSA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide the Transmission Customer firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of July 30, 1997.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Duke Power Company

[Docket No. ER97–4386–000]

Take notice that on August 28, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Constellation Power Source, Inc. (Transmission Customer), dated as of August 4, 1997 (TSA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide the Transmission Customer non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of August 4, 1997.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Arizona Public Service Company

[Docket No. ER97–4387–000]

Take notice that on August 28, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Kansas City Power & Light Co.

A copy of this filing has been served on Kansas City Power & Light Co., and the Arizona Corporation Commission.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Arizona Public Service Company

[Docket No. ER97–4388–000]

Take notice that on August 28, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3 with Cajun Electric Power Coop. (Cajun), Delhi Energy Services, Inc. (Delhi), British Columbia Power Exchange Corporation (PowerEx), and Cook Inlet Energy Supply (Cook).

A copy of this filing has been served on the Arizona Corporation Commission, Cajun, Delhi, PowerEx, and Cook.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Southern Company Services, Inc.

[Docket No. ER97–4389–000]

Take notice that on August 28, 1997, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed one (1) service agreement under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entity: North American Energy Conservation, Inc. SCSI states that the service agreement will enable Southern Companies to engage in short-term market-based rate transactions with this entity.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Florida Power Corporation

[Docket No. ER97–4573–000]

Take notice that on September 10, 1997, Florida Power Corporation tendered for filing an amendment to its open access transmission tariff that modifies the rates and charges for transmission service and ancillary services.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Central Illinois Light Company

[Docket No. OA96–36–002]

Take notice that on September 2, 1997, Central Illinois Light Company (CILCO) tendered for filing with the Commission a letter addressing compliance with the Commission's July 31, 1997, order.

Copies of this filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Citizens Utilities Company

[Docket No. OA97–610–000]

Take notice that on July 3, 1997, Citizens Utilities Company tendered for filing a Supplemental Request for Limited Waiver in the above-referenced docket.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Saluda River Electric Cooperative, Inc.

[Docket No. OA97–711–000]

Take notice that on August 12, 1997, Saluda River Electric Cooperative, Inc., tendered for filing a request for waiver of the reciprocity requirements of Order Nos. 888 and 889.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Allegheny Power Service Corp. on Behalf of Monongahela Power Company; The Potomac Edison Company; West Penn Power Company; (Allegheny Power)

[Docket No. OA97–712–00o]

Take notice that on August 22, 1997, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed a revised *pro forma* open access transmission tariff to comply with Orders Nos. 888–A and 889–A. Allegheny Power requests a May 13, 1997, effective date.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all affected parties.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Washington Water Power Company

[Docket No. OA97–713–000]

Take notice that on August 18, 1997, Washington Water Power Company (WWP), tendered for filing a Certificate of Concurrence for use in connection with WWP's FERC Electric Tariff First Revised Volume No. 9.

WWP states that the Certificate of Concurrence form will be used for exchanges under Service Schedule D of Volume No. 9 to unbundle transmission and ancillary services.

Copies of the filing were sent to each purchaser under the Index of Purchasers.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Washington Water Power Company

[Docket No. OA97–714–000]

Take notice that on August 18, 1997, Washington Water Power Company (WWP) tendered for filing a Certificate of Concurrence for use in connection with WWP's FERC Electric Tariff First Revised Volume No. 4.

WWP states that the Certificate of Concurrence form will be used for exchanges under Service Schedule D of Volume No. 4 to unbundle transmission and ancillary services. WWP also submitted thermal project fixed cost ceiling under Volume No. 4 current rates to reflect unbundling of transmission and ancillary services.

Comment date: September 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Idaho County Light & Power Cooperative Association, Inc.

[Docket No. OA97–717–000]

Take notice that on September 2, 1997, Idaho County Light & Power Cooperative Association Inc. (Idaho County), filed a request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's Regulations. Idaho County's filing is available for public inspection at its offices in Lucile, Idaho.

Comment date: October 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Public Service Company of New Mexico

[Docket No. OA97–720–000]

Take notice that on September 8, 1997, Public Service Company of New Mexico (PNM) submitted for filing pursuant to Order Nos. 889 and 889–A its amended Standards of Conduct. PNM also posted its Standards of Conduct on its Open Access Same-time Information System (OASIS). PNM's Standards of Conduct are also available for public inspection during regular business hours at its offices in Albuquerque, New Mexico.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25329 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4390–000, et al.]

Tampa Electric Company, et al.; Electric Rate and Corporate Regulation Filings

September 18, 1997.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Company

[Docket No. ER97–4390–000]

Take notice that on August 28, 1997, Tampa Electric Company (Tampa Electric), tendered for filing a Contract for the Purchase and Sale of Power and Energy (Contract) between Tampa Electric and Sonat Power Marketing L.P. (Sonat). The Contract provides for the negotiation of individual transactions in which Tampa Electric will sell power and energy to Sonat.

Tampa Electric proposes an effective date of September 1, 1997 for the Contract, or, if the Commission's notice requirement cannot be waived, the earlier of October 27, 1997 or the date the Contract is accepted for filing.

Copies of the filing have been served on Sonat and the Florida Public Service Commission.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp

[Docket No. ER97–4391–000]

Take notice that on August 28, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Non-Firm Transmission Service Agreement with Constellation Power Sources, Inc. ("Constellation"), Magnesium Corporation of America ("MCA") and NP Energy Inc. and Short-Term Firm Transmission Service Agreements with Constellation and MCA under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER97–4392–000]

Take notice that on August 28, 1997, Western Resources, Inc. tendered for filing a firm transmission agreement between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective August 14, 1997.

Copies of the filing were served upon Western Resources Generation Services and the Kansas Corporation Commission.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER97–4393–000]

Take notice that on August 28, 1997, Pacific Gas and Electric Company (PG&E) tendered for filing: 1) an agreement dated July 31, 1997, by and between PG&E and the San Francisco Bay Area Rapid Transit District (BART) entitled "Service Agreement for Firm Point-to-Point Transmission Service" (Service Agreement); and 2) a request for termination of this Service Agreement.

The Service Agreement was entered into for the purpose of providing firm point-to-point transmission service for 70 MW of power delivered to BART. The effective date of termination is the requested date shown below.

Service agreement date	Term	Requested effective date for termination
July 31, 1997—Service Agreement No. _____ under FERC Electric Tariff, Original Volume No. _____.	August 1, 1997 through December 31, 1997.	The later of December 31, 1997 or the date direct access is available but in no event shall the Service Agreement go beyond June 30, 1998, unless so ordered by the Commission.

Copies of this filing have been served upon the California Public Utilities Commission and BART.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Long Island Lighting Company

[Docket No. ER97–4394–000]

Take notice that on August 28, 1997, Long Island Lighting Company ("LILCO") filed Electric Power Service Agreements entered into as of the following dates by LILCO and the following parties:

Date	Purchaser
March 22, 1996	The Cincinnati Gas & Electric Company, an Ohio corporation, PSI Energy, Inc., an Indiana corporation (collectively Cinergy Operating Companies) and Cinergy Services, Inc., a Delaware corporation, as agent for and on behalf of the Cinergy Operating Companies.
April 1, 1996	Coral Power, L.L.C.
May 10, 1996	Noram Energy Services, Inc.
May 10, 1996	TransCanada Power Corp.
June 26, 1996	AIG Trading Corporation
July 10, 1996	Pan Energy Power Services, Inc.
July 31, 1996	Atlantic City Electric.
September 4, 1996	Energy Transfer Group, L.L.C.
September 4, 1996	Federal Energy Sales, Inc.
September 23, 1996	Dupont Power Marketing Inc.
October 10, 1996	Baltimore Gas and Electric Company.
October 22, 1996	Power Company of America, L.P.
December 19, 1996	Plum Street Energy Marketing, Inc.
January 3, 1997	Commonwealth Electric Company.
January 17, 1997	Western Power Services, Inc.
March 14, 1997	SONAT Power Marketing L.P.
April 15, 1997	Williams Energy Services Company.
May 23, 1997	Entergy Power Marketing Corp.
June 10, 1997	ProMark Energy.
June 11, 1997	Orange & Rockland Utilities, Inc.
June 11, 1997	PacifiCorp Power Marketing, Inc.
July 2, 1997	Central Maine Power Company.
August 19, 1997	Tractebel Energy Marketing, Inc.

The Electric Power Service Agreements listed above were entered into under LILCO's Power Sales Umbrella Tariff accepted for filing on April 4, 1996 and made effective as of August 11, 1995 by the Commission in Docket No. ER95–1518–000. Services to be provided under these Electric Power Service Agreements will be pursuant to the rates, terms and conditions of LILCO's Power Sales Umbrella Tariff.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of August 1, 1997 for the Electric Power Service Agreements listed above because in accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶61,081 (1993), service will be provided under an umbrella tariff and each Electric Power Service Agreement is being filed either prior to or within thirty (30) days of the commencement of service. LILCO has served copies of this filing to the customers which are a party to each of the Electric Power Service Agreements and to the New York State Public Service Commission.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Company

[Docket No. ER97–4395–000]

Take notice that on August 28, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Emerald Peoples Utility District.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Indiana Gas and Electric Company

[Docket No. ER97–4396–000]

Take notice that on August 28, 1997, Southern Indiana Gas and Electric Company ("SIGECO"), tendered for filing two (2) service agreements for market based rate power sales under its Market Based Rate Tariff with the following entities:

1. Commonwealth Edison Company
2. Western Resources, Inc.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER97–4397–000]

Take notice that on August 28, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35 (1996), service agreements under which NYSEG may provide capacity and/or energy to AIG Trading Corporation (AIG), Chicopee Municipal Lighting Plant (Chicopee), Entergy Power Marketing Corp. (Entergy), PacifiCorp Power Marketing, Inc. (PPM), and TransCanada Energy Ltd. (TransCanada)(collectively, the Purchasers) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the service agreements with Chicopee, Entergy, PPM, and TransCanada become effective as of August 29, 1997 and the service agreement with AIG becomes effective as of August 1, 1997.

NYSEG has served copies of the filing upon the New York State Public Service Commission, Chicopee, Entergy, PPM, TransCanada, and AIG.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania Power & Light Company

[Docket No. ER97–4398–000]

Take Notice that on August 28, 1997, Pennsylvania Power & Light Company ("PP&L"), filed a Service Agreement dated May 27, 1997 with American Electric Power Service Corporation (American) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds American as an eligible customer under the Tariff.

PP&L requests an effective date of August 28, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to American and to the Pennsylvania Public Utility Commission.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER97–4399–000]

Take notice that on August 28, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date of sixty days from the date of filing. Wisconsin Electric is authorized to state that Western Resources, Inc. (WRI) joins in the requested effective date.

Copies of the filing have been served on WRI, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Tucson Electric Power Company

[Docket No. ER97–4400–000]

Take notice that on August 28, 1997, Tucson Electric Power Company (TEP), tendered for filing two (2) service agreements for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under these agreements. The service agreements are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc. dated August 5, 1997.

2. Service Agreement for Firm Point-to-Point Transmission Service with Salt River Project dated August 5, 1997.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. South Carolina Electric & Gas Company

[Docket No. ER97–4401–000]

Take notice that on August 28, 1997, South Carolina Electric & Gas Company (SCE&G) submitted service agreements establishing Constellation Power Source, Inc. (CPS), CMS Marketing, Services and Trading Company (CMS), American Energy Solutions, Inc. (AES), Illinois Power Company (IPC), and NP Energy, Inc. (NP) as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon CPS, CMS, AES, IPC, NP, and the South Carolina Public Service Commission.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Electric Power Company

[Docket No. ER97–4402–000]

Take notice that on August 28, 1997, Southwestern Electric Power Company ("SWEPCO") submitted for filing an Amended and Restated Power Supply Agreement between SWEPCO and Northeast Texas Electric Cooperative, Inc. ("NTEC"). The Restated PSA provides NTEC with increased operational flexibility.

SWEPCO seeks an effective date of January 1, 1997, and, accordingly, seeks waiver of the Commission's notice requirements. SWEPCO served copies of the filing on NTEC and the Public Utility Commission of Texas.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER97–4403–000]

Take notice that on August 29, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Entergy Power, Inc.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER97–4404–000]

Take notice that on August 29, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Entergy Power, Inc.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER97–4405–000]

Take notice that on August 29, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for

the Entergy Operating Companies, and Entergy Power Marketing Corp.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. The Detroit Edison Company

[Docket No. ER97–4406–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and American Energy Solutions, Inc., dated as of August 21, 1997. Detroit Edison requests that the Service Agreement be made effective as of August 21, 1997.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. The Detroit Edison Company

[Docket No. ER97–4407–000]

Take notice that on August 29, 1997, The Detroit Edison Company ("Detroit Edison") tendered for filing a Service Agreement for wholesale power sales transactions (the "Service Agreement") under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the "WPS–2 Tariff"), between Detroit Edison and American Energy Solutions, Inc, dated as of August 21, 1997. Detroit Edison requests that the Service Agreement be made effective as of August 21, 1997.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Maine Electric Power Company

[Docket No. ER97–4517–000]

Take notice that on September 8, 1997, Maine Electric Power Company ("MEPCO") submitted for filing: (1) A notice of Termination of the Participation Agreement and certain Supplements thereto between MEPCO and certain New England utilities or municipal power districts, and (2) a unexecuted First Amendment to Supplemental Participation Agreement among MEPCO, Bangor Hydro-Electric Company and Central Maine Power Company. MEPCO requests waiver of notice under 18 CFR 35.15 for an effective date of July 9, 1996.

Copies of this filing have been served upon each of the parties to the agreements.

Comment date: October 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25330 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–139]

Grand River Dam Authority; Notice of Availability of Environmental Assessment

September 18, 1997.

An environmental assessment (EA) is available for public review. The EA is for an application for non-project use of project lands. The proposed action involves the construction of a golf course on approximately 145 acres of lands within the Pensacola Project boundary. The EA finds that approval of the proposed action would not constitute a major federal action significantly affecting the quality of the human environment. The proposed lease area is located immediately below the project dam, in Mayes County, Oklahoma.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager, Patti Pakkala at (202) 219–0025.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25287 Filed 9–23–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Southwestern Power Administration

Notice of Robert D. Willis Proposed Power Rate Change

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Public Review and Comment Period.

SUMMARY: The Administrator, Southwestern, has prepared Current and Revised 1997 Power Repayment Studies for the Robert D. Willis (Willis) project which show the need for an increase in annual revenues required to meet cost recovery criteria. The increase in the revenues required was the result of an increase in estimated Operations and Maintenance costs by Corps of Engineers and the increased amount of large maintenance items estimated for Willis. The Administrator has also developed a proposed rate schedule for the isolated Willis project to recover the required revenues. The proposed rate for the Willis project would increase annual revenues approximately 13.5 percent from $266,928 to $302,928 beginning January 1, 1998.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** and will end November 10, 1997.

1. Public Information Forum—October 2, 1997, 9:30 a.m., Central Time in Tulsa, OK
2. Public Comment Forum—October 29, 1997, 1:30 p.m., Central Time in Tulsa, OK

Southwestern is only conducting a 45 day public notice and comment period (10 CFR 903.14(d)) since the Willis project is considered a minor adjustment. In addition, this project has a single hydroelectric power customer and that customer has been notified of the proposed rate increase. It is anticipated that any comments from the customer or other interested parties will be developed well within the 45 day period provided.

ADDRESSES: The Forums will be held in Southwestern's offices, Suite 1600, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103. Ten copies of the written comments should be submitted to the Assistant Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101–1619.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, PO Box 1619, Tulsa, Oklahoma 74101, (918) 595–6696.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, through the Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977, and Southwestern Power Administration's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The Sam Rayburn Dam project, located in eastern Texas, is not interconnected with Southwestern's Integrated System hydraulically, electrically, or financially. Instead, the power produced by the Sam Rayburn Dam project is marketed by Southwestern as an isolated project under a contract through which the customer purchases the entire power output of the project at the dam. The Willis project, located on the Neches River downstream from the Sam Rayburn Dam, consists of two 4,000 kilowatt hydroelectric generating units. It, like the Sam Rayburn Dam project, is marketed as an isolated project under a contract through which the customer, Sam Rayburn Municipal Power Agency (SRMPA), receives the entire output of the project. The SRMPA contract is for a period of 50 years as a result of SRMPA's funding the construction of the hydroelectric facilities at the project. A separate power repayment study is prepared for each project which has a special rate based on its isolated project determination.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a current power repayment study for the Robert D. Willis project using the existing annual rate of $266,928. The study indicated that maintaining the current rate will create a revenue deficit for the project. This is primarily a result of the Corps of Engineers increase of estimated Operations and Maintenance cost of the Willis Project allocated from the Sam Rayburn Project. The Revised Power Repayment Study for the isolated Willis project shows that a increase of $36,000 (a 13.5 percent increase) annually will satisfy repayment criteria. This increase would change annual revenues produced by the Willis Project from $266,928 to $302,928 and satisfy the present financial criteria for repayment of the project.

Opportunity is presented for customers and interested parties to receive copies of the studies and proposed rate schedule for the Willis project. If you desire a copy of the Repayment Study Data Package for the Willis project, submit your request to: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, PO Box 1619, Tulsa, OK 74101, (918) 595–6696.

A Public Information Forum is scheduled to be held October 2, 1997. The Forum is to explain to customers and interested parties the proposed rates and supporting studies. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Questions concerning the rates, studies and information presented at the Forum may be submitted from interested persons and will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing, except the questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices. Persons interested in attending the Public Information Forum should indicate in writing by 4 p.m., Central Time, Tuesday, September 30, 1997, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held.

A Public Comment Forum is scheduled to be held October 29, 1997. At the Public Comment Forum interested persons may submit written comments or make oral presentations of their views and comments. This Forum will also be conducted by a chairman who will be responsible for orderly procedure. Southwestern's representatives will be present, and they and the chairman may ask questions of speakers. The chairman may allow others to speak if time permits. Persons interested in attending or speaking at the Public Comment Forum should indicate in writing by 4 p.m., Central Time, Friday, October 24, 1997, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held.

A transcript of each Forum will be made. Copies of the transcripts may be obtained, for a fee, directly from the transcribing service. Copies of all documents introduced will be available from Southwestern upon request, also for a fee. Written comments on the proposed rates for the project are due on or before 45 days from publication. Written comments should be submitted to the Assistant Administrator, Southwestern Power Administration, U.S. Department of Energy, PO Box 1619, Tulsa, Oklahoma 74101.

Following review of the oral and written comments, the Administrator will submit the rate proposals and the Power Repayment Studies for the Willis project, in support of the proposed rates, to the Deputy Secretary of Energy for confirmation and approval on an interim basis and subsequently to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increases before making a final decision.

Issued in Tulsa, Oklahoma, this 15th day of September 1997.

Michael A. Deihl,

Administrator.

[FR Doc. 97–25334 Filed 9–23–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00496; FRL–5736–6]

Science Applications International Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA). Science Applications International Corp. (SAIC) has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC in accordance with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2),

and will enable SAIC to fulfill the obligations of the contract.

DATES: SAIC will be given access to this information no sooner than September 29, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda Alexander, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259, e-mail: alexander.bewanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–D4–0098, work assignment number 317, SAIC will provide technical and scientific support to EPA evaluations of analytical methods and performance data for pesticide, and test analytical methods used in studies submitted to the Agency of the ecological effects, exposure, or environmental fate of pesticides.

The Office of Pesticide Programs has determined that access by SAIC to information on all pesticide products is necessary for the performance of the contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with SAIC prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SAIC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to SAIC by EPA for use in connection with this contract will be returned to EPA when SAIC has completed its work.

Dated: September 4, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–25098 Filed 9–23–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5897–6]

Public Meetings of the Urban Wet Weather Flows Advisory Committee, the Storm Water Phase II Advisory Subcommittee, and the Sanitary Sewer Overflow Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is given that the Environmental Protection Agency (EPA) is convening a public meeting of the Storm Water Phase II Advisory Subcommittee. This meeting is open to the public but requires advance registration since seating is very limited. The Storm Water Phase II Advisory Committee will discuss the latest draft of the proposed rule, the economic analysis for the proposed rule, and the tool box to be established for program implementation.

DATES: October 6–7, 1997. On the first day of the meeting, the Storm Water Phase II meeting will start at 10 a.m. EST and end at 5 p.m. On the second day, the meeting will begin at 8 a.m. and end at approximately 5 p.m.

ADDRESSES: The meeting will be held in the offices of Resolve, 1255 23rd Street, NW., Suite 275, Washington, DC 20037. The telephone number is (202) 944–2300.

FOR FURTHER INFORMATION CONTACT: Sharie Centilla, Office of Wastewater Management, at (202) 260–6052, or Internet: centilla.sharie@epamail.epa.gov.

Dated: September 17, 1997.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 97–25340 Filed 9–23–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–42064C; FRL–5741–9]

Department of Energy Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Approval of Certification Plan.

SUMMARY: On June 23, 1997, EPA announced its intention to approve a revised Department of Energy (DOE) plan for the certification of pesticide applicators. The revised DOE plan was similar to the original plan in only covering applicators in the Bonneville Power Administration. The revised plan retained the original certification category of right-of-way pest control and added a new category of wood treatment. The revised plan replaced the original 3–year recertification interval with a 1 year recertification interval. No comments were received on EPA's proposal to approve the revised DOE certification plan. Notice is hereby given of EPA's granting final approval of the revised DOE plan.

ADDRESSES: Copies of the DOE revised plan are available for viewing at the following locations during normal business hours:

1. U.S. Environmental Protection Agency, Office of Pesticide Programs, Crystal Mall #2, 1921 Jefferson Davis Highway, Rm. 1121, Arlington, VA 22202. Contact: John R. MacDonald, (703) 305–7370.

2. U.S. Department of Energy, Bonneville Power Administration, 905 Northeast Eleventh, Stop EP-5, Fifth Floor, Portland, OR 97232. Contact: James Meyer, (503) 230–5038.

3. Select U.S. Department of Energy installations. Contact: James Meyer at aforementioned location for list of locations.

FOR FURTHER INFORMATION CONTACT: By mail: John R. MacDonald (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, 1921 Jefferson Davis Highway, Rm. 1121, Arlington, VA, Telephone: (703) 305–7370.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 7, 1988, notice was published announcing the final approval of a DOE pesticide applicator certification plan. On June 23, 1997 (62 FR 33862) (FRL–5717–3), EPA announced its intention to approve a revised DOE certification plan. The revised DOE certification plan added a new wood treatment category and retained the existing right-of-way category. The revised certification plan also established an annual recertification period to replace the current 3–year period. The revised certification plan will continue to base certification and recertification on the taking and passing of a written examination. The revised DOE certification plan will continue to cover only employees of the Bonneville Power Administration. The DOE estimates that there will be 100 applicators certified in the new wood treatment category. There are presently approximately 150 applicators certified in the right-of-way category, whose certification will be unaffected by this action.

No comments were received on EPA's notice of intention to approve the revised DOE certification plan. Therefore, EPA approves the revised DOE certification plan.

List of Subjects

Environmental protection.

Dated: September 9, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–25337 Filed 9–23–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–764; FRL–5745–8]

E.I. DuPont de Nemours and Co., Inc.; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–764, must be received on or before October 24, 1997.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: James Stone, PM-25 Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 257, Crystal Mall #2 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7391; e-mail: stone.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–764] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–764) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 11, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

E.I. DuPont de Nemours and Co., Inc

PP 4F4391

EPA has received a pesticide petition (PP 4F4391) from E.I. DuPont de Nemours and Co., Inc (DuPont), Barley Mill Plaza, P.O. Box 80083, Wilmington, DE 19880–0038 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of pyrithiobac sodium salt (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate) in or on the raw agricultural commodities cottonseed at 0.02 part per million (ppm) and cotton gin byproducts at 0.10 (ppm). The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by using ultraviolet detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of pyrithiobac sodium in cotton is adequately understood. Metabolism studies with pyrithiobac sodium indicate the major metabolic pathway being o-dealkylation of the parent compound resulting in o-desmethyl pyrithiobac sodium (O-DPS). O-DPS, both free and conjugated, was the major metabolite identified in cotton foliage. The results of a confined crop rotation study with pyrithiobac sodium revealed the presence of a metabolite 2-chloro-6-sulfobenzoic acid (CSBA) not seen in the cotton metabolism study. This metabolite appeared to originate from soil metabolism of pyrithiobac sodium. Since preemergence applications of pyrithiobac sodium are allowed, crop residues of CSBA were considered a possibility. In consideration of PP 4F4391 CBTS, in consultation with the HED Metabolism Committee has previously concluded that for the proposed use on cotton, none of the pyrithiobac sodium metabolites including O-DPS and CSBA warrant inclusion in the tolerance regulation, and that the only residue of concern is the parent, pyrithiobac sodium.

2. *Analytical method.* There are independently validated practical analytical methods available using liquid chromatography (HPLC) with column switching and ultraviolet (UV) detection, to measure levels of pyrithiobac sodium in or on cottonseed and cotton gin byproducts, with limits of quantitation that will allow for monitoring of crop residues at or above tolerance levels. EPA has previously provided information on the method for cottonseed to FDA for future publication in PAM II.

3. *Magnitude of residues.* Crop field trial residue data from 60 day PHI studies show that the proposed pyrithiobac sodium tolerances on these raw agricultural commodities will not be exceeded when pyrithiobac sodium is used as directed. An adequate cottonseed processing study shows that pyrithiobac sodium does not concentrate in cottonseed processed commodities. No tolerances on processed commodities are required.

B. Toxicological Profile

1. *Acute toxicity.* Pyrithiobac sodium technical has been placed in EPA Toxicity Category II for acute eye irritation based on the test article inducing irritation in the form of corneal opacity, iritis and conjunctival redness, and discharge in the eyes of rabbits after receiving ocular doses of 36 mg (0.1 ml). Signs of irritation were clear within 14 days of treatment. Pyrithiobac sodium has been placed in Toxicity Category III for acute dermal toxicity based on the test article being nonlethal and nonirritating at the limit dose of 2,000 mg/kg, the highest dose tested (HDT). Pyrithiobac sodium has been placed in Toxicity Category III for acute oral toxicity based on acute oral LD_{50}s of 3,200 mg/kg for both male and female rats. Pyrithiobac sodium has been placed in Category IV for the remaining acute toxicity tests based on the following: a rat acute inhalation study with an LC_{50} of > 6.9 mg/l; and a primary dermal irritation test that did not induce a dermal irritation response. A dermal sensitization test with pyrithiobac sodium technical in guinea pigs demonstrated no significant effects. Based on these results, pyrithiobac sodium does not pose an acute dietary or exposure risk.

2. *Genotoxicty.* Pyrithiobac sodium technical was negative (non-mutagenic and non-genotoxic) in the following tests: Ames microbial mutation assay; the hypoxanthine-guanine phosphoribosyl transferase gene mutation assay using Chinese hamster ovary cells; and induction of unscheduled DNA synthesis (UDS) in primary rat hepatocytes. Pyrithiobac sodium was positive in an *in vitro* assay for chromosome aberrations in human lymphocytes. It was negative for the induction of micronuclei in the bone marrow cells of male and female CD-1 mice administered the test article by oral gavage at 500, 1,000 or 2,000 mg/kg. Based on the weight of these data, pyrithiobac sodium is neither genotoxic nor mutagenic.

3. *Reproductive and developmental toxicity.* A two generation, 4 litter reproduction study with CD rats treated at dietary levels of 0, 25, 1,500, 7,500 or 20,000 ppm of pyrithiobac sodium demonstrated a maternal NOEL of 1,500 ppm (103 mg/kg/day) and a maternal LOEL of 7,500 ppm (508 mg/kg/day), based on decreased body weight gain and food efficacy. An offspring NOEL of 7,500 ppm (508 mg/kg/day) and LOEL of 20,000 ppm (1,551 mg/kg/day) were also demonstrated based on decreased offspring body weight. Pyrithiobac sodium was not teratogenic when administered to rats or rabbits.

A developmental toxicity study with pyrithiobac sodium in rats demonstrated a maternal NOEL of 200 mg/kg and LOEL of 600 mg/kg due to increased incidence of salivation. A developmental NOEL of 600 mg/kg and LOEL of 1,800 mg/kg were demonstrated based on an increased incidence of skeletal variations.

A developmental toxicity study with pyrithiobac sodium in rabbits demonstrated maternal and developmental NOELs of 300 mg/kg and a maternal LOEL of 1,000 mg/kg based on mortality, decreased body weight gain and feed consumption, increased incidence of clinical signs, and an increase in early resorptions. A developmental LOEL of 1,000 mg/kg was based on decreased fetal body weight gain. Based on the weight of these data, pyrithiobac sodium is not considered a reproductive or developmental hazard.

4. *Subchronic toxicity.* In a 90–day feeding study in rats conducted with pyrithiobac sodium at dietary levels of 0, 10, 50, 500, 7,000 and 20,000 ppm, the NOEL was 500 ppm (31.8 and 40.5 mg/kg/day, m/f and the LOEL was 7,000 ppm (466 and 588 mg/kg/day, m/f) based on decreased body weight gains and increased rate of hepatic B-oxidation in males.

In a 90–day feeding study in mice conducted with pyrithiobac sodium at dietary levels of 0, 10, 50, 500, 1,500 and 7,000 ppm, the NOEL was 500 ppm (83.1 and 112 mg/kg/day, m/f) and the LOEL was 1,500 ppm (263 and 384 mg/kg/day, m/f) based on increased liver weight and increased incidence of hepatocellular hypertrophy in males and decreased neutrophil count in females.

In a 90–day feeding study in dogs conducted with pyrithiobac sodium at dietary levels of 0, 50, 5,000, or 20,000 ppm, the NOEL was 5,000 ppm (165 mg/kg/day) and the LOEL was 20,000 ppm (626 mg/kg/day) based on decreased red blood cell count, hemoglobin, and hematocrit in females and increased liver weight in both sexes.

In a 21–day dermal study with rats conducted with pyrithiobac sodium at exposure levels of 0, 50, 500, or 1,200 mg/kg/day, the dermal irritation NOEL was 500 mg/kg/day and the dermal irritation LOEL was 1,200 mg/kg/day. There were no systemic effects observed at this high dose; therefore, the systemic NOEL is considered to be 1,200 mg/kg/day.

5. *Chronic toxicity.* A 1–year feeding study in dogs conducted with pyrithiobac sodium at dietary levels of 0, 100, 5,000, and 20,000 ppm resulted in a NOEL of 5,000 ppm (143 and 166 mg/kg/day, m/f) and a LOEL of 20,000 ppm (580 and 647 mg/kg/day, m/f) based on decreases in body weight gain and increased liver weight.

A 78–week oncogenicity study in mice was conducted with pyrithiobac sodium at dietary levels of 0, 10, 150, 1,500 and 5,000 ppm. The systemic NOEL is 1,500 ppm (217 and 319 mg/kg/day, m/f) and the LEL is 5,000 ppm (745 and 1,101 mg/kg/day, m/f), based on decreased body weight gain and liver lesions. Kidney effects were also observed at 5,000 ppm; however, these were present at low incidence and were of minimal severity and were considered to be of only minimal biological significance. Increased incidence of foci/focus of hepatocellular alteration was observed in males fed 5,000 ppm diets. Increased incidences of hepatocellular neoplasms (adenomas or adenomas plus carcinomas) were observed only in 150 and 1,500 ppm males. The incidence of these liver tumors was not significantly increased in the 5,000 ppm males or in females at any dose level; the 5,000 ppm male tumor incidence was within the historical control range.

A 2–year study in rats was conducted at dietary pyrithiobac sodium levels of 0, 5, 25, 1,500 or 5,000 ppm for males and 0, 5, 25, 5,000 or 15,000 ppm for females. The NOEL for systemic effects was 1,500 ppm (58.7 mg/kg/day) for males and 5,000 ppm (278 mg/kg/day) for females. The LEL was 5,000 ppm (200 mg/kg/day for males)/15,000 ppm (918 mg/kg/day) for females. The LEL was based on the following: decreased body weight, body weight gain and food efficiency (for females); mild changes in hematology and urinalysis, clinical signs indicative of urinary tract dysfunction (both sexes); increased incidence of focal cystic degereration in the liver and increased rate of hepatic peroxisome beta-oxidation (males); and an increased incidence of inflammatory and degenerative microscopic lesions in the kidney (females). There was evidence of oncogenicity based on an increased trend for kidney tubular combined adenoma/carcinoma in male rats and an increased trend for kidney tubular adenomas in female rats. Although the incidences were low, they were statistically significant. The highest dose level tested in male rats (5,000 ppm) was considered adequate for assessment of oncogenic potential, that in female rats (15,000 ppm) exceeded the Maximum Tolerated Dose (MTD).

Carcinogenicity. In consideration of PP 4F4391 the HED Carcinogenicity Peer Review Committee has previously concluded that the available data provide limited evidence of the carcinogenicity of pyrithiobac sodium in mice and rats and has classified pyrithiobac sodium as a Group C (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines published in the Federal Register in 1986 (51 FR 33992, Sept. 24, 1986) and recommend that for the purpose of risk characterization a low-dose extrapolation model should be applied to the experimental animal tumor data for quantification for human risk (Q_1*). This decision was based on liver adenomas, carcinomas and combined adenoma/carcinomas in the male mouse and kidney tubular adenomas, carcinomas and combined adenoma/carcinomas in the male rat. The unit risk, Q_1* (mg/kg/day)$^{-1}$, of pyrithiobac sodium is 1.05×10^{-3} (mg/kg/day)-1 in human equivalents based on male kidney tumors.

6. *Animal metabolism.* Disposition and metabolism of pyrithiobac sodium were tested in male and female rats using two radiolabeled forms of pyrithiobac sodium. Either phenyl-labeled or pryimidine-labeled compounds were administered orally at 5 or 250 mg/kg. In addition, i.v. administration was evaluated at 5 mg/kg. Essentially all of the dose was excreted in the urine and feces, with greater than 90% being excreted within 48 hours. No label was detected in the expired air. Only minute quantities of radioactivity (at or near the limit of detection) were detected in the major organs of metabolism and excretion. This study indicates that pyrithiobac sodium has low toxicity and does not accumulate within the body. The major compound eliminated in urine and feces was O-DPS (desmethyl metabolite), formed by demethylation of the pyrimidine ring. There was evidence that conjugation with glucuronic acid and 5-hydroxylation of the pyrimidine ring of pyrithiobac sodium were additional minor routes of metabolism in the rat. The ruminant metabolism of pyrithiobac sodium was studied in lactating goats fed at a level of 15 mg/kg for 5 consecutive days, equaling a dose greater than 1000 times the anticipated residues of pyrithiobac sodium and its metabolites in cottonseed, and greater than 100 times the anticipated residues in cotton gin byproducts. Of the total administered dose 76–80% was recovered in the excreta plus cagewashes. Concentrations of radioactivity in milk, muscle, fat, whole-blood, and plasma were negligible. Biotransformation of the parent compound was not substantial with 90% of urine radioactivity and 40% of fecal extract corresponding to parent test substance. The major biotransformation pathway was *O*-demethylation. The results of this study indicate low potential for transfer of residues of pyrithiobac sodium and/or its metabolites into edible tissues or milk of ruminants, even at highly exaggerated feeding levels.

7. *Metabolite toxicology.* There is no evidence that the metabolites of pyrithiobac sodium as identified in either the plant metabolism, confined crop rotation, or animal metabolism studies are of any toxicological significance.

i. *Neurotoxicity.* A 90–day rat neurotoxicity screen battery conducted with pyrithiobac sodium resulted in a systemic no observed-effect level (NOEL) of 7,000 ppm (466 and 588 mg/kg/day, m/f) and a systemic lowest-observed-effect level (LOEL) of 20,000 ppm (1,376 and 1,609 mg/kg/day, m/f) based on reduced body weight gain and food efficiency and increased liver weight. Slight reductions in hind-leg grip strength and slightly increased foot splay in males were observed in 20,000 ppm males. However, because these were of small magnitude, lacked statistical significance and corresponding histopathology, pyrithiobac sodium was not considered a neurotoxin. The NOEL for neurotoxicity was 20,000 ppm (HDT).

ii. *Endocrine effects.* No special studies investigating potential estrogenic or other endocrine effects of pyrithiobac sodium have been conducted. However, the standard battery of required toxicology studies has been completed and found acceptable. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that pyrithiobac sodium has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* It is proposed that pyrithiobac sodium be defined as the residue for enforcement purposes. Monitoring for pyrithiobac sodium residues in field samples will provide an adequate estimate of this compound in edible portions of treated crops.

2. *Food—i. acute dietary exposure.* A Tier I acute dietary exposure analysis was conducted using the Dietary Exposure Evaluation Model (DEEM ver. 5.10) and assuming tolerance level residues for cottonseed oil, cottonseed meal, and a very conservative residue value of 6 parts per billion (ppb) for all sources of dietary water. Using the acute endpoint of 200 mg/kg from a developmental toxicity study in rats, the margins of exposure were greater than 100,000 for all 22 population subgroups at the 95th percentile exposure.

ii. *Chronic dietary exposure.* For purposes of assessing the potential chronic dietary exposure under this tolerance, an estimate of aggregate exposure is made using the proposed tolerance on cottonseed at 0.02 ppm, cotton gin byproducts at 0.10 ppm, and a very conservative contribution from drinking water based on GENEEC modeling. The potential exposure is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of cottonseed products translated as cottonseed meal and cottonseed oil eaten by various population subgroups. Cottonseed and cotton gin byproducts are fed to animals, thus exposure of humans to residues of pyrithiobac sodium might result if such residues are transferred to meat, milk, poultry, or eggs. However, in previous consideration of PP 4F4391 CBTS has concluded that secondary residues in meat, milk, poultry and eggs are not expected from the use of cottonseed as an animal feed. A ruminant (goat) metabolism study further demonstrates that residues of pyrithiobac sodium in cotton gin byproducts will not result in secondary meat or milk residues when this commodity is fed to livestock. There are no other established tolerances or registered uses for pyrithiobac sodium in the United States. Based on a NOEL of 58.7 mg/kg/day, from the chronic rat toxicity study and a 100-fold safety factor, the reference dose (RfD) is 0.58 mg/kg/day. Assuming residues at tolerance levels and that 100% of the crop is being treated, a theoretical maximum residue contribution (TMRC) of < 0.1 mg/kg/day is calculated using the DEEM computer software (version 5.1, Novigen Sciences, Inc., 1997). With the above assumptions which clearly overestimate potential human exposure and are a most conservative assessment of risk, dietary (food) exposure to pyrithiobac sodium will utilize significantly less than 1% of the RfD for the overall U.S. population. For the most highly exposed subgroup, non-nursing infants less than 1 year old, the TMRC is also < 0.1 mg/kg/day, which is still less than 1% of the RfD. The unit risk, Q_1^* (mg/kg/day)$^{-1}$, of pyrithiobac sodium is 1.05×10^{-3} (mg/kg/day)$^{-1}$ in human equivalents based on male kidney tumors. Based on this upper bound potency factor (Q^*), a 70–year lifespan, and the assumption that 100% of the crop is treated with pyrithiobac sodium, the upper-bound limit of a dietary carcinogenic risk is calculated in the range of 1 incidence in a billion (1.0×10^{-9}).

3. *Drinking water*. Other potential dietary sources of exposure of the general population to pesticides are residues in drinking water. There is no Maximum Contaminant Level established for residues of pyrithiobac sodium. The petitioner has reported to the Environmental Fate and Groundwater Branch of EPA (EFGWB) the results of a prospective groundwater monitoring study conducted at a highly vulnerable site. This study confirms the previous interim conclusions of EFGWB that pyrithiobac sodium may not be stable enough to leach to groundwater at most use sites, even in sandy soils. The potential for pyrithiobac sodium to enter surface water is also very low. This is supported by modeling done using GENEEC which under worst case conditions (100% of area treated, long half-life, etc.) predicted peak surface water concentrations of only 6 ppb. All environmental fate data requirements for pyrithiobac sodium have now been satisfied and based on these studies, the conditions of use, and worst-case modeling, the potential for finding pyrithiobac sodium residues in drinking water is minimal.

4. *Non-dietary exposure.* Pyrithiobac sodium is not registered for any use which could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

Pyrithiobac sodium is based on a new chemical class; there are no known registered herbicides with similar structure. Therefore, EPA should consider only the potential risks of pyrithiobac sodium in its exposure assessment. The herbicidal activity of pyrithiobac sodium is due to the inhibition of acetolactate synthase (ALS), an enzyme only found in plants. ALS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the low toxicity of pyrithiobac sodium in animals. There is no evidence to indicate or suggest that pyrithiobac sodium has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicity database, the EPA has adopted an RfD value of 0.58 mg/kg/day using the NOEL of 58.7 mg/kg/day, from the 2–year chronic toxicity study in rats and a 100-fold safety factor. Using crop tolerance levels and assuming 100% of the crop treated, a Theoretical Maximum Residue Contribution (TMRC) was calculated for the overall U.S. population and 22 population subgroups. This analysis concluded that aggregate exposure to pyrithiobac sodium will utilize significantly less than 1% of the RfD for either the entire U.S. population or any subgroup population. The TMRC for the most highly exposed subgroup identified as non-nursing infants less than 1 year old was also < 0.1 mg/kg/day. EPA generally has no concern for exposure below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to pyrithiobac sodium residues. The unit risk, Q_1^* (mg/kg/day)$^{-1}$, of pyrithiobac sodium is 1.05×10^{-3} (mg/kg/day)$^{-1}$ in human equivalents based on male kidney tumors. Based on this upper bound potency factor (Q_1^*) and assuming a 70 year lifetime exposure an upper-bound limit of a dietary carcinogenic risk is calculated in the range of 1 incidence in a billion (1.0×10^{-9}). This indicates a negligible cancer risk.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of pyrithiobac sodium, data from the previously discussed developmental and reproduction toxicity studies were considered. Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during pre-natal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposure to the pesticide. Based on the weight of these data, pyrithiobac sodium was not a reproductive toxicant. Maternal and developmental effects (NOEL's, LOEL's) were comparable indicating no increase in susceptibility of developing organisms. No evidence of endocrine effects were noted in any study. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre and post-natal toxicity and the completeness of the database. Based on current toxicological data requirements, the database for pyrithiobac sodium relative to pre- and post-natal effects for children is complete. The NOEL of 58.7 mg/kg/day from the 2–year rat study with pyrithiobac sodium, which was used to calculate the RfD, is lower than any of the NOEL's defined in the developmental and reproductive toxicity studies with pyrithiobac sodium. When the weight of these facts is considered an additional safety factor is not warranted for developmental effects. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U.S. population or any of 22 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to pyrithiobac sodium residues.

F. International Tolerances

There are no established Codex MRLs for pyrithiobac sodium on cottonseed. An established Mexican tolerance for pyrithiobac sodium on cottonseed is identical to the U.S. tolerance. Compatibility is not a problem at this time.

[FR Doc. 97–25234 Filed 9-23-97; 8:45 am]
BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–761; FRL–5740–9]

Yoshitomi Fine Chemicals Ltd.; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of tolerances for residues of 4,5-Dichloro-1,2-Dithiol-3-one (CASRN 1192–52–5) in or on paper and paperboard.

DATES: Comments, identified by the docket control number PF–761, must be received on or before October 24, 1997.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Portia Jenkins, Acting Product Manager (34), Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 6C, Crystal Plaza #1, 2800 Crystal Drive, Arlington, VA, (703) 308–6230; e-mail: jenkins.portia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition ((PP) 7F4902) from Yoshitomi Fine Chemicals, Ltd., 6–9, Hiranomachi 2-chome, Chuo-ku, Osaka, 541, Japan, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 185 "Tolerances for Pesticides in Food" by establishing Subpart D "Tolerance Exemptions for Pesticides in Foods" and promulgating therein section 185.9000 establishing a tolerance exemption for residues of the slimicide 4,5-Dichloro-1,2-Dithiol-3-one (CASRN 1192–52–5) in or on paper and paperboard resulting from its addition to pulp and paper mill process water to control slime forming organisms. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–761] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES".

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (PF–761) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Administrative practice and procedure, Paper and paperboard, Slimicides, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 16, 1997.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

Summary of Petition

Petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represent the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Yoshitomi Fine Chemicals, Ltd.

A. Residue Chemistry

This petition is not for residues in or on raw agricultural commodities. It is for residues in or on food contact paper or paperboard. Accordingly, the residue chemistry data submitted are solely for the residues remaining in food contact paper and paperboard when the subject slimicide (4,5-Dichloro-1,2-Dithiol-3-one, CASRN 1192–52–5, hereafter referred to as RYH–86) is used in pulp and paper mill process water to control slime forming organisms.

1. *Residues in paper and paperboard.* GC-MS-SIM analysis of approximately 30 paper and paperboard samples manufactured in a papermill which used RYH–86 amended slurry water revealed no RYH–86 detectable with a detection limit of 100 µg/kilograms (Kg) of paper (i.e., 100 parts per billion (ppb)). Extraction of such samples with

food simulating solvents (FSL's), using standard FDA methods for determining food additive extractives from food-contact materials which allowed for the equilibration of RYH–86 between the paper and paperboard samples and the FSL's for 10–days, revealed no RYH–86 migration into FSL's at detection limits of 10 µg/Kg for aqueous FSL's and 100 µg/Kg for fatty FSL's (using the same GC-MS-SIM method for analysis).

2. *Analytical method.* This is a tolerance exemption petition and, accordingly, no enforcement analytical method is proposed.

B. Toxicological Profile

1. *Acute toxicity.* Technical RYH–86 (99.8% active ingredient) is moderately toxic by the oral route, with acute oral LD_{50} of 350 milligrams/kilograms (mg/kg) in the male rat and 372 mg/kg in the female rat (MRID 41562401). Technical RYH–86 is practically nontoxic by dermal application (acute dermal LD_{50} > 5,000 mg/kg) but was quite irritant to the skin (severe skin irritation and dermal necrosis but no mortalities were observed) in an acute dermal toxicity and irritation study (MRIDs 41531114 & 41562402). The acute inhalation toxicity of RYH–86 was waived by EPA during review of the registration for RYH–86 Slimicide (EPA Reg. No. 63898–1) due to its being applied only by injection into process water and the resulting lack of significant inhalation exposure potential. Guideline 81–4 and 81–5 primary eye and skin irritation studies for RYH–86 manufacturing use product (about 50% RYH–86) showed it to produce severe ocular damage and severe skin irritation (MRIDs 41531115 & 41531116). In these same studies, technical RYH–86 was a severe eye irritant and a moderate skin irritant. Tested at 1% solution (to minimize irritancy effects) RYH–86 was not a dermal sensitizer (MRID 41531117).

2. *Subchronic toxicity.* The evaluation of the subchronic toxicity of RYH–86 has been carried out in 2 separate studies which, together with a bridging analysis of both, constitute one 3-volume data set which was previously reviewed by EPA during the registration review for RYH–86 Slimicide (EPA Reg. No. 63898–1: MRIDs 41531118, 41531119, & 41531120). In these studies, one study used relatively high doses of RYH–86 and the other used lower doses. The principal effect of note in these studies was gastrointestinal irritation exhibiting as a thickening of the gastric mucosa and, at sufficiently high dose, ulceration. The No Observed Effects Level (NOEL) for these effects was 3.8 mg/Kg/day and the Lowest Observed Effects Level (LOEL) was 5.0 mg/Kg/day. Other effects seen included: an increase in relative renal weight in males only (LOEL 5.0 mg/Kg/day, NOEL 3.8 mg/Kg/day); an increase in relative testicular weight and liver weight (LOEL 12 mg/Kg/day, NOEL 5.0 mg/Kg/day); possible GI complications related mortality (LOEL 45 mg/Kg/day, NOEL 15 mg/Kg/day); and miscellaneous effects on clinical chemistry, ketonuria, body weight depression, and clinical signs of distress (LOEL 45 mg/Kg/day, NOEL 15 mg/Kg/day).

3. *Chronic toxicity.* Chronic toxicity studies (2–year rat and 1–year dog) have not been conducted with RYH–86 due to the fact that its intended use pattern: (a) does not involve a potential for chronic occupational exposure; (b) leads to only negligible dietary exposure [see below]; and, (c) the only notable adverse effect observed in subchronic gavage studies with the rat was GI irritation / ulceration [see above]. Accordingly, Yoshitomi Fine Chemicals, Ltd. considers that significant chronic exposure is not an issue for RYH–86 as it is to be used and that the subchronic studies do not suggest that any unusual toxicity (other than GI irritation which is likely to be dose-limiting) will likely be seen in chronic toxicity studies. Indeed, the registration of RYH–86 Slimicide (EPA Reg. No. 63898–1) was supported by the Antimicrobials Data Call-in set of requirements and these provide specifically that chronic toxicity and oncogenicity studies for antimicrobial agents are required only if the results of subchronic toxicity or of gene toxicity studies indicate a potential concern or if there will, in fact, be significant chronic exposure.

4. *Oncogenicity.* Oncogenicity studies (2–year rat and 18–months mouse) have not been conducted with RYH–86 due to the fact that its intended use pattern: (a) does not involve a potential for chronic or long term, frequent occupational exposure; (b) leads only to negligible dietary exposure [see below]; (c) the only notable adverse effect observed in subchronic gavage with the rat was GI irritation / ulceration with no evidence for metaplasia, dysplasia, altered foci, or peroxisome proliferation observed[1]; and, (d) RYH–86 is not mutagenic or genotoxic (see No. 6, below). Accordingly, Yoshitomi Fine Chemicals, Ltd. considers that significant chronic exposure is not an issue for RYH–86 as it is to be used and that the subchronic studies do not suggest that any unusual toxicity (other than GI irritation which is likely to be dose-limiting) or oncogenicity is likely to be seen in chronic toxicity / oncogenicity studies. Indeed, the registration of RYH–86 Slimicide (EPA Reg. No. 63898–1) was supported by the Antimicrobials Data Call-in set of requirements and these provide specifically that chronic toxicity and oncogenicity studies for antimicrobial agents are required only if the results of subchronic toxicity or of gene toxicity studies indicate a potential concern or if there will, in fact, be significant chronic exposure.

5. *Developmental toxicity.* i. *Rats* - A standard Guideline 83–3 design teratology and developmental effects study (MRID 42680801) was conducted in which maternal toxicity (as evidenced by decreases in body weight, body weight gain, food consumption, and thickening of the stomach mucosa) was observed at 45 mg/Kg/ day. At this dose (the highest dose tested) no developmental or teratological effects were observed. In this study, doses of 15 mg/Kg and lower were not toxic to the dams and there were no developmental or teratological effects at these lower doses. The dose selection for this study was based on the observed GI effects in the rat 90–day gavage study.

ii. *Rabbits or mice* - Based on: (a) the lack of any suggestion of teratological or developmental effects at doses which produced frank maternal toxicity in the rat; (b) that the toxicity of RYH–86 in the rat study appeared to be largely a function of its GI effects; and, (c) the low exposure potential associated with RYH–86 in its intended uses, Yoshitomi Fine Chemicals, Ltd. considers that conduct of a second species developmental effect study is not needed to characterize the toxicology of RYH–86. Indeed, the registration of RYH–86 Slimicide (EPA Reg. No. 63898–1) was supported by the Antimicrobials Data Call-in set of requirements and these provide specifically that second species developmental toxicity studies for antimicrobial agents are required only if the results of studies in the first species indicate a potential concern or if there will, in fact, be significant exposure to females of child bearing age. The conclusion that a second species developmental toxicity study for RYH–86 is not needed has been reached to date by the Swedish, Finnish, and Canadian regulatory authorities in addition to EPA.

6. *Genotoxicity.* In the standard Ames test (5-strains), RYH–86 is non-mutagenic with or without metabolic activation (MRID 42897501). In the mouse, *in vivo*, bone marrow micronucleus test RYH–86 did not induce chromosome aberrations (MRID 41531122). In the rat hepatocyte UDS (unscheduled DNA synthesis) test, RYH–86 did not induce unscheduled DNA synthesis (MRID 41531123). On the basis of this genotoxicity battery, Yoshitomi Fine Chemicals, Ltd. concludes that RYH–86 is not mutagenic or genotoxic.

7. *Metabolism.* Specific mammalian metabolism studies with RYH–86 have not been conducted for the following reasons: (a) at the alkaline pH of the small intestine, RYH–86 will hydrolyze rapidly with release of chloride and active chlorine; and, (b) the toxicology profile for RYH–86 indicates that the principle effect of RYH–86 is GI irritancy and that metabolism does not appear to play a significant role in the toxicology of RYH–86. Therefore, Yoshitomi Fine Chemicals, Ltd. considers that mammalian metabolism studies in the rat with RYH–86 will not provide additional useful information on the safety of RYH–86 and such studies were not required by EPA to support the registration of RYH–86 Slimicide (EPA Reg. No. 63898–1).

8. *Reference Dose (RfD).* EPA has not previously set a RfD for RYH–86 since at the time of registration review for RYH–86 Slimicide (EPA Reg. No. 63898–1) the regulation of RYH–86 residues in food contact paper and paperboard was under the jurisdiction of the Food and Drug Administration (FDA). Enactment of the Food Quality Protection Act transferred jurisdiction over these residues to EPA. Based on the subchronic NOEL of 3.8 mg/Kg/day (for gastro-intestinal (GI) irritation effects) and an uncertainty factor (UF) of 100, Yoshitomi Fine Chemicals, Ltd. proposes an RfD set at 0.038 mg/Kg/day for RYH–86. Such an RfD leads to the following allowable daily intakes (ADI) for adult males and females and for children: Adult male, 70 Kg, ADI = 2.7 mg/day; Adult female, 60 Kg, ADI = 2.3 mg/day; Child, 20 Kg, ADI = 0.76 mg/day. Yoshitomi Fine Chemicals, Ltd. has considered the possible special sensitivity to RYH–86 of infants and children and, also, of sensitive individuals. The proposed RfD is based on a physico-chemical effect of RYH–86: gastro-intestinal irritation. This, Yoshitomi Fine Chemicals, Ltd. suggests is not an effect for which any wide differences between infants / children and adults would be expected on a reasonable scientific basis. The irritant effects of RYH–86 on the GI tract are expected to be a function of the concentration of RYH–86 in the GI tract and this will be a function of amount of RYH–86 per unit of body weight. Thus, an RfD set at 0.038 mg/Kg/day will lead to similar GI tract concentrations of RYH–86 in adults, children, and infants. Also, since the effect of irritation is a physico-chemical effect, the existence of metabolic differences among persons is not reasonably expected to be a factor producing individuals with special sensitivity to RYH–86. Also, since: (a) physico-chemical effects like irritancy usually do not at all occur well below a threshold concentration of irritant; and, (b) the RfD is based on gavage studies in which RYH–86 is directly delivered to the gastric compartment whereas daily dietary consumption of the RfD amount leads to a lower peak GI tract level than would occur after gavage administration of the RfD amount, it can be expected that even for persons with pre-existing conditions such as ulcers, colitis, and similar pathologies that dietary exposures to RYH–86 at levels up to the proposed RfD will not exacerbate such conditions. Therefore, Yoshitomi Fine Chemicals, Ltd. believs that the proposed RfD is suitable for adults, children, infants, and persons with pre-existing GI tract disturbances.

C. Aggregate Exposure

1. *Dietary exposure* —— i. *Food.* GC-MS-SIM analysis of approximately 30 paper and paperboard samples manufactured in a papermill which used RYH–86-amended slurry water revealed no detectable RYH–86 with a detection limit of 100 µg/Kg of paper (i.e., 100 ppb). Extraction of such samples with food simulating solvents (FSL's), using standard FDA methods for determining food additive extractives from food-contact materials which allowed for the equilibration of RYH–86 between the paper and paperboard samples and the FSL's for 10-days, revealed no RYH–86 migration into FSL's at detection limits of 10 µg/Kg for aqueous FSL's and 100 µg/Kg for fatty FSL's (using the same GC-MS-SIM method for analysis). Using a standard equation provided by U.S. FDA for estimating dietary exposure to indirect food additives migrating from food packaging[2], the hypothetical worst case potential for dietary exposure to RYH–86 as a result of migration into foods of RYH–86 residuals in food contact paper and paperboard is:

$$\langle M \rangle = f_{\text{aqueous and acidic}} (M_{10\ \text{percent ethanol}}) + f_{\text{alcohol}} (M_{50\ \text{percent ethanol}}) + f_{\text{fatty}} (M_{\text{fatty}})$$

In which, for un-coated food contact paper and paperboard, the food type distribution factors ($f_{\text{food type}}$) are:

$f_{\text{aqueous and acidic}}$ 0.57 + 0.01 = 0.58
f_{alcohol} 0.01
f_{fatty} 0.41

and <M> is the concentration of residues in food when the solvent to sample extraction ratio is 10 ml/sq. inch of sample surface (which was the case for Yoshitomi Fine Chemicals, Ltd.'s residue migration potential studies).

For the worst case, since no RYH–86 was detected in any of the FSLs, Yoshitomi Fine Chemicals, Ltd. has taken the migration values (M) which would result if RYH–86 were present in the FSLs at the limit of detection for the relevant food simulating solvent type:

$M_{10\ \text{percent ethanol}}$ 10 µg/Kg
$M_{50\ \text{percent ethanol}}$ 10 µg/Kg
M_{fatty} 100 µg/Kg

In which case the overall migrant load, <M> is:

$\langle M \rangle = (0.58 \times 10\ \mu g/Kg) + (0.01 \times 10\ \mu g/Kg) + (0.41 \times 100\ \mu g/Kg) = 47\ \mu g/Kg$

The above value of <M> can then be used for derivation of the estimated daily intake (EDI) for adults from the following FDA formula:[3]

$EDI = 3.0\ Kg\ food/day \times \langle M \rangle \times CF$

where CF is the consumption factor for foods contacted by a given type of material. In the case of paper and paperboard, CF = 0.1 for uncoated paper (see footnote 2). Therefore, as a worst case, the potential adult EDI for RYH–86 which derives from possible residuals in food contact paper and paperboard is:

$EDI = 3.0\ Kg\ food/day \times 47\ \mu g/Kg\ food \times 0.1 = 14.1\ \mu g/day$

For children, the daily diet is different in quantity. At 6 months age, the daily caloric requirement is 110 cal/Kg body weight and the mean body weight for 6 months infants is 8 Kg. This equates to an 880 Kg/day diet which at an average of 800 cal/Kg[4] is a 1.1 Kg total diet. In the age interval 4 years to 6 years of age (median body weight 20 Kg), the daily calorie requirement is 1,600 cal/day which equates to a 2 Kg total daily diet. The EDI's for infants and children are based on these total diet amounts:

$EDI_{INFANT} = 1.1\ Kg\ food/day \times 47\ \mu g/Kg \times 0.1 = 5.2\ \mu g/day$

$EDI_{CHILD} = 2.0\ Kg\ food/day \times 47\ \mu g/Kg \times 0.1 = 9.4\ \mu g/day$

Thus, for a 6 month old infant, for a 20 Kg child (age 4–6), for a 60 Kg

[1] Suggesting that the more typical forms of pre-neoplastic lesions or lesions which have been associated with indirect carcinogenesis, and which can often be observed already within 90–day studies, are not present.

[2] U.S. FDA (1985), "Recommendations for Chemistry Data for Indirect Food Additive Petitions", Center for Food Safety and Applied Nutrition, June 1995.

[3] Which considers that "food" consists of solid foods as well as beverages consumed.

[4] The adult calorie requirement is 2,400 cal/day for males and females averaged and this in a 3 Kg daily diet provides for calorie density of 800 cal/Kg. For comparison, human breast milk has a calorie density of 700 cal/Kg.

woman, and for a 70 Kg man, the daily intakes associated with the above EDI, expressed as µg/Kg/day and as percent RfD utilization are:

	Dietary Exposure	Percent RfD Utilized
Infant	0.65 µg/Kg/day	1.71
Child	0.47 µg/Kg/day	1.24
Woman	0.24 µg/Kg/day	0.632
Man	0.20 µg/Kg/day	0.526

Yoshitomi Fine Chemicals, Ltd. notes that at 40 CFR 180.1(l) EPA has defined that a "negligible residue.... Ordinarily ... will add to the diet an amount which will be less than 1/2,000th of the amount that has been demonstrated to have no effect from feeding studies on the most sensitive animal species tested." This, for a 100-fold uncertainty factor based RfD, means an RfD utilization of 5% or less. Yoshitomi considers, therefore, that under the hypothetical worst case dietary exposure assessment RYH–86 residues are clearly negligible residues.

i. *Drinking water.* The use of RYH–86 as a slimicide for pulp and paper mills does not provide for entry of RYH–86 into drinking water sources. Spent process water from such sites is treated as waste water, typically on-site, prior to release into surface waters. In a Finnish paper mill, with a use level of 1.5 ppm in the water (as an initial load to the slurry water) no RYH–86 was detected in air or water at sites by the paper making machine (detection limits were 4.5 ng/L in water and 3×10^{-6} mg/dm^3). Water samples which were examined included samples from the waste water holding pond and discharge from the on-site waste water treatment plant.

2. *Non-dietary exposure.* RYH–86 is an industrial-use slimicide whose only other registered use (i.e., aside from slimicide use in pulp and paper mills) is as a slime control agent in re-circulating cooling water. All of the uses of RYH–86 involve only occupational exposures. There are no registrations and no intended uses in residential scenarios. There are, therefore, no Food Quality Protection Act covered non-dietary exposures to RYH–86.

D. Cumulative Effects

There is no reliable information to indicate that RYH–86 has a common mechanism of toxicity with any other chemical compound.

E. Safety Determination

1. *U.S. population.* Since the use of RYH–86 as a slimicide in pulp and paper mills is, under hypothetical worst case conditions, anticipated to lead to only negligible adult dietary exposures (i.e., not greater than 0.63% of the RfD for adults with "negligible" defined at 40 CFR 180.1(l) as "ordinarily" not greater than 5% of the RfD) Yoshitomi Fine Chemicals, Ltd. concludes that there is a reasonable certainty that no harm to the general adult population will result from dietary exposure to RYH–86 residues which could occur in food contact paper and paperboard produced in pulp and paper mills utilizing RYH–86 for slime control in accordance with its FIFRA labeling.

2. *Infants and children.* Since the use of RYH–86 as a slimicide in pulp and paper mills is, under hypothetical worst case conditions, anticipated to lead to only negligible dietary exposures (i.e., not greater than 1.71% of the RfD for infants and not greater than 1.24% of the RfD for children with "negligible" defined at 40 CFR 180.1(l) as "ordinarily" not greater than 5% of the RfD) Yoshitomi Fine Chemicals, Ltd. concludes that there is a reasonable certainty that no harm to infants and children will result from dietary exposure to RYH–86 residues which could occur in food contact paper and paperboard produced in pulp and paper mills utilizing RYH–86 for slime control in accordance with its FIFRA labeling.

3. *Sensitive individuals.* The RfD for RYH–86 is based on gastro-intestinal irritation as the effect which occurs at lowest dose in animal gavage studies. Since the effect of irritation is a physico-chemical effect, the existence of metabolic differences among persons is not reasonably expected to be a factor producing individuals with special sensitivity to RYH–86. Also, since: (a) physico-chemical effects like irritancy usually do not at all occur well below a threshold concentration of irritant; and, (b) the RfD is based on gavage studies in which RYH–86 is directly delivered to the gastric compartment whereas daily dietary consumption of the RfD amount leads to a lower peak GI tract level than would occur after gavage administration of the RfD amount, it can be expected that even for persons with pre-existing conditions such as ulcers, colitis, and similar pathologies that dietary exposures to RYH–86 at levels up to the proposed RfD will not exacerbate such conditions. Therefore, Yoshitomi Fine Chemicals, Ltd. concludes that there is a reasonable certainty that no harm to persons with pre-existing GI-tract problems will result from dietary exposure to RYH–86 residues which could occur in food contact paper and paperboard produced in pulp and paper mills utilizing RYH–86 for slime control in accordance with its FIFRA labeling.

F. International Tolerances

There are no Codex maximum residue levels (MRLs) established for residues of RYH–86 resulting from the use of RYH–86.

[FR Doc. 97–25338 Filed 9–23–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2225]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

September 19, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed October 9, 1997. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band (PR Docket No. 93–144, RMs–8117,8030,8029).

Implementation of Sections 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services (GN Docket No. 93–252).

Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253).

Number of Petitions Filed: 6.

Subject: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band (PR Docket No. 93–144, RMs–8117,8030,8029).

Implementation of Sections 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services (GN Docket No. 93–252).

Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253).

Number of Petitions Filed: 3.

Subject: Amendment of parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices (ET Docket No. 95–19).

Number of Petitions Filed: 2.

Subject: Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service from the 18 GHz band to the 24 GHz band for Fixed Service (ET Docket No. 97–99).

Number of Petitions Filed: 2.

Subject: Applicant for Authorizations and Licenses of Certain Stations in Various Services (WT Docket No. 97–115).

Number of Petitions Filed: 5.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 97–25271 Filed 9–23–97; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, September 29, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25407 Filed 9–19–97; 5:06 pm]
BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Trade Commission.

TIME AND DATE: 12:00 p.m., Friday, November 7, 1997.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public: (1) Oral Argument in Brake Guard Products, Inc., Docket 9277

Portions Closed to the Public: (2) Executive Session to follow Oral Argument in Brake Guard Products, Inc., Docket 9277.

CONTACT PERSON FOR MORE INFORMATION: Victoria Streitfeld, Office of Public Affairs: (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 97–25521 Filed 9–22–97; 3:40 pm]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Study of the Implementation of the Office of Minority Health's Bilingual/Bicultural Service Demonstration Program—NEW—The Office of Minority Health proposes to survey sites participating in its Bilingual/Bicultural demonstration grant program to obtain general information on how the program is being implemented. *Type of Respondents:* demonstration sites; *Number of Respondents:* 47; *Burden Estimate per Response to Verification Survey:* 4 hours; *Total Burden for Verification Survey:* 188 hours; *Burden Estimate per Response to Telephone Interview:* 1 hour; *Total Burden for Telephone Interview:* 47 hours. *Total Study Burden:* 235 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 30 days of this notice.

Dated: September 12, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–25263 Filed 9–23–97; 8:45 am]
BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on October 20, 1997, 9 a.m. to 5 p.m., and October 21, 1997, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Walker and Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396, or from the Internet: http://

www.fda.gov. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 20, 1997, the committee will discuss issues relating to a premarket approval application for a surface modified intraocular lens (IOL) in addition to a review of an update of the FDA "grid" of historical IOL data. A product development protocol (PDP) based on the draft guidance document for monofocal IOL's will be discussed. On October 21, 1997, the committee will discuss proposed extensions to the draft guidance document for refractive surgical lasers, specifically, clinical criteria for the determination of safety and effectiveness for photorefractive keratectomy (PRK) and laser in-situ keratomileusis (LASIK) for myopia, astigmatism, hyperopia, and other refractive indications. A PDP for excimer lasers for PRK will also be discussed. Single copies of the above-mentioned guidance documents are available to the public by contacting the Division of Small Manufacturers Assistance, 1350 Piccard Dr., Rockville, MD 20851, 1–800–638–2041, or from the Internet: http://www.fda.gov/cdrh/draftgui.html.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 10, 1997. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. on October 20 and 21, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 10, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 16, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–25265 Filed 9-23-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dental Plaque Subcommittee Meeting of the Nonprescription Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on October 29 and 30, 1997, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Andrea G. Neal, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 29, 1997, the subcommittee will continue discussion and/or possibly vote on the safety and effectiveness of: C–31G, xylitol, and zinc citrate, as well as the following combination ingredients: (1) Menthol, thymol, eucalyptol, and methyl salicylate; (2) hydrogen peroxide and povidone iodine; and (3) hydrogen peroxide, sodium citrate, zinc chloride, and sodium lauryl sulfate. The subcommittee will also continue discussion of the criteria for over-the-counter (OTC) antiplaque and antigingivitis combination drug products. On October 30, 1997, the subcommittee will discuss the final formulation testing for OTC antiplaque and antigingivitis drug products, and assignments will be made for the review of foreign marketing data supporting OTC antiplaque and antigingivitis ingredients.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by October 15, 1997. Oral presentations from the public will be scheduled on both days between approximately 9 a.m. and 10 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 15, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 15, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–25266 Filed 9-23-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on October 6 and 7, 1997, 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: William Freas or Jane S. Brown, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 6, 1997, the committee will discuss FDA regulatory controls to address transmission of Creutzfeldt-Jakob Disease (CJD) by human dura mater products. On October 7, 1997, the committee will discuss appropriate FDA actions concerning CJD-implicated "secondary" products (i.e., products in which a CJD-implicated plasma derivative was either added as an excipient or used as a reagent in the manufacturing process).

Procedure: On October 6, 1997, from 8:30 a.m. to 5:30 p.m., and October 7, 1997, from 8:30 a.m. to 1:15 p.m., and 1:45 p.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 1, 1997. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:30 a.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 1, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 7, 1997, from 1:15 p.m. to 1:45 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial or financial information (5 U.S.C. 552b(c)(4)). The meeting will be closed to discuss trade secret and/or confidential information concerning the manufacture of the products under discussion.

FDA regrets that it was unable to publish this notice 15 days prior to the October 6 and 7, 1997, Transmissible Spongiform Encephalopathies Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Transmissible Spongiform Encephalopathies Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 16, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–25264 Filed 9-23-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on October 16, 1997, 12:30 p.m. to 3:15 p.m.

Location: Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the intramural scientific program of the Laboratory of Pertussis.

Procedure: On October 16, 1997, from 12:30 p.m. to 1:15 p.m., and 2:15 p.m. to 3:15 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 9, 1997. Oral presentations from the public will be scheduled between approximately 2:15 p.m. and 3:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 9, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 16, 1997, from 1:15 p.m. to 2:15 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The meeting will be closed to discuss personal information concerning individuals associated with the research program.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 16, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–25267 Filed 9-23-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Technical/Agency Draft Recovery Plan for Gesneria Pauciflora for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces availability for public review of a technical/agency draft recovery plan for *Gesneria pauciflora* (no common name). This small shrub, designated as threatened, is endemic to Puerto Rico. Only three populations are known to occur in the western mountains of Puerto Rico. The species is threatened by natural disasters and the modification of its highly restricted habitat. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 24, 1997 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Ms. Susan Silander, Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander, Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622, Telephone: 809/851–7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened species or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States.

Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency Draft is for *Gesneria pauciflora* (no common name), a small gregarious shrub which is currently known from only three populations in the western mountains of Puerto Rico. These occur in the municipalities of Maricao and Sabana Grande. Population estimates are difficult due to the plant's habit of growing in dense mats. At all known localities the species is found growing in rocky stream beds on wet serpentine rock, where water is constantly seeping. The species is threatened by the occurrence of natural disasters and the modification of its highly restricted habitat. The largest population is located in an area of steep unstable slopes and may be threatened by landslides and flood damage. Forest management practices such as trail maintenance may also adversely affect the species. This plan will describe measures necessary to recover the species, including studies of its reproductive biology and propegation.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1531.

Dated: September 17, 1997.

Susan R. Silander,

Acting Field Supervisor.

[FR Doc. 97–25335 Filed 9–23–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Technical/Agency Draft Recovery Plan for Mitracarpus Maxwelliae, Mitracarpus Polycladus, and Eugenia Woodburyana for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces availability for public review of a technical/agency draft recovery plan for *Mitracarpus maxwelliae, Mitracarpus polycladus,* and *Eugenia woodburyana. M. maxwelliae,* a small shrub, and *E. woodburyana,* a small tree, are endemic to southwestern Puerto Rico. *M. polycladus,* a small shrub, is found in southwestern Puerto Rico as well, but is also known from the island of Saba, in the Lesser Antilles. These species are threatened by road construction, recreational activities, wildfires, and land clearing associated with development for agriculture and other purposes. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 24, 1997 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Ms. Susan Silander, Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander, Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622, Telephone: 809/851–7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened species or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency Draft is for *Mitracarpus maxwelliae, Mitracarpus polycladus,* and *Eugenia woodburyana* (no common names), three species that are known from the southwestern portion of Puerto Rico. *Mitracarpus maxwelliae* is a low densely-branching, mound-like shrub known only from one locality in the Guánica Commonwealth Forest of arid southwestern Puerto Rico. *M. polycladus,* also a small perennial shrub, is known in Puerto Rico from only two locations in the Guánica Commonwealth Forest, where it grows in crevices and soil pockets of coastal rocks. It is also known from the island of Saba in the Lesser Antilles. *Eugenia woodburyana,* a small evergreen tree reaching 6 feet in height, is endemic to Puerto Rico and is known only from the municipalities of Lajas, Cabo Rojo, and Guánica in southwestern Puerto Rico. It is known from the Guánica Commonwealth Forest and the Cabo Rojo National Wildlife Refuge, publicly owned land, as well as privately-owned land. These three species are threatened by road construction, recreational activities, wildfires, and land clearing associated with urban, rural, tourist and agricultural development. This plan will describe measures necessary to recover the species, including studies of its reproductive biology and propagation.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1531.

Dated: September 17, 1997.

Susan R. Silander,

Acting Field Supervisor.

[FR Doc. 97–25336 Filed 9–23–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1990–00]

Final Environmental Impact Statement (FEIS) for the Little Rock Mine Project, Grant County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act, the Mimbres Resource Area has prepared a FEIS analyzing the potential environmental impacts of the proposed re-establishment, operation, and reclamation of the Little Rock Mine Project located approximately 7 miles south of Silver City, New Mexico. The proposed project would also require the construction of a haul road that would enable Phelps Dodge Mining Company (PDMC) to transport ore from the Little Rock Mine pit to existing Tyrone operations for processing. The permit area is approximately 600 acres of which the proposed mine pit would cover 190 acres and the haul road 40 acres.

DATES: Written comments on the FEIS must be submitted or postmarked no later than October 27, 1997.

ADDRESSES: Written comments should be sent to: Juan S. Padilla, Team Coordinator, BLM, Las Cruces District, 1800 Marquess, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Juan S. Padilla, Team Coordinator at (505) 525–4376.

SUPPLEMENTARY INFORMATION: Those individuals, organizations, Native American tribes, agencies, and other government agencies with a known interest in the proposal have been sent a copy of the FEIS. Single copies of the document are available from the BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico and the BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico. Reading copies are available for review at public and university libraries in Las Cruces, Silver City, Deming, Lordsburg, Socorro, and Santa Fe, New Mexico. Following the 30-day availability of this FEIS, a Record of Decision (ROD) will be issued.

Dated: September 18, 1997.

Linda S.C. Rundell,

District Manager.

[FR Doc. 97–25309 Filed 9–23–97; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–07–1430–00]

Notice of Intent To Prepare Planning Analysis

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Jackson District Office, Eastern States, will prepare a Planning Analysis/Environmental Assessment (PA/EA) for the public lands within the state of Louisiana which are administered by the Bureau of Land Management (BLM).

The planning effort will follow the procedures set forth in 43 CFR, subpart 1600.

The public is invited to participate in the planning process, beginning with the identification of planning issues and criteria. Planning criteria include applicable laws, regulations, and policies. Additional criteria will be developed if identified through public participation activities. The PA/EA will be prepared by an interdisciplinary team.

DATES: Comments relating to the identification of planning issues and criteria will be accepted through November 1, 1997.

ADDRESSES: Send comments to District Manager, Bureau of Land Management, Jackson District, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

FOR FURTHER INFORMATION CONTACT: Clay W. Moore, PA/EA Team Leader, (601) 977–5400.

SUPPLEMENTARY INFORMATION: The PA/EA will guide future use of approximately 2,400 acres of public domain land, comprised of small parcels of land located throughout the State.

The anticipated issues for the PA/EA include the following: (1) Land ownership adjustments and (2) special management areas. These issues are preliminary and subject to change as a result of public input.

The PA/EA will be developed by an interdisciplinary team composed of specialists in realty, wildlife, forestry, cultural resources, visual resources, recreation, fire management, soil, water and air. Additional technical support will be provided by other specialists as needed.

Public participation will be an important part of the planning process. It is intended that all interested or affected parties be involved. The planning team will seek public input by direct mailings, person-to-person contacts, and coordination with local, state, and other federal agencies. Agency coordination meetings and public meetings may be held to obtain input on issues and planning criteria. Public meetings, if any, will be scheduled at a later time.

Complete records of all phases of the planning process will be available for public review at the Jackson District Office. Copies of the PA/EA will be available upon request.

Dated: September 11, 1997.

Bruce E. Dawson,

Field Manager.

[FR Doc. 97–25310 Filed 9–23–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved information collection (OMB Control Number 1010–0049).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend and revise the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATES: Submit written comments by November 24, 1997.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4020; 381 Elden Street; Herndon, Virginia 20170–4817; attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, subpart B, Exploration and Development and Production Plans.

Abstract: The Outer Continental Shelf Lands Act (OCSLA), as amended, 43

U.S.C. 1331 *et seq.*, requires the Secretary of the Interior (Secretary) to preserve, protect, and develop offshore oil and gas resources; to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of the human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 11 of the amended OCLSA requires the holders of OCS oil and gas and sulphur leases to submit exploration or development and production plans for approval prior to commencing these activities. The implementing regulations and associated information collection requirements are contained in 30 CFR part 250, subpart B, Exploration and Development and Production Plans. In addition, the MMS Regions have issued Notices to Lessees and Operators (NTLs) that provide supplementary guidance and procedures applicable to each Region or nationally. These NTLs address the various surveys, reports, plans (including supplemental deep water operations plans and conservation information for the Gulf of Mexico (GOM) Region), etc., that are necessary for MMS to approve the exploration or development and production activities.

The MMS engineers, geologists, geophysicists, and environmental scientists use the information collected under 30 CFR part 250, subpart B, and related NTLs, to analyze and evaluate the planned operations to ensure that they will not adversely affect the marine, coastal, or human environment and that they conserve the resources of the OCS. It would be impossible for the Regional Supervisor to make an informed decision on whether to approve the proposed plans, or whether modifications are necessary, without the analysis and evaluation of the required information. The affected States also review the information collected for consistency with approved Coastal Zone Management plans.

The MMS will protect proprietary information submitted with the plans in accordance with the Freedom of Information Act; 30 CFR part 250.18, Data and information to be made available to the public; and 30 CFR part 252, OCS Oil and Gas Information Program. No items of a sensitive nature are collected. Responses are mandatory.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is on occasion.

Estimated Annual Reporting and Recordkeeping Hour Burden: 177,440 reporting burden hours; 260 recordkeeping burden hours. The estimated average burden per response is:

(1) Preliminary activities: 1 hour per notice.

(2) Exploration or development and production plans: 480 hours per plan.

(3) GOM Region Deepwater Operations Plans: 480 hours per plan.

(4) Revised plans: 80 hours per revision.

(5) Recordkeeping: 2 hours per respondent.

Estimated Annual Reporting and Recordkeeping Cost Burden: The MMS has identified no burdens associated with this collection of information.

Comments: The MMS will summarize written responses to this notice and address them in its submission for OMB approval. All comments will become a matter of public record. As a result of comments we receive and our consultations with a representative sample of respondents, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, MMS assumed that respondents perform many of the requirements and maintain records in the normal course of their activities. The MMS considers these to be usual and customary and took that into account in estimating the burden.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping cost burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have any. Your response should split the cost estimate into two components:

(a) Total capital and startup cost component; and

(b) Annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: September 18, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–25348 Filed 9–23–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Lake Texoma, OK in the Possession of the United States Army Corps of Engineers, Tulsa District, Tulsa, OK

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects from Lake Texoma, OK in the possession of the United States Army Corps of Engineers, Tulsa District, Tulsa, OK.

A detailed assessment of the human remains was made by U.S. Army Corps-Tulsa District professional staff in consultation with representatives of the Chickasaw Nation of Oklahoma.

In 1971, human remains representing two individuals were exposed during a work project at site 34Jn30, Lake Texoma, Johnson County, OK and removed by University of Oklahoma staff. No known individuals were identified. The 114 associated funerary objects included an iron padlock, a silver pendant, ceramics, glass seed beads, dark green glass sherds, animal bones, metal fragments, buttons, knife blades, a clay pipe, a screw, mussel shell, and stone flakes, however, these objects have not been located within the collections of the original curating institution, the University of Oklahoma.

Morphological evidence based on shoveled incisors indicates these individuals are Native American. The recorded associated funerary objects indicate these burial date to between c.1850—1890 A.D. During this time, site 34JN30 was located within the exclusive territory of the Chickasaw Nation of Oklahoma, and was allotted between 1901 and 1906 to Mr. Bluford J. Greer and Ms. Sophia R. Arpealer, two Chickasaw citizens.

During 1986–1987, human remains representing a minimum of four individuals were exposed by shoreline erosion at site 34MA15, Lake Texoma, Marshall County, OK and recovered by Army Corps-Tulsa District personnel. No known individuals were identified. The eleven associated funerary objects include three triangular-wire looped thumbscrews, one heart-shaped looped wire, one ribbon and bow decorative metal coffin hardware, one pair of decorative metal leaves coffin hardware, one decorative metal bird or flower hardware, and one metal coffin handle fragment with two screws.

Based on the coffin hardware, these burials are estimated to date between the late 1800s and the early 1900s. Morphological evidence, including curved femurs, indicates that three of these individuals are Native American. The fourth individual, a young adult woman found commingled with the remains of one of the Native American men, shows Caucasian facial morphology. Site 34Ma15 is located within an allotment held in the early 1900s by Mr. John Edward Mayo, Mr. William Phillip Mayo, and Mr. James D. Mayo, all of whom were Chickasaw citizens.

Based on the above mentioned information, officials of the U.S. Army Corps of Engineers, Tulsa District have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers, Tulsa District have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the eleven objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers, Tulsa District have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Chickasaw Nation of Oklahoma.

This notice has been sent to officials of the Chickasaw Nation of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. Robert W. Jobson, NAGPRA Coordinator, Planning Division, U.S. Army Corps of Engineers, Tulsa district, P.O. Box 61, Tulsa, OK 74121–0061, telephone (918) 669–7193, before October 24, 1997. Repatriation of the human remains and associated funerary objects to the Chickasaw Nation of Oklahoma may begin after that date if no additional claimants come forward.

Dated: September 16, 1997.

C. Timothy McKeown,

Acting Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 97–25308 Filed 9–23–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before October 24, 1997, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information contained in 30 CFR part 700, General. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR part 700, which is 1029–0094.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on June 20, 1997 (62 FR 33678). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: General, 30 CFR part 700.

OMB Control Number: 1029–0094.

Summary: This Part establishes procedures and requirements for terminating jurisdiction of surface coal mining and reclamation operations, petitions for rulemaking, and citizen suits filed under the Surface Mining Control and Reclamation Act of 1977.

Bureaur Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and tribal regulatory authorities, private citizens and citizen groups, and surface coal mining companies.

Total Annual Responses: 10.

Total Annual Burden Hours: 8.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of

Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: September 17, 1997.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 97–25358 Filed 9–23–97; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA–382]

Certain Flash Memory Circuits and Products Containing Same; Notice of Rescission of Limited Exclusion Order and Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has rescinded the limited exclusion order and the cease and desist order previously issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3107.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.76 of the Commission's Rules of Practice and Procedure (19 CFR § 210.76).

On June 2, 1997, the Commission issued a limited exclusion order and a cease and desist order in the investigation based upon a finding that respondents Samsung Electric Company, Ltd. and Samsung Semiconductor, Inc. (collectively, "Samsung") had violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), by importing, selling for importation, and/or selling after importation certain flash memory circuits that infringed claims 1, 2, or 4 of complainant SanDisk Corporation's ("SanDisk") U.S. Letters Patent 5,418,752 and/or claim 27 of complainant's U.S. Letters Patent 5,172,338.

On August 22, 1997, Samsung and SanDisk filed a joint petition to rescind the limited exclusion order and the cease and desist order on the basis of a settlement agreement they had reached. Samsung and SanDisk asserted that their settlement agreement constituted "changed conditions of fact or law" sufficient to justify recision of the orders under Commission rule 210.76(a), 19 C.F.R. § 210.76(a).

Having reviewed the parties' submissions, the Commission determined that the petition and settlement agreement satisfy the requirements of rule 210.76(a). The Commission therefore issued an order rescinding the cease and desist order and the limited exclusion order previously issued in the investigation.

Copies of the Commission's order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–2000. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

Issued: September 18, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–25357 Filed 9–23–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–373 and Nos. 731–TA–769 Through 775 (Preliminary)]

Stainless Steel Wire Rod From Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Italy of stainless steel wire rod,[2] provided for in subheading 7221.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Italy.

Further, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan of stainless steel wire rod that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, as amended in 61 FR 37818 (July 22, 1996), the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, as appropriate, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(b) of the Act, as appropriate. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] For purposes of these investigations, stainless steel wire rod is defined as articles of stainless steel that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. Stainless steel wire rod is made of alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Stainless steel wire rod is manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, is normally sold in coiled form, and is of solid cross section. Most stainless steel wire rod sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar, with the most common size of stainless steel wire rod being 5.5 millimeters (0.217 inches) in diameter. Stainless steel wire rod grades SF20T and K–M35FL are excluded from the scope of these investigations.

Background

On July 30, 1997, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of Al Tech Specialty Steel Corp., Dunkirk, NY; Carpenter Technology Corp., Reading, PA; Republic Engineered Steels, Massilon, OH; Talley Metals Technology, Inc., Hartsville, SC; and the United Steelworkers of America, AFL–CIO/CLC, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of stainless steel wire rod from Italy, and by reason of LTFV imports of such merchandise from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan. Accordingly, effective July 30, 1997, the Commission instituted preliminary countervailing duty investigation No. 701–TA–373 (Preliminary) and preliminary antidumping investigations Nos. 731–TA–769 through 775 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 6, 1997 (62 FR 42263). The conference was held in Washington, DC, on August 21, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 15, 1997. The views of the Commission are contained in USITC Publication 3060 (September 1997), entitled "Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan: Investigation No. 701–TA–373 and Nos. 731–TA–769 through 775 (Preliminary)."

Issued: September 19, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–25355 Filed 9–23–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Extending the Time for Receipt of Nominations for Vacancies Until October 15, 1997

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire Friday, November 14, 1997. The groups or fields represented are as follows: employee organizations (multiemployer plans), investment counseling, actuarial counseling, employers and the general public (pensioners). In addition, this year nominations also are being sought for individuals interested in an appointment to fill one year of a unexpired three-year term of a Council member who died while serving on the Council. That unexpired term calls for naming an employee organization (multiemployer) representative.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., suite N–5677, Washington, DC 20210. This notice is being issued to extend the period in which recommendations can be delivered or mailed. The new date for receipt of recommendations is on or before October 15, 1997. Nominations for a particular category of membership should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination.

Signed at Washington, DC, this 19th day of September, 1997.

Olena Berg,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 97–25353 Filed 9–23–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional

statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made part of every contract for performance of the described work without the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maine
ME970005 (Feb. 14, 1997)
ME970010 (Feb. 14, 1997)
ME970022 (Feb. 14, 1997)
ME970037 (Feb. 14, 1997)
New Jersey
NJ970003 (Feb. 14, 1997)
NJ970005 (Feb. 14, 1997)
New York
NY970002 (Feb. 14, 1997)
NY970003 (Feb. 14, 1997)
NY970004 (Feb. 14, 1997)
NY970005 (Feb. 14, 1997)
NY970007 (Feb. 14, 1997)
NY970010 (Feb. 14, 1997)
NY970011 (Feb. 14, 1997)
NY970013 (Feb. 14, 1997)
NY970018 (Feb. 14, 1997)
NY970019 (Feb. 14, 1997)
NY970022 (Feb. 14, 1997)
NY970032 (Feb. 14, 1997)
NY970033 (Feb. 14, 1997)
NY970034 (Feb. 14, 1997)
NY970036 (Feb. 14, 1997)
NY970038 (Feb. 14, 1997)
NY970039 (Feb. 14, 1997)
NY970041 (Feb. 14, 1997)
NY970042 (Feb. 14, 1997)
NY970043 (Feb. 14, 1997)
NY970044 (Feb. 14, 1997)
NY970045 (Feb. 14, 1997)
NY970046 (Feb. 14, 1997)
NY970047 (Feb. 14, 1997)
NY970048 (Feb. 14, 1997)
NY970049 (Feb. 14, 1997)
NY970051 (Feb. 14, 1997)
NY970072 (Feb. 14, 1997)
Puerto Rico
PR970002 (Feb. 14, 1997)

Volume II

Maryland
MD970015 (Feb. 14, 1997)
Pennsylvania
PA970001 (Feb. 14, 1997)
PA970002 (Feb. 14, 1997)
PA970004 (Feb. 14, 1997)
PA970017 (Feb. 14, 1997)
Virginia
VA970006 (Feb. 14, 1997)
VA970013 (Feb. 14, 1997)

Volume III

Florida
FL970014 (Feb. 14, 1997)
FL970017 (Feb. 14, 1997)
Kentucky
KY970001 (Feb. 14, 1997)
KY970002 (Feb. 14, 1997)
KY970003 (Feb. 14, 1997)
KY970004 (Feb. 14, 1997)
KY970006 (Feb. 14, 1997)
KY970007 (Feb. 14, 1997)
KY970027 (Feb. 14, 1997)
KY970028 (Feb. 14, 1997)
KY970029 (Feb. 14, 1997)
KY970032 (Feb. 14, 1997)
KY970035 (Feb. 14, 1997)

Volume IV

Illinois
IL970007 (Feb. 14, 1997)
Indiana
IN970001 (Feb. 14, 1997)
IN970003 (Feb. 14, 1997)
IN970004 (Feb. 14, 1997)
IN970005 (Feb. 14, 1997)
IN970017 (Feb. 14, 1997)
IN970020 (Feb. 14, 1997)
IN970061 (Feb. 14, 1997)
Michigan
MI970002 (Feb. 14, 1997)
MI970005 (Feb. 14, 1997)
MI970007 (Feb. 14, 1997)
MI970047 (Feb. 14, 1997)
Minnesota
MN970005 (Feb. 14, 1997)
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MN970015 (Feb. 14, 1997)
MN970027 (Feb. 14, 1997)
MN970031 (Feb. 14, 1997)
MN970035 (Feb. 14, 1997)
MN970039 (Feb. 14, 1997)
MN970058 (Feb. 14, 1997)
MN970061 (Feb. 14, 1997)
Ohio
OH970001 (Feb. 14, 1997)
OH970002 (Feb. 14, 1997)
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OH970007 (Feb. 14, 1997)
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OH970024 (Feb. 14, 1997)
OH970028 (Feb. 14, 1997)
OH970029 (Feb. 14, 1997)
OH970032 (Feb. 14, 1997)
OH970034 (Feb. 14, 1997)
OH970035 (Feb. 14, 1997)

Volume V

Iowa
IA970010 (Feb. 14, 1997)
IA970032 (Feb. 14, 1997)
Louisiana
LA970001 (Feb. 14, 1997)
LA970005 (Feb. 14, 1997)
LA970009 (Feb. 14, 1997)
LA970014 (Feb. 14, 1997)
LA970018 (Feb. 14, 1997)
Texas
TX970015 (Feb. 14, 1997)
TX970060 (Feb. 14, 1997)

Volume VI

Oregon
OR970001 (Feb. 14, 1997)
OR970004 (Feb. 14, 1997)
OR970017 (Feb. 14, 1997)

Volume VII

California
CA970001 (Feb. 14, 1997)
CA970002 (Feb. 14, 1997)
CA970004 (Feb. 14, 1997)
CA970027 (Feb. 14, 1997)
CA970028 (Feb. 14, 1997)
CA970029 (Feb. 14, 1997)
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CA970044 (Feb. 14, 1997)
CA970045 (Feb. 14, 1997)
CA970046 (Feb. 14, 1997)
CA970047 (Feb. 14, 1997)
CA970048 (Feb. 14, 1997)
CA970057 (Feb. 14, 1997)
CA970060 (Feb. 14, 1997)
CA970063 (Feb. 14, 1997)
CA970065 (Feb. 14, 1997)
CA970098 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 19th day of September 1997.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–25314 Filed 9–23–97; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

September 18, 1997.

TIME AND DATE: 10:00 a.m., Thursday, September 25, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Whether to propose revisions to Commission Procedural Rules 5, 9, 10, 45(f), 70, and 75 (supersedes earlier announcement).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sandra G. Farrow,

Acting Chief Docket Clerk.

[FR Doc. 97–25402 Filed 9–19–97; 4:55 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–138)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 24, 1997.

FOR FURTHER INFORMATION CONTACT: Yvonne Kellogg, Dryden Flight Research Center, Mail Stop D–4839A, P.O. Box 273, Edwards, CA 93523–0273, telephone (805) 258–3720.

NASA Case No. DRC–096–007: Emergency Control Aircraft System Using Thrust Modulation;

NASA Case No. DRC–097–021: Emergency Multiengine Aircraft System for Lateral Control Using Differential Thrust Control of Wing Engines.

Dated: September 17, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–25345 Filed 9–23–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–139)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the Untied States Patent and Trademark Office, and are available for licensing.

DATE: September 24, 1997.

FOR FURTHER INFORMATION CONTACT: Beth Vrioni, Patent Counsel, Kennedy Space Center, Mail Stop DE–TPO, at (407) 867–6225.

NASA Case No KSC–11866: Non-Intrusive Impedence based Cable Tester;

NASA Case No. KSC–11959: Use of Ultrasound to Improve the Effectiveness of a Permeable Treatment Wall;

NASA Case No. KSC–11809: Detector for Particle Surface Contamination.

Dated: September 17, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–25346 Filed 9–23–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME: 10:00 a.m., Tuesday, September 30, 1997.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE DISCUSSED:

6910
Highway Accident Summary Report: Collision With a Pedestrian by a Utility Truck, Cosmopolis, Washington, November 26, 1996.

6913
Highway Accident Summary Report: Truck Loss of Braking Control on Steep Downgrade and Vehicle Collision, Plymouth Meeting, Pennsylvania, April 25, 1996.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 314–6065.

Dated: September 19, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–25397 Filed 9–19–97; 4:18 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc., et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–2 and NPF–8, issued to the Southern Nuclear Operating Company, Inc., et al. (the licensee) for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendments would modify Technical Specification 3/4.4.9, "Specific Activity," and the associated Bases to reduce the limit associated with dose equivalent iodine-131. The steady-state dose equivalent iodine-131 limit will be reduced to 0.15 μCurie/gram. The transient limit for 80 percent to 100 percent will be reduced to 9 μCurie/gram with limits as shown on Technical Specification Figure 3.4–1 for less than 80 percent power.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Farley Units 1 and 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The reduction in the dose equivalent iodine limits, both steady-state and transient, will not increase the probability of any accident evaluated since no physical changes to the plant are being made. The consequences of any accident previously evaluated will not be increased since the specific activity limit of the primary coolant is being decreased.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The reduction in the dose equivalent iodine limits, both steady-state and transient, will not create the possibility of a new or different kind of accident from any accident previously evaluated since no physical changes to the plant are being made. The accidents of concern continue to be those that have previously been analyzed.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The calculated potential radiological consequences from the main steam line break accident remain within the regulatory exposure guidelines and have not changed. Reduction of the dose equivalent iodine limit to increase allowable steam line break primary-to-secondary steam generator leakage is a compensating offsite dose effect. Consequently, there is no reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 24, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 17, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 19th day of September 1997.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–25316 Filed 9–23–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3085]

Draft Environmental Impact Statement on Proposed Decommissioning of the Babcock & Wilcox Shallow Land Disposal Area in Parks Township, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Environmental Impact Statement—Decommissioning of the Babcock & Wilcox Shallow Land Disposal Area in Parks Township, Pennsylvania; withdrawal of notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission is withdrawing a Draft Environmental Impact Statement (DEIS) (NUREG–1613) regarding the proposed decommissioning of the Babcock & Wilcox (B&W) Shallow Land Disposal Area (SLDA) in Parks Township, Pennsylvania. A notice of availability for the DEIS was published on September 4, 1997 (62 FR 46780). The NRC is taking this withdrawal action in order to develop additional information regarding the alternatives described in the DEIS.

EFFECTIVE DATE: September 24, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Phyllis Sobel, Low-Level Waste and Decommissioning Projects Branch, Mail Stop T7F–27, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Telephone 301–415–6714.

SUPPLEMENTARY INFORMATION: On September 4, 1997 (62 FR 46780), the NRC published a notice of availability for a Draft Environmental Impact Statement (DEIS) for the proposed decommissioning of the Babcock & Wilcox (B&W) Shallow Land Disposal Area (SLDA) in Parks Township, Pennsylvania. The DEIS described and evaluated the potential environmental impacts of B&W's proposed approach to decommission the radiologically contaminated waste which would involve the stabilization of waste in place at the site. The DEIS also contained information regarding alternatives to B&W's proposal, including an NRC staff recommended alternative that would involve a modified stabilization in place option.

The NRC is withdrawing the DEIS in order to develop additional information regarding the alternatives presented. The NRC will provide further consideration to the merits of the various alternatives in light of any

additional information that is developed. As a result of this withdrawal action, the NRC is postponing the public meeting announced in the notice published on September 4. In addition, the opportunity for a hearing that was published as part of the notice is withdrawn pending further NRC action on the matter.

Dated at Rockville, Md., this 18th day of September 1997.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-25317 Filed 9-23-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 22, 29, October 6, and 13, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 22

There are no meetings scheduled for the week of September 22.

Week of September 29—Tentative

There are no meetings scheduled for the week of September 29.

Week of October 6—Tentative

There are no meetings scheduled for the week of October 6.

Week of October 13—Tentative

Tuesday, October 14

10:00 a.m.
Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301-415-7380)

1:00 p.m.
Briefing on Severe Accident Master Integration Plan (Public Meeting)

Wednesday, October 15

10:00 a.m.
Briefing on PRA Implementation Plan (Public Meeting) (Contact: Gary Holahan, 301-415-2884)

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

*The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording) (301) 415-1292. Contact person for more information: Bill Hill (301) 415-1661.

* * * * *

The NRC Commission Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: September 19, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97-25444 Filed 9-22-97; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 29, 1997, through September 12, 1997. The last biweekly notice was published on September 10, 1997 (62 FR 47696).

Notice Of Consideration of Issuance of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 24, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: July 15, 1997

Description of amendment request: The proposed amendments would: (1) add Technical Specification (TS) 3.5.7, "Main Steam Line Break Detection and Feedwater Isolation," to identify operability requirements and Bases for the main steamline break (MSLB) detection isolation circuitry, the feedwater isolation circuitry, the main feedwater main control valves, and the main feedwater startup control valves; (2) revise TS 3.5.1, "Operation Safety Instrumentation" to add a reference to TS 3.5.7; (3) revise Table 3.5.1-1, "Instruments Operating Conditions," to reflect operability requirements for the main steam header pressure and MSLB detection channels, the feedwater isolation channels, and the feedwater isolation channels manual pushbuttons; and (4) revise Table 4.1-1, "Instrument Surveillance Requirements," and Table 4.1-2, "Minimum Equipment Test Frequency," to include surveillance requirements for the subject circuitry and components.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Involve a significant increase in the probability or consequences of an accident previously evaluated?

NO

This proposed Technical Specification amendment does not create any conditions or events which lead to accidents (events) previously evaluated in the UFSAR [Updated Final Safety Analysis Report], other than a loss of Main Feedwater (FDW). The new MSLB detection and feedwater isolation circuitry addressed by this change is designed so that a credible single failure will not cause a loss of FDW to the steam generator unless [an] MSLB is detected. Single failures are not assumed if entry into a Technical Specification action statement occurs.

During [an] MSLB, the circuitry is intentionally stopping and isolating FDW. Operators are currently instructed to isolate FDW on indication of [an] MSLB. The new circuitry will automatically stop FDW to eliminate the need for this operator action. Thus the probability of the stopping (loss) of FDW is not increased. The NRC has also stated that the stopping of FDW to mitigate [an] MSLB is an acceptable response to address the concerns of Inspection and Enforcement Bulletin 80-04.

The Emergency Feedwater (EFW) System is an accident mitigation system. The MSLB modification and associated Technical Specification to keep the turbine driven emergency feedwater pump (TDEFW) pump from starting following [an] MSLB will not initiate any accidents.

The potential for containment overpressurization currently exists without the installed modification and associated Technical Specification. The new MSLB detection and feedwater isolation circuitry will assist in reducing the potential for the overpressurization of containment. The EFW circuitry is designed so that the TDEFWP will still auto start for any event other than [an] MSLB. The TDEFWP can still be manually started during [an] MSLB or FDW line break accident as needed. This action is similar to other manual actions to align EFW for the MSLB scenarios that are already described in the ONS [Oconee Nuclear Station] UFSAR. This new circuitry and associated Technical Specification creates no new credible single failures that could prevent the TDEFWP from auto starting (except for the MSLB). The motor driven EFW pumps and EFW flow control valves are not adversely affected by this change and will provide EFW flow for scenarios other than Station Blackout. Both FDW and EFW will still provide their design functions of supplying feedwater to the steam generators, as evaluated in the UFSAR. The ability to shut down following a 10CFR50 Appendix R fire is not adversely affected. This Technical Specification change does not adversely affect containment integrity and radiological release pathways.

B. Create the possibility of a new or different kind of accident from the accident previously evaluated?

NO

No accidents different than already evaluated in the UFSAR are postulated. The FDW System will still perform its design function of supplying feedwater to the steam generators as evaluated in the UFSAR. The EFW System will still provide its function of supplying feedwater to the steam generators, as evaluated in the UFSAR for events resulting in the loss of the FDW System.

C. Involve a significant reduction in a margin of safety?

NO

The design pressure of containment is specified to be 59 psig in the bases to several Technical Specifications. With the potential for unrestricted FDW and EFW flow during [an] MSLB inside containment, the design pressure of the containment could be exceeded. The proposed Technical Specifications address equipment which will function to isolate FDW in the unlikely event of [an] MSLB accident. Therefore, the proposed Technical Specifications do not increase the potential for the containment to be pressurized or increase the expected pressure of containment following [an] MSLB. No plant safety limits, set points, or design parameters are adversely affected. The fuel, fuel cladding, and Reactor Coolant System are not impacted.

Duke [Duke Energy Corporation] has concluded based on the above that there are no significant hazards considerations involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50-269, 270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: August 28, 1997 (TSC 96-09)

Description of amendment request: The proposed changes would add new limiting conditions for operation and new surveillance requirements for the Emergency Condenser Circulating Water System, the Essential Siphon Vacuum System, and the Siphon Seal Water System to reflect design changes and modifications to these systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1. Will the change] involve a significant increase in the probability or consequences of an accident previously evaluated?

NO.

This Technical Specification change does not create any conditions or events which lead to accidents previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. The new ECCW [Emergency Condenser Circulating Water] System Technical Specification 3.19, along with the new ECCW Surveillance requirements specified in Technical Specification Table 4.1-2, are conservative in nature. No existing Technical Specification requirements are being deleted with this revision. Surveillance and operability requirements are being added for the upgraded ECCW System.

The ECCW System is only required following the occurrence of loss of offsite power (LOOP) events. The most limiting of these LOOP events is the loss of coolant accident concurrent with the LOOP (LOCA/LOOP). Therefore, the ECCW System is not considered to be an accident initiator. As a result, the proposed new ECCW Technical Specification requirements will not result in any increase in the probability of any design basis accidents or events evaluated in the UFSAR.

The credit for restarting a CCW [Condenser Circulating Water] pump within 1.5 hours following a LOOP, to ensure suction to LPSW [Low Pressure Service Water] is maintained, is being replaced by credit for maintaining the ECCW siphon using the new siphon support systems (ESV [Essential Siphon Vacuum] System and SSW [Siphon Seal Water] System) in conjunction with the upgraded ECCW System. Therefore, obsolete requirements specified in Selected Licensee Commitments (SLCs) 16.9.7 and 16.9.8 will be revised or deleted accordingly. Replacement of the CCW pump restart during a LOOP with the ability to maintain ECCW siphon flow will not create any conditions or events which lead to accidents previously evaluated in the UFSAR.

The modifications to upgrade the ECCW System were performed to improve the reliability of the ECCW System. The proposed new ECCW Technical Specification provides additional surveillance and operability requirements to ensure that the upgraded ECCW System will function reliably during the design basis events which require its operation. Therefore, these proposed new Technical Specification requirements will not increase the consequences of any accidents previously evaluated in the UFSAR.

[2. Will the change] create the possibility of a new or different kind of accident from the accident previously evaluated?

NO.

No accidents different than those already evaluated in the UFSAR are postulated. The upgraded ECCW System will more reliably perform its design function of supplying water to the suction of the Low Pressure Service Water (LPSW) System as evaluated in the UFSAR. The new Technical Specification requirements will increase the reliability of the upgraded ECCW System. In addition, the ECCW System is not an accident initiator since it is used following certain design basis events such as a LOCA/LOOP.

[3. Will the change] involve a significant reduction in a margin of safety?

NO.

The proposed Technical Specifications address equipment which will function in certain design basis events, such as a LOCA/LOOP, to ensure a reliable water supply to the LPSW System. The LPSW System must function to remove decay heat from primary systems and the reactor building during a LOCA/LOOP. The proposed Technical Specifications addressing the upgraded ECCW System will further enhance the reliability of the ECCW System and will result in greater assurance that the LPSW System can perform its safety functions. No plant safety limits, setpoints, or design parameters are adversely affected. The fuel, fuel cladding, and Reactor Coolant System are not impacted. The proposed Technical Specifications provide additional, conservative, operational requirements beyond the current Technical Specifications which address the ECCW System.

Duke [Duke Energy Corporation] has concluded based on this information that there are no significant hazards considerations involved in this amendment request.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: September 4, 1997

Description of amendment request: The proposed changes would incorporate changes to the Oconee Final Safety Analysis Report and Technical Specification Bases to address a potential unreviewed safety question associated with implementation of revised small break loss-of-coolant accident analysis. The proposed changes would address operation of the facility and single failure criteria related to the high pressure injection system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

No. None of the proposed changes [have] any impact upon the probability of any accident which has been evaluated in the UFSAR [Updated Final Safety Analysis Report].

None of these changes have any impact upon the ability of the HPI [high-pressure injection] System to mitigate the consequences of a small break LOCA [loss-of-coolant accident], which is addressed below. The small break LOCA is the limiting design basis accident with respect to the HPI System operability requirements.

The proposed changes to the Bases of Specification 3.3.1 and Chapter 15 of the Oconee UFSAR include operator actions that have not previously been reviewed and approved by the [NRC] staff for licensing basis small break LOCA analyses. However, these operator actions have been included in the Emergency Operating Procedure for over 10 years and crediting these actions in the safety analyses does not result in any change to the operator's response to a small break LOCA. These actions are simply changes to the assumptions contained in the licensing basis small break LOCA analyses. The operability requirements for the HPI System contained in Specification 3.3.1 are supported by a spectrum of small break LOCA analyses based on the approved Evaluation Model described in FTI [Framatome Technologies, Inc.] topical report BAW-10192P. These small break LOCA analyses demonstrate that the acceptance criteria of 10CFR 50.46 are satisfied.

The operability requirements in Technical Specification 3.3.1.c assure that the HPI System can withstand the worst single failure and still result in two HPI pumps injecting through two trains. The full power small break LOCA analyses supporting this proposed license amendment have been performed in accordance with the approved Evaluation Model described in FTI topical report BAW-10192P.

When at or below 75% FP [full power], one HPI train provides sufficient flow to mitigate a small break LOCA. The 60% power level currently in Specification 3.3.1 is justified by analyses using the Evaluation Model described in FTI topical report BAW-10192P, considering the worst case break location and size described in LER [Licensee Event Report] 269/90-15 and Attachment 2 to this submittal. The proposed changes to the Bases of Technical Specification 3.3.1 describe the operator actions credited to justify the adequacy of the current specification and eliminate the need for the administrative restrictions imposed by LER 269/90-15. These requirements ensure that, following the worst single failure, one train of HPI would remain available to mitigate a small break LOCA.

In summary, the technical analyses described in this license amendment justify the adequacy of this specification and assure that operability of the HPI System is maintained in a manner consistent with the requirements of the design basis accidents. Therefore, it is concluded that this amendment request will not significantly increase the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

No. The proposed changes to the Bases of Technical Specification 3.3.1 and Chapter 15 of the Oconee UFSAR do not result in any new operator actions or changes in plant operation. The proposed changes involve crediting operator actions in the licensing basis small break LOCA analyses that have been included in the Emergency Operating Procedure for years. No new initiating events or potentially unanalyzed conditions have been created. Therefore, this proposed amendment will not create the possibility of any new or different kind of accident.

(3) Involve a significant reduction in a margin of safety.

No. The HPI System requirements associated with the proposed UFSAR and Technical Specification Bases changes are supported by analyses which demonstrate that the acceptance criteria of 10 CFR 50.46 are not violated for any small break LOCA. These analyses were performed in accordance with the Evaluation Model described in FTI topical report BAW-10192P. Therefore, it is concluded that the proposed amendment request will not result in a significant decrease in the margin of safety.

Duke [Duke Energy Corporation] has concluded, based on the above, that there are no significant hazards considerations involved in this amendment request.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 6, 1997

Description of amendment request: The proposed amendment would eliminate the provisions in Technical Specification 3.8.1, "AC Sources - Operating," for accelerated testing of the emergency diesel generators (DG). The proposed changes are the following: (1) the frequency of verifying DG starts and operation in Surveillance Requirements 3.8.1.2 and 3.8.1.3, respectively, would be changed to 31 days, from the present reference to Table 3.8.1-1, and (2) Table 3.8.1-1, "Diesel Generator Test

Schedule," would be deleted. The emergency DG provide emergency AC power to the site with the loss of offsite AC power.

Basis for proposed no significant hazardsconsideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[These] change[s] will provide flexibility to structure the standby diesel generator maintenance program based on the risk significance of the structures, systems, and components [(SSCs)] that are within the scope of the Maintenance Rule [(10 CFR 50.65, "Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants)]. The removal of the diesel generator accelerated testing is acceptable as the maintenance rule applies site and system specific performance criteria to monitor diesel generator performance. This criteria includes a running availability and reliability goal as well as specific goals to monitor maintenance preventable functional failures. The performance criteria for the diesel generator reliability and availability established by the maintenance rule and the causal determinations and corrective actions required for maintenance preventable functional failures are considered to be an acceptable method for monitoring diesel generator performance.

The proposed change[s] [have] no effect on the probability of the initiation of an accident, because the emergency diesel generators do not serve as the initiator of any event. Additionally, as diesel generator performance will continue to be [ensured] by the maintenance rule, the proposed changes do not affect the ability to mitigate the consequences of an accident previously evaluated. The changes do not impact the diesel [generator]'s design sources, operating characteristics, system functions, or system interrelationships. The failure mechanisms for the accident previously evaluated are not affected and no additional failure modes are created that could cause an accident that has been previously evaluated. Since the diesel generator performance and reliability will continue to be [ensured] by the maintenance rule, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[These] proposed change[s] [do] not involve a change to the plant design or operation. As a result, the proposed change[s] [do] not affect any of the parameters or conditions that could contribute to the initiation of any accidents. The proposed changes only affect the methods used to monitor and [ensure] diesel generator performance. The performance criteria for both the diesel generator reliability and unavailability established by the maintenance rule, and the causal determinations and corrective actions required for maintenance preventable functional failures, [are] considered by [the Nuclear Regulatory Commission (NRC) in] GL [(Generic Letter)] 94-01[, "Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators," issued May 31, 1994,] to be an acceptable method for monitoring diesel generator performance.

No SSC, method of operation, or system interface is altered by [these] change[s]. The changes do not impact the diesel [generator]'s design sources, operating characteristics, system functions, or system interrelationships. The failure mechanisms for the accidents are not affected, and no additional failure modes are created. Because the diesel generator performance and reliability will continue to be [ensured] by the maintenance rule, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This request does not involve a significant reduction in a margin [of] safety.

The proposed changes only affect the methods used to monitor and [ensure] diesel generator performance and reliability. The performance criteria for the diesel generator reliability and availability established by the maintenance rule, and the causal determinations and corrective actions required for maintenance preventable functional failures, [are] considered by [NRC in] GL 94-01 to be an acceptable method for monitoring diesel generator performance. No margin [of] safety as defined in the bases for any technical specification is impacted by these changes. [These] change[s] [do] not impact any uncertainty in the design, construction, or operation of any SSC. Diesel generator response to accident initiators is unchanged. No SSC, method of operating, or system interface is altered by [these] change[s]. The changes do not impact the diesel [generator]'s design sources, operating characteristics, system functions, or system interrelationships. Because the diesel generator performance and reliability will continue to be [ensured] by the maintenance rule, the proposed changes do not involve a significant reduction in the margin [of] safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: James W. Clifford, Acting

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: August 26, 1997

Description of amendment request: The proposed amendment would revise the Crystal River Unit 3 (CR3) Technical Specifications Bases (TSB) to change the design basis of the Emergency Diesel Generator (EDG) Air Handling System. Specifically, TSB Sections B 3.8.1 and B 3.8.2 would be revised to indicate that a single or dual fan operation depending upon fan supply air temperature, would maintain the temperature of the EDG engine and control rooms within the EDG manufacturer's limits.

Basis for proposed no significant hazardsconsideration determination:

The EDG Air Handling System provides continuous ventilation, and dissipates internal heat gains in the EDG engine and control rooms when the diesel is operating. Presently, the CR3 plant documentation requires operation of only one cooling fan per room to maintain the EDG room temperature within the manufacturer's limit and is inconsistent with the Final Safety Analysis Report (FSAR) which requires operation of two fans.

As part of its EDG upgrade to increase their service ratings and associated cooling analysis, the licensee has determined that operation of either a single or dual cooling fans depending upon fan supply air temperature, would achieve the required room cooling limits. The licensee has determined that reliance on the operation of two cooling fans instead of one involves an unreviewed safety question and requires a license amendment.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability of an accident previously evaluated. The EDG room cooling fans support operation of the EDGs which are used to mitigate design basis accidents. Although EDG availability is a contributor to the risk of station blackout, the CR-3 licensing basis assumes a station blackout without regard to EDG reliability. Therefore, the probability of previously evaluated accidents is not significantly increased.

For design basis accidents, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated. The proposed change to operate both cooling fans for each EDG to provide adequate ventilation potentially increases the probability of malfunction of equipment important to safety. However, the proposed changes do not affect the independence of the EDGs or the independence of the EDG Air Handling System and, based on single failure criteria, one EDG will be fully operable and capable of meeting its mission at all times as required by the CR-3 Technical Specifications. Therefore, no significant increase in the consequences of an accident previously evaluated, including the offsite radiological dose exists.

Based on the above, the probability of an accident previously evaluated has not been significantly increased, and this change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Neither the fans nor the EDGs are initiators of any new accidents. The EDG room cooling fans support operation of the EDGs, which are used to mitigate design basis accidents. Reliance on two fans rather than one has reduced the redundancy of the EDG Air Handling System and increased the probability of a malfunction of an EDG. However, the proposed changes do not affect the independence of the EDGs or the independence of the EDG Air Handling System and, based on single failure criteria, one EDG will be fully operable and capable of meeting its mission at all times as required by the CR-3 Technical Specifications. Results of analyses to evaluate the failure of an EDG to operate following a design basis accident are documented in the FSAR. Therefore, this change does not create the possibility of a new or different kind of accident.

3. Does not involve a significant reduction in the margin of safety

The proposed change does not involve a significant reduction in the margin of safety. The EDG room cooling fans support operation of the EDGs. Following this change, two fans will be required to maintain the EDG engine room and EDG control room temperatures within the design basis limit when the fan supply air temperature is greater than or equal to 85°F. Reliance on two fans rather than one has reduced the redundancy of the EDG Air Handling System and slightly increased the probability of malfunction of an EDG, but only after it has run for some period of time. However, the proposed changes do not affect the independence of the EDGs or the independence of the EDG Air Handling System and, based on single failure criteria, one EDG will be fully operable and capable of meeting its mission at all times as required by the CR-3 Technical Specifications. Therefore, this change does not result in a significant reduction to the margin safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC - A5A, P. O. Box 14042, St. Petersburg, Florida 33733-4042

NRC Project Director: Frederick J. Hebdon

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: September 9, 1997

Description of amendment request: The proposed amendment would revise the Crystal River 3 (CR3) Final Safety Analysis Report (FSAR) to reflect the revised analysis for the hypothetical Makeup System Letdown Line Failure Accident. In the original analysis, the event was modeled as being terminated by an automatic isolation of the failed letdown line on low reactor coolant system pressure. The revised analysis has modeled the event as being terminated by manual operator action to isolate the line. The licensee has determined that reliance on a manual operator action in place of the automatic action involves an unreviewed safety question (USQ) and requires prior Nuclear Regulatory Commission (NRC) approval. Other FSAR changes are being proposed to clarify that this accident is a hypothetical event that is presented only to demonstrate that the dose consequences are below 10 CFR Part 100 limits. The licensee submitted its proposed FSAR changes which, upon NRC approval, will be incorporated in the next revision to the FSAR.

Basis for proposed no significant hazardsconsideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change involves a revision to the analysis for the Makeup System Letdown Line Failure Accident. The revised analysis assesses the resultant change in consequences of this event based on the actions specified in EOP-3 [Emergency Operating Procedure - 3] to manually isolate the letdown line failure. No changes have been made to any precursors to this event. Therefore, the probability of an accident previously evaluated has not been increased.

This change has resulted in an increase in the calculated doses due to the greater release of reactor coolant prior to termination of the leak. Although the doses have increased, they remain significantly less than the limits of 10 CFR 100. These doses also remain lower than the resultant doses for the design basis LOCA [loss-of-coolant-accident].

The revised analysis evaluates the consequences of this accident based on the replacement of the automatic isolation of the letdown line with a manual operator action to isolate the letdown line. This action was added to EOP-3 when it was identified that the manual initiation of the HPI [high pressure injection] system directed by the EOP would interfere with the automatic isolation signal assumed to terminate this event. Manual initiation of the HPI system for a LSCM [loss of subcooling margin] event is consistent with the symptomatic philosophy of the EOPs. This philosophy is utilized in order to manage a wide range of event/leaks that would be indicated by a LSCM. Early initiation of the HPI system is intended to ensure adequate core cooling as the primary concern during a LSCM event.

Prior to the addition of the EOP step to manually isolate the letdown line, the EOP directed actions towards locating and isolating the source of the leak resulting in the LSCM. However, due to the potential significance of the letdown line failure which can result in RCS [reactor coolant system] leakage outside the reactor building, the manual action was added early in EOP-3 to isolate the letdown line. This action is proactive in ensuring early isolation of the potential leakage path and is consistent with the concept of a "simple" operator action (Reference 9) [NRC to Florida Power Corporation letter, Long-term modifications regarding emergency core cooling system Small Break Analysis problem, dated September 26, 1978].

Crediting a manual operator action instead of the automatic isolation introduces the possibility of a malfunction of a different type [i.e., operator error]. The revised analysis assumes that operator action to isolate the letdown line occurs 10 minutes following a LSCM. Although the probability of operator error during this action may be greater than the probability of the failure of the automatic function, the consequences of this error would be small. Several indications would be available to the operator to identify the continued loss of coolant through this line. As discussed above, the radiological dose calculated by this event remains a small fraction of the limits of 10 CFR Part 100. Therefore, adequate time would exist for the identification of an operator error and correction of this error before any significant increase in the consequences of this event would occur.

Additionally, the probability for operator error in this event is considered to be small due to the extensive training plant operators receive regarding the EOPs and the simple nature of the action. Validation of the required actions in the EOPs, including isolation of the letdown line, is performed on the plant simulator to ensure the validity of the EOPs as well as to ensure that these actions can be performed as required.

The clarification added to FSAR Section 5.4.4.2 and 14.2.2.6.1 reflects the previously approved evaluation for pipe rupture criteria outside the reactor building for CR-3. A break in the high energy portion of the letdown line outside containment is not considered a credible event. This accident is presented only to demonstrate that the dose consequences from a postulated break in the letdown line outside containment remain below the 10 CFR Part 100 limits.

Based on the above, this change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not involve any modification to the plant nor a change in the operation of the plant prior to the postulated failure of the letdown line. This change only evaluates the radiological dose consequences of the actions taken following the line failure. The addition of the action to manually isolate the letdown line for a LSCM event is consistent with the need to isolate potential RCS leakage paths and replaces the automatic isolation that was previously assumed to occur. Therefore, this change does not create the possibility of a new or different kind of accident.

3. Does not involve a significant reduction in the margin of safety.

This change does not result in a reduction to the margin of safety as defined in the Bases for any Technical Specifications. As discussed above, the radiological doses for the revised analysis have increased but remain a small fraction of the 10 CFR Part 100 limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC - A5A, P. O. Box 14042, St. Petersburg, Florida 33733-4042

NRC Project Director: Frederick J. Hebdon

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: August 22, 1997

Description of amendment request: The proposed amendment revises Technical Specification (TS) 4.0.5, Surveillance Requirements for Inservice Inspection and Testing of ASME Code Class 1, 2, and 3 components, to relocate the Inservice Testing Program requirements from TS 4.0.5 to the Administrative Controls Section 6.8, Procedures and Programs. The proposed amendment also provides conforming changes to several Surveillance Requirements to change the reference from TS 4.0.5 to the Inservice Testing Program.

Basis for proposed no significant hazardsconsideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. There are no changes to the testing and evaluation related to pumps and valves in the Inservice Testing Program. The only substantive change allows the implementation of alternate testing provisions where Code-requirements are impractical and the NRC has not formally provided written approval. Since impractical testing would not be performed in any event, the actual testing program is unaffected.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the modified specifications cannot create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to implementation of this administrative change since the proposed changes do not involve the addition or modification of equipment, nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components remain unchanged by the proposed amendments, therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981-5596

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408-0420

NRC Project Director: Frederick J. Hebdon

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Dates of amendment request: August 27, 1997

Description of amendment request: The licensee proposed modifying the Turkey Point Units 3 and 4 Technical Specifications (TS) to delete a sentence from section 6.2.2.f and add clarification to section 6.2.2.f of the Administrative section of TS to allow the use of up to 12 hour shifts without routine heavy use of overtime.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a physical or procedural change to any structure, system or component that significantly effects the probability or consequences of any accident or malfunction of equipment important to safety. The proposed changes will allow the use of 12 hour shifts for a nominal 40 hours per week.

This change is only administrative in nature and has no significant impact on the probabilities or consequences of any evaluated accident or malfunction of equipment important to safety.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or modes of plant operation defined in the Turkey Point Units 3 and 4 operating license. The proposed amendment will not involve addition or modification of permanent equipment for any systems structures or components at Turkey Point.

The change does modify the controls on working shift hours for operating personnel without significantly changing the hours worked per week and retains the current limitations on excessive overtime. The changes are administrative in nature.

Consequently, operation of either unit in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed amendment will allow the use of 12 hour shifts by virtue of the administrative change. This will result in fewer turnovers per day and will allow more contiguous days off between work shifts. The sum of these 12 hour work shift features will be more rested crews with better communications between shifts. The proposed change will not alter the basis for any Technical Specification that is related to the establishment of, or maintenance of, a nuclear safety margin.

Consequently, operation of Turkey Point Units 3 and 4 in accordance with this proposed amendment would not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 18, 1997

Description of amendment request: The proposed amendment would revise Technical Specification 3.7.1.6, Atmospheric Steam Relief Valves, to ensure the automatic feature of the steam generator power operated relief valve remains operable during Modes 1 and 2. In addition, the proposed change adds a surveillance requiring that a channel calibration on the steam generator power operated relief valve be performed every 18 months.

Basis for proposed no significant hazardsconsideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The South Texas Project proposed to revise Technical Specification 3.7.1.6 to ensure the automatic feature of the Steam Generator Power Operated Relief Valve remains operable during Modes 1 and 2. The South Texas Project has evaluated this proposed amendment and determined that it involves no significant hazards considerations based on the following:

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The methodologies used in the accident analyses remain unchanged. The automatic actuation of the Steam Generator Power Operated Relief Valves is not a new design feature. The effects of the inadvertent opening of a Steam Generator Power Operated Relief Valve are currently analyzed as described in Section 15.1.4 of the Updated Final Safety Analysis Report. The radiological consequences for the SBLOCA [small-break loss-of-coolant accident] event presented in the Updated Final Safety Analysis Report remain unchanged. The calculated Peak Clad Temperature remains substantially below the 2200°F acceptance limit of 10[]CFR[]50.46.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The automatic actuation of the steam generator power operated relief valves is not an accident initiator for the SBLOCA event. The automatic actuation of the steam generator power operated relief valves currently exists at the South Texas Project and is not a new design feature. The description of the Steam Generator Power Operated Relief Valves currently exists in the Updated Final Safety Analysis Report. This change does not represent a change to the facility and does not affect the safety functions and reliability of systems, structures, or components in any new manner. Operating procedures have a temporary administrative control to ensure the automatic actuation of the Steam Generator Power Operated Relief Valves remains operable in Modes 1 and 2. This condition will become permanent with the approval of the Technical Specification Amendment proposal.

C. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change results in the calculated Peak Clad Temperature remaining well below the acceptance limit of 10[]CFR[]50.46 and comparable to the results currently described in the Updated Final Safety Analysis Report.

Therefore, the South Texas Project has concluded that the proposed change does not involve a significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036-5869

NRC Project Director: James W. Clifford, Acting

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: September 2, 1997

Description of amendment request: The proposed changes to the Technical Specifications (TSs) would modify the maximum allowed containment pressure specified in TS 3.6.1.4, "Containment Systems Internal Pressure," from 2.1 psig to 1.0 psig. The TS Bases, Section 3/4.6.1.4, would also be revised to reflect the new maximum allowed containment pressure.

Basis for proposed no significant hazardsconsideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve an SHC (significant hazards consideration) because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will reduce the maximum allowed value for containment pressure specified in Technical Specification 3.6.1.4, "Containment Systems Internal Pressure." This change will improve the margin between the peak containment pressure following a main steam line break (most limiting accident for peak containment pressure at Millstone Unit No. 2) and the containment design pressure limit of 54 psig. Reducing the initial containment pressure will result in a reduction in peak containment pressure.

To ensure the assumption of a lower initial containment pressure is maintained, a change to Technical Specification 3.6.1.4 is necessary.

The proposed change to Technical Specification 3.6.1.4 will allow one of the initial assumptions used in the analysis for peak containment pressure following a main steam line break to be changed. However, this change will not affect how any of the plant systems function to mitigate design basis accidents and will not require any changes to mitigation procedures. The acceptance criteria of a peak containment pressure less than the design limit of 54 psig remains the same. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated. It does not

introduce any new failure modes and conservatively alters an assumption made in the main steam line break safety analysis.

Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

This proposed change will reduce the maximum allowed value for containment pressure specified in Technical Specification 3.6.1.4, "Containment Systems Internal Pressure." This change will improve the margin between the peak containment pressure following a main steam line break (most limiting accident for peak containment pressure at Millstone Unit No. 2) and the containment design pressure limit 54 psig. Starting at a lower initial containment pressure will result in a lower peak containment pressure. To ensure the assumption of a lower initial containment pressure is maintained, a change to Technical Specification 3.6.1.4 is necessary.

This more restrictive change in the maximum allowed containment pressure will result in the use of a lower initial containment pressure in the analysis of a main steam line break accident. However, the analysis acceptance criteria of a peak accident containment pressure less than 54 psig, will remain the same. Therefore, there is no significant reduction in a margin of safety as defined in the Bases of Technical Specification 3.6.1.4.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Deputy Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 2, 1997

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to: (1) Combine TS 3.6.2.1, "Containment Spray System," and TS 3.6.2.2, "Containment Air Recirculation System," into one specification which would reduce the allowed outage time for one inoperable containment spray (CS) train or one inoperable containment air recirculation (CAR) cooler from 30 days to 7 days; increase the allowed outage time for two inoperable CAR coolers from 48 hours to 7 days; add an allowed outage time of 48 hours (instead of entering TS 3.0.3) for one inoperable CS train and two inoperable CAR coolers or three or four inoperable CAR coolers; provide specific guidance on when to enter TS 3.0.3; and expand the applicable TS Bases to reflect these changes; (2) Modify the definition of containment integrity and TS 3.6.1.1, "Containment Integrity," to indicate that the operability of the automatic isolation valve system is satisfied by the use of the containment isolation trip push buttons in Mode 4, and expand the TS Bases to reflect these change; (3) Add an exception to the reactor coolant flow rate surveillance requirement, TS 4.1.1.3, whenever there is a reduction in reactor coolant system boration while in Modes 2 and 3 because the reactor coolant pumps are required to be in operation; (4) Delete the reactor coolant system leakage surveillance requirements, TS 4.4.6.2.a and TS 4.4.6.2.b, which require monitoring the containment atmosphere particulate radioactivity and containment sump inventory, respectively; (5) Modify emergency core cooling system surveillance requirement, TS 4.5.2.e, to allow the use of alternative methods to verify that the throttle valves in Table 4.5-1 are in the correct position and expand the TS bases to address the alternative methods; (6) Modify TS 5.5.1," Emergency Core Cooling Systems," by deleting the word "original" since the design has been modified; and (7) Make editorial changes to terminology and item numbering.

Basis for proposed no significant hazardsconsideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1.Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to combine Technical Specifications 3.6.2.1 and 3.6.2.2 into one specification reduces the allowed outage time for one inoperable containment spray (CS) train or one inoperable containment air recirculation (CAR) cooler from 30 days to 7 days; increases the allowed outage time for two inoperable CAR coolers from 48 hours to 7 days; adds an allowed outage time of 48 hours (instead of entering Technical Specification 3.0.3) for one inoperable CS train and two inoperable CAR coolers, or three or four inoperable CAR coolers; and provides specific guidance when it is necessary to enter Technical Specification 3.0.3 will not affect how these systems function to mitigate design basis accidents. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes to modify the definition of containment integrity, modify the Technical Specification 3.6.1.1, "Containment Integrity," and expand the Bases to explain why automatic containment isolation valves are operable in Mode 4 have no affect on any containment isolation valve or Engineered Safety Feature Actuation System (ESFAS) component. These components will still function as designed to mitigate design basis accidents. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to provide an exception to Surveillance Requirement 4.1.1.3 when the plant is in Modes 1 and 2 will not result in any new approach to plant operation, it simply removes the requirement to perform an unnecessary surveillance. The minimum coolant flow through the core during a reduction in Reactor Coolant System (RCS) boron concentration will still be met. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to delete Surveillance Requirements (SRs) 4.4.6.2.a and 4.4.6.2.b does not reduce the operability requirements for any equipment used to monitor RCS leakage. The equipment covered by these 2 SRs, containment atmosphere particulate radioactivity monitors and containment sump inventory monitor, provide early indication that RCS leakage exists, but do not provide the specific information (amount of leakage) necessary to verify operation within the leakage limits contained in Technical Specification 3.4.6.2, "Reactor Coolant System Leakage." Operability of the containment atmosphere particulate radioactivity monitors and containment sump inventory monitor is verified by SRs 4.4.6.1.a and 4.4.6.1.b. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to Surveillance Requirement 4.5.2.e. to allow the use of alternate methods does not reduce operability or surveillance requirements for any of the Emergency Core Cooling System (ECCS) throttle valves. Therefore, these ECCS throttle valves will continue to function as designed to mitigate design basis accidents. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification 5.5.1 has no affect on how the ECCS operates. The ECCS will still function as designed to mitigate design basis accidents. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes to add information to the Bases of the affected Technical Specifications, and make editorial changes to terminology and item numbering will have no affect on equipment operation. Therefore, all associated equipment will continue to function as designed to mitigate design basis accidents. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

Thus, this License Amendment Request does not impact the probability of an accident previously evaluated nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. They will not alter assumptions made in the safety analysis and licensing basis. The affected components and systems will still function as designed to mitigate design basis accidents.

Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not reduce the margin of safety since they have no impact on any safety analysis assumption. The proposed changes do not decrease the scope of equipment currently required to be operable or subject to surveillance testing, nor do the proposed changes affect any instrument setpoints or equipment safety functions. The requirement to check containment radiation and containment sump level every 12 hours has been eliminated. However, this equipment is still required to be operable, and the surveillance requirements to verify operability have not been changed. Therefore, this equipment will be available to provide early indication of RCS leakage.

The effectiveness of Technical Specifications will be maintained since the changes will not alter the operation of any component or system. In addition, the changes are consistent with the new, improved Standard Technical Specifications (STS) for Combustion Engineering plants (NUREG-1432).

Therefore, there is not significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Deputy Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: September 3, 1997

Description of amendment request: The proposed amendment would revise the Updated Final Safety Analysis Report (UFSAR) by changing the length of time the emergency diesel generators (EDGs) would operate following a loss-of-coolant accident (LOCA) based on the capacity of the onsite diesel fuel oil supply required by the current Technical Specifications (TSs). The UFSAR indicates that the diesel fuel oil supply tanks contain a sufficient amount of fuel to operate one EDG for about 7 days and the other EDG 1 hour following a LOCA based on the TS minimum limit of 24,000 gallons of diesel fuel oil stored onsite. Northeast Nuclear Energy Company (the licensee) has performed calculations indicating that both EDGs can initially operate, following a LOCA, for 24 hours and one EDG can continue to operate for an additional 3.5 days based on the TS requirement to have a minimum of 24,000 gallons of fuel oil stored onsite. The licensee has determined that the difference in the EDGs operating time, as a result of the new calculations, constitutes an unreviewed safety question and requests approval to revise the UFSAR.

Specifically, the proposed license amendment would revise the UFSAR, Section 8.3, "Emergency Generators," to reflect the operating times for the EDGs based on the TS-required onsite fuel oil supply. Additional requirements would also be added indicating that the existing nonsafety-related underground fuel oil storage tank would be required to maintain about 17,700 gallons of fuel oil when the unit is operating in Modes 1 through 4. This requirement would be included in the Technical Requirements Manual, which also will require that the amount of stored fuel oil be verified by surveillance requirements similar to the TS-required surveillances for the safety-related fuel oil supply. This change will increase the total time that one EDG can continue to operate following a LOCA from 3.5 to 7 days. The Emergency Plan (EP) procedures require that an evaluation be performed within 4 hours following a LOCA or loss of normal power (offsite power) to determine if additional fuel oil is needed from an offsite source. The licensee has a contract with a supplier for the delivery of fuel oil to the Millstone site. The EP procedures also require that load shedding recommendations be made within 24 hours. The recommendations will vary depending on the situation and are another way to extend the operating times for the EDGs.

Basis for proposed no significant hazardsconsideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change expands FSAR Section 8.3, "Emergency Generators," to discuss the length of time the emergency diesel generators (EDGs) will operate following a loss of coolant accident (LOCA) and a loss of normal power (LNP), utilizing only onsite diesel fuel oil sources. The onsite sources include the Technical Specification required volume of 12,000 gallons in each diesel oil supply tank and an additional approximate 17,700 gallons that will be maintained in the underground diesel oil storage tank. This onsite volume of diesel fuel oil is sufficient to allow two EDGs to operate at rated load (2750 KW) for 24 hours following a design basis LOCA and LNP. The remaining diesel fuel oil will be sufficient for one EDG to continue operation at rated load for a total of 7 days from event initiation.

The proposed change to the FSAR has no effect on EDG operation and reliability. The EDGs will continue to operate as designed to supply the electrical loads assumed to mitigate the design basis accidents. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. Plant operating procedures will be changed. However, the changes will not require the performance of any task not currently performed by the plant operators. Emergency Plan procedures already specify the action to provide load shedding recommendations within 24 hours of a LOCA and LNP, and to evaluate the need to order additional fuel from offsite sources within four hours after the accident.

The proposed change does not alter the way any structure, system, or component

functions and does not alter the manner in which the plant is operated. It does not introduce any new failure modes and does not alter assumptions made in the safety analysis.

Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The length of time the emergency diesel generators (EDGs) will operate following a Loss of Coolant Accident and a Loss of Normal Power, utilizing only the onsite diesel fuel oil sources required by Technical Specifications has been recalculated. The new EDG run times do not agree with the current EDG run times contained in the Millstone Unit No. 2 Final Safety Analysis Report (FSAR), and therefore do not agree with the current Technical Specification Bases for 3.8.1.1, "A.C. Sources - Operating," and 3.8.1.2, "A.C. Sources - Shutdown."

This deviation does result in a reduction in the margin of safety as defined in the Technical Specification Bases for 3.8.1.1, "A.C. Sources - Operating," and 3.8.1.2, "A.C. Sources - Shutdown." However, this proposed change will require additional diesel fuel oil to be maintained onsite in the non-seismic underground diesel oil storage tank. This will ensure sufficient diesel fuel oil will be maintained onsite to provide a 7 day supply, assuming a seismic event does not occur. Therefore, this is not a significant reduction in the margin of safety as defined in the Technical Specification Bases for 3.8.1.1, "A.C. Sources - Operating," and 3.8.1.2, "A.C. Sources - Shutdown."

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: : Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Deputy Director: Phillip F. McKee

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 20, 1997

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to provide for: (1) the relocation of suppression pool volume references in Limiting Condition for Operation (LCO) 3.5.3 to the Hope Creek (HC) Updated Final Safety Analysis Report (UFSAR) and TS Bases as appropriate; (2) the revision of the suppression pool volume currently listed in LCO 3.5.3.b; (3) the relocation of the suppression pool volume references in LCO 3.6.2.1.a.1 to the UFSAR and TS Bases; and (4) the revision to the suppression pool volume reference in TS 5.2.1 to reference the TS Bases section where this information will reside.

Basis for proposed no significant hazardsconsideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS revisions involve: 1) no changes to the operation of any systems or components in normal or accident operating conditions; and 2) no significant changes to existing structures, systems or components. The installation of the new strainers will be justified separately using the provisions of 10CFR50.59. The relocation of Technical Specification references to suppression pool volume to the UFSAR and/or TS Bases will not adversely impact the safety-related functions of the suppression pool or its supported systems since any changes to suppression pool volume will be subject to 10CFR50.59 provisions. The impact of the new strainers on ECCS (emergency core cooling system) performance in Operational Conditions 4 and 5 has been determined to be negligible, with less than a 0.3% decrease in suppression pool water volume at the minimum specified suppression pool water level limit. In addition, suppression pool volume is not a parameter involved in the initiation of any accident. Therefore these changes will not significantly increase the probability of an accident previously evaluated. To the extent practicable, these proposed changes were developed consistent with the changes approved by the NRC when developing NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR/4", with the intent of having the relocated information controlled in other plant documents subject to 10CFR50.59 provisions. Since the plant systems associated with these proposed changes will still be capable of: 1) meeting all applicable design basis requirements; and 2) retain the capability to mitigate the consequences of accidents described in the HC UFSAR, the proposed changes were determined to be justified. Therefore, these changes will not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Neither the relocation of Technical Specification references to suppression pool volume nor the revision of the suppression pool volume references for Operational Conditions 4 and 5 (COLD SHUTDOWN and REFUELING) will adversely impact the operation of any safety related component or equipment. Since the proposed changes involve: 1) no changes to the operation of any systems or components; and 2) no significant changes to existing structures, systems or components, there can be no impact on the occurrence of any accident. To the extent practicable, these proposed changes were developed consistent with the changes approved by the NRC when developing NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR/4", with the intent of having the relocated information controlled in other plant documents subject to 10CFR50.59 provisions. Furthermore, there is no change in plant testing proposed in this change request which could initiate an event. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Removal and relocation of the Technical Specification references to suppression pool volume is consistent, to the extent practicable, with the changes approved by the NRC when developing NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR/4". The information retained in the Technical Specifications for minimum suppression pool water level and the information retained in the UFSAR and Technical Specification Bases will ensure that the suppression pool and supported components will remain capable of performing their intended safety functions. Any changes to suppression pool volume information retained in the UFSAR or Technical Specification Bases will be subject to the provisions of 10CFR50.59 and a separate safety evaluation would be developed to support any proposed changes that would subsequently be made. The impact of the new strainers on ECCS performance in Operational Conditions 4 and 5 has been determined to be negligible, with less than a 0.3% decrease in suppression pool water volume in the minimum specified suppression pool water level limit. By retaining the 5 inch minimum suppression pool water level limit within the TS, adequate provisions for: 1) NPSH [net-positive suction head] for ECCS pump suction; 2) recirculation volume; and 3) vortex prevention are maintained. Therefore, the changes contained in this request do not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit - N21, P.O. Box 236, Hancocks Bridge, NJ 08038

NRC Project Director: John F. Stolz

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: August 19, 1997

Description of amendment request: The proposed amendment would revise the Ginna Station Improved Technical Specifications (ITSs) by adding a note to the Containment Spray (CS) Limiting Condition for Operation (LCO) 3.6.6 which would allow the CS pumps in MODE 4 to be placed in pull-stop, and motor-operated valves (MOVs) 896A and 896B to have their DC control power restored with the valves placed in the closed position in order to perform interlock and valve testing of MOVs 857A, 857B, and 857C. A time limit of 2 hours is placed on this configuration for each test.

Basis for proposed no significant hazardsconsideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change is to add a note to LCO 3.6.6 which allows the CS pumps to be placed in pull-stop and MOVs 896A and 896B to have power restored and closed in MODE 4. This does not increase the probability of any accident previously evaluated since the CS system provides mitigation capability only (i.e., does not initiate any accident). In addition, there is no design basis accident previously evaluated in MODE 4 which would require the use of CS. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes will not reduce a margin of plant safety because the CS function is not required for any design basis accident in MODE 4. In addition, time restraints [are] placed on the proposed plant configuration. As such, no question of safety is involved, and the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: Alexander W. Dromerick, Acting Director

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: August 2, 1996 (TXX-96434)

Brief description of amendments: The proposed changes would increase the allowed outage time (AOT) for a centrifugal charging pump from 72 hours to 7 days.

Basis for proposed no significant hazardsconsideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

There is no effect on the probability of an event; the only potential effect is on the capability to mitigate the event. The centrifugal charging pumps are credited in the Final Safety Analysis Report Chapter 15 LOCA analysis for ECCS injection and for the containment sump recirculation mode for the design-basis LOCA. Increasing the AOT for the centrifugal charging pumps does not affect analysis assumptions regarding functioning of required equipment designed to mitigate the consequences of accidents. Further, the severity of postulated accidents and resulting radiological effluent releases will not be affected by the increased AOT.

A reliability analysis of the charging system found the change to have no significant impact on normal operation or on the RCP seal cooling function. Therefore, the change would not significantly increase in the probability of a seal LOCA.

The change potentially affects only the availability of the charging system for accident mitigation and has no effect on the ability of other ECCS systems to perform their functions. Through the use of a probabilistic risk assessment, it was determined that the proposed change would have an insignificant effect on the core damage frequency.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different type of accident from any accident previously evaluated?

Unavailability of one centrifugal charging pump for a finite period of time is currently allowed by the Technical Specifications. Increasing the AOT from 72 hours to 7 days would not change the method that TU Electric operates CPSES, thus would not create a new condition. Further, the proposed change would not result in any physical alteration to any plant system, and there would not be a change in the method by which any safety related system performs its function. The ECCS would still be capable of mitigating the consequences of the design-basis accident LOCA with the one centrifugal charging pump operable. No new unanalyzed accident would be created.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The proposed change does not impact either the physical protective boundaries or performance of safety systems for accident mitigation. There is no safety analysis impact since the extension of the centrifugal charging pump AOT interval will have no effect on any safety limit, protection system setpoint, or limiting condition of operation. There is no hardware change that would impact existing safety analysis acceptance criteria, therefore there is no significant change in the margin of safety.

In summary, the proposed change would not have a significant impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036

NRC Project Director: James W. Clifford, Acting

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the

action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Detroit Edison Company, Docket No. 50-341, Fermi 2, Monroe County, Michigan

Date of amendment request: September 5, 1997 (NRC-97-0107)

Description of amendment request: The proposed amendment would add Special Test Exception 3/4.10.7, "Inservice Leak and Hydrostatic Testing," that allows the performance of pressure testing at a reactor coolant temperature up to 212 °F while remaining in Operational Condition 4. This special test exception would also require that certain Operational Condition 3 specifications for Secondary Containment Isolation, Secondary Containment Integrity, Secondary Containment Automatic Isolation Dampers, and Standby Gas Treatment System operability be met. This change would also revise the Index, Table 1:2, "Operational Conditions," and the Bases to incorporate the reference to the proposed special test exception. The licensee requested that this amendment be reviewed under exigent circumstances.

Date of individual notice in the **Federal Register:** September 12, 1997 (62 FR 48113)

Expiration date of individual notice: October 14, 1997 NSHC comments: September 29, 1997

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: John N. Hannon

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 14, 1997

Brief description of amendment request: The proposed amendments would revise the allowed tolerance of the reactor coolant system volume provided in Technical Specification 5.4.2 to account for steam generator tube plugging.

Date of individual notice in the **Federal Register:** August 26, 1997 (62 FR 45278)

Expiration date of individual notice: September 25, 1997

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Notice Of Issuance Of Amendments ToFacility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: January 15, 1997, as supplemented on August 22, 1997.

Brief description of amendments: The amendments revise the minimum and maximum allowed values in Technical Specification 3.6.2.1 for suppression chamber water volume. The amendments correct an error identified by Carolina Power & Light Company in the previous calculation of water volume and correct an error in the value listed in the associated TS Bases for Unit 1 for primary system operating pressure.

Date of issuance: August 28, 1997

Effective date: August 28, 1997

Amendment Nos.: 186 and 217

Facility Operating License Nos. DPR-71 and DPR-62: Amendments change the Technical Specifications

Date of initial notice in **Federal Register:** March 26, 1997 (62 FR 14458) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: December 4, 1996

Brief description of amendments: The amendments revise the approach in Technical Specification 3/4.1.2 for determining a reactivity anomaly by changing from control rod density comparison to direct comparison of reactivity status.

Date of issuance: September 5, 1997

Effective date: September 5, 1997

Amendment Nos.: 187 and 218

Facility Operating License Nos. DPR-71 and DPR-62: Amendments change the Technical Specifications

Date of initial notice in **Federal Register:** March 12, 1997 (62 FR 11484) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: January 24, 1997

Brief description of amendments: The amendments revise the Technical Specification (TS) required surveillance calibration to be performed on the reactor water level instrumentation to reflect the modifications made to the Unit 3 instrumentation. The modifications were made during the recent Unit 3 refueling outage to improve the reliability of emergency core cooling system (ECCS) initiation on low low reactor water level. The surveillance requirement for calibration of the new level instrumentation is consistent with the ECCS low reactor water level initiation transmitter calibration requirements of NUREG 1433, "Standard Technical Specifications, General Electric Plants, BWR/4" for similar instrumentation. The same TS change for Unit 2 has been previously reviewed and approved by the NRC staff in Amendment No. 145 dated June 28, 1996. In addition minor editorial changes were made to the TS.

Date of issuance: September 10, 1997

Effective date: September 10, 1997, with full implementation within 60 days.

Amendment Nos.: 162 and 157

Facility Operating License Nos. DPR-19 and DPR-25: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 18, 1997 (62 FR 19143) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450

oit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

application for amendment: December 15, 1994, as revised July 25, 1996, and supplemented December 13, 1996, and June 18, 1997

Brief description of amendment: The amendment revises Technical Specification (TS) Section 6.0, Administrative Controls, by (1) removing requirements that are adequately controlled by existing regulations other than 10 CFR 50.36 and the TS and (2) relocating selected requirements from TS Section 6.0 to licensee-controlled documents or programs.

Date of issuance: September 10, 1997

Effective date: September 10, 1997, with full implementation within 90 days. Implementation of this amendment shall include the relocation of the TS requirements to the appropriate licensee-controlled documents, as described in the licensee's application dated December 15, 1994, as revised July 25, 1996, and supplemented December 13, 1996, and June 18, 1997, and evaluated in the staff's safety evaluation dated September 10, 1997.

Amendment No.: 113

Facility Operating License No. NPF-43. Amendment revises the TS.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29873) and August 14, 1996 (61 FR 42279). The December 13, 1996, and June 18, 1997, letters provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: March 10, 1997

Brief description of amendment: The amendment modifies the Technical Specifications (TSs) by reducing the reactor coolant system specific activity limits in accordance with the NRC's guidance provided in Generic Letter 95-05, "Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes by Outside Diameter Stress Corrosion Cracking." The definition of DOSE EQUIVALENT I-131 is replaced with the Improved Standard TS definition in the first sentence and an equation is added based on dose conversion factors derived from the International Commission on Radiation Protection (ICRP) ICRP-30. TS 3.4.8, Specific Activity, is revised by reducing the DOSE EQUIVALENT I-131 limit from 1.0 micro Ci/gram to 0.35 micro Ci/gram for the 48-hour limit and from 60 micro Ci/gram to 21 micro Ci/gram for the maximum instantaneous limit. Item 4.a in TS Table 4.4-12, Primary Coolant Specific Activity Sample and Analysis Program, TS Figure 3.4-1, and the Bases for TS 3/4.4.8 are also modified to reflect the reduced DOSE EQUIVALENT I-131 limit.

Date of issuance: September 10, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No: 205

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 7, 1997 (62 FR 24985) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: August 4, 1997, as supplemented August 16, 1997.

Brief description of amendment: Temporary change to Technical Specification Surveillance Requirement (SR) 3.3.8.1. The change will allow the licensee to extend the frequency of SR 3.3.8.1 from 31 to 60 days.

Date of issuance: August 29, 1997

Effective date: August 29, 1997

Amendment No.: 157

Facility Operating License No. DPR-72. Amendment temporarily revises Technical Specifications Surveillance Requirement 3.3.8.1.

Date of initial notice in **Federal Register:** August 12, 1997 (62 FR 43189) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 17, 1996, as supplemented June 14, 1996, March 17, July 29, and July 30, 1997

Brief description of amendments: The amendments modify Technical

Specification Section 3/4.4.5 Steam Generators, 3/4.4.6 Reactor Coolant System Leakage, and associated Bases to allow the installation of tube sleeves as an alternative to plugging to repair defective steam generator tubes.

Date of issuance: September 4, 1997

Effective date: September 4, 1997

Amendment Nos.: Unit 1 - Amendment No. 90; Unit 2 - Amendment No. 77

Facility Operating License Nos. NPF-76 and NPF-80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1996 (61 FR 25938) and April 9, 1997 (62 FR 17235). The June 14, 1996, and July 29, and July 30, 1997, submittals provided additional information that did not affect the staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 4, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 30, 1997

Brief description of amendment: Technical Specification Surveillance Requirements 4.7.1.5.1 and 4.7.1.5.2 require the periodic testing of the main steam isolation valves (MSIVs) to demonstrate operability. The amendment (1) clarifies when the MSIVs are partial stroked or full closure tested, (2) adds a note to the Mode 4 applicability of Technical Specification 3.7.1.5 to require that the MSIVs be closed and deactivated at less than 320 degrees F, (3) makes editorial changes, and (4) makes changes to the associated Bases sections.

Date of issuance: September 3, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 148

Facility Operating License No. NPF-49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1997 (62 FR 40853) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: May 14, 1997, as supplemented by letter dated July 30, 1997

Brief description of amendment: Technical Specification Surveillance Requirement 4.8.2.1.c.4 requires that each battery charger be tested to verify that it can supply a specified current at 125 volts. The amendment increases the required test voltage.

Date of issuance: September 5, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 149

Facility Operating License No. NPF-49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1997 (62 FR 33130) The July 30, 1997, letter provided clarifying information that did not change the scope of the May 14, 1997, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 9, 1997, as supplemented by letter dated July 14, 1997

Brief description of amendments: The proposed change revises the Peach Bottom Atomic Power Station, Units 2 and 3, technical specifications to extend the interval for replacing the primary containment purge and exhaust valve inflatable seals.

Date of issuance: September 4, 1997

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendments Nos.: 220 and 223

Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 2, 1997 (62 FR 35851) The supplemental letter provided clarifying information that did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 4, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: September 25, 1996

Brief description of amendments: These amendments (1) revise the required number of operable gaseous radioactivity monitoring system channels and particulate radioactivity monitoring system channels from one in each of the monitoring systems to one in either of the monitoring systems, (2) allow both the gaseous radioactivity monitoring system and the particulate monitoring system to be inoperable for up to 30 days provided that grab samples are obtained and analyzed at least once per 12 hours, and (3) add an action for the loss of all reactor coolant system leakage detection systems (drywell floor sump level monitoring system, gaseous radioactivity monitoring system and particulate radioactivity monitoring system).

Date of issuance: September 3, 1997

Effective date: As of the date of issuance, to be implemented within 30 days of issuance.

Amendment Nos.: 168 and 142

Facility Operating License Nos. NPF-14 and NPF-22: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1996 (61 FR 58904) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 3, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: April 25, 1997, as supplemented June 6, 1997

Brief description of amendments: The amendments revise Technical Specification 3.5.2 to eliminate reference to the flow path from the residual heat removal system to the reactor coolant system hot legs. This flow path is being eliminated to prevent excessive flow through the residual heat removal system during all hot leg recirculation configurations assuming worst-case single failures that could result in excessive flow during hot leg recirculation following a loss-of-coolant accident.

Date of issuance: September 11, 1997

Effective date: Both units, as of the date of issuance, to be implemented within 60 days of issuance.

Amendment Nos.: 200 and 184

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 14, 1997 (62 FR 26574) The June 6, 1997, supplement provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 11, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079Sacramento Municipal Utility District, Docket No. 312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: December 9, 1993, as superseded December 19, 1995, and as supplemented on January 22, 1996.

Brief description of amendment: This amendment changes the Technical Specifications to incorporate the revised 10 CFR Part 20, Standards for Protection Against Radiation. The amendment corrects references from Semiannual Radioactive Effluent Release Report to Annual Radioactive Effluent Release Report. The amendment also corrects references from NRC Region V to NRC Region IV.

Date of issuance: August 22, 1997

Effective date: August 22, 1997

Amendment No.: 125

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10015) The information provided in the licensee's letters of December 19, 1995 and January 22, 1996 contained editorial changes and did not involve significant changes to the original Federal Register notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: : Central Library, Government Documents, 828 I Street, Sacramento, California 95814

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia Date of application for amendments: January 7, 1997, as supplemented July 2, 1997

Brief description of amendments: The amendments revise plant Technical Specifications associated with surveillance requirements testing that requires manually actuating every safety/relief valve during each unit startup from a refueling outage.

Date of issuance: September 5, 1997

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 208 and 150

Facility Operating License Nos. DPR-57 and NPF-5: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1997 (62 FR 4350) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Tennessee Valley Authority, Docket No. 50-260 Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: June 2, 1995, revised March 3, 1997, as supplemented May 13 and August 20, 1997 (TS 353)

Brief description of amendment: The amendment provides technical specification (TS) changes for an upgrade of the power range neutron monitor instrumentation. Changes to thermal limits specifications were also proposed to implement average power range monitor and rod block monitor ts improvements, and maximum extended load line limit analyses.

Date of issuance: September 11, 1997

Effective Date: September 11, 1997

Amendment No.: 249

Facility Operating License No. DPR-52: Amendment revised the TS.

Date of initial notice in **Federal Register:** August 16, 1995 (60 FR 42609) The March 3, 1997 revision, as supplemented May 13 and August 20, 1997, does not affect the staff's proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1997. No significant hazards consideration comments received: None.

Local Public Document Room location: Athens Public library, 405 E. South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket No. 50-390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: March 27, 1997, as supplemented May 28, June 4, and July 30, 1997.

Brief description of amendment: The amendment pertains to Cycle 2 core design changes and provides operational enhancements for reactor trip setpoints. Part 1 addresses an increase in the containment sump boron concentration during a large break loss-of-coolant accident and describes changes to Technical Specification (TS) 3.5.1 and 3.5.4 regarding boron concentration. Part 2 addresses changes to TS Figure 2.1.1-1, TS Table 3.3.1-1, and TS 3.4.1 on safety limits, the trip system and pressure, temperature and flow limits, respectively.

Date of issuance: September 11, 1997

Effective date: Sepember 11, 1997

Amendment No.: 7

Facility Operating License No. NPF-90: Amendment revises the TS.

Date of initial notice in **Federal Register:** July 2, 1997 (62 FR 35852) The July 30, 1997 submittal provided clarifying informetion which did not affect the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1997. No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440 Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: January 31, 1997, supplemented August 6, 1997.

Brief description of amendment: The amendment approves the use of Option B, "Performance-Based Requirements," to 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

Date of issuance: September 9, 1997

Effective date: September 9, 1997

Amendment No.: 86

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1997 (62 FR 11492). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440 Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: May 2, 1997

Brief description of amendment: The amendment allows the leakage rate of one or more main steam lines to be up to 35 standard cubic feet per hour (scfh), as long as the total leakage rate through all four main steam lines is less than or equal to 100 scfh.

Date of issuance: September 11, 1997

Effective date: September 11, 1997

Amendment No.: 87

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1997 (62 FR 33136). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 14, 1997 (TSCR 198)

Brief description of amendments: These amendments revise Technical Specification Section 15.3.1, "Reactor Coolant System," to eliminate the provisions for operation of the units at below 3.5 percent rated power with a single reactor coolant pump.

Date of issuance: September 3, 1997

Effective date: September 3, 1997, with full implementation within 45 days

Amendment Nos.: 178 and 182

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1997 (62 FR 27802) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 3, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 24, 1997, as supplemented on May 15 and August 5, 1997 (TSCR 193)

Brief description of amendments: These amendments revise TS 15.5.4, "Fuel Storage," to increase fuel assembly enrichment limits to 5.0 weight percent uranium-235 while maintaining K_{eff} in the storage pools (spent fuel pool and new fuel storage racks) less than 0.95. Date of issuance: September 4, 1997

Effective date: September 4, 1997, with full implementation within 45 days

Amendment Nos.: 179 and 183

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1997 (62 FR 30647) The August 5, 1997, submittal provided clarifying information within the scope of the original application and did not affect the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 4, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By October 24, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Arizona Public Service Company, et al., Docket No. STN 50-529, Palo Verde Nuclear Generating Station, Unit No. 2, Maricopa County, Arizona

Date of application for amendment: August 28, 1997, as supplemented by letter dated September 3, 1997.

Brief description of amendment: The amendment revises Technical Specification Table 4.3-2 to allow for a one-time, five-day extension of the required surveillance interval for the main steam isolation system portion of the engineered safety feature actuation system logic.

Date of issuance: September 4, 1997

Effective date: September 4, 1997

Amendment No.: 105

Facility Operating License No. NPF-51: The amendment revised the Technical Specifications. Press release issued requesting comments as to proposed no significant hazards consideration: Yes. September 1, 1997. Arizona Republic Newspaper (Arizona). Comments received: No. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Arizona and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 4, 1997.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey Date of application for amendment: August 19, 1997, as supplemented August 20, 1997.

Brief description of amendment: This amendment to the Technical Specifications increases the allowable band for control and shutdown rod demanded position versus indication position from plus or minus 12 steps to plus or minus 18 steps when the power level is not greater than 85% rated thermal power.

Date of issuance: September 10, 1997

Effective date: As of date of issuance, to be implemented within 7 days.

Amendment No. 183

Facility Operating License No. DPR-75: This amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration, and requested that any comments on the proposed no significant hazards consideration be provided to the staff by the close of business on September 3, 1997, and stated that, should circumstances change during the notice period, such that a failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The notice was published in the Wilmington News Journal on August 22, 1997, and in Today's Sunbeam on August 24, 1997. No public comments were received. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of New Jersey and final no significant hazards consideration determination are contained in a Safety Evaluation dated September 10, 1997.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit - N21, P.O. Box 236, Hancocks Bridge, NJ 08038

NRC Project Director: John F. Stolz

Dated at Rockville, Maryland, this 17th day of September 1997.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation

[Doc. 97-25210 Filed 9-23-97; 8:45 am]

BILLING CODE 7590-01-F

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-01786]

National Institutes of Health Issuance of Director's Decision Under 10 CFR § 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, U. S. Nuclear Regulatory Commission (NRC), has acted on a Petition for action dated October 10, 1995, submitted by Maryann Wenli Ma, M.D., Ph.D., and Bill Wenling Zheng, M.D., Ph.D. (Dr. Ma and Dr. Zheng or Petitioners), as supplemented by letters dated March 25, 1996, and July 10, 1997, with regard to NRC Licensee, the National Institutes of Health (NIH or the Licensee).

Petitioners requested, pursuant to 10 C.F.R. 2.206, that NRC suspend or revoke the materials license of NIH, NRC License No. 19–00296–10, pending resolution of the issues raised by the Petition, and that NRC take other appropriate enforcement action, including the imposition of civil penalties against NIH for willful and reckless violations of 10 CFR part 20. Broadly stated, the Petitioners assert that, as the direct and proximate result of NIH's: (1) Deliberate failure to control and secure radioactive materials in violation of 10 CFR 20.1801 and 20.1802; (2) failure to maintain an effective bioassay program; and (3) failure to otherwise adhere to the requirements of 10 CFR part 20, Dr. Ma was contaminated with phosphorus-32 (P–32), resulting in both her and her unborn fetus receiving intakes of radioactive material significantly in excess of regulatory limits, additional NIH employees were also internally contaminated with P–32, and NIH failed to take proper actions to assess accurately the level of Dr. Ma's internal contamination or provide appropriate medical care and follow-up treatment.

In their March 25, 1996, supplemental Petition, Petitioners state that NIH's repeated denials that it has any problem with its security over radioactive materials suggests that the NIH radioactive materials license should be suspended or revoked, because the Licensee poses a threat to public health and safety, the Licensee has not responded adequately to other enforcement actions, and is unwilling or unable to comply with NRC requirements. On July 10, 1997, Petitioners submitted another supplement to their Petition, requesting immediate revocation or suspension of the NIH license on the grounds that NIH continues in its failure to implement and maintain a program to oversee licensed radioactive materials sufficiently secure to prevent another contamination incident of the type Dr. Ma experienced in 1995.

For the reasons stated in the "Director's Decision Under 10 CFR 2.206," (DD–97–22) the Director of the Office of Nuclear Material Safety and Safeguards has granted the following requests of Petitioners in part: for enforcement action against NIH for violations of NRC security and control requirements and for violation of NRC requirements related to radiation safety training, ordering radioactive materials, inventory control of radioactive materials, monitoring, and the issuance, use, and collection of dosimetry.

Petitioners' request for NRC action to ensure adequate procedures and instructions to exposed persons for sample collection was granted as described in DD–97–22. The following requests of Petitioners for enforcement action against NIH were denied: for the exposure of Dr. Ma beyond regulatory limits, for the exposure of Dr. Ma's fetus, and for the contamination of the water cooler; regarding notification to Dr. Ma of her level of contamination; regarding Dr. Ma's declaration of pregnancy; regarding the conduct of surveys after Dr. Ma's contamination; and for the failure to accurately calculate Dr. Ma's occupational radiation dose. Finally, Petitioners' request to suspend or revoke the NIH license was denied.

The complete text of DD–97–22 follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., 20003–1527 and at NRC's Region I Office located at 475 Allendale Road, King of Prussia, PA, 19406–1415.

A copy of this Decision will be filed with the Secretary of the Commission for Commission review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 17th day of September, 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

Director's Decision Under 10 CFR 2.206

I. Introduction

By a Petition addressed to the Director, Office of Nuclear Material Safety and Safeguards (NMSS), dated October 10, 1995, Maryann Wenli Ma, M.D., Ph.D., and Bill Wenling Zheng, M.D., Ph.D. (Dr. Ma and Dr. Zheng or Petitioners) requested that the Nuclear Regulatory Commission (NRC) take action with respect to the National Institutes of Health (NIH or the Licensee).

Petitioners request that NRC suspend or revoke the materials license of NIH, NRC License No. 19–00296–10, pending resolution of the issues raised by the Petition, and that NRC take other appropriate enforcement action, including the imposition of civil penalties against NIH for willful and reckless violations of 10 CFR part 20.

As a basis for their requests, the Petitioners assert that NIH has willfully and recklessly committed numerous violations of 10 CFR part 20. Broadly stated, the Petitioners assert that, as the direct and proximate result of NIH's: (1) Deliberate failure to control and secure radioactive materials in violation of 10 CFR § 20.1801 and 20.1802; (2) failure to maintain an effective bioassay program; and (3) failure to otherwise adhere to the requirements of 10 CFR part 20; Dr. Ma was contaminated with phosphorus-32 (P–32), resulting in both her and her unborn fetus receiving intakes of radioactive material significantly in excess of regulatory limits, additional NIH employees were also internally contaminated with P–32, and failure of NIH to take proper actions to assess accurately the level of Dr. Ma's internal contamination or provide appropriate medical care and follow-up treatment. A more detailed description of the concerns raised by Petitioners appears in Section III., below.

By letter dated October 30, 1995, Carl J. Paperiello, Director, NMSS, acknowledged receipt of the Petition and denied Petitioners' request for immediate suspension or revocation of the NIH license because, although certain weaknesses had been identified in the 1995 inspections of NIH, these weaknesses were not sufficiently widespread or egregious as to warrant suspension or revocation of the license.

On November 2, 1995, NRC issued a Demand for Information (EA 95–240) to NIH, requesting that NIH respond to the concerns raised in the Petition. On December 11, 1995, NIH submitted its "Response to Demand for Information (EA–95–240)." John N. Weinstein, M.D., Ph.D. (Dr. Weinstein), submitted a response to the Petition dated December 15, 1995.

On March 25, 1996, Petitioners supplemented their Petition in a written reply to the Licensee's December 11, 1995, "Response to Demand for Information (EA–95–240)." In their supplemental Petition, Petitioners contend that NIH's repeated denials that it has any problem with its security over radioactive materials suggest that the NIH radioactive materials license should be suspended or revoked, because the Licensee poses a threat to public health and safety, the Licensee has not responded adequately to other enforcement actions, and is unwilling or unable to comply with NRC requirements. On July 10, 1997, Petitioners submitted another supplement to their Petition, requesting immediate revocation or suspension of the NIH license on the grounds that NIH continues in its failure to implement and maintain a program to oversee licensed radioactive materials sufficiently securely to prevent another contamination incident of the type Dr. Ma experienced in 1995. By letter dated August 5, 1997, the supplemental Petition was acknowledged and the request for immediate action was denied because NIH has made continuing progress in improving the security and control of licensed radioactive material since the 1995 contamination event. By letter dated September 10, 1997, NIH responded to the July 10, 1997, supplement to the Petition.

II. Background

NRC license No. 19–00296–10 is a broad-scope license that authorizes possession and use of radioactive material for medical diagnosis, therapy, and research in humans, as well as non-human research and development, at facilities in Bethesda, Rockville, Baltimore, and Poolesville, Maryland. The NIH main campus in Bethesda has 21 buildings housing nearly 3000 biomedical research laboratories. There are more than 800 Authorized Users and more than 5000 supervised users of radioactive material under NIH's licensed program. NIH's Materials License No. 19–00296–10, originally issued on December 7, 1956, was renewed on June 16, 1997, and will expire on June 30, 2002.

The internal contamination of Dr. Ma was discovered by Dr. Zheng (Dr. Ma's husband) during a survey of the NIH laboratory in which they both worked, on the evening of June 29, 1995. At 5:58 p.m., Dr. Zheng reported the internal contamination of his wife to the NIH emergency number, and then to their immediate supervisor, Dr. Weinstein, who was on the premises at the time. Dr. Weinstein notified the NIH Radiation Safety Branch of Dr. Ma's contamination.

Shortly after 6:00 p.m., an NIH ambulance with two emergency medical technicians responded to the scene, and at approximately 6:40 p.m., two personnel from the NIH Radiation Safety Branch (RSB) responded to the scene. Petitioners told RSB personnel that they believed Dr. Ma had been internally contaminated as a result of eating leftovers she had stored in a conference room refrigerator. The RSB performed surveys with portable radiation detection instruments to determine whether radioactive contamination was present in the laboratory, the adjacent hallways and corridors, and in the conference room. The RSB took smears of Dr. Ma's hands,

neck and face to determine if any of the contamination was removable and then had Dr. Ma change out of her clothes into clean scrubs to see if her clothing was radioactive. None of the smears, clothing, or surveys of Dr. Ma showed external contamination. The RSB asked Dr. Ma to submit a urine sample. The sample was surveyed by the RSB and found to contain radioactivity (later determined to be P–32), indicating that Dr. Ma's contamination was internal. Shortly after 8:00 p.m., the NIH ambulance departed with Dr. Ma en route to Holy Cross Hospital (Holy Cross).

NIH RSB staff contacted the on-call physician from the Radiation Emergency Assistance Center/Training Site (REAC/TS)[1] in Oak Ridge, Tennessee, and had the REAC/TS physician speak directly with the emergency room (ER) physician at Holy Cross. The REAC/TS physician stated that he discussed with the Holy Cross ER physician the possibility of administering a phosphate solution for dilution and displacement of the P–32, but that the ER physician choose not to follow this suggestion. The REAC/TS physician also advised the ER physician of the need to collect 24-hour urine samples for determination of Dr. Ma's occupational radiation dose. After consultation with REAC/TS and the NIH Radiation Safety Officer (RSO), the Holy Cross ER physician ordered intravenous infusions of fluids (hydration) in order to dilute Dr. Ma's internal contamination.

The Petitioners did not return to work in the NIH Laboratory of Molecular Pharmacology after the discovery of Dr. Ma's contamination, but eventually returned to work at other laboratories at NIH.

On June 30, 1995, NIH informed an NRC inspector on site at the time that Dr. Ma had been internally contaminated with P–32. On June 30, 1995, NRC initiated an Augmented Inspection Team (AIT) evaluation of the event and presented its preliminary findings to NIH on August 8, 1995. During October 23–24, 1995, and November 6–10, 1995, the NRC staff conducted two special team inspections of NIH. On December 21, 1995, NRC Inspection Report No. 030–01786/95–203 was issued describing the results of those inspections. The AIT issued a redacted version of its report on January 29, 1996, and, upon completion of NRC's investigation, issued the full, unredacted report on January 13, 1997. NRC's Office of Investigations (OI) began an investigation on June 30, 1995. Additionally, the Federal Bureau of Investigation began an investigation, as did the Department of Health and Human Services Office of the Inspector General, and the NIH Police Department. These investigative groups worked in cooperation with each other and shared their findings on an ongoing basis. On January 24, 1997, NRC's OI issued its report, "National Institutes of Health: Wrongful Administration of P–32, Case No. 1–95–033." That report and its associated exhibits are being publicly released concurrent with issuance of this Director's Decision.

NIH performed an assessment of Dr. Ma's intake of P–32, the resultant radiation exposure received by Dr. Ma, and the radiation exposure received by her fetus. In its initial notification to NRC on July 3, 1995, NIH indicated that its estimated ingestion for Dr. Ma was approximately 300 microcuries (μCi) or 11.1 megabequerel (MBq) of P–32.[2] On August 29, 1995, NIH reassessed Dr. Ma's dose and calculated her effective dose equivalent to be 4.17 rem [41.7 millisievert (mSv)], based upon an intake of 500 μCi (18.5 MBq), and the dose to her fetus to be 3.2 rem (32 mSv). Most recently, on July 30, 1996, NIH revised its committed effective dose equivalent (CEDE) estimates for Dr. Ma to between 4.7 and 7.0 rem (47 and 70 mSv), corresponding to an intake range of between 570 and 840 μCi (21.1 and 31.1 MBq). The revised dose to the fetus was between 3.7 and 5.4 rem (37 and 54 mSv). Additional discussion of NIH's dose estimates appears in Section III.K., below.

NRC's estimates indicate that Dr. Ma ingested between 30.3 and 48.1 MBq (820 and 1300 μCi) of P–32. Based on these values, Dr. Ma's estimated internal CEDE was between 80 and 127 mSv (8.0 and 12.7 rem). The annual occupational exposure limit applicable to Dr. Ma was, however, 5 mSv (5 rem) total effective dose equivalent per 10 CFR § 20.1201(a)(1)(i). The estimated dose received by Dr. Ma's fetus was between 51 and 81 mSv (5.1 and 8.1 rem).

NRC estimated that of the 26 other NIH employees who received P–32 contamination from a water cooler situated in a hallway near the Petitioner's laboratory, including Dr. Zheng, one individual who was not an occupational radiation worker received a dose of between 1.5 and 2.5 mSv (150 and 250 millirem), in excess of the applicable dose limit of 1.0 mSv (100 millirem) for members of the public specified by 10 CFR § 20.1301.

NRC issued a series of Confirmatory Action Letters (CALs) to NIH between July 21, 1995, and June 7, 1996, addressing various measures to be taken by NIH, such as: (1) Reduction of the possibility of further ingestion of radioactive material by NIH employees; (2) determination of the full scope of the personnel contaminations at NIH; (3) further enhancement and training of NIH staff regarding security of radioactive material; (4) documentation of corrective actions with respect to enforcement of a new NIH security policy; (5) modifications to the surveillance plan for NIH laboratories; and (6) other specific actions for inspections for NRC compliance.[3]

NRC continued its onsite inspection through July 28, 1995. The AIT conducted a technical debrief with NIH RSB management and staff on August 3, 1995, and with NIH senior management on August 8, 1995. Further NRC inspection activities, including assessment of radiation dose to the exposed individuals, and evaluation of a third-party independent dose assessment, continued through November 15, 1995.

On August 23, 1996, NRC issued a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty of $2500 (EA 96–027) to NIH for failure to physically secure licensed material or maintain surveillance over it to prevent unauthorized removal. Other violations of NRC requirements were also cited, involving: (1) Workers not wearing extremity dosimetry, or returning dosimetry promptly each month, as required; (2) users obtaining radioactive materials without providing required information regarding the identity of the intended user(s) or the signature of the authorized investigator; (3) researchers performing licensed activities without first receiving the required training; and (4) failure to perform thyroid bioassay measurements of researchers who handled gigabequerel (millicurie (mCi)) quantities of volatile iodine-125. On May 20, 1997, NRC issued an Order Imposing Civil Monetary Penalty in the amount of $2500 (EA 96–027), which NIH paid on June 6, 1997.

[1] REAC/TS is a Department of Energy response asset that maintains a radiological emergency response team consisting of physicians, nurses, health physicists and other support personnel. It is on 24-hour call to provide first-line responders with consultative or direct medical and radiological assistance at the REAC/TS facility, accident site, or attending hospital.

[2] Because the system of units employed by NIH and the Petitioner's Consultant were non-metric, the English unit is listed first, followed by its metric equivalent in brackets. However, for those instances where NRC has issued a report, metric units are listed first as primary units, followed by the English units in brackets, which is the usual NRC style.

[3] CAL 1–95–011 (July 21, 1995); CAL 1–95–011, Rev. 1 (July 21, 1995); CAL 1–95–016 (October 27, 1995); CAL 1–95–018, Supplement 1 (November 8, 1995); CAL 1–95–018, Supplement 2 (December 1, 1995); and CAL 1–95–018, Supplement 3 (June 7, 1996).

III. Discussion

A. Violations of NRC Requirements for Security and Control of Licensed Material

Petitioners assert that, as the direct and proximate result of NIH's deliberate failure to control and secure radioactive materials in violation of 10 CFR §§ 20.1801 and 20.1802, and to otherwise adhere to the requirements of 10 CFR part 20, Dr. Ma was contaminated with P–32, resulting in both her and her unborn fetus receiving an intake of radioactive material in excess of regulatory limits. In addition, Petitioners state that 26 other NIH employees, including Dr. Zheng, were also internally contaminated with P–32.

Petitioners state that NIH has been unwilling to comply with NRC safety requirements in accordance with 10 CFR part 20. Specifically, Petitioners state that during the summer of 1994, NIH officials deliberately failed to lock up radioactive material as part of an experiment with a liberalized policy concerning security and use of radioactive materials, which effectively excused laboratories from locking up radioactive materials, in violation of 10 CFR § 20.1801. NIH requested a license amendment on October 31, 1994, to establish and permanently implement a previously submitted "Interim Security Policy," and an exemption from the requirements to secure (under lock and key), or maintain constant surveillance of, licensed radioactive materials not in excess of 10 times the activity listed in Appendix C to 10 CFR part 20, on a per-container basis. Petitioners state that the resultant breakdown in security led to the issuance of CAL 1–95–018, on October 27, 1995, which required NIH to take immediate steps to secure radioactive materials. Petitioners state that NIH objected to complying with security regulations, and did not withdraw its application for an exemption from the security requirements until after the contamination of Petitioners.

Petitioners state that NRC's repeated discovery of unsecured radioactive materials and of absence of security controls in several NIH laboratories indicates a systemic failure of security rather than an isolated problem, and that NIH's lax control and security of radioactive materials created an environment where acts such as the deliberate contamination of Dr. Ma were bound to occur, given that the means to commit such an offense were readily available. Petitioners state that security over radioactive materials used in the Petitioners' laboratory was nonexistent. Specifically, the refrigerator and freezer used to store radioactive reagents were not locked, the lab was frequently left unattended during non-working hours, and there were no procedures to document individuals' access to the refrigerator or freezer, or to check to see if records were kept regarding the documented use of radioactive materials in that laboratory.

Petitioners state that despite NIH's reckless disregard of NRC requirements, since 1986 NRC has taken no enforcement action against NIH or the National Cancer Institute (NCI)[4] for repeated violations of 10 CFR Part 20 regulations related to security and control of radioactive material, occupational exposure, notification of exposure, incineration, surveys, monitoring, and dosimetry.

Contrary to the assertions in the Petition, since 1986, and before the June 1995 contamination incident, NRC had taken enforcement action against NIH for violations of NRC requirements concerning security and control of radioactive materials, occupational overexposures, surveys, monitoring and dosimetry.[5] Although many of these enforcement actions involved Notices of Violation for SL IV violations and no civil penalty, they still constitute enforcement action taken by NRC.[6]

The requirements of 10 CFR 20.1801 and 20.1802 to secure and control licensed material are absolute in that the rules specify no radioactivity thresholds. NIH established a threshold amount for the security of radioactive materials located in laboratories based on 10 CFR part 20, Appendix C, quantities and NUREG/CR–6204, "Questions and Answers Based on Revised 10 CFR part 20" (January 1994). The answer to Question 129 indicates, in part, that the security requirements described in 10 CFR 20.1801 and 20.1802 will not be enforced for quantities of radioactive material described in 10 CFR part 20, Appendix C, which are exempt from labeling by 10 CFR 20.1905(a). By an amendment request dated October 31, 1994, NIH asked for permission to store up to ten times Appendix C quantities of radioactive material per container in posted radioactive material use areas without the requirement for direct oversight or lock and key. In March 1995, NIH requested an exemption from the requirements of 10 CFR 20.1801 and 20.1802 to store less than Appendix C quantities in unlocked (and unattended) refrigerators or freezers in corridors. NRC approved the NIH request in June 1995 because these quantities did not rpquire labeling.[7] In response to the event of June 1995, NIH revised its security policy for

[4] NIH and NCI are two different licensees. Science Applications International Corp. holds NRC broadscope license for activities at the NCI-Frederick Cancer Research and Development Center facility located at Fort Dietrick in Frederick, MD (NRC License No. 19–21091–0). Prior to March 1995, the license was held by Program Resources Incorporated (PRI). Since 1985, NRC has issued to PRI six NOVs associated with either cited severity level (SL) IV violations or a monetary civil penalty: (1) During a February 1995 inspection, three SL IV violations were cited for inadequate surveys for P–32 personnel contamination, failure to perform thyroid bioassays, and failure to perform proper package surveys; (2) during a January 1993 inspection, two SL IV violations were cited for failure to wipe test packages and perform thyroid bioassays; (3) during a February 1991 inspection, one SL IV violation was cited for failure to perform package surveys; (4) during a January 1989 inspection, one SL IV was cited for failure to perform survey instrument calibration; (5) a $2500 Civil Penalty was issued on February 27, 1987, for an SL III violation from an inspection performed earlier that month; and (6) a December 1986 inspection resulted in five violations being cited for extremity overexposure, inadequate training, improper transfer and disposal of radioactive material, and exceedance of the license possession limits.

[5] (1) The June 11–13, 1990, inspection resulted in an NOV categorized at an SL IV, for failure to obtain specific user estimates of solid radwaste generation, as well as other non-cited violations for loss of radioactive material that was licensee-identified (Report No. 90–001). (2) The July 8–12, 1991, inspection resulted in an NOV categorized at an SL IV for failure to secure radioactive material (Report No. 91–001). (3) The July 20–24, 1992, inspection identified as inadequate dose assessment for a iutetium-177 contamination incident, and resulted in an NOV characterized as an SL IV (Report No. 92–001). (4) The January 13, 1993, inspection resulted in an escalated enforcement action (EA 93–009) categorized at two SL IVS and one SL III for failure to survey after use of radioactive material, a failure to supply dosimetry for a P–32 worker, and a P–32 contamination extremity overexposure, respectively (Report No. 93–001). (5) The April and May 1994 inspection, resulted in enforcement action (EA 94–123) categorized as two SL IVS for failure to secure, as well as a failure to survey, after using radioactive material (Report No. 94–001). The security violations from the April-May 1994 inspection also resulted in the issuance of a CAL on May 5, 1994. On July 12, 1994, an additional security violation resulted in the loss of a package containing 2.6 MBq (70 μCi) of iodine-125. The 1994 security violations were discussed at an enforcement conference held with the Licensee on July 27, 1994, and subsequently were cited as an SL IV in an NOV issued to NIH on August 16, 1994. (6) During the April and May 1994 inspections, an apparent violation was identified for incinerator operations (Report No. 94–001). On August 10, 1994, however, NIH informed NRC that it had permanently discontinued incineration operations at NIH in May 1994. Consequently, no enforcement action regarding incineration was taken.

[6] *See* "General Statement of Policy and Procedures for NRC Enforcement Actions," 10 C.F.R. Part 2, Appendix C (1986–1995) and NUREG–1600, "General Statement of Policy and Procedures for NRC Enforcement Actions" (July 1995), Section VI.

[7] See NMSS Technical Assistance Request dated June 19, 1995, from L. Camper, NRC Headquarters to R. Bellamy, NRC Region I.

radioactive materials to require that all licensed material must be in locked storage, or in a locked room, if otherwise unattended, effective October 26, 1995. On January 19, 1996, NIH submitted a license amendment to, among other things, permit licensed material that is exempt from the labeling requirements of 10 CFR 20.1905(a) to be exempted from the revised October 26, 1995, NIH security policy. NRC renewed the NIH license on June 13, 1997, but did not authorize any exemptions to the security and control requirements of 10 CFR 20.1801 and 20.1802.

Petitioners are correct in stating that there have been security and control problems at NIH that required amelioration. In particular, the failure to secure refrigerators and freezers used to store radioactive reagents, and the failure to secure or maintain surveillance over laboratories, formed the basis for a series of NRC enforcement actions. Several CALs were issued to address security and control of radioactive material after the June 1995 contamination of Dr. Ma.[8] On August 23, 1996, NRC issued a NOV and Proposed Imposition of Civil Penalty of $2500 (EA 96–027) to NIH for failure to physically secure licensed material or maintain surveillance over it to prevent unauthorized removal. On May 20, 1997, NRC issued an Order Imposing Civil Monetary Penalty in the amount of $2500 (EA 96–027), which NIH paid on June 6, 1997. Based on the inspections and the investigation, the NRC staff does not conclude that these violations were willful, contrary to the assertions of Petitioners. Moreover, although the AIT Report stated that the Licensee's violations of NRC security and control requirements could have been a contributing factor, after review of the various inspection and investigative results, the NRC staff concludes that the violations of NRC security and control requirements did not contribute to the internal contamination of Dr. Ma, her fetus, or the other 26 NIH employees, including Dr. Zheng.

Since the 1995 contamination event at NIH, NRC performed several inspections of NIH. Additionally, over this period, NIH performed 90,857 laboratory audits. The most recent NRC inspection report in July 1997 found that NIH has made continuing and significant progress in improving the security and control of licensed radioactive material since the 1995 contamination event. For example, the average rate of noncompliance with NRC security and control requirements has declined to 0.25 percent of laboratories surveyed, from an average rate of 0.57 percent since the last NRC inspection of September 1996. *See* NRC Inspection Report No. 030-01786/97–001 (July 29, 1997). Additional enforcement action for security and control violations is not warranted.

In view of the above, Petitioners presented valid concerns regarding security and control of licensed material at NIH, and their request for enforcement action with respect to violations of NRC security and control requirements was granted in part as described above.

B. Dosimetry, Radiation Safety Training, and Ordering Radioactive Materials

Petitioners state that Dr. Weinstein, the Senior Investigator in the Laboratory of Molecular Pharmacology and the former supervisor of Petitioners, insisted that the Petitioners begin working with radioactive materials before they were given radiation safety training and, on two occasions, directed the Petitioners to use Dr. Weinstein's and another Authorized User's identification number to order radioactive material before Petitioners were assigned their own identification numbers. Petitioners state that the AIT found that during the first 3 months of their research, the Petitioners were given radioactive materials that had been ordered by a researcher who had since left NIH, which was not reported by the Authorized User, Dr. Weinstein, as required on NIH Form 88–1; and that in November 1994, Petitioners were using phosphorus-33 (P–33), a low-energy beta-emitting isotope requiring whole body dosimetry (or whole body badges) during its use, but that Petitioners had not been trained to use radioactive material. In addition, Petitioners state that an NRC interview of a former researcher revealed that she had ordered radioactive materials for herself and shared them with other researchers, although these users were not listed on NIH's Form 88–1.[9]

NIH worker training, use of identification numbers for procurement of licensed materials with NIH Form 88–1, and dosimetry issuance and collection, were reviewed during the October 23–24 and November 6–10, 1995, NRC inspections. As a result of those inspections, NRC cited NIH for several violations. Specifically, the Licensee was cited for allowing users to order radioactive materials electronically between October 3 and November 20, 1995, without the signature of the authorized investigator. This violation was cited as a SL IV (EA 96–027). Additionally, NIH was cited for permitting the use of sulfur-35, P–32, and P–33 by two researchers in October 1994, before providing the researchers with the training course entitled, "Radiation Safety in the Laboratory," on November 29, 1994. This violation was also cited as an SL IV (EA–96–027). NIH was not cited for Petitioners' use of P–33 without the use of whole body dosimetry because neither the NIH License nor NRC regulations require such dosimetry for low-dose material. *See* Section III.C. and n. 12, below. NIH was cited, however, for violations of license requirements to use extremity dosimetry when using more than 185 MBq (0.5 mCi) of P–32 (EA 96–027).

Accordingly, Petitioners' request for enforcement action against NIH for violations of dosimetry, training, and ordering radioactive materials requirements was granted in part as described above.

C. NIH Routine Monitoring of, and Dosimetry for, Petitioners

Petitioners state that Dr. Ma was internally contaminated, in part as a result of NIH's failure to document Dr. Ma's exposure history at NIH, and failed to properly assess Dr. Ma's internal radiation doses, in violation of 10 CFR §§ 20.1202, 20.1204, 20.1501, and 20.1502. Petitioners state that NIH did not routinely monitor Petitioners' exposure to radiation and radioactive material through use of an appropriate dosimetry program. Specifically, the dosimetry given to Petitioners when they first arrived at NIH was never collected or analyzed, no dosimetry was assigned to them at the time of Dr. Ma's contamination, and as a result Petitioners were not wearing dosimetry at the time of Dr. Ma's contamination. Petitioners state that in November 1994, Petitioners were using P–33, a beta-emitting isotope requiring whole body dosimetry during its use, but Petitioners were not wearing required dosimetry, and Petitioners had never been issued dosimetry by Dr. Weinstein although they used P–32 in December 1994, and until March 1995.

NIH was not required to routinely monitor Petitioners' occupational exposure to radiation, or to document their occupational exposure history. 10 CFR § 20.2106(a), "Records of Individual Monitoring Results," provides, in part, that "Each licensee shall maintain records of doses received by all individuals for whom monitoring was required pursuant to § 20.1502 * * *." (Emphasis added) 10 CFR § 20.1502(a) provides that "Each licensee shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by—(1) Adults likely to receive, in 1 year from sources external to the body, a dose in excess of 10 percent of the limits in § 20.1201(a)." (Emphasis added) Based on NRC's review of information maintained by NIH for the past 10 years regarding occupational exposures at NIH, it is evident that it is not likely that any NIH user of NRC-licensed radioactive materials would exceed 10 percent of the applicable occupational standard in 10 CFR § 20.1201.[10]

Accordingly, issuance of personnel dosimetry monitoring, although done by NIH as a prudent measure in operating its Radiation Safety Program, was not required by 10 CFR § 20.1502. Since monitoring of Petitioners was not required, the recording requirements of 10 CFR § 20.2106 were not applicable to Petitioners.[11]

Condition 29 of the NIH License required the use of extremity (wrist or finger) monitors by occupational workers using P–32 in quantities greater than 0.5 mCi (185 MBq), but did not require the use of whole-body dosimetry by persons using P–32 or P–33.[12] Based on a review of the Petitioner's laboratory notebooks, it appears that Dr. Ma did not use P–32. Additionally, Dr. Ma states that she advised her obstetrician that she had previously been working with low dosage material (P–33) and, upon learning of her pregnancy, stopped handling radioactive isotopes altogether. Nonetheless, NIH internal documents demonstrate that NIH provided whole body dosimetry to Petitioners on October 28, 1994.[13] Although Petitioners' laboratory notebooks indicate that Dr. Zheng used P–32 on October 17, 1994, 11 days before receipt of a whole body dosimeter, this was not a violation of NIH License Condition 29. Moreover, because Petitioners never worked with more than 185 MBq (0.5 mCi) of P–32, they were not required to wear extremity dosimetry. Additionally, since the monitoring required by License Condition 29 is not required pursuant to 10 CFR § 10.1502, the results of that monitoring would not be subject to NRC dose recording requirements, contrary to the Petitioners' assertion. See n. 11, *supra*.

NRC conducted two special team inspections on October 23–24, 1995, and November 6–10, 1995, in which NIH personnel dosimetry issuance and collection were evaluated. Although review of exposure records during this inspection indicated that occupational doses to individuals from exposure to licensed materials were well below NRC limits, NIH was cited for one SL IV violation involving the failure to issue, wear, and return, individual monitoring devices (EA 96–027).

Accordingly, Petitioners' request for enforcement action against NIH for violations of monitoring and dosimetry requirements was granted, in part, as described above.

D. Inventory Control of Radioactive Materials

Petitioners assert that NIH exercised poor inventory control of radioactive materials. Specifically, if NIH had accurately monitored the use and disposal of radioactive materials, particularly P–32, it might be possible to ascertain who had ordered, but not used, the requisite amounts of P–32 within the timeframe of Petitioners' contamination, and possibly assist law enforcement officials to ascertain who contaminated Petitioners. Petitioners relied on the findings of the AIT that: (1) The accuracy of inventory records is questionable because researchers only estimate the amount of material removed from each vial, radioactive decay is rarely accounted for, and if the vial is not emptied (because the expiration date has passed), the users do not check the balance before disposal; and (2) the computerized inventory system NIH used to replace Form 88–1 does not comply with the NIH license because the electronic document does not include the signature of the Authorized User, and has no mechanism to reasonably verify that an Authorized User had placed an order for radioactive materials and had received those materials.

NIH places ultimate responsibility for the proper use of radioactive material on the Authorized User who orders the material. Authorized Users are permitted by NIH policy to order and share radioactive material with other users, and a Supervised User may work under more than one Authorized User. If an Authorized User wishes to transfer responsibility for material ordered under her/his authorization, an NIH 88–1 form must be completed transferring responsibility to another Authorized User. The RSO stated that routine laboratory audits include checks to see who is using radioactive material and that unauthorized use is dealt with severely.

NIH License Condition 29 makes Authorized Users responsible for maintaining a record of the receipt, use, and disposal of radioactive materials under their authorization by use of Form NIH–88–16, "Isotope Receipt, Utilization, and Disposal Record" or equivalent. In addition, the RSO, in a memorandum dated October 3, 1995, reminded Authorized Users that transfers among other Authorized Users must be documented by completion of the same form and submittal of the form to the RSB before the transfer. During NRC inspections conducted October 23–24 and November 6–10, 1995, the inspectors were informed, during discussions with Authorized Users and RSB staff, that each shipment of radioactive material delivered has normally been accompanied by Form NIH 88–1. Authorized Users stated that they knew that they were required to

[8] On July 21, 1995, CAL 1–95–011 was issued, which described the actions that NIH would take to reduce the possibility of further ingestion of radioactive material and to determine that the full scope of the personnel contaminations was known. On July 21, 1995, CAL 1–95–011, Revision 1, was issued to clarify certain points in the first CAL. On October 27, 1995, NRC issued CAL 1–95–018, which described the actions that NIH would take following an NRC special inspection on October 23 and 24, 1995, to further enhance and train NIH staff regarding security of radioactive material. On November 8, 1995, NRC issued CAL 1–95–018, Supplement 1, to further document the corrective actions that NIH took with respect to enforcement of the new NIH security policy, modifications to the surveillance plan for NIH laboratories, and other specific actions for inspections for NRC compliance. On December 1, 1995, NRC issued CAL 1–95–018, Supplement 2, to adjust each deadline within CAL 1–95–018 and its supplement. This supplement described the ongoing upgrades, to the radioactive material security program, that required that any posted room or area which contained radioactive materials in use, radioactive waste, or radioactive materials in unsecured storage, would be required to be locked when unoccupied. On June 7, 1996, NRC issued CAL 1–95–018, Supplement 3, to further clarify issues with regard to security and control of licensed radioactive material in building corridors and laboratory freezers at NIH.

[9] These facts do not constitute a violation of NRC regulations or the NIH license.

[10] In addition, during 1995, 6374 individuals at NIH were issued monitoring devices. Only one individual (other than Dr. Ma) using NRC licensed materials exceeded 10 percent of the applicable occupational external dose standard (the total deep dose equivalent to this individual was reported as 550 millirem (5.5 mSv)).

[11] In addition, Regulatory Guide 8.34, "Monitoring Criteria and Methods to Calculate Occupational Radiation Doses" addresses the applicability of the dose recording requirements when monitoring is not required. Regulatory Guide 8.34, paragraph 1.4 states that "While the results of required monitoring are subject to the dose recording requirements of § 20.2106, the results of monitoring provided when not required by § 20.1502 are not subject to the dose recording requirements."

[12] License Condition 29 requires conduct of the NIH program in accordance with the NIH license application dated July 28, 1986. Attachment 10–D of the July 28, 1986, application states that persons using or in close proximity to persons using gamma emitters, P–32, or radiation-producing machines "* * * should wear body film badges." This is a recommendation, not a requirement, regarding whole-body dosimetry for only P–32. P–33 usage does not require any dosimetry. In addition, Attachment 10–D states that the "* * * license requires extremity monitors for P–32>0.5 mCi." *See* p. 35.

[13] NIH "Response to Apparent Violations in Inspection Report Nos. 030–01786/95–002 (Redacted) and 030–01786/95–203" (May 23, 1996), Exhibit AIT–AV2–1.

keep records of the material currently on hand after loss by decay or disposal of material, and all those interviewed used the Form NIH 88–1. The inspectors did not identify any instances in which the inventory was not being kept current.

Regarding the Petitioner's concern about the accuracy of inventory records, NIH has recognized a need to review its radioactive material accountability portion of the Radiation Safety Program. Accordingly, the NIH RSO directed a complete and thorough physical inventory for radioactive materials during the latter half of 1996.[14] As of June 23, 1997, this inventory was completed, and now serves as the baseline for an on-line, real-time tracking of all radioactive materials within the RSB's centralized database system. Each Authorized User receives a complete inventory of his/her materials from the centralized database each month and is requested by the RSB to adjust records consistent with his/her use and disposal of radioactive materials.

For the NIH Authorized User to track the use of individual items of NRC-licensed materials, a new computer-generated inventory and disposal form was developed and is currently in use at NIH. This system permits Authorized Users to make changes in users, if required, and to report disposal and other inventory changes to RSB for update in the centralized database. This system, not present before 1996, substantially enhances NIH's accountability for radioactive material. Increased accountability has received NIH senior management attention and is considered by NRC staff to be a potential deterrent to the use of licensed radioactive materials for unauthorized purposes.

Initial use of the computerized inventory system, however, involved violation of NRC requirements. NIH License Condition 29 requires that the radiation safety identification number and name of all persons who will use the radioactive material, the name and signature of the Authorized User, be entered on form NIH 88–1.[15] Between October 3 and November 20, 1995, however, the licensee allowed users to order radioactive materials electronically, without the signature of the Authorized User. In addition, an NIH 88–1, submitted for order and use of radioactive materials received on September 9, 1994, did not include the radiation safety identification number and name of all persons who would use the radioactive material. NIH was cited for these irregularities as an SL IV violation (EA 96–027).

Accordingly, Petitioners' request for enforcement action against NIH for poor inventory control of radioactive materials was granted in part as described above.

E. Timeliness of NIH Emergency Personnel Response to Contamination Incident

Petitioners contend that NIH personnel responding to the scene of the incident failed to respond in a timely manner to the contamination event, resulting in Dr. Ma's transport to Holy Cross Hospital more than 3 hours after discovery of her contamination. Petitioners state that after Radiation Safety Branch (RSB) officials confirmed Dr. Ma's contamination, they took 1 hour searching for a shower to decontaminate her, that RSB officials surveyed the conference room and refrigerator, and that RSB officials directed Dr. Ma to provide a urine sample, which confirmed that her contamination was internal.

Dr. Zheng reported the internal contamination of Dr. Ma to the NIH emergency number at approximately 5:58 p.m., shortly after discovery of her contamination. The first NIH personnel (two emergency medical technicians) responded immediately and arrived on the scene with an ambulance at approximately 6:00 p.m. Dr. Zheng also notified Petitioners' immediate supervisor, Dr. Weinstein, who was on the premises at the time. Dr. Weinstein, the Authorized User, contacted the RSB at 6:00 p.m. and notified the Chief of the Radiation Safety Operations Section about the contamination incident. In addition, the NIH Fire Department independently notified the Deputy RSO, at approximately the same time, of a possible radioactive material contamination event involving an "injection of radioactive material." (The Deputy RSO is at the top of the emergency call list for response to incidents involving radioactive materials). The Deputy RSO advised the RSO of the report at approximately 6:00 p.m. and contacted the NIH Occupational Medical Service (OMS) for information on the incident.

At approximately 6:15 p.m., the first of two responding RSB health physicists was notified by the RSB receptionist that a second health physicist was on the phone with the RSB Section Chief talking about a possible contamination event in Building 37. The two responding RSB health physicists picked up spill and skin decontamination kits (which is a routine and necessary event response function) and responded to Building 37. Both health physicists met the Deputy RSO in the RSB parking lot at Building 21, and were informed that Dr. Ma was being transported to OMS at Building 10. The health physicists responded directly to OMS and were advised by the physician on duty that Dr. Ma was still in Building 37. The health physicists then responded to the fifth floor of Building 37, arriving at approximately 6:40 p.m.

To determine if Dr. Ma's contamination was external or internal and to identify the source of the contamination, the RSB took several measures. The emergency medical technicians and the RSB both evaluated Dr. Ma's condition and questioned Petitioners about the source of her contamination. The RSB took smears of Dr. Ma's hands, neck, and face to determine if any of the contamination was removable and then had Dr. Ma change out of her clothes into clean scrubs to see if her clothing was radioactive. None of the smears, surveys, or clothes of Dr. Ma showed external contamination.[16] The RSB asked Dr. Ma to submit a urine sample at approximately 7:00 p.m. The sample was surveyed by the RSB and found to contain radioactivity, indicating that the contamination was internal. The RSB health physicists performed surveys with portable radiation instruments to determine whether radioactive contamination was present in the laboratory, adjacent hallways and corridors, and in the conference room. Shortly after 8:00 p.m., NIH transported Dr. Ma to Holy Cross Hospital, where Dr. Ma arrived at approximately 8:20 p.m. Holy Cross was selected over Suburban Hospital, which was much closer, because Suburban Hospital did not have an obstetrics department.

Based on the inspections and the investigation, NRC staff concludes that NIH personnel responded properly and in a timely fashion to the incident. The actions taken by NIH to determine whether Dr. Ma was externally or internally contaminated and to identify the source of her contamination are time-consuming steps that must be taken during event response to ensure that the spread of radioactive contamination is prevented, especially when the event involves the transfer of personnel off the licensee's site and into a hospital setting. Moreover, because there were no signs of a life-threatening condition or immediate danger to Dr. Ma, which would have made immediate transport necessary, the Licensee's attention to these measures was eminently reasonable before transport of Dr. Ma to the hospital.

F. Defects in NIH Emergency Response to Dr. Ma's Contamination

Petitioners state that NIH's emergency response to Dr. Ma's contamination was defective in that NIH gave inappropriate and inadequate information and advice to Dr. Ma regarding her level of contamination, and failed to advise Dr. Ma concerning precautions to prevent spreading that contamination. Specifically, Petitioners state that one of the two RSB health physicists who responded to the event erroneously told Petitioners, before Dr. Ma's transport to Holy Cross Hospital and before any analysis concerning the extent of Dr. Ma's contamination, that the exposure Dr. Ma received was well within the allowable limits, that there was no risk to her, and, although it was not certain, that there appeared to be no problem posed to Dr. Ma's fetus. Additionally, Petitioners state that no one warned Dr. Ma about the possibility of vomiting as a consequence of her contamination, or instructed Dr. Ma as to appropriate steps to prevent contamination of her home as a result of vomiting. As a result, Dr. Ma contaminated her car and apartment.

The Petitioners are correct in stating that at the time that the two RSB staff responded to the event, there was no way (within the first few minutes) to determine if the radiation exposure that Dr. Ma received was within NRC regulatory limits, or if the dose received was harmful. Indeed, the only thing that could be determined at that time was whether or not the radioactive contamination was internal or external, which the RSB staff did effectively.

There are no NRC requirements concerning advice by licensees to their employees during emergencies concerning the possibility of further contamination of the employee's home and belongings. As occupational radiation safety workers at NIH, the Petitioners were required to, and did, complete formal radiation safety training on November 29, 1994. As part of that training, personnel protective procedures were described to limit the exposures from both external and internal sources of radiation. In addition, as part of their required daily radiation surveys, the Petitioners were aware of the potential hazards associated with contamination and radioactive material in their control and the need to isolate and remove any detected contamination.

On the evening that Dr. Ma became internally contaminated with P–32, the RSB staff at NIH and the hospital staff at Holy Cross informed Dr. Zheng that Dr. Ma's blood and urine were contaminated. The next day, the RSB staff surveyed the Petitioners' automobile because Dr. Ma had indicated that she had vomited in it earlier that morning. RSB staff found contamination inside the passenger's side of the car and decontaminated the affected area immediately. RSB staff also surveyed the Petitioners' apartment where contaminated areas were cleaned up or physically removed material for radioactive decay. Effective communications during emergencies are difficult, at best, and might have been improved by reminding Dr. Ma of the potential for not only her excreta being contaminated, but also any other bodily fluids released as well. However, the failure to fully advise Dr. Ma of the potential spread of contamination via body fluids was not a violation of any NRC requirement.

Petitioners also state that the NIH response to Dr. Ma's contamination was defective because RSB officials failed to secure the area, thus providing an opportunity for NIH personnel to tamper with or contaminate evidence.[17] In fact, before departing the scene of the event on June 29, 1995, NIH RSB personnel locked the conference room and marked it with security tape. The NIH RSB also asked Dr. Weinstein to secure the laboratory, which he did by locking it. On June 30, 1995, the NIH RSB changed the locks to the conference room, and again locked the laboratory and then secured it with police tape. Based on a review of the evidence, NRC concludes that NIH took all reasonable measures to secure the scene after responding to the event.

G. NIH Conduct of Surveys After Contamination Incident

Petitioners state that in violation of 10 CFR § 20.201(b) and an October 14, 1992, commitment by NIH to emphasize to all users the importance of notifying Radiation Safety promptly of spills of radioactive materials when there is personnel contamination, NIH failed to conduct surveys reasonably necessary under the circumstances surrounding discovery of Dr. Ma's contamination on June 29, 1995, and thus failed to detect P–32 contamination of a water cooler until July 14, 1995, which caused an additional 26 people, including Dr. Zheng, to become internally contaminated.

NRC stated in its AIT report of January 13, 1997, that because NIH did not survey the water cooler in the corridor near Petitioners' laboratory until July 14, 1997, 26 other individuals (besides Dr. Ma) were internally contaminated with P–32 by drinking water from the cooler. After review of all the evidence, however, the staff concludes that, although it would have led to a more desirable outcome to have identified the contaminated water cooler earlier, under the circumstances, NIH conducted all reasonably necessary surveys. When NIH safety response personnel were called to the scene, Dr. Ma and Dr. Zheng insisted that Dr. Ma had been contaminated by food that she had stored in the conference room refrigerator. Dr. Ma and Dr. Zheng also told RSB personnel that they brought all their own food and beverages to work with them. Immediately after the event, Dr. Ma and Dr. Zheng denied that they drank any liquid from Building 37, and stated that they brought all liquids from home. In the days after the incident, Dr. Zheng denied drinking water from the water cooler. Nonetheless, NIH sought to determine if other individuals also had been internally contaminated. After specimens provided by other NIH employees on July 13, 1995, demonstrated their internal contamination with P–32, and in an attempt to identify a common source of contamination, NIH surveyed the water coolers and coffee stations on the fifth floor of Building 37 on July 14, 1995, and identified contamination in a water cooler located in the hallway. Only later

[14] See letter from M. Gottesman, NIH, to R. Blough, NRC Region I, dated June 23, 1997.

[15] License Condition 29 requires conduct of the NIH program in accordance with the NIH license application dated July 28, 1986. Item 10.6 of the July 28, 1986, application required, in part, that the Authorized User provide to the Radiation Safety organization a completed Form NIH 88–1, "Request for Purchase and Use of Radioactive Materials," for each incoming shipment before the materials are released to the investigator. Form NIH 88–1, was provided as attachment 10–F to the July 28, 1986, application. Form NIH 88–1 requires, in part, that the radiation safety identification number and names of all persons who will use the radioactive material, the name of the authorized investigator, and the signature of the authorized investigator, be entered on the form.

[16] Because Dr. Ma's clothing was not contaminated, there was no need for her to shower in order to remove external contamination. Petitioner's assertion that RSB took 1 hour searching for a shower to decontaminate Dr. Ma was not substantiated by the inspections or the investigation.

[17] Petitioners assert that this provided Dr. Weinstein with an opportunity to "find" a coffee cup with a centrifuge tube, both contaminated, that RSB officials attest were not present when they surveyed the same area earlier, and that, on his own initiative, Dr. Weinstein put the items in a plastic bag and moved the items into his lab and locked the door. In fact, two NIH employees had seen the coffee cup and centrifuge tube in the hallway near Petitioners' lab over a period of 1 to 7 days before the event. Additionally, the NIH RSB directed Dr. Weinstein to put these items aside for the NIH RSB's later examination and to secure the laboratory.

did Drs. Ma and Zheng tell the NIH RSB that they had drunk from the contaminated water cooler. Finally, although NRC's AIT inspection arrived at NIH on June 30, 1995, one day after the discovery of Dr. Ma's contamination, NRC staff did not consider the possibility that Dr. Ma might have been contaminated by using a water cooler or suggest surveying water coolers.

Accordingly, the NRC staff concludes that under the circumstances, NIH did not fail to conduct reasonably necessary surveys after discovery of Dr. Ma's contamination in violation of 10 CFR § 20.1501(b).[18]

H. Procedures for Collection of Samples in Contamination Events

Petitioners state that before Dr. Ma's internal contamination, NIH failed to have a procedure in place to provide clear instructions to Dr. Ma about sample collection. Petitioners note that John Glenn, Ph.D. (Dr. Glenn), Chief, Radiation Protection and Health Effects Branch, Office of Nuclear Regulatory Research, NRC, stated at the December 19, 1995, Commissioner briefing that NIH "* * * lost information about early excretion of P–32 because clear instructions were not provided to the exposed individual about sample instruction [collection of samples]." [19]

The events and transcript from the December 19, 1995, Commissioner briefing on The Generic Implications of Recent Events Involving Ingestion of Radioactive Material at Research Facilities reveal a similarity between the NIH AIT and the Massachusetts Institute of Technology (MIT) Incident Investigation Team (IIT) events in that both licensees lost information about early excretion of P–32 because clear instructions had not been provided to the exposed individual about how to collect samples. Although there is a considerable amount of guidance in the scientific literature available on the management of contaminated persons, NRC staff determined that it would be beneficial to provide guidance to licensees on the levels of intake that should be considered for medical evaluation, the available methods to reduce the committed dose resulting from an intake, as well as guidance for the collection of samples for analysis. Consequently, NRC staff has completed its evaluation of current regulatory guidance on the collection of samples for analysis, as well as the analysis of intakes, and will revise the existing regulatory guidance to licensees.

Accordingly, the Petitioners' request for NRC action to ensure adequate procedures and instructions to exposed persons for sample collection is granted as described above.

I. Dr. Weinstein's Interactions With NIH Radiation Safety Response Personnel

Petitioners state that Dr. Weinstein interfered with the NIH radiation safety response to Dr. Ma's contamination, and delayed transport of Dr. Ma to the hospital for emergency treatment. Specifically, Petitioners state that Dr. Weinstein performed smear tests; directed Dr. Ma to drink a lot of water; argued with NIH RSB officials about how to save urine samples in order to get a correct determination of the amount of radiation Dr. Ma had ingested; attempted to interfere with RSB personnel efforts to question and counsel Dr. Ma about the biological effects of radioactive materials and her contamination; tried to answer questions asked of Dr. Ma by RSB personnel; and attempted to usurp RSB functions by conducting a survey of the NIH conference room where Dr. Ma had stored her food.

Based on the inspections and the investigation, NRC concludes that Dr. Weinstein did not interfere with the reasonable and necessary NIH radiation safety personnel measures in response to the contamination event, delay Dr. Ma's transport to the hospital, or usurp or attempt to usurp RSB functions. Both Dr. Weinstein and Dr. Zheng provided assistance to NIH RSB personnel in counting smears taken from Dr. Ma by RSB personnel. Dr. Weinstein reasonably asked Dr. Ma to drink liquids. (Dr. Weinstein recalled that the NIH RSB recommended over the phone that Dr. Ma drink liquids to stay hydrated.) The Holy Cross Hospital ER physician and the NIH RSO agreed that intravenous hydration of Dr. Ma was advisable. Petitioners state that Holy Cross Hospital issued instructions to Dr. Ma on her discharge to maintain good hydration. Additionally, the RSB directed Dr. Ma to provide a urine sample for immediate survey, a measure necessary for the NIH RSB to determine with certainty whether Dr. Ma was internally contaminated and thus whether to transport Dr. Ma to the hospital. The evidence does not corroborate the Petitioners' assertion that Dr. Weinstein argued with RSB personnel about the proper procedure for saving specimens from Dr. Ma. NIH RSB personnel at the scene described Dr. Weinstein as urging Dr. Ma's immediate transport to the hospital, along with Dr. Zheng, and as being impatient. Dr. Weinstein was not the only non-RSB person to survey the conference room. Dr. Zheng told an NIH colleague that he had found radioactive contamination in the conference room by surveying it. That colleague and a second colleague then surveyed the conference room for contamination shortly before arrival of the RSB. Dr. Weinstein went to survey the conference room after a third and a fourth colleague had already begun surveying the room.

J. Medical Care of Dr. Ma and Treatment To Reduce Her Contamination

Petitioners state that NIH personnel gave conflicting and harmful directions to Holy Cross ER personnel which delayed Dr. Ma's treatment, that NIH provided inadequate medical treatment of Dr. Ma, which was completely ineffective to reduce her contamination, and that the only effort NIH made to hasten the removal of the ingested radioactivity was to give Dr. Ma intravenous infusions of fluid at Holy Cross Hospital. Petitioners state that the Holy Cross ER Physician's attempt to consult with REAC/TS in Oak Ridge, Tennessee, was frustrated because the Holy Cross Hospital telefax machine was unable to receive information from REAC/TS. Petitioners believe that Dr. Ma should have been given phosphate orally as the buffered sodium salt, calcium intravenously, and parathyroid intramuscularly, but was only given intravenous infusions of fluid (hydration therapy), based on directions by NIH personnel, which resulted in no discernible enhancement of P–32 elimination.

Petitioners state that Dr. Weinstein's presence in Dr. Ma's treatment points up fundamental flaws in NIH medical intervention and investigative security protocols, and the fact that Dr. Ma was directed by the Holy Cross ER physician to follow-up with Mr. Zoon, Dr. Weinstein, and Dr. Ma's personal obstetrician-gynecologist (OB–GYN) "demonstrate[s] that the ER physician looked to NIH officials, including Dr. Weinstein, to direct treatment of Dr. Ma for internal contamination."

Petitioners state that NIH provided inadequate medical care to and follow-up on Dr. Ma. Specifically, NIH had no plan in place to ensure that one single person was in charge of directing and coordinating a contaminated employee's medical care and follow-up. No one from NIH met with Dr. Ma to discuss her contamination levels, and what, if any, medical treatment might decrease her contamination levels, except for a copy of the early NIH contractor, Oak Ridge Institute for Science and Education (ORISE) intake calculation of 9.8 MBq (265 μCi), given to Dr. Ma in July 1995 by the NIH RSO. The NIH OMS failed to provide any medical care or follow-up treatment to remove the ingested radioactivity. Petitioners state that Dr. Stansbury of OMS examined Dr. Ma on June 30, 1995, and that no services were provided by OMS after that date, except to request blood work results. Petitioners state that although Dr. Ma told Dr. Stansbury of her severe lower thoracic pain, Dr. Stansbury attributed the pain to Dr. Ma's pregnancy and recommended no follow-up other than for Dr. Ma to see her OB–GYN.

Petitioners state that on August 4, 1995, they visited OMS and reported that Dr. Ma was experiencing vomiting and severe pain in her lower right side, but that Dr. Ma was again referred to her OB–GYN. Petitioners state that on August 8, 1995, Dr. Ma again reported to OMS that she continued to experience frequent vomiting and nausea, and again no treatment or intervention was suggested. After the end of July 1995, no one from NIH requested additional urine samples from Dr. Ma, only blood samples. Dr. Ma states that subsequent tests revealed that the cause of Dr. Ma's lower thoracic pain was a significant liver function abnormality resulting from her contamination.[20]

NIH took reasonable and appropriate measures to determine whether Dr. Ma's contamination presented a life-threatening condition or immediate danger to Dr. Ma and her fetus, and whether her contamination was external or internal, before transporting Dr. Ma to a hospital for treatment. See Section III.E., *supra*. NIH also contacted the on-call physician from REAC/TS and put the REAC/TS physician in direct contact with the ER physician at Holy Cross Hospital, thus making expert advice available to Holy Cross Hospital and expediting Dr. Ma's treatment by Holy Cross Hospital. The ER physician decided not to follow the recommendation of the REAC/TS physician to administer a phosphate solution for dilution and displacement of the P–32 because of Dr. Ma's pregnancy. After consultation with both the REAC/TS physician and the NIH RSO, the ER physician ordered intravenous infusions of fluids (hydration) in order to dilute Dr. Ma's internal contamination, as was his prerogative. Additionally, based on the inspections and the investigation, NRC cannot conclude that Dr. Weinstein influenced or interfered with the Holy Cross ER physician's treatment decision regarding Dr. Ma's contamination. Before he arrived at Holy Cross at approximately 11:15 pm, Dr. Weinstein was aware that the NIH RSB recommended that Dr. Ma "push" fluids in order to maintain hydration. See Section III.I., *supra*. The IV hydration ordered for Dr. Ma was started around 9:00 p.m., long before Dr. Weinstein arrived at Holy Cross or spoke to the ER physician.

Moreover, based on the medical information made available by Petitioners to NRC's Medical Consultant, the NRC concludes that the symptoms reported by Dr. Ma were not related to her ingestion of P–32. The professional literature reveals three cases in which persons were inadvertently administered high levels of P–32.[21] The intakes in these cases were approximately 15 to 30 times greater than Dr. Ma's intake of 820 to 1300 mCi of P–32. The person with the highest intake reported symptoms that were consistent with low blood counts, an expected response to exposure to relatively high radiation doses. Blood count depressions, with no symptoms, were observed in the other two cases. NRC's Medical Consultant concluded that Dr. Ma's white blood cell count, white blood cell differential count, and her platelet count were all within normal limits, and that minor abnormalities in Dr. Ma's hematological profile, which did not include blood count depression, were consistent with typical plasma volume expansion during pregnancy. Additionally, radiation intakes sufficiently large to cause nausea and vomiting are accompanied by a depression or ablation of the bone marrow, which was not indicated by Dr. Ma's laboratory data. Finally, experience with intakes of P–32 much larger than Dr. Ma's intake, both accidental and as part of medical treatment, in which P–32 is frequently injected intravenously in doses 7 to 15 times great than Dr. Ma's intake, has not been observed to produce clinical symptoms. Accordingly, the NRC concludes that any symptoms Dr. Ma may have experienced, such as nausea and vomiting,[22] resulted from causes other than her ingestion of P–32.

NRC licensees are clearly required to determine the nature and extent of radiological overexposures to occupational workers and members of the public, to maintain records of such exposures, and to provide notifications to exposed individuals and reports to NRC. See, for example, 10 CFR §§ 19.13, 20.1204, 20.1501, 20.1502, 20.2106, 20.2107, 20.2202, 20.2203, 20.2205, and 20.2206. NRC requirements, however, impose no additional obligations upon licensees to provide medical care and follow-up to individuals exposed to radioactive materials for the purpose of removing radioactive contamination or ameliorating the medical effects of contamination.

In view of the above, to the extent that Petitioners are dissatisfied with the medical treatment provided to Dr. Ma by Holy Cross Hospital, or with any medical care provided by NIH to Dr. Ma apart from dose assessment, dose recordkeeping, or notification and reporting of Dr. Ma's dose, Petitioners' remedies, if any, do not lie with NRC.

K. Estimates of Internal Contamination of Dr. Ma and Her Fetus

Petitioners state that NIH failed to take proper actions to accurately assess, and as a result, greatly underestimated Dr. Ma's internal contamination, that NIH failed to consider all the relevant data in assessing Dr. Ma's internal contamination, demonstrating that NIH is not able or willing to impartially evaluate its worker's radiation exposure levels when exposures are in excess of Federal limits, and that NIH lied to Dr. Ma, to Federal regulators and to the public, about the magnitude of the exposure and the likely harm to Dr. Ma and her fetus. Specifically, the Petitioners state the following:

- NIH failed to take suitable and timely measurements from Dr. Ma to accurately calculate her occupational dose, in violation of 10 C.F.R. § 20.1204(a). NIH should have taken a full 24-hour urine sample following detection of Dr. Ma's contamination. Over the first two days urine was collected as spot samples at each void, rather than collecting the entire urinary excretion over a 24-hour period as recommended by NUREG/CR–4884, "Interpretation of Bioassay Measurements," (1987). Additionally,

[18] At the time of the incident, 10 CFR § 20.1501(a) required licensees to perform surveys that are reasonable under the circumstances. On January 1, 1993, 10 CFR § 20.201, with a similar requirement, became extant.

[19] Dr. Glenn's comment was made before full information was available regarding sample collection after the NIH event. With the benefit of all the evidence, it is now apparent that clear instructions were provided to Dr. Ma and that no information was lost. See Section III.K.(2).

[20] Medical data provided by Petitioners did not substantiate this assertion.

[21] Blood, Vol. 51, No. 4 (1983), pp. 746–750; Schweizerische Medizinische Wochenschrift (Journal Suisse de medecine) Vol. 124, No. 42, pp 1848–51 (October 22, 1994); and American Journal of Medical Sciences, Vol. 254, No. 4, pp. 451–63 (October 1967). See also "Ingestion of P–32 at Massachusetts Institute of Technology, Cambridge, Massachusetts, Identified on August 19, 1995," NUREG–1535 (December 1995).

[22] Dr. Ma's reported nausea and vomiting started long before her ingestion of P–32. An NIH technician observed Dr. Ma "always" vomiting at NIH for approximately two months prior to the contamination event.

NIH should have continued 24-hour urine collections and analysis until the activity level of the samples no longer yielded useful results. Instead, the NIH dose evaluation was based solely on samples collected during the first month following the intake.

• NIH incorrectly suggests that Dr. Ma is responsible for NIH's inadequate urine analysis because she returned a weekend's collection of urine in one carboy (a container), rather than three, and failed to follow through with continuing urine collection despite urging by NIH personnel. Dr. Ma did everything requested of her by NIH until it became evident that NIH had little interest in her health or in providing her medical care. NIH OMS and RSB officials asked Dr. Ma to collect all of her urine over the weekend following her contamination. Dr. Ma returned a weekends' urine collection in one carboy rather than three because two of the three wide-mouthed containers provided by RSB officials were defective and leaked. Dr. Ma was asked to bring in urine samples for the couple of weeks following her contamination. Dr. Ma collected her urine voluntarily until the end of July 1995, and submitted urine samples through July 27, 1995. Dr. Ma stopped providing samples because she did not receive any assistance or information from NIH. NRC estimated a significantly greater dose than did NIH, using the same information available to NIH.

• Between June 29, 1995, and July 27, 1995, Holy Cross provided NIH with twenty-five urine samples collected by Dr. Ma.

• Based on a whole body scan performed by NIH on June 30, 1995, Dr. Jorge Carrasquillo, Acting Chief, Nuclear Medicine Department, NIH, estimated that Dr. Ma had still retained a total of 862 μCi (31.9 MBq) of P–32 on that date.

• NIH's preliminary estimate of Dr. Ma's ingestion of P–32 on July 3, 1995, was approximately 300 μCi (11.1 MBq), which was not based on a 24-hour sampling of standard systemic excreta data as recommended by NUREG/CR–4884 and the National Council on Radiation Protection and Measurements (NCRP) Report No. 87, "Use of Bioassay Procedures for Assessment of Internal Radionuclide Deposition" (1987). Additionally, the initial dose estimate relied entirely on analysis of urine samples and was not confirmed through analysis of fecal samples, which led to significant understatement of Dr. Ma's internal contamination.

• The July 5, 1995, NIH estimate of Dr. Ma's intake was 265 μCi (9.8 MBq) of P–32 and was not based on the total volume Dr. Ma excreted, but was based on a sample. When the NIH RSO provided Dr. Ma with a copy of the ORISE estimate, he told Dr. Ma that the NIH estimate was "more or less the same."

• By letter dated July 28, 1995, Mr. Zoon advised NRC's Region I Office that evaluation of the total intake of Dr. Ma was continuing and could result in an estimated intake potentially exceeding the 10 CFR part 20, Appendix B, Annual Limit on Intake (ALI) for P–32 of 600 μCi (22.2 MBq).

• At NRC's request, NIH asked its first consultant, ORISE, to confirm isotopic analyses performed by the NIH RSB with four of the first 15 urine specimens taken on June 29 and 30, 1995, and with three urine samples and one blood sample. None of the samples was taken from a full 24-hour period and NIH failed to take any fecal samples. The August 15, 1995, revised estimate of Dr. Ma's intake performed by ORISE for NIH was between 740 and 820 μCi (27.4 and 30.3 MBq), resulting in an effective dose. equivalent to Dr. Ma of between 5.8 and 6.4 rem (58 and 64 mSv), and to her fetus a dose of between 4.6 and 5.1 rem (46 and 51 mSv).

• On August 29, 1995, NIH transmitted to NRC the "final" NIH assessment of Dr. Ma's effective dose equivalent as 4.17 rem (41.7 mSv), based upon an estimated intake of 500 μCi (18.5 MBq), and of the dose to her fetus as 3.2 rem (32 mSv). This analysis was not conducted in accordance with draft ANSI N13.30, "Performance Criteria for Bioassay" (1989). NIH also failed to continue the collection and analysis of excreta to ensure that Dr. Ma's excretion of P–32 followed the mathematical model NIH had used to predict her initial dose, and NIH failed to account for the effect of hydration therapy when initially evaluating the urine data. NIH's use of the "weighted least squares fit" method to assign its final dose is unacceptable because actual excretion does not follow the anticipated model.

• NRC's estimate of Dr. Ma's intake was between 30.3 and 48.1 MBq (820 and 1300 μCi) and of her internal committed effective dose equivalent (CEDE) was between 80 and 127 mSv (8.0 and 12.7 rem). Although both NRC and Petitioners' consultant excluded data from the first 2 days of urine collection as unreliable, NIH relied on that data primarily.

• The Petitioners' consultant estimated that Dr. Ma ingested 1000 μCi (37 MBq) of P–32 corresponding to a CEDE of 9.2 rem (92 mSv), and that her fetus received a dose of between 3 and 6.4 rem (30 and 64 mSv), based on an analysis of eleven urine specimens collected from Dr. Ma between June 29 and August 23, 1995.

Despite the inherent limitations in analysis based on excreta data and some differences in the assumptions used to evaluate the ingested activity and radiation dosimetry, the final estimates obtained by NIH, the Petitioners', and NRC are reasonably close. See Table, *infra*. Accordingly, the Petitioners concerns that NIH did not accurately assess Dr. Ma's dose and the dose to her fetus are unsubstantiated.

FINAL ESTIMATES OF RADIATION DOSE TO DR. MA AND HER FETUS

Organization	Date	Dr. Ma's dose estimate		Dr. Ma's Fetal dose estimate	
		(rem)	(mSv)	(rem)	(mSv)
NIH	7/96	4.7–7.0	47–70	3.7–5.4	37–54
NRC	12/95	8.0–12.7	80–127	5.1–8.1	51–81
Petitioners' Consultant	10/95	9.2	92	3.0–6.4	30–64

(1) *Petitioners' Estimates:* Petitioners retained the services of David A. Dooley, Ph.D., a Certified Health Physicist with expertise in internal dose assessment, to perform an assessment of the radiation dose and its effects upon Dr. Ma and her fetus. Based upon radioanalysis conducted by TMA/Norcal Laboratory, of 11 urine specimens collected by Dr. Ma between June 29 and August 23, 1995, Dr. Dooley estimated that Dr. Ma received an exposure of 9.2 rem (92 mSv) and that her fetus received an exposure of 3.0 and 6.4 rem (30 and 64 mSv). Although Dr. Ma continued to submit urine samples to Dr. Dooley until October 4, 1995, analysis of those samples did not result in revision of Dr. Dooley's estimates.[23] Dr. Dooley estimated that, because of the P–32 intake, Dr. Ma would suffer an increased lifetime excess cancer risk of approximately 30 percent to 83 percent, and her fetus would experience a risk of childhood cancer ". . . . 30 to 150 times that of an unexposed child."[24]

(2) *NIH Estimates:* NIH performed an assessment of Dr. Ma's intake of P–32, the resultant radiation exposure received by Dr. Ma, and the radiation exposure received by her fetus based on urine specimens collected by Dr. Ma.

On June 29, 1995, the NIH RSB gave instructions to collect all of Dr. Ma's urine to Dr. Ma, to the paramedics who transferred her to the hospital, and to the Holy Cross ER physician. The Licensee also contacted radiation emergency medical professionals via telephone at REAC/TS and arranged for the REAC/TS physician to speak directly with the Holy Cross Hospital ER physician, to assist with the evaluation of Dr. Ma's P–32 intake and the radiation dose to Dr. Ma and to her fetus. Given the apparent level of P–32 internal contamination, Dr. Ma's pregnancy, and the ER physician's lack of experience in dealing with radioactive material internal contamination events, this was an eminently reasonable measure. The REAC/TS physician, who also happened to be an OB/GYN, believed that medical intervention at the hospital would not have been very effective in inhibiting phosphorus absorption from the gastro-intestinal tract because, by the time Dr. Ma had arrived at Holy Cross, and based on discussion with the RSB, the REAC/TS physician understood that over 9 hours had elapsed since the suspected ingestion and the P–32 would have essentially been totally absorbed over this time period. The REAC/TS physician also asked the ER physician to instruct Dr. Ma to collect 24-hour urine samples for evaluation of P–32 kinetics."[25] The Holy Cross ER physician recalled that the NIH RSO requested that all of Dr. Ma's urine was to be measured, the volume for each void recorded, and then all of the urine to be placed in one container every 24-hours. In addition, Dr. Weinstein suggested to the ER physician that each urine void, at least during hospitalization, be saved separately, so that more time points would be available for modeling in determining the radiation exposure. He also suggested that the same could be accomplished by saving a small sample from each void (and recording the volume collected), separate from the continuing 24-hour collection. Dr. Weinstein believed that either procedure, if followed, would result in the availability of more information and no loss of urine.

The Holy Cross ER physician decided to develop his own method for collection of urine, and instructed his nurses that each time Dr. Ma voided, the amount would be measured, a small sample of each void would be maintained separately, and the rest would be put into one large container. The instructions given by the Holy Cross ER physician to Dr. Ma for collection of urine did not differ significantly from the recommendation of the REAC/TS physician, or of Dr. Weinstein, and were appropriate for proper assessment of Dr. Ma's intake and exposure, as well as that of her fetus. Holy Cross Hospital instructed Dr. Ma to collect urine on a 24-hour basis. When Dr. Ma reported to RSB on June 30, 1995, she brought the urine collected since departing Holy Cross, and was instructed to continue collecting urine on a 24-hour basis.

NIH states that when Drs. Ma and Zheng reported to the RSB for follow-up at 11:00 a.m. on June 30, 1995, they brought with them Dr. Ma's urine, in tubes and a container, and stated to RSB staff that was all the urine collected at the hospital and since discharge. Later that day, when Dr. Ma complained of back pain, she was escorted, at RSB's recommendation, to the NIH OMS where she was examined by a physician, and additional urine and blood samples were taken for radioanalysis. The results of the blood samples were within the expected range for a woman in her 17th week of pregnancy. Dr. Ma returned for a gamma camera scan at 5:00 p.m. at the NIH Clinical Center, and at that time was provided three carboys by RSB for the upcoming weekend and was advised to collect all her urine over the weekend using one carboy for each day. NIH states that on Monday, July 3, 1995, Dr. Ma returned only one carboy full of urine, stating to RSB staff that it was the urine from the evening of June 30 to July 1, 1995.

Based on NIH's preliminary notification, NRC issued PNO-I–95–025, "Internal Contamination of Researcher," on July 3, 1995, which stated that NIH had indicated that a 32-year old female, who was in her fourth month of pregnancy, had received an estimated ingestion of approximately 11.1 MBq (300 μCi) of P–32.[26]

Subsequent urine samples, when received from Dr. Ma, were analyzed promptly. NRC's AIT determined that the licensee analyzed all samples accurately, as confirmed by the analyses performed for NRC by ORISE, and by NRC's Region I Laboratory. The periodic reanalysis of samples by the Licensee to ensure that the samples contained no additional radioactive contaminates was appropriate.

On August 29, 1995, based upon additional urine analysis, NIH performed another assessment of Dr. Ma's exposure. NIH calculated Dr. Ma's effective dose equivalent to be 4.17 rem (41.7 mSv), based upon an estimated intake of 500 μCi (18.5 MBq), and the dose to Dr. Ma's fetus to be 3.2 rem (32 mSv). This reassessment was based on a total of 26 urine samples obtained from Holy Cross Hospital and Dr. Ma.

In 1996, NIH contracted with Skrable Enterprises, Inc., to perform a reassessment of all available urine data, as well as an evaluation of creatinine levels in the urine samples in order to confirm sample validity. This consultant suggested modification of the standard model parameters for the short-term retention compartments and use of creatinine normalized data to improve the fit of the estimate to the sample data. These suggestions accounted for the varying time periods of sample collection. Based upon this reassessment, NIH revised its estimate of Dr. Ma's CEDE to between 4.7 and 7.0 rem (47 and 70 mSv), corresponding to an intake range of between 570 and 840 μCi (21.1 and 31.1 MBq). The revised dose to the fetus was calculated to be between 3.7 and 5.4 rem (37 and 54 mSv). Also on July 30, 1996, NIH RSB staff delivered its revised estimates entitled, "Report of 1995 Radiation Dose, NRC License 19–00296–10, " to Dr. Ma at NIH, which summarized the doses described above and stated that the "levels (received by Dr. Ma) are considered to be safe and are not expected to result in a health impact."[27]

Regarding the concerns of the Petitioners' that NIH failed to account for the effect of hydration therapy, NIH's report of its last estimate of Dr. Ma's

[23] See Letter dated April 16, 1996, from Judith A. Wolfer, Esq., to Cynthia Jones, NRC.

[24] See Letter from Dr. David Dooley, dated April 15, 1996, to Debra C. Katz, Esq.

[25] Letter from Ronald E. Goans, Ph.D., M.D., REACT/TS, dated November 8, 1995, to Shawn W. Goggins, NIH, and memorandum from Ronald E. Goans, Ph.D., M.D., dated July 17, 1995, to Dr. Robert Ricks, REAC/TS.

[26] PNs constitute early notice of events of possible safety or public interest significance. Information contained in PNs is received without any verification or evaluation, and is basically all that is known by the licensee and NRC staff as of the date of issuance to the public. They are also known as preliminary notifications of occurence (PNOs)

[27] See NIH memorandum from the NIH RSO, dated July 30, 1996, to Dr. Ma.

1995 occupational radiation dose states that NIH's Consultant was not only aware of the large variation exhibited by the bioassay data as a result of hydration therapy, but accounted for these differences by using a modified biokinetic model and creatinine-normalized urine data to account for the large variances in the bioassay data. Moreover, the last NIH estimates are reasonably close to those of NRC and the Petitioners. Accordingly, the effects of hydration therapy upon the NIH dose estimates appear to raise no cause for concern.

As to the Petitioners' concerns that NIH's use of the weighted least squares fit method was unacceptable because actual excretion does not follow the anticipated models, NRC's second consultant, Lawrence Livermore National Laboratory (LLNL), performed an independent assessment of the NIH data to determine if differences in the dose estimates may have been due to the use of the different internal dose assessment codes. When the first two data values were removed from the NIH data set, the unweighted least squares intake assessment using the CINDY code was 30 MBq (810 μCi). Intake assessments from CINDY using the LLNL treated data set ranged from 20.7 to 40.7 MBq (560 to 1100 μCi). This range of results is also consistent with the ORISE intake estimates of between 22.9 and 30.3 MBq (620 and 820 μCi). These results indicate that differences in correcting for 24-hour excretion also do not significantly influence the intake estimates. Therefore, the differences in the dose assessments between NIH's August 29, 1995, estimate and NRC's estimate were mainly due to differences in data handling. The major difference in these two dose estimates was the treatment of the sample data from the first few days post intake. However, since the last NIH estimates now yield relatively close results with those of the Petitioners and NRC, NIH's use of the least squares method in its earlier estimate is not cause for concern.

After the surveys and bioassays of persons who had access to the contaminated conference room, NIH determined that 26 individuals, including Dr. Zheng and in addition to Dr. Ma, were positive for P–32 contamination. All of the 21 individuals who were occupational workers as defined by 10 CFR § 20.1003 received radiation exposures of less than 10 percent of NRC's annual occupational exposure limit of 50 mSv (5 rem) specified by 10 CFR § 20.1201(a)(1)(i). Of the five individuals who were members of the public, as defined by 10 CFR § 20.1003, one individual received a dose in excess of NRC's annual limit of 1 mSv (0.1 rem) for members of the public specified by 10 CFR § 20.1301(a)(1). This individual's dose was estimated to be between 1.5 and 2.5 mSv (150 and 250 millirem).

Petitioners are correct in stating that the July 3, 1995, preliminary NIH estimates for Dr. Ma and her fetus' intake were not based upon full and complete data. NRC requires licensees to notify NRC within 24 hours of any event which may have caused, or threatens to cause, an individual to receive a dose exceeding 50 mSv (5 rem). 10 CFR § 20.2202(b)(1)(i). Once information is reported to NRC, NRC issues a preliminary notification in accordance with NRC Inspection Manual Chapter 1120, Sections 1120–07 and 1120–08. These notifications promptly provide information to the Commissioners, as well as other NRC and Agreement State management on matters that are of significant safety concern or have, or potentially could have, high public interest. These notifications, however, are not assumed to constitute final estimates.

As far as the Petitioners' concern that the NIH bioassay program was faulty in not collecting and analyzing fecal samples, NRC-approved models and methods provides guidance for the use of either urine or fecal samples. *See* "Interpretation of Bioassay Measurements," NUREG/CR–4884, (1987). Based on descriptions in the International Commission on Radiological Protection Publication 30, the biokinetic model for phosphorus predicts that about 80 percent of the ingested phosphorus is absorbed from the gastrointestinal tract and enters the blood stream. From there, 15 percent is assumed to go directly to excretion through urine and feces, with a half-life of 0.5 day, 15 percent goes to intracellular fluids, 40 percent is incorporated into soft tissue and 30 percent is incorporated into the skeleton. The 15 percent that goes to early excretion is considered to enter directly into the kidney/bladder compartment, from which it is eliminated within a 4-hour retention time. Because the route of Dr. Ma's intake was via ingestion, and because there is little excretion of P–32 from the systemic compartment into the feces, NIH's use of urinary excretion data and decision not to use fecal excretion data was entirely appropriate.

Although NIH did not follow ANSI N13.30, they were not required to do so. Not only was this guidance issued as a draft for public comment at the time of the event, but NRC had not endorsed its use in any NRC Regulatory Guide.[28] Moreover, ANSI N13.30 is industry-issued guidance only, and does not constitute a regulatory requirement.

Petitioners are correct in stating that early reports from NIH of July and August 1995 were not based upon full and complete data. In hindsight, the August 29, 1995, report of NIH should not have been referenced as "final" assessments of dose. As NRC's LLNL evaluation points out, documented intakes of P–32 demonstrate an increase in urinary output of radiation over the first few days after intake. Since the concentration of phosphorus in the systemic compartments of the body is reflected in the urine, it is reasonable to conclude that urine activity may establish an equilibrium within a few days after the intake. Therefore, the early NIH dose assessments during the first month after the incident tended to underestimate the dose because of the nature of phosphorus biokinetics and the limited usefulness of internationally-accepted models derived primarily for standard-setting. It is understandable, however, that an internal dosimetrist may have a strong desire to maintain and use the first few days of bioassay samples. Continued use of these early excretion values also provides more consistency with early dose estimates, since these early values have more statistical weight. However, at long times after an intake (i.e., 20 to 30 days for P–32), an evaluation of the entire set of data must be performed relative to the projected values. It is during this time that a reevaluation should be made regarding the validity, usability, and statistical weight of the early times after intake. NIH's last set of consultants, as well as the NRC's and Petitioners' consultants, had the advantage of retrospective insight into the data, and based on that insight, did not use the urinary excretion data from the first few days after intake.

(3) *NRC Estimates:* ORISE, serving as a scientific consultant to NRC, and using bioassay data provided by NIH, performed an assessment for NRC of the intake by, and resultant P–32 radiation Dr. Ma was exposed to, and of the radiation exposure received by her fetus. One of the major differences between the early estimates of the Licensee and NRC was NIH's use of the annual limit on intake (ALI) that was based on Reference Man [70 kilograms (kg)], versus NRC's use of an ALI based on Reference Woman (57 kg). NRC requires licensees to calculate doses to individuals in accordance with ALIs that are based on Reference Man. See 10 CFR part 20, Appendix B, notes to Table 1, "Occupational." Because NRC's understanding was that Dr. Ma weighed approximately 53 kg, the model to calculate the ALI that more appropriately represented the circumstances of Dr. Ma's contamination was Reference Woman, and consequently all NRC dose estimates were based upon that model.

Because of the differences in the results of the assessments performed by the Licensee (dated August 26, 1995) and by NRC's scientific consultant to the AIT, ORISE (dated August 9, 1995), NRC contracted with a third party, LLNL, to independently review the assessments performed by the Licensee, and by ORISE, for NRC.

Based on the work of its consultants, NRC estimates that Dr. Ma ingested between 30.3 and 48.1 MBq (820 and 1300 μCi) of P–32, an amount of P–32 in excess of the 22.2 MBq (600 μCi) annual limit specified by 10 CFR part 20, Appendix B, Table 1, Column 1. Based on these values, NRC estimates that Dr. Ma's internal CEDE was between 80 and 127 mSv (8.0 and 12.7 rem). The estimated radiation exposure received by Dr. Ma's fetus was between 51 and 81 mSv (5.1 and 8.1 rem). A more detailed discussion of NRC's dose assessment can be found in the AIT final report of January 13, 1997.

NRC also contracted with one of its medical consultants to review and characterize the safety significance of the exposures to Dr. Ma and her fetus, summarized in his final report dated September 4, 1996. Based on NRC's estimated exposures to Dr. Ma and her fetus, NRC's medical consultant concluded that no deterministic or stochastic effects to Dr. Ma, and no deterministic effects to her fetus are expected. In regard to potential stochastic consequences to the fetus, although there is moderate uncertainty in the data used for cancer risk estimation as a result of *in utero* radiation exposure, in this case, an excess risk of 0.33% is estimated (for comparative purposes, the natural risk of childhood cancers is about 0.1%). Thus the probability that the exposed fetus will NOT develop a radiation-induced childhood cancer is 99.67% (range 99.60 to 99.74%). It is unknown whether this risk estimate should be reduced because of the low dose and low dose-rate associated with this internal exposure from P–32.

NRC performed a review of both the NIH AIT and the MIT IIT contamination events in order to determine if NRC guidance to licensees regarding instructions for collection of excreta and analysis of fetal dose based upon maternal uptake is adequate. As a result of this review, the staff issued additional guidance to licenses on analysis of fetal doses, NUREG/CR–5631, Rev. 2, "Contribution of Maternal Burdens to Prenatal Radiation Doses," (May 30, 1996).

One of NRC's scientific consultants reviewed and confirmed the NIH estimates of dose received by the 26 individuals who drank from the contaminated water cooler. NRC concluded that no deterministic or stochastic consequences are expected for any of the 26 individuals, including Dr. Zheng, who were internally contaminated with P–32.

L. Directions to Hospital Emergency Room Personnel Concerning Assessment of Dr. Ma's Level of Contamination

Petitioners state that NIH personnel gave conflicting and harmful directions to Holy Cross ER personnel, which interfered with efforts to properly assess Dr. Ma's contamination. Specifically, the NIH RSO directed the ER physician at Holy Cross to collect the total volume of urine for a 24-hour period, whereas Dr. Weinstein instructed the ER physician to aliquot a small part of the samples already taken and to discontinue efforts to collect urine over a 24-hour period, in conflict with NUREG/CR–4884, "Interpretation of the Bioassay Measurements" (1987). Petitioners also state that the Holy Cross ER physician did not know whose instructions to follow and so developed a compromise plan, and when Dr. Ma was released from Holy Cross, no instructions were given to her to collect her urine at any interval.

NRC concludes that the NIH RSB gave appropriate instructions, in view of the limited NRC guidance available to licensees at the time of this event regarding urine collection, *see* Section III.H., *supra*, to Dr. Ma, to the paramedics who transferred her to the hospital on June 29, 1995, and to the Holy Cross ER physician for urine collection. Additionally, the three methods for collection of Dr. Ma's urine recommended to the ER physician by the REAC/TS physician, the NIH RSO, and Dr. Weinstein were not significantly different from each other or conflicting, and the instructions given by the Holy Cross ER physician to Dr. Ma for collection of urine were appropriate for proper assessment of Dr. Ma's intake and exposure, as well as that of her fetus. *See* Section III.K.(2), *supra*. Accordingly, NRC staff cannot conclude that Dr. Ma was given inadequate or conflicting instructions.

M. NIH Notification to Dr. Ma of Her Radiation Exposure Level

Petitioners state that in violation of 10 CFR § 19.13(d), NIH deliberately failed to notify Dr. Ma of her estimated radiation exposure level at the same time such notification was provided to NRC. Specifically, the only NIH notification provided to Dr. Ma was a copy of the August 1995 ORISE report estimating her contamination at 265 μCi (9.8 MBq), despite NRC direction to NIH to make notifications required by 10 CFR § 19.13(d). As a result, before NRC's actions to estimate her intake, Dr. Ma had to learn of her exposure levels from indirect sources and consulted with an independent health physicist at great personal cost.

NRC notified NIH by letter dated December 1, 1995, from Thomas T. Martin, Regional Director for Region I, and by letter dated January 29, 1996, from Charles W. Hehl, Director, NRC Region I, Division of Nuclear Material Safety, that NIH was required to make notifications pursuant to 10 CFR § 19.13(d) regarding the estimated radiation exposure of Dr. Ma and her fetus. The December 1, 1995, letter notified NIH that Dr. Ma received a dose in excess of the applicable occupational regulatory limits, 10 CFR § 20.1201(a)(1)(i), specifically that NRC estimates her internal CEDE was between 80 and 127 mSv (8.0 and 12.7 rem) and that NRC estimates the radiation exposure received by Dr. Ma's fetus was between 51 and 81 mSv (5.1 and 8.1 rem).

By letter and facsimile dated May 15, 1997, counsel for Petitioners notified NRC that NIH had revised its dose estimates for Dr. Ma and her fetus, and Petitioners' counsel provided a copy to NRC of an NIH memorandum dated July 30, 1996, containing the revised estimates. Although this document is addressed to Dr. Ma, Petitioners' counsel state that Dr. Ma never received this memorandum and that NIH never notified her directly of her radiation dose after the accident.

NIH revised its original dose estimates after engaging an independent expert on internal dose assessment and bioassay interpretation to perform an analysis of the dose to Dr. Ma and her fetus. NIH's independent consultant completed its analysis and prepared a report to NIH dated March 4, 1996. NIH provided its memorandum dated July 30, 1996, summarizing Dr. Ma's 1995 revised radiation dose estimates for her and her fetus, to NRC at its request, on April 4, 1997, by facsimile. Based on the NIH

[28] ANS N13.30, "Performance Criteria for Radiobioassay," was issued as a draft standard for comment in September 1989, and was finalized in May 1996. NRC has not yet endorsed it for licensee use in any NRC Regulatory Guides.

consultant's report, NIH revised its dose estimates to a CEDE of between 4.7 and 7.0 rem (47 and 70 mSv) to Dr. Ma, corresponding to an intake range of between 570 and 840 μCi (21.1 and 31.1 MBq), and a dose of between 3.7 and 5.4 rem (37 and 54 mSv) to Dr. Ma's fetus.

NRC regulations at 10 CFR § 19.13(d) require that NIH provide Dr. Ma with a report of her exposure data at a time not later than NIH's transmittal to NRC of NIH's report on Dr. Ma's exposure. NIH denies that it never provided Dr. Ma with the revised dose estimates. NIH states that its Area Health Physicist hand-delivered the July 30, 1996, memorandum to Dr. Ma on July 30, 1996. The Area Health Physicist states that at that time, she explained the contents of the memorandum to both Dr. Ma and Dr. Zheng, asked if they had any questions, and identified NIH personnel to contact if Petitioners had any questions. The Area Health Physicist states that Petitioners opened the envelope and read the memorandum in her presence.[29]

Accordingly, NIH did violate 10 CFR § 20.2203(a)(2)(i), because NIH did not submit a written report to NRC within 30 days after learning of the occupational dose to Dr. Ma in excess of the limits for adults in 10 CFR § 20.1201. A Notice of Violation is being issued concurrently with the issuance of this Director's Decision. However, NIH did inform Dr. Ma of its revised dose estimates on July 30, 1996, in accordance with 10 CFR § 19.13(d). Accordingly, Petitioners' request for enforcement action for violation of 10 CFR § 19.13(d) is denied.[30]

N. Declaration of Pregnancy and Minimization of Radiation Exposure to Dr. Ma

Petitioners state that, in violation of 10 CFR § 20.1208, their supervisor, Dr. Weinstein, coerced Dr. Ma to not submit a written declaration of pregnancy to the NIH RSB, even though it was her clear desire to receive maximum protection for her fetus from exposure to radiation and radioactive materials, and thus Dr. Weinstein constructively denied Dr. Ma her right to receive protection for her fetus from ionizing radiation in excess of 0.5 rem (5 mSv). Petitioners state that between June 19 and June 23, 1995, Dr. Weinstein withheld the NIH form used to file a declaration of pregnancy, and insisted that if Dr. Ma filled out the declaration form, it would "cause trouble for the lab." Petitioners also state that Dr. Weinstein disagreed with the steps proposed by Petitioners to minimize radiation exposure of Dr. Ma during her pregnancy.

As a related matter, Petitioners also state that because Dr. Weinstein was in a hurry to patent the results of their research (a novel method to display more efficiently the existence of expressed genes), which would have had significant scientific and commercial value, Dr. Weinstein urged Petitioners to work tirelessly, and over a period of several weeks before the contamination incident, repeatedly requested Petitioners to terminate Dr. Ma's pregnancy. Based on the several inspections and the investigation, NRC concludes that the evidence does not substantiate Petitioners' assertions that Dr. Weinstein urged Petitioners to work tirelessly, requested Petitioners to terminate Dr. Ma's pregnancy,[31] and was in a hurry to patent the results of Petitioners' research,[32] or that the research would have had significant scientific and commercial value.[33]

Based on the inspections and investigation, NRC concludes that the evidence does not substantiate Petitioners' assertions that Dr. Weinstein, with coercion or otherwise, prevented or tried to prevent Dr. Ma from declaring, or interfered with Dr. Ma's declaration of, her pregnancy in writing,[34] or that Dr. Weinstein objected to or interfered with any measures proposed or taken by Petitioners to minimize exposure of Dr. Ma's fetus to radiation. Additionally, Petitioners both took the "NIH Radiation Safety in the Laboratory" training course on November 29, 1994. That training covered NIH procedures on written declarations of pregnancy for occupational workers and instructions for pregnant employees as to how to obtain the NIH form used to submit a written declaration of pregnancy. Although not required to do so, Dr. Weinstein obtained the NIH form for Petitioners and provided it to Petitioners on June 23, 1995. Dr. Ma, however, did not request the form, nor did she submit the formal declaration of her pregnancy to the NIH RSB, as provided in the materials covered in her training. In view of the above, Dr. Ma's failure to submit a written declaration of pregnancy was voluntary. Accordingly, the 5-mSv (0.5-rem) occupational exposure limit specified by 10 CFR § 20.1208(a) for the fetus of a declared pregnant worker was not applicable to Dr. Ma.

Based on the above, Petitioners' request for enforcement action against NIH for violation of 10 CFR § 20.1208 is denied.

O. Responsibility for Contamination of Dr. Ma and 26 NIH Employees

Based on the inspections and the investigation, NRC concludes that Dr. Ma and 26 NIH employees were deliberately contaminated with P–32. Dr. Ma's exposure and the exposure of one of the 26 employees contaminated by the water cooler were beyond regulatory limits, in violation of 10 CFR §§ 20.1201 and 20.1301, respectively. Neither the means of administering P–32 to Dr. Ma,[35] nor the person(s) responsible for the contamination of Dr. Ma[36] and of the water cooler, which was the source of contamination to the 26 NIH employees, however, was definitively identified. In the absence of any evidence to the contrary, NRC presumes that the violations were caused by an employee(s) of NIH and that the material belonged to NIH. As explained above, NRC also concludes that the contamination of Dr. Ma and of the water cooler was not a result of the Licensee's violations of NRC requirements for security and control of radioactive material. *See* Section III. A, "Violations of NRC requirements for security and control of licensed material"; *supra*. Normally, the exposures beyond regulatory limits in this case would be subject to significant enforcement action. However, under the circumstances of this case, the Commission has decided to exercise its enforcement discretion and not initiate formal enforcement action against NIH for these violations. Discretion is being exercised because NIH fully cooperated with the investigation, there is no evidence that NIH contributed directly or indirectly to the deliberate misuse of licensed material involved, and NIH could not reasonably foresee that an employee or employees would maliciously misuse radioactive material as was done in this case.

Accordingly, enforcement action against NIH, in addition to that already taken in the NOV and Proposed Imposition of Civil Penalty $2500 (EA 96–027) and the Order Imposing Civil Penalty $2500 (EA 96–027), is not warranted in this case for the occupational exposure of Dr. Ma beyond regulatory limits, the exposure of the member of the public beyond regulatory limits, or the contamination of the water cooler.[37]

IV. Conclusions

The following requests of Petitioners are granted in part as described above: for enforcement action against NIH for violations of NRC security and control requirements and for violation of NRC requirements related to radiation safety training, ordering radioactive materials, inventory control of radioactive materials, monitoring, and the issuance, use, and collection of dosimetry. Petitioners' request for NRC action to ensure adequate procedures and instructions to exposed persons for sample collection is granted as described above. The following requests of Petitioners for enforcement action against NIH are denied: for the exposure of Dr. Ma beyond regulatory limits, for the exposure of Dr. Ma's fetus, and for the contamination of the water cooler; regarding notification to Dr. Ma of her level of contamination; regarding Dr. Ma's declaration of pregnancy; regarding the conduct of surveys after Dr. Ma's contamination; and for the failure to accurately calculate Dr. Ma's occupational radiation dose. Finally, Petitioners' request to suspend or revoke the NIH license is denied.

A copy of this Decision will be filed with the Secretary of the Commission for Commission review in accordance with 10 CFR § 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

This 17th day of September 1997, Rockville, Maryland.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–25318 Filed 9–23–97; 8:45 am]

BILLING CODE 7590–01–P

[29] See letter dated August 15, 1997, from Robert A. Zoon, Radiation Safety Officer, NIH, to Carl J. Paperiello, NRC, and attached "Memorandum" dated August 14, 1997, from Beth Reed, NIH Area Health Physicist, to Robert A. Zoon.

[30] Although there is a dispute as to whether in fact NIH notified Dr. Ma of its revised dose estimates, Dr. Ma was in fact provided with the revised NIH dose estimates from another source.

[31] In addition to the lack of evidence corroborating this assertion, there are significant inconsistencies in Dr. Ma's account of how she learned of the alleged request. In the Petition, Dr. Ma stated that in the evening, after returning from a meeting with Dr. Weinstein at NIH, Dr. Zheng informed Dr. Ma that Dr. Weinstein had made the alleged request earlier that day. Dr. Ma, however, told investigators that she learned of the alleged request during a meeting at NIH with Dr. Zheng and Dr. Weinstein, a week after Dr. Weisnstein made the alleged request to Dr. Zheng, and that Dr. Zheng had not told Dr. Ma of the request.

[32] In addition to the lack of evidence to corroborate this assertion, Petitioners made contradicatory statements regarding Dr. Weinstein's plans for publication of the results of Petitioners' research. Several days after discovery of Dr. Ma's contamination, Dr. Ma told a colleague that the Petitioners wanted to publish their research paper before obtaining a patent application (contrary to usual procedures), but that Dr. Weinstein was trying to delay publication of the reserach paper. Dr. Ma told investigators shortly afterwards that Dr. Weinstein believed that her pregnancy would prevent her from handling radioactive materials, when Dr. Weinstein had applied for a patent and was trying to get the Petitioners' research paper published. A few days later, Dr. Zheng submitted a statement to investigators asserting that over the past 3 or 4 months Dr. Weinstein had been trying to delay publication of the research paper.

[33] The investigation indicates that the Petitioners' research, which was conducted to investigate a proposal of Dr. Weinstein, did not constitute a major scientific discovery and had little commercial value.

[34] Moreover, the investigation produced evidence that Dr. Ma was not eager to declare her pregnancy. Dr. Ma told an NIH colleague approximately 2 months before the contamination incident that she was reluctant to inform Dr. Weinstein of her pregnancy, because then she might have to stop conducting experiments involving radiation.

[35] Petitioners assert that Dr. Ma was contaminated at NIH on the evening of June 28, when she ate food that she had stored in an NIH conference room refrigerator the previous evening. Dr. Ma's contamination was discovered at approximately 6:00 p.m. on June 29. The evidence indicates that Dr. Ma was not contaminated by food she had stored in the NIH conference room refrigerator. In the evening of June 29, the NIH RSB found no radioactive contamination of the conference room refrigerator, the contents of the refrigerator, Dr. Ma's desk, the table at which Dr. Ma ate, the trash cans or containers or tables in the halls near Petitioners' lab, the lab, or Dr. Weinstein's office. On June 30, the microwave used by Dr. Ma to heat her food at NIH, and the plastic containers and the utensils used by Dr. Ma to eat the food she brought to NIH, were surveyed, and no contamination was found. Additionally, the evidence indicates that the P–32 contamination of the carpet in front of the conference room refrigerator occurred sometime after 5:00 p.m. on June 29. The AIT report states in the chronology that the NIH RSB initial estimated time of ingestion was noon on June 29, 1995. However, after review of the physical evidence and radiation surveys, NIH used 11:00 am, June 28, 1995, as the most probable initial ingestion time. NIH also used this initial ingestion time for the other 26 contaminated NIH individuals involved. NRC also used this initial time of ingestion in its dose estimates.

[36] The investigation produced no evidence to corroborate Petitioners' assertions that Dr. Weinstein had suggested to several people either that Petitioners already had a child in China, or that Petitioners deliberately contaminated themselves in order to terminate Dr. Ma's pregnancy.

[37] See letter from Ashok C. Thadani, Acting Deputy Executive Director for Regulatory Effectiveness, to Michael M. Gottesman, M.D., Deputy Director for Intramural Research, NIH, dated September 17, 1997.

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 13e–1, SEC File No. 270–255, OMB Control No. 3235–0305. Rule 12g3–2, SEC File No. 270–104, OMB Control No. 3235–0119, Trust Indenture Act Rules, SEC File No. 270–115, OMB Control No. 3235–0132.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval:

"Purchase of Securities by issuer thereof under the Securities Exchange Act of 1934". Rule 13e–1 under the Exchange Act is designed to provide shareholders and the marketplace with relevant information concerning issuer repurchases during a tender offer for its securities by a third party. Public companies are the respondents. An estimated 20 respondents will file submissions annually at and estimated 13 hours per response for a total annual burden of 260 hours.

"Securities Exchange Act of 1934—Rule 12g3–2." Rule 12g3–2 provides an exemption for certain foreign securities. It affects approximately 1800 foreign issuer respondents at an estimated one burden hour per response for a total annual burden of 1800 hours.

"Requirements as to Form and Content of Applications, Statements and Reports under the Trust Indenture Act of 1939." Rules 7a–15 through 7a–37 under the Trust Indenture Act of 1939 ("TIA") provides guidance for complying with requirements under the TIA. Persons and entities subject to TIA requirements are the respondents. No information collection burdens are imposed directly by these rules so they are assigned only one burden hour for administrative convenience.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing on or before November 24, 1997.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: September 16, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25322 Filed 9–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17f–6, SEC File No. 270–392, OMB Control No. 3235–0447. Rule 2a19–1, SEC File No. 270–294, OMB Control No. 3235–0332. Rule 17f–2, SEC File No. 270–233, OMB Control No. 3235–0223.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 17f–6 under the Investment Company Act of 1940 ("Act") permits registered investment companies ("funds") to maintain assets (i.e., margin) with futures commission merchants ("FCMs") in connection with commodity transactions effected on both domestic and foreign exchanges.[1] Prior to the adoption of the rule, funds generally were required to maintain such assets in special accounts with a custodian bank.

Rule 17f–6 permits funds to maintain their assets with FCMs that are registered under the Commodity Exchange Act ("CEA") and that are not affiliated with the fund. The rule requires that the manner in which the FCM maintains a fund's assets be governed by a written contract, which must contain certain provisions. First, the contract must provide that the FCM must comply with the segregation requirements of section 4d(2) of the CEA [7 U.S.C. 6d(2)] and the rules thereunder [17 CFR Chapter I] or, if applicable, the secured amount requirements of rule 30.7 under the CEA [17 CFR 30.7]. Second, the contract must provide that when placing the fund's margin with another entity for clearing purposes, the FCM must obtain an acknowledgment that the fund's assets are held on behalf of the FCM's customers in accordance with provisions under the CEA. Lastly, the contract must require the FCM, upon request, to furnish records on the fund's assets to the Commission or its staff.

The requirement of a written contract that contains certain provisions ensure important safeguards and other benefits relative to the custody of investment company assets by FCMs. For example, requiring FCMs upon request to furnish to the Commission or its staff information concerning the investment company's assets facilitates Commission inspections of investment companies. The contract requirement governing transfers of investment company margin seeks to accommodate the legitimate needs of the participants in the commodity settlement process, consistent with the safekeeping of investment company assets. The contract requirement requiring FCMs to comply with the segregation or secured amount requirements of the CEA and the rules thereunder is designed to safeguard fund assets held by FCMs.

The Commission estimates that approximately 2,000 investment companies could deposit margin with FCMs under rule 17f–6 in connection with their investments in futures contracts and commodity options. It is estimated that each investment company uses and deposits margin with 3 different FCMs in connection with its commodity transactions. Approximately 241 FCMs are eligible to hold investment company margin under the rule.[2]

The only paperwork burden of the rule consists of meeting the rule's contract requirements. The Commission estimates that after the first year, 2,000 investment companies will spend an average of 1 hour complying with the contract requirements of the rule (e.g., signing contracts with additional FCMs), for a total of 2,000 burden hours. The Commission estimates that each of the 241 FCMs eligible to hold investment company margin under the rule will spend 2 hours complying with the rule's contract requirements, for a total of 482 burden hours. The total annual burden for the rule are estimated to be 2,482 hours.

Rule 2a19–1 under the Act provides that investment company directors will not be considered interested persons, as defined by section 2(a) (19) of the Act, solely because they are registered broker-dealers or affiliated persons of registered broker-dealers, provided that the broker-dealer does not execute any portfolio transactions for the company's complex, engage in any principal transactions with the complex or distribute shares for the complex for at least six months prior to the time that the director is to be considered not to be an interested person and for the period during which the director continues to be considered not to be an interested person. The rule also requires the investment company's board of directors to determine that the company would not be adversely affected by refraining from business with the broker-dealer. In addition, the rule provides that no more than a minority of the disinterested directors of the company may be registered broker-dealers or their affiliates.

Before the adoption of rule 2a19–1, many investment companies found it necessary to file with the Commission applications for orders exempting directors from section 2(a)(19) of the Act. Rule 2a19–1 is intended to alleviate the burdens on the investment company industry of filing for such orders in circumstances where there is no potential conflict of interest. The conditions of the rule are designed to indicate whether the director has a stake in the broker-dealer's business with the company such that he or she might not be able to act independently of the company's management.

It is estimated that approximately 3,200 investment companies may choose to rely on the rule, and each investment company may spend one hour annually compiling and keeping records related to the requirements of the rule. The total annual burden associated with the rule is estimated to be 3,200 hours.

Rule 17f–2, under the Act, establishes safeguards for arrangements in which a registered management investment company is deemed to maintain custody of its own assets, such as when the fund maintains its assets in a facility that provides safekeeping but not custodial services. The rule includes several recordkeeping or reporting requirements. The funds directors must prepare a resolution designating not more than five fund officers or responsible employees who may have access to the fund's assets. The designated access persons (two or more of whom must act jointly when handling fund assets) must prepare a written notation providing certain information about each deposit or withdrawal of fund assets, and must transmit the notation to another officer or director designated by the directors. Independent public accountants must verify the fund's assets without prior notice to the fund twice each year.

The requirement that directors designate access persons is intended to ensure that directors evaluate the trustworthiness of insiders who handle fund assets. The requirements that access persons act jointly in handling fund assets, prepare a written notation of each transaction, and transmit the notation to another designated person are intended to reduce the risk of misappropriation of the fund assets by access persons, and to ensure that adequate records are prepared, reviewed by a responsible third person, and available for examination by the Commission.

The Commission estimates that approximately 110 funds rely upon the rule (and that each fund offers an average of two separate series or portfolios subject to the rule). It is estimated that each fund spends approximately 2 hours annually in drafting pertinent resolutions by directors, 24 hours annually in preparing transaction notations, and 100 hours annually in performing unscheduled verifications of assets. Therefore, the total annual burden associated with this rule is estimated to be 13,860 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB on or before October 24, 1997.

Dated: September 17, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25320 Filed 9–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form 2–E and Rule 609, SEC File No. 270–222, OMB Control No. 3235–0233. Rule 6c–7, SEC File No. 270–269, OMB Control No. 3235–0276. Rule 11a–2, SEC File No. 270–267, OMB Control No. 3235–0272.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Form 2–E is used, pursuant to Rule 609 of Regulation E under the Securities Act of 1933, by small business investment companies or business development companies engaged in limited offerings of securities to report semi-annually the progress of an offering, including the number of shares sold. The form solicits information such as the dates an offering has commenced and completed, the number of shares sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. This information assists the Commission staff in determining whether the issuer has stayed within the limits of an exemptive offering.

Form 2–E must be filed semi-annually during an offering and as a final report at the completion of the offering. Less frequent filing would not allow the Commission to monitor the progress of the limited offering in order to ensure that the issuer was not attempting to avoid the normal registration provisions of the securities laws.

There has been approximately one filing on form 2–E under rule 609 of regulation E during each of the last two years. On average, approximately one respondent spends four hours collecting information, preparing, and filing a form 2–E for a total annual reporting and recordkeeping burden of four hours.

Rule 6c–7 under the Investment Company Act of 1940 ("1940 Act") provides exemption from certain provisions of Sections 22(e) and 27 of the 1940 Act for registered separate accounts offering variable annuity contracts to certain employees of Texas institutions of higher education participating in the Texas Optional Retirement Program.

There are approximately 183 registrants governed by Rule 6c–7, with an estimated compliance time of 30 minutes per registrant for a total of 92 annual burden hours.

Rule 11a–2 permits certain registered insurance company separate accounts, subject to certain conditions, to make offers to exchange their securities for other investment company securities without obtaining prior Commission approval.

There are approximately 550 registrants governed by Rule 11a–2, with an estimated compliance time of 15 minutes per registrant for a total of 138 annual burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB on or before October 24, 1997.

Dated: September 16, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25323 Filed 9–23–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 29, 1997.

A closed meeting will be held on Monday, September 29, 1997, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Monday, September 29, 1997, at 11:00 a.m., will be:

[1] Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) (61 FR 66207 (Dec. 17, 1996)).

[2] Commodity Futures Trading Commission, Annual Report (1996).

Institution and settlement of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.
Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, pleased contact: The Office of the Secretary at (202) 942–7070.

Dated: September 22, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25463 Filed 9–22–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39086; File No. SR–PCX–97–18]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Numbers 1, 2 and 3 to Proposed Rule Change Relating to the PCX Application of the OptiMark System

September 17, 1997.

I. Introduction

On June 11, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish rules for a new exchange facility called the PCX Application of the OptiMark System ("PCX Application" or "Application"). Notice of the proposed rule change appeared in the **Federal Register** on June 19, 1997.[3] Fourteen comment letters were received in response to the proposal.[4] On August 1, 1997, PCX submitted an amendment ("Amendment No. 1") to the proposal, as well as two letters containing supplemental information.[5] On August 29, 1997, PCX submitted a second amendment ("Amendment No. 2") to the proposal.[6] On September 16, 1997, PCX submitted a third amendment ("Amendment No. 3") to the proposal.[7] This order approves PCX's proposal, as amended.

II. Description of the Proposal

A. Summary of the PCX Application and Purpose

The Exchange proposes to establish rules for a new exchange facility called the PCX Application of the OptiMark System. The PCX Application of the "OptiMark System"[8] is a computerized, screen-based trading service intended for use by Exchange members and their customers. The OptiMark System would provide automatic order formulation, matching, and execution capabilities in the equity securities listed or traded on the Exchange ("PCX Securities"). The OptiMark System would be used in addition to PCX's traditional floor facilities, to buy and sell PCX Securities.[9]

Specifically, the Application would allow PCX members and their customers to submit anonymously from their computer terminals ranges of the trading interest to the OptiMark Systems. At specified times during the trading day, the OptiMark System would conduct certain calculations against such expressions of interest to identify specific orders capable of execution. All orders formulated by the OptiMark System would be automatically executed on the Exchange, except to the extent that they are executed on other market centers through the Intermarket Trading System ("ITS"). The Exchange has stated that the proposed facility would meet institutional investors' growing demand for a new trading medium. The Exchange also expects retail investors to benefit from the operation of the PCX Application.

B. Description of the Proposed PCX Application Operation

The PCX Application was developed jointly by the Exchange and OTI. Exchange members and their customers will trade on the OptiMark System in the manner described below:

Proposed Method of Operation

Two distinct operations would be involved in running the PCX Application: (i) The central information processing system and related administrative and communications terminal network of the OptiMark System, which includes computers that collect and process data, log activities, and switch messages from and to other systems and carriers, as well as the communication network linking such computers with customer terminals; and (ii) the computer hardware and software needed (collectively, the "PCX Interfaces") for the OptiMark System to communicate with PCX's computerized order system (including any terminals in use by PCX specialists or floor brokers). The Exchange would continue to operate its electronic linkages with the ITS, Consolidated Quote System ("CQS"), and the Consolidated Tape System ("CTS"), as they currently exist.

The Exchange would have direct ownership of and control over the PCX Interfaces. The OptiMark System would provide such electronic communications and information services needed for the PCX Application to operate. From time to time, various services provided by the OptiMark System would be modified to allow for system improvement and enhancement. The Exchange would assure that, at all relevant times, the material terms and conditions of the PCX Application would comply fully with the applicable rules of the Exchange.

Access to the PCX Application

The PCX Application would be available to all members of PCX and, through them, to non-members such as institutional investors and other non-member broker-dealers. Each interested member and non-member customer would be eligible to enter into a subscription agreement ("User Agreement") with OTI and also to execute an agreement with OSI authorizing the delivery of the trading service made available from the OptiMark System.

The OptiMark System subscribers ("Users") would log in from their own computer terminals and communicate with the OptiMark System over customary commercial information services and networks of their choice. Those Users that serve as specialists and floor brokers on the Exchange could also communicate with the OptiMark System from certain computer terminals located on the floor of the Exchange. Security codes and protocols would be required to log in to the OptiMark System. Once logged in, Users with authorized access to the PCX Application would be able to submit certain expressions of their trading interest in a PCX Security to the OptiMark System. Users would be responsible for all of such expressions and any other messages submitted to the OptiMark System under their passwords and security codes.

Under PCX's proposal, each member of the Exchange would be granted access to the PCX Application directly as a User. Any orders formulated and matched by the OptiMark System based on the expressions of trading interest received from a member User would be automatically routed, executed and reported in that User's name. Each such member User would be responsible for all transactions resulting from the PCX Application for its own or customer accounts in the same way that it is currently responsible for transactions on the floor.

Non-member Users would be required to designate in advance member firms ("Designated Brokers") that would authorize their access to the PCX Application. Under a non-member's agreement with a Designed Broker ("Give-Up Agreement"), the Designated Broker would accept responsibility for that non-member User's transactions and provide a written statement to the Exchange to that effect. Under the Designated Broker's agreement with OSI ("Transmission Consent Agreement"), the Designated Broker would authorize any and all orders formulated and matched by the OptiMark System based on the expressions of trading interest received from the non-member User to be automatically routed, executed and reported in the Designated Broker's name. Both agreements must be in force before any non-member User may be given access to the PCX Application. At a minimum, the provisions in these agreements would include any credit limits that may be imposed by a Designated Broker (or its clearing broker if applicable) on a non-member User;[10] the Designated Broker's undertaking that it is responsible for the non-member User's transactions; and such other terms and conditions that may be agreed to from time to time.

Entry of Profiles

Under PCX's proposal, a User would submit an expression of its trading interest in the form of a "satisfaction profile" ("Profile"), which would indicate the User's degree of satisfaction or willingness (expressed as a number between zero and one) to trade at each coordinate of a price/size grid. A User may depict a varying degree of its trading preferences, covering a range of prices and sizes, in a Profile.

The price/size grid over which Profiles are entered would be unitized into individual coordinates. The price axis would be divided into the minimum trading increments in the relevant security being traded.[11] The size axis would be divided into 1,000 share increments. A User could create a three-dimensional Profile over each coordinate in the desired region of the price/size grid by indicating a degree of willingness (a "satisfaction value") to trade at that coordinate. Such willingness to trade or satisfaction value could range from the most satisfactory (*i.e.*, "1" satisfaction value) to a cut-off point at which a transaction at that price and size becomes undesirable (*i.e.*, "0" satisfaction value).

The delineation of the size axis into 1,000 share increments for purposes of defining a Profile is distinguishable from the minimum units of trading in the PCX Application, which are in round lots. An example provided in the Exchange's proposal would be a User seeking to submit a buy Profile for 4,100 shares that shows a 100% willingness to trade at the price of 20, decreasing to no willingness as the price reaches 22. Because of the 1,000 share increments on the size axis, the User's interest in excess of 4,000 shares (*i.e.*, the 100 shares) would be reflected in the next available higher coordinate size—5,000. To draw this Profile on the grid, the User would assign the satisfaction value of 1 to all the coordinates with the associated size of 5,000 shares or less and price of 20 or below. As the associated price increases from 20 to 22, the satisfaction value of the relevant coordinates would decrease steadily down to 0. According to the Exchange, the grid size of 5,000 shares does not mean that the User actually would receive a 5,000 share trade in excess of the desired amount, because the User could enter an instruction as part of the Profile to limit the transaction size to 4,100 shares.

According to the proposal, each User may specify, with respect to each Profile submitted, an associated maximum quantity of shares in any round lot multiples starting at 1,000 shares; provided, however, those Profiles submitted by PCX specialists and certain system-generated CQS Profiles (as discussed below) would each have the associated round lot size reflected in the relevant limit order book or

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[1] The Exchange originally submitted this filing to the SEC on May 20, 1997. On June 3, 1997, the Exchange submitted Amendment No. 1 to the filing. The Exchange resubmitted the entire filing on June 11, 1997. The resubmitted filing incorporates the substance of the June 3, 1997, Amendment No. 1. All subsequent references in this order to "Amendment No. 1" refer to the amendment, dated Aug. 1, 1997, submitted as an amendment to the June 11, 1997 filing. *See* note 5, *infra*.

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38740 (June 13, 1997), 62 FR 33448 (June 19, 1997).

[4] Comment letters to the Commission were received from Thomas D. Burke, Newbridge Securities, Inc., dated July 1, 1997; Steven A. Denning, General Atlantic Partners, dated July 2, 1997; Theodore E. James, Jr., Van Kasper & Company, dated July 3, 1997; Junius W. Peake, University of Northern Colorado, dated July 7, 1997; Theodore R. Aronson, Aronson & Partners, dated July 7, 1997; Praveen K. Gottipalli, Symphony Asset Management, dated July 8, 1997; Robert A. Hill, Melvin Specialists, Inc., dated July 9, 1997; Tim McCarthy, Charles Schwab, dated July 10, 1997; Todd Greenberg, ProActive Capital Management, dated July 10, 1997; Matt Fong, Treasurer, State of California, dated July 10, 1997; Harold S. Bradley, American Century Investment Management, Inc., dated July 15, 1997; James E. Buck, New York Stock Exchange, Inc. ("NYSE"), dated July 15, 1997; Tom C. Tinsley, Baan Company, N.V., dated July 17, 1997; Bill Porter and Christos M. Cotsakos, E*Trade Group, Inc., dated July 21, 1997.

[5] Letter from John C. Katovich, Senior Vice President, General Counsel, and Director of Legal Affairs, PCX, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated Aug. 1, 1997. In Amendment No. 1, PCX made a technical amendment to its short sale rule, and provided clarification regarding the application of Rule 10a–1 under the Act to short sales in the PCX Application. Also in Amendment No. 1, PCX responded to comments made by the NYSE.

[6] Letter from John C. Katovich, Senior Vice President, General Counsel, and Director of Legal Affairs, PCX, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated Aug. 29, 1997. In addition to Amendment No. 2, the PCX also submitted two letters containing supplemental information. *See* Letter from John C. Katovich, Senior Vice President, General Counsel, and Director of Legal Affairs, PCX, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated Aug. 29, 1997 (regarding issues related to the Intermarket Trading System) ("PCX ITS Letter"), and Letter from John C. Katovich, Senior Vice President, General Counsel, and Director of Legal Affairs, PCX, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated Aug. 29, 1997 (regarding interaction of the PCX Application with the PCX floor) ("PCX Floor Letter").

[7] Memorandum from John C. Katovich, Senior Vice President, General Counsel, and Director of Legal Affairs, PCX, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated Sept. 16, 1997. In Amendment No. 3, PCX clarified the manner in which Primary Market Protection ("PMP") orders will be executed once the Application is implemented. The letter also includes several trading scenarios that illustrate the operation of the Application vis-a-vis PCX specialists.

[8] The OptiMark System was developed by OptiMark Technologies, Inc. ("OTI"), a computer technology firm located in Durango, Colorado, based on certain patent-pending technology referred to as "OptiMark ™." OTI has represented that the PCX Application is expected to be one of several different trading services based on that technology that will be made available from the OptiMark System for other exchanges and markets in the future. OTI expects its wholly-owned subsidiary, OptiMark Servicers, Inc. ("OSI"), which currently plans to apply for registration as a broker-dealer, to be responsible for operating portions of the PCX Application for the Exchange and delivering the trading service to the Exchange's members and their customers. OTI is licensing the OptiMark System to OSI for purposes of the PCX Application.

[9] This rule filing addresses trading in PCX Securities only. PCX represents that if and when it proposes to extend the Application to options or other types of securities listed or traded on the Exchange, a rule change proposal will first be filed with the Commission.

[10] A non-member User's credit limits, as they may be established from time to time by a Designated Broker (or its clearing broker if applicable), will be programmed into the OptiMark System. In addition, the Designated Broker will be notified as its potential exposure to its customers, individually or in the aggregate, approaches the established credit limits.

[11] PCX recently amended its rules in order to trade equity securities in minimum increments of 1/16 of a dollar. *See* Securities Exchange Act Release No. 38780 (June 26, 1997), 62 FR 36087 (July 3, 1997).

quotation, which may be less than 1,000 shares. In addition, Users may, at their option, set boundary conditions on a Profile to restrict the total number of shares that may be purchased or sold within any particular price or size range. Similarly, Users may, at their option, place restrictions on any potential purchase or sale of shares through the ITS.

Users would submit Profiles through their own computers or computers on the floor of the Exchange. All Profiles received by the Application from a User would be treated confidentially and would be viewed only by that User. Unlike orders entered on the Exchange's traditional floor facilities, Profiles would not be widely disseminated to elicit any trading interest when they are received. Instead, they would be logged and maintained by the OptiMark System until they are centrally processed. As discussed further below, Profiles would not be executable outside of the specified times. As trading interest contingent upon such periodic processing, Profiles received by and kept within the OptiMark System would have no standing against orders on the floor and no bearing on the Exchange's traditional auction-pricing mechanism.

The Exchange has represented that, in accordance with its general audit trail requirements, all Profiles submitted by Users would be appropriately marked as proprietary or agency. In addition, each would be time-stamped with a unique serial number when received by the OptiMark System.[12] Users would be able to revise or cancel their own Profiles at any time prior to commencement of the next scheduled central processing. According to the Exchange, because it would be important for Users to be able to adjust their outstanding Profiles in a timely manner in response to sudden market developments, adjustments would be processed in the next central processing scheduled to take place more than one second after receipt. Submitting a revised Profile would result in a new time stamp, unless the only change made is a reduction in the maximum quantity of shares previously specified.

According to the Exchange, all Users would be held responsible for the terms and conditions contained in their Profiles. Each User would assume any and all responsibility for canceling or revising its Profile. Users would be able to specify in advance whether to cancel their outstanding Profiles or to keep such Profiles active in the event of an unexpected interruption experienced in their own telecommunications linkage to the OptiMark System. If a User decided to keep its Profile active, it would be accountable for any and all transactions resulting from the PCX Application based on such Profile.

Under PCX's proposal, the first match in a Cycle (as defined below), if it involves a short sale, will only be effected if it meets the requirements of Rule 10a–1 under the Act,[13] *i.e.*, if it is at a price above the last sale price reported on a consolidated transaction reporting system immediately prior to commencement of the Cycle, or at the last reported price if such price is above the next preceding different price. After the first transaction in the Cycle, short sale orders will only be executed at a price: (i) Above the price of the immediately preceding match within the Cycle, or (ii) equal to the immediately preceding price if such price is above the next preceding different price. PCX has requested an exemption from Rule 10a–1, the Commission's short sale rule, to permit matches within a Cycle (those subsequent to the initial match) to utilize the immediately prior match as a reference trade for determining short sale rule compliance.[14]

The OptiMark System would perform the necessary credit verification procedures on each Profile submitted by a non-member User. Such procedures would ensure that the maximum absolute dollar value of each Profile received by the OptiMark System, when added to the non-member Users' current credit usage, is consistent with the applicable credit limits. All Profiles not meeting the credit validation requirement would be deactivated.

Interaction With Existing Market Interest

According to the Exchange, the PCX Application is designed to provide Users with certain automated access to and interaction with quotations emanating from other participating market centers of the ITS. At the specified times during the trading day when central processing by the OptiMark System is scheduled to occur, the prevailing bid and offer quotations in CQS from each such market that may be reached by ITS, including the Intermarket Trading System/Computer Assisted Execution System interface ("ITS/CAES"), would be transformed into a pair of buy and sell Profiles ("CQS Profiles"). Each CQS Profile would have, for the relevant limit price and size, a satisfaction of 1 for all the corresponding coordinates in the price/size grid. The Exchange has represented that creation of these CQS Profiles and their interaction with the Profiles submitted by Users would ensure that the PCX Application is consistent with the intermarket price protection requirement under the ITS Plan.

According to the Exchange's proposal, the PCX Application is also designed to serve as an additional trading service for the Exchange specialists and floor brokers to use in handling existing market interest on the floor. In their capacity as Users, the specialists and floor brokers would be able to submit Profiles based on their customer limit orders. The PCX specialists would be provided with a uniquely designed electronic interface at their posts that would provide simple retrieval instructions to facilitate designation of customer orders on their limit order books for inclusion as Profiles in the OptiMark System. Such an interface also would permit PCX specialists to revise and/or cancel the relevant Profile if any of the limit orders reflected in the Profile subsequently became executable against some other market interest. The Profiles created from a PCX specialist's book would be treated the same as any other Profiles submitted by Users of the OptiMark System.[15] Similarly, floor brokers would have the ability to use existing terminals or designated OptiMark System terminals on the trading floor to submit Profiles if they wish to use the PCX Application to fill existing customer interest.

Central Processing

All Profiles received by the OptiMark System (including CQS Profiles) for each relevant security would be centrally processed by computer at one or more specified times during the trading day in order to generate one or more orders of identified prices and sizes at which execution may occur immediately ("orders"). Such processing would involve a series of high-speed calculations ("Cycle"). Cycles would be based on a computer algorithm that is designed to measure and rank all relevant mutual satisfaction outcomes by matching individual coordinates from intersecting Buy Profiles and Sell Profiles. The matching algorithm of the OptiMark System is intended to compute optimal trade results for Users based on their different willingness to trade across a wide range of price and size. A buy coordinate and a sell coordinate, each with a full satisfaction value of 1, would be matched, based on price, standing, time of entry, and size. If one or both coordinates have a partial satisfaction value of less than 1 (but greater than 0), they would be matched, generally based on the mutual satisfaction value—that is, the product of the specific satisfaction values associated with the buy coordinate and sell coordinate.

The Exchange has represented that Profiles would be processed according to the following terms concerning matching eligibility restrictions and priority principles:

1. *Eligibility Restrictions.* At commencement of a Cycle, each individual coordinate with a non-zero satisfaction value from all buy Profiles and all sell Profiles received by the OptiMark System (including CQS Profiles) in a given PCX Security would be grouped into the Buy Profile Data Base or the Sell Profile Data Base, respectively. Each individual coordinate, no matter how small or large in the corresponding size, from either Profile Data Base would be eligible to be matched with one or more coordinates from the other Profile Data Base and would result in one or more orders, provided that:

1.1 No buy and sell coordinates could be matched in violation of any applicable User instructions for the respective Profiles, including: (a) The maximum quantity associated with the Profile, (b) any boundary conditions restricting the aggregate number of shares that may be bought or sold at a particular price or size range, and (c) the restrictions on any potential sale or purchase through ITS; and

1.2 No buy and sell coodinates could be matched from contra CQS Profiles.

1.3 No buy and sell coordinates could be matched at a price inferior to that of another coordinate with standing (as defined below) that is eligible for matching. A buy (sell) coordinate has Standing if: (a) It has 1 satisfaction value and (b) all coordinates having the same price and a smaller size, down to and including the minimum trading increment (100 shares), are included in the associated Profile at 1 satisfaction value; provided, however, that no coordinate from a Profile containing any boundary conditions restricting the aggregate number of shares that may be bought or sold at a particular size range has Standing. Each coordinate from a CQS Profile would have Standing. By contrast, no coordinate from a Profile submitted by a User on an "all-or-none" basis would have Standing.

2. *Priority Principles.* The methods for considering potential matches between buy and sell coordinates in the Profile Data Bases would vary, depending on whether both coordinates represent satisfaction values of 1 or less than 1. As a result, these would be two separate stages of a Cycle:

2.1 *Aggregation Stage.* The OptiMark System initially would process eligible buy and sell coordinates in the Profile Data Bases, each with the full satisfaction value of 1 only. At this stage of calculation ("Aggregation Stage"), smaller-sized coordinates may be aggregated to build sufficient size to be matched with larger-sized coordinates to generate orders in accordance with the following rules of priority, subject to the applicable eligibility restrictions:

(A) *Price aggressiveness.* A coordinate with a more aggressive price (*i.e.*, a higher price for a buy coordinate and a lower price for a sell coordinate) would have priority over coordinates with less aggressive prices.

(B) *Standing.* Among the coordinates with the same price, a coordinate with Standing would have priority over all other coordinates without Standing.

(C) *Time of entry.* Among the coordinates with the same price and Standing, the time of the entry of the associated Profile would determine relative priority, with earlier submissions having priority. All Profiles submitted by Users would be appropriately time-stamped with a unique serial number when received by the OptiMark System; provided, however, that the effective time of entry for any Profile submitted by a PCX specialist representing proprietary trading interest in the specialist's designated security would fall behind that of a Profile submitted by any other User for that security. Because each CQS Profile would be generated from the relevant market's most current quotation prevailing at the time of commencement of a Cycle, the effective time of entry of a CQS Profile would be later than that of any other Profile submitted by a User, including a PCX specialist's proprietary trading in the specialist's designated security.[16]

(D) *Size.* Among the coordinates with the same price, standing and time of entry, priority would be determined by size, with larger sizes having higher priority.

2.2 *Accumulation Stage.* Upon completion of the Aggregation Stage, the OptiMark System would consider potential matches between eligible buy coordinates and sell coordinates in the Profile Data Bases where one or both parties have less than 1 (but greater than 0) satisfaction values. At this stage of calculation ("Accumulation Stage"), only those buy and sell coordinates with the same associated price and size would be matched to generate orders in accordance with the following rules of priority, subject to the applicable eligibility restrictions:

(A) *Mutual satisfaction.* A potential match with a higher mutual satisfaction value (the product of the two satisfaction values) would take precedence over other potential matches with lower mutual satisfaction values.

(B) *Time of entry (based on the earlier Profile).* Among the potential matches with the same mutual satisfaction, the match with the earlier time of entry, as determined initially by the effective time of entry assigned to the earlier of the buy and sell Profiles involved (the "earlier Profile"), would have priority over other potential matches.

(C) *Size.* Among the potential matches with the same mutual satisfaction and time of entry for the earlier Profile, priority would be given to one with a larger size.

(D) *Time of entry (based on the later Profile).* Among the potential matches with the same mutual satisfaction, time of entry (for the earlier Profile), and size, the match with the earlier time of entry, as determined this time by the effective time of entry assigned to the later of the buy and sell Profiles involved (the "later Profile"), would have priority over other potential matches.

(E) *Price assignment.* in regard to all remaining ties between potential matches, which would consist solely of the coordinates for a single pair of buy and sell Profiles from two Users that may be matched with the same mutual satisfaction, time of entry and size, but at different prices, priority would be given to the match at a price more favorable to the User whose Profile has the earlier time of entry. By way of example, among the last potential matches remaining at the price of 10 and also at 10⅛, if the sell Profile is the earlier Profile, then the match would take place at the price of 10⅛. The Commission notes that two or more Profiles that are entered into the OptiMark System representing the same number of shares may result in executions at differing prices depending on the other information and conditions entered into the System.

The Exchange has represented that, for purposes of the PCX Application, the specific times at which Profiles would be centrally processed would vary, depending on the security involved. No Cycle, however, would be scheduled until after the opening of the PCX market for any such security. Similarly, no Cycle would be scheduled at or after the closing of the PCS market for that security. The maximum frequency with which Cycles may take place throughout the trading day would be every 90 seconds, while the minimum would be once a day.

The Exchange has represented that the exact frequency of Cycles as to any given PCX Security would be determined by OSI, taking into account the general characteristics of the security (*e.g.*, trading volume, price, and number of shareholders), the associated Profile flow over a period, and the current level of interest expressed by

[12] PCX would have access to all non-member trade information held by a member in order to perform surveillance. Telephone conversation between John C. Katovich, Senior Vice President, General Counsel, and Director of Legal Affairs, PCX, and Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, Sept. 4, 1997.

[13] 17 CFR 240.10a–1.

[14] Letter from John C. Katovich, Senior Vice President, General Counsel, and Director of Legal Affairs, PCX, to Richard R. Lindsey, Director, Division of Market Regulation, SEC, dated August 29, 1997.

[15] According to the Exchange, the PCX specialists may also submit Profiles based on their own proprietary trading strategies, in addition to Profiles reflecting public limit orders on their books. To the extent that a PCX specialist chooses to represent a proprietary trading interest in its designated security by submitting a Profile, that particular Profile will have lower time priority than that of the Profile submitted by any other User in the security, thereby preventing the specialist from trading ahead of any agency orders submitted by Users. Time priorities are discussed below.

[16] See Amendment No. 3, *supra*, note 7.

Users. From time to time, OSI may alter the frequency of Cycles in response to subsequent developments. PCX has represented that OSI will consult with PCX prior to altering the frequency of any Cycle.[17] Any change in the frequency of Cycles would be effective upon three days' advance notice to Users. Such notice would be provided electronically, using the same telecommunications linkage and protocols available to Users for submitting Profiles. At all relevant times, Users would be fully informed as to when the next Cycle in a particular PCX Security would take place.

The Exchange would assure that the frequency of Cycles remains commensurate with the financial community's need and demand for the trading service. In addition, the Exchange would assure that the PCX Interfaces and the OptiMark System have sufficient capacity in place to handle any material increase in the volume of data prior to implementing a change in the frequency of Cycles.

Order Execution and Reporting

The Exchange would make available the necessary PCX Interfaces to permit orders in PCX Securities from the OptiMark System to be executed, either on the Exchange or on other market centers participating in ITS through the appropriate Exchange communications linkage. The Exchange would permit one or more pairs of orders resulting from intersection of the Profiles submitted by Users (including PCX specialists and floor brokers) to be routed and executed on the Exchange. Every trade resulting from the execution of a pair of orders on the Exchange would be appropriately reported, by way of the traditional Exchange linkage to the CTS processor for dissemination, in the sequence in which orders are generated from the Cycle. The Exchange would report these trades, similar to the way it currently reports other trades in PCX Securities to the CTS. Accordingly, consistent with the existing reporting practices, a series of orders generated from a single Cycle for the same seller with different buyers at an identical price would be printed on the Tape as one transaction. In general, the report for any transaction resulting from the PCX Application would not be distinguished on the Tape from the trade report of any other order executed on the PCX floor.

As for one or more orders representing matched coordinates from CQS Profiles, and other contra Profiles, the Exchange would submit an ITS commitment reflecting each such order and seeking execution on market centers other than PCX. Every ITS commitment would be sent under the give-up of the relevant member User or the Designated Broker, by way of the traditional Exchange linkage to the ITS, in the sequence in which orders are generated from the Cycle. Each ITS commitment would be assigned a "T–1" (one minute) time period as specified in the ITS Plan. The Exchange envisions sending ITS commitments resulting from the PCX Application in the same way other ITS commitments are currently sent from the Exchange. According to the Exchange, ITS commitments resulting from the PCX Application would not be distinguishable from other ITS commitments.

The Exchange would continue to apply all existing rules governing trading on its equity trading floor. For example, market orders routed from members to the Exchange would continue to be executed in the same manner. Similarly, ITS commitments received from ITS participants other than PCX would be executed against the Exchange's prevailing quotations as specified under the ITS Plan. As for limit orders, PCX specialists and floor brokers would be afforded an additional (but not alternative) opportunity to fill such interest through the PCX Application. To the extent that the Exchange specialists and floor brokers submit Profiles to the OptiMark System based on customer interest in their books, the handling of any such Profiles and any resulting trade executions through the PCX Application would be fully consistent with the parameters under which public limit orders are currently filled.

Moreover, PCX specialists would remain fully responsible for managing their limit order books. Accordingly, if a specialist elected not to reflect a customer limit order in the OptiMark System, it would remain accountable for execution at any more favorable price that could have been obtained if such order were processed through the PCX Application. In such a case, consistent with the Exchange's existing floor procedures and practices, the specialist would be required to satisfy or cause to be satisfied the customer limit order so held, either at the limit price specified, or at any better price generated by the Application. PCX has represented that this guarantee is limited to customer limit orders booked prior to the commencement of a Cycle. Therefore, orders booked after the commencement of a Cycle would not be guaranteed an execution at prices obtained as a result of such Cycle.

In Amendment No. 3 to its filing, PCX clarified that, even if the specialist does not submit a Profile for a limit order in its book, the limit order will receive "the limit price or a better price if one occurred in that cycle, up to the amount of the order or orders executed in OptiMark."[18]

Specifically, after a Cycle of the Application is completed, the Application sends the orders to the PCX floor in a batch. The batch of orders, which will be automatically executed, "will be in a specific, deterministic order, as defined by the Aggregation and Accumulation Stage"[19] (discussed above). According to PCX, the order of execution will be provided to the specialist, in the same manner as executions performed in another market, such as NYSE. The specialist will have, out of that batch of executions resulting from a Cycle, the prices and size of each execution. If at the beginning of a Cycle a specialist has a limit order in the book that was not reflected as a Profile in the Application, and, as a result of orders generated through the Application, the booked order becomes eligible for execution, the price that will be given to the booked order will be based upon the best price that occurs out of the batch of orders generated by the Application, up to the size of the booked order not entered into the Application as a Profile.

The Exchange presented the following example: There is a booked order to buy 1,000 shares with a 10 limit price, and the specialist does not express the order as a Profile in the Application. The immediately succeeding Cycle of the Application generates orders resulting in transactions at the following prices: 1,000 at 10⅛, 500 at 10, and 1,000 at 9⅞. Without the existence of the Application, an execution in the same security on the PCX at 10 would trigger an execution of the booked order at 10. With the implementation of the Application, the batched transactions resulting from a Cycle would be viewed as a unit for purposes of determining the price at which the booked order should be filled. The specialist, therefore, would look for the best price resulting from the Cycle in determining the price at which to fill the booked order. In this case, the transaction resulting at a price of 9⅞ for 1,000 shares would be the determining price, and the specialist would be obligated to fill the order at 9⅞. If, on the other hand, the Cycle resulted in a series of transactions that included only 500 shares at the prices stated above, and the specialist nevertheless had a booked limit order for 1,000 at 10 (which was not entered into the Application), the specialist would be obligated to fill the first 500 shares of the booked order at 9⅞ and the remaining 500 shares at 10, the next best price generated by the Cycle.

In Amendment No. 3, PCX provided an example of how limit orders booked with PCX specialists would interact with the Application. In the example, a specialist would have two booked limit orders at buy, the first for 1,000 shares, and the second for 500 shares, both at a price of 30. The example assumes that the specialist did not enter the 1,000 share order into the Application, but the specialist did enter the 500 share order into the Application as a Profile. In the example, the next Cycle of the Application resulted in a transaction of 29½ for the 500 share order entered into the Application as a Profile. In such a case, the specialist would be required to fill both orders at 29½.

In Amendment No. 3, PCX also further clarified the manner in which PMP would operate in connection with the Application. Generally, according to the PCX,

> [i]f an order is received and specifically marked PMP (primary market protection), this means that the firm sending the order has usually requested that the order only get filled if within the range of the designated "primary" market (usually the NYSE and AMEX). In such a case, the specialist is operating under the understanding that the order will not get filled outside the "primary" market range.[20]

In order to ensure that PMP orders can be integrated into the Application, PCX represented that:

> during regular "primary" market trading hours, an order specifically marked PMP will have to be treated just like any other booked order when executions result from OptiMark matches, even if the "primary" market range has not traded at that price. Similarly, a PMP order reflected into OptiMark as a profile, which is matched in OptiMark and results in an execution, will require that the PMP limit order be filled, even if the price is out of range from the * * * otherwise existing "primary" market, however defined.[21]

PCX will undertake to amend its rules so that the operation of the Application would be considered as an exception to Rule 5.32 regarding the execution of orders marked PMP.

The Exchange has also represented the operation of the PCX Application would be consistent with the Exchange's intermarket price protection obligations under the ITS Plan. The OptiMark System incorporates existing market interest emanating from each of the ITS participant markets to which it is not directly linked in the form of CQS Profiles. Because of the rules of priority for considering potential matches between buy coordinates and sell coordinates from any Profiles (including CQS Profiles), all orders that are priced inferior to the quotations of another market center would be generated and executed on PCX only upon submission of appropriate ITS commitments seeking to reach such better-priced interest. As a result, the Exchange has represented that execution of any such orders on PCX would not violate the trade-through rule under the ITS Plan.

The Exchange has represented that all Users would be informed of executions that take place against the Profiles that they submitted for their own or customer accounts promptly after the trades occur. If an ITS commitment resulting from the PCX Application is canceled or only partially filled, the OptiMark System would notify the relevant User and restore to the Profile the volume of the security represented by the unfilled order. All such reports would be sent electronically, using the same telecommunications linkage and protocols that were used to submit the Profiles initially. Unless specified otherwise by non-member Users in advance, executions would not be reported to relevant Designated Brokers until after the close of the trading day in order to limit market impact and other such adverse effects of non-member Users' trading.

Clearance and Settlement

The Exchange has represented that transactions in PCX Securities resulting from the PCX Application, including any ITS commitment sent to another market center and accepted, would clear and settle in the same way as other transactions occurring on the Exchange floor. All orders generated by the OptiMark System that are executed on PCX or another market center through ITS would be reported and entered into the comparison system on a locked-in basis. Orders generated by the OptiMark System on behalf of a member User and the resulting transactions would be cleared and settled using that member User's mnemonic (or its clearing broker's mnemonic). Orders generated by the OptiMark System on behalf of a non-member User and the resulting transactions would be cleared and settled using the appropriate Designated Broker's mnemonic (or its clearing broker's mnemonic).

The Exchange or any operator, administrator or licensor of the OptiMark System would not be responsible for any User's failure to pay for PCX Securities purchased or to deliver PCX Securities sold. Neither OTI nor OSI would be deemed to be a party to or a participant in, as principal or as agent, any trade or transaction entered into or otherwise conducted by Users while using the OptiMark System for the purposes of clearance and settlement.

Hours of Operation

The PCX Application would be initially available for execution of orders and routing of ITS commitments during the regular PCX hours after the opening and prior to the closing.[22] In the event of a suspension in trading of a security listed or traded on the Exchange, the Exchange would suspend the related trading activities respecting that security through the PCX Application. In addition, the Chairman or, in the Chairman's absence, Chief Operating Officer, or other PCX Officer(s) as the Chairman may designate, may determine that market conditions warrant a market-wide halt pursuant to the Exchange's Policy Statement on Market Closings. Trading on the PCX Application of the OptiMark System would be covered by such a market-wide halt. The Exchange may suspend the trading activities through the PCX Application relating to one or more PCX Securities at any time upon consultation with OTI if deemed necessary and proper to preserve system capacity and integrity.

Audit Trail and Surveillance

The Exchange would maintain, or cause to be maintained, a detailed audit trail of each transaction resulting from the PCX Application, including time sequenced records of Profiles submitted to the OptiMark System, orders resulting from a Cycle, and their execution and reporting through PCX facilities. Such data would be stored and preserved for a period of not less than three years, the first two years in an easily accessible place, to assure that the Exchange has sufficient information for exercising its regulatory oversight.

[17] Telephone conversation between John C. Katovich, Senior Vice President, General Counsel, and Director of Legal Affairs, PCX, and Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, Sept. 4, 1997.

[18] *See* Amendment No. 3, *supra*, note 7.

[19] *Id.*

[20] *See* Amendment No. 3, *supra*, note 7, at 2.

[21] *Id.* PCX will codify this clarification through a rule amendment with the Commission. In this regard, PCX stated that the amendment "will be consistent with the overall premise that under no circumstance can a specialist accept an execution arising out of orders generated from an OptiMark cycle, without first taking care of any eligible booked orders that were put in the book before the cycle began." *Id.*

[22] The Exchange's hours are currently 6:30 a.m. (P.T.) to 1:30 p.m. (P.T.).

The Exchange would apply appropriate equity trading surveillance procedures to monitor transactions resulting from the PCX Application.

System Capacity and Integrity

The Exchange believes that the PCX Interfaces and the OptiMark System would provide sufficient capacity to handle the volume of data reasonably anticipated for the PCX Application. The Exchange would have in place security procedures designed to prevent unauthorized access to the PCX Application and to safeguard the PCX Interfaces. The Exchange would obtain similar assurances from OTI and OSI that reasonable security procedures are in place to safeguard the OptiMark System and to protect against threats to the proper functioning of the OptiMark System, including any networks used by the OptiMark System. The Exchange would also obtain appropriate assurances that proper system reliability and system capacity exists to ensure the integrity of the data handled and timely response of the OptiMark computers in connection with the PCX Application.

Fees for the PCX Application

Transactions resulting from the PCX Application would be subject to the Exchange's customary assessment of transaction charges and the Commission's exchange transaction fee under Section 31 of the Act. As a sponsor of the OptiMark System within the meaning of Rule 17a–23 under the Act, OSI, which currently plans to apply to register as a broker-dealer, would be compensated by way of usual and customary commissions, on a cents-per-share-filled basis, for transactions effected by a member User for its own customer accounts through the PCX Application. With respect to transactions effected by a non-member User, OSI would be paid commissions on a similar basis from the relevant Designated Broker.

III. Comments Received

The Commission received fourteen comment letters in response to its request for comments on the PCX proposal.[23] All of the comment letters, except for a letter submitted by the NYSE, supported the PCX's proposal. Letters in support of the proposal were submitted by institutions, broker-dealers (including underwriters, specialists, and retail and clearing brokers), the Treasurer of the State of California, and from academia.

Those submitting letters in favor of the implementation of the OptiMark System provided various reasons for their support of the PCX proposal. For example, commenters stated that the OptiMark System would provide an alternative to the traditional method of order execution and would be the first system available to allow institutions to use complex trading strategies in a secure environment.

Several commenters stated that the OptiMark System would provide both retail and institutional participants with an improved ability to buy or sell securities in a manner that matches their objectives. Commenters stated that both retail and institutional customers would benefit from better prices.

One broker-dealer, for example, stated that the OptiMark System would enable its retail customers to obtain price improvement derived from a mixture of retail and institutional order flow between PCX floor brokers and specialists. Another stated that the system would be beneficial in allowing for anonymous interaction between retail orders and institutional orders.

In addition, some commenters focused specifically on the confidentiality of the OptiMark System. One commenter noted that, currently, trading interest may be difficult to assess because of concerns about information integrity and the market impact cost of large orders. Another stated that one of the biggest problems that institutions face today is attempting to keep their decisions to buy or sell securities confidential. These and other commenters argued that OptiMark would provide a solution to such problems. One commenter stated that the system would allow a portfolio manager to add qualitative information to each order on a non-disclosed basis.

Several commenters stated that the OptiMark System would promote liquidity, and two commenters stated that the Application would reduce market volatility. Several commenters stated that OptiMark would promote market efficiency and reduce transaction costs by lowering the market impact of trades.

Commenters also argued that the OptiMark System would further the development of the national market system ("NMS") envisioned in the Securities Acts Amendments of 1975,[24] and as reflected in Section 11A of the Act.[25] One such commenter stated that "OptiMark represents precisely the kind of 'new data processing and communications techniques' that Congress thought when it passed the 1975 Securities Act Amendments would create the opportunity for more efficient and effective market operations, and would foster efficiency, enhance competition, facilitate the offsetting of customer orders, and contribute to best execution."[26] The same commenter stated that OptiMark's operation as a facility of an exchange, "with the accompanying linkage to other markets through the ITS system, should ensure that OptiMark has a positive impact on the national market system as a whole."[27]

One commenter also stated that OptiMark would promote free market competition and would "erod[e] the private club benefits previously afforded members of dominant exchanges and compel * * * limit order disclosure to the public markets."[28]

In contrast to the views of the supporting commenters, NYSE submitted a comment letter opposing the PCX rule filing ("NYSE Comment Letter").[29] The NYSE asked the Commission not to approve the filing, but to require PCX to further explain and clarify its proposal. In its letter, NYSE expressed several concerns about the possible implementation of the OptiMark System. First, NYSE contended that the system would have the effect of "creating a hidden market" within PCX, which it believed would be detrimental to other trading interest on PCX and to the NMS, and contrary to established PCX auction rules.[30] NYSE argued that marketable trading interest processed through the Application would not be exposed to the PCX auction or to the NMS until after a transaction has occurred. In NYSE's view, OptiMark Profiles would constitute orders that should be incorporated into PCX's floor-based trading system. More specifically, NYSE contended that Profiles equal to or better than the price of the then-disseminated PCX quotation should be quoted in the same manner as other orders received by PCX. In addition, NYSE argued that a trade resulting from use of the OptiMark System that is printed on PCX would impose new and additional price protection responsibilities on PCX specialists. NYSE claimed that the PCX filing was silent about the right or obligation of PCX floor brokers to "break up," and provide potential price improvement

[23] *See supra*, note 4.

[24] Pub. L. No. 94–29, 89 Stat. 131 (1975).

[25] 15 U.S.C. 78k–1.

[26] *See* Letter from Tim McCarthy, Charles Schwab, *supra*, note 4.

[27] *See Id.*

[28] *See* Letter from Harold S. Bradley, American Century Investment Management, Inc., *supra*, note 4.

[29] *See* Letter from James E. Buck, NYSE, *supra*, note 4.

[30] *Id.* at 2.

for, Profiles crossed or matched within the OptiMark System and routed to the PCX floor for execution.

NYSE raised concerns about the potential effect of the Application on PCX's relationship with the ITS with respect to access and liability for clearance and settlement. NYSE stated its belief that the Application's access to ITS would be different from that currently used by PCX for the sending of ITS commitments pursuant to the ITS Plan. NYSE argued that it would be premature for the Commission to approve PCX's filing until PCX has provided the ITS participant markets with a clear and detailed understanding of how PCX intends for OptiMark to access the ITS. NYSE also claimed that PCX was attempting to amend the terms of the ITS Plan to limit PCX's liability beyond the authority set forth in the ITS Plan.[31]

Finally, NYSE stated that the PCX filing did not clearly reflect that all ITS price protection rules would be followed by the users of the Application. NYSE noted that ITS price protection rules specify the obligations of participant members for satisfying trade-throughs, Block Policy trades, and locked markets involving other ITS participant markets, and that these obligations include a requirement to issue ITS commitments to trade. Next, it highlighted that PCX's filing stated that users would be able to "place restrictions on any potential purchase or sale of shares through ITS."[32] NYSE believes this language suggests that a PCX member (or member's customer) could place restrictions on the use of ITS that would ignore the ITS price protection rules. Accordingly, NYSE suggested PCX's filing be amended to note the limitation on a user's right to place limitations on the use of ITS for price satisfaction purposes.

Further, NYSE questioned OptiMark's proposed compliance with the Commission's short sale rule. NYSE noted a letter sent by the PCX to the Commission's Division of Market Regulation in May 1997, requesting relief from the short sale rule.[33] NYSE stated that an exemption "would not be appropriate for a system such as OptiMark which provides price discovery."[34] NYSE also referred to PCX's proposed amendment to PCX Rule 5.14, which proposed that "[t]he Exchange's short sale rule (Rule 5.18) shall not be applicable to any resulting transaction in the Exchange."[35] NYSE argued that the approval of such a proposed rule would "establish a clear conflict that could lead to inadvertent regulatory violations."[36] NYSE recommended that PCX amend its proposal to delete both PCX Rule 5.14 and the above-quoted proposed language.

On August 1, 1997, PCX submitted to the Commission a letter responding to issues raised in the NYSE Comments Letter.[37] In response to NYSE's comment that the Application would create a "hidden market," PCX stated that the Application would operate in a manner consistent with existing principles of the current auction market now in place at PCX as well as at NYSE. PCX represented that "[b]ids or offers announced on the PCX floor or in the specialist's book will continue to be collected and disseminated by the PCX in full compliance with Rule 11AC1–1" under the Act, and that PCX's continuous auction facilities, separate and apart from the periodic auction conducted by the Application, would continue to be available to members.[38]

PCX argued that "[t]he fact that Profiles will not be disseminated as quotes does not create a hidden market" because the Profiles are analogous to indications of interest, and not bids and offers.[39] PCX further argued that the Application represents a periodic call market facility and that quotes in such market have no meaning because trading interest remains a generalized expression of interest until it is processed during the call. PCX argued that no Profile is eligible for execution until the time of the call, in contrast to a quote, which is a firm bid or offer available for execution at any time. In this regard, PCX believes that the display of any Profile in an open quote stream would contradict the desire of Users submitting Profiles and would impair the integrity of the quote system because individual Users would represent multiple and differing price values for any given buy or sell interest. Thus, PCX stated that it should not be required to display in the PCX quotation User Profiles, including those coordinates with a satisfaction value of 1.

In response to the NYSE argument that the Application would impose new price protection responsibilities on PCX specialists, PCX stated that although the Exchange would require its specialists, under PCX Rule 5.32(a), to honor their obligations for executions at the same or better prices that occur as a result of the Application, this requirement would not constitute a new obligation. As an example, PCX outlined how PCX specialists guarantee the price of executions that occur on the "other city floor"[40] of the PCX, noting that under certain circumstances, a PCX specialist may be obligated to fill an order at a price obtained from the "other" PCX floor. PCX noted that the guarantee requirements imposed on PCX specialists regarding transactions effected through the Application will likely influence them to reflect frequently their book orders in the OptiMark system, although they would not be obligated to do so. Further, if a specialist did not honor its obligations to execute an order, based upon an execution that occurs in the primary market or within the PCX market, the specialist would be found to be in violation of existing PCX rules.

PCX also disagreed with the NYSE's comment that the PCX proposal does not comply with PCX's crossing rules, specifically PCX Rules 5.14 (a) and (b). According to PCX, under these rules members are responsible for assuring that all existing bids or offers, at or better than the cross price, are filled at their limits. PCX argued that although the OptiMark System would help a User find other trading interest through the central processing of Profiles, this is not the same as a cross transaction on the Exchange floor, where both sides of the trade are brought to the specialist's post by a broker. PCX emphasized that when coordinates from Profiles happen to match at the time of the call, it is fortuitous and can not be considered a cross as defined in either PCX or NYSE rules. PCX further stated that when two Profiles with overlapping coordinates give the appearance of a cross, the processing of these Profiles against other

[31] The NYSE cited, in particular, the language in the PCX's filing that states:

In no event will the Exchange or any operator, administrator or licensor of the OptiMark System be responsible for any User's failure to pay for the PCX Securities purchased or to deliver the PCX Securities sold. Neither OTI nor OSI will be deemed to be a party to or a participant in, as principal or agent, any trade or transaction entered into or otherwise conducted by Users while using the OptiMark System for the purposes of clearance and settlement.

Letter from James E. Buck, NYSE, *supra*, note 4, at 5–6.

[32] *ID.* at 6.

[33] *See* Letter from John C. Katovich, Senior Vice President and General Counsel, PCX, to Richard R. Lindsey, Director, Division of Market Regulation, SEC, dated May 19, 1997 ("PCX May 19 Letter").

[34] *See* Letter from James E. Buck, NYSE, *supra*, note 4, at 4. NYSE also noted it would not generally comment on this because it understood that Commission staff would not grant the requested exemption from Rule 10a–1 under the Act. *Id.*

[35] *Id.*

[36] *Id.*

[37] *See* Amendment No. 1, *Supra, note 5.*

[38] *Id.* at 2.

[39] *Id.*

[40] The PCX has equity trading floors both in San Francisco and Los Angeles.

trading interest in the PCX Application may not result in a match between the two Profiles. Rather, the priorities established by the Application could effectively "break up" any such potential match.

With respect to NYSE's comment on ITS access, the Exchange argued that the Application would not change the method of system access in any manner that calls for an ITS Plan amendment. Instead, the Exchange stated that the Application would be an additional exchange facility, through which the Exchange would be able to honor its existing ITS commitments. The Exchange emphasized that the Application would merely provide more convenient electronic access for the benefit of its members and their customers, and as such, the Application would "complement one 'example' of system access described in Section 6 of the ITS Plan through added flexibility, thereby promoting the increased use of ITS through information and telecommunications technology innovation, all as intended by the ITS Plan and as required by the Commission under Section 11A of the Exchange Act."[41]

With respect to NYSE's argument that the PCX filing would "effectively amend the terms of the ITS Plan to limit PCX's liability beyond the terms specified in the Plan," PCX responded that the filing would not have such an effect; similar limitations on liability have not been construed or applied so as to limit an ITS Participant's contractual obligations arising under Section 9 of the ITS Plan. PCX further stated that NYSE itself limits its liability for any damages sustained in connection with the use of its facilities, citing NYSE Constitution, Article II, Section 6.

PCX strongly disagreed with NYSE's comment that PCX's proposed User restrictions on potential purchases or sales of shares through the ITS would have the effect of obviating the ITS price protection rules, stating that the Exchange "adheres strictly to the ITS price protection rules."[42] The Exchange stated that its filing "repeatedly provides that no orders may be executed on the Exchange at a price inferior to that of other outstanding trading interest with standing, which includes CQS Profiles derived from the quotes of other ITS Participants."[43] The Exchange also stated that Users placing restrictions on any potential purchase or sale of shares through ITS would be required to forgo any potential transactions that would cause a trade-through. The Exchange concluded that permitting a User to place limitations on the use of ITS at the User's own risk is consistent with the ITS plan because it does not implicate the ITS price protection rules.

The PCX letter also mentioned the PCX's May 1997 request for exemptive relief from the short sale rule and noted that it understood that such relief would not be granted. Accordingly, the PCX submitted a proposed amendment to PCX Rule 15.3(b), which (as modified by a subsequent amendment) would add the following language to the Rule:

> and provided further that no Orders designated as "sell short" may be generated for execution at a price: (i) Below the price of the immediately preceding match (or the last sale price reported on a consolidated transaction reporting system immediately prior to commencement of the Cycle in the case of the initial match of that Cycle) or (ii) at such price unless such price is above the next preceding different price.[44]

On August 20, 1997, NYSE submitted to the Commission a second comment letter responding to issues that the PCX raised in Amendment No. 1.[45] In its letter, NYSE expanded upon points raised in its initial comment letter. For example, NYSE again raised the "hidden market" issue. NYSE argued that the PCX was proposing "to sponsor two markets (its 'regular' market and the OptiMark cycles) with minimal interaction between the two."[46] NYSE also challenged OptiMark's claim that the Cycles would constitute a periodic call market because Cycles would be as frequent as every 90 seconds. As a result, NYSE argued, Users could enter a priced order into a "nearly-continuous auction, without disclosing the order to the regular market, even if the order matches or improves the national best bid and offer."[47] NYSE argued that this activity would stand in direct conflict with recent Commission efforts to integrate all trading interest in the national market system, whether through electronic communication networks or otherwise.

In addition, NYSE reiterated that the Application would be inconsistent with PCX's own auction rules, claiming that orders and executions resulting from the Application would not be integrated with other PCX trading interest and, as such, would not be like other PCX executions. NYSE stated that PCX's rules require that all orders be integrated into the PCX auction and interact with other trading interest taking place on the PCX floor. NYSE argued that, contrary to PCX's auction rules, an order entered on the PCX after the commencement of a Cycle of the Application would "not interact with an OptiMark 'order' that is 'routed and executed on the [PCX], even if the more recent PCX order is at a better price or has priority over the OptiMark 'order.'"[48]

In addition, NYSE argued that the PCX's proposed amendment regarding its intended compliance with the Commission's short sale rule, as explained in the PCX's Amendment No. 1, is inconsistent with the wording and purposes of the rule. NYSE characterized PCX's proposal as prohibiting short sales in the Application on minus ticks or zero minus ticks based on the last "match" in the Application, and that the Application would rely on the last transaction reported to the CTS only for the initial Cycle. NYSE argued that Rule 10a–1, by contrast, regulates short selling based on consolidated last sales, giving an exchange an option of using the last sale on that exchange. NYSE therefore argued that an exchange "cannot regulate short sales based on sales in only one component of an exchange's trading system."[49]

NYSE also addressed the Application's access to, and liability for clearance and settlement through, the ITS. With respect to access, NYSE took issue with the PCX's statement that the Application "will complement one 'example' of system access" described in the ITS Plan. NYSE argued that this statement "raises serious questions of access to NYSE market and to the markets of the other ITS Participants."[50] NYSE stated that PCX intends to make a detailed presentation at an ITS Committee meeting in September 1997, and argued that it would be premature for the Commission to act on the PCX's filing before the meeting and further consideration of the issue.

With respect to the PCX's proposal regarding liability for clearance and settlement with respect to the Application, NYSE restated its earlier position that the PCX's proposal is inconsistent with Section 9 of the ITS Plan, which requires each Participant to assume responsibility for settling certain uncompared ITS trades. NYSE argues that the PCX's proposal attempts to amend the ITS Plan to limit the PCX's liability beyond the terms of the Plan.

[41] *See* Amendment No. 1, *supra*, note 5, at 4.
[42] *Id.* at 5.
[43] *Id.*
[44] *Id.* at 1–2.
[45] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated Aug. 20, 1997 ("NYSE Second Comment Letter").
[46] *Id.* at 1.
[47] *Id.*
[48] *Id.* at 2.
[49] *Id.* at 3.
[50] *Id.* at 4.

On August 29, 1997, PCX submitted to the Commission two letters supplementing the filing and further addressing issues raised by the NYSE.[51] PCX stated that it is incorrect to characterize an order generated by an Optimark cycle as a "cross" given that, under PCX Rule 5.14(a), a cross transaction is "a transaction in which a member effects both the purchase and sale."[52] PCX submitted that most matches resulting from a Cycle would be based on trading interest reflected in Profiles submitted by two different members, and thus would not be crosses involving the same member. Although PCX conceded that the same member could submit both buy and sell Profiles that could result in a matched order, it pointed out that the member would have no control or influence in determining the outcome of such a match. PCX concluded that the presence of member intermediation and trading discretion is essential to the definition of "cross" as it is understood and applied in the context of continuous auction trading.[53]

In response to NYSE's claim that PCX floor brokers representing customer interest could "miss the market" if they chose not to use Optimark, PCX noted that such an outcome was no different than the situation where a floor broker either routes a customer order to another market or is not present in the trading crowd when a cross is announced.[54]

In the PCX ITS Letter, the PCX clarified its continued responsibility to settle trades effected through the PCX Application, pursuant to the terms of the ITS Plan. Specifically, PCX stated that it did not intend to modify any PCX members' obligations under the ITS Plan nor to modify the Exchange's obligation under the Plan to ensure settlement of trades effected via the PCX Application.[55]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b) (5).[56] The Commission finds that the Exchange's proposal to establish rules to implement the PCX Application of the Optimark System would promote the Commission's mandate under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a NMS, while protecting investors and the public interest. In addition, the Exchange's proposal with respect to the PCX Application is consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among customers, issuers, or broker-dealers.[57]

In addition, the Commission finds that the proposed rule change is consistent with the requirements of Section 11A of the Act.[58] The Commission believes that the proposed Application of the OptiMark System would further the purposes of Section 11A of the Act and the development of a NMS by promoting economically efficient execution of securities transactions, fair competition among markets, the best execution of customer orders, and an opportunity for orders to be executed without the participation of a dealer. The PCX Application provides a new and potentially more efficient way for the Exchange to match and execute trading interest. The Application appears principally designed to meet the demands of sophisticated portfolio managers and other market professionals implementing complex trading strategies. These market participants often require instantaneous access to the market, and desire to minimize the market impact of their transactions through the expression of varied trading interests on a confidential basis. At the same time, the Application is designed to allow retail customers, through member Users, to interact with institutional trading interests.

The PCX Application is likely to promote competition among market centers because it has the potential to attract new market participants and to increase order flow to the Exchange. By attracting order flow, the Application may provide a new and enhanced source of liquidity for investors. Further, as noted in the majority of the thirteen comment letters that supported the proposal, both institutional and retail investors should benefit from the Application insofar as their expressions of trading interest are represented in the OptiMark System and are executed on the Exchange. As a result, the Application could enhance the ability of investors to have their orders executed on the PCX. Moreover, the Application would increase the ability of investors' orders to interact directly with other investors orders on the PCX.

The Commission has historically encouraged exchanges to integrate new data communications and trade execution mechanisms into their markets in furtherance of the development of the NMS.[59] The Commission, for example, approved the fully computerized National Securities Trading System ("NSTS") of the Cincinnati Stock Exchange, the MAX and SuperMAX Systems of the Chicago Stock Exchange, and the CAES operated by Nasdaq.[60] In fact, the PCX Application of the OptiMark System shares many of the characteristics of the Chicago Stock Exchange's Chicago Match System, which was approved by the Commission in 1994.[61] Like the

[51] *See* PCX Floor. Letter and PCX ITS Letter, *supra*, note 6.
[52] PCX Floor Letter, *supra*, note 6, at 1.
[53] *Id.*
[54] *Id.* at 2.
[55] PCX ITS Letter, *supra*, note 6. *See also*, PCX Rule 5.23.
[56] 15 U.S.C. § 78(f)(b)(5).
[57] In approving the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).
[58] 15 U.S.C. § 78k–1.
[59] In 1982, when instating the Cincinnati Stock Exchange's NSTS as a permanent program, the Commission stated:

> In mandating the development of a NMS, Congress expressly stated that "[n]ew data processing and communications techniques create the opportunity for more efficient market operations." . . . In carrying out Congress' mandate, the Commission has taken an evolutionary approach by encouraging the securities industry to take the primary initiative in fashioning trading mechanisms which are consistent with the goals of a NMS. The Commission believes that, as a general matter, the industry has responded well to changing economic and technological demands by attempting to integrate state of the art data processing and communications technology to develop many new trading systems which have advanced the objectives of a NMS. In this respect, the Commission believes that ITS, the NASD's [National Association of Securities Dealers'] Computer Assisted Execution System ("CAES") and the NSTS represent constructive approaches to integrating trading in physically dispersed locations. (citations omitted)

Securities Exchange Act Release No. 19315 (Dec. 9, 1982), 47 FR 56236 (Dec. 15, 1982).

[60] *See, e.g.*, Securities Exchange Act Release No. 19315 (Dec. 9, 1982), 47 FR 56236 (Dec. 15, 1982) (Commission approval to terminate the NSTS as an experimental program and extend its duration for an indefinite period of time); Securities Exchange Act Release No. 12451 (May 14, 1976), 41 FR 20932 (May 21, 1976) (Commission approval of the MAX system to operate on a permanent basis); Securities Exchange Act Release No. 32631 (July 14, 1993), 58 FR 39069 (July 21, 1993) (Commission approval to operate the SuperMAX system on a permanent basis); Securities Exchange Act Release No. 17601 (Mar. 4, 1981); 46 FR 16171 (Mar. 11, 1981) (Commission Notice of the NASD filing of a proposed rule change for the establishment of CAES); Securities Exchange Act Release No. 17744 (Apr. 21, 1981), 46 FR 23856 (Apr. 28, 1981) (Commission order to implement an automated interface between the ITS and CAES); and Securities Exchange Act Release No. 18713 (May 6, 1982), 47 FR 20413 (May 12, 1982) (implementing ITS/CAES interface and operations).

[61] Securities Exchange Act Release No. 35030 (Nov. 30, 1994), 59 FR 63141 (Dec. 7, 1994). The

Continued

proposed Chicago Match System, the PCX Application blends some of the features of a call market with the continuous auction of the PCX floor. The operation of such a hybird system will differ in important respects from the traditional structure of a trading floor. For the reasons discussed below, however, the Commission does not believe that these differences would cause the PCX Application to violate the provisions of the Act.

First, the Commission believes that the Application, operating as a facility of an exchange, would have the ability and capacity to carry out the regulatory purposes of the Act.[62] As part of its obligations under the Act and pursuant to its own rules, the Exchange would conduct all necessary surveillance of the operation of and trading through the Application.[63] The Exchange has also represented that the Application would have a full audit trail capability, adequate computer capacity to handle and process User Profiles and order flow, and adequate computer security to ensure the safety and confidentiality of User transmission.[64]

Second, contrary to the NYSE's assertion, the Exchange is not operating a hidden market in violation of the Firm Quote Rule.[65] Specifically, the Commission does not believe that the PCX Application violates the Firm Quote Rule. The Firm Quote Rule, among other things, requires exchanges to collect bids, offers, quotation sizes and aggregate quotation sizes from responsible brokers or dealers for subject securities, and make them available to quotation vendors.

A bid or offer is defined in the Firm Quote Rule as the "bid price and the offer price communicated by an exchange member or OTC market maker to any broker or dealer, or to any customer."[66] In order to constitute a bid or offer, therefore, the underlying trading interest must have been communicated to at least one other potential counterparty. Bids and offers are intended to attract other parties to deal with the person publishing the bid or offer at the quoted price. For example, the Commission recently deemed the entry of priced orders into an electronic communications network ("ECN") to be bids and offers where these orders were widely disseminated to other parties.[67] In contrast, the essence of the Application is its anonymity. Only the Application is aware of the potential trading interest until trades occur. The PCX represents that the Application would "not permit any interactive communication among Users whatsoever for any solicitation of trading interest (not even on an anonymous basis)."[68] The PCX further represented that the Application "differs fundamentally from any 'hit or take' or 'interactive' trading system, which allows the display of order price and size levels by a subscriber for others to act on."[69] The Commission agrees with the PCX representation that the Application "is *not* a mechanism by which system subscribers (1) broadcast prices to other system subscribers and (2) trade with one another at those prices," like an exchange or ECN.[70] Accordingly, the Commission believes that the Application as proposed would not violate the Firm Quote Rule and would not fall within the status of an ECN.

Moreover, Profiles, unlike bids and offers, are conditional until they are processed in a Cycle. In this way, Profiles are analogous to indications of interest or CAP orders, neither of which are displayed in exchanges or on Nasdaq. The terms "bid" and "offer," as defined by the Firm Quote Rule, do not include "indications of interest."[71] A Profile is only a generalized expression of interest with conditions attached and is not eligible for execution until the completion of the Cycle. Profiles entered into the PCX Application can be revised and cancelled at any time prior to commencement of the next scheduled Cycle.

Further, the Commission does not believe that the PCX Application would create a hidden market within PCX. The Commission particularly disagrees with NYSE's suggestion that PCX's proposed non-dissemination of Profiles to PCX's equity floor and other exchange markets is contrary to the goals of the NMS. Rather, the Commission believes that the unique design of the Application warrants a non-traditional approach in determining whether to require the dissemination of trading interest expressed through operation of the Application. The Application reflects the efforts of PCX to establish a trading system that blends elements of a call market with a continuous auction market, with anonymous Profiles being continuously entered and cancelled until the next scheduled periodic call market (performing a Cycle). The failure to disseminate Profiles does not provide any other market participant with an unfair market advantage as a result of seeing the trading interest that is not shown to others. Any User only knows its own Profile; it has no special access to other Users' Profiles. Moreover, users have no control or influence in determining the outcome of a match, other than through the construction of their own Profiles.

In addition, the Commission believes that dissemination of Profiles would likely be very difficult, given that Profiles represent contingent trading interest at different prices, share amounts, and satisfaction levels. Any accurate dissemination of Profiles, other than Profiles containing only a satisfaction value of one, would need to be expressed in a three-dimensional format, which could create confusion for investors.

Third, the Commission believes that trading interest on the PCX floor would be adequately integrated into the PCX Application. Specifically, specialists and floor brokers would be able to reflect customer trading interest by entering Profiles into the PCX Application. In addition, if a specialist does not submit a limit order to the Application, the Exchange would require that specialist to guarantee the execution of the limit order at the price of an order derived from a Cycle that is priced at or better than the limit order's price, up to the amount of shares executed as a result of the particular Cycle.[72] Floor brokers, similarly, would remain subject to best execution obligations. The NYSE has pointed out the possibility that, during a small window of a few seconds, if a limit order were sent to the Exchange immediately following the commencement of a Cycle, this order would not have the opportunity to interact with the Profiles entered into the PCX Application.[73] Thus, once the Cycle is completed, resulting orders sent to the PCX for execution at such limit order's price or better would bypass the limit order, even though such limit order had priority under the PCX's current rules. The Commission acknowledges that there is a possibility of this scenario occurring. Because of the virtually instantaneous nature of the Cycles, however, such a scenario is likely to occur very infrequently.[74]

Fourth, the Commission notes the Exchange's representations that the operation of the PCX Application would be consistent with the Exchange's and its members' obligations under the ITS Plan. Specifically, the Exchange represents that the PCX Application would be operated in a manner consistent with the Exchange's intermarket price protection obligations under the ITS Plan. The PCX Application would incorporate existing market interest from each of the ITS participant markets in the form of CQS Profiles. All orders priced inferior to the quotations of another ITS participant market would be executed on the Exchange only upon submission of appropriate ITS commitments seeking to reach such better-priced interest. For orders representing matched coordinates from CQS Profiles and other Profiles, the Exchange would submit an ITS commitment reflecting each such order for execution on other market centers to which the OptiMark System is not directly linked. Every ITS commitment would be sent under the give-up of the member User or the Designated Broker, by way of the traditional Exchange linkage to the ITS, in the sequence in which orders are generated from the Cycle.

PCX has represented that it proposes to send ITS commitments resulting from the PCX Application in the same way as other ITS commitments are currently sent by the Exchange. The Commission notes that PCX has represented that the Application will be implemented in a manner fully consistent with the ITS Plan, and PCX is engaged in discussions with other ITS participants regarding the requirements of the ITS Plan.

The Commission believes that PCX has adequately represented that its proposed disclaimer of liability (proposed PCX Rule 15.8) covering the operation of the PCX Application does not operate to change or modify in any way PCX's obligations for clearance and settlement of trades matched through the Application and submitted for execution on another market center pursuant to the ITS Plan.

Fifth, the Commission also believes that the PCX will meet its obligation with respect to the reporting of transactions resulting from the Application. The Exchange has represented that transactions resulting from orders routed to the PCX floor from the Application would be reported to the CTS in the sequence in which such orders are generated from a Cycle. The Exchange has represented that it would report these trades in a manner similar to the way it currently reports other trades in PCX Securities to the CTS. Transaction reports resulting from a Cycle of the Application, moreover, would not be distinguishable on the CTS from the trade report of any other order executed on the PCX floor. Although such transaction reports may occur in rapid sequence, with numerous reports being generated in a short period of time, the individual transaction reports would still be reported and displayed in order of the execution of the transactions.

Sixth, although non-members would have access to the Application, such access would only be through an Exchange member broker-dealer. Before submitting Profiles to the PCX Application, non-members would be required to designate a member firm that would authorize their access to the PCX Application and accept responsibility for these non-member transactions. The Exchange states that it expects the Designated Brokers, or the clearing brokers of the Designated Brokers, to impose credit limits on non-member Users of the PCX Application.[75] Other exchanges have allowed non-members to access their facilities through member broker-dealers under similar conditions. For example, the Chicago Stock Exchange's Chicago Match System provided for direct non-member access through personal computers and modems, using a member broker-dealer give-up. The non-member access permitted by the Commission with respect to the Chicago Match System is substantially similar to the non-member User access proposed by PCX.[76]

PCX Application differs from Chicago Match in that it is a periodic, rather than a unitary, call market.

[62] The PCX Application is properly regulated as a facility of an exchange, as defined in Section 3(a)(2) of the Act. The PCX Application of OptiMark would use the PCX's premises, property, and services for effecting and reporting transactions. For a recent discussion of the classification of an electronic communication and matching system as a facility of an exchange, *see* Securities Exchange Act Release No. 35030, *supra*, note 61 (concerning the Chicago Match System).

OSI, which plans to register as a broker-dealer and comply with Rule 17a–23 under the Act, would be responsible for operating portions of the PCX Application for the Exchange and would receive commissions from Users for transactions. The Exchange has represented that it will submit any changes to this structure to the Commission as a rule filing.

In addition, OTI expects to offer other exchanges trading services based on the OptiMark System technology. If another national securities exchange chooses to use the OptiMark System, it would be required to file a separate rule filing under Section 19(b) of the Act.

[63] Further, the Exchange will ensure that the Application complies with all trading halts and trading suspensions.

[64] As with any other exchange application, the Commission expects to conduct a full EDP review of the Application and its operations. *See*, e.g., the Commission's Automation Review Policy guidelines. Securities Exchanges Act Release No. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989), and Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991).

[65] 17 CFR 240.11Ac1–1.

[66] *See* CFR 240.11Ac1–1(a)(4).

[67] The term "electronic communications network" means, for the purposes of 17 CFR 240.11Ac1–1(c)(5), "any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part; except that the term electronic communications network shall not include: (i) Any system that crosses multiple orders at one or more specified times at a single price set by the ECN (by algorithm or by any derivative pricing mechanism) and does not allow orders to be crossed or executed against directly by participants outside of such times; or (ii) Any system operated by, or on behalf of, an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal." *See* 17 CFR 240.11Ac1–1(a)(8). Rule 11Ac1–1(c)(5)(i) provides that the "[e]ntry of any priced order for a covered security by an exchange market maker or OTC market maker in that security into an electronic communications network that widely disseminates such order shall be deemed to be: (A) A bid or offer under this section, to be communicated to the market maker's exchange or association pursuant to paragraph (c) of this section for at least the minimum quotation size that is required by the rules of the market maker's exchange or association if the priced order is for the account of a market maker, or the actual size of the order up to the minimum quotation size required if the priced order is for the account of a customer; and (B) A communication of a bid or offer to a quotation vendor for display on a display device for purposes of paragraph (c)(4) of this section." 17 CFR 240.11Ac1–1(c)(5)(i).

[68] *See* PCX May 19 Letter, *supra*, note 33, at 8.

[69] *Id.* at 8–9.

[70] *Id.* at 9.

[71] Rule 11Ac1–1(a)(4) provides that the terms "bid and offer" mean "the bid price and the offer price communicated by an exchange member or OTC market maker to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of a covered security, as either principal or agent, *but shall not include indications of interest.*" (emphasis added) 17 CFR 240.11Ac1–1(a)(4).

[72] For example, if a specialist received a customer limit order to buy 1,000 shares at 20 prior to the commencement of a Cycle, and the best priced order generated by the Cycle was assigned a price of 19½, involving 900 shares, with the next best priced order at 19¾, involving 1,000 shares, the specialist would be obligated to fill 900 shares of the customer limit order at 19½, and fill the balance at 19¾.

[73] NYSE Second Comment Letter, *supra*, note 45, at 2.

[74] Contrary to NYSE's understanding, PCX specialists would not be required to guarantee customer limit orders booked after the commencement of a Cycle at prices obtained as a result of such Cycle.

[75] Further, Exchange members would be required to maintain information and records concerning non-members access for which they are responsible. The Exchange has represented to the Commission that it would require its members to make such non-member User information available to the Exchange upon request, so that the PCX can fulfill its duties regarding surveillance.

[76] *See* Securities Exchange Act Release No. 35030, concerning the Chicago Match System, *supra*, note 61. As with the PCX Application, the CHX required non-member users of the Chicago Match System to enter into several agreements to ensure that a CHX member had responsibility and control over the non-member's activities. These responsibilities, included, among other things, controlling and clearing the orders entered by non-members, assuming legal responsibility of the non-member orders entered, and ensuring appropriate credit limits. *See id.* The Commission's approval order for the Chicago Match System also noted that the then anticipated non-member use of the Chicago Match System was analogous to non-member access to the NYSE's Designated Order Turnaround System (now referred to as "SuperDOT"). The SuperDOT System is an electronic order-routing system that enables NYSE members and their customers to transmit market and limit orders in all NYSE-listed securities directly to the specialist post where the securities are traded, or to the member firm's booth. Non-member customers, however, must obtain the electronic means to access SuperDOT through a

Continued

Seventh, PCX is adopting reasonable requirements for the clearance and settlement of transactions resulting from the Application. In particular, the Commission believes it is appropriate for PCX to require that: (i) All orders generated by the Application that are executed on PCX or another market center through ITS be reported and entered into the comparison system on a locked-in basis; (ii) orders generated by the Application on behalf of a member User and the resulting transactions be cleared and settled using that member User's mnemonic (or its clearing broker's mnemonic, as applicable); and (iii) orders generated by the Application on behalf of a non-member User and the resulting transaction be cleared and settled using the appropriate Designated Broker's mnemonic.

Finally, the Commission believes that PCX has established that short sales effected through the Application, pursuant to the requested exemption and in accordance with the restrictions contained in proposed Rule 15.3(b), would not be susceptible to the practices that Rule 10a–1 is designed to prevent. PCX has amended its proposal to provide for substantial compliance with Rule 10a–1.[77] PCX represents that the first match of a Cycle, if it involves a short sale, would be in compliance with Rule 10a–1. Subsequent matches would use the price of the immediately preceding match in the Cycle, rather than the last trade in the consolidated transaction reporting system as a reference. The Division of Market Regulation, by delegated authority, intends to grant PCX an exemption from Rule 10a–1 to permit matches within a Cycle (those subsequent to the initial match) to use the immediately prior match as a reference for determining compliance with Rule 10a–1. The Commission, therefore, believes that PCX has adequately addressed concerns arising under the short sale rule.

The Commission finds that good cause exists to grant approval to Amendment Nos. 1, 2, and 3 to the proposed rule change on an accelerated basis. Collectively, these amendments reflect PCX's proposed handling of short sales affected through the Application and clarify PCX specialist obligations relating to price protection for orders generated by the Application. The short sale amendment narrows the scope of the proposed short sale exemption attendant to OptiMark transactions. Moreover, as stated above, the Commission has determined that PCX's proposed short sale restrictions substantially mirror the requirements of Rule 10a–1 and are designed in a manner that will not permit the types of short sale practices Rule 10a–1 was designed to prohibit. Accordingly, the Division intends to issue PCX an exemption from Rule 10a–1. In addition, the Commission believes that the amendments pertaining to specialist price protection obligations resulting from orders generated by the Application merely clarify and provide explanatory examples of how the PCX rules relating to the Application will ensure price protection of limit orders. The Commission therefore finds good cause to accelerate approval of Amendment Nos. 1, 2, and 3.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 15, 1997.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act.[78]

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[79] that the proposed rule change (SR–PCX–97–18) is hereby approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[80]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25319 Filed 9–23–97; 8:45 am]

BILLING CODE 8010–01–M

broker-dealer member. Like the Chicago Match System, the NYSE's SuperDOT system requires NYSE members to monitor customers' electronic orders and to provide the NYSE with an acknowledgement indicating their responsibility for orders. *See id.*

[77] The NYSE asserted that new Rule 15.4 proposed by PCX improperly stated that "the Exchange's short sale rule (Rule 5.18) shall not be applicable to any resulting transaction in the Exchange." *See* Letter from James E. Buck, NYSE, *supra*, note 4, at 4. The Commission notes that the PCX has removed this statement from proposed new Rule 15.4.

[78] 15 U.S.C. §§ 78f and 78s(b)(2).

[79] 15 U.S.C. § 73s(b)(2).

[80] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Mid-Atlantic States Regional Fairness Board; Public Hearing

The Mid-Atlantic States Regional Fairness Board will hold a public meeting on Thursday, September 25, 1997, at the CitiCorp Center, 135 E. 35th Street, 14th Floor, Room J, New York, NY, to inform the small business community of the existence of a regulatory enforcement oversight process and of SBA's desire to collect information regarding businesses' experience with regulatory enforcement actions, and to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, please contact Gary P. Peele at (312) 353–0880.

Dated: September 12, 1997.

Debra Silimeo,

Deputy Associate Administrator, Office of Communications and Public Liaison.

[FR Doc. 97–25274 Filed 9–23–97; 8:45 am]

BILLING CODE 8025–01–P–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (97–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved a fourth quarter 1997 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 1997 RCAF (Unadjusted) is 1.104. The fourth quarter 1997 RCAF (Adjusted) is 0.738. The fourth quarter 1997 RCAF–5 is 0.718.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1549. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423; telephone (202) 289–4357. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: September 18, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25352 Filed 9–23–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33463]

The Burlington Northern and Santa Fe Railway Co.—Trackage Rights Exemption—The Houston Belt & Terminal Railway Co.

The Houston Belt & Terminal Railway Company (HB&T) has agreed to grant local trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over HB&T's tracks in Houston, TX, as follows: (a) The West Belt main line between Belt Junction, at milepost 7.2, and TN&O Junction, at milepost 11.1; and (b) the East Belt main line between (1) milepost 0.0 and milepost 3.4, and (2) milepost 12.5, at Tower 85, and milepost 14.3, at Double Track Junction, a distance of approximately 9.1 miles.

The transaction is scheduled to be consummated on September 17, 1997.

The purpose of the local trackage rights is to permit BNSF to provide service to HB&T's shippers and to improve the operating efficiencies of the applicants.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33463, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, Esq., PO Box 961039, Fort Worth, TX 76161–0039.

Decided: September 15, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25351 Filed 9–23–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33461]

Southern Pacific Transportation Co.—Trackage Rights Exemption—The Houston Belt & Terminal Railway Co.

The Houston Belt & Terminal Railway Company (HB&T) has agreed to grant overhead and local trackage rights to Southern Pacific Transportation Company (SP) over HB&T's tracks in Houston, Harris County, TX. The overhead trackage rights are described as follows: (1) The West Belt Subdivision between milepost 0.0 and milepost 11.1; (2) the East Belt Subdivision between milepost 0.0 and milepost 14.3; and (3) the Columbia Tap from SP milepost 9.2 to the end of the line. The local trackage rights are described as follows: (1) The West Belt Subdivision between 0.00 and connection at milepost 7.2; (2) the East Belt Subdivision between Belt Junction, at milepost 3.4, and GH&H connection, at milepost 12.5; and (3) the Columbia Tap near Pierce Junction, at SP milepost 9.2, to the end of the line.

The transaction is scheduled to be consummated on or after October 6, 1997.

The purpose of the overhead trackage rights is to permit SP to operate over HB&T's trackage in Houston. The purpose of the local trackage rights is to permit SP to provide service directly to shippers on HB&T's tracks in the City of Houston.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33461, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Decided: September 15, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25349 Filed 9–23–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33462]

Union Pacific Railroad Co.—Trackage Rights Exemption—The Houston Belt & Terminal Railway Co.

The Houston Belt & Terminal Railway Company (HB&T) has agreed to grant local trackage rights to Union Pacific Railroad Company (UP) over HB&T's tracks in Houston, Harris County, TX, as follows: (1) The West Belt Subdivision between milepost 0.00 and connection at milepost 7.2; (2) the East Belt Subdivision between Belt Junction, at milepost 3.4, and GH&H connection, at milepost 12.5; and (3) the Columbia Tap near Pierce Junction, at SP milepost 9.2, to the end of the line.

The transaction is scheduled to be consummated on or after October 6, 1997.

The purpose of the local trackage rights is to permit UP to provide service directly to shippers on HB&T's tracks and will result in an efficient and economical operation in the City of Houston.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33462, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Decided: September 15, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25350 Filed 9–23–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Finding of No Significant Impact for Implementation of White House Security Review Vehicular Traffic Restriction Recommendations

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of the Treasury (Treasury) has made a finding of no significant impact (FONSI) with respect to the environmental assessment (EA) for implementation of White House Security Review Vehicular Traffic Restriction Recommendations. This EA was prepared by the Department of the Treasury following the security action to restrict vehicular access to certain streets in the vicinity of the White House Complex pursuant to the emergency provision (40 CFR 1506.11) of the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) implementing regulations. The Federal Highway Administration (FHWA) was a cooperating agency.

FOR FURTHER INFORMATION CONTACT: For a copy of the FONSI contact Mr. Bill McGovern, Environment and Energy Programs Officer, 1500 Pennsylvania Avenue, NW, Treasury Annex Room 6140, Washington, DC, 20220; telephone (202) 622–0043; fax (202) 622–1468. Copies of the EA are also available at the above address. The EA is still available on the Department of the Treasury's home page at http://www.treas.gov. Additionally, copies of the EA were mailed to Federal, State, and local agencies; public interest groups; interested individuals; and District of Columbia public libraries.

SUPPLEMENTARY INFORMATION: On June 2, 1997, the Treasury made the EA available to the public for a thirty day comment period. A total of 650 copies of the EA were distributed to Federal, state, and local agencies, Members of Congress, the Government of the District of Columbia, private organizations and interested members of the public. Additionally, the EA was available via the Internet. Twelve comment letters were received. Three of the comment letters were from private individuals. Two were from individuals or agencies representing the District of Columbia: Eleanor Holmes Norton, and the District of Columbia Department of Public Works (DCDPW). Three were from historic preservation organizations and sites: the Advisory Council on Historic Preservation (ACHP); the National Trust for Historic Preservation; and Saint John's Church. Four were from other governmental entities: Region III of the Environmental Protection Agency; the National Capital Planning Commission; the National Park Service (NPS); and the Washington Area Metropolitan Transit Authority (Metro).

A brief description of the security action and the findings of the EA are presented below followed by a summary of the issues raised in the comment letters along with Treasury's response for each issue.

On May 19, 1995 the Secretary of the Treasury ordered the Director of the United States Secret Service to restrict vehicular traffic on certain streets surrounding the White House Complex. The Director implemented the action on May 20, 1995. The security action was taken to provide necessary and appropriate protection for the President of the United States, the first family, and those working in or visiting the White House Complex.

This security action was one of several recommendations resulting from the "White House Security Review" (the Review). The final report of the Review is classified; however a "Public Report of the White House Security Review" was issued in May 1995. The Review's recommendation states that it was "not able to identify any alternative to prohibiting vehicular traffic on Pennsylvania Avenue that would ensure the protection of the President and others in the White House Complex from explosive devices carried in vehicles near the perimeter."

The EA examined the impacts of the security action on transportation, air quality, noise, vibration, visual/aesthetic resources, cultural resources, pedestrian access, socioeconomic resources, natural resources and cumulative environmental effects.

Available pre-action data was collected from local and Federal agencies and supplemented by traffic counts and travel time analysis conducted for the EA. With the exception of traffic counts for certain intersections, the available pre-action data was not directly comparable to the post action measurements and did not allow for accurate comparison of before and after action conditions. The analysis in the EA described the conditions after the action and several traffic modifications which the DCDPW implemented to alleviate congestion.

The EA did identify certain streets which received large increases in traffic after the security action. It also identified other streets which had large decreases in traffic. It was impossible to determine exactly how much of the increase or decrease was due to the security action because of the above mentioned lack of pre-action data. The majority of the streets in the study area continue to operate at an acceptable level, and traffic levels are typical of a downtown area in a major city.

The changes in traffic patterns did not result in any violations of National Ambient Air Quality Standards (NAAQS) for carbon monoxide, the pollutant of highest concern in intersection modeling. While the area remains in non-attainment status for ozone, ozone levels should not be significantly changed as a result of the security action. Ozone changes are more apt to result when there is a significant increase in vehicle miles traveled. The security action merely shifted traffic within the local area.

Noise levels in the study area were not significantly increased by the security action. Levels in the area on the north side of the White House dropped noticeably. Vibration levels on H street were examined and found to be similar to pre-existing levels. The frequency of vibration probably did increase; however, because the vibration levels remain below the threshold for damage to fragile historic buildings, no problems are anticipated.

The placement of the temporary security barriers has had an adverse visual impact on a number of historic buildings in the study area. This will be remedied by the NPS when they complete their plan for replacement of the temporary barriers with an acceptably designed permanent barrier. The removal of traffic from Pennsylvania Avenue presents pedestrian tourists and residents alike with an improved view of the north side of the White House.

Pedestrian access as measured by accident data appears to be relatively unchanged. Access to the north side of the White House is improved at Pennsylvania Avenue.

Socioeconomic analysis was limited to emergency services (fire and police) and Metro bus cost increases and parking meter revenue losses. No police or fire stations were moved as a result of the security action. Some minor adjustments in emergency response routes were made. Metrobus changed several routes and bus stops as a result of the security action. Some intersections had to be reconfigured to accommodate the turning radius of the buses. Metrobus provided a cost estimate of $115,000 in capital costs and $314,000 in annual operating costs. Parking meter revenue losses were estimated to be $98,000 annually.

No endangered or threatened species are known to frequent the study area. Little or no impact occurred to the native wildlife since there was no ground disturbing activity.

The cumulative impacts analysis did not identify any violation of NAAQSs even when the projected full operation of the Ronald Reagan Federal Building was added into the air quality analysis.

A number of recommendations are discussed which could further improve traffic conditions in the area around the White House. These recommendations are presented in the EA; however, they are meant for consideration by the relevant NPS and District of Columbia offices which have the legal authority to implement them.

None of the impacts analyzed in the EA were found to be significant under NEPA. None of the comment letters raised new issues that were not addressed in the EA. The comments along with responses to each comment are included below. Based on the FONSI, an Environmental Impact Statement will not be prepared for the security action (40 CFR 1501.4(c), (e)).

Summary of issues raised in the comment letters:

Issue 1: Two commenters questioned the lack of alternatives in the environmental assessment (EA). Both suggested alternatives that should have been considered.

Response: The White House Security Review, which was an eight month comprehensive study, considered numerous other alternatives; however, it ultimately concluded that none of the other alternatives would provide the necessary level of protection to the White House Complex. The Security Review is classified top secret and could not be included in a public review document such as the EA.

Issue 2: Two commenters stated that Treasury should prepare an Environmental Impact Statement (EIS) because the EA does not adequately address the socioeconomic impacts of the action. Both stated that there are significant impacts to the commercial sector of the city from the restriction.

Response: Neither comment provided any data to support the assertion as to commercial impact. Treasury's analysis of the economic impact of the action was limited to identifiable costs incurred by the District in terms of increased Metro costs and lost parking revenue. Treasury was able to gather reliable data in each of these areas. Over 150 copies of the EA were mailed to commercial entities and associations representing the private sector. No comments were received from any of these entities.

Issue 3: Three commenters questioned how Metro and the District would be reimbursed for the Metrobus costs incurred and parking meter revenue lost as a result of the security action.

Response: Treasury continues to work with the Office of Management and Budget to explore ways in which the Federal Government can provide economic support to Metro and the District.

Issue 4: Two commenters stated that Treasury should prepare an EIS because the EA does not adequately address the traffic conditions resulting from the security action. One commenter alleged that Treasury did not consider all the traffic data that might be available.

Response: The EA characterizes the traffic operating conditions within the study area in terms of level of service and travel speed and identifies the streets which received the increases and decreases in traffic. It does not quantify the increase or decrease in commuting time resulting from the security action, because of the lack of a comparable pre-action data. The emergency nature of the action precluded a systematic, advance collection of traffic data. Existing data was used to the extent possible, but no complete set of information ever existed which could be used for a direct comparison of before and after conditions. After an extensive search, every available source of data was used for the traffic analysis in the EA, including the DCDPW, the FHWA, and the NPS.

Issue 5: One commenter stated that the EA had thoroughly evaluated the potential impacts of the action. It concluded that the impacts were minor, should be further reduced by the recommendations in Chapter 3 and recommended that we prepare a finding of no significant impact.

Response: Treasury agrees the impacts are minor. It should be noted that several of the recommendations in Chapter 3 have been implemented by the cognizant agencies such as the DCDPW and Metro. The recommendations are items which could provide additional relief to traffic problems.

Issue 6: Three commenters questioned the adequacy of the air quality analysis provide in the EA. They believe that since the District was in non-attainment status for ozone, even before the security action, and attainment for carbon monoxide (CO), ozone should have been modeled to measure any increases. One commenter stated that slow moving vehicles would emit more emissions than were emitted before the action.

Response: Ozone is a regional problem. An action that creates traffic delay within a corridor of the study area does not translate into increased ozone in that same corridor because of the time lag between the emission of substances that are the precursors to ozone and ozone creation. Such an action theoretically could pose a threat to the region by representing an increase in the inventory of emissions leading to ozone formulation. The effects of individual projects are not known; the state of the art is to take care of ozone in planning, accounting for the interaction of numerous actions and multiple interrelated factors. The security action is not considered to be regionally significant. Many things contribute to ozone production. Hence the analysis at the region wide level. It is not common practice to conduct an assessment of the effects of an individual project, primarily because the individual project normally is not significant enough to perform an entire regional analysis to see how it fits into the picture. Whatever the effects the individual action would have on emissions would be within the terms of error of the model and thus would be statistically insignificant.

Additionally, the security action did not result in a large increase in vehicle miles traveled (VMT); the traffic that

otherwise would have been using Pennsylvania Avenue has shifted to adjoining streets. Idling or slow moving vehicles have low volatile organic compound (VOC) and nitrous oxide (Nox) emission rates. Instead, the amount of VMT and the speed of the travel are the main influences on VOC and Nox production. For Nox, which is the more vexing of the main ozone producing pollutants, any decrease in average speed below 28 miles per hour actually reduces emissions. Most of the traffic in the study area moves at speeds below this level during the three peak periods.

Issue 7: One commenter stated the belief that Treasury was trying to conceal the extent of the increase in carbon monoxide (CO) emissions, positing that the model results should be compared to ambient concentrations prior to the closing of Pennsylvania Avenue to vehicular traffic in 1995.

Response: While a comparison of the CO levels prior to and after the action could potentially find some increases in emissions, such a comparison would be impossible to perform, because traffic levels and CO concentrations were not measured before the action took place. In addition, an increase in emissions, by itself, is not an indication that a problem exists, provided that the NAAQS are met, and the State Implementation Plan is not violated. The EA shows that both these conditions are met. The analysis performed in the EA satisfies the requirements of the NEPA.

Issue 8: One commenter questioned the treatment of indirect emissions in the EA and the assertion that Treasury doesn't have control over these emissions.

Response: The direct and indirect emissions resulting from the security action were analyzed under NEPA. The same analysis techniques were used that would have been used for the analysis under the Clean Air Act Amendments' (CAAA) conformity requirements had they been applicable. The indirect emissions were not included in reaching a CAAA conformity decision because Treasury does not have a continuing program of control over traffic in the downtown area.

Issue 9: Two commenters stated that the results of the noise and vibration analysis along H Street are not representative of what they experience at their locations. One stated that parking tour buses along H Street were a noisy visual "wall of steel" on the historic structures. The same commenter requested that a vibration barrier be installed along H Street to eliminate the potential for damage to the historic structures. One questioned the use of the 95 dB vibration threshold for damage to extremely fragile historic buildings from the Federal Transit Administration (FTA).

Response: The noise and vibration data in the EA are actual data taken in a representative manner at various locations in the H Street area. This data is consistent with the limited amount of pre-existing data that was available. Treasury believes that repairing of the street could further reduce the noise and vibration levels along H Street. Treasury agrees that the illegally parked tour buses create additional sources of noise and vibration and should be removed by the appropriate authorities.

According to the FTA, the 95 dB vibration threshold is applicable to both short term impacts from construction and long-term vibration effects of operational traffic. It was used in the EA because it is one of only a few guidance publications on the effects of vibration. Further research has identified the California Department of Transportation (Caltrans) criteria for historic buildings and ancient ruins. The Caltrans guidance applies to continuous vibration sources, such as those resulting from traffic and trains. The Caltrans guidance uses a vibration criteria of 0.08 inch/second Peak Particle Velocity (PPV) as the threshold for damage. PPVs below this level should not result in damage. This is a more conservative level than the FTA's 95 dB (rms) or 0.12 inch/second PPV criteria. The post-action measured levels along H Street were 0.016 inch/second or below. Pre-action data showed levels as high as 0.035 inch/second PPV at Decatur House. Both the pre- and post-action levels are well below the Caltrans level of 0.08 inch/second PPV. It is clear that the security action did not result in any significant increase in these levels, and the vibration data does not show any need for installation of a vibration barrier along H Street.

Issue 10: Two commenters stated that the cumulative impacts analysis in the EA was deficient because it did not include a discussion of the General Service Administration's (GSA) proposal to limit on street parking at Federal Office Buildings here in the District.

Response: The purpose of the EA was to analyze the security action, which occurred two years before the GSA proposal. The GSA proposal is currently at the scoping stage and was not developed enough to include in the EA at the time the EA was being written. A draft of the Treasury EA was reviewed by GSA. GSA did provide detailed information about the parking at the Ronald Reagan Federal Building for use in the cumulative impact analysis. The GSA action will be fully described in a draft EIS they plan to release in December 1997. The security action should be part of the base condition for their EIS.

Issue 11: Three commenters asked questions related to the Metrobus impacts. Two requested detailed data on increases or decreases in ridership resulting from the actions. One provided corrections related to schedules and stops.

Response: Information obtained from Metro after the security action indicated there were some ridership changes in the period before and after the security action, but the changes could not be attributed to the security action. The corrections related to stops and schedules are acknowledged.

Issue 12: The Advisory Council on Historic Preservation stated that additional information about the historic character of the affected buildings would be needed to complete the Section 106 review under the National Historic Preservation Act. The commenter also clarified the extent of the original Section 106 review coverage undertaken at the time of the security action by Treasury.

Response: Additional information on the significance of the buildings on the register will be included in any follow-on Section 106 compliance activity. Treasury agrees that the temporary barriers were addressed as an emergency action at the time of the action and that only newly identified issues would be part of a follow-on Section 106 activity. It was important to recognize the adverse effect of the temporary barriers and to clarify that the National Park Service will be replacing the temporary barriers with a system of permanent barriers as part of its Long-term Design Plan for Pennsylvania Avenue.

Issue 13: One commenter noted that the description of the Section 106 compliance activity was confusing as to which agencies were doing what.

Response: Section 106 compliance for the placement of the temporary security barriers was completed by the Treasury in 1995. The NPS has a project to develop an acceptable permanent design and replace the temporary barriers, which will be subject to the Section 106 compliance process. Treasury is conducting a separate Section 106 process to examine effects other than the placement of the temporary security barriers, including traffic increases and the resulting visual, noise, and vibration impacts.

Issue 14: One commenter noted that the E Street traffic recommendation could affect the Zero Milestone and the Butt-Millet memorial, raising historic preservation issues that were not included in the EA.

Response: The recommendation for providing for resumption of westbound traffic on E Street assumed that the existing street configuration would be maintained and not require widening in the area of the Zero Milestone and the Butt-Millet memorial. The recommendations provided in Chapter 3 are just that, recommendations for consideration by the agencies with the authority to implement them.

Issue 15: One commenter stated that the EA was misleading because it did not describe the process for reaching a decision on whether to issue a FONSI or a notice of intent to prepare an environmental impact statement.

Response: The CEQ's NEPA regulations have been in place since 1978. Treasury did not feel it was necessary to explain the purpose of an environmental assessment in its document. The comment period was announced in the **Federal Register** and the EA itself.

Issue 16: One commenter stated that traffic was worse and that Pennsylvania Avenue and E Street should be reopened to vehicular traffic.

Response: The security need for the restriction has not been eliminated; however, Treasury is working with other agencies to examine potential new designs for traffic on E Street. The EA does show that some streets have had increases in traffic. The exact amount which is due to the action cannot be determined due to the lack of pre-action data.

Issue 17: One commenter criticized the EA for not having a section on the beneficial impacts of the action such as the better access to Lafayette Park and providing a more appropriate setting for one of our preeminent national symbols.

Response: Treasury agrees that there are many beneficial impacts resulting from the vehicular traffic restriction and attempted to describe them in qualitative terms in the EA. Most of these impacts are very difficult to assign dollar figures to and such an effort is not warranted at the EA level.

Issue 18: One commenter noted that the action is not consistent with the District's transportation plan, as outlined in the *Transportation Vision, Strategy and Action Plan for the Nation's Capital.*

Response: The action was taken to protect the White House Complex from explosive devices carried by vehicles near the perimeter. This action, while inharmonious with the transportation plan, is a necessary security precaution.

Issue 19: One commenter believes that there is sufficient pre-existing traffic data available from the District and the FHWA to allow for estimation of the action's effects.

Response: The EA used the above mentioned data and data from other sources and still could not identify a method for making the suggested estimation. FHWA was a cooperating agency for the EA.

Issue 20: One commenter citing anecdotal evidence from her constituents suggests that noise levels now are noticeably higher. This commenter also suggested that the methodology used for noise in the EA contains flaws and therefore failed to fully quantify the actual increase.

Response: The EA noise data was acquired using standard industry practices and equipment. It presents the actual dB readings taken at the time of the measurement in a scientifically accurate manner.

Issue 21: One commenter noted that the boundaries for the extended study area are appropriate for evaluating the project's effects.

Response: Treasury agrees.

Lawrence H. Summers,

Deputy Secretary.

[FR Doc. 97–25354 Filed 9–23–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Customs Service

Expansion of National Customs Automation Program Test Regarding Electronic Protest Filing

AGENCY: Customs Service, Treasury.

ACTION: General notice; expansion of program.

SUMMARY: This notice announces Customs plan to expand its program regarding the electronic filing of protests to encourage new participants. Also, public comments concerning any aspect of the test are solicited.

EFFECTIVE DATE: The testing period, which was scheduled to end on April 30, 1997, is now extended through December of 1997.

ADDRESSES: Written comments regarding this notice or any aspect of this test should be addressed to the Chief, Commercial Compliance Branch, U.S. Customs Service, 1301 Constitution Avenue, NW, Room 1313, Washington, DC 20229–0001.

FOR FURTHER INFORMATION CONTACT: For operational or policy issues: Neil Shannon, Chief, Commercial Compliance Branch, (202) 927–0300.

For protest system or automation issues: Steve Linnemann, Office of Information and Technology, (202) 927-0436.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1996, Customs published in the **Federal Register** (61 FR 3086) a general notice announcing, as part of the National Customs Automation Program (NCAP), a test regarding the electronic filing of protests. The test began on May 1, 1996, was to last six months, but was extended through April of 1997, when a second general notice was published on December 31, 1996, in the **Federal Register** (61 FR 69133). The test allows the following actions to be filed and tracked electronically:

(1) Protests against Customs decisions under 19 U.S.C. 1514

(2) Claims for refunds of duties deposited or for corrections of errors requiring reliquidation pursuant to 19 U.S.C. 1520 (c) and (d); and

(3) Interventions in an importer's protest by an exporter or producer of merchandise from a country that is a party to the North American Free Trade Agreement (NAFTA) under § 181.115 of the Customs Regulations (19 CFR 181.115).

Participation in this NCAP component is available to all interested parties. If you already are an ABI participant, you can take advantage of electronic protest immediately by contacting your local Customs Client Representative. If you are not an ABI participant, write a letter on your company's letterhead indicating your interest in electronic protest filing. The information provided should include your company's name, address, telephone number, and the name of a contact person. Send the letter to: U.S. Customs Service, Office of Information and Technology, User Support Services Division, Trade Support, Room 2419, 1301 Constitution Avenue, NW, Washington, DC 20229.

Expansion of Test

This notice informs the public that Customs is expanding the program for the electronic filing of protests to encourage new participants. Also, public comments concerning any aspect of the test are solicited.

Customs anticipates that this NCAP component will be available to all interested parties by January of 1998.

Dated: September 19, 1997.

Robert S. Trotter,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 97–25341 Filed 9–23–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974: Computer Matching Program

AGENCY: Internal Revenue Service, Treasury Department.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of an Internal Revenue Service (IRS) computer match.

EFFECTIVE DATE: This notice will be effective October 24, 1997, unless comments dictate otherwise.

ADDRESS: Comments or inquiries may be mailed to Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Mary Jacqueline Greening, Internal Auditor, Quality Assurance and Oversight Section, Office of Planning and Management, Office of Assistant Chief Inspector (Internal Audit), Internal Revenue Service, (202) 622–5911.

SUPPLEMENTARY INFORMATION: IRS management is responsible for discouraging the perpetration of irregular or illegal acts and limiting any exposure if an integrity breach occurs. To accomplish its mission, the Inspection Service assists management in achieving this objective by enhancing its conventional audit and investigative activities with a program designed to deter and detect such acts and to search for indicators of fraud sufficient to warrant investigation.

The Inspection Service's Integrity Program includes Integrity Projects, Integrity Tests, and national or other projects, including joint Internal Audit/Internal Security activities, designed to detect indicators of fraud and which focus specifically on the deterrence and detection of integrity breaches.

Integrity Projects are reviews or probes of specific high risk areas or transactions by the Inspection Service to detect material fraud and to assess the extent of integrity breaches that may have occurred.

Computer matching is the most feasible method of performing comprehensive analysis of employee, taxpayer, and tax administration data because of the large number of employees (seasonally varying to over 102,000), the geographic dispersion (nationwide) of IRS offices and employees, and the tremendous volume of computerized data that is available for analysis.

This computer match may be conducted in part or in its entirety by any or all of the Inspection Service's offices. The results of this match may be matched with County and/or State Lien records to identify any discrepancies and/or underlying fraudulent activity aimed at unauthorized lien releases.

NAME OF SOURCE AGENCY:

Internal Revenue Service.

NAME OF RECIPIENT AGENCY:

Internal Revenue Service.

BEGINNING AND COMPLETION DATES:

This computer match is targeted to commence in October, 1997 unless comments dictate otherwise. The program of computer matches will conclude at the end of the eighteenth month after the beginning date (April, 1999).

PURPOSE:

The purpose of this computer match is to identify employee misconduct (e.g., internal corruption through the exploitation of existing internal controls) that has resulted in improper lien releases and failure to adequately protect the government's interests.

AUTHORITY:

The Office of Chief Inspector was established and provided the authority to perform character and conduct investigations of IRS employees pursuant to 31 U.S.C. 321(b); sections 7801(a), 7802, and 7803 of the Internal Revenue Code of 1986; 26 U.S.C. 7804 and Reorganization Plan Number 1 of 1952.

Commissioner's reorganization Order #Hdq–1 (July 29, 1952), IR-Mimeograph Number 236 (December 7, 1953), and the current provisions of the Internal Revenue Manual (IRE) give authority to conduct personnel investigations to the Chief Inspector.

Internal Revenue Manual 1161 charges the Chief Inspector with carrying out a program for assisting management to maintain the highest standards of honesty and integrity among its employees.

The United States General Accounting Office field work standards for both performance and financial audits require auditors to design an audit to provide reasonable assurance of detecting abuse of illegal acts that could significantly affect the financial statements, audit objectives, or audit results.

CATEGORIES OF INDIVIDUALS COVERED:

Current and former employees of the IRS.

CATEGORIES OF RECORDS COVERED:

1. Information regarding Lien Files (Open and Closed) [Treasury/IRS 26.009].
2. Information regarding taxpayers, tax returns, and tax return information.
   a. Individual Master File (IMF) (Treasury/IRS 24.030).
   b. Business Master File (BMF) (Treasury/IRS 24.046).
3. Information regarding IRS employees (General Personnel and Payroll-Treasury/IRS 36.003)
4. Information regarding County and/or State Lien Filing and Lien Release Records.

Dated: September 17, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc.97–25279 Filed 9–23–97; 8:45am]

Billing Code: 4830–01–F

federal register

Wednesday
September 24, 1997

Part II

Railroad Retirement Board

20 CFR Part 220

Determining Disability; Proposed Rule

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AB18

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend its regulations in order to adopt standards for determining when an employee is disabled for his or her regular railroad occupation.

DATES: Comments should be submitted on or before October 24, 1997.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 2(a)(2) of the Railroad Retirement Act (45 U.S.C. 231a(a)(2)) provides that the Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees from performing work in the railroad industry. The Board has never formally adopted such standards. The agency, in the past, has used provisional standards which were adopted in 1946 but which are now outdated. In 1991 the Board adopted Subpart C of Part 220 which provides for determining disability for work in an employee's regular railroad occupation. Under these regulations if an employee's physical or mental condition does not meet a listing found in Appendix 1 of Part 200 (which determines if an individual is able to engage in any employment both within and outside the railroad industry) then the Board determines the employee's residual functional capacity and compares that to the demands of his or her regular railroad occupation to determine if the employee can continue to perform that job. However, Subpart C contains no specific standards which relate to specific railroad occupations. The Board proposes to amend Subpart C to add such standards with respect to certain railroad occupations.

Proposed § 220.10 provides for the establishment of an Occupational Disability Advisory Committee made up of two physicians, one from recommendations from rail labor, one from rail management. This committee shall review from time to time the disability standards developed by this regulation and the Occupational Disability Claims Manual (Manual) which supplements this regulation. The Board shall confer with this Committee before it amends this regulation or the Manual.

Proposed § 220.11 contains the definitions of "regular railroad occupation", "permanent physical and mental impairment", and "residual functional capacity" as presently found in part 220. In addition, it adds the definitions of "independent case evaluation" and "functional capacity test."

The current § 220.12 is proposed to be removed, and the current § 220.14 "Evidence Considered" is proposed to be redesignated § 220.12.

The introductory language and paragraph (a) of proposed § 220.13 follows the present regulation and describes the sequential evaluation process for determining disability for an employee's regular railroad occupation. Initially, if an employee has been medically disqualified by his employer, the Board will presume that the employee is disabled for his regular railroad occupation if there is any objective medical evidence to support that determination. If the employee has not been so disqualified, the Board will determine if the employee's impairment(s) meet or equal a listing found in Appendix 1.

Proposed § 220.13(b)(1) provides that if an employee has not been found disabled in the first two steps described above, the Board will then determine the employee's regular railroad occupation, based only upon the employee's description of his or her job.

Proposed § 220.13(b)(2)(i) provides that next the Board will determine if an employee's regular railroad occupation and impairment(s) are covered under the standards contained in a new Appendix 3 to Part 220. If both the occupation and impairment(s) are covered, the Board will confirm the existence of the impairment(s) using valid diagnostic tests set forth in Appendix 3. (Proposed § 220.13(b)(2)(ii).) Once the impairment(s) is confirmed, Appendix 3 is applied to determine if the employee is disabled. (Proposed § 220.13(b)(2)(iii).)

If the employee's regular railroad occupation and impairment(s) are not covered by Appendix 3, or if the medical evidence contains significant differences in interpretation of objective test findings which cannot be readily resolved, then the Board will not use Appendix 3, but will determine if the employee is disabled using an independent case evaluation (ICE) as set forth in proposed § 220.13(b)(2)(iv). Likewise, if Appendix 3 does not yield a "disabled" finding ICE will apply.

Proposed § 220.13(b)(2)(iv), which describes ICE, is essentially a more detailed description of the process which is described in § 220.13(b)(3) of the present regulation. Under this process the Board initially determines whether the evidence is complete (Step 1). The Board next confirms any impairment which has not been confirmed under proposed § 220.13(b)(2)(ii) (Step 2). Next, the Board will determine whether there is a concordance of medical findings among physicians. If there is not, the Board will request additional medical evidence from the employee's treating physician(s) or procure additional consulting exams (Step 3). Once the Board establishes a concordance of medical findings, to the extent that it is possible, it will then assess the quality of the medical evidence under the factors set forth in proposed § 220.14. This section sets forth factors which either support or call into question the validity of the medical findings. Thus, for example, the opinion of a treating physician, which is fully supported by medically acceptable clinical and diagnostic techniques, is given greater weight than one that is not so supported or is inconsistent with findings of other medical sources. Likewise, the claimant's description of his or her own condition, if consistent with objective medical findings, is given more weight than one that is not consistent. (Step 4). If, after assessment, the Board determines that there is no substantial objective evidence of an impairment, the Board will determine the employee is not disabled.

If through the assessment in Step 4 it is determined that there is substantial objective evidence of an impairment, then in Step 5 the Board will determine the demands of the employee's regular railroad occupation. At this point, the Board will not only consider the employee's own description of his or her job, but also the employer's description as well as other sources such as the Dictionary of Occupational Titles and generic descriptions, found in the Occupational Disability Claims Manual.

Next, the Board will determine the employee's residual functional capacity based upon the assessment performed in Step 4 and compare it to the job demands determined in Step 5. If the demands of the employee's regular railroad occupation exceed the employee's residual functional capacity, then the Board will find the employee disabled. If the demands do not exceed the residual functional capacity, then the Board will find the employee not disabled (Step 6).

The Board has determined that this is a significant rule under Executive Order 12866.

Proposed section 220.13(b)(2)(iv)(E) contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Board has submitted a copy of this section to the Office of Management and Review (OMB) for its review.

Collection of Information: Job Information Report. This proposed rule would offer the applicant's railroad employer the opportunity to voluntarily provide information on the applicant's job duties which may be utilized in determining the applicant's eligibility to an occupational disability. Two forms are proposed for this purpose. One form, G–251a, Employer Job Information (job description), would be used when a generic job description has been developed for the job the applicant claims to be his regular job; the other form (G–251b), Employer Job Information (general), would be used when no generic job description has been developed. The RRB estimates that each form takes 20 minutes to complete, and that of the estimated 3,500 forms that would be sent to the applicants' railroad employers annually, 1,750 (or 50 percent) will be completed and returned. The annual burden imposed as a result of this proposed rule would be 584 hours (1,750 responses × ⅓ hour per response).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to Laura Oliven, the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 226 Jackson Place, NW., Room 10235, Washington, D.C. 20503 and to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092.

The RRB considers comments by the public on this proposed collection of information in—

(a) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the RRB, including whether the information will have a practical use;

(b) Evaluating the accuracy of the RRB's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(d) Minimizing the burden of collection of information on those who are to respond, including the use of appropriate electronic, mechanical, of other automated collection techniques.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 15 days of publication. This does not affect the deadline for the public to comment to the RRB on the proposed regulations.

List of Subjects in 20 CFR Part 220

Disability benefits, Railroad employees, Railroad retirement.

PART 220—DETERMINING DISABILITY

For the reasons set forth in the preamble, Part 220 of Title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority for Part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

2. The title of Subpart C, is revised to read as follows: "Subpart C—Disability Under the Railroad Retirement Act for Work in an Employee's Regular Railroad Occupation".

3. Section 220.10 is revised to read as follows:

§ 220.10 Disability for work in an employee's regular railroad occupation.

(a) In order to receive an occupational disability annuity an eligible employee must be found by the Board to be disabled for work in his or her regular railroad occupation because of a permanent or physical or mental impairment. In this subpart the Board describes in general terms how it evaluates a claim for an occupational disability annuity. In accordance with section 2(a)(2) of the Railroad Retirement Act this subpart was developed with the co-operation of employers and employees. This subpart is supplemented by an Occupational Disability Claims Manual (Manual) which was also developed with the co-operation of employers and employees.

(b) In accordance with section 2(a)(2) of the Railroad Retirement Act, the Board shall select two physicians, one from recommendations made by representatives of employers and one from recommendations made by representatives of employees. These individuals shall comprise the Occupational Disability Advisory Committee (Committee). This Committee shall periodically review, as necessary, this subpart and the Manual and make recommendations to the Board with respect to amendments to this subpart or to the Manual. The Board shall confer with the Committee before it amends either this subpart or the Manual.

4. Section 220.11 is revised to read as follows:

§ 220.11 Definitions as used in this subpart.

Functional capacity test means one of a number of tests which provide objective measures of a claimant's maximal work ability and includes functional capacity evaluations which provide a systematic comprehensive assessment of a claimant's overall strength, mobility, and endurance and capacity to perform physically demanding tasks, such as standing, walking, lifting, crouching, stooping or bending, climbing or kneeling.

Independent Case Evaluation (ICE) means the process for evaluating claims not covered by Appendix 3 of this part.

Regular railroad occupation means an employee's railroad occupation in which he or she has engaged in service for hire in more calendar months than the calendar months in which he or she has been engaged in service for hire in any other occupation during the last preceding five calendar years, whether or not consecutive; or has engaged in service for hire in not less than one-half of all of the months in which he or she has been engaged in service for hire during the last preceding 15 consecutive calendar years. If an employee last worked as an officer or employee of a railway labor organization and if continuance in such employment is no longer available to him or her, the "regular occupation" shall be the position to which the employee holds seniority rights or the position which he or she left to work for a railway labor organization.

Permanent physical or mental impairment means a physical or mental impairment or combination of impairments that can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.

Residual functional capacity has the same meaning as found in § 220.120 of this part.

5. The current § 220.12 "Permanent physical or mental impairment, defined." is removed, and § 220.14 "Evidence Considered." is redesignated as § 220.12.

§ 220.13 [Amended]

6. Section 220.13 is amended by revising the section heading, the introductory text and paragraph (b) to read as follows:

§ 220.13 Establishment of permanent disability for work in regular railroad occupation.

The Board will presume that a claimant who is not allowed to continue working for medical reasons by his employer has been found, under standards contained in this subpart, disabled unless the Board finds that no person could reasonably conclude on the basis of evidence presented that the claimant can no longer perform his or her regular railroad occupation for medical reasons. (See § 220.21 if the claimant is not currently disabled, but was previously occupationally disabled for a specified period of time in the past). The Board uses the following evaluation process in determining disability for work in the regular occupation:

(a) * * *

(b) If the Board finds that the claimant does not have an impairment described in (a) above, it will—

(1) Determine the employee's regular railroad occupation, as defined in § 220.11 of this part, based upon the employee's own description of his or her job;

(2) Evaluate whether the claimant is disabled as follows:

(i) The Board first determines whether the employee's regular railroad occupation is an occupation covered under Appendix 3 of this part. Second, the Board will determine whether the employee's claimed impairment(s) is covered under Appendix 3 of this part. If claimant's regular railroad occupation or impairment(s) is not covered under Appendix 3 of this part, then the Board will determine if the employee is disabled under ICE as set forth in paragraph (b)(2)(iv) of this section.

(ii) If the Board determines that, in accordance with paragraph (b)(2)(i) of this section, Appendix 3 of this part applies, then the Board will confirm the existence of the employee's impairment(s) using valid diagnostic tests accepted by the medical community as set forth in Appendix 3 of this part. See also § 220.27 of this part. Once the Board determines that Appendix 3 of this part applies, only in situations where there are significant differences in objective tests such as imaging study, electrocardiograms or other test results, and these differences cannot be readily resolved, will the Board determine if the employee is disabled under the ICE as set forth in paragraph (b)(2)(iv) of this section.

(iii) Once the impairment(s) is confirmed, as provided for in paragraph (b)(2)(ii) of this section, the Board will apply Appendix 3 of this part. If Appendix 3 of this part dictates a "D" finding, the Board will find the claimant disabled.

(iv) If the Board does not find the employee disabled using the standards in Appendix 3 of this part, then the Board will determine if the employee is disabled using ICE. To evaluate a claim under ICE the Board will use the following steps:

(A) *Step 1.* The Board will determine if the medical evidence is complete. Under this step the Board may request the claimant to take additional medical tests such as a functional capacity test or other consultative examinations;

(B) *Step 2.* If the employee's impairments(s) has not been confirmed, as provided for in paragraph (b)(2)(ii) of this section, the Board will next confirm the employee's impairment(s), as described in paragraph (b)(2)(ii) of this section;

(C) *Step 3.* The Board will determine whether the opinions among the physicians regarding medical findings are consistent, by reviewing the employee's medical history, physical and mental examination findings, laboratory or other test results, and other information provided by the employee or obtained by the Board. If such records reveal that there are significant differences in the medical findings, significant differences in opinions concerning the residual functional capacity evaluations among treating physicians, or significant differences between the results of functional capacity evaluations and residual functional capacity examinations, then the Board may request additional evidence from treating physicians, additional consultative examinations and/or residual functional capacity tests to resolve the inconsistencies;

(D) *Step 4.* When the Board determines that there is concordance of medical findings, then the Board will assess the quality of the evidence in accordance with § 220.112 of this part, which describes the weight to be given to the opinions of various physicians, and § 220.114 of this part, which describes how the Board evaluates symptoms such as pain. The Board will also assess the weight of evidence by utilizing § 220.14 of this part which outlines factors to be used in determining the weight to be attributed to certain types of evidence. If, after assessment, the Board determines that is no substantial objective evidence of an impairment, the Board will determine that the employee is not disabled.

(E) *Step 5.* Next, the Board determines the physical and mental demands of the employee's regular railroad occupation. In determining the job demands of the employee's regular railroad occupation, the Board will not only consider the employee's own description of his or her regular railroad occupation, but shall also consider the employer's description of the physical requirements and environmental factors relating the employee's regular railroad occupation, as provided by the employer on the appropriate form set forth in Appendix 3 of this part, and consult other sources such as the Dictionary of Occupational Titles and the job descriptions of occupations found in the Occupational Disability Claims Manual, as provided for in § 220.10 of this part.

(F) *Step 6.* Based upon the assessment of the evidence in paragraph (b)(2)(iv) of this section, the Board shall determine the employee's residual functional capacity. The Board will then compare the job demands of the employee's regular railroad occupation, as determined in paragraph (b)(2)(iv)(E) of this section. If the demands of the employee's regular railroad occupation exceed the employee's residual functional capacity, then the Board will find the employee disabled. If the demands do not exceed the employee's residual functional capacity, then the Board will find the employee not disabled.

7. A new section 220.14 is added to read as follows:

§ 220.14 Weighing of Evidence.

(a) *Factors which support greater weight.* Evidence will generally be given more weight if it meets one or more of the following criteria:

(1) The residual functional capacity evaluation is based upon functional objective tests with high validity and reliability;

(2) The medical evidence shows multiple impairments which have a cumulative effect on the employee's residual functional capacity;

(3) Symptoms associated with limitations are consistent with objective findings;

(4) There exists an adequate trial of therapies with good compliance, but poor outcome;

(5) There exists consistent history of conditions between treating physicians and other health care providers.

(b) *Factors which support lesser weight.* Evidence will generally be given lesser weight if it meets one or more of the following criteria:

(1) There is an inconsistency between the diagnoses of the treating physicians;

(2) There is inconsistency between reports of pain and functional impact;

(3) There is inconsistency between subjective symptoms and physical examination findings;

(4) There is evidence of poor compliance with treatment regimen, keeping appointments, or cooperating with treatment;

(5) There is evidence of exam findings which are indicative of exaggerated or potential malingering response;

(6) The evidence consists of objective findings of exams that have poor reliability or validity;

(7) The evidence consists of imaging findings which are nonspecific and largely present in the general population;

(8) The evidence consists of a residual functional capacity evaluation which is supported by limited objective data without consideration for functional capacity testing.

Appendix 3—Railroad Retirement Board Occupational Disability Standards

8. Appendix 3—Railroad Retirement Board Occupational Disability Standards is added to part 220 to read as follows:

BILLING CODE 7905-01-P

Appendix 3 to Part 220—Railroad Retirement Board Occupational Disability Standards

Form Approved
OMB No. 3220-xxxx

JOB INFORMATION FORM

RRB Claim Number
Employee's Name
Date Released
Regular Railroad Occupation*
Location
Date Last Worked

* The regular railroad occupation is: 1) the occupation in which the employee has been engaged for more calendar months than any other occupation during the last preceding 5 calendar years, whether consecutive or not; or 2) the occupation which the employee has been in service for not less than one-half of all months in which the employee has been engaged in service during the last 15 consecutive calendar years; or 3) if an employee last worked as an officer or employee of a railway labor organization and if that employment is no longer available, the regular occupation shall be the position to which the employee holds seniority rights or the position left to work for the railway labor organization.

The above-named railroad employee has applied for an occupational disability benefit under section 2(a)(1)(iv) of the Railroad Retirement Act. Railroad Retirement Board (RRB) regulation 20 CFR 220.13 (b)(2) provides that railroad employers may furnish pertinent information concerning the job duties the employee is required to perform. If you wish to provide job duty information on the above-named employee, it must be received by the RRB no later than _____.

EMPLOYER INFORMATION

The attached list of job duties indicate those duties generally performed by the employee.

Please provide any additional information on the duties the employee performed over the last 5 years, or 15 years if appropriate.

This information can be entered in the Remarks section or attached to this form.

G-251a(XX-XX)

Job information should be sent to:

U.S. RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-2092
ATTENTION: DISABILITY PROGRAMS SECTION

or a facsimile may be sent to (312)751-7167.

Employer Certification - The information contained in this report is correct to the best of my knowledge and belief.

NAME _____ SIGNATURE _____
(Please Print)

TITLE _____ DATE ____/____/____
(Please Print)

TELEPHONE NO (____) _____

Remarks:

Paperwork Reduction Act Notice

Section 7 (b)(6) of the Railroad Retirement Act (RRA) allows the Railroad Retirement Board (RRB) to collect this information. While you are not required to respond, the information you provide will be used by the RRB in determining an applicant's eligibility for an occupational disability under the RRA.

We estimate that this form takes an average of 20 minutes per response to complete, including the time for reviewing the instructions, getting the needed data, and reviewing the completed form. *Federal agencies may not conduct or sponsor, and respondents are not required to respond to, a collection of information unless it displays a valid OMB number.* If you wish, send comments regarding the accuracy of our estimate or any other aspects of this form, including suggestions for reducing the completion time to: Chief of Information Management, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092 and to the Office of Management and Budget, Paperwork Reduction Project (3220-XXXX), Washington DC 20503. Please do not return this form to either of these addresses.

G-251a(XX-XX)

Form Approved
OMB No. 3220-xxxx

JOB INFORMATION FORM

RRB Claim Number
Employee's Name
Date Released
Regular Railroad Occupation*
Location
Date Last Worked

* The regular railroad occupation is: 1) the occupation in which the employee has been engaged for more calendar months than any other occupation during the last preceding five calendar years, whether consecutive or not; or 2) the occupation which the employee has been in service for not less than one-half of all months in which the employee has been engaged in service during the last 15 consecutive calendar years; or 3) if an employee last worked as an officer or employee of a railway labor organization and if that employment is no longer available, the regular occupation shall be the position to which the employee holds seniority rights or the position left to work for the railway labor organization.

The above-named railroad employee has applied for an occupational disability benefit under section 2(a)(1)(iv) of the Railroad Retirement Act. Railroad Retirement Board (RRB) regulation 20 CFR 220.13 (b)(2) provides that railroad employers may furnish pertinent information concerning the job duties the employee is required to perform. If you wish to provide job duty information on the above-named employee, it must be received by the RRB no later than _____.

EMPLOYER INFORMATION

You may wish to provide the RRB with job duty information. If so, the job information that is needed for a disability decision should include a full description of the basic duties to perform the occupation listed. For example, list the types of machinery, tools and/or equipment used, technical knowledge or skills involved, and number of people supervised. Also include the types of physical activities involved in a typical 8 hour work day, such as how many hours of walking, standing or sitting, what items are lifted and carried and how much these items weigh, and how often bending, crouching, kneeling, reaching and climbing are performed. If exposure to environmental hazards, such as working at heights or around dangerous machinery, in extreme temperatures or excessive noise are present, also list these.

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This information can be entered in the Remarks section or attached to this form.

Job information should be sent to:

U.S. RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-2092
ATTENTION: DISABILITY PROGRAMS SECTION

or a facsimile may be sent to (312)751-7167.

Employer Certification - The information contained in this report is correct to the best of my knowledge and belief.

NAME _____ SIGNATURE _____
(Please Print)

TITLE _____ DATE ____/____/____
(Please Print)

TELEPHONE NO (____) _____

Remarks:

Paperwork Reduction Act Notice

Section 7 (b)(6) of the Railroad Retirement Act (RRA) allows the Railroad Retirement Board (RRB) to collect this information. While you are not required to respond, the information you provide will be used by the RRB in determining an applicant's eligibility for an occupational disability under the RRA.

We estimate that this form takes an average of 20 minutes per response to complete, including the time for reviewing the instructions, getting the needed data, and reviewing the completed form. *Federal agencies may not conduct or sponsor, and respondents are not required to respond to, a collection of information unless it displays a valid OMB number.* If you wish, send comments regarding the accuracy of our estimate or any other aspects of this form, including suggestions for reducing the completion time to: Chief of Information Management, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092 and to the Office of Management and Budget, Paperwork Reduction Project (3220-XXXX), Washington DC 20503. Please do not return this form to either of these addresses.

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BILLING CODE 7905-01-C

A. Cancer

Cancer

Cancer conditions can be viewed as belonging to one of three categories.
Category 1: Significant impact on functional capacity or anticipated life span.
Category 2: Intermediate impact on functional capacity; large individual variability.
Category 3: No significant impact on functional capacity or expected life span.
The factors that are considered in developing these categories include the following:

Type of Cancer

The functional impact of different malignancies varies tremendously and each malignancy has to be considered on an individual basis.

Magnitude of Disease

The disability standards are based upon the magnitude or extent of disease. The extent of disease affects both anticipated life span and the functional capacity or work ability of the individual. Localized cancer including cancer "in situ" can frequently be completely cured and not have an impact on functional capacity or life span. In contrast, many cancers that have distant or significant regional spread generally have a poor prognosis. The magnitude or extent of disease is classified into three categories: local, regional and distant.

The criteria which are used to classify a cancer into one of the three categories are based upon the distillation of several staging methods into a single system [Miller, et al. (1992). *Cancer Statistics Review*, 1973–1989; NIH Publication No. 92–2789].

Effects of Treatment

Although some types of cancer may be potentially curable with radical surgery and/or radiation therapy, the treatment regimen may result in a significant impairment that could affect functional capacity and ability to work. For example, a person with a laryngeal tumor which had spread regionally could be cured by a complete laryngectomy and radiotherapy. However, this treatment could result in a loss of speech and significantly impair the individual's communicative skills or ability to use certain types of respiratory protective equipment.

Prognosis

Some cancers may have minimal impact on a person's functional capacity, but have a very poor prognosis with respect to life expectancy. For example, an individual with early stage brain cancer may be minimally impaired, but have a poor prognosis and minimal potential for surviving longer than two years. Five and two year survival data are presented in the Cancer Disability Guideline Table which follows.

The Cancer Disability Guideline Table provides information concerning the probability of survival for five years for local, regional, and distant disease for each type of malignancy. In addition, two-year survival data are also presented for all disease stages. The five-year survival data are based upon data collected from population-based registries in Connecticut, New Mexico, Utah, Hawaii, Atlanta, Detroit, Seattle and the San Francisco and East Bay area between 1983 and 1987 (Miller, 1992). The two-year data are from a cohort study initially diagnosed in 1988.

Assessment

The malignancies which are classified as disabling (Category 1), potentially disabling (Category 2) and non-disabling (Category 3). Category 2 conditions must be evaluated with respect to how the worker's tumor affects the worker's ability to perform the job and an assessment of his life span.

Information concerning the potential impact of the malignancy on a worker's ability to perform a job is identified in the Functional Impact column in the table. All railroad occupations are considered together. Functional impacts are classified as significant if the treatment or sequelae from treatment including radiotherapy, chemotherapy and/or surgery is likely to impair the worker from performing the job. If the treatment results in a significant impairment of another organ system, the individual should be evaluated for disability associated with impairment of that body part. For example, a person undergoing an amputation for a bone malignancy would have to be evaluated for an amputation of that body part. For many cancers, it is difficult to make generalizations regarding the level of impairment that will occur after the person has initiated or completed treatment. Nonsignificant impacts include those that are unlikely to have any effect on the individual's work capacity.

Cancer type	2-year [1]	5-year [1]	Disability status [2]	Functional impact [3]
Brain:				
Local		26	1	S
Regional		27.9	1	S
Distant		23.6	1	S
Female Breast:				
Regional		71.1	2	S
Distant		17.8	1	S
Colon:				
Local		91	2	S
Regional		60.1	2	S
Distant		6	1	S
Rectal:				
Local		84.5	2	S
Regional		50.7	2	S
Distant		5.3	1	S
Esophagus:				
Local		18.5	1	S
Regional		5.2	1	S
Distant		1.8	1	S
Hodgkin's Disease: [4]				
Stage 1		90–95	3	S
Stage 2		86	2	S
Stage 3		<80	2	S
Stage 4		<80	1	S
Kidney/Renal Pelvis:				
Local		85.4	3	S
Regional		56.3	2	S
Distant		9	1	S
Larynx:				
Local		84.2	2	S
Regional		52.5	2	S
Distant		24	1	S
Acute Lymphocytic Leukemia:				
All		51.1	2	S
Chronic Lymphocytic Leukemia:				
All		66.2	2	S
Acute Myelogenous Leukemia:				
All		9.7	1	S
Chronic Myelogenous Leukemia:				
All		21.7	1	S
Liver/Intrahepatic Bile Duct:				
Local		15.1	1	S
Regional		5.8	1	S
Distant		1.9	1	S
Lung/Bronchus: [5]				
Local		45.6	2	S
Regional		13.1	1	S
Distant		1.3	1	S
Melanomas of Skin:				
Regional		53.6	2	S
Distant		12.8	1	S
Oral Cavity/Pharyngeal:				
Local		76.2	2	S
Regional		40.9	2	S
Distant		18.7	1	S
Pancreas:				
Local		6.1	1	S
Regional		3.7	1	S
Distant		1.4	1	S
Prostate:				
Local		91	3	S
Regional		80.4	2	S
Distant		28	1	S
Stomach:				
Local		55.4	1	S
Regional		17.3	1	S
Distant		2.1	1	S
Testicular:				
Distant		65.5	1	S
Thyroid:				
Regional		93.1	3	S
Distant		47.2	1	S
Bladder:				
Regional		46	2	S
Distant		9.1	1	S

[1] Source of 2 and 5 year survival data: Miller BA et al. Cancer Statistics Review 1973–1989. NIH Publication No. 92–2789.
[2] Disability Status:
Category 1: Significant impact on functional capacity or life span.
Category 2: Intermediate impact.
Category 3: No significant impact on functional capacity or life span.
[3] Functional Impacts:
(S) Significant—significant potential for the effects of treatment (radiotheraphy, chemotherapy. surgery) to affect functional capacity.
(MS) Minimally Significant—minimal potential for effects of treatment to affect functional capacity.
[4] Hodgkin's disease data presented for each stage derived from American Cancer Society. American Cancer Society Textbook reference for unstaged cancer is derived from Cancer Statistics Review (See 3). In addition to other data, see: American Cancer Society Textbook of Clinical Oncology. Eds: Holleb AI, Fink DJ, Murphy GP, Atlanta: American Cancer Society, Inc. 1991.)

[5] There can be considerable variability between differing lymphomas. Each cell type needs to be evaluated on an individual basis.
[6] Small cell carcinoma is classified as a 1.

B. Endocrine

Confirmatory test	Minimum result	Requirements
BODY PART: ENDOCRINE CONFIRMATORY CONFIRMATORY TESTS		
Diabetes, requring insulin (IDDM):		
Medical record review	Confirmation of condition and need for insulin use	Highly recommended.

Disability test	Test result	Disability classification
BODY PART: ENDOCRINE JOB TITLE: ENGINEER		
Diabetes, requiring insulin (IDDM):		
Medical record review	Confirmation of condition and need for insulin use	D

C. Cardiac

Confirmatory test	Minimum result	Requirements
BODY PART: CARDIAC CONFIRMATORY TESTS		
Angina:		
Medical record review	Confirmed history of ischemia including copies of electrocardiogram.	Recommended.
Stress test	Definite ischemia on exercise test	Recommended.
Thallium study	Definite ischemia with exercise	Recommended.
Aortic valve disease:		
Cardiac catheterization	Proven and significant	Recommended.
Echocardiogram	Significant valve disease	Recommended.
Coronary artery disease:		
Medical record review	Documented ischemia with electrocardiogram confirmation.	Recommended.
Medical record review	Documented myocardial infarction	Recommended.
Stress test	Positive	Recommended.
Thallium study	Definite ischemia with exercise	Recommended.
Angiography	Definite significant (>60%) of one vessel	Recommended.
Cardiomyopathy:		
Echocardiogram	Proven ejection fraction <50%	Recommended.
Catheterization	Poor global function and not coronary artery disease	Recommended.
Hypertension:		
Medical record review	Documentation of hypertension for one year	Highly recommended.
Medical record review	Definite diagnosis by cardiologist or internist	Highly recommended.
Medical record review	Confirmation of medication use	Highly recommended.
Arrhythmia: heart block:		
Medical record review	Proven episode with electrocardiogram confirmation	Recommended.
Electrocardiogram	Documentation of arrhythmia	Recommended.
Mitral valve disease:		
Cardiac catheterization	Significant valve disease	Recommended.
Echocardiogram	Significant valve disease	Recommended.
Pericardial disease:		
Medical record review	Confirmed by cardiologist or internist	Highly recommended.
Pulmonary hypertension:		
Physical examination	Increased pulmonic sound or pulmonary ejection murmur by cardiologist or internist.	Recommended.
Electrocardiogram	Definite right ventricular hypertension	Highly recommended.
Ventricular ectopy:		
Medical record review	Definite episode within one year	Recommended.
Holter monitoring	Definite arrhythmia	Recommended.
Provocative testing	Positive response	Recommended.
Arrhythmia: supraventricular tachycardia:		
Medical record review	Definite episode within one year	Recommended.
Holter monitoring	Definite arrhythmia	Recommended.
Post heart transplant:		
Medical record review	Documented	Highly recommended.

Disability test	Test result	Disability classification
BODY PART: CARDIAC JOB TITLE: TRAINMAN		
Angina:		
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia <7 METS	D
Stress test	Definite ischemia >7 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25–50 mm HG.	
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Coronary artery disease:		
Myocardial infraction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25–50 mm Hg	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by a Cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia < or >7 METS	D
Isotope, e.g., thallium study	Definite ischemia < or >7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time	D
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmic: heart block:		
Holter	Documented asystole length >1.5–2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient 5–10 mm Hg	D
Cardiac catheterization	Mitral valve gradient >10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Decreased ejection fraction 50–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Stress test	Peak exercise 5–7 METS	D
Pericardial disease:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Medical record review	Surgical rhythm procedure	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D
BODY PART: CARDIAC JOB TITLE: ENGINEER		
Angina:		
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D

Disability test	Test result	Disability classification
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia <7 METS	D
Stress test	Definite ischemia >7 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25–50 mm HG	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25–50 mm Hg	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by a Cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia < or >7 METS	D
Isotope, e.g., thallium study	Definite ischemia < or >7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction 35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time	D
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5–2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient 5–10 mm Hg	D
Cardiac catheterization	Mitral valve gradient >10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Stress test	Peak exercise 5–7 METS	D
Pericardial disease:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Medical record review	Surgical rhythm procedure	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

BODY PART: CARDIAC
JOB TITLE: DISPATCHER

Angina:		
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia <7 METS	D
Stress test: significant ST changes	Definite ischemia >7 METS	D

Disability test	Test result	Disability classification
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25–50 mm Hg	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25–50 mm Hg	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia < or >7 METS	D
Isotope, e.g., thallium study	Definite ischemia < or >7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time	D
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5–2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient 5–10 mm.Hg	D
Cardiac catheterization	Mitral valve gradient >10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Stress test	Peak exercise 5–7 METS	D
Pericardial disease:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Medical record review	Surgical rhythm procedura	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

BODY PART: CARDIAC
JOB TITLE: CARMAN

Angina:		
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia <7 METS	D
Stress test: significant ST changes	Definite ischemia >7 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25–50 mm HG.	
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D

Disability test	Test result	Disability classification
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25–50 mm Hg	D
Cardiac catheterization	Decreased ejection fraction 40–50%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by a Cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia < or >7 METS	D
Isotope, e.g., thallium study	Definite ischemia < or >7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time	D
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5–2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient 5–10 mm Hg	D
Cardiac catheterization	Mitral valve gradient >10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Stress test	Peak exercise 5–7 METS	D
Pericardial disease:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Medical record review	Surgical rhythm procedure	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

BODY PART: CARDIAC
JOB TITLE: SIGNALMAN

Angina:		
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia <7 METS	D
Stress test: significant ST changes	Definite ischemia <7 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25–50 mm HG	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise 5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infractions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25–50 mm Hg	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D

Disability test	Test result	Disability classification
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia < or >7 METS	D
Isotope, e.g., thallium study	Definite ischemia < or >7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Decrease ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time	D
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block		
Holter	Documented asystole length >1.5–2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient 5–10 mm Hg	D
Cardiac catheterization	Mitral valve gradient >10 mm Hg	D
Cardiac catheterization	Mitral reguragitation severe	D
Cardiac catheterization	Decrease ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Stress test	Peak exercise 5–7 METS	D
Pericardial disease:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Medical record review	Surgical rhythm procedure	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

BODY PART: CARDIAC
JOB TITLE: TRACKMAN

Angina:		
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia <7 METS	D
Stress test: significant ST changes	Definite ischemia >7 METS	D
Aortic valve disease:.		
Cardiac catheterization	Aortic gradient 25–50 mm HG	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25–50 mm Hg	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by a cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia < or >7 METS	D
Isotope, e.g., thallium study	Definite ischemia < or >7 METS	D

Disability test	Test result	Disability classification
Cardiomyopathy:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time	D
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5–2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient 5–10 mm Hg	D
Cardiac catheterization	Mitral valve gradient >10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Stress test	Peak exercise 5–7 METS	D
Pericardial disease:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Medical record review	Surgical rhythm procedure	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

BODY PART: CARDIAC
JOB TITLE: MACHINIST

Angina:		
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia <7 METS	D
Stress test: significant ST changes	Definite ischemia >7 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25–50 mm HG.	
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25–50 mm Hg	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by a cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia < or >7 METS	D
Isotope, e.g., thallium study	Definite ischemia < or >7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Peak ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D

Disability test	Test result	Disability classification
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time	D
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5–2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient 5–10 mm Hg	D
Cardiac catheterization	Mitral valve gradient >10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Stress test	Peak exercise 5–7 METS	D
Pericardial disease:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Medical record review	Surgical rhythm procedure	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

BODY PART: CARDIAC
JOB TITLE: SHOP LABORER

Angina:		
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise >5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia <7 METS	D
Stress test: significant ST changes	Definite ischemia >7 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25–50 mm HG.	
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise >5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25–50 mm Hg.	
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by a Cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia < or >7 METS	D
Isotope, e.g., thallium study	Definite ischemia < or >7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time	D
Medical record review	Diastolic >120 and systolic >160, 50% of the time and evidence of end organ damage (blood creatinine >2; urinary protein >½ gm; or EKG evidence of ischemia).	D
Arrhythmia: heart block:		

Disability test	Test result	Disability classification
Holter	Documented asystole length >1.5–2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient 5–10 mm Hg	D
Cardiac catheterization	Mitral valve gradient >10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Stress test	Peak exercise 5–7 METS	D
Pericardial disease:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Medical record review	Surgical rhythm procedure	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

BODY PART: CARDIAC
JOB TITLE: SALES REPRESENTATIVE

Angina:		
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia <7 METS	D
Stress test: significant ST changes	Definite ischemia >7 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25–50 mm HG	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25–50 mm Hg	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by a cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia < or >7 METS	D
isotope, e.g., thallium study	Definite ischemia < or >7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Hypertension:		
Medical record review	Diastolic >120 and systolic >160, 50% of the time	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5–2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient 5–10 mm Hg	D
Cardiac catheterization	Mitral valve gradient >10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Poor ejection fraction <35%	D

Disability test	Test result	Disability classification
Echocardiogram	Decreased ejection fraction 40–55%	D
Stress test	Peak exercise 5–7 METS	D
Pericardial disease:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Medical record review	Surgical rhythm procedure	D
Holter	Uncontrolled ventricular rhythm	D
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

BODY PART: CARDIAC
JOB TITLE: GENERAL OFFICE CLERK

Angina:		
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by cardiologist	D
Stress test	Documented hypotensive response	D
Stress test: significant ST changes	Definite ischemia <7 METS	D
Stress test: significant ST changes	Definite ischemia <7 METS	D
Aortic valve disease:		
Cardiac catheterization	Aortic gradient 25–50 mm HG	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise >5 METS	D
Coronary artery disease:		
Myocardial infarction	Multiple infarctions	D
Echocardiogram	Confirmed ventricular aneurysm	D
Cardiac catheterization	Aortic gradient 25–50 mm Hg	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Stress test	Peak exercise <5 METS	D
Medical record review	Unstable as diagnosed by a Cardiologist	D
Stress test	Documented hypotensive response	D
Stress test	Definite ischemia < or >7 METS	D
Isotope, e.g., thallium study	Definite ischemia < or >7 METS	D
Cardiomyopathy:		
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Stress test	Peak exercise 5–7 METS	D
Arrhythmia: heart block:		
Holter	Documented asystole length >1.5–2 seconds	D
Medical record review	Documented syncope with proven arrhythmia	D
Mitral valve disease:		
Cardiac catheterization	Mitral valve gradient 5–10 mm Hg	D
Cardiac catheterization	Mitral valve gradient >10 mm Hg	D
Cardiac catheterization	Mitral regurgitation severe	D
Cardiac catheterization	Decreased ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Stress test	Peak exercise 5–7 METS	D
Pericardial disease:		
Cardiac catheterization	Poor ejection fraction 40–55%	D
Cardiac catheterization	Poor ejection fraction <35%	D
Echocardiogram	Decreased ejection fraction 40–55%	D
Echocardiogram	Poor ejection fraction <35%	D
Ventricular ectopy:		
Medical record review	Documented life threatening arrhythmia	D
Medical record review	Surgical rhythm procedure	D
Holter	Uncontrolled ventricular rhythm	D

Disability test	Test result	Disability classification
Medical record review	Documented related syncope	D
Arrhythmia: supraventricular tachycardia:		
Medical record review	Documented related syncope	D
Post heart transplant:		
Medical record review	Post heart transplant	D

D. Respiratory

Confirmatory test	Minimum result	Requirements
BODY PART: RESPIRATORY CONFIRMATORY TESTS		
Asbestosis:		
Medical record review	Occupational history of 2 years exposure and at least 5 years latency.	Highly recommended.
Chest X-ray	At least 1/0 by NIOSH B reader	Highly recommended.
Asthma:		
Spirometry	FEV_1/FVC ratio diminished	Recommended.
Spirometry	<15% change with administration of bronchodilator	Recommended.
Methacholine challenge test	Positive: FEV_1 decrease <20% at (PC <=8 mg/ml)	Recommended
Bronchiectasis:		
Medical record review	Chronic cough and sputum	Recommended.
Chest X-ray	Bronchiectasis demonstrated	Recommended.
Chest CAT scan	Bronchiectasis demonstrated	Recommended.
Chronic bronchitis:		
Medical record review	Frequent cough—2 years duration	Highly recommended.
Chronic obstructive pulmonary disease:		
Spirometry	FEV_1/FVC ratio below 65% when stable	Highly recommended.
Spirometry	FEV_1 below 75% of predicted when stable	Highly recommended.
Cor pulmonale:		
Electrocardiogram	Definite right ventribular hypertrophy	Recommended.
Echocardiogram	Definite right ventricular hypertrophy	Recommended.
Pulmonary fibrosis:		
Lung biopsy	Diffuse fibrosis	Recommended.
Chest CAT scan	More than minimal fibrosis	Recommended.
Lung resection:		
Medical record review	At least one lobe resected	Highly recommended.
Pneumothorax:		
Medical record review	Required hospitalization with chest tube drainage	Highly recommended.
Restrictive lung disease:		
Chest X-ray	Restrictive lung changes	Recommended.
Diffusing capacity	Abnormal	Highly recommended.
Chest CAT scan	Restrictive lung changes	Recommended.
Spirometry	FVC <75% predicted (race adjusted)	Highly recommended.
Silicosis:		
Medical record review	Occupational exposure for at least 1 year	Highly recommended.
Chest X-ray (ILO interpreted)	At least 1/0 by NIOSH B reader	Highly recommended.
Sleep apnea—central:		
Medical record review	Positive sleep apnea test	Highly recommended.
Medical record review	Verify history of chronic fatigue, excessive sleepiness, neurocognitive dysfunction, or other conditions interfering with job abilities.	Highly recommended.
Sleep apnea—obstructive:		
Medical record review	Positive sleep apnea test	Highly recommended.
Medical record review	Verify history of chronic fatigue, excessive sleepiness, neurocognitive dysfunction, or other conditions interfering with job abilities.	Highly recommended.
Medical record review	Readily available treatment excluded	Highly recommended.
Tuberculosis:		
Chest X-ray	Evidence of changes consistent with tuberculosis infection.	Recommended.
Culture	Positive	Recommended.

Disability test	Test result	Disability classification
BODY PART: RESPIRATORY JOB TITLE: TRAINMAN		
Asbestosis:		
PCO_2 (arterial	>50 mm Hg if stable	D
Asthma:		
Spirometry	FEV_1 with adequate treatment <40% percent predicted	D

Disability test	Test result	Disability classification
Bronchiectasis:		
PCO_2 arterial)	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	FEV_1 with adequate treatment <40% predicted	D
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2>5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Cor pulmonale:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Diffusing capacityfor CO	<45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrictive lung disease:		
Diffusing capacity for CO	<45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Sleep apnea—central:		
Sleep latency test	Positive	D
Sleep apnea—obstructive:		
Sleep latency test	Positive	D
BODY PART: RESPIRATORY JOB TITLE: ENGINEER		
Sleep apnea—central:		
Sleep latency test	Positive	D
Sleep apnea—obstructive:		
Sleep latency test	Positive	D
BODY PART: RESPIRATORY JOB TITLE: DISPATCHER		
Sleep apnea—central:		
Sleep latency test	Positive	D
Sleep apnea—obstructive:		
Sleep latency test	Positive	D
BODY PART: RESPIRATORY JOB TITLE: CARMAN		
Asbestosis:		
PCO_2 (arterial)	>50 mm Hg if stable	D
Asthma:		
Spirometry	FEV_1 with adequate treatment <40% predicted	D
Bronchiectasis:		
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	FEV_1 with adequate treatment <40% predicted	D
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D

Disability test	Test result	Disability classification
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Cor pulmonale:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Diffusing capacity for CO	<45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrictive lung disease:		
Diffusing capacity for CO	<45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Sleep apnea—central:		
Sleep latency test	Positive test	D
Sleep apnea—obstructive:		
Sleep latency test	Positive test	D

BODY PART: RESPIRATORY
JOB TITLE: SIGNALMAN

Asbestosis:		
PCO_2 (arterial)	>50 mm Hg if stable	D
Asthma:		
Spirometry	FEV_1 with adequate treatment <40% predicted	D
Bronchiectasis:		
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	FEV_1 with adequate treatment <40% predicted	D
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Cor pulmonale:		
Electrocardiogram	Define positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Diffusing capacity for CO	<45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrictive lung disease:		
Diffusing capacity for CO	<45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D

Disability test	Test result	Disability classification
Sleep apnea—central:		
Sleep latency test	Positive test	D
Sleep apnea—obstructive:		
Sleep latency test	Positive test	D

BODY PART: RESPIRATORY
JOB TITLE: TRACKMAN

Asbestosis:		
PCO_2 (arterial)	>50 mm Hg if stable	D
Asthma:		
Spirometry	FEV_1 with adequate treatment <40% predicted	D
Bronchiectasis:		
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	FEV_1 with adequate treatment <40% predicted	D
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Car pulmonate:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Diffusing capacity for CO	<45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrict lung disease:		
Diffusing capacity for CO	<45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Sleep apnea—central:		
Sleep latency test	Positive test	D
Sleep apnea—obstructive:		
Sleep latency test	Positive test	D

BODY PART: RESPIRATORY
JOB TITLE: MACHINIST

Asbestosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Asthma:		
Spirometry	FEV_1 with adequate treatment <40% predicted	D
Bronchiectasis:		
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	FEV_1 with adequate treatment <40% predicted	D
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D

Disability test	Test result	Disability classification
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Cor pulmonale:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Diffusing capacity for CO	<45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrictive lung disease:		
Diffusing capacity for CO	45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Sleep apnea—central:		
Sleep latency test	Positive test	D
Sleep apnea—obstructive:		
Sleep latency test	Positive test	D
BODY PART: RESPIRATORY JOB TITLE: SHOP LABORER		
Asbestosis:		
PCO (arterial)	>50mm Hg if stable	D
Asthma:		
Spirometry	FEV_1 with adequate treatment <40% predicted	D
Bronchiectasis:		
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic bronchitis:		
Spirometry	FEV_1 with adequate treatment <40% predicted	D
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Chronic obstructive pulmonary disease (COPD):		
PCO_2 arterial	>50 mm Hg if stable	D
Pulmonary exercise test	PO_2 >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Cor pulmonale:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Pulmonary fibrosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Diffusing capacity for CO	<45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Lung resection:		
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Restrictive lung disease:		
Diffusing capacity for CO	<45% predicted	D
Pulmonary exercise test	PO_2 drop >5 torr at maximum exercise	D
Pulmonary exercise test	Maximum VO_2 <15 ml/kg	D
Spirometry	FVC <50% predicted	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Silicosis:		
PCO_2 arterial	>50 mm Hg if stable	D
Electrocardiogram	Definite positive right ventricular hypertrophy	D
Sleep apnea—central:		
Sleep latency central	Positive test	D
Sleep apnea—obstructive:		
Sleep latency obstructive	Positive test	D

E. Lumbar Sacral Spine

Confirmatory test	Minimum result	Requirements
BODY PART: LS SPINE CONFIRMATORY TESTS		
Ankylosing spondylitis:		
X-ray-lumbar sacral spine	Sacroilitis	Highly recommended.
HLA B27 (blood test)	Positive HLA B27 (90% case)	Recommended.
Backache, unspecified:		
Medical record review	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.
Medical record review	History of back pain with functional limitations for at least 1 year.	Highly recommended.
Chronic back pain, not otherwise specified:		
Medical record review	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.
Medical record review	History of back pain with functional limitations for at least 1 year.	Highly recommended.
Cauda equina syndrome with bowel or bladder dysfunction:		
Magnetic resonance imaging	Neural impingement of spinal nerves below L1	Recommended.
Computerized tomography	Neural impingement of spinal nerves below L1	Recommended.
Cystometrogram	Impaired bladder function	Recommended.
Rectal examination	Diminished rectal sphincter tone	Recommended.
Myelogram	Neural impingement of spinal nerves below L1	Recommended.
Degeneration of lumbar disc:		
X-ray lumbar sacral spine	Significant degenerative disc changes	Recommended.
Computerized tomography	Significant degenerative disc changes	Recommended.
Magnetic resonance imaging	Significant degenerative disc changes	Recommended.
Myelogram	Significant degenerative disc changes	Recommended.
Displacement of lumbar disc:		
X-ray-lumbar sacral spine	Significant degenerative disc changes	Recommended.
Computerized tomography	Significant degenerative disc changes	Recommended.
Magnetic resonance imaging	Significant degenerative disc changes	Recommended.
Myelogram	Significant degenerative disc changes	Recommended.
Fracture: vertebral body:		
Magnetic resonance imaging	Fracture vertebral body	Recommended.
Computerized tomography	Fracture vertebral body	Recommended.
X-ray-lumbar sacral spine	Fracture vertebral body	Recommended.
Fracture: posterior element with spinal canal displacement:		
Magnetic resonance imaging	Fracture posterior spinal element with displacement of spinal canal.	Recommended.
Computerized tomography	Fracture posterior spinal element with displacement of spinal canal.	Recommended.
X-ray-lumbar sacral spine	Fracture posterior spinal element with displacement of spinal canal.	Recommended.
Fracture: posterior spinal element with no displacement:		
X-ray-lumbar sacral spine	Fracture posterior spinal element	Recommended.
Magnetic resonance imaging	Fracture posterior spinal element	Recommended.
Computerized tomography	Fracture posterior spinal element	Recommended.
Fracture: spinous process:		
X-ray-lumbar sacral spine	Spinous process fracture	Recommended.
Magnetic resonance imaging	Spinous process fracture	Recommended.
Computerized tomography	Spinous process fracture	Recommended.
Fracture: Transverse process:		
Lumbar sacral spone	Transverse process fracture	Recommended.
Magnetic resonance imaging	Transverse process fracture	Recommended.
Computerized tomography	Transverse process fracture	Recommended.
Intervertebral disc disorder:		
X-ray-lumbar sacral spine	Significant disc degeneration	Recommended.
Magnetic resonance imaging	Significant disc degeneration	Recommended.
Computerized tomography	Significant disc degeneration	Recommended.
Myelogram	Significant disc degeneration	Recommended.
Lumbago:		
Medical record review: lumbar	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review: lumbar	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.

Confirmatory test	Minimum result	Requirements
Medical record review: lumbar	History of back pain with functional limitations for at least 1 year.	Highly recommended.
Lumbosacral neuritis:		
Magnetic resonance imaging	Evidence of neural compression	Recommended.
Electromyography	Definite denervation	Recommended.
Nerve conduction velocity	Definite slowing	Recommended.
Physical examination—atrophy	Atrophy in affected limb with 2 cm difference between limbs.	Recommended.
Physcal examination: straight leg raise	Positive straight leg raise	Recommended.
Sensory examiation	Loss of sensation in affected dermatomes	Recommended.
Medical history	History of radicular pain	Highly recommended.
Computerized tomography	Evidence of neural compression	Recommended.
Lumbar spinal stenosis:		
Computerized tomography	Significant narrowing: spinal cord canal or intervertebral foramen.	Recommended.
Magnetic resonance imaging	Significant narrowing: spinal cord canal or intervertebral foramen.	Recommended.
Myelogram	Significant narrowing: spinal cord canal or intervertebral foramen.	Recommended.
Mechanical complication of internal orthopedic device:		
Medical record review	Documentation of failure of implant following surgical procedure.	Highly recommended.
Osteomalacia:		
X-ray-lumbar sacral spine	Evidence of significant osteomalacia	Recommended.
Magnetic resonance imaging	Evidence of significant osteomalacia	Recommended.
Computerized tomography	Evidence of significant osteomalacia	Recommended.
Osteomyelitis, chronic-lumbar:		
X-ray-lumbar sacral spine	Evidence of chronic infection	Recommended.
Magnetic resonance imaging	Evidence of chronic infection	Recommended.
Computerized tomography	Evidence of chronic infection	Recommended.
Osteoporosis:		
Computerized tomography	Significant bone density loss	Recommended.
Dual photon absorptiometry	Significant bone density loss	Recommended.
X-ray-lumbar sacral spine	Significant bone density loss	Recommended.
Post laminectomy syndrome with radiculopathy:		
Medical record review: lumbar	Documented surgical history of laminectomy	Highly recommended.
Magnetic resonance imaging	Evidence of laminectomy	Recommended.
Electromyography	Definite denervation	Recommended.
Nerve conduction velocity	Definite slowing	Recommended.
Physical examination—atrophy	Atrophy in affected limb with 2 cm difference between limbs.	Recommended.
Physical examination: straight leg raise	Positive straight leg raise	Recommended.
Sensory examiation	Loss of sensation in affected dermatomes	Recommended.
Medical record review: lumbar	History of radicular pain	Highly recommended.
Computerized tomography	Evidence of laminectomy	Recommended.
Myelogram	Evidence of laminectomy	Recommended.
Radiculopathy:		
Magnetic resonance imaging	Evidence of neural compression	Recommended.
Electromyography	Definite denervation	Recommended.
Nerve conduction velocity	Definite slowing	Recommended.
Physical examination—atrophy	Atrophy in affected limb with 2 cm difference between limbs.	Recommended.
Physical examination: straight leg raise	Positive straight leg raise	Recommended.
Sensory examination	Loss of sensation in affected dermatomes	Recommended.
Medical record review: lumbar	History of radicular pain	Highly recommended.
Computerized tomography	Evidence of neural compression	Recommended.
Myelogram	Evidence of neural compression	Recommended.
Sciatica:		
Magnetic resonance imaging	Evidence of neural compression	Recommended.
Electromyography	Definite denervation	Recommended.
Nerve conduction velocity	Definite slowing	Recommended.
Physical examination—atrophy	Atrophy in affected limb with 2 cm difference between limbs.	Recommended.
Physical examination: straight leg raise	Positive straight leg raise	Recommended.
Sensory examination	Loss of sensation in affected dermatomes	Recommended.
Medical history	History of radicular pain	Highly recommended.
Computerized tomography	Evidence of neural compression	Recommended.
Myelogram	Evidence of neural compression	Recommended.
Strains and sprains, unspecified:		
Medical record review	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.

Confirmatory test	Minimum result	Requirements
Medical record review	History of back pain with functional limitations for at least 1 year.	Highly recommended.
Medical record review	Documented history of strain and/or sprain	Highly recommended.
Spondylolisthesis grade 1:		
X-ray-lumbar sacral spine	1–25% slippage	Recommended.
Computerized tomography	1–25% slippage	Recommended.
Magnetic resonance imaging	1–25% slippage	Recommended.
Spondylolisthesis grade 2:		
X-ray-lumbar sacral spine	26–50% slippage	Recommended.
Computerized tomography	26–50% slippage	Recommended.
Magnetic resonance imaging	26–50% slippage	Recommended.
Spondylolisthesis grade 3:		
X-ray-lumbar sacral spine	51–75% slippage	Recommended.
Computerized tomography	51–75% slippage	Recommended.
Magnetic resonance imaging	51–75% slippage	Recommended.
Spondylolisthesis grade 4:		
X-ray-lumbar sacral spine	Complete slippage	Recommended.
Computerized tomography	Complete slippage	Recommended.
Magnetic resonance imaging	Complete slippage	Recommended.
Spondylolisthesis-acquired:		
X-ray-lumbar sacral spine	Slippage	Recommended.
Computerized tomography	Slippage	Recommended.
Magnetic resonance imaging	Slippage	Recommended.
Spondylolsis:		
X-ray-lumbar sacral spine	Defect—pars interarticularis	Recommended.
Computerized tomography	Defect—pars interarticularis	Recommended.
MRI	Defect—pars interarticularis	Recommended.
Sprains and strains, sacral:		
Medical record review: lumbar	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review: lumbar	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.
Medical record review: lumbar	History of back with functional limitations for at least 1 year.	Highly recommended.
Medical record review: lumbar	Documented history of strain and/or sprain	Highly recommended.
Sprains and strains, sacroiliac:		
Medical record review: lumbar	History of back pain under medical treatment for at least 1 year.	Highly recommended.
Medical record review: lumbar	History of back pain unresponsive to therapy for at least 1 year.	Highly recommended.
Medical record review: lumbar	History of back pain with functional limitations for at least 1 year.	Highly recommended.
Medical record review: lumbar	Documented history of strain and/or sprain	Highly recommended.

Disability test	Test result	Disability classification
BODY PART: LS SPINE JOB TITLE: TRAINMAN		
Ankylosing spondylitis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Backache, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves >L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves >L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves >L1	D
Physical examination: rectal	Impairment of sphincter tone	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D

Disability test	Test result	Disability classification
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myelogram	Significant narrowing of the spinal canal	D
Physical examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 1:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 3:		

Disability test	Test result	Disability classification
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylisthesis—acquired:		
X-ray flexion/extension	Segmental instability	D
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vertebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
BODY PART: LS SPINE JOB TITLE: ENGINEER		
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
BODY PART: LS SPINE JOB TITLE: CARMAN		
Ankylosing spondylitis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Backache, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		

Disability test	Test result	Disability classification
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myogram	Significant narrowing of the spinal canal	D
Physical examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 1:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 3:		
Muscle strength assessment	Lifting capacity diminshed by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis-acquired:		
X-ray flexion/extension	Segmental instability	D
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminshed by 50%	D
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vertebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminshed by 50%	D

BODY PART: LS SPINE
JOB TITLE: SIGNALMAN

Ankylosing spondylitis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D

Disability test	Test result	Disability classification
Backache, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myogram	Significant narrowing of the spinal canal	D
Physical examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifing capacity diminished by 50%	D
Computerized tomography	Disc extrusion and neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D

Disability test	Test result	Disability classification
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 1:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 3:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis-acquired:		
X-ray flexion/extension	Segmental instability	D
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vertebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminished by 50%	D

BODY PART: LS SPINE
JOB TITLE: TRACKMAN

Ankylosing spondylitis:		
Muscle strenght assessment	Lifting capacity diminished by 50%	D
Backache, unspecified:		
Muscle strenth assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifing capacity diminished by 50%	D
Cauda equina sydrome with bowel or bladder dysfunction:		
Computized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc oxtrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D

Disability test	Test result	Disability classification
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonnace imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myogram	Significant narrowing of the spinal canal	D
Physcial examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 1:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 3:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis-acquired:		
X-ray flexion/extension	Segmental instability	D
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminished by 50%	D

Disability test	Test result	Disability classification
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vetebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
BODY PART: LS SPINE JOB TITLE: MACHINIST		
Ankylosing spondylitis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Backache, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myogram	Significant narrowing of the spinal canal	D
Physical examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D

Disability test	Test result	Disability classification
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade I:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondyloisthesis grade 3:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis-acquired:		
X-ray flexion/extension	Segmental instability	D
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vertebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
BODY PART: LS SPINE JOB TITLE: SHOP LABORER		
Ankylosing spondylitis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Backache, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Chronic back pain, not otherwise specified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Cauda equina syndrome with bowel or bladder dysfunction:		
Computerized tomography	Disc extrusion with neural impingement, nerves <L1	D
Magnetic resonance imaging	Disc extrusion with neural impingement, nerves <L1	D
Physical examination	Lower extremity weakness	D
Cystometrogram	Impaired bladder function	D
Myelogram	Disc extrusion with neural impingement, nerves <L1	D
Physical examination: rectal	Impairment of sphincter tone	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Degeneration of lumbar disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Displacement of lumber disc:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D

Disability test	Test result	Disability classification
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: vertebral body:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: posterior spinal element with no displacement:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture: spinous process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Fracture transverse process:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Intervertebral disc disorder:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Lumbago:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Lumbosacral neuritis:		
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Muscle strength assessment	Lifting capacity diminished by 50%	D
Physical examination	Lower extremity weakness	D
Lumbar spinal stenosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Significant narrowing of the spinal canal	D
Magnetic resonance imaging	Significant narrowing of the spinal canal	D
Myogram	Significant narrowing of the spinal canal	D
Physical examination	Significant lower extremity weakness	D
Mechanical complication of internal orthopedic device:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Osteomalacia:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Osteomyelitis, chronic-lumbar:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Medical record review	Frequent flare-ups with objective findings	D
Osteoporosis:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Post laminectomy syndrome with radiculopathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Post laminectomy syndrome:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrustion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
X-ray flexion/extension	Segmental instability	D
Radiculpathy:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Sciatica:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Computerized tomography	Disc extrusion with neural impingement	D
Magnetic resonance imaging	Disc extrusion with neural impingement	D
Myelogram	Disc extrusion with neural impingement	D
Physical examination	Significant lower extremity weakness	D
Strains and sprains, unspecified:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 1:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis grade 2:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 3:		

Disability test	Test result	Disability classification
Muscle strength assessment	Lifting capacity diminished by 50%	D
Spondylolisthesis grade 4:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
X-ray flexion/extension	Segmental instability	D
Spondylolisthesis-acquired:		
X-ray flexion/extension	Segmental instability	D
Spondylolysis:		
X-ray flexion/extension	Segmental instability	D
Sprains and strains, sacral:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Sprains and strains, sacroiliac:		
Muscle strength assessment	Lifting capacity diminished by 50%	D
Vertebral body compression fracture:		
Muscle strength assessment	Lifting capacity diminished by 50%	D

F. Cervical Spine

Confirmatory test	Minimum result	Requirements
BODY PART: CE SPINE CONFIRMATORY TESTS		
Cervical disc disease with myelopathy:		
Physical examination: cervical	Evidence of myelopathy	Highly recommended.
Myelogram	Evidence of neurogenic compression	Recommended.
Computerized azial tomography	Evidence of neurogenic compression	Recommended.
Magnetic resonance imaging	Evidence of neurogenic compression	Recommended.
Chronic herniated disc:		
X-ray: cervical spine	Evidence of significant disc degeneration	Recommended.
Myelogram	Evidence of significant disc degeneration	Recommended.
Computerized axial tomography	Significant disc degeneration	Recommended.
Magnetic resonance imaging	Significant disc degeneration	Recommended.
Cervical spondyloiysis:		
X-ray: cervical spine	Evidence of significant disc degeneration	Recommended.
Computerized axial tomography	Evidence of significant disc degeneration	Recommended.
Magnetic resonance imaging	Evidence of significant disc degeneration	Recommended.
Cervical intervertebral disc degeneration:		
X-ray: cervical spine	Evidence of significant disc degeneration	Recommended.
Myelogram	Evidence of significant disc degeneration	Recommended.
Magnetic resonance imaging	Evidence of significant disc degeneration	Recommended.
Fracture: posterior element with spinal canal displacement:		
X-ray: cervical spine	Fractured posterior element with canal displacement	Recommended.
Computerized axial tomography	Fractured posterior element with canal displacement	Recommended.
Magnetic resonance imaging	Fractured posterior element with canal displacement	Recommended.
Fracture: transverse, spinous or posterior process:		
X-ray: cervical spine	Fracture of relevant part	Recommended.
Computerized axial tomography	Fracture of relevant part	Recommended.
Magnetic resonance imaging	Fracture of relevant part	Recommended.
Osteoarthritis, cervical:		
X-ray: cervical spine	Evidence of extensive joint degeneration	Recommended.
Computerized axial tomography	Evidence of extensive joint degeneration	Recommended.
Magnetic resonance imaging	Evidence of extensive joint degeneration	Recommended.
Post laminectomy syndrome:		
Medical records: cervical	Confirmed surgical history	Highly recommended.
Medical records: cervical	Continued pain post-surgery	Highly recommended.
Radiculopathy:		
Medical records: cervical	History of radicular pain	Highly recommended.
Physical examination: arm	Loss of reflexes in affected dermatomes	Recommended.
Physical examination: arm	Evidence of atrophy >2 cm	Recommended.
Electromyography	Definite denervation in muscle of affected nerve root	Recommended.
Myelogram	Evidence of neurogenic compression	Recommended.
Magnetic resonance imaging	Compression of spinal nerves	Recommended.
Computerized axial tomography	Compression of spinal nerves	Recommended.
Rheumatoid arthritis, cervical:		
Rheumatoid factor (blood test)	High titer	Recommended.
X-ray: cervical spine	Rheumatoid changes of spine	Highly recommended.
Medical records revjew: cervical	Confirmation by rheumatologist or internist	Highly recommended.
Spondylogenic compression of spinal cord:		
Physical examination: cervical	Evidence of myelopathy	Highly recommended.
Computerized axial tomography	Evidence of neurogenic compression	Recommended.
Magnetic resonance imaging	Evidence of neurogenic compression	Recommended.

Confirmatory test	Minimum result	Requirements
Myelogram	Evidence of neurogenic compression	Recommended.

Disability test	Test result	Disability classification
BODY PART: CE SPINE JOB TITLE: TRAINMAN		
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination: cervical	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination: cervical	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination: cervical	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination: cervical	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: cervical	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or spasticity	D
BODY PART: CE SPINE JOB TITLE: ENGINEER		
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or spasticity	D
Physical examination: cervical	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination: cervical	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination: cervical	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination: cervical	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: cervical	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or spasticity	D
BODY PART: CE SPINE JOB TITLE: DISPATCHER		
Cervical disc disease with myelopathy:		

Disability test	Test result	Disability classification
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Spondylogenic compression of spinal cord:		
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
BODY PART: CE SPINE JOB TITLE: CARMAN		
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination: cervical	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination: cervical	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination: cervical	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination: cervical	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: cervical	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or spasticity	D
BODY PART; CE SPINE JOB TITLE: SIGNALMAN		
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination: cervical	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination: cervical	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination: cervical	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination: cervical	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: cervical	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or spasticity	D

Disability test	Test result	Disability classification
BODY PART: CE SPINE JOB TITLE: TRACKMAN		
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination: cervical	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination: cervical	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination: cervical	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination: cervical	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: cervical	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or spasticity	D
BODY PART: CE SPINE JOB TITLE: MACHINIST		
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination: cervical	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination: cervical	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination: cervical	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination: cervical	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: cervical	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or spasticity	D
BODY PART: CE SPINE JOB TITLE: SHOP LABORER		
Cervical disc disease with myelopathy:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Myelogram	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D

Disability test	Test result	Disability classification
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: lower limb	Lower extremity weakness or significant spasticity	D
Physical examination: cervical	Multi-level neurologic compromise	D
Chronic herniated disc:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical spondylolysis:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical intervertebral disc degeneration:		
Physical examination: cervical	Multi-level neurologic compromise	D
Fracture: posterior element with spinal canal displacement:		
Physical examination: cervical	Multi-level neurologic compromise	D
Post laminectomy syndrome:		
Physical examination: cervical	Multi-level neurologic compromise	D
Cervical radiculopathy:		
Physical examination: cervical	Multi-level neurologic compromise	D
Spondylogenic compression of spinal cord:		
Computerized axial tomography	Significant spinal cord pressure	D
Magnetic resonance imaging	Significant spinal cord pressure	D
Cystometrogram	Impaired bladder function	D
Myelogram	Significant spinal cord pressure	D
Physical examination: rectal	Impairment of sphincter tone	D
Physical examination: cervical	Multi-level neurologic compromise	D
Physical examination: lower limb	Lower extremity weakness or spasticity	D
BODY PART: CE SPINE JOB TITLE: SALES REPRESENTATIVE		
Cervical disc disease with myelopathy:		
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Spondylogenic compression of spinal cord:		
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
BODY PART: CE SPINE JOB TITLE: GENERAL OFFICE CLERK		
Cervical disc disease with myelopathy:		
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D
Spondylogenic compression of spinal cord:		
Cystometrogram	Impaired bladder function	D
Physical examination: rectal	Impairment of sphincter tone	D

G. Shoulder

Confirmatory test	Minimum result	Requirements.
BODY PART: SHOULDER AND ELBOW CONFIRMATORY TESTS		
Arthritis, acromioclavicular:		
X-ray: shoulder	Significant degenerative changes of joint	Recommended.
Computerized tomography	Significant degenerative changes of joint	Recommended.
Magnetic resonance imaging	Significant degenerative changes of joint	Recommended.
Arthritis, glenohumeral:		
X-ray: shoulder	Significant degenerative changes of joint	Recommended.
Computerized tomography	Significant degenerative changes of joint	Recommended.
Magnetic resonance imaging	Significant degenerative changes of joint	Recommended.
Rotator cuff tear:		
Computerized tomography	Tear of rotator cuff	Recommended.
Magnetic resonance imaging	Tear of rotator cuff	Recommended.
Magnetic resonance imaging	Tear of rotator cuff	Recommended.
Permanent functional limitation, elbow:		
Medical record review	Condition with permanent functional limitation	Highly recommended.
X-ray: elbow	Imaging confirmation of functional diagnosis	Recommended.
Magnetic resonance imaging	Imaging confirmation of functional diagnosis	Recommended.

Disability test	Test result	Disability classification
BODY PART: SHOULDER AND ELBOW Job TITLE: TRAINMAN		
Arthritis, acromioclavicular:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination—range of motion	Flexion limit to 60 degrees (30 degrees from 90)	D
BODY PART: SHOULDER AND ELBOW JOB TITLE: ENGINEER		
Arthritis, acromioclavicular:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abudction	D
Rotator cuff tear:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of moiton	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination—range of motion	Flexion limit to 60 degrees (30 degrees from 90)	D
BOFY PSTY: SHOULDER AND ELBOW JOB TITLE: CARMAN		
Arthritis, acromioclavicular:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination—range of motion	Flexion limit to 60 degrees (30 degrees from 90)	D
BODY PART: SHOULDER AND ELBOW JOB TITLE: SIGNALMAN		
Arthritis, acromioclavicular:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination—range of motion	Flexion limit to 60 degrees (30 degrees from 90)	D
BODY Part: SHOULDER AND ELBOW JOB TITLE: TRACKMAN		
Arthritis, acromioclavicular:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination—range of motion	<40 degrees flexion	D

Disability test	Test result	Disability classification
Physical examination—range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination—range of motion	Flexion limit to 60 degrees (30 degrees from 90)	D
BODY PART: SHOULDER AND ELBOW JOB TITLE: MACHINIST		
Arthritis, acromioclavicular:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination—range of motion	Flexion limit to 60 degrees (30 degrees from 90)	D
BODY PART: SHOULDER AND ELBOW JOB TITLE: SHOP LABORER		
Arthritis, acromioclavicular:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Arthritis, glenohumeral:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Rotator cuff tear:		
Physical examination—range of motion	<40 degrees flexion	D
Physical examination—range of motion	<40 degrees abduction	D
Permanent functional limitation, elbow:		
Physical examination	>40 degrees deviation	D
Physical examination—range of motion	Flexion limit to 60 degrees (30 degrees from 90)	D

H. Arm and Hand

Confirmatory test	Minimum result	Requirements;
BODY PART: HAND AND ARM CONFIRMATORY TESTS		
Carpal tunnel syndrome:		
Medical record review	Pain, paresthesia and weakness in distribution median nerve.	Highly recommended.
Physical examination	Tinel's or Phalen's sign-suggestive but not confirmatory	Recommended.
Nerve conduction testing	Definite median nerve conduction showing at wrist	Highly recommended.
Electromyography	Denervation in serve cases	Recommended.
Fracture: wrist:		
X-ray: wrist	Evidence of fracture	Highly recommended.
Hand: permanent functional limitation:		
Medical record review	Documentation of medical condition for permanent limitation.	Highly recommended.
Physical examination	Definite reproducible evidence of limitation	Highly recommended.
Imaging study (e.g. x-ray, CAT, MRI)	Positive confirmation of underlying condition	Highly recommended.
Rheumatoid arthritis: hand:		
Rheumatoid factor	High titer	Recommended.
Medical record review	History of objective findings including serological studies	Highly recommended.
X-ray: Hand	Characteristic rheumatoid changes	Highly recommended.
Tenosynovitis:		
Medical record review	History of chronic tenosynovitis and objective findings	Highly recommended.
Physical examination	Definite evidence of tenosynovitis	Highly recommended.
Thumb: Permanent functional limitation:		
Medical record review	Documentation of medical condition for permanent limitation.	Highly recommended.
Physical examination	Definite reproducible evidence of limitation	Highly recommended.
Imaging study (x-ray, CAT, MRI)	Positive confirmation of underlying condition	Highly recommended.
Wrist: Permanent functional limitation:		
Medical record review	Documentation of medical condition for permanent limitation.	Highly recommended.
Physical examination	Definite reproducible evidence of limitation	Highly recommended.

Confirmatory test	Minimum result	Requirements;
Imaging study (e.g. x-ray, CAT, MRI)	Positive confirmation of underlying condition	Highly recommended.

Disability test	Test result	Disability classification
BODY PART: HAND AND ARM JOB TITLE: TRAINMAN		
Carpal tunnel syndrome:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Fracture, wrist:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
Hand: permanent functional limitation:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss <=4 cm	D
Adduction of thumb	Loss <=7 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss <=4 cm	D
Opposition	Loss <=7 cm	D
Wrist: permanent functional limitation:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE ENGINEER		
Fracture, wrist:		
Physical examination—range of motion	Extension-limit to 30 degrees	D
Physical examination—range of motion	Flexion-limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss <=4 cm	D
Adduction of thumb	Loss <=7 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss <=4 cm	D
Opposition	Loss <=7 cm	D
Wrist: permanent functional limitation:		
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D

Disability test	Test result	Disability classification
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: DISPATCHER		
Fracture, wrist:		
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss <=4 cm	D
Adduction of thumb	Loss <=7 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss <=4 cm	D
Opposition	Loss <=7 cm	D
Wrist: permanent functional limitation:		
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: CARMAN		
Carpal tunnel syndrome:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Fracture, wrist:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
Hand: permanent functional limitation:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb:	Loss <=4 cm	D
Adduction of thumb:	Loss <=7 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP of PIP: maximum flexion <40 degrees	D
Opposition	Loss <=4 cm	D
Opposition	Loss <=7 cm	D
Wrist: permanent functional limitation:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D

Disability test	Test result	Disability classification
BODY PART: HAND AND ARM JOB TITLE: SIGNALMAN		
Carpal tunnel syndrome:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Fracture, wrist:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
Hand: permanent functional limitation:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss <=4 cm	D
Adduction of thumb	Loss <=7 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss <=4 cm	D
Opposition	Loss <=7 cm	D
Wrist: permanent functional limitation:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: TRACKMAN		
Carpal tunnel syndrome:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Fracture, wrist:		
Strength (Jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
Hand: permanent functional limitation:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss <=4 cm	D
Adduction of thumb	Loss <=7 cm	D

Disability test	Test result	Disability classification
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss <=4 cm	D
Opposition	Loss <=7 cm	D
Wrist: permanent functional limitation:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: MACHINIST		
Carpal tunnel syndrome:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand <34 kg (male)	D
Fracture, wrist:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
Hand: permanent functional limitation:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand <34 kg (male)	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatent with rheumatologist	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss <=4 cm	D
Adduction of thumb	Loss <=7 cm	D
Ankylosis: degree from neutral	<20 degrees flexion	D
Ankylosis: degree from neutral	<40 degrees extension	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss <=4 cm	D
Opposition	Loss <=7 cm	D
Wrist: permanent functional limitation:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
BODY PART: HAND AND ARM JOB TITLE: SHOP LABORER		
Carpal tunnel syndrome:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand <34 kg (male)	D
Fracture, wrist:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
Hand: permanent functional limitation:		

Disability test	Test result	Disability classification
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Dominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extenive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss <=4 cm	D
Adduction of thumb	Loss <=7 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss <=4 cm	D
Opposition	Loss <=7 cm	D
Wrist: permanent functional limitation:		
Strength (jamar)	Dominant hand: <19 kg (female)	D
Strength (jamar)	Nondominant hand: <16 kg (female)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Strength (jamar)	Nondominant hand: <34 kg (male)	D
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D

BODY PART: HAND AND ARM
JOB TITLE: SALES REPRESENTATIVE

Fracture, wrist:		
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extenive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss <=4 cm	D
Adduction of thumb	Loss <=7 cm	D
Ankylosis: degree from neutral	<20 degrees extension	D
Ankylosis: degree from neutral	<40 degrees flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss <=4 cm	D
Opposition:	Loss <=7 cm	D
Wrist: permanent functional limitation:		
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D

BODY PART: HAND AND ARM
JOB TITLE: GENERAL OFFICE CLERK

Fracture, wrist:		
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D
Rheumatoid arthritis hand:		
Physical examination	Significant deformity	D
Medical record review	Significant flare-ups, under treatment with rheumatologist.	D
Medical record review	Extensive medication use, under treatment with rheumatologist.	D
Thumb: permanent functional limitation:		
Adduction of thumb	Loss <=4 cm	D
Adduction of thumb	Loss <=7 cm	D
Ankylosis: degree from neutral	<20 degree extension	D
Ankylosis: degree from neutral	<40 degree flexion	D
Loss of extension or flexion	MCP or PIP: maximum flexion <40 degrees	D
Opposition	Loss <=4 cm	D
Opposition	Loss <=7 cm	D

Disability test	Test result	Disability classification
Wrist: permanent functional limitation:		
Physical examination—range of motion	Extension—limit to 30 degrees	D
Physical examination—range of motion	Flexion—limit to 30 degrees	D
Physical examination—range of motion	Ankylosis: >20 degrees from neutral	D

I. Hip

Confirmatory test	Minimum result	Requirements
BODY PART: HIP CONFIRMATORY TESTS		
Ankylosis, hip:		
X-ray: hip	Exteme joint destruction	Highly Recommended.
Physical examination—range of motion	No mobility	Highly Recommended.
Osteoarthritis, hip:		
X-ray: hip	<4 mm joint space, or other positive evidence	Recommended.
Magnetic resonance imaging	<4 mm joint space, or other positive evidence	Recommended.
Computerized axial tomography	<4 mm joint space, or other positive evidence	Recommended.
Osteomyelitis, hip:		
X-ray: hip	Evidence of chronic infection	Recommended.
Computerized axial tomography	Evidence of chronic infection	Recommended.
Paget's disease:		
X-ray: hip	Osteolytic and blastic lesions	Highly Recommended.
Alkaline phosphatase	Increased up to 50 times	Highly Recommended.
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip	Recommended.
Medical record review	Documentation of prior hip replacement	Recommended.

Disability test	Test result	Disability classification
BODY PART: HIP JOB TITLE: TRAINMAN		
Ankylosis, hip:		
Physical examination—range of motion	Ankylosis 5 degrees or > flexion	D
Physical examination—range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination—range of motion	Ankylosis external rotation >10 degrees	D
Physical examination—range of motion	Ankylosis in abduction >5 degrees	D
Physical examination—range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D

BODY PART: HIP
JOB TITLE: ENGINEER

Ankylosis, hip:		
Physical examination—range of motion	Ankylosis 5 degrees or > flexion	D
Physical examination—range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination—range of motion	Ankylosis external rotation >10 degrees	D
Physical examination—range of motion	Ankylosis in abduction >5 degrees	D
Physical examination—range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination—range of motion	30 degrees flexion contracture	D

Disability test	Test result	Disability classification
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Signficant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D
BODY PART: HIP JOB TITLE: CARMAN		
Ankylosis, hip:		
Physical examination—range of motion	Ankylosis 5 degrees or > flexion	D
Physical examination—range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination—range of motion	Ankylosis external rotation >10 degrees	D
Physical examination—range of motion	Ankylosis in abduction >5 degrees	D
Physical examination—range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D
BODY PART: HIP JOB TITLE: SIGNALMAN		
Ankylosis, hip:		
Physical examination—range of motion	Ankylosis 5 degrees or > flexion	D
Physical examination—range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination—range of motion	Ankylosis external rotation >10 degrees	D
Physical examination—range of motion	Ankylosis in abduction >5 degrees	D
Physical examination—range of motion	Ankylosis in abduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees adduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contraction	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D

Disability test	Test result	Disability classification
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D
BODY PART: HIP JOB TITLE: TRACKMAN		
Ankylosis, hip:		
Physical examination—range of motion	Ankylosis 5 degrees or > flexion	D
Physical examination—range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination—range of motion	Ankylosis internal rotation >10 degrees	D
Physical examination—range of motion	Ankylosis in abduction >5 degrees	D
Physical examination—range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D
BODY PART: HIP JOB TITLE: MACHINIST		
Ankylosis, hip:		
Physical examination—range of motion	Ankylosis 5 degrees or > flexion	D
Physical examination—range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination—range of motion	Ankylosis external rotation >10 degrees	D
Physical examination—range of motion	Ankylosis in abduction >5 degrees	D
Physical examination—range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		
X-ray: hip	0 mm cartilage interval	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abudction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D
BODY PART: HIP JOB TITLE: SHOP LABORER		
Ankylosis, hip:		
Physical examination—range of motion	Ankylosis 5 degrees of > flexion	D
Physical examination—range of motion	Ankylosis internal rotation >5 degrees	D
Physical examination—range of motion	Ankylosis external rotation >10 degrees	D
Physical examination—range of motion	Ankylosis in abduction >5 degrees	D
Physical examination—range of motion	Ankylosis in adduction >5 degrees	D
Osteoarthritis, hip:		

Disability test	Test result	Disability classification
X-ray: hip	0 mm cartilage interval	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Osteomyelitis, chronic hip:		
X-ray: hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Medical record review	Documented occurrence of recurring infections with treatment.	D
Paget's disease:		
X-ray; hip	Significant joint destruction	D
Physical examination—range of motion	30 degrees flexion contracture	D
Physical examination—range of motion	<50 degrees flexion	D
Physical examination—range of motion	<5 degrees abduction	D
Hip replacement surgery:		
X-ray: hip	Evidence of artificial hip joint	D
Medical record review	Documentation of prior hip replacement	D

J. Knee

Confirmatory test	Minimum result	Requirements
BODY PART: KNEE CONFURMATORY TESTS		
Arthritis: knee:		
X-ray: knee	Evidence of significant degenerative changes	Recommended.
Collateral ligament tear with laxity:		
Physical examination: knee	Evidence of ligamentous laxity	Highly Recommended.
Magnetic resonance imaging	Evidence of ligamentous tear	Recommended.
Cruciate and collateral ligament tear with laxity:		
Magnetic resonance imaging	Tear of both ligaments	Recommended.
Physical examination	Evidence of ligamentous laxity	Highly Recommended.
Medical record review	Documentation of tear by arthroscopy	Recommended.
Cruciate ligament tear with laxity:		
Physical examination: knee	Evidence of ligamentous laxity	Highly Recommended.
Magnetic resonance imaging	Evidence of cruciate tear	Recommended.
Medical record review	Documentation of tear by arthroscopy	Highly Recommended.
Intercondylar fracture:		
X-ray: knee	Evidence of fracture	Highly Recommended.
Osteomyelitis: knee:		
Medical record review	Documentated history of osteomyelitis requiring treatment.	Highly Recommended.
X-ray: knee	Evidence of chronic infection	Recommended.
Computerized tomography	Evidence of chronic infection	Recommended.
Magnetic resonance imaging	Evidence of chronic infection	Recommended.
Osteonecrosis:		
X-ray: knee	Necrosis of femoral condyle or tibial plateau	Recommended.
Computerized tomography	Necrosis of femoral condyle or tibial plateau	Recommended.
Magnetic resonance imaging	Necrosis of femoral condyle or tibial plateau	Recommended.
Patellofemoral arthritis:		
X-ray: knee	Evidence of arthritis	Recommended.
Magnetic resonance imaging	Evidence of arthritis	Recommended.
Physical examination	Crepitation with movement	Highly Recommended.
Patellar fracture nonunion with displacement:		
X-ray: knee	Nonunion and displacement	Recommended.
Magnetic resonance imaging	Nonunion and displacement	Recommended.
Computerized tomography	Nonunion and displacement	Recommended.
Plateau fracture:		
X-ray: knee	Evidence of fracture	Recommended.
Computerized tomography	Evidence of fracture	Recommended.
Magnetic resonance imaging	Evidence of fracture	Recommended.
Meniscectomy—medial or lateral:		
Medical record review	History of surgery	Highly Recommended.
Patellectomy:		
Physical examination: knee	Absent patellae	Highly Recommended.
Patellar—subluxation—recurrent:		
Medical record review	History of recurrent subluxation with associated signs	Highly Recommended.
Supracondylar fracture:		
X-ray: knee	Evidence of fracture	Recommended.
Magnetic resonance imaging	Evidence of fracture	Recommended.
Computerized tomography	Evidence of fracture	Recommended.

Confirmatory test	Minimum result	Requirements
Total knee replacement:		
X-ray: knee	Presence of replacement knee	Recommended.
Medical record review	Documented surgical history	Recommended.
Tibial shaft fracture:		
X-ray: leg	Fracture of shaft	Recommended.
Magnetic resonance imaging	Evidence of fracture	Recommended.
Computerized tomography	Evidence of fracture	Recommended.

Disability test	Test result	Disability classification
	BODY PART: KNEE JOB TITLE: TRAINMAN	
Arthritis knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees degrees	D
Physical examination	Varus deformity, 8–12 degrees degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination—range of motion	Range of motion: flexion >60 degrees)	D
Physical examination—range of motion	Flexion contracture (20 or >degrees)	D
Collateral ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Valgus deformity, 8–12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee: patello femoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and >3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		

Disability test	Test result	Disability classification
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D
BODY PART: KNEE JOB TITLE: ENGINEER		
Arthritis knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	> 20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee: patello femoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and > 3 mm displacement	D
Plateau fracture:		
Post fracture angulation	> 20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	> 20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	> 20 degrees malalignment	D
BODY PART: KNEE JOB TITLE: CARMAN		
Arthritis knee:		

Disability test	Test result	Disability classification
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	> 20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee: patello femoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and > 3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D
BODY PART: KNEE JOB TITLE SIGNALMAN		
Arthritis knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Valgus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D

Disability test	Test result	Disability classification
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee: patello femoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and >3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D

BODY PART: KNEE
JOB TITLE: TRACKMAN

Arthritis knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D

Disability test	Test result	Disability classification
Cruciate ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degree angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee: patello femoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and > 3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D

BODY PART: KNEE
JOB TITLE: MACHINIST

Arthritis knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D

Disability test	Test result	Disability classification
Osteomyelitis, chronic knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Osteonecrosis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and >3 mm displacement	D
Plateau fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D

BODY PART: KNEE
JOB TITLE: SHOP LABORER

Arthritis knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Meniscectomy, medial or lateral:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Collateral ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate and collateral ligament tear:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Cruciate ligament tear with laxity:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Intercondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Osteomyelitis, chronic knee:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
Medical record review	Frequent episodes of infection requiring treatment	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D

Disability test	Test result	Disability classification
Osteonecrosis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee	0–1 mm cartilage interval with degenerative change	D
Patellofemoral arthritis:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Physical examination	Valgus deformity, 16–20 degrees	D
Physical examination	Varus deformity, 8–12 degrees	D
X-ray knee: patellofemoral joint	0 mm cartilage interval with degenerative change	D
Patellar fracture nonunion with displacement:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
X-ray knee	Nonunion and > 3 mm displacement	D
Plateau fracture::		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellectomy:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Patellar, subluxation, recurrent:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Supracondylar fracture:		
Post fracture angulation	>20 degrees angulation	D
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Tibial shaft fracture:		
Physical examination—range of motion	Range of motion: flexion <60 degrees	D
Physical examination—range of motion	Flexion contracture (20 or > degrees)	D
Post fracture angulation	>20 degrees malalignment	D

K. Ankle and Foot

Confirmatory test	Minimum result	Requirements
BODY PART: ANKLE AND FOOT CONFIRMATORY TESTS		
Ankle fracture:		
Medical record review	Documented history of ankle fracture	Recommended.
X-ray: ankle	Ankle fracture	Highly recommended.
Ankylosis, ankle:		
X-ray: ankle	Extensive joint destruction	Highly recommended.
Physical examination	No mobility	Highly recommended.
Arthritis, subtalar joint:		
X-ray: ankle	Evidence of significant arthritis: subtalar joint	Highly recommended.
Arthritis, talonavicular joint:		
X-ray: ankle	Significant arthritis: talonavicular joint	Highly recommended.
Achilles tendon rupture:		
Medical record review	Documentation of achilles tendon rupture	Highly recommended.
Physical examination	Rupture of achilles tendon	Highly recommended.
Arthritis, ankle:		
X-ray: ankle	Significant arthritis	Highly recommended.
Hindfoot fracture:		
X-ray: foot and ankle	Documentatin of fracture	Highly recommended.
Rheumatoid arthritis, foot:		
Medical History	Documented history of condition	Highly recommended.
X-ray: foot	Significant arthritis	Highly recommended.

Disability test	Test result	Disability classification
BODY PART: ANKLE AND FOOT JOB TITLE: TRAINMAN		
Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D

Disability test	Test result	Disability classification
Ankylosis, ankle:		
Physical examination—range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination—range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination—range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination—range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination—range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle—subtalar joint	Subtalar joint space 0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
X-ray: ankle—talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination—range of motion	Plantar flexion capability, <5 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination—range of motion	Plantar flexion capability, <5 degrees	D
Physical examination—range of motion	Plantar flexion constructure, 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Frequent flare-up with treatment	D

BODY PART: ANKLE AND FOOT
JOB TITLE: ENGINEER

Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Ankylosis, ankle:		
Physical examination—range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination—range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination—range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination—range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination—range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle—subtalar joint	Subtalar joint space 0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
X-ray ankle—talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture 20 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination—range of motion	Plantar flexion capability— <5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D

Disability test	Test result	Disability classification
Medical record review	Frequent flare-up with treatment	D

BODY PART: ANKLE AND FOOT
JOB TITLE: DISPATCHER

Achilles tendon rupture:		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Frequent flare-up with treatment	D

BODY PART: ANKLE AND FOOT
JOB TITLE: CARMAN

Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Ankylosis, ankle:		
Physical examination—range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination—range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination—range of motion	Ankylois in int or ext malrotation >15 degrees	D
Physical examination—range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination—range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle—subtalar joint	Subtalar joint space 0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
X-ray: ankle—talonavicular joint	Talonavicular joint space 0 mm	0
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle >95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Frequent flare—up with treatment	D

BODY PART: ANKLE AND FOOT
JOB TITLE: SIGNALMAN

Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Ankylosis, ankle:		

Disability test	Test result	Disability classification
Physical examination—range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination—range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination—range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination—range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination—range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle—subtalar joint	Subtalar joint space 0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
X-ray: ankle—talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Frequent flare-up with treatment	D

BODY PART: ANKLE AND FOOT
JOB TITLE: TRACKMAN

Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination—range of motion	Varus deformity >15 degrees	D
Physical examinaton—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Ankylosis, ankle:		
Physical examination—range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination—range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination—range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination—range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination—range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle—subtalar joint	Subtalar joint space 0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
X-ray: angle—talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Frequent flare-up with treatment	D

Disability test	Test result	Disability classification
BODY PART: ANKLE AND FOOT **JOB TITLE: MACHINIST**		
Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Ankylosis, ankle:		
Physical examination—range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination—range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination—range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination—range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination—range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle—subtalar joint	Subtalar joint space 0 mm	D
Physical examination—range of motion	Plantar flexion capability—>5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity<15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
X-ray: ankle—talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Frequent flare-up with treatment	D

BODY PART: ANKLE AND FOOT
JOB TITLE: LABORER

Ankle fracture:		
X-ray: ankle	Displaced intra-articular fracture	D
Physical examination	Varus deformity >15 degrees	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Ankylosis, ankle:		
Physical examination—range of motion	Ankylosis in 20 degree or > dorsiflexion	D
Physical examination—range of motion	Ankylosis in 20 degree plantar flexion	D
Physical examination—range of motion	Ankylosis in int or ext malrotation >15 degrees	D
Physical examination—range of motion	Ankylosis in varus 10 or more degrees	D
Physical examination—range of motion	Ankylosis in valgus 10 or more degrees	D
Arthritis, subtalar joint (hindfoot):		
X-ray: ankle—subtalar joint	Subtalar joint space 0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Arthritis, talonavicular joint (hindfoot):		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
X-ray: ankle—talonavicular joint	Talonavicular joint space 0 mm	D
Physical examination	Varus deformity >15 degrees	D
Achilles tendon rupture:		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D

Disability test	Test result	Disability classification
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Frequent flare-up with treatment	D
BODY PART: ANKLE AND FOOT JOB TITLE: SALES REPRESENTATIVES		
Achilles tendon rupture:		
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Physical examination—range of motion	Plantar flexion contracture, 20 degrees	D
Arthritis, ankle:		
X-ray: ankle	0 mm	D
Physical examination—range of motion	Plantar flexion capability—<5 degrees	D
Physical examination—range of motion	Plantar flexion contracture—20 degrees	D
Physical examination	Varus deformity >15 degrees	D
Hindfoot fracture:		
X-ray: foot	Calcaneal fracture with Boehler angle <95 degrees	D
X-ray: foot	Subtalar fracture with Boehler angle <95 degrees	D
Physical examination	Varus angulation >20 degrees (hindfoot)	D
Physical examination	Valgus angulation >20 degrees (hindfoot)	D
Rheumatoid arthritis, foot:		
X-ray: foot	Significant degeneration	D
Medical record review	Frequent flare-up with treatment	D

Dated: September 12, 1997.
By Authority of the Board.
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 95–24793 Filed 8–23–95; 8:45 am]
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Wednesday
September 24, 1997

Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430
Energy Conservation Program for Consumer Products; Conservation Standards for Room Air Conditioners; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Numbers EE–RM–90–201 and EE–RM–93–801–RAC]

RIN 1904–AA38

Energy Conservation Program for Consumer Products: Final Rule Regarding Energy Conservation Standards for Room Air Conditioners

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Final Rule.

SUMMARY: The Department of Energy (DOE or Department) has determined that revised energy conservation standards for room air conditioners will result in a significant conservation of energy, are technologically feasible, and are economically justified. On this basis, the Department is today amending the existing energy conservation standards for room air conditioners. The Department projects the standards to save 0.64 quad of energy through 2030, which is likely to result in a cumulative reduction of emissions of approximately 95,000 tons of nitrogen dioxide and 54 million tons of carbon dioxide.

EFFECTIVE DATE: The effective date of the standards is October 1, 2000.

ADDRESSES: A copy of the Technical Support Document (TSD) for this product may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the TSD may be obtained from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–9127.

FOR FURTHER INFORMATION CONTACT:

Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7425

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9507.

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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act, Pub. L. 94–163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act (NAECA), Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPAct), Pub. L. 102–486,[1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program are called "covered products." The covered products specified by statute include room air conditioners. EPCA, section 322, 42 U.S.C. 6292.

For room air conditioners, EPCA prescribes an initial Federal energy conservation standard effective in 1990 and specifies that the Department shall publish a final rule no later than January 1, 1992, to determine if the 1990 standards should be amended. A second review must be completed within five years after publication of this final rule. EPCA, section 325(c), 42 U.S.C. 6295(c). Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. EPCA, 325(o)(2)(A), 42 U.S.C. 6295(o)(2)(A). The Secretary may not prescribe any amended standard which increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. EPCA, section 325(o)(1), 42 U.S.C. 6295(o)(1).

Section 325(o)(2)(B) provides that DOE, in determining whether a standard is economically justified, must determine whether the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

In addition, section 325(o)(2)(B)(iii) establishes a rebuttable presumption of economic justification in instances where the Secretary determines that

[1] The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this notice as the "EPCA." Part B of Title III is codified at 42 U.S.C. 6291 *et seq.*

"the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure."

b. Background

The purpose of this rulemaking is to review the energy conservation standards for room air conditioners. In 1990, DOE published an advance notice of proposed rulemaking with regard to standards for nine covered products, including room air conditioners. 55 FR 39624 (September 28, 1990) (hereinafter referred to as the September 1990 advance notice). The September 1990 advance notice presented the product classes that DOE planned to analyze and provided a detailed discussion of the analytical methodology and models that the Department expected to use.

On March 4, 1994, DOE published a notice of proposed rulemaking (NOPR) concerning eight products, including room air conditioners. 59 FR 10464 (March 4, 1994) (hereinafter referred to as the Proposed Rule). The standards the Department proposed for room air conditioners are shown in the following table:

TABLE 1–1.—PROPOSED STANDARDS LEVELS FOR ROOM AIR CONDITIONERS

Product class	Energy efficiency ratio	
	Current standards (effective January 1, 1990)	Standards proposed in 1994 Proposed Rule
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	8.0	11.1
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	8.5	10.3
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	9.0	11.0
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	8.8	11.1
5. Without reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.2	9.6
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	8.0	10.7
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	8.5	9.9
8. Without reverse cycle, without louvered sides, and 8,000 to 13,999 Btu/h	8.5	10.7
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	8.5	10.8
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	8.2	9.3
11. With reverse cycle and with louvered sides	8.5	10.8
12. With reverse cycle and without louvered sides	8.0	10.4

DOE received over 8,000 comments during the comment period on the 1994 Proposed Rule and from participants at public hearings held in Washington, DC on April 5–7 and June 7–8, 1994. Most of the comments related to other products; twelve of the comments dealt specifically with room air conditioners.

After reviewing the comments on the proposed standards for room air conditioners, the Department concluded that a number of significant issues were raised which required additional analysis. In 1995, the Department revised the analyses regarding room air conditioners to account for the comments and data received during the public comment period. (This revised analysis became the basis for the 1996 Draft Report.)

A moratorium was placed on publication of proposed or final rules for appliance efficiency standards as part of the FY 1996 appropriations legislation. Pub. L. 104–134. That moratorium expired on September 30, 1996.

In 1995 and 1996, the Department conducted a review of its process for developing appliance energy efficiency standards. This review resulted in the publication of a final rule, entitled "Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products" (hereinafter referred to as the Process Rule). 61 FR 36973 (July 15, 1996). Although the new procedures in the Process Rule do not apply to this rulemaking, 61 FR at 36980, DOE has employed an approach consistent with the new procedures in completing work on this rule. In keeping with the new process, and based on comments received in response to the Proposed Rule, DOE distributed for comment a Draft Report on the Potential Impact of Alternative Energy Efficiency Levels for Room Air Conditioners (hereinafter referred to as Draft Report). The Draft Report contained DOE's revised analysis, begun in 1995, examining five alternative efficiency levels. The Draft Report was distributed to a mailing list that included all of the commenters on the proposed rule on room air conditioners on May 5, 1996. (EE–RM–93–801–RAC[2] No. 1 and No. 2.) The letter invited comment on the Draft Report by no later than July 1, 1996.

Between the beginning of June and the end of November 1996, DOE received six comments on the Draft Report and related issues. DOE officials also held meetings on September 26 with representatives of the Association of Home Appliance Manufacturers (AHAM) and interested manufacturers and on September 27 with the American Council For an Energy Efficient Economy (ACEEE), the Alliance to Save Energy, the Natural Resources Defense Council (NRDC), and State energy officials from California, Florida, and Oregon. (EE–RM–93–801–RAC No. 11 and No. 12.)

On the basis of these comments, DOE prepared a TSD which comprises the Draft Report and a supplemental analysis conducted on a candidate standard level not included in the Draft Report. The supplemental analysis focused on a set of efficiency levels for the same 9 classes analyzed in the proposed rule. (EE–RM–93–801–RAC No. 13.)

In a **Federal Register** (FR) Notice dated January 29, 1997, the Department reopened the comment period for room air conditioners for 15 days. This notice announced the availability of the supplemental analysis and gave indication of the standard levels the Department was inclined to promulgate in the final rule. The Department received 4 comments in response to this notice.

[2] EE–RM–90–201 refers to the docket for the September 1990 advance notice and the 1994 Proposed Rule. Docket No. EE–RM–93–801–RAC contains the 1996 Draft Report, comments to the 1996 Draft Report, comments to the 1997 reopening notice, and the supplemental analysis.

II. Summary of Final Rule

The standards set forth in today's rule are projected to save approximately 0.64 quad of energy through 2030. Although

the standards in the Proposed Rule were projected to save 2.2 quads, DOE has concluded, based on public comment and further analysis, that the proposed standards are not economically justified. The standard levels set forth in today's rule are significantly less costly than those standards in the proposed rule. The following table presents the standards established in today's rule:

Product class	Energy efficiency ratio, effective as of	
	January 1, 1990	October 1, 2000
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	8.0	9.7
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	8.5	9.7
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	9.0	9.8
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	8.8	9.7
5. Without reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.2	8.5
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	8.0	9.0
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	8.5	9.0
8. Without reverse cycle, without louvered sides, and 8,000 to 13,999 Btu/h	8.5	8.5
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	8.5	8.5
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	8.2	8.5
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	8.5	9.0
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	8.0	8.5
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.5	8.5
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.0	8.0
15. Casement-Only	(1)	8.7
16. Casement-Slider	(1)	9.5

[1] Casement-only and casement-slider room air conditioners are not separate product classes under standards effective January 1, 1990. These units are subject to the applicable standards in classes 1 through 14 based on unit capacity and the presence or absence of louvered sides and a reverse cycle.

III. Discussion of Comments

a. Room Air Conditioner Comments.

This section addresses comments to the 1994 Proposed Rule, the 1996 Draft Report, and the 1997 reopening notice. The "RAC" notation signifies that the following comment is from Docket No. EE–RM–93–801–RAC which contains comments to the 1996 Draft Report and the 1997 reopening notice. All other comments are from Docket No. EE–RM–90–201 which contains comments from the 1994 Proposed Rule. Note that the Draft Report addressed many of the comments to the 1994 Proposed Rule.

1. Classes

In the 1994 Proposed Rule, the Department proposed fourteen classes of room air conditioners. These product classes consisted of five categories; units with side louvers, units without side louvers, units with reversing valve and with side louvers, units with reversing valve and without side louvers, and casement-type units. There were five class divisions by capacity within each of the two categories without reversing valves. Casement-type units were divided into the following two classes: casement only units and casement-slider units.

Units with louvered sides and without reversing valves. The California Energy Commission (CEC) proposed a reduction in product classes from twelve to four, eliminating the class divisions based on capacity. They stated that the profusion of classes makes comparison of models difficult since the label-reading consumer does not compare all the models available. In addition, disincentives could be created that discourage manufacturers from making efficiency improvements to models near capacity breakpoints because design changes can push the capacity into the next category which has a higher or lower standard level. (CEC, No. 539 at 2–3.) Fedders Corporation (Fedders) proposed that the three smallest capacity classes for units with side louvers and without reversing valve be consolidated into a single class. It called for this consolidation due to the disparity in cost and dehumidifying capability that would arise from having significantly different efficiency standards promulgated for these three classes. (Fedders, April 7, 1994, Transcript at 120–122.) AHAM proposed that the Department retain the current five capacity class divisions for units with side louvers and without reversing valves. (AHAM, No. 1 at 2.)

In the 1994 Proposed Rule, DOE explained that performance and installation constraints necessitate class divisions by capacity. Manufacturers limit their production of cabinets to three or four sizes. Units of similar capacity tend to be designed for the same cabinet size. The space and configuration limitations imposed by the cabinet tend to produce units with similar efficiencies. Because efficiency is essentially a function of cabinet size, and thus capacity, class divisions by capacity are warranted. In the Final Rule, the minimum efficiency standards for each of the four classes with louvered sides and capacities less than 20,000 Btu/h all have nearly the same efficiency value (efficiencies range from 9.7 to 9.8 EER), reducing the concern about inappropriate incentives to change product capacity to take advantage of capacity based standards. The Department agrees with AHAM that the current 5 capacity-based classes should be retained.

Units without louvered sides and without reversing valves. AHAM, Frigidaire Company (Frigidaire), and Sanyo Electric Company (Sanyo) proposed that classes without louvered sides and without reversing valve be consolidated into two classes: units with capacities of less than 8,000 Btu/h and units with capacities greater than or equal to 8000 Btu/h. (AHAM, No. 1 at 2; Frigidaire, No. 544 at 5; Sanyo, No. 771 at 3.) AHAM states that the capacity classes established for units with side louvers and without reverse cycle are not particularly applicable to the other types of classes. (AHAM, RAC No. 4 at 1.) In support of making this recommendation, AHAM stated that since the 1990 minimum efficiency standards became effective, models without louvered sides have been produced only in the 6,000 to 7,999 Btu/h capacity class or the 8,000 to 13,999 Btu/h class. The sizes of existing sleeves and the efficiency standards have constrained capacities to these two classes. (AHAM, No. 1 at 20.) In its comments to the 1996 Draft report, AHAM again urged the Department to reduce the number of classes from five to two for these units. (AHAM, RAC No. 4 at Attachment 1 pg. 1.)

As discussed with respect to classes with louvered sides and without reversing valves, class divisions by capacity are warranted for units without louvered sides because of the effect that economic and installation constraints have on capacity and efficiency. Although manufacturers currently do not produce units in two of the existing five capacity classes, the Department has decided not to consolidate these classes into those units with capacities less than and greater than 8,000 Btu/h. However, the new standards for the two classes of units less than 8,000 Btu/h are the same (9.0 EER) and the new standards for the three classes of units with capacities of 8,000 Btu/h or more are the same (8.5 EER.) In the future, manufacturers might produce units in classes where none are currently being produced. For example, models are now being produced in the less than 6000 Btu/h class where models were not being manufactured previously. Therefore, the Department will retain all five of the existing classes for units without louvers and without reverse cycle.

Units with reversing valves. AHAM and Sanyo proposed that units with reversing valves be consolidated into a single class if the efficiency standard specified for them is a single fixed EER difference below all other cooling-only classes (i.e., classes without reversing valve.) A fixed EER difference of 0.5 EER was proposed. (AHAM, No. 1 at 2; Sanyo, No. 771 at 3.) This recommendation essentially creates as many classes for units with reversing valves as there are for units without reversing valves. Both Whirlpool Corporation (Whirlpool) and Fedders agreed with this recommendation. (Whirlpool, April 7, 1994, Transcript at 106; Fedders, April 7, 1994, Transcript at 136.) In a April 23, 1996 joint letter to AHAM, ACEEE and NRDC agreed with the fixed 0.5 EER difference between reverse-cycle classes and their corresponding "cool-only" classes. (ACEEE/NRDC, RAC No. 3 at 4.) In addition, during a meeting with ACEEE, Alliance to Save Energy, California Energy Commission, Florida Energy Office, Oregon Department of Energy, and NRDC, a recommendation was made to refer to reverse cycle products as "heat pump air conditioners" in the future. (RAC No. 10 at 2.) AHAM responded that these systems are not designed to be sophisticated heat pumps but rather to modify a room air conditioner by adding a reverse cycle to "make it function as a heat pump within the confines of a relatively small enclosure." (AHAM, RAC No. 6 at 3.)

The Department has determined its current class structure for units without reversing valves (two product classes: one for units with louvered sides and another for units without louvered sides) is not adequate. Therefore, the Department is adding two classes for units with reverse cycle to accommodate the concerns expressed in public comments. The two additional classes are class 13—units with reverse cycle, with louvers, and with a capacity of 20,000 Btu/h or more—and class 14—units with reverse cycle, without louvers, and capacity of 14,000 Btu/h or more.

Casement-Type Units. In the 1994 Proposed Rule, the Department proposed additional classes for casement-slider and casement-only room air conditioners because of the unique utility they offer to the consumer. Casement-type units offer a performance-related feature (fitting into casement windows) which other room air conditioners cannot provide. AHAM and Frigidaire supported the Department's proposal to establish separate classes for casement only and casement/slider units. In addition, AHAM stated that because of the limited number of models available and the narrow range of capacities, class divisions by capacity are not necessary for these unit types. (AHAM, No. 1 at 21–22; Frigidaire, No. 544 at 6.) In their comments to the Draft Report, ACEEE and NRDC recommended that casement-only units be combined in the same category as casement-slider units due to the fact that there is only one casement-only unit on the market. ACEEE and NRDC are also concerned that a loophole may be created because lower-priced casement units may be used in applications that do not require the special dimensions required by casement-only units. They commented that adjustable side panels can be used to enclose the space created when a window is wider than the air conditioner. (ACEEE/NRDC, RAC No. 5 at 4.)

The Department believes that the size limitations imposed on casement-type units are more significant than those faced by typical units which are designed for double-hung windows. Since this performance-related feature justifies a lower efficiency standard, separate classes will be established for casement-slider and casement-only units. The Department agrees with AHAM that class divisions by capacity are not necessary because of the narrow range of capacities in which models are currently available. According to AHAM's Directory of Certified Room Air Conditioners, casement-slider units range in capacity from 5,000 to 11,000 Btu/h, while there is currently only one casement-only unit, which has a capacity of 6,200 Btu/h. The Department believes that there is utility added by having a casement-only as well as a casement-slider class. In addition, the Department believes that the dimensions of casement units are restrictive enough to prevent a loophole.

Ductless Split Systems. Fedders proposed that ductless split system air conditioners be regulated under room air conditioner efficiency standards as it believes that they are directly competing against room air conditioners for market share. (Fedders, April 7, 1994, Transcript at 123.) The NRDC agreed with the Fedders recommendation. (NRDC, No. 55 at 28)

The Department's efficiency standards for split system-type central air conditioners also apply to ductless split systems. The Department makes no distinction between split systems which deliver conditioned air with or without ducts. Thus, because split systems are covered under standards for central air conditioners, ductless split system air conditioners will not be established as an additional class for room air conditioners.

2. Design Options

Commenters provided detailed comments on several of the design options that were analyzed by the Department for the proposed rulemaking.

Rotary compressors. Compressor efficiency was the design option that drew the greatest amount of comment. AHAM, Amana Refrigeration, Inc. (Amana), Frigidaire, Fedders, Sanyo, Matsushita Electric Corporation (Matsushita), Whirlpool, and Tecumseh Corporation (Tecumseh) all provided comments stating that rotary compressors cannot attain the 11.5 to 12.0 EER efficiency levels assumed in the Department's analysis. They stated that the maximum efficiency of currently available rotary compressors falls in the 10.7 to 10.9 EER range. Compressor manufacturers stated that only minor efficiency improvements are expected within the next three to five years. The combined effect of these efficiency improvements would yield only a 11.1 to 11.3 EER rotary compressor. And although efficiency increases of this magnitude may be theoretically achievable, they would require the development of high-efficiency motors which are currently not available, use of higher-grade materials in the rotary compressor

mechanism, and new compressor production methods and equipment. Both AHAM and Amana additionally commented that physical samples of new compressors need to be available to room air conditioner manufacturers at least 36 months prior to the effective date of the standards to provide adequate time for development, reliability and field testing. (AHAM, No. 1 at 7; Amana, Inc., No. 347 at 1; Frigidaire, No. 544 at 2; Fedders, April 7, 1994, Transcript at 121–122; Sanyo, No. 771 at 7–9; Matsushita, April 7, 1994, Transcript at 88–90; Tecumseh, April 7,1994, Transcript at 97–99; Whirlpool, April 7, 1994, Transcript at 102–103.) ACEEE commented that compressor efficiencies have been improving in recent years and are still below the theoretical limit. It stated that according to trade press articles, rotary and reciprocating compressors with efficiencies exceeding 11.0 EER are already available and further increases in efficiency are being developed. It argues that if 11.5 to 12.0 EER compressors are not realized, other technologies could be used to attain the Department's proposed efficiency levels. (ACEEE, No. 557 at 21.) ACEEE and NRDC commented that slightly more efficient compressors which are likely to become available soon should be used in the analyses in future rulemakings. (ACEEE/NRDC, RAC No. 5 at 1.)

The Department rejects AHAM's suggestion that design options must be available 36 months prior to the effective date of the standards. However, the prediction in the 1994 Proposed Rule that 11.5 to 12.0 EER compressors would be available by the year new efficiency standards would become effective was based on development plans of a compressor manufacturer to produce 11.8 to 12.0 EER compressors. Subsequently, those development plans were canceled. Because rotary compressor manufacturers state that they cannot produce compressors with efficiency levels approaching the 11.5 to 12.0 EER range, the Department, in the Draft Report, analyzed only rotary compressors which are currently on the market. Depending on their capacity, the most efficient rotary compressors range in efficiency from 10.7 to 11.1 EER. In its comments to the 1996 Draft Report, AHAM stated that the revised report addressed its concerns. (AHAM, RAC No. 4 at Attachment 1, pg 2.)

Scroll compressors. Only AHAM provided comments regarding scroll compressors. It stated that scroll compressors are currently not available in capacities less than 18,000 Btu/h and that efficiencies are either no more or slightly more efficient than rotary compressors. In addition, scroll compressor application heights are typically three to five inches greater than comparable rotary compressors, therefore requiring a larger chassis. Copeland Corporation (Copeland), a scroll compressor manufacturer, was cited by AHAM as having announced plans to develop a new, smaller scroll design optimized in the 14,000 to 24,000 Btu/h capacity range. AHAM stated this design could be expanded effectively into room air conditioner applications with more reasonable cost premiums and with efficiencies possibly in the 11.5 to 12.0 EER range, but because it is not possible to make these compressors available to manufacturers 36 months prior to the effective date of new standards, they should not be considered by the Department for this rulemaking. (AHAM, No. 1 at 8.) Again, ACEEE and NRDC in their joint comments to the Draft Report stated that slightly more efficient compressors which are likely to become available soon should be used in the analyses in future rulemakings. (ACEEE/NRDC, RAC No. 5 at 1.)

Again, the Department rejects AHAM's suggestion that design options must be available 36 months prior to the effective date of the standards. Although Copeland Corporation is currently investigating this more efficient compressor technology in the 14,000 to 24,000 Btu/h capacity range, they could not commit to produce it. Because there was not sufficient evidence this technology would be available by the effective date of the standards, only Scroll compressors which are currently on the market were considered for the Department's Final Rule analysis. For compressors which would be suitable for room air conditioner applications, Copeland's scroll compressors currently range in efficiency from 10.8 to 11.1 EER. The lowest capacity scroll compressor offered by Copeland is 16,500 Btu/h. Thus, scroll compressors were only considered for room air conditioners with capacities of at least 16,000 Btu/h. The information DOE received from compressor manufacturers showed that scroll compressor heights are only 1–2 inches greater than comparable rotary compressors. Moreover, because this design option was not contained in any of the standard levels the Department found to be economically justified, the Department does not consider this height differential to be an issue. AHAM commented that it was satisfied with the treatment of this issue in the Draft Report. (AHAM, RAC No. 4 at Attachment 1 pg. 2.)

Reciprocating compressors. The Department's analysis of an advanced reciprocating compressor design called the inertia compressor received comments by AHAM, Frigidaire, and Bristol Compressors (Bristol.) All three commented that inertia compressors with efficiencies in the range of 11.5 to 12.0 EER are expected to be available within the next couple of years but only in capacities exceeding 18,000 Btu/h. Inertia compressors are significantly heavier, larger, and noisier than the rotary compressors that are currently used in room air conditioner applications. Larger chassis sizes would be required to accommodate the increased weight and size of the inertia compressor. In addition, sound blankets would be necessary to muffle the increased noise levels. Thus, cost premiums and the accompanying application costs make inertia compressors difficult to cost justify for room air conditioners. (AHAM, No. 1 at 8–9; Frigidaire, No. 544 at 2; Bristol, June 7, 1994, Transcript at 355–362.)

Although the Department recognizes that advanced reciprocating compressors are heavier and larger than existing rotary compressors, no information was provided as to how great the application costs for enlarging and bracing the chassis would be for incorporating them into room air conditioner units. Thus, only the cost of the compressor itself, with its accompanying sound blanket, was explicitly included in the Department's Final Rule analysis. For those instances where the advanced reciprocating compressor exceeded the weight of the rotary compressor by a significant amount (over 30 percent), an increase in chassis size was assumed to be necessary for incorporating the larger and heavier compressor. Therefore, a design option which resulted in a chassis size increase (i.e., increased evaporator and condenser face areas) always preceded the incorporation of an advanced reciprocating compressor. The added costs for increasing the chassis were assumed to cover the expense of incorporating the reciprocating compressor. For compressors which would be suitable for room air conditioner applications, Bristol's inertia compressors currently range in efficiency from 11.2 to 11.8 EER. The lowest capacity inertia compressor offered by Bristol is 18,000 Btu/h. Thus, inertia compressors were considered only for room air conditioners with capacities of at least 18,000 Btu/h. In its comments to the 1996 Draft Report, AHAM indicated that this approach addressed its concerns. (AHAM, RAC No. 4 at Attachment 1 pg 2.)

Fan motor efficiency. Only AHAM provided comments with regard to improvements in fan motor efficiency. It stated that permanent split capacitor (PSC) fan motors are already used in 98 percent of room air conditioners. The efficiency of PSC fan motors fall in the range of 50 percent to 70 percent with larger motors being more efficient. AHAM admitted that some modest gains may be achieved with PSC fan motors in specific applications. With regard to electronically commutated motors (ECM), otherwise known as brushless permanent magnet motors (BPM), AHAM stated that they cost 2.5 to 3 times more than standard PSC motors. In addition, they weigh approximately twice that of a standard PSC motor. ECM efficiencies range from 68 percent to 78 percent. ECMs are currently not available with the double ended shaft required for room air conditioner applications because controls block one end of the motor. AHAM believes that ECMs with double ended shafts are not likely to be made available in the foreseeable future. Even if ECMs were manufactured with double ended shafts, AHAM claimed that manufacturers would need physical samples 24 months before the effective date of standards. (AHAM, No. 1 at 10 and RAC No. 4 at 5.)

The Department recognizes that most room air conditioner designs already incorporate permanent split capacitor fan motors. But for two of the product classes analyzed, the representative baseline units used inefficient shaded pole motors. Thus, for these two classes, significant efficiency gains were achieved by replacing the shaded pole motors with more efficient permanent split capacitor motors. For all other classes, the representative baseline units already incorporate permanent split capacitor motors. Further fan motor efficiency increases were assumed to be achieved only through the use of ECMs. Although current ECM controls are situated at one end of the motor, the Department believes that there is no reason why they cannot be moved to another location on the motor. Thus, it is assumed that ECMs can be manufactured with double ended shafts. Although the Department recognizes that ECMs weigh approximately twice as much as standard permanent split capacitor motors, no information was provided about the application costs for bracing the chassis to incorporate them into room air conditioner units. Thus, only the cost of the ECM itself was explicitly taken into account in the Department's Final Rule analysis. However, because the analysis showed that ECMs were not an advantageous design option, any cost increases due to increased ECM weight need not be considered further. In its comments to the 1996 Draft Report, AHAM indicated that the analysis, which assumes a fan motor efficiency of 30 percent for shaded pole and 50 percent for permanent split capacitor (PSC) when changing from a shaded pole to a PSC, addresses its concern. (AHAM, RAC No. 4 at Attachment 1, pg. 2.)

Variable speed compressors. AHAM stated that variable speed compressors are not currently used in room air conditioner applications and should not be considered a technically viable design option. AHAM commented that the cost premium is 30 percent to 50 percent above comparable single-speed compressors. Although variable speed compressors are available off-shore in capacities and sizes suitable for use in room air conditioners, improvements in efficiency cannot be measured with the Department's current test procedure. AHAM commented that the Department's current single condition test procedure adequately matches consumer usage patterns for room air conditioners. (AHAM, No. 1 at 12.) AHAM does not believe variable speed compressors are "capable of being assembled into room air conditioners by the effective date" and should not be considered a viable design option. (AHAM, RAC No. 4 at 5.)

Although the Department recognizes that the current test procedure is not adequate for determining the benefits due to variable speed compressors, they are still analyzed as a design option for room air conditioners. As done for the Proposed Rule's analysis, efficiency gains are established based on estimates from central air conditioning applications. The efficiency improvement, because it is primarily a result of reduced cycling (i.e., reduced on and off operation), is reported in terms of the seasonal energy efficiency ratio (SEER). A minimum efficiency standard cannot be based on its inclusion because the current test procedure does not recognize a SEER rating as an appropriate measure of efficiency. In addition, variable speed compressors were not included in any of the efficiency levels DOE determined to be economically justified.

Heat exchanger design options. A number of comments were received regarding design changes to improve heat exchanger (evaporator and condenser) performance. These improvements can be put into two categories: designs for increasing the heat exchanger surface area and designs for increasing the heat transfer coefficients. The heat transfer surface area can be increased by any of the following methods: increasing the frontal area of the coil by increasing the height or width; adding a subcooler to the condenser coil; increasing the depth of the coil by adding vertical tube rows; or increasing the fin density. The heat transfer coefficients can be increased by using an enhanced fin design or grooved (rifled) refrigerant tubing.

With regard to heat exchanger improvements, manufacturers expressed great concern over design options that would require an increase in chassis size, namely, increases in heat exchanger size. AHAM claimed that tooling for a new chassis size can range in cost from $1.5 to $5.0 million per manufacturer. In addition, it stated that there are limits to the efficiency that can be achieved through increases in coil size without causing problems with latent cooling capacity (i.e., dehumidification.) It also stated that if standards require larger chassis sizes, there will be loss of utility in terms of portability and availability of larger capacities that can fit into smaller windows. In addition, availability of very large capacities would be reduced. (AHAM, No. 1 at 11–12.) AHAM also stated that an increase in coil size could affect compressor reliability. It stated that if room air conditioner efficiency is increased by enlarging the coil, the compressor capacity must be reduced to maintain the capacity of the system. But because the unit now has more refrigerant as a result of enlarging the coil, it is more likely that the smaller compressor's maximum charge limitation would be reached. The closer the refrigerant charge comes to the compressor's charge limit, the more likely that compressor failure would occur. (AHAM, Transcript, April 7, 1994, at 66.) Amana stated that its current coil designs are already optimized. (Amana, Inc., No. 347 at 1.) Sanyo stated that increasing the condenser surface area is not feasible as the chassis enclosure is already too crowded. (Sanyo, No. 771 at 9.)

AHAM and several manufacturers commented that the Department's proposed efficiency standards would require increases in chassis size for all room air conditioner product classes because some design options that the Department assumed would be available, primarily 11.5 to 12.0 EER compressors, would not exist by the time the proposed standards became effective. AHAM stated that even a small increase in the efficiency standard will cause some models to move to a larger chassis size. According to AHAM,

92 percent of total production would need to move to a larger chassis size to meet the standards proposed in the 1994 Proposed Rule. AHAM further commented that because chassis sizes vary widely among manufacturers, new standards will have significant competitive effects. (AHAM, No. 1 at 1, 14–18.) Amana, Whirlpool and Frigidaire all provided comments reinforcing AHAM's comments. Amana stated that to meet the Department's proposed standards it would need to redesign nine of thirteen basic models into a larger chassis. These manufacturers further commented that the higher prices resulting from chassis size increases place an unfair burden on low income consumers. (Amana, No. 347 at 1; Whirlpool, No. 391A. at 1; Frigidaire, No. 544. at 3.)

AHAM provided the Department with a graph which shows the percentage of production which would be required to change chassis size at each EER. (AHAM No. 1 at 14.) In its comments to the Draft Report, AHAM states that "more stringent standards [than the standards proposed by AHAM] will cause a significant number of chassis size changes with step function-like cost implications to manufacturers and raise utility, marketing and competitive issues." (AHAM, RAC No. 6 at 1.) AHAM stated the baseline model method of analysis does not realistically represent the impact on cost of increasing the chassis size. AHAM believes the Department should weight the cost of a larger chassis by the proportion of models needing a larger chassis to achieve specific efficiency levels. (AHAM, RAC No. 4 at 3.) In their most recent comments, ACEEE and NRDC state this approach is reasonable, but they believe the life cycle cost minimums, resulting when costs of chassis size increases are prorated, should be used to select standards. Referring to the graph provided by AHAM, ACEEE and NRDC state that the proportion of models requiring a larger chassis size at 9.8 EER is "scarcely different" than the proportion required by 9.5 EER and that only at EER levels above 9.8 EER do a significant proportion of models need a larger chassis. Furthermore, they state "to consider chassis size as an independent decision-making factor would overemphasize chassis size in making a final decision." (ACEEE/NRDC, RAC No. 5 at 2.)

The impact of increased heat exchanger size on dehumidification was assessed with the engineering computer simulation model. The simulation model not only estimates the efficiency increase that results from adding more coil area but also its effect on latent heat removal. For all the room air conditioners which were modeled, the heat exchanger increases which were analyzed resulted in latent heat ratios of at least 25 percent. The latent heat ratio is the latent heat rate removal of the air conditioner divided by its total cooling capacity. AHAM considers 25 percent to be the minimum acceptable latent heat ratio. With regard to the issue of compressor reliability, although the Department recognizes that an increase in coil size coupled with a decrease in compressor capacity could affect the reliability of the compressor, manufacturer data were not provided as to the maximum charge limit of room air conditioner compressors. The Department's analysis of larger coil sizes assumed that the compressor capacity would not have to be reduced when analyzing larger coil sizes. Thus, with regard to how the Department conducted its analysis, it is unlikely that compressor reliability would be negatively impacted. Moreover, increasing evaporator/condenser coil area was not contained in any of the standard levels DOE found to be economically justified.

With regard to the issue that some manufacturers may be competitively disadvantaged by being required to increase chassis size, the Department carefully considered the information provided by AHAM which indicates that the proposed standards in the 1994 Proposed Rule would require 92 percent of manufacturers to increase chassis size. Both the Department and AHAM recognize that any change in efficiency standard will require some manufacturers to increase chassis size. The Department has attempted to reduce the number of chassis size changes as much as possible while still achieving the goal of promulgating standards which maximize energy efficiency consistent with economic justification. The standards set forth would require an increased chassis size for a substantially smaller subset—approximately 25 percent—of products.

The Department considered AHAM's recalculations of life-cycle cost minimums which prorated the cost of chassis size increases. (AHAM, RAC No. 9 at Attachment 3A.) DOE has selected standard levels corresponding to the minimum life cycle costs when chassis size cost is prorated for the classes for which AHAM provided this information (i.e., classes 1 through 5).

AHAM commented that manufacturers will make adjustments to the number of tube rows and the density of fins in order to optimize heat exchanger performance. Because heat exchangers are, in general, already optimized, however, adjusting either the tube rows or the fin density is not a significant factor in increasing system efficiency. (AHAM, No. 1 at 9.) Sanyo stated that adding tube rows or fin material causes increased air flow restrictions and requires design changes to fan and fan motors. If motor speeds are increased to obtain high airflow, unacceptable noise levels result. (Sanyo, No. 771 at 9.)

The Department agrees with AHAM and Sanyo that the number of tube rows and the fin density are already optimized to yield the greatest heat exchanger performance. In using the engineering computer simulation model, increases in either tube row density or fin density provided negligible increases in system performance. In its comments to the 1996 Draft Report, AHAM indicated that because the simulation model shows negligible increases in system performance by increasing the fin density and number of tube rows, AHAM is no longer concerned about this matter. (AHAM, RAC No. 4 at Attachment 1 pg. 2.)

AHAM stated that enhanced fins are already used in 64 percent of the evaporators produced by manufacturers and 99 percent of the condensers. AHAM also commented that good projections for the efficiency improvement due to enhanced fins are not available. AHAM further commented that the increased use of enhanced fins in evaporators is likely to be limited because in some cases condensate drainage is a limiting factor. AHAM believes that additional significant improvements in fin design are not expected in the foreseeable future. (AHAM, No. 1 at 10.) Sanyo stated that many models already employ enhanced fins. (Sanyo, No. 771 at 9.)

The Department recognizes that most room air conditioner designs incorporate enhanced fins. Consequently, most of the representative baseline units for the product classes analyzed by the Department already include enhanced (i.e., slit-type) fins. For those baseline units where enhanced fins could be added, efficiency improvements were based on information provided by room air conditioner and heat exchanger manufacturers. Publicly available research information was used to check the reasonableness of the data supplied by manufacturers. The manufacturer information also included data on how densely enhanced fins could be packed until condensate drainage became a problem. In accordance with this manufacturer data, the Department's analysis limited enhanced fin densities before condensate drainage became a problem. In its comments to the 1996 Draft Report, AHAM indicated that this approach addressed its concerns. (AHAM, RAC No. 4 at Attachment 1 pg. 2.)

AHAM stated that grooved refrigerant tubes are already used in 97 percent of the evaporators produced by manufacturers and 86 percent of the condensers. AHAM also commented that good projections for the efficiency improvement due to grooved tubes are not available. AHAM does not expect additional significant improvements in tube design in the foreseeable future. (AHAM, No. 1 at 10.) Sanyo stated that many models already employ grooved tubes. (Sanyo, No. 771 at 9.)

As with enhanced fins, the Department recognizes that most room air conditioner designs already incorporate grooved refrigerant tubing. However, for many of the representative baseline units that were selected (with consultation from AHAM) for the Proposed Rule's analysis, grooved tubing was not incorporated into the design. For the Department's Proposed Rule analysis, manufacturer test data was used to determine the efficiency improvements due to grooved tubing. However, publicly available research data indicated the manufacturer test data overstated the possible improvement. In addition, the analysis conducted for the Proposed Rule did not account for the increase in refrigerant-side pressure drop due to the grooved tubing. Thus, for the Department's analysis for the Final Rule, efficiency and pressure drop estimates were based on research data published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE.) In its comments to the 1996 Draft Report, AHAM commented that this approach addressed its concern. (AHAM, RAC No. 4 at Attachment 1 pg. 2.)

In their comments to the Draft Report, ACEEE and NRDC state that the report seems to ignore a new heat exchanger technology by Modine Technology that can achieve "at least a 0.75 increase in EER" without changing chassis size. (ACEEE/NRDC, RAC No. 5 at 1.) The advocates recommend that new technologies such as this one be considered in future rulemakings. The Oregon Department of Energy also stated its belief that most manufacturers were in contact with Modine Technology. (RAC No. 10 at 2.)

The efficiency improvement made possible by the new heat exchanger technology to which the energy efficiency advocates referred is based on theoretical calculations. Modine Technology's new heat exchanger has shown improvements in central air conditioners; however, it has not been tested in room air conditioners. The Department does intend to analyze this technology in future rulemakings.

AHAM, Amana, Frigidaire, Fedders, and Sanyo all provided comments with regard to subcoolers. Test data was provided indicating that the efficiency improvement due to subcoolers is significantly lower than that estimated by the Department in the 1994 Proposed Rule. AHAM presented data indicating that, on average, the actual efficiency and capacity improvements are 44 percent and 67 percent, respectively, of that projected by the Department's simulation model. Also, according to the AHAM, four out of seven room air conditioner manufacturers do not currently use subcoolers and five of the seven manufacturers would need to make major tooling changes on all or some of their chassis. (AHAM, No. 1 at 6–7; Amana, No. 347 at 2; Frigidaire, No. 544 at 2–3; Fedders, No. 693 at 2–6; Sanyo, No. 771 at 9.)

Based on comments, the Department used manufacturer test data to calibrate the subcooler efficiency increases that were estimated by the simulation model. For each room air conditioner model simulated, the temperature of the condensate into which the subcooler is immersed was adjusted until the simulated efficiency increase matched that indicated by the manufacturer test data. Depending on the capacity of the unit, the manufacturer test data demonstrates unit efficiency increases of between 1.4 percent to 3.0 percent, as compared to approximately 6 percent increases found in the analysis for the Proposed Rule. The simulation model was adjusted based on this test data. AHAM indicated that this approach addressed its earlier concern. (AHAM, RAC No. 4 at Attachment 1 pg. 2.) In addition, DOE used manufacturer cost information provided by AHAM to calculate the economic impact of incorporating a subcooler as one of the room air conditioner design options.

Design options already in use. Many manufacturers claimed that they already use many of the design options that are being considered by the Department for increasing energy efficiency. (AHAM, April 7, 1994, Transcript at 51–52; Amana, No. 347 at 1; Frigidaire, No. 544 at 4; Fedders, No. 693 at 1; Sanyo, No. 771 at 8.) Both Amana and Frigidaire stated that they already use high efficiency rotary compressors, grooved tubes, enhanced fins and permanent capacitor fan motors. Amana stated that the only design options available for increasing efficiency are more efficient compressors, larger coil sizes, larger chassis sizes, and the addition of a liquid line subcooler. (Amana, No. 347 at 1; Frigidaire, No. 544 at 4.)

The design options which are considered in the analysis are based on the characteristics of the representative baseline units. The baseline models used in this analysis were selected through consultation with AHAM. If a baseline unit does not include particular design options, then those options are analyzed as measures to improve the efficiency of the unit. Although some of these design options are already commonly used, they may not all be used simultaneously. For example, some of the baseline units used more efficient compressors to achieve a certain efficiency rating, while many of the units on the market used less efficient compressors but improved heat exchanger design options to achieve the same level of efficiency.

3. Engineering Simulation Model

The Department received several comments regarding the engineering computer simulation model that it used in its analysis of efficiency improvements for room air conditioners. Comments were provided primarily by AHAM and can be categorized into three areas: (1) the accuracy of the simulation model; (2) the method in which the modeling analysis was conducted; and (3) the selection of baseline models for room air conditioners without louvered sides.

In comparing simulation results from the Department's computer simulation model to test data gathered from four room air conditioner models, AHAM demonstrated that there is a marked tendency for the simulation model to overestimate system efficiency. It concluded that the simulation model has the potential for making errors of 5 percent or more, especially when extended well beyond the point where actual correlative test data exists. (AHAM, No. 1 at 3.) Frigidaire and Sanyo reinforced the AHAM's comments when they presented data demonstrating that the simulation model estimated higher benefits for design options than are realized in practice. (Frigidaire, No. 544 at 4; Sanyo, No. 771 at 10–12.)

The simulation model was extensively reviewed by the room air conditioner industry. For the 1994 Proposed Rule, simulation results were calibrated to manufacturer test data for all of the representative baseline units modeled. The Department recognizes that when simulation results are calibrated to a single manufacturer's test

data, it is possible that the model will yield errors of 5 percent or more when used to simulate the performance of other manufacturers' units. Where test data is not available, the Department expects to continue to use the simulation model to estimate the efficiency increases resulting from the incorporation of design options. When manufacturer test data is provided, as in the case of subcoolers, the Department will use it to adjust the simulation model.

AHAM commented that several errors were made in the simulation modeling. The first pertains to compressor modeling and the fact that actual compressor performance data was used only in the modeling of baseline equipment. The Department derived performance data for more efficient compressors by multiplying the motor input values from the baseline compressor data by the ratio of the baseline and high-efficiency compressor nominal energy efficiency ratios (EER.) This type of analysis shows overall room air conditioner efficiency improvement equal to 89 percent of the nominal compressor EER improvement. Limited test data shows that the overall room air conditioner efficiency increase is about 75 percent of the nominal compressor EER improvement. AHAM advocated using actual compressor performance data for the analysis of more efficient compressors but to limit maximum system efficiency improvements to 75 percent of the nominal compressor EER increase. It also stated that when deriving compressor coefficients for input to the simulation model, the Department must use compressor performance data that spans the entire range of evaporating and condensing temperatures under which the compressor might operate. Otherwise, incorrect input coefficients could be generated. (AHAM, No. 1 at 3–6 and AHAM, RAC No. 4 at Attachment 1 pg 1.)

The Department agrees with AHAM that actual compressor performance data should be used to model the performance of compressors. Nominal compressor performance is based on ratings at standardized temperature conditions, and actual compressor performance may be significantly different at actual room air conditioner operating conditions. Using the nominal efficiency to compare the performance between two compressors only provides the efficiency difference at the standardized conditions. Using actual compressor performance data to model compressor operation captures the effect that different operating conditions have on room air conditioner performance. Thus, actual compressor performance data, spanning the entire range of evaporating and condensing temperatures in which the compressor might operate, was used to model the performance of all the compressors analyzed for the Final Rule. The Department disagrees with AHAM that system efficiency improvements should be limited to 75 percent of the nominal compressor EER increase. The basis for using compressor performance data is to more accurately assess the system improvement due to more efficient compressors. Placing a ceiling on the efficiency improvement eliminates the possibility of gaining system EER increases due to more favorable compressor operating conditions. As it turned out, most of the compressors modeled as design options in the Final Rule analysis yielded system efficiency increases that were equal to or less than 75 percent of the nominal compressor EER increase. Only one of the compressors analyzed yielded a system efficiency increase significantly above the AHAM's suggested 75 percent ceiling. This compressor was used at standard level 5, which was found to be not economically justified.

According to AHAM, another error in the simulation modeling concerns the use of superheat. It noted that the Department incorrectly specified the input for superheat from manufacturer test data by using the difference between the mid-evaporator temperature and a temperature on the suction line. It claimed that the Department should have adjusted the superheat input to the simulation model until the difference between the averages of the simulated evaporator inlet and outlet temperatures and the simulated suction line inlet and outlet temperatures were equal to the test value. (AHAM, No. 1 at 5.)

The Department's method for specifying the superheat was in accordance with recommendations made by AHAM in 1990. These recommendations included making modifications to the simulation model in order to account for the presence of an accumulator. The modifications were based on treating the inlet to the accumulator as the inlet to the compressor shell for rotary compressors. In order to account for superheating occurring within the accumulator, the simulation model was modified to include provisions to account for the temperature and pressure increases that occur within the accumulator. The location on the suction line where the temperature was measured was at the accumulator inlet (i.e., the suction line outlet). The superheat in the simulation model is defined as the difference between the compressor shell inlet's refrigerant and saturation temperatures; therefore, knowing that the suction line temperature was measured at the accumulator inlet provided confidence in using it to specify the superheat. Because the test data did not provide the accumulator inlet's saturation temperature, the mid-evaporator temperature was used as a close approximation of the evaporator saturation temperature, which is also a close approximation for the compressor shell inlet saturation temperature. Therefore, the Department believes it appropriate to use the difference between the mid-evaporator and accumulator inlet temperatures to specify the superheat. AHAM indicated in its comments to the Draft Report that this method addresses its concerns. (AHAM, RAC No. 4 at Attachment 1, pg. 1.)

In estimating room air conditioner efficiency increases resulting from more efficient fan motors, AHAM commented that it was inappropriate to use combined fan and fan motor efficiencies as input to the simulation model. Rather than using efficiencies, it advocated using fan motor power as an input as it asserts that room air conditioner efficiencies will be overestimated by using fan and fan motor efficiencies. (AHAM, No. 1 at 5.)

The simulation model was originally developed to model the performance of central air conditioners. Manufacturers generally agreed to this approach. However, some adjustments had to be made to model a different air delivery system. For room air conditioners, the evaporator and condenser fans are both driven by a single fan motor, as opposed to central air conditioners, in which each fan is driven by its own fan motor. For the room air conditioner model, the Department decided to describe the air delivery system with combined fan and fan motor efficiencies in order to account for the impact of evaporator and condenser air-side pressure drop on fan motor power use. This modeling scheme also assumed that the evaporator fan accounted for 40 percent of the total fan motor power while the condenser fan accounted for the remaining 60 percent. AHAM was in agreement with modeling the room air conditioner's air delivery system by using a "40/60 split" on the fan motor power. But due to this modeling scheme, only 60 percent of the fan motor heat loss was added to the condenser air stream. All of the heat loss from the fan motor should be added to the condenser air stream as the motor resides in the outdoor section of the room air conditioner. The Department decided to change the simulation model in order to account for the fan motor's full heat loss. In the Department's analysis for the 1994 Proposed Rule, simulation results were calibrated to test data for all the baseline models. Because accounting for the full heat loss slightly lowers the system efficiency, minor adjustments had to be made to the power and capacity correction factors contained in the input files in order to recalibrate the simulation results to the baseline model test data. In AHAM's comments to the 1996 Draft Report, AHAM indicated that this method addressed its concerns. (AHAM, RAC No. 4 at Attachment 1, pg 1.)

AHAM claimed the simulation modeling analysis used incorrect power consumption penalties to account for reversing valves and for no louvers. With regard to reversing valves, AHAM noted that the TSD for the 1994 Proposed Rule reports two different power consumption penalties: 3 percent and 4 percent. AHAM noted that the Department's simulation analysis actually calculates a power reduction value of 2.5 percent. AHAM recommended using a penalty of five percent when modeling reverse cycle units with the simulation model. With regard to the power consumption penalty used for units without louvered sides, AHAM claimed that the value of 4 percent used in the Department's simulation analysis does not account for the reduced airflow across the condenser coil due to the non-louvered sides. Although it proposed no alternative power penalty to account for non-louvered sides, it stated that the condenser face area being modeled should be decreased because outdoor air is drawn through the back of the unit rather than through louvered sides, and thus less condenser area is available for heat exchange. (AHAM, April 7, 1994, Transcript at 62–65.)

For the 1994 Proposed Rule, power consumption penalties to account for reversing valves and to account for no louvers were applied only to the compressor's power consumption. Because the power penalty is assessed only to the compressor, the overall power increase for the entire room air conditioner is always slightly smaller than the reported power penalty value. The TSD for the Proposed Rule did mistakenly report two different penalties for reversing valves. The value that was actually used was 3 percent. The power penalty used to account for non-louvered sides was 4 percent. A 5 percent power penalty was used for the Final Rule to account for products with a reversing valve. Because an alternative power penalty value was not proposed for non-louvered sides, the Department retained the use of a 4 percent power penalty. This 4 percent power penalty was assumed to account for any degradation in performance due to drawing outdoor air directly through the condenser coil. Thus, the modeled condenser face area was not reduced.

In its comments to the 1996 Draft Report, AHAM states that although the Draft Report indicates that power consumption penalties were used in the simulation model, it appears (referencing Table 1.6 of the Draft Report) that baseline data for actual models were used, and that these results are not consistent with actual practice. (AHAM, RAC No. 4 at 2.) The Department did use the power consumption penalties in the simulation model for the Draft Report. Table 1.6 of the Draft Report is intended to show that the results produced by the simulation model are close to the actual test data.

Both AHAM and Sanyo asserted that the Department selected baseline models for "through-the-wall" units (units without louvered sides) with efficiencies that were not representative of the class. They both stated that baseline models were derived from models with louvered sides, and thus, the analysis conducted for these products is meaningless. Sanyo stressed that the largest capacity size within the smallest enclosure for the particular product class of interest should be selected as a representative baseline model. (AHAM, No. 1 at 19; Sanyo, No. 771 at 6–10.)

In the analysis for the 1994 Proposed Rule, representative baseline models for non-louvered and reversing valve classes were derived from the baseline models that were selected for louvered classes. The Department agrees with AHAM and Sanyo in that actual baseline units should be used to represent the non-louvered and reversing valve classes. Thus, the Department based its analysis of non-louvered and reversing valve classes on modeling of actual baseline units. With regard to non-louvered classes, manufacturer data were available only for two of the existing five capacity classes; 6,000 to 7,999 Btu/h and 8,000 to 13,999 Btu/h. Thus, analyses were conducted only for the two classes where manufacturer data were available. Manufacturer data were also available for selecting representative baseline units for reversing valve classes, with and without louvered sides, and engineering analyses were conducted for both these classes.

Based on its recommended changes for improving the performance of the engineering simulation model, AHAM re-ran the model for the five capacity classes with louvered sides and without a reversing valve. For all five classes, the efficiency levels determined by AHAM's simulation analysis were significantly lower than the Department's proposed efficiency standards. (AHAM, No. 1 at 28.) Using the version of the simulation model that the Department used for its Proposed Rule analysis, Sanyo conducted a simulation analysis for classes without louvered sides. With its analysis, it also concluded that efficiency gains were significantly below those that the Department demonstrated were possible for classes without louvered sides. (Sanyo, No. 771.) Like AHAM, Fedders also performed an efficiency analysis for the five capacity classes with louvered sides and without a reversing valve. But instead of using the Department's simulation model, it used test data (and interpolated estimates based on test data) to project efficiency increases. Fedders' results were similar to AHAM's in that the efficiency levels that were calculated were significantly lower than the Department's proposed standards for all five classes. (Fedders, No. 693 at Sec. 1, 1–6.)

Based on the comments received, DOE made a number of adjustments to the simulation model, as described above, and changed the method in which certain design options were analyzed. After these adjustments, the Department's simulation results were close to those reported by AHAM. For the five capacity classes being compared, these were the only two classes for which DOE and AHAM had efficiency results that differed by greater than 1 percent—the 6,000 to 7,999 Btu/h class and the 14,000 to 19,999 Btu/h class.

In the case of the 6000 to 7999 Btu/h class, the discrepancy (approximately 3 percent) between AHAM's simulation results and the Department's simulation results for the Final Rule can be attributed to an error in the earlier simulation model. This error, which was present in the simulation model that AHAM used and that the Department used in its analysis for the Proposed Rule, was corrected for the Department's Final Rule analysis. Thus, correcting this error in the version of the simulation model used by the AHAM would yield a predicted efficiency that would be closer to that estimated by the Department for the Final Rule. The error related acceptable difference between the calculated condenser exiting temperatures from the two subroutines—because the acceptable difference was too low, the model

converged at solutions that produced condenser heat transfer coefficients which were too small.

In the case of the 14,000 to 19,999 Btu/h class, the discrepancy (approximately 3.5 percent) was primarily attributable to AHAM's method of estimating efficiency improvements due to an additional design option (condenser grooved tubes) that was analyzed by the Department but not by AHAM. If the Department had not considered this design option, the discrepancy would only be 0.6 percent.

In AHAM's comments to the 1996 Draft Report, AHAM stated that it was "satisfied with the efficiency analyses of models with side louvers and without reverse cycle up to the application of the BPM fan motor and the variable speed compressor" and that after correcting for the errors described in the preceding paragraphs, "the correlations would all be within an acceptable 1%". (AHAM, RAC No. 4 at 2.)

With regard to Fedders' estimates, the Department's revised efficiency estimates were still significantly different: discrepancies, on average, were over 3.5 percent. Unfortunately, Fedders did not provide detailed information on how it arrived at its estimates. Given the close agreement with the results reported by AHAM, the Department is comfortable with its revised simulation results.

In its comments to the Draft Report, AHAM stated that the "fine tuning of the simulation model has led to reasonably good correlations" for models with side louvers and with a reverse cycle. However, AHAM stated that although the simulation model was calibrated to baseline data for actual models without louvers and actual models with a reverse cycle, "the simulated effect of the applied design options is not consistent with actual practice." AHAM also stated that considerable time and effort would be required to "get the same level of correlation that was achieved for models with louvers and without a reverse cycle." AHAM also states that the wide variability of results when comparing simulation model efficiency results to AHAM's results shows that there is a "significant problem" in simulating models with reverse cycle. (AHAM, RAC No. 4 at 2–4.) In addition, with regard to units with a reverse cycle, AHAM stated that "poor correlation with these units is most likely due to the unusual restrictions in the refrigeration circuit due to the reversing valve and compromises made to balance both the heating and the cooling of the unit." (AHAM, RAC No. 4 at 4.) ACEEE and NRDC recommended in their joint comments that "problems with the simulation models can be dealt with by examining the efficiencies of units now on the market, in order to sanity check the simulation model results." (ACEEE/NRDC, RAC No. 5 at 3.)

The Department agrees that its computer model may not accurately simulate actual performance for models without louvers (classes 6–10) or models with a reverse cycle (classes 11 and 12). Consequently, the Department has relied more heavily on the comments in selecting standards levels. For classes with a reverse cycle, the Department chose standard levels which took into consideration the comments by both the manufacturers and energy efficiency advocates. With regard to the recommendation made by ACEEE and NRDC, the Department consulted the AHAM directory when making decisions on the efficiency standards to set forth in this rule.

4. Proposed Efficiency Standards

Support for proposed standards. Southern California Edison Company (SCEC), ACEEE, Central Hudson Gas & Electric Corporation (CHGEC), and Alabama Power Company (APC) all generally supported the Department's proposed standards. ACEEE stated that the standards proposed in the 1994 Proposed Rule are supported due to the availability of products with high efficiency levels in the marketplace. ACEEE stated that according to AHAM's 1993 and 1994 directories, units with louvered sides and without a reversing valve are available with efficiencies exceeding 11.0 EER in the 6000 to 7999 Btu/h and 8000 to 13,999 Btu/h product classes. In the 14,000–19,999 Btu/h product class, models are available with efficiencies of 10.5 EER. The ACEEE asserted that even if the Department underestimated the extra first cost of the proposed standards by a factor of two, they would still be cost effective. (ACEEE, No. 557 at 20–22.) CHGEC stated that for its service area, the proposed standards would save approximately 103 kWh per unit for a typical 8000 Btu/h size. (CHGEC, No. 601 at 1.) SCEC and APC generally supported the rulemaking proposals. (SCEC, No. 14 at 1; APC, No. 696 at 20.)

Although the Department recognizes the comments supporting the proposed standards, lower efficiency standards are being promulgated in this Final Rule. Revisions made to both the engineering simulation model and the method in which certain design options were analyzed, based on public comment, resulted in lower efficiency standards being selected for all product classes.

Proposed standard level 6. In addition to receiving comments in support of the proposed standards, the NRDC commented that the Department did not provide justifiable reasons for rejecting even the higher efficiency standards in the 1994 Proposed Rule. NRDC's argument included: (1) the Department's rejection of the higher standards (described as standard level six in the 1994 Proposed Rule) based on the standard level's long payback is legally unacceptable; (2) though short-term return on equity is reduced by standard level six, the long-term return is not significantly reduced; and (3) manufacturer cost impacts are premised on the continuation of current practices for utility rate design under which residential peak kilowatt-hours do not carry a price premium. (NRDC, April 5, 1994, Transcript at 115–116.)

There are significant differences between the candidate standard levels selected for the proposed rule and those levels selected for the final rule. These differences are a result of revisions made to the engineering analysis.

In response to NRDC's specific comments, the Department recognizes that in determining whether a standard is economically justified, the Secretary cannot consider the failure to meet the rebuttable presumption criterion. EPCA, section 325(o)(2)(B)(iii), 42 U.S.C. 6295(o)(2)(B)(iii). However, the Department does consider energy cost savings relative to incremental first cost. EPCA, section 325(o)(2)(B)(I)(II), 42 U.S.C. 6295(o)(2)(B)(I)(II). The Department also considers both short run and long run return on equity as important factors in determining the rule's impact on manufacturers. In addition, the Department strives to fairly assess consumer cost impacts, including sensitivity analysis of high and low State energy prices.

Adverse effects of standards. The Department received several comments regarding the adverse effects of promulgating the proposed standards. The greatest concern of manufacturers, that heat exchanger coils and cabinets would need to be expanded, at significant expense, in order to meet the Department's proposed standards, was discussed previously under comments pertaining to design options requiring increased chassis sizes. Other manufacturer concerns included: (1) The disparity in the proposed efficiency levels for class 1 (less than 6,000 Btu/h, with louvers and without a reversing valve) and class 2 (6,000–7,999 Btu/h, with louvers and without a reversing valve); (2) the effect of higher efficiency standards on the replacement market for "through-the-wall" units (i.e., units without louvered sides); (3) the effect higher standards would have on sales of units with reversing valves; (4) the impact on the dehumidification capability of low capacity units; and (5) the impact on low-income consumers.

The proposed standard of 11.1 EER for class 1 units was significantly greater than the proposed standard of 10.3 EER for class 2 units. Both AHAM and Frigidaire claimed that this disparity in the efficiency levels will result in significantly higher consumer costs for class 1 units. They asserted that this disparity will eventually eliminate class 1 units from the marketplace because consumers would purchase less expensive class 2 units. They stated that eliminating low cost class 1 units would adversely effect low income consumers. With regard to energy consumption, for applications where class 1 units are more suitable, they stated that class 2 units might run less to provide the same amount of cooling, but their overall power consumption would be higher because they would operate at a lower efficiency. For units of equal efficiency providing cooling to environments with the same sensible and latent loads, limited manufacturer test data indicated that a class 2 unit (6,000 Btu/h capacity) consumes 6 percent more power than a class 1 unit (5,000 Btu/h capacity.) In addition, both AHAM and Frigidaire claimed that to offset humidity effects, class 2 units would probably be run with a lower thermostat setting resulting in increased run times and increased energy use. Both commenters urged the Department to set standard levels for class 1 units that are no greater than the standards that are set for class 2 units. (AHAM, No. 1 at 18–19; Frigidaire, No. 544 at 8–9.)

ACEEE also noted the disparity in the proposed efficiency levels for class 1 and class 2 units. It noted that class 3 units (8,000 to 13,999 Btu/h) have a significantly higher efficiency standard than class 2 units. ACEEE commented that promulgating a significantly lower standard for class 2 units would likely result in manufacturers concentrating a greater fraction of shipments in this size range, leading to lower than expected energy savings from the proposed standards. The ACEEE urged the Department to raise the standard for class 2 units to 11.0 or 11.1 EER. ACEEE claimed this level is "technically feasible according to the Department's analysis," citing that the top-rated model in the market in this capacity range has an 11.0 EER. ACEEE believed that because the DOE life-cycle cost analysis showed only a slight increase in life-cycle cost going from an EER of 10.25 to 10.74 for this capacity range, a "small additional step to an EER of 11.0—11.1 should not have much of an impact on LCC either." It also urged the Department to raise the standard for the 6000 to 7999 Btu/h product class without side louvers to the same levels being proposed for the less than 6000 Btu/h and 8000 to 13,999 Btu/h product classes. (ACEEE, No. 557 at 22.)

The Department disagrees that ACEEE's extrapolation of the life-cycle cost analysis of the 1994 Proposed rule indicates that an increase to 11.0—11.1 EER should have little impact on life-cycle cost. Moreover, the reanalysis provided in the Draft Report resulted in efficiency levels for classes 1 and 2 being approximately the same. AHAM indicated in its comments to the Draft Report that these results addressed its concerns. (AHAM, RAC No. 4 at Attachment 1, pg 3.) In addition, for the final rule, the Department has selected standards for class 1 and class 2 that are equal. ACEEE and NRDC also support these standard levels. (ACEEE/NRDC, RAC No. 14 at 3.)

AHAM, manufacturers, and real estate organizations commented that the proposed efficiency standards would obsolete the replacement market for "through-the-wall" units (i.e., units without louvered sides.) Because of the unavailability of 11.5 to 12.0 EER compressors, chassis sizes would need to be increased to meet the proposed efficiency standards. But because of the overall size restrictions due to "through-the-wall" sleeves already in service, chassis sizes cannot be increased without obsoleting the existing sleeves. If existing wall openings are expanded to accommodate larger units, retrofit costs are estimated to be between $250 and $500. These commenters argue that the proposed standards would force the discontinuation of higher capacity systems as only smaller capacity units would be able to fit into existing sleeve openings. (AHAM, No. 1 at 19; Given & Spindler Companies (G&S), No. 302 at 1–2; Frigidaire, No. 544. at 5; Institute of Real Estate Management (IREM), No. 553 at 7; Sanyo, No. 771 at 3–6; Friedrich Air Conditioning Co. (Friedrich), April 7, 1994, Transcript at 77–80.) Both IREM and G&S requested that the Department exempt "through-the-wall" units because of the undue burden upon owners who will be forced to make retrofit changes without any financial compensation. (G&S, No. 302 at 1–2; IREM, No. 553 at 7.) Sanyo stated that the efficiency levels proposed in the 1994 Proposed Rule would force higher capacity units to be discontinued. (Sanyo, No. 771 at 3.) The AHAM presented data demonstrating that existing models meeting the current efficiency standards already employ all available design options. The AHAM stated that any increase in efficiency can only be accomplished by increasing chassis size or by further decreasing cooling capacity. (AHAM, No. 1 at 20.) Frigidaire stated that above 8,000 Btu/h, any increase in the current standard "will result in a lower BTUH capacity, thus reducing the utility of this product category." Frigidaire notes that in order "to comply with the 1990 Energy Standards, we were forced to reduce the capacity in this product class from 13,500 BTU to 10,700 BTU." (Frigidaire, No. 544 at 5.) In its comments to the 1996 Draft Report, AHAM reiterated the industry's struggle to achieve the current standards in the largest capacity models which has resulted in the reduction of the maximum capacity available. (AHAM, RAC No. 4 at 4.) Both the National Apartment Association (NAA) and the National Multi Housing Council (NMHC) requested that the Department adopt an efficiency standard for units without louvered sides that takes into consideration the adverse impact upon the multi-family housing industry. (G&S, No. 302 at 2; IREM, No. 553 at 7.) Because the multi-family housing industry predominantly uses air conditioner units without louvered sides, NAA and NMHC are concerned about the impact of increased cabinet size (due to higher efficiency standards) on these "through-the-wall" units.

The ACEEE opposed exempting "through-the-wall" units from more stringent standards. It stated that such an exemption would create a loophole that could result in a significant reduction in energy savings. It believed that manufacturers should be able to produce these units using the same or similar components used in louvered-type units. Through gains in economy of scale, costs with maintaining different product lines for models with and without side louvers could be avoided. (ACEEE, No. 557 at 23.) ACEEE and NRDC are particularly concerned about loopholes if standards are not increased for units below 14,000 Btu/h. (ACEEE/NRDC, RAC No. 5 at 3.) In February 1997, ACEEE and NRDC urged the Department to raise the standard for class 8 (units without louvers, without a reverse cycle, and 8,000—13,999 Btu/h) to 8.7 EER in an effort to reduce the likelihood of a loophole. In addition, they stated that according to the data provided by AHAM (AHAM, RAC No. 9 at Attachment 1), the 1994 sales weighted average for this class is 8.73.

EER. (ACEEE/NRDC, RAC No. 14 at 3.) AHAM stated that these concerns are based "on the incorrect view that these products are essentially the same except for the presence of side louvers." AHAM states that the elimination of side louvers causes extensive changes that result in "a significant loss of efficiency for the same capacity." (AHAM, RAC No. 6 at 2.) Furthermore, AHAM stated that increasing the standard for class 8 would eliminate higher capacity units, causing harm to building owners and consumers, and would "violate NAECA's safe harbor rule in Section 325(n)(4)." (AHAM, RAC No. 16 at 4.)

In its comments to the 1994 Proposed Rule NRDC was concerned that the practice of using small sleeves may amount to a permanent constraint on how far energy efficiency can be increased. It suggested that the Department analyze what fraction of the market cannot accept design options that increase sleeve size. Then the Department should determine the economic impact of replacing design options that do require increased size with other less cost-effective options for that fraction of the market that cannot adapt. NRDC also suggested that the Department consider adopting a second tier of efficiency standards which would be available for states to adopt voluntarily through building codes. This way, room air conditioners could be designed to the optimum level for the new construction market without imposing unreasonable costs on the replacement market. (NRDC, No. 55 at 27.)

The Department agrees with manufacturers and real estate organizations that added retrofit costs would be necessary for units which require larger sleeves and, as a result, larger wall openings. Thus, for units without louvered sides, an additional installation cost of $375 is assumed for design options which require a larger chassis (i.e., for increased evaporator and condenser face areas.) The Department was not provided with the necessary information to determine the percentage of existing sleeves which could not accept larger chassis sizes. Thus, the added retrofit cost of $375 was assumed to apply to all units requiring a chassis size change. In addition, since the percentage of units being used in new construction is believed to be small, all units were assumed to incur the added retrofit cost, regardless of application. The Department examined the 1997 AHAM Directory. It indicates that for higher capacity models (9,000 Btu/h or more), only one manufacturer currently produces units which could meet the advocates recommendation of 8.7 EER, despite the fact that this value is the 1994 shipment weighted average for this class. The Department agrees that there is reason to believe that increasing standards for units without louvers and without reverse cycle may result in eliminating higher capacity units from the market. Thus, the Department will not increase standards for "through-the-wall" units of 8,000 Btu/h capacity or more in today's rule. These standard levels minimize or eliminate the need to increase chassis size. Consequently, the Department does not believe the multifamily housing industry will be negatively impacted.

As for the advocates concern over possible loopholes, the Department intends to monitor market trends for these classes and will consider these trends during its next review of room air conditioner standards. Regarding NRDC's suggestion that the Department adopt a second tier standard for states to adopt voluntarily through building codes, in accordance with the legislation, a recommendation for a second tier standard for adoption through voluntary building codes must be done separately from manufacturing standards. However, because the "through-the-wall" units account for only about one-tenth of air conditioner energy use and because only a fraction of these units are in new construction, the Department does not believe this measure is warranted.

In their comments to the 1994 Proposed Rule, AHAM and Whirlpool also expressed that, as a result of setting standards too high for units with a reversing valve, more electric resistance heat models will be sold because of their significantly lower cost. They stated that this will result in an overall increase in energy consumption. (AHAM, No. 1 at 21; Whirlpool, April 7, 1994, Transcript at 103–105.) The standards for units with a reverse cycle set forth in today's rule are significantly lower than those standards proposed in the 1994 Proposed Rule, so this concern should be mitigated.

Fedders claimed that energy consumption due to reduced dehumidification is adversely affected by the standard levels proposed in the 1994 Proposed Rule for class 1 through class 3. Fedders presented calculations demonstrating that units meeting the proposed standard levels will consume more energy than units meeting existing efficiency standards. Fedders stated that units meeting the proposed standard levels will need to operate longer in order to dehumidify as effectively as units meeting the existing standards. (Fedders, No. 693 at 1–5, Sec. 2.)

Fedders' claims of longer run times for more efficient units are based on its estimates of the dehumidification capability of existing minimum efficiency units and those which comply with the Proposed Rule's proposed efficiency standards. Fedders' dehumidification data for units at the proposed efficiency levels were based on historical test data which were extrapolated to the proposed levels. The Department's engineering simulation model indicated that the proposed efficiency standards did not significantly reduce the dehumidification capability of the units which were modeled. The Department has questions about Fedders' assumptions used to calculate room air conditioner run times. For example, although Fedders acknowledges that sizing recommendations for room air conditioners are dependent on such things as building construction, window types and insulation levels, its cooling load calculations are based on a single room size and a single set of initial indoor room conditions. Most importantly, because the standards promulgated in this final rule are significantly lower than those proposed in the 1994 Proposed Rule, the dehumidification capabilities should no longer be in question.

One of the country's largest retailers, the Sears, Roebuck and Company (Sears), asserted that the standards proposed in the 1994 Proposed Rule impose disproportionate hardships on low income consumers as most room air conditioner consumers have lower than average incomes. Whirlpool substantiates this claim by presenting data on the income distribution of typical room air conditioner purchasers. (Sears, April 7, 1994, Transcript at 115; Whirlpool, No. 391A at 1–2.)

The standards set forth in the final rule will have substantially less impact on purchase price than those standards proposed in the 1994 Proposed Rule and will have shorter payback periods. For example, class 1 has an approximate first cost increase of $10, and a payback period of approximately 2 years, satisfying the rebuttable presumption criteria for economical justification. The Department does not believe the standards set forth today will have a substantial negative impact on low income consumers.

Efficiency Standards Recommendations. Several commenters concerned about adverse effects of promulgating the efficiency standards proposed in the 1994 Proposed Rule recommended to DOE alternative levels

at which to set the standards for room air conditioners. For classes with louvered sides and without a reversing valve, Frigidaire recommended the following efficiency standards: 9.0 EER for the less than 6000 Btu/h class, 9.5 EER for the 6000 to 7999 Btu/h class, 9.5 EER for the 8000 to 13,999 Btu/h class, 9.5 EER for the 14,000 to 19,999 Btu/h class, and 8.5 EER for the greater than 20,000 Btu/h class. (Frigidaire, No. 544 at 10.) In its comments to the 1994 Proposed Rule, Fedders called for consolidating the three smallest capacity classes into a single class and setting the efficiency standard at 10.0 EER. For the two largest capacity classes, Fedders agreed with the Department's proposed standards (11.1 and 9.8 EER). (Fedders, April 7, 1994, Transcript at 120–122.) The CEC recommended a single efficiency standard for all classes with louvered sides and without a reversing valve. It recommended setting the efficiency standard based on the level which the Department proposed (11.0) for the most popular class (i.e., the 8000 to 13,999 Btu/h class.) (CEC, No. 539 at 2,3.)

For classes without louvered sides and without a reversing valve, AHAM, Frigidaire, and Sanyo recommended that the current five capacity classes be consolidated into two classes: units less than 8000 Btu/h and units greater than or equal to 8000 Btu/h. For the less than 8000 Btu/h class, AHAM, Frigidaire, and Sanyo all recommended setting the efficiency standard at 9.0 EER. For the greater than or equal to 8000 Btu/h class, they all recommended setting the standard at 8.5 EER. AHAM presented data demonstrating that existing models meeting the current efficiency standards already employ all available design options. They stated that any increase in efficiency can only be accomplished by increasing chassis size or by further decreasing cooling capacity. (AHAM, No. 1 at 20; AHAM RAC No. 4 at 1–2; Frigidaire, No. 544 at 5; Sanyo, No. 771 at 3.) Friedrich recommended that units without louvered sides be exempt from efficiency regulation. (Friedrich, April 7, 1994, Transcript at 84.) The CEC recommended a single efficiency standard for all classes without louvered sides and without a reversing valve. The Commission recommended setting the efficiency standard based on the level which the Department proposed (10.7 EER) for the most popular class (i.e., the 8000 to 13,999 Btu/h class). (CEC, No. 539 at 2,3.)

For classes with a reversing valve, AHAM stated that the efficiency of a reverse cycle unit in the cooling mode is theoretically less than the efficiency for a cooling-only model due to the additional pressure drop caused by the reversing valve and inefficiencies created by the refrigerant charge being adjusted for an acceptable balance between cooling and heating performance. AHAM presented data demonstrating that the average reduction in efficiency due to a reversing valve is 0.42 EER. In order to cover the majority of reverse cycle units, AHAM recommended setting a standard for reverse cycle units which is 0.5 EER less than the standard for a comparable cool-only model with or without louvered sides. (AHAM, No. 1 at 20, 21.) Both Sanyo and Whirlpool also recommended setting the same type of standard. (Sanyo, No. 771 at 3; Whirlpool, April 7, 1994, Transcript at 103–105.) The CEC proposed maintaining the current classification for units with a reversing valve; one class for units with louvered sides and another class for units without louvered sides. The CEC agreed the efficiency levels proposed by the Department for reverse cycle units. (CEC, No. 539 at 2,3.)

On April 23, 1996, ACEEE and NRDC sent a letter to AHAM with the following table of proposed standard levels (ACEEE/NRDC, RAC No. 3 at 3.):

Class	Standard level
Units without reverse cycle and with louvered sides:	
Capacity less than 20,000 Btu/h	10.0 EER.
Capacity 20,000 Btu/h and more	9.0 EER.
Units without reverse cycle and without louvered sides	9.0 EER.
Slider/casement and casement-only units	9.0 EER.
Units with reverse cycle, all capacities	0.5 EER less than the standard for comparable cool-only model.

In its comments to the 1996 Draft report, AHAM proposed the following standards (AHAM, RAC No. 6 at 2):

Class	Standard level
Units without reverse cycle and with louvered sides:	
Capacity less than 20,000 Btu/h	9.5 EER.
Capacity 20,000 Btu/h and more	8.5 EER.
Units without reverse cycle and without louvered sides:	
Capacity less than 8,000 Btu/h	9.0 EER.
Capacity 8,000 Btu/h or more	8.5 EER.
Units with reverse cycle, with louvers	8.5 EER.***
Units with reverse cycle, without louvers	8.0 ERR.***
Casement-only	8.7 EER.
Casement-slider	9.5 EER.

***AHAM would prefer to set the standard for reverse cycle units 0.5 EER less than the standard for its "cool-only" counterpart. This recommendation results in ten classes for reverse cycle units. Because DOE did not support ten classes for reverse cycle units, AHAM stated that the standard should be set in reference to the highest capacity class. For example, if the standard for models without reverse cycle, without louvers, 20,000 Btu/h or more were set at 8.5 EER, then the standard for units with reverse cycle, without louvers, 20,000 Btu/h or more should be set at 8.0 EER. (AHAM, RAC No. 6 at 2–3.)

Following the meetings in late September 1996, ACEEE modified its recommendation to the following standards (ACEEE/NRDC, RAC No. 5 at 4–5)

Class	Standard
Without reverse cycle and with louvered sides less than 6,000 Btu/h	9.7 EER.
Without reverse cycle and with louvered sides 6,000 to 7,999 Btu/h	9.7 EER.
Without reverse cycle and with louvered sides 8,000 to 13,999 Btu/h	9.8 EER.
Without reverse cycle and with louvered sides 14,000 to 19,999 Btu/h	9.7 EER.
Without reverse cycle and with louvered sides 20,000 or more Btu/h	8.5 EER.
Without reverse cycle and without louvered sides less than 14,000 Btu/h	9.0 EER.
Without reverse cycle and without louvered sides 14,000 or more Btu/h	8.5 EER.
With reverse cycle and with louvered sides	9.0 EER.
With reverse cycle, without louvered sides	8.5 EER.
Casement (Casement-only and Casement-slider)	9.5 EER.

For classes without louvered sides, ACEEE and NRDC stated in their November 1996 comments that they were willing to accept 8.5 EER for capacities of 14,000 Btu/h or more. However, ACEEE and NRDC emphasized their recommendation of 9.0 EER for the 8,000—13,999 Btu/h capacity class, stating that: this EER is the minimum life cycle cost point according to the Draft Report; the 1994 sales weighted average of 8.73 EER approaches this recommendation; and 20 percent of 1996 models in this class meet or exceed this level according to the March 1996 AHAM Directory. They were concerned that AHAM's 8.5 EER recommendation could "create a loophole in that units without louvered sides at 8.5 EER would cost manufacturers less than units with louvered sides at 9.5 EER ($240 vs. $263 according to the DOE draft analysis)." (ACEEE/NRDC, RAC No. 5 at 3.) In its comments to the Draft Report, AHAM states that there is a significant cost and energy efficiency differential between models with and without side louvers. (AHAM, RAC No. 6 at 2.) In February 1997, ACEEE and NRDC urged the Department to raise the standard for class 8 to at least 8.7 EER. (ACEEE/NRDC, RAC No. 14 at 3.)

As discussed earlier, although manufacturers currently do not produce units in two of the existing five capacity classes, the Department has retained the five capacity-based classes. The Department conducted analyses only for the two classes for which manufacturer data were available (the 6,000 to 7,999 Btu/h and the 8,000 to 13,999 Btu/h classes.) In this Final Rule, the Department has applied the same efficiency standard (9.0 EER) to the 6,000 to 7,999 Btu/h class and the less than 6,000 Btu/h class. The efficiency standard for the 8,000 to 13,999 Btu/h class (8.5 EER) is also applied to the 14,000 to 19,999 Btu/h class and the 20,000 Btu/h or more class. According to 1997 AHAM Directory, the highest capacity "through-the-wall" unit currently manufactured has a capacity of 12,500 Btu/h, and only one manufacturer currently makes units at a capacity of 9,000 Btu/h or higher which meet the 8.7 EER standard proposed by ACEEE/NRDC. On this basis, the Department has determined that raising this standard is likely to result in higher capacity models being withdrawn from the market to the disbenefit of consumers.

With regard to the comment that units without louvered sides at 8.5 EER would cost manufacturers less than units with louvered sides at 9.5 EER, ACEEE and NRDC appear to refer to the values found in tables 1.12 and 1.16 in the Draft Report. The two units being compared have different capacities; therefore a direct cost comparison is not appropriate. However, the Department shares the general concern about the possibility that differences in standard levels for different classes may cause shifts in product use and sales, and as stated previously, the Department intends to monitor market trends for these classes. If it appears that products without louvers are used in lieu of units with louvers because of differences in energy efficiency standards, the Department will consider the need to set comparable standards during its next review of room air conditioner standards.

In their comments to the Draft Report, ACEEE and NRDC recommend a 9.0 EER for reverse cycle units with louvers and an 8.5 EER for reverse cycle units without louvers. They stated that these levels are well below the minimum life-cycle cost point of the Draft Report. Furthermore, they state that a third of the 1996 reverse cycle units with louvers and 80 percent of the 1996 reverse cycle units without louvers meet these levels. The advocates also note that the only reverse cycle unit in the 1996 AHAM directory above 20,000 Btu/h has a 9.0 EER. (ACEEE/NRDC, RAC No. 5 at 3.) In addition, they are concerned about "loopholes" which may result if the standards are not raised. (RAC, No. 12 at 1.) AHAM counters that a loophole would not be created because the cost of building a unit with a reverse valve is "quite significant." (AHAM, RAC No. 6 at 3.) The energy advocates also state that the Department's analysis appears to only evaluate cooling energy savings and not heating energy savings. (ACEEE/NRDC, RAC No. 5 at 2.)

In response to comments, DOE has split classes 11 and 12. AHAM, NRDC, and ACEEE all recommended setting the standards for reverse cycle units at 0.5 EER less than their cool-only counterparts. (ACEEE/NRDC, RAC No. 3 and AHAM, No. 1 at 21.) For units with reverse cycle and louvered sides, the energy efficiency advocates believe an EER of 9.0 is acceptable. (ACEEE/NRDC, RAC No. 5 at 5.) AHAM also finds this level to be acceptable for units with capacities less than 20,000 Btu/h. However, for units at 20,000 Btu/h or more, AHAM argues that the standard should not be higher than the standard for its "cool-only" counterpart. (AHAM, RAC No. 6 at 3.) The Department agrees. By splitting class 11 at 20,000 Btu/h, the Department can raise the standard for most of the units with reverse cycle and with louvers to 9.0 EER, without raising the standard for units of capacities of 20,000 Btu/h or more above the 8.5 EER of its cool-only counterpart.

Similarly, the Department has split class 12 and set the standard for units less than 14,000 Btu/h at 8.5 EER while keeping the standard for units of 14,000 Btu/h or more at 8.0 EER. This split is largely consistent with the recommendations of ACEEE, NRDC, and AHAM for a 0.5 EER differential between reverse cycle units and their "cool-only" counterparts for units without louvers, with the exception of units in the 8,000–13,999 Btu/h capacity range for which there is no differential. According to the 1997 AHAM directory, only one model with reverse cycle and without louvers in this capacity range does not meet an 8.5 EER. In response to the advocates question as to why the Department's analysis only evaluates cooling energy savings and not heating energy savings, the Department does not evaluate heating savings because the test procedure is unable to account for the heating energy savings.

In their February 1997 comments to the notice reopening the comment period, ACEEE/NRDC stated that establishing separate classes with weaker standards for higher capacity units with a reverse cycle is unnecessary because all currently existing models at these capacity levels meet their recommended standards, without splitting the classes. (ACEEE/NRDC. RAC No. 14 at 3.) Although all currently existing models with louvers and with a reverse cycle at 20,000 Btu/h or more meet a 9.0 EER, the Department does not believe new models entering the market should be required to meet a standard higher than the standard for a unit without a reverse cycle. In addition, the Department recognizes that no models currently exist with a reverse cycle and without louvers at 14,000 Btu/h or more; however, the Department believes that it should allow manufacturers the opportunity to design units without louvers and with a reverse cycle at higher capacities, and the evidence indicates that manufacturers could not meet a standard greater than 8.0 EER at capacities of 14,000 Btu/h or more. Furthermore, in April 1996, the advocates supported AHAM's recommendation to make the standard for reverse cycle units 0.5 EER less than the standard for its cool-only counterpart. (ACEEE/NRDC, RAC No. 3 at 3.) This recommendation would create 10 classes for reverse cycle room air conditioners. Thus, the Department questions why the advocates suggest that promoting only four classes for reverse cycle units is superfluous.

AHAM stated that casement-type units are already using all available design options and are limited in size because of their applications. (AHAM, No. 1 at 22.) In its comments to the Draft Report, AHAM recommended efficiency standards of 9.5 EER for slider/casement units and 8.7 EER for casement-only units. (AHAM, RAC No. 6 at 2.) In its comments to the 1994 Proposed Rule, Frigidaire recommended a standard of 9.0 EER for slider/casement units. (Frigidaire, No. 544 at 6.) Because the 1994 Proposed Rule did not propose standards for casement-type units, ACEEE, CEC, NRDC, and the New York State Energy Office (NYSEO) urged the Department to collect the necessary data in order to perform an analysis and set efficiency standards for these units. ACEEE and NRDC stated that if data is not available to perform an analysis, standards should be set for casement-type units that are equivalent to those for typical room air conditioners. NRDC added that the Department is prohibited under NAECA from reducing the stringency of energy efficiency standards. The CEC asked the Department to clarify whether States may adopt efficiency standards for casement-type classes without preemption or whether another standard level applies to these products until the Department adopts a separate level. (ACEEE, No. 557 at 23; CEC, No. 539 at 3; NRDC, April 5, 1994, Transcript at 116–117; NYSEO, June 8, 1994, Transcript at 18–19.) The Department considers casement-type units to be air conditioners. Therefore, these units are subject to the currently applicable standards based on unit capacity and the presence or absence of louvered sides and a reverse cycle.

In their February 1997 comments, ACEEE and NRDC stated that a special class set aside for one casement-only model in existence is not necessary. They are concerned that a casement-only unit at an 8.7 EER will be less expensive to produce than a "standard" unit at 9.7 EER. They believe this cost disparity would cause manufacturers to capitalize on this niche class. (ACEEE/NRDC, RAC No. 14 at 2.) AHAM counters that casement units are expensive relative to their capacity and that there would be no economic incentive to exploit this class. Furthermore, casement-only units add a unique utility not provided by casement-slider units. (AHAM, RAC No. 16 at 3.) In addition, in February 1997, Friedrich provided information regarding the relative costs of casement room air conditioners as compared to "standard" models with side louvers and without a reverse valve. This information shows that casement-only and casement-slider room air conditioners are significantly more expensive than units that do not meet the size constraints of casement room air conditioners. (RAC No. 18.) Therefore, the Department has found no economical advantage to using casement-type units at lower energy efficiency ratings for standard room air conditioner applications. Thus, the Department has selected separate classes for casement room air conditioners. DOE has selected the efficiency standard recommended by AHAM, ACEEE, and NRDC for casement-slider units (9.5 EER) (AHAM, RAC No. 6 at 2 and ACEEE/NRDC, RAC No. 5 at 5) and the standard recommended by AHAM for casement-only units (8.7 EER). (AHAM, RAC No. 6 at 2.) However, due to the energy efficiency advocates' concern about the possibility of "loopholes," the Department will monitor market trends for these classes. If it appears that casement units are used in lieu of "standard" units because of differences in energy efficiency standards, the Department will consider the need to set comparable standards during its next review of room air conditioner standards.

AHAM stated that its recommended standards would result in meaningful energy savings but would alleviate the economic burden on manufacturers. AHAM states that in light of the economic burden of chassis size increases, the cumulative burden of other rulemakings, and the relatively modest energy use of room air conditioners that "more stringent standards than that proposed by industry would be unreasonable and unjustified." (AHAM, RAC No. 6 at 1.)

The standards established in today's rule are similar to the standards recommended by AHAM. The Department selected slightly higher standards for the first four classes. AHAM's primary concern was the cost of increasing chassis size. Because the standard levels the Department has selected for the first five classes are based on the life cycle cost minimums when the cost of increasing chassis size is prorated, the Department believes the cost impact is reduced.

5. Other Comments

Effective date of standards. Commenting on the 1994 Proposed Rule, Fedders proposed accelerating the effective date from January 1st to August 1st. It claimed this would prevent manufacturers from producing large quantities of less efficient units during the months of August through December. (Fedders, April 7, 1994, Transcript at 123–124.)

AHAM urged the Department to set an effective date of October 1, 2000, in order to coordinate with manufacturing cycles. AHAM stated that production begins in August or September and runs through June or July. AHAM stated that an arbitrary effective date of 3 years from the date of the rule, and likely in the middle of a manufacturing season, would cause severe economic hardships on manufacturers which are not accounted for in the manufacturing impact analysis. (AHAM, RAC No. 16 at 3.)

The Department agrees, due to the unique seasonal nature of room air conditioners, the effective date should be coordinated with manufacturing cycles. Thus, this rule will take effect on October 1,2000.

Units consuming less than 500 watts. Commenting on the 1994 Proposed Rule, Fedders recommended that room

air conditioners consuming less than 500 watts be exempted from regulation. In support of this recommendation, it stated that a 3000 Btu/h capacity unit at an efficiency of 8.0 EER consumes 375 watts compared to a 5000 Btu/h capacity unit at 11.1 EER that consumes 450 watts. Fedders argued that this exemption would encourage development of units that are smaller and consume less energy and resources. (Fedders, April 7, 1994, Transcript at 122–123.) AHAM, Frigidaire, NRDC, and the ACEEE all opposed the Fedders' recommendation. AHAM disagreed with Fedders' claim that as many as two-thirds of the rooms in which 5000 Btu/h capacity units are installed could be adequately cooled with units as small as 3000 Btu/h. AHAM saw no reason that smaller units should be given an advantage by being exempted from a standard and "strenuously disagreed with Fedders' proposed exemption for models of less than 500 watts." (AHAM, No. 1 at 23 and AHAM, RAC No. 4 at Attachment 1, pg 4.) Frigidaire stated that the recommendation by Fedders is counterproductive to saving energy as, under it, low capacity units of low efficiency will be introduced into the marketplace. (Frigidaire, No. 544 at 11.) The NRDC agreed with the motivation behind Fedders' suggestion but did not agree with the specifics of the recommendation as it would allow the creation of a new market driven entirely by low first cost. NRDC suggested that the Department consider a lower standard for a product class below 4000 Btu/h in capacity based on comparable criteria to the standard set for the below 6000 Btu/h class. (NRDC, No. 55 at 28.) The ACEEE opposed the Fedders' recommendation as it believes it could lead to widespread use of inefficient smaller capacity units. (ACEEE, No. 557 at 22.)

The Department agrees with both AHAM and ACEEE that room air conditioners which consume less than 500 watts should not be exempt from efficiency regulation. The Department recognizes that small capacity units may draw less power than larger capacity systems. But the Department does not agree with Fedders' claims that, for units in the less than 6000 Btu/h class, small capacity units will consume less energy than more efficient, larger capacity systems. In creating a separate product class for units with capacities below 6000 Btu/h, the Department has recognized that small capacity units are used differently than units in larger capacity classes. Applications for small capacity units tend to be for small rooms where the cooling load is relatively low. To further differentiate the less than 6000 Btu/h class by capacity would require field tests demonstrating that there are applications which are suitable specifically for units with extremely small capacities. Such field data has not been presented.

Phase out of HCFC–22. With concern that the phase out[4] of HCFC–22 (the refrigerant used by all room air conditioners) might be accelerated, AHAM recommended, in its comments to the 1994 Proposed Rule, that the Department promulgate a second tier of standard levels for HCFC-free room air conditioners. AHAM stated that some replacement refrigerants show a drop in efficiency of 10 percent. AHAM proposed that the second tier be set initially at 10 percent less than the efficiency standards for room air conditioners using HCFC–22. AHAM proposed that second tier of standards would be effective upon the phase-out date of HCFC–22 and would not be available if the HCFC–22 phase out date is not accelerated. (AHAM, No. 1 at 22,23.) Because compressor testing indicates that alternative refrigerant blends will decrease efficiency, Matsushita commented that any efficiency standards promulgated for room air conditioners should apply only to units charged with HCFC–22. (Matsushita, April 7, 1994, Transcript at 91–92.) Frigidaire urged the Department to consider possible energy penalties for HCFC–22 alternative refrigerants. (Frigidaire, No. 544 at 11.) NRDC did not support creating less stringent standards for room air conditioners using alternative refrigerants. NRDC believed that units with new refrigerant alternatives can attain the same efficiency level as units using HCFC–22. NRDC suggested that the Department collaborate with the Environmental Protection Agency on decisions regarding the phase out of HCFCs. Because the Department must promulgate another rulemaking before a phaseout would occur, NRDC stated that the phase out date of HCFC–22 is not within the period of applicability for room air conditioner efficiency standards. It urged that the Department should not plan around a phase out requirement that does not exist. (NRDC, No. 55 at 27,28.) ACEEE stated that alternative refrigerants, such as AZ–20, have been demonstrated to increase room air conditioner efficiency as compared to HCFC–22. (ACEEE, No. 557 at 21.)

In 1996, Fedders stated it has concern over replacement refrigerants. Fedders commented that the Montreal Protocol may require phase-out sooner than the current phaseout date of 2010. Fedders stated that the industry will be required to do extensive retooling if the new standards cannot be met with replacement refrigerants. Furthermore, Fedders stated that the U.S. is "dangerously close to the legal caps of HCFC chemicals." Fedders was concerned "the EPA will impose restrictions on production, thereby necessitating implementation of replacement refrigerants quickly." Therefore, Fedders recommended maintaining the current energy efficiency regulations until the issues related to refrigerant charges are "resolved and implemented into commerce." (Fedders, RAC No. 7 and RAC No. 8.)

In its comments to the 1996 Draft Report, AHAM stated that the issue of replacement refrigerants is a far more serious problem than the Department acknowledges. It states that because of the size restrictions of room air conditioners and because the compressor and condenser are located in a window, the potential adverse effects of high pressure refrigerants are higher, and low pressure alternates demonstrate efficiency penalties. (AHAM, RAC No. 4 at 5.) In February 1997, AHAM requested that the Department make a provision for compliance problems which may result from the transition to HCFC-free refrigerants.

In their comments to the Draft Report, ACEEE and NRDC stated that because the standard set forth in today's rule will cover the 2000–2005 time period, alternative refrigerants will likely be an issue for the next statutorily required standard review but not this review. In addition, the advocates state that it is unlikely for replacement refrigerants to result in an energy penalty and may result in a slight energy efficiency increase. (ACEEE/NRDC, RAC No. At 3.)

The Department agrees that the phase out date of 2010 for HCFC–22 is far enough in the future that no adjustment to these standards is necessary. Replacements for HCFC–22 are being developed. Concerned over the impact that the phase out of HCFC–22 would have on the unitary air conditioner and heat pump industry, the Air Conditioning and Refrigeration Institute initiated the Alternative Refrigerant Evaluation Program (AREP). AREP has identified several HCFC–22 alternatives. Two of the more promising replacements include a low-glide ternary blend consisting of HFC–32, HFC–125 and HFC–134a refrigerants, and an azeotrope consisting of H.C.-32 and H.C.-125 refrigerants. A detailed discussion of replacement refrigerants can be found on page 1.18 of the TSD.

Although two of the more promising alternatives demonstrate slight disadvantages compared to R–22, the Department expects that the performance characteristics of the available alternative refrigerant blends will improve as more experience is gained with their use in different formulations. The Department does not anticipate a problem with degradation of performance of refrigerants related to the HCFC–22 phaseout. The EPA states that it does not intend to accelerate the HCFC–22 phaseout. (RAC No. 19.) The Department recognizes the possibility that the phaseout date could be accelerated or the availability of HCFC–22 could diminish. DOE will continue to monitor the situation and take appropriate actions.

Based on this information, the Department declines to establish a two tier system that takes into account a possible degradation in system performance using replacement refrigerants.

Exemption of refrigerant-gas free units. Fedders stated that in order to promote the research and development of alternative air conditioning systems, the Department should exempt refrigerant-gas free room air conditioners from efficiency regulation. (Fedders, April 7, 1994, Transcript at 123.)

The Department will not exempt refrigerant-gas free room air conditioners from efficiency regulation because the energy conservation policies underlying the EPCA do not support such an exemption.

Installation Costs. A few commenters opposed the proposed standard because of increased installation costs. (G&S No. 302 at 2; Amana, No. 347 at 2; Southwestern Public Service Co No. 495 at 5; Whirlpool, No. 391A at 4; CHGEC, No. 601 at 1; and AHAM No. 1 for some classes.)

The Department analyzed the net consumer benefit from the imposition of the standards, estimating costs, including installation costs, and benefits to the utility customer, and concluded that the benefits outweighed the increased costs.

6. Other comments regarding FR Notice of January 29, 1997

Southern Company Services, Inc. stated that these standards appear reasonable and economically justified. (Southern Gas, RAC No. 15 at 1.) ACEEE and NRDC stated that the standards the Department indicated it was inclined to select for the final rule were generally reasonable, and they strongly supported those standards for the first five classes. For the remaining classes, they suggested a few changes which were addressed under "Efficiency Standards Recommendations." (ACEEE/NRDC, RAC No. 14 at 3.) AHAM stated that under two critical conditions, the majority of their members accepted the standard levels the Department indicated it was inclined to select in the January 29 notice. These conditions concerned non-HCFC refrigerants and the effective date of the standards, discussed in the previous section. (AHAM, RAC No. 16 at 1) Glenn Schleede of Energy Market & Policy Analysis, Inc. (EM&PA) stated that the economic analysis is based on outdated and invalid assumptions about potential energy costs. Mr. Schleede's comments dealt specifically with: overestimating national energy cost savings; using total residential electricity cost per kilowatt-hour to calculate national and consumer energy savings; the utility impact model; and the variables and assumptions used in the model. Mr. Schleede believes all calculations of life cycle costs, payback periods, and consumer energy cost savings in the TSD are based on unrealistically high estimates of future energy (particularly electricity) prices. He also believes the Department has not "taken into account the interests of real consumers." (EM&PA, RAC No. 17.)

In the analyses for the Draft Report, the Department utilized EIA forecasts that have not yet addressed the possible price effects of the electric utility regulatory reforms and industry restructuring that are anticipated. Due to this and other uncertainties in electricity price forecasts, the Department conducts sensitivity analyses to bound the possible ranges of impacts. The Department intends to increase the use of sensitivity analyses and scenario analyses in future rulemakings. 61 FR at 36987 (to be codified at 10 CFR Part 430, Subpart C, Appendix A, section 11(e)(1)). The Department will continue to examine how to better account for these changes in the future.

Various cases of Net Present Value (NPV) and life-cycle cost sensitivity to changes in energy price and equipment price were analyzed. These sensitivity analyses are discussed in section IV.c.2., "Life-cycle Cost and Net Present Value," of today's rule. These sensitivity analyses included the effect of using the lowest state energy prices on life-cycle cost and the use of energy price projections provided by the Gas Research Institute to calculate NPV and energy savings.

As a complement to energy price sensitivities, the Department calculated the cost of conserved energy (CCE) for its appliance energy-efficiency standards under consideration. The CCE is the increase in purchase price amortized over the lifetime of the appliance. The advantage of the CCE approach is that it does not require assumptions about future energy prices, because it uses only the purchase expense of the efficiency measure and the expected energy savings. The consumer will benefit whenever the cost of conserved energy is less than the energy price paid by the consumer for that end use. The CCE's calculated for the standards set forth in today's rule are all less than the energy prices projected by either the EIA or GRI. See Supplemental tables 4.10–4.18 in the TSD.

For consumer impacts such as payback and changes in life cycle cost, which are measured at the effective date of the standard, the Department believes both fixed and variable costs should be included because these costs are currently reflected in consumer utility bills based on cost-of-service rates. It is not anticipated that the reductions in energy demand resulting from energy efficiency standards for room air conditioners are likely to have any significant effect on consumer electricity rates (or prices).

In estimating the national net present value of the cost savings resulting from more stringent efficiency standards, it may be appropriate to distinguish between the expected cost impacts on individual consumers and the cost impacts on the nation as a whole. To determine whether there is a significant difference between consumer and national cost impacts, it would be necessary to distinguish between the long run fixed and variable costs of serving residential electricity demand. For example, if electricity demand is reduced, utilities will be able to cut back immediately on the fuel used to generate electricity and, over the long run, should also be able to reduce their power generating, transmission and possibly even their distribution capacity. However, reduced demand is unlikely to affect the cost to a utility of billing and servicing individual

[4] The EPA's final rule accelerating the phaseout of ozone-depleting substances bans the production and consumption of virgin HCFC–22 unless it is used as feedstock or in equipment manufactured before January 1, 2010. The final rule also bans the production and consumption of HCFC–22 on January 1, 2020, except for limited exemptions specified by statute. 60 FR 24970 (Wednesday May 10, 1995).

customers. Furthermore, because virtually all consumer electricity rates are still based on average costs and do not reflect the variations in these costs that occur hourly, it is also possible that improving the efficiency of particular appliances will result in significant reductions in the high costs of meeting peak demand or, in other cases, may simply reduce utility base loads (resulting in much lower cost savings). Unfortunately, the Department does not have adequate information upon which to distinguish accurately between consumer cost savings and the cost reductions likely to be experienced by utilities or the nation as a whole. In the absence of such information, the Department believes that its use of retail prices as the basis for calculating the net present value of projected cost savings to the nation (national benefits) is a reasonable approach.

In addition to the impact of energy savings in today's world, there is much speculation as to the impact of electric utility restructuring on future electric rates. However, with federal and state regulations being very undefined, the Department believes it would be pointless to attempt to reflect unknown future electric rate structures in today's analyses. In future rulemakings, the Department will consider such impacts as they become evident. The Department concludes from the information set forth above that it is properly calculating consumer energy cost savings and national net present value.

With regard to the variables and assumptions used in the models, the assumptions regarding discount rates have been discussed extensively, and DOE used the discount rates it determined to be most appropriate. For future rulemakings, the Department always seeks and welcomes the most current information regarding its models and will continue to improve them.

b. General Analytical Comments

This section discusses the general analytical issues raised by the comments to the 1994 Proposed Rule.

The Engineering Analysis identified design options for improvements in efficiency along with the associated costs to manufacturers for each class of product. For each design option, these costs constitute the increased per-unit cost to manufacturers to achieve the indicated energy efficiency levels. Manufacturer, wholesaler, and retailer markups will result in a consumer purchase price higher than the manufacturer cost.

In the analysis which supported the Draft Report, the Department used a computer model that simulates a hypothetical company to assess the likely impacts of standards on manufacturers and to determine the effects of standards on the industry at large. This model, the Manufacturer Analysis Model (MAM), is described in the TSD. (See TSD, Appendix C.) It provides a broad array of outputs, including shipments, price, revenue, net income, and short- and long-run returns on equity. An "Output Table" lists values for all these outputs for the base case and for each of the five standard levels analyzed. It also gives a range for each of these estimates. The base case represents the forecasts of outputs with a range of energy efficiencies which are expected if there are no new or amended standards. A "Sensitivity Chart" (TSD, Appendix C) shows how returns on equity would be affected by a change in any one of the nine control variables of the model. The Manufacturer Analysis Model consists of 13 modules. The module which estimates the impact of standards on total industry net present value is version 1.2 of the Government Regulatory Impact Model (GRIM), dated March 1, 1993, which was developed by the Arthur D. Little Consulting Company (ADL) under contract to AHAM, the Gas Appliance Manufacturers Association (GAMA), and the Air-Conditioning and Refrigeration Institute (ARI). (See TSD, Appendix C for more details.)

Arthur D. Little, Inc. (ADL) submitted comments on the 1994 Proposed Rule on behalf of AHAM, the Air-Conditioning and Refrigeration Institute (ARI), and the Gas Appliance Manufacturers Association (GAMA.) ADL and others criticized the methodology and analytical models used to assess standards. These comments raised concerns about the determination of the impact of standards on manufacturers, particularly the way the Department used the GRIM developed by industry, and the failure to consider the impact of multiple DOE and other agency regulations. Other analytical issues raised included the determination of consumer paybacks from energy savings, expected life of the product, economic assumptions, the use of prototypical firms, and other assumptions and variables used in the simulation model. (ADL, No. 665 at 1, 8–10, 14-19; AHAM, Transcript April 7, 1994, at 173.) Amana commented that historical models are difficult to construct and that prices fluctuate, and therefore, the Department should not "place too much stock in computer models." Basing its statement on the consumer price index (CPI), producer price index (PPI), and average energy use trends, Amana also stated that there is no evidence to suggest that capital cost increases due to efficiency improvements are passed on to the consumer. (Amana, No. 347 at 2–3.)

In implementing the Process Rule, the Department is now undertaking a review of the manufacturing impact analysis model and methodologies. In developing its new methodology, the Department will take into account the comments received concerning its methodology. However, while DOE is committed to working with the interested public to improve these analytical tools, DOE believes the analytical approach used in conjunction with the Draft Report is a reasonable basis for assessing manufacturer impact.

The Department recognizes that the manufacturers disagreed with the analytical method used in the 1994 Proposed Rule and the Draft Report regarding impacts on manufacturers. However, the Department assumes that the standards recommended by AHAM would not have adverse impacts on the industry or the individual manufacturers. The standards the Department sets forth in today's rule are quite similar to those recommended by AHAM. The Department has selected slightly higher (0.2–0.3 EER) standards than those standards proposed by AHAM for the classes 1 through 4. AHAM's primary concern was the impact of the cost of chassis size increases on manufacturers. The Department took into consideration a graph provided by AHAM which shows the percent of production requiring a chassis size change at each EER level. In selecting the standard levels for classes 1 through 4, the Department, in an effort to mitigate the identified cost impact on manufacturers, was careful to avoid any significant increase in the percentage of production requiring a chassis size change.

ACEEE recommended that DOE compile the best available data on two key variables: markup from manufacturer to the consumer and changes in purchase patterns in response to efficiency-induced price increases. This data should be used for the current analysis in both the Government Regulatory Impact Model (GRIM) and the Manufacturer Impact Model (MIM.) Over the long term, ACEEE suggested that DOE work with industry to co-fund a study on consumer purchase behavior in response to efficiency-induced price increases that would help improve the usefulness of both GRIM and MIM. (ACEEE, No. 557 at 5.)

DOE has decided to integrate the GRIM with the MIM which has resulted in the development of a new model entitled the Lawrence Berkeley Laboratory Manufacturer Analysis Model (LBL–MAM.) The Department will continue in its efforts to collect the best available data on markups to use in its analytical tools. With regard to consumer response to efficiency-induced price increases, the Department's consumer analysis contains, for each covered product, values that represent the likely response. These values were originally estimated by analyses of data concerning product purchases during the 1970's and have been updated. The Department continues attempting to update its assumptions where updates are warranted and welcomes ACEEE's suggestions. DOE will explore the feasibility of a cooperative study on empirically-verifiable updates on price elasticity.

IV. Analysis of Room Air Conditioner Standards

Revised standards for room air conditioners shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. These and related statutory criteria are addressed below.

a. Efficiency Levels Analyzed

The Department examined a range of standard levels for room air conditioners. Table 4–1 presents the five efficiency levels selected for analysis in the Draft Report, as well as the supplemental efficiency level. Level 5 corresponds to the highest efficiency level, max tech, considered in the engineering analysis. The Final TSD contains the information analyzed in the Draft Report and the supplemental analysis.

After analyzing the comments received concerning the Draft Report, the Department decided to analyze an additional standard level, defined as the supplemental level. The Department calculated the energy savings, net present value, life-cycle cost, life-cycle cost sensitivity to energy prices, payback period, and environmental emissions reduction for this supplemental standard level. These tables can be found in the Supplemental section of the TSD.

TABLE 4–1.—STANDARD LEVELS ANALYZED FOR ROOM AIR CONDITIONERS

Product class	Level 1	Level 2	Suppl. level	Level 3	Level 4	Level 5
Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	9.32	9.71	9.7	10.00	10.38	11.74
Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	9.38	9.66	9.7	9.91	10.33	11.67
Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	9.71	9.85	9.8	10.11	10.97	12.39
Without louvered sides, with reverse cycle, and 14,000 to 19,999 Btu/h	9.70	9.98	9.7	10.15	10.15	12.77
Without reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.39	8.39	8.5	8.51	8.88	11.14
Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	9.10	9.10	9.0	9.23	9.23	11.52
Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	9.10	9.10	9.0	9.23	9.23	11.52
Without reverse cycle, without louvered sides, and 8,000 to 13,999 Btu/h	8.80	9.05	8.5	9.12	9.12	11.08
Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	8.80	9.05	8.5	9.12	9.12	11.08
Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	8.80	9.05	8.5	9.12	9.12	11.08
With reverse cycle and with louvered sides	9.05	9.05	9.0	9.27	9.27	11.16
With reverse cycle and without louvered sides	8.72	8.72	8.5	8.86	8.86	10.87

Rather than presenting the results for all classes of room air conditioners in today's rule, the Department selected a class of room air conditioners as being representative, or typical, of the product and is presenting the results only for that class. The results for the other classes can be found in the TSD in the same sections as those referenced for the representative class. The representative class for room air conditioners is units with side louvers, without a reverse cycle, and with a capacity of 8,000–13,999 Btu per hour. This class of room air conditioners has the largest sales volume. For this representative class, trial standard level 1 accomplishes efficiency improvements from the baseline by increasing the compressor EER to 10.8; level 2 adds a subcooler; level 3 adds evaporator and condenser grooved tubing; level 4 increases the evaporator and condenser coil area; and level 5 adds a variable-speed compressor and brushless permanent magnet fan motor. Similar design options are used to achieve the above efficiencies for the other classes and are found tabulated in Section 1.5 of the TSD. The supplemental level was not based on any specific configuration of design options, but rather it resulted from consideration of the comments DOE received regarding the Draft Report. The analysis used in the Draft Report became the basis for the TSD. Consequently, calculations in the TSD and today's rule are based on those energy price forecasts from the 1995 Annual Energy Outlook (AEO) of the Energy Information Administration (EIA) , the current forecast at the time of the analysis, unless otherwise noted. (DOE/EIA–0383(95)). Supplemental calculations were performed where the Department determined it would be appropriate to reflect the most current prices.

The Department believes that all the standard levels it examined are technologically feasible. The only questions which were raised by commenters about technological feasibility pertained to Brushless Permanent Magnetic (BPM) fan motors and variable speed compressors. These

design options were only considered at the most stringent standard levels.

b. Significance of Savings

Under section 325(o)(3)(B) of EPCA, the Department is prohibited from adopting a standard for a product if that standard would not result in "significant" energy savings. The Department forecasted energy consumption by the use of the LBL–REM. (See Appendix B of the TSD.) To estimate the energy savings by the year 2030 due to revised standards, the energy consumption of new room air conditioners under the base case is compared to the energy consumption of those sold under the candidate standard levels. For the candidate energy conservation standards, the Lawrence Berkeley Laboratory-Residential Energy Model projects that over the period 1999–2030, the following energy savings would result for all classes of the product:

Level 1—0.36 Quad
Level 2—0.52 Quad
Supplemental Level—0.49 Quad
Level 3—0.69 Quad
Level 4—0.96 Quad
Level 5—0.72 Quad

The preceding values of energy savings use AEO 1995 energy price forecasts; however, calculating the energy savings for the supplemental level using AEO 1997 produces an energy savings of 0.64 Quad.[5]

While the term "significant" is not defined in EPCA, the U.S. Court of Appeals for the District of Columbia Circuit concluded that Congress intended the word "significant" to mean "non-trivial." *Natural Resources Defense Council* v. *Herrington*. 768 F.2d 1355, 1373 (D.C.Cir. 1985). Thus, for this rulemaking, DOE concludes that each standard level considered results in significant energy savings.

c. Economic Justification

Section 325(o)(2)(B) of EPCA provides seven factors to be evaluated, to the greatest extent practicable, in determining whether a conservation standard is economically justified.

1. Economic Impact on Manufacturers and Consumers

The engineering analysis identified improvements in efficiency along with the associated costs to manufacturers for each efficiency level for each class of product. For each design option, these associated costs constitute the increased per-unit cost to manufacturers to achieve the indicated energy efficiency levels. Manufacturer, wholesaler, and retailer markups will result in a consumer purchase price higher than the manufacturer cost.

To assess the likely impacts of standards on manufacturers and to determine the effects of standards on different-sized firms, the Department used a computer model that simulates hypothetical firms in the industry under consideration. This model, the Manufacturer Analysis Model (MAM), is explained in the TSD. (See TSD, Appendix C.)

For consumers, measures of economic impact are the changes in purchase price, annual energy expense, and installation costs. The purchase price, installation cost, and cumulative annual energy expense, i.e., life-cycle cost, of each standard level are presented in Chapter 3 of the TSD. Under section 325 of the EPCA, the life-cycle cost analysis is a separate factor to be considered in determining economic justification.

The per unit increased costs to manufacturers to meet the efficiency of levels 1–5 for the representative class are $6.11, $8.37, $13.17, $47.09, and $242.52, respectively. The increased per unit cost for the supplemental level falls within the range of $6–$9 for the representative class. See Tables 1.10–1.18 in the TSD.

The consumer price increases for the representative class are estimated to be $11, $15, $23, $82, and $434 for standard levels 1–5, respectively. The consumer price increase for the supplemental level is estimated to be $13. See Tables 4.1–4.9 and Supplemental Tables 4.1–4.9 in the TSD.

The per-unit reduction in annual costs of operation (i.e., energy expense) for the representative class are $2, $3, $4, $8, and $13 for standard levels 1–5, respectively, and $2.5 for the supplemental level. See Tables 4.1–4.9 and Supplemental Tables 4.1–4.9 in the TSD.

The Lawrence Berkeley Laboratory-Manufacturer Impact Model results for all classes of room air conditioners show that revised standards could cause a prototypical manufacturer to have some reductions in short-run return on equity from the 10.9 percent return in the base case. Standard levels 1 through 5 are projected to produce short-run returns on equity of 10.7 percent, 10.6 percent, 10.5 percent, 8.8 percent, and 0.13 percent, respectively. The short-run return on equity for the supplemental level is projected to be in the range of 10.5–10.7 percent. Revised standards have little or no effect on the prototypical manufacturer's long-run return on equity. Standard levels 1 through 5 are projected to produce long-run returns on equity of 10.8 percent, 10.8 percent, 10.8 percent, 10.3 percent, and 7.2 percent, respectively. For the supplemental level the long-run return on equity would also be approximately 10.8 percent. See Tables 5.1 and 5.3 in the TSD.

2. Life-cycle Cost and Net Present Value

One measure of the effect of proposed standards on consumers is the change in life-cycle costs, including recurring operating expenses, the purchase price, and the installation costs resulting from the new standards. The change in life-cycle cost is quantified by the difference in the life-cycle costs between the base case and candidate standard case for each of the product classes analyzed. The life-cycle cost is the sum of the purchase price and the cumulative operating expense, including installation and maintenance expenditures, discounted over the lifetime of the appliance. The life-cycle cost was calculated for the range of efficiencies analyzed in the "Engineering Analysis" section of the TSD, for each class, in the year standards are imposed, using real consumer discount rates of six percent.

For the representative class, life-cycle costs at standard levels 1–3 as well as the supplemental level are less than the baseline unit. Standard level 1 would reduce life-cycle costs for the average affected consumer of $6.76 for the representative class of room air conditioner; standard level 2 would reduce average life-cycle costs by $6.67, standard level 3 by $8.48, and the supplemental level by $6.59; for standard levels 4 and 5, the life-cycle costs are projected to increase $19.4 and $328, respectively, compared to the base case. Of the five candidate standard levels, a unit meeting standard level 3 would have the lowest consumer life-cycle cost for the representative class. See Figures 4.4, Tables 4.1–4.18, and Supplemental Tables 4.1–4.18 in the TSD.

The Department's baseline method of analysis[6] calculated costs of increasing chassis size at the standard level at which the baseline required a chassis size change. This analysis produced the preceding values for life-cycle cost. In addition, AHAM provided analysis in which the cost of increasing chassis size was prorated at each standard level. Using this method and the data provided by AHAM (AHAM, RAC No. 9 at Attachment 3A), for classes 1–5, which make up 85 percent of the shipments, the supplemental standard level has the lowest life-cycle cost when prorating chassis size cost.

The Department examined the effect of different discount rates (2, 6, and 15 percent) on the life-cycle cost curves and generally found little impact. See Figures 4.1–4.9 in the TSD. Life-cycle cost sensitivity to changes in energy price and equipment price were analyzed. See Figure 4.10, Table 4.19, and Supplemental Table 4.19 in the TSD. This analysis shows that the life-cycle cost minimums remain unchanged at high energy prices. For low State energy prices, any increase in standard above the baseline, shows a life-cycle cost increase; however, through standard level 3, this increase is less than $3 (and approximately $1 for the standards in today's rule).

As previously addressed under Discussion of Comments, the Department also calculated life cycle costs and paybacks using energy prices calculated by the Gas Research Institute (GRI). (See the Supplemental Sensitivity Analysis subsection of the TSD.) The life-cycle minimums resulting from the GRI projections remain unchanged from the analysis using the AEO price forecasts. The payback periods increase slightly, using the GRI forecasts, but remain well within the expected lifetime of the product.

The Net Present Value analysis, a measure of the net savings to society, indicates that for all classes of room air conditioners, standard level 1 would produce an NPV of $0.40 billion to consumers. The corresponding net present values for standard levels 2–5 are $0.54 billion, $0.59 billion, $−0.26 billion, and $−10.9 billion, respectively (based on AEO 1995 energy price projections). See Table 3.6 in the TSD. The NPV for the supplemental level is $0.51 billion using AEO 1995, for basis of comparison. Using AEO 1997 data, the NPV of the supplemental level is calculated to be $0.45 billion. See the Supplemental Sensitivity Analysis subsection of the TSD.

A sensitivity analysis was also conducted for energy savings and Net Present Value (NPV), using GRI forecasts for the following cases: the GRI fuel price projection, low equipment price, high equipment price, and high efficiency trend. (See the Supplemental Sensitivity Analysis subsection of the TSD.) The results of this analysis show that although the NPV and energy savings change in each scenario, both the NPV and the energy savings remain positive, indicating an overall benefit to the consumer and the nation.

3. Energy Savings

EPCA requires DOE to consider the total projected energy savings that result from revised standards. The Department forecasted energy consumption through the use of the LBL–REM. (See Appendix B of the TSD for a detailed discussion of the LBL–REM.) The projected savings using AEO 1997 is 0.64 Quad for the supplemental level. See Supplemental Table 3.97 in the TSD. Also, see section IV.c. in today's rule for the energy savings of the other efficiency levels.

4. Lessening of Utility or Performance of Products

In establishing classes of products and design options, the Department tried to eliminate consideration of any design option that would result in degradation of utility or performance. Thus, a separate class with a different efficiency standard was created for a product where the record indicated that the product included a utility or performance-related feature that affected energy efficiency. For example, the Department added classes for casement-only and casement-slider room air conditioners. These room air conditioners offer the unique utility of fitting into slider and casement windows. In this way, the Department attempted to minimize the impact of amended standards on the utility and performance of room air conditioners.

5. Impact of Lessening of Competition

The Energy Policy and Conservation Act directs the Department to consider the impact of any lessening of competition that is likely to result from the standards, as determined by the Attorney General.

In a letter dated September 16, 1994, the Department of Justice (DOJ) expressed concern about the effects the standards proposed in the 1994 Proposed Rule might have on industry. DOJ stated that there was evidence that some of the design options suggested in the 1994 Proposed Rule were less effective and more costly than the TSD indicated and that manufacturers may, among other things, need to redesign the chassis of some classes to comply with the standard. DOJ concluded that such redesigns could add to unit installation costs, make units larger and more cumbersome to install, and otherwise depress demand. Furthermore, DOJ noted evidence that at least one product, the five thousand Btu/h unit, may cease to be manufactured if the standard proposed in 1994 were adopted. DOJ was also concerned about the availability and efficacy of some design options suggested in the TSD for the Proposed Rule. DOJ concluded that the proposed standard could have a substantial negative impact on demand and rates of return, and could cause one or more firms to cease the manufacture and sale of some of these products, thus lessening competition. (DOJ, No. 840 at 5.) The September 16, 1994, letter is printed at the end of today's rule.

The Department of Justice comments were based on the standards proposed in the 1994 Proposed Rule. The revised analysis contained in the 1996 Draft Report and the supplemental analysis, and commented upon by the public, addressed many of the concerns raised by DOJ. The standards promulgated in today's final rule have been adjusted from the proposed standards in order to mitigate the types of concerns raised by DOJ. For example, the Final Rule sets the same standard level for class 1 as for class 2, addressing the concern that class 1 units would be eliminated from the marketplace as a result of the revised standards. The Department's revised analysis addressed concerns about the installation costs and chassis size increases, and the standards in the Final Rule reflect this revised analysis. The manufacturing impact analysis shows no significant shifts in manufacturer rates of return under the supplemental standards level. Thus, the Department of Energy concludes that the concerns raised by the DOJ have been addressed, and DOE does not expect competition to be negatively impacted by this final rule.

6. Need of the Nation to Save Energy

Enhanced energy efficiency improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts of energy production. In 1997, 3.4 percent of residential sector electricity consumption (corresponding to 0.38

[5] AEO 1995 projected higher energy prices in the future as compared to AEO 1997. Consequently, using AEO 1995 projections, a larger percentage of consumers are projected to purchase higher efficiency room air conditioners in the absence of standards (in the base case), as compared to the base case using AEO 1997 projections. This relative difference results in a larger projected energy savings between the base case and the standards case using AEO 1997 projections as compared to AEO 1995 projections.

[6] The engineering analysis is conducted on the basis of selecting a representative "baseline" unit for each room air conditioner product class. The selected "baseline" unit is an actual room air conditioner model that has an EER close to the existing minimum efficiency standard and a cooling capacity that is representative of most units in the product class. The physical characteristics of the "baseline" unit (e.g., compressor efficiency and heat exchanger design) dictate which design options can be considered to improve its efficiency and at what rate the manufacturer cost will be increased. The selected "baseline" unit's physical make-up is known not to be representative of all minimum efficiency equipment in its product classes. But because its EER and capacity are representative, it is assumed that the design options that are added to improve its efficiency will yield a manufacturer cost vs. efficiency relationship that is representative of all "baseline" units in the product class, irrespective of physical design.

quad source energy) was accounted for on a national basis by room air conditioners. The Department estimates that over 30 years the revised standards will save approximately 0.64 quads of primary energy.

7. Other Factors

Decreasing future electricity demand by means of standards will decrease air pollution. Standards will result in a decrease in nitrogen dioxide (NO_x) emissions. For standard levels 1–5, over the years 2000 to 2030, the total estimated NO_x emission reduction would be 55,000 tons; 80,000 tons; 104,000 tons; 141,000 tons; and 60,000 tons, respectively. For the supplemental level the reduction is estimated at 74,000 tons using the AEO 1995 energy prices and 95,000 tons using AEO 1997 energy prices. See Tables 7.1–7.5 and Supplemental Tables 7.6 and 7.7 in the TSD.

d. Payback Period

Another consequence of the standards will be the reduction of carbon dioxide (CO_2) emissions. For standard level 1, over the years 2000 to 2030, the total estimated CO_2 emission reduction would be 30 million tons. For standard levels 2–5, the reductions would be 44 million tons; 57 million tons; 79 million tons; and 55 million tons, respectively. For the supplemental level the reduction is estimated at 41 million tons using AEO 1995 energy prices and 54 million tons using AEO 1997. See Tables 7.1—7.5 and Supplemental Tables 7.6 and 7.7 in the TSD.

Energy associated with these standards would also reduce the costs associated with SO_2 compliance.[7] See Tables 7.1—7.5 and Supplemental Tables 7.6 and 7.7 in the TSD.

[7] Decreases in SO_2 emissions will not occur because the Clean Air Act places a ceiling on SO_2 emissions that will be met under any regulatory regime. In the case of SO_2 therefore, the emissions reductions should be interpreted as reduced costs to electricity generators for controlling SO_2. For all classes of room air conditioners, over the years 2000 to 2030, the estimated need to control SO_2 is estimated to be reduced by 59,000 tons; 86,000 tons; 111,000 tons; 149,000 tons; and 43,000 tons, for levels 1–5, respectively. For the supplemental level the reduction is estimated at 79,000 tons. However, using AEO 1997, the reduction is estimated at 100,000 tons. This reduced need to control emissions will be reflected in lower costs of pollution control at utilities or lower price allowances.

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then it is presumed that such standard is economically justified.[8] EPCA, Section 325(o)(2)(B)(iii), 42 U.S.C. 6295(o)(2)(B)(iii). This presumption of economic justification can be rebutted upon a proper showing. Failure to qualify for this presumption shall not be taken into consideration in determining whether a standard is economically justified. *Id.*

[8] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures. Therefore, the consumer is assumed to be an "average" consumer as defined by the DOE test procedures. Consumers who use the products less than the test procedure assumes will experience a longer payback while those who use them more than the test procedure assumes will have a shorter payback.

Table 4.2 presents the payback periods[9] for the efficiency levels analyzed for the representative class of the product. For this representative class, none of the standard levels satisfy the rebuttable presumption test. Standard level 4 meets the rebuttable presumption criteria for classes 4 and 12. Standard level 3 meets the rebuttable presumption criteria for classes 1, 4 and 12. The standards set forth in today's rule meet the rebuttable presumption criteria for classes 1, 2, 4, 8–10, and 12. Payback periods for all classes of room air conditioners may be found in Tables 4.10—4.18 and Supplemental Tables 4.10—4.18 in the TSD.

[9] These payback periods are weighted averages. They compare the portion of the projected distributions of designs in the base case that are less efficient than the standard level to the design at the standard level. Designs with energy consumption at or below the standard level are not affected by the standard and are excluded from the calculation of impacts.

TABLE 4–2.—PAYBACK PERIODS OF DESIGN OPTIONS (YEARS) FOR THE REPRESENTATIVE CLASS OF ROOM AIR CONDITIONERS

Standard level	Payback period
1	3.8
2	3.9
Supplemental	3.8

[10] This value was calculated using AEO 1997 and factoring in the offset from the increased use of central air conditioners and heat pumps.

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TABLE 4–2.—PAYBACK PERIODS OF DESIGN OPTIONS (YEARS) FOR THE REPRESENTATIVE CLASS OF ROOM AIR CONDITIONERS—Continued

Standard level	Payback period
3	4.2
4	8.3
5	27.2

e. Conclusion

1. *Additional Product Classes.* The Department has added four new product classes. First, the Department is adding two classes for casement-type units because of the unique utility they offer the consumer. The size limitations imposed on casement-type units are more significant than the limitations of typical units designed for double-hung windows, and the performance-related feature (fitting into casement windows) justifies a lower efficiency standard. The two additional product classes for casement units are casement-only units and casement-slider units. In today's rule, definitions for these terms are being added to Section 430.2 Subpart A of 42 U.S.C. 6291–6309. For today's rule, the Department has selected the efficiency standard recommended by AHAM, ACEEE, and NRDC for casement-slider units (9.5 EER) (AHAM, RAC No. 6 at 2 and ACEEE/NRDC, RAC No. 5 at 5) and the standard recommended by AHAM for casement-only units (8.7 EER). (AHAM, RAC No. 6 at 2.)

Second, the Department is splitting each of two classes for reverse cycle units into two classes. Splitting of these two classes accommodates the concerns expressed in public comments. The class of units with a reverse cycle and louvered sides is split between capacities of less than 20,000 Btu/h (class 11) and 20,000 Btu/h or more (new class 13). The class of units with reverse cycle and without louvered sides is split between capacities of less than 14,000 Btu/h (class 12) and capacities of 14,000 Btu/h or more (new class 14).

2. *Standards.* Section 325(o)(2)(A) of the Act specifies that the Department must establish standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." EPCA, section 325(o)(2)(A). Technologically feasible design options are "technologies which can be incorporated in commercial products or in working prototypes." 10 CFR part 430, Appendix A to Subpart C, 4(a)(4)(I).

A standard level is economically justified if the benefits exceed the burdens. EPCA, section 325(o)(2)(B)(I).

A maximum technologically feasible (max tech) design option was identified for each class of room air conditioners. The max tech levels were derived by adding energy-conserving engineering design options to the baseline units for each of the respective classes in order of decreasing consumer payback. The max tech level includes higher efficiency fan motors, which were added as one of the first design options, and variable speed compressors, which were added as one of the last design options because of their slower payback. A complete discussion of each max tech level, and the design options included in each, is found in the *Engineering Analysis* in the TSD, Chapter 3.

Table 5–1 presents the max tech performance levels for all classes of the subject product:

TABLE 5–1.—MAXIMUM TECHNOLOGICALLY FEASIBLE STANDARD LEVELS FOR ROOM AIR CONDITIONERS EXPRESSED IN ENERGY EFFICIENCY RATIO

Product class	Energy efficiency ratio
Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	11.7
Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	11.7
Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	12.4
Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	12.8
Without reverse cycle, with louvered sides, and 20,000 Btu/h or more	11.1
Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	11.5
Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	11.5
Without reverse cycle, without louvered sides, and 8,000 to 13,999 Btu/h	11.1
Without reverse cycle, without louvered sides, and 14,000 to 19,000 Btu/h	11.1
Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	11.1
With reverse cycle and with louvered sides	11.2
With reverse cycle and without louvered sides	10.9

Accordingly, the Department first considered the max tech level of efficiency, i.e., standard level 5. Of the standard levels analyzed, level 5 would save the most energy (4.1 quads between 1999 and 2030.) However, because many consumers would not purchase room air conditioners due to the high first cost associated with this standard level, purchases of central air conditioners and heat pumps will increase, resulting in a reduction of savings for room air conditioners. After accounting for this offset, the net savings is 0.72 quad. Also, in order to meet this standard, the Department assumes that all room air conditioners would incorporate larger and improved heat transfer devices in addition to high efficiency, variable-speed fan motors and compressors. However, at this standard level, the payback period of 27 years for the representative class, and up to 107 years for other classes, exceeds the 12.5-year life of the product. The life-cycle cost increases are $328 for the representative class and up to $911 for other classes. This level also drives the short-run manufacturer return on equity from 10.9 percent to 0.13 percent. The Department therefore concludes that the burdens of standard level 5 for room air conditioners outweigh the benefits and that this standard level is not economically justified, and thus the Department rejects the standard level.

The next most stringent standard level is standard level 4. This standard level is projected to save 1.34 quads of energy. However, many consumers would not purchase room air conditioners due to the high first cost associated with this standard level, resulting in increased purchases of central air conditioners and heat pumps and a reduction of savings for room air conditioners. After accounting for this offset, the savings are 0.96 quad. For the representative class this level produces a life-cycle cost increase of $19 compared to the base case. Classes 4 and 12 meet the rebuttable presumption criteria. However, the payback period for the representative class is 8.3 years, with payback periods of up to 10.6 years for the other classes (80 percent of the average product lifetime of 12.5 years). This level also reduces manufacturer short-run return on equity from 10.9 percent to 8.8 percent, a reduction of nearly 20 percent. The Department therefore, concludes that the burdens of standard level 4 for room air conditioners outweigh the benefits and that this standard level is not economically justified, and thus the Department rejects the standard level.

The next most stringent standard level is standard level 3. Standard level 3 is projected to save 0.79 quad of energy. After accounting for the increased use of central air conditioners and heat pumps, the savings become 0.69 quad. For the representative class, the analysis shows this level produces a life-cycle cost decrease of $8.5 compared to the base case and a payback of 4.2 years. This standard level meets the rebuttable presumption criteria for classes 1, 4 and 12. The manufacturer impact analysis for this level shows a manufacturer short-run return on equity reduction from 10.9 percent to 10.5 percent. Although the feedback generated from the LBL-MAM indicated acceptable manufacturer impact, the comments received from manufacturers on the 1996 Draft Report indicated burdens to manufacturers which were not identified by the model. The Department believes these impacts must be considered. A class-specific approach was taken to consider these impacts.

For classes 1 through 5, the manufacturers disagreed with the Department's baseline method of analysis wherein, for each class, a specific model was simulated for improvement up to and including a chassis size change, when necessary for that model. AHAM commented that this method does not adequately account for the cost of increasing chassis size. AHAM believes the cost of increasing chassis size should be prorated for each efficiency level analyzed, because at each efficiency improvement, some models within each class would need to undergo a chassis size change, even though the specific model being analyzed did not necessarily need a chassis size change. AHAM provided the Department with a graph depicting the percent of production required to change chassis size at each standard level for each of the first five classes. (AHAM, No, 1 at 14.) AHAM calculates that efficiency level 3 would require 39 percent of production to move to a larger chassis size. However, because the baseline method of analysis does not prorate the cost at each level, the impact of 39 percent of production requiring a

larger chassis is not considered by the model. (AHAM, No. 4 at 3.)

For classes 6 through 12, AHAM argues that because the engineering simulation model was designed using units with louvered sides and without a reversing valve, the simulation does not provide a good simulation for units without louvers or units with a reversing valve. AHAM commented that this inaccuracy understates the extreme differences between the air flow patterns on the condenser side of units with and without louvers, as well as the refrigeration circuit restrictions caused by the reversing valve and concessions made to balance both cooling and heating in one unit. As addressed in section III, "Discussion of Comments," manufacturers emphasize that increasing the standards could eliminate higher capacity models from the market due to the impracticality of increasing the chassis size for these units. (AHAM, RAC No. 4 at 3–4.)

For these reasons, the Department concludes the burdens of standard level 3 outweigh the benefits and that the standard level is not economically justified, and thus, the Department rejects this standard level.

Based on the comments received regarding the 1996 Draft Report, the Department next considered a supplemental efficiency level. The comments the Department received in response to its 1996 Draft Report contained recommended standards from AHAM and from ACEEE and NRDC. These recommended standards fell in the range between efficiency levels 1, 2 and 3, depending on the product class.

For classes with louvered sides and without a reversing valve, ACEEE and NRDC recommended 10.0 EER for the first four classes, while AHAM recommended 9.5 EER for the first four classes. For class 5, all three organizations supported an 8.5 EER. AHAM calculated the life cycle costs when prorating the cost of increasing the chassis size for each of the efficiency levels. The life cycle cost minimums fell in the 9.7–9.8 range for the first four classes and 8.5 EER for class 5. The Department concluded that these life-cycle cost minimums should be considered in the supplemental efficiency level.

For classes without louvered sides and without a reverse cycle, the Department also received comments and recommendations for efficiency standards. For most of these classes, both AHAM and the efficiency advocates agreed upon standard levels. Consequently, these levels were selected for the Department's supplemental efficiency level. For class 8, upon which AHAM and the efficiency advocates had differing recommendations, the Department concluded, after analyzing the AHAM Directory, that there is evidence that increasing standards for units without louvers and without reverse cycle may result in eliminating higher capacity units from the market. Thus, the Department chose 8.5 EER for this class.

For classes with a reverse cycle, the Department again took the comments and recommendations it received into consideration in adding and establishing efficiency levels to examine as part of the supplemental efficiency level. In response to public comment, the Department split the two classes for reverse cycle units in order to address the concerns of AHAM, ACEEE, and NRDC.

After carefully considering the analysis, the Department is amending the existing statutory standard for room air conditioners with the supplemental standard level for room air conditioners. The Department concludes that the supplemental standard level for room air conditioners saves a significant amount of energy and is designed to be technologically feasible and economically justified.

This level of efficiency will result in significant energy savings. During the period 2000—2030, these savings are calculated to be 0.64 quad [10] of primary energy. In addition, the standard is expected to have a positive effect on the environment by reducing the emissions of NO_X and CO_2 by 95,000 tons and 54 million tons, respectively.

The technologies that are necessary to meet this standard are presently available. The Department finds this level to be economically justified. The consumer payback of this standard level is 3.8 years for the representative class and no more than 5 years for any class. This standard is at or close to the lowest life-cycle cost for all classes and is expected to result in a reduction in life-cycle cost of approximately $6.6 for the representative class and up to $23 for the other classes. Additionally, the standard is expected to have a small impact on the prototypical manufacturer's short run return on equity and no impact on their long run return on equity, as calculated by the Department. Furthermore, the efficiency levels are reasonably close to the standards recommended by AHAM, which presumably reflect acceptable manufacturer impacts. Although stakeholder consensus was not reached, the public comments converged following the reanalysis, meetings with stakeholders, and the notice reopening the comment period. The efficiency levels selected for today's rule fall within the small range of difference between the stakeholder recommendations. These efficiency levels address the concerns raised by the Department of Justice with regard to the standards in the 1994 Proposed Rule. In addition, since this standard does not involve substantial redesign or retooling, the Department expects that it will not have negative impacts on smaller competitors. Moreover, for classes 1, 2, 4, 8–10, and 12 there is a payback period of less than 3 years and thus a presumption of economic justification. For these reasons, DOE concludes that these standard levels are economically justified and thus promulgates them as revisions to the existing standards.

[10] This value was calculated using AEO 1997 and factoring in the offset from the increased use of central air conditioners and heat pumps.

V. Procedural Issues and Regulatory Review

a. Review Under the National Environmental Policy Act

In issuing the proposed rule, the Department prepared an Environmental Assessment (EA) (DOE/EA–0819) that was published within the Technical Support Document for the Proposed Rule. (DOE/EE–0009, November 1993.) The environmental effects associated with various standard levels were not found to be significant, and a Finding of No Significant Impact (FONSI) was published. 59 FR 15868 (April 5, 1994).

In conducting the analysis for the final rule, the Department evaluated several design options suggested in comments on the proposed rule. As a result, the energy savings estimates and resulting environmental effects in the final rule differ somewhat from those presented in the proposed rule. For example, by the year 2030, the reductions in nitrogen dioxide (NO_2) and carbon dioxide (CO_2) emissions from the standard on room air conditioners are expected to be 95,000 tons and 54,000,000 tons respectively. The environmental effects expected from the final rule fall within ranges of environmental impacts that DOE found in the FONSI not to be significant.

b. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's regulatory action has been determined to be an "economically significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993.) Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

Pursuant to E.O. 12866, DOE prepared a draft regulatory analysis. Six major alternatives were identified by DOE as representing feasible policy alternatives for achieving consumer product energy efficiency. Each alternative was evaluated in terms of its ability to achieve significant energy savings at reasonable costs and has been compared to the effectiveness of the rule. 59 FR 10464, 10525–6 (March 4, 1994.) No new data has been received concerning this review, and no substantive changes have been made to this action since the review of the draft by OIRA. The non-regulatory alternatives analyzed in the draft Regulatory Analysis were evaluated for the eight products in aggregate. None of the alternatives analyzed saved as much energy as the standards in the Proposed Rule. The Department believes that the non-regulatory alternatives for each product would have energy savings proportional to the savings for all eight products. Therefore, the Department concludes that non-regulatory alternatives are not likely to meet or exceed the energy savings expected from the standards set forth in today's rule.

c. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires an assessment of the impact of regulations on small businesses unless an agency certifies that the rule will not have a significant economic impact on a substantial number of small businesses and other small entities. To be considered a small business, a manufacturer of room air-conditioners and its affiliates may employ a maximum of 750 employees. (Small Business Administration size standards, 61 FR 3280.) In the notice of proposed rulemaking, DOE certified pursuant to section 605(b) of the Regulatory Flexibility Act that the proposed action would not have a "significant economic impact on a substantial number of small entities," and, thus, a regulatory flexibility analysis was not prepared.

The Department has not identified any firms that both manufacture room air conditioners covered by EPCA, and have, together with their affiliates, 750 or fewer employees. The Department estimates there are approximately nine domestic firms and six foreign firms that manufacture room air conditioners covered under EPCA, with three domestic companies holding approximately 70 percent of U.S. room air conditioner sales. Many room air conditioner manufacturers are affiliated with larger U.S. or foreign firms which manufacture full product lines of home appliances.

DOE's notice of proposed rulemaking elicited no public comments on the economic impact of the proposed rule on small businesses. One commenter did criticize the Manufacturer Impact Model (MIM) and claimed that the model is inadequate for estimating the impact of standards on small firms. The comment was not supported by any data to cause the Department to conclude that this final rule would have a significant impact on small businesses subject to the regulation.

Today's final rule contains less stringent room air conditioner energy efficiency standards than the proposed rule. The final rule establishes standards in a range from 8.0 to 9.8 EER, and it would add four new product classes to accommodate room air conditioners with and without side louvers and reverse cycle as well as casement room air conditioners. These changes in the final rule will significantly reduce any potential economic impact of the rule on small businesses. Therefore, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

d. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

e. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's final rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the final regulations meet the relevant standards.

f. "Takings" Assessment Review

It has been determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988) that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

g. Federalism Review

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The Department finds that this final rule will not have a substantial direct effect on State governments. State regulations that may have existed on the products that are the subject of today's rule were preempted by the Federal standards established in EPCA. States can petition the Department for exemption from such preemption based on criteria set forth in EPCA. None has done so. Accordingly, the Department finds that the preparation of a federalism assessment for this rulemaking is not warranted.

h. Review Under the Unfunded Mandates Reform Act

With respect to a proposed regulatory action that may result in the expenditure by the private sector of $100 million or more (adjusted annually for inflation), section 202 of the

Unfunded Mandates Reform Act of 1995 (UMRA) requires a Federal agency to publish estimates of the resulting costs, benefits and other effects on the national economy. 2 U.S.C. 1532(a), (b). Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c).

The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of the notice of proposed rulemaking and "Regulatory Impact Analysis" section of the TSD for the 1994 Proposed Rule responded to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by section 325(o) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)), this final rule establishes energy conservation standards for room air conditioners that are designed to achieve the maximum improvement in energy efficiency which DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the "Regulatory Impact Analysis" section of the TSD for the 1994 Proposed Rule.

i. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

Consistent with Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801–808, DOE will submit to Congress a report regarding the issuance of today's final rule before the effective date set forth at the outset of this notice.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., on September 12, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

Part 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.2 of Subpart A is amended by adding new definitions for "Casement-only room air conditioner" and "Casement-slider room air conditioner" in alphabetical order, to read as follows:

Subpart A—General Provisions

§ 430.2 Definitions.

* * * * *

Casement-only means a room air conditioner designed for mounting in a casement window with an encased assembly with a width of 14.8 inches or less and a height of 11.2 inches or less.

Casement-slider means a room air conditioner with an encased assembly designed for mounting in a sliding or casement window with a width of 15.5 inches or less.

* * * * *

3. Section 430.32 is amended by revising paragraph (b) to read as follows:

§ 430.32 Energy conservation standards and effective dates.

* * * * *

(b) *Room air conditioners.*

Product class	Energy efficiency ratio, effective as of	
	Jan. 1, 1990	Oct. 1, 2000
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	8.0	9.7
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	8.5	9.7
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	9.0	9.8
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	8.8	9.7
5. Without reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.2	8.5
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	8.0	9.0
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	8.5	9.0
8. Without reverse cycle, without louvered sides, and 8,000 to 13,999 Btu/h	8.5	8.5
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	8.5	8.5
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	8.2	8.5
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	8.5	9.0
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	8.0	8.5
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.5	8.5
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.0	8.0
15. Casement-Only	*	8.7
16. Casement-Slider	*	9.5

* Casement-only and casement-slider room air conditioners are not separate product classes under standards effective January 1, 1990. These units are subject to the applicable standards in classes 1 through 14 based on unit capacity and the presence or absence of louvered sides and a reverse cycle.

* * * * *

Note: The following letter will not appear in the Code of Federal Regulations.

September 16, 1994

Honorable Christine A. Ervin

Assistant Secretary for Energy Efficiency and Renewable Energy
United States Department of Energy,
Forrestal Building, 1000 Independence Ave., S. W., Washington, D.C. 20585

Dear Ms. Ervin:

By letter dated March 14, 1994, the Department of Energy ("DOE") transmitted to the Attorney General a Notice of Proposed Rulemaking (59 FR 10464) addressing energy

standards for eight classes of household appliances. Those classes are: room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters, fluorescent lamp ballasts and television sets. Section 325 of the Energy Policy and Conservation Act, as amended in 1992 (42 U.S.C. 6295) ("the Act"), requires the Attorney General to determine the impact, if any, of any lessening of competition likely to result from the proposed standards. This letter contains the competitive impact determination of the Department of Justice ("Department").

Summary

The evidence available to the Department does not indicate that any significant lessening of competition is likely to result from the imposition of the proposed standards for mobile home furnaces and pool heaters contained in the Notice. For television sets, fluorescent lamp ballasts and professional-style or high-end kitchen ranges it is the Department's judgement based on the available evidence that significant anticompetitive effects are likely to occur. For electric water heaters the evidence indicates that a significant anticompetitive effect could take place if sufficient time is not permitted firms to develop, produce and market products complying with the new standard. For microwave ovens, oil-fired water heaters, room air conditioners, and direct heating equipment the evidence indicates that anticompetitive effects could result; the Department is unable on the basis of the available evidence to determine whether such effects are likely. Finally, the evidence indicates that the cumulative effects of these and other regulatory standards could be to lessen competition in certain markets for household appliances.

In preparing these comments the Department has considered the Notice, the Technical Support Document (TSD) prepared by Lawrence Berkeley Laboratory, written comments and oral comments collected by the department in the time allowed and without the benefit of compulsory process.

Discussion

Adoption of standards requiring greater energy efficiency in household appliances could affect competition in a number of ways. First, by raising the cost of appliances and reducing design and feature choices, standards may lower demand. If standards impose costs on manufacturers that can not be passed to consumers they can lower manufacturers' rates of return. Either one or both of these effects could cause manufacturers to exit the market with the effect of lessening competition and raising prices. Second, imposition of standards may lessen or discourage competition in the design and development of new product features or technologies; such competition benefits consumers and the economy.

The record in this proceeding raises many factual issues relating, among other things, to the technical feasibility of certain standards, their economic impact on manufacturers and consumers and consumer reaction to the changes in products that they might require. In numerous instances, industry representatives and technical consultants retained by them have challenged assumptions and conclusions in the Notice and TSD. The Department is not in a position to resolve many of these contested issues on the basis of the available record. Accordingly, in some instances, the Department is unable to reach a conclusion about the impact of the proposed standards on competition.

Fluorescent Lamp Ballasts

One technical issue that has been raised is whether the proposed standards for fluorescent lamp ballasts are attainable with currently available technology. Numerous ballast manufacturers assert that in many instances they are not. The Department concludes that the doubts raised about the technical feasibility of the standards are serious and affect a substantial number of ballast classes. Thus, if the proposed standards were adopted some or all manufacturers would likely have to cease the production of many products and competition in the sale of those products would cease or diminish.

Television Sets and Related Technologies

1. The weight of available evidence is that adoption of the proposed standard for television sets could force all or many manufacturers to revise their products to lessen the number and quality of their features. Many in the industry contend that the only way to produce products that will comply with the standard would be to reduce or eliminate features that consume electricity such as brighter pictures, remote control, picture-in-picture, improved sound and in-set program guides and other features presently being developed. Development and marketing of product improvements and new features has been an important factor driving competition in the market for television sets. Reducing or retarding the development of such features could substantially reduce demand for sets, retard development and refinement of technology, and reduce utility of the product.

Manufacturers might attempt to circumvent the proposed standard by letting features "migrate"—incorporating them in units to be sold separately or packaged with television sets. It is claimed that disaggregating features in this manner will decrease overall television energy efficiency. There is evidence that it could also lessen competition because the development and marketing of features in such attached units could be costly and cumbersome, among other things encountering receivers that receive cable signals.

There is evidence that the proposed standard for television sets could affect competition in other markets. Representatives of the television industry assert that as the "Information Highway" develops television manufacturers intend to expand the capabilities of their products to include new features to enable them to serve as in-home devices for data transmission and communication. They argue that the TV receiver, already located in virtually every American home, could be a uniquely efficient vehicle for the introduction of new data-processing and communication devices. The Department does not make final judgement on this contention but does conclude that, given the apparent difficulties in the marketing of new features as part of attached units, the standard is likely to retard the development of technology and inhibit the ability of television manufacturers to compete with computer manufacturers and others in the development of new technologies and features for the Information Highway.

Professional-Style and Standard Ranges

The Notice proposes a single set of standards for gas ovens and cooking tops in household ranges. There is substantial evidence that one category of home range cannot be manufactured to meet these proposed standards without losing so much of its distinct characteristics that it is no longer marketable. Professional-style or high-end ranges are products designed to provide some of the performance characteristics of professional or restaurant ranges for home kitchens. Some of these characteristics which differentiate them from standard kitchen ranges, such as high performance burners and ovens, involve considerably more energy consumption than do standard ranges; the special uses and appeal of these products, and their premium in price, depends in good measure on these features. Representatives of the range industry assert that high-end ranges cannot be modified to comply with the proposed standards without giving up so much of the special features of the product that they are no longer marketable. The Department concludes that it is likely that competition in the manufacture and sale of these products will be eliminated if the proposed standards are adopted.

While not as strong as the evidence relating to professional style ranges there is evidence challenging the conclusions in the TSD that the proposed standards for standard gas and electric range ovens and cooking tops will not require significant retooling or redesign and will have not more than minimal impact on manufacturers' long run rates of return on equity. The Association of Home Appliance Manufacturers contends that the standard could have a destructive impact on the range industry. It and various range manufacturers claim that design options suggested in the TSD are not effective and that compliance would require substantial investment in redesign and retooling. The Association also insists that suppliers of equipment and technology necessary to comply may not be able to respond simultaneously and evenly to range manufacturers, a problem that could impose a competitive handicap on some range manufacturers.

A range manufacturer has commented that compliance with the standard could seriously weaken it and its ability to compete. There is also evidence that the cumulative costs of compliance with this standard and with other and future appliance standards could induce or force "full line" appliance manufacturers to exit one or more of the markets that they serve. The range market is concentrated and, while there is conflicting evidence, the Department concludes that there is a possibility that this proposed standard could force one or more

firms out of the manufacture of standard ranges thus lessening competition.

Microwave Ovens

The Notice and the TSD conclude that the proposed standard for microwave ovens will not involve any substantial redesign or retooling by manufacturers and will have little impact on their long run returns on equity. Representatives of the industry strongly challenge these conclusions. For example, a representative of MCD Corporation has testified that compliance with the standard would require that her company, a manufacturer of microwaves, make large investments in retooling, and would threaten its viability. The Association of Home Appliance Manufacturers contends that the standard will in all likelihood eliminate all U.S. Production of microwaves and concentrate U.S. sales in the hands of one or two companies. The Department is not in a position to resolve all of the contested technical and financial issues but concludes that this proposed standard could force some significant producers from this concentrated market and substantially lessen competition in it.

Room Air Conditioners

The Notice and TSD conclude that this proposed standard will not involve substantial redesign or retooling and, while it may produce some reductions in the short run, will have little or no effect on manufacturers' long run returns on equity. This conclusion has been challenged by firms in the industry. There is evidence that some of the design options suggested in the Notice are less effective and more costly than the TSD assumes and that manufacturers may, among other things, need to redesign the chassis of some classes to comply with the standard. Such redesigns could add to unit installation costs, make units larger and more cumbersome to install, and otherwise depress demand. There is evidence that at least one product, the five thousand BTU unit, may cease to be manufactured if the standard is adopted. There are also unresolved issues about such matters as the availability and efficacy of some design options suggested in the TSD. The Department is not able to resolve these issues but concludes that the standard could have a substantial negative impact on demand and rates of return, and cause one or more firms to cease the manufacture and sale of some of these products, thus lessening competition.

Direct Heating Equipment

Manufacturers of direct heating equipment contend that this standard will seriously depress demand for their product and likely force some, perhaps all, manufacturers out of this business. Among other things, they contend that the TSD substantially underestimates the added costs of manufacture, and also the added installation costs for venting and wiring, that will be required. They insist that consumer cost increases will seriously depress demand for their product and that their profit margins will suffer because it will be impossible to pass on much of the increased manufacturing costs to consumers. The Department cannot resolve many of these issues but concludes that there is a possibility that several of the five companies that account for most of the production of these products might exit the market if the standard is adopted thus substantially lessening competition.

Water Heaters

Manufacturers of oil-fired heaters contend that the proposed standard for their product class would threaten the survival of the product, likely forcing all or most producers out of this business. Some claim that it may not be possible with presently available technology to design and manufacture a product that would comply. Manufacturers assert that the added costs of producing a product in compliance with the standard would, in any event, be considerably higher than the TSD indicates and that increases in price would very seriously depress consumer demand for this product. Five firms, two of them Canadian producers, account for most of the sales of this product in the U.S. The Department is not able to resolve all the questions raised regarding this standard; it concludes that there is at least a possibility that the standard might force one or more of these competitors to exitthe U.S. market. Another firm has been taking steps to enter the oil-fired water heater market; adoption of the standard may deter it from doing so. The loss of one such firm could result in a substantial lessening of competition.

DOE's proposed standard for electric water heaters would, in effect, require that such products have an integral heat pump. DOE concedes that this would involve major changes and might cause one or more existing firms to cease the marketing of electric water heaters but believes that other firms such as air conditioner manufacturers may begin producing electric water heaters as a result of the standard. There are complex and unresolved issues as to what would happen to demand for electric water heaters if consumers were required to purchase heat pumps with them. It seems clear that the price of such units will be considerably higher than that of the electric resistance heaters that the standard would remove from the market, but the range of future prices, costs of installation and maintenance and degree of consumer acceptance of a product that has not been widely accepted until now are very difficult to predict. Heat pump water heaters may be useful and economically attractive to many consumers but serious issues have been raised in this proceeding as to whether certain kinds of consumers, such as households with relatively little demand for hot water, will derive a benefit from the product.

Even if the heat pump water heater is eventually widely accepted in the market the Department has concluded that it is likely that competition will be adversely affected for some period of time if adequate time is not permitted for the phasing in of the standard. Three million units or more of electric resistance units are now sold annually in the U.S. Only a few thousand heat pump units are now produced annually in this country, by two firms. It could take a considerable time for other firms to design new product lines and being substantial ne production capacity on line. There is also evidence from those with experience with the product that heat pump water heaters require special maintenance and servicing. Considerable time may be required for firms to develop and train adequate distribution and service networks if they are to compete effectively. If adequate time for phasing in the standard is not allowed for a considerable period of time there could be fewer companies competing effectively in the electric water heater business than there are now, and competition in this concentrated market could be substantially lessened.

Cumulative Effects of Regulation

Many of the manufacturers of appliances subject to the proposed standards manufacture several different types of appliance, each subject to those standards or to others authorized by the Act. As indicated above, there is evidence that compliance with some of these standards may require manufacturers to make considerable investments. It is anticipated that future standards for other appliances could require manufacturers to make similar investments. Full-line manufacturers such as General Electric, Whirlpool, Frigidaire, Amana and Maytag could thus be required to make changes in several product lines.

As the TSD recognizes, it is difficult for manufacturers to pass redesign and retooling costs on to consumers. And the impact of a single product redesign may fall more heavily on firms with small shares of the market since they must write off their costs against less sales volume. There is some evidence that firms, particularly the smaller ones, facing the prospect of repeated redesigns involving several different products, may be induced to cease manufacturing one or more of such product lines. Thus to a degree that we cannot fully assess there is a possibility that the cumulative effect of these and future energy efficiency standards could be to lessen competition in one or more home appliance markets.

Sincerely yours,

Anne K. Bingaman,

Assistant Attorney General.

[FR Doc. 97–24978 Filed 9–23–97; 8:45 am]

BILLING CODE 6450–01–P

federal register

Wednesday
September 24, 1997

Part IV

Environmental Protection Agency

40 CFR Part 9 et al.

Control of Emissions of Air Pollution from Nonroad Diesel Engines; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 86, and 89

[AMS–FRL–5888–4]

RIN 2060–AF76

Control of Emissions of Air Pollution From Nonroad Diesel Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, EPA is proposing new emission standards for nonroad diesel engines. The affected engines are used in most land-based nonroad equipment and some marine applications. If these standards are implemented as proposed, the resulting emission reductions would translate into significant, long-term improvements in air quality in many areas of the U.S. For engines in this large category of pollution sources, the standards for oxides of nitrogen and particulate matter emissions would be reduced by up to two-thirds from current standards. Overall, the proposed program would provide much-needed assistance to states facing ozone and particulate air quality problems that are causing a range of adverse health effects for their citizens, especially in terms of respiratory impairment and related illnesses.

DATES: EPA will hold a hearing on the proposed rulemaking on October 8, 1997. EPA requests comments on the proposed rulemaking by November 24, 1997. More information about commenting on this action and on the public hearing and meeting may be found under Public Participation in **SUPPLEMENTARY INFORMATION**, below.

ADDRESSES: Materials relevant to this proposal, including the Draft Regulatory Impact Analysis are contained in Public Docket A–96–40, located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

Comments on this proposal should be sent to Public Docket A–96–40 at the above address. EPA requests that a copy of comments also be sent to Alan Stout, U.S. EPA, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

The public hearing will be held at Ramada Hotel O'Hare, 6600 North Mannheim Road, Rosemont, IL 60018, phone number (847) 827–5131. The public hearing will begin at 9 a.m. and will continue until all testimony has been presented. A transcript of the hearing will be placed in the docket. Copies may also be obtained by arrangement with the court reporter on the day of the hearing.

For further information on electronic availability of this proposal, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Alan Stout, U.S. EPA, Engine Programs and Compliance Division, (313) 741–7805; stout.alan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that manufacture or introduce into commerce new compression-ignition nonroad engines, vehicles, or equipment, and entities that rebuild or remanufacture nonroad compression-ignition engines. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers of new nonroad diesel engines and equipment.
Industry	Rebuilders and remanufacturers of nonroad diesel engines.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, the reader should carefully examine the proposed regulations, especially the applicability criteria in § 89.1, and the existing regulatory language in 40 CFR part 89. Questions regarding the applicability of this action to a particular entity may be directed to the person listed in **FOR FURTHER INFORMATION CONTACT.**

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language and Draft Regulatory Impact Analysis (Draft RIA) are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost already incurred for internet connectivity. The electronic version of this proposed rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/ (either select desired date or use Search feature)
2. http://www.epa.gov/OMSWWW/ (look in What's New or under the specific rulemaking topic)

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I. Introduction

Air pollution continues to represent a serious threat to the health and well-being of millions of Americans and a large burden to the U.S. economy. This threat exists despite the fact that over the past two decades great progress has been made at the local, state, and national levels in controlling emissions from many sources of air pollution. As a result of this progress, many individual emission sources, both stationary and mobile, pollute at only a fraction of their precontrol rates. However, continued industrial growth and expansion of motor vehicle usage threaten to reverse these past achievements. Today, many states are finding it difficult to meet the current ozone and particulate matter National Ambient Air Quality Standards (NAAQS) by the deadlines established in the Act.[1] Furthermore, other states that are approaching or have reached attainment of the current ozone and PM NAAQSs will likely see those gains lost if current trends persist.

In recent years, significant efforts have been made on both a national and state level to reduce air quality problems associated with ground-level ozone, with a focus on its main precursors, oxides of nitrogen (NO_X) and volatile organic compounds (VOCs).[2] In addition, airborne particulate matter (PM) has been a major air quality concern in many regions. As discussed below, ozone and PM have been linked to a range of serious respiratory health problems and a variety of adverse environmental effects.

The states have jurisdiction to implement a variety of stationary source emission controls. In most regions of the country, states are implementing significant stationary source NO_X controls (as well as stationary source VOC controls) for controlling acid rain, ozone, or both. In many areas, however, these controls will not be sufficient to reach and maintain the current ozone standard without significant additional NO_X reductions from mobile sources. Generally, the Clean Air Act specifies that emission standards for controlling NO_X, HC, and PM emissions from new mobile sources must be established at the federal level.[3] Thus, the states look to the national mobile source emission control program as a complement to their efforts to meet air quality goals. The concept of common emission standards for mobile sources across the nation is strongly supported by manufacturers, which often face serious production inefficiencies when different requirements apply to engines or vehicles sold in different states or areas.

Mobile source emission control programs have a history of technological success that, in the past, has largely offset the pressure from constantly growing numbers of vehicles and miles traveled in the U.S. The per-vehicle rate of emissions from new passenger cars and light trucks has been reduced to very low levels. Similarly, manufacturers of heavy-duty engines for highway use have developed new technological approaches over the past two decades that have significantly reduced emissions from these engines; new standards scheduled to take effect in 1998 will result in significant further emission reductions from trucks and buses (58 FR 15781, March 24, 1993). As a result, increasing attention is now focused on the engines used in a wide range of nonroad equipment.

Manufacturers of engines for nonroad applications have only recently become subject to emission regulations. The lessons learned from many years of reducing passenger car and heavy-duty truck emissions are being applied to nonroad engines; however, extensive new efforts are necessary to develop emission control techniques that address unique characteristics of nonroad applications (such as special engine cooling needs, dusty operating environments, marine use, etc.). The broad range of engine sizes (from a few kilowatts of power to many hundreds of kilowatts), the vast array of agricultural, construction, industrial, and electrical generation applications into which nonroad engines are installed, the large number of equipment manufacturers, and the newness of many in this industry to emission control requirements all combine to increase the challenge of reducing emissions from nonroad engines. A more detailed discussion of the history of nonroad engine emission control is included under Background (Section II.B.).

In addition, there are technological challenges inherent to nonroad diesel-cycle engine design that must be addressed.[4] While diesel engines provide advantages in terms of fuel efficiency, reliability, and durability, controlling NO_X emissions is generally considered a greater challenge for diesel engines than for otto-cycle engines. Similarly, control of PM emissions, which are very low for gasoline-fueled engines, represents a substantial challenge for diesel engines. Part of this challenge for diesel engines is that most traditional NO_X control approaches tend to increase PM emissions, and vice versa. A more complete discussion of technology issues is presented under Technological Feasibility (Section V).

This notice proposes a new set of emission standards for all nonroad diesel engines, except for locomotive engines, engines used in underground mining equipment, and marine engines rated over 37 kW.[5] EPA's Supplemental Advance Notice of Proposed Rulemaking (Supplemental ANPRM), published on January 2, 1997, and the comments received on that notice provide the framework for these new emission standards (62 FR 200, January 2, 1997).

II. Background

A. Air Quality Problems Addressed in the Proposed Rule

The emission standards proposed in this notice are intended to be a major step in reducing the human health and environmental impacts of ground-level ozone and particulate matter (PM). This section summarizes the air quality rationale for these new emission standards and their anticipated impact on nonroad diesel emissions.

1. Ozone

There is a large body of evidence showing that ground-level ozone, which is formed from photochemical reactions of NO_X and VOCs, causes harmful respiratory effects, including chest pain, coughing, and shortness of breath. Ozone most severely affects people with compromised respiratory systems and children. In addition, NO_X itself can directly harm human health. Beyond their effects on human health, other negative environmental effects are also associated with ozone and NO_X. Ozone has been shown to injure plants and materials; NO_X contributes to the secondary formation of PM (nitrates), acid deposition, and the overgrowth of algae in coastal estuaries. These environmental effects, as well as the health effects described above, are described in the Draft RIA. Additional information may be found in EPA's "staff papers" and "air quality criteria"

[1] See U.S.C. 7401 *et seq.*

[2] VOCs consist mostly of hydrocarbons (HC), including nonmethane hydrocarbons (NMHC).

[3] The CAA limits the role states may play in regulating emissions from new motor vehicles and nonroad engines. California is permitted to establish emission standards for new motor vehicles and most new nonroad engines; other states may adopt California's programs (sections 209 and 177 of the Act).

[4] Diesel-cycle engines, referred to simply as "diesel engines" in this notice, may also be referred to as compression-ignition (or CI) engines. These engines typically operate on diesel fuel, but other fuels may be also be used. This contrasts with otto-cycle engines (also called spark-ignition or SI engines), which typically operate on gasoline.

[5] This proposal is based on metric units. With the exception of engine power ratings, English units are included parenthetically throughout the preamble. The conversion of engine power ratings is included in Table 1, but is not repeated in the rest of the document.

documents for ozone and nitrogen oxides.[6,7,8,9]

Today, many states are finding it difficult to show how they can meet or maintain compliance with the current National Ambient Air Quality Standard for ozone by the deadlines established in the Act.[10] There are 66 areas currently designated "nonattainment" for ozone.

Local, state and federal organizations charged with initiating programs to achieve cleaner air have mounted significant efforts in recent years to reduce air quality problems associated with ground-level ozone, and there are signs of partial success. The main precursors of ozone, NO_X, and VOCs appear to have been reduced, and average levels of ozone seem to have begun gradually decreasing. However, this progress is in jeopardy. EPA projects that reductions in ozone precursors that will result from the full implementation of current emission control programs will fall far short of what would be needed to offset the normal emission increases that accompany economic expansion. By the middle of the next decade, the Agency expects that the downward trends will have reversed, primarily due to increasing numbers of emission sources. As discussed below, EPA expects that NO_X levels will have returned to current levels by around 2020 in the absence of significant new reductions. To the extent that some areas are seeing a gradual decrease in ozone levels in recent years, EPA believes that the expected increase in NO_X will likely result in an increase in ozone problems in the future.

NO_X controls are an effective strategy for reducing ozone where its levels are relatively high over a large region (as in the Northeast and much of the Midwest, Southeast, and California). EPA and states see regional control of NO_X emissions, in addition to local-scale VOC and NO_X controls, as a key to improving regional-scale air quality in many parts of the country. Specifically, EPA believes that regional-scale reductions in NO_X emissions will be necessary for many areas to attain and maintain compliance with the current ozone NAAQS. For the regions listed above, the NO_X reductions needed are very large (greater than 50 percent from base 1990 emissions in many cases). New programs to control emissions from both stationary and mobile sources will be necessary in most of these areas, since it is unlikely that cost effective controls of this magnitude can be achieved with either source category alone. Although in some locations and circumstances moderate reductions in local NO_X emissions may be associated with localized increases in ozone, the Agency is convinced that the ultimate attainment goal of all nonattainment areas necessitates continued reduction of regional-scale NO_X emissions.

2. Particulate Matter

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Particles are deposited deep in the lungs and result in effects including premature death, increased hospital admissions and emergency room visits, increased respiratory symptoms and disease, decreased lung function (particularly in children and individuals with asthma), and alterations in lung tissue and structure and in respiratory tract defense mechanisms. These effects are discussed further in the Draft RIA for this rule. (Additional information may be found in EPA's "staff paper" and "air quality criteria document" for particulate matter.[11,12])

Currently, there are 80 PM–10 nonattainment areas across the U.S. (PM–10 refers to particles smaller than 10 microns in diameter.) As is the case with NO_X, levels of PM caused by mobile sources are also expected to rise in the future. EPA believes that this projected increase will occur for two reasons: because of the expected continued increase in numbers of PM sources, including nonroad diesel engines; and because NO_X from diesel engines and other sources is transformed in the atmosphere into fine secondary nitrate particles.

Secondary nitrate particles account for a substantial fraction of the airborne particulate in some areas of the country, especially in the West. Measurements of ambient PM in some western U.S. urban areas that are having difficulty meeting the current NAAQS for PM–10 have indicated that secondary PM is a very important component of the problem. Secondary nitrate PM (consisting mostly of ammonium nitrate) is the major constituent of this secondary PM. For example, in Denver, on days when PM levels are high, about 25 percent of the measured PM–2.5 is ammonium nitrate. In the Provo/Salt Lake City area, secondary PM comprises about 40 percent of the measured PM–10. Similarly, in the Los Angeles Basin, secondary nitrate PM levels represent about 25 percent of measured PM–10.[13] Nitrate PM constitutes a smaller, but often important, fraction of PM in other areas of the country.

Because the atmospheric chemistry of secondary PM formation has common attributes to that of ozone, secondary PM also tends to be a regional, rather than a strictly local phenomenon. For this reason, EPA believes that regional-scale NO_X controls, including control of mobile NO_X sources, are very effective in reducing secondary PM over a significant area. For example, California's PM State Implementation Plans for serious areas conclude that secondary formation of nitrate particulate due to regional-scale NO_X emissions contributes to the particulate problem in the South Coast Air Basin, Coachella Area, and the San Joaquin Valley. EPA and the State of California believe that reduction of this fraction of the total PM will require additional regional-scale reductions in NO_X emissions.[14]

EPA believes that mobile sources, including nonroad diesel engines, contribute substantially to the fraction of ambient PM that is generally considered controllable. (The largest fraction of ambient PM is attributed to "miscellaneous" and "natural" sources, including wind erosion, wildfires, and fugitive dust, which are difficult or impossible to control.) As discussed in more detail in the next section, mobile sources make up more than a quarter of "controllable" sources (i.e., excluding miscellaneous and natural sources), with nonroad diesel engines accounting for about 16 percent. In addition, secondary PM contributes significant additional PM in some western PM nonattainment areas.

[6] U.S. EPA, 1996, Review of National Ambient Air Quality Standards for ozone, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–96–007 (found in Air Docket A–95–58).

[7] U.S. EPA, 1996, Air Quality Criteria for Ozone and Related Photochemical Oxidants, EPA/600/P–93/004aF (found in Air Docket A–95–58).

[8] U.S. EPA, 1995, Review of National Ambient Air Quality Standards for Nitrogen Dioxide, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–95–005 (found in Air Docket A–93–06).

[9] U.S. EPA, 1993, Air Quality Criteria for Oxides of Nitrogen, EPA/600/8–91/049aF (found in Air Docket A–93–06).

[10] See 42 U.S.C. 7401 *et seq.*

[11] U.S. EPA, 1996, Review of National Ambient Air Quality Standards for Particulate Matter, Assessment of Scientific and Technical Information, OAQPS Staff Paper, EPA–452/R–96–013 (found in Air Docket A–95–54).

[12] U.S. EPA, 1996, Air Quality Criteria for Particulate Matter, EPA/600/P–95/001aF (found in Air Docket A–95–54).

[13] Summary of Local-Scale Source Characterization Studies, EPA–230–S–95–002, July, 1994 (Air Docket A–96–40).

[14] Memorandum to the docket from Carol Bohnenkamp, EPA Region 9, regarding regional nature of secondary nitratee PM in California, July 30, 1997 (Docket A–96–40).

3. Contribution of Nonroad Engines to Emissions

Figure 1 shows EPA's current estimates of the NO_X emissions from the categories of nonroad diesel engines affected by the proposed standards. For 1996, nonroad diesel engines are estimated to represent about 27 percent of mobile source NO_X and 13 percent of total NO_X emissions. In the future, EPA projects NO_X emissions from these engines to drop slightly due to the Tier 1 emission standards, but then begin to rise again as growth overtakes the Tier 1 improvements. The contributions of the engines covered by this proposal to mobile source NO_X and total NO_X are projected to remain about constant.

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Figure 1

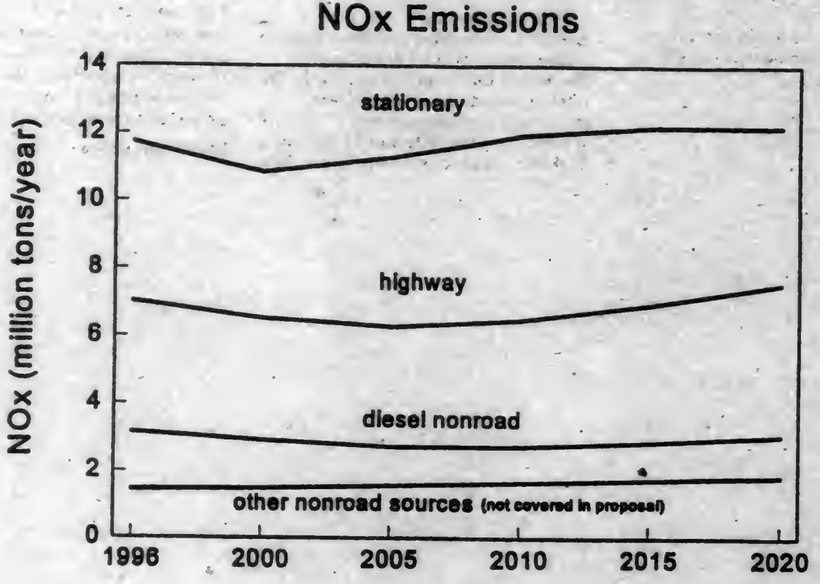
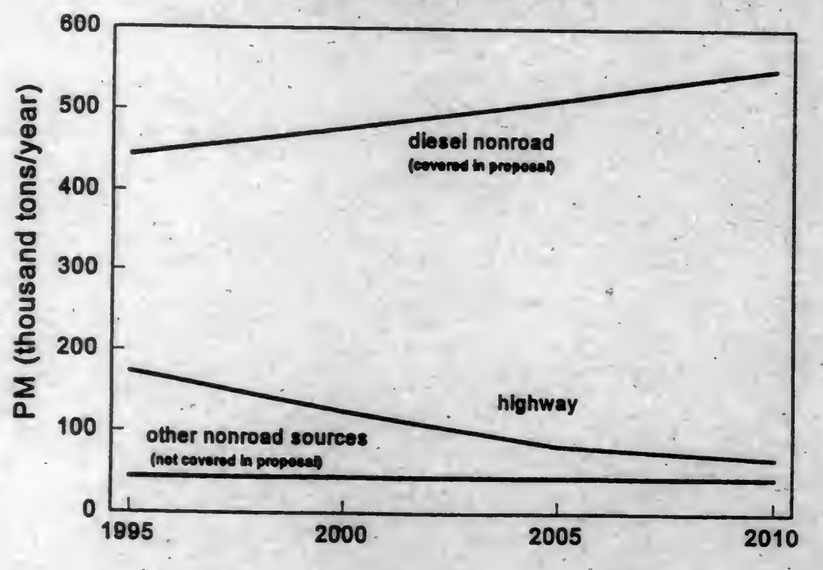


Figure 2



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Similarly, Figure 2 presents the Agency's best current projections for diesel PM emissions. EPA estimates that nonroad diesel engines currently contribute about 440,000 tons, or 48 percent of the directly emitted PM from mobile sources and 16 percent of total controllable PM emissions. In the future, Figure 2 projects that nonroad diesel PM emissions will steadily rise in the absence of new emission standards. In addition to directly emitted PM, EPA estimates that, as a national average, nonroad diesel engines currently contribute approximately 130,000 tons of PM in the form of secondary nitrate particles, based on the estimated 3,100,000 tons of NO_X emitted by these engines. Since NO_X emissions from these engines is expected to decrease slightly and then begin to rise (see Figure 1), nitrate PM attributable to these engines can be expected to follow the same pattern.[15]

In this rule, EPA is for the first time proposing emission standards for NMHC + NO_X, PM, carbon monoxide (CO), and smoke from engines rated under 37 kW. Engines in this category contribute to emissions of each of these pollutants, including emissions in nonattainment areas. Chapter 5 of the Draft RIA presents the Agency's most recent estimates of emissions from all land-based nonroad diesel engines and marine diesel engines rated under 37 kW.[16]

B. Legislative and Regulatory History

1. U.S. Federal Action

Section 213(a)(1) of the Clean Air Act required that the Agency study the emissions from all categories of nonroad engines and equipment to determine, among other things, whether these emissions "cause or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health and welfare." Section 213(a)(2) further required EPA to determine whether the emissions of CO, VOC, and NO_X found in the above study significantly contributed to ozone or CO emissions in more than one nonattainment area. With a determination of significance, section 213(a)(3) requires the Agency to establish emission standards regulating CO, VOC, and NO_X emissions from new nonroad engines and vehicles. EPA may also promulgate emission standards under section 213(a)(4) regulating any other emissions from nonroad engines that EPA finds contribute significantly to air pollution.

On June 17, 1994, EPA made an affirmative determination under section 213(a)(2) that nonroad emissions are significant contributors to ozone or CO in more than one nonattainment area (59 FR 31306, June 17, 1994). In the same notice, EPA set a first phase of emission standards ("Tier 1 standards") for nonroad diesel engines rated 37 kW and above. The Tier 1 standards did not include engines used in aircraft, underground mining equipment, locomotives, or marine vessels. EPA has initiated separate rulemakings to adopt regulations appropriate to different subgroups of nonroad engines, as described below.

EPA has taken several other actions under section 213, some of which provide important background for this proposal and are discussed here. The Agency recently published proposed emission standards for locomotive engines, which are addressed separately by the Act under section 213(a)(5) (62 FR 6366, February 11, 1997). Aircraft, which are regulated under sections 231 through 234 of the Act, must comply with emission standards finalized May 8, 1997 (62 FR 25356).

With regard to marine engines, EPA has finalized regulations for recreational marine engines, including personal watercraft and outboard engines (61 FR 52087, October 4, 1996).[17] That final rule sets no standards for diesel marine engines, though emission standards were proposed for those engines (59 FR 55929, November 9, 1994; 61 FR 4600, February 7, 1996). The large diesel marine rule is currently under development. However, as discussed in the Supplemental ANPRM, emission standards for marine diesel engines rated under 37 kW are included in the scope of this proposal.

EPA has also established a first phase of regulations for small SI engines, those rated under 19 kW (60 FR 34582, July 3, 1995). These engines are used in handheld and nonhandheld applications like chainsaws and lawnmowers. The Agency has also published an ANPRM for a second phase of control for these engines (62 FR 14740, March 27, 1997). SI engines rated over 19 kW remain unregulated, though EPA has begun work toward new emission standards for those engines.

2. State of California Action

The California Air Resources Board (California ARB) has the authority to regulate emissions from all nonroad engines, except for new engines used in locomotives and new engines used in farm and construction equipment rated under 130 kW. So far, the California ARB has adopted regulations for four groups of nonroad engines. First, emission standards have been promulgated for new small off-road engines rated under 19 kW, including both diesel and otto-cycle models. The California ARB, as a signatory to the Nonroad Statement of Principles, has indicated its intent to amend the regulations for small off-road engines to be consistent with the Statement of Principles for diesel engines rated under 19 kW in this notice. The California ARB has also set emission standards for new land-based nonroad diesel engines rated over 130 kW, which will be harmonized with the standards proposed in this notice. The California ARB has also adopted emission standards for nonroad recreational engines, including both compression-ignition and the more prevalent spark-ignition models. EPA intends to work cooperatively with the California ARB to develop new emission standards for nonroad SI engines rated over 19 kW (including new EPA emission standards applicable to engines for recreational vehicles). Finally, the California ARB has approved a voluntary registration and control program for existing portable equipment.

3. Development of This Proposal

In 1994 and 1995, states and environmental groups encouraged EPA to adopt more stringent emission standards for highway and nonroad diesel engines, in order to address the need for national pollution reduction measures to improve air quality in many urban areas. In response, EPA initiated discussions with engine manufacturers regarding future emission controls for these engines, gathering input from other interested parties as well. EPA, the California ARB, and engine manufacturers subsequently developed and agreed on a Statement of Principles supporting proposal of new emission standards for heavy-duty highway engines starting with the 2004 model year, which were published with an ANPRM on August 31, 1995 (60 FR 45580). These emission standards were formally proposed on June 27, 1996 (61 FR 33421), with signature on a final rule expected in 1997.

The Statement of Principles for highway engines included a

[15] "Emission Inventories Used in the Nonroad Diesel Proposed Rule," EPA memorandum to Air Docket A–96–40 from Joe Somers, August 1997.

[16] See also, "Nonroad Engine and Vehicle Emission Study—Report and Appendices," EPA–21A–201, November 1991 (available in Air Docket A–96–40).

[17] The final rule set no standards for sterndrive/inboards; refer to the preamble of that rule for a discussion of that decision.

commitment by the signatories to also pursue appropriate standards for nonroad engines, which was further discussed in the associated ANPRM. Subsequently, EPA, the California ARB, and engine manufacturers completed a similar Statement of Principles for nonroad diesel engines, which was then published with a Supplemental ANPRM, announcing the initiation of the rulemaking described in this document (62 FR 200, January 2, 1997). The Nonroad Statement of Principles and the comments received on the Supplemental ANPRM serve as a blueprint for the emission standards and other regulatory provisions proposed in this document.

In addition, in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, EPA conducted outreach to small businesses from various industry sectors to inform them of regulatory provisions of this proposed rule that may affect them and to seek early comment. As described below in Section VIII.B. (Regulatory Flexibility Act), EPA convened a federal government panel which collected comments and made recommendations about how the proposed program could reduce the impact on small entities. Several provisions to provide flexibility or relief for small businesses were recommended by small-entity commenters and the panel and have been incorporated into this proposal.

4. Harmonization

As EPA has pursued the emission reductions from nonroad engines needed to meet air quality goals, an important consideration has been harmonization with standards adopted and under consideration in California and Europe. The international nature of this industry, in which many manufacturers sell engines and equipment globally, makes harmonized standards and test procedures very important. Harmonized programs can avoid costly multiple design configurations to meet varying requirements, with associated cost savings to ultimate purchasers. In addition, with regard to international trade, harmonization reduces the cost of introducing a product into another country. For these reasons, EPA has pursued a policy of harmonizing with both California and the European Union (EU), to the extent this can be accomplished under the air quality improvement goals and process constraints of all of the parties, and to the extent it does not have a significant adverse impact on EPA's overarching mission of improving air quality in the United States.

To date, the goal of harmonization has been an important factor in the context of this rule and, in fact, harmonization was a major impetus behind the development of the Nonroad Statement of Principles. EPA and the California Air Resources Board agreed in that document to pursue harmonized standards and test procedures such that a nonroad diesel engine family tested and certified by EPA could be sold in California and, similarly, an engine family tested and certified in California could be sold in the rest of the country. Regarding international harmonization, the Statement of Principles signatories expressed an intent to work with the European Union, Japan, and other regulatory bodies in developing harmonized future standards, including provisions for implementation flexibility.

Subsequent to the completion of the Nonroad Statement of Principles, the responsible regulatory group in the EU issued a draft directive proposing a new round of standards that are aligned with the Tier 2 standards spelled out in this proposal.[18] This harmonization was a direct result of extensive discussions on potential standards that would be mutually acceptable.

Though harmonized to a great degree, the proposed EPA and EU standards are not identical. In particular, the proposed EU standards do not cover engines rated under 19 kW or above 560 kW and the EU proposal does not include Tier 3 standards. In addition, the EU proposed separate NO_X and HC standards (in contrast to EPA's proposed combined standards), and specified a somewhat different implementation schedule. Nevertheless, the goal of harmonization efforts, avoiding widespread duplicative design configurations, is being addressed at this stage of proposing new standards. Beyond standard levels and implementation dates, there are other differences between EPA and EU programs, including approaches to averaging, banking, and trading programs, flexibility provisions, and test procedure specifications. EPA plans to continue its harmonization work with governments in Europe and in other countries, in conjunction with the usual public rulemaking process, to build on the substantial successes to date. One major area in which a coordinated program will be pursued is the evaluation and possible modification of the certification test cycle discussed in Section III.B.

It should be noted that the small marine engines included in this proposal are not currently addressed in the EU program. Therefore, the ultimate success of international harmonization efforts with respect to these engines depends on further efforts by regulating agencies. It should also be noted that these engines are not covered by International Maritime Organization NO_X reduction efforts in the context of the International Convention for the Prevention of Pollution from Ships (MARPOL).

5. 2001 Feasibility Review

EPA proposes to conduct a special review, to be concluded in 2001, to reassess the appropriateness of the Tier 2 standards for engines rated under 37 kW and the Tier 3 standards for engines rated between 37 and 560 kW (including whether to propose the introduction of Tier 3 standards for PM). In addition to reviewing whether or not the proposed standards are technologically feasible and otherwise appropriate under the Clean Air Act, the Agency will examine the need for equipment redesign due to the proposed standards and will take appropriate action, such as proposing to relax or delay the standards, if significant adverse impacts on the nonroad equipment industry are identified.

Before making a final decision in this review, EPA intends to issue a proposal and offer an opportunity for public comment on whether the Tier 2 standards for engines rated under 37 kW and the Tier 3 standards for engines rated between 37 and 560 kW continue to be consistent with the Act and continue to be technologically feasible for implementation according to the proposed schedule. Any Tier 3 PM standards would also be proposed in such a notice. Following the close of the comment period, EPA intends to issue a final Agency decision under section 307 of the Act.

If by 2001 EPA finds the emission standards are not feasible according to the proposed schedule, or are otherwise not appropriate under the Act, EPA will propose changes to the program, possibly including adjustments to the levels of the standards. The adjusted standards may be more or less stringent than those already established, including the possibility of a new emission standard for particulate matter. Any change to the specified certification test procedure, including the possible adoption of a transient test cycle, will be factored into the evaluation of the appropriateness of the numerical standards. The standards finalized in the rulemaking initiated by this proposal would stay in effect unless revised by subsequent rulemaking procedure. The Supplemental ANPRM provides additional discussion of the Agency's plans for the feasibility review.

Based on the information presented in the Draft RIA and in Section V of this notice, EPA believes the proposed standards are technologically feasible and otherwise appropriate under the Act. Nonetheless, it is clear that a significant amount of research and development will be needed to comply with the proposed standards. Over the next several years, EPA will be actively engaged in programs to evaluate technology developments and progress toward meeting the proposed standards. This process will involve in-house programs, coordination with the involved industries, and active interaction with other stakeholders.

[18] Common Position (EC) No. /96. Adopted by the Council On _____ With a View to Adopting Directive 96/ /EC of the European Parliament and of the Council On the Approximation of the Laws of the Member States Relating To Measures Against the Emission of Gaseous and Particulate Pollutants From Internal Combustion Engines to Be Installed In Non-Road Mobile Machinery," draft dated November 12, 1996 (available in Docket A–96–40).

III. Description of Proposed Standards and Related Provisions

This proposed rulemaking includes a comprehensive program to reduce emissions from nonroad diesel engines and equipment. The significant potential benefits of controlling emissions from these engines provides a major opportunity to address the nation's air quality problems. The proposed program consists of stringent new emission standards, requirements to ensure that engines maintain their level of emission performance as they age, provisions providing compliance flexibility to engine and equipment manufacturers, and a voluntary program to encourage the introduction of low-emitting engines.

A. Emission Standards

EPA is proposing emission standards covering all nonroad diesel engines except for locomotives, engines used in underground mining equipment, and large (rated over 37 kW) engines used in marine applications. Engines not included in this proposal are or will be addressed by other federal programs. EPA is proposing a set of emission standards that vary in level and implementation date, depending on the rated power of the engine and other factors. The Agency believes that the standards proposed in this notice are consistent with the Clean Air Act requirement that standards represent the "greatest degree of emission reduction achievable" given the criteria specified by the Act (see Section V below).

In general, emission standards for engines rated between 37 and 560 kW are proposed in two tiers, building on the phase-in schedule adopted in the Tier 1 rule (see Table 1). These standards approximate the degree of control anticipated from existing and proposed standards covering engines used in heavy-duty diesel highway vehicles, with appropriate consideration of differences in the operational characteristics of the engines and in the organization of the industries. Specifically, the first set of proposed standards (Tier 2) generally parallel the emission standards that apply beginning with 1998 model year highway engines (58 FR 15781, March 24, 1993). The second set of proposed standards (Tier 3) parallel standards EPA has proposed for 2004 model year diesel highway engines (61 FR 33421, June 27, 1996). The standards for engines rated over 37 kW would become effective in the 2001 to 2006 time frame for Tier 2 levels and 2006 to 2008 for Tier 3 levels.

TABLE 1.—EMISSION STANDARDS IN G/KW-HR (G/HP-HR)

Engine Power	Tier	Model year	NMHC + NO_X	CO	PM
kW<8 (hp<11)	Tier 1	2000	10.5 (7.8)	8.0 (6.0)	1.0 (0.75)
	Tier 2	2005	7.5 (5.6)	8.0 (6.0)	0.80 (0.60)
8≤kW<19 (11≤hp<25)	Tier 1	2000	9.5 (7.1)	6.6 (4.9)	0.80 (0.60)
	Tier 2	2005	7.5 (5.6)	6.6 (4.9)	0.80 (0.60)
19≤kW<37 (25≤hp<50)	Tier 1	1999	9.5 (7.1)	5.5 (4.1)	0.80 (0.60)
	Tier 2	2004	7.5 (5.6)	5.5 (4.1)	0.60 (0.45)
37≤kW<75 (50≤hp<100)	Tier 2	2004	7.5 (5.6)	5.0 (3.7)	0.40 (0.30)
	Tier 3	2008	4.7 (3.5)	5.0 (3.7)	.....
75≤kW<130 (100≤hp<175)	Tier 2	2003	6.6 (4.9)	5.0 (3.7)	0.30 (0.22)
	Tier 3	2007	4.0 (3.0)	5.0 (3.7)	.....
130≤kW<225 (175≤hp<300)	Tier 2	2003	6.6 (4.9)	3.5 (2.6)	0.20 (0.15)
	Tier 3	2006	4.0 (3.0)	3.5 (2.6)	.....
225≤kW<450 (300≤hp<600)	Tier 2	2001	6.4 (4.8)	3.5 (2.6)	0.20 (0.15)
	Tier 3	2006	4.0 (3.0)	3.5 (2.6)	.....
450≤kW<560 (600≤hp<750)	Tier 2	2002	6.4 (4.8)	3.5 (2.6)	0.20 (0.15)
	Tier 3	2006	4.0 (3.0)	3.5 (2.6)	.....
kW≥560 (hp≥750)	Tier 2	2006	6.4 (4.8)	3.5 (2.6)	0.20 (0.15)

The standards proposed in this notice for engines rated under 37 kW would be the first EPA emission standards for these nonroad diesel engines. The proposed Tier 1 standards would be phased in by power category beginning in 1999, with Tier 2 standards phased in by power category beginning in 2004. Tier 3 standards are not proposed for these engines in this rule.

Table 1 lists the range of standards for the different power categories, including all the tiers of proposed standards with the affected model years. References throughout this notice to the engine power ratings listed in Table 1 will identify only the kilowatt rating. The reader may refer to the table for conversion between metric and English units.

EPA is at this time proposing Tier 3 standards only for nonroad diesel engines rated between 37 kW and 560 kW. For engines rated under 37 kW, the Agency believes it would be inappropriate to commit to Tier 3 standards at this time, since the industry is only now beginning to address emission control requirements for the first time. The uncertainties involved in proposing more than two tiers of standards seem too great at this early stage in the regulation of these engines.

In the case of engines rated over 560 kW, the longer lead time EPA believes is appropriate for these engines shifts the proposed implementation schedule for these engines later than any other

engines for Tier 2 standards, starting with the 2006 model year. This lead time reflects the longer product redesign cycles typical of these large engines with very low sales volumes. The Agency's intent is to avoid imposing unnecessary costs associated with frequently changing standards. As is the case for engines rated under 37kW, the large uncertainties that would be involved in proposing a third tier of standards, in this case presumably for sometime after 2010, led to EPA's decision not to propose such Tier 3 standards for these engines at this time.

Where Tier 3 standards are proposed, the Agency is choosing not to include more stringent PM standards. The Agency recognizes that there is an inverse technological relationship between NO_X and PM emission control and believes that more stringent PM standards may threaten the feasibility of the proposed Tier 3 NO_X standards. In addition, as discussed in Section III.B. below, the Agency believes that investigation during the next few years may conclude that a different emission test cycle is more appropriate for nonroad engines, especially for PM emissions. For these reasons, EPA believes that Tier 3 PM standards will be more appropriately discussed in the context of the improved technical understanding that will exist by the time of the 2001 Feasibility Review (see Section II.B.5. above).

The standards proposed in this docket assume the use of EPA's existing steady-state (modal) test procedures. New steady-state test cycles are proposed for constant-speed engines, marine propulsion engines, and engines rated under 19 kW. The Agency and the industry are working to better understand the sensitivity of nonroad diesel engine emissions to the test cycle, as discussed in the next section.

EPA proposes to change from a measurement of total hydrocarbons to nonmethane hydrocarbons. There is, however, no standardized method for measuring methane in diesel engine exhaust. In the absence of such a procedure, EPA is proposing to allow any of three options: (1) Measure total hydrocarbons in place of nonmethane hydrocarbons, without adjusting numerical values, (2) manufacturers may develop and use their own procedure to analyze nonmethane hydrocarbons, with prior approval from EPA, or (3) measure total hydrocarbons but subtract 2% from the measured hydrocarbon mass to correct for methane. This assumed methane fraction is based on data from two heavy-duty diesel engines.[19]

EPA is aware of the flame ionization detector plus gas chromatography method of determining nonmethane hydrocarbons (SAE J1151) and requests comment on whether this procedure or any other would be appropriate to measure methane. If such a procedure is acceptable, EPA further requests comment on whether a uniform procedure is preferable to the proposed options.

Finally, EPA is proposing to maintain the current smoke standards for nonroad diesel engines rated over 37 kW. The Agency proposes to extend the applicability of these standards to nonroad diesel engines rated under 37 kW. This proposal is discussed in detail in Section III.G.

B. Test Procedures

1. Test Cycles

The test cycle used to measure emissions is intended to simulate some measure of actual operation in the field. Testing an engine for emissions consists of exercising it over a prescribed duty cycle of speeds and loads using an engine dynamometer. The nature of the test cycle used for determining compliance with emission standards during the certification process is critical in evaluating the likely emissions performance of engines designed to those standards. To the extent that in-use operation differs from the certification test, there is the possibility that a certified engine will have higher than expected emission rates in the field. EPA has addressed such concerns in the past; for example, the highway heavy-duty engine test cycles were changed to address transient operation (45 FR 4136, January 21, 1980) and, more recently, EPA has revised the test cycle for light-duty vehicles (61 FR 54852, October 22, 1996).

Because of the potential inadequacies in the ability of test cycles to ensure control in real-life conditions, EPA is very concerned that engines may be designed to control emissions well during a certification test only to emit at higher levels during field operation. EPA has observed at times that manufacturers may tailor the design of their engines to narrowly meet emission test requirements. Also, engine manufacturers have a degree of discretion in how they control engine operation across the whole range of engine operating modes to balance competing demands for power, fuel economy and emission control. The advent of electronic controls has greatly increased the level of sophistication in controlling the full range of engine operation. This advance also carries with it some uncertainty about whether proper control of emission-related engine parameters is maintained during engine operation that is not represented in the certification test cycle. The current nonroad test cycle, with a limited combination of steady-state speeds and loads, does not include some operating modes that are commonly experienced in the field.

Originally, certification testing of heavy-duty highway engines was conducted with steady-state test cycles (one cycle for diesel engines and one for otto-cycle engines), in which an engine is operated at several discrete modes of constant speed and load for measuring emissions. EPA subsequently revised the highway engine test instead to use transient cycles, which continuously vary speeds and loads. Current test requirements for nonroad diesel engines are based on an eight-mode steady-state test cycle similar to the original cycle for highway engines. This test cycle was developed by the International Organization for Standards (ISO) as part of Standard 8178 and is designated as the C1 cycle.

EPA still believes that the C1 cycle is the most appropriate cycle available at this time for ensuring that emissions are controlled in the field. The Agency therefore proposes to continue to rely on the C1 cycle as the principal method of testing nonroad diesel engines. NO_X emission rates depend significantly on the degree of engine loading (as a fraction of its rated capacity); i.e., higher relative engine load, or load factor, corresponds with a greater mass of NO_X emissions for each combustion event. Testing on a limited number of engines—with current technology—shows that total NO_X emissions from the C1 cycle are comparable to those generated on the transient highway test procedure.[20] Engine-to-engine variability is significant, but available data is insufficient to determine any directional difference in the average results. This testing does not provide for conclusions on the possibility of high in-use NO_X emissions from engines that are designed to control emissions only in modes represented by the certification test procedure. The same testing shows that HC emissions, while more sensitive to test cycle in percentage terms, are formed at much lower levels. The set of engines tested emitted on average about 0.7 g/kW-hr (0.5 g/hp-hr) of HC less on the C1 cycle than on the highway test procedure, which is much less than the variability observed for NO_X emissions. Tested CO emissions were significantly lower on the C1 cycle than on the highway test procedure, which is reflected in the lower numerical emission standards for nonroad engines.

Evaluating the ability of a test cycle to appropriately measure PM emissions, however, requires a review of different parameters than evaluation of comparability for NO_X emissions. Particulate emissions, like NO_X emissions, depend on engine load, but are most sensitive to the degree of transient engine operation. Most nonroad engines are used in applications that include substantial transient operation in use, especially those used to propel motive equipment. Equipment such as pumps and generators operate mostly or exclusively at constant engine speeds, but they may may also depart from steady-state operation due to variation in engine loads over time. EPA believes that the proposed PM emission standards, with a steady-state certification test, will result in a predictable improvement in PM emissions from those engines used in constant-speed applications. Engines experiencing a greater degree of transient operation will also likely have lower rates of PM emissions, though the degree of that reduction is harder to predict. The concern for ensuring an adequate level of control of PM emissions from all nonroad engines has been the principal motivation for EPA to look at the possibility of incorporating an element of transient operation in the certification test. While the proposal includes no testing with a transient cycle, EPA will continue to pursue development of a transient cycle that can be incorporated into certification testing, as described below.

The proposal includes additional cycles for specific engines. The same numerical standards apply to all test cycles. Any engines that are limited to operate only at a constant speed may, at the manufacturer's option, use the ISO D2 cycle for emission testing. This cycle, which omits idle and intermediate-speed modes from the C1 cycle, is representative of engines such as generators, which are designed never to run at these omitted speeds.[21] Because of the more limited range of engine operation in the D2 cycle, manufacturers must ensure that engines certified with data generated with the D2 cycle are used exclusively in constant-speed applications. Accordingly, these engines must include labeling information indicating this limited emission certification.

For engines rated under 19 kW, EPA proposes an additional test cycle, the ISO G2 cycle, though manufacturers may also use the C1 or, for constant-speed engines, the D2 cycle for these smaller engines. The ISO G2 cycle includes the same modes as the D2 cycle and adds a mode for operation at idle. This cycle was developed to represent the operation of small diesel engines used primarily at rated speed, such as in lawn and garden applications, generators, pumps, welders, and air compressors. EPA has investigated the representativeness of this cycle for engines rated under 19 kW and supports the use of this cycle at this time. By capturing operation at rated speed for a variety of engine loads and including operation at idle the G2 cycle seems appropriate for the principal applications of these engines. The Nonroad Statement of Principles specifies only the G2 cycle for engines rated under 19 kW. Since that time, further deliberation has led EPA to allow also the C1 cycle and, in the case of constant-speed engines, the D2 cycle for these engines. As described above, the D2 cycle is appropriate for those engines that are limited to operate only at rated speed. By including more operating modes, the C1 cycle can be considered more broadly representative of a wide range of engine applications, including those rated under 19 kW. While the D2 cycle clearly has a unique role in emission certification, the C1 and G2 cycles here present manufacturers with two optional procedures for all the engines rated under 19 kW that are not certified under the D2 cycle. EPA therefore requests comment on whether it is appropriate or desirable to allow use of both the C1 and G2 cycles for these engines.

EPA proposes that propulsion marine engines rated under 37 kW rely on the E3 cycle for emission testing. The E3 cycle, which consists of engine operation at four different engine speeds and four different loads, was developed by ISO to represent the operation of propulsion marine engines, and has been supported by an Agency investigation.[22] EPA nevertheless requests comment on whether a similar candidate cycle for propulsion marine engines, the ISO E5 cycle, would be equally or more appropriate. The E5 cycle differs from the E3 cycle by including engine operation at idle. In addition, EPA proposes an additional flexibility to marine engine manufacturers to allow marine engines to be included in land-based engine families. This flexibility would enable manufacturers to certify propulsion marine engines on the C1 test cycle, which would be appropriate for marine engines developed from land-based models. Finally, EPA proposes that auxiliary marine engines subject to this rule (i.e., engines installed on a marine vessel, but not used for propulsion) should be tested using the G2, C1, or D2 test cycles, with the constraints described above for the counterpart land-based nonroad engines.

Except for the C1 cycle and the D2 cycle for constant-speed engines, EPA has little data supporting the adequacy of the test cycles described above; however, there also seems to be no information indicating that these cycles are flawed. ISO committees developed the various test cycles intending to capture a representative portion of the in-use operation for particular groups of engines. EPA, supporting efforts to harmonize emission certification requirements with those of other countries, supports the use of ISO test cycles if EPA can find that they are adequate for measuring and controlling in-use emissions. As noted above, EPA has reviewed the E3 and G2 cycles and supports the use of these cycles at this time. Technologies and emission control strategies in the future may, however, become more sensitive to variations in engine operation; EPA will therefore continue to explore the potential benefits of a new or revised test cycle for certifying engines.

The Supplemental ANPRM describes the need to review the adequacy of the certification test procedure, especially as it relates to transient operation in the field. The signatories to the Nonroad Statement of Principles agreed to better characterize in-use engine operation and evaluate the effectiveness of the current test procedure. In the event that the current test procedure would be found inadequate to address air quality concerns, EPA has committed to pursuing a revised test procedure to address the problem. In so doing, the

[19] Springer, Karl J. (1979), "Characterization of Sulfates, Odor, Smoke, POM and Particulates from Light and Heavy-Duty Engines—Part IX," Ann Arbor, Michigan: U.S. Environmental Protection Agency, Office of Mobile Sources. Publication No. EPA–460/3–79–007.

[20] "Summary of Nonroad Compression Ignition Transient and Steady-State NO_X and PM Emissions Data," EPA memorandum from Cleophas Jackson to Docket A–96–40, May 21, 1997.

[21] For a description of the development of the D2 cycle, see "Exhaust Emission Testing of Diesel Engines for Industrial Applications," (Docket A–96–40, item II–D–26).

[22] Selection of Duty Cycle for High-Speed CI Marine Engines," EPA memorandum to Docket A–96–40 from Mike Samulski, February 19, 1997.

Agency recognizes several constraints, including the need for a very extensive effort to develop revised test cycles, the importance of the objective of maintaining harmonization of international standards, and the need to re-evaluate the numerical standards with any change in the test procedure. Also, because of the time required to develop revised test cycles and the additional time for engine manufacturers to redesign engines with a new procedure, any change in the test cycle would likely not apply before the implementation of Tier 3 standards.

EPA requests comment on appropriate test cycles for nonroad diesel engines.

2. Test Fuel

In the 1994 final rule, EPA allowed manufacturers to test for certification of PM emission levels using the low-sulfur test fuel specified by the California ARB for nonroad diesel engines. EPA's objective was to minimize any difference from the protocol previously established for California, because EPA finalized PM standards for engines rated over 130 kW only in response to industry's request to adopt California's PM standard, which was not considered technology-forcing. Under current regulations, testing with federal test fuel involves an optional adjustment of measured PM levels to account for the higher PM emissions associated with the higher fuel sulfur content.

EPA is now proposing PM standards that are expected to provide meaningful reductions from all sizes of engines used nationwide. The Clean Air Act accordingly requires EPA to ensure that the test procedure, including fuel specifications, adequately represent in-use operation. Typical nonroad diesel fuel sulfur levels outside of California are about 0.33 weight percent, though nonroad equipment to some degree utilizes highway fuels, which have a maximum allowable sulfur level of 0.05 weight percent.[23] California extends the 0.05 weight percent limit to include both highway and nonroad diesel fuel. Using the calculated adjustment to PM emission levels for fuel sulfur finalized in 1994, the difference between 0.33 and 0.05 weight percent would correlate with a difference of 0.06 g/kW-hr (0.05 g/hp-hr) in PM emission levels. To the extent that in-use emissions are higher with high-sulfur fuel, regulated engines could be operating at levels that significantly exceed certification standards. This raises concerns regarding whether the test fuel is representative of in-use fuels. EPA therefore proposes to require that, beginning with Tier 2 emission standards (Tier 1 standards for engines rated under 37 kW), testing with fuel based on federal specifications be conducted without use of any adjustment to measured PM levels. Testing for NO_X, HC, CO, and smoke is not affected, since the 1994 final rule already specified that federal test fuel was appropriate without adjustment for measuring emissions of those pollutants.

Manufacturers' likely continued interest in using California's test fuel is consistent with EPA's goal of harmonizing certification requirements where possible. EPA will therefore continue this practice as an option for manufacturers. The Agency requests comment on whether there should be an upward adjustment to measured PM levels when engines are tested with low-sulfur fuel. EPA also requests comment on the appropriate form of such a PM adjustment. The current equation for adjusting PM measurements depends on the relationship of PM emission levels to fuel sulfur content and could therefore be modified to adjust PM measurements from testing with low-sulfur fuel. Such a calculation would require selection of a representative in-use fuel sulfur level.

One possible resolution would be to adopt the sulfur specification used for European testing. European test fuel specifications include a fuel sulfur level between 0.1 and 0.2 weight percent sulfur. Testing with fuel sulfur levels between 0.05 and 0.1 weight percent are allowed, but are adjusted upward using the same adjustment equation specified by EPA, referenced to a test fuel with 0.15 weight percent sulfur.

EPA currently specifies test fuel with a range in fuel sulfur levels from 0.05 to 0.5 weight percent. EPA solicits information related to sulfur levels found in in-use fuels, including the degree to which nonroad equipment utilizes highway-grade diesel fuel. EPA will accordingly consider changes to the test fuel specifications to ensure that the test fuel is representative of that used in the field.

Whether or not the manufacturers utilize low-sulfur test fuels and any associated adjustment, EPA would intend to conduct confirmatory testing with federal test fuels, which would not involve any adjustment to measured PM levels.

C. Durability

To achieve the full benefit of the emissions standards, programs are necessary to encourage manufacturers to design and build engines with durable emission controls and encourage the proper maintenance and repair of engines throughout their lifetime. The goal is for engines to maintain good emission performance throughout their in-use operation.

When the Tier 1 standards for engines rated over 37 kW were developed, deterioration was not expected to be a problem for two reasons. First, the Tier 1 standards were not considered by EPA to be technology forcing. Second, the focus was on NO_X control and NO_X emissions were thought not to deteriorate from these engines. As a result, there are few requirements in the current regulations that address deterioration concerns for nonroad diesel engines. As tighter standards are put into place, EPA believes that it becomes necessary to adopt measures to address concerns about possible in-use emission performance degradation.

EPA is proposing to make some changes to the existing durability program, as the new standards are phased in, to help ensure that engines are still meeting applicable standards in use. The specific areas of the durability program that are being focused on here are useful life, warranty period, deterioration factors, allowable maintenance intervals, and rebuilding requirements.

a. Useful Life

Currently, nonroad diesel engines rated over 37 kW are defined, for emission control purposes, to have a useful life of 8,000 hours or 10 years, whichever occurs first. The in-use testing liability period is currently 6,000 hours or 7 years, whichever occurs first. Based on a study performed for EPA, this is representative of the average time until first rebuild for the majority of nonroad diesel engines.[24] EPA is proposing no changes to these requirements.

EPA proposes a shorter useful life and liability period for engines rated under 37 kW. Based on EPA's current understanding, the smaller engines have a shorter life expectancy than larger engines. This is supported by data supplied to EPA on two small engines.[25] According to comments received from some manufacturers, engines rated under 37 kW that operate at higher rated speeds (<3000 rpm) have a shorter life expectancy than engines rated under 37 kW that operate at lower speeds.[26] EPA believes that these comments are reasonable. Table 2 presents the proposed useful lives and in-use testing liability periods. EPA requests comment on the appropriateness of the proposed useful lives for engines rated under 37 kW (land-based and marine). EPA is also interested in any durability data on nonroad diesel engines, especially those rated under 37 kW.

[23] "Estimates for In-use Nonroad Diesel Sulfur Levels," EPA memorandum from David Korotney to Docket A–96–40, July 1, 1997.

[24] ICF Incorporated, "Industry Characterization: Nonroad Heavy Duty Diesel Engine Rebuilders," prepared for U.S. Environmental Protection Agency, Contract 68–C5–0010, WAN 102, January 3, 1997, (Docket A–96–40, item II–A–02).

[25] Letter from Norman Weir, Yanmar Diesel America Corp., to Don Kopinski, Environmental Protection Agency, March 10, 1997 (Docket A–96–40, II–D–27).

TABLE 2.—PROPOSED USEFUL LIFE AND RECALL TESTING PERIODS

Power rating	Rated engine speed	Useful life		Recall testing period	Hours
		Hours	Years		Years
<19 kW	All	3000	5	2250	4
19–37kW	Constant speed engines 3000 rpm	3000	5	2250	4
	All others	5000	7	3750	5

Liability periods were proposed based on the ratio of useful life and liability periods established for engines rated over 37 kW. The purpose of the shorter liability periods is to ensure that engines used in recall testing are not statistical outliers with poor emissions durability. If a recall were ordered, all engines in that family would be subject to the recall regardless of their age.

EPA also requests comment on the appropriateness of basing the useful life on the typical time until first rebuild. The ICF report cited above reports that the average time until retirement for nonroad diesel engines is between 12,000 and 14,000 hours. According to this information, no one would be liable for the emission performance of these engines for a large percentage of their overall operation. EPA understands, however, that an appropriate useful life is needed to protect manufacturers from recall testing being based on engines that continue to perform beyond the emission control design life and are not representative of typical use.

b. Warranty Period

Tied to the useful life is the minimum warranty period imposed by the Clean Air Act. Currently, the minimum warranty period for nonroad diesel engines rated over 37 kW is 3,000 hours or 5 years of use, whichever occurs first. EPA proposes to extend this minimum warranty period to engines rated between 19 and 37 kW; however, for engines rated under 19 kW, EPA proposes a warranty period of 1,500 hours or 3 years, whichever occurs first. A shorter warranty for engines rated under 19 kW is proposed due to the shorter useful lives, and the three year warranty period for small engines is consistent with current warranty practice. EPA requests comment on the appropriateness of the proposed warranty period.

c. Deterioration Factors

In the Tier 1 nonroad engine rule, EPA did not require manufacturers to accumulate operating time on durability data engines or to generate deterioration factors for engine certification because that rule focused almost entirely on modest reductions in NO_X emissions. Analysis of highway engine data at that time led EPA to conclude that heavy-duty diesel engines do not generally produce more NO_X emissions as they get older. EPA believes that this stability of emission control can be attributed to the fact that diesel engine manufacturers have met emission standards through internal improvements to the engine and fuel systems, rather than relying on aftertreatment and other devices that would be more susceptible to in-use degradation. In fact, engine deterioration in current technology nonroad diesel engines could result in lower NO_X emission levels due to a loss in cylinder compression.

As NO_X, HC, and PM standards are reduced and nonroad diesel engine manufacturers introduce new technologies solely for emission control purposes, such as aftertreatment, sophisticated fuel delivery controls, and exhaust gas recirculation (EGR), long-term emissions performance becomes a greater concern. In addition, emission deterioration characteristics are not well known for aftertreatment, EGR, and other more sophisticated emission-control strategies.

EPA proposes to require the application of a deterioration factor (DF) to all engines covered by this rule. The DF is a factor applied to the certification emission test data to represent emissions at the end of the useful life of the engine. Currently, DFs are required for highway heavy-duty engines but are only required for nonroad diesel engines rated over 37 kW if engines use aftertreatment technologies. Deterioration factors would be determined by the engine manufacturers in accordance with good engineering practices. EPA is not proposing a specified procedure. The deterioration factors would, however, be subject to EPA approval. EPA requests comment on the need for and application of DFs.

It is not EPA's intent to force a great deal of data gathering on engines using established technology for which the manufacturers have the experience to develop appropriate DFs. New DF testing may not be needed where sufficient data already exists. EPA's main interest is that technologies with unproven durability in nonroad applications, such as EGR, are demonstrated to meet the proposed emission requirements throughout their useful lives. However, because this rule creates a program that will introduce new standards and new technologies over many years, the DF requirement is being proposed for all engines so that EPA can be sure that reasonable methods are being used to ascertain the capability of engines to meet standards throughout their useful lives. This proposed DF program would allow EPA to act in the traditional role of establishing emission performance standards, rather than putting EPA in a position where it would appear to be prejudging the durability of specific technologies and designs.

Similar to the provisions for highway engines, EPA proposes to allow the nonroad engine manufacturers the flexibility of using carryover and carryacross of durability emission data from a similar engine that has either been certified to the same standard or for which all of the data applicable for certification has been submitted. In addition, EPA proposes to extend this flexibility to allow deterioration data from highway engines to be used for similar nonroad engine families.

EPA is especially concerned that an unnecessarily burdensome durability

[26] Letter from Dr. Hartmut Mayer, Euromot, to Donald Kopinski, Environmental Protection Agency, January 16, 1997 (Docket A–96–40, II–D–32).

demonstration not be required for engines using established technology for which the manufacturers have the experience to determine appropriate deterioration factors. In these cases, EPA proposes to allow nonroad engine manufacturers to perform an analysis, based on good engineering practices, in place of actual service accumulation. For instance, in the case where no durability data exists for a certain engine but both smaller and larger engines using similar technology have been shown not to deteriorate for NO_x in use, it would be possible to build a case showing no NO_x deterioration for that engine.

EPA proposes that engines using established technology, for the purposes of this program, are engines that do not meet the proposed Tier 3 NMHC+NO_x and PM emission standards. However, EPA specifically proposes to exclude engines using exhaust gas recirculation or aftertreatment from being considered as using established technology. In the case where a manufacturer believes that a given engine is using established technology even though it meets the Tier 3 NMHC+NO_x and PM levels, EPA proposes that, prior to applying for certification, the manufacturer would be able to petition the Administrator to consider the given engine as using established technology.

In the past, in on-highway engine certification, durability data have been used for many years through carryover and carryacross of data. One concern is that, with repeated incremental changes in a nonroad engine design, the data would become unrepresentative for the engine applying for certification. EPA requests comment on how to ensure that carryover and carryacross data is appropriate-(for example, by including limit on how long data could be used). EPA also requests comment on alternatives to the durability program described here which would result in better, and more cost-effective, confirmation of in-use emissions performance.

d. Allowable Maintenance Intervals

Manufacturers are currently required to furnish the ultimate purchaser of each new nonroad engine with written instructions for the maintenance needed to ensure proper functioning of the emission control system. Generally, manufacturers require the owners to perform this maintenance as a condition of their emission warranties. If such required maintenance is more than the engine owner is likely to perform due to cost or inconvenience, then in-use emissions deterioration can result. For highway diesel engines, EPA imposes limits on the frequency of maintenance that can be required of the engine owners for emission-related items; these limits also apply to the engine manufacturer during engine certification and durability testing. Further, the performance of maintenance would be considered during any in-use recall testing conducted by the Agency.

Currently, EPA specifies no minimum allowable maintenance intervals for nonroad diesel engines. EPA believes, however, that allowable maintenance intervals for nonroad engines are necessary to ensure that the technology is practical in use. Because the actual maintenance intervals for nonroad engines are likely to be similar to highway engines, EPA believes that maintenance requirements should parallel those for highway engines (40 CFR 86.094–25). EPA therefore proposes the following minimum intervals for adjustment, cleaning, repair, or replacement of various components.

At 1,500 hours and 1,500 hour intervals thereafter:

1. EGR related filters and coolers.
2. Positive crankcase ventilation valve.
3. Fuel injector tips (cleaning only).

At 3,000 hours and 3,000-hour intervals thereafter for engines rated under 130 kW, 4,500-hour intervals thereafter for engines rated over 130 kW:

1. Fuel injectors.
2. Turbocharger.
3. Electronic engine control unit and its associated sensors and actuators.
4. PM trap or trap-oxidizer system.
5. EGR system (including all related control valves and tubing).
6. Catalytic convertor.
7. Any other add-on emissions-related component.

Add-on emission-related components are those whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control, yet not significantly affect the performance of the engine.

Consistent with the defmition for highway engine maintenance requirements, EPA proposes to define the following components as critical emission-related components:

1. Catalytic convertor.
2. Electronic engine control unit and its associated sensors and actuators.
3. EGR system (including all related filters, coolers, control valves and tubing).
4. PM trap or trap-oxidizer system.
5. Any other add-on emissions-related component.

If maintenance is scheduled on critical emission-related components in-use, EPA proposes that the manufacturer be required to show the reasonable likelihood that the maintenance will be performed in-use. In the proposed regulations, EPA lists the same manufacturer options for showing that maintenance is likely to be performed in-use as are currently included in the highway program. This list includes showing that performance would degrade without maintenance, survey data showing that the maintenance is performed, using a visible signal system, free maintenance provided by the manufacturer, and other methods approved by the Administrator.

EPA requests comment on the need for allowable maintenance intervals and the appropriateness of the intervals proposed here. EPA also requests comment on the appropriateness and need for the proposed critical emission-related scheduled maintenance requirements.

e. Rebuilding Requirements

EPA has two concerns regarding the rebuilding of nonroad diesel engines, both related to new emission-related components that may be added to the engine to meet the new standards. First, EPA is concerned that during engine rebuilding, there may not be an incentive to check and repair emission controls that do not affect engine performance. Second, EPA is concerned that there may be an incentive to rebuild engines to an older configuration due to real or perceived performance penalties associated with technologies that would be used to meet the standards proposed in this notice. Such practices would likely result in a loss in emission control.

Under the current program, there are no specific rebuilding requirements for nonroad diesel engines. However, there is a tampering provision that states "the manufacturer or rebuilder of the part may certify according to 40 CFR 85.2112 that use of the part will not result in a failure of the engine to comply with emission standards." [27] For highway engines, engine rebuilding practices are currently addressed in general terms under EPA policies established under Clean Air Act section 203(a)(3) regarding tampering. Under a separate action for highway heavy-duty engines, EPA has proposed to add the highway policies to the regulations as they apply to tampering and has also proposed new measures.[28] EPA's intent is to propose the same rebuilding requirements for nonroad diesel engines as those proposed to be put into place for heavy-duty highway engines starting with the 2004 model year.

EPA proposes that parties involved in the process of rebuilding or remanufacturing engines (which may include the removal of the engine, rebuilding, assembly, reinstallation and other acts associated with engine rebuilding) must follow the provisions listed below to avoid tampering with the engine and emission controls. The applicability for these provisions is proposed to be based on the build date of the engine. The rebuild requirements apply to any engine built on or after the date that new standards, proposed in this rule, go into effect for a specific engine category, regardless of the emission levels that the engine is designed to achieve.

(1) EPA proposes that, during engine rebuilding, parties involved must have a reasonable technical basis for knowing that the rebuilt engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, and specifications).

(2) When an engine is being rebuilt and remains installed or is reinstalled in the same piece of equipment, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a configuration of the same or later model year as the original engine.

(3) At the time of rebuild, emission-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes. Diagnostic systems must be free of all such codes when the rebuilt engines are returned to service. Further, such signals may not be rendered inoperative during the rebuilding process.

(4) When conducting an in-frame rebuild or the installation of a rebuilt engine, all emission-related components not otherwise addressed by the above provisions must be checked and cleaned, repaired, or replaced where necessary, following manufacturer recommended practices.

Under this proposal, any person or entity engaged in the process, in whole or part, of rebuilding engines who fails to comply with the above provisions may be liable for tampering. Parties would be responsible for the activities over which they have control and as such there may be more than one responsible party for a single engine in cases where different parties perform different tasks during the engine rebuilding process (e.g., engine rebuild, full engine assembly, installation). EPA is not proposing any certification or in-use emissions requirements for the rebuilder or engine owner. EPA requests comment on the appropriateness of applying this rebuild program to nonroad engines.

EPA is proposing to adopt modest record keeping requirements that EPA believes are in line with customary business practices. The records would be kept by persons involved in the process of nonroad engine rebuilding or remanufacturing and shall include the hours at time of rebuild and a list of the work performed on the engine and related emission control systems, including a list of replacement parts used, engine parameter adjustments, design element changes, and work performed as described in item (4) of the rebuild provisions above. EPA proposes that such records be kept for two years after the engine is rebuilt.

Under this proposal, parties would be required to keep the information for two years but would be allowed to use whatever format or system they choose, provided that the information can be readily understood by an EPA enforcement officer. EPA proposes that parties would not be required to keep information that they do not have access to as part of normal business practice. In cases where it is customary practice to keep records for engine families rather than specific engines, where the engines within that family are being rebuilt or remanufactured to an identical configuration, such record keeping practices are proposed to be satisfactory. Rebuilders would be able to use records such as build lists, parts lists, and engineering parameters that they keep of the engine families being rebuilt rather than on individual engines, provided that each engine is rebuilt in the same way to those specifications. EPA requests comments on the appropriateness of the proposed record keeping requirements including whether the records should be kept for a longer period of time such as for five years.

D. Averaging, Banking, and Trading

With this notice, EPA is proposing to replace the existing nonroad engine averaging, banking, and trading (ABT) program with a comprehensive new program. The proposed program is intended to enhance the flexibility offered to engine manufacturers that will be needed in meeting the stringent NMHC + NO_x standards and the PM standards being proposed. The proposed changes to the ABT program have been made in tandem with the proposed emission standards. This allows EPA to propose the most stringent emission standards that should apply with the proposed ABT program, while providing the flexibility and cost benefits to manufacturers who have to meet the technical challenges of the lower standards. It should be noted that as part of the 2001 feasibility review described earlier, the Agency plans to reassess the appropriateness of the averaging, banking, and trading provisions applicable to nonroad diesel engines and modify the provisions if deemed necessary.

The proposed changes come in the context of the existing ABT program for nonroad engines, which was adopted in 1994 (see 59 FR 31306, June 17, 1994). The existing program covers diesel engines rated over 37 kW and is available for NO_x emissions only. The three aspects of the ABT program (averaging, banking, and trading) are described in the following paragraphs.

Averaging means the exchange of emission credits among engine families within a given engine manufacturer's product line. Averaging allows a manufacturer to certify one or more engine families at levels above the applicable emission standard (but below a set upper limit). However, the increased emissions must be offset by one or more engine families within that manufacturer's product line certified below the same emission standard, such that the average emissions from all the manufacturer's families (weighted by engine power and production volume) are at or below the level of the emission standard. Averaging results are calculated for each specific model year. The mechanism by which this is accomplished is certification of the engine family to a "family emission limit" (FEL) set by the manufacturer, which may be above or below the standard. An FEL that is established above the standard may not exceed an upper limit specified in the ABT regulations. Once an engine family is certified to an FEL, that FEL becomes the enforceable emissions limit used to determine compliance during assembly line testing and in-use compliance testing.

Banking means the retention of emission credits by the engine manufacturer generating the credits for use in future model year averaging or trading. Under the existing program, banked credits have a three year life. EPA believes banking improves the feasibility of meeting standards, including the development and early introduction of advanced emission control technology, which allows certain engine families to act as trail blazers for new technology. This can

[27] 40 CFR 89.1007.

[28] Environmental Protection Agency, "Control of Emissions of Air Pollution from Highway Heavy-Duty Engines; Notice of Proposed Rulemaking," 61 FR 33421, June 27, 1996.

help provide valuable information to manufacturers on the technology prior to manufacturers needing to apply the technology throughout their product line. It can also provide valuable information for use in other regulatory programs. An incentive for early introduction arises because the banked credits can subsequently be used by the manufacturer to ease the compliance burden of new, more stringent standards.

Trading means the exchange of emission credits between engine manufacturers which can then be used for averaging purposes, banked for future use, or traded to another engine manufacturer. Trading can be advantageous to smaller manufacturers who might have limited opportunity to optimize their costs through the use of averaging. Trading can also be advantageous to larger manufacturers because extending the effective averaging set through trading can allow for overall optimization of costs across manufacturers.

As described later in this section, EPA is proposing significant changes to the existing ABT program for nonroad diesel engines. Behind these changes is the recognition that the proposed standards represent a major technological challenge to the industry. ABT provisions can ease the need to bring all engines into compliance during the exact year the proposed new standards would take effect by allowing credits to be used, for example, to temporarily offset emissions from some particularly difficult to control engine line. While the existing ABT provisions were designed with these same general goals in mind, EPA believes that the nature of the challenge presented by standards proposed in this notice justifies efforts to increase the flexibility of the ABT program. The Agency wishes to maximize the flexibility and incentives for early introduction of technology which ABT offers without limiting the air quality benefits of the proposed standards. This will help ensure that the proposed new standards will, in fact, be attainable for the manufacturers, will be met at the lowest cost, and will still achieve the expected emissions benefit from the proposed standards.

The ABT program contained in this proposal would apply to all nonroad diesel engines covered by this notice. The following discussion of the proposed ABT provisions is divided into two sections. The first section describes the proposed provisions for engines rated over 37 kW. The second section describes the proposed provisions for those engines rated under 37 kW, including land-based and marine engines, both of which are currently unregulated by EPA. Readers are encouraged to review the draft regulations for a fuller understanding of how the proposed ABT program would operate. In addition to those areas specifically highlighted, the Agency solicits comments on all aspects of the proposed ABT changes, including comments on the benefit of these changes to manufacturers in meeting the proposed emission standards and any potential air quality impacts which might be associated with them.

1. Proposed Program for Engines Rated Greater Than or Equal to 37 kW

EPA is proposing to implement several new provisions upon finalization of the proposed standards. The following section is divided into two subsections and describes the proposed changes to the ABT program for engines greater than or equal to 37 kW. The first subsection describes the general provisions applicable to all engines. The second subsection describes several provisions specific to engines certified to the existing Tier 1 standards for engines greater than or equal to 37 kW.

i. General Provisions: Beginning with the proposed Tier 2 standards, the form of the standard changes from separate HC and NO_X standards to a combined NMHC + NO_X standard. Therefore, once the proposed Tier 2 standards take effect, credits will be based on combined NMHC + NO_X values. In the Tier 2 time frame, NMHC + NO_X credits will be generated against the proposed Tier 2 standards, which vary from 6.4 to 7.5 g/kW-hr (4.8 to 5.6 g/hp-hr), depending on the power rating of the engine. In the Tier 3 time frame, NMHC + NO_X credits will be generated against the proposed Tier 3 standards, which vary from 4.0 to 4.7 g/kW-hr (3.0 to 3.5 g/hp-hr), depending on the power rating of the engine.

The existing Tier 1 ABT program for nonroad engines does not cover PM emissions. Based on the certification levels of Tier 1 engines, the Tier 2 PM standards contained in the proposal will require manufacturers to reduce the PM levels of their engines. In addition, the proposed NMHC + NO_X standards will affect the manufacturer's ability to comply with the proposed PM standards due to the tradeoff between NO_X emissions and PM emissions which exists for diesel engines. Therefore, beginning with the introduction of Tier 2 engines, EPA is proposing to include PM emissions in the ABT program in order to provide manufacturers with greater flexibility in complying with the proposed PM standards. (As described later, EPA is proposing to allow the early banking of PM credits from Tier 1 engines under certain conditions.) All PM credits will be generated against the proposed Tier 2 standards until EPA adopts subsequent PM standards. Because EPA is proposing to include both NMHC + NO_X and PM in the ABT program, EPA is also proposing to prohibit manufacturers from generating credits on one pollutant while using credits on another pollutant all on the same engine family. EPA believes such a provision is important given the tradeoff between NO_X and PM emissions which exists for diesel engines.

As discussed earlier, EPA is planning to assess the adequacy of the current steady-state test procedure in an effort to determine if the expected emission benefits are being realized in use. EPA is concerned that PM reductions required on the current steady-state certification test will not result in similar reductions in use and could possibly, under some situations, even result in an increase in in-use emissions. Given the lack of sufficient information to confirm these concerns, EPA still believes it is appropriate to include PM emissions in the ABT program at this time. However, should EPA determine that the current test procedure is inadequate and the expected in-use emission benefits are indeed not being fully realized, it would, of course, be inappropriate to allow the unconsidered use of credits generated under the current test procedure to demonstrate compliance under a future, more appropriate test procedure. EPA would therefore need to reassess the appropriateness of the PM provisions for any Tier 3 standards, taking into consideration the amount of credits generated up to that point or taking the expected credit balances into account in setting the Tier 3 PM standard levels.

EPA is also proposing FEL upper limits that go with these new proposed standards. EPA believes the proposed FEL upper limits provide the manufacturers adequate compliance flexibility while protecting against the introduction of unnecessarily high-emitting engines. EPA requests comment on the appropriateness of the proposed upper limits. EPA is proposing a NMHC + NO_X FEL upper limit of 10.5 g/kW-hr (7.9 g/HP-hr) for engines greater than or equal to 130 kW certified in the Tier 2 time frame. The proposed NMHC + NO_X FEL upper limit is based on the existing Tier 1 NO_X and HC standards of 9.2 and 1.3 g/kW-hr (6.9 and 1.0 g/HP-hr), respectively.

Engines between 37 and 130 kW do not currently have to show compliance with an HC standard. However, data from those engines currently certified with EPA show that these engines are below the 1.3 g/kW-hr (1.0 g/HP-hr) HC level. Therefore, EPA is proposing the same NMHC + NO_X FEL upper limit of 10.5 g/kW-hr for Tier 2 engines greater than or equal to 37 kW and less than 130 kW. For Tier 3 engine families, EPA proposes that the NMHC + NO_X FEL upper limit be the Tier 2 NMHC + NO_X standards for the same power category of engines.

For PM, EPA is proposing a PM FEL upper limit of 0.54 g/kW-hr (0.40 g/HP-hr) for engines greater than or equal to 130 kW certified in the Tier 2 time frame. The proposed PM FEL upper limit is based on the existing Tier 1 PM standard. Engines between 37 and 130 kW do not currently have to show compliance with a PM standard. Therefore, EPA is proposing a PM FEL upper limit of 1.2 g/kW-hr for Tier 2 engines greater than or equal to 37 kW and less than 130 kW. This level represents a typical PM level for uncontrolled engines based on an EPA report.[29] (EPA is not proposing a PM FEL upper limit beyond Tier 2 because EPA is not proposing Tier 3 PM standards at this time.)

Upon finalization of the new standards, EPA is proposing to replace the three year credit life provision of the existing ABT program with no limit on credit life. EPA believes that unlimited life is warranted given the stringency of the proposed standards. An unlimited credit life will promote the feasibility of the proposed standards because it increases the value of the credit to the manufacturer by providing greater flexibility. It is consistent with the emission reduction goal of ABT, not only because of the increased manufacturer incentive but also because it eliminates the "use or lose" aspect of the existing program's limit on credit life which creates the perverse incentive for manufacturers to use credits as quickly as possible. As a result, unused credits, which are extra emission reductions beyond what the EPA regulations require, may remain off the market longer. EPA also believes that removing credit life limits for the cleaner engines will provide maximum incentive for the development and introduction of clean engines with emission levels approaching the research objectives of the Nonroad Statement of Principles which are 2.0 g/kW-hr (1.5 g/hp-hr) NO_X and 0.07 g/kW-hr (0.05 g/hp-hr) PM.

EPA is proposing to eliminate the "buy high/sell low" power conversion factor provision of the existing ABT regulations and to replace it with the sales-weighted average power value beginning in Tier 2. Currently, when a manufacturer generates credits, the credits are based on the minimum power configuration in a family. When a manufacturer goes to use credits, the credits are based on the maximum power configuration in the family. In other words, credit generation is calculated based on the configuration which generates the least benefit within the family while credit use is based on the configuration which requires the most credits to comply. In some cases this can result in a sizeable offset. Based on experience with the ABT program for highway heavy-duty engines, EPA does not believe such an offset is necessary. This provision tends to introduce a penalty for credit generating engines, thus reducing the benefits of the ABT program for manufacturers. Therefore, EPA proposes to base both credit generation calculations and credit usage calculations on the sales-weighted average power values within each engine family. EPA has already proposed to incorporate this same change into the highway heavy-duty diesel engine ABT program (61 FR 33421, June 27, 1996) and requests comment on the appropriateness of such a change for the nonroad ABT program.

EPA is proposing to include an adjustment in the calculation of credits for the useful life of the engine. The existing ABT program does not include any adjustment for useful life to the credit calculations. All engines covered under the Tier 1 standards were assumed to have the same useful life of 8,000 hours. Therefore, in light of the fact that manufacturers are allowed to use credits across all power categories under the existing Tier 1 program, it was not necessary to adjust the value of the credits for different engine lifetimes. However, as discussed earlier, EPA is proposing to adopt useful life periods for engines below 37 kW that vary from 3,000 hours to 5,000 hours. In addition, as discussed later, EPA is also proposing to allow ABT credits to be used across some of the power categories where useful life will vary. Therefore, in order to appropriately determine the relative value of credits generated and the relative amount of credits used by different engines over their regulatory lifetime, EPA is proposing to include useful life in the equations used to calculate credits generated or credits used under the ABT program.

Another factor applied in the highway heavy-duty engine program that EPA is not proposing to include in the credit calculation for the nonroad program is related to engine load factor. Load factor refers to the percentage of maximum power at which an engine operates. An engine class that operates at a higher load would burn more fuel, and therefore, generate more emissions during an hour of operation. Including the load factor in the equation would lead to a more accurate estimation of in-use emissions and would be necessary if EPA were proposing to allow credits from the nonroad ABT program to be transferred to other emission trading programs, such as the Open Market Trading Program. No adjustment to the credit calculations for load factor is proposed under this rule because there do not appear to be distinct and varied load factors for different types of engines regulated under this rule.[30] As an indicator, the D2 and G2 test cycles have load factors of about 47% and the C1 test cycle has a load factor that is generally around 50±5%. However, the decision not to propose the inclusion of a load factor term to the credit calculations should not be interpreted to mean that this factor would not be appropriate for any future efforts. For example, marine engines have two very distinct engine applications: recreational and commercial. Commercial marine engines often have useful lives ten times longer and load factors two times greater than recreational marine engines. As noted below, EPA's diesel marine rule is currently under development and may need to address these differences as part of that proposal.

As discussed later in more detail in the equipment manufacturer flexibility section, EPA is proposing that engine manufacturers be given the option to trade the NMHC + NO_X and PM credits generated by their engines to equipment manufacturers. Equipment manufacturers could use these credits to increase their options under the equipment manufacturer flexibility provisions.

There are two remaining areas on which EPA is requesting comment. First, EPA requests comment on the inclusion of engines certified to meet the State of California's standards in the

[29] "Nonroad Engine and Vehicle Emission Study" (NEVES), U.S. EPA, EPA Report Number 21A–2001, November 1991 (available in Air Docket A–96–40).

[30] There are a wide range of load factors for in-use nonroad diesel engines which are a result of the wide variation of nonroad equipment applications. However, EPA believes that any attempt to track these load factors for the purposes of credit calculations would be overly burdensome and would have no real emissions benefit since the credits are only allowed to be used in within the nonroad ABT program.

proposed ABT program. Currently, manufacturers may not include engines certified for California in the ABT program. Although the California ARB is expected to adopt the same standards that EPA is proposing today, they have not yet proposed such changes to their diesel nonroad program. Therefore, EPA does not believe that it can propose to include such engines in the revised ABT program at this time without knowing the full details of California's program.

Second, EPA is requesting comment on whether there should be restrictions on trading PM credits across the different power categories for which EPA is proposing standards. Based on the emission levels of Tier 1 engines certified with EPA, the PM levels of engines between 75 and 130 kW appear to be similar to those of engines between 130 and 560 kW. (At this point, EPA has very little PM emissions data on engines between 37 and 75 kW that are required to be certified by January 1998.) Under the proposal, the Tier 2 PM standards for engines less than 130 kW will be higher than the Tier 2 PM standards for engines greater than 130 kW. Based on the limited certification information, EPA has concerns that engines in one power category could generate PM credits against higher standards and then use those credits for showing compliance with another power category of engines with a lower standard. For this reason, EPA is requesting comment on limiting the use of PM credits to the power category in which the credits were generated.

ii. Special Provisions for Tier 1 Engines: As described above, EPA is proposing to replace the existing ABT program with a comprehensive new program. Based on EPA's experience with Tier 1 certification and because of implementation differences between the existing Tier 1 provisions and the proposed Tier 2 and later provisions, EPA is proposing two changes that will specifically affect engines certified to the existing Tier 1 standards. First, EPA is proposing a methodology for calculating NO_X credits earned with Tier 1 engines that can be used for showing compliance with the proposed Tier 2 NMHC + NO_X standards. Second, EPA is proposing to allow engine manufacturers to bank early PM credits that can be used once the proposed Tier 2 standards take effect. Both of these proposed changes are described in more detail below. The proposed changes in the general provisions, described above, including the unlimited life, use of average power for credit calculations, and useful life adjustment, will also apply to engines certified to the existing Tier 1 engines. EPA believes these changes are warranted for Tier 1 engines given the stringency of the proposed standards. Also these proposed changes are consistent with the feasibility of the proposed standards because they increase the value of the credits to the manufacturer by providing greater flexibility.

With regard to the generation of NO_X credits from engines certified to the existing Tier 1 standards, EPA is proposing to continue to allow manufacturers to earn NO_X credits, but not NMHC + NO_X credits. The NO_X credits earned on engines certified to the existing Tier 1 standards could be used to show compliance with the proposed Tier 2 NMHC + NO_X standards. Under the existing Tier 1 regulations, manufacturers are required to meet separate HC and NO_X standards. However, as noted earlier, beginning with the proposed Tier 2 standards, the form of the standard changes to a combined NMHC + NO_X standard. Based on EPA certification information for engines between 130 and 560 kW, the sales-weighted average HC levels of Tier 1 engines are 0.5 g/kW-hr, well below the 1.3 g/kW-hr standard. EPA believes the Tier 1 HC standard did not require manufacturers to reduce HC emissions, and therefore, allowing manufacturers to earn NMHC + NO_X credits against the combined Tier 1 HC and NO_X standards would provide manufacturers with false HC credits. For this reason, EPA is proposing to allow manufacturers to earn NO_X credits, and not NMHC + NO_X credits, on Tier 1 engines.

With regard to the calculation of NO_X credits from Tier 1 engines that are to be banked or traded, EPA is proposing that an adjustment be made in the calculation unless the engine on which the credits were earned is below the applicable standards by a specified amount. EPA believes an adjustment to the NO_X credits from certain Tier 1 engines is necessary to prevent the possibility of a significant delay in the introduction of engines meeting the proposed Tier 2 NMHC + NO_X standards. Based on certification information for current Tier 1 nonroad engines, if EPA allowed engine manufacturers to generate NO_X credits against the Tier 1 standard from all engines, they could potentially generate a large number of NO_X credits, and thereby significantly delay compliance with the proposed Tier 2 standards. Furthermore, the smaller incremental reductions from those engines only slightly below the standard are less likely to represent the cleaner, pull-ahead technologies which ABT is designed to encourage. However, these smaller credits do represent early reductions and do have some value given the stringency of the Tier 2 standards.

EPA is proposing to implement a trigger as a mechanism to distinguish between Tier 1 engine families which are eligible for no adjustment and those families which must be adjusted. For engine families certified with a NO_X FEL at or below 8.0 g/kW-hr NO_X, no adjustment would be applied to any NO_X credits. EPA has set 8.0 g/kW-hr NO_X to be a reasonable discriminator for pull-ahead technology based on the certification levels and technologies used to comply with the existing Tier 1 standards. For engine families certified at a NO_X FEL above the 8.0 g/kW-hr trigger in the Tier 1 time frame, an adjustment that reduces the value of the credits by 35 percent would be applied to the NO_X credits. EPA requests comment on the proposed level to be used for adjusting the converted Tier 1 NO_X credits. The proposed level was selected based on a combination of factors. If the rate is set too high, EPA would create a significant disincentive for the introduction of progressively improved technology. There may also be some incentive for manufacturers to marginally recalibrate engines at higher NO_X levels for improved operating characteristics such as fuel economy. Conversely, if EPA set the rate too low (or proposed no adjustment at all), there would be little incentive to develop and implement truly cleaner technology than currently exists. EPA believes an adjustment of 35 percent for credits generated at NO_X FELs above 8.0 g/kW-hr, strikes a balance between these dynamics.

With regard to PM, EPA is proposing to allow early banking of PM credits from Tier 1 engines, under certain conditions, as soon as the proposed standards are finalized. Under the proposal, an engine will be eligible to generate PM credits as long as the engine meets the Tier 1 NO_X standard of 9.2 g/kW-hr. For those eligible engines, the number of PM credits generated will be calculated against the proposed Tier 2 standards and may only be used to show compliance once the Tier 2 PM standards take effect. EPA is not proposing to apply the trigger or credit adjustment concept to PM credits because the proposed provisions for PM credits already require credits generated in the Tier 1 time frame to be calculated against the significantly more stringent proposed Tier 2 standards. Based on certification information for current Tier 1 nonroad engines, if EPA allowed manufacturers to bank credits against the relatively loose Tier 1 PM standard, manufacturers could potentially generate a large number of PM credits, and thereby significantly delay compliance with the proposed Tier 2 standards. EPA's main objective in ABT is to increase the feasibility of the proposed standards by allowing manufacturers to meet more stringent standards for certain engine families, allowing manufacturers more flexibility and lead time in bringing emissions for more problematic families down to the level of the standards. It is not designed to allow manufacturers to delay compliance with new standards for a long period of time for large numbers of engines. EPA requests comment on the appropriateness of the 9.2 g/kW-hr NO_X level as a limiting factor for whether PM credits can be generated by an engine family.

EPA requests comment on two additional changes for Tier 1 engines that EPA is considering adopting upon finalization of the proposed standards. First, EPA is considering adopting a safety net approach regarding the use of the NO_X credits generated from Tier 1 engines used in the Tier 2 time frame. As noted earlier, manufacturers have the potential to earn a large number of credits from current Tier 1 engines that could be used to significantly delay the introduction of engines meeting the Tier 2 standards. Although EPA doesn't expect this situation will occur, EPA is considering adopting a provision that would apply an additional 10 percent surcharge to the NO_X credits used by a manufacturer if they use credits to certify more than 20 percent of their fleet in the first or second year a Tier 2 standard applies in a given power category. EPA believes such a provision would provide manufacturers with sufficient compliance flexibility while, at the same time, encouraging them to reasonably limit the number of engines certified through ABT as the proposed standards take effect. EPA requests comment on the level of both the surcharge and the level at which the surcharge would apply.

Second, EPA is requesting comment on limiting the number of years for which early PM credits would be available. Assuming EPA finalizes the proposed standards prior to the beginning of the 1999 model year, manufacturers would have the potential to bank early PM credits for between two to seven years. This increases the chances that manufacturers could potentially generate a large number of PM credits, and thereby delay compliance with the proposed Tier 2 standards for many engines. Therefore, EPA is requesting comment on limiting the availability of early PM credits to the three years prior to when the applicable Tier 2 standards take effect.

2. Proposed Program for Engines Rated Under 37 kW

As noted earlier, EPA is proposing standards for engines rated under 37 kW, which are currently unregulated by EPA. Therefore, the existing ABT program does not apply to such engines. EPA is proposing provisions to include both land-based and marine engines rated under 37 kW in the ABT program. A number of provisions are being addressed for these engines, including credit generation, credit life, credit calculation, trading across power categories, credit exchange between land-based and marine applications, and a special multi-year averaging and banking program.

With regard to credit generation, EPA is proposing to make credits available for both NMHC + NO_X emissions and for PM emissions as soon as the standards are finalized. However, because of the kinds of technologies typically used by these engines, if is necessary to put some restrictions on how they are generated. Specifically, EPA is proposing that all credits generated from engines rated under 19 kW be calculated against the proposed Tier 2 standards, even prior to the Tier 2 time frame. This will apply for both NMHC + NO_X credits and PM credits. In other words, prior to the date when the proposed Tier 2 standards become effective, manufacturers who want to generate credits can generate credits only against the proposed Tier 2 standards, not the proposed Tier 1 standards. EPA believes this strategy for generating emission credits from engines rated under 19 kW is appropriate because the majority of engines in that power category use indirect fuel injection designs, which tend to have significantly lower NO_X levels compared to direct injection engines and, in most cases, NMHC + NO_X levels significantly lower than the proposed Tier 1 standards. For engines rated between 19 and 37 kW, where direct injection engines are more common, EPA is proposing that all engines generate credits against the applicable proposed standards, but, as discussed below, EPA is requesting comment on whether credits for engines between 19 kW and 37 kW should be generated against the proposed Tier 2 standards even during the Tier 1 time frame.

Because engines rated under 37 kW are currently unregulated at the Federal level, EPA cannot base the Tier 1 FEL upper limits on the previously applicable standards. However, the California ARB currently regulates nonroad diesel engines rated under 19 kW. Based on existing California ARB standards for nonroad diesel engines rated under 19 kW, EPA is proposing Tier 1 FEL upper limits for engines rated under 37 kW of 16.0 g/kW-hr (12.0 g/hp-hr) for NMHC + NO_X and 1.2 g/kW-hr (0.9 g/hp-hr) for PM. The proposed FEL upper limits for the Tier 2 standards are the proposed Tier 1 standards.

With regard to credit life, EPA is proposing to adopt the unlimited life provisions for engines rated under 37 kW, as described earlier for engines rated over 37 kW, with one exception. Because of concerns over the amount of credits manufacturers could earn on indirect injection engines under the proposed Tier 1 standards and the potential for significant delay in implementation of the Tier 2 standards, EPA is proposing that all credits generated prior to the Tier 2 time frame on engines rated under 19 kW expire at the end of 2007. With respect to credit generation and usage calculations, EPA is proposing that manufacturers use the sales-weighted average power for engines rated under 37 kW, as described earlier for engines rated over 37 kW. The inclusion of useful life in the calculation of credits, as described earlier, will also apply to the proposed ABT program for engines rated under 37 kW.

With respect to trading across power categories, EPA is proposing two restrictions on such trading because of the concerns noted above regarding the relatively low emissions from indirect injection engines. First, EPA is proposing that manufacturers not be allowed to use credits generated on engines rated under 19 kW to demonstrate compliance for engines rated over 19 kW. Second, EPA is proposing to prohibit manufacturers from trading credits earned on indirect injection engines rated over 19 kW to other manufacturers. Under this second proposed restriction, a manufacturer would still be allowed to use such credits for averaging or banking purposes with other engines it produces rated over 19 kW. EPA believes these trading restrictions are important to alleviate concerns that indirect injection engines could generate significant NMHC + NO_X credits against the proposed standards, which could then be traded to other manufacturers to delay compliance in the higher power categories. As an alternative to the proposed prohibition on trading credits from indirect injection engines to other manufacturers, EPA requests comment on applying the same limitation on

credit generation for engines greater than or equal to 19 kW and less than 37 kW as are being proposed for engines below 19 kW. This alternative would require that all credits, including credits generated on Tier 1 engines, be generated against the proposed Tier 2 standards.

With respect to the exchange of credits across applications, EPA is proposing that manufacturers not be allowed to use credits generated on land-based engines to demonstrate compliance for marine engines. EPA believes that trading from land-based nonroad engines to marine engines is inappropriate for three reasons. First, allowing land-based credits to offset marine emissions could neutralize the marine program. There are many more land-based nonroad engines than there are marine engines, and allowing these trades would allow manufacturers to effectively trade out of the marine emission control requirements. Second, such a program would penalize small marinizers whose business consists of buying engines or engine blocks and modifying them for marine applications, or other manufacturers of only marine engines. These small marinizers would not have the same access to land-based credits as large engine manufacturers who also marinize their own engines. Allowing cross-application trading would give large manufacturers an unfair competitive advantage, since large manufacturers could effectively trade themselves out of the marine program whereas smaller marinizers would have to make the investments necessary to reduce emissions from their marine engines. Third, allowing land-based nonroad engine credits to offset marine emissions raises concerns regarding the geographic distribution of emission reductions. Specifically, the emissions from diesel marine engines are concentrated only in port areas while the emission from land-based nonroad are arguably spread out more evenly across the country. This creates a level of uncertainty as to whether the engines that generated the credits will be used in the same nonattainment area as the marine engines whose emissions are offset by the credits. While this problem is present to a certain degree in all nonroad programs, it is also the case that marine engines can be used in only one kind of area, and thus the ability to offset potentially higher marine emissions with lower-emitting land-based engines is limited.

While EPA is proposing not to allow manufacturers to use credits generated on land-based engines to demonstrate compliance for marine engines, EPA is proposing to allow manufacturers to use credits generated on marine engines to demonstrate compliance for land-based applications. This will benefit those engine manufacturers that only manufacture marine engines, who otherwise would be limited to trading emission credits among themselves or not trading at all. In addition, EPA expects to propose that small diesel marine engines be included in future diesel marine ABT program. This would create additional trading opportunities for these engine manufacturers.

Last of all, EPA is proposing a special four-year averaging and banking program for engines rated under 37 kW that would allow manufacturers to create a negative balance of credits for the first two years after the proposed Tier 1 standards are effective. This negative balance would have to be eliminated by the end of the fourth year of the Tier 1 standards. Based on discussions with engine manufacturers, it appears the proposed Tier 1 dates for engines rated under 37 kW will be challenging, especially for air-cooled direct injection engines. Even though a number of the small engine manufacturers have signed the Nonroad Statement of Principles that included the proposed Tier 1 standards, there may be some engine models that will not be ready by the proposed implementation dates. Therefore, EPA believes the two year allowance is important to ensure the feasibility of the proposed standards given the short lead time that is expected between the time the rule is expected to be finalized and the proposed implementation dates of the Tier 1 standards. Under the proposed program, manufacturers would be allowed to certify engines with FELs above the proposed Tier 1 standards and generate "negative credits" for the first two years after the proposed Tier 1 standards take effect. By the end of the fourth year after the proposed Tier 1 standards take effect, the manufacturer would be required to have certified enough engines with FELs below the proposed Tier 1 standards such that they have generated enough credits in order to pay back the negative credits, along with a ten percent penalty for any negative balance of credits carried over from one year to the next. Because of the penalty applied to negative credit balances, EPA believes the multi-year averaging and banking program will provide a small benefit to the environment in the long run. Under this special program, manufacturers would not be allowed to use emission credits obtained through trading with other engine manufacturers to offset their negative credit balances. In accordance with the above described provisions, separate programs would apply for engines rated under 19 kW and for engines between 19 and 37 kW.

As noted earlier, EPA solicits comments on all aspects of the proposed ABT changes, including comments on the benefit of these changes to manufacturers in meeting the proposed emission standards and any potential air quality impacts which might be associated with them.

E. Flexibility for Equipment Manufacturers

1. Overview of Approach to Providing Flexibility

EPA has often set engine emission standards that take full effect at a set point in time, concurrently precluding the installation of engines not certified to the new standards in vehicles or equipment. In meeting with manufacturers of nonroad engines and equipment to develop the Statement of Principles, EPA determined that a different approach to implementing new standards might be needed to avoid unnecessary hardship for equipment manufacturers (sometimes referred to as original equipment manufacturers or OEMs), while achieving the desired environmental benefits.

Some equipment manufacturers that do not make their own engines have complained that the Tier 1 rule resulted in disruptions because their engine suppliers did not always provide adequate lead time for the equipment redesigns needed to accommodate engine design changes such as mounting locations and heat rejection loads. The averaging, banking, and trading program is of little help to them, because they, as equipment manufacturers, have no control over which engines earn or use credits. For some, even timely information on the new engine designs has not solved the problem because of the sheer volume of redesign work needed to change diverse product offerings with limited engineering staffs. The manufacturers expressed a belief that the same problem would accompany the transition to the proposed Tier 2 standards. By addressing this problem in the design of the Nonroad Statement of Principles, the signatories were able to consider more stringent standards earlier than would otherwise be feasible.

In response to these concerns, the Agency is proposing an OEM transition program to provide equipment manufacturers with some control of the transition process to new standards. This proposed program is based on the provisions contained in the Supplemental ANPRM, with modifications suggested in written comments, in subsequent discussions with equipment manufacturers, and in the report of the panel convened for this rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).[31] The program consists of six major elements, each directed at a specific need. Although they involve certain planning and recordkeeping responsibilities if taken advantage of, all of these elements are voluntary. An OEM has the option to continue to do business as under the current regulations, subject to the prohibited acts provisions of 40 CFR Part 89, Subpart K. The elements of the program are: (1) A percent-of-production allowance for general applications, (2) a larger percent-of-production allowance for agricultural equipment, (3) a small-volume allowance, (4) continuance of the Tier 1 allowance to use up existing inventories of engines, (5) access to averaging, banking, and trading program credits, and (6) availability of hardship relief. Each of these is discussed in detail below.

2. Elements of Proposed OEM Transition Program

a. Percent-of-Production Allowance for General Applications: This proposed element allows each equipment manufacturer to install engines not certified to new emission standards in a certain percentage of its annual production for the U.S. market. For equipment with engines over 37 kW, in each year that a new Tier 2 standard first applies, an OEM will be allowed up to 15 percent of its equipment produced for sale or use in the U.S. to contain engines certified to Tier 1 standards. This allowance drops to 5 percent in each of the next 6 years. These allowances can provide substantial relief by allowing an OEM to prioritize redesign work onto high volume models. Many manufacturers have a substantial number of lower volume models with combined sales within these percentages. The several years in which exemptions are allowed accounts for the very limited engineering staffs available in many companies for the needed redesign work. EPA believes that allowing this latitude in the initial years of the standards is consistent with the Clean Air Act and that, were it not available, many OEMs would likely be unable to meet the redesign requirements necessitated by the standards. This flexibility allows the vast majority of the equipment population to be in compliance with these stringent standards more quickly than would otherwise be possible.

As presented in the Supplemental ANPRM, this provision would apply to equipment with engines under 37 kW as well, except that the 5 percent allowance would extend for 3 years instead of 6, and the exempted equipment could use uncontrolled engines beginning in the Tier 1 time frame. Manufacturers of equipment with engines rated under 37 kW objected to the shorter flexibility program duration proposed for their equipment. They argued that the 1999 and 2000 Tier 1 implementation dates that apply to them make it even more imperative that they receive flexibility allowances at least as large as those applied to manufacturers of large equipment. This concept was also put forward for consideration by the Small Business Advocacy Review Panel as potentially beneficial in addressing small business concerns. EPA believes that this concern has merit and also believes that the effect of such an extension on the environmental benefit would be small. Therefore the Agency is proposing, as a regulatory alternative, that the provisions of the general percent-of-production allowance that apply to manufacturers of large equipment be applied to manufacturers of equipment using small engines as well. Comment is requested on which of these regulatory alternatives is preferred. This alternative would also apply to the special agricultural equipment allowance and the small volume allowance (both discussed below) as well, so that no distinction would be made between equipment above and below 37 kW.

Commenters on the Supplemental ANPRM also requested a somewhat modified proposal from that outlined above. Under this modified approach, OEMs could respread the fixed percentage allowances across the years covered by the program. For example, instead of 15 percent of its production in the first year and 5 percent in each of the next 6 years, an OEM could exempt 45 percent in the first year and none thereafter, or save and spread its exemptions at 15 percent in each of years five, six, and seven to accommodate Tier 3 product introductions. EPA expects that this approach would not result in a significant degradation of the environmental benefit, due to the low percentages involved after the first year in the fixed percentage approach and the likelihood that some OEMs would group exemptions earlier and some later. The Agency believes that this added flexibility would provide substantial benefit to the industry by allowing each OEM to make its own determinations regarding which equipment is most in need of the flexibility provisions. EPA is therefore proposing it as a regulatory alternative to the fixed-percentage proposal. This concept was also put forward for consideration by the Small Business Advocacy Review Panel as potentially beneficial in addressing small business concerns (see Section VIII.B.).

To simplify the program, EPA proposes that the allowance under this alternative be framed as a 45 percent cumulative allowance over seven years (30 percent over 4 years for engines rated under 37 kW if the shorter duration alternative for these engines is adopted). The percent of production of exempted equipment in the first year would be subtracted from this starting allowance to determine the remaining allowance, and so on. EPA requests comment on the percent-of-production allowance and on which regulatory alternative is preferred.

Because actual production figures are not available when product planning decisions must be made, OEM's will have to base these decisions on projected production volumes. As a result, EPA will expect manufacturers to factor actual production data into annual redeterminations of remaining allowances and to adjust their product plans accordingly, so that all compliance determinations are ultimately based on actual production.

Another modification suggested by commenters is a provision to allow transfer of exemptions between power categories, with appropriate weightings to account for the differing environmental impacts of different engines. The Agency believes that this flexibility could provide substantial implementation benefits to some manufacturers, but is concerned that substantial losses in environmental benefits could result unless conservative correction factors could be devised. Many parameters affect an engine's impact on the environment, including size, life expectancy, average load factors, annual usage, and location of use, making the determination of correction factors extremely difficult. Of even more concern is the possible abuse of transferred exemptions to disadvantage a smaller competitor. A large manufacturer with a diverse product offering could stack exemptions into a market niche it competes in, possibly allowing it to sell machines with cheaper noncomplying engines for many years. EPA requests comment on

[31] "Final Report of the SBREFA Small Business Advocacy Review Panel for Control of Emissions of Air Pollution from Nonroad Diesel Engines", May 23, 1997 (available in Air Docket A–96–40).

the transfer of exemptions, including possible ways of addressing these concerns. EPA is especially interested in comments on the possible allowance of exemption transfers limited to the two power categories under 19 kW in Tier 1, because of the special challenges involved in designing these small engines to control emissions by the implementation date, and the relatively narrow power range for these two categories, which may somewhat ease concerns about proper weighting and exemption stacking.

b. Percent-of-Production Allowance for Agricultural Equipment: In preparing the proposal, EPA was made aware of some special concerns in the implementation of new emission controls on agricultural equipment. First, because the prices of farm products are strongly influenced by economic factors other than the cost of production, individual farmers are often not able to pass cost increases for new machinery on to consumers. Second, although many agricultural operations are quite large, there remains a sizeable segment of this equipment user community for which the rapid introduction of new technologies may be problematic. This segment is characterized (to varying degrees) by: (1) Small operations, often limited to family members, (2) remoteness from dealer or factory repair facilities, (3) traditional reliance on user maintenance, and (4) reticence to buy machines with unfamiliar technologies such as electronic controls. Third, there are numerous agricultural equipment models that service niche applications, for which only a handful of machines are sold each year. Fourth, although the international harmonization of standards is one of the goals of this program, farm tractors have not yet been included in the proposed regulations in the EU, and so control of emissions from these machines in Europe may therefore lag that of other applications. Finally, there are special challenges in redesigning some agricultural equipment for modified engine designs, such as the potential for heat exchanger plugging by airborne crop debris and the need for tractor hood profiles that allow a clear view of crop rows. Although certain of these or similar issues may apply individually to other equipment market segments as well as the agricultural market, they combine in the agricultural segment to warrant particular concern about a rapid transition to new standards.

After considering these issues, the Agency is proposing to grant more lead time for this equipment through a somewhat expanded OEM transition provision. Specifically, in each year that a new Tier 2 standard (Tier 1 for engines rated under 37 kW) applies, an OEM will be allowed up to 30 percent of its farm equipment produced for sale or use in the U.S. to contain engines certified to Tier 1 standards (uncertified for engines rated under 37 kW). This allowance drops to 15 percent in each of the next seven years (3 years for engines rated under 37 kW if the shorter duration alternative for these engines is adopted). A company that makes some farm equipment and some equipment used in other applications, wishing to take advantage of both the general and the special allowances, would make separate percent-of-production determinations in each category. EPA is also proposing that the provisions discussed above for exemption spreading apply to this special allowance as well. This would in effect provide a 135 percent cumulative allowance over eight years (75 percent over 4 years for engines rated under 37 kW if the shorter duration alternative for these engines is adopted).

EPA is aware that some ambiguity exists in the term "farm" equipment. The Agency desires that this expanded allowance be reserved for equipment models that are clearly targeted for the agricultural markets, but also recognizes that machines are sometimes put to diverse uses. EPA believes that the current definition for "farm equipment or vehicle" in 40 CFR 85.1602 is adequate for the purposes of this program. This definition covers equipment primarily used in commercial farm and logging activities. No routine record keeping or other evidence would be required of OEMs to make such an a priori determination. However, should EPA gather clear evidence of a misapplication of this designation, a recalculation of exemptions under the general application allowance would be required. Comment on this approach and alternative suggestions are solicited.

It should be noted that, although this provision may have some negative air quality implications, the impact of this expanded allowance on air quality is mitigated somewhat by the typical locations of this type of equipment. Much of this equipment is used in rural areas of the country that are remote from urban nonattainment areas. This is perhaps especially true of the small volume applications most likely to be exempted in the transition program. Although the regional transport of emitted pollutants over large distances is of concern, as explained in Section II, it is reasonable to expect some falloff of airborne concentrations of these pollutants over these distances.

Commenters on the Supplemental ANPRM suggested that companies that make both agricultural equipment and other equipment be allowed to transfer exemptions between these broad categories to further enhance implementation flexibility. Though supporting the goal of increased flexibility, EPA is concerned that substantial transfers of the large special exemption allowance could slow the introduction of complying construction, industrial, and utility machines, which is not justified by the analysis above. The Agency is also concerned that this added flexibility could provide an unfair competitive advantage to large companies with diverse product lines, a concern reflected in the comments as well. These concerns could be addressed by discounting transferred exemptions to reflect environmental or business impact differentials. However, at this time, EPA has no basis by which to determine the appropriate discount levels and so is not proposing this flexibility. Other commenters requested that the special allowance provision be dropped entirely and the resulting exemption pool be respread into the general allowance. However, the Agency believes that this would not address the above-discussed concerns. EPA requests comment on the special allowance proposal and on the suggestions made in the Supplemental ANPRM comments.

c. Small Volume Allowance: The percent-of-production approach outlined above may provide little benefit to small businesses focused on a small number of equipment models. To respond to these concerns, EPA is proposing that equipment manufacturers be allowed to exceed the percent-of-production allowances described above during the same years affected by the allowance program for general applications, provided they limit the installation of Tier 1 engines (uncertified engines for ratings under 37 kW) in each power category to a single equipment model with an annual production level (for U.S. sales) of 100 pieces or less. Though intended to ensure that the flexibility program does not disadvantage small businesses, this provision would be available to all equipment manufacturers. A manufacturer's use of this provision would not affect the availability of the other elements of the OEM transition program, although it would not be additive to the percent-of-production allowances: an OEM could base its exemption count on the percent-of-production allowance or the small volume allowance in any power category in any year.

EPA proposes that the exemption spreading provisions for the percent-of-production allowances discussed above, if adopted for these allowances, apply to the small volume allowance as well. That is, a manufacturer of a piece of equipment with an engine rated over 37 kW may use Tier 1 engines in a total of 700 of these units produced over the first seven years after the Tier 2 standard takes effect. Similarly, a manufacturer of a piece of equipment with an engine rated under 37 kW may use uncontrolled engines in a total of 400 of these units produced over the first four years after the Tier 1 standard takes effect, if the shorter duration allowance alternative is adopted for these engines.

EPA is aware of two concerns that must be addressed with this program element. First, a manufacturer may need to curtail sales of a product that, though initially selling below 100 units annually, experiences unanticipated sales growth marginally beyond this level; there would be no time to redesign the product for the new tier of standards. The Agency believes that the flexibility provided by the exemption spreading measure discussed above would sufficiently address this concern. A manufacturer with better than expected sales orders for the exempted model would use up the total exemption allowance earlier than expected, but, except in the last year that exemptions are available when conservative planning may be called for, an annual adjustment of the following year's exemptions would cover any reasonable underestimate of sales.

The second concern regards the vagueness of the term "model." Some OEMs may wish to take greater advantage of the small volume allowance by grouping several small volume products under a single model designation, possibly using "submodel" designations to distinguish products. One method of addressing this would be to adopt a regulatory definition of the term "model" for the purposes of this program, such as requiring that products cannot be considered to be of the same model designation unless they have exactly the same model number, with no distinguishing lower level designations.

Another approach would be to simplify the program by not requiring that the small volume exemption be limited to a single model. This has the advantage of providing more flexibility to the OEMs by allowing any number of models to be exempted, provided the combined annual exemptions from all of these models does not exceed the allowed maximum in any one power category. Some manufacturers have advocated this approach. However, it has the disadvantages of increasing the number of exemptions likely to be taken (thus possibly foregoing some environmental benefit), and of moving away from the intent of the small volume allowance, which is to help small OEMs with very limited product offerings. EPA believes that these disadvantages are not serious, and so is proposing this approach as an alternative to the single model requirement. This concept was also put forward for consideration by the Small Business Advocacy Review Panel as potentially beneficial in addressing small business concerns. EPA requests comment on the small volume allowance and on which of the proposed regulatory alternatives is preferred.

d. Continuance of the Existing Inventory Allowance: Paragraph (b)(4) of 40 CFR 89.1003 states in part: "Nonroad vehicles and equipment manufacturers may continue to use uncertified nonroad engines built prior to the effective date until uncertified engine inventories are depleted; however, stockpiling of uncertified nonroad engines will be considered a violation of this section." EPA proposes to extend this provision to the Tier 1-to-Tier 2 and Tier 2-to-Tier 3 transitions as well. A machine using such an engine would be considered under the tier of emission standards to which the engine is subject, and would therefore be treated as though it were produced in the previous year for such purposes as calculating percent-of-production and small volume allowances. It should also be noted that engines for which a manufacturer uses averaging, banking, and trading program credits to demonstrate compliance with EPA requirements will be treated in the OEM transition program as though they fully meet the applicable emission standards.

e. Access to Averaging, Banking, and Trading Program Credits: Though not discussed in the Supplemental ANPRM, commenters suggested that OEMs be provided additional flexibility by allowing them to purchase credits generated by engine manufacturers in the nonroad averaging, banking, and trading program. These credits would then be retired in exchange for further allowances to build equipment containing noncomplying engines. Although no guarantee could be made that credits would be available at a reasonable price, this provision would provide one more alternative in a range of options for OEMs to consider in planning for the new engines. This concept was also put forward for consideration by the Small Business Advocacy Review Panel as potentially beneficial in addressing small business concerns.

The Agency is favorable to concepts such as this that provide flexibility while tending to preserve the environmental benefit of the program, and so is proposing this additional flexibility. EPA believes this concept may actually benefit the environment by providing an incentive for engine manufacturers to pull ahead clean technologies in order to sell their credits at a profit. However, the Agency requests comment on whether there may be, on the other hand, the potential for a loss in environmental benefit through the creation of a market for credits that would otherwise have gone unused, and on the advisability of discounting credits used by OEMs to mitigate such losses. Comment is also sought on the advisability of restricting this provision to those applying for hardship relief, as discussed below.

The Agency is also soliciting comment on means of structuring the program to minimize its complexity and to preclude double-counting of credits. EPA is proposing that the credit amounts needed for each additional allowance be simply determined by multiplying the difference between the applicable standards times the midpoint of the applicable power range. For example, an allowance for a machine using a 200 kW (268 hp) Tier 1 engine in the Tier 2 time frame would require NMHC + NO_X credits totaling:

$(1.3 + 9.2 - 6.6)$ g/kW-hr $\times$ 177.5 kW $\times$ 8,000 hr = 5.538 Mg,

because 1.3, 9.2, and 6.6 g/kW-hr (1.0, 6.9, and 4.9 g/hp-hr) are the Tier 1 hydrocarbon, Tier 1 NO_X, and Tier 2 NMHC + NO_X standards, respectively; 177.5 kW (237.9 hp) is the midpoint of the 130 to 225 kW range, and 8,000 hours is the useful life for this range. For the sake of simplification, EPA would assume that Tier 1 hydrocarbon standards equate to NMHC levels, and that the 1.3 g/kW-hr (1.0 g/hp-hr) hydrocarbon level applies to Tier 1 power categories below 130 kW, for which there are no Tier 1 hydrocarbon standards. For OEMs seeking to use credits for additional allowances to install uncontrolled engines rated under 37 kW during Tier 1, EPA is proposing that the credit calculation assume uncontrolled NMHC + NO_X and PM levels of 16.0 and 1.2 g/kW-hr (11.9 and 0.9 g/hp-hr), respectively, based on a review of test data generated in the California small engine program.

Finally, the Agency is proposing that OEMs wishing to use ABT program credits would submit the same type of annual reports currently required of engine manufacturers participating in the ABT program, to allow the Agency to adequately track credits. Other credit use requirements and restrictions of the ABT program that apply to engine manufacturers would apply to equipment manufacturers as well.

f. Hardship Relief Provision: Commenters requested adoption of a hardship appeal process by which an OEM, especially a small business, could obtain relief by providing evidence that, despite its best efforts, it cannot meet the implementation dates, even with the OEM transition program provisions outlined above. Such a situation might occur if an engine supplier without a major business interest in the OEM were to change or drop an engine model very late in the implementation process. This concept was also put forward for consideration by the Small Business Advocacy Review Panel as potentially beneficial in addressing small business concerns. Based on outreach the Agency has done in formulating this proposal, especially to the small OEM community, EPA agrees that the concern of small businesses about the uncertainty of timely supply may be valid, and seeks to mitigate the possibility of business failures by providing fair, objective criteria for hardship appeal that minimize the potential loss in environmental benefit, minimize the Agency's involvement in a business' financial affairs, and avoid straining Agency resources.

The Agency is proposing a hardship relief provision under which appeals must be made in writing, be submitted before the earliest date of noncompliance, be limited to firms that fit the small business criteria established by the Small Business Administration,[32] include evidence that failure to comply was not the fault of the OEM (such as a supply contract broken by the engine supplier), and include evidence that the inability to sell the subject equipment will have a major impact on the company's solvency. The Agency would work with the applicant to ensure that all other remedies available under the flexibility provisions are exhausted before granting additional relief, and would limit the period of relief to no more than one year. Furthermore, the Agency proposes that applications for hardship relief only be accepted during the first year after the effective date of an applicable new emission standard. Comment is solicited on all aspects of this proposal and on whether the Agency should require those who receive relief to recover some of the lost environmental benefit, such as by purchasing Blue Sky Series engines described elsewhere in this proposal.

3. Availability of Engines

EPA is proposing that engine manufacturers be allowed to continue to build and sell the engines needed to meet the market demand created by the OEM transition program described above. Commenters on the Supplemental ANPRM expressed concern that the program will have minimal value because engine suppliers may decide not to continue making the older generation engines. Based on observation of current practice in which older engine configurations are routinely built to support replacement engine needs, EPA believes that engines will be made available to make the transition program workable. Further comment is solicited on this issue. Concerns that integrated manufacturers (who build engines for installation in their own OEM products and for sale to competitors) may purposely manipulate the production or prices of these engines to disadvantage their competitors appear to the Agency to be without merit, as this opportunity exists apart from EPA programs. However, to provide additional assurances, the engine manufacturers that signed the Nonroad Statement of Principles have agreed that, if they decide to continue the production of such engines, they will make them available for sale at reasonable prices to all interested buyers. EPA does not believe that regulation codifying this commitment is necessary or appropriate.

EPA is proposing that equipment manufacturers procuring engines for use under the OEM transition program provide written assurance to the supplying engine manufacturer that such engines are being procured for this purpose. EPA requests comment on the need for a requirement that engine manufacturers maintain or annually provide records on the engines manufactured in support of the OEM transition program, in order to help EPA prevent abuse of the program.

4. Enforcement and Record Keeping Requirements

The Agency desires to minimize the administrative burden to all parties involved with the OEM transition program. OEMs choosing not to take advantage of the allowances would have no requirements beyond those already in place from the Tier 1 rule. For OEMs choosing to take advantage of the allowances, EPA believes that the following requirements will be sufficient to allow it to enforce the program. (1) OEMs must keep records of the production of all pieces of equipment with engines covered by this rule. These records must be kept until December 31 of the year after the last year in which any of the allowances are used by the company. (2) Such records must include serial and model numbers and dates of production of equipment and installed engines, rated power of each engine, and the calculations used to determine the percent of production allowances taken in each power category. (3) OEMs must make these records available to the Agency upon request.

The Agency intends to conduct only limited audits of these records, and expects that scrutiny by the OEMs of their competitors' products will help identify potential candidates for audits. However, to further aid this process and the early identification of affected OEMs who may not be aware of the program requirements, EPA is considering also requiring that each OEM submit a letter to the Agency after each year in which allowances are utilized, providing some summary information, such as the number of machines sold with and without engines certified to the new standards. Comment is requested on the appropriateness of such a requirement.

EPA is aware of two conflicting concerns about the OEM transition program expressed by equipment manufacturers. On the one hand, manufacturers seek the maximum control and flexibility possible in implementing new standards. On the other hand, some manufacturers have felt that the flexibility provisions contained in the Supplemental ANPRM are already too complicated and that the suggested enhancements make them more so. Unfortunately, the simpler approaches suggested to date have involved a substantial loss in environmental benefits, amounting to effectively delaying the standards. Therefore the Agency has chosen to propose the collection of voluntary provisions discussed above, recognizing that effort will be needed by both the Agency and the industry to help manufacturers make best use of their options.

5. Alternative Concepts

Commenters on the Supplemental ANPRM suggested an alternative approach for helping OEMs implement

[32] 750 employees for manufacturers of construction equipment and industrial trucks, 500 employees for manufacturers of other nonroad equipment.

the new standards, by which a period of one to three years would be provided between availability of complying engines and the required date for use of these engines in new equipment. EPA is not proposing this approach because it would require a regulatory enforcement mechanism to ensure that final production-ready prototype engines are available long before the start of engine production on the required implementation date for new standards. Without such a mechanism, engine manufacturers could continue making design changes, delaying the implementation of new standards indefinitely. EPA is unaware of any such mechanism that would not also cause major disruptions in the industry.

Others recommended that the Agency set standards on a cost-effectiveness basis, application by application. Regulations would only apply to engines in those applications with an overall environmental impact high enough, and a cost of compliance low enough, to satisfy some specified cost-effectiveness threshold. The Agency is not proposing this approach for several reasons. First, this approach, which makes cost-effectiveness the primary factor in determining applicable standards, appears to be at odds with the standard setting criteria of section 213 of the Clean Air Act, which is primarily technology-based, with added consideration of cost, noise, energy, and safety factors. Second, accurate determinations of application-specific cost-effectiveness would be extremely difficult to make. Applications would constantly move above and below the threshold as new information and new design innovations are brought forth, creating uncertainty in the industry. Third, many engine models are used in multiple applications, possibly leading to multiple versions and higher costs. Fourth, evaluation outcomes would depend arbitrarily on how applications are defined. Many niche markets may have environmental impacts that are low individually, but quite large in the aggregate. Fifth, setting the threshold for cost-effectiveness would have inherent problems of arbitrariness, and would likely be met with vastly differing views in the public regarding the appropriateness of any threshold. Finally, the exempted equipment would still have some air quality impact, resulting in either a lower benefit of the program or more stringent standards for the regulated engines.

F. Flexibility for Post-Manufacture Marinizers

EPA believes that post-manufacture marinizers affected by the proposed standards may need some additional flexibility, beyond that available in the ABT program, to meet the challenges of new standards. By EPA's definition, a post-manufacture marinizer is someone who produces marine diesel engines by substantially modifying a complete or partially complete diesel engine, and who is not controlled by the manufacturer of the base engines or by an entity that controls both of them. For the purpose of this definition, "substantially modify" means changing an engine in a way that could change engine emission characteristics.

In some ways the challenge of any new standards for these marinizers would mirror that of nonroad equipment manufacturers, in that changes made by the original engine manufacturers might require changes in the parts and process involved in marinization. Because marinizers would experience similar impacts from the proposed standards as equipment manufacturers, EPA is requesting comment on extending some or all of the equipment manufacturer flexibility provisions described in Section III.E. to post-manufacture marinizers affected by this proposal. EPA sees the hardship relief provision for small businesses as perhaps especially appropriate for the post-manufacture marinizers, many of which are small businesses, and so is proposing their inclusion under this provision.

Unlike equipment manufacturers, however, marinizers generally complete the final stages of engine production and thus would typically be responsible for obtaining an EPA Certificate of Conformity with standards, and would bear liability for the emissions of these engines in use. One marinizer stated in EPA's outreach effort to small businesses (see Section VIII.B.) that the impact on small marinizers could be reduced if the proposed regulations allowed a post-manufacture marinizer to rely on the original engine maker's certificate of conformity, provided that the marinizer also demonstrates that it has not altered the engine's performance or combustion parameters. EPA is interested in pursuing certification streamlining options for marinizers, but has concerns that the original engine manufacturers may challenge their presumed liability in EPA enforcement actions directed at these engines. Also, a simple demonstration of equivalent emissions performance on pre- and post-marinized engines would not be sufficient to address the Agency's primary concern, which is the possibility of degradation of in-use emissions performance over time. EPA solicits suggestions on how the post-manufacture marinizer certification process might be streamlined while providing assurance of ongoing responsibility and durable emissions control design.

G. Control of Crankcase Emissions

Crankcase emissions are those exhaust gases that, upon leaving the combustion chamber, do not pass through the exhaust valve. Instead, the gases discharge (blowby) into the crankcase via the clearance between the piston and the cylinder wall. On certain engines (those engines with open crankcases), these gases may eventually escape from the crankcase to the atmosphere and are therefore named crankcase emissions. Some manufacturers produce engines that route crankcase vapors to the air intake system of the equipment; such a design is called a closed crankcase. This method, also called positive crankcase ventilation, recirculates blowby gases through a valve back to the intake manifold to be burned in the combustion chamber.[33]

Since 1985, closed crankcases have been required in naturally aspirated (nonturbocharged) highway diesel engines (45 FR 4136, January 21, 1980). Currently, turbocharged highway diesel engines are not required to have crankcase emission controls due to special difficulties in designing for closed crankcase. The problem with recirculating blowby gases in turbocharged engines is that the durability and effectiveness of turbocharger and aftercooler components can be affected by recycling gases containing particulate matter and corrosive gases.

There is limited data on crankcase emissions from nonroad diesel engines. In fact, EPA is not aware of any studies that explicitly investigate crankcase emissions from nonroad diesel engines. There are, however, studies relating to highway crankcase emissions.[34] Crankcase emission data from a 1977 study, in which three diesel engines (two naturally aspirated engines and one turbocharged engine) were tested. HC crankcase emissions ranged from 0.007 to 0.017 g/kW-hr (0.005 to 0.013 g/hp-hr), which represents 0.2 to 4.1 percent of corresponding exhaust emissions. PM crankcase emissions ranged from 0.9 to 2.9 percent of corresponding exhaust emissions. NO_x crankcase emissions represented only 0.01 to 0.1 percent of corresponding

[33] U.S. Environmental Protection Agency, Office of Mobile Sources, NEVES, Appendix I, Chapter 4, November 1991 (available in Air Docket A–96–40).

[34] ibid.

exhaust emissions. A more recent study performed by Southwest Research Institute in 1993 provided similar crankcase emissions from one turbocharged heavy-duty diesel engine, with HC, PM, and NO_X all at 0.01 g/kW-hr (0.01 g/hp-hr). None of the reported highway engines had more than 500,000 miles of use, an important consideration because of the expected increase in blowby gases as engines experience wear.[35]

EPA proposes to extend the closed crankcase requirement to nonroad engines, including the exemption for turbocharged diesel engines. Many naturally aspirated nonroad engines are already equipped with this technology; for those nonroad engine models still manufactured with open crankcases, EPA expects that closed-crankcase technology will be readily transferable. EPA has included the cost of closing crankcases in the analysis of the costs of complying with the proposed standards.

The proposed closed crankcase requirement applies to engines rated over 37 kW concurrent with the Tier 2 standards. Manufacturers of nonroad diesel engines rated under 37 kW are likely to have serious difficulties fully complying with closed crankcase provisions on the schedule proposed for Tier 1 emission standards, since this requirement would first apply to these manufacturers starting in 1999. Thus, for nonroad diesel engines rated under 37 kW, EPA proposes to delay the requirement for closed crankcases until 2001, providing more lead time for manufacturers of these engines. This delay will not have a major environmental impact because it is short, directed at a small segment of the engine market, and confined to a minor emission source relative to exhaust emissions. EPA requests comment on the proposal to control crankcase emissions and on the appropriateness of delaying the requirement for closed crankcases for these small engines.

H. Control of Smoke

1. Proposed Numerical Standards and Procedures

In 1994, EPA finalized smoke standards for nonroad diesel engines rated over 37 kW. The specified measurement method and calculations are from 40 CFR 86, subpart I, which was developed for highway engines. EPA concluded that the highway smoke test procedure would adequately test non-road engines and thus control smoke. The standards for nonroad engines are for engine smoke not to exceed averaged values of 20 percent on acceleration mode or 15 percent on lug mode and not to exceed peak opacity levels of 50 percent on either the acceleration or lug mode. EPA is proposing no changes to the smoke emission standards and procedures currently in place.

EPA proposes to extend the smoke standards to multiple-cylinder diesel engines rated under 37 kW, bringing these engines under the same regulatory framework as the larger engines. While these new standards may lead to lower smoke levels from some engines, the principal intent of setting standards is to prevent increased levels of smoke as engines are redesigned to comply with Tier 2 and Tier 3 standards for gaseous and particulate emissions. The same numerical standards would apply to the small engines. With minor exceptions, the same procedure, equipment, and calculation methods would also be used for these engines.

Extending smoke standards to the smaller engines raises some important issues. First, two-cylinder engines operating on the specified test procedure may produce puffs of smoke that may make the smoke measurement erratic. EPA proposes to permit the option of testing these engines with a preconditioned muffler of the type used in the field. Such an engine configuration is the same as that found in use, and thus represents meaningful control of in-use smoke; however, the smoke measurement response may be flattened out somewhat, resulting in potentially reduced levels of measured smoke. Engines with more than two cylinders will continue to be tested without a muffler, which is a "worst case" condition.

Second, specifying the correct exhaust pipe diameter requires extrapolation of specifications found in 40 CFR 86, subpart I. The current procedure calls for a 2 inch (5 cm) inside diameter exhaust pipe for testing engines rated under 101 horsepower maximum (75 kW). Yet, for constant visibility as a function of measured opacity (which is, in turn, a function of pipe diameter), this test pipe diameter should be smaller for engines with lower rated power. The same is true for the larger engines, where the procedure specifies the use of a 5 inch (13 cm) inside diameter exhaust pipe for the testing engines with a maximum rated power of 301 hp (225 kW) or greater. Consequently, the Agency is proposing that engines rated between 50 and 100 horsepower (37 and 75 kW) be tested with a 2 inch (5 cm) inside diameter exhaust pipe, while engines rated under 50 horsepower (37 kW) should be tested with an exhaust pipe of 1.5 inches (3.8 cm). Engines rated between 100 and 200 horsepower (75 and 150 kW) should be tested with the established 3 inch (7.6 cm) pipe diameter. Similarly, engines rated between 200 and 300 horsepower (150 and 220 kW) should be tested with the established 4 inch (10.2 cm) pipe diameter. For engines rated between 300 and 500 hp (225 and 373 kW), testing should be performed with the 5 inch (13 cm) inside diameter exhaust pipe, while engines rated over 500 horsepower (373 kW) should be tested with an exhaust pipe of 6 inches (15.2 cm). Perspectives and data on all issues related to testing these engines for smoke are solicited.

In applying the smoke standards and procedures to engines rated under 37 kW, EPA proposes to exempt one-cylinder engines. EPA believes that operation and testing of these engines is unique in ways that would need to be addressed before applying smoke standards. For example, it is not known if the smoke puffs emitted after each combustion stroke can be accommodated by the test procedure and if so, what the procedure features should be. The same is true of the dynamometer control specification elements of the procedure. Also, since there is no certainty as to the appropriate test procedure, there is no basis for selecting numerical standards. EPA is therefore proposing to postpone the regulation of smoke from these one-cylinder engines until a later rulemaking. The Agency believes there will be minimal air quality impact in the interim, since the large majority of one-cylinder diesel engines are used in generator sets and other steady-state applications; these engines therefore rarely experience acceleration modes, which are the the principal focus of smoke standards. EPA requests comment on the appropriate treatment of smoke requirements for one-cylinder engines.

In addition, EPA proposes to omit the smoke requirements for propulsion marine diesel engines rated under 37 kW. Manufacturers of these engines have stated that this is reasonable for at least the following two reasons. First, they state that smoke is not a problem with propulsion marine diesel engines. Most marine engine manufacturers already supply reduced-smoke engines because consumers demand low smoke levels for their own personal comfort. Second, they state that there is no reliable smoke test for propulsion marine engines, as the smoke test designed for land-based nonroad engines does not exercise the engine over the typical marine engine operating cycle, which is governed by the propeller. EPA solicits comments on this issue.

2. Consideration of ISO Procedure

Since promulgation of the Tier 1 rule, an International Standards Organization committee (ISO TC70/SC8/WG1) has been developing a smoke test procedure specifically for nonroad engines. The EPA and regulated industry recognize the value of harmonized test procedures and standards limits. The Statement of Principles therefore states:

> The Signatories support the completion and worldwide adoption of the new smoke test being developed by the International Standards Organization (ISO 8178–9). EPA intends to propose to replace its current smoke test with the ISO test procedure for the sake of harmonization and improved control of smoke, provided that it provides for a level of smoke control at least as adequate as the current test.

However, this ISO procedure has not been finalized and thus it is not being proposed in this rulemaking. In anticipation of EPA's eventual consideration of the ISO 8178–9 test procedure, the Agency welcomes comments (including test data) addressing issues related to this procedure.

The draft ISO 8178–9 test procedure has several important features that distinguish it from the smoke test procedure developed for highway engines. First, the duty cycle over which the engine is to be operated is very similar to the procedure for highway engines, except that it deletes the 200 rpm initial speed increase and first-shift feature of the engine duty cycle. These types of operation are seldom, if ever, found in nonroad equipment.

A second important difference is the use of a Bessel filter algorithm to compute the peak, acceleration, and lug data from the instantaneous smoke values given by the smoke meter. The Bessel algorithm specified in the ISO procedure emulates a low-pass second-order filter and uses iterative calculations to determine coefficients that are a function of the smoke meter's physical and electrical response times and the sampling rate. This Bessel filter method of calculating results contrasts with the method specified in 40 CFR 86 subpart I, which calls for simple mathematical averages of one-half second data. The ISO Bessel filter calculation procedure selects the highest calculated value for each reported mode (acceleration, lug and peak), using Bessel averaging times that are less than or equal to those of the highway-based test procedure. The ISO procedure will likely result in values that are greater than those generated from the same data by the averaging procedure specified in 40 CFR 86 subpart I. Information, addressing this question, including test data if possible, is solicited.

Another issue is the form used for expressing the level of the standards. The current form is units of opacity—20 percent acceleration, 15 percent lug, and 50 percent peak. Opacity measurements are, however, a function of the effective optical path length, which is determined by the exit diameter of the exhaust pipe upon which the smoke meter is mounted. The diameter of the exhaust pipe specified in the current procedure is a function of engine power, as described above. However, this creates a step-wise relationship in the level of stringency as a function of engine power, which, at a minimum, creates different levels of stringency for engines close to the horsepower cut points. One solution is to express the measurements in units of light absorption coefficient, k (inverse meters), which is the form that the ISO committee has stated is the most technically correct. The numerical level of the standards would be expressed in terms such as the standard level, k, being a function (to some degree) of a parameter such as displacement, engine power, or other basic engine descriptor, and some constant. The EPA solicits data and comments on these issues.

3. In-Use Smoke Testing

Some state governments have expressed a desire for a smoke regulatory program that would enable them to test in-use nonroad engines in a manner that would permit action against gross emitters of smoke. The main elements of such a program would be a certification smoke requirement for new engines, EPA guidance for state in-use smoke control programs (including an in-use smoke test procedure and accompanying limit values), and a means by which the data from the two programs can be related. The current smoke test procedure from part 86, subpart I, does not provide data comparable to the most practical in-use smoke test procedure (a snap acceleration with measured opacity). Based on the current draft ISO 8178–9 certification smoke test procedure, EPA believes this test will provide the desired linkage. The Agency requests comment on the advisability of establishing such a smoke control program and on any interim steps that should be pursued while the ISO test is under development. Any such program would need to meet the requirements of section 209 of the Act regarding preemption of certain state programs.

I. Voluntary Low-Emitting Engine Program

a. Background

The Nonroad Statement of Principles includes a commitment to work towards a goal of achieving emission levels in the future that are even lower than those proposed in this notice. Specifically, the signatories agreed to strive to develop engines capable of controlling NO_X emissions to 2.0 g/kW-hr (1.5 g/hp-hr) and PM emissions to 0.07 g/kW-hr (0.05 g/hp-hr), while maintaining performance, reliability, durability, safety, efficiency, and compatibility with nonroad equipment.

Some technologies that will be pursued in the context of the research agreement have already undergone significant development. Officials representing certain cities, states, or regions in the U.S. have expressed interest in developing incentive programs to encourage the use of engines that go beyond federal emission standards. EPA also would like to encourage manufacturers to initiate demonstration projects to prove out these technologies in areas where there is a particular need for superior emission controls. EPA is therefore proposing a set of voluntary standards that may be used to earn a designation as a low-emitting engine. The program, if successful, will lead to the introduction and more widespread use of these low-emission technologies.

Ongoing research has led to much improved prospects for a variety of low-emitting diesel engine technologies. Some particulate traps are now designed for regeneration without an active control system, sometimes using fuel-based catalyst materials to reduce regeneration temperature requirements. Selective catalytic reduction, long used very effectively in stationary source applications, is now in several demonstration heavy-duty vehicles. Plasma and thermoelectric techniques are also under consideration for large particulate and NO_X reductions. EPA is very interested in seeing a demonstration of the emission-control potential for these engines in nonroad applications, especially related to the capability of maintaining low emission levels over extended field operation.

Alternative fuels also have the potential to reduce emissions from internal combustion engines. Alternative-fuel engines have made significant inroads into some segments of the nonroad market. Forklifts running on propane and generators fueled by

[35] "Draft Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines," U.S. EPA, June 6, 1996 (Docket A–95–27).

natural gas are the most visible examples of nonroad applications with established roles for alternative fuels. Table 3 includes data derived from the PSR PartsLink database for these and other applications in which equipment with alternative-fueled engines was sold in 1995. This information is approximate and does not reflect the use of battery-powered equipment or any engine retrofits for fuel conversion.

TABLE 3.—APPROXIMATE SALES OF ALTERNATIVE FUEL APPLICATIONS MARKETED IN 1995

Application	1995 Sales			
	Natural gas	LPG	Diesel	Gasoline
Forklift	0	43,000	12,000	17,000
Generator	4,500	1,500	53,000	13,000
Gas Compressor	2,400	0	0	0
Oil Field Equip.	370	0	1,300	15
Terminal Tractor	0	230	3,700	750
Scrubber/Sweeper	10	170	6,200	3,400
Irrigation Set	150	0	4,700	1,600
Refrigeration, A/C	90	0	48,000	0
Pump	40	0	10,000	6,600

In addition to these existing uses of alternative fuels, ground service equipment at airports provides a case study of the potential to increase reliance on alternative fuels in the nonroad arena. A concern for reducing emissions to improve local air quality and limit worker exposures has led some airlines to see alternative fuels as a cost-effective alternative for their existing diesel-fueled equipment. Greater use of alternative fuels at airports has been limited by the availability of engines. A challenge for the engine manufacturers is to develop a nonroad alternative fuel engine without needing to charge a large premium (to recoup R&D) that makes the engines unaffordable. EPA's intent in pursuing a program of voluntary standards for low-emitting engines is to help justify development of these nonroad engines.

EPA believes that nonroad equipment is in some cases much better suited to alternative fuels than are highway vehicles. Nonroad equipment, when operated within a well-defined local area, often has the advantage of central fueling. Also, several high-power engines running consistently over long periods can consume great amounts of fuel and generate correspondingly high emissions. Alternative fuels have the potential to lower operating costs (for example, from less expensive fuel and longer oil-change intervals) in addition to reducing emissions.

b. Proposal for Blue Sky Series Engines

EPA proposes to adopt voluntary emission standards that manufacturers could use to earn a designation of "Blue Sky Series" engines. The range of possible incentives to produce these engines are described below.

Central to the purpose of the voluntary standards is the need to demonstrate superior control of particulate emissions. Because of the sensitivity of particulate emissions to test cycles, as described in Section III.B., testing on a transient cycle is an important element of the proposed program for Blue Sky Series engines. EPA has begun work toward developing transient test cycles for nonroad equipment, but there is not yet any established or proven nonroad transient cycle. The highway test cycle, while not developed for nonroad engine operation, would result in a significant degree of control for nonroad equipment. EPA therefore proposes to specify the highway transient test cycle to evaluate emission levels relative to the voluntary standards. A commenter on the Supplemental ANPRM recommended that engine manufacturers have the option of selecting alternative test cycles applicable to specific engines or applications. EPA requests further comment on alternative test cycles. If EPA adopts a transient test for certifying nonroad engines in the future, the Agency will accordingly re-evaluate the test cycle and standards for Blue Sky Series engines.

Manufacturers could certify to one of three levels to demonstrate emission control that goes beyond the Tier 2 certification requirements, as described in Table 4. The percentage reductions would apply to all power categories. EPA requests comment on whether simplifying the program to include only one or two emission levels to qualify for the Blue Sky Series program would make it more effective. Engines would need to meet all the requirements established to demonstrate durability of emission controls, including allowable maintenance, warranty, useful life, rebuild, and deterioration factor provisions. Manufacturers would demonstrate compliance with the CO standard by comparing the emission levels generated on the highway test cycle with the numerical value of the CO standard for the applicable tier of nonroad engines for that model year. Manufacturers would also need to demonstrate compliance with applicable smoke standards.

TABLE 4.—PROPOSED STANDARDS AND DESIGNATIONS FOR BLUE SKY SERIES ENGINES

Designation	Percent reduction relative to Tier 2 standards	
	NMHC + NO_x	PM
Blue Sky Series—Class A*	35	35
Blue Sky Series—Class AA	50	50
Blue Sky Series—Class AAA	65	65

*The Class A option would no longer be available beginning any year that the Tier 2 standards apply to a particular power range.

EPA recognizes that among the candidate engines for the Blue Sky Series program are those low-emitting engines that have already been designed and certified for highway use. EPA therefore requests comment on whether it would be more appropriate to set the optional emission standards based on established highway standards, defining, for example, an engine meeting the 2004 highway emission standards as a Blue Sky Series engine.

Repeating the certification process to develop and submit test data to make a highway engine available for nonroad use adds a significant hurdle to engines expected to sell in low volumes for nonroad applications. EPA therefore proposes for the Blue Sky Series engine program that manufacturers with highway-certified engines may waive the testing requirements for obtaining nonroad certification. This would include the need to comply with the provisions related to the durability of emission controls. EPA, however, would need to ensure that engine designs are not tailored to the transient cycle with much higher emissions on a steady-state cycle. To accommodate this, EPA would need to retain the ability to conduct in-use testing to verify that engines are operating in steady-state modes with substantially the same level of emission control. EPA therefore proposes that NO_x and PM emissions be no more than 20 percent higher on the appropriate nonroad steady-state test cycle compared with the highway test cycle. This is intended to provide relief for development testing needed to protect against in-use liability, while preventing any active strategies designed specifically for the transient test cycle at the expense of controlling emissions during steady-state operation. For evaluation of the performance of one of these engines in steady-state operation at any point in an engine's useful life, the Agency would conduct paired data generated on both the appropriate steady-state test cycle and the highway transient test cycle.

Engine manufacturers could generate credits under the averaging, banking, and trading program with Blue Sky Engines, provided that emission testing is also conducted on the appropriate steady-state test to facilitate calculation and exchange of credits. For this reason and for avoiding the uncertainty associated with surrogate test cycles, EPA would encourage manufacturers to conduct and submit steady-state test data with their application for certification even without a requirement to do so.

The Blue Sky Series program would begin immediately upon promulgation and would continue through the 2004 model year. EPA would evaluate the program to determine if it should be continued for 2005 and later engines, and if so, whether any changes are needed. This evaluation will be considered as part of the 2001 Feasibility Review. The experience gained with these engines and the Tier 3 resolution of certification test cycles and PM standards will factor into this evaluation.

c. Incentives for Producing Blue Sky Series Engines

Creating a program of voluntary standards for low-emitting engines, including testing and durability provisions to help ensure their in-use performance, will be a major step forward in advancing innovative emission control technologies, because EPA certification will provide protection against false claims of environmentally beneficial products. For the program to be most effective, however, incentives for the production of these engines must be created as well.

The Agency sees substantial potential for users and state and local governments to establish these incentive programs. For example, the increasing public concern about the effects of diesel engine emissions on health raises the possibility that some construction companies will purchase Blue Sky Series engines to protect its workers or the public from localized emissions, especially if benefits can also be gained in employee or public relations, such as with highly visible projects in polluted city centers. Similarly, a mining company could select these low-emitting engines for underground applications to minimize miners' exposure to exhaust pollutants. A state or local government may be able to add incentives for companies committing to rely on Blue Sky Series engines in contract bidding on publicly-funded construction projects in nonattainment areas. Some farmers may be willing to pay more for equipment with the cleaner engines to lower their field exposure to engine exhaust pollutants. In some of these applications, alternative fuels may be readily available, possibly even providing a cost savings compared to diesel fuel.

The Agency solicits ideas that could encourage the creation of these incentive programs by users and state and local governments. EPA also solicits comment on additional measures that that could be taken at a federal level to encourage these engines as well. One measure already suggested is adoption of a labeling program, by which EPA would regulate the form and display of prominent labels on equipment with Blue Sky Series engines. The Agency is not convinced at this point that such labels would provide sufficient incentive for users to purchase these engines to justify labeling requirements, but welcomes comment on this suggestion.

The Agency is concerned that incentive programs not lead to a net detriment to the environment through the double counting of benefits. For example, a manufacturer of a Blue Sky Series engine that claims credit under the averaging, banking, and trading program should not also be allowed to generate State Implementation Plan credit for emission reductions, such as under a state highway construction project program that encourages Blue Sky Series engines. The Agency intends to ensure that steps are taken to avoid such double counting of benefits.

IV. Technical Amendments

This proposed rule contains technical amendments to the procedures previously adopted for nonroad diesel engines (40 CFR part 89). These amendments result from the experience gained in conducting compliance programs for the recently implemented Tier 1 standards. Also, EPA's discussions with the industry on similar amendments related to testing highway engines have been translated into changes to nonroad test requirements where appropriate. This section describes proposed changes to the definition of rated speed and related terms and a variety of other modifications. A complete description of the technical amendments is detailed in a memorandum to the docket.[36]

A. Rated Speed Definition

EPA is proposing changes to the definitions of rated speed and intermediate speed. The current language allows the manufacturer to specify both of these speeds. Since these speeds are used to generate the test cycle, their definitions should permit only one rated and one intermediate speed for each engine. The proposed language links these speeds to speeds on the power and torque curves.

EPA is concerned that the current language allows a manufacturer to specify rated and intermediate speeds to any speeds. A manufacturer may specify these speeds to develop a less stringent test cycle. This test cycle would allow an otherwise failing engine to meet emission standards. Similarly, a manufacturer could take advantage of the current definitions by specifying speeds that maximize credits generated or minimize credits used in the Averaging, Banking, and Trading program.

Rated speed is proposed to be defined as the full load governed speed. The term full load is used to avoid confusion between the terms governed speed and high idle speed. High idle speed is the no-load governed speed. The maximum

[36] "Justification for Amendments to 40 CFR Part 89," EPA memorandum from Greg Orehowsky to Docket A–96–40, August 21, 1997.

full load speed is the highest speed with an advertised power greater than zero. EPA is linking full load governed speed to advertisements at this time since no adequate language has been developed that mathematically defines full load governed speed as a point on the torque or power curve. Power curves in manufacturer's advertisements typically end at the governed speed. EPA believes that manufacturers will continue to advertise the full range of power of its engine. Therefore, manufacturers will not set rated speed at less than full load governed speed. It is unlikely that manufacturers will advertise powers beyond the full load governed speed since a manufacturer cannot guarantee their customers power beyond this point.

The change in the definition of rated speed should not have any effect on manufacturers. EPA does not believe that any manufacturer will need to recertify their engines because of this new definition. By linking the definition to advertisements, EPA will not require manufacturers to perform an engine map for compliance testing. The advertised value will be the test value.

EPA plans to evaluate the appropriateness of the rated speed definition in a future test program. EPA would prefer to have a technical definition of full load governed speed, possibly in terms of rate of change of power. Given the large power range of engines covered by these regulations, an adequate definition using a singular rate could not be determined at this time. EPA will continue to evaluate this possibility.

Since the steady state test cycles test engines at a maximum of three engine speeds, it is important to test at speeds representative of in-use operation to control emissions during in-use operation. As the shapes of power and torque curves vary with future engine design, the emissions from engines will vary. Testing at the full load governor speed regulates emissions at this speed but may not effectively limit emissions from the engine. As part of the planned evaluation of the steady-state test procedure, EPA intends to evaluate whether another speed, such as the speed at maximum power, is more effective at controlling emissions.

EPA is proposing to amend the intermediate speed definition to be consistent with the definition of intermediate speed for the smoke test procedure. This definition will eliminate the possibility of a manufacturer specifying an intermediate speed to lower emissions from the engine. The proposed definition provides for testing at a median engine speed while still linking the definition to the torque curve of the engine and being a speed representative of in-use operation.

B. Other Technical Amendments

Additional amendments make a variety of clarifications and correct typographical errors and omissions from the original rule. The most significant of these are described in the following paragraphs.

The amendments change the criteria for test engine selection. The current language bases test engine selection on the maximum fuel per stroke at maximum power. However, EPA had intended in the original rule to make the test engine selection based primarily on the highest fuel per stroke at peak torque and secondarily on the highest fuel per stroke at rated speed.

The calibration requirements for the gaseous emission measurement analyzers are modified in various ways. The requirements for measurement accuracy below fifteen percent of full scale are revised to include a specific number of gas concentrations at the low end of the calibration curve. Also, calibration requirements are simplified to allow laboratories to calibrate only one analyzer range and still ensure accurate measurements. Additional changes to calibration requirements for other equipment are described in EPA's memorandum to the docket.

Other modifications relate to the test sequence and calculation of emission results. A "mode" is defined and the procedure for dealing with void modes is included. The equations used to calculate emissions during raw sampling are corrected. The amendments also correct errors in the currently listed equations and include new equations that were mistakenly omitted.

V. Technological Feasibility

The emission standards proposed above would apply to a broad range of diesel engines used in a wide variety of nonroad applications. Section 213(a)(3) of the Clean Air Act calls for EPA to establish standards that provide for the "greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology." This section describes EPA's understanding of the range of technologies that will be available for manufacturers to comply with the proposed standards. The costs associated with these technologies are considered in Section VI.B. EPA has concluded, as described in the Draft RIA, that the proposed standards will have no significant negative effect on noise, energy, or safety.

EPA has considered the diversity of the nonroad engine and equipment industries and believes that the standards being proposed will require the most advanced technology that will be available for the various engines classes in this time frame. While meeting these standards will be challenging, EPA believes compliance with the standards will be feasible for manufacturers, as described in the following discussion. In the course of the 2001 Feasibility Review, EPA will verify the appropriateness of the Tier 2 standards for engines rated under 37 kW and the Tier 3 standards for engines rated between 37 and 560 kW, including consideration of the same factors described above. A more detailed description of the technologies and their potential for controlling emissions is contained in the Draft RIA.

In developing the various numerical standards and implementation dates proposed in this notice, EPA depended heavily on extending the analysis of technological feasibility for the preceding proposal for highway heavy-duty engines. While the proposed standards for highway engines applied equally to all sizes of engines starting in the same year, the standards proposed in this notice are a complex combination of numerical values and applicable model years. Varying numerical standards were considered necessary to account for the very wide range of engines represented in nonroad applications. Also, because of the range of engines offered by individual manufacturers, EPA agreed with manufacturers that new standards could be implemented most expeditiously by phasing the standards in at different times for different power ranges. EPA applied a similar phase-in for the first tier of nonroad emission standards promulgated in 1994.

A. Development of the Implementation Schedule

The timing of the new and revised standards was calculated to maximize the introduction of emission-reduction technologies. For engines rated under 37 kW, introducing new Tier 1 standards for 1999 and 2000 is very aggressive. EPA considered the five years of lead time between Tier 1 and Tier 2 standards for these engines to be necessary for manufacturers to recover their initial investment and prepare for the next round of changes.

For engines rated between 37 and 560 kW, the Tier 2 standards follow the introduction of comparable emission standards for highway engines. Within this range, engines rated between 225 and 450 kW were considered most susceptible to technologies transferred from highway engines and were therefore scheduled to be the first engines subject to the Tier 2 standards, starting in 2001. This provides three years following implementation of EPA's 1998 highway NO_X emission standard of 5.4 g/kW-hr (4.0 g/hp-hr) for manufacturers to incorporate highway-based technologies into nonroad engines to meet the Tier 2 standards, which are comparable to the 1998 highway standards. Other power ratings within this range follow over the next three years. Engines rated between 37 and 75 kW are the last ones in this group to be subject to Tier 2 standards; this additional lead time (until 2004) is due to the need for a greater effort to transfer technology from the larger highway engines to these engines, many of which are naturally aspirated. Proposed implementation of Tier 3 standards for these engines is scheduled between two and four years following the implementation of comparable emission standards for highway engines. Also, implementation of Tier 3 standards between 2006 and 2008 allows three to five years following implementation of the Tier 2 nonroad standards for different power ratings. EPA believes that implementing the proposed Tier 3 standards any sooner could either forego the potential of transferring highway technology or pose an unreasonably short period between the Tier 2 and Tier 3 standards for manufacturers to recoup their costs for complying with Tier 2 standards.

Engines rated over 560 kW are in a unique category. Because of the very low sales volumes of these engines, manufacturers need a longer period to recoup their development costs. For that reason, these engines and the associated equipment generally have much longer product development cycles. EPA has accordingly proposed only one additional tier of emission standard for these engines. Tier 2 standards would then apply beginning in 2006, six years after the Tier 1 standards take effect.

B. Development of Numerical Standards

The next paragraphs lay out the rationale for the numerical standards in this proposal (see Table 1 for emission standards). Individual technologies and the unique characteristics of various sizes of engines are considered in greater detail in the next section. Selecting the numerical standards involved a measure of extrapolation of information available for highway engines, with additional judgment to take into account the unique operating characteristics typical of nonroad applications of the various power ranges. For nonroad engines most similar to models available as highway heavy-duty engines, EPA made a relatively straightforward adjustment of the technological capabilities established for highway engines. Expectations for other engines, especially smaller models, were adjusted according to their size-related limitations, with the expectation that most of the control technologies were adaptable to any size diesel engine.

1. NMHC + NO_X

The targeted level of emission control for engines rated under 37 kW is based on engine designs utilizing direct injection, rather than the lower-emitting indirect injection designs. The direct injection engines have significantly better fuel economy; EPA therefore does not want to set emission standards that preclude the use of direct injection engines. The Tier 1 standards allow very little lead time, which limits the degree of control achievable from these engines. EPA chose a NMHC + NO_X standard of 9.5 g/kW-hr (7.1 g/hp-hr) for engines rated between 8 and 37 kW, expecting these engines to use similar technologies to those adopted for larger Tier 1 engines in response to EPA's 1994 rulemaking. Direct injection engines rated under 8 kW are expected to have a greater challenge reducing emissions in the near term, due to the design constraints related to the smaller cylinders and higher engine speeds, and would therefore be subject to a NMHC + NO_X standard of 10.5 g/kW-hr (7.8 g/hp-hr). The 1994 rulemaking set a NO_X standard of 9.2 g/kW-hr (6.9 g/hp-hr) for engines rated over 37 kW and an HC standard of 1.3 g/kW-hr (1.0 g/hp-hr) for engines rated over 130 kW. The technologies needed to meet this standard would generally involve combustion chamber optimization and timing retard, both of which are well established for diesel engines and should be readily adaptable to the smaller engine models.

The proposed Tier 2 and Tier 3 numerical standards for NMHC + NO_X emissions are derived most directly from highway engines. Engines rated over 75 kW were believed to have little difficulty in transferring technology developed for highway engines. Two principal factors were considered in selecting the numerical standard. First, though nonroad engines have much in common with their highway counterparts, some aspects of operation in nonroad applications differs significantly from that of highway engines. The main distinction in nonroad applications is the lack of high-speed air for cooling the engine and intake air (after being heated by a turbocharger). Less effective heat transfer in the aftercooler translates into higher combustion temperatures and higher levels of NO_X formation. Second, the different test cycles specified for certification testing prevent a direct translation of numerical standards; however, as described in Section III.B. above, test data shows that NO_X and HC levels are roughly comparable on the highway test cycle and the primary nonroad test cycle (C1). Taking these factors into consideration led EPA to choose numerical standards for NMHC + NO_X approximately 0.7 g/kW-hr (0.5 g/hp-hr) higher than the comparable highway standards for nonroad engines rated over 75 kW. The resulting NMHC + NO_X standards are either 6.4 or 6.6 g/kW-hr (4.8 or 4.9 g/hp-hr) for Tier 2 engines and 4.0 g/kW-hr (3.0 g/hp-hr) for Tier 3 engines.

Engines rated under 75 kW have additional distinctions relative to highway engines. These engines are typically naturally aspirated, in which case they do not have the benefit of a turbocharger and aftercooler for controlling intake air characteristics. These engines also have progressively smaller cylinder displacements and higher rotation speeds, which increase the challenge of controlling the combustion event. The proposed numerical standards for these engines are therefore set higher than those for larger engines. The proposed Tier 2 NMHC + NO_X standard for all engines rated under 75 kW is 7.5 g/kW-hr (5.6 g/hp-hr). Similarly, the proposed Tier 3 NMHC + NO_X standard for engines rated between 37 and 75 kW is 4.7 g/kW-hr (3.5 g/hp-hr)

2. PM

In 1994, EPA set a PM standard of 0.54 g/kW-hr (0.40 g/hp-hr), using the steady-state ISO C1 cycle, for engines rated over 130 kW. EPA is interested in the possibility of developing a nonroad transient test for greater assurance of reduced PM emissions in the field. Because there is still no such cycle established for nonroad engines, EPA is proposing to adopt PM standards that represent the greatest degree of control appropriate for testing on the current test cycles in the Tier 2 time frame, including engines of all power ratings.

More stringent PM standards for Tier 3 are not included in the proposal, with the hope that questions related to test cycles can be resolved in time for a subsequent action, if appropriate.

For engines rated over 130 kW, EPA proposes a Tier 2 PM standard of 0.20 g/kW-hr (0.15 g/hp-hr). For the same reasons described above for NMHC and NO_X emissions, EPA expects smaller engines to face a greater challenge in controlling PM emissions. The proposed Tier 2 PM standard for engines rated between 75 and 130 kW is therefore set at 0.30 g/kW-hr (0.22 g/hp-hr); the comparable standard for engines rated between 37 and 75 kW is 0.40 g/kW-hr (0.30 g/hp-hr). For engines rated under 37 kW, EPA is proposing new PM standards for both Tier 1 and Tier 2 engines. The near-term standards for Tier 1 engines are 1.0 and 0.80 g/kW-hr (0.75 and 0.60 g/hp-hr) for engines rated under 8 kW and engines rated between 8 and 37 kW, respectively. Proposed Tier 2 standards are set at 0.60 and 0.60 g/kW-hr (0.60 and 0.45 g/hp-hr) for engines rated under 19 kW and engines rated between 19 and 37 kW, respectively.

3. CO

Formation of CO in diesel combustion is inhibited by the presence of excess oxygen, resulting in relatively low CO emissions without any active control strategies. Setting numerical standards for CO emissions therefore serves largely to prevent unexpected problems. Where two tiers of standards are set forth in this proposal, the numerical CO standard is the same for both tiers. Again, the largest engines have the lowest numerical standard.

C. Technological Approaches

Because the proposed emission standards for nonroad diesel engines depend on the evaluation of technologies for complying with the standards for highway engines, the discussion of technological feasibility in that rulemaking is central to supporting the feasibility of the proposed standards for nonroad engines. This analysis of diesel engine technologies is contained in Chapter 4 of the Draft RIA for the highway rule.[37] This analysis is considered and applied to nonroad engines in Chapter 3 of the Draft RIA for this proposal, which is summarized in the following paragraphs.

By proposing multiple tiers of standards that extend well into the next decade, EPA is providing engine manufacturers with substantial lead time for developing, testing, and implementing emission control technologies. This lead time and the coordination of standards with those for highway engines allows time for a comprehensive R&D program to integrate the most effective emission control approaches into the manufacturers' overall design goals related to durability, reliability, and fuel consumption.

To meet the emission standards proposed above, manufacturers would need to move beyond the steps used to comply with the first phase of nonroad engine controls. Understanding the control technologies applied to engines complying with the Tier 1 standards is important in assessing the feasibility of meeting more stringent numerical standards. Engines rated between 75 and 560 kW have begun to comply with the first nonroad emission standards, providing a clearer picture of the starting point from which manufacturers of these engines will be working to reduce emissions for subsequent emission standards. In the case of manufacturers of engines rated under 37 kW, the standards proposed in this notice would represent the first emission requirements for these engines under EPA regulations; the starting point for improving emissions would therefore be focused on basic engine technology with new emission controls.

Highway heavy-duty engines will be subject to a 5.4 g/kW-hr (4.0 g/hp-hr) NO_X standard beginning in the 1998 model year. For those manufacturers that produce engines for both highway and nonroad service, variations on a single engine model are sometimes sold for both markets. Because these engines have similar emission levels on the eight-mode test, they could likely comply with the proposed Tier 2 NMHC + NO_X standards with relatively minor modifications to adapt the technology to nonroad applications. Similarly, Tier 3 standards are intended to follow the highway engine standards proposed for the 2004 model year, with the expectation that technology transfer will be a very important element of achieving compliance with the nonroad standards. Even where engines are dedicated to nonroad applications, the very similar engine design makes clear that much of the technological development that has led to lower-emitting highway engines can be transferred or adapted for use on nonroad engines. Specifically, much of the improvement in highway engines has come from "internal" engine changes such as variation in fuel injection variables (injection pressure, spray pattern, rate shaping), modified piston bowl geometry for better air-fuel mixing, and improvements intended to reduce oil consumption. Introduction and ongoing improvement of electronic controls have played a vital role in facilitating many of these improvements.

Other technological developments for highway heavy-duty engines require a greater degree of development before they can be applied to nonroad engines. Turbocharging is widely used now in nonroad applications, especially in larger engines, because it improves power and efficiency by compressing the intake air. Turbocharging can also decrease PM emissions; however, changing an engine from naturally aspirated to turbocharged may raise concerns about "packaging," since with the added turbocharger the equipment may have to be adapted to accommodate a physically larger engine. The concern for packaging is especially sensitive for small, compact equipment designs. Space constraints, though, are generally a matter of cost rather than feasibility and are further addressed in the discussion of cost to equipment manufacturers. Turbochargers increase the power density of engines, but switching to a smaller engine with equivalent power may require substantial equipment redesign. EPA expects that, over the long term, equipment specifications will be updated to take advantage of the substantial growth in power density from all engines; however, the difficulty of making this transition prevents any straightforward analysis of addressing engine packaging concerns with more compact engines.

Aftercooling is a well established highway engine technology that has only recently been widely used in nonroad engines. The aftercooler chills the hot air coming from the turbocharger before it enters the cylinder, which decreases fuel consumption and helps prevent NO_X formation by reducing combustion temperatures. Air-to-water aftercoolers, which use the engine's coolant to provide partial cooling of the the intake air, can fit readily into most engine applications. In the long term, manufacturers are expected to move toward air-to-air aftercooling, which provides much better benefits for fuel economy and NO_X control. Because of the additional space required for air-to-air aftercoolers (for a separate heat exchanger and a bigger fan), these improved aftercoolers may in some cases be integrated when equipment manufacturers are ready to rework the overall designs for their equipment models.

[37] "Draft Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines," U.S. EPA, June 6, 1996 (Docket A-95-27).

In evaluating the feasibility of the proposed nonroad standards, it is helpful to separately consider three broad categories of engines. First, manufacturers of turbocharged nonroad diesel engines, most often rated over 75 kW, generally have the flexibility to incorporate more sophisticated technological innovations for performance, fuel economy, and emission control, including those derived from counterpart highway engines. Electronic controls offer great potential for improved control of engine operating parameters for better performance and lower emissions. Unit pumps or injectors would allow higher-pressure fuel injection with rate shaping to carefully time the delivery of the whole volume of injected fuel into the cylinder. Routing of the intake air and the shape of the combustion chamber can be redesigned for improved mixing of the air-fuel charge. Air-to-air aftercooling will likely gain widespread use in turbocharged engines, primarily for its fuel consumption and durability benefits, though it also lowers NO_X emissions. Manufacturers will be able to combine many of these technologies to comply with Tier 2 standards. Tier 3 standards will require deployment of additional technologies. Common rail injection systems provide greater overall control of the fuel injection strategy by maintaining a constant supply of high-pressure fuel at the injectors. Also, exhaust gas recirculation will likely be introduced in highway diesel engines over the next several years, providing valuable experience in developing those systems for nonroad engines. EPA believes these technologies will be important in achieving compliance with Tier 3 emission standards. A more detailed treatment of the feasibility of these engines meeting the proposed standards is included in the regulatory impact analyses, as described above. Because the long-term standards depend on significant progress in technology development, EPA will be reviewing requirements for Tier 3 engines by 2001 to confirm that developments are progressing as expected.

The second category is the set of water-cooled naturally aspirated engines, which are most often rated under 50 or 75 kW. The lack of turbocharging (and aftercooling) and the greater sensitivity to increased costs for these relatively inexpensive engines suggest that manufacturers will likely depend on basic technologies to control emissions to the necessary levels. Expected changes can be divided into two broad categories. First, combustion optimization includes changes to basic engine design for improved air-fuel mixing and management of the combustion process. These changes might include retarded injection timing, re-entrant piston bowl shapes, greater swirl of the intake air, and improved ring design for lower oil consumption. Second, fuel injection parameters provide many variables for the engine designer. Manufacturers might modify fuel pumps, injectors, or controls to achieve higher injection pressures, more rapid injection, better control of injection timing (including rate shaping), and reduced sac volume. In addition to exhaust emission control strategies, emissions from the crankcase of naturally aspirated engines can be eliminated by routing vapors from the crankcase directly to the air intake. These technological developments are well understood and should provide manufacturers with the tools needed to comply with Tier 1 and Tier 2 standards for engines rated under 37 kW. Similarly, engines rated between 37 and 75 kW should be able to comply with Tier 2 standards using these technologies; compliance with Tier 3 standards may in addition require use of exhaust gas recirculation. EPA believes these engines can meet the proposed emission standards without needing to incorporate turbocharging. EPA believes that increasing the numerical NMHC + NO_X standard by 0.9 g/kW-hr (0.7 g/hp-hr) relative to the larger engines appropriately compensates for the design constraints imposed by these engines.

Third, many of the air-cooled diesel engines rated under 8 kW face unique design challenges. The small cylinders and low cost of these engines limit the flexibility of designing or adapting technologies to control emissions. Tier 1 standards for these engines are therefore set at less stringent levels than larger engines. To reach these levels, manufacturers will need to rely on several of the strategies used for other engines. For example, increasing swirl and redesigning piston head geometries can be an effective way of improving fuel-air mixing in small engines, with the additional benefit of allowing higher injection pressures without increasing fuel wetting on the cylinder walls. The position and design of piston rings can be improved to reduce the contribution of engine oil to particulate emissions. Incorporating fuel injectors that provide mechanically controlled rate shaping would allow substantial control of NO_X emissions at a low cost. Using injectors with valve-closed-orifice nozzles would similarly control HC emissions. Engines that operate within a relatively narrow range of engine speeds can achieve a degree of charge-air compression with intake manifold designs that rely on pulse tuning. The unique characteristics of the smallest engines pose a challenge to the designer, but these and other technologies are available for complying with the Tier 1 and Tier 2 standards. Also, certification data from the California ARB shows that most direct injection diesel engines rated under 19 kW are currently emitting between 8 and 11 g/kW-hr (6 and 8 g/hp-hr) NMHC + NO_X; all these engines will need to improve, but the current best performers support the feasibility of the Tier 1 and Tier 2 standards for all these engines.

Finally, any engines relying on natural aspiration technology are also subject to the proposed requirement to eliminate crankcase emissions. This requirement has long been in place for naturally aspirated highway engines. EPA believes that the technology required to close the crankcase is well established and easily transferrable to any size of nonroad engine.

D. Conclusions Regarding Technological Feasibility

The standards set by this proposal are the most challenging that can be justified in this time frame. Engine manufacturers will need to use the available lead time to develop the necessary emission control technologies, including transfer of technology from highway engines. This development effort will require not only achieving the targeted emission levels, but also ensuring that each engine will meet all performance and emission requirements over its useful life. The proposed standards clearly represent major reductions compared with current emission levels.

Emission control technology for diesel engines is in a period of rapid development in response to the range of emission standards anticipated for the years ahead. This effort will need to continue to meet the requirements in this proposal. However, the emission targets are set in the framework of a long lead time, which provides manufacturers the time they will need to apply emission control technology developments to nonroad engines. Also, the experience gained in response to EPA's emission standards for highway engines will be invaluable in meeting the comparable requirements for nonroad engines. Because the technology development for highway engines will to a large extent constitute basic research of diesel engine combustion, this effort will also benefit manufacturers that produce no highway engines.

On the basis of information currently available, EPA believes that it is feasible for nonroad diesel engine manufacturers to meet the standards proposed in this notice within the the proposed time frame, using combinations of the technological approaches discussed above and in the Draft RIA. In addition, EPA believes that the flexibilities incorporated into this proposal will permit nonroad vehicle and equipment manufacturers to respond to engine changes in an orderly way. For both industries, EPA expects meeting these requirements will pose a significant challenge. As described above, EPA plans to assess, as part of the 2001 Feasibility Review, the appropriateness of the proposed Tier 3 standards and the proposed Tier 2 standards for engines rated under 37 kW.

VI. Projected Impacts

A. Environmental Impacts

To assess the environmental impact of the proposed standards, EPA has created a computer program for predicting emissions from the nonroad equipment covered by this proposal. A memorandum describing the computer program has been placed in the public docket for this rulemaking.[38] Chapter 5 of the Draft RIA also contains a thorough discussion of the methodology used to project the emission inventories and emission reductions from nonroad equipment covered by the proposed standards. The reader is directed to both of these documents for more information on the environmental impact of this proposal. EPA requests comment on all aspects of the computer program and the methodology for projecting the emissions impact of the proposed standards.

The amount of growth experienced in the nonroad market will have a significant impact on the emission inventories and emission reductions expected from the proposed standards. For this environmental impact analysis, EPA has examined the impact of the proposed standards under two different growth scenarios. (The growth rates used in the nonroad modeling are compounded growth rates.) The first scenario uses the growth rates developed by the Bureau of Economic Analysis (BEA). The BEA growth rates, which are based on a variety of economic indicators, vary by nonroad segment (i.e., agriculture, construction, etc.) and typically range from one to two percent per year. However, based on trends in nonroad equipment sales, trends in nonroad fuel usage, and the continuing strong performance of the U.S. economy, EPA believes that the BEA growth rates may underestimate the future growth of the nonroad market. Therefore, EPA has also modeled the impact of the proposed standards using a moderately higher growth rate of three percent for all nonroad segments. EPA believes the results from the two growth scenarios serve to bracket the expected environmental impact of the proposed standards. The following discussion of environmental impacts presents the results from both the BEA growth scenario and the three percent growth scenario. EPA requests comments on the appropriateness of the BEA growth rates and the three percent growth rate.

EPA modeled the impact of the proposed standards for NO_X, NMHC, and PM emissions. The modeling inputs conservatively assume that equipment manufacturers take full advantage of the flexibility provisions described earlier. EPA did not model the impacts of the proposed standards on CO because CO emissions from nonroad diesel equipment are a very small portion of the overall CO inventory and the proposed standards are not expected to have a significant impact on CO levels.

Because of the uncertainties about the degree to which the steady-state test procedure will control PM emissions in use, especially from the many nonroad engines that frequently operate in transient modes, EPA cannot be certain that any assessment of expected PM emission reductions made at this time will be completely accurate. Nevertheless, EPA has attempted to make a reasonable estimate of these reductions by assuming an in-use per-engine reduction equal to the difference between the Tier 1 and proposed standards. The baseline levels used in this analysis are consistent with the position taken in the Tier 1 rule that no PM benefits are claimed from the Tier 1 PM standard. EPA believes that this approach provides a reasonable estimate of PM benefits from the proposed standards but actual benefits could vary significantly from these levels.

Based on the results of the modeling, the expected emission benefits from the proposed standards are quite substantial. Tables 5, 6, and 7 contain the nationwide NO_X, NMHC, and PM inventories, respectively, under the baseline scenario, which assumes only the current Tier 1 standards are in effect, and under the control scenario, which assumes the proposed standards take effect. (The PM reductions contained in Table 7 are direct PM and do not include secondary PM benefits, which are described below.) By 2020, the emission reductions due to the proposed standards reach 50 percent for NO_X, 15 percent for NMHC, and 20 percent for PM. All percentages are calculated relative to the baseline inventories, which assumes only the current Tier 1 standards are in effect.

TABLE 5.—NO_X EMISSIONS INVENTORY FROM NONROAD DIESEL ENGINES

[Short tons]

Calendar year	BEA growth rates		3% growth rates	
	With the current standards	With the proposed standards	With the current standards	With the proposed standards
2000	2,920,000	2,890,000	3,150,000	3,120,000
2010	2,740,000	1,850,000	3,450,000	2,330,000
2020	3,070,000	1,460,000	4,520,000	2,150,000

[38] "Nonroad CI Nodeling Methodology and Request for Comment," EPA memorandum from Peter J. Caffrey to Docket A–96–40.

TABLE 6.—NMHC EMISSIONS INVENTORY FROM NONROAD DIESEL ENGINES

[Short tons]

Calendar year	BEA growth rates		3% growth rates	
	With the current standards	With the proposed standards	With the current standards	With the proposed standards
2000	503,000	497,000	543,000	536,000
2010	582,000	509,000	730,000	638,000
2020	673,000	541,000	980,000	789,000

TABLE 7.—PM EMISSIONS INVENTORY FROM NONROAD DIESEL ENGINES

[Short tons]

Calendar year	BEA growth rates		3% growth rates	
	With the current standards	With the proposed standards	With the current standards	With the proposed standards
2000	478,000	476,000	515,000	513,000
2010	553,000	483,000	693,000	606,000
2020	639,000	534,000	931,000	778,000

In addition to the effect of the proposed emission standards on direct PM emissions noted above, the proposed standards are expected to reduce the concentrations of secondary PM. Secondary PM is formed when NO_X reacts with ammonia in the atmosphere to yield ammonium nitrate particulate. SAI, under contract with EPA, recently evaluated the effect of the NO_X reductions on the formation of nitrate particulate.[39] The report concluded that, as a national average, each 100 tons of NO_X reduction will result in about 4 tons of secondary PM reduction. This conversion rate varies from region to region, and is greatest in the West. EPA estimates that the approximately 1.6 million tons per year of NO_X reduction projected in 2020 resulting from this proposal (assuming BEA growth rates) will result in a national average of about 64,000 tons per year reduction in secondary PM. This level of secondary PM reduction represents about 60 percent of the projected direct PM reductions presented in Table 7.

B. Economic Impacts

In assessing the economic impact of changing the emission standards, EPA has made a best estimate of the combination of technologies that an engine manufacturer might use to meet the new standards at an acceptable cost. While equipment manufacturers bear no responsibility for meeting emission standards, they will need to make changes in the design of their equipment models to accommodate the new engines. EPA's treatment of the impacts of the proposal therefore includes an analysis of costs for equipment manufacturers. Full details of EPA's cost and cost-effectiveness analyses can be found in Chapters 4 and 6 of the Draft RIA.

Estimated cost increases are broken into purchase price and total life-cycle operating costs. The incremental purchase price for new engines and equipment is comprised of variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification). Total operating costs include any expected increases in maintenance or fuel consumption. Cost estimates based on these projected technology packages represent an expected incremental cost of engines as they begin to comply with new emission standards. Costs in subsequent years would be reduced by several factors, as described below. Separate projected costs were derived for engines and equipment used in six different ranges of rated power; costs were developed for engines near the middle of the listed ranges. All costs are presented in 1995 dollars. Life-cycle costs have been discounted to the year of sale. EPA requests comment on all aspects of the economic impact analysis.

1. Engine Technologies

The following discussion provides a brief description of those technologies EPA projects will be needed to comply with the new emission standards. In some cases it is difficult to make a distinction between technologies needed to reduce emissions for compliance with emission standards and those technologies that offer other benefits for improved fuel economy, power density, and other aspects of engine performance. EPA believes that without new emission standards, manufacturers would continue research on and eventually deploy many technological upgrades to improve engine performance or more cost-effectively control emissions. Turbocharging, aftercooling, and variable-valve timing are examples of technologies whose primary benefit is for improved performance. Modifications to fuel injection systems and the introduction of electronic controls will also continue, regardless of any change in emission standards, to improve engine performance. Some further development with a focus on NO_X, HC, and PM emissions will nevertheless play an important role in achieving emission reduction targets.

A variety of technological improvements are projected for complying with the multiple tiers of proposed emission standards. Selecting these technology packages requires extensive engineering analysis and judgment. The fact that manufacturers have nearly a full decade before implementation of the most challenging of the proposed standards ensures that technologies will develop significantly before reaching production. This ongoing development will lead to reduced costs in three ways. First, research will lead to enhanced effectiveness for individual technologies, allowing manufacturers to use simpler packages of emission

[39] "Benefits of Mobile Source NO_X Related Particulate Matter Reductions," Systems Applications International, EPA Contract No. 68–C5–0010, WAN 1–8, October 1996 (available in Air Docket A–96–40).

control technologies than we would predict given the current state of development. Similarly, the continuing effort to improve the emission control technologies will include innovations that allow lower-cost production. Finally, manufacturers will focus research efforts on any potential drawbacks, such as increased fuel consumption or maintenance costs, attempting to minimize or overcome any negative effects.

A combination of technology upgrades are anticipated as a result of the proposed emission standards. Modifications to basic engine design features, such as piston bowl shape and engine block and head geometry, can improve intake air characteristics and distribution during combustion. For this analysis, EPA anticipates that manufacturers will make these basic engine modifications for the first tier of proposed standards. These redesigned engines are then expected to serve as a platform for the other changes anticipated for the next tier of standards. This will be less true for engines rated under 37 kW, which have less time to incorporate design changes before Tier 1 standards become effective. Manufacturers are expected to introduce electronic controls on some engines. Advanced fuel-injection techniques and hardware will allow designers to modify various fuel injection parameters for higher pressure, further rate shaping, and some split injection. For Tier 3 standards, EPA expects that many engines will see further fuel injection improvements and will incorporate a moderate degree of cooled exhaust gas recirculation. Details of the mix of technologies included in the cost analysis can be found in Chapter 4 of the Draft RIA.

While the following analysis projects a relatively uniform emission control strategy for designing the different categories of engines, this should not suggest that EPA expects a single combination of technologies will be used by all manufacturers. In fact, depending on basic engine emission characteristics, EPA expects that control technology packages will gradually be fine-tuned to different applications. Furthermore, EPA expects manufacturers to use averaging, banking, and trading programs as a means to deploy varying degrees of emission control technologies on different engines. EPA nevertheless believes that the projections presented here provide a cost estimate representative of the different approaches manufacturers may ultimately take.

2. Engine Costs

The projected costs of these new technologies for meeting the proposed standards are itemized in the Draft RIA and summarized in Table 8. For the proposed Tier 1 standards for engines rated under 37 kW, estimated costs vary widely. Those engines that already operate with emissions low enough to meet the proposed Tier 1 standards would bear costs only for closing the crankcase and certifying the engine, or about $20 per engine. For the remaining one-third of engines expected to need reduced emissions, adding engine modifications leads to total costs of around $70. The anticipated increase in operating costs would similarly be focused on the minority of engines that need design improvements, totaling about $220 in net present value (npv) over the lifetime of those engines. The calculated sales-weighted composite increase in both the purchase price and the operating costs for all engines rated under 37 kW is $75 or less.

TABLE 8.—PROJECTED UNIT COSTS—ENGINES

Cost category	Year of production	Power (kW)					
		0–37	37–75	75–130	130–450	450–560	560+
Tier 1							
Incremental purchase price	1	$53	.....	.....	.....	.....	.....
Life-cycle Operating costs (npv)	all	73	.....	.....	.....	.....	.....
Tier 2							
Incremental purchase price	1	28	180	321	328	916	1214
Life-cycle Operating costs (npv)	all	0	0	0	0	0	0
Tier 3							
Incremental purchase price	1	.....	322	424	436	1645	.....
	6		111	177	194	291	
Life-cycle Operating costs (npv)	all	.....	89	103	125	180	.....

Tier 2 standards, which apply to to the full range of power ratings, involve higher estimated cost impacts. The set of technologies anticipated for Tier 2 engines, including engine modifications, improved fuel injection and some use of electronic controls, are not expected to cause any increase in operating costs, as described in the Draft RIA. The price of engines rated under 450 kW is expected to increase by up to $330, while engines rated over 450 kW may see price increases approaching or exceeding $1,000. The projected cost of compliance with Tier 3 standards entails increases from Tier 2 costs that follow a similar pattern to the increases for Tier 2 standards, though the proposed Tier 3 standards apply only to engines rated between 37 and 560 kW.

Characterizing these estimated costs in the context of their fraction of the total purchase price and life-cycle operating costs is helpful in gauging the economic impact of the proposed standards. ICF conducted a study to characterize the range of current engine costs.[40] Although the incremental cost projections in Table 8 increase dramatically with increasing power rating, they in fact represent a comparable price change relative to the total price of the engine. The estimated cost increases for all engines are between 2 and 10 percent of estimated engine prices (after typical discounts and rebates). Moreover, the cost savings

[40] "Engine Price (On-Highway and Nonroad) & Life-cycle Cost Methodology," memorandum from Thomas Uden, ICF, Inc. to Alan Stout, U.S. EPA, March 21, 1997 (available in Air Docket A–96–40).

described below would further reduce the impact of the proposed emission standards; long-term cost increases are expected to be 4 percent of total engine price or less.

Another way of evaluating the variation of compliance costs with increasing power rating is to compare the ratio of projected cost to rated power (in kilowatts). For the Tier 2 standards, engines rated under 130 kW all have cost-per-kilowatt ratios near 3.5, while the ratios for larger engines is around 1.5. This shows again that the apparently high projected compliance costs for the largest engines, upon closer analysis, are consistent with their greater size and price.

For the long term, EPA has identified two principal factors that would cause the estimated incremental costs to decrease over time. First, since fixed costs are assumed to be recovered over a fixed period, these costs disappear from the analysis after they have been fully recovered. This has a most striking effect on the projected costs for engines rated over 450 kW, for which the much higher projected costs are dominated by fixed costs. Second, the analysis incorporates the expectation that manufacturers will apply ongoing research to making emission controls more effective and less costly over time. Research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts.[41] The analysis incorporates the effects of this learning curve by projecting that the variable costs of producing the low-emitting engines decreases by 20 percent starting with the third year of production and by reducing variable costs again by 20 percent starting with the sixth year of production. Table 8 lists the projected costs for each category of vehicle over time, including the set of numbers that illustrate the projected reduction in long-term costs for Tier 3 engines.

3. Equipment Costs

In addition to the costs directly associated with engines that are redesigned to meet new standards, costs may also result from the need to redesign the nonroad equipment in which these engines are used. Such redesigns, though not generally technologically challenging, could occur if the engine has a different shape or heat rejection rate, or is no longer made available in the configuration previously used. Based on their experience with the Tier 1 standards set in 1994, equipment manufacturers have told EPA that the main barrier to accommodating complying engines is the late delivery of such engines by engine manufacturers, which cuts into the lead time that equipment manufacturers need to properly redesign their equipment. Thus, attempts were made in the developing this proposal to provide stability and predictability in the setting of standards so engine and equipment manufacturers can more easily plan their product releases and can reasonably recoup the investment made to meet the standards.

In addition, the Tier 3 emission standards and implementation dates for engines rated over 37 kW and Tier 2 emission standards and implementation dates for engines rated under 37 kW are based on the premise that no significant equipment redesign beyond that required to accommodate engines meeting the previous tier of standards will be required to accommodate the new engines. Equipment manufacturers may, of course, choose to spread equipment redesigning over the time frame for both first and second tiers of standards. This analysis accounts for this flexibility by projecting one major redesign for each equipment model, spreading the costs of these redesigns over both tiers of standards. For each tier of standards, EPA projects that equipment manufacturers will have sufficient opportunity to accommodate complying engines and to market their product. EPA will consider the potential for multiple design changes to equipment models during the 2001 Feasibility Review.

In assessing the economic impact of the proposed emissions standards, EPA has made a best estimate of the modifications to equipment that relate to packaging (installing engines in equipment engine compartments), power train (torque curve), and heat rejection effects of the new complying engines. The incremental purchase price for new engines is comprised of fixed costs (for R&D and retooling) and variable costs (for hardware and assembly time for a small percentage of the equipment). In its analysis, EPA attributes all increases in operating costs (i.e., expected increases in maintenance or fuel consumption) to incremental engine costs, and thus, equipment costs do not include operating costs. As described in the engine cost section above, after a new standard takes effect, projected costs in subsequent years would be reduced by several factors. Separate projected costs were determined for equipment in the same ranges of power ratings used for engine costs. Full details of EPA's equipment cost analysis can be found in Chapter 4 of the Draft RIA.

a. Projected Equipment Changes: Key measures being taken by engine manufacturers to meet the Tier 1 standards set in 1994 are retarding the injection timing and adding air-to-water aftercooling. EPA projected in the Tier 1 rulemaking that, though the standards may lead to some additional heat rejection, it would not add enough heat rejection to require equipment changes such as increasing the cooling capacity and cooling fan speed (i.e., change the size of radiators or cooling fan blades).[42] However, equipment manufacturers claim that such changes are occurring due to Tier 1 standards. For the most part, this additional heat rejection occurred due to the retarded injection timing, and thus some equipment manufacturers needed to increase the size of their radiators to accommodate these Tier 1 engines. Some equipment manufacturers also increased the engine fan speed for additional airflow and cooling (increasing engine fan size can increase fan speed). In some cases, equipment manufacturers experienced a small increase in fuel consumption. In many cases equipment manufacturers needed to alter the engine compartment to accommodate these changes as well as making room for added turbochargers and aftercoolers.

A small percentage of equipment is projected to have modifications to the radiator and the engine fan to compensate for some additional heat rejection resulting from the proposed emission standards. Equipment with direct injection engines rated under 37 kW (about one third of the equipment in that size range) are expected to meet the proposed standards through retarded injection timing, which is expected to lead to some additional heat rejection. Some equipment/engines introducing or improving air-to-water aftercooling may still require more heat rejection and thus a somewhat larger radiator and fan, because the engine coolant would be routed (and thus heated up) through both the radiator and the aftercooler. Many equipment manufacturers are expected to install engines using air-to-

[41] "Learning Curves in Manufacturing," Linda Argote and Dennis Epple, Science, February 23, 1990, Vol. 247, pp. 920–924 (available in Air Docket A–96–40).

[42] U.S. EPA, Final Regulatory Impact Analysis and Regulatory Support Document, "Control of Air Pollution; Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts (50 Horsepower)," May 27, 1994 (found in Air Docket A–91–24, item VI–B–1).

air aftercooling, which greatly reduces the heat load compared with current air-to-water aftercooling models. Also, no more retarding of the timing is expected for these engines as a result of the proposed emission standards. Therefore, no increase in heat rejection and thus in the size of the radiator and engine fan is expected for equipment with air-to-air aftercooling. However, even with air-to-air aftercooling, some equipment may need a larger engine fan (increase engine fan size or speed), because there may be some reduction in the airflow out of the engine compartment due to the aftercooler. In addition, exhaust gas recirculation may lead to some additional heat load in the Tier 3 time frame.

With sufficient lead time provided, engine and equipment manufacturers are expected to have an opportunity to integrate several changes not directly related to emission control (i.e., air-to-air aftercooling). Therefore, the equipment changes are projected to be needed only to compensate for some additional heat rejection. Thus, EPA estimated that a small percentage of the equipment would have an increase in the size of their radiators and cooling fans to accommodate the new complying engines. In addition, for engine compartment modifications (engine panels, brackets, etc.), EPA estimated that, for all power ranges, a large percentage of the equipment would need additional miscellaneous steel since it is expected that many nonroad equipment models would need some additional steel in accommodating complying engines.

b. Projected Equipment Costs: The costs of the projected equipment changes due to the proposed standards are itemized in the Draft RIA and summarized in Table 9. The effort for the R&D and tooling was estimated for modifying equipment in all the above power categories based on those changes needed to accommodate the engine technology modifications described earlier in this preamble. In addition, variable costs for engine compartment, radiator, and engine fan changes as described in the above section were added for all the equipment power categories. For all the power categories it was estimated that equipment manufacturers would expend significant effort to generally redesign the engine compartments of their equipment due to emissions control and its related effects.

TABLE 9.—PROJECTED UNIT COSTS

Tier	Power (kW)					
	0–37	37–75	75–130	130–450	450–560	560+
Tier 1:						
Equipment	$12					
Total Engine and Equipment	65					
Tier 2:						
Equipment	5	55	137	118	159	136
Total Engine and Equipment	33	235	458	446	1,075	1,350
Tier 3 short-term:						
Equipment		18	46	39	53	
Total Engine and Equipment		340	470	475	1,698	
Tier 3 long-term:						
Equipment		1	2	4	4	
Total Engine and Equipment		112	179	198	295	

For the proposed Tier 1 standards that apply to equipment with engines rated under 37 kW, the estimated composite cost increase is $12 per piece of equipment. As described in the Engine Cost section, this cost estimate is based on the determination that a large percentage of the engines for this range of equipment already operate with emissions low enough to meet the Tier 1 standards.

For Tier 2 standards, the low engine costs for equipment rated under 75 kW reflect the relatively high sales volume of this range even though most of the equipment would need relatively more effort for accommodating complying engines versus equipment with engines rated over 75 kW. The highest projected cost of $159 for equipment utilizing engines rated between 450 and 560 kW demonstrates that high per-equipment piece costs are due to amortizing large fixed costs over small sales volumes even though most of the equipment in this large power range would require relatively less effort in accommodating complying engines. Also, the higher projected cost of $137 for equipment with engines rated between 75 and 130 kW results from amortizing slightly lower fixed costs compared to ratings under 75 kW over a much smaller sales volume.

The projected incremental cost of complying with Tier 3 standards are lower than that for Tier 2 standards, because EPA expects most of the significant changes to equipment designs would occur for Tier 2 standards (the previous or first set of standards). For Tier 3 standards, equipment with engines rated between 37 and 560 kW are expected to have incremental costs ranging from $18 to $53. In addition, EPA estimated that, for equipment with engines rated under 37 kW, the incremental cost of Tier 2 standards is only $5.

As discussed in the Engine Cost section, characterizing both these estimated incremental equipment and engine costs in the context of their fraction of the total equipment purchase price is useful for evaluating the economic impact of the proposed standards. EPA collected quoted retail (list) prices on several equipment pieces to characterize the range of current equipment prices. The combined incremental costs estimated for equipment and engines together for all power ranges are mostly under 2 percent of list prices with the exception of a few low power rated equipment (e.g., a 3 kW centrifugal pump), which may have relatively low sales prices and thus estimated incremental costs that are up to 4 percent of list prices.

Furthermore, as described above in the Engine Cost section, the cost savings below would further reduce the projected cost of the proposed standards. For the long term, EPA has identified two principal factors that would cause the estimated incremental costs to decrease over time. First, since fixed costs are assumed to be recovered over a ten-year period, these costs disappear from the analysis after the first ten model years. Second, as

described further in the Engine Cost section, the analysis incorporates the effects of a learning curve by projecting that the variable costs of making equipment changes to accommodate low-emitting engines decreases by 20 percent starting with the third year of production and by reducing variable costs again by 20 percent starting with the sixth year of production. Table 9 shows the schedule of projected equipment costs for each category of equipment over time, and it also presents the combined costs estimated for equipment and engines together. (The combined engine and equipment costs presented in Table 9 do not include increased operating costs.)

4. Aggregate Costs to Society

The above analysis develops unit cost estimates for each power category. With current data for equipment sales for each category and projections for the future, these costs can be translated into a total projected cost to the nation for the proposed emission standards in any year. Increased purchase prices and operating costs lead to aggregate costs of about $3 million in the first year, increasing to a peak of $320 million in 2008 as increasing numbers of engines become subject to the proposed standards. The following years show declining aggregate costs as the per-unit cost of compliance decreases, as described above, to a low point of about $190 million in 2014. After 2014, stable engine costs applied to a slowly growing market lead to slowly increasing aggregate costs.

Commenters on the Supplemental ANPRM suggested that new nonroad diesel engine standards would negatively impact other entities such as equipment distributors/dealers, ultimate purchasers (e.g., farmers, construction contractors, loggers), and suppliers of parts and services for engines and equipment. In the segment of the economy involving nonroad diesel engines and equipment, distributors/dealers and purchasers are downstream of engine and equipment manufacturers, and suppliers of parts and services are upstream. EPA recognizes that there may be some potential impact on these entities from the proposed rule. For example, as some commenters suggested, were a sudden large increase in equipment prices to occur, it might result in a slowing of purchases of new equipment, possibly causing upstream suppliers or downstream dealers to lose business. As described in Section IV.B.3., EPA estimates that the combined incremental costs for equipment and engines together for all power ranges would generally be under 2 percent of the list prices of equipment. Considering that price changes are already a common occurrence in this market, EPA believes the impacts will be minimal. Also, such small cost increments, together with the complexity of this market, make it extremely difficult to quantitatively analyze the impacts on entities upstream and downstream of engine and equipment makers. Therefore, EPA included in the cost analysis only those entities that are expected to be directly impacted by the proposed rule.

C. Cost-Effectiveness

EPA has estimated the cost-effectiveness (i.e., the cost per ton of emission reduction) of the proposed Tier 1, Tier 2 and Tier 3 standards for the same power categories of nonroad equipment highlighted earlier in this section. Chapter 6 of the Draft RIA contains a more detailed discussion of the cost-effectiveness analysis. EPA requests comments on all aspects of the cost-effectiveness analysis.

As described above in the Economic Impacts section, the projected cost of complying with the proposed standards will vary by power category and model year. Therefore, the cost-effectiveness will also vary from model year to model year. For comparison purposes, the discounted lifetime costs (including increased engine costs, equipment costs and operating costs), emission reductions (in short tons), and cost-effectiveness of the proposed NMHC + NO_X standards are shown in Table 10 for the same model years discussed above in the Economic Impacts section. EPA believes this is a conservative estimate because EPA assumed that all of the increased costs presented earlier were attributable to NMHC+NO_X control and none of the costs were attributed to PM control. NO_X reductions represent approximately 90 percent of the total NMHC+NO_X emission reductions expected from the proposed standards.

TABLE 10.—COST-EFFECTIVENESS OF THE PROPOSED NMHC+NO_X STANDARDS

Standard	Power (kW)	Year of production	Discounted lifetime cost	Discounted lifetime NMHC+NO_X reductions (tons)	Discounted lifetime cost-effectiveness (per ton)
Tier 1	0–37	1	$138	0.32	$440
Tier 2	0–37	1	33	0.04	790
		6	15		360
	37–75	1	235	0.59	400
	75–130	1	458	1.19	390
	130–450	1	446	2.11	210
	450–560	1	1,075	8.11	130
	560	1	1,350	11.44	120
		6	207		20
Tier 3	37–75	1	430	0.62	700
		6	217		350
	75–130	1	573	0.94	610
		6	325		350
	130–450	1	601	1.71	350
		6	356		210
	450–560	1	1,878	6.08	310
		6	522		90

Weighting the projected cost and emission benefit numbers presented above by the populations of the individual power categories, EPA calculated the cost-effectiveness of the proposed NMHC + NO_X standards for the entire nonroad diesel engine fleet. Table 11 contains the resulting fleet-

wide cost-effectiveness results for the Tier 2 and Tier 3 standards.

TABLE 11.—FLEET-WIDE COST-EFFECTIVENESS OF THE PROPOSED NONROAD NMHC + NO_X Standards

Standard	Discounted lifetime cost-effectiveness
Tier 2	$300/ton.
Tier 3—Short term	$400/ton.
Tier 3—Long term	$180/ton.

For comparison to other PM control strategies, EPA has also analyzed the cost-effectiveness of the proposed standards assuming half of the increased costs were attributable to PM control. Such a fleet-wide discounted lifetime cost-effectiveness represents the highest figure that could be expected for cost-effectiveness of the proposed standards and was calculated to provide an indication of the upper bound of PM cost-effectiveness. The resulting fleet-wide discounted lifetime cost-effectiveness of the proposed Tier 1 and Tier 2 PM standards was approximately $1,500 per ton.

In an effort to evaluate the cost-effectiveness of the proposed NMHC + NO_X controls for nonroad engines, EPA has summarized the cost-effectiveness results for three other recent EPA mobile source rulemakings that required reductions in NO_X (or NMHC + NO_X) emissions. The heavy-duty vehicle portion of the Clean Fuel Fleet Vehicle Program yielded a cost-effectiveness of approximately $1,500/ton of NO_X. Phase II of the Reformulated Gasoline Program yielded approximately $5,000/ton of NO_X, and the most recent NMHC + NO_X standards for highway heavy-duty diesel engines yielded a cost-effectiveness of $100–$600/ton of NMHC + NO_X. The cost-effectiveness of the proposed NMHC + NO_X standards for nonroad diesel engines presented above are more favorable than the cost-effectiveness of both the clean fuel fleet vehicle program and reformulated gasoline. The cost-effectiveness of the proposed NMHC + NO_X standards for nonroad diesel engines is comparable to the cost-effectiveness of the most recent NMHC + NO_X standards for heavy-duty highway diesel engines.

EPA has also summarized the cost-effectiveness results for two other recent EPA mobile source rulemakings that required reductions in PM emissions. The cost-effectiveness of the most recent urban bus engine PM standard was estimated to be $10,000–$16,000/ton and the cost-effectiveness of the urban bus retrofit/rebuild program was estimated to be approximately $25,000/ton. The PM cost-effectiveness of the proposed nonroad engine standards presented above are more favorable than either of the urban bus programs.

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X reductions from the proposed nonroad engine standards are expected to have beneficial impacts with respect to crop damage, secondary particulate, acid deposition, eutrophication, visibility, and forests, as described earlier. Because of the difficulty of quantifying the monetary value of these societal benefits, the cost-effectiveness values presented do not assign any numerical value to these additional benefits. However, based on an analysis of existing studies that have estimated the value of such benefits in the past, the Agency believes that the actual monetary value of the multiple environmental and public health benefits that would be produced by large NO_X reductions similar to those projected under this proposal will likely be greater than the estimated compliance costs. EPA requests comment on including these benefits in an estimate of the cost-effectiveness of the proposed standards.

VII. Public Participation

As mentioned above, EPA issued a Supplemental ANPRM releasing the Nonroad Statement of Principles and announcing EPA's intent to formally propose regulatory action relating to nonroad diesel emissions consistent with the Statement of Principles. By the time the comment period closed, the Agency had received more than 20 communications relating to this program and the Supplemental ANPRM. Additional comments have been received as a part of the Agency's special outreach to small entities (see Section VIII.B.). These comments have been very valuable in developing this proposal, and the Agency looks forward to additional comment as the formal rulemaking process now begins. All of these comments are available in the rulemaking docket and many of them are discussed in the context of various issues in this preamble. EPA has considered each of the comments and has attempted to address them in this proposal.

A. Comments and the Public Docket

Publication of this notice opens a formal comment period for this proposal. EPA will accept comments for the period indicated under "**DATES**" above. The Agency encourages all parties that have an interest in the program described in this notice to offer comment on all aspects of the action. Throughout this proposal are requests for specific comment on various topics.

The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. The Agency also encourages commenters that disagree with the proposed program to suggest and analyze alternate approaches to meeting the air quality goals of this proposed program. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–96–40 before the date specified above.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by: (1) Labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a nonconfidential version of the document that summarizes the key data or information should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and in accordance with the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it will be made available to the public without further notice to the commenter.

B. Public Hearing

The Agency will hold a public hearing as noted in the **DATES** section above. Any person desiring to present testimony at the public hearing is asked to notify the contact person listed above at least five business days prior to the date of the hearing. This notification should include an estimate of the time required for the presentation of the testimony and any need for audio/visual equipment. EPA suggests that sufficient copies of the statement or material to be presented be available to the audience. In addition, it is helpful if the contact person receives a copy of the testimony or material prior to the hearing.

The hearing will be conducted informally, and technical rules of evidence will not apply. A sign-up sheet will be available at the hearing for scheduling the order of testimony. A written transcript of the hearing will be

prepared. The official record of the hearing will be kept open for 30 days after the hearing to allow submittal of supplementary information.

VIII. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order (58 FR 51735, Oct. 4, 1993). The order defines "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposal is a "significant regulatory action" because the proposed standards and other regulatory provisions, if implemented, would have an annual effect on the economy in excess of $100 million. A Draft RIA has been prepared and is available in the docket associated with this rulemaking. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this proposal.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect them. In response to the provisions of this statute, EPA has identified industries subject to this proposed rule and has provided information to and received comment from small entities and representatives of small entities in these industries. The Agency has also convened a panel under section 609(b) of the Regulatory Flexibility Act as added by SBREFA. The purpose of the Panel is to collect the advice and recommendations of representatives of small entities that will be affected by the rule and to report on those comments and the Panel's findings as to issues related to the key elements of an initial regulatory flexibility analysis under section 603 of the Regulatory Flexibility Act. Those elements of an initial regulatory flexibility analysis are:

- The number of small entities to which the proposed rule will apply.
- Projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.
- Other relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.
- Any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Once completed, the Panel report is provided to the Agency issuing the proposed rule and included in the rulemaking record. In light of the Panel report, the Agency is to make changes to the proposed rule or the initial regulatory flexibility analysis for the proposed rule, where appropriate.

EPA has prepared an initial regulatory flexibility analysis to analyze the economic impacts of this proposed rule on small companies; the initial regulatory flexibility analysis is found in Chapter 4 of the Draft RIA. EPA's outreach to small entities and EPA's responses to the recommendations of the Panel are described in the initial regulatory flexibility analysis and summarized below. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes additional comments during the rulemaking process on issues related to such impacts.

1. Applicable Small Businesses

The initial regulatory flexibility analysis analyzes four separate but related industries that will be subject to this proposed rule and that contain small businesses as defined by regulations of the Small Business Administration (SBA): nonroad diesel engine manufacturing, manufacturing of nonroad diesel equipment, post-manufacture marinizing of diesel engines, and the rebuilding or remanufacturing of diesel nonroad engines. According to SBA's regulations (13 CFR 121), businesses with no more than the following numbers of employees or dollars of annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis:

- Manufacturers of engines (includes marinizers)—1000 employees.
- Equipment manufacturers
- Manufacturers of construction equipment—750 employees.
- Manufacturers of industrial trucks (forklifts)—750 employees.
- Manufacturers of other nonroad equipment—500 employees.
- Rebuilders/Remanufacturers of engines—$5 million.

2. Small Business Economic Impact Analysis

The initial regulatory flexibility analysis evaluates in detail the financial impacts of the proposed standards on small manufacturers of nonroad diesel equipment. Along with small manufacturers of equipment, the potential impacts on small manufacturers of diesel engines, small marinizers, and small engine rebuilders/remanufacturers were assessed as part of the SBREFA Panel process as discussed below; however, a detailed economic analysis was conducted only for equipment manufacturers, for the following reasons. There is only one small manufacturer of diesel engines affected by the proposed rule that meets the Small Business Administration's (SBA) small business criteria, and this small engine manufacturer would have impacts from the proposal that are similar to those impacts experienced by large nonroad engine manufacturers, which are described in Section VI.B. of this proposal. Marinizers are expected to experience impacts similar to those of nonroad equipment manufacturers since changes made by the original engine manufacturers might require changes in the parts and process involved in marinization. Engine rebuilders/remanufacturers would not be economically impacted by this proposed rule since as described in Section III.C. of this proposal, the proposed provisions for these entities would not require a change to their current practices.

As described in Section IV.B.4., commenters on the Supplemental ANPRM suggested that new nonroad diesel engine standards would negatively impact other small entities such as equipment distributors/dealers, ultimate purchasers, and suppliers of

parts and services for engines and equipment. EPA recognizes that these downstream and upstream small entities may be adversely impacted by the proposed rule. However, for the reasons described in Section IV.B.4., EPA included in the cost analysis and the initial regulatory flexibility analysis only those entities that are expected to be directly impacted by the proposed rule. EPA asks for comments on the potential impacts of the proposed rule on any downstream and upstream small entities, with supporting data or methodologies to assist in analyzing these impacts whenever possible.

The initial regulatory flexibility analysis applies an economic measure known as the "sales test" to evaluate the economic impact of the proposed standards on small manufacturers of nonroad diesel equipment. The sales test involves calculation of annualized compliance costs as a function of sales revenue. According to the sales test results in the initial regulatory flexibility analysis, an estimated 9 percent of small equipment manufacturers would be economically impacted by greater than 1 percent by the proposed rule. Also, an estimated 5 percent of small equipment manufacturers would experience an impact greater than 3 percent.

As described in Section III.E. of this proposal, this proposed rule includes flexibility provisions for equipment manufacturers (both large and small manufacturers). As shown in the initial regulatory flexibility analysis, the flexibility provisions should reduce any economic impacts of the proposed regulations on small equipment manufacturers. However, the effects of the provisions are likely conservatively estimated because the hardship relief provisions described in Section III.E. were not included in the analysis. EPA considers the flexibility provisions to be a significant regulatory alternative since they meet the Agency's air quality objectives while minimizing significant economic impacts on small equipment manufacturers.

3. SBREFA Panel and Other Regulatory Alternatives

Consistent with SBREFA, EPA convened a Small Business Advocacy Review Panel on March 25, 1997 to collect the advice and recommendations of representatives of small entities that may be affected by the proposed rule and to report on those comments. The Panel, consisting of representatives of the Small Business Administration, the Office of Management and Budget, and EPA, issued a report on May 23, 1997.[43]

Accordingly, during the development of this proposal, EPA and the SBREFA Panel were in contact with representatives of small nonroad diesel equipment manufacturers, small nonroad diesel engine manufacturers, small nonroad engine rebuilders/remanufacturers, and small post-manufacture engine marinizers. In its final report, the SBREFA Panel encouraged EPA to continue to seek information and conduct analysis relating the number of small entities potentially affected by this proposed rule. The Panel also encouraged EPA to consider the potential overlap with Occupational Safety and Health Administration (OSHA) regulations related to ambient CO levels and to design the rule to minimize the need for record keeping and reporting. The Agency requests additional information, comments, and suggestions on the number of small entities and the potential overlap with OSHA CO limits in response to this proposal. Proposed measures to minimize record keeping and reporting are discussed in Section III.E. of this proposal.

In addition, the Panel believed that a set of five alternatives to the provisions outlined in the Supplemental ANPRM, considered as an integrated package, would provide significant flexibility and burden reduction for small entities subject to the proposed rule. The Panel believed that EPA should consider conducting further analysis on these five alternatives and proposing or soliciting comment on them in this proposal. It is important to note that the Panel's findings are based on the information available at the time the Panel report was drafted. The Panel makes its report at an early stage of the process of promulgating a rule and its report should be considered in that light.

EPA is proposing or soliciting comment in this proposal on the five regulatory alternatives, based on EPA's analysis and agreement with the Panel's findings (see Section III.E.). These alternatives meet the Agency's air quality objectives while maximizing the compliance flexibility for small manufacturers of nonroad equipment and small marinizers. A more detailed discussion on EPA's outreach and these significant regulatory alternatives is provided in the initial regulatory flexibility analysis (found in Chapter 4 of the Draft RIA) and in Section III.E. of this proposal.

[43] "Final Report of the SBREFA Small Business Advocacy Review Panel for Control of Emissions of Air Pollution from Nonroad Diesel Engines", May 23, 1997 (available in Air Docket A–96–40).

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* A copy of any of the submitted Information Collection Requests (ICR) documents may be obtained from Sandy Farmer, Regulatory Information Division, U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740. The following ICR documents have been prepared by EPA:

EPA ICR #	Title
0011.09	Selective Enforcement Auditing and recordkeeping requirements for on-highway HDE, nonroad compression ignition engines, and on-highway light-duty vehicles and light duty trucks.
0095.10	Pre-certification and testing exemption reporting and record-keeping requirements.
0282.10	Emission Defect Information and Voluntary Emission recall reports.
1684.04	Compression ignition non-road engine certification application.
1695.03	Amendment to the Information Collection Request Emission Standards for New Nonroad Spark-Ignition Engines.
1826.01	Information Collection for Equipment Manufacturer Flexibility.

The Agency proposes to collect information related to certification results, durability, maintenance, and averaging, banking and trading. This information will be used to ensure compliance with and enforce the provisions in this rule. Section 208(a) of the Clean Air Act requires that manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory. EPA will consider confidential all information meeting the requirements of § 208(c) of the Clean Air Act.

These collections of information have an estimated annual burden averaging 3100 hours annually for a typical engine manufacturer. The estimated likely respondents is 58 with annual operational and maintenance costs of $195,000. However, the hours and annual cost of information collection activities by a given manufacturer depends on manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so forth. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W.; Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after publication in the **Federal Register**, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication in the **Federal Register**. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the proposed program would significantly or uniquely affect small governments. EPA has determined that this rule contains federal mandates that may result in expenditures of $100 million or more in any one year for the private sector. EPA believes that the proposed program represents the least costly, most cost-effective approach to achieving the air quality goals of the proposed rule. The cost-benefit analysis required by UMRA is contained in the RIA. The reader is directed to Section VIII.A. above, Administrative Designation and Regulatory Analysis, for further information regarding these analyses.

IX. Statutory Authority

In accordance with section 213(a) of the Clean Air Act, 42 U.S.C. 7547(a), EPA conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991. Based on the results of that study, EPA determined that emissions of NO_x, VOCs (including HC), and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306, June 17, 1994). Given this determination, section 213(a)(3) of the Act requires EPA to promulgate (and from time to time revise) emissions standards for those classes or categories of new nonroad engines, vehicles, and equipment that in EPA's judgment cause or contribute to such air pollution. EPA has determined that the engines that would be regulated under this proposal "cause or contribute" to such air pollution. (See the June 1994 final rule and Section II.A.3. above).

Where EPA determines that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that EPA determines cause or contribute to such air pollution. In the June 1994 final rule, EPA made this determination for missions of PM and smoke from nonroad engines in general and for CI nonroad engines rated over 37 kW. With this document, EPA is making the same findings for nonroad diesel engines rated under 37 kW. (See Section II.A.3. above).

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle engine pollution, Reporting and recordkeeping requirements.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements, Research.

Dated: August 29, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, parts 9, 86, and 89 of the Code of Federal Regulations are proposed to be amended as set forth below.

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended in the table by removing the center heading "Control of Emissions From New and In-Use Nonroad Engines" and the entries under that center heading and adding a new center heading and entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Control of Emissions From New and In-Use Compression-Ignition Nonroad Engines	
89.1	2060–0124
89.2	2060–0124
89.114–89.120	2060–0104
89.122–89.127	2060–0104
89.129	2060–0104
89.203–89.207	2060–0104
89.209—89.211	2060–0104
89.304–89.331	2060–0104
89.404–89.424	2060–0104
89.505–89.510	2060–0064
89.511–89.512	2060–0064
89.603–89.605	2060–0095
89.607–89.610	2060–0095
89.611	2060–0007
	2060–0095
89.612	2060–0095
89.801–89.803	2060–0048
89.903	2060–0124
89.905–89.911	2060–0007
* * * * *	

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

3. The heading of part 86 is revised as set forth above.

4. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

5. Section 86.884–8 as amended at 62 FR 47122 effective January 5, 1998, is amended by revising the table in paragraph (c)(4) to read as follows:

§ 86.884–8 Dynamometer and engine equipment.

* * * * *

(c) * * *

(4) * * *

Maximum rated horsepower	Exhaust pipe diameter (inches)
HP≤50	1.5
50≤HP<100	2.0
100≤HP<200	3.0
200≤HP<300	4.0
300≤HP<500	5.0
HP≥500	6.0

* * * * *

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE COMPRESSION-IGNITION NONROAD ENGINES

6. The heading of part 89 is revised as set forth above.

7. The authority citation for part 89 continues to read as follows:

Authority: Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

8. The following sections are redesignated as set forth in the following table:

Old designation	New designation
89.101–96	89.101
89.102–96	89.102
89.103–96	89.103
89.104–96	89.104
89.105–96	89.105
89.106–96	89.106
89.107–96	89.107
89.108–96	89.108
89.109–96	89.109
89.110–96	89.110
89.111–96	89.111
89.112–96	89.112
89.113–96	89.113
89.114–96	89.114
89.115–96	89.115
89.116–96	89.116
89.117–96	89.117
89.118–96	89.118
89.119–96	89.119
89.120–96	89.120
89.121–96	89.121
89.122–96	89.122
89.123–96	89.123
89.124–96	89.124
89.125–96	89.125
89.126–96	89.126
89.127–96	89.127
89.128–96	89.128
89.129–96	89.129
89.201–96	89.201
89.202–96	89.202
89.203–96	89.203
89.204–96	89.204
89.205–96	89.205
89.206–96	89.206
89.207–96	89.207
89.208–96	89.208
89.209–96	89.209
89.210–96	89.210
89.211–96	89.211
89.212–96	89.212
89.301–96	89.301
89.302–96	89.302
89.303–96	89.303
89.304–96	89.304
89.305–96	89.305
89.306–96	89.306
89.307–96	89.307
89.308–96	89.308
89.309–96	89.309
89.310–96	89.310
89.311–96	89.311
89.312–96	89.312
89.313–96	89.313
89.314–96	89.314
89.315–96	89.315
89.316–96	89.316
89.317–96	89.317
89.318–96	89.318
89.319–96	89.319
89.320–96	89.320
89.321–96	89.321
89.322–96	89.322
89.323–96	89.323
89.324–96	89.324
89.325–96	89.325
89.326–96	89.326
89.327–96	89.327
89.328–96	89.328
89.329–96	89.329
89.330–96	89.330
89.331–96	89.331
89.401–96	89.401
89.402–96	89.402
89.403–96	89.403
89.404–96	89.404
89.405–96	89.405
89.406–96	89.406
89.407–96	89.407
89.408–96	89.408
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89.410–96	89.410
89.411–96	89.411
89.412–96	89.412
89.413–96	89.413
89.414–96	89.414
89.415–96	89.415
89.416–96	89.416
89.417–96	89.417
89.418–96	89.418
89.419–96	89.419
89.420–96	89.420
89.421–96	89.421
89.422–96	89.422
89.423–96	89.423
89.424–96	89.424
89.425–96	89.425
89.501–96	89.501
89.502–96	89.502
89.503–96	89.503
89.504–96	89.504
89.505–96	89.505
89.506–96	89.506
89.507–96	89.507
89.508–96	89.508
89.509–96	89.509
89.510–96	89.510
89.511–96	89.511
89.512–96	89.512
89.513–96	89.513
89.514–96	89.514
89.515–96	89.515
89.516–96	89.516
89.601–96	89.601
89.602–96	89.602
89.603–96	89.603
89.604–96	89.604
89.605–96	89.605
89.606–96	89.606
89.607–96	89.607
89.608–96	89.608
89.609–96	89.609
89.610–96	89.610
89.611–96	89.611
89.612–96	89.612
89.613–96	89.613

9. In part 89, all internal section references are revised as indicated in the above redesignation table.

Subpart A—[Amended]

10. Section 89.1 is amended by revising paragraphs (a) and (b)(4) to read as follows:

§ 89.1 Applicability.

(a) This part applies to nonroad compression-ignition engines.

(b) * * *

(4) Engines used in marine vessels as defined in the General Provisions of the United States Code, 1 U.S.C. 3 , if those engines have a rated power at or above 37 kW.

11. Section 89.2 is amended by adding new definitions in alphabetical order to read as follows:

§ 89.2 Definitions.

* * * * *

Auxiliary marine diesel engine means a marine diesel engine that is not a propulsion marine diesel engine.

Blue Sky Series engine means a low-emitting nonroad engine meeting the requirements of § 89.112(f).

* * * * *

Compression-ignition engine means an engine with operating characteristics significantly similar to the theoretical Diesel combustion cycle. The non-use of a throttle during normal operation is indicative of a compression-ignition engine.

Constant-speed engine means an engine that is governed to operate only at rated speed.

Crankcase emissions means airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or lubrication systems.

* * * * *

Farm equipment or vehicle has the meaning contained in 40 CFR part 85, subpart Q.

Full load governed speed is the maximum full load speed as specified by the manufacturer in the sales and service literature and certification application. This speed is the highest engine speed with an advertised power greater than zero.

* * * * *

Intermediate speed means peak torque speed if peak torque speed occurs from 60 to 75 percent of rated speed. If peak torque speed is less than 60 percent of rated speed, intermediate speed means 60 percent of rated speed. If peak torque speed is greater than 75 percent of rated speed, intermediate speed means 75 percent of rated speed.

* * * * *

Marine diesel engine means a compression-ignition engine that is intended to be installed on a vessel.

* * * * *

Post-manufacture marinizer means a person who produces a marine diesel engine by substantially modifying a certified or uncertified complete or partially complete engine; and is not controlled by the manufacturer of the base engine or by an entity that also controls the manufacturer of the base engine. For the purpose of this definition, "substantially modify" means changing an engine in a way that could change engine emission characteristics.

* * * * *

Propulsion marine diesel engine means a marine diesel engine that is intended to move a vessel through the water or direct the movement of a vessel.

Rated speed is the maximum full load governed speed for governed engines and the speed of maximum horsepower for ungoverned engines.

Specific emissions means emissions expressed on the basis of observed brake power, using units of g/kW-hr. Observed brake power measurement includes accessories on the engine if these accessories are required for running an emission test (except for the cooling fan). When it is not possible to test the engine in the gross conditions, for example, if the engine and transmission form a single integral unit, the engine may be tested in the net condition. Power corrections from net to gross conditions will be allowed with prior approval of the Administrator.

* * * * *

Tier 1 engine means an engine subject to the Tier 1 emission standards listed in § 89.112(a).

Tier 2 engine means an engine subject to the Tier 2 emission standards listed in § 89.112(a).

Tier 3 engine means an engine subject to the Tier 3 emission standards listed in § 89.112(a).

* * * * *

U.S.-directed production volume means the number of nonroad equipment or vehicles units produced by a manufacturer for which the manufacturer has reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

* * * * *

Vessel has the meaning given to it in 1 U.S.C. 3.

12. Section 89.3 is amended by adding new acronyms in alphabetical order to read as follows:

§ 89.3 Acronyms and abbreviations.

* * * * *

EGR Exhaust gas recirculation

* * * * *

NMHC Nonmethane hydrocarbon

* * * * *

PM Particulate matter

* * * * *

§ 89.4 [Removed and reserved]

13. Remove and reserve § 89.4.

14. Section 89.6 is amended in paragraph (b)(1) by removing the last entry in the table and adding a new entry in its place and in paragraph (b)(2) by adding in alpha-numeric order a new entry to the table to read as follows:

§ 89.6 Reference materials.

* * * * *

(b) * * *

(1) * * *

Document No. and name	40 CFR part 89 reference
* * * * *	
ASTM E29–93a: "Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications"	89.120; 89.207; 89.509

(2) * * *

Document number and name	40 CFR part 89 reference
* * * * *	
SAE J1151 December 1991: "Methane Measurement Using Gas Chromatography"	89.309

* * * * *

Subpart B—[Amended]

15. The newly designated § 89.102 is amended by revising paragraph (a) and

adding new paragraphs (c), (d), (e), (f), and (g) to read as follows:

§ 89.102 Effective dates, optional inclusion.

(a) This subpart applies to all engines described in § 89.101 with the following power rating and manufactured after the following dates:

(1) Less than 19 kW and manufactured on or after January 1, 2000;

(2) Greater than or equal to 19 kW but less than 37 kW and manufactured on or after January 1, 1999;

(3) Greater than or equal to 37 kW but less than 75 kW and manufactured on or after January 1, 1998;

(4) Greater than or equal to 75 kW but less than 130 kW and manufactured on or after January 1, 1997;

(5) Greater than or equal to 130 kW but less than 560 kW and manufactured on or after January 1, 1996;

(6) Greater than or equal to 560 kW and manufactured on or after January 1, 2000.

* * * * *

(c) Engines meeting the voluntary standards described in § 89.112(f) may be designated as Blue Sky Series engines through the 2004 model year.

(d) *Implementation flexibility for equipment and vehicle manufacturers.* Nonroad equipment and vehicle manufacturers and may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) with respect to the following nonroad equipment and vehicles, subject to the requirements of paragraph (e) of this section. The following allowances apply separately to each engine power category subject to standards under § 89.112:

(1) *Percent-of-production allowances*—(i) *Farm equipment or vehicles at or above 37 kW.* For farm equipment or vehicles with engines rated at or above 37 kW, a manufacturer may take any of the actions identified in § 89.1003(a)(1) [Alternative 1: for up to 30 percent of its U.S.-directed production volume of such equipment and vehicles in the first year that Tier 2 engine standards apply to such engines, and for up to 15 percent of its U.S.-directed production volume in each of the seven years following the first year,] [Alternative 2: for a portion of its U.S.-directed production volume of such equipment and vehicles during the eight years immediately following the date on which Tier 2 engine standards first apply to engines used in such equipment and vehicles, provided that the eight-year sum of these portions in each year, as expressed as a percentage for each year, does not exceed 135, and] provided that all such equipment and vehicles or equipment must contain Tier 1 engines;

(ii) *Farm equipment or vehicles rated under 37 kW.* For farm equipment or vehicles with engines rated under 37 kW, a manufacturer may take any of the actions identified in § 89.1003(a)(1) [Alternative 1: for up to 30 percent of its U.S.-directed production volume of such equipment and vehicles in the first year that Tier 1 engine standards apply to such engines, and for up to 15 percent of its U.S.-directed production volume in each of the three [seven] years following the first year] [Alternative 2: for a portion of its U.S.-directed production volume of such equipment and vehicles during the four [eight] years immediately following the date on which Tier 1 engine standards first apply to engines used in such equipment and vehicles, provided that the four[eight]-year sum of these portions in each year, as expressed as a percentage for each year, does not exceed 75 [135]];

(iii) *Other equipment rated at or above 37 kW.* For all other nonroad equipment and vehicles with engines rated at or above 37 kW, a manufacturer may take any of the actions identified in § 89.1003(a)(1) [Alternative 1: for up to 15 percent of its U.S.-directed production volume of such equipment and vehicles in the first year that Tier 2 engine standards apply to such engines, and for up to 5 percent of its U.S.-directed production volume in each of the six years following the first year,] [Alternative 2: for a portion of its U.S.-directed production volume of such equipment and vehicles during the seven years immediately following the date on which Tier 2 engine standards first apply to engines used in such equipment and vehicles, provided that the seven-year sum of these portions in each year, as expressed as a percentage for each year, does not exceed 45, and] provided that all such equipment and vehicles or equipment must contain Tier 1 engines;

(iv) *Other equipment rated under 37 kW.* For all other nonroad equipment and vehicles with engines rated under 37 kW, a manufacturer may take any of the actions identified in § 89.1003(a)(1) [Alternative 1: for up to 15 percent of its U.S.-directed production volume of such equipment and vehicles in the first year that Tier 1 engine standards apply to such engines, and for up to 5 percent of its U.S.-directed production volume in each of the three [six] years following the first year][Alternative 2: for a portion of its U.S.-directed production volume of such equipment and vehicles during the four [seven] years immediately following the date on which Tier 1 engine standards first apply to engines used in such equipment and vehicles, provided that the four[seven]-year sum of these portions in each year, as expressed as a percentage for each year, does not exceed 30 [45]].

(2) *Small volume allowances.* A nonroad equipment or vehicle manufacturer may exceed the production percentages in paragraph (d)(1) of this section in any of the years for which these percentages apply, provided that in each regulated power category, the manufacturer's excepted equipment and vehicles in that year does not exceed 100 units[, and is limited to a single equipment or vehicle model].

Potential Alternative for Paragraph (d)(2)

(d)(2) *Small volume allowances.* A nonroad equipment or vehicle manufacturer may exceed the production percentages in paragraph (d)(1) of this section, provided that in each regulated power category, the manufacturer's total of excepted equipment and vehicles over the years in which the percent-of-production allowance applies does not exceed 100 units times the number of years in which the percent-of-production allowance applies[, and is limited to a single equipment or vehicle model].

(3) Emission credit-derived allowances. A nonroad equipment or vehicle manufacturer may exceed the allowances in paragraphs (d)(1) and (d)(2) of this section in any of the years for which these allowances apply, by retiring sufficient NMHC + NO_x and PM emission credits obtained under the provisions of subpart C of this part. Equipment or vehicles for which these emission credit-derived allowances are used shall be excluded from the determinations required in paragraph (e) of this section.

(i) The amount of emission credits, in megagrams, to be retired for each additional allowance shall be determined separately for NMHC + NO_x and for PM as follows:

Emission credits = [(Previous level)—(New level)] × (Category PR) × (UL) × (10^{-6})

Where:

Previous level = 10.5 g/kW-hr NMHC + NO_x and 0.54 g/kW-hr PM if the equipment for which the allowance is being used has an engine rated at or above 37 kW, or 16.0 g/kW-hr NMHC + NO_x and 1.2 g/kW-hr for PM if the equipment for which the allowance is being used has an engine rated under 37 kW.

New level = The emission standard that would apply to the engine used in the equipment if no allowance were to be used.

Category PR = The midpoint of the power range in § 89.112 applying to the engine used in the equipment for which the allowance is being used.

UL = The useful life for the engine family, in hours.

(ii) A nonroad equipment or vehicle manufacturer choosing to retire emission credits must submit an end-of-the-year report in accordance with the requirements of § 89.211 in each year that credits are retired.

(4) *Inclusion of previous-tier engines.* Equipment and vehicles built with previous tier or noncertified engines under the existing inventory provisions of § 89.1003(b)(4) need not be included in determining compliance with paragraphs (d)(1), (d)(2), and (d)(3) of this section, at the manufacturer's option.

(e) *Determination of compliance and recordkeeping.* The following shall apply to nonroad equipment or vehicle manufacturers who produce excepted equipment or vehicles under the provisions of paragraph (d) of this section:

(1) After each year in which excepted equipment or vehicles are produced, a determination of compliance with the requirements of paragraph (d) of this section shall be made. This determination shall be based on actual production information from the subject year and shall be made within 3 months after the availability of such information. Should any such determination reveal that a production percentage allowance (or small volume allowance where applied) for a power category has been exceeded for the subject year, the nonroad equipment or vehicle manufacturer shall adjust that category's percentage allowance and small volume allowance for the year after the subject year. The percentage allowance shall be recalculated by subtracting the excess percentage of excepted machines from the percentage allowance that would otherwise apply in the year after the subject year (from zero in the year after the final year of the allowance). The small volume allowance shall be recalculated by subtracting the excess number of excepted machines in the subject year from 100 (from zero in the year after the final year of the allowance). If both the recalculated percentage allowance and the recalculated small volume allowance for the year after the subject year is less than zero in any power category, then the manufacturer is in violation of section 203 of the Act and § 89.1003.

Potential Alternative for Paragraph (e)(1)

(e)(1) For each power category in which excepted equipment or vehicles are produced, a determination of compliance with the requirements of paragraph (d) of this section shall be made. This determination shall be made no later than December 31 of the year following the last year in which allowances apply, and shall be based on actual production information from the subject years. Should any such determination reveal that both the percentage allowance and the small volume allowance have been exceeded, then the manufacturer is in violation of section 203 of the Act and § 89.1003.

(2) A nonroad equipment or vehicle manufacturer shall keep records of all equipment and vehicles excepted under the provisions of paragraph (d) of this section, for each power category in which exceptions are taken. These records shall include equipment and engine model numbers, serial numbers, and dates of manufacture, and engine rated power. In addition, the manufacturer shall keep records sufficient to demonstrate the determinations of compliance required in paragraph (e)(1) of this section. All such records shall be kept until at least two full years after the final year in which exceptions are available for each power category.

(f) Hardship relief. Nonroad equipment and vehicle manufacturers, and post-manufacture marinizers, that qualify as small entities under 13 CFR part 121 may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) beyond those allowed under paragraph (d) of this section, subject to approval by the Administrator and the following requirements:

(1) Application for relief must be submitted to the Engine Programs and Compliance Division of the EPA in writing prior to the earliest date in which the applying manufacturer would be in violation of § 89.1003.

(2) Evidence must be provided that the conditions causing the impending violation are not substantially the fault of the applying manufacturer.

(3) Evidence must be provided that the applying manufacturer may be forced to permanently close or sell its equipment-producing operation if relief is not granted.

(4) Any relief granted must begin within one year after the implementation date of the standard applying to engines being used in the equipment for which relief is requested, and may not exceed one year in duration.

(g) *Allowance for the production of engines.* Engine manufacturers may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) with regard to uncertified engines or Tier 1 engines, as appropriate, if the engine manufacturer has received written assurance that the engine is required to meet the demand for engines created under paragraphs (d) and (f) of this section.

16. The newly designated § 89.104 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 89.104 Useful life, recall, and warranty periods.

(a) The useful life is based on the rated power and rated speed of the engine.

(1) For all engines rated under 19 kW, and for constant speed engines rated under 37 kW rated speeds greater than or equal to 3,000 rpm, the useful life is a period of 3,000 hours or five years of use, whichever first occurs.

(2) For all other engines rated at or above 19 kW and under 37 kW, the useful life is a period of 5,000 hours or seven years of use, whichever first occurs.

(3) For all engines rated at or above 37 kW, the useful life is a period of 8,000 hours of operation or ten years of use, whichever first occurs.

(b) Engines are subject to recall testing for a period based on the rated power and rated speed of the engines. However, in a recall, engines in the subject class or category would be subject to recall regardless of actual years or hours of operation.

(1) For all engines rated under 19 kW and for constant speed engines rated under 37 kW with rated speeds greater than or equal to 3,000 rpm, the engines are subject to recall testing for a period of 2,250 hours or four years of use, whichever first occurs.

(2) For all other engines rated at or above 19 kW and under 37 kW, the engines are subject to recall for a period of 3,750 hours or five years of use, whichever first occurs.

(3) For all engines rated at or above 37 kW, the engines are subject to recall for a period of 6,000 hours of operation or seven years of use, whichever first occurs.

(c) Warranties imposed by the Clean Air Act for engines rated under 19 kW

are for 1,500 hours of operation or three years of use, whichever first occurs. For engines rated at or above 19 kW, warranties imposed by the Clean Air Act are for 3,000 hours of operation or five years of use, whichever first occurs.

* * * * *

17. The newly designated § 89.109 is revised to read as follows:

§ 89.109 Maintenance instructions and minimum allowable maintenance intervals.

(a) The manufacturer must furnish or cause to be furnished to the ultimate purchaser of each new nonroad engine written instructions for the maintenance needed to ensure proper functioning of the emission control system. Paragraphs (b) through (g) of this section do not apply to Tier 1 engines with rated power at or above 37 kW.

(b) Maintenance performed on equipment, engines, subsystems or components used to determine exhaust emission deterioration factors is classified as either emission-related or nonemission-related and each of these can be classified as either scheduled or unscheduled. Further, some emission-related maintenance is also classified as critical emission-related maintenance.

(c) This paragraph (c) specifies emission-related scheduled maintenance for purposes of obtaining durability data and for inclusion in maintenance instructions furnished to purchasers of new nonroad engines. The maintenance intervals specified below are minimum intervals:

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same hours of use intervals that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the engine under paragraph (a) of this section. This maintenance schedule may be updated as necessary throughout the testing of the engine, provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test vehicle or engine.

(2) Any emission-related maintenance which is performed on vehicles, engines, subsystems, or components must be technologically necessary to assure in-use compliance with the emission standards. The manufacturer must submit data which demonstrate to the Administrator that all of the emission-related scheduled maintenance which is to be performed is technologically necessary. Scheduled maintenance must be approved by the Administrator prior to being performed or being included in the maintenance instructions provided to the purchasers under paragraph (a) of this section. The Administrator has determined that emission-related maintenance in addition to or at shorter intervals than those outlined in paragraphs (c)(3) and (c)(4) of this section is not technologically necessary to ensure in-use compliance and therefore will not be accepted. However, the Administrator may determine that maintenance even more restrictive (e.g., longer intervals) than that listed in paragraphs (c)(3) and (c)(4) of this section is also not technologically necessary.

(3) For nonroad compression-ignition engines, the adjustment, cleaning, repair, or replacement listed in paragraphs (c)(3)(i) through (c)(3)(iii) of this section shall occur at 1,500 hours of use and at 1,500-hour intervals thereafter.

(i) Exhaust gas recirculation system-related filters and coolers.

(ii) Positive crankcase ventilation valve.

(iii) Fuel injector tips (cleaning only).

(4) The adjustment, cleaning and repair in paragraphs (c)(4)(i) through (c)(4)(vii) of this section shall occur at 3,000 hours of use and at 3,000-hour intervals thereafter for nonroad compression-ignition engines rated under 130 kW, or at 4,500-hour intervals thereafter for nonroad compression-ignition engines rated at or above 130 kW.

(i) Fuel injectors.

(ii) Turbocharger.

(iii) Electronic engine control unit and its associated sensors and actuators.

(iv) Particulate trap or trap-oxidizer system (including related components).

(v) Exhaust gas recirculation system (including all related control valves and tubing) except as otherwise provided in paragraph (c)(3)(i) of this section.

(vi) Catalytic convertor.

(vii) Any other add-on emission-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(5)(i) The components listed in paragraphs (c)(5)(i)(A) through (c)(5)(i)(F) of this section are currently defined as critical emission-related components.

(A) Catalytic convertor.

(B) Electronic engine control unit and its associated sensors and actuators.

(C) Exhaust gas recirculation system (including all related filters, coolers, control valves, and tubing).

(D) Positive crankcase ventilation valve.

(E) Particulate trap or trap-oxidizer system.

(F) Any other add-on emission-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(ii) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in-use. The manufacturer shall be required to show the reasonable likelihood of such maintenance being performed in-use. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (c)(5)(ii)(A) through (c)(5)(ii)(F) of this section will be accepted as having a reasonable likelihood of the maintenance item being performed in-use.

(A) Data are presented which establish for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical driving.

(B) Survey data are submitted which adequately demonstrate to the Administrator that, at an 80 percent confidence level, 80 percent of such engines already have this critical maintenance item performed in-use at the recommended interval(s).

(C) A clearly displayed visible signal system approved by the Administrator is installed to alert the equipment operator that maintenance is due. A signal bearing the message "maintenance needed" or "check engine," or a similar message approved by the Administrator, shall be actuated at the appropriate usage point or by component failure. This signal must be continuous while the engine is in operation and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator. The system must not be designed to deactivate upon the end of the useful life of the engine or thereafter.

(D) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected vehicles per critical emission-related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (c)(5)(ii)(B) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one engine family, the sample will be sales weighted to ensure that it is representative of all the families in question.

(E) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under paragraph (a) of this section.

(F) Any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in-use.

(iii) Visible signal systems used under paragraph (c)(5)(ii)(C) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act.

(d) Nonemission-related scheduled maintenance which is reasonable and technologically necessary (e.g., oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, lubrication of the exhaust manifold heat control valve, etc.) may be performed on durability vehicles at the least frequent intervals recommended by the manufacturer to the ultimate purchaser, (e.g., not the intervals recommended for severe service).

(e) Adjustment of engine idle speed on emission data engines may be performed once before the low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with advance approval of the Administrator.

(f) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and:

(1) Are used in conjunction with scheduled maintenance on such components; or

(2) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (e) of this section for emission data engines; or

(3) Unless specifically authorized by the Administrator.

(g) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 89.124.

18. The newly designated § 89.110 is amended by removing "and" at the end of paragraph (b)(9), by adding a semicolon at the end of paragraph (b)(10), and by adding new paragraphs (b)(11) and (b)(12) to read as follows:

§ 89.110 Emission control information label.

* * * * *

(b) * * *

(11) Engines belonging to an engine family that has been certified as a constant-speed engine using the test cycle specified in Table 2 of appendix B to subpart E of this part must contain the statement on the label: "constant-speed only";

(12)(i) Engines meeting the voluntary standards described in § 89.112(f)(1) to be designated as Blue Sky Series engines must contain the statement on the label: "Blue Sky—Class A".

(ii) Engines meeting the voluntary standards described in § 89.112(f)(2) to be designated as Blue Sky Series engines must contain the statement on the label: "Blue Sky—Class AA".

(iii) Engines meeting the voluntary standards described in § 89.112(f)(3) to be designated as Blue Sky Series engines must contain the statement on the label: "Blue Sky—Class AAA".

* * * * *

19. The newly designated § 89.112 is amended by revising paragraphs (a), (b), and (d), and adding new paragraphs (e) and (f) to read as follows:

§ 89.112 Oxides of nitrogen, carbon monoxide, hydrocarbon, and particulate matter exhaust emission standards.

(a) Nonroad engines to which this subpart is applicable must meet the exhaust emission standards contained in Table 1 as follows:

TABLE 1.—EMISSION STANDARDS (G/KW-HR)

Rated brake power (kW)	Tier	Model year	NO_x	HC	$NMHC+NO_x$	CO	PM
kW<8	Tier 1	2000	.....	.....	10.5	8.0	1.0
	Tier 2	2005	.....	.....	7.5	8.0	0.80
8≤kW<19	Tier 1	2000	.....	.....	9.5	6.6	0.80
	Tier 2	2005	.....	.....	7.5	6.6	0.80
19≤kW<37	Tier 1	1999	.....	.....	9.5	5.5	0.80
	Tier 2	2004	.....	.....	7.5	5.5	0.60
37≤kW<75	Tier 1	1998	9.2	.....	.....	.....	.....
	Tier 2	2004	.....	.....	7.5	5.0	0.40
	Tier 3	2008	.....	.....	4.7	5.0	.....
75≤kW<130	Tier 1	1997	9.2	.....	.....	.....	.....
	Tier 2	2003	.....	.....	6.6	5.0	0.30
	Tier 3	2007	.....	.....	4.0	5.0	.....
130≤kW<225	Tier 1	1996	9.2	1.3	.....	11.4	0.54
	Tier 2	2003	.....	.....	6.6	3.5	0.20
	Tier 3	2006	.....	.....	4.0	3.5	.....
225≤kW<450	Tier 1	1996	9.2	1.3	.....	11.4	0.54
	Tier 2	2001	.....	.....	6.4	3.5	0.20
	Tier 3	2006	.....	.....	4.0	3.5	.....
450≤kW<560	Tier 1	1996	9.2	1.3	.....	11.4	0.54
	Tier 2	2002	.....	.....	6.4	3.5	0.20
	Tier 3	2006	.....	.....	4.0	3.5	.....
kW≥560	Tier 1	2000	9.2	1.3	.....	11.4	0.54
	Tier 2	2006	.....	.....	6.4	3.5	0.20

(b) Exhaust emissions of oxides of nitrogen, carbon monoxide, hydrocarbon, and nonmethane hydrocarbon are measured using the procedures set forth in subpart E of this part.

* * * * *

(d) In lieu of the NO_X standards, NMHC + NO_X standards, and PM standards specified in paragraph (a) of this section, manufacturers may elect to include engine families in the averaging, banking, and trading program, the provisions of which are specified in subpart C of this part. The manufacturer must set a family emission limit (FEL) not to exceed the levels contained in Table 2. The FEL established by the manufacturer serves as the standard for that engine family. Table 2 follows:

TABLE 2.—UPPER LIMIT FOR FAMILY EMISSION LIMITS (G/KW-HR)

Rated brake power (kW)	Tier	Model year	NO_X FEL	NMHC+ NO_X FEL	PM FEL
kW<8	Tier 1	2000	.....	16.0	1.2
	Tier 2	2005	.....	10.5	1.0
8≤kW<19	Tier 1	2000	.....	16.0	1.2
	Tier 2	2005	.....	9.5	0.80
19≤kW<37	Tier 1	1999	.....	16.0	1.2
	Tier 2	2004	.....	9.5	0.80
37≤kW<75	Tier 1	1998	14.6	.....	.....
	Tier 2	2004	.....	10.5	1.2
	Tier 3	2008	.....	7.5	
75≤kW<130	Tier 1	1997	14.6	.....	.....
	Tier 2	2003	.....	10.5	1.2
	Tier 3	2007	.....	6.6	
130≤kW<225	Tier 1	1996	14.6	.....	.....
	Tier 2	2003	.....	10.5	0.54
	Tier 3	2006	.....	6.6	
225≤kW<450	Tier 1	1996	14.6	.....	.....
	Tier 2	2001	.....	10.5	0.54
	Tier 3	2006	.....	6.4	
450≤kW<560	Tier 1	1996	14.6	.....	.....
	Tier 2	2002	.....	10.5	0.54
	Tier 3	2006	.....	6.4	
kW≥560	Tier 1	2000	14.6	.....	.....
	Tier 2	2006	.....	10.5	0.54

(e) Naturally aspirated nonroad engines to which this subpart is applicable shall not discharge crankcase emissions into the ambient atmosphere. For engines rated under 37 kW, this provision applies to all 2001 model year engines and later models. For engines rated at or above 37 kW, this provision applies to all Tier 2 engines and later models. This provision does not apply to engines using turbochargers, pumps, blowers, or superchargers for air induction.

(f) Engines may be designated "Blue Sky Series" engines through the 2004 model year by meeting the following voluntary standards, which apply to all certification and in-use testing. Emissions are measured using the procedures set forth in 40 CFR part 86, subpart N. Manufacturers may use an alternate procedure to demonstrate the desired level of emission control if approved in advance by the Administrator. Engines meeting the requirements to qualify as Blue Sky Series engines must be capable of maintaining a comparable level of emission control when tested using the procedures set forth in paragraph (c) of this section and subpart E of this part. The numerical emission levels measured using the procedures from this part may be up to 20 percent higher than those measured using the procedures from 40 CFR part 86, subpart N, and still be considered comparable. Engines designated as Blue Sky Series engines must meet the requirements related to in-use durability detailed in §§ 89.104, 89.109, 89.118, and 89.130; alternatively, manufacturers may fulfull these requirements with the comparable provisions from 40 CFR part 86.

(1) Engines certified to voluntary standards at least 35 percent below the numerical level established for Tier 2 engines, for both particulate matter and NMHC + NO_X, may be designated as a "Blue Sky Series engine—Class A". Manufacturers must also demonstrate compliance with the numerical level established for CO emissions from the applicable tier of engines, as described in paragraph (a) of this section, and with the smoke emission standards described in § 86.113 of this chapter. This designation will no longer be available beginning in the year for which Tier 2 standards apply to an engine's power category.

(2) Engines certified to voluntary standards at least 50 percent below the numerical level established for Tier 2 engines, for both particulate matter and NMHC + NO_X, may be designated as a "Blue Sky Series engine—Class AA". Manufacturers must also demonstrate compliance with the numerical level established for CO emissions from the applicable tier of engines, as described in paragraph (a) of this section, and with the smoke emission standards described in § 86.113 of this chapter.

(3) Engines certified to voluntary standards at least 65 percent below the numerical level established for Tier 2 engines, for both particulate matter and NMHC + NO_X, may be designated as a "Blue Sky Series engine—Class AAA". Manufacturers must also demonstrate compliance with the numerical level established for CO emissions from the applicable tier of engines, as described in paragraph (a) of this section, and with the smoke emission standards described in § 86.113 of this chapter.

20. The newly designated § 89.117 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 89.117 Test fleet selection.

(a) The manufacturer must select for testing, from each engine family, the engine with the most fuel injected per stroke of an injector, primarily at the speed of maximum torque and secondarily at rated speed.

* * * * *

(d) For establishing deterioration factors, the manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether engines, subsystems, or components are used, they shall be selected so that their emission deterioration characteristics may be expected to represent those of in-use engines, based on good engineering judgment.

21. The newly designated § 89.118 is amended by adding a new paragraph (e) to read as follows:

§ 89.118 Service accumulation.

* * * * *

(e) This paragraph (e) describes service accumulation requirements for the purpose of deterioration factor development. Paragraphs (b) through (d) of this section also apply here.

(1) *Service accumulation on engines, subsystems, or components selected by the manufacturer under § 89.117(d).* The manufacturer determines the form and extent of this service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(2) *Determination of exhaust emission deterioration factors.* The manufacturer determines the deterioration factors based on the service accumulation in paragraph (e)(1) of this section and related testing, according to the manufacturer's procedures.

(3) *Alternatives to service accumulation and testing for the determination of a deterioration factor.* A written explanation of the appropriateness of using an alternative must be included in the application for certification.

(i) *Carryover and carryacross of durability emission data.* In lieu of testing an emission data or durability data engine selected under § 89.117(d), and submitting data therefore, a manufacturer may, with Administrator approval, use exhaust emission deterioration data on a similar engine for which certification to the same standard has previously been obtained or for which all applicable data required under § 89.124 has previously been submitted. This data must be submitted in the application for certification.

(ii) *Use of on-highway deterioration data.* In the case where a manufacturer produces a certified on-highway engine that is similar to the nonroad engine to be certified, deterioration data from the on-highway engine may be applied to the nonroad engine. This application of deterioration data from an on-highway engine to a nonroad engine is subject to Administrator approval, and the determination of whether the engines are similar must be based on good engineering judgment.

(iii) *Engineering analysis for established technologies.* (A) In the case where an engine family uses technology which is well established, an analysis based on good engineering practices may be used in lieu of testing to determine a deterioration factor for that engine family.

(B) Engines using exhaust gas recirculation or aftertreatment are excluded from the provision set forth in paragraph (e)(3)(iii)(A) of this section.

(C) Engines for which the certification levels are not at or below the Tier 3 NMHC+NO_X or PM standards described in § 89.112 are considered established technology.

(D) Manufacturers may petition the Administrator to consider an engine with a certification level below the Tier 3 NMHC+NO_X and PM standards as established technology. This petition must be based on proof that the technology used is not significantly different than that used on engines that have certification levels that are not below the Tier 3 NMHC+NO_X and PM levels.

(E) The manufacturer shall provide a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the deterioration factor is based, are available to the Administrator upon request.

22. The newly designated § 89.119 is amended by revising paragraph (d) to read as follows:

§ 89.119 Emission tests.

* * * * *

(d) *Test fuels.* EPA may use the fuel specified in either Table 4 or Table 5 of Appendix A to subpart D of this part in confirmatory testing or other testing on any test engine.

23. The newly designated § 89.120 is amended by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 89.120 Compliance with emission standards.

* * * * *

(c) For each nonroad engine family, except Tier 1 engines with rated power at or above 37 kW that do not employ aftertreatment, a deterioration factor must be determined and applied.

(1) The applicable exhaust emission standards (or family emission limits, as appropriate) for nonroad compression-ignition engines apply to the emissions of engines for their useful life.

(2) Since emission control efficiency generally decreases with the accumulation of service on the engine, deterioration factors will be used in combination with emission data engine test results as the basis for determining compliance with the standards.

(3)(i) This paragraph (c)(3) describes the procedure for determining compliance of an engine with emission standards (or family emission limits, as appropriate), based on deterioration factors supplied by the manufacturer. Deterioration factors shall be established using applicable emission test procedures. NMHC + NO_X deterioration factors shall be established based on the sum of the pollutants. When establishing deterioration factors for NMHC + NO_X, a negative deterioration (emissions decrease from the official emissions test result) for one pollutant may not offset deterioration of the other pollutant. Where negative deterioration occurs for NO_X or NMHC, the official exhaust emission test result shall be used for purposes of determining the NMHC + NO_X deterioration factor.

(ii) Separate exhaust emission deterioration factors, determined from tests of engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. Separate factors shall be established for NMHC, CO, NO_X, NMHC + NO_X, and exhaust particulate. For smoke testing, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and peak opacity (designated as "C").

(iii) Compression-ignition nonroad engines not utilizing aftertreatment technology (e.g., particulate traps). For NMHC, CO, NO_X, NMHC + NO_X, and exhaust particulate, the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph (c).

(iv) Compression-ignition nonroad engines utilizing aftertreatment technology (e.g., particulate traps). For NMHC, CO, NO_X, NMHC + NO_X, and exhaust particulate, the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph (c).

(v) For acceleration smoke ("A"), lugging smoke ("B"), and peak opacity

("C"), the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However if the deterioration supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph (c).

(vi) The emission values to compare with the standards (or family emission limits, as appropriate) shall be the adjusted emission values of paragraphs (c)(3) (iii) through (v) of this section, rounded to the same number of significant figures as contained in the applicable standard in accordance with ASTM E29–93a, for each emission data engine. This procedure has been incorporated by reference (see § 89.6).

(4) Every test engine of an engine family must comply with all applicable standards (or family emission limits, as appropriate), as determined in paragraph (c)(3)(vi) of this section, before any engine in that family will be certified.

* * * * *

(e) For the purposes of setting an NMHC + NO_X certification level or FEL, one of the following options shall be used for the determination of NMHC for an engine family. The manufacturer must declare which option is used in its application for certification of that engine family.

(1) THC may be used in lieu of NMHC for the standards set forth in § 89.112.

(2) The manufacturer may choose its own method to analyze methane with prior approval of the Administrator.

(3) The manufacturer may assume that two percent of the measured THC is methane (NMHC=0.98×THC).

24. The newly designated § 89.126 is amended by revising paragraph (c) to read as follows:

§ 89.126 Denial, revocation of certificate of conformity.

* * * * *

(c) If a manufacturer knowingly commits an infraction specified in paragraph (b)(1) or (b)(4) of this section, knowingly commits any other fraudulent act which results in the issuance of a certificate of conformity, or fails to comply with the conditions specified in §§ 89.203(d), 89.206(c), 89.209(c) or 89.210(g), the Administrator may deem such certificate void ab initio.

* * * * *

25. A new § 89.130 is added to subpart B to read as follows:

§ 89.130 Rebuild practices.

(a) The provisions of this section are applicable to engines subject to the standards prescribed in section § 89.112 and are applicable to the process of engine rebuilding (or rebuilding a portion of an engine or engine system). This section does not apply to Tier 1 engines rated at or above 37 kW. The process of engine rebuilding generally includes disassembly, replacement of multiple parts due to wear, and reassembly, and also may include the removal of the engine from the vehicle and other acts associated with rebuilding an engine. Any deviation from the provisions contained in this section is a prohibited act.

(b) When rebuilding an engine, portions of an engine, or an engine system, there must be a reasonable technical basis for knowing that the resultant engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, specifications) of the same or newer model year as the original engine. A reasonable basis would exist if:

(1) Parts installed, whether the parts are new, used, or rebuilt, are such that a person familiar with the design and function of motor vehicle engines would reasonably believe that the parts perform the same function with respect to emission control as the original parts; and

(2) Any parameter adjustment or design element change is made only:

(i) In accordance with the original engine manufacturer's instructions; or

(ii) Where data or other reasonable technical basis exists that such parameter adjustment or design element change, when performed on the engine or similar engines, is not expected to adversely affect in-use emissions.

(c) When an engine is being rebuilt and remains installed or is reinstalled in the same equipment, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a configuration of the same or later model year as the original engine.

(d) At time of rebuild, emission-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes, regardless of whether the systems are installed to satisfy requirements in § 89.109 or for other reasons and regardless of form or interface. Diagnostic systems must be free of all such codes when the rebuilt engine is returned to service. Such signals may not be rendered inoperative during the rebuilding process.

(e) When conducting a rebuild without removing the engine from the equipment, or during the installation of a rebuilt engine, all critical emission-related components listed in § 88.109–99(d) of this chapter not otherwise addressed by paragraphs (b) through (d) of this section must be checked and cleaned, adjusted, repaired, or replaced as necessary, following manufacturer recommended practices.

(f) Records shall be kept by parties conducting activities included in paragraphs (b) through (e) of this section. The records shall include at minimum the hours of operation at time of rebuild, a listing of work performed on the engine, and emission-related control components including a listing of parts and components used, engine parameter adjustments, emission-related codes or signals responded to and reset, and work performed under paragraph (e) of this section.

(1) Parties may keep records in whatever format or system they choose as long as the records are understandable to an EPA enforcement officer or can be otherwise provided to an EPA enforcement officer in an understandable format when requested.

(2) Parties are not required to keep records of information that is not reasonably available through normal business practices including information on activities not conducted by themselves or information that they cannot reasonably access.

(3) Parties may keep records of their rebuilding practices for an engine family rather than on each individual engine rebuilt in cases where those rebuild practices are followed routinely.

(4) Records must be kept for a minimum of two years after the engine is rebuilt.

Subpart C—[Amended]

26. The newly designated § 89.203 is revised to read as follows:

§ 89.203 General provisions.

(a) The averaging, banking, and trading programs for NO_X, NMHC + NO_X, and PM emissions from eligible nonroad engines are described in this subpart. Participation in these programs is voluntary.

(b) Tier 1 engines rated at or above 37 kW. (1) A nonroad engine family is eligible to participate in the averaging, banking, and trading program for NO_X emissions and the banking and trading program for PM emissions if it is subject to regulation under subpart B of this part with certain exceptions specified in paragraph (b)(2) of this section. No averaging, banking, and trading program is available for meeting the Tier 1 HC, CO, or smoke emission standards specified in subpart B of this part. No averaging program is available for meeting the Tier 1 PM emission standards specified in subpart B of this part.

(2) Nonroad engines may not participate in the averaging, banking, and trading programs if they are subject to state engine emission standards, are exported, or use an alternate or special test procedure under § 89.114. Meeting the voluntary standards described in § 89.112(f) for Blue Sky Series engines does not preclude participation in the averaging, banking, and trading programs; however, participation in the averaging, banking, and trading programs depends on manufacturers developing test data on a steady-state test cycle, as specified in § 89.410(a), for credit computation purposes.

(3) A manufacturer may certify one or more nonroad engine families at NO_X family emission limits (FELs) above or below the Tier 1 NO_X emission standard, provided the summation of the manufacturer's projected balance of all NO_X credit transactions in a given model year is greater than or equal to zero, as determined under § 89.207(a). A manufacturer may certify one or more nonroad engine families at PM FELs below the Tier 2 PM emission standard that will be applicable to those engine families.

(i) FELs for NO_X may not exceed the Tier 1 upper limit specified in § 89.112(d).

(ii) An engine family certified to an FEL is subject to all provisions specified in subparts B, D, E, F, G, H, I, J, and K of this part, except that the applicable FEL replaces the emission standard for the family participating in the averaging, banking, and trading program.

(iii) A manufacturer of an engine family with an NO_X FEL exceeding the Tier 1 NO_X emission standard must obtain NO_X emission credits sufficient to address the associated credit shortfall via averaging, banking, or trading.

(Iv) An engine family with a NO_X FEL below the applicable Tier 1 standard may generate emission credits for averaging, banking, trading, or a combination thereof. An engine family with a PM FEL below the Tier 2 standard that will be applicable to that engine family may generate emission credits for banking, trading, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by a Selective Enforcement Audit (SEA) or by recall (in-use) testing. However, in the case of an SEA failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(4) NO_X credits generated in a given model year may be used to address credit shortfalls with other engines during that model year or in any subsequent model year except as noted under paragraph (b)(5)(ii) of this section. PM credits may be used to address credit shortfalls with Tier 2 and later engines greater than or equal to 37 kW and Tier 1 and later engines less than 37 kW and greater than or equal to 19 kW. Credits generated in one model year may not be used for prior model years.

(5) Using Tier 1 NO_X credits for showing compliance with Tier 2 NMHC + NO_X credits.

(i) A manufacturer may use NO_X credits from engines subject to the Tier 1 standards to address NMHC + NO_X credit shortfall with engines in the same averaging set subject to Tier 2 NMHC + NO_X emission standards.

(ii) NO_X credits generated from Tier 1 engines may not be used to address credit shortfalls with engines subject to the Tier 3 NMHC + NO_X standards.

(c) *Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* (1) A nonroad engine family is eligible to participate in the averaging, banking, and trading programs for NMHC + NO_X emissions and PM emissions if it is subject to regulation under subpart B of this part with certain exceptions specified in subsection (c)(2) of this section. No averaging, banking, and trading program is available for meeting the CO or smoke emission standards specified in subpart B of this part.

(2) Nonroad engines may not participate in the averaging, banking, and trading programs if they are subject to state engine emission standards, are exported, or use an alternate or special test procedure under § 89.114. Meeting the voluntary standards described in § 89.112(f) for Blue Sky Series engines does not preclude participation in the averaging, banking, and trading programs; however, participation in the averaging, banking, and trading programs depends on manufacturers developing test data on a steady-state test cycle, as specified in § 89.410(a), for credit computation purposes.

(3)(i) A manufacturer may certify one or more nonroad engine families at FELs above or below the applicable NMHC + NO_X emission standard and PM emission standard, provided the summation of the manufacturer's projected balance of all NMHC + NO_X credit transactions and the summation of the manufacturer's projected balance of all PM credit transactions in a given model year in a given averaging set is greater than or equal to zero, as determined under § 89.207(b).

(A) FELs for NMHC + NO_X and FELs for PM may not exceed the upper limits specified in § 89.112(d).

(B) An engine family certified to an FEL is subject to all provisions specified in subparts B, D, E, F, G, H, I, J, and K of this part, except that the applicable FEL replaces the emission standard for the family participating in the averaging, banking, and trading program.

(C) A manufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain emission credits sufficient to address the associated credit shortfall via averaging, banking, or trading, within the restrictions described in §§ 89.204(c) and 89.206(b)(4).

(D) An engine family with an FEL below the applicable standard may generate emission credits for averaging, banking, trading, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by a Selective Enforcement Audit (SEA) or by recall (in-use) testing. However, in the case of an SEA failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(ii)(A) In lieu of generating credits under paragraph (c)(3)(i) of this section, a manufacturer may certify one or more nonroad engine families rated under 37 kW at family emission limits (FELs) above or below the applicable NMHC + NO_X emission standard and PM emission standard. The summation of the manufacturer's projected balance of all NMHC + NO_X credit transactions and the summation of the manufacturer's projected balance of all PM credit transactions in a given model year, as determined under § 89.207(b), is allowed to be less than zero. Separate calculations shall be required for the following two categories of engines: engines rated under 19 kW and engines rated at or above 19kW and under 37 kW.

(B) A penalty equal to ten percent of the year end negative credit balance shall be added to the negative credit balance. The resulting negative credit balance shall be carried into the next model year.

(C) For engines rated under 19 kW, a manufacturer will be allowed to carry

over a negative credit balance until December 31, 2003. For engines rated at or above 19 kW and under 37 kW, a manufacturer will be allowed to carry over a negative credit balance until December 31, 2002. As of these dates, the summation of the manufacturer's projected balance of all NMHC + NO_X credit transactions and the summation of the manufacturer's projected balance of all PM credit transactions must be greater than or equal to zero.

(D) FELs for NMHC + NO_X and FELs for PM may not exceed the upper limits specified in § 89.112(d).

(E) An engine family certified to an FEL is subject to all provisions specified in subparts B, D, E, F, G, H, I, J, and K of this part, except that the applicable NMHC + NO_X FEL or PM FEL replaces the NMHC + NO_X emission standard or PM emission standard for the family participating in the averaging and banking program.

(F) A manufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain emission credits sufficient to address the associated credit shortfall via averaging or banking. The exchange of emission credits generated under this program with other nonroad engine manufacturers in trading is not allowed.

(G) An engine family with an FEL below the applicable standard may generate emission credits for averaging, banking, or a combination thereof. Emission credits may not be used to offset an engine family's emissions that exceed its applicable FEL. Credits may not be used to remedy nonconformity determined by a Selective Enforcement Audit (SEA) or by recall (in-use) testing. However, in the case of an SEA failure, credits may be used to allow subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL.

(4)(i) Except as noted in paragraphs (c)(4)(ii), (c)(4)(iii), and (c)(4)(iv) of this section, credits generated in a given model year may be used during that model year or used in any subsequent model year. Except as allowed under paragraph (c)(3)(ii) of this section, credits generated in one model year may not be used for prior model years.

(ii) Credits generated from engines rated under 19 kW prior to the implementation date of the applicable Tier 2 standards, shall expire on December 31, 2007.

(iii) Credits generated from engines rated under 19 kW under the provisions of paragraph (c)(3)(ii) shall expire on December 31, 2003.

(iv) Credits generated from engines rated at or above 19 kW and under 37 kW under the provisions of paragraph (c)(3)(ii) shall expire on December 31, 2002.

(d) Manufacturers must demonstrate compliance under the averaging, banking, and trading programs for a particular model year by 270 days after the model year. Engine families without an adequate amount of emission credits, except as allowed under paragraph (c)(3)(ii) of this section, will violate the conditions of the certificates of conformity. The certificates of conformity may be voided ab initio under § 89.126(c) for those engine families.

(e) Engine families may not generate credits for one pollutant while also using credits for another pollutant in the same model year.

(f) An engine manufacturer may exchange NO_X emission credits, NMHC + NO_X emission credits, and PM emission credits to equipment or vehicle manufacturers in trading. Such credits may be used within the provisions specified in § 89.102(d)(3).

27. The newly designated § 89.204 is revised to read as follows:

§ 89.204 Averaging.

(a) *Tier 1 engines rated at or above 37 kW.* (1) A manufacturer may use averaging to offset an emission exceedance of a nonroad engine family caused by a NO_X FEL above the applicable emission standard. NO_X credits used in averaging may be obtained from credits generated by another engine family in the same model year, credits banked in a previous model year, or credits obtained through trading.

(2) Credits scheduled to expire in the earliest model year must be used first, before using other available credits.

(b) *Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* (1) A manufacturer may use averaging to offset an emission exceedance of a nonroad engine family caused by an NMHC + NO_X FEL or a PM FEL above the applicable emission standard. Credits used in averaging may be obtained from credits generated by another engine family in the same model year, credits banked in previous model years that have not expired, or credits obtained through trading. The use of credits shall be within the restrictions described in paragraph (c) of this section and § 89.206(b)(4).

(2) Credits scheduled to expire in the earliest model year must be used first, before using other available credits.

(c) *Averaging sets for emission credits.* The averaging and trading of NO_X emission credits, NMHC + NO_X emission credits, and PM emissions credits will only be allowed between engine families in the same averaging set. The averaging sets for the averaging and trading of NO_X emission credits, NMHC + NO_X emission credits, and PM emission credits for nonroad engines are defined as follows:

(1) Eligible engines, other than marine diesel engines rated at or above 19 kW, constitute an averaging set.

(2) Marine diesel engines rated at or above 19 kW constitute an averaging set. Emission credits generated from marine diesel engines rated at or above 19 kW may be used to address credit shortfalls for eligible engines other than marine diesel engines rated at or above 19 kW.

(3) Eligible engines, other than marine diesel engines rated under 19 kW, constitute an averaging set.

(4) Marine diesel engines rated under 19 kW constitute an averaging set. Emission credits generated from marine diesel engines rated under 19 kW may be used to address credit shortfalls for eligible engines other than marine diesel engines rated under 19 kW.

28. The newly designated § 89.205 is revised to read as follows:

§ 89.205 Banking.

(a) *Tier 1 engines rated at or above 37 kW.* (1) A manufacturer of a nonroad engine family with a NO_X FEL below the applicable standard for a given model year may bank credits in that model year for use in averaging and trading in any subsequent model year.

(2) A manufacturer of a nonroad engine family may bank NO_X credits up to one calendar year prior to the effective date of mandatory certification. Such engines must meet the requirements of subparts A, B, D, E, F, G, H, I, J, and K of this part.

(3)(i) A manufacturer of a nonroad engine family may bank PM credits from Tier 1 engines under the provisions specified in § 89.207(b) for use in averaging and trading in the Tier 2 or later timeframe provided the engine family is certified without an FEL above the Tier 1 NO_X standard.

(ii) Such engine families are subject to all provisions specified in subparts B, D, E, F, G, H, I, J, and K of this part, except that the applicable PM FEL replaces the PM emission standard for the family participating in the banking and trading program.

(b) *Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* (1) A manufacturer of a nonroad engine family with an NMHC + NO_X FEL or a PM FEL below the applicable standard for a given model year may bank credits in that model year for use in averaging and trading in any following model year.

(2) For engine rated under 37 kW, a manufacturer of a nonroad engine family may bank credits prior to the effective date of mandatory certification. Such engines must meet the requirements of subparts A, B, D, E, F, G, H, I, J, and K of this part.

(c) A manufacturer may bank actual credits only after the end of the model year and after EPA has reviewed the manufacturer's end-of-year reports. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report and final report.

(d) Credits declared for banking from the previous model year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

29. The newly designated § 89.206 is revised to read as follows:

§ 89.206 Trading.

(a) *Tier 1 engines rated at or above 37 kW.* (1) A nonroad engine manufacturer may exchange emission credits with other nonroad engine manufacturers within the same averaging set in trading.

(2) Credits for trading can be obtained from credits banked in a previous model year or credits generated during the model year of the trading transaction.

(3) Traded credits can be used for averaging, banking, or further trading transactions within the restrictions described in § 89.204(c).

(b) *Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW.* (1) A nonroad engine manufacturer may exchange emission credits with other nonroad engine manufacturers within the same averaging set in trading.

(2) Credits for trading can be obtained from credits banked in previous model years that have not expired or credits generated during the model year of the trading transaction.

(3) Traded credits can be used for averaging, banking, or further trading transactions within the restrictions described in § 89.204(c) and paragraph (b)(4) of this section.

(4) Emission credits generated from engines rated at or above 19 kW utilizing indirect fuel injection may not be traded to other manufacturers.

(c) In the event of a negative credit balance resulting from a transaction, both the buyer and the seller are liable, except in cases involving fraud. Certificates of all engine families participating in a negative trade may be voided ab initio under § 89.126(c).

30. The newly designated § 89.207 is revised to read as follows:

§ 89.207 Credit calculation.

(a) *NO_X credits from Tier 1 engines rated at or above 37 kW.* (1) For each participating engine family, emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a, to the nearest one-tenth of a megagram (Mg). This procedure has been incorporated by reference (see § 89.6). Consistent units are to be used throughout the equation.

(i) For determining credit availability from all engine families generating credits:

Emission credits = (Std—FEL) × (Volume) × (AvgPR) × (UL) × (Adjustment) × (10^{-6})

(ii) For determining credit usage for all engine families requiring credits to offset emissions in excess of the standard:

Emission credits = (Std—FEL) × (Volume) × (AvgPR) × (UL) × (10^{-6})

Where:

Std = the applicable Tier 1 NO_X nonroad engine emission standard, in grams per brake horsepower hour.

FEL = the NO_X family emission limit for the engine family in grams per brake horsepower hour.

Volume = the number of nonroad engines eligible to participate in the averaging, banking, and trading program within the given engine family during the model year. Engines sold to equipment or vehicle manufacturers under the provisions of § 89.102(g) shall not be included in this number. Quarterly production projections are used for initial certification. Actual applicable production/sales volumes is used for end-of-year compliance determination.

AvgPR = the average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis.

UL = the useful life for the engine family, in hours.

Adjustment = a one-time adjustment, as specified in paragraph (a)(2) of this section, to be applied to Tier 1 NO_X credits to be banked or traded for determining compliance with the Tier 1 NO_X standards or Tier 2 NO_X+NMHC standards specified in subpart B of this part. Banked credits traded in a subsequent model year will not be subject to an additional adjustment. Banked credits used in a subsequent model year's averaging program will not have the adjustment restored.

(2) If an engine family is certified to a NO_X FEL of 8.0 g/kW-hr or less, an Adjustment value of 1.0 shall be used in the credit generation calculation described in paragraph (a)(1)(i) of this section. If an engine family is certified to a NO_X FEL above 8.0 g/kW-hr, an Adjustment value of 0.65 shall be used in the credit generation calculation described in paragraph (a)(1)(i) of this section. If the credits are to be used by the credit-generating manufacturer for averaging purposes in the same model year in which they are generated, an Adjustment value of 1.0 shall be used for all engines regardless of the level of the NO_X FEL.

(b) *NMHC + NO_X Credits from Tier 2 and later engines rated at or above 37 kW and Tier 1 and later engines rated under 37 kW and PM credits from all engines.* (1) For each participating engine family, NO_X + NMHC emission credits and PM emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a, to the nearest one-tenth of a megagram (Mg). This procedure has been incorporated by reference (see § 89.6). Consistent units are to be used throughout the equation.

(i) For determining credit availability from all engine families generating credits:

Emission credits = (Std—FEL) × (Volume) × (AvgPR) × (UL) × ($10-^{6}$)

(ii) For determining credit usage for all engine families requiring credits to offset emissions in excess of the standard:

Emission credits = (Std—FEL) × (Volume) × (AvgPR) × (UL) × ($10-^{6}$)

Where:

Std = the current and applicable nonroad engine emission standard, in grams per brake horsepower hour, except for PM calculations where it is the applicable nonroad engine Tier 2 PM emission standard, and except for engines rated under 19 kW where it is the applicable nonroad engine Tier 2 emission standard, in grams per brake horsepower hour. [Engines rated under 19 kW participating in the averaging and banking program provisions of § 89.203(c)(3)(ii) shall use the Tier 1 standard for credit calculations.)

FEL = the family emission limit for the engine family in grams per brake horsepower hour.

Volume = the number of nonroad engines eligible to participate in the averaging, banking, and trading program within the given engine family during the model year. Engines sold to equipment or vehicle manufacturers under the provisions of § 89.102(g) shall not be included in this number. Quarterly production projections are used for initial certification. Actual applicable production/sales volumes is used for end-of-year compliance determination.

AvgPR = the average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis.

UL = the useful life for the given engine family, in hours.

31. The newly designated § 89.208 is revised to read as follows:

§ 89.208 Labeling.

For all nonroad engines included in the averaging, banking, and trading programs, the family emission limits to which the engine is certified must be included on the label required in § 89.110.

32. The newly designated § 89.209 is amended by revising paragraph (a) to read as follows:

§ 89.209 Certification.

(a) In the application for certification a manufacturer must:

(1) Declare its intent to include specific engine families in the averaging, banking, and trading programs.

(2) Submit a statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, cause the manufacturer to have a negative credit balance when all credits are calculated for all the manufacturer's engine families participating in the averaging, banking, and trading programs, except as allowed under § 89.203(c)(3)(ii).

(3) Declare the applicable FELs for each engine family participating in averaging, banking, and trading.

(i) The FELs must be to the same number of significant digits as the emission standard for the applicable pollutant.

(ii) In no case may the FEL exceed the upper limits prescribed in § 89.112(d).

(4) Indicate the projected number of credits generated/needed for this family; the projected applicable production/sales volume, by quarter; and the values required to calculate credits as given in § 89.207.

(5) Submit calculations in accordance with § 89.207 of projected emission credits (positive or negative) based on quarterly production projections for each participating family.

(6)(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family or reserved) of the credits necessary to offset the credit deficit according to quarterly projected production, or, if the engine family is to be included in the provisions of § 89.203(c)(3)(ii), state that the engine family will be included in those provisions.

(ii) If the engine family is projected to generate credits, state specifically (manufacturer/engine family or reserved) where the quarterly projected credits will be applied.

* * * * *

33. The newly designated § 89.210 is amended by revising paragraphs (b) and (c) to read as follows:

§ 89.210 Maintenance of records.

* * * * *

(b) The manufacturer of any nonroad engine family that is certified under the averaging, banking, and trading programs must establish, maintain, and retain the following adequately organized and indexed records for each such family:

(1) EPA engine family;

(2) Family emission limits (FEL);

(3) Power rating for each configuration tested;

(4) Projected applicable production/sales volume for the model year; and

(5) Actual applicable production/sales volume for the model year.

(c) Any manufacturer producing an engine family participating in trading reserved credits must maintain the following records on a quarterly basis for each engine family in the trading program:

(1) The engine family;

(2) The actual quarterly and cumulative applicable production/sales volume;

(3) The values required to calculate credits as given in § 89.207;

(4) The resulting type and number of credits generated/required;

(5) How and where credit surpluses are dispersed; and

(6) How and through what means credit deficits are met.

* * * * *

34. The newly designated § 89.211 is amended by revising paragraphs (a) and (c) to read as follows:

§ 89.211 End-of-year and final reports.

(a) End-of-year and final reports must indicate the engine family, the actual applicable production/sales volume, the values required to calculate credits as given in § 89.207, and the number of credits generated/required. Manufacturers must also submit how and where credit surpluses were dispersed (or are to be banked) and/or how and through what means credit deficits were met. Copies of contracts related to credit trading must be included or supplied by the broker, if applicable. The report shall include a calculation of credit balances to show that the summation of the manufacturer's use of credits results in a credit balance equal to or greater than zero, except as allowed under § 89.203(c)(3)(ii).

* * * * *

(c)(1) End-of-year reports must be submitted within 90 days of the end of the model year to: Director, Engine Programs and Compliance Division (6405–J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(2) Final reports must be submitted within 270 days of the end of the model year to: Director, Engine Programs and Compliance Division (6405–J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

* * * * *

35. The newly designated § 89.212 is revised to read as follows:

§ 89.212 Notice of opportunity for hearing.

Any voiding of the certificate under §§ 89.203(d), 89.206(c), 89.209(c) and 89.210(g) will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 89.512 and 89.513 and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

Subpart D—[Amended]

36. The newly designated § 89.302 is revised to read as follows:

§ 89.302 Definitions.

The definitions in subpart A of this part apply to this subpart. For terms not defined in this part, the definitions in part 86, subparts A, D, I, and N, of this chapter apply to this subpart.

37. The newly designated § 89.304 is amended by revising paragraph (c) to read as follows:

§ 89.304 Equipment required for gaseous emissions; overview.

* * * * *

(c) Analyzers used are a non-dispersive infrared (NDIR) absorption type for carbon monoxide and carbon dioxide analysis; a heated flame ionization (HFID) type for hydrocarbon analysis; and a chemiluminescent detector (CLD) or heated chemiluminescent detector (HCLD) for oxides of nitrogen analysis. A gas chromatograph (GC) may also be required for methane analysis. Sections

89.309 through 89.324 set forth a full description of analyzer requirements and specifications.

38. The newly designated § 89.307 is amended by revising paragraphs (b)(7) and (b)(8) to read as follows:

§ 89.307 Dynamometer calibration.

* * * * *

(b) * * *

(7) The measured torque must be within either 2 percent of point or 1 percent of the engine maximum torque of the calculated torque.

(8) If the measured torque is not within the above requirements adjust or repair the system. Repeat steps in paragraphs (b)(1) through (b)(6) of this section with the adjusted or repaired system.

* * * * *

39. The newly designated § 89.308 is amended by revising paragraph (b) to read as follows:

§ 89.308 Sampling system requirements for gaseous emissions.

* * * * *

(b) If water is removed by condensation, the sample gas temperature shall be monitored within the water trap or the sample dewpoint shall be monitored downstream. In either case, the indicated temperature shall not exceed 7 °C.

40. The newly designated § 89.309 is amended by removing and reserving paragraph (a)(3) and revising paragraphs (a)(4)(iii), (a)(5)(i)(C), and (a)(5)(i)(D) and adding paragraph (a)(6) to read as follows:

§ 89.309 Analyzers required for gaseous emissions.

(a) * * *

(3) [Reserved]

(4) * * *

(iii) The FID oven must be capable of maintaining temperature within 5.5 °C of the set point.

* * * * *

(5) * * *

(i) * * *

(C) For raw analysis, an ice bath or other cooling device located after the NO_X converter (optional for dilute analysis).

(D) A chemiluminescent detector (CLD or HCLD).

* * * * *

(6) *Methane analysis.* (i) Using a methane analyzer consisting of a gas chromatograph combined with an FID, the measurement of methane shall be in accordance with SAE Recommended Practice J1151, "Methane Measurement Using Gas Chromatography." (Incorporated by reference pursuant to § 86.1(b)(2).)

(ii) As an option, the manufacturer may choose the analyzer to be used for methane measurement with the prior approval of the Administrator.

* * * * *

41. The newly designated § 89.310 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 89.310 Analyzer accuracy and specifications.

(a) * * *

(1) *Response time.* As necessary, measure and account for the response time of the analyzer.

* * * * *

(c) *Emission measurement accuracy—Bagged sampling.* (1) Good engineering practice dictates that exhaust emission sample analyzer readings below 15 percent of full-scale chart deflection should generally not be used.

(2) Some high resolution read-out systems, such as computers, data loggers, and so forth, can provide sufficient accuracy and resolution below 15 percent of full scale. Such systems may be used provided that additional calibrations of at least 4 non-zero nominally equally spaced points, using good engineering judgement, below 15 percent of full scale are made to ensure the accuracy of the calibration curves. If a gas divider is used, the gas divider must conform to the accuracy requirements specified in § 89.312(c). The procedure in paragraph (c)(3) of this section may be used for calibration below 15 percent of full scale.

(3) The following procedure shall be followed:

(i) Span the l analyzer using a calibration gas meeting the accuracy requirements of § 89.312(c), within the operating range of the analyzer, and at least 90% of full scale.

(ii) Generate a calibration over the full concentration range at a minimum of 6, approximately equally spaced, points (e.g. 15, 30, 45, 60, 75, and 90 percent of the range of concetrations provided by the gas divider). If a gas divider or blender is being used to calibrate the analyzer and the requirements of paragraph (c)(2) of this section are met, verify that a second calibration gas between 10 and 20 percent of full scale can be named within 2 percent of its certified concentration.

(iii) If a gas divider or blender is being used to calibrate the analyzer, input the value of a second calibration gas (a span gas may be used for the CO2 analyzer) having a named concentration between 10 and 20 percent of full scale. This gas shall be included on the calibration curve. Continue adding calibration points by dividing this gas until the requirements of paragraph (c)(2) of this section are met.

(iv) Fit a calibration curve per §§ 89.319 through 89.322 for the full scale range of the analyzer using the calibration data obtained with both calibration gases.

* * * * *

42. The newly designated § 89.312 is amended by revising paragraphs (c)(2), (d), and (f) and adding a new paragraph (g) to read as follows:

§ 89.312 Analytical gases.

* * * * *

(c) * * *

(2) Mixtures of gases having the following chemical compositions shall be available:

C_3H_8 and purified synthetic air;

C_3H_8 and purified nitrogen (optional for raw measurements);

CO and purified nitrogen;

NO_X and purified nitrogen (the amount of NO_2 contained in this calibration gas must not exceed 5 percent of the NO content);

CO_2 and purified nitrogen.

* * * * *

(d) Oxygen interference check gases shall contain propane with 350 ppmC±75 ppmC hydrocarbon. The three oxygen interference gases shall contain 21%±1% O_2,10%±1% O_2, and 5%±1% O_2. The concentration value shall be determined to calibration gas tolerances by chromatographic analysis of total hydrocarbons plus impurities or by dynamic blending. Nitrogen shall be the predominant diluent with the balance oxygen.

* * * * *

(f) Hydrocarbon analyzer burner air. The concentration of oxygen for raw sampling must be within 1 mole percent of the oxygen concentration of the burner air used in the latest oxygen interference check (%O_2I). If the difference in oxygen concentration is greater than 1 mole percent, then the oxygen interference must be checked and, if necessary, the analyzer adjusted to meet the %O_2I requirements. The burner air must contain less than 2 ppmC hydrocarbon.

(g) Gases for the methane analyzer shall be single blends of methane using air as the diluent.

43. The newly designated § 89.314 is amended by revising paragraphs (a) and (b) to read as follows:

§ 89.314 Pre- and post-test calibration of analyzers.

* * * * *

(a) The calibration is checked by using a zero gas and a span gas whose nominal value is between 75 percent

and 100 percent of full-scale, inclusive, of the measuring range.

(b) After the end of the final mode, a zero gas and the same span gas will be used for rechecking. As an option,the zero and span may be rechecked at the end of each mode or each test segment. The analysis will be considered acceptable if the difference between the two measuring results is less than 2 percent of full scale.

§ 89.316 [Amended]

44. The newly designated § 89.316 is amended by removing and reserving paragraph (b).

45. The newly designated § 89.317 is amended by revising paragraphs (g), (h), and (k) to read as follows:

§ 89.317 NO_x converter check.

* * * * *

(g) Turn on the NO_x generator O_2 (or air) supply and adjust the O_2 (or air) flow rate so that the NO indicated by the analyzer is about 10 percent less than indicated in paragraph (f) of this section. Record the concentration of NO in this NO+O_2 mixture.

(h) Switch the NO_x generator to the generation mode and adjust the generation rate so that the NO measured on the analyzer is 20 percent of that measured in paragraph (f) of this section. There must be at least 10 percent unreacted NO at this point. Record the concentration of residual NO.

* * * * *

(k) Turn off the NO_x generator O_2 (or air) supply. The analyzer will now indicate the NO_x in the original NO-in-N_2 mixture. This value should be no more than 5 percent above the value indicated in paragraph (f) of this section.

* * * * *

46. The newly designated § 89.318 is amended by revising paragraphs (c)(2)(i) and (c)(2)(iv) to read as follows:

§ 89.318 Analyzer interference checks.

* * * * *

(c) * * *

(2) *NO_x analyzer water quench check.* (i) This check applies to wet measurements only. An NO span gas having a concentration of 80 to 100 percent of full scale of a normal operating range shall be passed through the CLD (or HCLD) and the response recorded as D. The NO span gas shall then be bubbled through water at room temperature and passed through the CLD (or HCLD) and the analyzer response recorded as AR. Determine and record the bubbler absolute operating pressure and the bubbler water temperature. (It is important that the NO span gas contains minimal NO_2 concentration for this check. No allowance for absorption of NO_2 in water has been made in the following quench calculations. This test may be optionally run in the NO mode to minimize the effect of any NO_2 in the NO span gas.)

* * * * *

(iv)(A) The maximum raw or dilute exhaust water vapor concentration expected during testing (designated as Wm) can be estimated from the CO_2 span gas (or as defined in the equation in this paragraph and designated as A) criteria in paragraph (c)(1) of this section and the assumption of a fuel atom H/C ratio of 1.8:1 as:

$Wm(\%)=0.9\times A(\%)$

Where:

A= maximum CO_2 concentration expected in the sample system during testing.

(B) Percent water quench shall not exceed 3 percent and shall be calculated by:

$$\%\text{Water Quench} = 100\times\frac{D1-AR}{D1}\times\frac{Wm}{Z1}$$

47. The newly designated § 89.319 is amended by revising paragraphs (b)(1), (b)(2), (c), (d) introductory text, (d)(2), and (d)(6) to read as follows:

§ 89.319 Hydrocarbon analyzer calibration.

* * * * *

(b) *Initial and periodic optimization of detector response.* * * *

(1) Follow good engineering practices for initial instrument start-up and basic operating adjustment using the appropriate fuel (see § 89.312(e)) and zero-grade air.

(2) Optimize the FID's response on the most common operating range. The response is to be optimized with respect to fuel pressure or flow. Efforts shall be made to minimize response variations to different hydrocarbon species that are expected to be in the exhaust. Good engineering judgement is to be used to trade off optimal FID response to propane-in-air against reductions in relative responses to other hydrocarbons. A good example of trading off response on propane for relative responses to other hydrocarbon species is given in Society of Automotive Engineers (SAE) Paper No. 770141, "Optimization of Flame Ionization Detector for Determination of Hydrocarbon in Diluted Automotive Exhausts"; author Glenn D. Reschke. It is also required that the response be set to optimum condition with respect to air flow and sample flow. Heated Flame Ionization Detectors (HFIDs) must be at their specified operating temperature. One of the following procedures is required for FID or HFID optimization:

(i) The procedure outlined in Society of Automotive Engineers (SAE) paper No. 770141, "Optimization of a Flame Ionization Detector for Determination of Hydrocarbon in Diluted Automotive Exhausts"; author, Glenn D. Reschke. This procedure has been incorporated by reference. See § 89.6.

(ii) The HFID optimization procedures outlined in 40 CFR 86.331–79.

(iii) Alternative procedures may be used if approved in advance by the Administrator.

(iv) The procedures specified by the manufacturer of the FID or HFID.

* * * * *

(c) *Initial and periodic calibration.* Prior to introduction into service, after any maintenance which could alter calibration, and monthly thereafter, the FID or HFID hydrocarbon analyzer shall be calibrated on all normally used instrument ranges using the steps in this paragraph (c). Use the same flow rate and pressures as when analyzing samples. Calibration gases shall be introduced directly at the analyzer, unless the "overflow" calibration option of § 86.1310–90(b)(3)(i) of this chapter for the HFID is taken. New calibration curves need not be generated each month if the existing curve can be verified as continuing to meet the requirements of paragraph (c)(3) of this section.

(1) Adjust analyzer to optimize performance.

(2) Zero the hydrocarbon analyzer with zero-grade air.

(3) Calibrate on each used operating range with propane-in-air (dilute or raw) or propane-in-nitrogen (raw) calibration gases having nominal concentrations starting between 10–15 percent and increasing in at least six incremental steps to 90 percent (e.g., 15, 30, 45, 60, 75, and 90 percent of that range) of that range. The incremental steps are to be spaced to represent good engineering practice. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at each non-zero data point and within ±0.3 percent of full scale on the zero, the best-fit non-linear equation which represents the data to within these limits shall be used to determine concentration.

(d) *Oxygen interference optimization (Required for raw).* Choose a range where the oxygen interference check gases will fall in the upper 50 percent.

Conduct the test, as outlined in this paragraph, with the oven temperature set as required by the instrument manufacturer. Oxygen interference check gas specifications are found in § 89.312(d).

* * * * *

(2) Span the analyzer with the 21% oxygen interference gas specified in § 89.312(d).

* * * * *

(6) Calculate the percent of oxygen interference (designated as percent O_2I) for each mixture in paragraph (d)(4) of this section as follows:

percent $O_2I=((B-C)\times 100)/B$

Where:

A= hydrocarbon concentration (ppmC) of the span gas used in paragraph (d)(2) of this section.

B= hydrocarbon concentration (ppmC) of the oxygen interference check gases used in paragraph (d)(4) of this section.

C= analyzer response (ppmC) = A/D.

D= (percent of full-scale analyzer response due to A) × (percent of full-scale analyzer response due to B).

* * * * *

48. The newly designated § 89.320 is amended by revising paragraph (c) to read as follows:

§ 89.320 Carbon monoxide analyzer calibration.

* * * * *

(c) *Initial and periodic calibration.* Prior to its introduction into service, after any maintenance which could alter calibration, and every two months thereafter, the NDIR carbon monoxide analyzer shall be calibrated. New calibration curves need not be generated every two months if the existing curve can be verified as continuing to meet the requirements of paragraph (c)(3) of this section.

(1) Adjust the analyzer to optimize performance.

(2) Zero the carbon monoxide analyzer with either zero-grade air or zero-grade nitrogen.

(3) Calibrate on each used operating range with carbon monoxide-in-N_2 calibration gases having nominal concentrations starting between 10 and 15 percent and increasing in at least six incremental steps to 90 percent (e.g., 15, 30, 45, 60, 75, and 90 percent) of that range. The incremental steps are to be spaced to represent good engineering practice. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each non-zero data point and within ±0.3 percent of full scale on the zero, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds these limits, the best-fit non-linear equation which represents the data to within these limits shall be used to determine concentration.

* * * * *

49. The newly designated § 89.321 is amended by revising paragraph (c) to read as follows:

§ 89.321 Oxides of nitrogen analyzer calibration.

* * * * *

(c) *Initial and periodic calibration.* Prior to its introduction into service, after any maintenance which could alter calibration, and monthly thereafter, the chemiluminescent oxides of nitrogen analyzer shall be calibrated on all normally used instrument ranges. New calibration curves need not be generated each month if the existing curve can be verified as continuing to meet the requirements of paragraph (c)(3) of this section. Use the same flow rate as when analyzing samples. Proceed as follows:

(1) Adjust analyzer to optimize performance.

(2) Zero the oxides of nitrogen analyzer with zero-grade air or zero-grade nitrogen.

(3) Calibrate on each normally used operating range with NO-in-N_2 calibration gases with nominal concentrations starting at between 10 and 15 percent and increasing in at least six incremental steps to 90 percent (e.g., 15, 30, 45, 60, 75, and 90 percent) of that range. The incremental steps are to be spaced to represent good engineering practice. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each non-zero data point and within ±0.3 percent of full scale on the zero, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds these limits, the best-fit non-linear equation which represents the data to within these limits shall be used to determine concentration.

* * * * *

50. The newly designated § 89.322 is amended by revising paragraph (a) to read as follows:

§ 89.322 Carbon dioxide analyzer calibration.

(a) Prior to its introduction into service, after any maintenance which could alter calibration, and bi-monthly thereafter, the NDIR carbon dioxide analyzer shall be calibrated on all normally used instrument ranges. New calibration curves need not be generated each month if the existing curve can be verified as continuing to meet the requirements of paragraph (a)(3) of this section. Proceed as follows:

(1) Follow good engineering practices for instrument start-up and operation. Adjust the analyzer to optimize performance.

(2) Zero the carbon dioxide analyzer with either zero-grade air or zero-grade nitrogen.

(3) Calibrate on each normally used operating range with carbon dioxide-in-N_2 calibration or span gases having nominal concentrations starting between 10 and 15 percent and increasing in at least six incremental steps to 90 percent (e.g., 15, 30, 45, 60, 75, and 90 percent) of that range. The incremental steps are to be spaced to represent good engineering practice. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each non-zero data point and within ±0.3 percent of full scale on the zero, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds these limits, the best-fit non-linear equation which represents the data to within these limits shall be used to determine concentration.

* * * * *

51. The newly designated § 89.324 is revised to read as follows:

§ 89.324 Calibration of other equipment.

(a) Other test equipment used for testing shall be calibrated as often as required by the instrument manufacturer or necessary according to good practice.

(b) If a methane analyzer is used, the methane analyzer shall be calibrated prior to introduction into service and monthly thereafter:

(1) Follow the manufacturer's instructions for instrument startup and operation. Adjust the analyzer to optimize performance.

(2) Zero the methane analyzer with zero-grade air.

(3) Calibrate on each normally used operating range with CH_4 in air with nominal concentrations starting between 10 and 15 percent and increasing in at least six incremental steps to 90 percent (e.g., 15, 30, 45, 60, 75, and 90 percent) of that range. The incremental steps are to be spaced to represent good engineering practice. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each non-zero data point and within ±0.3 percent of full scale on the zero, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds these limits, the best-fit non-linear equation

which represents the data to within these limits shall be used to determine concentration.

52. The newly designated § 89.328 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 89.328 Inlet and exhaust restrictions.

* * * * *

(b) * * *

(1) Equip the test engine with an air inlet system presenting an air inlet restriction within 5 percent of the upper limit at maximum air flow, as specified by the engine manufacturer for a clean air cleaner. A system representative of the installed engine may be used. In other cases a test shop system may be used.

(2) The exhaust backpressure must be within 5 percent of the upper limit at maximum declared power, as specified by the engine manufacturer. A system representative of the installed engine may be used. In other cases a test shop system may be used.

53. The newly designated § 89.330 is amended by revising paragraph (b)(2) to read as follows:

§ 89.330 Lubricating oil and test fuels.

* * * * *

(b) * * *

(2) Use petroleum fuel meeting the specifications in Table 4 in Appendix A of this subpart, or substantially equivalent specifications approved by the Administrator, for exhaust emission testing. Alternatively, petroleum fuel meeting the specifications in Table 5 in Appendix A of this subpart may be used in exhaust emission testing. The grade of diesel fuel used must be commercially designated as "Type 2–D" grade diesel fuel and recommended by the engine manufacturer.

* * * * *

54.–57. Tables 1 through 4 of Appendix A to subpart D are revised to read as follows:

Appendix A to Subpart D—Tables

TABLE 1.—ABBREVIATIONS USED IN SUBPART D OF THIS PART

CLD	Chemiluminescent detector.
CO	Carbon monoxide.
CO_2	Carbon dioxide.
HC	Hydrocarbons.
HCLD	Heated chemiluminescent detector.
HFID	Heated flame ionization detector.
GC	Gas chromatograph.
NDIR	Non-dispersive infra-red analyzer.
NIST	National Institute for Standards and Testing.
NO	Nitric Oxide.
NO_2	Nitrogen Dioxide.
NO_X	Oxides of nitrogen.
O_2	Oxygen.

TABLE 2.—SYMBOLS USED IN SUBPARTS D AND E OF THIS PART.

Symbol	Term	Unit
conc	Concentration (ppm by volume).	ppm
f	Engine specific parameter considering atmospheric conditions.	
F_{FCB}	Fuel specific factor for the carbon balance calculation.	
F_{FD}	Fuel specific factor for exhaust flow calculation on dry basis.	
F_{FH}	Fuel specific factor representing the hydrogen to carbon ratio.	
F_{FW}	Fuel specific factor for exhaust flow calculation on wet basis.	
FR	Rate of fuel consumed	g/h
G_{AIRW}	Intake air mass flow rate on wet basis.	kg/h
G_{AIRD}	Intake air mass flow rate on dry basis.	kg/h
G_{EXHW}	Exhaust gas mass flow rate on wet basis.	kg/h
G_{Fuel}	Fuel mass flow rate	kg/h
H	Absolute humidity (water content related to dry air).	g/kg
i	Subscript denoting an individual mode.	
K_H	Humidity correction factor.	
L	Percent torque related to maximum torque for the test mode.	%
mass	Pollutant mass flow	g/h
$n_{d,i}$	Engine speed (average at the i'th mode during the cycle).	1/min
P_s	Dry atmospheric pressure.	kPa
P_d	Test ambient saturation vapor pressure at ambient temperature.	kPa
P	Observed brake power output uncorrected.	kW
P_{AUX}	Declared total power absorbed by auxiliaries fitted for the test.	kW
P_M	Maximum power measured at the test speed under test conditions.	kW
P_i	$P_i = P_{M,i} + P_{AUX,i}$	
P_B	Total barometric pressure (average of the pre-test and post-test values).	kPa
P_v	Saturation pressure at dew point temperature.	kPa
R_a	Relative humidity of the ambient air.	%
S	Dynamometer setting	kW
T	Absolute temperature at air inlet.	K
T_{ba}	Air temperature after the charge air cooler (if applicable) (average).	K
T_{clout}	Coolant temperature outlet (average).	K
T_{Dd}	Absolute dewpoint temperature.	K
$T_{d,i}$	Torque (average at the i'th mode during the cycle).	N-m
T_{SC}	Temperature of the intercooled air.	K
$T_{ref.}$	Reference temperature	K
V_{EXHD}	Exhaust gas volume flow rate on dry basis.	m^3/h
V_{AIRW}	Intake air volume flow rate on wet basis.	m^3/h
P_B	Total barometric pressure.	kPa
V_{EXHW}	Exhaust gas volume flow rate on wet basis.	m^3/h
WF	Weighing factor	
WF_E	Effective weighing factor	

TABLE 3.—MEASUREMENT ACCURACY AND CALIBRATION FREQUENCY

No.	Item	Calibration accuracy [1]	Calibration frequency
1	Engine speed	±2%	30 days.
2	Torque	±2%	30 days.
3	Fuel consumption (raw measurement)	±2% of engine maximum	30 days.
4	Air consumption (raw measurement)	±2% of engine maximum	As required.
5	Coolant temperature	±2°K	As required.
6	Lubricant temperature	±2°K	As required.
7	Exhaust backpressure	±0.5%	As required.
8	Inlet depression	±0.5%	As required.
9	Exhaust gas temperature	±15°K	As required.

TABLE 3.—MEASUREMENT ACCURACY AND CALIBRATION FREQUENCY—Continued

No.	Item	Calibration accuracy [1]	Calibration frequency
10	Air inlet temperature (combustion air)	±2°K	As required.
11	Atmospheric pressure	±0.5%	As required.
12	Humidity (combustion air) (relative)	±3.0%	As required.
13	Fuel temperature	±2°K	As required.
14	Temperature with regard to dilution tunnel	±2°K	As required.
15	Dilution air humidity (specific)	±3%	As required.
16	HC analyzer	±2%	Monthly or as required.
17	CO analyzer	±2%	Bi-monthly or as required.
18	NO_X analyzer	±2%	Monthly or as required.
19	Methane analyzer	±2%	Monthly or as required.
20	NO_X converter efficiency check	90%	Monthly.
21	CO_2 analyzer	±2%	Monthly or as required.

[1] All accuracy requirements pertain to the final recorded value which is inclusive of the data acquisition system.

TABLE 4.—FEDERAL TEST FUEL SPECIFICATIONS

Item	Procedure (ASTM) [1]	Value (type 2–D)
Cetane	D613–86	42–48
Distillation Range:		
IPB, °C	D86–90	171–204
10% point, °C	D86–90	204–235
50% point, °C	D86–90	243–283
90% point, °C	D86–90	293–332
EP, °C	D86–90	321–366
Gravity, API	D287–92	33–37
Total sulfur, % mass	D129–91 or D2622–92	>0.05–0.5
Hydrocarbon composition:		
Aromatics, % vol.	D1319–89	[2] 10
Parafins	D1319–89	[3]
Napthenes		
Olefins		
Flashpoint, °C (minimum)	D93–90	54
Viscosity @ 38 °C, centistokes	D445–88	2.0–3.2

[1] All ASTM procedures in this table have been incorporated by reference. See § 89.6.
[2] Minimum.
[3] Remainder.

* * * * *

Appendix A, Table 5 [Amended]

58. Table 5 of Appendix A to subpart D is amended by revising the heading to read as follows:

* * * * *

TABLE 5.—CALIFORNIA TEST FUEL SPECIFICATIONS

* * * * *

Subpart E—[Amended]

59. The newly designated § 89.401 is amended by revising paragraph (b) to read as follows:

§ 89.401 Scope; applicability.

* * * * *

(b) Exhaust gases, either raw or dilute, are sampled while the test engine is operated using the appropriate test cycle on an engine dynamometer. The exhaust gases receive specific component analysis determining concentration of pollutant, exhaust volume, the fuel flow, and the power output during each mode. Emissions are reported as grams per kilowatt hour (g/kW-hr).

* * * * *

60. The newly designated § 89.402 is revised to read as follows:

§ 89.402 Definitions.

The definitions in subpart A of this part apply to this subpart. For terms not defined in this part, the definitions in part 86, subparts A, D, I, and N, of this chapter apply to this subpart.

61. The newly designated § 89.404 is amended by revising paragraph (b) and removing paragraph (e) to read as follows:

§ 89.404 Test procedure overview.

* * * * *

(b) The test is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter. For more information on particulate matter sampling, see § 89.112(c). The test cycles consist of various steady-state operating modes that include different combinations of engine speeds and loads. These procedures require the determination of the concentration of each pollutant, exhaust volume, the fuel flow, and the power output during each mode. The measured values are weighted and used to calculate the grams of each pollutant emitted per kilowatt hour (g/kW-hr).

* * * * *

62. The newly designated § 89.405 is amended by revising paragraphs (d), (e), and (f) to read as follows:

§ 89.405 Recorded information.

* * * * *

(d) Test data; pre-test.

(1) Date and time of day.

(2) Test number.

(3) Intermediate speed and rated speed as defined in § 89.2 and maximum observed torque for these speeds.

(4) Recorder chart or equivalent. Identify for each test segment zero traces for each range used, and span traces for each range used.

(5) Air temperature after and pressure drop across the charge air cooler (if applicable) at maximum observed torque and rated speed.

(e) Test data; modal.

(1) Recorder chart or equivalent. Identify for each test mode the emission concentration traces and the associated analyzer range(s). Identify the start and finish of each test.

(2) Observed engine torque.

(3) Observed engine rpm.

(4) Record engine torque and engine rpm continuously during each mode with a chart recorder or equivalent recording device.

(5) Intake air flow (for raw mass flow sampling method only) and depression for each mode.

(6) Engine intake air temperature at the engine intake or turbocharger inlet for each mode.

(7) Mass fuel flow (for raw sampling) for each mode.

(8) Engine intake humidity.

(9) Coolant temperature outlet.

(10) Engine fuel inlet temperature at the pump inlet.

(f) Test data; post-test.

(1) Recorder chart or equivalent. Identify the zero traces for each range used and the span traces for each range used. Identify hangup check, if performed.

(2) Total number of hours of operation accumulated on the engine.

63. The newly designated § 89.406 is amended by revising paragraphs (b) and (c)(1) to read as follows:

§ 89.406 Pre-test procedures.

* * * * *

(b) Replace or clean the filter elements and then vacuum leak check the system per § 89.316(a). Allow the heated sample line, filters, and pumps to reach operating temperature.

(c) * * *

(1) Check the sample-line temperatures (see § 89.309 (a)(4)(ii) and (a)(5)(i)(A)).

* * * * *

64. The newly designated § 89.407 is amended by revising paragraphs (a), (c), and (d)(2) to read as follows:

§ 89.407 Engine dynamometer test run.

(a) Measure and record the temperature of the air supplied to the engine, the fuel temperature, the intake air humidity, and the observed barometric pressure during the sampling for each mode. The fuel temperature shall be less than or equal to 43 °C during the sampling for each mode.

* * * * *

(c) The following steps are taken for each test:

(1) Install instrumentation and sample probes as required.

(2) Perform the pre-test procedure as specified in § 89.406.

(3) Read and record the general test data as specified in § 89.405(c).

(4) Start cooling system.

(5) Precondition (warm up) the engine in the following manner:

(i) For variable-speed engines:

(A) Operate the engine at idle for 2 to 3 minutes;

(B) Operate the engine at approximately 50 percent power at the peak torque speed for 5 to 7 minutes;

(C) Operate the engine at rated speed and maximum horsepower for 25 to 30 minutes;

(ii) For constant-speed engines:

(A) Operate the engine at minimum load for 2 to 3 minutes;

(B) Operate the engine at 50 percent load for 5 to 7 minutes;

(C) Operate the engine at maximum load for 25 to 30 minutes;

(iii) Optional. It is permitted to precondition the engine at rated speed and maximum horsepower until the oil and water temperatures are stabilized. The temperatures are defined as stabilized if they are maintained within ±2 percent of point on an absolute basis for 2 minutes. The engine must be operated a minimum of 10 minutes for this option. This optional procedure may be substituted for the procedure in paragraph (c)(5)(i)or (c)(5)(ii) of this section;

(iv) Optional. If the engine has been operating on service accumulation for a minimum of 40 minutes, the service accumulation may be substituted for the procedure in paragraphs (c)(5)(i) through (iii) of this section.

(6) Read and record all pre-test data specified in § 89.405(d).

(7) Start the test cycle (see § 89.410) within 20 minutes of the end of the warmup. (See paragraph (c)(13) of this section.) A mode begins when the speed and load requirements are stabilized to within the requirements of § 89.410(b). A mode ends when valid emission sampling for that mode ends. For a mode to be valid, the speed and load requirements must be maintained continuously during the mode. Sampling in the mode may be repeated until a valid sample is obtained as long as the speed and torque requirements are met.

(8) Calculate the torque for any mode with operation at rated speed.

(9) During the first mode with intermediate speed operation, if applicable, calculate the torque corresponding to 75 and 50 percent of the maximum observed torque for the intermediate speed.

(10) Record all modal data specified in § 89.405(e) during a minimum of the last 60 seconds of each mode.

(11) Record the analyzer(s) response to the exhaust gas during the minimum of the last 60 seconds of each mode.

(12) Test modes may be repeated, as long as the engine is preconditioned by running the previous mode. In the case of the first mode of any cycle, precondition according to paragraph (c)(5) of this section.

(13) If a delay of more than 20 minutes, but less than 4 hours, occurs between the end of one mode and the beginning of another mode, precondition the engine by running the previous mode. If the delay exceeds 4 hours, the test shall include preconditioning (begin at paragraph (c)(2) of this section).

(14) The speed and load points for each mode are listed in Tables 1 through 4 of Appendix B of this subpart. The engine speed and load shall be maintained as specified in § 89.410(b).

(15) If at any time during a test mode, the test equipment malfunctions or the specifications in paragraph (c)(14) of this section are not met, the test mode is void and may be aborted. The test mode may be restarted by preconditioning with the previous mode.

(16) Fuel flow and air flow during the idle load condition may be determined just prior to or immediately following the dynamometer sequence, if longer times are required for accurate measurements.

(d) * * *

(2) Each analyzer range that may be used during a test mode must have the zero and span responses recorded prior to the execution of the test . Only the zero and span for the range(s) used to measure the emissions during the test are required to be recorded after the completion of the test .

* * * * *

65. The newly designated § 89.408 is amended by revising paragraph (e) to read as follows:

§ 89.408 Post-test procedures.

* * * * *

(e) For a valid test, the zero and span checks performed before and after each test for each analyzer must meet the following requirements:

(1) The span drift (defined as the change in the difference between the zero response and the span response) must not exceed 3 percent of full-scale chart deflection for each range used.

(2) The zero response drift must not exceed 3 percent of full-scale chart deflection.

66. The newly designated § 89.410 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 89.410 Engine test cycle.

(a) *Test cycles.* The manufacturer shall determine from of the following test cycles the most appropriate cycle for each engine family using the following guidelines. These cycles shall be used to test engines on a dynamometer.

(1) The 8-mode test cycle described in Table 1 of Appendix B of this subpart may be used for any land-based or auxiliary marine diesel engine.

(2) The 5-mode test cycle described in Table 2 of Appendix B of this subpart may be used for any constant-speed engine (see § 89.2). Any engine certified under this test cycle must meet the labeling requirements of § 89.110(b)(11).

(3) The 6-mode test cycle described in Table 3 of Appendix B of this subpart may be used for any land-based or auxiliary marine diesel engine rated under 19 kW.

(4) The 4-mode test cycle described in Table 4 of Appendix B of this subpart is intended for all propulsion marine diesel engines. Manufacturers may measure emissions from propulsion marine diesel engines using the 8-mode test cycle described in Table 1 of Appendix B of this subpart if the engine has been derived from a model already certified with that cycle, if approved in advance by the Administrator.

(b) During each non-idle mode, hold the specified load to within 2 percent of the engine maximum value and speed to within ±2 percent of point. During each idle mode, speed must be held within the manufacturer's specifications for the engine, and the throttle must be in the fully closed position and torque must not exceed 5 percent of the peak torque value of mode 5.

(c) For any mode except those involving either idle or full-load operation, if the operating conditions specified in paragraph (b) of this section cannot be maintained, the Administrator may authorize deviations from the specified load conditions. Such deviations shall not exceed 10 percent of the maximum torque at the test speed. The minimum deviations above and below the specified load necessary for stable operation shall be determined by the manufacturer and approved by the Administrator prior to the test run.

* * * * *

67. The newly designated § 89.411 is amended by revising paragraph (e)(5) to read as follows:

§ 89.411 Exhaust sample procedure—gaseous components.

* * * * *

(e) * * *

(5) If the difference between the readings obtained is 2 percent of full scale deflection or more, clean the sample probe and the sample line.

* * * * *

68. The newly designated § 89.412 is amended by revising paragraph (c)(3) and removing and reserving paragraph (g)(1) to read as follows:

§ 89.412 Raw gaseous exhaust sampling and analytical system description.

* * * * *

(c) * * *

(3) The location of optional valve V16 may not be greater than 61 cm from the sample pump.

* * * * *

(g) * * *

(1) [Reserved]

* * * * *

69. The newly designated § 89.413 is amended by revising paragraph (d) and removing paragraph (e) to read as follows:

§ 89.413 Raw sampling procedures.

* * * * *

(d) All heated sampling lines shall be fitted with a heated filter to extract solid particles from the flow of gas required for analysis. The sample line for CO and CO_2 analysis may be heated or unheated.

70. The newly designated § 89.414 is amended by revising paragraph (a) to read as follows:

§ 89.414 Air flow measurement specifications.

(a) The air flow measurement method used must have a range large enough to accurately measure the air flow over the engine operating range during the test. Overall measurement accuracy must be ±2 percent of the maximum engine value for all modes. The Administrator must be advised of the method used prior to testing.

* * * * *

71. The newly designated § 89.415 is revised to read as follows:

§ 89.415 Fuel flow measurement specifications.

The fuel flow rate measurement instrument must have a minimum accuracy of 2 percent of the engine maximum fuel flow rate. The controlling parameters are the elapsed time measurement of the event and the weight or volume measurement.

72. The newly designated § 89.418 is amended by revising paragraphs (c) and (d), the table in paragraph (e), paragraphs (f) introductory text and (f)(1), and the text of paragraph (g) preceding the equation to read as follows:

§ 89.418 Raw emission sampling calculations.

* * * * *

(c) When applying G_{EXHW} the measured "dry" concentration shall be corrected to a wet basis, if not already measured on a wet basis. This section is applicable only for measurements made on raw exhaust gas. Correction to a wet basis shall be according to the following formula:

$Conc_{WET} = K_W \times Conc_{"dry"}$

Where:

K_W is determined according to the equations in paragraphs (c)(1), (c)(2), and (c)(3) of this section.

(1) For measurements using the mass flow method (see § 89.416(a)):

$$K_W = \left[1 - F_{FH} \times \frac{G_{fuel}}{G_{aird}}\right] - K_{W1} \quad \text{only applicable for raw exhaust}$$

$$F_{FH} = ALF \times 0.1448 \times \frac{1}{1 + \left(\frac{G_{fuel}}{G_{airw}}\right)} \quad \text{for diesel fuel only}$$

ALF=Hydrogen mass percentage of fuel = 13.12 for $CH_{1.8}$ fuel.

$$ALF = \frac{1.008 \times \alpha}{12.01 + 1.008 \times \alpha} \times 100$$

α=H/C mole ratio of the fuel.

(2) For measurements using the fuel consumption and exhaust gas concentrations method (see § 89.416(b)):

$$K_W = \frac{1}{1 + 1.8 \times 0.005 \times \left[\frac{DCO}{10^4} + DCO_2\right]} - K_{W1}$$

$$\left(\frac{f}{a}\right) = \frac{4.77(1 + \alpha/4)(f/a)(f/a)\ \text{stoich}}{\frac{1}{X}\left[\frac{DCO}{2 \times (10)^6}\right] - \left(\frac{DHC}{\times(10)^6}\right) + \frac{\alpha}{4}\left(1 - \frac{DHC}{\times(10)^6}\right) - \frac{.75\alpha}{\left(\frac{K}{\frac{DCO}{\times(10)^6}}\right) + \left(\frac{(1-K)}{1 - \frac{DHC}{\times(10)^6}}\right)}}$$

or

$$\left(\frac{f}{a}\right) = \frac{G_{fuel}}{G_{aird}} = \frac{\text{Mass Fuel Measured}}{G_{airw} \times \left(1 - \frac{H}{1000}\right)}$$

K=3.5

$$X = \frac{DCO_2}{10^2} + \frac{DCO}{10^6} + \frac{DHC}{10^6}$$

$$(f/a)\text{Stoich} = \frac{M_c + \alpha M_H}{138.18(1 + \alpha/4)}$$

(3) For both methods, H is calculated as specified in paragraph (d)(1) of this section:

$$K_{W1} = \frac{1.608 \times H}{1000 + 1.608 \times H}$$

(d) As the NO_X emission depends on intake air conditions, the NO_X concentration shall be corrected for intake air temperature and humidity with the factor K_H given in the following formula. For engines operating on alternative combustion cycles, other correction formulas may be used if they can be justified or validated. The formula follows:

$$K_H = \frac{1}{1 + A(H - 10.71) + B(T - 298)}$$

Where:

A=0.309 (f/a)–0.0266

B=−0.209 (f/a)+0.00954

T=temperature of the air in K

H=humidity of the inlet air in grams of water per kilogram of dry air, in which:

$$H = \frac{6.22 \times R_a \times p_d}{p_R - \left(p_d \times R_a \times 10^{-2}\right)}$$

or

$$H = \frac{622 \times P_v}{\left(P_B - P_v\right)}$$

(e) * * *

Gas	u	v	w	Conc.
NO_X	0.001587	0.00205	0.00205	ppm.
CO	0.000966	0.00125	0.00125	ppm.
HC	0.000478	—	0.000618	ppm.
CO_2	15.19	19.64	19.64	Percent.

NOTE: The given coefficients u, v, and w are calculated for 273.15 °K (0 °C) and 101.3 kPa. In cases where the reference conditions vary from those stated, an error may occur in the calculations.

(f) The following equations may be used to calculate the coefficients u, v, and w in paragraph (e) of this section for other conditions of temperature and pressure:

(1) For the calculation of u, v, and w for NO_X (as NO_2), CO, HC (in paragraph (e) of this section as $CH_{1.85}$), CO_2, and O_2:

Where:

w=4.4615.10^{-5}xM if conc. in ppm

w=4.4615.10^{-1}xM if conc. in percent

v=w

u=w/ρ_{Air}

M=Molecular weight

ρ_{Air}=Density of dry air at 273.15 °K (0 °C), 101.3 kPa=1.293 kg/m^3

* * * * *

(g) The emission shall be calculated for all individual components in the following way where power at idle is equal to zero:

* * * * *

§ 89.423 [Removed and reserved]

73. Remove and reserve the newly designated § 89.423.

74. The newly designated § 89.424 is amended by revising paragraphs (a), (d)(6), and (e) to read as follows:

§ 89.424 Dilute emission sampling calculations.

(a) The final reported emission test results are computed by use of the following formula:

$$A_{WM} = \frac{\sum_{i=1}^{i=n}(g_i \times WF_i)}{\sum_{i=1}^{i=n-1}(P_i \times WF_i)}$$

Where:

A_{wm}=Weighted mass emission level (HC, CO, CO_2, PM, or NO_X) in g/kW-hr.

g_i=Mass flow in grams per hour, = grams measured during the mode divided by the sample time for the mode.

WF_i=Effective weighing factor.

P_i=Power measured during each mode (Power set = zero for the idle mode)

* * * * *

(d) * * *

(6) Equations for H and K_H are found in § 89.418.

Wet concentration = Kw X dry concentration

Where:

Kw=

1−(α/200)×CO_{2e}(′)−((1.608×H)/(7000+1.608×H)), or

1−(α/200)×CO_{2e}(′)−((1.608×H)/(1000+1.608×H))

for SI units.

CO_{2e}(′) = either CO_{2e} or CO_{2e}′ as applicable.

CO_{2e} (′) = average intergrated carbon dioxide concentration (wet basis) in percent (for continuous measurement).

(e) The final modal reported brake-specific fuel consumption (bsfc) shall be computed by use of the following formula:

$$bsfc = \frac{M}{kW - hr}$$

Where:

bsfc = brake-specific fuel consumption for a mode in grams of fuel per kilowatt-hour (kW-hr).

M = mass of fuel in grams, used by the engine during a mode.

kW-hr = total kilowatts integrated with respect to time for a mode.

* * * * *

§ 89.425 [Removed and reserved]

75. Remove and reserve the newly designated § 89.425.

76.–80. Appendix B to subpart E of part 89 is revised to read as follows:

Appendix B to Subpart E of Part 89—Tables

TABLE 1.—8-MODE TEST CYCLE FOR VARIABLE-SPEED ENGINES

Test segment	Mode No.	Engine speed[1]	Observed torque[2] (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	1	Rated	100	5.0	0.15
1	2	Rated	75	5.0	.15
1	3	Rated	50	5.0	.15
1	4	Rated	10	5.0	.10
2	5	Int	100	5.0	.10
2	6	Int	75	5.0	.10
2	7	Int	50	5.0	.10

TABLE 1.—8-MODE TEST CYCLE FOR VARIABLE-SPEED ENGINES—Continued

Test segment	Mode No.	Engine speed [1]	Observed torque [2] (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
2	8	Idle	0	5.0	.15

[1] Engine speed (non-idle): ±2 percent of point. Engine speed (idle): Within manufacturer's specifications. Idle speed is specified by the manufacturer.
[2] Torque (non-idle): Throttle fully open for 100 percent points. Other non-idle points: ±2 percent of engine maximum value. Torque (idle): Throttle fully closed. Load less than 5 percent of peak torque.

TABLE 2.—5-MODE TEST CYCLE FOR CONSTANT-SPEED ENGINES

Mode No.	Engine speed [1]	Observed torque [2] (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	Rated	100	5.0	0.05
2	Rated	75	5.0	0.25
3	Rated	50	5.0	0.30
4	Rated	25	5.0	0.30
5	Rated	10	5.0	0.10

[1] Engine speed: ±2 percent of point.
[2] Torque: Throttle fully open for 100 percent point. Other points: ±2 percent of engine maximum value.

TABLE 3.—6-MODE TEST CYCLE FOR ENGINES RATED UNDER 19 KW

Mode No.	Engine speed [1]	Observed torque [2] (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	Rated	100	5.0	0.09
2	Rated	75	5.0	.20
3	Rated	50	5.0	.29
4	Rated	25	5.0	.30
5	Rated	10	5.0	.07
6	Idle	0	5.0	.05

[1] Engine speed (non-idle): ±2 percent of point. Engine speed (idle): Within manufacturer's specifications. Idle speed is specified by the manufacturer.
[2] Torque (non-idle): Throttle fully open for operation at 100 percent point. Other nonidle points: ±2 percent of engine maximum value. Torque (idle): Throttle fully closed. Load less than 5 percent of peak torque.

TABLE 4.—4-MODE TEST CYCLE FOR PROPULSION MARINE DIESEL ENGINES

Mode No.	Engine speed [1] (percent of max. observed)	Observed power [2] (percent of max. observed)	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	020
2	91	75	5.0	.50
3	80	50	5.0	.15
4	63	10	5.0	.15

[1] Engine speed: ±2 percent of point.
[2] Power: Throttle fully open for operation at 100 percent point. Other points: ±2 percent of engine maximum value.

Subpart F—[Amended]

81. The newly designated § 89.505 is amended by revising paragraph (e) to read as follows:

§ 89.505 Maintenance of records; submittal of information.

* * * * *

(e) All reports, submissions, notifications, and requests for approvals made under this subpart are addressed to: Director, Engine Programs and Compliance Division (6405–J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

82. The newly designated § 89.506 is amended by revising paragraph (g) to read as follows:

§ 89.506 Right of entry and access.

* * * * *

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions where local law does not prohibit an EPA enforcement officer(s) or EPA authorized representative(s) from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed that local foreign law prohibits.

83. The newly designated § 89.509 is amended by revising paragraphs (a) and (b) to read as follows:

§ 89.509 Calculation and reporting of test results.

(a) Initial test results are calculated following the applicable test procedure specified in § 89.506(a). The manufacturer rounds these results, in accordance with ASTM E29–93a, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure. This procedure has been incorporated by reference. See § 89.6.

(b) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test engine, dividing by the number of tests conducted on the engine, and rounding in accordance with the procedure specified in paragraph (a) of this section to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

* * * * *

84. The newly designated § 89.512 is amended by revising paragraph (b) to read as follows:

§ 89.512 Request for public hearing.

* * * * *

(b) The manufacturer's request must be filed with the Administrator not later than 15 days after the Administrator's notification of the decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer must simultaneously serve two copies of this request upon the Director of the Engine Programs and Compliance Division and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, at her or his discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

* * * * *

85. The newly designated § 89.513 is amended by revising paragraph (e)(2) to read as follows.

§ 89.513 Administrative procedures for public hearing.

* * * * *

(e) * * *

(2) To the maximum extent possible, testimony will be presented in written form. Copies of written testimony will be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service will be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Engine Programs and Compliance Division must be sent by registered mail to: Director, Engine Programs and Compliance Division (6405–J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Service by registered mail is complete upon mailing.

* * * * *

Subpart G—[Amended]

86. The newly designated § 89.602 is amended by revising the definition for "Fifteen working day hold period" to read as follows:

§ 89.602 Definitions.

* * * * *

Fifteen working day hold period. The period of time between a request for final admission and the automatic granting of final admission (unless EPA intervenes) for a nonconforming nonroad engine conditionally imported pursuant to § 89.605 or § 89.609. Day one of the hold period is the first working day (see definition for "working day" in this section) after the Engine Programs and Compliance Division of EPA receives a complete and valid application for final admission.

* * * * *

87. The newly designated § 89.603 is amended by revising paragraph (d) to read as follows:

§ 89.603 General requirements for importation of nonconforming nonroad engines.

* * * * *

(d) The ICI must submit to the Engine Programs and Compliance Division of EPA a copy of all approved applications for certification used to obtain certificates of conformity for the purpose of importing nonconforming nonroad engines pursuant to § 89.605 or § 89.609. In addition, the ICI must submit to the Engine Programs and Compliance Division a copy of all approved production changes implemented pursuant to § 89.605 or subpart B of this part. Documentation submitted pursuant to this paragraph must be provided to the Engine Programs and Compliance Division within 10 working days of approval of the certification application (or production change) by EPA.

88. The newly designated § 89.604 is amended by revising paragraphs (c)(4) and (d) to read as follows:

§ 89.604 Conditional admission.

* * * * *

(c) * * *

(4) A copy of the written record is to be submitted to the Engine Programs and Compliance Division of EPA within five working days of the transfer date.

(d) Notwithstanding any other requirement of this subpart or U.S. Customs Service regulations, an ICI may also assume responsibility for the modification and testing of a nonconforming nonroad engine which was previously imported by another party. The ICI must be a holder of a currently valid certificate of conformity for that specific nonroad engine or authorized to import it pursuant to § 89.609 at the time of assuming such responsibility. The ICI must comply with all the requirements of § 89.603, § 89.604, and either § 89.605 or § 89.609, as applicable. For the purposes of this subpart, the ICI has "imported" the nonroad engine as of the date the ICI assumes responsibility for the modification and testing of the nonroad engine. The ICI must submit written notification to the Engine Programs and Compliance Division of EPA within 10 working days of the assumption of that responsibility.

89. The newly designated § 89.605 is amended by revising paragraphs (a)(2)(i), (a)(3)(vi), and (c) to read as follows:

§ 89.605 Final admission of certified nonroad engines.

(a) * * *

(2) * * *

(i) The ICI attests that the nonroad engine has been modified in accordance with the provisions of the ICI's certificate of conformity; presents to EPA a statement written by the applicable Original Engine Manufacturer (OEM) that the OEM must provide to the ICI, and to EPA, information concerning production changes to the class of nonroad engines described in the ICI's application for certification; delivers to the Engine Programs and Compliance Division of EPA notification by the ICI of any production changes already implemented by the OEM at the time of application and their effect on emissions; and obtains from EPA

written approval to use this demonstration option; or

* * * * *

(3) * * *

(vi) A report concerning these production changes is to be made to the Engine Programs and Compliance Division of EPA within ten working days of initiation of the production change. The cause of any failure of an emission test is to be identified, if known;

* * * * *

(c) Except as provided in paragraph (b) of this section, EPA approval for final admission of a nonroad engine under this section is presumed to have been granted if the ICI does not receive oral or written notice from EPA to the contrary within 15 working days of the date that the Engine Programs and Compliance Division of EPA receives the ICI's application under paragraph (a) of this section. EPA notice of nonapproval may be made to any employee of the ICI. It is the responsibility of the ICI to ensure that the Engine Programs and Compliance Division of EPA receives the application and to confirm the date of receipt. During this 15 working day hold period, the nonroad engine is to be stored at a location where the Administrator has reasonable access to the nonroad engine for the Administrator's inspection. The storage is to be within 50 miles of the ICI's testing facility to allow the Administrator reasonable access for inspection and testing. A storage facility not meeting this criterion must be approved in writing by the Administrator prior to the submittal of the ICI's application under paragraph (a) of this section.

90. The newly designated § 89.609 is amended by revising paragraph (d) to read as follows:

§ 89.609 Final admission of modification nonroad engines and test nonroad engines.

* * * * *

(d) Except as provided in paragraph (c) of this section, EPA approval for final admission of a nonroad engine under this section is presumed to have been granted if the ICI does not receive oral or written notice from EPA to the contrary within 15 working days of the date that the Engine Programs and Compliance Division of EPA receives the ICI's application under paragraph (b) of this section. Such EPA notice of nonapproval may be made to any employee of the ICI. It is the responsibility of the ICI to ensure that the Engine Programs and Compliance Division of EPA receives the application and to confirm the date of receipt. During this 15 working day hold period, the nonroad engine is stored at a location where the Administrator has reasonable access to the nonroad engine for the Administrator's inspection. The storage is to be within 50 miles of the ICI's testing facility to allow the Administrator reasonable access for inspection and testing. A storage facility not meeting this criterion must be approved in writing by the Administrator prior to the submittal of the ICI's application under paragraph (b) of this section.

* * * * *

91. The newly designated § 89.610 is amended by revising paragraph (b)(1) to read as follows:

§ 89.610 Maintenance instructions, warranties, emission labeling.

* * * * *

(b) *Warranties.* (1) ICIs must submit to the Engine Programs and Compliance Division of EPA sample copies (including revisions) of any warranty documents required by this section prior to importing nonroad engines under this subpart.

* * * * *

92. The newly designated § 89.611 is amended by revising paragraph (g) to read as follows:

§ 89.611 Exemptions and exclusions.

* * * * *

(g) An application for exemption and exclusion provided for in paragraphs (b), (c), and (e) of this section is to be mailed to: U.S. Environmental Protection Agency, Office of Mobile Sources, Engine Programs and Compliance Division (6405–J), 401 M Street, SW., Washington, DC 20460, Attention: Imports.

Subpart J—[Amended]

93. Section 89.903 is amended by revising paragraph (b) to read as follows:

§ 89.903 Application of section 216(10) of the Act.

* * * * *

(b) EPA will maintain a list of nonroad engines that have been determined to be excluded because they are used solely for competition. This list will be available to the public and may be obtained by writing to the following address: Chief, Selective Enforcement Auditing Section, Engine Programs and Compliance Division (6405—J), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

* * * * *

94. Section 89.905 is amended by revising paragraph (f) to read as follows:

§ 89.905 Testing exemption.

* * * * *

(f) A manufacturer of new nonroad engines may request a testing exemption to cover nonroad engines intended for use in test programs planned or anticipated over the course of a subsequent one-year period. Unless otherwise required by the Director, Engine Programs and Compliance Division, a manufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the record-keeping and control procedures that will be employed to assure that the engines are used for purposes consistent with paragraph (a) of this section.

95. Section 89.906 is amended by revising paragraphs (a)(3) introductory text, (a)(3)(iii)(D), and (b) to read as follows:

§ 89.906 Manufacturer-owned exemption and precertification exemption.

(a) * * *

(3) Unless the requirement is waived or an alternate procedure is approved by the Director, Engine Programs and Compliance Division, the manufacturer must permanently affix a label to each nonroad engine on exempt status. This label should—

* * * * *

(iii) * * *

(D) The statement "This nonroad engine is exempt from the prohibitions of 40 CFR 89.1003."

* * * * *

(b) Any independent commercial importer that desires a precertification exemption pursuant to § 89.611(b)(3) and is in the business of importing, modifying, or testing uncertified nonroad engines for resale under the provisions of subpart G of this part, must apply to the Director, Engine Programs and Compliance Division. The Director may require such independent commercial importer to submit information regarding the general nature of the fleet activities, the number of nonroad engines involved, and a demonstration that adequate record-keeping procedures for control purposes will be employed.

96. Section 89.911 is revised to read as follows:

§ 89.911 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to: Chief, Selective Enforcement Auditing Section, Engine Programs and Compliance Division (6405–J), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

97. Section 89.1003 is amended by revising paragraphs (a)(3), (a)(5), (a)(6), and (b)(4) to read as follows:

§ 89.1003 Prohibited acts.

(a) * * *

(3)(i) For a person to remove or render inoperative a device or element of design installed on or in a nonroad engine, vehicle or equipment in compliance with regulations under this part prior to its sale and delivery to the ultimate purchaser, or for a person knowingly to remove or render inoperative such a device or element of design after the sale and delivery to the ultimate purchaser; or

(ii) For a person to manufacture, sell or offer to sell, or install, a part or component intended for use with, or as part of, a nonroad engine, vehicle or equipment, where a principal effect of the part or component is to bypass, defeat, or render inoperative a device or element of design installed on or in a nonroad engine in compliance with regulations issued under this part, and where the person knows or should know that the part or component is being offered for sale or installed for this use or put to such use; or

(iii) for a person to deviate from the provisions of § 89.130 when rebuilding an engine (or rebuilding a portion of an engine or engine system).

* * * * *

(5) For a person to circumvent or attempt to circumvent the residence time requirements of paragraph (2)(iii) of the nonroad engine definition in § 89.2.

(6) For a manufacturer of nonroad vehicles or equipment to distribute in commerce, sell, offer for sale, or introduce into commerce a nonroad vehicle or piece of equipment, manufactured on or after the model year applicable to engines in such vehicle or equipment under § 89.112, which contains an engine not covered by a certificate of conformity.

(b) * * *

(4) Certified nonroad engines shall be used in all vehicles and equipment manufactured on or after the applicable model years in § 89.112 that are self-propelled, portable, transportable, or are intended to be propelled while performing their function, unless the manufacturer of the vehicle or equipment can prove that the vehicle or equipment will be used in a manner consistent with paragraph (2) of the definition of nonroad engine in § 89.2. For any model year for which a new standard takes effect, nonroad vehicle and equipment manufacturers may continue to use previous model year nonroad engines until inventories of those engines are depleted; however, stockpiling of noncertified nonroad engines will be considered a violation of this section.

98. Section 89.1007 is amended by revising paragraph (c) to read as follows:

§ 89.1007 Warranty provisions.

* * * * *

(c) For the purposes of this section, the owner of any nonroad engine warranted under this part is responsible for the proper maintenance of the engine. Proper maintenance includes replacement and service, at the owner's expense at a service establishment or facility of the owner's choosing, of all parts, items, or devices related to emission control (but not designed for emission control) under the terms of the last sentence of section 207(a)(3) of the Act, unless such part, item, or device is covered by any warranty not mandated by this Act.

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Wednesday
September 24, 1997

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et al.

Transportation of Hazardous Materials; Miscellaneous Amendments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, 177, 178 and 180

[Docket No. RSPA–97–2905 (HM–166Y)]

RIN 2137–AC41

Transportation of Hazardous Materials; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to make miscellaneous amendments to the Hazardous Materials Regulations (HMR) based on petitions for rulemaking and RSPA initiative. These proposed amendments are intended to update, clarify or provide relief from certain regulatory requirements.

DATES: Comments must be received by November 24, 1997.

ADDRESSES: Address comments to the Dockets Unit, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW., Washington, DC 20590–0001. Comments should identify the docket number, RSPA–97–2905 (HM–166Y) and should be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted by E-mail to rules@rspa.dot.gov. The Dockets Office is located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation at the above address. Public dockets may be reviewed between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking (NPRM) is designed primarily to reduce regulatory burdens on industry by incorporating changes into the HMR based on RSPA's own initiative and petitions for rulemaking submitted in accordance with 49 CFR 106.31. This NPRM also is consistent with the goals of the President's Regulatory Reinvention Initiative. On March 4, 1995, the President directed Federal agencies to perform an extensive review of all agency regulations and eliminate or revise those requirements that are outdated or in need of reform. In a continuing effort to review the HMR for necessary revisions, RSPA is also proposing to eliminate, revise, clarify and relax certain other regulatory requirements.

The following is a section-by-section summary of the proposed changes under this notice of proposed rulemaking.

Section-by-Section Review

Part 171

Section 171.7

The Association of American Railroads (AAR) (P–1315) requested that RSPA update the incorporation by reference of the AAR manual, "AAR Manual of Standards and Recommended Practices, Section C–Part III, Specifications for Tank Cars, Specification M–1002," from the 1992 edition to the 1996 edition. RSPA and the Federal Railroad Administration have reviewed the reference requirements in the 1996 manual and have determined that there are no substantive changes. Therefore, RSPA proposes to incorporate the 1996 edition by reference into the HMR.

Section 171.8

RSPA proposes to add a definition for "self-defense spray" to correspond with the proposed new entry, "Self-defense sprays, non-pressurized, *containing not more than 2 percent tear gas substances,*" Class 9. (See § 172.101.) RSPA specifically solicits comments on the use and scope of the word "animal" when defining a self-defense spray as having an irritating or incapacitating effect on a person or animal.

RSPA proposes to revise the definition of "Marine pollutant" by adding a reference to § 171.4, containing the marine pollutant requirements, to facilitate its location by readers. This proposal responds to a petitioner (P–1256) who stated that the exceptions contained in § 171.4 are often overlooked.

Section 171.18

Section 171.18 would be removed and reserved in order to delete an obsolete section concerning registrations filed with the Bureau of Explosives.

Section 171.19

RSPA proposes to revise § 171.19 to terminate all remaining Bureau of Explosives (BOE) approvals, other than those made under approval provisions in Part 179. Since 1979, approvals, authorizations and registrations issued by the BOE have continued in effect as if issued by the Associate Administrator for Hazardous Materials Safety. Over the years, the regulations on which these BOE approvals were based have been revised or eliminated. The majority of these BOE approvals have been converted to approvals issued by the Associate Administrator for Hazardous Materials Safety (AAHMS). RSPA believes that the remaining BOE approvals are obsolete and proposes to terminate them. Any person holding a BOE approval who is affected by this termination may file a request for issuance of a new approval by the AAHMS.

Part 172

Section 172.101

RSPA proposes to add two new entries to the Hazardous Materials Table (HMT) and to amend two current entries.

To clarify that both the aerosol and non-aerosol self-defense sprays are subject to the regulations, RSPA proposes to add two new entries, *"Self-defense sprays, aerosol containing not more than 2% tear gas substances, see* Aerosols" and "Self-defense sprays, non-pressurized, *containing not more than 2 percent tear gas substances"* to the HMT. The Federal Aviation Administration (FAA) has encountered numerous problems with airline passengers attempting to carry on their persons self-defense sprays, such as mace and pepper spray, having an irritating or incapacitating effect. The Federal Aviation Regulations (14 CFR 107.21 and 108.11) prohibit the possession of "deadly or dangerous weapons" on one's person or in carry-on baggage aboard aircraft. "Deadly or dangerous weapons" include disabling or incapacitating items such as tear gas, mace, pepper spray and similar chemicals and gases. The spray from these devices is released from either an aerosol or a pump. The aerosol type sprays are to be transported as aerosols. The HMT currently includes the entry, "Tear gas devices, *with not more than 2 percent tear gas substances, by mass,*" which references the entry for aerosols. RSPA is aware of misunderstanding as to how these materials are classed and described under the HMR. Both definitions for Class 6 and Class 9 address irritating materials, but do not specify criteria. Also, there is no specific entry for devices that are not aerosols. In cases where the substance contained in a device does not meet the criteria of any of Classes 1 through 8, there has been uncertainty as to whether they are subject to the regulations.

RSPA regards self-defense sprays which do not meet toxicity criteria for Class 6 as meeting the criterion for Class 9 given in § 173.140 (i.e., they could cause extreme annoyance or discomfort to a flight crew member so as to prevent the correct performance of assigned duties) and is adding an entry in the HMT to regulate them for transportation by aircraft only.

Consistent with the entry for "Tear gas devices, *with not more than 2 percent tear gas substances, by mass,*" RSPA proposes to add a new entry *"Self-defense sprays, aerosol containing not more than 2% tear gas substances,"* which will refer to aerosols. RSPA also proposes to add a new entry "Self-defense sprays, non-pressurized, *containing not more than 2 percent tear gas substances,"* Class 9, which would be assigned the identification number NA3334. This number corresponds to a newly created UN entry, UN3334, "Aviation regulated liquid, n.o.s." which RSPA will propose for inclusion in the HMR in a later proposal to implement changes introduced in the tenth revised edition of the UN Recommendations. Related changes are proposed to § 171.8 to add a definition for self-defense sprays and to § 175.10 to clarify that these items are not allowed to be carried in the passenger compartment of an aircraft and provide for carriage of a device by a passenger in checked baggage.

RSPA proposes to amend the entry, "Detonators, non-electric *for blasting,*" UN0455 in Column (8A), by correcting the erroneous reference "none" for packaging exceptions to read "63(f), 63(g)."

RSPA proposes to amend the entry "Trifluoroacetyl chloride" by adding Special Provision "B7" to Column (7). Multi-unit tank car tanks, containing "Trifluoroacetyl chloride," are authorized to be fitted with fusible plugs in accordance with § 179.300–15. A petitioner (P–1254), stating that it is the primary supplier and shipper of "Trifluoroacetyl chloride" in the United States, requested that the entry be amended by adding, in Column (7), Special Provision B7. Special Provision B7 prohibits the use of pressure relief devices on multi-unit tank car tanks and requires openings for relief devices to be plugged or blank flanged. The petitioner stated that past experience has shown that fusible plugs used on cylinders in "Trifluoroacetyl chloride" service are more likely to corrode or to be mishandled when compared to solid steel plugs. In addition, the petitioner stated that packagings used to contain other similar poisonous by inhalation hazardous materials do not allow the use of fusible plugs and that the use of pressure relief devices on cylinders containing "Trifluoroacetyl chloride" is prohibited. RSPA believes the petitioner's request has merit and proposes to amend the entry "Trifluoroacetyl chloride," in Column (7), by adding "B7" to ensure the safe transportation of this material in multi-unit tank car tanks.

Section 173.32c

RSPA proposes to revise paragraph (j) to allow monolithic solid materials to be loaded into IM portable tanks to a filling density of less than 80 percent by volume. Paragraph (j) currently specifies that an IM portable tank, or compartment thereof, having a volume greater than 7,500 liters may not be loaded to a filling density less than 80 percent by volume. This provision was intended to cover liquid and flowable solid hazardous materials in order to minimize the risk of accidents resulting from the sloshing and shifting of the center of gravity. A monolithic solid material which conforms to the tank geometry, such that the sloshing and shifting of the center of gravity is not possible, can be safely transported in an IM portable tank at a filling density of less than 80 percent by volume.

Section 173.40

Paragraph (d)(1) would be revised to clarify that a box, used to provide protection for the cylinder and, unless the cylinder has a protective collar or neck ring, protection to the valve against accidental functioning and damage, must be made of wood, fiberboard or plastic rather than made to a specific UN standard. This proposed change would be consistent with similar provisions in § 173.301 (g)(2) and (k) that permits a nonspecification box to be used for protection of the cylinder or valve.

Section 173.56

RSPA proposes to add new paragraphs (b)(1) (i) and (ii) to authorize a person approved by the Associate Administrator for Hazardous Materials Safety (AAHMS) to examine and make recommendations on the classification of explosives. The proposed paragraphs set out the criteria that a person must meet and demonstrate to qualify for approval to examine explosives and make recommendations to RSPA regarding appropriate shipping descriptions, divisions and compatibility groups. A person applying for this approval and a person who has obtained such an approval must meet all the criteria in paragraphs (b) (i) and (ii) and the provisions in Subpart H of Part 107. The person applying for this approval must demonstrate that the applicant is a resident of the United States; does not manufacture explosives; is not controlled by, or financially dependent upon, any entity that manufactures or markets explosives; does not perform any type of work in the explosives industry other than testing for determination of hazard class or performance; and is or employs a person who will sign examination and test reports and make recommendations for classifications to the AAHMS and who has at least ten years experience in the examination, testing and evaluation of explosives. To demonstrate compliance with each of these criteria, appropriate documentation must be submitted to the AAHMS. RSPA requests comments on all of the criteria, and in particular, the requirement for ten years' experience.

RSPA also proposes to revise paragraph (i) by removing wording including the phrase "following examination in accordance with paragraph (h) of this section." This proposed change will facilitate the classification of a material or device without prior examination when adequate data is available.

Section 173.156

Paragraph (b)(1) grants an exception from the marking requirements in § 172.316 for ORM–D materials when unitized in cages, carts, boxes or similar overpacks and when certain other conditions are met. As § 172.316 primarily addresses the required format to display the ORM–D marking, a number of inquiries have been directed to RSPA requesting guidance as to whether the exception in § 173.156(b)(1) provides relief from the requirement to mark the proper shipping name, also. RSPA does not require the proper shipping name or other markings on packages specified in Subpart D of Part 172 to appear on cages, carts, boxes or similar overpacks containing ORM–D materials that are offered for transportation or transported according to § 173.156(b)(1). To remove that ambiguity, RSPA proposes to revise § 173.156(b)(1) by specifically stating that the marking requirements of Subpart D of Part 172 do not apply.

Section 173.308

RSPA proposes to revise paragraph (b), which contains an exception from the requirements of Parts 172 and 177, for transporting up to 1,500 cigarette lighters on one motor vehicle by highway. The revision would clarify

that only the hazard communication requirements in Subparts C through G and the training requirements in Subpart H are excepted with respect to Part 172. RSPA has received several inquiries as to whether Special Provision N10 applies if Part 172 is excepted. The provisions set forth in Special Provision N10 apply. As stated in § 172.102(a)(2), if a special provision imposes limitations or requirements in addition to the packaging provisions referenced in Column 8 of the § 172.101 Table (e.g., § 173.308), packagings must conform to the requirements of the special provision. RSPA also is proposing to require that the outer packaging be marked with the required proper shipping name in the § 172.101 Hazardous Materials Table or with the words "CIGARETTE LIGHTERS" and the total number of devices contained in the package. This marking will more effectively communicate the presence of these hazardous materials during transport and will provide a carrier with the information necessary to determine if the exceptions from Part 172 (hazard communication and training requirements) and Part 177 requirements apply.

Section 173.469

In paragraph (a)(4)(i), the value of 1.3×10^{-24} would be amended to read 1.3×10^{-4} in order to correct a printing error.

Part 175

Section 175.10

RSPA proposes to amend this section by revising paragraph (a)(4) to clarify that all types of self-defense sprays are prohibited from being transported by air in a passenger compartment, either on one's person or in carry-on baggage. However, one self-defense device, not exceeding 118 ml (4 fluid ounces) per passenger, would be allowed in checked baggage, provided the device incorporates a positive means to prevent accidental discharge. Also see earlier preamble discussion to §§ 171.8 and 172.101. This revision also would clarify that the quantity limits in paragraphs (a)(4)(i) and (a)(4)(ii) apply to both medicinal and toilet articles and to Division 2.2 aerosols for sporting or home use.

Section 175.25

Paragraph (a) requires that aircraft operators display notices warning passengers against carrying undeclared hazardous materials aboard aircraft, in their luggage or on their persons. The notice wording, in paragraph (a)(1), contains obsolete information on the statutory citation and the penalties. To reflect codification of the Federal hazardous material transportation law under 49 U.S.C. 5101–5127, RSPA proposes to revise the citation "(49 U.S.C. 1809)" to read "(49 U.S.C. 5124)". In addition, current paragraph (a)(1) states that each notice must state, " A violation can result in penalties of up to $25,000 and five years" imprisonment (49 U.S.C. 1809)." In 1990, Congress amended the Federal hazardous materials transportation law to increase criminal penalties from $25,000 to penalties provided by Title 18 of the United States Code. Title 18 provides for fines of $250,000 for individuals and $500,000 for companies. RSPA believes that the cost to change the notices each time the penalty amount is increased is unnecessarily burdensome for aircraft operators. Therefore, RSPA proposes to amend the wording required in the notice to state that a violation can result in five years' imprisonment and penalties of $250,000 or more (49 U.S.C. 5124). In addition, a new paragraph (a)(4) would be added to allow aircraft operators to display existing notices containing the obsolete language until January 1, 2002.

RSPA proposes, also, to lower the quantity limit for medicinal and toilet articles carried in a passenger's luggage from 75 ounces to 70 ounces, consistent with the exception provided in § 175.10(a)(4)(i).

Section 175.26

This section requires each person who engages in the acceptance or transport of cargo for transportation by aircraft to display a notice, to persons offering such cargo, of the applicable requirements for hazardous materials aboard aircraft. RSPA proposes to amend the wording required in the notice to state that a violation can result in five years' imprisonment and penalties of $250,000 or more (49 U.S.C. 5124). In addition, a new paragraph (a)(4) would be added to allow each person who accepts or transports cargo for transportation by aircraft to display existing notices containing the obsolete language until January 1, 2002.

Part 177

Section 177.834

RSPA proposes to permit an IM portable tank to be unloaded while remaining on a transport vehicle with the power unit attached if the tank meets the outlet requirements in § 178.345–11 and the IM portable tank is attended during the unloading, as currently required for cargo tank motor vehicles under § 177.834(i). The last sentence in paragraph (h) would be revised to permit the unloading of an IM portable tank without being removed from the motor vehicle. A new paragraph (o) would contain the tank outlet requirement and require compliance with the attendance requirements in paragraph (i). Section 171.8 defines a portable tank as a "bulk packaging (except a cylinder having a water capacity of 1,000 pounds or less) designed primarily to be loaded onto, or on, or temporarily attached to a transport vehicle or ship and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means * * *." Thus, portable tanks are not intended to be filled or emptied while attached to a transport vehicle or a ship during transportation. This is in contrast with the definition of a cargo tank which states "* * * which, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle." Because of the size and weight of many fully loaded IM portable tanks, there are increasing demands to unload these portable tanks while they remain on the transport vehicle with the power unit attached. RSPA believes that requiring consignees to have hoisting equipment at their unloading facilities and requiring a fully loaded portable tank to be removed from the vehicle is more burdensome and less safe than allowing the tank to remain on the vehicle during unloading.

Section 177.848

Based on a Federal Highway Administration initiative, in the paragraph (f) Compatibility Table for Class 1 (Explosive) Materials, the entry "4" for compatibility groups B and D suggests that all items in groups B and D may be transported together. Groups B and D are not compatible. However, a domestic exception (4) is allowed for Detonators when they are transported in accordance with restrictions in § 177.835(g). To avoid the possibility of incompatible explosives being transported together, RSPA proposes to clarify the restriction by replacing the entry "4" with the entry "$X_{(4)}$".

Part 178

Section 178.65

Paragraph (i)(2)(viii)(A) is revised to update the citation "49 U.S.C. 1809" to read "49 U.S.C. 5124."

Sections 178.352 through 178.364

Several specification packaging requirements for radioactive materials

contain obsolete section references. RSPA proposes to update these section references.

Part 180

Section 180.405

The regulations at § 173.33(b)(1), in effect prior to December 31, 1990, read: "A cargo tank of the specification listed in Column 1 may be used when authorized in this part, provided the tank construction began before the date in Column 2." This provision applied to MC 300, 301, 302, 303, 304, 305, 310, 311 and 330 cargo tank motor vehicles. RSPA proposes to revise paragraph (c)(1) to recognize that the date marked on these older cargo tanks was the date initial construction began rather than the date construction was completed. This proposed wording also is consistent with the wording in paragraph (b) of this section.

In addition, paragraph (f) would be revised to allow the continued use of a cargo tank equipped with a self-closing system before September 1, 1993, but remarked and certified after that date.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The costs and benefits asociated with this proposed rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. This determination may be revised as a result of public comment.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This proposed rule concerns the classification, packaging, marking, labeling, and handling of hazardous material, among other covered subjects.

If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA requests comments on what the effective date of Federal preemption should be for the requirements in this proposed rule that concern covered subjects.

C. Regulatory Flexibility Act

This proposed rule would amend miscellaneous provisions in the HMR, generally to clarify those provisions and to relax requirements that are overly burdensome. The proposed changes in this rule are generally intended to provide relief to shippers, carriers, and packaging manufacturers, some of whom are small entities (*e.g.*, governmental jurisdictions and not-for-profit organizations). The costs and benefits associated with this proposed rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. Therefore, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This NPRM does not propose any new information collection burdens. Information collection requirements addressing the approval of explosives in § 173.56 are currently approved under OMB approval number 2137–0557. This approval expires July 31, 1999.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Hazardous materials transportation, Air carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

§ 171.7 [Amended]

2. In the § 171.7(a)(3) Table, under "Association of American Railroads", for the entry "AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002", the date "September 1992" would be revised to read "January 1996".

3. In § 171.8, the following definition is added in the appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Self-defense spray means an aerosol or non-pressurized device containing a material:

(1) Intended to have an irritating or incapacitating effect on a person or animal, but not more than 2 percent by mass, of a tear gas substance; and

(2) Meeting no hazard criteria other than § 173.132(a)(2) or § 173.140(a) of this subchapter and, for an aerosol, Division 2.1 or 2.2.

* * * * *

§ 171.8 [Amended]

4. In addition, in § 171.8, for the definition "Marine pollutant", in the first sentence, the wording "this subchapter and," would be removed and "this subchapter (also see § 171.4) and," would be added in its place.

§ 171.18 [Removed and Reserved]

5. Section 171.18 would be removed and reserved.

6. Section 171.19 would be revised to read as follows:

§ 171.19 Approvals or authorizations issued by the Bureau of Explosives.

Effective [90 days from the effective date of the Final Rule], all approvals or authorizations issued by the Bureau of Explosives (BOE), other than as authorized in part 179 of this subchapter, are no longer valid.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

7. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. In § 172.101, the Hazardous Materials Table would be amended by adding the following entries, in appropriate alphabetical order, to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(8) Quantity limitations		(10) Vessel storage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Self-defense sprays, aerosol, containing not more than 2% tear gas substances, see Aerosols, etc.												
+AD	Self-defense sprays, non-pressurized, containing not more than 2% tear gas substances.	9	NA3334	III	9		155	203	None	No limit	No limit		

§ 172.101 [Amended]

9. In addition, in § 172.101, in the Hazardous Materials Table, the following changes would be made:

a. For the entry, "Detonators, non-electric *for blasting.*", UN0455, in Column (8A), the reference "none" would be revised to read "63(f), 63(g)".

b. For the entry "Trifluoroacetyl chloride", in Column (7), Special Provision "B7," would be added immediately following "2,".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

10. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.45, 1.53.

11. In § 173.32c, paragraph (j) would be revised to read as follows:

§ 173.32c Use of Specification IM portable tanks.

* * * * *

(j) An IM portable tank or compartment thereof, having a volume greater than 7,500 liters, may not be loaded with hazardous material liquid or nonmonolithic solids to a filling density less than 80 percent by volume.

* * * * *

§ 173.40 [Amended]

12. In § 173.40, in paragraph (d)(1), in the first sentence, the wording "4C1, 4D, 4F, 4G, 4H1 or 4H2 box" is removed and "wood, fiberboard or plastic box" is added in its place.

13. In § 173.56, paragraph (b)(1) would be revised to read as follows:

§ 173.56 New explosives—definition and procedures for classification and approval.

* * * * *

(b) * * *

(1) Except for explosives made by or under the direction or supervision of the Departments of Defense or Energy, a new explosive must:

(i) Be examined and assigned a recommended shipping description, division and compatibility group, based on the tests and criteria prescribed in §§ 173.52, 173.57 and 173.58, by a person who—

(A) Is a resident of the United States;

(B) Has (directly or through an employee) at least ten years of experience in the examination, testing and evaluation of explosives;

(C) Does not manufacture or market explosives, and is not controlled by or financially dependent on any entity that manufactures or markets explosives, and whose work with respect to explosives is limited to examination, testing and evaluation; and

(D) Is approved by the Associate Administrator for Hazardous Materials Safety under the provisions of subpart H of part 107 of this chapter.

(ii) Receive a written approval and EX-number from the Associate Administrator for Hazardous Materials Safety. A person requesting approval of a new explosive must submit to the Associate Administrator for Hazardous Materials Safety a report of examination and assignment of recommended shipping description, division, and compatibility group prepared in accordance with paragraph (b)(1)(i) of this section.

* * * * *

§ 173.56 [Amended]

14. In addition, in § 173.56, in paragraph (i), the wording ", following examination in accordance with paragraph (b) of this section, revise its" would be removed and the wording "make a" would be added in its place.

15. In § 173.156, paragraph (b)(1) introductory text would be revised to read as follows:

§ 173.156 Exceptions for ORM materials.

* * * * *

(b) * * *

(1) Strong outer packagings as specified in this part, marking requirements specified in subpart D of Part 172 of this subchapter, and the 30 kg (66 pounds) gross weight limitation are not required for materials classed as ORM–D when—

* * * * *

16. In § 173.308, paragraph (b) would be revised to read as follows:

§ 173.308 Cigarette lighter or other similar device charged with fuel.

* * * * *

(b) When no more than 1,500 devices covered by this section are transported in one motor vehicle by highway, the requirements of subparts C through H of part 172, and part 177 of this subchapter do not apply. However, each person who offers for transportation or transports the devices or prepares the devices for shipment must be informed of the requirements of this section. The outer packaging, as specified in Special Provision N10 of § 172.102(c)(5) of this subchapter, must be plainly and durably marked with the required proper shipping name specified in § 172.101 of this subchapter or the words "CIGARETTE LIGHTERS" and the number of devices contained in the package.

* * * * *

§ 173.469 [Amended]

17. In § 173.469(a)(4)(i), in the second sentence, the mathematical expression "$(1.3 \times 10^{-24}$" would be removed and "$(1.3 \times 10^{-4}$" would be added in its place.

PART 175—CARRIAGE BY AIRCRAFT

18. The authority citation for part 175 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

19. In § 175.10, paragraph (a)(4) would be revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(4) When carried by a passenger or crew member for personal use, the following materials that, in the aggregate, do not exceed 2kg (4.4 pounds) by mass or 2 liters (68 fluid ounces) by volume and where the capacity of each container does not exceed 0.5kg (1.1 pounds) by mass or 470 ml (16 fluid ounces) by volume are subject to the following conditions:

(i) Non-radioactive medicinal and toilet articles (including aerosols), may be carried in checked or carry-on baggage

(ii) One self-defense spray (see § 171.8 of this subchapter), not exceeding 118 ml (4 fluid ounces) by volume, that incorporates a positive means to prevent accidental discharge may be carried in checked baggage only

(iii) Other aerosols in Division 2.2 with no subsidiary risk may be carried in checked baggage only.

* * * * *

20. In § 175.25, in paragraph (a)(1), the second and fifth full paragraphs of the notice would be revised and a new paragraph (a)(4) would be added to read as follows:

§ 175.25 Notification at air passenger facilities of hazardous materials restrictions.

(a) * * *

(1) * * *

A violation can result in five years' imprisonment and penalties of $250,000 or more (49 U.S.C. 5124).

* * * * *

There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your luggage and certain smoking materials carried on your person.

* * * * *

(4) Notwithstanding the requirements of paragraph (a)(1) of this section, a notice with the wording "A violation can result in penalties of up to $25,000 and five years imprisonment. (49 U.S.C. 1809)" may be used until December 31, 2001.

* * * * *

21. In § 175.26, paragraph (a)(2) is revised and a new paragraph (a)(4) is added to read as follows:

§ 175.26 Notification at cargo facilities of hazardous materials requirements.

(a) * * *

(2) A violation can result in five years' imprisonment and penalties of $250,000 or more (49 U.S.C. 5124).

* * * * *

(4) Notwithstanding the requirements of paragraph (a)(2) of this section, a notice with the wording "A violation can result in penalties of up to $25,000 and five years imprisonment (49 U.S.C. 1809)" may be used until December 31, 2001."

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

22. The authority citation for part 177 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 177.834 [Amended]

23. In § 177.834, in paragraph (h), in the next to the last sentence, the wording "cargo tank" would be removed and the wording "cargo tank or IM portable tank" would be added in its place and a new paragraph (o) would be added to read as follows:

§ 177.834 General requirements.

* * * * *

(o) *Unloading of IM portable tanks.* An IM portable tank may be unloaded

while remaining on a transport vehicle with the power unit attached if the tank meets the outlet requirements in § 178.345–11 of this subchapter and the tank is attended by a qualified person during the unloading in accordance with the requirements in paragraph (i) of this section.

§ 177.848 [Amended]

24. In § 177.848, in paragraph (f) in the Compatibility Table for Class 1 (Explosive) Materials, for compatibilty group B, under the column headed "D" and for compatibility group D, under the column headed "B", the entry "4" would be removed and "$X_{(4)}$" would be added in both places.

PART 178—SPECIFICATIONS FOR PACKAGINGS

25. The authority citation for part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.352–4 [Amended]

26. In § 178.352–4, at the end of the section, the section reference "§ 178.103(3)(c)(1)" would be revised to read "§ 178.352–3(c)(1)".

§ 178.354–2 [Amended]

27. In § 178.354–2, in the first sentence of paragraph (a), the section reference "§ 178.104–5" would be revised to read "§ 178.354–5".

§ 178.354–3 [Amended]

28. In § 178.354–3, in paragraph (c) introductory text, the section reference "§ 178.104–3(a)(1)" would be revised to read "paragraph (a)(1) of this section".

§ 178.354–5 [Amended]

29. In § 178.354–5, in paragraph (a), the wording "§ 173.24 of this chapter" would be revised to read "§ 178.3".

§ 178.356–4 [Amended]

30. In § 178.356–4, in paragraph (a), the wording "§ 173.24 of this subchapter" would be revised to read "§ 178.3".

§ 178.358–3 [Amended]

31. In § 178.358–3, the following changes would be made:

a. In paragraph (b)(6), the section reference "§ 178.121–5(c)" would be revised to read "§ 178.358–5(c)".

b. In paragraph (c), the section reference "§ 178.121–5(b)" would be revised to read "§ 178.358–5".

§ 178.358–5 [Amended]

32. In § 178.358–5, in paragraph (a), the wording "§ 173.24 of this subchapter" would be revised to read "§ 178.3".

§ 178.360–2 [Amended]

33. In § 178.360–2, the section reference "§ 178.34–4" would be revised to read "§ 178.360–4".

§ 178.362–3 [Amended]

34. In § 178.362–3, in paragraph (b), the section reference "§ 178.104–4" would be revised to read "178.354–4".

§ 178.364–5 [Amended]

35. In § 178.364–5, in paragraph (a), the wording "§ 173.24 of this subchapter" would be revised to read "§ 178.3".

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

36. The authority citation for part 180 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

37. In § 180.405, paragraph (c)(1) would be revised, paragraph (f)(7) would be redesignated as paragraph (f)(8) and new paragraph (f)(7) would be added to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(c) * * *

(1) A cargo tank made to a specification listed in Column 1 of Table 1 or Table 2 of this paragraph (c)(1) may be used when authorized in this part, provided—

(i) The cargo tank initial construction began on or before the date listed in Table 1, Column 2, as follows:

TABLE 1

Column 1	Column 2
MC 300	Sept. 2, 1967.
MC 301	June 12, 1961.
MC 302, MC 303, MC 304, MC 305, MC 310, MC 311.	Sept. 2, 1967.
MC 330	May 15, 1967.

(ii) The cargo tank was marked or certified before the date listed in Table 2, Column 2, as follows:

TABLE 2

Column 1	Column 2
MC 306, MC 307, MC 312	Sept. 1, 1995.

* * * * *

(f) * * *

(7) A cargo tank remarked and certified in conformance with this paragraph (f) is excepted from the provisions of paragraph (c) of this section.

* * * * *

Issued in Washington, DC on September 16, 1997, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–24973 Filed 9–23–97; 8:45 am]

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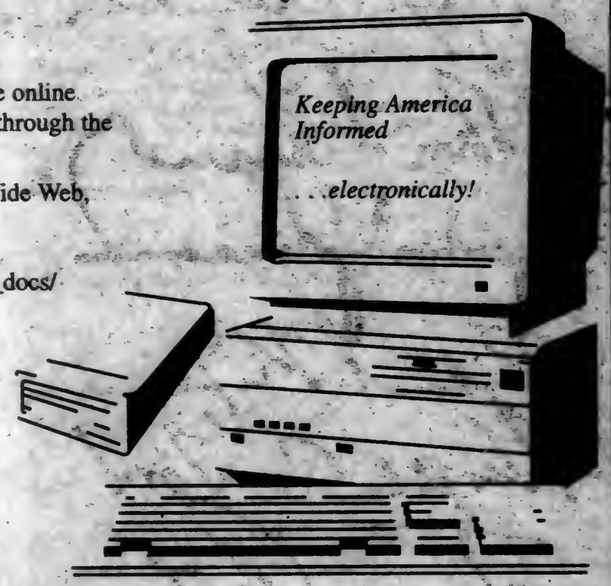
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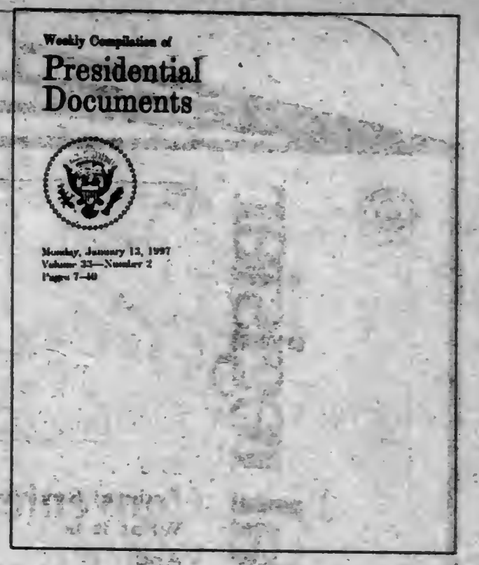
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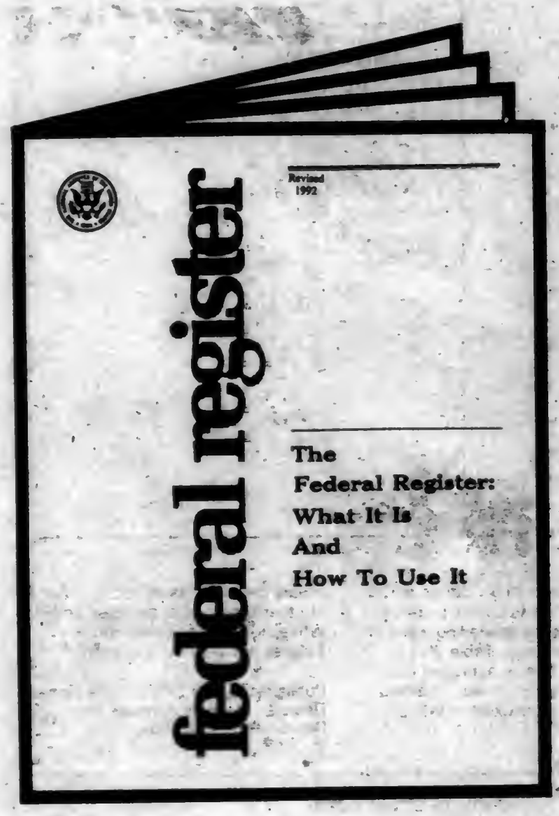
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Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 95–082–2]

Importation of Cut Flowers

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the cut flower regulations by eliminating the import permit and notice of arrival requirements for imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac. This action eliminates an unnecessary regulatory burden. The import permit and notice of arrival requirements were used to provide information about shipments. However, much of this information is available on cargo manifests. This action will not increase the risk of imported cut flowers introducing exotic plant pests into the United States, since all cut flowers, including cut flowers of camellia, gardenia, rhododendron, rose, and lilac, are routinely inspected upon arrival in the United States and, if necessary, fumigated.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road, Unit 139, Riverdale, MD 20737–1236, (301) 734–8891.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319.74 through 319.74–7 (referred to below as "the regulations") govern the importation of certain cut flowers into the United States. These regulations, among other things, require that all cut flowers imported into the United States be inspected for injurious plant pests and, if necessary, fumigated. Sections 319.74–2a, 319.74–4, and 319.74–5 of the regulations also require that persons wishing to import cut flowers of camellia (*Camellia* spp.), gardenia (*Gardenia* spp.), rhododendron (*Rhododendron* spp. [including Azalea]), rose (*Rosa* spp.), and lilac (*Syringa* spp.) into the United States apply for and receive a permit for importation, and that a notice of arrival be submitted to the Collector of Customs immediately after a shipment of these cut flowers arrives in the United States. The regulations do not require an import permit or notice of arrival for any other types of cut flowers.

On August 2, 1996, we published in the **Federal Register** (61 FR 40362–40364, Docket No. 95–082–1) a proposal to amend the regulations by eliminating the import permit and notice of arrival requirements for imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac. Because cut flowers of camellia, gardenia, rhododendron, rose, and lilac are the only types of cut flowers for which we have required an import permit or notice of arrival, we also proposed to remove all references to import permit and notice of arrival requirements from the regulations. In addition, we proposed to eliminate a provision allowing the Deputy Administrator of Plant Protection and Quarantine to deny certain importations of cut flowers into a State, Territory, or District of the United States by refusal of an import permit or by other means.

We solicited comments concerning our proposal for 30 days ending September 3, 1996. We received four comments by that date. They were from industry representatives. The comments are discussed below.

Pest Risk

All of the commenters expressed concern that the proposed removal of the import permit and notice of arrival requirements would result in an increased plant pest risk associated with imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac.

We do not believe that eliminating the import permit and notification requirements for cut flowers of camellia, gardenia, rhododendron, rose, and lilac will increase the risk of plant pest introduction into the United States. The import permit and notice of arrival requirements for cut flowers of camellia, gardenia, rhododendron, rose, and lilac were only used to collect information, such as country of origin, names and addresses of the shipper and consignee, and expected arrival date, about a shipment of these types of imported cut flowers. However, much of this information is available on a conveyance's cargo manifest. We do not expect that the elimination of these requirements will increase the volume of imported cut flowers, or pests in cut flower imports, entering the United States. Our inspection, not the import permit or notice of arrival, helps prevent the introduction of plant pests into the United States by determining the condition of a shipment of imported cut flowers. If an inspector determines that a shipment of cut flowers is infested with pests of concern, that shipment is fumigated, destroyed, or re-exported to help prevent the introduction of exotic plant pests into the United States. This rule does not affect our inspection procedures. Therefore, we are making no changes in response to this comment.

Budget

One commenter expressed concern that if the import permit and notice of arrival requirements for camellia, gardenia, rhododendron, rose, and lilac are eliminated, cut flowers will enter the United States in such great numbers at so many different ports of entry that APHIS will not have the funds to keep ports staffed with experienced inspectors of cut flowers.

We do not anticipate that this action will increase the number of imported cut flowers entering the United States because the import permit and notice of arrival requirements are information collection requirements only; they do not affect the number of importations or the manner of inspection of imported cut flowers upon arrival in the United States. APHIS has adequate personnel at all ports that may receive imported cut flowers to ensure that thorough inspections of shipments are performed and regulatory requirements are met. Cut flowers already enter the United States in large numbers through more than 50 international ports of entry. Staffing levels at these international ports, and at domestic ports of entry, have increased to accommodate inspections of rising levels of plant product imports into the United States. In terms of budget issues related to

staffing levels, user fees cover all Agriculture Quarantine Inspection activities, including the inspections of cut flowers entering the United States.

Propagation of Roses

One commenter noted that cut flowers of roses are easily propagated. The commenter felt that if the import permit and notice of arrival requirements for roses were eliminated, a pathway to circumvent requirements for postentry quarantine of propagative material would be made more readily available. The commenter remarked that current import permit requirements at least make the importer accountable for the ultimate disposition of the shipment.

An import permit is not signed by the permittee; therefore, the permittee has not made any agreement with APHIS as to the ultimate disposition of a shipment. The elimination of the permit requirement does not lessen the importer's duty to comply with other regulatory requirements on disposition. If a shipment of cut flowers is imported into the United States, it must be imported in accordance with the regulations.

Cut flowers are imported into the United States as consumption products to be used or sold for decorative purposes. Cut flowers are not imported for propagation. A very limited number of consumers may try to propagate cut flowers, but we regulate the importation of cut flowers based on the product's intended use as a consumption product. Therefore, we are making no changes in response to this comment.

Rhododendron

One commenter noted that when the final rule for the importation of plants in growing media was published, action regarding *Rhododendron* spp. was deferred pending decisions on issues related to the Endangered Species Act. The commenter suggested that if these issues have not yet been resolved, it may be prudent to postpone inclusion of *Rhododendron* spp. in the final rule.

The rulemaking referred to by the commenter initially proposed to allow five new species of plants to be imported into the United States in growing media. Because we determined that additional analysis was necessary with respect to *Rhododendron* spp. and issues related to the Endangered Species Act, we did not include *Rhododendron* spp. in that final rule.

Our regulations already allow the importation of cut flowers of *Rhododendron* spp. and, under certain conditions, nursery stock in bare root of *Rhododendron* spp. (see 7 CFR 319.37–2(b)). This rule makes no changes to the requirements for importing nursery stock, and is not expected to increase the volume of cut flowers of *Rhododendron* spp. imported into the United States. Less than a dozen shipments of cut flowers of *Rhododendron* spp. have been imported into the United States since the beginning of fiscal year 1994. Therefore, we are making no changes in response to this comment.

Accordingly, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. This action eliminates an unnecessary regulatory burden without increasing the risk of imported cut flowers introducing exotic plant pests, including plant diseases, into the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are eliminating the import permit and notice of arrival requirements for imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac.

The United States imported approximately $408 million worth of fresh cut flowers in 1994. Roses constituted the largest category of fresh cut flowers imported into the United States in 1994, accounting for 36 percent of the total value.

Although the United States imports cut flowers from many countries, in 1994, 5 countries represented approximately 92 percent of the total value of cut flowers imported into the United States. Colombia supplied the greatest percentage with 66 percent, followed by the Netherlands with 13 percent, Ecuador with 6.4 percent, Costa Rica with 3.7 percent, and Mexico with 3.3 percent. Also in 1994, 4 countries accounted for approximately 96.9 percent of the total value of rose imports into the United States; Colombia supplied the greatest percentage with 71.2 percent, followed by Ecuador with 13.6 percent, Mexico with 6.8 percent, and Guatemala with 5 percent.

Entities in the United States that could be affected by changes in cut flower import regulations are U.S. producers, importers, and wholesalers of cut flowers. Of the estimated 1,409 producers of cut flowers in the United States, approximately 85 percent are considered small entities. We do not expect that the volume of cut flowers imported into the United States will increase because of this rule, or that the pest risk presented by imported cut flowers will increase because of this rule. Therefore, we expect little, if any, change in the market price of cut flowers. As a result, we expect that the impact on producers of these varieties of cut flowers will be insignificant.

At this time, we cannot determine the number of importers of cut flowers. However, we do not expect this rule to affect the supply of cut flower importations, and, therefore, we expect any changes in costs or competition related to the importation of cut flowers of camellia, gardenia, rhododendron, rose, and lilac to be insignificant. As a result, we anticipate that the effect on importers of cut flowers of camellia, gardenia, rhododendron, rose, and lilac will be insignificant.

Of the estimated 3,043 wholesalers of cut flowers, approximately 96 percent are considered small entities. As stated earlier, we do not expect that the volume of cut flowers imported into the United States will increase, or that the pest risk presented by imported cut flowers will increase because of this rule. Therefore, we do not expect the price of cut flowers to be affected by this rule. As a result, we expect that the effect of this rule on wholesalers of imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac will be insignificant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Further, this rule eliminates the information collection or recordkeeping requirements in 7 CFR 319.74.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.74–1 [Amended]

2. In § 319.74–1, paragraph (c) is removed.

§ 319.74–2 [Amended]

3. Section 319.74–2 is amended as follows:

a. By removing paragraph (b).

b. By removing paragraph (c).

c. By removing the designation "(a)" preceding the first paragraph.

§ 319.74–2a [Removed]

4. Section 319.74–2a is removed.

§ 319.74–3 [Amended]

5. Section 319.74–3 is amended as follows:

a. By removing paragraph (b).

b. By redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

c. In paragraph (a), the first sentence, by removing the words "imported from the named foreign countries and localities, whether or not subject to permit requirements,".

d. In paragraph (a), the second sentence, by removing the reference "(d)" and adding in its place the reference "(c)".

§ 319.74–4 [Removed]

6. Section 319.74–4 and footnote 1 are removed.

§ 319.74–5 [Removed]

7. Section 319.74–5 is removed.

§ 319.74–6 [Redesignated]

8. Section 319.74–6 is redesignated as § 319.74–4.

§ 319.74–7 [Removed]

9. Section 319.74–7 is removed.

Done in Washington, DC, this 22nd day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25486 Filed 9–24–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 96–046–3]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, are subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables are required to meet other special conditions. The removal of these prohibitions provides the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

We are also amending the regulations to extend the production area in Arava, Israel, where peppers may be grown for importation into the United States; to eliminate the distribution restrictions for peppers from Arava, Israel; to eliminate the trust fund provisions for papayas from Costa Rica; to declare all Provinces in Chile free of the Mediterranean fruit fly; and to make several nonsubstantive editorial changes to the regulations. These actions relieve restrictions while continuing to prevent the introduction of plant pests into the United States.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Campbell, Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

On March 25, 1997, we published in the **Federal Register** (62 FR 14037–14044, Docket No. 96–046–1) a proposal to amend the regulations by allowing certain previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables had been prohibited because of the risk that the fruits and vegetables could introduce fruit flies or other injurious plant pests into the United States. We proposed to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses that indicated that the fruits or vegetables could be imported under certain conditions without significant pest risk.

We solicited comments concerning our proposal for 60 days ending May 27, 1997. We received 11 comments by that date. They were from representatives of industry and State governments. Six of the commenters supported the proposed rule in its entirety. The remaining 5 commenters had reservations about specific provisions of the proposed rule. Of those 5 commenters, 3 commenters had concerns about the proposed importation of papayas from Brazil. Upon further review and consideration of this issue, we are taking final action at this time on all portions of our March 27, 1997, proposed rule except the portion concerning papayas from Brazil. APHIS Docket No. 96–046–2 in this edition of the **Federal Register** seeks comment on our proposal to require a hot water treatment and require that certain actions be taken if fruit fly captures reach certain levels in the papaya production areas for the importation of papayas from both Brazil and Costa Rica. The proposal also seeks comment on any other issues involving the importation of papayas from Brazil.

The comments we have already received that raised concerns about actions other than the proposed importation of papayas from Brazil are discussed below.

Comment: Although the proposed rule mentions the risk associated with the introduction of injurious exotic insect pests and proposes criteria to prevent their movement into the United States with imported fruits and vegetables, the proposed rule does not refer to the possible introduction of exotic fungal, bacterial, and viral strains.

Response: The pest risk analysis prepared for each fruit or vegetable proposed for importation into the United States considers all of the injurious plant pests that might be associated with that fruit or vegetable. The term "pest" includes insect pests and all fungal, bacterial, and viral pathogens for which a plant may be a host. Our requirements for the importation of each fruit and vegetable covered in this rule present safeguards that we believe are adequate to prevent the introduction of all injurious plant pests into the United States.

Comment: More thorough pest risk analyses need to be prepared, and more thorough inspections need to be administered, to ensure that injurious plant pests do not enter the United States. Particularly without more detailed inspections, it is unreasonable to assume that any injurious plant pests will be, as stated in the proposed rule, "readily detectable by an inspector."

Response: All fruits and vegetables imported into the United States are subject to inspection at the port of entry in the United States by a U.S. Department of Agriculture (USDA) inspector. The inspector visually examines shipments for plant pests, or evidence of the presence of plant pests (for example, holes bored into fruit). When we say that certain plant pests are "readily detectable by an inspector," we mean that these pests can be detected upon visual examination. The level of inspection we provide for a given shipment takes into account a number of factors, including pest interception records and the relative risk presented by pests associated with a particular fruit or vegetable. We believe that our inspections are conducted in a manner that provides a high degree of assurance that we will detect plant pests if they are present.

Regarding our pest risk analyses, we believe that the pest risk analyses we prepare and the safeguards we propose effectively prevent the introduction of plant pests by the commodities proposed for entry. Our pest risk analyses follow the guidelines accepted by the United Nations' Food and Agriculture Organization, International Plant Protection Convention, and North American Plant Protection Organization and provide written documentation on the pest risk potential for organisms that rank high for the likelihood of introduction and establishment. Pest risk analyses prepared for our proposed rules are available for public review and comment during the public comment period for the proposed rules.

Comment: Due to the stem nematode *Ditylenchus dispaci*, basil from Guatemala and leeks from Belgium and the Netherlands should be fumigated in accordance with the same provisions proposed for garlic from Romania before entering the United States.

Response: Ditylenchus dispaci is widespread in the United States and, therefore, is not considered an exotic plant pest. It is not subject to the same stringent measures, such as fumigation, taken to prevent the introduction of exotic plant pests into the United States.

However, there are certain factors that will mitigate the risk of *Ditylenchus dispaci* entering the United States with a shipment of leeks from Belgium or the Netherlands. Nematodes, including *Ditylenchus dispaci*, are found in soil or on the roots of plants; the plant hosts of nematodes must be planted, or must have a considerable amount of soil attached, in order for the nematodes to survive. Neither roots nor soil will be attached to basil imported from Guatemala, and though a small number of root hairs may be attached to leeks imported from Belgium or the Netherlands, those leeks will be required, under 7 CFR 330.300, to be cleaned of soil before importation to the United States. Further, basil from Guatemala and leeks from Belgium and the Netherlands will be imported into the United States for human consumption, not propagation.

For all of these reasons, we are not making any changes to the proposed rule in response to this comment.

Comment: Leeks from Belgium and the Netherlands could introduce several mites and aphids which may carry several serious pathogens, including leek yellow stripe potyvirus, shallot latent virus, and white tip disease, into the United States. Therefore, further consideration needs to be taken before these leeks are allowed to enter the United States.

Response: Leek yellow stripe potyvirus and shallot latent virus are spread by insect vectors, such as mites and aphids, but these viruses are transmitted in a nonpersistent manner, that is, the virus only survives in the vector for a few minutes. Therefore, it is unlikely that a mite or aphid associated with leeks from Belgium or the Netherlands arriving in the United States would carry an active strain of either virus.

White tip disease is not transmitted by vectors, so it is unlikely that a mite or aphid associated with leeks from Belgium or the Netherlands would introduce this disease into the United States. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: Globodera rostochiensis and *Globodera pallida* cysts could infest leeks from both Belgium and the Netherlands, as well as garlic from Romania. However, these pests are not mentioned in the pest risk analysis for leeks. Further analysis of the risk associated with these pests should be completed before the importation of such leeks or garlic is approved.

Response: Long considered one species, the golden nematode (*Heterodera rostochiensis*), also referred to as the potato cyst nematode, includes in fact two distinct species forming the genus Globodera: *Globodera rostochiensis* and *Globodera pallida*. Golden nematode, as a collective reference to *Globodera rostochiensis* and *Globodera pallida*, creates cysts on the roots of host crops. These nematodes are not listed in the pest risk analysis for leeks from Belgium and the Netherlands or garlic from Romania because *Allium* spp. are not host crops for these nematodes.

In addition, as discussed earlier, neither roots nor soil will be attached to leeks imported from Belgium or the Netherlands, or to garlic from Romania. Therefore, we do not believe that nematodes of any species will be associated with these imports. Also, the risk that any nematode would be introduced and become established in the United States on imported leeks is minimized by the fact that the leeks are imported for human consumption, not propagation.

In the unlikely event that golden nematode is associated with a shipment of leeks from Belgium or the Netherlands or garlic from Romania, the cysts that this pest creates are readily detectable by inspection. If, upon inspection, a shipment of leeks from Belgium or the Netherlands or garlic from Romania is determined to be infested with golden nematode, the shipment would be destroyed or returned to its country of origin. Therefore, we are not making any changes to the proposed rule in response to this comment.

Comment: In order to limit the introduction into Florida of exotic pests, such as *Retithrips syriacus*, that may be associated with peppers from Israel, APHIS should continue to limit the distribution of peppers from Israel to the northern United States.

Response: Retithrips syriacus has been established in Florida for several years; therefore, this pest cannot be considered an exotic plant pest and is not subject to the same stringent quarantine measures taken to prevent the introduction of an exotic plant pest into the United States. As such, neither APHIS nor the State of Florida has promulgated regulations to restrict the movement of this pest. However, there is little risk of *Retithrips syriacus* or other plant pests entering the United States with a shipment of peppers from Israel's Arava Valley. In the Arava Valley, Israel, peppers are grown, sorted, and packaged in insect-proof screenhouses. This production method effectively controls pest populations in growing, sorting, and packaging areas and helps ensure that pests are not present in export shipments of peppers. Therefore, we are not making any changes to the proposed rule in response to this comment.

Comment: Eggplant is a host of the Mediterranean fruit fly (Medfly), and Medfly occurs in both Nicaragua and El Salvador. However, Medfly is not discussed in the pest risk analysis for eggplant from Nicaragua and El Salvador. The pest risk potential associated with the importation of eggplant should be determined prior to allowing the importation of eggplant from these two countries.

Response: Review of the scientific literature reveals that eggplant is a host of Medfly only when fully ripe and when other Medfly hosts are not available.

For this reason, we believe that eggplant imported from Nicaragua or El Salvador presents a relatively low risk of harboring Medfly. However, to further reduce the risk of Medfly associated with eggplant imported from Nicaragua and El Salvador, we are allowing only commercial shipments of eggplant from these countries to enter the United States. Commercial shipments, as defined in § 319.56–1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification is based on a variety of indicators, including, but not limited to: quantity of produce, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Eggplant produced for sale and distribution in mass markets is harvested at a stage of development when susceptibility to Medfly infestation is unlikely. Conversely, wild or "backyard" produce, including eggplant, is generally grown and handled under very different conditions than commercially-produced fruits and vegetables (e.g., wild or backyard produce usually involves different varieties of produce and different cultivating techniques, little or no pest control, and a lack of sanitary controls during growing and packing, such as removal and destruction of overripe and damaged fruit). As a result, there is reason to believe that wild or backyard produce presents a greater pest risk than commercially produced fruits and vegetables. This rule will not allow eggplant grown under these conditions to be imported into the United States.

Comment: In the pest risk analysis for eggplant from Nicaragua and El Salvador, APHIS states that it has not determined the pest risk potential for *Faustinius* spp., insect pests that may be carried into the United States with the eggplant. This pest risk needs to be determined, and if necessary additional mitigation measures taken, before eggplant from Nicaragua or El Salvador is allowed entry into the United States.

Response: Because we are limiting imports of eggplant to commercial shipments, as discussed above, we expect the measures taken by commercial growers in Nicaragua and El Salvador to prevent the introduction of injurious plant pests, including *Faustinius* spp., into the United States. However, there are other factors that help mitigate the risk of the introduction of *Faustinius* spp. into the United States. Larvae of the *Faustinius* spp. bore into the shoots and stems of eggplant to pupate and are only very occasionally associated with the fruit of eggplant. Because § 319.56–2(a) of the regulations requires all importation of fruits and vegetables to be free of plants or portions of plants, all but a very small portion of an eggplant's stem is removed prior to shipment to the United States. Therefore, we do not expect *Faustinius* spp. to be associated with eggplant from Nicaragua or El Salvador.

Certain species of *Faustinius* are established in areas of the United States, and these species are therefore not considered exotic pests and are not subject to the same stringent quarantine measures taken to prevent the introduction of an exotic plant pest into the United States. However, at the U.S. port of entry inspection, the holes created by the larvae in the stems or fruit of any eggplant infested with *Faustinius* would be readily detectable, and an infested shipment of eggplant would not be released until APHIS personnel have identified the pests within the shipment. If a shipment of eggplant from Nicaragua or El Salvador is determined to be infested by an exotic species of *Faustinius*, the shipment would be destroyed or returned to its country of origin. Therefore, we are making no changes to the proposed rule in response to this comment.

Miscellaneous

We are not revising the incorporation by reference of the Plant Protection and Quarantine Treatment Manual at § 300.1 of the regulations, as we proposed, because the treatment schedule for the methyl bromide fumigation of garlic borer (*Brachycerus* spp.) and garlic moth (*Dyspessa ulula* [Bkh.]) will not change. The countries from which garlic may be exported to the United States, including Romania, are only listed in § 319.56–2g of the regulations; the PPQ Treatment Manual does not list those eligible countries and therefore does not require revision.

We are also making several nonsubstantive editorial changes to the regulations for clarity and consistency.

Therefore, based on the rationale presented in our proposed rule and in this document, we are adopting the provisions of the proposed rule, with exception of the proposed importation of papayas from Brazil, as a final rule with the changes described above.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, set forth below,

regarding the economic impact of this rule on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities.

Under the Federal Plant Pest Act and the Plant Quarantine Act (7 U.S.C. 150dd, 150ee, 150ff, 151–165, and 167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This rule amends the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain foreign countries and localities under specified conditions. The importation of these fruits and vegetables had been prohibited because of the risk that they could have introduced injurious plant pests into the United States.

In our proposal, we solicited comments on the potential effects of the proposed action on small entities. In particular, we sought data and other information to determine the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received no comments on the Initial Regulatory Flexibility Analysis contained in the proposed rule.

Our rule is based on pest risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The pest risk analyses indicate that the fruits or vegetables listed in this rule can, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, are subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables are required to undergo mandatory treatment for injurious plant pests as a condition of entry, or to meet other special conditions. This action provides the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction into the United States of injurious plant pests by imported fruits and vegetables.

Availability of Data

For many of the commodities made eligible for importation into the United States by this document, data on the levels of production and the anticipated import volume is unavailable for a number of reasons. First, many of these commodities are not produced in significant quantities either in the United States or in the country that would be exporting the commodity to the United States; generally, less statistical data is collected—and therefore available—for commodities produced in small quantities when compared to a country's more heavily-produced commodities. Second, some of these commodities do not appear to be produced in the United States at all; therefore, data on the U.S. production and export levels for those commodities does not exist. Finally, estimates of potential exports of commodities from foreign countries to the United States are often difficult to obtain, due in part to the uncertainty surrounding the cost and availability of transportation and the demand for the commodity in the United States.

Leeks from Belgium

No information is available on U.S. production of leeks. Data is available, however, on U.S. exports and imports of the commodity. In 1995, the United States imported 2,764 metric tons of leeks, an increase over the 1993 and 1994 levels (2,328 metric tons and 2,042 metric tons, respectively). In 1995, the United States exported 3,279 metric tons of leeks, also an increase over the 1993 and 1994 levels (2,519 metric tons and 2,708 metric tons, respectively).

The fact that the United States exports leeks suggests that the commodity is produced in the United States. However, the volume of exports suggests that the level of production is low relative to other, more popular vegetables.

Data on the number or size of leek producers in the United States is not available. However, since most U.S. vegetable and melon farms are small by Small Business Administration (SBA) standards, it is very likely that the U.S. farms that produce leeks are also small.

Data on the volume of potential exports of leeks from Belgium to the United States is not available.

Radicchio from Ecuador

Data on radicchio production for the entire United States is not available. However, production data is available for the State of California, where most, if not all, of U.S. radicchio is produced. In 1994, California produced 7,040 metric tons of radicchio, an increase over the State's 1993 volume of 6,387 metric tons. California's 1994 production had a value of $7.7 million. No information on U.S. (or California) trade in radicchio is available.

Data on the number or size of radicchio producers in the United States (or California) is not available. However, since most U.S. vegetable and melon farms are considered small by SBA standards, it is very likely that the U.S. farms that produce radicchio are also small.

Information on Ecuador's production and export of radicchio, including potential exports to the United States, is not available.

Eggplant from El Salvador

In 1995, the United States produced 28,710 metric tons of eggplant, with a value of $16.2 million. In 1993 and 1994, domestic production levels were 34,160 metric tons and 35,380 metric tons, respectively. U.S. production has been supplemented by a steadily growing level of eggplant imports, 18,154 metric tons in 1993, 21,302 metric tons in 1994, and 24,946 metric tons in 1995. The United States is a net importer of eggplant, as exports of the commodity from the United States did not exceed 9,090 metric tons in any of the years between 1993 and 1995.

In 1992, the latest year for which data is available, eggplant was produced at 2,203 farms in the United States. It is not known how many of these farms are considered small entities under SBA standards, since information as to their size is not available. However, most are probably small, since most vegetable and melon farms in the United States are small.

Data on the volume of eggplant production in El Salvador is not available. Data on the volume of potential exports of eggplant from El Salvador to the United States is also not available.

Basil and Dill from Guatemala

Information on U.S. production and exportation of basil is not available, but indicators suggest that basil is not grown commercially in significant quantities in the United States. In 1995, the United States imported 3,404 metric tons of basil with a value of $4.9 million. U.S. basil imports in 1994 and 1993 were 3,216 metric tons and 2,449 metric tons, respectively.

Information on U.S. production and exportation of dill is not available, but indicators suggest that dill, like basil, is not grown commercially in significant quantities in the United States. In 1995, the United States imported 766 metric tons of dill with a value of $1.0 million. U.S. dill imports in 1994 and 1993 were 949 metric tons and 828 metric tons, respectively.

Guatemala currently produces basil and dill for its local market only. No data is available on the exact level of basil or dill production in Guatemala, but the volume is believed to be very small. Data on the volume of potential exports of these commodities from Guatemala to the United States is not available.

Mioga Ginger from Japan

No information is available on U.S. production or exportation of the flowers, leaves, and stems of mioga ginger. The absence of such data suggests that commercial production of mioga ginger in the United States is negligible, at most. Mioga ginger is a spice, and most spices are not grown commercially in significant quantities in the United States. Data on U.S. imports of mioga ginger is also not available.

Japan produced 6,638 metric tons of mioga ginger in 1994. No information is available on the potential volume of exports of this commodity from Japan to the United States. At the present time, all mioga ginger produced in Japan is consumed locally; none is exported.

Leeks from the Netherlands

Data on U.S. production and trade of leeks is discussed above under the heading "Leeks from Belgium."

In 1994, the Netherlands produced 102,727 metric tons of leeks, and its exports of leeks that year totaled 43,764 metric tons. In 1995, the Netherlands exported 51,062 metric tons of leeks, with just over 50 percent of those exports directed to Germany. Potential exports of leeks from the Netherlands to the United States could reach 1,000 metric tons annually, depending on such factors as the cost and availability of air transportation and demand in the United States. However, as the United States is a net exporter of leeks, it is doubtful that consumer demand in the United States will encourage a substantial volume of leek imports from the Netherlands.

Eggplant from Nicaragua

Data on U.S. production and trade of eggplant is discussed above under the heading "Eggplant from El Salvador."

To date, all of the eggplant produced commercially in Nicaragua has been consumed locally. No data is available, however, on the volume of eggplant production in Nicaragua. In addition, no data on the volume of potential exports of eggplant from Nicaragua to the United States is available. However, relatively small quantities are likely to be imported. In 1993, for example, Nicaragua produced little or no eggplant, and its production of all vegetables and melons that year totaled only 59,000 metric tons. By comparison, U.S. supply (domestically produced and imported) of eggplant alone in 1993 totaled 52,314 metric tons, just slightly less than Nicaragua's entire vegetable and melon production that year.

Radicchio from Nicaragua

Data on the production of radicchio in California is discussed above under the heading "Radicchio from Ecuador."

Nicaragua currently produces radicchio for its local market. No data is available on the exact volume of radicchio production in Nicaragua, but the volume is believed to be very small. Data on the volume of potential exports of radicchio from Nicaragua to the United States is also not available.

Garlic from Romania

In 1995, the United States produced 232,010 metric tons of fresh garlic, valued at $179.8 million. In 1993 and 1994, domestic production levels were 188,690 metric tons and 208,200 metric tons, respectively. While U.S. production has been growing rapidly, U.S. imports of garlic have steadily declined, 39,381 metric tons in 1993, 21,705 metric tons in 1994, and 18,594 metric tons in 1995. U.S. exports of the commodity have also steadily declined, from 11,274 metric tons in 1993 to 7,659 metric tons in 1995.

In 1992, garlic was produced at 619 U.S. farms. It is not known how many of these farms are considered small entities under SBA standards, since information as to their size is not available. However, most are probably small, since most vegetable and melon farms in the United States are small.

In 1995, Romania produced 58,000 metric tons of garlic, an increase over the country's 1994 and 1993 production levels (56,400 metric tons and 48,900 metric tons, respectively). In 1996, Romanian garlic production is estimated to have fallen to approximately 50,000 metric tons, due to unfavorable weather conditions. Data on the volume of potential exports of garlic from Romania to the United States is not available. However, trade sources within Romania indicate that the prospects for future exports to the United States are reduced, owing to both the high price and low quality of Romanian garlic.

The alternative to this rule was to make no changes in the regulations. After consideration, we rejected this alternative because there is no biological reason to prohibit the importation into the United States of the fruits and vegetables listed in this document.

The information collection requirements contained in this rule, which were described in the proposed rule, have been submitted for approval to the Office of Management and Budget.

Executive Order 12988

This rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule will be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.56–2 [Amended]

2. In § 319.56–2, paragraph (j) is amended by removing the words "except Arica, Iquique, and Parinacota".

3. In § 319.56–2g, paragraph (e) is revised to read as follows:

§ 319.56–2g Administrative instructions prescribing method of treatment of garlic from specified countries.

(e) Except as otherwise provided in these administrative instructions, fumigation with methyl bromide in

vacuum fumigation chambers, in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter, is a condition of entry under permit for all shipments of garlic (*Allium sativum*) from Algeria, Armenia, Austria, Azerbaijan, Czech Republic, Egypt, Estonia, France, Georgia, Germany, Greece, Hungary, Iran, Israel, Italy, Latvia, Lithuania, Moldova, Morocco, Portugal, Romania, the area of the Russian Federation west of the Ural Mountains, Slovakia, South Africa (Republic of), Spain, Switzerland, Syria, Turkey, Ukraine, and the area of the former Yugoslavia. Fumigation is to be carried out under the supervision of a plant quarantine inspector and at the expense of the importer. While it is believed that the garlic will be unaffected by the fumigation, the treatment will be at the importer's risk. Such entry will be limited to ports named in the permits, where approved facilities for vacuum fumigation with methyl bromide are available.

* * * * *

§ 319.56–2r [Amended]

4. In § 319.56–2r, paragraph (a)(1) is amended by removing the words ", and West Germany", by adding the word "Germany," immediately following the word "France", and by adding the word "and" immediately following the word "Sweden,".

5. In § 319.56–2t, the table is amended by adding, in alphabetical order, the following entries:

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
Belgium	Leek	*Allium* spp.	Whole plant. (Must be accompanied by a phytosanitary certificate issued by the Ministry of Agriculture of Belgium stating that the leek is apparently free of *Acrolepiopsis assectella.*)
Ecuador			
	Radicchio	*Cichorium* spp.	Above ground parts.
El Salvador			
	Eggplant	*Solanum melongena.*	Fruit, commercial shipments only.
Guatemala			
	Basil	*Ocimum* spp	Above ground parts.
	Dill	*Anethum graveolens.*	Above ground parts.
Japan	Mioga Ginger	*Zingiber mioga*	Above ground parts.
Netherlands	Leek	*Allium* spp.	Whole plant. (Must be accompanied by a phytosanitary certificate issued by the Ministry of Agriculture of The Netherlands stating that the leek is apparently free of *Acrolepiopsis assectella.)*
Nicaragua			
	Eggplant	*Solanum melongena.*	Fruit, commercial shipments only.
	Radicchio	*Cichorium* spp.	Above ground parts.

* * * * *

§ 319.56–2u [Amended]

6. Section 319.56–2u is amended as follows:

a. In paragraph (b)(1), by removing the words "in the Paran region of".

b. In paragraph (b)(2), by removing the word "Paran" and by adding in its place the words "the Arava Valley".

c. By removing paragraph (b)(6) and redesignating paragraphs (b)(7) through (b)(9) as paragraphs (b)(6) through (b)(8), respectively.

d. In newly designated paragraph (b)(6), by removing the word "Paran" and by adding in its place the words "the Arava Valley".

e. In newly designated paragraph (b)(7), by removing the word "Paran" and by adding in its place the words "the Arava Valley".

7. Section 319.56–2w is revised to read as follows:

§ 319.56–2w Administrative instruction; conditions governing the entry of papayas from Costa Rica.

The Solo type of papaya may be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands from the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica, only under the following conditions:

(a) The papayas were grown and packed for shipment to the United States in the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica.

(b) Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the field where the papayas were grown were kept free of papayas that were ½ or more ripe (more than ¼ of the shell surface yellow), and all culled and fallen fruits were removed from the field at least twice a week.

(c) When packed, the papayas were less than ½ ripe (the shell surface was no more than ¼ yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

(d) The papayas were packed in an enclosed container or under cover so as to prevent access by fruit flies and other injurious insect pests, and were not packed with any other fruit, including papayas not qualified for importation into the United States.

(e) All activities described in paragraphs (a) through (d) of this section were carried out under the general supervision and direction of plant health officials of the national Ministry of Agriculture.

(f) Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at a rate of 1 trap per hectare and were checked for fruit flies at least once weekly by plant health officials of the national Ministry of Agriculture. Fifty percent of the traps were of the McPhail type, and fifty percent of the traps were of the Jackson type. The national Ministry of Agriculture kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors upon request. The records were maintained for at least 1 year.

(g) All shipments must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

Done in Washington, DC, this 22nd day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25488 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 321, and 330

[Docket No. 97–010–2]

Foreign Potatoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations concerning imported plants and plant products to prohibit the importation of potato tubers from Bermuda and to prohibit the importation of potato plants from Newfoundland and a portion of Central Saanich, British Columbia, Canada. These changes appear necessary to prevent the introduction of foreign potato diseases and insect pests into the United States. We are also reorganizing and streamlining the regulations concerning the importation of potatoes into the United States. These changes remove unnecessary regulations and relieve restrictions that no longer appear warranted.

EFFECTIVE DATE: October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, Staff Officer, Import-Export Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236; (301)–734–6799; fax (301)–734–5786; or e-mail: jpdmange@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations concerning the importation of foreign potato tubers have been contained in 7 CFR part 321, Restricted Entry Orders, Subpart—Foreign Potatoes (referred to below as the Foreign Potatoes regulations). The Foreign Potatoes regulations have allowed the importation of potato tubers from Bermuda and Canada (except for Newfoundland and a portion of South Saanich, British Columbia) without restriction. The Foreign Potatoes regulations also have contained provisions for importing potato tubers from other countries that are free of injurious potato diseases and insect pests that are new to or not widely distributed throughout the United States. However, only Bermuda and parts of Canada have been considered free of injurious potato diseases and insect pests.

The regulations concerning the importation of foreign potato plants are contained in 7 CFR 319.37 through 319.37–14, Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products (referred to below as the Nursery Stock regulations). The Nursery Stock regulations prohibit the importation of potato plants from all parts of the world except Canada.

The regulations concerning the importation of most foreign fruits and vegetables are contained in 7 CFR 319.56 through 319.56–8, Subpart—Fruits and Vegetables (referred to below as the Fruits and Vegetables regulations). The Fruits and Vegetables regulations have referred readers to the Foreign Potatoes regulations for rules governing the importation of potatoes.

These regulations are intended to prevent the introduction of foreign plant diseases and insect pests into the United States.

On May 7, 1997, we published in the **Federal Register** (62 FR 24849–24851), Docket No. 97–010–1), a proposal to prohibit the importation of potato plants from Newfoundland and a portion of Central Saanich, British Columbia, Canada. We also proposed to prohibit the importation of potato tubers from Bermuda. These actions were intended to prevent the introduction of foreign potato diseases and insect pests into the United States. Further, we proposed to move the prohibitions on the importation of potato tubers from Bermuda, parts of Canada (Newfoundland and a portion of Central Saanich, British Columbia), and all other parts of the world from the Foreign Potatoes regulations to the Nursery Stock regulations. In conjunction with this change, we proposed to remove the Foreign Potatoes regulations from the Code of Federal Regulations, since the remainder of the regulatory text appeared to be unnecessary. We also proposed to amend the Fruits and Vegetables regulations to refer readers to the Nursery Stock regulations, rather than the Foreign Potatoes regulations, for rules governing the importation of potatoes. These actions were intended to consolidate the regulations for importing potatoes into one place and eliminate provisions that are not being used.

We also proposed to make an editorial change in the Federal Plant Pest regulations, contained in 7 CFR part 330.

We solicited comments concerning our proposal for 60 days ending July 7, 1997. We received two comments by that date. They were from representatives of a State government and State University students. Both comments fully supported the proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule moves the prohibitions on importing potato tubers from part 321 to subpart 319.37, prohibits the importation of potato tubers from Bermuda, and prohibits the importation of potato plants from Newfoundland and a portion of Central Saanich, British Columbia, Canada. These actions are not expected to have any economic impact. There have been no requests to import potato tubers from Bermuda, no record of shipments of potato tubers from Bermuda, and Bermuda has no potato tuber production for export. Canada does not allow potato tubers or plants to move from Newfoundland or the portion of Central Saanich that is covered by this rule due to the presence of potato wart disease and golden nematode.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 321

Imports, Plant diseases and pests, Potatoes, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly title 7, chapter III, is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.37–2 paragraph (a), the table is amended by revising the entry for Solanum spp. (potato) to read as follows.

§ 319.37–2 Prohibited Articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
* * *	* * *	* * *
Solanum spp. (potato) (tuber bearing species only-Section Tuberarium), including potato tubers.	All except Canada (except Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road.	Andean potato latent virus; Andean potato mottle virus; potato mop top virus; dulcamara mottle virus; tomato blackring virus; tobacco rattle virus; potato virus Y (tobacco veinal necrosis strain); potato purple top wilt agent; potato marginal flavescence agent; potato purple top roll agent; potato witches broom agent; stolbur agent; parastolbur agent; potato leaflet stunt agent; potato spindle tuber viroid; arracacha virus B; potato yellowing virus.
* * *	* * *	* * *

* * * * *

3. In § 319.56–2, footnote 1 and the reference to it are removed, footnote 2 and the reference to it are redesignated as footnote 1, and paragraph (c) is revised to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(c) Fruits and vegetables grown in Canada may be imported into the United States without restriction under this subpart; *provided*, that potatoes from Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road are prohibited importation into the United States in accordance with § 319.37–2 of this part.

* * * * *

PART 321—[REMOVED]

Under the authority of 7 U.S.C. 136, 136a, 154, 159, and 162; 7 CFR, Chapter III, is amended by removing "Part 321—Restricted Entry Orders."

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, and QUARRY PRODUCTS; GARBAGE

4. The authority citation for part 330 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd–150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.22, 2.80, and 371.2(c).

5. In § 330.300a, the words "South Saanich" are removed and the words "Central Saanich" are added in their place.

Done in Washington, DC, this 22nd day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25489 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV97–981–3 FIR]

Almonds Grown in California; Revision to Requirements Regarding Inedible Almonds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule revising the administrative rules and regulations of the California almond marketing order regarding inedible almonds. Under the terms of the order, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to non-human consumption outlets. This rule allows alternative methods of determining handlers' inedible disposition obligations in such instances. It will add flexibility to the order's rules and regulations and will help ensure that the integrity of the quality control provisions is maintained.

EFFECTIVE DATE: October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule revises the administrative rules and regulations of the California almond order regarding inedible almonds. Under the terms of the order, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to non-human consumption outlets. The quantity of almonds required to be disposed of is the handler's inedible disposition obligation. However, there are times when an incoming inspection sample may not be drawn, may be lost, or the size of the sample drawn may be too small for an inedible weight to be determined. This rule provides handlers with the opportunity in such cases to substantiate to the Board the weight of almonds received, the edible and inedible kernel weights, and the adjusted kernel weight. Such information can often be obtained from an outgoing inspection certificate. The inedible disposition obligation may then be based on that information. If a handler is only able to substantiate the approximate weight of almonds received, an inedible disposition obligation of 10 percent of the weight of almonds received in that particular lot may be applied, upon agreement between Board staff and the handler. The appropriate weight received can often be obtained from a weighmaster's weight certificate. In adding these procedures to the text of the rules and regulations, this rule will add flexibility to the rules and regulations and will help ensure that the integrity of the quality control provisions of the order is maintained. This change was unanimously recommended by the Board.

Section 981.42(a) of the almond order requires handlers to obtain incoming inspection on almonds received from growers to determine the percent of inedible kernels in any variety. Handlers are required to report such inedible determination for each lot received to the Board. Inedible kernels are those kernels, pieces, or particles of kernels with any defect scored as serious damage (excluding the presence of web and frass), or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Grades of Shelled Almonds, or which have embedded dirt not easily removed by washing. Edible kernels are kernels, pieces, or particles of almond kernels that are not inedible. Section 981.42(a) also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to

the administration of the order's incoming quality control provisions.

Section 981.442(a)(4) of the order's administrative rules and regulations specifies that the weight of inedible kernels in each lot of any variety of almonds in excess of 1 percent of the kernel weight received by a handler shall constitute such handler's inedible disposition obligation. Inedible kernels accumulated in the course of processing must be disposed of in non-human consumption outlets such as Board approved oil crushers, feed manufacturers, and animal feeders. Requiring handlers to meet this obligation helps to ensure that each handler's outgoing shipments of almonds are relatively free of almonds with serious damage, and the number of kernels with minor damage should be minimal. Thus, the intent of the order's inedible program is to help ensure that only quality almonds are ultimately shipped into market channels.

At a meeting on May 9, 1997, the Board recommended that § 981.442 of the order's administrative rules and regulations be revised to allow alternative methods of establishing handlers' inedible disposition obligations in certain instances. The Board recommended that this rule be in effect for the beginning of the 1997–98 crop year which began on August 1, 1997.

Discussions at this and prior meetings of the Board's Quality Control Committee indicated that a considerable amount of activity occurs at handlers' facilities when handlers are receiving almonds from growers. For example, handlers may be receiving, moving, processing, and shipping several lots of almonds at a rapid pace. During this time, incoming inspection for some lots of almonds may be inadvertently missed due to the high level of activity. In addition, samples are occasionally lost or the size of the samples drawn are too small for kernel weight determinations. Board staff commented that there are instances where handlers notice that an error was made and contact the Board's staff in an effort to comply with the order's rules and regulations. Board staff also indicated that this is not a large problem but that it does occur occasionally.

Thus, the Board recommended that for any lot of almonds where a sample is not drawn, is lost, or is too small for the kernel weight to be determined, the handler may establish and substantiate, to the Board's satisfaction, the weight of the almonds received, the edible and inedible kernel weights, and the adjusted kernel weight. Adjusted kernel weight means the actual gross weight of any lot of almonds less the following: the weight of containers; moisture of kernels in excess of 5 percent; shells (if applicable); processing loss of 1 percent for deliveries with less than 95 percent kernels; and trash or other foreign material. In such instances, the handler's inedible disposition obligation will be based on that information. If the handler is only able to establish and substantiate the approximate received weight, an inedible disposition obligation of 10 percent of such received weight may be applied, upon agreement between Board staff and the handler.

This change will add flexibility to the order and will help ensure that the integrity of the order's quality control provisions is maintained. The Board estimates that for the past 3 years, about 3.05 percent of the almonds received by handlers from growers were inedible. Thus, the Board's recommended 10 percent disposition obligation for lots of almonds where an inedible weight was not determined exceeds historical averages. This should provide a disincentive for handlers to purposely avoid inspection, while providing handlers an opportunity to maintain compliance with order requirements.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 97 handlers of California almonds who are subject to regulation under the marketing order and approximately 7,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 58 percent of the handlers ship under $5,000,000 worth of almonds and 42 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $156,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule revises the administrative rules and regulations of the almond order regarding inedible almonds. Section 981.42(a) of the order requires handlers to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Section 981.42(a) also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of the order's incoming quality control provisions.

Under § 981.442(a)(4) of the order's administrative rules and regulations, handlers are required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible in non-human consumption outlets. However, there are times when a sample may not be drawn, may be lost, or the size of the sample drawn may be too small for an inedible kernel weight to be determined. This rule revises § 981.442(a)(4) to allow a handler's inedible disposition obligation in such cases to be based on documentation provided by the handler, to the satisfaction of Board staff. If sufficient documentation is not available, an inedible disposition obligation of 10 percent of the received weight may be applied. This change adds flexibility to the regulations while maintaining the integrity of the order's quality control provisions. This rule was unanimously recommended by the Board and will be in effect beginning with the 1997–98 season which began on August 1, 1997.

Regarding the impact of this rule on handlers and growers in terms of cost, providing handlers with the option of accepting an inedible disposition obligation based on appropriate documentation or accepting an obligation of 10 percent for lots where a sample was not drawn, was lost, or was too small for an inedible weight to be determined are options that will be made available to all handlers, both large and small. Handlers receive lower prices for inedible almonds that must be sold in non-human consumption outlets as opposed to edible almonds that can be sold in normal market channels. For example, handlers receive about 28–35 cents per pound for almonds used for crushing into oil and about 2–3 cents per pound for almonds used for animal feed. Price levels for sales of edible almonds to normal market outlets vary significantly from year to year depending on available supplies and market conditions and can range from $1.00–$3.00 per pound. If inedible almonds were allowed to be sold in normal market channels, consumer and buyer satisfaction would likely decrease because poor quality almonds were being made available. Buyers would likely purchase fewer almonds and demand for almonds would thus decline, which would in turn decrease returns to growers and handlers, both large and small.

Thus, this rule will add flexibility to the rules and regulations and help ensure that the integrity of the order's quality control provisions is maintained. As previously mentioned, the Board estimates that for the past 3 years, about 3.05 percent of the almonds received by handlers from growers were inedible. The Board's recommended 10 percent disposition obligation for lots where an inedible weight was not determined exceeds historical averages. This rule also provides handlers an opportunity to maintain compliance with order requirements.

An alternative to this change would be to not incorporate these options into the order's administrative rules and regulations. Thus, in cases where an inedible disposition obligation was inadvertently not obtained, such handlers would be considered to be out of compliance with order requirements and subject to penalties under the Act. However, the Board determined that it would be in the industry's best interest to provide alternative methods of determining inedible disposition obligations. This will allow handlers additional options in the rules and regulations to remain in compliance with order requirements and the integrity of the order's incoming quality control program will still be maintained.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the May 9, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Quality Control Committee met on April 23, 1997, and discussed this inedible disposition obligation issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons were invited to submit information on the regulatory and information impacts of this action on small businesses.

An interim final rule concerning this action was issued by the Department on July 8, 1997, and published in the Federal Register on July 14, 1997 (62 FR 37485). Copies of the rule were mailed or sent via facsimile to all almond handlers. Finally, a copy of the rule was made available through the Internet by the Office of the Federal Register. No comments were received in response to the interim final rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing this interim final rule, without change, as published in the **Federal Register** (62 FR 37485, July 14, 1997), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 981—ALMONDS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR 981 which was published at 62 FR 37485 on July 14, 1997, is adopted as a final rule without change.

Dated: September 19, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–25412 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 999

[Docket No. FV97–999–1 IFR]

Specialty Crops; Import Regulations; Extension of Reporting Period for Peanuts Imported Under 1997 Import Quotas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule removes the 23-day reporting requirement and establishes a new date for importers to report disposition of peanuts imported under 1997 peanut import quotas. This rule also establishes a 120-day reporting period for any peanuts imported after the 1997 import quotas are filled. The 23-day reporting period established in the import regulation is impractical given the volume of peanuts imported under January 1 and April 1 peanut import quotas. This is an administrative change for the 1997 peanut quota periods only. This rule is deemed necessary by the Agricultural Marketing Service (AMS) to provide peanut importers with sufficient time to meet the quality and reporting requirements of the peanut import regulation.

DATES: Effective Setpember 29, 1997. Comments received by October 27, 1997 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; fax 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Senior Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; tel: (202) 720–6862; fax (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box

96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule amends the peanut import regulation published in the June 19, 1996, issue of the **Federal Register** (61 FR 31306, 7 CFR part 999.600), which regulates the quality of imported peanuts. An amendment to the regulation was issued December 31, 1996 (62 FR 1249, January 9, 1997). The import regulation is effective under subparagraph (f)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3), as amended November 28, 1990, and August 10, 1993, and section 155 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7271). Those statutes provide that the Secretary of Agriculture (Secretary) shall require that all peanuts in the domestic and export markets fully comply with all quality standards under Marketing Agreement No. 146 (7 CFR part 998) (Agreement), issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the regulations, disposition of imported peanuts must be reported to AMS within an established time period. This rule changes that time period and is intended to apply to Mexican peanuts imported from January 1, 1997, to December 31, 1997, and to Argentine and "other country" peanuts imported from April 1, 1997, to March 31, 1998. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This interim final rule amends, for the 1997 peanut quota year, a provision in § 999.600 of the regulations governing imported peanuts (7 CFR part 999—Specialty Crops; Import Regulations). Section 999.600 establishes minimum quality, identification, certification, and safeguard requirements for foreign produced farmers stock, shelled and cleaned-inshell peanuts presented for importation into the United States. The quality requirements are the same as those specified in § 998.100 Incoming quality regulation and § 998.200 Outgoing quality regulation of the Agreement.

Discussion

The import regulation was finalized June 19, 1996 (61 FR 31306). At that time, three duty-free peanut quotas for 1996 had been filled and no peanuts were entered under duty for the remainder of 1996. Therefore, the peanut import regulation had its first practical application with the opening of the Mexican peanut quota on January 1, 1997.

Under the safeguard procedures, importers are required to report to AMS disposition of all imported peanuts. Paragraph (f)(3) of the regulations sets a 23 day period for filing certificates of inspection and aflatoxin testing. Sixty day extensions are possible, but requests for these must be filed within the 23-day reporting period. The reporting period and procedures for extension were established with the expectation that three duty-free quotas would fill gradually during the quota year. However, this did not occur. The Mexican quota of 8.1 million pounds closed approximately 5 weeks after the January 1, 1997 opening. The Argentine quota of 73.5 million pounds and the "other country" quota of 13.3 million pounds filled immediately at 12:00 noon on opening day, April 1, 1997. Importers' applications to enter peanuts under the Argentine and "other country" quotas greatly exceeded the quota volumes for these countries. After pro-rata distribution of those quotas (based on the total peanut volume in each importer's entry applications), the Customs Service set April 15 as the entry date for approximately 86.8 million pounds of peanuts under the two quotas.

Because of the large volume of peanuts simultaneously released on April 15, 1997, importers have been unable to meet the 23-day reporting deadline for many of their imported lots. Obstacles to expedient certification of such large volumes of imported peanuts included: (1) Logistics of moving containers out of some congested port areas and into storage; (2) arranging for sampling and inspection, and receiving certifications; and (3) arranging for and transporting failing lots to facilities for reconditioning and recertification.

Therefore, this rule establishes a new reporting date of November 1, 1997, for reporting disposition of all peanuts entered under the 1997 import quotas. It also provides for an extension of the reporting period beyond November 1. Requests for extensions must be made in writing and include the Customs Service entry number, container and lot information for the unreported peanut lot(s), and the reason for delay in meeting the November 1 reporting date. AMS will evaluate each request on a case-by-case basis.

Peanuts may continue to be imported into the United States after the import quotas are closed (with payment of tariff charges). Therefore, this rule also provides that disposition of any peanuts imported after the 1997 import quotas close must be reported within 120 days after the peanuts are entered by the Customs Service.

As a compliance measure, paragraph (f)(4) provided that the Secretary would ask the Customs Service to demand redelivery of peanut lots not reported as meeting the requirements of the import regulation. Because this rule extends the reporting period beyond the Customs Service 30-day redelivery demand period, the first three sentences in paragraph (f)(4) are not applicable for peanuts entered under the three 1997 import quotas. Those sentences are therefore removed in this rulemaking. The remainder of paragraph (4) regarding failure to comply with the import regulation and falsification of reports is retained.

To help ensure a practicable and workable peanut import regulation, the procedures in the regulation will be reviewed after the 1997 entries have been closed out. Thus, paragraphs (f)(3) and (f)(4) may be further amended, if necessary, prior to opening of the 1998 peanut import quotas.

These changes do not affect the stamp-and-fax procedure established in paragraph (f)(1) of the safeguard provisions. That procedure ensures notification of the Federal or Federal-State Inspection Service of applications to import peanuts. This rule also does not change the safeguard requirement that all imported lots must be reported. Pursuant to paragraph (f)(1), all imported peanuts must be reported to AMS—including those peanut lots that meet import requirements. Paragraph (f)(2) provides that the quality and aflatoxin certifications and other documentation must be sent by regular mail to: Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456, "Attention: Report of Imported Peanuts." Overnight or express mail reports may be sent to Marketing Order Administration Branch, F&V, AMS, USDA , 14th and Independence Avenue, S.W., Room 2525–S, Washington, D.C. 20250, "Attention: Report of Imported Peanuts."

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis relevant to this rulemaking.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. AMS records for 1997 show that approximately ten importers of peanuts were large handlers of domestically grown peanuts and six were importers of general food commodities, some of whom may be small entities. Small agricultural service firms, which include importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5 million. Although small business entities may be engaged in the importation of peanuts, the majority of the importers are large business entities.

This rule extends for the 1997 quota periods only the time period for importers to meet import requirements for each lot of imported peanuts and file reports on the disposition of those peanuts. The reporting requirements are an integral part of the safeguard procedures specified in the import regulation, which is required by statute. The requirements are applied uniformly to small as well as large importers.

The previous reporting time period was 23 days. The new reporting time period ends on November 1, 1997. This change represents an increase, depending on date of entry of a peanut lot, of up to 280 days for Mexican peanut imports (entered on January 1) and 175 days for Argentine and "other country" peanuts (all of which were entered on April 15). The rule also extends the reporting period for all other peanut entries during the 1997 quota year from 23 days to 120 days. The additional time to meet requirements should enable importers to more efficiently manage movement and disposition of their imported peanuts.

It is not possible to estimate cost savings that might result from any increased efficiency of operations because of this action. Extension requests, when properly requested, already have been granted by AMS. The rule will benefit importers of large quantities of peanuts by relieving the time pressure to have multiple lots certified, and many lots reconditioned, within a very short time period. The rule also will benefit small importers who do not have peanut handling resources and must contract with remillers and blanchers to recondition failing peanut lots. Records indicate that some importers, including small importers, are outside the domestic peanut production area, and must transport failing lots long distances for reconditioning.

Alternative reporting time periods were considered by AMS. For the purposes of clarity, AMS believes that a single date, applicable to all 1997 entries under the quota is less confusing than 60 or 90 days from the release date of a peanut lot by the Customs Service. Sixty days are considered too short, as some peanut lots entered on April 15 are being inspected for the first time more than two months later. Also, necessary reconditioning efforts, with appropriate sampling and re-inspections after each attempt may take longer than 60 days. Extensions may be requested for individual lots not certified by the end of their applicable reporting period.

Experience shows that few, if any, peanuts will be imported after the quotas are filled. However, any such imports would be handled in a more routine manner and normal pace than when the great volumes are released simultaneously on quota opening days. Thus, the 120-day requirement for any peanuts imported after the quotas are filled is deemed reasonable by AMS.

For these reasons, AMS has determined that this action will be beneficial to all importers, both large and small.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) as amended in 1995, the information requirements contained in this rule was approved by the Office of Management and Budget (OMB) on September 3, 1996, and assigned OMB number 0581–0176. This rule does not establish new reporting or recordkeeping requirements. The current annual reporting burden for importers is estimated at 12 hours. Those affected by this rule have already reported entries and requested extensions of deadlines for reporting peanuts entered under the 1997 import quotas. Further, because no additional 1997 peanut imports are expected, there should be no need to file additional reports other than the final report of all entries, which is included in the approved 12 hour reporting burden.

Paragraph (f)(3) of the rule is revised for the 1997 import periods only. All certificates and other documents reporting the disposition of passing, as well as failing and reconditioned, peanut lots must be reported to AMS by November 1, 1997. This reporting date applies to only AMS' peanut import regulation and does not supersede other reporting dates for those peanuts that may be established by the Customs Service or other agencies. For peanuts imported after the quotas are filled, this rule extends the reporting period from 23 to 120 days, thus, reducing or eliminating the burden of requesting an extension of the reporting period.

Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses. This rule also invites comments on an extension in the time period for reporting dispositions of imported peanuts. Written comments timely received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes the reporting requirements of the import regulation; (2) some importers of 1997 import quota peanuts have already been authorized 60-day extensions of the reporting period; and (3) this rule provides a 30-day comment period and all written comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 999

Dates, Food grades and standards, Hazelnuts, Imports, Nuts, Peanuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR Part 999 is amended as follows:

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 999 is revised to read as follows:

Authority: 7 U.S.C. 601–674, 7 U.S.C. 1445c–3, and 7 U.S.C. 7271.

2. In § 999.600, paragraphs (f)(3) and (f)(4) are revised to read as follows:

§ 999.600 Regulation governing imports of peanuts.

* * * * *

(f) * * *

(3) Certificates and other documentation showing disposition of peanuts imported under 1997 import quotas, consistent with the requirements

of this section, must be filed by November 1, 1997. Disposition of peanuts imported in excess of the 1997 peanut import quotas must be filed within 120 days of the peanuts' entry by the Customs Service. Extension of these reporting periods must be granted by the AMS on a case by case basis upon a showing that such extension would be justified. Requests for extension must be submitted in writing to the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, Attn: Peanut Imports or faxing the request to (202) 720–5698. An extension request must include the Customs Service entry number, relevant grade and aflatoxin certificates (if any) issued on the outstanding peanuts, and the reasons for delay in obtaining final disposition of the peanuts.

(4) Failure to fully comply with quality and handling requirements or failure to notify the Secretary of disposition of all foreign produced peanuts, as required under this section, may result in a compliance investigation by the Secretary. Falsification of reports submitted to the Secretary is a violation of Federal law punishable by fine or imprisonment, or both.

* * * * *

Dated: September 19, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–25411 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

1997 Amendment to Cotton Board Rules and Regulations Adjusting Supplemental Assessment on Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document corrects the final rule published September 2, 1997 (62 FR 46412) which amended the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program.

EFFECTIVE DATE: October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, (202) 720-2259.

SUPPLEMENTARY INFORMATION:

Background

The Agricultural Marketing Service (AMS) amended the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This action is required by this regulation on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton. As a result of changes in the 1997 Harmonized Tariff Schedule (HTS), numbering changes in the import assessment table are amended. Eleven HTS numbers were to be eliminated from the assessment table because negligible assessments have been collected on these numbers and their elimination would contribute to reducing the overall burden to importers.

Need for Correction

In rule FR Doc. 97–23218 published on September 2, 1997 (62 FR 46412), make the following correction. On page 46415, in the third column, immediately following the HTS number 5212216090 remove the entries for HTS numbers 5309214010, 5309214090, 5309294010, 5311004020, 5407810010, 5407810030, 5407912020, 5408312020, 5408329020, 5408349020, and 5408349095.

Dated: September 18, 1997.

Norma McDill,

Acting Director, Cotton Division.

[FR Doc. 97–25278 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 95–078–4]

RIN 0579–AA74

Humane Treatment of Dogs; Tethering; Clarification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; clarification.

SUMMARY: On August 13, 1997, we published in the **Federal Register** (62 FR 43272–43275, Docket No. 95–078–2) a final rule that removed the option for facilities regulated under the Animal Welfare Act to use tethering as a means of primary enclosure. We also added a provision to the regulations to permit regulated facilities to temporarily tether a dog if they obtain approval from the Animal and Plant Health Inspection Service. The purpose of this notice is to clarify what kinds of facilities are regulated under the Animal Welfare Act and, subsequently, what kinds of facilities must comply with the final rule on tethering.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, Animal Care, APHIS, suite 6D02, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–4972, or e-mail: snsmith@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1997, we published in the **Federal Register** (62 FR 43272–43275, Docket No. 95–078–2) a final rule that amended the regulations by removing the option for facilities regulated under the Animal Welfare Act to use tethering as a means of primary enclosure. We also added a provision to the regulations to state that regulated facilities may temporarily tether a dog if they obtain approval from the Animal and Plant Health Inspection Service (APHIS).

This rulemaking was based on our experience in enforcing the Animal Welfare Act, which has shown that tethering can be an inhumane practice when used as a means of primary enclosure in facilities regulated under the Animal Welfare Act. Typically, this inappropriate use of tethering involves dogs that are permanently tethered without opportunity for regular exercise. This was the basis for our position that tethering is inhumane. However, we recognize that under other circumstances (intermittent use, dogs are vigorously exercised, pets are on running tethers, dogs have close oversight, etc.) the use of tethering may be entirely appropriate and humane. We did not intend to imply that tethering of dogs under all circumstances is inhumane, nor that tethering under any circumstances must be prohibited.

Since publication of the final rule, we have been made aware that some members of the public are confused as to who must comply with this final rule. We have received numerous inquiries from various kinds of dog owners who tether their dogs. These dog owners are concerned that, pursuant to the final rule, they will no longer be able to tether their dogs. We are publishing this notice in order to make it clear who must comply with the final rule, and who is not subject to the provisions of the final rule.

The final rule regarding tethering of dogs was issued under the authority of the Animal Welfare Act. The Animal Welfare Act authorizes APHIS to license, register, and regulate animal dealers, animal transporters, animal exhibitors, and research facilities that sell, transport, exhibit, or use certain kinds of animals, including dogs. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3. Subpart A of 9 CFR part 3 contains requirements concerning dogs and cats.

With regard to dogs sold, transported, exhibited, or used in research by persons subject to the Animal Welfare Act, APHIS' regulations are intended to ensure that the dogs are given proper and humane care. Persons subject to the Animal Welfare Act include persons who sell dogs wholesale or breed dogs to sell wholesale, sell dogs to laboratories for research purposes or breed dogs for sale to laboratories for research purposes, broker dogs, operate an auction at which dogs are sold, or give dogs as prizes as part of a promotion. Transporters of dogs, such as airlines, railroads, motor carriers, and handlers contracted to transport dogs, are also subject to the Animal Welfare Act. Additionally, persons who exhibit dogs (such as circuses or carnivals) and laboratories that use dogs for research are subject to the Animal Welfare Act. These are the groups that must comply with the final rule prohibiting permanent tethering of dogs as a means of primary enclosure. However, any person required to comply with the final rule may request approval from APHIS to temporarily tether a dog.

Any person who is not subject to the Animal Welfare Act does not have to comply with the final rule on tethering, and may continue to tether their dogs. Persons who own dogs as pets are not subject to the Animal Welfare Act. Persons who breed dogs as a hobby, and do not sell them wholesale, are not subject to the Animal Welfare Act. Dog mushers and owners of guard dogs or hunting dogs are not subject to the Animal Welfare Act. Therefore, these entities are not subject to and do not have to comply with APHIS' final rule regarding tethering of dogs. APHIS has no authority under the Animal Welfare Act to prohibit tethering of dogs by persons who are not subject to the Act.

Individuals most likely to be affected by the final rule on tethering are those licensed by APHIS as Class A and Class B dealers of dogs. This includes persons who sell dogs wholesale, breed dogs to sell wholesale, sell dogs to laboratories for research purposes, or breed dogs for sale to laboratories for research purposes. Most dog breeder and wholesale industry organizations agree that tethering is not a humane means of primary enclosure for dogs when used under the circumstances typical to breeding and wholesale facilities. Many of these organizations already prohibit member facilities from using tethering as a means of primary enclosure. For this reason, using tethering as a means of primary enclosure is rare among licensed Class A and Class B dog dealers. We recognize that many persons not subject to the Animal Welfare Act do tether their dogs. Persons not regulated under the Animal Welfare Act who tether their dogs are likely to be using this means of restraint under circumstances different than those typical to breeding and wholesale facilities. In these cases, tethering may be a humane method of restraint. Regardless, APHIS does not have the authority to regulate the activities of dog owners who are not subject to the Animal Welfare Act.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 22nd day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25482 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Interpretive Rulings and Policy Statements

AGENCY: National Credit Union Administration (NCUA).

ACTION: Withdrawal of outdated and unnecessary Interpretive Rulings and Policy Statements (IRPS).

SUMMARY: NCUA is withdrawing several of its Interpretative Rulings and Policy Statements (IRPS) that have become outdated or unnecessary or have been superseded by other IRPS or NCUA regulations. This is the first step in NCUA's ongoing project to update and streamline its IRPS. The intended purpose of withdrawing these IRPS is to ease the compliance burden on federally chartered and federally insured credit unions and provide more valuable guidance by eliminating IRPS that no longer effectively advance NCUA's regulatory goals or statutory responsibilities.

EFFECTIVE DATE: September 25, 1997.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Nicole Sippial Williams, Staff Attorney, Division of Operations, Office of the General Counsel, (703) 518–6540, or at the above address.

SUPPLEMENTARY INFORMATION:

A. Background

As part of its Regulatory Review Program, NCUA conducted a review of its IRPS to determine their current effectiveness. Several of the IRPS were found to be outdated and unnecessary and, thus, could be withdrawn. On March 13, 1997, the NCUA Board issued an advance notice of proposed rulemaking soliciting comments on a proposal to revise NCUA's existing IRPS. As part of the proposal, NCUA recommended withdrawing 17 IRPS, redesignating 9 IRPS into the NCUA Rules and Regulations, transferring 1 IRPS into a NCUA instructional manual or directive, and preserving 12 IRPS.

NCUA received a total of 17 comments from federal credit unions, state-chartered credit unions, trade organizations, state leagues, and state credit union regulators. The commenters were overwhelmingly in support of NCUA's efforts to revise and streamline its IRPS and the proposed action to be taken with regard to each IRPS, but suggested a few specific changes.

One commenter suggested that IRPS 80–10, When Federal Credit Unions Can Charge More Than 15% Per Annum on Government Insured or Guaranteed Loans, should not be withdrawn. We disagree. The guidance provided in this IRPS is adequately addressed in Section 701.21(e) of NCUA Rules and Regulations. One commenter suggested that IRPS 82–6, Corporate Federal Credit Union Chartering Guidelines, should not be withdrawn, but should remain for credit unions that believe they would be better served by a new corporate credit union or for state chartered credit unions that want to convert to federal charters. We disagree. The guidance provided in IRPS 82–6 is no longer relevant to chartering corporate credit unions. Applications for new corporate charters will be handled on a case-by-case basis with the NCUA Chartering and Field of Membership Manual (IRPS 94–1, as amended by IRPS 96–1) used as guidance where applicable.

NCUA thoroughly evaluated the comments and has incorporated some of the suggested changes into this

withdrawal of IRPS and will continue to do so as the IRPS are further revised.

IRPS that were marked for redesignation into NCUA Rules and Regulations, according to the March 13, 1997, proposal, will be redrafted as proposed rules and submitted to the public for notice and comment at a later date. IRPS to be preserved, will be further reviewed for possible revision, and if any changes are made, the IRPS will be reissued.

B. IRPS To Be Withdrawn

At this time NCUA is withdrawing 18 IRPS that it considers either outdated, since they no longer provide relevant or useful guidance, or unnecessary, since the guidance provided has already been incorporated into NCUA regulations or manuals. In addition, 10 IRPS are being withdrawn because they have been superseded by other IRPS or NCUA regulations and NCUA wants to reemphasize to the public that these IRPS are no longer viable.

IRPS No. 79–1, Statement of Policy Regarding Relationship of Credit Union Service Corporations and Existing Accounting Service Centers, 44 FR 21762, Apr. 12, 1979, provides that in order to assist existing accounting service centers and "leeway" organizations in complying with a new CUSO rule implemented by NCUA, NCUA agrees to forego taking any action for a period of one year. IRPS 79–1 is outdated because it addresses a specific NCUA policy to allow a one-year phase-in period for a new CUSO rule implemented by NCUA at that time.

IRPS No. 79–2, Share Accounts, 44 FR 39382, July 6, 1979, provides that as a result of a rule change deregulating share accounts, NCUA no longer requires share draft accounts to be identical to regular share accounts and confirms that share draft accounts are regular share accounts with terms and dividend rates that can vary from other regular share accounts. IRPS 79–2 is unnecessary because the guidance provided is restated in Section 701.35 of NCUA Rules and Regulations.

IRPS No. 79–3, Amortization of Long Term Real Estate Loans, 44 FR 39182, July 5, 1979, states that absent NCUA approval, federal credit unions must amortize real estate loans by "substantially equal monthly installments" with two exceptions. The total of principal and interest for the first and last monthly installment may differ slightly from the total of the other installments. IRPS 79–3 is outdated because it is superseded by Sections 5040.5.2.1.1 and 5040.5.2.1.2 of the NCUA Accounting Manual. The Accounting Manual establishes two methods of amortizing loans that may be used by federal credit unions.

IRPS No. 79–4, Investment Activities, 44 FR 51195, Aug. 31, 1979, established certain accounting procedures for permissible investment activities. IRPS 79–4 is unnecessary because the guidance provided is restated in the current, as well as, the newly revised version of Part 703 NCUA of Rules and Regulations and in the NCUA Accounting Manual.

IRPS No. 79–5, Insurance Activities, 44 FR 43711, July 26, 1979, provides that participation in a draft payment system that involves the presentment and settlement of claims by a federal credit union, with subsequent reimbursement to the federal credit union by the insurer is impermissible. Thus, a federal credit union's involvement with an insurance vendor is limited to the forwarding of claim forms to the vendor for processing. IRPS 79–5 is outdated because it interprets an obsolete provision. In addition Part 721 of NCUA Rules and Regulations, addressing rules governing insurance, limits a federal credit union's insurance activities to performing administrative functions on behalf of a vendor.

IRPS No. 79–7, Liquidity Reserve, 44 FR 61172, Oct. 24, 1979, provides guidance on NCUA's position on (1) provisions of Part 742, (2) the calculation and disclosure of liquidity reserves, and (3) procedures for requesting additional time to meet the liquidity reserve. IRPS 79–7 is outdated because Part 742 has been removed from NCUA Rules and Regulations. The NCUA Board believed that efficient liquidity management varies among credit unions, and liquidity decisions should be the responsibility of individual credit unions boards of directors.

IRPS No. 79–8, Public Observance and Availability of Information Regarding Board Meetings; Interim Sunshine Act Policy Statement, 44 FR 70709, Dec. 10, 1979, sets forth NCUA's policy governing the implementation of the Sunshine Act. IRPS 79–8 is unnecessary because the guidance provided is restated in §§ 791.9–791.18 of NCUA Rules and Regulations.

IRPS No. 79–9, Rate of Interest, 44 FR 74799, Dec. 18, 1979, provides that the effect of a compensating balance must be considered in determining usury limits on federal credit union member loans. IRPS 79–9 is outdated because the permissible interest rate that credit union may charge has changed from 12% to 15%, and the practice of requesting compensating balances is no longer prevalent among credit unions. Any potential questions from a federal credit union, relating to compensating balances, can be handled without the continuing need for this IRPS.

IRPS No. 79–10, Notice of Proposed Consumer Program, 45 FR 7738, Feb. 4, 1980, sets forth NCUA's proposed consumer program as requested by Executive Order 12160. IRPS 79–10 is outdated because it is superseded by IRPS 80–7, the Final Notice of Consumer Program, 45 FR 50260, July 28, 1980.

IRPS No. 80–7, Final Notice of Consumer Program, 45 FR 50260, July 28, 1980, sets forth NCUA's final consumer program which was to be governed by the Office of Consumer Affairs. IRPS 80–7 is outdated because it is superseded by NCUA Instruction 12400.2, Compliance Activities: Complaint Handling and Documentation of Violations, which sets forth NCUA's current policy for handling consumer affairs.

IRPS No. 80–10, When Federal Credit Unions Can Charge More Than 15 Percent Per Annum on Government Insured or Guaranteed Loans, 45 FR 71353, Oct. 28, 1980, provides that government insured and guaranteed loans may exceed the federal usury rate for federal credit unions. IRPS 80–10 is unnecessary because the guidance provided is restated in § 701.21(e) of NCUA Rules and Regulations.

IRPS No. 80–11, State Chartered Federally Insured Credit Unions as Most Favored Lenders, 45 FR 78624, Nov. 26, 1980, sets forth the conditions upon which federally insured state chartered credit unions (FISCUs) are granted most favored lender status pursuant to the Federal Credit Union Act. IRPS 80–11 is outdated because it has been superseded by IRPS 81–3, State Chartered Federally Insured Credit Unions as "Most Favored Lenders," 45 FR 78624, Nov. 26, 1980, which removed the conditions set forth in IRPS 80–11 so that most favored lender status would apply to any loan that an FISCU grants.

IRPS No. 80–12, Verification of Member Accounts, 46 FR 9919, Jan. 30, 1981, provides that federal credit unions are allowed to use statistical sampling in satisfaction of statutory and regulatory member account verification requirements. IRPS 80–12 is unnecessary because the guidance provided is restated in Chapter 24 of NCUA's Supervisory Committee Guide.

IRPS No. 81–1, Definitions—Exclusions from Gross Income in Computing Reserve Requirements, 46 FR 13204, Feb. 20, 1981, provides that credit unions receiving Central Liquidity Fund dividends may exclude those dividends in computing federally-imposed reserve requirements. IRPS 81–1 is unnecessary because the guidance provided is restated in Section 6090.5 of the NCUA Accounting Manual.

IRPS No. 81–2, Federal Funds, 46 FR 14887, Mar. 3, 1981, authorizes certain federal funds transactions for federal credit unions and establishes guidelines and accounting procedures for the same. IRPS 81–2 is unnecessary because the guidance provided is restated in § 703.100(g) of NCUA Rules and Regulations.

IRPS No. 81–4, Developing Government Regulations, 46 FR 29248, June 1, 1981, sets forth NCUA's procedures for developing and reviewing its regulations. IRPS 81–4 was drafted in response to the passage of the Financial Simplification Act of 1980, the Regulatory Flexibility Act of 1980, 5 U.S.C. *et seq.*, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* IRPS 81–4 is now outdated due to changes in the law, including the repeal of the Financial Simplification Act of 1980, and is superseded by IRPS 87–2 which sets forth NCUA's current procedures for developing and reviewing its regulations.

IRPS No. 81–5, Proposed Policy Statement Release of Consumer Examination Reports, 46 FR 29575, June 2, 1981, sets forth conditions under which individual federal credit unions may release consumer compliance examination reports to third parties. IRPS 81–5 is outdated because consumer compliance examinations are no longer performed as separate examinations, but are performed in conjunction with safety and soundness examinations producing one examination report. This examination report is an exempt document. The release of an exempt document is addressed in Part 792 of NCUA Rules and Regulations.

IRPS No. 81–8, Full and Fair Disclosure Requirements, 47 FR 23685, June 1, 1982, provides that compliance with Section 2000 of the Accounting Manual will place a federal credit union in compliance with the full and fair disclosure requirements of Part 702 of the NCUA Regulations. IRPS 81–8 is unnecessary because the guidance provided is restated in § 702.3 of NCUA Rules and Regulations and Section 1000 of the NCUA Accounting Manual.

IRPS No. 81–9, Share, Share Draft and Share Certificate Accounts, 46 FR 57668, Nov. 25, 1981, sets forth NCUA's position regarding the calculation and assessment of premature withdrawal penalties for variable-rate and multiple-addition share certificate accounts. IRPS 81–9 is outdated because NCUA deregulated § 701.35 of the NCUA Rules and Regulations, 47 FR 17979, Apr. 27, 1982, giving a federal credit union's board of directors the responsibility for determining the terms and conditions governing share, share draft, and share certificate accounts, including premature withdrawal penalties.

IRPS No. 82–1, Membership in Federal Credit Unions, 47 FR 16775, Apr. 20, 1982, provides that federal credit unions may offer membership to borrowers whose loans have been purchased from a liquidated credit union and that they may serve multiple occupational group. IRPS 82–1 is outdated because it is superseded by IRPS 82–3, Membership in Federal Credit Unions, 47 FR 26808, June 22, 1982.

IRPS No. 82–3, Membership in Federal Credit Unions, 47 FR 26808, June 22, 1982, provides further guidance on field of membership issues and authorizes multiple associational group charters. IRPS 82–3 is outdated because it is superseded by IRPS 89–1, Chartering and Field of Membership Policy, 54 FR 31165, July 27, 1989.

IRPS No. 83–2, Membership in Federal Credit Unions, 48 FR 22899, May 23, 1983, clarified that the definition of a "well-defined area" stated in IRPS 82–3 includes home offices and branch offices for purposes of adding additional associational and occupational groups. IRPS 83–2 is outdated because it is superseded by IRPS 89–1, Chartering and Field of Membership Policy, 54 FR 31165, July 27, 1989.

IRPS No. 84–1, Membership in Federal Credit Unions, 49 FR 46536, Nov. 27, 1984, combines IRPS 82–3 and IRPS 83–2, sets out modifications made since the two IRPS were published, incorporates several unwritten policies, and sets forth a new policy on service to senior citizens and retirees. IRPS 84–1 is outdated because it is superseded by IRPS 89–1, Chartering and Field of Membership Policy, 54 FR 31165, July 27, 1989.

IRPS No. 85–1, Trustees and Custodians of Pension Plans, 50 FR 48176, Nov. 22, 1985, provides guidelines for federal credit unions involved with self-directed IRA and Keogh accounts. IRPS 85–1 is unnecessary because the guidance provided is restated in Part 724 of NCUA Rules and Regulations.

IRPS No. 86–2, Joint Policy Statement on Basic Financial Services, 51 FR 42083, Nov. 21, 1986, provides that NCUA has adopted FFIEC's recommendation encouraging credit unions to offer basic financial services accessible to low and moderate-income members. IRPS 86–2 is unnecessary because it restates the basic mission of credit unions. As stated in the Federal Credit Unions Act, 12 U.S.C. 1751, the Act was established "to make more available to people of small means credit for provident purposes through a national system of cooperative credit, thereby helping stabilize the credit structure of the United States."

IRPS No. 88–1, Policy on Selection of Securities Dealers and Unsuitable Investment Practices, 53 FR 18268, May 23, 1988, provides that NCUA will adopt a modified version of the FFIEC's Supervisory Policy containing guidance to federal credit unions concerning selection of securities brokers and the avoidance of unsound investment practices. IRPS 88–1 is outdated because it is superseded by IRPS 92–1, Supervisory Policy Statement on Securities Activities, 57 FR 22157, May 27, 1992, which provides additional information on the development of a portfolio policy and strategies for securities and on securities practices that are inappropriate for an investment account.

IRPS No. 89–1, Chartering and Field of Membership Policy, 54 FR 31165, July 27, 1989, provides membership and chartering policies. IRPS 89–1 is outdated because it is superseded by IRPS 94–1, Chartering and Field of Membership Policy, 59 FR 29066, June 3, 1994, as amended by IRPS 96–1, 61 FR 11721, Mar. 22, 1996.

By the National Credit Union Administration Board on September 17, 1997.

Becky Baker,

Secretary to the Board.

[FR Doc. 97–25261 Filed 9–24–97; 8:45 am]

BILLING CODE 7535–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 950

[No. 97–57]

RIN 3069–AA57

Revision of Financing Corporation Operations Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation on Financing Corporation (FICO) operations to comply with new statutory requirements, eliminate provisions that have been rendered obsolete by statutory changes, and clarify the practices and procedures of the Finance Board and FICO. The final rule is consistent with the goals of the

Regulatory Reinvention Initiative of the National Performance Review.

EFFECTIVE DATE: The final rule will become effective October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Associate Director, Financial Analysis and Reporting Division, Office of Policy, 202/408–2845, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background and Analysis of the Final Rule

In November 1996, the Finance Board approved an interim final rule amending its FICO operations regulation, 12 CFR part 950, to comply with new statutory requirements, eliminate provisions that were rendered obsolete by statutory changes, and clarify the practices and procedures of the Finance Board and FICO. *See* 61 FR 59311 (Nov. 22, 1996). The 30-day public comment period for the interim final rule, which became effective upon publication in the **Federal Register**, closed on December 23, 1996. *See id.* The Finance Board received no public comments. Therefore, with the exception noted below, and for the reasons set forth in detail in the interim final rulemaking, the Finance Board is adopting the interim final rule as published.

In order to accommodate the terms of a memorandum of understanding (MOU) signed by FICO and the Federal Deposit Insurance Corporation (FDIC) after publication of the interim final rule in the **Federal Register**, the Finance Board has amended § 950.8(b)(2)(i) of the interim final rule to require FICO to determine an assessment rate formula rather than the actual assessment rate. Under the MOU, the FDIC will handle administrative tasks, such as computing each insured depository institution's assessment, issuing invoices notifying insured depository institutions of the amount to be paid and the date of payment, and arranging for the collection of the assessment through the payments system. *See* FICO–FDIC MOU (Jan. 23, 1997). Among other things, the MOU provides that the FDIC will compute the assessment rate in accordance with an assessment rate formula adopted by FICO. *See id.* ¶ 3. Section 950.8(b)(2)(i) of the interim final rule required FICO to determine the assessment rate by considering historical data regarding assessment collections and current information concerning the Savings Association Insurance Fund and Bank Insurance Fund deposit bases and the location of insured depository institutions that is available only to the FDIC. For consistency with the terms of the MOU, § 950.8(b)(2)(i) of the final rule requires FICO to establish a formula the FDIC will use to determine at least semiannually the rate of the assessment FICO will assess against insured depository institutions in order to pay its non-administrative expenses.

II. Paperwork Reduction Act

This rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

III. Regulatory Flexibility Act

The Finance Board adopted the changes to part 950 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act did not apply. *See* 5 U.S.C. 601(2), 603(a).

List of Subjects in Part 950

Federal home loan banks, Securities.

Accordingly, the Federal Housing Finance Board hereby adopts the interim final rule adding 12 CFR part 950 that was published at 61 FR 59311 on November 22, 1996, as a final rule and revises part 950 to read as follows:

PART 950—OPERATIONS

Sec.

950.1 Definitions.
950.2 General authority.
950.3 Authority to establish investment policies and procedures.
950.4 Book-entry procedure for Financing Corporation obligations.
950.5 Bank and Office of Finance employees.
950.6 Budget and expenses.
950.7 Administrative expenses.
950.8 Non-administrative expenses; assessments.
950.9 Reports to the Finance Board.
950.10 Review of books and records.

Authority: 12 U.S.C. 1441(b)(8), (c), and (j).

§ 950.1 Definitions.

For purposes of this part:

(a) *Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

(b) *Administrative expenses:*

(1) Include general office and operating expenses such as telephone and photocopy charges, printing, legal, and professional fees, postage, courier services, and office supplies; and

(2) Do not include any form of employee compensation, custodian fees, issuance costs, or any interest on (and any redemption premium with respect to) any Financing Corporation obligations.

(c) *Bank* or *Banks* means a Federal Home Loan Bank or the Federal Home Loan Banks.

(d) *BIF-assessable deposit* means a deposit that is subject to assessment for purposes of the Bank Insurance Fund under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), including a deposit that is treated as a deposit insured by the Bank Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act.

(e) *Custodian fees* means any fee incurred by the Financing Corporation in connection with the transfer of any security to, or maintenance of any security in, the segregated account established under section 21(g)(2) of the Act, and any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

(f) *Directorate* means the board established under section 21(b) of the Act to manage the Financing Corporation.

(g) *Exit fees* means the amounts paid under sections 5(d)(2)(E) and (F) of the Federal Deposit Insurance Act, and regulations promulgated thereunder (12 CFR part 312).

(h) *FDIC* means the agency established as the Federal Deposit Insurance Corporation.

(i) *Finance Board* means the agency established as the Federal Housing Finance Board.

(j) *Insured depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(k) *Issuance costs* means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of Financing Corporation obligations, including legal and accounting expenses, trustee, fiscal, and paying agent charges, securities processing charges, joint collection agent charges, advertising expenses, and costs incurred in connection with preparing and printing offering materials to the extent the Financing Corporation incurs such costs in connection with issuing any obligations.

(l) *Non-administrative expenses* means custodian fees, issuance costs, and interest on Financing Corporation obligations.

(m) *Obligations* means debentures, bonds, and similar debt securities issued by the Financing Corporation under sections 21(c)(3) and (e) of the Act.

(n) *Office of Finance* means the joint office of the Banks established under part 941 of this chapter.

(o) *Receivership proceeds* means the liquidating dividends and payments made on claims received by the Federal Savings and Loan Insurance Corporation Resolution Fund established under section 11A of the Federal Deposit Insurance Act from receiverships, that are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund established under section 21B of the Act.

(p) *SAIF-assessable deposit* means a deposit that is subject to assessment for purposes of the Savings Association Insurance Fund under the Federal Deposit Insurance Act, including a deposit that is treated as a deposit insured by the Savings Association Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act.

§ 950.2 General authority.

Subject to the limitations and interpretations in this part and such orders and directions as the Finance Board may prescribe, the Financing Corporation shall have authority to exercise all powers and authorities granted to it by the Act and by its charter and bylaws regardless of whether the powers and authorities are specifically implemented in regulation.

§ 950.3 Authority to establish investment policies and procedures.

The Directorate shall have authority to establish investment policies and procedures with respect to Financing Corporation funds provided that the investment policies and procedures are consistent with the requirements of section 21(g) of the Act. The Directorate shall promptly notify the Finance Board in writing of any changes to the investment policies and procedures.

§ 950.4 Book-entry procedure for Financing Corporation obligations.

(a) *Authority.* Any Federal Reserve Bank shall have authority to apply book-entry procedure to Financing Corporation obligations.

(b) *Procedure.* The book-entry procedure for Financing Corporation obligations shall be governed by the book-entry procedure established for Bank securities, codified at part 912 of this chapter. Wherever the terms "Federal Home Loan Bank(s)," "Federal Home Loan Bank security(ies)," or "Book-entry Federal Home Loan Bank security(ies)" appear in part 912, the terms shall be construed also to mean "Financing Corporation," "Financing Corporation obligation(s)," or "Book-entry Financing Corporation obligation(s)," respectively, if appropriate to accomplish the purposes of this section.

§ 950.5 Bank and Office of Finance employees.

Without further approval of the Finance Board, the Financing Corporation shall have authority to utilize the officers, employees, or agents of any Bank or the Office of Finance in such manner as may be necessary to carry out its functions.

§ 950.6 Budget and expenses.

(a) *Directorate approval.* The Financing Corporation shall submit annually to the Directorate for approval, a budget of proposed expenditures for the next calendar year that includes administrative and non-administrative expenses.

(b) *Finance Board approval.* The Directorate shall submit annually to the Finance Board for approval, the budget of the Financing Corporation's proposed expenditures it approved pursuant to paragraph (a) of this section.

(c) *Spending limitation.* The Financing Corporation shall not exceed the amount provided for in the annual budget approved by the Finance Board pursuant to paragraph (b) of this section, or as it may be amended by the Directorate within limits set by the Finance Board.

(d) *Amended budgets.* Whenever the Financing Corporation projects or anticipates that it will incur expenditures, other than interest on Financing Corporation obligations, that exceed the amount provided for in the annual budget approved by the Finance Board or the Directorate pursuant to paragraph (b) or (c) of this section, the Financing Corporation shall submit an amended annual budget to the Directorate for approval, and the Directorate shall submit such amended budget to the Finance Board for approval.

§ 950.7 Administrative expenses.

(a) *Payment by Banks.* The Banks shall pay all administrative expenses of the Financing Corporation approved pursuant to § 950.6.

(b) *Amount.* The Financing Corporation shall determine the amount of administrative expenses each Bank shall pay in the manner provided by section 21(b)(7)(B) of the Act. The Financing Corporation shall bill each Bank for such amount periodically.

(c) *Adjustments.* The Financing Corporation shall adjust the amount of administrative expenses the Banks are required to pay in any calendar year pursuant to paragraphs (a) and (b) of this section, by deducting any funds that remain from the amount paid by the Banks for administrative expenses in the prior calendar year.

§ 950.8 Non-administrative expenses; assessments.

(a) *Interest expenses.* The Financing Corporation shall determine anticipated interest expenses on its obligations at least semiannually.

(b) *Assessments on insured depository institutions*—(1) *Authority.* To provide sufficient funds to pay the non-administrative expenses of the Financing Corporation approved under § 950.6, the Financing Corporation shall, with the approval of the Board of Directors of the FDIC, assess against each insured depository institution an assessment in the same manner as assessments are made by the FDIC under section 7 of the Federal Deposit Insurance Act.

(2) *Assessment rate*—(i) *Determination.* The Financing Corporation at least semiannually shall establish an assessment rate formula, which may include rounding methodology, to determine the rate or rates of the assessment it will assess against insured depository institutions pursuant to section 21(f)(2) of the Act and paragraph (b)(1) of this section.

(ii) *Limitation.* Until the earlier of December 31, 1999, or the date as of which the last savings association ceases to exist, the rate of the assessment imposed on an insured depository institution with respect to any BIF-assessable deposit shall be a rate equal to ⅕ of the rate of the assessment imposed on an insured depository institution with respect to any SAIF-assessable deposit.

(iii) *Notice.* The Financing Corporation shall notify the FDIC and the collection agent, if any, of the formula established under paragraph (b)(2)(i) of this section.

(3) *Collecting assessments*—(i) *Collection agent.* The Financing Corporation shall have authority to collect assessments made under section 21(f)(2) of the Act and paragraph (b)(1) of this section through a collection agent of its choosing.

(ii) *Accounts.* Each Bank shall permit any insured depository institution whose principal place of business is in its district to establish and maintain at least one demand deposit account to facilitate collection of the assessments made under section 21(f)(2) of the Act and paragraph (b)(1) of this section.

(c) *Receivership proceeds*—(1) *Authority.* To the extent the amounts collected under paragraph (b) of this

section are insufficient to pay the non-administrative expenses of the Financing Corporation approved under § 950.6, the Financing Corporation shall have authority to require the FDIC to transfer receivership proceeds to the Financing Corporation in accordance with section 21(f)(3) of the Act.

(2) *Procedure.* The Directorate shall request in writing that the FDIC transfer the receivership proceeds to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the non-administrative expenses of the Financing Corporation approved under § 950.6.

(d) *Exit fees*—(1) *Authority.* To the extent the amounts provided under paragraphs (b) and (c) of this section are insufficient to pay the interest due on Financing Corporation obligations, the Financing Corporation shall have authority to request that the Secretary of the Treasury order the transfer of exit fees to the Financing Corporation in accordance with section 5(d)(2)(E) of the Federal Deposit Insurance Act or as otherwise may be provided for by statute.

(2) *Procedure.* The Directorate shall request in writing that the Secretary of the Treasury order that exit fees be transferred to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the interest due on Financing Corporation obligations.

§ 950.9 Reports to the Finance Board.

The Financing Corporation shall file such reports as the Finance Board shall direct.

§ 950.10 Review of books and records.

The Finance Board shall examine the Financing Corporation at least annually to determine whether the Financing Corporation is performing its functions in accordance with the requirements of section 21 of the Act and this part.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 97–25305 Filed 9–24–97; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–213–AD; Amendment 39–10144; AD 97–20–06]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires deactivation of certain floormat heaters in the cabin area. In addition, this amendment provides for optional terminating action for that deactivation. This amendment is prompted by a report indicating that a flight attendant's floormat heater became overheated as a result of a short circuit between a floormat heater and a floor panel that was made of conductive material; this condition resulted in smoke in the cabin area. The actions specified by this AD are intended to prevent such short circuiting, which could cause overheating of the floormat heater and lead to smoke or fire in the airplane cabin.

DATES: Effective October 30, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 30, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköing, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1721; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on May 22, 1997 (62 FR 27987). That action proposed to require deactivation of certain floormat heaters in the cabin area. In addition, that action proposed to provide for optional terminating action for that deactivation.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required deactivation, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $180, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 2 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer to the operators at no cost. Based on these figures, the cost impact of this optional terminating action is estimated to be $120 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–20–06 Saab Aircraft AB: Amendment 39–10144. Docket 96–NM–213–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers –004 through –039 inclusive, on which Saab Modification No. 5780, as specified in Saab Service Bulletin 2000–53–020, Revision 02, dated October 18, 1996, has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent short circuiting between the floormat heater and the floor panel, which could cause overheating of the floormat heater and lead to smoke or fire in the airplane cabin, accomplish the following:

(a) Within 14 days after the effective date of the AD, deactivate the flight attendant's floormat heater by either disconnecting electrical cable HW71–20 between the floormat heater and the floor panel, or by removing fuse 17HW (1) on panel 306VU, in accordance with Saab Service Bulletin 2000–A25–022, Revision 01, dated January 23, 1996.

(b) Installation of a floormat heater, floor covering, and a new floor panel made of non-conductive material, in accordance with Saab Service Bulletin 2000–53–020, Revision 02, dated October 18, 1996, constitutes terminating action for the deactivation required by paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Saab Service Bulletin 2000–A25–022, Revision 01, dated January 23, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 30, 1997.

Issued in Renton, Washington, on September 17, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25166 Filed 9–24–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–170–AD; Amendment 39–10145; AD 97–20–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that requires repetitive inspections to detect fatigue cracking in the left and right wings in the area where the top skin attaches to the center spar; and repair or modification of this area, if necessary. This amendment is prompted by a report from the manufacturer indicating that, during full-scale fatigue testing of the airframe, fatigue cracking was detected in this area. The actions specified by this AD are intended to detect and correct this cracking, which could reduce the residual strength of the top skin of the wings, and consequently affect the structural integrity of the airframe.

DATES: Effective October 30, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 30, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2589; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes was published in the **Federal Register** on

May 1, 1997 (62 FR 23697). That action proposed to require repetitive inspections to detect fatigue cracking in the left and right wings in the area where the top skin attaches to the center spar between ribs 1 and 7; and repair or modification of this area, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 35 Airbus Model A300–600 series airplanes of U.S. registry will be affected by this AD.

For airplanes on which Airbus Modification 10089 has not been installed, it will take approximately 2 work hours to accomplish each detailed visual inspection or 3 work hours to accomplish each high frequency eddy current (HFEC) inspection. The average labor rate is $60 per work hour. Based on these figures, the cost impact of each inspection on U.S. operators is estimated to be either $120 or $180 per airplane, depending on the type of inspection conducted.

For airplanes on which Airbus Modification 10089 has been installed, it will take approximately 3 work hours to accomplish each low frequency eddy current inspection. The average labor rate is $60 per work hour. Based on these figures, the cost impact of the each inspection on U.S. operators is estimated to be $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the rules docket. A copy of it may be obtained from the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–20–07 Airbus: Amendment 39–10145. Docket 96–NM–170–AD.

Applicability: Model A300–600 series airplanes on which Airbus Modification 10160 has not been installed during production; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the left and right wings in the area where the top skin attaches to the center spar, which could reduce the residual strength of this skin, and consequently affect the structural integrity of the airframe, accomplish the following:

(a) For airplanes on which Airbus Modification 10089 has not been installed: Prior to the accumulation of 18,000 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later, conduct either a detailed visual inspection or a high frequency eddy current (HFEC) inspection to detect fatigue cracking in the left and right wings in the area where the top skin attaches to the center spar between ribs 1 and 7, in accordance with Airbus Service Bulletin A300–57–6044, Revision 2, dated September 6, 1995, including Appendix 1.

(1) If no cracking is detected, conduct repetitive inspections thereafter at the following intervals:

(i) If the immediately preceding inspection was conducted using detailed visual techniques, conduct the next inspection within 5,000 landings.

(ii) If the immediately preceding inspection was conducted using HFEC techniques, conduct the next inspection within 9,500 landings.

(2) If any cracking is detected or suspected during any detailed visual inspection required by paragraph (a), (a)(1), or (a)(3)(i) of this AD, prior to further flight, confirm this finding and the length of this cracking by conducting a HFEC inspection, in accordance with the service bulletin. If no cracking is confirmed during the HFEC inspection, accomplish the repetitive inspection required by paragraph (a)(1)(ii) of this AD at the time specified in that paragraph.

(3) If any cracking is detected or confirmed during any HFEC inspection required by paragraph (a), (a)(1), or (a)(2) of this AD:

(i) If the cracking is 75 mm or less per rib bay, prior to further flight, repair in accordance with the service bulletin. Thereafter, conduct repetitive detailed visual inspections of the repaired area at intervals not to exceed 50 landings, in accordance with the service bulletin.

(ii) If the cracking exceeds 75 mm per rib bay, prior to further flight, install Airbus Modification 10089, in accordance with the service bulletin. Thereafter, conduct a low frequency eddy current inspection in accordance with the requirements of paragraph (b) of this AD.

Note 2: The Airbus service bulletin references Airbus Service Bulletin A300–57–6041, Revision 4, dated November 16, 1995, as an additional source of service information for installing Airbus Modification 10089.

(b) For airplanes on which Airbus Modification 10089 has been installed: Prior to the accumulation of 22,000 total landings after this modification has been installed, or within 1,500 landings after the effective date of this AD, whichever occurs later, conduct a low frequency eddy current inspection to detect fatigue cracking in the inboard and rear edges of the top skin reinforcing plates, in accordance with Airbus Service Bulletin A300–57–6044, Revision 2, dated September 6, 1995, including Appendix 1.

(1) If no cracking is detected, repeat this inspection thereafter at intervals not to exceed 11,000 landings.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Thereafter, repeat this inspection at intervals not to exceed 11,000 landings.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and installation shall be done in accordance with Airbus Service Bulletin A300–57–6044, Revision 2, dated September 6, 1995, including Appendix 1, which contains the specified effective pages:

Page number shown on page	Revision level shown on page	Date shown on page
1–8	2	Sept. 6, 1995.
9, 10	Original	Mar. 1, 1993.
Appendix 1		
1	1	Nov. 25, 1994.
2–6	Original	Mar. 1, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 30, 1997.

Issued in Renton, Washington, on September 17, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25164 Filed 9–24–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–97–026]

Drawbridge Operation Regulations; Columbia River, OR

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the operation of the twin, Interstate 5, drawbridges across the Columbia River, mile 105.6, between Vancouver, Washington and Portland, Oregon. The draws of the two bridges need not open for the passage of vessels from midnight, September 15 through midnight, October 7, 1997, to accommodate the replacement of a defective part in the lift machinery.

EFFECTIVE DATES: The period of deviation begins at midnight September 15 and ends at midnight October 7, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. John E. Mikesell, Chief, Plans and Programs Section, Thirteenth Coast Guard District. Telephone number (206) 220–7270.

SUPPLEMENTARY INFORMATION: A recent survey of the operating machinery of the twin Interstate 5 Bridges across the Columbia River revealed serious defects in the trunion shafts of the lift mechanism. The shafts require immediate replacement to insure the continued safe operation of the lift spans. During the closure period, low water conditions will allow for the passage of most commercial navigation through an alternate high level fixed span at midriver.

The District Commander has authorized a temporary deviation from the operation regulations from midnight, September 15, through midnight, October 7, 1997, during which the draws of the twin Interstate 5 bridges across the Columbia River need not open for the passage of vessels, while repairs are being made to the draw machinery. A concurrent action by the Coast Guard Captain of The Port establishes an Exclusionary Zone which restricts the entry of vessels into the area around the drawspans.

This deviation from normal operating regulations (33 CFR 117.869) is authorized in accordance with the provisions of Title 33 of the Code of Federal Regulations, § 117.35.

Dated: September 9, 1997.

J. David Spade,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 97–25371 Filed 9–24–97; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

36 CFR Part 703

[Docket No. LOC 97–2]

Availability of Library of Congress Records

AGENCY: Library of Congress.

ACTION: Final regulation.

SUMMARY: The Library of Congress issues this final regulation to revise Library of Congress Regulation 1917–3 (see 36 CFR 703.1 *et seq.*). The revised regulation will reflect the renaming and organizational restructuring of the responsible division from Central Services to Office Systems Services, an increase in the number of disclosure exemptions, a new definitional section for the types of records covered under the Regulation, and increased fees and charges for processing record requests. Access to Library records, including those in the LC Archives and exclusive of materials in the collections, must be made through the Chief, Office Systems Services.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Lana Kay Jones, Acting General Counsel, Office of the General Counsel, Library of Congress, Washington, D.C. 20540–1050. Telephone No. (202) 707–6316.

SUPPLEMENTARY INFORMATION: This Regulation implements the policy of the Library with respect to the public availability of Library of Congress records. Although the Library is not subject to the Freedom of Information Act, as amended (5 U.S.C. § 552), this Regulation follows the spirit of that Act consistent with the Library's duties, functions, and responsibilities to the Congress. The application of that Act to the Library is not to be inferred, nor should this Regulation be considered as conferring on any member of the public a right under that Act of access to or information from the records of the Library. Nothing in this Regulation modifies current instructions and practices in the Library with respect to handling Congressional correspondence.

The Copyright Office, although a service unit of the Library, is by law (17 U.S.C. § 701) subject to the provisions of the Freedom of Information Act, as

amended, only for purposes of actions taken under the copyright law. The Copyright Office has published its own regulation with respect to the general availability of information (see 37 CFR 201.2) and requests for copyright records made pursuant to the Freedom of Information Act (see 37 CFR 203.1 *et seq.*) and the Privacy Act (see 37 CFR 204.1 *et seq.*).

List of Subjects in 36 CFR Part 703

Archives and records, Libraries.

Final Regulation

In consideration of the foregoing the Library of Congress revises 36 CFR part 703 as follows:

PART 703—AVAILABILITY OF LIBRARY OF CONGRESS RECORDS

Sec.

703.1 Policy.
703.2 Administration responsibilities.
703.3 Definitions.
703.4 Records exempt from disclosure.
703.5 Procedures for access to copying of records.
703.6 Public reading facility.
703.7 Fees and charges.
Appendix A to Part 703—Fees and Charges for Services Provided to Requestors of Records

Authority: 2 U.S.C. 136.

§ 703.1 Policy.

(a) Subject to limitations set out in this part, Library of Congress records shall be available as hereinafter provided and shall be furnished as promptly as possible within the Library to any member of the public at appropriate places and times and for an appropriate fee, if any.

(b) The Library shall not provide records from its files that originate in another federal agency or non-federal organization to persons who may not be entitled to obtain the records from the originator. In such instances, the Library shall refer requesters to the agency or organization that originated the records.

(c) In order to avoid disruption of work in progress, and in the interests of fairness to those who might be adversely affected by the release of information which has not been fully reviewed to assure its accuracy and completeness, it is the policy of the Library not to provide records which are part of on-going reviews or other current projects. In response to such requests, the Library will inform the requester of the estimated completion date of the review or project so that the requester may then ask for the records. At that time, the Library may release the records unless the same are exempt from disclosure as identified in § 703.4.

§ 703.2 Administration responsibilities.

The administration of this part shall be the responsibility of the Chief, Office Systems Services (OSS), Library of Congress, 101 Independence Avenue, S.E., Washington, DC 20540–9440, and to that end, the Chief may promulgate such supplemental rules or guidelines as may be necessary.

§ 703.3 Definitions.

(a) *Records* includes all books, papers, maps, photographs, reports, and other documentary materials, exclusive of materials in the Library's collections, regardless of physical form or characteristics, made or received and under the control of the Library in pursuance of law or in connection with the transaction of public business, and retained, or appropriate for retention, by the Library as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the informational value of data contained therein. The term refers only to such items in being and under the control of the Library. It does not include the compiling or procuring of a record, nor does the term include objects or articles, such as furniture, paintings, sculpture, three-dimensional models, structures, vehicles, and equipment.

(b) *Identifiable* means a reasonably specific description of a particular record sought, such as the date of the record, subject matter, agency or person involved, etc. which will permit location or retrieval of the record.

(c) *Records available to the public* means records which may be examined or copied or of which copies may be obtained, in accordance with this part, by the public or representatives of the press regardless of interest and without specific justification.

(d) *Disclose or disclosure* means making available for examination or copying, or furnishing a copy.

(e) *Person* includes an individual, partnership, corporation, association, or public or private organization other than a federal agency.

§ 703.4 Records exempt from disclosure.

(a) The public disclosure of Library records provided for by this part does not apply to records, or any parts thereof, within any of the categories set out below. Unless precluded by law, the Chief, OSS, nevertheless may release records within these categories, except for Congressional correspondence and other materials identified in §703.4 (b)(1), after first consulting with the General Counsel.

(b) Records exempt from disclosure under these regulations are the following:

(1) Congressional correspondence and other materials relating to work performed in response to or in anticipation of Congressional requests, unless authorized for release by officials of the Congress.

(2) Materials specifically authorized under criteria established by Executive Order to be withheld from public disclosure in the interest of national defense or foreign policy and that are properly classified pursuant to Executive Orders.

(3) Records related solely to the internal personnel rules and practices of the Library. This category includes, in addition to internal matters of personnel administration, internal rules and practices which cannot be disclosed without prejudice to the effective performance of a Library function, such as guidelines and procedures used by auditors, investigators, or examiners in the Office of the Inspector General.

(4) Records specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(5) Records containing trade secrets and commercial or financial information obtained from a person as privileged or confidential. This exemption may include, but is not limited to, business sales statistics, inventories, customer lists, scientific or manufacturing processes or development information.

(6) Personnel and medical files and similar files the disclosure of which could constitute a clearly unwarranted invasion of personal privacy. This exemption includes all private or personal information contained in files compiled to evaluate candidates for security clearances.

(7) Materials and information contained in investigative or other records compiled for law enforcement purposes.

(8) Materials and information contained in files prepared in connection with government litigation and adjudicative proceedings, except for those portions of such files which are available by law to persons in litigation with the Library.

(9) Records having information contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(10) Inter-agency or intra-agency memoranda, letters or other materials that are part of the deliberative process, the premature disclosure of which would inhibit internal communications or be detrimental to a Library function (e.g., case files in the Manuscript Division).

(11) Records containing information customarily subject to protection as privileged in a court or other proceedings such as information protected by the doctor-patient, attorney work product, or attorney-client privilege.

(12) Information submitted by a person to the Library in confidence or which the Library has obligated itself not to disclose such as information received by the Office of the Inspector General through its hotline.

(13) Materials related to specific patron use of the Library's collections, resources, or facilities either on site or off site. This exemption includes:

(i) *Reader records.* Library records which identify readers by name, such as registration records, reading room logs or registers, telephone inquiry logs, and charge slips, if retained for administrative purposes.

(ii) *Use records.* Users of the Library are entitled to privacy with respect to their presence and use of the Library's facilities and resources. Records pertaining to the use of the Library and of Library collections and subjects of inquiry are confidential and are not to be disclosed either to other readers, to members of the staff who are not authorized, or to other inquirers including officials of law enforcement, intelligence, or investigative agencies, except pursuant to court order or administratively by order of The Librarian of Congress.

(c) Any reasonably segregable portion of a record shall be provided to anyone requesting such records after deletion of the portions which are exempt under this section. A portion of a record shall be considered reasonably segregable when segregation can produce an intelligible record which is not distorted out of context, does not contradict the record being withheld, and can reasonably provide all relevant information.

§ 703.5 Procedure for access to and copying of records.

(a) A request to inspect or obtain a copy of an identifiable record of the Library of Congress shall be submitted in writing to the Chief, OSS, Library of Congress, 101 Independence Avenue, S.E., Washington, DC 20540–9440, who shall promptly record and process the request.

(b) Requests for records shall be specific and shall identify the precise records or materials that are desired by name, date, number, or other identifying data sufficient to allow the OSS staff to locate, retrieve, and prepare the record for inspection or copying and to delete exempted matter where appropriate to do so. Blanket or generalized requests (such as "all matters relating to" a general subject) shall not be honored and shall be returned to the requester.

(c) Records shall be available for inspection and copying in person during business hours.

(d) Records in media other than print (e.g., microforms and machine-readable media) shall be available for inspection in the medium in which they exist. Copies of records in machine-readable media shall be made in media determined by the Chief, OSS.

(e) Library staff shall respond to requests with reasonable dispatch. Use of a record by the Library or Library employees, however, shall take precedence over any request. Under no circumstances shall official records be removed from Library control without the written authorization of The Librarian.

(f) The Chief, OSS, shall make the initial determination on whether:

(1) The record described in a request can be identified and located pursuant to a reasonable search; and

(2) The record (or portions thereof) may be made available or withheld from disclosure under the provisions of this part. In making the initial determinations, the Chief shall consult with any unit in the Library having a continuing substantial interest in the record requested. Where the Chief finds no valid objection or doubt as to the propriety of making the requested record available, the Chief shall honor the request upon payment of prescribed fees, if any are required by §703.7.

(g) If the Chief, OSS, determines that a requested record should be withheld, the Chief shall inform the requester in writing that the request has been denied; shall identify the material withheld; and shall explain the basis for the denial. The Chief shall inform the requester that further consideration of the denied request may be obtained by a letter to the General Counsel setting out the basis for the belief that the denial of the request was unwarranted.

(h) The General Counsel shall make the final determination on any request for reconsideration and shall notify the requester in writing of that determination. The decision of the General Counsel shall be the final administrative review within the Library.

(1) If the General Counsel's decision reverses in whole or in part the initial determination by the Chief, OSS, the Chief shall make the requested record, or parts thereof, available to the requester, subject to the provisions of § 703.7.

(2) If the General Counsel's decision sustains in whole or in part the initial determination by the Chief, OSS, the General Counsel shall explain the basis on which the record, or portions thereof, will not be made available.

§ 703.6 Public reading facility.

(a) The Chief, OSS, shall maintain a reading facility for the public inspection and copying of Library records. This facility shall be open to the public from 8:30 a.m. to 4:30 p.m., except Saturdays, Sundays, holidays, and such other times as the Library shall be closed to the public.

(b) The General Counsel shall advise the Chief, OSS, of the records to be available in the public reading facility following consultation with the Library managers who may be concerned.

§ 703.7 Fees and charges.

(a) The Library will charge no fees for:

(1) Access to or copies of records under the provisions of this part when the direct search and reproduction costs are less than $10.

(2) Records requested which are not found or which are determined to be exempt under the provisions of this part.

(3) Staff time spent in resolving any legal or policy questions pertaining to a request.

(4) Copies of records, including those certified as true copies, that are furnished for official use to any officer or employee of the federal government.

(5) Copies of pertinent records furnished to a party having a direct and immediate interest in a matter pending before the Library, when furnishing such copies is necessary or desirable to the performance of a Library function.

(b) When the costs for services are $10 or more, the Chief, OSS, shall assess and collect the fees and charges set out in the appendix to this part for the direct costs of search and reproduction of records available to the public.

(c) The Chief, Office Systems Services, is authorized to waive fees and charges, in whole or in part, where it is determined that the public interest is best served to do so, because waiver is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest

of the requester. Persons seeking a waiver or reduction of fees may be required to submit a written statement setting forth the intended purpose for which the records are requested or otherwise indicate how disclosure will primarily benefit the public and, in appropriate cases, explain why the volume of records requested is necessary. Determinations made pursuant to the authority set out herein are solely within the discretion of the Chief, OSS.

(d) Fees and charges for services identified in the appendix to this part shall be paid in full by the requester before the records are delivered. Payment shall be made in U.S. funds by personal check, money order, or bank draft made payable to the Library of Congress. The Chief, OSS, shall remit all fees collected to the Director, Financial Services, who shall cause the same to be credited to appropriate accounts or deposited with the U.S. Treasury as miscellaneous receipts.

(e) The Chief, OSS, shall notify a requester and may require an advance deposit where the anticipated fees will exceed $50.

Appendix A to Part 703—Fees and Charges for Services Provided to Requesters of Records

(a) Searches.

(1) There is no charge for searches of less than one hour.

(2) Fees charged for searches of one hour or more are based on prevailing rates.

Currently, those charges are:

Personnel searches (clerical)—$15 per hour
Personnel searches (professional)—$25 per hour
Reproduction costs—$.50 per page
Shipping and mailing fees—variable

(3) In situations involving the use of computers to locate and extract the requested information, charges will be based on the direct cost to the Library, including labor, material, and computer time.

(b) Duplication of Records. Fees charged for the duplication of records shall be according to the prevailing rates established by the Library's Photoduplication Service, or in the case of machine media duplication, by the Resources Management Staff, Information Technology Services.

(c) Certifications. The fee charges for certification of a record as authentic or a true copy shall be $10.00 for each certificate.

(d) Other Charges. When no specific fee has been established for a service required to meet the request for records, the Chief, Office Systems Services, shall establish an appropriate fee based on direct costs in accordance with the Office of Management and Budget Circular No. A–25.

Date: September 17, 1997.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–25347 Filed 9–24–97; 8:45 am]

BILLING CODE 1410–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 97–272]

Minimum Distance Separations to Mexican Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Order* modifies the Commission's rules to relax the minimum distance separations between U.S. FM broadcast stations or allotments as compared to Mexican FM broadcast stations or allotments. The revised separations were promulgated by the *Agreement Between the Government of the United States of America and the Government of the United Mexican States Relating to the FM Broadcasting Service in the Band 88–108 MHz*, dated August 11, 1992. The revised spacings are no event greater than, and are in most cases less than, the required separations between stations in effect prior to this date.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Dale Bickel, Mass Media Bureau, Audio Services Division, (202) 418–2720, or via the Internet at dbickel@fcc.gov.

SUPPLEMENTARY INFORMATION: This is the synopsis of the Commission's *Order*, FCC 97–272, adopted July 31, 1997, and released August 13, 1997. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., at (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036. The complete text is also available as a Word Perfect 5.1 file through the Internet at http://www.fcc.gov/Bureaus/Mass_Media/Orders/1997/fcc97272.wp .

Synopsis of the Order

1. The rule and procedure change adopted in the *Order* were enabled by revisions to the *Agreement Between the Government of the United States of America and the Government of the United Mexican States Relating to the FM Broadcasting Service*, dated August 11, 1992. The rule revisions to § 73.207 conform the rule to the agreement. Because the revisions are made in response to an international agreement, and because there will be no adverse effect on any existing permittee or licensee or pending applicant, a notice and comment rulemaking is not required. *See* 47 U.S.C. 551(a) and (b)(3)(B), and 47 CFR 1.412(c).

Final Paperwork Reduction Act of 1995 Analysis

2. This *Order* contains no new or modified information collections subject to the Paperwork Reduction Act of 1995 (*"PRA"*).

Final Regulatory Flexibility Analysis

3. Because the rule change conforms the Commission rule to an international agreement, and also because the rule change will not affect any licensee, permittee, or current applicant, a Regulatory Flexibility Analysis is not required. *See* 5 U.S.C. 551(a) and 553(b)(3)(B). The Commission certifies that no significant impact on a substantial number of small entities will result from adoption of this *Order*.

Ordering Clauses

4. Accordingly, it is ordered that pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 CFR part 73 is amended.

5. It is further ordered that the rules adopted established in this *Order* will become effective on September 25, 1997.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Rule Changes

Part 73 of title 47 is amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

2. Section 73.207 is amended by removing the number "8" appearing in the I.F. column between the entries for B–B and B–C1 in Table B of paragraph (b)(2) and by revising paragraph (b)(3) to read as follows:

§ 73.207 Minimum distance separation between stations.

* * * * *

(b) * * *

(3) Under the 1992 Mexico-United States FM Broadcasting Agreement, domestic U.S. assignments or allotments within 320 kilometers (199 miles) of the common border must be separated from Mexican assignments or allotments by not less than the distances given in Table C in this paragraph (b)(3). When applying Table C—

(i) U.S. or Mexican assignments or allotments which have been notified internationally as Class A are limited to a maximum of 3.0 kW ERP at 100 meters HAAT, or the equivalent;

(ii) U.S. or Mexican assignments or allotments which have been notified internationally as Class AA are limited to a maximum of 6.0 kW ERP at 100 meters HAAT, or the equivalent;

(iii) U.S. Class C3 assignments or allotments are considered Class B1;

(iv) U.S. Class C2 assignments or allotments are considered Class B; and

(v) Class C1 assignments or allotments assume maximum facilities of 100 kW ERP at 300 meters HAAT. However, U.S. Class C1 stations may not, in any event, exceed the domestic U.S. limit of 100 kW ERP at 299 meters HAAT, or the equivalent.

TABLE C—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS

Relation	Co-channel	200 kHz	400 kHz or 600 kHz	10.6 or 10.8 MHz (I.F.)
A to A	100	61	25	8
A to AA	111	68	31	9
A to B1	138	88	48	11
A to B	163	105	65	14
A to C1	196	129	74	21
A to C	210	161	94	28
AA to AA	115	72	31	10
AA to B1	143	96	48	12
AA to B	178	125	69	15
AA to C1	200	133	75	22
AA to C	226	165	95	29
B1 to B1	175	114	50	14
B1 to B	211	145	71	17
B1 to C1	233	161	77	24
B1 to C	259	193	96	31
B to B	237	164	65	20
B to C1	270	195	79	27
B to C	270	215	98	35
C1 to C1	245	177	82	34
C1 to C	270	209	102	41
C to C	290	228	105	48

* * * * *

[FR Doc. 97–25324 Filed 9–24–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1011

[STB Ex Parte No. 568]

Modifications to the General Provisions of the Board

AGENCY: Surface Transportation Board.

ACTION: Final rule; correction.

SUMMARY: The Surface Transportation Board (Board) published a document in the **Federal Register** on September 18, 1997 amending parts 1000, 1001, and 1011 of its regulations to reflect 10 changes made by the ICC Termination Act of 1995, Pub. L. No. 104–88. Inadvertently, an intended reference to part 1011 was not made. This document corrects that error.

EFFECTIVE DATE: These rules are effective on September 18, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board published a document in the **Federal Register** on September 18, 1997 (62 FR 48953) that, *inter alia*, attempted to amend the authority citation for part 1011. Instead, amendatory instruction number 5 incorrectly refers to part 1104 instead of part 1011. This document corrects the reference.

In STB Ex Parte No. 568 published in the **Federal Register** on September 18, 1997 (62 FR 48953), make the following correction. On page 48955, in the third column, amendatory instruction number 5 is corrected to read as follows:

5. The authority citation for part 1011 is revised to read as follows:

Authority: 5 U.S.C. 553, 31 U.S.C. 9701, and 49 U.S.C. 701, 721, 11144, 14122, and 15721.

Dated: September 22, 1997.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25479 Filed 9–24–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 091797B]

North Atlantic Swordfish Fishery; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: Based on landings to date, NMFS has projected that the directed fishery quota for the first semiannual 1997 north Atlantic swordfish season (June 1, 1997, to November 30, 1997)

will be reached on or before October 12, 1997. Consequently, NMFS closes the directed fishery for the north Atlantic swordfish management unit effective October 12, 1997.

EFFECTIVE DATE: The closure is effective at 12 noon, local time, on October 12, 1997, through November 30, 1997.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson, 301–713–2347, or Buck Sutter, 813–570–5447.

SUPPLEMENTARY INFORMATION: The north Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas.

The regulations governing the Atlantic swordfish fisheries at § 630.24 provide for a specified annual quota to be landed by the directed fishery. The annual quota is divided into two semiannual quotas for each of the 6-month periods, June 1 through November 30, and December 1 through May 31. NMFS is required, under § 630.25(a)(1), to monitor the catch and landings statistics and, on the basis of these statistics, to project a date when the catch will equal the quota, and to publish a **Federal Register** document announcing the closure.

Closure of the Fishery

Reported landings of swordfish in the directed fishery in the first semiannual season totaled 594.7 metric tons dressed weight (mt dw) as of September 1, 1997. Average landings of swordfish during September and October from 1994 to 1996 were 306 mt and 334 mt, respectively. However, current landings are higher than during similar periods during the past 3 years. Accounting for anticipated delayed reporting (based on experience in the last semiannual season from December 1, 1996, through May 31, 1997) and the current higher than average rate of landings, it is expected that the first semiannual directed harvest quota of 1,064.4 mt dw for the directed fishery would be reached on or about October 12, 1997.

Therefore, NMFS announces that the directed fishery for swordfish will close at 12 noon, local time on October 12, 1997. All vessels must be in port and offloaded on or before this closing date. This notice provides considerably more than the 14-day advance notice of closure required by regulation. To provide advance notice as early as possible, NMFS issued a notice to the industry on August 20, 1997, that, based on then current landings, a closure was anticipated about mid-October, 1997. This advance notice period will allow swordfish vessel owners to plan their fishing, offloading and sale of swordfish catch prior to the closure deadline.

During closure of the directed fishery, a person may not fish for swordfish from the north Atlantic stock, and no more than 15 swordfish, caught incidentally while fishing with longline gear for other species, may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean state. During this directed fishery closure, no swordfish may be retained or possessed on board a vessel using harpoon gear. Established swordfish bycatch limits for the non-directed fisheries remain unchanged (§ 630.25(d)).

The drift gillnet fishery is currently closed under emergency authority through November 26, 1997 (62 FR 30775, June 5, 1997). Pursuant to this emergency closure: (1) No one aboard a vessel using or having on board a drift gillnet may fish for swordfish from the north Atlantic swordfish stock; and (2) no more than two swordfish per trip may be possessed on board a vessel using or having on board a drift gillnet in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is taken under 50 CFR 630.24 and 50 CFR 630.25(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 19, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–25400 Filed 9–24–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 091997A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1997 total allowable catch (TAC) for pollock in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 21, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1997 TAC for pollock in Statistical Area 620 of the GOA was established as 31,250 metric tons (mt) by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997), determined in accordance with § 679.20(a) (5)(ii)(A).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1997 TAC for pollock in Statistical Area 620 will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 31,050 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is closing directed fishing for pollock in Statistical Area 620 of the GOA.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for pollock in Statistical Area 620 of the GOA. A delay in the effective date is impracticable and contrary to public interest. The fleet has already taken the 1997 TAC for pollock in Statistical Area 620 of the GOA. Further delay would only result in overharvest which would disrupt the FMP's objective of providing suficient pollock as bycatch to support other anticipated fisheries. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 19, 1997

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries National Marine Fisheries Service

[FR Doc. 97–25361 Filed 9–19–97; 4:41 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 186
Thursday, September 25, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 96–046–2]

Importation of Fruits and Vegetables; Papayas From Brazil and Costa Rica

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period on a proposal to allow the importation of papayas from Brazil in order to provide the public with an opportunity to comment on two additional safeguards we are proposing to add. These include requiring a hot water treatment and requiring that certain actions be taken if fruit fly captures reach certain levels in the papaya production areas. We are also proposing to add these safeguards to the requirements for importing papayas from Costa Rica, and are soliciting public comment on this action as well. These additional requirements appear necessary to prevent the introduction of injurious plant pests into the United States. Additionally, we will accept comments on any other issues involving the importation of papayas from Brazil.

DATES: Consideration will be given only to comments received on or before October 27, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–046–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–046–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Campbell, Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1997, we published in the **Federal Register** (62 FR 14037–14044, Docket No. 96–046–1) a proposal to amend the regulations in 7 CFR part 319 by allowing certain previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions.

One of the fruits that we proposed to allow to be imported into the United States under certain conditions was papayas from Brazil. Specifically, we proposed to allow solo type papayas (*Carica papaya*) from Brazil to be imported into the United States if the fruit is grown in the State of Espirito Santo and if the fruit is grown, packed, and shipped in accordance with certain phytosanitary conditions.

Because fully ripe papayas can be hosts of several serious plant pests, including the Mediterranean fruit fly (*Ceritatis capitata*) (Medfly) and the South American fruit fly (*Anastrepha fraterculus*), we proposed to require that papayas intended for importation into the United States from the State of Espirito Santo, Brazil, be subject to certain special conditions. The proposed special conditions outlined in the proposed rule for the importation of papayas from Brazil were based on the provisions in § 319.56–2w of the regulations for papayas from Costa Rica. The conditions proposed were as follows:

1. The papayas were grown and packed for shipment to the United States in the State of Espirito Santo.

2. Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the area where the papayas were grown were kept free of papayas that were one-half or more ripe (more than one-quarter of shell surface yellow), and all culled and fallen fruit were removed from the field at least twice a week.

3. When packed, the papayas were less than one-half ripe (shell surface no more than one-quarter yellow, surrounded by light green) and appeared to be free of all injurious plant pests.

4. The papayas were packaged so as to prevent access by fruit flies or other injurious plant pests, and the package does not contain any other fruit, including papayas not qualified for importation into the United States.

5. All activities described in provisions 1 through 4 above were carried out under the supervision and direction of plant health officials of the national Ministry of Agriculture.

6. Beginning at least 1 year before harvest began and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at the rate of 1 trap per hectare and were checked for fruit flies at least once a week by plant health officials of the national Ministry of Agriculture. Fifty percent of the traps were of the McPhail type, and 50 percent of the traps were of the Jackson type. The national Ministry of Agriculture kept records of the fruit fly finds for each trap, updating the records each time the traps were checked, and made the records available to APHIS upon request. The records were maintained for at least 1 year.

7. All shipments of papayas must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

Comments on the proposed rule were required to be received on or before May 27, 1997. Upon further review and consideration of this issue, we are also proposing to require a hot water treatment for papayas from Brazil and Costa Rica and to require that certain actions be taken if fruit fly captures reach certain levels in the papaya production areas. These conditions would further help to prevent the introduction into the United States of plant pests, including fruit flies, that may be associated with the papayas.

Hot Water Treatment

Though it is not currently required by the regulations, hot water treatment of papayas prior to importation into the United States is standard practice in Costa Rica. We believe that hot water treatment, in conjunction with other safeguards established for papayas from Costa Rica and proposed for papayas from Brazil, would reduce the likelihood that papayas will introduce injurious plant pests into the United States. Therefore, we are proposing to amend § 319.56–2w to require that papayas imported from Brazil and Costa Rica into the United States be given a hot water treatment consisting of 20 minutes in water at 49 °C (120.2 °F).

Threshold for Fruit Fly Captures

In order to further reduce the possibility of the introduction of Medfly into the United States, we are also proposing to establish a threshold for Medfly captures in papaya production areas of Brazil and Costa Rica. The thresholds would be as follows: If the average Jackson trap catch is greater than 7 Medflies per trap per week, measures, which may include Malathion bait sprays or other chemical sprays, must be taken to control the Medfly population in the production area. If the average Jackson trap catch exceeds 14 Medflies per trap per week, importations of papayas from that production area would be halted until the rate of capture drops to an average of 7 or fewer Medflies per trap per week. The thresholds for Medfly trapping would help detect increasing populations of Medflies in growing areas and would help ensure that Medflies are not associated with imports of papayas from Brazil or Costa Rica.

Reopening and Extension of Comment Period

We are reopening and extending the public comment period on that portion of Docket No. 96–046–1 that concerns the importation of papayas from Brazil from May 27, 1997, until 30 days after the date of publication of this notice in the **Federal Register**. Comments on the new conditions that would apply to papayas from Costa Rica will also be accepted until 30 days after the date of publication of this notice in the **Federal Register**. This action will provide interested persons with additional time in which to prepare comments on the importation of papayas from Brazil and will allow for public comment on the new conditions proposed for the importation of papayas from Costa Rica. Comments already received concerning the proposed importation of papayas from Brazil will remain under consideration and need not be resubmitted.

In this edition of the **Federal Register**, we have also published a final rule (Docket No. 96–046–3) that adopts, with certain changes, other amendments to the regulations that were proposed in Docket No. 96–046–1 on March 25, 1997 (62 FR 14037–14044).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The Initial Regulatory Flexibility Analysis set out in the proposed rule published in the **Federal Register** on March 25, 1997, included information on papayas from Brazil. That information still applies and will not change as a result of this proposal.

Executive Order 12988

This proposed rule would allow papayas to be imported into the United States from Brazil. If this proposed rule is adopted, State and local laws and regulations regarding papayas imported under this rule would be preempted while the fruit is in foreign commerce. Fresh papayas are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget.

The paperwork requirements and burdens were described in the proposed rule published in the **Federal Register** on March 25, 1997, and will not change as a result of this proposal.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, Room 404–W, 1400 Independence Ave., SW, Washington, DC 20250.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

9. Section 319.56–2w would be revised to read as follows:

§ 319.56–2w Administrative instruction; conditions governing the entry of papayas from Brazil and Costa Rica.

The Solo type of papaya may be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands from the State of Espirito Santo, Brazil, and the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica, only under the following conditions:

(a) The papayas were grown and packed for shipment to the United States in the State of Espirito Santo, Brazil, or in the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica.

(b) Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the field where the papayas were grown were kept free of papayas that were ½ or more ripe (more than ¼ of the shell surface yellow), and all culled and fallen fruits were removed from the field at least twice a week.

(c) The papayas were treated with a hot water treatment consisting of 20 minutes in water at 49 °C (120.2 °F).

(d) When packed, the papayas were less than ½ ripe (the shell surface was no more than ¼ yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

(e) The papayas were packaged so as to prevent access by fruit flies and other injurious insect pests, and the package does not contain any other fruit, including papayas not qualified for importation into the United States.

(f) All activities described in paragraphs (a) through (e) of this section were carried out under the supervision and direction of plant health officials of the national Ministry of Agriculture.

(g) Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at a rate of 1 trap per hectare and were checked for fruit flies at least once weekly by plant health officials of the

national Ministry of Agriculture. Fifty percent of the traps were of the McPhail type, and fifty percent of the traps were of the Jackson type. If the average Jackson trap catch was greater than 7 Medflies per trap per week, measures were taken to control the Medfly population in the production area. The national Ministry of Agriculture kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors upon request. The records were maintained for at least 1 year.

(h) If the average Jackson trap catch exceeds 14 Medflies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer Medflies per trap per week.

(i) All shipments must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

Done in Washington, DC, this 22nd day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25487 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 725

Central Liquidity Facility

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Credit Union Central Liquidity Facility(the CLF), a mixed-ownership government corporation within theNCUA, serves as a liquidity source for its member credit unions. The current regulation requires the CLF to secure each loan with a security interest in all of the assets of the member credit union. This requirement interferes with the ability of credit unions to establish credit arrangements with other parties and in some cases may preclude members from borrowing from the CLF. In order to accommodate credit arrangements between the CLF member credit unions and multiple parties, NCUA is proposing to amend this requirement to permit the CLF to take, in lieu of a blanket security interest, a first priority security interest in specific assets of the credit union with a net book value at least equal to 110% of the amounts owed on the CLF advance or Agent loan. The proposed rule is intended to provide credit unions with greater flexibility in their normal operations while ensuring that the CLF is adequately protected for any loans that it makes.

DATES: Comments must be received on or before November 24, 1997.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, President, National Credit Union Central Liquidity Facility, at the above address. Telephone Number (703) 518–6391 or (703) 518–6363.

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 96–630, Title XVIII, 12 U.S.C. 1795, et seq., enacted in 1979, created the CLF. Its purpose is to improve general financial stability by meeting the liquidity needs of credit unions and thereby encourage savings, support consumer and mortgage lending, and provide basic financial resources to all segments of the economy.

Most credit unions are members of a corporate credit union. In addition, credit unions are now eligible for Federal Home Loan Bank membership. Both corporate credit unions and Federal Home Loan Banks require that a credit union provide collateral for borrowing. In addition, credit unions may also borrow from other financial institutions and are required to provide collateral for such borrowings. While multiple security agreements are not prohibited under the current regulation, the presence of competing security interests could result in the CLF being under-collateralized for any advances.

Collateral—Net Book Value

Currently, Section 725.19 requires that the CLF secure each loan with a blanket security interest in all of the assets of the member credit union. The proposed rule gives the CLF the option of taking either a blanket security interest or a first priority security interest in specific collateral of the credit union with a net book value at least equal to 110% of the amounts owed on the CLF advance or Agent loan. This requirement would permit a credit union to provide collateral to other lenders and still have the ability to borrow from the CLF, so long as it had other assets with sufficient net book value to support the CLF advance or Agent loan. It also would permit the CLF to accept a security interest in all assets of the credit union as collateral for a CLF advance to a Regular member. However, the net book value of the assets would still have to be at least equal to 110% of the amounts amounts owed on the CLF advance or Agent loan.

Superior Perfected Interest

In calculating the value of the assets covered by the security interest, assets in which any third party had a superior perfected interest would be excluded.

Section 208 Assistance

The proposed rule also expressly authorizes the CLF to accept the guarantee of the National Credit Union Share Insurance Fund as collateral for borrowings by a credit union. This provision would facilitate advances by the CLF to credit unions receiving assistance under Section 208 of the Federal Credit Union Act.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that this proposed rule, if adopted, will not have a significant impact on a substantial number of small credit unions (those under $1 million in assets). The proposed rule will make it easier for credit unions to obtain loans from both CLF and other sources. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The proposed rule has no information collection requirements; therefore, no Paperwork Reduction Act analysis is required.

Executive Order 12612

The NCUA Board has determined that the proposed rule, if adopted, will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

List of Subjects in 12 CFR Part 725

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on September 17, 1997.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, NCUA proposes to amend 12 CFR part 725 as set forth below:

PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

1. The authority citation for part 725 continues to read as follows:

Authority: Secs. 301–307 Federal Credit Union Act, 92 Stat. 3719–3722 (12 U.S.C. 1795–1795f).

2. Section 725.19 is revised to read as follows:

§ 725.19 Collateral requirements.

(a) Each CLF advance and each Agent loan shall be secured by a first priority security interest in collateral of the credit union with a net book value at least equal to 110% of all amounts due under the applicable CLF advance or Agent loan, or by guarantee of the National Credit Union Share Insurance Fund.

(b) The CLF may accept as collateral for each CLF advance to a Regular member, a security interest in all assets of the Regular member; provided however, that the value of any assets in which any third party has a perfected security interest that is superior to the security interest of the CLF shall be excluded for purposes of complying with the requirements of paragraph (a) of this section.

(c) The CLF may accept as collateral for each CLF advance to an Agent member, a security interest in the Agent loans for which the CLF advance was made; provided however, that the collateral for such Agent loan meets the requirements of paragraph (a) of this section.

[FR Doc. 97–25359 Filed 9–24–97; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–54–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This proposal would require the application of a sealant, secondary fuel barrier, and corrosion-inhibiting compound to certain portions of the wing center section. This proposal is prompted by reports indicating that, during manufacture, the secondary fuel barrier was not applied to certain portions of the wing center section. The actions specified by the proposed AD are intended to prevent leakage of fuel through the fasteners, sealant, or structural cracks in the center section structure, which could result in fuel or fuel vapors entering the cargo or passenger compartment of the airplane.

DATES: Comments must be received by November 5, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–54–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (425) 227–1547; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the rules docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–54–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–54–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during manufacture, the secondary fuel barrier was not applied on the outboard corners of the front spar of the wing center section on certain Boeing Model 757–200 series airplanes. The secondary fuel barrier is applied to areas of the wing center section that are exposed to cabin pressure. If the secondary barrier is not applied, fuel could leak through the fasteners, sealant, or structural cracks in the center section structure, which could result in fuel or fuel vapors entering the cargo or passenger compartment of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 757–57–0053, dated February 6, 1997, which describes procedures for the application of a sealant, secondary fuel barrier, and corrosion-inhibiting compound to areas on the front spar of the wing center section. Accomplishment of this application will ensure that any fuel leaks through the tank structure do not enter the cargo or passenger compartments of the airplane.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the application of a sealant,

secondary fuel barrier, and corrosion-inhibiting compound to areas on the front spar of the wing center section. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 724 Boeing Model 757–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 463 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $101,860, or $220 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the rules docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 97–NM–54–AD.

Applicability: Model 757–200 series airplanes, line numbers 1 through 724 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of fuel through the fasteners, sealant, or structural cracks in the center section structure, which could result in fuel or fuel vapors entering into the cargo or passenger compartment of the airplane, accomplish the following:

(a) Within 16 months after the effective date of this AD, apply sealant, secondary fuel barrier, and corrosion-inhibiting compound to areas on the front spar of the wing center section, in accordance with Figure 3 of Boeing Service Bulletin 757–57–0053, dated February 6, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 19, 1997.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25415 Filed 9–24–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require a one-time inspection to determine if the rigging bushings in the rudder control system protrude above the surface of the flange in which they are installed, and replacement of any discrepant bushing with a new bushing. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent jamming in the rudder control system, and consequent reduced controllability of the airplane.

DATES: Comments must be received by October 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–110–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2796; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the rules docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–110–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–110–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it received a report indicating that, during routine inspection, a rigging bushing in the rudder control system was found to protrude above the surface of the flange on which it was installed. This condition, if not corrected, could result in jamming in the rudder control system, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB–328–27–003, dated July 13, 1994, which describes procedures for performing a one-time visual inspection to determine if the rigging bushings in the rudder control system protrude above the surface of the flange in which they are installed, and replacement of any discrepant rigging bushing with a new bushing. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this alert service bulletin as mandatory and issued German airworthiness directive 96–176, dated June 6, 1996, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

The FAA estimates that 7 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,260, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier: Docket 97–NM–110–AD.

Applicability: Model 328–100 airplanes, serial numbers 3005 through 3014 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming in the rudder control system, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time visual inspection to determine if the rigging bushings of the rudder control system protrude above the surface of the flange in which they are installed, in accordance with Dornier Alert Service Bulletin ASB–328–27–003, dated July 13, 1994. If any bushing protrudes by any amount above the surface of the flange, prior to further flight, replace the bushing with a new bushing, in accordance with the alert service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in German airworthiness directive 96–176, dated June 6, 1996.

Issued in Renton, Washington, on September 19, 1997.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25417 Filed 9–24–97; 8:45 am]

BILLING CODE 4910–13–U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE53

Administrative Review Process; Identification and Referral of Cases for Quality Review Under the Appeals Council's Authority To Review Cases on Its Own Motion

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to amend our regulations to include the rules under which a decision or order of dismissal that is issued after the filing of a request for a hearing by an administrative law judge (ALJ) will be referred to the Appeals Council for possible review under the Appeals Council's existing authority to review cases on its own motion. The proposed rules concern identification and referral procedures that we currently follow to ensure the accuracy of decisions at the ALJ-hearing step (hearing level) of the administrative review process, and new quality assurance procedures that we are proposing under the Plan for a New Disability Claim Process approved by the Commissioner of Social Security in September 1994 (59 FR 47887). The procedures set forth in the proposed rules apply to dispositions at the hearing level of the administrative review process that are made by ALJs, and also to dispositions at the hearing level that are not made by ALJs but are subject to review under the Appeals Council's own-motion authority. The latter type of dispositions currently consist of wholly favorable decisions issued by attorney advisors and adjudication officers.

DATES: To be sure that your comments are considered, we must receive them no later than November 24, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235; sent by telefax to (410) 966–2830; sent by E-mail to "regulations@ssa.gov"; or, delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

Under procedures set forth in §§ 404.967 ff. and 416.1467 ff., and pursuant to a direct delegation of authority from the Commissioner of Social Security (see 61 FR 35844, 35852, July 8, 1996), the Appeals Council, a component in our Office of Hearings and Appeals (OHA), reviews hearing decisions and orders of dismissal issued by ALJs of the Social Security Administration (SSA). The Appeals Council may review a decision or dismissal action of an ALJ at the request of a party to the action or, under authority provided in §§ 404.969 and 416.1469, on its own motion. Through the exercise of its authority to review cases, the Appeals Council is responsible for ensuring that the final decisions of the Commissioner of Social Security under titles II and XVI of the Social Security Act (the Act), as amended, are proper and in accordance with the law, regulations, and binding agency policy.

The Appeals Council's authority to review cases on its own motion also applies, at present, to two types of hearing-level cases that do not result in decisions by ALJs. Under §§ 404.942 and 416.1442, attorney advisors of OHA are temporarily authorized to conduct certain prehearing proceedings and to issue, where warranted by the documentary evidence, wholly favorable decisions. Under the provisions of §§ 404.942 (e)(2) and (f)(3) and 416.1442 (e)(2) and (f)(3), such decisions are subject to review under the own-motion authority of the Appeals Council established in §§ 404.969 and 416.1469. In addition, under §§ 404.943 and 416.1443, adjudication officers are authorized, for test purposes, to conduct certain prehearing proceedings and to issue, where warranted by the documentary evidence, wholly favorable decisions. Under the provisions of §§ 404.943(c)(2)(ii) and 416.1443(c)(2)(ii), such decisions are also subject to review on the Appeals Council's own motion.

Under our regulations on the Appeals Council's procedures, if the Appeals Council decides to review a case in response to a request for review or on its own motion, it may issue a decision or remand the case to an ALJ. The Appeals Council may also dismiss a request for hearing for any reason that the ALJ could have dismissed the request.

A decision by the Appeals Council "to review" a hearing-level decision means that the Appeals Council assumes jurisdiction to cause that decision not to be the final decision of the Commissioner of Social Security. A decision that the Appeals Council "reviews" will be replaced by a new final action in the case, either by a decision or dismissal order of the Appeals Council or, if a hearing or other hearing-level proceedings are required, by a decision or dismissal order issued following remand of the case from the Council to an ALJ.

A decision by the Appeals Council to review a case is made when, following a preliminary consideration of all aspects of the case to determine if review is appropriate, the Council issues a notice announcing a decision to review. The Council's standard notice of review advises the parties of the reasons for the review and (unless the Council issues a wholly favorable decision upon taking review) the issues to be considered in proceedings before the Council or before an ALJ on remand. In instances in which the Council reviews a hearing level decision that has been issued based on the documentary evidence without the holding of an oral hearing by an ALJ, the parties have the right to such a hearing, except where the parties waive that right in writing.

The existing provisions in §§ 404.969 and 416.1469 on the Appeals Council's authority to review cases on its own motion provide that the Appeals Council itself may decide to review a case within 60 days after the date of the hearing decision or dismissal and that, if the Council does review a case under this authority, it will provide notice to the parties to the hearing decision or dismissal action. Sections 404.969 and 416.1469 do not currently address the procedures we use in identifying and referring cases to the Appeals Council for it to consider for possible review on its own motion.

The Appeals Council has broad authority to review any case on its own motion pursuant to §§ 404.969 and 416.1469. The conditions under which the Appeals Council will review a case, on request for review or on its own motion, are set forth in §§ 404.970 and 416.1470. Those sections provide that the Council will review a case if: (1) There appears to be an abuse of discretion by the ALJ; (2) there is an error of law; (3) the action, findings or conclusions of the ALJ are not supported by substantial evidence; or (4) there is a broad policy or procedural issue that may affect the general public interest. Sections 404.970 and 416.1470 further provide that the Council will also review a case if new and material evidence is submitted that relates to the period on or before the date of the ALJ's decision and the Council finds, upon evaluating the evidence of record and the additional evidence, that an action, a finding or a conclusion of the ALJ is contrary to the weight of the evidence currently of record as a whole.

In fiscal year 1996 (FY '96), the Appeals Council received 99,735 requests for review filed by parties to the actions of ALJs. Most of the requests were for review of unfavorable decisions and dismissal actions; some concerned partially favorable decisions. In FY '96, the Council also considered 8,602 cases for possible review on its own motion. Almost all of these cases involved favorable hearing-level decisions that were referred to the Appeals Council under one of two types of identification and referral procedures we currently use—random sample procedures, which generated the majority of this workload in FY '96, and "protest" procedures.

Existing Identification and Referral Procedures

Section 304(g) of Public Law 96–265 (1980) required SSA to implement a program for initiating review of ALJ decisions in disability claims. Under section 304(g), the Appeals Council considers, for possible review on its own motion, a national random sample of favorable ALJ decisions that have not been implemented, and, as resources permit, a random sample of unappealed denial decisions and dismissals. (See Social Security Ruling 82–13.)

The Appeals Council also considers, for possible review on its own motion, a random sample of wholly favorable decisions issued by attorney advisors under the time-limited provisions of §§ 404.942 and 416.1442. Wholly favorable decisions issued by adjudication officers under the testing provisions of §§ 404.943 and 416.1443 are also identified by random sampling for referral to the Appeals Council for possible own-motion review. These procedures have been established in accordance with commitments we made, in publishing the final rules for the attorney advisor and adjudication officer provisions, to assess carefully the quality of the decisions issued by the attorney advisors and the adjudication officers (see 60 FR 34127 and 60 FR 47471, respectively).

Our existing identification and referral procedures also include those under which the SSA components responsible for implementing hearing-level decisions—SSA Processing Centers (PCs) and Field Offices (FOs)—refer ("protest") certain cases to the Appeals Council for possible review under its own motion authority. The PCs, which include our Program Service Centers and the Office of Disability and International Operations, refer cases directly to the Appeals Council; FOs forward cases to a PC or an SSA Regional Office, which decides if the PC or the Regional Commissioner should make a referral to the Council.

The decisions of ALJs and the decisions currently issued by attorney advisors and adjudication officers are subject to referral to the Appeals Council under our protest procedures. Almost all protested decisions are favorable decisions because almost all of the ALJ decisions that require implementation are wholly or partially favorable decisions under which benefit payments are to be effectuated (initiated or continued), and because all decisions issued by attorney advisors and adjudication officers are favorable. In protesting a decision, an effectuating component may recommend that the decision be made more or less favorable or unfavorable.

Effectuating components refer a case if the need for referral is believed to be clear (not dependent on a judgment factor) because of one of the following circumstances: (1) The decision contains a clerical error which affects the outcome of the claim; (2) the decision is clearly contrary to the Act, regulations or rulings; or (3) the decision cannot be effectuated because its intent is unclear as to an issue affecting the claim's outcome.

Effectuating components refer cases to the Appeals Council by written memoranda. If the Council decides to review a referred case, it provides the parties a copy of the effectuating component's referral memorandum with the notice by which it advises the parties that it will review the case.

We are proposing to amend our regulations to include rules on the existing random sample and protest procedures discussed above. We have decided to propose rules setting forth these procedures in connection with our decision to propose, in furtherance of the Plan for a New Disability Claim Process, that the Appeals Council's own-motion functions be strengthened by establishment of a new process for identifying and referring cases for possible review under the Council's existing own-motion authority.

New Identification and Referral Procedures

The Appeals Council currently considers only a small percentage of all favorable decisions issued at the hearing level for possible review under its own-motion authority. (In FY '96, the Council's workload in this area represented fewer than 3 percent of such decisions in that year.) In addition, the processes we currently use to select decisions for possible review on the Appeals Council's own motion are generally not designed to identify, in

any systematic way, hearing-level decisions that are likely to be incorrect. The random sample processes bringing cases before the Appeals Council do not identify cases other than by techniques designed to assure randomness of selection within broadly identified categories (i.e., allowances, unappealed denials, and dismissals). The identification of "protest" cases that occurs in the effectuation process is a secondary function of a process that is principally focused on the prompt payment of benefits.

Based on the above considerations, we are proposing to establish procedures under which our Office of Program and Integrity Reviews (OPIR), the SSA component that oversees the review of State agency determinations made under section 221(c) of the Act, will examine certain allowance decisions at the hearing level and refer to the Appeals Council the decisions that may not be supported by the record. Decisions that have been issued at the hearing level will be included in the OPIR-conducted examination process by random sampling and, as we develop the computer systems and other technical capacities needed to support this function, selective sampling that will rely on case profiling and other sampling techniques to identify cases that involve problematic issues or fact patterns that increase the likelihood of error.

Under the proposed process, upon referral of a case by OPIR, the Appeals Council would consider the case and OPIR's reasons for believing the decision is not supported by the record and decide whether to review the case in accordance with §§ 404.969–404.970 and/or 416.1469–416.1470. If the Appeals Council decides to review an OPIR-referred case, it would provide the parties a copy of OPIR's referral with its notice of review. The 60-day time limit for the Appeals Council to initiate review of a case under the authority and standards provided in §§ 404.969–404.970 and 416.1469–416.1470 would apply to cases the Council considers for review in response to referrals from OPIR.

Section 304(g) of Public Law 96–265 (see above) does not specify the kind of identification and referral procedures that SSA should use in implementing a program for initiating review of ALJ decisions in disability cases. We believe that use of the new procedures we are proposing, in combination with the existing identification and referral procedures that we are proposing to regulate, would be consistent with the kind of review contemplated by section 304.

An important purpose of the new procedures we are proposing is to increase our ability to identify policy issues that should be clarified through publication of regulations or rulings. We plan to monitor how our policies are understood and implemented by post-adjudicative evaluation of cases that are shown, as a result of their referral to the Appeals Council, to pose significant policy or program issues.

Proposed Regulations

We propose to revise §§ 404.969 and 416.1469, the regulations that set forth the Appeals Council's authority to review cases on its own motion, to state that we refer cases to the Appeals Council for it to consider reviewing on its own motion. As proposed for revision, §§ 404.969 and 416.1469 describe the identification and referral procedures we will follow and the action of the Appeals Council in cases it considers for possible review on its own motion.

Sections 404.969 and 416.1469 as proposed will apply to all cases that our regulations make subject to review on the Appeals Council's own motion. These currently include, in addition to cases involving ALJ decisions and dismissals, cases involving wholly favorable decisions issued by attorney advisors under the time-limited provisions of §§ 404.942 and 416.1442, and cases involving wholly favorable decisions issued by adjudication officers under the test procedures set out in §§ 404.943 and 416.1443.

Proposed §§ 404.969(b) and 416.1469(b) specify that we will identify a case for referral to the Appeals Council for possible review under its own-motion authority before we effectuate a decision in the case. These sections also provide that we will identify cases for referral through random and selective sampling techniques, that we may use these techniques in association with examination of the cases identified by sampling, and that we will also identify cases for referral through the evaluation of cases we conduct in order to effectuate decisions.

Under §§ 404.969(b)(1) and 416.1469(b)(1) as proposed, we may conduct random and selective sampling of cases involving all types of actions that occur at the hearing level of the administrative review process (i.e., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of title II or title XVI benefits (i.e., different types of benefits based on disability and benefits not based on disability). Our decision to propose these rules rests on our conclusion that we should increase the number of favorable disability decisions the Appeals Council considers for possible review on its own motion to better balance review of favorable and unfavorable decisions. However, the Council's existing authority to review cases on its own motion covers all types of title II and title XVI cases adjudicated at the hearing level, and these proposed rules will allow use of the identification and referral procedures being set forth with respect to all such cases.

Sections 404.969(b)(1) and 416.1469(b)(1) as proposed specify that we will use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. Under the provisions as proposed, the factors considered in selective sampling will not include the identity of the decisionmaker or the identity of the office issuing the decision.

Proposed §§ 404.969(b)(1) and 416.1469(b)(1) also authorize but do not require that we examine cases that have been identified through random or selective sampling. Cases may be identified for referral by random or selective sampling. The purpose of the examination of cases that we may conduct is to refine the identification of cases in which the action that has been taken is not supported.

Proposed §§ 404.969(b)(2) and 416.1469(b)(2) provide that effectuating components will identify cases for referral under criteria presently used to identify clear error and circumstances preventing effectuation of a decision. Any type of decision requiring effectuation may be identified for referral under these provisions.

Under §§ 404.969(c) and 416.1469(c), as proposed, we will make referrals that occur as the result of a case examination or the effectuation process in writing. The written referral will state the referring component's reasons for believing that the Appeals Council should review the case on its own motion. Sections 404.969(c) and 416.1469(c) as proposed also provide that referrals resulting from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral, and that referrals resulting from random sampling without a case examination will only identify the case as a random sample case. A statement of the issue(s) or fact pattern identified in selective sampling may be computer generated.

Proposed §§ 404.969(d) and 416.1469(d) specify that the Appeals Council's notice of review will include a copy of any written referral provided to the Appeals Council. These provisions also include language to state clearly our long-standing policy that issuance of the notice of review establishes when a decision to conduct a review occurs.

We are also proposing to include in §§ 404.969(d) and 416.1469(d) a statement specifying our policy that, when the Appeals Council is unable to decide whether to review a case on its own motion within the 60-day period in which it may do so, it may consider whether the decision should be reopened under the provisions of §§ 404.987 and/or 416.1487, which authorize the Council to reopen a final decision on its own initiative or at the request of a party to the decision, if a condition for reopening stated in §§ 404.988 and/or 416.1488 is present. We are including this statement in the regulations to clarify our long-standing policy that the Appeals Council may also reopen final decisions in accordance with §§ 404.987 and 416.1487 after the 60 days for initiating review under §§ 404.969 and 416.1469 have expired.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do meet the criteria for a significant regulatory action under Executive Order 12866. They were therefore submitted to OMB for review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or record keeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.003, Social Security-Special Benefits for Persons Aged 72 and Over; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: September 12, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

20 CFR part 404, subpart J, is amended as follows:

1. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 205 (a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405 (a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 304(g), Pub. L. 96–265, 94 Stat. 456 (42 U.S.C. 421 note); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6 (c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Section 404.969 is revised to read as follows:

§ 404.969 Appeals Council initiates review.

(a) *General.* Anytime within 60 days after the date of a decision or dismissal that is subject to review under this section, the Appeals Council may decide on its own motion to review the action that was taken in your case. We may refer your case to the Appeals Council for it to consider reviewing under this authority.

(b) *Identification of cases.* We will identify a case for referral to the Appeals Council for possible review under its own-motion authority before we effectuate a decision in the case. We will identify cases for referral to the Appeals Council through random and selective sampling techniques, which we may use in association with examination of the cases identified by sampling. We will also identify cases for referral to the Appeals Council through the evaluation of cases we conduct in order to effectuate decisions.

(1) *Random and selective sampling and case examinations.* We may use random and selective sampling to identify cases involving any type of action (i.e., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of benefits (i.e., benefits based on disability and benefits not based on disability). We will use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. Our selective sampling procedures will not identify cases based on the identity of the decisionmaker or the identity of the office issuing the decision. We may examine cases that have been identified through random or selective sampling to refine the identification of cases in which the action taken may not be supported by the record.

(2) *Identification as a result of the effectuation process.* We may refer a case requiring effectuation to the Appeals Council if the decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim; the decision is clearly inconsistent with the Social Security Act, the regulations, or a published ruling; or the decision is unclear regarding a matter that affects the claim's outcome.

(c) *Referral of cases.* We will make referrals that occur as the result of a case examination or the effectuation process in writing. The written referral based on the results of such a case examination or the effectuation process will state the referring component's reasons for believing that the Appeals Council should review the case on its own motion. Referrals that result from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral. Referrals that result from random sampling without a case examination will only identify the case as a random sample case.

(d) *Appeals Council's action.* If the Appeals Council decides to review a decision or dismissal on its own motion, it will mail a notice of review to all the parties as provided in § 404.973. The Appeals Council will include with that notice a copy of any written referral it has received under paragraph (c) of this section. The Appeals Council's decision

to review a case is established by its issuance of the notice of review. If it is unable to decide within the applicable 60-day period whether to review a decision or a dismissal, the Appeals Council may consider the case to determine if the decision or dismissal should be reopened pursuant to § 404.987.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

20 CFR part 416, subpart N, is amended as follows:

1. The authority citation for subpart N is revised to read as follows:

Authority: Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 304(g), Pub. L. 96–265, 94 Stat. 456 (42 U.S.C. 421 note).

2. Section 416.1469 is revised to read as follows:

§ 416.1469 Appeals Council initiates review.

(a) *General.* Anytime within 60 days after the date of a decision or dismissal that is subject to review under this section, the Appeals Council may decide on its own motion to review the action that was taken in your case. We may refer your case to the Appeals Council for it to consider reviewing under this authority.

(b) *Identification of cases.* We will identify a case for referral to the Appeals Council for possible review under its own-motion authority before we effectuate a decision in the case. We will identify cases for referral to the Appeals Council through random and selective sampling techniques, which we may use in association with examination of the cases identified by sampling. We will also identify cases for referral to the Appeals Council through the evaluation of cases we conduct in order to effectuate decisions.

(1) *Random and selective sampling and case examinations.* We may use random and selective sampling to identify cases involving any type of action (i.e., wholly or partially favorable decisions, unfavorable decisions, or dismissals) and any type of benefits (i.e., benefits based on disability and benefits not based on disability). We will use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. Our selective sampling procedures will not identify cases based on the identity of the decisionmaker or the identity of the office issuing the decision. We may examine cases that have been identified through random or selective sampling to refine the identification of cases in which the action taken may not be supported by the record.

(2) *Identification as a result of the effectuation process.* We may refer a case requiring effectuation to the Appeals Council if the decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim; the decision is clearly inconsistent with the Social Security Act, the regulations, or a published ruling; or the decision is unclear regarding a matter that affects the claim's outcome.

(c) *Referral of cases.* We will make referrals that occur as the result of a case examination or the effectuation process in writing. The written referral based on the results of such a case examination or the effectuation process will state the referring component's reasons for believing that the Appeals Council should review the case on its own motion. Referrals that result from selective sampling without a case examination may be accompanied by a written statement identifying the issue(s) or fact pattern that caused the referral. Referrals that result from random sampling without a case examination will only identify the case as a random sample case.

(d) *Appeals Council's action.* If the Appeals Council decides to review a decision or dismissal on its own motion, it will mail a notice of review to all the parties as provided in § 416.1473. The Appeals Council will include with that notice a copy of any written referral it has received under paragraph (c) of this section. The Appeals Council's decision to review a case is established by its issuance of the notice of review. If it is unable to decide within the applicable 60-day period whether to review a decision or dismissal, the Appeals Council may consider the case to determine if the decision or dismissal should be reopened pursuant to § 416.1487.

[FR Doc. 97–25365 Filed 9–24–97; 8:45 am]
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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AE56

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Evaluating Opinion Evidence

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to revise the Social Security and supplemental security income (SSI) regulations about the evaluation of medical opinions to clarify how administrative law judges and the Appeals Council are to consider opinion evidence from State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult in claims for disability benefits under titles II and XVI of the Social Security Act (the Act). We also propose to define or clarify several terms used in our regulations and to delete other terms.

DATES: To be sure that your comments are considered, we must receive them no later than November 24, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov," or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Richard M. Bresnick, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: The Act provides, in title II, for the payment of disability benefits to persons insured under the Act. Title II also provides, under certain circumstances, for the payment of child's insurance benefits based on disability and widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured persons. In addition, the Act provides, in title XVI, for SSI payments to persons who are aged, blind, or disabled and who have limited income and resources.

For adults under both the title II and title XVI programs (including persons claiming child's insurance benefits based on disability under title II), "disability" means the inability to engage in any substantial gainful activity. For an individual under age 18 claiming SSI benefits based on disability, "disability" means that an impairment(s) causes "marked and severe functional limitations." Under both title II and title XVI, disability must be the result of a medically determinable physical or mental impairment(s) that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

Explanation of Proposed Revisions

Proposals To Simplify and Clarify Terms

The current regulations use several terms to refer to sources of medical evidence. Regulations §§ 404.1502 and 416.902, "General definitions and terms for this subpart," define the terms "source of record," "medical sources" (which include "consultative examiners"), and "treating source." These terms are used in various sections of the regulations in subpart P of part 404 and subpart I of part 416, chiefly §§ 404.1527 and 416.927, "Evaluating medical opinions about your impairment(s) or disability." In addition, §§ 404.1519 and 416.919 use the phrase "a treating physician or psychologist, another source of record, or an independent source." Regulations §§ 404.1527 and 416.927 also employ the terms "nontreating source" and "nonexamining source."

In paragraph (a) of §§ 404.1513 and 416.913 of our regulations, we say that we need reports about the individual's impairments from "acceptable medical sources" and we identify the sources who are acceptable medical sources. We need various terms for acceptable medical sources in only three, specific instances: (1) When we explain the preference we give to obtaining evidence from treating sources, (2) when we explain the preference we give to treating sources to perform consultative examinations, and (3) in our rules for weighing opinions from acceptable medical sources. In the first two cases, the only definition that is needed is the definition of a "treating source." In the last case, relevant distinctions are needed between treating sources, nontreating sources (i.e., acceptable medical sources, such as some consultative examiners, who have examined an individual but not provided treatment), and nonexamining sources (i.e., acceptable medical sources who have provided opinion evidence but who have not treated or examined the individual).

Therefore, we propose to simplify and clarify the terms we use to describe various acceptable medical sources of evidence, including medical opinion evidence (i.e., opinions on the nature and severity of an individual's impairment(s)—see current §§ 404.1527(a)(2) and 416.927(a)(2)) and other opinions (e.g., opinions on issues reserved to the Commissioner—see current §§ 404.1527(e) and 416.927(e)), by using only four terms: Treating source, nontreating source, nonexamining source, and an overall term, "acceptable medical source," which would include all three types of sources. These proposals would not change our current policy, but are only intended to clarify our intent.

To do this, we propose to define the term "acceptable medical source" in §§ 404.1502 and 416.902. This is a term we have used for many years in §§ 404.1513(a) and 416.913(a). We also propose to redefine the term "medical sources" to mean acceptable medical sources, or other health care providers who are not "acceptable medical sources," to clarify our intent in certain regulations sections. For instance, under the rules in §§ 404.1519, 404.1519g, 416.919, and 416.919g, we may select a qualified medical source who is not an "acceptable medical source" to perform a consultative examination; e.g., an audiologist or speech and language pathologist.

We also propose to add definitions for the terms "nonexamining source" and "nontreating source," now used in §§ 404.1527 and 416.927, which are not currently defined in regulations. We propose to clarify the definition of "treating source" to include the other acceptable medical sources identified in §§ 404.1513(a) and 416.913(a) in addition to licensed physicians or licensed or certified psychologists, and, consistent with use of the word "evaluation" in the first sentence of the current definition in §§ 404.1502 and 416.902, to clarify that a source who only examines and evaluates an individual on an ongoing basis, but who does not provide any treatment, may also be a "treating source."

We propose to delete the term "source of record" because sources previously included in the definition of that term are included in the definition of the terms "acceptable medical source" or "medical source" and the term "source of record" is not needed.

Clarification of §§ 404.1527 and 416.927

We propose to clarify, consistent with our original intent, paragraph (f) of §§ 404.1527 and 416.927. As we explained in the preamble to the current rules published in the **Federal Register** on August 1, 1991 (56 FR 36932, 36937), the purpose of paragraph (f) is to: (1) Explain how we consider evidence from various kinds of nonexamining sources (e.g., State agency medical and psychological consultants, other program physicians and psychologists, and medical advisors—now called "medical experts"—at the administrative law judge hearings and Appeals Council levels of administrative review), (2) clarify the role of the State agency medical and psychological consultant at the various levels of the administrative review process, and (3) codify in regulations our longstanding policy that, because State agency medical and psychological consultants are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation, administrative law judges will consider their findings with regard to the nature and severity of an individual's impairment as opinions of nonexamining physicians and psychologists.

Sections 404.1527(f) and 416.927(f) of the current regulations state that administrative law judges and the Appeals Council are required to consider State agency medical and psychological consultant findings about the existence and severity of an individual's impairment(s), the existence and severity of an individual's symptoms, whether an individual's impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to subpart P of part 404, and an individual's residual functional capacity. We recently restated and clarified these provisions of the regulations in Social Security Ruling (SSR) 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence." (61 FR 34466, July 2, 1996.)

Consistent with our statements in the 1991 preamble to the current regulations and the clarifications in SSR 96–6p, we propose the following revisions to paragraph (f) of §§ 404.1527 and 416.927. We also propose conforming revisions to paragraphs (d)(6) and (e). None of these proposed revisions is intended to change our current policies.

Because paragraph (f) refers to the rules in paragraphs (a) through (e) of §§ 404.1527 and 416.927, which collectively address both medical opinions (as described in paragraph (a)(2) of §§ 404.1527 and 416.927) and opinions on issues reserved to the Commissioner of Social Security (the Commissioner), it is inaccurate to refer

in paragraph (f) solely to opinions on the "nature and severity of a person's impairment(s)." Therefore, we propose to delete the phrase "on the nature and severity of your impairments" from the introductory text of paragraph (f). We also propose to revise paragraph (f)(2) to provide more detail on how administrative law judges are to consider the opinions of State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult. The proposal would divide paragraph (f)(2) into an introductory paragraph and new paragraphs (f)(2)(i) through (f)(2)(iii), which would provide a more detailed explanation of how opinions from these sources are to be evaluated. The introductory text of paragraph (f)(2) and, when appropriate, paragraphs (f)(2)(i) through (f)(2)(iii), include reference to "other program physicians and psychologists" and the term "medical expert" for consistency with the current or proposed language in paragraph (b)(6) of §§ 404.1512 and 416.912.

We propose to clarify in new paragraph (f)(2)(i) that, because State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation, administrative law judges must consider findings of these experts, except for the ultimate determination of disability, when they make their disability decisions. We propose to state in new paragraph (f)(2)(ii) that when administrative law judges evaluate the findings of these experts, they will use the relevant factors set forth in paragraphs (a) through (e) of §§ 404.1527 and 416.927.

In paragraph (f)(2)(ii) we also propose to provide examples of the kinds of factors that an administrative law judge must consider when evaluating the findings of State agency medical and psychological consultants or other program physicians and psychologists. We also propose to clarify that administrative law judges are required to explain in their decisions the weight given to any opinion of a State agency medical or psychological consultant or other program physician or psychologist, as they must do for any opinions from treating sources, nontreating sources, and nonexamining sources who do not work for us.

In new paragraph (f)(2)(iii), we propose to substitute the term "medical expert" for "medical advisor" for the reason explained below about paragraph (b)(6) of §§ 404.1512 and 416.912. We also propose to make it clear in new paragraph (f)(2)(iii) that when administrative law judges consider opinions from medical experts they consult they will use the rules in paragraphs (a) through (e) of §§ 404.1527 and 416.927.

We also propose to amend paragraph (d)(6) of §§ 404.1527 and 416.927 by adding two examples of other factors that can affect the weight we give to a medical opinion. The amount of Social Security disability programs expertise an acceptable medical source has is a relevant factor that is consistent with the examples we propose to provide in paragraph (f)(2)(ii). This would include acceptable medical sources who are currently medical or psychological consultants and those who had been medical or psychological consultants, or other program physicians or psychologists, in the past. Another relevant factor is whether a source reviewed the individual's entire case record before providing a medical opinion. Both of these are relevant factors that we will consider in deciding the weight to give to a medical opinion from any acceptable medical source.

We also propose to amend paragraph (e) of §§ 404.1527 and 416.927 by adding an introductory paragraph to distinguish opinions on issues reserved to the Commissioner from medical opinions, and by designating the last sentence of paragraph (e)(2) as new paragraph (e)(3) to make it clear that the rule in new paragraph (e)(3) applies to an opinion about disability described in paragraph (e)(1) as well as to an opinion on any issue reserved to the Commissioner described in paragraph (e)(2).

Other Changes

Sections 404.1502 and 416.902 General Definitions and Terms for This Subpart

In §§ 404.1502 and 416.902, we propose to clarify, consistent with current §§ 404.602 and 416.302, the definition of the term "you" to more accurately indicate that the definition includes the person for whom an application is filed because the person who files an application may be filing it on behalf of another person.

Also, in keeping with the President's goal of streamlining and simplifying regulations, we propose to delete the term "Secretary" and its definition from § 404.1502 and to delete the terms "Commissioner" (see 62 FR 6408, February 11, 1997) and "Secretary" from § 416.902 because we define these terms for the entire parts 404 and 416 in §§ 404.2(b) and 416.120(b).

Sections 404.1512 and 416.912 Evidence of Your Impairment

We propose to amend §§ 404.1512 and 416.912 by revising paragraph (b)(6) to delete the word "certain" to clarify that every finding made by State agency medical or psychological consultants and other program physicians or psychologists and the opinions of medical experts, other than the ultimate determination about whether an individual is disabled, is evidence that an administrative law judge and the Appeals Council must consider at the administrative law judge and Appeals Council levels of review. We also propose to change the term "medical advisor" to "medical expert" because the latter is the term we currently use to describe these nonexamining sources we consult at the administrative law judge and Appeals Council levels.

Sections 404.1513 and 416.913 Medical Evidence of Your Impairment

We propose to revise paragraph (c) of §§ 404.1513 and 416.913 to codify our policy interpretation that, at the administrative law judge and Appeals Council levels of review, "statements about what you can still do," which we also call "medical source statements," include residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists. This is because they become opinion evidence of nonexamining physicians and psychologists at the hearings and appeals levels. (See SSR 96–6p, 61 FR 34466, 34468.)

Because paragraphs (b) and (c) relate to the reports about an individual's impairment(s) needed from acceptable medical sources described in paragraph (a), we propose to clarify paragraphs (b)(6), (c)(1) and (c)(2) of § 404.1513 and paragraphs (b)(6), (c)(1), (c)(2), and (c)(3) of § 416.913 to refer to findings and opinions of the "acceptable medical source," rather than findings and opinions of the "medical source." We also propose to clarify paragraphs (c)(1) and (c)(2) of § 416.913 by indicating that they pertain only to adults, to make the construction of these paragraphs parallel to that of paragraph (c)(3), which pertains only to children.

Sections 404.1519 and 416.919 The Consultative Examination

We propose to revise §§ 404.1519 and 416.919 to substitute the terms "treating source" and "medical source" for the terms "treating physician or psychologist," "source of record" and "independent source" in the first sentence.

Sections 404.1519g and 416.919g Who We Will Select To Perform a Consultative Examination

We propose to revise paragraph (a) to refer in the last sentence to §§ 404.1513 and 416.913, rather than §§ 404.1513(a) and 416.913(a), for the reasons explained above about the proposed revised definition of "medical source" in §§ 404.1502 and 416.902. For the same reason, we would also change the phrase "physician or psychologist" in the first sentence of paragraph (c) to "medical source."

Sections 404.1519h and 416.919h Your Treating Physician or Psychologist

We propose to revise the heading and text of these sections to substitute the term "treating source" for the term "treating physician or psychologist."

Sections 404.1519i and 416.919i Other Sources for Consultative Examinations

We propose to revise the text of these sections to substitute the term "treating source" for the term "treating physician or psychologist."

Sections 404.1519j and 416.919j Objections to the Designated Physician or Psychologist

We propose to revise the heading and text of these sections to use the term "medical source," rather than the phrase "physician or psychologist," for the reasons explained above.

Sections 404.1519k and 416.919k Purchase of Medical Examinations, Laboratory Tests, and Other Services

We propose to revise the introductory paragraph of these sections to use the term "medical source," rather than the phrase "licensed physician or psychologist, hospital or clinic" for the reasons explained above.

Sections 404.1519m and 416.919m Diagnostic Tests or Procedures

We propose to revise the first sentence of these sections to substitute the term "treating source" for the term "treating physician or psychologist." We also propose to revise the last sentence to use the term "medical source," rather than the phrase "physician or psychologist," for the reasons explained above.

Sections 404.1519n and 416.919n Informing the Examining Physician or Psychologist of Examination Scheduling, Report Content, and Signature Requirements

We propose to revise the heading, introductory paragraph, and paragraphs (a), (b), (c), and (e) to use the term "medical source," rather than the phrase "physician or psychologist," for the reasons explained above. We would also add a heading to paragraph (a) for consistency with the other paragraphs in this section. In addition, we would revise paragraph (c)(6) to insert language that we intended to include, as explained in our statements in the 1991 preamble (56 FR 36932, 36934, August 1, 1991) to the current regulations, but inadvertently omitted, to ensure that although medical source statements about what an individual can still do despite his or her impairment(s) should ordinarily be requested as part of the consultative examination process, the absence of such a statement in a consultative examination report does not make the report incomplete.

Sections 404.1519o and 416.919o When a Properly Signed Consultative Examination Report Has Not Been Received

We propose to revise paragraphs (a) and (b) to use the term "medical source," rather than the phrase "physician or psychologist," for the reasons explained above.

Sections 404.1519p and 416.919p Reviewing Reports of Consultative Examinations

We propose to revise paragraph (b) to use the term "medical source," rather than the phrase "physician or psychologist," for the reasons explained above. We would revise paragraph (c) to correct the grammar in the first sentence by substituting the word "when" for the word "where." We also propose to substitute the term "treating source" for the term "treating physician or psychologist."

Sections 404.1519s and 416.919s Authorizing and Monitoring the Consultative Examination

We propose to revise paragraph (e)(2) to refer to a consultative examination provider's "practice," rather than to a "practice of medicine, osteopathy, or psychology," for the reasons explained above about the definition of "medical source." For the same reasons, we would also use the term "medical sources" in paragraph (f)(6), rather than the phrase "physicians and psychologists."

Sections 404.1527 and 416.927 Evaluating Medical Opinions About Your Impairment(s) or Disability

We propose to change the heading of §§ 404.1527 and 416.927 from "Evaluating medical opinions about your impairment(s) or disability" to "Evaluating opinion evidence" to more accurately identify the content of these sections. Under current §§ 404.1527(a)(2) and 416.927(a)(2), the term "medical opinion" means statements from acceptable medical sources that reflect judgments about the nature and severity of an individual's impairments, but §§ 404.1527 and 416.927 address other types of opinions, too.

We propose to revise the third sentence of paragraph (d)(2) of §§ 404.1527 and 416.927 to clarify that the "other factors" referenced in paragraph (d)(6) will be considered along with the factors in paragraphs (d)(2) (i) and (ii) and paragraphs (d)(3) through (d)(5) of this section when we do not give a treating source's medical opinion controlling weight. As indicated by the current introductory text to §§ 404.1527(d) and 416.927(d), exclusion of reference to paragraph (d)(6) was an inadvertent omission when the current rule was published. (56 FR 36932, August 1, 1991.)

We propose to change the heading of paragraph (e) in §§ 404.1527 and 416.927 to reflect that the Commissioner, not the Secretary of Health and Human Services, has the authority on these issues pursuant to section 702(a)(5) of the Act as amended by section 102 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296, enacted on August 15, 1994. We also propose to change the second sentence of paragraph (e)(2) to substitute the term "medical sources" for the phrase "treating and examining sources" to be consistent with the use of the term "medical sources" in the first sentence of paragraph (e)(2) and to clarify that we consider opinions from all medical sources on the issues described in the second sentence.

We also propose to shorten the heading of paragraph (f) of §§ 404.1527 and 416.927 to "Opinions of nonexamining sources," consistent with the proposed definitions in §§ 404.1502 and 416.902. For the same reason, we propose to substitute the term "nonexamining sources" for "nonexamining physicians and psychologists" in the first sentence of paragraph (f).

Electronic Versions

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and

will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, they are not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: September 12, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart P of part 404 and subpart I of part 416 of 20 CFR chapter III as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402; 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1502 is amended by removing the term "Source of record" and its definition, revising the definitions of "Medical sources" and "Treating source," changing the term "You" to "You or your" and revising its definition, and adding definitions in the appropriate alphabetical order for the terms "Acceptable medical source," "Nonexamining source," and "Nontreating source" to read as follows:

§ 404.1502 General definitions and terms for this subpart.

As used in the subpart—

Acceptable medical source refers to one of the sources described in § 404.1513(a) who provides evidence about your impairments. It includes treating sources, nontreating sources, and nonexamining sources.

Medical sources refers to acceptable medical sources, or other health care providers who are not acceptable medical sources.

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult based on their review of the evidence in your case record. See § 404.1527.

Nontreating source means a physician, psychologist, or other acceptable medical source who has examined you but does not have, or did not have, an ongoing treatment relationship with you. The term includes an acceptable medical source who is a consultative examiner for us, when the consultative examiner is not your treating source. See § 404.1527.

* * * * *

Treating source means your own physician, psychologist, or other acceptable medical source who provides you, or has provided you, with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with an acceptable medical source when the medical evidence establishes that you see, or have seen, the source with a frequency consistent with accepted medical practice for the type of treatment and/or evaluation required for your medical condition(s). We may consider an acceptable medical source who has treated or evaluated you only a few times or only after long intervals (e.g., twice a year) to be your treating source if the nature and frequency of the treatment or evaluation is typical for your condition(s). We will not consider an acceptable medical source to be your treating source if your relationship with the source is not based on your medical need for treatment or evaluation, but solely on your need to obtain a report in support of your claim for disability. In such a case, we will consider the acceptable medical source to be a nontreating source.

* * * * *

You or *your* means, as appropriate, the person who applies for benefits or for a period of disability, the person for whom an application is filed, or the person who is receiving benefits based on disability or blindness.

3. Section 404.1512 is amended by revising paragraph (b)(6) to read as follows:

§ 404.1512 Evidence of your impairment.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical experts we consult based on their review of the evidence in your case record. See §§ 404.1527(f)(2) and (f)(3).

* * * * *

4. Section 404.1513 is amended by revising the first sentence of paragraph (b)(6) and paragraph (c) to read as follows:

§ 404.1513 Medical evidence of your impairment.

* * * * *

(b) * * *

(6) A statement about what you can still do despite your impairment(s) based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section (except in statutory blindness claims). * * *

(c) *Statements about what you can still do.* At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be "statements about what you can still do" made by nonexamining physicians and psychologists based on their review of the evidence in the case record. Statements about what you can still do (based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section) should describe, but are not limited to, the kinds of physical and mental capabilities listed below. See §§ 404.1527 and 404.1545(c).

(1) The acceptable medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment(s), the acceptable medical source's opinion about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting.

* * * * *

5. Section 404.1519 is amended by revising the first sentence to read as follows:

§ 404.1519 The consultative examination.

A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating source or another medical source, including a pediatrician when appropriate. * * *

6. Section 404.1519g is amended by revising the last sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 404.1519g Who we will select to perform a consultative examination.

(a) * * * For a more complete list of medical sources, see § 404.1513.

* * * * *

(c) The medical source we choose may use support staff to help perform the consultative examination. * * *

7. Section 404.1519h is revised to read as follows:

§ 404.1519h Your treating source.

When in our judgment your treating source is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports, your treating source will be the preferred source to do the purchased examination. Even if only a supplemental test is required, your treating source is ordinarily the preferred source.

8. Section 404.1519i is revised to read as follows:

§ 404.1519i Other sources for consultative examinations.

We will use a source other than your treating source for a purchased examination or test in situations including, but not limited to, the following situations:

(a) Your treating source prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file that cannot be resolved by going back to your treating source;

(c) You prefer a source other than your treating source and have a good reason for your preference;

(d) We know from prior experience that your treating source may not be a productive source, e.g., he or she has consistently failed to provide complete or timely reports.

9. Section 404.1519j is revised to read as follows:

§ 404.1519j Objections to the medical source designated to perform the consultative examination.

You or your representative may object to your being examined by a medical source we have designated to perform a consultative examination. If there is a good reason for the objection, we will schedule the examination with another medical source. A good reason may be that the medical source we designated had previously represented an interest adverse to you. For example, the medical source may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider include: The presence of a language barrier, the medical source's office location (e.g., 2nd floor, no elevator), travel restrictions, and whether the medical source had examined you in connection with a previous disability determination or decision that was unfavorable to you. If your objection is that a medical source allegedly "lacks objectivity" in general, but not in relation to you personally, we will review the allegations. See § 404.1519s. To avoid a delay in processing your claim, the consultative examination in your case will be changed to another medical source while a review is being conducted. We will handle any objection to use of the substitute medical source in the same manner. However, if we had previously conducted such a review and found that the reports of the medical source in question conformed to our guidelines, we will not change your examination.

10. Section 404.1519k is amended by revising the introductory paragraph to read as follows:

§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.

We may purchase medical examinations, including psychiatric and psychological examinations, X-rays and laboratory tests (including specialized tests, such as pulmonary function studies, electrocardiograms, and stress tests) from a medical source.

* * * * *

11. Section 404.1519m is amended by revising the first and last sentences to read as follows:

§ 404.1519m Diagnostic tests or procedures.

We will request the results of any diagnostic tests or procedures that have been performed as part of a workup by your treating source or other medical source and will use the results to help us evaluate impairment severity or prognosis. * * * The responsibility for deciding whether to perform the examination rests with the consultative examining medical source.

12. Section 404.1519n is amended by revising the heading and the first and last sentences of the introductory paragraph, adding a heading to and revising the first sentence of paragraph (a), revising the last two sentences of paragraph (b), revising the second sentence of and adding third and fourth sentences to paragraph (c)(6), and revising paragraphs (c)(7) and (e) to read as follows:

§ 404.1519n Informing the medical source of examination scheduling, report content, and signature requirements.

The medical sources who perform consultative examinations will have a good understanding of our disability programs and their evidentiary requirements. * * * We will fully inform medical sources who perform consultative examinations at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) *Scheduling.* In scheduling full consultative examinations, sufficient time should be allowed to permit the medical source to take a case history and perform the examination, including any needed tests. * * *

(b) *Report content.* * * * The report should reflect your statement of your symptoms, not simply the medical source's statements or conclusions. The examining medical source's report of the consultative examination should include the objective medical facts as well as observations and opinions.

(c) * * *

(6) * * * This statement should describe the opinion of the medical source about your ability, despite your impairment(s), to do work-related activities, such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the medical source about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting. Although we will ordinarily request, as part of the consultative examination process, a medical source statement about what you can still do despite your impairment(s), the absence of such a statement in a consultative examination report will not make the report incomplete. See § 404.1527; and

(7) In addition, the medical source will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the medical source who signs the report.

* * * * *

(e) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the medical source who actually performed the examination. This attests to the fact that the medical source doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The signature of the medical source on a report annotated "not proofed" or "dictated but not read" is not acceptable. A rubber stamp signature of a medical source or the medical source's signature entered by any other person is not acceptable.

13. Section 404.1519o is amended by revising the second sentence of paragraph (a) and the third sentence of paragraph (b) to read as follows:

§ 404.1519o When a properly signed consultative examination report has not been received.

* * * * *

(a) *When we will make determinations and decisions without a properly signed report.* * * * After we have made the determination or decision, we will obtain a properly signed report and include it in the file unless the medical source who performed the original consultative examination has died.

* * * * *

(b) *When we will not make determinations and decisions without a properly signed report.* * * * If the signature of the medical source who performed the original examination cannot be obtained because the medical source is out of the country for an extended period of time, or on an extended vacation, seriously ill, deceased, or for any other reason, the consultative examination will be rescheduled with another medical source.

* * * * *

14. Section 404.1519p is amended by revising paragraphs (b) and (c) to read as follows:

§ 404.1519p Reviewing reports of consultative examinations.

* * * * *

(b) If the report is inadequate or incomplete, we will contact the medical source who performed the consultative examination, give an explanation of our evidentiary needs, and ask that the medical source furnish the missing information or prepare a revised report.

(c) With your permission, or when the examination discloses new diagnostic information or test results that reveal potentially life-threatening situations, we will refer the consultative examination report to your treating source. When we refer the consultative examination report to your treating source without your permission, we will notify you that we have done so.

* * * * *

15. Section 404.1519s is amended by revising paragraph (e)(2) and the first sentence of paragraph (f)(6) to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(2) Any consultative examination provider with a practice directed primarily towards evaluation examinations rather than the treatment of patients; or

* * * * *

(f) * * *

(6) Procedures for providing medical or supervisory approval for the authorization or purchase of consultative examinations and for additional tests or studies requested by consulting medical sources. * * *

* * * * *

16. Section 404.1527 is amended by revising the section heading, the third sentence of paragraph (d)(2), the heading of paragraph (e), paragraph (e)(2), the heading and introductory text of paragraph (f), and paragraph (f)(2), by adding a sentence to paragraph (d)(6), by adding introductory text to paragraph (e), and by adding paragraph (e)(3) to read as follows:

§ 404.1527 Evaluating opinion evidence.

* * * * *

(d) * * *

(2) *Treatment relationship.* * * * When we do not give the treating source's opinion controlling weight, we apply the factors listed below, as well as the factors in paragraphs (d)(3) through (d)(6) of this section in determining the weight to give the opinion. * * *

* * * * *

(6) *Other factors.* * * * For example, the amount of Social Security disability programs expertise an acceptable medical source has and whether an acceptable medical source reviewed the individual's entire case record before providing a medical opinion are relevant factors that we will consider in deciding the weight to give to a medical opinion.

(e) *Medical source opinions on issues reserved to the Commissioner.* Opinions on some issues, such as the examples that follow, are not medical opinions, as described in paragraph (a)(2) of this section, but are, instead, opinions on issues reserved to the Commissioner because they are administrative findings that are dispositive of a case; i.e., that would direct the determination or decision of disability.

* * * * *

(2) *Other opinions on issues reserved to the Commissioner.* We use medical sources, including your treating source, to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from medical sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in appendix 1 to this subpart, your residual functional capacity (see §§ 404.1545 and 404.1546), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Commissioner.

(3) We will not give any special significance to the source of an opinion on issues reserved to the Commissioner described in paragraphs (e)(1) and (e)(2) of this section.

(f) *Opinions of nonexamining sources.* We consider all evidence from nonexamining sources to be opinion evidence. When we consider the opinions of nonexamining sources, we

apply the rules in paragraphs (a) through (e) of this section. In addition, the following rules apply to State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult in connection with administrative law judge hearings and Appeals Council review.

* * * * *

(2) Administrative law judges are responsible for reviewing the evidence and making findings of fact and conclusions of law. They will consider opinions of State agency medical or psychological consultants, other program physicians and psychologists, and medical experts as follows:

(i) Administrative law judges are not bound by any findings made by State agency medical or psychological consultants, or other program physicians or psychologists. However, State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation. Therefore, administrative law judges must consider findings of State agency medical and psychological consultants or other program physicians or psychologists, except for the ultimate determination about whether you are disabled. See § 404.1512(b)(6).

(ii) When administrative law judges consider findings of State agency medical or psychological consultants or other program physicians or psychologists, they will evaluate the findings using relevant factors in paragraphs (a) through (e) of this section, such as the medical or psychological consultants', or other program physicians' or psychologists', medical specialty and expertise in our rules, the evidence reviewed by the consultants or other program physicians or psychologists, supporting explanations provided by the consultants or other program physicians or psychologists, and any other factors relevant to the weighing of the opinions. he administrative law judge must explain in the decision the weight given to the opinions of a State agency medical or psychological consultant or other program physician or psychologist, as the administrative law judge must do for any opinions from treating sources, nontreating sources, and nonexamining sources who do not work for us.

(iii) Administrative law judges may also ask for and consider opinions from medical experts on the nature and severity of your impairment(s) and on whether your impairment(s) equals the requirements of any impairment listed in appendix 1 to this subpart. When administrative law judges consider these opinions, they will evaluate them using the rules in paragraphs (a) through (e) of this section.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

17. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

18. Section 416.902 is amended by removing the terms "Commissioner," "Secretary," and "Source of record" and their definitions, revising the definitions of "Medical sources" and "Treating source," changing the term "You" to "You or your" and revising its definition, and adding definitions in the appropriate alphabetical order for the terms "Acceptable medical source," "Nonexamining source," and "Nontreating source" to read as follows:

§ 416.902 General definitions and terms for this subpart.

As used in the subpart—

Acceptable medical source refers to one of the sources described in § 416.913(a) who provides evidence about your impairments. It includes treating sources, nontreating sources, and nonexamining sources.

* * * * *

Medical sources refers to acceptable medical sources, or other health care providers who are not acceptable medical sources.

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult. See § 416.927.

Nontreating source means a physician, psychologist, or other acceptable medical source who has examined you but does not have, or did not have, an ongoing treatment relationship with you. The term includes an acceptable medical source who is a consultative examiner for us, when the consultative examiner is not your treating source. See § 416.927.

* * * * *

Treating source means your own physician, psychologist, or other acceptable medical source who provides you, or has provided you, with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with an acceptable medical source when the medical evidence establishes that you see, or have seen, the source with a frequency consistent with accepted medical practice for the type of treatment and/or evaluation required for your medical condition(s). We may consider an acceptable medical source who has treated or evaluated you only a few times or only after long intervals (e.g., twice a year) to be your treating source if the nature and frequency of the treatment or evaluation is typical for your condition(s). We will not consider an acceptable medical source to be your treating source if your relationship with the source is not based on your medical need for treatment or evaluation, but solely on your need to obtain a report in support of your claim for disability. In such a case, we will consider the acceptable medical source to be a nontreating source.

* * * * *

You or *your* means, as appropriate, the person who applies for benefits, the person for whom an application is filed, or the person who is receiving benefits based on disability or blindness.

19. Section 416.912 is amended by revising paragraph (b)(6) to read as follows:

§ 416.912 Evidence of your impairment.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical experts we consult based on their review of the evidence in your case record. See §§ 416.927(f)(2) and (f)(3).

* * * * *

20. Section 416.913 is amended by revising the first sentence of paragraph

(b)(6) and paragraph (c) to read as follows:

§ 416.913 Medical evidence of your impairment.

* * * * *

(b) * * *

(6) A statement about what you can still do despite your impairment(s) based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section (except in statutory blindness claims). * * *

(c) *Statements about what you can still do.* At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be "statements about what you can still do" made by nonexamining physicians and psychologists based on their review of the evidence in the case record. Statements about what you can still do (based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section) should describe, but are not limited to, the kinds of physical and mental capabilities listed below. See §§ 416.927 and 416.945(c).

(1) If you are an adult, the acceptable medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) If you are an adult, in cases of mental impairment(s), the acceptable medical source's opinion about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting.

(3) If you are a child, the acceptable medical source's opinion about your functional limitations in learning, motor functioning, performing self-care activities, communicating, socializing, and completing tasks (and, if you are a newborn or young infant from birth to age 1, responsiveness to stimuli).

* * * * *

21. Section 416.919 is amended by revising the first sentence to read as follows:

§ 416.919 The consultative examination.

A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating source or another medical source, including a pediatrician when appropriate. * * *

22. Section 416.919g is amended by revising the last sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 416.919g Who we will select to perform a consultative examination.

(a) * * * For a more complete list of medical sources, see § 416.913.

* * * * *

(c) The medical source we choose may use support staff to help perform the consultative examination. * * *

23. Section 416.919h is revised to read as follows:

§ 416.919h Your treating source.

When in our judgment your treating source is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports, your treating source will be the preferred source to do the purchased examination. Even if only a supplemental test is required, your treating source is ordinarily the preferred source.

24. Section 416.919i is revised to read as follows:

§ 416.919i Other sources for consultative examinations.

We will use a source other than your treating source for a purchased examination or test in situations including, but not limited to, the following situations:

(a) Your treating source prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file that cannot be resolved by going back to your treating source;

(c) You prefer a source other than your treating source and have a good reason for your preference;

(d) We know from prior experience that your treating source may not be a productive source, e.g., he or she has consistently failed to provide complete or timely reports.

25. Section 416.919j is revised to read as follows:

§ 416.919j Objections to the medical source designated to perform a consultative examination.

You or your representative may object to your being examined by a medical source we have designated to perform a consultative examination. If there is a good reason for the objection, we will schedule the examination with another medical source. A good reason may be that the medical source we designated had previously represented an interest adverse to you. For example, the medical source may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider include: The presence of a language barrier, the medical source's office location (e.g., 2nd floor, no elevator), travel restrictions, and whether the medical source had examined you in connection with a previous disability determination or decision that was unfavorable to you. If your objection is that a medical source allegedly "lacks objectivity" in general, but not in relation to you personally, we will review the allegations. See § 416.919s. To avoid a delay in processing your claim, the consultative examination in your case will be changed to another medical source while a review is being conducted. We will handle any objection to use of the substitute medical source in the same manner. However, if we had previously conducted such a review and found that the reports of the medical source in question conformed to our guidelines, we will not change your examination.

26. Section 416.919k is amended by revising the introductory paragraph to read as follows:

§ 416.919k Purchase of medical examinations, laboratory tests, and other services.

We may purchase medical examinations, including psychiatric and psychological examinations, X-rays and laboratory tests (including specialized tests, such as pulmonary function studies, electrocardiograms, and stress tests) from a medical source.

* * * * *

27. Section 416.919m is amended by revising the first and last sentences to read as follows:

§ 416.919m Diagnostic tests or procedures.

We will request the results of any diagnostic tests or procedures that have been performed as part of a workup by your treating source or other medical source and will use the results to help us evaluate impairment severity or prognosis. * * * The responsibility for deciding whether to perform the examination rests with the consultative examining medical source.

28. Section 416.919n is amended by revising the heading and the first and last sentences of the introductory paragraph, adding a heading to and revising the first sentence of paragraph (a), revising the last two sentences of paragraph (b), revising the second and third sentences of and adding fourth and fifth sentences to paragraph (c)(6), and revising paragraphs (c)(7) and (e) to read as follows:

§ 416.919n Informing the medical source of examination scheduling, report content, and signature requirements.

The medical sources who perform consultative examinations will have a good understanding of our disability programs and their evidentiary requirements. * * * We will fully inform medical sources who perform consultative examinations at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) *Scheduling.* In scheduling full consultative examinations, sufficient time should be allowed to permit the medical source to take a case history and perform the examination, including any needed tests. * * *

* * * * *

(b) *Report content.* * * * The report should reflect your statement of your symptoms, not simply the medical source's statements or conclusions. The examining medical source's report of the consultative examination should include the objective medical facts as well as observations and opinions.

(c) * * *

* * * * *

(6) * * * If you are an adult, this statement should describe the opinion of the medical source about your ability, despite your impairment(s), to do work-related activities, such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the medical source about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting. If you are a child, this statement should describe the opinion of the medical source about your functional limitations in learning, motor functioning, performing self-care activities, communicating, socializing, and completing tasks (and, if you are a newborn or young infant from birth to age 1, responsiveness to stimuli). Although we will ordinarily request, as part of the consultative examination process, a medical source statement about what you can still do despite your impairment(s), the absence of such a statement in a consultative examination report will not make the report incomplete. See § 416.927; and

(7) In addition, the medical source will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination and reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the medical source who signs the report.

* * * * *

(e) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the medical source who actually performed the examination. This attests to the fact that the medical source doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The signature of the medical source on a report annotated "not proofed" or "dictated but not read" is not acceptable. A rubber stamp signature of a medical source or the medical source's signature entered by any other person is not acceptable.

29. Section 416.919o is amended by revising the second sentence of paragraph (a) and the third sentence of paragraph (b) to read as follows:

§ 416.919o When a properly signed consultative examination report has not been received.

* * * * *

(a) *When we will make determinations and decisions without a properly signed report.* * * * After we have made the determination or decision, we will obtain a properly signed report and include it in the file unless the medical source who performed the original consultative examination has died.

* * * * *

(b) *When we will not make determinations and decisions without a properly signed report.* * * * If the signature of the medical source who performed the original examination cannot be obtained because the medical source is out of the country for an extended period of time, or on an extended vacation, seriously ill, deceased, or for any other reason, the consultative examination will be rescheduled with another medical source.

* * * * *

30. Section 416.919p is amended by revising paragraphs (b) and (c) to read as follows:

§ 416.919p Reviewing reports of consultative examinations.

* * * * *

(b) If the report is inadequate or incomplete, we will contact the medical source who performed the consultative examination, give an explanation of our evidentiary needs, and ask that the medical source furnish the missing information or prepare a revised report.

(c) With your permission, or when the examination discloses new diagnostic information or test results that reveal potentially life-threatening situations, we will refer the consultative examination report to your treating source. When we refer the consultative examination report to your treating source without your permission, we will notify you that we have done so.

* * * * *

31. Section 416.919s is amended by revising paragraph (e)(2) and the first sentence of paragraph (f)(6) to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(2) Any consultative examination provider with a practice directed primarily towards evaluation examinations rather than the treatment of patients; or

* * * * *

(f) * * *

(6) Procedures for providing medical or supervisory approval for the authorization or purchase of consultative examinations and for additional tests or studies requested by consulting medical sources. * * *

* * * * *

32. Section 416.927 is amended by revising the section heading, the third sentence of paragraph (d)(2), the heading of paragraph (e), paragraph (e)(2), the heading and introductory text of paragraph (f), and paragraph (f)(2), by adding a sentence to paragraph (d)(6), by adding introductory text to paragraph (e), and by adding paragraph (e)(3) to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(d) * * *

(2) *Treatment relationship.* * * * When we do not give the treating source's opinion controlling weight, we apply the factors listed below, as well as the factors in paragraphs (d)(3) through (d)(6) of this section in determining the weight to give the opinion. * * *

* * * * *

(6) *Other factors.* * * * For example, the amount of Social Security disability programs expertise an acceptable medical source has and whether an acceptable medical source reviewed the individual's entire case record before providing a medical opinion are relevant factors that we will consider in deciding the weight to give to a medical opinion.

(e) *Medical source opinions on issues reserved to the Commissioner.* Opinions on some issues, such as the examples that follow, are not medical opinions, as described in paragraph (a)(2) of this section, but are, instead, opinions on issues reserved to the Commissioner because they are administrative findings that are dispositive of a case; i.e., that would direct the determination or decision of disability.

* * * * *

(2) *Other opinions on issues reserved to the Commissioner.* We use medical sources, including your treating source, to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from medical sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in appendix 1 to subpart P of part 404 of this chapter, your residual functional capacity (see §§ 416.945 and 416.946), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Commissioner.

(3) We will not give any special significance to the source of an opinion on issues reserved to the Commissioner described in paragraphs (e)(1) and (e)(2) of this section.

(f) *Opinions of nonexamining sources.* We consider all evidence from nonexamining sources to be opinion evidence. When we consider the opinions of nonexamining sources, we apply the rules in paragraphs (a) through (e) of this section. In addition, the following rules apply to State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult in connection with administrative law judge hearings and Appeals Council review.

* * * * *

(2) Administrative law judges are responsible for reviewing the evidence and making findings of fact and conclusions of law. They will consider opinions of State agency medical or psychological consultants, other program physicians and psychologists, and medical experts as follows:

(i) Administrative law judges are not bound by any findings made by State agency medical or psychological consultants, or other program physicians or psychologists. However, State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation. Therefore, administrative law judges must consider findings of State agency medical and psychological consultants or other program physicians or psychologists, except for the ultimate determination about whether you are disabled. See § 416.912(b)(6).

(ii) When administrative law judges consider findings of State agency medical or psychological consultants or other program physicians or psychologists, they will evaluate the findings using relevant factors in paragraphs (a) through (e) of this section, such as the medical or psychological consultants', or other program physicians' or psychologists', medical specialty and expertise in our rules, the evidence reviewed by the consultants or other program physicians or psychologists, supporting explanations provided by the consultants or other program physicians or psychologists, and any other factors relevant to the weighing of the opinions. The administrative law judge must explain in the decision the weight given to the opinions of a State agency medical or psychological consultant or other program physician or psychologist, as the administrative law judge must do for any opinions from treating sources, nontreating sources, and nonexamining sources who do not work for us.

(iii) Administrative law judges may also ask for and consider opinions from medical experts on the nature and severity of your impairment(s) and on whether your impairment(s) equals the requirements of any impairment listed in appendix 1 to subpart P of part 404 of this chapter. When administrative law judges consider those opinions, they will evaluate them using the rules in paragraphs (a) through (e) of this section.

* * * * *

[FR Doc. 97–25366 Filed 9–24–97; 8:45 am]
BILLING CODE 4190–29–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[CGD 97–059]

Recreational Boating Safety—Federal Requirements for Wearing Personal Flotation Devices

AGENCY: Coast Guard, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Coast Guard seeks comments from interested people, groups, and businesses about the need for, and alternatives to, Federal requirements or incentives for boaters to wear lifejackets. It will consider all comments, and consult with the National Boating Safety Advisory Council (NBSAC) in determining how best to reduce the number of boaters who drown.

DATES: Comments must reach the Coast Guard on or before February 2, 1998.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 97–059], U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this notice. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carlton Perry, Project Manager, Office of Boating Safety, Program Management Division, (202) 267–0979. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet, at the Web Site for the Office of Boating Safety, at URL address www.uscgboating.org/.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Most people who die in recreational boating accidents drown; but most of the victims would have survived if they had worn lifejackets. Through its Recreational Boating Safety Program, the Coast Guard tries to reduce the number of recreational boating accidents. Although recreational use of water has caused fewer and fewer deaths over the last 20 years, boating accidents still cause more deaths than any other transportation related activity except use of roads. Boating accidents caused over 800 deaths in 1995, over 600 of them through drowning. Although 68 victims drowned while wearing lifejackets, 561 victims drowned while not wearing them. Nobody knows how many of the 561 victims would have survived if they had worn lifejackets. There is evidence to suggest that factors other than drowning were the primary cause of death for most of the 68 victims who died wearing lifejackets. On the contrary, the best way to minimize the number of deaths due to drowning is to maximize the number of boaters wearing lifejackets.

Each year the Coast Guard sponsors a national boating safety campaign based on educational methods aimed at encouraging boaters to wear lifejackets. Realistically, such nonregulatory methods of modifying behavior will not by themselves be fully successful. However, the Coast Guard knows from data on boating accidents that State efforts, based on regulatory methods aimed at waterskiing and operation of personal watercraft, have been extremely successful.

Request for Comments

The Coast Guard encourages you to submit comments about the need for, and alternatives to, Federal requirements or incentives for boaters to wear lifejackets (personal flotation devices, or PFDs). In particular, the Coast Guard encourages you to answer the specific questions about these requirements or incentives for wearing lifejackets, which it developed in consultation with members of NBSAC at the meeting in April 1997. The Coast Guard also solicits comments from all segments of the boating community, State boating safety authorities, NBSAC, the National Association of State Boating Law Administrators (NASBLA), and other interested people, groups, and businesses on the economic and other impacts of Federal requirements or incentives for wearing PFDs.

Please include your name and address, identify this notice [CGD 97–059], the specific question or area of concern to which each comment applies, and give the reason(s) for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, to help us with copying and electronic filing. If you want us to acknowledge receipt of your comments, please enclose a stamped, self-addressed postcard or envelope.

A. Boating Activity of Commenter.

1. How much risk do you believe recreational boating involves?

2. Do you agree with the following statement: If I fell overboard, I would feel just as safe if someone threw me a lifering or a buoyant cushion (Type IV PFD) as I would feel if I have been wearing a standard jacket style (Type, I, II, III, or V PFD)?

3. Would a requirement for wearing a PFD likely affect your participation in recreational boating, and how would it affect it?

4. Recreational boating varies widely depending on the interest of the individual boater. Individuals may own, rent or be a passenger on a boat; the boat may be manual, sail, or motor powered; the reason for boating may be for relaxation, transportation, competition, or excitement. Please tell us something about your recreational boating activity, including how often you go boating, what type of boating activities you do, and the type of water on which you go boating.

5. Please tell us what type of PFD you carry when you go boating, whether or not you or other passengers wear a PFD, and the reason(s) for wearing or not wearing a PFD.

B. Mandatory wearing of PFDs.

1. Several States have imposed various requirements for wearing PFDs—by children, during waterskiing, aboard personal watercarft, and so on. What Federal requirements should the Coast Guard propose, if any, for wearing PFDs to ensure uniformity around the country? Should the Coast Guard propose Federal requirements only in those States with no requirements for children, while waterskiing, aboard a personal watercraft, or for any other appropriate category of boaters or boating activity?

2. What Federal requirements for wearing PFDs should the Coast Guard propose, if any, based directly on higher fatality statistics in one or more categories of boaters, boating activities, or boating conditions?

3. What Federal requirements for wearing PFDs should the Coast Guard propose, if any, based directly on higher fatality statistics involving one or more sizes or types of recreational vessels?

4. What Federal requirements for wearing PFDs should the Coast Guard propose, if any, based directly on higher fatality statistics related to ages of the victims?

5. A survey of State boating laws conducted in 1996 by NASBLA, under a Coast Guard grant, revealed that 25 States imposed requirements for the wearing of PFDs by children under various ages (from under 13, down to under 6). What Federal requirements should the Coast Guard propose, if any, specifying an age below which children must wear PFDs during any activities or under any conditions?

6. Statistics for 1995 show that 476 (75%) of the 629 drowning victims were non-swimmers. What Federal requirements should the Coast Guard propose, if any, for non-swimmers to wear PFDs during any boating activities or under any boating conditions? How would boaters or law enforcement agencies determine who is a swimmer and who is a non-swimmer?

7. If you know of an instance where a person did not wear a PFD, but where that person or you later wished that person had worn one, please describe the instance.

8. If you know of instances where safety makes wearing PFDs unacceptable or undesirable, please describe them.

9. Are you aware of the intended uses and limitations of the various types (Type I, II, III, IV, V) of PFDs and kinds of PFD flotation (inherently buoyant, hybrid inflatable, fully inflatable) approved by the Coast Guard?

10. What Federal requirements should the Coast Guard propose, if any, that boaters engaged in any particular activities wear PFDs under any conditions?

11. Describe any other boating activities, conditions, or categories under which the Coast Guard should propose Federal requirements that all boaters, or specific groups of boaters, wear PFDs.

C. General.

1. What benefits (in terms of personal safety or in other terms) do you think would accrue from Federal requirements to wear PFDs? What costs (in terms of money, paperwork, inconvenience, or other terms) would accrue from such requirements? Would the costs outweigh the benefits?

2. Please describe any nonregulatory ways to reduce the number of deaths by drowning at lower costs or with less burden than Federal requirements would entail.

3. Is there any other information you feel may help the Coast Guard to reduce the number of deaths by drowning with the lowest costs to, or least burden on, the Coast Guard itself, the States, and, most of all, boaters?

The Coast Guard will summarize all comments it receives during the comment period in response to this notice, place a copy of the summary in the public docket, and provide copies to the members of NBSAC for them to consider at their meeting in April, 1998. It will itself consider all relevant comments in the formulation of any regulatory and nonregulatory measures that may follow from this notice.

Dated: September 18, 1997.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 97–25373 Filed 9–24–97; 8:45 am]
BILLING CODE 4910–14–M

Notices

Federal Register
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Thursday, September 25, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 19, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- **Rural Housing Service**

Title: 7 CFR 1955–A, Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property.

OMB Control Number: 0575–0109.

Summary of Collection: Information collected includes offers to convey real estate security, to cure default after acceleration, and to convey chattel security.

Need And Use Of The Information: The information is necessary to determine a course of action when it is necessary to liquidate loans by voluntary conveyance or foreclosure that are secured by real estate.

Description Of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number Of Respondents: 1,500.

Frequency Of Responses: Reporting: On occasion.

Total Burden Hours: 1,797.

- **Agricultural Marketing Service**

Title: Farmers Market Questionnaire.

OMB Control Number: 0581–0169.

Summary of Collection: Information is collected concerning all aspects of farmers' markets.

Need And Use Of The Information: The information will be used to find better designs, development techniques, and operating methods for modern farmers' markets.

Description Of Respondents: Not-for-profit.

Number Of Respondents: 1,080.

Frequency Of Responses: Reporting: Biennially.

Total Burden Hours: 270.

- **Food and Consumer Service**

Title: Reaching the Working Poor and Poor Elderly.

OMB Control Number: 0584-New.

Summary Of Collection: Information is collected on household composition, knowledge of the Food Stamp Program, health, income and expenses and either participation history or reasons for nonparticipation.

Need And Use Of The Information: This study will pretest data collection instruments designed to provide systematic information on the reasons the elderly and working poor participates in the Food Stamp Program at lower-than-average rates.

Description Of Respondents: Individuals or households.

Number Of Respondents: 8,530.

Frequency Of Responses: Reporting: One-time.

Total Burden Hours: 853.

Donald Hulcher,
Departmental Clearance Officer.

[FR Doc. 97–25409 Filed 9–24–97; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–97–007]

Beef Promotion and Research; Board and State Beef Council Addresses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document updates the notice published in the **Federal Register** on Friday, April 15, 1994 (59 FR 18095). This Notice provides the addresses of the Cattlemen's Beef Promotion and Research Board (Board) and the current addresses of the 45 Qualified State Beef Councils (QSBCs) which are authorized under the Cattlemen's Beef Promotion and Research Order (Order) to receive assessments.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION: Pursuant to the Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), the Order was published in the July 18, 1986, **Federal Register** (51 FR 26132). Regulations implementing the Order were published in the October 1, 1986, issue of the **Federal Register** (51 FR 35196).

The Order and the Regulations provide that, beginning October 1, 1986, cattle sold in the United States are subject to an assessment of $1 per head. Persons who collect assessments from producers under the Order and Regulations are required to remit those assessments to the QSBC in the State where they reside or to the Board if there is no QSBC located in their State. Imported cattle, beef, and beef products are also subject to equivalent assessments; these are paid through the U.S. Customs Service.

The Act required that a referendum be conducted by the Secretary within 22 months after the issuance of the Order to determine if the Order should be continued or suspended. Any person had the right to demand and receive from the Board a one-time refund on cattle sold during the period prior to the approval of the continuation of the order pursuant to the referendum. On May 10, 1988, the referendum was conducted and producers voted to continue the checkoff program. After the passage of the referendum, refunds were no longer available.

This notice provides the current addresses of the Board and 45 QSBCs. Since the publication of the addresses in the **Federal Register** on April 15, 1994 (59 FR 18095), one additional State Beef Council, the New Jersey Beef Industry Council, has been certified by the Board. However, some of the addresses have changed. QSBCs have different addresses for different purposes. Accordingly, this notice includes two columns for such addresses; one for inquires and general business and one for remitting assessments and accompanying reports. For inquires and general business, the address of the Board is: Cattlemen's Beef Promotion and Research Board; P.O. Box 3316; 5420 South Quebec Street (80111); Englewood, Colorado 80155. For remitting assessments and accompanying reports, the address of the Board is Cattlemen's Beef Promotion and Research Board; P.O. Box 17382; Denver, Colorado 80217–0382.

ADDRESSES OF THE QUALIFIED STATE BEEF COUNCILS

Inquiries and general business	Remit assessments and accompanying reports to—
Alabama Cattlemen's Association, P.O. Box 2499, Montgomery, AL 36102–2499.	Alabama Cattlemen's Association, P.O. Box 2499, Montgomery, AL 36102–2499.
Arizona Beef Council, 1401 North 24th Street, Phoenix, AZ 85008	Arizona Beef Council, 1401 North 24th Street, Phoenix, AZ 85008.
Arkansas Beef Council, 310 Executive Court, Little Rock, AR 72205	Arkansas Beef Council, AR Dept. of Finance and Revenue, P.O. Box 896 Little Rock, AR 72203.
California Beef Council, 5726 Sonoma Drive, Suite A, Pleasanton, CA 94566.	California Beef Council, P.O. Box 12171, Pleasanton, CA 94566.
Colorado Beef Council, 6551 S. Revere Parkway, Suite 120, Englewood, CO 80111.	Colorado Beef Council, 6551 S. Revere Parkway, Suite 120, Englewood, CO 80111.
Delaware Beef Advisory Board, 2320 South DuPont Highway, Dover, DE 19901.	Delaware Beef Advisory Board, c/o Delaware Dept. of Agriculture, 2320 South DuPont Highway, Dover, DE 19901.
Florida Beef Council, P.O. Box 1929 (32742–1929), 1818 North Bermuda, Kissimmee, FL 32741.	Florida Beef Council, P.O. Box 421929, Kissimmee, FL 34742–1929.
Georgia Beef Board, 100 Cattlemens Drive (31210), P.O. Box 11347, Macon, GA 31212.	Georgia Beef Board, P.O. Box 6515, Macon, GA 31208–9939.
Hawaii Beef Industry Council, P.O. Box 1166, Ewa Beach, HI 96706	Hawaii Beef Industry Council, P.O. Box 1166, Ewa Beach, HI 96706.
Idaho Beef Council, 212 South Cole Road, Boise, ID 83709	Idaho Beef Council, 212 South Cole Road, Boise, ID 83709.
Illinois Beef Association, 2060 West Iles Ave., Suite B, Springfield, IL 62704.	Illinois Beef Association-Checkoff Division, 2060 West Iles Ave., Suite B, Springfield, IL 62704.
Indiana Beef Council, 8770 Guion Road, Suite A, Indianapolis, IN 46268–3013.	Indiana Beef Council, P.O. Box 66577, Indianapolis, IN 46266.
Iowa Beef Industry Council, P.O. Box 451 (50010), 2055 Ironwood Court, Ames, IA 50014.	Iowa Beef Industry Council, P.O. Box 451, Ames, IA 50010.
Kansas Beef Council, 6031 Southwest 37th, Topeka, KS 66614	Kansas Beef Council, 6031 Southwest 37th, Topeka, KS 66614.
Kentucky Beef Council, 733 Red Mile Road, Lexington, KY 40504	Kentucky Beef Council, 733 Red Mile Road, Lexington, KY 40504.
Louisiana Beef Industry Council, 4921 I–10 Frontage Road, Port Allen, LA 70767.	Louisiana Beef Industry Council, 4921 I–10 Frontage Road, Port Allen, LA 70767.
Maine Beef Industry Council, State House Station #28, Augusta, ME 04333–0028.	Maine Beef Industry Council, c/o Fleet Bank, 192 Water Street, Gardiner, ME 04345.
Maryland Beef Industry Council, University of Maryland, 1129 Animal Science Center, College Park, MD 20742.	Maryland Beef Industry Council, P.O. Box 259, Sykesville, MD 21784.
Michigan Beef Industry Commission, 2145 University Park Drive, Suite 300, Okemos, MI 48864.	Michigan Beef Industry Commission, 2145 University Park Drive, Suite 300, Okemos, MI 48864.
Minnesota Beef Council, 2850 Metro Drive, Suite 426, Minneapolis, MN 55425.	Minnesota Beef Council, 2850 Metro Drive, Suite 426, Minneapolis, MN 55425.
Mississippi Cattle Industry Board, 680 Monroe Street, Suite A, Jackson, MS 39202.	Mississippi Cattle Industry Board, 680 Monroe Street, Suite A, Jackson, MS 39202.
Missouri Beef Industry Council, 2015 Missouri Boulevard, Jefferson City, MO 65109.	Beef Merchandising Fund, c/o Missouri Dept. of Agriculture, P.O. Box 630, Jefferson City, MO 65102–9911.
Montana Beef Council, P.O. Box 5386 (59604–5386), 420 North California Street, Helena, MT 59601.	Montana Beef Council, Montana Dept. of Livestock, Capitol Station, Helena, MT 59620.
Nebraska Beef Council, 1319 Center Avenue, P.O. Box 2108, Kearney, NE 68847–6869.	Nebraska Beef Council, 1319 Center Avenue, P.O. Box 2108, Kearney, NE 68847–6869.
Nevada Beef Council, c/o Nevada Cattlemen's, P.O. Box 310, Elko, NV 89803–0310.	Nevada Division of Agriculture, Bureau of Livestock Identification, ATTN: Checkoff, 350 Capitol Hill Avenue, Reno, NV 89501.
New Jersey Beef Industry Council, c/o Sussex Co. Cooperative Extension, Plotts Road, Sussex Co. Administration Building, Newton, NJ 07860.	New Jersey Beef Industry Council, Warren Co. Administration Building, c/o Betty Wickwiser, 165 County Road, 519 South, Belvideve, NJ 07823–1949.
New Mexico Beef Council, Suite C, 1209 Mountain Road Place, NE., Albuquerque, NM 87110.	New Mexico Beef Council, Suite C, 1209 Mountain Road Place, NE., Albuquerque, NM 87110.
New York Beef Industry Council, 6351 NYS Route 26 South, Rome, NY 13440 (UPS Only), P.O. Box 250, Westmoreland, NY 13490.	New York Beef Industry Council, NY Beef Industry Council, Inc., Department #4021, P.O. Box 22088, Albany, NY 12201–2088.
North Carolina Beef Council, 2228 North Main Street, Fuquay-Varina, NC 27526.	Remit Assessments To: North Carolina Beef Council, North Carolina Dept. of Agric., NCDA, Room 206, P.O. Box 27647, Raleigh, NC 27611.

ADDRESSES OF THE QUALIFIED STATE BEEF COUNCILS—Continued

Inquiries and general business	Remit assessments and accompanying reports to—
	Remit Reports To: NC Cattlemen's Beef Council, 2228 North Main Street, Fuquay-Varina, NC 27526.
North Dakota Beef Commission, 4023 North State Street, Bismarck, ND 58501.	North Dakota Beef Commission, 4023 North State Street, Bismarck, ND 58501.
Ohio Beef Council, 10600 U.S. Route 42, Marysville, OH 43040	Ohio Beef Council, 10600 U.S. Route 42, Marysville, OH 43040.
Oklahoma Beef Industry Council, 5101 North Classen, Oklahoma City, OK 73118.	Oklahoma Beef Industry Council, P.O. Box 850027, Oklahoma City, OK 73185–0027.
Oregon Beef Council, 1200 Naito Parkway, Suite 290, Portland, OR 97209–2829.	Oregon Beef Council, 1200 Naito Parkway, Suite 290, Portland, OR 97209–2829.
Pennsylvania Beef Council, 1500 Fulling Mill Road, Middletown, PA 17057.	Pennsylvania Beef Council, 1500 Fulling Mill Road, Middletown, PA 17057.
South Carolina Beef Board, P.O. Box 11280, Columbia, SC 29201	South Carolina Beef Board, P.O. Box 11280, Columbia, SC 29211.
South Dakota Beef Industry Council 106 West Capitol, Pierre, SD 57501.	South Dakota Beef Industry Council, c/o American State Bank, P.O. Box 912, Pierre, SD 57501.
Tennessee Beef Industry Council, 128 Holiday Court, Suite 113, Franklin, TN 37064.	Tennessee Beef Industry Council, c/o First Tennessee Bank, P.O. Box 305172, Department 25, Nashville, TN 37230–9869.
Texas Beef Council, 8708 Rural Route 620, Austin, TX 78726	Texas Beef Council, P.O. Box 140766, Austin, TX 78714–0766.
Utah Beef Council, 150 S. 6th E., Suite 10B, Salt Lake City, UT 84102	Utah Beef Council, 150 S. 6th E., Suite 10B, Salt Lake City, UT 84102.
Vermont Beef Industry Council, P.O. Box 2029 (05449), 52 Middle Road, Colchester, VT 05446.	Vermont Beef Industry Council, Vermont National Bank, P.O. Box 180, Woodstock, VT 05091.
Virginia Cattle Industry Board, P.O. Box 176, U.S. Route 220, Daleville, VA 24083–0176.	Virginia Cattle Industry Board, P.O. Box 176, U.S. Route 220, Daleville, VA 24083–0176.
Washington State Beef Commission, Denny Building, Suite 105, 2200 Sixth Avenue, Seattle, WA 98121.	Washington State Beef Commission, Denny Building, Suite 105, 2200 Sixth Avenue, Seattle, WA 98121.
West Virginia Beef Industry Council, P.O. Box 668, 40 Chancery Street, Buckhannon, WV 26201.	West Virginia Beef Industry Council, P.O. Box 668, 40 Chancery Street, Buckhannon, WV 26201.
Wisconsin Beef Council, 630 Grand Canyon Drive, Madison, WI 53719	Wisconsin Beef Council, P.O. Box 86, Columbus, WI 53925–0086.
Wyoming Beef Council, P.O. Box 1243, 113 East 20th Street, Cheyenne, WY 82003.	Wyoming Beef Council, P.O. Box 1243, Cheyenne, WY 82003.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: September 19, 1997.

Barry L. Carpenter,

Director, Livestock and Seed Division.

[FR Doc. 97–25413 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–046–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations that prevent plant diseases and pests from spreading from infested areas of the United States to noninfested areas.

DATES: Comments on this notice must be received by November 24, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–046–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–046–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding domestic regulations, contact Ms. Coanne E. O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road, Unit 131, Riverdale, MD 20737–1237, (301) 734–8247. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: Domestic Quarantine Notices.

OMB Number: 0579–0088.

Type of Request: Extension of an approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing the spread of plant diseases and pests within the United States. Implementing this mission often requires the use of domestic quarantines and regulations, which in turn require us to collect information from a variety of individuals who are involved in growing, packing, handling, and transporting plants, fruits, vegetables, roots, bulbs, seeds, and other plant products.

The information we collect is vital to helping us ensure that plant diseases and pests are not spread from infested areas to noninfested areas of the United States.

For example, we issue permits to authorize the interstate movement of regulated articles to specified destinations for processing, treatment, or utilization. The person wishing to move these articles, however, must first complete a permit application.

We consider the permit application extremely important, since this process helps us ensure that regulated articles are moved to a specified destination for appropriate handling. In this way, the movement of items that harbor potentially harmful plant diseases and pests can be controlled and monitored.

Another means we employ to control and monitor the movement of these potentially harmful items is to require shippers to mark each container, waybill, manifest, or bill of lading with certain information, such as the nature and quantity of the contents, name and address of the shipper/owner/forwarder, name of consignee, shipper's identifying mark and number, and the serial number of the certificate or limited permit authorizing the movement.

These and other information gathering tools are critical to our mission of protecting the United States from plant diseases and pests which, if allowed to spread, could cause millions of dollars in damage to U.S. agriculture.

We are asking the Office of Management and Budget (OMB) to approve the continued use of these information collection activities.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .09838 hours per response.

Respondents: U.S. growers, shippers, and exporters; State and county plant health protection authorities.

Estimated Number of Respondents: 174,072.

Estimated Numbers of Responses per Respondent: 5.775.

Estimated Annual Number of Responses: 1,005,331.

Estimated Total Annual Burden on Respondents: 98,910 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 22nd day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25485 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–098–1]

In Vitro Testing of Veterinary Biologics; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting a public meeting to discuss the implementation of guidelines for the in vitro testing of veterinary biologics.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held in the main auditorium of the National Animal Disease Center, 2300 Dayton Road, Ames, IA. The meeting will be held from 8 a.m. until noon on Thursday, October 16, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; telephone (301) 734–8400; fax (301) 734–8910; or E-mail: jgreenberg@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: In a final rule published on April 18, 1997 (62 FR 19033–19039, Docket No. 94–051–3), we amended our regulations in 9 CFR part 113 to provide for the use of in vitro potency tests when conducting immunoassays to determine the relative antigen content (potency) of a serial of inactivated veterinary biological product once immunogenicity is established using host animal tests. The amended regulations provide that such tests are to be conducted using unexpired immunogenic reference preparations and parallel line assay or another method that is at least equivalent to the parallel line assay in terms of its linearity, specificity, and reproducibility.

The purpose of the public meeting announced in this notice is to present and discuss draft guidelines pertaining to the qualification and requalification of reference preparations used in in vitro immunoassays affected by the change in the regulations.

The meeting on October 16, 1997, will begin at 8 a.m. and end at noon; however, the meeting may end earlier if all persons desiring to speak have been heard. No advance registration is necessary to attend this meeting.

Done in Washington, DC, this 22nd day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25484 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–090–1]

User Fees; Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to user fees charged for agricultural quarantine and inspection services we provide in connection with commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the Customs territory of the United States. The purpose of this notice is to remind the public of the user fees for fiscal year 1998 (October 1, 1997 through September 30, 1998).

FOR FURTHER INFORMATION CONTACT: For information concerning program Operations, contact Mr. Jim Smith, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236, (301) 734–8295.

For information concerning rate development, contact Ms. Donna Ford, User Fees Section Head, FSSB, BAD, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.3 (referred to below as the "regulations") contain provisions for the collection of user fees for agricultural quarantine and inspection (AQI) services provided by

the Animal and Plant Health Inspection Service (APHIS). These services include, among other things, inspecting commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the Customs territory of the United States from points outside the United States. (The Customs territory of the United States is defined in the regulations as the 50 States, the District of Columbia, and Puerto Rico.)

These user fees are authorized by § 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a). This statute, known as the Farm Bill, was amended by § 504 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) on April 4, 1996.

On July 24, 1997, we published in the **Federal Register** (62 FR 39747–39755, Docket No. 96–038–3) a final rule to amend the regulations by adjusting our user fees for servicing commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the Customs territory of the United States from points outside the United States and by setting user fees for these services for fiscal years 1997 through 2002. When we established the user fees for fiscal years 1997 through 2002, we stated that, prior to the beginning of the fiscal year, we would publish a notice to remind the public of the user fees for that fiscal year. This document provides notice to the public of the user fees for fiscal year 1998.

We inspect commercial vessels of 100 net tons or more[1]. As specified in § 354.3(b)(1), our user fee for inspecting commercial vessels will be $454.50 during fiscal year 1998 (October 1, 1997 through September 30, 1998).

We inspect commercial trucks[2] entering the Customs territory of the United States. Commercial trucks may pay the APHIS user fee each time they enter the Customs territory of the United States from Mexico[3] or purchase a prepaid APHIS permit for a calendar year. Since commercial trucks are also subject to Customs user fees, our regulations provide that commercial trucks must prepay the APHIS user fee if they are prepaying the Customs user fee. In that case, the required APHIS user fee is 20 times the user fee for each arrival, and is valid for an unlimited number of entries during the calendar year (see § 354.3(c)(3)(i) of the regulations). The truck owner or operator, upon payment of the APHIS and the Customs user fees, receives a decal to place on the truck windshield. This is a joint decal, indicating that both the Customs and APHIS user fees for the truck have been paid for that calendar year. As specified in § 354.3(c)(1), our user fee for inspecting commercial trucks will be $4.00 for individual arrivals and, as specified in § 354.3(c)(2), $80.00 for a calendar year 1998 decal.

We inspect commercial railroad cars[4] entering the Customs territory of the United States. These user fees may be paid per inspection or prepaid. Prepaid user fees cover one calendar year's worth of AQI inspections. As specified in § 354.3(d)(1), the user fee for this service will be $6.50 per loaded commercial railroad car for each arrival or, if user fees are prepaid, $130 (20 times the individual arrival fee) for each loaded rail car during fiscal year 1998 (October 1, 1997 through September 30, 1998).

We inspect international commercial aircraft[5] arriving at ports in the Customs territory of the United States. As specified in § 354.3(e)(1), the user fee will be $59.75 during fiscal year 1998 (October 1, 1997 through September 30, 1998).

We also inspect international airline passengers[6] arriving at ports in the Customs territory of the United States. As specified in § 354.3(f)(1), the international airline passenger user fee will be $2.00 during fiscal year 1998 (October 1, 1997 through September 30, 1998).

[1] Those commercial vessels subject to inspections are specified in 7 CFR, chapter III, part 330 or in 9 CFR, chapter I, subchapter D of the regulations. Exemptions to these user fees are specified in § 354.3(b)(2).

[2] Those commercial trucks subject to inspections are specified in 7 CFR, chapter III, part 330 or in 9 CFR, chapter I, subchapter D of the regulations. Exemptions to these user fees are specified in § 354.3(c)(2).

[3] Section 354.3(c)(2)(i) of the regulations states that commercial trucks entering the Customs territory of the United States from Canada are exempt from paying an APHIS user fee.

[4] Those commercial railroad cars subject to inspections are specified in 7 CFR, chapter III, part 330 or in 9 CFR, chapter I, subchapter D of the regulations. Exemptions to these user fees are specified in § 354.3(d)(2).

[5] Those commercial aircraft subject to inspections are specified in 7 CFR, chapter III, part 330 or in 9 CFR, chapter I, subchapter D of the regulations. Exemptions to these user fees are specified in § 354.3(e)(2).

[6] Those international airline passengers subject to inspections are specified in 7 CFR, chapter III, part 330 or in 9 CFR, chapter I, subchapter D of the regulations. Exemptions to these user fees are specified in § 354.3(f)(2).

Done in Washington, DC, this 22nd day of September 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25483 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

Request for Extension and Revision of a Currently Approved Information Collection; Reinstatement and Extension of a Currently Approved Information Collection; and a Proposed New Information Collection

AGENCY: Farm Service Agency and the Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and Farm Service Agency (FSA) to request an extension and revision of an approved information collection to support the Tobacco Marketing Quota and Price Support program; a reinstatement and extension of an approved information collection to support Importer Assessments on imported tobacco; and an approval of a new information collection for conducting tobacco marketing quota referenda. These information collections are authorized by the following regulations: 7 CFR part 723, Tobacco; 7 CFR part 1464, Tobacco; and 7 CFR part 717, Holding of Referenda. Such regulations are issued under the authority of the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended.

DATES: Comments on this notice must be received on or before November 24, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Michael D. Thompson, USDA, Farm Service Agency, Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514, (202) 720–4318; facsimile (202) 720–1288; or Internet e-mail, mdthomps@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Marketing Quota and Price Support Program, 7 CFR parts 711, 723 and 1464.

OMB Control Number: 0560–0058.

Expiration Date: September 30, 1997.

Type of Request: Extension and revision of an approved information collection.

Abstract: The information collected under OMB Control Number 0560–0058, as identified above, is all that is currently demanded by FSA to meet administrative and statutory requirements for the tobacco marketing quota and price support programs. Information collected from tobacco producers and owners of farms with tobacco allotment or quota is needed to properly establish tobacco acreage allotments and marketing quotas for farms, transfer quota between farms, and determine price support eligibility. Because tobacco marketing quotas are highly regulated, information is needed to show where tobacco acreage is planted, how much is planted, where tobacco is marketed and how much is marketed. Tobacco marketed in excess of a farm marketing quota is subject to a substantial marketing quota penalty equal to 75 percent of the previous year's average price to producers.

Covered information collected from tobacco dealers, auction warehouses, processors, and others involved in the marketing, buying, or handling of tobacco is needed and used to effectively administer the marketing quota provisions of the tobacco program. All tobacco produced on farms is disposed of through commercial marketing channels that involve dealers, warehouses, processors, manufacturers, and others. In order to completely and accurately account for the production and marketing of tobacco on an individual farm basis, records and reports must be submitted by persons that acquire or handle producer tobacco. In order to determine if any tobacco in excess of a farm marketing quota has been marketed, these persons must maintain records and make reports on their purchases and sales of tobacco. Warehouse operators must maintain records and make reports showing the sales and purchases of tobacco handled by the warehouse. These reports are reviewed to ensure that excess tobacco is not being marketed without being subject to marketing quota penalties.

Information collected from domestic manufacturers of cigarettes is needed to establish the national marketing quotas for burley and flue-cured tobacco. By statute, the national marketing quota is based, in part, on the amount of tobacco the domestic cigarette manufacturers intend to purchase from the next crop year. The domestic cigarette manufacturers must also report their actual purchases and maintain records that support their purchases of producer tobacco. There are five major domestic cigarette manufacturers that are subject to these provisions.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7 minutes per response.

Respondents: Individual tobacco producers, allotment or quota owners, tobacco auction warehouses, dealers, and others involved in the marketing or buying of tobacco which may include small and medium size businesses, and five domestic manufacturers of cigarettes.

Estimated Number of Respondents: 325,455.

Estimated Number of Responses per Respondent: 3 per year.

Estimated Total Annual Burden on Respondents: 113,910 hours.

Title: Tobacco Importer Assessments, 7 CFR part 1464, subpart B.

OMB Control Number: 0560–0148.

Type of Request: Reinstatement and extension of an approved information collection.

Abstract: The information collected under OMB Control Number 0560–0148 is all of the information demanded by FSA in order to effectively administer the statutory provisions for assessments on imported tobacco. Information collected from importers of unmanufactured tobacco is necessary to determine the proper amounts of assessments are timely paid. The Omnibus Budget Reconciliation Act of 1993 amended sections 106, 106A, and 106B, of the Agricultural Act of 1949, to require the payment of importer no-net-cost (INNC), and budget deficient marketing assessments (BDMA) on imported unmanufactured tobacco. The INNC assessments apply only to burley and flue-cured tobacco, and the BDMA applies to all kinds of tobaccos that are subject to a domestic marketing quota and price support program. Information is collected on form CCC–100, Importer Entry and Assessment Worksheet. The data reported includes the importer's name and address, the importer's number, and the tobacco's entry number, Harmonized Tariff Schedule (HTS) number, as well as the quantity of tobacco, and amounts of assessments remitted.

Estimate of Burden: Public reporting burden for this collection of information is estimated at 45 minutes per response.

Respondents: Importers of unmanufactured tobacco for consumption in the United States, who may be individuals, small business, or large tobacco leaf dealers and cigarette manufacturers.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 18.

Estimated Total Annual Burden on Respondents: 540 hours.

Title: Holding of Referenda, 7 CFR part 717.

OMB Control Number: New submission.

Type of Request: Proposed new information collection.

Abstract: The Agricultural Adjustment Act of 1938, as amended, requires the establishment of national marketing quotas for certain commodities and the holding of a referendum of farmers engaged in the production of that commodity to determine if they favor or oppose marketing quotas for the next three crop years. Currently there are nine different referenda held every 3 years for tobacco. The number of eligible voters for all referenda is estimated at 400,000, with approximately 155,000 respondents returning voted ballots. Voter eligibility is based on a person being engaged in the production of that kind of tobacco for the preceding year. The actual voting and returning a ballot is strictly voluntary. The voter participation rate ranges from 20 percent to 90 percent. The average voter participation rate for all referenda is about 40 percent. Occasionally, special referenda are conducted as a result of a petition for a referendum, significant changes in the tobacco program, and under a Memorandum of Understanding with another entity or government agency. The Agency plans to continue to use the traditional ballot. The ballot itself has not been assigned an OMB control number, but such number would be assigned as a result of this notice.

Estimate of Burden: Public reporting burden for this collection of information is estimated at 5 minutes per response.

Respondents: Individual tobacco farmers and landowners who are eligible voters that return a voted ballot.

Estimated Number of Respondents: 155,000.

Estimated Number of Responses per Respondent: Once ever 3 years.

Estimated Total Annual Burden on Respondents: 4,300 hours.

Request for Comment: Comment on above information request is sought. Topics for comment may include, but need not be limited to: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the

information collected; or (d) minimizing the burden of the collection of information on respondents, including the use of appropriate automated electronic, mechanical, or other forms of informational technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Michael D. Thompson at the address listed above. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, DC, on September 18, 1997.

Keith Kelly,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–25451 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Silver Creek Integrated Resource Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Emmett Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for an integrated resource management project in the Silver Creek subwatershed, a headwater tributary to the Middle Fork Payette River drainage. The project area is located about 80 road miles north of Boise, Idaho.

The Forest Service is seeking information and comments from Federal, State, tribal, and local agencies, as well as individuals and organizations who may be interested and/or affected by the proposed action. The agency invites written comments and suggestions on the issues related to the proposal and the area being analyzed. The information received will be used in preparing the draft and final EIS. For most effective use, comments should be submitted within 30 days from the date of publication of this Notice in the **Federal Register**.

Proposed Action

Six objectives have been identified for the project: (1) Restore and/or maintain the presence of the seral, shade intolerant tree species (i.e., ponderosa pine, aspen) as part of the area's vegetative mosaic; (2) improve forest resilience to damaging insects and disease; (3) improve timber stand vigor and growth; (4) reduce the risk of large, stand-destroying wildfire, especially in the vicinity of the Silver Creek Plunge Hot Springs Resort and rural subdivision; (5) restore streambanks, riparian areas, and other wet, upland sites damaged by unrestricted, cross-country motorized travel; and, (6) provide sawlogs and other wood products to help sustain local sawmills and communities.

The proposed action would treat, either with timber harvest or prescribed fire, a total of 9,545 acres. An estimated 23 million board feet (MMBF) of timber would be harvested by ground-based (1,089 acres), skyline/cable (304 acres), or helicopter (4,722 acres) yarding systems. The proposed action would employ a variety of silvicultural systems, including improvement selection (38 percent), commercial thinning (31 percent), sanitation/salvage (13 percent), irregular shelterwood (9 percent) and group selection (6 percent). Prescribed fire would also occur on another 3,430 acres to rejuvenate old, decadent aspen stands and/or provide seedbeds for potential white-bark pine regeneration. The existing transportation system would be improved to facilitate the harvest operation and reduce sedimentation, 3 miles of road relocation and construction, 1.3 miles of temporary road construction, and spot graveling of intermittent sections of Roads No. 698 (Middle Fork Payette), No. 671 (Silver Creek), and No. 678 (Bridge-Bryan Creek). Two bridges would be constructed to provide log haul access. Six existing helicopter landings would be used, however, each would be first "stabilized" to improve drainage and reduce potential sediment delivery. Two dry, upland meadows would also be used as possible log landing sites. An estimated 4 miles of existing, user-developed roads, the majority which either lies immediately adjacent to perennial streams or is deeply eroded, would be obliterated. Five existing, user-developed stream crossings would be closed and rehabilitated. Upon completion of post-harvest activities, motorized travel east of Silver Creek would be restricted to designated routes (i.e., roads and trails), except for snowmobiles during the winter.

To meet the project's objectives, several changes to the Boise Land and Resource Management Plan (Forest Plan) would be needed. The proposed Forest Plan changes include redefining the visual quality objectives (VQO's) for the Peace Rock, Silver Creek, and Lightning Creek management areas (MA's) as well as changing the prohibition concerning the use of ground-based yarding systems, mechanized equipment, and road construction in the Peace Rock MA.

Preliminary Issues

Anticipated concerns related with the proposed action are: (1) Timber harvest and road relocation and/or construction could effect a portion of the Peace Rock inventoried roadless area's (IRA) wild character; (2) bridge construction and road relocation/reconstruction activities could result in short-term increases in the sediment entering area streams; (3) the project could alter the scenic quality of the Silver Creek area; (4) the proposed restrictions on cross-country, motorized travel could displace some outdoor enthusiasts and/or reduce recreational opportunities for some user groups; and (5) the activities resulting from the proposed Forest Plan changes could alter the semiprimitive, motorized character of the area. Other potential issues may be identified during the current scoping period.

Schedule

The draft EIS is anticipated to be available for public review and comment in April 1998; the final EIS by July 1998.

Public Involvement

The Forest Service is inviting the public to visit Silver Creek with Emmett District personnel. Two field tours are scheduled for the project area; one on October 3, 1997; the other on October 4, 1997. Both field tours will be from 9 a.m. to 4 p.m., beginning at the Garden Valley Station, Garden Valley, Idaho, with a brief presentation and then proceeding to the project area. In addition, a public meeting will be held at the Garden Valley Senior Citizens' Center, Crouch, Idaho on October 6, 1997, from 7–9 p.m. to discuss the proposed activities. Comments received from those field tours, as well as the public meeting will be incorporated into the analysis and decision-making process.

Comments

Written comments concerning the proposed project should be received on or before 30 days following publication of this announcement in the **Federal Register**. Mail comments to, or for further information contact, Chris Worth, Project Team Leader, Emmett Ranger District, 1805 Highway 16, Room 5, Emmett, ID 83617, or telephone 208–365–7000.

Comments received in response to this solicitation, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

Responsible Official

David D. Rittenhouse, Forest Supervisor, Boise National Forest is the responsible official.

Dated: September 15, 1997.

Cathy Barbouletos,

Acting Forest Supervisor.

[FR Doc. 97–25473 Filed 9–24–97; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Vermont Advisory Committee to the Commission will conduct a two-day community forum on November 4 and 5, 1997. The November 4 session will be held at the Sheraton Hotel and Conference Center, Emerald Room I and II, 870 Williston Road, Burlington, Vermont 05403, from 1:00 p.m. to 5:30 p.m. and 7:00 p.m. to 9:30 p.m. The November 5 session will be held at the Franklin Conference Center, Howe Center, One Scale Avenue, Rutland, Vermont 05701, from 1:00 p.m. to 5:30 p.m. and 7:00 p.m. to 9:30 p.m. The Advisory Committee will receive information from Federal and State government officials, community leaders, minority students, and parents concerning racial harassment in the Vermont public schools.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Kimberly B. Cheney, 802–229–0334, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 15, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–25471 Filed 9–24–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Analysis Bureau

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons.

Agency Form Number: BE–93.

OMB Approval Number: 0608–0017.

Type of Request: Revision of a currently approved collection.

Burden: 2,200 hours.

Number of Respondents: 550.

Avg. Hours Per Response: 4 hours.

Needs and Uses: The BE–93 annual survey is required in order to obtain reliable, up-to-date and detailed information on transactions in intangible rights between U.S. companies and foreign persons. Data from this survey will be used in monitoring U.S. services trade, analyzing its impact on the U.S. and foreign economies, formulating U.S. international trade policy on services, supporting bilateral and multilateral trade negotiations, monitoring and assessing the impact of trade agreements on the U.S. and foreign economies, compiling the U.S. balance of payments and national income and product accounts, developing U.S. international price indexes for services, assessing and promoting U.S. competitiveness in international trade in services, and improving the ability of U.S. businesses to identify and evaluate market opportunities.

Affected Public: Business or other for-profit organizations, or other institutions receiving royalties and license fees from, or paying royalties and licenses fees to unaffiliated foreign persons.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101—3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Linda Engelmeier, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days to Paul Bugg OMB Desk Officer, Room 10201, New Executive Office Building, 725 17th Street, N.W., Washington, DC 20503.

Dated: September 19, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–25438 Filed 9–24–97; 8:45 am]

BILLING CODE: 3510–06–P

DEPARTMENT OF COMMERCE

Economic Analysis Bureau

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

Agency Form Number: BE–22.
OMB Approval Number: 0608–0060.
Type of Request: Revision of a currently approved collection.
Burden: 17,250 hours.
Number of Respondents: 1,500.
Avg Hours Per Response: 11.5 hours.
Needs and Uses: The BE–22 annual survey is required to obtain reliable and up-to-date information on selected U.S. services transactions with unaffiliated foreign persons, by type of service cross-classified by foreign country. It is intended to update the results of the BE–20 benchmark survey, which covers the universe of such transactions. The BE–20 survey is conducted once every five years, and the last survey covered 1996. The BE–22 survey is conducted each of the four years between two benchmark surveys; the last BE–22 covered 1995. Some of the major purposes of the survey are to provide information needed in formulating U.S. international trade policy on services, support bilateral and multilateral trade negotiations and monitoring trade agreements, compile the U.S. balance of payments and national income and product accounts, develop U.S. international price indexes for services, assess and promote U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.
Affected Public: Business and other for-profit organizations, and non-for profit institutions; state and local government, or other institutions engaging in international transactions in covered services.
Frequency: Annual.
Respondent's Obligation: Mandatory.
Legal Authority: Title 22 U.S.C., Section 3101—3108, as amended.
OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Linda Engelmeier, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, 725 17th Street, N.W., Washington, DC 20503.

Dated: September 19, 1997.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc 97–25439 Filed 9–24–97; 8:45 am]
BILLING CODE: 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Fisheries Certificate of Origin.
Agency Form Number: NOAA Form 370.
OMB Approval Number: New number being requested but formerly under 0648–0040.
Type of Request: Reinstatement of a collection but with a request to assign a new OMB Control Number.
Burden: 1,033 hours.
Number of Respondents: 350 respondents with a total 4,000 responses.
Avg Hours Per Response: 20 minutes for processors and importers/exporters and 5 minutes for vessel captains.
Needs and Uses: The purpose of the collection of information is to comply with the requirements of the Marine Mammal Protection Act. The Act requires the Secretary of Commerce to promulgate regulations restricting the importation of tuna from those nations without a marine mamnial protection program comparable to that of the United States. In addition, tuna that is not dolphin-safe cannot be transported or sold in the United States. The collection serves three purposes: (1) documents that the shipment is dolphin safe, (2) verifies that the fish was not harvested by large-scale high seas driftnets, and (3) verifies that tuna was not harvested by a nation under primary or secondary embargo.
Affected Public: Businesses or other for-profit organizations.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, DC 20503.

Dated: September 19, 1997.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 97–25440 Filed 9–24–97; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration.
Title: Public Telecommunications Facilities Program (PTFP) Application Form.
Agency Form Number: Not applicable.
OMB Approval Number: 0660–0003.
Type of Request: Revision of currently approved collection.
Burden: 40,250 hours.
Ave. Hours Per Response: Approximately 89 hours.
Number of Respondents: Approximately 450.
Needs and Uses: The Public Broadcasting Act authorizes grants to be awarded for the planning and construction of public telecommunications facilities. Members of the public telecommunications community must complete a standardized form to provide information for evaluation by PTFP through a competitive review process.
Affected Public: State and local governments and non-profit institutions.
Frequency: Annually.
Respondent's Obligation: Required to obtain a benefit.
OMB Desk Officer: Tim Fain, (202) 395–3561.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5327, 14th St. and Constitution Ave, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Tim Fain, OMB Desk Officer, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: September 19, 1997.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 97–25441 Filed 9–24–97; 8:45 am]
BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.
Title: International Buyer Program: Application and Exhibitor Data.
Agency Form Number: ITA–4014P and ITA–4102P.
OMB Number: 0625–0151.
Type of Request: Regular Submission.
Burden: 919 hours.
Number of Respondents: 4,080.
Avg. Hours Per Response: 190 minutes for the application and 10 minutes for the exhibitor data.
Needs and Uses: The International Trade Administration's, International buyer Program (IBP), encourages international buyers to attend selected domestic trade shows in high export potential industries and to facilitate contact between US exhibitors and foreign visitors. The program has been successful having substantially increased the number of foreign visitors attending these selected shows as compared to the attendance when not supported by the program. The number of shows selected to the program increased from 10 in 1986 to 26 in 1997. Among the criteria used to select these shows are: export potential, international interest, scope of the show, stature of the show, exhibitor interest, overseas marketing, logistics, and cooperation of show organizers. Form ITA–4014P, "Exhibitor Data," is used to determine which U.S. firms are interested in meeting with international business visitors and the overseas business interests of the exhibitors. The exhibitor data form is completed by U.S. exhibitors participating in an IBP domestic trade show and is used to list the firm and its products in an Export Interest Directory which is distributed worldwide for use by Foreign Commercial Officers in recruiting delegations of international buyers to attend the show. The Form ITA–4102P, "Application," is used by a potential show organizer to provide (1) his/her experience, (2) ability to meet the special conditions of the IBP, and (3) information about the domestic trade show such as the number of U.S. exhibitors and the percentage of net exhibit space occupied by U.S. companies vis-a-vis non-U.S. exhibitors.
Affected Public: Businesses or other for-profit.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit, voluntary.
OMB Desk Officer: Patrick Boyd, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Pat Boyd, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, DC 20503.

Dated: September 19, 1997.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 97–25442 Filed 9–24–97; 8:45 am]
BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).
Title: Application for a Duplicate License
Agency Form Number: None
OMB Approval Number: 0694–0031
Type of Request: Extension of a currently approved collection of information.
Burden: 7 hours
Average Time Per Response: 15 minutes per response
Number of Respondents: 28 respondents
Needs and Uses: This collection of information is necessary to identify original export licenses of respondents who request duplicate export licenses for lost or destroyed licenses. The information is used to issue a new license.
Affected Public: Individuals, businesses or other for-profit institutions.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Patrick Boyd, (202) 395–5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Patrick Boyd, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20230.

Dated: September 19, 1997.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 97–25443 Filed 9–24–97; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Alaska Region Moratorium Application and Transfer Forms.
Agency Form Number: None.
OMB Approval Number: 0648–0282.
Type of Request: Reinstatement of a previously approved collection.
Burden: 319 hours.
Number of Respondents: 288 (638 responses).
Avg. Hours Per Response: 30 minutes each for the application for a permit, transfer application and the appeal process.
Needs and Uses: The Moratorium on Entry imposes a temporary moratorium on the entry of new (unqualified) vessels into the groundfish fisheries under Federal jurisdiction in the Bering Sea and Aleutian Islands management area, the groundfish fisheries under Federal Management in the Gulf of Alaska, and the crab fisheries under Federal jurisdiction in the Bering Sea/Aleutian Islands. An owner of a qualified vessel must apply for and

receive a permit from the National Marine Fisheries Service before deploying that vessel in one of the above named fisheries. The permit requirement is essential to the purpose of the Moratorium on Entry, which is to curtail increases in fishing capacity and provide industry stability. The Moratorium on Entry is intended to promote the conservation and management objectives of the North Pacific Fishery Management Council and the Magnuson-Stevens Fishery Conservation and Management Act. This collection also includes the request to transfer a vessel moratorium qualification and for the appeal process.

Affected Public: Businesses or other for-profit organizations, individuals, state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, DC 20503.

Dated: September 19, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–25449 Filed 9–24–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.215(b) (1997), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on pure magnesium from Canada and titanium sponge from Russia.

Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than August 31, 1998.

	Period to be reviewed
Antidumping Duty Proceedings	
Argentina:	
Oil Country Tubular Goods	
A–357–810	
Siderca S.A.I.C..	8/1/96–7/31/97
Belgium:	
Cut-to-Length Carbon Steel Plate	
A–423–805	
Fabrique de Fer de Charleroi.	
Phosphoric Acid	
A–423–602	8/1/96–7/31/97
Societe Chimique Prayon-Rupel.	
Brazil:	
Cut-to-Length Carbon Steel Plate	
A–351–817	
Usinas Siderurgica de Minas Gerais, Companhia Siderurgica Paulista	8/1/96–7/31/97
Silicon Metal	
A–351–806	
Companhia Brasileira Carbureto De Calcio,* Companhia Ferroligas Minas Gerais-Minasligas,* Eletrosilex Belo Horizonte,* Rima Industrial, S/A*	7/1/96–6/30/97
* Inadvertently omitted from previous initiation notice.	
Canada:	
Corrosion-Resistant Carbon Steel Flat Products	
A–122–822	
Continuous Color Coat, Ltd., Dofasco, Inc., Sorevco, Inc., Stelco, Inc	8/1/96–7/31/97
Cut-to-Length Carbon Steel Plate	
A–122–823	
A.J. Forsyth & Co., Ltd., Algoma Steel, Inc., Gerdau MRM Steel, Stelco, Inc	8/1/96–7/31/97
Pure Magnesium	
A–122–814	
Norsk Hydro Canada, Inc	8/1/96–7/31/97
Finland:	

	Period to be reviewed
Cut-to-Length Carbon Steel Plate	
A–405–802	
Rautaruukki Oy	8/1/96–7/31/97
France	
Industrial Nitrocellulose	
A–427–009	
Societe Nationale des Poudres et Explosifs	8/1/95–7/31/96
Germany:	
Cut-to-Length Carbon Steel Plate	
A–428–816	
AG der Dillinger Huttenwerke	8/1/96–7/31/97
Seamless Pipe	
A–428–820	
Mannesmannrohren-Werke AG	8/1/96–7/31/97
Italy:	
Granular Polytetrafluoroethylene (PTFE) Resin	
A–475–703	
Ausimont SpA	8/1/96–7/31/97
Japan:	
Corrosion-Resistant carbon Steel Flat Products	
A–588–824	
Nippon Steel Corporation	8/1/96–7/31/97
Granular Polytetrafluoroethylene (PTFE) Resin	
A–588–707	
Mitsui-DuPont Polychemical	8/1/96–7/31/97
Kazakhstan:	
Titanium Sponge	
A–834–803	
Special Metals Company, Titanium-Magnesium Combinat, Ust-Kamenogorsk Titanium and Magnesium Plant	8/1/96–7/31/97
Mexico:	
Cement	
A–201–802	
Apasco, S.A. de C.V., Cemex, S.A. de C.V., Cementos de Chihuahua, S.A. de C.V	8/1/96–7/31/97
Cut-to-Length Carbon Steel Plate	
A–201–809	
Altos Hornos de Mexico S.A. de C.V	8/1/96–7/31/97
Oil Country Tubular Goods	
A–201–817	
Hysla, S.a. de C.V., Tubos de Acero de Mexico S.A	8/1/96–7/31/97
Romania:	
Carbon Steel Plate	
A–485–803	
Windmill International PTE Ltd. of Singapore/Windmill International Romania Branch	8/1/96–7/31/97
Russia:	
Titanium Sponge	
A–821–803	
Avisma Titanium-Magnesium Works, Interlink Metals & Chemicals, S.A., TMC Trading International, Ltd	8/1/96–7/31/97
* South Korea:	
Cold-Rolled Carbon Steel Flat Products	
A–580–815	
Dongbu Steel Co., Ltd., Pohang Iron and Steel Co., Ltd., Union Steel Manufacturing Co., Ltd	8/1/96–7/31/97
Corrosion-Resistant Carbon Steel Flat Products	
A–580–816	
Dongbu Steel Co., Ltd., Pohang Iron and Steel Co., Ltd., Union Steel Manufacturing Co., Ltd	8/1/96–7/31/97
Industrial Nitrocellulose*	
A–580–805	
Miwon Co., Ltd	7/1/96–6/30/97
* Inadvertently omitted from previous initiation notice.	
Oil Country Tubular Goods	
A–580–825	
SeAH Steel Corporation	8/1/96–7/31/97
The Netherlands:	
Brass Sheet & Strip	
A–421–701	
Outokumpu Copper Strip B.V	8/1/96–7/31/97
Cold-Rolled Carbon Steel Flat Products	
A–421–804	
Hoogovens Staal BV	8/1/96–7/31/97
The Peoples Republic of China:	

	Period to be reviewed
Sulfanilic Acid*	
A–570–815	
China National Chemicals Import & Export Corporation, Hebei Branch, China National Chemical Construction Corporation, Beijing Branch, China National Chemical Construction Corporation, Qingdao Branch, Sinochem Qingdao, Sinochem Shandong, Baoding No. 3 Chemical Factor, Jinxing Chemical Factory, Zhenxing Chemical Industry Company, Mancheng Xinyu Chemical Factory, Shijiazhuang, Mancheng Xinyu Chemical Factory, Beijing, Hainan Garden Trading Company, Yude Chemical Industry Company, Shunping Lile	8/1/96–7/31/97

*If one of the above named companies does not qualify for a separate rate, all other exporters of sulfanilic acid from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Turkey:	
Aspirin	
A–489–602	
Atabay Kimya Sanayi ve Ticaret A.S	8/1/96–7/31/97
Countervailing Duty Proceedings	
Belgium:	
Cut-to-Length Carbon Steel Plate	
C–423–806	
Fabrique de Fer de Charleroi, S.A	1/1/96–12/31/96
Canada:	
Live Swine	
C–122–404	
Members of the Canadian Pork Council (19,028 producers)*	4/1/96–3/31/97

*The Canadian Pork Council's request lists 99 individual producers, one marketing group, and seven marketing boards. The Department has determined that it is not practicable to conduct company-specific reviews of the order on *Live Swine from Canada* because a large number of exporters and producers requested the review. Therefore, pursuant to section 777A(e)(2)(B) of the Tariff Act of 1930, as amended, the Department will conduct a country-wide review on the basis of aggregate data. We note the investigation and all prior reviews of this order have been conducted on an aggregate basis.

Canada:	
Alloy Magnesium	
C–122–815	
Norsk Hydro Canada Inc	1/1/96–12/31/96
Pure Magnesium	
C–122–815	
Norsk Hydro Canada Inc	1/1/96–12/31/96
Israel:	
Industrial Phosphoric Acid	
C–508–605	
Haifa Chemicals Ltd., Rotem Amfert Negev Ltd	1/1/96–12/31/96
Malaysia:	
Extruded Rubber Thread	
C–557–806	
Heveafil Sdn. Bhd., Filmax Sdn. Bhd., Rubberflex Sdn. Bhd., Filati Lastex Elastofibre Sdn. Bhd., Rubfil Sdn. Bhd	1/1/96–12/31–96
Mexico:	
Cut-to-Length Carbon Steel Plate	
C–201–810	
Altos Hornos de Mexico S.A. de C.V	1/1/96–12/31–96

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The requester must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: September 19, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Group III.

[FR Doc. 97–25497 Filed 9–24–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

University of Notre Dame, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision*: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 97–051. *Applicant*: University of Notre Dame, Notre Dame, IN 46556. *Instrument*: Mass Spectrometer, Model DELTA^{plus}. *Manufacturer*: Finnigan, Germany. *Intended Use*: See notice at 62 FR 40334, July 28, 1997. *Reasons*: The foreign instrument provides a double-focussing magnet sector mass analyzer with an internal precision of 0.006 per mil for 10 bar µl samples of CO_2.

Docket Number: 97–057. *Applicant*: University of Wyoming, Laramie, WY 82071. *Instrument*: Mass Spectrometer, Model Sector 54. *Manufacturer*: Micromass, Inc., United Kingdom. *Intended Use*: See notice at 62 FR 41361, August 1, 1997. *Reasons*: The foreign instrument provides: (1) Motorized multiple collectors for computer-controlled alignment of collectors, (2) mass/energy filtering for 10 ppb abundance sensitivity, and (3) an ion-counting multicollector system for detection of very small ion beams.

Docket Number: 97–058. *Applicant*: University of Miami, Miami, FL 33149. *Instrument*: Mass Spectrometer, Model GEO 20–20. *Manufacturer*: Europa Scientific, United Kingdom. *Intended Use*: See notice at 62 FR 41361, August 1, 1997. *Reasons*: The foreign instrument provides: (1) Sensitivity of 1000 molecules per m/z 44 ion at the collector, (2) an interface to an elemental analyzer, and (3) an abundance sensitivity of 10 ppm for CO_2 using dual inlet mode.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–25399 Filed 9–24–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pusurant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldridge National Quality Award will meet on: Monday, October 6, 1997, from 9:00 a.m. to 5:30 p.m.; Tuesday, October 7, 1997, from 8:00 a.m. to 5:30 p.m.; Wednesday, October 8, 1997, from 8:00 p.m. to 5:30 p.m.; and Thursday, October 9, 1997, from 8:00 a.m. to 3:00 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The Panel's agenda includes reviewing the 1997 award process and final judging of 1997 applicants, including a review of each of the 1997 site visits. The review process involves examination of records and discussions of applicant data, and will be closed to the public in accordance with Section 552b(c) (4) of Title 5, United States Code. .

DATES: The meeting will convene October 6, 1997, at 9:00 a.m. and adjourn at 3:00 p.m. on October 9, 1997.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 10, 1997, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, section 10(d) for those portions of the meeting which involve examination of records and discussion with section 552b(c) (4) of Title 5, United States Code, since those portions of the meeting are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: September 22, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–25496 Filed 9–24–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 9707–14173–7173–01]

RIN 0648–ZA31

Coastal Services Center Broad Area Announcement

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Federal assistance.

SUMMARY: The Coastal Services Center announces the availability of Federal assistance for fiscal year 1998 in the following program areas: Landscape Characterization and Restoration; the Coastal Change Analysis Program; Coastal Remote Sensing; Integration and Development; the administration of the Coastal Management Fellowship program; training and meeting facilitation; and Special Projects. This announcement provides general descriptions of the categories of projects for which federal assistance may be available. Detailed guidelines for each of the program areas are available from the technical points of contact. These guidelines will include details for the technical program, evaluation criteria, selection procedures, and the standard NOAA Grants Application forms. Funding will be contingent upon availability of funds.

DATES: Specific guidelines, and NOAA application forms for each of these program areas will be available and distributed to respondents to these announcements throughout fiscal quarters 1 and 2 for awards throughout FY98.

ADDRESSES: Send requests for general information about the CSC or the assistance programs to Coastal Services Center, Attn: Ms. Violet Legette, NOAA Coastal Service Center, 2234 South Hobson Avenue, Charleston, South Carolina, 29405–2413.

For specific guidelines and information regarding the Landscape Characterization and Restoration Program, please contact: Pace Wilber at (803) 974–6235 or pwilber@csc.noaa.gov.

For specific guidelines and information regarding the Coastal

Change Analysis Program, please contact: Dorsey Worthy at (803) 974–6234 or dworthy@csc.noaa.gov.

For specific guidelines and information regarding the Coastal Remote Sensing program, please contact: John Brock at (803) 974–6239 or jbrock@csc.noaa.gov.

For specific guidelines and information regarding the Integration and Development program, please contact: Miki Schmidt at (803) 974–6237 or mschmidt@csc.noaa.gov.

For specific guidelines and information regarding the Coastal Management Fellowship program, please contact: Paul M. Scholz at (803) 974–6208 or pscholz@csc.noaa.gov.

For specific guidelines and information regarding the Coastal Training Institute program, please contact: Jennet Robinson Alterman at (803) 974–6210 or jralterman@csc.noaa.gov.

For specific guidelines and information regarding the Special Projects program, please contact: Paul M. Scholz at (803) 974–6208 or pscholz@csc.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Violet Legette, Resource Management Services, at (803) 974–6222 or vlegette@csc.noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority: Statutory authority for these awards is provided under 16 U.S.C. Sec. 1456.c (Technical Assistance); 15 U.S.C. Sec. 1540 (Cooperative Agreements); 33 U.S.C. Sec. 1442 [Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems]; 33 U.S.C. Sec. 883a et seq [Surveys and other activities]; and, 33 U.S.C. Sec. 1441 (Monitoring and research programs).

Catalog of Federal Domestic Assistance (CFDA). The CSC Program is listed in the Catalog of Federal Domestic Assistance under Number 11.473.

Program Description

The goal of the Coastal Services Center is to build capabilities throughout the nation which simultaneously address pressing issues of coastal health and change by conserving coastal environments including coastal wetlands, riparian forested wetlands, maritime forests, fisheries/shell fisheries, and other living marine resources and by promoting efficient and sustainable industry, farming, commercial and residential development, urban redevelopment, and tourism. Each of the following programs is available to provide federal assistance for projects in the areas described below. For specific information about any of the programs, or for instructions on completing an application, please contact the technical points of contact listed for each program.

Landscape Characterization and Restoration Program

The goal of the Landscape Characterization and Restoration Program is to help coastal managers include ecosystem processes in their resource management, regulatory, and land use planning decisions. The Program works towards this goal by examining interrelationships between ecology, land use, human demographic, and socioeconomic trends on ecosystem/watershed scales and by developing tools needed to integrate those relationships into management processes. The Program's projects generally include development of habitat, wetland function, demographic, and land use maps; information syntheses; natural resource databases; and environmental models; and a customized geographic information system (GIS) or similar software to forecast results of management alternatives. While the Program routinely uses Unix-based systems, premiums are placed on tools used in a PC environment. Total program budget for FY98 will in the range of $250,000 to $400,000. On a per project basis, the range for funding available for FY98 is $30,000 to $200,000.

During FY98, the Program anticipates pursuing projects along the following lines:

(1) Ecological and socioeconomic characterizations of special management areas (e.g., National Marine Sanctuaries of Estuarine Research Reserves), small- to medium-size watersheds that represent special management issues (e.g., Kachemak Bay, AK, Great Bay, NH, Casco Bay, ME, Savannah River Estuary, GA).

(2) Ecological and socioeconomic characterizations of specific coastal management issues over broad geographic ranges (e.g., shellfish in the Gulf of Mexico, water delivery to estuaries in the southeastern U.S., invasions by non-native species to Pacific ports).

(3) Reviews and development of GIS-based tools for siting habitat restoration projects and forecasting success (e.g., identification of filled marshes from aerial photography, using wind and wave models to forecast the erosion potential of marsh and seagrass restoration sites).

For more information, please contact Pace Wilber at (803) 974–6235 or pwilber@csc.noaa.gov.

Coastal Change Analysis Program

The Coastal Change Analysis Program (C–CAP) is a nationwide effort by the NOAA Coastal Services Center, U.S. Department of Commerce (DOC), to produce standardized land cover and benthic habitat maps and change data for all coastal areas of the United States. This work is accomplished in close cooperation with state and local resource management agencies. The objectives of the program are to produce nationally consistent baseline and change data, and to determine the impacts these changes have on living marine resources for informed coastal decision making as well as for identifying and protecting essential fish habitat. For these C–CAP projects, consideration for funding will be limited to public resource management agencies in the following states: Alaska, California, Florida, Maine, Massachusetts, New York, Oregon, and Washington.

C–CAP anticipates initiating projects in three general areas in FY98:

(1) New Terrestrail land Cover Change Analysis Projects will be initiated to derive Landsat Thematic Mapper (TM)-based terrestrial wetland sand uplands land cover characterizations and change for state or regional scale studies. These projects are part of the continuing C–CAP effort to establish a baseline change assessment for all coastal areas of the United States. Anticipated funding for FY98 will range from $10,000 to $300,000.

(2) New Seagrass and Other Submerged-Benthic Mapping Projects will be initiated to derive location and change maps of seagrass and other nearshore benthic resources as part of the continuing C–CAP effort to establish a baseline change assessment for all coastal areas of the United States. Anticipated funding for FY98 will range form $10,000 to 100,000.

(3) State and Local Land Cover and Benthic Change Applications Projects will be initiated to foster local (county or township level) use of C–CAP land cover and benthic resource maps for coastal land use planning and management. Anticipated funding for FY98 will range from $10,000 to $30,000.

For more information, please contact Dorsey Worthy at 803–974–6234 or dwothy@csc.noaa.gov.

Coastal Remote Sensing Program

The Coastal Remote Sensing (CRS) Program seeks to provide coastal resource managers with practical high-technology data products based on new developments in remote sensing CRS identifies promising new remote sensing technologies, and works to bridge science and management by prototyping remote sensing data products that aid coastal decision makers. Current CRS projects involve the creation of advanced coastal resource mangement tools through both satellite and aircraft-based remote sensing. In support of this goal, CRS is currently conducing several closely related field-sampling and satellite ocean color remote sensing projects, in addition to several aircraft remote sensing projects. Any possible funding for assistance in FY98 may range in amount between $1,000 and $200,000.

During FY98, the Coastal Remote Sensing Program anticipates pursuing the following project activities:

(1) CRS is pursuing the multi-regional collection of in situ bio-optical data in diverse US Case 2 and Case 1 coastal waters. CRS is analyzing this high quality bio-optical data to yield a full suite of geographically widespread measurements appropriate for the evaluation, intercomparison and regional enhancement of the NASDA and NASA in-water bio-optical algorithms for ADEOS/OCTS and SeaWiFS data products.

(2) The CRS coastal US data archive of advanced multiple-season, in-situ bio-optical measurements from disparate US coastal, plus all collected historical B/O/WQ data, is being made publicly available via a World Wide Web-accessible Coastal Bio-optical data Analysis and Storage System (CoBASS). Documentation in the form of cruise reports will be provided for these advanced bio-optical data sets collected by the CRS Program.

(3) CRS will undertake the evaluation, intercomparison, and further refinement of standard algorithms for the generation of ocean color products for diverse coastal US bio-optical provinces. We will seek to explain the performance of standard OCTS and SeasWiFS in-water algorithms in the context of inter-regional and inter-seasonal variation in inherent optical properties arising through planktonic ecosystem functioning and structure, and variability in the biochemistry and sedimentology of major terrestial inputs, such as river plumes.

(4) CRS will undertake the adaption of NASA software to create a software package tailored to support the high scientific quality processing of coastal US satellite ocean color observations acquired by either ADEOS/OCTS and SeaWiFS, to support the creation of data products for coastal resource management and applied research.

(5) CRS will pursue the development of high scientific-quality, full resolution retrospective time series of satellite data products. CRS will create and make available via the WWW near-real time data products based on the fusion of satellite and in situ data with model forecasts; these products will provide timely information on issues of relevance to coastal resource managers.

(6) CRS will undertake the development of aircraft remote sensing techniques for high spatial resolution sensing of biological water quality within inshore coastal areas at costs that are low enough to allow repetitive surveys. These project activities are intended to: (1) Develop a capability for regional, low-cost monitoring of the chlorophyll, salinity, and turbidity fields in coastal areas, and (2) provide ground truth information for ocean color satellites in Case 2 water and (3) aid in the development of algorithms specific to regional water types.

(7) in response to the need for accurate, timely information on beach and dune field topography, and also pertaining to gradual or catastrophic coastal change, and erosion over broad expanses of coastline, CRS will undertake the mapping of coastal topography using aircraft LIDAR techniques. To establish the capability for highly accurate retrieval of coastal topography and erosion, CRS will map beach elevation over the middle and south Atlantic coast. CRS anticipates that these data will be useful in monitoring and assessing coastal erosion, including severe erosion due to hurricanes and other meteorological disturbances.

For more information, please contact John Brock at 803–974–6239 or jbrock@csc.noaa.gov.

Integration and Development

The Integration and Development (I&D) program focuses on product development. I&D's primary customers are the nation's coastal resource managers and other Coastal Services Center components. I&D specializes in linking the technical benefits of geographic information systems (GIS) with the political needs of coastal managers to enhance decisions. For coastal managers, I&D strives to provide readily accessible, spatial (geographic) information for decision-making support and visualization. To support this goal, I&D has a program for local government planning, management, and liaison services in developing community based hazard mitigation GIS-based decision support systems.

In FY98, the Coastal Services Center will participate in three local demonstration projects to develop integrated hazard mitigation decision support systems in Florida, North Carolina and Ohio. These projects will involve partnerships with various federal, state, and local agencies but will be targeted primarily for implementation at the local government level. Liaison services will be required from an organization with strong local government connections and expertise. Specific expertise will also be required in the areas of community planning, emergency management, and hazard mitigation. Total grant amount is estimated between $100,000 and $300,000.

For more information, please contact Miki Schmidt at 803–974–6237 or mschmidt@csc.noaa.gov.

Coastal Management Fellowship

The Coastal Services Center Coastal Management Fellowship was established to provide professional on-the-job education and training opportunities for post-graduate students in coastal resource management and policy and to provide specific technical assistance for state coastal resource management programs. The program matches highly qualified recently graduated masters, professional degree, and doctoral students with hosts around the U.S. in state coastal zone management programs. For two years the recipients will work on substantive state-level coastal resource management issues that pertain to federal management policies and regulations. The recipients are designated Coastal Services Center Coastal Management Fellows.

Funding to support the CSC Coastal Management Fellows is provided by several sources: the federal government, state governmental agencies, private industry, and non-profit organizations (501.c3's). The two year Fellowship award of $64,000 with an additional $12,000 State match made for each Fellow includes $30,000 per year salary for the Fellow, divided into a $20,000 stipend and $10,000 for per diem living expenses. The remaining $8,000 per year shall be divided as follows: $5,000 for fringe benefits, including health insurance, worker's compensation insurance, and the employer's share of FICA; $1,000 for reimbursable moving expenses; and $2,000 for travel associated with the fellowship experience. NOAA and the other funding sources will provide funding directly to the organization that will administer the Fellowship awards. The organization selected to administer the Fellowship awards shall be capable of receiving and processing funding from

all existing and potential funding sources. The organization selected to administer the grants shall be capable of providing all administrative and financial support required for between six and twenty Fellows per year, according to the guidelines set forth by the Coastal Services Center. Total program budget for FY98 will be in the range of $128,000 to $700,000. This program will be administered as a Cooperative Agreement, with substantial involvement by the Coastal Services Center in the implementation and coordination of the Fellowship Program.

For more information, please contact Paul M. Scholz at 803–974–6208 or pscholz@csc.noaa.gov.

Coastal Training Institute

The goal of the Coastal Training Institute is to provide technical training to support the development and use of Coastal Services Center products and services by the coastal management community. The Training Institute serves as an ongoing resource for training design, delivery and professional meeting/conference planning and logistics. Through specialized training workshops, professional conferences and meeting support services, the Coastal Training Institute provides ongoing opportunities for professional development and technical training. Services provided by the Training Institute include:

- Training development and design
- Needs assessment and evaluation
- Training delivery and training of trainers
- Facilitation and meeting management
- Meeting planning and logistical support

In FY98 the Coastal Training Institute will conduct up to 10 technical workshops and conferences in partnership with NOAA line offices, other federal agencies and state natural resource management agencies. Specific expertise in on site meeting management/logistical support, facilitation services, training design and delivery as well as technical trainers will be required. Anticipated funding for FY98 will be between $25,000 and $200,000. On a per project basis, the range for funding available is between $25,000 and $100,000. For more information, please contact Jennet Robinson Alterman at (803) 974–6210 or jralterman@csc.noaa.gov.

Special Projects

The Coastal Services Center has conducted a variety of projects that have resulted in technical, management or planning for outcomes that apply directly to the state and local coastal management community. The goal of this program is to provide assistance to the coastal management community for technical management related issued on a very broad range of topics related to coastal resources and their wise management. This has ranged from boating, shipping and navigation, to beach management and conservation, coastal hazards mitigation, protected areas, all forms of pollution and control, as well as training, education and outreach activities. In some cases, projects have included use of high-end spatial data and in other level meetings, workshops, and reports. The Coastal Services Center expects to work an equally broad range of topics and will be granting awards to organizations across the United States with proven abilities to implement practical solutions at a state and local level. All project proposal received in this category will be reviewed for technical merit and management relevance. The specific guidelines will include special projects evaluation criteria with point values to be assigned. In addition, program policy factors may be considered in final award decisions to ensure a variety of topic areas, geographical distribution, and/or organization type are represented in the final mix by quarter. Project proposals received for this program will be reviewed on the following timelines: Proposals received October 1–December 31—January review; January 1–March 31—April review; April 1–September 30—October review.

Anticipated funding for this in FY98 will be between $50,000 and $750,000. On a per project basis, the range for funding available is between $25,000 and $300,000.

For more information, please contact Paul M. Scholz at 803–974–6208 or pschol@csc.noaa.gov.

Evaluation

Specific evaluation criteria and selection procedures will be identified in the program guidelines distributed to requesters. These guidelines will include point value for each ranking criteria and a detailed description of the selection process and timeline.

Funding Availability

Specific funding available for awards in each of these categories will be finalized after the NOAA budget for FY98 is authorized, however, total funding availability for this announcement will be between $500,000 and $3,000,000. There is no guarantee that sufficient funds will be available to make awards for all approved projects. Publication of this notice does not obligate NOAA to award any specific grant or cooperative agreement or to obligate all or any parts of the available funds.

Cost Sharing

Applications must reflect the total budget to accomplish the project, including contributions and/or donations. Cost sharing is not required by general office policy, however, individual program guidelines may indicate cost share requirements and assign point values.

Type of Funding Instrument

The projects will be awarded either as a Grant or a Cooperative Agreement, distributed by the Coastal Service Center.

Eligibility Criteria

Applications for grants and cooperative agreements under this program announcement may be submitted, in accordance with the procedures set forth in the specific guidelines to be published by each program area, by any state resource management agency, college or university, private industry, or any nonprofit organization relating to cooperative research units. Other Federal agencies or institutions are not eligible to receive Federal assistance under this notice. Specific eligibility criteria for each program will be provided in the guidelines for proposal submission.

Before submitting an application under this program, applicants should contact the appropriate technical point of contact for a copy of the specific proposal guidelines for the program area. Applications for the project funding under this program must be complete and in accordance with the instructions in the proposal guidelines.

Award Period

The normal award period under this announcement will be one year, but for some programs the period will be longer. Interested applicants should consult with specific technical points of contact for additional information.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the current indirect cost rate negotiated and approved by the applicant's cognizant Federal agency, prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Project Funding Priorities

Funding priorities will be set by individual programs award categories depending on the FY98 appropriations.

Federal Policies and Procedures

Recipients and sub-recipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal assistance awards.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

No Obligation for Future Funding

If the application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Delinquent Federal Debts

No award or Federal Funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to DOC are made.

Primary Applicant Certifications

All organizations or individuals preparing grant applications must submit a completed Form CD–511 "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and explanations are hereby provided:

Non-Procurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, subpart f, "Government side Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

Anti-Lobbying

Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to application/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower-Tier Certifications

Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower-tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the aware document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Buy American-Made Equipment or Products

Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, cooperative agreements, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection-of-information has been approved by OMB, OMB Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Dated: September 17, 1997.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–25437 Filed 9–24–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 970624154–7154–01]

RIN 0648–ZA30

Dean John A. Knauss Marine Policy Fellowship National Sea Grant College Federal Fellows Program

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice announces that applications may be submitted for a Fellowship program which was initiated by the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The Fellowship program accepts applications once a year during the month of September. All applicants must submit an application to one of the state Sea Grant College Programs in their area.

FOR FURTHER INFORMATION CONTACT: Information and brochures can be obtained from Dr. Shirley J. Fiske, Director, National Sea Grant Federal Fellows Program, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 713–2431 extension 148 or call your nearest Sea Grant program:

University of Alaska—(907) 474–7086
University of California—(619) 534–4440
University of Connecticut—(860) 405–9128
University of Delaware—(302) 831–2841
University of Florida—(352) 392–5870
University of Georgia—(706) 542–6009
University of Hawaii—(808) 956–7031
University of Illinois—(317) 494–3593
Louisiana State University—(504) 388–6710
University of Maine—(207) 581–1436
University of Maryland—(301) 405–6371
Massachusetts Institute of Technology—(617) 253–7131
University of Michigan—(313) 763–1437
University of Minnesota—(218) 726–8106
Mississippi-Alabama Sea Grant Consortium—(601) 875–9341
University of New Hampshire—(603) 862–3505
New Jersey Marine Science Consortium—(908) 872–1300
State University of New York—(516) 632–6905
University of North Carolina—(919) 515–2454
The Ohio State University—(614) 292–8949
Oregon State University—(541) 737–3396
University of Puerto Rico—(787) 832–3585
Purdue University—(317) 494–3593
University of Rhode Island—(401) 874–6800
South Carolina Sea Grant Consortium—(803) 727–2078
University of Southern California—(213) 740–1961
Texas A&M University—(409) 845–3854
Virginia Graduate Marine Science Consortium—(804) 924–5965
University of Washington—(206) 543–6600
University of Wisconsin—(608) 262–0905
Woods Hole Oceanographic Institute—(508) 457–2000 ext. 2665

SUPPLEMENTARY INFORMATION:

Purpose of the Fellowship Program

In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The U.S. Congress recognized the value of this program and in 1987, Public Law 100–220 stipulated that the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows pursuant to 33 U.S.C. 1127(b).

Announcement

Fellows program announcements are sent annually to all participating Sea Grant institutions and campuses by the state Sea Grant Director upon receipt of notice from the National Sea Grant College Program Office (NSGCPO). A brochure describing the program is also available from the NSGCPO for distribution by both that office and the state Sea Grant programs.

Eligibility

Any student who, on September 30, 1998, is in a master's, doctoral or professional program in a marine related field from any accredited institution of higher education may apply to the NSGCPO through any state Sea Grant program. NOAA makes financial assistance funds available to the National Sea Grant Colleges to implement the fellowship program. The National Sea Grant College Program is listed in the Catalog of Federal Domestic Assistance under number 11.417: Sea Grant Support.

Deadlines

Students applications must be obtained from and submitted with their signature (no copies required) to the state Sea Grant Director, who will be the applicant's sponsor, by the date set by the Directors in their individual program announcement (usually early to mid-September).

Applications are to be submitted to the NSGCPO by the sponsoring state Sea Grant Director, no later than close of business on September 30th of any given year. The competitive selection process and subsequent notification will be completed by October 31st of any given year.

Stipend and Expenses

For 1998 a Fellow will receive an award of $30,000 which is distributed between salary (stipend) and living expenses in accordance with University guidelines. Other expenses covered are travel, moving costs, health insurance and institutional overhead.

Application

An application will include:

Personal and academic resume or curriculum vitae.
Personal education and career goal statement which emphasizes expectations from the experience in the way of career development. (not to exceed 2 pages)
No more than two letters of recommendation with at least one being from the student's major professor.
A letter of endorsement from the sponsoring state Sea Grant Director.
Copy of undergraduate and graduate student transcripts.

Thesis papers are not desired.

It is our intent that all applicants be evaluated only on their ability, therefore letters of endorsements from members of Congress, friends, relatives or others will not be considered. Placement preference in the Executive or Legislative Branches of the Government may be stated, and will be honored to the extent possible.

Selection Criteria

The selection criteria will include:

Strength of Academic Performance.
Communications Skills (both written and oral).
Diversity of Academic Background.
Work Experience.
Support of Major Professor.
Support of Sea Grant Director.
Ability to Work with People.

Selection

Applicants will be individually reviewed and ranked by a panel chaired by the Director of Federal Fellowships of the NSGCPO and include representation from: (1) The Council of Sea Grant Directors, (2) the Office of the Assistant Administrator for Oceanic and Atmospheric Research, and (3) the current and possibly last past group of Fellows. The individuals representative of these groups will be chosen on a year by year basis according to availability, timing, and other exigencies. Selection of finalists by the panel will be done by the Panel Chair according to the criteria outlined above. After selection, the panel chair will group applicants into the two categories, legislative and executive, based upon the applicant's stated preference and/or judgment of the panel based upon material submitted. The number of fellows assigned to the Congress will be limited to 10.

Federal Policies and Procedures

Fellows receive funds directly from the National Sea Grant Colleges and are considered to be subrecipients of federal assistance subject to all Federal laws and Federal and Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

Delinquent Federal Debts

No award of Federal funds shall be made to a Fellow applicant who has an outstanding delinquent Federal debt or fine until either:

a. The delinquent account is paid in full,

b. A negotiated repayment schedule is established and at least one payment is received, or

c. Other arrangemen's satisfactory to Commerce are made.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts.

Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This document contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB under control number 0648–0294. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: July 15, 1997.

Elbert W. Friday,

Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 97–25313 Filed 9–24–97; 8:45 am]

BILLING CODE 3510–12–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091697E]

Marine Mammals; Permit No. 970 (P557E)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 970 submitted by Scripps Institution of Oceanography, Acoustic Thermometry of Ocean Climate Project, Institute for Geophysics and Planetary Physics, 9500 Gilman Drive, La Jolla, California 92093–02252, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Protected Species Program Manager, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: On July 16, 1997, notice was published in the Federal Register (62 FR 38070) that an amendment of permit no. 970, had been requested. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*),and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23). The amendment extends the expiration date of Permit No. 970 through December 31, 1999.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 17, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–25505 Filed 9–24–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Mauritius

September 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 338/339 is being reduced for carryforward used in 1996.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 56522, published on November 1, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 28, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on September 25, 1997, you are directed to reduce the limit for Categories 338/339 to 510,362 dozen[1], as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–25364 Filed 9–24–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 24, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 19, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Guidance for Reporting on Waivers Granted by the U.S. Department of Education.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 20.
Burden Hours: 100.

Abstract: The Department is required by statute to collect reports from state education agencies on the uses of waivers in their states. The purpose of this guidance is to assist states in meeting the statutory requirements. Information from this collection will be used to monitor the progress of waiver recipients in improving teaching and learning and to inform the Department's annual report to Congress on waivers.

[FR Doc. 97–25432 Filed 9–24–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–010]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 19, 1997.

Take notice that on September 16, 1997, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in the Appendix A to the filing, to be effective October 1, 1997.

CIG states it is making this filing to implement lower rates for all of its jurisdictional services pending final Commission approval of the uncontested Settlement filed by CIG in Docket No. RP–190 on August 27, 1997 and certified to the Commission on September 10, 1997. CIG further states that Section 2.10 of the August 27, 1997 Settlement provides for the filing of this interim rate reduction. The Settlement also makes it clear that if the Commission modifies or rejects the August 27 Settlement and, as a result, the August 27 Settlement is never implemented, CIG can implement surcharges and/or refunds to reflect revenue recovery that would have occurred if this interim rate reduction had not gone into effect.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25383 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–61–008]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 19, 1997.

Take notice that on September 16, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective November 1, 1997:

Third Revised Sheet No. 306

NGT states that the purpose of this filing is to comply with the letter order issued in this docket on June 30, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25382 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–747–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

September 19, 1997.

Take notice that on September 11, 1997, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in the above docket, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) and under NorAm's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, to own and operate certain facilities in Arkansas to deliver gas to ARKLA, a division of NorAm Energy Corp. (ARKLA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT specifically proposes to own and operate a 2-inch delivery tap on NGT's Line BT–14 in Faulkner County, Arkansas to provide service to ARKLA. ARKLA will provide the meter station, install it and then deed it to NGT at zero cost. NGT will buy the lot for the location site of the tap and install electronic flow measurement at the site. The estimated volumes to be delivered through the above facilities are 400 MMBtu annually and 2 MMBtu on a peak day. NGT's construction costs are estimated at $12,781 and ARKLA will reimburse NGT $10,250 of the costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25388 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–753–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

September 19, 1997.

Take notice that on September 12, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP97–753–000 a request pursuant to §§ 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to upgrade the Dodge Center TBS #1, an existing delivery point in Dodge County, Minnesota, to accommodate incremental interruptible natural gas deliveries to UtiliCorp United Inc. (UCU), under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that interruptible service will be provided to UCU pursuant to currently effective throughput service agreement(s). The proposed incremental volumes to be delivered for UCU at the proposed delivery point are 935 MMBtu on a peak day and 97,001 MMBtu on an annual basis. The total estimated cost to upgrade is $266,000 and UCU will compensate Northern. The upgrade will consist of a replacement of the existing meter and appurtenant facilities. Northern states that UCU requested the proposed upgrade of the delivery point to serve local residential, commercial, and industrial customers.

Northern states that the proposed upgrade is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers and that the total volumes delivered after the request will not exceed total volumes authorized prior to the request.

Any person or the Commission's staff may, within 45 days after issuance of

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25387 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–451–001]

Questar Pipeline Company; Notice of Tariff Filing

September 19, 1997.

Take notice that on September 18, 1997, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet No. 75B, to be effective September 15, 1997, in compliance with the Commission's September 10, 1997, Order Accepting Tariff Sheets Subject to Conditions.

Questar states that this tariff filing complies with the September 10 order by deleting from Section 11.1(i) of Part 1 of the General Terms and Conditions of its tariff the sentence "Intra-day nominations received during this batch period may not bump gas that is already flowing."

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25379 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–129–007]

Questar Pipeline Company; Notice of Tariff Filing

September 19, 1997.

Take notice that on September 16, 1997, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Substitute Fourth Revised Sheet No. 92, Second Revised Sheet No. 92A, Substitute Second Revised Sheet No. 93 and Second Substitute Second Revised Sheet No. 94, to be effective June 1, 1997.

Questar states that the proposed tariff sheets incorporate into its tariff previously approved tariff language regarding crediting of interruptible revenues, which was inadvertently omitted from Section 18, Billing and Payment, when revised according to Order Nos. 587, 587–A and 587–B in Docket No. RP97–129.

Questar states further that it respectfully requests Commission waiver of Section 154.207 of its regulations so that the proposed tariff sheets may become effective June 1, 1997. Questar explains that Section 18.3, regarding crediting of interruptible revenues, has been in effect since February 1, 1996, and that continued effectiveness of this tariff provision is vital for proper administration of the billing provisions implemented by its tariff. Questar explains further that approval of the proposed date, which date is consistent with the effective date of Questar's tariff filings implementing Order 587, will allow Section 18.3 to continue to be effective without interruption.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25381 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–723–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

September 19, 1997.

Take notice that on September 3, 1997, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed a request with the Commission in Docket No. CP97–763–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to relocate a portion of its North Main Line, North Main Loop Line and Second North Main Line, under its blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the NGA, all are more fully set forth in the request which is open to public inspection.

Southern states that it proposes to relocate certain facilities in order to remove its system from the threat of soil subsidence which may occur as a result of a long-wall coal seam mining. Southern states that it will relocate its 22-inch North Main Line and 24-inch North Main Loop Line facilities in Jefferson County, Alabama. It is stated that the estimated cost would be about $17.7 million and that there would be no adverse impact to firm deliveries.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25389 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–541–000]

Southern Natural Gas Company; Notice of Site Visit

September 19, 1997.

Between September 29 and October 2, 1997, the Office of Pipeline Regulation staff will conduct a compliance inspection of the Brunswick Loop, South Main 2nd Loop, South Main 3rd Loop, and 2nd North Main Loop portions of the Southern Natural Gas Company Zone III Expansion Project.

On September 29, the Brunswick Loop will be inspected in Jones and Twiggs Counties, Georgia. This inspection will begin at 8:30 a.m. at the 57 QuickStop, located on Route 19 at the corner of Route 57 and Ridge Road in Macon, Georgia.

On September 30, the South Main 2nd Loop will be inspected in Crawford and Monroe Counties, Georgia. This inspection will begin at 8:30 a.m. at Southern Natural Gas Company's Warehouse Site, located at 24 Industrial Park Drive in Roberta, Georgia.

On October 1, the South Main 3rd Loop will be inspected in Lee County, Alabama. This inspection will begin at 9 a.m. All persons wishing to attend must meet in the lobby of the Holiday Inn in Opelika, Alabama, located at I–85 at US Highway 280 and US Highway 431.

On October 2, the 2nd North Main Loop in Pickens and Tuscaloosa Counties, Alabama will be inspected. The inspection will begin at 10 a.m. All persons wishing to attend must meet in the lobby of the Best Western Catalina Inn in Northport, Alabama, located at 2015 US Highway 82 West.

All parties may attend. Those planning to attend must provide their own transportation. For further information, please contact Paul McKee at (202) 208–1088.

Robert J. Cupina,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 97–25391 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–000]

Texas Gas Transmission Corporation; Notice of Informal Settlement Conference

September 19, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, October 8, 1997, at 10 a.m. and Thursday, October 9, 1997, at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Kathleen M. Dias at (202) 209–0524 or Michael D. Cotleur at (202) 208–1076.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25380 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–746–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

September 19, 1997.

Take notice that on September 11, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed a request pursuant to Section 7 of the Natural Gas Act and Sections 157.205 and 157.216 of the Commission's Regulations thereunder to abandon two delivery taps and related facilities in Mckenzie and Williams Counties, North Dakota, all as more fully described in the filed application.

Williston states that both of these taps were installed to deliver gas to Phillips Petroleum Company for fuel to field gathering compressors which have been removed.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25390 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission (Major License)

September 19, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* P–11607–000.

c. *Date Filed:* August 29, 1997.

d. *Applicant:* Ashburnham Municipal Light Plant and Massachusetts Municipal Wholesale Electric Company.

e. *Name of Project:* Holyoke Hydroelectric Project.

f. *Location:* On the Connecticut River in Hampden, Hampshire, and Franklin Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Roger W. Bacon, Director, Power Services Division, Massachusetts Wholesale Electric Company, Randall Road, P.O. Box 426, Ludlow, MA 01056, (413) 589–1041.

Thomas E. Lewis, Jr., General Manager, Ashburnham Municipal Light Plant,

78 Central Street, P.O. Box 823, Ashburnham, MA 01430–4423, (508) 827–4423

i. *FERC Contact*: Allan Creamer (202) 219–0365.

j. *Comment Date*: 60 days from the filing date shown in paragraph (c).

k. *Description of Project*:

The proposed run-of-river project would consist of the following features: (1) An approximately 1,000-foot-long masonry dam to elevation 97.47 feet NGVD, topped with a 3.1-foot-high rubber dam; (2) upstream and downstream fish passage facilities; (3) the Fish Lift Park adjoining the dam; (4) a 2,290-acre reservoir that extends approximately 25 miles upstream; (5) a three-level canal system adjacent to the river with headgates at the dam; (6) six separate hydroelectric facilities, named Hadley Falls Station, Riverside Station, Boatlock Station, Beebe-Holbrook Units, Skinner Unit and Chemical Units, and, except for the Hadley Falls Station which has its intake structure adjacent to the canal headgate structure, the facilities withdraw water from the canal system; (7) a total nameplate capacity of 58,756 kW, consisting of the existing 43,756 kW project plus a 15,000 kW expansion at the Hadley Falls Station; (8) transmission line connections; and (9) appurtenant facilities. The applicant estimates that the total average annual generation would be 212,000 MWh, which would increase to 257,600 MWh after completing the expansion in 2006.

l. With this notice, we are initiating consultation with the *Massachusetts State Historic Preservation Officer (SHPO)*, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on each of the applicants.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25384 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

September 19, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* 11512–000.

c. *Date filed:* December 27, 1994, amended September 2, 1997.

d. *Applicant:* John H. Bigelow.

e. *Name of Project:* McKenzie.

f. *Location:* On the McKenzie River in Lane County, Oregon, Section 10, Township 16S, Range 6E, West Meridian.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contract:* Robert Parker, Community Planning Workshop, 1209 University of Oregon, Eugene, OR 97403, (541) 346–3801.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. The project would consist of: (1) A diversion dam constructed of large rocks at river mile 73.6 (partially breached); (2) a concrete headgate; (3) a power canal about 1,500 feet long; (4) a 32-foot-long and 5-foot-diameter penstock; (5) a powerhouse with an installed capacity of 76 kilowatts; (6) a 30-foot-long tailrace; and (7) other appurtenances.

The applicant amended the application to delete modifications proposed originally: Reconstruct the diversion structure, yearly removal of sediment in front of the headgate, and placement of adult fish barrier in the tailrace.

k. *Status of Environmental Analysis:* This application is now ready for environmental analysis—see attached paragraph D9.

l. *Deadline for comments, recommendations, terms and conditions, and prescriptions:* See paragraph D9.

m. *This notice also consists of the following standard paragraph:* A4 and D9.

n. *Available Locations of Application:* A copy of the application, as amended, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E. Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25385 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission (Major License)

September 19, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* P–2004–073.

c. *Date Filed:* September 2, 1997.

d. *Applicant:* Holyoke Water Power Company.

e. *Name of Project:* Holyoke Hydroelectric Project.

f. *Location:* On the Connecticut River in Hampden, Hampshire, and Franklin Counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Ronald G. Chevalier, Vice President, Holyoke Water Power Company, P.O. Box 270, Hartford, CT 06141–0270, (860) 665–5315

James J. Kearns, Project Manager, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, (860) 665–5936

Catherine E. Shively, Counsel, Public Service Company of New Hampshire, 1000 Elm Street, Manchester, NH 03105, (603) 634–2326

i. *FERC Contact:* Allan Creamer, (202) 219–0365.

j. *Comment Date:* 60 days from the filing date shown in paragraph (c).

k. *Description of Project:*

The proposed run-of-river project would consist of the following features: (1) An approximately 1,000-foot-long masonry dam to elevation 97.47 feet NGVD, topped with a 3.1-foot-high rubber dam; (2) upstream and downstream fish passage facilities; (3) a 2,290-acre reservoir that extends approximately 25 miles upstream; (4) a three-level canal system adjacent to the river with headgates at the dam; (5) six separate hydroelectric facilities, named Hadley Falls Station, Riverside Station, Boatlock Station, Beebe-Holbrook Units, Skinner Unit and Chemical Units, and, except for the Hadley Falls Station which has its intake structure adjacent to the canal headgate structure, the facilities withdraw water from the canal system; (6) a total nameplate capacity of 43,756 kW; (7) transmission line connections; and (9) appurtenant facilities. The applicant estimates that the total average annual generation would be approximately 223,389 MWh.

l. With this notice, we are initiating consultation with the *Massachusetts State Historic Preservation Officer (SHPO)*, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25386 Filed 9–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Southwestern Power Administration

Open Access Transmission Service Tariff

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of proposed tariff.

SUMMARY: The Southwestern Power Administration (Southwestern) is proposing to adopt this Open Access Transmission Service Tariff (Tariff) in order to be consistent with the Federal Energy Regulatory Commission (FERC) Orders 888 and 888–A, to the extent practicable and consistent with laws and regulations applicable to Southwestern's activities.

DATES: The comment period on the proposed Tariff will begin with the publication of this notice in the **Federal Register** and will end November 10, 1997. To be assured of consideration, all written comments must be received by the end of the comment period. Southwestern has scheduled a public meeting to discuss the proposed Tariff on October 9, 1997, at 1:30 p.m., CDT, in Tulsa, Oklahoma. An opportunity for interested parties to make oral comments on the proposed Tariff is scheduled for October 20, 1997, at 1:30 p.m. CDT, also in Tulsa, Oklahoma.

ADDRESSES: Southwestern will hold its public meetings at Southwestern's offices, Room 1402, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103. All copies of written comments should be submitted to the Assistant Administrator, Corporate Operations, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma, 74101.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, OK 74101, (918) 595–6696. Electronic Mail: Reeves@swpa.gov; Facsimile: (918) 595–6656.

SUPPLEMENTARY INFORMATION:

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I. Procedures
II. Background
III. Summary of Changes from the FERC Pro Forma Tariff
IV. Coordination with Adoption of Open Access Transmission Rates

I. Procedures

After all public comments have been considered, Southwestern will prepare a final Tariff and publish it in the **Federal Register**. Southwestern will submit this final Tariff to FERC under a non-jurisdictional docket, and will request a declaratory order that the Tariff meets FERC comparability standards as set forth in FERC Orders 888 and 888–A. Interested parties will have an opportunity to comment on the Tariff by following appropriate procedures to intervene with FERC. Southwestern will make any necessary changes required by the FERC declaratory order, and will publish the final approved Tariff in the **Federal Register**.

There will be a public meeting on October 9, 1997, to discuss the proposed tariff. In addition, persons interested in attending the public meeting tentatively scheduled for October 20, 1997, should indicate in writing, by letter or facsimile transmission (918–595–6656), on or before October 15, 1997, of their intent to appear. No meeting will be held if no one indicates an intent to attend.

II. Background

Southwestern Power Administration (Southwestern) was created by Secretarial Order No. 1865, dated August 31, 1943, as an agency of the Department of the Interior, to carry out the power marketing responsibilities assigned to the Secretary of Interior by

Executive Order 9366, dated July 30, 1943, and Order 9373, dated August 30, 1943. Section 5 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 890; 16 U.S.C. 825s) broadened the power marketing responsibilities of the Secretary of the Interior by placing in him the responsibility for marketing the electric power and energy generated at reservoir projects built by and under the control of the Department of the Army. The U.S. Department of Energy was created by an Act of the U.S. Congress under the Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977. Pursuant to Sections 302(a) and 301(b) of such Act, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944 which relate to Southwestern were transferred to and vested in the Secretary of Energy effective October 1, 1977.

Under the said Section 5, Southwestern is enjoined to market power and energy generated at U.S. Army Corps of Engineers dams to public bodies and cooperatives, in such manner as to encourage the most widespread use of the resource, at the lowest possible rates to consumers consistent with sound business principles. The dams from which Southwestern currently markets power and energy are located in the States of Arkansas, Missouri, Oklahoma, and Texas. By the nature of its hydroelectric power resource, Southwestern is a partial requirements supplier to 93 municipal, cooperative, and military electric systems in the States of Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas. Southwestern markets Federal power and energy and owns and operates a transmission system to integrate its hydroelectric resources in order to reliably deliver such power and energy. Southwestern markets Transmission Services for the transmission of non-Federal power and energy across Southwestern's transmission system only to the extent that capacity is available over and above the capacity required to fulfill Southwestern's mission. Nothing in the proposed Tariff is intended to alter, amend, or abridge Southwestern's statutory obligation to market Federal power and to repay the Federal investment in the hydroelectric generation projects from which it markets power as well as the investment in its associated transmission system.

The Federal Energy Regulatory Commission (FERC) issued a Notice of Proposed Rulemaking (NOPR) for Open Access Transmission Service, published at 60 FR 17662, on April 7, 1995. On October 4, 1995, the Secretary, Department of Energy (DOE), adopted a "Power Marketing Administration Open Transmission Access Policy" in which the Secretary states that DOE supports the spirit and intent of the NOPR and directs the Power Marketing Administrations to prepare tariffs which conform to the principles set forth in the FERC's final rule. FERC issued its final rule, Order 888, published at 61 FR 21540, on May 10, 1996, and followed with supplementary Order 888–A, published at 62 FR 12273, on March 14, 1997. Southwestern's Tariff includes an Attachment J which is specific to Southwestern and is not found in the Pro Forma Tariff (Pro Forma) published as Appendix B to FERC Order 888–A.

III. Summary of Changes from the FERC Pro Forma Tariff

Southwestern has adopted the Pro Forma as the basis for its open access Tariff. However, Southwestern has made a number of changes that it deems necessary to reflect Southwestern's unique status as a Federal agency. Southwestern describes this unique status in an added Attachment J, "Authorities and Obligations," to its Tariff.

Southwestern has identified three general areas of difference from the Pro Forma in its Tariff that it believes are necessary to adapt the Pro Forma to the requirements of its unique status. These differences are:

(1) FERC Jurisdictional Issues

Since Southwestern is not a jurisdictional utility under the FERC, provisions which are based on such jurisdiction are deleted from the Pro Forma. This general approach necessitated deletions in Sections 1.10, 2.2, 9, 12.1, 13.3, 14.3, 20.3, 26, 29.5, 34, and 34.5 of the Pro Forma. Since Southwestern is not required to file its service agreements with the FERC, deletions and other changes were made in Sections 1.45, 7.3, 13.4, 14.4, 15.3, 17.6, 19.3, 19.4, 29.1, 29.5, 32.3, and 32.4 of the Pro Forma.

(2) Impact of Federal Law and Regulations.

Southwestern, as a Federal agency, is subject to Federal laws, regulations, and policies which supersede certain provisions in the Pro Forma. This fact accounts for most differences between the Pro Forma and Southwestern's Tariff, which changes fall into three general categories:

(a) General statements of Southwestern's requirements to conform to Federal laws and regulations, or references to specific Federal laws and regulations, account for additions and other changes to Sections 1.2, 10.2, 12.2, 18.2, 26, 34.5, Schedules 1 through 8 of the Pro Forma, and the submission of a new Attachment J.

(b) Under the Anti-Deficiency Act and appropriations laws, Southwestern cannot normally use appropriated funds to do work for others. Likewise, Southwestern is prohibited from entering into contracts that obligate expenditure of funds it does not have. Finally, some kinds of work, such as construction changes to facilities, are specifically contingent on the availability of funds to Southwestern, or on its reimbursable authority to use funds provided by customers, both of which are provided in the Congressional appropriations process. These limitations caused additions and other changes in Sections 13.5, 15.4, 19.1, 19.2, 19.4, 19.8, 20.3, 23.2, 28.2, 31.5, 32.1, 32.2, and 32.4 of the Pro Forma.

(c) Southwestern's current financial system and procedures make collecting deposits for refund and providing for the payment of interest on deposited funds unduly burdensome. Consequently, Southwestern has deleted all references to deposits and their return with interest. Southwestern has substituted provisions for payment of a processing fee to cover its costs in evaluating applications for firm transmission service arrangements of one year or longer, or, in the event that Southwestern is able to provide Network Integration Transmission Service, for applications for such service. The sections of the original Pro Forma which are affected by these changes are: Sections 1.5, 17.3, 17.4, 20.3, 22.2, 29.2, 31.5, 32.1, and 32.4.

(3) Operational Considerations

Southwestern has certain operational considerations that require changes to the Pro Forma.

(a) The development and filing of Southwestern's rates are dictated by Federal law and regulations separate and apart from the Tariff. Rate Schedules, as required by such laws and regulations, will be attached to Service Agreements in place of or in addition to Schedules 1 through 8. Thus, changes in the language of Pro Forma Section 2.2, and in Schedules 1 through 8 were required.

(b) Southwestern's primary mission is to market Federal power. The nature of this resource—hydroelectric power generation—may, under certain hydrological conditions, restrict Southwestern's ability to provide some Ancillary Services which support the transmission of non-Federal power and energy. This limitation is recognized in

changes to Section 3 and Schedules 3 through 6 of the Pro Forma.

(c) Southwestern added language to Section 10.1 to provide for notice between the Parties where Force Majeure renders either Party unable to fulfill obligations under the Service Agreement.

(d) Sections 15.7 and 28.5 cover Real Power Losses, which Southwestern normally addresses in Service Agreements. Changes were made to these Sections to acknowledge such practice.

(e) Section 19.2(iii) of the Pro Forma is changed from an internal reference to Section 20 to a reference to Section 8, which is more pertinent to Southwestern's administrative procedures.

Attachments

For Attachments A, B, and F, which are the form of the Service Agreements associated with the Tariff, Southwestern has elected to describe its proposed agreements, for Firm Transmission Service (2 types, for long- and short-term arrangements); for Non-Firm Transmission Service; and for Network Integration Transmission Service, in general terms rather than to publish specific contract language. Southwestern's practice is to develop standard contracts and to evolve language, especially for new operational arrangements, over time. Changes, if any, become part of the new standard language as such provisions evolve. Also, as a Federal agency, Southwestern has a number of provisions which are required to be in all its contracts but which are not directly pertinent to offering transmission service. Southwestern considers maintaining flexibility to allow continuous improvements in its contract language to be good policy. Therefore, Southwestern has described the contract forms rather than prescribed them. Additionally, this approach avoids unnecessary burdening of the filing and notice processes for the Tariff by omitting from the text of the Tariff standard, general provisions which are not directly germane to the issue of open access for transmission services.

In Attachments C and D, Southwestern acknowledges that, as a member of the Southwest Power Pool, Southwestern's methodology for determining Available Transfer Capability and performing System Impact Studies will follow the methodology of the Southwest Power Pool, which is readily and publicly available.

Attachments G and H will permit Southwestern to provide Network Integration Transmission Service, if such service is requested, and if Southwestern's Transmission System is determined to be capable of providing such service. Southwestern has no present arrangements equivalent to Network Service. In the absence of any particular request for Network Integration Transmission Service, Southwestern has not yet determined whether Network Service is practicable on its system. Until such determination is made, Southwestern deemed it advisable to prepare these attachments with very general language.

Attachment J was developed by Southwestern to describe its authorities and obligations as a Federal Power Marketing Administration. Such authorities and obligations are significantly different from the authorities and obligations of the public utilities for which the Pro Forma was developed, and this Attachment sets forth such differences. Attachments E and I, which are indexes of firm and network contracts, have been left blank.

IV. Coordination With Adoption of Open Access Transmission Rates

Southwestern's rate process is distinct from the rate process used by public utilities. This process, which includes mandatory public participation procedures, is described in 10 CFR 903. Additionally, Southwestern's rates are reviewed by the FERC under different parameters than those used for review of public utility rates. Southwestern is presently in the process of preparing new rate schedules for a FERC filing, and expects such new rates to be implemented January 1, 1998. The proposed rate schedules for Transmission Service will be structured in general accordance with the Pro Forma and Southwestern's Tariff. The new rate schedules will be attached to Service Agreements executed under the Tariff.

Review Under Executive Order 12866

Southwestern has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget (OMB) is required.

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. By the execution of this **Federal Register** notice, the Administrator, Southwestern, certifies that no significant economic impact on a substantial number of small entities will occur.

A redline/strikeout comparison of Southwestern's proposed Tariff to the FERC Pro Forma is available on the Internet at http://www.swpa.gov.

Dated: September 15, 1997.

Michael A. Deihl,

Administrator.

Southwestern Power Administration

Open Access Transmission Service Tariff

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Southwestern Power Administration

Open Access Transmission Service Tariff

Part I. Common Service Provisions

1 Definitions

1.1 *Ancillary Services:* Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

1.2 *Annual Transmission Costs:* The total annual cost of the Transmission System for purposes of Network Integration Transmission Service shall be the amount specified in Attachment H until amended by the Transmission Provider or modified by the Commission, pursuant to Federal law.

1.3 *Application:* A request by an Eligible Customer for transmission service pursuant to the provisions of the Tariff.

1.4 *Commission:* The Federal Energy Regulatory Commission.

1.5 *Completed Application:* An Application that satisfies all of the information and other requirements of the Tariff, including any required application processing fee.

1.6 *Control Area:* An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

(1) Match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(2) Maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;

(3) Maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and

(4) Provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

1.7 *Curtailment:* A reduction in firm or non-firm transmission service in response to a transmission capacity shortage as a result of system reliability conditions.

1.8 *Delivering Party:* The entity supplying capacity and energy to be transmitted at Point(s) of Receipt.

1.9 *Designated Agent:* Any entity that performs actions or functions on behalf of the Transmission Provider, an Eligible Customer, or the Transmission Customer required under the Tariff.

1.10 *Direct Assignment Facilities:* Facilities or portions of facilities that are constructed by the Transmission Provider for the sole use/benefit of a particular Transmission Customer requesting service under the Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer.

1.11 *Eligible Customer:* (i) Any electric utility (including the Transmission Provider and any power marketer), Federal power marketing agency, or any person generating electric energy for sale for resale is an Eligible Customer under the Tariff. Electric energy sold or produced by such entity may be electric energy produced in the United States, Canada or Mexico. However, with respect to transmission service that the Commission is prohibited from ordering by Section 212(h) of the Federal Power Act, such entity is eligible only if the service is provided pursuant to a state requirement that the Transmission Provider offer the unbundled transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider. (ii) Any retail customer taking unbundled transmission service pursuant to a state requirement that the Transmission Provider offer the transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider is an Eligible Customer under the Tariff.

1.12 *Facilities Study:* An engineering study conducted by the Transmission Provider to determine the required modifications to the Transmission Provider's Transmission System, including the cost and scheduled completion date for such modifications, that will be required to provide the requested transmission service.

1.13 *Firm Point-To-Point Transmission Service:* Transmission Service under this Tariff that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Part II of this Tariff.

1.14 *Good Utility Practice:* Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility

Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

1.15 *Interruption:* A reduction in non-firm transmission service due to economic reasons pursuant to Section 14.7.

1.16 *Load Ratio Share:* Ratio of a Transmission Customer's Network Load to the Transmission Provider's total load computed in accordance with Sections 34.2 and 34.3 of the Network Integration Transmission Service under Part III of the Tariff and calculated on a rolling twelve month basis.

1.17 *Load Shedding:* The systematic reduction of system demand by temporarily decreasing load in response to transmission system or area capacity shortages, system instability, or voltage control considerations under Part III of the Tariff.

1.18 *Long-Term Firm Point-To-Point Transmission Service:* Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of one year or more.

1.19 *Native Load Customers:* The wholesale and retail power customers of the Transmission Provider on whose behalf the Transmission Provider, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate the Transmission Provider's system to meet the reliable electric needs of such customers.

1.20 *Network Customer:* An entity receiving transmission service pursuant to the terms of the Transmission Provider's Network Integration Transmission Service under Part III of the Tariff.

1.21 *Network Integration Transmission Service:* The transmission service provided under Part III of the Tariff.

1.22 *Network Load:* The load that a Network Customer designates for Network Integration Transmission Service under Part III of the Tariff. The Network Customer's Network Load shall include all load served by the output of any Network Resources designated by the Network Customer. A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where an Eligible Customer has elected not to designate a particular load at discrete points of delivery as Network Load, the Eligible Customer is responsible for making separate arrangements under Part II of the Tariff for any Point-To-Point Transmission Service that may be necessary for such non-designated load.

1.23 *Network Operating Agreement:* An executed agreement that contains the terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Network Integration Transmission Service under Part III of the Tariff.

1.24 *Network Operating Committee:* A group made up of representatives from the Network Customer(s) and the Transmission Provider established to coordinate operating criteria and other technical considerations required for implementation of Network Integration Transmission Service under Part III of this Tariff.

1.25 *Network Resource:* Any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

1.26 *Network Upgrades:* Modifications or additions to transmission-related facilities that are integrated with and support the Transmission Provider's overall Transmission System for the general benefit of all users of such Transmission System.

1.27 *Non-Firm Point-To-Point Transmission Service:* Point-To-Point Transmission Service under the Tariff that is reserved and scheduled on an as-available basis and is subject to Curtailment or Interruption as set forth in Section 14.7 under Part II of the Tariff. Non-Firm Point-To-Point Transmission Service is available on a stand-alone basis for periods ranging from one hour to one month.

1.28 *Open Access Same-Time Information System (OASIS):* The information system and standards of conduct contained in Part 37 of the Commission's regulations and all additional requirements implemented by subsequent Commission orders dealing with OASIS.

1.29 *Part I:* Tariff Definitions and Common Service Provisions contained in Sections 2 through 12.

1.30 *Part II:* Tariff Sections 13 through 27 pertaining to Point-To-Point Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.31 *Part III:* Tariff Sections 28 through 35 pertaining to Network Integration Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.32 *Parties:* The Transmission Provider and the Transmission Customer receiving service under the Tariff.

1.33 *Point(s) of Delivery:* Point(s) on the Transmission Provider's Transmission System where capacity and energy transmitted by the Transmission Provider will be made available to the Receiving Party under Part II of the Tariff. The Point(s) of Delivery shall be specified in the Service Agreement for Long-Term Firm Point-to-Point Transmission Service.

1.34 *Point(s) of Receipt:* Point(s) of interconnection on the Transmission Provider's Transmission System where capacity and energy will be made available to the Transmission Provider by the Delivering Party under Part II of the Tariff. The Point(s) of Receipt shall be specified in the Service Agreement for Long-Term Firm Point-to-Point Transmission Service.

1.35 *Point-To-Point Transmission Service:* The reservation and transmission of capacity and energy on either a firm or non-firm basis from the Point(s) of Receipt to the Point(s) of Delivery under Part II of the Tariff.

1.36 *Power Purchaser:* The entity that is purchasing the capacity and energy to be transmitted under the Tariff.

1.37 *Receiving Party:* The entity receiving the capacity and energy transmitted by the Transmission Provider to Point(s) of Delivery.

1.38 *Regional Transmission Group (RTG):* A voluntary organization of transmission owners, transmission users and other entities approved by the Commission to efficiently coordinate transmission planning (and expansion), operation and use on a regional (and interregional) basis.

1.39 *Reserved Capacity:* The maximum amount of capacity and energy that the Transmission Provider agrees to transmit for the Transmission Customer over the Transmission Provider's Transmission System between the Point(s) of Receipt and the Point(s) of Delivery under Part II of the Tariff. Reserved Capacity shall be expressed in terms of whole megawatts on a sixty (60) minute interval (commencing on the clock hour) basis.

1.40 *Service Agreement:* The initial agreement and any amendments or supplements thereto entered into by the Transmission Customer and the Transmission Provider for service under the Tariff.

1.41 *Service Commencement Date:* The date the Transmission Provider begins to provide service pursuant to the terms of an executed Service Agreement, or the date the Transmission Provider begins to provide service in accordance with Section 15.3 or Section 29.1 under the Tariff.

1.42 *Short-Term Firm Point-To-Point Transmission Service:* Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of less than one year.

1.43 *System Impact Study:* An assessment by the Transmission Provider of (i) the adequacy of the Transmission System to accommodate a request for either Firm Point-To-Point Transmission Service or Network Integration Transmission Service and (ii) whether any additional costs may be incurred in order to provide transmission service.

1.44 *Third-Party Sale:* Any sale for resale in interstate commerce to a Power Purchaser that is not designated as part of Network Load under the Network Integration Transmission Service.

1.45 *Transmission Customer:* Any Eligible Customer (or its Designated Agent) that (i) executes a Service Agreement or (ii) requests in writing that the Transmission Provider provide transmission service without a Service Agreement, pursuant to Section 15.3 of the Tariff. This term is used in the Part I Common Service Provisions to include customers receiving transmission service under Part II and Part III of this Tariff.

1.46 *Transmission Provider:* Southwestern Power Administration, which owns, controls, or operates the facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Tariff.

1.47 *Transmission Provider's Monthly Transmission System Peak:* The maximum firm usage of the Transmission Provider's Transmission System in a calendar month.

1.48 *Transmission Service:* Point-To-Point Transmission Service provided under Part II of the Tariff on a firm and non-firm basis.

1.49 *Transmission System:* The facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under Part II and Part III of the Tariff.

2 Initial Allocation and Renewal Procedures

2.1 Initial Allocation of Available Transmission Capability

For purposes of determining whether existing capability on the Transmission Provider's Transmission System is adequate to accommodate a request for firm service under this Tariff, all Completed Applications for new firm transmission service received during the initial sixty (60) day period commencing with the effective date of the Tariff will be deemed to have been filed simultaneously. A lottery system conducted by an independent party shall be used to assign priorities for Completed Applications filed simultaneously. All Completed Applications for firm transmission service received after the initial sixty (60) day period shall be assigned a priority pursuant to Section 13.2.

2.2 Reservation Priority For Existing Firm Service Customers

Existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more), have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed. This transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the Transmission Provider or elects to purchase capacity and energy from another supplier. If at the end of the contract term, the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service, the existing firm service customer must agree to accept a contract term at least equal to a competing request by any new Eligible Customer and to pay the current rate for such service. This transmission reservation priority for existing firm service customers is an ongoing right that may be exercised at the end of all firm contract terms of one-year or longer.

3 Ancillary Services

Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. The Transmission Provider is required to provide (or offer to arrange with the local Control Area operator as discussed below), and the Transmission Customer is required to purchase, the following Ancillary Services (i) Scheduling, System Control and Dispatch, and (ii) Reactive Supply and Voltage Control from Generation Sources.

The Transmission Provider is required, to the extent possible, to offer to provide (or offer to arrange with the local Control Area operator as discussed below) the following Ancillary Services only to the Transmission Customer serving load within the Transmission Provider's Control Area (i) Regulation and Frequency Response, (ii) Energy Imbalance, (iii) Operating Reserve—Spinning, and (iv) Operating Reserve—Supplemental. The Transmission Customer serving load within the Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply. The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source. The Transmission Provider will offer to provide Ancillary Services to the Transmission Customer only to the extent that surplus Federal generation is available for such services. However, the Transmission Provider may purchase Ancillary Services from others on behalf of the Transmission Customer under the terms of an agreement separate from the Service Agreement. The costs of such purchases on behalf of a Transmission Customer will be passed directly through to that Transmission Customer. The Transmission Customer must list in its Application which Ancillary Services it will purchase from the Transmission Provider.

If the Transmission Provider is a utility providing transmission service, but is not a Control Area operator, it may be unable to provide some or all of the Ancillary Services. In this case, the Transmission Provider can fulfill its obligation to provide Ancillary Services by acting as the Transmission Customer's agent to secure these Ancillary Services from the Control Area operator. The Transmission Customer may elect to: (i) Have the Transmission Provider act as its agent, (ii) secure the Ancillary Services directly from the Control Area operator, or (iii) secure the Ancillary Services (discussed in Schedules 3, 4, 5, and 6) from a third party or by self-supply when technically feasible.

The Transmission Provider shall specify the rate treatment and all related terms and conditions in the event of an unauthorized use of Ancillary Services by the Transmission Customer.

The specific Ancillary Services, prices and/or compensation methods for each are described on the Schedules that are attached to and made a part of the Tariff. Three principal requirements apply to discounts for Ancillary Services provided by the Transmission Provider in conjunction with its provision of transmission service as follows: (1) Any offer of a discount made by the Transmission Provider

must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. A discount agreed upon for an Ancillary Service must be offered for the same period to all Eligible Customers on the Transmission Provider's system. Sections 3.1 through 3.6 below list the six Ancillary Services.

3.1 Scheduling, System Control and Dispatch Service: The rates and/or methodology are described in Schedule 1.

3.2 Reactive Supply and Voltage Control from Generation Sources Service: The rates and/or methodology are described in Schedule 2.

3.3 Regulation and Frequency Response Service: Where applicable the rates and/or methodology are described in Schedule 3.

3.4 Energy Imbalance Service: Where applicable the rates and/or methodology are described in Schedule 4.

3.5 Operating Reserve—Spinning Reserve Service: Where applicable the rates and/or methodology are described in Schedule 5.

3.6 Operating Reserve—Supplemental Reserve Service: Where applicable the rates and/or methodology are described in Schedule 6.

4 Open Access Same-Time Information System (OASIS)

Terms and conditions regarding Open Access Same-Time Information System and standards of conduct are set forth in 18 CFR § 37 of the Commission's regulations (Open Access Same-Time Information System and Standards of Conduct for Public Utilities). In the event available transmission capability as posted on the OASIS is insufficient to accommodate a request for firm transmission service, additional studies may be required as provided by this Tariff pursuant to Sections 19 and 32.

5 Local Furnishing Bonds

5.1 Transmission Providers That Own Facilities Financed by Local Furnishing Bonds

This provision is applicable only to Transmission Providers that have financed facilities for the local furnishing of electric energy with tax-exempt bonds, as described in Section 142(f) of the Internal Revenue Code ("local furnishing bonds"). Notwithstanding any other provision of this Tariff, the Transmission Provider shall not be required to provide transmission service to any Eligible Customer pursuant to this Tariff if the provision of such transmission service would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance the Transmission Provider's facilities that would be used in providing such transmission service.

5.2 Alternative Procedures for Requesting Transmission Service

(i) If the Transmission Provider determines that the provision of transmission service requested by an Eligible Customer would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance its facilities that would be used in providing such transmission service, it shall advise the Eligible Customer within thirty (30) days of receipt of the Completed Application.

(ii) If the Eligible Customer thereafter renews its request for the same transmission service referred to in (i) by tendering an application under Section 211 of the Federal Power Act, the Transmission Provider, within ten (10) days of receiving a copy of the Section 211 application, will waive its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act. The Commission, upon receipt of the Transmission Provider's waiver of its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act, shall issue an order under Section 211 of the Federal Power Act. Upon issuance of the order under Section 211 of the Federal Power Act, the Transmission Provider shall be required to provide the requested transmission service in accordance with the terms and conditions of this Tariff.

6 Reciprocity

A Transmission Customer receiving transmission service under this Tariff agrees to provide comparable transmission service that it is capable of providing to the Transmission Provider on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate affiliates. A Transmission Customer that is a member of a power pool or Regional Transmission Group also agrees to provide comparable transmission service to the members of such power pool and Regional Transmission Group on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate affiliates.

This reciprocity requirement applies not only to the Transmission Customer that obtains transmission service under the Tariff, but also to all parties to a transaction that involves the use of transmission service under the Tariff, including the power seller, buyer and any intermediary, such as a power marketer. This reciprocity requirement also applies to any Eligible Customer that owns, controls or operates transmission facilities that uses an intermediary, such as a power marketer, to request transmission service under the Tariff. If the Transmission Customer does not own, control or operate transmission facilities, it must include in its Application a sworn statement of one of its duly authorized officers or other representatives that the purpose of its Application is not to assist an Eligible Customer to avoid the requirements of this provision.

7 Billing and Payment

7.1 Billing Procedure

Within a reasonable time after the first day of each month, the Transmission Provider shall submit an invoice to the Transmission Customer for the charges for all services furnished under the Tariff during the preceding month. The invoice shall be paid by the Transmission Customer within twenty (20) days of receipt. All payments shall be made in immediately available funds payable to the Transmission Provider, or by wire transfer to a bank named by the Transmission Provider.

7.2 Interest on Unpaid Balances

Interest on any unpaid amounts (including amounts placed in escrow) shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 CFR § 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by the Transmission Provider.

7.3 Customer Default

In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Within the same 30 calendar days after notice of failure to make payment, the Transmission Customer shall have the right of appeal to the Administrator, Southwestern Power Administration. The Transmission Provider shall continue service until the Administrator makes a determination on the Transmission Customer's appeal. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer: (i) Continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy.

8 Accounting for the Transmission Provider's Use of the Tariff

The Transmission Provider shall record the following amounts, as outlined below.

8.1 Transmission Revenues

Include in a separate operating revenue account or subaccount the revenues it receives from Transmission Service when making Third-Party Sales under Part II of the Tariff.

8.2 Study Costs and Revenues

Include in a separate transmission operating expense account or subaccount, costs properly chargeable to expense that are incurred to perform any System Impact Studies or Facilities Studies which the Transmission Provider conducts to determine if it must construct new transmission facilities or upgrades necessary for its own uses, including making Third-Party Sales under the Tariff; and include in a separate operating revenue account or subaccount the revenues received for System Impact Studies or Facilities Studies performed when such amounts are separately stated and identified in the Transmission Customer's billing under the Tariff.

9 Regulatory Filings

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

10 Force Majeure and Indemnification

10.1 Force Majeure

An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither the Transmission Provider nor the Transmission Customer will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff. Either Party rendered unable to fulfill any of its obligations under the Service Agreement by reason of an uncontrollable force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

10.2 Indemnification

The Transmission Customer shall at all times indemnify, defend, and save the Transmission Provider harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Transmission Provider's performance of its obligations under this Tariff on behalf of the Transmission Customer, except in cases of negligence or intentional wrongdoing by the Transmission Provider. The liability of the Transmission Provider shall be determined in accordance with the provisions of the Federal Tort Claims Act, as amended.

11 Creditworthiness

For the purpose of determining the ability of the Transmission Customer to meet its obligations related to service hereunder, the Transmission Provider may require reasonable credit review procedures. This review shall be made in accordance with standard commercial practices. In addition, the Transmission Provider may require the Transmission Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under the Tariff, or an alternative form of security proposed by the Transmission Customer and acceptable to the Transmission Provider and consistent with commercial practices established by the Uniform Commercial Code that protects the Transmission Provider against the risk of non-payment.

12 Dispute Resolution Procedures

12.1 Internal Dispute Resolution Procedures

Any dispute between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff shall be referred to a designated senior representative of the Transmission Provider and a senior representative of the Transmission Customer for resolution on an informal basis as promptly as practicable.

12.2 Disputes

Any dispute regarding service provided under the Service Agreement will be resolved in a manner consistent with the Administrative Disputes Resolution Act, as amended, subject to statutory and regulatory limits on the Transmission Provider's authority to submit disputes to arbitration.

12.3 Rights Under The Federal Power Act

Nothing in this section shall restrict the rights of any party to file a Complaint with the Commission under relevant provisions of the Federal Power Act.

Part II. Point-to-Point Transmission Service

Preamble

The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service pursuant to the applicable terms and conditions of this Tariff. Point-To-Point Transmission Service is for the receipt of capacity and energy at designated Point(s) of Receipt and the transmission of such capacity and energy to designated Point(s) of Delivery.

13 Nature of Firm Point-To-Point Transmission Service

13.1 Term

The minimum term of Firm Point-To-Point Transmission Service shall be one day and the maximum term shall be specified in the Service Agreement.

13.2 Reservation Priority

Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis *i.e.*, in the chronological sequence in which each Transmission Customer reserved service. Reservations for Short-Term Firm Point-To-Point Transmission Service will be conditional based upon the length of the requested transaction. If the Transmission System becomes oversubscribed, requests for longer term service may preempt requests for shorter term service up to the following deadlines; one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. Before the conditional reservation deadline, if available transmission capability is insufficient to satisfy all Applications, an Eligible Customer with a reservation for shorter term service has the right of first refusal to match any longer term reservation before losing its reservation priority. A longer term competing request for Short-Term Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in § 13.8) from being notified by the Transmission Provider of a longer-term competing request for Short-Term Firm Point-To-Point Transmission Service. After the conditional reservation deadline, service will commence pursuant to the terms of Part II of the Tariff. Firm Point-To-Point Transmission Service will always have a reservation priority over Non-Firm Point-To-Point Transmission Service under the Tariff. All Long-Term Firm Point-To-Point Transmission Service will have equal reservation priority with Native Load Customers and Network Customers. Reservation priorities for existing firm service customers are provided in § 2.2.

13.3 Use of Firm Transmission Service by the Transmission Provider

The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under agreements executed on or after November 24, 1997. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of the Point-To-Point Transmission Service to make Third-Party Sales.

13.4 Service Agreements

The Transmission Provider shall offer a standard form Firm Point-To-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it submits a Completed Application for Long-Term Firm Point-To-Point Transmission Service. The Transmission Provider shall offer a standard form Firm Point-to-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it first submits a Completed Application for Short-Term Firm Point-to-Point Transmission Service pursuant to the Tariff.

13.5 Transmission Customer Obligations for Facility Additions or Redispatch Costs

In cases where the Transmission Provider determines that the Transmission System is not capable of providing Firm Point-To-Point Transmission Service without: (1) Degrading or impairing the reliability of service to Native Load Customers, Network Customers, and other Transmission Customers taking Firm Point-To-Point Transmission Service, or (2) interfering with the Transmission Provider's ability to meet prior firm contractual commitments to others, the Transmission Provider will be obligated to expand or upgrade its Transmission System pursuant to the terms of § 15.4. The Transmission Customer must agree to compensate the Transmission Provider in advance for any necessary transmission facility additions pursuant to the terms of Section 27. To the extent the Transmission Provider can relieve any system constraint more economically by redispatching the Transmission Provider's resources than through constructing Network Upgrades, it shall do so, provided that the Eligible Customer agrees to compensate the Transmission Provider pursuant to the terms of Section 27. Any redispatch, Network Upgrade or Direct Assignment Facilities costs to be charged to the Transmission Customer on an incremental basis under the Tariff will be specified in the Service Agreement or a separate agreement, as appropriate, prior to initiating service.

13.6 Curtailment of Firm Transmission Service

In the event that a Curtailment on the Transmission Provider's Transmission System, or a portion thereof, is required to maintain reliable operation of such system, Curtailments will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint. If multiple transactions require Curtailment, to the extent practicable and consistent with Good Utility Practice, the Transmission Provider will curtail service to Network Customers and Transmission Customers taking Firm Point-To-Point Transmission Service on a basis comparable to the curtailment of service to the Transmission Provider's Native Load Customers. All Curtailments will be made on a non-discriminatory basis; however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. When the Transmission Provider determines that an electrical emergency exists on its Transmission System and implements emergency procedures to Curtail Firm Transmission Service, the Transmission Customer shall make the required reductions upon request of the Transmission Provider. However, the Transmission Provider reserves the right to Curtail, in whole or in part, any Firm Transmission Service provided under the Tariff when, in the Transmission Provider's sole discretion, an emergency or other unforeseen condition impairs or degrades the reliability of its Transmission System. The Transmission Provider will notify all affected Transmission Customers in a timely manner of any scheduled Curtailments.

13.7 Classification of Firm Transmission Service

(a) The Transmission Customer taking Firm Point-To-Point Transmission Service may: (1) Change its Receipt and Delivery Points to obtain service on a non-firm basis consistent with the terms of Section 22.1, or (2) request a modification of the Points of Receipt or Delivery on a firm basis pursuant to the terms of Section 22.2.

(b) The Transmission Customer may purchase transmission service to make sales of capacity and energy from multiple generating units that are on the Transmission Provider's Transmission System. For such a purchase of transmission service, the resources will be designated as multiple Points of Receipt, unless the multiple generating units are at the same generating plant in which case the units would be treated as a single Point of Receipt.

(c) The Transmission Provider shall provide firm deliveries of capacity and energy from the Point(s) of Receipt to the Point(s) of Delivery. Each Point of Receipt at which firm transmission capacity is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Receipt. Points of Receipt and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. Each Point of Delivery at which firm transmission capacity is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Delivery. Points of Delivery and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. The greater of either: (1) The sum of the capacity reservations at the Point(s) of Receipt, or (2) the sum of the capacity reservations at the Point(s) of Delivery shall be the Transmission Customer's Reserved Capacity. The Transmission Customer will be billed for its Reserved Capacity under the terms of Schedule 7. The Transmission Customer may not exceed its firm capacity reserved at each Point of Receipt and each Point of Delivery except as otherwise specified in Section 22. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery.

13.8 Scheduling of Firm Point-To-Point Transmission Service

Schedules for the Transmission Customer's Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than *10:00 a.m.* of the day prior to commencement of such service. Schedules submitted after 10:00 a.m. will be accommodated, if practicable. Hour-to-hour schedules of any capacity and energy that is to be delivered must be stated in increments of 1,000 kW per hour. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their service requests at a common point of receipt into units of 1,000 kW per hour for scheduling and billing purposes. Scheduling changes will be permitted up to *twenty (20) minutes* before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14 Nature of Non-Firm Point-To-Point Transmission Service

14.1 Term

Non-Firm Point-To-Point Transmission Service will be available for periods ranging from one (1) hour to one (1) month. However, a Purchaser of Non-Firm Point-To-Point Transmission Service will be entitled to reserve a sequential term of service (such as a sequential monthly term without having to wait for the initial term to expire before requesting another monthly term) so that the total time period for which the reservation applies is greater than one month, subject to the requirements of Section 18.3.

14.2 Reservation Priority

Non-Firm Point-To-Point Transmission Service shall be available from transmission capability in excess of that needed for reliable service to Native Load Customers, Network Customers, and other Transmission Customers taking Long-Term and Short-Term Firm Point-To-Point Transmission Service. A higher priority will be assigned to reservations with a longer duration of service. In the event the Transmission System is constrained, competing requests of equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service. Eligible Customers that have already reserved shorter term service have the right of first refusal to match any longer term reservation before being preempted. A longer term competing request for Non-Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request: (a) Immediately for hourly Non-Firm Point-To-Point Transmission Service after notification by the Transmission Provider; and, (b) within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in Section 14.6) for Non-Firm Point-To-Point Transmission Service other than hourly transactions after notification by the Transmission Provider. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.

14.3 Use of Non-Firm Point-To-Point Transmission Service by the Transmission Provider

The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under agreements executed on or after November 24, 1997. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of Non-Firm Point-To-Point Transmission Service to make Third-Party Sales.

14.4 Service Agreements

The Transmission Provider shall offer a standard form Non-Firm Point-To-Point Transmission Service Agreement (Attachment B) to an Eligible Customer when it first submits a Completed Application for Non-Firm Point-To-Point Transmission Service pursuant to the Tariff.

14.5 Classification of Non-Firm Point-To-Point Transmission Service

Non-Firm Point-To-Point Transmission Service shall be offered under terms and conditions contained in Part II of the Tariff. The Transmission Provider undertakes no obligation under the Tariff to plan its Transmission System in order to have sufficient capacity for Non-Firm Point-To-Point Transmission Service. Parties requesting Non-Firm Point-To-Point Transmission Service for the transmission of firm power do so with the full realization that such service is subject to availability and to Curtailment or Interruption under the terms of the Tariff. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its non-firm capacity reservation. Non-Firm Point-To-Point Transmission Service shall include transmission of energy on an hourly basis and transmission of scheduled short-term capacity and energy on a daily, weekly or monthly

basis, but not to exceed one month's reservation for any one Application under Schedule 8.

14.6 Scheduling of Non-Firm Point-To-Point Transmission Service

Schedules for Non-Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than *2:00 p.m.* of the day prior to commencement of such service. Schedules submitted after 2:00 p.m. will be accommodated, if practicable. Hour-to-hour schedules of energy that are to be delivered must be stated in increments of 1,000 kW per hour. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their schedules at a common Point of Receipt into units of 1,000 kW per hour. Scheduling changes will be permitted up to *twenty (20) minutes* before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14.7 Curtailment or Interruption of Service

The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when, an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System. The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) A request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, (3) a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, or (4) transmission service for Network Customers from non-designated resources. The Transmission Provider also will discontinue or reduce service to the Transmission Customer to the extent that deliveries for transmission are discontinued or reduced at the Point(s) of Receipt. Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest term (*e.g.*, hourly non-firm transactions will be Curtailed or Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have a lower priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. The Transmission Provider will provide advance notice of Curtailment or Interruption where such notice can be provided consistent with Good Utility Practice.

15 Service Availability

15.1 General Conditions

The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service over, on or across its Transmission System to any Transmission Customer that has met the requirements of Section 16.

15.2 Determination of Available Transmission Capability

A description of the Transmission Provider's specific methodology for assessing available transmission capability posted on the Transmission Provider's OASIS (Section 4) is contained in Attachment C of the Tariff. In the event sufficient transmission capability may not exist to accommodate a service request, the Transmission Provider will respond by performing a System Impact Study.

15.3 Initiating Service in the Absence of an Executed Service Agreement

If the Transmission Provider and the Transmission Customer requesting Firm or Non-Firm Point-To-Point Transmission Service cannot agree on all the terms and conditions of the Point-To-Point Service Agreement, the Transmission Provider shall commence providing Transmission Service subject to the Transmission Customer agreeing to: (i) Compensate the Transmission Provider at the existing rate placed in effect pursuant to Federal law and regulations, and (ii) comply with the terms and conditions of the Tariff including paying the appropriate processing fees in accordance with the terms of Section 17.3. If the Transmission Customer cannot accept all of the terms and conditions of the offered Service Agreement, the Transmission Customer may request resolution of the unacceptable terms and conditions under Section 12, Dispute Resolution Procedures, of the Tariff. Any changes resulting from the dispute resolution procedures will be effective upon the date of initial service.

15.4 Obligation to Provide Transmission Service that Requires Expansion or Modification of the Transmission System

If the Transmission Provider determines that it cannot accommodate a Completed Application for Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider will use due diligence to expand or modify its Transmission System to provide the requested Firm Transmission Service, provided the Transmission Customer agrees to compensate the Transmission Provider in advance for such costs pursuant to the terms of Section 27. The Transmission Provider will conform to Good Utility Practice in determining the need for new facilities and in the design and construction of such facilities. The obligation applies only to those facilities that the Transmission Provider has the right to expand or modify.

15.5 Deferral of Service

The Transmission Provider may defer providing service until it completes construction of new transmission facilities or upgrades needed to provide Firm Point-To-Point Transmission Service whenever the Transmission Provider determines that providing the requested service would, without such new facilities or upgrades, impair or degrade reliability to any existing firm services.

15.6 Other Transmission Service Schedules

Eligible Customers receiving transmission service under other agreements on file with the Commission may continue to receive transmission service under those agreements until such time as those agreements may be modified by the Commission.

15.7 Real Power Losses

Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Transmission Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are specified in the Service Agreements.

16 Transmission Customer Responsibilities

16.1 Conditions Required of Transmission Customers

Point-To-Point Transmission Service shall be provided by the Transmission Provider only if the following conditions are satisfied by the Transmission Customer:

a. The Transmission Customer has pending a Completed Application for service;

b. The Transmission Customer meets the creditworthiness criteria set forth in Section 11;

c. The Transmission Customer will have arrangements in place for any other transmission service necessary to effect the delivery from the generating source to the Transmission Provider prior to the time service under Part II of the Tariff commences;

d. The Transmission Customer agrees to pay for any facilities constructed and chargeable to such Transmission Customer under Part II of the Tariff, whether or not the Transmission Customer takes service for the full term of its reservation; and

e. The Transmission Customer has executed a Point-To-Point Service Agreement or has agreed to receive service pursuant to Section 15.3.

16.2 Transmission Customer Responsibility for Third-Party Arrangements

Any scheduling arrangements that may be required by other electric systems shall be the responsibility of the Transmission Customer requesting service. The Transmission Customer shall provide, unless waived by the Transmission Provider, notification to the Transmission Provider identifying such systems and authorizing them to schedule the capacity and energy to be transmitted by the Transmission Provider pursuant to Part II of the Tariff on behalf of the Receiving Party at the Point of Delivery or the Delivering Party at the Point of Receipt. However, the Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in making such arrangements, including, without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

17 Procedures for Arranging Firm Point-To-Point Transmission Service

17.1 Application

A request for Firm Point-To-Point Transmission Service for periods of one year or longer must contain a written Application to Administrator, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101–1619, at least sixty (60) days in advance of the calendar month in which service is to commence. The Transmission Provider will consider requests for such firm service on shorter notice when feasible. Requests for firm service for periods of less than one year shall be subject to expedited procedures that shall be negotiated between the Parties within the time constraints provided in Section 17.5. All Firm Point-To-Point Transmission Service requests should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time-recorded telephone line. Each of these methods will provide a time-stamped record for establishing the priority of the Application.

17.2 Completed Application

A Completed Application shall provide all of the information included in 18 CFR § 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the entity requesting service

(ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff

(iii) The location of the Point(s) of Receipt and Point(s) of Delivery and the identities of the Delivering Parties and the Receiving Parties

(iv) The location of the generating facility(ies) supplying the capacity and energy and the location of the load ultimately served by the capacity and energy transmitted. The Transmission Provider will treat this information as confidential except to the extent that disclosure of this information is required by the Tariff, by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations

(v) A description of the supply characteristics of the capacity and energy to be delivered

(vi) An estimate of the capacity and energy expected to be delivered to the Receiving Party

(vii) The Service Commencement Date and the term of the requested Transmission Service

(viii) The transmission capacity requested for each Point of Receipt and each Point of Delivery on the Transmission Provider's Transmission System; customers may combine their requests for service in order to satisfy the minimum transmission capacity requirement

The Transmission Provider shall treat this information consistent with the standards of conduct contained in part 37 of the Commission's regulations.

17.3 Processing Fee

A Completed Application for Firm Point-To-Point Transmission Service also shall include a processing fee for all requests for Firm Transmission Service of one year or longer. The processing fee shall be calculated using the estimated average number of hours required to process an application. The fee will be posted on the Transmission Provider's OASIS and may change as average costs/per/hour for the Transmission Provider change. This fee does not apply to costs to complete System Impact Studies or Facility Studies or to add new facilities.

17.4 Notice of Deficient Application

If an Application fails to meet the requirements of the Tariff, the Transmission Provider shall notify the entity requesting service within fifteen (15) days of receipt of the reasons for such failure. The Transmission Provider will attempt to remedy minor deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application. Upon receipt of a new or revised Application that fully complies with the requirements of Part II of the Tariff, the Eligible Customer shall be assigned a new priority consistent with the date of the new or revised Application.

17.5 Response to a Completed Application

Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transmission capability as required in Section 15.2. The Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (i) If it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to Section 19.1. Responses by the Transmission Provider must be made as soon as practicable to all completed applications (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.

17.6 Execution of a Service Agreement

Whenever the Transmission Provider determines that a System Impact Study is not required and that the service can be provided, it shall notify the Eligible Customer as soon as practicable but no later than thirty (30) days after receipt of the Completed Application. Where a System Impact Study is required, the provisions of Section 19 will govern the execution of a Service Agreement. Failure of an Eligible Customer to execute and return the Service Agreement or request service without an executed service agreement pursuant to Section 15.3 within fifteen (15) days after it is tendered by the Transmission Provider will be deemed a withdrawal and termination of the Application. Nothing herein limits the right of an Eligible Customer to file another Application after such withdrawal and termination.

17.7 Extensions for Commencement of Service

The Transmission Customer can obtain up to *five (5) one-year extensions* for the commencement of service. The Transmission Customer may postpone service by paying a non-refundable annual reservation fee equal to one-month's charge for Firm Transmission Service for each year or fraction thereof. If during any extension for the commencement of service an Eligible Customer submits a Completed Application for Firm Transmission Service, and such request can be satisfied only by releasing all or part of the Transmission Customer's Reserved Capacity, the original Reserved Capacity will be released unless the following condition is satisfied. Within thirty (30) days, the original Transmission Customer agrees to pay the Firm Point-To-Point transmission rate for its Reserved Capacity concurrent with the new Service Commencement Date. In the event the Transmission Customer elects to release the Reserved Capacity, the reservation fees or portions thereof previously paid will be forfeited.

18 Procedures for Arranging Non-Firm Point-To-Point Transmission Service

18.1 Application

Eligible Customers seeking Non-Firm Point-To-Point Transmission Service must submit a Completed Application to the Transmission Provider. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by: (i) Transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time-recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application.

18.2 Completed Application

A Completed Application shall provide all of the information included in 18 CFR § 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the entity requesting service.

(ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff.

(iii) The Point(s) of Receipt and the Point(s) of Delivery.

(iv) The maximum amount of capacity requested at each Point of Receipt and Point of Delivery; and

(v) The proposed dates and hours for initiating and terminating transmission service hereunder.

In addition to the information specified above, when required to properly evaluate system conditions, the Transmission Provider also may ask the Transmission Customer to provide the following:

(vi) The electrical location of the initial source of the power to be transmitted pursuant to the Transmission Customer's request for service.

(vii) The electrical location of the ultimate load.

The Transmission Provider will treat this information in (vi) and (vii) as confidential at the request of the Transmission Customer except to the extent that disclosure of this information is required by this Tariff, by Federal law or regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice, or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

18.3 Reservation of Non-Firm Point-To-Point Transmission Service

Requests for monthly service shall be submitted *no earlier than sixty (60) days* before service is to commence; requests for weekly service shall be submitted *no earlier than fourteen (14) days* before service is to commence, requests for daily service shall be submitted *no earlier than two (2) days* before service is to commence, and requests for hourly service shall be submitted *no earlier than noon the day* before service is to commence. Requests for service received *later than 2:00 p.m.* prior to the day service is scheduled to commence will be accommodated if practicable.

18.4 Determination of Available Transmission Capability

Following receipt of a tendered schedule the Transmission Provider will make a determination on a non-discriminatory basis of available transmission capability pursuant to Section 15.2. Such determination shall be made as soon as reasonably practicable after receipt, but not later than the following time periods for the following terms of service: *(i) Thirty (30) minutes for hourly service, (ii) thirty (30) minutes for daily service, (iii) four (4) hours for weekly service, and (iv) two (2) days for monthly service.*

19 Additional Study Procedures For Firm Point-To-Point Transmission Service Requests

19.1 Notice of Need for System Impact Study

After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. In such cases, the Transmission Provider shall within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to which the Eligible Customer shall agree to advance funds to the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its application shall be deemed withdrawn.

19.2 System Impact Study Agreement and Compensation

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge will not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If, in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the requests for service, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 8.

19.3 System Impact Study Procedures

Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify any system constraints and redispatch options, additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System Impact Study the Eligible Customer must execute a Service Agreement or request service without an executed Service Agreement pursuant to Section 15.3, or the Application shall be deemed terminated and withdrawn.

19.4 Facilities Study Procedures

If a System Impact Study indicates that additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to advance funds to the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its application shall be deemed withdrawn. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Transmission Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of: (i) The cost of Direct Assignment Facilities to be charged to the Transmission Customer, (ii) the Transmission Customer's appropriate share of the cost of any required Network Upgrades as determined pursuant to the provisions of Part II of the Tariff, and (iii) the time required to complete such construction and initiate the requested service. The Transmission Customer shall pay the Transmission Provider, in advance, the Transmission Customer's share of the costs of new facilities or upgrades. The Transmission Customer shall have thirty (30) days to execute a construction agreement and a Service Agreement and to provide the advance payment or request service without an executed Service Agreement pursuant to Section 15.3, and provide the required letter of credit or other form of security, or the request will no longer be a Completed Application and shall be deemed terminated and withdrawn.

19.5 Facilities Study Modifications

Any change in design arising from inability to site or construct facilities as proposed will require development of a revised good faith estimate. New good faith estimates also will be required in the event of new statutory or regulatory requirements that are effective before the completion of construction or other circumstances beyond the control of the Transmission Provider that significantly affect the final cost of new facilities or upgrades to be charged to the Transmission Customer pursuant to the provisions of Part II of the Tariff.

19.6 Due Diligence in Completing New Facilities

The Transmission Provider shall use due diligence to add necessary facilities or upgrade its Transmission System within a reasonable time. The Transmission Provider will not upgrade its existing or planned Transmission System in order to provide the requested Firm Point-To-Point Transmission Service if doing so would impair system reliability or otherwise impair or degrade existing firm service.

19.7 Partial Interim Service

If the Transmission Provider determines that it will not have adequate transmission capability to satisfy the full amount of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider nonetheless shall be obligated to offer and provide the portion of the requested Firm Point-To-Point Transmission Service that can be accommodated without addition of any facilities and through redispatch.

However, the Transmission Provider shall not be obligated to provide the incremental amount of requested Firm Point-To-Point Transmission Service that requires the addition of facilities or upgrades to the Transmission System until such facilities or upgrades have been placed in service.

19.8 Expedited Procedures for New Facilities

In lieu of the procedures set forth above, the Eligible Customer shall have the option to expedite the process by requesting the Transmission Provider to tender at one time, together with the results of required studies, an "Expedited Service Agreement" pursuant to which the Eligible Customer would agree to compensate the Transmission Provider in advance for all costs incurred pursuant to the terms of the Tariff. In order to exercise this option, the Eligible Customer shall request in writing an expedited Service Agreement covering all of the above-specified items within thirty (30) days of receiving the results of the System Impact Study identifying needed facility additions or upgrades or costs incurred in providing the requested service. While the Transmission Provider agrees to provide the Eligible Customer with its best estimate of the new facility costs and other charges that may be incurred, such estimate shall not be binding and the Eligible Customer must agree in writing to compensate the Transmission Provider in advance for all costs incurred pursuant to the provisions of the Tariff. The Eligible Customer shall execute and return such an Expedited Service Agreement within fifteen (15) days of its receipt or the Eligible Customer's request for service will cease to be a Completed Application and will be deemed terminated and withdrawn.

20 Procedures if the Transmission Provider is Unable to Complete New Transmission Facilities for Firm Point-To-Point Transmission Service

20.1 Delays in Construction of New Facilities

If any event occurs that will materially affect the time for completion of new facilities, or the ability to complete them, the Transmission Provider shall promptly notify the Transmission Customer. In such circumstances, the Transmission Provider shall, within thirty (30) days of notifying the Transmission Customer of such delays, convene a technical meeting with the Transmission Customer to evaluate the alternatives available to the Transmission Customer. The Transmission Provider also shall make available to the Transmission Customer studies and work papers related to the delay, including all information that is in the possession of the Transmission Provider that is reasonably needed by the Transmission Customer to evaluate any alternatives.

20.2 Alternatives to the Original Facility Additions

When the review process of Section 20.1 determines that one or more alternatives exist to the originally planned construction project, the Transmission Provider shall present such alternatives for consideration by the Transmission Customer. If, upon review of any alternatives, the Transmission Customer desires to maintain its Completed Application subject to construction of the alternative facilities, it may request the Transmission Provider to submit a revised Service Agreement for Firm Point-To-Point Transmission Service. If the alternative approach solely involves Non-Firm Point-To-Point Transmission Service, the Transmission Provider shall promptly tender a Service Agreement for Non-Firm Point-To-Point Transmission Service providing for the service. In the event the Transmission Provider concludes that no reasonable alternative exists and the Transmission Customer disagrees, the Transmission Customer may seek relief under the dispute resolution procedures pursuant to Section 12 or it may refer the dispute to the Commission for resolution.

20.3 Refund Obligation for Unfinished Facility Additions

If the Transmission Provider and the Transmission Customer mutually agree that no other reasonable alternatives exist and the requested service cannot be provided out of existing capability under the conditions of Part II of the Tariff, the obligation to provide the requested Firm Point-To-Point Transmission Service shall terminate and any advance payment made by the Transmission Customer that is in excess of the costs incurred by the Transmission Provider through the time construction was suspended shall be returned. However, the Transmission Customer shall be responsible for all prudently incurred costs by the Transmission Provider through the time construction was suspended.

21 Provisions Relating to Transmission Construction and Services on the Systems of Other Utilities

21.1 Responsibility for Third-Party System Additions

The Transmission Provider shall not be responsible for making arrangements for any necessary engineering, permitting, and construction of transmission or distribution facilities on the system(s) of any other entity or for obtaining any regulatory approval for such facilities. The Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in obtaining such arrangements, including, without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

21.2 Coordination of Third-Party System Additions

In circumstances where the need for transmission facilities or upgrades is identified pursuant to the provisions of Part II of the Tariff, and if such upgrades further require the addition of transmission facilities on other systems, the Transmission Provider shall have the right to coordinate construction on its own system with the construction required by others. The Transmission Provider, after consultation with the Transmission Customer and representatives of such other systems, may defer construction of its new transmission facilities if the new transmission facilities on another system cannot be completed in a timely manner. The Transmission Provider shall notify the Transmission Customer in writing of the basis for any decision to defer construction and the specific problems which must be resolved before it will initiate or resume construction of new facilities. Within sixty (60) days of receiving written notification by the Transmission Provider of its intent to defer construction pursuant to this section, the Transmission Customer may challenge the decision in accordance with the dispute resolution procedures pursuant to Section or it may refer the dispute to the Commission for resolution.

22 Changes in Service Specifications

22.1 Modifications on a Non-Firm Basis

The Transmission Customer taking Firm Point-To-Point Transmission Service may request the Transmission Provider to provide transmission service on a non-firm basis over Receipt and Delivery Points other than those

specified in the Service Agreement ("Secondary Receipt and Delivery Points"), in amounts not to exceed its firm capacity reservation, without incurring an additional Non-Firm Point-To-Point Transmission Service charge or executing a new Service Agreement, subject to the following conditions.

(a) Service provided over Secondary Receipt and Delivery Points will be non-firm only, on an as-available basis, and will not displace any firm or non-firm service reserved or scheduled by third-parties under the Tariff or by the Transmission Provider on behalf of its Native Load Customers.

(b) The sum of all Firm and non-firm Point-To-Point Transmission Service provided to the Transmission Customer at any time pursuant to this section shall not exceed the Reserved Capacity in the relevant Service Agreement under which such services are provided.

(c) The Transmission Customer shall retain its right to schedule Firm Point-To-Point Transmission Service at the Receipt and Delivery Points specified in the relevant Service Agreement in the amount of its original capacity reservation.

(d) Service over Secondary Receipt and Delivery Points on a non-firm basis shall not require the filing of an Application for Non-Firm Point-To-Point Transmission Service under the Tariff. However, all other requirements of Part II of the Tariff (except as to transmission rates) shall apply to transmission service on a non-firm basis over Secondary Receipt and Delivery Points.

22.2 Modifications on a Firm Basis

Any request by a Transmission Customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service in accordance with Section 17 hereof except that such Transmission Customer shall not be obligated to pay any additional application processing fee if the capacity reservation does not exceed the amount reserved in the existing Service Agreement. While such new request is pending, the Transmission Customer shall retain its priority for service at the existing firm Receipt and Delivery Points specified in its Service Agreement.

23 Sale or Assignment of Transmission Service

23.1 Procedures for Assignment or Transfer of Service

Subject to Commission approval of any necessary filings, a Transmission Customer may sell, assign, or transfer all or a portion of its rights under its Service Agreement, but only to another Eligible Customer (the Assignee). The Transmission Customer that sells, assigns or transfers its rights under its Service Agreement is hereafter referred to as the Reseller. Compensation to the Reseller shall not exceed the higher of (i) the original rate paid by the Reseller, (ii) the Transmission Provider's maximum rate on file at the time of the assignment, or (iii) the Reseller's opportunity cost capped at the Transmission Provider's cost of expansion. If the Assignee does not request any change in the Point(s) of Receipt or the Point(s) of Delivery, or a change in any other term or condition set forth in the original Service Agreement, the Assignee will receive the same services as did the Reseller and the priority of service for the Assignee will be the same as that of the Reseller. A Reseller should notify the Transmission Provider as soon as possible after any assignment or transfer of service occurs but in any event, notification must be provided prior to any provision of service to the Assignee. The Assignee will be subject to all terms and conditions of the Tariff. If the Assignee requests a change in service, the reservation priority of service will be determined by the Transmission Provider pursuant to Section 13.2.

23.2 Limitations on Assignment or Transfer of Service

If the Assignee requests a change in the Point(s) of Receipt or Point(s) of Delivery, or a change in any other specifications set forth in the original Service Agreement, the Transmission Provider will consent to such change subject to the provisions of the Tariff, provided that the change will not impair the operation and reliability of the Transmission Provider's generation, transmission, or distribution systems. The Assignee shall compensate the Transmission Provider in advance for performing any System Impact Study needed to evaluate the capability of the Transmission System to accommodate the proposed change and any additional costs resulting from such change. The Reseller shall remain liable for the performance of all obligations under the Service Agreement, except as specifically agreed to by the Parties through an amendment to the Service Agreement.

23.3 Information on Assignment or Transfer of Service

In accordance with Section 4, Resellers may use the Transmission Provider's OASIS to post transmission capacity available for resale.

24 Metering and Power Factor Correction at Receipt and Delivery Point(s)

24.1 Transmission Customer Obligations

Unless otherwise agreed, the Transmission Customer shall be responsible for installing and maintaining compatible metering and communications equipment to accurately account for the capacity and energy being transmitted under Part II of the Tariff and to communicate the information to the Transmission Provider. Such equipment shall remain the property of the Transmission Customer.

24.2 Transmission Provider Access to Metering Data

The Transmission Provider shall have access to metering data, which may reasonably be required to facilitate measurements and billing under the Service Agreement.

24.3 Power Factor

Unless otherwise agreed, the Transmission Customer is required to maintain a power factor within the same range as the Transmission Provider pursuant to Good Utility Practices. The power factor requirements are specified in the Service Agreement where applicable.

25 Compensation for Transmission Service

Rates for Firm and Non-Firm Point-To-Point Transmission Service are provided in the Schedules appended to the Tariff: Firm Point-To-Point Transmission Service (Schedule 7); and Non-Firm Point-To-Point Transmission Service (Schedule 8). The Transmission Provider shall use Part II of the Tariff to make its Third-Party Sales. The Transmission Provider shall account for such use at the applicable Tariff rates, pursuant to Section 8.

26 Stranded Cost Recovery

The Transmission Provider may seek to recover stranded costs from the Transmission Customer in a manner consistent with applicable Federal law and regulations.

27 Compensation for New Facilities and Redispatch Costs

Whenever a System Impact Study performed by the Transmission Provider in connection with the provision of Firm Point-To-Point Transmission Service identifies the need for new facilities, the Transmission Customer shall be responsible for such costs to the extent consistent with Commission

policy. Whenever a System Impact Study performed by the Transmission Provider identifies capacity constraints that may be relieved more economically by redispatching the Transmission Provider's resources than by building new facilities or upgrading existing facilities to eliminate such constraints, the Transmission Customer shall be responsible for the redispatch costs to the extent consistent with Commission policy.

Part III. Network Integration Transmission Service

Preamble

The Transmission Provider will provide Network Integration Transmission Service pursuant to the applicable terms and conditions contained in the Tariff and Service Agreement. Network Integration Transmission Service allows the Network Customer to integrate, economically dispatch and regulate its current and planned Network Resources to serve its Network Load in a manner comparable to that in which the Transmission Provider utilizes its Transmission System to serve its Native Load Customers. Network Integration Transmission Service also may be used by the Network Customer to deliver economy energy purchases to its Network Load from non-designated resources on an as-available basis without additional charge. Transmission service for sales to non-designated loads will be provided pursuant to the applicable terms and conditions of Part II of the Tariff.

28 Nature of Network Integration Transmission Service

28.1 Scope of Service

Network Integration Transmission Service is a transmission service that allows Network Customers to efficiently and economically utilize their Network Resources (as well as other non-designated generation resources) to serve their Network Load located in the Transmission Provider's Control Area and any additional load that may be designated pursuant to Section 31.3 of the Tariff. The Network Customer taking Network Integration Transmission Service must obtain or provide Ancillary Services pursuant to Section 3.

28.2 Transmission Provider Responsibilities

The Transmission Provider will plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice in order to provide the Network Customer with Network integration Transmission Service over the Transmission Provider's Transmission System. The Transmission Provider, on behalf of its Native Load Customers, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of the Tariff. This information must be consistent with the information used by the Transmission Provider to calculate available transmission capability. The Transmission Provider shall include the Network Customer's Network Load in its Transmission System planning and shall, consistent with Good Utility Practice, endeavor to construct and place into service sufficient transmission capacity to deliver the Network Customer's Network Resources to serve its Network Load on a basis comparable to the Transmission Provider's delivery of its own generating and purchased resources to its Native Load Customers. This obligation to construct and place into service sufficient capacity to deliver the Network Customer's Network Resources to serve its Network Load is contingent upon the availability to the Transmission Provider of sufficient appropriations, when needed, and the Transmission Customer's advanced funds.

28.3 Network Integration Transmission Service

The Transmission Provider will provide firm transmission service over its Transmission System to the Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Network Loads on a basis that is comparable to the Transmission Provider's use of the Transmission System to reliably serve its Native Load Customers.

28.4 Secondary Service

The Network Customer may use the Transmission Provider's Transmission System to deliver energy to its Network Loads from resources that have not been designated as Network Resources. Such energy shall be transmitted, on an as-available basis, at no additional charge. Deliveries from resources other than Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under Part II of the Tariff.

28.5 Real Power Losses

Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Network Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are specified in the Service Agreements.

28.6 Restrictions on Use of Service

The Network Customer shall not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) direct or indirect provision of transmission service by the Network Customer to third parties. All Network Customers taking Network Integration Transmission Service shall use Point-To-Point Transmission Service under Part II of the Tariff for any Third-Party Sale which requires use of the Transmission Provider's Transmission System.

29 Initiating Service

29.1 Condition Precedent for Receiving Service

Subject to the terms and conditions of Part III of the Tariff, the Transmission Provider will provide Network Integration Transmission Service to any Eligible Customer provided that: (i) The Eligible Customer completes an Application for service as provided under Part III of the Tariff, (ii) the Eligible Customer and the Transmission Provider complete the technical arrangements set forth in Sections 29.3 and 29.4, (iii) the Eligible Customer executes a Service Agreement pursuant to Attachment F for service under Part III of the Tariff or requests in writing that the Transmission Provider provide service without an executed Service Agreement, and (iv) the Eligible Customer executes a Network Operating Agreement with the Transmission Provider pursuant to Attachment G. If the Transmission Provider and the Network Customer cannot agree on all the terms and conditions of the Network Service Agreement, the Transmission Provider shall commence providing Network Integration Transmission Service subject to the Network Customer's agreeing to: (i) Compensate the Transmission Provider at the existing rate placed in effect pursuant to applicable Federal law and regulations, and (ii) comply with the terms and conditions of the Tariff, including paying the appropriate processing fees in accordance with the terms of Section 29.2. If the Network Customer cannot accept all of the terms and conditions of the offered Service Agreement, the Network Customer may request resolution of the unacceptable terms and conditions under Section 12, Dispute Resolution Procedures, of the Tariff. Any changes resulting from the dispute resolution procedures will be effective upon the date of initial service.

29.2 Application Procedures

An Eligible Customer requesting service under Part III of the Tariff must submit an Application to the Transmission Provider as far as possible in advance of the month in which service is to commence. Unless subject to the procedures in Section 2, Completed Applications for Network Integration Transmission Service will be assigned a priority according to the date and time the Application is received, with the earliest Application receiving the highest priority. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by: (i) Transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time-recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application. A Completed Application for Network Integration Transmission Service shall include an application processing fee. The processing fee shall be calculated using the estimated average number of hours required to process an application. The fee will be posted on the Transmission Provider's OASIS and may change as average costs/per/hour for the Transmission Provider change. This fee does not apply to costs to complete System Impact Studies or Facility Studies or to add new facilities. A Completed Application shall provide all of the information included in 18 CFR § 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the party requesting service;

(ii) A statement that the party requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;

(iii) A description of the Network Load at each delivery point. This description should separately identify and provide the Eligible Customer's best estimate of the total loads to be served at each transmission voltage level, and the loads to be served from each Transmission Provider substation at the same transmission voltage level. The description should include a ten (10) year forecast of summer and winter load and resource requirements beginning with the first year after the service is scheduled to commence;

(iv) The amount and location of any interruptible loads included in the Network Load. This shall include the summer and winter capacity requirements for each interruptible load (had such load not been interruptible), that portion of the load subject to interruption, the conditions under which an interruption can be implemented and any limitations on the amount and frequency of interruptions. An Eligible Customer should identify the amount of interruptible customer load (if any), included in the 10 year load forecast provided in response to (iii) above;

(v) A description of Network Resources (current and 10-year projection), which shall include, for each Network Resource:

—Unit size and amount of capacity from that unit to be designated as Network Resource
—VAR capability (both leading and lagging), of all generators
—Operating restrictions
—Any periods of restricted operations throughout the year
—Maintenance schedules
—Minimum loading level of unit
—Normal operating level of unit
—Any must-run unit designations required for system reliability or contract reasons
—Approximate variable generating cost ($/MWH) for redispatch computations
—Arrangements governing sale and delivery of power to third parties from generating facilities located in the Transmission Provider Control Area, where only a portion of unit output is designated as a Network Resource
—Description of purchased power designated as a Network Resource including source of supply, Control Area location, transmission arrangements and delivery point(s) to the Transmission Provider's Transmission System;

(vi) Description of Eligible Customer's transmission system:

—Load flow and stability data, such as real and reactive parts of the load, lines, transformers, reactive devices and load type, including normal and emergency ratings of all transmission equipment in a load flow format compatible with that used by the Transmission Provider
—Operating restrictions needed for reliability
—Operating guides employed by system operators
—Contractual restrictions or committed uses of the Eligible Customer's transmission system, other than the Eligible Customer's Network Loads and Resources
—Location of Network Resources described in subsection (v) above
—10 year projection of system expansions or upgrades
—Transmission System maps that include any proposed expansions or upgrades
—Thermal ratings of Eligible Customer's Control Area ties with other Control Areas;

(vii) Service Commencement Date and the term of the requested Network Integration Transmission Service. The minimum term for Network Integration Transmission Service is one year.

Unless the Parties agree to a different time frame, the Transmission Provider must acknowledge the request within ten (10) days of receipt. The acknowledgment must include a date by which a response, including a Service Agreement, will be sent to the Eligible Customer. If an Application fails to meet the requirements of this section, the Transmission Provider shall notify the Eligible Customer requesting service within fifteen (15) days of receipt and specify the reasons for such failure. Wherever possible, the Transmission Provider will attempt to remedy deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application without prejudice to the Eligible Customer filing a new or revised Application that fully complies with the requirements of this section. The Eligible Customer will be assigned a new priority consistent with the date of the new or revised Application. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

29.3 Technical Arrangements to be Completed Prior to Commencement of Service

Network Integration Transmission Service shall not commence until the Transmission Provider and the Network Customer or a third party, have completed installation of all equipment specified under the Network Operating Agreement consistent with Good Utility Practice and any additional requirements reasonably and consistently imposed to ensure the reliable operation of the Transmission System. The Transmission Provider shall exercise reasonable efforts, in coordination with the Network Customer to complete such arrangements as soon as practicable taking into consideration the Service Commencement Date.

29.4 Network Customer Facilities

The provision of Network Integration Transmission Service shall be conditioned upon the Network Customer constructing, maintaining and operating the facilities on its side of each delivery point or interconnection necessary to reliably deliver capacity and energy from the Transmission Provider's Transmission System to the Network Customer. The Network Customer shall be solely responsible for constructing or installing all facilities on the Network Customer's side of each such delivery point or interconnection.

29.5 This Section is Intentionally Left Blank

30 Network Resources

30.1 Designation of Network Resources

Network Resources shall include all generation owned, purchased, or leased by the Network Customer designated to serve Network Load under the Tariff. Network Resources may not include resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis. Any owned or purchased resources that were serving the Network Customer's loads under firm agreements entered into on or before the Service Commencement Date shall initially be designated as Network Resources until the Network Customer terminates the designation of such resources.

30.2 Designation of New Network Resources

The Network Customer may designate a new Network Resource by providing the Transmission Provider with as much advance notice as practicable. A designation of a new Network Resource must be made by a request for modification of service pursuant to an Application under Section 29.

30.3 Termination of Network Resources

The Network Customer may terminate the designation of all or part of a generating resource as a Network Resource at any time but should provide notification to the Transmission Provider as soon as reasonably practicable.

30.4 Operation of Network Resources

The Network Customer shall not operate its designated Network Resources located in the Network Customer's or Transmission Provider's Control Area such that the output of those facilities exceeds its designated Network Load, plus non-firm sales delivered pursuant to Part II of the Tariff, plus losses. This limitation shall not apply to changes in the operation of a Transmission Customer's Network Resources at the request of the Transmission Provider to respond to an emergency or other unforeseen condition which may impair or degrade the reliability of the Transmission System.

30.5 Network Customer Redispatch Obligation

As a condition to receiving Network Integration Transmission Service, the Network Customer agrees to redispatch its Network Resources as requested by the Transmission Provider pursuant to Section 33.2. To the extent practical, the redispatch of resources pursuant to this section shall be on a least cost, non-discriminatory basis between all Network Customers, and the Transmission Provider.

30.6 Transmission Arrangements for Network Resources Not Physically Interconnected With the Transmission Provider

The Network Customer shall be responsible for any arrangements necessary to deliver capacity and energy from a Network Resource not physically interconnected with the Transmission Provider's Transmission System. The Transmission Provider will undertake reasonable efforts to assist the Network Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other entity pursuant to Good Utility Practice.

30.7 Limitation on Designation of Network Resources

The Network Customer must demonstrate that it owns or has committed to purchase generation pursuant to an executed contract in order to designate a generating resource as a Network Resource. Alternatively, the Network Customer may establish that execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff.

30.8 Use of Interface Capacity by the Network Customer

There is no limitation upon a Network Customer's use of the Transmission Provider's Transmission System at any particular interface to integrate the Network Customer's Network Resources (or substitute economy purchases) with its Network Loads. However, a Network Customer's use of the Transmission Provider's total interface capacity with other transmission systems may not exceed the Network Customer's Load.

30.9 Network Customer Owned Transmission Facilities

The Network Customer that owns existing transmission facilities that are integrated with the Transmission Provider's Transmission System may be eligible to receive consideration either through a billing credit or some other mechanism. In order to receive such consideration the Network Customer must demonstrate that its transmission facilities are integrated into the plans or operations of the Transmission Provider to serve its power and transmission customers. For facilities constructed by the Network Customer subsequent to the Service Commencement Date under Part III of the Tariff, the Network Customer shall receive credit where such facilities are jointly planned and installed in coordination with the Transmission Provider. Calculation of the credit shall be addressed in either the Network Customer's Service Agreement or any other agreement between the Parties.

31 Designation of Network Load

31.1 Network Load

The Network Customer must designate the individual Network Loads on whose behalf the Transmission Provider will provide Network Integration Transmission Service. The Network Loads shall be specified in the Service Agreement.

31.2 New Network Loads Connected With the Transmission Provider

The Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable of the designation of new Network Load that will be added to its Transmission System. A designation of new Network Load must be made through a modification of service pursuant to a new Application. The Transmission Provider will use due diligence to install any transmission facilities required to interconnect a new Network Load designated by the Network Customer. The costs of new facilities required to interconnect a new Network Load shall be determined in accordance with the procedures provided in Section 32.4 and shall be charged to the Network Customer in accordance with Commission policies.

31.3 Network Load Not Physically Interconnected With the Transmission Provider

This section applies to both initial designation pursuant to Section 31.1 and the subsequent addition of new Network Load not physically interconnected with the Transmission Provider. To the extent that the Network Customer desires to obtain transmission service for a load outside the Transmission Provider's Transmission System, the Network Customer shall have the option of: (1) Electing to include the entire load as Network Load for all purposes under Part III of the Tariff and designating Network Resources in connection with such additional Network Load, or (2) excluding that entire load from its Network Load and purchasing Point-To-Point Transmission Service under Part II of the Tariff. To the extent that the Network Customer gives notice of its intent to add a new Network Load as part of its Network Load pursuant to this section the request must be made through a modification of service pursuant to a new Application.

31.4 New Interconnection Points

To the extent the Network Customer desires to add a new Delivery Point or interconnection point between the Transmission Provider's Transmission System and a Network Load, the Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable.

31.5 Changes in Service Requests

Under no circumstances shall the Network Customer's decision to cancel or delay a requested change in Network Integration Transmission Service (*e.g.*, the addition of a new Network Resource or designation of a new Network Load) in any way relieve the Network Customer of its obligation to pay the costs of transmission facilities constructed by the Transmission Provider and charged to the Network Customer as reflected in the Service Agreement. However, the Transmission Provider must treat any requested change in Network Integration Transmission Service in a non-discriminatory manner. The Transmission Provider will have no obligation to refund any advance of funds expended for purposes of providing facilities for a Network Customer. However, upon receipt of a Network Customer's written notice of such a cancellation or delay, the Transmission Provider will use the same reasonable efforts to mitigate the costs and charges owed to the Transmission Provider as it would to reduce its own costs and charges.

31.6 Annual Load and Resource Information Updates

The Network Customer shall provide the Transmission Provider with annual updates of Network Load and Network Resource forecasts consistent with those included in its Application for Network Integration Transmission Service under Part III of the Tariff. The Network Customer also shall provide the Transmission Provider with timely written notice of material changes in any other information provided in its Application relating to the Network Customer's Network Load, Network Resources, its transmission system or other aspects of its facilities or operations affecting the Transmission Provider's ability to provide reliable service.

32 Additional Study Procedures for Network Integration Transmission Service Requests

32.1 Notice of Need for System Impact Study

After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. In such cases, the Transmission Provider shall within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to which the Eligible Customer shall agree to advance funds to the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its Application shall be deemed withdrawn.

32.2 System Impact Study Agreement and Compensation

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge shall not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the service requests, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 8.

32.3 System Impact Study Procedures

Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify any system constraints and redispatch options, additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System Impact Study the Eligible Customer must execute a Service Agreement or request service without an executed Service Agreement pursuant to Section 29.1, or the Application shall be deemed terminated and withdrawn.

32.4 Facilities Study Procedures

If a System Impact Study indicates that additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to advance funds to the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its Application shall be deemed withdrawn and its deposit shall be returned. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Eligible Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of: (i) The cost of Direct Assignment Facilities to be charged to the Eligible Customer, (ii) the Eligible Customer's appropriate share of the cost of any required Network Upgrades, and (iii) the time required to complete such construction and initiate the requested service. The Eligible Customer shall advance funds to the Transmission Provider for the construction of new facilities, and such advance and construction shall be provided for in a separate agreement. If the construction of new facilities requires the expenditure of Transmission Provider funds, such construction shall be contingent upon the availability of appropriated funds. The Eligible Customer shall have thirty (30) days to execute a construction agreement and a Service Agreement or request service without an executed Service Agreement pursuant to Section 29.1, and provide the required letter of credit or other form of security, or the request no longer will be a Completed Application and shall be deemed terminated and withdrawn.

33 Load Shedding and Curtailments

33.1 Procedures

Prior to the Service Commencement Date, the Transmission Provider and the Network Customer shall establish Load Shedding and Curtailment procedures pursuant to the Network Operating Agreement with the objective of responding to contingencies on the Transmission System. The Parties will implement such programs during any period when the Transmission Provider determines that a system contingency exists and such procedures are necessary to alleviate such contingency. The Transmission Provider will notify all affected Network Customers in a timely manner of any scheduled Curtailment.

33.2 Transmission Constraints

During any period when the Transmission Provider determines that a transmission constraint exists on the Transmission System, and such constraint may impair the reliability of the Transmission Provider's system, the Transmission Provider will take whatever actions, consistent with Good Utility Practice, that are reasonably necessary to maintain the reliability of the Transmission Provider's system. To the extent the Transmission Provider determines that the reliability of the Transmission System can be maintained by redispatching resources, the Transmission Provider will initiate procedures pursuant to the Network Operating Agreement to redispatch all Network Resources and the Transmission Provider's own resources on a least-cost basis without regard to the ownership of such resources. Any redispatch under this section may not unduly discriminate between the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers and any Network Customer's use of the Transmission System to serve its designated Network Load.

33.3 Cost Responsibility for Relieving Transmission Constraints

Whenever the Transmission Provider implements least-cost redispatch procedures in response to a transmission constraint, the Transmission Provider and Network Customers will each bear a proportionate share of the total redispatch cost based on their respective Load Ratio Shares.

33.4 Curtailments of Scheduled Deliveries

If a transmission constraint on the Transmission Provider's Transmission System cannot be relieved through the implementation of least-cost redispatch procedures and the Transmission Provider determines that it is necessary to Curtail scheduled deliveries, the Parties shall Curtail such schedules in accordance with the Network Operating Agreement.

33.5 Allocation of Curtailments

The Transmission Provider shall, on a non-discriminatory basis, Curtail the transaction(s) that effectively relieve the constraint. However, to the extent practicable and consistent with Good Utility Practice, any Curtailment will be shared by the Transmission Provider and Network Customer in proportion to their respective Load Ratio Shares. The Transmission Provider shall not direct the Network Customer to Curtail schedules to an extent greater than the Transmission Provider would Curtail the Transmission Provider's schedules under similar circumstances.

33.6 Load Shedding

To the extent that a system contingency exists on the Transmission Provider's Transmission System and the Transmission Provider determines that it is necessary for the Transmission Provider and the Network Customer to shed load, the Parties shall shed load in accordance with previously established procedures under the Network Operating Agreement.

33.7 System Reliability

Notwithstanding any other provisions of this Tariff, the Transmission Provider reserves the right, consistent with Good Utility Practice and on a not unduly discriminatory basis, to Curtail Network Integration Transmission Service without liability on the Transmission Provider's part for the purpose of making necessary adjustments to, changes in, or repairs on its lines, substations and facilities, and in cases where the continuance of Network Integration Transmission Service would endanger persons or property. In the event of any adverse condition(s) or disturbance(s) on the Transmission Provider's Transmission System or on any other system(s) directly or indirectly interconnected with the Transmission Provider's Transmission System, the Transmission Provider, consistent with Good Utility Practice, also may Curtail Network Integration Transmission Service in order to: (i) Limit the extent or damage of the adverse condition(s) or disturbance(s), (ii) prevent damage to generating or transmission facilities, or (iii) expedite restoration of service. The Transmission Provider will give the Network Customer as much advance notice as is practicable in the event of such Curtailment. Any Curtailment of Network Integration Transmission Service will be not unduly discriminatory relative to the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that the Network Customer fails to respond to established Load Shedding and Curtailment procedures.

34 Rates and Charges

The Network Customer shall pay the Transmission Provider for any Direct Assignment Facilities, Ancillary Services, and applicable study costs, consistent with Federal policy, along with the following:

34.1 Monthly Demand Charge

The Network Customer shall pay a monthly Demand Charge, which shall be determined by multiplying its Load Ratio Share times one twelfth (1/12) of the Transmission Provider's Annual Transmission Revenue Requirement specified in Schedule H.

34.2 Determination of Network Customer's Monthly Network Load

The Network Customer's monthly Network Load is its hourly load (including its designated Network Load not physically interconnected with the Transmission Provider under Section 31.3) coincident with the Transmission Provider's Monthly Transmission System Peak.

34.3 Determination of Transmission Provider's Monthly Transmission System Load

The Transmission Provider's monthly Transmission System load is the Transmission Provider's Monthly Transmission System Peak minus the coincident peak usage of all Firm Point-To-Point Transmission Service customers pursuant to Part II of this Tariff plus the Reserved Capacity of all Firm Point-To-Point Transmission Service customers.

34.4 Redispatch Charge

The Network Customer shall pay a Load Ratio Share of any redispatch costs allocated between the Network Customer and the Transmission Provider pursuant to Section 33. To the extent that the Transmission Provider incurs an obligation to the Network Customer for redispatch costs in accordance with Section 33, such amounts shall be credited against the Network Customer's bill for the applicable month.

34.5 Stranded Cost Recovery

The Transmission Provider may seek to recover stranded costs from the Network Customer in a manner consistent with applicable Federal law and regulations.

35 Operating Arrangements

35.1 Operation Under the Network Operating Agreement

The Network Customer shall plan, construct, operate and maintain its facilities in accordance with Good Utility Practice and in conformance with the Network Operating Agreement.

35.2 Network Operating Agreement

The terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Part III of the Tariff shall be specified in the Network Operating Agreement. The Network Operating Agreement shall provide for the Parties to (i) Operate and maintain equipment necessary for integrating the Network Customer within the Transmission Provider's Transmission System (including, but not limited to, remote terminal units, metering, communications equipment and relaying equipment), (ii) transfer data between the Transmission Provider and the Network Customer (including, but not limited to, heat rates and operational characteristics of Network Resources, generation schedules for units outside the Transmission Provider's Transmission System, interchange schedules, unit outputs for redispatch required under Section 33, voltage schedules, loss factors and other real time data), (iii) use software programs required for data links and constraint dispatching, (iv) exchange data on forecasted loads and resources necessary for long-term planning, and (v) address any other technical and operational considerations required for implementation of Part III of the Tariff, including scheduling protocols. The Network Operating Agreement will recognize that the Network Customer shall either: (i) Operate as a Control Area under applicable guidelines of the North American Electric Reliability Council (NERC) and the applicable regional reliability council, (ii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with the Transmission Provider, or (iii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with another entity, consistent with Good Utility Practice, which satisfies NERC and the applicable regional reliability council requirements. The Transmission Provider shall not unreasonably refuse to accept contractual arrangements with another entity for Ancillary Services. The Network Operating Agreement is included in Attachment G.

35.3 Network Operating Committee

A Network Operating Committee (Committee) shall be established to coordinate operating criteria for the Parties' respective responsibilities under the Network Operating Agreement. Each Network Customer shall be entitled to have at least one representative on the Committee. The Committee shall meet from time to time as need requires, but no less than once each calendar year.

Schedule 1

Scheduling, System Control and Dispatch Service

This service is required to schedule the movement of power through, out of, within, or into a Control Area. This service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located. Scheduling, System Control and Dispatch Service is provided directly by the Transmission Provider if the Transmission Provider is the Control Area Operator or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for Scheduling, System Control and Dispatch Service are to be based on the rates referred to below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The charges for Scheduling, System Control and Dispatch Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Transmission Provider may modify the charges for Scheduling, System Control and Dispatch Service upon written notice to the Transmission

Customer. Any change to the charges to the Transmission Customer for Scheduling, System Control and Dispatch Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies, and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 2

Reactive Supply and Voltage Control From Generation Sources Service

In order to maintain transmission voltages on the Transmission Provider's transmission facilities within acceptable limits, generation facilities under the control of the Control Area operator are operated to produce or absorb reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service must be provided for each transaction on the Transmission Provider's transmission facilities. The amount of Reactive Supply and Voltage Control from Generation Sources Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the Transmission Provider.

Reactive Supply and Voltage Control from Generation Sources Service can be provided directly by the Transmission Provider if the Transmission Provider is the Control Area operator or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for such service will be based upon the rates referred to below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by the Control Area Operator.

The charges for Reactive Supply and Voltage Control from Generation Sources Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Transmission Provider may modify the charges for Reactive Supply and Voltage Control from Generation Sources Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Reactive Supply and Voltage Control from Generation Sources Service shall be as set forth in a subsequent rate schedule promulgated pursuant to the above procedures and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 3

Regulation and Frequency Response Service

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources, generation and interchange, with load and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Transmission Provider (or the Control Area operator that performs this function for the Transmission Provider). The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation. The charges for Regulation and Frequency Response Service are referred to below. The amount of Regulation and Frequency Response Service may be set forth in the Service Agreement. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The charges for Regulation and Frequency Response Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Transmission Provider may modify the charges for Regulation and Frequency Response Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Regulation and Frequency Response Service shall be as set forth in a subsequent rate schedule promulgated pursuant to the above procedures and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 4

Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a Control Area over a single hour. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either obtain this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Energy Imbalance Service obligation. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission Provider shall establish a deviation band of +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s). Parties should attempt to eliminate energy imbalances within the limits of the deviation band within thirty (30) days or within such other reasonable period of time as is generally accepted in the region and consistently adhered to by the Transmission Provider. If an energy imbalance is not corrected within thirty (30) days or a reasonable period of time that is generally accepted in the region and consistently adhered to by the Transmission Provider, the Transmission Customer will compensate the Transmission Provider for such service. Energy imbalances outside the deviation band will be subject to charges to be specified by the Transmission Provider. Compensation for Energy Imbalance Service will be as set forth below.

The compensation for Energy Imbalance Service is set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Transmission Provider may modify the compensation for Energy Imbalance Service upon written notice to the Transmission Customer. Any change to the compensation to the Transmission Customer for Energy Imbalance Service shall be as set forth in a subsequent rate schedule promulgated pursuant to the above procedures and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 5

Operating Reserve—Spinning Reserve Service

Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation. The charges for Spinning Reserve Service are referred to below. The amount of Spinning Reserve Service may be set forth in the Service Agreement. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The charges for Operating Reserve—Spinning Reserve Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Transmission Provider may modify the charges for Operating Reserve—Spinning Reserve Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Operating Reserve—Spinning Reserve Service shall be as set forth in a subsequent rate schedule promulgated pursuant to the above procedures and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 6

Operating Reserve—Supplemental Reserve Service

Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation. The charges for Supplemental Reserve Service are referred to below. The amount of Supplemental Reserve Service may be set forth in the Service Agreement. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The charges for Operating Reserve—Supplemental Reserve Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Transmission Provider may modify the charges for Operating Reserve—Supplemental Reserve Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Operating Reserve—Supplemental Reserve Service shall be as set forth in a subsequent rate schedule promulgated pursuant to the above procedures and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 7

Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider each month for Reserved Capacity pursuant to its rate schedule for Firm Point-to-Point Transmission Service attached to and made a part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Transmission Provider may modify the charges for Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Firm Point-to-Point Transmission Service shall be as set forth in a subsequent rate schedule promulgated pursuant to the above procedures and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Discounts: Three principal requirements apply to discounts for transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from point(s) of receipt to point(s) of delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Schedule 8

Non-Firm Point-To-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider for Non-Firm Point-to-Point Transmission Service pursuant to its rate schedule for Non-Firm Point-to-Point Transmission Service attached to and made a part of the applicable

Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Transmission Provider may modify the charges for Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Firm Point-to-Point Transmission Service shall be as set forth in a subsequent rate schedule promulgated pursuant to the above procedures and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Discounts: Three principal requirements apply to discounts for transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from point(s) of receipt to point(s) of delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Attachment A

Form Of Service Agreement For Firm Point-To-Point Transmission Service

Southwestern intends for future Service Agreements for Firm Point-to-Point Transmission Service to be constituted as follows:

Type 1—Long-Term Firm

Point-to-Point Transmission Service Agreements will be executed for *each* Point-to-Point arrangement, and will consist of the following components:

a. The initial document with signatures of the Parties (Part A), similar to the initial document form suggested in Attachment A of the Pro Forma Tariff published as Appendix B of FERC Order 888–A, with added provisions to include, but not be limited to:

i. Provisions reserving the right to change rates and contract provisions which may be affected by statutory and regulatory requirements imposed on the Transmission Provider, as well as changes in losses and other operational matters which may be affected by changing conditions for operation of the Transmission Provider's Transmission System.

ii. Requirements for conforming to the interchange standards of the North American Electric Reliability Council and the Southwest Power Pool.

iii. Limitations on the Transmission Provider's obligations to provide for deficiencies in Third-Party resources and to notify parties in regard to suspensions or reductions due to the actions of Third Parties.

b. The Specifications for *Long-Term* Firm Transmission Service (Part B), in a form similar to that of the specification document suggested in Attachment A of the Pro Forma Tariff published as Appendix B of FERC Order 888–A, with added provisions to include, but not be limited to:

i. Describing the service from information provided in the Transmission Customer's Completed Application.

ii. Listing of charges, including information on Ancillary Services.

c. The General Provisions Applicable to Transmission Service (Part C), including, but not limited to:

i. Special payment terms including provision for sending payments to a U.S. Treasury lockbox, payment by EFT, and other applicable procedures relating to billing and payment in addition to those provided in the Tariff.

ii. Standard provisions required by a Federal agency in its contracts, such as availability of funds and certain socioeconomic clauses.

iii. Facilities issues including environmental and safety provisions for entry and use, if any, of the Transmission Provider's property by representatives of the Transmission Customer, and provisions related to upgrade of facilities and mutual assistance of the Parties. *These provisions would not be included in any contract with a Transmission Customer to which they are not applicable.*

Type 2—Short-Term Firm

Point-to-Point Transmission Service Agreements will be executed as *enabling agreements* for a specified term under which the Transmission Customer can request *various* specific transactions in accordance with the Tariff during the term of the Agreement, and will consist of the following components:

a. The initial document as described above in 1. (Part A),

b. General Terms and Conditions for Short-Term Firm Transmission Service, (Part B), including, but not limited to:

i. Provision for the Transmission Customer to fill out an Application which lists certain information related to proposed point-to-point arrangements as "various."

ii Procedures for requesting service and submitting schedules for specific transactions under the enabling agreement.

iii Parameters for maximum and minimum periods for requesting Short-Term Firm capacity reservations modeled on Section 18.3 of the Tariff.

iv Listing of charges, including information on Ancillary Services.

c. General Provisions Applicable to Transmission Service (Part C), as described above under Contract Type 1.

Attachment B

Form Of Service Agreement For Non-Firm Point-To-Point Transmission Service

Non-Firm Point-to-Point Transmission Service Agreements will be executed as *enabling agreements* for a specified term under which the Transmission Customer can request a *variety* of transactions for Non-Firm Transmission Service in accordance with the Tariff during the term of the agreement, and will consist of the following components:

1. The initial document with signatures of the Parties (Part A), similar to the initial document form suggested in Attachment B of the Pro Forma Tariff published as Appendix B of FERC Order 888–A, with added provisions to include, but not be limited to:

a. Provisions reserving the right to change rates and contract provisions which may be affected by statutory and regulatory requirements imposed on the Transmission Provider, as well as changes in losses and other operational matters which may be affected by changing conditions for operation of the Transmission Provider's Transmission System.

b. Requirements for conforming to the interchange standards of the North American Electric Reliability Council and the Southwest Power Pool.

c. Limitations on the Transmission Provider's obligations to provide for deficiencies in Third-Party resources and to notify parties in regard to suspensions or reductions due to the actions of Third Parties.

2. The General Terms and Conditions for Non-Firm Transmission Service (Part B), including, but not limited to:

a. Provision for the Transmission Customer to fill out an Application which lists information on proposed point-to-point arrangements as "various."

b. Procedures for requesting service and submitting schedules for individual transactions.

c. Listing of charges, including information on Ancillary Services.

3. The General Provisions Applicable to Transmission Service (Part C), including, but not limited to:

a. Special payment terms including provision for sending payments to a U.S. Treasury lockbox, payment by EFT, and other applicable procedures relating to billing and payment in addition to those provided in the Tariff.

b. Standard provisions required by a Federal agency in its contracts, such as availability of funds and socioeconomic clauses.

c. Facilities issues including environmental and safety provisions for entry and use, if any, of the Transmission Provider's property by representatives of the Transmission Customer, and provisions related to upgrade of facilities and mutual assistance of the Parties. *These provisions would not be included in any contract with a Transmission Customer to which they are not applicable.*

Attachment C

Methodology to Assess Available Transmission Capability

The Transmission Provider is a member of the Southwest Power Pool (SPP), and follows the SPP's approach in the determination of Available Transfer Capability (ATC) and Total Transfer Capability. The SPP does seasonal transfer studies to determine the inter-area transfer capabilities. The methodology uses standard incremental transfer capability techniques that recognize thermal, voltage, and stability limitations as well as contractual limitations. This methodology is based on NERC Criteria, Operating Policies, and Reference Documents related to interchange and transfer capability estimates.

The Transmission Provider will post on the OASIS the values calculated by the SPP. When ATC approaches zero for any interface, the Transmission Provider may do dedicated, off-line studies in accordance with SPP methodology to update the seasonal values of ATC calculated by the SPP.

Attachment D

Methodology for Completing a System Impact Study

The Transmission Provider may require System Impact Studies to determine the feasibility of providing Transmission Service under this Tariff. The System Impact Studies will follow the criteria and procedures as described below. In determining the level of capacity available for new Transmission Service requests, the Transmission Provider may exclude the capacity needed to meet current and reasonably forecasted load of Native Load Customers and Network Customers, existing Firm Point-to-Point Transmission Service customers, previously pending applications for Firm Point-to-Point Transmission Service, and the capacity needed to meet existing contractual obligations.

Point-To-Point Service

The Transmission Provider will do a System Impact Study for a Point-to-Point Transmission Service request by simulating the proposed transaction along with all other contracted and pending uses of the transmission system of equal or greater priority. Criteria will be the same as those used to determine the ATC limits posted on the OASIS.

Network Integration Service

The Transmission Provider will do a System Impact Study for a Network Integration Transmission Service request using the criteria and assessment practices as detailed in Parts 4 and 5 of the Transmission Provider's annual FERC Form 715 submittal.

Attachment E

Index of Point-To-Point Transmission Service Customers

Customer Date of Service Agreement

This Attachment E is intentionally left blank.

Attachment F

Form of Service Agreement For Network Integration Transmission Service

Note: Transmission Provider will not immediately offer Network Integration Transmission Service due to limits in its Transmission System and to concerns relating to its statutory and regulatory requirements to set rates to recover costs and to repay the Federal investment in the generation and transmission system from which it markets Federal power and associated energy as well as point-to-point transmission services. If and when Network Integration Service can be offered, the Transmission Provider will develop a suitable service agreement form which will be constituted as follows:

1. An initial document with signatures of the Parties (Part A), similar to the initial document form suggested in Attachment A of the Pro Forma Tariff published as Appendix B of FERC Order 888–A, with added provisions to include, but not be limited to:

a. Provisions reserving the right to change rates and contract provisions which may be affected by statutory and regulatory requirements imposed on the Transmission Provider, as well as changes in losses and other operational matters which may be affected by changing conditions for operation of the Transmission Provider's Transmission System.

b. Requirements for conforming to the interchange standards of the North American Electric Reliability Council and the Southwest Power Pool.

c. Limitations on the Transmission Provider's obligations to provide for deficiencies in Third-Party resources and to provide redispatching services.

d. Recognition that the Transmission Provider's obligation to construct new or upgraded facilities to provide capacity to meet the Network Customer's loads is specifically contingent on availability of funds from the U.S. Congress.

2. The Specifications for Network Transmission Service (Part B), in a form similar to that of the specification document suggested in Attachment A of the Pro Forma Tariff published as Appendix B of FERC Order 888–A, with added provisions to include, but not be limited to:

a. Describing the service from information provided in the Network Customer's Completed Application.

b. Reading in the separately negotiated Network Operating Agreement (See Attachment G).

c. Detailing the charges associated with the service, including applicable Ancillary Services and penalties for unauthorized use of the service.

d. Methods for computing Real Power Losses and for the Transmission Customer to provide for such losses to the Transmission Provider.

3. A separately negotiated and attached Network Operating Agreement.

4. Transmission Provider's economic basis for determining network service charges.

5. The General Provisions Applicable to Transmission Service (Part C), including, but not limited to:

a. Special payment terms including provision for sending payments to a U.S. Treasury lockbox, payment by EFT, and other applicable procedures relating to billing and payment in addition to those provided in the Tariff.

b. Standard provisions required by a Federal agency in its contracts, such as availability of funds, and socioeconomic clauses.

c. Facilities issues including environmental and safety provisions for

entry and use, if any, of the Transmission Provider's property by representatives of the Transmission Customer, and provisions related to upgrade of facilities and mutual assistance of the Parties.

Attachment G

Network Operating Agreement

To be provided by the Transmission Provider at such time as the Transmission Provider has negotiated or offered a Network Integration Transmission Service Agreement. The terms and conditions under which the Network Customer will be required to operate its facilities and the technical and operational matters associated with the implementation of Network Integration Transmission Service will be specified in a separate Network Operating Agreement and appended to the applicable Service Agreement.

The Network Operating Agreement may include, but not be limited to, provisions addressing the following:

Authorized Representatives of the Parties
Network Operating Committee
Load Following
System Protection
Redispatch to Manage Transmission Constraints
Maintenance of Facilities
Load Shedding
Operation Impacts
Service Conditions
Data, Information and Reports
Metering
Communications
System Regulation and Operating Reserves
Assignment
Notices
Accounting for Transmission Losses
Ancillary Services
Penalties for Unauthorized Use of Transmission Provider's System

Attachment H

Annual Transmission Revenue Requirement For Network Integration Transmission Service

1.0 The Annual Transmission Revenue Requirement for purposes of the Network Integration Transmission Service is proposed to be $_____.

In the event that the Transmission Provider is able to provide Network Integration Transmission Service, the amount provided above will be based on the annualized costs associated with operation and maintainance of the Transmission System and the Transmission Provider's obligation to repay the costs of its transmission facilities. Such amount may be revised annually in accordance with other standard procedures of the Transmission Provider.

The pro rata share of each applicant which may be granted Network Integration Transmission Service will be determined by an algorithm which has not yet been developed.

Attachment I

Index of Network Integration Transmission Service Customers

Customer Date of Service Agreement

This Attachment I is intentionally left blank.

Attachment J

Authorities and Obligations

Southwestern Power Administration (Southwestern) was established in 1943 pursuant to Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890; 16 U.S.C. 825s) and Pub. L. 95–456 (92 Stat. 1230; 16 U.S.C. 825s–3). Southwestern was organized as part of the Department of the Interior, but became part of the Department of Energy pursuant to Section 302 of the Department of Energy Organization Act (91 Stat. 578; 42 U.S.C. 7152) in 1977.

According to the Flood Control Act, Southwestern is to market hydroelectric power and energy generated at U.S. Army Corps of Engineers Dams in excess of project needs "to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles.* * * Preference in the sale of such power and energy shall be given to public bodies and cooperatives." Further, "only such transmission lines and related facilities as may be necessary in order to make the power and energy generated at such projects available in wholesale quantities for sale * * *" may be constructed or acquired to fulfill this mission.

Southwestern markets power and associated energy from hydroelectric generation projects in the States of Arkansas, Missouri, Oklahoma, and Texas to cooperative, municipal, and military customers in those states as well as the States of Kansas and Louisiana. By statute, Southwestern's Transmission System was constructed to enable the integration of Southwestern's hydroelectric power resources to satisfy Southwestern's contractual obligations to its Federal Customers, which have allocations of Federal power. Southwestern sells transmission service using Federally owned or controlled facilities only to the extent that transmission capacity is available in excess of that necessary to reliably deliver Federal power. In order to fulfill its mission, Southwestern will reserve transmission capacity sufficient to deliver Federal power. Accordingly, the Tariff shall apply only to the marketing of such transmission capacity in the system of Southwestern as is excess to the requirements of Southwestern's primary mission.

Southwestern's Federal Customers are somewhat analogous to, and its nearest equivalent of, Native Load Customers as defined in the Tariff. Southwestern is, by the nature of its resources and the provisions of its power sales contracts, a partial requirements supplier only. Southwestern uses its transmission system to integrate its resources to reliably meet contract obligations rather than to meet loads. These distinctions mean, among other things, that Southwestern is not obliged to meet customer loads or to construct facilities to meet loads, and thus has no "utility responsibility." to its Federal Customers. However, for the purposes of the Tariff, Southwestern will consider its Federal Customers as the equivalent of Native Load Customers.

Southwestern is not a jurisdictional public utility under Sections 205 and 206 of the Federal Power Act and is not specifically subject to the requirements of the Federal Energy Regulatory Commission's (FERC or Commission) Final Orders 888 and 888–A. Southwestern is a transmitting utility subject to Section 211 of the Federal Power Act as amended by the Energy Policy Act of 1992. Southwestern is also subject to the reciprocity provisions of FERC Orders 888 and 888–A. The Department of Energy has issued a Power Marketing Administration Open Access Transmission Policy that supports the intent of the FERC Final Rule in Order 888 on Open Access Transmission. This Open Access Transmission Tariff is intended to provide for transmission of non-Federal power on the unused capacity of transmission facilities under the jurisdiction or control of Southwestern in a manner consistent with the spirit and intent of FERC Orders 888 and 888–A.

Southwestern has prepared this Tariff to provide transmission service comparable to that required of jurisdictional public utilities by FERC Orders 888 and 888–A, and to implement the spirit and intent of those Orders consistent with the DOE Policy. An entity desiring Transmission Service from Southwestern must comply with the application procedures outlined therein. The review and approval requirements detailed therein will apply to all requesting parties. Southwestern will perform the necessary studies or assessments for evaluating requests for Transmission Service as set forth in the Tariff. Any facility construction or interconnection necessary to provide transmission service will be subject to Southwestern's Requirements for Interconnection, which are available upon request, and will require that funds necessary for such construction be submitted in advance to Southwestern, subject to Southwestern's authority to receive such funds.

Based on a reasonable level of risk, Southwestern has marketed the maximum practical amount of power from each of its projects, leaving little flexibility for provision of additional power services. Changes in water conditions frequently affect the ability of hydroelectric projects to meet obligations on a short-term basis. The unique characteristics and limitations of the hydroelectric resource caused by changing water conditions may limit Southwestern's ability to provide certain generation-related services, including some Ancillary Services and any redispatching which may require the use of Federal hydro resources.

Southwestern is committed to providing comparable open-access transmission service to any Eligible Customer without discrimination, as has been its practice throughout its history. However, nothing in the Tariff shall alter, amend, or abridge the statutory and regulatory obligations of Southwestern to market Federal Power to Federal Customers and to repay the Federal investment in the projects and facilities from which Southwestern markets power and energy.

Southwestern will provide Firm and Non-Firm Point-to-Point Transmission Service and, if practicable, Network Integration Transmission Service, consistent with the Tariff. The specific terms and conditions for providing transmission service to an Eligible Customer will be set forth in a Service Agreement.

[FR Doc. 97–25333 Filed 9–24–97; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5898–6]

Public Meeting on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a workshop for purposes of information exchange on issues related to developing a national estimate of waterborne disease occurrence. The purpose of the workshop will be to provide a brief review of the Safe Drinking Water Act mandate to develop a national estimate; review and discuss current approaches to developing the national estimate; review and discuss planned and ongoing epidemiological studies and the goals and methodologies of these studies; and discuss approaches for enhancing these studies as well as identifying additional studies that might be useful in improving the national estimate. Experts in epidemiology, biostatistics, public health and related fields will be invited to the workshop to offer their insight.

The meeting will take place on October 9, 1997, from 8:30 a.m. until 5:30 p.m. and October 10, 1997 from 9:00 a.m. until 12:30 p.m., at the Washington National Airport Hilton at 2399 Jefferson Davis Highway, Arlington, VA 22202. The agenda will include discussion of methods for assessing rates of waterborne disease and the economic impact of those diseases. Discussion is expected to focus on the extent to which planned and ongoing studies can be used in developing a national estimate and other potentially viable approaches to developing this national estimate.

EPA is inviting interested members of the public to participate in the meeting, which continues a series of public meetings that the Agency has been holding since last year on issues related to the development of regulations to control pathogens and disinfection byproducts in drinking water. As with all previous meetings in this series, EPA is maintaining an open door policy to allow members of the public to attend. To assist EPA in managing limitations on conference room seating, members of the public who are interested in attending are requested to contact Valerie Blank of EPA's Office of Ground Water and Drinking Water. Members of the public who are interested in additional information about this or other meetings in this series or who would like to be included on the mailing list to receive notice of further meetings in this series are also requested to contact Ms. Blank, who can be reached at 401 M Street, SW, 4607, Washington, DC 20460, (202) 260–8376, blank.valerie@epamail.epa.gov.

Dated: September 19, 1997.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–25504 Filed 9–24–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00224; FRL–5746–4]

Notice of Public Meeting on Establishing a Program for Lead-Based Paint Hazard Evaluation and Reduction Products

AGENCY: Environmental Protection Agency.
ACTION: Notice.

SUMMARY: EPA is announcing a public meeting on September 29, 1997, in Arlington, VA, to take suggestions from a cross-section of stakeholders on the development of a program to carry out the testing and registration of lead-based paint hazard evaluation and reduction products as required under Section 405(f) of the Toxic Substances Control Act (TSCA, 15 U.S.C. Section 2685(f).
DATES: The meeting will take place on Monday, September 29, 1997, beginning promptly at 6:00 p.m. and continuing until 8:00 p.m.
ADDRESSES: The meeting will take place at the Crystal Gateway Marriot Hotel, 1700 Jefferson Davis Highway, Arlington, VA.
FOR FURTHER INFORMATION CONTACT: Darlene Watford, National Program Chemicals Division, (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460, telephone: (202) 260–3989, fax: (202) 260–0001, e-mail: watford.darlene@epamail.epa.gov.
SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X of the Housing and Community Development Act of 1992, became law. Title X amended TSCA by adding a new Title IV, the purpose of which is to reduce the hazards from lead in paint and coatings used in housing, public and commercial buildings, and other structures. Section 405(f) of TSCA stipulates that EPA establish testing criteria, testing protocols, and performance characteristics as necessary to ensure to the greatest extent possible that lead-based paint hazard evaluation and reduction products introduced into commerce are effective for the intended use described by the manufacturer.

Several states have already begun to pass lead laws and regulations which establish lead prevention programs, as well as the infrastructure necessary to support such programs. Many of these programs specify a set of performance standards that must be met by lead

hazard control products to be included on a state's list of registered products, and certified lead abatement contractors must use only products that have been registered in the state. Although most of these state programs are similar, there are some significant differences. As a result, some manufacturers of lead hazard control products fear that registration of their products will be very costly if they have to be tested and approved by each state using different criteria. A federal program could provide a minimal set of consistent requirements to evaluate lead hazard control products, and could be utilized by many, if not all, state and local agencies.

Under section 405(f), EPA plans to establish a national program that provides a mechanism to develop testing protocols, criteria, and performance characteristics for lead-based paint hazard evaluation and reduction products. EPA wishes to activate section 405(f) by obtaining feedback and information from interested parties concerning their suggestions on establishing the program.

II. Participants

Any and all stakeholders (e.g., individuals, or representatives of organizations, state and local governments, or academia) are invited to attend as members of the audience.

III. Draft Approach to Establishing Program

Section 405(f) stipulates that EPA shall establish "appropriate testing criteria, testing protocols, and performance characteristics as are necessary to ensure to the greatest extent possible and consistent with the purposes and policy of this Title [TSCA Title IV], that lead-based paint hazard evaluation and reduction products introduced into commerce . . . are effective for the intended use described by the manufacturer." In general, a product is to be evaluated by subjecting it to a set of standard test methods according to a given protocol. The results of these tests will be compared to performance-based testing criteria established to measure the product's effectiveness in accurately and precisely evaluating lead levels or minimizing the user's exposure to lead-based paint hazards. If a product meets the testing criteria, it will be approved for use as described by the manufacturer and recognized as an EPA-approved product.

EPA is initiating the process of developing a Lead-Based Paint Hazard Evaluation and Reduction Program (LBPHERP) that will define the requirements of and create, an organization to administer the program. The program will also identify the specific classes of products that are currently used for lead-based paint hazard evaluation and reduction, and develop criteria and requirements for testing these products.

EPA plans to focus its efforts on hazard evaluation and reduction products that are used in renovation and remodeling activities. A priority will be placed on products that homeowners will use; however, products used by certified abatement professionals may be covered where applicable and practical. Lead-based paint hazard products that may require testing and registration under section 405(f) include: chemical spot test kits, electrochemical lead paint and/or dust analyzers, encapsulants, chemical paint removers, household cleaners; respirators; mechanical grinders or blasters with shrouds, and HEPA vacuums. At present, most of these products do not have a complete set of test methods, testing protocols, testing criteria, and defined performance characteristics to determine whether the product is effective for its intended use as a lead hazard evaluation or reduction product.

Various Federal agencies, quasi-governmental groups, and private agencies were contacted to solicit input and possible involvement in implementing section 405(f). In addition, test methods and protocols that have been developed are being evaluated to determine if they satisfy EPA testing requirements. Based on this preliminary investigation, it was determined that no single national organization or agency currently addresses the requirements of section 405(f) with respect to the wide variety of products that could potentially fall within the scope of this program. Also, the current state of development of test protocols and testing criteria for these products varies significantly across the classes of products identified.

The ultimate goal of the LBPHERP is to provide regulators, industry, and consumers with a nationally recognized means to reliably assess lead-based paint hazard evaluation and reduction products. Accomplishing this goal will require that products are tested against a set of accepted standards, and that only those products which meet the predetermined performance criteria be considered EPA-registered products. Pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995, Pub. No. 104-113, Voluntary Consensus Boards will be used to develop standards for those products for which test methods or protocols do not yet exist. Once standard test methods and protocols and testing criteria are established, product registration can occur. The registration of a product is intended to confirm that the product conforms to specified standards, and provides the user with explicit or implicit information about the characteristics and performance of the product.

EPA has determined that certain key elements must be considered when establishing the LBPHERP. These elements focus on keeping government costs to a minimum; ensuring that guidelines support existing Title X rules and programs such as section 402, section 403, section 404, and section 1,018; requiring the use of accredited third-party laboratories for product testing; and making results easily accessible to the public. EPA is considering nonprofit or not-for-profit organizations that have expertise in the lead-based paint hazard field to administer the LBPHERP. This organization would be capable of gaining the confidence of interested government authorities, manufacturers, and the public so that they accept and adopt the organization's or group's recommendations and standards. This organization would also utilize independent testing laboratories as required by section 405(f) to test the lead hazard evaluation and reduction products.

Presently, there is no one organization that stands out as the obvious choice to administer the LBPHERP; however, there are groups who may be interested. There are numerous federal agencies, accreditation organizations, standards organizations, nationally recognized lead abatement organizations, national laboratories, contract research centers, and quasi-government organizations which are heavily involved in the lead-based paint hazard evaluation and reduction field, and might welcome the opportunity to become involved in the administration of the LBPHERP. Many configurations of these agencies and organizations could facilitate the LBPHERP.

EPA is considering the position that the LBPHERP should be able to eventually finance itself through fees charged to manufacturers to register their products and maintain this registration.

IV. Topics of Discussion

There are two main topics of discussion that EPA would like to address during this public meeting:

1. What type of organization could best facilitate the lead-based paint hazard evaluation and reduction program and meet the scope of section 405(f)?

2. Which lead hazard reduction products are going to be required to be tested before they can be registered under this program?

There are several factors affecting the first question, such as the cost and size of the program; timeliness of implementation; cost to the government and industry; and acceptance by industry, state regulators, and consumers. The acceptance of a program will depend in part on the expertise of the staff administering the program and the recognition of the organization as an accredited certification/registration body.

Several issues associated with the second question will need to be discussed, such as testing methods, and protocols, development of testing criteria, voluntary consensus standards, cost of testing products, and reciprocity between states.

V. Public Docket

The official record for this notice has been established under docket control number "OPPTS–00224." The record is available for inspection from 12 noon to 4:00 p.m., Monday through Friday, excluding legal holidays. The record is located at: TSCA Docket (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room E–G99, 401 M St., SW., Washington, DC. 20460.

List of Subjects

Environmental protection.

Dated: September 18, 1997

William H. Saunders III,
Director, Office of Pollution Prevention and Toxics.

[FR Doc.97–25500 Filed 9–22–97; 3:06 p.m.]
Billing Code 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–767; FRL–5748–2]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–767, must be received on or before October 27, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Registration Division [PM-13], Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 204, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–767] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket controlnumber [PF–767] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 19, 1997.

James Jones,
Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. AgrEvo USA Company

PP 2F4055, 6F3436, 4F2993, 6F3309

EPA has received a request from AgrEvo USA Company (acting as registered US agent for Hoechst Schering AgrEvo, S. A., Little Falls Centre, 2711 Centerville Road,

Wilmington, DE 19808, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by removing the time limitation for tolerances established for residues of the insecticides and pyrethroid Deltamethrin and Tralomethrin in or on the following raw agricultural commodities: Deltamethrin - cottonseed at 0.04 parts per million (ppm) and cottonseed oil at 0.2 ppm; and Tralomethrin - broccoli at 0.50 ppm, cottonseed at 0.02 ppm, lettuce, head at 1.00 ppm, lettuce, leaf at 3.00 ppm, soybeans at 0.05 ppm, sunflower seed at 0.05 ppm and cottonseed oil at 0.20 ppm. The IUPAC name for deltamethrin is [(1*R*, 3*R*)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester] and for tralomethrin is [(1*R*, 3*S*)3[(1' RS)(1',2',2',2',-tetrabromo-ethyl)]-2,2-dimethylcyclopropane-carboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester]. The tolerances were originally requested in Pesticide Petition Numbers 2F4055, 6F3436, 4F2993, 6F3309. Based on the fact that tralomethrin is rapidly metabolized in plants and animals to deltamethrin, and the toxicological profile of the two compounds is similar, it is appropriate to consider combined exposure assessments for tralomethrin and deltamethrin. EPA has determined that the request contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the permanent tolerance. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Deltamethrin metabolism studies in tomatoes, corn, apples, and cotton demonstrate the same metabolic pathway. Furthermore, plant metabolism studies have been conducted following application of tralomethrin in cotton, corn, cabbage, and tomatoes. These studies have demonstrated that the metabolism of tralomethrin involves debromination to deltamethrin and its isomers. Thus, a similar metabolic pathway has been shown to occur in a variety of crops following either direct application of deltamethrin (cotton, corn, apples, and tomatoes) or in-plant formation of deltamethrin via debromination of applied tralomethrin (tomatoes, cotton, corn, and cabbage). As a result of this substantial information base, it is concluded that the residues of toxicological concern in/on growing crops following application of tralomethrin or deltamethrin are tralomethrin, cis-deltamethrin, and its isomers, trans-deltamethrin and alpha-R-deltamethrin.

2. *Analytical method.* Analytical methods for determining residues of tralomethrin and deltamethrin in the commodities for which registrations have been approved, have been previously submitted to, and reviewed by, the Agency. These methods, based on gas nyhromatography (GLC) equipped with an electron capture detector (ECD) and a DB-1 (or equivalent) capillary column, are used for the determination of tralomethrin, cis-deltamethrin, trans-deltamethrin, and alpha-R-deltamethrin in various raw agricultural, animal derived, and processed commodities. These methods were independently validated and are appropriate for the determination of residues of tralomethrin and deltamethrin in various food and feed commodities after application of these ingredients to target growing crops, and after use in food/feed handling establishments.

3. *Magnitude of residues.* Residues of tralomethrin, deltamethrin, and its metabolites are not expected to exceed the established tolerance levels as a result of the use of these active ingredients on target crops.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral LD_{50} values for deltamethrin in the rat are 66.7 mg/kg for males, 86 mg/kg for females and for tralomethrin 99 mg/kg for males, 157 mg/kg for females when administered in sesame oil. The oral LD_{50} for deltamethrin when administered in aqueous methyl cellulose was greater than 5,000 mg/kg for both sexes. The dermal LD_{50} in rabbits was greater than 2,000 mg/kg for both materials. Inhalation 4–hour LC_{50} values in the rat are 2.2 mg/L for deltamethrin and greater than 0.286 mg/L for tralomethrin.

2. *Genotoxicity.* No indication of genotoxicity was noted in a battery of *in vivo* and *in vitro* studies conducted with either deltamethrin or tralomethrin.

3. *Reproductive and developmental toxicity*— a. *Deltamethrin* A rat developmental toxicity study conducted with deltamethrin indicated a maternal no-observed-effect levels (NOEL) of 3.3 mg/kg/day based on clinical observations, decreased weight gain and mortality. The developmental NOEL was 11 mg/kg/day [highest dose tested] (HDT). In a rabbit developmental toxicity study with deltamethrin, the maternal NOEL was considered to be 10 mg/kg/day based on decreased defecation at 25 and 100 mg/kg/day, and mortality at 100 mg/kg/day. The developmental NOEL was considered to be 25 mg/kg/day based on retarded ossification of the pubic and tail bones at 100 mg/kg (HDT). A three-generation rat reproduction study and a more recent, two-generation rat reproduction study with deltamethrin indicated the NOEL for both parents and offspring was 80 ppm (4–12 mg/kg/day for adults and 18–44 mg/kg/day for offspring) based on clinical signs of toxicity, reduced weight gain and mortality at 320 ppm (HDT).

b. *Tralomethrin.* In a rat developmental toxicity study with tralomethrin the NOEL for maternal and developmental toxicity was judged to be greater than or equal to 18 mg/kg/day (HDT). No evidence of developmental toxicity was observed in either of two rabbit developmental toxicity studies conducted with tralomethrin. In one study, the maternal NOEL was 12.5 mg/kg/day based on mortality while the developmental NOEL was judged to be greater than or equal to 25 mg/kg/day (HDT). In the second study, the maternal NOEL was 8 mg/kg/day based on body weight effects while the developmental NOEL was 32 mg/kg/day (HDT). In a two-generation reproduction study with tralomethrin in rats, the parental NOEL was 0.75 mg/kg/day based on body weight deficits while the NOEL for offspring was 3.0 mg/kg/day, also based on body weight deficits.

4. *Subchronic toxicity*— a. *Deltamethrin.* A 90–day rat oral toxicity study was conducted with deltamethrin which was administered by gavage. The NOEL was judged to be 1.0 mg/kg/day based on reduced body weight gain and slight hypersensitivity. In a more recent 90–day rat dietary study with deltamethrin, the NOEL was judged to be 300 ppm (~23.9 mg/kg/day for males, 30.5 mg/kg/day for females) based on uncoordinated movement, unsteady gait, tremors, increased sensitivity to sound, shakes and spasmodic convulsions. The difference in the NOEL between the two studies is attributed to the different routes of exposure (gavage in oil vs. administered in diet). A 12-week study was conducted with deltamethrin in mice. The NOEL was 300 ppm (~61.5 mg/kg/day in males and 77.0 mg/kg/day in females) based on chronic contractions, convulsions, poor condition, decreased weight gain and mortality. Two 13–week dog studies were conducted with deltamethrin. In the first study, beagle dogs were administered deltamethrin by capsule using PEG 200 as a vehicle. The NOEL for this study was 1 mg/kg/day based on tremors, unsteadiness, jerking movements, salivation, vomiting, liquid feces and/or dilatation of the pupils. In the second study, deltamethrin was administered by capsule without a vehicle to beagle dogs. The NOEL for this study was 10 mg/kg/day based on unsteady gait, tremors, head shaking, vomiting and salivation. The difference in toxicity between the two studies is attributed to the enhanced absorption resulting from the use of PEG 200 as a vehicle in the first study. A 21–day dermal toxicity study was conducted with deltamethrin in rats. The NOEL for systemic toxicity was determined to be 1,000 mg/kg/day. In a subchronic inhalation study, rats were exposed to aerosolized deltamethrin for 6 hours per day, 5 days per week, for a total of 14 days over 3 weeks. Based on slightly decreased body weights and neurological effects at higher dose levels, it was concluded that 3 µg/l was the NOEL for systemic effects in this study.

b. *Tralomethrin.* Tralomethrin was administrated by gavage in corn oil to rats for 13 weeks. Based on mortality, decreased activity and motor control, soft stools, labored breathing and significantly lower absolute and relative mean liver weights, the NOEL was considered to be 1 mg/kg/day. Tralomethrin was administered by capsule to beagle dogs for 13 weeks. The NOEL for this study was 1.0 mg/kg/day based on refusal of milk supplement, tremors, exaggerated patellar response, unsteadiness and uncoordinated movement. A 21-day dermal toxicity study was conducted with tralomethrin on rats. No systemic effects were observed, therefore, the systemic NOEL for this study was 1,000 mg/kg/day.

5. *Chronic toxicity*— a. *Deltamethrin.* Deltamethrin was administered in the diet to beagle dogs for 2 years. No treatment-related effects were observed and the NOEL was judged to be 40 ppm (~1.1 mg/kg/day). In a more recent study, deltamethrin was administered by capsule (without a vehicle) to beagle dogs for 1–year. The NOEL in this study was considered to be 1 mg/kg/day based on clinical signs, decreased food consumption and changes in several hematology and blood chemistry parameters. Two rat chronic toxicity/oncogenicity studies were conducted with deltamethrin. In the first study, the test substance was administered via the diet to rats for 2 years. The NOEL for this study was 20 ppm (~1 mg/kg/day) based on slightly decreased weight gain. In a more recent study, deltamethrin was administered to rats in the diet for 2 years. The NOEL for this study was considered to be 25 ppm (~1.1 and 1.5 mg/kg/day for males and females, respectively), based on neurological signs, weight gain effects and increased incidence and severity of eosinophilic hepatocytes and/or balloon cells. No evidence of carcinogenicity was noted in either study. Two mouse oncogenicity studies were conducted with deltamethrin. In the first study, deltamethrin was administered in the diet for 2 years. No adverse effects were observed and the NOEL was judged to be 100 ppm (~12 and 15 mg/kg/day, respectively, for males and females). In a more recent study, deltamethrin was administered in the diet to mice for 97 weeks. The NOEL was considered to be 1,000 ppm (~15.7 and 19.6 mg/kg/day) based on a higher incidence of poor physical condition and a slight transient weight reduction. There was no evidence of oncogenicity in either study.

b. *Tralomethrin.* Tralomethrin was administered to beagle dogs by capsule for 1–year at initial dosages of 0, 0.75, 3.0 and 10.0 mg/kg/day. Due to trembling, ataxia, prostration and convulsions, the high dosage was lowered to 8 mg/kg/day at study week 4 and lowered again to 6 mg/kg/day on study week 14. On the fourteenth week of study, the 0.75 mg/kg/day dosage was raised to 1.0 mg/kg/day. Based on body weight changes, convulsions, tremors, ataxia and salivation, the NOEL for this study was considered to be 1 mg/kg/day. Tralomethrin was administered by gavage to rats for 24 months. The NOEL for this study was 0.75 mg/kg/day based on salivation, uncoordinated movement, inability to support weight on limbs and decreased body weight parameters. No evidence of carcino-genicity was observed. A 2–year mouse oncogenicity study was conducted with tralomethrin administered by gavage. The NOEL was judged to be 0.75 mg/kg/day based on higher incidences of dermatitis and mortality, salivation, uncoordinated involuntary movements and aggressiveness. No evidence of oncogenicity was observed.

6. *Animal metabolism*— a. *Deltamethrin.* The absorption of deltamethrin appears to be highly dependent upon the route and vehicle of administration. Once absorbed, deltamethrin is rapidly and extensively metabolized and excreted, primarily within the first 48 hours.

b. *Tralomethrin.* Tralomethrin is rapidly metabolized to deltamethrin after debromination. The metabolic pattern of the debrominated tralomethrin is exactly the same as that of the metabolic pattern of deltamethrin.

7. *Neurotoxicity.* Acute delayed neurotoxicity studies in hens were conducted for both deltamethrin and tralomethrin. In both cases, the study results were negative indicating that neither material causes delayed neurotoxicity.

8. *Endocrine effects.* No special studies have been conducted to investigate the potential of deltamethrin or tralomethrin to induce estrogenic or other endocrine effects. However, the standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects, yet no such effects were detected. Thus, the potential for deltamethrin or tralomethrin to produce any significant endocrine effects is considered to be minimal.

C. Aggregate Exposure

Based on the fact that tralomethrin is rapidly metabolized in plants and animals to deltamethrin, and the toxicological profile of the two compounds is similar, it is appropriate to consider combined exposure assessments for tralomethrin and deltamethrin. Deltamethrin and tralomethrin are broad spectrum insecticides used to control pests of crops, ornamental plants and turf, and domestic indoor and outdoor (including dog collars), commercial, and industrial food use areas. Thus, aggregate non-occupational exposure would include exposures resulting from non-food uses in addition to consumption of potential residues in food and water. Exposure via drinking water is expected to be negligible since deltamethrin binds tightly to soil and rapidly degrades in water.

1. *Dietary exposure*— a. *Food.* Food tolerances have been established (with expiration dates of November 15, 1997), for residues of tralomethrin and/or deltamethrin and its metabolites in or on a variety of raw agricultural commodities. These tolerances, in support of registrations, currently exist for residues of tralomethrin on broccoli, cottonseed, head lettuce, leaf lettuce, soybeans, sunflower seed, and cottonseed oil. Also, such tolerances, in support of registrations, currently exist for deltamethrin on cottonseed and cottonseed oil. Additionally, tolerances which are not time-limited have been established for tralomethrin to support its use in food/feed handling establishments, and for deltamethrin on tomatoes and concentrated tomato products to support the importation of tomato commodities treated with deltamethrin. Further, a food/feed

handling establishment use, and associated tolerances, is pending for deltamethrin. Potential acute exposures from food commodities were estimated using a Tier 3 acute dietary risk assessment (Monte Carlo Analysis) following EPA guidance. Potential chronic exposures from food commodities under the established food and feed additive tolerances for deltamethrin and tralomethrin, plus the pending tolerances for deltamethrin associated with use in food/feed handling areas, were estimated using NOVIGEN's DEEM (Dietary Exposure Evaluation Model). This chronic risk assessment was conducted using anticipated residues based on field trial or monitoring data, percent crop treated, and percent food handling establishments treated.

b. *Drinking water.* Tralomethrin and deltamethrin are immobile in soil and, therefore, will not leach into groundwater. Additionally, due to the insolubility and lipophilic nature of deltamethrin and tralomethrin, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore not contributing to potential dietary exposure from drinking water. A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (much less than 0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using Standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible.

2. *Non-dietary exposure.* As noted above, deltamethrin and tralomethrin are broad spectrum insecticides registered for use on a variety of food and non-food agricultural commodities. Additionally, registrations are held for non-agricultural applications including turf and lawn care treatments, broadcast carpet treatments (professional use only), indoor fogger, spot, crack and crevice treatments, insect baits, lawn and garden sprays and indoor and outdoor residential, industrial and institutional sites including those for Food/Feed Handling Establishments.

To evaluate non-dietary exposure, the "flea infestation control" senario was chosen to represent a plausible but worst case non-dietary (indoor and outdoor) non-occupational exposure. This scenario provides a situation where deltamethrin and/or tralomethrin is commonly used and they can be used concurrently for a multitude of uses, e.g., spot and/or broadcast treatment of infested indoor surfaces such as carpets and rugs, treatment of pets and treatment of the lawn. This hypothetical situation provides a very conservative, upper bound estimate of potential non-dietary exposures. Consequently, if health risks are acceptable under these conditions, the potential risks associated with other more likely scenarios would also be acceptable.

Because tralomethrin is rapidly metabolized to deltamethrin, and the toxicology profiles of deltamethrin and tralomethrin are virtually identical, a non-dietary and aggregate (non-dietary + chronic dietary) exposure/risk assessment has been conducted for the combination of both active ingredients. The total exposure to both materials was expressed as "deltamethrin equivalents" and these were compared to the toxicology endpoints identified for deltamethrin.

C. Cumulative Effects

When considering a tolerance, the Agency must consider "available information" concerning the cumulative effects of a particular pesticides residues and "other substances that have a common mechanism of toxicity". AgrEvo USA Company, acting as registered US agent for Hoechst Schering AgrEvo SA, believes that "available information" in this context includes not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments.

Further, AgrEvo does not have, at this time, available data to determine whether tralomethrin and/or deltamethrin have a common mechanism of toxicity with other substances. For the purposes of this tolerance action, therefore, no assumption has been made that tralomethrin and/or deltamethrin have a common mechanism of toxicity with other substances.

AgrEvo USA Company, acting as registered US agent for Hoechst Schering AgrEvo SA, will submit information for EPA to consider concerning potential cumulative effects of deltamethrin and/or tralomethrin consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997,) and other EPA publications pursuant to the Food Quality Protection Act (FQPA).

D. Safety Determination

1. *U.S. population.* The toxicity and residue data base for deltamethrin and tralomethrin are considered to be valid, reliable and essentially complete according to existing regulatory requirements. No evidence of oncogenicity has been observed for either compound. For acute exposures, the toxicology endpoint from the deltamethrin rat development toxicity study, 3.3 mg/kg/day, is used. For chronic exposures to deltamethrin and tralomethrin, the Reference Dose (RfD) of 0.01 mg/kg bodyweight/day established for deltamethrin based on the NOEL from the 2–year rat feeding study and a 100-fold safety factor to account for interspecies extrapolation and intraspecies variation is used.

For the overall U.S. population, acute dietary exposure at the 99.9th percentile results in a Margin of Exposure (MOE) of 5,382; the MOE for the 99th percentile is 16,661; and at the 95th percentile the MOE is 57,470. For the overall US population, chronic dietary exposure results in a utilization of 0.2 percent of the reference dose. Using an upper bound estimate of potential non-dietary exposures for a worst case scenario (flea treatment) results in an MOE of 160,000 for adults. Utilizing the scenario of chronic dietary exposure plus an upper bound estimate of potential non-dietary exposure from a worst case scenario (flea treatment), it is shown that for aggregate exposure to deltamethrin and tralomethrin there is an MOE of 83,000 for adults. There is generally no concern for MOE greater than 100. For chronic exposure, there is generally no concern for exposure below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

In conclusion, there is reasonable certainty that no harm will result to the U.S. population, in general, from dietary or aggregate exposure to either deltamethrin and/or tralomethrin.

2. *Infants and children.* Data from developmental toxicity studies in rats and rabbits, and multigeneration reproduction studies in rats are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposure to the pesticide. None of these studies conducted with deltamethrin or tralomethrin indicated developmental or reproductive effects as a result of exposure to these materials.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects in children is complete. Although no indication of increased susceptibility to younger animals was noted in any of the above studies, or in the majority of studies with other pyrethroids, several recent publications have reported that deltamethrin is more toxic to neonate and weanling animals than to adults. However, a joint industry group currently investigating this issue was unable to reproduce these findings. Furthermore, the RfD (0.01 mg/kg/day) that has been established for deltamethrin is already more than 1,000-fold lower than the lowest NOEL from the developmental and reproduction studies. Therefore, the RfD of 0.01 mg/kg/day is appropriate for assessing chronic aggregate risk to infants and children and an additional uncertainty factor is not warranted. Also, the NOEL of 3.3 mg/kg/day from the rat developmental toxicity study is appropriate to use in acute dietary, short term non-dietary, and aggregate exposure assessments.

For the population subgroup described as non-nursing infants, less than 1 year old, the MOE for acute dietary exposure at the 99.9th percentile is 13,853; at the 99th percentile the MOE is 74,022; and at the 95th percentile the MOE is 663,629. For the population subgroup described as children 1–6 years old, the MOE for acute dietary exposure is 2,300 for the 99.9th percentile; at the 99th percentile the MOE is 10,409; and at the 95th percentile the MOE is 42,070. For non-nursing infants, chronic dietary exposure results in a utilization of 0.3 percent of the reference dose, and for children 1–6 years old 0.4 percent of the reference dose is utilized. Using an upper bound estimate of potential non-dietary exposures for a worst case scenario (flea treatment) results in an MOE of 6,100 for infants less than 1 year old, and an MOE of 6,600 for children 1–6 years old. Utilizing the scenario of chronic dietary exposure plus an upper bound estimate of potential non-dietary exposure from a worst case scenario (flea treatment) it is shown that for aggregate exposure to deltamethrin and tralomethrin, there is an MOE of 5,800 for infants less than 1–year old, and an MOE of 6,100 for children 1-6 years old. There is generally no concern for MOE s greater than 100. For chronic exposure, there is generally no concern for exposure below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

In summary, there is reasonable certainty that no harm will result to infants and children from aggregate exposure to either deltamethrin or tralomethrin.

E. International Tolerances

The proposed/established CODEX maximum residue levels (MRL) and for deltamethrin are as follows: cotton at 0.05 ppm and food/feed handling uses at 0.05 ppm. As far as can be determined at this time, no CODEX MRL's are established or proposed for tralomethrin.

F. Conclusions

The existing tolerances for deltamethrin and tralomethrin do not pose a significant risk to human health, including that of children, and are in compliance with the requirements of the FQPA of 1996. Therefore, the time limitations associated with these tolerances can be removed. (John Hebert)

2. Bayer Corporation

PP 4F3046, 9F3731, 3F4204, 4F4309, 4F4313, 2F4137, 4H5427, 9H5574, 3H5670, 4H5686, 4H5687

EPA has received a request regarding pesticide petitions (PP 4F3046, 9F3731, 3F4204, 4F4309, 4F4313, 2F4137, 4H5427, 9H5574, 3H5670, 4H5686, 4H5687) from Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64210 to remove the time limitations on the established tolerances at 40 CFR § 180.436, § 185.1250 and § 186.1250 for the insecticide cyfluthrin, [cyano[4-fluoro-3-phenoxyphenyl]-methyl-3-[2,2-dicloroethenyl]-2,2-dimethyl- cyclopropanecarboxylate] in or on the raw agricultural commodities alfalfa, forage, at 5.0 ppm; alfalfa, hay, at 10.0 ppm; aspirated grain fractions at 300 ppm; carrots at 0.2 ppm; cattle, fat, at 1.0 ppm; cattle, meat, at 0.4 ppm; cattle, meat by-products (mbyp) at 0.4 ppm; corn, forage (sweet), at 15.0 ppm; corn, fodder (sweet), at 30 ppm; corn (sweet, K+CWHR), at 0.05 ppm; cottonseed at 1.0 ppm; cottonseed, oil, at 2.0 ppm; cottonseed, hulls, at 2.0 ppm; citrus, whole fruit, at 0.2 ppm; citrus oil, at 0.3 ppm; citrus dried pulp, at 0.3 ppm; eggs at 0.01 ppm; goats, fat, at 1.0 ppm; goats, meat, at 0.4 ppm; goats, meat by-products (mbyp) at 0.4 ppm; hogs, fat, at 1.0 ppm; hogs, meat, at 0.4 ppm; hogs, meat by-products (mbyp) at 0.4 ppm; horses, fat, at 1.0 ppm; horses, meat, at 0.4 ppm; horses, meat by-products (mbyp) at 0.4 ppm; milkfat, at 15.0 ppm (representing 0.5 ppm in whole milk); peppers, at 0.5 ppm; poultry, fat, at 0.01 ppm; poultry, meat, at 0.01 ppm; poultry, meat by-products (mbyp) at 0.01 ppm; radishes at 1.0 ppm; sheep, fat, at 1.0 ppm; sheep, meat, at 0.4 ppm; sheep, meat by-products (mbyp) at 0.4 ppm; sorghum, fodder, at 5.0 ppm; sorghum, forage, at 2.0 ppm; sorghum, grain at 4.0 ppm, sunflower, forage, at 1.0 ppm; sunflower, seed, at 0.02 ppm; sugarcane, at 0.05 ppm; sugarcane, molasses, at 0.2 ppm; tomatoes, at 0.2 ppm; tomato, concentrated products, at 0.5 ppm; and tomato, pomace (wet and dry) at 5.0 ppm. All data requested by EPA have been submitted. Therefore, a request for unconditional registration and removal of the time limitations on established tolerances is being made.

Consistent with section 408(d) of FFDCA, as recently amended by the Food Quality Protection Act, Bayer submitted a summary and authorization for the summary to be published in the **Federal Register** in a notice of receipt of the request. The summary represents the views of Bayer; EPA is in the process of evaluating the request. Consistent with section 408(d)(3), EPA is including the summary as a part of this notice of filing. EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting the request.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cyfluthrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radio labeled cyfluthrin in various crops all showing similar results. The residue of concern is cyfluthrin.

2. *Analytical method.* Adequate analytical methodology (gas/liquid chromatography with an electron capture detector) is available for enforcement purposes.

3. *Magnitude of residues.* Cyfluthrin is the active ingredient in the registered end-use product Baythroid 2 Emulsifiable Pyrethroid Insecticide, EPA Reg. No. 3125–351. Baythroid 2 is registered for use on alfalfa, carrots,

citrus, cotton, peppers, radishes, sorghum, sugarcane, sweet corn, sunflowers and tomatoes.

Tolerances to support these uses were proposed in pesticide petitions 4F3046, 9F3731, 3F4204, 4F4309, 4F4313, 2F4137, and 4F4313 and food/feed additive petitions 4H5427, 9H5574, 3H5670, 4H5686, and 4H5687. Residue data covering all the uses associated with these petitions have been previously submitted to EPA for review and have been found by EPA to support the establishment of the tolerances. Consequently, regulations establishing these tolerances were promulgated in response to these petitions. See [53 FR 30676] (cottonseed), [60 FR 28353] (carrots, radishes, peppers and tomatoes), [60 FR 28353] (sugarcane), [61 FR 10678] (alfalfa, sunflowers, and sweet corn), [61 FR 39883] (sorghum), and [62 FR 25518] (citrus).

B. Toxicological Profile

The database for cyfluthrin is current and complete. Toxicology data cited in support of these tolerances include:

1. *Acute toxicity.* There is a battery of acute toxicity studies for cyfluthrin supporting an overall toxicity Category II.

2. *Genotoxicty.* Mutagenicity tests were conducted, including several gene mutation assays (reverse mutation and recombination assays in bacteria and a Chinese hamster ovary (CHO)/HGPRT assay); a structural chromosome aberration assay (CHO/sister chromatid exchange assay); and an unscheduled DNA synthesis assay in rat hepatocytes. All tests were negative for genotoxicity.

3. *Reproductive and developmental toxicity.* An oral developmental toxicity study in rats with a maternal and fetal NOEL of 10 milligrams/kilogram of body weight/day (mg/kg bw/day) (highest dose tested).

An oral developmental toxicity study in rabbits with a maternal NOEL of 20 mg/kg bw/day and a maternal Lowest Effect Level (LEL) of 60 mg/kg bw/day, based on decreased body weight gain and decreased food consumption during the dosing period. A fetal NOEL of 20 mg/kg bw/day and a fetal LEL of 60 mg/kg bw/day were also observed in this study. The LEL was based on increased resorptions and increased postimplantation loss.

A three-generation reproduction study in rats with systemic toxicity NOELs of 7.5 and 2.5 mg/kg bw/day for parental animals and their offspring, respectively. At higher dose levels, the body weights of parental animals and their offspring were reduced.

4. *Subchronic toxicity.* A subchronic toxicity feeding study using rats demonstrated a NOEL of 22.5 mg/kg bw/day, the highest dose tested.

A 6–month toxicity feeding study in dogs established a NOEL of 5 mg/kg bw/day. The LEL was 15 mg/kg bw/day based on clinical signs and reduced thymus weights.

5. *Chronic toxicity.* A 12–month chronic feeding study in dogs established a NOEL of 4 mg/kg bw/day. The lowest effect level (LEL) for this study is established at 16 mg/kg bw/day, based on slight ataxia, increased vomiting, diarrhea and decreased body weight.

A 24–month chronic feeding/carcinogenicity study in rats demonstrated a NOEL of 2.5 mg/kg bw/day and LEL of 6.2 mg/kg bw/day, based on decreased body weights in males, decreased food consumption in males, and inflammatory foci in the kidneys in females.

A 24–month carcinogenicity study in mice was conducted. Under the conditions of the study there were no carcinogenic effects observed. A 24–month chronic feeding/carcinogenicity study in rats was conducted. There were no carcinogenic effects observed under the conditions of the study.

6. *Animal metabolism.* A metabolism study in rats showed that cyfluthrin is rapidly absorbed and excreted, mostly as conjugated metabolites in the urine, within 48 hours. An enterohepatic circulation was observed.

7. *Metabolite toxicology.* No toxicology data have been required for cyfluthrin metabolites. The residue of concern is cyfluthrin.

8. *Endocrine effects.* There is no evidence of endocrine effects in any of the studies conducted with cyfluthrin, thus, there is no indication at this time that cyfluthrin causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure—Food.* Dietary exposure was estimated using Novigen's Dietary Exposure Evaluation Model (DEEMa) software; results from field trial and processing studies; consumption data from the USDA Continuing Surveys of Food Intake by Individuals (CSFIIs), conducted from 1989 through 1992; and information on the percentages of the crop treated with Cyfluthrin.

Cyfluthrin is registered for use in alfalfa, citrus, sweet corn, cotton, sorghum, sunflower, sugarcane, carrots, peppers, radishes and tomatoes. In addition, it has an import tolerance for hops. Various formulations are registered for use in food handling establishments and in combination with another active ingredient, for use in field corn, pop corn and sweet corn.

Chronic dietary exposure estimates for the overall U.S. population were 0.5% of the Reference dose (RfD) (0.006 mg/kg bw/day). For the most highly exposed population subgroup, children 1 to 6 years of age, the exposure was estimated to be 0.000062 mg/kg bw/day, or 0.8% of the RfD. Acute dietary exposures were estimated for the overall US population, females 13 years and older, children, ages 1–6 and 7–12 years, infants, non-nursing and nursing. The exposure was compared to the NOEL of 20 mg/kg bw/day to estimate the Margins of Exposures (MOEs).

For the overall U.S. population the 95th, 99th and 99.9th percentile of exposure the MOEs were calculated as 29,981; 9,519; and 3,658 respectively.

For women aged 13 years and older the 95th, 99th and 99.9th percentile of exposure the MOEs were calculcated as 45,996; 20,103 and 10,011 respectively.

Lastly, for the potentially highest exposed population subgroup, non-nursing infants, the 95th, 99th and 99.9th percentile of exposure to the MOEs were calculated at 16,107; 3,072; and 1,343, respectively.

2. *Drinking water.* Cyfluthrin is immobile in soil, therefore, will not leach into groundwater. Additionally, due the insolubility and lipophilic nature of cyfluthrin, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore not contributing to potential dietary exposure from drinking water.

A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at 2 meters are essentially zero (much less than 0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using Standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 52 parts per trillion. Concentration in actual drinking water would be much lower. Based on these analyses, the contribution of water to the dietary risk estimate is negligible.

3. *Non-dietary exposure.* Non-occupational exposure to cyfluthrin may occur as a result of inhalation or contact from indoor residential, indoor commercial, and outdoor residential uses. Pursuant to the requirements of FIFRA as amended by the Food Quality Protection Act of 1996, non-dietary and aggregate risk analyses for cyfluthrin were conducted. The analyses include evaluation of potential non-dietary acute application and post-application exposures. Non-occupational, non-dietary exposure was assessed based on the assumption that a flea infestation control scenario represents a "worst case" scenario. For the flea control infestation scenario indoor fogger, and professional residential turf same day treatments were included for cyfluthrin. Deterministic (point values) were used to present a worse case upper-bound estimate of non-dietary exposure. The non-dietary exposure estimates were expressed as systemic absorbed doses for a summation of inhalation, dermal, and incidental ingestion exposures. These worst-case non-dietary exposures were aggregated with chronic dietary exposures to evaluate potential health risks that might be associated with cyfluthrin products. The chronic dietary exposures were expressed as an oral absorbed dose to combine with the non-dietary systemic absorbed doses for comparison to a systemic absorbed dose (NOEL). Results for each potential exposed subpopulation (of adults, children 1–6 years, and infants <1 year) were compared to the systemic absorbed dose NOEL for cyfluthrin to provide estimates of MOE.

The large MOEs for cyfluthrin clearly demonstrate a substantial degree of safety. The total non-dietary MOEs are 3,800, 2,700, and 2,500 for adults, children (1–6 years), and infants (<1 year), respectively. The aggregate MOE for adults is approximately 3,800 and the MOEs for infants and children exceed 2,500.

The non-dietary methods used in the analyses can be characterized as highly conservative. This is due to the conservatism inherent in the calculation procedures and input assumptions. An example of this is the conservatism inherent in the jazzercise over representation of residential post-application exposures. It is important to acknowledge that these MOEs are likely to significantly underestimate actual MOEs due to a variety of conservative assumptions and biases inherent in the derivatization of exposure by this method. Therefore, it can be concluded that large MOEs associated with potential non-dietary and aggregate exposures to cyfluthrin will result in little or no health risks to exposed persons. The aggregate risk analysis demonstrates compliance with the health-based requirements of the Food Quality Protection Act of 1996 and supports the continued registration and use of residential, commercial, and agricultural products containing cyfluthrin.

D. Cumulative Effects

Further, Bayer does not have, at this time, available data to determine whether cyfluthrin has a common mechanism of toxicity with other substances. For the purposes of this tolerance action, therefore, no assumption has been made that cyfluthrin has a common mechanism of toxicity with other substances.

Bayer will submit information for EPA to consider concerning potential cumulative effects of cyfluthrin consistent with the schedule established by EPA in the **Federal Register** of August 4, 1997, (62 FR 42020) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population.* Based on the exposure assessments described above and on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to cyfluthrin from all uses will utilize less than 1% percent of the RfD for chronic dietary exposures and that MOEs in excess of 1,000 exist for aggregate exposure to cyfluthrin for non-occupational exposure. EPA generally has no concerns for exposures below 100 percent of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Margins of exposure of 100 or more (300 for infants and children) also indicate an adequate degree of safety. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to cyfluthrin residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of cyfluthrin, the data from developmental studies in both rat and rabbit and a two-generation reproduction study in the rat can be considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

The toxicology data which support these tolerances include:

An oral developmental toxicity study in rats with a maternal and fetal NOEL of 10 mg/kg bw/day (HDT).

An oral developmental toxicity study in rabbits with a maternal NOEL of 20 mg/kg bw/day and a maternal LEL of 60 mg/kg bw/day, based on decreased body weight gain and decreased food consumption during the dosing period. A fetal NOEL of 20 mg/kg bw/day and a fetal LEL of 60 mg/kg bw/day were also observed in this study. The LEL was based on increased resorptions and increased postimplantation loss.

An oral developmental toxicity study performed with beta-cyfluthrin, the resolved isomer mixture of cyfluthrin, has been submitted to the Agency and is currently under review.

A developmental toxicity study in rats exposed via inhalation to liquid aerosols of cyfluthrin revealed developmental toxicity, but only in the presence of maternal toxicity. The developmental NOEL was 0.46 mg/m^3 on the basis of reduced placental and fetal weights, and delayed ossification. The NOEL for overt maternal toxicity was < 0.46 mg/m^3, the lowest dose tested (LDT).

A three-generation reproduction study in rats with systemic toxicity NOELs of 7.5 and 2.5 mg/kg bw/day for parental animals and their offspring, respectively. At higher dose levels, the body weights of parental animals and their offspring were reduced. Another multiple-generation reproduction study in rats has been submitted to the Agency and is currently under review.

The Agency used the rabbit developmental toxicity study with a maternal NOEL of 20 mg/kg bw/day to assess acute dietary exposure and determine a MOE for the overall U.S. population and certain subgroups. Since this toxicological endpoint pertains to developmental toxicity the population group of concern for this analysis was women aged 13 and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. The Agency calculated the MOE to be over 600. Generally, MOE's greater than 100 for data derived from animal studies are regarded as showing no appreciable risk.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal effects and the completeness of the toxicity database.

The results of the three-generation study in rats provided evidence suggesting that, with respect to effects of cyfluthrin on body weight, pups were more sensitive than adult rats. Thus, the Agency determined that an additional 3–fold uncertainty factor (UF) should be used in risk assessments to ensure adequate protection of infants and children.

Generally, EPA considers MOEs of at least 100 to indicate an adequate degree of safety. With an additional 3× uncertainty factor, this would be 300 for infants and children. Using the exposure assessments described above and based on the described toxicity data aggregate exposure to infants and children indicate a MOE in excess of 2,500. Thus, it can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyfluthrin residues.

3. *Conclusions.* The available data indicate that there is reasonable certainty of no harm from the aggregate exposure from all currently registered uses of cyfluthrin. Thus, consistent with the provisions of the FFDCA as amended August 3, 1996, the time limitations on established cyfluthrin tolerance should be removed.

F. International Tolerances

Codex maximum residue levels (MRLs) are established for residues of cyfluthrin on milk (0.01 mg/kg); cottonseed (0.05 mg/kg); peppers, sweet (0.2 mg/kg); and tomatoes (0.5 mg/kg). (Stephanie Willett)

3. DuPont Agricultural Products

PP–7F2013

EPA has received a request from DuPont Agricultural Products, P. O. Box 80038, Wilmington, DE 19880–0038 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by removing the time limitation for a tolerance established for residues of the insecticide and pyrethroid fenvalerate, including the *s,s*-enriched isomer esfenvalerate (Asana® XL Insecticide), ((*S*)-cyano-(3-phenoxyphenyl)methyl (*S*)-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity cottonseed at 0.2 parts per million (ppm). The tolerance was originally requested in PP–7F2013. EPA has determined that the request contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism and chemical nature of residues of fenvalerate in plants is adequately understood. The fate of fenvalerate has been extensively studied using radioactive tracers in plant and animal metabolism/nature of the residue studies previously submitted to the Agency. These studies have demonstrated that the parent compound is the only residue of toxicological significance.

2. *Analytical method.* There is a practical analytical method utilizing electron-capture gas chromatography with nitrogen phosphorous detection available for enforcement with a limit of detection that allows monitoring food with residues at or above tolerance levels.

3. *Magnitude of residues.* Tolerances are based on the sum of all isomers of fenvalerate. Fenvalerate is a racemic mixture of four isomers (about 25% each). This product was registered as Pydrin® . However since 1992, an *S,S*-isomer enriched formulation, Asana® (esfenvalerate), has been the only fenvalerate formulation sold in the U.S. for agricultural use. Since the *S,S*-isomer is the insecticidally active isomer, the use rate for Asana® is four times lower than that for Pydrin® . A petition is pending (PP–4F4329), to convert tolerances (still to be expressed as the sum of all isomers) based on the use rates for Asana®. Bridging residue studies have shown Asana® residues to be 3–4 times lower than Pydrin® residues.

EPA has established a tolerance of 0.2 ppm for fenvalerate on cottonseed. Magnitude of residue and processing studies support this tolerance. This request is for the removal of the time limitation currently imposed on the tolerance of 0.2 ppm for fenvalerate on cottonseed.

B. Toxicological Profile

The following studies have been submitted to EPA:

1. *Acute toxicity.* A rat acute oral study on esfenvalerate technical has an LD_{50} of 87.2 milligram (mg)/kilogram (kg). A rabbit acute dermal study on esfenvalerate has an LD_{50} of >2,000 mg/kg. Acute inhalation on technical grade active ingredient (a.i.) waived due to negligible vapor pressure. A primary eye irritation test using esfenvalerate in the rabbit showed mild irritation (conjunctivitis) that cleared by day 7. A primary dermal irritation test using esfenvalerate in the rabbit which showed minimal irritation that reversed within 72 hours after treatment. A dermal sensitization test on esfenvalerate in guinea pigs which showed no sensitization.

2. *Genotoxicty.* Esfenvalerate was not mutagenic in reverse mutation assays in Salmonella and *E. Coli in vitro* assay in Chinese hamster lung cells. Esfenvalerate did not induce chromosome aberrations in an *in vitro* assay in Chinese hamster ovary cells. Esfenvalerate did not induce micronuclei in bone marrow of mice given up to 150 mg/kg intraperitoneally. Esfenvalerate did not induce unscheduled DNA synthesis in HeLa cells.

3. *Reproductive and developmental toxicity.* In a pilot developmental study in the rat with doses of 0, 1, 2, 3, 4, 5, and 20 mg/kg/day esfenvalerate maternal clinical signs of abnormal gait or mobility occurred at 4 mg/kg/day and above. In a developmental study in the rat with doses of 0, 2.5, 5, 10, and 20 mg/kg/day esfenvalerate by gavage maternal signs observed at 2.5 mg/kg/day were erratic jerking and extension of forelimbs, rapid side-to-side head movement, and excessive grooming. There was no maternal No-Observed-Effect-Level (NOEL) in the main study but a NOEL of 2 mg/kg/day was established on the pilot study. There were no fetal or developmental effects in either study at 20 mg/kg/day, the highest dose tested. Therefore, the fetal/developmental NOEL was ≥20 mg/kg/day.

In a pilot developmental study in the rabbit with doses of 0, 2, 3, 4, 4.5, 5, and 20 mg/kg/day esfenvalerate by gavage. The maternal NOEL was 2 mg/kg/day based on excessive grooming at 3 mg/kg/day and above. In a developmental study in the rabbit with doses of 0, 3, 10, and 20 mg/kg/day esfenvalerate by gavage there was no maternal NOEL in the main study, but a maternal NOEL of 2 mg/kg/day was established in the pilot study. There were no fetal or developmental effects in either study at the highest dose tested. Therefore, the fetal/developmental NOEL was ≥20 mg/kg/day.

A two-generation feeding study with esfenvalerate in the rat at dietary levels of 0, 75, 100, or 300 ppm. The high dietary concentration was lowered to 150 ppm for the second generation. Very mild body weight effects and sores at 75 ppm in both generations were considered secondary effects caused by scratching related to skin stimulation from dermal exposure. Therefore 75 ppm (4.2 mg/kg/day for first generation parental males, 5.6 mg/kg/day for first generation parental females, 6.0 mg/kg/day for second generation parental males, and 7.3 mg/kg/day for second generation parental females) was considered an No-Observed-Adverse-Effect-Level (NOAEL) for both adult rats and their offspring. Effects were observed in adults and pups of both generations at 100 ppm and above. Pups were no more sensitive than adult animals.

4. *Subchronic toxicity.* A 90–day feeding study in rats was conducted at 0, 75, 100, 125, and 300 ppm esfenvalerate with a NOEL of 125 ppm (6.3 mg/kg/day). This study provided intermediate dose levels to supplement a 90–day feeding study in rats conducted at 0, 50, 150, 300 and 500 ppm esfenvalerate with a NOEL of 50 ppm (2.5 mg/kg/day) based on jerky leg movements at 150 ppm (7.5 mg/kg/day) and above.

A 90–day feeding study in mice was conducted at 0, 50, 150, and 500 ppm esfenvalerate and 2,000 ppm fenvalerate with a NOEL of 50 ppm esfenvalerate (10.5 mg/kg/day) based on lower glucose and triglycerides at 150 ppm. Neurologic symptoms were observed with 500 ppm esfenvalerate and 2,000 ppm fenvalerate.

A 3–month subchronic study in dogs is satisfied by a 1–year oral study in dogs, in which the NOEL was 200 ppm (5 mg/kg/day).

A 21–day dermal study in rabbits with fenvalerate was conducted at 100, 300, and 1,000 mg/kg/day with an NOAEL of 1,000 mg/kg/day.

5. *Chronic toxicity.* In a 1–year study in which dogs were fed 0, 25, 50, or 200 ppm esfenvalerate with no treatment related effects at any dietary level the NOEL was 200 ppm (5 mg/kg/day). An effect level for dietary administration of esfenvalerate for dogs of 300 ppm had been established earlier in the 2–week pilot study used to select dose levels for the chronic-dog study.

In a 20–month study with fenvalerate in mice fed 0, 10, 30, 100, and 300 ppm the NOEL was 30 ppm (– 6 mg/kg/day) based on red blood cell effects and granulomatous changes at 100 ppm. Fenvalerate was not carcinogenic at any concentration.

In a 18–month study in mice fed 0, 35, 150, and 350 ppm esfenvalerate. Mice fed the 350 ppm dose were sacrificed within the first two months of the study, after excessive morbidity and mortality due to self-trauma induced by pharmacological effects related to skin stimulation. Therefore, data collected from the 350 ppm group were not used in the evaluation of the oncogenic potential of esfenvalerate. The NOEL was 35 ppm (4.29 and 5.75 mg/kg/day for males and females, respectively) based on lower body weight and body-weight gain at 150 ppm. Esfenvalerate did not produce carcinogenicity.

In a 2–year study with fenvalerate in rats fed 1, 5, 25, and 250 ppm a 1,000 ppm group was added to establish an effect level. The NOEL was 250 ppm (12.5 mg/kg/day). At 1,000 ppm, hind limb weakness, lower body weight, and higher organ-to-body weight ratios were observed. Fenvalerate was not carcinogenic at any concentration.

EPA has classified esfenvalerate in Group E—evidence of noncarcinogenicity for humans.

6. *Animal metabolism.* After oral dosing with fenvalerate, the majority of the administered radioactivity was eliminated in the initial 24 hours. The metabolic pathway involved cleavage of the ester linkage followed by hydroxylation, oxidation, and conjugation of the acid and alcohol moieties.

7. *Metabolite toxicology.* The parent molecule is the only moiety of toxicological significance appropriate for regulation in plant and animal commodities.

8. *Endocrine effects.* Estrogenic effects have not been observed in any studies conducted on fenvalerate or esfenvalerate. In subchronic or chronic studies there were no lesions in reproductive systems of males or females. In the recent reproduction study with esfenvalerate, full histopathological examination of the pituitary and the reproductive systems of males and females was conducted. There were no compound-related gross or histopathological effects. There were also no compound-related changes in any measures of reproductive performance including mating, fertility, or gestation indices or gestation length in either generation. There have been no effects on offspring in developmental toxicity studies.

C. Aggregate Exposure

1. *Dietary exposure.* For purposes of assessing dietary exposure, chronic and acute dietary assessments have been conducted using all existing and pending tolerances for esfenvalerate. The toxicological endpoints used in both dietary assessments are derived from maternal NOEL's of 2.0 mg/kg/day from rat and rabbit teratology studies. There were no fetal effects in these studies.

2. *Food.* A chronic dietary exposure assessment using anticipated residues and monitoring data and adjusting for percent crop treated, found the percentages of the Reference Dose (RfD) utilized by the most sensitive sub-population (children 1–6 years) to be 5.2%. Chronic exposure for the overall U.S. population was 2.1% of the RfD. This assessment included pending tolerances and all food tolerances for incidental residues from use in food handling establishments.

A Tier 3 acute dietary assessment indicated the most sensitive sub-population was children 1–6 years with Margin of Exposures (MOEs) of 352, 200, and 103 at the 95th, 99th, and 99.9th percentile of exposure, respectively. The MOEs for nursing infants are 410, 199, and 151 at the 95th, 99th, and 99.9th percentile of exposure, respectively. The MOEs for non-nursing infants are 661, 270, and 134 at the 95th, 99th, and 99.9th percentile of exposure, respectively. The MOEs for the general population are 742, 352, and 170 at the 95th, 99th, and 99.9th percentile of exposure, respectively. This analysis used field trial data to estimate exposure and market share information for the percent of crop treated. It used Monte Carlo modeling and appropriate processing factors for processed food and distribution analysis. Food handling establishment commodities are not relevant to this type of analysis and EPA methodology does not include them in Tier 3 exposure modeling.

3. *Drinking water.* Esfenvalerate is immobile in soil and, therefore, will not leach into groundwater. Additionally, due to the insolubility and lipophilic nature of esfenvalerate, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore not contributing to potential dietary exposure from drinking water.

A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (much less than 0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pound model since drinking water derived from surface water would be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible.

4. *Non-dietary exposure.* Esfenvalerate is registered for non-crop uses including spray treatments in and around commercial and residential areas, treatments for control of ectoparasites on pets, home care products including foggers, pressurized sprays, crack and crevice treatments, lawn and garden sprays, and pet and pet bedding sprays. For the non-agricultural

products, the very low amounts of active ingredient they contain, combined with the low vapor pressure (1.5×10^{-9} millimeters (mm) Mercury at 25°C) and low dermal penetration, would result in minimal inhalation and dermal exposure.

Individual non-dietary risk exposure analyses were conducted using a flea infestation scenario that included pet spray, carpet and room treatment, and lawn care, respectively. The pet spray product assessment indicated MOEs of 740,000, 2,600, and 2,500 for adults, children 1–6 years, and children < 1 year, respectively. The carpet and room treatment assessment indicated MOEs of 110,000, 4,500, and 4,200 for adults, children 1–6 years, and children < 1 year, respectively. The lawn care assessment indicated MOEs of 700,000, 26,000, and 24,000 for adults, children 1–6 years, and children < 1 year, respectively.

5. *Aggregate exposure— Dietary and non-dietary.* Based on the toxicity endpoints selected for esfenvalerate, absorbed doses were combined and compared to the relevant systemic NOEL for estimating MOEs.

The non-dietary risk analysis MOEs combined with the chronic dietary risk analysis MOEs indicated aggregate MOEs of 4,400, 860, and 1,000 for adults, children 1–6 years, and children < 1 year, respectively.

It is important to acknowledge that these MOEs are likely to significantly underestimate the actual MOEs due to a variety of conservative assumptions and biases inherent in the exposure assessment methods used for their derivation. Therefore, it can be concluded that the potential non-dietary and dietary aggregate exposures for esfenvalerate are associated with a substantial degree of safety. The aggregate risk analyses demonstrate compliance with the health-based requirements of the Food Quality Protection Act of 1996 (FQPA) (7 U.S.C. 136 note) and supports the continued registration and use of residential, agricultural, and commercial products containing this a.i.

D. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity". At this time, available methodologies do not exist to resolve the complex scientific issues concerning common mechanism of toxicity of pyrethroids in a meaningful way. DuPont intends to submit information for EPA to consider concerning potential cumulative effects of esfenvalerate consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997)(FRL–5734–6) and other EPA publications pursuant to the FQPA.

In consideration of potential cumulative effects of esfenvalerate and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by esfenvalerate would be cumulative with those of other chemical compounds. In addition, since esfenvalerate does not appear to produce a toxic metabolite produced by other substances; only the potential risks of esfenvalerate have been considered in this assessment of its aggregate exposure.

E. Safety Determination

Both the chronic and acute toxicological endpoints are derived from maternal NOEL's of 2.0 mg/kg/day in developmental studies in rats and rabbits. There were no fetal effects. In addition, no other studies conducted with fenvalerate or esfenvalerate indicate that immature animals are more sensitive than adults. Therefore, the safety factor used for protection of adults is fully appropriate for the protection of infants and children; no additional safety factor is necessary.

1. *U.S. population.* A chronic dietary exposure assessment using anticipated residues, monitoring information, and percent crop treated indicated the percentage of the RfD utilized by the general population to be 2.1%. There is generally no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

For acute exposure, a MOE of greater than 100 is considered an adequate MOE. A Tier 3 acute dietary exposure assessment found the general population to have MOE's of 742, 352, 170 at the 95th, 99th, and 99.9th percentile of exposure, respectively. These values were generated using actual field trial residues and market share data for percentage of crop treated. These results depict an accurate exposure pattern at an exaggerated daily dietary exposure rate.

The aggregate exposure to use of esfenvalerate as pet spray, carpet treatment, lawn care, and in the diet indicated an MOE of 4,400 for adults. Therefore, there is a reasonable certainty that no harm will result from chronic dietary, acute dietary, non-dietary, or aggregate exposure to esfenvalerate residues.

2. *Infants and children.* A chronic dietary exposure assessment found the percentages of the RfD utilized by the most sensitive sub-population to be 5.2% for children 1–6 years. The acute dietary exposure assessment found the most sensitive sub-population to be children 1–6 years with MOEs of 352, 200, and 103 at the 95th, 99th, and 99.9th percentile of exposure, respectively. Nursing infants had MOEs of 410, 199, and 151 at the 95th, 99th, and 99.9th percentile of exposure, respectively. Non-nursing infants had MOEs of 661, 270, and 134 at the 95th, 99th, and 99.9th percentile of exposure, respectively. The aggregate exposure to use of esfenvalerate as pet spray, carpet treatment, lawn care, and in the diet indicated an MOE of 860 for children 1–6 years and an MOE of 1,000 for children < 1 year.

Thus, there is reasonable certainty that no harm to infants and children will result from chronic dietary, acute dietary, non-dietary, or aggregate exposure to esfenvalerate residues.

F. International Tolerances

Codex Maximum Residue Levels (MRL's) have been established for residues of fenvalerate on a number of crops that also have U.S. tolerances. Several of these MRL's are different than the proposed U.S. tolerances for esfenvalerate. Therefore, some harmonization of these maximum residue levels is desirable. (John Hebert)

4. FMC Corporation

PP 2F2623, 4F2986, 3F2824, 7F3498, and 4F3011

EPA has received a request regarding pesticide petitions (PP 2F2623, 4F2986, 3F2824, 7F3498, and 4F3011) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. The request proposes to remove any time limitations on established tolerances for residues of the insecticide zeta-cypermethrin (*s*-Cyano(3-phenoxyphenyl)methyl (±) *cis, trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodities cottonseed at 0.5 ppm, pecans 0.05 ppm, lettuce, head at 10.0 ppm, onions, bulb at 0.10 ppm and cabbage at 2.0 ppm (established at 40 CFR 180.418). These tolerances were established under (PP) 2F2623, 4F2986, 3F2824, 7F3498, and 4F3011. EPA has determined that the request contains data or information regarding the elements set forth in

section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the requests. Additional data may be needed before EPA rules on the requests.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cypermethrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances Gas Chromatography with Electron Capture Detection (GC/ECD).

3. *Magnitude of residues.* Crop field trial residue data from studies conducted at the maximum label rates for cotton, pecans, head lettuce, bulb onions, and cabbage show that the established cypermethrin tolerances on cottonseed of 0.5 ppm, pecans 0.05 ppm, lettuce, head at 10.0 ppm, onions, bulb at 0.10 ppm and cabbage at 2.0 ppm, will not be exceeded when the zeta-cypermethrin products labeled for these uses are used as directed.

B. Toxicological Profile

1. *Acute toxicity.* For the purposes of assessing acute dietary risk, FMC has used the NOEL of 0.5 mg/kg/day based on the NOEL of 1.0 mg/kg/day from the cypermethrin chronic toxicity study in dogs and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOEL of this study of 5.0 mg/kg/day was based on gastrointestinal disturbances observed in the first week of the study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicity.* The following genotoxicity tests were all negative: *in vivo* chromosomal aberration in rat bone marrow cells; *in vitro* cytogenic chromosome aberration; unscheduled DNA synthesis; CHO/HGPTT mutagen assay; weakly mutagenic: gene mutation (Ames).

3. *Reproductive and developmental toxicity.* No evidence of additional sensitivity to young rats was observed following pre- or postnatal exposure to zeta-cypermethrin.

a. A two-generation reproductive toxicity study with zeta-cypermethrin in rats demonstrated a NOEL of 7.0 mg/kg/day and a LOEL of 27.0 mg/kg/day for parental/systemic toxicity based on body weight, organ weight, and clinical signs. There were no adverse effects in reproductive performance. The NOEL for reproductive toxicity was considered to be > 45.0 mg/kg/day (the highest dose tested).

b. A developmental study in rats demonstrated a maternal NOEL of 12.5 mg/kg/day and a LOEL of 25 mg/kg/day based on decreased maternal body weight gain, food consumption and clinical signs. There were no signs of developmental toxicity at 35.0 mg/kg/day, the highest dose level tested.

c. A developmental study with cypermethrin in rabbits demonstrated a maternal NOEL of 100 mg/kg/day and a LOEL of 450 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 700 mg/kg/day, the highest dose level tested.

4. *Subchronic toxicity—Short- and intermediate-term toxicity.* The systemic NOEL of 2.5 mg/kg/day based on the systemic NOEL of 5.0 mg/kg/day from the cypermethrin chronic toxicity study in dogs and a correction factor of two to account for the biologically active isomer would also be used for short- and intermediate-term MOE calculations (as well as acute, discussed in (1) above). This NOEL was based on neurotoxic clinical signs observed in the first week of treatment of the study.

5. *Chronic toxicity*—a. The RfD has been established at 0.0050 mg/kg/day. This RfD is based on a cypermethrin chronic toxicity study in dogs with a NOEL of 1.0 mg/kg/day, based on gastrointestinal disturbances observed at the LOEL of 5.0 mg/kg/day during the first week of the study; an uncertainty factor of 200 is used to account for the differences in the percentage of the biologically active isomer.

b. Cypermethrin is classified as a Group C chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in female mice; assignment of a Q^* has not been recommended.

6. *Animal metabolism.* The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oxidation.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine Disruption.* No special studies investigating potential estrogenic or other endocrine effects of cypermethrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—a. *Food.* Tolerances have been established for the residues of the insecticide zeta-cypermethrin, in or on a variety of raw agricultural commodities. Tolerances, in support of registrations, currently exist for residues of zeta-cypermethrin on cottonseed; pecans; lettuce, head; onions, bulb; and cabbage and livestock commodities of cattle, goats, hogs, horses, and sheep. For the purposes of assessing the potential dietary exposure for these existing tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated as follows:

b. *Acute exposure and risk.* Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC has used the NOEL of 0.5 mg/kg/day based on the NOEL of 1.0 mg/kg/day from the cypermethrin chronic toxicity study in dogs and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOEL of this study of 5.0 mg/kg/day was based on gastrointestinal disturbances observed in the first week of the study.

This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the margins of exposure (MOE) are significantly greater than the EPA standard of 100 for all subpopulations.

The 95th percentile of exposure for the overall U.S. population was estimated to be 0.000528 mg/kg/day (MOE of 947); 99th percentile 0.001746 mg/kg/day (MOE of 286); and 99.9th percentile 0.004069 mg/kg/day (MOE of 123).

The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.000560 mg/kg/day (MOE of 892); 99th percentile 0.000885 mg/kg/day (MOE of 565); and 99.9th percentile 0.001260 mg/kg/day (MOE of 397).

The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.000207 mg/kg/day (MOE of 2,417); 99th percentile 0.000569 mg/kg/day (MOE of 879); and 99.9th percentile 0.001442 mg/kg/day (MOE of 347).

The 95th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.000607 mg/kg/day (MOE of 824); 99th percentile 0.000925 mg/kg/day (MOE of 540); and 99.9th percentile 0.001190 mg/kg/day (MOE of 420).

The 95th percentile of exposure for children 1 to 6 years old and 7 to 12 years old (the most highly exposed population subgroup) was estimated to be, respectively, 0.000740 mg/kg/day (MOE of 676) and 0.000596 mg/kg/day (MOE of 839); 99th percentile 0.001856 mg/kg/day (MOE of 269) and 0.002047 mg/kg/day (MOE 244); and 99.9th percentile 0.005021 mg/kg/day (MOE of 100) and 0.004843 (MOE of 103). Therefore, FMC concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

c. *Chronic exposure and risk.* The acceptable reference dose (RfD) of 0.0050 mg/kg/day for zeta-cypermethrin is based on a NOEL of 1.0 mg/kg/day from the cypermethrin chronic dog study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern were based on gastrointestinal disturbances observed in the first week of the study at the LOEL of 5.0 mg/kg/day. A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above RfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC).

The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000017 mg/kg body weight (bwt)/day and utilize 0.3 percent of the RfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) and nursing infants (<1 year) are estimated to be 0.000011 mg/kg/day and 0.000002 mg/kg/day and utilizes 0.2 percent and 0 percent of the RfD, respectively. The ARC for children 1–6 years old and children 7–12 years old (subgroups most highly exposed) are estimated to be 0.000027 mg/kg bwt/day and 0.000022 mg/kg bwt/day and utilizes 0.5 percent and 0.4 percent of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 percent of the RfD. Therefore, FMC concludes that the chronic dietary risk of cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

2. *Drinking water.* Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into groundwater. Other data show that cypermethrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in groundwater at depths of 1 and 2 meters are essentially zero (<<0.001 parts per billion).

Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 parts per billion. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

3. *Non-dietary exposure.* Zeta-cypermethrin is registered for agricultural crop applications only, therefore non-dietary exposure assessments are not warranted.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicology database, the acceptable reference dose (RfD) for zeta-cypermethrin is 0.0005 mg/kg/day, based on a NOEL of 1.0 mg/kg/day and a LOEL of 5.0 mg/kg/day from the cypermethrin chronic dog study and an uncertainty factor of 200. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into an analysis to estimate the Anticipated Residue Contribution (ARC) for 26 population subgroups.

The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000017 mg/kg body weight (bwt)/day and utilize 0.3 percent of the RfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) and nursing infants (<1 year) are estimated to be 0.000011 mg/kg/day and 0.000002 mg/kg/day and utilizes 0.2 percent and 0 percent of the RfD, respectively. The ARC for children 1–6 years old and children 7–12 years old (subgroups most highly exposed) are estimated to be 0.000027 mg/kg bwt/day and 0.000022 mg/kg bwt/day and utilizes 0.5 percent and 0.4 percent of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 percent of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the aggregate risk assessment, does not appear to be of concern.

For the overall U.S. population, the calculated margins of exposure (MOE) at the 95th percentile was estimated to be 947; 286 at the 99th percentile; and 123 at the 99.9th percentile.

For all infants < 1 year old, the calculated margins of exposure (MOE) at the 95th percentile was estimated to be 892; 565 at the 99th percentile; and 397 at the 99.9th percentile.

For nursing infants < 1 year old, the calculated margins of exposure (MOE) at the 95th percentile was estimated to be 2,417; 879 at the 99th percentile; and 347 at the 99.9th percentile.

For non-nursing infants < 1 year old, the calculated margins of exposure (MOE) at the 95th percentile was estimated to be 824; 540 at the 99th percentile; and 420 at the 99.9th percentile. For the most highly exposed population subgroups, children 1–6 years old and children 7–12 years old, the calculated MOEs at the 95th percentile were estimated to be, respectively, 676 and 839; 269 and 244 at the 99th percentile; and 100 and 103 at the 99.9th percentile. Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to zeta-cypermethrin.

2. *Infants and children*— a. *General.* In assessing the potential for additional sensitivity of infants and children to residues of zeta-cypermethrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a two-generation reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats to zeta-cypermethrin or rabbits to cypermethrin *in utero* and/or postnatal exposure to zeta-cypermethrin or cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database.

b. *Developmental toxicity studies.* In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the highest doses tested (35.0 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOEL in each study; the maternal NOEL was established at 12.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

c. *Reproductive toxicity study.* In the two-generation reproduction study in rats, offspring toxicity (body weight) and parental toxicity (body weight, organ weight, and clinical signs) was observed at 27.0 mg/kg/day and greater. The parental systemic NOEL was 7.0 mg/kg/day and the parental systemic LOEL was 27.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 45.0 mg/kg/day, highest dose tested.

d. *Pre- and post-natal sensitivity*— i. *Pre-natal.* There was no evidence of developmental toxicity in the studies at the highest doses tested in the rat (35.0 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

ii. *Post-natal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

F. Conclusion

Based on the above, FMC concludes that reliable data support use of the standard 100–fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1 percent of the RfD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

Subchronic toxicity— Short- and intermediate-term toxicity. The systemic NOEL of 2.5 mg/kg/day based on the systemic NOEL of 5.0 mg/kg/day from the cypermethrin chronic toxicity study in dogs and a correction factor of two to account for the biologically active isomer would also be used for short- and intermediate-term MOE calculations (as well as acute, discussed in (1) above). This NOEL was based on neurotoxic clinical signs observed in the first week of treatment of the study.

G. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of zeta-cypermethrin in or on cotton, pecans, lettuce, head, onions, bulb, or cabbage. (Stephanie Willett)

5. FMC Corporation

PP 2F2623, 4F2986, 3F2824, 7F3498, 4F3011, 4F4291

EPA has received a request regarding (PP 2F2823, 4F2986, 3F2824, 7F3498, 4F3011, 4F4291) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. The request proposes to remove any time limitations on established tolerances for residues of the insecticide cypermethrin (±-alpha -Cyano(3-phenoxyphenyl)methyl (±) *cis, trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodities cottonseed at 0.5 ppm, pecans 0.05 ppm, lettuce, head at 10.0 ppm, onions, bulb at 0.10 ppm, cabbage at 2.0 ppm, *Brassica*, head and stem at 2.0 ppm and *Brassica*, leafy at 14.0 ppm (established at 40 CFR 180.418). These tolerances were established under [PP] 2F2623, 4F2986, 3F2824, 7F3498, 4F3011, and 4F4291. EPA has determined that the request contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the requests. Additional data may be needed before EPA rules on the requests.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cypermethrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection - GC/ECD).

3. *Magnitude of residues.* Crop field trial residue data from studies conducted at the maximum label rates for cotton, pecans, head lettuce, bulb onions, cabbage, *Brassica*, head and stem, and *Brassica*, leafy show that the established cypermethrin tolerances on cottonseed of 0.5 ppm, pecans 0.05 ppm, lettuce, head at 10.0 ppm, onions, bulb at 0.10 ppm, cabbage at 2.0 ppm, *Brassica*, head and stem at 2.0 ppm and *Brassica*, leafy at 14.0 ppm will not be exceeded when the cypermethrin products labeled for these uses are used as directed.

B. Toxicological Profile

1. *Acute toxicity.* For the purposes of assessing acute dietary risk, FMC has used the NOEL of 1.0 mg/kg/day from the chronic toxicity study in dogs. The LOEL of this study of 5.0 mg/kg/day was based on gastrointestinal disturbances observed in the first week of the study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicty.* The following genotoxicity tests were all negative:

gene mutation (Ames); chromosome aberration in Chinese hamster bone marrow cells; host mediated assay in mice; dominant lethal assay in mice.

3. *Reproductive and developmental toxicity.* No evidence of additional sensitivity to young rats or rabbits was observed following pre- or postnatal exposure to cypermethrin.

a. A three-reproductive toxicity study in rats demonstrated a NOEL of 2.5 mg/kg/day and a LOEL of 7.5 mg/kg/day for parental/systemic toxicity based on decreased body weight gain in both sexes. There were no adverse effects in reproductive performance. The NOEL for reproductive toxicity was considered to be 37.5 mg/kg/day, the highest dose level tested.

b. A developmental study in rats demonstrated a maternal NOEL of 17.5 mg/kg/day and a LOEL of 35 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 70 mg/kg/day, the highest dose level tested.

c. A developmental study in rabbits demonstrated a maternal NOEL of 100 mg/kg/day and a LOEL of 450 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 700 mg/kg/day, the highest dose level tested.

4. *Subchronic toxicity.* Short- and intermediate-term toxicity. The systemic NOEL of 5.0 mg/kg/day from the chronic toxicity study in dogs is also used for short- and intermediate-term MOE calculations (as well as acute, discussed in (1) above). This NOEL was based on neurotoxic clinical signs observed in the first week of treatment of the study.

5. *Chronic toxicity*— a. The RfD has been established at 0.010 mg/kg/day. This RfD is based on a chronic toxicity study in dogs with a NOEL of 1.0 mg/kg/day, based on gastrointestinal disturbances observed at the LOEL of 5.0 mg/kg/day during the first week of the study; an uncertainty factor of 100 is used.

b. Cypermethrin is classified as a Group C chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in female mice; assignment of a Q^* has not been recommended.

6. *Animal metabolism.* The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oxidation.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption* . No special studies investigating potential estrogenic or other endocrine effects of cypermethrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure— Food* . Tolerances have been established for the residues of cypermethrin, in or on a variety of raw agricultural commodities. Tolerances, in support of registrations, currently exist for residues of cypermethrin on cottonseed; pecans; lettuce, head; onions, bulb; cabbage; *Brassica*, head and stem; *Brassica*, leafy and livestock commodities of cattle, goats, hogs, horses, and sheep. A pending tolerance for onions, green also exists. For the purposes of assessing the potential dietary exposure for these existing and pending tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated as follows:

i. *Acute exposure and risk* . Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. For the purposes of assessing acute dietary risk for cypermethrin, the maternal NOEL of 1.0 mg/kg/day from the chronic toxicity study in dogs was used. The LOEL of this study of 5.0 mg/kg/day was based on gastrointestinal disturbances observed in the first week of the study. This acute dietary endpoint was used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the MOEs are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U. S. population was estimated to be 0.00067 mg/kg/day (MOE of 1,493); 99th percentile 0.002109 mg/kg/day (MOE of 474); and 99.9th percentile 0.004543 mg/kg/day (MOE of 220). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.000562 mg/kg/day (MOE of 1,780); 99th percentile 0.000896 mg/kg/day (MOE of 1,116); and 99.9th percentile 0.001362 mg/kg/day (MOE of 734). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.000213 mg/kg/day (MOE of 4,706); 99th percentile 0.000587 mg/kg/day (MOE of 1,704); and 99.9th percentile 0.001660 mg/kg/day (MOE of 602). The 95th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.000613 mg/kg/day (MOE of 1,631); 99th percentile 0.000939 mg/kg/day (MOE of 1,065); and 99.9th percentile 0.001224 mg/kg/day (MOE of 817). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) was estimated to be 0.000819 mg/kg/day (MOE of 1,221); 99th percentile 0.002400 mg/kg/day (MOE of 417); and 99.9th percentile 0.005694 mg/kg/day (MOE of 176). Therefore, FMC concludes that the acute dietary risk of cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

ii. *Chronic exposure and risk.* The acceptable RfD is based on a NOEL of 1.0 mg/kg/day from the chronic dog study and an uncertainty factor of 100 is 0.010 mg/kg/day. The endpoint effect of concern were based on gastrointestinal disturbances observed in the first week of the study at the LOEL of 5.0 mg/kg/day. A chronic dietary exposure/risk assessment has been performed for cypermethrin using the above RfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000024 mg/kg bwt/day and utilize 0.2% of the RfD for the overall U. S. population. The ARC for non-nursing infants (< 1 year) and children 1–6 years old (subgroups most highly exposed) are estimated to be 0.000018 mg/kg bwt/day and 0.000042 mg/kg bwt/day and utilizes 0.2% and 0.4% of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

2. *Drinking water.* Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into groundwater. Other data show that cypermethrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in groundwater at depths of 1 and 2 meters are essentially zero (much less than 0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

3. *Non-dietary exposure.* Analyses were conducted which included an evaluation of potential non-dietary (residential) applicator, post-application and chronic dietary aggregate exposures associated with cypermethrin products used for residential flea infestation control and agricultural/commercial applications. The aggregate analysis conservatively assumes that a person is concurrently exposed to the same active ingredient via the use of consumer or professional flea infestation control products and to chronic level residues in the diet.

In the case of potential non-dietary health risks, conservative point estimates of non-dietary exposures, expressed as total systemic absorbed dose for each product use category (indoor total release fogger and lawn care) and exposed population group (adults, children 1–6 years, and infants < 1 year) are compared to the systemic absorbed dose No-Observed-Effects-Level (NOEL) for cypermethrin to provide estimates of the MOEs. Based on the toxicity endpoints selected by EPA for cypermethrin, inhalation and incidental oral ingestion absorbed doses were combined and compared to the relevant systemic NOEL for estimating MOEs.

In the case of potential aggregate health risks, the above mentioned conservative point estimates of non-dietary exposure (expressed as systemic absorbed dose) are combined with estimates (arithmetic mean values) of chronic average dietary (oral) absorbed doses. These aggregate absorbed dose estimates are also provided for adults, children 1–6 years and infants < 1 year. The combined or aggregated absorbed dose estimates (summed across non-dietary and chronic dietary) are then compared with the systemic absorbed dose NOEL to provide estimates of aggregate MOEs.

The total non-dietary MOEs (combined across all product use categories) for the inhalation + incidental oral routes are 97,000 for adults, 2,100 for children 1–6 years old, and 1,900 for infants (< 1 year). The aggregate MOE (inhalation + incidental oral + chronic dietary, summed across all product use categories) was estimated to be 66,000 for adults, 2,000 for children 1–6 years old and 1,900 for infants (<1 year). It can be concluded that the potential non-dietary and aggregate (non-dietary + chronic dietary) exposures for cypermethrin are associated with substantial margins of safety.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicology database, the acceptable RfD is 0.010 mg/kg/day, based on a LOEL of 5.0 mg/kg/day from the chronic dog study and an uncertainty factor of 100. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into an analysis to estimate the Anticipated Residue Contribution (ARC) for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000024 mg/kg body weight (bwt)/day and utilize 0.2% of the RfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) and children 1–6 years old (subgroups most highly exposed) are estimated to be 0.000018 mg/kg bwt/day and 0.000042 mg/kg bwt/day and utilizes 0.2% and 0.4% of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of cypermethrin, as estimated by the aggregate risk assessment, does not appear to be of concern.

For the overall U.S. population, the calculated MOE at the 95th percentile was estimated to be 1,493; 474 at the 99th percentile; and 220 at the 99.9th percentile. For all infants < 1 year old, the calculated MOE at the 95th percentile was estimated to be 1,780; 1,116 at the 99th percentile; and 734 at the 99.9th percentile. For nursing infants < 1 year old, the calculated MOE at the 95th percentile was estimated to be 4,706; 1,704 at the 99th percentile; and 602 at the 99.9th percentile. For non-nursing infants < 1 year old, the calculated MOE at the 95th percentile was estimated to be 1,631; 1,065 at the 99th percentile; and 817 at the 99.9th percentile. For the most highly exposed population subgroup, children 1 – 6 years old, the calculated MOE at the 95th percentile was estimated to be 1,221 ; 417 at the 99th percentile; and 176 at the 99.9th percentile. Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to cypermethrin.

2. *Infants and children*— a. *General.* In assessing the potential for additional sensitivity of infants and children to residues of cypermethrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a three-reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database.

b. *Developmental toxicity studies.* In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the highest doses tested (70 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOEL in each study; the maternal NOEL was established at 17.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

c. *Reproductive toxicity study.* In the three-reproduction study in rats, offspring toxicity (reduced mean litter weight gain) was observed only at the highest dietary level tested (37.5 mg/kg/day), while toxicity in the parental animals was observed at the lower treatment levels. The parental systemic NOEL was 2.5 mg/kg/day and the parental systemic LOEL was 7.5 mg/kg/day. There were no developmental (pup) or reproductive effects up to 37.5 mg/kg/day (highest dose tested).

d. *Pre- and post-natal sensitivity*—i. *Pre-natal.* There was no evidence of developmental toxicity in the studies at the highest doses tested in the rat (70 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

ii. *Post-natal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

e. *Conclusion .* Based on the above, FMC concludes that reliable data support use of the standard 100–fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of cypermethrin in or on cotton; pecans; lettuce, head; onions, bulb; cabbage; *Brassica*, head and stem, or *Brassica*, leafy. (Stephanie Willett)

6. FMC Corporation, Agricultural Products Group

PP 6F3453, 7F3546, 5F4484, and 0E3921

EPA has received a request to remove the time limitations on established tolerances from FMC Corporation, Agricultural Products Group, 1735 Market Street, Philadelphia, Pennsylvania 19103 and from the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. The request proposes to remove the time limitations on established tolerances for residues of the insecticide bifenthrin ((2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate), in or on the raw agricultural commodities cottonseed at 0.5 parts per million (ppm); corn, grain (field, seed, and pop) at 0.05 ppm; hops, dried at 10.0 ppm; and strawberries at 3.0 ppm (established at 40 CFR 180.442). These tolerances were established under [PP] 6F3453, 7F3546, 5F4484, and 0E3921. EPA has determined that the request contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the requests. Additional data may be needed before EPA rules on the requests.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of bifenthrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabeled bifenthrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of bifenthrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection (GC/ECD) analytical method P-2132M.

3. *Magnitude of residues.* Crop field trial residue data from studies conducted at the maximum label rates for cotton; corn (field, seed, pop); strawberries, and hops show that the established bifenthrin tolerances on cottonseed of 0.5 ppm; corn, grain (field, seed, and pop) of 0.05 ppm; corn, fodder of 5.0 ppm; corn, forage of 2.0 ppm; strawberries of 3.0 ppm, and hops, dried of 10.0 ppm will not be exceeded when the bifenthrin products labeled for these uses are used as directed.

B. Toxicological Profile

1. *Acute toxicity.* For the purposes of assessing acute dietary risk, FMC has used the maternal NOEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats. The maternal LEL of this study of 2.0 mg/kg/day was based on tremors from day 7-17 of dosing. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicty.* The following genotoxicity tests were all negative: gene mutation in Salmonella (Ames); chromosomal aberrations in Chinese hamster ovary and rat bone marrow cells; HGPRT locus mutation in mouse lymphoma cells; and unscheduled DNA synthesis in rat hepatocytes.

3. *Reproductive and developmental toxicity*— a. *Parental toxicity.* In the rat reproduction study, parental toxicity occurred as decreased body weight at 5.0 mg/kg/day with a NOEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day (highest dose tested).

b. *Post-natal sensitivity.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

4. *Subchronic toxicity.* Short- and intermediate-term toxicity. The maternal NOEL of 1.0 mg/ kg/day from the oral developmental toxicity study in rats is also used for short- and intermediate-term margins of exposure (MOE) calculations (as well as acute, discussed in (1) above). The maternal lowest effect level (LEL) of this study of 2.0 mg/kg/day was based on tremors from day 7–17 of dosing.

5. *Chronic toxicity*—a. The reference dose (RfD) has been established at 0.015 mg/kg/day. This RfD is based on a 1 year oral feeding study in dogs with a NOEL of 1.5 mg/kg/day, based on intermittent tremors observed at the Lowest Observed Effect Level (LOEL) of 3.0 mg/kg/day; an uncertainty factor of 100 is used.

b. Bifenthrin is classified as a Group C chemical (possible human carcinogen) based upon urinary bladder tumors in mice; assignment of a Q* has not been recommended.

6. *Animal metabolism.* The metabolism of bifenthrin in animals is adequately understood. Metabolism studies in rats with single doses demonstrated that about 90% of the parent compound and its hydroxylated metabolites are excreted.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of bifenthrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of bifenthrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that bifenthrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure— Food.* Tolerances have been established for the residues of bifenthrin, in or on a variety of raw agricultural commodities. Tolerances, in support of registrations, currently exist for residues of bifenthrin on hops; strawberries; corn grain, forage, and fodder; cottonseed; and livestock commodities of cattle, goats, hogs, horses, sheep, and poultry. Additionally, time-limited tolerances associated with emergency exemptions were recently established for broccoli, cauliflower, raspberries, cucurbits, and canola. A pending tolerance for artichokes also exists. For the purposes of assessing the potential dietary exposure for these existing and pending tolerances as well as the existing time-limited tolerances under FIFRA section 18 emergency exemptions, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated as follows:

i. *Acute exposure and risk.* Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. For the purposes of assessing acute dietary risk for bifenthrin, the maternal NOEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats was used. The maternal LEL of this study of 2.0 mg/kg/day was based on tremors from day 7–17 of dosing. This acute dietary endpoint was used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the MOE are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U.S. population was estimated to be 0.000362 mg/kg/day (MOE of 2,762); 99th percentile 0.000732 mg/kg/day (MOE of 1,367); and 99.9th percentile 0.002282 mg/kg/day (MOE of 438). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.000652 mg/kg/day (MOE of 1,534); 99th percentile 0.001138 mg/kg/day (MOE of 879); and 99.9th percentile 0.001852 mg/kg/day (MOE of 540). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.000193 mg/kg/day (MOE of 5,180); 99th percentile 0.000456 mg/kg/day (MOE of 2,192); and 99.9th percentile 0.000475 mg/kg/day (MOE of 2,107). The 95th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.000766 mg/kg/day (MOE of 1,306); 99th percentile 0.001203 mg/kg/day (MOE of 832); and 99.9th percentile 0.001977 mg/kg/day (MOE of 506). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) was estimated to be 0.000632 mg/kg/day (MOE of 1,583); 99th percentile 0.001196 mg/kg/day (MOE of 836); and 99.9th percentile 0.005277 mg/kg/day (MOE of 190). Therefore, FMC concludes that the acute dietary risk of bifenthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

ii. *Chronic exposure and risk.* The acceptable RfD is based on a NOEL of 1.5 mg/kg/day from the chronic dog study and an uncertainty factor of 100 is 0.015 mg/kg/day. The endpoint effect of concern were tremors in both sexes of dogs at the LEL of 3.0 mg/kg/day. A chronic dietary exposure/risk assessment has been performed for bifenthrin using the above RfD. Available information on anticipated residues, monitoring data, and percent crop treated was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.00002 mg/kg body weight (bwt)/day and utilize 0.1% of the RfD for the overall U.S. population. The ARC for non-nursing infants (< 1 year) and children 1–6 years old (subgroups most highly exposed) are estimated to be 0.000042 mg/kg bwt/day and 0.000032 mg/kg bwt/day and utilizes 0.3% and 0.2% of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of bifenthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

2. *Drinking water.* Laboratory and field data have demonstrated that bifenthrin is immobile in soil and will not leach into groundwater. Other data show that bifenthrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in groundwater at depths of 1 and 2 meters are essentially zero (much less than 0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

3. *Non-dietary exposure.* Analyses were conducted which included an evaluation of potential non-dietary (residential) applicator, post-application and chronic dietary aggregate exposures associated with bifenthrin products used for residential flea infestation control and agricultural/commercial applications. The aggregate analysis conservatively assumes that a person is concurrently exposed to the same active ingredient via the use of consumer or professional flea infestation control products and to chronic level residues in the diet. In the case of potential non-dietary health risks, conservative point estimates of non-dietary exposures, expressed as total systemic absorbed dose (summed across inhalation and incidental ingestion routes) for each relevant product use category (i.e., lawn care) and receptor subpopulation (i.e., adults, children 1–6 years and infants < 1 year) are compared to the systemic

absorbed dose NOEL for bifenthrin to provide estimates of the MOEs. Based on the toxicity endpoints selected by EPA for bifenthrin, inhalation and incidental oral ingestion absorbed doses were combined and compared to the relevant systemic NOEL for estimating MOEs. In the case of potential aggregate health risks, the above-mentioned conservative point estimates of inhalation and incidental ingestion non-dietary exposure (expressed as systemic absorbed dose) are combined with estimates (arithmetic mean values) of chronic average dietary (oral) absorbed doses. These aggregate absorbed dose estimates are also provided for adults, children 1–6 years and infants < 1 year. The combined or aggregated absorbed dose estimates (summed across non-dietary and chronic dietary) are then compared with the systemic absorbed dose NOEL to provide estimates of aggregate MOEs. The non-dietary and aggregate (non-dietary + chronic dietary) MOEs for bifenthrin indicate a substantial degree of safety. The total non-dietary (inhalation + incidental ingestion) MOEs for post-application exposure for the lawn care product evaluated was estimated to be > 51,000 for adults, 1,900 for children 1–6 years old and 1,800 for infants < 1 year. The aggregate MOE (inhalation + incidental oral + chronic dietary, summed across all product use categories) was estimated to be 25,000 for adults, 1,800 for children 1–6 years old and 1,600 for infants (< 1 year). It can be concluded that the potential non-dietary and aggregate (non-dietary + chronic dietary) exposures for bifenthrin are associated with substantial margins of safety.

D. Cumulative Effects

In consideration of potential cumulative effects of bifenthrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by bifenthrin would be cumulative with those of other chemical compounds; thus only the potential risks of bifenthrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of bifenthrin consistent with the schedule established by EPA in the **Federal Register** of August 4, 1997 (62 FR 42020) (FRL–5734–6), and other EPA publications pursuant to the FQPA.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicology data base, the acceptable reference dose (RfD) is 0.015 mg/kg/day, based on a NOEL of 1.5 mg/kg/day from the chronic dog study and an uncertainty factor of 100. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into an analysis to estimate the Anticipated Residue Contribution (ARC) for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.00002 mg/kg body weight (bwt)/day and utilize 0.1% of the RfD for the overall U.S. population. The ARC for non-nursing infants (< 1 year) and children 1–6 years old (subgroups most highly exposed) are estimated to be 0.000042 mg/kg bwt/day and 0.000032 mg/kg bwt/day and utilizes 0.3% and 0.2% of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of bifenthrin, as estimated by the aggregate risk assessment, does not appear to be of concern. For the overall U.S. population, the calculated MOE at the 95th percentile was estimated to be 2,762; 1,367 at the 99th percentile; and 438 at the 99.9th percentile. For all infants < 1 year old, the calculated MOE at the 95th percentile was estimated to be 1,534; 879 at the 99th percentile; and 540 at the 99.9th percentile. For nursing infants < 1 year old, the calculated MOE at the 95th percentile was estimated to be 5,180; 2,192 at the 99th percentile; and 2,107 at the 99.9th percentile. For non-nursing infants < 1 year old, the calculated MOE at the 95th percentile was estimated to be 1,306; 832 at the 99th percentile; and 506 at the 99.9th percentile. For the most highly exposed population subgroup, children 1–6 years old, the calculated MOE at the 95th percentile was estimated to be 1,583; 836 at the 99th percentile; and 190 at the 99.9th percentile. Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to bifenthrin.

2. *Infants and children*— a. *General.* In assessing the potential for additional sensitivity of infants and children to residues of bifenthrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a two-generation reproductive study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base.

b. *Developmental toxicity studies.* In the rabbit developmental study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal NOEL was 2.67 mg/kg/day based on head and forelimb twitching at the LOEL of 4 mg/kg/day. In the rat developmental study, the maternal NOEL was 1 mg/kg/day, based on tremors at the LOEL of 2 mg/kg/day. The developmental (pup) NOEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOEL 2 mg/kg/day. There were 5/23 (22%) litters affected (5/141 fetuses since each litter only had one affected fetus) in the 2 mg/kg/day group, compared with zero in the control, 1, and 0.5 mg/kg/day groups. According to recent historical data (1992-1994) for this strain of rat, incidence of distended ureter averaged 11% with a maximum incidence of 90%.

c. *Reproductive toxicity study.* In the rat reproduction study, parental toxicity occurred as decreased body weight at 5.0 mg/kg/day with a NOEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day (highest dose tested).

d. *Pre- and post-natal sensitivity*— i. *Pre-natal.* Since there was not a dose-related finding of hydroureter in the rat developmental study and in the presence of similar incidences in the recent historical control data, the marginal finding of hydroureter in rat fetuses at 2 mg/kg/day (in the presence of maternal toxicity) is not considered a significant developmental finding. Nor does it provide sufficient evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

ii. *Post-natal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

e. *Conclusion.* Based on the above, FMC concludes that reliable data support use of the standard 100–fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U.S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin residues.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of bifenthrin in or on cotton; corn, field, seed, pop; strawberries; or hops. (Adam Heyward)

7. McLaughlin Gormley King Company

PP 7F4915

EPA has received a pesticide petition (PP 7F4915) from McLaughlin Gormley King Company, 8810 Tenth Avenue North, Minneapolis, MN 55427, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of (*RS*)-2-Methyl-4-oxo-3-(2-propynyl) cyclopent-2-enyl (1*RS*)-cis, trans-chrysanthemate (common name, prallethrin; trade name ETOC®), a Type I synthetic pyrethroid in or on food commodities at 1 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method.* An adequate analytical method is available to detect residues of ETOC® in or on food commodities. Prallethrin can be extracted from samples and analyzed by gas chromatography, with final electron capture detection. The method has been confirmed through an independent laboratory validation.

2. *Magnitude of residues.* Studies were conducted to determine residues resulting from the application of ETOC® by ULV spray and contact spray in a simulated feed or food processing situation, and in a simulated warehouse situation. No residues were detected following contact sprays in either situation, with the exception of a trace amount in a peanut sample after the tenth treatment at 4X the normal application rate. No residues were detected in covered commodities after ULV spraying of ETOC®, but residues were detected in uncovered commodities and samples with permeable wrapping.

B. Toxicological Profile

1. *Acute toxicity.* An oral dosage rat study reported Category II toxicity with the LD_{50} being 640 mg/kg for males and 460 mg/kg for females. An acute dermal study with rats reported Category IV toxicity. An acute inhalation study with rats reported Category II toxicity with an LC_{50} of 0.288 mg/liter for males and 0.333 mg/liter for females. Rabbits were tested for eye and skin irritation. Eye irritation was minimal (Category III) and there was no skin irritation (Category IV). ETOC® is not a skin sensitizer, based on a Guinea Pig dermal sensitization study. Rats were dosed at 30, 100, and 300 mg/kg by oral gavage to test acute neurotoxicity. While there was some temporary motor activity reduction, there were no permanent treatment-related anomalies.

2. *Genotoxicity.* A bacterial reverse mutation test using *Salmonella typhimurium* and *Escherichia coli* indicated that ETOC® was not mutagenic. A gene mutation assay with Chinese hamster lung cells in both the presence and absence of S9 metabolic activation reported no mutagenicity. An *in vitro* chromosomal aberration test reported clastogenic potential against Chinese hamster ovary cells (CHO-K1) in the presence of S9 mix. An *in vivo* mouse bone marrow micronucleus test did not induce micronuclei formation in bone marrow cells of mice. An *in vivo/in vitro* unscheduled DNA synthesis test reported no induction of DNA damage in rat hepatocytes *in vivo*.

3. *Reproductive and developmental toxicity.* A range-finding study was conducted by administering 30, 60, 100, 300, 600, and 800/1,000 mg/kd/day by oral gavage to rabbits on days 7 through 19 of presumed gestation. Significantly decreased body weights occurred in those rabbits receiving 300 mg/kg/day and above, food consumption decreased at 100 mg/kg/day and above, and deaths occurred at 300 mg/kg/day and above. Doses as high as 100 mg/kg/day did not produce adverse effects in the offspring. ETOC® was then administered by oral gavage at doses of 10, 30, 100, and 200 mg/kg/day to rabbits on days 7 through 19 of presumed gestation. The maternal NOAEL was 100 mg/kg/day. The 200 mg/kg/day dosage caused reduced maternal body weight gains and reduced absolute and relative feed consumption values. The developmental NOAEL was reported as 200 mg/kg/day. ETOC® is not considered a developmental toxin. A teratology study was conducted by administering 10, 30, 100, and 300 mg/kg/day by oral gavage to rats on days 6–15 of presumed gestation. The developmental NOEL was >300 mg/kg/day and the developmental LOEL was not determined. Compound related maternal mortality was reported at 300 mg/kg/day. The maternal LOEL was 30 mg/kg/day, as determined by increased mortality at 300 mg/kg/day levels, clinical signs at the 30, 100, and 300 mg/kg/day dosages, and decreased body weight gain and food consumption. Rats were dosed with 12.5, 25.0, and 50 mg/kg/day by subcutaneous injection on days 7 through 17 of presumed gestation. No NOEL or LOEL was established, but the occurrence of lumbar rib variants was significantly higher in the offspring of the 50 mg/kg/day group than in the controls. Rabbits were dosed at 1, 3, and 10 mg/kg/day by subcutaneous injection on days 6 through 18 of presumed gestation. No effects were reported on either the dams or the offspring. ETOC® was incorporated into the feed at concentrations of 120, 600, 3,000, and 6,000 ppm to evaluate the reproductive effects on two generations of rats. The systemic toxicity and reproductive toxicity NOEL's were both established at 600 ppm, and the LOEL's were both 3,000 ppm, respectively. There were dosage-dependent effects on weight gains, body weights, feed consumption values, liver weights, and reduction of pup body weight at the 3,000 and 6,000 ppm dose levels. There were no adverse effects on viability or fertility in either generation up to the 6,000 ppm level.

4. *Subchronic toxicity.* A 21–day dermal toxicity rat study was conducted at 30, 150 and 750 mg/kg/day. The test article was considered a mild irritant. The dermal NOEL was 150 mg/kg/day and the systemic NOEL was 30 mg/kg/day. A 13–week oral mouse study was conducted at inclusion levels of 300, 3,000, 6,000, or 12,000 ppm. The NOEL was 3,000 ppm, and the LOEL was 6,000 ppm. A 3–month feeding study incorporating 100, 300, 1,000, and 3,000 ppm into the diet of rats reported a NOEL of 300 ppm, and a LOEL of 1,000 ppm. EPA later recommended raising the NOEL to 1,000 ppm and the LOEL to 3,000 ppm. A 3–month oral study on beagle dogs dosed at 3, 10, and 30 mg/kg/day, administered by capsule, reported a NOEL of 3 mg/kg/day and a LOEL of 10 mg/kg/day. A 4–week inhalation study exposed rats to 1.01, 4.39, and 19.6 mg/m3 of 92.0% ETOC®, with median aerodynamic particle diameter of 3.77 to 4.89 m. The NOEL was 1.01 mg/m^3 and the LOEL was 4.39 mg/m^3.

5. *Chronic toxicity.* A 52–week oral toxicity study was conducted on beagle dogs administered dosage levels of 2. 5, 5.0, 10.0 or 20.0 mg/kg/day. The NOEL was reported at 2.5 mg/kg/day; EPA's RfD/Peer Review Committee later recommended 5 mg/kg/day in a DER dated June 6, 1995. The LOEL was 5.0 mg/kg/day based upon reduced weight gain, clinical signs, elevated cholesterol levels and deposition of lipofuscin in renal and bladder epithelium. A 106–week combined oral toxicity and oncogenicity study was performed on rats using dietary concentrations of 80, 400, and 2,000 ppm. It was determined that there was no carcinogenic potential in rats. The NOEL was 80 ppm, and the LOEL was 400 ppm: There were no ophthalmologic, biochemical changes, or gross pathological treatment-related effects except for increased liver and thyroid weights in the 400 ppm and above level. An 80 week dietary oncogenicity study on rats with dose levels of 120, 600, 3,000 and 6,000 ppm showed that the principal effect of ETOC® was increased liver weights in those rats given the 3,000 to 6,000 ppm diet. There was no indication of any treatment related effect on the incidence of neoplastic findings.

6. *Animal metabolism.* Solutions of (4S), (1R)-*trans*- and (4S), (1R)- *cis*-S-4068SF (ETOC®) labeled with ^{14}C were given to rats by single oral dose or subcutaneous administration at 2 mg/kg. Both isomers were rapidly absorbed, widely distributed to various tissues, and then readily metabolized and excreted. Neither isomer was retained or accumulated in any tissues. There was no marked difference in metabolic fate between sexes and administration routes. The absorption and disposition of ^{14}C-S-4068SF *cis* and *trans* isomers in rats was determined after oral administration of the compounds at 2 and 100 mg/kg and at 2mg/kg after 14 daily doses of the non-labeled compounds at the same dose level. The results indicated that the dose was rapidly eliminated at all dose levels. A greater proportion was excreted in the urine of rats receiving the *trans*-compound compared to the *cis*-compound, indicating a greater ester cleavage of the *trans*-isomer. Concentrations of compound in tissues were not significantly affected by repeat doses of unlabelled compound and concentrations at the higher dose level were in proportion to the increase in dose. The greatest concentrations were detected in the organs responsible for excretion and metabolism (liver and kidneys). Concentrations in these tissues were greater in females.

7. *Endocrine effects.* The standard battery of required toxicity studies is generally considered to be sufficient to detect any endocrine effects, and is complete for ETOC®. No developmental or reproductive effects were noted. The potential for ETOC® to produce any significant endocrine effects is considered minimal

8. *Metabolite toxicology.* There is no evidence that prallethrin contains metabolites of toxicological concern.

C. Aggregate Exposure

1. *Dietary exposure.* A chronic dietary exposure analysis was conducted for exposure to potential prallethrin residues in all food commodities that can be exposed to prallethrin by indoor ULV fogging treatment, crack and crevice, and hard surface applications in food-handling establishments. Residue amounts from MGK field trials in a simulated warehouse situation were used in the analysis. Chronic dietary exposure to prallethrin has been conservatively estimated to be less than 1% of the RfD for all population groups.

2. *Drinking water.* ETOC® is presently registered only for indoor, non-food uses. No agricultural uses are planned for ETOC®, so residues in drinking water are not likely to be present.

3. *Non-dietary exposure.* Acute and short-term non-dietary exposure assessments were conducted to determine the non-dietary exposure risk of prallethrin from both registered and pending, occupational and residential uses. These assessments considered oral, dermal, and inhalation exposure to prallethrin during application and post-application of total release aerosols, crack and crevice sprays, broadcast carpet/hard surface sprays, pet dipping, and indoor ULV fogging concentrate/contact spray. Incidental ingestion of ETOC® residues by children's hand-to-mouth behavior was included in the assessment. All of the MOE's for the occupational setting were greater than 5,200, the residential MOE's were greater than 4,900, and the aggregate residential assessment was greater than 1,400. These MOE values allow a reasonable certainty that no harm will occur from exposure to residues of prallethrin.

D. Cumulative Effects

The EPA guidelines for product safety testing address noticeable toxic effects rather than the underlying mode of toxicity. There is very little information or data available to determine whether or not the toxic mode of action of prallethrin is sufficiently similar to other Type I pyrethroids to be cumulative.

E. Safety Determination

1. *U.S. population.* Based on the conservative aggregate exposure estimates noted above and the complete and reliable toxicology database for prallethrin, it is safe to conclude that the aggregate exposure of the whole U.S. population to prallethrin will be 0.2% or less of the RfD of 0.05 mg/kg bw/day. Children from 1 to 6 years old may be exposed to a slightly higher amount of prallethrin; 0.3% of the RfD.

Generally speaking, EPA has no concerns about exposures which are less than 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It is therefore concluded that there is a reasonable certainty that no harm will result from aggregate exposure to prallethrin residues.

2. *Infants and children.* Developmental toxicity studies of prallethrin orally administered to rats and rabbits did not demonstrate any pre-natal sensitivies for developing fetuses. The maternal NOEL for rats was 10 mg/kg/day, and the maternal NOEL for rabbits was 100 mg/kg/day.

A two-generation reproduction study of rats administered prallethrin in their feed did not reveal any treatment-related reproductive or developmental effects in either generation. The NOEL for adult rats was found to be 120 ppm while the LEL was 600 ppm. The NOEL for fetotoxicity was found to be 600 ppm and the LEL was 3,000 ppm.

Since no special sensitivities to offspring were noted in these studies, there is no need for an additional fold safety factor to be applied to risk assessments.

F. International Tolerances

There are no international maximum residue limits established for prallethrin; therefore, incompatibility is not an issue. (Adam Heyward)

8. Valent U. S. A. Corporation

PP 2F4144, 3F4186, 4F4327

EPA has received a request from Valent U. S. A. Corporation, 1333 North California Blvd., Walnut Creek, CA 94596–8025 pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.466 to remove the time limitations on tolerances for residues of the pyrethroid insecticide chemical fenpropathrin, *alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclo-propanecarboxylate, in or on the raw agricultural commodities cottonseed at 1.0 parts per million

(ppm), peanut nutmeat at 0.01 ppm, peanut vine hay at 20 ppm, strawberry at 2.0 ppm, tomato at 0.6 ppm, meat and meat by-products of cattle, goats, hogs, horses and sheep at 0.1 ppm, fat of cattle, goats, hogs, horses and sheep at 1.0 ppm, milk fat (reflecting 0.08 ppm in whole milk) at 2.0 ppm, and poultry meat, fat, meat by-products and eggs at 0.05 ppm, and in the processed products cottonseed oil at 3.0 ppm and cottonseed soapstock at 2.0 ppm. The tolerances were first established in response to pesticide petitions PP 2F4144, 3F4186, and 4F4327 and were only made time limited because of concerns associated with toxicity to aquatic arthropods. EPA has determined that the request contains data or information consistent with the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the request. Additional data may be needed before EPA rules on the request.

A. Residue Chemistry

Summary. An extensive plant and animal metabolism data base demonstrates that the appropriate definition of aged fenpropathrin residue is parent. Ruminant and poultry feeding studies have shown that feed to residue ratios are very low in most commodities, with higher (but still relatively low) ratios in fat and milk fat. This section will describe residue data supporting the establishment of tolerances for residues of fenpropathrin in or on the raw agricultural commodities cottonseed at 1.0 parts per million (ppm), peanut nutmeat at 0.01 ppm, peanut vine hay at 20 ppm, strawberry at 2.0 ppm, tomato at 0.6 ppm, meat and meat by-products of cattle, goats, hogs, horses and sheep at 0.1 ppm; fat of cattle, goats, hogs, horses and sheep at 1.0 ppm, milk fat (reflecting 0.08 ppm in whole milk) at 2.0 ppm, and poultry meat, fat, meat by-products and eggs at 0.05 ppm, and in the processed products cottonseed oil at 3.0 ppm and cottonseed soapstock at 2.0 ppm. The approved analytical method is capillary gas-liquid chromatography with flame ionization detection.

1. *Plant metabolism.* The plant metabolism of fenpropathrin has been studied in five different crop plant species: cotton, apple, tomato, cabbage, and bean. Radiocarbon labeling has been in the cyclopropyl ring of the acid, in the aryl rings of the alcohol, and in the nitrile of fenpropathrin, a cyanohydrin ester. The permutations of radiocarbon label position and plant species yield a total of 17 separate, reviewed studies. Each of the studies involved foliar treatment of the plants under either greenhouse or field conditions and, while the actual treatment conditions and times to harvest varied from study to study, the results of the many studies are remarkably consistent. The total toxic residue is best defined as parent, fenpropathrin.

Fenpropathrin remains associated with the site of application and only traces are found in seeds (e.g., bean or cotton) or in other parts of the plant not directly exposed to the application. Much of the parent residue can be removed from the plant material with a mild hexane/acetone or hexane rinse, demonstrating that the residue is located on or near the outside surface of the plant material. The primary metabolic pathway for fenpropathrin in plants is similar to that in mammals. There are no qualitatively unique plant metabolites; the primary aglycones are identical in both plants and animals.

2. *Analytical method.* Adequate analytical methodology is available to detect and quantify fenpropathrin (and its metabolites) at residue levels in numerous matrices. The methods use solvent extraction and partition and/or column chromatography clean-up steps, followed by separation and quantitation using capillary column gas-liquid chromatography with flame ionization detection. The extraction efficiency has been validated using radiocarbon samples from the plant and animal metabolism studies. The enforcement methods have been validated at independent laboratories, and by EPA. The limit of quantitation for fenpropathrin in raw agricultural commodity samples is 0.01 ppm.

3. *Magnitude of residues— Cotton.* The time limited section 408 tolerance for fenpropathrin in/on cottonseed is 1.0 ppm. The use pattern allows a maximum single application rate of 0.3 lb ai/acre, a total maximum seasonal use of 0.8 lb ai/acre, and a 21-day phi. The field residue experiments were performed in six years at thirty-three sites in nine states. There were 38 separate treatments yielding 101 separate, treated samples for analysis. The existing time limited tolerance of 1.0 ppm is based on all of the field residue data, including treatments at exaggerated rates. For the subset of the field residue samples that most closely match the present, labeled use pattern, 0.3 lb ai/acre, 5 applications, and a 21-day phi, the average residue was 0.069 ppm ($n = 14$, $\sigma_{n-1} = 0.091$). The highest average residue (HAR) found in these crop field trials for fenpropathrin in/on cottonseed was 0.28 ppm.

There are existing time limited section 408 tolerances for fenpropathrin in the processed products cottonseed oil (3.0 ppm) and cottonseed soapstock (2.0 ppm). Three processing studies yielding hulls, extracted meal, crude cottonseed oil, refined cottonseed oil, and cottonseed soapstock were performed. These studies demonstrated that fenpropathrin residues were reduced in extracted meal but did concentrate in refined cottonseed oil (average concentration factor = 2.77) and soapstock. Tolerances for the processed products cottonseed oil and cottonseed soapstock were needed because the concentration factors were greater than unity. Soapstocks are no longer considered significant feed commodities. The HAR times the average concentration factor for cottonseed oil (0.28 ppm x 2.77 = 0.78 ppm) is less than the tolerance of 1.0 ppm. Under present residue chemistry guidelines, tolerances for cottonseed oil and soapstock would no longer be required.

The calculated mean residue value for cottonseed of 0.07 ppm was used in both the chronic and acute dietary exposure and risk assessments since cottonseed is a blended commodity. Processing factors used in the assessments were refined cottonseed oil (2.77), cottonseed meal (0.48), and cottonseed hulls (0.90).

Peanut. The time limited section 408 tolerances for fenpropathrin in/on peanut nutmeat is 0.01 ppm and in/on peanut vine hay is 20.0 ppm. The use pattern allows a maximum single application rate of 0.3 lb ai/acre, a total maximum seasonal use of 0.8 lb ai/acre, and a 14-day interval before digging the peanuts or feeding the vines or hay. The field residue experiments were performed in two years at seven sites in five states. There were 9 separate treatments yielding 22 separate, treated samples for analysis for nutmeats, green vines, and dried vine hay. Data from the subset of the field residue samples that most closely match the present, labeled use pattern, 0.3 lb ai/acre, 2 or more applications, and a 14-day phi were used to support the tolerances.

Peanut nutmeats. No finite residues were detected (< 0.01 ppm) in 17 of 18 samples. In a single sample a finite residue of .01 ppm was detected.

Peanut vine hay. Field dried vines, peanuts removed, were sampled at 14-days plus 2- to 9-days field drying time following the last application. The average residue found in/on peanut vine hay was 8.31 ppm ($n = 16$, $\sigma_{n-1} = 4.64$ ppm). The HAR for peanut vine hay was 16 ppm. A peanut processing study using a very highly exaggerated field

application rate showed positive concentration in peanut oil and other processed products. However, Agency guidance has indicated that no additional tolerances are needed.

Except for a single sample of peanut nutmeat (0.01 ppm) all appropriate field trial data were non-detects. Therefore, 0.005, or half the limit of detection (LOD), was used for the chronic dietary risk assessment, and 0.01 ppm (full LOD) was used for the acute assessment. Calculated mean residue values were used for peanut commodities in both the chronic and acute assessments because peanuts is a blended commodity. The processing factor for deodorized bleached refined oil (1.33) was used in the risk assessments since this is the grade of peanut oil available for human consumption. For feed, the processing value for expeller presscake (1.33) was used for peanut meal.

Strawberry. The time limited section 408 tolerance for fenpropathrin in/on strawberries is 2.0 ppm. The use pattern allows a maximum single application rate of 0.4 lb ai/acre, a minimum 30-day interval between treatments, a total maximum seasonal use of 0.8 lb ai/acre, and a 2-day phi. The field residue experiments were performed in three years at twelve sites in six states. There were 47 separate treatments yielding 128 separate, treated samples for analysis. For the subset of the field residue samples that most closely match the present, labeled use pattern, 0.4 lb ai/acre, 1 or 2 applications with a (approximately) 30-day interval between treatments, and a 2-day phi, the average residue was 0.65 ppm (n = 34, σ_{n-1} = 0.44). The HAR found in these crop field trials in/on strawberries was 1.45 ppm.

For chronic dietary exposure and risk assessment, the mean residue value (0.65 ppm) was used. For acute assessment, the complete distribution of the appropriate field trial data was used.

Tomato. The time limited section 408 tolerance for fenpropathrin in/on tomato is 0.6 ppm. The use pattern allows a maximum single application rate of 0.2 lb ai/acre, a total maximum seasonal use of 0.8 lb ai/acre, and a 3-day phi. The field residue experiments were performed in four years ateighteen sites in eight states. There were 27 separate treatments yielding 118 separate, treated samples for analysis. For the subset of the field residue samples that most closely match the present, labeled use pattern, 0.2 lb ai/acre, 4 (or more) applications, and a 3-day phi, the average residue was 0.166 ppm (n = 54, σ_{n-1} = 0.132). The highest average residue (HAR) found in these crop field trials for fenpropathrin in/on tomatoes was 0.55 ppm.

A tomato processing study using an exaggerated field application rate showed positive concentration in wet and dried tomato pomace. However, Agency guidance has indicated that no additional tolerances are needed.

The mean residue value of 0.17 ppm was used for all tomatoes in the chronic dietary assessment, and for the blended commodities in the acute assessment (paste, puree, juice, and catsup). In the acute assessments, a complete distribution of the appropriate field trial data was used for whole and dried tomatoes. Appropriate concentration factors were used for processed commodities: tomato juice (0.05), canned tomatoes (0.08), tomato paste (0.3).

Secondary residues. Residues in animal feed may transfer to animal products, meat, milk, and eggs, used in human food. The existing time limited tolerances are meat and meat by-products of cattle, goats, hogs, horses and sheep at 0.1 ppm, fat of cattle, goats, hogs, horses and sheep at 1.0 ppm, milk fat (reflecting 0.08 ppm in whole milk) at 2.0 ppm, and poultry meat, fat, meat by-products and eggs at 0.05 ppm. The feed items that are associated with the existing registered uses for beef and dairy cattle are peanut hay, cottonseed, cotton gin by-products (feeding restriction), cottonseed hulls, cottonseed meal and peanut meal in descending order of the magnitude of the anticipated residues. For poultry and swine only cottonseed and peanut meals are significant feed items. Tissue to feed residue ratios vary from a high of 0.0139 in fat to 0.001625 in milk, to a low of 0.00004 in liver in cattle. In poultry, tissue to feed ratios vary from a high of 0.0069 in fat to a low of 0.0002 in muscle. Both chronic and acute dietary assessments show very low residue contribution from secondary residues in animal products to all population subgroups.

B. Toxicological profile

Summary. The existing registrations and tolerances of fenpropathrin are supported at EPA by a complete toxicology data base. Toxicity endpoints of concern have been identified by the Agency's Health Effects Division, Hazard Identification Assessment Review Committee. The identified endpoints are an Acute Dietary of 6.0 mg/kg/day (systemic) and a Chronic Dietary of 2.5 mg/kg/day (RfD = 0.025 mg/kg/day, UF = 100). No endpoints of concern were identified by the Committee for occupational or residential, dermal or inhalation exposures of any duration.

1. *Acute toxicity.* The following acute toxicity studies using fenpropathrin technical as the test material have been reviewed and accepted by EPA to support registration.

Acute oral, rat. The rat oral LD_{50} values were determined to be 54.0 and 48.5 milligrams per kilogram body weight (mg/kg) for male and female rats, respectively. Toxicity Category I.

Acute dermal, rat. The rat dermal LD_{50} values were determined to be 1600 and 870 mg/kg for male and female rats, respectively. Toxicity Category II.

Acute inhalation, rat. A high dosage inhalation study is technically not possible because of the low vapor pressure and thick, viscous nature of fenpropathrin technical. The study has been waived by the Agency. Toxicity Category IV.

Primary eye irritation, rabbit. No corneal involvement; mild iris and conjunctival irritation. Toxicity Category III.

Primary dermal irritation, rabbit. No irritation. Toxicity Category IV.

Dermal sensitization, guinea pig. Not a sensitizer.

Acute oral and acute dermal toxicity studies have also been submitted on the mouse and rabbit. In the acute oral and dermal studies, clinical signs of toxicity included tremors, hyperexcitability, muscular fibrillation, ataxia of the hind limbs, urinary incontinence, diarrhea, and salivation. The intoxicated animals from the oral studies showed no major changes in tissues or organs at necropsy. Where there were sexual differences in toxicity, females were consistently slightly more sensitive than males. Surviving animals recovered in two days in the case of rats and mice and within 4 days in the case of rabbits. In surviving animals, all clinical signs were completely reversible.

2. *Genotoxicty.* Fenpropathrin does not present a genetic hazard. The Agency has reviewed, accepted, and classed as negative the following genotoxicity tests: A gene mutation assay (Ames), a chromosomal aberration study in rodents, an in vitro cytogenics assay, a sister chromatide exchange on CHO-K1 cells, and DNA damage/repair in *Bacillus subtilis.*

3. *Reproductive and developmental toxicity.* There is no evidence from reproduction or developmental toxicity studies that the developing fetus, young growing and developing animals, or adult reproducing animals are any more sensitive to fenpropathrin effects than mature adult animals. In addition, reproductive parameters were unaffected at dosages higher than those that caused overt adult toxicity.

Three-generation reproduction study, rats. Dietary concentrations of 0, 40, 120, and 360 ppm were fed continuously to rats for three generations to assess the effect of fenpropathrin on reproductive function. (Parent) Systemic no effect level (NOEL) of 40 ppm (M/F 3.0/3.4 mg/kg/day). Systemic lowest effect level (LEL) of 120 (M/F 8.9/10.1 mg/kg/day)—body tremors with spasmodic muscle twitches, increased sensitivity, and maternal lethality. Reproductive NOEL 120 ppm (M/F 8.9/10.1 mg/kg/day). Reproductive LEL 360 ppm (M/F 26.9/32.0 mg/kg/day)—Decreased mean F_2 loss. (Pups) Developmental NOEL 40 ppm (M/F 3.0/3.4 mg/kg/day). Developmental LEL 120 ppm (M/F 8.9/10.1 mg/kg/day)—body tremors, increased mortality.

Developmental toxicity, rabbits. Female rabbits were treated by gavage on days 7 through 19 of pregnancy with 0, 4, 12, and 36 mg/kg/day in corn oil to assess the maternal and developmental toxicity of fenpropathrin. Maternal NOEL 4 mg/kg/day, maternal LEL 12 mg/kg/day (grooming, anorexia, flicking of the forepaws). Developmental NOEL > 36 mg/kg/day, there were no compound-related effects on development. Clinical signs included grooming, anorexia, flicking of the forepaws and hindfeet, shaky movements, trembling, stamping of the hindfeet, and lethargy.

Developmental toxicity, rats. Female rats were treated by gavage on days 6 through 15 of pregnancy with 0, 0.4, 1.5, 2.0, 3.0, 6.0 and 10 mg/kg/day in corn oil to assess the maternal and developmental toxicity of fenpropathrin. Maternal NOEL 6 mg/kg/day, maternal LEL of 10 mg/kg/day (death, moribundity, ataxia, sensitivity to external stimuli, spastic jumping, tremors, prostration, convulsion, hunched posture, squinted eyes, chromodacryorrhea, and lacrimation). Developmental NOEL > 10 mg/day. No developmental effects were observed at a dose that was lethally neurotoxic to 7 of 30 dams.

4. *Subchronic toxicity- Subchronic feeding, rat 3-month.* Fenpropathrin was fed to rats at dietary concentrations of 0. 3, 30, 100, 300 and 600 ppm. The NOEL was determined to be 300 ppm (15 mg/kg/day). The LEL was 600 ppm (30 mg/kg/day)—body weight reduction (F), body tremors, reduced kaolin-cephalin clotting time (F), increased alkaline phosphatase and potassium (M), increased brain (F) and kidney (M) weights.

Subchronic feeding, dog 3-month. Groups of six male and six female beagle dogs were fed diets containing 250, 500. and 750 ppm fenpropathrin for 13 weeks. The NOEL was not determined and is less than 250 ppm (7.25 mg/kg/day). At this dosage there were signs of GI tract disturbance (note dog chronic, below). At higher feeding levels the following effects were observed: 500 ppm (15 mg/kg/day) produced tremors and body weight loss in females, 750 ppm (22.25 mg/kg/day) produced tremors, ataxia and blood changes (reduced RBC, HCT, HGB).

Dermal, rabbit 21-day. Ten rabbits of each sex at each dose, half with intact skin and half with abraded skin, were treated dermally with 500, 1200 and 3000 mg/kg/day. The experimental animals were treated 5 days per week for three weeks. There was localized dermal irritation but there were no systemic effects. The systemic NOEL was determined to be greater than 3000 mg/kg/day.

5. *Chronic toxicity.* A complete chronic data base supported by appropriate subchronic studies for fenpropathrin is available to the Agency. A chronic RfD has been identified, and a safety factor of 100 is appropriate. Fenpropathrin shows no evidence of oncogenicity at maximum tolerated dosages. Clinical signs of chronic toxicity were observed as body tremors, at high dosages with little other effects noted.

Oral toxicity study, dogs 12-month. Groups of male and female beagle dogs were fed diets containing 0, 100, 250. and 750 ppm fenpropathrin for 52 weeks. Systemic NOEL of 100 ppm (2.5 milligram (mg)/kilogram (kg)/day) and a systemic LEL of 250 ppm (6.25 mg/kg/day).

Chronic/carcinogenicity feeding, rat 24-month. Groups of male and female Charles River CD rats were fed diets containing 0, 50, 150, 450, and 600 ppm fenpropathrin for 104 weeks. Systemic NOEL's of 450 ppm in males, 150 ppm in females (17.06 mg/kg/day and 7.23 mg/kg/day, respectively). Systemic LEL of 600 ppm [(HDT): 22.80 mg/kg/day] in males (increased mortality, body tremors, increased pituitary, kidney, and adrenal weights), and systemic LEL of 450 ppm (19.45 mg/kg/day) in females (increased mortality and body tremors). There were no oncogenic effects observed at any dose level.

Chronic/carcinogenicity feeding study, mouse 24-month. Groups of male and female Charles River (UK) CD-1 mice were fed diets containing 0, 40, 150, and 600 ppm fenpropathrin for 104 weeks. Systemic NOEL greater than 600 ppm HDT (males and females; 56.0 and 65.2 mg/kg/day, respectively). There were no indications of toxicity or carcinogenicity other than marginally increased hyperactivity in females dosed at 600 ppm.

Carcinogenicity. Fenpropathrin has been classified in EPA Weight-of-the Evidence Category "Group E—Evidence of Non-Carcinogenicity for Humans" for carcinogenicity by the EPA/RFD/PR committee reviewed 1/29/93 and EPA verified 3/18/93. Studies in two species with adequate dosing show no evidence of oncogenicity.

6. *Animal metabolism.* Acceptable rat metabolism studies have been performed using single high (25 mg/kg), and single and multiple low (2.5 mg/kg) doses using both sexes. Elimination was similar in both sexes. The urine: feces ratio of elimination was 1:2 following the high or low single dose, and 1:1 following the 15 daily doses. The half life was 11-16 hours in the urine, and 7-9 hours in the feces. After 7 days, greater than 99% of the administered dose was excreted. A small percentage of radiolabel was found in the tissues (primarily in the fat). The major biotransformations included cleavage of the ester, oxidation at the methyl group of the acid moiety, and hydroxylation at the 4'-position of the alcohol moiety. Ester cleavage products, 2,2,3,3-tetramethylcyclopropanecarboxylic acid and (after oxidation) 3-phenoxybenzoic acid, were excreted either directly or conjugated as sulfates or glucuronides. Parent was detected in the feces, but not in the urine. Eight urinary metabolites and 4 fecal metabolites were identified.

There are no qualitatively unique plant metabolites . The primary aglycones are identical in both plants and animals; the only difference is in the nature of the conjugating moieties employed.

7. *Metabolite toxicology.* The metabolism and potential toxicity of the small amounts of terminal plant metabolites have been tested on mammals. Glucoside conjugates of 3-phenoxy-benzyl alcohol and 3-phenoxybenzoic acid, administered orally to rats, were absorbed as the corresponding aglycones following cleavage of the glycoside linkage in the gut. The free or reconjugated aglycones were rapidly and completely eliminated by normal metabolic pathways. The glucose conjugates of 3-phenoxybenzyl alcohol and 3-phenoxy-benzoic acid are less toxic to mice than the corresponding aglycones.

8. *Endocrine disruption.* No special studies to investigate the potential for estrogenic or other endocrine effects of fenpropathrin have been performed. However, as summarized above, a large

and detailed toxicology data base exists for the compound including studies acceptable to the Agency in all required categories. These studies include evaluations of reproduction and reproductive toxicity and detailed pathology and histology of endocrine organs following repeated or long term exposure. These studies are considered capable of revealing endocrine effects and no such effects were observed.

C. Aggregate Exposure

1. *Dietary exposure.* Toxicity endpoints of concern have been identified by the Agency's Health Effects Division, Hazard Identification Assessment Review Committee (July 17 and 24, 1997). The identified endpoints are a Chronic Dietary of 2.5 mg/kg/day (RfD = 0.025 mg/kg/day, UF = 100) and an Acute Dietary of 6.0 mg/kg/day (systemic). Thus, both chronic and acute exposure and risk analyses are necessary.

2. *Food.* Chronic and acute dietary exposure analyses were performed for fenpropathrin using anticipated residues and accounting for proportion of the crop treated. The crops included in the analyses are cottonseed, currants, peanuts, strawberries, tomatoes, and the secondary residues in meat, milk, and eggs. These exposure/risk analyses have been submitted to the Agency along with a detailed description of the methodology and assumptions used.

Chronic dietary exposure was calculated for the U.S. population and 26 population subgroups. The results from several representative subgroups are listed below. In all cases, chronic dietary exposure was at or below 0.2 % of the reference dose and strawberries was the commodity contributing the most exposure.

Population subgroup	Exposure (mg/kg bw/day)	Percent of RfD
Total U.S. Population	0.000020	008
Females (13+/Nursing)	0.000036	0.14
Non-Hispanic other than B/W	0.000053	0.21
Children (1-6 Years)	0.000035	0.14
All Infants (<1 Year Old)	0.000002	0.008
Non-Nursing Infants (<1 Year Old)	0.000003	0.012

Acute dietary exposure was calculated for the U.S. population and five children subgroups. The calculated exposures and margins of exposure (MOE) for the higher exposed proportions of the subgroups are listed below. It should be noted that the population sizes are small at the lower probability exposures (e.g. 99th and 99.9th percentiles) oftentimes leading to unrealistically high calculated exposures. In all cases, margins of exposure exceed one-hundred.

Calculated Acute Dietary Exposures to Fenpropathrin Residues in Food

Population Subgroup	99th Percentile		99.9th Percentile	
	Exposure (mg/kg bw/day)	MOE	Exposure (mg/kg bw/day)	MOE
U.S. Population	.000682	8,804	.002800	2,143
Children 1-6	.000916	6,547	.007465	804
Children 7-12	.000619	9,687	.003012	1,992
All Infants	.001084	5,533	.001510	3,974
Nursing Infants (<1)	.000297	20,230	.000416	14,412
Non-Nursing Infants (<1)	.001237	4,851	.001572	3,816

3. *Drinking water.* Since fenpropathrin is applied outdoors to growing agricultural crops, the potential exists for fenpropathrin or its metabolites to reach ground or surface water that may be used for drinking water. Fenpropathrin is extremely insoluble in water (14 ppb), with a high octanol/water partitioning coefficient (K_{ow} 1.19 x 10^5) and a relatively short soil half-life for parent and environmental metabolites. The Agency has determined that it is unlikely that fenpropathrin or its metabolites can leach to potable groundwater. The residence time of fenpropathrin in surface water is short because of its very low water solubility and high affinity to bind to soil. In pond studies, fenpropathrin half-lives in the water column were less than 1.5 days.

To quantify the potential small exposure from drinking water, screening evaluations of leaching potential of a typical pyrethroid, cypermethrin, were conducted using EPA's Pesticide Root Zone Model (PRIZM3). Based on this assessment, the potential concentrations of the pyrethroid in groundwater at depths of 1 to 2 meters are essentially zero (<< 0.001 parts per billion). Potential surface water concentrations for the pyrethroid were estimated using PRIZM3 coupled with EPA's Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi farm pond scenarios. The maximum concentration predicted in the simulated pond water was 0.052 ppb. Using standard assumptions about body weight and water consumption, the chronic exposure from this drinking water would be 1.5 x 10^{-6} and 5.2 x 10^{-6} mg/kg bw/day for adults and children, respectively; less than 0.02 percent of the RfD for children. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical small stagnant farm pond modeled, since drinking water from surface sources receives treatment prior to consumption. Based on these analyses, the contribution of water to any the dietary risk analyses is negligible.

4. *Non-dietary exposure.* Fenpropathrin, as the product TAME 2.4 EC Spray, is registered for professional non-food use both indoors and outdoors on ornamentals and non-bearing nursery fruit trees. Fenpropathrin has no animal health, homeowner, turf, termite, or industrial uses. Quantitative information concerning human exposure from this ornamental use is not available, but exposure to the general public from this use of fenpropathrin is expected to be minimal. It is important to note that no endpoints of concern were identified by the Health Effects Division, Hazard Identification Assessment Review Committee for occupational or residential, dermal or inhalation exposures of any duration. Thus, no risk assessment is needed.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." "Available information" in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way.

There are numerous other pesticidal compounds, pyrethroids and natural pyrethrins, that are structurally related to fenpropathrin and may have similar effects on animals. In consideration of potential cumulative effects of fenpropathrin and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by fenpropathrin would be cumulative with those of other chemical compounds. Thus, only the potential risks of fenpropathrin have been considered in this assessment of aggregate exposure and effects.

Valent will submit information for EPA to consider concerning potential cumulative effects of fenpropathrin consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

The Food Quality Protection Act introduces a new standard of safety, a reasonable certainty of no harm. To make this determination, at this time the Agency should consider only the incremental risk of fenpropathrin in its exposure assessment. Since the potential chronic and acute exposures to fenpropathrin are small (<< 100% of RfD, MOE >> 100) the provisions of the FQPA of 1996 will not be violated.

1. *U.S. population— Chronic.* Using the dietary exposure assessment procedures described above for fenpropathrin, chronic dietary exposure is minimal with all population subgroups at or below 0.2 percent of the RfD. Addition of the small potential chronic exposure from drinking water (calculated above) increases the occupancy of the RfD by only 0.006 percent. Generally, the Agency has no cause for concern if total residue contribution is less than 100 percent of the RfD.

Acute. The potential acute exposure from food to the U.S. population (shown above) provides an MOE greatly exceeding 100. In a conservative policy, the Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger.

2. *Infants and children— Safety factor for infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of fenpropathrin, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to ten-fold, for added protection for infants and children in the case of threshold effects unless EPA determines that a different margin of safety will be safe for infants and children.

The toxicological data base for evaluating pre- and post-natal toxicity for fenpropathrin is complete with respect to current data requirements. There are no special pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the three-generation reproductive toxicity study in rats. EPA HED Hazard ID Committee has concluded that reliable data support use of the standard 100-fold uncertainty factor and that an additional uncertainty factor is not needed to be further protective of infants and children.

Chronic risk. Using the conservative exposure assumptions described above, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of fenpropathrin ranges from 0.14 % for children (1–6 years old) and 0.012% for non-nursing infants (< 1 year old). Addition of the small potential chronic exposure from drinking water (calculated above) increases the occupancy of the RfD by only 0.02 percent. Generally, the Agency has no cause for concern if total residue contribution is less than 100 percent of the RfD.

Acute. The potential acute exposure from food to populations of infants and children (shown above) provide MOE values greatly exceeding 100 In a conservative policy, the Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger.

Aggregate acute or chronic dietary exposure to various sub-populations of children and adults demonstrate acceptable risk. Chronic exposures to fenpropathrin occupy considerably less than 100% of the RfD, and all acute MOE values exceed 100. Chronic and acute dietary risk to children from fenpropathrin should not be of concern. Further, fenpropathrin has no other uses, such as indoor pest control, homeowner or turf, that could lead to unique, enhanced exposures to vulnerable sub-groups of the population. It can be concluded that there is a reasonable certainty that no harm will result to any sub-group of the U.S. population, including infants and children, from aggregate chronic or acute exposure to fenpropathrin residues.

F. International Tolerances

Codex Maximum Residue Limits

186	Fenpropathrin
Main uses	8 Insecticide/acaracide
JMPR	83
ADI	0.03 mg/kg body weight (1993)

Codex Maximum Residue Limits—Continued

Residue		Fenpropathrin (fat soluble)			
Commodity		MRL (mg/kg)	Step	JMPR	CCPR
Code	Name				
MM 0812	Cattle meat	0.5 (fat)	6	93	
ML 0812	Cattle milk	0.1 F	6st	93	
MO 0812	Cattle, Edible offal of	0.05	CXL		(1995)
SO 0691	Cotton seed	1	CXL		(1995)
OC 0691	Cotton seed oil, Crude	3	CXL		(1995)
VO 0440	Egg plant	0.2	6	93	
PE 0112	Eggs	0.01 (*)	CXL		(1995)
VC 0425	Gherkin	0.2	CXL		(1995)
FB 0269	Grapes	5	6	93	
VO 0445	Peppers, Sweet	1	CXL		(1995)
FP 0009	Pome fruits	5	CXL		(1995)
PM 0110	Poultry meat	0.02 (fat)	CXL		(1995)
PO 0111	Poultry, Edible offal of	0.01 (*)	CXL		(1995)
VO 0448	Tomato	1	CXL		(1995)

There are small differences between the section 408 tolerances and the Codex MRL values for secondary residues in animal products. These minor differences are mainly caused by differences in the methods used to calculate animal feed dietary exposure. The only substantial difference between the US tolerance and the Codex MRL value is for tomatoes. The JMPR reviewer required that the MRL exceed the highest field residue, and rounded to unity. The EPA reviewer agreed with Valent that one set of field residue samples was possibly compromised by the presence of a high rate processing treatment nearby. High outliers were ignored, and the tolerance was set at 0.6 ppm. (Adam Heyward)

9. Zeneca Ag Products

PP 7G3518, 7F3521, 4F4406

EPA has received a request from Zeneca Ag Products, P. O. Box 15458, Wilmington, DE, 19850–5458 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by removing the time limitation for tolerances established for residues of the insecticide and pyrethriod Tefluthrin in or on the raw agricultural commodities corn, grain, field and pop; corn, forage and fodder, field, pop and sweet; and corn, fresh (including sweet K and corn with huskremoved (CWHR)) at 0.06 ppm. The International Union of Pure and Applied Chemist (IUPAC) name for tefluthrin is (2,3,5,6-tetrafluro-4-methylphenyl)methyl-(1 alpha, 3 alpha)-(Z)-(+/−)-3(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) and its metabolite (Z)-3-(2-chloro-3,3,3-trifluroro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid. The tolerances were originally requested in Pesticide Petition Numbers 7G3518, 7F3521, and 4F4406. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of tefluthrin residues in plants and animals for corn use is adequately understood. The residue of concern is tefluthrin and its metabolite. There is no reasonable expectation of secondary residues in animal tissues and milk from the use as delineated in 40 CFR 180.6(a)(3).

2. *Analytical method.* An adequate analytical method, gas liquid chromatography with an electron capture detector, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration, and is published in the Pesticide Analytical Manual Vol. II (PAM II).

3. *Magnitude of residues.* Tefluthrin (also know as FORCE® Insecticide) is an effective granular soil insecticide registered for use against a number of soil corn pest; the most economically significant being soil dwelling pest, such as corn rootworm, wireworm, cutworm, and white grubs. Residue data covering all the uses associated with the permanent tolerances requested by this petition have been previously submitted to EPA for review and have been found by EPA to support the requested tolerances. See February 1, 1989 (54 FR 5080); and May 3, 1996 (61 FR 19852) (FRL–5358–5).

B. Toxicological Profile

1. *Acute toxicity.* Acute toxicity studies with the technical grade of the active ingredient tefluthrin: Oral LD_{50} in the rat is 22 mg/kg) for (males) and 35 mg/kg for (females); dermal LD_{50} in the rat is 316 mg/kg in (males) and 177 mg/kg in (females); acute inhalation LC_{50} in the rat is 0.04 milligram/liter (mg/l) and 0.05 mg/l in female and male rats, respectively; primary eye irritation in the rabbit study showed slight irritation; primary dermal irritation in the rabbit study showed none to slight irritation, and the dermal sensitization in the guinea pig study showed no skin sensitization.

2. *Genotoxicty.* The following genotoxicity test were all negative: A gene mutation assay (Ames), dominant lethal (mouse *in vivo*), mouse micronucleus (*in vivo*), acute cytogenetic study in the rat, unscheduled DNA synthesis and a mouse lymphoma cells test.

3. *Reproductive and developmental toxicity.* In a rat developmental study, delayed ossification was noted in the highest dose group (5 mg/kg/day), along with significant maternal toxicity (decreased body weight (bwt)). The developmental no observed effect level (NOEL) for this study was established at 3 mg/kg/day. However, the effects observed were most likely a secondary effect resulting from maternal stress.

In a developmental toxicity study in rabbits given gavage doses of 0, 3, 6, and 12 mg/kg/day, the maternal NOEL is 3 mg/kg/day and the developmental NOEL is > 12 mg/kg/day. No developmental effects were observed under the conditions of the study.

In a rat multi-generation reproduction study, conducted at 0, 15, 50, and 250 ppm with tefluthrin in the diet, a reproductive NOEL was established at 50 ppm (3.4 mg/kg/day) based on reduced pup weight and litter size observed at 250 ppm (12.5 mg/kg/day). Parental toxicity (in the form of abnormal, sprayed, or high-stepping gait) was also observed at 250 ppm. Thus, the effects observed in offspring at 250 ppm is considered to be secondary to maternal toxicity.

4. *Subchronic toxicity.* A 90–day feeding study in which rats were fed doses of 0, 50, 150, and 350 ppm with a NOEL of 50 ppm and a lowest observed effect level (LOEL) of 150 ppm based on mild dose changes in hemoglobin, cholesterol, and liver weight.

A 90–day feeding study in which dogs were fed doses of 0, 0.1, 0.5, and 1.5 mg/kg with a NOEL of 0.5 mg/kg and a LOEL of 1.5 mg/kg based on increased triglycerides and AST.

A 21–day dermal study in which rats were exposed dermally to doses of 1, 5, and 50 mg/kg/day, 6 hours/day with a toxicological NOEL of 1mg/kg.

5. *Chronic toxicity.* A 12–month feeding study in dogs was conducted with a NOEL of 0.5 mg/kg/day. The LOEL for this study is established at 2 mg/kg/day based upon ataxia.

A 24–month rat and mouse chronic feeding/oncogenicity studies were conducted with systemic NOEL's of 1.1mg/kg/day and 3.4 mg/kg/day with no oncogenic effects observed at dose levels up to and including 18.2 mg/kg/day and 54.4 mg/kg/day, the highest dose levels tested for rats and mice, respectively.

6. *Animal metabolism.* A metabolism study in the rat demonstrated that distribution patterns and excretion rates in multiple oral dosing periods are similar to single-dose studies. The metabolism of tefluthrin in livestock has been studied in the goat and chicken. The nature of tefluthrin residue in animals for corn use is adequately understood. The residue of concern is tefluthrin and its metabolite. There is no reasonable expectation of secondary residues in animal tissues and milk from the use as delineated in 40 CFR 180.6(a)(3).

7. *Metabolite toxicology.* The nature of tefluthrin residue in plants and animals for corn use is adequately understood. The residue of concern is tefluthrin and its metabolite. There is no reasonable expectation of secondary residues in animal tissues and milk from the use as delineated in 40 CFR 180.6(a)(3). An adequate analytical method, gas liquid chromatography with an electron capture detector, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration, and is published in the Pesticide Analytical Manual Vol. II (PAM II).

8. *Endocrine disruption.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect produced by a naturally occurring estrogen, or such other endocrine effect... ." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists, in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from passage of the Food Quality Protection Act (FQPA) (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

C. Aggregate Exposure

The primary source of human exposure to tefluthrin will be from ingestion of raw and processed food commodities which have been treated with tefluthrin. These commodities include corn, grain, field and pop; corn, forage and fodder, field, pop and sweet; and corn, fresh (including sweet K and CWHR) as listed in 40 CFR 180.440. There is no reasonable expectation of secondary residues in animal tissues, milk, or eggs from use as delineated in 40 CFR 180.6(a)(3).

1. *Dietary exposure.* For purposes of assessing the potential dietary exposure under these tolerances, aggregate exposure is estimated based on the Theoretical Maximum Residue Contribution (TMRC) from the existing tolerances for tefluthrin in food crops. The TMRC is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of those food products eaten by various population subgroups. The following assumptions were used in conducting this exposure assessment: 100 percent of the crops were treated, and the raw agricultural commodities (RAC) residues would be at the level of the tolerance. This results in an overestimate of human exposure and a conservative assessment of risk.

2. *Food.* The acute dietary risk assessment used tolerance level residues and assumed that 100 percent of all crops were treated. Thus, this acute dietary exposure estimate is considered "worst-case" and severely overestimates potential exposure. The acute dietary Margin of Exposure (MOE) for the most highly exposed population subgroup was children ages one to six. The MOE's were 2,436 at the 95th percentile, 1,342 at the 99th percentile, and 738 at the 99.9th percentile. EPA concludes that there is a reasonable certainty of no harm for MOE of 100 or greater. Therefore, the acute dietary risk assessment for tefluthrin clearly indicates a reasonable certainty of no harm.

For the chronic dietary assessment Zeneca used the standard EPA conservative exposure assumptions (i.e. tolerance level residues and 100 percent market share), and based on the completeness and reliability of the toxicity data Zeneca has concluded that the aggregate exposure to this chemical will utilize less than one percent (0.40 percent) of the reference dose (RfD) for the U. S. population. The most highly exposed population subgroup was children ages one to six with a total dietary exposure of 0.000049 mg/kg bwt/day (1.0 percent of the RfD). Since EPA generally has no concern for exposures below 100 percent of the RfD, there is a reasonable certainty that no harm will result from aggregate exposure to residues.

3. *Drinking water.* Tefluthrin is immobile in soil and, therefore, will not leach into ground water. Additionally, due to the insolubility and lipophilic nature of tefluthrin, any residues in surface water will rapidly and tightly bind to soil-particles and remain with sediment, therefore not contributing to potential dietary exposure from drinking water.

A screening evaluation of leaching potential of a typical synthetic pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, potential concentrations of a pyrethroid in ground water at depths of 1 to 2 meters are essentially zero (<0.001 ppb). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis

Modeling Systems (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible.

4. *Non-dietary exposure.* The potential for non-occupational exposure to the general population is expected to be essentially zero. Tefluthrin is not registered for aquatic and/or domestic outdoor or indoor uses. The major use (corn) is applied only once per year at planting as a granular formulation. The other use is limited to commercial seed treatment of field corn, popcorn, seedcorn, and sweet corn seed. There is a commercial use in liquid slurry seed treaters and seed coating equipment, which is not for use on agricultural establishments in hopper-box, planter-box, slurry-box, or other seed treatment applications. The other minor use is for the treatment of fire ants for containerized and balled nursery stock under the USDA/APHIS Imported Fire Ant Quarantine Program (Department of Agriculture-Animal and Plant Health Inspection Service-7 CFR part 301).

D. Cumulative Effects

Zeneca will submit information for EPA to consider concerning potential cumulative effects of tefluthrin consistent with the schedule established by EPA on August 4, 1997 (62 FR 42020) (FRL–5734–6) and other EPA publications pursuant to the FQPA. At this time, Zeneca cannot make a determination, based on available and reliable information, that tefluthrin and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore, for purposes of this request it is appropriate only to consider the potential risks of tefluthrin in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* EPA recently reviewed all of the toxicity end points for the synthetic pyrethroids. Based on this review EPA concluded that the chronic RfD is 0.005 mg/kg/day. This RfD is based on a 1–year dog feeding study with a NOEL of 0.5 mg/kg/day for ataxia, and a 100–fold uncertainty factor. In addition, EPA derived an acute NOEL of 0.5 mg/kg/day for use in acute dietary risk assessment. This NOEL is based on the 1–year dog feeding study in which increased incidence of tremors in both sexes of dogs was observed on the first day of dosing.

Using these RfD's and EPA's standard default assumptions (i.e. tolerance level residues and 100 percent market share), Zeneca assessed the potential acute and chronic dietary risk to the general U.S. population and 22 subpopulations. These analyses are considered "worst-case", and the results concluded that for the U.S. population, uses were 0.000021 mg/kg/day (0.4 of the RfD). The acute MOE's at the 95th, 99th, and 99.9th percentile were 5.195, 2,449, and 1,091 respectively. The most highly exposed population subgroup (children ages one to six), utilizes 1.0 percent of the chronic RfD, and the acute dietary MOE's at the 95th, 99th, and 99.9th percentiles were 2,436, 1,342, and 738, respectively. These assessments indicate a reasonable certainty that no harm will result from aggregate exposure to residues.

2. *Infants and children.* Section 408 of the FFDCA provides that EPA shall apply an additional 10–fold margin of safety for infants and children in the case of threshold effects to account for pre– and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. EPA generally defines the level of appreciable risk as exposure that is greater than $\frac{1}{100}$ of the NOEL in the animal study appropriate to the particular risk assessment. This 100–fold uncertainty (safety) factor/margin of exposure is designed to account for combined inter- and intra-species variability. EPA believes that reliable data support using the standard 100–fold margin/factor, not the additional 10–fold margin/factor, when EPA has a complete database under existing guidelines and when the severity of the effect in infants and children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor.

In assessing the potential for additional sensitivity of infants and children to residues of tefluthrin, EPA considered the data from oral developmental toxicity studies in the rat and rabbit, as well as data from a multi-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects in the developing organism resulting from pesticide exposure during prenatal development in the mothers. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

3. *Pre-natal effects.* In a rat developmental study delayed ossification was noted in the highest dose group (5 mg/kg/day), along with significant maternal toxicity (decreased bwt). The developmental NOEL for this study was established at 3 mg/kg/day. However, the effects observed were most likely a secondary effect resulting from maternal stress.

In a developmental toxicity study in rabbits given gavage doses of 0, 3, 6, and 12 mg/kg/day the maternal NOEL is 3 mg/kg/day, and the developmental NOEL is > 12 mg/kg/day. No developmental effects were observed under the conditions of the study.

4. *Post-natal effects.* In a rat multi-generation reproduction study conducted at 0, 15, 50, and 250 ppm with tefluthrin in the diet, a reproductive NOEL was established at 50 ppm (3.4 mg/kg/day), based on reduced pup weight and litter size observed at 250 ppm (12.5 mg/kg/day). Parental toxicity (in the form of abnormal, sprayed, or high-stepping gait) was also observed at 250 ppm. Thus, the effects observed in offspring at 250 ppm is considered to be secondary to maternal toxicity.

In EPA's review of the toxicity endpoints for tefluthrin they concluded that the data on developmental and reproductive toxicity tests do not indicate any increased pre- or post-natal sensitivity. Therefore, EPA concluded that reliable data support use of a 100–fold safety factor, and additional 10–fold safety factor is not needed. This aggregate assessment of tefluthrin clearly demonstrates that there is no harm for all population groups.

F. International Tolerances

There are no Codex Maximum Residue Levels (MRL's) established for tefluthrin. (John Hebert)

10. Zeneca Ag Products

PPs 7F3560, 7H5543, 7F3488, 1F3952, 1H5607, 1F3992, 2F4109, 2F4100, 2F4114, 1F3985, and 6F4769

EPA has received a request from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, Delaware 19850–5458, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.438 by removing the time limitation for tolerances established for residues of lambda-cyhalothrin and its epimer in or on the following crops and commodities: broccoli at 0.4 ppm; cabbage at 0.4 ppm; cattle, fat at 3.0 ppm; cattle, meat at 0.2 ppm; cattle, meat and meat by-products (mbyp) at 0.2 ppm; corn, grain (field and pop) at 0.05 ppm; corn, fodder at 1.0 ppm; corn, forage at 6.0 ppm; corn, sweet (k+kwhr) at 0.05 ppm; cottonseed at 0.05 ppm; dry bulb onion at 0.1 ppm; eggs at 0.01 ppm; garlic at 0.1 ppm; goats, fat at 3.0 ppm; goats, meat at 0.2 ppm; goats, mbyp at 0.2 ppm, hogs, fat at 3.0 ppm; hogs, meat at 0.2 ppm; hogs, mbyp at 0.2 ppm; horses, fat at 3.0 ppm; horses, meat at 0.2 ppm; horses, mbyp at 0.2 ppm; lettuce, head at 2.0 ppm; milk, fat (reflecting 0.2 ppm in whole milk) at 5.0 ppm; peanuts at 0.05 ppm; peanuts, hulls at 0.05 ppm; poultry, fat at 0.01 ppm; poultry, meat at 0.01 ppm; poultry, mbyp at 0.01 ppm; rice, grain at 1.0 ppm; rice, hulls at 5.0 ppm; rice, straw at 1.8 ppm; sheep, fat at 3.0 ppm; sheep, meat at 0.2 ppm; sheep, mbyp at 0.2 ppm; soybeans at 0.01 ppm; sorghum, grain at 0.02 ppm; sorghum, grain dust at 1.5 ppm; sunflower, seeds at 0.2 ppm; sunflower, forage at 0.2 ppm; tomatoes at 0.1 ppm; wheat, grain at 0.05 ppm; wheat, forage at 2.0 ppm; wheat, hay at 2.0 ppm; wheat, straw at 2.0 ppm; wheat, grain dust at 2.0 ppm; corn, grain flour at 0.15 ppm; sunflower, oil at 0.30 ppm; sunflower, hulls at 0.50 ppm; tomato pomace (dry or wet) at 6.0 ppm; and wheat, bran at 0.2 ppm. The IUPAC name for lambda-cyhalothrin is a 1:1 mixture of (*S*)-alpha-cyano-3-phenoxybenzyl-(*Z*)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-alpha-cyano-3-phenoxybenzyl-(*Z*)-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and the epimer of lambda-cyhalothrin is a 1:1 mixture of (*S*)-alpha-cyano-3-phenoxybenzyl-(*Z*)-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-alpha-cyano-3-phenoxybenzyl-(*Z*)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate. These tolerances were originally requested in Pesticide Petition Numbers 7F3560, 7H5543, 7F3488, 1F3952, 1H5607, 1F3992, 2F4109, 2F4100, 2F4114, 1F3985, and 6F4769. EPA has determined that the petitions contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting the request. Additional data may be needed before EPA rules on the request.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of lambda-cyhalothrin has been studied in cotton, soybean, cabbage and wheat plants. The studies show that the metabolism generally follows that of other pyrethroid insecticides. The ester linkage is cleaved to form cyclopropanecarboxylic acids and the corresponding phenoxybenzyl alcohol. Overall the studies show that unchanged lambda-cyhalothrin is the principal constituent of the residue on edible portions of these crops.

2. *Analytical method.* An adequate analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement purposes.

3. *Magnitude of residues.* Field residue trials, meeting EPA study requirements, have been conducted for each crop in this petition. These data have previously been reviewed and classified by the Agency as supportive of these tolerances.

B. Toxicological Profile

The following toxicity studies have been conducted to support this request.

1. *Acute toxicity.* Acute toxicity studies with the technical grade of the active ingredient lambda-cyahothrin: oral LD_{50} in the rat of 79 millgrams/kilogram (mg/kg) (males) and 56 mg/kg (females), dermal LD_{50} in the rat of 632 mg/kg (males) and 696 mg/kg females, primary eye irritation study showed mild irritation and primary dermal irritation study showed no irritation.

2. *Genotoxicty.* The following genotoxicity tests were all negative: a gene mutation assay (Ames), a mouse micronucleus assay, an *in-vitro* cytogenetics assay, and a gene mutation study in mouse lymphoma celis.

3. *Reproductive and developmental toxicity.* A three-generation reproduction study in rats fed diets containing 0, 10, 30, and 100 ppm with no developmental toxicity observed at 100 ppm, the highest dose tested. The maternal NOEL and LOEL for the study are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based upon decreased parental body weight gain. The reproductive NOEL and LOEL are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based on decreased pup weight gain during weaning.

A developmental toxicity study was conducted in rats given gavage doses of 0, 5, 10, and 15 mg/kg/day with no developmental toxicity observed under the conditions of the study. The developmental NOEL is greater than 15 mg/kg/day, the highest dose tested. The maternal NOEL and LOEL are established at 10 and 15 mg/kg/day, respectively, based on reduced body weight gain.

A developmental toxicity study was conducted in rabbits given gavage doses of 0, 3, 10, and 30 mg/kg/day with no developmental toxicity observed under the conditions of the study. The maternal NOEL and LOEL are established at 10 and 30 mg/kg/day, respectively based on decreased body weight gain. The developmental NOEL is greater than 30 mg/kg/day, the highest dose tested.

4. *Subchronic toxicity.* A 90–day feeding study in rats fed doses of 0, 10, 50 and 250 ppm with a NOEL of 50 ppm and a LOEL of 250 ppm based on body weight gain reduction.

A study where lambda-cyhalothrin in olive oil was applied to the skin of rats for 21 successive days at dose rates of 1, 10, or 100 (reduced to 50 after 2–3 applications) mg/kg/day. A NOEL of 10 mg/kg/day is based on clinical signs of slight general toxicity at 50 mg/kg/day.

5. *Chronic toxicity.* A 12–month feeding study was conducted in dogs fed dose (by capsule) levels of 0, 0.1, 0.5, 3.5 mg/kg/day with a NOEL of 0.1 mg/kg/day. The LOEL for this study is established at 0.5 mg/kg/day based upon clinical signs of neurotoxicity.

A 24–month chronic feeding/carcinogenicity study was conducted with rats fed diets containing 0, 10, 50, and 250 ppm. The NOEL was established at 50 ppm and LOEL at 250 ppm based on reduced body weight gain. There were no carcinogenic effects observed under the conditions of the study.

A carcinogenicity study was conducted in mice fed dose levels of 0, 20, 100, or 500 ppm (0, 3, 15, or 75 mg/kg/day) in the diet for 2 years. A systemic NOEL was established at 100 ppm and systemic LOEL at 500 ppm based on decreased body weight gain in males throughout the study at 500 ppm. The Agency has classified lambda-cyhalothrin as a Group D carcinogen (not classifiable due to an equivocal finding in this study). It is Zeneca's position that no treatment-related carcinogenic effects were observed under the conditions of the study.

6. *Animal metabolism.* Metabolism studies in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. Accumulation of unchanged compound in fat upon chronic administration shows slow elimination. Otherwise, lambda-cyhalothrin was rapidly metabolized and excreted. The metabolism of

lambda-cyhalothrin in livestock has been studied in the goat, chicken, and cow. Unchanged lambda-cyhalothrin is the major residue component of toxicological concern in meat and milk.

Human metabolism of lambda-cyhalothrin was assessed by administering 5 mg lambda-cyhalothrin orally to six male volunteers (average dose was 0.06 mg/kg) and dermally at 20 mg/800 cm^2 to five volunteers. No adverse effects were noted in the individuals given an oral dose, and only mild signs of parasthesia were noted in individuals receiving a dermal dose. Absorption by these two routes of exposure were determined by analysis of urinary metabolites. An average amount of 59% of the oral dose was absorbed. Dermal absorption was extremely low, and estimated to be 0.12% (range 0.04–0.19%).

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of lambda-cyhalothrin are not of toxicological concern and need not be included in the tolerance expression. Given this determination, it is concluded that there is no need to discuss metabolite toxicity.

8. *Endocrine disruption.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect***." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

C. Aggregate Exposure

Zeneca has conducted an aggregate exposure assessment for lambda-cyhalothrin. This assessment included exposures resulting from agricultural crop use and non-dietary residential use.

1. *Dietary exposure.* For the purposes of assessing the potential chronic dietary exposure for all existing and pending tolerances for lambda-cyhalothrin, Zeneca has utilized available information on anticipated residues (FDA monitoring data, average field trial residues and processing data) and percent crop treated. For the acute dietary assessment, a Monte Carlo modeling was used to estimate exposure.

2. *Food.* The Agency has stated that the acute dietary risk assessment for lambda-cyhalothrin should be based on a toxicological NOEL from a 1–year dog study. Zeneca disagrees with EPA's selection of a multiple-dose toxicological endpoint (0.5 mg/kg) for the acute dietary risk assessment, and have requested the Agency to base the acute dietary NOEL on single-dose effects. Acute risk, by EPA definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to pesticide residues. Therefore, an appropriate NOEL must be based on effects noted after a single dose, even if the endpoint is selected from a repeat dose study, such as a 1–year dog. Nonetheless, sufficient margins of exposure are achieved at percentiles of exposure up to and including the 99.9th percentile based on the Agency's NOEL of 0.5 mg/kg.

Based on the Agency's selected acute toxicity endpoint of 0.5 mg/kg bw day, the acute dietary MOE for the most highly exposed population subgroup was children 1–6 years old. The MOEs were 658 at the 95th percentile, 248 at the 99th percentile, and 132 at the 99.9th percentile. EPA concludes that there is a reasonable certainty of no harm for a MOE of 100 or greater. Therefore, the acute dietary risk assessment for lambda-cyhalothrin clearly indicates a reasonable certainty of no harm. The assessment of chronic dietary exposure was estimated to be 5.0% of the chronic reference dose (RfD) for the overall U.S. population. The RfD for lambda-cyhalothrin, 0.001 mg/kg bw /day, is based on the NOEL of 0.1 mg/kg from the 1–year dog study and an Uncertainty Factor of 100. For the most exposed subgroup, children 1–6 years old, the exposure was estimated to be 0.000159 mg/kg bw/day, or 15.9% of the RfD. Since EPA generally has no concern for exposures below 100 percent of the RfD, there is a reasonable certainty that no harm will result from chronic dietary exposure to lambda-cyhalothrin residues.

3. *Drinking water.* Laboratory and field data have demonstrated that lambda-cyhalothrin and its degradates are immobile in soil and will not leach into ground water. Other data show that lambda-cyhalothrin is virtually insoluble in water and extremely lipophilic. As a result, residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Together these data indicate that residues are not expected in drinking water.

A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethorid in ground water at depths of 1 and 2 meters are essentially zero (< 0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible.

4. *Non-dietary exposure.* Other potential sources of exposure are from non-occupational sources such as structural pest control and ornamental plant and lawn use of lambda-cyhalothrin. In its review of toxicity endpoints for assessing risks for lambda-cyhalothrin, the Agency concluded that the most appropriate endpoint for non-dietary risk assessment is 10 mg/kg bw/day based on the NOEL from the 21–day dermal toxicity study. Exposure was estimated using available market use information and surrogate indoor exposure data. The resulting MOEs were 15,000 for the U.S. population, 7,000 for non-nursing infants and 7,200 for children 1–6 years old. The aggregate risk assessment of combined exposures from chronic dietary, drinking water and non-dietary residential sources has been conducted. The resulting MOEs are 14,000 for the U.S. Population, 6,500 for non-nursing infants and 6,500 for children 1–6 years old. EPA concludes that there is a reasonable certainty of no harm for MOE of 100 or greater. Therefore, the non-dietary and overall aggregate risk assessments for lambda-cyhalothrin clearly indicates a reasonable certainty of no harm.

D. Cumulative Effects

Zeneca Ag Products will submit information for EPA to consider concerning potential cumulative effects of lambda-cyhalothrin consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997)(FRL–5734–6) and other EPA publications pursuant to the FQPA. At this time, Zeneca cannot make a determination based on available and reliable information that lambda-cyhalothrin and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore for purposes of this request it is appropriate only to consider the potential risks of lambda-cyhalothrin in an aggregate exposure assessment.

E. Safety Determination

The acceptable RfD based on a NOEL of 0.1 mg/kg bw/day from the chronic dog study and a safety factor of 100 is 0.001 mg/kg bw/day. A chronic dietary exposure/risk assessment has been performed for lambda-cyhalothrin using the above RfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues.

1. *U.S. population.* The ARC from established tolerances and the current and pending actions are estimated to be 0.00005 mg/kg bw/day and utilize 5.0 per cent of the RfD for the U.S. population. For the acute dietary assessment the MOEs at the 95th, 99th, and 99.9th percentiles are 2074, 742, and 237, respectively.

2. *Infants and children.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOEL in the animal study appropriate to the particular risk assessment. This hundredfold uncertainty (safety) factor/margin of exposure is designed to account for combined inter and intraspecies variability. EPA believes that reliable data support using the standard hundredfold margin/factor and not the additional tenfold margin/factor when EPA has a complete database under existing guidelines and when the severity of the effect in infants and children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor.

In assessing the potential for additional sensitivity of infants and children to residues of lambda-cyhalothrin, EPA considered the data from oral developmental toxicity studies in the rat and rabbit, as well as data from a multi-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects in the developing organism resulting from pesticide exposure during prenatal development in the mothers. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

i. *Pre-natal effects.* A developmental toxicity study in rats given gavage doses of 0, 5, 10, and 15 mg/kg/day with no developmental toxicity observed under the conditions of the study. The developmental NOEL is greater than 15 mg/kg/day, the highest dose tested. The maternal NOEL and LOEL are established at 10 and 15 mg/kg/day, respectively, based on reduced body weight gain.

A developmental toxicity study in rabbits given gavage doses of 0, 3, 10, and 30 mg/kg/day with no developmental toxicity observed under the conditions of the study. The maternal NOEL and LOEL are established at 10 and 30 mg/kg/day, respectively based on decreased body weight gain. The developmental NOEL is greater than 30 mg/kg/day, the highest dose tested.

ii. *Post-natal effects.* A three-generation reproduction study in rats fed diets containing 0, 10, 30, and 100 ppm with no developmental toxicity observed at 100 ppm, the highest dose tested. The maternal NOEL and LOEL for the study are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based upon decreased parental body weight gain. The reproductive NOEL and LOEL are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based on decreased pup weight gain during weaning.

In EPA's review of the toxicity endpoints for lambda-cyhalothrin they concluded that the data on developmental and reproductive toxicity tests do not indicate any increased pre- or post-natal sensitivity. Therefore, EPA concluded that reliable data support use of a hundredfold safety factor and that an additional tenfold safety factor is not needed.

Based on this information the ARC for children 1-6 years old, and non-nursing infants (subgroups most highly exposed) utilizes 0.000159 mg/kg bw/day (15.9% of the RfD) and 0.000101 mg/kg bw/day (10.1% of the RfD), respectively. Generally speaking, the Agency has no cause for concern if anticipated residues contribution for all published and proposed tolerances is less than the RfD.

For the acute dietary assessment the MOEs at the 95th, 99th, and 99.9th percentiles are 658, 248, and 132, respectively for children 1–6 years old. For non-nursing infants the MOEs at the 95th, 99th and 99.9th percentiles are 710, 316, and 152, respectively.

F. International Tolerances

There are Codex maximum residue levels established for residues of cyhalothrin, as the sum of all isomers, in or on the following crops and commodities: pome fruits at 0.2 ppm; cabbage, head at 0.2 ppm; potatoes at 0.02 ppm; cotton seed at 0.02 ppm; cotton seed oil, crude at 0.02 ppm; and cotton seed oil, edible at 0.02 ppm. (Adam Heyward)

[FR Doc. 97–25499 Filed 9–22–97; 3:06 pm]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

September 19, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 27, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St. NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

Note: The Commission is submitting this information collection to the Office of Management and Budget under the emergency provisions of the Paperwork Reduction Act of 1995. OMB approval is requested by October 12, 1997.

OMB Approval Number: 3060–0004.

Title: Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (Second Memorandum Opinion and Order, ET Docket No. 93–62).

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; and state, local or tribal government.

Number of Respondents: 128,108.

Estimated Time Per Response: 1.77 hours (avg.). The estimated time per response varies with the number of transmitters considered, e.g., a site with a single transmitter might require one hour to determine compliance, while a site with many co-located transmitters may require considerably more time.

Cost to Respondents: The estimated cost to respondents to perform the environmental evaluations per service varies. For example, complex situations that require a consulting engineer @ $100 per hour may require additional time to perform an evaluation; portable devices authorized under Part 2 of the rules require a specific absorption rate of RF energy test with an average cost of approximately $5,000 per test; and other applicants will use OET Bulletin #65 to perform environmental evaluations, and will no financial burden associated with the evaluation.

Total Annual Burden: 223,376 hours.

Needs and Uses: This revised information collection is a result of responsibility placed on the FCC by the National Environmental Policy Act (NEPA) of 1969. NEPA requires that each federal agency evaluate the impact of "major actions significantly effecting the quality of the human environment." It is the FCC's opinion that this is the most efficient and reasonable method of complying with NEPA with regard to the environmental issue of radio frequency radiation from FCC-regulated transmitters. The Commission will require applicants to perform an environmental evaluation with respect to radio frequency electromagnetic fields. Applicants are required to consider contributions from other transmitters within the vicinity of their facility in order to assess the cumulative exposure. Accordingly, to correctly determine compliance with the Commission's exposure limits, an applicant must locate, determine ownership, and gather technical information for all contributing transmitters. Applicants are generally required, as part of the authorization and licensing process, to indicate compliance with the Commission environmental rules. Supporting information may be requested and reviewed by the Commission's engineers, attorneys, and paraprofessional staff to determine whether the environmental evaluation is sufficiently complete and in accordance with the Commission's rules.

OMB Approval Number: 3060–0213.

Title: Section 73.3525, Agreements for removing application conflicts.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 38.

Estimated Time Per Response: 8 hours.

Cost to Respondents: $60,800.

Total Annual Burden: 39 hours (1 hour per respondent, 8 hours per attorney which includes 1 hour consultation time with respondent). The 8 hours attorney time is reflected in the cost estimate not the total annual burden hours.)

Needs and Uses: Section 73.3525 requires applicants for a construction permit for a broadcast station to obtain approval from the FCC to withdraw, dismiss or amend its application when that application is in conflict with another application pending before the FCC. In the event that the proposed withdrawal of a conflicting application would unduly impede achievement of a fair, efficient and equitable distribution of radio service, the FCC must issue an order providing further opportunity to apply for the facilities specified in the application(s) withdrawn. Upon release of this order, Section 73.3525(b) requires that the party proposing withdrawal of its application give notice in a daily newspaper of general circulation published in the community in which the proposed station would have been located. This notice must be published twice a week for two consecutive weeks within the three-week period immediately following release of the FCC's order. Additionally, within 7 days of the last of publication of the notice, the applicant proposing to withdraw shall file with the FCC a statement giving the dates on which the notice was published, the text of the notice, and the name and location of the newspaper in which the notice appeared. The data in the request for approval is used by FCC staff to assure that the agreement is in compliance with its rules and regulations and Section 311 of the Communications Act of 1934, as amended. The newspaper publication gives interested parties an opportunity to apply for the facilities specified in the withdrawn application(s).

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–25360 Filed 9–24–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

September 18, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 27, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0625.

Title: Section 24.237, Amendment of the Commission's Rules to Establish New Personal Communications Services (Interference Protection).

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; and state, local or tribal government.

Number of Respondents: 100.

Estimated Time Per Response: 2 hours.

Cost to Respondents: N/A.

Total Annual Burden: 200 hours.

Needs and Uses: Section 24.237 requires that the results of the coordination process between incumbent microwave users and PCS licensees be reported to the Commission only if the parties fail to agree. Additionally, the Commission requires that each broadband PCS licensee perform an engineering analysis to assure that the proposed facilities will not cause interference to existing OFS stations within the specified coordination distance of a magnitude greater than a specified criteria, unless there is prior agreement with the affected OFS licensee. This collection is being revised because the requirement in Section 24.204 was eliminated and removed from the Commission's rules.

OMB Approval Number: 3060–0727.

Title: Section 73.213, Grandfathered Short-Spaced FM Stations.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15.

Estimated Time Per Response: 5 hours per showing (0.5 hours consultation time/4.5 hours contracting time).

Cost to Respondents: $8,493. We assume that the applicant would use a consulting engineer ($125/hour) to complete the interference showing. We estimate that copying of the application would be approximately $0.10/page and that each application would have an average of 25 pages. We also estimate that the postage for the mailing of an application would be $1.24/application.

Total Annual Burden: 200 hours.

Needs and Uses: On 8/4/97, the Commission adopted a Report and Order in MM Docket No. 96–120. The Commission adopted two of the proposals as set forth in the NPRM. The third proposal was adopted as proposed but a disclosure requirement was added that requires that a copy of any application for co-channel or first-adjacent channel stations proposing predicted interference caused in any area where interference is not currently predicted to be caused must be served upon the licensee(s) of the affected short-spaced station(s). These modified procedures will allow grandfathered stations greater flexibility in making transmitter site changes and other facility modifications. The data are used by Commission staff to determine if the public interest will be served and that existing levels of interference will not be increased to other licensed stations. Providing copies of application(s) to affected licensee(s) will enable potentially affected parties to examine the proposals and provide them an opportunity to file informal objections against such applications.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–25431 Filed 9–24–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER NUMBER: 97–23579.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, September 11, 1997, 10:00 a.m., meeting open to the public.

This meeting was not held. All agenda items were continued to the next open meeting of September 18, 1997.

FEDERAL REGISTER NUMBER: 97–24251.

PREVIOUSLY ANNOUNCED DATE & TIME: Tuesday, September 16, 1997, 10:00 a.m., meeting closed to the public.

This meeting was cancelled.

DATE & TIME: Tuesday, September 30, 1997, at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Wednesday, October 1, 1997, at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opnion 1997–20: Friends of McCarthy by its treasurer, Rita Copeland.
Advisory Opnion 1997–21: Firebaugh for Congress Committee by its treasurer, Charles Rorex.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–25678 Filed 9–23–97; 3:06 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–011456–023.

Title: South Europe American Conference.

Parties:

DSR-Senator Lines GmbH
Evergreen Marine Corporation (Taiwan) Ltd.
Italia di Navigazione, S.p.A.
A.P. Moller-Maersk Line
P&O Nedlloyd B.V.
P&O Nedlloyd Ltd.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The parties have deleted all authority under the Agreement, effective October 1, 1997, except that relating to the performance of any conference service contracts entered into prior to October 1, 1997. This remaining authority will expire when such contracts are terminated, canceled, or expire, but not later than August 31, 1998.

Agreement No.: 224–200244–002.

Title: Manatee County Port Authority and Del Monte Fresh Produce N.A. Corporation Marine Terminal Agreement.

Parties: Manatee County Port Authority, Del Monte Fresh Produce N.A. Corporation.

Synopsis: The proposed Agreement extends the term of the Agreement to December 31, 2002; establishes a new facility on Parcel B; reduces and establishes new cargo wharfage rates; increases the minimum guaranteed wharfage rates; and eliminates the rate discount for increase annual vessel port calls in order to have the existing Port Manatee tariff rate on vessel dockage to apply.

By Order of the Federal Maritime Commission.

Dated: September 19, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–25392 Filed 9–24–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Seaport Services, Inc., 960 Fell Street, Suite 601, Baltimore, MD 21231, Officer: Vernon R. Martin, President.

ProTrans Logistics & Agency, Inc., 3000 Marna Avenue, Long Beach, CA 90808, Officers: Charles H. Kerr, President, Jo Ellen Kerr, Vice President.

Dated: September 19, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–25401 Filed 9–24–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

University of Georgia; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–104R. *Applicant:* University of Georgia, Athens, GA 30602. *Instrument:* Environmental Process Control Laboratory. *Manufacturer:* Minworth Systems Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 41360, August 1, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a comprehensive mobile laboratory for monitoring the transport and the biochemical transformation of carbon-, nitrogen- and phosphorus-bearing materials and associated behavior of microbiological organisms in water. A domestic manufacturer of similar equipment advised on June 11, 1997 that: (1) These capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–25398 Filed 9–24–97; 8:45 am]

BILLING CODE 3510–DS–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

Background:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before November 24, 1997.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

1. Report title: Recordkeeping Requirements Associated with Real Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y

Agency form number: none

OMB control number: 7100-0250

Frequency: on occasion

Reporters: state member banks and bank holding company (BHC) subsidiaries

Annual reporting hours: 61,220 (27,940 for state member banks and 33,280 for BHC subsidiaries

Estimated average hours per response: .25

Number of respondents: 2,040 (1,016 state member banks and 1,024 BHC subsidiaries)

Small businesses are affected.

General description of report: This recordkeeping is mandatory (U.S.C. Sections 3310, 3331-3351). Since the Federal Reserve does not collect this information, confidentiality under the Freedom of Information Act (FOIA) is generally not at issue. The issue of the confidentiality of the information, however, might arise if the Federal Reserve were to obtain a copy of the appraisal during an examination or inspection. In such a case, the documents would be exempt (5 U.S.C. 552(b)(8)). The information also would be exempt if disclosure would likely cause substantial harm to the institution from which it was obtained (5 U.S.C. 552(b)(4)).

Abstract: This information collection is a recordkeeping requirement contained in the Board's Regulation H (12 C.F.R. 208.18) and Regulation Y (12 C.F.R. 225.61) that implements Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The purpose of the statute is to provide that federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals used in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

The Federal Deposit Insurance Corporation, the Office of the Controller of the Currency, and the Office of Thrift Supervision have parallel requirements for the institutions they supervise.

Board of Governors of the Federal Reserve System, September 19, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–25494 Filed 9–24–97; 8:45 am]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System*.

TIME AND DATE: 3:00 p.m., Tuesday, September 30, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits.

2. Any items carried forward from a previously announced meeting.

• The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for Employees of the Federal Reserve System.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 23, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–25685 Filed 9–23–97; 3:55 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System.

TIME AND DATE: 2:30 p.m., Tuesday, September 30, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of the 1998 budget for the Office of Employee Benefits.

2. Any items carried forward from a previously announced meeting.

• The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for Employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 23, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–25686 Filed 9–23–97; 3:55 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Commission on Consumer Protection and Quality in the Health Care Industry's Subcommittee on Consumer Rights, Protections and Responsibilities, Notice of Public Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of the meeting of the Advisory Commission on Consumer Protection and Quality in the Health Care Industry's Subcommittee on Consumer Rights, Protections and Responsibilities. This meeting will be open to the public, limited only by the space available.

Place of meeting: Hubert H. Humphrey Building, Room 800; 200 Independence Avenue, S.W. Washington, D.C. 20201.

Times and Dates: 9:00 a.m.–4:00 p.m., Monday, October 6, 1997.

Purpose/Agenda: To hear testimony and to continue formal proceedings of the Commission's Subcommittee on Consumer Rights, Protections, and Responsibilities. Agenda items are subject to change as priorities dictate.

Contact Person: For more information, including substantive program information and summaries of the meeting, please contact: Edward (Chip) Malin, Hubert H. Humphrey Building, Room 118F, 200 Independence Avenue, S.W., Washington, DC 20201; [202/205–3038]

Dated: September 17, 1997.

Janet Corrigan,

Executive Director, Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

[FR Doc. 97–25466 Filed 9–24–97; 8:45 am]

BILLING CODE 4110–60–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0295]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Devices: Medical Device Reporting Certification" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 20, 1997 (62 FR 13302), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0059. The approval expires on June 30, 2000.

Dated: September 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–25367 Filed 9–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General; Statement of Organization, Functions and Delegations of Authority

Notice is hereby given that I have delegated to the Inspector General my authority under section 552a(b)(7) of the Privacy Act, as amended, to request disclosure of any record from another agency or government instrumentality without the prior written consent of the individual to whom the record pertains for civil and criminal law enforcement activities. The delegation includes the authority to redelegate in accordance with the Office of Management and Budget (OMB) guidelines.

This delegation supersedes all previous delegations to the Inspector General on this subject. This delegation is effective immediately.

Dated: September 16, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–25468 Filed 9–24–97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–981]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans, ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance for projects in competitive areas administered by the Administration for Native Americans for American Indians, Native Hawaiians, Alaska Natives and Native American Pacific Islanders.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1998 funds in three competitive areas:

(1) Governance and social and economic development;

(2) Governance and social and economic development for Alaska Native entities; and

(3) environmental regulatory enhancement.

Financial assistance provided by ANA in support of projects in these three areas is intended to promote the goal of self-sufficiency for Native Americans.

APPLICATION KIT: Application kits, (Approved by the OMB under control number 0980–0204, which expires August 31, 1999) containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop HHH 348F, Washington, D.C. 20447, Attention: 93612–981, Telephone: (202) 690–7776, Fax: (202) 690–7441.

Copies of this program announcement and many of the required forms may be obtained electronically at the ANA World Wide Web Page: http://www.acf.dhhs.gov/programs/ana/index.html

The printed **Federal Register** notice is the only official program announcement. Although all reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

SUPPLEMENTARY INFORMATION:

Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1998 funds, authorized under the Native American Programs Act of 1974 (Act), as amended, to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders in three competitive areas. Funding authorization is provided under sections [803(a), and 803(d) of the Native American Programs Act of 1974, as amended (Pub. L. 93–644, 88 Stat. 2324, 42 U.S.C. 2991b).]

The Indian Environmental Regulatory Enhancement Act of 1990 (Pub. L. 101–408) authorizes financial assistance for projects to address environmental regulatory concerns (Section 803(d) of the Native American Programs Act of 1974, as amended).

The Administration for Native Americans assists eligible applicants for the three competitive areas to undertake 12 to 36 month development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency.

In order to streamline the application process for eligible applicants under three competitive areas, ANA is issuing a single program announcement for fiscal year 1998 funds. Information regarding ANA's mission, policy, goals, application requirements, review criteria and closing dates for all three competitive areas is included in this announcement.

The Administration for Native Americans promotes the goal of self-sufficiency in Native American communities primarily through Social and Economic Development Strategies (SEDS) projects. The Native American Programs Act also authorizes ANA to establish an additional program for environmental regulatory enhancement.

This program announcement is being issued in anticipation of the appropriation of funds for fiscal year 1998 and the availability of funds for the three competitive areas is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented under each competitive area in this announcement.

Eligible applicants may compete for a grant award in each of the three competitive areas. However, no applicant may receive more than one SEDS grant. Also, an Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the May closing dates. Alaska Native entities may receive a grant under either competitive area 1 or 2, but not under both. However, ANA continues its policy that an applicant may only submit one application per competitive area.

This program announcement consists of three parts.

Part I ANA Policy and Goals

Provides general information about ANA's policies and goals for the three competitive areas.

Part II ANA Competitive Areas

Describes the three competitive areas under which ANA is requesting applications:

- Governance, Social and Economic Development (SEDS);
- Governance, Social and Economic Development (SEDS) for Alaska Native entities;
- Environmental Regulatory Enhancement.

Each competitive area includes the following sections which provide information to be used to develop an application:

A PURPOSE AND AVAILABILITY OF FUNDS;
B BACKGROUND;
C PROPOSED PROJECTS TO BE FUNDED;
D ELIGIBLE APPLICANTS;
E GRANTEE SHARE OF THE PROJECT;
F REVIEW CRITERIA;
G APPLICATION DUE DATE; and
H FOR FURTHER INFORMATION CONTACT

Part III General Application Information and Guidance

Provides important information and guidance that applies to all three competitive areas and that must be taken into account in developing an application for any of the three areas.

A DEFINITIONS;
B GENERAL CONSIDERATIONS;
C ACTIVITIES THAT CANNOT BE FUNDED BY ANA;
D MULTI-YEAR PROJECTS;
E INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS;
F THE APPLICATION PROCESS;
G THE REVIEW PROCESS;
H GENERAL GUIDANCE TO APPLICANTS;
I PAPERWORK REDUCTION ACT OF 1995; and
J RECEIPT OF APPLICATIONS

Part I—ANA Policy and Goals

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders.

The Administration for Native Americans believes that a Native American community is self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

The Administration for Native Americans also believes that the responsibility for achieving self-sufficiency resides with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner which is consistent with its established long-range goals.

The Administration for Native Americans' policy is based on three interrelated goals:

1. Governance: To assist tribal and Alaska Native village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.
2. Economic Development: To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well-being.
3. Social Development: To support local access to, control of, and coordination of services and programs which safeguard the health, well-being and culture of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

Applicants for the three competitive areas may propose to undertake 12 to 36 month projects. For each type of project, applicants must describe a locally-determined strategy to carry out a proposed project with fundable objectives and activities. Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.

An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.

If a federally recognized Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another

applicant's project (e.g., a tribal organization) which serves or impacts the reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.

Part II—ANA Competitive Areas

The three competitive areas under this Part describe ANA's funding authorities, priorities, special initiatives, special application requirements, and review criteria. The standard requirements necessary for each application, as well as standard ANA program guidance and technical guidance are described in Part III of this announcement.

An applicant may submit a separate application under any of the competitive areas described in this Part, as long as the applicant meets the listed eligibility requirements. However, for the May closing, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community.

ANA Competitive Area 1. Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1998 financial assistance to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through locally developed social and economic development strategies (SEDS).

Approximately $14 million of financial assistance is anticipated to be available under this priority area for governance, social and economic development projects. In fiscal year 1998, ANA anticipates awarding approximately 120 competitive grants ranging from $30,000 to $1,000,000 under this area.

B. Background

ANA assists tribal and village governments, and Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The SEDS approach is based on ANA's program goals and incorporates two fundamental principles:

1. The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

2. Governance and social and economic development are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

ANA's SEDS policy uses the following definitions:

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Social infrastructure" includes those components through which health, economic well-being and culture are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local social and economic development strategy is developed as part of a grant application.

A community's movement toward self-sufficiency could be jeopardized if a careful balance between governmental, economic and social development is not maintained. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services.

Conversely, inadequate support services and training could seriously impede productivity and local economic development. Additionally, the necessary infrastructures must be developed or expanded at the community level to support social and economic development and growth. In designing their social and economic development strategies, ANA encourages an applicant to use or leverage all available human, natural, financial, and physical resources.

In discussing their community-based, long-range goals, and the objectives for the proposed projects, ANA recommends that non-Federally recognized and off-reservation groups include a description of what constitutes their specific community.

ANA encourages the development and maintenance of comprehensive strategic plans which are an integral part of attaining and supporting the balance necessary for successful activities that lead to self-sufficiency.

C. Proposed Projects To Be Funded

This section provides descriptions of activities which are consistent with the SEDS philosophy. Proposed activities should be tailored to reflect the governance, social and economic development needs of the local community and should be consistent and supportive of the proposed project objectives. The types of projects which ANA may fund include, but are not limited to, the following:

Governance

- Improvements in the governmental, judicial and/or administrative infrastructures of tribal and village governments (such as strengthening or streamlining management procedures or the development of tribal court systems);
- Increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency (including strategic planning);
- Increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, executive orders, administrative and court decisions, or as citizens of a particular state, territory, or of the United States.
- Status clarification activities for Native groups seeking Federal or State tribal recognition, such as performing research or any other function necessary to submit a petition for Federal acknowledgement or in response to any obvious deficiencies cited by the Bureau of Acknowledgement and Research (BAR), Department of Interior, in a petition from a Native group seeking Federal recognition; and
- Development of and/or amendments to tribal constitutions, court procedures and functions, by-laws or codes, and council or executive branch duties and functions.

Economic Development

- Development of a community economic infrastructure that will result in businesses, jobs, and an economic support structure;
- Establishment or expansion of businesses and jobs in areas such as tourism, specialty agriculture, light and/or heavy manufacturing, construction, housing and fisheries or aquaculture;
- Stabilizing and diversifying a Native community's economic base through business development ventures; and,
- Creation of microenterprises or private sector development.

Social Development

- Enhancing tribal capabilities to design or administer programs aimed at strengthening the social environment desired by the local community;
- Developing local and intertribal models related to comprehensive planning and delivery of services;
- Developing programs or activities to preserve and enhance tribal heritage and culture; and
- Establishing programs which involve extended families or tribal societies in activities that strengthen cultural identity and promote community development or self-esteem.

Other SEDS Relationships. ANA encourages projects designed to use the SEDS approach to help achieve current priorities of the Administration for Children and Families which are to:

- Address welfare reform initiatives such as moving families to work.
- Help ensure child support from both parents.
- Create access to affordable child care for low income working families.
- Reach children earlier to promote full development, including links to Head Start, Early Head Start and Child Care.
- Help enroll children in quality Head Start and prepare them to be ready to learn.
- Provide safety, permanency and well-being for children and double the number of adoptions from the public child welfare system.

D. Eligible Applicants

Current ANA SEDS grantees whose grant project period ends on or before September 30, 1998 are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document). Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 1998.

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional; Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies serving Native Hawaiians (The populations served may be located on these islands or on the continental United States);
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States); and
- Tribally controlled community colleges, Tribally controlled cost-secondary vocational institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.
- Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional Councils) as recognized by the Bureau of Indian Affairs.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a federally recognized Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts a reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the application and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under the specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds must include a match of at least $75,000 (20% of the total $375,000 project cost).

As per 45 CFR 74.2, In-Kind contributions are defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where legislation or regulations authorize

using specific types of funds for match and provided the source relates to the ANA project, examples follow:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source(s), must be included in an application.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Note: Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions).

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and program goals described in the Background section of this competitive area; include a social and economic development strategy which reflects the needs and specific circumstances of the local community; and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

Similarly, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should define their membership and describe how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

- "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.
- "Letters and other documents of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

(2) Organizational Capabilities and Qualifications. (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Objective Work Plan and in the proposed budget. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes and/or proposed position descriptions demonstrate that the proposed staff are or will be qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (45 points)

The application proposes specific project Objective Work Plan(s) with activities related to each specific objective.

The Objective Work Plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.

For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all ANA applicants.

G. Application Due Date

The closing dates for submission of applications under this competitive area are: November 24, 1997 and May 1, 1998.

H. For Further Information Contact:

Leon McKoy, Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop HHH 348F, Washington, D.C. 20447, tel: (202) 690–6320, e-mail: LMcKoy@acf.dhhs.gov

Competitive Area 2. Alaska-Specific Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1998 funds for Alaska Native social and economic development projects. Approximately $1.5 million of financial assistance is anticipated to be available under this competitive area for Alaska Native governance, social and economic development projects.

ANA plans to award approximately 15–18 grants under this competitive area. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period of 12 months will be up to $150,000, commensurate with approved multi-village objectives.

B. Background

Based on the three ANA goals described in Part I, ANA implemented a special Alaska social and economic development initiative in fiscal year 1984. This special effort was designed to provide financial assistance at the village level or for village-specific projects aimed at improving a village's governance capabilities and for social and economic development.

This competitive area continues to implement this special initiative. ANA believes both the nonprofit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203.

While the Administration for Native Americans does not fund objectives or activities for the core administration of an organization. ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

C. Proposed Projects To Be Funded

Examples of the types of projects that ANA may fund include, but are not limited to, projects that will:

Governance

- Initiate demonstration programs at the regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base;
- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management and protection, resource assessment and conducting environmental impact studies;
- Assist village consortia in the development of tribal constitutions, ordinances, codes and tribal court systems;
- Develop agreements between the State and villages that transfer programs jurisdictions, and/or control to; Native entities;
- Strengthen village government control of land management, including land protection, through coordination of land use planning with village corporations and cities, if appropriate;
- Assist in status clarification activities;
- Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health, well being and culture of a community and its people;
- Strengthen local governance capabilities through the development of village consortia and regional IRAs (Indian Reorganization Act councils organized under the Indian Reorganization Act, 25 U.S.C. 473a);
- Assist villages in preparing and coordinating plans for the development and/or improvement of water and sewer systems within the village boundaries;
- Assist villages in establishing initiatives through which youth may participate in the governance of the community and be trained to assume leadership roles in village governments; and
- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills or earthquakes.

Economic Development

- Assist villages in developing businesses and industries which: 1) use local materials; 2) create jobs for Alaska Natives; 3) are capable of high productivity at a small scale of operation; and 4) complement traditional and necessary seasonal activities;
- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system;
- Assist villages, or consortia of villages, in developing subsistence compatible industries that will retain local dollars in villages;

• Assist in the establishment or expansion of new native-owned businesses; and

• Assist villages in labor export; i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development

• Assist in developing training and education programs for local jobs in education, government, and health-related fields; and work with these agencies to encourage job replacement of non-Natives by trained Natives;

• Develop local models related to comprehensive planning and delivery of social services;

• Develop new service programs, initially established with ANA funds, which will be funded by local communities or the private sector for continued operation after the ANA grant expires;

• Develop or coordinate with State-funded projects, activities designed to decrease the incidence of child abuse and neglect, fetal alcohol syndrome, and/or suicides;

• Assist in obtaining licenses to provide housing or related services from State or local governments; and

• Develop businesses to provide relief for caretakers needing respite from human service-related care work.

D. Eligible Applicants

Current ANA SEDS grantees in Alaska whose project period ends on or before September 30, 1998 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the "Financial Assistance Award" document.

The following organizations are eligible to apply under this competitive area:

• Federally recognized Indian Tribes in Alaska;

• Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

• Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

• Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and

• Nonprofit Native organizations in Alaska with village specific projects.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans orNative Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. To establish compliance with the requirement in the regulations for a Board representative of the community, applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a federally recognized Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts a reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the application and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under the specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20% of the total $125,000 project cost).

As per 45 CFR 74.2, In-Kind contributions is defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where legislation or regulations authorize using specific types of funds for match and provided the source relates to the ANA project, examples follow:

• Indian Child Welfare funds, through the Department of Interior;

• Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and

• Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and goals (described in the Background section of this competitive area and in the Background section of Competitive Area 1), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 points)

(a) The application describes the long-range goals and strategy, including:

• How specific social, governance and economic long-range community goals relate to the proposed project and strategy;

• How the community intends to achieve these goals;

• The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and

• A clearly delineated social and economic development strategy (SEDS).

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

Similarly, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

• "Letters of support" merely express another organization's endorsement of a proposed project.

Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.

• "Letters and other documents of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

(2) Organizational Capabilities and Qualifications. (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (45 points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

• Is measurable and/or quantifiable in terms of results or outcomes;

• Supports the community's social and economic development strategy;

• Clearly relates to the community's long-range goals;

• Can be accomplished with the available or expected resources during the proposed project period;

• Indicates when the objective, and major activities under each objective, will be accomplished;

• Specifies who will conduct the activities under each objective; and

• Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

• Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;

• Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and

• Requests funds which are appropriate and necessary for the scope of the proposed project.

For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

G. Application Due Date

The closing date for submission of applications under this competitive area is: May 1, 1998.

H. For Further Information Contact

Diann Winford, Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade; Mail Stop HHH 348F, Washington, D.C. 20447, tel: (202) 401–7365, e-mail: DWinford@acf.dhhs.gov

Competitive Area 3. Indian Environmental Regulatory Enhancement Projects

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1998 funds for environmental regulatory enhancement projects. Approximately $3 million of financial assistance is anticipated to be available under this announcement for environmental regulatory enhancement projects. ANA expects to award approximately 35 grants under this competitive area. The funding level for a budget period of 12 months will be up to $250,000. An applicant may propose project periods of between 12 and 36 months.

B. Background

Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, this lack of resources has resulted in a delay in action on the part of the tribes.

Some of the critical issues identified by tribes before Congressional committees include:

- The need for assistance to train professional staff to monitor and enforce tribal environmental programs;
- The lack of adequate data for tribes to develop environmental statutes and establish environmental quality standards; and
- The lack of resources to conduct studies to identify sources of pollution and the ability to determine the impact on existing environmental quality.

As a result, Congress enacted the Indian Environmental Regulatory Enhancement Act of 1990 (Pub. L. 101–408) to strengthen tribal governments through building capacity within the tribes in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. ANA is to support these activities on a government-to-government basis in a way that recognizes tribal sovereignty and is consistent with tribal culture.

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups.

"Environmental regulatory enhancement" includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

Progress toward the goal of environmental regulatory enhancement would include the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring compliance with and enforcement of these laws, and the development of programs to conduct compliance and enforcement functions.

Other functions leading toward enhancing local regulatory capacity include, but are not limited to:

- Environmental assessments;
- Development and use of environmental laboratories; and
- Development of court systems for enforcement of tribal and Federal environmental laws.

Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

C. Proposed Projects To Be Funded

Financial assistance provided by ANA is available for developmental projects designed to assist tribes in advancing their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate and enforce environmental activities on Indian lands pursuant to Federal and Indian law;
- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote environmental training and education of tribal employees;
- Develop technical and program capability to meet tribal and Federal regulatory requirements;
- Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
- Ensure the tribal court system enforcement requirements are developed in concert with and support the tribe's comprehensive environmental program.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian tribes;
- Incorporated non-federally and State recognized Indian tribes;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaska Native Regional Corporations/Associations with village specific projects; and
- Other tribal or village organizations or consortia of Indian tribes.
- Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

The following organizations are not eligible to apply:

- Urban Indian Centers;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, Palau, or the Commonwealth of Northern Mariana Islands;
- Incorporated nonprofit Alaska Native multi-purpose community based organizations; and
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories:

(1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

Note: Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe or Native American community. If a federally recognized Tribe or Alaska native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts a reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the application and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions; although applicants are encouraged to meet their match requirement through cash contributions. Therefore, a project requesting $250,000 in Federal funds must include a match of at least $62,500 (20% of total $312,500 project cost).

As per 45 CFR 74.2, In-Kind contributions are defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where legislation or regulations authorize using specific types of funds for match and provided the source relates to the ANA project, examples follow:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source(s), must be included in an application.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Review Criteria

A proposed project should reflect the environmental regulatory purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 points)

(a) The application describes the long-range goals and strategy, including:

- How specific environmental regulatory enhancement long-range goal(s) relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The applicant's specific environmental regulatory needs; and
- a clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

Similarly, a tribal organization may submit resolutions supporting the project proposal from each of its member tribes, as well as a resolution from the applicant organization. Other examples of documentation include: Community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

- "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.
- "Letters and other documents of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

(2) Organizational Capabilities and Qualifications. (15 points)

(a) The management and administrative structure of the applicant is described and explained. Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement but the proposed staff and consultants should have the required qualifications and experience. The application should clearly describe any previous or current activities of the applicant organization or proposed staff and/or consultants in support of environmental regulatory enhancement.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the

proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (40 points) The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's strategy for environmental regulatory enhancement;
- Clearly relates to the community's long-range environmental goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range environmental goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.

G. Application Due Date

The closing date for submission of applications under this competitive area is March 6, 1998.

H. For Further Information Contact

Jeanette Clyburn, Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop HHH 348F, Washington, D.C. 20447, tel: (202) 690–6326 e-mail: JClyburn@acf.dhhs.gov

Part III—General Application Information and Guidance

A. Definitions

Funding areas in this program announcement are based on the following definitions:

- A "multi-purpose community-based Native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.
- A "multi-year project" is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.
- "Budget Period" is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.
- "Core administration" is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.
- "Environmental regulatory enhancement" includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.
- "Real Property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
- "Construction" is the term which specifies a project supported through a discretionary grant or a cooperative agreement, to support the initial building of a facility.

B. General Considerations

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

Costs of fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

C. Activities That Cannot Be Funded by ANA

The Administration for Native Americans does not fund projects that:

- Operate indefinitely or require ANA funding on a recurring basis.
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. In addition, T/TA is an allowable activity for environmental regulatory enhancement projects submitted under Competitive Area 3.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- ANA will not fund the purchase of real property.
- ANA will not fund construction.
- Objectives or activities for the support of core administration of an organization.

"Core administration" is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. Under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section H, General Guidance to Applicants, below.

D. Multi-Year Projects

A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects as defined in Section D of this Part. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-to-three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

E. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

F. The Applicotion Process

1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, SW., Mail Stop HHH 348F, Washington, D.C. 20447, Attention: 93612–981, Telephone: (202) 690–7776.

Copies of this program announcement and many of the required forms may be obtained electronically at the ANA World Wide Web Page: www.acf.dhhs.gov/programs/ana/index.html

The printed **Federal Register** notice is the only official program announcement. Although all reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of the Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

2. Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the specific closing date of each ANA competitive area to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447, Attention: Lois B. Hodge, ANA No. 93612–981.

Hand delivered applications are accepted between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, if they are either received on or before the deadline date or postmarked on or before the established closing date at: Administration for Children and Families, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024.

The application (Form 424) must be signed by an individual authorized (1) to act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Each tribe, Native American organization, or other eligible applicant may compete for a grant award in each of the three competitive areas. However, no applicant may receive more than one SEDS grant. The Administration for Native Americans will accept only one application per competitive area from any one applicant. Alaska Native entities may receive a grant under either competitive area 1 or 2, but not under both. Therefore, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both at the same time.

If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

3. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA. An incomplete application is one that is:

- Missing Form SF 424.
- Does not have a signature on Form SF 424.
- Does not include proof of non-profit status, if applicable.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with American Indian Tribes and Native American communities and organizations, and environmental issues, as appropriate, evaluate each application using the published criteria in each funding competitive area. As a result of the review, a normalized numerical score will be assigned to each application. A normalized score reflects the average score from the reviewers, adjusted to reflect the average score from the panels.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a critique including recommendations for improving the application.
- Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

G. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application is signed and submitted by the deadline explained in section G, Application Due Date, in each competitive area of this announcement.
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation and the project described is an allowable type. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applications subjected to the pre-review described above which fail to satisfy one or more of the listed requirements will be ineligible or otherwise excluded from competitive evaluation.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

3. Appeal of Ineligibility

Applicants who are initially excluded from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

H. General Guidance To Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement.
- Projects will not be ranked on the basis of general financial need.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitutes their specific "community."
- Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For tribes, a current signed resolution from the governing body of the tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.
- Applications from National Indian and Native American organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and the community's long-range goals or plan.
- The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.
- Supporting documentation, including letters of support, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.
- In the ANA Project Narrative, Section A of the application package, "Resources Available to the Proposed Project," the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.
- Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or a new business, if the applicant includes a business plan that clearly describes its feasibility and the approach for the implementation and marketing of the business. (ANA has included sample business plans in the application kit).

It is strongly recommended that an applicant use these materials as guides in developing a proposal for an economic development project or business that is part of the application.

- Applications which were not funded under a previous closing date and revised for resubmission should make reference to the changes, or reasons for not making changes, in their current application which are based on ANA panel review comments.

2. Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.
- If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.
- For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of Federally recognized Indian tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other Federally recognized Indian tribes which are not included on this list (e.g., those Tribes which have been recently recognized or restored by the United States Congress) are also eligible to apply for ANA funds.
- The Administration for Native Americans will accept only one application, per competitive area, from any one applicant. If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.
- Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a federally recognized Tribe, or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts a reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support and approval of the application and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.
- The Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.
- If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92.)
- Applicants proposing multi-year projects must fully describe each year's project objectives and activities.

Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

- Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.
- The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. "Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per "unit." During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and deemed not appropriate to the needs of the project by ANA.
- Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Grant Administrative Guidance

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.
- An application with an original signature and two additional copies are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the request. ANA may negotiate a reduction of the project period. The approved project period is shown on block 9 of a Financial Assistance Award.
- Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

• Applicants may propose a 17 month project period. However, the project period for the first year of a multi-year project may only be 12 months.

4. Projects or Activities That Generally Will Not Meet The Purposes of This Announcement

• Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. However, ANA is not interested in funding "wish lists" of business possibilities. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.

• Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. However, under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

• Project goals which are not responsive to one or more of the funding competitive areas.

• Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. Proposals from consortia of tribes should have individual objectives which are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both a consortia of tribes and the tribes who belong to the consortia receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member tribes.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

• ANA will not fund investment capital for purchase or takeover of an existing business, for purchase or acquisition of a franchise, or for purchase of stock or other similar investment instruments.

• Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.

• Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

I. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

J. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section F, The Application Process: Application Submission. The Administration for Native Americans cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ANA electronically will not be accepted regardless of date or time of submission and time of receipt. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

Applications and related materials postmarked after the closing date will be classified as late.

1. Deadlines

• Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U. S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, D.C. 20447.

• Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

• Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date or postmarked on or before the deadline date, Monday through Friday (excluding Federal holidays), between the hours of 8:00 am and 4:30 pm at: U.S. Department of Health and Human Services," Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

• ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

• No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late Applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadlines

The Administration for Children and Families may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is a widespread disruption of the mails. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

(Catalog of Federal Domestic Assistance Program Numbers: 93.612 Native American Programs; and 93.581 Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality)

Dated: September 16, 1997.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 97–25498 Filed 9–24–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0388]

Cultor Food Science, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cultor Food Science, Inc., has filed a petition proposing that the food additive regulations be amended to permit aqueous transition metal catalytic hydrogenation in the production of polydextrose and to adopt the specifications for polydextrose of the Food Chemicals Codex, 4th ed., 1996.

DATES: Written comments on the petitioner's environmental assessment by October 27, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3107.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7A4556) has been filed by Cultor Food Science, Inc., 205 East 42d St., New York, NY 10017. The petition proposes to amend the food additive regulations in § 172.841 *Polydextrose* (21 CFR 172.841) to permit aqueous transition metal catalytic hydrogenation in the production of polydextrose and to adopt the specifications for polydextrose of the Food Chemicals Codex, 4th ed., 1996, pp. 297–300.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before October 27, 1997 submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 9, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–25368 Filed 9–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 97F–0405]

Shikoku Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Shikoku Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aluminum borate as an antistatic agent and/or antifogging agent for olefin polymers intended for use as packaging materials in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4559) has been filed by Shikoku Chemical Corp., c/o SRS International Corp., suite 1000, 1625 K St. NW., Washington DC 20006–1604. The petition proposes to amend the food additive regulations in § 178.3130 Antistatic and/or antifogging agents in food-packaging materials (21 CFR 178.3130) to provide for the safe use of aluminum borate as an antistatic and/or antifogging agent for olefin polymers complying with 21 CFR 177.1520(c) as packaging materials intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 11, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–25430 Filed 9–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0399]

Helen A. Ballack Co. et al.; Withdrawal of Approval of 61 New Drug Applications, 8 Abbreviated Antibiotic Applications, and 36 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 61 new drug applications (NDA's), 8 abbreviated antibiotic applications (AADA's), and 36 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also,

by their request, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 4–526	Bal-Con Capsules	Helen A. Ballack Co., 1356 Book Bldg., Detroit, MI 48226.
NDA 6–203	Nupercaine Heavy Solution (dibucaine hydrochloride)	Novartis Pharmaceuticals Corp., 59 Rt. 10, East Hanover, NJ 07936–1080.
NDA 6–514	Benylin (diphenhydramine hydrochloride) Cough Syrup 12.5 milligrams (mg)/milliliter (mL)	Warner-Lambert Co., 170 Tabor Rd., Morris Plains, NJ 07950.
NDA 6–550	ORTHOXICOL Cough Syrup	The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199.
NDA 6–658	Floropryl (isoflurophate ophthalmic solution) Ophthalmic Solution	Merck & Co., Inc., P.O. Box 4, BLA–20, West Point, PA 19486.
NDA 6–921	CHLOR-TRIMETON (chlorpheniramine maleate) Tablets and Syrup	Schering-Plough Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
NDA 7–635	NPH Insulin	Merck Sharp & Dohme, Division of Merck & Co., Inc.
NDA 7–757	Gantrisin (sulfoxazole diolamine ophthalmic solution) Ophthalmic Solution	Hoffman-LaRoche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199.
NDA 9–018	Hydrocortone Acetate Ophthalmic Solution and Ophthalmic Ointment	Merck & Co., Inc.
NDA 10–656	Floropryl (isoflurophate ophthalmic ointment) Ophthalmic Ointment	Do.
NDA 11–185	Reserpine Tablets USP, 0.1 mg and 0.25 mg	Zenith Goldline Pharmaceuticals, Inc., 140 Legrand Ave., Northvale, NJ 07647.
NDA 11–300	Paraflex (chlorzoxazone tablet) Caplets, 250 mg	R. W. Johnson Pharmaceutical Research Institute, 920 Rt. 202 South, P.O. Box 300, Raritan, NJ 08860–0602.
NDA 11–521	Rauwolfia Serpentine Tablets USP, 50 mg and 100 mg	Zenith Goldline Pharmaceuticals, Inc.
NDA 11–919	Otrivin (xylometazoline hydrochloride)	Novartis Pharmaceuticals, Corp., 59 Rt. 10, East Hanover, NJ 07936–1080.
NDA 17–313	Iodohippurate Sodium I–131 Injection	CIS–US, Inc., 10 De Angelo Dr., Bedford, MA 01730.
NDA 17–672	Lithonate Syrup (Lithium Citrate Syrup, USP)	Solvay Pharmaceuticals, Inc., 901 Sawyer Rd., Marietta, GA 30062.
NDA 17–792	AN–MAA, Technetium TG 99m Albumin Aggregated Kit	CIS–US, Inc.
NDA 17–996	Semilente Insulin (prompt insulin zinc suspension, USP (Beef))	Novo Nordisk Pharmaceuticals, Inc., suite 200, 100 Overlook Center, Princeton, NJ 08540–7810.
NDA 17–997	Ultralente Insulin (extended insulin zinc suspension, USP (Beef))	Novo Nordisk.
NDA 18–125	Halog (halcinonide ointment) Ointment, 0.025%	Bristol-Myers Squibb Pharmaceutical Research Institute, P.O. Box 4000, Princeton, NJ 08543–4000.
NDA 18–055	3.3% Dextrose and 0.3% Sodium Chloride Injection in Flexible Containers	Abbott Laboratories, D–389 Bldg. AP30, 200 Abbott Park Rd., Abbott Park, IL 60064–3537.
NDA 18–384	Lentard (Purified pork and beef insulin zinc suspension)	Novo Nordisk.
NDA 18–462	Ringer's Irrigation in Flexible Containers	Abbott Laboratories.
NDA 18–525	Purified beef insulin zinc suspension	Novo Nordisk.
NDA 18–526	Isophane purified beef insulin suspension	Do.
NDA 18–528	Purified pork insulin injection	Do.
NDA 18–804	Aminosyn 3.5% and 3.5%M in Flexible Containers	Abbott Laboratories.
NDA 18–875	Aminosyn 3.5% and 3.5%M in CR3 Flexible Containers	Do.
NDA 18–923	38.5% Dextrose Injection in Flexible Containers	Do.
NDA 19–065	Novolin N NPH Human Insulin Isophane Suspension (semi-synthetic)	Novo Nordisk.
NDA 19–118	Aminosyn 3.5% and 25% Dextrose Injection	Abbott Laboratories.
NDA 19–119	Aminosyn 4.25% and 25% Dextrose Injection	Do.
NDA 19–120	Aminosyn 3.5% and 5% Dextrose Injection	Do.
NDA 19–218	0.9% Sodium Chloride Injection in Plastic Vials	Do.
NDA 19–339	Heparin Sodium in 5% Dextrose Injection in CR3 Flexible Container	Do.
NDA 19–400	Aminosyn-HBC 7% in CR3 Flexible Containers	Do.
NDA 19–449	Insulatard NPH Human (human insulin (semi-synthetic) isophane suspension)	Novo Nordisk.
NDA 19–482	5% Dextrose and 0.225% Sodium Chloride Injection in 250 mL ADD-Vantage Flexible Containers	Abbott Laboratories.
NDA 19–483	5% Dextrose and 0.9% Sodium Chloride Injection in 250 mL ADD-Vantage Flexible Containers	Do.
NDA 19–484	5% Dextrose and 0.45% Sodium Chloride Injection in 250 mL ADD-Vantage Flexible Containers	Do.
NDA 19–485	Lactated Ringer's Injection in 250 mL ADD-Vantage Flexible Containers	Do.
NDA 19–486	5% Dextrose and 0.3% Sodium Chloride Injection in 250 mL ADD-Vantage Flexible Containers	Do.
NDA 19–491	Aminosyn II 3.5% in CR3 Flexible Containers	Do.
NDA 19–493	Aminosyn II 3.5M in CR3 Flexible Containers	Do.

Application No.	Drug	Applicant
NDA 19–504	Aminosyn II 4.25% w/25% Dextrose in Dual-Chamber Flexible Container	Do.
NDA 19–505	Aminosyn II 3.5% w/25% Dextrose in CR3 Dual-Chamber Flexible Container	Do.
NDA 19–506	Aminosyn II 3.5% w/5% Dextrose in CR3 Dual-Chamber Flexible Container	Do.
NDA 19–712	Aminosyn II w/Electrolytes in Dextrose Injection in 2000 mL CR3 Flexible Container	Do.
NDA 19–713	Aminosyn II in Dextrose Injection in CR3 Flexible Containers	Do.
NDA 19–714	Aminosyn II w/Electrolytes in Dextrose Injection w/Calcium in 2000 mL CR3 Flexible Container	Do.
NDA 19–837	Bretylium Tosylate in 5% Dextrose Injection in Plastic Container, PL 146	Baxter Healthcare Corp., Rt. 120 and Wilson Rd., Round Lake, IL 60073–0490.
NDA 20–043	OMNIFLOX (temafloxacin hydrochloride) Filmtab Tablets	Abbott Laboratories.
NDA 50–188	VINACTANE (sterile viomycin sulfate)	Novartis Pharms, 556 Morris Ave., Summit, NJ 07901.
NDA 50–019	Penbritin Drops	Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–8299.
NDA 50–028	DYNAPEN (Dicloxacillin sodium menohydrate) Capsules	Bristol-Myers, U.S. Pharmaceutical Group, Evansville, IN 47721–0001.
NDA 50–029	Hetacillin Potassium, Sterile	Bristol-Myers Squibb Co., P.O. Box 4755, Syracuse, NY 13221–4755.
NDA 50–134	SYNCILLIN (phenethicillin potassium) O.S.	Bristol-Myers, U.S. Pharmaceutical Group.
NDA 50–328	Methicillin Sodium	Bristol-Myers Squibb Co.
NDA 50–378	Neohydeltrasol (neomycin sulfate/prednisolone sodium sulfate ophthalmic ointment) Ophthalmic Ointment	Merck & Co., Inc.
NDA 50–562	Azlin (azlocillin sodium)	Miles, Pharmaceutical Division, 400 Morgan Lane, West Haven, CT 06516–4175.
NDA 50–618	AMIKIN (amikacin sulfate) in 0.9% NaCL (PVC flexible containers)	Apothecon, P.O. Box 4500, Princeton, NJ 08543–4500.
AADA 60–291	Tetracycline Oral Suspension USP, 125 mg/5 mL	Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
AADA 62–218	Ampicillin Trihydrate, bulk drug	ACS Dobfar SpA, U.S. Agent: Interchem Corp., 120 Rt. 17 North, P.O. Box 1579, Paramus, NJ 07653–1579.
AADA 62–319	Tetracycline Hydrochloride (bulk, nonsterile)	Tianjin Pharmaceuticals Corp., U.S. Agent: Darsheng Trade & Tech. Dev. Co., Ltd., P.O. Box 1220, 655 Amboy Ave., A-wing, 1st Fl., Woodbridge, NJ 07095.
AADA 62–387	Nystatin Cream USP, 100,000 Units/g	Alpharma, U.S. Pharmaceuticals Div., Johns Hopkins Bayview Center, 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
AADA 62–571	Nystatin Oral Suspension USP, 100,000 Units/mL	Do.
AADA 62–731	Nystatin Ointment USP, 100,000 Units/g	Do.
AADA 62–809	Cephalexin Capsules USP, 250 mg and 500 mg	Purepac Pharmaceutical.
AADA 62–942	Cyclacilin, bulk drug	ACS Dobfar SpA.
ANDA 70–580	Allopurinol Tablets, USP, 300 mg	Purepac Pharmaceutical.
ANDA 71–085	Betamethasone Dipropionate Lotion USP, 0.05%	Alpharma.
ANDA 71–798	Triprolidine and Pseudo-ephedrine Hydrochlorides Extended-Release Capsules, 5 mg/120 mg	KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144–2555.
ANDA 71–924	Clorazepate Dipotassium Capsules, 3.75 mg	Purepac Pharmaceutical.
ANDA 71–925	Clorazepate Dipotassium Capsules, 7.5 mg	Do.
ANDA 71–926	Clorazepate Dipotassium Capsules, 15 mg	Do.
ANDA 80–087	Sulfisoxazole Tablets USP, 500 mg	Do.
ANDA 80–395	Hydrocortisone Tablets, 20 mg	Do.
ANDA 83–271	Niacin Tablets, 500 mg	Do.
ANDA 84–020	Triamcinolone Tablets USP, 4 mg	Do.
ANDA 84–247	Hydrocortisone Tablets, 10 mg	Do.
ANDA 84–804	Meprobamate Tablets USP, 200 mg and 400 mg	Do.
ANDA 84–939	Chlordiazepoxide Hydrochloride Capsules USP, 10 mg	Do.
ANDA 85–144	Chlordiazepoxide Hydrochloride Capsules USP, 25 mg	Do.
ANDA 85–155	Chlordiazepoxide Hydrochloride Capsules USP, 5 mg	Do.
ANDA 85–753	Liothyronine Sodium Tablets, 50 micrograms	Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726.
ANDA 85–904	Isoproterenol Hydrochloride Inhalation Aerosol USP, 0.25%	Alpharma.
ANDA 86–110	Sustachron (Nitroglycerin Extended-release) Oral Tablets, 6.5 mg	Forest Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731.
ANDA 86–112	Sustachron (Nitroglycerin Extended-release) Oral Tablets, 2.6 mg	Do.
ANDA 86–649	Sustachron (Nitroglycerin) Tablets, 10 mg	Do.
ANDA 87–110	Nitroglycerin Extended-release Capsules	KV Pharmaceutical Co.
ANDA 87–683	Pentaerythritol Tetra-nitrate Extended-release Capsules, 80 mg	Inwood Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731.
ANDA 87–995	THEO–DUR (Theophylline Sustained-release Capsules) Sprinkle, 200 mg	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.

Application No.	Drug	Applicant
ANDA 88–015	THEO–DUR (Theophylline Sustained-release Capsules) Sprinkle, 75 mg	Do.
ANDA 88–016	THEO–DUR (Theophylline Sustained-release Capsules) Sprinkle, 125 mg	Do.
ANDA 88–022	THEO–DUR (Theophylline Sustained-release Capsules) Sprinkle, 50 mg	Do.
ANDA 88–066	Hydrocone Bitartrate and Homatropine Methylbromide Syrup, 5 mg/1.5 mg per5 mL	Halsey Drug Co., 1827 Pacific St., Brooklyn, NY 11233.
ANDA 88–112	Tripodrine (Triprolidine and Pseudoephedrine Hydrochlorides Tablets USP) 2.5 mg/60 mg	Danbury Pharmacal, Inc., 131 West St., Danbury, CT 06810.
ANDA 88–140	Chlorthalidone Tablets USP, 50 mg	Purepac Pharmaceutical.
ANDA 88–178	Hydralazine Hydrochloride Tablets, 50 mg	Do.
ANDA 88–360	Fluocinolone Acetonide Cream USP, 0.025%	Alpharma.
ANDA 88–361	Fluocinolone Acetonide Cream USP, 0.01%	Do.
ANDA 88–950	Tolbutamide Tablets, 500 mg	Purepac Pharmaceutical.
ANDA 88–997	Dexamethasone Elixir USP, 0.5 mg/5 mL	Alpharma.
ANDA 89–754	Hydrocortisone Cream USP, 2.5%	Do.
ANDA 89–840	Procainamide Hydrochloride Extended-release Tablets, 500 mg	Inwood Laboratories.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective September 25, 1997.

Dated: September 11, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–25369 Filed 9–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Delegation of Authority

Notice is hereby given that I have delegated to the Director, Centers for Disease Control and Prevention, with authority to redelegate, the following authorities vested in the Secretary of Health and Human Services under Title XXVI of the Public Health Service Act, "Health Care Services Program," and the Ryan White Care Act Amendments of 1996 (P.L. 104–146), as amended hereafter, insofar as these authorities pertain to the functions assigned to the Centers for Disease Control and Prevention:

Section 2625—CDC Guidelines for Pregnant Women

Section 2626—Perinatal Transmission of HIV Disease; Contingent Requirement Regarding State Grants Under This Part

Section 2628—Report by the Institute of Medicine

Sections 2641–2650—Formula Grants for States

Sections 2661–2667—General Provisions

Section 2675—Coordinaiton

Section 2680—Grants to States and political subdivisions of States to implement guidelines and model curriculum for health workers and public safety workers, including emergency response employees.

Sections 2681–2690—Notificaiton of Possible Exposure to Infectious Diseases

The Centers for Disease Control and Prevention and the Health Resources and Services Administration shall cooperate in the implementation of Section 2626(e).

This delegation shall be excised under the Department's existing delegation of authority and policy on regulations.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control and Prevention or his subordinates which involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: September 15, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–25467 Filed 9–24–97; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–97]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Requirement to Disclose HMO Financial Information to Members and Supporting Regulations in 42 CFR 417.124; *Form No.:* HCFA–R–0097 (OMB 0938–0472); *Use:* Federally qualified HMOs must meet the full and fair disclosure requirements at 42 CFR 417.124. It requires a written description of an HMOs benefits, coverage, procedures for obtaining benefits, circumstances under which benefits may be denied, premium rates, grievance procedures, service area, provider location(s), hours of service, participating providers, and the financial condition of the HMO. *Frequency:* On occasion; *Affected Public:* Business or other for profit, and Not for profit institutions; *Number of Respondents:* 386; *Total Annual Responses:* 386; *Total Annual Hours:* 1.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 19, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–25470 Filed 9–24–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R13 grant (98–02).
Date: October 1, 1997.
Time: 1:00 p.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892, (teleconference).
Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R01 grant (98–03).
Date: October 13, 1997.
Time: 10:00 a.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892, (teleconference).
Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Dental Research Institute; National Institutes of Health, HHS)

Dated: September 19, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25425 Filed 9–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meeting of the National Institute of Dental Research Special Grants Review Committee

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Dental Research Special Grants Review Committee.
Date: October 16–17, 1997.
Time: 8:30 a.m. to Adjournment.
Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland 20814.
Contact Person: Dr. William Gartland, Scientific Review Administrator, NIDR Special Grants Review Committee, Natcher Building, Room 4AN–38E, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To review and evaluate grant applications and/or contract proposals.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: September 19, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25426 Filed 9–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health (NIH)

National Institute on Aging; Notice of Meeting of the Board of Scientific Counselors, National Institute on Aging

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, October 21–23, 1997 to be held at the Gerontology Research Center, Baltimore, Maryland. On Wednesday, October 22, the meeting will be open to the public for the review

Purpose/Agenda; To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R01 grant (98–04).
Date: October 20, 1997.
Time: 1:00 p.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892, (teleconference).
Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Pane—Review of R01 grant (98–06).
Date: October 22, 1997.
Time: 10:00 a.m.
Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892, (teleconference).
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: September 19, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25426 Filed 9–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health (NIH)

National Institute on Aging; Notice of Meeting of the Board of Scientific Counselors, National Institute on Aging

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, October 21–23, 1997 to be held at the Gerontology Research Center, Baltimore, Maryland. On Wednesday, October 22, the meeting will be open to the public for the review

of the Laboratory of Biological Chemistry from 8:20 a.m. until 12:00 noon; and from 1:00 until 4:30 p.m. On Thursday, October 23, the meeting will be open to the public for the review of the Laboratory of Neurosciences—Brain Aging Dementia Section from 8:30 until 11:30 a.m. and from 12:30 to 3:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on Tuesday, October 21, from 8:00 p.m. to recess; Wednesday, October 22, from 8:00 to 8:20 a.m.; from 12:00 noon to 1:00 p.m.; and from 4:30 to 5:00 p.m.; and Thursday, October 23, from 8:00 to a 8:30 a.m.; from 11:30 a.m. to 12:30 p.m.; and from 3:00 p.m. until adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institute on Aging, (NIA), including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer, NIA, Gateway Building, Room 2C218, National Institutes of Health, Bethesda, Maryland 20892, (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Dr. Dan L. Longo, Scientific Director, NIA, Gerontology Research Center, 4940 Eastern Avenue, Baltimore, Maryland 21224 will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: September 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25428 Filed 9–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of SEP: National Institute on Aging Special Emphasis Panel Healthy Aging and Senile Dementia.
Date of Meeting: October 21, 1997.
Time of Meeting: 8:00 a.m. to 5:00 p.m.
Place of Meeting: Washington University, St. Louis, Missouri.
Purpose/Agenda: To review a program project grant application.
Contact Person: Dr. Arthur D. Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group Neurosciences Aging Review Committee.
Dates of Meeting: November 3–5, 1997.
Times of Meeting:
November 3—7:00 p.m. to recess
November 4—8:00 a.m. to recess
November 5—8:00 a.m. to adjournment
Place of Meeting: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Purpose/Agenda: To review grant applications.
Contact Person: Dr. Maria Mannarino and Dr. Louise Hsu, Scientific Review Administrators, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Pilot Research Grant Program in Neuroscience and Biology.
Date of Meeting: November 5, 1997.
Time of Meeting: 8:00 a.m. to adjournment.
Place of Meeting: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Purpose/Agenda: To review R03 grant applications.
Contact Person: Dr. Louise Hsu, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Pilot Research Grant Program.
Date of Meeting: November 5, 1997.
Time of Meeting: 10:30 a.m. to adjournment.
Place of Meeting: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Purpose/Agenda: To review R03 grant applications.
Contact Person: Dr. Maria Mannarino, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel, Prevention of Alzheimer's Dementia and Cognitive Decline.
Dates of Meeting: November 10–11, 1997.
Times of Meeting:
November 10—7:00 p.m. to recess
November 11—8:00 a.m. to adjournment.
Place of Meeting: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Purpose/Agenda: To review one grant application.
Contact Person: Dr. Maria Mannarino, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel.
Date of Meeting: November 13, 1997.
Time of Meeting: 8:00 a.m. to 5:00 p.m.
Place of Meeting: Bethesda Holiday Inn, 5120 Wisconsin Avenue, Bethesda, Maryland 20814.
Purpose/Agenda: To review a program project grant application.
Contact Person: Dr. Arthur D. Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: September 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25429 Filed 9–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: October 8–10, 1997.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

Name of SEP: Biological and Physiological Sciences.
Date: October 9, 1997.
Time: 12:00 p.m.
Place: NIH, Rockledge 2, Room 4212, Telephone Conference.
Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, Maryland 20892, (301) 435–1222.

Name of SEP: Chemistry and Related Sciences.
Date: October 15, 1997.
Time: 11:00 a.m.
Place: NIH, Rockledge 2, Room 4170, Telephone Conference.
Contact Person: Dr. Nancy LaMontagne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4170, Bethesda, Maryland 20892, (301) 435–1726.

Name of SEP: Multidisciplinary Sciences.
Date: October 23, 1997.
Time: 11:00 a.m.
Place: NIH, Rockledge 2, Room 5116, Telephone Conference.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Biological and Physiological Sciences.
Date: October 27–28, 1997.
Time: 8:00 a.m.
Place: Bethesda Marriott Hotel, Bethesda, MD.
Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, Maryland 20892, (301) 435–1222.

Name of SEP: Biological and Physiological Sciences.
Date: November 4, 1997.
Time: 8:30 a.m.
Place: Georgetown Holiday Inn, Washington, DC.
Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Chemistry and Related Sciences.
Date: November 13, 1997.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4168, Telephone Conference.
Contact Person: Dr. John Bowers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4168, Bethesda, Maryland 20892, (301) 435–1725.

Name of SEP: Biological and Physiological Sciences.
Date: November 18, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4132, Telephone Conference.
Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: September 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25427 Filed 9–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–26]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: November 24, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, 451—7th Street, SW, Room 9116; Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Rose Donnelly, telephone number (202) 708–4767 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Conveyance (Acquisition) and Disposition.
OMB Control Number: 2502–0306.
Descripton of the need for the information and proposed use:

This proposed information collection is required under under 24 CFR 203.377. The Single Family Property Disposition Sales Program is the only HUD program that disposes of single family acquired properties. Therefore, the collection information forms are unique to this program. The acquisition forms are: HUD–9516A, Initial Inspection Report, Condition of Property covers the obligation for mortgagees to inspect, preserve and protect properties; HUD–9519, Acquired Property Inspection Report, is used by the Department's property managers and/or local office staff to document all types of inspections related to contract work on acquired properties; HUD–9519A, Property Maintenance inspections; HUD–9733, Property Disposition Program Management Broker Qualification Data, is completed by prospective bidders and is used to determine the qualifications and responsibility of an applicant to be placed on HUD's bidder's mailing list for property management services. The disposition forms required in this information collection are: HUD–9544, Contract of Sale and Purchase (All Cash-Bulk Sale), sales contract specifically for the purpose of selling more than one property to a single purchaser and is completed by a real estate broker; HUD–9548, Sales Contract, used between the purchaser and HUD; HUD–9548–A, Law Enforcement Officer Certification, is an addendum to the Form HUD–9548, Sales Contract, and will be used as part of the contract between the purchaser of acquired property and HUD; HUD–9548–B, Land Use Restriction Addendum, is an addendum to the form HUD–9548, Sales Contract, and will be used a part of the contract between HUD and a nonprofit organization or unit of local government when purchasing a

property under the Officer Next Door Sales Program; HUD–9548–C, Assignment of Sales Contract, is an addendum to the form HUD–9548, Sales Contract, and will be used as part of the contract between the purchaser of a single family acquired property and HUD.

Form numbers: HUD–9516A, 9519, 9519A, 9733, 9544, 9548, 9548–A, 9548–B, 9548–C.

Members of affected public: Individuals or households; business or other for profit; not for-profit institutions; federal government and state and local or tribal governments.

An estimation of the total numbers of hours needed to prepare the information collection is 248,570, the number of respondents is varied, frequency of response is on occasion, and the hours of response is HUD–9516A (.50 hrs.); HUD–9519 (.25 hrs.); HUD–9519A (.25 hrs); HUD–99733 (.50 hrs); HUD–9544 (.50 hrs); HUD–9548 (.50 hrs.); HUD–9548–A (.17 hrs); HUD–9548–B (.17 hrs); HUD–9548–C (.17 hrs).

Status of the proposed information collection: Revision of currently approved collection.

Authority: Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35,as amended.

Dated: September 19, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–25452 Filed 9–24–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Edward D. Yates, Wrightsville, PA,PRT–834219.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: The Seattle Aquarium, Seattle, WA, PRT–834418.

Type of Permit: Take for Public Display.

Name and Number of Animals: Northern sea otter (*Enhydra l.lutris*), 1.

Summary of Activity to be Authorized: The applicant has requested a permit for the public display of a non-releasable sea otter pup that was found orphaned in Alaska, and turned over to the U.S. Fish and Wildlife Service, Office of Marine Mammals Management.

Source of Marine Mammals: Orphaned/stranded pup found near Kodiak, Alaska.

Period of Activity: Up to five years from issuance date of the permit, if issued.

Applicant: Mote Marine Laboratory, Sarasota, FL, PRT–834406.

Type of Permit: Take for Scientific Research.

Name and Number of Animals: Manatee (*Trichechus manatus*), unlimited.

Summary of Activity to be Authorized: The applicant has requested a permit to collect blood samples (approximately 20 ml each) on an opportunistic basis during regular veterinary care from manatees held in captivity at Mote Marine Laboratory, Lowry Park Zoo, Sea World of Florida, and Homosassa Springs Wildlife Park for the purpose of scientific research of the manatee cellular immune function.

Period of Activity: five years from issuance date of the permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of the applications listed above to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Casper Schrepfer, Lakeside, MT, PRT–834414.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Applicant: Wilton Hardesty, Gunnison, CO, PRT–832902.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, from the Davis Strait polar bear population, Northwest Territories, Canada for personal use.

Applicant: Edward Minto, Davison, MI, PRT–833518.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 19, 1997.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–25378 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Conservation Agreement for the Least Chub (Iotichthys phlegethontis) for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service announces the availability for public review of a Draft Conservation Agreement for the least chub (*Iotichthys phlegethontis*). This species is proposed for Federal listing as endangered with critical habitat pursuant to the Endangered Species Act (Act) of 1973, as amended. The Conservation Agreement was developed by the Utah Department of Natural Resources, with participation from the following parties—Bureau of Land Management; Utah Reclamation, Mitigation and Conservation Commission; Bureau of Reclamation; Central Utah Water Conservancy District; Army Corps of Engineers; and the Service. The agreement focuses on eliminating or minimizing threats to the least chub and its habitat to the greatest extent possible and on restoring and maintaining populations of least chub throughout its historical range. The Service solicits review and comment from the public on the draft agreement.

DATES: Comments on the Draft Conservation Agreement must be received on or before October 27, 1997 to be considered by the Service during preparation of the final conservation agreement and prior to the Service's determination whether it will be a signatory party to the agreement.

ADDRESSES: Persons wishing to review the Draft Conservation Agreement may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Written comments and materials regarding the Draft Conservation Agreement also should be directed to the same address. Comments and written materials will be available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Reed E. Harris, Field Supervisor (see **ADDRESSES** section) (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

The least chub is a small monotypic minnow endemic to the Bonneville Basin in Utah where it was once common and widely distributed. The distribution and abundance of least chub populations have declined steadily over the past 15–20 years, and at the time it was proposed for Federal listing as an endangered species with critical habitat, September 29, 1995 (60 FR 50518), was only known to occur within the Snake Valley in western Utah. The declines in range and abundance of least chub has been attributed to competition and predation from nonnative species and habitat loss and degradation. Shortly after the species was proposed for Federal listing, the Utah Department of Natural Resources initiated development of a Conservation Agreement, working cooperatively with other agencies, in an effort to reduce the threats affecting the least chub.

The Draft Conservation Agreement focuses on identifying, reducing and eliminating significant threats to the species that warrant its listing as an endangered species with critical habitat, and on restoring and maintaining least chub populations throughout its historical range.

Public Comments Solicited

The Service will use information received in its determination on whether it should be a signatory party to the agreement. Comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this draft document are hereby solicited. All comments and materials received will be considered prior to the approval of any final document.

Author: The primary author of this notice is Janet Mizzi (see **ADDRESSES** section) (telephone 801/524–5001).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Act of 1956, the Fish and Wildlife Service Coordination Act of 1964, and the National Memorandum of Understanding (94 (SMU–058)).

Dated: September 18, 1997.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 97–25414 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Threatened and Rare Native Fishes of the Warner Basin and Alkali Subbasin: Warner Sucker (Catostomus warnerensis) (Threatened); Hutton Tui Chub (Gila bicolor ssp.) (Threatened); Foskett Speckled Dace (Rhinichthys osculus ssp.) (Threatened); Cowhead Lake Tui Chub (Gila bicolor vaccaceps) (Candidate); Warner Valley Redband Trout (Oncorhynchus mykiss ssp.) (Special Concern)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the draft recovery plan for the Threatened and Rare Native Fishes of the Warner Basin and Alkali Subbasin. These fishes include the threatened Warner sucker (Catostomus warnerensis), the threatened Hutton tui chub (Gila bicolor ssp.), the threatened Foskett speckled dace (Rhinichthys osculus ssp.), the candidate Cowhead Lake tui chub (Gila bicolor vaccaceps) and the Warner Valley redband trout (Oncorhynchus mykiss ssp.) which is considered to be of special concern.

These species inhabit a wide variety of spring, stream, and lake habitats in the Warner Basin of Oregon, California, and Nevada. The Hutton tui chub inhabits a spring system in the Alkali Subbasin of Oregon. The Service solicits review and comment from the public on this draft plan.

DATES: All comments on the draft recovery plan received by November 24, 1997 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266–1398 (telephone 503–231–6179). Written comments and materials regarding the plan should be addressed to the State Supervisor, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Antonio Bentivoglio at the above Oregon State Office address and phone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions necessary for the conservation of the species, establish criteria for reclassification or delisting, and estimate the time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review be provided during recovery plan development. The Service hereby publishes a notice that the draft plan is

available for public review during a 60-day comment period.

The Warner sucker inhabits the lakes and low gradient stream reaches of the Warner Valley in southeastern Oregon. The Foskett speckled dace inhabits two springs in the Coleman subbasin of the Warner Valley. The Hutton tui chub inhabits one spring, and may inhabit a second spring, in the Alkali subbasin of the Chewaucan Basin, in southeastern Oregon. The Warner sucker was listed in September of 1985 (50 FR 39117), and critical habitat was designated at that time. The Foskett speckled dace and Hutton tui chub were listed in March of 1985 (50 FR 12305) and at that time the designation of critical habitat was determined to be imprudent.

In addition to these listed species, this plan also addresses the conservation needs of the candidate Cowhead Lake tui chub and the Warner Valley redband trout which is considered to be of special concern. The Cowhead Lake tui chub is native to Cowhead Lake, Modoc County, California, where it inhabits the seasonal waters of the lake and a nearby slough that drains the lake. The Warner Valley redband trout is native to the Warner Valley and is found in the same habitats as the Warner sucker, but also in higher gradient stream reaches upstream of the Warner sucker's habitat.

Most of these species are impacted by a variety of human induced disturbances to their habitats. Activities such as grazing of livestock, timber harvest, road construction, irrigation practices, and the stocking of non-native fish species have all contributed to the declines of, or otherwise increased the risk of extinction of, these species. Recovery and long term conservation of these species will require establishment of self-sustaining populations with adequate distribution in current habitats and, in some cases, the reestablishment of migration corridors among habitats. For spring dwelling species, conservation will additionally require securing spring water sources, research into long-term habitat management needs, and assessment of genetic threats to small populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to the approval of the plan.

Author: The author of this notice is Antonio Bentivoglio (see Oregon State Office address above).

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 30, 1997.

Mike Spear,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 97–25419 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Applegate's Milk-vetch (Astragalus applegatei) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of the Technical/Agency Draft Recovery Plan for Applegate's Milk-vetch (*Astragalus applegatei* Peck). This endangered plant is from the Lower Klamath Basin near the city of Klamath Falls, Klamath County, in southern Oregon.

DATE: Comments on the draft recovery plan received by November 24, 1997 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office, 6610 Washburn Way, Klamath Falls, Oregon 97603. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Steven Alan Lewis, Project Leader, at the above Klamath Falls office.

FOR FURTHER INFORMATION CONTACT: Barb Masinton at the Klamath Falls address above (541/885–8481).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

Astragalus applegatei (Applegate's milk-vetch) is endangered and is currently known from only three populations occurring in the Lower Klamath Basin near the city of Klamath Falls, Klamath County, in southern Oregon. It is restricted to flat-lying, seasonally moist, strongly alkaline soils. Although it is currently replete with introduced grasses and other weeds, the species' habitat was historically characterized by sparse, native bunch grasses and patches of bare soil. Intensive agricultural and urban development of the Klamath River floodplain has resulted in severe depletion and fragmentation of Applegate's milk-vetch habitat. The largest of the three populations continues to face attrition through industrial development on private lands. Virtually all remaining potential (undeveloped) habitat for the species has been seriously modified by a proliferation of weeds, fire suppression, flood control, and land reclamation projects involving extensive construction of drainage ditches and water retention dikes. Threats to the species are exacerbated by the small number of populations in a limited area, which increases the vulnerability of Applegate's milk-vetch to extirpation due to random mortality events. Furthermore, the smaller populations may not have enough individuals to maintain the genetic variability necessary for long-term population viability.

This plan provides a framework for the recovery of Applegate's milk-vetch so it can at least be reclassified from endangered to threatened status, and might eventually no longer need the protection by the Endangered Species Act. This plan summarizes available information about the species, reviews the threats to its continued existence, and lists management actions needed to remove these threats. Immediate actions needed to prevent extinction of Applegate's milk-vetch includes conservation of natural populations and establishment of new populations. Inventories will be conducted to attempt to find undiscovered populations and to find suitable sites to establish new populations. Habitat management will be instituted for populations of this plant, as will monitoring to determine whether populations are likely to persist. Long-term activities necessary to perpetuate this species in its natural habitats include long-term seed storage and propagation to mitigate future population losses and make it possible to maintain genetic variability in small populations that are vulnerable to inbreeding depression and/or allele fixation. Research to define population self-sustainability, improve population establishment and augmentation techniques, assess the efficacy of habitat management strategies, and evaluate the plant's soil and water requirements are all needed to help make appropriate management decisions.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 18, 1997.

Don Weathers,

Acting Regional Director, U.S. Fish and Wildlife Service, Pacific Region.

[FR Doc. 97–25420 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Recovery Plan for Nelson's Checker-Mallow (Oregon and Washington) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Nelson's checker-mallow (*Sidalcea nelsoniana*), listed as a threatened species on February 12, 1993 (58 FR 8242). The species occurs primarily as scattered populations in two distinct ecological regions—the northern Coast Range and the Willamette Valley of Oregon. Two outlying populations are located in the Puget Trough of Washington.

DATES: Comments on the draft recovery plan received by November 24, 1997 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Ave., Suite 100, Portland, Oregon 97266–1398. Written comments and material regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew F. Robinson Jr., Fish and Wildlife Biologist, at the above address or by phone at 503/231–6179.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe the site specific management actions considered necessary for conservation and survival of the species, establish objectives and measurable criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service, and other affected Federal agencies, will take these comments into account in the course of implementing approved recovery plans.

Nelson's checker-mallow (*Sidalcea nelsoniana*) is a herbaceous perennial plant species in the mallow family (Malvaceae). Like many of the members of its genus, Nelson's checker-mallow produces mature plants that have either exclusively female flowers or perfect flowers. Nelson's checker-mallow is listed as threatened, with 59 known extant occurrences containing an estimated 27,000 individuals. The species typically occurs in or along the margins of seasonally moist, early successional valley bottom habitats of the Willamette Valley or in mountain meadows in the Oregon Coast Range.

Populations in the Willamette Valley are threatened by agriculture and urban development that has resulted in severe habitat depletion and modification, and the fragmentation of its populations into mostly small, widely-scattered patches. Successional species, primarily resulting from suppression or elimination of natural disturbances such as periodic flooding and fires, are eliminating Nelson's checker-mallow from much of its remaining habitat. In addition to land use threats, Willamette Valley populations are subject to competitive exclusion by exotic species, seed predation by weevils prior to seed dispersal, and increased vulnerability to extirpation due to small population size and genetic isolation, and lack of genetic variation within and among populations.

Land use threats are serious in the Oregon Coast Range, where the meadows occupied by Nelson's checker-mallow are isolated from agricultural and Urban development. The major land use threat in the Oregon Coast Range is inundation by a reservoir planned for Walker Creek, the site of the largest known population of the species. The habitat of several Oregon Coast Range populations is disturbed by recreational use of habitat by motorcyclists.

The objective of this plan is to provide a framework for the recovery of Nelson's checker-mallow so that its protection by the Act is no longer necessary. The plan will be made final and approved following incorporation of comments and material received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described above. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 14, 1997.

William F. Shake,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–25421 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Recovery Plan for the Pacific Pocket Mouse for Review and Comment

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability of the draft recovery plan for the endangered Pacific pocket mouse (*Perognathus longimembris pacificus*) for public review and comment. The Pacific pocket mouse occurs on 3 small parcels on private or federal lands in coastal Orange and San Diego Counties, California. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan received by November 24, 1997 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor at the following address: Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California, 92008. Telephone requests may be made by calling (760) 431–9440. Comments and material received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Loren R. Hays at the above address or telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide this effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions necessary for conservation of the species. The plans additionally establish criteria for downlisting or delisting the species and provide estimates of the time and cost of implementing the necessary recovery measures.

The Endangered Species Act of 1973, as amended (U.S.C. 1531 *et seq.*) (Act) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice be given during plan development to provide an opportunity for public review and comment. The Service will consider all significant information presented during the public comment period prior to the approval of each new or revised recovery plan. The Service and other federal agencies also will consider these comments in the course of implementing approved recovery plans.

The Pacific pocket mouse has an extremely limited distribution in coastal southern California. Less than 150 animals were detected in the 3 known populations from 1993–1995. Pacific pocket mice occur on fine-grain, sandy substrates and inhabit (or inhabited) coastal strand, coastal dunes, river alluvium, and coastal sage scrub habitats growing on marine terraces within approximately 4 kilometers (2.4 miles) of the ocean. The threats to the species include habitat destruction and fragmentation and documented depredation by cats. The conservation, protection, and management of existing populations and occupied and potential habitat are the primary goals of the recovery effort.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All significant comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533(f)).

Dated: August 19, 1997.

Thomas J. Dwyer,

Acting Regional Director.

[FR Doc. 97–25422 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Micronesian megapode (Megapodius laperouse laperouse) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Micronesian megapode (*Megapodius laperouse laperouse*). This species is known only from the Mariana islands and is currently limited to 10 islands in this archipelago with a total population of 1,000 to 1,500 individuals.

DATES: Comments on the draft recovery plan received by December 24, 1997 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (phone: 808/541–2749); the Northern Marianas College Library, P.O. Box 1250, Asterlaje Campus, Saipan, MP 96950 (phone: 670/234–5498, extension 1121/2); and University of Guam, RFK Memorial Library, UOG Station, Mangilao, Guam 96923 (phone: 671/734–9412). Requests for copies of the draft recovery plan and written comments and materials regarding the plan should be addressed to Brooks Harper, Field Supervisor-Ecological Services of the Pacific Islands Office at the Honolulu address given above.

FOR FURTHER INFORMATION CONTACT: Michael Lusk, Fish and Wildlife Biologist, Recovery Branch, at the Honolulu address given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States, its Territories and Commonwealths. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan.

Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is the Micronesian megapode (*Megapodius laperouse laperouse*). This forest bird was historically widespread throughout the Mariana islands archipelago and found on all the islands except Farrallon de Medinilla. The extinction of birds in Micronesia began 2000 to 4000 years ago with the arrival of aboriginal man. These human populations altered vegetation, introduced predatory Polynesian rats (*Rattus exulans*), hunted adult birds and gathered eggs. Decline in bird numbers continued with the arrival of Europeans in the 16th century who brought domestic livestock that caused widespread damage to native forests. At this time, predatory black (*R. rattus*) and Norway (*R. norwegicus*) rats were also introduced. Large areas were converted to agriculture during the German (1899–1917) and Japanese (1917–1944) occupations and native forest were further damaged during World War II battles. These factors, along with the appearance of other exotic competitors and predators, such as the brown tree snake (*Boiga irregularis*), have led to reduction or extirpation of megapode populations from most of the Mariana Islands. Small remnant populations persist on Aguiguan, Tinian, and Saipan, while larger populations persist on Anatahan, Guguan, Sarigan, Alamagan, Pagan, Asculon, and Maug. Habitat loss and exotic predators, such as the brown tree snake, continue to be the greatest threats to the survival of the Micronesian megapode.

The Micronesian megapode is currently represented by populations on ten islands with a total estimate of 1,000 to 1,500 birds. The areas of emphasis for recovery actions are the ten islands with existing populations. In addition, the recovery plan recommends reintroduction of the species onto the islands of Agrihan and/or Rota.

The objective of this plan is to provide a framework for the recovery of this species so that protection by the Act is no longer necessary. Recovery efforts will focus on protection of all extant individuals from habitat loss, control of introduced competitors and predators, and preventing the spread of the brown tree snake. Further research on the reproductive ecology, territory size and habitat use, nesting requirements, demographics, and the impacts of predation and hunting is needed to ensure the long-term survival of the megapode. Recovery efforts will include augmenting existing populations and reestablishment of the species in protected areas throughout its former range.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the data specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 16, 1997.

Mike Spear,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–25423 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Hawaiian Hoary Bat, Lasiurus cinereus semotus, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Hawaiian hoary bat, *Lasiurus cinereus semotus*. This subspecies is known from the islands of Hawaii, Maui, Oahu, Kauai, and Molokai. Population numbers are not known, but Hawaiian hoary bats are observed regularly only on Hawaii, Kauai, and Maui, and the bat is apparently restricted in distribution on the latter two islands. There is a general lack of historic and current data on this subspecies, and its present status is not well understood.

DATES: Comments on the draft recovery plan received by December 24, 1997 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, Room 3108, 300 Ala Moana Boulevard, P.O. Box 50088, Honolulu, Hawaii 96850 (phone: 808/541–3441). Requests for copies of the draft recovery plan and written comments and materials regarding the plan should be addressed to Brooks Harper, Field Supervisor-Ecological Services, U.S. Fish and Wildlife Service, Pacific Islands Ecoregion at the Honolulu address given above.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor-Endangered Species, at the Honolulu address given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States, its Territories and Commonwealths. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the

plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The subspecies being considered in this recovery plan is the Hawaiian hoary bat, *Lasiurus cinereus semotus*. It is known from the islands of Hawaii, Maui, Oahu Kauai, and Molokai. Population numbers are not known, but Hawaiian hoary bats are observed regularly only on Hawaii, Kauai, and Maui, and the bat is apparently restricted in distribution on the latter two islands. There is a general lack of historic and current data on this subspecies, and its present status is not well understood. Habitat requirements for the Hawaiian hoary bat are not well known. Bats are most often observed foraging in open areas, near the edges of native forests, or over open water. Hawaiian hoary bats roost solitarily in trees. Habitat requirements may vary seasonally, but this is not clear. Threats to this subspecies include habitat destruction (elimination of roosting sites), and possibly direct and indirect effects of predation, pesticides, introduced insects, and disease.

The objective of the actions proposed by this recovery plan is to delist the Hawaiian hoary bat. Interim goals include determining the abundance, distribution, and habitat needs of this subspecies. Interim criteria for downlisting the Hawaiian hoary bat to threatened status are also identified.

Delisting and downlisting decisions cannot be made without a basic understanding of the Hawaiian hoary bat's distribution, abundance, and habitat needs. Research addressing these questions must be undertaken prior to consideration of delisting or downlisting.

Downlisting Objectives

A widespread population of Hawaiian hoary bats must be naturally reproducing and stable or increasing in size on the island of Hawaii for a minimum of 5 consecutive years before downlisting is considered.

Delisting Objectives

Hawaiian hoary bat populations on Hawaii, Kauai, and Maui must be well-distributed, naturally reproducing, and stable or increasing in size for at least 5 consecutive years before delisting is considered.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 15, 1997.

Thomas J. Dwyer,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 97–25424 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1220–00]

Closure of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Closure of public lands, roads and trails in Fremont County, CO.

SUMMARY: Notice is hereby given that effective October 1, 1997 that certain public lands, including all existing roads and trails, east of Badger Creek in Fremont County are closed to all types of motor vehicle (including but not limited to 4x4, ATVs, and motorcycles) travel. The purpose of this closure is to prevent further disturbance to soils and vegetation in and near the riparian area, reduce sedimentation into Badger Creek, and stop the expansion of user-created trails in the area. This closure is made under the authority of 43 CFR 8364.1. The public lands affected by this emergency closure are specifically identified as follows: Fremont County, Colorado.

New Mexico Principal Meridian

T. 49 N., R. 10 E.,
Sec. 22 east of Badger Creek
Sec. 23 N½
Sec. 24 N½ west of BLM Road 5980
Sec. 13 S½ west of BLM Road 5980
Sec. 14 SE¼ (locally known as Bloody Gulch and/or Rattlesnake Canyon).

DATES: Effective October 1, 1997 and will remain in effect unless revised, revoked or amended.

ADDRESSES: Bureau of Land Management, Canon City District Office, 3170 East Main Street, Canon City, Colorado 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Levi Deike, Area Manager, Royal Gorge Resource Area at the above address and phone number or John Nahomenuk, Outdoor Recreation Planner, Arkansas Headwaters Recreation Area, P.O. Box 126, Salida, CO 81201; (719) 539–7289.

SUPPLEMENTARY INFORMATION: This closure does not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. Violation of this order is punishable by fine and/or imprisonment as defined in 18 USC 3571. A copy of this **Federal Register** Notice and map showing the closure area is posted in the Canon City District Office and in public places in the affected area.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 97–25475 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Re-opening of Public Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Re-opening of Public Call for Nominations for the Wild Horse and Burro Advisory Board.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.). Notice is hereby given that the public call for nominations for membership on the Wild Horse and Burro Advisory Board is being re-opened for a 30-day period to ensure that all interested parties have had an adequate opportunity to submit nominations for board membership.

Any individual or organization may nominate one or more persons to serve on the Wild Horse and Burro Advisory Board. Individuals may also nominate themselves for Board membership. Nominations that have already been made do not have to be resubmitted. All nomination letters should include the name, address, profession, relevant biographic data, and reference sources for each nominee, and should be sent to the address below.

Nominations may be made for the following categories of interest:

Wild horse and burro advocacy group
Wild horse and burro research
(especially genetics and population biology)
Veterinary medicine (equine science)
Natural resources management
(especially rangeland science)
Humane organization
Wildlife management
Livestock management
Public-at-large.

The specific category that the nominee will represent should be identified in the letter of nomination.

DATES: Nominations should be submitted to the address listed below no later than October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Jim Fox, Bureau of Land Management, LS 314, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 452–7744. Internet: j1fox@wo.blm.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Wild Horse and Burro Advisory Board will be to advise the Secretary of the Interior, the Director of the Bureau of Land Management, the Secretary of Agriculture, and the Chief of the Forest Service on matters pertaining to management and protection of wild free-roaming horses and burros on the Nation's public lands.

Board membership shall be balanced in terms of categories of interest represented. Each member will be a person who, as a result of training and experience, has knowledge or special expertise that qualifies him or her to provide advice from among the categories of interest listed above. Pursuant to Section 7 of the Wild Free-Roaming Horse and Burro Act, members of the Board shall not be employees of Federal or State Government.

Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

The Board will meet no less than two times annually. Additional meetings may be called by the Director, Bureau of Land Management, in connection with special needs for advice.

Dated: September 19, 1997.

Tom Fry,

Acting Director.

[FR Doc. 97–25469 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1020–00]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Interior.

ACTION: Notice of meeting.

SUMMARY: The Miles City District Resource Advisory Council will have a meeting Wednesday, October 22, 1997 at 8:00 a.m. at the Big Horn Restaurant meeting room in Lovell, Wyoming. On October 23 the Council will participate in a field trip to the Pryor Mountains.

Topics of discussion at the meeting will be an overview of the management and gather plan for the Pryor Mountain Wild Horse Range, access, and updates on current BLM projects including the alluvial valley floor coal exchange.

The meeting is open to the public and the public comment period is set for 12:30 p.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City District, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: September 17, 1997.

Timothy M. Murphy,

District Manager.

[FR Doc. 97–25472 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CO–070–1230–00]

Castle Peak Area Travel Management Designations and Use Restrictions

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of change in off highway vehicle use designations, and area closure and use restrictions.

SUMMARY: Notice is hereby given on changes in the off highway vehicle use designations and travel related rules of conduct on approximately 119,631 acres of public land administered by the Grand Junction District, Glenwood Springs Resource Area of the Bureau of Land Management. This order closes public lands in the Bull Gulch and Castle Peak Wilderness Study Areas to use and operation of all motorized and mechanized vehicles, limits use of said vehicles to designated routes on all other public lands in the Castle Peak planning area, and prohibits use of motorized vehicles in specified areas during the fall and winter seasons. The motorized and mechanized travel designations and use restrictions are established pursuant 43 CFR 8341.2(a), and 43 CFR 8464.1. These designations and use restrictions modify current designations established in the Glenwood Springs Resource Area Resource Management Plan, record of decision signed in January 1984, and supersede general rules of conduct for recreational use of public lands in the affected area.

The affected public lands are bounded by the Colorado River, Eagle River and Highway 131 and are located in Townships 2, 3, 4, and 5 South, Ranges 83, 84, 85 and 86 West of the 6th Principal Meridian, Eagle County, Colorado.

EFFECTIVE DATES: The designations will be effective as of the date of approval of the Castle Peak Travel Management Plan. The use restrictions shall be effective as of September 15, 1997 until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: Public lands in the Castle Peak area contain important and fragile resource values and provide a variety of outdoor recreational opportunities. Changes in the current travel designations are needed to protect erosive soils, wintering wildlife habitat, sensitive water quality management areas, cultural resources, important scenic values, semi-primitive non-motorized settings, and wilderness values. Growing recreational use in the area is expected to continue, and travel management is needed to prevent conflicts between users and unacceptable impacts on resource values, while continuing to provide a variety of recreational opportunities.

These travel designations and use restrictions are the result of the Castle Peak Travel Management Plan. Public comments were received throughout the planning process beginning in April 1996, which included scoping of the issues and potential solutions, review of alternatives and the plan proposed in September 1996, and review of the final plan with record of decision approved

by the Colorado State Director on August 8, 1997. Comments were received from users, adjacent landowners, interest groups, the Colorado Division of Wildlife and other State and local agencies.

The areas, roads and trails affected by this order will be posted with appropriate regulatory signs. Information including maps of the restricted areas and travel management designations is available in the Resource Area Office and District Office at the addresses shown below.

The Castle Peak Area described herein will be subject to the following designations, closures and use restrictions:

A. Closed Designation

Use and operation of all motorized and mechanized vehicles including mountain bikes and snowmobiles operating over snow shall be prohibited year round within the following areas:

(1) Bull Gulch Wilderness Study Area—15,201 acres located 8 miles north of the Town of Gypsum in all or portion of T2S R85W Secs. 21, 28, 32, 33; T3S R85W Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 28, 29, 30, 31, 32; T3S R86W Secs. 24; T4S R85W Secs. 3, 4, 5, 6, 8, 9, 10.

(2) Castle Peak Wilderness Study Area—12,237 acres located 9 miles north of the Town of Eagle in all or portion of T3S R84W Secs. 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 33, 34 and 35.

B. Limited Designation

All travel by motorized and mechanized vehicles, except snowmobiles operating over snow, is limited to designated routes year-round on all public lands not otherwise closed. Motorized and mechanized travel off the designated routes is prohibited.

C. Fall Limitation

Between October 1 and April 30 annually, use and operation of all motorized vehicles, including snowmobiles operating over snow, is prohibited on the following routes. This fall limitation does not restrict non-motorized travel on these routes.

1. Stagecoach Trail (Route #8535) and related spurs: 5.1 miles of route located 2 miles southwest of McCoy in T2S, R84W Secs. 10, 11, 12, 13 and 24.

2. Domantle Road (Route #8513) and related spurs: 3 miles of route located 11 miles northeast of the Town of Eagle in T3S R 84 W Secs. 11, 12, and 13.

D. Winter Limitation

Between December 1 and April 30 annually, all motorized vehicle use, including snowmobiles operating over snow, is prohibited on and off the roads and trails on public lands in the following areas and on all routes therein. This winter limitation does not restrict non-motorized travel, or any travel on county roads.

(1) Cottonwood Creek: 11,768 acres west of Eby Creek, northwest of the Town of Eagle in all or portion of T4S R84W Secs. 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32; T4S R85W Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36.

(2) Red Canyon: 5,451 acres east of Eby Creek and west of Milk Creek, northeast of the Town of Eagle in all or portion of T4S R83W Secs. 5, 7, 8 and 18; T4S R84W Secs. 8, 13, 14, 15, 17, 20, 21, 22, 23, 24, 26, 27, 28, 29, 32, and 33.

(3) Bocco Mountain: 3,117 acres east of Milk Creek, north of the Eagle River to Alkali Creek and west of Highway 131, northeast of Wolcott in all or portion of T3S R83W Secs. 27, 28, 32, 33 and 34; T4S R83W Secs. 3, 4, 5, 8, 9 and 10.

(4) Domantle-Boore Flats: 10,134 acres north of Alkali Creek, south of Pisgah Mountain and east of the Winter Ridge Road, southeast of Burns in all or portion of T2S R83W Secs. 30, 31, 32; T2S R84W Secs. 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35 and 36; T3S R83W Secs. 6, 7, and 18; T3S R84W Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, and 14.

(5) Pisgah Mountain-Windy Point Area: 15,849 acres south of the Colorado River, west of Highway 131 to Big Alkali Creek, south of McCoy in all or portion of T2S R83W 7, 8, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36; T2S R84W Secs 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, and 28.

(6) Black Mountain: 7,536 acres south of the Colorado River, west of the Winter Ridge Road to the Bull Gulch area near Burns in all or portion of T2S R84W Secs. 17, 18, 19, 30, 31; T2S R85W Secs. 13, 14, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36.

E. Motorized Routes

Open to use and operation of all motorized vehicles including motorcycles, all terrain vehicles, four wheel drive vehicles and snowmobiles, subject to the conditions of use in 43 CFR 8341. Also open to non-motorized travel including mountain bikes, foot and horseback or pack animal unless otherwise restricted.

F. Single Track Motorized Routes

Use and operation of motorized vehicles over 40" in width is prohibited. Open to use of motorcycles and snowmobiles operating over snow and mountain bikes unless otherwise closed.

G. Non Motorized Routes

Use and operation of all motorized vehicles is prohibited. Open to all non-motorized travel year round including mountain bikes, unless otherwise closed.

Persons who are exempt from these restrictions include any Federal, State, or local officers engaged in fire, emergency and law enforcement activities; BLM employees engaged in official duties, and other persons specifically authorized to conduct or engage in the otherwise prohibited use or activity. These designations and use restrictions do not apply to use of county roads or private lands.

The environmental impacts of these designations and use restrictions are described in the Castle Peak Travel Management Plan Environmental Assessment No. CO–078–07–49.

Penalties

Violations of this closure and restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Michael S. Mottice, Area Manager, Glenwood Springs Resource Area, 50629 Highway 6/24, P.O. Box 1009, Glenwood Springs, CO 81602; (970) 947–2800. Mark Morse, District Manager, Grand Junction District, 2815 H Road, Grand Junction, Colorado 81506; (970) 244–3000.

Mark Morse,

Grand Junction District Manager.

[FR Doc. 97–25474 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–5410–A153] AZA 30011; [AZ–020–5410–A152] AZA 30354]

Notice of Segregation

SUMMARY: An application for the conveyance of federally-owned minerals has been filed for the federally-owned mineral interests in the following described lands, under the provisions of 43 U.S.C. 1719:

Gila and Salt River Meridian, Arizona

T. 4 S., R. 13 E.,
Sec. 33, SE¼, W½.
T. 6 S., R. 15 E.,

Sec. 33.

Aggregating 1,120 acres.

Upon publication in the **Federal Register**, the mineral interests owned by the United States in the land described above will be segregated from appropriation under the public land laws, including the mining laws. The segregation will terminate upon issuance of a patent for the mineral interests, rejection of the application, or 2 years from the date of publication, whichever comes first.

FOR FURTHER INFORMATION CONTACT: Laura Wood, Land Law Examiner, Arizona State Office, Bureau of Land Management (602) 417–9360.

Dated: September 11, 1997.

Mary Jo Yoas,

Supervisor, Lands and Minerals Operations.

[FR Doc. 97–25476 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–1430–00; COC60563]

Realty Action: Sale Of Public Land In Grand County, Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Grand County, Colorado have been examined and found suitable for direct sale under section 203 and 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 & 1719), at not less than the appraised fair market value. The mineral interest will be included in the sale.

Affected Public Lands:

Sixth Principal Meridian, Colorado

T. 1S., R. 76W.,
Sec. 20, NW¼SE¼;
Sec. 21, NW¼SW¼.

The lands described above contains 80 acres more or less.

FOR FURTHER INFORMATION CONTACT: Information concerning this sale is available for review by contacting Madeline Dzielak at the Kremmling Resource Area Office at P.O. Box 68, Kremmling, Colorado 80459, (970) 724–3437.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws, including the mining laws, for a period of 270 days from the date of publication of this notice. The land will be segregated as specified above unless the sale is cancelled or completed prior to that date.

The following reservations, will be made in a patent issued for the public lands:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

For a period of 45 days from the date of this notice, interested parties may submit comments to the Area Manager, Kremmling Resource Area Office, Bureau of Land Management, P.O. Box 68, Kremmling, Colorado 80459. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: September 3, 1997.

Mark T. Morse,

District Manager.

[FR Doc. 97–25405 Filed 9–24–97; 8:45 am]

BILLING CODE 1430–CO–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825–0451, (916) 978–4310.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Humboldt Meridian, California

Tps. 3 & 4 N., Rs. 1 E. and 1 W.—Dependent resurvey and tract survey (Group 1300), accepted August 29, 1997, to meet certain administrative needs of the BLM, Arcata Resource Area.

Mount Diablo Meridian, California

T. 29 S., R. 40 E.—Supplemental plat of a portion of section 35, accepted August 7, 1997, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Resource Area.

T. 8 N., R. 14 E.—Corrective dependent resurvey and subdivision (Group 1257), accepted August 12, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 26 S., R. 10 E.—Dependent resurvey and subdivision (Group 1219), accepted August 25, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: September 15, 1997.

Lance J. Bishop,

Chief, Branch of Cadastral Survey.

[FR Doc. 97–25406 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1430–01; F–92350]

Notice of Proposed Extension of Withdrawal and Transfer of Jurisdiction; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The General Services Administration has filed an application for the Extension of Withdrawal and Transfer of Jurisdiction from the U. S. Department of the Treasury, Bureau of Customs, to the General Services Administration for approximately 10 acres of land known as the Poker Creek Border Station. The land is withdrawn from all forms of appropriation under the public land laws by Public Land Order No. 5645. The land will be administered by the General Services Administration, and used jointly with the Bureau of Customs and the Immigration and Naturalization Service as a border inspection station to aid in the enforcement of the Customs and Immigration laws.

DATE: Comments and requests for a public meeting must be received by December 24, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office,

222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, BLM Alaska State Office, 907–271–5477.

SUPPLEMENTARY INFORMATION: On August 28, 1997, the General Services Administration filed an application to transfer jurisdiction and extend the existing land withdrawal made by Public Land Order No. 5645 for 20 years, pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, U.S.C. 1714 (1994). The land is described as follows:

Copper River Meridian

A parcel of land located within the S½S½ of sec. 25, T. 27 N., R. 22 E., more particularly described as:

Beginning at the intersection of the Alaska-Canada International Boundary with the centerline of the road between Boundary, Alaska, and Dawson, Yukon, at approximate latitude 64°05.1" N., longitude 141°00" W.;

Thence South along the International Boundary 330 feet to corner No. 1;

Thence West 660 feet to corner No. 2;

Thence North 660 feet to corner No. 3;

Thence East 660 feet to corner No. 4 on the Alaska-Canada International Boundary;

Thence South on said International Boundary 330 feet to the point of beginning.

The area described contains approximately 10 acres.

The purpose of the withdrawal is to protect the Poker Creek Border Station. The withdrawal segregates the land from settlement, sale, location, or entry, under all of the general land laws, including the mining laws, as provided by Public Land Order No. 5645. No change is proposed in the purpose of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, or desire a public meeting in connection with the proposed withdrawal extension and transfer of jurisdiction, may present their views in writing to the Alaska State Director of the Bureau of Land Management at the address indicated above.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Dated: September 19, 1997.

Donald W. Baggs,

Lands and Minerals Group Supervisor, Division of Lands, Minerals, and Resources.

[FR Doc. 97–25418 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30353]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 7,040 acres of National Forest System land to protect the Diamond Rim Recreational Mining Collection Area. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may be made of National Forest System land.

DATES: Comments should be received on or before December 24, 1997.

ADDRESSES: Comments should be sent to the Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona 85006.

FOR FURTHER INFORMATION CONTACT: Karyn Harbour, Tonto National Forest, 602–225–5200, or Rod Byers, Payson Ranger District, 520–474–7900.

SUPPLEMENTARY INFORMATION: On August 13, 1997, the United States Department of Agriculture filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Tonto National Forest

T. 11 N., R. 11 E.,
- Sec. 1;
- Sec. 2;
- Sec. 3;
- Sec. 10;
- Sec. 11;
- Sec. 12;
- Sec. 13;
- Sec. 14;
- Sec. 15, NW¼;
- Sec. 23, N½N½;
- Sec. 24, N½.

T. 11½ N., R. 11 E.,
- Sec. 34;
- Sec. 35, W½, and SE¼;
- Sec. 36, SW¼.

The area described contains 7,040 acres in Gila County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Tonto National Forest.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of time and place will be published in the **Federal Register** and a newspaper in the general vicinity of the lands to be withdrawn at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 97–25478 Filed 9–24–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF JUSTICE

Sunshine Act Meeting

United States Parole Commission

Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. 552b)

I, Michael J. Gaines, Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately nine-thirty a.m. on Wednesday, September 17, 1997 at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide four appeals from the National Commissioners' decisions pursuant to 28 CFR Section 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Michael J. Gaines, Edward F. Reilly, Jr., and John R. Simpson.

In witness of whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: September 19, 1997.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 97–25891 Filed 9–23–97; 3:58 pm]

BILLING CODE 4410–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Policy Letter on Procurement System Education, Training and Experience Requirements for Acquisition Personnel

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is issuing a Policy Letter on "Procurement System Education, Training and Experience Requirements for Acquisition Personnel."

SUMMARY: Section 37(b)(3) of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. § 401, *et seq.*, requires the Administrator for Federal Procurement Policy to issue policies to promote uniform implementation of a program to provide for improvements in the quality of the Government's acquisition workforce, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. To the extent practicable, the policies set forth in this Policy Letter are comparable to those established for acquisition personnel in the Department of Defense (DOD) who are subject to the Defense Acquisition Workforce Improvement Act (Chapter 87 of title 10, United States Code).

Pursuant to Section 37 of the OFPP Act, the Administrator established a working group consisting of Senior Procurement Executives of the major civilian agencies to make recommendations concerning a program to improve the quality of the non-DOD acquisition workforce. The policies and procedures set forth in this Policy Letter represent the culmination of that effort.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Office of Federal Procurement Policy (telephone: 202–395–3254). The address is Office of Federal Procurement Policy, 725 17th Street, NW, Room 9001, Washington, DC 20503. To obtain a copy of this Policy Letter, please call the Executive Office of the President's Publication Office at (202) 395–7332.

Dated: September 12, 1997.

Steven Kelman,

Administrator.

Policy Letter No. 97–01

To the Heads of Civilian Executive Departments and Agencies

Subject: Procurement System Education, Training and Experience Requirements for Acquisition Personnel

1. Purpose

The purpose of this Letter is to implement Section 37 of the Office of Federal Procurement Policy Act, as amended (hereafter referred to as the Act).

2. Authority

These policies and procedures are issued pursuant to Section 37(b)(3) of the Office of Federal Procurement Policy (OFPP) Act, as amended, (41 U.S.C. 401 *et seq.*), which directs the Administrator, Office of Federal Procurement Policy, to issue policies to promote uniform implementation of Section 37 of the Act by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission.

3. Background

Beginning with the report of the Commission on Government Procurement in 1972, every major study of the Federal acquisition process has recommended improvements in the management of the acquisition workforce, because "people are the most critical part of any effective procurement process". Subsequently, Congress directed every Federal department and agency to develop and maintain a procurement career management program to ensure an adequate professional workforce (section 16(4) of the Act). In Section 6(d)(5) of the Act, Congress further directed the OFPP Administrator, through the Federal Acquisition Institute (FAI), to foster and promote the development of a professional acquisition workforce Government-wide. Pursuant to these statutory mandates, OFPP Policy Letter 92–3 (implemented in section 1.603–1 of the Federal Acquisition Regulation) establishes Government-wide policies and standards for skill-based training in performing contracting duties and tasks. In 1990 Congress passed the Defense Acquisition Workforce Improvement Act (DAWIA) which established education, training and experience requirements for entry and advancement in the acquisition career field within the Department of Defense (DOD). In 1996, Congress amended the OFPP Act to establish comparable education, training, and experience requirements for civilian agencies.

4. Applicability

This Letter applies to all executive agencies, except those subject to the Defense Acquisition Workforce Improvement Act (chapter 87 of title 10, United States Code).

5. Responsibility for Acquisition Career Management Programs

Subject to the authority, direction, and control of the head of an executive agency, the Senior Procurement Executive of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this Letter. The Senior Procurement Executive shall ensure that the policies of the head of the agency, established in accordance with this Letter, are implemented throughout the agency.

6. Establishment of Agency-wide Policies and Procedures

Agency heads, after consultation with the OFPP Administrator, shall establish department or agency-wide policies and procedures pursuant to the provisions of the Act. The Senior Procurement Executive of each affected agency shall advise the Administrator, within 180 days from the date of this Letter, on agency plans for issuing such policies and procedures for the effective management (including accessions, education, training and career development) of the acquisition workforce. Agency heads, unless otherwise advised by the OFPP Administrator within thirty (30) days after such notification, shall proceed with planned implementation activities. To the maximum extent practicable, these acquisition workforce policies and procedures shall be uniform in their implementation throughout the agency. The head of each department and agency shall issue such policies and procedures by May 1, 1998.

7. Workforce Coverage

For purposes of this Letter, the acquisition workforce of an agency includes:

a. All positions in the General Schedule (GS–1102) Contracting Series and non-DOD uniformed personnel in comparable positions.

b. All Contracting Officers regardless of General Schedule series with authority to obligate funds above the micropurchase threshold.

c. All positions in GS–1105 Purchasing Series.

d. All Contracting Officer Representatives/Contracting Officer Technical Representatives, or equivalent positions.

The Administrator of the Office of Federal Procurement Policy will consult with the agencies in the identification of other acquisition related positions.

8. Management Information System

Agencies are required to collect and maintain standardized information on implementation of the provisions of section 37 of the Act. The Federal Acquisition Institute will work with the agencies and the Office of Personnel Management to establish and prescribe standard data elements for the purposes of this statutory requirement. To the maximum extent practicable, such management information systems will conform to the standards established by the Office of Personnel Management for the Central Personnel Data File. These systems shall include a data element on waivers under paragraph 9.g. of this Letter.

9. Career Development

a. Career Paths—Agencies shall identify and publish model career paths or "road maps" to ensure that contracting and other personnel interested in pursuing careers in contracting are knowledgeable of the education, training, and experience requirements for employment, progression and advancement to the most senior positions in the contracting field within the agency.

b. Critical Skills—For each career path, the critical acquisition-related duties and tasks employees must be competent to perform at the full performance and senior levels shall be established by the agencies and shall include coverage of duties and tasks as identified by the Director of the Federal Acquisition Institute. OFPP Policy Letter 92–3 established Government-wide standards for these purposes.

c. Mandatory Education—The education requirements for acquisition positions are established by the OFPP Administrator, in coordination with the Office of Personnel Management, as prescribed by section 37(g) of the Act. The education requirements for GS–1102 positions have been established in coordination with the Office of Personnel Management.

d. Mandatory Training and Experience—Experience requirements for GS–1102 positions are identified in the OPM Contract Specialist (GS–1102) Qualification Standard. In addition to the following mandatory training, agencies may require assignment-specific training for personnel in selected positions, as appropriate:

(1) All personnel in the GS–1102 Contracting Series and Contracting Officers (regardless of General Schedule Series) with authority to obligate funds above the micropurchase threshold shall complete the mandatory and related on-the-job training, as prescribed in OFPP Policy Letter 92–3.

(2) All Personnel in the Purchasing occupational series (General Schedule Series 1105), other civilian and uniformed personnel performing purchasing duties, and individuals with contracting authority at or below the simplified acquisition threshold, or with authority to place delivery orders at any dollar level, shall complete training in acquiring goods and services under FAR Part 13 and placing delivery orders.

(3) Contracting Officer Representatives/Contracting Officer Technical Representatives (CORs/COTRs)—The core training for CORs/COTRs must cover the competencies as contained in the FAI COR/COTR Workbook. Agencies may consider any training methodology to satisfy this requirement, i.e., classroom, correspondence, computer-based instruction, etc.

(4) Other acquisition related occupations—Training for these participants in the procurement process will be established as such occupations are identified by the OFPP Administrator.

e. Skills Currency—Agencies shall establish policies that require an equivalent of at least 40 hours of continuing education or training every two years for contract specialists (GS–1102 series) and Contracting Officers who have satisfied the mandatory and agency/assignment-specific training for the purpose of maintaining currency of acquisition knowledge and skills. This may include, but is not limited to, agency sponsored training and management/executive seminars, special job and/or professional association related projects and/or participation in seminars/workshops, or other appropriated developmental activities.

f. Tuition Assistance—The head of an executive agency may provide tuition reimbursement in education (including a full-time course of study leading to a degree) in accordance with section 4107 of title 5, United States Code, for personnel serving in acquisition positions in the agency.

g. Waiver Authority for GS–1102 Education Requirements. The agency Senior Procurement Executive may, based on demonstrated analytical and decision making capabilities, job performance, and qualifying experience, waive one of the two sets of education requirements for an applicant for a GS–13 and above position based on a certification (see Contract Specialist (GS–1102) Qualification Standard) that the applicant possesses significant potential for advancement to levels of greater responsibility and authority. This waiver should be utilized only in rare and unusual circumstances, i.e., when there are no qualified candidates readily available. The use of this authority should be adequately documented and exercised on a case-by-case basis.

h. Funding Levels—The head of an executive agency shall set forth separately the funding levels requested for education and training of the acquisition workforce in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31, United States Code. Funds appropriated for education and training under this section may not be obligated for any other purpose. [1]

i. Program Evaluation—The OFPP Administrator shall evaluate the implementation of these provisions by executive agencies.

10. FAI Responsibilities

The OFPP Administrator is responsible for providing for and directing the activities of the FAI. The FAI is in turn responsible for a wide range of career management support activities associated with maintaining the inventory of acquisition personnel competencies for use by Federal and private sector education and training communities and providing specific and general technical assistance to Federal agencies in improving the quality of the acquisition workforce.

As courseware (including Workbooks) are developed and/or updated, these products will be made available through the FAI Homepage. The FAI Homepage address is: http://www.gsa.gov/staff/v/training.htm. The FAI specific responsibilities relating to the provisions of this Letter are to:

a. Foster and promote the development of a professional acquisition workforce;

b. Promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to acquisition by the executive agencies;

c. Collect and analyze acquisition workforce data from the Office of Personnel Management, the heads of executive agencies and, through periodic surveys of individual employees;

d. Periodically analyze acquisition career fields to identify critical competencies, duties, tasks, and related academic prerequisites, skills, and knowledge;

e. Coordinate and assist agencies in identifying and recruiting highly qualified candidates for acquisition fields;

f. Develop instructional material for acquisition personnel in coordination with private and public acquisition colleges and training facilities;

g. Evaluate the effectiveness of training and career development programs for acquisition personnel;

h. Promote the establishment and utilization of academic programs by colleges and universities in acquisition fields;

i. Facilitate, to the extent requested by agencies, interagency intern and training programs; and

j. Perform other career management and research functions as directed by the Administrator.

11. Information Contact

Questions regarding this Policy Letter should be directed to Richard C. Loeb, Executive Secretary, Office of Federal Procurement Policy, 202–395–3254, facsimile, 202–395–5105. The address is Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503.

12. Judicial Review

This Policy Letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any persons. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this Policy Letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this Policy Letter.

13. Effective Date

This Policy Letter is effective 30 days after the date of issuance.

Steven Kelman,

Administrator.

[FR Doc. 97–25393 Filed 9–24–97; 8:45 am]

BILLING CODE 3110–01–P

[1] Section 433(h), Title 41 U.S.C.

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TYPE: Quarterly Meeting.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: November 3–5, 1997, 8:30 a.m. to 5:00 p.m.

LOCATION: Sheraton City Centre Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037; 202–775–0800.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004–1007; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of our room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council on Disability will be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Strategic Planning—Closed Work Session for Members and Staff
Return-to-work Initiative
Disability Date Collection
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on September 23, 1997.

Ethel D. Briggs,

Executive Director.

[FR Doc. 97–25612 Filed 9–23–97; 12:38 p.m.]

BILLING CODE 6820–MA–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Anthropological, Geographic Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following six meetings.

Name: Advisory Panel for Anthropological and Geographic Sciences (#1757).

1. *Date & Time:* October 17, 1997 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard Room 970, Arlington, Va 22230.

Contact Person: Dr. John E. Yellen, Program Director for Archaeology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1759.

Agenda: To review and evaluate Archaeometry proposals as part of the selection process for awards.

2. *Date & Time:* November 9, 1997 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 970, Arlington, VA 22230.

Contact Person: Dr. John E. Yellen, Program Director for Archaeology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1759

Agenda: To review and evaluate Archaeometry proposals as part of the selection process for awards.

3. *Date & Time:* November 18–19, 1997; 8:00 a.m.–500 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 970, Arlington, VA 22230.

Contact Person: Dr. Dennis O'Rourke, Program Director for Physical Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate Physical Anthropology proposals as part of the selection process for awards.

4. *Date & Time:* November 23–24, 1997; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 970, Arlington, VA 22230.

Contact Person: Dr. Stuart Plattner, Program Director for Cultural Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate Cultural Anthropology proposals as part of the selection process for awards.

5. *Date & Time:* November 18, 1997; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Contact Person: Dr. Stuart Plattner, Program Director for Cultural Anthropology, National Science Foundation, 4201, Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate Cultural Dissertation proposals as part of the selection process for awards.

6. *Date & Time:* November 17–18, 1997; 9:00 a.m.–5:00 p.m.

Place: National Center for Ecological Analysis Synthesis, University of California, Suite 300, 735 State Street, Santa Barbara, CA 93101–3351.

Contact Person: Dr. Thomas Leinbach, or Bernard Bauer, Program Directors for Geography, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1754.

Agenda: To review and evaluate Geography proposals as part of the selection process for awards.

7. *Date & Time:* December 8–9, 1997; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 310.

Contact Person: Dr. Thomas Leinbach, or Bernard Bauer, Program Directors for Geography, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1754.

Agenda: To review and evaluate Geography Dissertation proposals as part of the selection process for awards.

Time of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–25460 Filed 9–24–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel in Earth Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Proposal Review Panel in Earth Sciences (1569).

Date and Time: October 15–17, 1997; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 770.

Type of Meeting: Closed.

Contact Person: Dr. Leonard E. Johnson, Program Director, Continental Dynamics Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1559

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Continental Dynamics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–25461 Filed 9–24–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (#1173).

Date & Time: October 14–15, 1997; 11:30 a.m. to 5:00 p.m. and 8:00 a.m. to 5:00.

Place: Room 1295, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Sue Kemnitzer, Executive Secretary, Room 585, NSF, 4201 Wilson Blvd., Arlington, Va. 22230. Phone: (703) 306–1382.

Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To advise NSF on policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities currently underrepresented in scientific, engineering, professional, and technical; fields and to advise NSF concerning implementation of the provisions of the Science and Engineering Equal Opportunities Act.

Agenda: (Tentative)

Tuesday, October 14, 1997

11:30 Lunch (Sandwiches brought into the room)
Noon Welcome; Introduction of New Members; Minutes
12:30 Description of the charge to CEOSE
1:00 Congressional report and Congressional staff visitor
2:00 Break
2:30 Status of Implementation of the New Merit Review Criteria
3:00 Human Resource Development Working Group and Task ForceUpdate
3:30 Strategic Planning Follow Up; Other Federal Science Agencies; Persons with Disabilities; Capacity Building within NSF
4:30 Meeting with the Deputy Director (suggested time)
5:00 Adjorn

October 15, 1997

8:00 Science Resource Studies Division Data Briefing; Women, Minorities and Persons with Disabilities 1998 Report Office of Management and Budget Ethnicity Classification
8:30 Data Needs for 1998 Congressional Report
9:00 Briefing on Science Policy Issues
10:00 Update on new programs (POWRE and IGERT)
10:30 Reports from Advisory Committee Liaisons
11:00 Issues Regarding Persons with Disabilities
Noon Open discussion/Working Lunch
1:00 Linking with Other Federal Agencies
2:00 Capacity Building within NSF
3:00 Meeting with the Director (suggested time)
4:00 Plans for the next meeting
5:00 Adjourn

Dated: September 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–25457 Filed 9–24–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Networking & Communications Research & Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Networking and Communications Research & Infrastructure (#1207).

Date and Time: October 16–17, 1997; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1175 Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Tatsuya Suda, Program Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for the Networking and Communications Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–25459 Filed 9–24–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Date and Time: October 16 & 17, 1997; 9:00 a.m. to 6:00 p.m.

Place: Room 340, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Persons: Dr. Emmeline Edwards, Program Director, Behavioral Neuroscience; Dr. Daniel Hartline, Program Director, Computational Neuroscience; Division of Integrative Biology and Neuroscience; room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1416.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: October 17, 1997; 10:00 a.m. to 11:00 a.m., To discuss research trends and opportunities in Behavioral and Computational Neuroscience. Closed Session: October 16, 1997; 9:00 a.m. to 6:00 p.m.; October 17, 1997, 9:00 a.m. to 10:00 a.m.; 11:00 a.m. to 6:00 p.m. To review and evaluate Behavioral and Computational Neuroscience proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 22, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–25458 Filed 9–24–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company; H.B. Robinson Steam Electric Plant, Unit No. 2 Environmental Assessment and Finding of No Significant Impact

1.0 Introduction

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23 issued to the Carolina Power & Light Company (CP&L or the licensee) for operation of the H.B. Robinson Steam Electric Plant, Unit No. 2 (Robinson) located at the licensee's site in Darlington County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application dated August 27, 1996, as supplemented by letters dated January 17, February 18, March 27, April 4, April 25, April 29, May 30, June 2, June 13, June 18, August 4, August 8, and September 10, 1997. The proposed amendment will replace the current Robinson Technical Specifications (CTS) in their entirety with Improved Technical Specifications (ITS) based on Revison 1 to NUREG–1431, "Standard Technical Specifications Westinghouse Plants" dated April 1995, and the CTS for Robinson.

In the application of August 27, 1996, the licensee also requested an amendment to the Appendix B TS to relocate certain radiological and environmental reporting requirements to a licensee-controlled document. Appendix B TS contain environmental reporting requirements which were relocated to Appendix B as an interim action in 1976 pending reissuance of comprehensive Appendix B Environmental TS. These requirements are comparable to portions of other Radiological Environmental Monitoring TS that are also being separately relocated because they do not relate to mitigating a design basis accident or transient.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of TS. The Commission's "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," (52 FR 3788, February 6, 1987), and later the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," 58 FR 39132 (July 22, 1993), formalized this need. To facilitate the development of individual improved TS, each reactor vendor owners group (OG) and the NRC staff developed standard TS (STS). For Westinghouse plants, the STS are published as NUREG–1431, and this document was the basis for the new Robinson TS. The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion to the STS by operating plants.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG–1431 and on guidance provided in the Final Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the existing TS were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters with the OG.

The proposed changes from the existing TS can be grouped into four general categories, as follows:

1. Non-technical (administrative) changes, which were intended to make the ITS easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformatting of requirements without affecting technical content. Every section of the Robinson TS has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG–1431 as guidance to reformat and make other administrative changes.

2. Relocation of requirements, which includes items that were in the existing

Robinson TS. The TS that are being relocated to licensee-controlled documents are not required to be in the TS under 10 CFR 50.36 and do not meet any of the four criteria in the Commission's Final Policy Statement for inclusion in the TS. They are not needed to obviate the possibility that an abnormal situation or event will give rise to an immediate threat to the public health and safety. The NRC staff has concluded that appropriate controls have been established for all of the current specifications, information, and requirements that are being moved to licensee-controlled documents. In general, the proposed relocation of items in the Robinson TS to the Final Safety Analysis Report (FSAR), appropriate plant-specific programs, procedures and ITS Bases follows the guidance of the Westinghouse STS (NUREG–1431). Once these items have been relocated by removing them from the TS to licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms, which provide appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed Robinson ITS items that are either more conservative than corresponding requirements in the existing Robinson TS, or are additional restrictions that are not in the existing Robinson TS but are contained in NUREG–1431. Examples of more restrictive requirements include: placing a Limiting Condition of Operation (LCO) on plant equipment that is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing Robinson TS that provide little or no safety benefit and place unnecessary burdens on the licensee. These relaxations were the result of generic NRC actions or other analyses. They have been justified on a case-by-case basis for Robinson as will be described in the staff's Safety Evaluation to be issued with the license amendment, which will be noticed in the **Federal Register**.

In addition to the changes described above, the licensee proposed certain changes to the existing TS that deviated from the STS in NUREG–1431. These additional proposed changes are described in the licensee's application and in the staff's Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing (61 FR 55830). Where these changes represent a change to the current licensing basis for Robinson, they have been justified on a case-by-case basis and will be described in the staff's Safety Evaluation to be issued with the license amendment.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.

Changes that are administrative in nature have been found to have no effect on the technical content of the TS, and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which ensures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1431 and the Final Policy Statement, and, therefore, are acceptable.

Changes involving more restrictive requirements have been found to be acceptable and are likely to enhance the safety of plant operations.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burdens on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for Robinson. Generic relaxations contained in NUREG–1431 as well as proposed deviations from NUREG–1431 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TS was found to provide control of plant operations such that reasonable assurance will be provided so that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. The revisions to the Appendix B TS relocate reporting requirements on radioactive effluent releases, solid waste shipments and results of the environmental monitoring programs. The relocation of the reporting requirements to a licensee-controlled document is comparable to portions of other radiological environmental monitoring TS which are also being separately relocated. Programmatic aspects of these specifications are retained in the ITS Administrative Controls. The relocation of the reporting requirements will not change or affect the possible releases or monitoring programs. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the request for the amendment. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the Robinson Electric Generating Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on September 11, 1997, the staff consulted with the South Carolina State official, Max Batavia, Chief, South Carolina Department of Health, Bureau of Radiological Health and Environmental Control. The State official had no comments.

Findings of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the licensee's letter dated August 27, 1996, and supplemental letters dated January 17, February 18, March 27, April 4, April 25, April 29, May 30, June 2, June 13, June 18, August 4, August 8, and September 10, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Hartsville Memorial Library, 147 West College, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland this 22nd day of September, 1997.

For The Nuclear Regulatory Commission.

Gordon E. Edison,

Acting Director, Project Directorate II–I, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–25630 Filed 9–24–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

Duquesne Light Company, et al.; Beaver Valley Power Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval, by issuance of an order under 10 CFR 50.80, of the indirect transfer of Facility Operating Licenses Nos. DPR–66 and NPF–73, to the extent they are held by the Duquesne Light Company (DLC) for Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2), located in Shippingport, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the indirect transfer of the licenses with respect to a proposed merger between DQE, Inc., and Allegheny Power Systems, Inc. DQE, Inc. is the parent holding company of DLC, which holds licenses to possess interests in and operate BVPS–1 and BVPS–2. The Cleveland Electric Illuminating Company, The Toledo Edison Company, and Ohio Edison Company, and its subsidiary Pennsylvania Power Company, also hold licenses to possess interests in BVPS–1 and BVPS–2, but are not involved in the proposed merger. In the proposed merger, DQE, Inc. will become a wholly owned subsidiary of Allegheny Power. Allegheny Power will be renamed Allegheny Energy, Inc.

According to the application, the merger will have no effect on the operation of Beaver Valley Power Station or the provisions of its operating licenses. The Cleveland Electric Illuminating Company, The Toledo Edison Company, Ohio Edison Company, and Pennsylvania Power Company will remain licensees responsible for their possessory interests and related obligations. Duquesne Light Company will continue to operate the Beaver Valley Power Station after the merger, as required by the operating licenses. No direct transfer of the licenses will result from the merger.

The proposed action is in accordance with DLC's request for approval dated August 1, 1997.

The Need for the Proposed Action

The proposed action is required to obtain the necessary consent to the indirect transfer of the licenses discussed above. According to the application, the underlying transaction is needed to create a stronger, more competitive enterprise that is expected to save over $1 billion in net savings over the first 10 years, thereby enhancing DLC's financial resources to possess its interests in BVPS–1 and BVPS–2.

Environmental Impacts of the Proposed Action

The Commission has reviewed the proposed action and concludes that there will be no changes to the facility or its operation as a result of the proposed action. Accordingly, the NRC staff concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the NRC staff concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Beaver Valley Power Station, Unit 1," dated July 1973, and the "Final Environmental Statement Related to the Operation of Beaver Valley Power Station, Unit 2," dated September 1986 in NUREG–1094.

Agencies and Persons Consulted

In accordance with its stated policy, on September 5, 1997, the staff consulted with the Pennsylvania State official, Mr. Michael P. Murphy of the Bureau of Radiation Protection, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see DLC's submittal dated August 1, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 19th day of September 1997.

For The Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–25445 Filed 9–24–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–10647]

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Precision Optics Corporation, Inc., Common Stock, $0.01 Par Value)

September 19, 1997.

Precision Optics Corporation, Inc. ("Company") has filed an application with Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company is filing this application because its Board of Directors has determined that continued listing on the Exchange is unnecessary in light of the listing of the Security on the Nasdaq SmallCap Market. The Company's experience with Nasdaq has been positive and the Company wishes to avoid the incremental expenses and administrative responsibilities associated with continued listing on the Exchange.

The Company has notified the Exchange of its intention to withdraw its Security from listing on the Exchange. By letter dated August 12, 1997, the BSE indicated that it did not object to the Company's filing of this application with the Commission.

Any interested person may, on or before October 10, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matters.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–25464 Filed 9–24–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39092; File No. SR–CBOE–97–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange Relating to Certain Rules Governing the Trading of Options on the DJIA

September 18, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1997,[1] the Chicago Board Options Exchange Incorporated ("CBOE " or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b–4 under the act.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CBOE has requested that the Commission accelerate the operative date for the proposed rule change for good cause.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend certain of its rules governing trading with respect to the trading of options on the Dow Jones Industrial Average ("DJIA").[4] The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend certain Exchange rules governing trading with respect to the trading of options on the DJIA (trading under the symbol "DJX"). In each case, the Exchange is proposing to provide comparable treatment for options on the DJIA to that existing for other broad-based indexes with wide retail investor interest, *i.e.*, options on the Standard & Poor's ("S&P") 100 Stock Index ("OEX") and options on the S&P 500 Stock Index ("SPX").

First, the Exchange is proposing to amend Interpretation .08 to Rule 6.20 to permit members of a floor procedure committee which has been delegated responsibility for overseeing the trading of options on the DJIA to act as Floor Officials. Currently, the interpretation permits members of the Index Floor Procedures Committee to act as Floor Officials in the OEX and SPX trading crowds only. At this time, the Exchange has not decided which committee will be delegated responsibility for options on the DJIA, but the Exchange expects the trading crowd to be large and to develop its unique trading protocols. Therefore, the rationale for allowing committee members to act as Floor Officials, *i.e.*, these members will be familiar with the particular trading protocols in the trading crowd governing those options, applies equally to options on the DJIA. The interpretation will also change the reference to the "Index Floor Procedure Committee" to the "applicable Floor Procedure Committee" because it has not yet been decided which committee will have jurisdiction over options on the DJIA and because the Index Floor Procedure Committee has been divided into the OEX Floor Procedure Committee and the SPX Floor Procedure Committee. The Exchange may decide to delegate responsibility for overseeing the trading in options on the DJIA to an existing Floor Procedure Committee (such as the OEX Floor Procedure Committee) or it might create a new Floor Procedure Committee that is responsible for overseeing trading on options on the DJIA alone. The Exchange also may decide to create one Committee responsible for all broad-based index options which would replace the OEX Floor Procedure Committee and the SPX Floor Procedure Committee.

Second, the Exchange is proposing to exempt DJX from the requirement that the use of hand signals to convey order information must be followed in written form and time stamped immediately after the signal has been sent. Currently, Interpretation .02 to Rule 6.24 exempts options on the OEX and the SPX from this requirement. Because the Exchange expects trading in DJX to be in a large pit with an active order flow, the Exchange believes it is appropriate to exempt DJX from this requirement as well.

Third, the Exchange wants to provide for the possibility of using Lead Market-Makers ("LMMs") in the DJX crowd as it uses LMMs in the OEX crowd during opening rotations. Due to the size of the OEX trading crowd and the large number of series traded in the crowd, the Exchange has found that the use of a modified opening rotation whereby LMMs are assigned to open particular series has allowed the OEX trading crowd to conduct opening rotations more quickly (and thus, enter into open trading more quickly). The Exchange believes that the LMM system should be available for use by the DJX crowd because the Exchange expects the DJX crowd to be similar in size to the OEX crowd and expects a large number of series to trade in DJX. In addition, the Exchange is proposing to change the LMM rule to specify that the "appropriate Market Performance Committee," rather than the "Market Performance Committee," may assign LMMs because the Exchange has not yet decided which Market Performance Committee will have responsibility for overseeing the trading in DJX.[5] The appropriate Market Performance Committee will likely monitor how opening rotations are conducted without LMMs before it decides whether to appoint LMMs. Nevertheless, the Exchange believes it is critical to have the system available for use in the DJX crowd in the event that the opening rotations are taking too much time from the commencement of trading.

Finally, the Exchange is also proposing to apply the terms of the OEX/SPX joint account circular to trading in options on the DJIA.[6] The circular provides that joint accounts may be represented in the crowd by more than one participant trading in-person for the joint account. In addition, the circular provides that joint account participants who are not trading in-person in the crowd may enter orders for the joint account with floor brokers even if other participants are trading the same joint account in-person. The joint account circular applicable to equity options does not allow a joint account participant to enter orders while another joint account participant is trading in-person on behalf of the joint account. The Exchange believes the OEX/SPX model is more appropriate for options on the DJIA because of the expected large size of the DJX crowd.[7]

2. Statutory Basis

By applying certain existing trading rules and circulars to the trading of options on the DJIA, the Exchange expects to enhance the possibility of the successful launch of options on the DJIA and to be able to provide investors with a useful tool to invest in and hedge interests in the U.S. equity market. Therefore, the proposed rule change will better serve the needs of CBOE's public customers and the Exchange members who make a market for such customers and is consistent with and furthers the objectives of Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder because it: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) was provided by the Exchange to the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. A proposed rule change filed under Rule 19b–4(e) does not become operative prior to thirty days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. CBOE has requested that the Commission accelerate the implementation of the proposed rule change so that it may become operative prior to the thirty days specified under Rule 19b–4(e)(6)(iii). At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission finds good cause to accelerate the thirty day period for the proposed rule change to become operative prior to the thirtieth day after the date of filing. Specifically, the Commission believes that the proposed rule change should become operative on the day that CBOE begins to trade options on the DJIA to ensure that all rules applicable to trading DJIA options are in place prior to such trading commences. Accordingly, the proposed rule change will become operative on October 6, 1997, rather than October 8, 1997.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

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[1] CBOE filed Amendment No. 1 to the proposed rule change requesting that the Commission accelerate the operative date of the filing for good cause shown to October 6, 1997. *See* letter from Timothy H. Thompson, Senior Attorney, CBOE, to Heather Seidel, Attorney, Market Regulation, Commission, dated September 12, 1997.

[2] The Exchange has represented that this proposed rule change: (i) Will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing, unless an earlier operative date is designated by the Commission for good cause shown. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act.

[3] *See supra* note 1.

[4] The Commission recently approved a CBOE rule filing to list and trade options on the DJIA. *See* Securities Exchange Act Release No. 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (File No. SR–CBOE–97–26).

[5] The Exchange may create a new Market Performance Committee responsible for the market performance functions specific to trading the DJX, or it may delegate market performance duties for the DJX crowd to an existing Market Performance Committee.

[6] The Commission approved the Exchange's OEX/SPX joint account circular on September 10, 1992. *See* Securities Exchange Act Release No. 31174, 57 FR 42789 (September 16, 1992) (approving File No. SR–CBOE–91–40). The circular was updated pursuant to Commission approval of a change to allow more than one SPX participant participate on a trade on behalf of the joint account. *See* Securities Exchange Act Release No. 35579 (April 7, 1995), 60 FR 18867 (April 13, 1995) (approving File No. SR–CBOE–95–17).

[7] Attached as Exhibit B to the proposed rule change is a revised version of the joint account circular for OEX/SPX which incorporates DJX.

[8] 15 U.S.C. 78F(b)(5).

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–44 and should be submitted by October 16, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25374 Filed 9–24–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39095; File No. SR–DTC–97–06]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Memo Segregation Service

September 19, 1997.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on June 1, 1997, The Depository Trust Company ("TDC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify the procedures for participants to control their collateral in connection with the use of DTC's memo segregation service ("memo seg").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, and Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC developed memo seg to assist participants in their compliance with Rule 15c3–3 under the Act.[3] Rule 15c3–3, among other things, requires that broker-dealers maintain control of all fully-paid and excess margin securities they hold for the accounts of customers.[4] Memo seg enables participants, particularly broker-dealer participants, to segregate customer fully-paid and excess margin securities by creating a memo position within their free accounts. This memo position enables participants to protect themselves from unintended deliveries of customer fully-paid and excess margin securities that either are in the participant's free account or that may be received during the daily processing cycle.

One of DTC's primary risk management controls to protect DTC in the event of a participant's failure to settle is DTC's collateralization procedures. These procedures are designed to assure that a participant's net debit does not exceed the total collateral available in its account. One of the methods available to a participant to collateralize its account is to give DTC a standing instruction that designates as collateral those securities in its free account at the start of the processing day. Currently, this instruction would apply to all securities in the participant's free account, including securities for which a memo seg position has been created.

Accordingly, the proposed rule change will amend DTC's participant collateralization procedures to exclude start-of-day memo seg positions from classification as collateral even if the participant has given DTC a standing instruction to designate as collateral all securities in its free account. If a participant subsequently wishes to utilize memo seg positions as collateral, it will be permitted to do so by giving DTC the appropriate instructions. DTC believes that the proposed rule change will assist participants in retaining the protections of memo seg from one day to the next which should reduce the potential for unintended deliveries of customer fully paid or excess margin securities.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[5] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(e)(4) thereunder[7] because it effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a detailed description of memo seg, refer to Securities Exchange Act Release No. 26250 (November 3, 1988), 53 FR 45636 (File No. SR–DTC–88–16) (order permanently approving DTC's proposed rule change).

[4] 17 CFR 240.15c3–3.

[5] 15 U.S.C. 78q–1(b)(3)(A).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–97–08 and should be submitted by October 16, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25465 Filed 9–24–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39099; File No. SR–GSCC–97–08]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Extend the Maximum Term for Repurchase Agreements

September 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 6, 1997, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–GSCC–97–08) as described in Items I and II below, which items have been prepared primarily by GSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC proposes to amend the time frame for the maximum allowable number of calendar days that the term of a repurchase agreement ("repo") may span.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC proposes to extend the maximum number of calendar days that a repo's term may span and still be eligible for netting services from 360 calendar days to two calendar years. GSCC Rule 11 states the requirements that a repo must meet in order to be eligible for netting services and provides that the number of calendar days between the scheduled settlement date for the close leg and the business day on which trade data is submitted may not be greater than the "maximum number of business days established by the Corporation for such purpose and published in a schedule made available to members. * * *" When GSCC introduced its repo netting service in November 1995, it set the maximum number of days allowable between scheduled settlement and data submission at 195 calendar days.[3] Last year, it received Commission approval to extend this maximum time period to 360 calendar days.[4]

In response to rising repo volumes and at the request of GSCC's members that engage in repos with a term of greater than one year, GSCC proposes to extend the time period that a repo term may span and still be eligible for netting services to two years. Members will benefit from the inclusion of longer term repos in the netting service because clearing and settlement risks and costs will be further reduced by encompassing more repo transactions into the net. GSCC believes that its risk management procedures currently in place are sufficient to protect against any exposure created by longer repo terms. GSCC will continue to monitor and to evaluate all aspects of its repo netting services.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F)[5] of the Act and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions and safeguards securities and funds in GSCC's custody or control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[6] The Commission believes that the proposed

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries submitted by GSCC.

[3] Securities Exchange Act Release No. 36491 (November 17, 1995), 60 FR 61577 [File No. SR–GSCC–95–02] (order approving proposed rule change implementing netting services for certain repo transactions).

[4] Securities Exchange Act Release No. 37996 (November 27, 1996), 61 FR 64778 [File No. SR–GSCC–96–11].

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *Id.*

rule change is consistent with GSCC's obligations under the Act because the proposal permits GSCC to provide the benefits of centralized, automated settlement to a broader segment of repos involving government securities. Thus, the proposal should assist in the prompt and accurate clearance and settlement of securities transactions.

As discussed in the order approving GSCC's repo netting system, the Commission believes that GSCC has put into place adequate risk management procedures to limit the settlement risk associated with repo transactions.[7] The Commission also believes that GSCC has adequately analyzed the application of these risk management procedures to the risks associated with longer term repo transactions and therefore will be able to adequately safeguard itself and its participants from the risk associated with the inclusion of longer term repo transactions in the netting system. Thus the proposal is consistent with GSCC's obligation to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

GSCC requests that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause exists for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because accelerated approval will allow GSCC to immediately expand its netting services to include repos with terms between 360 calendar days and two years. This will permit more participants that conduct repo transactions to benefit from the positive effects of netting.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–97–08 and should be submitted by October 16, 1997.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–97–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25462 Filed 9–24–97; 8:45 am]

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[7] *Supra* note 3.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39096; File No. SR–NSCC–96–21]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Establishment of the Annuities Processing Service

September 19, 1997.

On December 26, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–96–21) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On February 27, 1997, and May 12, 1997, NSCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on August 6, 1997.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends NSCC's rules to establish the Annuities Processing Service ("APS"). APS will be a centralized communication link that connects participating insurance carriers with broker-dealers, banks, and the broker-dealers' or banks' affiliated life insurance agencies where appropriate. Only those annuity plans[3] that are purchased by individuals from insurance carriers through broker-dealers, banks, or their affiliated insurance agencies will be eligible for processing through APS.

NSCC will implement APS in phases. Phase I will provide NSCC's participants with the ability to send and receive daily information regarding annuity contract positions, the value of a contract's underlying assets, and settlement of commission monies.[4] This information will be transmitted through the "position and valuation," and "commission and charge back" components of Phase I.

The position and valuation component will permit insurance carriers to transmit information regarding the value of individual annuity contracts and the value of the assets underlying the contracts to broker-dealers and insurance agencies. Insurance carriers will submit position and valuation information to NSCC, which NSCC will forward to the party designated as recipient by the insurance carrier.

The commission and charge back component will permit insurance carriers and agencies to communicate concerning periodic trail or asset-based compensation and transaction-based commission payments, each paid by an insurance carrier to an agency, as well as charge backs paid by an agency to an insurance carrier. Insurance carriers and agencies will settle these payments through NSCC's money settlement system.

Insurance carriers will be able to initiate commission and charge back transactions by submitting instructions to NSCC. On any day prior to settlement, an annuities agency or annuities carrier member may submit a cancel instruction if the member does not recognize the transaction or an exit instruction if the member recognizes the transaction but wants that transaction to be processed outside of APS.[5] A properly submitted exit or cancellation will cause the payment transaction to which it relates to be deleted from APS. Unless NSCC receives a cancellation or exit instruction, the commission and charge back transaction will settle in the three-day settlement cycle following their completion unless the parties have agreed that the transaction will settle on an extended basis. However, no transaction will be allowed to settle more than five business days after the day on which the last instruction pertaining to the transaction was submitted to NSCC.

NSCC will not be responsible for the completeness or accuracy of any APS data or for any errors, omissions, or delays that may occur relating to the APS data. The proposed rule change states that the processing of any transaction through APS will not relieve a party from its legal or regulatory rights or its obligations relating to a transaction.

The proposed rule change will amend NSCC's Rule 2 to permit a corporation, partnership, or agency, including a registered broker-dealer, bank, or trust company, that is licensed to sell insurance products and is subject to supervision or regulation pursuant to the provisions of state insurance laws to become a member of the NSCC. If the entity agrees to limit their activities to APS services only, the entity would be classified as an "annuities agency member."

The proposed rule change permits broker-dealers to join NSCC as annuities agency members regardless of whether they conduct their insurance business in-house or through an affiliated or subsidiary insurance agency. The proposed rule change provides that NSCC may restrict the activities of the broker-dealers' insurance agency affiliates and subsidiaries that become annuities agency members and require them to enter into agreements for operational support services with an entity that is acceptable to NSCC. The entity can be, but is not required to be, another annuities agency member and cannot be replaced without the prior approval of NSCC. In addition, broker-dealers and banks that are not currently NSCC members that sell annuity products also will be permitted to join NSCC for the purpose of using APS.

The proposed rule change amends NSCC's rules to establish the annuities carrier member category. As proposed, NSCC Rule 2 will define annuities carrier member as a company, partnership, limited liability corporation, or other organization or entity that is not a member of NSCC but is subject to the supervision or regulation pursuant to state insurance laws. Annuities carrier members will not be required to make a deposit to the clearing fund.[6]

The proposed rule change also will create NSCC Rule 56 to establish the financial and operational standards for annuities carrier members. Annuities carrier members will be required to have an A.M. Best rating of "A–." If rated by (i) Standard & Poor's, the annuities carrier member must have a claims paying ability rating of not less than "AAA;" (ii) Moody's the annuities carrier member must have a long-term debt rating of not less than "Aaa;" or (iii) Duff & Phelps, the annuities carrier member must have a long-term debt rating of not less than "A–."[7]

Alternatively, if the annuities carrier member does not satisfy the above-mentioned criteria, Rule 56 will require that the annuities carrier member have an A.M. Best rating of not less than "B+." If rated by (i) Standard & Poor's, the annuities carrier member must have a claims-paying ability rating of not less than "BBB;" (ii) Moody's, the annuities carrier member must have a long-term debt rating of not less than "A;" or (iii) Duff & Phelps, the annuities carrier member must have a long-term debt rating of not less than "BBB–." In this case, Rule 56 also will require that the annuities carrier member demonstrate to NSCC's Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from access to APS, and NSCC must determine that the financial condition of such annuities carrier member does not pose an undue risk to NSCC or its members.

The proposed rule change will amend NSCC Rule 15 to require that all annuities agency members and annuities carrier members file certain financial information with NSCC. In addition to some of the financial information required of full NSCC members, Rule 15 will require annuities agency members and annuities carrier members to file with NSCC reports filed with relevant state insurance departments as may be determined by NSCC from time to time.

The proposed rule change amends Addendum B of NSCC's rules (Standards of Financial Responsibility & Operational Capability) to include membership standards for applicants that will use only APS. The proposed rule change will require a broker-dealer whose membership is limited to the use of APS to have $25,000 in excess net capital over the minimum net capital requirement imposed by the Commission or such higher minimum capital requirement imposed by the broker-dealer's designated examining authority. In addition, the broker-dealer must have a capital ratio or percentage that would not require it to be placed on immediate surveillance at NSCC and must not be on "closer-than-normal" surveillance by its designated examining authority. If the applicant is a bank or trust company, it must have $100,000 minimum excess capital over the capital requirement imposed by its state or federal regulatory authority. A bank or trust company must not be operating at a loss at the time of its application and must not have operated at a loss in any of its previous three fiscal quarters. All others which apply for use of APS must only have the operational capability for membership or have an agreement concerning the provision of operational support services to such applicant with an entity acceptable to NSCC and which may not be replaced without prior approval by NSCC and must agree to restrict its business activities as NSCC may require.

Addendum B also will require that all annuities agency members file certain prescribed information annually. Such information includes, among other things, general information concerning the member's corporate organizational structure and licensing, the nature of its business, bonding, pending investigations, and litigation.

The proposed rule change explicitly sets forth that, like NSCC's Mutual Fund Services and New York Window Service, APS will not be a guaranteed service. An additional paragraph has been added to Addendum K Interpretation of the Board of Directors—Application of Clearing Fund to make it clear that APS is not a guaranteed service.[8]

Continued

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38889 (July 30, 1997), 62 FR 42274.

[3] APS will process variable rate and fixed rate annuity products. Letter from Julie Beyers, Associate Counsel, NSCC (February 26, 1997).

[4] NSCC intends to implement additional phases in the future to include the processing of annuity contract applications and the settlement of premium payments. In addition, the scope of information included in APS may be expanded beyond position and valuation information. NSCC will be required to make the appropriate rule filings with the Commission at such times as NSCC is ready to implement these additional components.

[5] According to NSCC, this feature will not be available when the APS becomes operational; it will be added at a later date. Until the exit and cancel features are added, an annuities agency or annuities carrier member must go outside of APS to arrange for the reversal of a commission and charge back transaction that was erroneously entered into APS.

Telephone conversation between Julie Beyers, Associate Counsel, NSCC, and Jeffrey Mooney, Attorney, Division of Market Regulation, Commission (September 8, 1997).

[6] Although no clearing fund deposit will be required from annuities agency members and annuities carrier members, NSCC has amended Rule 4 of its rules to state that an annuities agency member or annuities carrier member may be required to make a deposit in the clearing fund in the event that in the future NSCC determines that a clearing fund deposit should be required.

[7] It should be noted that applicants will not be required to be rated by any rating agency other than A.M. Best in order to qualify as annuities carrier members. The standards set forth for the other rating agencies apply only if a annuities carrier member determines to utilize a rating agency in addition to A.M. Best.

[8] Furthermore, NSCC states that it has not yet determined the fees for APS. NSCC will make the appropriate rule filing pursuant to Section

The proposed rule change amends NSCC's Rule 3 (Lists to be Maintained) to indicate that NSCC will maintain a list of annuity plans that may be the subject of orders processed through APS. The proposed rule change amends NSCC's Rule 57 (Annuities Processing Service) to clarify what governs these Phase I aspects of APS.

The proposed rule change also makes technical amendments to the following NSCC rules to accommodate the APS service, annuities agency members, and annuities carrier members: Rule 1 (Definitions and Descriptions), Rule 5 (General Provisions), Rule 6 (Distribution Facilities), Rule 12 (Settlement), Rule 17 (Fine Payments), Rule 18 (Procedures For When the Corporation Declines or Ceases to Act), Rule 20 (Insolvency), Rule 22 (Suspension of Rules), Rule 24 (Charges for Services Rendered), Rule 26 (Bills Rendered), Rule 27 (Admission to Premises of the Corporation—Powers of Attorney, Etc.), Rule 29 (Qualified Securities Depositories), Rule 32 (Facsimile Signatures), Rule 33 (Procedures), Rule 34 (Insurance), Rule 35 (Financial Reports), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 39 (Special Representative/Index Receipt Agent), Rule 45 (Notices), Rule 46 (Restrictions on Access to Services), Rule 48 (Disciplinary Proceedings), Rule 55 (Settling Banks), Procedure VIII (Money Settlement Service), Procedure XV (Clearing Fund Formula and Others Matters), Addendum D (Statement of Policy—Envelope Settlement Service), and Addendum F (Statement of Policy—In Relation to Same Day Funds Settlement).[9]

II. Discussion

Section 17A(b)(3)(F)[10] of the Act requires that the rules of a clearing agency be designed to facilitate the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's proposed rule change is consistent with its obligations under the Act because APS will provide centralized communication between insurance carriers and broker-dealers, banks, and their affiliated insurance agencies. APS also permits commission and charge back transactions to be processed in a standardized and automated environment. Because the activities will be handled through NSCC, the time and cost associated with processing should be reduced. Thus, the proposal promotes the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–96–21) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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19(b)(3)(A) of the Act at such time as NSCC determines the fees to be charged for APS services.

[9] The full text of each of these technical rule changes is set forth in Exhibit A of NSCC's filing and subsequent amendments thereto, each of which is available for inspection and copying at the Commission's Public Reference Room or through NSCC.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39088; International Series Release No. 1102; File No. SR–OCC–97–10]

Self-Regulatory Organizations, the Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Seeking Approval to Issue, Clear, and Settle Flexibly Structured Options on the Mexican Peso

September 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 24, 1997, The Options Clearing Corp. ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval, conditioned as described below, of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow OCC to issue, clear, and settle option transactions where the Mexican peso is either the trading currency or the underlying currency.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, OCC will issue, clear, and settle flexibly structured option contracts where the Mexican peso is either the trading currency or the underlying currency. The Philadelphia Stock Exchange ("PHLX") has proposed to list and trade such foreign currency options through its customized options facility.[3] The PHLX rule filing proposes to enable its members to trade customized contracts between the peso and United States dollar. The PHLX rule filing further proposed to offer cross-rate contracts for the Mexican peso against the Canadian dollar.

Currently, OCC has approval to list and clear flexibly structured option contracts on any combination of the following currencies: (1) Australian dollars, (2) British pounds, (3) Canadian dollars, (4) German deutsche marks, (5) European Economic Community currency units, (6) French francs, (7) Italian lire, (8) Japanese yen, (9) Spanish pesetas, (10) Swiss francs, and (11) United States dollars. OCC is now proposing to add the Mexican peso to that list of approved currencies.

Options on the peso will be cleared and settled in accordance with the clearance and settlement mechanisms already in place for flexibly structured foreign currency options and for cross-rate foreign currency options. In addition, options on the peso will be margined like OCC's existing foreign currency and cross-rate foreign currency option contracts. Accordingly, OCC has determined that no changes to its by-laws or rules are necessary to accommodate these new contracts.

OCC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[4] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible. OCC's proposal will allow the clearance and settlement of flexibly structured option contracts where the peso is either the trading currency or the underlying currency by using existing OCC systems, rules, and procedures already in place for flexibly structured foreign currency options and for cross-rate foreign currency options. Due to the similarity of these option contracts to the option contracts currently cleared and settled in OCC's existing system, OCC should be able to implement the clearance and settlement of such options safely and in a manner consistent with its obligations under Section 17A. Thus, the Commission is approving OCC's proposal, subject to the Commission's approval of the proposed rule change contained in File No. SR–PHLX–97–22.[6]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow OCC to issue, clear, and settle flexibly structured options and cross-rate foreign currency options on the Mexican peso as soon as the Commission approves PHLX's trading of such options.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–97–10 and should be submitted by October 16, 1997.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–97–10) be and hereby is approved, subject to the Commission's final approval of the proposed rule change contained in File No. SR–PHLX–97–22.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25375 Filed 9–24–97; 8:45 am]

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[1] The Commission has modified the text of the summaries prepared by OCC.

[2] For a discussion of the PHLX proposal, refer to Securities Exchange Act Release No. 38867 (May 22, 1997), 62 FR 29385 [File No. SR–PHLX–97–22] (notice of proposed rule change to list and trade options on the Mexican peso). The PHLX proposal has not received final approval from the Commission.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] *Id.*

[6] *Supra* note 3.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39094; File No. SR–OCC–97–06]

Self-Regulatory Organizations, The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Issue, Clear, and Settle Packaged Spread Options

September 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 15, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on July 1, 1997, amended the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval, conditioned as described below, of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's by-laws and rules to permit OCC to issue, clear, and settle packaged spread options, which have been proposed for trading by the Chicago Board Options Exchange ("CBOE").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Description of Packaged Spreads*

The purpose of the proposed rule change is to amend OCC's by-laws and rules to permit OCC to issue, clear, and

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

settle packaged spread options, which have been proposed for trading by the CBOE.[3] A packaged spread option is a cash-settled option that upon exercise calls for the payment by the assigned writer (*i.e.*, seller) to the exercising holder (*i.e.*, buyer) of an amount equal to the net exercise settlement values of all of the component options in a specified spread position ("exercise settlement amount"). A spread position is the position resulting from the purchase and sale of more than one option of the same type (*i.e.*, put or call) on the same underlying interest. A packaged spread option permits an investor to create the entire spread position in a single transaction thereby avoiding the difficulty of simultaneous executions and potentially reducing transaction costs.

The proposed packaged spread options will be European-style, cash settled index options which will synthetically create a butterfly spread or a vertical spread position. A butterfly spread strategy is a neutral strategy where the holder of the spread typically seeks to profit from a market in which the underlying interest does not significantly rise or decline in value. A packaged butterfly spread option is a single security that replicates the behavior of a butterfly spread strategy by combining four options of the same type on the same underlying interest with the same expiration date. Two of the options have the same exercise price, the third option has an exercise price above the exercise price of the first two by a stated amount ("spread interval"), and the fourth has an exercise price below the first two by the same spread interval. Because a butterfly spread strategy has precisely the same settlement value whether it consists of all puts or all calls, packaged butterfly spreads will not be identified as either puts or calls except that, as noted below, they will be counted as calls for purposes of determining the number of calls issued by OCC and registered under the Securities Act of 1933 ("Securities Act") and the Act.

A packaged vertical spread option is a single security that upon exercise calls for the payment of an exercise settlement amount equal to the net exercise settlement amounts of the component options in a vertical spread position. A vertical spread position consists of a combination of two options of the same type at different exercise prices expiring on the same date. The difference between the exercise prices is the vertical spread interval. The holder of a vertical call spread is long the call having the lower exercise price and is short the call having the higher exercise price. The holder of a vertical put spread is long the put having the higher exercise price and short the put having the lower exercise price. The holder of a vertical spread option typically seeks to profit from an increase (*i.e.*, in the case of a vertical call spread) or decrease (*i.e.*, in the case of a vertical put spread) in the value of the underlying index, with the maximum potential gain in either case being the amount of the vertical spread interval times the multiplier for the index.

2. Organization of Proposed Rule Change

The proposed rule change consists of four sections: (i) amendments to OCC's existing by-laws; (ii) a new Article XXVI of the by-laws applicable only to packaged spread options, (iii) amendments to OCC's existing rules; and (iv) a new Chapter XXVII of the rules applicable only to packaged spread options.

3. Proposed Amendments to Existing By-Laws

The proposed rule changes will amend certain defined terms in Article I of the by-laws to indicate how those terms will apply to packaged spread options. The definitions of the terms "call" and "put" will be amended to state that for purposes of determining the number of calls and puts registered under the Securities Act and the Act a packaged vertical call spread option will be deemed to be a single call option, a packaged butterfly spread options will be deemed to be a single call option, and a packaged vertical put spread option will be deemed to be a single put option. Otherwise, for purposes of OCC's by-laws and rules, packaged vertical call spread options, packaged vertical put spread options, and packaged butterfly spread option will be separate "types" of options. Accordingly, the proposed rule change will amend the term "type of option" set forth in article I, Section I.T. (4) to include packaged butterfly spread options, packaged vertical call spread options, and packaged vertical put spread options as distinct types of options.

OCC also proposes to amend the definition of "cleared security" set forth in Article I, Section I.C.(5). According to OCC, the change is intended merely to eliminate unnecessary words and has no specific relationship to packaged spread options although a packaged spread option will be defined as an "option contract" and therefore is within OCC's definition of "cleared security."

The amendments in Sections 6 and 7 of Article VI regarding the issuance of securities and the reporting of matched trades, respectively, are intended merely to adapt those sections to apply to packaged spread options. Similarly, the changes in Interpretations and Policies .01 of OCC's rules following Article VI, Section 9, are intended merely to make clear that the general rights and obligations of holders and writers of packaged spread options will be set forth in new Article XXVI of OCC's by-laws and not in Article VI, Section 9. Article VI, Section 10 will be amended to identify the terms of packaged spread options that must be determined by the exchange on which these options trade prior to opening of trading in a series of packaged spread options. Additionally, Article VI, Section 18(b)(2) will be amended to use more general language that can apply to packaged spread options as well as other non-stock option products without referencing the particular chapter of OCC's rules that applies to each.

4. Proposed New By-laws

The proposed rule change will adopt Article XXVI of the by-laws which will pertain only to packaged spread options. Section 1 will define additional terms and will supplement existing defined terms in Article I with respect to packaged spread options. Most of these are self-explanatory and do not require discussion.[4] The term "base exercise price" will be used for packaged spread options rather than simply "exercise price" to avoid confusion between the exercise price of the packaged spread option itself and the exercise prices of the component positions in puts and calls that the packaged spread options are designed to replicate. For packaged butterfly spread options, the "base exercise price" will be the exercise price of the two options that have the same exercise price in the spread. For packaged vertical call spread options, the base exercise price will be the lower exercise price of the spread. For packaged vertical put spread options, it will be the higher exercise price of the spread. Except as described above, packaged spread options will otherwise be subject to the provisions governing index options found in Article XVII of OCC's Rules and Chapter XVIII of OCC's by-laws.

Article XXVI, Section 2 regarding the general rights and obligations of holders and writers of packaged spread options is similar to corresponding provisions in other Articles. Provisions in Sections 3, 4, and 5 relating to adjustments, unavailability or inaccuracy of index values, and time for determination of index values merely incorporate corresponding provisions of Article XVII of the index option by-laws.

5. Proposed Amendments to Existing Rules

Provisions in existing Rules 207 and 401 regarding records and reporting of matched trades, respectively, will be modified in order to accommodate the unique attributes of packaged spread options. Rule 602, which sets forth the margin requirements for non-equity options does not require substantive modification in order to provide for the margining of packaged spread options. The existing margin rules calculate margin for an account that contains options in a spread position based upon the net risk of that position. Consequently, the margin requirement for a short position in packaged spread options and the margin credit, if any, for a long position will be precisely the same as if margin was calculated based upon the corresponding spread position consisting of separate European-style puts or calls. Accordingly, the margin rule will apply to packaged spreads without modification except that Interpretations and Policies .06 to Rule 602 will be modified to make clear that packaged spreads will never be treated as "unpaired" because short and long option positions are synthetically paired within the packaged spread option itself.

6. Proposed New Rules

OCC proposes to add Chapter XXVII to its rules which will relate only to packaged spread options. Rule 2701 sets forth that OCC will not accept escrow deposits in lieu of margin on packaged spread options. Rules 2702 and 2703 set forth the exercise and assignment procedures for packaged spread options. These procedures essentially parallel the procedures in OCC Rules 805 and 1802–1804 that are applicable to European-style index options. OCC will follow its usual expiration date exercise procedures in identifying to clearing members those options that are in the money by at least $1 and will afford the clearing member an opportunity to negate an exercise if it chooses to do so. As is the case with most other options, Interpretations and Policies .01 to proposed Rule 2702 states that these procedures are for administrative convenience only and are not intended to override a clearing member's agreement with its customers as to whether an option will be exercised. Rule 2704 will provide that the exercise settlement date will ordinarily be the business day following the expiration date as is the case for index options.

Rule 2705 will specify that the exercise settlement amount for a packaged spread option will be the settlement value of the synthetically created spread position as calculated by OCC utilizing a settlement value furnished to OCC by the exchange on which the packaged spread option is traded. Rule 2706 is needed to integrate the packaged spread rules with those in Chapter XI relating to clearing member suspensions. It is parallel to similar provisions in other product-specific chapters of the OCC's rules.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act[5] because it applies to packaged spread options the same procedures and safeguards that have been and are successfully employed by OCC for other options products. OCC believes that these procedures have proven effective in promoting the prompt and accurate clearance and settlement of securities transactions and to safeguard funds and securities in its custody or control for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any material adverse impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to promote the prompt and accurate clearance and settlement of securities transactions. OCC's proposal will allow OCC to clear and settle packaged spread options using existing OCC systems, rules, and procedures. Thus, due to the similarity of packaged spreads to other option products currently cleared and settled by OCC, OCC should be able to implement the clearance and settlement of packaged spread options safely and in a manner consistent with its safeguarding obligations under Section 17A. In addition, the packaging of a strategy that synthetically creates two option positions (as with vertical spread options) and four option positions (as with the packaged butterfly spread options) into one security should reduce the number of transactions processed because a clearing member will only have to enter into one transaction and because OCC will only have to process one transaction rather than multiple transactions to achieve the same option strategy. In this way, the Commission believes that the proposal is consistent with OCC's obligation under Section 17A to promote the prompt and accurate clearance and settlement of securities transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of the filing because accelerated approval will allow OCC to coordinate the issuance, clearance, and settlement of packaged spread options with the CBOE's listing of packaged spread options. The Commission believes that because OCC will be applying procedures which have proved to be efficient and safe in the past, accelerated approval is justified. Furthermore, no negative comments were received upon publication of the notice of filing of the CBOE's proposed rule changes, and the Commission does not expect to receive any adverse comments on the present proposed rule change.[7] However, the Commission's approval of OCC's proposed rule change is subject to the Commission's approval of CBOE's proposed rule changes.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule

[3] For a description of CBOE's proposal, refer to Securities Exchange Release Nos. 38214 (January 28, 1997), 62 FR 5266 [File No. SR–CBOE–96–76] (notice of filing of proposed rule change relating to the listing and trading of packaged vertical spread options) and 38213 (January 28, 1997), 62 FR 5265 [File No. SR–CBOE–96–75] (notice of filing of proposed rule change relating to the listing and trading of packaged butterfly spread options).

[4] The text of OCC's proposed rule changes is included in OCC's filing which is available for inspection and copying at the Commission's Public Reference Room or through OCC.

[5] 15 U.S.C. 78q–1

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *Supra* note 3.

change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–97–06 and should be submitted by October 16, 1997.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–97–06) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25446 Filed 9–24–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39087; File No. SR–PCX–97–29]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Pacific Exchange, Inc. Relating to the Listing and Trading of Options on the Morgan Stanley Emerging Growth Index

September 17, 1997.

I. Introduction

On July 8, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade options on the Morgan Stanley Emerging Growth Index ("Index"). On July 29, 1997, the Exchange submitted an amendment to the proposal.[3] Notice of the proposed rule change and Amendment No. 1 appeared in the **Federal Register** on August 5, 1997.[4] No comment letters were received concerning the proposed rule change. On September 17, 1997, the Exchange submitted Amendment No. 2.[5] This order approves the PCX's proposal, as amended.

II. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade European-style, cash-settled options on the Index, a market capitalization-weighted, broad-based index developed by Morgan Stanley & Co. Incorporated ("Morgan Stanley") comprised of the common stocks of 50 domestic emerging growth securities representing 26 different industry groups.

A. Design of the Index

The Index is comprised of 50 representative stocks[6] traded on the New York Stock Exchange, Incorporated ("NYSE"), the American Stock Exchange, Incorporated ("Amex") and through the facilities of the National Association of Securities Dealers, Incorporated ("NASD") automated quotation system and are reported national market system securities.

The Index was designed by Morgan Stanley to reflect the emerging growth equity market. The component securities were selected for their market capitalization, price per share, longterm debt as a percentage of total capital, mean estimated longterm (three year) earnings per share growth rate, net sales and return on average total equity. Specifically, stocks were selected based on whether they are "emerging" stocks (in general, having current sales figures of between $25 million and $2 billion annually) and "growth" stocks (in general, having a high mean I/B/E/S[7] anticipated earnings growth rate). A primary consideration in determining "growth" is whether a stock's expected growth rate is significantly higher than that of other stocks. In addition, currently all of the issues are traded in the United States and there are no foreign issues or American Depositary Receipts ("ADRs") included in the Index.[8]

The Exchange represents that the Index currently is representative of the domestic emerging growth stock market as a whole, and therefore, believes it is a broad-based index. In support of this, the PCX notes that the Index is comprised of companies in 26 different industry groups, which range from apparel (.76%) to auto parts (.63%) to restaurants (1.79%).[9] Although technology issues comprise 61% of the market capitalization of the Index, these companies are included in nine different industries ranging from computer software to semiconductors to computer services.

The Index is weighted by the market capitalization of the component stocks. As of June 18, 1997, the total market capitalization of the Index was $112.7 billion, and the average market capitalization of the component stocks was $2.3 billion. The individual market capitalization of the stocks ranged from $629 million (Bio Technology General Corp.) to $5.9 billion (BMC Software, Inc.) on the same date. The largest component stock accounted for 5.20% of the Index, while the smallest accounted for 0.56%. The top five stocks in the Index by weight accounted for 24.05% of the Index. The average daily trading volume in the component securities for the period from December 18, 1996 through June 18, 1997, ranged from a low of 94,688 shares to a high of 6,291,777 shares, with an average daily trading volume for all the component stocks of approximately 926,131 shares per day.

B. Maintenance of the Index

The Index will be maintained by PCX in conjunction with Morgan Stanley. Index maintenance includes monitoring Index criteria and completing the adjustments for company additions and deletions, share changes, stock splits, stock dividends and stock price adjustments due to events such as company restructurings or spin-offs, as well as a semi-annual rebalancing and quarterly review.[10] In order to ensure that the Index continues to represent the overall character of the emerging growth equity market, any changes made to the Index, including those made at the time of semi-annual rebalancing and quarterly review, will be in compliance with the following initial inclusion and maintenance criteria: (a) the number of component stocks in the Index will be no less than 42 and no greater than 58; (b) the top weighted component stock will not account for more than 25% of the weight of the Index; (c) the top five weighted component stocks will not account for more than 50% of the weight of the Index; (d) no component stock will have a market capitalization of below $75 million; (e) no component issue will have an average trading volume of less than 20,000 shares per day; (f) no component issue will have an average trading value of less than $100,000 per day; (g) no component will have a price per share of less than $3; (h) at least 80% of the issues comprising the Index and at least 90% of the Index weight will meet the initial listing requirements for options trading pursuant to PCX Rule 3.6; and (i) the minimum market capitalization for all of the issues included in the Index, collectively, will be $60 billion.

In the event that the Index does not comply with any of these criteria at the time of semi-annual rebalancing and quarterly review, the Exchange either will: (i) make adjustments to the composition of the Index to place it in compliance with such criteria; or (ii) notify Commission staff to determine the appropriate regulatory response, which could include, but is not limited to, the removal of securities from the Index, prohibiting opening transactions, or discontinuing the listing of new series of Index options.

C. Calculation and Dissemination of Index Value

The value of the Index is determined by multiplying the price of each stock by the number of shares outstanding, adding those sums and dividing by a divisor which resulted in an Index value of 300.00 on its base date of February 7, 1997. The Index value will be calculated by Bridge Data Corporation and will be disseminated at 15-second intervals during regular PCX trading hours to market information vendors via the Consolidated Tape Authority. Notice of component changes will be disseminated to vendors and Member Firms via facsimile and over the Options News Network.

D. Trading of the Index Options

The Exchange proposes to base trading in options on the Index on the full value of the Index as expressed in U.S. dollars. The Exchange also may provide for the listing of long-term index option series ("LEAPS") and for FLEX options on the Index. The Exchange will list expiration months for Index options and Index LEAPS in accordance with PCX Rule 7.8. Strike prices will be set to bracket the Index in 5 point increments. The minimum tick size for series trading below $3 will be 1/16th and the minimum tick size for all other series will be 1/8th.[11]

E. Position Limits

The Exchange is proposing to establish position limits for Index options equal to 37,500 contracts on the same side of the market, with no more than 22,500 contracts in the series with the nearest expiration date. These limits are roughly equivalent, in dollar terms, to the limits applicable to options on other indices.[12] Furthermore, the hedge exemption rule applicable to broad-based index options, Commentary .02 to PCX Rule 7.6, will apply to Index options. With regard to FLEX Index options, the Exchange is proposing to establish position limits of 200,000 contracts on the same side of the market pursuant to PCX Rule 8.107(a). The PCX also represents that it has the necessary systems capacity to support new series that would result from the introduction of the Index options.[13]

F. Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month and trading in the expiring contract month on the PCX will normally cease at 1:15 p.m. (Pacific Time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of Index options at expiration will be determined from opening prices established at the open of the regular Friday trading sessions at the appropriate exchange or market system. If a stock does not trade during

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to James T. McHale, Special Counsel, Division of Market Regulation ("Division"), SEC, dated July 29, 1997 ("Amendment No. 1"). Amendment No. 1, among other issues, addressed maintenance standards and revised the Exchange's limitation of liability rule, PCX Rule 7.13.

[4] *See* Securities Exchange Act Release No. 38884 (July 29, 1997), 62 FR 42150 (August 5, 1997).

[5] *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to Marianne H. Duffy, Special Counsel, Division, SEC, dated September 17, 1997 ("Amendment No. 2"). Amendment No. 2 proposed an additional maintenance standard regarding options eligibility of the Index components.

[6] The 50 stocks comprising the Index are: BMC Software Inc. (BMCS), Parametric Technology Corp. (PMTC), Diamond Offshore Drilling, Inc. (DO), Ascend Communications Inc. (ASND), Cabletron Systems (CS), Altera Corp. (ALTR), Ciena Corp. (CIEN), Linear Technology Inc. (LLTC), Paychex Inc. (PAYX), Compuware Corp. (CPWR), XILINX Inc. (XLNX), Maxim Integrated Products (MXIM), Health Management Assoc. (HMA), McAfee Associates Inc. (MCAF), Sterling Commerce Inc. (SE), Iomega Corp. (IOM), Robert Half Intl. Inc. (RHI), ATMEL Corp. (ATML), Bed Bath & Beyond Inc. (BBBY), American Power Conversion (APCC), Planet Hollywood Intl. Inc. (PHII), Synopsys Inc. (SNPS), Reading and Bates Corp. (RB), Viking Office Prods. Inc. (VKNG), Micron Electronics Inc. (MUEI), Cambridge Technology Partners (CAPT), Blyth Industries Inc. (BTH), Jabil Circuit Inc. (JBIL), Novellus Systems Inc. (NVLS), Dollar Tree Stores Inc. (DLTR), Jones Medical Inds. Inc. (JMED), Pairgain Technologies Inc. (PAIR), Rexall Sundown Inc. (RXSD), CDW Computer Centers Inc. (CDWC), Titanium Metals Corp. (TIMT), Remedy Corp. (RMDY), Aspect Telecommunications (ASPT), Delta & Pine Land Co. (DLP), Telco Communications Grp. Inc. (TCGX), APAC Teleservices Inc. (APAC), Learning Tree Intl. Inc. (LTRE), Visio Corp. (VSIO), Catalina Marketing Corp. (POS), Nautica Enterprises Inc. (NAUT), Boston Technology Inc. (BSN), ETEC Systems Inc. (ETEC), Mentor Corp. (MNTR), Gentex Corp. (GNTX), Veritas Software Co. (VRTS), and Bio Technology General Corp. (BTGS).

[7] The term I/B/E/S refers to the Institutional Broker's Estimate System, a source of analysts' earnings expectation data that is obtained from over 7,000 analysts working for approximately 750 research organizations.

[8] In the future, should the Index include non-U.S. registered securities, such securities will not in the aggregate comprise more than 10% of the Index weight and will not represent more than 3 Index components. Prior to reaching these limits, PCX will notify the Commission to determine if a new filing under Rule 19b–4 is required.

[9] The industry groupings and their Index weight are as follows: apparel (0.76%); auto parts (0.63%); biotechnology (0.56%); catalog/specialty distribution (2.55%); computer communications (5.66%); computer local area networks (4.52%); computer software (20.45%); contract drilling (6.29%); discount stores (1.14%); diversified commercial services (8.37%); electronic data processing peripherals (2.55%); electronic data processing services (4.06%); electrical products (1.82%); electronic data processing (1.53%); electronic production equipment (3.18%); farming/seeds/milling (0.86%); hospital/nursing management (2.88%); medical specialties (0.64%); other metals/minerals (0.91%); other pharmaceuticals (2.15%); other speciality stores (1.89%); other telephone/communications (0.84%); packaged goods/cosmetics (1.35%); restaurants (1.79%); semiconductors (16.99%); and telecommunications equipment (5.63%). The industry groupings are based upon the classifications used by FactSet Research Systems, Inc., an electronic market data provider of information that is available by subscription in the securities industry.

[10] Routine corporate actions, such as stock splits and stock dividends that require simple changes in the common shares outstanding and the stock prices of the companies in the Index will be handled by PCX through a contract with Bridge Data. Non-routine corporate actions and other material changes such as share issuances that change the market value of the Index and require an Index divisor adjustment are performed by Morgan Stanley. In addition, Morgan Stanley will select all of the stocks that are added to the Index at the time of the semi-annual rebalancing and quarterly review.

[11] *See* PCX Rule 6.72.

[12] For example, on June 18, 1997, a position of 37,500 contracts would have a dollar value of $1,168,800,000 (37,500 times the Index value of 311.68 times the Index multiplier of 100). For a comparison of position limits on similar indices, *see* Securities Exchange Act Release No. 32554 (June 29, 1993) 58 FR 36492 (July 7, 1993) (order approving increase in position and exercise limits on the Wilshire Small Cap Index to 37,500 contracts on the same side of the market with no more than 22,500 of such contracts in the series with the nearest expiration date) and Securities Exchange Act Release No. 36504 (November 22, 1995) 60 FR 61275 (November 29, 1995) (order approving increase in position and exercise limits on the PSE Technology Index to 37,500 contracts on the same side of the market with no more than 22,500 on such contracts in the series with the nearest expiration date).

[13] In addition, the Options Price Reporting Authority ("OPRA") has represented that it has the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and long-term Index options. *See* letter from Joe Corrigan, Executive Director, OPRA, to Kim Koppien, Vice President-Operations, Options Division, PCX, dated August 18, 1997.

this interval or if it fails to open for trading, the last available price of the stock will be used in the calculation of the Index.[14] When the last trading day is moved in accordance with Exchange holidays (such as when the PCX is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the open of the regular Thursday trading sessions.

G. Surveillance

The Exchange will apply its existing index option surveillance procedures to Index options. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group ("ISG") Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[15]

H. Other Exchange Matters

Finally, the Exchange proposes to amend PCX Rule 7.13 regarding limitation of liability in order to be consistent with the limitation of liability rules of other self-regulatory organizations ("SROs").[16]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[17] Further, the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risk associated with their portfolios. Specifically, the Commission finds that the listing and trading of options on the Index, including LEAPS and FLEX Index options, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with the emerging growth equity market[18] and promote efficiency, competition, and capital formation.[19]

Nevertheless, the trading of options on the Index raises several concerns related to the design and maintenance of the Index, customer protection, surveillance and market impact. The Commission believes, however, for the reasons discussed below, that the PCX has adequately addressed these concerns.

A. Design and Maintenance of the Index

The Commission finds that it is appropriate and consistent with the Act for the PCX to designate the Index as broad-based for purposes of index options trading. First, the Index is composed of 50 companies from 26 industry groups including: computer software; semiconductors; consumer goods; energy; capital equipment; basic materials; agriculture/food and financial services.[20] Second, no particular stock or group of stocks dominates the Index. Specifically, as of June 18, 1997, the largest stock accounted for 5.20% of the Index weight, while the smallest accounted for 0.56%. The top five stocks in the Index by weight accounted for 24.05%. Accordingly, the Commission believes that it is appropriate for the PCX to apply its rules governing broad-based index options to trading in the proposed Index options. The Commission notes that with respect to the maintenance of the Index, Morgan Stanley has implemented several safeguards in connection with the listing and trading of the Index options that will serve to ensure that the Index components are highly capitalized, diversified and actively-traded. In this regard, Morgan Stanley will maintain the Index so that: (a) the number of component stocks in the Index will be no less than 42 and no greater than 58; (b) the top weighted component stock will not account for more than 25% of the weight of the Index; (c) the top five weighted component stocks will not account for more than 50% of the weight of the Index; (d) no component stock will have a market capitalization of below $75 million; (e) no component issue will have an average trading volume of less than 20,000 shares per day; (f) no component issue will have an average trading value of less than $100,000 per day; (g) no component will have a price per share of less than $3; (h) at least 80% of the issues comprising the Index and 90% of the Index weight will meet the initial listing requirements for options trading pursuant to PCX Rule 3.6; and (i) the minimum market capitalization for all of the issues included in the Index, collectively, will be $60 billion.

In addition, the Commission notes that Morgan Stanley has adopted appropriate procedures to be followed by those responsible for maintaining the Index in order to help to prevent and to deter the misuse of any informational advantages with respect to changes in the composition of the Index.[21] Such procedures include, for example, informational barriers.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options currently traded on the PCX, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options. In addition, the PCX plans to distribute a circular to its membership calling attention to specific risks associated with options on the Index.

C. Surveillance

In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to manipulation. The ability to obtain information necessary to detect and deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation. It is for this reason that the Commission requires that there be a comprehensive surveillance sharing agreement ("CSSA") in place between an exchange listing or trading a derivative product and the exchanges trading the stocks underlying the derivative contract that specifically enables officials to surveil trading in the derivative product and its underlying stocks.[22] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. For foreign stock index derivative products, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.[23]

In order to address the above noted concerns, the Exchange will apply its existing index option surveillance procedures to Index options. In addition, as previously discussed, the markets on which all component stocks trade are members of the ISG which provides for the exchange of all necessary surveillance information.[24]

D. Market Impact

The Commission believes that the listing and trading of Index options on the PCX should not adversely impact the securities markets in the United States.[25] First, the existing index option surveillance procedures of the PCX will apply to options based on the Index. Second, the Commission notes that the Index is broadbased and diversified and includes highly capitalized securities that are actively traded. Third, the position limit of 37,500 contracts on the same side of the market, provided no more than 22,500 of such contracts are in series in the nearest expiration month, will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because Index and regular and long-term options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded into the United States. Accordingly, the Commission does not believe that the introduction of Index options on the PCX will have a significant effect on the underlying securities markets.

E. Other Exchange Matters

The Commission finds that the proposed limitation of liability language will provide the PCX with protection that is substantively similar to protection already afforded other SROs.[26] The Commission believes that by amending the Exchange's limitation of liability rule, entities will not be discouraged from creating new products or calculating and disseminating settlement values.[27] Therefore, derivative products, that provide hedging or other economic functions, should remain available to investors.

For the reasons described above, the Commission finds good cause to approve Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 provides, 90% of the Index weight will meet the initial listing requirements for options trading pursuant to PCX Rule 3.6.

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)[28] of the Act, to find that good cause exists to approve Amendment No. 2 on an accelerated basis.

IV. Solicitation of Comments and Conclusion

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to the File No. SR–PCX–97–29 and should be submitted by October 16, 1997.

For the foregoing reasons, the Commission finds that the PCX's proposal to list and trade options based on the Morgan Stanley Emerging Growth Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PCX–97–29), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[29]

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[14] If a stock does not trade during the opening of the regular Friday trading session at the appropriate exchange or market system, or if it fails to open for trading, then pursuant to PCX Rule 7.8(e), the last reported sale price of stock will be used in the calculation of the Index, unless the exercise settlement amount is fixed in accordance with the Rules and By-Laws of The Options Clearing Corporation.

[15] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc. ("CBOE"); the Chicago Stock Exchange, Inc.; the NASD; the NYSE; the PCX; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock, and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[16] *See* Amendment No. 1, *supra* note 3. The Commission notes that the text of new Rule 7.13 is substantially similar to the limitation of liability provisions of other SROs. *See* CBOE Rule 24.14.

[17] 15 U.S.C. 78f(b)(5).

[18] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks representing companies in the emerging growth sector in the U.S. stock markets.

[19] 15 U.S.C. 78c(f).

[20] Although technology issues comprise 61% of the market capitalization of the Index, these companies are included in nine different industries ranging from computer software to semiconductors to computer services. In addition, the Commission previously has approved the listing and trading of options on a broad-based index designed to measure the performance of high capitalization technology stocks. *See e.g.*, Securities Exchange Act Release No. 37693 (September 17, 1996) 61 FR 50362 (September 25, 1996) (order approving the listing and trading of options on the Goldman Sachs Technology Composite Index),

[21] *See* Letter from Carol Shahmoon, Counsel, Morgan Stanley, to Sharon Lawson, Senior Special Counsel, Division of Market Regulations, Commission, dated August 7, 1997.

[22] The Commission believes that a CSSA should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a CSSA require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers and sellers of securities. *See* Securities Exchange Act Release No. 31529 (November 27, 1992).

[23] As noted above, presently there are no stocks of foreign issuers in the Index.

[24] *See supra* note 14.

[25] The Commission notes that both the Exchange and OPRA have represented that they have the necessary systems capacity to support those new series of index options that would result from the introduction of options on the Index. *See supra* note 13 and accompanying text.

[26] *See e.g.*, CBOE Rule 24.14, *supra* note 15. In order to conform its limitation of liability provisions to those of other SROs, the PSE will not rely on this rule to limit its liability for intentional misconduct or for any violation of the federal securities laws.

[27] *See e.g.*, Securities Exchange Act Release No. 34125 (May 27, 1994) 59 FR 29307 (June 6, 1994).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 97–25376 Filed 9–24–97; 8:45 am]
BILLING CODE 3010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Schedule of Hearings and Deadlines for Submitting Comments on One Additional Petition for the GSP 1997 Product Review

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: This is to notify that one product has been added to the 1997 GSP Product Review and to set forth the timetable for hearings, and for providing public comments on a petition to waive the GSP competitive need limit on imports of sugar from Brazil.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508 (Tel. 202/395–6971). Public versions of all documents relating to this review may be seen by appointment in the USTR public Reading Room between 9:30–12 a.m. and 1–4 p.m. (Tel. 202/395–6186).

SUPPLEMENTARY INFORMATION: The GSP program is authorized pursuant to Title V of the Trade Act of 1974, as amended ("the Trade Act") (19 U.S.C. 2461 et seq.). The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. In a **Federal Register** notice dated August 13, 1997 (62 FR 43408), USTR announced the acceptance of product petitions for review and in a subsequent notice dated September 4, 1997 (62 FR 46792) USTR announced deadlines for hearings and submissions related to them.

I. Subject of reviews

USTR has accepted one petition for a waiver of the competitive need limit for the following article in addition to those petitions described in part C of the Annex to the **Federal Register** notice dated August 13, 1997 (62 FR 43408).

PETITION FOR WAIVER OF COMPETITIVE NEED LIMIT FOR A PRODUCT ON THE LIST OF ELIGIBLE PRODUCTS FOR THE GENERALIZED SYSTEM OF PREFERENCES

Case No.	HTS subheading	Article	Petitioner
97–26	1701.11.10 (Brazil)	Cane or beet sugar and chemically pure sucrose, in solid form: Raw sugar not containing added flavoring or coloring matter Cane sugar: Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.	Sindicato da Industria do Azucar e do alcool do Estado de Pernambuco, Brazil.

II. Opportunities For Public Comment And Inspection Of Comments And Notice Of Public Hearings

The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) invites comments in support of, or in opposition to, any petition which is the subject of this notice. Submissions should comply with 15 CFR Part 2007, including sections 2007.0, and 2007.1. Instructions and dates for submitting statements, schedule of public hearings and requests to make statements at the public hearings should, with one exception, conform to the instructions in the **Federal Register** notice of September 4, 1997 (62 FR 46792). The one exception to these **Federal Register** instructions, and the final date of submitting statements on the product that is the subject of this notice and for requesting permission to make a statement on this product at the public hearing is not September 30, 1997, but has been set at 5:00 p.m. on October 10, 1997.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.
[FR Doc. 97–25370 Filed 9–24–97; 8:45 am]
BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under Office of Management and Budget Review

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice.

SUMMARY: The Department of Transportation, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public, grantee organizations, and State, local and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 944, U.S.C. 3506(c)(2)(A). The Act requires Federal agencies to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection, and to allow 60 days for public comment in response to the notice. The Department is currently seeking comments concerning collection requirements for grants to State and local governments, and for grants to institutions of higher learning, hospitals, and other nonprofit institutions.

DATES: Written comments should be received on or before November 24, 1997 to be assured of consideration.

ADDRESSES: Submit written comments to Mr. Ladd Hakes, U.S. Department of Transportation (M–62), 400 Seventh Street SW., Washington, DC 20590. Written comments may be faxed to (202) 366–7510. Identify comments regarding collection requirements for grants to State and local governments by the OMB Control Number 2105–0520. Identify comments regarding requirements for grants to institutions of higher learning, hospitals, and other nonprofit institutions by the OMB Control Number 2105–0531.

FOR FURTHER INFORMATION CONTACT: Mr. Ladd Hakes, (202) 366–4268; refer to the control numbers above.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Title: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Forms: SF 269, SF 270, SF 271, SF 272, and SF 424.

OMB Control Number: 2105–0520.

Affected Public: State and local governments receiving Federal financial assistance from the Department of Transportation (DOT).

Abstract: Requirements for Federal administration of financial assistance to State and Local governments is provided to affected Executive agencies via a common grant management rule, codified by DOT at 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local governments. The Office of Management and Budget (OMB) provides management and oversight of the common rule. OMB also provides for a standard figure of seventy (70) annual burden hours per grantee for completion of required forms. This action initiates reinstatement of an existing paperwork clearance approval (OMB Number 2105–0520), which has expired.

Annual Existing Burden: The annual burden is 68,250 hours. *Number of respondents:* 975. *Total hours per respondent:* 70. This is a reduction from the existing 199,500 hours. DOT financial assistance programs requiring different, or additional reporting requirements from that of the common rule now report separately, and have their own separate OMB approval numbers.

Title: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

Forms: SF 269, SF 270, SF 271, SF 272, and SF 424.

OMB Control Number: 2105–0531.

Expiration Date: October 31, 1997. The Department has submitted a request to OMB for an emergency extension to January 31, 1998.

Affected Public: Schools, hospitals, and other nonprofit organizations receiving Federal financial assistance from DOT.

Abstract: Requirements for Federal administration of financial assistance to schools, hospitals, and other nonprofit organizations is provided to affected Executive agencies via OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, with the Department has codified at 49 CFR part 19. OMB provides management and oversight of the circular. OMB also provides for a standard figure of seventy (70) annual burden hours per grantee for completion of required forms. This action initiates extension of an existing paperwork clearance approval (OMB Number 2105–0531).

These information collections are available for inspection at the Grants Management Division (M–62), Office of Acquisition and Grant Management, Department of Transportation, at the address above. Copies of 49 CFR parts 18 and 19 can be obtained from Mr. Ladd Hakes at the address and phone number shown above.

Comments regarding both information collections are invited on: (a) ways to enhance the quality, utility and clarity of the information to be collected; and (b) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the requests for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on September 18, 1997.

Robert G. Taylor,
Chief, Grants Management Division.
[FR Doc. 97–25433 Filed 9–24–97; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–062]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) and its Committees on Human Factors, Navigation Equipment, Navigation Information, and Rules of the Road will meet to discuss various issues relating to commercial and recreational boat safety. The meetings are open to the public.

DATES: NAVSAC Committees will meet on Wednesday, October 22, 1997, from 8 a.m. to 5 p.m. NAVSAC will meet on Thursday, October 23, 1997, from 8 a.m. to 5 p.m. and on Friday, October 24, 1997, from 8 a.m. to 4 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before October 10, 1997.

ADDRESSES: NAVSAC will meet at the Queen and Crescent Hotel, 344 Camp Street, New Orleans, LA 70130. The Committees will meet at the same address. Send written material and requests to make oral presentations to Margie G. Hegy, Commandant (G–MOV–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director of NAVSAC, telephone (202) 267–0415, fax (202) 267–4826, or Diane Schneider, NAVSAC Executive Secretary, telephone (202) 267–0352.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Navigation Safety Advisory Council (NAVSAC). The agenda includes the following:

(1) Reports from Navigation Equipment, Human Factors, Navigation Information and Rules of the Road Committees.

(2) Update on the Coast Guard's Vessel Traffic Services program and Ports and Waterways Safety Systems (PAWSS) initiative.

(3) Merchant mariner licensing and training program changes.

(4) Facilitated discussion on mandatory recreational boater education and personal flotation device (PFD) wear.

(5) Update on Coast Guard Customer Satisfaction Survey.

(6) Update on National Waterways Management Plan development.

Navigational Equipment Committee. The agenda includes:

—Vessels that lose propulsion or experience steering problems during transit.

Human Factors Committee. The agenda includes:

—Master/pilot communication.

Navigation Information Committee. The agenda includes:

—Underkeel clearance.

Rules of the Road Committee. The agenda includes:

—Inland Rule 23(c)—Small boat compliance with vertical positioning and spacing of lights as specified in Annex I, § 84.03(d) of Inland Rules.

Procedural

All sessions are open to the public. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than October 10, 1997. If you would like a copy of your material distributed to each member of the Council or Committee in advance of the meeting, please submit 25 copies to the Executive Director no later than October 10, 1997.

Information on Services for the Handicapped

For information on facilities or services for individuals with disabilities or request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: September 19, 1997.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–25372 Filed 9–24–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lawton-Fort Sill Regional Airport, Lawton, Oklahoma

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lawton-Fort Sill Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 27, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, TX 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Barbara McNally, Manager of Lawton-Fort Sill Regional Airport at the following address: Ms. Barbara McNally, Lawton-Fort Sill Regional Airport, Lawton Metro Area Airport Authority, P.O. Box 531, Lawton, OK 73502.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, TX 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lawton-Fort Sill Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 9, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 6, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1998.

Proposed charge expiration date: February 28, 2000.

Total estimated PFC revenue: $393,200.00.

PFC application number: 97–02–C–00–LAW.

Brief description of proposed projects:

Projects To Impose and Use PFC's

Relocate Guidance Signs, Correct Ponding of Water on Runway 17/35, Purchase the Commute a Walk System, Conduct Minimal Ecological Study, and Correct Structural Problems with ARFF Station and Snow Plow Bay.

Proposed class or classes of air carriers to be exempted from collecting PFC's:

None.

Any person may inspect the application in person at the FAA office listed above from **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Boulevard, Forth Worth, TX 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lawton-Fort Sill Regional Airport.

Issued in Forth Worth, Texas on September 10, 1997.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 97–25436 Filed 9–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Clark County, Nevada and Mohave County, Arizona

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Clark County, Nevada and Mohave County, Arizona.

FOR FURTHER INFORMATION CONTACT: Terry K. Haussler, Project Manager, Federal Highway Administration, 555 Zang Street, Lakewood, Colorado 80228, telephone 303–969–5916.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Bureau of Reclamation (Reclamation), National Park Service, Nevada Department of Transportation, and Arizona Department of Transportation, will prepare an EIS on a proposal to construct a bridge across the Colorado River near Hoover Dam. The FHWA is resuming work on the EIS that Reclamation initiated in 1989. Reclamation published a notice of intent in the **Federal Register** to prepare a draft EIS (NOI Citation: 55 FR 19364, May 9, 1990). Reclamation stopped work on the project and subsequently canceled the notice of intent to prepare a draft EIS (60 FR 54382, October 23, 1995).

The purpose of the proposal is to remove through-traffic and trucks from the Hoover Dam crossing. Alternatives under consideration include: (1) The "no build" alternative; (2) construction of a bridge approximately 0.2 mile upstream from Hoover Dam; (3) construction of a bridge approximately 0.3 mile downstream from Hoover Dam; and (4) construction of a bridge approximately 1.0 mile downstream from Hoover Dam. Alternatives 2, 3, and 4 also require approximately three miles of associated new roadway construction.

Notices describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. Interagency meetings, public scoping meetings and public hearings will be held in the project area and in other appropriate areas. Information on the time and place of public scoping meetings and public hearings will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the hearings.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: September 10, 1997.

Larry C. Smith, P.E.,

Division Engineer, FHWA, Lakewood, CO.

[FR Doc. 97–25404 Filed 9–24–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Fremont County, Wyoming

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fremont County, Wyoming.

FOR FURTHER INFORMATION CONTACT: B.J. McCauley, Environmental Project Manager, Federal Highway Administration, P.O. Box 25246, Denver, Colorado 80225, telephone 303–969–5924.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Shoshone National Forest, the Wyoming Department of Transportation, and Fremont County, Wyoming will prepare an environmental Impact statement (EIS) on a proposed improvement of Wyoming Forest Highway (FH) 23, Louis Lake Road. The proposed Wyoming FH 23 project begins at the end of the pavement approximately 1.5 miles from the terminus of State Highway 131 at the National Forest boundary and continues southerly a distance of approximately 7.1 miles to the Worthen Meadows Reservoir Road.

The roadway may be reconstructed to a minimum width two-lane, asphalt or gravel with shoulders. In order to minimize impacts to environmentally sensitive areas, the reconstruction may take place largely along the existing corridor utilizing design speeds ranging from 25 miles-per-hour to 35 miles-per-hour. However, other alternatives will be investigated during preparation of the EIS, including: (1) No action; (2) reconstructing the entire 7.1 miles along the existing corridor; and (3) various realignment, surfacing type and roadway width alternative combinations that may be developed during the project development process through public or agency input.

Interagency scoping meetings, public scoping meetings, and public hearings will be held in the project area. Information on the time and place of public scoping meetings and public hearings will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the public hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Larry C. Smith, P.E.,

Division Engineer, FHWA, Denver, CO.

[FR Doc. 97–25403 Filed 9–24–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Contract DTRS–56–96–C–0010]

Fifth Quarterly Performance Review Meeting on the Contract "Detection of Mechanical Damage in Pipelines"

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of meeting.

SUMMARY: RSPA invites the pipeline industry, in-line inspection ("smart pig") vendors, and the general public to the fifth quarterly performance review meeting of progress on the contract "Detection of Mechanical Damage in Pipelines." The meeting is open to anyone, and no registration is required. This contract is being performed by Battelle Memorial Institute (Battelle), along with the Southwest Research Institute, and Iowa State University. The contract is a research and development contract to develop electromagnetic in-line inspection technologies to detect and characterize mechanical damage and stress corrosion cracking. The first hour of the meeting will be devoted to reviewing the overall project plan. The remainder of the meeting will cover the status of the contract tasks, progress made during the past quarter, and projected activity for the next quarter.

DATES: The fifth quarterly performance review meeting will be held on October 9, 1997, beginning at 1:00 p.m. and ending around 5:00 p.m.

ADDRESSES: The quarterly review meeting will be held at the Sheraton at Fisherman's Wharf, 2500 Mason Street, San Francisco, CA 94133. The hotel's telephone number is (415) 362–5500.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Ulrich, Contracting Officer's Technical Representative, Office of Pipeline Safety, telephone: (202) 366–4556, FAX: (202) 366–4566, e-mail: lloyd.ulrich @ rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

RSPA is conducting quarterly public meetings on the status of its contract "Detection of Mechanical Damage in Pipelines" (Contract DTRS–56–96–C–0010) because in-line inspection research is of immediate interest to the pipeline industry and in-line inspection vendors. RSPA will continue this practice throughout the contract, which may be three years. The research contract with Battelle is a cooperative effort between GRI and DOT, with GRI providing technical guidance. The meetings allow disclosure of the results to all interested parties and provide an opportunity for interested parties to ask Battelle questions concerning the research. Attendance is open to all and does not require advanced registration nor advanced notification to RSPA.

An objective is to hold alternate meetings in Washington, DC. The first meeting was conducted on October 22, 1996, in Washington, DC. Another objective is to conduct the alternate meetings held outside Washington immediately after meetings of the Gas Research Institute's (GRI) Nondestructive Evaluation Technical Advisory Group to enable participation by pipeline technical personnel involved with nondestructive evaluation. However, future meetings may also be held at other locations. This meeting is being held in San Francisco as a dovetail to a meeting of the GRI Nondestructive Technical Advisory

Group. Each of the future meetings will be announced in the **Federal Register** at least two weeks prior to the meeting.

We specifically want that segment of the pipeline industry involved with in-line inspection to be aware of the status of this contract. To assure that a cross section of industry is well represented at these meetings, we have invited the major domestic in-line inspection company (Tuboscope-Vetco Pipeline Services) and the following pipeline industry trade associations: American Petroleum Institute, Interstate Natural Gas Association of America, and the American Gas Association. Each has named an engineering/technical representative.

The first hour of the meeting will be devoted to reviewing the overall project plan. This review will assist those attending a quarterly meeting for the first time to better understand the overall project. The remainder of this meeting will be devoted to a review of progress made during the past quarter and plans for the next quarter.

II. The Contract

The Battelle contract is a research and development contract to evaluate and develop in-line inspection technologies for detecting mechanical damage and cracking, such as stress-corrosion cracking (SCC), in natural gas transmission and hazardous liquid pipelines. Third-party mechanical damage is one of the largest causes of pipeline failure, but existing in-line inspection tools cannot always detect or accurately characterize the severity of some types of third-party damage that can threaten pipeline integrity. Although SCC is not very common on pipelines, it usually appears in high-stressed, low-population-density areas and only when a limited set of environmental conditions are met. Several attempts have been made to develop an in-line inspection tool for SCC, but there is no commercially successful tool on the market.

Under the contract, Battelle will evaluate and advance magnetic flux leakage (MFL) inspection technology for detecting mechanical damage and two electromagnetic technologies for detecting SCC. The focus is on MFL for mechanical damage because experience shows MFL can characterize some types of mechanical damage and can be successfully used for metal-loss corrosion under a wide variety of conditions. The focus for SCC is on electromagnetic technologies that can be used in conjunction with, or as a modification to, MFL tools. The technologies to be evaluated take advantage of the MFL magnetizer either by enhancing signals or using electrical currents that are generated by the passage of an inspection tool through a pipeline.

The contract includes two major tasks during the base two years of the contract. Task 1 is to evaluate existing MFL signal generation and analysis methods to establish a baseline from which today's tools can be evaluated and tomorrow's advances measured. Then, it will develop improvements to signal analysis methods and verify them through testing under realistic pipeline conditions. Finally, it will build an experience base and defect sets to generalize the results from individual tools and analysis methods to the full range of practical applications.

Task 2 is to evaluate two inspection technologies for detecting stress corrosion cracks. The focus in Task 2 is on electromagnetic techniques that have been developed in recent years and that could be used on or as a modification to existing MFL tools. Three subtasks will evaluate velocity-induced remote-field techniques, remote-field eddy-current techniques, and external techniques for sizing stress corrosion cracks.

A Task 3 is being considered for an option year to the contract. Task 3, if done, will verify the results from Tasks 1 and 2 by tests under realistic pipeline conditions. Task 3 will: (1) Extend the mechanical damage detection, signal decoupling, and sizing algorithms developed in the basic program to include the effects of pressure, (2) verify the algorithms under pressurized conditions in GRI's 4,700 foot, 24-inch diameter Pipeline Simulation Facility (PSF) flow loop, and (3) evaluate the use of eddy-current techniques for characterizing cold working within mechanical damage.

A drawback of present pig technology is the lack of a reliable pig performance verification procedure that is generally accepted by the pipeline industry and RSPA. The experience gained by the pipeline industry and RSPA with the use of the PSF flow loop in this project will provide a framework to develop procedures for evaluating pig performance. Defect detection reliability is critical if instrumented pigging is to be used as an in-line inspection tool in pipeline industry risk management programs.

The ultimate benefits of the project could be more efficient and cost-effective operations, maintenance programs to monitor and enhance the safety of gas transmission and hazardous liquid pipelines. Pipeline companies will benefit from having access to inspection technologies for detecting critical mechanical damage and stress-corrosion cracks. Inspection tool vendors will benefit by understanding where improvements are beneficial and needed. These benefits will support RSPA's long-range objective of ensuring the safety and reliability of the gas transmission and hazardous liquid pipeline infrastructure.

Issued in Washington, D.C., on September 19, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–25434 Filed 9–24–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 97–10]

Notice of Information Collection Approval

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of information collection approval.

SUMMARY: This notice announces OMB approval of information collection requests (ICRs), for OMB No. 2137–0014, entitled Cargo Tank Specification Requirements, OMB No. 2137–0051, entitled Rulemaking, Exemption and Preemption Requirements, and OMB No. 2137–0059, entitled Requirements for Rail Tank Car Tanks, Transportation of Hazardous Materials by Rail. These information collections have been extended until September 30, 2000.

DATES: The expiration date for these ICRs is September 30, 2000.

ADDRESSES: Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, RSPA has received OMB approval of the following ICRs:

Title: Cargo Tank Specification Requirements.

OMB Control Number: 2137–0014.

Title: Rulemaking, Exemption and Preemption Requirements.

OMB Control Number: 2137–0051.

Title: Requirements for Rail Tank Car Tanks, Transportation of Hazardous Materials by Rail.

OMB Control Number: 2137–0059.

These information collection approvals expire on September 30, 2000.

Issued in Washington, DC on September 19, 1997.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 97–25435 Filed 9–24–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB No. MC–F–20906]

Capital Motor Lines, et al.—Pooling—Greyhound Lines, Inc.

AGENCY: Surface Transportation Board; DOT.

ACTION: Notice of approval in part of pooling application and supplemental notice of proposed pooling application.

SUMMARY: Applicants, Capital Motor Lines, d/b/a Capital Trailways, of Montgomery, AL, and Colonial Trailways, of Mobile, AL, and Greyhound Lines, Inc., of Dallas, TX, jointly seek approval under 49 U.S.C. 14302 of an operations and revenue pooling agreement to govern their motor passenger and express transportation services between described points in Alabama, Florida, Georgia, Louisiana, and Mississippi. Notice of the application was published in the **Federal Register** on April 23, 1997 (62 FR 19853). We have approved the application in part and have tentatively approved the remainder of the application in a decision served concurrently with this notice. The original notice did not completely describe the scope of the pooling agreement, necessitating this republication to describe more fully the transportation services governed by applicants' agreement and to provide additional opportunity for comment as to that part of the application for which approval has not been finally given.

DATES: Comments are due by October 27, 1997 and, if comments are filed, applicants' rebuttal is due by November 14, 1997.

ADDRESSES: Send an original and 10 copies of comments referring to STB No. MC–F–20906 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. Also, send one copy of comments to applicants' representatives: Dennis N. Barnes, 1800 M Street, N.W. (#600N), Washington, DC 20036–5869; and Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The prior notice of the application stated that applicants' operations and revenue pooling agreement governs their motor passenger and express transportation services between Mobile and Birmingham, AL, and between Mobile and New Orleans, LA. No comments were received. However, in addition to the described routes, the pooling agreement also governs routes between Mobile and Montgomery, AL, and between Mobile and Jackson, MS, and between Montgomery and Birmingham, between Montgomery and Tallahassee, FL, between Montgomery and Meridian, MS, and between Montgomery and Columbus, GA. We have reviewed the application and have granted final approval for the proposed pooling of services that were specifically covered by our prior notice, and have tentatively approved the remainder of the application in a decision served September 25, 1997. Because the scope of the application is broader than the notice originally published, our approval for the broader portion is contingent upon publication of this notice and the opportunity for public comment. If no comments are received by the due date, our tentative approval of that part of the application will become final.

Copies of the application may be obtained free of charge by contacting applicants' representatives. Copies of our decision tentatively approving the application may be purchased from DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.) A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: September 17, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25480 Filed 9–24–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33459]

Rio Valley Railroad, Inc. and Rio Valley Switching Company—Lease and Operation Exemption—Southern Pacific Transportation Company

Rio Valley Railroad, Inc. (RVRI) and Rio Valley Switching Company (RVSC), Class III rail carriers, have filed a joint verified notice of exemption under 49 CFR 1150.41 for RVRI to lease a total of 12.79 miles of rail lines owned by Southern Pacific Transportation Company, and for RVSC to operate these lines pursuant to an operating agreement with RVRI. The transaction was expected to be consummated on or shortly after September 11, 1997, the effective date of the exemption.

The lines involved in the lease and operation are described as follows: (1) A portion of the Brownsville branch at or near Edinburg, TX, between milepost 142.65 at the west leg of the wye track and milepost 145.0, a short distance east of the plant of Inland Paperbox Packaging, a distance of 2.35 miles; and, (2) a portion of the McAllen branch between milepost 141.52 at the end of the Edinburg line at or near Edinburg, TX, and milepost 151.96 at the point of connection of that line with the line of Union Pacific Railroad Company at or near McAllen, TX, a distance of 10.44 miles.[1]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33459, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–

[1] In a letter received on September 9, 1997, the applicants' representative amended the notice of exemption filed on September 4, 1997, to change the milepost numbers for the McAllen branch.

0001 and served on: Thomas F. McFarland, Jr., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

Decided: September 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25481 Filed 9–24–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 18, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0010.
Form Number: PD F 1782.
Type of Review: Extension.
Title: Application for Redemption at Par of United States Treasury Bonds Eligible for Payment of Federal Estate Tax.
Description: The form is used to apply for redemption at par of certain Treasury Bonds eligible for payment of Federal Estate Tax assessed against a decedent's estate.
Respondents: Individuals or households.
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,250 hours.

OMB Number: 1535–0048.
Form Number: PD F 385 and PD F 385–1.
Type of Review: Extension.
Title: Certificate of Identity of Owner of Registered Securities Certificate of Identity of Owner of Savings and Retirement Securities.
Description: The form is used to establish the identity of the owner of U.S. Savings Bonds or Registered Securities.
Respondents: Individuals or households.
Estimated Number of Respondents: 177.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 89 hours.

OMB Number: 1535–0058.
Form Number: PD F 1646.
Type of Review: Extension.
Title: Application for Disposition United States Registered Securities and Related Checks Without Administration of Deceased Owner's Estate.
Description: The form is used by person(s) entitled to a decedent's estate not being administered to request disposition of U.S. Registered Securities and related checks.
Respondents: Individuals or households.
Estimated Number of Respondents: 625.
Estimated Burden Hours Per Response: 1 hour, 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 938 hours.

OMB Number: 1535–0063.
Form Number: PD F 4239.
Type of Review: Extension.
Title: Request by Owner or Person Entitled To Payment or Reissue of United States Savings Bonds/Notes Deposited in Safekeeping When Original Custody Receipts Are Not Available.
Description: The form is used by owner or persons entitled to request reissue or payment of U.S. Savings Bonds/Notes deposited in safekeeping when original custody receipts are not available.
Respondents: Individuals or households.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 84 hours.

OMB Number: 1535–0100.
Form Number: PD F 4094.
Type of Review: Extension.
Title: Affidavit by Individual Surety.
Description: The form serves as an affidavit from individuals who agree to act as surety for an indemnification agreement on a Bond of Indemnity submitted in support of a claim for lost, stolen or destroyed U.S. Registered Securities.
Respondents: Individuals or households.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 460 hours.

OMB Number: 1535–0120.
Form Number: PD F 5366, PD F 5354, and PD F 5367.
Type of Review: Extension.
Title: FHA New Account Request (PD F 5366); FHA Transaction Request (PD F 5354); and FHA Debenture Transfer Request (PD F 5367).
Description: These forms are used to (1) establish a book-entry account; (2) change information on a book-entry account; and (3) transfer ownership of book-entry account.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 102 hours.
Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–25453 Filed 9–24–97; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

September 18, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0028.
Form Number: IRS Forms 940 and 940–PR.
Type of Review: Extension.

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return (Form 940) Planilla Para La Declaracion Anual Del Patrono—La Contribucion Federal Para El Desempleo (FUTA) (Form 940–PR).

Description: Internal Revenue Code (IRC) section 3301 imposes a tax on employers based on the first $700 of taxable annual wages paid to each employee. IRS uses the information reported on Forms 940 and 940–PR (Puerto Rico) to ensure that employers have reported and figured the correct FUTA wages and tax.

Respondents: Bureau or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/ Recordkeepers: 1,367,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS (minutes)
940	11 hours, 29 minutes	24	36
940–PR	12 hours, 12 minutes	18	31

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 5,040 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–25454 Filed 9–24–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

September 19, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0212.
Form Number: IRS Forms 5558.
Type of Review: Revision.
Title: Application for Extension of Time to File Certain Employee Plan Returns.
Description: This form is used by employers to request an extension of time to file the employee plan excise tax return (Form 5330). The data supplied is used to determine if such extension is warranted.
Respondents: Bureau or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 305,000.
Estimated Burden Hours Per Respondent: 26 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 131,749 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–25455 Filed 9–24–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 19, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.
Project Number: SOI–37.
Type of Review: Revision.
Title: 1998 TeleFile Automated Customer Satisfaction Survey.
Description: The IRS is planning to conduct a single automated TeleFile customer satisfaction survey in 1998 administered to a sample of taxpayers who successfully use TeleFile. This survey will build on the 1997 data.
Respondents: Individuals or households.
Estimated Number of Respondents: 4,675.
Estimated Burden Hours Per Response: 2 minutes.
Frequency of Response: Other (one time only).
Estimated Total Reporting Burden: 156 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–25456 Filed 9–24–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 113 (Rev. 14)]

Delegation of Authority

AGENCY: Internal Revenue Service.

ACTION: Delegation of authority.

SUMMARY: In light of the centralization of the determination letter activity for Employee Plans and Exempt Organizations, the specification of which key district directors have the authority to sign determination letters is adjusted to allow for gradual centralization. The text of the delegation order appears below.

FOR FURTHER INFORMATION CONTACT: Barbara Kastl, CP:E:EO:FC, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, telephone: 202–622–7488, 8 a.m. to 3 p.m., Eastern Time (not a toll-free call).

Delegation Order No. 113 (Rev. 14)

Authority to Issue Exempt Organization Determination Letters

Authority: To issue determination letters based on the provisions of the Code, Regulations, Treasury decisions, or on a ruling, opinion, or court decision and pertaining to the following:

a. the exempt status of organizations under section 501(a) and 521 except in the case of an organization under the jurisdiction of Regional Counsel or Appeals as explained in this delegation order.

b. an organization's status under IRC 170(c)(2), 507, 508, 509, 4942(j)(3), 4945(f), 4947, 4948, and 6033.

c. withholding of information from public inspection under IRC 6104(a)(1)(D).

d. the imposition of tax under IRC 11, 511 through 514, 527(f), 641, 1381 and Chapters 41 and 42.

Delegated to: Employee Plans and Exempt Organizations (EP/EO) Key District Directors.

Redelegation: This authority may be redelegated no lower than to Exempt Organizations Specialist, Grade-11.

Authority: To issue modifications or revocations of rulings or determination letters in accordance with currently applicable appeal procedures. The Assistant Commissioner (EP/EO), with the concurrence of the Chief Counsel, is authorized to require pre-issuance review, by Counsel, of final adverse determination letters.

Delegated to: Employee Plans and Exempt Organizations (EP/EO) Key District Directors, except, that in the case of letters and rulings issued by the National Office, the Directors will notify the National Office of the proposed revocations prior to proposing revocation to the organization.

Redelegation: This authority may be redelegated no lower than the Chief, Technical/Review Staff.

Authority: To determine that any trust described in section 501(c)(17) or 501(c)(18) has engaged in a prohibited transaction and to notify such entity in writing of the revocation of exemption and of the requalification for exemption after the trust establishes that it will not knowingly again engage in a prohibited transaction and that it also satisfies all other requirements under section 501(c)(17) or 501(c)(18).

Delegated to: Employee Plans and Exempt Organizations (EP/EO) Key District Directors.

Redelegation: This authority may be redelegated no lower than Chief, Technical/Review Staff.

Authority: To issue final determination letters to organizations which have appealed proposed adverse determinations and proposed revocations issued by key district directors under this delegation.

Delegated to: Regional Counsels, Regional Directors of Appeals, Chiefs and Associate Chiefs of Appeals Offices, and Appeals Team Chiefs and Team Managers as to their respective cases.

Redelegation: This authority may not be redelegated.

Source of Authority: Treasury Order 150–10.

To the extent that authority previously exercised consistent with this Order may require ratification, it is hereby approved and ratified. This order supersedes Delegation Order No. 113 (Rev. 13), effective September 28, 1990.

Dated: September 5, 1997.

Approved:

James E. Donelson,

Acting Chief Compliance Officer.

[FR Doc. 97–25491 Filed 9–24–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held at the Department of Veterans Affairs, Employee Education System, Birmingham Center, Suite 500, 950 North 22nd Street, Birmingham, AL 35203, from October 15, through October 17, 1997. Each day the meeting will convene at 9 a.m. and end at 5 p.m. The meeting is open to the public.

The purpose of the meeting is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The agenda for October 15 will begin with a review of committee reports and an update of activities since the last meeting. The agenda for October 16 will include a presentation of POW issues and general business. The issues will include medical research being done related to former prisoners of war. On October 17, the Acting Under Secretary of Benefits will provide comments to the Committee. Subcommittee work will also be completed including the educational subcommittee and preparations for the next meeting.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Ms. Kristine Moffitt, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and roster of Committee members may be obtained from Ms. Moffitt.

By Direction of the Secretary.

Dated: September 18, 1997.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–25394 Filed 9–24–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 62, No. 186

Thursday, September 25, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

34 CFR Parts 300, 301, and 303

IDEA Agreements of 1997

Correction

In proposed rule document 97–24703, beginning on page 48924, in the issue of Wednesday, September 17, 1997, make the following correction:

On page 48925, in the second column, the third line "24" should read "21".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-428-001]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

Correction

In notice document 97–24873, appearing on page 49214, in the issue of Friday, September 19, 1997, make the following correction:

On page 49214, in the second column, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1427-93]

RIN 1115-AC51

Nonimmigrant Classes; Treaty Aliens; E Classification

Correction

In rule document 97–22314, beginning on page 48138, in the issue of Friday, September 12, 1997, make the following corrections:

1. On page 48138, in the first column, in the "**Background**" section, in the third line "101(a)(15(E)" should read "101(a)(15)(E)".

§ 214.2 [Corrected]

2. On page 48146, in the third column, in § 214.2(e)(8), the paragraph designated "8." should read "(8)".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

RIN 3206-AG70

Pay Administration Under the Fair Labor Standards Act

Correction

In proposed rule document 97–22390, beginning on page 45064, in the issue of Monday, August 25, 1997 make the following correction:

§ 551.601 [Corrected]

On page 45073, in the third column, in §551.601(a), in the second line "section 3(l)" should read "section 3(1)".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1602, 1603, 1604, 1615, 1616, 1629, 1631, 1643, 1644,1645, 1649, 1652, and 1653

RIN 3206-AH45

Federal Employees Health Benefits Program Acquisition Regulation; Truth in Negotiations Act and Related Changes

Correction

In rule document 97–23883, beginning on page 47569, in the issue of Wednesday, September 10, 1997, make the following corrections:

1. On page 47582, in the table, in the third column, the fourth line "Disability" should read "Disabled."

2. On page 47582, under the Title Clause No. FAR 52.242-1, in the sixth column, in the fourth line from the bottom, remove the "T".

3. On page 47583, in the table, in the third column, the third line down, add "Air" after " Flag".

4. On page 47583, in the fourth column, the seventh line down "M" should read "A".

5. On page 47583, in the fourth column, the eighth line down, "M" should read "A".

BILLING CODE 1505-01-D

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federal register

Thursday
September 25, 1997

Part II

Department of Agriculture

Cooperative State Research, Education, and Extension Service

1890 Institution Teaching and Research Capacity Building Grants Program for Fiscal Year 1998; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

1890 Institution Teaching and Research Capacity Building Grants Program for Fiscal Year 1998; Solicitation of Applications

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of application.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is announcing the 1890 Institution Teaching and Research Capacity Building Grants Program for Fiscal Year (FY) 1998. Proposals are hereby requested from eligible institutions as identified herein, for competitive consideration of capacity building awards.

The authority for this program is contained in section 1417(b)(4) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA)(7 U.S.C. 3152(b)(4)). Under this authority, the U.S. Department of Agriculture (USDA) through the Higher Education Programs (HEP) of CSREES will award competitive grants of eighteen months to three-years duration, subject to the availability of funds. These grants will be made to the historically black 1890 Land-Grant Institutions and Tuskegee University to strengthen their programs in the food and agricultural sciences in the targeted need areas as described herein. The Capacity Building Grants Program is designed specifically to build the institutional capacities of the eligible colleges and universities through cooperative initiatives with Federal and non-Federal entities. This program addresses the need to (1) Attract more minority students into the food and agricultural sciences, (2) expand the linkages among the 1890 Institutions and with other colleges and universities, and (3) strengthen the teaching and research capacity of the 1890 Institutions to more firmly establish them as full partners in the food and agricultural science and education system. In addition, through this program, USDA will strive to increase the overall pool of qualified applicants for the Department to make significant progress toward achievement of the Department's goal of increasing participation of under represented groups in Departmental programs.

DATES: Project grant applications must be received on or before January 26, 1998. Proposals received after January 26, 1998 will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: Richard M. Hood, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2251, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2251; Telephone: (202) 720–1973; E-mail: rhood@reeusda.gov.

SUPPLEMENTARY INFORMATION: This program is subject to the provisions found at 7 CFR part 3406, 62 FR 39330, July 22, 1997. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.216, 1890 Institution Capacity Building Grants Program.

Eligibility

Proposals may be submitted by any of the sixteen historically black 1890 Land-Grant Institutions and Tuskegee University. The 1890 Land-Grant Institutions are: Alabama A&M University; University of Arkansas—Pine Bluff; Delaware State University; Florida A&M University; Fort Valley State University; Kentucky State University; Southern University and A&M College; University of Maryland—Eastern Shore; Alcorn State University; Lincoln University (MO); North Carolina A&T State University; Langston University; South Carolina State University; Tennessee State University; Prairie View A&M University; and Virginia State University. An institution eligible to receive an award under this program includes a research foundation maintained by an 1890 land-grant institution or Tuskegee University.

Available Funds

The amount available for this program in FY 1998 is $9.2 million. After administrative and other deductions of approximately 4 percent (including peer panel and related costs), it is anticipated that $8.8 million will be available for project grants. Of this amount, approximately $4.45 million will be used to support teaching projects and $4.35 million will be used to support research projects. Awards will be based upon peer review panel recommendations; however, up to ten percent of the funds allocated for teaching and up to ten percent of the funds allocated for research may be used to support projects in either area based upon administrative decision by CSREES.

Program Areas

In FY 1998, the Capacity Building Grants Program will support both teaching and research projects.

Targeted Areas

The targeted need areas to be supported by capacity building grants in FY 1998 are:

For teaching project grants—curricula design and materials development, faculty preparation and enhancement for teaching, instruction delivery systems, scientific instrumentation for teaching, student experiential learning, and student recruitment and retention.

For research project grants—studies and experimentation in food and agricultural sciences, centralized research support systems, technology delivery systems, and other creative projects designed to provide needed enhancement of the Nation's food and agricultural research system.

In FY 1998, eligible institutions may propose projects in any discipline(s) of the food and agricultural sciences; there are no limits on the specific subject matter/emphasis areas to be supported.

Degree Levels Supported

In FY 1998, proposals may be directed to the undergraduate or graduate level of study leading to a baccalaureate or higher degree in the food and agricultural sciences.

Proposal Submission Limitations

In FY 1998, there is no limit on the number of proposals an eligible institution may submit. However, there are funding limitations in FY 1998 that will affect the number of awards eligible institutions and individuals may receive. Therefore, institutions are encouraged to establish on-campus quality control panels to ensure that only high quality proposals having the greatest potential for improving academic and research programs are submitted for consideration. Eligible institutions may submit grant applications for either category of grants (teaching or research); however, each application must be limited to either a teaching project grant proposal or a research project grant proposal.

Maximum Grant Size

In FY 1998, the following limitations apply: A teaching proposal may request a grant for up to $200,000. A research proposal may request a grant for up to $300,000.

Note: These maximums are for the duration of the project, not per year.

Project Duration

A regular, complementary, or joint project proposal may request funding for a period of eighteen months to three-years duration.

Funding Limitations per Institution

In FY 1998, the following two limitations will apply to the institutional maximum: (1) No institution may receive more than four grants, and (2) no institution may receive more than 10 percent of the total funds available for grant awards (approximately $880,000).

For a Joint Project Proposal (submitted by an eligible institution and involving two or more other colleges or universities assuming major roles in the conduct of the project), only that portion of the award to be retained by the grantee will be counted against the grantee's institutional maximum. Those funds to be transferred to the other colleges and universities participating in the joint project will not be applied toward the maximum funds allowed the grantee institution. However, if any of the other colleges and universities participating in the joint project are 1890 Institutions or Tuskegee University, the amount transferred from the grantee institution to such institutions will be counted toward their institutional maximums. For Complementary Project Proposals, only those funds to be retained by the grantee institution will be counted against the grantee's institutional maximum.

Funding Limitation per Individual

In FY 1998, the maximum number of new awards that an individual (Project Director or Principal Investigator) may receive is two grants. This restriction does not apply to joint projects.

Funding Limitation per Targeted Need Area

In FY 1998, the maximum number of new awards that an individual may receive in a given fiscal year, in any one targeted need area, that focuses on a single subject matter area or discipline, is one grant. This restriction would not apply to proposals that address multiple targeted need areas and/or multiple subject matter areas.

Matching Funds

The Department strongly encourages non-Federal matching support for the program. For FY 1998, the following incentive is offered to applicants for committing their own institutional resources or securing third-party contributions in support of capacity building projects:

Tie Breaker—The amount of cash and non-cash matching support for each proposal, will be used as the primary criterion to break any ties (cases where proposals are equally rated in merit) resulting from the proposal review process conducted by the peer review panels. A grant awarded on this basis will contain language requiring such matching commitments as a condition of the grant.

Please Note: Proposals *must* include *written verification* from the donor(s) of any actual commitments of matching support (including both cash and non-cash contributions) derived from the university community, business and industry, professional societies, the States, or other non-Federal sources.

The cash contributions towards matching from the institution should be identified in the column "Applicant Contributions to Matching Funds" of the Higher Education Budget, Form CSREES–713. The cash contributions of the institution and third parties as well as non-cash contributions should be identified on Line N., as appropriate, of Form CSREES–713.

Evaluation Criteria

The evaluation criteria as provided in the Administrative Provisions, 7 CFR part 3406, will be used to evaluate proposals for the FY 1998 competition.

Program Application Materials

An Application Kit containing program application materials will be made available to eligible institutions upon request. These materials include the Administrative Provisions, forms, instructions, and other relevant information needed to prepare and submit grant applications. Copies of the Application Kit may be requested from the Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the FY 1998 1890 Institution Capacity Building Grants Program.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1998 1890 Institution Capacity Building Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

When and Where to Submit Proposals

An original and seven (7) copies of a proposal must be submitted. Each copy of the proposal must be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the proposal must be submitted in one package. Proposals submitted through the mail must be received on or before January 26, 1998. Proposals submitted through the U.S. mail should be sent to the following address: 1890 Institution Capacity Building Grants Program; c/o Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048. Hand-delivered proposals (brought in person by the applicant or through a courier service) must be received on or before January 26, 1998 at the following address: 1890 Institution Capacity Building Grants Program; c/o Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Note that in FY 1998, Form CSREES–711, "Intent to Submit a Proposal," is not requested nor required for the 1890 Institution Capacity Building Grants Program.

Program Contacts

The 1890 Institution Capacity Building Grants Program is managed by the CSREES Higher Education Programs. For further information concerning the FY 1998 program, contact Mr. Richard Hood, National Program Leader, Higher Education Programs, CSREES, USDA, at (202) 720–1973; or via the Internet: rhood@reeusda.gov. Dr. McKinley Mayes, 1890 College Program Coordinator, CSREES, USDA is also available to assist you. He can be reached at (202) 720–3511; or via the Internet: mmayes@reeusda.gov.

Done at Washington, D.C., this 19th day of September 1997.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–25408 Filed 9–24–97; 8:45 am]

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Thursday
September 25, 1997

Part III

Environmental Protection Agency

40 CFR Part 300
National Priorities List for Uncontrolled Hazardous Waste Sites; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5895–8]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate.

This rule adds 6 new sites to the NPL, all to the General Superfund Section.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be October 27, 1997.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see Section II, "Availability of Information to the Public" in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, State and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, (703) 603–8852, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Background

What Are CERCLA and SARA

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Pub. L. No. 99–499, 100, Stat. 1613 *et seq.*

What Is the NCP

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under Section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." ("Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C 9601(23).)

What Is the National Priorities List (NPL)

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. However, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed generally by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

How Are Sites Listed on the NPL

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP):

(1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

(2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)).

(3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on April 1, 1997 (62 FR 15572).

What Happens to Sites on the NPL

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. * * *" 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

How Are Site Boundaries Defined

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by a Remedial Investigation/Feasibility Study (RI/FS) as more information is developed on site contamination (40 CFR 300.430(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

How Are Sites Removed From the NPL

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

To date, the Agency has deleted 149 sites from the NPL.

Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of September 1997, EPA has deleted portions of 6 sites.

What Is the Construction Completion List (CCL)

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when:

(1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) The site qualifies for deletion from the NPL.

In addition to the 142 sites that have been deleted from the NPL because they have been cleaned up (7 sites have been deleted based on deferral to other authorities and are not considered cleaned up), an additional 305 sites are also on the NPL CCL. Thus, as of September 1997, the CCL consists of 447 sites.

II. Availability of Information to the Public

Can I Review the Documents Relevant to This Final Rule

Yes, the documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the appropriate Regional offices.

What Documents Are Available for Review at the Headquarters Docket

The Headquarters docket for this rule contains HRS score sheets for five of the final sites that were added to the NPL based on HRS scores, Documentation Records for those sites describing the information used to compute the scores, pertinent information regarding statutory requirements or EPA listing policies that affect those sites, and a list of documents referenced in each of the Documentation Records. For the site added to the NPL based on ATSDR Health Advisory criteria, the Headquarters docket contains the nomination package which includes the ATSDR Health Advisory for the site. For all sites, the Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—September 1997."

A general discussion of the statutory requirements affecting NPL listing, the purpose and implementation of the NPL, the economic impacts of NPL listing, and the analysis required under the Regulatory Flexibility Act is included as part of the Headquarters rulemaking docket in the **ADDITIONAL INFORMATION** document.

What Documents Are Available for Review at the Regional Dockets

The Regional dockets contain all the information in the Headquarters docket, plus, for sites added to the NPL based on HRS scores, the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS scores for the sites. These reference documents are available only in the Regional dockets.

How Do I Access the Documents

You may view the documents, by appointment only, after the appearance of this document. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Docket for hours.

You may also request copies from the Headquarters or appropriate Regional docket. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

Following is the contact information for the EPA Headquarters and Regional dockets:

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917

Jim Kyed, Region 1, U.S. EPA Waste Management Records Center, HRC–CAN–7, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–9656

Ben Conetta, Region 2, U.S. EPA, 290 Broadway, New York, NY 10007–1866, 212/637–4435

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/566–5250

Kathy Piselli, Region 4, U.S. EPA, 100 Alabama Street, SW, Atlanta, GA 30303, 404/562–8190

Cathy Freeman, Region 5, U.S. EPA, Records Center, Waste Management Division, 7–J Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604 312/886–6214

Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740

Carole Long, Region 7, U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7224

Pat Smith, Region 8, U.S. EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/312–6082

Carolyn Douglas, Region 9 U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2343

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW–114, Seattle, WA 98101, 206/553–2103

How Can I Obtain a Current List of NPL Sites

You may obtain a current list of NPL sites via the internet at WWW.EPA.GOV/SUPERFUND and look under site information category or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

Additions to the NPL

This final rule adds 6 sites to the NPL, all to the General Superfund Section. The following table presents the sites in this rule arranged alphabetically by State and identifies their rank by group number. Group numbers are determined by arranging the NPL by rank and dividing it into groups of 50 sites. For example, a site in Group 4 has an HRS score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State	Site name	City/county	Group
CA	Del Amo	Los Angeles	22
MD	Central Chemical	Hagerstown	5/6

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Group
MD	Ordnance Products, Inc	Cecil County	21
NJ	Grand Street Mercury	Hoboken	NA
TX	Sprague Road Ground Water Plume	Odessa	10
WA	Oeser Co	Bellingham	1

Number of Sites Added to the General Superfund Section: 6

Status of NPL

With the new sites added in today's rule, the NPL now contains 1,204 sites, 1,053 in the General Superfund Section and 151 in the Federal Facilities Section. With a proposed NPL rule published elsewhere in today's **Federal Register**, there are now 52 sites proposed and awaiting final agency action, 46 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,256.

What Did EPA Do With the Public Comments It Received

EPA reviewed all comments received on sites included in this rule. Based on comments received on the proposed sites, as well as investigation by EPA and the States (generally in response to comment), EPA recalculated the HRS scores for individual sites where appropriate. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—September 1997."

IV. Regulatory Issues

A. Executive Order 12866

What Is Executive Order 12866

Executive Order 12866 requires certain regulatory assessments for any "economically significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

Is This Final Rule Subject to Executive Order 12866 Review

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Unfunded Mandates

What Is the Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely opportunity to participate in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Does UMRA Apply to This Final Rule

No, today's rule contains no Federal mandates (within the meaning of Title II of the UMRA) for State, local, or tribal governments or the private sector. Nor does it contain any regulatory requirements that might significantly or uniquely affect small governments. This is because today's listing decision does not impose any enforceable duties upon any of these governmental entities or the private sector. Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake response action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Therefore, today's rulemaking is not subject to the requirements of sections 202, 203 or 205 of the Unfunded Mandates Act.

C. Effect on Small Businesses

What is the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

Does the Regulatory Flexibility Act Apply to This Final Rule

While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis.

EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

Has This Rule Been Submitted to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Possible Changes to the Effective Date of the Rule

Could the Effective Date of This Final Rule Change

Provisions of the Administrative Procedure Act (APA) or section 305 of CERCLA may alter the effective date of this regulation.

Under 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements under any other Act and any relevant Executive Orders.

Section 5 U.S.C. 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted. Section 5 U.S.C. 801(a)(4) provides that all other rules shall take effect after submission to Congress, as otherwise provided by law.

EPA has submitted a report under the APA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 5 U.S.C. 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself.

What Could Cause the Effective Date of This Rule to Change

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 5 U.S.C. 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and Bd. of Regents of the *University of Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under the Small Business Regulatory Enforcement Fairness Act calls the effective date of this regulation into question, EPA will publish a notice of clarification in the **Federal Register.**

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 12, 1997.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. In appendix B to part 300, table 1 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes(a)
CA	Del Amo	Los Angeles.	
MD	Central Chemical	Hagerstown.	
MD	Ordnance Products, Inc.	Cecil County.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes(a)
NJ	Grand Street Mercury	Hoboken	A
TX	Sprague Road Ground Water Plume	Odessa.	
WA	Oeser Co.	Bellingham.	

(a) A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be ≤ 28.50).

[FR Doc. 97–25095 Filed 9–24–97; 8:45 am]

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federal register

Thursday
September 25, 1997

Part IV

Environmental Protection Agency

40 CFR Part 300
National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 23; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5895–7]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 23

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate.

This rule proposes to add 9 new sites to the NPL, all to the General Superfund Section.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 24, 1997.

ADDRESSES: *By Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Federal Express: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to SUPERFU-ND.DOCKET@EPAMAIL.EPA.GOV. E-mailed comments must be followed up by an original and three copies sent by mail or Federal Express.

For additional Docket addresses and further details on their contents, see Section II, "Public Review/Public Comment," of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, State and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, (703) 603–8852, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Background

What are CERCLA and SARA

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100, Stat. 1613 *et seq.*

What is the NCP

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under Section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." ("Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

What is the National Priorities List (NPL)

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. However, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed generally by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

How are Sites Listed on the NPL

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP):

(1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

(2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)).

(3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on April 1, 1997 (62 FR 15572).

What Happens to Sites on the NPL

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions * * *." 42 USC 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, to describe the relevant release(s) the approach generally used is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by a Remedial Investigation/Feasibility Study ("RI/FS") as more information is developed on site contamination (40 CFR 300.430(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

How are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as

explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

To date, the Agency has deleted 149 sites from the NPL.

Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of September 1997, EPA has deleted portions of 6 sites.

What Is the Construction Completion List (CCL)

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when:

(1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) The site qualifies for deletion from the NPL.

In addition to the 142 sites that have been deleted from the NPL because they have been cleaned up (7 sites have been deleted based on deferral to other authorities and are not considered cleaned up), an additional 305 sites are also on the NPL CCL. Thus, as of September 1997, the CCL consists of 447 sites.

II. Public Review/Public Comment

Can I Review the Documents Relevant to This Proposed Rule

Yes, the documents that form the basis for EPA's evaluation and scoring of sites in this rule are contained in dockets located both at EPA Headquarters in Washington, D.C. and in the appropriate Regional offices.

How Do I Access the Documents

You may view the documents, by appointment only, in the Headquarters or the appropriate Regional docket after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

You may also request copies from EPA Headquarters or the appropriate Regional docket. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

Following is the contact information for the EPA Headquarters docket (see "*How do I submit my comments?*" section below for Regional contacts):

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble, or contact Regional offices as detailed in the "*How do I submit my comments?*" section below.)

What Documents Are Available for Public Review at the Headquarters Docket

The Headquarters docket for this rule contains: HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

The Headquarters docket also contains an "Additional Information" document which provides a general discussion of the statutory requirements affecting NPL listing, the purpose and implementation of the NPL, and the economic impacts of NPL listing.

What Documents Are Available for Public Review at the Regional Dockets

Each Regional docket for this rule contains all of the information in the Headquarters docket for sites in that Region, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets.

How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble. Regional offices may be reached at the following:

Jim Kyed, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA Waste Management Records Center, HRC–CAN–7, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–9656

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866, 212/637–4435

Diane McCreary, Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/566–5250

Kathy Piselli, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 100 Alabama Street, SW, Atlanta, GA 30303, 404/562–8190

Cathy Freeman, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886–6214

Bart Canellas, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7224

Pat Smith, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/312–6082

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2343

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW–114, Seattle, WA 98101, 206/553–2103

What Happens to My Comments?

EPA considers all comments received during the comment period. Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific

information that EPA should consider and how it affects individual HRS factor values (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will make final listing decisions after considering the relevant comments received during the comment period.

Can I Submit Comments After the Public Comment Period Is Over?

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an "as received" basis.

Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

Proposed Additions to the NPL

Table 1 identifies the 9 sites in the General Superfund section being proposed to the NPL in this rule. This table follows this preamble. All sites are proposed based on HRS scores of 28.50 or above. The sites in Table 1 and Table 2 are listed alphabetically by State, for ease of identification, with group number identified to provide an indication of relative ranking. To determine group number, sites on the NPL are placed in groups of 50; for example, a site in Group 4 of this proposal has an HRS score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Status of NPL

A final rule published elsewhere in today's **Federal Register**, results in an NPL of 1,204 sites, 1,053 in the General Superfund Section and 151 in the Federal Facilities Section. With this proposal of 9 new sites, there are now 52 sites proposed and awaiting final agency action, 46 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,256.

IV. Executive Order 12866

What is Executive Order 12866?

Executive Order 12866 requires certain regulatory assessments for any "economically significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

Is This Proposed Rule Subject to Executive Order 12866 Review?

No, this is not an economically significant regulatory action; therefore, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Does UMRA Apply to This Proposed Rule?

No, today's rule contains no Federal mandates (within the meaning of Title II of the UMRA) for State, local, or tribal governments or the private sector. Nor does it contain any regulatory requirements that might significantly or uniquely affect small governments. This is because today's listing decision does not impose any enforceable duties upon any of these governmental entities or the private sector. Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Therefore, today's rulemaking is not subject to the requirements of section 202, 203 or 205 of the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

What Is the Regulatory Flexibility Act?

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

Does the Regulatory Flexibility Act Apply to This Proposed Rule?

While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated

above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE #23, GENERAL SUPERFUND SECTION

State	Site name	City/county	Group
IN	Cam-Or Inc	Westville	2
MA	GE-Housatonic River	Pittsfield	1
NJ	Cornell Dubilier Electronics Inc	South Plainfield	5
NJ	LCP Chemicals Inc	Linden	5/6
NJ	Puchack Well Field	Pennsauken Township	5/6
NJ	Zschiegner Refining	Howell Township	5/6
NY	Fulton Avenue	North Hempstead	21
NY	Peter Cooper	Gowanda	5/6
TN	American Bemberg	Elizabethton	5/6

Number of Sites Proposed to General Superfund Section: 9.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 12, 1997.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 97–25094 Filed 9–24–97; 8:45 am]

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federal register

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September 25, 1997

Part V

Environmental Protection Agency

40 CFR Part 74

Acid Rain Program: Revisions to Sulfur Dioxide Opt-Ins; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 74

[FRL–5892–3]

RIN 2060–AH36

Acid Rain Program: Revisions to Sulfur Dioxide Opt-Ins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Title IV of the Clean Air Act, as amended by Clean Air Act Amendments of 1990, ("the Act") authorizes the Environmental Protection Agency ("EPA" or "Agency") to establish the Acid Rain Program. The purpose of the Acid Rain Program is to significantly reduce emissions of sulfur dioxide and nitrogen oxides from electric generating plants in order to reduce the adverse health and ecological impacts of acidic deposition (or acid rain) resulting from such emissions. This proposal is intended to promote participation in the opt-in program by clarifying existing regulations, allowing a limited exception to the general rule of one designated representative for all affected units at a source, revising the conditions under which the Agency may cancel current-year allowance allocations, and allowing thermal energy plans to be effective on a quarterly basis.

DATES: Comments on the regulations proposed by this action must be received on or before October 27, 1997, unless a hearing is requested by October 6, 1997. If a hearing is requested, written comments must be received by November 10, 1997.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than October 6, 1997. If a hearing is held it will take place October 9, 1997, beginning at 10:00 am.

ADDRESSES: *Comments.* All written comments must be identified with the appropriate docket number (Docket No. A–97–23) and must be submitted in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington DC 20460.

Docket. Docket No. A–97–23, containing supporting information used to develop the proposal is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski at (202) 233–9074 Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; or the Acid Rain Hotline at (202) 233–9620. Electronic copies of this rulemaking and technical support documents can be accessed through the Acid Rain Division website at http://www.epa.gov/acidrain.

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I. Affected Entities

Entities potentially affected by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity, generate steam, or cogenerate electricity and steam. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Electric service providers, boilers from a wide range of industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in § 74.2 of title 40 of the Code of Federal Regulations and the revised §§ 72.6, 72.7, 72.8, and 72.14 proposed on December 27, 1996 (61 FR 68340). If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

The overall goal of the Acid Rain Program is to achieve significant environmental benefits through reductions in emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X), the primary precursors of acid rain. To achieve this goal at the lowest cost to society, the program employs both traditional and innovative, market-based approaches for controlling air pollution. In addition, the program encourages energy efficiency and promotes pollution prevention.

The Acid Rain Program departs from traditional regulatory methods by introducing an SO_2 allowance trading system that lowers the cost of reducing emissions by allowing electric utilities to seek out the least costly methods of control. Utility units affected under title IV are allocated allowances based on the product of their historic utilization and emission rates prescribed in the Clean Air Act. These units may trade allowances, provided that at the end of each year, each unit holds enough allowances to cover its annual SO_2 emissions.

Although the Acid Rain Program is mandated only for utility sources, section 410 provides opportunities for SO_2-emitting sources not otherwise affected by title IV requirements (e.g., industrial sources) to participate through the opt-in program. Entry of combustion sources into the opt-in program is voluntary. Opt-in sources are allocated allowances and, by making cost-effective emissions reductions so that their allowance allocations will exceed their emissions, will have allowances that may be sold in the SO_2 allowance trading system. These marketable allowances provide greater compliance flexibility for affected utility units.

III. Part 74: Opt-Ins

A. Designated Representative

Under the opt-in rules issued April 4, 1995 (60 FR 17100), combustion or process sources located at the same location as affected units are required to have the same designated representative as the affected units. EPA has received comment that, in some limited circumstances, the requirement for the same designated representative will inhibit entry or continued participation in the opt-in program of opt-in sources that could otherwise make cost-effective emissions reductions. The commenter described a situation where combustion sources and a process source are owned by an industrial company and Phase I units at the same affected source are partly owned by a utility. The industrial company uses electricity to operate the process sources and, for this purpose, generates electricity at its wholly-owned combustion sources and supplements the generation with electricity obtained from the utility-owned unit. The industrial company is concerned that having a single designated representative for all these facilities may result in confidential business information—particularly concerning

the process source operations and the industrial company's own generation costs—being available to the designated representative, who is an employee of the utility and would not otherwise have access to such information. According to the commenter, the industrial company's participation in the opt-in program may be jeopardized because of its concern over the potential competitive disadvantage that could result from this arrangement. The commenter raised the issue in a petition for review filed on June 5, 1995 challenging the existing opt-in regulations. On January 9, 1997, EPA and the commenter entered into a settlement of the litigation initiated by the June 5, 1995 petition.

In response to the above comment and consistent with the settlement, EPA is establishing a procedure for nonutility combustion or process sources located with affected utility units to elect an exception to the general requirement that there be only one designated representative for all affected units at a source. EPA is establishing this procedure for nonutility opt-in sources because their participation, which Congress viewed as beneficial, in the Acid Rain Program is voluntary. Nonutility opt-in sources are part of industrial operations that are very different businesses from electric utilities. Although EPA recognizes the recent trend toward increased competition in the electricity market, the concern over confidentiality of business information and the potential adverse effect of disclosure of information on a company's competitiveness are likely to be greater for nonutility businesses. These factors are thus more likely to discourage industrial sources from opting in to the Acid Rain Program.

Under EPA's proposed new approach, the certifying official of an electing opt-in source must certify to the Administrator that the combustion or process source meets the following criteria: that the opt-in source (1) is located at the same source as one or more affected utility units and (2) is a nonutility opt-in source, i.e., has no owner or operator of which the principal business is the sale, transmission, or distribution of electricity to the public or that is a public utility under the jurisdiction of a State or local utility regulatory authority. In addition, a certificate of representation meeting the generally applicable requirements for such certificates must be submitted. The Administrator will rely on the submitted certificate, unless the Administrator determines that the opt-in source does not actually meet the election requirements.

EPA notes that its general approach has been, and continues to be, to make opt-in sources subject to the same requirements as other affected units. 60 FR 17101. In fact, EPA has previously explained that section 410 requires that combustion sources meet the same monitoring requirements as other affected units. 59 FR 50088, 50095 (1993); *see also* 42 U.S.C. 7651i(e) (requiring opt-in sources to meet the monitoring requirements of section 412 of the Clean Air Act). In deciding whether to impose on opt-in sources the same single-designated-representative requirement that other affected sources must meet, EPA must balance, on one hand, the importance of imposing consistent requirements on all affected units and, on the other hand, Congress' desire to encourage voluntary entry of opt-in sources into the Acid Rain Program. EPA believes that allowing, in a few cases in order to encourage voluntary participation, a separate designated representative for an opt-in source will not adversely affect the Acid Rain Program. EPA anticipates that there will be few opt-in sources that will qualify for the proposed election. Balancing these considerations, EPA is proposing to revise the regulations to allow for such limited exceptions.

B. Thermal Energy Plans

The opt-in rule allows combustion sources to become opt-in sources at the beginning of any calendar quarter, not only at the beginning of a calendar year. *See* 40 CFR 74.28. However, EPA notes that the thermal energy provision at § 74.47 only provides for calendar year plans. This may create a problem in cases where the replacement of thermal energy is supposed to begin some time after January 1 of the calendar year. The opt-in source would have to delay replacement of thermal energy for a period of up to almost 12 months after the replacement would otherwise begin to coordinate the replacement with the commencement of the thermal energy plan. EPA believes that allowing thermal energy plans to begin after the first calendar quarter provides additional flexibility to opt-in sources without unduly burdening the Agency because EPA anticipates that there will be few opt-in sources requesting such plans.

Therefore, EPA is proposing revisions to allow (and take account of the possibility of) the submission of thermal energy plans at the beginning of any calendar quarter. For example, certain revisions require that, where a thermal energy plan is to begin during a quarter after the first quarter, the plan must include information related to the amount of the replacement thermal energy to be provided for the first partial year of the plan. Information on the replacement thermal energy in subsequent full years of the plan must also be provided. The allowances transferred to the replacement unit are based on the amount of replacement thermal energy; for the first calendar year allowances will reflect the replacement energy provided during the partial year, and for any subsequent years, allowances will reflect the replacement energy during the full year.

C. Deduction of Allowances From ATS Accounts

The opt-in rule not only restricts transfer of future year opt-in allowances, it also allows EPA to cancel current-year opt-in allowances in the event that an opt-in source has excess emissions and has shut down. For operating opt-in sources, EPA draws upon future-year allowances in the opt-in's Allowance Tracking System (ATS) account to offset excess emissions. However, when the opt-in source shuts down, future-year allowances are eliminated and EPA retains the option of canceling opt-in allowances, even when those allowances have been transferred to other ATS accounts.

EPA has received comment that retaining such option may unduly restrict transfer of opt-in allowances and that the option is unnecessarily broad, considering EPA's other processes. This issue was raised in the June 5, 1995 petition for review of the existing opt-in regulations and is addressed in the January 9, 1997 settlement, which petition and settlement are discussed above. EPA agrees that EPA's recordation process and EPA's process regarding confirmation reports appear to generally offer sufficient protection to prevent transfer of opt-in allowances before the Agency is assured that those allowances are not needed to cover excess emissions.

Thus, in response to the comment and consistent with the settlement, EPA is proposing to provide that an opt-in allowance may not be deducted under § 74.50(a) from any ATS account, other than the account of the opt-in source allocated such allowance, (i) after EPA has completed the process of recordation as set forth in § 73.34(a) following the deduction of allowances from the opt-in source's compliance subaccount for the year for which such allowance may first be used or (ii) if the opt-in source claims under in an annual compliance certification report an estimated reduction in heat input from

improved efficiency, under § 74.44(a)(1)(B), after EPA has completed action on the confirmation report concerning such claimed reduction pursuant to §§ 74.44(c)(2)(iii)(E)(3)–(E)(5) for the year for which such allowance may first be used.

For any given compliance year and, for opt-in sources claiming reductions from improved efficiency, the recordation process and action on confirmation reports will probably be completed before the end of the year following the compliance year. For 1995, EPA actually completed the recordation process on July 2, 1996. For 1996, EPA completed the process on June 12, 1997. However, because confirmation reports are not due to EPA until July 1, EPA expects to complete action on such reports by September of the same year.

D. Miscellaneous

EPA is proposing a number of modifications and corrections to the combustion source opt-in rules to reflect changes in the Acid Rain Program and operating permits program under title V of the Clean Air Act since the publication of the final opt-in rule on April 4, 1995. In particular the Agency has finalized operating permit rules in part 71 and proposed changes to part 72.

The following types of miscellaneous changes are proposed:

1. References to part 71 are added to part 74 where appropriate.

2. References to exemptions under §§ 72.7, 72.8 and 72.14 are added where appropriate in order to reflect the proposed revisions to part 72 that provide that exempt units are not affected units. Units exempted under these sections may not become opt-in units.

3. Repetitive language concerning the effect of withdrawal of an opt-in source from the Acid Rain Program on prior violations of opt-in requirements is removed. A similar change was proposed to language in part 72 concerning the effect of exemptions under §§ 72.7, 72.8 and 72.14 on prior violations. *See* 61 FR 68369–68371 (similar language in "Special Provisions" for each exemption).

4. Corrections are made so that language concerning the use of improved efficiency of an opt-in source to account for reduced utilization is consistent with similar provisions in part 72 concerning reduced utilization of affected utility units. *See* 40 CFR 72.91(a)(5) and (b)(2).

5. The formula for determining how many allowances should be retained in the allowance account of an opt-in source with a thermal energy plan is revised. The revision takes into account the fact that the opt-in source's allowance account may include allowances acquired by the opt-in source as well as allowances allocated to it by EPA.

6. Incorrect references to sections in parts 74 and 75 are corrected.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a "significant regulatory action" because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

The proposed revisions to part 74 will not have a significant effect on regulated entities or State permitting authorities. The revisions potentially reduce the burden certain opt-in sources, by allowing the election of a separate designated representative and by allowing thermal energy plans to begin on the calendar quarter. Also, the revisions potentially reduce the burden on the utility sector by revising when EPA may deduct allowances from ATS accounts.

C. Paperwork Reduction Act

This action proposing revisions to the opt-in rule would not impose any new information collection burden. OMB has previously approved the information collection requirements contained in the opt-in rules, 40 CFR part 74, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2060–0258. 60 FR 17111.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M. St. SW (mail code 2136); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR and/or OMB number in any correspondence.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities.

In the preamble of the April 4, 1995 opt-in rule, the Administrator certified that the rule, including the provisions revised by today's rule, would not have a significant economic impact on small entities. 60 FR 17111. Today's revisions are not significant enough to change the overall economic impact addressed in the April 4, 1995 preamble. Moreover, as discussed above, the revisions provide regulated entities with additional flexibility (e.g., the option to have a separate designated representative and to have a thermal energy plan that begins in the second, or later, quarter of the year). Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Miscellaneous

In accordance with section 117 of the Act, issuance of this rule was preceded by consultation with any appropriate advisory committees, independent experts, and federal departments and agencies.

List of Subjects in 40 CFR Part 74

Environmental protection, Acid rain, Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 9, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 74 is proposed to be amended as set forth below.

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 74.3 is amended by:

i. In paragraph (b), revising the phrase "parts 70 and 72" to read "parts 70, 71, and 72";

ii. In paragraph (b), revising the phrase "part 70" to read "parts 70 and 71"; and

iii. Adding at the end of paragraph (d) the words ", consistent with subpart E of this part."

3. Section 74.4 is amended by adding paragraph (c) to read as follows:

§ 74.4 Designated Representative.

* * * * *

(c)(1) Notwithstanding paragraph (b) of this section, a certifying official of a combustion or process source that is located at the same source as one or more affected utility units and that has no owner of which the principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory commission may elect to designate, for such combustion or process sources, a different designated representative than the designated representative for the affected utility units.

(2) In order to make such an election, the certifying official shall submit to the Administrator, in a format prescribed by the Administrator: a certification that the combustion or process source for which the election is made meets each of the requirements for election in paragraph (c)(1) of this section; and a certificate of representation for the designated representative of the combustion or process source in accordance with § 72.24 of this chapter. The Administrator will rely on such certificate of representation in accordance with § 72.25 of this chapter, unless the Administrator determines that the requirements for election in the paragraph (c)(1) are not met.

§ 74.14 [Corrected]

4. Section 74.10 is amended by removing from paragraph (a)(2) the word "§ 74.62" and adding in its place the words "§ 75.20 of this chapter".

§ 74.10 [Corrected]

5. Section 74.14 is amended by removing from paragraph (b) introductory text the words "part 70" and adding in their place the words "parts 70 and 71" and by removing from paragraph (b)(6)(ii) the word "approved" and adding in its place the words "approved for operating permits".

§ 74.16 [Corrected]

6. Section 74.16 is amended by removing from paragraph (a)(12) the word ";" and adding in its place the words "and does not have an exemption under § 72.7, 72.8, or 72.14 of this chapter;".

§ 74.18 [Corrected]

7. Section 74.18 is amended by removing from paragraph (d) the words "§ 74.46(c)" and adding in their place "§ 74.46(b)(2)" and by removing the last sentence from paragraph (e).

§ 74.22 [Corrected]

8. Section 74.22 is amended by removing from paragraph (c)(2) the words "§ 74.20(a)(2)(A)" and adding in their place the words "§ 74.20(a)(2)(i)".

§ 74.26 [Corrected]

9. Section 74.26 is amended by removing from paragraph (a)(2) the words "in which" and adding in their place the words "for which".

§ 74.42 [Corrected]

10. Section 74.42 is amended by removing from paragraph (a) the word "(a)."

§ 74.44 [Corrected]

11. Section 74.44 is amended by:

i. Removing from paragraph (a)(1)(i)(G) the words "demand side measures that improve the efficiency of electricity or steam consumption" and adding in their place the words "specific measures";

ii. Removing from paragraph (a)(2)(i) the words "or for the first two calendar years after the effective date of a thermal energy plan governing an opt-in source in accordance with § 74.47 of this chapter";

iii. Adding in paragraph (a)(2)(iii) the words "of this section" after the word "(a)(2)(ii)";

iv. Removing from paragraph (c)(2)(ii)(B)(1) the words "opt-in sources." and adding in their place the words "opt-in sources and Phase I units.";

v. Removing from the formula in paragraph (c)(2)(iii)(F) the words "= allowances allocated" and adding in their place the words "allowances allocated or acquired";

vi. Removing from paragraph (c)(2)(iii)(F) the words " 'Allowances allocated' shall be the number of

allowances allocated under section § 74.40 for the calendar year." and adding in their place the words " 'Allowances allocated or acquired' shall be the number of allowances held in the source's compliance subaccount at the allowance transfer deadline plus the number of allowances transferred for the previous calendar year to all replacement units under an approved thermal energy plan in accordance with § 74.47(a)(6).";

vii. Removing from paragraph (c)(2)(iii)(E)(3) the words "allowances necessary" and adding in their place the words "allowances that he or she determines is necessary".

12. Section 74.47 is amended by:

i. By adding in paragraph (a)(3)(i), after the word "year" in each place it appears, the word "and quarter";

ii. Adding in the first sentence of paragraph (a)(3)(vii), after the word "year", the words "and quarter"; and

iii. Revising paragraphs (a)(1), (a)(3)(viii), (a)(3)(ix), (a)(3)(x), (a)(3)(xi), (a)(3)(xii), and (a)(4) to read as follows:

§ 74.47 Transfer of allowances from the replacement of thermal energy—combustion sources.

(a) *Thermal energy plan.* (1) *General provisions.* The designated representative of an opt-in source that seeks to qualify for the transfer of allowances based on the replacement of thermal energy by a replacement unit shall submit a thermal energy plan subject to the requirements of § 72.40(b) of this chapter for multi-unit compliance options and this section. The effective period of the thermal energy plan shall begin at the start of the calendar quarter (January 1, April 1, July 1, or October 1) for which the plan is approved and end December 31 of the last full calendar year for which the opt-in permit containing the plan is in effect.

* * * * *

(3) * * *

(viii) The estimated annual amount of total thermal energy to be reduced at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, and, for a plan starting April 1, July 1, or October 1, such estimated amount of thermal energy to be reduced starting April 1, July 1, or October 1 respectively and ending on December 31;

(ix) The estimated amount of total thermal energy at each replacement unit for the calendar year prior to the year for which the plan is to take effect, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, and, for a plan starting April 1, July 1, or October 1, such estimated amount of total thermal energy for the portion of such calendar year starting April 1, July 1, or October 1 respectively;

(x) The estimated annual amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, and, for a plan starting April 1, July 1, or October 1, such estimated amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source starting April 1, July 1, or October 1 respectively and ending December 31;

(xi) The estimated annual amount of thermal energy at each replacement unit, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, replacing thermal energy at the opt-in source, and, for a plan starting April 1, July 1, or October 1, such estimated amount of thermal energy replacing thermal energy at the opt-in source starting April 1, July 1, or October 1 respectively and ending December 31;

(xii) The estimated annual total fuel input at each replacement unit after replacing thermal energy at the opt-in source and, for a plan starting April 1, July 1, or October 1, such estimated total fuel input after replacing thermal energy at the opt-in source starting April 1, July 1, or October 1 respectively and ending December 31;

* * * * *

(4) *Submission.* The designated representative of the opt-in source seeking to qualify for the transfer of allowances based on the replacement of thermal energy shall submit a thermal energy plan to the permitting authority by no later than six months prior to the first calendar quarter for which the plan is to be in effect. The thermal energy plan shall be signed and certified by the designated representative of the opt-in source and each replacement unit covered by the plan.

* * * * *

13. Section 74.50 is amended by redesignating the introductory text paragraph (a) as paragraph (a)(1), redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a)(1)(i) through (a)(1)(iv), and adding paragraph (a)(2) to read as follows:

§ 74.50 Deducting opt-in source allowances from ATS accounts.

(a) * * *

(2) An opt-in allowance may not be deducted under paragraph (a)(1) of this section from any Allowance Tracking System Account other than the account of the opt-in source allocated such allowance:

(i) After the Administrator has completed the process of recordation as set forth in § 73.34(a) of this chapter following the deduction of allowances from the opt-in source's compliance subaccount for the year for which such allowance may first be used; or

(ii) If the opt-in source includes in the annual compliance certification report estimates of any reduction in heat input resulting from improved efficiency under § 74.44(a)(1)(i), after the Administrator has completed action on the confirmation report concerning such estimated reduction pursuant to §§ 74.44(c)(2)(iii)(E)(3), (4), and (5) for the year for which such allowance may first be used.

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Thursday
September 25, 1997

Part VI

Department of Education

34 CFR Parts 682 and 685
Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 685

RIN 1840–AC45

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Family Education Loan (FFEL) Program regulations and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations to modify requirements in these programs. These proposed modifications are intended to eliminate certain differences in the requirements of the FFEL and Direct Loan programs and to reduce burden.

DATES: Comments must be received on or before November 3, 1997.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Mr. Kenneth Smith, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272, or to the following internet address: parity@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements should be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named above.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Smith, U.S. Department of Education, 600 Independence Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5346, telephone 202–708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Section 455(a) of the Higher Education Act of 1965, as amended (HEA), provides that, unless otherwise specified in statute, Federal Direct Stafford/Ford (Direct Subsidized) Loans, Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, and Federal Direct PLUS (Direct PLUS) Loans shall have the same terms, conditions, and benefits, and be available in the same amounts, as Federal Stafford Loans, Federal Unsubsidized Stafford Loans, and Federal PLUS Loans.

The Direct Loan Program regulations (34 CFR part 685) provide terms, conditions, benefits, and amounts for Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans. The FFEL Program regulations (34 CFR part 682) provide terms, conditions, benefits, and amounts for Federal Stafford Loans, Federal Unsubsidized Stafford Loans, and Federal PLUS Loans.

The Secretary is proposing to amend 34 CFR parts 682 and 685 to change certain requirements and procedures in the FFEL and Direct Loan programs. These proposed changes are intended to eliminate certain differences in the requirements of these programs and to reduce burden on program participants.

A summary of each proposed change is provided below, in the order of its first occurrence in the proposed regulatory text.

Sections 682.201 and 685.301 Students With Need of $200 or Less

Under FFELP regulations, at § 682.201(a)(2)(i), a student with a calculated need of $200 or less is not required to file an application for a Subsidized Stafford Loan with a lender before applying for a Federal Supplemental Loans for Students (SLS) loan. The final rule for these proposed regulations would include a technical correction to apply § 682.201(a)(2)(i) to a borrower's application for an Unsubsidized Stafford loan, because Unsubsidized Stafford loans are effectively the replacement for SLS loans. This technical correction reflects a long-standing FFEL Program policy and has been included in this NPRM so that changes to FFEL and Direct Loan program regulatory text are made simultaneously.

Essentially, this technical correction to § 682.201(a)(2)(i) clarifies a method by which a school participating in the FFEL Program may choose not to certify a Subsidized Stafford Loan for a student with a calculated need of $200 or less, and may instead certify an Unsubsidized Stafford Loan that includes the amount of $200 or less that would have been awarded in the Subsidized Stafford Loan.

This provision is necessary to avoid processing delays and increased costs in delivering funds to students. Because of the proportionally higher cost of small loans, many lenders under the FFEL Program do not make loans of $200 or less. Without this provision, a school would be required to submit an application to a lender for a Subsidized Stafford Loan amount when it is already aware that the loan will be refused by the lender.

To make the practices of schools participating in the FFEL and Direct Loan programs more consistent, the Secretary proposes to establish a provision for the Direct Loan Program similar to that described above for the FFEL Program. The proposed regulations would allow, but not require, a school to choose not to originate a Direct Subsidized Loan for a student with a calculated need of $200 or less. Instead, a school participating in the Direct Loan Program would be able to originate a Direct Unsubsidized Loan that includes the $200 or less that would have been originated as a Direct Subsidized Loan. For example, a student with a cost of attendance of $2,000, estimated financial assistance of $0, and an expected family contribution of $1,850 would have a calculated need of $150. The school could choose to originate one Direct Unsubsidized Loan for $2,000 for this student, rather than a Direct Subsidized Loan for $150 and a Direct Unsubsidized Loan for $1,850.

This proposal is consistent with guidance provided in the preamble to the Direct Loan Program final rule published in the **Federal Register** on December 1, 1994 (59 FR 61669), in which the Secretary stated that "an institution may establish a minimum loan amount." The proposed regulations would provide a ceiling of $200 to the "minimum loan amount" allowed in that preamble language, and would provide a regulatory basis for this action by a school. It is important to note that the Department has not established a minimum Direct Loan amount that it will process, and a school participating in the Direct Loan Program may continue to originate loans of $200 or less to meet borrower needs.

The Secretary realizes that an additional interest cost is incurred by a student who is awarded an amount in an unsubsidized loan rather than in a subsidized loan, even if the loan amount is $200 or less, because the government does not charge interest on a subsidized loan if it is not in repayment status or in a deferment. The Department estimates a maximum cost to a student of $66, for interest accruing on $200 over four years. However, this provision

was established for a school participating in the FFEL Program for the reasons described above, and it is proposed for a school participating in the Direct Loan Program to provide parity with the FFEL Program and to allow a school to control its administrative costs in making loans. The Secretary expects the proposed regulations to have little actual effect on costs to borrowers for receiving FFEL or Direct Loan program funds because current FFEL Program policy would remain unchanged and current Direct Loan Program policy would only be defined in regulations. The only change to current Direct Loan Program policy in the proposed regulations is the provision of a $200 limit to replace the currently unspecified "minimum loan amount," so a school would no longer be able to establish a minimum loan amount higher than $200.

Sections 682.202(c)(5), 682.401(b)(10), and 685.202(c)(4) Refund of FFEL Program Origination Fees and Insurance Premiums and of Direct Loan Program Loan Fees

Under § 682.202(c)(5), a lender must refund, by a credit against the borrower's loan balance, the applicable portion of the origination fee previously deducted from the loan if (1) the borrower repays a portion of the loan within 120 days of disbursement, (2) the funds are not delivered within 120 days of disbursement, or (3) the funds are returned by the school to the lender.[1] Similarly, under § 682.401(b)(10)(vi)(B), a lender must refund the applicable portion of the insurance premium previously deducted by application to the borrower's account if (1) the loan is paid in full within 120 days of disbursement, (2) the loan check has not been negotiated within 120 days of disbursement, or (3) the loan or a portion of a loan is returned by the school to the lender. Direct Loan Program regulations at § 685.202(c)(4) provide for the refund of the applicable portion of the loan fee previously deducted from the loan if a portion of the loan is repaid within 120 days or should have been repaid by the school within 120 days of disbursement.

[1] The introductory language for § 682.202(c)(5) is incorrect as published in the Code of Federal Regulations (CFR), revised as of July 1, 1996. The CFR reflects the final rule published in the **Federal Register** on May 17, 1994 (59 FR 25745). However, a correction to the May 17, 1994, rule was published on July 13, 1994 (59 FR 35625). The correction was not included in the current CFR. To ensure that the correct introductory language is properly reflected in regulations, it is included in this NPRM and will be included in the final rule as a technical correction.

The Secretary proposes to revise §§ 682.202(c)(5)(i), 682.401(b)(10)(vi)(B)(1), and 685.202(c)(4) to provide that the applicable portion of the origination fee, insurance premium, or loan fee is to be repaid or returned in cases in which loan funds are returned by the school in order to comply with the HEA or with applicable regulations.

For example, the applicable portion of the origination fee, insurance premium, or loan fee *would* be repaid or returned to a borrower if during a program review it was determined that a school should have paid a larger refund to a student, even if that refund should have occurred more than 120 days after the disbursement was made. On the other hand, the applicable portion of the origination fee, insurance premium, or loan fee would not be repaid or returned to a borrower if a school assists the borrower by forwarding a prepayment to the lender more than 120 days after disbursement. In this example, the school would not be returning the funds in order to comply with the HEA or with applicable regulations; it would be returning the funds to comply with the borrower's request.

This proposed revision clarifies current FFEL requirements. Further, it expands the circumstances under which the Secretary would reduce the Direct Loan Program loan fee charged to borrowers by removing the requirement that the repayment should have been made within 120 days of disbursement. Under the proposed provision, students in both the FFEL and Direct Loan programs would receive the same benefits.

Sections 682.402 and 685.212 Discharge of a Loan

Under § 682.402(c)(1), FFEL Program regulations provide for the discharge of a borrower's or endorser's obligation to repay a Consolidation Loan, due to a total and permanent disability, for a borrower who became disabled (or whose condition substantially deteriorated, so as to render the borrower totally and permanently disabled) after applying for all of the Consolidation Loan's underlying loans. This discharge is made even if a borrower's condition did not substantially deteriorate after the borrower applied for the Consolidation Loan itself. Corresponding Direct Loan Program regulations, at § 685.212(b), do not allow for a discharge of a loan obligation for a Direct Consolidation Loan if the borrower did not become disabled (or whose condition did not substantially deteriorate, so as to render the borrower totally and permanently disabled) after the Direct Consolidation Loan was made.

For example, a borrower who received several loans, then became totally and permanently disabled, and then consolidated those loans into a Direct Consolidation Loan, remains obligated to repay the loan. Under current Direct Loan Program regulations, a borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time the borrower applied for the consolidation loan, unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled. In the example above, since the borrower's condition existed at the time the borrower applied for the Direct Consolidation Loan and did not substantially deteriorate after the Direct Consolidation Loan was made, the borrower would remain obligated to repay the loan. By contrast, corresponding FFEL regulations would allow a discharge of the borrower's obligation to make further payments on the loan.

The Secretary proposes to revise Direct Loan Program regulations to provide the same discharge conditions for a Direct Consolidation Loan as are currently provided for an FFELP Consolidation Loan. Because there has been some confusion regarding the FFEL rule on this issue, the Secretary also proposes to clarify the current FFEL Program provision and to make a conforming change to regulations at § 682.402(k)(2)(iii).

Sections 682.604(g)(2) and 685.304(b)(2) Exit Counseling

Section 485(b)(1)(A)(i) of the HEA requires a school to inform a student of "the average anticipated monthly repayments" during exit counseling. For an FFEL borrower, under § 682.604(g)(2)(i), a school is required to base the calculation of this amount on an average indebtedness for students at that school. Direct Loan Program regulations, at § 685.304(b)(2)(i), go beyond the requirements in FFEL regulations and require a school to base its calculation of this amount on the individual student's actual indebtedness.

The Secretary proposes to revise both FFEL and Direct Loan program regulations to allow a school to base its calculation of this amount upon either the student's individual indebtedness or upon the average indebtedness of students who have obtained loans for attendance at that school or in the borrower's program of study. This change would provide more flexibility in both loan programs, would promote

consistency in exit counseling, and would reduce burden for schools participating in both the FFEL and the Direct Loan programs.

A Direct Loan borrower's ability to make an informed choice when selecting a repayment plan is not lessened by this change. A school participating in the Direct Loan Program may, and is encouraged to, continue to receive information regarding an individual borrower's anticipated Direct Loan Program monthly repayment amount for distribution to the borrower during exit counseling. If a borrower does not select a repayment plan by the 60th day of the loan's grace period, he or she is sent the individualized information by the Direct Loan Servicer. In addition, the individualized repayment information is always available to a borrower who calls the Direct Loan Servicer, both when the borrower is selecting an initial repayment plan and when the borrower is considering a change from one plan to another.

Under § 685.304(b)(2) (ii) and (iii), a school is required to review available repayment options with a borrower and to provide the borrower with options concerning debt-management strategies. Should these proposed regulations be included in the final rule, to comply with § 685.304(b)(2) (ii) and (iii), a school that chooses not to provide the individualized repayment information to a student would be expected to advise the student of the availability of this information at the student's Direct Loan servicer and of its usefulness in selecting the most appropriate repayment plan.

The Secretary requests specific comments on whether the timing and availability of the individualized Direct Loan Program repayment information, as described above, provides all Direct Loan Program borrowers with an adequate opportunity to select the most appropriate repayment plan. In particular, the Secretary requests comments on the ability of a borrower to make an informed choice when selecting a repayment plan if he or she does not receive individualized information until the 60th day of the loan's grace period because his or her school has chosen to supply repayment information based on average indebtedness during its exit counseling.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these regulations without impeding the effective and efficient administration of these programs.

Summary of Potential Costs and Benefits

Potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the following heading: *Regulatory Flexibility Act Certification*, and in the information stated previously under Supplementary Information.

2. Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.24 *Records retention and examinations.*) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Mr. Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW, Room 5121, FOB–10, Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Small entities affected by these proposed regulations are small schools and loan holders participating in the federal student loan programs.

The provisions of this regulation provide added flexibility to schools and loan holders, or reduce the administrative burden on schools. Thus, no significant adverse economic impacts on small entities are expected to occur.

The Secretary particularly invites comments on the effect that these proposed regulations would have on small entities.

Paperwork Reduction Act of 1995

Section 685.212 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: William D. Ford Federal Direct Loan Program—685.212—Discharge of a loan obligation. The Secretary proposes to provide for the discharge of a Direct Consolidation Loan due to a total and permanent disability for a borrower who would be eligible for the discharge of all the loans that were included in the Direct Consolidation Loan if those loans had not been consolidated. The Department may require additional certifications and information concerning the underlying loans in order to provide this benefit to the borrower. Annual public reporting burden for this collection of information is estimated to average 0.2 hours per response for 180 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total estimated annual recordkeeping and reporting burden hours equals 36 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m., and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Electronic Access to This Document

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.032: Federal Stafford Loan Program; 84.032: Federal PLUS Program; 84.032: Federal Supplemental Loans for Students Programs; 84.033 and 84.268: Federal Direct Student Loan Program.)

Dated: September 17, 1997.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 682 and 685 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.201 [Amended]

2. Section 682.201 is amended by removing the words "receive an SLS loan" in the introductory language of paragraph (a) and adding, in their place, "receive an unsubsidized Stafford loan"; by removing the acronym "SLS" in paragraph (a)(1) and adding, in its place, "unsubsidized Stafford"; by removing the words "who, for a period of enrollment that begins prior to July 1, 1994, seeks an SLS" in the introductory language to paragraph (a)(2) and adding, in their place, "who seeks an unsubsidized Stafford"; and by removing the acronym "SLS" in paragraph (a)(3) and adding, in its place, "unsubsidized Stafford".

3. Section 682.202 is amended by revising paragraph (c)(5) to read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(c) * * *

(5) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to any portion of the loan that is—

(i) Returned by a school to a lender in order to comply with the Act or with applicable regulations;

(ii) Repaid or returned within 120 days of disbursement; or

(iii) Not delivered within 120 days of disbursement.

* * * * *

4. Section 682.401 is amended by revising paragraphs (b)(10)(vi)(B)(*1*) and (b)(10)(vi)(B)(*2*) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(10) * * *

(vi) * * *

(B) * * *

(*1*) The loan or a portion of the loan is returned by the school to the lender

in order to comply with the Act or with applicable regulations;

(2) Within 120 days of disbursement, the loan or a portion of the loan is repaid;

* * * * *

5. Section 682.402 is amended by revising paragraph (c)(1) and by removing the words "become totally and permanently disabled since applying for the Consolidation loan" in paragraph (k)(2)(iii) and adding, in their place, "is determined to be totally and permanently disabled under § 682.402(c)", to read as follows:

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

* * * * *

(c) *Total and permanent disability.* (1) (i) If a lender determines that an individual borrower has become totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is discharged.

(ii) Except as provided in paragraph (c)(1)(iii)(A) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(iii)(A) For a Consolidation Loan, a borrower who would be considered totally and permanently disabled under paragraphs (c)(1)(i) and (ii) of this section for all loans that were included in the Consolidation Loan, if those loans had not been consolidated, is considered totally and permanently disabled.

(B) For the purposes of discharging a loan under paragraph (c)(1)(iii)(A) of this section, provisions in paragraphs (c)(1) (i) and (ii) of this section apply to all loans included in the Consolidation Loan.

(C) If requested, a borrower seeking to discharge a loan obligation under paragraph (c)(1)(iii)(A) of this section must provide the lender with the disbursement dates of the underlying loans if the lender does not possess that information.

* * * * *

6. Section 682.604 is amended by revising paragraph (g)(2)(i) to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(g) * * *

(2) * * *

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained FFEL Program loans for attendance at that school or in the borrower's program of study.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

7. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

8. Section 685.202 is amended by revising paragraph (c)(4) to read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

* * * * *

(c) * * *

(4) Applies to a borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to a disbursement of the loan that is—

(i) Repaid or returned within 120 days of disbursement; or

(ii) Returned by a school in order to comply with the Act or with applicable regulations.

9. Section 685.212 is amended by revising paragraph (b) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(b) *Total and permanent disability.* (1) If the Secretary receives acceptable documentation that a borrower has become totally and permanently disabled, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(2) Except as provided in paragraph (b)(3)(i) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(3)(i) For a Direct Consolidation Loan, a borrower who would be considered totally and permanently disabled under paragraphs (b) (1) and (2) of this section for all loans that were included in the Direct Consolidation Loan, if those loans had not been consolidated, is considered totally and permanently disabled.

(ii) For the purposes of discharging a loan under paragraph (b)(3)(i) of this section, provisions in paragraphs (b)(1) and (2) of this section apply to all loans included in the Consolidation Loan.

(iii) If requested, a borrower seeking to discharge a loan obligation under paragraph (b)(3)(i) of this section must provide the Secretary with the disbursement dates of the underlying loans.

* * * * *

10. Section 685.301 is amended by redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8), respectively, and by adding a new paragraph (a)(6) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(a) * * *

(6) If a student has received a determination of need for a Direct Subsidized Loan that is $200 or less, a school may choose not to originate a Direct Subsidized Loan for that student and to include the amount as part of a Direct Unsubsidized Loan.

* * * * *

11. Section 685.304 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 685.304 Counseling borrowers.

* * * * *

(b) * * *

(2) * * *

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the borrower's program of study.

* * * * *

[FR Doc. 97–25377 Filed 9–24–97; 8:45 am]
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Thursday
September 25, 1997

Part VII

The President

Proclamation 7024—Minority Enterprise Development Week, 1997

Proclamation 7025—National Historically Black Colleges and Universities Week, 1997

Proclamation 7026—National Farm Safety and Health Week, 1997

Federal Register
Vol. 62, No. 186
Thursday, September 25, 1997

Presidential Documents

Title 3—

The President

Proclamation 7024 of September 19, 1997

Minority Enterprise Development Week, 1997

By the President of the United States of America

A Proclamation

The American economy today is the envy of the world. Since the beginning of my Administration, our economy has created nearly 13 million new jobs, unemployment has declined to 4.9 percent, and America has once again become the world's leading exporter.

Minority entrepreneurs have played a vital role in this success story. With their faith in our free enterprise system, their determination to overcome any barriers to success, their willingness to work long and hard and to make the most of every opportunity, they epitomize the American can-do spirit. They create jobs in communities where jobs are most needed, and they set a powerful example of achievement for young people seeking to make the most of their lives.

In the years ahead, these minority business men and business women will become increasingly important to our Nation's competitive edge in the global economy, which will offer great rewards to those who truly understand life beyond our borders. Because of their racial, linguistic, and cultural diversity, minority entrepreneurs are uniquely positioned to meet the needs of this dynamic international marketplace.

Recognizing the contributions that minority enterprises make to the social and economic fabric of our Nation, we must continue to remove any barriers that prevent talented men and women of every racial and ethnic background from participating fully in America's economic mainstream. Working in partnership, government and private industry must ensure that minority-owned firms have equal access to capital, technical assistance, new markets, and opportunities for growth. We must attract new entrepreneurs to the marketplace and encourage existing firms to expand. By doing so, we can ensure that America's promise will continue to shine brightly for all our people.

As we observe Minority Enterprise Development Week, let us honor the energy, determination, and optimism of our Nation's minority entrepreneurs, whose hard work has done so much to help keep America strong, prosperous, and full of hope for the future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 21 through September 27, 1997, as Minority Enterprise Development Week. I call on all Americans to commemorate this event with appropriate ceremonies and activities in acknowledgment of the many contributions that minority entrepreneurs bring to our national life.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of September, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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Presidential Documents

Proclamation 7025 of September 19, 1997

National Historically Black Colleges and Universities Week, 1997

By the President of the United States of America

A Proclamation

we are a few short years away from the dawn of the 21st century, yet much of the challenge and change we have been anticipating is already upon us. We are competing today in a truly global economy, an economy based on information and technology as well as agriculture and industry. We are living in the age of the information revolution, the era of the World Wide Web, of daily advances in communications technology where a universe of knowledge is only a keyboard and a modem away. We are crossing the frontier into a new world, and our only map and compass in that world will be education.

We must build an educational system that prepares our young people for the jobs of the future. We must empower them with the values, experiences, and self-confidence to succeed in our diverse society. We must provide them with the knowledge and motivation to reach their full human potential—and we must leave no one behind. In devising such an educational system, we need only look to America's Historically Black Colleges and Universities (HBCUs) for a model of excellence.

This extraordinary network of institutions, more than a century old, has created a legacy of unquestioned accomplishment in fostering student success. Founded to educate African Americans in a segregated society, these colleges and universities have flourished and built an enviable record of achievement in educating America's black scientists, doctors, teachers, lawyers, artists, entrepreneurs, community and religious leaders, and other professionals. They have provided generations of students with access to highly supportive environments for learning. The experience and expertise of HBCUs make them an invaluable resource to our Nation during this period of significant change.

America's Historically Black Colleges and Universities daily demonstrate effective leadership in a multitude of ways: they develop and practice innovative academic approaches to ensure student success; they create campus programs that offer new solutions to critical social problems; they produce cutting-edge research with practical applications; and they forge strong global relationships from a myriad of international activities. Moreover, against formidable financial odds, they have persisted in keeping education affordable for the constituencies they serve, without sacrificing quality. They have never allowed scarce funding, poor educational preparation, or societal disadvantage to get in the way of their mission to educate and nurture the intellectual potential of the black community.

Historically Black Colleges and Universities have done more to make the American Dream a reality for African Americans than has any other set of institutions in our country. These institutions are poised to enter the 21st century, ready to build on this tradition of excellence, achievement, and reverence for education. We can count on them to continue to make vital contributions to our Nation's success and to ensure that America lives up to our fundamental values of equality and opportunity.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 21 through September 27, 1997, as National Historically Black Colleges and Universities Week. I call upon the people of the United States, including government officials, educators, and administrators, to observe this week with appropriate programs, ceremonies, and activities honoring America's Historically Black Colleges and Universities and their graduates.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of September, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-25697
Filed 9-24-97; 8:59 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7026 of September 19, 1997

National Farm Safety and Health Week, 1997

By the President of the United States of America

A Proclamation

From the earliest days of our Nation, the men and women who work the land have held a special place in America's heart, history, and economy. Many of us are no more than a few generations removed from forebears whose determination and hard work on farms and fields helped to build our Nation and shape its values. While the portion of our population directly involved in agriculture has diminished over the years, those who live and work on America's farms and ranches continue to make extraordinary contributions to the quality of our national life and the strength of our economy.

The life of a farmer or rancher has never been easy. The work is hard, physically challenging, and uniquely subject to the forces of nature; the chemicals and labor-saving machinery that have helped American farmers become so enormously productive have also brought with them new health hazards; and working with livestock can result in frequent injury to agricultural workers and their families.

Fortunately, there are measures we can take to reduce agriculture-related injuries, illnesses, and deaths. Manufacturers continue to improve the safety features of farming equipment; protective clothing and safety gear can reduce the exposure of workers to the health threats posed by chemicals, noise, dust, and sun; training in first-aid procedures and access to good health care can often mean the difference between life and death.

The key to all these safety measures is education. During National Farm Safety and Health Week, I encourage America's farmers, ranchers, and other agricultural workers to remain alert to the dangers inherent in their livelihood. By learning about and using the latest safety features of farming equipment and vehicles, wearing personal protective gear and clothing, and practicing good preventive health care, they can avoid or reduce many of the hazards they face each day. It is particularly important to teach our young people on farms and ranches about proper safety measures, to provide safe areas where children can play, and to monitor their activities. Their experience and maturity must always be considered before they are allowed to participate in farm or ranch work.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 21 through September 27, 1997, as National Farm Safety and Health Week. I call upon government agencies, educational institutions, businesses, and professional associations that serve our agricultural sector to strengthen efforts to promote safety and health measures among our Nation's farm and ranch workers. I ask agricultural workers to take advantage of available technology, training, and information that can help them prevent injury and illness. I also call upon all Americans to observe Wednesday, September 24, 1997, as a day to focus on the risks facing young people on our Nation's farms and ranches and to reflect during this week on the bounty that we enjoy thanks to the hard work and dedication of America's agricultural workers.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of September, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-25698
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federal register

Thursday
September 25, 1997

Part VIII

The President

Notice of September 24, 1997—
Continuation of Emergency With Respect to UNITA

Federal Register
Vol. 62, No. 186
Thursday, September 25, 1997

Presidential Documents

Title 3—

The President

Notice of September 24, 1997

Continuation of Emergency With Respect to UNITA

On September 26, 1993, by Executive Order 12865, I declared a national emergency to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of the National Union for the Total Independence of Angola ("UNITA"), prohibiting the sale or supply by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of arms and related material of all types, and petroleum and petroleum products to the territory of Angola, other than through designated points of entry. The order also prohibits the sale or supply of such commodities to UNITA. Because of our continuing international obligations and because of the prejudicial effect that discontinuation of the sanctions would have on the Angolan peace process, the national emergency declared on September 26, 1993, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond September 26, 1997. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to UNITA.

This notice shall be published in the Federal Register and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
September 24, 1997.

[FR Doc. 97–25740
Filed 9–26–97; 11:30 am]
Billing code 3195–01–P

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Vol. 62, No. 187
Friday, September 26, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV97–948–1 IFR]

Irish Potatoes Grown in Colorado; Change in Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the size requirement from a 2 inch minimum diameter or 4 ounce minimum weight to a 1⅞ inch minimum diameter for Centennial Russet variety potatoes grown in Area No. 2 of Colorado. The current size requirement for Centennial Russets is larger than the requirement for similar long varieties. This change recognizes the similarity and should provide potato handlers with more marketing flexibility, growers with increased returns, and consumers with a greater supply of potatoes.

DATES: Effective September 30, 1997; comments received by November 25, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule relaxes the size requirement for Centennial Russet variety potatoes grown in Area No. 2 from the current 2 inch minimum diameter or 4-ounce minimum weight to a 1⅞ inch minimum diameter with no minimum weight option. This change will enable handlers to market a larger portion of the crop in fresh market outlets and is expected to improve the marketing of Colorado potatoes. Further, all Russet varieties will now be required to meet the same size specifications.

Section 948.22 (7 CFR 948.22) authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety or varieties of potatoes grown in different portions of the production area during any period.

Section 948.4 of the order defines the counties included in Area No. 2, which is commonly known as the San Luis Valley. The Colorado Potato Administrative Committee, San Luis Valley Office (Area No. 2) (Committee), is the agency responsible for local administration of the Federal marketing order in Area No. 2.

Size regulations for potatoes grown in Area No. 2 are currently in effect under § 948.386. Centennial Russet variety potatoes must be 2 inches minimum diameter or 4 ounces minimum weight. Other long varieties, which includes other Russet varieties, must be 1⅞ inch minimum diameter, with no minimum weight option. This rule amends that section by removing the weight requirement option for Centennial Russets and reducing the minimum diameter requirement for Centennial Russets to 1⅞ inches. Thus, all Russet varieties will be required to meet the same minimum diameter. The Committee unanimously recommended this change at its August 21, 1997, meeting.

When the current size regulations were established, the Centennial Russet was the dominant variety in the San Luis Valley (Area No. 2), accounting for approximately 65–75 percent of the crop. The other major Russet variety grown in the San Luis Valley was the Russet Burbank, a slimmer potato which was required to meet the 1⅞ inch minimum diameter. Today, the Russet Burbank has been phased out completely and the Centennial Russet accounts for less than 10 percent of the crop. The Burbank and the Centennial have been replaced by other varieties, including new Russet varieties which

have the same bulky features as the Centennial.

The new varieties, however, are required only to meet the 1⅞ inch minimum diameter, not the 2 inch minimum diameter or 4 ounce minimum weight requirement that Centennial Russets must meet. The industry is concerned that Centennial Russets could be misrepresented as one of the new Russet varieties, so as to comply only with the smaller size requirement. This rule, by establishing the same size requirements for all Russet varieties, eliminates this possibility.

Reducing the size requirement will allow handlers to market a larger portion of the Centennial Russet crop in fresh outlets. This change is expected to improve the marketing of Colorado potatoes and increase returns to producers.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

There are approximately 120 handlers of Colorado potatoes who are subject to regulation under the marketing order and approximately 400 producers of Colorado potatoes in the regulatory areas. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

Section 948.22 of the order authorizes the issuance of handling regulations for potatoes grown in Colorado. This rule relaxes the size requirement for Centennial Russet variety potatoes grown in Area No. 2 from the current 2 inch minimum diameter or 4-ounce minimum weight to a 1⅞ inch minimum diameter with no weight option. This change will enable handlers to market a larger portion of the crop in fresh market outlets and is expected to improve the marketing of Colorado potatoes. There is no available information detailing how many potatoes this relaxation will allow to be marketed which could not have been marketed prior to this action.

This rule also eliminates a potential compliance problem, as all Russet varieties will now be required to meet the same size specifications. Other Russet varieties are currently required only to meet the smaller size regulation of 1⅞ inch diameter. Because some the new Russet varieties with characteristics very similar to Centennials face the smaller size requirement and have surpassed Centennials in popularity, there is a possibility that Centennials could be misrepresented as one of the new Russet varieties.

The only viable alternative to reducing the size requirement for Centennials is to increase the size requirement for all other long potatoes, including all other Russets. The Committee surveyed 270 growers from Area No. 2 concerning grade and size regulation. Both options for equalizing the size regulations for all long potatoes were included in the survey. The participating growers rejected increasing the size requirements for all other long potatoes, which would have reduced the number of Colorado potatoes on the market, in favor of the size requirement reduction established by this rule.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 21, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members, of which 5 are handlers and 7 are producers, the majority of whom are small entities.

Also, the Committee surveyed 270 producers in Area No. 2, the majority of whom are small entities, concerning regulation during the 1997–98 potato shipping season. This rule reflects the outcome of that survey of predominantly small growers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the handling regulations currently prescribed for Area No. 2 under the Colorado potato marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements in the handling regulations; (2) this action must be taken promptly to be in place before handlers begin shipping heavily in early October; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 948.386 is amended by removing paragraph (a)(2), redesignating paragraphs (a)(3) through (a)(6) as paragraphs (a)(2) through (a)(5), and revising newly redesignated paragraphs (a)(2) and (a)(5) to read as follows:

§ 948.386 Handling regulation.

* * * * *

(a) * * *

(2) *Long varieties.* U.S. No. 2, or better grade, 1⅞ inches minimum diameter.

* * * * *

(5) None of the above categories of potatoes identified in paragraphs (a)(1) through (a)(5) of this section may be commingled in the same bag or other container.

* * * * *

Dated: September 22, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–25619 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV–97–989–2 FR]

Raisins Produced From Grapes Grown in California; Suspension of Provisions Concerning Certain Offers of Reserve Raisins to Handlers for Free Use

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension of rule.

SUMMARY: This final rule suspends language in provisions of the raisin marketing order concerning certain offers of reserve raisins to handlers for free use. The marketing order regulates the handling of raisins produced from grapes grown in California, and is administered locally by the Raisin Administrative Committee (Committee). This rule indefinitely suspends certain language to provide the Committee more flexibility in meeting its marketing needs. This rule was unanimously recommended by the Committee.

EFFECTIVE DATE: This final rule becomes effective September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906; or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830, Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administretion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This final rule indefinitely suspends language in §§ 989.54(g) and 989.67(j) of the order. The suspension concerns certain offers of reserve raisins to handlers for free use. The suspension was unanimously recommended by the Committee.

Section 989.54(g) of the order describes two annual offers of reserve raisins to handlers for free use for each varietal type for which preliminary volume control percentages have been computed and announced. Each of these offers consists of 10 percent of the prior year's shipments of free raisins and reserve raisins sold for free use. These offers are known to the industry as the "10 plus 10" offers. The order currently mandates that the 10 plus 10 offers must be made simultaneously on or before November 15 of the crop year. The order defines the crop year for raisins as the 12-month period beginning with August 1 of any year and ending with July 31 of the following year.

Section 989.54(a) establishes that the trade demand for raisins shall be 90 percent of the prior crop year's shipments with adjustments for inventory, meaning that the trade demand excludes 10 percent of the prior year's shipments. Preliminary volume control percentages, which are computed and announced by October 5 of each crop year, make up to 85 percent of the trade demand available to handlers for disposal in any marketing channel. The final free percentage, which is recommended by the Committee by February 15 of each crop year, makes the remainder of the trade demand available to handlers.

Standard raisins are raisins which meet the minimum grade and condition standards for natural condition raisins. Handlers are required to place the reserve percentage of their standard raisin acquisitions in the reserve pool. One of the 10 plus 10 offers makes available, from the reserve pool, the 10 percent of the prior year's shipments which the final free percentage does not make available. This offer, then, equates the current year's supply with the prior year's shipments. Because the free percentage and this 10 plus 10 offer only make available the tonnage shipped during the prior year (with the appropriate inventory adjustments), the other 10 plus 10 offer, intended for market expansion, makes an additional 10 percent available to handlers from the reserve pool. Acceptance of the 10 plus 10 offers is voluntary; handlers are not required to purchase any reserve raisins.

The Committee believes that changes in the raisin industry, particularly changes to export programs administered under the marketing order, have made the 10 plus 10 offers a more important source of raisins for many handlers. The Committee's export programs in the early 1990's allowed handlers who exported California raisins to purchase, at a reduced rate, reserve raisins for free use. This effectively blended down the cost of the raisins which were exported, allowing handlers to be price competitive in export markets, which generally feature lower prices than the domestic market. One effect of this program was that handlers would continuously purchase reserve raisins for free use throughout the crop year. Handlers who knew they would be exporting raisins did not need to purchase enough raisins to meet their needs for the entire year early in the season.

The current export program, which is in its second year of operation, offers cash, rather than reserve raisins, to exporting handlers. This has caused handlers to make larger purchases of 10 plus 10 raisins to replace the raisins formerly acquired through the export program. When handlers make large 10 plus 10 purchases early in the season, rather than small reserve purchases throughout the season, however, they are committing themselves to raisins before they have a firm estimate of their needs for the year. Handlers are forced to guess at the demand for the remainder of the crop year. If this guess is too high, prices will fall and there

may be excess free tonnage inventory at the end of the crop year, resulting in market instability and a lower free percentage for the following year. If the guess is too low, market needs may not be met and the Committee may be forced to dispose of the excess reserve raisins in low income outlets.

Most raisin deliveries, and most of the associated costs, are concentrated between September and November, so handlers must establish large lines of credit at this time during each crop year. Because the Committee is required to make the 10 plus 10 offers concurrently on or before November 15 of the crop year, handlers must arrange for additional credit to make their 10 plus 10 purchases. The Committee believes that the inflexibility of the November 15 deadline and the requirement of simultaneous offers creates unnecessary financial stress on handlers.

Section 987.67(j) of the order lists other circumstances, including national emergency, crop failure, changing economic or marketing conditions, fire or other disasters, or to supplement an inadequate inventory to carryover to the next crop year, under which the Committee can sell reserve raisins for free use. The Committee also can offer reserve raisins for free use if raisin shipments during the first 10 months of the current crop year exceed 105 percent of shipments during the comparable period of the prior crop year. This type of offer is limited to the amount exceeding 105 percent of the prior year's shipments. Thus, if the market for raisins expands rapidly during any crop year, this provision allows the Committee to make more raisins available to handlers to supply the increased market needs. The 105 percent limit was established to safeguard against depressing raisin prices by expanding the free supply by too large a quantity. Like the 10 plus 10 offers, handler acceptance of this type of offer is voluntary.

During the past two seasons, the Committee has reduced its desirable carryout inventory level by about 20 percent, meaning that the free percentage provides for fewer raisins to remain at the end of a crop year for use in the following crop year. Reduction of the desirable carryout, coupled with the elimination of the export program which offered reserve raisins for free use, has increased the likelihood that the raisin industry might have an inadequate supply of raisins late in a crop year which featured an increase in shipments. If handlers, when making acquisition decisions early in the season, underestimate their needs for the crop year, they could be forced to either lose current sales or ship raisins which were intended to be carried over, which could prevent the industry from meeting its market needs early in the next crop year.

As an example, if the raisin industry were to experience 6 percent growth over the first 10 months of a given crop year, the Committee could offer reserve raisins for free use up to 1 percent of the previous year's shipments. With the tightening of the desirable carryout and the absence of reserve raisins offered under the export program, the industry could face a short supply of free raisins while an adequate supply of reserve raisins sat unused.

At its meeting on April 10, 1997, the Committee recommended suspending language in both §§ 989.54(g) and 989.67(j). In the former, the suspension eliminates both the simultaneous requirement and the November 15 deadline for the 10 plus 10 offers. In the latter, the 105 percent requirement is removed from the required level of shipments and the size of the reserve offer for free use.

Elimination of the simultaneous requirement and the November 15 deadline from the first sentence of § 989.54(g) will leave the following sentence, "the Committee shall make two offers of reserve tonnage to sell to handlers to sell as free tonnage for each varietal type for which preliminary percentages have been computed and announced." This means that if preliminary percentages have been established, the Committee will still be required to make two 10 plus 10 offers, but these offers could take place independently at any time during the crop year.

The Committee expects that these changes will solve some of the planning and credit problems which handlers currently face. If one or both of the offers were moved to later in the crop year, handlers would be able to make better informed acquisition decisions. At the same time, a change in the offer date would ease the autumn credit burden for many handlers.

The language suspension in § 989.67(j) will leave the following as one of the circumstances which allows the Committee to offer reserve tonnage to handlers for free use: "free tonnage shipments during the then current crop year exceeding shipments of a comparable period of the prior crop year: *Provided*, that, such sale of reserve tonnage shall be limited to the quantity exceeding shipments for the first ten months of the prior crop year". Thus, if free tonnage shipments were up during the first ten months of a crop year, the Committee could offer reserve raisins to handlers for free use in any amount exceeding the prior year's shipments.

Following the earlier example, if the raisin industry were to experience 6 percent growth over the first ten months of a given crop year, the Committee could offer reserve raisins for free use up to 6 percent of the previous year's shipments. In fact, if the growth was only 4 percent, the Committee could offer up to 4 percent of the previous year's shipments. Under the current provisions, the Committee could make no offer at 4 percent growth because the year's growth did not meet the 5 percent threshold. The Committee believes that the current inflexibility could become problematic in the future, particularly if the industry was unable to take advantage of a growth opportunity in what has, in recent years, become a relatively stagnant market.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order and approximately 4,500 producers of raisins in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 8 handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 8 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This final rule suspends provisions concerning certain offers of reserve raisins to handlers for free use under §§ 989.54(g) and 989.67(j) of the raisin marketing order. The current provisions in § 989.54(g) require that the

Committee make two simultaneous offers of reserve raisins for free use, each equal to 10 percent of the prior year's free shipments, on or before November 15 of each crop year for each variety for which preliminary volume control percentages have been computed and announced. These "10 plus 10" offers are intended to ensure that the establishment of volume control regulations will not prevent the industry from having enough raisins to meet the prior year's shipments plus some raisins for market expansion.

Changes in the Committee's export programs have caused many handlers to greatly increase their 10 plus 10 purchases. During the 5 years prior to the change to the export programs, handler purchases of raisins from 10 plus 10 offers averaged 10,355 tons. In the 2 seasons since the program was modified, the purchases increased to an average of 61,033 tons, a 489 percent increase. The requirement that the offers be made simultaneously on or before November 15 of each crop year does not allow the Committee the flexibility that it now believes is necessary for handlers to meet their market needs. Because these offers must take place so early in the season, handlers have to guess at the level of raisins they will need for the year.

Raisin handlers, because most raisin deliveries to handlers are concentrated between September and November, must establish credit lines totaling between $250–270 million each autumn. Because of the increase in 10 plus 10 purchases, handlers have had to establish an additional $75–80 million in credit during their most financially burdened period of the year. The Committee believes that the inflexibility of the November 15 deadline and the requirement of simultaneous offers creates unnecessary financial stress on handlers, and that this suspension will alleviate that stress and allow the handlers to better plan to meet their market needs.

Section 989.67(j) of the order authorizes the Committee to offer reserve raisins for free use if raisin shipments during the first 10 months of the current crop year exceed shipments during the comparable period of the prior crop year. Thus, if the market for raisins expands rapidly during any crop year, this provision allows the Committee to make more raisins available to handlers to supply the increased market needs. Any such offer is limited, however, to the amount of raisins exceeding 105 percent of the prior year's shipments.

As described above, handlers are now making their acquisition decisions earlier in the season than in previous years. In addition, the Committee has tightened its supply situation during the last 2 seasons by reducing its desirable inventory level and eliminating the feature of its export program which made reserve tonnage available to handlers for free use. The Committee believes that these factors leave the industry with little room for error; if handlers underestimate the tonnage that is needed to meet the market needs, there are too few avenues for acquiring raisins for free use later in the season. In a growth year, a poor estimate could result in customers with unmet needs.

The earlier example discussed years in which the industry experienced 4 and 6 percent growth, and that the Committee now believes that the inflexibility of § 989.67(j) could prevent the industry from taking advantage of growth opportunities in what has become a relatively stagnant market. According to the Committee's 1996–97 marketing policy, during the last 10 crop years free shipments have ranged between 290,646 (in 1986–87) and 338,881 tons (1990–91). The most recent complete crop year's shipments (1995–96) were the lowest, 315,170 tons, since 1986–87. The Committee calculates that the loss of just 1 percent of annual shipments due to the inability to supply the late season market would cost about $3 million in grower revenue.

The Committee also considered the following situation. If free shipments during 10 months of a crop year were 275,000 tons, and shipments grew by 4 percent (11,000 tons) during the same time period during the following crop year, the current provision would allow for no reserve offer due to growth. Under this suspension, however, the Committee could offer up to 11,000 tons of reserve raisins for free use. Assuming a profit to handlers of 1 cent per pound, the Committee calculates that operating under the current provision would cost handlers $220,000 in profit and growers $11 million in revenue. The benefits generated by this rule are not expected to be disproportionately greater or less for small handlers or producers than for large entities.

The Committee discussed alternatives to this change, including not suspending any language in either section of the order. Suspending the provisions discussed herein provides the Committee with flexibility, including the option of operating exactly as it does now. If the Committee were to find any change was not beneficial, the suspension does not prevent the Committee from returning to its current procedures for the next year. Leaving the sections as they currently stand, however, offers the Committee no marketing flexibility. The Committee also recognized that reserve raisins can be offered for free use to supplement an inadequate carryover inventory, but thought that this option could be too late to prevent lost sales. Also, this suspension will not prevent the Committee from selecting such a course.

This final rule suspends language concerning offers of reserve tonnage raisins under the raisin marketing order. The order currently authorizes such offers and would continue to do so. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was issued by the Department on July 22, 1997, put on display at the Office of the Federal Register on July 27, 1997, and published in the **Federal Register** on July 28, 1997. Copies of the rule were mailed by the Committee's staff to all Committee members, raisin handlers, and dehydrators. Finally, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 30-day comment period which ended August 27, 1997. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the order language to be suspended, as hereinafter set forth, no longer tends to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5

U.S.C. 553) because the crop year is underway and this rule suspends language concerning offers of reserve tonnage raisins to handlers for free use. This action could provide the Committee with more flexibility in meeting its marketing needs and therefore should be implemented as soon as possible. Further, handlers are currently making their marketing plans for the upcoming season. Handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 989.54 [Amended]

2. In § 989.54, paragraph (g) the words, "On or before November 15 of the crop year," and "simultaneous", are suspended indefinitely from the first sentence.

§ 989.67 [Amended]

3. In § 989.67, paragraph (j) the words, "by more than 5 percent" and "105 percent of", are suspended indefinitely from the first sentence.

Dated: September 22, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–25621 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1138

[DA–97–07]

Milk in the New Mexico-West Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This document suspends certain provisions of the pool plant and producer milk definitions of the New Mexico-West Texas Federal milk marketing order for a two-year period. Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a majority of the producers who supply milk to the market, requested continuation of the current suspension which would limit the pooling of diverted milk. Continuation of the suspension currently in effect is necessary to ensure that dairy farmers who have historically supplied the market will continue to have their milk priced under the New Mexico-West Texas order without incurring costly and inefficient movements of milk.

EFFECTIVE DATE: October 1, 1997, through September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456, (202)720–9368, e-mail address Clifford_M_Carman@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 7, 1997; published May 13, 1997 (62 FR 26257).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of March 1997, the milk of 174 producers was pooled on the New Mexico-West Texas Federal milk order. Of these producers, 26 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 19 handlers operating pool plants under the New Mexico-West Texas order. Twelve of these handlers would be considered small businesses.

The suspension continues the current suspension of segments of the pool plant and producer milk definitions under the New Mexico-West Texas order. The continued suspension will allow more pooling of diverted milk. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Preliminary Statement

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the New Mexico-West Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 13, 1997 (62 FR 26257) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting and one comment opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of October 1, 1997, through September 30, 1999, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1138.7, paragraph (a)(1), the words "including producer milk diverted from the plant,";
2. In § 1138.7, paragraph (c), the words "35 percent or more of the producer"; and
3. In § 1138.13(d), paragraphs (1), (2), and (5).

Statement of Consideration

This rule continues the suspension of segments of the pool plant and producer milk definitions under the New Mexico-West Texas order. The provisions that are suspended limit the pooling of diverted milk. This suspension will be effective from October 1997 through September 1999. The current suspension will expire September 30, 1997.

This rule continues the suspension of:

1. The requirement that milk diverted to a nonpool plant be considered a receipt at the distributing plant from which it was diverted;
2. The requirement that a cooperative association must deliver at least 35 percent of its milk to pool distributing plants in order to pool a plant that the cooperative operates which is located in the marketing area and is neither a distributing plant nor a supply plant;
3. The requirement that a producer must deliver one day's production to a pool plant during the months of September through January to be eligible to be diverted to a nonpool plant;
4. The provision that limits a cooperative's diversions to nonpool plants to an amount equal to the milk it caused to be delivered to, and physically received at, pool plants during the month; and
5. The provision that excludes from the pool, milk diverted from a pool plant to the extent that it would cause the plant to lose its status as a pool plant.

Continuation of the current suspension was requested by Associated Milk Producers, Inc., a cooperative association that represents a substantial number of dairy farmers who supply the New Mexico-West Texas market. The cooperative stated that marketing conditions have not changed since the provisions were suspended in 1995 and therefore should be continued until restructuring of the Federal order program is achieved as mandated in the 1996 Farm Bill.

A comment in support of the continuation of the suspension was filed by Associated Milk Producers, Inc. and Mid-America Dairymen, Inc., two cooperative associations representing producers whose milk is pooled on Order 138. The cooperative associations state that the continued suspension is necessary to balance markets in the Texas and New Mexico milksheds and to allow producers in the area to participate in the Federal order program.

Select Milk Producers, Inc. (Select), a dairy cooperative located in New Mexico representing producers that account for approximately one-third of the milk that has been historically associated with the New Mexico-West Texas Marketing area, submitted a comment in opposition to the continued suspension. The cooperative states that current marketing conditions do not warrant the suspension of segments of performance standard provisions in the marketing area. According to the commentor, pooling standards that are loose or non-existent permit abusive pool shifting to occur and may result in the inefficient and uneconomical movement of milk supplies.

The cooperative association opposes the suspension of the portion of the pool plant provision which would exclude producer milk diversions for purposes of pool plant qualification. According to Select, without such a standard there is an unlimited amount of milk that can be attached to the order and diverted.

Select states that instead of suspending the pooling qualifications altogether as proposed by AMPI, the Secretary should utilize his authority to alter the shipping requirement by up to 10 percentage points as specified in Order 138. A reduced shipping requirement, according to Select, would permit qualification of milk in the order without eliminating the provision entirely.

The cooperative also states that the "touch-base" provision included in the New Mexico-West Texas order should not be suspended entirely, but that a minimum touch-base requirement should be maintained to ensure that loose shipping requirements are not abused. Furthermore, Select states that the proponent fails to identify the amount of milk that may be depooled if the standard limiting the total quantity of milk diverted by a cooperative association is not suspended.

During the past two years, milk production in this region has increased while Class I utilization has decreased. Thus, a return to the pooling standards of the order would likely result in milk movements solely for pooling requirements and/or some milk being depooled. The continuation of the suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the New Mexico-West Texas marketing area will continue to benefit from pooling and pricing under the order.

Accordingly, it is appropriate to suspend the aforesaid provisions beginning October 1, 1997, through September 30, 1999.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting and one comment opposing the continued suspension were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1138

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR part 1138 is amended as follows:

PART 1138—MILK IN THE NEW MEXICO-WEST TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1138 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1138.7 [Suspended in part]

2. In § 1138.7, paragraph (a)(1), the words "including producer milk diverted from the plant," are suspended;

3. In § 1138.7, paragraph (c), the words "35 percent or more of the producer" are suspended; and

§ 1138.13 [Suspended in part]

4. In § 1138.13, paragraphs (d) (1), (2), and (5) are suspended.

Dated: September 22, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–25620 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1717

RIN 0572–AB26

Settlement of Debt Owed by Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Administrator of the Rural Utilities Service (RUS) hereby establishes policies and standards for the settlement of debts and claims owed by rural electric borrowers. In addition to establishing policies and standards for debt settlement, the rule establishes RUS policy on subsequent loans to borrowers whose debt has been restructured.

DATES: This rule is effective September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Blaine D. Stockton, Jr., Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone: 202–720–9545.

SUPPLEMENTARY INFORMATION: This regulatory action has been determined to be significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has been reviewed by the Office of Management and Budget (OMB). The Administrator of the Rural Utilities Service (RUS) has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), for which RUS published a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). Therefore, the Regulatory Flexibility Act does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Sec. 3 of the Executive Order.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements: The recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0116.

Background

On April 4, 1996, Public Law 104–127 (110 Stat. 888) amended section 331(b) of the Consolidated Farm and Rural Development Act (Con Act) to extend to RUS loans and loan guarantees the Secretary of Agriculture's authority to compromise, adjust, reduce, or charge-off debts or claims owed to the government (collectively, debt settlement). The amendment also extended to the security instruments, leases, contracts, and agreements administered by RUS, the Secretary's authority to adjust, modify, subordinate, or release the terms of those documents. The Secretary of Agriculture, in 7 CFR 2.47, has delegated authority under section 331(b) to the Administrator of RUS, with respect to loans made or guaranteed by RUS.

The proposed rule to implement this new authority was published in the **Federal Register** on March 3, 1997 at 62 FR 9382. Comments were received from 42 different individuals or organizations, including the National Rural Electric Cooperative Association (NRECA), the National Rural Utilities Cooperative Finance Corporation (CFC), the Edison Electric Institute (EEI), the Office of Inspector General of the U.S. Department of Agriculture, an ad hoc group of 6 investor-owned utilities (IOUs), 9 power supply borrowers, 16 distribution borrowers, and 12 other individuals or organizations. Two of the power supply borrowers submitted identical comments, which were supported by identical or supporting comments from 9 of their members. Five other distribution borrowers and one state-wide borrower association submitted comments identical to their power supplier's comments.

In general, comments from NRECA, CFC, and most borrowers supported a more expansive use of debt relief under section 331(b) of the Con Act, more flexibility and discretion for the Administrator to grant debt relief, no limitation on the debt relief measures, such as the proposed 5 percent floor on interest rates, and other changes in support of more generous terms and conditions for defaulting borrowers and other borrowers facing financial or competitive problems. In contrast, 2 distribution borrowers opposed settlement of borrowers' debts, stating that debt forgiveness is unfair to the majority of cooperatives who exercise fiscal responsibility and presents an undesirable public image for all electric cooperatives. EEI, the ad hoc group of 6 IOUs, and 2 individual IOUs generally favored strict limitation of the Administrator's debt settlement authority to borrowers in default or where default is imminent; more specific and more restrictive standards for determining eligibility for relief and the amount of relief provided; referral of most cases to the Department of Justice for settlement under the Attorney General's settlement authority; more extensive documentation of the need for relief, the amount of relief provided, and the underlying justification; and greater congressional and public oversight of RUS' debt settlement activities.

All comments received were considered in drafting this final regulation. The more common and more significant comments are discussed below.

Information Collection and Recordkeeping Requirements

Several commenters expressed concern that the estimate of 2 responses per year from the public, in the from of borrowers seeking debt settlement, was too low and might impose an artificial limit on the number of applications for debt relief RUS would consider. The estimate is nothing more than an estimate of the average number of responses over a period of several years. More applications may be received in some years than in others. This estimate does not place any limit on the number of legitimate applications RUS would consider.

Expansion of Use of Debt Settlement Authority

As indicated above, NRECA and several borrowers urged that the rule be expanded to authorize the use of debt relief to lower the costs of borrowers that, although not in default and not expected to face default within the foreseeable future, nevertheless face serious financial or competitive problems. They argued that Congress intended the new debt settlement authority to be used in this expansive way. EEI and the ad hoc group of 6 IOUs argued just the opposite. They argued that Congress intended the authority to be used only in cases where a borrower has defaulted or where default is imminent. They further argued that providing debt relief to non-defaulting borrowers would give an unfair competitive advantage to cooperatives at the expense of IOUs and other utilities, which they and other taxpayers would be required to pay for. They also said that such expanded use of debt relief would constitute a federal program of stranded cost recovery (avoidance) for cooperatives, at taxpayer expense, without any direction from Congress on stranded cost recovery for the electric industry as a whole.

RUS does not believe that the language of section 331(b) or the legislative history of the section supports the expansive use of debt settlement to lower the costs and improve the competitive positions of borrowers that are not in default nor expected to default in the foreseeable future. Furthermore, RUS does not believe it would be good policy to accept applications with respect to defaults projected far into the future. There would be too many uncertainties with respect to a borrower's particular circumstances and the competitive and regulatory environment within the industry as a whole. It would be too difficult to accurately assess the borrower's problems, the likelihood of default, effective remedial actions, and the actual need for and appropriateness of debt settlement.

NRECA and several borrowers also urged that debt relief be used to encourage mergers between borrowers, regardless of whether or not any of the parties to the merger are in default or are expected to default in the foreseeable future. RUS agrees that our policies and programs ought to support mergers and consolidations between borrowers that will likely result in economies of scale and lower operating costs, better management, and improved opportunities for innovation, technological development, market expansion, and better customer service. This past December, with publication of 7 CFR 1717 subpart D, RUS instituted several new forms of transitional assistance for borrowers entering into economically beneficial mergers and consolidations. While such assistance is appropriate and strongly supported by RUS, RUS does not believe it is appropriate to use debt relief under section 331(b) of the Con Act to encourage mergers or consolidations in the absence of default or the likelihood of default in the foreseeable future.

Some borrowers also argued that, in support of the objectives of the RE Act, mergers between borrowers in connection with debt settlement should be given preference to mergers with or acquisitions by nonborrowers. While as a general proposition, RUS is very supportive of economically beneficial mergers that will strengthen both loan security and service to rural electric consumers, and is happy to provide transitional assistance for such mergers under 7 CFR part 1717 subpart D, RUS does not believe it is appropriate to give preference to mergers between borrowers in connection with debt settlements if granting such preference would in any material way reduce debt recovery by the government in comparison with any other debt settlement alternative.

Reports to Congress and the Public

The ad hoc group of 6 IOUs recommended that the findings of the in-depth analysis used to determine the need for and amount of debt settlement be published in the **Federal Register** in each case, with notice and comment from the public; that RUS be required to report periodically to Congress (also supported by EEI) on borrowers seeking settlement, the amount of money at risk, the timetable for acting on requests, and the status of settlements under consideration, with the information being made available to the public; and that RUS publish written orders in the **Federal Register** on final debt settlements, detailing the basis for the debt settlement decision, and providing opportunity for public comment. The commenters argued that these procedures would keep Congress better informed; improve the information available to the Administrator in making debt settlement decisions; and give interested taxpayers and competitors of co-ops a chance to provide input on the co-ops' financial and competitive positions and their need for debt settlement, and explain how alternative workout solutions would affect them.

Regarding the recommendation that RUS be required to report periodically to Congress, it should be noted that RUS does report to Congress on its debt settlement activities as part of the budget process, in testifying before congressional oversight committees, and in responding to special requests from Congress. Since Congress always has the prerogative to request status reports and hearings, RUS does not believe it is necessary to require such reporting in this regulation.

Publishing the findings of the in-depth analyses of borrowers' needs for debt settlement and the justification for the amount of settlement provided, and providing opportunity for public comment, presents several problems. It could risk divulging the government's strategy and internal deliberations on debt settlements, thus damaging the government's ability to achieve maximum recovery in other debt settlement cases. In addition, much of the information about a borrower and alternative workout scenarios contained in an in-depth analysis could be used by the borrower's competitors, other creditors or other parties, to the disadvantage of both the borrower and the government. Such information should not be made routinely available to the public at large. Also, allowing the normal 30 to 60 days for public comment on the in-depth analyses could cause delays in some cases, such that certain opportunities with a limited timeframe could be missed, to the detriment of both the borrower and the government.

Moreover, development of the in-depth analyses, whether supervised by RUS or an independent consultant, would include the gathering of all relevant information from sources likely to have information bearing on the question of a borrower's need for debt settlement and the alternatives that will likely maximize the government's debt recovery. For example, in many cases, RUS will require that a competitive bid be conducted for the borrower's system to determine its value. Relevant information would be expected to be obtained from bidders and other parties as part of that process and other information collection efforts. To ask for public comments on what would have to be, for reasons of confidentiality, rather heavily summarized versions of the in-depth analyses, after the analyses

have been completed, is not likely to produce much additional useful information in most cases.

As to the last point, on publishing written orders in the **Federal Register** on final debt settlements and providing opportunity for public comment, the purpose of such a procedure isn't clear. If the main purpose is to inform the public of decisions reached on debt settlements, it would be more efficient and timely to continue to rely on the trade press and general media. If the primary purpose is to provide evaluation and supervision of RUS' debt settlement activities, that function is more appropriately and effectively provided by the traditional program planning, evaluation, and budgeting processes at the RUS, USDA, Office of Management and Budget, and congressional levels.

Confidentiality of Information and the Deliberative Process

NRECA and several borrowers expressed concerns that privileged or confidential information about borrowers gathered by RUS be held in strict confidence. They expressed concerns that such information, if not held in strict confidence, could be used by competitors, other creditors, or litigants to gain financial or competitive advantage over them. RUS agrees that privileged or confidential information should be held in strictest confidence and should not be released beyond RUS and its consultants and advisors except when release of the information is necessary to determine the value of a borrower's system and the need for and appropriate type of debt settlement. For example, it would be necessary to provide certain information about a borrower when conducting a competitive bid for the borrower's system.

RUS also believes that commercial or financial information obtained from borrowers that is privileged or confidential, as well as agency documents and other information, such as inter-agency or intra-agency memoranda, letters, or papers, that are predecisional or deliberative in nature, should be withheld from the public under the exemptions in the Freedom of Information Act, such as Exemption 4. Disclosure of this information would allow other financially troubled borrowers to learn the general strategic and tactical approaches of RUS and DOJ in dealing with financially troubled borrowers. Disclosure would harm the deliberative process of RUS and DOJ in negotiating, settling, and compromising debts.

Section 1717.1201 Definitions

One commenter suggested that the definition of debt (outstanding debt) be augmented by adding several specific items, such as deferred principal and deferred interest. RUS believes that deferred principal and deferred interest ordinarily would be considered as being included as part of "principal" and "accrued interest," which are listed as elements of outstanding debt. It was not RUS' intention that the specific items listed in the definition be all inclusive of every conceivable element and variation of nomenclature that may make up the outstanding debt of a borrower. Rather than trying to list every conceivable element, the definition has been amended to indicate that the items listed are not necessarily the only elements included in outstanding debt.

Section 1717.1202 General Policy

Several comments were received regarding paragraph (d) of this section, which sets forth several general factors (but not an exclusive list of factors) the Administrator will consider in structuring debt settlements and determining the amount of debt recovery that is possible. NRECA and several borrowers recommended that regulatory and legislative actions by states be added to the list since such actions can affect a borrower's ability to meet its financial obligations. EEI and the ad hoc group of 6 IOUs criticized paragraph (d) for failing to list, as one of the factors, the ability of the borrower to repay its debts.

Paragraph (d) is intended to set out some of the more important general factors the Administrator will consider in structuring debt settlements and determining the amount of debt a borrower can repay. These general factors relate either to public policy or the competitive positions of borrowers and their ability to meet their financial obligations. They are not intended to have priority over other factors that affect a borrower's ability to repay debt. Nor are they intended in any way to modify or diminish the policy set forth in paragraph (a) of this section that "wherever possible, all debt owed shall be collected in full in accordance with the terms of the borrower's loan documents," or the policy in paragraph (c) that the Administrator's authority to settle debts will be limited to cases where "settlement will maximize the recovery of debts and claims owed to the government." This fact is particularly relevant with respect to one IOU's comment that listing market and nonmarket forces that affect competition in the electric utility industry introduces a vague and overbroad provision that could result in RUS providing borrowers an unfair advantage in competitive electric markets. That is not the intent. Market and nonmarket forces are included in simple recognition of the fact that they do affect a borrower's ability to generate revenue to meet its financial obligations to the government and other creditors.

Paragraph (d) has been amended to try to allay concerns that the factors listed might somehow override the central consideration of a borrower's ability to repay debt. Also, whereas legislative and regulatory actions by the states was assumed to be included under "other market and nonmarket forces as to their effects on competition * * *," they are now explicitly listed as one of the general factors that will be considered. While explicitly recognizing that state regulatory and legislative actions may affect the ability of borrowers to meet their financial obligations, RUS believes state legislators and regulators should give due consideration to the effects of their actions on the ability of rural electric systems to recover their costs and meet their financial obligations to the federal government and other creditors.

In related comments, EEI and the ad hoc group of 6 IOUs criticized the proposed rule for failing to set out detailed standards for deciding when a borrower is unable to meet its financial obligations and the amount of debt relief that is appropriate. These commenters also suggested several specific changes and additions to the analyses to be conducted in determining the need for and the appropriate amount of debt settlement. Several of these suggestions have been adopted, as discussed elsewhere.

As for more detailed standards for deciding when debt settlement is needed and the amount of debt settlement, RUS believes that, with the changes made, the rule provides reasonably detailed standards. Sections 1717.1202 and 1717.1204(b)(1) clearly establish that, wherever possible, all debt will be collected in full in accordance to its terms and that settlement will be used only when it will maximize the recovery of debts and claims. The remainder of § 1717.1204 sets out in substantial detail the information and actions required for the Administrator to make a determination that debt settlement is necessary and the appropriate amount and form of the settlement. Given the tremendous variation from case to case in the numerous factors that affect a borrower's ability to meet its financial

obligations (e.g., economic, financial, competitive, engineering, technological, and regulatory factors) RUS does not believe that it is possible to develop a more detailed, immutable set of decision criteria that would work well in most cases.

Section 1717.1203 Relationship Between RUS and Department of Justice

NRECA, CFC, and several borrowers asked for clarification of several aspects of this section. First, if a claim has been referred in writing to the Attorney General for settlement under the Attorney General's authority, can the claim be referred back to the Administrator for action? Yes, it can, at the discretion of the Attorney General. Second, if a claim has been referred in writing to the Attorney General, is there a formal mechanism by which the borrower or the Administrator could request that the claim be referred back to the Administrator? No, there is no formal mechanism. A claim could be referred back to the Administrator at the discretion of the Attorney General. Third, if a borrower has previously had its debt settled under the authority of the Attorney General and the borrower applies for additional relief on any outstanding debt to the government, can the Administrator use his or her authority to consider the request from the borrower? The Administrator could consider the borrower's request after promptly notifying the Attorney General that the request has been received. These points have been clarified in the changes made to § 1717.1203.

Section 1717.204(b) Need for Debt Settlement

The Office of Inspector General (OIG) of the U.S. Department of Agriculture recommended that a borrower's application for debt settlement include a certification by the borrower that it is unable to meet its financial obligations. RUS agrees with the recommendation and has revised § 1717.204(b) to require a resolution to that effect by the borrower's board of directors.

OIG also recommended the borrower be required to certify that all the information provided to RUS in connection with the application for debt settlement is true and accurate in all material respects. RUS has adopted this recommendation and has added a new paragraph (m) to § 1717.1204.

NRECA and several borrowers criticized the provision in paragraph (b)(1) that would limit the use of debt settlement to borrowers that have defaulted or are likely to default within 24 months of the borrower's application for debt settlement. They felt that either there should be no limit on the forecast period within which a borrower is likely to default, or that the forecast period should be longer. Some of them felt that limiting the forecast period to 24 months would limit the use of debt settlement to essentially crisis situations, where it would be too late to help the borrower in dealing with its serious problems and too late to avoid bankruptcy. EEI and the *ad hoc* group of 6 IOUs argued that debt settlement should be used only when a borrower has in fact defaulted, and that use of a 24 month forecast period for when a borrower is likely to default would amount to an extraordinary grace period and would result in borrowers receiving an unfair subsidy from RUS at the expense of taxpayers and the borrowers' competitors.

RUS continues to believe that its middle ground position is the right one on this issue. It does not believe that debt settlement should be used only when a borrower has already defaulted. Debt settlement should be one of the tools available to assist borrowers in addressing their own problems when it is reasonably clear that the borrower will default without some debt relief. RUS believes, however, that a specific, defined time period within which a borrower is likely to default is needed to discourage unmerited or wildly speculative applications for relief, and to focus government resources on problems that can be defined and resolved with some degree of certainty, as opposed to distant potential problems that may not materialize or may change greatly in the rapidly changing industry environment. This approach is an important element in maximizing debt recovery by the government.

The forecast period is an aid for identifying cases where default is relatively imminent. It does not establish the time period during which RUS will consider the borrower's application for relief. Nor does the forecast period limit in any way discussions between RUS and borrowers regarding their financial and economic problems, possible actions by the borrowers to address their problems, and any assistance that RUS may be able to offer, short of debt settlement, such as deferral of principal and interest payments under section 12 of the RE Act, merger incentives under 7 CFR 1717 subpart D, or waiver of certain requirements and controls under §§ 1710.4 or 1717.600(c). Eliminating the forecast period and accepting applications from borrowers who assert that they may default at some distant point in the future would not provide greater incentive for borrowers to take advantage of all available opportunities to address their problems themselves or to work with RUS in fashioning workable solutions short of debt settlement. RUS continues to believe that a forecast period of 24 months is reasonable and will enable RUS to assist borrowers in dealing with serious problems before they become insurmountable.

Some borrowers argued that requiring a borrower to demonstrate to RUS that it will likely default within a certain period of time in order to be considered for possible debt settlement would ruin the borrower's credit rating and make it extremely difficult for the borrower to obtain credit from other sources. Since debt settlement will be used only when a borrower has already defaulted or will likely default in the relatively near future, RUS believes that the act of applying for debt settlement will probably have the same effect on the borrower's relationship with other creditors whether or not the borrower is required to demonstrate to RUS that it will likely default within the forecast period. No change has been made in the requirement that borrowers must demonstrate to RUS that they will probably be unable to meet their financial obligations sometime during the forecast period.

NRECA, CFC, and some borrowers argued that requiring the borrower to perform an in-depth analysis of the opportunities available to the member-owners of a power supply borrower to reduce costs or otherwise improve their financial and competitive positions could cause too much delay and should be optional. RUS believes that determination of the need for debt settlement for a power supply borrower normally should not be based only on the condition and potential remedial actions of the power supply borrower, since the efficiency and effectiveness of the borrower's member-owners will often have a major bearing on the health of the power supply borrower. If there is a serious financial problem warranting consideration of debt settlement, there appears to be no reason why a credible analysis of the member-owner's operations cannot be completed in a timely manner. However, since there could be some instances where it may be in the government's interest to waive this requirement, the provision has been amended to allow for a waiver by the Administrator.

EEI and an investment banker recommended that the in-depth analysis required to demonstrate the need for debt settlement include the possibility of raising rates in order to generate more

revenue to meet the borrower's obligations. It was assumed by RUS that such analysis would be included, and that has now been made explicit. EEI also recommended that the in-depth analysis of the need for debt settlement include a review of the borrower's contracts for services and supplies; a thorough analysis of the borrower's management structure, system operations, and financial and operating statements for possible cost reductions; and comparisons of the borrower with one or more "benchmark" electric utilities to help identify areas for efficiency gains. RUS agrees with the substance of these recommendations and notes that certain elements, such as including a thorough analysis of the borrower's management structure, system operations, and financial and operating statements, are already included in one form or another. Changes have been made to paragraphs (b)(2) and (b)(3) of § 1717.1204 to include analytical elements contained in EEI's recommendations that were not explicitly included in the proposed rule.

With respect to the use by RUS of independent consultants to advise on debt settlements (see paragraph (b)(3) of § 1717.1204), a borrower suggested that RUS have a pre-qualified list of consultants for borrowers to choose among, in order to eliminate the need for independent consultants. RUS disagrees with this suggestion. The choice of an independent consultant must reside entirely with RUS in order to ensure that the consultant has the expertise needed for a particular case, and is in fact independent and capable of rendering impartial and objective analysis and advice to RUS. NRECA, in its comments, recognized the need for the consultant to be completely independent of the borrower, but suggested that RUS should consider consulting with the borrower before making a selection. RUS does not believe it should be under any obligation to consult with the borrower, and would view any such obligation as compromising its abillty to select a truly independent consultant.

The *ad hoc* group of 6 IOUs stated that use of independent consultants and other neutral third parties to determine the value of the borrower's system should be mandatory rather than optional. RUS agrees that independent consultants should be used in most cases to help RUS determine the value of a borrower's system, but does not believe that this should be mandatory in all cases. The additional time and cost of obtaining an independent consultant's assessment may not be worthwhile in all cases, such as when the amount of debt involved is small, or when only very limited relief is being considered, such as reamortization or extension of maturities.

Section 1717.1204(c) Debt Settlement Measures

Several commenters argued that extension of debt maturities should not be limited to the weighted average of the expected remaining useful lives of the assets pledged as security. RUS agrees that the language in the proposed rule is suitable primarily when the only assets involved are plant and other real estate. In many cases there may to other "assets" pledged as security for the debt, such as wholesale power contracts, irrevocable trusts, or other assured streams of revenues pledged as security, which don't fit the normal concept of an asset's useful life. Given these considerations, RUS has concluded that because of the unusual complexity of the loan security issues when debt is restructured, it is not possible to impose a fixed generic limit on debt maturity tied to specific assets or other forms of security that would serve the government's interests in all cases. The limitation in § 717.1204(c) on debt maturity has been revised such that the maturity of the restructured debt shall not extend more than 10 years beyond the latest maturity date prior to settlement. This is an outside limit, only. The actual maturity approved in each case will depend on specific consideration of quality and longevity of the collateral and other evidence or guarantees that the debt will be repaid and is reasonably secured.

Proposed paragraph (c) included reducing the interest rate on debt as one of the settlement measures, but imposed a floor of 5 percent interest, below which rates could not be reduced. NRECA and several borrowers argued that limiting the amount that interest rates could be reduced would limit the Administrator's flexibility in negotiating terms favorable to the government. RUS does not believe the 5 percent interest floor would be a problem in most cases, but recognizes that the Administrator should be able to waive the limitation if he or she determines that that would facilitate the maximization of debt recovery by the government. The paragraph has been amended accordingly.

Section 1717.1204(d) Debt Owed to Other Creditors

CFC stated that it was unfair to expect similar debt relief on a pro rata basis to be provided by other secured lenders, and said that pro rata implied equal methodology in determining the fair contribution of each secured lender. RUS disagrees that it would be unfair to expect each of the secured lenders to provide similar relief on a pro rata basis, or "other benefits or value to the restructuring." RUS recognizes that a given structure of debt relief that may be suitable to one lender may not be entirely suitable to another. RUS is not trying to impose the same structure or methodology on all lenders involved, but does want to ensure that each lender provides it fair share of relief. RUS believes that the proposed language, retained herein, adequately expresses the intended objective and is not unfair to other lenders.

NRECA suggested substituting the words "comparable concessions" for "similar relief on a pro rata basis . . . or other benefits or value." RUS does not believe that this change would result in greater assurance that each lender will provide its fair share of debt relief.

Section 1717.1204(e) Competitive Bids for System Assets

Paragraph (e) provides that RUS may ask the borrower or an independent consultant to solicit competitive bids from potential buyers of the borrower's system. One commenter asked how conflicts of interest could be avoided if the borrower, rather than an independent consultant, solicits the bids. RUS believes that any conflicts of interest can be prevented or minimized by the provisions in paragraph (e) which require the bidding process to be conducted in consultation with RUS and using standards and procedures acceptable to RUS.

A borrower stated that preference should always be given to a co-op acquiring or merging with a troubled borrower, and that competitive bids should not be required when acquisition by or merger with another RUS-financed co-op is possible. As discussed above, RUS strongly supports mergers and consolidations between borrowers that are economically beneficial to the parties and, as a result, strengthen RUS loan security. RUS provides incentives for such mergers and consolidations under 7 CFR 1717 subpart D. A merger or consolidation among two or more borrowers may represent one of the elements of a debt settlement, but should not be given preference at the expense of reducing the government's recovery of debt.

Another borrower commented that requiring competitive bids for a borrower's system and using the bids to sell the system is not a mortgage requirement for non-defaulting borrowers, and may damage the credit worthiness of solvent borrowers. RUS notes that soliciting of competitive bids applies only to borrowers that have requested debt settlement, and in that situation is appropriate whether or not the borrower has defaulted. It is not a requirement imposed on all borrowers, but simply an option available to the Administrator for determining the value of assets of borrowers that have requested debt settlement.

The *ad hoc* group of 6 IOUs stated that the value to the Treasury of selling all or part of the borrower's assets should be considered in every case, and should not be optional. RUS does not believe it is necessary to actually solicit competitive bids in every case to determine the value of a borrower's system. Various appraisal techniques other than actual competitive bids may be more cost-effective, more timely, or otherwise more appropriate in some circumstances to determine a system's value.

Section 1717.1204(i) Regulatory Approvals

A borrower stated that RUS should be able to conditionally approve a settlement before all regulatory approvals are obtained so that the borrower could proceed to implement an action plan. NRECA stated that regulatory approvals should be required in advance of RUS approval of a debt settlement only "insofar as possible," since it may not be possible to obtain the regulatory approvals in some cases. RUS would note that most remedial actions available to borrowers do not hinge on RUS approval of debt relief, and that borrowers should aggressively implement such actions without delay. However, the point is well taken that RUS could approve or preliminarily approve a debt settlement or parts of a settlement before all regulatory approvals have been obtained. The paragraph has been amended to clarify that only those regulatory approvals deemed necessary by the Administrator must be obtained before a settlement will be approved.

Section 1717.1204(j) Conditions Regarding Management and Operations

NRECA objected to the possibility of RUS imposing additional controls on the members of a power supply borrower regarding general funds and investments, based on the argument that such decisions by members impacted little on their power supplier and because bankruptcy would be an alternative for the power supply borrower. The additional controls identified in § 1717.1204(j)(3) ordinarily would not be imposed on the members of a power supply borrower that is seeking debt settlement. However, such controls on members may be appropriate in some cases, such as when the members have agreed to guarantee the debt of a power supply borrower as a condition of settling the latter's debt.

Section 1717.1206 Loans Subsequent to Settlement

One commenter stated that the paragraph is unclear and subject to various interpretations, but did not indicate what is unclear. Perhaps one area needing some clarification is whether the section would grant some right to subsequent loans to a borrower that as agreed as part of its debt settlement not to seek subsequent loans from RUS. The section does not grant any such right.

Perhaps the commenter thought that a "presumption" that credit support will be needed for any subsequent loans is not clear. "Presumption" means that credit support will be required for any subsequent loans, unless the Administrator, for good reason, determines that credit support is not needed.

The ad hoc group of 6 IOUs stated that RUS should establish a presumption that new loans will not be made to borrowers whose debts have been settled unless they can prove that they are now creditworthy. Demonstration of creditworthiness is a requirement which applies to all loans made by RUS, as set forth in 7 CFR 1710.112, 1710.113, and elsewhere in RUS regulations.

A borrower stated that if a healthy borrower acquires or merges with a borrower whose debt has been settled by RUS, the surviving entity should be exempt from the presumption that credit support will be needed for any subsequent loans. RUS does not agree that an exemption should be granted for all such cases, since the surviving entity may nevertheless be a high risk that would warrant credit support.

List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Claims, Electric power, Electric utilities, Intergovernmental relations, Investments, Lien accommodation, Lien subordination, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For reasons explained in the preamble, RUS hereby amends 7 CFR chapter XVII, part 1717, as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1717 is revised to read as follows:

Authority: 7 U.S.C. 901–950b, 1981; Pub. L. 99–591, 100 Stat. 3341–16; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*), unless otherwise noted.

2. Subparts T through X are added and reserved and subpart Y is added to part 1717 to read as follows:

Subpart T—[Reserved]

Sec.
1717.950–1717.999 [Reserved]

Subpart U—[Reserved]

1717.1000–1717.1049 [Reserved]

Subpart V—[Reserved]

1717.1050–1717.1099 [Reserved]

Subpart W—[Reserved]

1717.1100–1717.1149 [Reserved]

Subpart X—[Reserved]

1717.1150–1717.1199 [Reserved]

Subpart Y—Settlement of Debt

1717.1200 Purpose and scope.
1717.1201 Definitions.
1717.1202 General policy.
1717.1203 Relationship between RUS and Department of Justice.
1717.1204 Policies and conditions applicable to settlements.
1717.1205 Waiver of existing conditions on borrowers.
1717.1206 Loans subsequent to settlement.
1717.1207 RUS obligations under loan guarantees.
1717.1208 Government's rights under loan documents.

Subpart T—[Reserved]

§§ 1717.950–1717.999 [Reserved]

Subpart U—[Reserved]

§§ 1717.1000–1717.1049 [Reserved]

Subpart V—[Reserved]

§§ 1717.1050–1717.1099 [Reserved]

Subpart W—[Reserved]

§§ 1717.1100–1717.1149 [Reserved]

Subpart X—[Reserved]

§§ 1717.1150–1717.1199 [Reserved]

Subpart Y—Settlement of Debt

§ 1717.1200 Purpose and scope.

(a) Section 331(b) of the Consolidated Farm and Rural Development Act (Con Act), as amended on April 4, 1996 by Public Law 104–127, 110 Stat. 888 (7 U.S.C. 1981), grants authority to the Secretary of Agriculture to compromise,

adjust, reduce, or charge-off debts or claims arising from loans made or guaranteed under the Rural Electrification Act of 1936, as amended (RE Act). Section 331(b) of the Con Act also authorizes the Secretary of Agriculture to adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Rural Utilities Service (RUS). The Secretary, in 7 CFR 2.47, has delegated authority under section 331(b) of the Con Act to the Administrator of the RUS, with respect to loans made or guaranteed by RUS.

(b) This subpart sets forth the policy and standards of the Administrator of RUS with respect to the settlement of debts and claims arising from loans made or guaranteed to rural electric borrowers under the RE Act. Nothing in this subpart limits the Administrator's authority under section 12 of the RE Act.

§ 1717.1201 Definitions.

Terms used in this subpart that are not defined in this section have the meanings set forth in 7 CFR part 1710. In addition, for the purposes of this subpart:

Application for debt settlement means a written application containing all of the information required by § 1717.1204(b)(2), in form and substance satisfactory to RUS.

Attorney General means the Attorney General of the United States of America.

Claim means any claim of the government arising from loans made or guaranteed under the RE Act to a rural electric borrower.

Con Act means the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

Debt means outstanding debt of a rural electric borrower (including, but not necessarily limited to, principal, accrued interest, penalties, and the government's costs of debt collection) arising from loans made or guaranteed under the RE Act.

Enforced collection procedures means any procedures available to the Administrator for the collection of debt that are authorized by law, in equity, or under the borrower's loan documents or other agreements with RUS.

Loan documents means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note entered into between the borrower and RUS.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901–950b).

Restructure means to settle a debt or claim.

Settle means to reamortize, adjust, compromise, reduce, or charge-off a debt or claim.

§ 1717.1202 General policy.

(a) It is the policy of the Administrator that, wherever possible, all debt owed to the government, including but not limited to principal and interest, shall be collected in full in accordance with the terms of the borrower's loan documents.

(b) Nothing in this subpart by itself modifies, reduces, waives, or eliminates any obligation of a borrower under its loan documents. Any such modifications regarding the debt owed by a borrower may be granted under the authority of the Administrator only by means of the explicit written approval of the Administrator in each case.

(c) The Administrator's authority to settle debts and claims will apply to cases where a borrower is unable to pay its debts and claims in accordance with their terms, as further defined in § 1717.1204(b)(1), and where settlement will maximize, on a present value basis, the recovery of debts and claims owed to the government.

(d) In structuring settlements and determining the capability of the borrower to repay debt and the amount of debt recovery that is possible, the Administrator will consider, among other factors, the RE Act, the National Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776), the policies and regulations of the Federal Energy Regulatory Commission, state legislative and regulatory actions, and other market and nonmarket forces as to their effects on competition in the electric utility industry and on rural electric systems in particular. Other factors the Administrator will consider are set forth in more detail in § 1717.1204.

§ 1717.1203 Relationship between RUS and Department of Justice.

(a) The Attorney General will be notified by the Administrator whenever the Administrator intends to use his or her authority under section 331(b)of the Con Act to settle a debt or claim.

(b) If an outstanding claim has been referred in writing to the Attorney General, the Administrator will not use his or her own authority to settle the claim without the approval of the Attorney General.

(c) If an application for additional debt relief is received from a borrower whose debt has been settled in the past under the authority of the Attorney General, the Administrator will promptly notify the Attorney General before proceeding to consider the application.

§ 1717.1204 Policies and conditions applicable to settlements.

(a) *General.* Settlement of debts and claims shall be subject to the policies, requirements, and conditions set forth in this section and in § 1717.1202.

(b) *Need for debt settlement.* (1) The Administrator will not settle any debt or claim unless the Administrator has determined that the borrower is unable to meet its financial obligations under its loan documents according to the terms of those documents, or that the borrower will not be able to meet said obligations sometime within the period of 24 months following the month the borrower submits its application for debt settlement to RUS, and, in either case, such default is likely to continue indefinitely. The determination of a borrower's ability to meet its financial obligations will be based on analyses and documentation by RUS of the borrower's historical, current, and projected costs, revenues, cash flows, assets, opportunities to reduce costs and/or increase revenues, and other factors that may be relevant on a case by case basis.

(2) In its application to RUS for debt settlement, the borrower must provide, in form and substance satisfactory to RUS, an in-depth analysis supporting the borrower's contention that it is unable or will not be able to meet its financial obligations as described in paragraph (b)(1) of this section. The analysis must include:

(i) An explanation and analysis of the causes of the borrower's inability to meet its financial obligations;

(ii) A thorough review and analysis of the opportunities available or potentially available to the borrower to reduce administrative overhead and other costs, improve efficiency and effectiveness, and expand markets and revenues, including but not limited to opportunities for sharing services, merging, and/or consolidating, raising rates when appropriate, and renegotiating supplier and service contracts. In the case of a power supply borrower, the study shall include such opportunities among the members of the borrower, unless the Administrator waives this requirement;

(iii) Documentation of the actions taken, in progress, or planned by the borrower (and its member systems, if applicable) to take advantage of the opportunities cited in paragraph (b)(2)(ii) of this section; and

(iv) Other analyses and documentation prescribed by RUS on a case by case basis.

(3) RUS may require that an independent consultant provide an analysis of the efficiency and effectiveness of the borrower's organization and operations, and those of its member systems in the case of a power supply borrower. The following conditions will apply:

(i) RUS will select the independent consultant taking into account, among other matters, the consultant's experience and expertise in matters relating to electric utility operations, finance, and restructuring;

(ii) The contract with the consultant shall be to provide services to RUS on such terms and conditions as RUS deems appropriate. The consultant's scope of work may include, but shall not be limited to, an analysis of the following:

(A) How to maximize the value of the government's collateral, such as through mergers, consolidations, or sales of all or part of the collateral;

(B) The viability of the borrower's system, taking into account such matters as system size, service territory and markets, asset base, physical condition of the plant, operating efficiency, competitive pressures, industry trends, and opportunities to expand markets and improve efficiency and effectiveness;

(C) The feasibility and the potential benefits and risks to the borrower and the government of corporate restructuring, including aggregation and disaggregation;

(D) In the case of a power supply borrower, the retail rate mark-up by member systems and the potential benefits to be achieved by member restructuring through mergers, consolidations, shared services, and other alliances;

(E) The quality of the borrower's management, management advisors, consultants, and staff;

(F) Opportunities for reducing overhead and other costs, for expanding markets and revenues, and for improving the borrower's existing and prospective contractual arrangements for the purchase and sale of power, procurement of supplies and services, and the operation of plant and facilities;

(G) Opportunities to achieve efficiency gains and increased revenues based on comparisons with benchmark electric utilities; and

(H) The accuracy and completeness of the borrower's analysis provided under paragraph (b)(2) of this section;

(iii) RUS and, as appropriate, other creditors, will determine the extent to which the borrower and third parties (including the members of a power supply borrower) will be required to participate in funding the costs of the independent consultant;

(iv) The borrower will be required to make available to the consultant all corporate documents, files, and records, and to provide the consultant with access to key employees. The borrower will also normally be required to provide the consultant with office space convenient to the borrower's operations and records; and

(v) All analyses, studies, opinions, memoranda, and other documents and information produced by the independent consultant shall be provided to RUS on a confidential basis for consideration in evaluating the borrower's application for debt settlement. Such documents and information may be made available to the borrower and other appropriate parties if authorized in writing by RUS.

(4) The borrower may be required to employ a temporary or permanent manager acceptable to the Administrator, to manage the borrower's operations to ensure that all actions are taken to avoid or minimize the need for debt settlement. The employment could be on a temporary basis to manage the system during the time the debt settlement is being considered, and possibly for some time after any debt settlement, or it could be on a permanent basis.

(5) The borrower must submit, at a time determined by RUS, a resolution of its board of directors requesting debt settlement and stating that the borrower is either currently unable to meet its financial obligations to the government or will not be able to meet said obligations sometime within the next 24 months, and that, in either case, the default is likely to continue indefinitely.

(c) *Debt settlement measures.* (1) If the Administrator determines that debt settlement is appropriate, the debt settlement measures the Administrator will consider under this subpart with respect to direct, insured, or guaranteed loans include, but are not limited to, the following:

(i) Reamortization of debt;

(ii) Extension of debt maturity, provided that the maturity of the borrower's outstanding debt after settlement shall not extend more than 10 years beyond the latest maturity date prior to settlement;

(iii) Reduction of the interest rate charged on the borrower's debt, provided that the interest rate on any portion of the restructured debt shall not be reduced to less than 5 percent, unless the Administrator determines that reducing the rate below 5 percent would maximize debt recovery by the government;

(iv) Forgiveness of interest accrued, penalties, and costs incurred by the government to collect the debt; and

(v) With the concurrence of the Under Secretary for Rural Development, forgiveness of loan principal.

(2) In the event that RUS has, under section 306 of the RE Act, guaranteed loans made by the Federal Financing Bank or other third parties, the Administrator may restructure the borrower's obligations by: acquiring and restructuring the guaranteed loan; restructuring the loan guarantee obligation; restructuring the borrower's reimbursement obligations; or by such means as the Administrator deems appropriate, subject to such consents and approvals, if any, that may be required by the third party lender.

(d) *Borrower's obligations to other creditors.* The Administrator will not grant relief on debt owed to the government unless similar relief, on a pro rata basis, is granted with respect to other secured obligations of the borrower, or the other secured creditors provide other benefits or value to the debt restructuring. Unsecured creditors will also be expected to contribute to the restructuring. If it is not possible to obtain the expected contributions from other creditors, the Administrator may proceed to settle a borrower's debt if that will maximize recovery by the government and will not result in material benefits accruing to other creditors at the expense of the government.

(e) *Competitive bids for system assets.* If requested by RUS, the borrower or the independent consultant provided for in paragraph (b)(3) of this section shall solicit competitive bids from potential buyers of the borrower's system or parts thereof. The bidding process must be conducted in consultation with RUS and use standards and procedures acceptable to RUS. The Administrator may use the competitive bids received as a basis for requiring the sale of all or part of the borrower's system as a condition of settlement of the borrower's debt. The Administrator may also consider the bids in evaluating alternative settlement measures.

(f) *Valuation of system.* (1) The Administrator will consider the value of the borrower's system, including, in the case of a power supply borrower, the wholesale power contracts between the borrower and its member systems. The valuation of the wholesale power contracts shall take into account, among other matters, the rights of the government and/or third parties, to assume the rights and obligations of the borrower under such contracts, to charge reasonable rates for service

provided under the contracts, and to otherwise enforce the contracts in accordance with their terms. In no case will the Administrator settle a debt or claim for less than the value (after considering the government's collection costs) of the borrower's system and other collateral securing the debt or claim.

(2) RUS may use such methods, analyses, and assessments as the Administrator deems appropriate to determine the value of the borrower's system.

(g) *Rates.* The Administrator will consider the rates charged for electric service by the borrower and, in the case of a power supply borrower, by its members, taking into account, among other factors, the practices of the Federal Energy Regulatory Commission (FERC), as adapted to the cooperative structure of borrowers, and, where applicable, FERC treatment of any investments by co-owners in projects jointly owned by the borrower.

(h) *Collection action.* The Administrator will consider whether a settlement is favorable to the government in comparison with the amount that can be recovered by enforced collection procedures.

(i) *Regulatory approvals.* Before the Administrator will approve a settlement, the borrower must provide satisfactory evidence that it has obtained all approvals required of regulatory bodies that the Administrator determines are needed to implement rates or other provisions of the settlement, or that are needed in any other way for the borrower to fulfill its obligations under the settlement.

(j) *Conditions regarding management and operations.* As a condition of debt settlement, the borrower, and in the case of a power supply borrower, its members, will be required to implement those changes in structure, management, operations, and performance deemed necessary by the Administrator. Those changes may include, but are not limited to, the following:

(1) The borrower may be required to undertake a corporate restructuring and/or sell a portion of its plant, facilities, or other assets

(2) The borrower may be required to replace senior management and/or hire outside experts acceptable to the Administrator. Such changes may include a commitment by the borrower's board of directors to restructure and/or obtain new membership to improve board oversight and leadership;

(3) The borrower may be required to agree to:

(i) Controls by RUS on the general funds of the borrower, as well as on any investments, loans or guarantees by the borrower, notwithstanding any limitations on RUS' control rights in the borrower's loan documents or RUS regulations; and

(ii) Requirements deemed necessary by RUS to perfect and protect its lien on cash deposits, securities, equipment, vehicles, and other items of real or non-real property; and

(4) In the case of a power supply borrower, the borrower may be required to obtain credit support from its member systems, as well as pledges and action plans by the members to change their operations, management, and organizational structure (e.g., shared services, mergers, or consolidations) in order to reduce operating costs, improve efficiency, and/or expand markets and revenues.

(k) *Conveyance of assets.* As a condition of a settlement, a borrower may be required to convey some or all its assets to the government.

(l) *Additional conditions.* The borrower will be required to warrant and agree that no bonuses or similar extraordinary compensation has been or will be provided, for reasons related to the settlement of government debt, to any officer or employee of the borrower or to other persons or entities identified by RUS. The Administrator may impose such other terms and conditions of debt settlement as the Administrator determines to be in the government's interests.

(m) *Certification of accuracy.* Before the Administrator will approve a debt settlement, the manager or other appropriate official of the borrower must certify that all information provided to the government by the borrower or by any agent of the borrower, in connection with the debt settlement, is true, correct, and complete in all material respects.

§ 1717.1205 Waiver of existing conditions on borrowers.

Pursuant to section 331(b) of the Con Act, the Administrator, at his or her sole discretion, may waive or otherwise reduce conditions and requirements imposed on a borrower by its loan documents if the Administrator determines that such action will contribute to enhancement of the government's recovery of debt. Such waivers or reductions in conditions and requirements under this section shall not include the exercise of any of the debt settlement measures set forth in § 1717.1204(c), which are subject to all of the requirements of said § 1717.1204.

§ 1717.1206 Loans subsequent to settlement.

In considering any future loan requests from a borrower whose debt has been settled in whole or in part (including the surviving entity of merged or consolidated borrowers, where at least one of said borrowers had its debts settled), it will be presumed that credit support for the full amount of the requested loan will be required. Such support may be in a number of forms, provided that they are acceptable to the Administrator on a case by case basis. They may include, but need not be limited to, equity infusions and guarantees of debt repayment, either from the applicant's members (in the case of a power supply borrower), or from a third party.

§ 1717.1207 RUS obligations under loan guarantees.

Nothing in this subpart affects the obligations of RUS under loan guarantee commitments it has made to the Federal Financing Bank or other lenders.

§ 1717.1208 Government's rights under loan documents.

Nothing in this subpart limits, modifies, or otherwise affects the rights of the government under loan documents executed with borrowers, or under law or equity.

Dated: September 19, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–25315 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–141; Special Conditions No. 25–ANM–132]

Special Conditions: Boeing Model 737–600/–700/–800; High Intensity Radiated Fields (HIRF)/Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 737–600/–700/–800 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

EFFECTIVE DATE: September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Gregory Dunn, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 1993, Boeing submitted an application for an amendment to Type Certificate A16WE to include the next generation 737 family of airplanes. Two of these airplanes will have the same length as the present 737–300 and 737–500. The third version will be the existing 737–400, stretched to add two additional passenger rows. In addition, all models will have increased wing size, higher thrust engines, and body structure modifications due to increased design weights and higher wing and tail loads. The maximum operating altitude is to be increased from 37,000 ft. to 41,000 ft. The long range cruise speed is increased to 0.78 Mach or better. The range is increased to be transcontinental of approximately 2,950 nmi. There is only one engine type being offered, which is a derivative of the existing CFM56 referred to as the CFM56–7.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, Boeing must show that the Model 737–600/–700/–800 airplanes meet the applicable provisions of the regulations incorporated by reference in Type Certificate A16WE, or the applicable regulations in effect on the date of application for the change to the Model 737. The regulations incorporated by reference in the type certificate are commonly referred to as the: "original type certification basis." The certification basis for the Model 737–600/–700/–800 airplanes includes 14 CFR part 25, as amended by Amendments 25–1 through 25–77, except as indicated below:

Section No.	Title	At amdt. 25–
25.365	Pressurized Compartment Loads.	0
25.561	Emergency Landing Conditions—General.	0
25.562	Emergency Landing Dynamic Conditions.	*64
25.571	Damage-tolerance and Fatigue Evaluation of Structure.	**0,77
25.607	Fasteners	**0,77
25.631	Bird Strike Damage.	**0,77
25.699	Lift and Drag Device Indicator.	**0,77
25.783(f)	Doors	**15,77
25.807(c)(3)	Emergency Exits	15
25.813	Emergency Exit Access.	45
25.832	Cabin Ozone Concentration.	***0,77
25.1309	Equipment, Systems and Installations.	**0,77
25.1419(c)	Ice Protection	**23,77

Boeing has also elected to comply with Amendments 25–78 and 25–80 and portions of Amendments 25–79, 25–84, and 25–86.

* Flight attendants seats will be qualified to Technical Standard Order C127. Passenger and flight deck seats will comply with 14 CFR 25.562 (a),(b),((c)(1),(2),(3),(4),(7), and (8)).

** Applicable to new and significantly modified structure and systems and portions of the airplane affected by these changes. Where two amendment levels are shown for the same paragraph, the number without the asterisks (*) applies to structures, systems, and portions of the airplane which are not new or significantly modified. The structure, systems, and components which comply with the later amendment will be identified in Boeing document D010A001, approved by the FAA and JAA, and referenced on the type certificate data sheet.

*** Boeing provides FAA approved data (Document number D6–49779) to 737 operators to enable the operators to show ozone compliance per 14 CFR 121.578 for their specific route structures.

Amendment level "0" is the original published version of Part 25 (February 1, 1965).

In addition, the certification basis will be upgraded to include the Part 25 complement to any Part 121 amendments adopted prior to the certification date and having impact on transport category airplane type designs, and these special conditions.

In addition to the applicable airworthiness regulations and special conditions, the Model 737–600/–700/–800 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 737–600/–700/–800 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by 14 CFR 11.28 and 11.29, and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 737–600/–700/–800 airplanes will incorporate new avionic/electronic systems, such as the Air Data Inertial Reference System (ADIRS) and Common Display System (CDS), that perform critical functions. These systems may be vulnerable to HIRF external to the airplane. In addition, the CFM56–7B engine proposed for the Boeing 737–700 airplane is a high-bypass ratio fan jet engine that will not seize and produce transient torque loads in the same manner that is envisioned by current § 25.361(b)(1) related to "sudden engine stoppage."

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, a special condition is needed for the Boeing Model 737–600/–700/–800, which requires that new electrical and electronic systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

For the CFM56–7B engine, the limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category

airplanes since 1957. The size, configuration, and failure modes of jet engines has change considerably from those envisioned in 14 CFR 25.361(b) when the engine seizure requirement was first adopted.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards.

The FAA is developing a new regulation and new advisory circular that will provide more comprehensive criteria for treating engine loads resulting from structural failures. In the meantime, a special condition is needed to establish appropriate criteria for the Boeing 737–600/–700/–800 airplanes.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1, or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

Limit Engine Torque Loads for Sudden Engine Stoppage

In order to maintain the level of safety envisioned by § 25.361(b), more comprehensive criteria are needed for the new generation of high bypass engines. This special condition distinguishes between the more common events and those rare events resulting from structural failures in the engine. For these more rare but severe events, these criteria allow deformation in the engine supporting structure in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by applying an additional factor on these loads.

Discussion of Comments

Notice of proposed special conditions No. SC–97–3–NM for the Boeing 737–600/–700/–800 airplanes was published in the **Federal Register** on May 14, 1997 (62 FR 26453).

Comments were received from an engine manufacturer who, while supporting the need for the engine torque loads requirements, offers the following comments for consideration.

The commenter recommends that the words "* * * and that could cause a shutdown due to vibrations" be removed from paragraph 2(b)(1)(i) of the special conditions. The commenter states that its position is based on a comparison of the proposed special condition with similar work currently underway within the Aviation Rulemaking Advisory Committee (ARAC). The commenter notes differences between these two proposals. For example, the special condition adds a provision that the engine malfunction for limit load calculation be such that it "could cause a shutdown due to engine vibrations," while this provision was removed from the ARAC proposal, whose intent is to address engine events beyond maximum acceleration and other than structural failures, seizures, jamming, and unbalance, such as engine surge. The commenter further notes that the special condition does not explicitly state that the limit torque acts simultaneously with 1g flight loads, although this may be intended.

The FAA recognizes that the ARAC working group is studying this issue and that its final proposal may be different from what has already been applied as a special condition on several airplanes. However, until more definitive criteria have been accepted by industry and by the FAA, the special condition will remain unchanged. The special condition is based on the assumption that the airplane will be subjected to 1g flight loads throughout the engine torque event.

Applicability

As discussed above, these special conditions are applicable to the Model 737–600/–700/–800 airplanes. Should Boeing Commercial Airplane Group apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Model 737–600/–700/–800 airplanes is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain design features on the Boeing Model 737–600/–700/–800 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 737–600/–700/–800 airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

For the purpose of this special condition, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

2. *Engine Torque Loads.* In lieu of compliance with § 25.361(b), compliance with the following must be shown:

(b) For turbine engine installations, the mounts and local supporting structure must be designed to withstand each of the following:

(1) The maximum torque load, considered as limit, imposed by:

(i) sudden deceleration of the engine due to a malfunction that could result in a temporary loss of power or thrust capability, and that could cause a shutdown due to vibrations; and

(ii) the maximum acceleration of the engine.

(2) The maximum torque load, considered as ultimate, imposed by sudden engine stoppage due to a structural failure, including fan blade failure.

(3) The load condition defined in paragraph (b)(2) of this section is also assumed to act on adjacent airframe structure, such as the wing and fuselage. This load condition is multiplied by a factor of 1.25 to obtain ultimate loads when the load is applied to the adjacent wing and fuselage supporting structure.

Issued in Renton, Washington, on September 17, 1997.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25509 Filed 9–25–97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 95N–0374]

RIN 0910–AA32

Latex Condoms; User Labeling; Expiration Dating

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that requires the labeling of latex condoms to contain an expiration date based upon physical and mechanical testing performed after exposing the product to varying conditions that age latex. Studies show that latex condoms degrade over time. Such degradation has a significant effect on the product's ability to provide a barrier to sexually transmitted diseases (STD's), including human immunodeficiency virus (HIV). This requirement is established in order to provide consumers with essential information regarding the safe use of these products.

EFFECTIVE DATE: March 25, 1998.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–2444.

SUPPLEMENTARY INFORMATION:

I. Background

It is estimated that over 1 million persons in the United States are infected with HIV (Ref. 1). Although nonsexual transmission can occur, HIV is transmitted primarily through sexual contact. With the prevalence of HIV infection and the risk of transmission of other STD's, the importance of the quality of an effective barrier to the transmission of infection is crucial. Because latex membranes, such as condoms and medical gloves, are effective barriers against the spread of various diseases, including hepatitis, HIV, and other STD's (Refs. 2, 4, and 5), the Centers for Disease Control and Prevention and the Surgeon General of the Public Health Service have recommended that latex condoms be used according to instructions with every act of intercourse for maximum protection against STD's (Ref. 3).

The effectiveness of latex condoms as a barrier, however, is dependent upon the integrity of the latex material. Degradation of latex film products (e.g., the embrittlement of the latex film, an increase in the porosity of the membrane, or other loss of physical properties) occurs when latex is exposed to various types of environmental conditions (such as elevated temperature, fluorescent lights, or ozone) normally experienced in product use, shipment, or storage conditions. Exposure to these environmental conditions degrade the film progressively over time and may result in bursts, rips, tears, or seepages that allow the transmission of disease.

To understand the effects of aging and other storage conditions on latex properties, the State of Washington's Board of Pharmacy initiated an FDA-sponsored study of the material integrity of latex condoms (the FDA/Washington study) in July of 1989 (Ref. 6). At the laboratories of the FDA/Washington study, packaged and unpackaged latex condoms were exposed to 20 and 30 °C (representing room temperature) for up to 5 years. In order to represent exposure to the upper extreme of environmental temperatures, condoms were exposed for 100 days to a temperature of 45 °C. Also, to accelerate the aging process of the latex, condoms were exposed to temperatures of 70 and 85 °C for up to 100 days (Refs. 7 through 9).

The study revealed that exposed condoms (i.e., condoms not protected by packaging) degraded to the point of being unusable within 1 year at room temperature, and at higher temperatures in as little as 10 days. The FDA/Washington study further shows that latex condoms stored in intact plastic packages also degrade over time, though at a much slower rate. The results of the FDA/Washington study demonstrate that aging and other conditions can significantly affect the integrity, strength, and quality of latex essential to maintaining a barrier against the transmission of disease.

Based upon these findings, using standards established by the American Society for Testing and Materials (ASTM), and following meetings with condom manufacturers, the agency published in the **Federal Register** of May 24, 1996 (61 FR 26140), a proposed rule that would require latex condoms to be labeled with an expiration date. Specifically, FDA proposed that, to ensure visibility of the expiration date by customers, an expiration date must appear on the primary packaging (i.e., the individual package), as well as higher levels of labeling, such as the case containing individually packaged products.

To establish the expiration date, FDA proposed that a manufacturer, before performing tests on products that demonstrate physical and mechanical integrity of the product, subject products from three discrete and random lots to each of the following conditions: (1) Storage unpackaged for the maximum amount of time the manufacturer allows the product to remain unpackaged after manufacture, followed by storage of the packaged product at 70 °C (plus or minus 2 °C) for 7 days; (2) storage unpackaged for the maximum amount of time the manufacturer allows the product to remain unpackaged after manufacture, followed by storage of the packaged product at 40 to 50 °C (plus or minus

2 °C) for 90 days; and (3) storage unpackaged for the maximum amount of time the manufacturer allows the product to remain unpackaged after manufacture, followed by storage of the packaged product at 15 to 30 °C for the stated shelf life of the product.

If the latex barrier properties are adequate (i.e., pass the manufacturer's physical and mechanical integrity tests) after undergoing the 70 °C/7-day and 40 to 50 °C/90-day tests, the proposal provided for that product to be labeled with an expiration date of up to 5 years. If the product, after storage at either 7- or 90-day test conditions, fails to meet the manufacturer's physical or mechanical integrity tests, the labeled shelf life of the product would be required to be demonstrated by real-time storage data at 15 to 30 °C. Products that pass the 7- and 90-day test conditions would be required to undergo confirmation tests after the product has been stored at 15 to 30 °C for the stated shelf life. If the product fails the 15 to 30 °C confirmation test, the product would be required to be relabeled to represent the actual shelf life supported by real time data.

This final rule incorporates the principles described in the proposed rule and requires latex condoms to bear expiration dates after being subjected to appropriate testing. When a labeling change is made to comply with this rule, products currently cleared for marketing would not be required to submit a new 510(k). FDA will modify agency guidance to reflect this policy. Of course, latex condom products that have not been cleared for marketing are still required to submit to FDA a 510(k) premarket notification.

II. Summary of Comments

The agency received only three comments on the proposed rule, two of which addressed the economic impact of the rule, but not its content. The remaining comment, submitted by a trade association, was generally supportive of the proposed rule but raised several issues warranting further consideration.

A. General

1. The comment stated that the proposed rule did not distinguish between the testing requirements applicable to new products as opposed to currently marketed products. The comment suggests that some currently marketed products may already be labeled with an expiration date that has been cleared by the agency. To require these products to undergo testing following accelerated and intermediate aging would be unnecessarily redundant if the existing cleared expiration date has been established by real time testing.

The agency agrees that, where a product bears an expiration date based on appropriate integrity tests following storage in real time, accelerated aging and testing are redundant and should not be required. This position is reflected in the final rule that has been modified accordingly in new § 801.435(f).

The agency stresses that testing data supporting an expiration date must be available for inspection by the agency, regardless of whether the agency previously cleared product labeling which bears an expiration date. If such data is not available for inspection, the manufacturer must generate shelf life data with accelerated and real time storage and testing.

2. The comment suggested that the introductory paragraph of proposed § 801.435(d) be modified to read,

"The expiration date must be supported by the data from reasonable quality control tests demonstrating the physical and mechanical integrity of the product after three discrete and typical lots of the product have been subjected to each of the following conditions." (Emphasis added.)

The language in the proposed rule stated, "* * * after three discrete and random lots of the same product have been subjected to each of the following conditions." (Emphasis added.)

The agency recognizes that manufacturers of new products, or new formulations, may not have produced a sufficient number of lots to allow a truly random selection for testing. The purpose of selecting random lots is to ensure that the tests are conducted on products that are representative of the products being produced. The word "representative" is more commonly used in the context of sampling analyses than its synonym, "typical." The agency believes the comment that suggested substituting the word "typical" for "random" is appropriately addressed by substituting the word "representative" for the word "random." The final regulation has been modified accordingly.

The agency also recognizes that the proposed requirement to conduct testing on lots of the same product needs further clarification in light of the agency's October 1989 "General Guidance for Modifying Condom Labeling to Include Shelf Life," that states that shelf life data may not be needed for each variation from a "standard" condom. The agency continues to consider its October 1989 guidance to be an accurate statement of agency policy. FDA recognizes that a manufacturer may produce several variations of a tested condom, including variations of packaging, design (e.g., texture, thickness, etc.), latex formulation (including color additives), dusting powders, spermicides, desensitizers, and lubricants. As stated in the agency guidance, "FDA recognizes that some variations may not warrant separate shelf life testing." Certain variations, however, may affect condom strength, integrity, and even response to environmental factors in a variety of ways. Therefore, the regulation has been revised to state in § 801.435(g) that, if a manufacturer applies shelf life data to a variation of the tested condom, the manufacturer must document and provide upon request appropriate justification.

3. The comment stated that the requirement that the condoms to be tested be stored unpackaged for the maximum amount of time the manufacturer allows the product to remain unpackaged, before packaging, storage, and testing, is unnecessary and overly burdensome. The comment states that this provision would require manufacturers to develop new data for holding periods with respect to products that are currently labeled with approved expiration dating.

The agency disagrees that this provision is unnecessary and overly burdensome. Degradation of latex films is cumulative. Shelf life data derived from a lot of condoms that were packaged the day following production may not necessarily be applicable to the same product that is left unpackaged for 180 days. In requiring a manufacturer to conduct tests on products that have been stored unpackaged for the maximum time the manufacturer allows the product to remain unpackaged, the agency is ensuring that the integrity of the tested products would be representative of the products receiving the greatest exposure to environmental conditions. Thus, shelf life data generated by testing these products could be applied with the greatest confidence.

As discussed in comment 1 in section II.A of this document, the agency believes that currently cleared expiration dates that have been determined by real time testing of the product may continue to be applied. In the event this real time testing did not account for time periods products remain unpackaged, however, manufacturers would be required to perform confirmation testing to account for maximum holding periods for their products that are already labeled with an expiration date. This testing will be initiated by the effective date of the

regulation. Until the confirmation tests are completed, the previously cleared products may remain on the market labeled with the expiration date based on previous real time testing. The regulation has been modified in § 801.435(f) to clarify this issue.

4. The comment objected to the requirement that new premarket notification submissions, required under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)), for latex condoms should include data to establish labeled expiration dates, especially in light of the agency's allowance that such data need only be held as part of the manufacturing records for currently marketed products. This comment suggested that new 510(k) submissions only be required to state the claimed expiration dating period, and identify whether it has been tentatively established through accelerated aging or established under real time conditions consistent with the requirements of § 801.435.

The agency agrees with this comment. The agency believes that a 510(k) submission that includes statements that appropriate tests were performed and that the condoms passed appropriate mechanical and physical integrity tests should not generally have to include underlying test data. FDA intends to revise its existing guidance on 510(k) submissions for latex condoms to reflect its position that underlying data for expiration dating should not be submitted. All shelf life data generated under the requirements of this final rule shall be retained in each company's files, as required by § 820.180 (21 CFR 820.180), and shall be made available upon request for inspection by FDA.

5. The comment requests that the agency draw a clear distinction in the regulation between closed-ended latex condoms, that are used for prevention of STD transmission and pregnancy, and open-ended condom catheters that are used for continence and chronic care.

The agency confirms that the rule does not apply to open-ended condom catheters. The agency, however, does not believe that the regulation requires any modification to clarify this issue. As proposed and finalized, the regulation states that "this section applies to the subset of condoms as identified in § 884.5300, and condoms with spermicidal lubricant as identified in § 884.5310 of this chapter, which products are formed from latex films." Sections 884.5300 and 884.5310 (21 CFR 884.5300 and 884.5310) specifically describe the intended uses of closed ended condoms. The regulation, therefore, clearly establishes that open-ended condom catheters are not subject to this rule.

Moreover, in order to avoid future confusion, the agency is taking this opportunity to clarify the fact that this rule does not apply to female condoms. Female condoms are distinguished from the products identified in the scope of this rule in two significant details: (1) Sections 884.5300 and 884.5310 do not describe female condoms, and (2) female condoms are formed from polyurethane, not latex.

6. The agency is also taking this opportunity to clarify its position regarding latex condoms that are sold with spermicidal lubricants. Such products are currently cleared for marketing provided they bear labeling that reflects expiration dates and statements relating to the spermicidal agents. On August 9, 1982, in response to a petition by Schmidt Laboratories, Inc., FDA issued an order reclassifying a condom with a spermicidal lubricant (nonoxyl-9) from class III to class II. In the preamble to the final rule published in the **Federal Register** of October 29, 1982 (47 FR 49021), which reclassified generic condoms with spermicidal lubricants into class II, FDA advised that the generic device was reclassified into class II only insofar as its labeling bore an expiration date for the spermicidal agent and the following statement "The expiration date on this product applies only to the spermicidal agent in it."

Because the effectiveness of condoms with spermicidal lubricants depends on both the integrity of the latex and the stability of the spermicide, the expiration date should warn against use of the product after a date that either the spermicide or the latex could be ineffective. FDA is advising that it would consider a condom with spermicidal lubricant that bears the earlier expiration date that is related to the condom's latex or spermicidal properties, substantially equivalent to a class II condom with spermicidal lubricant under § 884.5310.

FDA has added § 801.435(h) to the final rule to state that if a latex condom contains spermicide, and the expiration date based upon spermicidal stability testing is different from the expiration date based on latex integrity testing, the product shall bear only the earlier expiration date. Accordingly, the statement required by the August 9, 1982, Reclassification Order that "The expiration date on this product applies only to the spermicidal agent in it" would be incorrect and shall not appear on the labeling of latex condoms with spermicidal lubricants following the effective date of this regulation. Any labeling changes to comply with § 801.435(h) will not require the filing of a new 510(k).

This regulation does not impose new testing requirements to determine expiration dates based upon spermicide stability. Manufacturers should continue to perform the appropriate tests to determine spermicide amount and biological activity that have supported the expiration dating for the spermicide in the past.

B. Comments on the Economic Impact

7. The agency received two comments addressing the economic impact of the proposed rule. One comment stated that the agency significantly underestimated the cost burden of establishing an expiration date for latex condoms because, in order to accurately establish shelf life data, a manufacturer would need to test packaging integrity, packaging material, and lubricants used, as well as latex compound integrity.

The agency disagrees. The testing requirements in the proposed and final rules would provide shelf-life data based upon the aggregate effect of the factors identified by the comment. The agency believes that no real purpose would be served by additionally requiring the suggested tests.

8. One comment suggested that requiring manufacturers of new products to submit shelf life data with their 510(k) submissions subjects manufacturers of those products to an additional administrative burden that is unnecessarily restrictive and may delay the public access to new and improved products.

As discussed in comment 4 in section II.A of this document, the agency has revised its position and is not requiring that manufacturers submit shelf life data with their 510(k) submissions. Instead, shelf life data shall be retained in each company's files, as required by § 820.180, and shall be made available upon request for inspection by FDA.

C. Comments on the Estimated Recordkeeping Burden

9. One comment stated that the agency significantly underestimated the recordkeeping burden that would be created by shelf life testing. The comment stated that the number of condom variations that would require testing is much higher than estimated, however, no guidance was given for estimating the number more accurately. The comment also stated that the industry practice in gathering real time testing data is to test the product each year. That is, instead of testing the product at 0 days, 7 days (accelerated

aging), 90 days (intermediate aging), and 5 years (real time) as discussed in the paperwork burden section of the proposed rule (61 FR 26140 at 26143), manufacturers would actually be testing at 0 days, 7 days, 90 days, 1 year, 2 years, 3 years, 4 years, and 5 years. This would represent a doubling of the testing burden for each product over the course of 5 years.

The agency agrees that the testing of products in intermediate years 1, 2, 3, and 4 is an appropriate and customary method of gathering real time shelf life data. This would be reflected in the burden chart as a doubling of the estimated burden. However, in response to other comments, the agency has required manufacturers of latex condoms that already have expiration dating data, based on real time testing, to do only a confirmation test, as appropriate. These products would be required to be tested only once in 5 years. The Paperwork Reduction Act analysis is modified to address these changes in testing frequency.

Moreover, the agency has adjusted the Paperwork Reduction statement to address the comment stating that manufacturers would be required to collect expiration dating data for more than one variation of a standard condom. The agency has attributed an average of two variations that would require testing for each standard condom considered in its original estimate. Furthermore, the agency has provided that manufacturers may apply expiration dating data collected on a standard to a variation of the standard, provided the manufacturer documents its justification. The burden estimates have been modified to reflect the cost of such documentation.

The Paperwork Reduction Act analysis is further modified to annualize the cost of shelf life testing over 5 years. Whereas the proposed Paperwork Reduction Act analysis reflected an annual burden of testing products at 0 days, 7 days, 90 days, and 5 years, the agency has determined that it would be more appropriate to consider the testing of products at 0 days, 7 days, 90 days, 1 year, 2 years, 3 years, 4 years, and 5 years, as a burden spread out over the 5 years it would take to complete the tests.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by Subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This regulation requires physical and mechanical integrity tests. Because condom manufacturers routinely conduct such tests on their products as part of their quality control practices, the required testing would affect manufacturers primarily by establishing storage conditions prior to testing such products, and increasing sampling sizes subjected to testing. This rule also requires a labeling change. However, the 180-day time period between the publication date and effective date of this rule will allow most manufacturers to exhaust their existing supply of labels. Accordingly, the agency certifies that the final rule will not have a significant economic impact on small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1995

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collections are shown below and an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Labeling Requirements for Latex Condoms—Expiration Date Labeling.

Description: These information collection requirements apply to manufacturers of latex condoms. This rule expands the labeling of latex condoms to include an expiration date. The expiration date must be supported by data from quality control tests demonstrating physical and mechanical integrity of three sample lots of the product being tested that were stored under accelerated and real time aging conditions. Quality control testing under accelerated aging conditions must include tests of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by: (1) Storage of the packaged product at 70 °C (plus or minus 2 °C) for 7 days; (2) storage of the packaged product at a selected temperature between 40 and 50 °C (plus or minus 2 °C) for 90 days; and (3) storage of the packaged product at a monitored or controlled temperature between 15 and 30 °C for the lifetime of the product (up to 5 years). Manufacturers who already have shelf life data based upon real time testing are not required to perform the 7-day and 90-day accelerated aging testing.

The recording of shelf life testing by condom manufacturers is used to support the inclusion of expiration dating on the labeling of latex condoms. Information concerning latex condom shelf life is necessary to allow lay users to use these products safely by avoiding use of products that have degraded. The effectiveness of latex condoms as a barrier is dependent upon the integrity of the latex material. The shelf life of latex condoms is material information that consumers need in order to safely use the product.

Condom manufacturers will use the information collected from the testing to establish the expiration date to be printed on the labeling, and purchasers will use the information collected to determine the likely effectiveness of the product.

Section 510(h) of the act, requires that condom manufacturers, as device manufacturers, be inspected at least once in a 2-year period. During that inspection, FDA inspectors will review the test records used to support the expiration date in order to ensure that the expiration date is accurate.

Description of Respondents: Businesses or other for profit organizations.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Capital Costs	Total Operating and Maintenance Costs
801.435(d)	58	1	58	96	5,568	$1,856[1]	$94,655[2]

[1] Capital costs are one time start-up costs and consist of a revision of policies and procedures. These costs have been annualized over a period of 5 years.

[2] The annual burden reported here represents the recordkeeping burden of testing a product of 0 days, 7 days, 90 days, 1 year, 2 years, 3 years, 4 years, and 5 years. The cost of this burden is annualized over the 5-year period required to conduct all the necessary testing.

The agency received one comment on the Paperwork Reduction Act statement of the proposed rule. As discussed in comment 9 in section II.C of this document, the agency has adjusted the estimated burden according to the suggestions made by the comment. The revised estimated burden has been adjusted to include the burden of testing a product at intermediate years during real time aging, and the burden of testing more than one variation on a standard condom. The revised estimated burden reflects a burden annualized over the 5 years required to perform all necessary testing.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. This final rule contains information collection requirements which have been submitted to OMB for approval. FDA will publish a notice in the **Federal Register** prior to the effective date of this final rule of OMB's decision to approve, modify, or disapprove the information collection requirements.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Center for Disease Control and Prevention, "HIV Prevalence Estimates and AIDS Case Projections for The United States: Report Based Upon a Workshop," *Morbidity and Mortality Weekly Report*, vol. 39/No. RR–16, November 30, 1990.

2. Conference on Latex as a Barrier Material, University of Maryland, (sponsored by FDA), May 1989.

3. Center for Disease Control and Prevention, "Update: Barrier Protection Against HIV Infection and Other Sexually Transmitted Diseases," *Morbidity and Mortality Weekly Report*, vol. 42/No. 30, August 6, 1993.

4. DeVincenzi, L., European Study Group on Heterosexual Transmission of HIV, Heterosexual Transmission of HIV in a European Cohort of Couples (abstract No. WS–CO2–1), vol. 1, IXth International Conference on AIDS/IVth STD World Congress, Berlin, 83, June 9, 1993.

5. Saracco, A., M. Musicco, A. Nicolosi, et al., "Man-to-Woman Sexual Transmission of HIV: Longitudinal Study of 343 Steady Partners of Infected Men," *Journal of Acquired Immune Deficiency Syndrome*, 6:497–502, 1993.

6. Final Report: Lubricated Latex Condoms—Study of the Effects of Environmental Parameters on Deterioration: Program for Appropriate Technology in Health (PATH), FDA Contract No. 223–88–4285, October 1993.

7. Mandel, J. et al., "Measurement of the Aging of Rubber Vulcanizates," *Journal of Research of the National Bureau of Standards*, vol. 63C, No. 2, October–December, 1959.

8. Barker, L. R., "Accelerated and Long-Term Ageing of Natural Rubber Vulcanizates," *Journal of Natural Rubber Research*, vol. 2, No. 4, pp. 201–213, 1987.

9. Barker, L. R., "Accelerated Long-Term Ageing of Natural Rubber Vulcanizates, Part 2: Results From Aging Tests at 40 C," *Journal of Natural Rubber Research*, vol. 5, No. 3, pp. 266–274, 1990.

10. ASTM D 3492, Standard Specification for Rubber Contraceptives (Condoms), American Society for Testing and Materials, Philadelphia, PA.

11. "General Guidance for Modifying Condom Labeling to Include Shelf Life," FDA Guidance Document.

List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 801 is amended as follows:

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. New § 801.435 is added to subpart H to read as follows:

§ 801.435 User labeling for latex condoms.

(a) This section applies to the subset of condoms as identified in § 884.5300 of this chapter, and condoms with spermicidal lubricant as identified in § 884.5310 of this chapter, which products are formed from latex films.

(b) Data show that the material integrity of latex condoms degrade over time. To protect the public health and minimize the risk of device failure, latex condoms must bear an expiration date which is supported by testing as described in paragraphs (d) and (h) of this section.

(c) The expiration date, as demonstrated by testing procedures required by paragraphs (d) and (h) of this section, must be displayed prominently and legibly on the primary packaging (i.e., individual package), and higher levels of packaging (e.g., boxes of condoms), in order to ensure visibility of the expiration date by consumers.

(d) Except as provided under paragraph (f) of this section, the expiration date must be supported by data demonstrating physical and mechanical integrity of the product after three discrete and representative lots of the product have been subjected to each of the following conditions:

(1) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at 70 °C (plus or minus 2 °C) for 7 days;

(2) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at a selected temperature between 40 and 50 °C (plus or minus 2 °C) for 90 days; and

(3) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at a monitored or controlled temperature between 15 and 30 °C for the lifetime of the product (real time storage).

(e) If a product fails the physical and mechanical integrity tests commonly used by industry after the completion of the accelerated storage tests described in paragraphs (d)(1) and (d)(2) of this section, the product expiration date must be demonstrated by real time storage conditions described in paragraph (d)(3) of this section. If all of the products tested after storage at temperatures as described in paragraphs (d)(1) and (d)(2) of this section pass the manufacturer's physical and mechanical

integrity tests, the manufacturer may label the product with an expiration date of up to 5 years from the date of product packaging. If the extrapolated expiration date under paragraphs (d)(1) and (d)(2) of this section is used, the labeled expiration date must be confirmed by physical and mechanical integrity tests performed at the end of the stated expiration period as described in paragraph (d)(3) of this section. If the data from tests following real time storage described in paragraph (d)(3) of this section fails to confirm the extrapolated expiration date, the manufacturer must, at that time, relabel the product to reflect the actual shelf life.

(f) Products that already have established shelf life data based upon real time storage and testing and have such storage and testing data available for inspection are not required to confirm such data using accelerated and intermediate aging data described in paragraphs (d)(1) and (d)(2) of this section. If, however, such real time expiration dates were based upon testing of products that were not first left unpackaged for the maximum amount of time as described in paragraph (d)(3) of this section, the real time testing must be confirmed by testing products consistent with the requirements of paragraph (d)(3) of this section. This testing shall be initiated no later than the effective date of this regulation. Until the confirmation testing in accordance with paragraph (d)(3) of this section is completed, the product may remain on the market labeled with the expiration date based upon previous real time testing.

(g) If a manufacturer uses testing data from one product to support expiration dating on any variation of that product, the manufacturer must document and provide, upon request, an appropriate justification for the application of the testing data to the variation of the tested product.

(h) If a latex condom contains a spermicide, and the expiration date based on spermicidal stability testing is different from the expiration date based upon latex integrity testing, the product shall bear only the earlier expiration date.

(i) The time period upon which the expiration date is based shall start with the date of packaging.

(j) As provided in part 820 of this chapter, all testing data must be retained in each company's files, and shall be made available upon request for inspection by the Food and Drug Administration.

(k) Any latex condom not labeled with an expiration date as required by paragraph (c) of this section, and initially delivered for introduction into interstate commerce after the effective date of this regulation is misbranded under sections 201(n) and 502(a) and (f) of Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(n) and 352(a) and (f)).

Dated: August 20, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–25587 Filed 9–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8731]

RIN 1545–AU92

Section 42(d)(5) Federal Grants

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations with respect to the low-income housing tax credit relating to the application of section 42(d)(5) to certain rental assistance programs under section 42(g)(2)(B)(i). The regulations clarify that certain types of federal rental assistance payments do not result in a reduction in the eligible basis of a low-income housing building.

DATES: These regulations are effective September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher J. Wilson, (202) 622–3040 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations (TD 8713) and a notice of proposed rulemaking cross-referencing the temporary regulations were published in the **Federal Register** for January 27, 1997 (62 FR 3792, 3848). Those regulations provide that certain federal rental assistance payments made to the owner of a building on behalf of low-income tenants are not federal grants with respect to a building or its operation that require a reduction in the building's eligible basis under section 42(d)(5) of the Internal Revenue Code (Code). These payments include rental assistance payments made under section 8 of the United States Housing Act of 1937 (Act) (42 U.S.C. 1437f), certain payments made under section 9 of the Act (42 U.S.C. 1437g), and payments made under such other programs or methods of rental assistance as may be designated in the **Federal Register** or the Internal Revenue Bulletin. The notice of proposed rulemaking indicated that comments would be considered on those areas addressed in the temporary regulations. Written comments responding to the notice of proposed rulemaking were received. There was no request for a public hearing, and no public hearing was held. After consideration of all the written comments, the proposed regulations have been adopted, without change, by this Treasury decision.

Summary of Comments

One commenter suggested that the final regulations provide additional guidance for state agencies to use in determining whether similar programs beyond those described in the regulations should be considered grants that cause a reduction in a building's eligible basis under section 42(d)(5) of the Code. The final regulations do not adopt this suggestion. The scope of this regulation is limited to specified rental assistance payments that are not grants requiring a reduction in a building's eligible basis and any additional payments the Secretary may designate in the future.

Another commenter suggested that § 1.42–16(c)(3) should be deleted if it is intended to impose conditions beyond the restrictions under section 9 of the Act, because the Service is improperly infringing upon the Department of Housing and Urban Development's (HUD) authority to provide subsidies under section 9. The final regulations do not adopt this suggestion. Section 1.42–16 does not interpret HUD's authority for paying subsidies under section 9; it describes the extent to which section 9 payments may be made without a reduction in a building's eligible basis under section 42(d)(5) of the Code. The conditions imposed on section 9 payments in § 1.42–16(c)(3) serve to differentiate section 9 assistance for operating expenses that function in a manner similar to rental assistance payments under section 8 of the Act from section 9 assistance that is applied to uses more closely associated with operational expenses requiring a reduction in a building's eligible basis under section 42(d)(5).

This commenter also suggested that if § 1.42–16(c)(3) were to be retained, it should be clarified to provide that actual operating costs be determined by HUD and/or the appropriate public housing agency. The commenter reasons that HUD is already making this determination in the context of deciding the proper amount of assistance to make

under section 9 of the Act, and that precedent already exists for allowing HUD to make certain interpretations relating to the section 42 program. The final regulations do not adopt this suggestion. The IRS and Treasury believe they should retain the ability to determine what costs are appropriately characterized as operating costs that require a reduction in a building's eligible basis under section 42(d)(5) of the Code.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore; a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Christopher J. Wilson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Section 1.42–16T and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42–16 also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–16 is added to read as follows:

§ 1.42–16 Eligible basis reduced by federal grants.

(a) *In general.* If, during any taxable year of the compliance period (described in section 42(i)(1)), a grant is made with respect to any building or the operation thereof and any portion of the grant is funded with federal funds (whether or not includible in gross income), the eligible basis of the building for the taxable year and all succeeding taxable years is reduced by the portion of the grant that is so funded.

(b) *Grants do not include certain rental assistance payments.* A federal rental assistance payment made to a building owner on behalf of or in respect of a tenant is not a grant made with respect to a building or its operation if the payment is made pursuant to—

(1) Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f)

(2) A qualifying program of rental assistance administered under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g); or

(3) A program or method of rental assistance as the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(c) *Qualifying rental assistance program.* For purposes of paragraph (b)(2) of this section, payments are made pursuant to a qualifying rental assistance program administered under section 9 of the United States Housing Act of 1937 to the extent that the payments—

(1) Are made to a building owner pursuant to a contract with a public housing authority with respect to units the owner has agreed to maintain as public housing units (PH-units) in the building;

(2) Are made with respect to units occupied by public housing tenants, provided that, for this purpose, units may be considered occupied during periods of short term vacancy (not to exceed 60 days); and

(3) Do not exceed the difference between the rents received from a building's PH-unit tenants and a pro rata portion of the building's actual operating costs that are reasonably allocable to the PH-units (based on square footage, number of bedrooms, or similar objective criteria), and provided that, for this purpose, operating costs do not include any development costs of a building (including developer's fees) or the principal or interest of any debt incurred with respect to any part of the building.

(d) *Effective date.* This section is effective September 26, 1997.

§ 1.42–16T [Removed]

Par. 3. Section 1.42–16T is removed.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 26, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25490 Filed 9–25–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8732]

RIN 1545–AT60

Available Unit Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the treatment of low-income housing units in a building that is occupied by individuals whose incomes increase above 140 percent of the income limitation applicable under section 42(g)(1). These regulations affect owners of those buildings who claim the low-income housing tax credit.

DATES: These regulations are effective September 26, 1997.

For dates of applicability of these regulations, see § 1.42–15(i).

FOR FURTHER INFORMATION CONTACT: David Selig, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1996, the IRS published a notice of proposed rulemaking in the **Federal Register** (PS–29–95 at 61 FR 27036) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42(g)(2)(D) of the Internal Revenue Code. A public hearing was scheduled for September 17, 1996, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. However, the IRS received no requests to speak at the public hearing, and no public hearing was held. Written comments responding to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The general rule in section 42(g)(2)(D)(i) provides that if the income

of an occupant of a low-income unit increases above the income limitation applicable under section 42(g)(1), the unit continues to be treated as a low-income unit. This general rule only applies if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii), however, provides an exception to the general rule in section 42(g)(2)(D)(i). Under this exception, the unit ceases being treated as a low-income unit when two conditions occur. The first condition is that the occupant's income increases above 140 percent of the income limitation applicable under section 42(g)(1), or above 170 percent for a deep rent skewed project described in section 142(d)(4)(B) (applicable income limitation). When this occurs, the unit becomes an over-income unit. The second condition is that a new occupant, whose income exceeds the applicable income limitation (nonqualified resident), occupies any residential unit in the building of a comparable or smaller size (comparable unit).

Rules and Definitions

One commentator suggested that the available unit rule under the proposed regulations did not clearly indicate whether the aggregate income of all occupants of a unit is taken into account. Accordingly, the final regulations clarify that an over-income unit means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B).

Commentators requested that the final regulations specify whether a comparable unit is measured by floor space or number of bedrooms. The final regulations provide that a comparable unit must be measured by the same method the taxpayer used to determine qualified basis for the credit year in which the comparable unit became available.

Some commentators stated that the provision in the proposed regulations that all available comparable units (not just the "next available" unit) must be rented to qualified residents to continue treating an over-income unit as a low-income unit is inconsistent with the title of section 42(g)(2)(D)(ii). Although the title of that provision uses the term next available unit, the text of the rule provides that if any available comparable unit is occupied by a nonqualified resident, the over-income unit ceases to be treated as a low-income unit. This means that if a building has more than one over-income unit, renting any available comparable unit (a comparably sized or smaller unit) to a qualified resident preserves the status of all over-income units as low-income units. Similarly, if any available comparable unit is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit lose their status as low-income units; thus, comparably sized or larger over-income units would lose their status as low-income units. In operation, this means that the owner must continue to rent any available comparable unit to a qualified resident until the percentage of low-income units in a building (excluding the over-income units) is equal to the percentage of low-income units on which the credit is based. At that point, failure to maintain the over-income units as low-income units has no immediate significance. (However, the failure to maintain an over-income unit as a low-income unit may affect the owner's decision of whether or not to rent a particular available unit at market rate at a later time.) Consequently, the final regulations provide that all available comparable units in the building, not only the next available comparable unit, must be rented to qualified residents to retain the low-income status of the over-income units.

Application of Rules on a Building by Building Basis

The proposed regulations provide that in a project containing more than one low-income building, the available unit rule applies separately to each building. Some commentators suggested that the regulations should permit residents of over-income units to move to available units in different buildings within the same low-income housing project without violating the available unit rule. However, because the requirements under section 42 must be satisfied on a building by building basis, the final regulations provide that the available unit rule only permits a current resident to move to another unit within the same building of a low-income housing project.

In addition, in response to requests from several commentators, the final regulations make clear that when a current resident moves to a different unit within the same low-income building, the units exchange status. (See example 2 of § 1.42–15(g) of the proposed regulations and § 1.42–15(h) of the final regulations.) Thus, the newly occupied unit adopts the status of the vacated unit, and the vacated unit assumes the status the newly occupied unit had immediately prior to its occupancy by the qualifying residents.

Timing Issues

The methods of committing rental units to tenants varies in different jurisdictions. However, it is a common rental practice to have some form of preliminary reservation for a unit prior to the date on which a lease is signed or the unit is occupied. Thus, several commentators have requested clarification that once a unit is reserved for a prospective tenant, it is no longer treated as available for purposes of the available unit rule. Accordingly, the final regulations provide that a unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to a reservation that is binding under local law.

Finally, financing arrangements using obligations that purport to be exempt facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). The requirements under section 142(d) may differ from those under section 42. Accordingly, the final regulations provide that the rules under the final regulations are not intended as an interpretation of the applicable rules under section 142.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is David Selig, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42–15 is also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–15 is added to read as follows:

§ 1.42–15 Available unit rule.

(a) *Definitions.* The following definitions apply to this section:

Applicable income limitation means the limitation applicable under section 42(g)(1) or, for deep rent skewed projects described in section 142(d)(4)(B), 40 percent of area median gross income.

Available unit rule means the rule in section 42(g)(2)(D)(ii).

Comparable unit means a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent skewed projects described in section 142(d)(4)(B), any low-income unit. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available.

Current resident means a person who is living in the low-income building.

Low-income unit is defined by section 42(i)(3)(A).

Nonqualified resident means a new occupant or occupants whose aggregate income exceeds the applicable income limitation.

Over-income unit means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B).

Qualified resident means an occupant either whose aggregate income (combined with the income of all other occupants of the unit) does not exceed the applicable income limitation and who is otherwise a low-income resident under section 42, or who is a current resident.

(b) *General section 42(g)(2)(D)(i) rule.* Except as provided in paragraph (c) of this section, notwithstanding an increase in the income of the occupants of a low-income unit above the applicable income limitation, if the income of the occupants initially met the applicable income limitation, and the unit continues to be rent-restricted—

(1) The unit continues to be treated as a low-income unit; and

(2) The unit continues to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set-aside requirement of section 42(g)(1).

(c) *Exception.* A unit ceases to be treated as a low-income unit if it becomes an over-income unit and a nonqualified resident occupies any comparable unit that is available or that subsequently becomes available in the same low-income building. In other words, the owner of a low-income building must rent to qualified residents all comparable units that are available or that subsequently become available in the same building to continue treating the over-income unit as a low-income unit. Once the percentage of low-income units in a building (excluding the over-income units) equals the percentage of low-income units on which the credit is based, failure to maintain the over-income units as low-income units has no immediate significance. The failure to maintain the over-income units as low-income units, however, may affect the decision of whether or not to rent a particular available unit at market rate at a later time. A unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law (for example, a unit is not available if it is subject to a preliminary reservation that is binding on the owner under local law prior to the date a lease is signed or the unit is occupied).

(d) *Effect of current resident moving within building.* When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current resident, whose income exceeds the applicable income limitation, moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

(e) *Available unit rule applies separately to each building in a project.* In a project containing more than one low-income building, the available unit rule applies separately to each building.

(f) *Result of noncompliance with available unit rule.* If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit within the same building lose their status as low-income units; thus, comparably sized or larger over-income units would lose their status as low-income units.

(g) *Relationship to tax-exempt bond provisions.* Financing arrangements that purport to be exempt-facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). This section is not intended as an interpretation under section 142.

(h) *Examples.* The following examples illustrate this section:

Example 1. This example illustrates noncompliance with the available unit rule in a low-income building containing three over-income units. On January 1, 1998, a qualified low-income housing project, consisting of one building containing ten identically sized residential units, received a housing credit dollar amount allocation from a state housing credit agency for five low-income units. By the close of 1998, the first year of the credit period, the project satisfied the minimum set-aside requirement of section 42(g)(1)(B). Units 1, 2, 3, 4, and 5 were occupied by individuals whose incomes did not exceed the income limitation applicable under section 42(g)(1) and were otherwise low-income residents under section 42. Units 6, 7, 8, and 9 were occupied by market-rate tenants. Unit 10 was vacant. To avoid recapture of credit, the project owner must maintain five of the units as low-income units. On November 1, 1999, the certificates of annual income state that annual incomes of the individuals in Units 1, 2, and 3 increased above 140 percent of the income limitation applicable under section 42(g)(1), causing those units to become over-income units. On November 30, 1999, Units 8 and 9 became vacant. On December 1, 1999, the project owner rented Units 8 and 9 to qualified residents who were not current residents at rates meeting the rent restriction requirements of section 42(g)(2). On December 31, 1999, the project owner rented Unit 10 to a market-rate tenant. Because Unit 10, an available comparable unit, was leased to a market-rate tenant, Units 1, 2, and 3 ceased to be treated as low-income units. On that date, Units 4, 5, 8, and 9 were the only remaining low-income units. Because the project owner did not maintain five of the residential units as low-income units, the qualified basis in the building is reduced, and credit must be recaptured. If the project owner had rented Unit 10 to a qualified resident who was not a current resident,

eight of the units would be low-income units. At that time, Units 1, 2, and 3, the over-income units, could be rented to market-rate tenants because the building would still contain five low-income units.

Example 2. This example illustrates the provisions of paragraph (d) of this section. A low-income project consists of one six-floor building. The residential units in the building are identically sized. The building contains two over-income units on the sixth floor and two vacant units on the first floor. The project owner, desiring to maintain the over-income units as low-income units, wants to rent the available units to qualified residents. J, a resident of one of the over-income units, wishes to occupy a unit on the first floor. J's income has recently increased above the applicable income limitation. The project owner permits J to move into one of the units on the first floor. Despite J's income exceeding the applicable income limitation, J is a qualified resident under the available unit rule because J is a current resident of the building. The unit newly occupied by J becomes an over-income unit under the available unit rule. The unit vacated by J assumes the status the newly occupied unit had immediately before J occupied the unit. The over-income units in the building continue to be treated as low-income units.

(i) *Effective date.* This section applies to leases entered into or renewed on and after September 26, 1997.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 26, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25493 Filed 9–25–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD8–97–038]

RIN 2115–AE46

Special Local Regulations; 1997 Galveston Offshore Powerboat Festival, Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Galveston Offshore Powerboat Festival. This event will be held on October 11, 1997 from 11 a.m. to 5 p.m. in the Galveston Ship Channel and on October 12, 1997 from 10 a.m. to 6 p.m. offshore of Galveston Island at Galveston, Texas. These regulations are needed to provide for the safety of life on the navigable waters during the event.

DATES: These regulations become effective on October 11, 1997 at 10:30 a.m. until 5:30 p.m. and on October 12, 1997 at 9:30 a.m. until 6:30 p.m.

FOR FURTHER INFORMATION CONTACT: LT Harry Schmidt, Operations Officer, U.S. Coast Guard Group Galveston. Tel: (409) 766–5603.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a power boat race called the "1997 Galveston Offshore Powerboat Festival". This event is sponsored by Texas Gulf Coast Racing, Inc. It will consist of an inshore powerboat race in the Galveston Ship Channel on October 11, 1997 and an offshore race on October 12, 1997. Approximately 60 offshore V-hull and catamaran-hull outboard and inboard race boats from 22 to 50 feet in length operating at high speeds are expected to participate in the races. The courses to be followed by the races will be marked by patrol vessels positioned at various points along each route. Fifty to two hundred spectator boats are expected for this event.

While viewing the event at any point outside the regulated area is not prohibited spectators will be encouraged to congregate within areas designated by the sponsor. Non-participating vessels will be permitted to transit the area every hour on the hour at No Wake Speed with the permission of the patrol commander.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e (34) (h) of Commandant Instruction M16475.1B, (as revised by 61 FR 13563; March 27, 1996) this rule is excluded from further environmental documentation.

List of Subjects In 33 CFR Part 100

Mine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T08–038 is added to read as follows:

§ 100.35–T08–038 Galveston, TX.

(a) *Regulated Area:* The Galveston Ship Channel from the Pelican Island Bridge to Pier 9 on October 11, 1997 and The Gulf of Mexico within the area bounded by a point on the shoreline at 29–18.7N, 094–45.5W southeast to 29–18.2N, 094–45.0W thence southwest to 29–16.0N, 094–46.4W thence west to 29–14.8.0N, 094–49.6W thence northwest to the shoreline at 29–15.7N, 094–52.0W on October 12, 1997.

(b) *Special Local Regulation:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. Participants are those persons and vessels identified by the sponsor as taking part in the event. The *official patrol* consists of any Coast Guard, public, state, or local law enforcement and sponsor provided vessel assigned to patrol the event. The Coast Guard *Patrol Commander* is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, U.S. Coast Guard Group Galveston.

(1) No spectator shall anchor, block, loiter in or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(2) When hailed and signaled, by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The patrol commander is empowered to forbid and control the movement of all vessels in the regulated area. He may terminate the event at any time it is deemed necessary for the protection of life or property. He may be reached on VHF–FM Channel 16, when required by the call sign *PATCOM.*

(c) *Effective Dates:* This section is effective from 10:30 a.m. until 5:30 p.m. on October 11, 1997 and from 9:30 a.m. until 6:30 p.m. on October 12, 1997.

Dated: September 19, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 97–25602 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–97–039]

RIN 2115–AE46

Special Local Regulations; Head of the Licking Regatta, Licking River Mile 0.0–3.5, Newport, KY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Head of the Licking Regatta. This event will be held on September 27, 1997 from 8 a.m. until 5 p.m. at Newport, Kentucky. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations are effective from 8 a.m. until 5 p.m., on September 27, 1997.

FOR FURTHER INFORMATION CONTACT: Lt. Jeffrey W. Johnson, Chief, Port Operations Department, USCG Marine Safety Office, Louisville, Kentucky at (502) 582–5194, ext. 39.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a rowing regetta to benefit a non-profit rowing organization. The event is sponsored by Kendle of Cincinnati, Ohio. Rowing races will utilize the Licking River at approximately miles 0.0 to 3.5, midchannel. Commercial vessels will be permitted to transit the area every three hours.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the Peperwork Reduction Act (44 U.S.C. 3501 *et seq*).

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e (34) (h) of Commandant Instruction M16475.1B, (as revised by 61 FR 13563; March 27, 1996) this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T08–039 is added to read as follows:

§ 100.35–T08–039 Licking River at Newport, Kentucky

(a) *Regulated Area:* Licking River Mile 0.0–3.5.

(b) *Special Local Regulation:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. *Paticipants* are those persons and vessels identified by the sponsor as taking part in the event. The *official patrol* consists of any Coast Guard, public, state or local law enforcement and sponsor-provided vessel assigned to patrol the event. The Coast Guard *Patrol Commander* is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, Coast Guard Marine Safety Office Louisville.

(1) No vessel shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels

shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call sign *PATCOM.*

(c) *Effective Date:* This section is effective from 8 a.m. to 5 p.m. September 27, 1997.

Dated: September 19, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 97–25598 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–022]

RIN 2115–AE47

Drawbridge Operation Regulations; Manchester Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the operating rules for the Massachusetts Bay Transportation Authority (MBTA) Bridge over Manchester Harbor in Manchester, Massachusetts. The mariners located in the vicinity of the MBTA Bridge and the Manchester Harbormaster requested longer operating hours for the bridge during the summer boating season. This change to the regulations will require the bridge owner to crew the bridge for eight additional hours each day from Memorial Day through the end of September, to install clearance gauges and to post the regulations for the operation of the bridge.

DATES: This final rule is effective October 27, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 4 p.m. Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Manager, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 14, 1994, the Coast Guard published a temporary 90 day deviation (59 FR 30524) from the effective operating regulations to evaluate changes to the operating rules during the 1994 boating season. The Coast Guard received one letter opposing the proposal and nine letters in favor of increasing the operating hours for the bridge during the boating season. On July 17, 1995, the Coast Guard published a temporary final rule with a request for comments (60 FR 36357) which tested an alternate operating schedule for the bridge. The Coast Guard received 20 letters from mariners. Three petitions with a total of 40 signatures, a letter from Manchester Harbor Marina, and a letter from the Manchester Harbor Boat Club with 200 members were also received. All comments requested that the operating rules be changed to require the bridge to open on signal from 7 a.m. to 11 p.m. each day, Memorial Day through the end of September. On April 11, 1997, the Coast Guard published a notice of proposed rulemaking with a request for comments (62 FR 17762) to permanently change the operating hours to 7 a.m. to 11 p.m. Memorial Day to the end of September. No additional comments were received as a result of the April 1997, proposal.

Background and Purpose

The Manchester MBTA Bridge was formerly owned and operated by the Boston and Maine Railroad. The present owner of the bridge is the MBTA. The existing operating regulations are published at 33 CFR 117.603 and require that the bridge be crewed from 1 April through 1 November from 9 a.m. to 6 p.m., with a one hour lunch closure between 1 p.m. and 2 p.m. daily.

The Coast Guard received a request in May 1994, from the Manchester Harbormaster/Chief of Police and several mariners located upstream of the bridge to extend the hours that the Manchester MBTA Bridge is crewed during the boating season. The June 1994 temporary deviation extended the hours that the bridge was crewed by an additional five hours a day during the boating season. It required the bridge to be crewed from 8 a.m. to 9 p.m. daily and eliminated the one hour lunch hour closure from 1 p.m. to 2 p.m. each day. The Coast Guard asked for comments at the close of the 90 day deviation period.

The Coast Guard received only one letter during the comment period that closed October 31, 1994. The MBTA, the bridge owner, opposed the proposal to extend the operating hours of the bridge. Their objection was based upon the additional cost of $16,000 to crew the bridge during the deviation period. The Coast Guard requested additional data and actual copies of the bridge logs to analyze the impact of the deviation. The data was never provided.

Several comments were received after the comment period closed. The comments included seven petition letters, one letter representing forty-five boat owners located upstream of the bridge at the Manchester Harbor Marina, and one letter from the Manchester Harbormaster/Chief of Police. All the letters were strongly in favor of increasing the operating hours for the bridge.

The July 1995, temporary final rule increased the period that the bridge opened on signal by three hours, from 6 p.m. to 9 p.m., each day during the boating season. As noted in the Regulatory History section above, all the letters received in response to the rule were in favor of permanently changing the operating regulations to require that the bridge be crewed from 7 a.m. to 11 p.m. each day from Memorial Day through the end of September. The mariners requested the extended bridge operating hours so that they could get underway earlier in the summer mornings and return to their moorings after a day trip or their evening racing and sailing.

One letter from the bridge owner, the MBTA, opposed the proposal requesting that the hours remain unchanged. The MBTA objected to the extra operating hours based upon a claim that there was a $27,000 additional cost to crew the bridge during the 1995 test period. Copies of the bridge logs were not submitted as requested.

On April 30, 1996, the Coast Guard implemented another temporary final rule with a request for comments (61 FR 18946) requiring the bridge to be crewed from 7 a.m. to 11 p.m. each day Memorial Day through the end of September. On May 7, 1996, the Coast guard sent a letter to the MBTA requiring them to post a sign summarizing the temporary regulations and maintain a bridge log for the 1996 test period. The MBTA was asked to provide bridge logs and operating cost data to the Coast Guard no later than October 31, 1996, for consideration of impacts upon the MBTA. The Coast Guard received one letter from a mariner in favor the temporary regulation. A review of the bridge logs provided by MBTA for the 1996 test period indicated that there was an average of 247 additional openings per month for the hours 7 a.m. to 11 p.m.

during June, July and August 1996. Thirty-five additional openings during these hours were logged for September, 1996. The MBTA submitted a letter indicating an additional operating cost of $41,459 for the period May 30 to September 30, 1996. On April 11, 1997, the Coast Guard published a notice of proposed rulemaking (62 FR 17762) to permanently change the operating hours for the Manchester MBTA Bridge to 7 a.m. to 11 p.m. Memorial Day to the end of September. No additional comments have been received in response to the notice of proposed rulemaking.

Discussion of Comments and Changes

Upon review of the comments from all the test periods, the Coast Guard believes that the operating hours for the bridge should be permanently changed. The mariners specifically requested, after several alternative schedules, that the bridge be crewed from 7 a.m. to 11 p.m. each day during the prime boating season, Memorial Day through the end of September. The bridge logs also indicated that there were significant additional openings as a result of the longer operating hours for the bridge; therefore, the Coast Guard is changing the operating hours for the Manchester MBTA Bridge. This final rule change will amend section 117.603 to require the Manchester MBTA Bridge to open on signal between 7 a.m. and 11 p.m. from Memorial Day through September 30 each year. The hours that the bridge is crewed from April 1 to Memorial Day and from October 1 through November 1 would remain 9 a.m. to 1 p.m. and 2 p.m. to 6 p.m.

It is the Coast Guard's policy in the interest of protecting the needs of navigation to assure that drawbridges are operated in such a manner that they are a minimum obstruction to waterway traffic while at the same time still providing for the reasonable needs of land traffic. Under that policy drawbridges shall be operated in a manner and under operating rules and regulations that are in the overall public best interest by pursuing balanced operating schedules. Under the existing operating rules for the Manchester MBTA Bridge, the needs of navigation were clearly not being satisfied as evidenced by the comments from the mariners and the documented increased openings as a result of the 1996 temporary final rule. The Coast Guard responded to all the MBTA's submissions, but believes the increase in the operating hours for a four month period each year will allow the mariners to enjoy the prime boating season and best serve the public interest by balancing the needs of the boating public against the needs of rail traffic and operating costs. The expanded operating schedule will allow the mariners to depart earlier and return later each day during the prime boating season. The previous hours clearly did not meet the needs of navigation as a result of the bridge not opening until 9 a.m. and closing at 6 p.m. during the boating season.

The Coast Guard has also changed the advance notice requirements of the Manchester MBTA Bridge by establishing a four hour advance notice requirement for openings during all periods when the bridge is not scheduled to be crewed.

The Coast Guard determined that clearance gauges should be installed and maintained for the safety of navigation to assist mariners in determining whether they can safely pass under the bridge without an opening during periods when the bridge is not crewed. The final rule requires the bridge owner to post the operating regulations to assist mariners interested in transiting under the bridge by posting the operating schedule of the bridge.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that bridges must operate in accordance with the needs of navigation while providing for the reasonable needs of land transportation. This rule adopts the operating hours which the Coast Guard believes to be appropriate based on the results of previous test periods and public comments. The Coast Guard believes this rule achieves the requirement of balancing the navigational rights of recreational boaters and the needs of land based transportation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations less than 50,000. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.603 to read as follows:

§ 117.603 Manchester Harbor.

The Massachusetts Bay Transportation Authority Bridge at mile 1.0 in Manchester, shall operate as follows:

(a) The draw shall open on signal—

(1) From Memorial Day through September 30 from 7 a.m. to 11 p.m.;

(2) From April 1 to Memorial Day and from October 1 to November 1 from 9 a.m. to 1 p.m. and 2 p.m. to 6 p.m.

(b) At all other times, the draw shall open on signal with at least four hours notice.

(c) The owner of this bridge shall provide and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained in accordance with the provisions of section 118.160 of this chapter.

§ 117.604 [Removed]

3. Section 117.604 is removed.

Dated: August 17, 1997.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 97–25601 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–97–027]

Safety Zone Regulation; Commencement Bay Maritime Festival Tugboat Races, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone during the Commencement Bay Maritime Festival Tugboat Races held on Commencement Bay in Tacoma, WA. This event will be held on Sunday, September 28, 1997, from 12:30 p.m. to 3:30 p.m. (PDT). The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. Entry into the safety zone will be prohibited during the event in order to keep spectator vessels from interfering with the races and to prevent damage that may be caused by the large wakes produced by the tugboats during the races.

DATES: This regulation becomes effective on September 28, 1997, at 12:30 p.m. and will terminate at 3:30 p.m. (PDT) that same day, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Joel Roberts, c/o Commanding Officer, Coast Guard Marine Safety Office, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective less than 30 days from the date of publication in the **Federal Register**. The final details of this event were not available from its sponsor more than 30 days prior to the event. Prompt regulatory action is needed in order to provide for the safety of spectators and participants during this event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Tug Boat Races are sponsored by the Commencement Bay Maritime Festival Committee as part of the Commencement Bay Maritime Festival and will be conducted on the waters of Commencement Bay, Tacoma, WA. This one day event attracts a large number of spectator craft which gather on the waters near the race course. To promote the safety of both the spectators and participants, a safety zone will be established and entry into this safety zone will be restricted during the event. This action is necessary in order to keep spectators off of the race course and to prevent any damage to spectator vessels that may be caused by the large wakes produced by the tugs during the races. This safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal, state, and local agencies.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 CFR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the safety zone will involve less than one square mile of area on Commencement Bay and entry into this zone will be restricted for only 3 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation above, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has concluded that under Section 2.B.2.c. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section 165T.13–022 is added to read as follows:

§ 165.T13–022 Safety Zone; Commencement Bay, Tacoma, WA.

(a) *Location.* The following area is a safety zone: All waters of Commencement Bay, Tacoma, WA, bounded by a line commencing at position latitude 47°15'49" N, longitude 122°26'00" W; thence to position latitude 47°16'24" N, longitude 122°26'19" W; thence to position latitude 47°17'23" N, longitude 122°28'40" W; thence to position latitude 47°17'00" N, longitude 122°29'00" W; thence along the shore of Commencement Bay to position latitude 47°15'41" N, longitude 122°26'21" W; thence returning across the mouth of the Thea Foss Waterway to the point of origin. This safety zone resembles a rectangle measuring approximately 2.4 miles along the shoreline and extending approximately 800 yards into Commencement Bay. (Datum: NAD 83)

(b) *Regulations.* In accordance with the general regulations in 165.23 of this part, no person or vessel may enter or remain in this zone, except for participants in the event, supporting personnel, vessels registered with the event organizer, or other vessels authorized by the Captain of the Port or his designated representatives.

(c) *Effective dates.* This section is effective on September 28, 1997, at 12:30 p.m. (PDT) and terminates on September 28, 1997, at 3:30 p.m., unless sooner terminated by the Captain of the Port.

Dated: September 18, 1997.

M.S. Boothe,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 97–25597 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–97–019]

RIN 2115–AE84

Regulated Navigation Area: Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent regulated navigation area on portions of the Miami River, and Tamiami Canal. Over 300 freight vessels, ranging in size from 40 to 278 feet in length and 20 to 2600 gross tons routinely operate from the Miami River and the Tamiami Canal. The waterway channel is well under 150 feet wide at most points, and as vessels are often moored several abreast into the waterway this can result in little room in the channel for the safe navigation of other vessels transiting the waterway. This regulated navigation area is needed to provide for an unrestricted navigation channel by preventing the improper mooring of vessels on affected portions of the Miami River and the Tamiami Canal. By establishing this permanent regulation, the Coast Guard expects to improve navigational safety on the river, prevent marine casualties which can cause injury to persons, property and the environment, and ensure the river's continued ability to serve as a main artery for flood control.

DATES: This Regulated Navigation Area is effective October 27, 1997.

FOR FURTHER INFORMATION CONTACT: LCDR S.M. Hanewich, Port Management and Response Department, USCG Marine Safety Office Miami at (305) 535–8764.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rulemaking concerning this Regulated Navigation Area on the Miami River, was published in the **Federal Register** on June 9, 1997 (62 FR 31385). No comments were received during the comment period.

Background and Purpose

These regulations are needed to provide for the unimpeded transit of vessels along portions of the Miami River and the Tamiami Canal, to prevent damage to bridges and other structures or moored vessels, and to protect the navigable waters from harm resulting from improperly moored vessels in the Miami River and Tamiami Canal. The project channel depth is 15 feet. The width varies from 150 feet at the mouth of the river (at the Brickell Avenue Bridge) to 90 feet at the limit of navigation (South Florida Water Management District salinity dam). The Coast Guard believes that a significant risk exists that vessels rafted too far into the waterway channel interfere with the ability of other vessels to navigate. Furthermore, local emergency response personnel have been hampered in their ability to reach outboard rafted vessels during vessel fires and other emergencies.

The Miami River also serves as a flood control conduit in southern Florida, especially during hurricanes and tropical storms. During periods of high water, the South Florida Water Management District may release water from the Everglades and surrounding areas into the river. Vessels that are improperly moored along the river, as when there are more than two vessels abreast, create a risk that the vessels may break loose and damage bridges or other vessels, or create obstructions which could jeopardize navigation and flood control. This rule is intended to improve navigational safety on the river, and ensure the river's continued ability to serve as a main artery for flood control.

These regulations would not allow vessels to be rafted more than two abreast. Neither a single vessel nor a maximum of two rafted vessels will be allowed to extend greater than 54 feet into the main river (measured from the dock) without permission of the Captain of the Port. There are many mooring facilities available on the river to accommodate those vessels required to move because of these regulations. These regulations will require that a minimum navigation channel width of 65 feet exist on the Miami River at all times, from the Brickell Avenue Bridge west to the Tamiami Canal. A minimum channel width of 45 feet shall exist at all times on the Tamiami Canal and on the Miami River west of its junction with the Tamiami Canal to the South Florida Water Management District's salinity dam. No moored vessels shall extend into the channels in such a way as to obstruct navigation. All moored and rafted vessels shall provide safe access from the shore in order that the vessel can be boarded by crew and authorities quickly and efficiently as needed.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs

and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary as there are numerous available moorings on the Miami River and Tamiami Canal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as there are multiple mooring facilities available on the Miami River and the Tamiami Canal.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the rulemaking does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment.

Environmental Analysis

The Coast Guard has considered the environmental impact of this action and has determined pursuant to section 2.B.2.e(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist have been prepared and are available in the docket for inspection and copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard amends Subpart F of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.726 is added to read as follows:

§ 165.726 Regulated Navigation Areas; Miami River, Miami, Florida.

(a) *Location.* The following are Regulated Navigation Areas:

(1) All the waters of the Miami River, Miami, Florida, from the Brickell Avenue Bridge, in approximate position 25°–46.19′ N, 80°–11.4′ W, inland to the South Florida Water Management District's salinity dam in approximate position 25°–48.4′ N, 80°–15.6′ W.

(2) The Tamiami Canal from its intersection with the Miami river in approximate position 25°47.7′ N, 80°14.7′ W to the N.W. 37th Avenue bridge in approximate position 25°48.5′ N, 80°15.5′ W. All coordinates referenced use datum: NAD 83.

(b) *Regulations.* The restrictions in this paragraph apply to vessels operating within the regulated navigation areas in paragraph (a) of this section unless authorized to deviate by the Captain of the Port, Miami, Florida, or a Coast Guard commissioned, warrant, or petty officer designated by him.

(1) All rafted vessels (inboard and outboard) must be properly moored in accordance with applicable municipal laws and regulations.

(2) At no time shall any vessels be rafted more than two abreast.

(3) Neither single nor rafted vessels shall extend greater than 54 feet into the main river (measured from the dock) without permission of the Captain of the Port.

(4) A minimum channel width of 65 feet shall be maintained at all times on the Miami River from the Brickell Avenue Bridge west to the Tamiami Canal. A minimum channel width of 45 feet shall be maintained at all times on the Miami River west of the junction of the Miami River and the Tamiami Canal to the South Florida Water Management District's salinity dam, as well as on the Tamiami Canal from its mouth to the N.W. 37th Avenue Bridge.

(5) All moored and rafted vessels shall provide safe access from the shore.

(6) All moored and rafted vessels shall provide clear and ready access for land-based firefighters to safely and quickly reach outboard rafted vessels.

(7) No vessels shall moor or raft in any manner as to impede safe passage of another vessel to any of the tributaries of the Miami River.

(8) Nothing in these regulations shall prohibit the U.S. Army Corps of Engineers from requiring the relocation or movement of vessels in a declared flood emergency.

(c) *Enforcement.* Violations of these regulated navigation areas should be reported to the Captain of the Port, Miami. Persons in violation of these regulations will be subject to civil penalty under § 165.13(b) of this part.

Dated: September 18, 1997.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 97–25600 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI12–01–7266; FRL–5898–2]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 12, 1997, the Environmental Protection Agency (EPA) published an action of proposed rulemaking discussing its decision to approve a revision to the Michigan State implementation Plan (SIP) to grant an exemption for the Muskegon County ozone nonattainment area from the applicable Oxides of Nitrogen (NO_x) transportation conformity requirements. See **Federal Register** (62 FR 32058). No comments were received by the EPA during the 30-day comment period. This rule finalizes EPA's decision to approve the exemption for Muskegon County, moderate ozone nonattainment area, from the transportation conformity requirements for NO_x. The Michigan SIP revision request is based on the urban airshed modeling (UAM) conducted for the attainment demonstration for the Lake Michigan Ozone Study (LMOS) modeling domain. Additional information is available at the address indicated below.

EFFECTIVE DATE: This final rule is effective on October 27, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Victoria Hayden at (312) 886–4023 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202)260–7548.

FOR FURTHER INFORMATION CONTACT: Victoria Hayden, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–4023.

SUPPLEMENTARY INFORMATION: The specific rationale EPA used to approve the exemption for Muskegon County from the transportation conformity requirements of NO_x was explained in the proposed rulemaking and will not be restated here. This rule announces EPA's final action regarding approval of the Michigan SIP revision.

I. EPA Final Rulemaking Action

In this final action EPA is approving the transportation conformity NO_x waiver SIP revision for the State of Michigan. In light of the modeling completed thus far and considering the importance of the Ozone Transport Assessment Group (OTAG) process and attainment plan modeling efforts, EPA notes that it may reexamine the impact of this NO_x waiver. In the near future, EPA intends to require appropriate States to submit SIP measures to achieve emissions reductions of ozone precursors needed to prevent significant transport of ozone. EPA will evaluate the States' submitted SIP measures and available refined modeling to determine whether the NO_x waiver should remain in place, or whether EPA must seek a plan revision.

The EPA also reserves the right to require NO_x emission controls for transportation sources under section 110(a)(2)(D) of the Act if future ozone modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas.

II. Administrative Requirements

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and Subchapter I, Part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2)

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Oxides of Nitrogen, Transportation conformity, Transportation—air quality planning, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 12, 1997.
Michelle D. Jordan,
Acting Regional Administrator.

Part 52, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

§ 52.1174 [Amended]

2. Section 52.1174 is amended by adding paragraph (p) to read as follows:

* * * * *

(p) Approval—On November 22, 1995 the Michigan Department of Natural Resources submitted a petition for exemption from transportation conformity requirements for the Muskegon ozone nonattainment area. This approval exempts the Muskegon ozone nonattainment area from transportation conformity requirements under section 182(b)(1) of the Clean Air Act. If a violation of the ozone standard occurs in the Muskegon County ozone nonattainment area, the exemption shall no longer apply.

[FR Doc. 97–25501 Filed 9–25–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–31–1–7310a; FRL–5893–6]

Approval and Promulgation of Air Quality Implementation Plans, New Mexico; Recodification of, and Revisions to, the Air Quality Control Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the EPA is approving the recodification of, and revisions to, the New Mexico State Implementation Plan (SIP). The existing Air Quality Control Regulations (AQCRs) have been renumbered and reformatted into the New Mexico Administrative Code (NMAC) as required by the New Mexico State Records Center. In addition to having renumbered and reformatted the regulations, standard administrative changes have been made throughout all AQCRs, and revisions made to seven particular AQCRs. The intended effects of these revisions are to delete obsolete, nonessential, redundant, and technically inadequate regulations; make certain rules and definitions more explicit and; make one particular regulation more closely reflect current New Mexico Environment Department (NMED) policy.

DATES: This action is effective on November 25, 1997, unless adverse or critical comments are received by October 27, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Eaton R. Weiler, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–2174.

SUPPLEMENTARY INFORMATION:

I. Background

On January 8, 1996, the Governor of New Mexico formally submitted a recodification of, and revision to, the State Implementation Plan. On July 18, 1996, the Governor formally submitted a revision to the recodified regulation 20 NMAC 2.72. The January submittal recodification and revisions were adopted by the New Mexico Environmental Improvement Board (NMEIB) at hearings in July, September, October and December 1995. The August submittal revision to 20 NMAC 2.72 was adopted by the NMEIB at a hearing on June 14, 1996. The recodification was prompted by the New Mexico State Records Center requirement that all AQCRs be recodified into the new numbering system and format of the NMAC. As well as renumbering and reformatting regulations, standard administrative changes have been made throughout all AQCRs, and revisions made to seven particular AQCRs. The intended effects of these revisions are to comply with the requirements of the New Mexico State Records Center as well as to: delete obsolete, non-essential, redundant, and technically inadequate regulations; make certain rules and definitions more explicit and; make one particular regulation more closely reflect current NMED policy.

The revisions fall into three groups as outlined below. The first group consists of renumbering and format revisions consistent with the NMAC requirements. The second group consists of standard administrative wording changes that have been made throughout all regulations in which they appear. The third group consists of other minor revisions, each of which are discussed separately below.

II. NMAC Format Revisions

The NMAC system is divided into Titles, Chapters, Parts and Sections. Title 20, *Environmental Protection*, includes all rules and regulations providing for the protection of the environment. Chapter Two of Title 20, *Air Quality*, contains the revised and recodified AQCRs of the NMED. Chapter Two is divided into Parts, which are further divided into Sections. The resulting NMAC for air quality is of the format: 20 NMAC 2.xxx.yyy, where xxx is the Part number and yyy is the Section number.

The following administrative sections have been added to each Part as required by the State Records Center:

100 ISSUING AGENCY
101 SCOPE
102 STATUTORY AUTHORITY
103 DURATION
104 EFFECTIVE DATE
105 OBJECTIVE
106 AMENDMENTS AND SUPERSESSION OF PRIOR REGULATIONS
107 DEFINITIONS

Section 108, DOCUMENTS, has been added to all Parts citing documents other than the NMAC, such as 40 *Code of Federal Regulations* (CFR). Also, RESERVED has been added to all nonexistent sections between subparts.

III. Standard Administrative Revisions

In addition, the following administrative changes have been made to all rules and regulations in which they appear:

1. "division" to "Division"
2. "director" to "Secretary"
3. "department" to "Department"
4. "secretary" to "Secretary"
5. "federal Clean Air Act" to "Federal Act"
6. "federal Act" to "Federal Act"
7. "Federal environmental protection agency" to "US EPA"
8. "EPA" to "US EPA"
9. "this regulation" to "this Part"
10. "section n" to "Section n"
11. "Part" added to definitions section of all Parts
12. "Air Quality Control Unit of the Department" to "Air Pollution Control Bureau of the Department"
13. Internal references have been changed to reflect the NMAC numbering system.
14. Effective date added to all subsections.
15. Regulations have been rewritten so as to be positive: "no person owning or operating * * * shall", has been changed to "the owner or operator * * * shall not."
16. Obsolete language, outdated compliance schedules and outdated effective dates have been deleted.

IV. Other Revisions

A. Non-Methane Hydrocarbon

The non-methane hydrocarbon (NMHC) ambient air quality standard, AQCR 201(C)(7), has been deleted. The rule has been found to be technically inadequate, 48 FR 628. The intended effect of this revocation is to eliminate unnecessary regulations pertaining to ambient air quality.

A NMHC National Ambient Air Quality Standard (NAAQS) was promulgated on April 30, 1971. The standard is unique among the primary NAAQS because it was expressly developed as a guide and not as a health-based standard. When this standard was promulgated in 36 FR 8186, EPA stated that "The sole purpose of prescribing a hydrocarbon standard is to control oxidants." The standard was promulgated because it represented EPA's best judgement at the time of the maximum level of NMHCs which would ensure the attainment of the NAAQS for photochemical oxidants. The EPA has since determined that there is no single, universally applicable relationship between NMHCs and photochemical oxidants and that NMHCs, as a class, apparently do not produce any health or welfare effects at or near ambient levels. On January 5, 1983, the NAAQS was revoked in 48 FR 628.

Considering that NMHCs do generate photochemical oxidants, they have continued to be regulated. Precursors to photochemical oxidants today are commonly called Volatile Organic Compounds (VOC). This is a much broader term than NMHCs. The VOCs are regulated under the Federal ozone regulations. Major sources must limit or control VOC output, especially in ozone nonattainment areas. Also, automobiles located in nonattainment areas undergo inspection and maintenance programs. Such programs are part of the SIP to control ozone pollution. So, despite the deletion of the Federal and state NMHC standards, many programs exist to regulate the emissions of this type of compound to meet the NAAQS for ozone.

B. Beryllium, Asbestos and Heavy Metals

The ambient air quality standards for beryllium, asbestos and heavy metals, 20 NMAC 2.3.109(B), formerly AQCR 201(B), have been deleted. These pollutants have been superseded by other state and Federal regulations. The intended effect of these revocations is to eliminate unnecessary and redundant regulations pertaining to ambient air quality.

1. Federal National Emission Standards for beryllium are included in 40 CFR part 61, subparts C and D. Through 20 NMAC 2.78, *Emission Standards for Hazardous Air Pollutants*, New Mexico has the authority to implement and enforce Federal standards for beryllium. Subpart C is general, and subpart D is specific for beryllium rocket motor firing. Sources subject to subpart C are: extraction plants, ceramic plants, foundries, incinerators, and propellant plants and machine shops which process beryllium.

Beryllium emission is also regulated by 20 NMAC 2.74, *Prevention of Significant Deterioration*. Major sources which have emission rates which are greater than a certain threshold or any emission rate which would result in an air concentration greater than a certain threshold shall apply Best Available Control Technology (BACT), provide for air quality monitoring of beryllium, and perform ambient air quality impact analyses.

2. Asbestos emissions are regulated under 40 CFR part 61 subpart M, *National Emission Standards for Asbestos*, in which strict requirements are laid out for the emissions, processing and handling of asbestos for many sources. Through 20 NMAC 2.78, *Emission Standards for Hazardous Air Pollutants*, New Mexico has the authority to implement and enforce Federal standards for asbestos.

Asbestos emissions are also controlled under the state regulation 20 NMAC 2.74, *Prevention of Significant Deterioration*. Major sources which have emission rates which are greater than a certain threshold shall apply BACT, provide for air quality monitoring of asbestos, and perform ambient air quality impact analyses.

3. Heavy Metals. Heavy metal emissions are regulated under permitting rules. The air toxics portion of 20 NMAC 2.72, *Permits*, includes emission rate thresholds and Occupational Exposure Limit (OEL) thresholds on a number of heavy metals. These metals are barium, cadmium, chromium, cobalt, copper, hafnium, indium, manganese, molybdenum, nickel, platinum, rhodium, silver, tantalum, tellurium, thallium, tin, tungsten, uranium, vanadium, yttrium, and zirconium. If emission rates are greater than the emission rate threshold, or modeling shows that the eight-hour average ambient concentration of the toxic air pollutant exceeds one-one hundredth of the OEL, the permit application shall include a health assessment for the toxic air pollutant under consideration.

Lead and mercury are also controlled under the state regulation 20 NMAC 2.74, *Prevention of Significant Deterioration*, which establishes emission rate and air quality concentration thresholds. If these thresholds are exceeded, the major source shall apply BACT, provide for air quality monitoring, and perform ambient air quality impact analyses.

C. Photochemical Oxidants

The ambient air quality standard for photochemical oxidants, 20 NMAC 2.3.111.C, formerly AQCR 201.B, has been deleted. This deletion takes into account the revision of the national standard.

The EPA promulgated ambient air quality standards for photochemical oxidants in 1971 (36 FR 8186). In accordance with the provisions of sections 108 and 109 of the Clean Air Act (the Act) as amended, EPA reviewed and revised the standard on February 8, 1978 (44 FR 8202). The revisions include: (1) raising the primary and secondary standard from 0.08 to 0.12 parts per million and (2) changing the chemical designation of the standard from photochemical oxidants to ozone.

Oxidants are strongly oxidizing compounds, which are the primary constituents of photochemical smog. The oxidant found in largest amounts is ozone, a very reactive form of oxygen. Oxidants also include the group of compounds referred to collectively as peroxyacylnitrates and other compounds, all produced in much smaller quantities than ozone.

Most of these materials are not emitted directly into the atmosphere but result primarily from a series of chemical reactions between oxidant precursors (nitrogen oxides and organic compounds) in the presence of sunlight. The principal sources of organic compounds are the hydrocarbon emissions from automobile and truck exhausts, gasoline vapors, paint solvent evaporation, open burning, dry cleaning fluids, chemical plants and other industrial operations. Nitrogen oxides are emitted primarily from combustion sources such as electric power generation units, gas and oil-fired space heaters, and automobile, diesel and jet engines.

The reduction in emissions of nitrogen oxides and organic compounds are achieved through Federal and State programs that have been formalized in regulations promulgated under the Act.

The deletion does not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

D. Soiling Index

Soiling Index of Ambient Air Quality Standards, 20 NMAC 2.3.112, has been deleted. This revision takes into account the availability of improved methods. The State is revising the plan consistent with the applicable requirements.

E. Smoke and Visible Emissions

Smoke and Visible Emissions, 20 NMAC 2.61, establishes controls on smoke and visible emissions for certain sources. The Part is revised by the addition of Section 111(D) which provides an exclusion "for sources subject to the provisions of 20 NMAC 2.70, emissions which result from insignificant activities as defined 20 NMAC 2.70." The proposed change intends to allow sources covered by Part 70 to use the definition of insignificant activities in Part 70 to determine compliance. This addition will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirements of the Act.

F. Schedules of Compliance

Schedules of Compliance, AQCR 705, has been repealed. Regulation 705 was incorporated into the SIP, and codified at 40 CFR 52.1620(c)(9). The regulation created provisions for sources to come into compliance with subsequent State or Federal air control laws under extended schedules. Since most current statutes have their own compliance schedules, this would only be used in cases where a source required a variance to come into compliance. Repeal of this provision would oblige sources seeking a schedule of compliance to adhere to 40 CFR 51.262. This revision does not weaken the New Mexico SIP in any discernable way.

G. Air Quality Maintenance Areas

Air Quality Maintenance Areas, AQCR 706, has been repealed. Regulation 706 is the state implementation of 40 CFR 51.40 subpart D, which was repealed in the regulatory reform action taken by the EPA. The regulation 40 CFR 51.40 was determined to have become legally obsolete upon passage of the 1990 Act Amendments. Similarly, Regulation 706, implementing a Federal requirement, is obsolete.

H. Confidential Information Protection

Confidential Information Protection, 20 NMAC 1.115, (formerly AQCR 110) has been rewritten to more closely reflect NMED policy and the New Mexico Air Quality Control Act. The revision is consistent with the requirements applicable to implementation plans under 40 CFR 51.116, *Data Availability*.

Section 115 lays out procedures for handling requests for confidentiality and the conditions which must be satisfied to keep information concerning air contaminant sources confidential.

Concerning availability of data, Section 115 paragraph (B) states that Section 115 shall not be construed to prohibit disclosure of records and information: to representatives of the NMED, to representatives of the EPA, in any proceeding under the Air Quality Control Act or the Act, of data concerning nature and amount of emissions from any source, or limit the use of such records or information in any civil or criminal action.

Furthermore, 20 NMAC 72, *Permits*, Section 210 states that the NMED shall make available for public inspection the permit application and the NMED's preliminary determination.

I. Procedures for Requesting a Variance Hearing

Procedures for Requesting a Variance Hearing, AQCR 701, paragraph (C), has been rewritten and paragraphs (D) through (I) have been deleted. This revision is consistent with the requirements applicable to implementation plans under 40 CFR part 51. Paragraph (C) now states that any further action and proceeding shall be in accordance with general adjudicatory procedures of the Environmental Improvement Board. All other language that has been deleted concerns actions and hearings of the EIB. Since the Board hears and grants variances and it has standard adjudicatory procedures for hearings, paragraphs (D) through (I) of AQCR 701 are nonessential and redundant.

J. Construction Permits

The 20 NMAC 2.72.103 has been revised to provide a stay of enforcement on the asphalt fumes portion of the air toxics list until September 1, 1997. The air toxics list is part of Subpart IV, *Permits for Toxic Air Pollutant Emissions*, which is not a part the New Mexico SIP. The actual revision wording, however, occurs in Section 103, *Duration*, which is part of the SIP.

V. Final Action

By this action, the EPA is approving the recodification and revisions of the New Mexico SIP. The existing AQCRs have been renumbered and reformatted into the NMAC as required by the New Mexico State Records Center. As well as renumbering and reformatting regulations, standard administrative changes have been made throughout all AQCRs, and revisions made to seven particular AQCRs. The following table lists the submitted SIP AQCRs and the corresponding NMAC part number.

The EPA has reviewed these recodification and revisions to the New Mexico SIP and is approving them as submitted.

AQCR No.	NMAC part No.	NMAC title
100	2	Definitions.
110*	1	General Provisions.
200	3	Ambient Air Quality Standards.
201*	3	Ambient Air Quality Standards.
301	60	Open Burning.
401*	61	Smoke and Visibility Emissions.
402	10	Contingency-Use Woodwaste Burners.
501	11	Asphalt Processing Equipment.
502	12	Cement Kilns.
503	13	Gypsum Processing Plants.
504	14	Particulate Emissions From Coal Burning.
505	15	Pumice Mica and Perlite Process Equipment.
506	16	Nonferrous Smelters—Particulate Matter.
506.1	17	Existing Nonferrous Smelters—Particulate Matter—Additional Requirements.
507	18	Oil Burning Equipment—Particulate Matter.
508	19	Potash, Salt or Sodium Sulfate Processing Equipment—Particulate Matter.
509	20	Lime Manufacturing Plants—Particulate Matter.
510	21	Fugitive Particulate Matter Emissions From Nonferrous Smelters.
511	22	Fugitive Particulate Matter Emissions From the Roads Within the Town of Hurley.
601	30	Kraft Mills.
602	31	Coal Burning Equipment—Sulfur Dioxide.
603	32	Coal Burning Equipment—Nitrogen Dioxide.
604	33	Gas Burning Equipment—Nitrogen Dioxide.
606	34	Oil Burning Equipment—Nitrogen Dioxide.
651	40	Sulfuric Acid Production Units—Sulfur Dioxide, Acid Mist and Visible Emissions.
652	41	Nonferrous Smelters—Sulfur.
700	75	Permit Fees.
701*	1	General Provisions.
702*	72	Permits.
Part I		Subpart I—General Provisions.
Part II		Subpart II—Permit Processing and Requirements.
Part IV		Subpart III—Source Class Permit Streamlining.
703.1	73	Notice Of Intent and Emissions Inventory Requirements.
704	5	Source Surveillance.
705*	5	(Repealed).
706*	5	(Repealed).
709	79	Permits—Nonattainment Areas.
710	80	Stack Heights.
801	7	Excess Emissions During Malfunction, Start-up, or Scheduled Maintenance.
901	8	To Control Emissions Leaving New Mexico.
1001	1	General Provisions.
1101	1	General Provisions.
1201	1	General Provisions.
1301	1	General Provisions.

*Indicates the revised AQCRs.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on November 25, 1997 unless, by October 27, 1997 adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based the proposed rule for this action published elsewhere in this **Federal Register**. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 25, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 8, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation of part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(66) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(66) Recodified and revised regulations of the New Mexico Administrative Code submitted by the Governor on January 8, and July 18, 1996.

(i) Incorporation by reference.

(A) New Mexico Administrative Code, Title 20, Chapter 2, Parts 1 and 2, adopted by the New Mexico Environmental Improvement Board September 22, 1995, and filed with the State Records and Archives Center on September 27, 1995.

(B) New Mexico Administrative Code, Title 20, Chapter 2, Parts 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, 31, 32, 33, 34, 40, 41, 60, 61, 70, 71, 72 (Subparts I, II and, III; Subpart V, Sections 501 and 502), 73, 75, 79, and 80; adopted by the New Mexico Environmental Improvement Board on October 20, 1995, and filed with the State Records and Archives Center on October 30, 1995.

(C) Revised New Mexico Administrative Code, Title 20, Chapter 2, Part 3, Sections 109 and 111 and; Part 61, Section 111 and; repeal of Part 3, Section 112, adopted by the New Mexico Environmental Improvement Board December 8, 1995, and filed with the State Records and Archives Center on December 11, 1995.

(D) New Mexico State Records Center transmittals repealing Air Quality Control Regulations 705 and 706; adopted by the New Mexico Environmental Improvement Board December 8, 1995; and filed with the State Records and Archives Center on December 11, 1995.

(E) Revised New Mexico Administrative Code, Title 20, Chapter 2, Part 72, Section 103; adopted by the New Mexico Environmental Improvement Board on June, 18, 1996, and filed with the State Records and Archives Center on June 19, 1996.

(ii) Additional material. None.

[FR Doc. 97–25502 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECITON AGENCY

40 CFR Part 300

[FRL–5897–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Northwest Transformer South Harkness Street site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces the deletion of the Northwest Transformer South Harkness Street Site, located in Everson, Whatcom County, Washington from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of human health and the environment.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Timothy H. Brincefield, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop ECL–111, Seattle, Washington 98101, (206) 553–2100.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Northwest Transformer (South Harkness Street), Everson, Washington.

A notice of intent to delete for this site was published on August 15, 1997 (62 FR 43684). The closing date for comments was September 14, 1997. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 17, 1997.

Randall F. Smith,

Acting Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing site for "Northwest Transformer (South Harkness St), Everson, Washington."

[FR Doc. 97–25339 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–120; FCC 97–276]

Grandfathered Short-Spaced FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Report and Order* (*R&O*) in MM Docket No. 96–120 modifies a current rule to permit certain short-spaced stations to make changes based on a showing that no interference is caused or received, or if interference already exists, based on the total of such interference not being increased. The *R&O* also permits certain stations short-spaced to a second-adjacent-channel or a third-adjacent-channel station to change transmitter location or other station facilities without regard to such short-spacing, and to eliminate the need to obtain agreements by grandfathered stations proposing increased facilities. The types of modifications for this revised rule are expected to have no potential to increase interference to other stations.

EFFECTIVE DATE: November 25, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James Bradshaw, Mass Media Bureau, Audio Services Division, (202) 418–2720, or via the Internet at jbradsha@fcc.gov. For additional information concerning the information collections contained in the *R&O*, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is the synopsis of the Commission's *Report and Order* in MM Docket No. 96–120, adopted August 4, 1997, and released August 8, 1997.

The complete text of this *R&O*, which was adopted in MM Docket No. 96–120, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of the Report and Order

1. In the *R&O*, the Commission streamlines the Commission's rules specifically dealing with modifications of commercial FM stations that became short-spaced in 1964, and have remained short-spaced since that time. The *R&O* modifies portions of part 73 of the rules to lift restrictions which unnecessarily impede flexibility as to site selection for grandfathered stations and substitute the currently required interference showings in applications, which have proven ineffective, with showings that directly relate to the impact such modification proposals have on other stations and the public.

2. In the *R&O*, the Commission changes three aspects of the rule section dealing with grandfathered short-spaced stations. First, the Commission approves use of predicted interference area analysis based on field strength protection ratios, instead of the current limitation based on the relative locations of the 1 mV/m (60 dBu) service contour of the short-spaced stations. Second, the Commission eliminates the second-adjacent-channel and third-adjacent-channel protection criteria for grandfathered short-spaced stations. Finally, the Commission eliminates the provision for agreements between grandfathered short-spaced stations.

3. The rules set forth in the *R&O* puts the focus on more accurately evaluating and controlling interference. The rules also return some flexibility when stations with second-adjacent-channel or third-adjacent-channel grandfathered short-spacings propose modifications. And for stations with co-channel or first-adjacent-channel grandfathered short-spacings, the rules allow for a more accurate determination of predicted interference. In addition, the rules eliminate the Commission's policy regarding agreements between grandfathered stations.

Final Paperwork Reduction Act of 1995 Analysis

4. This *R&O* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 ("*PRA*"). It has been submitted to the Office of Management and Budget ("OMB") for review under the *PRA*.

OMB Control Number: 3060–0727.

Title: R&O: Grandfathered Short-Spaced FM Stations.

Form Number: 301/340.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 15 FM broadcast licensees.

Estimated time per response: 5 hours per showing (0.5 hours consultation time/4.5 hours contracting time); 0.083 hours per disclosure.

Annual Burden: 9 hours.

Needs and Uses: This *R&O* eliminates unnecessary regulations and streamlines the current method of modifying pre-1964 grandfathered short-spaced FM stations. This *R&O* lifts restrictions which unnecessarily impede flexibility as to site selection for grandfathered stations and substitutes the currently required interference showings in applications with showings that directly relate to the impact such modification proposals have on other stations and the public. The data are used by Commission staff to determine if the public interest will be served and that existing levels of interference will not be increased to other stations. The Commission adopted two of the proposals as set forth in the *NPRM*. The third proposal was adopted as proposed but a disclosure requirement was added that requires that a copy of any application for co-channel or first-adjacent channel stations proposing predicted interference caused in any area where interference is not currently predicted to be caused must be served upon the licensee(s) of the affected short-spaced station(s).

Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act[1] (RFA), the Commission considered regulatory flexibility issues in the *NPRM* in this proceeding, *Grandfathered Short-Spaced FM Stations.*[2] The Commission sought written public comments on the proposals in the *NPRM*. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *R&O* conforms to the RFA as amended.[3]

A. Need For and Objectives of the Rules

6. The Commission's Rules currently require pre-1964 grandfathered short-spaced stations proposing transmitter site changes or facility modifications to demonstrate that the proposed 1 mV/m field strength contour is not extended toward the 1 mV/m field strength contour of any station to which it is short-spaced. This rule was found to be overly restrictive, and open to multiple interpretations. The Commission therefore proposed revisions to its broadcast regulations to replace the current rule with a simple rule based on straight-forward interference prediction methods, and to eliminate spacing requirements for second and third-adjacent channel grandfathered stations.

7. By making these changes, grandfathered stations will have the maximum flexibility when changing transmitter site or proposing facility modifications. Any such changes must be made by filing a minor change application. The new regulations should expedite new and improved service to

[1] See 5 U.S.C. 603.

[2] *Notice of Proposed Rulemaking* in MM Docket No. 96–120, 61 FR 33474 (June 14 , 1996).

[3] See 5 U.S.C. 604. The Regulatory Flexibility Act, see 5 U.S.C. 601 *et. seq.* has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA). We note that the *NPRM* was issued prior to enactment of the amendments to the RFA in the SBREFA.

the public, with minimal impact on existing stations. The specified changes require prior authorization from the Commission. The exact circumstances in which the Commission will allow modifications are listed in 47 CFR 73.213(a) (*see* Rule Changes at the end of this document).

B. Summary of Significant Issues Raised by Public Comments in Response to the Regulatory Flexibility Analysis

8. No comments were received specifically in response to the regulatory flexibility issues contained in the *NPRM*. However, commenters generally addressed the effects of the proposed rule changes on FM licensees, including small businesses. Generally, commenters favored the rule changes proposed, with minor changes, some of which have been incorporated into the rules specified in the Rule Changes at the end of this document.

C. Description and Estimate of the Number of Small Entities To Which the Rule Will Apply

9. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and the same meaning as the term "small business concern" under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5] According to the SBA's regulations, entities engaged in radio broadcasting (Standard Industrial Classification ("SIC") Code 4832 for radio) may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern. 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

10. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."[6] While we tentatively believe that the foregoing definition of "small business" greatly overstates the number of radio broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small business, we did not propose an alternative definition in the Regulatory Flexibility Analysis. Accordingly, for purposes of this *R&O*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio broadcast stations and to consider further the issue of the number of small entities that are radio broadcasters in the future. Further, in this FRFA, we will identify the different classes of small radio stations that may be impacted by the rules adopted in this *R&O*.

Commercial Radio Services

11. The rules and policies adopted in this *R&O* will apply to radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[7] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[8] Included in this industry are commercial, religious, educational, and other radio stations.[9] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[10] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[11] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[12] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[13] As of March, 1997, official Commission records indicate that 12,128 radio stations were operating.[14]

12. It is estimated that the rules will affect about 450 radio stations, approximately 432 of which are small businesses.[15] These estimates are based on cursory studies performed by the staff and may overstate the number of small entities since the revenue figures on which they are based do not include aggregate revenues from non-radio affiliated companies.

Alternative Classification of Small Stations

13. An alternative way to classify small radio stations is the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.

[5] Small Business Act, 15 U.S.C. 632 (1996).

[6] We tentatively conclude that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio and television stations. However, for purposes of this *R&O*, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the rules adopted in this *R&O* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See *R&O* in MM Docket 93–48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (August 27, 1996), citing 5 U.S.C. 601 (3). In our *Notice of Inquiry* in GN Docket No. 96–113B, *In the matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 11 FCC Rcd 6280 (1996), 61 FR 33066 (June 26, 1996), we requested commenters to provide profile data about small telecommunications businesses in particular services, including television and radio, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rulemaking in MM Docket 96–16, In the Matter of Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1997), we invited comment as to whether relief should be afforded to stations: (1) Based on small staff and what size staff would be considered sufficient for relief, *e.g.*, 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

[7] 13 CFR 121.201, SIC 4832.

[8] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A–9.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[13] FCC News Release No. 31327, January 13, 1993.

[14] FCC News Release No. 64958, September 6, 1996.

[15] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

Employment Opportunity Rule (EEO) for broadcasting.[16] Thus, radio stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[17] We estimate that the total number of grandfathered broadcast stations with 4 or fewer employees is approximately 120.[18]

D. Projected Compliance Requirements of the Rule

14. Applicants filing a modification application will be required to provide similar exhibits to those currently required for a construction permit. This information may consist of an interference analysis showing that no area previously receiving interference-free service would receive co-channel or first-adjacent channel interference using the desired to undesired signal strength ratio interference calculation method.

15. Alternatively, for co-channel and first-adjacent channel applicants, a showing that the public interest would be served by the changes proposed in an application must include exhibits demonstrating that the total area and population subject to co-channel or first-adjacent channel interference, caused and received, would be maintained or decreased. In addition, the showing must include exhibits demonstrating that the area and the population subject to co-channel or first-adjacent channel interference caused by the proposed facility to each short-spaced station individually is not increased. In all cases, the applicant must also show that any area predicted to lose service as a result of new co-channel or first-adjacent-channel interference has adequate aural service remaining. For these purposes, adequate service is defined as 5 or more aural services (AM or FM). Finally, any applicant proposing interference caused in an area where interference is not caused must serve its application upon the licensee(s) of the affected short-spaced station(s). The above-listed requirements are similar to the interference exhibits required by the previous rule section.

16. Second-adjacent and third-adjacent channel grandfathered stations will no longer be required to submit interference exhibits, therefore reducing the filing burden.

17. The information required with a modification application generally is the minimum necessary for the Commission to verify compliance with its rules and regulations. In most instances, the new procedures will reduce the time and expense required to implement certain modifications to grandfathered broadcast stations. Most permittees and licensees retain professional consulting engineers or legal counsel, or both in preparing construction permit applications. We do not expect this to change significantly by the adoption of the new rules and procedures. However, the time needed for the preparation of the simplified applications will be reduced as a result of fewer necessary waiver requests, translating into time and money savings for the broadcast applicant.

E. Significant Alternatives Considered Minimizing the Economic Impact on Small Entities and Consistent with the Stated Objectives

18. The burdens on co-channel and first-adjacent-channel grandfathered applicants will be similar to the requirements under the previous rule section. The burden on second-adjacent and third-adjacent grandfathered applicants will be reduced. Modification applications will typically require that lesser amounts of information be submitted to the Commission as compared to an application submitted under the previous rules. The rule and policy changes will have a positive economic impact, as eligible entities, including small entities, will be able to increase their service or make transmitter site changes that were previously inhibited by the rules. All entities will still be able to file informal objections against a modification application, just as they may do now. In addition, any applicant proposing to cause interference in an area previously receiving interference must serve its application on the licensee(s) of the affected station(s).

F. Report to Congress

19. The Secretary shall send a copy of this Final Regulatory Flexibility Analysis along with this *R&O* in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. 801(a)(1)(A). A copy of this RFA is also published earlier in this document.

Ordering Clauses

20. Accordingly, *it is ordered* that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 CFR part 73 is *amended* as set forth below.

21. *It is further ordered* that the requirements and regulations established in this *Report and Order* will become effective November 25, 1997.

22. For further information contact Jim Bradshaw of the Audio Services Division, Mass Media Bureau at (202) 418–2740, or by e-mail at jbradsha@fcc.gov.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Reporting and recordkeeping requirements, Television broadcasting.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Rule Changes

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

2. Section 73.213(a) is revised to read as follows:

§ 73.213 Grandfathered short-spaced stations.

(a) Stations at locations authorized prior to November 16, 1964 that did not meet the separation distances required by § 73.207 and have remained continuously short-spaced since that time may be modified or relocated with respect to such short-spaced stations,

[16] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, section 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, section 301, 108 Stat. 4187 (1994). However, this definition was adopted after the public notice and the opportunity for comment. See *R&O* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

[17] See, *e.g.*, 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); First *Report and Order* in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket 96–16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as on with ten or fewer employees.

[18] Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form 395B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

provided that no area previously receiving interference-free service would receive co-channel or first-adjacent channel interference as predicted in accordance with paragraph (a)(1) of this section, or that a showing is provided pursuant to paragraph (a)(2) of this section that demonstrates that the public interest would be served by the proposed changes.

(1) The F(50,50) curves in Figure 1 of § 73.333 are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to § 73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the desired (service) field strength. The F(50,10) curves in Figure 1a of § 73.333 are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to § 73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the undesired (interfering) field strength. Predicted interference is defined to exist only for locations where the desired (service) field strength exceeds 0.5 mV/m (54 dBu) for a Class B station, 0.7 mV/m (57 dBu) for a Class B1 station, and 1 mV/m (60 dBu) for any other class of station.

(i) Co-channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 20 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 40 dBu or more for predicted interference to exist).

(ii) First-adjacent channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 6 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 54 dBu or more for predicted interference to exist).

(2) For co-channel and first-adjacent channel stations, a showing that the public interest would be served by the changes proposed in an application must include exhibits demonstrating that the total area and population subject to co-channel or first-adjacent channel interference, caused and received, would be maintained or decreased. In addition, the showing must include exhibits demonstrating that the area and the population subject to co-channel or first-adjacent channel interference caused by the proposed facility to each short-spaced station individually is not increased. In all cases, the applicant must also show that any area predicted to lose service as a result of new co-channel or first-adjacent-channel interference has adequate aural service remaining. For the purpose of this section, adequate service is defined as 5 or more aural services (AM or FM).

(3) For co-channel and first-adjacent-channel stations, a copy of any application proposing interference caused in any areas where interference is not currently caused must be served upon the licensee(s) of the affected short-spaced station(s).

(4) For stations covered by this paragraph (a), there are no distance separation or interference protection requirements with respect to second-adjacent and third-adjacent channel short-spacings that have existed continuously since November 16, 1964.

* * * * *

§ 73.4235 [Removed]

3. Section 73.4235 is removed.

[FR Doc. 97–25272 Filed 9–25–97; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[STB Ex Parte No. 571]

Revision of Authority Citations

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board amends its regulations by updating its authority citations.

EFFECTIVE DATE: These rules are effective September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) is revising certain authority citations in the Code of Federal Regulations (CFR) to reflect statutory changes made by the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (ICCTA) and previous statutes.[1] The ICCTA abolished the Interstate Commerce Commission (ICC), established the Board to assume many of the functions of the ICC, and made substantial revisions to 49 U.S.C. Subtitle IV. The revisions to subtitle IV included both substantive changes and a wholesale renumbering of individual sections within subtitle IV. See H.R. Rep. No. 104–422, 104th Cong., 1st Sess. 241–47 (1995) (table showing disposition of individual statutory provisions). Under section 204(a) of the ICCTA, the regulations that had been promulgated and administered by the ICC, located at 49 CFR chapter X, were transferred to the Board (except for parts relating to functions transferred to the Secretary of Transportation under the ICCTA, which were transferred to the Secretary of Transportation and have since been moved to other chapters).[2] In an ongoing effort to update the regulations in chapter X, the Board has removed many parts that had been rendered obsolete by changes in the governing statute; revised other parts to conform to substantive changes in the governing statute; and made wholesale changes to the nomenclature of yet other parts to reflect the elimination of the ICC and the substitution of the Board. The Board is now updating the authority citations, as required by 1 CFR 21.41, for most parts within chapter X—those which are not obsolete and have not been addressed in other proceedings—to reflect renumbering of the underlying provisions in the governing statute.

Under 1 CFR 21.40, the authority citation must include the general or specific authority delegated by statute. We are deleting references to the Administrative Procedure Act (APA), because the APA does not provide an independent basis of authority.[3]

Some authority citations include only a general or a specific authority, but not both. See 49 CFR 1037 and 49 CFR 1302. We believe these to be legally sufficient; as noted, under 1 CFR 21.40, a general or specific authority is required. Because we are merely updating the authority citations to remove obsolete statutory references, we will generally not add authorities.[4]

[1] An authority citation denotes what statutory provision(s) authorize the agency to adopt or change the regulation(s) involved.

[2] See 61 FR 54706 (October 21, 1996).

[3] *Cf. Cousins v. Secretary of Transp.*, 880 F.2d 603, 605 (1st Cir. 1989). We do not believe, however, that it is necessary at this time to delete APA references in authority citations that are otherwise up-to-date.

[4] In some cases, however, we have added statutory authorities. In part 1246 (Number of railroad employees), we are including a citation to 49 U.S.C. 11145 that pertains to rail carrier reports. In part 1253 (rate-making organization; records and reports), we are also adding a reference to 49 U.S.C. 11144, rail carrier records. We are also changing the headings in parts 1037 and 1331, and have modified part 1220 to remove obsolete references.

We are not updating the authorities of certain regulations (parts 1022, 1030, 1091, 1131, 1143, 1156, and 1170), because these rules appear to be obsolete will be addressed in a separate proceeding. Also, we are not amending the authority citation for part 1004. The Federal Highway Administration has incorporated all of part 1004, except section 1004.26, into 49 CFR part 356 (62 FR 32040, June 12, 1997), without removing provisions from chapter X. We question whether the portions of part 1004 that are not obsolete are still necessary, and we will seek comment in a separate proceeding as to whether this rule should be maintained. Finally, part 1144 appears to be partially obsolete. We will update the authorities for the operative portions of that rule, and later undertake a substantive revision of that part.

Small Entities

The Board certifies that these changes will not have a significant economic effect on a substantial number of small entities.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1003

Administrative practice and procedure.

49 CFR Part 1005

Claims, Investigations, Motor carriers, Railroad.

49 CFR Part 1007

Administrative practice and procedure, Privacy.

49 CFR Part 1012

Sunshine Act.

49 CFR Part 1013

Common carriers, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

49 CFR Part 1016

Claims, Equal access to justice, Lawyers.

49 CFR Part 1018

Claims, Debts.

49 CFR Part 1019

Government employees.

49 CFR Part 1021

Claims.

49 CFR Part 1033

Railroads.

49 CFR Part 1034.

Railroads.

49 CFR Part 1035

Bills of Lading, Railroads, Water carriers.

49 CFR Part 1037

Claims, Grains, Railroads.

49 CFR Part 1090

Intermodal transportation, Motor carriers, Railroads.

49 CFR Part 1100

Administrative practice and procedure.

49 CFR Part 1101

Administrative practice and procedure.

49 CFR Part 1102

Administrative practice and procedure.

49 CFR Part 1103

Administrative practice and procedure, Lawyers.

49 CFR Part 1109

Administrative practice and procedure.

49 CFR Part 1110

Administrative practice and procedure.

49 CFR Part 1116

Administrative practice and procedure.

49 CFR Part 1117

Administrative practice and procedure.

49 CFR Part 1119

Administrative practice and procedure.

49 CFR Part 1120

Freight, Motor carriers.

49 CFR Part 1133

Claims, Freight.

49 CFR Part 1137

Administrative practice and procedure, Railroads.

49 CFR Part 1139

Administrative practice and procedure, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 1141

Administrative practice and procedure.

49 CFR Part 1144

Railroads.

49 CFR Part 1151

Administrative practice and procedure, Railroads.

49 CFR Part 1177

Administrative practice and procedure, Archives and records, Railroads.

49 CFR Part 1184

Administrative practice and procedure, Motor carriers.

49 CFR Part 1200

Common carriers, Uniform System of Accounts.

49 CFR Part 1220

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1242

Railroads, Taxes.

49 CFR Part 1243

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1245

Railroad employees, Reporting and recordkeeping requirements, Wages.

49 CFR Part 1246

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1248

Freight, Railroads, Reporting and recordkeeping requirements, Statistics.

49 CFR Part 1253

Motor carriers, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1302

Exports, Freight, Imports, Railroads.

49 CFR Part 1331

Motor carriers, Moving of household goods, Railroads.

Decided: September 17, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1003—FORMS

1. The authority citation for part 1003 is revised to read as follows:

Authority: 49 U.S.C. 721, 13301(f).

PART 1005—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

2. The authority citation for part 1003 is revised to read as follows:

Authority: 49 U.S.C. 721, 11706, 14706, 15908.

PART 1007—RECORDS CONTAINING INFORMATION ABOUT INDIVIDUALS

3. The authority citation for part 1007 is revised to read as follows:

Authority: 5 U.S.C. 552, 49 U.S.C. 721.

PART 1012—MEETINGS OF THE BOARD.

4. The authority citation for part 1012 is revised to read as follows:

Authority: 5 U.S.C. 552b(g), 49 U.S.C. 701, 721.

PART 1013—GUIDELINES FOR THE PROPER USE OF VOTING TRUSTS

5. The authority citation for part 1013 is revised to read as follows:

Authority: 49 U.S.C. 721, 13301(f).

PART 1016—SPECIAL PROCEDURES GOVERNING THE RECOVERY OF EXPENSES BY PARTIES TO BOARD ADJUDICATORY PROCEEDINGS

6. The authority citation for part 1016 is revised to read as follows:

Authority: 5 U.S.C. 504(c)(1), 49 U.S.C. 721.

PART 1018—DEBT COLLECTION

7. The authority citation for part 1018 is revised to read as follows:

Authority: 31 U.S.C. 3701, 31 U.S.C. 3711 *et seq.*, 49 U.S.C. 721, 4 CFR parts 101–105.

PART 1019—REGULATIONS GOVERNING CONDUCT OF SURFACE TRANSPORTATION BOARD EMPLOYEES

8. The authority citation for part 1019 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1021—ADMINISTRATIVE COLLECTION OF ENFORCEMENT CLAIMS

9. The authority citation for part 1021 is revised to read as follows:

Authority: 31 U.S.C. 3701, 3711, 3717, 3718.

PART 1033—CAR SERVICE

10. The authority citation for part 1033 is revised to read as follows:

Authority: 49 U.S.C. 721, 11121, 11122.

PART 1034—ROUTING OF TRAFFIC

11. Remove the authority at the end of section 1034.1 and add the following authority citation for part 1034 after the Editorial Note:

Authority: 49 U.S.C. 721, 11123.

PART 1035—BILLS OF LADING

12. The authority citation for part 1035 is revised to read as follows:

Authority: 49 U.S.C. 721, 11706, 14706.

PART 1037—BULK GRAIN AND GRAIN PRODUCTS—LOSS AND DAMAGE CLAIMS

13. The authority citation for part 1037 is revised to read as follows:

Authority: 49 U.S.C. 721.

14. The heading for part 1037 is revised to read as set forth above.

PART 1090—PRACTICES OF CARRIERS INVOLVED IN THE INTERMODAL MOVEMENT OF CONTAINERIZED FREIGHT

15. The authority citation for part 1090 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1100—GENERAL PROVISIONS

16. The authority citation for part 1100 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1101—DEFINITIONS AND CONSTRUCTION

17. The authority citation for part 1101 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1102—COMMUNICATIONS

18. The authority citation for part 1102 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1103—PRACTITIONERS

19. The authority citation for part 1103 is revised to read as follows:

Authority: 21 U.S.C. 862; 49 U.S.C. 703(e), 721.

PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY

20. The authority citation for part 1109 is revised to read as follows:

Authority: 5 U.S.C. 571 *et seq.*

PART 1110—PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS

21. The authority citation for part 1100 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1116—ORAL ARGUMENT BEFORE THE BOARD

22. The authority citation for part 1116 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1117—PETITIONS (FOR RELIEF) NOT OTHERWISE COVERED

23. The authority citation for part 1117 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1119—COMPLIANCE WITH BOARD DECISIONS

24. The authority citation for part 1119 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1120—USE OF 1977–1978 STUDY OF MOTOR CARRIER PLATFORM HANDLING FACTORS

25. The authority citation for part 1120 is revised to read as follows:

Authority: 49 U.S.C. 721, 13701, 13703.

PART 1133—RECOVERY OF DAMAGES

26. The authority citation for part 1133 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1137—PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

27. The authority citation for part 1137 is revised to read as follows:

Authority: 49 U.S.C. 721, 10705.

PART 1139—PROCEDURES IN MOTOR CARRIER REVENUE PROCEEDINGS

28. The authority citation for part 1139 is revised to read as follows:

Authority: 49 U.S.C. 721, 13703.

PART 1141—PROCEDURES TO CALCULATE INTEREST RATES

29. The authority citation for part 1141 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1144—INTRAMODAL RAIL COMPETITION

30. The authority citation for part 1144 is revised to read as follows:

Authority: 49 U.S.C. 721, 10703, 10705, and 11102.

PART 1151—FEEDER LINE DEVELOPMENT PROGRAM

31. The authority citation for part 1151 is revised to read as follows:

Authority: 49 U.S.C. 10907.

PART 1177—RECORDATION OF DOCUMENTS

32. The authority citation for part 1177 is revised to read as follows:

Authority: 49 U.S.C. 721, 11301.

PART 1184—MOTOR CARRIER POOLING OPERATIONS

33. The authority citation for part 1184 is revised to read as follows:

Authority: 49 U.S.C. 721, 14302.

PART 1200—GENERAL ACCOUNTING REGULATIONS UNDER THE INTERSTATE COMMERCE ACT

34. The authority citation for part 1200 is revised to read as follows:

Authority: 49 U.S.C. 721, 11142, 11143, 11144, 11145.

PART 1220—PRESERVATION OF RECORDS

35. The authority citation for part 1220 is revised to read as follows:

Authority: 49 U.S.C. 721, 11144, 11145.

36. In section 1220.0, remove "Motor carriers and brokers," "Water carriers," and "Household goods freight forwarders."

PART 1242—SEPARATION OF COMMON OPERATING EXPENSES BETWEEN FREIGHT SERVICE AND PASSENGER SERVICE FOR RAILROADS

37. The citation for part 1242 is revised to read as follows:

Authority: 49 U.S.C. 721, 11142.

PART 1243—QUARTERLY OPERATING REPORTS—RAILROADS

38. The authority citation for part 1243 is revised to read as follows:

Authority: 49 U.S.C. 721, 11145.

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

39. The authority citation for part 1244 is revised to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

PART 1245—CLASSIFICATION OF RAILROAD EMPLOYEES; REPORTS OF SERVICE AND COMPENSATION

40. The authority citation for part 1245 is revised to read as follows:

Authority: 49 U.S.C. 721, 11145.

PART 1246—NUMBER OF RAILROAD EMPLOYEES

41. The authority citation for part 1246 is revised to read as follows:

Authority: 49 U.S.C. 721, 11145.

PART 1248—FREIGHT COMMODITY STATISTICS

42. The authority citation for part 1248, subpart A is revised to read as follows:

Authority: 49 U.S.C. 721, 11144, 11145.

43. The authority citation for part 1248, subpart B is revised to read as follows:

Authority: 49 U.S.C. 721, 11144, 11145.

PART 1253—RATE-MAKING ORGANIZATION; RECORDS AND REPORTS

44. The authority citation for part 1253 is revised to read as follows:

Authority: 49 U.S.C. 721, 10706, 13703, 11144, and 11145.

PART 1302—EXPORT AND IMPORT SHIPMENTS; RAILROADS

45. The authority citation for part 1302 is revised to read as follows:

Authority: 49 U.S.C. 884.

PART 1331—APPLICATIONS UNDER 49 U.S.C. 10706 AND 13703

46. The authority citation for part 1331 is revised to read as follows:

Authority: 49 U.S.C. 721, 10706, 13703.

47. The heading for part 1331 is revised to read as set forth above.

[FR Doc. 97–25640 Filed 9–25–97; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346–7035–02; I.D. 092297B]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New Jersey

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 1997, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notice to advise the State of New Jersey that the quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in New Jersey.

DATES: Effective 0001 hours September 24, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Dana Hartley, Fishery Management Specialist, 978–281–9226.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percentage allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1997 calendar year was set equal to 11,111,298 lb (5,040,000 kg) (March 7, 1997, 62 FR 10473). The percentage allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, or 1,858,363 lb (842,939 kg) for 1997.

Section 648.100(d)(2) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1996, a total of 2,369,134 lb (1,074,621 kg) were landed in New Jersey. The amount allocated for New Jersey landings in 1996 was 1,858,363 lb

(842,939 kg), creating a 510,771 lb (231,682 kg) overage that was deducted from the amount allocated for landings in that State during 1997 (July 15, 1997, 62 FR 37741). The resulting 1997 quota for New Jersey is 1,347,592 lb (611,257 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notice in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. Because the available information indicates that the State of New Jersey has attained its quota for 1997, the Regional Administrator has determined based on dealer reports and other available information, that the State's commercial quota has been harvested.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours September 24, 1997, further landings of summer flounder in New Jersey by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1997 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective on September 24, 1997, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12286.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 22, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–25625 Filed 9–24–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 187
Friday, September 26, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the fiqal rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–37–AD]

RIN 2120–AA64

Airworthiness Directives; American Champion Aircraft Corporation Model 8GCBC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 87–18–09, which currently requires inspecting (one-time) the sides of the front and rear wood spars for compression cracks on certain American Champion Aircraft Corporation (ACAC) Model 8GCBC airplanes, and repairing or replacing any wood spar with compression cracks. The proposed AD would require installing inspection holes on the top and bottom wing surfaces, repetitively inspecting the front and rear wood spars for damage, repairing or replacing any damaged wood spar, and installing inspection covers. Damage is defined as cracks; compression cracks; longitudinal cracks through the bolt holes, spacer holes, or nail holes; or loose or missing rib nails. The proposed AD results from in-flight wing structural failure on one of the affected airplanes that was in compliance with the one-time inspection requirement of AD 87–18–09. The actions specified by the proposed AD are intended to prevent damage in the wood spar wing from going undetected, which could result in in-flight structural failure of the wing with consequent loss of control of the airplane.

DATES: Comments must be received on or before November 28, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–37–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday and Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. William Rohder, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7697; facsimile (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–37–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–CE–37–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 87–18–09, Amendment 39–5725, currently requires inspecting (one-time) the sides of the front and rear wood spars for compression cracks on American Champion Aircraft Corporation (ACAC) Model 8GCBC airplanes, repairing or replacing any wood spar with compression cracks, and re-inspecting immediately after any incident involving wing damage. AD 87–18–09 was the result of three accidents involving ACAC Model 8GCBC airplanes where compression cracks in the wood spar caused in-flight structural failure of the wing.

Wood compression cracks are failures of wood fibers on a plane perpendicular to the wood fiber longitudinal axis. Repetitive high stress can initiate these compression cracks on the top or bottom surface of the wing spar adjacent to doubler plate glue lines and rib nail holes. These high stress conditions can occur during crop dusting, banner and glider tow operations, turbulence, and rough field or float operations. Compression cracks can also initiate if the wing contacts the ground. Compression cracks can initiate at either the top or bottom surface of the spar depending on the bending loads (either upward or downward) at impact.

Actions Since Issuance of Previous Rule

In-flight structural failure of the wing recently occurred on an ACAC Model 8GCBC airplane that was initially inspected as required by AD 87–18–09. A possible contributing factor of this accident was an undetected compression crack on the right wing front spar.

Review of data acquired from inspections of several ACAC Model 8GCBC airplanes indicate that wood spar compression cracks can occur without previous wing damage. The data indicates that detection of a compression crack on the sides of the spar is unlikely, unless the crack is in an advanced state of propagation. Based

on this data, the FAA believes that repetitive inspections are necessary.

Relevant Service Information

The FAA has reviewed and approved the technical contents of ACAC Service Letter 406, dated March 28, 1994, and ACAC Service Letter 417, dated August 14, 1997. ACAC Service Letter 406 includes procedures for conducting a detailed visual inspection of both the front and rear wood wing spars for cracks; compression cracks; longitudinal cracks through the bolt holes, spacer holes, or nail holes; and loose or missing rib nails (referred to as damage hereon). ACAC Service Letter 417 includes procedures for installing inspection holes and surface covers and assuring that all applicable lower surface drain holes are installed.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents and accidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent damage in the wood spar from going undetected, which could result in in-flight structural failure of the wing with consequent loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other ACAC Model 8GCBC airplanes of the same type design, the FAA is proposing an AD to supersede AD 87–18–09. The proposed AD would require installing inspection holes on the top and bottom wing surfaces, repetitively inspecting the front and rear wood spars for damage, repairing or replacing any damaged wood spar, and installing surface covers.

Accomplishment of the proposed actions would be as follows:

—Installations: in accordance with ACAC Service Letter 417, dated August 14, 1997;

—Inspections: in accordance with ACAC Service Letter 406, dated March 28, 1994; and

—Spar Repair and Replacement, as applicable: in accordance with Advisory Circular (AC) 43–13, Acceptable Methods, Techniques and Practices; or other data that the FAA has approved for spar repair and replacement

Difference Between This Proposed AD and ACAC Service Letter 406

ACAC Service Letter 406, dated March 28, 1994, specifies the same inspections as are proposed in this notice of proposed rulemaking (NPRM). The differences between the service letter and NPRM are:

—The service letter specifies the proposed action within the next 30 days or 10 flight hours and at each 100 hour/annual inspection thereafter. The FAA has determined that a more realistic compliance and enforceable compliance time would be to require the proposed action within 3 calendar months after the effective date of the AD, and thereafter at intervals not to exceed 12 calendar months or 500 hours time-in-service (TIS), whichever occurs first; and

—The service letter applies to all ACAC 7 and 8 series airplanes, whereas the NPRM applies only to ACAC Model 8GCBC airplanes. The FAA is currently reviewing the service history of all of the ACAC airplane models specified in ACAC Service Letter 406. Based on this review, the FAA may initiate additional rulemaking action in the future on the airplane models other than the Model 8GCBC airplanes. This potential action may propose the same actions as the proposed AD with either the same or different compliance times, or may propose entirely different actions altogether.

Compliance Time of the Proposed AD

The compliance time of the proposed AD is presented in calendar time and hours TIS. Although the unsafe condition specified in the proposed AD is a result of airplane operation, operators of the affected airplanes utilize their airplanes in different ways.

For example, an operator may utilize his/her airplane 50 hours TIS in a year while utilizing the aircraft in no or very little crop dusting operations, banner and glider tow operations, or rough field or float operations. This airplane operator would obviously experience less of a chance of high crack propagation than the airplane operator that utilizes his/her airplane 300 hours TIS in a year regularly in heavy crop dusting operations, banner and glider tow operations, or rough field or float operations. However, this airplane could have pre-existing and undetected wood spar damage that occurred during previous operations. In this situation, the damage to the wood spar would propagate at a level that depends on the operational exposure of the airplane and severity of the wood spar damage.

To assure that compression cracks do not go undetected on the wood spars of the affected airplanes, the FAA has determined that an initial 3 calendar month compliance time should be used. Repetitive actions would be accomplished every 12 calendar months or 500 hours TIS, whichever occurs first.

Cost Impact

The FAA estimates that 261 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours (installations: 5 workhours; Initial inspection: 1 workhour) per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $292 per airplane, provided that each airplane would only need 11 additional standard inspection hole covers per wing (total of 22 additional standard covers per airplane). If the airplane would require the installation of more inspection covers (i.e., a result of previous non-factory wing recover work), the cost could be slightly higher. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $170,172 or $652 per airplane.

This cost figure is based on the presumption that no affected airplane owner/operator has accomplished the installations or the initial inspection. The FAA has no knowledge of any owner/operator of the affected airplanes that has already accomplished the installations and initial inspection.

The cost figure also does not account for repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur over the life of his/her airplane. However, each proposed repetitive inspection would cost substantially less than the initial inspection because of the cost of the initial proposed inspection hole and cover installations. The inspection covers allow easy access for the inspection of the wood spars, and the proposed compliance time would enable the owners/operators of the affected airplanes to accomplish the repetitive inspections at regularly scheduled annual inspections.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 87–18–09, Amendment 39–5725, and by adding a new AD to read as follows:

American Champion Aircraft Company: Docket No. 97–CE–37–AD; Supersedes AD 87–18–09, Amendment 39–5725.

Applicability: Model 8GCBC airplanes, all serial numbers, certificated in any category, that are equipped with wood wing spars.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, repaired, or reconfigured in the area subject to the requirements of this AD. For airplanes that have been modified, altered, repaired, or reconfigured so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent damage in the wood spar wing from going undetected, which could result in in-flight structural failure of the wing with consequent loss of control of the airplane, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, accomplish the following:

(1) Install inspection holes in the top and bottom surface of each wing in accordance with American Champion Aircraft Corporation (ACAC) Service Letter 417, dated August 14, 1997. Assure that all drainage holes are installed as depicted in this service letter, and install drainage holes as necessary.

(2) Inspected (detailed visual) both the front and rear wood wing spars for cracks; compression cracks; longitudinal cracks through the bolt holes, spacer holes, or nail holes; and loose or missing rib nails (referred to as damage hereon). Accomplish these inspections in accordance with ACAC Service Letter 406, dated March 28, 1994.

(3) If any spar damage is found, prior to further flight, accomplish the following:

(i) Repair or replace the wood wing spar in accordance with Advisory Circular (AC) 43–13, Acceptable Methods, Techniques and Practices; or other data that is approved by the FAA for wing spar repair or replacement.

(ii) If the wing is recovered, accomplish the installations required by paragraph (a)(1) of this AD, as applicable.

(4) Install inspection hole covers on the top and bottom surface of the wing in accordance with ACAC Service Letter 417, dated August 14, 1997.

(b) Within 12 calendar months or 500 hours TIS (whichever occurs first) after accomplishing all actions required by paragraph (a), all subparagraphs included, of this AD, and thereafter at intervals not to exceed 12 calendar months or 500 hours TIS, whichever occurs first, accomplish the inspection, repair, replacement, and installation required by paragraphs (a)(2), (a)(3) as applicable; including its subparagraphs; and (a)(4) of this AD.

Note 2: The affected airplanes are not certificated for acrobatic maneuvers. AD 87–18–09 required a placard prohibiting acrobatic maneuvers in addition to the existing operational placard. The FAA encourages owners/operators of the affected airplanes to keep this placard installed on their airplanes.

(c) If any of the affected airplanes are involved in an incident involving wing damage after the effective date of this AD, prior to further flight, accomplish the inspection, repair, replacement, and installation required by paragraphs (a)(2), (a)(3), as applicable; including its subparagraphs; and (a)(4) of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance time that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office (ACO), 2300 E. Devon Avenue, Des Plaines, Illinois 60018.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

(2) Alternative methods of compliance approved in accordance with AD 87–18–09 (superseded by this action) are not considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to American Champion Aircraft Corporation, P.O. Box 37, 52032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 87–18–09, Amendment 39–5725.

Issued in Kansas City, Missouri, on September 22, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25607 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 970903222–7222–01]

RIN 0691–AA28

International Services Surveys: BE–93 Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed rules to amend the reporting requirements for the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments Between U.S. and Unaffiliated Foreign Persons.

The BE–93 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The data are needed to support U.S. trade policy initiatives, compile the U.S. balance of payments and the national income and product accounts, develop U.S. international price indexes for services, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to

identify and evaluate market opportunities.

The change to the BE–93 annual survey contained in these proposed rules is to add coverage of general use computer software royalties and license fees. This change will consolidate on one form all transactions in intangible rights between U.S. and unaffiliated foreign persons. Previously, royalties and license fees related to general use computer software were included on the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons, and all other royalties and license fees were included on the BE–93. Placing general use computer software royalties and license fees together with other royalties and license fees on the BE–93 will eliminate the possibility that some respondents would have to examine their accounting records on royalties and license fees for purposes of responding to two separate surveys. In addition, the consolidation will improve consistency with current international standards for the compilation of balance of payments accounts, which include general use computer software royalties and license fees in the same category as all other royalties and license fees.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before November 10, 1997.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington DC 20230, or hand delivered to room M–100, 1441 L Street, N.W., Washington, DC 20005. Comments will be available for public inspection in room 7005, 1441 L Street, N.W., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 6060–9800.

SUPPLEMENTARY INFORMATION: These proposed rules amend 15 CFR Part 801 by revising paragraph 801.9(b)(5)(i) to set forth revised reporting requirements for the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments Between U.S. and Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the Act provides that "The President shall, to the extent he deems necessary and feasible— * * * (1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * *" In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–93 is an annual survey of U.S. royalty and license fee transactions for intangible rights with unaffiliated foreign persons. The data are needed to support U.S. trade policy initiatives, compile the U.S. balance of payments and the national income and product accounts, develop U.S. international price indexes for services, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The change to the BE–93 annual survey contained in these proposed rules is to add coverage of general use computer software royalties and license fees. In the past, annual data on such fees and royalties were collected as part of an all-inclusive computer and data processing services category on the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons, and classified in "other services" in the U.S. balance of payments. However, this required some respondents to examine their accounting records on royalties and license fees for purposes of responding to two separate surveys and also made it impossible to classify these transactions in the most appropriate balance of payments category. (Current international standards recommend that computer software royalties and license fees be classified in "royalties and license fees" in the balance of payments, rather than in "other services".) Thus, BEA is moving coverage of general use computer software royalties and license fees from the BE–22 to the BE–93. To effect this change, this proposed rulemaking strikes language that previously excluded coverage of copyrights and other intellectual property rights related to computer software from the BE–93 rules. Separately, a proposed rulemaking for the BE–22 survey will add language to exclude coverage of computer software royalties and license fees.

Reporting in the BE–93 annual survey is required from all U.S. persons whose total receipts from, or total payments to, unaffiliated foreign persons for intangible rights equaled or exceeded $500,000 during the reporting year. The data are disaggregated by country and by type of intangible right.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. A request for review of the forms has been submitted to the Office of Management and Budget under section 3507 of the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608–0017) has been displayed.

Public reporting burden for this collection of information is estimated to vary from less than one hour to 25 hours, with an overall average burden of 4 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0017, Washington, DC 20503.

Regulatory Flexibility Act

The Assistant General counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total receipts from, or total payments to unaffiliated foreign persons for intangible rights equaled or exceeded $500,000 during the year. Of those smaller businesses that must report, most will tend to have specialized operations and activities and will likely report only one type of royalty or license transaction; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 801

Economic statistics, balance of payments, foreign trade, penalties, reporting and recordkeeping requirements.

Dated: August 26, 1997.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O., 11961 (3 CFR, 1977 Comp. P. 860 as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 801.9 is amended by revising paragraph (b)(5)(i) to read as follows:

§ 801.9 Reports required.

* * * * *

(b) * * *

(5) * * *

(i) *Who must report.* Reports on Form BE–93 are required from U.S. persons who have entered into agreements with unaffiliated foreign persons to buy, sell, or use intangible assets or proprietary rights, excluding oil royalties and other natural resources (mining) royalties.

* * * * *

[FR Doc. 97–25613 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–EA–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 970903223–7223–01]

RIN 0691–AA30

International Services Surveys: BE–22 Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed rules to amend the reporting requirements for the BE–22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons.

The BE–22 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. It is the annual follow-on survey to the quinquennial BE–22, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons, which was last conducted for 1996. Together, the two surveys produce a continuous annual time series of data on major types of services that are out of the scope of other international services surveys. In nonbenchmark years, universe estimates of these transactions are derived by adding to annually reported sample data extrapolations of data reported in the benchmark survey by companies exempt from annual reporting. The data are needed to support U.S. trade policy initiatives, compile the U.S. balance of payments and the national income and product accounts, develop U.S. international price indexes for services, assess U.S. competitiveness in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Two major changes to the BE–22 annual survey are contained in these proposed rules: Coverage of the BE–22 annual survey is expanded to conform with the most recent BE–20 benchmark survey, which covered 1996, and coverage of general use computer software royalties and license fees is dropped. To consolidate on one form all transactions in intangible rights between U.S. and unaffiliated foreign persons, coverage of general use computer software royalties and license fees is being moved from the BE–22 to the BE–93, Annual Survey Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before November 10, 1997.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington DC 20230, or hand delivered to room M–100, 1441 L Street, N.W., Washington, DC 20005. Comments will be available for public inspection in room 7005, 1441 L Street, N.W., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: These proposed rules amend 15 CFR Part 801 by revising paragraph 801.9(b)(6)(ii) to set forth revised reporting requirements for the BE–22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the Act provides that "The President shall, to the extent he deems necessary and feasible—* * * (1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * *" In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–22 survey is an annual survey of selected U.S. services transactions with unaffiliated foreign persons. It is intended to update the results of the BE–20 benchmark survey, which covers the universe of such transactions. In nonbenchmark years, universe estimates of these transactions are derived by adding to annually reported sample data extrapolations of data reported in the benchmark survey by companies exempt from annual reporting. The data are needed to support U.S. trade policy initiatives, compile the U.S. balance of payments and the national income and product accounts, develop U.S. international price indexes for services, assess U.S. competitiveness in, and

promote, international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities for services trade.

In order to bring the BE–22 annual survey into conformity with the 1996 BE–20 benchmark survey, coverage of the BE–22 is expanded to include, for the first time, data on merchanting services (sales only), operational leasing services, selling agent services, and a variety of services included in a new "other" selected services category. This category covers satellite photography services, security services, actuarial services, salvage services, oil spill and toxic waste cleanup services, language translation services, and account collection services.

These proposed rules also drop coverage of general use computer software royalties and license fees from the BE–22. In the past, annual data on such fees and royalties were collected as part of an all-inclusive computer and data processing services category on the BE–22, and classified in "other services" in the U.S. balance of payments. However, this required some respondents to examine their accounting records on royalties and license fees for purposes of responding to two separate surveys and also made it impossible to classify these transactions in the most appropriate balance of payments category. (Current international standards recommend that computer royalties and license fees be classified in "royalties and license fees" rather than "other services" in the balance of payments.) Thus, BEA is moving coverage of general use computer software royalties and license fees from the BE–22 to the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons. To effect this change, this proposed rulemaking strikes language that previously included coverage of copyrights and other intellectual property rights related to computer software on the BE–22. Separately, a proposed rulemaking for the BE–93 survey will add language to include coverage of computer software royalties and license fees.

Reporting in the BE–22 annual survey is required from U.S. persons with sales to, or purchases from, unaffiliated foreign persons in excess of $1,000,000 in any of the services covered during the reporting year. Those meeting this criterion must supply data on the amount of their total sales or total purchases of each type of service in which their transactions exceeded this threshold amount. Except for sales of merchanting services, the data are also disaggregated by country. U.S. persons with purchases or sales during the reporting year of $1,000,000 or less in a given type of covered service are asked to provide, on a voluntary basis, estimates only of their total purchases or total sales, as appropriate, for the given type of service.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. A request for review of the forms has been submitted to the Office of Management and Budget under section 3507 of the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control Number; such a Control Number (0608–0060) has been displayed.

Public reporting burden for this collection of information is estimated to vary from 4 to 500 hours, with an overall average burden of 11.5 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0060, Washington, DC 20503.

Regulatory Flexibility Act

The Assistant General counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only it total sales or purchases transactions with unaffiliated foreign persons in a covered type of service exceed $1,000,000 during the year. Of those smaller businesses that must report, most will tend to have specialized operations and activities and will likely report only type of service; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 801

Economic statistics, balance of payments, foreign trade, penalties, reporting and recordkeeping requirements.

Dated: August 26, 1997.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 15 U.S.C. 4908, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1977 Comp., p. 860 as amended by E.O. 12013 (3 CFR 1997 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 801.9 is amended by revising paragraph (b)(6)(ii) to read as follows:

§ 801.9 Reports required.

* * * * *

(b) * * *

(6) * * *

(ii) *Covered services.* With the exceptions given below, the services covered by this survey are the same as those covered by the BE–20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1996, as listed in § 801.10(c) of this part. The exceptions are elimination of coverage of general use computer software royalties and license fees from computer and data processing services, and the elimination of coverage of four small types of services—agricultural services; management of health care facilities; mailing, reproduction, and commercial art; and temporary help supply services.

* * * * *

[FR Doc. 97–25614 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–EA–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–246250–96]

RIN 1545–AV13

Public Disclosure of Material Relating to Tax-Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the public disclosure requirements of section 6104(e) of the Internal Revenue Code. The proposed regulations provide guidance for a tax-exempt organization required to make its application for tax exemption and annual information return available for public inspection. The proposed regulations also provide guidance for a tax-exempt organization required to comply with requests made in writing or in person from individuals who seek a copy of those documents. The proposed regulations describe how a tax-exempt organization can make those documents widely available and, therefore, not be required to provide copies in response to individual requests. The proposed regulations address the standards that apply in determining whether a tax-exempt organization is the subject of a harassment campaign and guidance on the applicable procedures to obtain relief. This document also provides notice of a public hearing.

DATES: Written comments and requests to speak (with outlines of oral comments) at the public hearing scheduled for February 4, 1998, beginning at 10 a.m. must be submitted by December 26, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–246250–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–246250–96), Courier's Desk, Internal Revenue Service, Constitution Avenue NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael B. Blumenfeld, (202) 622–6070; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collections of information should be received by November 25, 1997. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §§ 301.6104(e)–1, 301.6104(e)–2, and 301.6104(e)–3. This information is required to enable a tax-exempt organization to comply with section 6104(e) of the Internal Revenue Code. Under section 6104(e), a tax-exempt organization is required to make its application for tax exemption and its annual information returns available for public inspection. In addition, a tax-exempt organization is required to comply with requests made in writing or in person from individuals who seek a copy of those documents or, in the alternative, to make its documents widely available. The requirement that a tax-exempt organization make its application for tax exemption and annual information returns available for public inspection and comply with requests made in writing or in person from individuals who seek a copy of those documents or, in the alternative, make the documents widely available, will enable the public to obtain information about the tax-exempt organization. Under section 6104(e), a tax-exempt organization is permitted to file an application for relief from the requirement to provide copies if the organization reasonably believes it is the subject of a harassment campaign. The information a tax-exempt organization provides when filing an application for a determination that it is subject to a harassment campaign will be used by the IRS to make such determination. The collection of information is required to obtain relief from the requirement to comply with requests for copies if such requests are part of the harassment campaign. The likely respondents and/or recordkeepers are tax-exempt organizations. The burden for recordkeeping and for reporting is reflected below.

Estimated total annual recordkeeping burden: 551,000 hours.

Estimated average annual burden per recordkeeper: 30 minutes.

Estimated number of recordkeepers: 1,100,000.

Estimated total annual reporting burden: 500 hours.

Estimated average annual reporting burden per respondent: 29 minutes.

Estimated number of respondents: 1050.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration

of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 301) relating to the section 6104(e) disclosure requirements affecting tax-exempt organizations (organizations described in sections 501 (c) or (d) and exempt from taxation under section 501(a)). Section 10702 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) added subsection (e) to section 6104 of the Internal Revenue Code (Code). Section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to allow public inspection of the organization's application for recognition of tax exemption. Section 6104(e) also requires each tax-exempt organization, other than one that is a private foundation, to allow public inspection at the organization's principal office (and certain regional or district offices) of its three most recent annual information returns. Each return must be made available for a 3-year period beginning on the date the return is required to be filed or is actually filed, whichever is later. Notice 88–120 (1988–2 C.B. 454), provided tax-exempt organizations with guidance for complying with the section 6104(e) public inspection requirements.

The Taxpayer Bill of Rights 2 (TBOR2), enacted on July 30, 1996, amended section 6104(e) by adding additional requirements. As amended, section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to comply with requests, made either in writing or in person, for copies of the organization's application for recognition of tax-exempt status. Section 6104(e) also requires each tax-exempt organization, other than one that is a private foundation, to comply with requests, made either in writing or in person, for copies of the organization's three most recent annual information returns. The organization must fulfill these requests without charge, other than a reasonable fee for reproduction and mailing costs. If the request for copies is made in person, the organization must provide the requested copies immediately. If the request for copies is made in writing, the organization must provide the copies within 30 days. Section 6104(e) also provides that an organization is relieved of its obligation to provide copies upon request if, in accordance with regulations to be promulgated by the Secretary of the Treasury, (1) the organization has made the requested documents widely available or (2) the Secretary of the Treasury determines, upon application by the organization, that the organization is subject to a harassment campaign such that a waiver of the obligation to provide copies would be in the public interest.

In Notice 96–48 (1996–39 I.R.B. 8), the IRS invited comments on the changes made by TBOR2. Twenty-two comments were received and considered in the drafting of this notice of proposed rulemaking. The comments addressed a range of issues, although they made several suggestions in common. Several commentators requested that the guidance on the new disclosure requirements follow the existing guidance on the public inspection requirements provided in Notice 88–120. Several commentators also recommended that the fee charged by the IRS for copies of organization documents be used to establish a reasonable fee for an organization to charge when fulfilling requests for copies of the documents. A number of comments were received concerning the Internet. Most, but not all, of these comments urged that posting an organization's documents on the Internet be treated as making those documents widely available. Finally, several commentators asked for guidance in determining when an organization is subject to a harassment campaign, how to apply for a harassment determination, what kind of relief is available while such an application is pending and the effect of a determination that the organization is the subject of a harassment campaign.

Explanation of Provisions

Overview

The proposed regulations provide guidance concerning the application and returns a tax-exempt organization must make available for public inspection and must supply in response to requests for copies. The proposed regulations also provide guidance on (1) the place and time for making these documents available for public inspection, (2) conditions that may be placed on requests for copies of documents, and (3) the amount, form and time of payment of any fees that may be charged. The regulations also prescribe how an organization can make its application for tax exemption and annual information returns widely available. Finally, the proposed regulations provide guidance on the standards that apply in determining whether an organization is the subject of a harassment campaign and on the applicable procedures for obtaining relief.

Material Required To Be Made Available for Public Inspection and Supplied in Response to a Request for Copies

The proposed regulations specify the documents that a tax-exempt organization must make available for public inspection or supply in response to a request for copies. A tax-exempt organization, including one that is a private foundation, must make its application for tax exemption available. An application for tax exemption includes the application form (such as Form 1023 or Form 1024) and any supporting documents filed by the organization in support of its application. It also includes any letter or document issued by the IRS in connection with the application. Consistent with the guidance provided in Notice 88–120, if an organization filed its application before July 15, 1987, the proposed regulations provide that the organization is required to make available a copy of its application only if it had a copy of the application on July 15, 1987.

A tax-exempt organization, other than one that is a private foundation, must make its three most recent annual information returns available. Generally, an annual information return includes Forms 990, 990–EZ, 990–BL, and Form 1065. It also includes all schedules and attachments filed with the IRS. An organization is not required, however, to disclose the parts of the return that identify names and addresses of contributors to the organization, nor is it required to disclose Form 990–T. The proposed regulations provide rules concerning the documents that must be made available by an organization that is recognized as tax-exempt under a group exemption letter or that files a group return pursuant to § 1.6033–2(d) and Rev. Proc. 80–27, 1980–1 C.B. 677 (or any successor provision). Finally, the proposed regulations provide guidance to an individual denied inspection, or a copy, of an application or a return. In such a case, the individual may provide the IRS with a statement that describes the reason why the individual believes the denial was in violation of legal requirements.

Place and Time Documents Must Be Available for Public Inspection

The proposed regulations provide that a tax-exempt organization must make the specified documents available for public inspection at its principal, regional and district offices. The specified documents generally must be

available for inspection on the day of the request during the office's normal business hours. Consistent with section 6104(e) and Notice 88–120, the proposed regulations provide that an office of an organization will be considered a regional or district office only if it has three or more paid full-time employees (or paid employees, whether part-time or full-time, whose aggregate number of paid hours per week is at least 120). The rules exclude certain sites where the organization's employees perform solely exempt function activities from being treated as a regional or district office. In addition, the proposed regulations prescribe how an organization that does not maintain a permanent office or whose office has very limited hours during certain times of the year can comply with the public inspection requirements. The proposed regulations also provide rules concerning the conditions the organization may impose on public inspections that are consistent with Notice 88–120.

Requirement To Furnish Copy to a Requester

The proposed regulations require that a tax-exempt organization accept requests for copies made in person at the same place and time that the information must be available for public inspection. They also generally require an organization to provide the copies on the day of the request. In unusual circumstances, an organization will be permitted to provide the requested copies on the next business day.

When a request is made in writing, the proposed regulations require that a tax-exempt organization furnish the copies within 30 days from the date it receives the request. If an organization, however, requires advance payment of a reasonable fee for copying and mailing, it may provide the copies within 30 days from the date it receives payment, rather than from the date of the initial request.

The proposed regulations provide guidance as to what constitutes a request, when a request is considered received, and when copies are considered provided. The proposed regulations provide that, instead of requesting a copy of an entire application for tax exemption or annual information return, individuals may request a specific part of either document. Finally, the proposed regulations permit a principal, regional, or district office of an organization to use an agent to process requests for copies.

Reasonable Fee for Providing Copies

The proposed regulations provide that the reasonable fee a tax-exempt organization is permitted to charge for copies may be no more than the fees charged by the IRS for copies of tax-exempt organization tax returns and related documents (currently $1.00 for the first page and $.15 for each subsequent page), plus actual postage costs. The proposed regulations permit an organization to collect payment in advance of providing the requested copies. If an organization receives a written request for copies with no payment enclosed, and the organization requires payment in advance, the organization must request payment within 7 days from the date it receives the request. Payment will be deemed to occur on the day an organization receives the cash, check (provided the check subsequently clears) or money order. The proposed regulations require an organization to accept payment made by cash or money order, and when the request is made in writing, also accept payment made by personal check. An organization is permitted, though not required, to accept other forms of payment. To protect requesters from unexpected fees where a tax-exempt organization does not require prepayment and where a requester does not enclose prepayment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage is in excess of $20.

Making Applications and Information Returns Widely Available

The proposed regulations provide that a tax-exempt organization is not required to comply with requests for copies if the organization has made the requested documents widely available. The proposed regulations specify that an organization can make its application for tax exemption and/or an annual information return widely available by posting the applicable document on the organization's World Wide Web page on the Internet or by having the applicable document posted on another organization's page as part of a database of similar materials. In addition, the proposed regulations provide that the Commissioner may prescribe, by revenue procedure or other guidance, other methods that an organization can use to make its application and/or its return widely available. An organization that makes its application and/or its return widely available must inform individuals who request copies how and where to obtain the requested document. The Treasury and the IRS are interested in comments on additional methods by which applications and returns could be made widely available, including the use of a clearinghouse that maintains a large inventory of documents from many organizations.

Harassment Campaigns

The proposed regulations provide guidance in determining whether a tax-exempt organization is the subject of a harassment campaign. Generally, a harassment campaign exists where an organization receives a group of requests, and the relevant facts and circumstances show that the purpose of the group of requests was to disrupt the operations of the tax-exempt organization rather than to obtain information. The proposed regulations also contain examples that evaluate whether particular situations constitute a harassment campaign and whether an organization has a reasonable basis for believing that a request is part of the harassment campaign. For example, the IRS will not allow organizations to suspend compliance with a request for copies from a representative of the news media even though the organization believes that request is part of a harassment campaign. The proposed regulations also permit an organization to disregard requests in excess of two per month or four per year made by a single individual or sent from a single address. Finally, the proposed regulations provide procedures for requesting a determination that an organization is subject to a harassment campaign, the treatment of requests for copies while a request for a determination is pending, and the effect of such a determination.

Proposed Effective Date

These regulations are proposed to be effective beginning 60 days after publication of these regulations as final regulations.

Special Analyses

Pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, it is certified that the collection of information referenced in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to the collection of information requirements in these regulations, the requirements will not have a significant economic impact on these entities. The average time required to maintain and disclose the information required under these regulations is estimated to be 30 minutes for each tax-exempt

organization. This estimate is based on the assumption that, on average, a tax-exempt organization will receive one request per year to inspect or provide copies of its application for tax exemption and its annual information returns. Less than 0.001 percent of the tax-exempt organizations affected by these regulations will be subject to the reporting requirements contained in the regulations. It is estimated that annually, approximately 1,000 tax-exempt organizations will make its documents widely available by posting them on the Internet. In addition, it is estimated that annually, approximately 50 tax-exempt organizations will file an application for a determination that they are the subject of a harassment campaign such that a waiver of the obligation to provide copies of their applications for tax exemption and their annual information returns is in the public interest. The average time required to complete, assemble and file an application describing a harassment campaign is expected to be 5 hours. Because applications for a harassment campaign determination will be filed so infrequently, they will have no effect on the average time needed to comply with the requirements in these regulations. In addition, a tax-exempt organization is allowed in these regulations to charge a reasonable fee for providing copies to requesters. Therefore, it is estimated that on average it will cost tax-exempt organizations less than $10 per year to comply with these regulations, which is not a significant economic impact.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 4, 1998, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Service Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time devoted to each topic (signed original and eight (8) copies) by December 26, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Michael B. Blumenfeld, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. Other personnel from the IRS and Treasury Department also participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for 26 CFR part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6104(e)–2 also issued under 26 U.S.C. 6104(e)(3);

Section 301.6104(e)–3 also issued under 26 U.S.C. 6104(e)(3); * * *

Par. 2. Sections 301.6104(e)–0, 301.6104(e)–1, 301.6104(e)–2, and 301.6104(e)–3 are added to read as follows:

§ 301.6104(e)–0 Table of contents.

This section lists captions contained in §§ 301.6104(e)–1, 301.6104(e)–2, and 301.6104(e)–3.

§ 301.6104(e)–1 Public inspection and distribution of annual information returns of tax-exempt organizations (other than private foundations) and applications for tax exemption.

(a) In general.
(b) Definitions.
(1) Tax-exempt organization.
(2) Private foundation.
(3) Application for tax exemption.
(i) In general.
(ii) No prescribed application form.
(iii) Exceptions.
(4) Annual information return.
(i) In general.
(ii) Returns more than 3 years old.
(5) Regional or district offices.
(i) In general.
(ii) Site not considered a regional or district office.
(c) Special rules relating to public inspection.
(1) Permissible conditions on public inspection.
(2) Organizations that do not maintain permanent offices.
(d) Special rules relating to copies.
(1) Time and place for providing copies in response to requests made in person.
(i) In general.
(ii) Unusual circumstances.
(iii) Agents for providing copies.
(2) Request for copies in writing.
(i) In general.
(ii) Time and manner of fulfilling written requests.
(A) In general.
(B) Agents for providing copies.
(3) Request for a copy of parts of document.
(4) Fees for copies.
(i) In general.
(ii) Form of payment.
(A) Request made in person.
(B) Request made in writing.
(iii) Avoidance of unexpected fees.
(iv) Responding to inquiries of fees charged.
(e) Rules relating to documents to be provided by regional and district offices, and local and subordinate organizations.
(1) Documents to be provided by regional and district offices.
(2) Documents to be provided by local and subordinate organizations.
(f) Failure to comply with public inspection or copying requirements.
(g) Effective date.

§ 301.6104(e)–2 Making applications and returns widely available.

(a) In general.
(b) Widely available.
(1) In general.
(2) Internet posting.
(3) Notice requirement.
(c) Effective date.

§ 301.6104(e)–3 Tax-exempt organization subject to harassment campaign.

(a) In general.
(b) Harassment.
(c) Special rule for multiple requests from a single individual or address.
(d) Harassment determination procedure.
(e) Effect of a harassment determination.
(f) Examples.
(g) Effective date.

§ 301.6104(e)–1 Public inspection and distribution of annual information returns of tax-exempt organizations (other than private foundations) and applications for tax exemption.

(a) *In general.* Except as otherwise provided in this section, a tax-exempt organization, including one that is a private foundation, shall make its application for tax exemption (as defined in paragraph (b)(3) of this section) available for public inspection without charge at its principal, regional and district offices during regular business hours. A tax-exempt organization, other than a private foundation, shall make its annual information returns (as defined in paragraph (b)(4) of this section) available for public inspection without charge in the same offices during regular business hours. Each annual information return shall be made available for a period of three years beginning on the date the return is required to be filed (determined with regard to any extension of time for filing) or is actually filed, whichever is later. In addition, except as provided in § 301.6104(e)–2 and § 301.6104(e)–3, an organization shall provide a copy without charge, other than a reasonable fee for reproduction and actual postage costs, of all or any part of any application or return required to be made available for public inspection under this paragraph to any individual who makes a request for such copy in person or in writing. See paragraph (d)(4) of this section for rules relating to fees for copies.

(b) *Definitions.* For purposes of section 6104(e) and the regulations thereunder, the following definitions apply:

(1) *Tax-exempt organization.* The term *tax-exempt organization* means any organization that is described in section 501(c) or section 501(d) and is exempt from taxation under section 501(a).

(2) *Private foundation.* The term *private foundation* means a private foundation as defined in section 509(a).

(3) *Application for tax exemption*—(i) *In general.* The term *application for tax exemption* includes any prescribed application form (such as Form 1023 or Form 1024), all documents and statements the Internal Revenue Service requires an applicant to file with the form, any statement or other supporting document submitted by an organization in support of its application, and any letter or other document issued by the Internal Revenue Service concerning the application (such as a favorable determination letter or a list of questions from the Internal Revenue Service about the application). For example, a legal brief supporting an application, or a response to questions from the Internal Revenue Service during the application process, is a supporting document.

(ii) *No prescribed application form.* If no form is prescribed for an organization's application for tax exemption, the application for tax exemption includes—

(A) The application letter and copy of the articles of incorporation, declaration of trust, or other similar instrument that sets forth the permitted powers or activities of the organization;

(B) The organization's bylaws or other code of regulations;

(C) The organization's latest financial statements, as of the date the application is submitted, showing assets, liabilities, receipts and disbursements;

(D) Statements describing the character of the organization, the purpose for which it was organized, and its actual activities;

(E) Statements showing the sources of the organization's income and receipts and their disposition; and

(F) Any other statements or documents the Internal Revenue Service required the organization to file with, or that the organization submitted in support of, the application letter.

(iii) *Exceptions.* The term *application for tax exemption* does not include—

(A) Any application for tax exemption filed by an organization that has not yet been recognized, on the basis of the application, by the Internal Revenue Service as exempt from taxation for any taxable year;

(B) Any application for tax exemption filed before July 15, 1987 unless the organization filing the application had a copy of the application on July 15, 1987; or

(C) Any material, including the material listed in § 301.6104(a)–1(i) and information that the Secretary would be required to withhold from public inspection, that is not available for public inspection under section 6104.

(4) *Annual information return*—(i) *In general.* The term *annual information return* includes an exact copy of any return filed by a tax-exempt organization pursuant to section 6033. It also includes any amended return filed with the Internal Revenue Service after the date the original return is filed. The copy must include all information furnished to the Internal Revenue Service on Form 990, Return of Organization Exempt From Income Tax, or any version of Form 990 (such as Forms 990–EZ or 990–BL except Form 990–T) and Form 1065, as well as all schedules, attachments and supporting documents, except for the name or address of any contributor to the organization. For example, the annual information return includes Schedule A of Form 990 containing supplementary information on section 501(c)(3) organizations, and those parts of the return that show compensation paid to specific persons (Part VI of Form 990 and Parts I and II of Schedule A of Form 990). The term *annual information return* does not include Schedule A of Form 990–BL, Form 990–T, Exempt Organization Business Income Tax Return or Form 1120–POL, U.S. Income Tax Return For Certain Political Organizations. For purposes of this section and the regulations thereunder, an annual information return does not include the return of a private foundation. See § 301.6104(d)–1 for requirements relating to public disclosure of private foundation annual returns.

(ii) *Returns more than 3 years old.* The term *annual information* return does not include any return after the expiration of 3 years from the date the return is required to be filed (including any extension of time that has been granted for filing such return) or is actually filed, whichever is later. If an organization has filed an amended return, however, the amended return must be made available for a period of 3 years beginning on the date it is filed with the Internal Revenue Service.

(5) *Regional or district offices*—(i) *In general.* A regional or district office is any office of a tax-exempt organization, other than its principal office, that has—

(A) 3 or more paid full-time employees; or

(B) Paid employees, whether part-time or full-time, whose aggregate number of paid hours a week are normally at least 120.

(ii) *Site not considered a regional or district office.* A site is not considered a regional or district office, however, if—

(A) The only services provided at the site further exempt purposes (such as day care, health care or scientific or medical research); and

(B) The site does not serve as an office for management staff, other than managers involved solely in managing the exempt function activities at the site.

(c) *Special rules relating to public inspection*—(1) *Permissible conditions on public inspection.* A tax-exempt organization may have an employee present in the room during an inspection. The organization, however, must allow the individual conducting the inspection to take notes freely during the inspection, and to photocopy the document at no charge, if the individual provides the photocopying equipment at the place of inspection.

(2) *Organizations that do not maintain permanent offices.* If a tax-exempt organization does not maintain a permanent office, the organization shall comply with the public inspection requirements of paragraph (a) of this section by making its application for tax

exemption and its annual information returns, as applicable, available for inspection at a reasonable location of its choice. Such an organization shall permit public inspection within a reasonable amount of time after receiving a request for inspection (normally not more than 2 weeks) and at a reasonable time of day. At the organization's option, it may mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester in lieu of allowing an inspection. The organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. An organization that has a permanent office, but has no office hours or has very limited hours during certain times of the year, shall make its documents available during those periods when office hours are limited or not available as though it were an organization without a permanent office.

(d) *Special rules relating to copies*—(1) *Time and place for providing copies in response to requests made in-person*—(i) *In general.* A tax-exempt organization shall provide copies of the documents it is required to provide under section 6104(e) in response to a request made in person at the time and place that it makes its documents available for inspection under paragraph (a) of this section. Except as provided in paragraph (d)(1)(ii) of this section, an organization shall provide such copies to a requester on the day the request is made.

(ii) *Unusual circumstances.* Where unusual circumstances exist such that fulfilling a request on the same business day places an unreasonable burden on the tax-exempt organization, the organization may provide the copies in response to a request made in person on the next business day following the day of the request. Unusual circumstances may include, but are not limited to, receipt of a volume of requests that exceeds the organization's daily capacity to make copies; requests received shortly before the end of regular business hours that require an extensive amount of copying; or requests received on a day when the organization's managerial staff is conducting special duties, such as student registration, rather than its regular administrative duties.

(iii) *Agents for providing copies.* A principal, regional or district office of a tax-exempt organization subject to the requirements of this section may retain a local agent, within reasonable proximity of the applicable office, to process in person requests for copies of its documents. An agent that receives a request for copies must provide the copies within the time and under the conditions that apply to the organization itself. For example, an agent must provide a copy to a requester on the day the agent receives the request. However, an office using such an agent that receives an in-person request for a copy must immediately provide the name, address and telephone number of the local agent to the requester. An organization that notifies an in-person requester of such an agent is not required to respond further to the requester. However, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization if the organization's agent fails to provide the documents as required under section 6104(e).

(2) *Request for copies in writing*—(i) *In general.* A tax-exempt organization must honor a written request for a copy of documents that the organization is required to provide under section 6104(e) if the request—

(A) Is addressed to, and delivered by mail, electronic mail, facsimile, a private delivery service as defined in section 7502(f), or in person, to the principal, regional or district office of the organization; and

(B) Sets forth the address to which the copy of the documents should be sent.

(ii) *Time and manner of fulfilling written requests*—(A) *In general.* A tax-exempt organization receiving a written request for a copy shall mail the copy of the requested documents (or the requested parts of documents) within 30 days from the date it receives the request. If a tax-exempt organization requires payment in advance, it shall provide the copies within 30 days from the date it receives payment. If an organization requiring payment in advance receives a written request without payment or an insufficient payment, the organization must, within 7 days from the date it receives the request, notify the requester of its prepayment policy and the amount due. A request or payment that is mailed shall be deemed (in the absence of evidence to the contrary) to be received by an organization 7 days after the date of the postmark. Requests transmitted to the organization by electronic mail or facsimile shall be deemed received the day the request is transmitted successfully. Copies are deemed provided on the date of the postmark or private delivery mark (or if sent by certified or registered mail, the date of registration or the date of the postmark on the sender's receipt). If an individual making a request consents, a tax-exempt organization may provide a copy of the requested document exclusively by electronic mail. In such case, the material is provided on the date the organization successfully transmits the electronic mail.

(B) *Agents for providing copies.* A tax-exempt organization subject to the requirements of this section may retain an agent to process written requests for copies of its documents. The agent shall provide the copies within the time and under the conditions that apply to the organization itself. For example, if the organization received the request first (e.g. before the agent), the deadline for providing a copy in response to a request shall be determined in reference to when the organization received the request, not when the agent received the request. An organization that transfers a request for a copy to such an agent is not required to respond further to the request. However, if the organization's agent fails to provide the documents as required under section 6104(e), the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization.

(3) *Request for a copy of parts of document.* A tax-exempt organization must fulfill a request for a copy of the organization's entire application for tax exemption or annual information return or any identifiable part, attachment or supporting paper of its application or return. A request for a copy of less than its entire application or less than its entire return must describe the information desired in sufficient detail to enable the organization to identify the desired part of the applicable document without placing an unreasonable burden upon the organization. For example, a request may be limited to those parts of an organization's annual information return that relates to the compensation of the organization's officers and managers.

(4) *Fees for copies*—(i) *In general.* A tax-exempt organization charges a reasonable fee for providing copies only if it charges no more than the per-page copying charge stated in § 601.702(f)(5)(iv)(B) of this chapter (fee charged by the Internal Revenue Service for providing copies to a requester), plus no more than the actual postage costs incurred by the organization to provide the copies. An organization may require that an individual requesting copies of documents pay the fee before the documents are provided. If the organization has provided an individual making a request with notice of the fee, and the individual has not paid the fee within 30 days, or if the individual pays the fee by check and the check does not clear when deposited, the organization may disregard the request.

(ii) *Form of payment*—(A) *Request made in person.* If a tax-exempt organization charges a fee for copying as permitted under paragraph (d)(4)(i) of this section, it shall accept payment by cash and money order for requests made in person. The organization may accept other forms of payment, such as personal checks or credit cards.

(B) *Request made in writing.* If a tax-exempt organization charges a fee for copying and postage as permitted under paragraph (d)(4)(i) of this section, it shall accept payment by certified check, personal check and money order for requests made in writing. The organization may accept other forms of payment, such as credit cards.

(iii) *Avoidance of unexpected fees.* Where a tax-exempt organization does not require prepayment and a requester does not enclose prepayment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage under paragraph (d)(4)(i) of this section is in excess of $20.

(iv) *Responding to inquiries of fees charged.* In order to facilitate a requester's ability to receive copies promptly, a tax-exempt organization shall respond to any questions from potential requesters concerning its fees for copying and postage. For example, the organization shall inform the requester of its charge for copying and mailing its application for exemption and each annual information return, with and without attachments, so that a requester may include payment with the request for copies.

(e) *Rules relating to documents to be provided by regional and district offices, and local and subordinate organizations*—(1) *Documents to be provided by regional and district offices.* A regional or district office of a tax-exempt organization must satisfy the same rules as the principal office with respect to public inspection and providing copies of its application for tax exemption and annual information returns. However, a regional or district office is not required to make its annual information return available for inspection or for providing copies until 30 days after the date the return is required to be filed (including any extension of time that is granted for filing such return) or is actually filed, whichever is later.

(2) *Documents to be provided by local and subordinate organizations.* A local organization that does not file its own annual information return (because it is affiliated with a central organization that files a group return pursuant to § 1.6033–2(d)) must make available the applicable annual information returns filed by the central organization. However, a local organization is not required to make its annual information return available for inspection or for providing copies until 30 days after the date the return is required to be filed (including any extension of time that is granted for filing such return) or is actually filed by the central organization, whichever is later. If a subordinate organization is covered by a group exemption letter, the application for tax exemption the subordinate organization must make available for public inspection and furnish in response to requests for copies is the application submitted to the Internal Revenue Service by its parent or supervisory organization to obtain the group exemption letter, as well as any additional documents submitted in order to cover the subordinate organization under the group exemption letter.

(f) *Failure to comply with public inspection or copying requirements.* If a tax-exempt organization denies an individual's request for inspection or a copy of an application for tax exemption or an annual information return as required under section 6104(e) and this section, and the individual wants to alert the Internal Revenue Service to the possible need for enforcement action, the individual may provide a statement to the Director, Exempt Organizations Division, CP:E:EO, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 that describes the reason why the individual believes the denial was in violation of the requirements of section 6104(e).

(g) *Effective date.* This section is effective beginning 60 days after its publication as a final regulation in the **Federal Register.**

§ 301.6104(e)–2 Making applications and returns widely available.

(a) *In general.* A tax-exempt organization is not required to comply with a request for a copy of its application for tax exemption or an annual information return pursuant to § 301.6104(e)–1(a) if the organization has made the requested application or return widely available in accordance with paragraph (b) of this section. An organization that makes its application or return widely available must nevertheless make the application or return available for public inspection as required under § 301.6104(d)–1 or § 301.6104(e)–1, as applicable.

(b) *Widely available*—(1) *In general.* A tax-exempt organization makes its application for tax exemption and/or an annual information return widely available if the organization uses a method specified in paragraph (b)(2) of this section or in a revenue procedure or other form of guidance issued by the Commissioner, and if the organization satisfies the requirements of paragraph (b)(3) of this section.

(2) *Internet posting.* A tax-exempt organization can make its application for tax exemption and/or an annual information return widely available by posting the application or return on a World Wide Web page that the tax-exempt organization establishes and maintains or by having the application or return posted, as part of a database of similar documents of other tax-exempt organizations, on a World Wide Web page established and maintained by another entity. In order for the application or return to be widely available through an Internet posting, the entity maintaining the World Wide Web page must have procedures for ensuring the reliability and accuracy of the application or return that it posts on the page and must take reasonable precautions to prevent alteration, destruction or accidental loss of the application or return posted on its page. Furthermore, the application or return will be considered widely available only if—

(i) It is posted in the same format used by the Internal Revenue Service to post forms and publications on the Internal Revenue Service World Wide Web page;

(ii) The World Wide Web page through which it is available clearly informs readers that the document is available and provides instructions for downloading it;

(iii) When downloaded and printed in hard copy, the application or return is in substantially the same form as the original application or return, and contains the same information provided in the original application or return filed with the Internal Revenue Service (except information withheld pursuant to § 301.6104(e)–1(b)(4)(i) (the names and addresses of contributors listed on the annual information), Schedule A of Form 990–BL and information on the application for tax exemption required to be withheld under section 6104(a)(1)(D) and § 301.6104(e)–1(b)(3) (trade secrets and similar information)); and

(iv) A person can access and download the application or return without payment of a fee to the organization maintaining the World Wide Web page.

(3) *Notice requirement.* If a tax-exempt organization has made its application for tax exemption and/or an annual information return otherwise widely available it must tell any individual requesting a copy where the documents are available (including the address on the World Wide Web, if applicable). If the request is made in person, the organization shall provide such notice to the individual immediately. If the request is made in writing, the notice shall be provided within 7 days of receiving the request.

(c) *Effective date.* This section is effective beginning 60 days after its publication as a final regulation in the **Federal Register.**

§ 301.6104(e)–3 Tax-exempt organization subject to harassment campaign.

(a) *In general.* If the key district director for the district where the organization's principal office is located determines that the organization is the subject of a harassment campaign and compliance with the requests that are part of the harassment campaign would not be in the public interest, a tax-exempt organization is not required to fulfill a request (as otherwise required by § 301.6104(e)–1(a)) for a copy that it reasonably believes is part of the campaign.

(b) *Harassment.* A group of requests for an organization's application for tax exemption or annual information returns is indicative of a harassment campaign if the requests are part of a single coordinated effort to disrupt the operations of a tax-exempt organization rather than to collect information about the organization. Whether a group of requests constitutes a harassment campaign depends on the relevant facts and circumstances. Facts and circumstances that indicate the organization is the subject of a harassment campaign include: a sudden increase in the number of requests; an extraordinary number of requests made through form letters or similarly worded correspondence; evidence of a purpose to deter significantly the organization's employees or volunteers from pursuing the organization's exempt purpose; requests that contain language hostile to the organization; direct evidence of bad faith by organizers of the purported harassment campaign; evidence that the organization has already provided the requested documents to a member of the purported harassing group; and a demonstration by the tax-exempt organization that it routinely provides copies of its documents upon request.

(c) *Special rule for multiple requests from a single individual or address.* A tax-exempt organization may disregard any request for copies of all or part of any document beyond the first two received within any 30-day-period or the first four received within any one-year-period from the same individual or the same address, regardless of whether the key district director has determined that the organization is subject to a harassment campaign.

(d) *Harassment determination procedure.* A tax-exempt organization may apply for a determination that it is the subject of a harassment campaign by submitting a signed application to the key district director for the key district where the organization's principal office is located. The application shall consist of a written statement giving the organization's name, address, employer identification number, and the name, address and telephone number of the person to contact regarding the application, and describing in detail the facts and circumstances that the organization believes support a determination that the organization is subject to a harassment campaign. The organization may suspend compliance with respect to any request for a copy of its documents based on its reasonable belief that such request is part of a harassment campaign, provided that the organization files an application for a determination within 5 days from the day the organization first suspends compliance with respect to a request that is part of the alleged campaign. In addition, the organization may suspend compliance with any request it reasonably believes to be part of a harassment campaign until it receives a response to its application for a harassment campaign determination.

(e) *Effect of a harassment determination.* If the appropriate key district director determines that a tax-exempt organization is the subject of a harassment campaign, such organization is not required to comply with any request for copies that it reasonably believes is part of the campaign. This determination may be subject to other terms and conditions set forth by the key district director. A person (as defined in section 6652(c)(4)(C)) shall not be liable for any penalty under sections 6652(c)(1)(C), (D) or 6685 for failing to timely provide a copy of documents in response to a request covered in a request for a harassment determination if the organization fulfills the request within 30 days of receiving a determination from the key district director that the organization is not subject to a harassment campaign. Notwithstanding the preceding sentence, if the key district director further determines that the organization did not have a reasonable basis for requesting a determination that it was subject to a harassment campaign or reasonable belief that a request was part of the campaign, the person (as defined in section 6652(c)(4)(C)) remains liable for any penalties that result from not providing the copies in a timely fashion.

(f) *Examples.* The provisions of this section may be further illustrated by the following examples.

Example 1. V, a tax-exempt organization, receives an average of 25 requests per month for copies of its three most recent information returns. In the last week of May, V is mentioned in a national news magazine story that discusses information contained in V's 1996 information return. From June 1 through June 30, 1997 V receives 200 requests for a copy of its documents. Other than the sudden increase in the number of requests for copies, there is no other evidence to suggest that the requests are part of an organized campaign to disrupt V's operations. Although fulfilling the requests will place a burden on V, the facts and circumstances do not show that V is subject to a harassment campaign. Therefore, V must respond timely to each of the 200 requests it receives in June.

Example 2. Y is a tax-exempt organization that receives an average of 10 requests a month for copies of its annual information returns. From March 1, 1997 to March 31, 1997, Y receives 25 requests for copies of its documents. Fifteen of the requests come from individuals Y knows to be active members of the board of organization X. In the past X has opposed most of the positions and policies that Y advocates. None of the requesters have asked for copies of documents from Y during the past year. Y has no other information about the requesters. Although the facts and circumstances show that some of the individuals making requests are hostile to Y, they do not show that the individuals have organized a campaign that will place enough of a burden on Y to disrupt its activities. Therefore, Y must respond to each of the 25 requests it receives in March.

Example 3. The facts are the same as in *Example 2*, except that during March 1997, Y receives 100 requests. In addition to the fifteen requests from members of organization X's board, 75 of the requests are similarly worded form letters. Y discovers that several individuals associated with X have urged the X's members and supporters, via the Internet, to submit as many requests for a copy of Y's annual information returns as they can. The message circulated on the Internet provides a form letter that can be used to make the request. Both the appeal via the Internet and the requests for copies received by Y contain hostile language. During the same year but before the 100 requests were received, Y provided copies of its annual information returns to the headquarters of X. The facts and circumstances show that the 75 form letter requests are coordinated for the purpose of disrupting Y's operations, and not to collect information that has already been provided to an association representing the requesters' interests. Thus, the fact and circumstances show that Y is the subject of an organized harassment campaign. To confirm that it may disregard the 90 requests that constitute the harassment campaign, Y must apply to the district director for a determination. Y may disregard the 90 requests while the application is pending and after the determination is received. However, it must respond within the applicable time limits to the 10 requests it received in March that were not part of the harassment campaign.

Example 4. The facts are the same as in *Example 3*, except that Y receives 5 additional requests from representatives of the news media. In the past, some of these representatives have published articles criticizing Y. Some of these articles were hostile to Y. Normally, the Internal Revenue Service will not consider a tax-exempt organization to be reasonable under paragraph (d) of this section if it disregards requests from members of the news media. There are no additional facts that demonstrate that Y could reasonably believe the requests from the news media to be part of X's harassment campaign. Thus, although Y is the subject of a harassment campaign, it must respond within the applicable time limits to the 5 requests that it received from representatives of the news media.

(g) *Effective date.* This section is effective beginning 60 days after its publication as a final regulation in the **Federal Register.**

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Self-Rescue Devices; Use and Location Requirements

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of a draft policy change; request for comments.

SUMMARY: The Mine Safety and Health Administration (MSHA) is requesting comments on a change to a proposed policy letter (PPL) relating to the approval guidelines for storage plans for Self-Contained Self-Rescue (SCSR) Devices in underground coal mines. MSHA is publishing this notice to voluntarily afford an opportunity for interested persons to comment on the PPL before its anticipated issuance and effective date.

DATES: Submit all comments on or before November 25, 1997.

ADDRESSES: Comments may be transmitted by electronic mail, fax or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: psilvey@msha.gov. Comments by fax must be clearly identified as such and sent to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Milton D. Conley, Division of Health, Coal Mine Safety and Health, (703) 235–1358.

SUPPLEMENTARY INFORMATION: MSHA updates its policies for enforcement of safety and health regulations through Program Policy Letters (PPLs). These PPLs are Agency interpretations of what existing MSHA regulations require; they are not new regulations. Therefore, PPLs do not impose new requirements, but explain or clarify how regulations work or apply in a particular situation. These PPLs are used by MSHA inspectors, miners, mine operators, and mining equipment manufacturers as guidance in determining how best to comply with MSHA regulations.

To increase public participation in selected draft PPLs, MSHA is voluntarily requesting comments and suggestions from the public, especially from people who would be directly affected by the PPLs. By this notice, MSHA is affording an opportunity for public comment on a draft PPL that addresses the storage plans for self-contained self-rescuers in underground coal mines. MSHA will consider all timely submitted comments before finalizing the PPL.

I. Background

MSHA standards at 30 CFR 75.1714 require, in part, that each mine operator make available to each miner who enters the mine an approved Self-Contained Self-Rescue (SCSR) device which is adequate to protect the miner for one hour or longer. Section 75.1714–2 addresses use and location requirements for these devices. Under this standard, the devices must be worn, carried, or kept within 25 feet of the miners, unless a storage plan has been approved by the district manager.

The present SCSR storage plan policy, as outlined in Volume V of MSHA's Program Policy Manual, requires the storage cache of one-hour SCSRs to be within 5 minutes travel time of the affected miners on a working section. This policy also allows for up to 10 minutes travel time to the SCSR storage cache for miners in outby areas. The SCSR storage caches are required to contain a number of devices at least equal to the number of miners who may be required to use the devices at any given time. The travel time and distance to the SCSR storage cache is determined by using an Escapeway and Distance Chart.

In 1977, MSHA proposed, as part of its rulemaking development of the SCSR standard, that miners wear, carry or keep the one-hour SCSR devices within 25 feet. Those devices (referred to as first generation SCSRs) measure approximately 10.5" x 7.75" x 3.375" and weigh about 8.5 pounds. By way of comparison, these devices are about three times the size and weight of the approved filter-type self-rescue devices that miners had been required to wear or carry under the previous regulations.

Comments from the mining industry expressed concern that the size and weight of the one-hour SCSR devices available at that time made it impractical for miners to wear, carry or keep these devices within 25 feet, and in some cases exposed miners to a hazard. As a result of these concerns, the final rule includes provisions for MSHA, upon request from a mine operator, to approve storage plans on a mine-by-mine basis, allowing miners to be more than 25 feet from a one-hour SCSR device. See 30 CFR 75.1714–2(e). This provision also requires mine operators to submit specific information to justify a storage plan, and requires miners who are further than 25 feet from their one-hour SCSRs to wear or carry an approved filter-type self-rescuer.

In an effort to improve SCSR technology, a joint government task force was formed in 1984. Its primary charge was to determine if feasible technology existed to develop a one-hour SCSR device that was smaller and lighter than the first generation devices, and therefore could be more readily worn, carried, or kept within 25 feet of miners during the course of their work. The task force members included representatives from the Bureau of Mines (BOM), the National Institute for Occupational Safety and Health (NIOSH), and MSHA. As a part of this effort, the task force members worked with representatives from the various SCSR manufacturers, mine operators' associations, and the United Mine Workers of America (UMWA). This task force work led to the development, by the CSE Corporation of the CSE SR–100, a second generation one-hour SCSR device measuring approximately 7.75" x 5.5" x 4.0" and weighing about 5.7

pounds. This device is approximately one-third smaller in size and weight than the first generation device, is more ergonomically designed, and is therefore easier to wear or carry than the first generation SCSRs. This device was subjected to extensive in-mine testing, and in 1990 received approval by MSHA and NIOSH to be used underground as a Person Wearable-Self-Contained Self-Rescuer (PW–SCSR). Shortly thereafter, Draeger developed the OXY K Plus, and the Mine Safety Appliances Company (MSA) developed the Portal-Pack. These are similar devices that were also approved by MSHA and NIOSH as one-hour SCSR devices. All three devices, CSE SR–100, Draeger OXY K Plus, and MSA Portal-Pack, are approximately the same size and weight, and are referred to by MSHA as second generation PW–SCSR devices.

In May of 1992, the Assistant Secretary for MSHA convened a government, labor, and industry task group to study the wearability of the second generation devices and the SCSR storage plan guidelines. It included representatives from the BOM, NIOSH, MSHA, UMWA, mine operators' associations, and SCSR manufacturers. The final task group report was released in July, 1994. Wearability survey results from miners and inspectors who wore the second generation devices indicated the improved wearability of these devices. However, the size and weight of the second generation devices in some circumstances could create a problem for miners who work in confined spaces such as equipment operators and mechanics. The report also stressed the importance of all miners wearing, carrying or keeping their SCSRs as close as possible at all times. However, where in-mine conditions made this difficult, the task group supported MSHA's approval of storage plans as part of the overall mine evacuation plan.

In January, 1995, as part of the MSHA-sponsored Mine Emergency Preparedness Seminar, Agency personnel met with representatives from SCSR manufacturers, mine operators' associations, and labor representatives. The primary purpose of those discussions was to identify problems the mining community was continuing to face regarding the use of SCSR devices. The participants identified approximately twenty problems that generally were classified as follows: (1) Size and weight of the second generation devices; (2) restrictiveness of the 25-foot rule; and (3) approval of storage plans on a mine-by-mine basis only.

MSHA is continuing to work with manufacturers to encourage the development of a one-hour SCSR device that would be widely accepted as person wearable for all occupations. Comments from the industry indicate that this would mean the development of a one-hour SCSR that is closer to the size and weight of the approved filter self-rescue devices that miners have worn or carried for many years. MSHA recognizes that this will be a difficult task to achieve with present technology. However, we will continue to work with the manufacturers toward that goal. In September 1996, MSA received MSHA/NIOSH approval for the Life-Saver 60 SCSR. This indicates that manufacturers are willing to continue their efforts to further develop SCSR devices that meet the needs of the industry.

II. Draft Policy Objectives

MSHA is interested in receiving comments on the following draft changes to the existing SCSR storage policy. A key objective of these changes is to recognize that improvements in SCSR technology and design over the past 15 years have produced smaller, lighter, and more ergonomically suitable devices. As a result, it is possible for a significant number of miners to wear or carry their one-hour SCSRs, making the devices more readily accessible and available to miners in the event of an emergency. This needs to be reflected in MSHA's policy on SCSR storage.

The draft policy changes are also intended to respond to the concerns expressed by miners, mine operators, and manufacturers that: (1) The size and weight of the second generation SCSR devices still make it difficult for some miners to wear, carry, or keep the devices within 25 feet; (2) the 25-foot requirement in the SCSR standard is too restrictive in that miners who wear, carry, or keep their SCSRs within 25 feet may inadvertently leave the one-hour devices when, for example, they go to the dinner hole, go for supplies, or help move trailing cables; (3) storage plans should be approved on a mine-by-mine basis; (4) MSHA should develop uniform national procedures for approving storage plans; and (5) the policy should not impede the development and use of new technology.

III. Draft Revised Policy

SCSR Storage Location Guidelines

Mine operators who provide their miners with one-hour SCSRs that are worn, carried, or kept within 25 feet of them at all times while underground are not required to have a storage plan, and only one SCSR for each miner underground is needed.

Mine operators, who choose to request approval to store the one-hour SCSRs more than 25 feet from miners, must minimize the travel time to the SCSR storage caches and should deploy additional SCSRs, as outlined below, to ensure that all miners have ready access to one-hour SCSRs in the event of an emergency requiring the use of such devices.

1. Miners Who Work or Travel in Outby Areas of a Mine

Miners who work or travel in outby areas of a mine should either wear or carry their one-hour SCSRs with them at all times. If the mine operator, in consultation with the miners, believes it would be difficult for certain miners to perform their work while wearing or carrying their one-hour devices and wants the one-hour SCSRs to be stored for such miners, the mine operator must request that the district manager approve a storage plan allowing such miners to be more than 25 feet from their one-hour SCSRs. A storage plan for miners who work or travel in outby areas of a mine must include a provision requiring the affected miners to wear an approved filter type self-rescuer or, utilizing new SCSR technology, wear an approved SCSR which provides less than one-hour of protection. It also should: (1) Specify the proposed storage locations for the one-hour SCSRs, which should always be within a distance that can be traveled by miners at a normal pace within five minutes; and (2) set the number of one-hour SCSRs in each of these storage locations to equal or exceed the total number of miners who may be relying on the use of these devices at any given time. The five minute travel distance should be determined based on actual in-mine conditions rather than on the current Escapeway and Distance Chart. Before approving any storage locations proposed by the mine operator for the one-hour SCSRs, the district manager should verify that any proposed cache would always be within a distance that can be traveled at a normal pace in five minutes or less from these miners.

2. Miners on Continuous or Conventional Mining Sections

Miners who work on or around equipment, such as continuous miner operators, roof bolting machine operators, and shuttle car operators and their helpers, should place their one-hour SCSRs in a readily accessible location on the equipment if they do not wear or carry them. If such miners place their one-hour SCSRs on their equipment and take the devices with them when they are going to be further than 25 feet from that equipment, a storage plan is not required. Mine operators and manufacturers are encouraged to develop compartments on the equipment to ensure safe storage for the devices.

If the mine operator, in consultation with the miners, believes that it would be difficult or impractical for such miners to take their one-hour SCSRs with them when they may be further than 25 feet from their equipment, the mine operator must request that the district manager approve a storage plan allowing these equipment operators and helpers to be more than 25 feet from their one-hour SCSRs on the equipment. A storage plan for these miners must include a provision requiring the affected miners to wear an approved filter type self-rescuer or, utilizing new SCSR technology, wear an approved SCSR which provides less than one hour of protection. It also should: (1) Establish a designated section storage cache for one-hour SCSRs, in addition to the SCSRs on the equipment, which should always be within a distance that can be traveled by miners at a normal pace within three minutes; and (2) set the number of one-hour SCSRs in the proposed storage location to equal or exceed the total number of miners that normally work on the affected section. The three minute travel distance should be determined based on actual in-mine conditions rather than on the current Escapeway and Distance Chart. Before approving the designated section storage cache of additional SCSRs proposed by the mine operator, the district manager should verify that the proposed cache would always be within a distance that can be traveled by miners at a normal pace in three minutes or less.

Miners on continuous or conventional sections who perform work that does not include the use of mobile equipment, such as foremen, mechanics, and general laborers, should wear, carry or keep their one-hour SCSRs within 25 feet. If the mine operator, in consultation with the miners, believes that it would be difficult or impractical for such miners to do so, the mine operator must request that the district manager approve a storage plan permitting these miners to be further than 25 feet from their one-hour SCSRs. The plan must include a provision requiring the affected miners to wear an approved filter type self-rescuer or, utilizing new SCSR technology, wear an approved SCSR which provides less than one hour of protection. It also should: (1) Establish a designated section storage cache for one-hour SCSRs which should always be within a distance that can be traveled by miners at a normal pace within three minutes; and (2) set the number of one-hour SCSRs in the proposed storage location to equal or exceed the total number of such miners that normally work on the affected section. The three minute travel distance should be determined based on actual in-mine conditions rather than on the current Escapeway and Distance Chart. Before approving the designated section storage cache of SCSRs proposed by the mine operator, the district manager should verify that the proposed cache would always be within a distance that can be traveled by miners at a normal pace in three minutes or less.

3. Miners on Longwall Mining Sections

Miners who work on longwall mining sections should wear or carry their one-hour SCSRs. If the mine operator, in consultation with the miners, believes that it would be difficult for longwall miners to perform their work on the longwall face while wearing or carrying their devices, the mine operator must request that the district manager approve a storage plan permitting these miners to be further than 25 feet from their one-hour SCSRs. The plan must include a provision requiring the affected miners to wear an approved filter type self-rescuer or, utilizing new SCSR technology, wear an approved SCSR which provides less than one hour of protection. It also should: (1) Locate storage caches at the headgate and tailgate ends of the longwall; (2) provide miners on the longwall section with additional SCSRs located on the longwall face so they are no further than three minutes travel time from the one-hour devices; and (3) set the number of one-hour SCSRs located at each headgate and tailgate cache and on the face to equal or exceed the number of miners who normally work on the longwall mining section. The three minute travel distance should be determined based on actual in-mine conditions rather than on the current Escapeway and Distance Chart. Before approving the location for the additional face SCSRs proposed by the mine operator, the district manager should verify that longwall miners would always be within three minutes or less of one-hour devices in the headgate, tailgate, or on the face traveling at a normal pace.

4. Miners Working in Specific Outby Areas

Miners working in specific outby areas, such as belt installers, track layers, and construction workers, should wear, carry, or keep their one-hour SCSRs in a readily accessible location within 25 feet. If the mine operator, in consultation with the miners, believes it is difficult or impractical for these miners to perform their work while wearing or carrying their one-hour devices, the operator must request that the district manager approve a storage plan permitting these miners to be further than 25 feet from their one-hour SCSRs. A storage plan for miners working in specific outby areas of a mine must include a provision requiring the affected miners to wear an approved filter type self-rescuer or, utilizing new SCSR technology, wear an approved SCSR which provides less than one hour of protection. It also should: (1) Establish a designated storage location for one-hour SCSRs that should always be within a distance that can be traveled by the affected miners at a normal pace within three minutes; and (2) set the number of one-hour SCSRs in the designated storage cache to equal or exceed the number of miners working in the specific area at any given time. The storage plan may describe the typical arrangement proposed since the area where this type of miner works changes periodically. The three minute travel distance should be determined based on actual in-mine conditions rather than on the current Escapeway and Distance Chart. Before approving the storage cache proposed by the mine operator, the district manager should verify that the location would always be within a distance that can be traveled by miners at a normal pace in three minutes or less.

IV. Other Matters Bearing Upon the Safety of Miners

1. Storage Methods and Procedures

Storage plans submitted for district manager approval must contain provisions ensuring that all designated storage caches: (1) Are readily identifiable; (2) are easily accessible and direct miners to the nearest intake escapeway; and (3) are adequately protected from the mining environment.

2. Training

All mine operators who request approval to store more than one type of one-hour SCSR must include a provision in their SCSR storage plans detailing the training to be provided to ensure that all miners have the ability to satisfactorily don and use each type of filter self-rescuer and SCSR device deployed at their mines.

V. Final Policy Effective Date

Mine operators who submit new SCSR storage plans for approval after the date the notice of final policy change is issued should address the factors outlined in 30 CFR Section 75.1714–2(e)(1)(I) through (xi), and should provide the additional SCSR protection set out in the final policy change notice.

Mine operators with currently approved SCSR storage plans who choose to continue storing the one-hour SCSR devices should revise their storage plans to provide the additional SCSR protection set out above within two years from the date of the final notice of policy change.

Dated: September 19, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–25633 Filed 9–25–97; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Workshops on Proposed Rule—Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of workshops.

SUMMARY: The Minerals Management Service (MMS) has reopened the public comment period under a proposed rule published in the **Federal Register** on January 24, 1997 (62 FR 3742), amending the royalty valuation regulations for crude oil produced from Federal leases. In the July 3, 1997, **Federal Register** (62 FR 36030), we published a supplementary notice of proposed rulemaking. We received a variety of comments on the proposed and supplementary proposed rules. In the September 22, 1997, **Federal Register**, we published a summary of these comments, outlined alternatives for proceeding with further rulemaking, and requested public comment on those or other suggested alternatives. Comments on the notice reopening the comment period must be submitted to MMS by October 22, 1997.

MMS will hold three workshops to discuss alternatives for proceeding with the rulemaking. The sole purpose of these workshops is to obtain comments on the alternatives described in the September 22, 1997, **Federal Register** notice, or any new alternatives or modifications to the proposed alternatives for MMS's consideration. We are not requesting comments on the original proposed rule or the supplemental proposed rule, nor on the summary of comments outlined in the September 22, 1997, **Federal Register** notice. Interested parties are invited to attend and participate in these workshops.

DATES: The workshops will be held as follows:

Workshop 1: Lakewood, Colorado, on September 30, 1997, and October 1, 1997, beginning at 9 a.m. each day and ending at 5 p.m. on September 30, 1997, and ending at 3 p.m. on October 1, 1997, Mountain time.

Workshop 2: Houston, Texas, on October 7 and 8, 1997, beginning at 9 a.m. each day and ending at 5 p.m. on October 7, 1997, and 3 p.m. on October 8, 1997, Central time.

Workshop 3: Houston, Texas, on October 14, 1997, beginning at 9 a.m. and ending at 4 p.m. Central time.

ADDRESSES: Workshop 1 will be held at the Golden Hill Office Complex, 12600 West Colfax Avenue, Suite C–300, Lakewood, Colorado 80225–0165; telephone (303) 275–7200. Workshops 2 and 3 will be held in the Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas 77032; telephone (281) 987–6802.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; telephone (303) 231–3432; fax number (303) 231–3385; e-Mail David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: MMS has invited two representatives each from five industry trade associations and from five States to participate in a round table discussion of the alternatives at Workshops 1 and 2. These two workshops will be open to the public to observe the discussions. We ask for the cooperation of States and industry trade associations in limiting the people in attendance so that we may assure a productive dialogue of the alternatives among the round table participants. Workshop 3 will be open to the public without advance registration. We encourage a workshop atmosphere; members of the public are encouraged to participate in a discussion of the alternatives. For building security measures, each person may be required to present a picture identification to gain entry to the meeting.

Dated: September 22, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 97–25515 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–97–047]

RIN 2115–AE46

Special Local Regulations; City of Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for the Augusta Port Authority's Head of the South Rowing Regatta. The event will be held from 7:00 a.m. to 6:00 p.m. Eastern Standard Time (EST) on November 7 and 8, 1997, on the Savannah River at Augusta, GA. These regulations are necessary for the safety of life on the navigable waters during the event.

DATES: Comments must be received on or before October 27, 1997.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to the Operations Office at the same address between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays. The telephone number is (803) 724–7621.

The Group Commander maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: LTJG M.J. DaPonte, Project Manager, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD7 97–047) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons desiring acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES.** If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at the time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The proposed regulations are needed to provide for the safety of life during the Head of the South Rowing Regatta. There will be up to 6000 participants racing singles, doubles, four and eight person rowing shells on a fixed course. These regulations are intended to promote the safe navigation on the Savannah River immediately before, during, and after the regatta by controlling the traffic entering, exiting, and traveling within the regatta area. The anticipated concentration of spectator vessels poses a safety concern which is addressed in this proposed special local regulation. The proposed regulation would not permit the entry or movement of spectator vessels and other non-participating vessel traffic between a line drawn directly across the Savannah River at mile markers 200.2 and 197.45 on Friday, November 7th and Saturday, November 8th, 1997, between the hours of 6:30 a.m. and 6:30 p.m. EST.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The regulated area encompasses less than 3 nautical miles on the Savannah River between mile markers 200.2 and 197.45, entry into which is prohibited for only twelve hours on each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this proposed rule, if adopted, will not have a significant effect upon a substantial number of small entities because it encompasses less than 3 nautical miles on the Savannah River between mile markers 200.2 and 197.45, entry into which is prohibited for only twelve hours on two days.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action, and has determined pursuant to Section 2.B.2.e(34)(h) of Commandant Instruction M16475.1B, that it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be prepared during the comment period and will be available for inspection and copying after the comment period for this proposed rulemaking has expired.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is proposed for amendment as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority. 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T–07–047 is added to read as follows:

§ 100.35T–07–047 Head of the South Rowing Regatta, Savannah River at Augusta, GA.

(a) *Regulated area.* A regulated area is established on that portion of the Savannah River at Augusta, GA, between mile markers 200.2 and 197.45. The regulated area encompasses the width of the Savannah River between these two points. All coordinates referenced use Datum: NAD 83.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, SC.

(c) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Coast Guard Patrol Commander. After termination of the Head of the South Rowing Regatta on November 7 and 8, 1997, all vessels may resume normal operations.

(d) *Effective Date.* This section is effective from 6:30 a.m. to 6:30 p.m. EST on November 7 and 8, 1997.

Dated: September 18, 1997.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 97–25596 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–31–1–7310b; FRL–5893–5]

Approval and Promulgation of Air Quality Implementation Plans, New Mexico; Recodification of, and Revisions to, the Air Quality Control Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the recodification of, and revisions to, the New Mexico State Implementation Plan (SIP). The existing Air Quality Control Regulations (AQCR) have been renumbered and reformatted into the New Mexico Administrative Code as required by the New Mexico State Records Center. In addition to having renumbered and reformatted the regulations, standard administrative changes have been made throughout all AQCRs, and revisions made to seven particular AQCRs. The intended effects of these revisions are to delete obsolete, nonessential, redundant, and technically inadequate regulations; make certain rules and definitions more explicit and; make one particular regulation more closely reflect current New Mexico Environment Department policy.

In the Rules and Regulations section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 27, 1997.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Reference Docket Number: File Code SIP 1–3–10; NM–90–05. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Room So. 2100, Santa Fe, New Mexico 87503.

FOR FURTHER INFORMATION CONTACT: Eaton R. Weiler, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–2174.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 8, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 97–25503 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42187J; FRL–5748–8]

RIN 2070–AC76

Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the public comment period from September 30, 1997 to December 1, 1997, on the proposed rule published in the **Federal Register** of June 26, 1996 (61 FR 33178)(FRL–4869–1) requiring the testing of 21 hazardous air pollutants (HAPs) for certain health effects. This extension is needed to allow the Agency more time to amend the HAPs test rule proposal to reference eleven new Toxic Substances Control Act (TSCA) test guidelines and make other changes and clarifications to the proposed rule.

DATES: Written comments on the proposed rule must be received by EPA on or before December 1, 1997.

ADDRESSES: Submit three copies of written comments on the proposed HAPs test rule, identified by docket control number (OPPTS–42187A; FRL–4869–1) to: Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–099, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically to oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov. For technical information contact: Richard W. Leukroth, Jr., Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document, all **Federal Register** support documents, and the eleven TSCA test guidelines are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry under "Laws and Regulations" (http://www.epa.gov/fedrgstr).

I. Background and General Information

On June 26, 1996 (61 FR 33178), EPA proposed health effects testing, under section 4(a) of TSCA, of the following hazardous air pollutants (HAPs): 1,1'-biphenyl, carbonyl sulfide, chlorine, chlorobenzene, chloroprene, cresols (3 isomers: *ortho-*, *meta-*, *para-*), diethanolamine, ethylbenzene, ethylene dichloride, ethylene glycol, hydrochloric acid, hydrogen fluoride, maleic anhydride, methyl isobutyl ketone, methyl methacrylate, naphthalene, phenol, phthalic anhydride, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and vinylidene chloride. EPA would use the data generated under the rule to implement several provisions of section 112 of the Clean Air Act and to meet other EPA data needs and those of other Federal agencies. In the HAPs proposal, EPA invited the submission of proposals for pharmacokinetics (PK) studies for the HAPs chemicals, which could provide the basis for negotiation of enforceable consent agreements (ECAs). These PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs rule.

On October 18, 1996, EPA extended the public comment period on the proposed rule from December 23, 1996, to January 31, 1997 (61 FR 54383) (FRL–5571–3). This extension was for the purpose of allowing more time for the submission of PK proposals and adequate time for comments on the proposed rule to be submitted after the Agency had responded to the proposals. EPA has received eight PK proposals for diethanolamine, ethylene dichloride, ethylene glycol, hydrogen fluoride, maleic anhydride, phthalic anhydride, 1,2,4-trichlorobenzene, and 1,1,2trichloroethane). In addition, the Agency has received another proposal to develop an ECA for an alternative testing program for methyl isobutyl ketone. EPA has agreed to review the contents of this proposal and to provide comments on its technical merit and relevance to the proposed HAPs testing requirements.

Due to the complexity of the issues raised by the PK proposals and other issues related to test guidelines, EPA successively extended the public comment period (61 FR 67516, December 23, 1996 (FRL–5580–6); 62 FR 9142, February 28, 1997 (FRL–5592–1); 62 FR 14850, March 28, 1997 (FRL–5598–4); 62 FR 29318, May 30, 1997 (FRL–5722–1); 62 FR 37833, July 15, 1997 (FRL–5732–2)) to allow the Agency more time to respond to the PK proposals and to finalize the test guidelines to be referenced in the proposed HAPs test rule. This extension of the comment period is needed to allow the Agency more time to complete work on amending the proposed HAPs test rule.

EPA has completed seven preliminary technical analyses for the PK proposals that were submitted in response to the Agency's solicitation on June 26, 1996. These include HAPs chemicals: hydrogen fluoride, 1,1,2-trichlorethane, ethylene dichloride, maleic anhydride, phthalic anhydride, 1,2,4-trichlorobenzene, and ethylene glycol. Copies of these preliminary technical analyses have been sent to the submitters and placed in the public record for this action (OPPTS–42187B; FRL–4869–1). The Agency intends to provide comments to the submitter of the other PK proposal as soon as possible but in any event prior to the close of the comment period. EPA also recognizes that submitters may need to revise their proposals based on EPA comments. If the Agency decides to proceed with the ECA process, EPA will announce, in the **Federal Register**, one or more public meetings to discuss the proposals and to negotiate ECAs. In that document, the Agency will solicit persons interested in participating in or monitoring negotiations to develop ECAs based on: the PK testing proposals or revisions thereof, EPA's preliminary technical analyses, and additional comments on EPA's preliminary technical analyses provided by the submitters. The procedures for ECA negotiations are described at 40 CFR 790.22(b).

The Agency emphasizes that the submission of proposals to develop ECAs to conduct alternative testing using PK is no guarantee that EPA and the submitters will, in fact, conclude such agreements. Therefore, EPA urges all submitters of PK proposals to comment on the HAPs proposed rule as an activity separate from the PK proposal/ECA process.

On August 15, 1997, EPA promulgated eleven new TSCA test guidelines (62 FR 43820)(FRL–5719–5), codified at 40 CFR part 799, subpart H. These TSCA part 799 test guidelines were developed based on the OPPTS harmonized guidelines that were developed from the OPPTS guideline harmonization process. In the original HAPs proposal and subsequent notices extending the comment period on the rule, EPA indicated that, for the purposes of this rulemaking and testing under TSCA section 4(a), the Office of Pollution Prevention and Toxics (OPPT) intends to reference final TSCA test guidelines developed from the OPPTS harmonized guidelines. The eleven TSCA test guidelines are included in the record for this rulemaking.

EPA is amending the proposed HAPs test rule to reference the eleven new TSCA part 799 test guidelines and to seek comment on the guidelines as referenced in enforceable test standards in the forthcoming amended HAPs proposal. In addition, the amendment will provide a revised economic assessment and describe other changes and clarifications to the proposed test rule. This amendment to the proposed HAPs test rule will be published in the **Federal Register** as soon as possible but in any event no later than December 1, 1997.

II. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number (OPPTS–42187A; FRL–4869–1) (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPPTS–42187A; FRL–4869–1). Electronic comments on the proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 22, 1997.

Charles M. Auer,

Chemical Control Division, Office of Pollution Prevention and Toxics.

Accordingly, EPA is extending the comment period on the proposed rule to December 1, 1997.

[FR Doc. 97–25657 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–4, and 51–6

Miscellaneous Amendments to Committee Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed rule.

SUMMARY: The Committee is proposing to make changes to five sections of its regulations to clarify them and improve the efficiency of operation of the Committee's Javits-Wagner-O'Day (JWOD) Program. The changes are necessary to clarify and expand earlier regulation changes and to eliminate unnecessary regulatory language.

DATES: Submit comments on or before November 25, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–7740. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: The Committee is proposing to amend § 51–2.4 of its regulations to clarify further that its authorizing statute, the JWOD Act, 41 U.S.C. 46–48c, treats addition of commodities and services to the Procurement List and the establishment by the Committee of a fair market price as two separate functions and applies the requirement for notice and comment rulemaking only to the addition function. This area was first addressed in 1994 (59 FR 59338, Nov. 16, 1994) with the removal of fair market price from the list of suitability criteria for Procurement List additions, in accordance with a 1992 court decision, *McGregor Printing Corporation* v. *Kemp*, 802 F. Supp. 519, 527 (D.D.C), *rev'd on other grounds*, 20 F.3d 1188 (D.C. Cir. 1994). The proposed amendment states that the Committee does not consider comments on proposed fair market prices for commodities and services proposed for addition to the Procurement List to be pertinent to a suitability determination. Accordingly, they will not be addressed when the Committee makes an addition decision. This amendment will not affect the ability of Government and other appropriate parties to comment on proposed fair market prices and price changes in connection with the Committee's fair market pricing process. The Committee also proposes to remove paragraph 51–2.4(a)(4)(C) of its regulations to eliminate one of two essentially redundant statements in § 51–2.4 to the effect that the Committee considers pertinent comments when making its addition decisions.

The Committee also amended paragraphs (b)(6) and (c)(1) of § 51–4.3 of its regulations in 1994 (59 FR 59343) to allow the acceptance of State certifications of blindness or other severe disabilities as documentation of disability, in additions to reports by individual health professionals. Many of these certifications, however, are done by health professionals at local governmental bodies, such as public schools. The proposed amendment would allow acceptance of these certifications.

Paragraph (c) of § 51–4.4 of the Committee's regulations permits nonprofit agencies participating in the JWOD Program to subcontract a portion of the process for providing a commodity on the Procurement List. The proposed amendment would extend this permission to services on the Procurement List, and would specify how the Committee will oversee routine subcontracting of a part of the production process.

Paragraph (c) of § 51–6.12 of the Committee's regulations requires Government contracting activities to provide a 90-day notice when changing the scope of work of a service on the Procurement List. The proposed amendment would make it clear that this notice requirement also applies to situations where the contracting activity converts a service to performance by Government personnel.

Prior to the 1991 revision of the Committee's regulations (56 FR 48974, Sept. 26, 1991), the matters contained in current parts 51–5 and 51–6 were in a single part 51–5, which had a disputes provision applicable to the entire part of the Committee's regulations. The proposed amendment clarifies the disputes provision, § 51–6.14, to state its applicability to both parts 51–5 and 51–6.

Regulatory Flexibility Act

I certify that this proposed revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this proposed rule because it contains no new information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the proposed rule is not a significant regulatory action as defined in the Executive Order.

List of Subjects in 41 CFR Parts 51–2, 51–4, and 51–6

41 CFR Part 51–2

Organization and functions (Government agencies)

41 CFR Part 51–4

Reporting and recordkeeping requirements.

41 CFR Part 51–6

Government procurement, Handicapped.

For the reasons set out in the preamble, Parts 51–2, 51–4, and 51–6 of Title 41, Chaper 51 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for Parts 51–2, 51–4, and 51–6 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

PART 51–2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

2. Section 51–2.4 is amended by removing paragraph (a)(4)(C) and adding a sentence to paragraph (b), to read as follows:

§ 51–2.4 Determination of suitability.

* * * * *

(b) * * * Because the Committee's authority to establish fair market prices is separate from its authority to determine the suitability of a commodity or service for addition to the Procurement List, the Committee does not consider comments on proposed fair market prices for commodities and services proposed for addition to the Procurement List to be pertinent to a suitability determination.

PART 51–4—NONPROFIT AGENCIES

3. Section 51–4.3 is amended by revising paragraphs (b)(6) and (c)(1), to read as follows:

§ 51–4.3 Maintaining qualification.

* * * * *

(b) * * *

(6) Maintain a file for each blind individual performing direct labor which contains a written report reflecting visual acuity and field of vision of each eye, with best correction, signed by a person licensed to make such an evaluation, or a certification of blindness by a State or local governmental entity.

* * * * *

(c) * * *

(1) A written report signed by a licensed physician, psychiatrist, or qualified psychologist, reflecting the nature and extent of the disability or disabilities that cause such person to qualify as a person with a severe disability, or a certification of the disability or disabilities by a State or local governmental entity.

* * * * *

4. Section 51–4.4 is amended by revising paragraph (c), to read as follows:

§ 51–4.4 Subcontracting.

* * * * *

(c) Nonprofit agencies may subcontract a portion of the process for producing a commodity or providing a service on the Procurement List provided that the portion of the process retained by the prime nonprofit agency generates employment for persons who are blind or have other severe disabilities. Subcontracting intended to be a routine part of the production of a commodity or provision of a service shall be identified to the Committee at the time the commodity or service is proposed for addition to the Procurement List and any significant changes in the extent of subcontracting must be approved in advance by the Committee.

* * * * *

PART 51–6—PROCUREMENT PROCEDURES

5. Section 51–6.12 is amended by revising paragraph (c), to read as follows:

§ 51–6.12 Specification changes and similar actions.

* * * * *

(c) For services on the Procurement List, the contracting activity shall notify the nonprofit agency furnishing the service and the central nonprofit agency concerned at least 90 days prior to the date that any changes in the statement of work or other conditions of performance will be required, including assumption of performance of the service by the contracting activity.

* * * * *

6. Section 51–6.14 is revised to read as follows:

§ 51–6.14 Disputes.

Disputes between a nonprofit agency and a contracting activity arising out of matters covered by parts 51–5 and 51–6 of this chapter shall be resolved, where possible, by the contracting activity and the nonprofit agency, with assistance from the appropriate central nonprofit agency. Disputes which cannot be resolved by these parties shall be referred to the Committee for resolution.

Dated: September 23, 1997.

Beverly L. Milkman,

Executive Director

[FR Doc. 97–25810 Filed 9–25–97; 8:45 am]

BILLING CODE 6353–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–203, RM–9132]

Radio Broadcasting Services; Wallace, ID and Lolo, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Hawkeye Radio Properties, Inc., permittee of Station KQWK(FM), Channel 248C2, Wallace, Idaho, requesting the reallotment of Channel 248C2 to Lolo, Montana, as a Class C3 channel, and modification of its authorization accordingly, pursuant to the provisions of § 1.420(i) of the Commission's Rules. Coordinates used for Channel 248C3 at Lolo, Montana, are 46–53–07 and 114–06–30. As Lolo, Montana, is located within 320 kilometers (199 miles) of the Canadian border, the Commission must obtain concurrence of the Canadian government to this proposal.

The petitioner's modification proposal complies with the provisions of § 1.420(i) of the Commission's Rules, and therefore, we will not accept competing expressions of interest in the use of Channel 248C3 at Lolo, Montana, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before November 10, 1997, and reply comments on or before November 25, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dale A. Ganske, President, Hawkeye Radio Properties, Inc., 5546–3 Century Avenue, Middleton, WI 53562.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–203, adopted September 10, 1997, and released September 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–25592 Filed 9–25–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–194; RM–9128]

Radio Broadcasting Services; Shelley and Island Park, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Woodcom, Inc. seeking the substitution of Channel 292C1 for Channel 300C at Shelley, Idaho, and modification of its authorization (File No. BPH950123MH) to specify operation on the lower class channel. Additionally, to accommodate the requested substitution at Shelley, petitioner requests the substitution of Channel 300C for Channel 293C at Island Park, Idaho, for which an application is pending. Coordinates designated for Channel 292C1 at Shelley are 43–06–45 and 112–29–34. Coordinates specified for Channel 300C at Island Park are those set forth in the pending application at Island Park at 44–10–31 and 111–25–47.

Additionally, petitioner's modification proposal is consistent with the provisions of § 1.420(g)(2) of the Commission's Rules as an additional

equivalent channel can be allotted to Shelley in the event other parties express an interest in the proposal. Therefore, we will not accept competing expressions of interest in the use of Channel 292C1 at Shelley.

DATES: Comments must be filed on or before November 3, 1997, and reply comments on or before November 18, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David Tillotson, Esq., 4606 Charleston Terrace, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–194, adopted August 27, 1997, and released September 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–25595 Filed 9–25–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

49 CFR Part 1111

[STB Ex Parte No. 527 (Sub–No. 1)]

Expedited Procedures for Processing Simplified Rail Rate Reasonableness Proceedings

AGENCY: Surface Transportation Board; DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On February 12, 1997, the Surface Transportation Board issued an Advance Notice of Proposed Rulemaking soliciting comments on how the complaint and investigation procedures at 49 CFR part 1111 should be modified to reflect the Board's adoption of *Simplified Rate Guidelines*.[1] Based on the comments received, the Board proposes to amend part 1111 to facilitate the processing of cases using *Simplified Rate Guidelines*. Comments are invited.

DATES: Comments are due November 10, 1997.

ADDRESSES: Send comments referring to STB Ex Parte No. 527 (Sub-No. 1) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 565–1567. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: The Board is charged with expediting the processing of rate complaint proceedings. Under 49 U.S.C. 10704(c), we are required to make a determination as to the reasonableness of a challenged rate within 9 months after the record closes if the determination is based on stand-alone cost (SAC) evidence, and within 6 months if it is based upon a simplified methodology adopted pursuant to 49 U.S.C. 10701(d)(3). On October 1, 1996,[2] we adopted rules to expedite the handling of complaints challenging the reasonableness of railroad rates using SAC,[3] including the generally applicable procedural schedule of 49 CFR 1111.8 that requires completion of the evidentiary phase of a SAC case in 7 months. We declined to adopt a procedural schedule to govern the filing of evidence in cases using the then unadopted *Simplified Rate Guidelines* procedures. Rather, we decided to consider the adoption of regulations covering such cases following completion of the *Simplified Rate Guidelines* rulemaking.

On December 31, 1996, we adopted simplified evidentiary guidelines in *Simplified Rate Guidelines* to determine the reasonableness of rail rates on captive traffic where the *Coal Rate Guidelines* could not be practicably applied. Subsequently, by Advance Notice of Proposed Rulemaking, served February 12, 1997 (62 FR 6508), we solicited comments on whether a general procedural schedule applicable to cases processed under the *Simplified Rate Guidelines* could be promulgated (and, if so, what that schedule should be), or whether we should delay the adoption of a general procedural schedule and proceed on a case-by-case basis until all concerned acquire some experience utilizing the new guidelines.[4]

Comments were filed by the Association of American Railroads (AAR), the National Industrial Transportation League (NITL), Barbara R. Kueppers, and the United Transportation Union-Illinois Legislative Board (UTU–ILB).

Positions of the Parties

AAR acknowledges that the choice of guidelines (*Coal Rate Guidelines* or *Simplified Rate Guidelines*) must be made at the outset of a case. However, AAR sees no need to adopt a set timeframe, such as the 45-day schedule suggested in *Simplified Rate Guidelines* (at 38) for deciding whether a case should proceed under the *Coal Rate Guidelines* or the simplified procedures. AAR claims that a 45-day schedule would be unfair because it would give a shipper unlimited time to prepare its initial case while giving the defendant only two weeks to analyze complainant's case and prepare opposing evidence.[5] AAR also notes that the 45-day schedule appears to conflict with the requirement for a conference of the parties required by 49 CFR 1111.9.[6] AAR prefers convening a conference of the parties shortly after a complaint is filed to allow the parties to develop a schedule, subject to Board approval, for determining whether the *Simplified Rate Guidelines* can be used. In addition, because no case has yet been processed using *Simplified Rate Guidelines*, AAR suggests that we set procedural schedules for the filing of evidence on a case-by-case basis until sufficient experience is gained and the need for a general schedule becomes apparent.

NITL argues that, with minor modifications, complaints seeking to invoke *Simplified Rate Guidelines* can be handled under the procedures established at 49 CFR part 1111.[7] NITL supports deciding within 45 days a request for invocation of the simplified procedures. It proposes that the factors that must be included in a complaint seeking to invoke the *Simplified Rate Guidelines* be specifically listed in 49 CFR 1111.1(a) so that potential complainants are given appropriate notice of both the availability of, and requirements for, the use of the simplified procedures.[8]

Finally, NITL recommends that the Rules of Practice should include a reference to the procedures established in 49 CFR 1244.8 regarding access to the Waybill Sample data. It suggests that complainants request access to the Waybill Sample simultaneously with the filing of the complaint so that complainant can complete discovery and prepare its opening statement within 120 days of the filing of the complaint as specified at 49 CFR 1111.8.

Ms. Kueppers argues that the Board should provide for a cost-efficient means of accessing data through discovery.[9] In particular, she proposes that discovery be completed in 6 months where rate reasonableness is the sole issue in a proceeding. When rate reasonableness is combined with other issues, she proposes that the procedural schedule be determined on a case-by-case basis, allowing for discovery related to other issues. Ms. Kueppers also argues that, because individuals in small shipping organizations have a variety of duties, it is difficult to determine a universally appropriate schedule (such as 120 days in stand-alone cases) for small shippers to prepare and present a case. She contends that small shippers should be afforded flexibility in scheduling.

The UTU–ILB offers no comments on procedural matters but states that it continues to support traditional rate comparisons as the best test of rate reasonableness for the small shipper, port, or community. It adds that it will await the issuance of a notice of proposed rulemaking before making any other recommendations.

Discussion

We appreciate the comments of the parties and have attempted to incorporate as many of their suggestions as practical in our proposal. We propose to include in our regulations the information that a complainant should supply when seeking to test the reasonableness of a rate using the *Simplified Rate Guidelines*. We also propose to establish a schedule for determining whether the *Simplified Rate Guidelines* can be used in a particular case. Additional, minor changes are being proposed. We are not proposing to adopt at this time a general procedural schedule for processing rate complaints under the *Simplified Rate Guidelines*, but rather intend to proceed on a case-by-case basis until we gain more experience using the new guidelines.

Simplified Rate Guidelines (at 37) recognized that a determination as to which guidelines should be used in a particular case must be decided at the outset of the case.[10] If the simplified procedures are sought, the complainant "must present sufficient information to show that [use of the *Coal Rate Guidelines*] is not available * * *. [T]his information should be included in the initial complaint, so as not to delay the case." *Id. Simplified Rate Guidelines* enumerated 9 evidentiary factors (listed in note 8, *supra*), which should be included in a complaint. We propose to modify section 1111.1(a), as suggested by NITL, to specifically list the 9 evidentiary factors that a complaint seeking to use the *Simplified Rate Guidelines* should address.[11] This will ensure that anyone contemplating filing a complaint is fully aware of the factors that must be addressed in its initial pleading. We also propose to make certain technical changes to that section.

As noted, AAR and NITL differ on whether we should prescribe a 45-day period for deciding whether the simplified procedure should be used in deciding rate reasonableness. To comply with the Congressional directive to expedite rate cases, the determination of whether to apply the simplified procedures must be made quickly at the outset of a case. Based on the comments of the parties, however, we propose to modify slightly the 45-day schedule suggested in *Simplified Rate Guidelines*. Instead of 15 days, the railroad would have 20 days to file opposition to the

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[1] *Rate Guidelines—Non-Coal Proceedings*, Ex Parte No. 347 (Sub-No. 2) (STB served Dec. 31, 1996), *pet. for rehearing and reconsideration denied* (STB served Sept. 24, 1996), *pet. for judicial review pending sub nom., Association of Am. Railroad* v. *Surface Transp. Bd.*, No. 97–1020 (D.C. Cir. filed Jan. 10, 1997).

[2] *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527, published in the **Federal Register** on October 8, 1996, (61 FR 52710), modified by decision served November 15, 1996.

[3] SAC is one of four constraints on railroad pricing adopted in *Coal Rate Guidelines—Nationwide*, 1 I.C.C.2d 520 (1985). Notwithstanding its title, *Coal Rate Guidelines* procedures are not limited to coal cases. Rather, the guidelines are the preferred method of evaluating the reasonableness of any rate.

[4] *Simplified Rate Guidelines* suggested that procedural schedules should initially be set on a case-by-case basis. *Id.* at 38 n.145.

[5] Under the 45-day schedule, the defendants would have 15 days after the complaint is filed to oppose use of the simplified procedures. Complainant would have 10 days to respond to the railroad position, and the Board would have 20 days to make its determination.

[6] Under 49 CFR 1111.9(b), in stand-alone cost complaints, the parties are to discuss procedural matters within 7 days after a complaint is filed. Under 49 CFR 1111.9(a), in all other complaint proceedings, the parties shall discuss procedural issues within 7 days after an answer is filed.

[7] NITL suggests that a conference of the parties could be held within 7 days of the filing of the answer as specified in 49 CFR 1111.9(a).

[8] *Simplified Rate Guidelines* (at 37–38) requires that a complaint seeking to invoke the simplified procedures should contain:

(1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and nonrail) that have participated in the transportation of this traffic or could do so.

(2) The specific commodity description(s) for the traffic at issue, the shipping characteristics and requirements of the traffic, and the type of railroad cars required or used for the traffic.

(3) All origins, destinations, and O–D [origin-destination] pairs involved in the complaint, by commodity type.

(4) The amount of traffic involved (by commodity type), including total annual carloadings, average tons per car, number of carloads per shipment, and number of carloads per week or month.

(5) Total or average revenue per carload paid to the defendant railroad(s), by commodity type.

(6) The feasibility and anticipated cost of preparing a SAC presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

AAR notes that factor 7 includes costs associated with "preparing necessary jurisdictional threshold and market dominance evidence." It asserts that these costs are common to both simplified procedure and CMP cases and are therefore not relevant to determining which procedure to follow. We note that while the costs are common to both types of cases, the purpose of including them is to determine and weigh the costs of presenting a rate case under either CMP or the simplified procedures.

[9] She requests that parties enter into a confidentiality agreement within 7 days after a complaint is filed. If they are unable to concur on an agreement, they can request that the Board impose a confidentiality agreement. Within 10 days of a confidentiality agreement being in place, the parties are to disclose the information required in Rule 26 of the Federal Rules of Civil Procedure, and the carrier shall provide to complainant its waybill tapes.

[10] No special showing is needed to use Coal Rate Guidelines because, where available, those guidelines must be used.

[11] Currently, 49 CFR 1111.1(a) states in relevant part:

In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether * * * the reasonableness of the rate should be examined using constrained market pricing or simplified standards to be adopted pursuant to 49 U.S.C. 10701(d)(3). The complainant should specify the basis for this assertion.

use of the simplified procedures, the same due date for filing an answer to a complaint. 49 CFR 1111.4 (a) and (b). This proposal gives a railroad more time to respond and necessitates only one filing, rather than two, in response to a complaint. The complainant would have 10 days to respond, and the Board would have 20 days in which to determine whether the *Simplified Rate Guidelines* should be used. *See* proposed new section 1111.9 (providing for a 50-day schedule).[12]

We believe that such an approach balances the needs of the parties. While the time frame is relatively short, we note that we are not deciding the case on the merits but simply determining whether to use the *Simplified Rate Guidelines*. This short schedule is necessary if we are to proceed with the expeditious handling of the complaint.

Both the AAR and the NITL see a scheduling conflict between holding the procedural conference (49 CFR 1111.9) and determining whether to apply the simplified procedures. AAR, while not wanting a schedule for determining whether to apply the *Simplified Rate Guidelines*, wants a conference of the parties to be held "shortly after the complaint is filed." NITL also favors a conference and supports proceeding under 49 CFR 1111.9(a), under which the parties are required to meet, or discuss by telephone, discovery and procedural matters within 7 days after an answer to a complaint is filed.[13] To avoid convening a conference during the time that parties are preparing pleadings addressing the appropriateness of using the *Simplified Rate Guidelines*, we propose to modify 49 CFR 1111.9(a) so that the conference will be held 12 (instead of 7) days after the answer is filed (day 32) and the report to the Board will be due 19 (instead of 14) days after the answer is filed.[14]

The parties disagree about whether we should prescribe a general procedural schedule to govern the submission of evidence for cases processed under the *Simplified Rate Guidelines*. AAR and, to some extent, Ms. Kueppers favor a case-by-case approach. NITL supports the use of the procedural schedule applicable to stand-alone cost cases with certain modifications.[15]

We agree with AAR and Ms. Kueppers that it seems best to proceed initially on a case-by-case basis. Without any experience processing cases using the *Simplified Rate Guidelines*, it is difficult to develop a generally applicable procedural schedule. Nevertheless, the goal of section 10704 is to expedite the processing of rate cases. As a general matter, we believe that the evidentiary phase of a non-coal case should take less than the 7-month time frame for large coal cases. Therefore, we will generally require that discovery be expedited.

Finally, NITL requests that the Rules of Practice cross reference the regulation at 49 CFR 1244.8 concerning access to the Waybill Sample.[16] We believe, however, that such redundance is unnecessary.[17]

The Board certifies that the rules, if adopted, would not have a significant economic effect on a substantial number of small entities. The proposed rules should result in the quicker processing of rail complaints using the simplified procedures. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1111

Administrative practice and procedure, Investigations.

Decided: September 18, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49 chapter X, part 1111 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

1. The authority citation for part 1111 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721, 10704, and 11701.

2. Section 1111.1 is proposed to be amended by revising the last two sentences of paragraph (a) and adding paragraphs (a)(1) through (a)(9) to read as follows:

§ 1111.1 Content of formal complaints; joinder.

(a) * * * In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether, in its view, the reasonableness of the rate be examined using constrained market pricing or simplified standards adopted pursuant to 49 U.S.C. 10701(d)(3). If the complainant seeks to use the simplified standards, it should support this request by submitting, at a minimum, the following information:

(1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and nonrail) that have participated in the transportation of this traffic or could do so.

(2) The specific commodity description(s) for the traffic at issue, the shipping characteristics and requirements of the traffic, and the type of railroad cars required or used for the traffic.

(3) All origins, destinations, and origin-destination (O–D) pairs involved in the complaint, by commodity type.

(4) The amount of traffic involved (by commodity type), including total annual carloadings, average tons per car, number of carloads per shipment, and number of carloads per week or month.

(5) Total or average revenue per carload paid to the defendant railroad(s), by commodity type.

(6) The feasibility and anticipated cost of preparing a SAC presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

* * * * *

[12] We propose to renumber current section 1111.9 as section 1111.10.

[13] Within 14 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

[14] Because we propose to redesignate § 1111.9 as § 1111.10, these modifications are in proposed section 1111.10(a).

[15] *See* 49 CFR 1111.8.

[16] Ms. Kueppers requests that the carrier provide its waybill tapes to the complainant. Our rules at section 1244.8, however, provide for a party to request from the Board the Waybill Sample, which is a statistically valid sample. We believe that this process is a more efficient method of obtaining information. We also believe, at least for the present, that Ms. Kueppers' request for discovery and confidentiality rules is unnecessary and can be handled on a case-by-case basis.

[17] In *Simplified Rate Guidelines* (at 41) we denied access to the Waybill Sample prior to the filing of the complaint. However, parties can request access to such data simultaneously with the filing of a complaint. The Board will act promptly on these requests.

§ 1111.8 [Amended]

3. In § 1111.8 remove the phrase "section 1111.9(b)" and add "§ 1111.10(b)" in its place.

4. Redesignate § 1111.9 as § 1111.10 and add new § 1111.9 to read as follows:

§ 1111.9 Procedural schedule to determine whether to use simplified procedures.

Absent a specific order by the Board, the following procedural schedule will apply in determining whether to grant a request under § 1111.1(a) to use the simplified procedures (the remainder of the procedural schedule will be determined on a case-by-case basis):

Day 0 Complaint filed, discovery period begins.

Day 20 Defendant's answer to complaint and opposition to use of simplified procedures due.

Day 30 Complainant's response to use of simplified procedures due.

Day 50 Board's determination of whether simplified procedures should be used.

5. In newly designated § 1111.10 paragraph (a) is revised to read as follows:

§ 1111.10 Meetings to discuss procedural matters.

(a) *Generally.* In all complaint proceedings, other than those challenging the reasonableness of a rail rate based on stand-alone cost, the parties shall meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed. Within 19 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

* * * * *

[FR Doc. 97–25642 Filed 9–25–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 091997B]

RIN 0648–AJ17

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 15

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 15 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before November 25, 1997.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 15, which includes an environmental assessment, a regulatory impact review, and an initial regulatory flexibility analysis, and for copies of a minority report submitted by two members of the Council, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266, Phone: 813–228–2815; Fax: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to the Secretary of Commerce for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Amendment 15 would: Replace the current system of commercial red snapper permit endorsements and trip limits with a system of two classes of transferrable commercial red snapper licenses and associated trip limits; starting in 1998, split the red snapper commercial fishing season into two time periods, the first commencing February 1 with two-thirds of the annual quota available and the second commencing on September 1 with the remainder of the annual quota available; open the red snapper commercial fishery at noon on the first of each month and close it at noon on the 15th of each month during the commercial season; prohibit the possession of reef fish in excess of the bag limit on a vessel that has on board, or is tending, a trap other than a fish, stone crab, or spiny lobster trap; increase the minimum size limit for vermilion snapper; close the commercial fishery for greater amberjack each year during the period March through May; remove sea bass, grunts, and porgies from management under the FMP; and remove certain species from the aggregate bag limit for reef fish.

A proposed rule to implement Amendment 15 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule and may publish it in the **Federal Register** for public review and comment.

Comments received by November 25, 1997, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 15. Comments received after that date will not be considered in the approval/disapproval decision. All comments received on Amendment 15 or on the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 22, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–25556 Filed 9–23–97; 1:25 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 187
Friday, September 26, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on October 9, 1997, in Newport, Oregon, at the Hatfield Marine Science Center (Meeting Room 9/Fireside Room), 2030 S. Marine Science Drive, Newport, OR. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Water quality/303d designations (expected effects on Federal forest management in the northern Oregon Coast Range); (2) PAC subcommittees' (Adaptive Mgmt. Area, media, timber, water quality/fish) reports and recommendations to PAC for consideration and discussion; and (3) Monitoring Report (results of Province-wide monitoring will be summarized). All Oregon Coast Provincial Advisory Committee meetings are open to the public. Two 15-minute open public forums are scheduled for 9:30 a.m. and 2:45 p.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Trish Hogervorst, Public Affairs Officer, Bureau of Land Management, at (503) 375–5657, or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: September 19, 1997.

James R. Furnish,

Forest Supervisor.

[FR Doc. 97–25532 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Williamette PIEC Advisory Committee will meet on Thursday, October 16, 1997. The Advisory Committee will be taking a field trip to BLM lands in the North Santiam River Basin. The field trip will begin at the USDI Salem BLM Office; 1717 Fabry Rd SE; Salem, Oregon 97306; phone (503) 375–5642. The Advisory Committee is scheduled to meet at 9:00 a.m. and will leave at approximately 9:15 a.m. The tentative agenda includes: An overview of the Province timber sale monitoring process, an example of timber management practices under the Northwest Forest Plan, and a review and discussion of watershed management and water quality issues in the North Santiam basin.

Bus transportation will be provided for Advisory Committee members, alternates, and presentors. Maps of the field trip route and stops will be available for the public. Public participants will be responsible for their own transportation. Opportunities for brief public input will be provided at each stop. Written comments may be submitted prior to the meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester, Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: September 22, 1997.

Darrel L. Kenops,

Willamette Forest Supervisor.

[FR Doc. 97–25582 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR, part 1951, subpart N, Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing.

DATES: Comments on this notice must be received by November 25, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Ernest W. Harris, Senior Loan Specialist, Rural Housing Service, USDA, STOP 0782, Room 5321, South Agriculture Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0743, STOP 0782, Telephone: (202) 720–1613.

Title: "Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing".

OMB Number: 0575–0104.

Expiration Date of Approval: January 31, 1998.

Type of Request: Intent to extend the currently approved information collection and record keeping requirements.

Abstract: The regulation promulgates the policies and procedures for actions to be taken in cases where unauthorized financial assistance in the form of a loan, grant, interest subsidy benefit created through use of an incorrect interest rate, interest credits, or rental assistance has been extended to a Multiple Family Housing borrower or grantee by RHS.

Estimate of Burden: 1.14 hours.

Respondents: Individuals, state or local governments, and small businesses or organizations.

Estimated Number of Respondents: 450.

Estimated Number of Responses per Respondent: 1.5.

Estimated Total Annual Burden on Respondents: 800 hours.

Copies of this information collection can be obtained from the Barbara Williams, Regulations and Paperwork Management Branch, at (202) 720–9734.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Housing Service, including whether the information will have practical utility; (b) the accuracy of Rural Housing Service's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0743, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 16, 1997.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 97–25528 Filed 9–25–97; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 27, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Case, Radio Set
5895–00–889–3856
NPA: Border TM Industries, Inc., El Paso, Texas

Illuminator/Corrector Stx and Refills
7520–01–386–2407
7520–01–386–2441
7510–01–390–0704
7510–01–390–0705
7510–01–390–0708
7510–01–390–0709
NPA: San Antonio Lighthouse, San Antonio, Texas

Belt Extender, Equipment
8465–00–NIB–0033
8465–00–NIB–0034
(Requirements for the U.S. Army Natick Research & Development Center, Natick, MA)
NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Service

Janitorial/Custodial, Eisenhower Library Complex, 200 S.E. 4th Street, Abilene, Kansas
NPA: Occupational Center of Central Kansas, Salina, Kansas

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–25608 Filed 9–25–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 27, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 16, June 6, 20, July 7 and August 8, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 27011, 31065, 33585, 26256 and 42745) of proposed additions to the Procurement List.

The Following Comments Pertain to Paper, Perforator, Desk

Comments were received from the current contractor for the perforator. The contractor claimed that addition of the perforator to the Procurement List would have a severe adverse impact on the company's sales, as it is part of the company's core business, and would require closing a dedicated production line, with consequent layoffs and loss of use of equipment.

The contractor's Government business includes two perforators, only one of which is being added to the Procurement List. The percentage of the contractor's total sales which this

perforator represents is below the level which the Committee normally considers to constitute severe adverse impact. The contractor will continue to have the opportunity to produce the other perforator for the Government, so the equipment and workers on its dedicated production line will not be idle.

Addition of this perforator to the Procurement List will create employment for several persons with severe disabilities. These persons as a group have a very high unemployment rate, so it is likely that any of the contractor's workers who may be displaced by the Committee's action will have a better chance of finding other work than these persons with severe disabilities.

The Following Comments Pertain to Linen Management Service, Norfolk, Virginia

Comments were received from the current contractor for this service. The contractor claimed that the proposed addition to the Procurement List does not meet the Committee's regulatory requirements on contractor impact and nonprofit agency capability, and cited court decisions on these points.

The contractor claimed that the proposed addition will have a severe adverse impact on the sales of the local plant which is performing the service. However, the Committee's regulation on contractor impact requires the Committee to look at the entire corporate structure of a contractor, including parent and affiliated companies, in making a determination. This addition to the Procurement List represents a very small percentage of the total sales of the corporate structure of this contractor, which is a very large business, even when the impact of other Procurement List additions on the contractor and its long record as a contractor for this service are taken into account.

The contractor also claimed that the addition would require it to discharge a number of workers and would result in a loss in annualized projected revenue. The number of workers and the anticipated loss far exceeds the number of jobs the service is expected to create for people with severe disabilities, and the anticipated revenue loss is well above the annual contract value for the service. Accordingly, the Committee does not believe the contractor's figures to be credible. Any actual loss suffered by the contractor in these areas is outweighed by the creation of jobs for people with severe disabilities, who experience very high unemployment rates.

The contractor cited a 1970 court decision to the effect that the Committee's program was not intended to have any impact on commercial businesses. That decision construed an earlier version of the Committee's statute. The statute was substantially amended in 1971, and the same court in a 1978 decision noted the legislative intent of the new statute was to allow impact on commercial entities. The contractor impact for this Procurement List addition is far below the figure allowed by that court decision.

The contractor also claimed that the nonprofit agency could not be deemed capable of providing the service in compliance with strict requirements applicable to it, such as local water quality and discharge standards. The contractor cited another court decision which requires the Committee to have evidence that the particular nonprofit agency has the capability to provide the service, rather than relying on generalized statements about the capability of people with severe disabilities. The nonprofit agency is currently successfully providing the same service to another Federal installation in the same area, and the Government contracting activity which is responsible for the service now being added to the Procurement List has informed the Committee that it has inspected the nonprofit agency and found it capable of providing this service. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies

(Requirements for Lackland Air Force Base, Texas)

Cross "Solo" Pen and Refill
- 7520–01–424–4846
- 7520–01–424–4881
- 7520–01–424–4860
- 7520–01–424–4848
- 7520–01–424–4871
- 7510–01–425–6802

Perforator, Paper, Desk
- 7520–00–224–7589

Services

Janitorial/Custodial, Plains High School/Visitor Center, Jimmy Carter National Historic Site, Plains, Georgia

Laundry Service, Evans U.S. Army Community Hospital, (all general laundry excluding uniforms), Fort Carson, Colorado

Linen Management Service, Fleet and Industrial Supply Center, (standard grade linen), Norfolk, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–25609 Filed 9–25–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 72–97]

Foreign-Trade Zone 32—Miami, Florida Application for Foreign-Trade Subzone Status; Hewlett-Packard Company (Computer and Related Electronic Products) Miami, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Miami Foreign-Trade Zone Inc., grantee of FTZ 32, requesting special-purpose subzone status for the manufacturing and distribution facilities (computers, printers, measurement devices, medical products and related products) of the Hewlett-Packard Company (Hewlett-Packard), located in Miami, Florida. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 17, 1997.

The Hewlett-Packard facilities are located at two sites (765,438 square feet on 45 acres) in Miami, Florida: Site 1 (21 acres, 313,438 sq.ft.)—located at 6701/6703 Northwest 7th Street; Site 2 (23 acres, 452,000 sq.ft. (including a proposed building))—located at 10205 NW 19th Street and 10200 NW 21st Street.

The facilities (240 employees) are used for storage, manufacture, and distribution for import and export of computers and related devices, printers, electronic test and measurement devices, electronic medical products, and related electronic products and components. A number of components are purchased from abroad (an estimated 40% of value on manufactured products), including printed circuit boards, silicon wafers, rectifiers, integrated circuits, memory modules, CD–ROM drives, disk drives, scanners, hard drives, keyboards, monitors/displays (CRT and LCD type), LEDs, speakers, microphones, belts, valves, bearings, plastic materials, industrial chemicals, sensors, filters, resistors, transducers, fuses, plugs, relays, ink cartridges, toner cartridges, switches, fasteners, cards, transformers, DC/electric motors, magnets, modems, batteries, cabinets, power supplies, cables, copper wire, power cords, optical fiber, casters, cases, labels, and packaging materials (1997 duty range: free-14.2%). (Full zone procedures are not being sought for certain linear motion bearings, display tubes and parts, optical fiber, or photonic components.)

Zone procedures would exempt Hewlett-Packard from Customs duty payments on foreign components used in export production. On its domestic sales, Hewlett-Packard would be able to choose the lower duty rate that applies to the finished products (free-13.2%) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 25, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 10, 1997.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

U.S. Department of Commerce Export Assistance Center, 5600 Northwest 36th St., Suite 617, Miami, Florida 33166.

Dated: September 18, 1997.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 97–25645 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Notice of Final Court Decision and Amended Final Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 5, 1997, in the case of *E.I. DuPont de Nemours & Co., Inc.*, v. *United States*, 954 F. Supp. 263 (CIT 1997), the United States Court of International Trade affirmed the Department of Commerce's second redetermination on remand arising out of the final determination of sales at less than fair value in the antidumping duty investigation of polyethylene terephthalate film, sheet and strip from the Republic of Korea. As there is now a final and conclusive court decision in this action, we are amending the final determination in this matter and will instruct the U.S. Customs Service to change the "all others" cash deposit rate.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT:

Magd A. Zalok or Kris Campbell at (202) 482–4162 or (202) 482–3813, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1991, the Department of Commerce ("the Department") published the antidumping duty order and amended final determination of sales at less than fair value for polyethylene terephthalate film, sheet, and strip from the Republic of Korea. See Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea (56 FR 16305, April 22, 1991), as amended (56 FR 25669, June 5, 1991). E.I. DuPont de Nemours & Company, Inc. Hoechst Celanese Corp., and ICI Americas, Inc., ("petitioners"), filed an action challenging the final determination. On December 6, 1993, the Court of International Trade (CIT) remanded certain of the challenged issues to the Department. The CIT directed the Department to re-examine the following issues in light of the Federal Circuit's decision in *IPSCO, Inc.* v. *United States*, 965 F.2d 1056 (Fed. Cir. 1992) ("IPSCO Appeal"): (1) Methodology for calculating costs of production of off-grade PET film reported by Cheil Synthetics, Inc. ("Cheil") and SKC Limited ("SKC"); (2) methodology for calculating Cheil's costs of recycled scrap film; and (3) SKC's product-specific cost accounting methodology. The CIT also directed the Department to reconsider its methodology for adjustments to United States price ("USP") for value-added taxes ("VATs"). See *E.I. DuPont de Nemours & Co., Inc.* v. *United States*, 841 F. Supp. 1237 (CIT 1993).

On April 7, 1994, pursuant to the remand order, the Department announced its remand results. (See Final Remand Determination Pursuant to Court Order, *E.I. DuPont de Nemours & Co., Inc.* v. *United States*, Court No. 91–07–00487.) For calculating Cheil's cost of production of off-grade PET film, the Department adjusted Cheil's submitted costs to reflect actual, product-specific costs. In the case of SKC, the Department revised its methodology consistent with the *IPSCO Appeal* decision and recalculated SKC's costs of production of off-grade PET film based on quantity rather than value. The Department did not adjust its cost methodology for Cheil's recycled PET film because it reasoned that the recycled film was not a co-product, and therefore, the rationale of the *IPSCO Appeal* decision was not applicable. The Department also accepted SKC's submitted costs adjusted to reflect actual product-specific costs because it determined that SKC's verified cost

accounting methodology was reasonable. Finally, the Department revised the treatment of VATs to comport with its then-existing methodology used in Certain Stainless Steel Wire rod from France, 58 FR 6885 (Dec. 29, 1993) by adjusting USP for tax by multiplying the home market tax rate by the USP at the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax.

With exception of the department's methodology for VAT adjustments, the CIT upheld all aspects of the Department's remand redetermination. See *E.I Dupont de Nemours & Co., Inc., ICI Americas, Inc.*, v. *United States*, 932 F. Supp. 296 (CIT 1996). The CIT concluded that the Department's VAT adjustments were not consistent with the Federal circuit court's ruling in *Federal Mogul Corp.* v. *United States*, 66 F.3d 1572 (Fed. Cir. 1995) and remanded this issue to the Department for recalculation of the VAT adjustments.

On May 17, 1996, the Department filed the results of the second remand redetermination. In accordance with the VAT methodology adopted after the *Federal Mogul* decision, the Department added the tax amount paid in the home market to USP for the same merchandise.

On February 5, 1997, the CIT upheld the second remand results. *E.I. DuPont de Nemours & Co., Inc.* v. *United States*, 954 F. Supp. 263 (CIT 1997). The period to appeal has expired and no appeal was filed. Therefore, as there is now a final and conclusive court decision in this action, we are amending our final determination.

Amendment to Final Determination

Pursuant to section 516A(e) of the Act, we are now amending the final determination in polyethylene terephthalate film, sheet and strip from the Republic of Korea. The recalculated weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
SKC	13.92
Cheil	36.33
All others	21.50

We will instruct U.S. Customs to change the existing "all others" cash deposit requirements accordingly. We note that this order has been revoked with respect to Cheil (61 FR 35177) and SKC's current cash deposit rate is based upon an administrative review conducted subsequent to this segment of the proceeding. Therefore, this amended redetermination does not affect the cash deposit rates for either SKC or Cheil.

Dated: September 22, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–25646 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082797C]

Marine Mammals; Permit No. 993 (P597)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of amendment.

SUMMARY: Notice is hereby given that photography permit No. 993 issued to Mr. Michael Kundu, Arcturus Adventure Communications International, 5516 64th Place, NE, Marysville, WA 98270, has been amended to extend the expiration date of the permit to August 1, 1998.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of § 216.39 of the regulations of the governing the taking and importing (50 CFR part 216) of marine mammals.

Addresses: Documents may be reviewed in the following locations:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Regional Office, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150); and

Regional Administrator, Alaska Regional Office, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Dated: September 12, 1997.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–24923 Filed 9-25-97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

September 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58038, published on November 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 22, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on September 29, 1997, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC):

Category	Adjusted twelve-month limit [1]
340/640	1,382,638 dozen.
347/348	1,659,395 dozen.
351/651	277,915 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Guaranteed Access Levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–25583 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Romania

September 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); the Uruguay Round Agreements Act.

The current limit for Category 648 is being increased for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 4034, published on January 28, 1997.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the May 7, 1997 MOU, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 22, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on September 26, 1997, you are directed to increase the limit for Category 648 to 74,103 dozen [1], as provided for by the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–25584 Filed 9–25–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Center of Military History.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Historical Advisory Committee.

Date: 23 October 1997.

Place: U.S. Army Center of Military History, Franklin Court Building, Room 203, 1099 14th Street, Northwest, Washington, DC 20005–3402.

Time: 0900–1600 (23 Oct 97).

Proposed Agenda: Review and discussion of the status of historical activities in the United States Army.

Purpose of the Meeting: The committee will review the Army's historical activities for FY 97 and those projected for FY 98 based upon reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

FOR FURTHER INFORMATION CONTACT: All communication regarding this advisory committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, Franklin Court Building, 1099 14th Street, Northwest, Washington, DC 20005–3402; telephone number (202) 761–5402.

SUPPLEMENTARY INFORMATION: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the 23 October meeting.

Any members of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the

committee chairman may allow public presentations of oral statements at the meeting.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–25636 Filed 9–25–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Program for Qualifying Department of Defense Ground Passenger Carriers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: Reference previous Notice (Request for comments) in **Federal Register**, Vol. 62, No. 61, dated March 31, 1997, page 15165, provided a 60 day comment period on the proposed changes to the Military Bus Agreement (MBA). Comments and Military Traffic Management Command (MTMC's) responses to those comments are addressed accordingly and are provided below. The MBA is amended to improve the standards for qualifying carriers transporting Department of Defense (DOD) passengers by bus, van and limousine service. The improvements are prepared under a new basic Agreement. The changes affect all current and future ground passenger carriers transporting for the DOD. A copy of the final Agreement between Military Traffic Management Command (MTMC) and ground passenger carriers is available upon request.

EFFECTIVE DATE: This new basic Agreement is effective 1 October 1997.

FOR FURTHER INFORMATION CONTACT: Leesha Saunders at 703–681–6393; Headquarters, Military Traffic Management Command, ATTN: MTOP–QQ, Room 630, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION:

Comments: The following comments were received from Industry:

Comment 1. (II–2 Carrier Application., c. & Department of Transportation (DOT) Rating) Continental Air Transport commented on the regulatory procedures for their individual company in relation to the DOT safety fitness rating for all carriers applying to the Military Bus Program. The carrier operates ten passenger vans. These vehicles are too small to be regulated by the Department of Transportation (DOT); therefore, they cannot obtain a safety fitness rating from DOT.

Response 1. These objections reflect concerns relevant to a van carrier like Continental Air Transport. The DOT's safety fitness rating requirements for the MBA is for carriers whose vehicles seat 16 passengers or more including the driver. Under the present and future MBA application requirements, carriers whose vehicles seat a maximum of 15 passengers are only required to submit copies of their vehicle licenses with their applications. Van & limousine carriers applying for approval from deregulated states must submit a notarized letter indicating they meet all state requirements.

Comment 2. (III–8 Driver Qualifications) Continental Air Transport Company comments that the state of Illinois and the DOT do not require their drivers to have Commercial Driver's Licenses (CDL). In addition, the carrier comments it is not possible to get a CDL specifically for their vehicle capacity. The carrier further explains its driving staff undergoes in-house training including the National Safety Council's Defense Driving Course. Recommended change is that the statement "* * * hold a current commercial driver's license * * *" be deleted from this section and maintain the following wording: "* * * be properly qualified and licensed and operate the type of equipment owned by the carrier."

Response 2. Continental Air Transport Co. comment refers to carriers with vehicles seating less than 16 passengers. Many companies making application to the MBA operate vehicles that seat more than 16 passengers and those drivers are required by federal and local regulations to have and carry their CDL. Therefore, the following sentence change is made: "Drivers, in addition to meeting the DOT's requirements, must be legal residents of the United States, be able to communicate in English, hold a current commercial driver's license or be properly qualified and licensed to operate the type of equipment owned by the carrier."

Comment 3. (III–9 Financial Statements) Continental Air Transport Co. believes that carriers would have problems providing copies of their financial statements to MTMC for qualifying for the MBA.

Response 3. The proof of the financial stability of carriers is to reduce the risk to the Department of Defense of approving carriers who are not financially able to provide safe and reliable passenger service. Thus, financial information is required at time of application or upon request of the MTMC. However, the requirement for Certified Public Accountant audited statements is removed.

MTMC is the agency established within the DOD for the procurement of land transportation from commercial carriers for DOD passengers, their families and impedimenta, in domestic movements procured by the MTMC and DOT Transportation Offices. In light of current deregulation and changing federal regulations, MTMC is modifying the passenger policies in order to improve the current qualification program. The MBA is the standards of service carriers must meet for MTMC approval including the Federal Motor Carrier Safety Regulations and DOD passenger requirements. Under the new Agreement carriers must show compliance with federal, state and DOD passenger safety requirements. All bus, van and limousine carriers currently approved by MTMC will be required to re-sign the new MBA and provide proof of insurance, company drug testing, financial and additional information newly established under the revised Amendment.

Alan M. Cox,

Colonel, U.S. Army, Acting Chief, Qualification Division.

[FR Doc. 97–25635 Filed 9–25–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 30, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before November 25, 1997.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 22, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement

Title: Performance Report—Training Personnel for the Education of Individuals with Disabilities

Abstract: These Performance Reports collect information required of grantees receiving Federal funds under Part D of the Individuals with Disabilities Education Act (IDEA), required by P.L. 101–476 and 102–119, through fiscal year 1997 grants. Training data will be summarized in the Office of Special Education and Rehabilitative Services' (OSERS") Annual Report to Congress, including data on special education and related services personnel, as well as parents trained.

Additional Information: Recently, the U.S. Department of Education's Office of the General Counsel rendered a legal opinion that, because the new law takes effect beginning Fiscal Year 1998, the old law governs reporting requirements for grantees who were funded for Fiscal Years 1996 and 1997. This being the case, data reports are still required by law to be filed with the Department by the grantees no later than November 30, 1997, for the Fiscal Year 1996 budget reporting period. In order to accomplish the mailout to grantees of the data collection forms and instructions, an emergency extension is urgently sought for this package so that the Department can comply with the law. Approval is needed to permit the mailout to occur on October 15. To secure the support services of the Department's mailout contractor, OMB approval needs to be obtained no later than September 30, 1997.

Frequency: Annually

Affected Public: Businesses or other for-profits; not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs

Annual Reporting and Recordkeeping Hour Burden:

Responses: 894

Burden Hours: 1,192

[FR Doc. 97–25577 Filed 9–25–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–2170–001]

William W. Berry; Notice of Filing

September 22, 1997.

Take notice that on July 30, 1997, William W. Berry filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director: ISO New England Inc.

Director: Scott & Stringfellow Financial Corp.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25559 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–703–000]

Black Hills Power and Light Company; Notice of Filing

September 22, 1997.

Take notice that on July 31, 1997, Black Hills Power and Light Company tendered for filing its Open Access Transmission Tariff filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25564 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4236–000]

Boston Edison Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Boston Edison Company (Boston Edison), Massachusetts, submitted for filing revised sheet Nos. 123 through 125 of its open-access transmission tariff. Boston Edison submits these revisions to conform with the July 1, 1997 filing by the New England Power Pool in Docket Nos. 0A97–608–000, et al. Boston Edison requests waiver of the 60-day notice provision to allow an effective date of September 1, 1997.

Boston Edison states that this filing has been posted in accordance with the Commission's regulations and that copies of the filing have been served upon Boston Edison's wholesale customers, the Massachusetts Department of Public Utilities, and all persons listed on the official service lists in Docket No. OA96–70–000, ER97–1328–000 and ER97–2340–000.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25551 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–3063–000]

Alger B. Chapman; Notice of Filing

September 22, 1997.

Take notice that on July 30, 1997, Alger B. Chapman filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director: ISO New England Inc.
Vice Chairman: ABN AMRO Chicago Corporation
Chairman of the Board; Chief Executive Officer: ABN AMRO Investment Services Inc.

Any person desiring to be heard or to protests said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25568 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2610–000]

Cinergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 6, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25541 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2827–000]

Cinergy Services, Inc., Notice of Filing

September 22, 1997.

Take notice that on August 6, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25542 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3069–000]

Cinergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 6, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25544 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3764–000]

Cinergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 22, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25546 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3790–000]

Cinergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 22, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25547 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3792–000]

Cinergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 22, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25548 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER90–24–001]

Commonwealth Atlantic Limited Partnership; Notice of Filing

September 22, 1997.

Take notice that on August 22, 1997, Commonwealth Atlantic Limited Partnership tendered for filing a Notification of Material Change in Facts of Commonwealth Atlantic Limited Partnership in connection with the merger of Destec Energy, Inc., and NGC Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25539 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–158–001]

Entergy Services, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing its compliance filing in the above-captioned docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protest should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25561 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3580–000]

First Power, LLC; Notice of Issuance of Order

September 23, 1997.

First Power, LLC (First Power) submitted for filing a rate schedule under which First Power will engage in wholesale electric power and energy transactions as a marketer. First Power also requested waiver of various Commission regulations. In particular, First Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by First Power.

On September 8, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by First Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, First Power is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of First Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 8, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25616 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3688–000]

The Green Power Connection, Inc.; Notice of Issuance of Order

September 23, 1997.

The Green Power Connection, Inc. (Green Power) submitted for filing a rate schedule under which Green Power will engage in wholesale electric power and energy transactions as a marketer. Green Power also requested waiver of various Commission regulations. In particular, Green Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Green Power.

On September 8, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Green Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Green Power is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Green Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 8, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25617 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4168–000]

Griffin Energy Marketing, L.L.C.; Notice of Filing

September 22, 1997.

Take notice that on September 9, 1997, Griffin Energy Marketing, L.L.C. tendered for filing an amendment to its August 12, 1997, filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25550 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–50–000]

Heartland Energy Services, Inc.; Notice of Filing

Take notice that on September 17, 1997, Heartland Energy Services, Inc. (HES), filed additional information regarding the nature of the jurisdictional contracts being transferred from HES to the joint venture, Cargill-IEC, L.L.C.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 285.214). All such motions or protests should be filed on or before September 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–25538 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4343–000]

Idaho Power Company; Notice of Filing

September 22, 1997.

Take notice that on September 8, 1997, Idaho Power Company tendered for filing an amendment in the above-referenced docket. No. 11.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25555 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4250–000]

Illinois Power Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Illinois Power Company (Illinois Power) tendered for filing firm transmission agreements under which Granite City Steel, Division of National Steel Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25553 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4351–000]

Illinois Power Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Illinois Power Company tendered for filing firm transmission agreements under which Illinois State University will take transmission service pursuant to its open access transmission tariff. The agreements are base on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1997.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25557 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2984–000]

MidAmerican Energy Company; Notice of Filing

September 22, 1997.

Take notice that on August 26, 1997, MidAmerican Energy Company (MidAmerican) tendered for filing an amendment to its initial filing in this proceeding consisting of a First Amendment to the Network Integration Transmission Service Agreement entered into by MidAmerican and the City of Sergeant Bluff, Iowa. The purpose of the First Amendment is to revise certain rates set forth in the Agreement and to add loss factors associated with service to the customer.

MidAmerican proposes an effective date of July 1, 1997, for the First Amendment and, accordingly, has requested a waiver of the Commission's 60-day notice requirement.

Copies of the filing were served on the City of Sergeant Bluff, Iowa.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25543 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–164–001]

Minnesota Power & Light Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Minnesota Power & Light Company tendered for filing an index of all customers served under its open access transmission tariff as required by the Commission in its Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures, 80 FERC ¶61,143 (1997).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25562 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4501–000]

New York State Electric & Gas Corporation; Notice of Filing

September 22, 1997.

Take notice that the New York State Electric & Gas Corporation (NYSEG) on August 19, 1997, tendered for filing an amendment (Amendment) to a power purchase agreement under NYSEG will provide capacity and/or energy to the Power Authority of the State of New York (NYPA). The power purchase agreement was filed on September 17, 1984 and was subsequently assigned Rate Schedule Number 88, with an effective date of December 1, 1983. The parties agree to revise Article 6 of the power purchase agreement to read that bills shall be rendered on or before the fifteenth day of the next succeeding month and the payment due date shall be either: (a) Ten days after NYPA's receipt of the bill, or (b) the first banking day following the nineteenth of the month, whichever date of later. The Amendment, which is comprised of a revised Article 6 of the power purchase agreement, effects that revision.

NYSEG continues to request an effective date of December 1, 1983, for the power purchase agreement. NYSEG served copies of the filing upon NYPA and the New York State Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25558 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–708–000]

Orange and Rockland Utilities, Inc.; Notice of Filing

September 22, 1997.

Take notice that on July 25, 1997, Orange and Rockland Utilities, Inc., acting on behalf of itself and its wholly owned subsidiaries, Rockland Electric Company and Pike County Light & Power Company, filed a revised Open Access Transmission Service Tariff which incorporates the changes to the Pro Forma Open Access Transmission Tariff set forth in Order No. 888–A.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25565 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3553–000 and ER97–3556–000]

Rochester Gas & Electric Corporation and ROXDEL; Notice of Issuance of Order

September 23, 1997.

ROXDEL (ROXDEL), a power marketer, is a wholly-owned subsidiary of Rochester Gas & Electric Company. ROXDEL filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, ROXDEL requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ROXDEL. On September 12, 1997, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 12, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ROXDEL should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, ROXDEL is hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ROXDEL, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ROXDEL's issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 14, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25615 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–116–001]

Tampa Electric Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, Tampa Electric Company (Tampa Electric), submitted a filing in compliance with the Commission's Order On Compliance Tariff Rates and Generic Clarification of Implementation Procedures, issued in Allegheny Power Systems, Inc., Docket No. OA96–18–000, *et al.*, on July 31, 1997.

The compliance filing includes revised tariff sheets for Tampa Electric's open access transmission tariff under order No. 888, an index of transmission customers under Tampa Electric's prior and existing transmission tariffs, and a form of service agreement between Tampa Electric as transmission provider and Tampa Electric in its wholesale merchant function.

Copies of the compliance filing have been served on the persons designated on the official service list in Docket No. OA96–116–000, all of the customers under Tampa Electric's open access tariff, and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1997, Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pubic inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25560 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–749–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 22, 1997.

Take notice that on September 11, 1997, Texas Gas Transmission Corporation (Texas Gas), Post Office Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP97–749–000 a request pursuant to §§ 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for authorization to replace, relocate, and consolidate three existing delivery points in Hart County, Kentucky. Texas Gas avers that such proposal would upgrade the existing measurement facilities, and relocate the meters to a site which is more convenient for the operation and maintenance of the station. Texas Gas makes such request under its blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Texas Gas proposes to replace, relocate and consolidate its existing Rowletts, Woodsonville and Munfordville delivery points which are used to serve Western Kentucky Gas Company (WKG), a local distribution company. Texas Gas then proposes to replace those three delivery points with a new consolidated delivery point that will be know as the River Oaks delivery meter station. Texas Gas states that since this proposal is merely a relocation and consolidation of existing meter stations into one new station, service to the customers of WKG will not be affected by this abandonment. It is further stated that since no increase in contract quantity has been requested by WKG, this proposal will not have a significant effect on Texas Gas' peak day and annual deliveries.

Texas Gas estimates the cost of these replacements and relocations to be approximately $81,000.

Any person or the Commission's staff may, within 45 days after issuance of the instate notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25536 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4237–000]

Tucson Electric Power Company; Notice of Filing

September 22, 1997.

Take notice that Tucson Electric Power Company (TED) on August 15, 1997, tendered for filing proposed changes in its FERC Electric Service Tariff. By this filing, TEP is incorporating into its tariff settlement rates and charges applicable to transmission services utilizing TEP's 69kV—138kV Transmission facilities.

Copies of this filing were served upon TEP's jurisdictional customers, the Arizona Public Service Commission, and on all parties of record that actively participated in TEP's open access proceeding.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25552 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–171–001]

The United Illuminating Company; Notice of Filing

September 22, 1997.

Take notice that on August 15, 1997, The United Illuminating Company (UI) tendered for filing proposed changes to, and clarifications regarding, its Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4 (Tariff), to comply with the Commission's order in *Allegheny Power System, Inc.*, 80 FERC ¶ 61,143 (1997).

UI served a copy of this filing upon all persons listed on the official service list compiled by the Secretary in Docket No. OA96–171–000, upon the current customers under the Tariff, and upon the Connecticut Department of Public Utility Control and McCallum Enterprises I Limited Partnership.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 2, 1997. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25563 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4082–000]

The Washington Water Power Company; Notice of Filing

September 22, 1997.

Take notice that on September 11, 1997, The Washington Water Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25549 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4302–000]

Washington Water Power Company; Notice of Filing

September 22, 1997.

Take notice that on August 22, 1997, Washington Water Power Company (WWP) tendered for filing executed Service Agreements for Non-Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8. WWP requests the Service Agreements be given effective dates of July 23, 1997 and July 31, 1997.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25554 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2424–001]

Western Resources, Inc.; Notice of Filing

September 22, 1997.

Take notice that on August 18, 1997, Western Resources, Inc., tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 30, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–25540 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–756–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

September 22, 1997.

Take notice that on September 15, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed a request with the Commission in Docket No. CP97–756–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate new metering and associated appurtenant facilities for use in providing delivery of transportation service gas to Bear Paw Energy, Inc. (Bear Paw), authorize in blanket certificate issued in Docket No. CP82–487–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to add a new metering station and associated appurtenant facilities in Richland County, Montana to provide delivery of transportation service gas to Bear Paw. Williston states that bear Paw has requested installation of this metering facility which would allow Williston Basin to make deliveries of up to 535 Mcf per day. The natural gas transportation deliveries to Bear Paw would be used to fuel a field compressor and provide service to an existing tank battery. The estimated cost of the proposed metering facility is $3,700 which would be reimbursable by Bear Paw.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25537 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3656–000]

Wisconsin Public Service Corporation; Notice of Filing

September 22, 1997.

Take notice that on August 20, 1997, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPSC and Wisconsin Power & Light Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–25545 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4408–000, et al.]

The Detroit Edison Company, et al.; Electric Rate and Corporate Regulation Filings

September 19, 1997.

Take notice that the following filings have been made with the Commission:

1. The Detroit Edison Company

[Docket No. ER97–4408–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Northeast Utilities Service, Inc., dated as of August 14, 1997. Detroit Edison requests that the Service Agreement be made effective as of August 14, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. The Detroit Edison Company

[Docket No. ER97–4409–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and Northeast Utilities Service Company, dated as of August 18, 1997. Detroit Edison requests that the Service Agreement be made effective as of August 18, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. The Detroit Edison Company

[Docket No. ER97–4410–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and Stand Energy Corporation, dated as of July 15, 1997. The parties commenced transactions under the Service Agreement on July 15, 1997. Detroit Edison requests that the Service Agreement be made effective as of July 15, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Detroit Edison Company

[Docket No. ER97–4411–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Stand Energy Corporation, dated as of July 15, 1997. The parties commenced transactions under the Service Agreement on July 15, 1997. Detroit Edison requests that the Service Agreement be made effective as of July 15, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. The Detroit Edison Company

[Docket No. ER97–4412–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Southern Energy Trading and Marketing, Inc., dated as of August 19, 1997. Detroit Edison requests that the Service Agreement be made effective as of August 19, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Company

[Docket No. ER97–4413–000]

Take notice that on August 29, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and Enron Power Marketing, Inc., under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of August 11, 1997. Detroit Edison requests that the Service Agreements be made effective as of August 11, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Texas-New Mexico Power Company

[Docket No. ER97–4414–000]

Take notice that on August 29, 1997, Texas-New Mexico Power Company (TNMP), tendered for filing a Service Agreement for Network Integration Transmission Service provided by TNMP's transmission function for TNMP's merchant function.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. The United Illuminating Company

[Docket No. ER97–4415–000]

Take notice that on August 29, 1997, The United Illuminating Company (UI), tendered for filing a Service Agreement, dated August 13, 1997, between UI and Williams Energy Services Company (WESCO) for non-firm point-to-point transmission service under UI's Open Access Transmission Tariff, FERC Electric Tariff, Volume No. 4, as amended.

UI requests an effective date of August 13, 1997, for the Service Agreement. UI served a copy of the filing upon WESCO and upon the Connecticut Department of Public Utility Control.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. The United Illuminating Company

[Docket No. ER97–4416–000]

Take notice that on August 29, 1997, The United Illuminating Company (UI), tendered for filing a Service Agreement, dated August 7, 1997, between UI and NP Energy Inc. (NP Energy) for non-firm point-to-point transmission service under UI's Open Access Transmission Tariff, FERC Electric Tariff, Volume No. 4, as amended.

UI requests an effective date of August 7, 1997, for the Service Agreement. UI served a copy of the filing upon NP Energy and upon the Connecticut Department of Public Utility Control.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Bangor Hydro-Electric Company

[Docket No. ER97–4417–000]

Take notice that on August 29, 1997, Bangor Hydro-Electric Company (Bangor), tendered for filing service agreements under its open access transmission tariff. These service agreements provide for Bangor's merchant functions to take non-firm point-to-point transmission service and firm point-to-point transmission service under Bangor's open access transmission tariff.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Louisiana Electric Co., Inc.

[Docket No. ER97–4418–000]

Take notice that on August 29, 1997, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to ConAgra Energy Services under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on ConAgra Energy Services.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc. (on behalf of Georgia Power Co.)

[Docket No. ER97–4419–000]

Take notice that on August 29, 1997, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company, tendered for filing a Purchase Power Agreement between Georgia Power Company and the Municipal Electric Authority of Georgia, effective August 1, 1997. SCS states that it is filing the Purchase Power Agreement as a separate service agreement under SCS' currently effective Power Sales Tariff.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER97–4420–000]

Take notice that on August 29, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Allegheny Power under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to Allegheny Power.

NUSCO requests that the Service Agreement become effective August 27, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER97–4421–000]

Take notice that on August 29, 1997, the New England Power Pool (NEPOOL) Executive Committee submitted materials related to its filing on December 31, 1996 in the captioned dockets. These materials extend by two months a Standstill Agreement concerning the use of the transmission interconnections with New York and New Brunswick.

The NEPOOL Executive Committee states that copies of these materials were sent to all entities on the service list in Docket Nos. OA97–237–000 and ER97–1079–000, the participants in the New England Power Pool, and the New England state governors and regulatory commissions.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER97–4423–000]

Take notice that on August 29, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Western Resources, Inc. (WR).

Cinergy and WR are requesting an effective date of July 29, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER97–4424–000]

Take notice that on August 29, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and ProMark Energy, Inc. (ProMark).

Cinergy and ProMark are requesting an effective date of August 11, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ER97–4425–000]

Take notice that on August 29, 1997, UtiliCorp United Inc., tendered for filing with the Commission forms of service agreements for the transmission provider's own uses of the system under the open access transmission tariffs of UtiliCorp's Missouri Public Service Company, WestPlains Energy-Colorado, and WestPlains Energy-Kansas operating divisions.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–4426–000]

Take notice that on August 29, 1997, Ohio Edison Company and Pennsylvania Power Company (together, Ohio Edison), tendered for filing revisions to the rates, terms and conditions of Ohio Edison's Power Sales Tariff (Tariff) filed on November 29, 1996 (as supplemented on January 31, 1997) in Docket No. ER97–664–000 and designated as OE Operating Companies FERC Electric Tariff Original Volume No. 2.

Ohio Edison states that a copy of the filing has been served on the public utility commissions of Ohio and Pennsylvania, current customers under the Tariff, and participants in Docket No. ER97–664–000.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER97–4429–000]

Take notice that on September 2, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an unexecuted Form of Network Transmission Service Agreement for serving its wholesale requirements customers. This filing is in compliance with the Commission's July 31, 1997, order in *Allegheny Power Systems, Inc., et al.*

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Company

[Docket No. ER97–4430–000]

Take notice that on August 29, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing a form of service agreement reflecting the use of the Company's transmission system to serve its wholesale requirements customers pursuant to Delmarva's open access transmission tariff. Delmarva asks that the Commission set an effective date for the service agreement of July 9, 1996, the effective date of Delmarva's Order No. 888 tariff.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Southern California Edison Company

[Docket No. ER97–4431–000]

Take notice that on September 2, 1997, Southern California Edison Company (Edison), tendered for filing Amendment No. 1 (Amendment No. 1) to the Coordination Agreement (Agreement) between Edison and the State of California, Department of Water Resources (CDWR), and a Notice of Cancellation of FERC Rate Schedule No. 170 and all supplements thereto.

Edison requests that this cancellation become effective August 31, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. American Electric Power Service Corporation

[Docket No. ER97–4432–000]

Take notice that on September 2, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Open Access Transmission Service Tariff. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective

for service billed on and after August 1, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Additional Signatory to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER97–4433–000]

Take notice that on September 2, 1997, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the LLC, a membership application of Constellation Power Source, Inc. PJM requests an effective date of August 30, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Clean Air Capital Markets Corporation

[Docket No. ER97–4434–000]

Take notice that on September 2, 1997, Clean Air Capital Markets Corporation (CACM) petitioned the Commission for acceptance of CACM Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

CACM intends to engage in wholesale electric power and energy purchases and sales as a marketer. CACM is not in the business of generating or transmitting electric power.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Idaho County Light & Power Cooperative Association, Inc.

[Docket No. ER97–4435–000]

Take notice that on September 2, 1997, Idaho County Light & Power Cooperative Association Inc.(Idaho County), submitted for filing a Revised Agreement for Transmission and Power Supply Services to David Cereghino, as amended pursuant to § 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and 35.12 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.12. Idaho County's filing is available for public inspection at its offices in Lucile, Idaho.

Idaho County requests that the Commission accept the Revised Service Agreement with an effective date of October 7, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. The Detroit Edison Company

[Docket No. ER97–4436–000]

Take notice that on September 2, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Network Integration Transmission Service (the Service Agreement) between Detroit Edison Transmission Operations and Thumb Electric Cooperative under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of November 1, 1997. Detroit Edison requests that the Service Agreement be made effective as of November 1, 1997.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Duquesne Light Company

[Docket No. ES97–48–000]

Take notice that on September 15, 1997, Duquesne Light Company filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, to issue not more than $600,000,000 of promissory notes and commercial paper and other evidences of indebtedness from time to time with a final maturity date of not later than October 31, 2000.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Public Service Corporation

[Docket No. ER97–4428–000]

Take notice that on Setpember 2, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Southern Energy Trading and Market. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: October 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25618 Filed 9–25–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Open Access Transmission Service Tariff

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed tariff.

SUMMARY: The Western Area Power Administration (Western) is proposing to adopt this Open Access Transmission Service Tariff (Tariff) in order to be consistent with the Federal Energy Regulatory Commission (FERC) Orders 888 and 888–A to the extent practicable and consistent with laws applicable to Western's activities.

DATES: The comment period on the proposed Tariff will begin with the publication of this notice in the **Federal Register** and will end October 27, 1997. To be assured of consideration, all written comments must be received by the end of the comment period. Western will hold a combined public information and public comment forum on the proposed Tariff beginning at 1 p.m., October 7, 1997.

ADDRESSES: The combined public information and public comment forum will be held at the Stapleton Plaza Hotel, 3333 Quebec Street, Denver, Colorado.

All written comments regarding this proposed Tariff should be directed to the following address: Mr. Robert C. Fullerton, A0600, Corporate Communications, Western Area Power Administration, 1627 Cole Boulevard, P.O. Box 3402, Golden, CO 80401–0098, Electronic Mail: tariff@wapa.gov Facsimile: (303) 275–1290.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert J. Harris, Power Marketing Manager, Upper Great Plains Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7394

Mr. Dave Sabo, CRSP Manager, CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493

Mr. Anthony H. Montoya, Power Marketing Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2789

Mr. James D. Keselburg, Power Marketing Manager, Rocky Mountain Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 490–7370

Ms. Zola Jackson, Power Marketing Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4421.

SUPPLEMENTARY INFORMATION:

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II. Background
III. Issues Raised During the Development of this Proposed Tariff
IV. Summary of Changes from the FERC Pro Forma Tariff
V. Coordination with Adoption of Open Access Transmission Rates

I. Procedures

After all public comments have been considered, Western will prepare a final Tariff and publish it in the **Federal Register**. Western will submit the final Tariff to FERC under a nonjurisdictional docket and will request a declaratory order that the Tariff meets FERC comparability standards as set forth in FERC Orders 888 and 888–A. Western will make necessary changes in response to the FERC declaratory order and further comments and will then publish the revised final Tariff in the **Federal Register**.

II. Background

Western was established pursuant to Section 302 of the Department of Energy (DOE) Organization Act, Public Law 95–91, dated August 4, 1977. Western is generally a partial requirements power supplier that markets and transmits Federal electric power in 15 central and western States encompassing a geographic area of 3.38 million-square-kilometers (1.3 million-square-miles). Western has four Regional Offices and one Customer Service Center which market and transmit power generated by various Federal projects. Nothing in the proposed Tariff is intended to alter, amend, or abridge the statutory obligations of Western to market Federal power and to repay the Federal investment in those Federal projects.

FERC issued a Notice of Proposed Rulemaking (NOPR) for Open Access Transmission Service, published at 60 FR 17662, on April 7, 1995. On October 4, 1995, the Secretary of the Department of Energy (DOE) adopted a Power Marketing Administration Open Access Transmission Policy which stated that DOE supported the spirit and intent of the NOPR and directed the Power Marketing Administrations to prepare tariffs which would conform to the principles set forth in the FERC's final rule. FERC issued its final rule, Order 888, published at 61 FR 21540 on May 10, 1996, and followed with Order 888–A, published at 62 FR 12273, on March 14, 1997.

In early 1996, Western began developing a Tariff Equivalent Package (TEP) to comply with the Secretary's directive. A draft TEP, which was designed as a Western-wide document that would contain Region-specific rates and charges, was completed in July 1996 and sent to Western's electric service customers, transmission-service customers, and other interested parties for review and comment. Western accepted comments through November 1996.

After evaluating comments, Western modified its original concept of preparing a Western-wide TEP and began developing Regional Open Access Transmission Service Guidelines (Regional Guidelines). These Regional Guidelines contained service agreements consistent with the specific conditions applicable to each Region. The resulting documents were sent to electric service customers, transmission customers, and other interested parties for review and comment in April 1997. The review period for those documents ended in early June 1997. To date, customer and interested party participation has been conducted informally.

Western will submit a single Tariff document to FERC under a nonjurisdictional docket and request a declaratory order from FERC that the Tariff meets the FERC comparability standards as set forth in FERC Orders 888 and 888–A. Consistent with a single FERC filing, Western decided to develop and file this single Tariff with appended schedules and attachments. Western's Tariff includes Attachment J, Provisions Specific to the Transmission Provider, and Attachment K, Authorities and Obligations, which are specific to Western and are not found in FERC Order 888–A, Exhibit B, Pro Forma Tariff.

III. Issues Raised During the Development of This Proposed Tariff

Participants in the informal review process raised numerous issues about both versions of the draft documents. The following discussion highlights the more significant issues and Western's responses as incorporated into this proposed Tariff.

A. *Issue:* There is concern that some of Western's Regional Offices may not offer Network Integration Transmission Service, hereafter called network service, at this time. Some think that not providing network service would probably mean that the Tariff would be of little value to all existing transmission customers. They think this would raise significant comparability issues since the service Western provides itself is network service.

Response: In most cases, the service Western provides to its firm power customers is not exactly network or point-to-point service. Western will offer network service subject to available transfer capability determined considering operating constraints, facility limitations, and existing contractual obligations.

B. *Issue:* Some of Western's customers have expressed concern that the combination of the network service provisions and the definitions provided in Western's Tariff result in transmission being paid for both as part of Western's power rates and again under Western's Tariff. The Tariff does not clearly describe how this would be eliminated. A Western customer's load and/or resources should be reduced to account for Western's power contract commitment to the customer. Similarly, the definition of Network Customer should include the possibility that a Network Customer may also be a Federal customer as defined in Attachment K.

Response: FERC recognized that existing power and transmission arrangements represent a transitional problem as customers begin to take service under the Pro Forma Tariff. FERC did not intend, nor does Western, for a transmission provider to receive two payments for providing service to the same portion of a transmission customer's load. The current definition of Network Customer does not exclude the possibility that a Network Customer may also be a Federal customer.

C. *Issue:* Some of Western's customers encouraged Western to reserve its transmission capability to serve future load growth needs of its customers, including direct-service customers. Some of Western's firm power customers also requested that Western

identify its allocations to customers as Native Load in the Tariff.

Response: Western's customers with point-to-point transmission service may request increased reservations of point-to-point transmission to accommodate specified amounts of anticipated load growth of the customer. Where Western is able to provide network service, Western intends to meet anticipated load growth; however, Western's ability to construct additional transmission facilities to accommodate Network Customer load growth may be limited by appropriations or advance customer funding. Western will adhere to the transmission procedures set forth in its final Tariff for all requests for transmission service. Western has defined firm power and project use customers as Federal customers in Attachment K to the Tariff and will treat them in a manner analogous to the treatment of Native Load Customers of public utilities.

D. *Issue:* Why does Western require advancement of funds?

Response: Under present legislation, Western cannot use appropriated funds to do work for others and is prohibited from entering into contracts that obligate it to spend funds it does not have.

E. *Issue:* Western should be proposing service only over Federal facilities. Western should not allow stranded cost recovery for non-Federal facilities.

Response: Each Western Regional Office will design rates to include the facilities used to provide transmission service under the Tariff. The transmission system description may be modified in the Tariff to correspond with results of some rate making processes. The terms of the Tariff will allow stranded cost recovery when appropriate and consistent with applicable Federal law.

F. *Issue:* Why cannot Western provide service without a contract?

Response: Western believes that the Pro Forma language, as modified in Western's Tariff, provides adequate protection and is willing to provide service without an executed Service Agreement in accordance with the terms of sections 1.45, 15.3 and 29.1. These sections require the Transmission customer to agree to abide by the Tariff terms and the existing transmission rates. The Transmission Customer may also request resolution under the provisions of Section 12, Dispute Resolution, of the Tariff.

G. *Issue:* What process will Western use for future changes to the Tariff?

Response: Western is providing notice of this proposal and an opportunity to comment. The proposal may then be modified after considering the comments received. Western will submit the final Tariff to FERC under a nonjurisdictional docket and request a declaratory order from FERC that the final Tariff meets FERC comparability standards as set forth in FERC Orders 888 and 888–A. Interested parties will have an opportunity to comment on the Tariff by following appropriate procedures to intervene with FERC. Western will make necessary changes in response to the FERC declaratory order and further comments and will then publish the final revised Tariff in the **Federal Register**.

H. *Issue:* Some of Western's customers believe that Western has a statutory obligation to deliver power to its firm power customers and therefore, should not they have a superior right? How will Western address "comparability" issues?

Response: Service to be provided under the Tariff will not conflict with any of Western's statutory obligations. There will be no need to give Western's Federal customers a superior right to transmission since adequate capacity will be reserved for the long-term delivery of the Federal power through Western's process in determining its Available Transfer Capability (ATC), which requires consideration of various hydrological conditions and also considers the possible integration of thermal or other generation sources. If there is additional capacity above Western's needs for use by others, Western will make that capacity available under the Tariff. This will ensure adequate long-term transmission capacity for Federal purposes as well as allowing Western the ability to provide comparable service to others.

I. *Issue:* Does Western intend that an entity seeking transmission service across the entire Western system would need to have a service agreement with each Western Regional Office and pay individual rates for use of each office's system, leading to a pancaking of rates?

Response: More than one service agreement may be needed if an entity wants service across the transmission facilities of more than one project. Although a Regional Office may have responsibility for more than one Project Transmission System, each Project has its own separate transmission system and its own repayment obligation for that specific system.

IV. Summary of Changes From the FERC Pro Forma Tariff

Western's proposed Tariff has 11 differences from the Pro Forma Tariff that can be grouped into four major categories: Preservation of Obligations, FERC Jurisdictional Issues, Financial Considerations, and Legal Issues.

A. Preservation of Obligations

i. Transmission Provider and Transmission System

Western operates, manages, and has repayment responsibilities for several independent transmission systems. Each system is managed as an independent financial entity with discrete repayment responsibilities under Federal statutes authorizing the individual transmission systems. A Service Agreement for use of one system's facilities and payment of one system's rate may not permit a transmission customer to use the facilities of another system. There is no single Western-wide transmission system or transmission rate. Each system is described in Attachment K (Authorities and Obligations) to the proposed Tariff. The definitions of Transmission Provider in Section 1.46 and Transmission System in Section 1.49 are modified to recognize the independent nature of the transmission facilities.

ii. Losses

Sections 15.7 and 28.5 of the Pro Forma Tariff are modified to allow the applicable transmission losses percentages to be included in the Region-specific Service Agreements. Western's Regional Offices frequently modify transmission loss factors based on actual system losses. Including losses in the Service Agreement provides a more efficient means of modifying losses than modifying the Tariff. Additionally, since Western has developed a Western-wide Tariff applicable to all Regional Offices, including losses in the Service Agreements is more appropriate.

iii. Federal Customers

Western markets generation to customers that are entitled by law to receive preference in the sale of Federal power, as opposed to jurisdictional public utilities that serve load requirements in a geographical area. Western will treat preference customers in a manner analogous to Native Load Customers of public utilities as defined in the Pro Forma Tariff. Attachment K defines these Federal Customers.

iv. Ancillary Services

Section 3 of the proposed Tariff is modified to include the option for Western to purchase Ancillary Services and pass through such costs to the Transmission Customer. Western's hydroelectric power facilities have limited capability to provide some Ancillary Services, due to variable hydrological conditions and environmental and operational constraints. The existing long-term hydrological capability is allocated and under contract to Federal Customers in accordance with the preference provisions of Federal law.

B. FERC Jurisdictional Issues

Since Western is not a jurisdictional public utility, the Tariff does not include reference to FERC approval of rates or service agreements. Western does not file its rates or contracts under Section 205 and Section 206 of the Federal Power Act. Western's rates are developed pursuant to Federal law, under public information and comment procedures, that specify FERC's role in reviewing Power Marketing Administration rates. Appropriate modifications reflecting Western's rate setting process were made to Sections 1.10, 2.2, 9, 12.1, 13.3, 14.3, 20.3, 26, 27, 34, 34.5.

Western does not file executed service agreements with FERC or seek FERC approval to terminate service. Appropriate modifications are made to Sections 1.45, 7.3, 13.4, 14.4, 15.3, 17.6, 19.3, 19.4, 29.1, 29.5, 32.3, and 32.4 to reflect Western's status as a nonjurisdictional utility.

C. Financial Considerations

i. Deposits for Transmission Service and Interest

Western's current financial system and procedures make collecting and refunding deposits unduly burdensome. Western has replaced provisions for collecting deposits with Completed Applications and returning such deposits with interest under certain circumstances with language that allows Western to assess a nondiscriminatory, non-refundable application processing fee for all Transmission Service requests. The processing fee reflects an average of staff wages and benefits multiplied by the average time it takes to analyze and respond to requests for service. FERC has found in other nonjurisdictional tariffs that such an approach represents an administratively simple alternative to the Pro Forma language. Also, Western will not pay interest on deposits for studies or construction. Although Western may, by contract, pay interest, Western cannot earn interest on funds deposited into the U.S. Treasury. Western has also investigated escrow accounts at commercial financial institutions and found that administrative costs generally exceeded interest payments. Paying interest on deposits would result in other ratepayers funding this expense. Western does not believe this is an equitable method and will not pay interest. Appropriate modifications are made to Sections 1.5, 17.3, 17.4, 17.6, 19.1, 19.4, 20.3, 22.2, 29.2, 32.1, 32.2, and 32.4.

ii. Advance Payment

There are several sections in the Pro Forma Tariff that require the Transmission Provider to perform activities with reimbursement by the Transmission Customer. Except for certain activities with other Federal agencies, Western normally requires advance of funds to perform work rather than receiving a reimbursement. Western is funded through Congressional appropriations. The Anti-Deficiency Act and other appropriations laws generally prohibit Federal agencies from expending funds without having adequate funds in the Treasury and from expending appropriations for purposes other than those for which Congress appropriated the funds. Modifications are made to Sections 13.5, 15.4, 19.1, 19.2, 19.4, 19.8, 20.3, 23.2, 28.2, 31.5, 32.1, and 32.4.

iii. Net Billing and Bill Crediting

Western's proposed Tariff uses the Pro Forma Tariff language in Section 7 (Billing and Payment). In addition, two provisions in Attachment J provide for Net Billing and Bill Crediting. Net Billing and Bill Crediting are two alternative financing mechanisms that Western has a long-standing history of using. The Net Billing language provides that charges for generation will not be offset with transmission charges without mutual agreement. To be as consistent as possible with the Pro Forma Tariff language, Western included these Western-specific provisions in Attachment J.

D. Legal Issues

Western has adopted the Force Majeure language of the Pro Forma Tariff. Western has added language assuring that both parties to a contract will provide each other with written notice of any Force Majeure and exercise due diligence in resolving the problem. Western used the Pro Forma Tariff language for Indemnification with the addition of a sentence to reflect the fact that Western's liability is limited under Federal law and is determined in accordance with the Federal Tort Claims Act. Appropriate modifications are made to Section 10.

i. Dispute Resolution

Western modified the dispute resolution provisions to recognize the limits to Western's statutory and regulatory authority to submit disputes to arbitration consistent with the Administrative Dispute Resolution Act. Appropriate modifications are made to Section 12.

ii. Western-Specific Provisions

In Attachment J to the Tariff, Western incorporated several provisions specific to Western, as a Federal agency. Section 1, Change of Rates, provides for Western to change rates under the Schedules in accordance with appropriate rate adjustment procedures and other applicable Federal laws. This provision also provides an option for transmission customers to terminate service within 90 days after the effective date of a rate change. This language is necessary because Western does not file its rate adjustments with FERC under the Federal Power Act like jurisdictional public utilities. FERC's review of Western's rates is provided under a different body of Federal law.

Section 2, Contingent Upon Appropriations, is required by Federal law to be included in Federal contracts that will extend beyond the current fiscal year. Section 3, Covenant Against Contingent Fees; Section 4, Contract Work Hours and Safety Standards; Section 5, Equal Opportunity Employment Practices; and Section 6, Use of Convict Labor, are contract sections that are required by Federal law to be included in all Federal contracts.

Section 7, Independent System Operator (ISO), recognizes that Western is involved with the development of several independent system operator (ISO) organizations and that the final Tariff may need modifications as a result of a Western Regional Office joining an ISO.

Section 8 provides that the final Tariff does not grant any rights to any Third Parties who are not a party to the Service Agreement. Section 9, Entire Agreement, provides that the Service Agreement and Tariff are the entire understanding between Western and the Transmission Customer. Section 10, Power Supply Obligations, provides that Western is not obligated to supply capacity and energy from Federal generation sources during interruptions or Curtailments other than through the provisions of Operating Reserve Service and emergency power. Generally, Federal generation is completely allocated and under contract on a long-term basis to customers entitled to preference under Federal law and may not be available for support of Transmission Service.

Section 11, Federal Law, provides that the performance under the Tariff and Service Agreement shall be governed by

applicable Federal law. This avoids disputes concerning state law and Federal sovereignty. There may be other sections of the Tariff where there may be potential conflicts between laws under which Western must operate and FERC policy, such as Sections 27 and 31.2. Section 12, Continuing Obligations, provides that obligations to make payments survive termination of the Service Agreement until satisfied. Section 13, Net Billing, and Section 14, Bill Crediting, are discussed above.

V. Coordination With Adoption of Open Access Transmission Rates

Each of Western's Regional Offices is at a different point in the process of developing Open Access Transmission Rates. DOE approval of Western's rates is addressed in DOE Delegation Order No. 0204–108. Western's procedures for public involvement for rate procedures are covered in 10 CFR Part 903. Filing requirements and procedures for FERC review of Power Marketing Administration rates are detailed in 18 CFR Part 300. Until the Regional Offices complete the processes of placing long-term rates in effect for the services to be provided under the open-access tariff, they will use existing long-term rates when applicable. Short-term rates may be placed in effect by Western's Administrator and used when no rates exist for such services. Once the long-term rates are in effect, they will supersede the short-term rates.

The Sierra Nevada Region's (SNR) new rates for ancillary services and transmission are proposed to become effective October 1, 1997, and to be effective for a 5-year period ending September 30, 2002. The proposed rate adjustment was initiated on May 5, 1996, and four informal customer workshops were held. A **Federal Register** notice was published on March 4, 1997 (62 FR 9763), officially announcing the proposed rates, initiating the public consultation and comment period, and announcing the public information and public comment forums. The **Federal Register** notice was sent to all Central Valley Project preference customers and interested parties, and a public information and a public comment forum were held.

The Colorado River Storage Project Customer Service Center (CRSP CSC) is currently conducting a public process to develop transmission and ancillary service rates consistent with FERC Orders 888 and 888–A to be used with its Tariff. The public comment period will conclude September 23, 1997. The proposed effective date of the rates will be April 1, 1998.

The Desert Southwest Region will begin a formal public involvement process in September 1997 to develop transmission and ancillary service rates consistent with FERC Orders 888 and 888-A to be used with the Tariff. The proposed effective date of the rates will be April 1, 1998.

The Upper Great Plains Region (UGPR) has implemented short-term Open Access Transmission Rates approved by Western's Administrator. These transmission rates and ancillary service rates became effective December 20, 1996, and will expire December 19, 1997. On March 28, 1997, by the mailing of an Advance Announcement of the transmission rate adjustment for the Pick-Sloan Missouri Basin Program, Eastern Division, a public process was initiated to establish long-term Open Access Transmission Rates for the UGPR. UGPR has received comments from that announcement and published its proposal in September 1997. The proposed effective date is February 1, 1998.

The Rocky Mountain Region (RMR) will begin a formal public involvement process in September 1997 to develop transmission and ancillary service rates consistent with FERC Orders 888 and 888–A to be used with the Tariff. The proposed effective date of the rates will be April 1, 1998.

Subsequent changes to Regional Office Open Access Transmission rates will be completed on a project-by-project basis using the public involvement and FERC review processes outlined above.

Review Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget (OMB) is required.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. The Acting Administrator for Western certifies that Western's providing open transmission access would not cause an adverse economic impact on a substantial number of such entities. Since the proposed open-access tariff is of limited applicability, no flexibility analysis is required.

Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from OMB for the collection of information in this rule under OMB control number 1910–0100.

Review Under the National Environmental Policy Act

Western will comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE NEPA Implementing Procedures (10 CFR Part 1021) prior to adopting the Tariff.

AVAILABILITY OF INFORMATION: A redline/strikeout comparison of Western's proposed Tariff to the FERC Pro Forma will be available from the informational contacts listed previously or on the Internet at http://www.wapa.gov.

Dated: September 17, 1997.

Michael S. Hacskaylo,

Acting Administrator.

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I. Common Service Provisions

1 *Definitions*

1.1 Ancillary Services: Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

1.2 Annual Transmission Costs: The total annual cost of the Transmission System for purposes of Network Integration Transmission Service shall be the amount specified in Attachment H until amended by the Transmission Provider or modified by the Commission, pursuant to Federal Law.

1.3 Application: A request by an Eligible Customer for transmission service pursuant to the provisions of the Tariff.

1.4 Commission: The Federal Energy Regulatory Commission.

1.5 Completed Application: An Application that satisfies all of the information and other requirements of the Tariff, including any required application processing fee.

1.6 Control Area: An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

(1) Match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(2) Maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;

(3) Maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and

(4) Provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

1.7 Curtailment: A reduction in firm or non-firm transmission service in response to a transmission capacity shortage as a result of system reliability conditions.

1.8 Delivering Party: The entity supplying capacity and energy to be transmitted at Point(s) of Receipt.

1.9 Designated Agent: Any entity that performs actions or functions on behalf of the Transmission Provider, an Eligible Customer, or the Transmission Customer required under the Tariff.

1.10 Direct Assignment Facilities: Facilities or portions of facilities that are constructed by the Transmission Provider for the sole use/benefit of a particular Transmission Customer requesting service under the Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer.

1.11 Eligible Customer: (i) Any electric utility (including the Transmission Provider and any power marketer), Federal power marketing agency, or any person generating electric energy for sale for resale is an Eligible Customer under the Tariff. Electric energy sold or produced by such entity may be electric energy produced in the United States, Canada or Mexico. However, with respect to transmission service that the Commission is prohibited from ordering by Section 212(h) of the Federal Power Act, such entity is eligible only if the service is provided pursuant to a state requirement that the Transmission Provider offer the unbundled transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider. (ii) Any retail customer taking unbundled transmission service pursuant to a state requirement that the Transmission Provider offer the transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider, is an Eligible Customer under the Tariff.

1.12 Facilities Study: An engineering study conducted by the Transmission Provider to determine the required modifications to the Transmission Provider's Transmission System, including the cost and scheduled completion date for such modifications, that will be required to provide the requested transmission service.

1.13 Firm Point-To-Point Transmission Service: Transmission Service under this Tariff that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Part II of this Tariff.

1.14 Good Utility Practice: Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

1.15 Interruption: A reduction in non-firm transmission service due to economic reasons pursuant to Section 14.7.

1.16 Load Ratio Share: Ratio of a Transmission Customer's Network Load to the Transmission Provider's total load computed in accordance with Sections 34.2 and 34.3 of the Network Integration Transmission Service under Part III of the Tariff and calculated on a rolling twelve month basis.

1.17 Load Shedding: The systematic reduction of system demand by temporarily decreasing load in response to transmission system or area capacity shortages, system instability, or voltage control considerations under Part III of the Tariff.

1.18 Long-Term Firm Point-To-Point Transmission Service: Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of one year or more.

1.19 Native Load Customers: The wholesale and retail power customers of the Transmission Provider on whose behalf the Transmission Provider, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate the Transmission Provider's system to meet the reliable electric needs of such customers.

1.20 Network Customer: An entity receiving transmission service pursuant to the terms of the Transmission Provider's Network Integration Transmission Service under Part III of the Tariff.

1.21 Network Integration Transmission Service: The transmission service provided under Part III of the Tariff.

1.22 Network Load: The load that a Network Customer designates for Network Integration Transmission Service under Part III of the Tariff. The Network Customer's Network Load shall include all load served by the output of any Network Resources designated by the Network Customer. A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where a Eligible Customer has elected not to designate a particular load at discrete points of delivery as Network Load, the Eligible Customer is responsible for making separate arrangements under Part II of the Tariff for any Point-To-Point Transmission Service that may be necessary for such non-designated load.

1.23 Network Operating Agreement: An executed agreement that contains the terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Network Integration Transmission Service under Part III of the Tariff.

1.24 Network Operating Committee: A group made up of representatives from the Network Customer(s) and the Transmission Provider established to coordinate operating criteria and other technical considerations required for implementation of Network Integration Transmission Service under Part III of this Tariff.

1.25 Network Resource: Any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

1.26 Network Upgrades: Modifications or additions to transmission-related facilities that are integrated with and support the Transmission Provider's overall Transmission System for the general benefit of all users of such Transmission System.

1.27 Non-Firm Point-To-Point Transmission Service: Point-To-Point Transmission Service under the Tariff that is reserved and scheduled on an as-available basis and is subject to Curtailment or Interruption as set forth in Section 14.7 under Part II of the Tariff. Non-Firm Point-To-Point Transmission Service is available on a stand-alone basis for periods ranging from one hour to one month.

1.28 Open Access Same-Time Information System (OASIS): The information system and standards of conduct contained in Part 37 of the Commission's regulations and all additional requirements implemented by subsequent Commission orders dealing with OASIS.

1.29 Part I: Tariff Definitions and Common Service Provisions contained in Sections 2 through 12.

1.30 Part II: Tariff Sections 13 through 27 pertaining to Point-To-Point Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.31 Part III: Tariff Sections 28 through 35 pertaining to Network Integration Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.32 Parties: The Transmission Provider and the Transmission Customer receiving service under the Tariff.

1.33 Point(s) of Delivery: Point(s) on the Transmission Provider's Transmission System where capacity and energy transmitted by the Transmission Provider will be made available to the Receiving Party under Part II of the Tariff. The Point(s) of Delivery shall be specified in the Service Agreement for Long-Term Firm Point-to-Point Transmission Service.

1.34 Point(s) of Receipt: Point(s) of interconnection on the Transmission Provider's Transmission System where capacity and energy will be made available to the Transmission Provider by the Delivering Party under Part II of the Tariff. The Point(s) of Receipt shall be specified in the Service Agreement for Long-Term Firm Point-to-Point Transmission Service.

1.35 Point-To-Point Transmission Service: The reservation and transmission of capacity and energy on either a firm or non-firm basis from the Point(s) of Receipt to the Point(s) of Delivery under Part II of the Tariff.

1.36 Power Purchaser: The entity that is purchasing the capacity and energy to be transmitted under the Tariff.

1.37 Receiving Party: The entity receiving the capacity and energy transmitted by the Transmission Provider to Point(s) of Delivery.

1.38 Regional Transmission Group (RTG): A voluntary organization of transmission owners, transmission users and other entities approved by the Commission to efficiently coordinate transmission planning (and expansion), operation and use on a regional (and interregional) basis.

1.39 Reserved Capacity: The maximum amount of capacity and energy that the Transmission Provider agrees to transmit for the Transmission Customer over the Transmission Provider's Transmission System between the Point(s) of Receipt and the Point(s) of Delivery under Part II of the Tariff. Reserved Capacity shall be expressed in terms of whole megawatts on a sixty (60) minute interval (commencing on the clock hour) basis.

1.40 Service Agreement: The initial agreement and any amendments or supplements thereto entered into by the Transmission Customer and the Transmission Provider for service under the Tariff.

1.41 Service Commencement Date: The date the Transmission Provider begins to provide service pursuant to the terms of an executed Service Agreement, or the date the Transmission Provider begins to provide service in accordance with Section 15.3 or Section 29.1 under the Tariff.

1.42 Short-Term Firm Point-To-Point Transmission Service: Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of less than one year.

1.43 System Impact Study: An assessment by the Transmission Provider of (i) the adequacy of the Transmission System to accommodate a request for either Firm Point-To-Point Transmission Service or Network Integration Transmission Service and (ii) whether any additional costs may be incurred in order to provide transmission service.

1.44 Third-Party Sale: Any sale for resale in interstate commerce to a Power Purchaser that is not designated as part of Network Load under the Network Integration Transmission Service.

1.45 Transmission Customer: Any Eligible Customer (or its Designated Agent) that (i) executes a Service Agreement, or (ii) requests in writing that the Transmission Provider provide transmission service without a Service Agreement, pursuant to section 15.3 of the Tariff. This term is used in the Part I Common Service Provisions to include customers receiving transmission service under Part II and Part III of this Tariff.

1.46 Transmission Provider: The Regional Office of the Western Area Power Administration (Western) which owns, controls, or operates the facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Tariff with which the Transmission Customer has contracted to provide Transmission Service (See Attachment K).

1.47 Transmission Provider's Monthly Transmission System Peak: The maximum firm usage of the Transmission Provider's Transmission System in a calendar month.

1.48 Transmission Service: Point-To-Point Transmission Service provided under Part II of the Tariff on a firm and non-firm basis.

1.49 Transmission System: The facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under Part II and Part III of the Tariff and are defined in Attachment K to the Tariff.

2 Initial Allocation and Renewal Procedures

2.1 Initial Allocation of Available Transmission Capability: For purposes of determining whether existing capability on the Transmission Provider's Transmission System is adequate to accommodate a request for firm service under this Tariff, all Completed Applications for new firm transmission service received during the initial sixty (60) day period commencing with the effective date of the Tariff will be deemed to have been filed simultaneously. A lottery system conducted by an independent party shall be used to assign priorities for Completed Applications filed simultaneously. All Completed Applications for firm transmission service received after the initial sixty (60) day period shall be assigned a priority pursuant to Section 13.2.

2.2 Reservation Priority For Existing Firm Service Customers: Existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more), have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed. This transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the Transmission Provider or elects to purchase capacity and energy from another supplier. If at the end of the contract term, the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service, the existing firm service customer must agree to accept a contract term at least equal to a competing request by any new Eligible Customer and to pay the current rate for such service. This transmission reservation priority for existing firm service customers is an ongoing right that may be exercised at the end of all firm contract terms of one-year or longer.

3 Ancillary Services

Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. The Transmission Provider is required to provide (or offer to arrange with the local Control Area operator as discussed below), and the Transmission Customer is required to purchase, the following Ancillary Services (i) Scheduling, System Control and Dispatch, and (ii) Reactive Supply and Voltage Control from Generation Sources.

The Transmission Provider is required, to the extent possible, to offer to provide (or offer to arrange with the local Control Area operator as discussed below) the following Ancillary Services only to the Transmission Customer serving load within the Transmission Provider's Control Area (i) Regulation and Frequency Response, (ii) Energy Imbalance, (iii) Operating Reserve—Spinning, and (iv) Operating Reserve—Supplemental. The Transmission Customer serving load within the Transmission Provider's Control Area, is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply. The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source. The Transmission Provider will offer to provide the Transmission Customer Ancillary Services only to the extent surplus Federal generation is available for such services. However, the Transmission Provider may purchase Ancillary Services from others on behalf of the Transmission Customer under the terms of an agreement separate from the Service Agreement. The costs of such purchases on behalf of a Transmission Customer will be passed directly through to that Transmission Customer. The Transmission Customer must list in its Application which Ancillary Services it will purchase from the Transmission Provider.

If the Transmission Provider is a utility providing transmission service, but is not a Control Area operator, it may be unable to provide some or all of the Ancillary Services. In this case, the Transmission Provider can fulfill its obligation to provide Ancillary Services by acting as the Transmission Customer's agent to secure these Ancillary Services from the Control Area operator. The Transmission Customer may elect to (i) have the Transmission Provider act as its agent, (ii) secure the Ancillary Services directly from the Control Area operator, or (iii) secure the Ancillary Services (discussed in Schedules 3, 4, 5, and 6) from a third party or by self-supply when technically feasible.

The Transmission Provider shall specify the rate treatment and all related terms and conditions in the event of an unauthorized use of Ancillary Services by the Transmission Customer.

The specific Ancillary Services, prices and/or compensation methods for each are described on the Schedules that are attached to and made a part of the Tariff. Three principal requirements apply to discounts for Ancillary Services provided by the Transmission Provider in conjunction with its provision of transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. A discount agreed upon for an Ancillary Service must be offered for the same period to all Eligible Customers on the Transmission Provider's system. Sections 3.1 through 3.6 below list the six Ancillary Services.

3.1 Scheduling, System Control and Dispatch Service: The rates and/or methodology are described in Schedule 1.

3.2 Reactive Supply and Voltage Control from Generation Sources Service: The rates and/or methodology are described in Schedule 2.

3.3 Regulation and Frequency Response Service: Where applicable the rates and/or methodology are described in Schedule 3.

3.4 Energy Imbalance Service: Where applicable the rates and/or methodology are described in Schedule 4.

3.5 Operating Reserve—Spinning Reserve Service: Where applicable the rates and/or methodology are described in Schedule 5.

3.6 Operating Reserve—Supplemental Reserve Service: Where applicable the rates and/or methodology are described in Schedule 6.

4 Open Access Same-Time Information System (OASIS)

Terms and conditions regarding Open Access Same-Time Information System and standards of conduct are set forth in 18 CFR 37 of the Commission's regulations (Open Access Same-Time Information System and Standards of Conduct for Public Utilities). In the event available transmission capability as posted on the OASIS is insufficient to accommodate a request for firm transmission service, additional studies may be required as provided by this Tariff pursuant to Sections 19 and 32.

5 Local Furnishing Bonds

5.1 Transmission Providers That Own Facilities Financed by Local Furnishing Bonds: This provision is applicable only to Transmission Providers that have financed facilities for the local furnishing of electric energy with tax-exempt bonds, as described in Section 142(f) of the Internal Revenue Code ("local furnishing bonds"). Notwithstanding any other provision of this Tariff, the Transmission Provider shall not be required to provide transmission service to any Eligible Customer pursuant to this Tariff if the provision of such transmission service would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance the Transmission Provider's facilities that would be used in providing such transmission service.

5.2 Alternative Procedures for Requesting Transmission Service:

(i) If the Transmission Provider determines that the provision of transmission service requested by an Eligible Customer would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance its facilities that would be used in providing such transmission service, it shall advise the Eligible Customer within thirty (30) days of receipt of the Completed Application.

(ii) If the Eligible Customer thereafter renews its request for the same transmission service referred to in (i) by tendering an application under Section 211 of the Federal Power Act, the Transmission Provider, within ten (10) days of receiving a copy of the Section 211 application, will waive its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act. The Commission, upon receipt of the Transmission Provider's waiver of its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act, shall issue an order under Section 211 of the Federal Power Act. Upon issuance of the order under Section 211 of the Federal Power Act, the Transmission Provider shall be required to provide the requested transmission service in accordance with the terms and conditions of this Tariff.

6 Reciprocity

A Transmission Customer receiving transmission service under this Tariff agrees to provide comparable transmission service that it is capable of providing to the Transmission Provider on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate affiliates. A Transmission Customer that is a member of a power pool or Regional Transmission Group also agrees to provide comparable transmission service to the members of such power pool and Regional Transmission Group on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate affiliates.

This reciprocity requirement applies not only to the Transmission Customer that obtains transmission service under the Tariff, but also to all parties to a transaction that involves the use of transmission service under the Tariff, including the power seller, buyer and any intermediary, such as a power marketer. This reciprocity requirement also applies to any Eligible Customer that owns, controls or operates transmission facilities that uses an intermediary, such as a power marketer, to request transmission service under the Tariff. If the Transmission Customer does not own, control or operate transmission facilities, it must include

in its Application a sworn statement of one of its duly authorized officers or other representatives that the purpose of its Application is not to assist an Eligible Customer to avoid the requirements of this provision.

7 Billing and Payment

7.1 Billing Procedures: Within a reasonable time after the first day of each month, the Transmission Provider shall submit an invoice to the Transmission Customer for the charges for all services furnished under the Tariff during the preceding month. The invoice shall be paid by the Transmission Customer within twenty (20) days of receipt. All payments shall be made in immediately available funds payable to the Transmission Provider, or by wire transfer to a bank named by the Transmission Provider.

7.2 Interest on Unpaid Balances: Interest on any unpaid amounts (including amounts placed in escrow) shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 CFR 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by the Transmission Provider.

7.3 Customer Default: In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Within the same 30 calendar days after notice of failure to make payment, the Transmission Customer shall have the right of appeal to the Administrator of Western. The Transmission Provider shall submit its recommendation to the Administrator for review and approval, but shall not terminate service until the Administrator makes a determination on the Transmission Customer's appeal. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy.

8 Accounting for the Transmission Provider's Use of the Tariff

The Transmission Provider shall record the following amounts, as outlined below.

8.1 Transmission Revenues: Include in a separate operating revenue account or subaccount the revenues it receives from Transmission Service when making Third-Party Sales under Part II of the Tariff.

8.2 Study Costs and Revenues: Include in a separate transmission operating expense account or subaccount, costs properly chargeable to expense that are incurred to perform any System Impact Studies or Facilities Studies which the Transmission Provider conducts to determine if it must construct new transmission facilities or upgrades necessary for its own uses, including making Third-Party Sales under the Tariff; and include in a separate operating revenue account or subaccount the revenues received for System Impact Studies or Facilities Studies performed when such amounts are separately stated and identified in the Transmission Customer's billing under the Tariff.

9 Regulatory Filings

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

10 Force Majeure and Indemnification

10.1 Force Majeure: An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither the Transmission Provider nor the Transmission Customer will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff. Either Party rendered unable to fulfill any of its obligations under the Service Agreement by reason of an uncontrollable force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

10.2 Indemnification: The Transmission Customer shall at all times indemnify, defend, and save the Transmission Provider harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Transmission Provider's performance of its obligations under this Tariff on behalf of the Transmission Customer, except in cases of negligence or intentional wrongdoing by the Transmission Provider. The liability of the Transmission Provider shall be determined in accordance with the provisions of the Federal Tort Claims Act, as amended.

11 Creditworthiness

For the purpose of determining the ability of the Transmission Customer to meet its obligations related to service hereunder, the Transmission Provider may require reasonable credit review procedures. This review shall be made in accordance with standard commercial practices.

In addition, the Transmission Provider may require the Transmission Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under the Tariff, or an alternative form of security proposed by the Transmission Customer and acceptable to the Transmission Provider and consistent with commercial practices established by the Uniform Commercial Code that protects the Transmission Provider against the risk of non-payment.

12 Dispute Resolution Procedures

12.1 Internal Dispute Resolution Procedures: Any dispute between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff shall be referred to a designated senior representative of the Transmission Provider and a senior representative of the Transmission Customer for resolution on an informal basis as promptly as practicable.

12.2 Disputes: Any dispute regarding service provided under the Service Agreement will be resolved in a manner consistent with the Administrative Dispute Resolution Act, as amended, subject to statutory and regulatory limits on Western's authority to submit disputes to arbitration.

12.3 Rights Under The Federal Power Act: Nothing in this section shall restrict the rights of any party to file a Complaint with the Commission under relevant provisions of the Federal Power Act.

Part II. Point-To-Point Transmission Service

Preamble

The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service pursuant to the applicable terms and conditions of this Tariff. Point-To-Point Transmission Service is for the receipt of capacity and energy at designated Point(s) of Receipt and the transmission of such capacity and energy to designated Point(s) of Delivery.

13 Nature of Firm Point-To-Point Transmission Service

13.1 Term: The minimum term of Firm Point-To-Point Transmission Service shall be one day and the maximum term shall be specified in the Service Agreement.

13.2 Reservation Priority: Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis *i.e.*, in the chronological sequence in which each Transmission Customer reserved service. Reservations for Short-Term Firm Point-To-Point Transmission Service will be conditional based upon the length of the requested transaction. If the Transmission System becomes oversubscribed, requests for longer term service may preempt requests for shorter term service up to the following deadlines: one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. Before the conditional reservation deadline, if available transmission capability is insufficient to satisfy all Applications, an Eligible Customer with a reservation for shorter term service has the right of first refusal to match any longer term reservation before losing its reservation priority. A longer term competing request for Short-Term Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in Section 13.8) from being notified by the Transmission Provider of a longer-term competing request for Short-Term Firm Point-To-Point Transmission Service. After the conditional reservation deadline, service will commence pursuant to the terms of Part II of the Tariff. Firm Point-To-Point Transmission Service will always have a reservation priority over Non-Firm Point-To-Point Transmission Service under the Tariff. All Long-Term Firm Point-To-Point Transmission Service will have equal reservation priority with Native Load Customers and Network Customers. Reservation priorities for existing firm service customers are provided in Section 2.2.

13.3 Use of Firm Transmission Service by the Transmission Provider: The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under agreements executed on or after November 25, 1997. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of the Point-To-Point Transmission Service to make Third-Party Sales.

13.4 Service Agreements: The Transmission Provider shall offer a standard form Firm Point-To-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it submits a Completed Application for Long-Term Firm Point-To-Point Transmission Service. The Transmission Provider shall offer a standard form Firm Point-to-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it first submits a Completed Application for Short-Term Firm Point-to-Point Transmission Service pursuant to the Tariff.

13.5 Transmission Customer Obligations for Facility Additions or Redispatch Costs: In cases where the Transmission Provider determines that the Transmission System is not capable of providing Firm Point-To-Point Transmission Service without (1) degrading or impairing the reliability of service to Native Load Customers, Network Customers and other Transmission Customers taking Firm Point-To-Point Transmission Service, or (2) interfering with the Transmission Provider's ability to meet prior firm contractual commitments to others, the Transmission Provider will be obligated to expand or upgrade its Transmission System pursuant to the terms of Section 15.4. The Transmission Customer must agree to compensate the Transmission Provider in advance for any necessary transmission facility additions pursuant to the terms of Section 27. To the extent the Transmission Provider can relieve any system constraint more economically by redispatching the Transmission Provider's resources than through constructing Network Upgrades, it shall do so, provided that the Eligible Customer agrees to compensate the Transmission Provider pursuant to the terms of Section 27. Any redispatch, Network Upgrade or Direct Assignment Facilities costs to be charged to the Transmission Customer on an incremental basis under the Tariff will be specified in the Service Agreement or a separate agreement, as appropriate, prior to initiating service.

13.6 Curtailment of Firm Transmission Service: In the event that a Curtailment on the Transmission Provider's Transmission System, or a portion thereof, is required to maintain reliable operation of such system, Curtailments will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint. If multiple transactions require Curtailment, to the extent practicable and consistent with Good Utility Practice, the Transmission Provider will curtail service to Network Customers and Transmission Customers taking Firm Point-To-Point Transmission Service on a basis comparable to the curtailment of service to the Transmission Provider's Native Load Customers. All Curtailments will be made on a non-discriminatory basis, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. When the Transmission Provider determines that an electrical emergency exists on its Transmission System and

implements emergency procedures to Curtail Firm Transmission Service, the Transmission Customer shall make the required reductions upon request of the Transmission Provider. However, the Transmission Provider reserves the right to Curtail, in whole or in part, any Firm Transmission Service provided under the Tariff when, in the Transmission Provider's sole discretion, an emergency or other unforeseen condition impairs or degrades the reliability of its Transmission System. The Transmission Provider will notify all affected Transmission Customers in a timely manner of any scheduled Curtailments.

13.7 Classification of Firm Transmission Service:

(a) The Transmission Customer taking Firm Point-To-Point Transmission Service may (1) change its Receipt and Delivery Points to obtain service on a non-firm basis consistent with the terms of Section 22.1 or (2) request a modification of the Points of Receipt or Delivery on a firm basis pursuant to the terms of Section 22.2.

(b) The Transmission Customer may purchase transmission service to make sales of capacity and energy from multiple generating units that are on the Transmission Provider's Transmission System. For such a purchase of transmission service, the resources will be designated as multiple Points of Receipt, unless the multiple generating units are at the same generating plant in which case the units would be treated as a single Point of Receipt.

(c) The Transmission Provider shall provide firm deliveries of capacity and energy from the Point(s) of Receipt to the Point(s) of Delivery. Each Point of Receipt at which firm transmission capacity is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Receipt. Points of Receipt and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. Each Point of Delivery at which firm transmission capacity is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Delivery. Points of Delivery and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. The greater of either (1) the sum of the capacity reservations at the Point(s) of Receipt, or (2) the sum of the capacity reservations at the Point(s) of Delivery shall be the Transmission Customer's Reserved Capacity. The Transmission Customer will be billed for its Reserved Capacity under the terms of Schedule 7. The Transmission Customer may not exceed its firm capacity reserved at each Point of Receipt and each Point of Delivery except as otherwise specified in Section 22. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer, (including Third-Party Sales by the Transmission Provider) exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery.

13.8 Scheduling of Firm Point-To-Point Transmission Service: Schedules for the Transmission Customer's Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than 10:00 a.m. [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 10:00 a.m. will be accommodated, if practicable. Hour-to-hour schedules of any capacity and energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their service requests at a common point of receipt into units of 1,000 kW per hour for scheduling and billing purposes. Scheduling changes will be permitted up to twenty (20) minutes [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14 Nature of Non-Firm Point-To-Point Transmission Service

14.1 Term: Non-Firm Point-To-Point Transmission Service will be available for periods ranging from one (1) hour to one (1) month. However, a Purchaser of Non-Firm Point-To-Point Transmission Service will be entitled to reserve a sequential term of service (such as a sequential monthly term without having to wait for the initial term to expire before requesting another monthly term) so that the total time period for which the reservation applies is greater than one month, subject to the requirements of Section 18.3.

14.2 Reservation Priority: Non-Firm Point-To-Point Transmission Service shall be available from transmission capability in excess of that needed for reliable service to Native Load Customers, Network Customers and other Transmission Customers taking Long-Term and Short-Term Firm Point-To-Point Transmission Service. A higher priority will be assigned to reservations with a longer duration of service. In the event the Transmission System is constrained, competing requests of equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service. Eligible Customers that have already reserved shorter term service have the right of first refusal to match any longer term reservation before being preempted. A longer term competing request for Non-Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request: (a) Immediately for hourly Non-Firm Point-To-Point Transmission Service after notification by the Transmission Provider; and, (b) within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in Section 14.6) for Non-Firm Point-To-Point Transmission Service other than hourly transactions after notification by the Transmission Provider. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.

14.3 Use of Non-Firm Point-To-Point Transmission Service by the Transmission Provider: The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under agreements executed on or after November 25, 1997. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of Non-Firm Point-To-Point Transmission Service to make Third-Party Sales.

14.4 Service Agreements: The Transmission Provider shall offer a standard form Non-Firm Point-To-Point Transmission Service Agreement (Attachment D) to an Eligible Customer when it first submits a Completed Application for Non-Firm Point-To-Point Transmission Service pursuant to the Tariff.

14.5 Classification of Non-Firm Point-To-Point Transmission Service: Non-Firm Point-To-Point Transmission Service shall be offered under terms and conditions contained in Part II of the Tariff. The Transmission Provider undertakes no obligation under the Tariff to plan its Transmission System in order to have sufficient capacity for Non-Firm Point-To-Point Transmission Service. Parties requesting Non-Firm Point-To-Point Transmission Service for the transmission of firm power do so with the full realization that such service is subject to availability and to Curtailment or Interruption under the terms of the Tariff. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its non-firm capacity reservation. Non-Firm Point-To-Point Transmission Service shall include transmission of energy on an hourly basis and transmission of scheduled short-term capacity and energy on a daily, weekly or monthly basis, but not to exceed one month's reservation for any one Application under Schedule 8.

14.6 Scheduling of Non-Firm Point-To-Point Transmission Service: Schedules for Non-Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than 2:00 p.m. [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 2:00 p.m. will be accommodated, if practicable. Hour-to-hour schedules of energy that are to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their schedules at a common Point of Receipt into units of 1,000 kW per hour. Scheduling changes will be permitted up to twenty (20) minutes [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14.7 Curtailment or Interruption of Service: The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when, an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System. The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) a request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, (3) a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, or (4) transmission service for Network Customers from non-designated resources. The Transmission Provider also will discontinue or reduce service to the Transmission Customer to the extent that deliveries for transmission are discontinued or reduced at the Point(s) of Receipt. Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest term (e.g., hourly non-firm transactions will be Curtailed or Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have a lower priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. The Transmission Provider will provide advance notice of Curtailment or Interruption where such notice can be provided consistent with Good Utility Practice.

15 Service Availability

15.1 General Conditions: The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service over, on or across its Transmission System to any Transmission Customer that has met the requirements of Section 16.

15.2 Determination of Available Transmission Capability: A description of the Transmission Provider's specific methodology for assessing available transmission capability posted on the Transmission

Provider's OASIS (Section 4) is contained in Attachment C of the Tariff. In the event sufficient transmission capability may not exist to accommodate a service request, the Transmission Provider will respond by performing a System Impact Study.

15.3 Initiating Service in the Absence of an Executed Service Agreement: If the Transmission Provider and the Transmission Customer requesting Firm or Non-Firm Point-To-Point Transmission Service cannot agree on all the terms and conditions of the Point-To-Point Service Agreement, the Transmission Provider shall commence providing Transmission Service subject to the Transmission Customer agreeing to (i) compensate the Transmission Provider at the existing rate placed in effect pursuant to applicable Federal law and regulations , and (ii) comply with the terms and conditions of the Tariff including paying the appropriate processing fees in accordance with the terms of Section 17.3. If the Transmission Customer cannot accept all of the terms and conditions of the offered Service Agreement, the Transmission Customer may request resolution of the unacceptable terms and conditions under Section 12, Dispute Resolution Procedures, of the Tariff. Any changes resulting from the Dispute Resolution Procedures will be effective upon the date of initial service.

15.4 Obligation to Provide Transmission Service that Requires Expansion or Modification of the Transmission System: If the Transmission Provider determines that it cannot accommodate a Completed Application for Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider will use due diligence to expand or modify its Transmission System to provide the requested Firm Transmission Service, provided the Transmission Customer agrees to compensate the Transmission Provider in advance for such costs pursuant to the terms of Section 27. The Transmission Provider will conform to Good Utility Practice in determining the need for new facilities and in the design and construction of such facilities. The obligation applies only to those facilities that the Transmission Provider has the right to expand or modify.

15.5 Deferral of Service: The Transmission Provider may defer providing service until it completes construction of new transmission facilities or upgrades needed to provide Firm Point-To-Point Transmission Service whenever the Transmission Provider determines that providing the requested service would, without such new facilities or upgrades, impair or degrade reliability to any existing firm services.

15.6 Other Transmission Service Schedules: Eligible Customers receiving transmission service under other agreements on file with the Commission may continue to receive transmission service under those agreements until such time as those agreements may be modified by the Commission.

15.7 Real Power Losses: Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Transmission Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are specified in the Service Agreements.

16 Transmission Customer Responsibilities

16.1 Conditions Required of Transmission Customers: Point-To-Point Transmission Service shall be provided by the Transmission Provider only if the following conditions are satisfied by the Transmission Customer:

a. The Transmission Customer has pending a Completed Application for service;
b. The Transmission Customer meets the creditworthiness criteria set forth in Section 11;
c. The Transmission Customer will have arrangements in place for any other transmission service necessary to effect the delivery from the generating source to the Transmission Provider prior to the time service under Part II of the Tariff commences;
d. The Transmission Customer agrees to pay for any facilities constructed and chargeable to such Transmission Customer under Part II of the Tariff, whether or not the Transmission Customer takes service for the full term of its reservation; and
e. The Transmission Customer has executed a Point-To-Point Service Agreement or has agreed to receive service pursuant to Section 15.3.

16.2 Transmission Customer Responsibility for Third-Party Arrangements: Any scheduling arrangements that may be required by other electric systems shall be the responsibility of the Transmission Customer requesting service. The Transmission Customer shall provide, unless waived by the Transmission Provider, notification to the Transmission Provider identifying such systems and authorizing them to schedule the capacity and energy to be transmitted by the Transmission Provider pursuant to Part II of the Tariff on behalf of the Receiving Party at the Point of Delivery or the Delivering Party at the Point of Receipt. However, the Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in making such arrangements, including without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

17 Procedures for Arranging Firm Point-To-Point Transmission Service

17.1 Application: A request for Firm Point-To-Point Transmission Service for periods of one year or longer must contain a written Application to appropriate Regional Office, as identified in Attachment K to the Tariff, at least sixty (60) days in advance of the calendar month in which service is to commence. The Transmission Provider will consider requests for such firm service on shorter notice when feasible. Requests for firm service for periods of less than one year shall be subject to expedited procedures that shall be negotiated between the Parties within the time constraints provided in Section 17.5. All Firm Point-To-Point Transmission Service requests should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the priority of the Application.

17.2 Completed Application: A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the entity requesting service;

(ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;
(iii) The location of the Point(s) of Receipt and Point(s) of Delivery and the identities of the Delivering Parties and the Receiving Parties;
(iv) The location of the generating facility(ies) supplying the capacity and energy and the location of the load ultimately served by the capacity and energy transmitted. The Transmission Provider will treat this information as confidential except to the extent that disclosure of this information is required by the Tariff, by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations;
(v) A description of the supply characteristics of the capacity and energy to be delivered;
(vi) An estimate of the capacity and energy expected to be delivered to the Receiving Party;
(vii) The Service Commencement Date and the term of the requested Transmission Service;
(viii) The transmission capacity requested for each Point of Receipt and each Point of Delivery on the Transmission Provider's Transmission System; customers may combine their requests for service in order to satisfy the minimum transmission capacity requirement;

The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

17.3 Processing Fee: A Completed Application for Firm Point-To-Point Transmission Service also shall include a non-refundable processing fee. Such fee shall be applicable to all Transmission Customers for firm Transmission Service requests of one year or longer. Individual Transmission Provider processing fees will be calculated using the number of estimated hours it will take to process an application and will be set forth in Attachment K. This fee does not apply to costs to complete System Impact Studies or Facility Studies or to add new facilities.

17.4 Notice of Deficient Application: If an Application fails to meet the requirements of the Tariff, the Transmission Provider shall notify the entity requesting service within fifteen (15) days of receipt of the reasons for such failure. The Transmission Provider will attempt to remedy minor deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application. Upon receipt of a new or revised Application that fully complies with the requirements of Part II of the Tariff, the Eligible Customer shall be assigned a new priority consistent with the date of the new or revised Application.

17.5 Response to a Completed Application: Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transmission capability as required in Section 15.2. The Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (i) if it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to Section 19.1. Responses by the Transmission Provider must be made as soon as practicable to all completed applications (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.

17.6 Execution of a Service Agreement: Whenever the Transmission Provider determines that a System Impact Study is not required and that the service can be provided, it shall notify the Eligible Customer as soon as practicable but no later than thirty (30) days after receipt of the Completed Application. Where a System Impact Study is required, the provisions of Section 19 will govern the execution of a Service Agreement. Failure of an Eligible Customer to execute and return the Service Agreement or request service without an executed Service Agreement pursuant to Section 15.3, within fifteen (15) days after it is tendered by the Transmission Provider will be deemed a withdrawal and termination of the Application, Nothing herein limits the right of an Eligible Customer to file another Application after such withdrawal and termination.

17.7 Extensions for Commencement of Service: The Transmission Customer can obtain up to five (5) one-year extensions for the commencement of service. The Transmission Customer may postpone service by paying a non-refundable annual reservation fee equal to one-month's charge for Firm Transmission Service for each year or fraction thereof. If during any extension for the commencement of service an Eligible Customer submits a Completed Application for Firm Transmission Service, and such request can be satisfied only by releasing all or part of the Transmission Customer's Reserved Capacity, the original Reserved Capacity will be released unless the following condition is satisfied. Within thirty (30) days, the original Transmission Customer agrees to pay the Firm Point-To-Point transmission rate for its Reserved Capacity concurrent with the new Service Commencement Date. In the event the Transmission Customer elects to release the Reserved Capacity, the reservation fees or portions thereof previously paid will be forfeited.

18 Procedures for Arranging Non-Firm Point-To-Point Transmission Service

18.1 Application: Eligible Customers seeking Non-Firm Point-To-Point Transmission Service must submit a Completed Application to the Transmission Provider. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application.

18.2 Completed Application: A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the entity requesting service;
(ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;
(iii) The Point(s) of Receipt and the Point(s) of Delivery;
(iv) The maximum amount of capacity

requested at each Point of Receipt and Point of Delivery; and

(v) The proposed dates and hours for initiating and terminating transmission service hereunder.

In addition to the information specified above, when required to properly evaluate system conditions, the Transmission Provider also may ask the Transmission Customer to provide the following:

(vi) The electrical location of the initial source of the power to be transmitted pursuant to the Transmission Customer's request for service;

(vii) The electrical location of the ultimate load

The Transmission Provider will treat this information in (vi) and (vii) as confidential at the request of the Transmission Customer except to the extent that disclosure of this information is required by this Tariff, by Federal Law or regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice, or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

18.3 Reservation of Non-Firm Point-To-Point Transmission Service: Requests for monthly service shall be submitted no earlier than sixty (60) days before service is to commence; requests for weekly service shall be submitted no earlier than fourteen (14) days before service is to commence, requests for daily service shall be submitted no earlier than two (2) days before service is to commence, and requests for hourly service shall be submitted no earlier than noon the day before service is to commence. Requests for service received later than 2:00 p.m. prior to the day service is scheduled to commence will be accommodated if practicable [or such reasonable times that are generally accepted in the region and are consistently adhered to by the Transmission Provider].

18.4 Determination of Available Transmission Capability: Following receipt of a tendered schedule the Transmission Provider will make a determination on a non-discriminatory basis of available transmission capability pursuant to Section 15.2. Such determination shall be made as soon as reasonably practicable after receipt, but not later than the following time periods for the following terms of service (i) thirty (30) minutes for hourly service, (ii) thirty (30) minutes for daily service, (iii) four (4) hours for weekly service, and (iv) two (2) days for monthly service. [Or such reasonable times that are generally accepted in the region and are consistently adhered to by the Transmission Provider].

19 Additional Study Procedures for Firm Point-To-Point Transmission Service Requests

19.1 Notice of Need for System Impact Study: After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. In such cases, the Transmission Provider shall within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to which the Eligible Customer shall agree to advance funds to the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its application shall be deemed withdrawn.

19.2 System Impact Study Agreement and Compensation:

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge will not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the requests for service, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 8.

19.3 System Impact Study Procedures: Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify any system constraints and redispatch options, additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System Impact Study the Eligible Customer must execute a Service Agreement or request service without an executed Service Agreement pursuant to Section 15.3, or the Application shall be deemed terminated and withdrawn.

19.4 Facilities Study Procedures: If a System Impact Study indicates that additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to advance funds to the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its application shall be deemed withdrawn. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Transmission Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of (i) the cost of Direct Assignment Facilities to be charged to the Transmission Customer, (ii) the Transmission Customer's appropriate share of the cost of any required Network Upgrades as determined pursuant to the provisions of Part II of the Tariff, and (iii) the time required to complete such construction and initiate the requested service. The Transmission Customer shall pay the Transmission Provider in advance the Transmission Customer's share of the costs of new facilities or upgrades. The Transmission Customer shall have thirty (30) days to execute a construction agreement and a Service Agreement and provide the advance payment or request service without an executed Service Agreement pursuant to Section 15.3 and provide the required letter of credit or other form of security or the request will no longer be a Completed Application and shall be deemed terminated and withdrawn.

19.5 Facilities Study Modifications: Any change in design arising from inability to site or construct facilities as proposed will require development of a revised good faith estimate. New good faith estimates also will be required in the event of new statutory or regulatory requirements that are effective before the completion of construction or other circumstances beyond the control of the Transmission Provider that significantly affect the final cost of new facilities or upgrades to be charged to the Transmission Customer pursuant to the provisions of Part II of the Tariff.

19.6 Due Diligence in Completing New Facilities: The Transmission Provider shall use due diligence to add necessary facilities or upgrade its Transmission System within a reasonable time. The Transmission Provider will not upgrade its existing or planned Transmission System in order to provide the requested Firm Point-To-Point Transmission Service if doing so would impair system reliability or otherwise impair or degrade existing firm service.

19.7 Partial Interim Service: If the Transmission Provider determines that it will not have adequate transmission capability to satisfy the full amount of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider nonetheless shall be obligated to offer and provide the portion of the requested Firm Point-To-Point Transmission Service that can be accommodated without addition of any facilities and through redispatch. However, the Transmission Provider shall not be obligated to provide the incremental amount of requested Firm Point-To-Point Transmission Service that requires the addition of facilities or upgrades to the Transmission System until such facilities or upgrades have been placed in service.

19.8 Expedited Procedures for New Facilities: In lieu of the procedures set forth above, the Eligible Customer shall have the option to expedite the process by requesting the Transmission Provider to tender at one time, together with the results of required studies, an "Expedited Service Agreement" pursuant to which the Eligible Customer would agree to compensate the Transmission Provider in advance for all costs incurred pursuant to the terms of the Tariff. In order to exercise this option, the Eligible Customer shall request in writing an expedited Service Agreement covering all of the above-specified items within thirty (30) days of receiving the results of the System Impact Study identifying needed facility additions or upgrades or costs incurred in providing the requested service. While the Transmission Provider agrees to provide the Eligible Customer with its best estimate of the new facility costs and other charges that may be incurred, such estimate shall not be binding and the Eligible Customer must agree in writing to compensate the Transmission Provider in advance for all costs incurred pursuant to the provisions of the Tariff. The Eligible Customer shall execute and return such an Expedited Service Agreement within fifteen (15) days of its receipt or the Eligible Customer's request for service will cease to be a Completed Application and will be deemed terminated and withdrawn.

20 Procedures if the Transmission Provider Is Unable To Complete New Transmission Facilities for Firm Point-To-Point Transmission Service

20.1 Delays in Construction of New Facilities: If any event occurs that will materially affect the time for completion of new facilities, or the ability to complete them, the Transmission Provider shall promptly notify the Transmission Customer. In such circumstances, the Transmission Provider shall within thirty (30) days of notifying the Transmission Customer of such delays, convene a technical meeting with the Transmission Customer to evaluate the alternatives available to the Transmission Customer. The Transmission Provider also shall make available to the Transmission Customer studies and work papers related to the delay, including all information that is in the possession of the Transmission Provider that is reasonably needed by the Transmission Customer to evaluate any alternatives.

20.2 Alternatives to the Original Facility Additions: When the review process of Section 20.1 determines that one or more alternatives exist to the originally planned construction project, the Transmission Provider shall present such alternatives for consideration by the Transmission Customer. If, upon review of any alternatives, the Transmission Customer desires to maintain its Completed Application subject to construction of the alternative facilities, it may request the Transmission Provider to submit a revised Service Agreement for Firm Point-To-Point Transmission Service. If the alternative approach solely involves Non-Firm Point-To-Point Transmission Service, the

Transmission Provider shall promptly tender a Service Agreement for Non-Firm Point-To-Point Transmission Service providing for the service. In the event the Transmission Provider concludes that no reasonable alternative exists and the Transmission Customer disagrees, the Transmission Customer may seek relief under the dispute resolution procedures pursuant to Section 12 or it may refer the dispute to the Commission for resolution.

20.3 Refund Obligation for Unfinished Facility Additions: If the Transmission Provider and the Transmission Customer mutually agree that no other reasonable alternatives exist and the requested service cannot be provided out of existing capability under the conditions of Part II of the Tariff, the obligation to provide the requested Firm Point-To-Point Transmission Service shall terminate and any advance payment made by the Transmission Customer that is in excess of the costs incurred by the Transmission Provider through the time construction was suspended shall be returned. However, the Transmission Customer shall be responsible for all prudently incurred costs by the Transmission Provider through the time construction was suspended.

21 Provisions Relating to Transmission Construction and Services on the Systems of Other Utilities

21.1 Responsibility for Third-Party System Additions: The Transmission Provider shall not be responsible for making arrangements for any necessary engineering, permitting, and construction of transmission or distribution facilities on the system(s) of any other entity or for obtaining any regulatory approval for such facilities. The Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

21.2 Coordination of Third-Party System Additions: In circumstances where the need for transmission facilities or upgrades is identified pursuant to the provisions of Part II of the Tariff, and if such upgrades further require the addition of transmission facilities on other systems, the Transmission Provider shall have the right to coordinate construction on its own system with the construction required by others. The Transmission Provider, after consultation with the Transmission Customer and representatives of such other systems, may defer construction of its new transmission facilities, if the new transmission facilities on another system cannot be completed in a timely manner. The Transmission Provider shall notify the Transmission Customer in writing of the basis for any decision to defer construction and the specific problems which must be resolved before it will initiate or resume construction of new facilities. Within sixty (60) days of receiving written notification by the Transmission Provider of its intent to defer construction pursuant to this section, the Transmission Customer may challenge the decision in accordance with the dispute resolution procedures pursuant to Section 12 or it may refer the dispute to the Commission for resolution.

22 Changes in Service Specifications

22.1 Modifications On a Non-Firm Basis: The Transmission Customer taking Firm Point-To-Point Transmission Service may request the Transmission Provider to provide transmission service on a non-firm basis over Receipt and Delivery Points other than those specified in the Service Agreement ("Secondary Receipt and Delivery Points"), in amounts not to exceed its firm capacity reservation, without incurring an additional Non-Firm Point-To-Point Transmission Service charge or executing a new Service Agreement, subject to the following conditions.

(a) Service provided over Secondary Receipt and Delivery Points will be non-firm only, on an as-available basis and will not displace any firm or non-firm service reserved or scheduled by third-parties under the Tariff or by the Transmission Provider on behalf of its Native Load Customers.

(b) The sum of all Firm and non-firm Point-To-Point Transmission Service provided to the Transmission Customer at any time pursuant to this section shall not exceed the Reserved Capacity in the relevant Service Agreement under which such services are provided.

(c) The Transmission Customer shall retain its right to schedule Firm Point-To-Point Transmission Service at the Receipt and Delivery Points specified in the relevant Service Agreement in the amount of its original capacity reservation.

(d) Service over Secondary Receipt and Delivery Points on a non-firm basis shall not require the filing of an Application for Non-Firm Point-To-Point Transmission Service under the Tariff. However, all other requirements of Part II of the Tariff (except as to transmission rates) shall apply to transmission service on a non-firm basis over Secondary Receipt and Delivery Points.

22.2 Modifications On a Firm Basis: Any request by a Transmission Customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service in accordance with Section 17 hereof except that such Transmission Customer shall not be obligated to pay any additional application processing fee if the capacity reservation does not exceed the amount reserved in the existing Service Agreement. While such new request is pending, the Transmission Customer shall retain its priority for service at the existing firm Receipt and Delivery Points specified in its Service Agreement.

23 Sale or Assignment of Transmission Service

23.1 Procedures for Assignment or Transfer of Service: Subject to Commission approval of any necessary filings, a Transmission Customer may sell, assign, or transfer all or a portion of its rights under its Service Agreement, but only to another Eligible Customer (the Assignee). The Transmission Customer that sells, assigns or transfers its rights under its Service Agreement is hereafter referred to as the Reseller. Compensation to the Reseller shall not exceed the higher of (i) the original rate paid by the Reseller, (ii) the Transmission Provider's maximum rate on file at the time of the assignment, or (iii) the Reseller's opportunity cost capped at the Transmission Provider's cost of expansion. If the Assignee does not request any change in the Point(s) of Receipt or the Point(s) of Delivery, or a change in any other term or condition set forth in the original Service Agreement, the Assignee will receive the same services as did the Reseller and the priority of service for the Assignee will be the same as that of the Reseller. A Reseller should notify the Transmission Provider as soon as possible after any assignment or transfer of service occurs but in any event, notification must be provided prior to any provision of service to the Assignee. The Assignee will be subject to all terms and conditions of the Tariff. If the Assignee requests a change in service, the reservation priority of service will be determined by the Transmission Provider pursuant to Section 13.2.

23.2 Limitations on Assignment or Transfer of Service: If the Assignee requests a change in the Point(s) of Receipt or Point(s) of Delivery, or a change in any other specifications set forth in the original Service Agreement, the Transmission Provider will consent to such change subject to the provisions of the Tariff, provided that the change will not impair the operation and reliability of the Transmission Provider's generation, transmission, or distribution systems. The Assignee shall compensate the Transmission Provider in advance for performing any System Impact Study needed to evaluate the capability of the Transmission System to accommodate the proposed change and any additional costs resulting from such change. The Reseller shall remain liable for the performance of all obligations under the Service Agreement, except as specifically agreed to by the Parties through an amendment to the Service Agreement.

23.3 Information on Assignment or Transfer of Service: In accordance with Section 4, Resellers may use the Transmission Provider's OASIS to post transmission capacity available for resale.

24 Metering and Power Factor Correction at Receipt and Delivery Point(s)

24.1 Transmission Customer Obligations: Unless otherwise agreed, the Transmission Customer shall be responsible for installing and maintaining compatible metering and communications equipment to accurately account for the capacity and energy being transmitted under Part II of the Tariff and to communicate the information to the Transmission Provider. Such equipment shall remain the property of the Transmission Customer.

24.2 Transmission Provider Access to Metering Data: The Transmission Provider shall have access to metering data, which may reasonably be required to facilitate measurements and billing under the Service Agreement.

24.3 Power Factor: Unless otherwise agreed, the Transmission Customer is required to maintain a power factor within the same range as the Transmission Provider pursuant to Good Utility Practices. The power factor requirements are specified in the Service Agreement where applicable.

25 Compensation for Transmission Service

Rates for Firm and Non-Firm Point-To-Point Transmission Service are provided in the Schedules appended to the Tariff: Firm Point-To-Point Transmission Service (Schedule 7); and Non-Firm Point-To-Point Transmission Service (Schedule 8). The Transmission Provider shall use Part II of the Tariff to make its Third-Party Sales. The Transmission Provider shall account for such use at the applicable Tariff rates, pursuant to Section 8.

26 Stranded Cost Recovery

The Transmission Provider may seek to recover stranded costs from the Transmission Customer in a manner consistent with applicable Federal law and regulations.

27 Compensation for New Facilities and Redispatch Costs

Whenever a System Impact Study performed by the Transmission Provider in connection with the provision of Firm Point-To-Point Transmission Service identifies the need for new facilities, the Transmission Customer shall be responsible for such costs to the extent consistent with Commission policy. Whenever a System Impact Study performed by the Transmission Provider identifies capacity constraints that may be relieved more economically by redispatching the Transmission Provider's resources than by building new facilities or upgrading existing facilities to eliminate such constraints, the Transmission Customer shall be responsible for the redispatch costs to the extent consistent with Commission policy.

Part III. Network Integration Transmission Service

Preamble

The Transmission Provider will provide Network Integration Transmission Service pursuant to the applicable terms and conditions contained in the Tariff and Service Agreement. Network Integration Transmission Service allows the Network Customer to integrate, economically dispatch and regulate its current and planned Network Resources to serve its Network Load in a manner comparable to that in which the Transmission Provider utilizes its Transmission System to serve its Native Load Customers. Network Integration Transmission Service also may be used by the Network Customer to deliver economy energy purchases to its Network Load from non-designated resources on an as-available basis without additional charge. Transmission service for sales to non-designated loads will be provided pursuant to the applicable terms and conditions of Part II of the Tariff.

28 Nature of Network Integration Transmission Service

28.1 Scope of Service: Network Integration Transmission Service is a transmission service that allows Network Customers to efficiently and economically utilize their Network Resources (as well as other non-designated generation resources) to serve their Network Load located in the Transmission Provider's Control Area and any additional load that may be designated pursuant to Section 31.3 of the Tariff. The Network Customer taking Network Integration Transmission Service must obtain or provide Ancillary Services pursuant to Section 3.

28.2 Transmission Provider Responsibilities: The Transmission Provider will plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice in order to provide the Network Customer with Network Integration Transmission Service over the Transmission Provider's Transmission System. The Transmission Provider, on behalf of its Native Load Customers, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of the Tariff. This information must be consistent with the information used by the Transmission Provider to calculate available transmission capability. The Transmission Provider shall include the Network Customer's Network Load in its Transmission System planning and shall, consistent with Good Utility Practice, endeavor to construct and place into service sufficient transmission capacity to deliver the Network Customer's Network Resources to serve its Network Load on a basis comparable to the Transmission Provider's delivery of its own generating and purchased resources to its Native Load Customers. This obligation to construct and place into service sufficient capacity to deliver the Network Customer's Network Resources to serve its Network Load is contingent upon the availability to Western of sufficient appropriations, when needed, and the Transmission Customer's advanced funds.

28.3 Network Integration Transmission Service: The Transmission Provider will provide firm transmission service over its Transmission System to the

Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Network Loads on a basis that is comparable to the Transmission Provider's use of the Transmission System to reliably serve its Native Load Customers.

28.4 Secondary Service: The Network Customer may use the Transmission Provider's Transmission System to deliver energy to its Network Loads from resources that have not been designated as Network Resources. Such energy shall be transmitted, on an as-available basis, at no additional charge. Deliveries from resources other than Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under Part II of the Tariff.

28.5 Real Power Losses: Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Network Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are specified in the Service Agreements.

28.6 Restrictions on Use of Service: The Network Customer shall not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) direct or indirect provision of transmission service by the Network Customer to third parties. All Network Customers taking Network Integration Transmission Service shall use Point-To-Point Transmission Service under Part II of the Tariff for any Third-Party Sale which requires use of the Transmission Provider's Transmission System.

29 Initiating Service

29.1 Condition Precedent for Receiving Service: Subject to the terms and conditions of Part III of the Tariff, the Transmission Provider will provide Network Integration Transmission Service to any Eligible Customer provided that (i) the Eligible Customer completes an Application for service as provided under Part III of the Tariff, (ii) the Eligible Customer and the Transmission Provider complete the technical arrangements set forth in Sections 29.3 and 29.4, (iii) the Eligible Customer executes a Service Agreement pursuant to Attachment F for service under Part III of the Tariff or requests in writing that the Transmission Provider provide service without an executed Service Agreement, and (iv) the Eligible Customer executes a Network Operating Agreement with the Transmission Provider pursuant to Attachment G. If the Transmission Provider and the Network Customer cannot agree on all the terms and conditions of the Network Service Agreement, the Transmission Provider shall commence providing Network Integration Transmission Service subject to the Network Customer agreeing to (i) compensate the Transmission Provider at the existing rate placed in effect pursuant to applicable Federal law and regulations, and (ii) comply with the terms and conditions of the Tariff including paying the appropriate processing fees in accordance with the terms of Section 29.2. If the Network Customer cannot accept all of the terms and conditions of the offered Service Agreement, the Network Customer may request resolution of the unacceptable terms and conditions under Section 12, Dispute Resolution Procedures, of the Tariff. Any changes resulting from the Dispute Resolution Procedures will be effective upon the date of initial service.

29.2 Application Procedures: An Eligible Customer requesting service under Part III of the Tariff must submit an Application to the Transmission Provider as far as possible in advance of the month in which service is to commence. Unless subject to the procedures in Section 2, Completed Applications for Network Integration Transmission Service will be assigned a priority according to the date and time the Application is received, with the earliest Application receiving the highest priority. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application. A Completed Application for Network Integration Transmission Service also shall include a non-refundable processing fee. Such fee shall be applicable to all Transmission Customers for firm Transmission Service requests of one year or longer. Individual Transmission Provider processing fees will be calculated using the number of estimated hours it will take to process an application and will be set forth in Attachment K. This fee does not apply to costs to complete System Impact Studies or Facility Studies or to add new facilities. A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the party requesting service;

(ii) A statement that the party requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;

(iii) A description of the Network Load at each delivery point. This description should separately identify and provide the Eligible Customer's best estimate of the total loads to be served at each transmission voltage level, and the loads to be served from each Transmission Provider substation at the same transmission voltage level. The description should include a ten (10) year forecast of summer and winter load and resource requirements beginning with the first year after the service is scheduled to commence;

(iv) The amount and location of any interruptible loads included in the Network Load. This shall include the summer and winter capacity requirements for each interruptible load (had such load not been interruptible), that portion of the load subject to interruption, the conditions under which an interruption can be implemented and any limitations on the amount and frequency of interruptions. An Eligible Customer should identify the amount of interruptible customer load (if any), included in the 10 year load forecast provided in response to (iii) above;

(v) A description of Network Resources (current and 10-year projection), which shall include, for each Network Resource:

—Unit size and amount of capacity from that unit to be designated as Network Resource
—VAR capability (both leading and lagging), of all generators
—Operating restrictions
—Any periods of restricted operations throughout the year
—Maintenance schedules
—Minimum loading level of unit
—Normal operating level of unit
—Any must-run unit designations required for system reliability or contract reasons
—Approximate variable generating cost ($/MWH) for redispatch computations
—Arrangements governing sale and delivery of power to third parties from generating facilities located in the Transmission Provider Control Area, where only a portion of unit output is designated as a Network Resource
—Description of purchased power designated as a Network Resource including source of supply, Control Area location, transmission arrangements and delivery point(s) to the Transmission Provider's Transmission System;

(vi) Description of Eligible Customer's transmission system:

—Load flow and stability data, such as real and reactive parts of the load, lines, transformers, reactive devices and load type, including normal and emergency ratings of all transmission equipment in a load flow format compatible with that used by the Transmission Provider
—Operating restrictions needed for reliability
—Operating guides employed by system operators
—Contractual restrictions or committed uses of the Eligible Customer's transmission system, other than the Eligible Customer's Network Loads and Resources
—Location of Network Resources described in subsection (v) above
—10 year projection of system expansions or upgrades
—Transmission System maps that include any proposed expansions or upgrades
—Thermal ratings of Eligible Customer's Control Area ties with other Control Areas;

(vii) Service Commencement Date and the term of the requested Network Integration Transmission Service. The minimum term for Network Integration Transmission Service is one year;

Unless the Parties agree to a different time frame, the Transmission Provider must acknowledge the request within ten (10) days of receipt. The acknowledgment must include a date by which a response, including a Service Agreement, will be sent to the Eligible Customer. If an Application fails to meet the requirements of this section, the Transmission Provider shall notify the Eligible Customer requesting service within fifteen (15) days of receipt and specify the reasons for such failure. Wherever possible, the Transmission Provider will attempt to remedy deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application without prejudice to the Eligible Customer filing a new or revised Application that fully complies with the requirements of this section. The Eligible Customer will be assigned a new priority consistent with the date of the new or revised Application. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

29.3 Technical Arrangements to be Completed Prior to Commencement of Service: Network Integration Transmission Service shall not commence until the Transmission Provider and the Network Customer or a third party, have completed installation of all equipment specified under the Network Operating Agreement consistent with Good Utility Practice and any additional requirements reasonably and consistently imposed to ensure the reliable operation of the Transmission System. The Transmission Provider shall exercise reasonable efforts, in coordination with the Network Customer to complete such arrangements as soon as practicable taking into consideration the Service Commencement Date.

29.4 Network Customer Facilities: The provision of Network Integration Transmission Service shall be conditioned upon the Network Customer constructing, maintaining and operating the facilities on its side of each delivery point or interconnection necessary to reliably deliver capacity and energy from the Transmission Provider's Transmission System to the Network Customer. The Network Customer shall be solely responsible for constructing or installing all facilities on the Network Customer's side of each such delivery point or interconnection.

29.5 This section is intentionally left blank.

30 Network Resources

30.1 Designation of Network Resources: Network Resources shall include all generation owned, purchased, or leased by the Network Customer designated to serve Network Load under the Tariff. Network Resources may not include resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis. Any owned or purchased resources that were serving the Network Customer's loads under firm agreements entered into on or before the Service Commencement Date shall initially be designated as Network Resources until the Network Customer terminates the designation of such resources.

30.2 Designation of New Network Resources: The Network Customer may designate a new Network Resource by providing the Transmission Provider with as much advance notice as practicable. A designation of a new Network Resource must be made by a request for modification of service pursuant to an Application under Section 29.

30.3 Termination of Network Resources: The Network Customer may terminate the designation of all or part of a generating resource as a Network Resource at any time but should provide notification to the Transmission Provider as soon as reasonably practicable.

30.4 Operation of Network Resources: The Network Customer shall not operate its designated Network Resources located in the Network Customer's or Transmission Provider's Control Area such that the output of those facilities exceeds its designated Network Load, plus non-firm sales delivered pursuant to Part II of the Tariff, plus losses. This limitation shall not apply to changes in the operation of a Transmission Customer's Network Resources at the request of the Transmission Provider to respond to an emergency or other unforeseen condition which may impair or degrade the reliability of the Transmission System.

30.5 Network Customer Redispatch Obligation: As a condition to receiving Network Integration Transmission Service, the Network Customer agrees to redispatch its Network Resources as requested by the Transmission Provider pursuant to Section 33.2. To the extent practical, the redispatch of resources pursuant to this section shall be on a least cost, non-discriminatory basis between all Network Customers, and the Transmission Provider.

30.6 Transmission Arrangements for Network Resources Not Physically Interconnected With The Transmission Provider: The Network Customer shall be responsible for any arrangements necessary to deliver capacity and energy from a Network Resource not physically interconnected with the Transmission Provider's Transmission System. The Transmission Provider will undertake

reasonable efforts to assist the Network Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other entity pursuant to Good Utility Practice.

30.7 Limitation on Designation of Network Resources: The Network Customer must demonstrate that it owns or has committed to purchase generation pursuant to an executed contract in order to designate a generating resource as a Network Resource. Alternatively, the Network Customer may establish that execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff.

30.8 Use of Interface Capacity by the Network Customer: There is no limitation upon a Network Customer's use of the Transmission Provider's Transmission System at any particular interface to integrate the Network Customer's Network Resources (or substitute economy purchases) with its Network Loads. However, a Network Customer's use of the Transmission Provider's total interface capacity with other transmission systems may not exceed the Network Customer's Load.

30.9 Network Customer Owned Transmission Facilities: The Network Customer that owns existing transmission facilities that are integrated with the Transmission Provider's Transmission System may be eligible to receive consideration either through a billing credit or some other mechanism. In order to receive such consideration the Network Customer must demonstrate that its transmission facilities are integrated into the plans or operations of the Transmission Provider to serve its power and transmission customers. For facilities constructed by the Network Customer subsequent to the Service Commencement Date under Part III of the Tariff, the Network Customer shall receive credit where such facilities are jointly planned and installed in coordination with the Transmission Provider. Calculation of the credit shall be addressed in either the Network Customer's Service Agreement or any other agreement between the Parties.

31 Designation of Network Load

31.1 Network Load: The Network Customer must designate the individual Network Loads on whose behalf the Transmission Provider will provide Network Integration Transmission Service. The Network Loads shall be specified in the Service Agreement.

31.2 New Network Loads Connected With the Transmission Provider: The Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable of the designation of new Network Load that will be added to its Transmission System. A designation of new Network Load must be made through a modification of service pursuant to a new Application. The Transmission Provider will use due diligence to install any transmission facilities required to interconnect a new Network Load designated by the Network Customer. The costs of new facilities required to interconnect a new Network Load shall be determined in accordance with the procedures provided in Section 32.4 and shall be charged to the Network Customer in accordance with Commission policies.

31.3 Network Load Not Physically Interconnected with the Transmission Provider: This section applies to both initial designation pursuant to Section 31.1 and the subsequent addition of new Network Load not physically interconnected with the Transmission Provider. To the extent that the Network Customer desires to obtain transmission service for a load outside the Transmission Provider's Transmission System, the Network Customer shall have the option of (1) electing to include the entire load as Network Load for all purposes under Part III of the Tariff and designating Network Resources in connection with such additional Network Load, or (2) excluding that entire load from its Network Load and purchasing Point-To-Point Transmission Service under Part II of the Tariff. To the extent that the Network Customer gives notice of its intent to add a new Network Load as part of its Network Load pursuant to this section the request must be made through a modification of service pursuant to a new Application.

31.4 New Interconnection Points: To the extent the Network Customer desires to add a new Delivery Point or interconnection point between the Transmission Provider's Transmission System and a Network Load, the Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable.

31.5 Changes in Service Requests: Under no circumstances shall the Network Customer's decision to cancel or delay a requested change in Network Integration Transmission Service (*e.g.* the addition of a new Network Resource or designation of a new Network Load) in any way relieve the Network Customer of its obligation to pay the costs of transmission facilities constructed by the Transmission Provider and charged to the Network Customer as reflected in the Service Agreement. However, the Transmission Provider must treat any requested change in Network Integration Transmission Service in a non-discriminatory manner. The Transmission Provider will have no obligation to refund any advance of funds expended for purposes of providing facilities for a Network Customer. However, upon receipt of a Network Customer's written notice of such a cancellation or delay, the Transmission Provider will use the same reasonable efforts to mitigate the costs and charges owed to the Transmission Provider as it would to reduce its own costs and charges.

31.6 Annual Load and Resource Information Updates: The Network Customer shall provide the Transmission Provider with annual updates of Network Load and Network Resource forecasts consistent with those included in its Application for Network Integration Transmission Service under Part III of the Tariff. The Network Customer also shall provide the Transmission Provider with timely written notice of material changes in any other information provided in its Application relating to the Network Customer's Network Load, Network Resources, its transmission system or other aspects of its facilities or operations affecting the Transmission Provider's ability to provide reliable service.

32 Additional Study Procedures For Network Integration Transmission Service Requests

32.1 Notice of Need for System Impact Study: After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. In such cases, the Transmission Provider shall within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to which the Eligible Customer shall agree to advance funds to the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its Application shall be deemed withdrawn.

32.2 System Impact Study Agreement and Compensation:

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge shall not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the service requests, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 8.

32.3 System Impact Study Procedures: Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify any system constraints and redispatch options, additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System Impact Study the Eligible Customer must execute a Service Agreement or request service without an executed Service Agreement pursuant to Section 29.1, or the Application shall be deemed terminated and withdrawn.

32.4 Facilities Study Procedures: If a System Impact Study indicates that additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to advance funds to the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its Application shall be deemed withdrawn and its deposit shall be returned. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Eligible Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of (i) the cost of Direct Assignment Facilities to be charged to the Eligible Customer, (ii) the Eligible Customer's appropriate share of the cost of any required Network Upgrades, and (iii) the time required to complete such construction and initiate the requested service. The Eligible Customer shall advance funds to the Transmission Provider for the construction of new facilities and such advance and construction shall be provided for in a separate agreement. If the construction of new facilities requires the expenditure of Transmission Provider funds, such construction shall be contingent upon the availability of appropriated funds. The Eligible Customer shall have thirty (30) days to execute a construction agreement and a Service Agreement and provide the advance payment or request service without an executed Service Agreement pursuant to Section 29.1 and provide the required letter of credit or other form of security or the request no longer will be a Completed Application and shall be deemed terminated and withdrawn.

33 Load Shedding and Curtailments

33.1 Procedures: Prior to the Service Commencement Date, the Transmission Provider and the Network Customer shall establish Load Shedding and Curtailment procedures pursuant to the Network Operating Agreement with the objective of responding to contingencies on the Transmission System. The Parties will implement such programs during any period when the Transmission Provider determines that a system contingency exists and such procedures are necessary to alleviate such contingency. The Transmission Provider will notify all affected Network Customers in a timely manner of any scheduled Curtailment.

33.2 Transmission Constraints: During any period when the Transmission Provider determines that a transmission constraint exists on the Transmission System, and such constraint may impair the reliability of the Transmission Provider's system, the Transmission Provider will take whatever actions, consistent with Good Utility Practice, that are reasonably necessary to maintain the reliability of the Transmission Provider's system. To the extent the Transmission Provider determines

that the reliability of the Transmission System can be maintained by redispatching resources, the Transmission Provider will initiate procedures pursuant to the Network Operating Agreement to redispatch all Network Resources and the Transmission Provider's own resources on a least-cost basis without regard to the ownership of such resources. Any redispatch under this section may not unduly discriminate between the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers and any Network Customer's use of the Transmission System to serve its designated Network Load.

33.3 Cost Responsibility for Relieving Transmission Constraints: Whenever the Transmission Provider implements least-cost redispatch procedures in response to a transmission constraint, the Transmission Provider and Network Customers will each bear a proportionate share of the total redispatch cost based on their respective Load Ratio Shares.

33.4 Curtailments of Scheduled Deliveries: If a transmission constraint on the Transmission Provider's Transmission System cannot be relieved through the implementation of least-cost redispatch procedures and the Transmission Provider determines that it is necessary to Curtail scheduled deliveries, the Parties shall Curtail such schedules in accordance with the Network Operating Agreement.

33.5 Allocation of Curtailments: The Transmission Provider shall, on a non-discriminatory basis, Curtail the transaction(s) that effectively relieve the constraint. However, to the extent practicable and consistent with Good Utility Practice, any Curtailment will be shared by the Transmission Provider and Network Customer in proportion to their respective Load Ratio Shares. The Transmission Provider shall not direct the Network Customer to Curtail schedules to an extent greater than the Transmission Provider would Curtail the Transmission Provider's schedules under similar circumstances.

33.6 Load Shedding: To the extent that a system contingency exists on the Transmission Provider's Transmission System and the Transmission Provider determines that it is necessary for the Transmission Provider and the Network Customer to shed load, the Parties shall shed load in accordance with previously established procedures under the Network Operating Agreement.

33.7 System Reliability: Notwithstanding any other provisions of this Tariff, the Transmission Provider reserves the right, consistent with Good Utility Practice and on a not unduly discriminatory basis, to Curtail Network Integration Transmission Service without liability on the Transmission Provider's part for the purpose of making necessary adjustments to, changes in, or repairs on its lines, substations and facilities, and in cases where the continuance of Network Integration Transmission Service would endanger persons or property. In the event of any adverse condition(s) or disturbance(s) on the Transmission Provider's Transmission System or on any other system(s) directly or indirectly interconnected with the Transmission Provider's Transmission System, the Transmission Provider, consistent with Good Utility Practice, also may Curtail Network Integration Transmission Service in order to (i) limit the extent or damage of the adverse condition(s) or disturbance(s), (ii) prevent damage to generating or transmission facilities, or (iii) expedite restoration of service. The Transmission Provider will give the Network Customer as much advance notice as is practicable in the event of such Curtailment. Any Curtailment of Network Integration Transmission Service will be not unduly discriminatory relative to the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that the Network Customer fails to respond to established Load Shedding and Curtailment procedures.

34 Rates and Charges

The Network Customer shall pay the Transmission Provider for any Direct Assignment Facilities, Ancillary Services, and applicable study costs, consistent with Federal policy, along with the following:

34.1 Monthly Demand Charge: The Network Customer shall pay a monthly Demand Charge, which shall be determined by multiplying its Load Ratio Share times one twelfth (1/12) of the Transmission Provider's Annual Transmission Revenue Requirement specified in Schedule H.

34.2 Determination of Network Customer's Monthly Network Load: The Network Customer's monthly Network Load is its hourly load (including its designated Network Load not physically interconnected with the Transmission Provider under Section 31.3) coincident with the Transmission Provider's Monthly Transmission System Peak.

34.3 Determination of Transmission Provider's Monthly Transmission System Load: The Transmission Provider's monthly Transmission System load is the Transmission Provider's Monthly Transmission System Peak minus the coincident peak usage of all Firm Point-To-Point Transmission Service customers pursuant to Part II of this Tariff plus the Reserved Capacity of all Firm Point-To-Point Transmission Service customers.

34.4 Redispatch Charge: The Network Customer shall pay a Load Ratio Share of any redispatch costs allocated between the Network Customer and the Transmission Provider pursuant to Section 33. To the extent that the Transmission Provider incurs an obligation to the Network Customer for redispatch costs in accordance with Section 33, such amounts shall be credited against the Network Customer's bill for the applicable month.

34.5 Stranded Cost Recovery: The Transmission Provider may seek to recover stranded costs from the Network Customer in a manner consistent with applicable Federal law and regulations.

35 Operating Arrangements

35.1 Operation under The Network Operating Agreement: The Network Customer shall plan, construct, operate and maintain its facilities in accordance with Good Utility Practice and in conformance with the Network Operating Agreement.

35.2 Network Operating Agreement: The terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Part III of the Tariff shall be specified in the Network Operating Agreement. The Network Operating Agreement shall provide for the Parties to (i) operate and maintain equipment necessary for integrating the Network Customer within the Transmission Provider's Transmission System (including, but not limited to, remote terminal units, metering, communications equipment and relaying equipment), (ii) transfer data between the Transmission Provider and the Network Customer (including, but not limited to, heat rates and operational characteristics of Network Resources, generation schedules for units outside the Transmission Provider's Transmission System, interchange schedules, unit outputs for redispatch required under Section 33, voltage schedules, loss factors and other real time data), (iii) use software programs required for data links and constraint dispatching, (iv) exchange data on forecasted loads and resources necessary for long-term planning, and (v) address any other technical and operational considerations required for implementation of Part III of the Tariff, including scheduling protocols. The Network Operating Agreement will recognize that the Network Customer shall either (i) operate as a Control Area under applicable guidelines of the North American Electric Reliability Council (NERC) and the applicable regional reliability council, (ii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with the Transmission Provider, or (iii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with another entity, consistent with Good Utility Practice, which satisfies NERC and the applicable regional reliability council requirements. The Transmission Provider shall not unreasonably refuse to accept contractual arrangements with another entity for Ancillary Services. The Network Operating Agreement is included in Attachment G.

35.3 Network Operating Committee: A Network Operating Committee (Committee) shall be established to coordinate operating criteria for the Parties' respective responsibilities under the Network Operating Agreement. Each Network Customer shall be entitled to have at least one representative on the Committee. The Committee shall meet from time to time as need requires, but no less than once each calendar year.

Schedule 1

Scheduling, System Control and Dispatch Service

This service is required to schedule the movement of power through, out of, within, or into a Control Area. This service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located. Scheduling, System Control and Dispatch Service is provided directly by the Transmission Provider if the Transmission Provider is the Control Area Operator or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for Scheduling, System Control and Dispatch Service are to be based on the rates referred to below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission System specific charges for Scheduling, System Control and Dispatch Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Scheduling, System Control and Dispatch Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Scheduling, System Control and Dispatch Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 2

Reactive Supply and Voltage Control From Generation Sources Service

In order to maintain transmission voltages on the Transmission Provider's transmission facilities within acceptable limits, generation facilities under the control of the Control Area operator are operated to produce or absorb reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service must be provided for each transaction on the Transmission Provider's transmission facilities. The amount of Reactive Supply and Voltage Control from Generation Sources Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the Transmission Provider.

Reactive Supply and Voltage Control from Generation Sources Service can be provided directly by the Transmission Provider if the Transmission Provider is the Control Area operator or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for such service will be based upon the rates referred to below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by the Control Area Operator.

The Transmission System specific charges for Reactive Supply and Voltage Control from Generation Sources Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Reactive Supply and Voltage Control from Generation Sources Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Reactive Supply and Voltage Control from Generation Sources Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 3

Regulation and Frequency Response Service

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources, generation and interchange, with load and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary to follow the

moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Transmission Provider (or the Control Area operator that performs this function for the Transmission Provider). The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation. The charges for Regulation and Frequency Response Service are referred to below. The amount of Regulation and Frequency Response Service will be set forth in the Service Agreement. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission System specific charges for Regulation and Frequency Response Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Regulation and Frequency Response Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Regulation and Frequency Response Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 4

Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a Control Area over a single hour. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either obtain this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Energy Imbalance Service obligation. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission Provider shall establish a deviation band of +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s). Parties should attempt to eliminate energy imbalances within the limits of the deviation band within thirty (30) days or within such other reasonable period of time as is generally accepted in the region and consistently adhered to by the Transmission Provider. If an energy imbalance is not corrected within thirty (30) days or a reasonable period of time that is generally accepted in the region and consistently adhered to by the Transmission Provider, the Transmission Customer will compensate the Transmission Provider for such service. Energy imbalances outside the deviation band will be subject to charges to be specified by the Transmission Provider. Compensation for Energy Imbalance Service will be as set forth below.

The Transmission System specific compensation for Energy Imbalance Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the compensation for Energy Imbalance Service upon written notice to the Transmission Customer. Any change to the compensation to the Transmission Customer for Energy Imbalance Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 5

Operating Reserve—Spinning Reserve Service

Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation. The charges for Spinning Reserve Service are referred to below. The amount of Spinning Reserve Service will be set forth in the Service Agreement. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission System specific charges for Operating Reserve—Spinning Reserve Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Operating Reserve—Spinning Reserve Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Operating Reserve—Spinning Reserve Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 6

Operating Reserve—Supplemental Reserve Service

Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation. The charges for Supplemental Reserve Service are referred to below. The amount of Supplemental Reserve Service will be set forth in the Service Agreement. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission System specific charges for Operating Reserve—Supplemental Reserve Service are set forth in the appropriate rate schedule attached to and made part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Operating Reserve—Supplemental Reserve Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Operating Reserve—Supplemental Reserve Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Schedule 7

Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider each month for Reserved Capacity pursuant to the Transmission System specific Firm Point-to-Point Transmission Service Rate Schedule attached to and made a part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Firm Point-to-Point Transmission Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Discounts: Three principal requirements apply to discounts for transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Schedule 8

Non-Firm Point-To-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider for Non-Firm Point-to-Point Transmission Service pursuant to the Transmission System specific Non-Firm Point-to-Point Transmission Service Rate Schedule attached to and made a part of the applicable Service Agreement. The rates or rate methodology used to calculate the charges for service under this schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

The Transmission Provider may modify the charges for Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Firm Point-to-Point Transmission Service shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and attached to and made part of the applicable Service Agreement. The Transmission Provider shall charge the Transmission Customer in accordance with the rate then in effect.

Discounts: Three principal requirements apply to discounts for transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

Attachment A

Form of Service Agreement for Firm Point-To-Point Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between the (Region) of Western Area Power Administration (Transmission Provider), and _____ (Transmission Customer). The Transmission Provider may revise charges or losses for Firm Point-to-Point Transmission Service provided under this Service Agreement pursuant to applicable Federal Laws, regulations and policies upon written notice to the Transmission Customer.

2.0 The Transmission Customer has been determined by the Transmission Provider to have a Completed Application for Firm Point-To-Point Transmission Service under the Tariff.

3.0 The Transmission Customer has provided to the Transmission Provider a nonrefundable Application processing fee in accordance with the provisions of Section 17.3 of the Tariff.

4.0 Service under this agreement shall commence on the later of (1) the requested Service Commencement Date, or (2) the date on which construction of any Direct Assignment Facilities and/or Network Upgrades are completed, or (3) such other date as is mutually agreed. Service under this agreement shall terminate on _____.

5.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff, and this Service Agreement.

6.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

_____

_____

_____

Transmission Customer:

_____

_____

_____

7.0 The Tariff and the "Specifications For Long-Term Firm Point-To-Point" as presently constituted or as they may be revised or superseded are incorporated herein and made a part hereof.

In witness whereof, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Western Area Power Administration

By: _____

Title: _____

Address: _____

_____

Date: _____

(Transmission Customer)

By: _____

Title: _____

Address: _____

_____

Date: _____

Specifications for Long-Term Firm Point-To-Point Transmission Service

For purposes of this Service Agreement, the Transmission Provider's Transmission System consists of the facilities of the (Region) as described in Attachment K.

1.0 Term of Transaction: _____
Start Date: _____
Termination Date: _____

2.0 Description of capacity and energy to be transmitted by Transmission Provider including the electric Control Area in which the transaction originates.

_____

3.0 Point(s) of Receipt: _____
Delivering Party: _____
Capacity Reservation: _____

4.0 Point(s) of Delivery: _____
Receiving Party: _____
Capacity Reservation: _____

5.0 The Maximum amount of capacity and energy to be transmitted (Reserved Capacity) is : ____

6.0 Designation of party(ies) subject to reciprocal service obligation:

_____

_____

_____

7.0 Name of the Control Area from which capacity and energy will be delivered to the Transmission Provider for Transmission Service:

_____

Name of the Control Area to which capacity and energy will be delivered by the Transmission Provider:

_____

Name(s) of any Intervening Systems providing transmission service:

_____

_____

8.0 Service under this Agreement may be subject to some combination of the charges detailed below. The appropriate charges for individual transactions will be determined in accordance with the terms and conditions of the Tariff.

8.1 Transmission Charge: _____

8.2 System Impact and/or Facilities Study Charge(s):

_____

_____

8.3 Direct Assignment Facilities Charge:

_____

8.4 Ancillary Services Charges:

_____

_____

_____

_____

8.5 Redispatch Charges:
To be filled in if applicable.

8.6 Network Upgrade Charges:
To be filled in if applicable

9.0 *Power Factor:* The Transmission Customer will be required to maintain a power factor between ____-percent lagging and ____-percent leading for all deliveries of capacity and energy to and from the Transmission Provider's Transmission System.

10.0 *Transmission Losses*

10.1 *Loss Factors:*

10.1.1 If, based on operating experience and technical studies, the Transmission Provider determines that any of the transmission loss factors on the Transmission Provider's Transmission System differs from the loss factors set forth in this Service Agreement, the Transmission Provider reserves the right to update this Service Agreement to reflect such revised loss factors.

10.1.2 Transmission Provider Transmission Loss Factor: Transmission Provider transmission losses shall be ____% and shall be assessed on the power scheduled and transmitted to a point of delivery on the Transmission Provider's Transmission System.

11.0 *Ancillary Services*

11.1 Provided by Transmission Provider

11.1.1 Scheduling, System Control, and Dispatch Service

11.1.2 Reactive Supply and Voltage Control from Generation Sources Service

11.2 Provided by Transmission Customer

11.2.1 (To be filled in if applicable)

11.2.2

11.3 Provided by _____

11.3.1 (To be filled in if applicable)

11.3.2

12.0 *Net Billing and Bill Crediting Option:* The Parties have agreed to implement [Net Billing, Bill Crediting, or both] as set forth in Attachment J.

13.0 *Charges for Service:* Charges for Firm Point-to-Point Transmission Service and associated Ancillary Services shall be calculated in accordance with [Rate Schedules] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

Attachment B

Form Of Service Agreement For Non-Firm Point-To-Point Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between the (Region) of Western Area Power Administration (Transmission Provider), and _____ (Transmission Customer). The Transmission Provider may revise charges or losses for Non-Firm Point-to-Point Transmission Service provided under this Service Agreement pursuant to applicable Federal laws, regulations and policies upon written notice to the Transmission Customer.

2.0 The Transmission Customer has been determined by the Transmission Provider to be a Transmission Customer under Part II of the Tariff and has filed a Completed Application for Non-Firm Point-To-Point Transmission Service in accordance with Section 18.2 of the Tariff.

3.0 Service under this Service Agreement shall be provided by the Transmission Provider upon request by an authorized representative of the Transmission Customer. For purposes of this Service Agreement, the Transmission Provider's Transmission System consists of the facilities of the (Region) as described in Attachment K.

4.0 The Transmission Customer agrees to supply information the Transmission Provider deems reasonably necessary in accordance with Good Utility Practice in order for it to provide the requested service.

5.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Non-Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff, and this Service Agreement.

6.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

_____

_____

_____

Transmission Customer:

_____

_____

_____

7.0 The Tariff as presently constituted or as it may be revised or superseded is incorporated herein and made a part hereof.

8.0 *Power Factor:* The Transmission Customer will be required to maintain a power factor between ____-percent lagging and ____-percent leading for all deliveries of capacity and energy to and from the Transmission Provider's Transmission System.

9.0 *Transmission Losses:*

9.1 *Loss Factors:*

9.1.1 If, based on operating experience and technical studies, the Transmission Provider determines that any of the transmission loss factors on the Transmission Provider's Transmission Systems differ from the loss factors set forth in this Service Agreement, the Transmission Provider reserves the right to update this Service Agreement to reflect such revised loss factors.

9.1.2 *Transmission Provider Transmission Loss Factor:* Transmission Provider transmission losses shall be ____% and shall be assessed on the power scheduled and transmitted to a point of delivery on the Transmission Provider's Transmission System.

10.0 *Ancillary Services*

10.1 Provided by Transmission Provider

10.1.1 Scheduling, System Control, and Dispatch Service

10.1.2 Reactive Supply and Voltage Control from Generation Sources Service

10.2 Provided by Transmission Customer

10.2.1 To be filled in if appropriate

10.2.2

10.3 Provided by _____

10.3.1 To be filled in if appropriate

10.3.2

11.0 *Net Billing and Bill Crediting Option:* The Parties have agreed to implement [Net Billing, Bill Crediting, or both] as set forth in Attachment J.

12.0 *Charges for Service:* Charges for Non-Firm Point-to-Point Transmission Service and associated Ancillary Services shall be calculated in accordance with [Rate Schedules] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

WESTERN AREA POWER ADMINISTRATION

By: _____

Title: _____

Address: _____

Date: _____

(TRANSMISSION CUSTOMER)

By: _____

Title: _____

Address: _____

Date: _____

Attachment C

Methodology To Assess Available Transmission Capability

The Transmission Provider will compute the transmission transfer capability available on a point-to-point basis from the Delivering Party to the Receiving Party using Good Utility Practice and the engineering and operating principles, standards, guidelines and criteria of the Transmission Provider, the applicable Regional Reliability Council, any entity of which the Transmission Provider is a member and is approved by the Commission to promulgate or apply regional or national reliability planning standards (such as a regional transmission group, RTG), or any similar organization that may exist in the future of which the Transmission Provider is then a member. Principal items used to determine maximum transmission transfer capability available shall include reliability, transmission element loading, system contingency performance, voltage levels, and stability. In determining Available Transmission Capability, the Transmission Provider will reserve sufficient transmission capability to meet its current and forecasted power service obligations, current and forecasted Network Customer loads, and existing transmission service obligations.

Attachment D

Methodology For Completing a System Impact Study

The Transmission Provider will assess the capability of the Transmission System to provide the service requested using the criteria and process for this assessment as detailed in Sections 4 and 5 of the Transmission Provider's annual FERC Form 715 submittal in those instances where the Transmission Provider is a member of the Western Systems Coordinating Council. (CRSP, DSW, RMR, and SNR) The Transmission Provider will use the Mid-Continent Area Power Pool (MAPP) System Impact Study Methodology when the Transmission Provider is a member of MAPP. (UGPR)

Attachment E

Index of Point-To-Point Transmission Service Customers

Customer	Date of service agreement

Attachment F

Service Agreement For Network Integration Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between the (Region) of Western Area Power Administration (Transmission Provider), and _____ (Transmission Customer).

2.0 The Transmission Customer has been determined by the Transmission Provider to have a Completed Application for Network Integration Transmission Service under the Tariff.

3.0 Service under this Service Agreement shall commence on the later of (1) _____, or (2) the date on which construction of any Direct Assignment Facilities and/or Network Upgrades are completed, or (3) such other date as is mutually agreed. Service under this Service Agreement shall terminate on _____.

4.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Network Integration Transmission Service in accordance with the provisions of Part III of the Tariff, and this Service Agreement.

5.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

_____

_____

_____

Transmission Customer:

_____

_____

_____

6.0 The Tariff and the "Specifications for Network Integration Transmission Service" as presently constituted or as they may be revised or superseded are incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

WESTERN AREA POWER ADMINISTRATION

By: _____
Title: _____
Address: _____
_____
Date: _____

(TRANSMISSION CUSTOMER)

By: _____
Title: _____
Address: _____
_____
Date: _____

Specifications for Network Integration Transmission Service

For purposes of this Service Agreement, the Transmission Provider's Transmission System consists of the facilities of the (Region) as described in Attachment K.

1.0 The Transmission Provider will provide Network Integration Transmission Service over the Transmission Provider's Transmission System for the delivery of capacity and energy from the Network Customer's designated Network Resources to the Network Customer's designated Network Load. The Transmission Provider will also provide non-firm transmission service from non-designated Network Resources under the terms of this Service Agreement. The loss factors associated with this Network Integration Transmission Service are set forth below. Such losses shall be applied and accounted for as set forth in Section 4.

2.0 *Designated Network Resources:*

Designated Network Resources & Estimated Maximum Resource (MW)	Point of Receipt	Delivering Party & Voltage

3.0 *Designated Network Loads:*

Designated Network Load & Estimated Maximum Resource (MW)	Point of Delivery	Voltage

4.0 *Transmission Losses:*

4.1 *Loss Factors:*

4.1.1 If, based on operating experience and technical studies, the Transmission Provider determines that any of the transmission loss factors on the Transmission Provider's Transmission System differ from the loss factors set forth in this Service Agreement, the Transmission Provider reserves the right to update this Service Agreement to reflect such revised loss factors.

4.1.2 *Transmission Provider Transmission Loss Factor:* For deliveries to the Network Customer Network Load, Transmission Provider transmission losses shall be—% and shall be assessed on the power scheduled and transmitted to a point of delivery on the Transmission Provider's Transmission System.

4.2 Transmission losses may be revised by written notice from the Transmission Provider to the Transmission Customer.

5.0 The Network Customer's transmission facilities that are integrated with the Transmission Provider's Transmission System will receive _____ credit. These facilities include the following:

5.1 _____
5.2 _____

6.0 Names of any intervening systems with whom the Network Customer has arranged for transmission service to the Transmission Provider's Transmission System.

6.1 _____
6.2 _____

7.0 *Power Factor:* The Transmission Customer will be required to maintain a power factor between__-percent lagging and__-percent leading for all deliveries of capacity and energy to and from the Transmission Provider's Transmission System.

8.0 *Ancillary Services*

8.1 Provided by Transmission Provider

8.1.1 Scheduling, System Control, and Dispatch Service

8.1.2 Reactive Supply and Voltage Control from Generation Sources Service

8.2 Provided by Transmission Customer.

8.2.1 (To be filled in if appropriate)

8.2.2

8.3 Provided by _____

8.3.1 (To be filled in if appropriate)

8.3.2

9.0 *Net Billing and Bill Crediting Option:* The Parties have agreed to implement [Net Billing, Bill Crediting, or both] as set forth in Attachment J.

10.0 *Charges for Service:* Charges for associated Ancillary Services shall be calculated in accordance with [Rate Schedule] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

Attachment G

Network Operating Agreement

To be filed by the Transmission Provider at such time as the Transmission Provider has negotiated or offered a Network Integration Transmission Service Agreement. The terms and conditions under which the Network Customer will be required to operate its facilities and the technical and operational matters associated with the implementation of Network Integration Transmission Service and this Service Agreement will be specified in a separate Network Operating Agreement.

The Network Operating Agreement will include provisions addressing the following:

Authorized Representatives of the Parties
Network Operating Committee
Load Following
System Protection
Redispatch to Manage Transmission Constraints
Maintenance of Facilities
Load Shedding
Operation Impacts
Service Conditions
Data, Information and Reports
Metering
Communications
System Regulation and Operating Reserves
Assignment
Notices
Accounting for Transmission Losses
(Alternative language to be used only by UGPR) Network Integration Transmission provided by the Transmission Provider will be subject to all operating and scheduling procedures and protocols of the Mid-Continent Area Power Pool (MAPP) as stated in the MAPP Restated Agreement and the MAPP Operating Handbook as existing and as may be amended, superseded or replaced. The Transmission Provider will therefore not enter into a separate Network Operating Agreement with each Network Customer.

Attachment H

Annual Transmission Revenue Requirement For Network Integration Transmission Service

1.0 The Annual Transmission Revenue Requirement for purposes of the Network Integration Transmission Service is to be set forth in a separate Rate Schedule.

2.0 The amount in 1 shall be effective until amended by the Transmission Provider or modified by the Commission pursuant to applicable Federal laws, regulations and policies, and may be revised upon written notice to the Transmission Customer.

3.0 The Transmission Provider will charge the Network Customer a charge equal to ten (10) times the highest charge incurred during the preceding twelve months for any use of the Transmission Provider's Transmission System not in compliance with the terms and conditions of Part III of this Tariff.

Attachment I

Index of Network Integration Transmission Service Customers

Customer	Date of service agreement

Attachment J

Provisions Specific To The Transmission Provider

1.0 Change of Rates

Rates applicable under the Service Agreements shall be subject to change by Western in accordance with appropriate rate adjustment procedures. If at any time the United States promulgates a rate changing a rate then in effect under a Service Agreement, it will promptly notify the Transmission Customer thereof. Rates shall become effective as to the Service Agreements as of the effective date of such rate. The Transmission Customer, by written notice to the Transmission Provider within ninety (90) days after the effective date of a rate change, may elect to terminate the service billed by the Transmission Provider under the new rate. Said termination shall be effective on the last day of the billing period requested by the Transmission Customer not later than two (2) years after the effective date of the new rate. Service provided by the Transmission Provider shall be paid for at the new rate regardless of whether the Transmission Customer exercises the option to terminate service.

2.0 Contingent Upon Appropriations

Where activities provided for in the Service Agreement extend beyond the current fiscal year, continued expenditures by the Transmission Provider are contingent upon Congress making necessary appropriations required for the continued performance of the Transmission Provider's obligations under the Service Agreement. In the event that such appropriation by Congress is not made, The Transmission Customer hereby releases the Transmission Provider from its obligations under the Service Agreement and from all liability due to the failure of Congress to make such appropriation.

3.0 Covenant Against Contingent Fees

The Transmission Customer warrants that no person or selling agency has been employed or retained to solicit or secure the Service Agreement upon a contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Transmission Customer for the purpose of securing business. For breach or violation of this warranty, the Transmission Provider shall have the right to annul the Service Agreement without liability or in its discretion to deduct from the Service Agreement price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

4.0 Contract Work Hours and Safety Standards

The Service Agreement, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 329 (1986), is subject to the provisions of the Act, 40 U.S.C. §§ 327–333 (1986), and to regulations promulgated by the Secretary of Labor pursuant to the Act.

5.0 Equal Opportunity Employment Practices

Section 202 of Executive Order No. 11246, 43 Fed. Reg. 46501 (1978), which provides, among other things, that the Transmission Customer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the Service Agreement.

6.0 Use of Convict Labor

The Transmission Customer agrees not to employ any person undergoing sentence of imprisonment in performing the Service Agreement except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

7.0 Independent System Operator

The Parties understand that the Transmission Provider may join an Independent System Operator. An Independent System Operator (ISO) is defined as a Commission regulated control area operator of the ISO transmission grid. Its responsibilities include providing non-discriminatory access, managing congestion, and maintaining the reliability and security of the grid. In the event the Transmission Provider either joins or is required to conform to protocols of the Independent System Operator, the

Parties agree that the Transmission Provider either may (1) modify the relevant provisions of the Tariff and the Service Agreement to conform them to the terms and conditions required by the Independent System Operator, or (2) terminate the Service Agreement by providing a one-year written notice to the Transmission Customer.

8.0 Third Party Rights

The Service Agreements shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation, or undertaking established therein to any third party as a beneficiary to such Service Agreement.

9.0 Entire Agreement

The Service Agreements, including the Tariff, together with the specifications under such Service Agreement and any completed scheduling forms shall constitute the entire understanding between the Transmission Provider and the Transmission Customer with respect to Transmission Service thereunder.

10.0 Power Supply Obligations

The Transmission Provider shall not be obligated to supply capacity and energy from its own sources or from its purchases from other neighboring systems during Interruptions or Curtailments in the delivery by the Transmission Provider or delivery to the Transmission Provider by the Delivering Party of capacity and energy for Transmission Service hereunder, and nothing in the Service Agreement or in the Transmission Customer's agreements with others shall have the effect of making, nor shall anything in the Service Agreement or said agreements with others be construed to require the Transmission Provider to take any action which would make the Transmission Provider, directly or indirectly, a source of power supply to the Transmission Customer, to any Delivering Party or Receiving Party, or to any ultimate recipient other than through the provision of Operating Reserve Service and emergency power.

11.0 Federal Law

Performance under the Tariff and Service Agreement shall be governed by applicable Federal law.

12.0 Continuing Obligations

The applicable provisions of the Service Agreement will continue in effect after termination of the Service Agreement to the extent necessary to provide for final billing, billing adjustments and payments, and with respect to liability and indemnification from acts or events that occurred while this Service Agreement was in effect.

13.0 Net Billing

Payments due the Transmission Provider by a Transmission Customer may, at the Transmission Provider's discretion, be offset against payments due the Transmission Customer by the Transmission Provider for the use of transmission facilities, operation and maintenance of electric facilities, and other services. Net billing for the sale or exchange of electric capacity and energy will be as mutually agreed. For services included in net billing procedures, payments due one Party in any month shall be offset against payments due the other Party in such month, and the resulting net balance shall be paid to the Party in whose favor such balance exists. The Parties shall exchange such reports and information that either Party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

14.0 Bill Crediting

As agreed in the Service Agreement, payments due the Transmission Provider by a Transmission Customer shall be paid by a Transmission Customer to a third party when so directed by the Transmission Provider. Any third party designated to receive payment in lieu of the Transmission Provider, and the amount to be paid to that party, will be so identified in writing to a Transmission Customer with the monthly power bill. The payment to the third party shall be due and payable by the payment due date specified on the Transmission Provider's bill. When remitting payment to a designated third party, a Transmission Customer shall indicate that such payment is being made on behalf of the Transmission Provider. The Transmission Provider shall credit a Transmission Customer for the amount paid as if payment had been made directly to the Transmission Provider. All other payment provisions shall remain in full force and effect.

Attachment K

Transmission Provider Authorities And Obligations

Western Area Power Administration (Western) was established on December 21, 1977, pursuant to Section 302 of the Department of Energy (DOE) Organization Act, Public Law 95-91, dated August 4, 1977. Western's primary and long-standing mission is to market Federal power resources with emphasis on maintaining an efficient and reliable power system. Western is a partial requirements power supplier that markets and transmits Federal power resources in 15 Central and Western States encompassing a geographic area of 3.38 million-square-kilometers (1.3 million-square-miles). Western has four Customer Service Regional Offices and the Colorado River Storage Project Customer Service Center, each referred to in the Tariff as Regional Office. Western markets power and provides transmission service from various multi-purpose hydroelectric projects and one coal-fired power plant in Arizona. Western will sell transmission service using Federally owned or controlled facilities only to the extent that transmission capacity is available in excess of that needed to deliver Federal power.

Western is not a public utility under Sections 205 and 206 of the Federal Power Act and is not specifically subject to the requirements of the Federal Energy Regulatory Commission's (FERC or Commission) Final Orders 888 and 888-A. Western is a transmitting utility subject to Section 211 of the Federal Power Act as amended by the Energy Policy Act of 1992. The Department of Energy has issued a Power Marketing Administration Open Access Transmission Policy that supports the intent of the FERC Notice of Proposed Rulemaking for Open Access Transmission.

Western's Regional Offices reserved transmission capacity shall include capacity sufficient to deliver Federal power resources, including statutory and firm electric service and project use power. The Tariff is intended to provide for transmission of non-Federal power on the unused capacity of transmission facilities under the jurisdiction or control of each of Western's Regional Offices, as well as each Regional Office's use of those facilities for third party sales, in a manner consistent with the spirit and intent of FERC Orders 888 and 888–A.

By statute, Western markets Federal power resources to Federal Customers, defined for purposes of this Tariff to be the statutory and firm electric service customers and project use power users of the Federal government. Western's transmission system was built primarily to enable the delivery of Federal power to satisfy contractual obligations, which are generally only partial requirements. Western interprets the term, "Native Load Customers" as used under this Tariff to be analogous to and the closest equivalent of Western's Federal Customers. Western therefore will treat its Federal Customers in a manner analogous to the treatment of Native Load Customers by public utilities.

Western is committed to providing comparable open-access transmission service to all customers. However, nothing in this Tariff shall alter, amend or abridge the statutory or contractual obligations of Western to market and deliver Federal power resources to Federal Customers and to repay the Federal investment in such projects.

Western has prepared this Tariff and service agreements to provide transmission service comparable to that required of public utilities by FERC Orders 888 and 888–A, and to implement the spirit and intent of those Orders consistent with the DOE Policy. An entity desiring transmission service from Western must comply with the application procedures outlined herein. The review and approval requirements detailed herein will apply to all requesting parties.

Western will perform the necessary studies or assessments for evaluating requests for transmission service as set forth in the Tariff. Any facility construction or interconnection necessary to provide transmission service will be subject to Western's General Requirements for Interconnection which are available upon request.

It is Western's intent to provide Firm and Non-Firm Point-to-Point Transmission Service and Network Integration Transmission Service consistent with the Tariff. The specific terms and conditions for providing transmission service to a customer will be included in a Service Agreement. Operating Procedures, Available Transmission Capacity (ATC), and System Impact Methodology are defined in the Attachments. Western's rates are developed under a separate public process pursuant to applicable Federal law and regulations. Therefore, rates and charges for specific services will be set forth in the appropriate Regional rates schedules attached to each Service Agreement.

Based on a reasonable level of risk, Western has marketed the maximum practical amount of power from each of its projects, leaving little flexibility for provision of additional power services. Changes in water conditions frequently affect the ability of hydroelectric projects to meet obligations on a short term basis. The unique characteristics of the hydro resource, Western's marketing plans, and the limitations of the resource due to changing water conditions may limit Western's ability to provide generation-related services including ancillary services and redispatching using Federal hydro resources.

Colorado River Storage Project Customer Service Center

The Colorado River Storage Project Customer Service Center (CRSP CSC), located in Salt Lake City, Utah, markets power from three Federal multipurpose water development projects; the Colorado River Storage Project, the Collbran Project, and the Rio Grande Project, collectively called the Integrated Projects. The hydroelectric facilities associated with these projects include: Flaming Gorge and Fontelle powerplants on the Green River; Blue Mesa, Morrow Point, and Crystal powerplants on the Gunnison River; Upper and Lower Molina powerplants of the Collbran Project in Western Colorado; the largest of the CRSP facilities, Glen Canyon power plant on the Colorado River; and Elephant Butte power plant, part of the Rio Grande Project on the Rio Grande River in South Central New Mexico. The CRSP transmission system consists of high-voltage transmission lines and attendant facilities extending from Arizona, into New Mexico, through Colorado, and into portions of Utah and Wyoming. The CRSP CSC uses the CRSP transmission system to meet its commitments to its federal customers, point-to-point transmission customers, and exchange power contractors. The CRSP CSC must, therefore, reserve sufficient transmission capacity to meet these long-term obligations. The CRSP CSC also needs to reserve capacity in its transmission system to enable it to deliver power produced by the Integrated Projects hydroelectric powerplants during periods when flood control water releases produce greater than normal generation levels.

The CRSP office, located in Salt Lake City, is a member of the Western Regional Transmission Association and Southwest Regional Transmission Association and operates within the Western Systems Coordinating Council.

The CRSP CSC does not operate a control area and as such may be unable to provide some or all of the services under the Tariff from its Integrated Projects hydroelectric resources, including, but not limited to, ancillary services and Network Integration Transmission Service.

The CRSP CSC application processing fee will be $1,600.

Desert Southwest Region

The Desert Southwest Region (DSR) manages transmission facilities in the states of Arizona, California, and Nevada. These transmission facilities were constructed for the primary purpose of marketing power from the Navajo Project for the Central Arizona Project, Boulder Canyon Project and the Parker-Davis Project. The Pacific Northwest-Pacific Southwest Intertie Project (Intertie), in which the DSR has ownership rights and administers the southern portion, is a part of the DSR transmission facilities. Transmission facilities of the Parker-Davis Project and the Intertie Project are included in this Tariff. The DSR transmission facilities are integrated with transmission facilities of several non-Federal entities. DSR is a member of the Southwest Regional Transmission Association and the Western Regional Transmission Association and its system is operated in the Western Systems Coordinating Council, and adheres to their criteria. DSR manages a control area operations center in its Desert Southwest Regional Office. The DSR office and the control area operations both are located in Phoenix, Arizona.

The DSR application processing fee will be $1,700.

Rocky Mountain Region

The Rocky Mountain Region (RMR) manages transmission facilities in the states of Colorado, Wyoming, Nebraska, and Kansas which were constructed for the primary purpose of marketing power from the Pick-Sloan Missouri Basin Program—Western Division. The RMR office and control area operations center is located in Loveland, Colorado. The RMR is a member of the Western Regional Transmission Association and its system is operated in the Western Systems Coordinating Council.

For RMR, the rates for Point-to-Point and Network Integration Transmission Service charged pursuant to the Tariff will be calculated using the costs of the transmission facilities of the Pick-Sloan Missouri Basin Program—Western Division. The rates for the ancillary services will be calculated using the costs of the generation facilities of the Pick-Sloan Missouri Basin Program—Western Division and the Fryingpan—Arkansas Project.

The RMR application processing fee will be $1,600.

Sierra Nevada Region

The Sierra Nevada Customer Service Region (SNR), located in Folsom, California, manages the Central Valley Project (CVP) transmission facilities in the state of California. These facilities were constructed for the primary purpose of marketing power resources from the CVP. SNR also has ownership rights to capacity in two multi-party transmission systems, the Pacific Northwest-Pacific Southwest Intertie Project (Pacific AC Intertie), and the

California-Oregon Transmission Project (COTP). Congress authorized SNR's participation in the Pacific AC Intertie for the purpose of importing power from the Pacific Northwest. COTP rights were acquired pursuant to Public Law 98–630, primarily for the purpose of delivering power to the United States Department of Energy Laboratories (DOE Labs) and Federal Fish and Wildlife refuges. Long-term use of the Pacific AC Intertie and COTP by third parties is restricted under existing contracts. SNR is a member of the Western Regional Transmission Association regional transmission group and operates within the Western Systems Coordinating Council reliability council.

The SNR does not operate a control area and as such may be unable to provide some or all of the services under the Tariff, including but not limited to, ancillary services and Network Integration Transmission Service.

The SNR application processing fee will be $1,300.

Upper Great Plains Region

The Upper Great Plains Region (UGPR) manages transmission facilities in the states of Montana, North Dakota, South Dakota, Nebraska, Minnesota, and Iowa which were constructed for the primary purpose of marketing power from the Pick-Sloan Missouri Basin Program—Eastern Division. The UGPR office is located in Billings, Montana. The UGPR manages a control area operations center in Watertown, South Dakota. The eastern portion of the UGPR system is operated in the Mid-Continent Area Power Pool (MAPP) reliability council. The western portion of the system is operated in the Western Systems Coordinating Council.

The UGPR transmission facilities are integrated with the transmission facilities of Basin Electric Power Cooperative (Basin) and Heartland Consumers Power District (Heartland) such that transmission services are provided over an integrated transmission system. UGPR rates for Point-to-Point and Network Integration Transmission Service charged pursuant to the Tariff will be calculated using the costs of the transmission facilities of UGPR, Basin, and Heartland that are included in the Transmission System. This Transmission System is also called the Integrated System (IS) and the rates are identified as IS Rates. The integration of these facilities as the IS and the use of the IS rates have been approved by the Administrator of Western through December 19, 1997. The definition of the Transmission System and the rates for Point-To-Point and Network Integration Transmission Service may be subject to change upon conclusion of an Open Access Transmission Service rate development process conducted pursuant to applicable Federal Law and regulations.

Both Basin and Heartland also own generating facilities and must commit to deliver the output of those resources to their respective members. Basin and Heartland will therefore reserve sufficient capacity in their transmission facilities to deliver that output.

Any Transmission Customer taking service under these Guidelines shall be subject to a Stranded Cost Charge payable to either UGPR, Basin or Heartland if such service is used for the transmission of power or energy that replaces wholly or in part, power or energy supplied by Western, Basin or Heartland respectively.

The Stranded Cost Charge of Basin shall be applicable regardless of whether the transmission relates to power and/or energy that is purchased by or on behalf of a Generation and Transmission Cooperative member of Basin (G&T), a Distribution Cooperative member of Basin or G&T, or a retail customer of a Distribution Cooperative member of Basin or a G&T.

The Stranded Cost Charge of Heartland shall be applicable whether the transmission service relates to power and/or energy that is purchased by or on behalf of a municipal customer of Heartland or a retail customer of a municipal customer of Heartland.

Stranded costs will be recovered only from a Transmission Customer who obtains transmission service under access rights granted through the Transmission Provider's compliance tariff developed pursuant to FERC Final Orders 888 and 888–A and causes either UGPR, Basin or Heartland to incur stranded costs. Stranded costs will be recovered through the terms and conditions of a separate contract entered into either by UGPR and the Transmission Customer or Basin and the Transmission Customer or Heartland and the Transmission Customer.

The UGPR application processing fee will be $1,700.

[FR Doc. 97–25332 Filed 9–25–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5898–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Collection Request for Iron and Steel Foundries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Collection Request for Iron and Steel Foundries, EPA ICR Number 1809.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 27, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No 1809.01.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Request for Iron and Steel Foundries; EPA ICR No. 1809.01. This is a new collection.

Affected entities: Entities potentially affected by this action are iron and steel foundries, which are facilities primarily engaged in manufacturing iron and steel castings. The Standard Industrial Classification (SIC) codes for these facilities include 3321 (gray and ductile iron foundries), 3322 (malleable iron foundries), 3324 (steel investment foundries), and 3325 (steel foundries, not elsewhere classified).

Abstract: The EPA is charged under section 112 of the Clean Air Act (the Act) with developing national emission standards for listed hazardous air pollutants (HAP). Preliminary information indicates that there are major sources of HAP in the iron and steel foundry source categories. These categories were listed pursuant to section 112(c) of the Act on July 16, 1992, and section 112(d) of the Act requires the Administrator to promulgate regulations establishing emission standards for this source category. Standards must be promulgated by November 15, 2000. The responses to the survey are mandatory and are being collected under the authority of section 114 of the Act.

The Emission Standards Division (ESD) of the Office of Air Quality Planning and Standards plans to use the survey responses to develop legally defensible maximum achievable control technology (MACT) standards. The focus of the survey is on determinations of HAP emissions, emission controls, and control performance, which are critical elements in the development of technology-based standards. Other questions in the survey provide information that ESD will use to develop reasonable estimates of impacts associated with potential standards, including emission reductions, cost, and economic impacts.

Specifically, the information will be used by ESD to develop estimates of emissions of HAP, make determinations with respect to probable "major" sources, and develop MACT standards for both new and existing foundries. The data base compiled from the results will be used to make a determination of the MACT floor for existing sources based on the average emission limitation achieved by the best-performing 12 percent of sources. The results will also aid in identifying the best controlled sources for a determination of MACT for new foundries. In addition, the data base will be invaluable to make defensible estimates of the impacts of the standards, including emissions and emission reductions, costs of control options and their cost effectiveness, and economic impacts. Because many foundries meet the definition of small entities, the survey is necessary for EPA to meet the requirements of the Regulatory Flexibility Act of 1980 and the Small Business Regulatory Enforcement Fairness Act of 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 3, 1997 (62 FR 30322); three comments were received. All three commenters supported the need for the survey to gather information to develop MACT standards and recommended an expeditious distribution to allow EPA to meet statutory deadlines.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 24 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Iron and steel foundries.

Estimated Number of Respondents: 742.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 5,681 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No 1809.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: September 23, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–25650 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5899–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Protection of Stratospheric Ozone: Labeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Protection of Stratospheric Ozone: Labeling (OMB control number 2060–0342 expiring September 30, 1997). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 27, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1757.02.

SUPPLEMENTARY INFORMATION:

Title: Protection of Stratospheric Ozone: Labeling (OMB Control No. 2060–0342; EPA ICR No. 1757.02.) expiring 09/30/97. This is a request for extension of a currently approved collection.

Abstract: The regulations in 40 CFR 82.100 through 82.124 require all products containing or made with a class I substance and all containers of class I and class II ozone-depleting substances to have an applicable warning label. The disclosure, in the form of labeling, will be used by consumers to make product choices based on environmental information and consumer preferences. These requirements are mandatory as authorized under section 611 of the Clean Air Act Amendments of 1990.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 2/26/97 (62 FR 8724); no comments were received.

Burden Statement: The annual public burden for disclosure of this information is estimated to average 63 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and

providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers, distributors, retailers, importers, and recyclers/reclaimers of class I and class II ozone-depleting substances.

Estimated Number of Respondents: 48.

Estimated Total Annual Hour Burden: 3024 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1757.02 and OMB Control No. 2060–0342 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: September 23, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–25651 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5484–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements filed September 15, 1997 through September 19, 1997, pursuant to 40 CFR 1506.9.

EIS No. 970365, Draft EIS, FHW, NM, New Mexico Highway 126 (NM–126), Cuba-La Cueva Road (also Known as Forest Highway 12) Improvement, COE Section 404 Permit and NPDES Permit, Sandoval and Rio Arriba Counties, NM, Due: November 14, 1997, Contact: Richard J. Cushing (303) 969–5910.

EIS No. 970366, Final EIS, AFS, AK, Swan Lake-Lake Tyee Intertie Project, Electrical Transmission Line and Associated Facilities Construction and Operation, Northwestern Portion of Revillagigedo Island from Upper Carroll Inlet to Behm Canal and the Northeastern Portion of Cleveland Peninsula from Spacious Bay to Bradfield Canal, Special-Use-Permit Issuance, Tongass, AK, Due: October 27, 1997, Contact: Bill Angelus (907) 225–2148.

EIS No. 970367, Final EIS, BLM, CA, Soledad Mountain Open Pit Leap Leach Gold Mine Project, Construction and Operation, Plan-of-Operations Approval, Mojave, Kern County, CA, Due: October 27, 1997, Contact: Ahmed Mohsen (760) 384–5421.

EIS No. 970368, Final EIS, BLM, NM, Little Rock Open-Pit Mine Project, Construction and Operation, Plan of Operations Approval, and Several Permits Issuance, Grant County, NM, Due: October 27, 1997, Contact: Juan Padilla (505) 525–4376.

EIS No. 970369, Draft EIS, AFS, MT, Wayup Mine/Fourth of July Road Access, Right-of-Way Grant, Kootenai National Forest, Libby Ranger District, Lincoln County, MT, Due: November 10, 1997, Contact: Jon Jeresek (406) 293–7773.

EIS No. 970370, Draft EIS, AFS, MT, Meadow Timber Sales, Implementation, Timber Harvesting, Road Construction and Prescribed Burning, Fortine Ranger District, Kootenai National Forest, Lincoln County, MT, Due: November 25, 1997, Contact: Joleen Dunham (406) 882–4451.

EIS No. 970371, Final EIS, USN, PR, VA, Relocatable over the Horizon Radar (ROTHR) System Construction and Operation, New and Updated Information on Fort Allen as Potential Site, Commonwealth of Puerto Rico and Chesapeake, VA, Due: October 27, 1997, Contact: Ms. Linda Blount (757) 322–4892.

Dated: September 23, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–25838 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5484-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 25, 1997 through August 29, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–FRC–E02006–MS Rating EC2, Destin Natural Gas Pipeline Project, Construction and Operation, Six Major Interstate Pipelines in the Gulf of Mexico, Southern Natural Gas, COE Section 10 and 404 Permits, Right-of-Way and Special-Use Permits.

Summary: EPA expressed concerns over the loss of forested wetlands, the need for numerous water body crossings, the need to address potential environmental justice concerns, and the need for documentation of annual nitrogen oxide emissions of the proposed new compressors.

ERP No. D–MMS–E02009–00 Rating EC2, Central Planning Area, Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales 169, 172, 175, 178 and 182, Lease Offering, Offshore Marine Environment and Coastal Counties/Parishes of AL, MS, LA and TX.

Summary: EPA expressed concerns regarding inadequate protection of benthic marine habitats and MMS allowing pipeline projects to be reviewed independent of production projects. EPA preferrers the Alternative B.

ERP No. DS–COE–K67020–CA Rating EO2, Syar Mining Operation and Reclamation Plan, Six Sites Selected along the Russian River, New and Updated Information, Construction, Mining-Use-Permit and COE Section 404 Permit, City of Healdsburg, Sonoma County, CA.

Summary: EPA expressed environmental objections with the proposed Project because it appears to be the alternative which is most damaging to the aquatic environment, especially in terms of adverse impacts to riffle-pool complexes and anadromous fisheries, including Federally-listed species. EPA was also concerned that the SDEIS did not propose mitigation for direct and indirect impacts to Section 404 regulated resources, including wetlands and riffle-pool complexes, over the life of the project.

ERP No. DS–NOA–K90025–CA Rating LO, Monterey Bay National Marine Sanctuary Management Plan, Updated Information, To Amend the Designation Document and Regulations to Allow Jade Collecting in the Sanctuary, San Mateo, Santa Cruz and Monterey Counties, CA.

Summary: EPA had no objection to the action as proposed.

Final EISs

ERP No. F–COE–E30037–FL, Brevard County Shore Protection Study, Implementation, Beach Restoration Project, Brevard County, FL.

Summary: EPA expressed environmental concerns that given the magnitude of the coastal erosion rates in Brevard County, it is unclear whether the proposed project would have long-term benefits despite the adverse environmental impacts to the nearshore environment.

ERP No. F–COE–E30038–FL, Coast of Florida Erosion and Storm Effects Study Region III, Construction, Operation and Maintenance, Shore Protection Project, Palm Beach, Broward and Dade Counties, FL.

Summary: EPA had no additional comments regarding the Final EIS.

ERP No. F–FAA–E51044–NC, Initial Development of the North Carolina Global TransPark (NCGTP) Complex, Implementation, Airport Layout Plan Approval, COE Section 404 Permit, Kinston, Lenoir County, NC.

Summary: EPA's review found that the document addressed most environmental concerns adequately. A wetland mitigation proposal was not finalized, as had been requested.

ERP No. F–FHW–C40135–NY, I–287 Cross Westchester Expressway (CWE) Transportation Improvements, New York State Thruway Route 303 to Route 120, Funding, Right-of-Way Acquisition, COE Section 10 and 404 Permits, Rockland and Westchester Counties, NY.

Summary: EPA had concluded that the proposed project would not result in significant adverse environmental impacts and had no objections to its implementation.

ERP No. F–FHW–K40197–CA, East Sonora Bypass Corridor Construction, CA–108 from Post Mile M1.8 to Post Mile R6.9 near Sonora, Funding and Right-of-Way, City of Sonora, Tuolumne County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–L61213–00, Nez Perce National Historical Park and Big Hole National Battlefield General Management Plan, Implementation, Asotin and Okanogan Counties, WA; Wallowa County, OR; Idaho, Lewis, Nez Perce, Clearwater and Clank Counties, ID; and Blaine, Yellowstone and Beaverhead Counties, MT.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–SCS–G36146–OK, Middle Deep Red Run Creek Watershed Plan, Implementation, Funding and Possible COE Section 404 Permit, Central Rolling Red Plains, Tillman, Comanche and Kiowa Counties, OK.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–UAF–G11032–TX, Reese Air Force Base (AFB) Disposal and Reuse, Implementation, NPDES Permit and COE Section 404 Permit, Lubbock and Terry Counties, TX.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

Dated: September 23, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–25639 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5898–8]

Clean Air Act Advisory Committee

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

Open Meeting Notice

Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Friday November 7, 1997, from 8:30 a.m. to 3:00 p.m. at Sheraton Grand Hotel, 4860 W. Kennedy Blvd., Tampa, Florida 33609. Seating will be available on a first come, first served basis. The Permits/NSR/Toxics Integration Subcommittee, the Economic Incentives and Regulatory Innovations Subcommittee, the Linking Transportation, Land Use and Air Quality Concerns Subcommittee will conduct meetings on Thursday November 6, 1997, from approximately 8:30 a.m. to 10:30 a.m. at the same hotel.

Inspection of Committee Documents

The committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available for contacting Committee DFO Paul Rasmussen at (202) 260–6877.

FOR FURTHER INFORMATION CONTACT: Concerning this meeting of the CAAAC, please contact Paul Rasmussen, Officer of Air and Radiation, US EPA (202) 260–6877, Fax (202) 260–4185 or by mail at US EPA, Officer of Air and Radiation (Mail Code 6102), Washington, D.C. 20460. If you would like to receive an agenda for the CAAAC meeting, please leave your fax number on Mr. Rasmussen's voice mail and it will be forwarded to you.

Dated: September 18, 1997.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–25652 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00508; FRL–5748–4]

State FIFRA Issues Research and Evaluation Group (SFIREG) Water Quality and Pesticide Disposal Working Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation (SFIREG) Water Quality and Pesticide Disposal Working Committee will hold a 2-day meeting, October 6, and 7, 1997. This notice announces the location and times for the meeting and sets forth the tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Water Quality and Pesticide Disposal

will meet on Monday, October 6, 1997, from 8:30 a.m. to 5:00 p.m. Tuesday, October 7, 1997, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at: the National Airport Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA, 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: (703) 305–5306; (703) 308–1850 (fax); e-mail: Lyon.elaine.@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Water Quality and Pesticide Disposal includes the following:

1. Surface Water - storm water retention ponds and sanitary waste water treatment facilities.
2. Lysimeters technology.
3. Update on state management plan rule.
4. Update on restricted use product rule.
5. Measures of success.
6. Rinse water reuse.
7. Reports from committee members.
8. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: September 22, 1997.

Jay Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 97–25757 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–760; FRL–5740–2]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–760, must be received on or before October 27, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Indira Gairola, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. W-57, 4th floor, CS #1, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, 703–308–8371, e-mail: gairola.indira@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–760] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–760] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 16, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

AgrEvo

PP 7F4850

EPA has received a pesticide petition (PP 7F4850) from AgrEvo, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of herbicide safener Mefenpyr-diethyl (HOE 107892) on wheat and barley commodities. The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography using UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The fate of mefenpyr-diethyl has been determined in young barley plants and the nature of the residue is understood. Residues of concern are mefenpyr-diethyl and its 2,4–dichlorophenyl-pyrazoline metabolites, all of which are detected and quantified by the analytical method described above.

Residue trials have been conducted in the United States in 1995 and 1996. When applied as a single application at a rate of 0.089 lb. of safener per acre, combined residues in wheat or barley grain did not exceed 0.04 ppm. In wheat or barley straw, combined residues did not exceed 0.67 ppm, and in wheat or barley hay combined residues did not exceed 0.35 ppm. In these same trials, combined residues did not exceed 0.55 ppm in wheat forage. Thus, the proposed tolerances of 0.05 ppm in barley and wheat grain, 0.75 ppm in wheat straw and forage, 0.5 ppm in wheat and barley hay, and 1.0 ppm in barley straw are adequate.

2. *Analytical method.* A practical analytical method utilizing gas chromatography and a mass selective detector is available for detecting and measuring levels of mefenpyr-diethyl and its 2,4–dichlorophenyl-pyrazoline containing metabolites in wheat grain and straw. The limit of quantitation (LOQ) is 0.01 mg/kg (ppm) in wheat and barley grain, 0.05 mg/kg (ppm) in wheat and barley straw and wheat hay, and 0.1 ppm in wheat forage.

3. *Magnitude of residues.* The fate of mefenpyr-diethyl has been determined in young barley plants and the nature of the residue is understood. Residues of concern are mefenpyr-diethyl and its 2,4–dichlorophenyl-pyrazoline metabolites, all of which are detected and quantified by the analytical method described above.

Residue trials have been conducted in the United States in 1995 and 1996. When applied as a single application at a rate of 0.089 lb. of safener per acre, combined residues in wheat or barley grain did not exceed 0.04 ppm. In wheat or barley straw, combined residues did not exceed 0.67 ppm, and in wheat or barley hay combined residues did not exceed 0.35 ppm. In these same trials, combined residues did not exceed 0.55 ppm in wheat forage. Thus, the proposed tolerances of 0.05 ppm in barley and wheat grain, 0.75 ppm in wheat straw and forage, 0.5 ppm in wheat and barley hay, and 1.0 ppm in barley straw are adequate.

The metabolism of mefenpyr-diethyl in poultry is adequately understood. Laying hens were fed the compound at a level approximately 5–times the worst case dietary burden for 14–days. Low levels of residues of mefenpyr-diethyl were detected in fat, and low levels of residues of mefenpyr-diethyl and its 2,4–dichlorophenyl-pyrazoline containing metabolites were detected in liver and eggs.

The metabolism of mefenpyr-diethyl in ruminants is also adequately understood. A lactating goat was dosed with the compound at a level approximately 56–times the worst case dietary burden for 7–days. Low levels of residues of mefenpyr-diethyl and/or its 2,4–dichlorophenyl-pyrazoline containing metabolites were detected in liver and eggs.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral LD_{50} of mefenpyr-diethyl was greater than 5,000 mg/kg in both rats and mice. The acute rat dermal LD_{50} was greater than 4,000 mg/kg, and the acute rat inhalation LC_{50} (4-hour) was greater than 1.32 mg/l. Mefenpyr-diethyl was slightly irritating to the eyes of rabbits. It was not irritating to rabbit skin in a standard dermal irritation study but was a weak dermal sensitizer in a guinea pig maximization study. Evidence of photoirritation, but no photosensitization, was observed in other studies with guinea pigs. Based on these results, mefenpyr-diethyl is expected to be classified as TOXICITY CATEGORY IV for acute oral toxicity and skin irritation, and TOXICITY CATEGORY III for acute dermal and inhalation toxicity, and eye irritation.

2. *Genotoxicty.* No evidence of genotoxicity was observed in a battery of studies including *Salmonella* and *E. coli* bacterial gene mutation assays, an HGPRT gene mutation assay in Chinese hamster cells, a mouse micronucleus assay, an *in vitro* chromosome aberration assay, and an *in vitro* unscheduled DNA synthesis assay.

3. *Reproductive and developmental toxicity.* Two rat developmental toxicity studies have been conducted with mefenpyr-diethyl. In the first study, Wistar rats were administered mefenpyr-diethyl by gavage at dose levels of 0 and 1,000 mg/kg body weight/day on gestation days 7 to 16. The fetuses were delivered by cesarean section on gestation day 21 and evaluated for external, visceral and/or skeletal anomalies. No maternal or developmental effects were noted in this study. Thus, the NOEL for maternal and developmental effects was considered to be 1,000 mg/kg bodyweight. In the second study, Wistar rats were again administered mefenpyr-diethyl by gavage at dose levels of 0 and 1,000 mg/kg body weight/day on gestation days 7 to 16, but the dams were then allowed to deliver normally and the offspring were evaluated for up to 44–days post-partum. No maternal effects were observed in this study. There was a marginal decrease in the body weight of the offspring at birth and during lactation but no other changes in physical, functional, or behavioral endpoints were observed.

In a rabbit developmental toxicity study, mefenpyr-diethyl was administered by gavage to Himalayan rabbits at dose levels of 0, 40, 100, and 250 mg/kg body weight/day on gestation days 6 to 18. The highest dose tested was toxic to both dams and embryos, as evidenced by a decreased food and water consumption, decreased maternal body weights, abortions, and increased incidences of intrauterine death. No morphological effects on the offspring were noted. The NOEL for maternal and embryonic toxicity was considered to be 100 mg/kg body weight.

A 2–generation reproduction study was conducted in Wistar rats fed diet containing mefenpyr-diethyl at dietary concentrations of 0, 200, 1,000, and 5,000 ppm for 70–days then continuously through successive generations. Effects observed at 5,000 ppm consisted of decreased food consumption, decreased body weight gain, increased spleen weights and increased splenic hematopoiesis in the parental animals, and decreased body weights in the pups during lactation. No effects on reproductive parameters were noted. Thus, the overall study NOEL for both parents and the progeny was considered to be 1,000 ppm, equivalent to a mean daily substance intake of 75 and 99 mg/kg bodyweight for the males and females, respectively.

4. *Subchronic toxicity.* In a 90–day feeding study, mefenpyr-diethyl was administered to Wistar rats at concentrations of 0, 100, 500, 2,500, and 7,500 ppm in the diet. Based on slight reduction in body weight at 7,500 ppm and minimal to slight anemia at 2,500 and 7,500 ppm, the NOEL was considered to be 500 ppm, equivalent to

a mean daily test substance intake of 42 mg/kg body weight.

In a 90–day feeding study in beagle dogs, mefenpyr-diethyl was administered in the diet at concentrations of 0, 400, 2,000, and 10,000 ppm. Effects observed at 10,000 ppm included decreased food consumption and body weight gain, increased liver weights, anemia, and alterations in several clinical chemistry parameters. There were no histopathological changes. Increased liver weight and increases in two serum enzymes were noted at 2,000 ppm. Thus, the NOEL was considered to be 400 ppm, equivalent to a mean daily test substance intake of 15 mg/kg body weight.

In a 90–day feeding study in NMRI mice, mefenpyr-diethyl was administered in the diet at concentrations of 0, 100, 500, 2,500, and 7,500 ppm. Effects noted at 7,500 ppm included decreased food consumption and body weight gain, slight anemia, alterations in several hematology and clinical chemistry parameters, slightly increased spleen weights, and markedly increased liver weights. Histopathological evaluation revealed hepatocellular hypertrophy in the liver, and increased hemosiderin deposits and compensatory hematopoiesis in the spleen. Effects noted at 2,500 ppm included decreased weight gain, minor alterations in several clinical pathology parameters, slight increases in liver weights, and hepatocellular hypertrophy. The NOEL for this study was considered to be 500 ppm, equivalent to a mean daily substance intake of 89 mg/kg body weight.

In a subchronic dermal toxicity study, mefenpyr-diethyl was applied to Wistar rats at dose levels of 0, 100, 300, and 1,000 mg/kg body weight for six hours per day, 5–days a week, for a total of 21–days over a period of 30–days. Based on slight anemia observed among the females at 1,000 mg/kg body weight, the NOEL was considered to be 300 mg/kg bodyweight.

5. *Chronic toxicity.* A 2–year feeding chronic toxicity/carcinogenicity study was conducted in Wistar rats with mefenpyr-diethyl at dietary concentrations of 0, 40, 200, 1,000, and 5,000 ppm. No evidence of carcinogenicity was observed in this study. Based on slight reductions in female body weights and slight anemia in both sexes at 5,000 ppm, the NOEL was considered to be 1,000 ppm, equivalent to a mean daily substance intake of 48 and 60 mg/kg bodyweight in males and females, respectively.

A 2–year feeding chronic toxicity/carcinogenicity study was conducted in NMRI mice with mefenpyr-diethyl at dietary concentrations of 0, 20, 100, 500, and 2,500 ppm. No evidence of carcinogenicity was observed in this study. Slight but consistently reduced body weights and slight increases in liver weight were noted in male mice at 2,500 ppm. Hepatocellular hypertrophy was noted in both sexes at 2,500 ppm, in male mice only at 500 ppm, and in a few males at 100 ppm. Hematology, serum biochemistry and urinalysis parameters were unaffected. Because of the low incidence and severity of the hepatocellular hypertrophy at 100 ppm, the NOAEL for this study was considered to be 500 ppm, equivalent to a mean daily intake of 71 mg/kg body weight.

A 1–year feeding study was conducted in beagle dogs with mefenpyr-diethyl at dietary concentrations of 0, 60, 300, 1,500, and 7,500 ppm. There was a slight decrease in food consumption in males at 7,500 ppm, but body weights were unaffected. Other effects at this dose level consisted of slight anemia, a slight increase in platelet count, alterations in several clinical chemistry parameters, moderately to markedly increased liver weights, slightly increased thyroid weights, slightly decreased prostate weights, and minimal intrahepatic cholestasis. The NOEL for this study was considered to be 1,500 ppm, equivalent to a mean daily test substance intake of 55 mg/kg body weight.

6. *Animal metabolism.* The metabolism of mefenpyr-diethyl in poultry is adequately understood. Laying hens were fed the compound at a level approximately 5–times the worst case dietary burden for 14–days. Low levels of residues of mefenpyr-diethyl were detected in fat, and low levels of residues of mefenpyr-diethyl and its 2,4–dichlorophenyl-pyrazoline containing metabolites were detected in liver and eggs.

The metabolism of mefenpyr-diethyl in ruminants is also adequately understood. A lactating goat was dosed with the compound at a level approximately 56–times the worst case dietary burden for 7–days. Low levels of residues of mefenpyr-diethyl and/or its 2,4–dichlorophenyl-pyrazoline containing metabolites were detected in kidney, liver, fat, and milk.

Based on the results observed in these metabolism studies, secondary residues in animal commodities are not expected to be of concern in terms of dietary risk to consumers.

C. Aggregate Exposure

Mefenpyr-diethyl is intended for use on agricultural crops as a herbicide safening agent. As such, non-occupational exposures to mefenpyr-diethyl would be limited to potential exposures via residues in food or water. There are no acute toxicity concerns with mefenpyr-diethyl. Therefore, only chronic exposures are being addressed here.

Dietary exposure—1. *Food.* Potential dietary exposures from food under the proposed tolerances were estimated using the Exposure 1 software system (TAS, Inc.) and the 1977–78 USDA consumption data. For the purposes of this risk assessment, AgrEvo USA Company has made the overly conservative assumption that 100% of all wheat and barley commodities will contain residues of mefenpyr-diethyl and that all of those residues will be at the proposed tolerance level. Further, default concentration factors are assumed for processed wheat and barley commodities. Thus, this estimate should result in a gross overestimation of actual human exposure. allowing administration. Metabolite profiles were similar following oral and dermal exposures, with the route of metabolism being hydrolysis of the two carboxylic acid ester groups, and decarboxylation of one of the carboxylic acid groups resulting in the aromatization of the heterocyclic ring.

2. *Drinking water.* The potential for mefenpyr-diethyl to leach into groundwater has been assessed in various laboratory studies. These experiments clearly demonstrate that mefenpyr-diethyl is rapidly degraded in the environment, chiefly via metabolism in biologically active soils. Aerobic degradation half-lives of 3–days or less were observed under a wide range of experimental conditions. Clear degradation of metabolites was also observed, with soil photolysis accelerating the process. Mefenpyr-diethyl was stable to hydrolysis under acid conditions, but was rapidly degraded at mildly alkaline pH vales. Rapid photodegradation was observed under those aqueous conditions where mefenpyr-diethyl is stable to hydrolysis. The compound sorbed readily to soil organic matter, therefore, leaching is not of concern. Based on these environmental fate data and the anticipated conditions of use, the potential for movement of mefenpyr-diethyl is considered to be low. As such, the potential contribution of any residues of the compound in water to the total dietary intake of mefenpyr-diethyl will be negligible.

D. Cumulative Effects

The potential for mefenpyr-diethyl to leach into groundwater has been assessed in various laboratory studies. These experiments clearly demonstrate that mefenpyr-diethyl is rapidly degraded in the environment, chiefly via metabolism in biologically active soils. Aerobic degradation half-lives of 3– days or less were observed under a wide range of experimental conditions. Clear degradation of metabolites was also observed, with soil photolysis accelerating the process. Mefenpyr-diethyl was stable to hydrolysis under acid conditions, but was rapidly degraded at mildly alkaline pH vales. Rapid photodegradation was observed under those aqueous conditions where mefenpyr-diethyl is stable to hydrolysis. The compound sorbed readily to soil organic matter, therefore leaching is not of concern. Based on these environmental fate data and the anticipated conditions of use, the potential for movement of mefenpyr-diethyl is considered to be low. As such, the potential contribution of any residues of the compound in water to the total dietary intake of mefenpyr-diethyl will be negligible.

E. Safety Determination

1. *U.S. population.* A Reference Dose value (RfD) of 0.48 mg/kg body weight/day is appropriate for chronic dietary risk assessments of mefenpyr-diethyl. This RfD is based on the 2–year rat chronic toxicity study in which the NOEL was 1,000 ppm, equivalent to 48 mg/kg body weight for males, and a 100–fold safety factor to account for interspecies extrapolation and intraspecies variation.

Under the conservative (worst-case) dietary exposure assumption described above in paragraph D.1., chronic dietary exposures will utilize only 0.11% of the RfD for the general U.S. population. There is generally no concern for exposures below 100% of the RfD since it represents the level at or below which no appreciable risks to human health is posed. Thus, there is reasonable certainty that no harm will result to the U.S. population in general from aggregate exposure to mefenpyr-diethyl residues.

2. *Infants and children.* Data from rat and rabbit development toxicity studies and rat multigeneration reproduction studies are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposure to the pesticide.

FFDCA Section 408 provides that the Agency may apply an additional safety factor for infants and children to account for pre- and post-natal toxicity or incompleteness of the database. However, the toxicology database for mefenpyr-diethyl regarding potential pre- and post-natal effects in offspring is complete according to existing Agency data requirements and does not indicate any particular developmental or reproductive concerns. No reproductive effects were noted in any of the studies and the NOEL's for the parents and offspring were the same in three of the four studies. A marginal decrease in pup weights was noted at a non-maternally toxic dose level in the second rat developmental toxicity study, but only at a dose level of 1,000 mg/kg/day. Thus, there does not appear to be any significant difference in sensitivity to mefenpyr-diethyl between adults and offspring. Furthermore, the proposed RfD of 0.48 mg/kg/day, which is based on a 48 mg/kg/day NOEL from the 2–year rat feeding study, already provides for a safety factor of 208 relative to the 100 mg/kg/day developmental NOEL from the rabbit developmental toxicity study. Thus, the RfD of 0.48 mg/kg/day is considered to be appropriate for assessing potential risks to infants and children and an additional uncertainty factor is not warranted.

Using the conservative assumptions described above, aggregate exposure to mefenpyr-diethyl is expected to utilize 0.25% of the reference dose in the population subgroups children 1–6 years old and 0.18% of the reference dose in the population subgroup children 7–12 years old. These numbers would, in all likelihood, be significantly lower if an adjustment for actual percent of crop treated was considered.

F. International Tolerances

Italy has established an MRL (maximum residue limit) of 0.05 ppm in wheat grain for residues of mefenpyr-diethyl and metabolites.

[FR Doc. 97–25656 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5899–2]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding ProSoCo, Inc., Kansas City, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding ProSoCo, Inc., Kansas City, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment to the proposed assessment.

Under 33 U.S.C. 1321(b)(6), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 132(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On August 6, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of ProSoCo, Inc., Kansas City, Kansas, EPCRA Docket No. VII–97E–44 and CWA Docket No. VII–97–W–0017.

The Complaint proposes a penalty of Ten Thousand Dollars ($10,000) under the Clean Water Act for the release and discharge of a hazardous substance into waters of the United States in violation of section 103(a) of CERCLA and section 311(b)(3) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the

proposed penalty assessment, or otherwise participate in the proceeding should contact Vanessa Cobbs, Regional Hearing Clerk, at (913) 551–7630.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by ProSoCo, Inc., is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: September 17, 1997.

William A. Spratlin,

Acting Regional Director.

[FR Doc. 97–25648 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5899–37]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding Morton International, Inc., Hutchinson, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Morton International, Inc., Hutchinson, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1321(b)(6), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On March 31, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of, Morton International, Inc., Hutchinson, Kansas; EPCRA Docket No. VII–96E–218 and CWA Docket No. VII–97–W–0008.

The Complaint proposes a penalty of Six Thousand Nine Hundred Dollars ($6,900) for the discharge of a hazardous substance in violation of section 11(b)(3) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact Vanessa Cobbs, Regional Hearing Clerk at (913) 551–7630.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Morton International, Inc. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: September 17, 1997.

William A. Spratlin,

Regional Administrator.

[FR Doc. 97–25649 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:46 a.m. on Tuesday, September 23, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a personnel matter and other matters which relate to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Nicolas P. Retsinas (Acting Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: September 23, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97–25780 Filed 9–24–97; 2:37 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 10, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bradley Investments, L.L.L.P., Golden, Colorado, Leo N. Bradley, Golden, Colorado, Susan Q. Bradley, Denver, Colorado, and Jeffrey N. Bradley, Denver, Colorado; to acquire shares of Evergreen Bancorporation, Evergreen, Colorado, and thereby indirectly acquire Evergreen National Bank, Evergreen, Colorado.

Board of Governors of the Federal Reserve System, September 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25567 Filed 9–25–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Banks or Bank Holding Companies, Correction

This notice corrects a notice (FR Doc. 97-24579) published on page 48662 of the issue for Tuesday, September 16, 1997.

Under the Federal Reserve Bank of Chicago heading, the entry for James Randel Smith, Auburn, Nebreska, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. James Randel Smith, Auburn, Nebraska, to acquire 33.3 percent; Jerry A. Jobe, Tabor, Iowa, to retain 33.3 percent; and Grant T. Schaaf, Randolph, Iowa, to retain 33.3 percent, of the voting shares of Tabor Enterprises, Inc., Tabor, Iowa, and thereby indirectly acquire First State Bank, Tabor, Iowa.

Comments on this application must be received by October 1, 1997.

Board of Governors of the Federal Reserve System, September 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25570 Filed 9–25–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Penns Wood Bancorp, Inc., Williamsport, Pennsylvania; to acquire 10 percent of the voting shares of Columbia Financial Corporation, Bloomsburg, Pennsylvania, and thereby indirectly acquire First Columbia Bank & Trust Company, Bloomsburg, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Horizon Bancorp of South Arkansas, Inc., Magnolia, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Horizon Bank of Columbia County, Magnolia, Arkansas.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. The First National Bank at St. James ESOP, St. James, Minnesota; to acquire an additional 2.3 percent of the voting shares of The First National Agency at St. James, St. James, Minnesota, and thereby indirectly acquire The First National Bank at St. James, St. James, Minnesota. Applicant is also applying to retroactively acquire .55 percent of the voting shares of The First National Agency at St. James.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Community Bankshares, Inc., Denver, Colorado; to acquire 90 percent of the voting shares of Dove Creek State Bank, Dove Creek, Colorado.

2. Trustbank Financial Corporation, Denver, Colorado, to become a bank holding company by acquiring 100 percent of the voting shares of Trust Bank of Colorado, Denver, Colorado.

Board of Governors of the Federal Reserve System, September 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25569 Filed 9–25–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Preimer Bancorp, Inc., Doylestown, Pennsylvnia; to become a bank holding company by acquiring 100 percent of the voting shares of Preimer Bank, Doylestown, Pennsylvania.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Builders Financial Corporation, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Builders Bank, Chicago, Illinois (in organization).

2. Washington Bancorp, Washington, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Rubio Savings Bank of Brighton, Brighton, Iowa. Applicant also has applied to acquire Washington Federal Savings Bank, and thereby operate a savings association, pursuant to § 225.28(b)(11) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Roseau Realty Co., Inc., Roseau, Minnesota; to become a bank holding company by acquiring 74.9 percent of the voting shares of Citizens State Bank of Roseau, Roseau, Minnesota.

In connection with this application, Applicant also has applied to engage in general insurance agency activities in a town with a population less than 5,000, pursuant to § 225.28(b)(11)(iii)(A) of the Board's Regulation Y.

2. Winter-Park Bancshares, Inc., Cameron, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of, and thereby merge with, Owen-Curtiss Financial Corporation, Rice Lake, Wisconsin, which has applied to become a bank holding company, and thereby indirectly acquire Brill Bancshares, Inc., Rice Lake, Wisconsin, and Brill State Bank, Brill, Wisconsin.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. CSB Bancshares, Inc., Ellsworth, Kansas; to acquire 5.92 percent of the voting shares of Wilson Bancshares, Inc., Wilson, Kansas, and thereby indirectly acquire Wilson State Bank, Wilson, Kansas.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. SWB Bancshares, Inc., Fort Worth, Texas, and SW Financial, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Southwest Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, September 23, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-25659 Filed 9-25-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 10, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Mutual Bancorp of the Berkshires, Inc., Pittsfield, Massachusetts; to acquire Trust Company of the Berkshires, N.A., Pittsfield, Massachusetts, and there engage in performing trust company functions, pursuant to § 225.28(b)(5) of the Board's Regulation Y.

2. Mutual Bancorp of the Berkshires, Inc., Pittsfield, Massachusetts; to acquire Pittsfield Central Development Company, LLC, Pittsfield, Massachusetts, and thereby engage in community development activities, pursuant to § 225.28(b)(12) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National Commerce Bancorporation, Memphis, Tennessee; to engage *de novo* through its subsidiary, First Market Bank, FSB, Memphis, Tennessee, in the operation of a federal savings bank, pursuant to § 225.28(b)(4) of the Board's Regulation Y. Notificant will acquire at least 49 percent of FSB and will operate FSB with a co-venturer, Ukrop's Super Markets, Inc., Richmond, Virginia. Comments must be received by October 20, 1997.

Board of Governors of the Federal Reserve System, September 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-25568 Filed 9-25-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 14, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Boston Private Bancorp, Inc., Boston, Massachusetts; to acquire Westfield Capital Management Company, Inc., Boston, Massachusetts, through a *de novo* subsidiary, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 23, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-25660 Filed 9-25-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Refugee Resettlement Program Estimates: CMA, ORR-1.

OMB No.: 0970-0030.

Description: ORR reimburses, to the extent of available appropriations, certain non-Federal costs for the provision of cash and medical assistance to refugees, along with allowable expenses in the administration of the Refugee Resettlement Program. ORR needs sound State estimates of likely expenditures for refugee cash, medical, and administrative (CMA) expenditures so that it can anticipate Federal costs in upcoming quarters. If Federal costs are anticipated to exceed budget allocations, ORR must take steps to reduce Federal expenses, such as limiting the number of months of eligibility for Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA).

To meet the need for reliable State estimates of anticipated expenses, ORR has developed a single-page form in which States estimate the average number of recipients for each category of assistance, the average unit cost over the next 12 months, and the expense for the overall administration of the program. This form, the ORR-1 (formerly Form FSA-601) must be submitted prior to the beginning of each Federal fiscal year. Without this information, ORR would be out of compliance with the intent of its legislation and otherwise unable to estimate program costs adequately.

In addition, the ORR-1 serves as the State's application for reimbursement of its CMA expenses. Submission of this form is thus required by section 412(a)(4) of the Immigration and Nationality Act which provides that "no grant or contract may be awarded under this section unless an appropriate proposal and application * * * are submitted to, and approved by, the appropriate administering official."

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR-1	24	1	.5	24

Estimated Total Annual Burden Hours: 24

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Service, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 22, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97-25603 Filed 9-25-97; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96F-0493]

Gerard T. O'Brien; Denial Without Prejudice of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying a petition (FAP 7A4530) proposing that the food additive regulations be amended to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry. The petitioner did not provide sufficient data and information for the agency to conclude that the proposed use of the food additive is safe, or that it will have its intended technical effect.

DATES: Written objections and request for a hearing by October 27, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204-0001, 202-418-3078.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register on January 2, 1997 (62 FR 101), FDA announced that a food additive petition (FAP 7A4530) had been filed by Gerard T. O'Brien, 2162 Skyline Dr., Gainesville, GA 30501. The petitioner requested that FDA amend the food additive regulations to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry.

In acting on any food additive petition, FDA must determine whether the proposed use of the additive under the conditions of use to be specified in the regulation is safe (section 409(c)(3)(A) of the Federal Food, Drug,

and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A))). The burden is on the petitioner to submit to FDA data and information that are adequate to provide the basis for such a determination. The data and information must include all studies, whether favorable or adverse, relevant to the safety of the food additive and relevant to whether the food additive will achieve its intended physical or technical effect.

FAP 7A4530 was submitted to the agency on September 24, 1987, as FAP 7A4045. The agency found that the petition did not meet the minimum requirements for filing in accordance with § 171.1(c) (21 CFR 171.1(c)). Despite FDA requests to petitioner for data and information to correct the deficiencies (Refs. 1, 2, and 3), the petitioner failed to submit such data and information to demonstrate that the food additive will achieve its intended technical effect, and that it is safe for the intended use. Specifically, the petitioner failed to provide data and information to demonstrate that the hydrogen peroxide and sodium bicarbonate mixture would significantly reduce pathogenic bacterial contamination on the surface of fresh poultry, e.g. *Salmonella*, *Escherichia coli*, and psychrophiles. In addition, the petitioner failed to provide data and information on whether oxidative effects of hydrogen peroxide occur on poultry as a result of the proposed use.

Consequently, FDA requested that the petitioner submit laboratory data to demonstrate that there is reduced bacterial contamination on poultry processed with hydrogen peroxide and sodium bicarbonate, to provide TBA (2-thiobarbituric acid, a representative measure of lipid oxidation) values in skin/fat and meat from processed poultry, and to provide the basis to estimate the amount of hydrogen peroxide that reacts with poultry during the proposed treatment. FDA requested this information to: (1) Determine the bacteriocidal effectiveness of the petitioned use of the additive, (2) assess the degree of oxidation of poultry lipids by hydrogen peroxide, and (3) estimate the human dietary exposure to oxidation products that might be formed in the chicken during processing and might remain until consumption. The petitioner failed to submit this information that the agency had requested in several letters. Without this information the agency is not able to determine the microbiological efficacy and safety of treating fresh poultry with a mixture of hydrogen peroxide and sodium bicarbonate. This information is essential for the agency to determine whether the proposed use of this food additive is safe, and whether it will achieve its intended technical effect.

FDA has several safety concerns regarding the petitioned use of the mixture of hydrogen peroxide and sodium bicarbonate that would be addressed by the data and information that FDA requested from the petitioner. One concern is that this mixture may not kill significant numbers of the pathogenic microbes on the surface of the chicken skin. Thus, human exposure to these pathogens could be higher with the use of the mixture of hydrogen peroxide and sodium bicarbonate than human exposure to these pathogens from currently used methods for killing bacteria on the surface of chicken skin, for example processing poultry in chlorinated water. In addition, it is possible that the mixture of hydrogen peroxide and sodium bicarbonate will kill off nonpathogenic microbes, giving a competitive advantage to the pathogens, so that they may reproduce to higher numbers. Another safety concern is that hydrogen peroxide is a strong oxidant that could interact with lipids and other biological constituents in the skin of chicken to form oxidation products. These oxidation products could potentially be mutagenic and represent a hazard to consumers.

Thus, on March 9, 1992, because the petitioner failed to correct the deficiencies in the petition as previously described, FDA notified the petitioner that it would not continue to evaluate this submitted petition (Ref. 4).

Although the petitioner continued to correspond with the agency, at no time did he submit the requested information. In a September 18, 1995, letter to FDA the petitioner asked whether he had exhausted his administrative remedies. Before receiving a response from FDA, on December 6, 1995, the petitioner filed, in the U.S. District Court for the Northern District of Georgia, Gainesville Division, a pro se complaint against FDA and others alleging patent and copyright infringement, antitrust violations, Racketeer Influenced and Corrupt Organizations Act violations, fraud, and various torts. The Court dismissed the complaints without prejudice on March 20, 1996.

In a letter dated October 16, 1996, the agency responded to the petitioner's earlier question on whether the petitioner had exhausted his administrative remedies. In that letter, the agency stated that the petitioner had not exhausted his administrative remedies, and that he could either file a new petition that would include the supplemental information requested by the agency or send a written request to FDA asking the agency to file the petition as submitted in accordance with § 171.1(i)(1). The petitioner responded in a November 4, 1996, letter indicating that he wanted FDA to approve the proposed use of the additive and did not intend to supplement the petition. Therefore, on December 10, 1996, FDA filed the petition as submitted in accordance with § 171.1(i)(1) (62 FR 101, January 2, 1997).

The filed petition (FAP 7A4530) proposed that the food additive regulations be amended to provide for the safe use of a mixture of hydrogen peroxide and sodium bicarbonate as an antimicrobial agent on fresh poultry. After reviewing the petition, which the petitioner did not supplement in order to correct previously identified deficiencies, the agency concluded that the petition does not contain data and information that would allow the agency to conclude that the food additive is safe and that it will achieve its intended technical effect. Therefore, FDA is denying FAP 7A4530 in accordance with 21 CFR 171.100(a).

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter dated January 6, 1988, from FDA to the petitioner.
2. Letter dated April 14, 1988, from FDA to the petitioner.
3. Letter dated June 15, 1989, from FDA to the petitioner.
4. Letter dated March 9, 1992, from FDA to the petitioner.

Any person who will be adversely affected by the foregoing order may at any time on or before October 27, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered. Each numbered objection shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order to which objection is made, and state the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the order may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–25588 Filed 9–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0398]

Guidance for Industry on Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document for industry entitled "Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations." This guidance document is intended to provide recommendations to pharmaceutical sponsors who intend to develop documentation in support of an in vitro/in vivo correlation (IVIVC) for an oral extended release (ER) drug product for submission in a new drug application (NDA), abbreviated new drug application (ANDA), or antibiotic drug application (ANDA/AADA).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of "Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ramana Uppoor, Center for Drug Evaluation and Research, HFD–860, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301–594–5305.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance document for industry entitled "Extended Release Oral Dosage Forms: Development, Evaluation, and Application of In Vitro/In Vivo Correlations." This guidance document provides recommendations to pharmaceutical sponsors who intend to develop documentation in support of an IVIVC for an oral ER drug product for submission in an NDA, ANDA, or AADA. The guidance presents a comprehensive perspective on: (1) Methods of developing an IVIVC and evaluating its predictability; (2) using an IVIVC to set dissolution specifications; and (3) applying an IVIVC as a surrogate for in vivo bioequivalence when it is necessary to document bioequivalence during the initial approval process or because of certain preapproval or postapproval changes, e.g., formulation, equipment, process, and manufacturing site changes.

This guidance document represents the agency's current thinking on the development, evaluation, and application of in vitro/in vivo correlations for an oral ER drug product for submission in an NDA, ANDA, or AADA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

An electronic version of this guidance is also available on the Internet at http://www.fda.gov/cder/guidance/index.htm.

Dated: September 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–25514 Filed 9–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–22]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 18, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–25183 Filed 9–25–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Vernal Pools of Southern California for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for Vernal Pools of Southern California. This plan addresses the endangered *Eryngium aristulatum* var. *parishii* (San Diego button celery), *Orcuttia californica* (California Orcutt grass), *Pogogyne abramsii* (San Diego mesa mint), *Pogogyne nudiuscula* (Otay mesa mint), San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Riverside fairy shrimp (*Streptocephalus wootonii*), and the proposed threatened *Navarretia fossalis* (spreading navarretia). These five plant species and two shrimp species collectively occur on scattered and limited habitat on Federal and private lands remaining on the coastal terraces of Goleta and Isla Vista in Santa Barbara County, California to the Simi Hills of eastern Ventura County and the Santa Clarita region of Los Angeles County, east through Orange and western Riverside Counties, and the more extensive vernal pool complexes of San Diego County. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan received by December 26, 1997 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Telephone requests may be made by calling 760/431–9440.

FOR FURTHER INFORMATION CONTACT: Ann Kreager at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U. S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels necessary to reclassify them from endangered to threatened or remove them from the list, and estimate the time and cost for implementing the needed recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

Southern California vernal pools are habitat to at least 12 endemic plants and three endemic fairy shrimp species. Six of the endemic species are federally endangered: *Eryngium aristulatum* var. *parishii* (San Diego button celery), *Orcuttia californica* (California Orcutt grass), *Pogogyne abramsii* (San Diego mesa mint), *Pogogyne nudiuscula* (Otay mesa mint), San Diego fairy shrimp (*Branchinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus wootonii*); and one is proposed for threatened status: *Navarretia fossalis* (spreading navarretia).

Vernal pool habitat in southern California has suffered extensive loss and degradation. The objective of this plan is to stabilize and protect existing populations of *Eryngium aristulatum* var. *parishii*, *Pogogyne abramsii*, *Pogogyne nudiuscula*, *Orcuttia californica*, *Navarretia fossalis*, and San Diego and Riverside fairy shrimps. It is also the intent of this plan to establish new protected populations within their historic ranges, so that the listed species may be considered for reclassification to threatened status and the proposed rule for *Navarretia fossalis* may be withdrawn.

Public Comments Solicited

The Service solicits written comments on the recovery plan described herein. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 17, 1997.

Michael J. Spear,

Regional Director, Region 1, Portland Oregon.

[FR Doc. 97–25580 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–4120–05; NMNM 99768]

Invitation To Participate; Exploration for Coal in New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with San Juan Coal Company on a pro rata cost sharing basis, in a program for the exploration of coal deposits owned by the United States of America. The lands are located in San Juan County, New Mexico, and are described as follows:

T. 30 N., R. 14 W., NMPM
Sec. 17, All;
Sec. 18, All;
Sec. 19, All;
Sec. 20, All;
Sec. 29, All;
Sec. 30, All;
Sec. 31, Lots 1, 2, 3, 4, N½N½S½;
Containing 4463.88 acres, more or less.

Interested parties may obtain a complete description of the lands covered in the exploration license application by contacting San Juan Coal Company, at the address shown below, or the Bureau of Land Management, New Mexico State Office, Solid Minerals Adjudication, P.O. Box 27115, Santa Fe, New Mexico 87502–0115.

Any parties electing to participate in this exploration program shall notify in writing, both the State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, and the San Juan Coal Company, P.O. Box 561, Waterflow, NM 87421. Such written notice must include a justification for wanting to participate and any recommended changes in the exploration plan with specific reasons for such changes. The notice must be received no later than 30-calendar days after the publication of this notice in the **Federal Register**.

This proposed exploration program is for the purpose of determining the quality and quantity of the coal in the area and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by San Juan Coal Company may be examined at the Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, and the Farmington District Office, 1235 La Plata Highway, Farmington, New Mexico 87401–1808.

Dated: September 15, 1997.

Gilbert J. Lucero,

State Director.

[FR Doc. 97–25524 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–015–07–1060–04]

Notice of Public Meeting

AGENCY: Bureau of Land Management—Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management, Lower Snake River District proposes to gather approximately 150 wild horses from the Hardtrigger, Black Mountain and Sands Basin Herd Area located within the Owyhee Herd Management Area. A public meeting will be held at 7:00 p.m. in the conference room of the Bureau of Land Management, Lower Snake River District Office located at 3948 Development Avenue, Boise, Idaho to discuss the proposed gathering. The proposed wild horse gathering is planned to begin on or about November 12, 1997. A helicopter will be used to gather the horses.

DATES: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Kim Schultsmeier or Jay K. Carlson, Bureau of Land Management, Boise District Officer, 3948 Development Avenue, Boise, Idaho 83705. Telephone (208) 384–3430.

Dated: September 17, 1997.

Jerry L. Kidd,

District Manager.

[FR Doc. 97–25530 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–GG–P–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP7–0282; OR–51831–WA]

Amendment of Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has amended its application in part to withdraw certain lands in the San Juan Archipelago. This action will amend the legal description and acreage but will not change the effects or duration of segregation which temporarily closed the lands from surface entry and mining until June 4, 1998. The public lands have been and will remain open to mineral leasing. Upon acquisition, the non-Federal land will be opened to the mineral leasing laws.

DATES: Comments and requests for a public meeting must be received by December 26, 1997.

ADDRESSES: Comments and meetings requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, 503–952–6155.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 61 FR 28594, June 5, 1996, which segregated the lands from settlement, sale, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2(1994)) but not from leasing under the mineral leasing laws, subject to valid existing rights. The purpose of the proposed withdrawal is to protect the natural and recreational values on seven waterfront tracts, one inland tract, and two islands in the San Juan Archipelago. On August 22, 1997, an amendment was filed which added 36.26 acres of public lands to the proposed withdrawal and deleted 4.39 acres of non-Federal land, and which affected Tracts H and K. The proposed withdrawal, is amended to read as follows:

Willamette Meridian

Public Lands

T. 34 N., R.1 W., (Tract H),
Sec. 17, those portions of the south 530 (formerly 200) feet of the N½SE¼ and SW¼SE¼ and SE¼SE¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Wenatchee Area Office, Wenatchee, Washington.
T. 34 N., R. 1 W., (Tract K),
Sec. 21, that portion of lot 2 and SW¼NW¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Wenatchee Area Office, Wenatchee, Washington.
T. 34 N., R. 1 W., (Tract J),
Sec. 21, those portions of lot 2 and the SW¼NW¼, TOGETHER with tidelands of the second class abutting thereon as more particularly identified and described in the official records of the Bureau of Land Management, Oregon/Washington State Office and the Wenatchee Area Office, Wenatchee, Washington.
T. 34 N., R.1 W., (Cape St. Mary, Tract L)
Sec. 15, lot 1.
T. 35 N., R.1 W., (Lopez Pass, Tract M)
Sec. 33, lot 1.
T. 36 N., R. 2 E., (Eliza Island, Tract N)
Sec. 5, unsurveyed portion of Eliza Island.
T. 36 N., R. 2 E., (Carter Point, Tract O)
Sec. 6, unsurveyed portion of Lummi Island.
T. 37 N., R. 1 E., (Lummi Rocks, Tract P)
Sec. 27, unsurveyed Lummi Rocks in the NW¼ and SW¼NE¼.
T. 37 N., R. 2 E., (Chuckanut Rock, Tract Q)
Sec. 24, unsurveyed Chuckanut Rock.

The areas described aggregate approximately 198.26 (formerly 160) acres of public lands in San Juan and Whatcom Counties.

Non-Federal Land

T. 34 N., R. 1 W., (Tract I)
Sec. 21, lot 1 and NW¼NW¼.

The area described contains 75.61 (formerly 80) acres of non-Federal land in San Juan County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the amended proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the amended proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the amended proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

The lands will remain segregated as specified above until June 4, 1998, unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: September 11, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 97–25529 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the San Luis Resort and Conference Center in Galveston, Texas on October 29–30, 1997.

The agenda will cover the following principal subjects:

—Report from the Coastal Impact Assistance Working Group
—Report from the Hard Minerals Subcommittee
—Central and Western Gulf of Mexico: Update and Challenges
—Update on Leasing and Activity
—Changing Geological Potential—Recent Discoveries and Drilling
—Technology Advances, Issues and Research
—Tight Demand for Rigs and Vessels
—Supply of Labor and Training
—Environmental Studies and Issues
—Eastern Gulf of Mexico Issues
—Geoogical Plays and Ecological Perspective
—Future Developments
—"The Promise and the Reward: 50 Years Offshore"
—U.N. Year of the Ocean
—Congressional Update
—OCS Scientific Committee Update
—Alaska and Pacific Regional Updates

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than October 17, 1997, to the Minerals Management Service, 381 Elden Street, MS–4001, Herndon, Virginia 20170, Attention: Jeryne Bryant.

Request to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Jeryne Bryant at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia.

DATES: Wednesday, October 29 and Thursday, October 30, 1997.

ADDRESSES: The San Luis Resort and Conference Center, 5222 Seawall Boulevard, Galveston, Texas 77551—(800) 445–0090 or (409) 744–1500.

FOR FURTHER INFORMATION CONTACT: Jeryne Bryant at the address and phone number listed above.

Authority: Federal Advisory Committee Act, P.L. No. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: September 23, 1997.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 97–25637 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Palm Springs Desert Museum, Palm Springs, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Palm Springs Desert Museum which meet the definition of "sacred object" and "unassociated funerary object" under Section 2 of the Act.

The 22 cultural items consist of a ceremonial bundle, a clay pipe with red pigment, a bone whistle, two dance sticks, four feather wands, a set of twelve wooden counting sticks for peon; a set of eight pieces used in peon, a clay pipe; a set of flicker feather straps; an olla with red pigment; a tortoise shell rattle; a small mortar and pestle set; a gray fox headband; a coyote skin headband; a bear fur piece; two bone and asphaltum whistles; and a strand of shell, ceramic and stone beads.

In 1954, the set of twelve wooden counting sticks for peon were donated to the Palm Springs Desert Museum by Cornelia B. White and A.E. Dickinson.

In 1958, a clay pipe was donated to the Palm Springs Desert Museum by Randall Henderson who indicated it was found in Indio Heights.

In 1961 and 1965, Dr. Lowell Bean, Anthropologist of the Palm Springs Desert Museum, purchased the ceremonial bundle, bone whistle, and two wooden dance sticks from unknown sources, and the tortoise shell rattle from Seraglio Welmas, a member of the Agua Caliente Band.

In 1965, the set of flicker feather straps, a clay pipe, two bone and asphaltum whistles, four ceremonial feather wands, the coyote headband, the gray fox headband, the bear fur piece, and the peon game were donated to the Palm Springs Desert Museum from unknown sources.

In 1985, a ceramic olla with red pigment was donated to the Palm Springs Desert Museum by Edward B. And Josefa Kaminski. This olla was removed from Tahquitz Canyon within the Agua Caliente reservation.

In 1990, a small granite mortar and pestle were donated to the Palm Springs Desert Museum by Ms. Mary Elizabeth Redeker. During the 1970s, Ms. Redeker was given the mortar and pestle by Nina Paul Shumway, who found these items in the Coachella Valley, site unknown, around 1920.

Consultation with representatives of the Agua Caliente Band of Cahuilla Indians indicates that the 21 items listed above are specific ceremonial objects used and worn in sacred ceremonies and needed by traditional Native American religious leaders for the practice of traditional Native American religion by their present-day adherents.

In 1975, a strand of bone, shell, and stone beads exhibiting blackening was donated to the Palm Springs Desert Museum by Nina Paul Shumway. Consultation with representatives of the Agua Caliente Band of Cahuilla Indians indicate that such blackening is consistent with cremation, the traditional funerary practice of the Agua Caliente Band of Cahuilla Indians.

Based on the above-mentioned information, officials of the Palm Springs Desert Museum have determined that, pursuant to 25 U.S.C. 3001(3)(B), the one strand of bone, shell, and stone beads is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a burial site of an Native American individual. Officials of the Palm Springs Desert Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(C), the remaining 21 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Palm Springs Desert Museum have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these 22 items and the Agua Caliente Band of Cahuilla Indians.

Based on the above-mentioned information, officials of the Palm Springs Desert Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 21 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a burial site of an Native American individual. Officials of the Palm Springs Desert Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(C), the remaining 21 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Palm Springs Desert Museum have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these 22 items and the Agua Caliente Band of Cahuilla Indians.

This notice has been sent to officials of the Agua Caliente Band of Cahuilla Indians, the Cabazon Indians of California, the Cahuilla Band of Mission Indians, the Los Coyotes Band of Mission Indians, the Morongo Band of Mission Indians, the Ramona Band of Cahuilla Indians, the Santa Rosa Reservation, the Soboba Band of Mission Indians, and the Torres-Martinez Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Katherine Hough, Director of Collections/Exhibitions, 101 Museum Drive, Palm Springs, CA 92262; telephone (760) 325–7186 before October 27, 1997. Repatriation of these objects to the Agua Caliente Band of Cahuilla Indians may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: September 19, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97– 25579 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Nevada in the Control of the Humboldt-Toiyabe National Forests, United States Forest Service, Elko, NV

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects from Nevada in the control of the Humboldt-Toiyabe National Forests, United States National Forest Service, Elko, NV.

A detailed assessment of the human remains was made by U.S. Forest Service and Nevada State Museum professional staff in consultation with representatives of the Te-Moak Tribe of Western Shoshone, Ely Shoshone Tribe, Yomba Shoshone Tribe, Duckwater Shoshone Tribe, and the Duck Valley Shoshone-Paiute Tribes.

In 1972, human remains representing four individuals were recovered from site 26EK831 (Itsy Cave) during legally authorized excavations by Nevada State Museum archeologists. No known individuals were identified, however, the families of these individuals are known. The 47 associated funerary objects include leather and leather bands, a rusted key, a uniface and two utilized flakes, cloth and cloth fragments, a white button, string fragments, braided and twisted plant material cordage, two clay objects or coprolites; rock with scratches, pieces of ochre, cloth/paper fragments, Desert Side Notch projectile point, pot sherds, thread and thread fragment, peeled hardwood arrow shaft, Eastgate projectile point, animal bones, wood fragments, trimmed cut stick, buckle and strap, and white canvas and blue denim fragments.

Based on manner of interment and types of associated funerary objects, these individuals have been determined to be Native American. Based on archeological evidence and material culture of the site, site 26EK831 (Itsy Cave) has been identified as a Western Shoshone use and occupation site from the late precontact period to approximately the early 20th century. A medicine man, Killhorse Charlie (also known as Bronco Charlie) informed his niece, Ms. Theresa Temoke before his death that he had buried relatives at this location. Ms. Evelyn Temoke Roche', Ms. Theresa Temoke's daughter, has made a claim of lineal descent for these individuals on behalf of the related families.

During 1972–1973, human remains representing one individual were recovered from site 26EK801 (Bronco Charlie Cave) during legally authorized excavations by Nevada State Museum archeologists. No known individual was identified. No associated funerary objects are present.

Based on material culture including stone artifacts and ceramics recovered during the excavations, site 26EK801 has several occupations dating between 700 B.C. into the historic period. Excavation reports state that Western Shoshone artifacts were found throughout all levels of the deposits, and the early date for the site is based on a single projectile point type used between 700 B.C. until the early 19th century. Based on ceramics, lithics, and pictographs, the primary occupations of this site have been identified as late precontact Western Shoshone. Ethnographic reports the area surrounding this site was densely populated with single family camps and larger Western Shoshone winter villages. Additional ethnographic evidence indicates Bronco Charlie Cave is known and was identified as a sacred site by Killhorse (Bronco) Charlie.

Based on the above mentioned information, officials of the U.S. Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of the U.S. Forest Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 47 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the U.S. Forest Service have determined that, pursuant to 43 CFR 10.2 (b)(1), Ms. Evelyn Temoke Roche' can trace her ancestry directly and without interruption by means of the traditional kinship system of the Te-Moak Tribe of Western Shoshone to the human remains and associated funerary objects from the Itsy Cave site. Lastly, officials of the U.S. Forest Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the Native American human remains from Bronco Charlie Cave and the Te-Moak Tribe of Western Shoshone.

This notice has been sent to Ms. Evelyn Temoke Roche' and officials of the Te-Moak Tribe of Western Shoshone, Ely Shoshone Tribe, Yomba Shoshone Tribe, Duckwater Shoshone Tribe, and the Duck Valley Shoshone-Paiute Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Fred Frampton, NAGPRA Coordinator, Northeastern Nevada Ecosystem, Humboldt-Toiyabe National Forests, 2035 Last Chance Road, Elko, NV 89801; telephone: (702) 738–5171, fax: (702) 778–0299, before October 27, 1997. Repatriation of the human remains and associated funerary objects to Ms. Evelyn Temoke Roche' and the Te-Moak Tribe of Western Shoshone may begin after that date if no additional claimants come forward.

Dated: September 22, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–25578 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the permanent program inspection and enforcement procedures at 30 CFR part 840.

DATES: Comments on the proposed information collection must be received by November 25, 1997, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR 840.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Permanent Program Inspection and Enforcement Procedures, 30 CFR part 840.

OMB Control Number: 1029–0051.

Abstract: This provision requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports for public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and its public participation provisions. Public review assures the public that the State is meeting the requirements of the Act and approved State regulatory program.

Bureau Form Number: None.

Frequency of Collection: Once, on occasion, and annually.

Description of Respondents: State Regulatory Authorities.

Total Annual Responses: 5,766.

Total Annual Burden Hours: 507,952.

Dated: September 22, 1997.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 97–25585 Filed 9–25–97; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development One Hundred and Twenty-Fourth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and twenty-fourth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9 a.m. to 5 p.m. on October 2, and from 9 a.m. to 12:15 p.m. on October 3, 1997, both days, at the Pan-American Health Organization, located at 525 23rd Street NW., Washington DC, 20523, in Conference Room B.

The agenda will concentrate on the strategic plan of the Agency for International Development, the activities of the Task Force to review the Collaborative Research Support Program (CRSP) Guidelines, and activities resulting from the 1996 World Food Summit.

The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Mr. George Like at the Agency for International Development, Office of Agriculture and Food Security, 320 21st Street, NW., Room 2.11–072, Washington DC, 20523–2110, telephone (202) 712–1436, fax (202) 216–3010 or internet[glike@usaid.gov] with your full name.

Anyone wishing to obtain additional information about BIFAD should contact Mr. Tracy Atwood the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Office of Agriculture and Food Security, 320 21st Street, NW., Room 211.005, Washington DC, 20523–2110, telephone him at (202) 712–5571 or fax (202) 216–3010.

Dated: September 5, 1997.

Tracy Atwood,

AID Designated Federal Officer, (Chief, Food Policy Division, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs).

[FR Doc. 97–25527 Filed 9–25–97; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–751 (Final)]

Open-End Spun Rayon Singles Yarn From Austria

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Austria of open-end spun rayon singles yarn,[2] provided for in subheading 5510.11.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective August 20, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by the Ad Hoc Committee of Open-End Spun Rayon Yarn Producers, Gastonia, NC.[3] The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of open-end spun rayon singles yarn from Austria were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 7, 1997 (62 FR 16606). The hearing was held in Washington, DC, on August 12, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 22, 1997. The views of the Commission are contained in USITC Publication 3059 (September 1997), entitled "Open-End Spun Rayon Singles Yarn from Austria: Investigation No. 731–TA–751 (Final)."

Issued: September 23, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–25628 Filed 9–25–97; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The product covered by this investigation is open-end spun singles yarn containing 85 percent or more rayon staple fiber.

[3] Firms comprising the membership of the Ad Hoc Committee of Open-End Spun Rayon Yarn Producers consist of Burlington Madison Yarn Co., Greensboro, NC; Carolina Mills, Inc., Maiden, NC; National Spinning Co., Washington, NC; and Uniblend Spinners, Inc., Union, SC.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1873–97]

Freedom of Information Act Users Conference: Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee Holding Meeting: Immigration and Naturalization Service, Freedom of Information Act and Privacy Act Program.

Date and Time: September 29, 1997, at 8:30 a.m.

Place: The Renaissance Washington DC Hotel, 999 9th Street, NW., Washington, DC, telephone number: (202) 898–9000.

Status: Open.

Purpose: The Immigration and Naturalization Service (Service) will hold a Freedom of Information Act (FOIA) Users Conference as a part of its renewed commitment to improving openness and responsiveness to the public. The purpose of the conference will be to open communications between the Service and its FOIA user community, to explain alternatives for access to Service information, and to obtain FOIA users' views for improving the process.

Summary of Agenda: The principal purpose of the meeting is to set forth the mission requirements of the Service and the types of records available from this component. Additionally, we want to obtain the views of the users. The agenda for the conference will include:

1. Registration;
2. Opening remarks;
3. Comments from the Commissioner;
4. Overview of FOIA requirements;
5. DOJ's openness policy;
6. Mission requirements;
7. Questions/Answer Section.

SUPPLEMENTARY INFORMATION: Pursuant to our initiative to implement President Clinton's and Attorney General Reno's commitment to openness in government and improved customer service, the general public is invited to participate in this, our first conference. This conference is open to the interested public, but limited to the space available. Persons wishing to attend should notify Gladys Glover at least 5 days prior to the conference by written notice to Immigration and Naturalization Service (FOIA/PA), Attention: Gladys Glover, 425 I Street, NW., Washington, DC 20536 or calling (202) 514–1722. Those wishing to fax their response to this notice may do so at (202) 514–4310.

Any member of the public may file a written statement with the Freedom of Information Act Office before the meeting of topics for discussion. Pending requests will not be discussed during the conference.

FOR FURTHER INFORMATION CONTACT: Mildred Carter, Freedom of Information Act and Privacy Act Program Specialist, Immigration and Naturalization Service, ULLICO Building, 2nd Floor, 425 I Street NW., Washington, DC 20536, Telephone (202) 514–1722.

Dated: September 23, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–25643 Filed 9–25–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OJP(NIJ)–1143]

RIN 1121–ZA89

National Institute of Justice Solicitation for the Forensic DNA Laboratory Improvement Program, Phase 3

AGENCY: Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice's "Solicitation for the Forensic DNA Laboratory Improvement Program, Phase 3."

DATES: The deadline for receipt of proposals is close of business on December 15, 1997.

ADDRESSES: National Institute of Justice, 810 7th Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Dr. Richard M. Rau, National Institute of Justice, at (202) 307–0648. For a copy of the solicitation, please call NCJRS at 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center at 1–800–421–6770.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–3, as amended, 42 U.S.C. 3721–3 (1994).

Background

The purpose of this solicitation is to provide funding to State and local governments to develop or improve the capability to analyze deoxyribonucleic acid (DNA) in State and local forensic laboratories. This program is authorized by the DNA identification Act of 1994 (Pub. L. 103–322).

This solicitation is for the third year of the 5-year grant program authorized by the Act.

Interested State and local governments should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for the Forensic DNA Laboratory Improvement Program, Phase 3" (refer to document no. SL000238).

The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via the Internet. Telnet to ncjrsbbs.ncjrs.org, or gopher to ncjrs.org:71. For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set the modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 97–25516 Filed 9–25–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

September 23, 1997.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506). OMB approval has been requested by October 3, 1997. A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Theresa M. O'Malley, at (202) 219–5095 ext. 143.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, ATTN: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, D.C. 20503 (202) 395–7316. The Office of Management and Budget is particularly interested in comments which:

• Evaulate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Indian and Native American Welfare-to-Work Programs.

Frequency: Annual (Plan submission).

Affected Public: State, Local or Tribal Government.

Number of Respondents: 150.

Total of Responses: 150.

Estimated Time Per Respondent: 6 hours.

Total Burden Hours: 900.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $3,000,000.00 per year (program administrative costs).

Description: This ICR concerns the submission of applications and plans by Federally-recognized tribes and Alaska Native entities (or consortia thereof) eligible to receive funding under the Indian and Native American Welfare-to-Work (INA W2W) program. These instructions include a pre-application process for those tribes which do not operate a tribal Temporary Assistance for Needy Families (TANF) program or a Native Employment Works (NEW) program, as established by Public Law 104–193 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly called the "Welfare Reform Act"). These non-TANF or NEW tribes must qualify as INA W2W grantees under the "substantial services" criteria established by the Department in accordance with the provisions of section 412(a)(3)(B)(ii) of the Social Security Act, as amended by section 5001(c) of Public Law 105–33 (the Balanced Budget Act of 1997). Once determined to have met the "substantial services" criteria, applicants must submit a plan containing a Standard Form (SF) 424, the basic information on service area, plans for providing client services, preliminary funding and expenditure estimates, and standard assurances and forms common to most Federal funds recipients. This emergency clearance is necessary to enable the Department to implement the INA W2W program as close to the legislatively-mandated beginning date of October 1, 1997 (Fiscal Year 1998) as possible, as authorized by Public Law 105–33. Also, quick implementation of the INA W2W program is desirable because many TANF recipients are reaching the exhaustion of their benefits, due to the time limits for receiving those benefits imposed by Public Law 104–193 (the "Welfare Reform Act").

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–25624 Filed 9–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

AGENCY: Notice.

SUMMARY: The Department of Labor, as part of kits continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed instrument for collection monitoring data for the Summer Youth Employment Program.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 25, 1997.

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarify of the information to be collected; and

• Minimize the burden of the collection of information of those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: James Wiggins, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 219–7533 ext. 164 (this is not a toll-free number); internet address—wigginsj@doleta.gov; fax number (202) 219–7190.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Job Training Partnership Act Program, title IIB, the Department of Labor has established the Summer Youth Employment and Training Program to: (1) Enhance the basic education skills of youth; (2) encourage school completion or enrollment in supplementary or alternative school programs; provide eligible youth with exposure to the world of work; and (3) enhance the citizenship skills of youth. The Department of Labor is responsible for overseeing these programs. In order to carry out that responsibility, the Department has drafted a proposal to revise the current monitoring format and will continue using the current reporting instrument.

II. Current Actions

As result of obtaining input from employers and program operators and the convening of a workgroup to minimize reporting burdens, ETA will develop a new collection instrument to determine whether or not the GPRA goals are being achieved. This information will permit the Department to fulfill requests from the U.S. Congress, the Administration, the media and the public.

Type of Review: New.

Agency: Employment and Training Administration, U.S. Department of Labor.

Title: Summer Youth Employment and Training Program.

OMB Number: 1205–XXXX.

Recordkeeping: Retention for three years.

Affected Public: States.

Cite/Reference/Form/etc: Summer reporting (Planning estimates, Mid-summer, Final) and regional monitoring.

Total Respondents: 56.

Frequency: Other (Before the start of the summer program—Planning estimates, Mid summer, End of Summer report and annual monitoring).

Total Responses: 56.

Average Time per Response: 2 hours.

Estimated Total Burden Hours: 448.

Total Burden Cost (operating/maintaining): $6,720.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 22, 1997.

Charles L. Atkinson,

Deputy Administrator, Office of Job Training Programs.

[FR Doc. 97–25622 Filed 9–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the "Construction Industry Benefits Test." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 25, 1997. The Bureau of Labor Statistics is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Employment Standards Administration (ESA) has determined that research should be conducted into alternative ways of collecting information for Davis-Bacon Act purposes. As a result, ESA's Wage and Hour Division (WHD) wishes to evaluate the usefulness of BLS data in the Davis-Bacon wage determination process.

The Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a) requires that workers employed on federal construction contracts valued in excess of $2,000 be paid wages and fringe benefits that, at a minimum, have been determined by the Secretary of Labor to be prevailing for corresponding classes of workers employed on projects similar in character to the contract work in the area where the construction takes place. The prevailing wage is defined by Department of Labor regulations as the wage paid to more than 50 percent of the workers in the job classification on similar projects in the area during the period in question. If the majority of those employed in the classification are not paid the same wage, the prevailing wage is determined by calculating the average of the wages paid. In cases where the majority of workers in a classification are represented by a union

and are paid the same rate, the union rate is the prevailing rate.

Current Actions: The Employment Standards Administration (ESA) and the Bureau of Labor Statistics (BLS), Office of Compensation and Working Conditions (OCWC) have entered into an interagency agreement to test the feasibility of BLS collecting and publishing information on the incidence of and employer costs for specific benefits by detailed construction occupations in local areas. The purpose is to provide ESA with an alternative method for arriving at compensation determinations for the construction industry as required by the Davis-Bacon Act.

BLS will provide ESA with the survey results in both a publication and an electronic file. In addition, BLS will provide respondents and other interested parties with the survey results.

BLS plans wage and benefit collection in four metropolitan areas, Jacksonville, Florida; Salt Lake City-Ogden, Utah; Toledo, Ohio; and Tucson, Arizona. In each locality, BLS will survey a sample of establishments and, within each establishment, take a sample of blue-collar jobs. Information will be collected on benefits incidence and costs, hours worked, wages, and worker characteristics such as union/nonunion and full-time/part-time job status.

The compensation data will include the following information:

- Incidence of employee benefits by occupation;
- Employer benefits cost by occupation; and
- Median and mean earnings by occupation.

Worker characteristic information will include the following:

- Union and nonunion;
- Full-time and part-time; and
- Time and incentive.

The types of benefit information collected will include:

- Health, life, and disability insurance;
- Retirement plan information;
- Leave information; and
- Overtime, shift, and bonus pay.

Depending upon response levels, varying degrees of occupational detail will be produced.

The survey forms to be used for this test are the Employment Cost Index forms previously approved under the National Compensation Survey (OMB Number 1220–0164). BLS will use the information collected in this test for statistical purposes only. To the full extent permitted by law, BLS will hold the information in confidence and will not disclose it without the written consent of respondents.

Type of Review: New Collection.

Agency: Bureau of Labor Statistics.

Title: Construction Industry Benefits Test.

OMB Number: 1220-New.

AFfected Public: Business or other for-profit.

Fiscal year average	Number of respondents per year	Responses per year	Total responses per year	Average minutes per response	Total burden hours
BLS 3038A	550	1	468	75	585
BLS 3038B	550	1	468	35	273
BLS 3038D	550	1	468	180	1404
Quality assurance	117	1	117	10	20
Average annual burden	550	1	468	293	2282

Total Burden Cost (capital/startup): $0.

Total Burden Coast (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 23rd day of September, 1997.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 97–25623 Filed 9–25–97; 8:45 am]

BILLING CODE 4510–24–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–22]

Westinghouse Electric Corporation; Waltz Mill Test Reactor Consideration of Approval of Transfer of License and Issuance of a Conforming Amendment to Facility License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order approving, under 10 CFR 50.80, the transfer of Facility License No. TR–2, to the extent now held by Westinghouse Electric Corporation, to a new corporate entity which will utilize the same name. The license authorizes possession of the shut down test reactor at the Waltz Mill site in Westmoreland County, Pennsylvania. The Commission is also considering the issuance of a conforming amendment under 10 CFR 50.90.

The Westinghouse Electric Corporation, organized in 1886, is presently composed of industrial businesses and media operations (including the production and transmission of radio and television programming). It plans to reorganize into two separate corporations. One of these will retain certain assets and operations relating to the Westinghouse industrial businesses. This corporation will eventually retain the name Westinghouse Electric Corporation (WELCO). The license for the Waltz Mill Test Reactor will be held by this corporation.

The other corporation will be named CBS corporation, and will include the media operations and those industrial businesses which are not being transferred to WELCO.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of a license, or any right thereunder, after notice to interested persons. Such approval is contingent upon the Commission's determination that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

Before issuance of the proposed license amendment which will reflect the proposed license transfer, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will transfer [SIC] the Westinghouse Test Reactor ("WTR facility") license, a possession only license, from Westinghouse to WELCO. This amendment request is necessary because of a proposed transfer by Westinghouse of certain of its industrial businesses to a company to be known from and after the closing date of the transactions as WELCO. As a result of the transfer of these businesses, WELCO will be financially qualified to hold the WTR facility possession only license.

Furthermore, WELCO employees will be technically qualified to carry out licensed activities. In connection with the pending transactions, current Westinghouse employees for the licensed WTR facility to be transferred will become WELCO employees and will continue to be responsible after the transfers to WELCO. The proposed amendment does not involve any changes in licensed activities which will continue in their current form without any interruptions of any kind resulting from the amendment.

The proposed amendment does not require any physical change to the WTR facility or changes to Technical Specifications or procedures. The proposed change does not increase the probability of an accident previously evaluated because it does not affect any initiators in any of the previously evaluated accidents. The proposed change does not increase the consequences of any accident previously evaluated because it does not affect any of the items on which the consequences depend.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not modify the WTR facility configuration or licensed activities. Thus no new accident initiators are introduced. Therefore, the proposed amendment does not create the possibility of a new or different accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

This amendment request is necessary because of a proposed transfer of the WTR facility license from Westinghouse to WELCO. As a result of the transfer of these businesses, WELCO will be financially qualified to hold the WTR facility possession only license.

WELCO will be technically qualified to carry out licensed activities. In connection with pending transactions, current Westinghouse employees responsible for the licensed WTR facility to be transferred will become WELCO employees and will continue to be responsible after the transfers to WELCO. The proposed amendment does not involve any changes in licensed activities which will continue in their current form without any interruptions of any kind resulting from the amendment.

The proposed change does not alter any margin of safety because it does not involve any changes in the WTR facility or licensed activities which will continue in their current form without any interruptions of any kind resulting from the amendment.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30 day notice period. However, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6–D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 27, 1997, the licensee may file a request for a hearing with respect to the issuance of an order regarding the proposed transfer of the license and issuance of a conforming amendment to the subject license to reflect the transfer, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commissions's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing

Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the transfer approval or amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross examine witnesses.

If a hearing is requested with respect to the proposed amendment, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If a final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any such amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Lisa A. Campagna, Assistant General Counsel, Law Department, Westinghouse Electric Corporation, P.O. Box 355, Pittsburgh, Pennsylvania 15230, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application dated August 18, 1997, regarding the transfer of license and amendment, and the letter dated August 15, 1997, from the licensee which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 17th day of September 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–25629 Filed 9–25–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Docket No. 50–390

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for amendment to Facility Operating License No. NPF–90, issued to Tennessee Valley Authority, (TVA), for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow the licensee to utilize the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Case N–514, "Low Temperature Overpressure Protection" to determine its low temperature overpressure protection (LTOP) setpoints and is in accordance with the licensee's application for exemption dated June 20, 1997. The proposed action requests an exemption from certain requirements of 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation," to allow application of an alternate methodology to determine the LTOP setpoints for the Watts Bar Nuclear Plant.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Watts Bar reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed the use of safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel will not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

The proposed alternate to the methodology of Appendix G is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, "Low Temperature Overpressure Protection," which has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. However, 10 CFR 50.55a, "Codes and Standards," and Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability" have not been updated to reflect the acceptability of Code Case N–514.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintains the Technical Specifications P/T limits applicable for normal heatup and cooldown in accordance with 10 CFR Part 50, Appendix G and Sections III and XI of the ASME Code.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all lightwater nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G. Appendix G of 10 CFR Part 50 defines P/T limits during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in 10 CFR Part 50, Appendix G, may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce excursions exceeding the 10 CFR Part 50, Appendix G, P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of power-operated relief valves (PORVs) that are set at a pressure below the LTOP enabling temperature that would prevent the pressure in the reactor vessel from exceeding the P/T limits of 10 CFR Part 50, Appendix G. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump (RCP) starting and shifting operating charging pumps) with the reactor coolant system in a solid water condition, the operating pressure must be maintained below the PORV setpoint.

In addition, to prevent damage to RCP seals, the operator must maintain a minimum differential pressure across the RCP seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start an RCP and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. 10 CFR Part 50, Appendix G, safety margin adds instrument uncertainty in the LTOP setpoint. The licensee's current LTOP analysis indicates that using this 10 CFR Part 50, Appendix G, safety margin to determine the PORV setpoint would result in an operating window between the LTOP setpoint and the minimum pressure required for RCP seals which is significantly restricted when physical conditions such as PORV overshoot, RCP Delta Ps, and static head corrections are taken into account in setpoint determination. Operating with these limits could result in the lifting of the PORVs or damage to the RCP seals during normal operation. Using Code Case N–514 would allow the licensee to recapture most of the operating margin that is lost by factoring in the instrument uncertainties in the determination of the LTOP setpoint. The net effect of using Code Case N–514 is that the setpoint will not change significantly with the next setpoint analysis. Therefore, the licensee proposed that in determining the setpoint for LTOP events for Watts Bar, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by 10 CFR Part 50, Appendix G. The alternate methodology is consistent with the ASME Code Case N–514. The content of this Code Case had been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated June 20, 1997, the licensee requested an exemption from 10 CFR 50.60 to allow it to utilize the alternate methodology of Code Case N–514 to compute its LTOP setpoints.

Environmental Impacts of the Proposed Action

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area, as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there is no significant environmental impact associated with this action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement, Supplement No 1, for WBN Units 1 and 2, dated April 1995.

Agencies and Persons Consulted

In accordance with its stated policy, on August 21, 1997 the staff consulted with the Tennessee State official, Mr. J. Graves of the Division of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 20, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 22nd day of September 1997.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II.

[FR Doc. 97–25631 Filed 9–25–97; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, Et Al., San Onofre Nuclear Generating Station, Units 2 and 3; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has acted on a Petition for action under 10 CFR 2.206 received from Mr. Stephen Dwyer dated September 22, 1996, as supplemented by letter dated December 10, 1996, two e-mails of March 26, 1997, and an e-mail of May 28, 1997, for the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3.

The Petition requests that the Commission shut down the San Onofre Nuclear Generating Station pending a complete review of the "new seismic risk." As a basis for the request, the Petitioner asserts that a design criterion for the plant, which was "0.75 G's acceleration," is "fatally flawed" on the basis of the new information gathered at the Landers and Northridge quakes. The Petitioner asserts (1) that the accelerations recorded at Northridge exceeded "1.8 G's and it was only a Richter 7+ quake," (2) that there were horizontal offsets of up to 20 feet in the Landers quake, and (3) that the Northridge fault was a "Blind Thrust and not mapped or assessed."

The Director of the Office of Nuclear Reactor Regulation has determined that the request should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–97–23), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, and at the Local Public Document Room located at the Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 19th day of September 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206

I. Introduction

By Petition dated September 22, 1996, Stephen Dwyer (Petitioner) requested that the Nuclear Regulatory Commission (NRC) take action with regard to San Onofre Nuclear Generating Station (SONGS). The Petitioner requested that the NRC shut down the SONGS facility "as soon as possible" pending a complete review of the "new seismic risk."[1] The Petitioner asserted as a basis for this request that a design criterion for the plant, which was "0.75 G's acceleration," is "fatally flawed" on the basis of new information gathered at the Landers and Northridge earthquakes. The Petitioner asserted (1) That the accelerations recorded at Northridge exceeded "1.8G's and it was only a Richter 7+ quake," (2) that there were horizontal offsets of up to 20 feet in the Landers quake, and (3) that the Northridge fault was a "Blind Thrust and not mapped or assessed." On November 22, 1996, the NRC staff acknowledged receipt of the Petition as a request pursuant to 10 CFR 2.206 and informed the Petitioner that there was insufficient evidence to conclude that the requested immediate action was warranted. Notice of the receipt of the Petition indicating that a final decision with respect to the requested action would be forthcoming at a later date was published in the **Federal Register** on November 29, 1996 (61 FR 60734).

The Petitioner provided supplemental information in support of his Petition in a letter dated December 10, 1996, two e-mails dated March 26, 1997, and an e-mail dated May 28, 1997.[2] My Decision in this matter follows.

II. Discussion

A. Regulatory Requirements Associated With Potential Earthquake Motion and the Licensing Basis for SONGS

The design bases for each nuclear power plant must take into account the potential effects of earthquake ground motion.[3] The seismic design basis, called the safe-shutdown earthquake (SSE), defines the maximum ground motion that certain structures, systems, and components necessary for safe shutdown are designed to withstand.[4] SONGS Units 2 and 3 seismic design basis is consistent with the siting criteria set forth in Title 10 of the Code of Federal Regulations, Part 100, Appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants." Appendix A describes the nature of the investigations required to

[1] In his e-mail dated March 26, 1997, supplementing his Petition, the Petitioner also requested removal of "all spent fuel out of the southern California seismic zone."

[2] By letter dated June 26, 1997, the NRC staff advised the Petitioner that his e-mail dated April 25, 1997, concerning the ability of the SONGS steam generators to withstand a major seismic event, would be treated as a separate 10 CFR 2.206 Petition.

[3] See 10 CFR Part 50, Appendix A. Criterion 2 and 10 CFR 50.34(a)(1)(i); see also 10 CFR Part 100, Appendix A, V.(a) which provides, in part, that "the design of each nuclear power plant shall take into account the potential effects of vibratory ground motion caused by earthquakes." The investigative obligations of 10 CFR Part 100, Appendix A, which are only imposed explicitly on applicants for construction permits, were effective December 13, 1973 (38 FR 31279, November 13, 1973). The Licensing Board issued its decision regarding the SONGS Units 2 and 3 construction permits on October 15, 1973. However, the SONGS site was reviewed against the Appendix A criteria during the construction permit licensing review which was updated at the operating license review stage.

[4] The SSE is defined, in part, as "that earthquake which is based upon an evaluation of the maximum earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material. It is that earthquake which produces the maximum vibratory ground motion for which certain structures, systems, and components are designed to remain functional." See 10 CFR Part 100, Appendix A. III.(c).

obtain the geologic and seismic information necessary to determine site suitability and provide reasonable assurance that a nuclear power plant can be constructed and operated at a site without undue risk to health and safety of the public. Among other particulars, Appendix A requires[5]—

- Determination of the lithologic, stratigraphic, hydrologic, and structural geologic conditions of the site and the region surrounding the site.
- Identification and evaluation of tectonic structures underlying the site and the region surrounding the site, whether buried or expressed at the surface.
- Evaluation of physical evidence concerning the behavior during prior earthquakes of the surficial geologic materials and substrata underlying the site.
- Determination of the static and dynamic engineering properties of the materials underlying the site, such as seismic wave velocities, density, water content, porosity, and strength.
- Listing of all historically reported earthquakes that affected or that could reasonably be expected to have affected the site.
- Correlation of epicenters of historically reported earthquakes, where possible, with tectonic structures, any part of which is located within 320 kilometers (200 miles) of the site. Epicenters that cannot be correlated with tectonic structures shall be identified with tectonic provinces, any part of which is located within 320 kilometers (200 miles) of the site.
- For capable faults[6] that may be of significance in establishing the SSE or that are longer than 330 meters (1000 feet) and within 8 kilometers (5 miles) of the site, determination of the length of the fault; the relationship of the fault to the regional tectonics structures; and the nature, amount, and geologic history of displacements along the fault, including the estimated amount of maximum Quaternary displacement related to any one earthquake along the fault are required.

The information collected in these investigations is used to determine the vibratory ground motion at the site, assuming that the epicenters of the earthquakes are situated at the point on the tectonic structures or in the tectonic provinces nearest to the site. The earthquake that could cause the maximum vibratory ground motion at the site is designated the SSE. The vibratory ground motion produced by the SSE is defined by response spectra, which are smoothed design spectra developed from a set of vibratory ground motions caused by more than one earthquake.

SONGS was licensed consistent with the seismic and geologic siting criteria for nuclear power plants set forth in 10 CFR Part 100, Appendix A, described above. The site has undergone geologic, geophysical, geotechnical, and seismic investigations and reviews that are at least as thorough and comprehensive as those of any critical facility.[7] The SONGS SSE is based on the assumed occurrence of a surface-wave (M_S)[8] magnitude 7 earthquake on the offshore zone of deformation (OZD), a right lateral strike slip fault zone, approximately 8 kilometers from the site at its closest approach. This magnitude 7 event is larger than any earthquake known to have occurred on the OZD, and the resulting ground motion estimate is larger than that which could reasonably be expected at the SONGS site from any other seismic source. The determination of the SSE was made in accordance with the criteria and procedures specified in Appendix A to 10 CFR Part 100 and using a multiple hypothesis approach in which several different methods were used to determine each parameter; sensitivity studies were performed to account for the uncertainties in the earth sciences.

In addition, the plant has design margins (capability) well beyond the demands of the SSE. The ability of a nuclear power plant to resist the forces generated by the ground motion during an earthquake is thoroughly incorporated in the design and construction of the plant. The codes that govern the construction of residential and commercial buildings are far less stringent than the requirements for nuclear power plants. As a result, nuclear power plants are able to resist earthquake ground motions well beyond their design basis, the SSE, and far above the ground motion that would result in damage to buildings designed and built to commercial codes.

The geologic and seismic siting and the design of SONGS were reviewed by the NRC staff, the U. S. Geologic Survey, the National Oceanic and Atmospheric Administration, the Advisory Committee on Reactor Safeguards and were litigated before the Atomic Safety Licensing Board before they were licensed by the Commission.[9] The NRC continually monitors the adequacy of the design of nuclear power plants in order to protect the public health and safety. The SONGS licensee performed an individual plant examination of external events (IPEEE).[10] The IPEEE is a program that involves the evaluation of the capability of a nuclear power plant to withstand the effects of several natural phenomena such as earthquakes, fires, and floods, well beyond its design bases. The most recent geologic and seismic information for the southern California region was used in the probabilistic analysis to quantify the seismic hazard and the uncertainties for the SONGS site for this program.

The ground motion from an earthquake at a particular site is a function of the magnitude and focal mechanism (type of faulting, i.e., normal, reverse, strike slip) at the earthquake source. It is also a function of the distance of the facility from the

[5] See 10 CFR Part 100, Appendix A. IV.

[6] A capable fault is a fault which has exhibited one or more of the following characteristics: (1) Movement at or near the ground surface at least once within the past 35,000 years or movement of a recurring nature within the past 500,000 years, (2) Macro-seismicity instrumentally determined with records of sufficient precision to demonstrate a direct relationship with the fault, and (3) A structural relationship to a capable fault according to characteristics (1) or (2), above, such that movement on one could be reasonably expected to be accompanied by movement on the other. See 10 CFR Part 100, Appendix A.III(g).

[7] The findings of these investigations were reviewed extensively by the staff and were litigated in proceedings concerning the issuance of the construction permit and operating licenses for SONGS Units 2 and 3. See LBP–73–36, 6 AEC 929 (1973); ALAB–248, 8 AEC 957 (1974) and see LBP–82–3, 15 NRC 61 (1982); ALAB–673, 15 NRC 685 (1982); ALAB–717, 17 NRC 346 (1983); and see Carstens v. NRC 742 F.2d 1546 (D.C. Cir. 1984), cert. denied, 471 U.S. 1136 (1985) (the Court of Appeals affirmed the Commission's granting of the operating licenses for SONGS Units 2 and 3, noting the voluminous record and substantial evidence supporting the seismic review).

[8] In 1935, Charles Richter introduced the concept of magnitude to describe the size of earthquakes. His original formula was based on events in southern California recorded on torsion seismographs within 600 km of the epicenter. This is the magnitude labeled M_L. Over the years Richter and others developed formulas to compute magnitudes from body and surface waves (m_b and M_S) at distant (teleseismic) stations as well as other methods to compute magnitudes for local events in other areas of the world. Most of these methods of computing magnitude use as the measured variable the amplitude of one or more seismic waves. All of these magnitude procedures, including the moment magnitude M_W, have been developed to produce a number which represents the size of an earthquake, and each was shingled onto Richter's original procedure so that the formulas would produce similar values at particular places on the magnitude scale. Each computation procedure has its own magnitude or distance range over which it is valid. Surface wave magnitude is normally calculated from the amplitudes of waves with periods near 20 seconds. Moment magnitude is based on the seismic moment. Seismic moment is calculated from recordings on digital seismographs and compared to the waveforms synthetic seismograms from numerical models of the fault rupture to determine the moment.

[9] See cases cited *supra* note 7.

[10] See response to Generic Letter 88–20, Supplement 4, Individual Plant Examination of External Events (IPEEE) dated December 15, 1995, discussed, *infra*, at pages 22–24.

fault and the geology immediately under the facility site. The estimates of SSE ground motion for the SONGS site conform with the procedures and criteria specified in 10 CFR Part 100, Appendix A and the Standard Review Plan (SRP)[11] Sections 2.5.1 and 2.5.2 (NUREG–0800). As previously stated, the earthquake that was determined to control the design of SONGS is a M_S=7 located on the OZD at a distance of 8 kilometers from the site. The appropriate level of conservatism for characterizing the ground motion through a site-specific spectrum as specified in SRP 2.5.2 is the 84th percentile. This level of conservatism was used in the design and licensing review of SONGS, Units 2 and 3.

Since the SONGS plants were licensed, a new magnitude scale, moment magnitude (M_W), has come into common usage. The most recently published ground motion attenuation relationships[12] use M_W. An attenuation relationship is a relationship between sized earthquake, distance to fault and the amplitude of the ground motion. Since magnitude 7 M_W is equal to magnitude 7 M_S,[13] there is no need to make a conversion between M_W and M_S when comparing the ground motion estimates obtained using the recent attenuation relationships to the SONGS SSE ground motion.

B. Responses to the Petitioner's Concerns

1. Concern that SONGS is in a High Seismic Hazard Area

In the enclosure to his letter,[14] the Petitioner referenced "a recent paper by M. D. Petersen et al. (Seismic Hazard Analysis, AEG, 1–20–96)" and stated that it concludes that the entire Los Angeles, Ventura, and Orange Counties are high hazard areas. The Petitioner stated that the paper also concludes that accelerations of 0.4g (pga), 1.0g (0.3-sec SA), and 0.5g (1-sec SA) can occur nearly everywhere.

The NRC staff attempted to find the reference mentioned by Mr. Dwyer but was unsuccessful. Mark D. Petersen of the California Division of Mines and Geology informed the staff that the correct reference is an article that he and his coauthors published in the Bulletin of the Seismological Society of America.[15] Dr. Petersen made a presentation at a workshop on seismic hazard in southern California in January 1996 and gave participants in the workshop preprints and reprints of some of his recent publications. The cited reference was one of these handouts.

In the section of the paper entitled "Hazard Maps," the authors state:

> The DMG probabilistic seismic hazard maps (10% exceedance in 50 years) for peak ground acceleration (pga) and 5% damped spectral acceleration (SA) at 0.3-and 1-sec periods on alluvial site conditions are shown in Figures 3 through 5. These maps may be useful in characterizing regional variations in seismic hazard in southern California but should not be used as input for detailed site-specific estimates of ground shaking in the earthquake-resistant design of individual structures.[16]

The paper then states—

> The three maps show similar hazard patterns that indicate high hazard over the entire tri-county area. The expected peak accelerations exceed 0.4g (pga), 1.0g (0.3 s SA), and 0.5g (1 s SA) nearly everywhere in the tri-county area."[17]

To address the acceleration values mentioned by the Petitioner with respect to SONGS, the NRC staff has produced Figure 1, which contains a plot of the SONGS SSE seismic response spectrum at 5 percent of critical damping and the values quoted from the Petersen paper. Since period in seconds is the reciprocal of frequency in Hertz, the 1-second period spectral acceleration (0.5g) is plotted at a frequency of 1 Hertz, the 0.3-second period acceleration (1.0g) is plotted at a frequency of 3.33 Hertz and the peak ground acceleration (0.4g) is plotted at a frequency of 33 Hertz. The figure demonstrates that the spectral accelerations (accelerations plotted in the response spectra) used in the design of SONGS are significantly higher than those from the Petersen paper, thus showing the conservatism of the design basis for SONGS.

2. Concern About a Large Earthquake on the San Andreas Fault

In the enclosure to his letter dated December 10, 1996, entitled "Uncertainty Factors Affecting Seismic Risk Risk Modelling in Southern California," the Petitioner stated "We must prepare for a great event on the Southern San Andreas Fault." He also mentioned an earthquake on the San Andreas in his e-mail message.[18]

The NRC staff agrees that there must be preparation for a large event on the San Andreas fault and finds that the SONGS seismic design is well able to withstand the demands of a large earthquake on the southern San Andreas fault. Although the geologic evidence appears to indicate that the largest event to have occurred on the southern San Andreas in the Quaternary Period (the last 2 million years) is estimated to have been in the moment magnitude (Mw) range of 7.5 to 8; to evaluate the potential ground motion at the SONGS site from a large earthquake on the southern San Andreas fault, the staff made the very conservative assumption of a moment magnitude 8.25 strike-slip earthquake at the closest distance of the San Andreas fault to the site (90 kilometers). This assumption was made to calculate the effects of a large earthquake on the San Andreas fault. The results are plotted in Figure 2 which demonstrates that the design basis (SSE) spectrum for SONGS is much higher than the ground motion estimates from the Mw 8.25 on the San Andreas fault using four recent attenuation relationships. These four empirical attenuation relationships were developed after the occurrence of the Northridge and Landers earthquakes, and include the recent strong ground motion from these events. They were performed by internationally known experts in earthquake ground motion analysis and were published in the Seismological Research Letters,[19] the peer-reviewed journal of the Seismological Society of America. The assumption of a moment magnitude 8.25 strike-slip earthquake and the

[11] Standard Review Plan (SRP) is used as guidance for the Office of Nuclear Reactor Regulation staff responsible for the review of applications to construct and operate nuclear power plants.

[12] N. A. Abrahamson and W. J. Silva, "Empirical Response Spectral Attenuation Relations for Shallow Crustal Earthquakes," Seismological Research Letters, 68, 94–127 (1997); David M. Boore, William B. Joyner, and Thomas E. Fumal, "Equations for Estimating Horizontal Response Spectra and Peak Acceleration From Western North American Earthquakes: A Summary of Recent Work," Seismological Research Letters, 68, 128–153 (1997); K. W. Campbell, "Empirical Near-Source Attenuation Relationships for Horizontal and Vertical Components of Peak Ground Acceleration, Peak Groud Velocity and Pseudo-Absolute Acceleration Response Spectra," Seismological Research Letters, 68, 154–179; K. Sadigh, C.Y. Chang, J. A. Egan, F. Makdisi, and R. R. Yongs, "Attenuation Relationships for Shallow Crustal Earthquakes Based on California Strong Motion Data," Seismological Research Letters, 68 180–189 (1997).

[13] Thorne Lay and Terry C. Wallace, Modern Global Seismology, Academic Press, Inc., San Diego, California; K. W. Campbell (1995).

[14] Stephen Dwyer, Letter to Dr. Shirley Jackson and Frank J. Miraglia, Jr., with enclosure, dated December 10, 1996.

[15] Mark D. Petersen, Chris H. Cramer, William A. Bryant, Michael S. Reichle, and Tousson R. Toppozada, "Preliminary Seismic Hazard Assessment for Los Angeles, Ventura, and Orange Counties, California, Affected by the 17 January 1994 Northridge Earthquake," Bulletin of the Seismological Society of America, 86, S247–S261 (1996).

[16] Id.

[17] Id.

[18] Stephen Dwyer, e-mail message to Dr. Jackson, Subject: San Onofre Nuclear Power Plant Risk, dated September 22, 1996.

[19] Abrahamson and Silva, *supra* note 12.

SONGS site foundation geology were used as input parameters for these four earthquake ground motion attenuation relationships.[20] The ground motion estimates were made at the 84th percentile level recommended by SRP Section 2.5.2. The plots of the results obtained from these four attenuation relationships and the SONGS Units 2 and 3 SSE design response spectrum are shown in Figure 2. The plotted information in the figure demonstrates that the SONGS design is well able to accommodate the demand of the ground motion of the large earthquake on the southern San Andreas fault since it envelopes the estimates of the four relationships at all frequencies.

3. Concern About the SONGS Design Basis in Light of the Landers and Northridge Earthquakes

In an e-mail message to Chairman Jackson dated September 22, 1996, the Petitioner stated—

> I am a geologist in Southern California, and I am deeply concerned by the current situation at San Onofre NPP. The design criteria for this old plant was 0.75 G's acceleration. With the new information gathered at the Landers and Northridge Quakes, this criteria is fataliy flawed. The accelerations recorded at Northridge exceeded 1.8 G's !!! and it was only a Richter 7+ quake. Horizontal offsets of up to 20 feet in the Landers quake were also way beyond geologists and seismologists estimates. The whole science is in disarray. Also the Northridge fault was a "Blind Thrust' and not mapped or assessed. If we have a larger quake here on the San Andreas, or a smaller one closer to the plant, well I hate to imagine * * *. What's even worse is the fact that scientists are not able to give us the info we need to evaluate the situation.

The main points of the Petitioner's message appear to be—

- A peak ground acceleration recorded from the Northridge magnitude Mw 6.7 earthquake exceeded 1.8 g.
- The Northridge earthquake occurred on a blind fault that had not been mapped or assessed.
- The maximum horizontal displacement of almost 20 feet due to the Landers magnitude 7.3 earthquake is much larger than would be estimated.
- Scientists are not able to provide the information to evaluate the situation.

The magnitude 6.7 Northridge earthquake of January 17, 1994, occurred on a buried thrust fault in the San Fernando Valley and was similar to the 1971 San Fernando Valley earthquake. The distance from this earthquake epicenter to the SONGS site is about 130 kilometers (80 miles). The Northridge earthquake was felt at SONGS. A free-field seismic instrument at SONGS recorded a peak ground acceleration of 0.025g, which is significantly less than the SSE peak ground acceleration of 0.67g, thus indicating that an earthquake in the epicentral region of Northridge poses no threat to the plant.

The peak ground acceleration of 1.8g from the Northridge earthquake referred to by the Petitioner was recorded by the California Division of Mines and Geology station in Tarzana. The anomalous character of the seismic response at the Tarzana site is well known.[21] The intense shaking at the Tarzana site is a condition of the site and is not characteristic of the Northridge earthquake. This fact is demonstrated by the unusually strong ground motion that was also observed there during the 1987 Whittier Narrows earthquake[22] and during the aftershocks following both the Northridge and Whittier Narrows mainshocks. In recognition of the unusually high ground motion recordings at Tarzana, there have been a number of studies of this site[23] to try to determine the cause of the high recordings. These studies have attributed the high peak ground accelerations to the site's specific geology. The anomalous site effect was found to be confined to a small area 50 meters in radius around the station; beyond this area, the ground motion recordings were down to their normally expected values. It is, therefore, inappropriate to rely on data recorded at the unique Tarzana site to make judgments about ground motion estimates at other locations. The geologic formations under the SONGS site differ from those at the Tarzana site. The SONGS site does not anomalously amplify the earthquake ground motion as the Tarzana site does. During the evaluation of the site no geologic formations under SONGS were identified that would result in exceptionally high earthquake ground motions. Further, recorded earthquakes at SONGS have not exhibited any unusual amplifications.

As a result of their studies of the near field ground motions from thrust faults, Somerville et al.[24] found that the ground motions from the Northridge earthquake, in general, are within the 84th percentile when compared to previously developed empirical attenuation relations for thrust faults. This finding indicates that the Northridge ground motion data would not cause seismologists to revise ground motion estimates for thrust fault earthquakes. The data from this earthquake have been incorporated into the strong ground motion databases and have not significantly altered the results of the attenuation relationships. In addition, it is inappropriate to use the ground motions from thrust faults for estimates in a region in which there is no potential for this type of faulting, such as the South Coast Borderland where SONGS is located.

To address the issue of whether there is a potential for buried thrust faults at the SONGS site, the staff referred to a book by Yeats et al.[25] that contains a list and a map of the regions of the world that have the potential for large reverse-fault earthquakes. Thrust faults are low angle reverse faults. In California, the regions listed are the northern California coast, the Coast Ranges of central California, and the western Transverse Ranges. The 1994 Northridge earthquake and the 1971 San Fernando Valley earthquake are related to the western Transverse Ranges. There is no indication of reverse-fault earthquakes in the South Coast Borderland where SONGS is located.

In southern California, the mountain ranges flanking the "Big Bend" of the San Andreas fault (the Transverse Ranges) strike east-west and are bounded on the south by north-dipping range-front reverse faults, part of a discontinuous system of faults that extends from the Santa Barbara Channel eastward to the eastern end of the San Gabriel Mountains. Other important reverse faults in this region include the Pleito fault in the southern margin of the South San Joaquin Basin; the south-dipping Oak Ridge fault in the Ventura Basin which extends eastward to the San Fernando Valley as a blind thrust that produced the 1994 Northridge

[20] Id.

[21] J. A. Rial, "The Anomalous Seismic Response of the Ground Motion at the Tarzana Hill Site During the Northridge 1994 Southern California Earthquake: A Resonant, Sliding Block?" Bulletin of the Seismological Society of America, 86, 1714–1723 (1996).

[22] A. M. Shakal, M. Huang, and T. Cao, "The Whittier Narrows, California, Earthquake of October 1, 1987: CSMIP Strong Motion Data," Earthquake Spectra, 4 75–100 (1988).

[23] R. D. Catchings and W. H. K. Lee, "Shallow Velocity Structure and Poisson's Ratio at the Tarzana, California Strong-Motion Accelerometer Site," Bulletin of the Seismological Society of America, 86 1704–1713; Rial, loc. cit.; Paul Spudich, Margaret Hellweg, and W. H. K. Lee, "Directional Topographic Site Response at Tarzana Observed in Aftershocks of the 1994 Northridge, California, Earthquake: Implications for Mainshock Motions," Bulletin of the Seismological Society of America, 86, S193–S208 (1996).

[24] Paul Somerville, Chandan Saikia, David Wald, and Rover Graves, "Implications of the Northridge Earthquake for Strong Ground Motions from Thrust Faults," Bulletin of the Seismological Society of America, 86 S115–S125 (1996).

[25] Robert S. Yeats, Kerry Sieh, and Clarence R. Allen, The Geology of Earthquakes, Oxford University Press, Oxford, England (1997).

earthquake; and a blind reverse-fault system beneath the Santa Monica Mountains North of the Los Angeles basin. Major earthquakes generated by these reverse faults include the 1952 Kern County earthquake in the South San Joaquin Valley (M_S 7.7), the 1971 San Fernando earthquake at the eastern edge of the Ventura basin (M_W 6.7), the 1978 Santa Barbara earthquake in the western Ventura basin (M_L 5.9), the 1987 Whittier Narrows earthquake in the Los Angeles basin (M_L 5.9), the 1991 Sierra Madre earthquake at the southern edge of the San Gabriel Mountains northeast of Los Angeles (M_L 6.0), and the 1994 Northridge earthquake in the San Fernando Valley (M_L 6.7). Of these, only the 1952 and 1971 earthquakes produced surface rupture. Global Positioning System satellite geodesy confirms the high convergence rate as a result of reverse slip on these faults,[26] indicating this is an active thrust fault area. These indications were not seen in the SONGS area.

To state that the Northridge earthquake occurred on a blind fault that had not been mapped or assessed is an oversimplification. Blind thrust faults are recognized as significant sources of seismic hazard in areas of active folding, and the Transverse Ranges-Los Angeles basin has long been recognized as such an area. If, before the Northridge earthquake, such a fault had been sought as part of a siting investigation, it or the active folding indicative of such a fault would have been found and would have been considered in the seismic hazard estimate. In addition, the potential occurrence of a M_W 6.5 to 7 on a buried fault has been assumed in the commercial design and construction codes for the area where the Northridge earthquake occurred, so in effect, the potential for blind faults has been accounted for.

The types of site investigations, borehole drilling, and seismic survey profiles normally performed for critical facilities such as nuclear power plants are not used for normal residential or commercial structures because of the high costs of such work. For residences or commercial buildings, the codes rely on more generalized hazard estimates, such as those found in Petersen et al.[27] These hazard studies incorporate all the known geologic information in their ground motion estimates.

The most promising new data for the identification of areas of potential buried thrust faults comes from geodetic measurements of the satellite-based Global Positioning System, which is capable of determining convergence rates across folded terranes. Geomorphic studies are important in that the deformation of late Quaternary stream or coastal terraces provides quantitative data on the uplift rates or lack of uplift of postulated active folds over buried faults. In fact, the locale of the 1987 Whittier Narrows, California, earthquake was identified more than 70 years ago [28] as an active anticline on the basis of warped geomorphic surfaces.

The SONGS site lies in a relatively stable structural block bounded by major northwest-southeast trending strike-slip faults. The relative motion between the Pacific plate and the North American plate is accommodated, in part, by dextral strike slip along the San Andreas fault system and faults in the borderlands, extension in the Gulf of California, and contraction in the Transverse Ranges and the Los Angeles basin region.[29]

The tectonic setting of the SONGS site is significantly different from the complex regime of the Transverse Ranges and the Los Angeles basin. This difference is reflected in the higher seismicity in the Transverse Range and the Los Angeles basin than in the SONGS site area. The presence or absence of blind thrust faults in a region is indicated by the presence or absence of significant uplift and folding of late Quaternary period deposits and geomorphic surfaces [30] as evidenced in the Transverse Ranges and the Los Angeles basin region. Mapping of marine terraces along the western flank of the San Joaquin Hills to the north of the SONGS site indicates a uniform uplift rate for the past 80 to 120 thousand years.[31] Lajoie et al.[32] reported on the coastal region between San Onofre Bluff and Torrey Pines north of Soledad Mountain in San Diego and noted that there has been no significant crustal tilt perpendicular to the coastline during much of the Quaternary Period. There is also no indication from the marine terrace studies of significant tilt parallel to the coastline during much of the Quaternary Period. The marine terrace data, along with other geological mapping and geophysical surveys, have not identified geologically young folds or blind thrust faults in the SONGS site vicinity. The closest capable fault to the site is the OZD 8 kilometers from the site, and it is the postulated earthquake on this fault that dominates the seismic hazard at SONGS. Therefore, the statement that the Northridge earthquake occurred on a blind fault that had not been mapped or assessed, and the implication that such a condition could also exist at the SONGS site, are not valid.

The Landers magnitude M_W 7.3 earthquake of June 28, 1992, was in the Eastern California Shear Zone (ECSZ) approximately 140 kilometers from the SONGS site. The ECSZ is a complex zone of predominantly right lateral strike-slip faulting. The earthquake was caused by strike-slip faulting on five fault segments with a total rupture length of about 70 kilometers.[33]

Campbell and Bozorgnia [34] used 167 accelerograms recorded during the Landers earthquake to study the ground motions from this event. A comparison of these recordings with ground motions predicted by contemporary attenuation relationships indicated that relationships developed before the Landers earthquake made a reasonable prediction of the Landers ground motions within 60 kilometers of the fault, and relationships developed after

[26] Id.

[27] Mark D. Peterson, *et al.*, *supra* note 15.

[28] F.F. Vickery, "The Interpretation of the Physiography of the Los Angeles Coastal Belt," Bulletin of the American Association of Petroleum Geologists, 11, 417–424 (1927).

[29] M.L. Zoback and R.E. Anderson, "Cenozoic Evolution of the State of Stress and Style of Tectonism in Western United States," Philosophical Transactions of the Royal Society of London, 300, 407–434 (1981); R. Weldon and E. Humphreys, "A Kinematic Model of Southern California," Tectonics, 5, 38–48 (1986); D.F. Argus and R.G. Gordon, "Sierra Nevada-North America Motion From VLBI and Paleomagnetic Data—Implications for the Kinematics of the Basin and Range, Colorado Plateau, and California Coast Ranges," EOS Transactions, American Geophysical Union, 69, 1416 (1988); R.S. Stein and R.S. Yeats, "Hidden Earthquakes," Scientific American, 260, 48–57 (1989).

[30] Stein and Yeats, *supra* notes 25 and 29.

[31] D.T. Barrie, T. Totnall, and E. Gath, "Neotectonic Uplift and Ages of Pleistocene Marine Terraces, San Joaquin Hills, Orange County, California," in E.G. Heath and W.L. Lewis (editors), The Regressive Pleistocene Shoreline Coastal Southern California, South Coast Geological Society, Inc., 1992 Annual Field Trip Guide Book No. 20, 115–122 (1992).

[32] K.R Lajoie, D.J. Ponti, C.L. Powell, II, S.A. Mathieson, and A.M. Sarna-Wojcicki, "Emergent Marine Strandlines and Associated Sediments, Coastal California; a Record of Quaternary Sea-Level Fluctuations, Vertical Tectonic Movements, Climatic Changes, and Coastal Processes," in E.G. Heath and W.L. Lewis (editors), The Regressive Pleistocene Shoreline Coastal Southern California, South Coast Geological Society, Inc., 1992 Annual Field Trip Guide Book No. 20, 81–104 (1992).

[33] Yeats, et al., *supra* note 25.

[34] K.W. Campbell and Y. Bozorgnia, "Empirical Analysis of Strong Ground Motion from the 1992 Landers, California, Earthquake," Bulletin of the Seismological Society of America, 84, 573–588 (1997).

the Landers earthquake did a reasonably good job of predicting the Landers ground motions within the distance ranges for which they were applicable. This information shows that there was nothing extraordinary about the ground motions from the Landers earthquake that would challenge the adequacy of the near field ground motion estimates made for the SONGS SSE. To demonstrate the adequacy of the SONGS SSE ground motion, Figure 3 contains a plot of the SSE response spectrum and the 84th percentile response spectra obtained from the four recent earthquake ground motion attenuation relationships to estimate the ground motion for a magnitude M_W 7 earthquake at a distance of 8 kilometers. The SONGS response spectrum envelopes the response spectra of all four relationships at all frequencies.

To address the issue of the 20 feet (6 meters) of fault displacement as a result of the Landers earthquake, the staff has reviewed the work of researchers on this subject. Post-earthquake investigations have found that slip on the Landers earthquake faults was extremely heterogeneous both along strike and down dip. The magnitude of the horizontal offset varied along the fault trace, but was typically 2 to 3 meters with maximum strike-slip offset of about 6 meters.[35] This offset is not unusual and is within the range of offsets for an earthquake of this size.[36] The U.S. Geological Survey, with NRC sponsorship, has conducted paleoseismic studies of the fault segments that ruptured during the Landers earthquake. Trenches across the faults provide clear evidence of the two most recent pre-1992 surface faulting events. The most recent faulting, Holocene age, has displacements essentially the same as the 1992 event. Evidence from the trenches also indicates that the segments that ruptured during the 1992 event had ruptured during the previous events.[37] If, before the Landers earthquake, these faults had been subjected to the type of investigations that nuclear power plant sites undergo, the earthquake and fault rupture potential would have been identified.

There are no faults at the SONGS site capable of surface offset. The fault nearest to the SONGS site capable of significant surface offset is the OZD, which is 8 kilometers from the site. Assuming that there were to be offsets on the order of 6 meters or more on the OZD, they would have no detrimental effect on SONGS because of the distance of the fault, the orientation of the fault, and the potential ground motion to which the plant is designed.

With respect to the Petitioner's statement that scientists are not able to provide the information to evaluate the situation, the staff notes that numerous papers have been published in the scientific literature and presentations made at national and international scientific meetings on these two earthquakes. In addition, the Seismological Society of America has devoted one issue of its Bulletin [38] to the Northridge earthquake and another issue to the Landers earthquake.[39] The information about these events is understood and is widely distributed in the professional community.

4. Concern About "Seismic Analysis Uncertainties"

In the enclosure to his letter dated December 10, 1996, the Petitioner provided a list of 10 seismic analysis uncertainties [40] and implies that these must be addressed because new surprises will occur with each event.

The Petitioner appears to have compiled a list of uncertainties in estimating seismic hazard from the Petersen paper.[41] There is nothing unique about this list. These are the types of issues a geologist or a seismologist performing earthquake hazard investigations must routinely confront. They are among the points that the NRC Seismic and Geologic Siting Criteria for Nuclear Power Plants and the NRC SRP were developed to address.

The geologic and seismic investigations and reviews that were performed for the licensing of SONGS Units 2 and 3 were deterministic in nature. In the deterministic method, the uncertainties were not explicitly quantified. Rather, a multi-method approach with sensitivity studies was used. For instance, to determine the maximum magnitude estimate for a fault empirical relationship, such as magnitude as a function of the parameters slip rate, the fault length, the rupture length per event, the rupture area, and the historical seismicity were used. Also, various fault segmentation models were used in magnitude estimates. To determine the ground motion from a magnitude 7 earthquake at a distance of 8 kilometers, attenuation relationships from the statistical analysis of empirical ground motion data, theoretical numerical modeling studies, and the response spectra from magnitude 6.5 and larger earthquakes recorded at distances of 13 kilometers and less were used. The SSE for the SONGS site enveloped all of these estimates. The geology in the site region was investigated by geologic mapping, excavation of faults, offshore and onshore seismic reflection profiles, onshore refraction profiles, geophysical surveys, drill holes, well logs, trenching, geomorphic surveys, and geodetic studies. The information from these various studies was analyzed by experienced professional geologists and geophysicists, and the site characteristics were thus developed in a conservative manner. Independent studies and reviews were performed by the NRC staff, the U.S. Geologic Survey, the National Oceanic and Atmospheric Adminstration, and the Advisory Committee on Reactor Safeguards. These studies and reviews confirmed the licensee's determinations.

The uncertainties in seismic hazard estimates can be addressed quantitatively through a probabilistic seismic hazard analysis. In 1991, the NRC issued Supplement 4 to Generic Letter 80–20 requesting licensees of nuclear power plants to perform an IPEEE to identify plant-specific vulnerabilities to severe accidents. Among the events to be assessed were earthquakes, internal fires, high winds and tornadoes, external floods, and transportation and nearby facility accidents. As part of the SONGS IPEEE

[35] Carlos Lazarte, Jonathan D. Bray, Arvid M. Johnson, and Robert E. Lemmer, "Surface Breakage of the 1992 Landers Earthquake and Its Effects on Structures," Bulletin of the Seismological Society of America, 84, 547–561 (1994).

[36] Donald L. Wells and Kevin J. Coppersmith, "New Empirical Relationships Among Magnitude, Rupture Length, Rupture Width, Rupture Area, and Surface Displacement," Bulletin of the Seismological Society of America, 84, 974–1002 (1994).

[37] David P. Schwartz. Personal communication with Dr. Robert Rothman, of the NRC staff, June 1997. Dr. Schwartz is a senior geologist employed by the U.S. Geological Survey in Menlo Park, California and a international authority on paleoseismology.

[38] Bulletin of the Seismological Society of America, Volume 86, Number 1, Part B Supplement, February 1996.

[39] Bulletin of the Seismological Society of America, Volume 84, Number 3, June 1994.

[40] List of Seismic Analysis Uncertainties: (1) How to quantify slip rates and maximum magnitudes along with their uncertainties for all fault sources. (2) How to incorporate blind thrusts with appropriate weighting. (3) What seismogenic zone widths to use for various fault zones. (4) Which magnitude distributions are most appropriate for various faults. (5) How to incorporate background seismicity and which "b" value is most appropriate for exponentially distributed earthquakes. (6) Whether to use source zones or simple point sources in modelling background seismicity. (7) Which alternative segmentation models are viable (including alternative cascades models for "A" zones). (8) How to incorporate geodetic data directly in the model. (9) Which attenuation relations are most appropriate and how to model ground motion from large (M>8) earthquakes. (10) How to resolve the discrepancy between the rate of earthquakes in this and other seismic hazard models and the historic earthquake record (especially in the Transverse Ranges).

[41] Peterson, *et al.*, *supra* note 15.

program, a state-of-the-art probabilistic seismic hazard analysis was performed. In response to an NRC request for information, Southern California Edison submitted its contractor's final report on the seismic hazard study.[42] In the seismic hazard study, ground motion exceedance probabilities were calculated using hypotheses about the causes and characteristics of earthquakes in the region. Scientific uncertainty about the causes of earthquakes and about the physical characteristics of potentially active tectonic features lead to uncertainty in the inputs to the seismic hazard calculations. These uncertainties were quantified using the tectonic interpretations developed by earth scientists knowledgeable about the region. These experts evaluated the likelihood associated with alternative tectonic features and with alternative characteristics of these potential sources. These and other uncertainties were propagated through the entire analysis. The result of the analysis is a spectrum of hazard curves and their associated weights. These curves quantify the seismic hazard at the site and its uncertainty.

The major components of the probabilistic seismic hazard analysis are the identification of the seismic sources, the determination of the earthquake magnitude distribution and rate of occurrence for each source, the estimation of the ground motion, and the incorporation of these factors by the probability analysis into the hazard curves. The Risk Engineering, Inc., report [43] more than adequately demonstrates how the uncertainties of the type the Petitioner listed in the enclosure to his letter were addressed. The comparison of the probabilistic seismic hazard results to the SSE indicates that the SSE response spectrum has an annual probability of being exceeded in the range of 5×10^{-6} to 4×10^{-4}, depending on the frequency. This estimate is similar to the probabilistic hazard estimates for other critical facilities in the western United States. The low frequency of exceedance of the SSE ground motion provides further assurance that the licensing basis for SONGS provides adequate protection of the health and safety of the public.

[42] Risk Engineering, Inc., "Seismic Hazard at San Onofre Nuclear Generating Station, "Prepared for Southern California Edison Co., Final Report (1995).

[43] Id.

5. Concern About the Failure of Welded-Steel Frames in Commercial Buildings During the Northridge Earthquake

In an e-mail message to Dr. Shirley Jackson,[44] the Petitioner stated—

The breaking of welds in steel buildings in the San Fernando Valley is a warning that all sorts of steel welds and fittings are vulnerable. The number of such welds and fittings at SONGS is almost uncountable, and it's therefore unrealistic to believe that they will all be undamaged or broken at forces far below the Design Basis Event of 67%g.

It appears that the Petitioner is referring to the failure of welded-steel moment-resisting frames (WSMFs) in high-rise residential and commercial buildings during the 1994 Northridge earthquake. Following the Northridge earthquake, inspections of many otherwise intact buildings indicated structural damage to WSMFs. The WSMFs were specifically designed on the basis of the assumption that they would be capable of extensive yielding and plastic deformation. The deformation was assumed to be accomplished by the yielding of plastic hinges in the beams at their connections to the columns. Damage was expected to consist of moderate yielding at the connections and localized buckling of the steel elements. However, contrary to the design assumption, the WSMF failures were brittle fractures with unanticipated deformations in girders, cracking in column panel zones, and fractures in beam-to-column weld connections. A number of factors related to seismic analysis and design, materials, fabrication, and construction have been identified as contributing to the failure of the WSMFs and are the focus of research projects sponsored by the Federal Emergency Management Agency.[45]

The method of computing seismic loads, their combination with other non-seismic loads, the acceptance criteria, and the quality assurance requirements for nuclear power plants are significantly more conservative than those for non-nuclear buildings designed using building codes for residential or commercial structures. For nuclear power plants, two levels of ground motion, based on very conservative siting criteria, are determined for designing the safety-related structures, systems, and components. For the lower level of vibratory motion, the operating-basis earthquake,[46] the load factors, and acceptable allowable stresses ensure that the stresses in plant structures remain at least 40 percent below the yield stress of the material. For the higher level vibratory motion, the SSE, the associated load factors, and allowable stresses ensure that the stresses in steel structures do not exceed the yield stress of the material. The NRC staff design review guidance specified in SRP Section 3.7.2 does not accept the use of inelastic deformation of any steel member or connection in nuclear power plants for design-basis seismic events. Also, the use of broadband design response spectra, conservatively defined structural damping values, consideration of amplified forces at higher elevations in the plants, and consideration of all three components of the design-basis vibratory motion in the dynamic analysis ensure that the loads and load paths of the seismic events are properly considered in the design, as opposed to the use of static shear forces in non-nuclear structures. For these reasons, the failure of WSMFs in residential and commercial buildings as a result of the Northridge earthquake is not relevant to nuclear power plants.

On the basis of its review of the Petitioner's request that the SONGS units be shutdown due to inadequate protection against potential earthquake ground motion, the staff has concluded that the Petitioner has not presented a basis for such an action.

[44] Stephen Dwyer, e-mail message to Dr. Shirley Jackson, Subject: 2.206 Petition Re: SONGS Seismic Hazards, dated May 28, 1997.

[45] FEMA 267, "Interim Guidelines: Evaluation, Repair, Modification and Design of Welded Steel Moment Frame Structures, Program to Reduce the Earthquake Hazards of Steel Moment Frame Structures," Federal Emergency Management Agency, Washington, DC (1995).

[46] See 10 CFR Part 100, Appendix A, III(d).

III. Conclusion

On the basis of the above assessment, I have concluded that no substantial health and safety issues have been raised by the Petitioner that would require taking the action requested by the Petitioner. As explained above, the SONGS site has undergone extensive geologic, geophysical, geotechnical, and seismic investigations and reviews, including a recent analysis to quantify the seismic hazard and uncertainties for the SONGS site. Furthermore, SONGS was licensed consistent with the seismic and geologic siting criteria for nuclear power plants set forth in 10 CFR Part 100, Appendix A. The Petitioner has not provided any information in support of his concerns and requested actions, including information regarding recent earthquakes, which the NRC staff was not already aware. Accordingly, the Petitioner's requested action, pursuant to Section 2.206, is denied.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 19th day of September 1997.

For The Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

BILLING CODE 7590-01-P

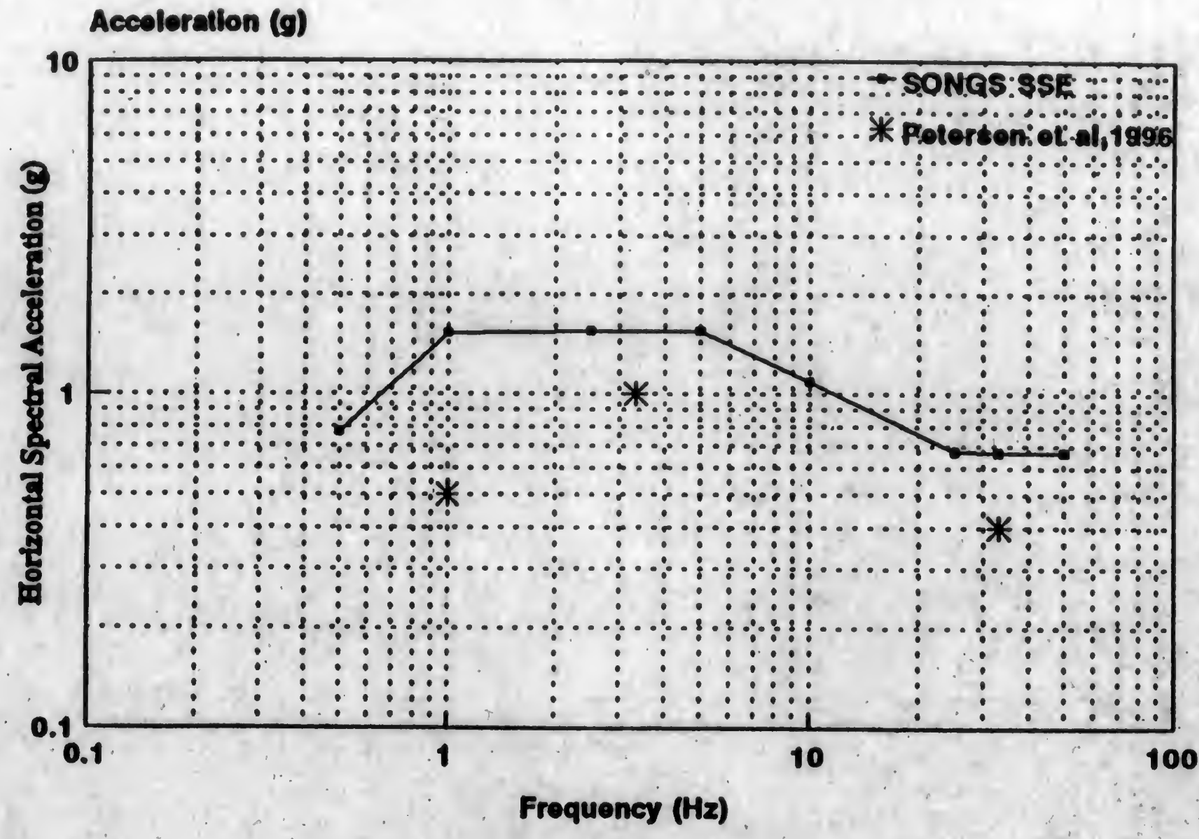


Figure 1

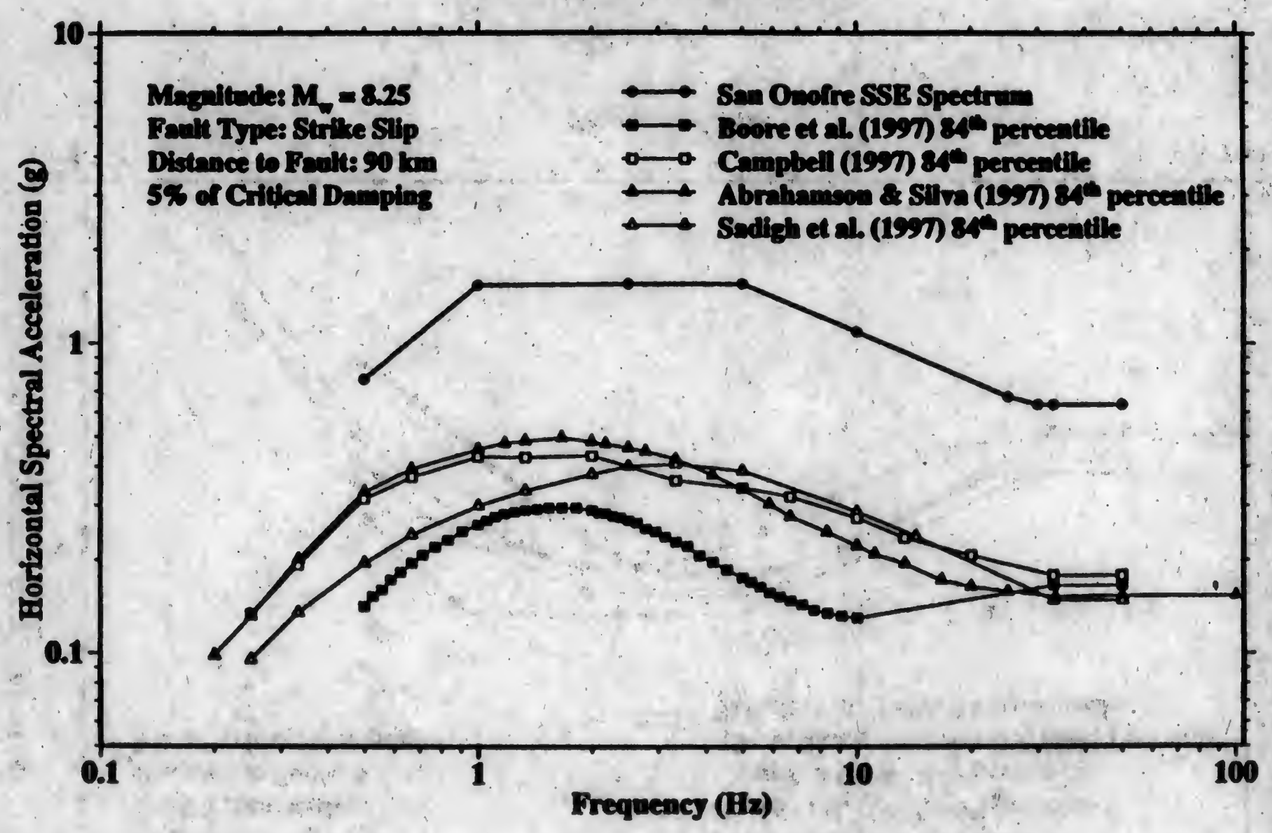


Figure 2

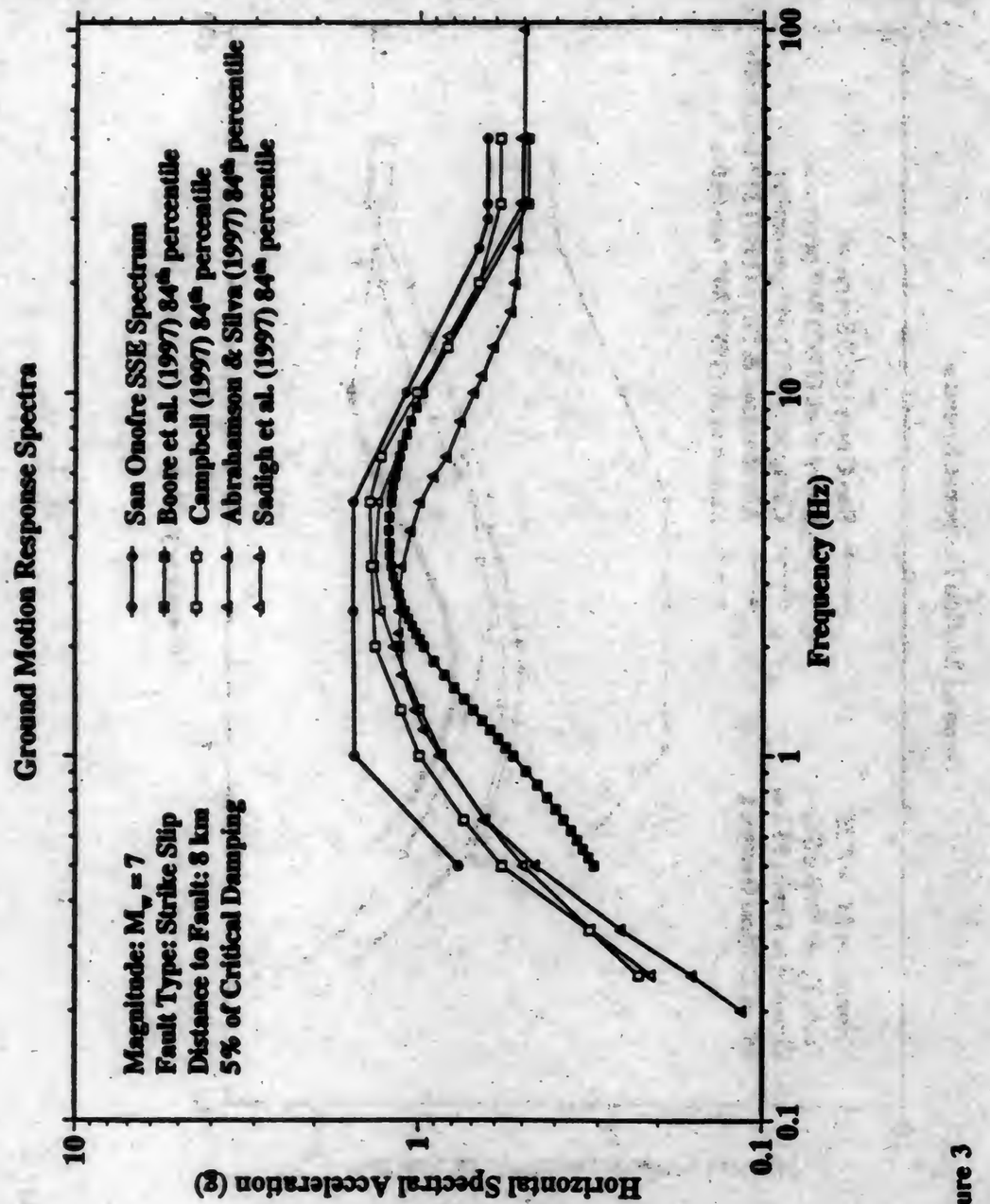


Figure 3

[FR Doc. 97–25632 Filed 9–25–97; 8:45 am]
BILLING CODE 7590–01–C

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Form RI 38–115

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 38–115, Representative Payee Survey, is designed to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Approximately 12,000 RI 38–115 forms will be completed annually. This form takes approximately 20 minutes to complete. The annual burden is 4,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before November 25, 1997.

ADDRESSES: Send or deliver comments to: Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–25614 Filed 9–25–97; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the fifty-second meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting, the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATES: October 14, 1997, at 10:00 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Room 7310 (formerly 7B09), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–25507 Filed 9–25–97; 8:45 am]
BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Evidence of coverage Under An Employer Group Health Plan.

(2) *Form(s) submitted:* RL–311–F.

(3) *OMB Number:* 3220–0189.

(4) *Expiration date of current OMB clearance:* November 30, 1997.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other for profit.

(7) *Estimated annual number of respondents:* 1,000.

(8) *Total annual responses:* 1,000.

(9) *Total annual reporting hours:* 167.

(10) *Collection description:* The collection obtains information from railroad employers which is needed to determine if a railroad retirement beneficiary is entitled to a special enrollment period when applying for supplemental medical insurance under Medicare.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–25661 Filed 9–25–97; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 206(4)–2, SEC File No. 270–217, OMB Control No. 3235–0241; Rule 02 and Forms 4–R, 5–R, 6–R, and 7–R, SEC File No. 270–214, OMB Control No. 3235–0240; Rule 203–2 and Form ADV–W, SEC File No. 270–40; OMB Control No. 3235–0313.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 206(4)–2 governs the custody or possession of funds or securities by Commission-registered investment advisers. Rule 206(4)–2 makes it a fraudulent, deceptive or manipulative act, practice or course of business for any investment adviser who has custody or possession of funds or securities of its clients to do any act or take any action with respect to any such funds or securities unless: (1) The securities are properly segregated and safely kept; (2) the funds are held in one or more specially designated client accounts with the adviser named as trustee; (3) the adviser promptly notifies the client as to the place and manner of safekeeping; (4) the adviser sends a detailed written statement to each client at least once every three months; and (5) at least once each year, on an unannounced basis, an independent public accountant verifies by actual examination the clients' funds and securities and files a certificate with the Commission describing the examination. The rule does not apply to an investment adviser that is also

registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"), provided the adviser is in compliance with Rule 15c3–1 under the Exchange Act, or, if a member of an exchange, in compliance with exchange requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of the customer.

The information required by Rule 206(4)–2 is used by the Commission in connection with its investment adviser inspection program to ensure that advisers are in compliance with Rule 206(4)–2. The information required by paragraphs (3) and (4) of the rule is also used by clients. Without the information collected under the rule, the Commission would be less efficient and effective in its inspection program and clients would not have information valuable for monitoring the adviser's handling of their accounts.

The Commission recently adopted amendments to the rule to restrict the application of the rule to those advisers registered with the Commission. The likely respondents to this information collection are those investment advisers that are registered with the Commission after July 8, 1997, are not also registered as broker-dealers, and have custody of clients' funds or securities. The Commission estimates that 111 advisers would be subject to Rule 206(4)–2. The number of responses under Rule 206(4)–2 will vary considerably depending on the number of clients for which an adviser has custody or possession of funds or securities. It is estimated that an adviser subject to this rule would be required to provide an average of 250 responses annually at an average of .5 hours per response. The total annual burden for each respondent is estimated to be 125 hours. The total annual aggregate burden for all respondents is estimated to be 13,875 hours.

Rule 0–2 requires certain non-resident persons to furnish to the Commission a written irrevocable consent and power of attorney that designates the Commission as an agent for service of process, and that stipulates and agrees that any civil suit or action against such person may be commenced by service of process on the Commission. Regulation 279.4, 279.5, 279.6, and 279.7 [17 CFR 279.4, 279.5, 279.6, and 279.7] designate Forms 4–R, 5–R, 6–R, and 7–R as the irrevocable appointments of agent for service of process, pleadings and other papers to be filed by an individual non-resident adviser or an unincorporated nonresident investment adviser, a partnership nonresident investment adviser, or a nonresident general partner of an investment adviser or a nonresident "managing agent" of an unincorporated investment adviser, respectively, which is registered or applying for registration with the Commission as an investment adviser.

It is necessary to obtain the appropriate consent to ensure that the Commission and other persons can institute injunctive actions against nonresident investment advisers and non-resident partners or managers of investment advisers in cases involving violation of the Investment Advisers Act of 1940 ("Advisers Act") that may result in civil liabilities.

The Commission estimates that there may be an increase in the number of non-resident registered investment advisers, which may be offset by those non-resident general partners or non-resident managing agents of investment advisers that would not register or be registered with the Commission after July 8, 1997 who would no be subject to the Rule 0–2 or the forms.[1] Therefore, non-resident general partners or non-resident managing agents of investment advisers that would be registered with the states after the July 8, 1997 effective date would no longer be subject to Rule 0–2 or be required to file the forms.

The Commission estimates that there would be approximately 300 registrants subject to Rule 0–2. An adviser subject to this rule would be required to file only once, and the Commission estimates that the preparation and filing of any of the forms designated for use pursuant to Rule 0–2 would require approximately one hour of the registrant's time. The total annual burden would be 300 hours.

Rule 203–2 governs withdrawal from registration under the Advisers Act and Form ADV–W is the form for withdrawing registration under the Advisers Act.

To enforce the registration provisions of the Advisers Act and to fulfill its responsibilities under Section 203(h), the Commission must obtain certain information from persons seeking to withdraw from registration. The information required by Form ADV–W enables the Commission to satisfy itself that the activities of person seeking to withdraw from registration do not require such person to be registered and to determine whether terms and conditions should be imposed upon a registrant's withdrawal. Such terms and conditions might include the making of appropriate arrangements with respect to the transfer to clients of client funds and securities in the custody and possession of the adviser or the return to clients of prepaid advisory fees.

After July 8, 1997 (effective date of the Coordination Act), the Commission estimates that only 28 percent of investment advisers currently registered with the Commission will remain eligible for Commission registration. It is estimated that approximately 616 advisers will be withdrawing their registration from the Commission by filing Form ADV–W. The total annual burden for each respondent is estimated to be one hour. The annual aggregate burden for all respondents is estimated to be 616 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 19, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25604 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

[1] On October 11, 1996, President Clinton signed into law the National Securities Markets Improvement Act of 1996 ("1996 Act"). Title III of the 1996 Act, the Investment Advisers Supervision Coordination Act ("Coordination Act"), amended the Investment Advisers Act of 1940 to, among other things, reallocate the responsibilities for regulating investment advisers between the Commission and the securities regulatory authorities of the states.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39100; File No. SR–CBOE–97–41]

Self-Regulatory Organizations; Proposed Rule Change By Chicago Board Options Exchange, Incorporated Relating to the Definition of Stop Orders

September 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE or Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its Rule 6.53 ("Rule") governing the definition of stop orders to clarify that a stop order on the CBOE is triggered when the option contract reaches a specified price "on the CBOE floor." The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to amend the definition of a stop order to clarify that the stop order becomes triggered when the option contract reaches a specified price "on the CBOE floor."

Currently, paragraph (c)(iii) of Exchange Rule 6.53 defines a stop order as a contingency order to buy or sell when the market for a particular option contract reaches a specified price. The Rule does not specify, but has always been interpreted to mean, that the contingency to buy or sell is satisfied when the option contract is bid at or above the stop price (in the case of a by order) or is offered at or below the stop price (in the case of a sell order) "on the floor of the CBOE." The proposed amendment will make it clear, therefore, that a stop order is not activated when the bid or offer (as appropriate) reaches the stop limit on another exchange.

Unlike the equity markets, the option markets are not electronically linked to each other. Thus, options traders have no way of knowing whether a contract has reached a specified "stop" in another market place, as would an equity securities trader. Accordingly, there is no rule prohibiting trade-throughs in options market places as there is in the equity market places.

The CBOE believes that the proposed rule change will clarify the CBOE's responsibility in this regard, and will prevent any perception that CBOE members have a duty to execute stop orders when the "stop" price has not been reached on the CBOE floor.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to protect and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. By clarifying the definition of a "stop order," the proposed rule change will more accurately describe the obligations of CBOE members with regard to stop orders executed on the Exchange. Therefore, the Exchange believes that amending the rule is consistent with, and furthers, the objectives of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to adtermine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number SR–CBOE–97–41 and should be submitted by October 17, 1997.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25518 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39105; File No. SR–CSE–97–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Minor Rule Plan Violations

September 22, 1997.

On August 5, 1997, The Cincinnati Stock Exchange, Incorporated ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change pursuant to Section 19(b)(1)

[3] 17 CFR 200.30–3(a)(12).

of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder.[3] Notice of the proposed rule change, together with the substance of the proposal, was published in the **Federal Register**.[4] No comment letters were received. This order approves the proposed rule change, as amended.

I. Background

Exchange Rule 8.14 provides the Minor Rule Violation Program ("Program") as an alternative disciplinary regime to violations of Exchange Rules that the Exchange determines are of a minor nature. The Program provides the Exchange with the ability, but not the obligation, to impose a fine, not to exceed $2500, on any member the Exchange determines has violated a rule subject to the Program. Section (e) of Exchange Rule 8.14 requires the Exchange from time to time to prepare a list of minor rule violations. Adding a particular rule violation to the Program does not limit the Exchange's ability to treat violations of those rules through more formal disciplinary measures. The Program simply provides the Exchange with greater flexibility in addressing rule violations appropriately.

As part of its ongoing effort to improve its regulatory program, the Exchange has determined that certain rule violations should be added to the Program. The Program currently includes the requirements of Exchange Rules 4.1 and 4.2, concerning books and records, to submit trade data to the Exchange. The proposed rule change will clarify that a member also must provide financial and regulatory records in accordance with Rule 4.2 and Interpretations thereunder as well as trade-related information. The proposed rule change also will add Exchange Rule 11.9(c) to the Program. Exchange Rule 11.9(c) requires Designated Dealers, the Exchange's multiple, competing specialists, to maintain continuous quotations throughout the trading day.

II. Discussion

The Commission finds that the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(7) in particular because it provides a fair procedure for the disciplining of members and persons associated with members in that the proposed rule change will augment the Exchange's ability to police its market and will increase the Exchange's flexibility in responding to minor rule violations.[5] The Commission believes the proposed rule change will enable the Exchange to address appropriate minor rule violations promptly and efficiently through the minor rule procedures, without the need to initiate formal disciplinary proceedings.

Furthermore, the Commission believes that proposed rule change is consistent with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest because the proposed rule change will help the Exchange ensure compliance with its quotation requirements and spread parameters, which will enhance the value of quotations made by the Exchange's multiple, competing specialists.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–CSE–97–07, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25606 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

[3] The proposed rule change was originally submitted on June 24, 1997. The CSE subsequently submitted Amendment No. 1 which altered minor technical language in Item II. Letter from Adam W. Gurwitz, Vice President Legal and Secretary, CSE, to Karl J. Varner, Esq., SEC, dated August 4, 1997. This proposed rule change replaces SR–CSE–97–06, which has been withdrawn. Letter from Adam W. Gurwitz, Vice President Legal and Secretary, CSE, to Katherine England, Assistant Director, SEC, dated June 23, 1997.

[4] Securities Exchange Act Release No. 38922 (August 11, 1997), 62 FR 44024 (August 18, 1997).

[5] The Commission has considered the effect of the proposed rule change on the promotion of efficiency, competition and capital formation. 15 U.S.C. 78(c).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(i).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39103; File No. SR–MBSCC–97–5]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Participant Liability for Transactions Submitted on Behalf of Nonparticipants

September 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on August 1, 1997, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBSCC–97–5) as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will clarify that participants will be liable as principal for any contracts or other transactions submitted to MBSCC on behalf of entities that are not participants ("nonparticipants") and that nonparticipants will not be deemed to possess any rights or benefits of participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, MBSCC's rules state that participants that process any contracts or other transactions through MBSCC for other participants are liable as principal for such contracts or transactions. However, it has always been MBSCC's intention that participants be principally liable whether they submit a contract or transaction on behalf of other participants or nonparticipants. Thus, the proposed rule change will clarify that participants will be liable as principal for any contracts or other transactions processed, compared, settled, or carried out on behalf of nonparticipants. In addition, the proposed rule change states that such nonparticipants will not be deemed to possess any of the rights or benefits of participants.

[2] The Commission has modified the text of the summaries prepared by MBSCC.

MBSCC believes that the proposed rule change will further protect MBSCC in the event a participant fails to discharge its liabilities. In this respect, MBSCC will treat all of a participant's accounts[3] and obligations as belonging to such participant regardless of the identity of the original underlying party. In addition, MBSCC believes that the proposed rule change will remove any doubt that a participant's participant fund[4] deposits will be available for all of the participant's transactions regardless of the source. Furthermore, MBSCC believes that this proposed rule change will foreclose any attempt by a nonparticipant to assert a claim against MBSCC with respect to a trade.

MBSCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations promulgated thereunder in that it will enhance MBSCC's ability to protect itself and its participants against loss.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MBSCC has not solicited or received comments relating to the proposed rule change. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so findings or (ii) as to which MBSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspections and copying at the principal office of MBSCC. All submissions should refer to the File No. SR–MBSCC–97–5 and should be submitted by October 17, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25519 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

[3] According to MBSCC's rules, the term account generally means any account maintained by MBSCC on behalf of a participant for the comparison, margining, and clearing of trades.

[4] According to MBSCC's rules, the term "participant fund" means the fund for which provision is made in Article IV to which participants are required to make basic deposits, minimum market margin differential deposits, and market margin differential deposits.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39104; File No. SR–OCC–97–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Permitting the Use of Certain Fund Shares to Satisfy Margin Requirements and Permitting the Use of Certain Fund Shares and Trust Units as Escrow Deposits

September 22, 1997.

On February 21, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–97–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on May 20, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

(1) Using Fund Shares as a Form of Margin

The proposal amends subparagraph (4) of OCC Rule 604(d), which sets forth the margin deposit eligibility requirements for debt and equity issues, to permit OCC's clearing members to deposit as a form of margin collateral fund shares issued by open-end management investment companies that hold portfolios or baskets of common stocks ("fund shares").[3] The proposal amends the term "stock" defined Rule 604(d)(4) to include fund shares. Fund shares will have to meet the requirements applicable to stocks under Rule 604(d) and be of a class approved by OCC for deposit as margin to be eligible for deposit as margin collateral. Because Rule 604(d)(1) requires that a stock be exchange listed or traded on the NASDAQ National Market System, the "publicly traded" requirement of subparagraph (4) has been deleted. The proposal also amends Section 11 of OCC's Interpretations and Policies to require that OCC's Membership/Margin Committee ("Committee") approve classes of fund shares for deposit as margin. Presently, World Equity Benchmark Shares ("WEBS") listed on the American Stock Exchange are the only class of fund shares the Committee has approved.

(2) Using Fund Shares and Trust Units as Escrow Deposits

The proposal amends OCC Rule 1801(b), which relates to index option escrow deposits, by adding new subparagraph (2) which will define the term "common stocks" to include fund shares and trust units.[4] By adding this definition, OCC Rule 1801(b) now permits clearing members to use fund shares and trust units as part of an escrow deposit made with respect to index call option contracts carried in a

[2] Securities Exchange Act Release No. 38625 (May 13, 1997), 62 FR 27638.

[3] Similarly, OCC permits its clearing members to use certain publicly traded units of beneficial interest in unit investment trusts ("trust units") as margin deposits under the conditions specified in subparagraph (4) of Rule 604(d). Currently, the only trust units approved for deposit as margin are Standard & Poor's ("S&P") Depository Receipts ("SPDR's") on the S&P 500 Index and S&P 400 Mid-Cap Index.

[4] The proposed rule change also makes numbering changes to Rule 1801 as a result of the addition of new subparagraph (b)(2).

short position in a clearing members' customer account.[5]

The language of the new definition parallels that of Rule 604(d), as amended herein. Accordingly, fund shares and trust units deposited as index option escrow deposits must meet the existing requirements for deposits of common stock under Rule 1801(b) and must be of a class approved by OCC for deposit as margin collateral. Because the Committee already has approved for deposit as margin SPDRs on the S&P 500 Index and S&P 400 Mid-Cap Index (as an eligible class of trust units) and WEBS (as an eligible class of fund shares), upon approval of this rule filing SPDRs and WEBS will be eligible for use as escrow deposits for short positions in index call options.[6]

II. Discussion

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. Because fund shares and trust units, among other things, must be either traded on a national securities exchange or designated as a national market system security to be eligible as margin collateral, the proposal ensures that only liquid securities will be accepted as a form of margin or an escrow deposit. In addition, fund shares and trust units are typically traded and cleared like shares of common stock and are typically held in book-entry form at a securities depository.[8] As a result, OCC believes it will be able to readily perfect a security interest in deposited fund shares and will be able to liquidate them if necessary. Furthermore, OCC already has had an opportunity to gain experience in accepting trust units as a form of margin and will be able to use this experience in expanding to fund shares. Therefore, the Commission believes that OCC's proposed rule change is consistent with OCC's obligations under the Act to safeguard securities and funds.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–97–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25520 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

[5] OCC has filed with the Commission a proposed rule change that will authorize OCC to issue and clear options on fund shares and trust units. Securities Exchange Act Release No. 38706 (June 2, 1997, 62 FR 31468. OCC also asserts that, if approved by the Commission, fund shares and trust units will by definition become "underlying securities as defined by Article I, Section 1 of OCC's bylaws," and escrow deposits with respect to call option contracts on these underlying securities carried in a short position will be automatically permitted under the existing provisions of OCC Rule 610, which relates to the deposit of underlying securities in lieu of margin.

[6] OCC has indicated that if the Commission approves the proposal, OCC will send a notice to each of its custodian banks advising them that the term "common stocks" as used in the Amended and Restated On-Line Escrow Deposit Agreement includes the SPDRs and WEBS identified above.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] Securities Exchange Act Release No. 38105, (December 31, 1996) 62 FR 1014 [File No. SR–OCC–96–13] [order approving a proposed rule change relating to unit investment trusts as margin collateral).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Performance Review Board: Membership

AGENCY: Securities and Exchange Commission.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Securities and Exchange Commission announces the appointment of Performance Review Board members.

EFFECTIVE DATE: November 1, 1997.

FOR FURTHER INFORMATION CONTACT: Carol S. Smith, U.S. Securities and Exchange Commission, Washington, DC 20549 (202) 942–4198.

The following are the names and present titles of the individuals appointed to the Performance Review Board established by the U.S. Securities and Exchange Commission.

Name, Title, Organization

Jennifer Scardino, Chief of Staff, Office of the Chairman

James M. McConnell, Executive Director, Office of the Executive Director

Richard Walker, General Counsel, Office of the General Counsel

For the Chairman, by the Executive Director, pursuant to delegated authority.

Dated: September 18, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25605 Filed 9–25–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before November 25, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Request for Management and Technical Assistance".

Type of Request: Revision of Currently Approved Collection.

Form No: 641.

Description of Respondents: Individuals Requesting Counseling Management Counseling from SBA.

Annual Responses: 450,000.

Annual Burden: 59,850.

Title: "Counselor's Case Report".

Tye of Request: Revisions of Currently Approved Collection.

Form No: 641A.

Description of Respondents: SBI and Score Counselors.

Annual Responses: 450,000.

Annual Burden: 90,000.

Comments: Send all comments regarding these information collections to John Bebris, Director, Business Education & Resource Management, Small business Administration, 409 3rd Street, S.W., Suite 6100, Washington, D.C. 20416. Phone No: 202–205–7424. Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize these estimates, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–25627 Filed 9–25–97; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2981]

State of Illinois

As a result of the President's major disaster declaration on September 17, 1997, I find that Cook County, Illinois constitutes a disaster area due to damages caused by severe thunderstorms and flash flooding which occurred August 16–17, 1997. Applications for loans for physical damages may be filed until the close of business on November 15, 1997, and for loans for economic injury until the close of business on June 17, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Du Page, Kane, Lake, McHenry, and Will in Illinois, and Lake County, Indiana may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 298106 and for economic injury the numbers are 960900 for Illinois and 961000 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 19, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–25626 Filed 9–25–97; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S1 for the Office of the Deputy Commissioner, Finance, Assessment and Management is being amended to reflect internal realignments within the Office of Publication and Logistics Management (OPLM) (S1S). The four current subordinate offices within OPLM will be realigned and their functions integrated into a three subordinate office structure. The Office of Library, Records and Reprographics (S1SK) will be abolished in its entirety. The Office of Receiving, Storage and Issue (S1SC) will be retitled as the Office of Supply and Warehouse Management (S1SC). The Office of Supply and Property Management (S1SH) will be retitled as the Office of Property Management (S1SH). The changes are as follows:

Section S1S.10 *The Office of Publications and Logistics Management*—(Organization):

Delete:

G. The Office of Library, Records and Reprographics (S1SK).

Retitle:

D. The "Office of Receiving, Storage and Issue: (S1SC) to the "Office of Supply and Warehouse Management" (S1SC).

E. The "Office of Supply and Property Management" (S1SH) to the "Office of Property Management" (S1SH).

Section S1S.20 *The Office of Publications and Logistics Management*—(Functions):

Retitle and amend as follows:

D. The "Office of Receiving, Storage and Issue" (S1SC) to the "Office of Supply and Warehouse Management" (S1SC).

1. The Office of Supply and Warehouse Management (OSWM) is responsible for the development of policies, procedures, and directives in support of the Agency's nationwide supply, warehouse and transportation systems and operations.

2. OSWM ensures that the Agency's printing requests and justified requisitions are processed timely and oversees the replenishment of warehouse stock for Headquarters' use and ensures delivery of major use forms and publications to the field.

3. OSWM provides transportation services as needed.

E. The "Office of Supply and Property Management" (S1SH) to the "Office of Property Management" (S1SH).

1. The Office oversees all policy and procedures pertaining to the acquisition, utilization, accountability, transfer and disposal of SSA personal property. Represents SSA's interest as liaison to HSS, GSA and other Federal, State and Local Government and private sector organizations and vendors in the acquisition, transfer and disposal of personal property. Oversees the acquisition and disposal of personal property. Oversees the acquisition and installation of modular/systems furniture in SSA offices nationwide. Acts as technical expert and plans, coordinates and implements studies and surveys related to providing necessary ergonomic furniture and equipment to support SSA employees.

2. Oversees the acquisition and installation of modular furniture in SSA offices. Plans, coordinates and implements studies and surveys to access the variety of ergonomic furniture previously purchased and new furniture available to SSA offices. Maintains audit trails for both normal and special expense incurred during and after furniture installation. Responsible for all financial management and contracting activities performed within the scope of the Interagency Agreement with the Federal Prison Industries.

Amend functions to read:

F. The Office of Publications Management (S1SJ).

1. The Office of Publications Management (OPM) directs a comprehensive SSA-wide forms control, publication and distribution management program, including forms and publications design, photocomposition and electronic information dissemination (electronic publishing, on-line publishing/services, electronic reference materials and CD-ROM and multimedia production and delivery). It also provides SSA-wide special media services for visually impaired employees. It is responsible for administering the regulatory and procedural requirements governing SSA's collection of information from the public, stemming from the Paperwork Reduction Act and providing liaison service with the Office of Management and Budget. The Office also coordinates the Agency Administrative Instructions Manual System (AIMS) for printing, clearance and issuance of policy, standards and procedural instructions.

2. The Office coordinates and directs a comprehensive printing management program and administers the procurement of all SSA printing needs.

It prepares the Agency's Comprehensive Printing Program Plan report for the Joint Committee on Printing (JCP) and provides liaison with the JCP and the Government Printing Office on policy and procedural issues. OPM plans, directs and administers the SSA mail policy program, including developing methodologies (e.g., presorting, barcoding, direct accountability, etc). It provides liaison with the United States Postal Service in all national level mail management and operational policy negotiations and activities. It also administers agencywide mail management contracts.

3. The Office plans, directs and coordinates the SSA mail handling program, including the receipt, processing, and dispatch of all incoming and outgoing United States Postal Service mail for SSA headquarters. It provides inter-office mail service for SSA headquarters and priority delivery service in Washington, D.C. It administers oversight of necessary contracts such as the internal mail messenger service. It consolidates and processes outgoing mail from headquarters to District Offices, Branch Offices, Program Service Centers and Regional Offices, etc. It also processes computer-generated priority notices to SSA beneficiaries nationwide, using high-speed equipment to fold, insert and label mailings.

4. The Office coordinates and directs a comprehensive printing management program and administers the procurement of all SSA printing needs. It prepares the Agency's Comprehensive Printing (JCP) and provides liaison with JCP and Government Printing office on policy and procedural issues. Plans, directs and administers the SSA mail policy program, including developing policy and procedures for more efficient Agency mail processing methodologies. It provides liaison with the United States Postal Service in all national level mail management and operational policy negotiations and activities. It also administers agencywide mail management contracts.

5. The Office of Publications Management develops, recommends and implements SSA policies and standards for library and information services of the SSA Headquarters Library and for SSA employees nationwide. It provides a collection of information on subjects related to SSA programs and their operation.

6. The Office provides SSA duplicating services for short turnaround work and for the development of metal photo requests for Commissioner's citations, award plaques, signs, etc.

Dated: August 21, 1997.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 97–25611 Filed 9–25–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Bureau of Consular Affairs (CA/VO/F/P)

[Public Notice 2603]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Department of State.

ACTION: 60-Day Notice of Proposed Information Collection; OF–230 I & II, Application for Immigrant Visa and Alien Registration.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs (CA/VO/F/P).

Title of Information Collection: Application for Immigrant Visa and Alien Registration.

Frequency: On occasion.

Form Number: OF–230.

Respondents: Aliens.

Estimated Number of Respondents: 750,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 750,000.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: September 15, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–25531 Filed 9–25–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2609]

Advisory Committee on International Economic Policy Notice of Partially Closed Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet 9 a.m.–1 p.m. on Wednesday, October 8, 1997, in Room 1107, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. The meeting will be hosted by Committee Chairman Mike Gadbaw and by Assistant Secretary of State for Economic and Business Affairs, Alan P. Larson.

The closed briefings that the Department of State will arrange for ACIEP members will involve discussions of classified or business proprietary information, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. II section 10(d), and the Government in the Sunshine Act 5 U.S.C. 552b (c)(1), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(9)(B).

The open portion of the session, which will begin at approximately 12 noon, will focus *inter alia* on the economic dimensions of climate change.

For further information, contact Sharon Rogers, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 6828, Main State, Washington, DC 20520. she may be reached at telephone number (202) 647–5968 or fax number (202) 647–5713.

Dated: September 15, 1997.

Alan P. Larson,

Assistant Secretary for Economic and Business Affairs.

[FR Doc. 97–25535 Filed 9–25–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice No. 2606]

International Telecommunications Advisory Committee (ITAC) Ad Hoc on Administrative Preparations for the 1998 Plenipotentiary Conference Meeting Notice

The Department of State announces a meeting, under the International Telecommunications Advisory Committee (ITAC), of its Ad Hoc Group on administrative preparations for the next ITU Plenipotentiary Conference, to be hosted by the United States in Minneapolis in October/November 1998. The Ad Hoc meeting will be held Thursday, October 9, 1997, at 10 a.m. In Room 1207 of the Department of State, 22nd and C Street, NW., Washington, DC.

The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic telecommunications and information issues. To assist in preparations for specific international events and issues, the Department may establish an ITAC Ad Hoc group. The purpose of the upcoming Ad Hoc meeting is to provide an update on preparations for the 1998 Plenipotentiary Conference of the International Telecommunications Union (ITU).

Working group chairpersons of the Ad Hoc will report on past and upcoming activities. The telecommunications requirements for the Plenipotentiary Conference will be reviewed. Questions regarding the agenda may be directed to Anne Jillson, Department of State (202) 647–9117, fax number (202) 736–4933.

All participants may join in discussions, subject to instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to (202) 647–5957 at least 24 hours before the meeting, providing name, affiliation, date of birth and social security number, to arrange for pre-clearance. One of the following valid photo ID's is required for admittance: U.S. driver's license with picture, passport, government ID (company IDs are not accepted). Enter the "C" Street Main Lobby.

Dated: September 16, 1997.

Richard E. Shrum,

ITAC Executive Director.

[FR Doc. 97–25525 Filed 9–25–97; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

[Public Notice No. 2607]

International Telecommunications Advisory Committee; Telecommunications Development Sector (ITAC–D) Group Meeting Notice

The Department of State announces the United States International Telecommunications Advisory Committee (ITAC) Telecommunications Development Sector (ITAC–D) Group will meet over the next several months to prepare for the upcoming International Telecommunications Union (ITU) World Telecommunication Development Conference scheduled for March 23–April 1, 1998 in Valletta, Malta. First preparatory meeting is scheduled for Friday, October 17, 1997, Room 1408, U.S. Department of State.

The agenda for the preparatory meeting is to discuss and review proposals to the Conference regarding the Development Sector's mission and strategic plan, its structure and methods of work and the priorities for the programme 1999–2003. U.S. proposals for new Study Group questions will also be discussed. It is expected that ad hoc committees will be formed at the first meeting to work on specialized or specific topics.

Questions regarding the meeting may be addressed to Ms. Doreen McGirr at 202–647–0201. If you wish to attend please send a fax to 202–647–7407 no later than two days before the scheduled meeting. Please include your name, Social Security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. Government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: September 17, 1997.

Doreen F. McGirr,

Chair of ITAC–D.

[FR Doc. 97–25526 Filed 9–25–97; 8:45 am]

BILLING CODE 4710–45–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–102]

Determinations Under Section 304 of the Trade Act of 1974 With Respect to Certain Canadian Practices Affecting Periodicals

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations, termination and monitoring.

SUMMARY: The United States Trade Representative (USTR) has determined pursuant to section 304(a)(1)(A)(ii) of the Trade Act of 1974 (19 U.S.C. 2414(a)(1)(A)(ii)) ("the Trade Act") that certain acts, policies and practices of the Government of Canada that restrict or prohibit imports of certain periodicals into Canada and apply discriminatory treatment to certain imported periodicals violates, or otherwise denies benefits to which the United States is entitled to under, the General Agreement on Tariffs and Trade (GATT) 1994. This determination is based on the report of a dispute settlement panel convened under the World Trade Organization (WTO), at the request of the United States, to examine the Canadian measures at issue. That report, as modified by a report of the WTO Appellate Body, and adopted by the WTO Dispute Settlement Body (DSB), found four Canadian measures affecting periodicals to be inconsistent with Canada's obligations under GATT 1994.

Following the adopting of this report by the DSB, Canada submitted a letter to the DSB announcing its commitment to meet its obligations under the WTO with regard to this matter and comply with the panel and Appellate Body reports within a reasonable period of time. Thus, pursuant to section 304(a)(1)(B) of the Trade Act, the USTR has determined that, by making this commitment, Canada is taking satisfactory measures to grant the rights of the United States under the GATT. Therefore, the USTR will not take action under section 301 of the Trade Act at this time and has terminated this investigation, but will monitor under section 306 of the Trade Act Canada's implementation of this commitment.

EFFECTIVE DATE: September 11, 1997.

ADDRESSES: 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William Kane, Associate General Counsel, (202) 395–6800; or Megan Waters, Director for Canadian Affairs, (202) 395–3412.

SUPPLEMENTARY INFORMATION: On March 11, 1996, the United States Trade Representative initiated an investigation under section 302(b)(1) of the Trade Act of 1974 ("the Trade Act") regarding certain measures adopted by the Government of Canada affecting periodicals and requested public comment on the issues raised in the investigation and the determinations to be made under section 304 of the Trade Act. 61 FR 11067 (March 18, 1996).

These measures included, but were not limited to, the following: (1) Tariff Code 9958, which prohibits the importation into Canada of certain periodicals; (2) Part V.1 of the Excise Tax Act, as enacted by Bill C–103 of December 15, 1995, which imposed an excise tax on certain so-called "split-run" periodicals, and (3) application of two types of discriminatory postal rates in favor of certain Canadian periodicals. As required under section 303(a) of the Trade Act, the USTR requested consultations with the Government of Canada under the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

Pursuant to Section 304(a)(1)(A) of the Trade Act, the USTR must determine in this case whether any act, policy or practice of the Government of Canada violates, or otherwise denies benefits to which the United States is entitled to under, any trade agreement. If that determination is affirmative, the USTR must take action under section 301 of the Trade Act, subject to the specific direction of the President, if any, unless, *inter alia*, the United States finds that the foreign country is taking satisfactory measures to grant the rights of the United States under the trade agreement.

Reasons for Determinations

(1) Canada's Acts, Policies and Practices

The WTO panel in this case circulated its report on March 14, 1997. The panel found that the following three Canadian measures violated Canada's obligations under the GATT: (1) Canada's import ban on certain periodicals; (2) Canada's 80 percent excise tax on so-called "split-run" periodicals, and (3) Canada's discriminatory "commercial" postal rates. Canada appealed the WTO panel's finding regarding the 80 percent excise tax, and the United States cross-appealed the panel's conclusion that a fourth Canadian measure—Canada's discriminatory "funded" postal rates—were a subsidy exempt from GATT national treatment requirements. The Appellate Body upheld the WTO panel's findings on the excise tax, but reversed the panel's finding (agreeing with the United States) regarding Canada's "funded" postal rates. The DSB adopted the WTO panel and Appellate Body reports on July 30, 1997. Thus, based on the results of the WTO dispute settlement proceedings, the public comments received and appropriate consultations, the USTR has determined pursuant to section 304(a)(1)(A)(ii) of the Trade Act that certain acts, policies and practices of the Government of Canada violate, or otherwise deny benefits to which the United States is entitled to under, GATT 1994.

(2) U.S. Action

Upon affirmative determination of the denial of rights under a trade agreement, the USTR must decide pursuant to section 304(a)(1)(B) of the Trade Act to take action unless, *inter alia*, the USTR finds that the foreign country is taking satisfactory measures to grant the rights of the United States under the trade agreement. On August 29, 1997, Canada submitted a letter to the DSB stating that it will meet its WTO obligations and will comply with the WTO panel and Appellate Body reports within a reasonable period of time. The USTR has determined that, in light of Canada's letter of intention, Canada is taking satisfactory measures to grant the rights of the United States under GATT. Thus, the USTR will not take action under section 301 of the Trade Act at this time and has determined this investigation. Pursuant to section 306 of the Trade Act, the USTR will monitor Canada's compliance with the WTO panel and Appellate Body report and will take action under section 304(a) of the Trade Act if Canada does not come into compliance.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–25586 Filed 9–25–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–063]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) will meet to conduct a comprehensive review of currently effective boating safety regulations as previously announced. Special subcommittees will meet to review boating safety regulations dealing with manufacturer requirements, boat and equipment standards and operator requirements. Additionally, Council subcommittees on boat occupant protection, navigation lights, and personal flotation device-life saving index will meet to discuss various issues relating to recreational boating. All meetings will be open to the public.

DATES: NBSAC will meet on Monday and Tuesday, October 27 and 28, 1997, from 8:30 a.m. to 5 p.m. The Manufacturer Requirements, Boat and Equipment Standards, and Operator Requirements Regulations Review Subcommittees will meet on Saturday, October 25, 1997, from 1:30 p.m. to 5 p.m. and on Sunday, October 26 from 1:30 to 5:00 p.m. The Navigation Light and the Personal Flotation Device-Life Saving Index Subcommittees will meet from 8:30 to 10:30 a.m., and the Boat Occupant Protection Subcommittee from 10:00 a.m. to noon, on Sunday, October 26, 1997 .Written material and requests to make oral presentations should reach the Coast Guard on or before October 20, 1997. Requests to have a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting should reach the Coast Guard on or before October 14, 1997.

ADDRESSES: NBSAC will meet at the Holiday Inn Hotel and Conference Center, 210 Holiday Court, Annapolis, Maryland. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Albert J. Marmo, Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Albert J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet, at the Web Site for the Office of Boating Safety, at URL address www.uscgboating.org/.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. A Notice of Request for Comments concerning the review of currently effective boating safety regulations by NBSAC was published in the **Federal Register** on May 28, 1997 (62 FR 28824).

Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Executive Director's report.
(2) Chairman's session.
(3) Manufacturer Requirements Regulations Review Subcommittee report.
(4) Boat and Equipment Standards Regulations Review Subcommittee report.
(5) Operator Requirements Regulations Review Subcommittee report.

(6) Boat Occupant Protection Subcommittee report.
(7) Navigation Light Subcommittee report.
(8) Personal Flotation Device—Life Saving Index Subcommittee report.
(10) Recreational Boating Safety Program report.
(11) Canadian Coast Guard report.
(12) National Association of State Boating Law Administrators report.
(13) Coastal Zone Mission Analysis discussion.
(14) Fire extinguisher labeling discussion.
(15) Update on mandatory personal flotation device wearing requirements and mandatory boating safety education requests for comments.
(16) Update on Global Maritime Distress and Safety System and National Distress System Modernization Project Issues.
(17) Report on personal flotation device conspicuity research.

Manufacturer Requirements Regulations Review Subcommittee

The agenda includes the following:
(1) Review recreational boating safety regulations concerning capacity; flotation; certification; hull identification number, and defect notification.
(2) Present recommendation to the Council as to whether the current recreational boating safety regulations need to be changed or removed based on a review of need, technical accuracy, cost/benefit, problems and alternatives.

Boat and Equipment Standards Regulations Review Subcommittee

The agenda includes the following:
(1) Review recreational boating safety regulations concerning fuel and electrical systems, ventilation; start-in-gear protection; and backfire flame control.
(2) Present recommendations to the Council as to whether the current recreational boating safety regulations need to be changed or removed based on a review of need, technical accuracy, cost/benefit, problems and alternatives.

Operator Requirements Regulations Review Subcommittee

The agenda includes the following:
(1) Review recreational boating safety regulations concerning intoxicated operation; regattas and marine parades; personal flotation devices; visual distress signals; correction of especially hazardous conditions; numbering; accident reporting; and fire extinguishers.
(2) Present recommendations to the Council as to whether the current recreational boating safety regulations need to be changed or removed based on a review of need, technical accuracy, cost/benefit, problems and alternatives.

Boat Occupant Protection Subcommittee

The agenda includes the following:
(1) Review and discuss boat occupant protection study issues.
(2) Discuss risk avoidance alternatives.
(3) Discuss planned study research efforts.

Navigation Light Subcommittee

The agenda includes the following:
(1) Review and discuss issues concerning regulatory controls for navigation lights for recreational vessels.
(2) Discuss and make recommendations regarding the conduct of a study to improve the visibility and display of navigation lights focusing on hardware issues.

Personal Flotation Device—Life Saving Index Subcommittee

The agenda includes the following:
(1) Assist in the development of a consensus standard for application of the life saving index to various types of personal flotation devices.
(2) Review personal flotation device (PFD) conspicuity issues and recommend a course of action.
(3) Review the status of inflatable PFD inflation systems.

Procedural

All meetings are open to the public. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than October 20, 1997. If you would like a copy of your material distributed to each member of the committee or subcommittees in advance of a meeting, please submit 25 copies to the Executive Director no later than October 14, 1997.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: September 22, 1997.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard Assistant Commandant for Operations.

[FR Doc. 97–25571 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.812–2. Floor Proximity Emergency Escape Path Marking Systems Incorporating Photoluminscent Elements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.812–2, Floor Proximity Emergency Escape Path Marking Systems Incorporating Photoluminescent Elements. This AC provides guidance material for use in demonstrating compliance with the provisions of part 25 of the Federal Aviation Regulations (FAR) regarding floor proximity emergency escape path marking systems (FPEEPMS) which incorporate photoluminesent elements. Like all ACs, it is not regulatory but is to provide guidance for applicants in demonstrating compliance with the objective safety standards set forth in the rule.

DATES: Advisory Circular 25.812–2 was issued by the Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100, on July 24, 1997.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or faxing your request to the warehouse at 301–386–5394.

Issued in Renton, Washington, on September 15, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–25510 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee

(ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from October 6–9, 1997, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at Federal Aviation Administration Headquarters, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Reavis, Executive Director, ATPAC, Strategic Operations/ Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held October 6 through 9, 1997, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than October 3, 1997. The next quarterly meeting of the FAA ATPAC is planned to be held from January 12–15, 1998, location TBD.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on September 18, 1997.

Charles R. Reavis,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 97–25512 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Hearing of the National Civil Aviation Review Commission

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public hearing.

SUMMARY: The FAA is issuing this notice to advise the public of a hearing of the National Civil Aviation Review Commission. The Commission is soliciting comments and suggestions from the public regarding aviation safety issues.

DATES: The meeting will be held on Wednesday, October 8th at 9:30 am.

ADDRESSES: The hearing will be held at the Rayburn House Office Building in Room 2167, the House Transportation and Infrastructure Committee hearing room.

FOR FURTHER INFORMATION CONTACT: Margie Tower, (202) 366–6942, fax: (202) 493–2963, National Civil Aviation Review Commission, Room 8332, Nassif Bldg. 400 7th Street, S.W., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The National Civil Aviation Review Commission was created by Congress as part of the Federal Aviation Reauthorization Act of 1996. If you would like to testify at the public hearing, please contact Margie Tower at the phone number listed above. Attendance is open to the interested public but may be limited to space available. The public must make arrangements in advance to present oral statements at the hearing, and will be required to provide written statements to the Commission by close of business Friday, October 3rd.

Issued in Washington, DC, on September 19, 1997.

Margie Tower,

Hearing Officer, National Civil Aviation Review Commission.

[FR Doc. 97–25511 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. PS–142; Notice 8]

Pipeline Safety: Risk Management Public Meeting

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is to notify pipeline operators, government agencies, and the public that OPS is hosting a public meeting to provide an update on the Risk Management Demonstration Program and to receive your input on the progress of the Program thus far and on specific demonstration projects under review.

DATES: The public meeting will be held on November 19, 1997, from 8:00 a.m. to 12:00 p.m. It is being held in conjunction with the Pipeline Safety Technical Advisory Committee meetings. These meetings are open to the public.

ADDRESSES: The public meeting will be held at the Adam's Mark Hotels and Resorts, 2900 Briarpark Drive at Westheimer, Houston, TX 77042. The Adam's Mark Hotel is located 35 minutes away from both Intercontinental and Hobby airports. Hourly shuttle and taxi service are available to either airport.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov), regarding the subject matter of this Notice.

SUPPLEMENTARY INFORMATION:

The public meeting is being held in conjunction with two Pipeline Safety Technical Advisory Committee meetings. The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) and the Technical Pipeline Safety Standards Committee (TPSSC) will meet on November 18 and 19. The THLPSSC will meet during the morning of November 18 and there will be a joint session of the THLPSSC and the TPSSC in the afternoon. The TPSSC will meet on the afternoon of November 19 following the risk management meeting.

The agenda will include an overview of the demonstration projects, an update on what we have learned from the consultation process, a discussion of the potential benefits of the projects and technologies used, an update on the plans for the Local Distribution Company Risk Assessment Quality Team and more. Before and after the meeting, OPS and candidate companies will be available to answer questions about specific demonstration projects and to demonstrate the Pipeline Safety Risk Management Information System, a database for all interested parties to learn more about pipeline risk management.

Issued in Washington, DC on September 22, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–25513 Filed 9–25–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board [1]

[Finance Docket No. 32530]

Kansas City Southern Railway Company—Construction and Operation Exemption—Geismar Industrial Area Near Gonzales and Sorrento, Louisiana

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of extension of time for comment period for draft environmental impact statement (EIS).

SUMMARY: The Kansas City Southern Railway Company (KCS) applied to the Interstate Commerce Commission (ICC), now the Surface Transportation Board (Board), for authority to construct and operate an 8.62-mile rail line from the Geismar Industrial area to its mainline near Gonzales and Sorrento, in Ascension Parish, Louisiana. On July 16, 1997, the Board's Section of Environmental Analysis (SEA) issued a draft EIS. Consistent with Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act (NEPA), SEA provided a 45-day comment period for the public review of the draft EIS, with comments due by September 8, 1997.

In response to several requests to extend the comment period an additional 60 days, SEA granted a 15-day extension for filing comments to September 23, 1997.

The Concerned Citizens of Ascension Parish (CCAP) filed an Appeal of SEA's decision and requested the full 60 days sought in their original request. As stated in the original extension decision, SEA believes that the 45-day comment period specified by CEQ guidelines is sufficient in this case. However, in order to allow every opportunity for public input into the Board's NEPA process in this case, SEA will accept comments to the draft EIS for an additional 14 days past the current due date of September 23, 1997. Comments to the draft EIS will now be due on October 7, 1997.

If you wish to file comments on the draft EIS, send an original and 10 copies to: Vernon A. Williams, Secretary, Surface Transportation Board, Suite 700, 1925 K Street, NW, Washington, DC 20423. Mark the lower left corner of the envelope: Attention: Michael Dalton, Environmental Comments, Finance Docket No. 32530.

FOR FURTHER INFORMATION CONTACT: Michael Dalton, Section of Environmental Analysis, Room 528, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423; phone number (202) 565–1530. TDD for the hearing impaired: (202) 565–1695.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25641 Filed 9–25–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to section 49 U.S.C. 10901. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former section of the statute, unless otherwise indicated.

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on two information collections that are due for renewed approval by the Office of Management and Budget. The Office of International Financial Analysis within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form BL–3, Intermediary's Notification of Foreign Borrowing Denominated in Dollars; and Treasury International Capital Form CM, Dollar Deposit and Certificate of Deposit Claims on Banks Abroad.

DATES: Written comments should be received on or before November 25, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Gary A. Lee, Manager, Treasury International Capital Reporting System, Department of the Treasury, Room 5464, 1500 Pennsylvania Avenue NW, Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Gary A. Lee, Manager, Treasury International Capital Reporting System, Department of the Treasury, Room 5464, 1500 Pennsylvania Avenue NW, Washington DC 20220, (202) 622–2270.

SUPPLEMENTARY INFORMATION:

Titles: Treasury International Capital Form BL–3, Intermediary's Notification of Foreign Borrowing Denominated in Dollars; and Treasury International Capital Form CM, Dollar Deposit and Certificate of Deposit Claims on Banks Abroad.

OMB Numbers: 1505–0088 and 1505–0023.

Abstracts: Forms BL–3 and CM are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 USC 286f; 22 USC 3103; EO 10033; 31 CFR 128), and are designed to collect timely information on international portfolio capital movements. Form BL–3 is a monthly report used to strengthen compliance with existing TIC reporting requirements, whereby a U.S. bank advises its domestic nonbank customers of their responsibilities to report as liabilities on TIC Form CQ–1 their loans from foreigners that the bank will not include among its reportable custody liabilities to foreigners on TIC Form BL–2. Form CM is a monthly report whereby nonbanking enterprises in the U.S. report their total dollar deposit and certificate of deposit claims on foreign banks. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies.

Current Actions: No changes to reporting requirements for either form are proposed at this time.

Type of Review: Extensions.

Affected Public: Business or other for-profit organizations.

Form BL–3 (1505–0088).

Estimted Number of Respondents: 25

Estimated Average Time per Respondent: 30 minutes per respondent per filing.

Estimated Total Annual Burden Hours: 150 hours, based on twelve reporting periods per year.

Form CM (1505–0023).

Estimated Number of Respondents: 175

Estimated Average Time per Respondent: 30 minutes per respondent per filing.

Estimated Total Annual Burden Hours: 1,050 hours, based on twelve reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: Whether Forms BL–3 and CM are necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness, and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Thomas Ashby McCown,

Director, Office of International Financial Analysis.

[FR Doc. 97–25523 Filed 9–25–97; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

September 19, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

Dates: Written comments should be received on or before October 27, 1997 to be assured of consideration.

OMB Number: 1550–0019.

Form Number: SEC Schedules 13D, 13G, 14D–1, 14C, 14A and 14B; Sec forms 15, 8–A, 10, 10–K, 10–KSB, 8–K, 8–A, 12b–25, 10Q, 10QSB, 3, 4, 5, and Annual Report.

Type of Review: Extension of an already approved collection.

Title: Annual Reporting Requirements and Disclosures Required by the Securities Exchange Act of 1934.

Description: OTS collects periodic disclosure documents required to be filed by savings associations pursuant to the Securities Exchange Act of 1934 on forms promulgated by the U.S. Securities and Exchange Commission for its registrants.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 90.

Estimated Burden Hours Per Respondent: 500 hours average.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 272,813 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–25574 Filed 9–25–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

September 19, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

Dates: Written comments should be received on or before October 27, 1997 to be assured of consideration.

OMB Number: 1550-0063.

Form Number: OTS Form 1564.

Type of Review: Extension of an already approved collection.

Title: Activities of Savings and Loan Holding Companies.

Description: 12 CFR Section 584.2–1 requires that savings and loan holding companies notify OTS when proposing to engage in the prescribed services and activities listed in this regulation. The OTS uses this information to track activities and decide the advisability of other actions.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Once.

Estimated Total Reporting Burden: 2 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–25575 Filed 9–25–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

September 19, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

Dates: Written comments should be received on or before October 27, 1997 to be assured of consideration.

OMB Number: 1550–0077.

Form Number: OTS Form 1579.

Type of Review: Extension of an already approved collection.

Title: Operating Subsidiaries.

Description: 12 CFR Part 559 requires a savings association proposing to establish or acquire an operating subsidiary or conduct new activities in an existing operating subsidiary to either notify OTS or obtain the prior approval of the OTS. The regulation also requires a savings association to create and maintain certain documents.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 154.

Estimated Burden Hours Per Respondent: 14 hours.

Frequency of Response: Once.

Estimated Total Reporting and Recordkeeping Burden: 1,540.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–25576 Filed 9–25–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

September 22, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

DATES: Written comments should be received on or before October 27, 1997 to be assured of consideration.

OMB Number: 1550–0035.

Form Number: SEC Forms S–4, S–8, SB–1, SB–2, and OTS Forms PS, OC and G–12.

Type of Review: Extension of an already approved collection.

Title: Securities Offerings Disclosure.

Description: OTS collects information for disclosure in securities offerings by savings associations based on the U.S. Securities and Exchange Commission requirements for the offering of information to potential securities purchasers.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 71.

Estimated Burden Hours Per Respondent: 440 hours average.

Frequency of Response: Once.

Estimated Total Reporting Burden: 31,194 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–25634 Filed 9–25–97; 8:45 am]

BILLING CODE 6720–01–P

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federal register

Friday
September 26, 1997

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AE14

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 1997–98 migratory bird hunting season. These late seasons include most waterfowl seasons, the earliest of which generally commence on or about October 1, 1997. The effects of this final rule are to facilitate the selection of hunting seasons by the States to further the annual establishment of the late-season migratory bird hunting regulations. State selections will be published in the **Federal Register** as amendments to §§ 20.104 through 20.107 and § 20.109 of title 50 CFR part 20.

DATE: This rule takes effect on September 26, 1997.

ADDRESSES: Season selections from States are to be mailed to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1997

On March 13, 1997, the Service published in the **Federal Register** (62 FR 39712) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 6, 1997, the Service published in the **Federal Register** (62 FR 31298) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1997–98 duck hunting season. The June 6 supplement also provided detailed information on the 1997–98 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings. On June 27, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13 and June 6 **Federal Registers** to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 23, 1997, the Service published in the **Federal Register** (62 FR 39712) a third document. This document contained the final regulatory alternatives for the 1997–98 duck hunting season and the proposed early-season frameworks for the 1997–98 season.

On August 7, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13, June 6, and July 23 **Federal Registers** to review the status of waterfowl. Proposed hunting regulations were discussed for late seasons. On August 20, 1997, the Service published a fifth document (62 FR 44229) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. On August 25, 1997, the Service published a sixth document (62 FR 45078) which dealt specifically with proposed frameworks for the 1997–98 late-season migratory bird hunting regulations. On August 29, 1997, the Service published in the **Federal Register** (62 FR 46512) a seventh document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. This document, which establishes final frameworks for late-season migratory bird hunting regulations for the 1997–98 season, is the eighth in the series.

Review of Comments and the Service's Response

Public-hearing and written comments received through September 4, 1997, relating to proposed late-season frameworks, are discussed and addressed here. Mr. Robert McDowell, representing the Atlantic Flyway Council, presented a statement at the August 7, 1997, public hearing. Late-season comments are summarized and discussed in the order used in the March 13, 1997, **Federal Register**. Only the numbered items pertaining to late seasons for which comments were received are included. Flyway Council recommendations shown below include only those involving changes from the 1996–97 late-season frameworks. For those topics where a Council recommendation is not shown, the Council supported continuing the same frameworks as in 1996–97.

General

Written Comments: The Humane Society of the United States (Humane Society) expressed concern that the public was not well represented in the regulations-development process and requested establishment of a system directly involving the non-hunting public. In addition, they recommended that the Service undertake efforts to obtain population estimates for all hunted species. Finally, they recommended pre-sunrise shooting be disallowed.

Service Response: As we have stated previously, when the preliminary proposed rulemaking document was published in the **Federal Register** on March 13, 1997, the Service announced the comment periods for the early-season and late-season proposals and gave notice that the process of promulgating hunting regulations "must, by its nature, operate under time constraints." Ample time must be given to gather and interpret survey data, consider recommendations and develop proposals, and to receive public comment. Scheduled dates are set to give the greatest possible opportunity for public input. The Service is obligated to, and does, give serious consideration to all information received as public comment. The Service has long recognized the problems associated with the length of time necessary to establish the final frameworks, and in conjunction with States, Flyway Councils, and the public, continues to seek new ways to streamline and improve the regulatory process.

Regarding the Service's efforts to obtain population estimates, the long-term objectives of the Service continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Annually, the Service evaluates the status of populations and considers the potential impacts of hunting. The Service believes that the hunting seasons provided herein are consistent with the current status of waterfowl populations and long-term population goals. In regard to shooting hours, the Service has compiled information which demonstrates that shooting hours beginning one-half hour before sunrise do not contribute significantly to the harvest of nontarget species. Consistent with the Service's long-term strategy for shooting hours, published in the September 21, 1990, **Federal Register** (55 FR 38898), the frameworks herein provide for shooting hours of one-half hour before sunrise to sunset, unless otherwise specified.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

A. General Harvest Strategy

Council Recommendations: The Atlantic Flyway Council, the Upper-Region Regulations Committee of the Mississippi Flyway Council, the Central Flyway Council, and the Pacific Flyway Council recommended adopting the "liberal" alternative for the 1997–98 duck hunting season.

The Atlantic and Pacific Flyway Councils further recommended that the four regulatory packages adopted by the Service in the July 23, 1997, **Federal Register** be maintained until such time as the Service and Flyway Councils agree that there is compelling justification for modification.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended adoption of the "liberal" alternative with a modification of the framework closing date. Specific details are discussed in *B. Framework Dates.*

Written Comments: The Pennsylvania Game Commission (Pennsylvania) supported the Adaptive Harvest Management process and was encouraged that information from eastern mallards was beginning to be used to develop harvest strategies for the Atlantic Flyway. While Pennsylvania supported the final four alternatives for 1997–98, they continue to support consideration for a fixed bag limit in all alternatives.

Individuals from California, Florida, Illinois, Indiana, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, and Utah requested that bag limits and season lengths not be increased this year since at least six duck populations (mallard, wigeon, pintail, redhead, scaup, and black ducks) declined in 1996.

Delta Waterfowl (Delta) believed that the Service was placing tremendous burden on individual States that recognize that the regulation package was overly excessive. Delta further believed that the Service should play more of a leadership role in the aspects of hunter attitudes and ethical standards of waterfowl hunting. By promoting soley highly technical, statistically confusing data and ignoring constituencies, Delta believed that the Service was not acting in the best interest of waterfowling. Further, Delta believed that hunters did not ask for extensive liberalizations in the regulations.

Service Response: Beginning in 1995, the Service, Flyway Councils, and States introduced a new approach to the regulation of duck harvests, called Adaptive Harvest Management (AHM). An integral part of this harvest-management approach is the cooperative establishment of a set of regulatory alternatives that includes specified season lengths and bag limits for very restrictive, restrictive, moderate, and liberal seasons. The alternatives established for this year's hunting season were the result of extensive discussions with the Flyway Councils and States since last January, as well as involvement by the public during an open comment period. The estimate of total ducks this year is 16 percent higher than the long-term average and several species are at record levels. The outlook for production is excellent and the 1997 fall flight will be comparable to those observed during the 1970s. Based on favorable input, the Service will continue use of the AHM approach initiated last year. The AHM strategy for 1997 prescribes the "liberal" regulatory alternative based on high mallard and pond numbers.

The framework closing date recommended by the Lower-Region Regulations Committee of the Mississippi Flyway Council differed from those in the "liberal" alternative established in the July 23 **Federal Register**. The Service's frameworks are consistent with the "liberal" alternative outlined in the July 23 **Federal Register** and was supported by the other three Flyway Councils as well as the Mississippi Flyway Council's Upper-Region Regulations Committee.

B. Framework Dates

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended an experimental extension of the framework closing date to January 31 to allow evaluation of the extension, as long as this does not affect regulations/framework packages in non-participating states.

Written Comments: The Mississippi Department of Wildlife, Fisheries and Parks (Mississippi) requested Service support and approval of the Lower-Region Regulations Committee of the Mississippi Flyway Council's study/framework extension proposal. Mississippi further offered to (1) accept a 50-day season in return for a January 31 closure, (2) close the season on the Sunday before January 31, (3) accept one less hen mallard in the bag, and (4) assist with the necessary funding to conduct the study.

The Humane Society recommended that all seasons open at noon mid-week in order to reduce the high level of harvest associated with traditional Saturday season openings. Furthermore, the Humane Society recommended that season openings be delayed by 2 weeks in all breeding areas in order to allow ducks time to leave natal marshes before being subjected to hunting pressure.

Service Response: In the July 23 **Federal Register**, the Service outlined the reasons why it did not support an expansion of the framework dates at this time.

Regarding the Humane Society's recommendation for mid-week season openings, the Service has previously stated in the **Federal Register** (58 FR 50190) that a State may choose to delay its opening date to correspond with a particular day of the week or to close earlier to maximize the number of weekends that hunting is allowed.

F. Zones and Split Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended the Service allow "3 zones and 2-way splits in one or more zones" as an additional option to the current zoning process. The Committee also requested that the Service allow States up to 1 year to choose this option, based on the public-input process States undertake, before they provide the Service with their proposal (prior to the 1998–99 regular-duck season).

Written Comments: The Maine Department of Inland Fisheries and Wildlife (Maine) supported the use of 3 zones and 2-way splits in one or more zones as an additional option to the current zoning criteria. Maine further requested this change be accomplished prior to the 2001 regulation cycle.

Several individuals from Iowa recommended an elimination of zones and allowing a continuous, statewide season. An individual from Missouri recommended the use of a 3-way split season in Missouri.

The Humane Society urges the Service to discontinue all split and

special seasons and recommends that any State establishing such seasons reduce the total number of hunting days by a minimum of 10 days.

Service Response: In 1990, the Service established guidelines for the use of zones and split seasons for duck hunting (**Federal Register**, 55 FR 38901). These guidelines were based upon an evaluation of the historical use of zone/split options, and were reviewed by the Flyway Councils. The primary purpose of the guidelines was to provide a framework for controlling the proliferation of changes in zones and split seasons which compromise our ability to measure impacts of various regulatory changes on harvest. One of the guidelines is that once a State selects a zone/split option during an open season, the option must remain in place for the following 5 years.

The first open season for changes was in 1991 and the second occurred last year when zone/split configurations were established for the 1996–2000 period. Last year during the open season, the Service revised the 1990 guidelines, based largely on recommendations from the four Flyway Councils. Final guidelines were published in the July 22, 1996, **Federal Register**. Currently, the 1997–98 season will be only the second year of the 5-year moratorium period. The next open season for changes in zone/split configurations will be in 2001.

In regard to the recommendation that split and special seasons be discontinued, the Service notes that States always have the option of selecting a continuous season with no splits. Furthermore, the Service is not aware of any information suggesting that split and special seasons are causing detrimental impacts to populations.

G. Special Seasons/Species Management

i. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended that the individual Atlantic Flyway States achieve a 42 percent reduction in their black duck harvest during the 1997–98 season compared with the 1977–81 base-line harvest.

Written Comments: The New Jersey Waterfowlers Association recommended a uniform black duck daily bag limit of 2 birds in the Atlantic Flyway.

Service Response: The Service agrees with the Atlantic Flyway Council's recommendation and acknowledges the Council's concern for the population status of black ducks. Black duck populations remain below the North American Waterfowl Management Plan goal, and while the decline seems to have halted, little increase is evident. The Service believes the harvest restrictions identified in the 1983 *Environmental Assessment* should be maintained until a revised harvest strategy is developed.

ii. Canvasbacks

Written Comments: The New Jersey Waterfowlers Association recommended a canvasback daily bag limit of 2 birds based on 1995 and 1996 breeding population indices.

Service Response: The Service continues to support the canvasback harvest strategy adopted in 1994. Current population and habitat status suggests that a daily bag limit of 1 canvasback during the 1997–98 season will result in a harvest within levels allowed by the strategy. The Service believes that it has insufficient experience with this harvest strategy to consider modifications at this time, and is concerned that an overly aggressive strategy could precipitate a return to closed seasons. The Service, as stated in previous **Federal Registers**, is continuing to monitor the performance of the canvasback harvest strategy adopted in 1994. The Service is particularly interested in harvest information from the coming duck season, which will have the longest season lengths offered in decades. Prior to next summer, the Service plans to assess how well observed harvests and population abundance were predicted by the strategy. The Service notes that the development of the canvasback strategy took several years and required a lot of technical work and consensus-building. The resulting strategy appears to have been fairly successful at meeting the major needs expressed: (1) provides a consistent harvest strategy (i.e., minimizing closed seasons as previously experienced); (2) provides hunting opportunity over a wide geographic area; (3) does not include seasons within seasons; and (4) provides for a fairly stabilized population.

A complete reassessment of the strategy is not a high priority, given other pressing issues with AHM. The extent of the assessment will be tempered by the amount of staff time needed to address higher-priority issues.

iii. Pintails

Council Recommendations: The Atlantic Flyway Council recommended a 2-bird daily bag limit for pintails in the 1997–98 hunting season instead of the 3-bird daily bag limit prescribed by the Interim Pintail Harvest Strategy.

Written Comments: The Pennsylvania Game Commission did not support the proposed interim pintail harvest strategy. They believe that the status of pintails derived from eastern areas is uncertain and that increasing the bag limit to 3 birds will lead to negative perceptions from hunters. They recommend a 2-bird daily bag limit.

Delta Waterfowl did not support a 3-pintail daily bag limit in all four Flyways. They believed that the proposal did not have adequate time for public input and that such a change would further erode the confidence of hunters in AHM. They recommended that, if a 3-bird limit were approved, that no more than 1 hen pintail be allowed. Individuals from Michigan and Minnesota recommended that the pintail daily bag limit remain at 1 bird.

The National Wildlife Federation was concerned that pintails remain below population objectives and believed it would be prudent to reduce the pintail daily bag limit to 2.

The Wildlife Management Institute expressed concern over the status of pintails, but believed the interim strategy provides the Service with a solid foundation for the time being.

Service Response: In the July 23 **Federal Register**, the Service adopted the Interim Strategy for Northern Pintail Harvest Regulations detailed in the June 6 and July 23 **Federal Registers**. The Service adopted this interim strategy with the understanding that it would be replaced by a more fully adaptive approach at the earliest opportunity and because it addressed key Service concerns outlined in the July 22, 1996, **Federal Register** (61 FR 37994). For the 1997–98 hunting season, the interim harvest strategy prescribes a 3-bird daily bag limit for pintails in all four Flyways.

iv. High Plains Management Unit

Council Recommendations: The Central Flyway Council recommended minor administrative changes to the High Plains Mallard Management Unit boundary in North Dakota and South Dakota for boundary clarification and wetland development.

Service Response: The Service concurs.

4. Canada Geese

Council Recommendations: The Atlantic Flyway Council recommended the Service not open the regular hunting season on Atlantic Population (AP) Canada geese during the 1997–98 season except that a 10-day season with a 1-bird daily bag limit be allowed during November in that portion of New England east of the Connecticut River and in eastern Long Island, New York, where geese from the Maritime segment of the AP population may occur.

The Atlantic Flyway Council also recommended the establishment of regular-season frameworks in Maine, West Virginia, South Carolina, Georgia, and Florida, and those portions of New York, Pennsylvania, Maryland, Virginia, and North Carolina that have been determined not to contain AP Canada geese. The Council's recommended frameworks would consist of a 70-day season with a 3-bird daily bag limit for Maine, West Virginia, South Carolina, Georgia, and Florida with framework dates of October 1 to February 15; a 70-day season with a 3-bird daily bag limit for designated portions of Virginia, Maryland, Pennsylvania, and New York with framework dates of November 15 to February 15; and a 46-day season with a 3-bird daily bag limit in designated portions of North Carolina with framework dates of October 1 to November 15.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended several changes in Canada goose quotas, season lengths, etc., based on population status and population management plans and programs.

The Pacific Flyway Council recommended several changes in Canada goose frameworks. In southwest Washington and northwest Oregon, the Council recommended increasing the bag and possession limits on cackling Canada geese from 2/4 to 3/6 respectively in the regular season. In the Balance-of-the-State Zone in California, the Council recommended that the season for cackling Canada geese be extended by two weeks and the possession limit be expanded from 1 to 2 birds. In western New Mexico, the Council recommended increasing the bag and possession limit from 2/4 to 3/6, respectively. Regarding dusky Canada goose harvest quotas, the Council recommended establishment of a 85 dusky Canada goose quota in Washington's Lower Columbia River Special Goose Management Area and a 165 dusky Canada goose quota in Oregon's Special Goose Management Area. Finally, the Council recommended a minor revision the Western Washington Goose Management Area 2.

Written Comments: The Massachusetts Division of Fisheries and Wildlife supported the Atlantic Flyway Council's recommendation for a 10 day, 1-bird daily bag in the New England area.

The Pennsylvania Game Commission expressed disappointment with the Service's proposal to not accept the Atlantic Flyway Council's recommendation for regular goose seasons in areas free of AP geese. They believed that the Service's proposal is not supported by available data and serves to further complicate regulations in Pennsylvania by creating four areas with different goose regulations. They disagree with the Service's position to manage much of western Pennsylvania as Southern James Bay Population harvest areas and are concerned that the Service has ignored available data supporting the creation of regular-season resident goose areas. They also questioned the need to evaluate the special late season in areas free of migrant geese.

The National Wildlife Federation agreed with the Service's frameworks intended to help restore migratory geese in the Atlantic Flyway, while the Wildlife Management Institute applauded the Service's decision to forego seasons on Atlantic Population geese even though production appears to have improved.

The Southshore Waterfowlers Association of New York and the Concerned Coastal Sportsmen's Association of Massachusetts supported the Atlantic Flyway Council's recommendation of a 10-day season in New England.

An individual from Massachusetts supported keeping the season on AP geese closed, while an individual from Pennsylvania recommended reinstatement of the regular season on AP geese.

An individual from Washington recommended a 4-bird limit in the Southwest Washington Zone.

Service Response: The Service does not support the Atlantic Flyway Council's request for a November season (10 days) with a 1-bird daily bag limit in that portion of New England east of the Connecticut River, including eastern Long Island, NY, because this stock of geese has been considered part of the Atlantic Population and a management plan describing this Maritime Population of Canada geese has not yet been developed. The Service first requested that a Plan be developed in 1995 and encouraged the Council to work cooperatively with the Canadian Provinces to gather more data, review key population parameters, and establish an appropriate harvest strategy. Although the Service does not oppose the delineation of a Maritime population, if warranted, more information is needed to separate the Atlantic Population into two units. A management plan should set population goals, identify monitoring programs and contain some means to evaluate its status and the effects of harvest. The Service reiterates its longstanding policy to manage Canada geese on a population basis, guided by cooperatively developed management plan.

Regarding the Atlantic Flyway Council's request to establish a regular season on Canada geese in portions of the Flyway determined not to contain AP geese, the Service believes that it is appropriate to conduct such a season provided that it is consistent with the Southern James Bay Population (SJBP) Management Plan, and maintains those restrictions currently in place in several areas (Pennsylvania and South Carolina).

Thus, the Service will allow the following: in designated areas of Pennsylvania, Maryland, and Virginia, a 40-day season with a 2-bird daily bag limit between November 15 and January 14 and the continuation of existing experimental 30-day special late seasons with a 5-bird daily bag limit between January 15 and February 15; in designated areas of New York, a 70-day season with 2-bird daily bag limit between November 15 and January 31; in designated areas of North Carolina, a 46-day season with a 2-bird daily bag limit between October 1 and November 15; in West Virginia, a 70-day season with a 3-bird daily bag limit between October 1 and January 31; in South Carolina, Georgia, and Florida, a 70-day season with a 5-bird daily bag limit between October 1 and February 15.

The Service does not support the Council's request for a regular season in Maine because a management plan for Maritime Canada geese has not been developed. The Service believes that it would be inconsistent to establish a season without having a management plan for the entire New England area. Therefore, the Service again asks that the Council work to develop a management plan for Maritime Canada geese.

The Service recognizes Pennsylvania's concerns regarding the complicated configurations of Canada goose hunting regulations in different areas of the State and believes that these regulations should be reviewed and simplified to the extent possible. However, the Service does not agree that a regular season on resident Canada geese should be established in most areas that are more liberal than those prescribed by the SJBP Management Plan. Presently, the Service has not established migrate-free regular seasons in any Flyway. Furthermore, the regular season request approved by the Atlantic Flyway included areas in other states that are harvesting SJBP geese. Also, several of these areas, including portions of Pennsylvania, have special late seasons specifically designed to harvest resident Canada geese. These

seasons remain experimental and continue to be evaluated. The Service encourages the Atlantic Flyway Council to continue its review of harvest strategies for specific populations of Canada geese, and to update management plans and simplify regulations wherever possible.

The Service concurs with the changes proposed by the Pacific Flyway Council.

C. Special Late Seasons

Council Recommendations: The Atlantic Flyway Council recommended that New York be allowed to expand its existing experimental late season area to new areas along the north shore of Long Island and in other areas of southeastern New York.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a special late season for four counties in Indiana. The Committee also recommended that the experimental special late season in Michigan's Southern Michigan Goose Management Unit (GMU) be extended for one additional year to allow completion of the final report, and that the bag limit be increased from 2 to 5. The Committee further recommended a new experimental late season be initiated in the Central Michigan GMU with a 5-bird daily bag limit.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that in areas where Canada goose populations of special concern exist, the Service should closely monitor any cumulative effects that special seasons may have on non-target populations.

The Pacific Flyway Council recommended several changes in the special late-season frameworks. In southwest Washington, the Council recommended increasing the bag and possession limits on cackling Canada geese from 2/4 to 3/6, respectively, in the late season. Regarding dusky Canada geese, the Council recommended changing the late-season framework opening date to January 24 in Washington's Lower Columbia River Special Goose Management Area.

Written Comments: An individual from Massachusetts requested a special late season for Canada geese on Cape Cod.

The Humane Society opposed special late seasons targeting resident geese. They believe that such hunts fail to target the populations ostensibly responsible for conflicts with humans and as such are ineffective.

Service Response: The Service concurs with the Atlantic Flyway Council's recommendation to expand New York's existing late season to new areas of Long Island and southeastern New York.

Regarding the Mississippi Flyway Council's Upper-Region Regulations Committee recommendation to allow an experimental special late Canada goose season in four counties in Indiana beginning in 1997, the Service does not support the experimental season. The criteria for special seasons require two years of data collection prior to the beginning of an experiment and that the data demonstrate that the season likely will meet the criterion regarding proportion of migrants in the special-season harvest. Of the four counties proposed, no data were presented for one county and only one year of data for another. The limited data available (a total of only 12 collars were seen, 3 of which were migrant collars) indicate that about 25 percent of the harvest would be migrant geese, which exceeds the 20 percent level in the special-season criteria. The Service concurs with the recommendations for Michigan's special late seasons. The Service notes the concern expressed by the Mississippi Flyway Council's Lower-Region Regulations Committee about the cumulative effects of special-season harvests and will continue to monitor those harvests in all areas.

The Service concurs with the changes proposed by the Pacific Flyway Council.

5. White-fronted geese

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended extending the season length from 70 to 86 days and changing the framework closing date from January 31 to February 15.

The Pacific Flyway Council recommends that hunting frameworks for 1997–98 be changed by adding 14 days and 1 bird to the daily bag and possession limits for dark geese in the Balance-of-the-State Zone in California.

Written Comments: An individual from Louisiana recommended a 75- to 80-day season with a 3-dark goose limit including no more than 1 Canada goose.

Service Response: The Service will continue use of the same frameworks as last year in 1997–98. Greater white-fronted geese in the Central and Mississippi Flyways previously have been managed as separate segments of the Mid-continent Population under separate management plans. Recent information has suggested that Mid-continent whitefronts should be managed as one population, and revision/combination of the management plans into one plan is under way. The Central Flyway Council and Canada both are considering liberalizations in harvest opportunity for Mid-continent whitefronts, but are delaying recommendations for such changes until the new management plan is in place. The Service believes that changes in the Mississippi Flyway also should be deferred until the new management plan is in place, when all recommendations for liberalizing harvest opportunity can be considered in light of the goals, objectives, and harvest strategies in the new plan.

The Service concurs with the changes proposed by the Pacific Flyway Council.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 50-day Atlantic brant season with a 2-bird daily bag limit.

Written Comments: The New Jersey Waterfowlers Association supported the continued use of the Atlantic brant hunt plan.

Service Response: The Service concurs with the recommendation.

7. Snow and Ross's Geese

Council Recommendations: The Atlantic Flyway Council recommended a daily bag and possession limit of 10 and 30, respectively.

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended that in a further effort to increase snow goose harvest, the Service implement regulatory changes, as suggested by the Arctic Goose Joint Venture Management Board, for the 1998–99 hunting season.

The Central Flyway Council recommended a March 10 framework closing date, except for the Rainwater Basin Light Goose Area in Nebraska, where the framework closing date would vary according to an experimental late-winter snow goose hunting strategy proposed by the Council. The Council also recommended no limit on the number of season splits in the East-tier States.

The Pacific Flyway Council recommended expanding the possession limit to twice the daily bag limit in the Balance-of-the-State Zone in California.

Written Comments: The Rainwater Basin Joint Venture Management Board of the North American Waterfowl Management Plan urged the Service to consider the possibility of alternatives to the hunting regulations of the last 2 years (complete closure of the Rainwater Basin region after mid-February).

The National Wildlife Federation agreed with the Service's frameworks intended to help reduce white goose populations.

The Wildlife Management Institute supported the need to reduce

populations of snow geese which are creating habitat problems on northern breeding areas. They further recognized that customary approaches to harvest have not controlled populations and that more innovative actions may be necessary.

An individual from Louisiana recommended a 12-bird limit. Other individuals from Louisiana, Kansas, and Missouri recommended allowing the use of electronic calls to hunt snow geese. Another individual from Arkansas recommended the use of rifles for snow geese. Several individuals from Iowa recommended allowing a later and longer hunt in the spring. An individual from Texas recommended allowing the use of lead shot.

Service Response: The Service concurs with the Atlantic Flyway Council's recommendation to increase the daily bag and possession limits on snow geese. The Service believes that the extension of the ending framework date for hunting of light geese until March 10 in Nebraska's Rainwater Basin Area may pose a threat to the management and welfare of other migratory bird species during the spring migration period. In response to these concerns, the Central Flyway Council proposed an experimental late-winter hunting strategy in the eastern portion of this important spring staging area. This proposal contains the use of both temporal and spacial constraints on hunting activity and results in a hunting strategy that would allow for evaluation of any negative impacts related to disturbance and distribution of other migratory birds, disease management, eco-tourism, and endangered species. The Service supports this experimental strategy, provided a mutually-acceptable evaluation component is developed and implemented. The Service will cooperate with the Nebraska Game and Parks Commission to develop and complete assessments of this experimental strategy.

The Service does not support the Central Flyway proposal for East Tier States that would allow for an unlimited number of splits during light goose seasons. Alternatively, the Service supports increasing the allowed number of season segments from 2 to 3. This increase would result in a more consistent use of split-season options among all flyways. The Service also believes that the ability to divide light goose seasons into 3 segments provides adequate flexibility to use the current season length of 107 days.

The Service concurs with the changes proposed by the Pacific Flyway Council.

Regarding the recommendations from several commenters on expanding the allowable hunting methods for snow geese, the Service recognizes the problems associated with over-population of Mid-continent snow geese and believes that some management actions, including modification of the basic regulations, may be appropriate. However before any such modifications to the basic regulations, the Service must conduct a thorough public review process.

8. Swans

Written Comments: The Humane Society requested that the Service close all swan hunting seasons, citing that tundra swan seasons were impeding, if not preventing, winter range expansion and recovery of trumpeter swans.

Service Response: The Service would refer the Humane Society to our detailed response in the September 27, 1995, **Federal Register** (60 FR 50042) concerning the establishment of a general swan season. Enhancing Rocky Mounting Population trumpeter swan range expansion while retaining most aspects of tundra swan hunting were covered in detail in our 1995 Environmental Assessment "Proposal to Establish General Swan Seasons in Parts of the Pacific Flyway for the 1995–99 Seasons" (August 1995) which compares various alternative strategies for reconciling conflicting swan management strategies. Copies are available from the Service at the address indicated under the caption **ADDRESSES.**

23. Other

A. Compensatory Days

Council Recommendations: The Atlantic Flyway Council requested the Service grant compensatory days for States in their Flyway that are closed to waterfowl hunting statewide on Sunday by State law. The Council's requested compensatory days would apply to waterfowl seasons only and not to other migratory game birds. The request includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia. The Council believes that granting this request at this time will allow integration of these changes into AHM evaluations of harvest rates in the Flyway and selection of appropriate regulatory alternatives.

Public-Hearing Comments: Mr. Robert McDowell, representing the Atlantic Flyway Council, offered to modify the Flyway's original request for compensatory days to states closed to Sunday hunting by restricting it to only those states with existing statewide prohibitions in place prior to its implementation. This action prevents any states from enacting new laws to close Sunday hunting in order to be eligible for compensatory days.

Written Comments: The South Carolina Department of Natural Resources asserted that Sunday closures of waterfowl hunting are State issues and should not be addressed by the Service. South Carolina further asserted that if the Service grants compensatory days to States that are currently closed on Sundays by State law, then compensatory days should also be granted to States that enact Sunday closures in the future. In a subsequent letter, South Carolina asserted that the Service's action was arbitrary and capricious and in violation of the First Amendment of the U.S. Constitution.

The Georgia Department of Natural Resources objected to the Service offering compensatory days to States in the Atlantic Flyway with Sunday closures. They believed that this was a State issue and, as such, the Federal government should not be involved. They further believed that each State should change any applicable self-imposed restrictions relating to Sunday hunting closures and that involving Federal procedures to circumvent State laws sets a bad precedent that could open the door for further involvement in future unresolved issues.

The Delaware Division of Fish and Wildlife (Delaware) recommended the Service grant compensatory days in lieu of Sunday hunting on a 1 for 1 basis to restricted States with no penalty to unrestricted States. In a subsequent letter, Delaware thanked the Service for proposing to grant compensatory days to those States and believed that the issue was more symbolic than biological. Further, Delaware did not believe that any significant change in harvest would result.

The Maryland Department of Natural Resources (Maryland) requested that the Service grant compensatory days to the 10 Atlantic Flyway States that are closed to waterfowl hunting on Sunday by State law. They believe that compensatory days would enable these States to equally share in the recreational benefits derived from the Flyway's waterfowl resource. Maryland supported the Federal closure of Sunday for the taking of wild waterfowl if the Service deemed this approach necessary to provide compensatory days. However, Maryland requested the Service give consideration to the current Sunday hunting exception Maryland grants falconers.

The New Jersey Division of Fish, Game and Wildlife (New Jersey)

requested the Service grant compensatory days for States in their Flyway that are closed to waterfowl hunting statewide on Sunday by State law. New Jersey's requested compensatory days would apply to waterfowl seasons only and not to other migratory game birds. The compensatory request includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia.

The Massachusetts Division of Fisheries and Wildlife and the Pennsylvania Game Commission supported the Service's proposal to allow compensatory days to those States prohibited from hunting on Sundays. They believed that compensatory days would address the issue of inequality in hunting opportunities that exist in the Atlantic Flyway.

The North American Falconers Association and several individuals from Maryland questioned the need to close Sundays to the take of all migratory waterfowl, including falconry, in order to provide compensatory hunting days to those States prohibiting Sunday hunting.

The Concerned Coastal Sportsmen's Association of Massachusetts supported and commended the Service for offering States in the Atlantic Flyway that now prohibit Sunday hunting compensatory hunting days. An individual from Massachusetts supported offering States that now prohibit Sunday hunting compensatory hunting days.

The Humane Society opposed granting compensatory days in those Atlantic Flyway states where Sunday hunting is prohibited. The Humane Society believed that hunters in those States should work for the passage of legislation to change State law regarding Sunday closures rather than requesting that the Service compensate them.

Service Response: In 1995, the Service committed to working with the Atlantic Flyway Council to review and better clarify the issue of compensatory days for those States prohibiting Sunday hunting in an attempt to resolve this long-standing issue. In the past, the Service has maintained the policy that this problem is an individual State issue, to be resolved by each State removing their self-imposed restrictions. However, recognizing the difficulties involved with changing State law, the Service is sympathetic to the loss of hunting opportunity that results from the existing prohibitions on Sunday hunting. A recent Service assessment suggests that compensatory days for Sunday closures will result in a slight increase in the harvest rates of mallards breeding in eastern Canada and the northeastern U.S., which would be accompanied by a small decrease in average breeding population size. A similar effect is expected on other species. Thus, after examining the various technical and policy concerns, the Service believes that any additional harvest impacts can be adjusted by changing regulatory frameworks where needed and that various administrative and procedural concerns can be managed. Therefore, during the 1997–98 hunting season, the Service will offer compensatory days to States in accordance to the following guidelines: (1) Only States in the Atlantic Flyway that prohibit Sunday hunting *Statewide* by State law prior to 1997 are eligible (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia); (2) All Sundays will be closed to all take (including extended falconry) of migratory waterfowl (including mergansers and coots) by Federal rulemaking. Other migratory game species are not eligible for compensatory days; (3) Season days must run consecutively within prescribed framework dates and season length, excluding the Sunday closure, and conform to existing split-season criteria. Total season days (including extended falconry) must not exceed 107 days.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations have been conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may cause modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress and has been declared major. Because this rule establishes hunting seasons, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Regulatory Flexibility Act

These regulations have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). In the March 13, 1997, **Federal Register**, the Service reported measures it took to comply with requirements of the Act. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses in 1996. Copies of the Analysis are available upon request from the MBMO.

Paperwork Reduction Act

The Department examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Act, information collections must be approved by the Office of Management and Budget (OMB). The Service uses the various information collection requirements contained in this rule to develop future migratory game bird hunting regulations. Specifically, the information collection requirements of the Migratory Bird Harvest Information Program have been approved by OMB and assigned clearance number 1018–0015. This information is used to provide a sampling frame for voluntary

national surveys to improve Service harvest estimates for all migratory game birds in order to better manage these populations.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1997–98 season. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1997–98 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a—j.

Dated: September 12, 1997.

Donald Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1997–98 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1997, and March 10, 1998.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Definitions: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese - Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese - snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: 60 days and daily bag limit of 6 ducks, including no more than 4 mallards (2 hens), 1 black duck, 3 pintails, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 1 canvasback.

Closures: The season on harlequin ducks is closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: The Canada goose season is suspended throughout the Flyway except as noted below. Unless specified otherwise, seasons may be split into two segments.

Connecticut: A special experimental season may be held in the South Zone between January 15 and February 15, with 5 geese per day.

Florida: A 70 day season may be held between November 15 to February 15, with 5 geese per day.

Georgia: In specific areas, a 70-day season may be held between November

15 and February 15, with a limit of 5 Canada geese per day.

Maryland: In designated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. An experimental season in designated areas of western Maryland may be held from January 15 to February 15, with 5 geese per day.

Massachusetts: In the Central Zone and a portion of the Coastal Zone, a season may be held from January 15 to February 15, with 5 geese per day.

New Jersey: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with 5 geese per day.

New York: In designated areas, a 70-day season may be held between November 15 to January 30, with 2 geese per day. An experimental season may be held between January 15 and February 15, with 5 geese daily in designated areas of Chemung, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

North Carolina: A 46-day season may be held between October 1 and November 15, with 2 geese per day Statewide, except for the Northeast Hunt Unit and Northampton County.

Pennsylvania: In designated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. In Erie, Mercer, and Butler Counties, a 70-day season may be held between October 1 and January 31, with 2 geese per day. In Crawford County, a 35-day season may be held between October 1 and January 20, with 1 goose per day.

An experimental season may be held in the designated areas of western Pennsylvania from January 15 to February 15 with 5 geese per day.

Rhode Island: An experimental season may be held in a designated area from January 15 to February 15, with 5 geese per day.

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a daily bag limit of 5 Canada geese per day.

Virginia: In designated areas, a 40-day season may be held between November 15 to January 14, with 2 geese per day. An experimental season may be held between January 15 to February 15, with 5 geese per day, in all areas west of Interstate 95.

West Virginia: a 70-day season may be held between October 1 and January 31, with 3 geese per day.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with 10 geese per day and 30 in possession. States may split their seasons into three segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1 and January 20, with 2 brant per day. States may split their seasons into two segments.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest October 1 (October 4) and the Sunday nearest January 20 (January 18).

Hunting Seasons and Duck Limits: 60 days with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 1 black duck, 3 pintails, 2 wood ducks, 1 canvasback, and 2 redheads.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Minnesota and Arkansas, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania (Northwest Zone).

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation, by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 4) and January 31, and 107 days for light geese between the Saturday nearest October 1 (October 4) and March 10. The daily bag limit is 10 light geese, 3 Canada geese, 2 white-fronted geese, and 2 brant. The possession limit for light geese is 30. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: In the Southern James Bay Population (SJBP) Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone and 16 days in the West Zone. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 74,600 birds. Limits are 2 Canada geese daily and 10 in possession.

(a) North Zone - The season for Canada geese will close after 78 days or when 8,400 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(b) Central Zone - The season for Canada geese will close after 78 days or when 12,500 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone - The harvest of Canada geese in the Southern Illinois and Rend Lake Quota Zones will be limited to 26,400 and 5,700 birds, respectively. The season for Canada geese in each zone will close after 78 days or when the harvest limit has been reached, whichever occurs first. In the Southern Illinois Quota Zone, if any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

(1) Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

(2) Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

In the remainder of the South Zone, the season may extend for 78 days or until both the Southern Illinois and Rend Lake Quota Zones have been closed, whichever occurs first.

Indiana: The total harvest of Canada geese in the State will be limited to 19,200 birds.

(a) Posey County - The season for Canada geese will close after 65 days or when 3,450 birds have been harvested, or when the harvest at the Hovey Lake Fish and Wildlife Area exceeds 1,725 birds, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State - The season for Canada geese may extend for 65 days in the respective duck-hunting zones, except in the SJBP Zone, where the season may not exceed 35 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky

(a) Western Zone - The season for Canada geese may extend for 66 days (81 days in Fulton County), and the harvest will be limited to 16,500 birds. Of the 16,500-bird quota, 10,750 birds will be allocated to the Ballard Reporting Area and 3,135 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 66-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 66 days (81 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone - The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit for Canada and white-fronted geese is 2, no more than 1 of which may be a Canada goose. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 41,700 birds.

(a) North Zone - The season for Canada geese may extend for 16 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone - The season for Canada geese may extend for 16 days. The daily bag limit is 2 Canada geese.

(c) South Zone

(1) Allegan County GMU - The season for Canada geese will close after 41 days or when 1,760 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU - The season for Canada geese will close after 43 days or when 560 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU - The season for Canada geese will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(4) Tuscola/Huron GMU - The season for Canada geese will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(5) Remainder of South Zone - The season for Canada geese may extend for 20 days. The daily bag limit is 1 Canada goose the first 9 days and 2 Canada geese thereafter.

(d) Southern Michigan GMU - An experimental special Canada goose season may be held between January 3 and February 1. The daily bag limit is 5 Canada geese.

(e) Central Michigan GMU - An experimental special Canada goose season may be held between January 3 and February 1. The daily bag limit is 5 Canada geese.

Minnesota:

(a) West Zone

(1) West Central Zone - The season for Canada geese may extend for 30 days. In the Lac Qui Parle Zone, the season will close after 30 days or when 16,000 birds have been harvested, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State - The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(d) Fergus Falls/Alexandria Zone - A special Canada goose season of up to 10 days may be held in December. During the special season, the daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri

(a) Swan Lake Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The season may be split into 3 segments, provided that one segment of at least 9 days occurs prior to October 15. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. In the Pymatuning Reservoir Area, the seasons, limits, and shooting hours for all geese shall be the same as those selected in the adjacent portion of Pennsylvania.

Tennessee

(a) Northwest Zone - The season for Canada geese will close after 79 days or when 6,150 birds have been harvested, whichever occurs first. The season may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone - The season for Canada geese may extend for 64 days, and the harvest will be limited to 750 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone - The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese. In lieu of the quota and tagging requirement above, the State may select either a 50-day season with a 1-bird daily bag limit or a 35-day season with a 2-bird daily bag limit for this Zone.

(d) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 55,700 birds.

(a) Horicon Zone - The framework opening date for all geese is September 20. The harvest of Canada geese is limited to 27,600 birds. The season may not exceed 93 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone - The framework opening date for all geese is September 20. The harvest of Canada geese is limited to 900 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone - The framework opening date for all geese is September 27. The harvest of Canada geese is limited to 22,700 birds, with 500 birds

allocated to the Mississippi River Subzone. The season may not exceed 93 days and the daily bag limit is 1 Canada goose. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 22,200 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Northwest and Kentucky/Barkley Lakes (if applicable) Zones in Tennessee, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks, Mergansers, and Coots

Outside Dates: Between October 4 and January 18.

Hunting Seasons and Duck Limits: (1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days and a daily bag limit of 6 ducks, including no more than 5 mallards (2 hens), 1 mottled duck, 1 canvasback, 2 redheads, 2 wood ducks, and 3 pintails. The last 23 days may start no earlier than the Saturday nearest December 10 (December 13).

(2) Remainder of the Central Flyway: 74 days and a daily bag limit of 6 ducks, including no more than 5 mallards (2 hens), 1 mottled duck, 1 canvasback, 2 redheads, 2 wood ducks, and 3 pintails.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation, by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons not to exceed 107 days; except for dark geese, which may not exceed 86 days in Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas. For dark geese, outside dates for seasons may be selected between the Saturday nearest October 1 (October 4) and January 31, except in the Western Goose Zone of Texas, where the closing date is the Sunday nearest February 15 (February 15). For light geese, outside dates for seasons may be selected between the Saturday nearest October 1 (October 4) and March 10, except in the Rainwater Basin Light Goose Area of Nebraska where the closing date is February 1 in the West and March 10 in the East with temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1997. The daily bag and possession limits for light geese are 10 and 40, respectively.

Dark goose daily bag limits in States and goose management zones within States, may be as follows:

Kansas, Nebraska, Oklahoma, and South Dakota: 2 dark geese, including no more than 1 white-fronted goose.

Colorado, Montana, New Mexico and Wyoming: 4 dark geese.

North Dakota: 2 dark geese.

Texas: For the Western Goose Zone, the daily bag limit is 5 dark geese, including no more than 1 white-fronted and 4 Canada geese.

For the Eastern Goose Zone, the daily bag limit is 2 dark geese, including no more than 1 white-fronted goose.

Pacific Flyway

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons and Duck Limits: Concurrent 107 days and daily bag limit of 7 ducks and mergansers, including no more than 2 female mallards, 3 pintails, 2 redheads and 1 canvasback.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest October 1 (October 4) and the Sunday nearest January 20 (January 18).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 4), and the Sunday nearest January 20 (January 18), and the basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation, by each participating State.

Brant Season - A 16-consecutive-day season may be selected in Oregon and Washington, and a 30-consecutive day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 2.

California

Northeastern Zone - White-fronted geese and cackling Canada geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone - The seasons and limits must be the same as those selected in the adjacent portion of Arizona (South Zone).

Southern Zone - The daily bag and possession limits for dark geese is 2 geese, including not more than 1 cackling Canada goose.

Balance-of-the-State Zone - A 79-day season may be selected. Limits may not include more than 3 geese per day and 6 in possession, of which not more than 2 daily and 4 in possession may be white-fronted geese and not more than 1 daily or 2 in possession may be cackling Canada geese.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before December 14, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23.

Colorado: The daily bag limit for dark geese is 2 geese.

Idaho

Northern Unit - The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit - The daily bag limit on dark geese is 4.

Montana

West of Divide Zone and East of Divide Zone - The daily bag limit on dark geese is 4.

Nevada

Lincoln and Clark County Zone - The daily bag limit of dark geese is 2.

New Mexico: The daily bag limit for dark geese is 3.

Oregon: Except as subsequently noted, the dark goose limit is 4, including not more than 1 cackling Canada goose.

Harney, Lake, Klamath, and Malheur Counties Zone - The season length may be 100 days. The dark goose limit is 4, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Western Zone - In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 3 and may include 3 cackling Canada geese.

Utah: The daily bag limit for dark geese is 2 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese.

West Zone - In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 3 and may include 3 cackling Canada geese.

Wyoming: The daily bag limit is 4 dark geese.

Quota Zones: Seasons on Canada geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late Canada goose season, and any extended falconry season, combined, must not exceed 107 days and the established quota of dusky Canada geese must not be exceeded. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese. The daily bag limit of Canada geese may not include more than 3 cackling Canada geese.

In the designated areas of the Washington Quota Zone, a special late Canada goose may be held between January 24 and March 10. The daily bag limit may not include Aleutian Canada geese. In the Special Canada Goose Management Area of Oregon, the framework closing date is extended the Sunday closest to March 1.

Swans

In designated areas of Utah, Nevada, and the Pacific Flyway portion of Montana, an open season for taking a limited number of swans may be selected. Permits will be issued by States and will authorize each permittee to take no more than 1 swan per season. The season may open no earlier than the Saturday nearest October 1 (October 4). The States must implement a harvest-monitoring program to measure the species composition of the swan harvest. In Utah and Nevada, the harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. All States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination or, in the case of Montana, reporting bill-measurement and color information. All States must provide to the Service by June 30, 1998, a report covering harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas. These seasons will be subject to the following conditions:

In Utah, no more than 2,750 permits may be issued. The season must end no later than the first Sunday in December (December 7) or upon attainment of 15 trumpeter swans in the harvest, whichever occurs earliest.

In Nevada, no more than 650 permits may be issued. The season must end no later than the Sunday following January 1 (January 4) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In Montana, no more than 500 permits may be issued. The season must end no later than December 1.

Tundra Swans

In Central Flyway portion of Montana, and in North Carolina, North Dakota, South Dakota, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, from October 1 to January 31.

—In North Carolina, no more than 5,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days and must occur during the light goose season.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,000 permits may be issued.

—In South Dakota, no more than 1,500 permits may be issued.

Area, Unit and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I-95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine border to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I-95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Balleyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I-91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I-95 (New Hampshire Turnpike) in Hampton, and south along I-95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I-80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I-80 to U.S. 220, Route 220 to I-180, I-180 to I-80, and I-80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

West Virginia

Zone 1 : That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I-64; I-64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I-79, I-79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I-280 to I-80, then east along I-80 to the Indiana border.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I-70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I-70, then east along I-70 to the Indiana border.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I-75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Mississippi

Zone 1: Hancock, Harrison, and Jackson Counties.

Zone 2: The remainder of Mississippi.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I-55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota border along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan border.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S, 183, south along U.S. 183 to KS 4, east along KS 4 to I-135, south along

I-135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of the State west of Highways U.S. 183 and U.S. 20 from the South Dakota border to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas border.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and east of a line extending from the South Dakota border along NE 26E Spur to U.S. 20, west on U.S. 20 to NE 12, west on NE 12 to the Knox/Keya Paha County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: That portion of the State east of the High Plains Zone and bounded by designated highways and political boundaries starting on U.S. 73 at the Kansas border, north to NE 67, north to U.S. 75, north to NE 2, west to NE 43, north to U.S. 34, east to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to U.S. 34; west to NE 2; south to I-80; west to Hamilton/Hall County line (Gunbarrel Road), south to Giltner Road; west to U.S. 34; west to U.S. 136; east on U.S. 136 to NE 10; south to the State line; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; northeasterly to NE 91; west to U.S. 281, north to NE 91 in Wheeler County, west to U.S. 183; north to northerly boundary of Loup County; east along the north boundaries of Loup, Garfield, and Wheeler County; south along the east Wheeler County line to NE 70; east on NE 70 from Wheeler County to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east along U.S. 30 to U.S. 75, north along U.S. 75 to the Washington/Burt County line; then east along the county line to the Iowa border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I-40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota border along U.S. 83 and I-94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas border along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I-40, east along I-40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I-35, north along I-35 to U.S. 60, west along U.S. 60 to U.S. 64, west along U.S. 64 to OK 132, then north along OK 132 to the Kansas border.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota border and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I-90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska border.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along US 212 to SD 15, then north along SD 15 to Big Stone Lake at the Minnesota border.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I-29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma border along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I-10 to Louisiana border at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, Washakie, and that portion of Park County south of T58N and not within the boundary of the Shoshone National Forest.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B-45.

North Zone: GMUs 1-5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties and that part of Toole County north of I-80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

Same zones as for ducks.

Maryland

Special Regular and Late Seasons for Canada Geese: Allegheny, Carroll, Frederick, Garrett, Washington counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

Massachusetts

Special Area for Canada Geese: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

New Hampshire

Same zones as for ducks.

New Jersey

Special Area for Canada Geese:

North - that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94; then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South - that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to the Garden State Parkway; then south along the Garden State Parkway to Route 9; then south along Route 9 to Route 542; then west along Route 542 to the Mullica River (at Pleasant Mills); then north (upstream) along the Mullica River to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then south along Route 49 to Route 50; then east along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Special Late Season Area for Canada Geese: that area of Chemung County lying east of a continuous line extending south along State Route 13 from the Schuyler County line to State Route 17 and then south along Route 17 to the New York-Pennsylvania boundary; all of Tioga and Broome Counties; that area of Delaware, Sullivan, and Orange Counties lying southwest of a continuous line extending east along State Route 17 from the Broome County line to U.S. Route 209 at Wurtsboro and then south along Route 209 to the New York-Pennsylvania boundary at Port Jervis, excluding areas on or within 50 yards of the Delaware River between the confluence of the West Branch and East Branch below Hancock and the mouth of the Shingle Kill (3 miles upstream from Port Jervis); that area of Orange, Rockland, Dutchess, Putnam and Westchester Counties lying southeast of a continuous line extending north along Route 17 from the New York-New Jersey boundary at Suffern to Interstate Route 87, then north along Route 87 to Interstate Route 84, then east along Route 84 to the northern boundary of Putnam County, then east along that boundary to the New York-Connecticut boundary; that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line

extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

Regular Season Area in Southwest for Canada Geese: all of Allegany, Cattaraugus, and Chautaugua Counties; that area of Erie, Wyoming and Niagara Counties lying south and west of a continuous line extending from the Rainbow Bridge below Niagara Falls, north along the Robert Moses Parkway to US Route 62A, then east along Route 62A to US Route 62, then southeast along US Route 62 to Interstate Route 290, then south along Route 290 to Exit 50 of the NYS Thruway, then east along the Thruway to Exit 49, then south along NYS Route 78 to State Route 20 in Depew, then east along Route 20 to State Route 77 in Darien Center, then south along Route 77 to Java Center, then south along State Route 98 to the Cattaraugus County line; and that area of Steuben and Chemung Counties lying south of State Route 17.

North Carolina

Regular Season for Canada Geese: Statewide, except for Northampton County and the Northeast Hunt Unit - Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties.

Regular Season Area for Canada Geese: Area from New York State line west of U.S. Route 220 to intersection of I-180, west of I-180 to intersection of SR 147, west of SR 147 to intersection of U.S. Route 322, west of U.S. Route 322 to intersection of I-81, west of I-81 to intersection of I-83, west of I-83 to I-283, west of I-283 to SR 441, west of SR 441 to U.S. Route 30, west of U.S. Route 30 to I-83, west of I-83 to Maryland State line, except for the Counties of Erie, Mercer, Butler, and Crawford.

Special Late Season Area for Canada Geese: Same as Regular Season Area and the area from New York State line east of U.S. Route 220 to intersection of I-180, east of I-180 to intersection of SR 147, east of SR 147 to intersection of U.S. Route 322, east of Route 322 to intersection of I-81, north of I-81 to intersection of I-80, north of I-80 to New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Virginia

Regular and Special Late Season Area for Canada Geese: All areas west of I-95.

Back Bay Area—Defined for white geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, Izard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

Illinois

Same zones as for ducks, but in addition:

North Zone:

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone:

Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I-24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

Same zones as for ducks, but in addition:

South Zone

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly 1/2 mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I-196 in Casco Township, then northerly along I-196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I-69, westerly along I-69 to Michigan Highway 21, westerly along Michigan 21 to I-96, northerly along I-96 to I-196, westerly along I-196 to Lake Michigan Drive (M-45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Central Michigan GMU: That portion of the South Zone north of the Southern Michigan GMU, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

West Zone: That portion of the state encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I-94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons:

Fergus Falls/Alexandria Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Missouri

Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone

Schell-Osage Zone: That portion of the State encompassed by a line extending east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

Ohio

Same zones as for ducks but in addition:

North Zone

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Lake Erie SJBP Zone: That portion of the State encompassed by a line extending south from the Michigan border along Interstate Highway 75 to I-280, south along I-280 to I-80, and east along I-80 to the Pennsylvania border.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of

Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I-90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I-90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I-25 from the Wyoming border south to I-70; west on I-70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

Kansas

Light Geese

Unit 1: That portion of Kansas east of a line beginning at the intersection of the Nebraska border and KS 99, extending south along KS 99 to I-70 to U.S. 75, south on U.S. 75 to U.S. 54, west on U.S. 54 to KS 99, and then south on KS 99 to the Oklahoma border.

Unit 2: The remainder of Kansas, lying west of Unit 1.

Dark Geese

Marais des Cygne Valley Unit: The area is bounded by the Missouri border to KS 68, KS 68 to U.S 169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by Highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Central Flint Hills Unit: That area southwest of Topeka bounded by Highways U.S. 75 to I-35, I-35 to U.S. 50, U.S. 50 to U.S. 77, U.S. 77 to I-70, I-70 to U.S. 75.

Southeast Unit: That area of southeast Kansas bounded by the Missouri border to U.S. 160, U.S. 160 to U.S. 69, U.S. 69 to KS 39, KS 39 to U.S. 169, U.S. 169 to the Oklahoma border, and the Oklahoma border to the Missouri border.

Montana (Central Flyway Portion)

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central Flyway portion of Montana.

Nebraska

Dark Geese

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

East Unit: The area east of a line beginning at U.S. 183 at the northern State line; south to NE 2; east to U.S. 281; south to the southern State line, excluding the North Unit.

West Unit: All of Nebraska west of the East Unit.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and NS 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra County and that portion of Socorro County lying south of the Sevilleta National Wildlife Refuge Boundary.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Dark Geese

Missouri River Zone: That area encompassed by a line extending from the South Dakota border north on U.S. 83 and I-94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 37, south to ND 1804, south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, south and west across the lake to ND 8, south to ND 200, east to ND 31, south to ND 25, south to I-94, east to ND 6, south to the South Dakota border, and east to the point of origin.

Statewide: All of North Dakota.

South Dakota

Dark Geese

Unit 1: Statewide except for Units 2 and 3.

Unit 2: Brule, Buffalo, Campbell, Dewey, Hughes, Hyde, Lyman, Potter, Stanley, Sully, and Walworth Counties and that portion of Gorson County east of State Highway 65.

Unit 3: Charles Mix and Gregory Counties.

Texas

West Unit: That portion of the State lying west of a line from the international toll bridge at Laredo; north along I-35 and I-35W to Fort Worth; northwest along US 81 and US 287 to Bowie; and north along US 81 to the Oklahoma border.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion)

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and that portion of Park County south of T58N.

Area 2: Platte County.

Area 3: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties and those portions of Carbon County east of the Continental Divide and Park County north of T58N.

Area 4: Goshen County.

Pacific Flyway

Arizona

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on I-5 to Hahn Road north of Arbuckle in Colusa County; easterly on Hahn Road and the Grimes Arbuckle Road to Grimes on the Sacramento River; southerly on the Sacramento River to the Tisdale Bypass to O'Banion Road; easterly on O'Banion Road to CA 99; northerly on CA 99 to the Gridley-Colusa Highway in Gridley in Butte County; westerly on the Gridley-Colusa Highway to the River Road; northerly on the River Road to the Princeton Ferry; westerly across the Sacramento River to CA 45; northerly on CA 45 to CA 162; northerly on CA 45-162 to Glenn; westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

San Joaquin Valley Area: That area bounded by a line beginning at Modesto in Stanislaus County proceeding west on CA 132 to I-5; southerly on I-5 to CA 152 in Merced County; easterly on CA 152 to CA 165; northerly on CA 165 to CA 99 at Merced; northerly and westerly on CA 99 to the point of beginning.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I-84, and south and west of I-84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I-84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I-40.

South Zone: The Pacific Flyway portion of New Mexico located south of I-40.

Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I-5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I-5; then south on I-5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to the Pacific Coast.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone.

Closed Zone: Those portions of Coos, Curry, Douglas and Lane Counties west of US 101.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake and Malheur Counties Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Eastern Washington: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Area 1: Lincoln, Spokane, and Walla Walla Counties; that part of Grant County east of a line beginning at the Douglas-Lincoln County line on WA 174, southwest on WA 174 to WA 155, south on WA 155 to US 2, southwest on US 2 to Pinto Ridge Road, south on Pinto Ridge Road to WA 28, east on WA 28 to the Stratford Road, south on the Stratford Road to WA 17, south on WA 17 to the Grant-Adams County line; those parts of Adams County east of State Highway 17; those parts of Franklin County east and south of a line beginning at the Adams-Franklin County line on WA 17, south on WA 17 to US 395, south on US 395 to I-182, west o I-182 to the Franklin-Benton County line; those parts of Benton County south of I-182 and I-82; and those parts of Klickitat County east of U.S. Highway 97.

Area 2: All of Okanongan, Douglas, and Kittitas Counties and those parts of Grant, Adams, Franklin, and Benton Counties not included in Eastern Washington Goose Management Area 1.

Area 3: All other parts of eastern Washington not included in Eastern Washington Goose Management Areas 1 and 2.

Western Washington: All areas west of the East Zone.

Area 1: Skagit, Island, and Snohomish Counties.

Area 2: Clark, except portions south of the Washougal River, Cowlitz, Pacific, and Wahkiakum Counties.

Area 3: All parts of western Washington not included in Western Washington Goose Management Areas 1 and 2.

Lower Columbia River Early-Season Canada Goose Zone: Beginning at the Washington-Oregon border on the I-5 Bridge near Vancouver, Washington; north on I-5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Wyoming (Pacific Flyway Portion): See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Beadle, Brookings, Brown, Campbell, Clark, Codington, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hughes, Hyde, Kingsbury, Marshall, McPherson, Potter, Roberts, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box, Elder, Weber, Davis, Salt Lake, and Toole Counties lying south of State Hwy 30, I-80/84, west of I-15, and north of I-80.

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Part III

Securities and Exchange Commission

17 CFR Part 240

Amendments to Rules on Shareholder Proposals; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39093; IC–22828; File No. S7–25–97]

RIN 3235–AH20

Amendments to Rules on Shareholder Proposals

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("we" or "Commission") proposes revisions to the rule that opens, and then regulates, a channel of communication among shareholders, and between shareholders and the management of their companies: rule 14a–8, the shareholder proposal rule. We propose to recast rule 14a–8 into a Question & Answer format that both shareholders and companies should find easier to follow, and to modify the rule to address concerns raised by both shareholders and companies. We also propose revisions to related rules.

DATES: Public comments are due November 25, 1997.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Comment letters can be sent electronically to the following e-mail address: rule-comments@sec.gov. The comment letter should refer to File No. S7–25–97; if e-mail is used please include the file number in the subject line. Anyone can inspect and copy the comment letters in the SEC's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We will post comment letters submitted electronically on our Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Frank G. Zarb, Jr., Special Counsel, Office of Chief Counsel, Division of Corporation Finance; at (202) 942–2900, or Doretha M. VanSlyke, Division of Investment Management, at (202) 942–0721, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to the following rules under the Securities Exchange Act of 1934 (the "Exchange Act"):[1] 14a–8,[2] 14a–4,[3] 14a–5,[4] 14a–2,[5] and 13d–5.[6]

I. Executive Summary

The shareholder proposal rule provides an avenue for communication between shareholders and companies, and among shareholders themselves. Like any other well-traveled road, however, the rule is in need of some repair. These proposals accordingly are designed to rectify problems identified by both shareholders and corporations.

The proposals today would make it easier for shareholders to include a broader range of proposals in companies' proxy materials, and provide companies with clearer ground rules and more flexibility to exclude proposals that failed to attract significant shareholder support in prior years. We are proposing a "package" of reforms that we believe best accommodates the concerns of most participants in the shareholder proposal process, including proposals to accomplish the following:

- Recast the rule into a more understandable Question & Answer format;
- Reverse the *Cracker Barrel* policy, making it easier for shareholders to include in companies' proxy materials employment-related proposals that raise significant social policy matters;
- Make it more difficult to present proposals again that received an insignificant percentage of the votes cast on earlier submissions, enhancing shareholders' ability to decide for themselves which proposals are important to the company;
- Introduce an "override" mechanism permitting 3% of the share ownership to override a company's decision to exclude a proposal under certain of the bases for exclusion;
- Adopt a new qualified exemption from the proxy rules under Section 14(a) of the Exchange Act, and a safe harbor under Section 13(d) of the Exchange Act and rule 13d–5, to make it easier for shareholders to use the new "override;"
- Streamline the exclusion for matters considered irrelevant to corporate business, to permit companies to exclude proposals that relate to economically insignificant portions of their businesses;
- Streamline our administration of the rule whereby companies are permitted to exclude proposals furthering personal grievances or special interests; and
- Provide clearer ground rules for management's exercise of discretionary voting authority when a shareholder notifies the company that it intends to present a proposal outside the mechanism of rule 14a–8.

II. Introduction and Background

Rule 14a–8 provides, and then regulates, a channel of communication among shareholders, and between shareholders and companies. It is not the only avenue for communication, since a shareholder may undertake an independent proxy solicitation or may seek informal discussions with management or other shareholders outside the proxy process. Rule 14a–8 is popular because it provides an opportunity for any shareholder owning a relatively small amount of the company's shares to have his or her own proposal placed alongside management's proposals in the company's proxy materials for presentation to a vote at an annual or special meeting of shareholders.

The rule's operation is fairly simple. A shareholder must mail a copy of his or her proposal to the company in time to meet the deadline imposed by the rule.[7] If the company intends to omit the proposal from its proxy materials, it must first submit its reasons to the Commission.[8] The Division of Corporation Finance or Division of Investment Management (the "Division[9]") usually issues a written response either concurring or declining to concur with the company's reasoning.[9] The Division's response is not legally binding, and does not necessarily reflect the view of the Commission.[10] Either party may obtain a legally binding decision on the excludability of a challenged proposal from a federal court.

Proposals are considered appropriate for inclusion in proxy materials under rule 14a–8 unless the company demonstrates that the proposal falls within one of thirteen bases for exclusion, or that the shareholder proponent is otherwise ineligible to submit a proposal. A company may, for example, omit a shareholder proposal that is not a proper matter for shareholder action under state law,[11] or if the shareholder fails to demonstrate that he or she continuously held $1000 worth of the company's voting securities for at least one year prior to submitting a proposal.[12]

Between 300 and 400 companies typically receive a total of about 900 shareholder proposals each year.[13] Their subjects vary. A majority of the proposals each year focus on corporate governance matters—such as proposals to repeal by laws establishing a classified board of directors—and on compensation matters—such as proposals to eliminate pension plans for non-employee directors. Social policy issues, such as environmental matters or the manufacture of tobacco products, and other issues, such as extraordinary business transactions, are also the focus of a significant number of proposals each year.

While we believe that the rule works well overall, some shareholder and corporate groups have expressed concerns about certain aspects of the rule and how it operates. Some shareholders seek to broaden the subject matter categories of proposals that companies are required to include in their proxy statements,[14] focusing in particular on a 1992 no-action letter issued to Cracker Barrel Old Country Store, Inc.[15] In the Cracker Barrel letter, the Division announced a new "bright line" test for analysis of employment-related shareholder proposals that raise significant social policy issues.[16] Some shareholders want that test changed.

Just as some shareholders have expressed concern that the rule permits companies to exclude important proposals, some companies in turn believe that the rule and current interpretations of the rule compel them to include too many proposals of little relevance to their businesses.[17] Some companies suggest that the problem be addressed by an increase in the amount of stock a shareholder must hold to be eligible to submit a proposal, or in the percentage of the vote a proposal must receive to qualify for re-submission in future years.[18] Among companies responding to the Questionnaire, 40% rank as a top reform goal reduction of the types of proposals that they must include in their proxy materials.

Companies also seek additional guidance on their exercise of discretionary voting authority[19] when a shareholder notifies them of his or her intention to present proposals without invoking rule 14a–8.[20] And they raise other concerns about the operation of the rules governing shareholder proposals.[21]

Congress recently required that we conduct a comprehensive study of the shareholder proposal process, and submit a report on the results of the study by October 11, 1997.[22] We began the study in February 1997 with the distribution of a Questionnaire on shareholder proposals. While we did not design the Questionnaire to obtain a scientific sampling, it provided us with some indication of the views of interested shareholders and companies, including those who do not typically express their views to the Commission.[23] In addition, the Commission staff has held discussions with interested groups, and tapped its own reservoir of experience and knowledge about the rule.

Although we have considered some fundamentally different approaches to regulating the shareholder proposal process, the proposals today reflect our belief that most participants would prefer that we maintain the current system, with modifications. We request your comments on whether our view is correct, and on whether we should consider some other approach in lieu of the amendments proposed today.

We could, for instance, withdraw entirely from the area, leaving it to each state to adopt its own shareholder proposal rule to govern what proposals are appropriate to be included in companies' proxy materials. The shareholder proposal process affects the internal governance of corporations, and it is state law—not federal securities law—which is primarily concerned with corporate governance matters. In its current form, rule 14a–8 in fact defers to state law on the central question of whether a proposal is a proper matter for shareholder action.[24] The "ordinary business" exclusion[25] is based in part on state corporate law establishing spheres of authority for the board of directors on one hand, and the company's shareholders on the other.[26]

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[1] 15 U.S.C. 78a *et seq.*

[2] 17 CFR 240.14a–8.

[3] 17 CFR 240.14a–4.

[4] 17 CFR 240.14a–5.

[5] 17 CFR 240.14a–2.

[6] 17 CFR 240.13d–5.

[7] Rule 14a–8(a)(3) [17 CFR 240.14a–8(a)(3)].

[8] Rule 14a–8(d) [17 CFR 240.14a–8(d)].

[9] The Division of Corporation Finance has reviewed approximately 400 submissions under rule 14a–8 annually. The Division of Investment Management typically has reviewed fewer than 12 submissions from investment companies in previous years; shareholder proposals have only infrequently been submitted to investment companies, and those submitted have usually involved closed-end investment companies.

[10] The procedures on the rendering of staff advice for shareholder proposals are explained in Exchange Act Release No. 12599 (July 7, 1976) (41 FR 29989). These proposals do not alter the procedures set forth in that release.

[11] Rule 14a–8(c)(1) [17 CFR 240.14a–8(c)(1)].

[12] Rule 14a–8(a)(1) [17 CFR 240.14a–8(a)(1)].

[13] See American Society of Corporate Secretaries ("ASCS"), Report on Shareholder Proposals, July 1, 1995–June 30, 1996; IRRC Summary of 1996 U.S. Shareholder Resolutions, Apr. 12, 1997. The IRRC tracks proposals at approximately 1,500 companies each year, and the ASCS monitors proposals at approximately 1,950 public companies. A company is not required to contact the Commission staff unless it intends to omit the proposal from its proxy materials.

[14] In response to a questionnaire on shareholder proposals which we distributed last February (the "Questionnaire"), 63% of shareholder respondents ranked as a top goal of reform expanding the categories of proposals that companies must include in their proxy materials. As discussed more fully below, the Commission staff prepared the Questionnaire as part of a Congressionally-mandated study of the shareholder proposal process.

[15] See, e.g., Rulemaking Petition dated July 27, 1995, submitted to the Commission by the Interfaith Center on Corporate Responsibility, Calvert Group Ltd., and the Comptroller of the City of New York. The petition asked that the Commission modify its position announced in the no-action letter Cracker Barrel Old Country Store, Inc. (Oct. 13, 1992) ("*Cracker Barrel*") (proposal that company implement employment practices related to sexual orientation). The proposals address the concerns raised by the petition. See Section III, Part D of this release.

[16] *Cracker Barrel.* The Commission subsequently upheld the Division's response. See Letter dated January 15, 1993 from Jonathan G. Katz, Secretary to the Commission, to Sue Ellen Dodell, Deputy Counsel, Office of Comptroller, The City of New York.

[17] See *e.g.*, Response of Porter Lavoy & Rose Inc., No. 31; The Finova Group, No. 61; Boise Cascade Corp., No. 163; Allied Signal Inc., No. 184; Intel Corporation, No. 216; RJR Nabisco, Inc., No. 207; The Proctor & Gamble Company, No. 264. The responses are available for inspection and copying in file number S7–5–97.

[18] See, *e.g.*, Response of Roanoke Electric Steel Corp, No. 44; Cooper Industries, No. 174; Carolina Power and Light Co., No. 156; Eastman Kodak Company, No. 268.

[19] Discretionary voting authority is the ability to vote proxies that shareholders have executed and returned to the company, on matters not reflected on the proxy card, and on which shareholders have not had an opportunity to vote.

[20] See, *e.g.*, Response of Gannett Co., Inc., No. 117; Questar Corp., No. 18; Albertson's Inc., No. 204; CNF Transportation, No. 11; Safety-Kleen Corp., No. 180; Honeywell Inc., No. 198.

[21] The American Trucking Associations ("ATA"), for instance, recently petitioned the Commission to amend rule 14a–8(c)(4), the personal grievance exclusion, to "prevent labor unions from continuing to use the shareholder proposal process to advance union interests not shared by the target company's shareholders' generally." Rulemaking Petition dated October 13, 1995 submitted to the Commission by the ATA. The Commission considered the ATA's concerns in connection with these proposals. Section III, Part B, describes proposed modifications to the way we administer current rule 14a–8(c)(4).

[22] National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, § 510(b), 110 Stat. 3416 (1996). The Commission is required to study "(A) whether shareholder access to proxy statements pursuant to section 14 of the Securities Exchange Act of 1934 has been impaired by recent statutory, judicial, or regulatory changes; and (B) the ability of shareholders to have proposals relating to corporate practices and social issues included as part of proxy statements."

[23] We received a total of 330 responses, including 172 responses from companies, and 149 from individual and institutional shareholders. We also heard from a handful of other types of institutions, such as a proxy solicitation firm, an investor relations consulting firm, and an economic consulting firm. You may inspect and copy completed Questionnaires in our Public Reference Room, public file number S7–5–97.

[24] Rule 14a–8(c)(1).

[25] Rule 14a–8(c)(7) [17 CFR 240.14a–8(c)(7)].

[26] States likely do not currently have appropriated procedures in place to accommodate such an approach. We could retain rule 14a–8 for a period of time, such as 3 or 6 years, to permit states to

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In 1982, the Commission proposed for comment fundamental alternatives to the existing shareholder proposal rule, although it did not propose leaving the matter up to the states. Under one proposal, the Commission would have adopted a supplemental rule to permit a company and its shareholders to adopt a plan providing their own alternative procedures governing the process. Another alternative would have required companies to include in their proxy materials all proposals that are proper under state law and that do not involve the election of directors, subject to a numerical maximum. Most of those who expressed views on the 1982 proposals rejected the proposed alternatives, and the Commission adopted revisions that left the rule essentially in its current form.[27]

We believe that it is worthwhile to consider whether there is a workable alternative approach to the current rule and process. Among other things, the current rule in effect places the Commission and its staff in the role of informal arbiter between companies and shareholders submitting a growing variety of shareholder proposals. In implementing rule 14a–8, the Commission and its staff are sometimes called upon to make difficult judgments about the proper interpretation of proposals and about the matters to which they relate. Should these judgments be made by institutions other than the Commission, or by the shareholders and companies themselves? Your comments are welcome on these matters.

Despite these considerations, the results of the Questionnaire appear to support the view that most participants would prefer that we maintain the current system, possibly with modifications. The Questionnaire sought views on a number of different alternatives to the existing system, none of which appeared to receive strong support from respondents. For instance, the Questionnaire asked about a system like that discussed above where states would be urged to adopt their own shareholder proposal rules in place of rule 14a–8; and about a system where each company would be permitted to adopt its own shareholder proposal rule, subject to shareholder approval. Neither shareholders nor companies appeared to favor these approaches.[28]

The Questionnaire also asked about another approach that would have substantially restricted companies' ability to exclude proposals, but would have placed a numerical cap on the total number of proposals that a company would be required to include in its proxy materials. The results were mixed. Many companies supported the approach, while most shareholders did not.[29]

The Questionnaire also asked whether respondents would prefer the existing system, with possible modifications, to some other alternative not identified in the Questionnaire. Most preferred retaining the existing system.[30]

The results also reflected some support for the Commission's continued involvement in the shareholder proposal process. Most shareholders and a number of companies responding to the Questionnaire indicated that the Commission's role should be expanded or stay the same.[31]

III. Proposed Amendments

We view the various reforms proposed today as a "package" designed to address in a balanced manner the sometimes conflicting concerns of different participants. Your comments should therefore focus not only on whether we should adopt each proposal viewed in isolation, but also on whether we should adopt the proposal as part of an overall package.

Part A below describes the proposed Question & Answer format for revised rule 14a–8, and clarifying language changes. Part B addresses our proposal to change the way the Division applies rule 14a–8(c)(4)[32], which permits companies to exclude proposals furthering personal grievances or special interests. Proposed amendments to rule 14a–8(c)(5)[33], the "relevance" exclusion, are explained in Part C. Part D describes how we propose to modify our interpretation of rule 14a–8(c)(7), which permits companies to exclude proposals relating to their "ordinary business operations." In Part E, we describe proposed modifications to rule 14a–8(c)(12),[34] which permits companies to exclude proposals that received less than specified percentages of voting support on earlier submissions.

Part F describes a proposed mechanism to permit shareholders to "override" certain bases for excluding proposals. Part G addresses a proposed safe harbor from Section 13(d),[35] and a qualified exemption from the proxy rules, for shareholders using the proposed "override" described in Part F. Part H describes proposed revisions to rule 14a–4(c)[36] designed to establish clearer guidelines for the exercise of discretionary voting authority when a company receives advance notice that a shareholder intends to present a proposal for a vote without invoking rule 14a–8's mechanism. Finally, in Part I, we explain some other proposed amendments to rules 14a–8 and 14a–5.

A. Plain-English, Question & Answer Format

We propose to amend and recast Rule 14a–8 into a Question & Answer format so that the hundreds of shareholders and companies who refer to the rule each year can more easily understand its requirements.[37] We request your comments on whether the proposed revisions on the whole would make the rule easier to understand. Should we instead retain the format and style of the current rule?

Your comments should also address each of the proposed revisions individually. Except as specifically noted here, or elsewhere in Section III of this release, most of the proposed language modifications are intended solely to make the requirements easier to understand and follow, and not to result in substantive modifications. Some proposed revisions described in this Part A, however, are intended to reflect current Division or Commission interpretations of the rule. Your comments should address whether each proposed language modification makes the rule more understandable, whether some other revision would be more appropriate, and whether the proposed modification is consistent with current interpretations.

Most of the current rule's procedural and eligibility requirements would appear in the answers to Questions 2 through 8, and 12. We also proposed revisions to some of the thirteen bases upon which a company may rely for excluding a proposal, which appear in paragraph (c) of current rule 14a–8. The bases would now appear in the answer to Question 9.

In current paragraph (c)(1), permitting exclusion of proposals that are not proper subjects for shareholder action under state law, the reference to the "laws of the issuer's domicile" would be replaced by a reference to "the laws of the state of the company's incorporation," which we have applied to have the same meaning. We would revise the note to the paragraph to reflect the Division's current practice of assuming that a proposal drafted as a recommendation or request is proper unless the company demonstrates otherwise.

We propose to make only minor plain-English revisions to current paragraph (c)(2),[38] replacing the word "require" with the word "cause" and moving to a "note" the portion of the current paragraph discussing the priority accorded domestic laws. We request your comments on whether some other formulation would make this paragraph easier to understand and follow, and whether the revisions appear consistent with current interpretations.[39]

Current paragraph (c)(3)[40] would be amended to eliminate the reference to "regulations" because it is redundant. We request your comments on whether this revision would make the rule clearer, or whether some other revisions would make the rule easier to understand and follow.

A proposed modification of the way we administer current paragraph (c)(4), and revisions to current paragraph (c)(5), are described in Parts B and C below.

As proposed, current paragraph (c)(6)[41] would be revised to permit exclusion "[i]f the company would lack the power or authority to carry out the proposal." We believe that the revised language is clearer, without altering the meaning of the paragraph, which currently permits exclusion of proposals that are "beyond the registrant's power to effectuate." We request your comments on whether some other revision would make the rule easier to understand and follow, and whether the revision appears consistent with current interpretations of the rule.[42]

Current paragraph (c)(7) permits the exclusion of proposals relating to a company's "ordinary business operations." We recognize that the term "ordinary business" is a legal term of art that provides little indication of the types of matters to which it refers. We therefore propose to revise the paragraph to permit exclusion "if the proposal relates to specific business decisions normally left to the discretion of management." The revised rule would provide a list of examples, which is not exclusive, including the way a newspaper formats its stock tables, whether a company charges an annual fee for use of its credit card, the wages a company pays its non-executive employees, and the way a company operates its dividend reinvestment plan. For an investment company, an example is a decision whether to invest in the securities of a specific company.

These proposed revisions are intended to make the "ordinary business' exclusion easier to understand, not to modify current interpretations. We request comments on whether the examples of excludable matters provided are helpful and appropriate, and whether some other examples than the ones proposed would be more helpful. We also request your comments on the degree to which the proposed formulation would be consistent with current interpretations.[43]

We also request your comments on whether some other revision would be preferable. We could, for instance, retain the existing language, with or without additional guidance on its meaning. An example of this approach would be to revise current paragraph (c)(7) to permit omission of a proposal "if it deals with a matter relating to the conduct of the company's ordinary business operations (matters that should be left to the discretion of the company's managers because of their complexity, impracticability of shareholder participation, or relative insignificance)." Would this formulation be preferable to the current or proposed approach, and be consistent with current interpretations of the rule?

The proposed revisions to current paragraph (c)(8)[44] are designed to reflect the current interpretation that the rule applies only to proposals on elections of individuals for membership to, and removal from, the board of directors.[45] We propose to revise current paragraph (c)(9)[46] to reflect the Division's long-standing interpretation permitting omission of a shareholder proposal if the company demonstrates that its subject matter directly conflicts with all or part of one of management's proposals.[47] We request your comments on whether some other revision would make these rules easier to understand and follow, and whether the revisions appear consistent with current interpretations of the rules.

Current paragraph (c)(10),[48] permitting exclusion of "moot" proposals, would be revised to reflect the Commission's interpretation permitting exclusion of proposals that have been "substantially implemented."[49] Only minor stylistic revisions would be made to paragraph (c)(11)[50], which permits omission of substantially duplicative proposals. Although we significantly revised current paragraph (c)912),[51] the rule restricting resubmission of certain proposals, the only substantive proposed modifications to the paragraph are described in Part E below. We request your comments on whether the current rules are preferable, or whether some other revision would make the rules easier to understand and follow, and whether the proposed revisions appear consistent with current interpretations of the rules.

Finally, the rule as proposed to be revised would permit both companies and shareholders to send their rule 14a–8 submissions to the Commission by

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adopt necessary procedures, if we decide to pursue this approach.

[27] See Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release") [48 FR 38218].

[28] One percent of shareholder respondents and 47% of company respondents favored, and 93% of shareholders and 49% of companies disfavored, allowing each company to set up its own shareholder proposal process. Eighty-nine percent of shareholders, and an equal percentage of companies, disfavored replacing rule 14a–8 with state-adopted systems, while only 8% of companies and 5% of shareholders favored the approach.

[29] Sixty-three percent of company respondents and 9% of shareholder respondents supported the approach, while 34% of companies and 86% of shareholders disfavored it.

[30] Seventy-three percent of company respondents and 75% of shareholder respondents preferred the existing system either without reform or with other reforms. Only 6% of companies and 4% of shareholders, preferred some other alternative.

[31] Fifty-four percent of shareholder respondents and 47% of company respondents indicated that they believed the Commission's role would either increase or stay the same. Twenty-six percent of shareholders and 49% of companies indicated that our role should be diminished, and only 1% of shareholders and 8% of companies thought it should be eliminated. Additionally, 64% of shareholder respondents and 74% of companies indicated their belief that the Commission's role as informal "referee" in the shareholder proposal process is beneficial.

[32] 17 CFR 240.14a–8(c)(4).

[33] 17 CFR 240.14a–8(c)(5).

[34] 17 CFR 240.14a–8(c)(12).

[35] 15 U.S.C. 78m(d).

[36] 17 CFR 240.14a–4(c).

[37] The existing rule may be confusing for shareholders who may heve had little or no prior experience dealing with our rules. In response to the Questionnaire, 65% of individual shareholder respondents indicated that they do not believe that shareholders generally understand the current shareholder proposal rule.

[38] 17 CFR 240.14a–8(c)(2).

[39] See, *e.g., Firestone* (Dec. 8, 1987).

[40] 17 CFR 240.14a–8(c)(3).

[41] 17 CFR 240.14a–(c)(6).

[42] See, *e.g., SCECorp* (Dec. 20, 1995) (proposal that third party fiduciary trustees amend discretionary voting agreements).

[43] See the summary of the principal considerations in the application of the "ordinary business" exclusion in Part D below.

[44] 17 CFR 240.14a–8(c)(8).

[45] See, *e.g., Cornerstone Properties, Inc.* (Mar. 8, 1996) (proposal nominating proponent for election to company's board of directors).

[46] 17 CFR 240.14a–8(c)(9).

[47] See, *e.g., General Electric Corporation* (Jan. 26, 1997) (shareholder proposal requiring company to modify stock option plans conflicted with company proposal); *Northern States Power Co.* (July 25, 1995) (shareholder proposal counter to management's).

[48] 17 CFR 240–14a–8(c)(10).

[49] 1983 Release Consistent with that release, in order to have been "substantially implemented," the company must have actually taken steps to implement the proposal. It is insufficient for the company to have merely considered the proposal, unless the proposal clearly seeks only consideration by the company, and not necessarily implementation.

[50] 17 CFR 240.14a–8(c)(11). See, *e.g., Detroit Edison* (Jan. 16, 1996).

[51] See, *e.g., Gannett Co.* (Feb. 12, 1996).

electronic mail. That option is not currently available.

B. Personal Claim or Grievance Exclusion: Rule 14a–8(c)(4)

We propose to modify the application of rule 14a–8(c)(4), which permits companies to exclude proposals relating to "a personal claim or grievance against the registrant or any other person, or if it is designed to result in a benefit to the proponent or to further a personal interest, which benefit or interest is not shared by the other security holders at large." The goal of paragraph (c)(4) is straightforward: to screen out proposals designed to further a personal grievance or a special interest, since such proposals are unlikely to further the interests of all shareholders at large.[52] The Commission has recognized, however, that the exclusion is "[p]erhaps the most subjective provision and definitely the most difficult for the staff to administer" because it "requires the staff to make determinations essentially involving the motivation of the proponent in submitting the proposal."[53]

Application of the exclusion is particularly difficult when the proposal is neutral on its face, meaning that the proposal itself does not by its terms relate to a personal grievance or special interest of the proponent. In those situations, the Division must make factual determinations, sometimes involving the proponent's or the company's credibility, based normally on circumstantial evidence presented in the parties' submissions.[54] In practice, the Division has infrequently concurred in the exclusion of a "neutral" proposal under rule 14a–8(c)(4).

We propose to modify the way the Division applies the rule so that the staff would concur in the exclusion of a proposal on this ground only if the proposal (including any supporting statement) on its face relates to a personal grievance or special interest. While a company would still be required to make a submission under rule 14a–8 if it intends to omit a "neutral" proposal under paragraph (c)(4), the Division would automatically express "no view," rather than concur or decline to concur in its exclusion.

We propose this new approach because we recognize that the basic policy underlying paragraph (c)(4) is equally applicable to proposals that are neutral on their face. The proposed modification of the way we administer the rule merely reflects our appreciation that the Division's ability to make the necessary factual findings is limited in the context of such a proposal. Companies receiving "no view" responses could elect to omit the proposal if they believe they possess adequate factual records to demonstrate the personal grievance or interest. However, the Commission and its staff would not make that determination.

While this is a change in the Division's administration of the rule, we nevertheless request your comments on whether we should implement this change, including whether it would lead to abuse by either shareholders or companies.

C. Rule 14a–8(c)(5): The "Relevance" Exclusion

We propose to narrow and clarify the operation of rule 14a–8(c)(5), which is often called the "relevance" exclusion because its primary purpose is to screen out proposals that are of little or no economic relevance to the company and its business. Currently, the rule permits companies to exclude a proposal relating to

operations which account for less than 5 percent of the registrant's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the registrant's business.

Since its adoption, the rule has suffered from the inherently subjective nature of the "otherwise significantly related" standard. The Commission has considered more objective tests. In 1976, for example, the Commission considered a purely economic test for determining a proposal's relevance, but rejected the idea largely out of recognition that some matters, such as cumulative voting rights or the ratification of auditors, may be important to the company despite the unavailability of a quantifiable economic value.[55] The Commission nonetheless recognized that there were "circumstances in which economic data may indicate a valid basis for omitting a proposal under this provision."[56]

Realizing that the rule continued to suffer from imprecision, the Commission revised it in 1983 to add the specific 5% economic test and to modify the reference to "significantly related" matters.[57] Thus, if the subject of the proposal represented less than 5% of total assets, gross sales, and net earnings, the proponent could avoid exclusion of a proposal by demonstrating that the proposal is "otherwise significantly related" to the company's business.[58]

Largely as a result of the subjectivity of the "otherwise significantly related" language, that portion of the rule frequently overshadows the 5% economic standard. Thus, even if a proposal represents less than 5% of the company's total assets, net earnings, and gross sales, the proponent often can satisfy the "otherwise significantly related" part to defeat the company's reliance on the rule. In the period between September 30, 1996, and the date of this release, only two companies successfully invoked the rule to exclude proposals.[59]

The rule as revised would apply a purely economic standard. The exception for proposals that are "otherwise significantly related" would be deleted. A company would be permitted to exclude proposals relating to matters involving the purchase or sale of services or products that represent $10 million or less in gross revenue or total costs, whichever is appropriate, for the company's most recently completed fiscal year. However, an economic threshold lower than $10 million would apply if 3% of the company's revenue or total assets (whichever is higher), for its most recently completed fiscal year, results in a number lower than $10 million.

For instance, assume a proposal relates to a single retail store operated by a company with multiple stores, and the store generated $4 million in gross revenue for the company' most recently completed fiscal year. Because $4 million is less than $10 million, the company would be permitted to exclude the proposal unless the exception in the second part of the rule applies. However, because the company's gross revenue worldwide for the last completed fiscal year was $500 million, and its total assets totalled $400 million, the exception would not apply in this example. Three percent of the company's gross revenue for the relevant period (the higher number) amounts to $15 million—a number greater than $10 million. If it resulted in a lower number, that number would be the applicable threshold.

In response to the Questionnaire, companies stated that rule 14a–8 operates in a manner that requires them to include too many proposals of little or no relevance to their businesses.[60] We believe that the proposed revisions address this concern by establishing clearer, more predictable criteria for excluding proposals. The proposed revisions should also make it easier for companies to exclude economically insignificant proposals. The approach would appear to balance the various competing concerns, since under the proposed revision companies may also be unable to exclude some proposals—with relatively greater economic significance—that they are currently permitted to omit under the existing 5% test.

There would be four safeguards to prevent the revised rule from precluding proposals that may be significant to the company despite a low quantifiable value. First, the exclusion would apply only to proposals relating to quantifiable matters, such as operations in a specific foreign country, a specific product line, or a specific retail store or set of stores. It would not apply to proposals where quantification is impracticable or unreliable, such as proposals on cumulative voting, or the ratification of auditors.

Second, the economic threshold in the proposed rule has been reduced significantly from the threshold in current rule 14a–8(c)(5) to counterbalance the elimination of the "otherwise significantly related" portion of the current rule. The economic thresholds that would apply under the proposed rule would be the lesser of either $10 million in gross revenues or total costs (which is appropriate), or 3% of gross revenues or total assets (whichever is higher).

We recognize that $10 million may be economically significant for some smaller companies. That is why we propose the alternative 3% test which would make it more difficult to exclude proposals at smaller companies. The alternatives test could operate only to reduce the $10 million threshold, not to increase the threshold.

Third, the exclusion would apply only to proposals relating to the purchase or sale of products and services. This qualification is designed to help ensure that the exclusion is applied only to distinct operational matters relating to the company's business activities, and not to matters involving the company's internal governance, such as voting procedures for the board of directors.

Finally, we believe that any inflexibility that may result from adoption of a purely economic standard would be mitigated by the adoption of the "override" mechanism described in Part F below. That mechanism would permit a proponent who obtained sufficient shareholder support to override a company's use of current paragraph (c)(5) if he or she believed that it permitted exclusion of an important proposal.

We request your comments on whether we should consider some other modification of current paragraph (c)(5). For example, instead of eliminating the "otherwise significantly related" portion of the current paragraph, should we attempt to clarify and narrow that portion of the rule? Should it refer instead to specific types of proposals that would not be subject to the exclusion, such as corporate governance proposals and/or proposals relating to extraordinary transactions?[61] Should we revise the language to make it less subjective, to refer for instance to proposals where the substantiative action in the resolution relates to matters that under the applicable corporate law can be effectuated only by shareholders or the board of directors, or both acting together? Or should we instead retain the "otherwise significantly related" language?

We also request your comments on whether the qualification that the exclusion apply only to matters relating to purchase or sale of goods or services is necessary to ensure that the exclusion is not overly broad? Would some other formulation work more effectively, such as limiting application of the exclusion to matters relating to a company's assets or earnings?

In addition, we solicit your comments on whether economic thresholds other than $10 million in gross revenues or total costs, or 3% of gross revenues or total assets, might be more appropriate. Should there be only one threshold, such as the $10 million threshold, or the 3% threshold, or is it appropriate to have alternative thresholds, as proposed? The 3% test is intended to apply to relatively small companies where the fixed dollar test might be too high. Is that safeguard unnecessary if the fixed dollar threshold is set at a number as low as $10 million? The alternative 3% percent test would operate only to reduce the $10 million threshold, not to increase the threshold. We request your comments on whether the alternative test should also operate to increase the fixed dollar threshold.

Your comments should also address whether the proposed $10 million threshold is too low, so that it would fail to permit omission of economically insignificant proposals. If so, should the threshold be higher, such as $15 million or $25 million? Or would the rule as proposed permit companies to exclude too many proposals? If that is so, should the threshold be lower, such as $1 million, or $5 million? Similarly, should we adopt a percentage threshold lower than the proposed 3%, such as 1% or .5%, or a higher one, such as 5% or 6%?

The proposed $10 million threshold would be based on total costs or gross revenues, whichever is appropriate. Cost appears to be an appropriate measure for some matters, such as supply contracts, while revenue appears more appropriate for others, such as retail operations. Companies would not be permitted to choose between the two measures. For the percentage portion of the exclusion, we believe that a test based alternatively on gross revenues or total assets is warranted because it would apply in the most consistent and meaningful manner among different companies and industries compared to other possible measures. While revenues should in most cases be a consistent measure of size, assets may be a better measure for some types of companies, such as banks.

Should we instead adopt some other basis, or series of bases, for measuring the fixed dollar amount, such as pre-tax income, total assets, gross profit and/or net earnings? Instead of basing the amount on an alternative between two measures—such as revenues or cost—should we base it on only one measure, such as only cost, revenues, or assets? Similarly, we request your comments on whether the percentage portion of the test should be based on a measure other than gross revenues or total assets. Should we instead adopt some other basis, or series of bases, such as pre-tax income, gross profit and/or net earnings?

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[52] Exchange Act Release No. 19135 (Oct. 14, 1982) [47 FR 47420].

[53] *Id.*

[54] See, e.g., *Service Corporation Int'l* (Feb. 28, 1997) (company pointed to proponent's history of harassment as indicative of a personal claim or grievance); *Nortek Inc.* (Aug. 13, 1996) (staff did not concur with company's view that proposal requesting recision of a bylaw was excludable under rule 14a–8(c)(4)).

[55] Exchange Act Release No. 12999 (Nov. 22, 1976) [49 FR 52994].

[56] *Id.*

[57] 1983 Release; see also Exchange Act Release No. 19135 (Oct. 14, 1982).

[58] The proponent carries the burden of demonstrating that the proposal is "otherwise significantly related." See Exchange Act Release No. 19135 (Oct. 14, 1982).

[59] *Atlantic Richfield Company* (Jan. 26, 1997) (proposal on company's operations in Myanmar); *La Jolla Pharmaceutical Company* (Feb. 18, 1997) (proposal on use of human fetal tissue).

[60] See Section II above. In addition, of those responding to the Questionnaire, 59% of shareholders, and 54% of companies, ranked either simplification of the shareholder proposal process, or reduction of the cost and time required to participate, as a top goal of reform.

[61] The Questionnaire asked about a reformulation that would permit companies to exclude proposals representing less than 5% of assets, earnings, and sales, unless the proposal relates to corporate governance. Forty-one percent of shareholder respondents and 23% of companies indicated that they would favor such an approach.

D. The Interpretation of Rule 14a–8(c)(7): The "Ordinary Business" Exclusion

When adopted in 1953, the "ordinary business" exclusion had a fairly straightforward mission: to "relieve the management of the necessity of including in its proxy material security holder proposals which relate to matters falling within the province of management."[62]

That mission became more complicated with the emergence of proposals focusing on social policy issues beginning in the late 1960's. As drafted, the rule provided no guidance on how to analyze proposals relating simultaneously to both an "ordinary business" matter and a significant social policy issue.

In 1976, the Commission considered revisions to the "ordinary business" exclusion, hoping to fashion more workable language distinguishing between "mundane" business matters and "important" ones.[63] It declined to adopt the new language after commentators expressed concern that the new language might be overly restrictive and difficult to apply.[64] In lieu of adopting revisions, the Commission stated that it would apply the exclusion in a "somewhat more flexible manner."[65]

In applying the "ordinary business" exclusion to proposals relating to social policy issues, the Division applies the most well-reasoned standards possible, given the complexity of the task. From time to time, in light of experience dealing with proposals in particular subject areas, it adjusts its approach. Over the years, for instance, the Division has in several instances reversed its position on the excludability of proposals involving plant closings,[66] the manufacture of tobacco products,[67] executive compensation,[68] and golden parachutes.[69]

Another of these interpretive adjustments is a subject of today's proposals. In a 1992 no-action letter issued to the Cracker Barrel Old Country Stores, Inc.,[70] the Division announced that the fact that a shareholder proposal concerning a company's employment policies and practices for the general workforce is tied to a social issue will no longer be viewed as removing the proposal from the realm of ordinary business operations of the registrant. Rather, determinations with respect to any such proposals are properly governed by the employment-based nature of the proposal.

As a basis for the interpretive shift, the Division explained in the letter that

> [n]otwithstanding the general view that employment matters concerning the workforce of the company are excludable as matters involving the conduct of day-to-day business, exceptions have been made in some cases where a proponent based an employment-related proposal on 'social policy' concerns. In recent years, however, the line between includable and excludable employment-related proposals has been increasingly difficult to draw. The distinctions recognized by the staff are characterized by many as tenuous, without substance and effectively nullifying the application of the ordinary business exclusion to employment-related proposals.

The *Cracker Barrel* interpretation has been controversial since it was announced.[71] While the reasons for adopting the *Cracker Barrel* interpretation continue to have some validity, as well as significant support in the corporate community,[72] we believe that reversal of the position is warranted in light of the broader package of reforms proposed today. Reversal will require companies to include proposals in their proxy materials that some shareholders believe are important to companies and fellow shareholders. In place of the 1992 position, the Division would return to its approach to such proposals prevailing before it adopted the position. That is, employment-related proposals focusing on significant social policy issues could not automatically be excluded under the "ordinary business" exclusion.

Under this proposal, the "bright line" approach for employment-related proposals established by the *Cracker Barrel* position would be replaced by the case-by-case analysis that prevailed previously. Return to a case-by-case approach should redress the concerns of shareholders interested in submitting for a vote by fellow shareholders employment-related proposals raising significant social issues. While this would be a change in the Commission's interpretation of the rule, we nonetheless request your comments on whether we should reverse the *Cracker Barrel* interpretation. Your comments should focus on the proposed interpretive change independently of other proposals as well as part of the overall package of reforms proposed today.

In framing responses, commenters should bear in mind that the *Cracker Barrel* position relates only to employment-related proposals raising significant social policy issues. Reversal of the position would not affect the Division's analysis of any other category of proposals under the exclusion, such as proposals on general business operations. Also, the Division would continue to concur in the exclusion of straightforward employment proposals not raising significant social issues.[73]

Despite return to a case-by-case, analytical approach, some types of proposals raising social policy issues may continue to raise difficult interpretive questions. For instance, reversal of the *Cracker Barrel* position would not automatically result in the inclusion of proposals focusing on wage and other issues for companies' operations in the Maquiladora region of Mexico,[74] or on "workplace practices."[75]

Finally, we believe that it would be useful to summarize the principal considerations in the Division's application of the "ordinary business" exclusion. These considerations would continue to impact our reasoning even if the proposals are adopted. The general underlying policy of this exclusion is consistent with the policy of most state corporate laws: to confine the resolution of ordinary business problems to management and the board of directors since it is impracticable for shareholders to decide how to solve such problems.[76] Although the policy is based on state law, it is not completely guided by it, due in part to an absence of state authority on many of the issues we are called upon to address.

The policy underlying the rule includes two central considerations. The first relates to the subject matter of the proposal. Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on significant social policy issues generally would not be considered to be excludable, because such issues typically fall outside the scope of management's prerogative.[77]

The second consideration relates to the degree to which the proposal seeks to "micro manage" the company by probing too deeply into "matters of a complex nature that shareholders, as a group, would not be qualified to make an informed judgment on, due to their lack of business expertise and lack of intimate knowledge of the [company's] business."[78] This consideration may come into play in a number of circumstances, such as where the proposal seeks intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.[79]

E. Rule 14a–8(c)(12): The Resubmission Thresholds

We propose to increase the resubmission thresholds under rule 14a–8(c)(12). If a proposal fails to receive a specified level of support, that rule permits a company to exclude a proposal focusing on substantially the same subject matter for a three-year period. In order to avoid possible exclusion, a proposal must receive at least 3% of the vote on its first submission, 6% on the second, and 10% on the third.

We propose to raise the thresholds to 6% on the first submission, 15% on the second submission, and 30% on the third. At least for the time frame contemplated by the rule, we believe that a proposal that has not achieved these levels of support has been fairly tested and stands no significant chance of obtaining the level of voting support required for approval. We propose to increase the second and third thresholds by relatively larger amounts because the proposal will have had two or three years to generate support.

The amendments would also respond to companies' concerns that they receive too many proposals of little or no relevance to their businesses.[80] In addition, we believe that the amendments are appropriate to counter-balance other proposals that would expand the range of proposals companies must include in their proxy materials, such as the proposed reversal of the *Cracker Barrel* position, and the "override" mechanism described in Part F below.

The theory of this approach is consistent with that of the proposed "override" mechanism: in some circumstances, shareholders may be the best judge of which rule 14a–8 proposals deserve space on the company's proxy card. Even with the proposed revisions, paragraph (c)(12) will continue to permit shareholders an opportunity to see otherwise proper proposals at least once, and to decide for themselves which are sufficiently important and relevant to see on the proxy card a second, third, or fourth time. In this respect, we believe that the proposed approach is preferable to other suggested alternatives, such as increasing the eligibility criteria for initial submissions,[81] or further restricting the types of proposals that may appear in proxy materials. We request your comments whether this approach is preferable to alternatives, such as increasing eligibility criteria.

We request your comments on whether the thresholds should remain at their current levels, or whether they should be amended to amounts lower or higher than those proposed. For instance, instead of increasing the first threshold of 6%, we could increase it to 5%, or to 8% or 10%. The second threshold instead could be increased to 10% or 20%, and the third to 15% or 40%. Alternatively, we could increase only one or two of the thresholds. To illustrate, we could increase only the second and third thresholds, for instance to 15% and 30%, but leave the first at its current level of 3%.

We also request your comments on whether the size of the thresholds should vary in inverse relationship to the size of the company. Under this alternative, the percentage vote that a proposal must receive could be higher or lower depending on the company's total assets, market capitalization, revenues, profits, earnings, or a combination of those factors. A smaller percentage would be sufficient for a larger company, and a larger percentage for a smaller company. This approach would account for the fact that obtaining a certain percentage of support may become more difficult as the size of the shareholder base increases. If you believe that the thresholds should vary, your comments should specify the factors that should be considered in distinguishing between companies.

Finally paragraph (c)(12) prescribes a "votes cast" standard for determining whether a proposal received sufficient voting support in previous years to bar its omission in the current year. Under this standard, which has been characterized as the "most favorable to shareholder proponents,[82] abstentions and broker non-votes[83] are excluded

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[62] Exchange Act Release No. 4950 (Oct. 9, 1953) [18 FR 6646].

[63] Exchange Act Release No. 12598 (Jul. 7, 1976) [41 FR 29982].

[64] Exchange Act Release No. 12999 (Nov. 22, 1976) [41 FR 52994].

[65] *Id.*

[66] See *Pacific Telesis Group* (Feb. 2, 1989).

[67] See *Philip Morris Companies, Inc.* (Feb. 13, 1990).

[68] See *Reebok Int'l Ltd.* (Mar. 16, 1992).

[69] See *Transamerica Corp.* (Jan. 10, 1990).

[70] See *Cracker Barrel.*

[71] Shortly after its announcement, the New York City Employees Retirement System unsuccessfully challenged the Commission's authority to adopt the position. See *New York City Employee's Retirement System* v. *SEC*, 843 F. Supp. 858, *rev'd* 45 F.3d 7 (2d Cir. 1995). The Amalgamated Clothing and Textiles Union successfully challenged Wal-Mart's decision to exclude an affirmative action proposal after the Division concurred that the proposal could be excluded. See *Amalgamated Clothing and Textile Workers Union* v. *Wal-Mart Stores, Inc.*, 821 F. Supp. 877 (S.D.N.Y. 1993). During the last proxy season, we declined proponents' requests that we review three Division no-action responses implicating the interpretation, and concerning companies' affirmative action policies and practices. Commissioner Wallman dissented, and issued a dissenting statement.

[72] In response to the Questionnaire, 91% of companies favored excluding employment-related shareholder proposals raising significant social policy issues under the *Cracker Barrel* interpretation. Eighty-six percent of shareholders thought such proposals should be included.

[73] See, *e.g.*, *Marion Merrell Dow, Inc.* (Mar. 26, 1993) (proposal on the scope of employees' responsibilities); *Eastman Kodak Company* (Jan. 30, 1991) (procedures for employee-management communications); *International Business Machines Corporation* (Dec. 28, 1995) (proposal requesting amendment of terms of employee benefit plans).

[74] See, *e.g.*, *Allied Signal, Inc.* (Jan. 8, 1997) (proposal on company's Maquiladora operations). In response to the proponents' request for Commission review, we declined to review this no-action response in light of the ongoing Congressionally-mandated study of the shareholder proposal process.

[75] See, *e.g.*, *W.R. Grace & Co.* (Feb. 29, 1996) (proposal on matters such as employee training, quality control).

[76] See Testimony of Chairman Armstrong, Hearings on SEC Enforcement problems Before a Subcommittee of the Senate Committee on Banking and Currency, 85th Cong., 1st Sess., pt. 1, at 116 (1957); see also Exchange Act Rel. No. 12999 (Nov. 22, 1976).

[77] See, *e.g.*, *Reebok Int'l Ltd.* (Mar. 16, 1992).

[78] Exchange Act Release No. 12999 (Nov. 22, 1976).

[79] See, *e.g.*, *Capital Cities/ABC, Inc.* (Apr. 4, 1991) (proposal requested detailed information on the composition of the company's workforce and other matters); *Templeton Dragon Fund/Newgate Management Associates* (Jun. 11, 1997) (proposal sought to establish the interval between repurchases and the amount of the initial repurchase offer for a fund's repurchase program); *Burlington Northern Santa Fe Corp.* (Jan. 22, 1997) (proposal on development of new technology for railroad braking systems); see also, *e.g.*, *Roosevelt* v. *Dupont*, 958 F.2d 416, 427 (D.C. Cir. 1992) (proposal sought to impose earlier timetable for cessation of CFC production).

[80] See Section II above.

[81] For a discussion of the eligibility criteria, see Part I.2. below.

[82] See American Bar Association Interpretive Letter (avail. June 24, 1993) (quotation in footnote 2 of incoming letter describing staff's position, for tabulation purposes, on 14a–8(c)(12) resubmission thresholds; the letter sought staff interpretive advice on the proper treatment of broker non-votes and abstentions for purposes of Rule 16b–3).

[83] In Exchange Act Release No. 30849 (June 24, 1992) [57 FR 29584], at footnote 67, the Commission described abstentions and broker-dealer non-votes as follows:

> In two instances, a shareholder will be deemed present at the meeting for quorum purposes, but will be deemed not to have voted on a particular matter. First, the shareholder may specifically abstain from the vote by registering an abstention vote. Second, a nominee holding shares for beneficial owners [e.g., a broker-dealer] may have voted on certain matters at the meeting pursuant to discretionary authority or instructions from the beneficial owners, but with respect to other matters may not have received instructions from the

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from the denominator comprised of the total number of votes cast "For" and "Against" a given proposal. This figure in turn is divided into the total number of favorable votes cast to obtain the requisite percentage.

The Commission believes that the staff should continue to apply this method of vote counting for (c)(12) purposes, regardless of whether the existing thresholds are increased. Comment is sought on whether a different method should be applied; for example, including abstentions and/or broker non-votes as votes cast in the denominator, and/or treating abstentions and/or broker non-votes as votes against a proposal. We note that treating abstentions and/or non-votes as votes cast would result in the largest denominator, requiring the most "For" votes to surmount the (c)(12) thresholds.

F. Proposed Override Mechanism

We propose to revise rule 14a–8 to permit a shareholder proponent to override the exclusions under rules 14a–8(c) (5) and (7) if he or she demonstrates that at least 3% of the company's outstanding voting shares support the submission of the proposal for a shareholder vote. Current rule 14a–8 does not include any mechanism for overriding exclusions currently listed in any paragraph of rule 14a–8.

The "override" mechanism would broaden the spectrum of proposals that may be included in companies' proxy materials where a certain percentage of the shareholder body believes that all shareholders should have an opportunity to express a view on the proposal. The proposed mechanism would accordingly provide shareholders an opportunity to decide for themselves which proposals are sufficiently important and relevant to all shareholders—and, therefore, to the company—to merit space in the company's proxy materials.

As an example, companies often rely on current paragraph (c)(7) in attempting to exclude shareholder proposals on a variety of issues. Under the proposed "override," a shareholder obtaining the required level of support could avoid exclusion under that paragraph.

The requirement that the proponent obtain the support of a certain percentage of his or her fellow shareholders should serve two purposes. First, the percentage should be high enough to ensure that the proposals receiving that level of support are likely to be sufficiently relevant and important to the company to deserve a space in its proxy materials. Second, the percentage should not be so high as to make the "override" unattainable. We believe that 3% would strike the right balance, but we request your comments on whether the percentage should be higher, such as 5% or 8%, or lower, such as 1% or 2%. Your comments, preferably supported by empirical information, should address the degree to which a 3% support level is achievable.

As proposed, the shareholder who submitted the proposal could include his or her own shares in calculating the 3% necessary to accomplish an override. We recognize that, under this approach, a proponent who holds 3% of a company's outstanding voting shares could accomplish an override without having to obtain the endorsement of other shareholders. We request your comments on whether alternatively the rule should preclude consideration of the proponent's own shares in calculating the percentage required for an override.

We request your comments on whether we should adopt an alternative mechanism for establishing a shareholder override in addition to, or in place of, the 3% requirement. We could, for instance, permit an override by a fixed number of shareholders, such as 200, or 500 holders, either in place of the 3% threshold, or as an alternative test. If so, should it be permissible for the supporters to be members of the same organization, such as the same shareholder organization?

We also request your comments on whether the level of support a shareholder must obtain should vary in inverse relationship to the size of the company. That is, the percentage of share ownership that a proposal must receive could be higher or lower depending on the company's total assets, market capitalization, revenues, profits, earnings , income or a combination of those factors. A smaller percentage would be sufficient for a larger company, and a larger percentage for a smaller company. This approach would account for the fact that obtaining a certain percentage of support may become more difficult as the size of the shareholder base increases. If you believe that the thresholds should vary, your comments should specify the factors that should be considered in distinguishing between companies.

One method for obtaining the required support likely could be to enlist the support of institutions holding large blocks of the company's voting shares. We currently do not have conclusive information on the extent to which institutions would actually support inclusion of social proposals, and we request your comments on this question. Our review of institutional filings on form 13F indicates that in many cases the support of 3% could be achieved by enlisting the support of only one institutional holder,[84] although it did not indicate how many of those holders would as a practical matter likely be in a position to engage in shareholder proposal activity.

In calculating the percentage, a proponent could rely on the number of voting shares outstanding reported in the company's annual report to shareholders distributed for the prior year's annual meeting.[85] Proponents taking advantage of the "override" would be responsible for demonstrating to the company, not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting, that their proposals had received the endorsement by the holders of 3% of the company's shares entitled to be voted on the proposal at the meeting. That would include, from each supporter:

(i) His or her written statement supporting the inclusion of the proposal in the company's proxy materials for a specific meeting of shareholders. The statement must be executed and dated as of a date no earlier than the date of the company's annual meeting for the prior year. If the company did not hold a meeting the prior year, the statement must be dated no more than one year before the scheduled date of the meeting for which the proposal is submitted. Of course, a shareholder's support of an "override" effort would not include proxy authority with respect to the vote on the proposal if it is ultimately placed in the company's proxy materials;[86] and

(ii) A written statement from the record holder of the supporter's shares, specifying the number of shares that the supporter held as of the date of the supporter's statement described in (i) of this section.

It would be the proponent's responsibility to collect this evidence from the supporters and provide it to the company in an organized,

beneficial owner and (therefore) may not exercise discretionary voting power. Such unvoted shares are termed "non-votes."

[84] In the last quarter of 1996, institutional investment managers filing Form 13F [17 CFR 249.325] reported holdings in 5,993 listed equity issues. For 69% (4,166) issues, institutional holdings are sufficiently high that an investor would need to contact only one holder to communicate with at least 3% of the corporation's equity ownership.

[85] Companies are required to provide this information in the annual report under rule 5–20 of Regulation S–X. The information should also be available in the company's annual report on Form 10–K [17 CFR 249.310].

[86] See discussion in Part G below of proposed amendments to rules 14a–2 and 13d–5.

understandable form. We request your comments on these procedures, including the requirement that proponents submit the written evidence no later than 120 calendar days before the date that the company first mailed its proxy materials to shareholders for the prior year's annual meeting. Would a deadline set at 60 or 90 calendar days, or 150 or 180 calendar days, be more appropriate?

The 120-day deadline has the benefit of simplicity because it would track the deadline that currently applies to the submission of shareholder proposals to companies, which companies are already required to publish in their proxy materials. The 120-day deadline would also ensure that companies learn of a potential override sufficiently before they print and mail their proxies to review the proponent's written support and to discuss any questions on its sufficiency.

Under current rule 14a–8's timing requirements, there is little change that a proponent would learn whether a company intends to omit, and may properly omit, his or her proposal before invoking the override mechanism. Under paragraph (d) of current rule 14a–8, a company intending to omit a proposal is not required to submit its reasons to the Commission until 80 calendar days before the date the company files its definitive copies of its proxy statement and form of proxy.[87] That, of course, is after the proposed 120-day deadline for submitting "override" material to companies. We accordingly propose to amend rule 14a–8's timing requirements to provide a proponent a chance to learn the Division's views on whether the proposal is properly excludable before undertaking an override effort.

Under current rule 14a–8(d), the 80-day deadline applies to companies' submissions with the Commission without regard to when the company receives a copy of the shareholder proposal. Unless the company submits early, the Division's views on the excludability of the proposal may not be available until weeks before the date of the meeting of shareholders. We propose to amend current paragraph (d) to require companies to make their submissions no later than 40 calendar days after receiving a proposal. Thus, under proposed Question 12, a company would be required to submit its reasons to the Commission no later than 40 calendar days after the date that it receives a shareholder proposal for inclusion in its proxy materials, and no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. Under this approach, a proponent who submits his or her proposal to the company early enough would likely learn whether, in the Division's view, the proposal may be excluded before needing to commence an override effort.

We request your comments on whether it is necessary for proponents to learn of the Division's position before undertaking an override effort. We also request your comments on whether the proposed modification of rule 14a–8's timing requirements would provide proponents with an adequate opportunity to learn of the Division's response prior to commencing an override effort. Finally, would the proposed modification provide companies with adequate time to consider shareholder proposals, and to prepare and submit a rule 14a–8 filing with the Commission?[88] Should companies be allowed more time, such as 50 or 60 days, or less time, such as 30 days?

As proposed, written support for an override effort must be executed and dated no earlier than the date of the company's annual meeting for the previous year. The purpose of this requirement is to ensure that support for an override is sought and provided as of a date reasonably close to the date of the meeting at which the proposal is to be presented. It is also designed to prevent a proponent from using the same override more than once. We request your comments on whether proponents should have more time, such as 18 months, to collect override evidence, or less time, such as 9 months. We also request your comments on whether we should consider some other approach, such as stating that override evidence may be used only once, without placing a limitation on how old it can be.

The proposed share ownership requirements for supporting an override would be more lenient than the current eligibility requirements for actually submitting a proposal to a company. Paragraph (a) of current rule 14a–8 requires that the actual proponent have held his or her shares for at least one year before becoming eligible to submit a proposal to a company. One purpose of the one-year requirement is to curtail abuse of the rule by requiring that those who put the company and other shareholders to the expense of including a proposal in its proxy materials have had a continuous investment interest in the company. While we do not propose a one-year ownership requirement for supporting the placement of a proposal in a company's proxy materials under the override mechanism, we request your comments on whether we should adopt one. If so, your comments should address whether we should choose one year, or instead a shorter ownership period for the purposes of the override, such as 6 months, or a longer period, such as 2 years.

In addition, paragraph (a) of the current rule requires that an actual proponent state that he or she intends to hold his or her shares at least through the date of the meeting. Largely out of concern that the fiduciary duties of institutional holders would preclude them from making such a commitment, we do not propose that those supporting an override promise to hold their shares through the date of the meeting. We request your comments, however, on whether we should adopt such a requirement, and on whether it would, if adopted, interfere with fiduciary duties. Alternatively, should we require a supporter to state that he or she intends, as of the date of the statement, to hold his or her shares through the date of the meeting, without attaching a penalty to a sale of the shares before the meeting date?[89]

As proposed, the override mechanism would limit each shareholder to endorsement of no more than one proposal sponsored by another shareholder. That would not, however, affect the shareholder's eligibility to submit a proposal of his or her own. The purpose of the limit would be to place a limitation on the number of proposals that a group of shareholders could force a company to include in its proxy materials. We request your comments on whether the "one endorsement" limit should be more liberal, permitting each shareholder to endorse two or three proposals for each company. Or should it be more restrictive, permitting each shareholder to either submit one proposal, or to endorse one proposal, at each company? Under that approach, a shareholder who had endorsed a proposal would be disqualified from submitting his or her own proposal.

We view the proposed override as a supplemental, rather than a primary,

[87] See rule 14a–8(d)(17 CFR 240.14a–8(d)).

[88] Under current rule 14a–8(d), shareholder proposals must be submitted to the company no later than 120 calendar days before the date that the company mailed it proxy materials to shareholders the prior year. Because the company need not make its filing until 80 calendar days before the filing of definitive proxy materials, the current rule in most instances assures companies approximately 40 days to consider and respond to the receipt of a proposal.

[89] Under current rule 14a–8(a)(1), if a proponent fails to hold his or her securities continuously through the date of the meeting, the company may preclude him or her from including another proposal in its proxy materials for two calendar years.

method for including proposals in companies' proxy materials. Accordingly, we are not proposing any special mechanisms for requiring companies to provide shareholder lists or other shareholder information to proponents seeking to obtain support for an override. We request your comments on whether the rule should include any such mechanisms.

G. Safe Harbor Under Section 13(d); Qualified Exemption From Proxy Rules

To address concerns that a proponent's efforts to gather shareholder support to avail himself or herself of the override might be deterred by concerns about triggering filing and other obligations under Section 13(d)[90] or 14(a)[91] of the Exchange Act, we also propose a new safe harbor from the 13(d) "group" beneficial ownership reporting requirements, and a new exemption from the proxy rules in rule 14a–2.

Under current rules, there may be a concern that shareholders cooperating in an "override" effort, who beneficially own in aggregate more than 5 percent of the company's equity securities, might be required to file a Schedule 13D or 13G if deemed to have formed a "group" under rule 13d–5. Similarly, there may be a concern that the shareholder proponents and others assisting them in seeking support also could trigger obligations under the proxy rules if their cooperation involves any "solicitation" as defined in rule 14a–1(l)(1).[92] The relief afforded by the safe harbor would be limited to support for the inclusion of the proposal in the company's proxy materials for a shareholder vote. It would not extend to agreements or arrangements on how shareholders would ultimately vote if the proposal appears in the company's proxy materials. Proposed rule 13d–5(b)(3) would provide that:

Notwithstanding paragraph (b)(1) of this section, a group formed among the beneficial owners of a class of equity securities solely by an understanding, arrangement, or agreement that a shareholder proposal should be placed in a registrant's proxy materials for a shareholder vote, for the purpose of using the "override" mechanism provided in § 240.14a–8(j) (Question 10), shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group for the purposes of Section 13(d)(1) of the Act (15 U.S.C. 78m); provided, however, that such understanding, arrangement or agreement does not relate to how the holders will vote on the proposal if it is ultimately placed in the registrant's proxy materials.

We request your comments on whether this relief is necessary in order to enable shareholders effectively to make use of the override, and, if so, whether it will serve that purpose adequately. We also request your comments on whether efforts to obtain an override for certain types of proposals (*e.g.*, those affecting control of the company) should be afforded protection under the safe harbor, and more generally on whether the proposed safe harbor is overly broad.

Proposed new rule 14a–2(b)(2) would provide an exemption from compliance with all proxy rules except rule 14a–9,[93] for any solicitation made for the sole purpose of gathering support for placing a shareholder proposal in a registrant's proxy materials pursuant the "override" mechanism provided in § 240.14a–8(j) (Question 10); provided that such solicitation does not seek proxy authority with respect to the vote on the proposal if it is ultimately placed in the registrant's proxy materials;

We request your comments on whether we should adopt proposed new rule 14a–2(b)(2), including whether it would provide adequate relief for shareholders concerned that their participation in an "override" effort could amount to a "solicitation," or whether the proposed relief is overly broad. We also request your comments on whether, and the extent to which, the restrictions set forth in current rule 14a–2(b)(1) (i)–(x)[94] should also apply to limit the persons who may use the proposed new exemption. Alternatively, we have previously made clear that proponents of rule 14a–8 proposals may use the exemption provided by rule 14a–2(b)(1);[95] instead of adopting the proposed new rule, should we make clear that proponents seeking to use the proposed override mechanism may avail themselves of that exemption?

H. Rule 14a–4: Discretionary Voting Authority

If a shareholder submits a proposal under rule 14a–8 to be included in the company's proxy materials, but the company properly excludes the proposal, rule 14a–4(c)(4)[96] permits the company to exercise discretionary voting authority to vote uninstructed proxies against that proposal if the shareholder chooses an alternative route for its presentation to a vote. The proponent may, for instance, intend to present the proposal from the floor of the company's annual meeting, or solicit proxy votes independently by distributing its own proxy statement and form of proxy.

Rule 14a–4 does not, however, clearly address the exercise of discretionary voting authority if the shareholder chooses not to use rule 14a–8's procedures for placing a proposal in the company's proxy materials. This may occur if the proponent notifies the company of his or her intention to present the proposal from the floor of the meeting, or commences his or her own proxy solicitation, without ever invoking rule 14a–8's procedures.

The availability of discretionary voting authority on a non-14a–8 proposal has been the subject of litigation and attendant uncertainty.[97] Current rule 14a–4(c)(1) permits a company to exercise voting authority on proposals that the company did not know of a "reasonable time" before the meeting. The "reasonable time" standard has been the source of some uncertainty when a company is notified of a shareholder proposal shortly before its meeting is scheduled to take place.[98]

In response to the Questionnaire, companies indicated that they seek clearer ground rules and the avoidance of potential delay and expense when they are notified of possible proposals after they have begun to print or even mail proxy materials to shareholders.[99] We accordingly propose to amend rule 14a–4(c) in part to clarify when a company may exercise discretionary voting authority on a shareholder proposal where the proponent has not invoked rule 14a–8's procedures.

Last year, the Division provided no-action advice on the ability of a company to exercise discretionary voting authority under rule 14a–4(c)(1) to vote on a matter to be raised at an annual meeting, when the company received adequate advance notice of the proposal.[100] Under those no-action letters, a company that receives adequate advance notice of a non-rule 14a–8 proposal—such as under its advance notice bylaw—nevertheless may preserve its discretionary voting authority by disclosing in its proxy materials the nature of any proposal it has been advised may be presented, and the manner in which the company intends to exercise its discretion. Under the no-action letters, the company loses its voting discretion, however, once the proponent commences a proxy solicitation and solicits the percentage of holders required to carry the proposal.

Of course, the Division's no-action letters provide only informal advice, and we recognize that the position outlined in those letters has not eliminated all uncertainty in situations where a company has advance knowledge of a potential proxy contest. For instance, if the shareholder proponent files preliminary proxy materials after the company has filed its own proxy statement, or even after the company has mailed its definitive proxy statement and form of proxy to shareholders, the company may be placed in a dilemma of either including the shareholder's proposal on its proxy card, or risking the delay and expense of a last-minute resolicitation. That is because the company may not know whether the shareholder intends to begin to solicit proxies independently by circulating his/her own proxy card, along with the definitive version of his or her proxy statement, or how many shareholders will be solicited if such a solicitation is actually launched.

To address these uncertainties, we propose to amend paragraph (c)(1) of rule 14a–4, and to add new paragraph (c)(2), to provide clearer guidelines in these circumstances. The proposed revisions to paragraph (c)(1) would replace the "reasonable time" standard with a clear date after which notice of a possible shareholder solicitation would not be deemed adequate for purposes of proposed new paragraph (c)(2).

Revised paragraph (c)(1) would allow a company voting discretion where "the registrant did not have notice of the matter more than 45 days before the date on which the registrant first mailed its proxy materials for the prior year's annual meeting."[101] This approach will not only provide clearer guidelines for shareholders and companies, but also benefit investors by helping to ensure that companies are notified of proposals sufficiently in advance of the annual meeting to provide shareholders a meaningful opportunity to review related disclosures in the proxy statement.

We recognize that the laws of some states authorize bylaw provisions requiring shareholders to provide advance notice of proposals that they intend to present at a meeting of shareholders. We do not intend to interfere with the operation of state law authorized definitions of advance notice. Accordingly, an advance notice bylaw provision ordinarily would override the 45-day period under rule 14a–4 as proposed to be amended, resulting in either a longer or shorter notice period. For example, if a company properly adopts a bylaw provision requiring advance notice 60 days before the previous year's mailing date, that date would apply instead of the date specified by the proposed paragraph 14a–4(c)(1).

We request your comments on whether it would be more appropriate to establish a shorter period than 45 days, such as 30 days or 15 days, or a longer period, such as 60 or 90 days for revised paragraph 14a–4(c)(1). We understand that some companies begin printing their proxy materials well in advance of the mailing date. We request your comments on whether the 45-day period is adequate to accommodate printing schedules.

Proposed new paragraph 14a–4(c)(2) would address a company's ability to exercise discretionary voting authority after it has received timely notice of a non-14a–8 proposal for the purposes of paragraph (c)(1). The new rule would permit the exercise of such authority if the proxy materials include: (i) In the proxy statement, a discussion of the nature of the matters and how the company intends to exercise its discretion on each matter, and (ii) on the proxy card, a cross-reference to the discussion in the proxy statement and a box allowing shareholders to withhold discretionary authority from management to vote on the same matter(s).

We believe that the proposed framework would benefit both shareholders and companies by establishing clearer and more predictable ground rules. The proposed framework also would provide shareholders with some control over the company's discretionary authority to vote their shares on matters for which the company received adequate notice. Under current rules, a company is not required to provide shareholders an opportunity to withhold discretionary authority on such matters where such authority properly can be exercised.[102] Under proposed new rule 14a–4(c)(2), the company would be required to provide shareholders who execute and return proxies an opportunity to withhold discretionary authority, albeit only on those matters for which it received adequate notice and which it described in its proxy statement. Should we provide shareholders greater latitude to "grant" discretionary voting authority, or to "abstain," in addition to the ability to "withhold"?

We request your comments on the proposed revisions to paragraph (c)(1), and the adoption of proposed new paragraph (c)(2). Would some other approach be more effective? For example, should we require companies to place proposals in their proxy materials if the proponent commences a formal proxy solicitation, and solicits the number of shares necessary to carry the proposal? What impact, if any, might the proposed revision(s) have on the conduct of proxy contests generally? Would the proposed amendments have the effect of unduly discouraging insurgent solicitations? Your comments should address the proposed revisions individually, together with the other proposed changes to rule 14a–4(c), and the broader package of reforms proposed today.

Although they would provide clearer guidance on the exercise of discretionary voting authority under rule 14a–4(c), the proposed amendments would not relieve companies of their obligation under rule 14a–9, the anti-fraud rule. Under that rule, companies must provide shareholders with sufficient information to make informed voting decisions as well as a meaningful opportunity to review the information. If the proponent solicits a large number of his or her fellow shareholders, for instance, a company may elect to provide shareholders with an opportunity to vote for or against a shareholder's proposal. In this and similar circumstances, the company must remain mindful of its obligations under rule 14a–9.[103]

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[90] 15 U.S.C. 78m(d).

[91] 15 U.S.C. 78n(a).

[92] 17 CFR 240.14a–1(l)(1).

[93] 17 CFR 240.14a–9.

[94] 17 CFR 240.14a–2(b)(1).

[95] See Exchange Act Release No. 31326 (Oct. 16, 1992) [57 FR 48276].

[96] 17 CFR 240.14a–4(c)(4).

[97] See, *e.g.*, *United Mine Workers of America* v. *Pittston Company*, Fed. Sec. L. Rep. ¶ 94,946 (D.D.C. Nov. 24, 1989); *Larkin* v. *Baltimore Bancorp*, 769 F. Supp. 919, 925 (D.Md. 1991). See also *Union of Needletrades, Industrial and Textile Employees ("UNITE") et al.* v. *The May Department Stores Company*, 97 Civ. 3120 (SDNY).

[98] See, *e.g.*, *Larkin* v. *Baltimore Bancorp*, 769 F. Supp. 919, 925 (D.Md. 1991).

[99] See Section II above.

[100] See *Idaho Power Company* (Mar. 13, 1996) and *Borg-Warner Security Corporation* (Mar. 14, 1996).

[101] Because the company's mailing date for the previous year's annual meeting may not be available to shareholders, we propose to amend rule 14a–5(e) [17 CFR 240.14a–5(e)] to require companies to publish in their proxy materials the date by which notice would have to be received. This date will by definition be 75 days after the date by which shareholder proposals must normally be received under rule 14a–8 (Question 5). See Part I.4 below.

[102] Rule 14a–4(a)(3) currently provides that "[n]o reference need be made * * * to proposals as to which discretionary authority is conferred pursuant to [rule 14a–4(c)]."

[103] Recently, for example, some companies have included shareholder proposals in supplemental proxy materials with revised forms of proxy, which they mailed shortly before the date that the annual meeting is scheduled to take place. Even if the supplemental proxy contains all material information necessary to make an informed voting decision, we understand that the beneficial holders may not receive the supplemental materials, or may receive them too late for meaningful review and

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Finally, during the past proxy season, the Division permitted several companies to file proxy materials in definitive form despite prior notification of a non-14a–8 shareholder proposal, so long as they disclosed the nature of the proposal and how they intended to exercise discretionary voting authority if the proposal were to be presented.[104] In light of the proposed amendments to rule 14a–4, we would reverse that informal position, so that companies receiving notice of a non-rule 14a–8 proposal before the filing of their proxy materials would henceforth be required to file their materials in preliminary form, subject to staff review. We request your comments on this proposed reversal.

I. Other Proposed Modifications

We propose a few other modifications to rules 14a–8 and 14a–5:

1. The answer to Question 1 of revised rule 14a–8 would define a "proposal" as a request that the company or its board of directors take an action. The definition reflects our belief that a proposal that seeks no specific action, but merely purports to express shareholders' views, is inconsistent with the purposes of rule 14a–8 and may be excluded from companies' proxy materials. The Division, for instance, declined to concur in the exclusion of a "proposal" that shareholders express their dissatisfaction with the company's earlier endorsement of a specific legislative initiative.[105] Under the proposed rule, the Division would reach the opposite result, because the proposal did not request that the company take an action. We request your comment on whether this or some other approach may be preferable.

2. Rule 14a–8(a)(1) currently requires that a shareholder have held for one year the lesser of $1,000 in market value, or 1%, of the company's voting shares, at the time he or she submits a proposal. We propose adjusting the $1,000 requirement to account for inflation since first adopted in 1983.[106] The amended rule, which would appear in the answer to Question 2, would require continuous ownership of $2,000 in market value of the company's voting shares. While the actual inflation adjustment from the date of adoption to today would increase the existing requirement by approximately $600, we propose $2,000 to account for future inflation, and because it will be easier to use for calculations. We sought to avoid increasing the threshold further out of concern that a more significant increase could restrict access to companies' proxy materials by smaller shareholders, who equally with other holders have a strong interest in maintaining channels of communication with management and fellow shareholders. We request your comments on whether we should adopt a higher number such as $3,000, $5,000 or $10,000, or a lower number such as $1,500.

We also request your comments on whether we should modify or eliminate the one-year continuous ownership period. One purpose of the requirement is to curtail abuse of the rule by requiring that those who put the company and other shareholders to the expense of including a proposal in proxy materials have had a continuous investment interest in the company. We could, for example, permit shareholders more flexibility to submit proposals earlier, by adopting a shorter period, such as 6 months, or less flexibility, by adopting a longer period, such as 18 months. Alternatively, we could maintain the current one-year period, but provide that relatively larger holders, such as holders of 3% or 6% of the outstanding voting shares, would be eligible to submit proposals without regard to a continuous ownership period.

3. The answer to Question 6 in revised rule 14a–8 would describe the procedures a company must follow if it intends to omit a proposal on grounds that the proponent is ineligible or otherwise failed to comply with the rule's procedures. As proposed, the answer states that a company may omit a proposal on the grounds only after it has first noticed the proponent of the deficiency and gives the proponent 14 calendar days to remedy the deficiency.[107] The proposed language largely adopts the procedures set forth in current paragraph (a)(1)[108] and (a)(4)[109] of the current rule. However, the proposed 14-day period in which a shareholder must respond is shorter than the 21 calendar days allowed by current paragraph (a)(1), and by some of the Division's response letters under paragraph (a)(2).[110] We believe that the shorter period will be sufficient for shareholder proponents, and will help to streamline the rule's operation by establishing a single "shareholder response period" that would apply under all circumstances that may arise under the rule. The shorter response time should expedite the timing of a company's filings with the Commission and, in turn, the Commission's responses. We request your comments on whether we should adopt some other mechanism, including whether the proposed time for responding should be shorter, such as 10 calendar days, or longer, such as 21 calendar days.

4. Rule 14a–5(e) currently requires a company to disclose the deadline for submitting proposals to be included in proxy materials for the next year's annual meeting. We propose to revise the rule to require companies also to disclose the date after which proposals submitted outside the framework of rule 14a–8 are considered untimely for the purposes of rule 14a–4(c)(1).[111] This is because shareholders may not be aware of all the information necessary to calculate the date for themselves.

In addition, current paragraph (e) requires companies to notify shareholders of a new meeting date, and deadline for submitting proposals, if the date of the next annual meeting is subsequently advanced by more than 30 days, or delayed by more than 90 days. For the sake of consistency with other rules,[112] we propose to revise the rule to require notification of changes in the meeting date and each of the disclosed dates if the meeting date is delayed or advanced more than 30 calendar days. Finally, the current rule contemplates notification by "any means calculated to so inform" shareholders. We propose to require that such notification of date changes appear in the company's earliest quarterly report on Form 10–Q[113] or 10–QSB,[114] if practicable.[115] We request your comments on whether notice in a company's quarterly report is likely to be effective, and whether we should require notification in some document other than the company's quarterly report, such as Form 8–K.[116]

5. Current rule 14a–8(e)[117] provides a mechanism for a shareholder to obtain staff review of a company's statement in opposition to a shareholder proposal appearing in its proxy materials. In our experience, only a handful of shareholders make use of the mechanism each year, and the staff review rarely results in modifications to the company's statement. In most instances, the shareholder's objection highlight matters that do not constitute materially false or misleading statements for the purpose of rule 14a–9. Accordingly, we propose to eliminate the mechanism provided by current rule 14a–8(e). We request your comments on this proposal.

Current rule 14a–8(a)(2) provides that a proposal may be presented at a meeting either by the proponent or by his or her representative qualified under state law to present the proposal. It has been our long-standing interpretation of this rule that both the proponent and his or her representative must follow any procedures for attending the meeting and/or presenting the proposal that are authorized or required by state law (e.g., possession of a valid proxy). A proponent who holds his or her shares in street name may have to obtain from the record holder (usually a broker or bank) a proxy to permit attendance at the meeting and/or presentation of the proposal. A proponent's representative may have to obtain a proxy from the proponent. A particular state's law, of course, may not authorize or require any such procedures, or the company may elect not to adopt or enforce them where permissible under applicable state law.

We added the following advisory in the answer to Question 8 of the proposed rule: "Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow any applicable procedures that are proper under state law for appearing at the meeting and/or presenting your proposal." We request your comments on this revision, including whether our long-standing interpretation on this subject is appropriate.

IV. Request for Comments

We request your comments on the proposals, other matters that may have an impact on the proposals, and your suggestions for additional changes. In addition to the requests for your comments on each of the specific proposals, we would like to hear your comments on the proposals viewed as a package of reforms, whether they fairly balance participants' sometimes conflicting concerns, and whether they would bring an overall improvement to the process whereby shareholders present proposals to fellow shareholders.

You should consider whether the Commission should instead adopt some fundamentally different approach to the shareholder proposal system. Some alternatives, such as encouraging each company to adopt its own shareholder proposal rule and process, would largely remove the Commission from its role of "arbiter" pursuant to the staff's role in issuing response letters. If you believe that we should adopt an alternative approach, your comments should explain the approach in some detail, including the role that the Commission should play.

You may also consider the purposes of the rule, and the degree to which the rule and the proposed amendments serve those purposes. We believe that the purpose of the rule is to ensure proper disclosure and enhance investor confidence in the securities markets by promoting proposals raising significant issues that are relevant to the company and its business. You may want to consider whether this is the proper purpose of the rule, and if so, what types of proposals are the most relevant and important.

We also request comments on the matters discussed in Sections V through VIII below, including our initial regulatory flexibility analysis, our preliminary analysis of costs and benefits and effects on competition, and our obligations under the Paperwork Reduction Act, and the Small Business Regulatory Enforcement Fairness Act of 1996.

If you wish to submit written comments, you should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW,. Washington, D.C. 20549. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–25–97; this file number should be included on the subject line if e-mail is used. All comments received will be available for public inspection and copying in the Commission's public reference room at the same address. Electronically submitted comments will be posted on the Commission's Internet web site (http://www.sec.gov).

V. Initial Regulatory Flexibility Analysis

We have prepared this Initial Regulatory Flexibility Analysis under 5 U.S.C. 603 concerning the proposed amendments to rules 14a–8, 14a–2, 14a–4, 14a–5, and 13d–5. We will consider your written comments in the preparation of a final analysis. The purpose of the amendments is to streamline the operation of the rule, and address concerns raised by both shareholder and corporate participants. We propose the amendments pursuant to Sections 13, 14, and 23 of the Exchange Act[118] and Section 20(a) of the Investment Company Act of 1940[119] ("Investment Company Act").

The amendments focus primarily on rule 14a–8, which requires companies to include shareholder proposals in their proxy materials, subject to certain bases for excluding them. We propose to revise the rule into a more understandable Question & Answer format; make it easier for shareholders to include a broader range of proposals in companies' proxy materials; and provide companies with clearer guidelines, and more flexibility to exclude economically insignificant proposals and proposals that lack significant shareholder support.

The proposed amendments to rules 14a–2 and 13d–5 are ancillary to the amendments to rule 14a–8. Proposed new 14a–2(b)(2) would provide an exemption from the proxy rules for shareholders attempting to comply with a proposed new "override" mechanism in rule 14a–8. The override would permit holders of 3% of the company's voting shares to override the operation of two bases for excluding proposals. Proposed new rule 13d–5 would provide relief for such holders from filing obligations under Section 13(d) of the Exchange Act.

We also propose to amend rule 14a–4 to further clarify when a company may exercise discretionary voting authority on proposals submitted outside the rubric of rule 14a–8.[120] We believe that the revisions would help to mitigate the uncertainty that some companies experience when presented with such proposals. The revisions should also decrease a company's likelihood of incurring the delay and expense of rescheduling its meeting of

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consideration of whether to change or formulate new voting decisions. Timing considerations often depend on the facts and circumstances of individual cases, and the obligation to provide a meaningful opportunity rests with the company.

[104] Rule 14a–6 [17 CFR 240.14a–6] addresses when a company must file its proxy materials in definitive form, and when it must file in preliminary form.

[105] *Pacific Gas and Electric Company* (Jan. 21, 1997).

[106] See 1983 Release.

[107] Of course, consistent with current practice, a company would not have to follow these procedures if the deficiency cannot be remedied, such as if the proponent fails to submit a proposal by the company's proper deadline.

[108] 17 CFR 240.14a–8(a)(1).

[109] 17 CFR 240.14a–8(a)(4).

[110] 17 CFR 240.14a–8(a)(2). See, e.g., *CoBancorp Inc.* (Feb. 22, 1996); *Archer-Daniels-Midland* (July 29, 1996).

[111] See Part H above.

[112] Current rule 14a–8(a)(3)(i) [17 CFR 240.14a–8(a)(3)(i)], and proposed rule 14a–8 (Question 5), require the company to adjust the deadline for submitting proposals if the date of the annual meeting is delayed or advanced by more than 30 calender days.

[113] 17 CFR 249.308a. The new information, if applicable, would be disclosed under Item 5 of Form 10–Q or 10–QSB ("Other Information").

[114] 17 CFR 249.308b.

[115] For investment companies, the proposal would require the notification to appear in shareholder reports under 30D–1 [17 CFR 270.30d–1] of the Investment Company Act.

[116] 17 CFR 249.308. The information would be included under Item 5 of that form.

[117] 17 CFR 240.14a–8(e).

[118] 15 U.S.C. 78m, 78n & 78u.

[119] 15 U.S.C. 80a–1 *et seq.*

[120] We propose related amendments to rule 14a–5 to require a company to identify in its proxy statement a date relating to its potential exercise of discretionary voting authority.

shareholders, or of resoliciting its shareholders.

The proposed amendments would affect small entities that are required to file proxy materials under the Exchange Act or the Investment Company Act. Exchange Act rule 0–10 defines "small business" as a company whose total assets on the last day of its most recent fiscal year were $5 million or less.[121] Investment Company Act rule 0–10 defines "small entity" as an investment company with net assets of $50 million or less as of that date.[122] We are currently aware of approximately 1,000 reporting companies that are not investment companies with assets of $5 million or less. There are approximately 800 investment companies that satisfy the "small entity" definition. Only approximately one-third of all investment companies have shareholder meetings and file proxy materials annually. Therefore, we believe approximately 250 small entity investment companies may be affected by the proposals.

Not all companies conducting a proxy solicitation receive shareholder proposals each year. Furthermore, a company that receives a proposal has no obligation to make a submission under rule 14a–8 unless it intends to exclude the proposal from its proxy materials. In the period from September 30, 1996 to today, we received submissions from a total of 245 companies, and only 6 were "small businesses."

Some of the proposed amendments to rule 14a–8 may broaden the range of proposals that companies must include in their proxy materials, requiring companies to include more proposals in their proxy materials than they have in the past. This includes the proposal to reverse the *Cracker Barrel* position on employment-related shareholder proposals raising social policy issues, and the proposal to permit the holders of 3% of the company's voting shares to override the exclusions under paragraphs (5) and (7) under Question 9 of the proposed rule. This year, the Division received approximately 30 submissions, none by "small business," involving employment-related proposals tied to social issues. It is likely, however, that reversal of the *Cracker Barrel* position, if implemented, would lead to an increase in the number of proposals included in proxy materials each year. We request your comments on the potential impact on the number of employment-related proposals submitted to companies each year.

[121] 17 CFR 240.0–10.
[122] 17 CFR 240.0–10.

Because rule 14a–8 currently does not include a mechanism like the proposed override, there is no reliable way to predict how often shareholders would in the future take advantage of the override to force companies to include proposals that they would otherwise be permitted to exclude. We request your comments and supporting empirical data on the potential impact of the proposed override on the total number of proposals companies are required to include in their proxy materials.

Other proposed revisions, however, would enhance companies' ability to exclude certain proposals that are economically insignificant to them. As revised, paragraph (5) under proposed Question 9 would permit companies to exclude proposals on matters relating to the lesser of $10 million in total costs or gross revenues (whichever is appropriate), or 3% of total assets or gross revenues (whichever is higher). Because companies' submissions under current rule 14a–8 have not addressed these criteria, we presently have no reliable way to estimate their future impact on the number of proposals companies are required to include in their proxy materials. Unlike the current paragraph (c)(5), however, the proposed revision would enable companies to include companies to exclude proposals based solely on economic criteria, which may permit companies to exclude proposals that they are not permitted to exclude under the current rule. On the other hand, because the proposed economic thresholds are lower than the current thresholds, if the revisions are adopted, companies may be unable to exclude some proposals that they are currently permitted to exclude. We request your comments, preferably supported by empirical data, on the nature and magnitude of the potential impact of this proposed revision.

We expect the proposed increase in the resubmission thresholds under Question 9, paragraph (12), to cause a decrease in the total number of proposals companies must include in their proxy materials each year. Current rule 14a–8(c)(12) permits a company to exclude a proposal focusing on substantially the same subject matter as a prior proposal that failed to receive at least 3% of the vote on its first submission, 6% on the second, and 10% percent on the third. We propose to increase the thresholds to 6%, 15%, and 30%, respectively. However, because companies' submissions under current rule 14a–8 have not addressed these criteria, we presently do not have a reliable way to estimate the future impact on the number of proposals companies are required to include in their proxy materials. We nonetheless expect that the proposed revisions would increase the number of proposals that companies are permitted to exclude; a proposal would have to receive a higher percentage of the votes in order to avoid exclusion if the revisions are adopted. We request your comments, preferably supported by empirical data, on the potential impact of this proposal.

Rule 14a–8(a)(4) permits companies to exclude proposals relating to personal grievances or special interests. We propose to modify our administration of the rule to express "no view" if the proposal does not on its face relate to the grievance or interest. We request your comments on the potential impact of this proposal on the number of proposals companies are required to include in their proxy materials each year.

Your comments should address whether the proposals will on balance significantly alter the overall number of proposals companies are required to include in their proxy materials.

We do not have empirical data demonstrating the marginal cost of including an additional shareholder proposal in companies' proxy materials. However, question 14 of the Questionnaire asked each company respondent how much money on average it spends on printing costs (plus any directly related costs, such as additional postage and tabulation expenses) to include shareholder proposals in its proxy materials. While individual responses may have accounted for the printing of more than one proposal, the average cost reported by 67 companies was $49,563.[123] We expect that any additional printing costs are lower for small entities, since small entities typically should have to print fewer copies of their proxy materials because they have fewer shareholders. We request your comments, preferably supported by empirical data, on the incremental cost that "small businesses" would incur if required to include additional proposals in their proxy materials.

None of the proposed amendments should increase the time or burden of preparing individual submissions under rule 14a–8. Our proposal to reformat the rule into a more understandable Question & Answer format should help decrease the time and expense incurred by both shareholders and companies

[123] This average is based on respondents reporting costs greater than zero. Reported costs ranged from a low of $200 to a high of nearly $900,000. The median cost was $10,000.

attempting to comply with its provisions. Companies frequently consult with legal counsel in preparing submissions under rule 14a–8. The rule's added clarity may obviate the need for a shareholder or company to consult with counsel, depending on the issues raised by the submission. Under some circumstances, however, companies' submissions must include supporting opinions of counsel.

In addition, because a company that includes a proposal is not required to make a submission under rule 14a–8, any costs of including an additional proposal should be offset, at least partially, by not having to make a rule 14a–8 submission. Under rule 14a–8, a company is not required to make a submission to the Commission unless it intends to exclude the proposal from its proxy materials. Therefore, a company would save any costs associated with the submission if it decides to include the proposal.

We do not have empirical data demonstrating how much it costs companies to consider and prepare an individual submission under rule 14a–8. We do not believe, however, that the cost is likely to vary depending on the size of the company. That is, the cost to a small entity is likely to be the same as the cost to a larger entity. Question 13 of the Questionnaire asked respondent companies how much money they spend on average each year determining whether to include or exclude shareholder proposals and following Commission procedures in connection with any proposal that it wishes to exclude (including internal costs as well as any outside legal and other fees). While responses may have accounted for consideration of more than one proposal, the costs reported by 80 companies averaged $36,603.[124]

The proposed amendments to rule 14a–4 should favorably affect companies, including "small business," because they would provide clearer ground rules when a shareholder presents a proposal without invoking rule 14a–8. We do not have empirical information on the number of "small businesses" that receive non-rule 14a–8 proposals each year, since non-14a–8 proposals do not necessarily lead to a submission to the Commission. We therefore request your comments on the number of "small businesses" that may be affected by the proposed amendments to rule 14a–4.

[124] This average is based on respondents reporting costs greater than zero. Reported costs ranged from a low of $10 to a high of approximately $1,200,000. The median cost was $10,000.

To the extent they receive such proposals, we believe that the proposed amendments to rule 14a–4 would favorably affect "small businesses" by reducing uncertainly, and decreasing the likelihood that the company would have to incur the delay and expense of rescheduling its annual meeting, or resoliciting its shareholders. We request your comments and empirical data, however, on any costs or other burdens that these amendments may impose on small entities.

Under the proposed revisions to rule 14a–4, a company wishing to preserve discretionary voting authority on certain possible proposals may be required to include in its proxy materials an additional discussion among other things describing the proposals. It may also be required to include an additional box on its proxy card permitting shareholders to withhold discretionary voting authority on the proposals if they are raised. We request your comments and empirical data on any incremental costs resulting from these proposed requirements. Automatic Data Processing, Inc. informed the staff that tabulation of an additional box on the proxy card permitting shareholders to withhold discretionary authority would likely cause no increase in the cost of its tabulation services. Daniels Financial Printing informed the staff that in most cases adding up to three-fourths of a page in the proxy statement would not increase the cost to the company. That is because up to an extra three-fourths of a page can normally be incorporated without increasing the page length by reformatting the document. Daniels Financial estimated that adding more than three-fourths of a page could increase costs by about $1,500 for an average sized company.

As discussed in section III.I of this release, the proposed amendment to rule 14a–5 would require companies to disclose an additional data in their proxy statements. Disclosure of the date should require no more than an additional sentence, and therefore should result in no, or negligible, additional printing costs. Because it is exemptive, the proposed amendment to rule 14a–2 should help shareholders attempting to use the proposed override mechanism to avoid the expense of preparing proxy materials, and should impose no additional costs. Similarly, because it would provide a safe harbor, the proposed amendments to rule 13d–5 should impose no additional costs on shareholders, which may include small entities.

Finally, current rule 14a–8(e) provides a mechanism for a proponent to challenge a company's statement in opposition to a proposal if the proponent believes that the statement contains materially false or misleading statements in violation of rule 14a–9. The elimination of the rule will likely save companies, including small entities, the expense of responding to challenge under the rule. This proposal is discussed more fully in section III.I. We request your comments on these views.

We considered significant alternatives to the proposed amendments for small entities with a class of securities registered under the Exchange Act. We could, for instance, exempt small businesses from any obligation to include shareholder proposals in their proxy materials. Such an exemption, however, would be inconsistent with the current purpose of the proxy rules, which is to provide and regulate a channel of communication among shareholders and public companies. Exempting small entities would deprive their shareholders of this channel of communication.

We also considered other alternatives identified in Section 603 of the Regulatory Flexibility Act to minimize the economic impact of the amendments on small entities. We considered the establishment of different compliance requirements or timetables that take into account the resources available to small entities. Different timetables, however, may make it difficult for the Division to issue responses in a timely manner, and could otherwise impede the efficient operation of the rule.

We also considered the clarification, consolidation, or simplification of the rule's compliance requirements for small entities. As explained more fully in section III.A. of this release, we propose to recast and reformat rule 14a–8 into a more understandable, Question & Answer format. As described above, some of the proposed amendments should enable companies, including small businesses, to exclude certain additional proposals from their proxy materials. As explained in section III.H., we also propose clearer guidelines for companies' exercise of discretionary voting authority under rule 14a–4. If adopted, these modifications should simplify and facilitate compliance by all companies, including small entities. We do not currently believe that there is any appropriate way to further facilitate compliance by small entities without compromising the current purposes of the proxy rules.

We also considered the use of performance rather than design standards. The rules that we propose to modify are not specifically designed to achieve certain levels of performance.

Rather, they are designed to serve other policies, such as to ensure adequate disclosure of material information, and to provide a mechanism for shareholders to present important and relevant matters for a vote by fellow shareholders. Performance standards accordingly would not directly serve the policies underlying the rules. We do not believe that any current federal rules duplicate, overlap, or conflict with the rules that we propose to amend.

We request your written comments on any aspect of this Initial Regulatory Flexibility Analysis. We particularly seek comment on: (i) The number of small entities that would be affected by the proposed amendments; (ii) the expected impact of, the proposals as discussed above; and (iii) how to quantify the number of small entities that would be affected by, and how to quantify the impact of, the proposed amendments. We ask commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact.

VI. Cost-Benefit Analysis

The proposed rule changes should improve the efficiency of the process for determining which shareholder proposals must be included in proxy materials distributed by companies. They should help to ensure that a company includes shareholder proposals that are relevant to the company and likely to receive the support of a significant percentage of the company's shareholders. The proposed rule changes would also provide clearer guidelines for a company's exercise of discretionary voting authority when notified that a shareholder intends to present a proposal without invoking rule 14a–8's mechanisms.

We currently do not believe that the proposed changes would adversely affect capital formation, market efficiency, competition, or investors' confidence in the integrity of the securities markets. Rule 14a–8 requires companies to include shareholder proposals in their proxy materials, subject to specific bases for excluding them. We believe that the rule enhances investor confidence in the securities markets by providing a means for shareholders to communicate with management and among themselves on significant matters. By expanding the range of proposals that companies must include in their proxy materials, the proposed amendments to rule 14a–8 could make a company's managers more responsible to the shareholders. That, in turn, could better align the interests of the company's management with that of shareholders, possibly resulting in an improvement in the company's operations and the market price for its shares. Shareholder proposals could have a positive or negative impact, or no impact, on the price of a company's securities.[125] We are currently examining this issue, and we invite comment on the expected shareholder wealth impact of the rule.

At the same time, other amendments would improve the integrity and efficiency of the shareholder proposal process by increasing companies' ability to exclude economically insignificant proposals, or proposals lacking significant shareholder support.

We currently do not know whether the proposed amendments would on balance significantly affect the cost of complying with the rules. Not all companies receive shareholder proposals each year. And a company that receives a proposal has no obligation to make a submission under rule 14a–8 unless it intends to exclude the proposal from its proxy materials. In the period from September 30, 1996 to today, we received approximately 400 submissions under rule 14a–8.

Some of the proposed amendments to rule 14a-8 may broaden the range of proposals that companies must include in their proxy materials, requiring companies to include more proposals than they have in the past. This includes the proposal to reverse the *Cracker Barrel* position on employment-related shareholder proposals raising social policy issues, and the proposal to permit holders of 3 percent of the company's shares to override the exclusions under paragraphs (5) and (7) under proposed Question 9.

This year, the Division received approximately 30 submissions of proposals implicating the *Cracker Barrel* position on employment-related proposals tied to social issues. Reversal of that position could encourage more shareholders to submit these types of proposals to companies each year, and we do not know whether the modification would result in a significant increase in the number of such proposals. We request your comments, including any supporting empirical information on this question.

Because rule 14a–8 currently does not include a mechanism like the proposed "override," we presently have no reliable means to predict how often shareholders would in the future take advantage of the override to force companies to include proposals that they would otherwise be permitted to exclude. During the last proxy season, the staff concurred in the exclusion of almost 100 proposals under two grounds for omitting proposal that would be subject to the proposed override (rules 14a–8 (c)(7) and (c)(5)). We request your comments and supporting empirical data on the potential impact of the override on the total number of proposals companies are required to include in their proxy materials.

Other proposed revisions, however, would enhance companies' ability to exclude economically insignificant proposals. As revised, paragraphs (5) under proposed Question 9 would permit companies to exclude proposals on matter relating to the lesser of $10 million in total costs or gross revenues, or 3 percent of total assets or gross revenues (whichever is higher). Because companies' submissions under current rule 14a–8 have not addressed these criteria, we presently have no reliable means to estimate their future impact on the number of proposals companies are required to include in their proxy materials. Unlike current rule 14a–8(c)(5), however, the proposed revision would enable companies to exclude proposals based solely on economic criteria, which may permit companies to exclude proposals that they are not permitted to exclude under the current rule. On the other hand, because the proposed economic thresholds are significantly lower than the current thresholds, if the revisions are adopted companies may be unable to exclude some proposals that they are currently permitted to exclude. We request your comments, preferably supported by empirical data, on the nature and magnitude of the potential impact of these proposed revisions.

We expect the proposed modifications to paragraph (12) under proposed Question 9 to cause a decrease in the total number of proposals companies must include in their proxy materials each year. Current rule 14a–8(c)(12) permits a company to exclude a proposal focusing on substantially the same subject matter as a prior proposal that failed to receive at least 3 percent of the vote on its first submission, 6 percent on the second, and 10 percent on the third. We propose to increase the thresholds to 6 percent, 15 percent, and 30 percent respectively. Because companies' submissions under current rule 14a–8 have not addressed these criteria, there is no reliable way to estimate their future impact on the number of proposals companies would be required to include in their proxy materials. Nevertheless, we expect that the revisions will increase the number of proposals that companies are permitted to exclude. We request your comments, preferably supported by empirical data, on the potential impact of this proposal.

Rule 14a–8(c)(4) permits companies to exclude proposals relating to personal grievances or special interests. We propose to modify our administration of the rule to express "no view" if the proposal does not on its face relate to the grievance or interest. We request your comments on the potential impact of this proposal on the number of proposals companies are required to include in their proxy materials each year.

We do not know whether the proposed revisions to rule 14a–8 would significantly alter the overall number of proposals companies are required to include each year. We request your comments, preferably supported by empirical information, on whether the proposed amendments, considered together, would in practice cause a significant overall increase or decrease in the number of proposals companies must include in their proxy materials each year.

We do not have empirical data demonstrating the marginal cost of including an additional shareholder proposal in companies' proxy materials. However, question 14 of the Questionnaire asked each company respondent how much money on average it spends on printing costs (plus any directly related costs, such as additional postage and tabulation expenses) to include shareholder proposals in its proxy materials. While individual responses may have accounted for the printing of more than one proposal, the average cost reported by 67 companies was $49,563.[126] We seek comment on whether this estimated cost is accurate; if not accurate, we ask commenters to submit more accurate cost data.

In addition, because a company that includes a proposal is not required to make a submission to the Commission under rule 14a–8, any incremental costs of including an additional proposal should be offset by savings on the submission. We do not know the extent to which any additional incremental costs would be offset by savings, and we therefore request your comments and empirical data on additional incremental savings, and the degree to which they would offset additional costs. Question 13 of the Questionnaire asked respondent companies how much money they spend on average each year determining whether to include or exclude shareholder proposals and following Commission procedures in connection with any proposal that it wishes to exclude (including internal costs as well as any outside legal and other fees). While individual responses may have accounted for consideration of more than one proposal, the costs reported by 80 companies averaged $36,603.[127] We seek comment on whether this estimated cost is accurate; if not accurate, we ask commenters to submit more accurate cost data.

The proposed amendments to rule 14a–4 would provide clearer ground rules for companies' exercise of discretionary voting authority when a company receives a shareholder proposal outside the rubric of rule 14a–8. We believe that these amendments would therefore eliminate much of the uncertainty that some companies experience in these circumstances, and decrease the likelihood a company will have to incur the delay and expense to resolicit its shareholders, or to reschedule its meeting of shareholders. We request your comments and empirical information on the potential effects of these proposed revisions to rule 14a–4.

Under the proposed revisions to rule 14a–4, a company wishing to preserve discretionary voting authority on certain possible proposals my be required to include in its proxy materials an additional discussion that, among other things, describes the proposals. It may also be required to include an additional box on its proxy card permitting shareholders to withhold discretionary voting authority on the proposals if they are raised. We request your comments and empirical data on any incremental cost resulting from these proposed requirements. Automatic Data Processing, Inc. informed the staff that tabulation of an additional box on the proxy card permitting shareholders to withhold discretionary authority would likely cause no increase in the cost of its tabulation services. Daniels Financial Printing informed the staff that in most cases adding up to three-fourths of a page in the proxy statement would not increase the cost to the company. That is because up to an extra three-fourths of a page can normally be incorporated without increasing the page length by reformatting the document. Daniels reported that adding more than three-fourths of a page could increase costs by about $1,500 for an average sized company. We seek comment on whether these estimated costs are accurate, and on the degree to which such costs may vary based on timing considerations, such as the proximity to the company's planned mailing date. If you believe that they are not accurate, we ask you to submit cost data.

The proposed amendments to rules 14a–2 and 13d–5 are ancillary to the amendments to rule 14a–8. Proposed rule 14a–2(b)(2) would provide an exemption from the proxy rules for shareholders attempting to comply with the proposed new "override" mechanism in rule 14a–8. The override would permit the holders of 3% of the company's voting shares to override the operation of two bases for excluding proposals. Proposed rule 13d–5 would provide relief for such shareholders for the purposes of Section 13(d). Because these amendments would be exemptive, we do not expect that they would be responsible for any additional costs or other burdens. We nonetheless request your comments on the accuracy of these views.

As discussed in section III.I., the proposed amendment to rule 14a–5 would require companies to disclose an additional date in their proxy statements. Disclosure of the date should require no more than an additional sentence, and therefore should result in no, or negligible, additional printing costs. We nonetheless request your comments on the accuracy of this view.

Finally, current rule 14a–8(e) provides a mechanism for a proponent to challenge the Division's statement in opposition to a proposal if the proponent believes that the statement contains materially false or misleading statements in violation of rule 14a–9. The elimination of the rule will likely save companies, including small entities, the expense of responding to challenges under the rule. This proposal is discussed more fully in section III.I. We request your comments on these views.

VII. Paperwork Reduction Act

Certain provisions of rules 14a–8, 14a–4, and 14a–5 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted proposed revisions to those rules to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are "Amendments to Shareholder Proposal Rules."

[125] See, e.g., Michael P. Smith, Shareholder Activism by Institutional Investors: Evidence from CalPERS, The Journal of Finance, Vol. L1, No. 1, March 1996; Sunil Wahal, Pension Fund Activism and Firm Performance, Journal of Financial and Quantitative Analysis, Vol. 31, No. 1, March 1966.

[126] See note 123 above.

[127] See note 124 above.

Schedule 14A,[128] and the Commission's related proxy rules, including rules 14a–8, 14a–4, and 14a–5, were adopted pursuant to Section 14(a) of the Exchange Act. Section 14(a) directs the Commission to adopt rules "as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this rule title." Schedule 14A prescribes information that a company must include in its proxy statement to ensure that shareholders are provided material information relating to voting decisions.

The Commission currently estimates that Schedule 14A results in a total annual compliance burden of 782,964 hours.[129] The burden was calculated by multiplying the estimated number of entities filing Schedule 14A annually (approximately 9,321) by the estimated average number of hours each entity spends completing the form (approximately 84 hours). The Commission staff estimated the number of entities that would complete and file the form based on the actual number of filers during the Commission's most recently completed fiscal year. The staff estimated the average number of hours each entity spends completing the form by contacting a number of law firms and other persons regularly involved in completing the form.

The amendments to rules 14a–8, 14a–4(c), and 14a–5, if adopted, would make it easier for shareholder proponents to submit a broader range of proposals, and provide companies subject to the proxy rules with clearer grounds and more flexibility to exclude proposals that fail to attract significant shareholder support, or that are economically insignificant. As a result, the Commission anticipates any additional burden to be offset by a corresponding reduction in the number of hours respondents need to comply with Schedule 14A.

The amendments focus primarily on rule 14a–8, which requires companies to include shareholder proposals in their proxy materials, subject to certain bases for excluding them. Not all companies receive shareholder proposals each year. Furthermore, a company that receives a shareholder proposal has no obligation to make a submission under rule 14a–8 unless it intends to exclude the proposal from its proxy materials. In the period from September 30, 1996 to today, we received submissions from a total of 245 companies, concerning approximately 400 proposals.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden to collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–25–97. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 [130] ("SBREFA"), we also are requesting information on the potential impact of the proposed amendments on the economy on an annual basis. You should provide empirical data to support your views. Under SBREFA, the proposals must be submitted to Congress before they take effect. If they amount to a "major rule," then effectiveness of the rules will be delayed 60 days pending Congressional review. We have not yet reached a conclusion on whether the proposals amount to a "major rule," and we request your comments, supported by empirical data, on that issue.

A rule is "major" if it has resulted, or is likely to result in (i) an annual effect on the economy of $100 million or more; (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effects on competition, investment, or innovation.

We presently do not believe that there is a basis for concluding that the proposals will result in a major increase in costs or prices for consumers or individual industries. The proposals, which relate to the disclosures in public companies' proxy statements, and their exercise of discretionary voting authority, are not designed to, and should not, have any impact on consumer prices. As noted in the Cost-Benefit Analysis in section VI above, the costs associated with including shareholder proposals in companies' proxy materials averages less than $50,000.[131] The costs associated with excluding a proposal under rule 14a–8 averages less than $37,000.[132]

Similarly, we presently do not believe the proposals will have any adverse effects on competition, investment, or innovation. The proposals should improve the efficiency and effectiveness of a channel of communication between companies and shareholders.

We have not yet reached a conclusion on whether the proposals will have an annual effect on the economy of $100 million or more, and we request your comments, supported by empirical data, on the proposals' potential overall annual effect.

Some of the proposed amendment to rule 14a–8 may broaden the range of proposals that companies must include in their proxy materials, requiring companies to include more proposals than they have in the past. This includes our proposal to reverse the *Cracker Barrel* position on employment-related shareholder proposals raising social policy issues, and our proposal to permit holders of 3% of a company's voting shares to override the exclusions under paragraphs (5) and (7) under proposed Question 9.

This year, the Division received approximately 30 submissions on proposals implicating the *Cracker Barrel* position on employment-related proposals tied to social issues. Reversal of that position could encourage more shareholders to submit these types of proposals to companies each year. We request your comments, preferably supported by empirical data, on the potential impact on the number of employment-related proposals submitted to companies each year, and any related costs resulting from this proposal.

Because rule 14a–8 currently does not include an "override" mechanism, we have no reliable means to predict how often shareholders would in the future take advantage of the mechanism to force companies to include proposals that they would otherwise be permitted to exclude. We request your comments and supporting empirical data on the potential impact of the proposed override on the number of proposals companies are required to include in their proxy materials. Although in many cases garnering sufficient support for the override may require substantial efforts, we expect that shareholders will successfully use the override several times each year.

Other proposed revisions, however, would enhance companies' ability to exclude economically insignificant proposals. As revised, paragraph (5) under proposed Question 9 would permit companies to exclude proposals on matters relating to the lesser of $10 million in total costs or gross revenues, or 3% of total assets or gross revenues (whichever is higher). Because companies' submissions under current rule 14a–8 have not addressed these criteria, we have no reliable means to estimate the future impact of these proposed amendments on the number of proposals companies are required to include in their proxy materials. Unlike the current rule 14a–8(c)(5), however, companies would be permitted to exclude proposals based solely on economic criteria, which may permit companies to exclude proposals that they are not permitted to exclude under the current rule. On the other hand, because the proposed economic thresholds are lower than the current thresholds, if the revisions are adopted, companies may be unable to exclude some proposals that they are currently permitted to exclude. We request your comments, preferably supported by empirical data, on the nature and magnitude of the potential impact of this proposed revision.

We expect the proposed modifications to paragraph (12) under proposed Question 9 to cause a decrease in the total number of proposals companies must include in their proxy materials each year. Current rule 14a–8(c)(12) permits a company to exclude a proposal focusing on substantially the same subject matter as a prior proposal that failed to receive at least 3% of the vote on its first submission, 6% on the second, and 10% percent on the third. We propose to increase the thresholds to 6%, 15%, and 30%, respectively. Because companies' submissions under current rule 14a–8 do not address these proposed increased thresholds, there is no reliable way to estimate their future impact on the number of proposals companies are required to include in their proxy materials. Nonetheless, we expect that the revisions will increase the number of proposals that companies are permitted to exclude. We request your comments, preferably supported by empirical data, on the potential impact of this proposal.

Rule 14a–8(c)(4) permits companies to exclude proposals relating to personal grievances or special interests. We propose to modify our administration of the rule to express "no view" if the proposal does not on its face relate to the grievance or interest. We request your comments on the potential impact of this proposal on the number of proposals companies are required to include in their proxy materials each year.

We do not know whether the proposed revisions to rule 14a–8 would on balance significantly alter the overall number of proposals companies are required to include in their proxy materials. We request your comments and empirical data on this question. We do not presently have empirical data demonstrating the marginal cost of including an additional shareholder proposal in companies' proxy materials. However, question 14 of the Questionnaire asked each company respondent how much money on average it spends on printing costs (plus any directly related costs, such as additional postage and tabulation expenses) to include shareholder proposals in its proxy materials. While individual responses may have accounted for the printing of more than one proposal, the cost reported by 67 companies averaged $49.563.[133]

In addition, because a company that includes a proposal is not required to make a submission to the Commission under rule 14a–8, any incremental costs of including an additional proposal should be offset by savings on the submission. We do not know the extent to which any additional incremental costs would be offset by savings, and we therefore request your comments and empirical data on additional incremental savings, and the degree to which they would offset additional costs. Question 13 of the Questionnaire asked respondent companies how much money they spend on average each year determining whether to include or exclude shareholder proposals and following Commission procedures in connection with any proposal that it wishes to exclude (including internal costs as well as any outside legal and other fees). While individual responses may have accounted for consideration of more than one proposal, the costs reported by 80 companies averaged $36,603.[134]

Revised rule 14a–4(c) would provide companies with clearer guidelines for the exercise of discretionary voting authority on proposals presented by shareholders who do not invoke rule 14a–8's procedures. We do not know how many companies subject to our proxy rules receive such proposals each year, and request your comments and supporting empirical data on that question.

We believe the revisions, if adopted, will help some companies avoid costs associated with rescheduling their annual meetings, and possibly with resolicitations of proxy materials. We do not have empirical data to estimate reliably the scope or magnitude of any such savings, and we request your comments, preferably supported by empirical data, on this question.

Under the proposed revisions to rule 14a–4, a company wishing to preserve discretionary voting authority on certain possible proposals may be required to include in its proxy materials an additional discussion among other things describing the proposals. It may also be required to include an additional box on its proxy care permitting shareholders to withhold discretionary voting authority on the proposals if they are raised. We request your comments and empirical data on any incremental cost resulting from these proposed requirements. Automatic Data Processing, Inc. informed the staff that tabulation of an additional box on the proxy card permitting shareholders to withhold discretionary authority would likely cause no increase in the cost of its services. Daniels Financial Printing informed the staff that in most cases adding up to three-fourths of a page in the proxy statement would not increase the cost to the company. That is because up to an extra three-fourths of a page can normally be incorporated without increasing the page length by reformatting the document. Daniels Financial reported that adding more than three-fourths of a page could increase costs by about $1,500 for an average sized company.

As discussed in section III.I., the proposed amendment to rule 14a–5 would require companies to disclose an

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[128] 17 CFR 240.14a–101.

[129] This reflects an increase from previous estimates of total compliance burden. The increase results solely from an increase in the number of entities filing on Schedule 14A each year. The increase is not attributable to any of the proposals described in this release.

[130] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[131] See note 123 above.

[132] See note 124 above.

[133] See note 123 above.

[134] See note 124 above.

additional date in their proxy statements. Disclosure of the date should require no more than an additional sentence, and therefore should result in no, or negligible,, additional printing costs. Because it is exemptive, the proposed amendment to rule 14a–2 should help some shareholders attempting to use the proposed override mechanism to avoid the expense of preparing proxy materials, and should impose no additional costs. Similarly, because it would provide a safe harbor, the proposed amendments to rule 13d–5 should impose no additional costs. We request your comments on these views.

Finally, current rule 14a–8(e) provides a mechanism for a proponent to challenge a company's statement in opposition to a proposal if the proponent believes that the statement contains materially false or misleading statements in violation of rule 14a–9. The elimination of the rule will likely save companies, including small entities, the expense of responding to challenges under the rule. This proposal is discussed more fully in section III.I. We request your comments on these views.

We also believe that certain shareholder proposals may have a positive or negative effect, or no effect, on shareholder wealth.[135] By expanding the range of proposals that companies must include in their proxy materials, the amendments could make a company's managers more responsive to the shareholders. That, in turn, could better align the interests of the company's management with that of shareholders, possibly resulting in an improvement in the company's operations and the market price for its shares. We currently lack reliable empirical data on the magnitude and frequency of any such effects. We request your comments supported by empirical data on the magnitude and frequency of any such effects. We request your comments supported by empirical data.

Relatively few shareholder proposals are approved by shareholders each year. Based on information provided to us by IRRC,[136] we understand that in the period from January 1, 1997 to date, 19 proposals obtained shareholder approval out of a total of 234 submitted to shareholder votes. Nine were proposals to repeal classified boards. Nine sought redemption of companies' shareholder rights plans. One focused on "golden parachute" payments to executives. Even if a proposal does not obtain shareholder approval, however, it may nonetheless influence management, especially if it receives substantial shareholder support. A proposal may also influence management even if it is not put to a shareholder vote. We understand that in some instances management has made concessions to shareholders in return for the withdrawal of a proposal.

Proposals addressing corporate governance matters tend to receive the most substantial shareholder support, and, we believe, are most likely to affect shareholder wealth. Examples are proposals on voting and nomination procedures for board members, and proposals to restrict or eliminate companies' shareholder rights plans. The proposed revisions do not focus on those types of proposals, and should not significantly affect shareholders' ability to include them in companies' proxy materials. As a result, we request your comments on the degree to which the proposals would impact shareholder wealth, viewing the proposals in isolation and together with other proposals.

The proposed modification to current rule 14a–8(c)(12) will affect all proposals, including corporate governance proposals. Those modifications will make it easier for a company to exclude a proposal that has failed to receive significant shareholder support in the recent past. Because we believe that the revised rule, if adopted, would operate to exclude only those proposals on which shareholders have already voted at least once previously, and have effectively rejected, we do not expect that the revisions to current rule 14a–8(c)(12) will have any significant impact on shareholder wealth. We request your comments, preferably supported by empirical data, on the accuracy of these views.

IX. Statutory Basis and Text of Amendments

We propose amendments to Rules 14a–8, 14a–4, 14a–2, 14a–5, and 13d–5 under the authority set forth in Sections 13, 14 and 23 of the Securities Exchange Act of 1934, and Section 20(a) of the Investment Company Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. By adding paragraph (b)(3) to § 240.13d–5 to read as follows:

§ 240.13d–5 Acquisition of securities.

* * * * *

(b) * * *

(3) Notwithstanding paragraph (b)(1) of this section, a group formed among the beneficial owners of a class of equity securities solely by an understanding, arrangement, or agreement that a shareholder proposal should be placed in a registrant's proxy materials for a shareholder vote, for the purpose of using the "override" mechanism provided in § 240.14a–8(j) (Question 10), shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group for the purposes of Section 13(d)(1) of the Act (15 U.S.C. 78m); provided, however, that such understanding, arrangement or agreement does not relate to how the holders will vote on the proposal if it is ultimately placed in the registrant's proxy materials.

3. By amending § 240.14a–2 by redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(3) through (b)(5), and by adding a new paragraph (b)(2), to read as follows:

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

* * * * *

(b) * * *

(2) For any solicitation made for the sole purpose of gathering support for placing a shareholder proposal in a registrant's proxy materials pursuant the "override" mechanism provided in § 240.14a–8(j) (Question 10); provided that such solicitation does not seek proxy authority with respect to the vote on the proposal if it is ultimately placed in the registrant's proxy materials;

* * * * *

4. By amending § 240.14a–4 by removing the last sentence in paragraph (a)(3) before the note, by revising the introductory text of paragraph (c) and paragraph (c)(1), redesignating paragraphs (c)(2) through (c)(5) as paragraphs (c)(3) through (c)(6), and adding a new paragraph (c)(2), to read as follows:

§ 240.14a–4 Requirements as to proxy.

* * * * *

(c) A proxy may confer discretionary authority to vote on any matter presented by a security holder for a vote under the following circumstances:

(1) If the registrant did not have notice of the matter at least 45 days (or such date specified by an advance notice bylaw) before the date on which the registrant first mailed its proxy materials for the prior year's annual meeting of shareholders. If the registrant did not hold an annual meeting of shareholders the prior year, or if the date of the annual meeting has changed more than 30 days from the prior year, then notice must be received a reasonable time before the company mails its proxy materials for the current year.

(2) If the registrant includes, in the proxy statement, a discussion of the nature of any such matter and how the registrant intends to exercise its discretion on each matter, and, in the proxy card, a cross-reference to the discussion in the proxy statement and a box to withhold discretionary authority on the same matter(s).

5. By amending § 240.14a–5 by revising paragraph (e), and adding paragraph (f), to read as follows:

§ 240.14a–5 Presentation of information in proxy statement.

* * * * *

(e) All proxy statements shall disclose, under an appropriate caption, the following dates:

(1) The deadline for submitting shareholder proposals for inclusion in the registrant's proxy statement and form of proxy for the registrant's next annual meeting, calculated in the manner provided in § 240.14a–8(d) (Question 4); and

(2) The date after which notice of a shareholder proposal submitted outside the rubric of § 240.14a–8 is considered untimely, calculated in the manner provided by § 240.14a–4(c)(1).

(f) If the date of the next annual meeting is subsequently advanced or delayed by more than 30 calendar days from the date of the annual meeting to which the proxy statement relates, the registrant shall, in a timely manner, inform security holders of such change, and the new dates referred to in paragraphs (e)(1) and (e)(2) of this section, by including a notice in its earliest possible quarterly report on Form 10–Q (§ 249.308a of this chapter) or Form 10–QSB (§ 249.308b of this chapter), or, in the case of investment companies, in a shareholder report under § 270.30d–1 of this chapter under the Investment Company Act of 1940, or, if impracticable, any means reasonably calculated to inform shareholders.

6. By revising § 240.14a–8 to read as follows:

§ 240.14a–8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy materials when it holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured the section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, shareholders will have an opportunity to case their votes either in support of your proposal or against your proposal. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1% of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You will have to continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records, the company can verify your eligibility on its own. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§ 240.13d–101), Schedule 13G (§ 240.13d–102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter) and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3: How many proposals may I submit?* Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4: How long can my proposal be?* The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5: What is the deadline for submitting a proposal?* (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than thirty days from last year's meeting, you can find the deadline on one of the company's quarterly reports on Form 10–Q (§ 249.308a of this chapter) or 10–QSB (§ 249.308b of this chapter), or in shareholder reports of investment companies under § 270.30d–1 of this chapter of the Investment Company Act of 1940. In order to avoid confusion, shareholders should submit their proposals by means, including

[135] See note 125 above.

[136] See note 13 above.

electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and mail its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and mail its proxy materials.

(f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?* (1) The company may omit your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked no later than 14 days from the date you received the company's notification.

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude any of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be omitted?* Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to omit a proposal.

(h) *Question 8: Must I appear personally at the shareholders meeting to present the proposal?* (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow any applicable procedures that are proper under state law for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part on the Internet, and the company permits you or your representative to present your proposal via the Internet, then you may appear through the Internet rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company may omit any of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to omit my proposal?*

(1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the state of the company's incorporation;

Note to paragraph (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if written so that they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law;

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a–9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company, or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which benefit or interest is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to a matter involving the purchase or sale of services or products which represents $10 million or less in gross revenues or total costs, whichever is appropriate, for the company's most recently completed fiscal year. However, if 3% of the company's gross revenue or total assets, whichever is higher, for the company's most recently completed fiscal year, results in a number less than $10 million, that number applies instead of $10 million;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal relates to specific business decisions normally left to the discretion of management;

Note to paragraph (i)(7): Examples of such matters include the way a newspaper formats its stock tables, whether a company charges an annual fee for use of its credit card, the wages a company pays its non-executive employees, and the way a company operates its dividend reinvestment plan. For an investment company, such matters include the decision whether to invest in the securities of a specific company.

(8) *Relates to election:* If the proposal relates to an election for membership on the company's board of directors;

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may omit it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 6% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 15% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 30% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposed relates to specific amounts of cash or stock dividends.

(j) *Question 10: If the company demonstrates that my proposal is excludable based on the criteria listed in the answer to Question 9, is there any other way to have my proposal included in the company's proxy materials?* (1) Yes. If enough of the company's shareholders support inclusion of your proposal in the company's proxy materials, then you may override certain of the criteria for excluding your proposal listed in answer to Question 9. More specifically, if you demonstrate to the company that the holders of 3% of the company's outstanding shares entitled to be voted on the proposal at the meeting agree that your proposal should be included in the company's proxy materials, then the company may not rely on criteria paragraphs (5) or (7) under Question 9 of this section to omit your proposal for that meeting. In calculating the 3%, you may include your own shares even if the proposal is your own. The percentage is based on the total number of voting shares outstanding for the year before the year for which the meeting is held. You should find that number in the company's annual report to shareholders for that year.

(2) However, it is your obligation to demonstrate that you have, or have gathered, the required support for including your proposal, by providing the company:

(i) A written statement from each of your supporters stating his or her support for the inclusion of your proposal in the company's proxy materials for a specific meeting of shareholders. The written statement must be executed and dated as of a date no earlier than the date of the company's annual meeting for the previous year. If the company did not hold a meeting the year before, the statement must be dated no more than one year before the scheduled date of the meeting for which the proposal is submitted; and

(ii) A written statement from the record holder of each supporter's shares, specifying the number of shares that the supporter held as of the date of the statement described in paragraph (j)(2)(i) of this section. It is your obligation to collect this evidence from your supporters, and to present it to the company in an organized, understandable form. You must provide the company with copies of the evidence by the due date for submitting a proposal.

(k) *Question 11: How many proposals sponsored by other shareholders may I support under the "override" mechanism described in the answer to Question 10 of this section?* At each company, you may support no more than one proposal sponsored by other shareholders under the "override" mechanism described in the answer to Question 10 of this section. Of course, this does not affect your ability to sponsor your own proposal. If the proposal is your own proposal, then it does not count against that limit.

(l) *Question 12: What procedures must the company follow if it intends to omit my proposal?* (1) If the company intends to omit a proposal from its proxy materials, it must file its reasons with the Commission no later than 40 calender days after the date that it receives your proposal, and no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 40 days after receiving your proposal, or 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies (or alternatively file via e-mail to the following address: shprop@sec.gov) of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may omit the proposal, which should if possible refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(m) *Question 13: May I submit my own statement to the Commission responding to the company's arguments?* Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You may submit either six paper copies of your response, or alternatively, you may make your submission via e-mail to the following address: shprop@sec.gov.

(n) *Question 14: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?* (1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

Dated: September 18, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

Concurrence of Commissioner Steven M.H. Wallman

The Commission today (Release No. S7–25–97) proposes a "package" of changes to the current process for submitting shareholder proposals. Not only does this process preclude valid shareholder debate on issues of significant importance to the companies in which shareholders invest, it also imposes burdens on corporations and on this Commission, such as requiring the Commission to engage in line-drawing for which it is ill-suited. A year ago I proposed changes to the rules to make them fairer and to eliminate much of that line-drawing. And I have repeatedly called for the reversal of Cracker Barrel—independent of any other or more comprehensive reform.

I recognize and appreciate how difficult it is to craft a solution to the problems posed by these rules, and I commend the staff and my colleagues for their efforts today. As a practical matter, those who are active participants in the shareholder proposal process are small in number—especially when compared with the number this Commission regulates or influences in other activities. But the practical impact of what can be accomplished through shareholders appropriately engaged in their corporations' affairs is enormous. Part of what makes our economy strong and our corporations successful is our system of active shareholders engaged in debate over matters of concern. And those matters consistently have included issues relating to corporate governance, workplace practices and social issues.

Because I believe so strongly in the benefits that accrue from responsible shareholders acting responsibly, I am concerned by this proposed "package." While I concur in the issuance of this release so that the debate may begin, I believe this proposal may not have

sufficient benefits for the shareholder community to outweigh the detriments to that community and, therefore, may not be balanced. Moreover, I remain opposed as a matter of principle to the notion of holding the reversal of Cracker Barrel hostage to the success or failure of an overall reform effort. I urge my colleagues again to consider its immediate reversal.

I understand this is a complicated area involving many players with often divergent interests. Moreover, not all members of the corporate community, or the shareholder community, are affected in the same manner by either the current or the proposed process.[1] Some companies have never received a shareholder proposal, while others receive a multitude on a yearly basis. Likewise, some proponents have no difficulty in placing their resolutions in the company's proxy statement, while others face a yearly battle to avert exclusion.

Under today's proposal, if it is adopted, the proponent community will obtain some benefit from the reversal, at least in form, of Cracker Barrel, as well as a lower economic standard under the relevance exclusion, and the availability for the first time of a shareholder override. From a practical perspective though, these benefits will primarily assist those proponents who currently have potential difficulty obtaining access to the proxy statement—such as social groups sponsoring social policy proposals related to employment. Since most shareholder proposals are not so characterized, this package provides little for all other proponents.

And with regard to social proposals, it remains to be seen whether the proposed changes will result in any increased access to the proxy statement. While Cracker Barrel may be reversed in form if the proposals are adopted, it is unclear from the release whether it will be reversed in substance. Although social policy proposals related to employment will no longer be automatically excludable, neither will they be automatically included.[1] The return to subjective line-drawing by the staff, coupled with the shift to a purely economic test under the relevance exclusion, leaves open the possibility of continued attempts to exclude many social proposals (whether related to employment or not).[2] While theoretically proponents of social proposals could be helped by the availability of a shareholder override, the burdens of the currently proposed override—a threshold set at the high level of 3%[3] combined with the practical difficulties of soliciting or doing a major publicity campaign[4]—will constrain its practical effectiveness.[5]

As to detriments, all members of the proponent community will be adversely impacted by the increased resubmission thresholds—thresholds that, as proposed, will rise to the very high level of 30% in the third year—without any practical benefits being provided in return to a large percentage of the proponents. Likewise, for those members of the proponent community who might use Rule 14a–4 in lieu of rule 14a–8, the proposed tightening of Rule 14a–4 will be troublesome. And to the extent that any part of the package is changed to decrease the benefits or increase the burdens on the proponent community, the lack of balance may well become intolerable.

Although I have strong reservations about this package as a whole and about specific provisions,[6] I vote today to issue this release to ensure that debate will ensue on this matter. In its current form, I agree that the release can be used to frame the issues and I believe it is in the best interests of all of those involved in the shareholder proposal process for change to be commenced as soon as possible. My hope would be that any changes ultimately adopted will, in fact, properly balance the interests of companies and shareholders.[7]

In any event, I must stress my dismay at the failure of this Commission to reverse Cracker Barrel. The continuation of Cracker Barrel over the past four years has been a terrible mistake—not from a practical perspective but rather from a policy perspective. As I have stated previously, Cracker Barrel has had little practical effect—most proponents of the types of proposals excludable under Cracker Barrel either succeed in having the companies include their proposals anyway, or otherwise have their concerns addressed and withdraw their proposals voluntarily. Nevertheless, Cracker Barrel is bad public policy because the wrong message is sent as to what the Commission believes is important. I fail to understand why its reversal can only be considered as part of any broader reform—after all Cracker Barrel was imposed on the proponent community without any reforms for their benefit and has tilted the balance, as a matter of principle, over these last four years in an unacceptable manner.

Finally, stepping back from the issue of whether Cracker Barrel should be reversed only as part of overall reform or on its own, the practical realities are that this reform proposal, with or without Cracker Barrel, likely cannot be adopted in time for the 1998 proxy season. The specter of continuing Cracker Barrel for yet another proxy season should simply be unacceptable. I strongly urge my colleagues to do the right thing—reverse Cracker Barrel now, in time for the 1998 proxy season.

I respectfully concur in the issuance of this release.

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[1] The release is unclear on whether new lines will be drawn and where those lines will fall.

[2] Since the new proposed economic test under the relevance exclusion focuses solely on historical financial statement components, it also excludes shareholder proposals motivated by far more important possible material liabilities or prospective costs, such as boycotts, negative publicity or lawsuits. The result is that this exclusion could be even more restrictive than Cracker Barrel. As an example, if a company employs slave labor in a small plant in Asia, a proposal relating to that operation would be excludable under this test, notwithstanding the significant potential costs to the company and its shareholders from the company's pursuing such a policy.

[3] Three percent of the outstanding stock of large corporations involves dollar amounts in the billions; it is unclear why the support of such a large financial stake is necessary before a proposal may be placed on the ballot.

[4] Moreover, the proposal does not require access to shareholder lists (although Rule 14a–7 theoretically may be useful)—and may be dependent on adequate relief under Sections 13(d) and 14 of the Securities Exchange Act of 1934.

[5] I am also concerned about the specter that the existence of the override—a concept that I originally proposed, but in a different context, and that I still independently support—will be used as a rationale for the staff's engaging in overly broad interpretations of the exclusions under Rule 14a–8 on the grounds that, if shareholders want the resolutions included, they can avail themselves of the override.

[6] I also am concerned about the extent of the reliance on the Division's Questionnaire as a basis for today's proposals given the failure to use scientific sampling in both its design and its distribution.

[7] As an additional goal, it would be worthwhile to reduce as much as possible the staff's role as line-drawers. One alternative that could accomplish this goal would be to permit all resolutions to be included subject to whatever exclusions the states wished to impose as a matter of internal corporate affairs—and the release asks questions about this approach. I suspect that both companies and shareholders will find this option to be impracticable. If they do not, I believe the Commission should give it more thought.

federal register

Friday
September 26, 1997

Part IV

Federal Election Commission

11 CFR Parts 102, 104, and 108 Recordkeeping and Reporting; Proposed Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 102, 104 and 108

[Notice 1997–14]

Recordkeeping and Reporting

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Election Commission requests comment on proposed revisions to regulations that govern recordkeeping, reporting, and filing with State officers under the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"). The proposed revisions, many of which are technical in nature, would clarify and simplify requirements for recording, reporting, and filing reports of campaign-related receipts and disbursements. The revisions are intended to address issues that have arisen since the rules were last amended. Please note that the draft rules which follow do not represent a final decision by the Commission on issues presented in this rulemaking.

DATES: Comments must be received on or before October 27, 1997. If the Commission receives requests to testify, it will hold a hearing on November 5, 1997 at 10:00 a.m. Persons wishing to testify should so indicate in their written comments.

ADDRESSES: Comments should be addressed to Ms. Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Faxed comments should be sent to (202) 219–3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to "reprec@fec.gov". Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Teresa A. Hennessy, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The FECA's principal requirements for recording and reporting contributions and expenditures in connection with Federal elections currently appear at 11 CFR 102.9 and 104.3. The first rule prescribes procedures for committees that qualify as political committees under the Act to follow in recordkeeping. The second sets forth procedures for political committees to follow in reporting campaign-related receipts and disbursements. The procedures apply to authorized committees, i.e. committee(s) designated by a candidate to receive contributions and make expenditures on his or her behalf, and unauthorized committees, those not so designated by a candidate. 11 CFR 100.5(f).

Although the Commission has made several changes to these sections in earlier rulemakings, it is now taking a comprehensive look at the recordkeeping and reporting requirements. Disclosure of campaign finance in connection with Federal elections is a major goal of the FECA, as recognized by the Supreme Court. See *Buckley* v. *Valeo*, 424 U.S. 1, 67–69 (1976). Hence, the Commission is undertaking to clarify—and where possible, to simplify—the requirements. The Commission is aware of the ongoing need to balance the public interest in effective and timely disclosure with the concerns of the regulated community about reporting burdens. Thus, the draft rules propose several key changes: reorganizing the reporting requirements by retaining the provisions applicable to unauthorized committees at 11 CFR 104.3 and moving the reporting requirements for candidates' authorized committees to new 11 CFR 104.17; permitting alternatives for reporting loan repayments; simplifying the reporting requirements for draws on a line of credit; and clarifying procedures for reporting disbursements paid by credit card(s).

Concurrently, a review is underway of the relevant reporting forms: Form 3 for authorized committees and Form 3X for unauthorized committees. Under the proposed revisions, the rules and forms would be revised in a parallel manner. Draft revised Form 3 and Form 3X are available on request from the Commission's Public Records Branch at 999 E Street, NW, Washington, DC 20463 (202/219–4140 or 800/424–9530).

Lastly, the Act's requirements for filing reports with State officers appear at 11 CFR part 108. The regulations provide that any reports required under the Act are also required to be filed with the Secretary of State, or other State officer, of the appropriate State(s). The regulations identify the "appropriate" State(s) and set forth duties for State officers regarding the reports. *See, e.g.*, 11 CFR 108.2 and 108.6. The Commission seeks to comport these rules with recent amendments to the FECA, providing that these requirements do not apply in certain circumstances. Public Law No. 104–79, 109 Stat. 791 (1995).

The Commission seeks comment on the proposed regulations. It requests that any comments on the reporting forms be forwarded with comments on the proposed reporting rules. The Commission also welcomes comments on the recordkeeping and reporting process, in general, including any issues not covered by the proposed regulations. A summary of the proposed revisions follows.

A. Proposed 11 CFR 102.9—Accounting for Contributions and Expenditures

Proposed § 102.9, governing recordkeeping for contributions and expenditures, would redesignate current paragraphs (a)(1)–(3) as paragraphs (a)(2)–(4), respectively. The draft rule also would propose several substantive changes for procedures set forth at current paragraphs (a), (b) and (d).

1. Proposed Recordkeeping for Contributions

The proposed revisions first would codify recordkeeping requirements for contributions of $50 or less. A committee would have two options for maintaining this information. It may retain the information specified for contributions in excess of $50 at redesignated paragraph (a)(2). Or, for many small contributions received at a fundraising event, the committee may record the name of the event, the date(s) contributions are received at the event, and the total amount of contributions received on each day of the event.

The Act requires that a treasurer of a political committee maintain an account of all contributions received by or on behalf of the committee but does not specify how records should be kept of receipts under $50. 2 U.S.C. 432(c)(1). Currently, the rule elaborates that the treasurer may use "any reasonable accounting procedure" to maintain these records. 11 CFR 102.9(a). The Commission has suggested methods of recording receipts under $50 in Advisory Opinions ("AO") 1981–48 and 1980–99. This section would codify that guidance at new paragraph (a)(1).

2. Proposed Recordkeeping for Disbursements

The draft rule would continue the current rule's definition of "payee". See proposed paragraph (b)(2)(i)(A). The rule would provide that a "payee" is a person who receives payment directly from the committee, or indirectly from an agent of the committee, in return for goods or services extended to the committee or its agent. To comply with the proposed section, a committee therefore must retain records for all disbursements it makes, including those by its agent, or primary payee, to other vendors that perform work for the committee, or secondary payees. As presented later, a committee similarly would be required to report all disbursements: payments to primary payees would be reported as disbursements and, under certain circumstances, payments to secondary payees would be reported as memo entries. See proposed §§ 104.3(c)(2) and 104.17(c)(2).

The Commission has addressed recording and reporting disbursements to payees in AO 1996–20, AO 1983–25 and in audits. In AO 1996–20, the Commission determined that the principal campaign committee ("PCC")—the committee designated by the candidate as his main authorized committee—for the re-election of a Member of Congress was permitted to reimburse the Member's Chief of Staff ("COS") for his campaign-related travel expenses. See 11 CFR 100.5(e)(1), 101.1 and 102. The Commission stated that the PCC must report as memo entries the COS' payments to vendors for the travel expenses "* * * to achieve full disclosure but not inflate disbursement figures." See AO 1996–20, note 3. The Commission reached a different conclusion in AO 1983–25. There, the Commission determined that, after a presidential PCC made direct payments to certain media consultants, it was not required to itemize payments by the consultants to other vendors which performed work for the PCC as long as records were maintained for the latter disbursements.

The draft rule would codify the guidance of AO 1996–20 for two reasons. First, the reporting method referenced in this opinion would indicate how a committee's disbursements are actually used and, thus, would serve the disclosure policy underlying the Act. Relying alone on the recordkeeping requirements in AO 1983–25 would not as effectively result in such disclosure.

Next, the two committees in the opinions are different legal entities under the Act. The Presidential campaign committee was a recipient of public funding and, therefore, was required to undergo a mandatory audit. 26 U.S.C. 9007 and 9038. It also was required to maintain records of disbursements to secondary payees. See 11 CFR 9003.5, 9033.1(b)(7) and 9033.11. Hence, even if publicly funded committees were not required to report disbursements to secondary payees, the Commission could rely on audits to examine these disbursements. On the other hand, Title 2 committees, such as the PCC in AO 1996–20, do not receive public funding and are not required to be audited by statute. Compare 2 U.S.C. 438(b). Thus, the mechanism of a recordkeeping and reporting requirement is necessary so that the Commission may examine how Title 2 committees directly, and indirectly, use funds. The Commission welcomes comments on the proposed clarification.

The draft rule would revise the recordkeeping requirements in other respects. The draft rule would more clearly state that an individual who receives an advance from a committee for his or her own travel or subsistence would be a "payee". The draft rule would raise the amount of the qualifying advance from $500 or less to $1,000 or less, to accommodate inflationary increases. See proposed paragraph (b)(2)(i)(B).

The documentation requirements for disbursements also would be revised. The draft rule would require that if a committee makes an advance for travel or subsistence expenses, it must keep all expense account documentation related to the advance. The present rule requires only that the committee maintain "the expense voucher or other expense account documentation" (emphasis added). Thus, committees now may satisfy their recordkeeping obligations by retaining only one type of documentation, even if more records originally existed for a particular expense. The Commission proposes this change because the present rule may conflict with the general requirement to maintain records stated at 11 CFR 104.14. Moreover, the Commission has discovered that an expense voucher may have required information that other expense account documentation lacks, or vice-versa. The proposed documentation requirement would not require committees to create new records. Rather, it would clarify that committees must preserve all records related to disbursements, consistent with § 104.14.

The draft rule specifically would address documentation requirements for disbursements by bank draft accounts and debit cards. These financial instruments are more commonly used today by committees and have unique characteristics. Therefore, the Commission is providing guidance on how to retain required information for transactions based on these. The Commission also would welcome comments on suitable documentation for these transactions. Please note that the proposed requirements for bank draft accounts are distinct from those for share draft accounts at credit unions, addressed at current paragraph (b)(2)(iii). The new provisions would address a current concern of committees and lead to more complete, useful information for committees and the Commission. *See* proposed paragraph (b)(2) and new paragraphs (b)(2)(iv) and (v).

Further, the draft rule would clarify that a committee treasurer must comply with both the "best efforts" rule and the requirements of 11 CFR 104.14. Principally, a treasurer would be required to meet the recordkeeping duties set forth at proposed § 102.9 and, at the same time, to maintain bank records and other documents related to reports required under 11 CFR part 104. See proposed paragraph (d).

The proposed revisions also would require that, in recording contributions to candidates, a committee identify the election(s) for which these are made. *See* proposed paragraph (b)(1)(iii). In addition, the proposed revisions would amend paragraph (b)(1)(iv) of the section to cross-reference the new citations for the definition of "purpose" in proposed §§ 104.3 and 104.17. The final rules will contain conforming amendments to other sections of the regulations to reflect the revisions proposed for this section.

B. Proposed 11 CFR 104.3—Contents of Reports for Unauthorized Committees

1. Proposed Restructuring of Current 11 CFR 104.3

The Commission proposes to restructure, into two sections, 11 CFR 104.3 which governs the contents of reports political committees must file. Proposed 11 CFR 104.3 would state the requirements applied to all unauthorized committees for reporting receipts and disbursements. The corresponding requirements for authorized committees would appear at new 11 CFR 104.17. (Please note that the Commission recently repealed former 11 CFR 104.17 as an obsolete rule. 60 FR 56506 (November 9, 1995.)) The purpose of the proposed restructuring is to clarify points of Commission policy, simplify the preparation of reports pursuant to 2 U.S.C. 434, and facilitate committees' efforts to locate the rules that apply to each. The Commission welcomes comments on the proposed restructuring.

2. Proposed Reporting Requirements for Unauthorized Committees

As amended, the section would follow the organization of current 11 CFR 104.3 except for the changes discussed below. Most of the proposed changes would appear at draft paragraphs (b), (c), (k) and (l) to address procedures for reporting receipts and disbursements, amending reports and reporting disbursements paid by credit card(s), respectively. New paragraph (a) would state the rule's scope and refer authorized committees to the reporting requirements at new § 104.17.

a. Reporting Receipts of Unauthorized Committees

The proposed amendments would delete the reference to traveler's checks in the definition of "Cash on hand". Under this amendment, a committee may hold traveler's checks only after receiving these as contributions, see 11 CFR 104.8, and before depositing these pursuant to 11 CFR 103.3(a). The proposed amendment is intended to comport with the Act and to address substantial problems raised by the use of traveler's checks for disbursements. The Act requires that, except for petty cash fund expenditures, a committee issue a check from an account at its campaign depository to make a disbursement. 2 U.S.C. 432(h). See also 11 CFR 102.10 and 103.3. Traveler's checks are unlike these checks: traveler's checks are not forwarded to a committee's campaign depository and are unavailable for review. Thus, at times committees have been unable to identify payees or the purpose of disbursements by traveler's checks, and the Commission's efforts to evaluate a committee's compliance with the Act have been frustrated. The Commission welcomes comment on the proposal to limit the role of traveler's checks in campaign finance. See redesignated paragraph (b)(2).

The categories and itemizations of receipts for unauthorized committees would be reorganized and revised in draft paragraphs (b) (3) and (4). Concurrently, Form 3X would be revised to conform to the proposed rule. Similar provisions for authorized committees would be addressed in new § 104.17.

Paragraph (b)(3) would set forth the revised categories of receipts that must be reported on the Detailed Summary Page of Form 3X. The revisions would reflect the types of receipts received by unauthorized committees in recent years. For example, the draft rule would add two new categories: "loan repayments received" and "refunds of contributions made by the reporting committee to political committees". See proposed paragraphs (b)(3) (vi) and (viii). In addition, the Commission proposes to reduce the burden on committees by deleting the itemized and unitemized sub-categories for "offsets to operating expenditures" and "other receipts". See proposed paragraphs (b)(3) (vii) and (ix). The draft rule also would clarify that the category of "contributions from persons" would include contributions from committees that do not qualify as political committees under the Act, and that "offsets to operating expenditures" would refer to rebates and refunds from vendors. See proposed paragraphs (b)(3) (i), (ii) and (vii). Further, the draft paragraph would require year-to-date reporting for itemized and unitemized sub-categories.

The proposed itemizations of receipts for unauthorized committees, which must be reported on Schedule A of Form 3X, would follow the revisions proposed for reporting categories of receipts, discussed above. Thus, the proposed rule would add an itemization for loan repayments received, clarify that the current itemization for "offsets" refers to rebates and refunds from vendors, and add an itemization for refunds of contributions. See proposed paragraphs (b)(4) (v)–(vii).

b. Reporting Disbursements of Unauthorized Committees

The draft rule would reorganize and revise requirements for reporting categories and itemizations of disbursements at proposed paragraphs (c) (1) and (2). The proposed revisions would appear on Form 3X, concurrently under revision. (Similar requirements for authorized committees would be moved to new section 104.17.) The draft rule also would cross-reference new reporting requirements for disbursements paid by credit card found at new paragraph (l).

The categories of disbursements, which are reported as total amounts on the Detailed Summary Page of Form 3X, would be revised to reflect contemporary disbursement practices by committees. Illustratively, the categories for refunds of contributions to persons and to political committees would replace "offsets". See proposed paragraphs (c)(1) (ix) and (x). These revisions also would correspond to amendments proposed for reports of receipts. To ease committees' reporting burdens, the draft rule would delete itemized and unitemized sub-categories for "other disbursements". See proposed paragraph (c)(1)(xii). The proposed amendments additionally would clarify which disbursements are covered by categories in the current rule for operating expenditures, transfers to affiliated or party committees, coordinated party expenditures under 11 CFR 110.7, and other disbursements. See proposed paragraphs (c)(1) (ii), (iii), (vi), and (xii). As for receipts, the proposed rule would require year-to-date reporting for itemized and unitemized sub-categories of disbursements.

The revised itemizations of disbursements for unauthorized committees, which must be reported on Schedule B of Form 3X, would appear at proposed paragraph (c)(2). The amended rule would clarify that a committee may report a loan repayment in two ways: report the sum of the principal and interest as a single loan repayment, or report the principal as a loan repayment and the interest as an operating expenditure. (Committees would continue to report on Schedule C repayments of principal and the outstanding principal balance for each loan.) In the past, the Commission has instructed that each interest payment be reported as a separate operating expenditure. See AO 1991–9 and AO 1986–45. Although the latter method is consistent with the Act's requirements, the former may be easier for reporting committees. The Commission seeks to ease the reporting burden on committees and requests comment on the proposal to permit alternative reporting methods for loan repayments. See proposed paragraph (c)(2)(vi).

The Commission seeks comments on related points raised by Schedule D. For example, should a committee report as a payment toward a debt incurred for goods or services only the principal paid and report as an operating expenditure the finance charges paid? Or, should a committee report the sum of these as a debt payment? The Commission is considering permitting both reporting methods, and requiring that payments (including accrued interest) on debts owed *to* a committee be reported along similar lines.

The revisions proposed for itemizations of disbursements generally would follow the revisions proposed for categories of disbursements, discussed above. Thus, a committee would itemize "refunds of contributions" to persons and to political committees in place of "offsets to contributions". See proposed paragraphs (c)(2) (viii) and (ix). The proposed rule would add a requirement that, for certain itemized disbursements, a committee identify the election for which the disbursement was made. See proposed paragraphs (c)(2) (iii)–(v) and (vii). Where a disbursement is a contribution, a committee would be required to identify the election for which it made the contribution and, hence, the particular contribution limit against which the contribution must be counted, e.g. 1998 General Election. See 2 U.S.C. 441a.

c. Additional Revisions to Section 104.3

Significant changes are proposed at paragraphs (e), "Reporting debts and obligations", (h), "Legal and accounting services", (k), "Amending reports", and (l), "Credit card payments", of the draft rule. With respect to paragraph (e), the provision governing loans to candidates would be moved to new § 104.17. The proposed revisions also would simplify the current rule to require that, for a line of credit, a committee file Schedule C–1 only when it reports the receipt of a line of credit or a restructuring of the line. As revised, the rule would require a committee to report each draw on a line of credit only as a receipt on Schedule A.

The Commission proposes to simplify the reporting requirements because it appears that committees often make numerous draws on a line of credit in a single day. The draws usually are made without restructuring the line of credit, i.e. changing the repayment terms such as the interest rate. The Commission therefore has questioned the present practice of requiring a Schedule C–1 for every routine draw. The Commission believes that it would be more informative to require that, after the initial Schedule C–1, a committee file a subsequent Schedule C–1 only to report a restructuring of the line. This approach would ease the burden on committees while protecting the public interest in disclosure. The Commission emphasizes that a committee would remain obligated to report, as with any debt or obligation, the outstanding balance on a line of credit on Schedule C.

The reporting requirements would be streamlined for a committee that receives legal and accounting services pursuant to 11 CFR 100.7(b) (13) and (14). Draft paragraph (h) would delete the current requirement that a committee report each person providing the services. The Commission also is proposing to institute a $200 threshold for "itemizing" receipts of these services: a committee would specify in a memo entry, on Schedule A, the regular employers of persons providing the services which have spent more than $200 for the services during the calendar year. For "unitemized" receipts of the services, or those from employers which have not met the $200 threshold, a committee instead would report as a memo entry, on Schedule A, the total of amounts paid by regular employers for the services and maintain all records of the services as described in 11 CFR 102.9(c). A memo entry is supplemental information about a specific transaction, and the dollar amount recorded in the memo entry is not included in the totals reported on the Detailed Summary Page for Form 3X (or Form 3). Thus, for an employer meeting the $200 threshold, a committee would report a memo entry: Employer A/Address, $50, on 11/22/96 (where Employer A had spent $250 for the services in 1996). For regular employers not meeting the threshold, a committee would report a memo entry: $500 received in "unitemized" exempt legal and accounting services (for example, to reflect 5 employers which individually had not spent more than $200 for the services in 1996).

New paragraph (k) would be added to clarify the process for amending reports that are filed with the Commission in hard-copy form. The new paragraph would present: the deadline for filing an amendment; optional methods for filing amendments; and a provision for identifying the specific changes in the amended report(s). These provisions would apply both to amendments prompted by a Commission notice and to those initiated by a committee after discovering an error, omission or change in information. The Commission proposes to standardize the amendment process to simplify a committee's reporting obligations. The proposed revisions also are intended to address an issue that frequently arises concerning amendments to longer reports as well as shorter reports, such as Schedule H–4 ("Joint Federal and NonFederal Activity Schedule"). A mechanism to quickly and clearly identify the changes on amended pages, or reports, submitted by a committee is necessary to ensure the accuracy of the Commission's database and to assist the review of disclosure reports. The draft rule provides one mechanism for ensuring that the Commission and the public are able to locate easily new or amended information in a report. The Commission welcomes suggestions as to other effective methods for achieving this result, and seeks comment generally on the proposed amendment process. In addition, the Commission notes that a committee which amends an electronically filed report must follow a different procedure set forth at 11 CFR 104.18.

New paragraph (l) would clarify and simplify reporting obligations for disbursements paid by credit card. These provisions would apply to all disbursements subject to the requirements proposed for categories of disbursements, and itemized entries for the categories, discussed earlier. The new paragraph would define a credit card as representing a credit account with a depository institution or other corporation that is not a depository institution. See 11 CFR 103.2. For some credit cards, the monthly balance must be paid in full; for others, it may be paid in part or in full. A committee would be required to itemize on Schedule B each payment to a credit card company, the depository institution or other corporation receiving the payment, the date and the amount of payment. For example, for a payment that covers an entire monthly balance, the committee would report: ABC National Bank (VISA), Anytown, Any State, 12/05/96, $2,000.00. The committee also would include the payment in the total for the appropriate category on the Detailed Summary Page of Form 3X (or Form 3).

Under the new provisions, if the disbursement is a partial payment of a monthly credit card balance, the committee first would report the information required for a full payment, as noted above, and next report a memo entry on Schedule B. The memo entry would report the creditor, the outstanding credit balance, and the corresponding date. In the example above, the committee would report as a memo entry: ABC National Bank (VISA), $1,000 balance, as of 12/05/96. It would not include $1,000 in the appropriate totals on the Detailed Summary Page, but it would report the unpaid balance as a debt under 11 CFR 104.11(b).

Whether paying its bill in full or in part, a committee also would be required to report, as a memo entry on Schedule B, each expenditure that is separately listed on a monthly credit card statement and that would be required to be itemized under proposed paragraph (c)(2). In the example above, the committee would report as a memo entry: $600 to XYZ Printing Company, Anytown, Any State, 12/01/96, by ABC National Bank VISA, for campaign literature. If a committee made multiple expenditures to a particular vendor during a single reporting period and each was required to be itemized, the committee would report a memo entry for each expenditure. Thus, a committee would itemize a disbursement to pay all, or part, of a credit card balance and would identify the itemizable, underlying expenditures that were paid by credit card. See new paragraphs (l) (2) and (3).

In the Commission's experience, many committees pay for disbursements with credit card(s) and subsequently

make partial payments to the credit card company. Thus, regulations tailored to these transactions would disclose more information about a committee's disbursements as well as identify a committee's outstanding credit balances. The Commission welcomes comment on the proposal to include the new paragraph in the reporting requirements.

Lastly, the proposed amendments would modify section 104.3 in several other respects. The draft rule would substitute the term "savings association" for "savings and loan institutions" to reflect current regulatory practice. See 12 CFR 561.43 (Regulations Applicable to All Savings Associations, Office of Thrift Supervision, U.S. Department of Treasury). In addition, the draft provision for reporting "cash on hand" would cross-reference to 11 CFR 104.13 to clarify that, when a committee receives a non-liquid asset (such as a computer) as an in-kind contribution, it should report the contribution in a memo entry rather than as cash. See proposed paragraph (b)(2). Current paragraph (c), "Summary of contributions and operating expenditures", would be adjusted to reflect the amendments proposed for reporting categories of receipts and disbursements. See proposed paragraph (d). Finally, the proposed amendments would move current paragraph (f), "Consolidated reports", to new § 104.17 as it relates solely to authorized committees, and add guidance for national party committees in proposed paragraph (g), "Building funds".

C. New 11 CFR 104.17—Contents of Reports for Authorized Committees

The new rule would contain all the reporting provisions applicable to authorized committees of candidates. Also, Form 3 would be revised to reflect these provisions. New § 104.17 generally would follow the organization of proposed § 104.3, thus simplifying the reporting process for authorized committees. The discussion below concentrates on the provisions unique to authorized committees and not discussed in the preceding discussion of proposed § 104.3.

1. Reporting Receipts of Authorized Committees

The new rule would address reporting receipts by authorized committees at new paragraph (b) and would correspond to current 11 CFR 104.3(a)(3) and (4). The categories of receipts at new paragraph (b)(3) would be reported as total amounts on the Detailed Summary Page of Form 3. The new section would specify more clearly which categories include the following receipts: contributions from the candidate; loans made, guaranteed or endorsed by the candidate; Federal matching funds for presidential candidates; and the new factor of contributions refunded by authorized committees for other Federal candidates. See new paragraphs (b)(3)(iii), (vi), (vii), and (ix). The draft categories also would provide for transfers from other committees authorized by the candidate, to the extent permitted by Commission regulations. See new paragraph (b)(3)(v) and 11 CFR 110.3(c)(4) and (5) and 110.8(d)(2). In addition, reimbursements by any person for "personal use" of committee funds would be added to the category of "other receipts". See new paragraph (b)(3)(x). "Personal use" consists of the use of campaign funds for an obligation of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. Certain payments for travel or vehicle expenses may include both legitimate officeholder or campaign activities and personal business. The portion of these costs associated with personal activities must be reimbursed under 11 CFR 113.1(g)(1)(ii)(C) or (D).

As drafted, the categories would continue to state that coordinated party expenditures, made pursuant to 11 CFR 110.7, are not contributions and would add that loan repayments received are included as "other receipts". See new paragraph (b)(3)(ii) and (x). To ease reporting burdens, the draft rule would delete the requirements for reporting total itemized and unitemized "offsets to operating expenditures" and "other receipts". See new paragraphs (b)(3)(viii) and (x).

The draft rules for itemizing receipts, which must be reported on Schedule A of Form 3, would follow the changes proposed for categories of receipts. The new section also would add that an authorized committee specify the election for which contributions from persons and from political committees are made when it itemizes the contributions. See draft paragraphs (b)(4)(i) and (ii). In addition to the requirements at proposed § 104.3, a committee would be required to itemize all loans it has received including those made to the candidate as the committee's agent. If any loan itemized under draft paragraph (b)(4)(v) represents a contribution by a lender, endorser or guarantor, the committee would be required to report the election for which the contribution was made. As drafted, the section would add a provision governing the itemization of contributions by the candidate, excluding any loans by the candidate. See new paragraph (b)(4)(iii) and (v).

2. Reporting Disbursements of Authorized Committees

The new rule would govern reporting disbursements at new paragraph (c). This new paragraph would correspond to current 11 CFR 104.3(b)(2) and (4).

One issue on which the Commission seeks comment concerns the requirement that authorized committees report the "purpose" of committee disbursements. See new paragraphs (c)(2)(i)(A) and (B). In particular, the Commission seeks comment on whether to require more information on committees' statements of "purpose" in the interests of monitoring adequately possible instances of personal use of campaign funds. 11 CFR 113.1(g)(1)(i) and (ii). It is intended that any new requirement would generate meaningful disclosure about committee disbursements, as intended by the Act, without significantly increasing committees' reporting burdens.

The Commission's current regulations closely follow the legislative guidance on this point:

> It is the opinion of the Committee that the purpose requirement will be satisfied by a short statement or description, no more than one or two words in most cases, of why the money was spent. The particulars, i.e., the details, of the disbursement are not required by the statute.
>
> H.R. Rep. No. 422, 96th Cong., 1st Sess. 18 (1979). Despite suggestions in comments received in the Commission's rulemaking on "personal use", 60 FR 7862 (February 9, 1995), the Commission has been reluctant to conclude that the purpose statement serves only to regulate personal use of campaign funds. These statements provide required information about other committee disbursements, such as a committee's contributions to a committee authorized by another candidate. Over the years, however, purpose statements often have lacked sufficient detail to enable the Commission to determine whether a certain disbursement represents a candidate's personal use of campaign funds. See Matter Under Review 3107. In addition, a more informative purpose statement may be necessary to determine whether a disbursement by an authorized committee for an office-holder not seeking re-election is impermissible personal use.
>
> The Commission is obligated to enforce the Act's prohibition on personal use of campaign funds. 2 U.S.C. 439a. Currently, the only reporting provisions addressing this ban are the requirement for statements of purpose and the requirement to describe certain disbursements for travel and vehicle expenses for which the committee expects reimbursement. See 11 CFR 104.17(c)(2)(i)(A) and (B); 11 CFR 113.1(g)(1)(ii)(C) and (D). Hence, the Commission requests comment on possible mechanisms for generating more disclosure of the purpose of committee disbursements without heavily burdening reporting committees.

As drafted, the new rule would cross-reference to draft paragraph (l) governing disbursements paid by credit card. The categories of disbursements, at new paragraph (c)(1), would be reported as total amounts on the Detailed Summary Page of Form 3. The draft rule would specify which categories include the following receipts: transfers to other committees authorized by the candidate; repayments of loans made or guaranteed by the candidate; and disbursements by authorized committees for presidential candidates not subject to the limitations at 11 CFR 110.8. See new paragraphs (c)(1)(ii)–(iv). Also, the new rule would add a category for contributions to committees authorized by other candidates for Federal office. See new paragraph (c)(1)(viii). The new categories of refunds of contributions to persons and to political committees would replace the current category of "offsets to contributions". See new paragraphs (c)(1)(v) and (vi). To ease committees' reporting burdens, the new rule would eliminate reporting itemized and unitemized subcategories for "other disbursements". See draft paragraph (c)(1)(ix).

Paragraph (c)(2) would contain the reporting requirements for itemizing disbursements on Schedule B of Form 3. The draft rule would add a requirement that a committee identify the election for which contributions and loans to authorized committees for other candidates are made. See new paragraphs (c)(2)(iii) and (v). A committee would be required to itemize repayments for all loans used in the campaign, whether these were made to the committee or to the candidate. See draft paragraph (c)(2)(iv).

3. Additional Revisions to New Section 104.17

Generally, new paragraphs (d)–(l) would correspond to proposed paragraphs (d)–(l) of § 104.3 with certain exceptions. The draft rule would provide for reporting loans to candidates and would move "Consolidated reports" from current 11 CFR 104.3(f). See new paragraphs (e)(2), (3) and (g).

The final rules will contain conforming amendments to other sections of the regulations to reflect changes in cross-reference citations, resulting from the reorganization of 11 CFR 104.3 into two sections and the proposed revisions included therein.

D. 11 CFR Part 108—Filing Copies of Reports and Statements With State Officers

The FECA governs, *inter alia*, the filing of campaign finance reports and statements by political committees with Secretaries of State or equivalent State officers. Similarly, the Act specifies the duties of State officers to maintain the duplicate reports. 2 U.S.C. 439. On December 28, 1995, Public Law No. 104–79, 109 Stat. 791 (1995), amended the FECA to provide that the filing and maintenance requirements no longer apply where the Commission determines that a State maintains a system that permits electronic access to, and duplication of, reports and statements filed with the Commission. Public Law No. 104–79, section 2 (codified at 2 U.S.C. 439(c)).

The proposed rule would revise 11 CFR part 108 to conform to the statutory amendments. It also would ease reporting burdens for political committees and other persons as well as filing responsibilities for State offices. For example, an unauthorized committee or other person, making independent expenditures under 11 CFR part 109, would not be required to file a copy of campaign finance reports with the relevant State officer where the Commission has determined that the State office maintains a system that can receive and duplicate optically imaged reports from the Commission. Optically imaged reports are stored on special optical disks. See proposed §§ 108.1(b)(1) and 108.3(b). These are unlike microfilm and microfiche. This method also is distinct from electronic filing of reports, which was the subject of a separate rulemaking by the Commission. See 61 FR 42371 (August 15, 1996). Current technology requires that the images be stored and maintained on specialized equipment at the Commission. To access and retrieve these images, states must have the equipment necessary to connect to the Commission's imaging system. Although currently no state office has the necessary capability, the Commission expects that states will begin to gain the capability in the near future.

The proposed revisions would apply to reports filed in connection with primaries for presidential and vice-presidential candidates as well as reports by unauthorized committees in connection with a presidential election. See proposed §§ 108.2 and 108.4. The revisions also would apply to reports filed in connection with a candidate's campaign for the office of Representative in, Delegate or Resident Commissioner to the Congress. The 1995 amendments and a subsequent rulemaking on the point of entry for campaign finance reports provide that these reports now are filed with the Commission rather than the Clerk of the House of Representatives. Public Law 104–79, section 3; 61 FR 3549 and 6095 (February 1 and 16, 1996). Hence, the Commission includes the reports in the optical imaging process and is able to make the reports available to State offices.

However, reports filed by a candidate, or authorized committee(s) of a candidate, to the office of Senator would not be covered. Since these reports are filed with the Secretary of the Senate, the Commission does not receive the original reports and cannot optically image the copies it receives. Consequently, it is unable to make the reports available to State offices by this method. See proposed § 108.3.

Lastly, the provisions governing the duties of state officers to maintain the duplicate reports would be modified to correspond to the 1995 amendments. See proposed § 108.6.

The Commission seeks comment on all proposed revisions to the regulations concerning recordkeeping, reporting, and filing with State offices and on the proposed conforming amendments. The Commission also welcomes comment on these requirements generally, including any issues not covered by the proposed regulations. Please note that a subsequent rulemaking may cover other issues addressed by parts 102 and 104.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

(Regulatory Flexibility Act)

The attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The majority of the attached proposed rules would clarify recordkeeping and reporting requirements under the Federal Election Campaign Act, and any affected entities already are required to comply with the Commission's requirements in this area. The remaining attached proposed rules for filing copies of reports with State officers would conform to statutory amendments and reduce any reporting burden of affected entities. Therefore, these rules would not have a significant

economic effect on a substantial number of small entities.

List of Subjects

11 CFR Part 102

Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to amend subchapter A, chapter I of title 11 of the Code of Federal Regulations as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. Section 102.9 would be amended by redesignating paragraphs (a)(1) through (3) as paragraphs (a)(2) through (4), respectively, by adding new paragraph (a)(1), by revising newly designated paragraphs (a)(2) through (4), the last sentence of (b)(1) introductory text, (b)(1) (iii) and (iv), (b)(2) introductory text and (b)(2)(i) (A) and (B), by adding new (b)(2) (iv) and (v), and by revising paragraph (d) to read as follows:

§ 102.9 Accounting for contributions and expenditures (2 U.S.C. 432(c)).

* * * * *

(a) * * *

(1) For contributions of $50 or less, a committee may satisfy the requirements of this section by keeping either: the name and address of each contributor, the date of receipt and the amount of each contribution; or, if the committee received many small contributions under $50 each through a fundraising event, the name of the event, the date(s) contributions were received at the event, and the total amount of contributions received on each day of the event.

(2) For contributions in excess of $50 each, the account shall include the name and address of the contributor, the date of receipt and amount of each contribution.

(3) For contributions from any person whose contributions aggregate more than $200 during a calendar year, the account shall include the identification of the person, the date of receipt and amount of each contribution.

(4) For contributions from a political committee, the account shall include the identification of the political committee, the date of receipt and amount of each contribution.

(b)(1) * * * The account shall consist of a record of:

* * * * *

(iii) if the disbursement is made for a candidate, the name, the election (e.g. primary or general) and office (including State and Congressional district, if any) sought by the candidate.

(iv) For purposes of 11 CFR 102.9(b)(1), purpose has the same meaning given the term at 11 CFR 104.3(c)(2)(i)(A) and (B) and 104.17(c)(2)(i)(A) and (B).

(2) In addition to the account to be kept under paragraph (b)(1) of this section, the receipt(s) or invoice(s) from the payee or the canceled check(s) to the payee shall be obtained and kept for each disbursement in excess of $200, by or on behalf of, the committee, except that credit card transactions shall be documented in accordance with paragraph (b)(2)(ii) of this section, disbursements by share draft or check drawn on a credit union account shall be documented in accordance with paragraph (b)(2)(iii) of this section, bank draft account disbursements shall be documented in accordance with paragraph (b)(2)(iv) of this section, and debit card transactions shall be documented in accordance with paragraph (b)(2)(v) of this section.

(i)(A) For purposes of paragraph (b)(2) of this section, payee means the person who provides the goods or services to the committee or its agent in return for payment, except that an employee of a political committee, or other individual, who receives an advance from the committee of $1,000 or less for his or her own travel and subsistence shall be considered the payee for that advance.

(B) For any advance to an employee of a political committee, or other individual, of $1,000 or less for travel and subsistence, the committee shall obtain and keep all expense account documentation including the expense voucher and the canceled check(s) to the recipient of the advance.

* * * * *

(iv) For purposes of paragraph (b)(2) of this section, a copy of the draft drawn on a bank draft account may be used as a duplicate record of the draft provided that the monthly account statement showing that the draft was paid by the bank also is retained.

(v) For purposes of paragraph (b)(2) of this section, the point of sale receipt for a debit card transaction may be used as a duplicate record of the transaction provided that the monthly account statement reflecting the debit charge also is retained.

* * * * *

(d) * * * The treasurer, or his or her authorized agent, also shall meet the requirements of 11 CFR 104.14.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(d), 432(i), 434, 438(a)(8), 438(b), 439a.

4. Section 104.3 would be revised to read as follows:

§ 104.3 Contents of reports for political committees other than authorized committees (2 U.S.C. 434(b), 439a).

(a) *Scope.* The requirements of this section apply to all political committees other than authorized committees. Authorized committees shall meet the requirements for reporting receipts and disbursements set forth at 11 CFR 104.17.

(b) *Reporting of Receipts.* (1) *General.* Each report filed under this section shall disclose the total amount of receipts for the reporting period and for the calendar year and shall disclose the information set forth at paragraphs (b)(2) through (4) of this section. The first report filed by a committee shall also include all amounts received prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not received during the current reporting period.

(2) *Cash on hand.* The amount of cash on hand at the beginning of the reporting period, including: currency; balance on deposit in banks, savings associations and other depository institutions; certificates of deposit, treasury bills and any other committee investments valued at cost. Non-liquid assets on hand, if received as in-kind contributions, should be reported in accordance with 11 CFR 104.13.

(3) *Categories of receipts.* Each report shall disclose the total amount of receipts received during the reporting period and during the calendar year for each of the following categories:

(i) Contributions from persons other than political committees, including individuals and committees that do not qualify as political committees under the Act;

(A) Itemized contributions;

(B) Unitemized contributions;

(ii) Contributions from political committees;

(A) Party committees;

(B) Authorized committees;

(C) Unauthorized committees other than party committees;

(iii) Total contributions (add contributions from persons to contributions from political committees);

(iv) Transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other party committees of the same party, regardless of whether the committees are affiliated;

(v) Loans received;

(vi) Loan repayments received;

(vii) Offsets to operating expenditures, such as vendor refunds and rebates;

(viii) Refunds of contributions made by the reporting committee to political committees;

(ix) Other receipts (such as dividends and interest);

(x) The total sum of all receipts.

(4) *Itemization of receipts.* The identification (as defined at 11 CFR 100.12) of each contributor and the aggregate year-to-date total for the contributor in each of the following categories shall be reported.

(i) Each person other than a political committee, including individuals and committees which do not qualify as political committees under the Act, who makes a contribution to the reporting committee during the reporting period, whose contribution(s) aggregate in excess of $200 per calendar year, together with the date of receipt and amount of the contribution(s), except that the reporting committee may elect to report this information for contributors of lesser amount(s) on a separate schedule;

(ii) All political committees which make contributions to the reporting committee during the reporting period, together with the date of receipt and amount of the contribution(s);

(iii) Each affiliated political committee which transfers funds to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another party committee of the same party regardless of whether the committees are affiliated, together with the date and amount of the transfer;

(iv) Each person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of the loan, the date the loan was made, and the amount or value of the loan;

(v) Each person who makes a loan repayment to the reporting committee during the reporting period, together with the date and amount of the repayment;

(vi) Each person who provides an offset to operating expenditures, such as vendor rebates and refunds, to the reporting committee in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the offset;

(vii) Each political committee, including authorized committees, which refunds during the reporting period a contribution made by the reporting committee, together with the date of receipt and amount of the refund; and

(viii) Each person who provides any dividend, interest, or other receipt to the reporting committee, in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the receipt.

(c) *Reporting of Disbursements.* Each report filed under this section shall disclose the total amount of all disbursements for the reporting period and for the calendar year and shall disclose the information set forth at paragraphs (c)(1) and (2) of this section. If a committee has paid any disbursements by credit card, the committee shall report the disbursements in accordance with paragraph (l) of this section. The first report filed by a committee shall also include all amounts disbursed prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not disbursed during the current reporting period.

(1) *Categories of disbursements.* Each report shall disclose the total amount of disbursements made during the reporting period and during the calendar year in each of the following categories:

(i) Shared Federal and nonfederal operating expenditures;

(A) Federal share;

(B) Nonfederal share;

(ii) Other Federal operating expenditures;

(A) Itemized expenditures;

(B) Unitemized expenditures;

(C) Total Federal operating expenditures;

(iii) Transfers to affiliated political committees and, where the reporting committee is a political party committee, transfers to other party committees of the same party, regardless of whether the committees are affiliated;

(iv) Contributions to political committees including authorized committees and unauthorized committees, such as party committees;

(v) Independent expenditures made (2 U.S.C. 434(b)(4)(H)(iii));

(vi) Coordinated party expenditures made (2 U.S.C. 441a(d));

(vii) Loan repayments made;

(viii) Loans made by the reporting committee;

(ix) Refunds of contributions to persons, including individuals, other than political committees;

(A) Itemized refunds;

(B) Unitemized refunds;

(x) Refunds of contributions to political committees;

(A) Party committees;

(B) Authorized committees;

(C) Unauthorized committees other than party committees;

(xi) Total contribution refunds (add contribution refunds to persons and contribution refunds to political committees);

(xii) Other disbursements, including any disbursements to nonfederal candidate committees;

(xiii) Total disbursements;

(xiv) Total Federal disbursements.

(2) *Itemization of disbursements.* Each report shall disclose the full name and address of each person in each of the following categories, as well as the information required by each category. For each disbursement governed by paragraphs (c)(2)(i) or (x) of this section, the report shall disclose this information for each vendor or other person to whom a disbursement is made directly by the committee, and shall contain a memo entry for each vendor or other person to whom a disbursement is made by an agent of the committee.

(i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount, and purpose of the operating expenditure;

(A) As used in paragraph (c)(2) of this section, purpose means a brief statement or description of why the disbursement was made.

(B) Examples of statements or descriptions which adequately describe the purpose of a disbursement include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration would not meet the requirements of paragraph (c)(2) of this section for reporting the purpose of an expenditure.

(ii) Each affiliated political committee to which a transfer is made by the reporting committee during the reporting period and, where the

reporting committee is a political party committee, each transfer of funds by the reporting committee to another party committee of the same party regardless of whether the committees are affiliated, together with the date and amount of the transfer;

(iii) Each political committee, which has received a contribution from the reporting committee during the reporting period, together with the date and amount of the contribution and, for contributions to authorized committees, the candidate's name, the election (e.g. primary or general) and office sought (including State or Congressional district, where applicable);

(iv) (A) Each person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of the independent expenditure(s);

(B) For each independent expenditure reported, the committee must also provide a statement which indicates whether the independent expenditure is in support of, or in opposition to, a particular candidate, as well as the name of the candidate, the election and office sought by the candidate (including State and Congressional district, where applicable), and a certification, under penalty of perjury, as to whether the independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or its agent;

(C) The information required by paragraph (c)(2)(iv)(A) and (B) of this section shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursements for any independent expenditure to any person exceed $200 per calendar year. Schedule E shall also include the total of all such expenditures of $200 or less made during the reporting period.

(v) Each person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under 11 CFR 110.7 (2 U.S.C. 441a(d)), together with the date, amount, and purpose of the expenditure as well as the name of, and the election and office sought by (including State and Congressional district, where applicable), the candidate on whose behalf the expenditure is made;

(vi) Each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of repayment;

(A) For each loan repayment, the committee shall either report the principal and the interest as separate disbursements, or, it shall report the sum of these as a single disbursement. If the committee applies the former method, the principal shall be reported on Schedules B and C as a loan repayment and the interest shall be reported on Schedule B as an operating expenditure. If the committee applies the latter method, the sum of the principal and the interest shall be reported on Schedule B as a loan repayment and only the principal shall be reported on Schedule C;

(B) The committee shall use one reporting method for the duration of a loan;

(vii) Each person who has received a loan from the reporting committee during the reporting period, together with the date and amount or value of the loan, and for any authorized committee that has received a loan, the candidate's name, the election and office sought (including State or Congressional district, where applicable);

(viii) Each person, other than a political committee, who receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(i) of this section, together with the date and amount of the refund;

(ix) Each political committee which receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(ii) of this section, together with the date and amount of the refund; and

(x) Each person, including nonfederal candidate committees, who has received any disbursement during the reporting period not otherwise disclosed under paragraph (c)(2) of this section, to whom the aggregate amount or value of disbursements made by the reporting committee exceeds $200 within the calendar year, together with the date, amount, and purpose of the disbursement(s).

(d) *Summary of contributions and operating expenditures.* Each report filed under this section shall disclose for both the reporting period and the calendar year:

(1)(i) The total contributions to the reporting committee;

(ii) The total of contribution refunds;

(iii) The net contributions (subtract total of contribution refunds from total contributions);

(2)(i) The reporting committee's total Federal operating expenditures;

(ii) The total offsets to operating expenditures; and

(iii) The net Federal operating expenditures (subtract total offsets from total Federal operating expenditures).

(e) *Reporting debts and obligations.* Each report filed under this section shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Where these debts and obligations are settled for less than their reported amount or value, each report filed under this section shall contain a statement as to the circumstances and conditions under which the debts or obligations were extinguished and the amount paid. See 11 CFR 116.7.

(1) In addition, when a committee obtains a loan or a line of credit from a lending institution as described in 11 CFR 100.7(b)(11) and 100.8(b)(12), it shall disclose in the next due report the following information on Schedule C–1:

(i) The date and amount of the loan or line of credit;

(ii) The interest rate and repayment schedule of the loan or line of credit;

(iii) The types and value of traditional collateral or other sources of repayment that secure the loan or the line of credit, and whether that security interest is perfected;

(iv) An explanation of the basis upon which the loan was made or the line of credit established, if not made on the basis of either traditional collateral or other sources of repayment described in 11 CFR 100.7(b)(11)(i) (A) and (B) and 100.8(b)(12)(i) (A) and (B); and

(v) A certification from the lending institution that the borrower's responses to paragraphs (e)(1) (i) through (iv) of this section are accurate, to the best of the lending institution's knowledge; that the loan was made or the line of credit established on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness; and that the lending institution is aware of the requirement that a loan or line of credit must be made on a basis which assures repayment and that the lending institution has complied with Commission regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12).

(2) The committee shall submit a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C–1.

(3) The committee shall file with the next due report a Schedule C–1 each time a loan or a line of credit is restructured to change the terms of the repayment.

(4) The committee shall report a receipt of funds in the next due report, on Schedule A, each time it makes a draw on a line of credit.

(f) *Use of pseudonyms.* (1) To determine whether the names and addresses of its contributors are being used in violation of 11 CFR 104.15 to solicit contributions or for commercial purposes, a committee may submit up to ten (10) pseudonyms on each report filed under this section.

(2) For purposes of this section, a pseudonym is a wholly fictitious name which does not represent the name of an actual contributor to a committee.

(3) If a committee uses pseudonyms it shall subtract the total dollar amount of the fictitious contributions from the total amount listed on line 11(a)(ii) of the Detailed Summary page, "Contributions from Individuals/Persons, Unitemized". Thus the committee will, for this purpose only, be overstating the amount of itemized contributions received and understating the amount of unitemized contributions received.

(4) No committee which files reports under this section shall attribute more than $5,000 in contributions to the same pseudonym in any calendar year.

(5) A committee using pseudonyms shall send a list of the pseudonyms under separate cover directly to the Reports Analysis Division, Federal Election Commission, 999 E Street, N.W., Washington, DC 20463, on or before the date on which any report containing such pseudonyms is filed with the Secretary of the Senate or the Commission. The Commission shall maintain the list, but shall exclude it from the public record. A committee shall not send any list of pseudonyms to the Secretary of the Senate or to any Secretary of State or equivalent State officer.

(6) A committee shall not use pseudonyms for the purpose of circumventing the reporting requirements or the limitations and prohibitions of the Act.

(g) *Building funds.* Gifts, subscriptions, loans, advances, deposits of money or anything of value made to defray costs of construction or purchase of office facilities received by a political committee in accordance with 11 CFR 100.7(b)(12) shall be reported as a memo entry on Schedule A. National party committees shall report building fund receipts and disbursements in accordance with 11 CFR 104.8(f) and 104.9(d).

(h) *Legal and accounting services.* A committee which receives legal or accounting services pursuant to 11 CFR 100.7(b) (13) and (14) during the reporting period shall report the services in accordance with paragraphs (i) (1) or (2) of this section.

(1) If the regular employer of person(s) who provide the services has paid in excess of $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the amounts paid for the services by the regular employer together with the date(s) the services were performed.

(2) For each regular employer who has paid no more than $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the sum of the amount(s) paid by each regular employer of person(s) who provide the services. The committee shall preserve all records of these services, for the period required by 11 CFR 102.9(c), to reflect the name of each regular employer, the amounts paid by each, and the date(s) the services were performed.

(i) *Cumulative reports.* The reports required to be filed under 11 CFR 104.5 shall be cumulative for the calendar year to which they relate, but if there has been no change in a category reported in a previous report during that year, only the amount thereof need be carried forward.

(j) *Earmarked contributions.* Earmarked contributions shall be reported in accordance with 11 CFR 110.6. See also 11 CFR 102.8(c).

(k) *Amending reports.* A committee shall change or correct a report previously filed under this section, no later than the next due report, after the committee discovers an error, omission or change in the information submitted in the report. A committee may submit only those pages that have been changed or corrected, or it may refile the entire, amended report. The committee shall identify the changes, either in a cover letter or on the amended pages or report, by specifying the lines on the Schedule(s) or Form(s) that have been amended.

(l) *Credit card payments.* (1) Where a committee has paid, by credit card, any disbursement(s) subject to paragraphs (c) (1) and (2) of this section, the committee shall report these disbursements in accordance with this paragraph. For the purposes of this section, a credit card represents a credit account with a depository institution (see 11 CFR 103.2) or other corporation that is not a depository institution. A credit account may permit the committee to make a partial payment of each monthly balance or may require the committee to pay each monthly balance in full.

(2) The reporting committee shall itemize on Schedule B each payment to a credit card issuer by specifying the depository institution or other corporation to which payment was made, the date and amount of payment. Where the committee has made a partial payment of a monthly balance, the committee shall report a memo entry for the outstanding credit balance on Schedule B and report the outstanding balance as a debt to the extent required by 11 CFR 104.11(b).

(3) Any disbursement reflected on a monthly account statement for a credit card, that otherwise is required to be itemized by paragraph (c)(2) of this section, shall be reported as a memo entry on Schedule B in addition to the information required under paragraph (l)(2) of this section.

5. New § 104.17 would be added to read as follows:

§ 104.17 Contents of reports for authorized committees (2 U.S.C. 434(b), 439a).

(a) *Scope.* The requirements of this section apply to all authorized committees of candidates for Federal office. All other political committees shall meet the requirements for reporting receipts and disbursements set forth at 11 CFR 104.3.

(b) *Reporting of Receipts.* (1) *General.* Each report filed under this section shall disclose the total amount of receipts for the reporting period and for the calendar year and shall disclose the information set forth at paragraphs (b)(2) through (4) of this section. The first report filed by a committee shall also include all amounts received prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not received during the current reporting period.

(2) *Cash on hand.* The amount of cash on hand at the beginning of the reporting period, including: currency; balance on deposit in banks, savings associations and other depository institutions; certificates of deposit, treasury bills and any other committee investments valued at cost. Non-liquid assets on hand, if received as in-kind contributions, should be reported in accordance with 11 CFR 104.13.

(3) *Categories of receipts.* Each report shall disclose the total amount of receipts received during the reporting period and during the calendar year for each of the following categories:

(i) Contributions from persons other than political committees, including individuals and committees that do not qualify as political committees under the Act, but excluding the candidate

who authorized the reporting committee;
(A) Itemized contributions;
(B) Unitemized contributions;
(ii) Contributions from political committees;
(A) Party committees, except that expenditures made under 11 CFR 110.7 (2 U.S.C. 441a(d)) by a party committee shall not be reported as contributions by the authorized committee on whose behalf they are made;
(B) Authorized committees of other candidates;
(C) Unauthorized committees other than party committees;
(iii) Contributions from the candidate, excluding loans which are reported under paragraph (b)(3)(vi)(A) of this section;
(iv) Total contributions (add contributions from persons, political committees and the candidate);
(v) Transfers from other committee(s) authorized by the candidate, regardless of amount;
(vi) Loans received;
(A) Loans made, guaranteed, or endorsed by the candidate to his or her authorized committee;
(B) All other loans to the committee;
(C) Total loans;
(vii) For authorized committee(s) of Presidential candidates, Federal funds received under chapters 95 and 96 of the Internal Revenue Code of 1954 (Title 26, United States Code);
(viii) Offsets to operating expenditures, such as vendor refunds and rebates;
(ix) Refunds of contributions made by the reporting committee to committees authorized by other candidates for Federal office and to other political committees;
(x) Other receipts (such as dividends, interest, loan repayments and reimbursements received pursuant to 11 CFR 113.1(g));
(xi) The total sum of all receipts.
(4) *Itemization of receipts.* The identification (as defined at 11 CFR 100.12) of each contributor and the aggregate year-to-date total for the contributor in each of the following categories shall be reported.
(i) Each person other than a political committee, including individuals and committees that do not qualify as political committees under the Act but excluding the candidate who authorized the reporting committee, who makes a contribution to the committee during the reporting period, whose contribution(s) aggregate in excess of $200 per calendar year, together with the date of receipt, the amount of the contribution(s) and the election(s) (e.g. primary or general) for which each contribution is made, except that the committee may elect to report this information for contributors of lesser amount(s) on a separate schedule;
(ii) All political committees which make contributions to the reporting committee during the reporting period, together with the date of receipt, amount of the contribution and the election(s) for which each contribution is made;
(iii) Each contribution by the candidate to the reporting committee during the reporting period, together with the date of receipt and amount of the contribution;
(iv) Each committee authorized by the candidate which transfers funds to the reporting committee during the reporting period, together with the date and amount of the transfer;
(v) Each person who makes a loan during the reporting period to the reporting committee or to the candidate acting as an agent of the committee, together with the identification of any endorser or guarantor of the loan, the date the loan was made, the amount or value of the loan, and, where applicable, the election(s) for which the loan was made;
(vi) Each person who makes a loan repayment to the reporting committee during the reporting period, together with the date and amount of the repayment;
(vii) Each person who provides an offset to operating expenditures, such as vendor rebates and refunds, to the reporting committee, in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the offset;
(viii) Each authorized committee for other candidates for Federal office and any other political committee which, during the reporting period, refunds a contribution made by the reporting committee, together with the date of receipt and amount of the refund; and
(ix) Each person who provides any dividend, interest, reimbursement received pursuant to 11 CFR 113.1(g) or other receipt to the reporting committee, in an aggregate amount in excess of $200 within the calendar year, together with the date and amount of the receipt.
(c) *Reporting of Disbursements.* Each report filed under this section shall disclose the total amount of disbursements for the reporting period and for the calendar year and shall disclose the information set forth at paragraph (c)(1) and (2) of this section. If a committee has paid any disbursements by credit card, the committee shall report these in accordance with paragraph (l) of this section. The first report filed by a committee shall also include all amounts disbursed prior to becoming a political committee under 11 CFR 100.5, even if these amounts were not disbursed during the current reporting period.
(1) *Categories of disbursements.* Each report shall disclose the total amount of disbursements made during the reporting period and during the calendar year in each of the following categories:
(i) Operating expenditures;
(A) Itemized expenditures;
(B) Unitemized expenditures;
(C) Total operating expenditures;
(ii) Transfers to other committees authorized by the candidate;
(iii) Loan repayments made;
(A) Repayment of loans made by or guaranteed by the candidate;
(B) Repayment of all other loans;
(C) Total loan repayments;
(iv) For an authorized committee of a candidate for the office of President, disbursements not subject to the limitations of 11 CFR 110.8 (2 U.S.C. 441a(b));
(v) Refunds of contributions to persons, including individuals but excluding the candidate and political committees;
(A) itemized refunds;
(B) Unitemized refunds;
(vi) Refunds of contributions to political committees;
(A) Party committees;
(B) Authorized committees for other candidates for Federal office;
(C) Unauthorized committees other than party committees;
(vii) Total contribution refunds (add contribution refunds to persons and contribution refunds to political committees);
(viii) Contributions to committees authorized by other candidates for Federal office and to other political committees;
(ix) Other disbursements, including any disbursements to nonfederal candidate committees;
(x) Total disbursements.
(2) *Itemization of disbursements.* Each report shall disclose the full name and address of each person in each of the following categories, as well as the information required by each category, whether the disbursement was made by the reporting committee or the candidate acting as its agent. For each disbursement governed by paragraphs (c)(2)(i) or (viii) of this section, the report shall disclose this information for each vendor or other person to whom a disbursement is made directly by the committee, and shall contain a memo entry for each vendor or other person to whom a disbursement is made by an agent of the committee.

(i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount, and purpose of the operating expenditure;
(A) As used in paragraph (c)(2) of this section, purpose means a brief statement or description of why the disbursement was made.
(B) Examples of statements or descriptions which adequately describe the purpose of a disbursement include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration would not meet the requirements of paragraph (c)(2) of this section for reporting the purpose of an expenditure.
(C) In addition to reporting the purpose described in paragraph (c)(2)(i)(A) and (B) of this section, whenever the reporting committee itemizes a disbursement that is partially or entirely a personal use for which reimbursement is required under 11 CFR 113.1(g)(1)(ii)(C) or (D), it shall provide a brief explanation of the activity for which reimbursement is required.
(ii) Each committee authorized by the same candidate to which a transfer is made by the reporting committee during the reporting period, together with the date and amount of the transfer;
(iii) Each authorized committee for other candidates for Federal office and any other political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of the contribution and, for any authorized committee that has received a contribution, the candidate's name, the election (e.g. primary or general) and office sought (including State or Congressional district, where applicable);
(iv) Each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of the loan repayment;
(A) All loan repayments from the reporting committee;
(B) All loan repayments from the candidate, if the proceeds of the loan were used in connection with the candidate's campaign;
(C) For each loan repayment, the committee shall either report the principal and the interest as separate disbursements, or, it shall report the sum of these as a single disbursement. If the committee applies the former method, the principal shall be reported on Schedules B and C as a loan repayment and the interest shall be reported on Schedule B as an operating expenditure. If the committee applies the latter method, the sum of the principal and the interest shall be reported on Schedule B as a loan repayment and only the principal shall be reported on Schedule C;
(D) The committee shall use one reporting method for the duration of a loan;
(v) Each person who has received a loan from the reporting committee during the reporting period, together with the date and amount or value of the loan, and for any authorized committee that has received a loan, the candidate's name, the election and office sought (including State or Congressional district, where applicable);
(vi) Each person who receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(i) of this section, together with the date and amount of the refund;
(vii) Each political committee which receives a contribution refund from the reporting committee during the reporting period where the receipt of the contribution was reported under paragraph (b)(4)(ii) of this section, together with the date and amount of the refund; and
(viii) Each person, including nonfederal candidate committees, who has received any disbursement during the reporting period not otherwise disclosed under paragraph (c)(2) of this section, to whom the aggregate amount or value of disbursements made by the reporting committee exceeds $200 within the calendar year, together with the date, amount, and purpose of the disbursement(s).
(d) *Summary of contributions and operating expenditures.* Each report filed under this section shall disclose for both the reporting period and the calendar year:
(1)(i) The total contributions to the reporting committee;
(ii) The total of contribution refunds;
(iii) The net contributions (subtract total of contribution refunds from total contributions);
(2) (i) The reporting committee's total Federal operating expenditures;
(ii) The total offsets to operating expenditures; and
(iii) The net Federal operating expenditures (subtract total offsets from total Federal operating expenditures).
(e) *Reporting debts and obligations.* (1) Each report filed under this section shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Where these debts and obligations are settled for less than their reported amount or value, each report filed under this section shall contain a statement as to the circumstances and conditions under which the debts or obligations were extinguished and the amount paid. See 11 CFR 116.7.
(2) A loan obtained by an individual prior to becoming a candidate for use in connection with that individual's campaign shall be reported as an outstanding loan owed to the lender by the candidate's principal campaign committee, if the loan is outstanding at the time the individual becomes a candidate.
(3) When a candidate or a committee obtains a loan or a line of credit from a lending institution as described in 11 CFR 100.7(b)(11) and 100.8(b)(12), it shall disclose in the next due report the following information on Schedule C–1 or C-P–1:
(i) The date and amount of the loan or line of credit;
(ii) The interest rate and repayment schedule of the loan or line of credit;
(iii) The types and value of traditional collateral or other sources of repayment that secure the loan or the line of credit, and whether that security interest is perfected;
(iv) An explanation of the basis upon which the loan was made or the line of credit established, if not made on the basis of either traditional collateral or other sources of repayment described in 11 CFR 100.7(b)(11)(i) (A) and (B) and 100.8(b)(12)(i) (A) and (B); and
(v) A certification from the lending institution that the borrower's responses to paragraphs (e)(1)(i) through (iv) of this section are accurate, to the best of the lending institution's knowledge; that the loan was made or the line of credit established on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness; and that the lending institution is aware of the requirement that a loan or line of credit must be made on a basis which assures repayment and that the lending institution has complied with Commission regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12).

(4) The committee shall submit a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C–1 or C–P–1.

(5) The committee shall file with the next due report a Schedule C–1 or C-P–1 each time a loan or a line of credit is restructured to change the terms of the repayment.

(6) The committee shall report a receipt of funds in the next due report, on Schedule A, each time it makes a draw on a line of credit.

(f) *Use of pseudonyms.* (1) To determine whether the names and addresses of its contributors are being used in violation of 11 CFR 104.15 to solicit contributions or for commercial purposes, a committee may submit up to ten (10) pseudonyms on each report filed under this section.

(2) For purposes of this section, a pseudonym is a wholly fictitious name which does not represent the name of an actual contributor to a committee.

(3) If a committee uses pseudonyms it shall subtract the total dollar amount of the fictitious contributions from the total amount listed on line 11(a)(ii) of the Detailed Summary page, "Contributions from Individuals/ Persons, Unitemized". Thus the committee will, for this purpose only, be overstating the amount received and understating the amount of unitemized contributions received.

(4) No committee which files reports under this section shall attribute more than $5,000 in contributions to the same pseudonym in any calendar year.

(5) A committee using pseudonyms shall send a list of the pseudonyms under separate cover directly to the Reports Analysis Division, Federal Election Commission, 999 E Street, N.W., Washington, DC 20463, on or before the date on which any report containing such pseudonyms is filed with the Secretary of the Senate or the Commission. The Commission shall maintain the list, but shall exclude it from the public record. A committee shall not send any list of pseudonyms to the Secretary of the Senate or to any Secretary of State or equivalent State officer.

(6) A committee shall not use pseudonyms for the purpose of circumventing the reporting requirements or the limitations and prohibitions of the Act.

(g) *Consolidated reports.* Each principal campaign committee shall consolidate in each report those reports required to be filed with it. These consolidated reports shall include reports submitted to it by any authorized committees and the principal campaign committee's own report. The consolidation shall be made on FEC Form 3–Z and shall be submitted with the reports of the principal campaign committee and with the reports, or applicable portions thereof, of the committees shown on the consolidation.

(h) *Legal and accounting services.* A committee which receives legal or accounting services pursuant to 11 CFR 100.7(b)(14) during the reporting period shall report the services in accordance with paragraphs (i) (1) or (2) of this section.

(1) If the regular employer of person(s) who provide the services has paid in excess of $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the amounts paid for the services by the regular employer together with the date(s) the services were performed.

(2) For each regular employer who has paid no more than $200 for the services during the calendar year, the committee shall report as a memo entry, on Schedule A, the sum of the amount(s) paid by each regular employer of person(s) who provide the services. The committee shall preserve all records of these services, for the period required by 11 CFR 102.9(c), to reflect the name of each regular employer, the amounts paid by each, and the date(s) the services were performed.

(i) *Cumulative reports.* The reports required to be filed under 11 CFR 104.5 shall be cumulative for the calendar year to which they relate, but if there has been no change in a category reported in a previous report during that year, only the amount thereof need be carried forward.

(j) *Earmarked contributions.* Earmarked contributions shall be reported in accordance with 11 CFR 110.6. *See* also 11 CFR 102.8(c).

(k) *Amending reports.* A committee shall change or correct a report previously filed under this section, no later than the next due report, after it discovers an error, omission or change in the information submitted in the report. A committee may submit only those pages that have been changed or corrected, or it may refile the entire, amended report. The committee shall identify the changes, either in a cover letter or on the amended pages or report, by specifying the lines on the Schedule(s) or Form(s) that have been amended.

(l) *Credit card payments.* (1) Where a committee has paid, by credit card, any disbursement(s) subject to paragraphs (c) (1) and (2) of this section, the committee shall report these disbursements in accordance with this paragraph. For the purposes of this section, a credit card represents a credit account with a depository institution (see 11 CFR 103.2) or other corporation that is not a depository institution. A credit account may permit the committee to make a partial payment of each monthly balance or may require the committee to pay each monthly balance in full.

(2) The reporting committee shall itemize on Schedule B each payment to a credit card issuer by specifying the depository institution or other corporation to which payment was made, the date and amount of payment. Where the committee has made a partial payment of a monthly balance, the committee shall report a memo entry for the outstanding credit balance on Schedule B and report the outstanding balance as a debt to the extent required by 11 CFR 104.11(b).

(3) Any disbursement reflected on a monthly account statement for a credit card, that otherwise is required to be itemized by paragraph (c)(2) of this section, shall be reported section, shall be reported as a memo entry on Schedule B in addition to the information required under paragraph (l)(2) of this section.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

6. The authority citation for part 108 would continue to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

7. Section 108.1 would be amended by redesignating the text as paragraph (a), revising the first sentence of newly designated paragraph (a), and adding new paragraph (b) to read as follows:

§ 108.1 Filing requirements (2 U.S.C. 439(a)(1)).

(a) Except as provided in paragraph (b)(1) of this section, a copy of each report and statement required to be filed by any person under the Act shall be filed either with the Secretary of State of the appropriate State or with the State officer who is charged by State law with maintaining state election campaign reports. * * *

(b)(1) The filing requirements and duties of State officers under 11 CFR part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements filed with the Commission.

(2) The provisions of paragraph (b)(1) of this section shall not apply to reports filed by candidates, and the authorized committees of candidates, for nomination for election, or election, to the office of Senator. See 11 CFR 108.3(a)(1).

8. Section 108.2 would be amended by revising the first sentence to read as follows:

§ 108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (2 U.S.C. 439(a)(2)).

Except as provided in 11 CFR 108.1(b)(1), a copy of each report and statement required to be filed under the Act (including 11 CFR part 104) by a Presidential or Vice Presidential candidate's principal campaign committee, or under 11 CFR 104.4 or part 109 by any other person making independent expenditures, in connection with a candidate seeking nomination for election to the office of President or Vice-President, shall be filed with the State officer of each State in which an expenditure is made in connection with the campaign of a candidate seeking nomination for election to the office of President or Vice-President. * * *

9. Section 108.3 would be revised to read as follows:

§ 108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (2 U.S.C. 439(a)(2)).

(a)(1) A copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and the authorized committees of candidates, for nomination for election, or election, to the office of Senator, shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(2) Except as provided in 11 CFR 108.1(b)(1), a copy of each report and statement required to be filed by any unauthorized committee under 11 CFR part 104, or by any other person under 11 CFR part 109, in connection with a campaign for nomination for election, or election to, the office of Senator, shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(b) Except as provided in 11 CFR 108.1(b)(1), a copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and authorized committees of candidates, for nomination for election, or election, to the office of Representative in, Delegate or Resident Commissioner to the Congress, or by unauthorized committees, or by any other person under 11 CFR part 109, in connection with these campaigns shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(c) Unauthorized committees that file reports pursuant to paragraph (b) of this section are required to file, and the Secretary of State is required to retain, only that portion of the report applicable to candidates seeking election in that State.

10. Section 108.4 would be revised to read as follows:

§ 108.4 Filing copies of reports by committees other than principal campaign committees (2 U.S.C. 439(a)(2)).

Except as provided in 11 CFR 108.1(b)(1), any unauthorized committee, which makes contributions in connection with a Presidential election and which is required to file a report(s) and statement(s) under the Act, shall file a copy of the report(s) and statement(s) with the State officer of the State in which both the recipient and contributing committees have their headquarters.

11. Section 108.6 would be amended by revising the introductory text to read as follows:

§ 108.6 Duties of State officers (2 U.S.C. 439(b)).

Except as provided in 11 CFR 108.1(b)(1), the Secretary of State, or the equivalent State officer, shall carry out the duties set forth in 11 CFR 108.6(a) through (d):

* * * * *

12. Section 108.8 would be revised to read as follows:

§ 108.8 Exemption for the District of Columbia.

Any copy of a report required to be filed with the equivalent officer in the District of Columbia under 11 CFR part 108 shall be deemed to be filed if the original has been filed with the Secretary or the Commission, as appropriate.

Dated: September 22, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97–25477 Filed 9–25–97; 8:45 am]

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Part V

Department of Housing and Urban Development

24 CFR Part 888

Fair Market Rents for the Section 8 Housing Assistance Payments Program, Fiscal Year 1998; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4232–N–02]

Fair Market Rents for the Section 8 Housing Assistance Payments Program—Fiscal Year 1998

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Final Fiscal Year (FY) 1998 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate Program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify their use.

Today's notice provides final FY 1998 FMRs for all areas. It includes increased FMRs for 16 areas that submitted public comments and for 3 areas as a result of HUD-contracted Random Digit Dialing (RDD) surveys conducted through August, 1997.

Today's notice also makes effective FMR reductions for 20 areas that were proposed for reduction in the April 30, 1997 notice (62 FR 23552), based on the results of recent RDD and American Housing Surveys (AHSs).

EFFECTIVE DATE: The FMRs published in this notice are effective on October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Operations Division, Office of Rental Assistance, telephone (202) 708–0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Alan Fox, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–9426, Extension 328 (e-mail: alan__fox@hud.gov). Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the "800" TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by FMRs established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Method Used To Develop FMRs

FMR Standard

FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 40th percentile rent, the dollar amount below which 40 percent of standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of units which are occupied by recent movers (renter households who moved into their unit within the past 15 months). Newly built units less than two years old are excluded, and adjustments have been made to correct for the below market rents of public housing units included in the data base.

Data Sources

HUD used the most accurate and current data available to develop the FMR estimates. The sources of survey data used for the base-year estimates are:

(1) The 1990 Census, which provides statistically reliable rent data for all FMR areas;

(2) The Bureau of the Census' American Housing Surveys (AHSs), which are used to develop between-Census revisions for the largest metropolitan areas and which have accuracy comparable to the decennial Census; and

(3) Random Digit Dialing (RDD) telephone surveys of individual FMR areas, which are based on a sampling procedure that uses computers to select statistically random samples of rental housing.

The base-year FMRs are updated using trending factors based on Consumer Price Index (CPI) data for rents and utilities or HUD regional rent change factors developed from RDD surveys. Annual average CPI data are available individually for 99 metropolitan FMR areas. RDD regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions. The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

State Minimum FMRs

In response to public concern that FMRs in rural areas were too low to operate the program successfully, HUD implemented a minimum FMR policy starting with the FY 1996 FMRs. FMRs are now established at the higher of the local 40th percentile rent level or the Statewide average of nonmetropolitan counties, subject to a ceiling rent cap. The State minimum also affects a small number of metropolitan areas whose rents would otherwise fall below the State minimum.

Public Comments

In response to the April 30, 1997 proposed FMRs, HUD received public comments covering 41 FMR areas. Rental housing survey information was provided for 26 of those FMR areas. All of the survey information submitted was evaluated and, based on that review, the FMRs for 16 areas are being revised. The information submitted for the other FMR areas was not considered sufficient to provide a basis for revising the FMRs. An RDD survey sponsored by local Public Housing Agencies (PHAs) for the Los Angeles FMR area found results that were the same as what had been proposed based on the HUD RDD survey.

The 16 FMR areas with approved FMR revisions are as follows: Orange County and Stockton-Lodi, CA; Lafayette, LA; Addison, Bennington, Chittenden, Lamoille, Orange, Rutland, Washington, Windham, and Windsor Counties, VT; Burlington, VT; Berkeley, Morgan, and Jefferson Counties, WV.

PHAs and other interested parties should be aware that FMR comments received too late for adjusting the current year's final FMRs will be held for use in the following year. In such cases HUD will trend the survey results to the date of the FMR estimate. If the PHA is concerned that rents are changing rapidly, surveys should be timed to be received as close as possible to HUD's deadline for public comments.

AHS and RDD Surveys

This notice makes effective the FMRs for 20 areas proposed with reductions based on recent RDD or AHS surveys. One of those areas, the Stockton-Lodi, CA MSA, submitted information that caused HUD to reduce the FMRs less than had been proposed. For the other areas, the lower proposed FMRs are, by this notice, being made final. FMR areas with reductions based on RDD surveys are:

1996 RDD:
- New Haven-Meriden, CT
- Des Moines, IA
- Pittsfield, MA
- Worcester, MA-CT

1997 RDD:
- Bakersfield, CA
- Los Angeles-Long Beach, CA
- Stockton-Lodi, CA
- Daytona Beach, FL
- Fort Myers-Cape Coral, FL
- Lakeland-Winter Haven, FL
- Melbourne-Titusville-Palm Bay, FL
- Brockton, MA
- Lawrence, MA-NH
- St Cloud, MN
- Salem, OR
- Harrisburg-Lebanon-Carlisle, PA
- Spokane, WA
- Tacoma, WA

The areas with reductions based on AHS surveys are:
- Fort Lauderdale, FL
- Miami, FL.

HUD is increasing FMRs for the following 3 areas, based on RDDs that were completed after the date of the proposed FMR notice:
- Detroit, MI
- Greensboro—Winston-Salem—High Point, NC
- Phoenix, AZ

Technical Correction: Des Moines, IA

The final FMRs for the Des Moines, IA MSA have been revised slightly upward ($4 for 2-bedroom units) to correct an error that resulted from applying the wrong inflation factor to the June, 1996 RDD survey. The corrected FMRs are listed in Schedule B.

FMR Area Definition Changes

In the April 30, 1997 publication of the proposed FY 1998 FMRs, HUD announced that it had reevaluated the definition of the Atlanta FMR area and proposed to add back Carroll, Pickens, and Walton Counties, which because of recent growth are now considered part of the housing market area. In addition, HUD announced that it was accepting the Office of Management and Budget's (OMB) expanded definition of the Jackson, TN metropolitan area as the revised FMR area. No comments were received concerning these proposed changes which, therefore, are being made effective with this publication.

Manufactured Home Space Surveys

HUD received no public comments concerning the manufactured home space FMRs.

FMRs for the rental of manufactured home spaces are 30 percent of the applicable Section 8 existing housing program FMR for two-bedroom unit. HUD accepts public comments requesting modifications of these FMRs where the 30 percent FMRs are thought to be inadequate. In order to be accepted as a basis for revising the FMRs, such comments must contain statistically valid survey data that show the 40th percentile space rent (excluding the cost of utilities) for the entire FMR area. However, the sampling requirements for manufactured home space rent surveys are easier to meet than for regular FMR comments, and interested parties should contact HUD for suggestions. HUD uses the same FMR area definitions for manufactured home space rental as for the Section 8 existing housing FMRs shown in Schedule B. Manufactured home space FMR revisions are published as final FMRs in Schedule D. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to update the Section 8 existing housing program FMRs.

HUD Rental Housing Survey Guides

HUD recommends the use of professionally-conducted RDD telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $10,000–$12,000. Areas with 500 or more program units usually meet this criterion, and areas with fewer units may meet it if the actual two-bedroom FMR rent standard is significantly different than that proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of about $5,000.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties. All grouped county surveys must be approved in advance by HUD. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on its relationship to the combined rent of the group of FMR areas.

PHAs that plan to use the RDD survey technique may obtain a copy of the appropriate survey guide by calling HUD USER on 1–800–245–2691. Larger PHAs should request "Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments." Smaller PHAs should obtain "Rental Housing Surveys; A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments." These guides are also available on the Internet at http://www.huduser.org/publications/ publicassist/ assisted/ rddlrge3.zip and .../rddsmall.exe, respectively.

HUD prefers, but does not mandate, the use of RDD telephone surveys, or the more traditional method described in the small PHA survey guide. Other survey methodologies are acceptable as long as they provide statistically reliable, unbiased estimates of the 40th percentile gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single-family, duplex and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means of verification for determining whether the sample is representative of the FMR area's rental housing stock. All survey results must be fully documented.

The cost of an RDD survey may vary, depending on the characteristics of the telephone system used in the FMR area. RDDs (and simplified telephone surveys) of some non-metropolitan areas have been unusually expensive because of telephone system characteristics. A PHA or PHA contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations HUD is prepared to relax normal sample size requirements.

FMRs for Federal Disaster Areas

Under the authority granted in 24 CFR part 899, the Secretary of HUD finds good cause to waive and hereby waives the regulatory requirements that govern requests for geographic area exception rents for areas that are declared disaster areas by the Federal Emergency Management Agency (FEMA). HUD is prepared to grant disaster-related exceptions up to 10 percent above the applicable FMRs for those areas. HUD field offices are authorized to approve such exceptions for (1) single-county FMR areas and for individual county parts of multi-county FMR areas that qualify as disaster areas under the Robert T. Stafford Disaster Relief and

Emergency Assistance Act; if (2) the PHA certifies that damage to the rental housing stock as a result of the disaster is so substantial that it has increased the prevailing rent levels in the affected area. Such exception rents must be requested in writing by the responsible PHAs. Exception rents approved by HUD during FY 1998 will remain in effect until superseded by the publication of the final FY 2000 FMRs.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate Program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

Regulatory Flexibility Act

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 Program.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR Part 888, are amended as follows:

Dated: September 16, 1997.

Andrew M. Cuomo,

Secretary.

Fair Market Rents for the Section 8 Housing Assistance Payments Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. *Metropolitan Areas*—FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition. The FMRs shown in Schedule B incorporate OMB's most current definitions of metropolitan areas, with the exceptions discussed in paragraph (b). HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions.

b. *Exceptions to OMB Definitions*—The exceptions are counties deleted from several large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the "Metropolitan FMR Areas" listing:

Metropolitan Area and Counties Deleted

Chicago, IL
  DeKalb, Grundy and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN
  Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX
  Henderson County
Flagstaff, AZ–UT
  Kane County, UT
New Orleans, LA
  St. James Parish
Washington, DC–MD–VA–WV
  Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren Counties in Virginia

c. *Nonmetropolitan Area FMRs*—FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states and for FMR areas in Puerto Rico, the Virgin Islands and the Pacific Islands.

d. *Virginia Independent Cities*—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan County. The full definitions of these areas, including the independent cities, are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED WITH COUNTY

County	Cities
Allegheny	Clifton Forge and Covington
Augusta	Staunton and Waynesboro
Carroll	Galax
Frederick	Winchester
Greensville	Emporia
Henry	Martinsville
Montgomery	Radford
Rockbridge	Buena Vista and Lexington
Rockingham	Harrisonburg
Southhampton	Franklin
Wise	Norton

e. *FMRs for Manufactured Home Spaces*—FMRs for Section 8 manufactured home spaces are established at 30 percent of the two-bedroom Section 8 existing housing program FMRs, with the exception of the areas listed in Schedule D whose FMRs have been modified on the basis of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to estimate the Section 8 existing housing FMRs. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the Section 8 existing FMRs.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	253	299	374	522	591	Calhoun
Birmingham, AL MSA	359	405	472	640	710	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA	341	380	455	595	645	Russell
Decatur, AL MSA	335	339	428	553	661	Lawrence, Morgan
Dothan, AL MSA	304	311	386	532	539	Dale, Houston
Florence, AL MSA	284	327	421	525	588	Colbert, Lauderdale
Gadsden, AL MSA	253	309	357	463	570	Etowah
Huntsville, AL MSA	352	413	508	677	806	Limestone, Madison
Mobile, AL MSA	370	413	473	637	747	Baldwin, Mobile
Montgomery, AL MSA	385	412	486	662	797	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	332	356	473	650	688	Tuscaloosa

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	242	287	343	444	509
Bullock	242	287	343	444	509
Chambers	242	287	343	444	510
Chilton	250	287	343	444	509
Clarke	242	287	343	444	509
Cleburne	242	287	343	444	509
Conecuh	242	287	343	444	509
Covington	242	287	343	444	509
Cullman	242	287	343	455	553
Dekalb	242	287	343	444	509
Fayette	242	287	343	444	509
Geneva	242	287	343	444	509
Hale	242	287	343	444	509
Jackson	261	287	343	444	545
Lee	255	356	457	594	751
Macon	264	296	395	495	554
Marion	242	287	343	444	509
Monroe	242	287	343	444	509
Pickens	242	287	343	444	509
Randolph	242	287	343	444	509
Talladega	242	287	343	444	509
Walker	242	298	351	454	578
Wilcox	242	287	343	444	509

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bibb	242	287	343	462	554
Butler	242	287	343	444	509
Cherokee	242	287	343	444	509
Choctaw	242	287	343	444	509
Clay	242	287	343	444	509
Coffee	242	340	441	614	689
Coosa	242	287	343	444	509
Crenshaw	242	287	343	444	509
Dallas	242	287	343	444	509
Escambia	242	287	343	444	509
Franklin	242	287	343	444	509
Greene	242	287	343	444	509
Henry	242	287	343	444	509
Lamar	242	287	343	444	509
Lowndes	242	287	343	444	509
Marengo	242	287	343	444	509
Marshall	277	287	349	484	573
Perry	242	287	343	444	509
Pike	247	287	343	444	517
Sumter	242	287	343	444	509
Tallapoosa	243	287	343	444	509
Washington	242	287	343	444	509
Winston	242	287	343	444	509

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	487	575	763	1061	1253	Anchorage

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutian East	512	577	651	812	1064
Bethel	661	827	1047	1311	1467
Dillingham	638	649	864	1081	1210
Haines	476	590	672	914	941
Kenai Peninsula	433	552	665	924	1091
Kodiak Island	681	748	971	1215	1576
Matanuska-Susitna	457	619	697	946	1117
North Slope	784	783	967	1346	1568
Pr.Wales-Outer Ketchikan	357	568	653	906	958
Skagway-Yakutat-Angoon	437	445	576	721	809
Valdez-Cordova	535	655	727	929	1106
Wrangell-Petersburg	389	574	698	888	975

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutian West	439	496	556	698	781
Bristol Bay	531	612	688	957	1041
Fairbanks North Star	403	548	719	989	1166
Juneau	711	822	1046	1392	1447
Ketchikan Gateway	523	639	856	1192	1254
Lake & Peninsula	409	662	744	929	1042
Nome	673	833	935	1301	1468
Northwest Arctic	809	911	1022	1423	1678
Sitka	583	669	750	1044	1232
Southeast Fairbanks	449	470	568	710	797
Wade Hampton	382	576	649	811	909
Yukon-Koyukuk	510	575	648	810	938

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ	415	450	583	783	940	Coconino
Las Vegas, NV-AZ MSA	482	572	681	948	1119	Mohave
Phoenix-Mesa, AZ MSA	410	496	623	866	1021	Maricopa, Pinal
Tucson, AZ MSA	359	430	572	796	939	Pima
Yuma, AZ MSA	359	415	553	768	774	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	355	373	474	619	735
Gila	355	373	474	619	735
Greenlee	355	373	474	619	735
Navajo	355	373	474	619	735
Yavapai	377	393	524	731	805

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cochise	355	373	474	619	735
Graham	355	373	474	619	735
La Paz	355	373	474	619	735
Santa Cruz	355	393	487	619	735

ARKANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	301	378	497	672	696	Benton, Washington
Fort Smith, AR-OK MSA	298	302	397	531	557	Crawford, Sebastian
Jonesboro, AR MSA	305	331	390	538	568	Craighead
Little Rock-North Little Rock, AR MSA	371	411	489	676	789	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	340	395	465	646	679	Crittenden

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 3

A R K A N S A S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR-AREA within STATE
Pine Bluff, AR MSA	283	336	442	558	725	Jefferson
Texarkana, TX-Texarkana, AR MSA	302	369	450	594	630	Miller

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Arkansas	257	278	356	487	528
Baxter	234	298	396	509	620
Bradley	234	278	356	472	528
Carroll	275	301	356	472	564
Clark	257	278	361	472	570
Cleburne	265	278	356	472	535
Columbia	234	278	356	472	528
Cross	243	308	356	479	565
Desha	234	278	356	472	528
Franklin	245	278	356	472	528
Garland	234	298	399	557	657
Greene	251	278	356	472	528
Hot Spring	234	278	356	472	528
Independence	246	285	356	472	528
Jackson	242	278	356	472	528
Lafayette	245	278	356	472	528
Lee	258	278	356	472	528
Little River	234	278	362	502	592
Madison	267	278	362	472	528
Miasiasippi	266	289	387	510	572
Montgomery	234	278	356	472	528
Newton	234	278	356	472	528
Perry	234	278	356	472	528
Pike	234	278	356	472	528
Polk	234	278	356	472	528
Prairie	234	278	356	472	528
St. Francis	234	284	356	482	567
Searcy	234	278	356	472	528
Sharp	234	278	356	472	528
Union	293	310	372	499	611
White	234	278	356	488	528
Yell	243	278	356	472	528

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashley	234	278	356	472	559
Boone	277	282	374	521	615
Calhoun	234	278	356	472	528
Chicot	234	278	356	472	528
Clay	234	278	356	472	528
Cleveland	234	278	356	472	528
Conway	234	289	387	483	542
Dallas	234	278	356	472	528
Drew	234	303	405	560	569
Fulton	242	278	356	472	528
Grant	243	289	356	472	533
Hempstead	234	278	356	472	528
Howard	234	278	356	472	528
Izard	234	278	356	472	528
Johnson	234	278	356	472	528
Lawrence	234	278	356	472	528
Lincoln	253	278	362	484	528
Logan	245	278	356	472	528
Marion	234	278	356	472	528
Monroe	238	278	356	472	528
Nevada	234	278	356	488	528
Ouachita	273	278	356	491	580
Phillips	234	278	356	472	528
Poinsett	234	278	356	472	528
Pope	234	306	387	537	619
Randolph	234	278	356	472	528
Scott	234	278	356	472	528
Sevier	256	278	356	472	528
Stone	234	278	356	472	528
Van Buren	234	278	356	472	583
Woodruff	234	278	356	472	528

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 4

C A L I F O R N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	354	398	499	693	767	Kern
Chico-Paradise, CA MSA	324	416	554	759	908	Butte
Fresno, CA MSA	399	447	533	741	855	Fresno, Madera
Los Angeles-Long Beach, CA PMSA	486	583	737	995	1187	Los Angeles
Merced, CA MSA	386	435	528	730	862	Merced
Modesto, CA MSA	427	460	562	783	922	Stanislaus
Oakland, CA PMSA	535	647	812	1113	1330	Alameda, Contra Costa
Orange County, CA PMSA	635	693	858	1193	1328	Orange
Redding, CA MSA	367	408	510	709	835	Shasta
Riverside-San Bernardino, CA PMSA	432	481	587	816	964	Riverside, San Bernardino
Sacramento, CA PMSA	459	518	648	899	1059	El Dorado, Placer, Sacramento
Salinas, CA MSA	520	608	733	1020	1070	Monterey
San Diego, CA MSA	483	552	691	960	1133	San Diego
San Francisco, CA PMSA	603	781	987	1354	1432	Marin, San Francisco, San Mateo
San Jose, CA PMSA	700	799	987	1353	1519	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	498	563	714	991	1171	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	605	672	852	1186	1338	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	619	737	985	1369	1604	Santa Cruz
Santa Rosa, CA PMSA	532	604	782	1088	1284	Sonoma
Stockton-Lodi, CA MSA	401	453	581	808	954	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	512	582	711	986	1165	Napa, Solano
Ventura, CA PMSA	537	617	781	1039	1209	Ventura
Visalia-Tulare-Porterville, CA MSA	359	381	497	693	792	Tulare
Yolo, CA PMSA	462	527	652	904	1069	Yolo
Yuba City, CA MSA	319	372	479	668	772	Sutter, Yuba

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alpine	301	451	510	709	764
Calaveras	364	421	561	780	920
Del Norte	308	422	561	781	922
Humboldt	310	430	564	786	930
Inyo	311	421	540	708	764
Lake	339	431	575	725	943
Mariposa	325	413	531	696	821
Modoc	329	368	474	661	764
Nevada	377	515	686	954	1105
San Benito	451	531	665	927	1085
Siskiyou	315	368	474	661	764
Trinity	338	368	474	661	764

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Amador	415	457	611	850	947
Colusa	329	368	474	661	764
Glenn	301	368	474	661	764
Imperial	340	425	523	729	764
Kings	349	405	506	704	830
Lassen	368	373	485	661	764
Mendocino	416	501	616	857	863
Mono	459	551	732	1018	1203
Plumas	332	368	474	661	764
Sierra	301	403	497	690	815
Tehama	314	368	474	661	764
Tuolumne	333	454	606	843	994

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 5

COLORADO

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	478	573	734	1023	1206	Boulder
Colorado Springs, CO MSA	424	455	607	845	998	El Paso
Denver, CO PMSA	401	478	637	884	1043	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	419	517	639	887	1048	Larimer
Grand Junction, CO MSA	386	400	501	675	803	Mesa
Greeley, CO PMSA	401	443	558	774	916	Weld
Pueblo, CO MSA	406	421	526	708	844	Pueblo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alamosa	374	388	485	654	779
Baca	374	388	485	654	779
Chaffee	374	388	485	654	779
Clear Creek	374	436	494	687	810
Costilla	374	388	485	654	779
Custer	374	388	485	654	779
Dolores	374	388	485	654	779
Elbert	413	458	523	654	858
Garfield	434	466	588	734	962
Grand	444	448	568	711	860
Hinsdale	374	395	485	654	779
Jackson	374	388	485	654	779
Kit Carson	374	388	485	654	779
La Plata	489	540	713	992	1170
Lincoln	374	388	485	654	779
Mineral	374	388	485	654	779
Montezuma	374	388	485	654	779
Morgan	374	388	485	654	779
Ouray	374	388	491	654	794
Phillips	374	388	485	654	779
Prowers	374	388	485	654	779
Rio Grande	374	388	485	654	779
Saguache	374	388	485	654	779
San Miguel	688	994	1092	1365	1761
Summit	482	577	739	1029	1267
Washington	374	388	485	654	779

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Archuleta	447	490	579	781	929
Bent	374	388	485	654	779
Cheyenne	374	388	485	654	779
Conejos	374	388	485	654	779
Crowley	374	388	485	654	779
Delta	374	388	485	654	779
Eagle	503	548	731	1018	1199
Fremont	374	388	485	654	779
Gilpin	374	497	631	834	922
Gunnison	374	388	485	654	779
Huerfano	374	388	485	654	779
Kiowa	374	388	485	654	779
Lake	374	388	485	654	779
Las Animas	374	399	485	654	779
Logan	374	388	485	654	779
Moffat	374	388	485	654	779
Montrose	374	388	491	680	802
Otero	374	388	485	654	779
Park	374	414	539	748	851
Pitkin	561	768	1023	1349	1533
Rio Blanco	374	388	485	654	779
Routt	374	452	598	830	978
San Juan	374	388	485	654	779
Sedgwick	374	388	485	654	779
Teller	374	443	591	821	828
Yuma	374	388	485	654	779

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CONNECTICUT

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	468	609	734	917	1144	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	586	702	876	1156	1332	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT PMSA	430	535	684	858	1042	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	500	614	760	973	1127	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	486	587	715	895	1023	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town Windham county towns of Canterbury town, Plainfield town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 7

CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	749	877	1070	1434	1584	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	425	575	711	888	994	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT	403	488	610	761	853	Windham county towns of Thompson town
NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	356	575	649	902	1063	Hartland town
Litchfield	413	563	751	938	1067	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	613	694	927	1288	1519	Chester town, Deep River town, Essex town Westbrook town
New London	519	635	721	932	1182	Lyme town, Voluntown town
Tolland	356	575	649	902	908	Union town
Windham	409	501	649	812	1020	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	477	529	602	781	888	Kent
Wilmington-Newark, DE-MD PMSA	425	562	654	889	1073	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	421	447	571	750	800

DIST. OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA	609	692	812	1106	1333	District of Columbia

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 8

FLORIDA

METROPOLITAN FMR AREAS	0 BR.	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	380	444	569	755	801	Flagler, Volusia
Fort Lauderdale, FL PMSA	470	553	684	952	1121	Broward
Fort Myers-Cape Coral, FL MSA	408	470	567	791	826	Lee
Fort Pierce-Port Lucie, FL MSA	453	497	644	838	903	Martin, St. Lucie
Fort Walton Beach, FL MSA	398	432	490	665	784	Okaloosa
Gainesville, FL MSA	396	432	526	720	850	Alachua
Jacksonville, FL MSA	414	463	558	738	820	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	380	416	470	583	636	Polk
Melbourne-Titusville-Palm Bay, FL MSA	380	443	555	743	866	Brevard
Miami, FL PMSA	440	552	688	946	1096	Dade
Naples, FL MSA	424	597	718	998	1113	Collier
Ocala, FL MSA	398	432	490	644	756	Marion
Orlando, FL MSA	491	558	665	874	1066	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	396	432	490	626	671	Bay
Pensacola, FL MSA	396	432	490	656	774	Escambia, Santa Rosa
Punta Gorda, FL MSA	396	454	604	839	990	Charlotte
Sarasota-Bradenton, FL MSA	397	504	641	825	897	Manatee, Sarasota
Tallahassee, FL MSA	405	448	591	773	931	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	386	460	569	757	917	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton, FL MSA	485	567	701	932	1152	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	380	416	470	583	634
Calhoun	380	416	470	583	634
Columbia	380	416	470	583	634
Dixie	380	416	470	583	634
Gilchrist	380	416	470	583	634
Gulf	380	416	470	583	634
Hardee	380	416	470	583	634
Highlands	380	416	470	585	654
Indian River	380	475	611	764	855
Jefferson	380	416	470	583	634
Levy	380	416	470	583	634
Madison	380	416	470	583	634
Okeechobee	380	416	470	583	640
Sumter	380	416	470	583	634
Taylor	380	416	470	583	635
Wakulla	380	416	470	583	634
Washington	380	416	470	583	634

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bradford	380	416	470	583	634
Citrus	380	416	470	583	634
Desoto	380	416	470	583	634
Franklin	380	416	470	583	634
Glades	380	416	470	583	634
Hamilton	380	416	470	583	634
Hendry	380	416	484	607	680
Holmes	380	416	470	583	634
Jackson	380	416	470	583	634
Lafayette	380	416	470	583	634
Liberty	380	416	470	583	634
Monroe	544	614	789	1087	1293
Putnam	380	416	470	583	634
Suwannee	380	416	470	583	634
Union	380	416	470	583	634
Walton	380	416	470	605	756

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 9

G E O R G I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	295	346	423	577	624	Dougherty, Lee
Athens, GA MSA	364	392	507	692	834	Clarke, Madison, Oconee
Atlanta, GA MSA	512	570	665	885	1072	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett Henry, Newton, Paulding, Pickens, Rockdale, Spalding Walton
Augusta-Aiken, GA-SC MSA	350	419	493	670	792	Columbia, Mcduffie, Richmond
Chattanooga, TN-GA MSA	357	417	500	646	737	Catoosa, Dade, Walker
Columbus, GA-AL MSA	341	380	455	595	645	Chattahoochee, Harris, Muscogee
Macon, GA MSA	382	426	494	682	701	Bibb, Houston, Jones, Peach, Twiggs
Savannah, GA MSA	356	441	514	693	721	Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Appling	276	333	407	527	599	Atkinson	276	333	407	527	599
Bacon	276	333	407	527	599	Baker	276	333	407	527	599
Baldwin	276	353	431	552	603	Banks	276	333	407	527	599
Ben Hill	276	333	407	527	607	Berrien	276	333	407	527	599
Bleckley	276	333	407	527	599	Brantley	276	333	407	527	599
Brooks	276	333	407	527	599	Bulloch	333	338	434	559	710
Burke	276	333	407	527	599	Butts	276	365	485	649	680
Calhoun	276	333	407	527	599	Camden	386	437	489	680	804
Candler	276	333	407	527	599	Charlton	276	333	407	527	599
Chattooga	276	333	407	527	599	Clay	276	333	407	527	599
Clinch	276	333	407	527	599	Coffee	276	333	407	527	607
Colquitt	276	333	407	527	599	Cook	276	333	407	527	599
Crawford	276	333	407	527	599	Crisp	279	333	407	527	599
Dawson	276	359	478	598	737	Decatur	276	333	407	527	599
Dodge	276	333	407	527	599	Dooly	276	333	407	527	599
Early	276	333	407	527	599	Echols	276	333	407	527	599
Elbert	276	333	407	527	599	Emanuel	276	333	407	527	599
Evans	276	333	407	527	599	Fannin	276	333	407	527	599
Floyd	276	333	408	538	599	Franklin	276	333	407	527	599
Gilmer	276	333	407	527	599	Glascock	276	333	407	527	599
Glynn	385	431	488	655	803	Gordon	328	333	415	535	683
Grady	281	333	407	527	599	Greene	276	333	407	527	599
Habersham	296	333	407	527	604	Hall	292	444	522	654	730
Hancock	276	333	407	527	599	Haralson	276	333	407	527	599
Hart	276	333	407	527	599	Heard	276	333	407	527	599
Irwin	276	333	407	527	599	Jackson	307	333	418	527	687
Jasper	276	333	412	559	599	Jeff Davis	276	333	407	527	599
Jefferson	276	333	407	527	607	Jenkins	276	333	407	527	599

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 10

G E O R G I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Johnson	276	333	407	527	599	Lamar	276	342	407	527	645
Lanier	276	333	407	527	599	Laurens	282	333	407	527	599
Liberty	344	383	436	606	611	Lincoln	276	333	407	527	599
Long	276	359	407	527	599	Lowndes	309	374	452	635	702
Lumpkin	276	372	419	560	687	Mcintosh	276	333	407	527	599
Macon	276	333	407	527	599	Marion	276	333	407	527	599
Meriwether	276	333	407	527	599	Miller	276	333	407	527	599
Mitchell	276	333	407	527	599	Monroe	276	333	407	536	599
Montgomery	276	333	407	527	599	Morgan	276	333	422	527	599
Murray	276	333	407	527	599	Oglethorpe	276	333	407	527	599
Pierce	276	333	407	527	599	Pike	321	348	440	613	617
Polk	276	333	407	550	599	Pulaski	276	333	407	527	599
Putnam	276	333	407	527	607	Quitman	276	333	407	527	599
Rabun	276	333	407	527	599	Randolph	276	333	407	527	599
Schley	276	333	407	527	599	Screven	276	333	407	527	599
Seminole	276	333	407	527	599	Stephens	276	333	407	527	599
Stewart	276	333	407	527	599	Sumter	276	338	407	527	599
Talbot	276	333	407	527	599	Taliaferro	276	333	407	527	599
Tattnall	276	333	407	527	599	Taylor	276	333	407	527	599
Telfair	276	333	407	527	599	Terrell	276	333	407	527	599
Thomas	276	343	407	527	599	Tift	276	333	407	527	599
Toombs	276	333	407	527	599	Towns	276	333	407	527	599
Treutlen	276	333	407	527	599	Troup	276	376	424	529	599
Turner	276	333	407	527	599	Union	276	333	425	532	599
Upson	285	333	407	527	599	Ware	305	343	407	527	633
Warren	276	333	407	527	599	Washington	276	333	407	527	599
Wayne	285	333	407	527	599	Webster	276	333	407	527	599
Wheeler	276	333	407	527	599	White	276	333	407	527	613
Whitfield	276	362	436	557	657	Wilcox	276	333	407	527	599
Wilkes	276	333	407	527	599	Wilkinson	276	333	407	527	599
Worth	276	333	407	527	599						

H A W A I I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	700	838	986	1333	1442	Honolulu

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 11

H A W A I I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hawaii	470	613	704	936	1153
Maui	759	941	1148	1483	1679
Kauai	600	897	1092	1444	1562

I D A H O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA	384	439	532	739	874	Ada, Canyon
Pocatello, ID MSA	275	319	411	560	661	Bannock

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	275	319	411	544	644
Benewah	275	319	411	544	644
Blaine	425	467	623	869	1023
Bonner	316	391	484	671	772
Boundary	275	319	411	544	644
Camas	275	319	411	544	644
Cassia	275	319	411	544	644
Clearwater	275	319	411	544	644
Elmore	275	319	411	544	644
Fremont	275	319	411	544	644
Gooding	275	319	411	544	644
Jefferson	283	319	411	544	644
Kootenai	349	411	538	748	884
Lemhi	275	319	411	544	644
Lincoln	275	319	411	544	644
Minidoka	275	319	411	544	644
Oneida	276	319	411	544	644
Payette	275	319	411	544	644
Shoshone	275	319	411	544	644
Twin Falls	275	319	416	548	644
Washington	275	319	411	544	644

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bear Lake	275	319	411	544	644
Bingham	292	319	411	544	644
Boise	275	354	411	544	644
Bonneville	280	352	484	651	794
Butte	275	319	411	544	644
Caribou	275	319	411	544	644
Clark	275	319	411	544	644
Custer	275	319	411	544	644
Franklin	275	319	411	544	644
Gem	275	319	411	544	644
Idaho	275	319	411	544	644
Jerome	275	319	411	544	644
Latah	275	319	411	544	653
Lewis	275	319	411	544	644
Madison	275	319	411	544	644
Nez Perce	280	319	411	544	644
Owyhee	275	319	411	544	644
Power	275	319	411	544	644
Teton	299	319	411	556	658
Valley	286	319	411	544	644

I L L I N O I S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	331	404	541	751	793	Mclean
Champaign-Urbana, IL MSA	339	416	538	738	884	Champaign
Chicago, IL	529	635	756	946	1058	Cook, Dupage, Kane, Lake, Mchenry, Will
Davenport-Moline-Rock Island, IA-IL MSA	275	379	469	607	657	Henry, Rock Island

Note: The FMR5 for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 12

I L L I N O I S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Decatur, IL MSA	263	341	439	593	615	Macon
De Kalb County, IL	409	477	604	839	973	Dekalb
Grundy County, IL	358	413	549	725	771	Grundy
Kankakee, IL PMSA	325	393	525	670	735	Kankakee
Kendall County, Il	494	563	679	945	950	Kendall
Peoria-Pekin, IL MSA	367	405	543	722	887	Peoria, Tazewell, Woodford
Rockford, IL MSA	352	451	549	691	805	Boone, Ogle, Winnebago
St. Louis, MO-IL MSA	310	378	491	638	706	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	304	376	501	667	759	Menard, Sangamon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	255	286	368	483	586
Bond	255	286	368	483	542
Bureau	255	321	377	483	542
Carroll	255	286	368	483	542
Christian	274	286	370	485	542
Clay	255	286	368	483	542
Crawford	255	286	368	483	542
De Witt	259	286	368	487	542
Edgar	255	286	368	483	542
Effingham	255	295	368	483	542
Ford	242	340	442	567	620
Fulton	255	286	368	483	542
Greene	255	286	368	483	542
Hancock	255	288	368	483	542
Henderson	256	286	368	483	542
Jackson	309	310	391	555	621
Jefferson	256	300	375	511	542
Johnson	255	286	368	483	542
La Salle	255	298	398	538	603
Lee	284	292	390	488	548
Logan	285	303	403	505	633
Macoupin	255	286	368	483	542
Marshall	255	286	368	483	542
Massac	256	286	368	483	542
Montgomery	255	286	368	483	542
Moultrie	255	286	368	496	542
Piatt	255	310	402	549	563
Pope	255	286	368	483	542
Putnam	255	286	368	483	542

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alexander	255	286	368	483	542
Brown	255	286	368	483	542
Calhoun	255	286	368	483	542
Cass	256	286	368	483	542
Clark	255	286	368	483	542
Coles	269	320	426	565	669
Cumberland	255	286	368	483	542
Douglas	272	286	368	483	542
Edwards	255	286	368	483	542
Fayette	255	286	368	483	542
Franklin	255	286	368	483	542
Gallatin	255	286	368	483	542
Hamilton	255	287	368	483	542
Hardin	255	286	368	483	542
Iroquois	255	286	368	483	542
Jasper	255	288	368	483	542
Jo Daviess	282	305	368	483	542
Knox	255	286	368	483	559
Lawrence	255	286	368	483	542
Livingston	255	314	419	540	589
Mcdonough	255	291	368	483	580
Marion	260	286	368	483	542
Mason	255	286	368	483	549
Mercer	255	286	368	483	542
Morgan	255	322	429	571	602
Perry	256	286	368	483	542
Pike	255	286	368	483	542
Pulaski	255	286	368	483	542
Randolph	255	286	368	483	542

Note: The FMR5 for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 13

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Richland	255	286	366	483	542
Schuyler	255	286	368	483	542
Shelby	255	286	368	483	542
Stephenson	269	308	389	487	546
Vermilion	255	324	405	507	567
Warren	269	286	368	483	542
Wayne	255	286	368	483	542
Whiteside	269	306	407	510	574
Saline	255	286	368	483	542
Scott	255	286	368	483	542
Stark	255	286	368	483	542
Union	255	286	368	483	542
Wabash	255	286	368	483	572
Washington	255	305	406	509	661
White	255	286	368	483	542
Williamson	255	286	370	514	542

I N D I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	360	466	620	861	1017	Monroe
Cincinnati, OH-KY-IN	303	390	521	699	755	Dearborn
Elkhart-Goshen, IN MSA	363	414	524	670	769	Elkhart
Evansville-Henderson, IN-KY MSA	275	327	424	531	594	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	311	397	492	635	690	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	363	478	596	748	836	Lake, Porter
Indianapolis, IN MSA	355	445	535	670	751	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	334	396	516	663	722	Howard, Tipton
Lafayette, IN MSA	338	430	573	797	941	Clinton, Tippecanoe
Louisville, KY-IN MSA	310	398	488	674	711	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	289	360	426	578	683	Delaware
Ohio County, IN	281	316	404	521	573	Ohio
South Bend, IN MSA	312	415	546	682	765	St. Joseph
Terre Haute, IN MSA	281	329	419	524	584	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bartholomew	390	420	507	633	833
Blackford	275	310	408	511	572
Carroll	275	310	396	510	560
Crawford	275	310	396	510	560
Decatur	275	335	429	555	604
Fayette	275	310	397	510	601
Franklin	275	310	396	510	627
Gibson	275	310	396	510	560
Greene	275	310	396	510	560
Jackson	337	353	437	577	620
Jay	275	310	396	510	560
Benton	275	310	396	510	560
Brown	275	365	481	668	691
Cass	275	310	396	510	560
Daviess	275	310	396	510	560
Dubois	275	310	396	510	578
Fountain	275	310	396	510	560
Fulton	303	317	396	533	560
Grant	290	310	396	512	560
Henry	275	310	396	510	560
Jasper	275	333	396	510	560
Jefferson	275	310	396	510	560

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 14

I N D I A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Jennings	287	310	396	510	560
Kosciusko	275	364	439	569	615
La Porte	280	338	453	580	634
Marshall	325	330	439	553	615
Miami	275	310	396	510	560
Newton	287	310	396	510	560
Orange	275	310	396	510	560
Parke	275	310	396	510	586
Pike	275	310	396	510	560
Putnam	299	348	428	574	579
Ripley	275	310	396	518	587
Spencer	275	310	396	510	560
Steuben	336	380	454	567	634
Switzerland	275	310	396	510	560
Wabash	275	310	396	510	560
Washington	275	310	396	510	560
White	275	310	396	510	619
Knox	280	310	401	510	561
Lagrange	280	322	411	535	622
Lawrence	275	310	398	514	560
Martin	275	310	396	510	560
Montgomery	321	337	421	534	591
Noble	317	323	402	519	574
Owen	275	310	396	510	587
Perry	275	310	396	510	560
Pulaski	275	310	396	510	560
Randolph	275	310	396	510	560
Rush	283	310	396	510	587
Starke	275	310	396	510	560
Sullivan	275	310	396	510	560
Union	275	310	396	510	560
Warren	275	310	396	510	560
Wayne	275	310	396	510	560

I O W A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	268	378	486	677	726	Linn
Davenport-Moline-Rock Island, IA-IL MSA	275	379	469	607	657	Scott
Des Moines, IA MSA	346	438	538	698	733	Dallas, Polk, Warren
Dubuque, IA MSA	285	348	448	572	698	Dubuque
Iowa City, IA MSA	337	434	558	775	915	Johnson
Omaha, NE-IA MSA	291	399	503	660	740	Pottawattamie
Sioux City, IA-NE MSA	335	402	501	625	714	Woodbury
Waterloo-Cedar Falls, IA MSA	265	339	423	564	662	Black Hawk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	260	321	403	511	564
Allamakee	260	321	403	517	592
Audubon	260	321	403	511	564
Boone	260	341	403	517	612
Buchanan	274	321	403	511	564
Butler	277	321	403	511	564
Carroll	260	321	403	511	564
Cedar	260	325	403	511	564
Cherokee	260	321	403	511	564
Adams	260	321	403	511	564
Appanoose	260	321	403	511	568
Benton	267	321	403	511	564
Bremer	260	321	403	511	600
Buena Vista	275	321	403	511	564
Calhoun	260	321	403	511	564
Cass	260	321	403	511	564
Cerro Gordo	260	340	421	561	589
Chickasaw	260	321	403	511	564

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Clarke	267	321	403	511	564
Clayton	260	321	403	511	564
Crawford	260	321	403	511	564
Decatur	260	321	403	511	564
Des Moines	260	331	426	534	596
Emmet	260	321	403	511	596
Floyd	283	321	403	511	564
Fremont	286	321	403	511	594
Grundy	260	321	403	511	580
Hamilton	296	336	408	511	571
Hardin	260	321	403	511	564
Henry	260	329	418	523	592
Humboldt	260	321	403	511	564
Iowa	260	321	403	511	564
Jasper	260	329	417	521	584
Jones	269	321	403	511	564
Kossuth	260	321	403	511	564
Louisa	260	321	403	511	564
Lyon	260	321	403	511	564
Mahaska	260	321	403	511	564
Marshall	260	321	403	511	564
Mitchell	280	321	403	511	564
Monroe	260	338	403	511	594
Muscatine	260	321	426	567	596
Osceola	260	321	403	511	564
Palo Alto	260	321	403	511	564
Pocahontas	260	321	403	511	564
Ringgold	260	321	403	511	564
Shelby	260	321	403	511	564
Story	338	411	484	671	768
Taylor	260	321	403	511	565
Van Buren	260	321	403	511	564
Washington	260	321	403	511	594
Webster	260	321	409	514	573
Winneshiek	260	321	403	511	564
Wright	260	321	403	511	564

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Clay	260	321	403	511	564
Clinton	260	321	409	511	572
Davis	260	321	403	511	564
Delaware	260	321	403	511	564
Dickinson	260	321	403	511	564
Fayette	260	321	403	511	564
Franklin	267	321	403	511	564
Greene	260	321	403	511	564
Guthrie	260	321	403	511	593
Hancock	260	321	403	511	564
Harrison	260	321	403	511	564
Howard	260	321	403	511	589
Ida	267	321	403	511	564
Jackson	260	321	406	511	568
Jefferson	260	328	437	569	718
Keokuk	260	321	403	511	564
Lee	260	321	416	520	583
Lucas	260	321	403	511	564
Madison	260	321	419	537	588
Marion	260	356	437	546	612
Mills	260	347	410	514	574
Monona	260	321	403	511	564
Montgomery	286	322	403	511	564
O'Brien	260	321	403	511	564
Page	260	321	403	511	564
Plymouth	260	321	421	526	589
Poweshiek	275	341	437	546	612
Sac	260	321	403	511	564
Sioux	260	321	403	511	564
Tama	260	321	403	511	564
Union	260	321	403	511	594
Wapello	260	321	407	511	569
Wayne	260	321	403	511	564
Winnebago	260	326	403	511	564
Worth	260	321	403	511	573

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	341	429	516	714	791	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	346	414	532	740	852	Douglas
Topeka, KS MSA	325	374	486	657	741	Shawnee
Wichita, KS MSA	319	383	513	693	749	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	265	300	385	496	552
Atchison	265	300	385	496	592
Barton	265	300	385	496	552
Brown	265	300	385	496	552
Chautauqua	265	300	385	496	552
Cheyenne	265	300	385	498	552
Clay	265	300	385	496	552
Coffey	274	300	385	496	577
Cowley	283	300	385	508	552
Decatur	265	300	385	496	552
Doniphan	265	300	385	496	552
Elk	265	300	385	496	552
Ellsworth	265	300	385	498	552
Ford	284	335	418	526	593
Geary	325	342	428	552	599
Graham	265	300	385	496	552
Gray	265	300	385	496	552
Greenwood	265	300	385	496	552
Harper	265	300	385	498	552
Hodgeman	265	300	385	496	552
Jefferson	265	300	392	520	552
Kearny	294	300	396	533	585
Kiowa	265	300	385	496	552
Lane	265	300	385	496	552
Linn	265	300	385	496	552
Lyon	265	300	385	496	589
Marion	265	300	385	496	552
Meade	265	300	385	496	552
Montgomery	265	300	385	496	552
Morton	265	322	385	496	552
Neosho	265	300	385	496	552
Norton	265	300	385	496	552
Osborne	265	300	385	496	553
Pawnee	265	300	385	496	552

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	265	300	385	496	552
Barber	265	300	385	496	552
Bourbon	265	300	385	498	552
Chase	265	300	385	496	552
Cherokee	265	300	385	496	552
Clark	265	300	385	496	552
Cloud	265	300	385	496	552
Comanche	265	300	385	496	552
Crawford	265	300	392	496	552
Dickinson	265	300	385	496	552
Edwards	265	300	385	496	552
Ellis	265	300	385	496	552
Finney	326	349	447	582	736
Franklin	287	300	388	496	606
Gove	265	300	385	496	552
Grant	265	336	385	527	574
Greeley	265	300	385	496	552
Hamilton	265	300	385	496	552
Haskell	265	307	385	496	552
Jackson	265	300	385	496	552
Jewell	265	300	385	496	552
Kingman	265	300	385	496	552
Labette	265	300	385	496	552
Lincoln	265	300	385	496	552
Logan	265	300	385	496	552
Mcpherson	267	300	385	496	552
Marshall	265	300	385	496	552
Mitchell	265	300	385	496	552
Morris	265	300	385	496	552
Nemaha	265	300	385	496	552
Ness	265	300	385	496	552
Osage	265	300	385	496	552
Ottawa	265	300	385	496	552
Phillips	265	300	385	496	552

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 17

K A N S A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pottawatomie	265	300	385	496	565
Rawlins	265	300	385	496	552
Republic	265	300	385	496	552
Riley	328	361	481	601	730
Rush	265	300	385	496	552
Saline	346	357	472	652	660
Seward	298	324	432	541	604
Sherman	265	300	385	496	552
Stafford	265	300	385	496	552
Stevens	265	301	385	496	568
Thomas	265	300	385	496	552
Wabaunsee	265	300	385	496	552
Washington	265	300	385	496	552
Wilson	265	300	385	496	552
Pratt	265	300	385	506	552
Reno	265	300	385	496	600
Rice	265	300	385	496	552
Rooks	265	300	385	496	552
Russell	265	300	385	496	552
Scott	265	300	385	506	582
Sheridan	265	300	385	496	552
Smith	265	300	385	496	552
Stanton	265	300	385	496	552
Sumner	265	300	385	520	552
Trego	265	300	385	496	552
Wallace	265	300	385	496	552
Wichita	265	300	396	496	616
Woodson	265	300	385	496	552

K E N T U C K Y

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	303	390	521	699	755	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	331	371	434	593	609	Christian
Evansville-Henderson, IN-KY MSA	275	327	424	531	594	Henderson
Gallatin County, KY	252	344	421	527	689	Gallatin
Grant County, KY	251	299	396	553	654	Grant
Huntington-Ashland, WV-KY-OH MSA	297	348	429	547	602	Boyd, Carter, Greenup
Lexington, KY MSA	335	418	511	697	787	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	310	398	488	674	711	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	292	303	398	535	559	Daviess
Pendleton County, KY	253	293	391	491	549	Pendleton

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	246	300	354	469	515
Anderson	271	286	371	463	520
Barren	246	297	354	458	515
Bell	246	286	357	458	515
Bracken	246	286	354	458	515
Breckinridge	246	286	354	458	515
Caldwell	246	286	354	458	515
Carlisle	246	286	354	458	515
Casey	246	286	354	458	515
Clinton	246	286	354	458	515
Allen	246	286	354	458	515
Ballard	246	286	354	458	515
Bath	246	286	354	458	515
Boyle	292	296	395	495	554
Breathitt	246	286	354	458	515
Butler	246	286	354	458	515
Calloway	246	286	354	458	515
Carroll	246	286	354	458	515
Clay	246	286	354	458	515
Crittenden	246	286	354	458	515

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 18

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cumberland	246	286	354	458	515
Elliott	246	286	354	458	515
Fleming	246	286	354	458	515
Franklin	246	361	443	572	723
Garrard	246	286	354	458	515
Grayson	246	286	354	458	515
Hancock	246	286	354	462	548
Harlan	246	373	426	555	655
Hart	246	286	354	458	515
Hickman	246	286	354	458	515
Jackson	246	286	354	458	515
Knott	246	286	354	458	515
Larue	246	286	354	458	515
Lawrence	246	286	354	458	515
Leslie	246	286	354	458	515
Lewis	246	286	354	458	515
Livingston	283	286	382	531	535
Lyon	246	286	354	458	515
Mccreary	246	286	354	458	515
Magoffin	246	286	354	458	515
Marshall	246	292	354	458	551
Mason	246	286	354	458	515
Menifee	246	286	354	458	515
Metcalfe	246	286	354	458	515
Montgomery	246	286	354	458	515
Muhlenberg	246	286	354	458	515
Nicholas	246	286	354	458	515
Owen	246	286	354	458	528
Perry	275	286	369	461	517
Powell	246	286	354	458	515
Robertson	246	286	354	458	515
Rowan	246	286	354	458	535
Shelby	247	325	363	507	515
Spencer	246	292	354	458	515
Todd	246	286	354	458	515
Trimble	246	286	354	458	515
Warren	246	318	425	530	613
Wayne	246	286	354	458	515
Whitley	246	286	354	458	515
Edmonson	246	286	354	458	515
Estill	246	286	354	458	515
Floyd	259	315	354	492	565
Fulton	246	286	354	458	515
Graves	246	286	354	458	515
Green	246	286	354	458	515
Hardin	305	314	392	528	626
Harrison	246	287	363	458	561
Henry	248	286	354	458	515
Hopkins	246	286	354	458	520
Johnson	246	286	354	458	515
Knox	246	340	435	545	669
Laurel	321	362	430	580	601
Lee	246	286	354	458	515
Letcher	246	286	354	458	515
Lincoln	246	286	354	458	515
Logan	246	286	354	467	515
Mccracken	278	299	374	479	615
Mclean	246	286	354	458	515
Marion	246	286	354	458	515
Martin	246	286	354	458	515
Meade	254	316	363	480	598
Mercer	246	286	354	467	515
Monroe	246	286	354	458	515
Morgan	246	286	354	458	515
Nelson	270	286	365	458	515
Ohio	246	286	354	458	515
Owsley	246	286	354	458	515
Pike	264	301	365	458	541
Pulaski	270	286	363	459	515
Rockcastle	246	286	354	458	515
Russell	246	286	354	458	515
Simpson	246	307	359	459	515
Taylor	296	350	392	525	593
Trigg	246	286	354	458	515
Union	246	286	354	458	515
Washington	246	290	354	458	515
Webster	246	286	354	458	515
Wolfe	246	286	354	458	515

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 19

L O U I S I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	274	343	431	597	607	Rapides
Baton Rouge, LA MSA	298	370	459	637	752	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	270	317	406	564	668	Lafourche, Terrebonne
Lafayette, LA MSA	287	330	393	542	641	Lafayette, Acadia, St. Landry, St. Martin
Lake Charles, LA MSA	369	429	544	713	893	Calcasieu
Monroe, LA MSA	297	332	443	598	621	Ouachita
New Orleans, LA	352	403	503	685	828	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles St. John the Baptist, St. Tammany
St. James Parish, LA	266	301	401	500	561	St. James
Shreveport-Bossier City, LA MSA	334	380	478	639	784	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	264	287	353	463	516
Avoyelles	284	287	353	463	518
Bienville	264	287	353	469	555
Cameron	264	287	353	463	516
Claiborne	264	287	353	463	516
De Soto	284	287	353	463	520
East Feliciana	264	287	353	463	516
Franklin	264	287	353	463	520
Iberia	279	291	361	463	516
Jackson	264	287	353	463	516
La Salle	264	287	353	463	520
Madison	264	287	353	463	516
Natchitoches	282	289	373	517	520
Red River	264	287	353	463	520
Sabine	264	294	353	463	545
St. Mary	289	310	389	530	553
Tensas	264	287	353	463	516
Vermilion	264	287	353	463	516
Washington	264	287	353	463	516
West Feliciana	264	343	460	575	645

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Assumption	289	311	368	463	516
Beauregard	322	350	415	543	597
Caldwell	264	287	353	463	516
Catahoula	264	287	353	463	516
Concordia	264	287	353	463	516
East Carroll	264	287	353	463	516
Evangeline	264	287	353	463	516
Grant	264	287	353	463	516
Iberville	264	287	353	463	532
Jefferson Davis	264	287	353	463	524
Lincoln	311	313	390	535	641
Morehouse	264	287	353	463	516
Pointe Coupee	264	287	353	463	561
Richland	264	287	353	463	520
St. Helena	264	287	353	463	516
Tangipahoa	283	294	378	495	528
Union	264	287	353	463	520
Vernon	303	338	385	498	588
West Carroll	264	287	353	463	516
Winn	264	287	353	463	516

M A I N E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	343	419	537	701	753	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 20

M A I N E continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Lewiston-Auburn, ME MSA	309	381	490	613	687	Waldo county towns of Winterport town Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	374	482	634	793	889	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	442	529	680	871	1069	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	315	389	517	646	723	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	315	369	474	604	695	
Cumberland	461	470	626	852	977	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	322	369	474	604	695	
Hancock	340	416	515	649	720	
Kennebec	328	409	492	617	695	
Knox	315	406	527	702	740	
Lincoln	410	456	519	721	852	
Oxford	315	369	474	604	695	
Penobscot	315	389	474	604	695	Alton town, Argyle unorg., Bradford town, Bradley town Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 21

M A I N E continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Piscataquis	315	369	474	604	695	
Sagadahoc	444	508	626	833	1028	
Somerset	330	376	474	604	712	
Waldo	315	369	474	604	695	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Washington	315	369	474	604	695	
York	389	446	597	747	835	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town

M A R Y L A N D

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD	414	507	618	818	936	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	556	747	869	1149	1436	Columbia
Cumberland, MD-WV MSA	328	395	488	645	737	Allegany
Hagerstown, MD PMSA	326	393	488	642	733	Washington
Washington, DC-MD-VA	609	692	812	1106	1333	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington-Newark, DE-MD PMSA	425	562	654	889	1073	Cecil

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Caroline	362	390	488	640	726
Garrett	323	434	488	636	801
St. Mary's	494	586	676	942	1077
Talbot	428	453	604	757	991
Worcester	323	390	489	679	726

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Dorchester	323	418	488	636	726
Kent	327	403	538	672	810
Somerset	385	433	488	677	800
Wicomico	364	421	543	690	760

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	460	616	822	1029	1152	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 22

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	620	697	874	1092	1282	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA PMSA	415	547	671	835	951	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA	325	456	592	762	828	Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA	417	504	633	791	974	Essex county towns of Andover town, Boxford town Georgetown town, Groveland town, Haverhill city Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town
Lowell, MA-NH PMSA	455	589	711	891	997	Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
New Bedford, MA MSA	436	533	606	757	850	Bristol county towns of Acushnet town, Dartmouth town Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town Rochester town
Pittsfield, MA MSA	316	449	554	694	860	Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
Providence-Fall River-Warwick, RI-MA PMSA	401	545	655	822	1013	Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town
Springfield, MA MSA	411	508	642	802	986	Franklin county towns of Sunderland town Hampden county towns of Agawam town, Chicopee city East Longmeadow to, Hampden town, Holyoke city Longmeadow town, Ludlow town, Monson town Montgomery town, Palmer town, Russell town Southwick town, Springfield city, Westfield city West Springfield t, Wilbraham town Hampshire county towns of Amherst town, Belchertown town Easthampton town, Granby town, Hadley town Hatfield town, Huntington town, Northampton city Southampton town, South Hadley town, Ware town Williamsburg town
Worcester, MA-CT	403	488	610	761	853	Hampden county towns of Holland town Worcester county towns of Auburn town, Barre town Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town East Brookfield to, Grafton town, Holden town Leicester town, Millbury town, Northborough town Northbridge town, North Brookfield t, Oakham town Oxford town, Paxton town, Princeton town, Rutland town Shrewsbury town, Southbridge town, Spencer town Sterling town, Sturbridge town, Sutton town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city
NONMETROPOLITAN COUNTIES	**O BR**	**1 BR**	**2 BR**	**3 BR**	**4 BR**	**Towns within non metropolitan counties**
Barnstable	444	609	811	1014	1135	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Berkshire	373	454	535	735	880	Alford town, Becket town, Clarksburg town, Egremont town Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town Peru town, Sandisfield town, Savoy town, Sheffield town Tyringham town, Washington town, West Stockbridge t Williamstown town, Windsor town
Dukes	600	610	812	1015	1138	
Franklin	403	500	639	800	966	Ashfield town, Bernardston town, Buckland town Charlemont town, Colrain town, Conway town Deerfield town, Erving town, Gill town, Greenfield town Hawley town, Heath town, Leverett town, Leyden town Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town Whately town
Hampden	407	554	740	984	1214	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Hampshire	570	577	771	965	1081	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town
Nantucket	720	965	1287	1609	1802	
Worcester	453	473	630	789	882	Athol town, Hardwick town, Hubbardston town New Braintree town, Petersham town, Phillipston town Royalston town, Warren town

M I C H I G A N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	456	552	681	893	1001	Lenswee, Livingston, Washtenaw
Benton Harbor, MI MSA	368	372	488	611	686	Berrien
Detroit, MI PMSA	376	512	618	773	867	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	357	406	508	649	711	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	385	450	549	689	770	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	290	390	493	617	692	Jackson
Kalamazoo-Battle Creek, MI MSA	342	413	521	652	728	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	386	454	586	766	885	Clinton, Eaton, Ingham

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 25

M I C H I G A N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Saginaw-Bay City-Midland, MI MSA	336	371	493	617	692	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alcona	284	323	410	533	608
Alpena	284	323	410	533	612
Arenac	284	323	410	533	608
Barry	284	350	466	584	654
Branch	328	336	413	564	608
Charlevoix	345	349	442	601	622
Chippewa	284	323	410	533	608
Crawford	311	323	419	572	608
Dickinson	284	349	431	538	608
Gladwin	284	323	410	533	608
Grand Traverse	376	402	537	672	753
Hillsdale	284	323	410	533	608
Huron	284	323	410	533	608
Iosco	284	323	410	533	643
Isabella	317	338	453	612	742
Keweenaw	284	323	410	533	608
Leelanau	384	416	487	636	798
Mackinac	284	323	410	533	608
Marquette	284	323	410	533	608
Mecosta	284	323	410	555	659
Missaukee	299	323	410	533	608
Montmorency	284	323	410	533	608
Oceana	303	323	410	533	608
Ontonagon	284	323	410	533	608
Oscoda	284	323	410	533	608
Presque Isle	284	323	410	533	608
St. Joseph	284	330	410	535	608
Schoolcraft	284	323	410	533	608
Tuscola	309	336	449	560	627

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alger	284	323	410	533	608
Antrim	284	340	410	533	608
Baraga	284	323	410	533	608
Benzie	297	323	410	551	608
Cass	284	323	412	562	608
Cheboygan	299	323	410	533	623
Clare	295	323	410	533	608
Delta	284	323	410	533	608
Emmet	317	380	449	589	627
Gogebic	284	323	410	533	608
Gratiot	297	323	410	533	608
Houghton	284	323	410	533	608
Ionia	348	352	441	550	618
Iron	284	323	410	533	608
Kalkaska	284	323	411	535	676
Lake	287	323	410	533	608
Luce	284	323	410	533	608
Manistee	284	323	410	533	608
Mason	284	323	410	533	608
Menominee	284	323	410	533	608
Montcalm	288	323	410	533	608
Newaygo	326	350	411	533	608
Ogemaw	296	324	410	533	608
Osceola	284	323	410	533	608
Otsego	291	352	444	617	716
Roscommon	314	323	410	533	608
Sanilac	284	333	410	535	608
Shiawassee	284	356	429	597	639
Wexford	284	327	425	556	659

M I N N E S O T A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	287	351	451	602	701	St. Louis
Fargo-Moorhead, ND-MN MSA	322	444	536	743	796	Clay
Grand Forks, ND-MN MSA	333	397	522	720	803	Polk

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

M I N N E S O T A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
La Crosse, WI-MN MSA	276	356	453	606	734	Houston
Minneapolis-St. Paul, MN-WI MSA	392	504	644	872	987	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	305	427	559	774	868	Olmsted
St. Cloud, MN MSA	316	408	482	610	777	Benton, Stearns

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aitkin	264	342	456	571	638
Beltrami	261	333	446	584	624
Blue Earth	355	429	534	684	868
Carlton	261	317	402	504	576
Chippewa	261	317	402	504	576
Cook	309	317	414	565	589
Crow Wing	261	317	423	529	665
Douglas	261	317	402	504	576
Fillmore	261	317	402	504	576
Goodhue	261	335	448	571	627
Hubbard	266	317	402	504	576
Jackson	261	317	402	504	576
Kandiyohi	261	330	402	504	606
Koochiching	315	321	427	533	699
Lake	261	317	402	504	576
Le Sueur	261	317	402	504	621
Lyon	261	317	402	504	597
Mahnomen	261	317	402	504	576
Martin	261	317	402	504	576
Mille Lacs	277	317	403	561	662
Mower	261	317	402	504	576
Nicollet	326	349	465	616	652
Norman	261	317	402	504	576
Pennington	261	317	402	538	576
Pipestone	261	317	402	504	576
Red Lake	261	328	402	504	576
Renville	261	317	402	504	576
Rock	261	317	402	504	576
Sibley	261	317	402	504	576
Stevens	297	375	423	529	593
Todd	261	317	402	504	576
Wabasha	261	317	402	504	576
Waseca	339	373	473	593	678

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Becker	261	374	420	525	589
Big Stone	261	317	402	504	576
Brown	261	336	402	504	576
Cass	261	317	402	504	576
Clearwater	261	317	402	504	576
Cottonwood	261	317	402	504	576
Dodge	261	317	402	504	576
Faribault	261	317	402	504	576
Freeborn	261	317	410	540	578
Grant	261	317	402	504	576
Itasca	333	337	440	550	616
Kanabec	261	327	425	531	595
Kittson	261	317	402	504	576
Lac qui Parle	261	317	402	504	576
Lake of the Woods	261	317	402	504	576
Lincoln	261	317	402	504	576
Mcleod	261	336	448	557	625
Marshall	261	317	402	504	576
Meeker	270	317	402	504	576
Morrison	289	317	402	504	576
Murray	261	317	402	504	576
Nobles	261	317	402	504	576
Otter Tail	261	317	402	504	576
Pine	288	317	402	507	576
Pope	261	317	402	504	576
Redwood	261	317	402	504	576
Rice	309	422	562	702	786
Roseau	315	321	421	543	591
Steele	309	358	477	596	668
Swift	261	317	402	504	576
Traverse	261	317	402	504	576
Wadena	261	317	402	504	576
Watonwan	261	317	402	504	576

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 27

M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wilkin	261	317	402	504	576
Yellow Medicine	261	317	402	504	576
Winona	266	346	439	548	615

M I S S I S S I P P I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	348	409	470	655	773	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	257	316	386	519	619	Forrest, Lamar
Jackson, MS MSA	354	404	494	657	693	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	340	395	465	646	679	Desoto

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	245	290	361	462	589
Amite	245	290	359	462	520
Benton	245	290	359	462	520
Calhoun	245	290	359	462	520
Chickasaw	245	290	359	462	520
Claiborne	245	290	359	462	520
Clay	245	290	359	462	525
Copiah	245	290	359	462	520
Franklin	248	290	359	462	520
Greene	245	290	359	462	520
Holmes	245	290	359	462	520
Issaquena	257	353	469	587	658
Jasper	245	290	359	462	520
Jefferson Davis	245	290	359	462	520
Kemper	247	290	359	462	520
Lauderdale	245	316	397	515	557
Leake	245	290	359	462	520
Leflore	245	290	359	463	556
Lowndes	302	326	386	484	546
Marshall	245	290	359	462	528
Montgomery	245	290	359	462	520
Newton	245	290	359	462	520
Oktibbeha	300	313	382	531	627
Pearl River	257	290	359	464	520
Pike	249	290	359	462	520
Prentiss	248	290	359	462	520
Scott	245	290	359	462	520
Simpson	248	290	359	462	520

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alcorn	245	290	359	462	520
Attala	245	290	359	462	520
Bolivar	278	290	374	467	534
Carroll	245	290	359	462	520
Choctaw	245	290	359	462	520
Clarke	245	290	359	462	520
Coahoma	284	290	383	481	538
Covington	245	290	359	462	520
George	245	290	359	462	520
Grenada	245	291	359	491	520
Humphreys	245	290	359	462	520
Itawamba	245	290	359	462	520
Jefferson	245	290	359	462	520
Jones	245	290	359	462	520
Lafayette	248	340	452	567	634
Lawrence	245	290	359	462	520
Lee	306	330	397	497	557
Lincoln	245	290	359	462	520
Marion	245	290	359	462	520
Monroe	245	290	359	462	520
Neshoba	245	290	359	462	520
Noxubee	249	290	359	462	520
Panola	253	290	359	462	520
Perry	245	290	359	462	520
Pontotoc	245	290	359	462	520
Quitman	245	290	359	462	520
Sharkey	249	290	359	462	520
Smith	245	290	359	462	520

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 28

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Stone	245	290	359	462	520
Tallahatchie	245	290	359	462	520
Tippah	245	290	359	462	520
Tunica	245	290	359	462	520
Walthall	245	290	359	462	520
Washington	265	315	421	543	598
Webster	247	290	359	462	520
Winston	245	290	359	462	520
Yazoo	249	290	359	462	520
Sunflower	271	294	359	462	552
Tate	245	331	382	479	629
Tishomingo	245	290	359	462	520
Union	245	290	359	462	520
Warren	245	320	399	551	660
Wayne	245	290	359	462	520
Wilkinson	245	290	359	462	520
Yalobusha	247	290	359	462	520

M I S S O U R I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	255	359	467	650	766	Boone
Joplin, MO MSA	249	288	382	503	541	Jasper, Newton
Kansas City, MO-KS MSA	341	429	516	714	791	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	239	290	387	488	542	Andrew, Buchanan
St. Louis, MO-IL MSA	310	378	491	638	706	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	261	331	428	591	616	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	234	292	388	488	586
Audrain	250	270	347	469	542
Barton	234	270	347	451	517
Benton	264	270	358	451	517
Butler	234	270	347	451	517
Callaway	277	281	373	474	613
Cape Girardeau	241	296	394	525	644
Carter	234	270	347	451	517
Charlton	234	270	347	451	517
Cole	234	309	412	549	576
Crawford	257	309	348	459	517
Dallas	234	270	347	451	517
Dekalb	242	270	347	456	517
Douglas	234	270	347	451	517
Gasconade	234	270	347	451	517
Grundy	234	270	347	451	517
Henry	267	272	362	454	596
Holt	234	270	347	451	517
Howell	234	270	347	451	517

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atchison	234	270	347	451	517
Barry	234	279	347	451	517
Bates	234	270	347	451	527
Bollinger	234	270	347	451	517
Caldwell	234	272	365	457	517
Camden	308	311	416	577	678
Carroll	234	270	347	451	517
Cedar	234	270	347	451	517
Clark	234	270	347	451	517
Cooper	234	270	347	451	517
Dade	234	270	347	451	517
Daviess	234	270	347	451	517
Dent	234	270	347	451	517
Dunklin	234	270	347	451	517
Gentry	234	270	347	451	517
Harrison	234	270	347	451	517
Hickory	234	270	347	451	517
Howard	234	270	347	451	519
Iron	234	270	347	451	517

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Johnson	282	314	410	543	642
Laclede	234	270	347	454	517
Lewis	234	270	347	451	517
Livingston	234	270	348	451	517
Macon	234	270	347	451	517
Maries	234	270	347	451	517
Mercer	234	270	347	451	517
Mississippi	234	270	347	451	517
Monroe	234	270	347	451	517
Morgan	234	270	347	451	517
Nodaway	247	299	368	468	564
Osage	234	270	347	451	517
Pemiscot	234	270	347	451	517
Pettis	251	294	394	495	593
Pike	234	270	347	451	544
Pulaski	234	328	368	487	544
Ralls	234	270	347	451	517
Reynolds	234	270	347	451	517
St. Clair	234	270	347	451	517
St. Francois	247	311	394	494	648
Schuyler	234	270	347	451	517
Scott	282	284	379	511	589
Shelby	234	270	347	451	517
Stone	272	289	359	459	517
Taney	265	292	383	517	608
Vernon	234	270	347	462	517
Wayne	234	270	347	451	517
Wright	234	270	347	451	517

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Knox	234	270	347	451	517
Lawrence	248	277	347	451	517
Linn	234	270	347	451	517
Mcdonald	234	270	347	451	517
Madison	234	270	347	451	517
Marion	234	270	347	451	517
Miller	257	309	347	454	537
Moniteau	234	270	347	451	517
Montgomery	234	270	347	451	517
New Madrid	234	270	347	451	517
Oregon	234	270	347	451	517
Ozark	234	270	347	451	517
Perry	272	277	369	491	517
Phelps	242	290	372	505	548
Polk	234	271	347	451	542
Putnam	234	270	347	451	517
Randolph	234	270	347	451	517
Ripley	234	270	347	451	517
Ste. Genevieve	234	279	358	459	581
Saline	234	270	356	451	517
Scotland	234	270	347	451	517
Shannon	234	270	347	451	517
Stoddard	234	270	347	451	517
Sullivan	234	270	347	451	517
Texas	234	270	347	451	517
Washington	274	331	371	464	520
Worth	234	270	347	451	517

MONTANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	314	364	488	655	795	Yellowstone
Great Falls, MT MSA	314	362	478	622	741	Cascade

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

MONTANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	289	334	441	573	670
Blaine	289	334	441	573	670
Carbon	289	339	441	573	670
Chouteau	289	334	441	573	670
Daniels	289	355	441	573	670
Deer Lodge	289	334	441	573	670
Fergus	289	334	441	573	670
Gallatin	357	416	558	717	917
Glacier	289	334	441	573	670
Granite	289	334	441	573	670
Jefferson	305	334	441	573	670
Lake	315	334	441	573	670
Liberty	289	334	441	573	670
Mccone	289	353	441	573	670
Meagher	289	355	441	573	670
Missoula	316	371	494	636	809
Park	289	334	441	573	677
Phillips	289	334	441	573	670
Powder River	289	339	441	573	670
Prairie	289	334	441	573	670
Richland	289	362	441	573	670
Rosebud	289	334	441	573	670
Sheridan	297	334	441	573	670
Stillwater	295	334	441	573	670
Teton	289	334	441	573	670
Treasure	289	334	441	573	670
Wheatland	289	334	441	573	670

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	289	334	441	573	670
Broadwater	289	334	441	573	715
Carter	289	355	441	573	670
Custer	289	334	441	573	670
Dawson	289	334	441	573	670
Fallon	289	334	441	573	670
Flathead	289	335	448	624	735
Garfield	289	334	441	573	670
Golden Valley	289	354	441	573	670
Hill	298	334	441	573	670
Judith Basin	289	355	441	573	670
Lewis and Clark	322	377	501	697	825
Lincoln	315	334	441	573	670
Madison	295	334	441	573	670
Mineral	289	334	441	573	684
Musselshell	294	334	441	573	670
Petroleum	289	334	441	573	670
Pondera	289	354	441	573	670
Powell	294	334	441	573	670
Ravalli	289	334	441	573	670
Roosevelt	302	334	441	573	670
Sanders	289	334	441	573	670
Silver Bow	289	334	441	573	670
Sweet Grass	312	334	441	573	670
Toole	295	334	441	573	670
Valley	289	334	441	573	670
Wibaux	289	355	441	573	670

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	305	392	517	686	800	Lancaster
Omaha, NE-IA MSA	291	399	503	660	740	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	335	402	501	625	714	Dakota

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

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N E B R A S K A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	243	325	430	539	646
Arthur	233	300	383	489	557
Blaine	233	300	383	489	557
Box Butte	253	300	383	490	579
Brown	233	300	383	489	569
Burt	233	300	383	489	557
Cedar	233	300	383	489	557
Cherry	233	315	383	492	580
Clay	233	300	383	489	557
Cuming	233	316	383	489	557
Dawes	249	300	383	493	582
Deuel	233	300	383	489	557
Dodge	233	300	395	520	557
Fillmore	233	300	383	489	557
Frontier	262	300	383	489	557
Gage	233	301	390	496	557
Garfield	233	300	383	489	557
Grant	233	300	383	489	557
Hall	280	368	490	646	723
Harlan	233	300	383	490	557
Hitchcock	233	300	383	489	557
Hooker	233	314	383	490	557
Jefferson	233	300	383	489	557
Kearney	233	300	383	489	582
Keya Paha	233	300	383	489	557
Knox	233	311	383	489	557
Logan	233	300	383	489	583
Mcpherson	233	300	383	490	557
Merrick	233	300	383	489	557
Nance	233	300	383	489	557
Nuckolls	233	300	383	489	557
Pawnee	233	300	383	493	557
Phelps	261	300	383	490	582
Platte	233	300	383	535	557
Red Willow	233	300	383	489	567
Rock	233	307	383	489	557
Saunders	233	300	383	489	557
Seward	289	300	391	489	557
Sherman	233	302	383	489	583
Stanton	233	300	383	489	557

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Antelope	233	315	383	492	557
Banner	233	300	383	490	557
Boone	233	300	383	489	580
Boyd	233	313	383	489	557
Buffalo	251	363	456	569	687
Butler	233	300	383	489	557
Chase	233	316	383	489	584
Cheyenne	261	300	383	489	557
Colfax	254	312	383	489	557
Custer	261	302	383	489	579
Dawson	256	312	383	493	557
Dixon	260	300	383	489	557
Dundy	233	300	383	489	557
Franklin	233	300	383	494	557
Furnas	233	300	383	489	580
Garden	233	312	383	492	582
Gosper	233	300	383	489	564
Greeley	233	300	383	489	567
Hamilton	233	300	383	493	557
Hayes	233	314	383	489	580
Holt	233	300	383	489	557
Howard	233	300	383	489	557
Johnson	233	304	383	489	557
Keith	233	300	383	489	557
Kimball	233	300	383	490	582
Lincoln	239	312	383	489	557
Loup	233	300	383	489	581
Madison	239	314	416	538	656
Morrill	233	302	383	489	580
Nemaha	233	300	383	489	557
Otoe	233	300	383	489	583
Perkins	233	300	383	489	557
Pierce	233	300	383	489	557
Polk	233	300	383	489	557
Richardson	233	300	383	489	557
Saline	233	313	383	489	557
Scotts Bluff	237	311	395	489	580
Sheridan	233	300	383	489	558
Sioux	233	300	383	489	582
Thayer	233	315	383	489	557

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

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N E B R A S K A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Thomas	233	300	383	489	557
Valley	233	300	383	489	557
Webster	233	300	383	489	557
York	233	300	388	489	557
Thurston	233	300	383	489	557
Wayne	267	300	383	489	580
Wheeler	233	300	383	490	557

N E V A D A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	482	572	681	948	1119	Clark, Nye
Reno, NV MSA	467	541	695	988	1144	Washoe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Churchill	432	438	586	808	959
Elko	393	448	598	789	982
Eureka	318	519	585	728	815
Lander	321	498	585	731	958
Lyon	381	455	585	814	959
Pershing	442	448	598	748	855
White Pine	319	439	585	789	830
Douglas	388	566	709	984	1096
Esmeralda	416	519	585	729	818
Humboldt	468	491	592	776	831
Lincoln	319	480	585	732	819
Mineral	322	441	588	770	964
Storey	448	454	598	833	982
Carson City	336	459	614	853	1007

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	620	697	874	1092	1282	Rockingham county towns of Seabrook town, South Hampton town
Lawrence, MA-NH PMSA	417	504	633	791	974	Rockingham county towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	455	589	711	891	997	Hillsborough county towns of Pelham town
Manchester, NH PMSA	367	523	653	816	915	Hillsborough county towns of Bedford town, Goffstown town, Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town, Londonderry town
Nashua, NH PMSA	432	602	747	1016	1209	Hillsborough county towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	442	529	680	871	1069	Rockingham county towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING — PAGE 33

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town
						Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city
NONMETROPOLITAN COUNTIES	**O BR**	**1 BR**	**2 BR**	**3 BR**	**4 BR**	**Towns within non metropolitan counties**
Belknap	423	489	643	868	1056	
Carroll	354	485	646	809	1010	
Cheshire	439	521	666	867	1026	
Coos	302	369	474	618	732	
Grafton	389	470	626	809	1023	
Hillsborough	415	519	692	915	1101	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack	437	522	651	834	932	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham	453	531	710	985	1137	Deerfield town, Northwood town, Nottingham town
Strafford	401	544	726	911	1021	Middleton town, New Durham town, Strafford town
Sullivan	422	429	556	731	779	

NEW JERSEY

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	476	541	721	903	1032	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	637	776	910	1213	1496	Bergen, Passaic
Jersey City, NJ PMSA	582	687	800	1016	1119	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	679	744	929	1262	1457	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	560	671	851	1131	1326	Monmouth, Ocean
Newark, NJ PMSA	539	688	825	1044	1320	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA-NJ PMSA	463	570	704	881	1104	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	462	644	784	1062	1282	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	459	559	675	841	945	Cumberland

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NEW MEXICO

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	385	459	574	791	934	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	287	361	429	588	693	Dona Ana
Santa Fe, NM MSA	415	589	727	976	1105	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Catron	267	313	388	521	588
Cibola	278	304	388	521	588
Curry	267	311	407	521	588
Eddy	274	303	388	521	606
Guadalupe	267	303	388	521	592
Hidalgo	267	303	388	521	588
Lincoln	303	311	410	540	675
Mckinley	267	336	427	532	596
Otero	267	303	388	541	588
Rio Arriba	313	320	393	521	588
San Juan	302	324	404	561	664
Sierra	267	303	388	521	588
Taos	459	465	620	775	1020
Union	267	328	388	521	588

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Chaves	267	304	401	552	588
Colfax	267	311	388	521	588
Debaca	267	304	388	521	588
Grant	317	361	462	620	700
Harding	267	303	388	521	588
Lea	267	303	388	521	588
Luna	294	324	414	556	627
Mora	267	303	388	521	588
Quay	267	387	436	546	610
Roosevelt	267	303	388	521	588
San Miguel	296	303	400	521	588
Socorro	267	303	388	521	604
Torrance	293	317	388	521	588

NEW YORK

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	393	483	595	746	834	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA	352	396	493	627	703	Broome, Tioga
Buffalo-Niagara Falls, NY PMSA	358	436	525	656	735	Erie, Niagara
Dutchess County, NY PMSA	541	687	849	1103	1289	Dutchess
Elmira, NY MSA	352	396	485	615	732	Chemung
Glens Falls, NY MSA	352	459	559	700	783	Warren, Washington
Jamestown, NY MSA	352	396	475	615	703	Chautauqua
Nassau-Suffolk, NY PMSA	728	877	1070	1488	1594	Nassau, Suffolk
New York, NY PMSA	681	759	862	1078	1208	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	654	852	1038	1350	1611	Westchester
Newburgh, NY-PA PMSA	533	693	848	1075	1227	Orange
Rochester, NY MSA	379	493	600	769	840	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	377	455	563	719	798	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	352	398	484	615	703	Herkimer, Oneida

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 35

NEW YORK continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allegany	352	396	475	615	703
Chenango	375	396	475	615	703
Columbia	440	462	593	777	831
Delaware	352	396	475	615	755
Franklin	352	396	475	615	703
Greene	352	456	548	707	862
Jefferson	379	447	526	659	737
Otsego	352	417	479	619	786
Schuyler	381	406	482	672	791
Steuben	364	415	475	622	703
Tompkins	459	495	636	887	1046
Wyoming	352	396	475	615	703

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cattaraugus	352	396	475	615	703
Clinton	352	396	512	640	717
Cortland	352	421	527	659	779
Essex	352	401	503	630	703
Fulton	352	396	475	615	703
Hamilton	352	424	487	615	703
Lewis	352	396	475	615	703
St. Lawrence	352	396	475	615	703
Seneca	376	404	488	631	703
Sullivan	456	512	624	862	874
Ulster	433	601	723	941	1186
Yates	352	396	475	615	703

NORTH CAROLINA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	300	363	473	616	665	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	426	480	540	712	853	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	367	417	467	646	769	Cumberland
Goldsboro, NC MSA	300	346	421	541	632	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	397	452	539	743	756	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	392	397	515	694	849	Pitt
Hickory-Morganton, NC MSA	379	413	479	603	716	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	342	399	451	626	740	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	425	478	566	789	927	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	444	539	633	849	1001	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	320	346	421	557	614	Edgecombe, Nash
Wilmington, NC MSA	438	482	590	807	962	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alleghany	288	338	404	520	616
Ashe	288	333	404	520	590
Beaufort	288	333	404	520	590
Bladen	288	333	404	520	590
Carteret	327	357	436	606	674
Cherokee	288	333	404	520	590
Clay	288	333	404	520	590
Columbus	288	333	404	520	590
Dare	299	474	546	748	765
Gates	288	333	404	520	590

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anson	288	333	404	520	590
Avery	322	362	441	553	618
Bertie	288	333	404	520	590
Camden	288	368	491	614	689
Caswell	288	333	404	520	590
Chowan	288	333	404	520	590
Cleveland	288	339	404	535	590
Craven	288	360	434	568	608
Duplin	288	333	404	520	590
Graham	288	333	404	520	590

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 36

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Granville	304	333	404	535	605
Halifax	288	333	404	520	590
Haywood	300	342	416	558	607
Hertford	288	333	404	520	590
Hyde	288	333	404	520	590
Jackson	288	333	404	565	738
Lee	288	366	436	565	612
Mcdowell	288	351	422	576	682
Martin	288	333	404	520	590
Montgomery	288	333	404	520	590
Northampton	288	333	404	520	590
Pasquotank	333	355	443	616	622
Perquimans	288	333	404	520	590
Polk	288	365	410	520	590
Robeson	288	340	404	520	590
Rutherford	291	333	404	520	590
Scotland	288	333	404	520	590
Surry	288	333	404	520	590
Transylvania	334	356	451	598	640
Vance	305	346	404	520	590
Washington	288	333	404	520	590
Wilkes	328	369	416	575	646
Yancey	288	339	404	520	609

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Greene	288	333	404	520	590
Harnett	288	333	404	522	590
Henderson	373	384	475	632	728
Hoke	288	333	404	520	590
Iredell	389	399	526	658	736
Jones	288	333	404	520	590
Lenoir	288	333	404	520	590
Macon	288	345	404	520	590
Mitchell	288	377	433	591	618
Moore	288	348	415	567	680
Pamlico	288	333	404	520	590
Pender	288	349	404	520	636
Person	288	333	433	565	681
Richmond	288	333	404	520	590
Rockingham	288	333	404	520	590
Sampson	288	333	404	520	590
Stanly	288	333	410	553	590
Swain	288	333	404	520	590
Tyrrell	288	333	404	520	590
Warren	288	333	404	520	590
Watauga	376	451	571	777	937
Wilson	301	333	409	520	590

NORTH DAKOTA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	328	367	490	682	806	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	322	444	536	743	796	Cass
Grand Forks, ND-MN MSA	333	397	522	720	803	Grand Forks

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	223	279	361	469	547
Benson	253	279	361	469	547
Bottineau	223	279	361	469	547
Burke	242	279	361	469	547
Dickey	242	279	361	469	547
Dunn	223	279	361	469	547
Emmons	223	279	361	469	547
Golden Valley	223	286	381	476	547

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barnes	223	281	373	487	547
Billings	242	279	361	469	547
Bowman	223	279	361	469	547
Cavalier	223	287	383	477	589
Divide	223	279	361	469	547
Eddy	223	279	361	469	547
Foster	223	279	363	469	547
Grant	223	279	361	469	547

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NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Griggs	223	279	361	469	547
Kidder	223	279	361	469	547
Logan	223	279	361	469	547
McIntosh	223	279	361	469	547
McLean	236	279	381	489	547
Mountrail	246	279	361	489	547
Oliver	223	279	361	469	547
Pierce	223	279	361	483	547
Ransom	227	279	361	469	547
Richland	234	279	368	469	547
Sargent	223	279	361	469	547
Sioux	223	279	361	469	547
Stark	223	279	361	469	547
Stutsman	267	279	365	508	599
Traill	234	297	361	469	547
Ward	223	306	408	552	658
Williams	223	279	361	469	547

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hettinger	223	279	361	469	547
Lamoure	242	279	361	469	547
Mchenry	223	279	361	469	547
Mckenzie	223	279	361	469	547
Mercer	223	279	361	469	547
Nelson	223	279	381	489	547
Pembina	223	279	361	475	565
Ramsey	229	306	408	511	688
Renville	258	279	381	472	557
Rolette	241	307	371	469	547
Sheridan	223	279	361	469	547
Slope	223	279	361	469	547
Steele	223	279	361	469	547
Towner	255	286	381	476	626
Walsh	296	317	393	493	551
Wells	237	279	361	469	547

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	344	418	536	670	752	Portage, Summit
Brown County, OH	280	329	411	532	587	Brown
Canton-Massillon, OH MSA	279	363	464	580	651	Carroll, Stark
Cincinnati, OH-KY-IN	303	390	521	699	755	Clermont, Hamilton, Warren
Cleveland-Lorain-Elyria, OH PMSA	345	434	537	683	770	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	358	423	543	690	793	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton-Springfield, OH MSA	344	385	492	635	713	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	305	434	556	695	778	Butler
Huntington-Ashland, WV-KY-OH MSA	297	348	429	547	602	Lawrence
Lima, OH MSA	279	334	440	561	618	Allen, Auglaize
Mansfield, OH MSA	279	334	425	531	595	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	299	358	410	531	576	Washington
Steubenville-Weirton, OH-WV MSA	279	329	412	526	586	Jefferson
Toledo, OH MSA	349	424	519	668	725	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	305	333	412	526	586	Belmont
Youngstown-Warren, OH MSA	292	344	431	542	617	Columbiana, Mahoning, Trumbull

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 38

OHIO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	273	323	403	515	576
Athens	322	365	429	561	690
Clinton	273	350	421	586	591
Darke	300	323	406	515	576
Erie	273	364	454	613	742
Gallia	273	323	403	515	576
Hancock	346	350	443	565	619
Harrison	273	323	403	515	576
Highland	273	323	403	515	576
Holmes	273	323	403	515	576
Jackson	273	323	403	515	576
Logan	320	324	419	563	587
Meigs	273	323	403	515	576
Monroe	273	323	403	515	576
Morrow	273	323	403	515	576
Noble	273	323	403	515	584
Paulding	273	323	403	515	576
Pike	287	341	424	543	606
Putnam	283	323	403	515	576
Sandusky	273	354	454	572	633
Seneca	274	323	403	519	576
Tuscarawas	273	323	423	529	593
Van Wert	273	327	403	515	576
Wayne	273	361	444	563	621
Wyandot	273	323	403	515	576

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashland	273	323	426	532	596
Champaign	273	332	433	540	605
Coshocton	273	323	403	515	576
Defiance	285	323	427	538	598
Fayette	297	323	403	515	576
Guernsey	273	323	403	515	576
Hardin	273	323	403	515	576
Henry	295	326	407	525	598
Hocking	273	323	403	515	576
Huron	316	344	429	565	602
Knox	321	353	453	585	647
Marion	273	323	403	515	576
Mercer	273	323	403	515	593
Morgan	273	328	403	515	576
Muskingum	273	323	403	515	576
Ottawa	273	403	464	631	674
Perry	273	323	403	515	576
Preble	280	331	413	529	591
Ross	316	329	403	515	576
Scioto	273	323	403	515	576
Shelby	273	332	444	554	621
Union	273	378	498	623	722
Vinton	273	323	403	515	576
Williams	290	323	403	515	576

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	291	295	391	545	623	Garfield
Fort Smith, AR-OK MSA	298	302	397	531	557	Sequoyah
Lawton, OK MSA	360	362	461	640	701	Comanche
Oklahoma City, OK MSA	309	337	437	608	680	Canadian, Cleveland, Logan, Mcclain, Oklahoma, Pottawatomie
Tulsa, OK MSA	326	390	511	712	839	Creek, Osage, Rogers, Tulsa, Wagoner

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 39

OKLAHOMA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	244	280	349	465	533
Atoka	244	280	349	465	533
Beckham	248	280	349	465	533
Bryan	244	280	349	465	533
Carter	244	282	352	490	533
Choctaw	244	280	349	465	533
Coal	244	280	349	465	533
Craig	244	280	349	477	564
Delaware	244	280	349	465	543
Ellis	244	280	349	485	533
Grady	267	280	362	492	594
Greer	244	280	349	465	533
Harper	244	280	349	465	533
Hughes	244	280	349	465	533
Jefferson	244	280	349	465	533
Kay	270	286	376	524	614
Kiowa	244	280	349	465	533
Le Flore	244	280	349	465	533
Love	244	280	353	465	533
Mcintosh	244	280	349	465	533
Marshall	244	280	349	465	533
Murray	244	280	349	465	533
Noble	244	280	349	465	533
Okfuskee	244	280	349	465	533
Ottawa	263	280	349	465	533
Payne	282	333	426	588	660
Pontotoc	244	280	349	465	533
Roger Mills	244	280	349	465	533
Stephens	248	280	349	465	555
Tillman	244	280	349	465	533
Washita	244	280	349	465	533
Woodward	244	280	349	465	533

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alfalfa	244	280	349	465	533
Beaver	244	284	349	465	533
Blaine	244	280	349	465	533
Caddo	244	280	349	465	533
Cherokee	256	289	349	465	541
Cimarron	244	280	349	465	533
Cotton	244	280	349	465	533
Custer	244	280	358	498	575
Dewey	244	280	349	465	533
Garvin	244	280	349	465	537
Grant	244	280	349	465	533
Harmon	244	280	349	465	533
Haskell	244	280	349	465	533
Jackson	244	317	386	507	572
Johnston	244	280	349	465	533
Kingfisher	244	288	357	468	533
Latimer	244	280	349	465	533
Lincoln	262	280	349	465	533
Mccurtain	244	280	349	465	533
Major	244	293	349	485	533
Mayes	244	284	378	477	533
Muskogee	264	297	349	483	533
Nowata	244	280	349	465	533
Okmulgee	248	280	349	465	533
Pawnee	275	280	362	466	533
Pittsburg	244	280	349	465	533
Pushmataha	244	280	349	465	533
Seminole	244	280	349	465	533
Texas	244	290	349	466	533
Washington	244	335	408	541	632
Woods	244	280	349	465	533

OREGON

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	329	451	588	821	949	Lane
Medford-Ashland, OR MSA	338	444	592	823	918	Jackson
Portland-Vancouver, OR-WA PMSA	409	504	621	864	938	Clackamas, Columbia, Multnomah, Washington, Yamhill

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

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OREGON continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Salem, OR PMSA	383	427	548	754	790	Marion, Polk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	307	364	471	649	723
Clatsop	384	420	549	749	841
Crook	307	364	471	649	723
Deschutes	379	436	583	812	940
Gilliam	307	387	471	649	723
Harney	307	364	471	649	723
Jefferson	307	364	471	649	723
Klamath	307	364	471	649	788
Lincoln	373	378	504	702	762
Malheur	307	364	471	649	723
Sherman	307	384	471	649	723
Umatilla	307	364	471	649	723
Wallowa	307	364	471	649	723
Wheeler	307	364	471	649	723

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	367	475	603	907	963
Coos	307	375	497	693	723
Curry	307	418	554	709	873
Douglas	307	364	471	649	773
Grant	307	364	471	649	723
Hood River	338	380	517	672	794
Josephine	307	373	479	649	757
Lake	307	364	471	649	723
Linn	369	438	568	781	871
Morrow	307	364	471	649	723
Tillamook	307	364	471	649	723
Union	307	364	471	649	723
Wasco	374	462	518	706	792

PENNSYLVANIA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	407	552	657	856	982	Carbon, Lehigh, Northampton
Altoona, PA MSA	278	353	423	552	617	Blair
Erie, PA MSA	282	367	433	559	625	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	334	428	549	692	770	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	282	358	431	559	825	Cambria, Somerset
Lancaster, PA MSA	370	454	566	739	795	Lancaster
Newburgh, NY-PA PMSA	533	693	848	1075	1227	Pike
Philadelphia, PA-NJ PMSA	463	570	704	881	1104	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	329	404	487	610	681	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	293	433	534	667	753	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	282	394	472	588	711	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	309	358	431	559	625	Mercer
State College, PA MSA	405	495	613	804	860	Centre
Williamsport, PA MSA	282	360	433	559	625	Lycoming
York, PA MSA	314	431	534	666	748	York

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 41

PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	278	373	496	642	813
Bedford	278	353	423	552	617
Cameron	278	353	423	552	617
Clearfield	278	353	423	552	617
Crawford	278	353	423	552	617
Forest	278	353	423	552	617
Fulton	278	353	423	552	617
Huntingdon	278	353	423	552	617
Jefferson	278	353	423	552	617
Lawrence	278	353	423	552	617
Mifflin	308	353	423	552	617
Montour	328	353	444	617	728
Potter	278	353	423	552	617
Snyder	334	353	424	552	617
Susquehanna	332	353	423	552	655
Union	335	445	556	696	777
Warren	278	353	423	552	617
Armstrong	282	372	423	552	694
Bradford	282	357	436	570	624
Clarion	278	353	423	552	617
Clinton	278	353	423	552	617
Elk	278	353	423	552	617
Franklin	278	353	429	590	617
Greene	278	353	423	552	617
Indiana	318	355	423	552	617
Juniata	278	353	423	552	617
Mc Kean	278	355	423	552	617
Monroe	444	529	654	894	998
Northumberland	294	371	453	602	670
Schuylkill	278	353	440	552	617
Sullivan	278	353	423	552	617
Tioga	278	353	423	552	617
Venango	278	353	423	552	617
Wayne	279	431	507	646	831

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	486	587	715	895	1023	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA	401	545	655	822	1013	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 42

RHODE ISLAND continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Newport	547	638	819	1025	1147	Middletown town, Newport city, Portsmouth town
Washington	647	728	818	1056	1163	New Shoreham town

SOUTH CARDLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	350	419	493	670	792	Aiken, Edgefield
Charleston-North Charleston, SC MSA	393	456	524	696	811	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	426	480	540	712	853	York
Columbia, SC MSA	422	464	534	705	811	Lexington, Richland
Florence, SC MSA	319	355	461	576	645	Florence
Greenville-Spartanburg-Anderson, SC MSA	347	420	474	597	702	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	414	421	538	673	754	Horry
Sumter, SC MSA	337	374	425	581	689	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville	283	331	402	516	590
Bamberg	283	331	402	516	590
Beaufort	405	497	572	714	800
Chester	283	331	402	516	590
Clarendon	283	331	402	516	590
Darlington	283	331	402	516	590
Fairfield	283	380	433	540	605
Greenwood	284	331	402	516	590
Jasper	283	331	402	516	590
Lancaster	297	332	402	516	590
Lee	283	331	402	516	590
Marion	283	331	402	516	590
Newberry	283	331	402	516	590
Orangeburg	283	331	402	516	590
Union	283	331	402	516	590
Allendale	283	331	402	516	590
Barnwell	298	331	404	516	590
Calhoun	283	331	402	516	590
Chesterfield	283	331	402	516	590
Colleton	283	331	402	516	590
Dillon	283	331	402	516	590
Georgetown	283	360	405	516	615
Hampton	283	331	402	516	590
Kershaw	283	331	402	516	590
Laurens	283	331	402	516	590
Mccormick	283	331	402	516	629
Marlboro	283	331	402	516	590
Oconee	283	331	402	516	590
Saluda	283	331	402	516	590
Williamsburg	283	331	402	516	590

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	340	404	538	732	885	Pennington
Sioux Falls, SD MSA	328	454	575	728	836	Lincoln, Minnehaha

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

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SOUTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	247	330	411	544	629
Bennett	247	327	411	544	629
Brookings	265	419	465	627	740
Brule	247	327	411	544	629
Butte	284	388	516	674	795
Charles Mix	247	327	411	544	629
Clay	247	327	411	544	675
Corson	247	327	411	544	629
Davison	259	327	411	551	629
Deuel	247	327	411	544	629
Douglas	274	327	411	544	629
Fall River	281	327	411	544	629
Grant	247	327	411	544	629
Haakon	247	335	411	544	629
Hand	247	327	411	544	629
Harding	247	335	411	544	629
Hutchinson	247	327	411	544	629
Jackson	247	332	411	544	629
Jones	247	327	411	544	629
Lake	247	332	411	544	629
Lyman	247	327	411	544	629
Mcpherson	247	327	411	544	629
Meade	347	391	522	683	807
Miner	247	332	411	544	629
Perkins	247	327	411	544	629
Roberts	247	327	411	544	629
Shannon	247	332	411	544	629
Stanley	247	335	411	544	629
Todd	273	327	411	544	629
Turner	247	327	411	544	629
Walworth	247	335	411	544	629
Ziebach	247	327	411	544	629

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beadle	247	327	411	544	629
Bon Homme	274	327	411	544	629
Brown	247	327	411	544	629
Buffalo	247	327	411	544	635
Campbell	247	327	411	544	629
Clark	247	327	411	544	629
Codington	247	327	411	544	629
Custer	247	327	411	544	629
Day	275	327	411	544	629
Dewey	247	327	411	544	629
Edmunds	247	327	411	544	629
Faulk	247	327	433	544	629
Gregory	248	327	411	544	629
Hamlin	247	327	411	544	629
Hanson	251	343	457	574	642
Hughes	272	327	433	571	675
Hyde	247	333	411	544	629
Jerauld	247	330	411	544	629
Kingsbury	270	327	411	544	629
Lawrence	282	407	512	702	794
Mccook	247	327	411	544	629
Marshall	291	327	411	544	629
Mellette	294	332	411	544	629
Moody	247	327	411	544	629
Potter	247	327	411	544	629
Sanborn	247	327	411	544	629
Spink	269	327	418	544	629
Sully	247	327	411	544	629
Tripp	247	327	411	544	629
Union	260	327	411	544	629
Yankton	247	327	411	544	629

TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	357	417	500	646	737	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	331	371	434	593	609	Montgomery
Jackson, TN MSA	257	338	453	627	631	Madison, Chester

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 44

TENNESSEE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	297	355	438	570	675	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	297	366	459	612	736	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA	340	395	465	646	679	Fayette, Shelby, Tipton
Nashville, TN MSA	417	498	614	837	940	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	235	302	369	465	517
Bledsoe	235	275	348	457	512
Campbell	237	275	348	457	512
Carroll	235	285	348	487	512
Clay	239	275	348	457	512
Coffee	235	328	368	512	583
Cumberland	248	275	360	503	512
Dekalb	235	275	348	457	512
Fentress	235	275	348	457	512
Gibson	235	275	348	457	512
Grainger	239	275	348	457	512
Grundy	235	275	348	457	512
Hancock	235	275	348	457	512
Hardin	235	275	348	457	512
Henderson	235	275	348	457	512
Hickman	277	281	373	492	522
Humphreys	235	288	348	457	512
Jefferson	256	275	356	457	567
Lake	235	275	348	457	512
Lawrence	235	275	348	457	512
Lincoln	235	275	351	457	512
Mcnairy	235	275	348	457	512
Marshall	278	301	392	496	551
Meigs	235	275	348	457	512
Moore	235	275	348	457	512
Obion	272	276	353	468	512
Perry	235	277	348	457	512
Polk	235	275	348	457	512
Rhea	235	293	348	462	512
Scott	235	275	348	457	512
Smith	235	275	348	457	512
Trousdale	235	288	383	481	630
Warren	261	275	355	457	512

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Benton	253	288	348	457	512
Bradley	235	296	395	535	650
Cannon	235	275	348	457	512
Claiborne	235	275	348	457	512
Cocke	235	275	348	457	512
Crockett	235	275	348	457	512
Decatur	235	275	348	457	512
Dyer	293	297	396	498	618
Franklin	246	275	348	478	562
Giles	235	299	370	463	518
Greene	235	275	348	457	512
Hamblen	235	276	362	482	512
Hardeman	235	275	348	457	512
Haywood	247	286	382	478	535
Henry	235	275	348	457	512
Houston	235	275	348	457	512
Jackson	235	275	348	457	512
Johnson	235	278	348	457	512
Lauderdale	235	275	350	457	512
Lewis	235	275	348	457	512
Mcminn	235	275	348	459	512
Macon	235	275	348	457	512
Maury	337	344	457	573	639
Monroe	235	275	348	457	512
Morgan	235	275	348	457	512
Overton	235	275	348	457	512
Pickett	235	275	348	457	512
Putnam	285	288	370	509	548
Roane	253	275	348	467	562
Sequatchie	235	275	348	457	512
Stewart	235	275	348	457	512
Van Buren	235	275	348	457	512
Wayne	235	275	348	457	512

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 45

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Weakley	254	275	348	457	512
White	239	275	348	457	512

T E X A S

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	327	365	471	635	772	Taylor
Amarillo, TX MSA	277	350	436	608	717	Potter, Randall
Austin-San Marcos, TX MSA	427	516	687	954	1128	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	316	382	466	617	654	Hardin, Jefferson, Orange
Brazoria, TX PMSA	434	484	605	843	992	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	332	419	523	655	817	Cameron
Bryan-College Station, TX MSA	370	430	544	758	894	Brazos
Corpus Christi, TX MSA	346	425	543	739	873	Nueces, San Patricio
Dallas, TX	471	541	694	961	1135	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	390	437	518	718	850	El Paso
Fort Worth-Arlington, TX PMSA	403	438	569	793	936	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	426	438	550	763	900	Galveston
Henderson County, TX	287	341	417	569	683	Henderson
Houston, TX PMSA	404	454	588	818	964	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	389	405	513	714	784	Bell, Coryell
Laredo, TX MSA	315	383	477	596	670	Webb
Longview-Marshall, TX MSA	312	352	432	589	643	Gregg, Harrison, Upshur
Lubbock, TX MSA	299	378	491	683	757	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	277	379	434	542	608	Hidalgo
Odessa-Midland, TX MSA	299	345	461	641	743	Ector, Midland
San Angelo, TX MSA	277	354	430	590	696	Tom Green
San Antonio, TX MSA	365	421	545	758	896	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	277	379	458	585	700	Grayson
Texarkana, TX-Texarkana, AR MSA	302	369	450	594	630	Bowie
Tyler, TX MSA	347	383	468	649	686	Smith
Victoria, TX MSA	343	347	438	609	686	Victoria
Waco, TX MSA	302	370	487	648	682	Mclennan
Wichita Falls, TX MSA	332	372	448	597	704	Archer, Wichita

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 46

T E X A S continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	326	367	412	573	579
Angelina	296	343	387	537	633
Armstrong	271	314	410	514	579
Austin	271	314	378	518	579
Bandera	291	314	378	514	579
Bee	271	314	378	507	579
Borden	271	314	378	507	579
Brewster	271	314	378	511	612
Brooks	271	314	378	507	579
Burleson	271	314	397	537	654
Calhoun	290	314	378	523	619
Camp	367	372	465	582	650
Cass	271	314	378	507	579
Cherokee	303	315	385	507	579
Clay	271	320	378	507	590
Coke	271	314	378	507	579
Collingsworth	271	314	378	507	579
Comanche	271	314	378	507	579
Cooke	294	314	398	541	600
Crane	271	314	378	507	579
Crosby	271	314	378	507	579
Dallam	271	314	378	507	579
Deaf Smith	271	314	378	507	588
Dewitt	271	314	378	507	579
Dimmit	271	314	378	507	579
Duval	271	314	378	507	579
Edwards	271	314	378	507	579
Falls	271	314	378	507	579
Fayette	271	314	378	507	579
Floyd	271	314	378	507	579
Franklin	271	314	378	523	579
Frio	271	314	378	507	579
Garza	271	314	378	507	579
Glasscock	271	314	378	507	579
Gonzales	271	314	378	507	579
Grimes	271	314	378	511	603
Hall	271	314	378	507	579
Hansford	271	314	378	507	594
Hartley	271	314	378	507	579
Hemphill	271	349	391	546	579
Andrews	271	314	378	507	579
Aransas	271	334	445	619	623
Atascosa	271	314	378	507	579
Bailey	271	314	378	507	579
Baylor	271	314	378	507	579
Blanco	271	314	400	558	587
Bosque	271	314	378	507	579
Briscoe	271	314	378	507	579
Brown	271	314	379	509	622
Burnet	271	314	386	536	627
Callahan	271	314	378	507	579
Carson	271	314	378	507	579
Castro	273	314	378	507	579
Childress	271	314	378	507	579
Cochran	271	314	378	507	579
Coleman	271	314	378	507	579
Colorado	271	314	378	507	579
Concho	271	314	378	507	579
Cottle	271	314	378	507	579
Crockett	271	314	378	507	579
Culberson	271	314	378	507	579
Dawson	271	314	378	507	579
Delta	271	325	378	507	579
Dickens	271	314	378	507	579
Donley	271	314	378	507	579
Eastland	271	314	378	507	579
Erath	281	319	412	533	579
Fannin	275	314	378	509	579
Fisher	271	314	378	507	579
Foard	271	314	378	507	579
Freestone	271	314	378	507	579
Gaines	277	314	378	507	579
Gillespie	271	341	443	609	621
Goliad	271	314	378	507	579
Gray	297	314	403	507	598
Hale	271	314	378	507	579
Hamilton	271	314	378	507	579
Hardeman	271	314	378	507	579
Haskell	271	314	378	507	579
Hill	271	314	378	507	579

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 47

TEXAS continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hockley	277	324	378	512	579
Houston	271	314	378	507	579
Hudspeth	327	369	412	517	679
Irion	271	314	378	507	579
Jackson	271	315	378	507	579
Jeff Davis	271	314	378	507	579
Jim Wells	271	314	378	507	586
Karnes	271	314	378	507	579
Kenedy	271	314	378	507	579
Kerr	271	351	439	611	720
King	271	314	378	507	579
Kleberg	330	341	416	582	685
Lamar	271	337	396	554	654
Lampasas	271	314	378	514	607
Lavaca	271	314	378	507	579
Leon	271	348	390	507	642
Lipscomb	271	314	378	507	579
Llano	271	349	465	583	764
Lynn	271	314	378	507	579
Mcmullen	271	314	378	507	579
Marion	271	314	378	507	600
Mason	271	314	378	507	579
Maverick	271	314	378	507	579
Menard	271	314	378	507	579
Mills	271	314	378	507	579
Montague	271	314	378	507	579
Morris	271	314	378	507	579
Nacogdoches	286	345	448	560	661
Newton	271	314	378	507	579
Oc[illegible]iltree	271	314	378	507	579
Pa[illegible]o Pinto	271	314	378	507	602
P[illegible]mer	271	314	378	507	579
Polk	303	331	385	518	629
Rains	271	351	425	589	594
Real	271	314	378	507	579
Reeves	271	314	378	507	579
Roberts	271	317	378	507	579
Runnels	271	314	378	507	579
Sabine	271	314	378	507	579
San Jacinto	284	321	378	507	592

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hopkins	317	340	400	558	600
Howard	289	314	378	511	579
Hutchinson	271	314	391	546	644
Jack	271	314	378	507	579
Jasper	271	314	386	514	631
Jim Hogg	271	314	378	507	579
Jones	271	314	378	507	579
Kendall	271	396	445	619	731
Kent	271	314	378	507	579
Kimble	271	314	412	516	579
Kinney	271	314	378	507	579
Knox	271	314	378	507	579
Lamb	271	314	378	507	579
La Salle	271	314	378	507	579
Lee	308	345	388	542	608
Limestone	271	314	378	507	579
Live Oak	271	314	378	507	579
Loving	271	314	378	507	579
Mcculloch	279	314	378	507	579
Madison	271	323	378	507	596
Martin	271	314	378	507	579
Matagorda	314	342	425	589	594
Medina	271	314	378	507	579
Milam	271	314	378	507	579
Mitchell	271	314	378	507	579
Moore	271	319	378	507	588
Motley	271	314	378	507	579
Navarro	325	341	411	521	579
Nolan	279	314	378	507	579
Oldham	271	314	410	514	601
Panola	271	320	378	507	579
Pecos	271	314	378	511	603
Presidio	271	314	378	507	579
Reagan	345	351	467	586	767
Red River	271	349	391	507	579
Refugio	271	314	378	507	579
Robertson	271	359	401	507	579
Rusk	283	314	378	507	579
San Augustine	271	314	378	507	579
San Saba	271	314	378	507	579

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 48

TEXAS continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Schleicher	271	314	378	507	579
Shackelford	271	314	378	507	579
Sherman	271	314	378	507	579
Starr	271	314	378	507	579
Sterling	271	314	378	507	579
Sutton	271	314	378	507	579
Terrell	271	314	378	507	579
Throckmorton	271	314	378	507	579
Trinity	282	319	378	507	579
Upton	271	314	378	507	579
Val Verde	271	360	424	529	624
Walker	366	389	476	632	667
Washington	337	343	459	573	753
Wheeler	271	314	378	507	579
Willacy	271	314	378	507	579
Wise	271	317	380	530	579
Yoakum	271	357	439	549	720
Zapata	271	314	378	507	579

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Scurry	271	314	392	548	646
Shelby	271	314	378	507	579
Somervell	311	349	391	537	579
Stephens	271	314	378	507	579
Stonewall	271	314	378	507	579
Swisher	271	314	378	507	579
Terry	271	314	378	507	579
Titus	288	358	406	561	579
Tyler	271	314	404	507	665
Uvalde	271	314	378	507	579
Van Zandt	290	314	392	535	646
Ward	271	314	378	507	579
Wharton	271	314	378	507	579
Wilbarger	271	314	378	507	597
Winkler	271	314	378	507	579
Wood	271	314	391	546	644
Young	271	314	378	507	586
Zavala	271	314	378	507	579

UTAH

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kane County, UT	298	366	458	613	739	Kane
Provo-Orem, UT MSA	412	435	538	746	882	Utah
Salt Lake City-Ogden, UT MSA	358	415	526	732	858	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaver	289	355	444	595	716
Cache	323	396	497	665	800
Daggett	315	430	572	717	803
Emery	289	355	444	595	716
Grand	289	355	444	595	716
Juab	289	355	444	595	716
Morgan	289	355	444	595	716
Rich	289	355	444	595	716
Sanpete	289	355	444	595	716
Summit	428	528	660	890	1082
Uintah	289	355	444	595	716
Washington	357	439	583	779	954

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Box Elder	323	358	448	600	722
Carbon	311	355	444	595	716
Duchesne	289	355	444	595	716
Garfield	289	355	444	595	716
Iron	295	402	501	626	736
Millard	289	355	444	595	716
Piute	289	355	444	595	716
San Juan	289	355	444	595	716
Sevier	293	355	444	595	716
Tooele	289	369	444	595	716
Wasatch	289	369	444	595	716
Wayne	289	355	444	595	716

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 49

V E R M O N T

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	419	513	684	933	1126	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	413	499	580	808	907	
Bennington	367	462	595	756	880	
Caledonia	325	388	474	598	686	
Chittenden	379	614	692	960	1132	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex	318	382	474	598	686	
Franklin	342	386	474	602	692	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle	318	382	474	598	686	Alburg town, Isle La Motte town, North Hero town
Lamoille	330	458	546	749	859	
Orange	343	450	553	731	819	
Orleans	318	382	474	598	686	
Rutland	370	481	588	737	825	
Washington	356	441	595	744	834	
Windham	402	485	617	783	862	
Windsor	433	489	612	785	931	

V I R G I N I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA	419	495	634	842	944	Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA	302	425	550	755	771	Clarke
Culpeper County, VA	371	542	630	833	997	Culpeper
Danville, VA MSA	286	360	423	568	685	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA	297	355	438	570	675	Scott, Washington, Bristol city
King George County, VA	365	485	545	757	763	King George
Lynchburg, VA MSA	340	374	432	568	685	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
Norfolk-Virginia Beach-Newport News, VA-NC MSA	425	478	586	789	927	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

V I R G I N I A continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Richmond-Petersburg, VA MSA	462	524	609	848	1000	Suffolk city, Virginia Beach city, Williamsburg city Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	288	360	467	599	747	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	295	403	538	705	881	Warren
Washington, DC-MD-VA	609	692	812	1106	1333	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	334	361	422	560	675
Amelia	282	355	417	560	675
Augusta	282	365	443	583	710
Bland	282	355	417	560	675
Buchanan	282	355	417	560	675
Caroline	399	404	540	717	756
Charlotte	282	355	417	560	675
Cumberland	282	388	448	560	675
Essex	282	396	468	651	768
Franklin	282	355	417	560	675
Giles	282	355	417	560	675
Greensville	282	365	417	560	675
Henry	282	355	417	560	675
King and Queen	282	404	455	569	675
Lancaster	352	395	446	594	723
Louisa	282	367	452	628	675
Madison	283	420	473	592	775
Middlesex	282	357	417	560	675
Nelson	282	355	417	560	675
Northumberland	282	355	417	560	675
Orange	312	425	569	791	928
Patrick	282	355	417	560	675
Pulaski	282	355	417	560	675
Richmond	282	375	421	560	692
Rockingham	282	390	494	677	793
Shenandoah	371	380	469	649	737
Southampton	282	355	417	560	675
Sussex	282	355	417	560	675

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	294	355	417	560	675
Appomattox	282	355	417	560	675
Bath	282	355	417	560	675
Brunswick	282	355	417	560	675
Buckingham	282	355	417	560	675
Carroll	282	355	417	560	675
Craig	282	355	417	560	675
Dickenson	282	355	417	560	675
Floyd	282	355	417	560	675
Frederick	382	441	530	726	870
Grayson	282	355	417	560	675
Halifax	282	355	417	560	675
Highland	282	355	417	560	675
King William	282	386	433	560	675
Lee	282	355	417	560	675
Lunenburg	282	355	417	560	675
Mecklenburg	282	355	417	560	675
Montgomery	290	380	447	621	734
Northampton	282	355	417	560	675
Nottoway	282	355	417	560	675
Page	327	369	417	560	675
Prince Edward	315	357	417	560	675
Rappahannock	286	463	520	722	852
Rockbridge	282	355	417	560	675
Russell	282	355	417	560	675
Smyth	282	355	417	560	675
Surry	293	355	417	560	675
Tazewell	282	355	417	560	675

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING — PAGE 51

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Westmoreland	282	380	506	636	823
Wythe	295	355	417	560	675

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wise	282	355	417	560	675

W A S H I N G T O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	389	505	672	928	1101	Whatcom
Bremerton, WA PMSA	401	462	599	809	984	Kitsap
Olympia, WA PMSA	412	506	632	870	1025	Thurston
Portland-Vancouver, OR-WA PMSA	409	504	621	864	938	Clark
Richland-Kennewick-Pasco, WA MSA	485	556	665	926	1087	Banton, Franklin
Seattle-Bellevue-Everett, WA PMSA	481	561	710	986	1165	Island, King, Snohomish
Spokane, WA MSA	311	424	512	695	779	Spokane
Tacoma, WA PMSA	356	425	566	787	889	Pierce
Yakima, WA MSA	351	432	535	718	749	Yakima

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	311	373	484	639	709
Chelan	311	373	484	639	709
Columbia	311	373	484	639	709
Douglas	384	384	484	639	709
Garfield	311	373	484	639	709
Grays Harbor	318	373	489	660	761
Kittitas	311	373	484	639	709
Lewis	311	373	484	639	709
Mason	353	438	539	708	761
Pacific	311	373	484	639	709
San Juan	384	525	700	922	1097
Skamania	311	373	484	639	709
Wahkiakum	311	373	484	639	709
Whitman	335	381	508	706	835

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Asotin	311	373	484	639	709
Clallam	363	449	571	734	802
Cowlitz	349	390	503	699	709
Ferry	311	373	484	639	709
Grant	334	373	484	639	709
Jefferson	311	402	494	670	709
Klickitat	311	373	484	639	709
Lincoln	311	373	484	639	709
Okanogan	311	373	484	639	709
Pend Oreille	311	373	484	639	851
Skagit	424	518	611	763	853
Stevens	311	373	484	639	709
Walla Walla	311	373	484	648	766

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County, WV	384	410	483	603	678	Berkeley
Charleston, WV MSA	252	342	434	596	652	Kanawha, Putnam
Cumberland, MD-WV MSA	328	395	488	645	737	Mineral
Huntington-Ashland, WV-KY-OH MSA	297	348	429	547	602	Cabell, Wayne
Jefferson County, WV	385	426	527	685	776	Jefferson

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING — PAGE 52

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	299	358	410	531	576	Wood
Steubenville-Weirton, OH-WV MSA	279	329	412	526	586	Brooke, Hancock
Wheeling, WV-OH MSA	305	333	412	526	586	Marshall, Ohio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barbour	250	317	355	457	531
Braxton	250	305	355	457	531
Clay	250	305	355	457	531
Fayette	250	305	355	457	531
Grant	250	305	355	457	531
Hampshire	250	305	357	470	531
Harrison	275	338	390	487	584
Lewis	250	334	355	457	531
Logan	256	305	355	460	544
Marion	250	315	389	499	575
Mercer	250	305	355	457	531
Monongalia	314	348	424	584	691
Morgan	324	366	410	514	574
Pendleton	250	305	355	457	531
Pocahontas	250	305	355	457	531
Raleigh	259	305	355	457	535
Ritchie	250	305	355	457	531
Summers	250	305	355	457	531
Tucker	250	305	355	457	531
Upshur	250	305	357	457	531
Wetzel	283	305	383	479	604
Wyoming	250	305	355	457	531

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Boone	250	305	355	457	531
Calhoun	250	305	355	457	531
Doddridge	259	305	355	457	531
Gilmer	275	305	355	457	531
Greenbrier	250	345	368	459	531
Hardy	250	305	355	457	531
Jackson	250	312	355	486	531
Lincoln	250	305	355	457	531
Mcdowell	250	305	355	457	531
Mason	250	305	355	457	546
Mingo	250	305	355	457	538
Monroe	250	305	355	457	531
Nicholas	250	305	355	457	531
Pleasants	258	305	355	457	545
Preston	250	320	355	457	531
Randolph	250	305	355	457	531
Roane	250	305	355	457	531
Taylor	306	330	361	457	531
Tyler	250	305	373	468	531
Webster	250	305	355	457	531
Wirt	250	305	355	457	531

W I S C O N S I N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	311	383	486	614	707	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA	272	351	451	602	701	Douglas
Eau Claire, WI MSA	335	365	479	615	693	Chippewa, Eau Claire
Green Bay, WI MSA	340	375	481	668	672	Brown
Janesville-Beloit, WI MSA	342	432	535	670	751	Rock
Kenosha, WI PMSA	364	452	555	763	858	Kenosha
La Crosse, WI-MN MSA	276	356	453	606	734	La Crosse
Madison, WI MSA	425	535	646	898	1059	Dane

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

WISCONSIN continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	361	472	593	743	830	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	392	504	644	872	987	Pierce, St. Croix
Racine, WI PMSA	320	397	524	677	741	Racine
Sheboygan, WI MSA	297	382	467	583	723	Sheboygan
Wausau, WI MSA	364	377	472	642	712	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	270	315	401	512	577
Barron	270	315	401	512	577
Buffalo	270	315	401	512	577
Clark	270	315	401	512	577
Crawford	270	315	401	512	577
Door	270	334	415	534	648
Florence	270	315	401	512	577
Forest	270	315	401	512	577
Green	275	315	401	540	577
Iowa	280	315	401	527	577
Jackson	270	315	401	512	577
Juneau	276	315	401	512	577
Lafayette	275	315	401	512	577
Lincoln	270	315	401	512	577
Marinette	270	315	401	512	577
Menominee	270	315	401	512	577
Oconto	270	315	401	512	577
Pepin	270	315	401	512	577
Portage	328	347	450	661	695
Richland	270	315	401	512	577
Sauk	316	326	438	543	609
Shawano	275	315	401	512	577
Trempealeau	270	315	401	512	577
Vilas	270	315	401	512	577
Washburn	270	315	401	512	577
Waushara	270	315	401	512	577

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashland	295	326	401	512	577
Bayfield	270	315	401	512	577
Burnett	270	315	401	512	577
Columbia	270	321	422	553	620
Dodge	342	347	456	571	638
Dunn	270	315	412	551	680
Fond du Lac	314	425	503	684	706
Grant	274	315	401	512	577
Green Lake	270	315	401	512	577
Iron	270	315	401	512	577
Jefferson	270	358	465	601	657
Kewaunee	270	315	401	512	577
Langlade	270	315	401	512	577
Manitowoc	273	315	401	512	577
Marquette	270	315	401	512	577
Monroe	270	315	401	535	577
Oneida	270	316	401	516	618
Polk	270	315	408	512	577
Price	270	315	401	512	577
Rusk	270	315	401	512	577
Sawyer	270	315	401	512	577
Taylor	270	315	401	512	577
Vernon	270	315	401	512	577
Walworth	282	396	515	671	753
Waupaca	270	315	401	512	607
Wood	293	335	416	522	586

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	308	357	456	625	739	Natrona
Cheyenne, WY MSA	348	436	582	744	904	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	299	375	500	695	821
Campbell	308	327	420	559	660
Converse	284	327	420	557	640
Fremont	284	327	420	557	640
Hot Springs	284	327	420	557	640
Lincoln	284	327	420	557	640
Park	284	327	420	557	647
Sheridan	284	327	420	557	647
Sweetwater	296	327	420	559	660
Uinta	298	327	420	558	674
Weston	284	327	420	557	640

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	284	327	420	557	640
Carbon	284	327	420	557	640
Crook	284	327	420	557	640
Goshen	284	327	420	557	640
Johnson	284	327	420	557	640
Niobrara	284	327	420	557	640
Platte	284	327	420	557	640
Sublette	317	357	420	557	640
Teton	380	484	642	864	942
Washakie	284	327	420	557	640

PACIFIC ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	670	806	954	1196	1346

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	206	251	298	371	418	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR PMSA	223	270	317	398	447	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR PMSA	260	313	370	465	517	Caguas Municipio, Cayey Municipio, Cidra Municipio Gurabo Municipio, San Lorenzo Municipio
Mayaguez, PR MSA	245	298	354	439	495	Anasco Municipio, Cabo Rojo Municipio Hormigueros Municipio, Mayaguez Municipio Sabana Grande Municipio, San German Municipio
Ponce, PR MSA	243	297	350	437	491	Guayanilla Municipio, Juana Diaz Municipio Penuelas Municipio, Ponce Municipio, Villalba Municipio Yauco Municipio
San Juan-Bayamon, PR PMSA	327	399	471	589	661	Aguas Buenas Municipio, Barceloneta Municipio Bayamon Municipio, Canovanas Municipio Carolina Municipio, Catano Municipio, Ceiba Municipio Comerio Municipio, Corozal Municipio, Dorado Municipio Fajardo Municipio, Florida Municipio, Guaynabo Municipio Humacao Municipio, Juncos Municipio Las Piedras Municipio, Loiza Municipio Luquillo Municipio, Manati Municipio, Morovis Municipio

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091697

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 55

PUERTO RICO continued

METROPOLITAN FMR AREAS	Counties of FMR AREA within STATE	O BR	1 BR	2 BR	3 BR	4 BR
NONMETROPOLITAN COUNTIES						
Adjuntas Municipio	Naguabo Municipio, Naranjito Municipio	197	244	285	360	399
Arroyo Municipio	Rio Grande Municipio, San Juan Municipio	197	244	285	360	399
Ciales Municipio	Toa Alta Municipio, Toa Baja Municipio	197	244	285	360	399
Culebra Municipio	Trujillo Alto Municipio, Vega Alta Municipio	197	244	285	360	399
Guayama Municipio	Vega Baja Municipio, Yabucoa Municipio	197	244	285	360	399
Jayuya Municipio		197	244	285	360	399
Lares Municipio		197	244	285	360	399
Maricao Municipio		197	244	285	360	399
Orocovis Municipio		197	244	285	360	399
Quebradillas Municipio		197	244	285	360	399
Salinas Municipio		197	244	285	360	399
Santa Isabel Municipio		197	244	285	360	399
Vieques Municipio		197	244	285	360	399

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. Croix	471	572	674	842	944
St. Johns/St. Thomas	605	734	864	1080	1209

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4 BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE D - FY 1998 40TH PERCENTILE FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 CERTIFICATE PROGRAM

Area Name	SPACE RENT
California	
Mendocino County, CA	$238
Orange County, CA PMSA	$451
San Diego, CA MSA	$396
Vallejo-Fairfield-Napa, CA PMSA	$300
Colorado	
Boulder-Longmont, CO PMSA	$314
Denver, CO PMSA	$299
Delaware	
Dover, DE MSA	$172
Sussex County, DE	$119
Maryland	
Hagerstown, MD PMSA	$213
St. Mary's County, MD	$260
Minnesota	
Minneapolis-St. Paul, MN-WI MSA	$258
New York	
Dutchess County, NY PMSA	$348
Jamestown, NY MSA	$175
Newburgh, NY-PA PMSA	$326
Rochester, NY MSA	$244
Utica-Rome, NY MSA	$218
Tompkins County, NY	$204
Oregon	
Salem, OR PMSA	$217
Portland-Vancouver, OR-WA MSA	$262
Benton County, OR	$207
Linn County, OR	$187
Utah	
Provo-Orem, UT MSA	$215
Vermont	
Washington County, VT	$207
West Virginia	
Berkeley County, WV	$140
Jefferson County, WV	$143
Morgan County, WV	$138

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[FR Doc. 97-25506 Filed 9-25-97; 8:45 am]
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Friday
September 26, 1997

Part VI

Department of Justice

Bureau of Prisons

28 CFR Parts 523, 541, and 544
Good Conduct Time; Interim Rule
Inmate Discipline and Good Conduct Time; Final Rule
Literacy Program; Interim Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 523

[BOP–1032–I]

RIN 1120–AA62

Good Conduct Time

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is issuing interim regulations for the awarding of good conduct time pursuant to the Prison Litigation Reform Act of 1995 (PLRA). Pursuant to the PLRA, in awarding good conduct time credit, the Bureau shall consider whether the inmate, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or equivalent degree. This interim rule provides that an inmate subject to the PLRA shall be awarded the full 54 days credit for good conduct time (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has earned or is making satisfactory progress toward earning a General Educational Development (GED) credential. The interim rule further provides that an inmate subject to the PLRA shall be awarded 42 days credit for good conduct time per year (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has not earned or is not making satisfactory progress toward earning a GED credential. The amount of good conduct time awarded is also subject to disciplinary disallowance.

DATES: Effective November 3, 1997; comments must be submitted by November 25, 1997.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is adopting interim regulations for the awarding of good conduct time for certain inmates. The awarding and vesting of good conduct time at a rate of 54 days per year (prorated when the time served by the inmate for the sentence during the year is less than a full year) had been clearly stated by statute since the implementation of the Sentencing Reform Act of 1984. The actual awarding of good conduct time occurs annually on the date marking the anniversary of the inmate's completion of one year in Federal custody. The awarding of good conduct time is also subject to disciplinary disallowance (see Tables 3 through 6 in 28 CFR 541.13).

Further statutory mandates on vesting good conduct time were added by the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and by the PLRA. Under the Sentencing Reform Act of 1984, good conduct time vested annually. Section 20412 of VCCLEA required, among other things, that credit toward an inmate's service of sentence shall not be vested unless the inmate has earned or is making satisfactory progress toward a high school diploma or an equivalent degree. Section 809 of the PLRA requires, among other things, that credit toward an inmate's service of sentence shall vest on the date the inmate is released from custody, and that in awarding credit, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. This interim regulation is being issued for the purpose of implementing the discretionary provision of the PLRA pertaining to the awarding of good conduct time.

Regulations for the Bureau's literacy program have been revised to include a definition of "satisfactory progress" (28 CFR 544.73(b)). The revised regulations are published elsewhere in today's **Federal Register**. Pursuant to that definition, an inmate shall be deemed to be making satisfactory progress toward earning a GED credential or high school diploma unless and until the inmate receives a progress assignment confirming that the inmate refuses to enroll in the literacy program, that the inmate has been found to have committed a prohibited act that occurred in a literacy program during the last 240 hours of the inmate's most recent enrollment in the literacy program, or that the inmate has withdrawn from the literacy program. An inmate who receives a progress rating that the inmate is not making satisfactory progress shall be deemed to be making satisfactory progress only after the inmate has received a new progress assignment that the inmate has been continuously enrolled in a literacy program for a minimum of 240 instructional hours. Any further withdrawal or finding that the inmate has committed a prohibited act that occurred in a literacy classroom during the last 240 instructional hours of the literacy program shall result in a progress assignment indicating that the inmate is again not making satisfactory progress.

An inmate who is subject to the requirements of VCCLEA (i.e., an inmate who has been convicted of an offense committed on or after September 13, 1994 but before April 26, 1996) therefore may have his or her good conduct time vest if he or she possesses a high school diploma, a GED credential, or is making satisfactory progress toward attaining a GED. An inmate who is subject to the PLRA (i.e., an inmate who has been convicted of an offense committed on or after April 26, 1996) is awarded credit upon Bureau consideration whether the inmate has earned or is making satisfactory progress toward earning a high school diploma or an equivalent degree. By statute, good conduct time awarded to such inmate does not vest until the inmate is released from custody. The Bureau has determined (see new § 523.20) that when a PLRA inmate has not earned a high school diploma and is not making satisfactory progress toward earning a GED credential, the inmate shall be awarded 42 days of good conduct time rather than 54 days (prorated when the time served by the inmate during the year is less than a full year). The amount of good conduct time to be awarded is also subject to disciplinary disallowance.

The Bureau is publishing this regulation as an interim rule in order to solicit public comment. Members of the public may submit comments concerning this rule by writing to the previously cited address. Comments received before expiration of the deadline will be considered before the rule is finalized. Comments received after expiration of the deadline will be considered to the extent practicable.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget pursuant to E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 523

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 523 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 523—COMPUTATION OF SENTENCE

1. The authority citation for 28 CFR part 523 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (repealed November 1, 1987 as to offenses committed on or after that date), 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166 (repealed October 12, 1984 as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. A new subpart C, consisting of § 523.20, is added to read as follows:

Subpart C—Good Conduct Time

§ 523.20 Good conduct time.

Pursuant to 18 U.S.C. 3624(b), as in effect for offenses committed on or after November 1, 1987 but before April 26, 1996, an inmate earns 54 days credit toward service of sentence (good conduct time credit) for each year served. This amount is prorated when the time served by the inmate for the sentence during the year is less than a full year. The amount to be awarded is also subject to disciplinary disallowance (see Tables 3 through 6 in § 541.13 of this chapter). Pursuant to 18 U.S.C. 3624(b), as in effect for offenses committed on or after April 26, 1996, the Bureau shall consider whether the inmate has earned, or is making satisfactory progress (see § 544.73(b) of this chapter) toward earning a General Educational Development (GED) credential before awarding good conduct time credit.

(a) When considering good conduct time for an inmate serving a sentence for an offense committed on or after April 26, 1996, the Bureau shall award:

(1) 54 days credit for each year served (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has earned or is making satisfactory progress toward earning a GED credential or high school diploma; or

(2) 42 days credit for each year served (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has not earned or is not making satisfactory progress toward earning a GED credential or high school diploma.

(b) The amount of good conduct time awarded for the year is also subject to disciplinary disallowance (see Tables 3 through 6 in § 541.13 of this chapter).

[FR Doc. 97–25533 Filed 9–25–97; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[BOP–1040–F]

RIN 1120–AA34

Inmate Discipline and Good Conduct Time

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is implementing provisions of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and the Prison Litigation Reform Act of 1995 (PLRA) which make the earning of good conduct time contingent upon exemplary compliance with institution regulations. The list of sanctions which may be imposed by the Discipline Hearing Officer in instances where an inmate subject to either of these two Acts has been determined to be not in compliance with institution regulations is accordingly being modified to achieve this purpose.

EFFECTIVE DATES: November 3, 1997.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons (Bureau) is amending its regulations on inmate discipline (28 CFR part 541, subpart B). Section 20405 of the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 3624(b)) provides that a prisoner who is serving a term of imprisonment of more than one year for a crime of violence, other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to the determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner.

A proposed rule on this subject was published in the **Federal Register** on October 26, 1995. In that document the Bureau defined exemplary compliance with institutional disciplinary regulations in terms of the number of times an inmate was found to have committed a prohibited act. Accordingly, the Bureau proposed changes to 28 CFR 541.13(a) (1), (2), (3), and (4), (f), and 541.14(a). For ease of reference, Tables 3, 4 and 5 were revised in their entirety to incorporate changes to sanctions B and B.1. Under the proposed revision, when a VCCLEA inmate who has been rated as violent (i.e., an inmate who, as specified in the Violent Crime Control and Law Enforcement Act of 1994, committed a crime of violence on or after September 13, 1994) is found to have committed a greatest or high category offense during incarceration, the Discipline Hearing Officer (DHO) must, as a minimum, impose a sanction disallowing all Good Conduct Time (GCT) for the evaluation period. This means a loss of 54 days GCT. Sanctions to be imposed for such inmates found to have committed moderate or low category offenses during incarceration were also modified, though in neither case would all available GCT be necessarily disallowed for a single incident. An accumulation of prohibited act determinations, however, could result in such a loss.

The comment period for the proposed rule ended on December 26, 1995. The Bureau received one comment on the proposed rule. The commenter raised two objections: the proposed rule appeared to create inequities in inmate discipline sanctions based upon a difference of commitment date, and the proposed rule would greatly increase the workload of the Discipline Hearing Officer (DHO).

With respect to the apparent creation of inequities in inmate discipline sanctions based on commitment date, the Bureau notes that the statutory authority is explicit as to the consequences of less than exemplary behavior by VCCLEA inmates rated as violent. Since the statutory change potentially affects the loss of good conduct time, the changes can only be

applied to persons sentenced for an offense committed after the effective date of the Act. The statute has not been implemented retroactively. The distinction, then, is based both on date of the commitment offense and on the inmate's rating as a violent offender. What was at issue in the proposed rule is what constitutes exemplary compliance with institutional disciplinary regulations. The proposed rule procedurally defined this as the avoidance by the inmate of committing greatest or high category offenses. The proposed application of intermediate sanctions based on the commission of moderate or low category offenses by a VCCLEA inmate rated as violent fell within the upper limit of sanctions available for other inmates. The Bureau believes that the proposed application was supportive of the goal of maintaining exemplary compliance by VCCLEA inmates rated as violent. As noted below, however, the Bureau is making an adjustment in its determination of exemplary compliance in order to avoid disparity in the application of exemplary compliance for all inmates in accordance with the provisions of the Prison Litigation Reform Act of 1995 (PLRA).

With respect to a possible increase in the DHO's workload resulting from Unit Discipline Committee referrals of moderate and low category offenses, the Bureau believes that the DHO needs to be aware of the discipline record of VCCLEA inmates rated as violent and, if needed, that additional resources can be considered to address an excessive increase in the DHO's workload.

Section 809 of the PLRA amended 18 U.S.C. 3624 to require all inmates, not only those convicted of a crime of violence, to demonstrate exemplary compliance with institution disciplinary regulations in order to earn good conduct time. The Bureau believes that, having proposed an exemplary compliance standard for violent offenders, it may adopt the standard with modification both for VCCLEA violent offenders and for all inmates who are subject to the PLRA.

The Bureau is therefore modifying § 541.13(a) and 541.14(a) to cover PLRA inmates and revising the explanation of Sanction B.1 in Table 4 to specify that the DHO shall impose a specific minimum disallowance in cases involving a VCCLEA violent offender or a PLRA inmate. The practical result of this is to establish that either one or two 100 or 200 level offenses would result in a VCCLEA violent offender or PLRA inmate's losing all good conduct time for the year. The wording of Sanction B.1 need not change in Table 3. The proposed revision to § 541.13(f) eligibility for restoration of forfeited good conduct time is not being finalized in this document. The Bureau intends to analyze the impact of the new sanctions on good conduct time before making a final determination. Sanction B in Table 3 and its explanation in Table 4 have been adjusted to note that a good conduct time sanction may not be suspended and that forfeited good conduct time will not be restored. The prohibition on suspension of good conduct time conforms to the treatment of disallowed good conduct time in Sanction B.1. In adopting the proposed rule as final, the Bureau is making two further editorial changes. Prohibited Act 109 (possession, introduction, or use of any narcotics, etc.) is being divided into three separate prohibited acts in order to simplify statistical reporting and analysis of such behavior. Prohibited Act 220 is also amended to exclude drill authorized and conducted by staff (for example, as may be given in an intensive confinement center program). New interim regulations for the intensive confinement center program were published in the **Federal Register** on April 26, 1996 (61 FR 18658). As noted above, the previously proposed revised sanctions are applicable to VCCLEA inmates rated as violent (i.e., inmates who, as specified in the Violent Crime Control and Law Enforcement Act of 1994, committed a crime of violence on or after September 13, 1994) and to PLRA inmates (inmates who committed offenses on or after April 26, 1996). Inmates who are eligible for good conduct time because they were sentenced under the provisions of the Sentencing Reform Act of 1984, but who were sentenced for a crime of violence committed before September 13, 1994 are not defined as "VCCLEA inmates rated as violent" or "PLRA inmates" and consequently are unaffected by the new sanctions for those inmates.

Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 541

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 541 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for 28 CFR part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509; 510; 28 CFR 0.95–0.99.

2. In § 541.13, paragraphs (a)(1) through (a)(4) are revised; in Table 3, under GREATEST CATEGORY, Sanction B is revised, the prohibited act language in column 2 for Code 109 is revised, and new Codes 111 through 113 are added in numerical order; in Table 3, under HIGH CATEGORY, Sanction B and the prohibited act for Code 220 are revised; in Table 3, under MODERATE CATEGORY, Sanction B is revised; in Table 4, Items 1.(b) and (b.1) are revised; in Table 5, item 2 under "Sanctions Permitted" for Low Moderate Sanctions, Moderate Sanctions, and High Sanctions is revised; and in Table 6, the column headings and the Note are revised to read as follows:

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) * * *

(1) *Greatest category offenses.* The Discipline Hearing Officer (DHO) shall impose and execute one or more of sanctions A through E. Sanction B.1 must be imposed for a VCCLEA inmate rated as violent (i.e., an inmate who, as specified in the Violent Crime Control and Law Enforcement Act of 1994, committed a crime of violence on or after September 13, 1994) and for a PLRA inmate (i.e., an inmate who has been sentenced for an offense committed on or after April 26, 1996). The DHO may impose and execute sanction F and/or G only in addition to execution of one or more of sanctions A through E. Except as noted in the sanction, the DHO may also suspend one or more additional sanctions A through G.

(2) *High category offenses.* The Discipline Hearing Officer shall impose and execute one or more of sanctions A through M, and, except as noted in the sanction, may also suspend one or more additional sanctions A through M. Sanction B.1 must be imposed for a VCCLEA inmate rated as violent and for a PLRA inmate. The Unit Discipline Committee shall impose and execute one or more of sanctions G through M, and may also suspend one or more additional sanctions G through M, except for a VCCLEA inmate rated as violent. All high category offense charges for a VCCLEA inmate rated as violent and for a PLRA inmate must be referred to the DHO.

(3) *Moderate category offenses.* The Discipline Hearing Officer shall impose at least one sanction A through N, but, except as noted in the sanction, may suspend any sanction or sanctions imposed. Sanction B.1 ordinarily must be imposed for a VCCLEA inmate rated as violent and for a PLRA inmate. Except for charges referred to the DHO, the Unit Discipline Committee shall impose at least one sanction G through N, but may suspend any sanction or sanctions imposed. The UDC ordinarily shall refer to the DHO a moderate category charge for a VCCLEA inmate rated as violent or for a PLRA inmate if the inmate had been found to have committed a moderate category offense during the inmate's current anniversary year (i.e., the twelve month period of time for which an inmate may be eligible to earn good conduct time). The UDC must thoroughly document in writing the reasons why the charge for such an inmate was not referred to the DHO.

(4) *Low moderate category offenses.* The Discipline Hearing Officer shall impose at least one sanction B.1, or E through P. The Discipline Hearing Officer may suspend any E through P sanction or sanctions imposed (a B.1 sanction may not be suspended). Except for charges referred to the DHO, the Unit Discipline Committee (UDC) shall impose at least one sanction G through P, but may suspend any sanction or sanctions imposed. The UDC ordinarily shall refer to the DHO a low moderate category charge for a VCCLEA inmate rated as violent or for a PLRA inmate if the inmate had been found to have committed two low moderate category offenses during the inmate's current anniversary year (i.e., the twelve month period of time for which an inmate may be eligible to earn good conduct time). The UDC must thoroughly document in writing the reasons why the charge for such an inmate was not referred to the DHO.

* * * * *

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

Code	Prohibited acts	Sanctions
	Greatest Category	
	The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.	
	. . . . .	
		B. Forfeit earned statutory good time or non-vested good conduct time (up to 100%) and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
	. . . . .	
109	(Not to be used)	
	. . . . .	
111	Introduction of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
112	Use of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
113	Possession of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff	
	. . . . .	
	High Category	
	. . . . .	
		B. Forfeit earned statutory good time or non-vested good conduct time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
	. . . . .	
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill (except for drill authorized and conducted by staff)	

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

Code	Prohibited acts	Sanctions
	Moderate Category	
		B. Forfeit earned statutory good time or non-vested good conduct time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).

TABLE 4.—SANCTIONS

1. . . .

(b) *Forfeit earned statutory good time, non-vested good conduct time, and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 U.S.C. 4161 (less any previous forfeiture or withholding outstanding). The amount of good conduct time (GCT) available for forfeiture is limited to the total number of days in the "non-vested" status at the time of the misconduct (less any previous forfeiture). A forfeiture of good conduct time sanction may not be suspended. Disallowance of extra good time is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. The sanction of termination or disallowance of extra good time may not be suspended. Forfeited good conduct time will not be restored. Authority to restore forfeited statutory good time is delegated to the Warden. This decision may not be delegated lower than the Associate Warden level. Limitations on this sanction and eligibility for restoration are based on the severity scale. (See Table 6)

(b.1) *Disallowance of good conduct time.* I. An inmate sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act (includes the inmate who committed his or her crime on or after November 1, 1987) may not receive statutory good time, but is eligible to receive 54 days good conduct time credit each year (18 U.S.C. 3624(b)). Once awarded, the credit is vested, and may not be disallowed. However, for crimes committed on or after September 13, 1994 and prior to April 26, 1996, credit toward an inmate's service of sentence shall not be vested unless the inmate has earned or is making satisfactory progress toward a high school diploma or an equivalent degree, or has been exempted from participation because of a learning disability. For crimes committed on or after April 26, 1996, credit toward an inmate's service of sentence shall vest on the date the inmate is released from custody. Once disallowed, the credit may not be restored, except by immediate review or appeal action as indicated below. Prior to this award being made, the credit may be disallowed for an inmate found to have committed a prohibited act. A sanction of disallowance of good conduct time may not be suspended. Only the DHO can take action to disallow good conduct time. The DHO shall consider the severity of the prohibited act and the suggested disallowance guidelines in making a determination to disallow good conduct time. A decision to go above the guideline range is warranted for a greatly aggravated offense or where there is a repetitive violation of the same prohibited act that occurs within a relatively short time frame (e.g., within 18 months for the same greatest severity prohibited act, within 12 months for the same high severity prohibited act, and within 6 months for the same moderate severity prohibited act). A decision to go below the guidelines is warranted for strong mitigating factors. Any decision outside the suggested disallowance guidelines is to be documented and justified in the DHO report.

II. VCCLEA inmates rated as violent and PLRA inmates will ordinarily be disallowed good conduct time for each prohibited act they are found to have committed at a DHO hearing, consistent with the following:

(1) Greatest category offenses: A minimum of 40 days (or, if less than 54 days are available for the prorated period, a minimum of 75% of available good conduct time) for each act committed;

(2) High category offenses: A minimum of 27 days (or, if less than 54 days are available for the prorated period, a minimum of 50% of available good conduct time) for each act committed;

(3) Moderate category offenses: A minimum of 13 days (or, if less than 54 days are available for the prorated period, a minimum of 25% of available good conduct time) for each act committed if the inmate has committed two or more moderate category offenses during the current anniversary period;

(4) Low moderate category offenses: A minimum of 6 days (or, if less than 54 days are available for the prorated period, a minimum of 12.5% of available good conduct time) for each act committed if the inmate has committed three or more low moderate category offenses during the current anniversary period.

However, the DHO may, after careful consideration of mitigating factors (seriousness of the offense, the inmate's past disciplinary record, the lack of available good conduct time, etc.) choose to impose a lesser sanction, or even disallow no GCT for moderate and low moderate prohibited acts by VCCLEA inmates rated as violent or by PLRA inmates. The DHO must thoroughly detail the rationale for choosing to disallow less than 13 days or 6 days respectively. This will be documented in Section VII of the DHO report. Disallowances of amounts greater than 13 days or 6 days respectively will occur with repetitive offenses consistent with the guidelines in this (b.1).

III. The decision of the DHO is final and is subject only to review by the Warden to ensure conformity with the provisions of the disciplinary policy and by inmate appeal through the administrative remedy program. The DHO is to ensure that the inmate is notified that any appeal of a disallowance of good conduct time must be made within the time frames established in the Bureau's rule on administrative remedy procedures.

IV. Except for VCCLEA inmates rated as violent or PLRA inmates, Sanction B.1 may be imposed on the Low Moderate category only where the inmate has committed the same low moderate prohibited act more than one time within a six-month period.

. . . . . .

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
			Low Moderate Sanctions, plus.
			2. Forfeit earned SGT or non-vested GCT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (an EGT sanction may not be suspended).
			Moderate Sanctions (A, C, E–N), plus.
			2. Forfeit earned SGT or non-vested GCT up to 37½% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
			High Sanctions (A, C, E–M), plus.
			2. Forfeit earned SGT or non-vested GCT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Max. amt. forf. GT	Max. amt W/hd SGT	Elig. restoration forf. SGT	Elig. restoration W/hd/SGT	Max. dis seg
.	.	.	.	.	.	.

Note: (1) In Table 6 headings, "GT" represents both good conduct and statutory good time and "SGT" represents statutory good time. Forfeited good conduct time is not eligible for restoration. Restoration of statutory good time will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When the Warden or his delegated representative denies restoration of forfeited or withheld statutory good time, the unit team shall notify the inmate of the reasons for denial. The unit team shall establish a new eligibility date, not to exceed six months from the date of denial.

(2) An inmate with an approaching parole effective date, or an approaching mandatory release or expiration date who has forfeited good time may be placed in a Community Treatment Center only if that inmate is otherwise eligible under Bureau policy, and if there exists a legitimate documented need for such placement. The length of stay at the Community Treatment Center is to be held to the time necessary to establish residence and employment.

3. In § 541.14, paragraph (a) is amended by revising the last sentence to read as follows:

§ 541.14 Incident report and investigation.

(a) *Incident report.* * * * Only the DHO may make a final disposition on a prohibited act in the Greatest Severity Category or on a prohibited act in the High Category (when the High Category prohibited act has been committed by a VCCLEA inmate rated as violent or by a PLRA inmate).

* * * * *

[FR Doc. 97–25522 Filed 9–25–97; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

[BOP–1036–I]

RIN 1120–AA33

Literacy Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is revising its regulations on the literacy program on an interim basis in order to include a definition of "satisfactory progress". This definition is one determinant which is statutorily required for the awarding and/or vesting of good conduct time for certain inmates. In implementing this change, the Bureau has further revised its regulations on the literacy program for the sake of clarification or simplification.

DATES: Effective November 3, 1997; comments must be submitted by November 25, 1997.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is adopting interim regulations on its literacy program for inmates. A final rule on the literacy program was published in the **Federal Register** May 1, 1991 (56 FR 20089), and was corrected on March 17, 1992 (57 FR 9211).

The Bureau's literacy program, which uses the General Educational Development (GED) credential as the equivalence for a high school diploma, requires participation from inmates who are not able to demonstrate the achievement of a GED credential or a high school diploma, with certain stated exceptions. Section 20412 of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) requires, among other things, that credit toward an inmate's service of sentence shall not be vested unless the inmate has earned or is making satisfactory progress toward a high school diploma or an equivalent degree. Under the Comprehensive Crime Control Act, good conduct time vested annually. Section 809 of the Prison Litigation Reform Act of 1995 (PLRA) requires, among other things, that credit toward an inmate's service of sentence shall vest on the date the inmate is released from custody, and that in awarding credit, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. A separate rulemaking published elsewhere in today's **Federal Register** addresses the discretion of the Bureau in awarding good conduct time credit to an inmate subject to PLRA (i.e., an inmate whose offense was committed on or after April 26, 1996).

In this document the Bureau is amending its regulations on the literacy program in order to include a definition of what constitutes satisfactory progress toward earning a GED credential. As defined in newly revised § 544.73(b), an inmate subject to VCCLEA or PLRA shall be deemed to be making satisfactory progress toward earning a GED credential or high school diploma unless and until the inmate receives a progress assignment confirming that the inmate refuses to enroll in the literacy program, that the inmate has been found to have committed a prohibited act that occurred in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program, or that the inmate has withdrawn from the literacy program. When an inmate subject to VCCLEA or PLRA receives a progress assignment indicating that he or she is not making satisfactory progress, this assignment shall not be changed to indicate that the inmate is making satisfactory progress until the inmate is currently and continuously enrolled in a literacy program for a minimum of 240 instructional hours. Any further withdrawal or finding that the inmate committed a prohibited act that occurred in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program shall result in a progress assignment indicating that the inmate is again not making satisfactory progress.

Further revisions to the Bureau's regulations on the literacy program made for the sake of clarification or simplification are described below.

Previously, regulations in § 544.70 had specified that the minimum time required for participation is 120 calendar days or until a GED credential is achieved, whichever occurs first. Based upon the results of past program experience, 120 calendar days has been shown to provide sufficient time for the average inmate to achieve a GED credential. As revised, the Bureau has chosen to restate the time frame for minimum required participation in terms of instructional hours (i.e., 240 instructional hours is the equivalent of 120 calendar days). As revised, the statement of purpose and scope includes reference to exceptions stated in new § 544.71. Redundant references in § 544.70 to incentives have been removed.

Section 544.71 has been revised as a more clear statement of exceptions to mandatory participation. Paragraph (a)(2) contains additional statutory reference for study and observation cases. The exception for "good cause" formerly contained in paragraph (a)(4) has been replaced with more specific provisions in new paragraphs (a)(4) and (b). New paragraph (a)(4) allows for staff to make exceptions on a temporary basis due to special circumstances. Special circumstances (including, but not limited to, medical reasons, transfer on writ, being on the waiting list for initial placement) may make it temporarily impracticable to participate in the literacy program. Once the special circumstances are no longer applicable, the inmate shall be required to participate in the literacy program. The exception in new paragraph (b) is based upon the existence of an emotional, mental, or physical impediment to learning which has been documented through formal diagnostic assessment.

The provisions in former §§ 544.72 and 544.74 on work promotions and assignments have been consolidated and revised in a new § 544.74 as noted below. New § 544.72 contains the provisions on incentives formerly contained in § 544.75.

The provisions in § 544.73 have been revised to include the definition of satisfactory progress as noted above.

New § 544.74 consolidates provisions on work promotion and assignments contained in former §§ 544.72 and 544.74. These provisions have been revised for the sake of clarity. The revised provisions clarify that covered assignments above grade 4 include commissary positions. The revised provisions no longer stipulate that withdrawal from the literacy program may be used as the basis to remove an inmate appointed to a grade 4 position pursuant to new § 544.74(a)(1).

Section 544.75 has been revised to remove specific reference to calendar days. As noted above, the regulations state this period, where necessary, in terms of instructional hours.

The Bureau is publishing this regulation as an interim rule in order to solicit comment on a working definition of "satisfactory progress" without unnecessary delay in applying the definition to procedures for vesting and awarding good conduct time. As noted above, other changes in the regulations affect clarity or organization. Members of the public may submit comments concerning this rule by writing to the previously cited address. Comments received before expiration of the deadline will be considered before the rule is finalized. Comments received after expiration of the deadline will be considered to the extent practicable.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget pursuant to E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 544

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(p), part 544 in subchapter C of 28 CFR, chapter V is amended as set forth below.

Subchapter C—Institutional Management

PART 544—EDUCATION

1. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date). 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart H of part 544 is revised to read as follows:

Subpart H—Literacy Program

Sec.

544.70 Purpose and scope.
544.71 Exceptions to required literacy program participation.
544.72 Incentives.
544.73 Program participation.
544.74 Work assignment limitations.
544.75 Disciplinary action.

Subpart H—Literacy Program

§ 544.70 Purpose and scope.

Except as provided for in § 544.71, an inmate confined in a federal institution who does not have a verified General Educational Development (GED) credential or high school diploma is required to attend an adult literacy program for a minimum of 240 instructional hours or until a GED is achieved, whichever occurs first.

§ 544.71 Exceptions to required literacy program participation.

(a) The following inmates are not required to attend the literacy program:

(1) Pretrial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c), 4241(d), or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced deportable aliens;

(4) Inmates determined by staff to be temporarily unable to participate in the literacy program due to special circumstances beyond their control (e.g., due to a medical condition, transfer on writ, on a waiting list for initial placement). Such inmates, however, shall be required to participate when the special circumstances are no longer applicable.

(b) Inmates who have been determined (on the basis of formal diagnostic assessment) to have a documented emotional, mental, or physical individual impediment to learning shall not be required to complete the literacy program beyond those achievement levels indicated as realistic by the formal diagnostic assessment.

(c) Staff shall document in the inmate's education file the specific reasons for not requiring the inmate to participate in, or to complete, the literacy program.

§ 544.72 Incentives.

The Warden shall establish a system of incentives to encourage an inmate to obtain a GED credential.

§ 544.73 Program participation.

(a) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's literacy program. Initially, staff shall meet with the inmate for the purpose of enrolling the inmate in the literacy program. Subsequently, staff shall formally interview each inmate involved in the literacy program when necessary for the purpose of determining a progress assignment. Staff shall place documentation of these interviews in the inmate's education file.

(b)(1) For the purposes of 18 U.S.C. 3624, an inmate subject to the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) or the Prison Litigation Reform Act of 1995 (PLRA) shall be deemed to be making satisfactory progress toward earning a GED credential or high school diploma unless and until the inmate receives a progress assignment confirming that:

(i) The inmate refuses to enroll in the literacy program;

(ii) The inmate has been found to have committed a prohibited act that occurred in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program; or

(iii) The inmate has withdrawn from the literacy program.

(2) When an inmate subject to VCCLEA or PLRA receives a progress assignment indicating that the inmate is not making satisfactory progress, the assignment shall be changed to indicate satisfactory progress only after the inmate is currently and continuously enrolled in a literacy program for a minimum of 240 instructional hours. Any further withdrawal or finding that the inmate has committed a prohibited act in a literacy program during the last 240 instructional hours of the inmate's most recent enrollment in the literacy program shall result in a progress assignment indicating that the inmate is again not making satisfactory progress (see paragraphs (b)(1)(ii) and (iii) of this section).

(c) At the end of 240 instructional hours, excluding sick time, furloughs, or other absences from scheduled classes, the unit team during scheduled program review sessions shall meet with the inmate to encourage continued participation in the literacy program until the inmate earns a GED credential or high school diploma. At these meetings, the inmate may elect not to continue in the literacy program, and no disciplinary action will be taken. The inmate may not discontinue this program when participation is mandated by statute.

§ 544.74 Work assignment limitations.

These limitations on work assignment appointment and promotion apply to all inmates, including those exempted from required participation in the literacy program by § 544.71.

(a) *Appointment.* (1) An inmate who does not meet the literacy requirement may be assigned to a grade 4 position contingent upon the inmate's continued enrollment in the literacy program.

(2) An inmate ordinarily must show prior attainment of a GED credential or high school diploma in order to be considered for a commissary work assignment above minimum pay level, an institution work assignment above grade 4 compensation, or an industrial work assignment above grade four or in a non-graded incentive pay position.

(3) If labor force needs require, an inmate who does not meet the literacy requirement may be assigned to an industrial non-graded incentive pay position if the inmate is simultaneously enrolled in a literacy or related program. Withdrawal from the literacy program shall result in termination of the assignment. Local Federal Prison Industry (FPI) management may elect to retain the reassigned inmate in an hourly rated grade 4 position.

(b) *Promotion.* An inmate ordinarily must show prior attainment of a GED credential or high school diploma to be promoted above the minimum pay level or grade in a commissary work assignment, an institutional work assignment, or an industrial work assignment. An inmate already in an assignment above the minimum pay grade who had met prior literacy requirements when approved for promotion is eligible for further promotion under the prior standard. Such inmate, however, must meet the current standard if, due to demotion based upon a poor performance appraisal, he or she needs to reapply for a promotion.

(c) *Exceptions.* The Warden may, for good cause, exempt inmates on a case-by-case basis, from the literacy requirements for work assignment appointment and promotion. Staff shall document such exemption in the inmate's education file and central file.

§ 544.75 Disciplinary action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate lacking a GED credential or high school diploma if that inmate refuses to enroll in, and to complete, the mandatory 240 instructional hours of the literacy program.

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federal register

Friday
September 26, 1997

Part VII

Department of Defense

32 CFR Part 178
Closed, Transferred, and Transferring Ranges Containing Military Munitions; Proposed Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 178

RIN 0790–AG46

Closed, Transferred, and Transferring Ranges Containing Military Munitions

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) is proposing a rule that identifies a process for evaluating appropriate response actions on closed, transferred, and transferring military ranges. Response actions will address safety, human health, and the environment. This rule contains a five-part process that is not inconsistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and is tailored to the special risks posed by military munitions and military ranges. All closed, transferred, and transferring military ranges will be identified. A range assessment will be conducted in which a site-specific accelerated response (various options for protective measures, including monitoring) will be implemented. If these measures are not sufficient, a more detailed site-specific range evaluation will be conducted. Recurring reviews will be conducted, and an administrative close-out phase also is included.

DATES: Written comments on this proposed rule will be accepted until December 26, 1997.

ADDRESSES: Written comments (one original and two copies) should be addressed to: DoD Range Rule, P.O. Box 4137, Gaithersburg, MD 20885–4137. Comments may also be submitted electronically by sending electronic mail ("e-mail") through the internet to: fbarrule@b-r.com. All electronic comments must be submitted as an American Standard Code for Information Interchange (ASCII) file without special characters or any form of encryption, or as a Microsoft Word file. The administrative record for this rulemaking will be kept in paper form. Accordingly, the Department of Defense will convert all documents received electronically into printed paper form as they are received and will place the paper copies in the administrative record. In addition, comments may be faxed to (800) 870–6547.

Public comments and the supporting information used for this rule will be made available for public inspection and copying at the DoD range rule administrative record located at 910 Clopper Road, Gaithersburg, MD 20878–1399. This administrative record is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review the administrative record materials, the public must make an appointment by calling (301) 258–8753.

FOR FURTHER INFORMATION CONTACT: To request a copy of the Range Rule or to ask a general question, please call the toll-free DoD range rule information request line (available 24 hours a day, 7 days a week) at (888) 541–1081. The toll-free number for the hearing-impaired is (800) 870–6557. In addition, this proposed rule may be downloaded from the World Wide Web at http://www.acq.osd.mil/ens/. For specific technical questions, please contact Mr. Joseph Murphy, U.S. Army Environmental Center Range Rule Office, or Ms. Karen Heckelman, U.S. Army Environmental Center Office of Counsel, at (410) 612–7104.

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I. Legal Authority

This part is proposed under the authorities of the Defense Environmental Restoration Program (DERP), in 10 U.S.C. 2701 *et seq.*; the DoD Explosives Safety Board (DDESB), in 10 U.S.C. 172 *et seq.*; and Section 104 of CERCLA, in 42 U.S.C. 9601 *et seq.*, as delegated to the DoD by Executive Order (E.O.) 12580 (59 FR 2923, January 23, 1987).

II. Background

Section 107 of the Federal Facility Compliance Act of 1992 amended the Resource Conservation and Recovery Act (RCRA) and required the U.S. Environmental Protection Agency (EPA) to promulgate regulations identifying when conventional and chemical military munitions become hazardous waste subject to RCRA Subtitle C regulations. EPA's proposed military munitions rule (60 FR 56476, November 8, 1995) would have identified military munitions left on a closed range or a range transferred from military control as meeting the statutory definition of solid waste in RCRA Section 1004(27), potentially subject to RCRA corrective action or Section 7003 authorities. However, EPA's proposed rule also stated that if the Department of Defense, pursuant to the Department of Defense's own statutory authority, were to promulgate a rule that addressed military munitions on closed or transferred ranges in a manner that was protective of human health and the environment and that allowed for public involvement in addressing these ranges, EPA would interpret the statutory definition of solid waste as not including military munitions left on closed or transferred ranges. The Department of Defense began development of this proposal, the "DoD Range Rule," in response to EPA's proposed military munitions rule.

The final EPA military munitions rule was published on February 12, 1997 (62 FR 6622). In this final rule, EPA postponed action on whether to identify as solid waste military munitions left on closed or transferred ranges. EPA will reach its final decision on this issue based on further analyses of comments received on the military munitions rule and on the Department of Defense's final regulation governing the cleanup of munitions on closed and transferred ranges. In the final military munitions rule, EPA indicated that it is prepared to address this issue under Federal environmental laws if the Department of Defense does not promulgate the range rule or if EPA finds that the range rule does not adequately protect human health and the environment.

The Department of Defense is including transferring ranges within the scope of the range rule, even though they were not included in the scope of EPA's proposed military munitions rule, to more comprehensively address this issue. The DoD proposed rule addresses the unique explosives safety considerations associated with military munitions (including unexploded ordnance (UXO)) and the need for environmental protection, and it does so under DERP, 10 U.S.C. 172, and CERCLA authorities rather than under RCRA.

III. Summary of Proposed Rule

This proposal identifies a process for evaluating response actions on closed, transferred, and transferring military ranges. These response actions fully encompass safety, are protective of human health and the environment, and address risks based upon reasonably anticipated future land use.

Closed ranges include those ranges that are within military control but are put to a use incompatible with range activities. Transferring ranges include those ranges associated with Base Realignment and Closure (BRAC) activities and other property transfers to nonmilitary entities. Transferred ranges include those being identified in the Formerly Used Defense Site (FUDS) program.

The Department of Defense's proposed rule contains a phased process, with accelerated response (AR) options as part of an early phase. All closed, transferred, and transferring military ranges will be identified. Then a site-specific range assessment (RA), in which an AR involving various protective measures such as monitoring is implemented, will determine if the protective measures are sufficient to safeguard safety, human health, and the environment. If the protective measures in and of themselves are not sufficient at a specific military range, the range evaluation (RE) process will be initiated. The RE process includes more detailed data collection to support a site-specific safety risk assessment and a site-specific human health and ecological risk assessment. At the completion of the RA and/or RE, the Department of Defense will document its decision after input from Federal and State regulators, American Indian tribes, and the public. Recurring reviews will also be conducted. The final phase is an administrative close-out of range responses that have been completed.

In this proposed rule, the Department of Defense articulates the nature and extent of its environmental response authorities under DERP, 10 U.S.C. 172, and CERCLA. It is doing so in the form of creating a formal military range response process based on the general delegation of response authority given to the Department of Defense by Congress under DERP and by the President under CERCLA; the specific emphasis in DERP and 10 U.S.C. 172 on limiting risks posed to human health and the environment by military munitions (including UXO) and military ranges; and the unique nature of the risks posed by military munitions and military ranges, for which the Department of Defense alone has special responsibility and expertise.

IV. Section-by-Section Analysis

A. Purpose, Scope and Applicability

This proposal applies to all the DoD components, such as the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the National Guard Bureau (NGB), and the U.S. Coast Guard (USCG). It applies to military munitions on closed, transferred, and transferring military ranges previously or currently owned by, leased to, or otherwise possessed or used by the United States. These military ranges may not be under the administrative control of the Secretary of Defense (or the Secretary of War prior to 1949); however, the munitions themselves remain under the jurisdiction of the Secretary of Defense. For this reason, this proposal applies to military munitions on closed, transferred, or transferring military ranges where the range itself is under the administrative control of another Federal agency or property owner, provided that the activity that led to the munitions being on those ranges was in support of the Department of Defense's national defense or national security mission. For example, the national laboratories under the U.S. Department of Energy (DOE) conduct research, development, training, and evaluation of military munitions on behalf of the Department of Defense. Similarly, USCG conducts training activities involving the use of military munitions as part of their mission in support of the Department of Defense's national defense mission. In these cases the munitions remain under the jurisdiction of the Secretary of Defense, but the range may fall under the administrative control of the Secretary of Energy or the Secretary of Transportation. This rule uses the term "Federal Land Manager" to refer to Federal agencies having or clearly anticipated to receive jurisdiction, custody, or control of land affected by this proposal. The scope of this proposal is thus not inconsistent with DERP (10 U.S.C. 2701(c)), CERCLA, and EPA's military munitions rule.

In some instances, however, the United States does not own the property utilized as a military range but instead leases or leased the property, or otherwise possesses, possessed or used the property. Additionally, the land could be owned by a State entity, as when National Guard activities are conducted. For this reason, this proposal would be applied to military ranges owned by an entity other than the United States but where military activities, such as operation of a range by the NGB,[1] have occurred.

This rule does not apply to any closed, transferred, or transferring military ranges that are subject to response activities pursuant to any specific statutory authority (e.g., Title X of Pub. L. 103–139, DoD Appropriations Act, 1994, Conveyance of Kaho'olawe Island, Hawaii to the State of Hawaii,

[1] The NGB will be the Department of Defense agency responsible for evaluating and implementing response actions on closed, transferred, and transferring military ranges that are owned, leased, or otherwise possessed by a State National Guard if NGB validates that the military range is or was used for a military purpose. The DoD point of contact for military ranges owned or leased by a State National Guard will be located at the NGB.

where Congress has mandated special response actions, and a special cleanup agreement was developed between the Secretary of the Navy and the State of Hawaii) or pursuant to any agreements that were negotiated prior to the effective date of this rule and that cover military ranges. However, in either case, should any aspects of this proposed rule be useful in making a given response more efficient or cost-effective, then, upon mutual consent of the parties to the agreement, nothing in this rule would prevent the response from being so adapted for use at such a range. This rule also does not apply to ranges located outside the United States, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands.

Under CERCLA Section 120(e), the DoD component must enter into an interagency agreement with the EPA Administrator "for the expeditious completion * * * of all necessary remedial action" at a DoD site on the National Priorities List (NPL). Where a closed, transferred, or transferring range was identified and included in the interagency agreement for an NPL site, the interagency agreement, even if negotiated prior to the effective date of this rule, will govern. If the interagency agreement provides that subsequently identified areas of concern are included automatically in the interagency agreement, then for purposes of § 178.2(b)(2), such subsequently identified areas of concern would be considered to be "identified and included in an interagency agreement for an NPL site." As stipulated in the preceding paragraph, nothing would prevent the response from following this rule instead, upon mutual consent of the parties to the agreement. If the range was not "identified and included in the interagency agreement for an NPL site," this rule will be utilized. In some cases, UXO investigations or response actions are underway on closed, transferred, or transferring ranges at facilities where there are unresolved issues concerning the scope of the interagency or Federal facility agreement. This proposal does not apply to ongoing UXO response actions at such facilities, unless mutually agreed to by all parties to the interagency or Federal facility agreement.

Finally, this proposal does not apply to explosives or munitions emergency responses, as defined in EPA's military munitions rule (62 FR 6622, February 12, 1997). In the final rule, EPA defines an explosives or munitions emergency as all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. As defined by EPA, an explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions, and/or transport of those items to another location to be rendered safe, treated, or destroyed. Explosives and munitions emergency responses can occur on either public or private lands. The Department of Defense may not be the first responder to a military munitions emergency (for example, the local police or another Federal agency may be the first to arrive on the scene).

Under EPA's military munitions rule, explosives or munitions emergency response activities are exempted from most requirements under RCRA. Because explosives or munitions emergencies may or may not involve military munitions on a closed, transferred, or transferring military range, the Department of Defense has decided to exclude these activities from the scope of this rule and to conduct the activities in accordance with the provisions of EPA's military munitions rule. The fact that an area has been subject to an emergency response in the past should not, however, preclude that area from being subject to the range rule. The Department of Defense solicits comments on proposed §§ 178.1—178.3, which address the purpose, scope, and applicability of this rule.

B. Definitions

This proposal includes definitions for several terms that clarify the scope and applicability of this proposed rule. While the Department of Defense is not separately defining the nine criteria from the National Contingency Plan (NCP), the nine criteria mentioned in §§ 178.7(c) and 178.9(d) have the same meanings as the nine criteria as set out in the NCP. The Department of Defense requests comments on the following proposed definitions.

1. Military Munitions

This proposal includes a definition of military munitions in § 178.4(g). This definition is the same as the definition in EPA's final military munitions rule (62 FR 6622, February 12, 1997).

2. Military Range

This proposal includes a definition of a military range in § 178.4(h). A military range is any land mass or water body that is or was used for the conduct of training, research, development, testing, or evaluation of military munitions or explosives. A military range can be used for many purposes. Examples include missile, artillery, aerial bombing, tank, naval surface warfare, mortar, antiaircraft, grenade, small arms, demolition, and multipurpose ranges where combined arms are utilized. The definition in § 178.4(h) is the same as EPA's definition in the final military munitions rule (62 FR 6622, February 12, 1997), except that additional information is provided on activities and locations that do not meet the definition of a military range.

A classic setup of a live fire area military range consists of a central area called the "impact area." The impact area varies in size depending on the type of military munitions employed. The impact area contains the targets that are fired upon and thus poses the greatest potential safety risk due to the concentration of military munitions employed (i.e., the impact area will normally contain the greatest concentration of UXO). Surrounding the impact area is a buffer zone. This area is not intentionally fired into but may include some UXO; thus military activities are not conducted in this area. Outside the buffer zone are the firing/release points from which military munitions are employed (e.g., fired, dropped, placed).

Another example of a military range includes designated land and water areas set aside for the purpose of training and conducting "maneuvers." These maneuver areas are used to conduct military exercises and create an environment that simulates an area of conflict or an active war zone. During these maneuvers, training aids and military munitions simulators are used and expended. Examples are training ammunitions, artillery simulators, smoke grenades, pyrotechnics, mine simulators, and riot control agents used to simulate a chemical agent attack. Even though these training aids and simulators are used to create an environment that is safer than a war or open conflict, they may still pose an explosives safety concern. For this proposed rule, the definition of military ranges includes current and former designated maneuver areas on land and water.

Airspace and water or land areas underlying airspace used for aircraft-related training, testing, or research and development where military munitions were not used do not fall within the definition of military range solely as a result of the aircraft-related activities. Examples of airspace and underlying water or land areas that would not be considered a military range for purposes of this rule include areas used for air-to-air training, electronic scoring site ranges, military operations areas, and military training routes (MTR). Electronic scoring site ranges provide bomber aircraft with a weapon drop score without the aircraft's actually releasing any military munitions. Military operations areas are areas that separate certain military activities (e.g., air-to-air training) from civil and military aircraft traffic under instrument flight rules. MTRs are used to conduct low-altitude navigation and tactical training in excess of 250 knots air speed below 10,000 feet mean sea level altitude. No military munitions are dropped or fired in MTRs.

A water range is another example of a military range. CERCLA and DERP address releases or threats of releases of hazardous substances, pollutants, and contaminants into the "environment," which is defined in CERCLA as including navigable waters, the water of the contiguous zone, and ocean waters.[2] In general, in 33 CFR 2.05–1 to 2.05–35, the terms "navigable waters," "contiguous zone," and "ocean waters" are defined as being, respectively, the internal waters of the United States and its coastal waters out to a distance of 3 nautical miles, 12 nautical miles from the U.S. coast, and 200 nautical miles from the U.S. coast. As a result, the DoD ranges located on water courses within these three zones are likewise subject to this proposed regulation.

Over the life of a military range, the types and quantities of military munitions expended on the range vary greatly due to changes in mission and technology. An important characteristic of military ranges is that their use and/or the military munitions employed normally changes over time. As technology improves and weapons systems are replaced, new types of military munitions are developed and employed. Because of limited land availability and safety requirements, new ranges are often constructed on top of old ranges. Thus a variety of military munitions (including UXO) exist on a military range because of the different types of weapons that have been employed on a particular range during its life cycle. Changes in training needs over the years also contribute to the occurrence of several classes and types of military munitions at military ranges.

[2] CERCLA Section 101(8) defines "environment" as including "(A) the navigable waters, the water of the contiguous zone, and ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act of 1976, and (B), any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States."

Historic battlefields are not covered by this proposed definition of a military range. Battlefields were used for actual combat and thus were not used for training, research, development, testing, and evaluation. The Department of Defense has transferred areas that were historic battlefields and may contain UXO from past conflicts. Even though these areas are not "military ranges" and are not covered by this proposal, the Department of Defense will continue to provide explosive ordnance disposal (EOD) support to civil authorities for any UXO discovered on historic battlefields.

3. Closed Range

This proposal includes a definition of a closed range in § 178.4(d). This definition was provided in EPA's proposed military munitions rule (60 FR 56476, November 8, 1995) and is consistent with the final military munitions rule (62 FR 6622, February 12, 1997). Closed ranges are ranges that have been taken out of service and either have been put to new uses that are incompatible with range activities or are not considered by the military to be potential range areas. Examples of incompatible use may include the construction of a permanent building not compatible with range operations or training, such as houses, schools, hospitals, clinics, commissaries, libraries, and other such buildings. Closed ranges remain under the control of the military. Closed ranges would include those ranges that are on Federal lands or otherwise possessed by the military, determined at the respective military department's Secretariat-level position to be closed, and where future use is incompatible with range activities. Areas that meet the definition of a closed range will be regulated under this rule.

4. Transferring Range

This proposal includes a definition of a transferring range in § 178.4(n). Under that definition, a military range that is proposed to be leased, transferred, or returned from the Department of Defense to another entity, including Federal entities, is a "transferring range." To qualify as a military range "proposed" to be leased, transferred, or returned, within the meaning of this rule, the proposal must be concrete and specific. Further experience likely will be needed to develop and clarify this definition, particularly the requirement that a proposal be "specific and concrete." DoD notes that where a Federal agency might receive jurisdiction, but the transfer is not sufficiently concrete or specific to be "proposed" within the meaning of the definition, the agency may sit on the project team for informational purposes only, and such participation is encouraged.

A number of military ranges are proposed for transfer outside of the military control. Transferring ranges include military ranges associated with the BRAC program, as well as any other property transactions in which military ranges are transferred to nonmilitary entities. It is important to note that, immediately prior to becoming a transferring range, a military range could be considered closed, inactive, or active. Transferring ranges remain under military control until they have been officially transferred to another party. Transfer may be by deed or lease, or by return under the terms of a withdrawal, special-use permit or authorization, right-of-way, public land order, or other instrument under which the Department of Defense used the property. An active range will not be considered to be a "transferring range" until the transfer is imminent. While an active or transferred range is easier to identify, classifying a military range as "transferring" is more complex, and is based on multiple site-specific factors. Reasonably anticipated land uses for the range property will be identified and agreed to prior to the land transfer.

In some situations, the Department of Defense may not transfer a military range or a portion of the range if during the assessment it is determined that the risks cannot be reliably managed or reduced (unless such transfer is congressionally mandated). If technology limits the range response and thus restricts the use of the land, but later improvements in technology allow for a change in the designated land use, the Department of Defense is responsible for conducting a later response, if doing so is consistent with the land transfer agreement and reasonably anticipated land uses that were originally identified. Areas that meet the definition of a transferring range will be regulated under this rule. EPA's military munitions rule does not address transferring ranges; the Department of Defense has included a definition in this proposal to more comprehensively address the issue.

5. Transferred Range

This proposal includes a definition of a transferred range in § 178.4(m). A transferred range is a military range that has been released from military control. FUDS are areas that were once controlled by the Secretary of Defense and may have portions that were used as military ranges. Transferred ranges

include those being identified in the FUDS program. These areas could have been transferred to other Federal agencies (U.S. Department of the Interior (DOI), DOE, etc.), State or local governments, or private citizens.

The transfer may have been by deed or lease, or by return under the terms of a withdrawal, special-use permit or authorization, right-of-way, public land order, or other instrument under which the Department of Defense used the property. For example, public lands may be federally owned lands under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM). These lands may be withdrawn (by statute, executive order, or public land order) from the operation of the public land laws and reserved for other Federal agencies' uses, including the Department of Defense. Agencies holding withdrawn public lands that they no longer need are to file with BLM a notice of intent to relinquish such lands (43 CFR 2372; 41 CFR 101–47.202–6). The BLM will then determine if the lands are suitable for return to the public domain for administration under the public land laws. If the lands are no longer suitable for return to the public domain, they will be processed as "real property" under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 472), or under the property management and disposal provisions of the defense base closure laws, as applicable.

6. Inactive Range

This proposal includes a definition of an inactive range in § 178.4(f). As defined in EPA's military munitions rule (62 FR 6622, February 12, 1997), an inactive range is "a military range that is not currently being used, but that is still under military control and is considered by the military to be a potential range area, and that has not been put to a new use incompatible with range activities." The Department of Defense has military range areas that have been used in the past for training, research, development, testing, or evaluating military munitions. Inactive ranges are held in reserve in case the Department of Defense has a change in mission that requires additional range areas. Some inactive ranges remain under military control to protect national security, as the activities conducted on them were classified. Therefore, inactive ranges would not be considered "closed" under this rule. Inactive ranges are not covered by this proposed rule or EPA's military munitions rule, but they do fall under existing environmental and DoD regulations if the source of possible contamination is other constituents, not military munitions, or if contamination from range activities is moving off the range. Active and inactive ranges will be addressed in a forthcoming DoD policy to be issued by DDESB on proper safety-based management techniques for such sites. The Department of Defense will issue guidance on when an inactive range should be classified as a closed range. Factors in this decision-making process include future testing, training, and new weapons development needs, as well as needed range rotation.

7. Active Range

This proposal includes a definition of an active range in § 178.4(b), which is the same as the definition of an active range in EPA's military munitions rule (62 FR 6622, February 12, 1997). The scope of the DoD range rule is limited to closed, transferred, and transferring ranges; a definition of active ranges is included in this proposal for the sake of clarity.

8. Unexploded Ordnance

This proposal includes a definition of UXO in § 178.4(o). This definition is the same as the definition of UXO in EPA's military munitions rule (62 FR 6622, February 12, 1997). Military munitions are designed to be safe during storage and handling operations and will not normally detonate until an item is actually employed. A military munition becomes UXO only after it has been employed and failed, in total or in part, to function properly. Due to the complex design of many military munitions and the large number of military munitions employed, some of them are almost certain to become UXO. The highly likely presence of UXO on closed, transferred, and transferring military ranges creates a safety risk.

9. Other Constituents

This proposal includes a definition of other constituents in § 178.4(j). Due to their complexity and varied functions, military munitions may contain many other constituents that may be a source of concern on military ranges.

Military munitions can be composed of propellants, explosives, and pyrotechnics (PEP); chemical agents; metal parts; and other inert components. When munitions are employed on a range, the PEP components generally are consumed, leaving behind metal parts and other inert components that may be distributed in small pieces across a large area. The risk caused by the metal parts and other inert components will depend on the types of materiel used, the susceptibility of this materiel to leaching and other transport mechanisms, the physical characteristics of the range (the climate, amount of rainfall, soil type, etc.), and the quantity of military munitions employed. These components of military munitions, if released into the environment, are included in the definition of other constituents.

A small percentage of military munitions employed on military ranges fail to function as intended, which can result in UXO remaining on the range. UXO can pose a safety hazard (as discussed in Section IV.C.1. of this preamble, Safety) and/or an environmental concern. PEP compounds in military munitions could be released to the environment when the munitions casing is damaged or deteriorated. To a lesser extent, metal or other materials could build up over time in the environment. While UXO itself is not considered an other constituent, compounds released from the UXO are included in the definition of other constituents. At significant concentrations, other constituents may present explosives safety risks.

Other constituents that may be identified on military ranges also could include fluids from vehicles used as targets or from activities that occurred prior to the area's being used as a military range (e.g., landfill, industrial operations). Other constituents that are present on a military range and that fall under other regulatory authorities may be addressed by the appropriate agency (see Section IV.F.1.b. of this preamble, Relationship to Other Laws, and Section V, Discussion of Other Major Alternatives).

10. Federal Land Manager

This proposal includes a definition of Federal land manager in § 178.4(e). DERP applies to property "owned by, leased to, or otherwise possessed by the U.S. and under the jurisdiction of the Secretary [of Defense]" (10 U.S.C. at 2701(c)). For simplicity, the Department of Defense has used the term "Federal land manager" throughout the rule to refer to a Federal agency that has received or is clearly anticipated to receive jurisdiction, custody, or control over the property. The phrase "clearly anticipated to receive jurisdiction" refers to situations where the transfer to the Federal agency is statutorily established; legally required; incorporated in a legislative proposal formally supported by the Administration; designated under the land reuse plan; or where the transfer to the Federal agency is otherwise recognized as being clearly anticipated, such as where both the Federal agency and the DoD component have agreed that such transfer will take place. Where a Federal agency has been proposed to receive jurisdiction, custody, or control of a former range, but the agency is not yet a Federal land manager as defined in this rule, the agency may sit on the project team for informational purposes only.

11. American Indian Tribe

This proposal includes a definition of American Indian tribe in § 178.4(c). This term is used in the proposed DoD range rule to describe Native American tribes and Native Alaskan villages that meet specific criteria so that they can be afforded substantially the same treatment as States under this rule, and thus receive a concurrence role in the range response process. The governing body of the American Indian tribe must be federally recognized by the Department of Interior; have an appropriate tribal governing body that performs health, safety, or environmental functions; and have real property interests, as defined in § 178.4(l) of this rule, over some or all of a closed, transferred, or transferring range at which a response, including pre-response activities, is ongoing or contemplated.

12. Property Owner

This proposal includes a definition of a property owner in § 178.4(l). The term "property owner" as used in this proposal refers to non-Federal entities that now own property that is a closed, transferred, or transferring military range, and to Native American tribes and Native Alaskan villages that own property or land held in trust by the United States for that tribe or village or its individual members. "Property owner" also includes any non-Federal entity legally entitled to control access to the property, to the exclusion of the right of the legal owner to control access, if known to the responsible DoD component. This situation may exist if the person legally entitled to control access to the property is different from the current legal owner (e.g., in lease situations).

C. Summary of Challenges

Military munitions are designed to injure or kill people and/or to damage or destroy property. Thus, during any environmental response activity, the presence or suspected presence of military munitions creates unique challenges due to explosives safety concerns. Before undertaking any response action on a closed, transferred, or transferring military range, the Department of Defense must first consider the explosives safety risks inherent in locating, investigating, evaluating, and responding to military range areas where military munitions are known or suspected to be present. The explosives safety risk is equally great regardless of whether military munitions (including UXO) or other constituents are being addressed in the response action. Response personnel, even those specially trained to deal with the explosives safety hazards associated with military munitions, must not be exposed to an unreasonable explosives safety risk in order to address less compelling environmental concerns. The risk to response personnel increases as the density of military munitions, e.g., UXO, increases. Additionally, rough terrain and thick vegetation restrict visibility and mobility, thereby substantially increasing the explosives safety risks associated with response activities. Response activities are made more difficult and dangerous because technology is not yet sophisticated enough to ensure positive detection, identification, and subsequent removal of all military munitions in any given area.

1. Safety

The Department of Defense is committted to the management of safety risks associated with exposure of the public and clearance personnel to military munitions. As discussed throughout this rule, the explosives safety risks from locating and clearing unstable materials such as UXO are very high. The investigation and restoration activities associated with other constituents present similar risks, as they usually occur in areas that also contain UXO. The Department of Defense is the recognized expert in the management of these risks. Federal, State, and local regulators typically seek DoD's expertise in safely managing military munitions and other ordnance discovered at non-DoD sites. Unless the explosive risk is first eliminated or at least reduced, catastrophic injury or fatalities may result from any response activity.

Typical military munitions/UXO on military ranges may include: bombs (up to 2,000 pounds), artillery, mortar, aircraft cannon, or tank-fired projectiles (20-millimeter through 16-inch), dispensed munitions, submunitions, rockets, guided missiles, grenades, general demolition materials, bulk explosives, pyrotechnics, torpedoes, mines, small arms ammunition, and chemical munitions. Military munitions are designed to be safe during storage, handling, and transportation. The fuzes used with these items also have built-in safety features to preclude arming of the munition until actual employment (firing, placing, etc.) of the item. It is not until after the munition has been employed and failed to function (totally or in part) that it becomes UXO.

Although the fuze is the most sensitive portion of the UXO, the filler may pose an even greater danger to human health and the environment. By their nature, high-explosive fillers present risks. Explosives may deteriorate over time to form sensitive crystals that could detonate if subjected to heat, shock, or friction. Chemical munitions contain chemical agents that present additional safety risks. High-explosive fillers, deteriorated explosives, and chemical munitions are a few examples of military munitions where the filler itself requires special safety consideration, even if the fuzing mechanism is no longer capable of firing.

Fuzes are designed to initiate a train of fire or detonation in ordnance by an action such as mechanical or electronic timing, electrical or mechanical energy, impact, radar, chemical, pyrotechnic, hydrostatic pressure, etc. Once safety devices (such as safety pins, safety blocks, and arming wires) are removed, a fuze can require one or more of the following forces to fully arm: acceleration, deceleration, setback, or centrifugal force. EOD personnel cannot visually determine if a fuze is armed. Therefore a fuze must be considered armed and ready to fire if the right force is applied. For example, a clockwork mechanism fuze that has armed but failed to function contains a firing pin under spring tension which, if disturbed, could fire. Also, many military munitions pose even more serious risks because they have a secondary system that will, should the munition fail to operate as intended, detonate the munition if it is disturbed in any way.

Addressing the unique problems associated with UXO on military ranges requires that knowledgeable UXO personnel and specialized safety procedures be used. The acute hazard associated with the presence of armed and potentially deadly UXO is the primary factor that drives the sequence of investigative and remedial actions. In essence, acute safety concerns direct and determine the sequence of site activities. Once the explosives hazards are identified and addressed, further response actions may occur. In some cases, normal activities may be delayed (e.g., drilling monitoring wells in UXO areas), or additional requirements may have to be met (e.g., UXO surface

clearance, followed by downhole magnetometry at regular intervals to detect subsurface ordnance present in the area where a well is being drilled). The most acute risk is to the response personnel who come near the UXO. In some cases, the risk may be so high as to preclude a clearance action.

2. Current Technological Capabilities

a. *Military munitions/UXO detection:* Military munitions detection, which is often referred to as ordnance detection, has been undertaken since the first military munitions were found on the battlefield. The clearing of military munitions requires personnel to have the capability to safely and precisely locate these items regardless of whether they are lying on the surface, covered with heavy overgrowth, buried deeply in the soil, or located underwater and potentially buried in the sediments.

Several recent tests and evaluations have identified shortfalls in UXO detection technology. Detection technologies can be hampered by the depth of penetration of the munition. The penetration depth is dependent on the munition's velocity upon impact, size, weight, shape, angle of entry, and the type and composition of soil. Obvious physical signs made by military munitions, such as entry holes, are quickly erased by natural weather processes or are often destroyed by other impacting ordnance. The growth of grass and brush compound the problem by covering munitions lying on the surface. Since many of the ranges covered by this proposed rule have not been active for many years, vegetation often hinders the ability to detect the munitions. Methods to address the problems of dense vegetation, such as deforestation and controlled burns, can cause other environmental problems. Underwater items often are buried by silt or covered with marine growth. In addition, military munitions on water ranges can be greatly affected by coastal storms and tidal actions that can immerse the military munitions in a bed of sediments or uncover military munitions that were previously embedded in sediments. Furthermore, the depth or condition of a water range may make analysis, much less retrieval, effectively impossible, or may pose an unreasonable risk to the health and safety of range response personnel.

In summary, items that affect UXO detection include: munition size, composition, depth, and orientation; soil composition and geology; vegetation and terrain; and background interference from metal scrap. Strides will have to be taken to eliminate the high degree of uncertainty associated with UXO detection. Safe clearance operations require technologies that can detect and determine the precise location of a broad spectrum of military munitions in a wide variety of soil and surface conditions, both on land and under water. Safe clearance operations also require the capability to internally examine items to identify hazardous contents, including fuzing as well as filler material.

Detection and location of military munitions depend primarily on the ability to distinguish their physical characteristics from those of the surrounding environment. Characteristics that have the most impact on the effectiveness of current detection and removal technologies include the materials used in the ordnance case, fuzing, and filler. The majority of casings are constructed of ferrous (i.e., iron-containing) metal. Nonferrous metals and plastics, however, are used for some submunitions and land mines. Nonferrous military munitions make detection much more difficult and subsequent clearance more dangerous. Fuzing systems include combinations of ferrous and nonferrous metals, plastics, electrical circuits, and small amounts of explosive materials. Filler materials include a variety of high explosives, chemical agents, pyrotechnics, and inert items such as concrete and sand.

Common methods used to detect military munitions include visual searches, magnetometers, electromagnetic induction (metal detectors), and ground-penetrating radar (GPR). A visual search for military munitions is restricted to the surface and often is hindered by vegetation and terrain. Magnetometers are the most commonly used form of detecting military munitions below the surface and can be adapted for underwater use. Low-sensitivity magnetometers have a limited depth of detection capability, while high-sensitivity magnetometers have a large number of false detections. Magnetometers can only detect munitions that contain ferrous metal. Metal detectors can locate both ferrous and nonferrous metallic objects and can be adapted for use under water; however, metal detectors can only detect munitions that are located very near the surface. GPR can collect rough images of buried metallic and nonmetallic munitions, but its effectiveness is severely limited in certain soil conditions. In general, the material used in the construction of military munitions, the munition's size and depth, and the soil's composition all affect the effectiveness of available technology.

(1) Advanced technology demonstrations. Congress authorized and appropriated funding in fiscal years 1993 to 1995 to conduct unexploded munition technology demonstrations. In response, the U.S. Army Environmental Center established the UXO Advanced Technology Demonstration (ATD) Program with technical support from the U.S. Naval EOD Technology Division. The objective of this program was to evaluate and identify innovative, cost-effective, commercially available systems for the detection, identification, and removal of UXO. These demonstrations have established a technology baseline for UXO detection and removal. In addition, the ATDs have progressively monitored state-of-the-art UXO technology advancements.

There are four separate and distinct projects associated with the multiyear Congressional funding:

(1) Jefferson Proving Ground (JPG) Phase I ATD, conducted during summer 1994.

(2) JPG Phase II ATD, conducted during summer 1995.

(3) Live Site ATDs, conducted during summer 1995.

(4) JPG Phase III ATD, conducted during summer and fall 1996.

The JPG Phases I through III ATDs were conducted at a controlled test site, which contained numerous types of inert ordnance precisely located at various depths and orientations. The Live Site ATDs were conducted at five sites across the United States that contained live ordnance. Commercial companies were invited to demonstrate their system's ability to detect, characterize, or remotely excavate UXO.

To date, more than 60 technologies have been demonstrated and evaluated as part of the ATD program. The demonstrators represented airborne, ground vehicle, and man-portable platforms; magnetometer, GPR, electromagnetic induction, and infrared sensors; target processing software; and excavation technologies.

To date, technology performance ATD results have shown systems exhibiting ordnance detection capabilities ranging from 0–85%. JPG Phase III results, although not yet published and released, once again indicate increased detection performance. While commercial technology has exhibited less than desirable capabilities (especially evidenced during JPG Phase I), private industry has made strides to identify technology performance weak points. Phases II and III show evidence of increased private industry teaming efforts, commercial research and development efforts, and clearer understanding of government needs. Combined, this translates into enhanced systems and capabilities. However, throughout all ATDs, UXO detection technology continues to exhibit extremely high false alarm rates and minimal or no discrimination ability. Systems are unable to determine if a detected anomaly is ordnance or a piece of scrap metal. For example, if 100 ordnance items are located on a range scheduled for remediation, a technology may be able to detect 85 of the 100 UXO items. However, the demonstrator would also falsely identify over 200 other locations. For excavation purposes, this translates into many empty holes and unnecessary excavation.

(2) *Other assessments of UXO technology.* The Army Corps of Engineers recently evaluated UXO detection technology applications at 33 specific sites. The Army Corps of Engineers stated that, in general:

> [T]hree [main types of UXO sensor] technologies [(magnetometry, infrared, and ground-penetrating radar)] for the detection and location of [UXO] tend to dominate. While other evolving technology is promising, there is considerable development yet remaining. The most important observation, however, is that there is no single technology that can accomplish this task unambiguously. For all their merits, neither magnetometers, GPR, nor [metal detectors] alone can assure more than a modicum of success probability. While each is a powerful technology with distinct advantages, none has the breadth of capability to interpret all of the phenomena that are typically encountered in the search for [UXO]. This includes the capability to discriminate [UXO] from background artifacts, the ability to resolve individual entities below-ground, and the ability to determine depth below the surface independent of geology.[3]

Of the 28 systems the Army Corps of Engineers evaluated, only 5 were rated above average. Four were rated as average, while 19 were rated as below average. The Army Corps of Engineers concluded that "the vast diversity of ordnance * * * coupled with the very nature of its designed use * * * renders the detection and location of [UXO] a very difficult task."

Additionally, the DoD Inspector General has reviewed UXO detection technologies and stated that "the technology currently employed to detect and remove ordnance is primitive and labor intensive."[4] In a 1994 report, the DoD Inspector General stated:

> To date, there has been limited success in identifying UXO on or near the cleared surface. Detecting and identifying UXO underground present a much greater challenge * * *. We found that relatively primitive detection and "pick and shovel" removal methods are typically used for ordnance and explosive waste cleanup. The basic approach is to remove as much vegetation as possible, mark off grids, then use crews with hand held magnetometers to "sweep" the area. The magnetometers will detect any metal to a maximum depth of approximately three feet. When a metal object is detected, it is exposed by careful hand excavation. Most of the objects identified through that procedure are simply non-explosive scrap metal. However, when UXO is found, it is either destroyed in place or removed to a safe location for destruction. Those procedures are usually labor intensive and thus very expensive. The dangerous nature of the work requires the use of highly trained Explosive Ordnance Disposal personnel.[5]

The Inspector General concluded that UXO cleanup operations were "relatively simplistic, labor intensive, sometimes environmentally disruptive, and expensive."[6] Thus, despite the efforts placed on developing effective detection technology, UXO detection technology cannot currently support a totally efficient response effort.

b. *Clearance technology and activities:* In earlier years, military munitions generally were detonated in place. Even now, detonation in place is a primary response when moving a munition presents a safety risk. Section IV.C.1 of this preamble, Safety, describes some of the basic elements that affect the explosives safety risk of UXO. To accomplish range clearance, a series of complex detection and location tasks must be undertaken, such as locating surface and subsurface objects, distinguishing if the object is or may be a munitions item, and identifying the type of device and the type of filler used. Once located, there are two types of clearance methods available: point recovery and area recovery. Point recovery relies heavily on technologies to locate possible ordnance items and uses current construction, mining, and drilling technologies to unearth the detected objects. Area recovery is the removal and sifting of all soil to a certain depth, utilizing heavy equipment to remove ordnance items and debris.

The safe excavation of buried military munitions requires the removal of large quantities of soil. As the clearance depth increases, fewer military munitions are found, but the items that are found typically contain large amounts of explosives. The precise location of the buried items becomes more difficult, so their recovery often becomes a major excavation effort. Both methods are labor intensive, time-consuming, and expensive. They also present a high risk of injury or death to clearance personnel due to the larger amounts of explosives in the buried munitions. Results from the demonstration at JPG showed that robotic excavation of located UXO is feasible. Robotic responses are time-consuming, however, and could have a significant adverse impact on the speed of response operations if a large quantity of UXO requires excavation.

c. *Other constituents:* This rule addresses military munitions and other constituents on a military range. The Department of Defense recognizes that other constituents include materials that are uniquely military in nature. EPA has not established a scientific environmental baseline relative to fate, transport, and toxicological impact of these materials, or the degradation products on the environment. Although some scientific data have been collected on some of these materials on a site-specific basis, these data cannot be directly extrapolated to a national risk analysis profile. The Department of Defense will need to gain a better understanding of the adverse environmental impact, if any, of these uniquely military materials through ongoing research and development. In order to ensure the most effective response to other constituents that are uniquely military materials on ranges, the Department of Defense will prepare and implement an overall technology research and development plan based on information needed to complete the range hazards analysis and range response prioritization.

3. Technology Development

The Department of Defense recognizes the potential negative environmental impacts presented by UXO and is committed to reducing the quantity of UXO generated to the greatest extent possible. This commitment is evidenced across the life-cycle management of military munitions. The UXO reduction effort begins during the design phase of

[3] U.S. Army Corps of Engineers, "Sensor Technology Assessment for Ordnance and Explosive Waste Detection and Location," page 134 (March 1, 1995).

[4] The Department of Defense, Inspector General, Memorandum for Deputy Under Secretary of Defense (Environment Security), "Review of Policies and Procedures Guiding the Cleanup of Ordnance on Department of Defense Lands," page 35 (November 22, 1994).

[5] The Department of Defense, Inspector General, Memorandum for Deputy Under Secretary of Defense (Environment Security), "Review of Policies and Procedures Guiding the Cleanup of Ordnance on Department of Defense Lands," page 35 (November 22, 1994).

[6] The Department of Defense, Inspector General, Memorandum for Deputy Under Secretary of Defense (Environment Security), "Review of Policies and Procedures Guiding the Cleanup of Ordnance on Department of Defense Lands," page 42 (November 22, 1994).

new munitions, where attempts to produce "green munitions" by eliminating toxic components are underway. Significant research and development efforts are also underway to find environmentally acceptable ways to dispose of or destroy munitions at the end of their life cycle. For example, the Department of Defense now is fielding a UXO tracking system based on geo-prepositioning technology. This tracking system is designed to provide range managers with the location, type, and quantity of UXO and will assist them in reducing or eliminating unidentified UXO during routine range sweep operations. Finally, fully recognizing the limits of current technology to reliably find subsurface UXO, the Department of Defense is committing resources to develop, in concert with the private sector, new and emergent technologies that will improve the ability to locate and eliminate UXO. Therefore, the Department of Defense sees a pressing need for additional research in these areas. This is particularly true when safety considerations prevent entering the range to conduct site-specific investigations of other constituents or when the available methods to address UXO, such as a large-scale excavation, are known to have serious environmental impacts.

While detecting, approaching, detonating, and even in some cases excavating and moving UXO is possible, the process for assessing ranges and for evaluating alternatives for site-specific responses provides only limited opportunity for technological advancement. Due to the current need for advancement in these areas, both here in the United States and throughout the world, the Department of Defense believes that there must be a commitment to conducting research and technology development in these areas separate from the actions being taken at specific ranges. Since fiscal year 1993, Congress authorized and appropriated $25 million for a DoD program at JPG to identify and demonstrate the "state-of-the-art" in UXO detection and remediation technologies. The JPG program did establish what state-of-the-art detection technology existed and highlighted areas in need of future development. Congress has authorized and appropriated an additional $5 million (beginning in fiscal year 1997) to continue the ATD Program, JPG Phase IV.

Opportunities to evaluate and implement new technologies can occur anywhere from range assessments to recurring reviews. The Department of Defense is soliciting recommendations on means to integrate research and technology development into the range response program as outlined in this proposal.

Realizing that the only true way to eliminate UXO is to reduce the use of live munitions, the Department of Defense is focusing additional efforts on greater use of simulators, practice munitions, or less-than-lethal technology to reduce the quantity of UXO being introduced on active ranges. It is a fact, however, that to prepare for war, the nation's servicemen and women must train with live munitions. The Department of Defense has therefore committed to minimizing to the greatest degree possible the introduction of UXO into the environment through aggressive range management practices.

4. Magnitude

Military munitions have been expended in the United States since pre-Revolutionary War times. Employment of military munitions has always led to some percentage of the munitions not functioning as intended, resulting in the presence of UXO. Through the end of the 1600s, the bulk of military munitions was expended in the United States during armed conflicts. Although no battles other than in Hawaii, Alaska, Guam, and several other territories have been fought on U.S. soil in the 20th century, military training and weapons development to deter and prepare for armed conflicts have resulted in the presence of military munitions at ranges throughout the country. During both World Wars, extensive defenses were established along the Atlantic and Pacific coasts. Many of the military installations established to train and support U.S. armed forces during World War II continued to use military ranges throughout the Cold war era. As the extent of the U.S. military force's structure varied throughout the 20th century, military installations have expanded or decreased operations, and some have ceased operating entirely.

a. *Transferred ranges:* Many transferred ranges are a subset of FUDS, but not all of them qualify for the FUDS program. The FUDS program has identified approximately 8,000 former DoD properties. Of these, fewer than 1,000 have the potential to be classified as transferred ranges. The largest amount of acreage affected resides on the 169 sites identified on DOI-controlled lands. The current estimate is that more than 7 million acres of DOI property potentially contain military munitions. A large number of these DOI sites are suspected of having been used as military ranges during the World War II era. The Department of Defense may identify transferred ranges through archive searches, aerial photography, interviews with past employees, and other available sources of documentation.

b. *Transferring ranges:* Transferring ranges are frequently the result of closure decisions under BRAC. The Department of Defense also leases properties from other parties for use as military ranges. When a decision is made to terminate a lease, the affected range will be classified as a transferring range. In addition, the Department of Defense can excess property that may contain military ranges. However, the Department of Defense has established policies over the past decade to prevent the release from DoD control of additional properties containing military munitions that may pose risks to the public.

c. *Closed ranges:* Closed ranges are located on active military or National Guard installations. Military ranges on active military installations can be divided into three categories: active ranges that are currently being used to train or test military munitions; inactive ranges that are being kept in the range inventory in case conflict would break out requiring an increased level of training in the future; and closed ranges that are no longer needed for training or testing by the military and have been converted to an incompatible use. The Department of Defense began to keep records of inactive and active ranges in the mid-1970s. The Department of Defense recognizes the need to identify and maintain an inventory of closed ranges. The Department of Defense may identify closed ranges through archive searches, aerial photography, interviews with past employees, and other available sources of documentation.

D. Overview of the Range Response Process

1. Introduction

Addressing the unique problems associated with military munitions and other constituents on military ranges demands an approach that modifies the one taken under the CERCLA response and RCRA corrective action programs. The most significant reason for this difference is the absolute need to minimize explosives safety risks in planning, conducting, and implementing response actions. This is because the acute hazards associated with military munitions (especially UXO) are the primary factor driving the scope, sequence, and types of actions that are possible on the range. These concerns are unique to military ranges

in that most actions on CERCLA response or RCRA corrective action sites do not need to consider an explosion hazard posed by the presence of a munition or explosive. For example, installation of a monitoring well at most CERCLA sites does not require surveying the access route for buried military munitions or conducting a magnetometer survey as the well is drilled. Another example where range responses require a different approach is in balancing the risks and impacts of addressing the military munitions and/or UXO and other constituents against the risks involved in not taking an action. Minimizing explosives safety risks while achieving the proper balance between these competing concerns is the goal of the program described in this proposal.

The requirements of 10 U.S.C. 172, DERP, and CERCLA to respond to environmental risks at ranges provide a basis for the Department of Defense to develop a response program that addresses the same factors as are applied at CERCLA response or RCRA corrective action sites where military munitions or UXO are not present, but with a different and overarching emphasis: to protect not only the public and environment in general but the response personnel as well. In developing this proposal, the Department of Defense sought to be as consistent as possible with the overall process used in CERCLA response and RCRA corrective action programs. In taking this approach to developing this proposed rule, the Department of Defense drew not only on its experience and expertise with respect to ranges but also on its own experience with site investigation and response under CERCLA response and RCRA corrective action. Further, the Department of Defense drew on the experience of other Federal agencies. One very important source was EPA's own reviews of, and recommendations for improving, the CERCLA response and RCRA corrective action programs.

In developing the response process for military ranges described in this proposal, the Department of Defense established the following basic parameters. First, the process must minimize explosives safety risks; protect human health and the environment; and directly include the public, American Indian tribes, and appropriate Federal and State agencies by seeking their active participation throughout the process. Second, the process should focus on informed risk management decision-making and risk management actions rather than protracted study. Third, the process should, where possible, draw on the lessons learned in the CERCLA response and RCRA corrective action programs, and incorporate into its basic approach the recommended changes to improving those programs.

The Department of Defense is developing, in consultation with other Federal agencies, a conceptual time frame to establish timeline goals for beginning the first two phases of the range response process. The Department of Defense expects this conceptual time frame to be included in the final rule. See also § 178.6(a). Conceptual time frames for the later three phases will be made publicly available when developed.

2. Program Overview

The process for addressing military ranges has five basic phases. These are: (1) Range identification, (2) Range assessment/accelerated response (RA/AR), (3) RE/site-specific response, (4) Recurring review, and (5) Ending the range response action. A graphical portrayal of the process appears in figure 1, DoD Range Rule Process Overview. The demarcations between the phases are mostly for discussion purposes and are not distinct starting and stopping points. A military range addressed through this process can fall into more than one phase at any given time, depending on site-specific considerations.

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FIGURE 1 (PAGE 1 OF 2)

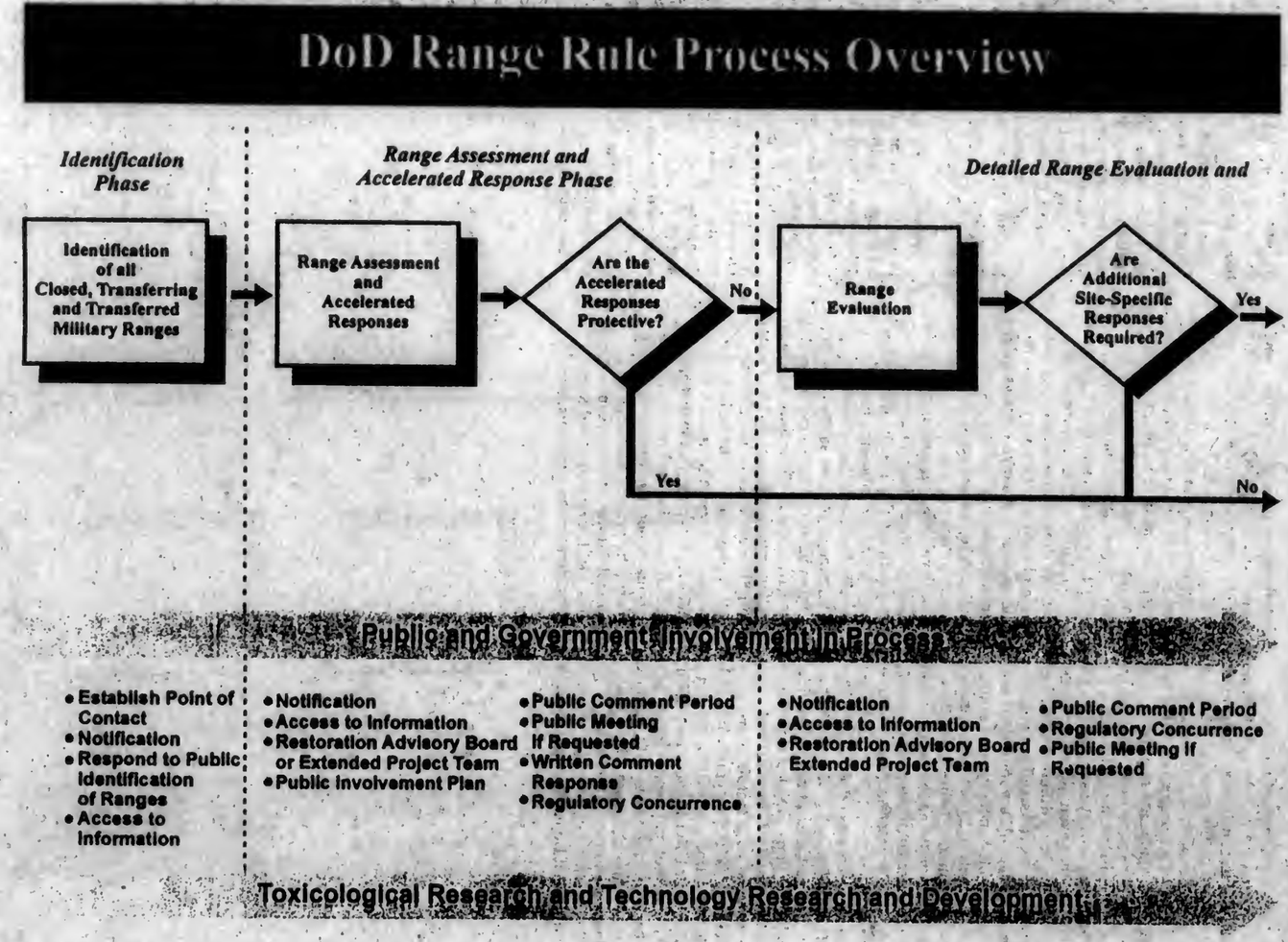
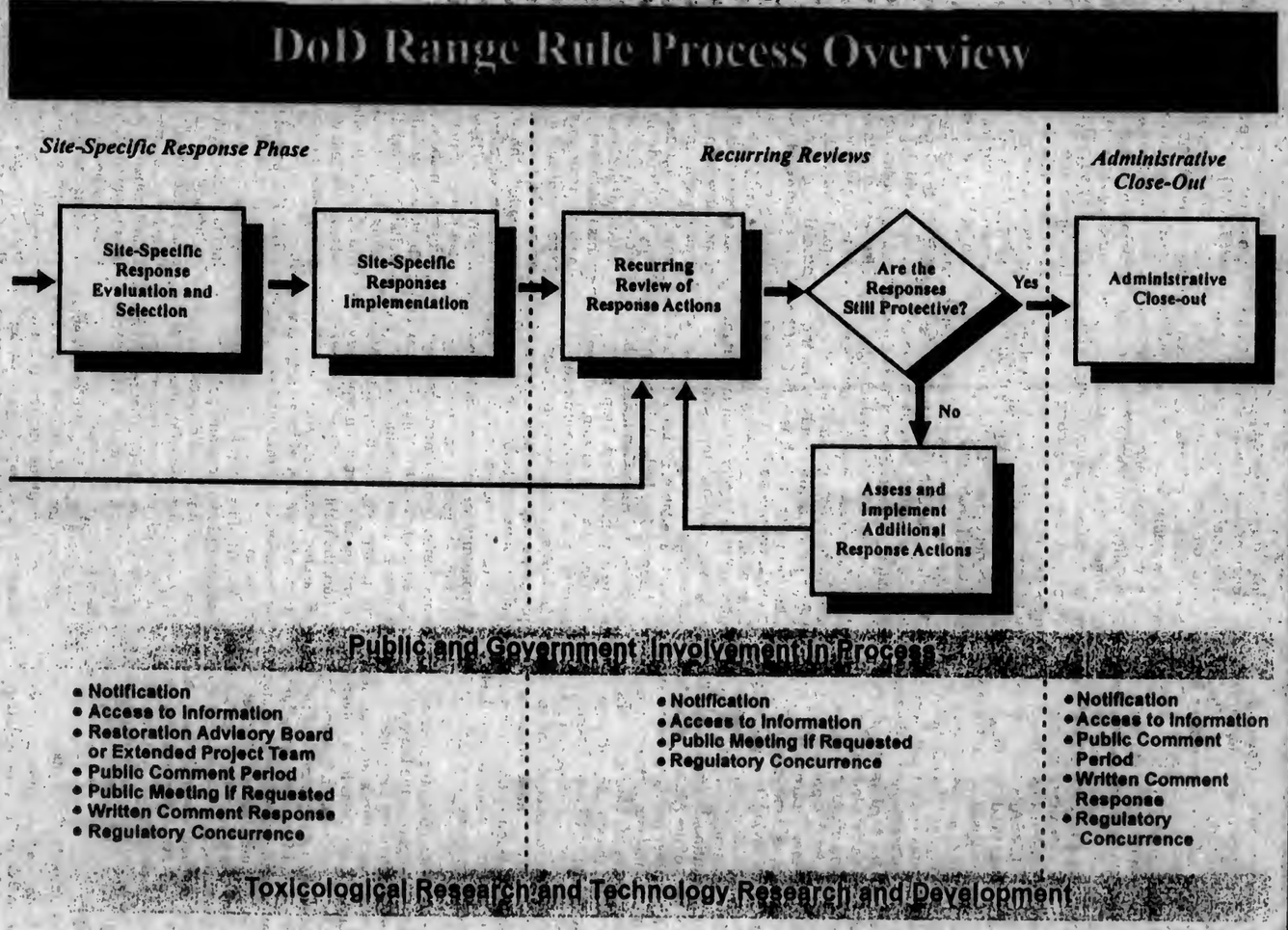


FIGURE 1 (PAGE 2 OF 2)



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The process for conducting response actions at military ranges integrates site assessment functions into a process that allows for an informed decision on how to best manage the risks posed by military munitions and other constituents at the range. Furthermore, the range response process as outlined in this proposal relies heavily on taking prompt action to address risks. One of the principal ways the range response process will achieve this is through implementation of ARs. ARs use readily available means to address the identified risks posed by UXO or other constituents (e.g., access controls, techniques to reduce the migration potential of other constituents), while continuing the assessment of the range to determine the need for subsequent actions, such as detailed studies or implementation of more complex solutions. Under this process, the decision whether to carry out an AR occurs as soon as there is enough information showing that conditions warrant such action. Further assessment of range conditions would focus on gathering additional data to assess the effectiveness of the AR, as well as on identifying other problems. Any further assessment must support decisions on how to address the identified risks remaining at the site. Should site conditions suggest a need for additional studies or responses, these can take place either through continuation of the RA/AR phase or, if these studies or actions require long periods to conduct or implement, by proceeding to the RE/site-specific response evaluation (SSRE) phase.

As can be seen from the overview flowchart in figure 1, the Department of Defense is providing the public, American Indian tribes, and regulatory agencies opportunities for involvement or access to information at every step of the process. The Department of Defense sees early and frequent interaction with the public and government agencies (including American Indian tribal governments) as essential to the success of this process, as it not only enhances risk management decisionmaking but also helps prevent disputes over the actions taken. Emphasis is placed on public, regulatory agency, and American Indian tribal involvement throughout the process.

3. Programmatic Concepts

a. *Public and government agency involvement:* In this proposal, the Department of Defense has committed to involving the public and government agencies throughout the range response process. The process provides for this involvement through widely accepted mechanisms such as public notice and comment periods, public meetings, and public availability of information. It also expands on these basic mechanisms through making information on each range as readily accessible to the public and government agencies as is practical, and by offering opportunities for public, government agency, and American Indian tribal interaction directly with the project team conducting the response. Where public interest is sufficient, the public will be involved through implementation of a public involvement plan (PIP) that is not inconsistent with CERCLA.

There are several mechanisms that the Department of Defense intends to use to involve the public, Federal and State regulators, American Indian tribes, and other Federal agencies in the range response process. These mechanisms are not inconsistent with the public participation requirements under the CERCLA program and, as with CERCLA, occur at various points in the process. In general, these requirements (described in greater detail later in this proposed rule) seek to: (1) Make information on response activities publicly available; (2) keep the public and appropriate Federal, State, and local agencies and American Indian tribes aware of planned and completed actions; (3) solicit written comments from the public and government agencies on proposed actions, and provide a responsiveness summary for public comments before the final decision to proceed; and (4) provide an opportunity for concurrence by the appropriate Federal and/or State environmental regulatory agencies, American Indian tribe, and Federal land manager. The responsible DoD component will also be responsible for operating an information repository where the public will have access to releasable documents. An administrative record for all actions will be included in the information repository.

As part of its effort to provide for meaningful regulator and public participation in the site-specific range response process, the Department of Defense will provide a technology education program to assist regulators, American Indian tribes, and the public in obtaining a layperson's understanding of the complex subject of UXO detection and removal technology. The objective of the program is not to make the participants experts in the science of UXO detection and removal technologies, but rather to increase their general knowledge. At the RA/AR phase, the responsible DoD component will provide an explanation of available UXO detection and remediation technologies to the Restoration Advisory Board (RAB) or Extended Project Team (EPT). This program will consist of a focused presentation (2 to 8 hours in duration) on current UXO detection and removal technologies and, if necessary, technology update presentations (2 to 4 hours in duration) to capture significant technology advancements that have been made since the initial presentation. The program's objective will be to increase the participants' general understanding of the science, its capabilities and its limitations.

In addition to these means for involving the public and government agencies, the Department of Defense also is examining other mechanisms for making information readily accessible. First, as part of the identification phase of the range response process, the Department of Defense will identify an official point of contact (POC) for each range addressed under these provisions. Whenever there is an inquiry by the public, a tribe, or a Federal, State, or local agency, the POC will be responsible for providing any relevant and releasable information, or for providing a formal written response explaining in detail why that information was not provided.

Second, the Department of Defense plans that the information contained in the range inventory and tracking system to be established under the provisions of proposed § 178.6(a)(1) will be readily accessible to the public, possibly including via the internet. The Department of Defense is also examining the practicality of making information about specific ranges (e.g., reports, updates, decision documents) available through this same venue. In the final rule, the Department of Defense will specifically address the types of information that will be available through the internet and how to obtain it.

Third, as part of the identification phase, the Department of Defense proposes that it will submit for inclusion in the permanent land record at the local jurisdiction level for a parcel of land identified as a closed, transferred, or transferring range, a formal notice addressing: (1) The identification of the parcel of land as a known or possible military range, including the unique identifier and common name assigned to that range; (2) a statement that the land may have been a military range; (3) a statement about the potential hazards associated with military ranges; (4) the DoD component to contact for additional information. As the range progresses through the range response process, the Department of Defense will append summaries of information contained in formal decision documents to this notice.

Where RABs exist or can be established, they will be utilized to involve the regulators, American Indian tribes, and the public in this rule's proposed process. If a RAB does not exist and sufficient interest to establish a RAB is not obtainable, a mechanism the Department of Defense is considering to involve the public and government agencies is the use of EPTs. When a RAB cannot be established, the Department of Defense will identify interested members of the community from the RAB solicitation process and seek support for the establishment of an EPT. An EPT is a highly focused subcommittee similar to a RAB.[7] While most RABs address installation-wide remedial activities, an EPT is intended to involve the public and other agencies at the individual military ranges where response actions are planned and implemented. A primary objective of the EPT is to develop a common understanding of the scope and proposed approach to the upcoming range response activities. Under this concept, the EPT consists of the DoD staff and contractors responsible for planning, conducting, and implementing response actions at a specific range (i.e., the internal project team)[8]; specific representatives of the public (where a RAB exists, EPT representatives would be nominated from the RAB; where a RAB does not exist, EPT representatives would be nominated from interested members of the community); specific personnel from Federal and State regulatory agencies (e.g., environmental regulatory personnel, as identified by their respective agency); and American Indian tribes and others with direct technical expertise or a significant interest in the results of the action.

EPT meetings should provide opportunities to: (1) Communicate the initial understanding of the range and the project team's initial approach for planning and conducting a response; (2) identify issues of concern; and (3) solicit viewpoints. The success of an EPT depends largely on the commitment of all the parties to consistent and continued involvement. With such a commitment, the EPT becomes the primary forum for presentation and discussion of identified problems, recommended solutions, and unresolved concerns to the public and the other Federal or State agencies. Through this exchange, the Department of Defense can address public, government agency, and tribal concerns as the response process proceeds, rather than at its conclusion. The Department of Defense believes that the use of EPTs not only will foster mutual exchange of ideas, concerns, and technical information at the working level, but also will allow DoD decision-makers the opportunity to redirect planned response actions as necessary before committing to a course of action. The Department of Defense will also consider other forums for public involvement as the specifics of the site and the interest of the community dictate. The EPT will be conducted in a manner that is consistent with the final published rule on RABs, which was proposed on August 6, 1996 (61 FR 40764–40772) and is planned to be published in calendar year 1997.

In § 178.14 of this proposed rule, a concurrence role is included for Federal and/or State environmental regulatory agencies, American Indian tribes, and Federal land managers when a response will be conducted on a closed, transferred, or transferring range under their jurisdiction, custody, or control. The concurrence role specifically applies to Federal and/or State environmental regulators, American Indian tribes, and Federal land managers, as appropriate. Regulatory agencies are given a concurrence role because other regulatory authorities may apply to a military range. Federal land managers are given a concurrence role due to the independent statutory authorities they have pertaining to lands under their jurisdiction, custody, or control. American Indian tribes are a given a concurrence role in order to provide them with substantially the same role as States. Specifically, the Department of Defense will seek review of and concurrence on the draft decision document identified in § 178.14(d) in this proposed rule. In addition, the Department of Defense will seek concurrence on the RA work plans identified under § 178.7(b)(2). Technical impracticability (TI) and no further action determinations, as well as requests for applicable or relevant and appropriate requirements (ARAR) waivers, will be contained in the draft decision document appropriate to the specific response phase underway, and thus will be provided for review and concurrence. Procedures for ARs described in § 178.7(e)(4) are not inconsistent with time-critical removals taken under CERCLA, and the Department of Defense intends to apply the same administrative procedures as those that are applicable to CERCLA time-critical removals. However, the Department of Defense does not intend to ask for concurrence on these AR decision documents, but does intend to make them available for comment.

Section 178.14 provides for document review times of 45 days. This will allow the response process to progress more rapidly. Additionally, § 178.14 of this rule encourages the use of site-specific or area-wide agreements between the Department of Defense and Federal or State environmental agencies, the Department of Defense and American Indian tribes, or the Department of Defense and Federal land managers. These agreements may modify, upon mutual agreement of the parties, the review times and dispute resolution procedures, as well as cover other pertinent issues. If nonconcurrence is received, then dispute resolution will be invoked. If no written response is received by the responsible DoD component within the established review period (including extension, if applicable), then the responsible DoD component may proceed with a range response action or invoke the dispute resolution process, or both.

The Department of Defense requests comment on the general mechanisms described for involving the public and government agencies and seeks specific comments on establishing EPTs. The Department of Defense requests that commentors provide specific recommendations on mechanisms to identify public and government agencies that might be interested in

[7] DERP, at 10 U.S.C.2705(d), states that the Department of Defense may permit the establishment of a restoration advisory board in connection with an installation (or group of installations) where [the Department of Defense] is planning or implementing environmental restoration activities." Since this proposed rule establishes a formal process for planning and implementing response actions at military ranges, creation of EPTs within existing RABs (or establishment of a RAB for this purpose) will be utilized to the maximum practicable extent and in accordance with DoD policies and guidance on the establishment of RABs.

[8] The project team consists of the responsible DoD component and, as appropriate, the Federal land manager(s). Federal land managers will have direct access to information through the project team. The project team will have meetings, conference calls, and/or other methods to ensure regular communication and input. The project team is responsible for:

(1) Scoping of the response action, including but not limited to, problem definition, establishing data quality objectives, selection of response alternatives for evaluation, and project planning.

(2) Preparing all necessary planning documents for conducting the response.

(3) Preparing all reports (including recommendations on appropriate responses) and decision documents related to the response.

(4) Managing the project for purposes of assignment of responsibilities to any subteams, budget, procurement, allocation of resources, and resolution or elevation of disputes.

(5) Coordinating response activities with the EPT, the RAB, or other forums for public involvement.

participating in EPTs, especially groups that represent the public.

b. *Development of a risk assessment model for use at ranges:* The Department of Defense recognizes that there is an urgent need to develop a risk assessment model for military ranges in order to carry out the requirements of these regulations. Although there are already several risk assessment models for ranges under various stages of development, none comprehensively address the risks posed by both military munitions and other constituents. In implementing these provisions, the Department of Defense intends to develop a model or protocol that: (1) Addresses the risks posed by military munitions and UXO and (2) incorporates to the maximum extent possible the models EPA has developed for assessing the acute and chronic risks posed by releases at CERCLA and RCRA sites. The Department of Defense does recognize that completing this model/protocol by the promulgation date of this rule is a very ambitious objective. Should the Department of Defense not be able to finalize the risk model/protocol, an interim model/protocol will be put into place before the promulgation date of this rule. The Department of Defense will develop the model/protocol in consultation with EPA and also will seek input from Federal land managers, States, American Indian tribes, and the public in the development of the model/protocol. The Department of Defense will seek public input by publishing a notice of availability of the interim and/or draft final version of the risk model/protocol. The notice will provide for public comment on this guidance document. Further, the Department of Defense plans to develop a streamlined version of this model/protocol to use as a screening tool, as EPA did with its streamlined version of the Hazard Ranking System (HRS) for screening sites during the CERCLA response process. This streamlined version will rely more on qualitative information than quantitative information. The primary use of this streamlined model/protocol will be to focus the RA/AR process and to assess the need for implementing ARs. The decision to utilize the more detailed risk assessment model/protocol (versus solely the streamlined version) will be made by the Department of Defense in consultation with regulators and the RAB or EPT.

In the explosives safety element of the model/protocol, the Department of Defense plans to consider the following types of factors:

(1) The specific type(s) of military munitions employed on the range.

(2) The quantity of each type of munition employed.

(3) The fuze types used on these military munitions.

(4) The density (i.e., spatial distribution) of UXO on the range.

(5) The estimated depth of the military munitions (based on penetration data).

(6) Public access to the range (i.e., likelihood of exposure of the public).

(7) The terrain, vegetation, soil type, and climate.

(8) Current and anticipated land use.

In the other constituents element of the model/protocol, the Department of Defense plans to incorporate many of the factors considered in the HRS and EPA's "Risk Assessment Guidance in Superfund (RAGS)." In general, these models assess the risk posed by the site based on:

(1) The identity and concentration of the constituents known or believed present at the site.

(2) The environmental setting of the site (e.g., surface and groundwater features, soils and geology, terrain, climate, vegetation).

(3) The human and environmental receptors potentially exposed at or near the site.

(4) The exposure pathways of concern (e.g., direct contact, inhalation, ingestion).

(5) The known or suspected acute and chronic hazards posed by exposure.

(6) Current and anticipated land use.

The Department of Defense requests recommendations on additional factors to consider in both the explosives safety and constituent elements of the model/protocol. Further, the Department of Defense solicits recommendations on whether it should integrate these explosives safety and environmental protection elements into a single, unified model.

c. *Technical impracticability:* At a limited number of sites, the Department of Defense foresees that explosives safety concerns and limitations of existing UXO detection and destruction technologies may lead to consideration of site-specific remedies that are limited to institutional controls and monitoring. Institutional controls, such as fences or barriers to control public access, would be implemented to restrict access to unsafe areas and thereby limit the explosives safety risks and constituent threats to human health. Monitoring would be implemented to ensure that constituent releases do not migrate to where they pose unacceptable risks to human health and the environment. At other sites, safety and technical considerations may allow a limited, active response in conjunction with institutional controls and monitoring.

A TI determination may occur during the site evaluation and response action process. An example where active response actions may not be technically practicable is a water range that may be too deep to allow investigation or implementation of an accelerated or site-specific response using current technologies. Other conditions may exist at range sites where it is readily apparent that on-range response actions are technically impracticable due to explosives safety concerns or lack of adequate technology to address the site conditions. Where it is readily apparent, as in the deep water range scenario, that it is technically impracticable to implement active response actions, the Department of Defense may make a TI determination and approve only institutional controls without initial attempts to actively remove UXO from the range. Conversely, there may be range sites where the Department of Defense will extensively investigate and evaluate site conditions and feasible alternatives, implement active response actions, and subsequently discover that the site conditions render a particular type of response action technically impracticable due to explosives safety or technological limitation concerns.

As discussed later in this proposed rulemaking, the Department of Defense proposes to use a range response process that is similar to the NCP process developed by EPA for sites addressed under CERCLA. In arriving at a TI determination, the Department of Defense proposes to develop a TI recommendation that would be included in the appropriate report for the applicable phase or stage of the range response process. The TI recommendation will address the specific information and analyses necessary to support a TI decision and recommendations for actions that may be needed to prevent deterioration of the environmental conditions at the site. These actions may typically include measures to prevent further environmental degradation, implementation of management and institutional controls, and continuation of adequate monitoring to ensure that constituent releases do not migrate from the range and that the constituents left in place do not pose a risk equal to or greater than the explosives safety risk. Reports supporting TI recommendations are subject to review and comment (see § 178.14(c) of this proposal). Decision documents recommending TI determinations are subject to concurrence (see §§ 178.14 (d) and (e) of this proposal).

The Department of Defense will seek regulator and American Indian tribe concurrence and will consider public comments received on the TI recommendation in deciding whether to approve a TI determination. The Department of Defense will issue a formal decision document if the TI recommendation is approved at the DoD level. A notice of availability for any report containing a TI recommendation will be published. The decision document for such a report, recommending a TI determination, will explain the basis for the decision, a synopsis of comments received and the Department of Defense's responses to relevant comments, any conditions required as part of the TI determination, and the frequency of subsequent periodic reviews ("recurring reviews") to reevaluate the TI determination. (Recurring reviews are discussed in more detail later in this proposed rule.) The recurring review would determine if: (1) The control measures in place are functioning adequately, and (2) advances in UXO detection or destruction technologies can acceptably reduce the explosives safety risk posed to personnel entering the site. If the recurring review process indicates that the reasons for having issued the TI determination can be overcome, the Department of Defense will reevaluate the need to pursue additional response actions for the range sites. If practicable from a safety and technological viewpoint, the Department of Defense will implement the new response action based on advances in technology.

The concept of TI determinations to forgo certain response actions due to safety or technological limitations is not novel. For example, although used in a different context and on a more limited scale, EPA has previously issued guidance on evaluating the technical impracticability of groundwater restoration at certain sites having hydrogeologic constraints or contaminant-related factors that severely impede the success of active restoration. (For an example, see Guidance for Evaluating the Technical Impracticability of Ground-Water Restoration, Interim Final, OSWER Directive 9234.2–25[9] (September 1993)). Under appropriate conditions, EPA's guidance allows a waiver of Federal or State cleanup standards that otherwise would be normally required for groundwater restoration efforts under CERCLA. EPA's guidance also allows selection of alternative remedial technologies commensurate with the waiver of the cleanup standards. Due to the extreme safety risks associated with range sites containing UXO and the limited detection technology currently available for effectively locating UXO, the Department of Defense proposes to use EPA's TI waiver concept to implement appropriate and protective institutional controls and to periodically review the practicability of implementing additional response actions.

[9] Copies of EPA's "Guidance for Evaluating the Technical Impracticability of Ground-Water Restoration, Interim Final, OSWER Directive 9234.2–25" (September 1993) can be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (telephone 703–487–4650).

E. Detailed Discussion of the Phases of the Range Response Process

1. Identification of Closed, Transferred, and Transferring Military Ranges

The first phase of the range response process is the identification of closed, transferred, and transferring ranges. In this phase, a list of the ranges subject to these requirements will be developed. Proposed § 178.6, Identification of closed, transferred, and transferring ranges, defines the specific requirements for the identification phase of the range response process.

a. *Identification and establishment of a tracking system:* In summary, upon the effective date of these regulations, the Department of Defense will undertake a coordinated effort to identify all land and water areas potentially subject to these provisions. This information will form a permanent record and centralized tracking system for closed, transferred, and transferring military ranges. Such a system provides a valuable tool for the Department of Defense's internal use in managing the program. Furthermore, the Department of Defense intends that the information in this tracking system be readily accessible to the public and other governmental agencies. As mentioned before, one alternative the Department of Defense intends to examine is whether the internet could serve as a means for public access to the tracking system.

The Department of Defense believes the following information about each range is the minimum necessary to include in this tracking system:

(1) A unique identifier for the range.

(2) The common name for the range.

(3) The status of the range (i.e., closed, transferring, transferred).

(4) The name, address, and telephone number of a POC at the Department of Defense or Military Service organization with responsibility for implementing the range rule at that range.

(5) The States and counties (including independent cities and towns) in which the range lies.

(6) A representation or description of the range showing its location, boundaries, and areal extent.

(7) The general type(s) of military munitions used on the range (e.g., artillery, small arms, naval gunnery).

(8) A list of parties other than the Department of Defense or a military department with ownership interest in or governmental administrative control of the land or its resources.

The Department of Defense requests comments on these basic information requirements, specifically with respect to recommendations for additional information to include in the centralized tracking system. In addition, the Department of Defense requests recommendations on other mechanisms for making this information accessible to the public. The Department of Defense plans to update the tracking system, including the priority assigned to each range, at least once per year to indicate which military ranges have entered the RA/AR phase and which ranges have been identified for entering the RA/AR next.

b. *Notices in official land records:* This proposal makes use of current DoD recordkeeping practices. For example, permanent records are required for each range area. These records indicate known and suspected range areas, and identify military munitions used, their hazard, quantity, locations, and UXO rates. Another example is that transfer records are required to detail past ammunition and explosives use, provide information on other constituents present, and advise the user not to excavate or drill in range areas without a metal detection survey. This information is required to be entered in the permanent land records of the civil jurisdiction in which the property is located. To the extent to which any of these records are available for closed, transferred, or transferring ranges, they will be used in the range identification process.

Following identification and collection of sufficient information about the location and boundaries of a range identified under these provisions, the Department of Defense will examine the appropriate land records. A formal notice in the official local land record for that range should include, at a minimum:

(1) The proper legal description of the land that was or may have been used as a military range, including the unique

identifier and common name assigned to that range.

(2) A statement that the land may have been a military range.

(3) A summary description of the hazards commonly encountered at military ranges (e.g., UXO).

(4) The DoD component to contact for additional information about that range.

Upon analysis of additional information and the implementation of accelerated or site-specific responses, the Department of Defense will update this notice to reflect the current conditions at the range.

c. *Supply of information to Federal mapping agencies and State and tribal geographic information systems (GIS):* The Department of Defense also plans to provide certain information on the ranges identified under these requirements to those Federal, State, and Native American tribal agencies charged with the development and distribution of official maps and charts. The Department of Defense will recommend that these agencies include in updates to these maps and charts a means of delineating these areas, as well as several pertinent pieces of information. This information includes the unique identifier for each range, the name of the DoD organization with responsibility for implementing these provisions on that range, and a brief statement of the potential hazards associated with entry into these areas. In addition, the Department of Defense requests comments as to whether this information would be useful to local governmental entities with mapping or zoning responsibilities or to private firms that prepare and print maps for public distribution. If the commentor believes this to be the case, the Department of Defense requests the commentor's recommendations on means to provide that information to those entities.

d. *Prioritization for range assessment/accelerated response:* While the Department of Defense believes that, immediately following their identification, all ranges should enter the RA/AR phase of the range response process, current fiscal realities show a need for a system to determine the order in which ranges enter the RA/AR phase. Of the various approaches available, the Department of Defense believes that one consideration for ranking these ranges for entry into the RA/AR phase is the degree to which the Department of Defense or a Military Service can control access to the area, since this is one simple yet effective means of managing the potential risk posed by the range. Access control sets forth a basis for prioritization, but other environmental factors will be considered, such as imminent hazards, and the likelihood of release migration within 1 year.

Based on the consideration of access controls and risk management, the first group of ranges that would be addressed are those already transferred from DoD control, because the Department of Defense has the least ability to exercise control over those areas. The second group would be the ranges planned or scheduled for transfer from DoD control; these ranges are still subject to DoD control, but failure to transfer the range in a timely manner can impact other activities, for example a land transfer under BRAC Act provisions. The final group will be those ranges that, while closed, are still under DoD control. The Department of Defense recognizes, however, that other factors may influence the need to conduct a response action. Therefore, in determining which ranges will enter into the RA/AR phase, the Department of Defense will consider factors relating to safety and environmental hazard potential, such as:

(1) Whether a site access can be controlled and the population is at risk.

(2) The potential for direct human contact and evidence of people entering into the range area.

(3) Whether a response action has been or is being taken at that range under the FUDS program or other environmental restoration programs.

(4) Planned or mandated dates for transfer of the range from DoD control.

(5) Documented incidents involving UXO or off-range releases of other constituents from the range.

(6) The potential for drinking water contamination.

(7) The potential for destruction of sensitive ecosystems.

(8) The potential for damages to natural resources.

(9) The potential for releases to the air.

(10) The degree of public interest in the range.

(11) The degree of Federal land manager interest in the range.

(12) The degree of state or Federal regulator or American Indian tribe interest in the range.

The priority assigned to each range is another element the Department of Defense plans to include in the tracking system. The Department of Defense plans to update the tracking system, including the priority assigned to each range, at least once per year to indicate which military ranges have entered the RA/AR phase and which ranges have been identified for entering the RA/AR next. The Department of Defense solicits comments on this approach to prioritizing military ranges, with specific emphasis on other factors to consider when assigning a priority ranking to a given range.

e. *Public and government agency involvement:* One of the basic requirements the Department of Defense established when developing this proposal was the commitment to involving the public and government agencies in each phase of the range response process. The responsible DoD component will work with the community to provide information concerning response activities, respond to inquiries, and provide information concerning the conditions at the range. The responsible DoD component will notify, at a minimum, immediately affected citizens, State and local officials, and, when appropriate, civil defense or emergency management agencies. During the identification phase, one of the primary goals is to ensure public access to information on each range subject to these requirements. The Department of Defense does, however, recognize an additional opportunity for public and government agency involvement during this phase. The Department of Defense proposes allowing public and government agency submission of documents identifying the location of closed, transferred, or transferring ranges. Upon verification of the accuracy of such submissions, the Department of Defense would enter that range into the tracking system of ranges subject to these provisions.

The Department of Defense solicits comments on additional mechanisms to involve the public and government agencies in the identification process and means to provide access to information about ranges identified subject to these requirements.

2. Range Assessment/Accelerated Responses

One goal of the RA/AR is to determine the condition of the property. Another goal of the RA/AR phase is finding ways to accelerate the response process by delineating areas within the range where response activities are necessary and by limiting the effort spent collecting data to only the level necessary to address the uncertainties that accompany prompt action. The Department of Defense intends that the RA/AR phase use readily available information to determine if additional investigation or implementation of an AR is warranted, based on range conditions. Therefore, the RA/AR phase is dependent on: (1) Identification of the types and sufficiency of data needed for an informed risk management decision; (2) the ability to implement ARs when appropriate; and (3) analysis of information to know when (a) enough information either has been or cannot be gathered to make an informed risk management decision, and (b) when an identified risk can or cannot be addressed by an AR. The Department of Defense will be issuing detailed guidance on how to conduct the RA/AR phase and believes that it will be possible to develop standardized procedures and reporting requirements for RA/AR activities.

For clarity, the following discussion presents the RA and AR separately. However, the Department of Defense intends for them to be concurrent, interrelated activities.

a. *Range assessment:* The RA is a limited-scope investigation designed to distinguish between ranges, and areas within ranges, posing little or no safety, human health, or environmental risks and ranges, or areas within ranges, that do pose such risks. Ranges that pose a risk warrant further investigation or implementation of an AR. The Department of Defense intends that the initial effort in an RA be a compilation and analysis of existing information about the range and its surroundings, similar to the CERCLA preliminary assessment or a RCRA facility assessment. The RA emphasizes collection of available information through a combination of file searches and "desktop" information collection and analysis. If, based on analysis of the existing information about the range, collection of additional information is believed necessary to better delineate the range or areas within the range where response activities are warranted, then visual inspection of the range or sampling of environmental media may be undertaken to provide an improved understanding of the conditions at the range. The Department of Defense will be issuing guidance on the specific requirements and procedures for conducting an RA.

(1) Scope of the range assessment. The Department of Defense envisions implementing the RA by conducting several levels of information collection and assessment. The first level of the RA is to determine if the range is subject to these requirements and if there is readily available information suggesting that the range poses a hazard. This usually can be done by reviewing the official records of the installation, local records, or other references. Such documents are often the primary source of information on range locations and operations conducted at those ranges.

If in fact the area was or is a military range subject to these provisions, the next phase of the RA is collection of information on the types and quantities of military munitions employed at the range. At a minimum the Department of Defense sees a need for the following types of information:

(1) The type(s) of military munitions employed on the range.

(2) The estimated quantity of military munitions employed.

(3) Time frames during which the military munitions were employed on the range.

(4) The chemical constituents of those munitions.

(5) The fuze types used on these military munitions.

(6) Identification of locations within the range where these military munitions are known or suspected to have been employed.

(7) The estimated density of UXO in those locations.

(8) The estimated depth of the munitions (based on penetration data).

(9) Information on range clearance operations or reported incidents involving UXO on the range.

(10) Safety issues related to military munitions employed on the range.

(11) The type(s) of any targets that may have been used on the range.

(12) Other past and present uses of the range.

This information feeds into the assessment of the risks posed by the military munitions and UXO potentially found on the range.

One of the critical early efforts during the RA is the identification and delineation of areas within a range that pose varying explosives safety hazards and environmental threats. Delineation procedures will adequately define different types of range areas. Delineation of range areas would likely include, but not necessarily be limited to: Impact areas; buffer zones; firing areas; maneuver areas; military munition stockpile areas; open burning/open detonation areas; disposal areas; and any other areas of concern (including off-range areas where constituents may have migrated from on-range sources). Environmental threats can include, but are not limited to, chronic, mutagenic, or teratogenic effects.

A goal of this effort will be to identify areas with a higher explosives safety risk from those areas that are either unaffected or minimally affected. Once delineated, a range area would proceed through the five-phase process independently of other areas. For example, an impact area with a high explosives safety risk that is confirmed to be too dangerous to assess or remediate would proceed on a distinctly different path through the five-phase process than would an adjacent buffer zone that was confirmed to have a lower explosives safety risk but has significant quantities of other constituents. The buffer zone and other site areas that fit into this category would, as a group, proceed to the RE/SSRE phase, where focused characterization and response activities ultimately would take place.

Another goal of range delineation during the RA will be to assess what ARs can be implemented at areas geographically outside ranges with a high explosives safety risk, but where constituent levels from employed munitions or other constituents are significant. It is likely that all ranges will include areas with a lower explosives safety risk, where characterization and possible response efforts may be feasible in order to provide for incremental risk reduction. This will serve to specifically address releases from other constituents.

If the Department of Defense, in consultation with the RAB and/or EPT, determines that any of the following conditions exist, the affected portion(s) of the range should proceed without delay to the RE phase. These conditions are (1) that the range presents issues that are too complex to be addressed in the RA; (2) that all or part of the range poses an imminent threat to human health or the environment which cannot be mitigated effectively through an AR; or (3) that an AR had been implemented but substantial environmental threats remain.

To address the risks posed by other constituents, including CERCLA hazardous substances, known or suspected to be present on the range, the Department of Defense will use existing information on the constituents identified during the assessment of the military munitions employed on the range and any other potential constituents identified from other activities on the range. The goal of this aspect of the RA is to develop an initial "target" list of constituents and to suggest locations for sampling for use in later phases in which environmental samples may be collected and analyzed; to identify the corresponding ARARs; and to address the ability of that RA to meet the ARAR requirements and protect human health and the environment. This assessment also will collect readily available existing information on the identity, concentration, and characteristics (e.g., toxicological, fate and transport) of the identified constituents. This information feeds into the initial

assessment of the risk posed by other constituents at the range.

The RA also will require collection of existing data on the environmental setting of the range, the location and identity of receptors potentially impacted by the range, and specific routes of exposure of concern. Specifically, the RA involves collection of existing information on such factors as:

(1) Local hydrologic and hydrogeologic conditions (which includes groundwater).
(2) Soils and geology.
(3) Terrain.
(4) Climate and meteorological data.
(5) Vegetation.
(6) Current and predicted land use.
(7) Cultural resources.
(8) Receptors (i.e., humans, ecological receptors).
(9) Exposure pathways of concern (e.g., direct contact, inhalation, ingestion, or exposure to radionuclides).

The Department of Defense believes that a significant portion of the information needed to address these factors is available from existing sources such as topographic maps, aerial photographs, on-line databases, and published studies.

The preliminary phases of the RA, which depend primarily on existing information, can suggest that a visual inspection of the range or limited-scale sampling of environmental media is necessary to develop a more complete understanding of the conditions at the range or to better delineate areas requiring response activities. In either case, entry onto the range requires the development of an explosives safety plan and submittal of the plan to DDESB for coordination. If the information suggests a need for sampling of environmental media, the DoD organization conducting the response should develop a work plan describing the objectives and plan for conducting the sampling, including the standard operating procedures (SOPs) to be used for the range response. Typically, the plan for sampling and analysis of environmental media will use a format similar to the one used when conducting these activities under a CERCLA response or RCRA corrective action.

Once collected, the information on the military munitions employed at the range, the other constituents believed present, and the environmental setting of the range serves the following purposes:

(1) Identification of any actual or potential threats posed by the site (e.g., reported incidents involving UXO, documented releases of other constituents from the range).

(2) Initial assessment of the identified risks posed by the military munitions and other constituents on the range, with a qualitative identification of the source-pathway-receptor chain and UXO density potential.

(3) Focus of follow-on studies or monitoring.

(4) Assessment of the need to implement ARs.

(2) Accelerated responses. An AR is any readily available, proven method of addressing the identified risks posed by military munitions or other constituents at ranges subject to these requirements. Some examples of ARs include:

(1) Posting signs warning of the danger associated with range.

(2) Erecting fences or other measures to control access.

(3) Implementing simple erosion controls (e.g., silt fences).

(4) Suspending incompatible land uses (where the Department of Defense can do so).

(5) Implementing community education and awareness programs.

(6) Requiring "dig permits" at areas where the Department of Defense has control over site activities.

(7) Conducting source removals or surface sweeps for UXO.

(8) Implementing deed restrictions.

(9) Implementing a monitoring program (for example, to assess if constituents are migrating off the range in stormwater runoff or percolating into groundwater).

(10) Providing alternative sources of drinking water.

(11) Performing other effective engineering, institutional, or exposure controls.

This is by no means a complete listing of the types of ARs available to address the identified risks posed by ranges. The Department of Defense plans to develop detailed guidance on ARs in the near term which will be not inconsistent with CERCLA.

The Department of Defense sees merit in using the same criteria for evaluating AR alternatives and for evaluating more complex and tailored site-specific responses. A later section of this proposal provides a detailed discussion of these criteria. The primary differences are in the scope of the evaluation of alternatives, and that the AR analyses rely on qualitative rather than quantitative information. In these ways, the AR process is similar to the process identified in the NCP for non-time-critical removal actions (at least 6 months' planning time) and time-critical removal actions (less than 6 months' planning time). For example, the process for selecting an AR is similar to the engineering evaluation/cost analysis performed as part of non-time-critical removal actions identified in the NCP.

In general, using the data collected during the RA, this process will be a qualitative evaluation of the source-pathway-receptor link that creates the risk. These data will be analyzed to determine which AR options would most effectively sever that link or reduce its impacts.

(3) *Public and government agency involvement.* Before beginning the RA/AR phase, the DoD organization responsible for that range will send a written notice to the appropriate Federal, State, and local officials and American Indian tribes informing them that these activities will be starting. This notice will also request that these officials name a POC within their organization and identify that POC to the project team.

Throughout the RA/AR phase, the public, government agencies, and American Indian tribes will have access to validated information about range conditions, the potential hazards posed by the site, and any ARs undertaken to address those hazards. In addition, the public will have access to RA/AR reports and decision documents. Usually, access to this information is through the information repository; however, unresolved questions or concerns can be taken to the DoD POC or to the EPT, if one exists. Other venues for information exchange are the RAB (if one exists), and/or informal meetings with community leaders or other government officials.

For all ARs where implementation of an on-site action is expected to take more than 120 days to complete, within that period the responsible DoD component will conduct interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns, information needs, and how or when citizens would like to be involved in the range response process. The Department of Defense also will prepare a formal PIP based on community interviews or other relevant information, specifying the public involvement activities that are needed during the response.

Before undertaking an AR, the DoD organization responsible for the activities at that range will formally document its decision. This document will briefly summarize conditions at the range, explain the hazards the AR was to address, and provide other useful and relevant information.

Except where an emergency response is required to address an imminent threat to human health or the environment, the public, regulators, American Indian tribes, and (where appropriate) Federal land managers will be provided a reasonable opportunity to comment on proposed RA/AR actions, based on information included in the RA/AR report. This report will be subject to a 45-day review and comment period prior to implementation of the AR. If requested, the Department of Defense also will hold a public availability session. If the physical construction associated with an AR, including implementation of site access control measures, is reasonably expected to be completed within 120 days of the commencement of the AR (i.e., completion of the RA), the opportunity for review and comment may be provided during or when the AR has been implemented. While an AR might be fully protective, the majority of ARs will be interim responses by nature, particularly those for which the physical construction is reasonably expected to be completed within 120 days of commencement. In cases where an AR is expected to be fully protective and to make a site-specific response unnecessary, public participation through review and comment on the RA prior to implementation of the AR should be afforded, even when the AR can be implemented within 120 days.

3. Evaluation of Range Assessment/Accelerated Response Results

As discussed in Section IV.E.2 of this preamble; one goal of the RA/AR process is to couple existing information with a limited gathering of additional information to make informed risk management decisions at the range. If the range poses a hazard, ARs, as appropriate, can be taken to address that hazard. This process continues until enough information is available to make an informed risk management decision (or, alternatively, the effort necessary to collect that information is beyond the scope of the RA); and all identified hazards have been addressed through implementation of an AR (or a determination has been made that ARs are unable to address the identified hazards).

Once at this point, the DoD organization conducting activities at the site may implement a time-critical AR or will make the RA/AR report available for comment and will then issue a decision document for the proposed action. The RA/AR report will document the findings of all assessment activities and the reasons for and effectiveness of each AR at the range. The RA/AR report will also make one of the following recommendations:

(1) Issue a determination of no further action (typically where the area was not a range or there is no appreciable risk associated with the range).

(2) Conduct recurring reviews because all identified risks have been effectively managed and are expected to remain effectively managed in the long-term.

(3) Conduct an RE because of a need for additional information to make an informed risk management decision or in anticipation of a site-specific response to address the remaining hazards.

(4) Issue a TI determination because, while a risk remains, there are no alternatives available capable of addressing the identified risk. For example, a TI determination would be appropriate at a naval gunnery range located in deep water (i.e., over 300 feet deep), where existing technology is not available to effectively implement a response. Another example would be an artillery range with a large number of UXO located in a small area of rugged terrain where manual clearance is required. Due to the density of the UXO, entry into the area may be too hazardous to undertake; clearance of one UXO by detonation may lead to sympathetic detonation of nearby rounds, due to the proximity of the UXO item to other UXO items. This situation would present an unacceptable explosives safety risk, in that the sympathetically detonated round may undergo a low-order detonation, scattering unconsumed explosives over a wide area, worsening the problem. In a case such as this, not directly addressing the UXO while implementing other types of control measures may be the most appropriate response action. Typically, recommendations for other appropriate control measures and recurring reviews will be a part of a recommendation for the TI determination.

Once the draft RA/AR report is complete, the Department of Defense will include it in the administrative record and make it publicly accessible at the information repository. The Department of Defense also will publish a notice of availability of the draft RA/AR report and brief description of the action being proposed in the report in a major local newspaper of general circulation and announce a 45-day period for submission of written comments to the DoD POC for that range. If requested, the Department of Defense will hold a public meeting or availability session. Following the comment period, the Department of Defense will develop written responses to significant comments received during the comment period, consider any issues brought out by these comments, and prepare a formal decision document outlining which recommendation will be adopted. A copy of the decision document and all supporting information will become a part of the administrative record for the military range, and the Department of Defense will mail a copy of the decision document to all appropriate government agencies and the current property owner.

4. Range Evaluation

REs are detailed investigations of the military munitions employed on the military range, the other constituents believed or known to be present, and the environmental setting. Generally, an RE will be performed when making an informed risk management decision requires the collection and analysis of a significant quantity of quantitative information not otherwise available. This information collection often is a complex, long-term effort (e.g., groundwater monitoring) that demands careful planning before its execution. This phase includes evaluation of site safety, and potential human health and ecological impacts. RE examples include, but are not limited to:

(1) Military ranges where chemical munitions were employed and where the RA/AR process shows a potential exposure from a chemical agent release.

(2) Military ranges where land use or the degree of public access is incompatible with the condition of the range following the RA/AR process.

(3) Military ranges with a reasonable potential for contamination of surface water or groundwater that is in excess of applicable standards and which is a potential source of drinking water.

a. *Scope of a range evaluation:* The types of information collected during the RE are similar to those collected during the RA/AR phase and serve the same purposes; however, the information collected is far more specific and typically quantitative in nature. For example, while the RA/AR phase sought information on the type(s) of military munitions employed on the range, an RE might seek to determine the specific military munitions employed. Similarly, where the RA/AR used estimates of various values such as the quantity of military munitions employed on the range and the density (i.e., distribution) of UXO, the RE uses a combination of detailed "desktop" evaluations and field sampling to refine the estimates.

The first step in conducting the RE is reviewing the available information to focus the RE. The Department of Defense intends all REs to be focused studies, tailored to answering specific

questions. Conducting such a focused study requires defining:

(1) The objective of the information collection effort (i.e., what question is to be answered).

(2) The boundaries of the information collection effort.

(3) The role of the data in supporting risk management decisions.

(4) The specific type, quantity, and quality of information to collect to meet the objective.

(5) The acceptable level of uncertainty (in terms of the accuracy) of the information.

For example, to assess the risk posed by the other constituents known or suspected to be present on the range, the Department of Defense will use existing information on the other constituents identified during the RA, as well as any other readily available sources. This review will provide the basis for developing a "target" list of potential constituents. This approach also will focus the collected information on the health and environmental characteristics of the constituents that may be present on the range. Similarly, it is possible to focus collection of information on the environmental setting. If, for example, the range is in an area where, due to an extremely high concentration of total dissolved solids, the groundwater is not useful for drinking or agriculture, it may be appropriate to limit assessment of potential groundwater impacts.

b. *The range evaluation plan:* The Department of Defense intends this focusing effort to lead to the development of a single, concise document, the RE plan. The RE plan will provide all necessary information about the objectives established for the RE, the rationale for those objectives, and how those objectives will be achieved. For example, this document would explain the focus of the RE, define the objective(s), boundaries, data uses, sampling and analysis protocols, safety, and data analysis procedures required to complete the RE. The Department of Defense will issue detailed guidance on how to conduct an RE, and believes that it will be possible to develop a standard RE plan that, with minor modifications, can be adopted for use at the majority of these ranges. The DoD organizations conducting the RE will make this document a part of the administrative record and will publish a notice of availability in a local newspaper. The notice will summarize the purpose of the document and inform the public how to gain access to the RE plan. At a minimum; the RE plan will be made available at the information repository.

c. *The range risk assessment:* The collection and analysis of additional information about conditions at the range lead to the primary purpose of the RE, a detailed, quantitative assessment of the risks posed by the military munitions and other constituents at the range. The level of risk posed by the site is one element in making an informed risk management decision about the need for a site-specific response.

In general terms, the military range risk assessment model/protocol the Department of Defense plans to develop requires similar types of information for military munitions and other constituents. These information requirements include:

(1) Identification of the source of the risk (e.g., identification of the specific military munitions or other constituents).

(2) Identification of receptors, pathways, and potential for exposure.

(3) Identification of the effects of exposure (e.g., the types of injuries that accidental explosion of military munitions can cause; the acute, chronic, and carcinogenic effects of exposure to other constituents).

While the explosives safety and other constituent risk assessments generally require similar types of information, the specific information requirements are different and reflect the basic differences between explosives safety risks and constituent releases. For example, injury from the detonation of conventional military munitions requires either direct or indirect exposure to the energy (as pressure or heat) released by the explosion, or to energy imparted to materials by the explosion (e.g., shrapnel); generally, the injury is due to physical trauma. In contrast, exposure to other constituents usually involves entry into the receptor by ingestion, inhalation, or dermal absorption, and the effects are due primarily to disruption of physical functions in the receptor. Therefore, the specific information required to assess the effects of exposure will be different.

Currently, the risk assessment models used for military munitions and UXO do not adequately address the potential risks associated with constituent exposure. Likewise, the risk assessment models for constituent exposure do not address the effects of explosions or other injuries caused by military munitions. For these reasons, the Department of Defense will be developing, in consultation with and with the assistance of EPA, a risk assessment model or protocol to use at military ranges. This risk assessment model or protocol will provide an assessment of risks posed by military munitions and UXO at the range, as well as the human health and environmental risks posed by the constituents to: (1) Provide an estimate of the risks posed by military range conditions; and (2) to serve as a tool for assessing (a) the effectiveness of a given response at addressing those risks and (b) the potential consequences (either positive or negative) of implementing a response targeted at addressing a specific risk. The Department of Defense, in conjunction with EPA, will seek Federal land manager, State, American Indian tribe, and public input during the development of the risk assessment model or protocol. Because of the importance of this model/protocol, an interim version is to be developed and made publicly available prior to the promulgation of the final rule. A final version will be developed and made publicly available no later than 1 year after the final rule is promulgated.

It is equally important to note that, since the explosives safety element of the overall range RA examines the identified risks posed by military munitions and UXO on the range, an evaluation of these risks must be conducted concurrently with the development of the RE plan, especially if on-range data collection is contemplated. Even if very limited information on potential explosives safety hazards exists, any such information is critical to assessing the practicality of on-range actions and to developing the explosives safety plan (which must be submitted to DDESB for approval before commencing any on-range activity). Like the explosives safety risk assessment, the constituent risk assessment examines the risks posed by constituents known or suspected of being present on the range. The preliminary phases of this assessment also will need to be conducted concurrently with the development of the RE plan, since the information requirements for the constituent risk assessment are critical to focusing investigative efforts. Furthermore, available data on the constituents known to be or suspected of being on the range are critical to developing a health and safety plan for on-site workers.

d. *Public and government agency involvement:* During the RE, the public, government agencies, and American indian tribes have access to validated information about range conditions and the potential hazards posed by the site. In addition, the public will have access to the final RE report and any related decision documents. As with the RA/AR, access to this information is through the information repository, the DoD POC, the EPT (if one exists), the RAB (if one exists), and formal or informal meetings. Furthermore, before beginning the RE, the DoD component responsible for that range will send a written notice to appropriate Federal, State, and local officials informing them that these activities will be starting.

If a formal RE report is prepared, then a 45-day public comment period on the report will occur, as well as a public availability session if requested. If the recommendation is to proceed directly to the SSRE, however, a letter report will summarize the RE findings and the public comment period will occur on the SSRE report. Following the public comment period, the Department of Defense will develop written responses to significant comments received during the comment period and consider any issues brought out by these comments. A copy of the draft decision document will be provided to the appropriate Federal or State agency, American Indian tribe, and Federal land manager for concurrence.

5. Range Evaluation Findings

The goal of an RE is to couple existing information with focused information collection to assess the risk posed by the military munitions and other constituents on the military range. This information is necessary to make informed risk management decisions. Once the objectives set for the RE are reached, the findings and conclusions will be presented in a formal RE report. Depending on the scope and findings of the RE, the RE report also will make one of the following recommendations:

(1) Conduct recurring reviews because the quantitative analyses demonstrated that all identified risks are effectively managed and will remain effectively managed over the long term.

(2) Issue a TI determination because, while a risk remains, there are no available alternatives capable of addressing the risk. Typically, recommendations for other appropriate control measures and recurring reviews will be a part of a recommendation for a TI determination.

If the findings of the RE demonstrate a need for a site-specific response to address remaining risks, the Department of Defense may prepare a letter report instead of an RE report and proceed directly to the SSRE. If a letter report is prepared, then the DoD organization conducting the response must prepare a formal decision document that summarizes the findings of the RE, identifies the hazards requiring a site-specific response, and describes the anticipated scope and starting of the SSRE. This decision document will be made available to the public, and concurrence will be sought from appropriate Federal, State, and American Indian tribal officials.

If, however, the responsible DoD component recommends either proceeding to the recurring review process or issuing a TI determination, the responsible DoD component will prepare a formal RE report, publish a notice of availability and a brief description of the RE report in a major local newspaper of general circulation, and announce a 45-day period for submission of written comments to the DoD POC for that military range. If requested, the Department of Defense also will hold a public meeting or availability session. Following the comment period, the Department of Defense will develop written responses to significant comments received during the comment period, consider any issues brought out by these comments, and prepare a formal decision document on which recommendation will be adopted. A copy of the decision document and all supporting information will become part of the administrative record for the range, and a copy of the decision document will be mailed to appropriate government agencies and the current property owner.

6. Site-Specific Response Evaluation

An SSRE examines various response alternatives that address risks posed by the range which have not been or cannot be effectively addressed by ARs. The SSRE process is similar to the feasibility study under CERCLA; however, there is one very important distinction: explosives safety is a frequent overriding concern. If a given response alternative cannot minimize explosives safety risks, then it will be dropped from consideration. EPA stated in the preamble to the final NCP that short-term effectiveness:

> * * * will consider who may be exposed during the remedial action, what risks those populations may face, how those risks can be mitigated, and what risks cannot be readily controlled. Workers are included in the population that may be affected by short-term exposures. (55 FR 8722, March 8, 1990)

Furthermore, the NCP explains that the threshold assessment of overall protection "draws on the assessments of other evaluation criteria," which specifically includes the short-term effectiveness (40 CFR 300.430(d)(iii)(A)). Hence, in the remedy selection process; worker safety is not only considered when determining the short-term effectiveness of a remedy, but is also an integral part of the analysis in determining whether a remedial alternative meets the threshold requirement of overall protectiveness. As EPA stated in response to comments on the proposed NCP:

> EPA agrees that unacceptable short-term impacts can cause an alternative to be considered non-protective of human health and the environment and can remove that alternative from consideration as a viable option. (55 FR 8725, March 8, 1990)

EPA adopted a similar approach, in which one factor carries more weight than others, in developing the evaluation process under the NCP (40 CFR 300). Under the NCP, EPA considers overall protection of human health and the environment and compliance with ARARs as "threshold criteria" that each alternative must meet to be eligible for further consideration.

The Department of Defense intends to identify and address ARARs exactly as prescribed under CERCLA and in the NCP. In the event that the Department of Defense wishes to waive an ARAR, it will justify the waiver under the criteria and processes stipulated under CERCLA and in the NCP. The Department of Defense will provide a written description of the ARAR to be waived; the waiver type to be invoked; and the justification for invoking the waiver. The Department of Defense will provide regulators with the opportunity to review and concur on ARAR waivers, as appropriate. The provisions of CERCLA Section 121(f)(2)(B), concerning a State's ability to challenge ARAR waivers, remains unaffected by this range rule.

a. *The Department of Defense screening process:* The NCP allows use of a screening process to reduce the number of alternatives to be considered in detail if a wide array of alternatives initially is developed. The screening process involves three evaluative criteria: (1) Long- and short-term effectiveness; (2) long- and short-term implementability; and (3) long- and short-term cost-effectiveness. Effectiveness of alternatives refers to their overall performance in eliminating, reducing, or controlling current and potential health risks, both during planning and implementation. Short-term effectiveness includes consideration of risks to workers who are involved in conducting the response. EPA guidance allows, at the screening process, elimination of alternatives that are clearly unacceptable in terms of short- and long-term human health risks. EPA guidance further provides that this evaluation is based primarily on many simplifying assumptions and on professional judgment at the screening

stage and is intended to identify alternatives with clearly unacceptable short-term risks. At DoD range sites covered by the proposed rule, the Department of Defense anticipates that the explosive risks posed by military munitions to response personnel will warrant screening out response alternatives that might otherwise be considered at typical CERCLA sites. If a given response alternative cannot provide adequate explosives safety, this will result in its elimination from consideration. If however, none of the on-range response alternatives identified provide for adequate explosives safety for workers involved in the response, the Department of Defense must consider other alternatives that will prevent the situation from worsening, or that will prevent or control releases of UXO or other constituents from the range, or prevent community exposure.

b. *Scope of the site-specific response evaluation:* As with REs, the Department of Defense intends that the SSRE be a highly focused investigation of response alternatives to address a specific risk. Where similar risks were successfully addressed at other ranges, the SSRE should focus on only those alternatives, rather than on conducting research and development of alternative technologies.[10] In recent years, EPA has adopted a similar philosophy and now advocates examination of "presumptive remedies." Presumptive remedies are preferred technologies for common categories of sites, based on historical patterns of remedy selection, and scientific and engineering evaluation of performance. Focusing on developing standardized approaches for addressing the identified risks posed by a military range would allow streamlining of the process, provide consistent resolutions when dealing with recurring problems, and usually result in significant savings.

c. *The site-specific response evaluation plan:* The Department of Defense intends this focusing effort to lead to the development of an SSRE plan. The SSRE plan will be a single, concise document that provides all necessary information about the objectives established for the SSRE, the rationale for those objectives, and how those objectives will be achieved. As necessary, the document will detail sampling and analysis protocols, safety requirements, data analysis procedures, or treatability studies required to complete the SSRE. The SSRE plan will be part of the administrative record, and the Department of Defense will publish a notice of its availability in a local newspaper. The notice will summarize the purpose of the document and inform the public how to gain access to it. The Department of Defense will be issuing detailed guidance on how to conduct an SSRE and how to effectively convey the information in the SSRE plan to the general public.

(1) Conducting the site-specific response evaluation. Once the SSRE plan is complete, the first step in conducting an SSRE is to identify a preliminary list of objectives for the response. These preliminary objectives will depend on the various site-specific factors such as the type of problems to be addressed, environmental setting, and subsequent land use. The second step is to identify general classes of response actions that meet or exceed the preliminary objectives identified for the response. The third step is to determine or estimate the scope of the response using an appropriate unit of measure. This can be, for example, the quantity of military munitions or media present or the size of the range. This determination allows elimination from further consideration of remedial alternatives that are incapable of treating the necessary quantity of military munitions or contaminated material in a reasonable time frame. The fourth step is to identify and screen specific technologies and, within a class of technologies, options for the actual treatment process. The fifth step is detailed evaluation of the effectiveness of the remaining options. The sixth and final step is to identify the alternatives or combinations of alternatives for a more detailed evaluation.

Any alternative that remains under consideration after the final step may require individual treatability studies, if such studies are needed, to provide sufficient data to: fully assess the alternative's suitability; support its design and implementation (if selected); or refine cost estimates and reduce performance uncertainties. Treatability studies are not required for all alternatives; if enough information exists to allow an accurate evaluation of each remedial alternative without conducting treatability studies, the Department of Defense will weigh the cost and time of conducting such a study against the potential benefits.

The detailed analysis of range response alternatives consists of examining each alternative against the following nine criteria, which are used by EPA in evaluating CERCLA remedial alternatives. A comparative analysis of the proposed alternative to each of the other alternatives is then performed. In developing these criteria, the Department of Defense adopted the basic concepts embodied in the nine evaluation criteria used to assess remedial alternatives under the NCP.

(1) Overall protection of human health and the environment (including explosives safety and natural resources).

(2) Compliance with ARARs established under Federal and State law.

(3) Long-term effectiveness and permanence.

(4) Reduction in toxicity, mobility, quantity, or volume.

(5) Short-term effectiveness.

(6) Implementability.

(7) Cost.

(8) Acceptability to appropriate Federal and State officials.

(9) Community (including property owner) acceptance.

Explosives safety and protection of human health, including risks posed to response personnel, are of paramount concern. Under EPA guidance, the detailed evaluation of responses resulting from each alternative must consider short-term risks. EPA considers the short-term risk to response personnel in evaluating whether a proposed remedial alternative meets the threshold criterion of overall protection of human health and the environment. The Department of Defense expects that explosives safety and risk to response personnel will be recurring issues and overriding considerations in the detailed evaluation of alternatives for range responses.

The first criterion addresses the ability of each alternative to protect human health and the environment from the acute, chronic, and carcinogenic effects of exposure to the constituents present at the range. This criterion draws on the constituent risk assessment and the evaluations of other criteria, especially the long- and short-term effectiveness evaluations. The Department of Defense believes that, in evaluating this criterion at military ranges subject to this proposed rule, a balance will need to be struck between protection of human health (including explosives safety) and protection of the environment. For example, while it may be feasible to excavate UXO to a depth of several feet over a large area, doing so will have a negative impact on the local environment. If that area also were critical habitat to a threatened or endangered species, then the benefits of UXO removal would have to be balanced against the disruption of that species' habitat. Furthermore, if a response alternative cannot minimize explosives safety risks, it will be dropped from consideration. In assessing this criterion, an explosives safety plan addressing all alternatives will be submitted to the DDESB for evaluation.

Compliance with Federal and State ARARs is identical to the evaluation criteria required under CERCLA and the NCP. This criterion requires evaluation of the ability of each alternative to comply with chemical-specific, action-specific, and location-specific requirements that are either directly applicable to the response action or, in best professional engineering judgment, similar enough to the conditions of the site and response action to warrant their use (termed by EPA as "relevant and appropriate requirements"). For example, the Department of Defense's on-site response actions must comply with the substantive requirements of RCRA. Under CERCLA, the Department of Defense plans to adopt the process established in the NCP for waiving an applicable requirement. If required, concurrence of that waiver must be sought from the appropriate Federal or State agencies. For the assessment of the effectiveness of an AR, compliance with applicable requirements is required only to the extent practicable given the exigencies of the situation. In this way, this requirement is directly analogous to the requirement for ARAR compliance during a CERCLA removal action.

The long-term effectiveness evaluation assesses the residual risk posed by military munitions or other constituents that will remain at the range following the completion of the response action, and considers the reliability and adequacy of those actions in providing a long-term or permanent solution to the hazard posed at the range. The Department of Defense also believes that this criterion should consider any long-term liabilities associated with the response. For example, in evaluating a response action when wastes will be shipped to an off-site commercial facility for treatment or disposal, the Department of Defense should consider the potential CERCLA liability incurred by that action.

Evaluation of how the response reduces the explosives safety risks, toxicity, mobility, quantity, or volume of the military munitions or constituents (as appropriate) involves assessment of the effectiveness of the alternative at treating the military munitions or other constituents present on the range and the quantity that will remain following the response action.

The short-term effectiveness criterion addresses the risks or impacts of the alternative from the start of the action through to the time when the response objectives are achieved. Under this criterion, each alternative is evaluated to determine the degree of protection afforded to on-site workers and the surrounding community during implementation. Each alternative is also examined for possible adverse environmental impacts arising from implementation of the response or the time required to achieve the response action's objectives.

The implementability criterion assesses both the technical and administrative feasibility of implementing each alternative. Included in this assessment are (1) consideration of the availability of the necessary resources to implement the alternative, (2) an assessment of the reliability of the alternative (also a consideration under the short- and long-term effectiveness criteria), and (3) whether the action will impede other responses at the range. Another aspect of this assessment is the determination of the requirements for interaction with other Federal, State, or local agencies or American Indian tribes. For example, this assessment may require determining the need for obtaining a permit for a given alternative. Another factor the Department of Defense may consider in the assessment under this criterion is the availability of on- and off-range treatment and disposal units for wastes generated by the response action. In the case of chemical munitions, the statutory provisions of 50 U.S.C. 512a regulate the transportation, destruction, and open-air testing of these munitions; thus, the availability of the treatment or disposal capacity at the nearest chemical military munitions stockpile facility may be one of the most important factors limiting response alternatives. The Department of Defense is currently developing mobile treatment systems for these chemical munitions in an effort to preclude any need to transport them off-site.

Cost evaluation requires assessment of the direct and indirect capital costs as well as the operating and maintenance (O&M) costs associated with the alternative. O&M costs are usually a significant portion of the overall costs. The evaluation of this cost should consider any long-term financial liability associated with the response.

Assessment of the last two criteria, acceptability of each alternative to Federal and State agencies and community acceptance, requires consultation with these parties. By this point in the range response process, the public and government agencies should be fully engaged and their concerns already addressed. Some of the ways the DoD organization conducting the response can achieve this goal is through an EPT or RAB (if one exists), and through mechanisms such as public availability sessions.

Once all the alternatives are evaluated against the nine criteria to see if they meet the basic requirements, they are compared to one another to determine the pros and cons of each. For example, one alternative might provide a reduction in risk equal to another for a similar cost, but have a far greater potential for requiring another action sometime in the future. A specific example involves the use of off-site disposal facilities as opposed to an on-site action. In this case, the Department of Defense would need to consider the potential CERCLA liability arising from a release at the off-site facility in making the selection. Another example would be where one alternative provides a slightly higher degree of protection than another, but at vastly greater cost. The balancing of these alternatives will need to evaluate carefully the significance of the difference in protection and the significance of the cost difference. Such a determination in balancing the alternatives should be based on quantitative analysis, but ultimately the decision is largely a matter of professional judgment.

(2) Explosives safety and the nine NCP criteria. Explosives safety issues will be adequately addressed under the current CERCLA process by using the existing nine criteria described in the final NCP. Specifically, worker safety is part of the analysis in evaluating the criterion of short-term effectiveness. EPA states in the preamble to the final NCP that the short-term effectiveness criterion considers: who may be exposed during the remedial action; what risks those populations may face; how those risks can be mitigated; and what risks cannot readily be controlled. Workers are included in the population that may be affected by short-term exposures (55 FR 8723, March 8, 1990).

Section 2.2.9 of EPA's Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, Interim Final, EPA/540/G–89/004[11] (October 1988) is consistent with the NCP position. This guidance states, "Protecting the health and safety of the investigative team and the general public is a major concern during remedial response actions. Workers may be exposed to a variety of hazards

[10] In August 1996, the Department of Defense established a UXO Technology Executive Committee that will centralize the efforts on research, development, and management of technology for UXO detection, neutralization, and remediation.

[11] Copies of EPA's "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, Interim Final, EPA/540/G–89/004" (October 1988) can be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (telephone 703–487–4650).

including toxic chemicals, biological agents, radioactive materials, heat or other physical stresses, equipment-related accidents, and fires or explosions."

Furthermore, the NCP explains that the threshold assessment of overall protection "draws on the assessments of other evaluation criteria," which include short-term effectiveness (40 CFR 300.430 (d)(iii)(A)). Hence, in the remedy selection process, worker safety is considered not only when determining the short-term effectiveness of a remedy, but also as an integral part of the threshold requirement of overall protectiveness. As EPA stated in response to comments on the proposed NCP, "EPA agrees that unacceptable short-term impacts can cause an alternative to be considered non-protective of human health and the environment and can remove that alternative from consideration as a viable option". (55 FR 8725, March 8, 1990). In summary, information as presented in the NCP, as well as EPA guidance, ensures that risks to workers during investigative and response actions would be adequately addressed within the present CERCLA process.

d. *Site-specific response evaluation report:* As discussed in Section IV.E.5. of this preamble, if the identified risks posed by the military range require an SSRE, an RE letter report may be prepared in lieu of an RE report. The SSRE report will document the findings of both the RE and the SSRE. The SSRE report will provide a complete summary of the information collection and range risk assessment conducted during the RE, as well as the findings and conclusions of the SSRE. Depending on the findings of the RE and SSRE, the SSRE report will make one of the following recommendations:

(1) Identifying the recommended response alternative(s) for implementation, discussing the hazard(s) the response is to address, the results of the evaluation criteria, and the means of assessing the effectiveness of that response after it has been implemented.

(2) Conducting recurring reviews because the quantitative analyses demonstrated that all identified risks are effectively managed and are expected to remain managed in the long term.

(3) Issuing a TI determination because, while an identified risk remains, there are no available alternatives capable of addressing the risk. Typically, recommendations for other appropriate control measures and recurring reviews will be part of a recommendation for a TI determination.

e. *Public and government agency involvement:* The Department of Defense will provide a copy of the draft SSRE report to appropriate Federal and State agencies for review and comment. The Department of Defense also will publish a notice of availability and brief summary of the SSRE report in a major local newspaper of general circulation, and announce a 45-day period for submission of written comments to the DoD POC for that range. If requested, the Department of Defense also will hold a public meeting or availability session. Following the public comment period, the Department of Defense will develop written responses to significant comments received during the comment period and consider any issues brought out by these comments.

If significant changes result from this process, it may be necessary to issue a revised SSRE report and solicit further public comment. This is necessary only if the changes are so dramatic that they could not have been foreseen based on information available before the public comment period. Evaluation of new alternatives because a waiver of an applicable requirement was not granted is one example of when this might occur; however, selection of a new preferred alternative from among those already evaluated would not trigger the need for further comment. Following the comment period and development of written responses to those comments, the Department of Defense will formally document its decision and reasons for choosing the selected response alternative.

The Department of Defense will prepare a formal decision document describing the actions to be taken. A copy of the final SSRE report, the decision document, and all supporting information will become part of the administrative record for the range response at that site. A copy of the draft decision document will be provided to the appropriate Federal or State agency, American Indian tribe, and Federal land manager for concurrence.

f. *Documenting the selection of alternatives:* A formal decision document will identify the alternative(s) to be implemented and discuss the goals of the response (e.g., the risk to be addressed) and how the response will achieve those goals. This discussion needs to provide information as to how the alternative(s) provides for explosives safety, protects human health and the environment, addresses the concerns that the public and government agencies expressed in written comments, and eliminates, reduces, or controls the identified risks posed by military munitions or other constituents present at the military range. The decision document also will: (1) Discuss the Federal and State ARARs; (2) identify any ARARs not met; (3) provide justification for a waiver of those requirements; (4) specify the conditions of any waiver; and (5) discuss coordination of the waiver with appropriate Federal or State agencies. Finally, the document will discuss whether military munitions or other constituents will remain at the range. If so, the document also must describe the specific mechanisms used to ensure that land use remains compatible with any remaining military munitions or other constituents, and describe the frequency of recurring reviews. A copy of the decision document and all supporting information becomes a part of the administrative record for the range, and a copy of the decision document will be mailed to appropriate Federal and State agencies, American Indian tribe, and the current property owner.

7. Site-Specific Response Implementation

Under both the CERCLA response and the RCRA corrective action programs, implementation of the selected responses is a separate action from the detailed site assessment, evaluation of remedial alternatives, and process for selecting the remedy. The Department of Defense sees no real need for this demarcation; indeed, the Department of Defense hopes that the preliminary phases of implementing a site-specific response can be occurring simultaneously with the development of the formal decision document. This is not an indication that the Department of Defense will not give the comments received on the SSRE report careful and deliberate consideration, but rather that the Department of Defense hopes to speed the design, construction, operation, and monitoring of the response by capitalizing on existing information, design documents, or plans. This will be especially true if the alternative is either an accelerated response used by the Department of Defense at a military range or a "presumptive remedy" used by the Department of Defense, EPA, or another Federal agency at a site undergoing a CERCLA response or RCRA corrective action.

a. *Implementation planning:* Once the site-specific response selection process is complete, the DoD organization conducting the response will plan implementation, operation, and monitoring of the response alternative. This planning process includes several required steps, such as setting design and performance specifications, preparing complete construction drawings and operating plans, and starting the procurement of any required goods or services. In addition, the Department of Defense is considering including another recommended practice: preparing an implementation strategy document to describe the manner and methods to meet the requirements of applicable Federal, State, and local regulations for performance and construction; reduce environmental and community impacts; address the technical factors related to the design; account for assumptions made in developing the design; and account for possible sources of error in the design process. This document also would outline contingency plans for managing foreseeable deviations.

b. *The response implementation plan:* As with every other phase, the Department of Defense believes that focusing the implementation process is critical to the success of the response. To achieve this, the Department of Defense proposes to develop a single, concise document providing all necessary information about the objectives established for the response, the rationale for those objectives, and how those objectives will be achieved. As necessary, the document also will detail the design, construction, operation, maintenance, monitoring, and decommissioning of the response alternative. An explosives safety plan addressing explosives safety risks will be developed and forwarded to DDESB for approval. This document will be part of the administrative record, and the Department of Defense will publish a notice of its availability in a local newspaper. The notice will summarize the purpose of the document and tell the public where and how to gain access to it.

c. *Implementation of the alternative:* The first step in implementing the response is development of appropriate sets of construction drawings, engineering calculations, process flow diagrams, critical path analyses, and lists and specifications for all equipment and materials. Development of operational guidance for and training of personnel involved in implementing the response should begin as needed. Once these elements are in place, implementing the response is a two-phase process. The first phase involves the actual construction and initial operation of the response, and the second phase involves operation until the response achieves the response objectives. Actual implementation or construction includes conducting necessary quality assurance inspections and preparing any necessary periodic reports on progress in executing the response. Clearly, there must be DDESB review of all phases of the implementation process, including the construction and acceptance testing activities. This function ensures that the construction of the remedy follows the specifications and requirements detailed in the planning process for implementation and the terms of any contracts for operation. The Department of Defense also will monitor the response to determine its effectiveness. Upon completion of each phase of monitoring, the results will be analyzed to determine if the remedy has achieved the response objectives.

d. *Public and government agency involvement:* Any releasable documents or reports developed during this phase of the range response process are part of the administrative record and will be made available for public inspection at the information repository. The public, government agencies, and American Indian tribes may take concerns or questions about the response directly to the DoD POC, the EPT, or the RAB. Federal or State agencies that have granted a waiver from an applicable requirement may request regular updates on the progress of the response and its compliance with any conditions imposed in granting the waiver.

8. Recurring Reviews

In this rule, the Department of Defense is proposing to require recurring reviews of ARs, conditions imposed as part of a TI determination, and site-specific responses. Sites issued a determination of no further action will not be subject to recurring reviews, but if a previously unidentified risk is identified at a later date, the Department of Defense is obligated to take necessary response actions.

The purpose of recurring reviews is to determine if the responses taken continue to ensure explosives safety, protect human health and the environment, prevent off-range releases of other constituents, and provide an opportunity for assessing the applicability of new UXO technology or other new technology that will overcome a previous TI determination.[12] The focus of the review will depend upon the response objectives and the specific responses implemented to address the identified hazards at the range. For example, for responses that provided explosives safety or human health protection through limiting access to the range, the recurring review will focus on the effectiveness of the mechanisms and institutional controls put into place to control access. For ranges where a long-term response is required, the recurring review will focus the ability of the response to achieve its specific performance objectives within a specified time frame.

a. *Frequency of recurring reviews:* Under CERCLA Section 121, EPA conducts reviews of remedial actions at sites on the NPL at least every 5 years, starting with implementation of the remedial action. The Department of Defense is proposing that the first recurring review at closed, transferred, and transferring ranges occur after 3 years. Subsequent recurring reviews would occur at year 7 and at 5-year intervals thereafter, or as necessary to ensure that the response is still effectively addressing the identified risks posed at the range. The Department of Defense proposes this frequency because problems with responses typically manifest themselves in the time shortly after implementation. Recurring reviews will be set on a more frequent schedule (e.g., years 2, 5, 9, 14 * * *) when necessary.

The Department of Defense also proposes that should a problem with a response be identified outside the recurring review process, for example by a private citizen, that party can submit a request to the DoD component responsible for the range to have the response reviewed. Such a request will need to provide sufficient details as to the location of the range, the problem noted, and the identity of the party submitting the request so that it can be handled in a timely manner.

b. *Documenting recurring review findings:* At each recurring review, the Department of Defense will formally document the review procedures and the evaluation criteria used to assess the effectiveness of the response in a recurring review report. The document also will describe any information collected or analysis conducted as part of the review. Finally, the document will provide a discussion of the findings, stating whether or not the response continues to address the hazards at the range and if any new problem is discovered in the period since the last review. If the response failed to remain effective, or if a new problem is discovered, the DoD component responsible for that range will provide a discussion of what actions will be taken to return the response to full effectiveness. If a new problem is identified, the responsible DoD component will document the actions to be taken to address that problem and the schedule for the

[12] The Department of Defense has established a UXO Technology Executive Committee that will centralize the assessment of new UXO technologies.

actions. For the most part, this will involve returning to the appropriate phase of the range response process (e.g., go back to the RA/AR phase and implement an AR). The responsible DoD component then will take action as necessary to address the risks posed by the range.

c. *Public and government agency involvement:* If the review determines that the response remains effective, the Department of Defense will publish a notice to that effect in a major local newspaper of general distribution. The recurring review report will be included in the administrative record and made publicly available at the information repository. If the review finds that the response is not effective, the Department of Defense will publish a notice to that effect and will hold a public meeting or availability session if requested to do so by the public. Furthermore, the Department of Defense will prepare a formal decision document describing any actions to be taken and will send formal written notice to appropriate Federal, State, and American Indian tribal officials that discusses the findings of the review and the Department of Defense's planned actions to address the risks posed by the military range. A copy of the draft decision document will be provided to the appropriate Federal or State agency, American Indian tribe, and Federal land manager for concurrence.

9. Ending the Range Response Process

Following completion of an appropriate number of recurring reviews to demonstrate that the range is unlikely to pose an explosives safety risk or a risk to human health or the environment, the Department of Defense will administratively close out and end the range response. Typically, this will require that:

(1) The Department of Defense has demonstrated that any military munitions or other constituents at the range pose minimal hazards.

(2) The specific response objectives are achieved and all related monitoring activities to demonstrate that are complete.

(3) For responses that do not involve restoring groundwater or surface water (for example, in-situ soil treatment), the response is fully operational and performing to design specifications. A response becomes "fully operational" either 1 year after construction is complete or when the remedy is determined to be functioning properly and is performing as designed, whichever is earlier.

(4) For response actions involving treatment or other measures to restore groundwater or surface water quality to a level that ensures protection of human health and the environment, the operation of such treatment or other measures for a period of up to 10 years after the response becomes "fully operational" will be considered part of the response action, and not O&M.

(5) The only remaining activities at the site involve O&M. O&M measures are initiated after the response action has achieved its goal as outlined in the decision document, and is determined to be "fully operational" (except for groundwater or surface water restoration actions as described in IV.E.9.(4)).

Once these requirements are met, the Department of Defense will prepare a range close-out report justifying completion of the response. This report will include:

(1) A summary of the range's history and past and current conditions.

(2) Demonstration that all response objectives have been met.

(3) A determination that sufficient monitoring results have been collected to demonstrate that the response objectives have been achieved.

(4) Demonstration that any long-term maintenance requirements for the response are capable of being successfully carried out.

(5) Documentation that the range response has effectively addressed the hazards posed by military munitions and other constituents at the range.

a. *Public and government agency involvement:* The responsible DoD component will provide a copy of the draft range close-out report to the appropriate State and Federal agencies, American Indian tribe, and Federal land manager for their review and comment. The Department of Defense also will publish a notice of availability and brief summary of the range close-out report in a major local newspaper of general circulation, and announce a 45-day period for submission of written public comments to the DoD POC for that range. If requested, the Department of Defense also will hold a public meeting or availability session. The Department of Defense will prepare a formal decision document describing the actions to be taken, and will provide that document to the appropriate regulators, American Indian tribe, and Federal land manager for concurrence in accordance with § 178.14 of this rule. A copy of the draft decision document will be provided to the appropriate Federal or State agency, American Indian tribe, and Federal land manager for concurrence. The final range close-out report, decision document, and supporting information will be placed in the administrative record for the range response.

b. *The Department of Defense's continuing obligation:* Under DERP and 10 U.S.C. 172, the Department of Defense is never fully relieved of its obligation to address environmental damages caused by military munitions or other constituents. If at some future date a problem is discovered at a range where the Department of Defense completed the range response process, the Department of Defense will conduct an appropriate response to address that problem. This response typically will be handled as an explosives or military munitions emergency response; however, if the circumstances indicate a need for a more detailed response, the Department of Defense will reopen the range response process and conduct any appropriate actions. If a response is needed due to the Federal land manager's or property owner's failure to comply with the deed restrictions or other land-use limitations placed on the use of the property, however, the Department of Defense is not responsible for conducting any part of the response that has been made necessary by this failure to comply. After the range rule process has been administratively ended, the Department of Defense is still responsible for continuing any long-term maintenance or monitoring requirements that were part of the Department of Defense response at a given range.

The Department of Defense also has stated that if technology limits the range response and the use of the land is restricted, but later, cost-effective improvements in technology allow for the removal of such a restriction, the Department of Defense is responsible for conducting a later response, if doing so is consistent with the land transfer agreement and reasonably anticipated land uses that were originally identified and there is a current need for the removal of such a restriction. Assessments of the applicability of new technology typically will occur in the recurring review phase, but also may arise after the range response has been administratively ended. Assessment of the applicability of new technology will relate to new UXO technology or other new technology that will overcome a previous TI determination.

F. Other Issues

1. DoD Environmental Response Authorities and Relationship to Other Laws

a. *Regulatory and environmental response authorities:* In this proposed rule, the Department of Defense has articulated, for the first time in regulatory form, the nature and extent of its environmental response authorities under DERP, DDESB, and CERCLA. It has chosen to do so in the case of response activities at closed, transferred, and transferring ranges because of the unique risks to safety, human health, and the environment posed by such sites, and because of the Department of Defense's expertise in safely managing the risks posed by military munitions and military ranges. DERP, DDESB, and CERCLA give the Department of Defense authority to respond to releases or threatened releases from its facilities (including NPL sites). Like any other executive agency that has been directed to carry out a legislative mandate, the Department of Defense is entitled to create regulations that spell out how this mandate will be effectuated. The Department of Defense has chosen to do this for range responses because of two focused, statutory mandates that direct the Department of Defense's attention to the issue of ordnance and range activities: DERP and 10 U.S.C. 172, which established the DDESB. In this proposed rule, the Department of Defense intends that military munitions and other constituents on closed, transferred, or transferring military ranges are to be addressed under DERP and DDESB authorities in a manner that is not inconsistent with CERCLA. Accordingly, substantive requirements of RCRA may be the source of ARARs to any response actions deemed necessary. This proposed rule's process is one that is tailored to the unique risks posed by military munitions and military ranges (i.e., the risks of UXO and any other constituents that may emanate from UXO, exploded ordnance, or range activities).

When Congress established DERP in 1986, it directed the Secretary of Defense to "carry out a program of environmental restoration" at facilities under the jurisdiction of the Secretary of Defense. Section 2701(b)(2) of DERP specifically cites one of the program goals of DERP to be the "correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment." Under 10 U.S.C. 172, the Department of Defense has a specific charter to prevent "hazardous conditions from arising to endanger life and property inside or outside storage reservations" when it comes to military munitions (including UXO). The DoD agency entrusted with carrying out this mandate is the DDESB. The DDESB is a multi-Service entity that has issued military munitions safety standards and guidance documents such as DoD Directive 6055.9, Ammunition and Explosives Safety Standards,[13] that are followed by all of the armed Services. Case law and the opinion of the U.S. Attorney General support the concept that the DDESB has broad rulemaking powers regarding safety issues over munitions (1949, 41 Op. Atty. Gen. October 27;[14] see also *McQueary* v. *Laird*, 449 F.2d 608 (10th Cir. 1971)[15] and *Pratt* v. *Hercules, Inc.*, 570 F. Supp. 773 (D. Utah 1982)).[16] Thus, DERP and DDESB are the foundation for the Department of Defense's creation of a range-specific response process.

The DERP and DDESB authorities are then combined with the preexisting authority and obligations under CERCLA to engage in environmental response activities. The Department of Defense was already involved in removal and remediation activities at its facilities under the auspices of its Installation Restoration Program (IRP) for many years prior to the creation of CERCLA. The scope of this early IRP was responding to the releases or the substantial threat of releases of hazardous substances into the environment, as well as pollutants and contaminants that present an imminent and substantial danger to public health or welfare. The Department of Defense's IRP continued, with certain modifications, after the enactment of CERCLA in 1980. The Superfund Amendments and Reauthorization Act (SARA) clarified the nature of the Department of Defense's authority to respond to releases from its installations. SARA created CERCLA Section 120, which waived Federal sovereign immunity to the requirements of CERCLA.

CERCLA Section 104 states that the President is authorized by Congress to take removal and remedial actions consistent with the NCP whenever there is a release or a substantial threat of a release of a hazardous substance into the environment or a release or threat of release of a pollutant or contaminant into the environment that may present an imminent and substantial danger to public health or welfare. CERCLA Section 115 states that the President is authorized to delegate any assigned duties or powers and to promulgate any regulations necessary to carry out the requirements of CERCLA.

In E.O. 12580 (59 FR 2923 (January 23, 1987)), the President in Section 2(d) delegated his Section 104 authority (as well as other authorities) to the Secretary of Defense with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody, or control of the Department of Defense. The President's delegation to the Secretary of Defense is not conditioned on the NPL status of the release in question. The Department of Defense must exercise its CERCLA authority in a manner consistent with the requirements of Section 120 of CERCLA.

CERCLA Section 120 requires the Department of Defense to perform restoration activities in a manner consistent with guidelines, rules, regulations, or criteria developed by EPA, such as the NCP. In the NCP, EPA has recognized the various delegations made in E.O. 12580 and the various responsibilities of Federal agencies under CERCLA Section 120 by referring to Federal agencies that are responding to releases from their facilities as CERCLA "lead agents." This "lead agency" status applies regardless of whether the release in question is from an NPL or a non-NPL site (i.e., "the Federal agency maintains its lead agency responsibilities whether the remedy is selected by the Federal agency for non-NPL sites, or by EPA and the Federal agency or by the EPA alone under CERCLA Section 120" (40 CFR 300.5)).

The Department of Defense has been designated as the lead removal response authority with respect to military munitions in the NCP (40 CFR 300.120(d)). Thus the Department of Defense has lead agency authority under CERCLA (see also 40 CFR 300.5). Currently under the CERCLA program, the Department of Defense has the authority to select the appropriate response at non-NPL sites that are under the jurisdiction, custody, or control of the Department of Defense.[17] At NPL sites, EPA and the Department of Defense jointly choose the appropriate

[13] Copies of DoD Directive 6055.9 may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (telephone 703–487–4650).

[14] Copies of this Attorney General opinion may be obtained by visiting the DoD range rule administrative record at 910 Clopper Road, Gaithersburg, MD 20878–1399 (telephone 301–258–8753).

[15] Copies of this case may be obtained by visiting the DoD range rule administrative record at 910 Clopper Road, Gaithersburg, MD 20878–1399 (telephone 301–258–8753).

[16] Copies of this case may be obtained by visiting the DoD range rule administrative record at 910 Clopper Road, Gaithersburg, MD 20878–1399 (telephone 301–258–8753).

[17] Note that DoD authorities under DERP also extend to carrying out response actions consistent with DERP and CERCLA at a "site which was under the jurisdiction of the Secretary" of Defense.

response. If there is a disagreement, EPA has the final decision. The Department of Defense wants to make it clear that the hallmark of an effective "lead agency" is effective involvement by the public, as well as by EPA and State regulators. The Department of Defense believes that the process proposed in this rule allows responses at military ranges to be evaluated in an open fashion, with direct public and regulator involvement. Other Federal agencies have been delegated similar CERCLA authorities in E.O. 12580 in connection with facilities under their jurisdiction, custody, or control.

While this proposal is not inconsistent with the CERCLA process, an interaction and balancing of immediate UXO safety concerns with potential chronic environmental concerns must occur. Unlike other materials, UXO poses an immediate explosives safety risk to human health that must be considered before environmental concerns can be addressed. While explosives safety remains an overriding concern, the Department of Defense recognizes that if CERCLA hazardous substances or RCRA hazardous wastes exist on the range, other regulatory authorities (e.g., State RCRA authorities) may apply. As a practical matter, requirements could be imposed outside of the area suspected of containing UXO to address contamination from these hazardous substances or waste (for example, groundwater collection).

Certain regulators have designated constituents of military munitions as a hazardous waste or hazardous substance under their State CERCLA/RCRA programs. Some States may assert a regulatory cleanup authority, despite the Federal statutory bases for the Department of Defense's response process. Should conflicts develop between the Department of Defense and regulators, it is the Department of Defense's intention to work out compromise solutions that will respect the statutory and regulatory authorities of all parties and yet achieve the necessary expedited and safe response envisioned by this proposed rule, while recognizing that the regulatory agency retains decision-making authority, consistent with CERCLA and RCRA, for human health and the environment.

The Department of Defense's proposed range-specific response process is further supported by the unique threats that military munitions pose to human health and the environment. The Department of Defense's use of military munitions has arisen from its mission of national defense, and the Department of Defense has special expertise in managing explosives safety risks. As described throughout this rule, the risks to safety, human health, and the environment inherent in locating and responding to such relatively unstable materials as UXO are considerable. The location and response activities associated with other constituents are equally dangerous because such activities will typically occur within areas containing UXO. The Department of Defense is the recognized expert in the management of these risks. With its years of experience in safely handling and managing UXO, the Department of Defense has the expertise for determining when immediate safety concerns may prevent certain actions to address potential environmental concerns. Due to the specialized mission of the Department of Defense, the requirement for explosives safety expertise is a critical element unavailable within other organizations. The Department of Defense maintains the nation's institutional military munitions knowledge. EPA has formally recognized the Department of Defense's expertise in explosives safety, and it is appropriate that the Department of Defense regulate the safety implications of UXO on ranges. Typically, Federal, State, and local regulators seek the Department of Defense's expertise when it comes to safely managing military munitions and other ordnance discovered at non-DoD sites. Since it is an expert in military munitions, it is appropriate for the Department of Defense to use its inherent statutory explosives safety and environmental response authorities in DERP, 10 U.S.C. 172, and CERCLA to address the risks posed by military munitions and other constituents at the Department of Defense's closed, transferred, and transferring military ranges.

In summary, the Department of Defense believes there are three reasons that justify establishing a special process for response activities at its closed, transferred, and transferring military ranges: (1) The specific emphasis addressing the imminent and substantial threats posed to human health and the environment by military munitions that is found in DERP and 10 U.S.C. 172; (2) the general delegation of response authority given to the Department of Defense by Congress under DERP and by the President under CERCLA; and (3) the unique nature of the threats posed to human health and the environment by military munitions and military ranges.

b. *Relationship to other laws:* Under this proposal, the Department of Defense will follow the ARAR process in selecting response activities at its closed, transferred, and transferring ranges, and as such, many environmental laws will be considered at this stage. If further action is necessary and can be safely performed, these additional environmental laws will be considered. For example, in the process of removing military munitions, or even installing some protective measures, habitat destruction may occur. If the response action could affect a species listed pursuant to the Endangered Species Act, the Department of Defense must consult with the U.S. Fish and Wildlife Service to ensure that the action is not likely to jeopardize such species or adversely impact its designated critical habitat. In addition, prior to any excavation, the Department of Defense will take appropriate measures to identify resources protected under the National Historic Preservation Act, Archeological Resources Preservation Act, and Native American Graves Protection and Repatriation Act. If any protected resources are likely to be affected, the Department of Defense will comply with the requirements of these acts.

Another example of coordination with other laws involves the Safe Drinking Water Act (SDWA). If contaminants on a military range are affecting the quality of an actual or potential drinking water supply (e.g., a Class I or II groundwater as defined under the SDWA), then, consistent with CERCLA Section 121, this contamination must be addressed. Safety factors under the DERP program would still be considered, and it is possible that safety factors could require alternatives other than source removal, such as collection and treatment of contaminated groundwater outside the range area.

Clean Air Act requirements such as emission limits in a State Implementation Plan (SIP) could be a source of ARARs. In the case of remedial activities that generate air emissions, for example, the response would have to meet the SIP's substantive requirements.

Under RCRA, if military munitions/UXO are excavated from the range and taken off-site, RCRA hazardous waste requirements would apply, as appropriate. As stated in EPA's military munitions rule, "used or fired munitions are solid wastes when they are removed from their landing spot and then either (1) managed off-range * * * or (2) disposed of (i.e., buried or landfilled) on-range" (62 FR 6632, February 12, 1997). Also, EPA has made it clear in the preamble to the NCP and various CERCLA guidance documents that aspects of the RCRA corrective action program may also be a source of ARARs for the Department of Defense's response actions. For example, the flexibility afforded to restoration activities by RCRA's corrective action management unit and temporary unit concepts may be of use in expediting the Department of Defense's restoration activities.

The Department of Defense solicits comments on the interaction of this proposed range rule process with other environmental laws and regulations.

2. Water Ranges

The process of conducting response activities at closed, transferred, and transferring water ranges is particularly daunting. The retrieval, rendering safe, and even the location of military munitions in such ranges are extremely difficult. For example, tidal action may make maneuvering difficult and visibility poor; deep waters require remotely operated equipment; and military munitions often are buried in sediments. Orientation and location are therefore extremely difficult in the ocean environment. Typically, the Navy is limited to diver point searches and sweeps for recovery of military munitions. There is no technology available with the accuracy and discrimination needed to rapidly survey, detect, pinpoint, and classify underwater military munitions.

UXO has a long life in the underwater environment. Projectiles and bombs are designed with thick metal cases that take years to corrode. Nonetheless, experience with aged intact military munitions reveals that fills are typically in deteriorated condition, with formation of metal/explosive compounds and other chemical changes. Because such materials may be more sensitive, most UXO recovered from water ranges is destroyed soon after it is recovered. The toxicity of military munitions ingredients in water ranges generally is low. Most toxic compounds are rapidly decomposed by hydrolysis, photolysis, and oxidation once they are dissolved in water.

Because of the inherent difficulty in locating, rendering safe, and/or retrieving military munitions in water ranges, and because of significant risks to human health and safety posed to Navy personnel by such activities (i.e., the dangers inherent in underwater activities), as well as the water range UXO itself (i.e., its relatively unstable and sensitive nature), the types of ARs and site-specific responses will likely be significantly different than the responses for land-based military ranges. With regard to responses at water ranges, this proposed rule will be implemented in a manner consistent with the rights and obligations of the United States under the Law of the Sea Convention.

3. Other Range Activities

Activities not related to training or researching, developing, or evaluating military munitions may occur or have occurred on closed, transferred, and transferring military ranges. Some examples of these activities are open burning/open detonation (OB/OD) and certain explosive ordnance disposal (EOD) activities.

OB/OD sites are used to thermally treat waste military munitions by a controlled burn or a controlled detonation. Some OB/OD sites were in use for a number of years before RCRA was enacted. Many OB/OD sites were located within military ranges. OB/OD operations may not have completely destroyed the military munitions, resulting in the presence of UXO and its associated explosives safety risks.

OB/OD sites that exist on closed, transferred, and transferring ranges and were never permitted (and did not need to be permitted during their active life) are covered by this rule because they may contain UXO or other constituents. According to current RCRA standards, RCRA-permitted OB/OD facilities (or OB/OD facilities that should have been permitted) need to undergo RCRA closure as directed in their individual treatment facility permit or post-closure care permit, once the decision has been made that the facility will no longer be operated.

In "Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities' (59 FR 55778, November 8, 1994), EPA recently proposed eliminating the regulatory requirement that it issue permits to all facilities subject to post-closure care requirements in favor of imposing the same substantive requirements at the facility by using "alternate legal authorities." Although EPA's rule has not been finally promulgated, the Department of Defense intends to work with EPA to establish its CERCLA/DERP authorities as an adequate alternate legal authority for purposes of CERCLA/DERP-based response actions (in lieu of RCRA closure activities) at appropriate OB/OD sites located on the Department of Defense's closed, transferred, and transferring ranges.

EOD ranges are not sites that are used for routine OB/OD activities. EOD sites are designated to be used for EOD procedures that are conducted during munitions or explosives emergency responses. Individual and organizational EOD training may also be conducted at these sites. Often, EOD sites are located within military ranges, which provide the explosives safety distances from personnel, buildings, and facilities, as well as controlled access to the ranges. Both of these conditions also are required for EOD sites. EOD sites involved in such activities are within the scope of this proposed rule. EOD activities that are non-emergency and non-training are usually waste treatment and disposal activities and are conducted at permitted facilities; such activities are not covered by this rule.

4. Chemical Agent Constituents

Live chemical agent testing and demilitarization prior to 1969 was performed on certain military ranges. Some of this testing occurred on closed and transferred ranges, and possibly on some transferring military ranges as well. When chemical munitions were employed on a military range, a certain percentage of the fired military munitions did not function and became UXO. Chemical UXO poses a unique and difficult situation for the technical escort unit (TEU), an EOD team specially trained to handle chemical munitions. Although the explosive component of a chemical UXO is much less than that of the conventional high-explosive UXO, TEU personnel must assess the round and handle the UXO wearing personal protective equipment and follow special procedures and techniques unique to the Department of Defense and the Chemical Warfare Material program in case of a chemical release. This greatly slows the assessment and handling process. Increased safety precautions are necessary when there is a potential for the presence of chemical UXO, due to the potentially greater risk to the health and safety of workers and the public should a chemical UXO detonate. In addition, the transport and destruction of lethal chemical agent are regulated by 50 U.S.C. 1512 and 1512a, requiring special approvals by the Secretary of Defense and the Secretary of Health and Human Services prior to either transport or destruction. In addition, notification is required to be given to Congress and affected State governors prior to any such destruction or transportation.

5. Buried Military Munitions

The historical and then-acceptable practice by the Department of Defense was to bury certain military munitions. Many of these past burial sites have been remediated, but a number of them still exist, and some may be located on closed, transferred, or transferring ranges. The Department of Defense

believes that military munitions disposed of by burial or disposal in a landfill are a solid waste, and, if hazardous, would be subject to RCRA Subtitle C regulation when unearthed and further managed; they could also potentially be subject to RCRA corrective action and/or CERCLA. These buried munitions pose the same safety and hazard risks as UXO. In fact, buried munitions can involve greater safety risks than UXO, because the number and types of military munitions may not be known. The presence or suspected presence of buried military munitions will be a significant factor in whether response actions can be performed on the range. Even though they are potentially subject to RCRA, burial sites that are located on closed, transferred, or transferring military ranges should be evaluated in accordance with this rule. The Department of Defense solicits comment on this approach of addressing past burial sites of military munitions on closed, transferred, and transferring ranges.

6. Depleted Uranium

Depleted uranium (DU) is a byproduct of the uranium enrichment processes. DU is used in the commercial sector by the aircraft industry as counterweights, by the power industry as radiation shielding, and by the military as an armor-piercing projectile due to its hardness, strength, and density. DU's potential radiation exposure is small. As an alpha particle emitter, its radiation does not penetrate human skin or even ordinary paper. DU may be present on closed, transferred, and transferring ranges. DU is regulated by the U.S. Nuclear Regulatory Commission.

7. Regulator, American Indian Tribe, and Public Involvement

a. *General:* The Department of Defense will ensure a substantial role for the public, American Indian tribes, and regulators in this rule's process. In addition to the detailed roles outlined in Section IV.E. of this preamble, d etailed discussion of the phases of the range response process, the Department of Defense encourages States to enter into a Defense/State Memorandum of Agreement (DSMOA) to increase State involvement and strengthen the DoD/State partnership. The Department of Defense will make use of established RABs to involve the public throughout the process, or other forums, such as EPTs, as the specifics of the site and interest of the community dictate. While a finalized Defense and Tribal Memorandum of Agreement (DTMOA) does not yet exist, a DTMOA would be treated in a similar fashion.

The Department of Defense intends to seek regulatory agency involvement throughout the range response process. Communication and participation with environmental regulators should be frequent and should go beyond participation in RABs. While RABs are a valuable forum for communication between community, regulator, and the Department of Defense stakeholders, the RAB should not serve as a substitute for regulator involvement. The level of regulator participation should be consistent with the BRAC guidance on regulator involvement. Frequent communications, such as weekly or monthly progress meetings, data exchanges, and early notification of new information, are critical to building a team approach between environmental regulators and the DoD component responsible for the range.

Range responses executed with BRAC and Environmental Restoration Account funds will be eligible to be incorporated into the DSMOA process. The DSMOA process is designed to account for State oversight in the BRAC and Environmental Restoration Account programs, but prohibits incorporation of other projects not funded by these two accounts. To address the revision of the cooperative agreements, the Department of Defense is contemplating a special revision cycle for the States to incorporate new requirements resulting from the DoD range rule.

b. *American Indian tribes:* The U.S. Government has a unique legal relationship with Native American tribes as set forth in the U.S. Constitution, treaties, statutes, and court decisions. In implementing this rule's proposed process, the Department of Defense will act in a manner that is consistent with the "Government-to-Government Relations With Native American Tribal Governments" memorandum issued by President Clinton (59 FR 22951, May 4, 1994), the Native American Graves and Repatriation Act (as mentioned in Section IV.F.1.b. of this preamble, Relationship to Other Laws), and any military policies on Native American relations.

Section 178.4(c) provides a definition of American Indian tribe as used in this proposed DoD range rule. To be afforded substantially the same treatment as States under this rule, and thus receive a concurrence role, the governing body of the American Indian tribe must be federally recognized by the Department of Interior; have an appropriate tribal governing body that performs health, safety, or environmental functions; and have real property interests (as defined in § 178.4(l) of this rule) over some or all of a closed, transferred, or transferring range at which a response, including pre-response activities, is ongoing or contemplated.

To ensure meaningful participation by federally recognized tribes and villages that do not meet this rule's definition of an American Indian tribe, the Department of Defense encourages such tribes and villages to participate in RABs and/or EPTs as applicable, and to participate in all public forums provided (such as attending public meetings and technical education programs, and commenting on site-specific documents and notifications produced during the range response process). On a site-specific basis, the Department of Defense intends to notify, coordinate with, and consult with Native American tribes and Native Alaskan villages in accordance with tribal trust obligations and with the presidential memorandum on government-to-government relations. Furthermore, the Department of Defense recognizes that federally recognized tribes and villages have specific rights created under treaties, statutes, and other regulations. For example, the NCP provides that a Native American tribe may bring an action for injury to, destruction of, or loss of natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a restriction on alienation (55 FR 8788; March 8, 1990). Nothing in this proposal is intended to preempt or restrict such tribal rights, privileges, or authorities.

This proposal also describes what information and notices are to be provided to appropriate officials of the American Indian tribes (see, for example, § 178.7(e)). Notices to these officials should also include the affected trustee (e.g., the Department of Interior), when applicable. The Department of Defense particularly requests comments on this portion of the proposed rule, especially concerning the relationship between federally recognized tribes and this rule, the level of detail needed on this subject, and the interaction between tribes and States under the range rule.

c. *State involvement in ARARs:* The Department of Defense will provide the States 45 working days to review the draft RA/AR report, the draft RE report if prepared, the draft SSRE report, the draft range close-out report, and the draft recurring review report. A key component of the DoD/State partnership will be the communication of potential Federal and State ARARs and, as appropriate, other pertinent advisories, criteria, or guidance to be considered (TBCs), prior to the response selection. ARARs and TBCs will be identified early in the alternatives analysis to allow adequate time to identify them and screen the alternatives appropriately. The Department of Defense will request that the States review and concur in the draft decision document for each phase of the range response process. If the responsible DoD component is considering a waiver of State ARARs, it will place the waiver request in the appropriate decision document being submitted for concurrence.

8. Small Arms Ranges

Small arms ranges are a subset/type of military ranges. Military ranges are designed to teach, sustain, and maintain individual and collective group (i.e., unit) skills. Multipurpose ranges support integrated live-fire training of large caliber weapons (such as tanks) with small arms (machine guns). Small arms training is therefore not always confined to a range dedicated solely to a particular type of small caliber weapon. Because small arms ranges, along with large caliber and multipurpose ranges, are commonly configured around a common impact area in a range complex, small arms ranges can be located inside the surface danger zone of other ranges, such as artillery or tank ranges, thus increasing the chance of UXO or other military munitions and debris being present on the range. It is also possible that the area of the small arms range may have been used in the past as a military range that employed large caliber weapons, thus again increasing the chance of UXO or other military munitions and debris being present.

Smaller caliber weapons also are uniquely military in nature due to the types and specifications of ammunition they use; they must meet military specifications and be manufactured to U.S. and North Atlantic Treaty Organization (NATO) standards. The ammunition used is designed for a number of purposes: for use against armored aircraft, light armored vehicles, concrete shelters, and other bullet-resistant targets; incendiary effects against aircraft; signaling; personnel; and light material targets. Due to the type and specifications of the ammunition, small arms ranges are covered by this proposed rule if they are located on a closed, transferred, or transferring military range.

9. Guidance

The Department of Defense will develop implementing guidance on this proposed rule. The guidance will be coordinated with the EPA, States, American Indian tribes, and other Federal agencies before being issued as final. This guidance will address, at a minimum, implementation of the safety risk assessment model or protocol, the decision-making process, and record searches.

10. Dispute Resolution

The Department of Defense has structured this proposed process for range response activities to maximize frequent and meaningful public, American Indian tribe, and regulator involvement. As such, the process should typically resolve issues before they become disputes. The proposed rule contains a formal alternative dispute resolution (ADR) process for Federal and State regulatory agencies, American Indian tribes, and Federal land managers in § 178.15(b).

If, however, a dispute arises that cannot be resolved informally, the Department of Defense encourages any property owner who is not specifically described in § 178.15(b) and who may feel aggrieved by the Department of Defense's response activities to pursue the following ADR [18] mechanism with the Department of Defense to resolve differences: A property owner disputing a response at a closed, transferred, transferring range can submit the dispute in writing to the DoD POC for that range. The Department of Defense will attempt to resolve the dispute within 30 days, or a longer period if mutually agreed upon. Negotiation and other forms of mutually acceptable, nonbinding ADR, which may include non-binding mediation by a qualified third party, may be utilized. If a mutually agreeable resolution is reached, it will be documented in writing. If, after 30 days or a longer agreed-upon period, a mutually acceptable resolution is not reached, the parties may exercise any rights, remedies, or privileges available to them under applicable law. For example, if a hazardous substance is involved, the citizens' suit provision of CERCLA may be applicable. Additionally, procedures under the Military Claims Act (10 U.S.C. 2732 *et seq.*) could be utilized by private property owners of transferred ranges. In addition, the dispute resolution processes spelled out in E.O. 12088 (43 FR 47707, October 13, 1978) and E.O. 12146 (44 FR 42657, July 18, 1979) are available for disputes between Federal agencies and between Federal and State agencies. The Department of Defense solicits input on whether this ADR process for property owners should be a mandatory requirement or if any mechanisms should even be suggested.

A more formalized dispute resolution procedure is included for Federal and State environmental regulatory agencies, American Indian tribes, and Federal land managers in § 178.15(b). The Department of Defense encourages environmental regulators, American Indian tribes, and Federal land managers to utilize this dispute resolution procedure instead of asserting additional statutory authorities over environmental remediation at military ranges, although the use of these procedures does not preclude the use of other statutory authorities. Additionally, site-specific or area-wide agreements may be applicable to a given military range which may provide for alternative dispute resolution procedures. The procedure specifically applies to Federal and/or State environmental regulators, American Indian tribes, and Federal land managers as appropriate.

The formal procedure provides for five levels of dispute resolution: the project manager level, the installation commander level, the military headquarters level, the environmental policy-maker at the Secretariat staff level, and an appropriate political appointee with responsibility for environmental policy within the responsible DoD component. Because the title varies among the military departments, the terms "headquarters level" and "principal environmental policy-maker level" are used. For example, for the Air Force, the term "headquarters level" would refer to the Major Command to which the installation reports, while the term "principal environmental policy maker" would refer to the Air Force Deputy Assistant Secretary for Environment, Safety, and Occupational Health. These personnel would meet with a similarly positioned person in the Federal or State agency or American Indian tribe.

An additional level of dispute resolution is available to Federal agencies: elevating the dispute to the Office of Management and Budget (OMB). The dispute resolution process recognizes that regulatory agencies dissatisfied with an outcome under the dispute resolution process may elect to pursue resolution under other applicable laws such as CERCLA or RCRA. Nothing in this rule is intended to preempt State regulatory or enforcement powers or authority concerning hazardous waste or

[18] The Administrative Dispute Resolution Act (5 U.S.C. 571 *et seq.*) and E.O. 12778 (56 FR 12778 (October 23, 1991)) encourage Federal agencies to utilize ADR processes to resolve issues that might otherwise be litigated.

hazardous substances, nor is it intended to affect the waiver of sovereign immunity by the United States contained in the Federal Facility Compliance Act of 1992 or any other environmental law.

In recognition of their unique status, the dispute resolution mechanism provided to American Indian tribes in the DoD range rule is similar to that offered to the States. The final phase of the dispute resolution process provides for resolution between the Secretary of the Military Department, or his/her designee who must be a political appointee whose appointment requires the advice and consent of the Senate, and the American Indian tribal leader or his/her designee. Because the title may vary among the various American Indian tribes, the term "tribal leader" has been used to refer to the head of the tribe. Thus the term American Indian tribal leader would refer to the Governor, President, Chief Executive Officer, or other final decision-maker for the American Indian tribe.

In addition to this first option for the final step in dispute resolution for States and American Indian tribes, as presented in § 178.15(b)(5), the Department of Defense is considering a second and third option. The second option is to provide the State governor or the American Indian tribal leader with final decision-making authority for issues under dispute. While the Department of Defense is considering this option, it believes that there are significant legal impediments. In the range rule, the Department of Defense voluntarily acknowledges its obligations, independent of any other authorities that might be available to State regulators or tribes, to address UXO and other constituents from DoD activities on closed, transferred, and transferring ranges. Because the Department of Defense is utilizing statutory authorities for which it has responsibility and no authority to delegate, it believes it should be the final decision-maker under the DoD range rule. Since nothing in the range rule removes or limits any authorities the States and tribes have, the Department of Defense will have a strong incentive to ensure that any actions it takes under the range rule will be fully satisfactory to States and tribes.

The Department of Defense is, however, seriously considering the third option. Under this option, should the Secretary of the responsible DoD component's military department and the State governor or American Indian tribal leader be unable to resolve a dispute by consensus, then the responsible DoD component would prepare a written statement acknowledging the inability of the responsible DoD component and the State or tribe to resolve the dispute and recognizing that the responsible DoD component and the State or tribe may pursue their authorities under any applicable law.

The Department of Defense believes that utilization of the mechanisms in this proposed rule, in lieu of any other authorities that might be applicable, would present substantial advantages for all interested parties because environmental and safety risks will be addressed more promptly and more comprehensively through this rule. As made clear in the dispute resolution provision, if a State or Federal agency or American Indian tribe is dissatisfied with the results of the application of this rule, there is recourse outside the Department of Defense; the State may choose to apply other legal authorities that might be applicable, and the Federal agency may elevate the dispute to OMB or choose to apply other applicable legal authorities.

CERCLA Section 120(e)(4) requires that the selection of a remedial action be made by the head of the relevant department (i.e., the DoD component) and the EPA Administrator, or, if unable to reach agreement on the selection of a remedial action, by the EPA Administrator. Section 178.15(b)(4) thus integrates this statutory authority into this proposed rule to avoid duplicative procedures and unnecessary delays. Section 178.15(b)(4) of this rule recognizes that there may be an overlap between EPA's authority under CERCLA for the final selection of a remedial action at an NPL site and the Department of Defense's authority under 10 U.S.C. 172 and 2701 for explosives safety [19] and military munitions. Thus, consistent with Section 10 of E.O. 12580 on Superfund Implementation, the dispute can be raised to OMB. While such a dispute theoretically is possible, the Department of Defense is confident that the dispute resolution process contained in this rule would result in the selection of a response that is fully satisfactory to the EPA Administrator and to the Secretary of the Military Department prior to the OMB stage.

Range response activities will not be suspended during the dispute resolution process absent extraordinary circumstances. If the secretary of a Federal land manager, or his/her designee whose appointment requires the advice and consent of the Senate, provides a written declaration with supporting rationale to the Department Secretary for the responsible DoD component, stating that an immediate suspension of response activities during the full dispute resolution process is needed to prevent substantial environmental harm that would result from the performance of the activity itself, then the responsible DoD component shall immediately suspend such activity, to the extent consistent with the protection of human health from any imminent and substantial danger. The suspension issue (i.e., whether to suspend response actions during the full dispute resolution process) will be raised directly to the Military Service Department Secretary, or his/her designee whose appointment requires the advice and consent of the Senate, consistent with § 178.15(b)(4). The Secretary of the Federal land manager and the Military Service Department Secretary will have 5 calendar days to arrive at a consensus on the suspension issue. If no consensus is reached, then the Federal land manager will have 5 calendar days to raise the suspension issue to OMB and request OMB to decide whether to continue the suspension of the response action. Five days following the submission of the suspension issue to OMB, the Military Service can resume activity unless OMB makes or has made a determination that the response actions should not resume pending resolution of the underlying dispute, or that an additional time period is needed to consider the merits of the arguments over whether the response action should be allowed to resume.

Because of the extensive involvement of the Federal land manager throughout the range rule process, this mechanism should be rarely used, and will typically be based on concerns over endangered species or other issues involving statutory protections. This process is intended as a true emergency measure to assure the Federal land manager that it will be able to protect its lands from substantial environmental damage while the merits of the dispute are fully aired. Because the suspension of an action could result in substantial contract costs to the government and delays in the mitigation of risks to human health and the environment from UXO, the Federal land manager should endeavor to raise its concerns over substantial environmental effects of a proposed response action at the earliest possible time.

One Federal commentor has suggested that the time limits of this provision be changed from 5 days to 10 days. Additionally, a State commentor has asked if States can suspend response actions during a dispute. The Department of Defense seeks comments on both of these issues.

[19] The Department of Defense notes that, under isolated circumstances, other constituents subject to CERCLA could be present in concentrations that constitute an explosives safety hazard. In such case, the Secretary of the Military Department would resolve the explosives safety issues, and the EPA Administrator would resolve the other issues related to the release of those other constituents.

11. Allocation of Operation and Maintenance Costs Between Federal Agencies

The Department of Defense intends to enter into a memorandum of understanding (MOU) with Federal land managers to establish the general principle that the Department of Defense is responsible for the incremental O&M costs attributable to military munitions (including UXO and its associated constituents) employed by the Department of Defense at ranges that are under the responsibility of another Federal land manager and for which the Department of Defense would be responsible under the proposed rule for the costs of the response, unless otherwise specified by law. Such an MOU would be modified only by mutual agreement of the parties. This MOU would establish a workgroup to review quality controls and the consistency of decisions whether to commence the RA/AR process at former ranges managed by a Federal land manager. The MOU would incorporate the dispute resolution process for allegations that the Department of Defense arbitrarily applied the factors in § 178.6(b) or relied upon inaccurate information.

The Department of Defense and the Federal land manager also would enter into site-specific MOUs to establish the costs for which the Department of Defense would be responsible at that range. The costs and the requirements would be established for a range as part of the response selection process called for under the rule, including the selection of an AR.

12. Future Land Use Issues for Transfers Between Federal Agencies

The Department of Defense and the Federal land managers have agreed to enter into a memorandum of agreement (MOA) to discuss future land use issues. Section 178.16 of this proposed rule generally discusses future land use issues at these Federal properties. The Department of Defense has divided this issue into three topics: Transferring ranges, transferred ranges, and responsibility for additional response actions. For transferring ranges, the Department of Defense will conduct and fund response activities consistent with all reasonably anticipated future land uses that are identified and agreed to between the parties to the land transfer prior to the transfer. Where the transfer of the military range is mandated by statute, executive order, a previously concluded agreement between the Department of Defense and the Federal land manager, or under terms of a withdrawal, special-use permit or authorization, right-of-way, public land order, or other instrument issued by the Federal land manager, under which the Department of Defense used the property, and where future land uses are not identified or response activities are not specified in such statute, order, agreement, or instrument, any dispute will be resolved through utilization of the dispute resolution procedure identified in the range rule. Where the transfer is not legally mandated, disagreement over what the reasonably anticipated future land uses are may result in the transfer of the property to some other party, or no transfer. Technology limitations may restrict current uses or cleanup of the property. Reasonably anticipated future land uses for the property will not necessarily be limited by current technological limitations on the cleanup of UXO on ranges.

For transferred ranges, in the absence of a prior agreement identifying reasonably anticipated future land uses or imposing land use restrictions, the Department of Defense will conduct and fund response activities consistent with all reasonably anticipated future land uses at the time of the range response. Reasonably anticipated future land uses will be decided by the Federal land manager with the concurrence of the Department of Defense. If there is disagreement, the dispute resolution procedure identified in the range rule will be utilized. Technology limitations may restrict current uses or cleanup of the property. Reasonably anticipated future land uses for the property will not necessarily be limited by current technological limitations on the cleanup of UXO on ranges.

Section 178.16 also lists a number of specific circumstances where the Department of Defense will conduct and fund additional response actions at these Federal properties (for example, when the remedy fails or additional UXO is found that creates conditions inconsistent with the established reasonably anticipated land use, the Department of Defense will conduct and fund additional response actions at these Federal properties to achieve consistency with the established reasonably anticipated land use). The Department of Defense seeks comments on the applicability of these future land use concepts to parties other than Federal land managers.

The MOA will also discuss responsibilities for additional response actions should a response previously implemented under the range rule later conflict with a Federal land manager's trust obligations or statutory management responsibilities. Where the Federal land manager makes a determination that the level of response previously implemented pursuant to the range rule is inconsistent with the Federal land manager's trust obligations or statutory responsibilities for management and stewardship of the land and natural resources for the United States and the public, the Federal land manager shall identify to the Department of Defense what further response action is necessary to meet those obligations or responsibilities and shall identify how the OMB decisional factors described in this paragraph are implicated by the proposed additional response action. If the Department of Defense elects not to fund or perform the additional response action so identified, the Federal land manager may invoke the dispute resolution procedure in the range rule. If such a dispute arises, EPA shall be provided notice and an opportunity to participate in discussions with OMB. When OMB resolves a dispute as to whether the Department of Defense or the Federal land manager should fund or perform additional response action identified by a Federal land manager pursuant to this section, OMB shall consider and balance:

(1) The importance of the proposed additional response action in meeting the Federal land manager's obligations or responsibilities.

(2) Any reasonable alternatives by which the Federal land manager could satisfy its obligations and responsibilities, including alternatives that utilize innovative technology or that require no additional response action.

(3) The cost and cost-effectiveness of the proposed additional response action in comparison to the other reasonable alternatives.

(4) The cost of the cleanup to the Federal government as a whole.

(5) The availability or expected availability of appropriated funds at each of the respective agencies to fund or perform the proposed additional response action.

The Department of Defense and the Federal land managers have agreed to include the language of the MOA concerning future land use in the site-

specific agreements under which land is to be transferred from the Department of Defense to a Federal land manager. The Department of Defense seeks comments on the applicability of these future land use concepts to parties other than Federal land managers.

V. Discussion of Other Major Alternatives

A. General

In proposing this rule, the Department of Defense is considering several alternatives to address military munitions on closed, transferred, or transferring ranges. In assessing each of these alternatives, the Department of Defense has sought to identify the relative merits of each statutorily based process in meeting the goals of establishing a single, logical, and comprehensive process that addresses explosives safety, human health, and environmental concerns. In the Department of Defense's view, a single, specific process is necessary to avoid confusion and to ensure that effective response activities are undertaken in a fiscally responsible manner. That process must recognize and consider the unique explosives safety hazards associated with military munitions, and concomitantly with any response activity conducted on closed, transferred, or transferring ranges. The process must ensure that the public and regulators are fully informed and engaged at every stage of the process, including substantial and meaningful public and regulator participation in the response selection and implementation. The process must be accessible, consistent, and lead to informed decision-making. As noted elsewhere in this rulemaking, the Department of Defense's response activities, both on- and off-range, have been variously subject to rules implemented under DERP, CERCLA, RCRA, or a combination. With respect to military munitions, DDESB exercises independent statutory authority over explosives safety. As such, the Department of Defense has identified and continues to consider several alternatives based on each of these statutory authorities.

B. Comprehensive Environmental Response, Compensation, and Liability Act

The Department of Defense also is considering the adequacy of CERCLA to address military munitions on closed, transferred, or transferring ranges. As specified in CERCLA Section 104, CERCLA is triggered by the "release or substantial threat of a release into the environment" of a "hazardous substance" or of a "pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare." Neither military munitions nor UXO are, as a class, designated as CERCLA hazardous substances. However, the Department of Defense is considering whether UXO should, as a class, be recognized for purposes of this rule as CERCLA pollutants or contaminants. A CERCLA pollutant or contaminant triggers a CERCLA response if an imminent and substantial endangerment to the public health or welfare exists.

The procedural and technical standards for conducting CERCLA response activities are codified at 40 CFR 300, National Oil and Hazardous Substances Pollution Contingency Plan (55 FR 8666, March 8, 1990). The NCP establishes five steps to respond to releases or potential releases of hazardous substances: (1) Identifying releases; (2) conducting a removal action if warranted; (3) conducting a site assessment, and, if warranted, listing the site on the NPL; (4) performing a remedial investigation/feasibility study (RI/FS); and (5) implementing the remedy through remedial design/remedial action (RD/RA).

The first step, release identification, occurs through various means, including: reports of releases; investigations by Federal, State, or local government agencies; land inventories or surveys; or incidental discoveries. All sites where a release is identified should be reported to the National Response Center and/or EPA, and all Federal sites should be listed on the Federal agency hazardous waste compliance docket.

The second step in the CERCLA response process is conducting a removal action, as appropriate. This is not to say that removal actions cannot be undertaken at other points in the process; they can be conducted at any time during a CERCLA response. Removals, as described in 40 CFR 300.415, are actions taken to mitigate immediate threats to human health and the environment. There are three types of removals: (1) Emergency removals where action is required within hours or days; (2) time-critical removals where up to 6 months can elapse before action is necessary; and (3) non-time-critical removals, where more than 6 months can elapse before action is taken. A non-time-critical removal requires the development of an engineering evaluation/cost analysis, as well as more significant public outreach than is required for an emergency or time-critical removal. Removal actions are undertaken at the discretion of the lead agency, and should, to the maximum extent practicable, contribute to the overall remediation of the site. The decision to move from a removal action to a remedial action is also at the discretion of the lead agency (40 CFR 300.415(f)). All removal actions require the development of an action memorandum that describes the action taken and the rationale for that action.

Site assessment, the third step in the CERCLA process, has several stages and is outlined in the NCP at 40 CFR 300.420. First, the lead agency conducts a preliminary assessment (PA), which is a "desktop" review of available information about the site and involves the collection of demographic information and information about the environmental setting of the site. Sites not posing a sufficient threat to human health or the environment to warrant a CERCLA response are screened out. The second stage, site inspection (SI), may be required to further evaluate site conditions. The SI is a more detailed investigation of site conditions, usually involving sampling of environmental media. Information from the PA and SI is the basis for the third stage, scoring the site using the hazard ranking system (HRS). The HRS is a model for assessing the site's relative threat to human health and the environment. If a site scores at or above 28.5, it may be placed on the NPL, and an RI/FS will be required.

The fourth phase of the CERCLA remedial process is the RI/FS (40 CFR 300.430). The RI/FS characterizes the site and evaluates various alternatives for remediation of the site. Unlike the SI, the RI involves the collection of sufficiently detailed information to fully characterize site conditions, determine the nature and extent of the contamination, evaluate risks posed by the site, and assess the performance of options for remediation. The FS involves development, screening, and detailed evaluation of each remedial option. Each alternative is evaluated against the following nine criteria:

(1) Overall protection of human health and the environment (including explosives safety and natural resources).

(2) Compliance with ARARs.

(3) Long-term effectiveness and permanence of the remedy.

(4) Reduction of the toxicity, mobility, quantity, or volume of the contaminants present at the site.

(5) Short-term effectiveness of the remedy.

(6) Implementability of the remedy.

(7) Cost of the remedy.

(8) Federal and State acceptance of the selected alternative.

(9) Community (including current property owner) acceptance of the selected alternative.

The RI/FS phase leads to the selection of the remedial option, the development of a proposed plan, and the signing of a record of decision (ROD). Once the ROD is signed, the RI/FS phase is complete.

The fifth step of the CERCLA process, outlined under 40 CFR 300.435, is the RD/RA, where the selected remedy is actually implemented. The RD involves all aspects of designing the remedial action, including development of technical drawings, specifications, operational guidance, and training. The RA involves the actual construction, operation, and monitoring of the remedial action selected to clean up the contamination at the site. Depending upon site conditions, an RA may continue for many years. Upon completion of the RA and demonstration that the site has been remediated to the required levels, the site is deleted from the NPL.

The Department of Defense recognizes the fact that the NCP and E.O. 12580, which implement CERCLA, identify the Department of Defense as the lead agency with respect to releases from its facilities, including those involving military munitions. Thus, while the CERCLA process provides a potentially viable alternative to the proposed rule, the Department of Defense has identified some initial concerns. For example, confusion exists as to the extent of EPA's response authority and the application of State ARARs. While E.O. 12580 delegates to the Department of Defense the authority to conduct these response activities, the Department of Defense is not often directly involved in the national priority listing of these response activities.

The Department of Defense recognizes that CERCLA is a possible and existing alternative to the range rule. The Department of Defense has closely modeled the range rule on the CERCLA process and utilizes CERCLA and DERP, an amendment to CERCLA, as authorities for promulgation of the range rule. However, the range rule has advantages over CERCLA. The range rule focuses exclusively on range issues, unlike CERCLA, and will provide for a consistent response by the Military Services. The range rule is not limited to those materials addressed under CERCLA. Additionally, the range rule will require the Department of Defense to respond to former ranges without a State forcing action under CERCLA or other State authorities.

C. Defense Environmental Restoration Program

DERP was established in 1986 by Section 211 of SARA. DERP is codified at 10 U.S.C. 2701, *et seq.* and establishes the Department of Defense's responsibility and authority to address UXO (which is a subset of military munitions), as well as hazardous substances, pollutants, and contaminants on DoD property. Likewise, DERP establishes funding authority for these response activities. For example, in 1996, Congress appropriated more than $1.4 billion for the Department of Defense's response activities. DERP, therefore, ensures that the obligation to undertake response activities is directly linked with the Department of Defense's authority to undertake these response activities and its authority to fund them. This approach under DERP is not inconsistent with existing statutory, regulatory, and policy pronouncements in CERCLA, the NCP, and E.O. 12580.

The NCP and E.O. 12580 identify the Department of Defense as the lead agency under CERCLA for releases or threatened releases of hazardous substances, pollutants, and contaminants from the Department of Defense's facilities. Consistent with this designation, the Department of Defense has conducted removal or remedial responses at its NPL and non-NPL sites in accordance with the processes set forth in CERCLA and the NCP.

Less clear, however, is the role of explosives safety under DERP. The Department of Defense believes that explosives safety is inextricably linked to any response activity that is undertaken on a military range. Thus, consistent with its statutory mandate under 10 U.S.C. 172, the Department of Defense is proposing to incorporate into this process the additional consideration of explosives safety when addressing military munitions and other constituents on closed, transferred, or transferring ranges. In doing so, the Department of Defense believes that response activities on military ranges will be expedited and will more fully address human health and environmental issues in the practical context of explosives safety.

D. Resource Conservation and Recovery Act

In its proposed military munitions rule (60 FR 56476, November 8, 1995), EPA proposed 40 CFR 261.2(g)(4)(i), which would have identified military munitions on closed and transferred ranges as a statutory solid waste. EPA proposed allowing the Department of Defense's range rule to supersede this provision as long as the range rule was protective of human health and the environment and allowed for public involvement in addressing the cleanup of closed and transferred ranges. In its final military munitions rule (62 FR 6622, February 12, 1997), however, EPA decided to postpone action on this section of the proposed munitions rule to conduct further analyses of comments and to evaluate the Department of Defense's range rule. In the final military munitions rule, EPA indicated that it is prepared to address this issue under Federal environmental laws if the Department of Defense does not promulgate the range rule or if EPA finds that the range rule does not adequately protect human health and the environment.

While the Department of Defense recognizes the RCRA corrective action process as an available alternative to the proposed rule, the Department of Defense has identified several initial concerns that may weigh against use of this alternative. First, the question of whether military munitions that have been used for their intended purpose and that remain on a closed, transferred, or transferring military range are a solid waste has generated much discussion. See *Barcelo* v. *Brown*, 478 F Supp. 646, 668–669 (D. Puerto Rico 1979)[20] and *Connecticut Coastal Fishermen's Assoc.* v. *Remington Arms Co.*, 989 F.2d 1305 (2d. Cir. 1993).[21] Also, the use of munitions has not been characterized as disposal because the ordinary use of munitions includes placement on the land.

In the proposed Military Munitions Rule, EPA concluded that "the legal arguments supporting the characterization of munitions on closed or transferred ranges as "solid waste," and the legal arguments opposing such a characterization are finely balanced, with the result that EPA has the discretion to select either interpretation pursuant to [RCRA] Section 3004(y)." EPA did not repeat or reject this discussion in the Final Rule.

Second, the applicability of RCRA's remedial authorities (i.e., Sections 3004 (u) and (v) or Section 3008(h)) requires that a range be collocated at a RCRA-permitted or interim status facility. Some closed, transferred, or transferring ranges may not be located at RCRA-

[20] Copies of this case may be obtained by visiting the DoD range rule administrative record at 910 Clopper Road, Gaithersburg, MD 20878–1399 (telephone 301–258–8753).

[21] Copies of this case may be obtained by visiting the DoD range rule administrative record at 910 Clopper Road, Gaithersburg, MD 20878–1399 (telephone 301–258–8753).

permitted facilities or facilities with interim status, thereby falling outside the scope of RCRA's authorities. The Range Rule would, in contrast, apply to all closed, transferred, or transferring ranges, and would impose a uniform set of requirements and procedures regardless of whether or not the range is at a site subject to RCRA.

Last, as with CERCLA, the Department of Defense is concerned that the RCRA corrective action process, as outlined in the 1990 proposed rule concerning solid waste, does not address explosives safety issues. As noted elsewhere in this proposed rule, explosives safety risks must be minimized during all phases of a response activity involving military munitions.

E. DoD Explosives Safety Standards Promulgated Pursuant to 10 U.S.C. 172

Pursuant to 10 U.S.C. 172, Congress established the DDESB, an independent entity whose charter involves determining appropriate safety standards for dealing with military munitions. While the Department of Defense believes that such standards are of paramount importance in any activity involving military munitions, it recognizes that in the environmental context, other factors must be considered.

The DDESB process for addressing military munitions is set forth in Chapter 12 of DoD 6055.9-STD.[22] Specifically, the process requires that a site-specific evaluation of the explosives safety hazards and an explosives safety plan be developed and submitted to DDESB prior to the undertaking of any response action. In the event that a site-specific evaluation is impracticable, the DDESB process provides for the use of default criteria in addressing the explosive hazards present or suspected. In both instances, the response undertaken is not inconsistent with the anticipated use of the property. Absent from this evaluation and determination is a consideration of the chronic effects of other constituents on the environment.

Application of DDESB standards in response activities would differ from the proposed rule, as the DDESB standards focus primarily on concern for explosives safety. The proposed rule accounts for explosives safety concerns, while also addressing the effects of other constituents on human health and the environment.

[22] See footnote 13 in Section IV.F.1.a. for information on obtaining DoD issuances.

F. Status Quo

As noted in the foregoing discussion of alternatives, the current applicability of all of the foregoing laws and regulations and the lack of any clear direction to the Department of Defense on the appropriate process for addressing military munitions responses is confusing, inefficient, costly, and time-consuming, and may be ineffective. This confusion contributes to public and regulator concern that military munitions are not being addressed adequately. The Department of Defense is committed to sound environmental stewardship in all of its activities. This commitment includes addressing the safety, human health, and environmental effects of military munitions on closed, transferred, and transferring ranges.

In recent years, Congress and the public have demanded that the Department of Defense make available for public use lands that are no longer needed to perform the military's mission. In light of the Department of Defense's downsizing efforts, the BRAC process, and increasing fiscal constraints, more land is being identified for transfer. These transfers are subject to a plethora of environmental laws and regulations, which often involve different, and sometimes inconsistent, processes and decision-makers. To date, the public and regulators have relied on RCRA and CERCLA as the primary environmental laws governing DoD response activities. Additionally, the Department of Defense's response to military munitions is subject to DERP and DDESB criteria. The Department of Defense views this confusion as an impediment to effective, timely, and fiscally responsible responses to military munitions on closed, transferred, and transferring ranges. This rulemaking will identify a single, specific process by which the Department of Defense will execute its responsibilities, while providing for meaningful public and regulator participation throughout all phases of the process.

VI. Administrative Requirements

A. Regulatory Impact Analysis

Under E.O. 12866 (59 FR 51735 (October 4, 1993)), the Department of Defense must determine whether this regulatory action is "significant" and therefore subject to review by OMB and to the requirements of this E.O., which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The E.O. defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.

The Department of Defense recognizes that E.O. 12866 contains an exemption for "military functions"; however, the Department of Defense has decided to prepare a cost/benefit analysis due to the novel legal and policy issues raised by this proposal. The Department of Defense estimates that this proposed rule would result in national incremental costs of $709,000,000, or $47 to $71 million per year over a 10- to 15-year period. This represents a savings from costs that would be anticipated under a RCRA program of $12,984,000,000, or $865 to $1,300 million per year over a 10- to 15-year period. For more information on the cost impacts of this proposed rule and of some alternative approaches, see the *Department of Defense (DoD) Final Report: Range Rule Regulatory Impact Analysis*, July 3, 1996, in the range rule docket.

1. Cost Analysis

Implementing this proposed rule equates to national incremental costs of $709,000,000. These costs are less than those of other alternatives; for example, a RCRA program that is anticipated to cost $12,984,000,000.

2. Benefits Analysis

Benefits include increased protection of the public, increased protection of UXO response workers, a consistent process, increased public involvement in responses, a substantial role for regulatory agencies and for American Indian tribes, and a substantial role for Federal land managers. Implementing a comprehensive approach to respond to closed, transferred, and transferring ranges while ensuring public safety, worker safety, and protection of human health and the environment is essential and would be a beneficial outcome of this proposed rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the Regulatory Flexibility Act requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Regulatory Flexibility Act are only those "business, organizations and governmental jurisdictions subject to regulation."

The Department of Defense has determined that this proposal will primarily affect the Department and that few, if any, small entities will be affected.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501, authorizes the Director of OMB to review certain information collection requests by Federal agencies. The recordkeeping and reporting requirements of this proposed rule do not constitute a "collection of information" as defined in 44 U.S.C. 3502(3) of the Paperwork Reduction Act of 1995.

D. Environmental Justice

On February 11, 1994, President Clinton issued E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. This E.O. requires Federal agencies to identify and address disproportionately high and adverse human health and environmental effects of Federal programs, policies, and activities on minority and low-income populations.

This rulemaking effort will incorporate environmental justice concerns in promoting partnerships with all the public and government agencies and will carefully consider where and how any public availability sessions will be offered. The Department of Defense is soliciting comment and input from all public entities and government agencies, including members of the environmental justice community and members of the regulated community.

This proposed rule is intended to reduce risks from military munitions. The rule involves not one site, but will affect property nationwide. Because of the locations of some of this property, in the implementation of the rule the potential exists for impacts to minority or low-income communities. The rule itself, however, is not expected to cause any disproportionate impacts to minority or low-income communities versus affluent or nonminority communities.

E. Unfunded Mandates

Title II of the Unfunded Mandates Report Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department of Defense generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

The Department of Defense has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this proposed rule is not subject to the requirements of Section 202 of the UMRA.

VII. References/Docket

The regulatory docket for this proposed rule contains a number of background materials. To obtain a list of these background materials, contact the toll-free DoD range rule information request line at (888) 541–1081 (voice), (800) 870–6547 (fax), or (800) 870–6557 for the hearing-impaired.

Accordingly, 32 CFR part 178 is proposed to be added to read as follows:

PART 178—CLOSED, TRANSFERRED, AND TRANSFERRING RANGES CONTAINING MILITARY MUNITIONS

Sec.

178.1 Purpose and objectives.
178.2 Scope.
178.3 Applicability.
178.4 Definitions.
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178.7 Range assessment/accelerated response.
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178.10 Site-specific response implementation.
178.11 Recurring reviews.
178.12 Ending the range response process.
178.13 Information repository and the administrative record.
178.14 Participation of and concurrence role for Federal and State regulatory agencies, American Indian tribes, and Federal land managers.
178.15 Dispute resolution.
178.16 Future land use for transfers within the Federal government.

Authority: 10 U.S.C. 2701 *et seq.*; 10 U.S.C. 172; 42 U.S.C. 9601, *et seq.*; and E.O. 12580, 3 CFR, 1987 Comp., p. 193.

§ 178.1 Purpose and objectives.

(a) This part establishes the procedures for evaluating and responding to explosives safety, human health, and environmental risks on closed, transferred, and transferring military ranges and for providing opportunities for full and active participation by Federal, State, and local agencies; American Indian tribes; and the public in the evaluation and responses conducted at those military ranges.

(b) This part implements the authorities and responsibilities of the Department of Defense (DoD) under 10 U.S.C. 2701 *et seq.*, the Defense Environmental Restoration Program; 10 U.S.C. 172, Ammunition Storage Board; 42 U.S.C. 9601 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; and Executive Order 12580, Superfund Implementation, 59 FR 2923 (January 23, 1987), 3 CFR, 1987 Comp., p. 193, as amended. When appropriate, it may also be used in conjunction with other authorities governing effects to land or water.

§ 178.2 Scope.

(a) This part applies to closed, transferred, and transferring military ranges located in the United States, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, and which are or were owned by, leased to, or otherwise possessed or used by the United States where military munitions have been used in training or research, development, testing, and evaluation (RDT&E) by the Department of Defense or an agent of the Department of Defense in furtherance of the national defense or security.

(b) This part does not apply to:

(1) Active and inactive ranges.

(2) Any closed, transferred, or transferring range that, upon [the effective date of the final rule], was identified and included in an interagency agreement for a National Priorities List (NPL) site, or which is subject to response activities pursuant to any specific statutory authority or pursuant to any agreement that addresses military ranges that has taken

effect prior to [the effective date of the final rule]. Should, however, any aspects of this part be useful in making a given response more efficient, effective, or protective, then nothing in this part shall prohibit their application upon mutual consent of the parties. In cases where unexploded ordnance (UXO) investigations or response actions are underway on closed, transferred, or transferring ranges at the time of [the effective date of the final rule], this part, this part will not apply unless mutually agreed to by the parties to the interagency or Federal facility agreement.

(3) Airspace designated as a military operation area or military training route (MTR), or their underlying water or land areas where military munitions have not been used.

(4) Properties that are historic battlefields.

(5) Sites where military munitions or explosives are destroyed as part of a munitions or explosives emergency response as defined under 40 CFR 260.10 and subject to the provisions of 40 CFR 261 through 272 (inclusive).

(6) Ranges located outside the United States, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

§ 178.3 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Military Service in the Department of the Navy), the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, the DoD Field Activities, and the National Guard Bureau (NGB) (hereafter referred to collectively as "DoD components"). For purposes of this part, the Department of War and the Department of the Navy as they existed prior to the creation of the Department of Defense are also considered DoD components.

§ 178.4 Definitions.

When used in this part, the following terms have the meanings given as shown:

(a) *Accelerated responses (ARs).* Any readily available, generally used, reliable, and easily implemented methods of addressing the risk posed by military munitions, unexploded ordnance, or other constituents at military ranges. ARs may be fully protective in and of themselves.

(b) *Active range.* A military range that is currently in service and is being regularly used for range activities.

(c) *American Indian tribe.* For purposes of this part, the term American Indian tribe means Native American tribes and Native Alaskan villages that:

(1) Are federally recognized as an Indian tribe or a Native Alaskan village by the Secretary of the Department of Interior, in accordance with 26 CFR 83.5;

(2) Have a tribal governing body that is currently performing governmental functions to promote the health, safety, and welfare of the affected population or to protect the environment within a defined geographical area, and;

(3) Are the property owner, as defined in paragraph (l) of this section, of any portion of a closed, transferred, or transferring range at which a response is ongoing or contemplated.

(d) *Closed range.* A military range that has been taken out of service as a range and that either has been put to new uses that are incompatible with range activities or is not considered by the military to be a potential range area. A closed range is still under the control of a DoD component.

(e) *Federal land manager.* Federal agencies having or clearly anticipated to receive jurisdiction, custody, or control over the property.

(f) *Inactive range.* A military range that is not currently being used, but that is still under military control and is considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

(g) *Military munitions.* All ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes and incendiaries used by DoD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include nonnuclear components of nuclear devices, managed under DOE's nuclear weapons program, after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

(h) *Military range.* A designated land or water area set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas. The definition of a military range does not include airspace, or water, or land areas underlying airspace used for training, testing, or research and development where military munitions have not been used.

(i) *Operation and maintenance (O&M).* O&M means measures that are required to maintain the effectiveness of response actions. O&M measures are initiated after the response action has achieved the goal in the decision document and is determined to be "fully operational."

(j) *Other constituents.* Other constituents are potentially hazardous chemicals that are located on or originate from closed, transferred, or transferring ranges and are released from military munitions or UXO, or resulted from other activities on military ranges. Other Constituents may be subject to other statutory authorities, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, *et seq.*) and the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*).

(k) *Project team.* The responsible DoD component, its designated representatives, any Federal land manager with jurisdiction, custody, or control for all or part of the range, and its designated representatives. The designated representatives provide the working-level direction for scoping the response action, preparing planning documents, conducting investigations and studies, and preparing reports.

(l) *Property owner.* A non-Federal entity that owns a piece of property, or a Native American tribe or Native Alaskan village that owns a piece of property or land, held in trust by the United States for that tribe or village or its individual tribal or village members, that is a closed, transferred, or transferring military range.

(m) *Transferred range.* A military range that is no longer under military control and has been leased, transferred, or returned to another entity, including Federal entities. This includes a military range that is no longer under military control but was used under the terms of a withdrawal, executive order, special-use permit or authorization, right-of-way, public land order, or other instrument issued by the Federal land manager.

(n) *Transferring range.* A military range that is proposed to be leased, transferred, or returned from the Department of Defense to another entity, including Federal entities. This includes a military range that is used under the terms of a withdrawal, executive order, special-use permit or authorization, right-of-way, public land order, or other instrument issued by the Federal land manager. An active range will not be considered a "transferring range" until the transfer is imminent.

(o) *Unexploded ordnance.* Military munitions that have been primed, fuzed, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

§ 178.5 Responsibilities.

(a) The DoD component responsible for the military munitions or other constituents present at a closed, transferred, or transferring military range, or another DoD component designated by the Secretary of Defense shall exercise the responsibilities set forth in this part. This entity shall be referred to in this part as the "responsible DoD component" or the "DoD component responsible for" a range.

(b) In the case of closed, transferred, or transferring ranges that are owned, leased, or otherwise possessed by a State National Guard and are covered by this part, the NGB shall be the responsible DoD component.

(c) If the closed, transferred, or transferring military range includes property under the jurisdiction, custody, or control of a Federal land manager, the responsible DoD component must establish a project team that will include the Federal land manager. The project team will exercise the responsibilities of the responsible DoD component in the working-level development and management of the range response process at that range. Where a Federal agency has been proposed to receive jurisdiction, custody, or control of a former range but the agency is not yet a Federal land manager as defined in this part, the agency may sit on the project team for informational purposes only.

(d) The Department of Defense recognizes that other Federal agencies listed in 40 CFR 300.175 have duties established by statute, executive order, or presidential directive that may apply to or be impacted by response actions conducted under the regulations set forth in this part. These agencies may be called upon by the responsible DoD component or other Federal agency during response planning and implementation to provide assistance in their respective areas of authority or expertise, as described in 40 CFR 300.175, consistent with the agencies' capabilities and authorities.

§ 178.6 Identification of closed, transferred, and transferring ranges.

(a) Within 18 months of [the effective date of the final rule], each DoD component shall develop a list of all known closed, transferred, and transferring ranges subject to this part and controlled at any time by that DoD component, and shall submit that list to a DoD component designated by the Secretary of Defense for use in developing the central inventory database.

(1) The information for each military range in the inventory database shall include, at a minimum:

(i) A unique identifier for the range.

(ii) The current status of the range (i.e., closed, transferred, transferring).

(iii) The name, address, and telephone number of a point of contact at the responsible DoD component.

(iv) An appropriate record showing the location, boundaries, and areal extent of the range including all counties, independent cities and towns in which the range is located, as well as all states in which that range is located.

(v) Known entities, other than a DoD component, with current ownership interest or control of the land or its resources.

(vi) Any deed restrictions currently in place that might affect the potential for exposure to military munitions, UXO, or other constituents present at the range.

(2) The inventory database shall be updated on a periodic basis (at least annually) to reflect new information that has become available.

(b) Each military range included in the inventory database will be assigned a relative priority for range assessment/accelerated response (RA/AR) activities based on the overall conditions at the range. When assigned, this priority will be included in the record for each military range in the inventory database. The Department of Defense will consider factors relating to safety and environmental hazard potential, such as:

(1) Whether access to a site can be controlled, and the population is potentially at risk.

(2) The potential for direct human contact and evidence of people entering into the range area.

(3) Whether a response action has been or is being taken at that range under the Formerly Used Defense Sites (FUDS) program or other environmental restoration programs.

(4) Planned or mandated dates for transfer of the range from DoD control.

(5) Documented incidents involving UXO or off-range releases of other constituents from the range.

(6) The potential for drinking water contamination.

(7) The potential for destruction of sensitive ecosystems.

(8) The potential for damages to natural resources.

(9) The potential for releases to the air.

(10) The degree of public interest in the range.

(11) The degree of Federal land manager interest in the range.

(12) The degree of State or Federal regulator or American Indian tribal interest in the range.

(c) This paragraph describes Federal, State, and local government; American Indian tribe; and public involvement with the inventory database.

(1) Upon the designation of the responsible DoD component, that DoD component shall work with the community to provide information concerning conditions at the range, response activities, and shall respond to inquiries. The responsible DoD component shall notify, at a minimum, immediately affected individuals; State, local, and tribal officials; and, when appropriate, civil defense or emergency management agencies.

(2) Federal, State, and local officials; members of Native American tribes and Native Alaskan villages; and the public possessing detailed information on areas believed to be military ranges are encouraged to submit that information in writing to the Office of the Deputy Under Secretary of Defense (Environmental Security, 3000 Defense Pentagon, Washington, DC 20301–3000). If, based on the Department of Defense's evaluation of that information, the area is identified as a military range subject to this part, it will be included in the inventory database.

§ 178.7 Range assessment/accelerated response.

(a) *Purpose.* The purpose of the RA/AR is to promptly identify and respond

to risks posed by military munitions, UXO, and other constituents at military ranges subject to this part and to distinguish between military ranges posing little or no explosives safety, human health, or environmental risk and military ranges that pose a greater risk. The RA/AR shall use readily available information or limited data collection efforts to determine if additional investigation is required, or if implementation of an AR is warranted.

(b) *Range assessment.* As used in this part, the range assessment:

(1) Is a limited-scope investigation designed to assess the risk posed by any military munitions, UXO, or other constituents found at the range.

(2) Shall, to the extent feasible, rely on available information gathered through a combination of file searches and desktop information collection and analysis. If warranted, additional data may be collected by such methods as visual inspection of the range or focused sampling of environmental media in an effort to develop an improved understanding of the conditions at the range. Such on-range activities require development of a work plan describing the objectives and plan for conducting any such activities.

(i) Prior to any activities that require entry onto the range, an explosives safety plan must be approved by the DoD Explosives Safety Board (DDESB) or other explosives safety organization designated by DDESB. The work plan implemented by the responsible DoD component must provide for an appropriate balance between the risks to the safety of the investigators and the risk to the community and environment. The draft work plan will be coordinated with and comment sought from the appropriate Federal, State, and local governments and American Indian tribe. The final work plan will be subject to regulatory concurrence.

(ii) Proposed decisions that recommend limiting the entry into specific areas of the range based on munitions safety hazards will be provided to stakeholders, together with a description of the criteria and rationale used to develop such recommendations. In response to such a proposed decision, the responsible DoD component must:

(A) Seek reversal or modifications of the proposed decision, or

(B) Develop an alternative explosives safety plan that meets the conditions of the proposed or modified decision.

(iii) Prior to entry onto a transferred range, written permission must be obtained from the current Federal land manager or property owner.

(3) Shall initiate range delineation procedures that will adequately define discrete areas within a range that pose varying explosives safety hazards and environmental risks.

(4) Should include collection of the following information:

(i) Information about the types, quantities, constituents, and other factors related to the military munitions employed on the range.

(ii) Information on previous range clearance operations or reported incidents involving military munitions or UXO on the range.

(iii) Safety issues related to use of military munitions on the range.

(iv) The identity, concentration, and human health or environmental effects of other constituents known or believed to be present on the range.

(v) The type(s) of any targets that may have been used on the range.

(vi) Other past and present uses of the range.

(vii) Any prior agreements identifying reasonably anticipated future land uses or imposing land use restrictions, and, in the absence of these, current and reasonably anticipated future land uses.

(viii) The environmental setting of the range, including:

(A) The location and identity of receptors (e.g., human, threatened and endangered species) potentially impacted by the range.

(B) Specific exposure routes of concern.

(C) Local hydrologic and hydrogeologic conditions (which include groundwater).

(D) Soils and geology.

(E) Terrain.

(F) Climate.

(G) Biological resources.

(H) Cultural resources.

(c) *Accelerated response.* (1) Examples of ARs include, but are not limited to:

(i) Conducting source removals or surface sweeps for UXO.

(ii) Posting signs warning of the dangers associated with the range.

(iii) Erecting fences or other similar physical means to control access.

(iv) Implementing erosion controls (e.g., silt fences).

(v) Suspending incompatible land uses (where DoD has the ability to do so).

(vi) Implementing community education and awareness programs.

(vii) Implementing a monitoring program.

(viii) Other appropriate engineering, institutional, or exposure controls.

(2) *Selection of an AR.* AR alternatives shall be evaluated using qualitative (or if available, quantitative) information to assess how the AR would address the following nine criteria, which shall have the same meanings as set forth in the National Contingency Plan (NCP):

(i) Overall protection of human health and the environment (including explosives safety and natural resources).

(A) All AR alternatives must minimize explosives safety risks.

(B) if the AR requires entry onto the range, an explosives safety plan must be approved by DDESB or other explosives safety organization designated by DDESB.

(ii) Compliance with applicable or relevant and appropriate requirements (ARARs) established under Federal and State law, to the extent practicable given the exigencies of the situation.

(iii) Long-term effectiveness and permanence.

(iv) Reduction in the toxicity, mobility, quantity, or volume of other constituents present at the range.

(v) Short-term effectiveness.

(vi) Implementability.

(vii) Cost.

(viii) Acceptability to Federal and State regulatory agencies, or agencies with jurisdiction over affected resources.

(ix) Community (including current property owner) acceptance.

(d) *Evaluation of RA/AR process results.* (1) The RA/AR process continues until:

(i) Enough information has been gathered to make an informed risk management decision, or it is determined that the effort necessary to collect that information is beyond the scope of the RA.

(ii) Identified risks have been addressed through implementation of an AR, or it is determined that ARs are unable to address the identified risk.

(2) An RA/AR report shall be prepared to document the findings of all assessment activities and the reasons for and effectiveness of each AR implemented.

(3) The RA/AR report shall make a recommendation as to appropriate action, including one or a combination of the following recommendations:

(i) Issue a determination of no further action (residual munitions risk is below the threshold of concern and no continued protective measures or institutional controls are needed).

(ii) Conduct recurring reviews of the ARs implemented.

(iii) Conduct a range evaluation (RE).

(iv) Issue a technical impracticability (TI) determination.

(v) Other recommendations, as appropriate.

(e) *Public and government agency involvement.* This section describes

Federal, State, and local government, American Indian tribal, and public involvement with the RA/AR process.

(1) Before beginning the RA/AR, the responsible DoD component shall send a written notice to the appropriate Federal, State, and local governments and American Indian tribe, informing them that these activities will be starting. This notice will also request that these governments designate a point of contact within their organization and identify that point of contact to the responsible project team. The responsible DoD component shall also send a copy of this notice to the current property owner.

(2) All validated information about conditions at the military range, the documented risks posed by the site, and any ARs to address those risks shall be included in the administrative record and be made available to Federal, State, and local governments; American Indian tribes; and the public through the information repository.

(3) For all ARs where implementation of an on-site action is expected to take more than one hundred twenty (120) days to complete, within that period the responsible DoD component shall conduct interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns, information needs, and how or when they would like to be involved in the range response process. The responsible DoD component shall also prepare a formal public involvement plan (PIP) based on the community interviews or other relevant information, specifying the public involvement activities that are needed during the response.

(4) The RA report shall be subject to a forty-five (45)-day review and comment period prior to implementation of the AR. However, if the physical construction associated with an interim AR, including implementation of site access control measures, is reasonably expected to be completed within 120 days of the commencement of the AR (i.e., completion of the RA), the opportunity for review and comment may be provided during or when the AR has been implemented.

(5) As part of involving Federal, State, and local governments; American Indian tribes; and the public in the range response, the responsible DoD component shall make use of existing Restoration Advisory Boards (RABs) to involve these parties throughout the process, or other forums, such as an Extended Project Team (EPT), as the specifics of the site or interest of the community indicate.

(6) Range responses conducted under this part shall include a technology education program which provides an opportunity for members of the public, American Indian tribes, and regulators to receive a general explanation of available UXO detection and remediation technologies, their capabilities, and their limitations. This program will be provided by the responsible DoD component beginning in the RA/AR phase. The program shall consist of a presentation to the RAB or EPT which generally explains the UXO detection and removal technologies available to respond to former military ranges. Additional presentations may be made as a follow-up to the initial presentation if significant technology advancements have been made.

(7) Except as provided in paragraph (e)(4) of this section, once the RA/AR report is complete, the responsible DoD component shall:

(i) Send a copy of the draft RA/AR report to the appropriate Federal and State regulators and American Indian tribe, seeking their review and comment.

(ii) Publish a notice of availability and brief description of the RA/AR report in a major local newspaper of general circulation announcing a forty-five (45)-day period for submission of written comments.

(iii) Hold a public meeting or availability session, if requested.

(iv) Develop written responses to significant comments received during the comment period and prepare a final RA/AR report.

(8) Except as provided in paragraph (e)(4) of this section, the responsible DoD component shall then prepare a formal decision document specifying the action(s) to be taken.

(i) This decision document and all supporting information are part of the administrative record.

(ii) Copies of the decision document will be sent to the appropriate Federal, State, and local governments; American Indian tribe; and current property owner.

(iii) The responsible DoD component shall seek concurrence on the decision document in accordance with § 178.14(e).

§ 178.8 Range evaluation.

(a) *Purpose.* The purpose of the RE is to conduct a detailed investigation designed to fully characterize the risks posed by any military munitions, UXO, or other constituents known or believed to be present at the military range. The purpose of this investigation is to determine if the AR measures are adequate or whether a site-specific response is necessary. The RE will typically require the collection and analysis of quantitative information not otherwise available, in addition to the data assembled for the RA/AR.

(b) *The RE plan.* An RE plan shall be prepared providing information as to the objectives established for the RE, the rationale for those objectives, and how those objectives will be achieved. As necessary, the RE plan shall include any sampling and analysis protocols, explosives safety requirements, data analysis procedures, or studies required to complete the RE.

(1) Prior to any activities that require entry onto the range, a site safety plan must be approved by the DDESB or other explosives safety organization designated by DDESB.

(2) Prior to entry onto a transferred range, written permission must be obtained from the current Federal land manager or property owner.

(c) Information collected during the RE should include:

(1) Information about the types, quantities, constituents, and other factors related to the military munitions employed on the range.

(2) Information on previous range clearance operations or reported incidents involving military munitions or UXO on the range.

(3) Safety issues related to use of military munitions on the range.

(4) The identity, concentration, and human health or environmental effects of other constituents known or believed to be present on the range.

(5) Any prior agreements identifying reasonably anticipated future land uses or imposing land use restrictions, and, in the absence of these, current and reasonably anticipated future land uses.

(6) The environmental setting of the range, including:

(i) The location and identity of receptors (e.g., human, threatened and endangered species) potentially impacted by the range.

(ii) Specific exposure routes of concern.

(iii) Local hydrologic and hydrogeologic conditions (including groundwater).

(iv) Soils and geology.

(v) Terrain.

(vi) Climate.

(vii) Biological resources.

(viii) Cultural resources.

(d) *Range risk assessment.* (1) Information obtained from the RE will be used to conduct a detailed, quantitative assessment of the risks posed by any military munitions, UXO, or other constituents identified at the

military range to provide an estimate of the overall risk posed by the range, and to serve as a tool for assessing the effectiveness of a given response at addressing those risks. The range risk assessment will evaluate explosives safety, human health, and environmental risks.

(2) The range risk assessment shall consider:

(i) Identification of the source of the risk (e.g., identification of the specific munitions or constituents).

(ii) The likelihood of exposure.

(iii) The effects of exposure.

(e) *RE report.* (1) The findings and conclusions of the RE will be presented in a formal RE report. The RE report shall make a recommendation as to appropriate action, including one or a combination of the following recommendations:

(i) The AR was adequate to address the identified risks.

(ii) Conduct recurring reviews.

(iii) Issue a TI determination.

(iv) Conduct a site-specific response.

(v) Issue a determination of no further action.

(vi) Other recommendations, as appropriate.

(2) If the recommendation is to initiate a site-specific response, a letter report may be used to summarize the findings of the RE, identify the risks requiring a site-specific response, and the anticipated scope and start of the site-specific response evaluation (SSRE). No formal RE report would be prepared, and instead the SSRE report would incorporate the findings and conclusions of the RE.

(f) *Public and government agency involvement.* This paragraph describes Federal, State, and local government; American Indian tribe; and public involvement with the RE process.

(1) Before beginning the RE, the responsible DoD component shall send a written notice to the appropriate Federal, State, and local governments and American Indian tribe informing them that these activities will be starting. This notice will also request that these governments designate a point of contact within their organization and identify that point of contact to the responsible DoD component. The responsible DoD component shall also send a copy of this written notice to the current property owner.

(2) The RE plan, all validated information about conditions at the military range, and any documented risks posed by the site shall be included in the administrative record and be made available to Federal, State, and local governments; American Indian tribes; and the public through the information repository.

(3) As appropriate, the responsible DoD component shall hold a public availability session to provide information on the status of the RE when appropriate.

(4) If a letter report in accordance with paragraph (e)(2) of this section is prepared, then the responsible DoD component shall:

(i) Prepare a formal decision document that summarizes findings of the RE, identifies the risks requiring a site-specific response, and describes the anticipated scope and start date of the SSRE.

(ii) Make the decision document available to the public.

(iii) Send a copy of the decision document to the appropriate Federal, State, and local governments and American Indian tribe. A copy shall also be sent to the current property owner.

(iv) Seek concurrence on the decision document in accordance with § 178.14(e).

(5) If a formal RE report is prepared, then, upon completion of the draft RE report, the responsible DoD component shall:

(i) Send a copy of the draft RE report to the appropriate Federal and State regulators and American Indian tribe, seeking their review and comment.

(ii) Publish a Notice of Availability and a brief description of the RE report in a major local newspaper of general circulation and announce a forty-five (45)-day period for submission of written comments.

(iii) Hold a public meeting or availability session, if requested.

(iv) Develop written responses to significant comments received during the comment period and prepare a final RE report.

(6) After an RE report is finalized, the responsible DoD component shall prepare a formal decision document recommending the action(s) to be taken.

(i) This decision document and all its supporting information are part of the administrative record.

(ii) Copies of the decision document and final report will be sent to the appropriate Federal, State, and local governments; American Indian tribe; and current property owners.

(iii) The responsible DoD component shall seek concurrence on the decision document in accordance with § 178.14(e).

§ 178.9 Site-specific response evaluation.

(a) *Purpose.* An SSRE examines response alternatives that address the remaining risks identified by the RE that have not been, or cannot be, effectively addressed by ARs. SSREs are highly focused investigations of response alternatives that address risks based upon reasonably anticipated future land use.

(b) *SSRE plan.* An SSRE plan that provides the following information shall be prepared: the objectives established for the SSRE, the rationale for those objectives, and how those objectives will be achieved. As necessary, the SSRE plan shall include any sampling and analysis protocols, explosives safety requirements, data analysis procedures, or studies required to complete the SSRE.

(1) Prior to any activities that require entry onto the range, an explosives safety plan must be approved by the DDESB or other explosives safety organization designated by DDESB.

(2) Prior to entry onto a transferred range, written permission must be obtained from the current Federal land manager or property owner.

(c) *Development of site-specific response alternatives.* Site-specific response alternatives shall be initially developed and screened in the following manner:

(1) Identify a preliminary list of objectives for the response.

(2) Identify general categories of response actions that will meet or exceed the preliminary objectives.

(3) Determine the scope of the response.

(4) Identify and screen specific technologies and, within a class of technologies, identify options for the actual treatment process.

(5) Identify the alternatives or combinations of alternatives for a more detailed evaluation.

(6) Conduct bench or pilot-scale studies as necessary.

(d) *Analysis of site-specific response alternatives.* The following evaluation criteria shall be interpreted and have the same meanings as set forth in the NCP and shall be interpreted in the same manner as in the preamble to the NCP and any relevant policy or guidance issued by EPA. The response alternatives developed in paragraph (c) of this section shall be further analyzed with respect to the following nine evaluation criteria:

(1) Protection of human health and the environment (including explosives safety and natural resources).

(2) Compliance with Federal and State ARARs, or appropriate use of waivers from those requirements.

(3) Long-term effectiveness. Assess the residual risk posed by military munitions (including UXO) or other constituents that will remain at the range following the completion of the response action, and consider the reliability and adequacy of the action in providing a long-term or permanent solution to the hazards posed at the range. The long-term effectiveness evaluation shall also include an assessment of any potential long-term liabilities associated with the response action.

(4) Reduction in toxicity, mobility, quantity, or volume of other constituents present at the range.

(5) Short-term effectiveness. Address the risks or impacts of the alternative from the start of the action through to the time when the response objectives are achieved.

(6) Implementability. Assess both the technical and administrative feasibility of implementing each alternative. Included in this assessment are:

(i) Consideration of the availability of the necessary resources to implement the alternative.

(ii) Assessment of the reliability of the alternative.

(iii) Assessment of whether the action will impede other responses at the range.

(iv) Requirements for interaction with other Federal, State, or local governments or American Indian tribes.

(v) Availability of on- and off-range treatment and disposal capacity.

(7) Cost. Assess direct and indirect capital costs; operating and maintenance costs; and long-term liability costs associated with the alternative.

(8) Acceptability of each alternative to Federal and State regulatory agencies or agencies with jurisdiction over affected resources.

(9) Community acceptance (community and/or property owner acceptance).

(e) *Site-specific response evaluation report.* (1) The findings and conclusions of the SSRE shall be presented in an SSRE report. If only a letter report is prepared for an RE, the findings and conclusions of the RE shall be documented in the SSRE report. The SSRE report shall make a recommendation of appropriate action, including one or a combination of the following recommendations:

(i) Implement the recommended response alternative(s).

(ii) Conduct recurring reviews.

(iii) Issue a TI determination.

(2) [Reserved]

(f) The SSRE report shall document the selection of alternative(s) by:

(1) Identifying the alternative(s) to be implemented.

(2) Discussing the goals of the response (e.g., the risk to be addressed).

(3) Explaining how the response is expected to achieve the goals.

(4) Providing information as to how the alternative(s):

(i) Provides for explosives safety.

(ii) Protects human health and the environment.

(iii) Addresses the concerns of the public and government agencies that were received in the written comments.

(iv) Eliminates, reduces, or controls the risks posed by military munitions, UXO, or other constituents present at the range.

(v) Meets ARARs, or identifies those requirements that will not be met, and provides the justification for the waivers, and any conditions imposed.

(vi) Discusses whether military munitions, UXO, or other constituents will remain at the range following the completion of the response, and if so, describes the specific mechanisms used to ensure that land use remains compatible with any residual hazard, and designates the frequency of recurring reviews.

(g) *Public and government agency involvement.* This paragraph describes Federal, State, and local government; American Indian tribal; and public involvement in the RE/SSRE process.

(1) The RE and SSRE Plans, all validated information about conditions at the military range, any documented risks posed by the site, and any validated information generated during the SSRE shall be included in the administrative record and be made available to the appropriate Federal, State, and local governments; American Indian tribe; and the public through the information repository.

(2) As appropriate, the responsible DoD component will hold public availability sessions to provide information on the status of the RE and SSRE.

(3) Once the draft SSRE report is complete, the responsible DoD component shall:

(i) Send a copy of the draft SSRE report to the appropriate Federal and State regulators and American Indian tribe, seeking their review and comment.

(ii) Publish a notice of availability and brief description of the SSRE report in a major local newspaper of general circulation announcing a forty-five (45)-day period for submission of written comments.

(iii) If requested, hold a public meeting or availability session.

(iv) Develop written responses to significant comments received during the comment period and prepare a final SSRE report.

(4) The responsible DoD component shall then prepare a formal decision document specifying the action(s) to be taken.

(i) This decision document and all supporting information are part of the administrative record.

(ii) Copies of the final SSRE report and decision document will be provided to the appropriate Federal, State, and local governments and American Indian tribe. In the case of a military range on privately owned lands, a copy of these documents shall also be sent to the current property owner.

(iii) The responsible DoD component shall seek concurrence on the decision document in accordance with § 178.14(e).

§ 178.10 Site-specific response implementation.

(a) *Implementation plan.* A response implementation plan shall be prepared describing the objectives established for the response, the rationale for those objectives, and how those objectives will be achieved. As necessary, the document shall also detail the design, construction, operation, maintenance, monitoring, and decommissioning of the response alternative, and any operational guidance and training of personnel involved in implementing the response.

(1) Prior to any activities that require entry onto a range, an explosives safety plan must be approved by the DDESB.

(2) Prior to entry onto a transferred range, written permission must be obtained from the current Federal land manager or property owner.

(b) *Response implementation.* Implementation of the response requires the following:

(1) Actual construction and initial operation of the response, including conducting necessary quality assurance inspections and preparing any necessary periodic reports on progress in executing the response.

(2) Once the response is fully operational, monitoring the response to determine its effectiveness.

(3) Operation until all response objectives are achieved.

(c) *Public and government agency involvement.* This paragraph describes Federal, State, and local government; American Indian tribal; and public involvement in the process of implementing the site-specific response.

(1) All validated information about conditions at the military range, the documented risks posed by the site, and the site-specific response to address those risks shall be included in the administrative record and be made available to Federal, State, and local governments; American Indian tribes; and the public through the information repository.

(2) As appropriate, the responsible DoD component will hold public availability sessions to provide information on the status of the response.

(3) If requested, the responsible DoD component shall provide periodic updates on the status of the response to the appropriate Federal, State, and local governments and American Indian tribe.

(4) A periodic update on the status of the response shall be sent to the current property owner.

§ 178.11 Recurring reviews.

(a) *Purpose.* The purpose of recurring reviews is to determine if the responses taken continue to minimize explosives safety risks and protect human health and the environment, and to provide an opportunity for assessing new technology. The scope of the review will depend upon the response objectives and the specific responses implemented. The review will evaluate the changes in physical conditions at the range, changes in public accessibility, applicability of new UXO technology or other new technology that will overcome a previous TI determination, and continued effectiveness of the response.

(b) *Conduct of recurring reviews.* Recurring reviews shall be conducted for ARs, any conditions imposed as part of a TI determination, and site-specific responses. Sites with a determination of no further action are not subject to recurring reviews.

(c) *Frequency of recurring reviews.* (1) Recurring Reviews shall be conducted starting in the third year following the completion of the response.

(2) Subsequent reviews may, as needed, be repeated in the seventh year and at five-year intervals thereafter, for as long as needed.

(3) The review cycle may be set on a different or more frequent schedule (e.g., years 2, 5, 9, 14), as necessary.

(d) *Documenting recurring review findings.* (1) At each recurring review, the review procedures and the evaluation criteria used to assess the effectiveness of the response will be documented in a recurring review report.

(2) The recurring review report will provide a discussion of the findings, stating whether or not the response continues to effectively address the risk at the range, and if any new problems have been discovered in the period since the last review, such as changes in public accessibility (due, for example, to changes in adjacent land uses).

(3) If the response failed to remain effective, or a new problem is discovered, then the responsible DoD component will document the action(s) which will be taken to address that problem and the schedule for the action. If the response was inadequate, then the response process starts again at the RA/AR phase.

(e) *Public ond government agency involvement.* This paragraph describes Federal, State, and local government; American Indian tribal; and public involvement in the recurring review process.

(1) The responsible DoD component shall:

(i) Send a copy of the draft recurring review report to the appropriate Federal and State regulators and American Indian tribe, seeking their review and comment.

(ii) Publish a notice of whether the response remains effective or not in a major local newspaper of general circulation.

(iii) Hold a public availability session or meeting, if requested.

(2) The responsible DoD component shall then prepare a formal decision document specifying the actions(s) to be taken.

(i) This decision document and all supporting information are part of the administrative record.

(ii) Copies of the decision document will be provided to the appropriate Federal, State, and local governments and American Indian tribe. In the case of a military range on privately owned land, a copy of this document shall also be sent to the current property owner.

(iii) The responsible DoD component shall seek concurrence on the decision document in accordance with § 178.14(e).

§ 178.12 Ending the range response process.

(a) Following completion of an appropriate number of recurring reviews to demonstrate that the range poses no significant risk to public health or the environment, and commensurate with the originally agreed upon use of the property, the responsible DoD component may administratively close out and end the range response process subject to the following requirements:

(1) Demonstration that any military munitions (including UXO) or other constituents at the military range pose minimal risks.

(2) The specific response objectives have been achieved and all related monitoring activities demonstrate that achievement.

(3) The response is fully operational and performing to design specifications.

(4) The only remaining activities at the site involve operations and maintenance.

(b) *Range close-out report.* A range close-out report shall be prepared supporting completion of the response. This report will include:

(1) A summary of the range's history and past and current conditions.

(2) Demonstration that all response objectives have been met.

(3) A determination that sufficient monitoring results have been collected to demonstrate that the response objectives have been achieved.

(4) Demonstration that any long-term maintenance requirements for the response are capable of being successfully carried out.

(5) Documentation that the range response has effectively addressed the risks posed by military munitions, UXO, or other constituents at the range. Approval must be obtained from DDESB.

(c) *Public and government agency involvement.* This paragraph describes Federal, State, and local government; American Indian tribal; and public involvement in the process of ending the range response.

(1) Once the draft range close-out report is complete, the responsible DoD component shall:

(i) Send a copy of the draft range close-out report to the appropriate Federal and state regulators and American Indian Tribe, seeking their review and comment.

(ii) Publish a notice of intent to end response activities in a major local newspaper of general circulation announcing a forty-five (45)-day period for submission of written comments.

(iii) Hold a public meeting or availability session, if requested.

(iv) Develop written responses to significant comments received during the comment period and prepare a final range close-out report.

(2) The responsible DoD component shall then prepare a formal decision document specifying the action(s) to be taken.

(i) This decision document and all supporting information are part of the administrative record.

(ii) Copies of the decision document and final report will be sent to the appropriate Federal, State, and local governments; American Indian tribe; and the current property owner.

(iii) The responsible DoD component shall seek concurrence on the decision document in accordance with § 178.14(e).

(d) *The Department of Defense's continuing obligation.* If at some future date a problem is discovered at a military range that has been administratively closed out, the Department of Defense will conduct an appropriate response to address the problem. This response typically will be handled as an explosives or munitions emergency response; however, if the circumstances indicate a need for a more detailed response, the Department of Defense will reopen the range response process and conduct any appropriate actions.

§ 178.13 Information repository and the administrative record.

(a) *Purpose.* The Department of Defense seeks to ensure full and active participation by any public or private entity interested in the range response process. Accomplishing this requires making information about the response activities taken at each military range available to the public. This section establishes the minimum requirements for making this information available.

(b) *Information repository.* The responsible DoD component shall establish an information repository.

(1) This information repository will be located where it is easily accessible to the local population, such as the community library. The information repository will be established when the RA/AR is initiated.

(2) Upon completion of each relevant study document, report, or decision document, the responsible DoD component will place a copy of that document in the information repository.

(c) *Administrative record.* The responsible DoD component shall establish an administrative record that contains the documents that form the basis for the selection of response actions.

(1) The administrative record shall be maintained at a location near the site being addressed, as established by the responsible DoD component.

(2) A copy of the administrative record shall be made publicly available at the information repository.

(3) Documents to be placed in the administrative record include, but are not limited to, the following:

(i) Notice that the RA/AR is being initiated.

(ii) The RA/AR report.

(iii) The RE plan.

(iv) All explosives safety plans.

(v) The RE report.

(vi) The SSRE plan.

(vii) The site-specific evaluation report.

(viii) The site-specific response implementation plan.

(ix) Recurring review reports.

(x) The range close-out report.

(xi) All decision documents.

(xii) All public comments.

§ 178.14 Participation of and concurrence role for Federal and State regulatory agencies, American Indian tribes, and Federal land managers.

(a) *General.* This part provides the appropriate Federal and State environmental remediation regulatory agencies and American Indian tribes with the opportunity to concur and participate in the development of the various decision documents under this part. This part also provides Federal land managers having jurisdiction, custody, or control over property on which a range response will occur the opportunity to concur and otherwise participate. The provisions of this section are in addition to the provisions elsewhere in this part which provide for participation of Federal, state, and local governments; American Indian tribes; the public; and current property owners.

(b) *A Federal land manager for a transferred or transferring range* will be given the opportunity to participate on the range response project team during all phases of the range response as an equal member of the team, with access to project documents and information. The Federal land manager will be provided a concurrence role during the evaluation and response at the range, including at the RA/AR, RE/SSRE, recurring review, and administrative close-out phases. In the absence of concurrence on significant issues or a document, a Federal land manager member of the project team may invoke the formal dispute resolution mechanism provided in § 178.15(b).

(c) *Review.* As required under this part, the responsible DoD component will seek review and comments from the appropriate Federal, State, and local governments; American Indian tribe; Federal land manager; the public; and other parties on the following: the RA/AR report under § 178.7; the RE report under § 178.8, if prepared; the SSRE report under § 178.9; the recurring review report under § 178.11; and the range close-out report under § 178.12. The parties identified in paragraph (e) of this section shall have forty-five (45) days for review of these documents. The responsible DoD component will then respond to significant comments, after which the responsible DoD component will issue a draft decision document for concurrence from the parties identified in paragraph (e).

(d) *Decision documents.* For purposes of this paragraph, "decision documents" shall mean the following: the decision document prepared under § 178.7(e)(8) for the RA/AR phase; the decision document prepared under § 178.8(f)(4) or (6) for the RE; the decision document prepared under § 178.9(g)(4) for the SSRE; the decision document prepared under § 178.11(e)(2) for the recurring review phase; the decision document prepared under § 178.12(c)(2) for the administrative close-out phase; and any final work plan for on-range activities under § 178.7(b)(2)(i). These decision documents shall include any TI or no further action determinations, as well as ARAR waivers.

(e) *Concurrence.* When the responsible DoD component provides a draft decision document, the appropriate Federal or State regulatory agency or affected American Indian tribe, as well as to any Federal land manager having jurisdiction, custody, or control over property on which a range response will occur, will have forty-five (45) calendar days from the date of dispatch to provide its written concurrence or nonconcurrence with the draft decision document. An extension of up to thirty (30) additional days may be granted by the responsible DoD component, upon request. If no written response is received by the responsible DoD component within that forty-five (45)-day period, or seventy-five (75)-day period if an extension was granted, then the responsible DoD component may proceed with a range response action or invoke the dispute resolution process as set forth in § 178.15(b), or both. If a regulatory agency, American Indian tribe, or Federal land manager provides a timely nonconcurrence to the responsible DoD component, then the regulatory agency, American Indian tribe, or Federal land manager and the responsible DoD component will attempt to informally resolve the dispute. If they are unable to informally resolve the dispute to the satisfaction of the regulatory agency, American Indian tribe, or Federal land manager, then the regulatory agency, American Indian tribe, or Federal land manager, as the case may be, may utilize the formal dispute resolution mechanism provided in § 178.15(b).

(f) *Alternative timelines and dispute resolution.* The responsible DoD components and regulatory agencies, American Indian tribes, or Federal land managers may enter into agreements, either site-specific or area-wide, that provide for different timelines and dispute resolution procedures. These agreements may combine the review and dispute resolution procedures under this part with environmental remediation actions taken under other authorities or agreements in order to achieve efficiency and uniformity. Any such agreement will not make the review and dispute resolution processes or decision documents under this part

subject to the assessment of fines or penalties of any kind.

§ 178.15 Dispute resolution.

(a) If a dispute arises under this part, interested entities who may feel aggrieved by the responsible DoD component's response activities are encouraged to pursue alternative dispute resolution mechanisms with the responsible DoD component to resolve any differences over the response alternatives selected.

(b) If a dispute on a significant issue or document arises under § 178.14 that is not resolved informally between the Federal or State regulatory agency, American Indian tribe, or Federal land manager and the responsible DoD component at the project officer level, then the regulatory agency, American Indian tribe, Federal land manager, or responsible DoD component, as the case may be, may pursue the following formal dispute resolution procedure:

(1) The regulatory agency, American Indian tribe, or Federal land manager will provide a written statement of its dispute, along with any rationale or supporting documents, to the military commander representing the responsible DoD component. The military commander will engage in discussions with the regulatory agency, American Indian tribe, or Federal land manager in an attempt to arrive at a consensus and resolve the dispute.

(2) If no resolution is reached within thirty (30) calendar days of receipt of the statement of dispute, then the dispute may be elevated to the responsible DoD component's headquarters-level official, or his/her designee. The headquarters-level official for the responsible DoD component will engage in discussions with the regulatory agency, American Indian tribe, or Federal land manager to attempt to arrive at a consensus. If consensus is not achieved, the headquarters-level official for the responsible DoD component will announce his or her resolution of the dispute, along with a written statement of the supporting rationale.

(3) Within thirty (30) calendar days from announcement of a resolution under § 178.15(b)(2), the dispute may be elevated to the principal environmental policymaker for the responsible DoD component, or his or her designee. The principal environmental policymaker for the DoD component will engage in discussions with the regulatory agency, American Indian tribe, or Federal land manager to attempt to arrive at a consensus. If consensus is not achieved, the headquarters-level official for the DoD component will announce his or her resolution of the dispute, along with a written statement of the supporting rationale.

(4) In the case of a dispute involving Federal agencies with respect to the application and/or interpretation of this part, a Federal agency dissatisfied with the results of the dispute resolution process in paragraphs (b)(1) through (b)(3) of this section may raise its dispute within thirty (30) calendar days from announcement of a resolution under paragraph (b)(3) to the Secretary of the Military Department, or his or her designee who must be a political appointee whose appointment requires the advice and consent of the Senate, and to its Department Secretary/Agency Administrator, or his or her designee who also must be a political appointee whose appointment requires the advice and consent of the Senate. For disputes arising at a closed, transferred, or transferring range that is a facility listed on the NPL, the Secretary of the Military Department (or his or her designee) shall resolve issues related to explosives safety, and the EPA Administrator (or his or her designee) shall resolve issues related to the release or substantial threat of release of other constituents that are subject to CERCLA jurisdiction. If consensus is not achieved, then the Secretary of the Military Department (or his or her designee) and/or, as applicable, the EPA Administrator (or his or her designee) will announce his or her resolution of the dispute, along with a written statement of the supporting rationale. Nothing in this paragraph shall restrict or enlarge the authority of the EPA Administrator with respect to a facility on the NPL. If any party is dissatisfied with the resolution of the dispute, the dispute may be elevated to the Office of Management and Budget (OMB).

(5) In the case of a dispute involving a State regulatory agency or American Indian tribe with respect to the application and/or interpretation of this part, a State or tribe dissatisfied with the results of the dispute resolution process in paragraphs (b)(1) through (b)(3) of this section may raise its dispute within thirty (30) calendar days from announcement of a resolution under paragraph (b)(3) to the Secretary of the Military Department, or his or her designee who must be a political appointee whose appointment requires the advice and consent of the Senate, and to the Governor of the State or the American Indian tribal leader as appropriate, or their designee. If consensus is not achieved, the Department Secretary or his or her designee will announce his or her resolution of the dispute, along with a written statement of the supporting rationale, with respect to the application and interpretation of this part, and the State or tribe may pursue its authority under any applicable laws.

(6) The dispute resolution process set forth in this section may also be utilized by a DoD component as provided for elsewhere in this part (for example, when significant unresolved issues exist). The same levels for dispute resolution will be utilized in such cases; however, in such cases, the DoD component would provide a written statement of its dispute, along with supporting rationale, to the regulatory agency, American Indian tribe, or Federal land manager, as applicable.

(7) Range response activities will not be suspended during the dispute resolution process absent extraordinary circumstances. If the Secretary of a Federal land manager, or his or her designee whose appointment requires the advice and consent of the Senate, provides a written declaration with supporting rationale to the Department Secretary for the DoD component, stating that an immediate suspension of response activities during the full dispute resolution process is needed to prevent substantial environmental harm that would result from the performance of the activity itself, the responsible DoD component shall immediately suspend such activity, to the extent consistent with the protection of human health from any imminent and substantial danger. The suspension issue (i.e., whether to suspend response actions during the full dispute resolution process) will be raised directly to the Military Service Department Secretary, or his or her designee whose appointment requires the advice and consent of the Senate, consistent with paragraph (b)(4) of this section. The Secretary of the Federal land manager and the Military Service's Department Secretary will have 5 calendar days to arrive at a consensus on the suspension issue. If no consensus is reached, then the Federal land manager will have 5 calendar days to raise the suspension issue to OMB and request OMB to decide whether to continue the suspension of the response action. Five days following the submission of the suspension issue to OMB, the Military Service can resume activity unless OMB makes or has made a determination that the response actions should not resume pending resolution of the underlying dispute, or that an additional time period is needed to consider the merits of the arguments over whether the response action should be allowed to resume.

(8) These time limits may be extended on the mutual agreement of the parties to the dispute.

§ 178.16 Future land use for transfers within the Federal government.

(a) This section discusses how future land use issues are incorporated where a Federal land manager has jurisdiction, custody, or control over property on which a range response will or has occurred.

(b) For transferring ranges, the Department of Defense will conduct and fund response activities consistent with all reasonably anticipated future land uses that are identified and agreed to between the parties to the land transfer prior to the transfer. Where the transfer of the military range is mandated by statute, Executive Order, a previously concluded agreement between the Department of Defense and the Federal land manager, or under the terms of a withdrawal, special-use permit or authorization, right-of-way, public land order, or other instrument issued by the Federal land manager under which the Department of Defense used the property, and where future land uses are not identified or response activities are not specified in such statute, order, agreement, or instrument, any dispute will be resolved through utilization of the dispute resolution procedure identified in this part. Where the transfer is not legally mandated, disagreement over what the reasonably anticipated future land uses are may result in the transfer of the property to some other party, or no transfer. Technology limitations may restrict current uses or cleanup of the property. Reasonably anticipated future land uses for the property will not necessarily be limited by current technological limitations on the cleanup of UXO on ranges.

(c) For transferred ranges, in the absence of a prior agreement identifying reasonably anticipated future land uses or imposing land use restrictions, the Department of Defense will conduct and fund response activities consistent with all reasonably anticipated future land uses at the time of the range response. Reasonably anticipated future land uses will be decided by the Federal land manager with the concurrence of the Department of Defense. If there is disagreement, the dispute resolution procedure identified in this part will be utilized. Technology limitations may restrict current uses or cleanup of the property. Reasonably anticipated future land uses for the property will not necessarily be limited by current technological limitations on the cleanup of UXO on ranges.

(d) If there is disagreement over the reasonably anticipated future land uses, the dispute resolution provisions in § 178.15 will be utilized. Technology limitations may restrict current uses or cleanup of the property. Reasonably anticipated future land uses for the property will not necessarily be limited by current technological limitations on the cleanup of unexploded ordnance on ranges.

(e) The Department of Defense will conduct and fund additional response actions where:

(1) The remedy fails (e.g., the remedy fails to meet previously identified remediation goals or response objectives; restrictions on access or other institutional controls fail not due to the acts or omissions of the Federal land manager but due to changes in the use of or access to surrounding parcels of property, such as those relating to population growth and migration; or through other developments out of the control of the Federal land manager); or

(2) Contamination (i.e., other constituents) caused by the Department of Defense of a previously unknown nature, location, magnitude, or extent creates conditions inconsistent with the reasonably anticipated land use that had been agreed upon or otherwise established; or

(3) Additional UXO is found that creates conditions inconsistent with the established reasonably anticipated land use; or

(4) Changes in applicable laws or regulations concerning cleanup standards necessitate reassessment of a previous response; or

(5) UXO technology limited the range response, with the result that the use of the land is more restricted than the established reasonably anticipated future land use, but later improvements in technology that are cost effective allow for removal of such a restriction and there is a current need for the removal of such restriction; or

(6) A statute, a final and binding court order, or a final and binding administrative order necessitates additional response actions to address UXO attributable to Department of Defense activities on the property, provided that the order is not occasioned by Federal land manager activities that are inconsistent with the reasonably anticipated future land use; or

(7) The remedy fails to protect previously unidentified significant environmental or cultural resources that would have been protected consistent with the established reasonably anticipated future land use and this part, had their existence been known at the time of the previous range response.

Dated: September 18, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–25269 Filed 9–25–97; 8:45 am]

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Federal Register

Friday
September 26, 1997

Part VIII

Department of Education

34 CFR Parts 674, 675, and 676
Federal Perkins Loan Program, Federal Work Study Program, and Federal Supplemental Educational Opportunity Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

RIN 1840–AC40

Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: This document contains amendments to regulatory provisions that provide consistency among program regulations, correct minor technical errors and omissions in the existing regulations governing the programs, and conform with self-implementing provisions of the Higher Education Act of 1965, as amended (HEA). The student financial assistance programs authorized by title IV of the HEA, include the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs).

EFFECTIVE DATE: These regulations take effect October 27, 1997.

FOR FURTHER INFORMATION CONTACT:

1. For the FWS and FSEOG programs: Ms. Kathy Gause, Campus-Based Grants Program Specialist, U.S. Department of Education, 600 Independence Avenue, SW, Regional Office Building 3, Room 3053, Washington, DC 20202–5447. Telephone: (202) 708–8242.

2. For the Federal Perkins Loan Program: Ms. Gail McLarnon, Campus-Based Loan Program Specialist, U.S. Department of Education, 600 Independence Avenue, SW, Regional Office Building 3, Room 3053, Washington, DC 20202–5447. Telephone: (202) 708–8242.

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SUPPLEMENTARY INFORMATION: On March 4, 1995, the President directed every Federal agency to review its rules and procedures to reduce regulatory and paperwork burden and directed Federal agencies to eliminate or revise those regulations that are outdated or otherwise in need of reform.

As part of his response to the President's Regulatory Reinvention Initiative, and to improve program accountability to protect students and the Federal fiscal interest, the Secretary published amendments to the cash management regulations contained in part 668, subpart K, in the **Federal Register** (61 FR 60578–60610) on November 29, 1996 (effective date July 1, 1997). The campus-based programs regulations are amended to conform with the cash management regulations published on November 29, 1996, and to correct errors and omissions in the text of the campus-based programs existing regulations.

Although these regulations do not establish any new policies, there are issues surrounding the technical changes to the regulations that govern the Federal Perkins Loan Program that need further explanation. Several Federal Perkins Loan Program regulatory provisions are amended to conform with self-implementing provisions of the HEA. The following list summarizes those issues:

Federal Perkins Loan Program

Default Reduction Plan—Section 674.6

The Secretary amends § 674.6 to eliminate the option allowing institutions to submit a statement to the Secretary indicating that they, in order to satisfy the requirement to establish and implement a default reduction plan for their Federal Perkins Loan Program, agree to apply to their Federal Perkins Loan Program the default management plan in place for their Federal Family Education Loan (FFEL) Program. This change is being made because as of July 1, 1996, institutions participating in the FFEL Program are no longer required to develop default management plans.

Student Eligibility—Section 674.9

An incorrect cross-reference has been corrected in paragraph (a) by removing "34 CFR 668.7," and adding, in its place, "34 CFR 668.32."

Fiscal Procedures and Records—Section 674.19

An incorrect cross-reference has been corrected in paragraph (b) by removing "§ 668.164," and adding, in its place, "§ 668.163."

Promissory Note—Section 674.31 and Repayment—Section 674.33

The Secretary amends §§ 674.31 and 674.33 to add language requiring institutions to exclude periods of forbearance in determining the 10-year repayment period for a Federal Perkins loan. This language, which reflects section 464(c)(4) of the HEA, was inadvertently omitted from the current Federal Perkins Loan Program regulations.

The Secretary also amends § 674.33(b)(6)(ii) by adding a reference to a $30 minimum monthly payment rate for Direct loans. This reference was inadvertently omitted when the Secretary published final regulations on November 30, 1994, that revised the minimum monthly payment rate language in this section to reflect the new $40 rate for Federal Perkins loans in accordance with the HEA.

Deferment of Repayment—Section 674.34

The Secretary amends § 674.34(h) to clarify that an institution may not include the period of the post-deferment grace period in determining the 10-year repayment period for a Federal Perkins loan in accordance with section 464(c)(2)(A)(iv) of the HEA.

Deferment of Repayment—Federal Perkins Loans Made Before July 1, 1993—Section 674.35, Deferment of Repayment—Direct Loans Made on or After October 1, 1980, but Before July 1, 1993—Section 674.36, and Deferment of Repayment—Direct Loans Made Before October 1, 1980 and Defense Loans—Section 674.37

The Secretary amends §§ 674.35, 674.36, and 674.37 to add the hardship deferment to the list of the qualifying deferment periods that are not to be included in the 10-year repayment period for a Federal Perkins loan. This change reflects section 464(c)(4) of the HEA and was inadvertently omitted from the Federal Perkins Loan Program regulations.

Collection Procedures—Section 674.45

The Secretary amends § 674.45(c)(1)(ii)(A) by eliminating the phrase "unless specifically prohibited by State law," in order to make this paragraph consistent with section 484A of the HEA and § 674.45(g). Final regulations published on November 30, 1994, in accordance with the HEA, added § 674.45(g), the provisions of which specifically preempt State statutes, regulations, or rules that would hinder satisfaction of requirements that an institution must carry out in collecting Federal Perkins loans.

Cancellation Procedures—Section 674.52

The Secretary amends § 674.52(d)(2) by adding § 674.58 to the cross-references. This cross-reference, which reflects the changes made to section 464(c)(2)(A)(iv) of the HEA, was inadvertently omitted from the Federal Perkins Loan Program regulations. The addition of a cross-reference to § 674.58 allows a borrower with a loan made on or after July 1, 1993, to defer repayment while doing service that qualifies for cancellation in a Head Start program.

Federal Work-Study Program

There are no major changes to the FWS Program. However, the Secretary has made some minor technical changes as described in the following paragraphs.

Student Eligibility—Section 675.9

An incorrect cross-reference has been corrected in paragraph (a) by removing "34 CFR 668.7," and adding, in its place, "34 CFR 668.32."

Fiscal Procedures and Records—Section 675.19

An incorrect cross-reference has been corrected in paragraph (a)(3) by removing "§ 668.164," and adding, in its place, "§ 668.163."

Eligible Employers and General Conditions and Limitations on Employment—Section 675.20

The Secretary amends § 675.20(b)(1) to add the word "public" after the word "local," and to delete the phrase "(see appendix B for a sample agreement)" in paragraph (b)(1). Appendix B was previously removed from regulations and is now included in the Federal Student Financial Aid Handbook

Employment Provided by a Federal, State, or Local Public Agency, or a Private Nonprofit Organization—Section 675.22

The Secretary amends § 675.22 to add the word "public" after the word "local" in the section heading.

Nature and Source of Institutional Share—Section 675.27

A typographical error has been corrected in the authority citation following the section.

Federal Supplemental Educational Opportunity Grant Program

There are no major changes to the FSEOG Program. However, the Secretary has made some minor technical changes as described in the following paragraphs.

Student Eligibility—Section 676.9

An incorrect cross-reference has been corrected in paragraph (a) by removing "34 CFR 668.7," and adding, in its place, "34 CFR 668.32."

Fiscal Procedures and Records—Section 676.19

An incorrect cross-reference has been corrected in paragraph (a)(2) by removing "§ 668.164," and adding, in its place, "§ 668.163."

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations are small institutions of higher education. These regulations contain technical amendments that correct current regulations.

The changes will not have a significant economic impact on the institutions affected.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the regulatory changes in this document are necessary to correct minor technical errors, to implement mandatory statutory provisions, and to correct omissions in the campus-based programs existing regulations. The changes in this document do not establish any new policies. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

The Federal Perkins Loan and Federal Work-Study programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 675

Colleges and universities, Employment, Grant programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 676

Grant programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: September 23, 1997.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; and 84.038 Federal Perkins Loan Program)

The Secretary amends parts 674, 675, and 676 of Title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

§ 674.6 [Amended]

2. Section 674.6 is amended by removing the semicolon at the end of paragraph (a)(1) and adding, in its place, ", or"; by removing "; or" at the end of paragraph (a)(2) and by adding, in its place, a period; and by removing paragraph (a)(3).

§ 674.9 [Amended]

3. Section 674.9(a) is amended by removing "34 CFR 668.7" and by adding, in its place, "34 CFR 668.32".

§ 674.19 [Amended]

4. Section 674.19(b) is amended by removing "§ 668.164" and adding, in its place, "§ 668.163".

5. Section 674.31(b)(2)(i)(D) is revised to read as follows:

§ 674.31 Promissory note.

* * * * *

(b) * * *
(2) * * *
(i) * * *
(D) May vary because of minimum monthly repayments (see § 674.33(b)), extensions of repayment (see § 674.33(c)), forbearance (see § 674.33(d)), or deferments (see §§ 674.34, 674.35, and 674.36);
* * * * *

6. Section 674.33 is amended by adding "for a Direct Loan or" after "$30" in paragraph (b)(6)(ii), and by adding a new paragraph (d)(8) to read as follows:

§ 674.33 Repayment.
* * * * *
(d) * * *
(8) The institution may not include the periods of forbearance described in this paragraph in determining the 10-year repayment period.
* * * * *

7. Section 674.34(h) is revised to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans and Direct loans made on or after July 1, 1993.
* * * * *
(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section and the period described in paragraph (i) of this section in determining the 10-year repayment period.
* * * * *

8. Section 674.35 is amended by removing "(see § 674.56)" in paragraph (c)(1) and adding, in its place, "(see § 674.59)"; by removing "(see § 674.57)" in paragraphs (c)(3) and (4) and adding, in its place, "(see § 674.60)"; by removing paragraph (g); by redesignating paragraph (i) as paragraph (g); by redesignating paragraph (h) as paragraph (i); and by adding a new paragraph (h) to read as follows:

§ 674.35 Deferment of repayment—Federal Perkins loans made before July 1, 1993.
* * * * *
(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section and the period described in paragraph (i) of this section when determining the 10-year repayment period.
* * * * *

§ 674.36 [Amended]

9. Section 674.36 is amended by removing "(see § 674.56)" in paragraph (c)(1) and adding, in its place, "(see § 674.59)"; by adding "(see § 674.60)" before the semicolon in paragraphs (c)(2) and (c)(3); and by removing "and" after "(c)," and adding ", and (e)" after "(d)" in paragraph (f).

§ 674.37 [Amended]

10. Section 674.37 is amended by removing "(see § 674.56)" in paragraph (c)(1) and adding in its place "(see § 674.59)"; by adding "(see § 674.60)" before the semicolon in paragraph (c)(2) and before the period in paragraph (c)(3); and by removing "and (c)" after "(b)" and adding, in its place, ", (c), and (e)" in paragraph (d).

§ 674.45 [Amended]

11. Section 674.45(c)(1)(ii)(A) is amended by removing ", unless specifically prohibited by State law," after "shall".

§ 674.52 [Amended]

12. Section 674.52(d)(2) is amended by removing "or" before "674.57" and by adding ", or 674.58" after "674.57".

PART 675—FEDERAL WORK-STUDY PROGRAMS

13. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

§ 675.9 [Amended]

14. Section 675.9(a) is amended by removing "34 CFR 668.7" and adding, in its place, "34 CFR 668.32".

§ 675.19 [Amended]

15. Section 675.19(a)(3) is amended by removing "§ 668.164" and adding, in its place, "§ 668.163".

§ 675.20 [Amended]

16. Section 675.20(b)(1) is amended by adding "public" after "local" in the first sentence and by removing in the second sentence "(see Appendix B for a sample agreement)".

§ 675.22 [Amended]

17. Section 675.22 is amended by adding in the heading "public" after "local".

§ 675.27 [Amended]

18. Section 675.27 is amended by revising the authority citation following the section to read as follows:

(Authority: 42 U.S.C. 2754)

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

§ 676.9 [Amended]

20. Section 676.9(a) is amended by removing "34 CFR 668.7" and adding, in its place, "34 CFR 668.32".

§ 676.19 [Amended]

21. Section 676.19(a)(2) is amended by removing "§ 668.164" and adding, in its place, "§ 668.163".

[FR Doc. 97–25658 Filed 9–25–97; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 783

Commodity Credit Corporation

7 CFR Part 1478

RIN 0560–AF17

Tree Assistance Program

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth the regulations necessary for implementing the 1997 Tree Assistance Program (TAP). The Act Making Emergency Supplemental Appropriations for Recovery from Natural Disasters for the Fiscal Year ending September 30, 1997, (The Act) authorized TAP assistance to small orchardists to replace or rehabilitate trees and vineyards damaged by natural disasters. Due to limited funds appropriated for this program, the losses for which reimbursement is sought are limited to natural disasters that occurred between October 1, 1996, and September 30, 1997. Cost-share assistance may not exceed 100 percent of the eligible replacement or rehabilitation costs and may be based on average costs or the actual costs for the replanting practices, as determined by the Deputy Administrator for Farm Programs.

DATES: Interim rule effective September 24, 1997. Written comments on this rule must be received on or before October 29, 1997 to be assured of consideration. Comments on the information collections in this rule must be received on or before November 28, 1997 in order to be assured of consideration.

ADDRESSES: Submit written comments to: David M. Nix, Compliance and Production Adjustment Division (CPAD), Farm Service Agency (FSA), USDA, 1400 Independence Avenue, S.W., STOP 0517, Washington, DC 20012–0517, telephone (202) 690–4091, e-mail address: dnix@wdc.fsa.usda.gov. Comments may be inspected in the Office of the Director, Compliance and Production Adjustment Division (CPAD), Farm Service Agency (FSA), USDA, Room 3630 South Building, Washington, D.C., between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: David M. Nix at the above listed address.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

An Environmental Evaluation with respect to the Tree Assistance Program has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA will submit an emergency information request (ICR) to OMB for the approval of the Tree Assistance Program reports as necessary for the proper functioning of the program.

Title: Tree Assistance Program.

OMB Control Number: 0560-NEW.

Type of Request: Emergency.

Abstract: Persons who suffered losses according to this part are required to provide information regarding their operation, losses that occurred and the action that will or has been taken as a result of those losses.

USDA has submitted to the Office of Management and Budget proposed forms to be used for application and contract and for collection of information relating to resource needs. Form CCC–435, Tree Assistance Program Technical Worksheet, is used for the collection of data and calculation of losses of eligible trees and eligible vines due to natural disaster. Form CCC–436, TAP Eligibility Certification Statement, is used for owner certification that the owner owns no more than 500 acres of eligible trees or eligible vines, and had an annual qualifying gross revenue of no more than $2.5 million for the 1996 tax year.

Estimate of Burden: Public reporting for this information collection is estimated to average 20 minutes per applicant.

Respondents: Owners of eligible trees and eligible vines who suffered losses from natural disasters.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 333 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, D.C. 20503, and to David M. Nix. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in this interim rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the interim regulations.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State law to the extent that such laws are inconsistent with the provisions of this rule. The provisions of this rule are retroactive to October 1, 1996. Before any judicial action may be brought regarding the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA regulations.

Background

This interim rule sets forth the terms and conditions under which owners of eligible trees and eligible vines who suffered a loss as a result of a natural disaster may apply for benefits to compensate for this loss. Congress has mandated the Secretary to make available up to $9 million to replace or rehabilitate eligible trees and eligible vines damaged by natural disasters. Owners eligible for TAP may be reimbursed up to 100 percent of the cost incurred to replace or rehabilitate eligible trees or eligible vines.

List of Subjects in 7 CFR Part 783 and Part 1478

Disaster assistance, Grant programs—agriculture.

For reasons set forth in the preamble and under the authority of Pub. L. 105–18, (111 Stat. 158), 7 CFR Chapters VII and XIV are amended as follows:

PART 1478—[REMOVED]

1. Part 1478 is removed.

2. Part 783 is added to read as follows:

PART 783—1997 TREE ASSISTANCE PROGRAM

Sec.

783.1 Applicability.
783.2 Administration.
783.3 Definitions.
783.4 Program deadlines.
783.5 Ownership, income and payment limitations.
783.6 Qualifying loss.
783.7 Eligible costs.
783.8 Application process.
783.9 Obligations of an eligible owner.
783.10 Partial performance.
783.11 Liens and claims of creditors; set-offs.
783.12 Appeals.
783.13 Misrepresentation and scheme or device.
783.14 Estates, trusts, and minors.
783.15 Death, incompetency, or disappearance.
783.16 Other regulations.
783.17 Paperwork Reduction Act assigned numbers.

Authority: Pub. L. 105–18, 111 Stat. 158.

§ 783.1 Applicability.

The regulations in this part set forth the terms and conditions of the Tree Assistance Program (TAP) authorized by the Act Making Emergency Supplemental Appropriations for Recovery from Natural Disasters for the Fiscal Year ending September 30, 1997 (1997 Emergency Appropriations Act). Within specified limits, FSA is authorized by the 1997 Emergency Appropriations Act to reimburse eligible owners for up to 100 percent of the cost of replanting or rehabilitating eligible trees and eligible vines damaged by natural disasters occurring from October 1, 1996, through September 30, 1997.

§ 783.2 Administration.

(a) This part shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Deputy Administrator for Farm Programs, FSA. The program shall be carried out in the field by FSA State and county committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) The State committee shall allow the county committee to approve applications only for those owners of eligible trees and eligible vines who actually owned the eligible trees or eligible vines at time of the eligible disaster and at the time of application.

(e) No delegation herein to a State or county committee shall preclude the Deputy Administrator for Farm Programs, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 783.3 Definitions.

(a) In determining the meaning of the provisions of this part, unless the context indicates otherwise, singular terms include the plural and plural terms include the singular, masculine terms include the feminine, and terms used in the present tense include the future.

(b) The following terms contained in this part shall have the following meanings:

Annual gross revenue means, with respect to a person as defined in part 1400 of this title:

(1) For a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the total gross income received from such operations.

(2) For a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the total gross income from all sources.

(3) The determinations made in accordance with 7 CFR part 1400, subpart B, shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

(4) The year for which the annual gross income shall be received for the purpose of this definition shall be the 1996 tax year.

Cutting means a vine which was planted in the ground for commercial production of grapes, kiwi fruit, or passion fruit.

Eligible owner means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity and includes any Indian tribe under the Indian Self-Determination and Education Assistance Act; any Indian organization or entity chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Assistance Act; and, any economic enterprise under the Indian Financing Act of 1974 which meets the requirements of this part.

Eligible trees means papaya trees or orchard trees grown for commercial production of fruit and nuts.

Eligible vines means grape, kiwi fruit, or passion fruit vines grown for commercial production.

Individual stand means an area of eligible trees or vines which are tended by an eligible owner as a single operation, whether or not such trees or vines are planted in the same field or similar location, as determined by the Deputy Administrator. Differing species of trees or vines in the same field or similar area may be considered to be separate individual stands if FSA determines that the species have significantly differing levels of freeze, drought, earthquake, hurricane, or typhoon susceptibility.

Local county office means the county FSA office or USDA Service Center that services the farm if an FSA farm serial number has been assigned or, if no serial number is assigned, then the office that services the county in which the eligible trees or vines are located.

Natural disaster means drought, excessive moisture, hail, freeze, tornado, hurricane, earthquake, or excessive wind.

Normal mortality means the percentage of plant loss on the individual stand of eligible trees or eligible vines which normally occurs in a 12-month period.

Orchard means eligible trees planted for commercial annual production of fruit or nuts.

Owner means a person who has legal ownership of the eligible trees or vines as determined by FSA. Eligible tree or vine owners need not own the land on which the trees or vines are planted.

Seedling means an eligible tree which was planted in the ground for commercial purposes.

Total mortality means the actual percentage of eligible tree or eligible vine losses on a given individual stand.

(c) The definitions set forth in this section shall be applicable for all purposes of administering the Tree Assistance Program. The terms defined in part 718 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

§ 783.4 Program deadlines.

(a) A request for benefits under this part to reimburse for losses to eligible trees and eligible vines must be submitted to FSA at the local county office by close of business on Friday, September 26, 1997.

(b) All related and supporting documentation shall be submitted at the time the request for assistance is filed or no later than September 30, 1997.

(c) The State committee shall allow the county committee to approve late-filed requests received after the enrollment period ends, but no later than September 30, 1997. Late-filed requests will be accepted only for those owners who applied late due to circumstances beyond their control as determined by the county committee and concurred with by the State committee.

(d) The State committee may approve an extension, not to exceed 24 months beyond the date of application, to complete TAP practices if delays are determined to be beyond the control of the applicant.

§ 783.5 Ownership, income and payment limitations.

(a) An eligible owner must:

(1) Own less than 500 acres of each type of eligible tree or eligible vine, regardless of their size or condition, which produce annual crops for commercial purposes, or are grown for harvest for commercial purposes; and

(2) Have owned the eligible trees or eligible vines at the time the natural disaster occurred and continuously until the application for TAP benefits is submitted.

(b) No person, as defined in part 1400 of this title, as applicable, with an annual gross revenue in excess of $2.5 million for the 1996 tax year will be eligible for TAP benefits.

(c) The amount of payments which any person, as determined in accordance with part 1400 of this title, may receive under this part in connection with losses of eligible trees and eligible vines, shall not exceed $25,000.

(d) An owner who acquires eligible trees or eligible vines from a previous owner approved for 1997 TAP shall not receive additional program benefits due to an increase in the number of persons associated with the new ownership. A new owner is allowed to receive TAP benefits not paid to the previous owner if the new owner:

(1) Acquires ownership of land or trees for which TAP benefits have been approved;

(2) Meets the income and payment limitation under this part;

(3) Agrees to complete all practices which the original owner has not completed; and

(4) Agrees to receive any remaining payments and assumes full responsibility for all provisions of TAP, including refund of payments made to the previous owner, if necessary.

(e) In the event the total amount of claims submitted under this part during the sign-up period exceeds the applicable funds available for such period, such payments shall be reduced by a uniform national percentage. Such payment reductions shall be applied after the imposition of applicable payment limitation provisions.

(f) Federal, State, and local governments and agencies and political subdivisions thereof are not eligible for benefits under this part.

§ 783.6 Qualifying loss.

(a) An eligible owner may receive assistance under this part for qualifying loss of eligible trees, eligible orchard tree seedlings, eligible vines or cuttings as determined by the Deputy Administrator for Farm Programs, FSA:

(1) Which were destroyed or injured as a result of a natural disaster, as determined by the county committee in accordance with the instructions of the Deputy Administrator; and

(2) For which the total mortality rate equals or exceeds 20 percent, after deducting the normal mortality the owner would have incurred.

(b) Qualifying loss determinations shall be made on an individual stand basis. A qualifying loss shall be the loss for the individual stand of eligible trees, or eligible vines, as appropriate, after deducting the normal mortality of such trees or vines, equal to or in excess of 20 percent mortality.

(c) Qualifying losses of eligible trees or vines shall not include:

(1) Losses which could have been prevented through readily-available horticultural measures; or

(2) Losses of trees or vines which would normally have been rehabilitated

or replanted within the 12-month period following the loss, in the absence of the natural disaster.

(d) When visible evidence of losses no longer exists on the site where the eligible trees or eligible vines were planted, acceptable evidence as determined in accordance with instructions issued by the Deputy Administrator must be established for the county committee to qualify the individual stand for the program.

§ 783.7 Eligible costs.

(a) Payments will be made only to the extent specifically provided for in this part. An eligible owner shall be reimbursed under this part, to the extent of the availability of funds, for an amount not to exceed 100 percent of the eligible costs of replanting or rehabilitating trees or vines, not in excess of the number of trees or vines constituting the qualifying loss. Such reimbursement may be based on average costs or the actual costs for the replanting, or rehabilitating practices, as determined by the Deputy Administrator. If the costs are to replace eligible trees or eligible vines, the costs reimbursed under this part shall only be for replacement seedlings or cuttings of a size and quality determined by Deputy Administrator to be sufficient for that purpose. The costs for which cost-sharing shall be permitted shall only be the costs of:

(1) The seedlings or cuttings, eligible tree or vine rehabilitation measures;

(2) Site preparation measures and debris handling measures that are normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival;

(3) Chemicals and nutrients if needed to ensure successful plant survival; and

(4) Labor used to physically plant or rehabilitate such seedlings or cuttings as based on standard labor rates as determined by the county committee.

(b) Costs eligible for reimbursement under this part specifically exclude items such as fencing, irrigation, irrigation equipment, measures to protect seedlings from wildlife, and general land and eligible tree or vine stand improvements, and re-establishing structures and windscreens.

(c) When eligible trees or eligible vines are replanted instead of rehabilitated, the types planted may be different than those originally planted if the new types have the same general end use as determined by the county committee. Payments will be based on the lesser of rates established to plant the types actually lost or the cost to establish the trees or vines actually used. Eligible costs shall not include costs incurred for planting species of seedlings or cuttings differing significantly from the species of the seedlings or cuttings constituting the qualifying loss except as approved by the Deputy Administrator. If such substitution is approved, eligible costs shall be the lesser of:

(1) The actual eligible costs incurred; or

(2) The estimated eligible costs which otherwise would have been incurred to replant the species constituting the qualifying loss.

(d) Costs eligible for reimbursement under this part shall only include expenditures approved within the limits set by this part, including, but not limited to, those limits set forth in paragraph (a) of this section. Eligible costs include costs incurred before an application for payment is submitted. Eligible costs shall only include those costs for which the eligible owner has submitted documentation determined by the county committee to adequately document such costs. The county committee shall limit TAP payments for eligible costs at the minimum level to re-establish an individual stand, as determined by the State committee.

(e) Payments shall not exceed the lesser of 100 percent of the eligible costs actually incurred by an eligible applicant for replanting or rehabilitating the qualifying loss, or the average cost to replant or rehabilitate the qualifying loss, as determined by the Deputy Administrator.

§ 783.8 Application process.

(a) Applications for payment shall be filed by the eligible owner with the local county office and shall contain an estimate by the applicant of the number of eligible trees or eligible vines which constitute the qualifying loss and the amount of the acreage of the individual stands with respect to which the loss was suffered. The applicant must provide sufficient evidence of the losses so as to allow the county committee to determine qualifying losses.

(b)(1) The county committee or a designee may conduct field reviews to determine the actual qualifying loss and the acreage of individual stands with respect to which the loss was suffered. The county committee and, if designated by the county committee, the county executive director, are authorized, subject to the provisions of this part, to approve or disapprove all applications, subject to the limitations and conditions of this part, provided the applicant is not a county committee member or an FSA employee.

(2) The State committee shall approve or disapprove applications of the county committee members and all FSA employees except applications submitted by the State Executive Director, or by a State committee member.

(3) The Deputy Administrator, or a designee, shall approve or disapprove applications of State committee members and the State Executive Director.

(4) All applications forwarded to a higher reviewing authority for consideration shall be accompanied by committee recommendations. No application shall be approved unless the owner meets all eligibility requirements. Information furnished by the applicant and any other information, including knowledge of the county and State committee members concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operations in order to make a determination as to the owner's eligibility, the owner's application shall not be approved until sufficient additional information is provided by the owner.

(c) TAP eligibility and payments are not affected by participation in crop or tree insurance, or the receipt of any other payments.

§ 783.9 Obligations of an eligible owner.

(a) Eligible owners must submit a request for assistance on the approved form and must also submit all documentation requested by the appropriate official as necessary to make determinations specified in this part.

(b) Eligible owners must:

(1) Comply with all terms and conditions of this part;

(2) Execute all required documents;

(3) Comply with all applicable noxious weed laws; and

(4) Complete the TAP practice within 24 months of the date the application is approved.

(c) In the event of a determination that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, or other condition for payment imposed by the county or State committee or the Deputy Administrator, such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under part 1403 of this title and computed from the date of disbursement of the payment to the date of the refund.

(d) Eligible owners must allow representatives of FSA to visit the site for the purposes of examining and certifying mortality and practice completion.

§ 783.10 Partial performance.

(a) Participants may elect not to replant the maximum amount of eligible trees or eligible vines because of imposition of the payment limitation in § 783.5(c) or any other reason. If owners partially complete their practices after they apply, but do not replant or rehabilitate all of their qualifying trees or vines, the county committee shall calculate payment based on the extent performed.

(b) Eligible owners who have been paid but choose not to complete the practice by the final practice expiration date shall refund their payments with interest. Interest on these refunds shall be calculated beginning on the date the payment was disbursed. Such refund amounts may be reduced, at the discretion of the Deputy Administrator, when only part of the required replanting practice is not implemented.

§ 783.11 Liens and claims of creditors; set-offs.

Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at part 792 of this chapter shall be applicable to this part.

§ 783.12 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at part 11 of this title and part 780 of this chapter.

§ 783.13 Misrepresentation and scheme or device.

(a) A person shall be ineligible to receive assistance under this program if such person is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) All moneys paid by CCC under this part to any such person or to any other person as a result of such person's actions shall be refunded to CGC with interest together with such other sums as may become due. The party engaged in acts prohibited by this section and the party receiving payment shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided to CCC in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 783.14 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an otherwise eligible owner shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 783.15 Death, incompetency, or disappearance.

In the case of death, incompetency or disappearance of any owner who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this chapter may receive such assistance.

§ 783.16 Other regulations.

In addition to any other regulations as may be applicable, the following regulations shall also apply to this part:

(a) Part 11 of this title, National Appeals Division Rules of Foreclosure;

(b) Part 12 of this title, Highly Erodible Land and Wetland Conservation;

(c) Part 703 of this chapter, Debt Settlements, Policies and Procedures;

(d) Part 718 of this chapter, Provisions Applicable to Multiple Programs;

(e) Part 780 of this chapter, Appeal Regulations;

(f) Part 1400 of this title, Payment Limitation and Payment Eligibility; and

(g) Part 1404 of this title, Assignments.

§ 783.17 Paperwork Reduction Act assigned numbers.

The information collection requirements of this part have been submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act.

Signed at Washington, D.C., on September 24, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

Acting Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV96–916–3 FIR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes, with a few spelling corrections, the provisions of an interim final rule that revised the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container requirements for fresh shipments of these fruits, beginning with 1997 season shipments. This rule also corrects current grade, size and maturity requirements, primarily by restoring regulatory text that was inadvertently misnumbered or omitted during previous rulemaking actions. This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: October 29, 1997.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone:(209) 487–5901; Fax: (209) 487–5906; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698. Small

businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 [7 CFR Parts 916 and 917] regulating the handling of nectarines and peaches grown in California, hereinafter referred to as the "orders". The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act".

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the orders, grade, size, maturity, container and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) met December 4, 1996, and unanimously recommended that these handling requirements be revised prior to the 1997 season, which began April 1. The changes (1) authorize continued use of a container first used in 1996; (2) authorize shipments of "CA Utility" quality fruit during the 1997 season; (3) clarify container tolerances for all nectarines and peaches; and (4) revise varietal maturity and size requirements to reflect recent changes in growing conditions.

The committees meet prior to and during each season to review the rules and regulations effective on a continuous basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Container Requirements (Nectarines and Peaches)

Sections 916.52 and 917.41 of the nectarine and peach orders, respectively, provide authority to fix the size, capacity, weight, dimensions, markings, or pack of the container or containers that may be used in the packaging and handling of these fruits. Section 916.350 specifies container and pack requirements for fresh nectarine shipments and section 917.442 specifies container and pack requirements for fresh peach shipments. Included in these sections are requirements that all containers be marked with specific information (e.g., the name of the handler, and the maturity, size, and variety of the fruit) and that such markings be applied to the outside ends of the container.

Prior to the 1996 season, the NAC and PCC recommended that a new container, permitted to be marked on its lid, be approved for nectarine and peach shipments during the 1996 season only. The revised requirements became effective on April 1, 1996. The NAC and PCC then reviewed the impact of the use of this container at the conclusion of the 1996 season.

The new container is plastic, rather than wood and paper. It is also recyclable and reusable. The design of some styles of the container, which has cooling slots on all of its sides, discourages placement of markings on the outside ends. Furthermore, in order to ensure and facilitate its reuse, container markings on the permanent outside ends of the new container are not desirable. Instead, placement of markings on the disposable lid is preferable. Thus, markings on the new container have been permitted for either the lid or the outside ends.

In the 1996 season, approximately 450,000 recyclable, reusable boxes were used by nectarine and peach handlers. This represents approximately 1 percent each of the total number of packages of nectarines and peaches shipped in that season. Users of the recyclable, reusable plastic boxes reported good acceptance by retailers and expect increased demand for their use in the coming years. Industry sources reported the boxes will likely be used for other commodities as awareness and acceptance of the boxes increase. It was also noted that the nectarine and peach industries could improve their competitive edge by continued and increased use of the new recyclable, reusable plastic box.

The NAC and PCC believe that continuing to permit container markings to be placed either on the container lid or the outside ends will continue to facilitate the use of this plastic, reusable, and recyclable container. Authorizing the continued use of this container will allow handlers to reduce their container costs through the continued reuse of the container. Such reduced container costs could result in increased returns to producers as well.

When the container requirements for nectarines and peaches were changed on April 1, 1996, the revised provisions did not specify that the change was effective only for the 1996 season. Thus, no changes in the regulatory text of §§ 916.350 and 917.442 are necessary. The use of the recyclable, reusable plastic container is authorized for the 1997 season and beyond.

Quality Requirements (Nectarines and Peaches)

Sections 916.52 and 917.41 authorize the establishment of grade and quality requirements for nectarines and peaches. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapened fruit. Under § 917.459, peaches were also required to meet the requirements of a U.S. No. 1 grade, except there was a more liberal allowance for open sutures which are damaged but not seriously damaged.

This rule continues the revision in the interim rule to paragraph (a)(1) of § 916.356 and paragraph (a)(1) of § 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 1997 season. ("CA Utility" fruit is lower in quality than fruit meeting the modified U.S. No. 1 grade

requirements.) Shipments of nectarines and peaches meeting "CA Utility" quality requirements were first permitted during the 1996 season for that season only. By unanimous vote, the NAC and PCC recommended that fruit meeting "CA Utility" quality requirements be permitted to be shipped for an additional year. The NAC and PCC will continue to monitor retailer and consumer perceptions of "CA Utility" nectarines and peaches to determine whether such fruit should continue to be marketed.

Preliminary studies conducted by the NAC and PCC indicate that some consumers, retailers, and foreign importers found the lower quality fruit acceptable in some markets. Shipments of "CA Utility" nectarines represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes in 1996. Shipments of "CA Utility" peaches represented 1.9 percent of all peach shipments in 1996, or approximately 365,000 boxes.

Dr. Dennis Nef, California State University, Fresno, studied samples of culled fruit at handler facilities during the 1995 and 1996 seasons. Results from the 1996 season were compared to the 1995 season. Preliminary data indicate that a smaller percentage of culled nectarines and peaches met the marketing order grade (modified U.S. No. 1) and size requirements in 1996 than in 1995. In 1995, approximately 8 percent of the nectarines in the cull stream met those requirements, while in 1996, approximately 1 percent of the nectarines in the cull stream met those requirements. In 1995, approximately 7 percent of the peaches in the cull stream met the order's grade and size requirements, while in 1996, approximately 1 percent of the peaches in the cull stream met those requirements. (The "cull stream" includes all fruit which is removed from the packing line by the handler's quality control personnel and not placed in a container for shipment.) The decrease in the amount of fruit in the cull stream seems to indicate a greater utilization of available fruit rather than its disposal. With the option of packing "CA Utility" quality fruit, it appears that the handlers" quality control personnel were less inclined to be overly critical and to exclude acceptable modified U.S. No. 1 fruit. However, not all of this increased utilization can be attributed to the implementation of "CA Utility" quality requirements. The 1995 season, which was the first in which cull data were obtained, was plagued by adverse weather and hail storms. The damage inflicted by the storms created conditions which decreased the quality of available nectarines and peaches and increased somewhat the percentage of fruit in the cull stream which would have met marketing order requirements. It is probable that the implementation of "CA Utility" quality requirements increased the utilization of some fruit which might have been disposed of otherwise. Such utilization benefitted producers, handlers, and consumers. For that reason, the NAC and PCC recommended that "CA Utility" quality requirements be continued for the 1997 season. The NAC and PCC will continue to monitor the impact of shipping "CA Utility" nectarines and peaches to determine whether such shipments continue to be in the interests of producers, handlers, and consumers.

In conforming changes, paragraph (d) of § 916.350 and paragraph (d) of § 917.442 continue to be revised to require that "CA Utility" quality fruit be labeled as such. This marking requirement was in effect during the 1996 season, and is intended to enable customers to differentiate between the different qualities of available fruit.

Clarification of Container Tolerances (Nectarines and Peaches)

For those grade factors included in the U.S. Standards for Grades of Nectarines or Peaches (standards), tolerances are provided for fruit that fails to meet those factors to allow for variations incidental to proper grading and handling. Tolerances are specified for both entire lots of fruit and for individual containers within the lot.

The container tolerances in the standards are applicable to all nectarines and peaches since those tolerances are not modified by the order's rules and regulations. However, last fall, the NAC and PCC voted to clarify the requirements for affected parties. Clarifying these container tolerances will not have a regulatory impact on nectarine and peach handlers because these tolerances are the same as those applied in the standards.

Maturity Requirements (Nectarines and Peaches)

Both orders provide (in §§ 916.52 and 917.41) authority to establish maturity requirements. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. Additionally, both orders' rules and regulations provide for a higher, "well matured" classification. For most varieties, "well matured" fruit determinations are made using maturity guides (e.g., color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed based on the most recent information available on the characteristics of each variety.

Nectarines

Requirements for "well matured" nectarines are specified in paragraph (a)(1) of § 916.356. This rule continues in effect the revision in the interim rule of Table 1 of paragraph (a)(1) of § 916.356 for nectarines to add maturity guides for 12 nectarine varieties. Specifically, an addition to the maturity guides was recommended for Earliglo, May Jim, Red Glo, Royal Glo, and Zee Grand nectarine varieties at a maturity guide of I; Big Jim, Early Red Jim, Late Red Jim, May Lion, and Red Fred nectarine varieties at a maturity guide of J; and Kay Diamond and Ruby Diamond nectarine varieties at a maturity guide of L.

Table 1 of paragraph (a)(1) of § 916.356 continues in effect the revision changing the maturity guides for the following eight nectarine varieties: Autumn Delight, Fairlane, Moon Grand, Red Diamond, Sparkling June, Spring Diamond, Summer Diamond, and Summer Lion. The maturity guide for these eight varieties was M, which was changed to L. The M maturity guide is no longer deemed suited by SPI to nectarine varieties currently in production. The L maturity guide more accurately reflects the background color of modern nectarine varieties under production at this time. For this reason, the NAC recommended these maturity requirement changes based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well matured" level of maturity for nectarine varieties in production.

Paragraph (a)(1) of § 916.356 also continues in effect the revision in the interim rule to remove 13 nectarine varieties which are no longer in production. The NAC routinely reviews the status of nectarine varieties listed in these maturity guides. The most recent review revealed that 13 of the nectarine varieties listed in the maturity guide had not been in production since the 1993 season. Typically, the NAC recommends removing a variety after non-production for three seasons or if trees of that variety are known to have been pulled out because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the Clinton-Strawberry, Desert Dawn, Early Star, Gee Red, Granderli, Hi Red, Larry's Grand, Late Tina Red, Mayfair, May Red, Red June, Stan Grand, and 61–61 nectarine varieties.

Table 1 of paragraph (a)(1) of § 916.356 continues in effect the revision to correct the identification of the Red Lion nectarine variety. The name "Red Lion" has been changed to "August Lion." For that reason, all references to Red Lion have been changed to August Lion. In addition, three nectarine varieties were identified as June Glo, May Glo, and Spring Brite. The correct spelling of these three varieties is Juneglo, Mayglo, and Spring Bright, respectively.

Peaches

Paragraph (a)(1) of § 917.459 specifies maturity requirements for fresh peaches being inspected and certified as being "well matured."

This rule continues in effect the revision of Table 1 of paragraph (a)(1) of § 917.459 to add maturity guides for the Kingscrest peach variety to be regulated at the H maturity guide, the Red Dancer peach variety to be regulated at the I maturity guide, and the Early Elegant Lady peach variety to be regulated at the L maturity guide.

This rule also continues in effect the revision in the interim rule changing the maturity guide assignment on Table 1 of paragraph (a)(1) of § 917.459 for the Summer Lady peach variety from the M maturity guide to the L maturity guide. The M maturity guide is no longer deemed suited by SPI to peach varieties currently in production. The L maturity guide more accurately reflects the background color of modern peach varieties in production at this time. For this reason, the PCC recommended this maturity requirement change based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well matured" level of maturity for peach varieties in production.

The maturity requirement changes for these peach varieties are based on the PCC's continuing review of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the "well matured" level of maturity for each such variety.

Table 1 of paragraph (a)(1) of § 917.459 continues in effect the revision in the interim rule removing 19 peach varieties which are no longer in production. The PCC routinely reviews the status of peach varieties listed in these maturity guides. The most recent review revealed that 19 of the peach varieties listed in the maturity guide had not been in production since the 1993 season. Typically, the PCC recommends removing a variety after non-production for three seasons or if trees of that variety are known to have been pulled out because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the Armgold, Bella Rosa, Bonjour, Desertgold, Early Fairtime, Early Royal May, Fortyniner, Jody Gaye, June Crest, Mardigras, Morning Sun, Preuss Suncrest, Prima Fire, Royal April, Sun Lady, Toreador, Treasure, Windsor, and 50–178 peach varieties.

Table 1 of paragraph (a)(1) continues in effect the revision to change the spelling of two varieties of peaches. The Judy Elberta and Mary Ann varieties appeared on Table 1. However, the spelling of these two names was corrected to read "July Elberta" and "Mary Anne."

Size Requirements (Nectarines and Peaches)

Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations encourage growers to leave fruit on the tree for a greater length of time. This increased growing time not only improves maturity and, therefore, the quality of the product, but also the size of the fruit. Increased size results in increases in the number of packed boxes of fruit per acre. Acceptable size fruit also provides greater consumer satisfaction, more repeat purchases, and, therefore, increased returns to producers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes reached by the regulated varieties and determine whether revisions in the size requirements are appropriate.

Nectarines

Section 916.356 specifies size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule continues in effect the revision in the interim rule of § 916.356 to establish variety-specific size requirements for 10 nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1996 season. This rule also continues in effect the modification of the variety-specific size requirements for several varieties of nectarines.

For example, one of the varieties added to the variety-specific size requirements is the Kay Glo variety. Studies of the size ranges attained by the Kay Glo variety revealed that .5 percent of that variety met the smallest size, size 96, while 1.6 percent met the largest size, size 40. Approximately 45 percent of the nectarines of the Kay Glo variety met the next larger size, size 50.

A review of other varieties with the same harvesting period indicated that Kay Glo was comparable to those varieties in its size ranges. Thus, the recommendation to place the Kay Glo nectarine variety in the variety-specific size regulation at a size 88 is appropriate. Historical variety data such as this provide the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties.

Paragraph (a)(3) of § 916.356 continues in effect the revision to include the Grand Sun nectarine variety; paragraph (a)(4) continues in effect the revision to include the Arctic Star, Kay Glo, Prima Diamond II, and Prince Jim nectarine varieties; and paragraph (a)(6) in § 916.356 continues in effect the revision to include the Arctic Pride, Arctic Sweet, Diamond Ray, Honey Kist, and Prime Diamond VII nectarine varieties.

This rule also continues in effect the revision of § 916.356 to remove seven nectarine varieties from the variety-specific size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1996 season. Paragraph (a)(4) of that section continues in effect the removal of the Mike Grand nectarine variety. Paragraph (a)(6) continues in effect the removal of the Early Sungrand, Nectarine 23, Prima Diamond, Prima Diamond III, Tasty Gold, and Tom Grand nectarine varieties.

Paragraph (a)(4) of § 916.356 continues in effect the revision to include the Arctic Glo and Red Glo nectarine varieties which were inadvertently removed from the variety-specific size requirement prior to the 1996 season.

In a conforming change, paragraphs (a)(3) and (a)(4) of § 916.356 also continue in effect the revision in the interim rule to correct the spelling of the Mayglo and Juneglo nectarine varieties, respectively. Paragraph (a)(6) continues in effect the revision to include the August Lion variety in place of the Red Lion variety.

Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for nectarine varieties, and consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

Peaches

Section 917.459 specifies size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule continues in effect the revision in the interim rule of § 917.459 to establish variety-specific size requirements for nine peach varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1996 season.

For example, one of the varieties added to the variety-specific size requirements is the August Lady variety. Studies of the size ranges attained by the August Lady variety revealed that no peaches of that variety met the smallest size, size 96, while 36 percent of the peaches of the August Lady variety met the largest size, size 30.

A review of other varieties of the same harvesting period indicated that August Lady was comparable to those varieties in its size ranges. Thus, the recommendation to place the August Lady peach variety in the variety-specific size regulation at a size 72 is appropriate. Historical variety data such as this provide the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties.

In § 917.459, current paragraph (a)(5) continues in effect the revision to include the Rich Mike, Sweet Gem, and Sweet Scarlet peach varieties; and current paragraph (a)(6) continues in effect the revision to include the August Lady, Autumn Flame, Red Sun, Scarlet Snow, Snow Diamond, Summer Zee, and Vista peach varieties.

This rule also continues in effect the removal of one peach variety from the variety-specific size requirements specified in § 917.459, because less than 5,000 packages of this variety were produced during the 1996 season. In § 917.459, current paragraph (a)(5) continues in effect the revision to remove the Regina peach variety.

In a conforming change, current paragraph (a)(6) of § 917.459 continues the revision in the interim rule to correct the spelling of one peach variety from "Mary Ann" to "Mary Anne."

Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh peaches consistent with expected crop and market conditions.

This rule reflects the committees' and the Department's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. The Department's determination is that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000. Small agricultural service firms, which includes handlers, are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. This rule continues the revisions in the interim rule of requirements to: (1) authorize continued use of a container first used in 1996; (2) authorize shipments of "CA Utility" quality fruit during the 1997 season; (3) clarify container tolerances for containers of nectarines and peaches; and (4) revise varietal maturity and size requirements to reflect current growing conditions.

Section 916.350, paragraph (c) and § 917.442, paragraph (c) continue in effect the authority to use a recyclable, reusable plastic container during the 1997 season and beyond. This rule also continues in effect the authority to permit markings on such containers to be placed on the disposable lids rather than on the outside ends of the containers. Use of this container will continue to offer a cheaper and more environment-friendly alternative to currently-used disposable wooden and paper boxes. In addition, use of this container is advocated by retailers who desire to decrease their costs of disposing of packing boxes. Approximately 450,000 recyclable, reusable plastic boxes were used by handlers of nectarines and peaches during the 1996 season, representing more than 1 percent each of total nectarine shipments of 19,561,227 boxes and peach shipments of 19,481,624 boxes.

The increased use of this container is expected to result in decreased handling costs for handlers, and thereby improved returns to producers. Generally, under current industry practices, handlers' costs of packaging nectarines and peaches are passed on to producers by handlers via a deduction from total returns. Such costs include pre-cooling of received fruit, costs of boxes, costs of packing materials, costs of palletizing packed boxes, cold storage, inspection costs, etc. A decrease in the cost of boxes, then, has the potential for decreased handling costs passed on to all producers.

Under §§ 916.350 and 917.442 of the regulations for nectarines and peaches, respectively, use of lower-quality "CA Utility" nectarines and peaches was authorized for the 1996 season only. This rule continues the revision in the interim rule to permit the continued use of "CA Utility" quality fruit for the 1997 season while further data is obtained. During the 1996 season, the Department authorized the use of nectarines and peaches which were of a lower quality than the minimum permitted for previous seasons. During 1996, there

were 210,443 boxes of nectarines and 365,761 boxes of peaches shipped as "CA Utility," or 1.1 percent and 1.9 percent of nectarine and peach shipments, respectively. Continued availability of "CA Utility" quality fruit is expected to have a positive impact on producers, handlers, and consumers by permitting more nectarines and peaches into fresh market channels, without adversely impacting the market for higher quality fruit.

This rule also continues the clarification in the interim rule of the container tolerances for nectarines and peaches. Under the orders, the container tolerances in the standards have been applied to nectarines and peaches, although the tolerances were not specifically included in the orders' rules and regulations. Thus, this is a clarifying change which will not impose any additional burdens on growers or handlers.

Sections 916.356 and 917.442 for nectarines and peaches, respectively, currently establish minimum maturity levels. This rule continues in effect adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (e.g., color chips). Such maturity guides provide producers and handlers with objective tools for measuring the maturity of different varieties of nectarines and peaches. Such maturity guides are reviewed annually to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect changes in the maturity patterns of nectarines and peaches as experienced over the previous seasons' inspections. Adjustments in the guides ensure that fruit has met an acceptable level of ripeness, thus ensuring consumer satisfaction and benefitting nectarine and peach growers and handlers.

Currently, in §§ 916.356 and 917.459, minimum sizes for various varieties of nectarines and peaches are established. This rule continues in effect adjustments to the minimum sizes for various varieties of nectarines and peaches beginning with the 1997 season. Minimum size regulations are put in place to allow fruit to remain on the tree for a greater length of time. This increased growing time not only improves maturity, but also improves fruit size. Increased fruit size increases the number of packed boxes per acre to the benefit of both producers and handlers. Increased fruit size also provides greater consumer satisfaction and, therefore, more repeat purchases by consumers. Repeat purchases and consumer satisfaction benefit producers and handlers alike. Such adjustments to minimum sizes of nectarines and peaches are recommended each year by the NAC and PCC based upon historical data regarding sizes which the different varieties attain.

This rule clarifies some of the orders' requirements and relaxes others. This action does not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues. Like all committee meetings, the December 4, 1996, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees themselves are composed of producers, the majority of whom are small entities.

The interim final rule regarding this action was issued on March 24, 1997, and published in the **Federal Register** on April 1, 1997 (62 FR 15355). That rule amended §§ 916.350, 916.356, 917.442, and 917.459 of the rules and regulations in effect under the orders. That rule provided a 30-day comment period which ended on May 1, 1997. One comment was received from the committees' Field Director.

The comment was apparently based on a misreading of the application of tolerances in the U.S. Standards and suggested that the container tolerances for nectarines included in the interim final rule were greater than those recommended by the NAC. However, the commenter recommended that the container tolerances in the interim rule continue in effect unchanged, since revisions at this point would subject handlers of nectarines to changes in container tolerances in the middle of the shipping season. The comment further indicated that the NAC will likely review the nectarine container tolerances at the end of the 1997 season and consider whether modifications are needed prior to the 1998 season.

The comment also noted three typographical errors in the interim final rule. The nectarine variety named "May Fire" should be spelled "Mayfire." Table 1 in § 916.356 (a)(1) has been corrected accordingly.

The name of a nectarine variety included in the variety-specific size requirements at § 916.356(a)(6) has also been corrected from "White Jewels (Arctic Snow)" to "Arctic Snow (White Jewel)."

Finally, the commenter noted that the spelling of "Kingcrest" should be changed to "Kingscrest" in references to that peach variety in Table 1 of paragraph (a)(1) and current paragraph (a)(5) of § 917.459. Those corrections are made by this rule.

The Department also noted a number of errors in the current text of §§ 916.356 and 917.459 that are corrected by this rule. The primary corrections restore regulatory text that was inadvertently misnumbered or removed during previous rulemaking actions, move certain text to more appropriate locations, and delete obsolete language no longer needed. Specific changes are listed below.

Paragraph (a)(1) of § 916.356 is revised to include an exemption from a grade requirement pertaining to color for nectarine varieties lacking red blush or red color on the skins. This provision was inadvertently omitted from the regulatory text in a previous rule.

Paragraphs (a)(1) of §§ 916.356 and 917.459 are revised to move the maturity tables, which were misnumbered, to a new subparagraph (iv). This new subparagraph also contains introductory text pertaining to the maturity tables, which was misnumbered. Also, provisions pertaining to appeals of maturity determinations are relocated in a new subparagraph (v).

In the interim final rule published in the **Federal Register** on April 1, 1997 (62 FR 15355), the new provisions pertaining to container tolerances were duplicatively numbered with the tolerances applicable to "CA Utility" quality nectarines and peaches. The latter tolerances are placed in subparagraphs (a)(1)(iii) of §§ 916.356 and 917.459. In § 916.356, current paragraph (c) is redesignated as paragraph (d), and the new container tolerances are moved to a new paragraph (c). In § 917.459, current paragraph (e) is redesignated as paragraph (f), and the new container tolerances are moved to a new paragraph (e).

As previously noted, the spelling of the "Mayglo" nectarine variety was corrected in paragraph (a)(3) of § 916.356; this rule makes that correction in paragraph (a)(2) of that section as well.

In § 917.459, obsolete language pertaining to minimum sizes for peaches is removed. Current paragraphs (a)(2) and (a)(4) are removed and current paragraphs (a)(3), (a)(5), and (a)(6) are redesignated as (a)(2), (a)(3), and (a)(4). Conforming changes are made in paragraphs (b) and (c) of that section as well.

After consideration of all relevant matter presented, including that contained in the interim final rule, as well as the committees' recommendations, the comment received, and other available information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 62 FR 15355 on April 1, 1997, is adopted as a final rule with the following changes:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 916 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 916.356 is amended by:

(A) Revising paragraphs (a)(1) introductory text, and (a)(1)(iii);

(B) Adding new paragraphs (a)(1)(iv), (a)(1)(v), and a new Table 1 with a note immediately following it after paragraph (a)(1)(iv);

(C) Removing the words "May Glo" and adding the word "Mayglo" in paragraph (a)(2);

(D) Adding the words "Arctic Snow (White Jewel)" after the words "Arctic Queen" and removing the words "White Jewels (Arctic Snow)" in paragraph (a)(6); and

(E) Redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 916.356 California Nectarine Grade and Size Regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed, but not badly misshapened: *Provided further*, That all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further*, That during the period April 1 through October 31, 1997, any handler may handle nectarines if such nectarines meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade and that such nectarines are mature and are:

(i) * * *

(ii) * * *

(iii) Tolerances. Not more than 10 percent, by count, of the nectarines in any one container may be below the requirements which are prescribed by this paragraph, including not more than 5 percent, by count, for any one defect, except split pits. An additional tolerance of 10 percent, by count, of the nectarines in any one container or bulk lot may contain nectarines affected with split pits. This means a total tolerance of 20 percent is allowed for all defects, including split pits, but not to exceed 15 percent for split pits alone.

(iv) The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color guides or such other tests as determined appropriate by the inspection agency. The Federal or Federal-State Inspection Service will use the maturity guides listed in Table 1 to paragraph (a)(1)(iv) in making maturity determinations for the specified varieties when inspecting to the "well matured" level of maturity. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, except that for the Fairlane, Tom Grand, and 61–61 varieties of nectarines, not less than an aggregate area of 80 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in Table 1 to paragraph (a)(1)(iv) may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well matured."

TABLE 1 TO PARAGRAPH (a)(1)(iv)

Column A variety	Column B maturity guide
Alshir Red	J
Ama Lyn	G
Apache	G
April Glo	H
Arm King	B
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Autumn Grand	L
Big Jim	J
Bob Grand	L
Del Rio Rey	G
Earliglo	I
Early Diamond	J
Early May	F
Early May Grand	H
Early Red Jim	J
Early Sungrand	H
Fairlane	L
Fantasia	J
Firebrite	H
Flamekist	L
Flaming Red	K
Flavor Grand	G
Flavortop	J
Flavortop I	K
Gold King	H
Grand Diamond	L
Grand Stan	F
Independence	H
July Red	L
Juneglo	H
June Grand	G
Kay Diamond	L
Kent Grand	L
King Jim	L
Kism Grand	J
Late Le Grand	L
Late Red Jim	J
Le Grand	H
Maybelle	F
May Diamond	I
Mayfire	H
Mayglo	H
May Grand	H
May Jim	I
May Kist	H
May Lion	J

TABLE 1 TO PARAGRAPH (a)(1)(iv)—Continued

Column A variety	Column B maturity guide
Mid Glo	L
Mike Grand	H
Moon Grand	L
Niagara Grand	H
Pacific Star	G
P–R Red	L
Red Diamond	L
Red Delight	I
Red Fred	J
Red Free	L
Red Glen	J
Red Glo	I
Red Grand	H
Red Jim	L
Red June	G
Red May	J
Regal Grand	L
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Sierra Star/181–119	G
Son Red	L
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Grand	G
Spring Red	H
Spring Top	B
Star Bright	G
Star Brite	J
Star Grand	H
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Lion	L
Summer Red	L
Summer Star	G
Sunburst	J
Sun Diamond	I
Sunfre	F
Sun Grand	G
Super Star	G
Tasty Free	J
Tasty Gold	H
Tom Grand	L
Zee Glo	J
Zee Grand	I

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed in this table.

(v) If a grower or handler believes his/her fruit is meeting the appropriate maturity level but the fruit has not been so graded by the inspector, he/she may appeal the inspection by calling the officer-in-charge of the local Federal-State Inspection Service office to arrange for an on-site examination of the fruit.

* * * * *

(c) Container tolerances. A package may contain not more than double any specified tolerance except that at least two defective specimens may be permitted in any package: *Provided*, That the averages for the entire lot are within the tolerances specified in this part.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

3. The authority citation for 7 CFR part 917 continues to read as follows:

4. Section 917.459 is amended by:

(A) Revising paragraphs (a)(1) introductory text, and (a)(1)(iii);

(B) Adding new paragraphs (a)(1)(iv) and (a)(1)(v), and a new Table 1 with a note immediately following it following paragraph (a)(1)(iv);

(C) Removing paragraph (a)(2) and redesignating paragraphs (a)(3), (a)(4), (a)(5) and (a)(6) as paragraphs (a)(2), (a)(3), (a)(4) and (a)(5);

(D) Revising the introductory text of paragraphs (b) and (c);

(E) Redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to read as follows:

§ 917.459 California Peach Grade and Size Regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: *Provided*, That an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged: *Provided further*, That during the period April 1 through November 23, 1997, any handler may handle peaches if such peaches meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 30 percent of the peaches in any container meet or exceed the requirements of the U.S. No. 1 grade and that such peaches are mature and are:

(i) Free from insect injury which has penetrated or damaged the flesh; split pits which cause an unhealed crack or one or more healed cracks which, either singly or in the aggregate, are more than ½ inch in length; and mold, brown rot, and decay; and

(ii) * * *

(iii) Tolerances. Not more than 10 percent, by count, of the peaches in any container may be below the requirements prescribed by this paragraph. Not more than one-half of this tolerance shall be allowed for any one cause. Individual containers in any lot may contain not more than one and one-half times the tolerances specified if the percentage of defects of the entire lot averages within the tolerances.

(iv) The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color chips or such other tests as determined appropriate by the inspection agency. The Federal or Federal-State Inspection Service will use the maturity guides listed in Table 1 to paragraph (a)(1)(iv) in making maturity determinations for the specified varieties when inspecting to the "well matured" level of maturity. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in Table 1 to paragraph (a)(1)(iv) may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified inappropriate measure of "well matured."

Table 1 to paragraph (a)(1)(iv)

Column A variety	Column B maturity guide
Angelus	I
Ambercrest	G
August Sun	I
Autumn Crest	I
Autumn Gem	I
Autumn Lady	H
Autumn Rose	I
Belmont (Fairmont)	I
Berenda Sun	I
Blum's Beauty	G
Cardinal	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Diamond Princess	J
Early Coronet	D
Early Delight	H
Early Elegant Lady	L
Early May Crest	H
Early O'Henry	I
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C
Fayette	I
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Golden Crest	H
Golden Lady	F
Honey Red	G
John Henry	J
July Elberta	C
July Lady	G
June Lady	G
June Pride	J
June Sun	H
Kearney	I
Kern Sun	H
Kingscrest	H
Kings Lady	I
Kings Red	I
Lacey	I
Mary Anne	G
May Crest	G
May Lady	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
O'Henry	I
Pacifica	G
Parade	I
Pat's Pride	D
Prima Lady	J
Prime Crest	H
Queencrest	G
Ray Crest	G
Red Cal	I
Red Dancer (Red Boy)	I
Redglobe	C
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rio Oso Gem	I
Royal Lady	J
Royal May	G
Ruby May	H
Ryan Sun	I
Scarlet Lady	F
September Sun	I
Sierra Crest	H
Sierra Lady	I
Sparkle	I
Springcrest	G
Spring Lady	H
Springold	D
Sugar Lady	J
Summer Lady	L
Summerset	I
Suncrest	G
Topcrest	H
Tra Zee	J
Willie Red	G
Zee Lady	L

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed in this table.

(v) If a grower or handler believes his/her fruit is meeting the appropriate maturity level but the fruit has not been so graded by the inspector, he/she may appeal the inspection by calling the officer-in-charge of the local Federal-State Inspection Service office to arrange for an on-site examination of the fruit.

* * * * *

(b) During the period April 1 through June 30 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a)(2), (a)(3) or (a)(4) of this section unless:

* * * * *

(c) During the period July 1 through October 31 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a)(2), (a)(3) or (a)(4) of this section unless:

* * * * *

(e) Container tolerances. The contents of individual packages in the lot are subject to the following limitations, provided the averages for the entire lot are within the tolerances specified in this part:

(1) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages shall have not more than double the tolerance specified.

(2) For packages which contain 10 pounds or less, individual packages are not restricted as to the percentage of defects.

* * * * *

Dated: September 18, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–25410 Filed 9–26–97; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–63–AD; Amendment 39–10147; AD 97–20–10]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes, that requires modification of the attitude and heading reference systems (AHRS). This amendment is prompted by a report of loss of power to both AHRS's during flight due to a faulty terminal block to which the signal ground for the AHRS's are connected. The actions specified by this AD are intended to prevent simultaneous power loss to both AHRS's, which could result in reduced controllability of the airplane.

DATES: Effective November 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 3, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to

include an airworthiness directive (AD) that is applicable to de Havilland Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on July 22, 1997 (62 FR 39194). That action proposed to require modification of the attitude and heading reference systems (AHRS).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 173 de Havilland Model DHC–8–100, –200, and –300 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $10 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $43,250, or $250 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the rules docket. A copy of it may be obtained from the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–20–10 De Havilland, Inc.: Amendment 39–10147. Docket 97–NM–63–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent simultaneous power loss to both attitude and heading reference systems (AHRS), which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, modify the AHRS's, in accordance with Bombardier Alert Service Bulletin S.B. A8–34–117, Revision 'C', dated February 14, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Bombardier Alert Service Bulletin S.B. A8–34–117, Revision 'C', dated February 14, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 3, 1997.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–01R1, dated February 3, 1997.

Issued in Renton, Washington, on September 19, 1997.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25416 Filed 9–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–15; Amendment 39–10137; AD 97–19–17]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT58 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company CT58 series turboshaft engines, that requires removal from service of certain compressor rear shafts, initial and repetitive inspections of specific critical rotating parts, and replacement if found cracked, until those parts are removed from service and replaced with improved design parts. This amendment is prompted by a stage 2 turbine wheel incident in 1993 which resulted in an increased awareness of small features on critical rotating parts which could affect part life. The actions specified by this AD are intended to prevent fatigue cracking on specific critical rotating parts, which could result in failure of the part, causing an uncontained engine failure and damage to the aircraft.

DATES: Effective November 28, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines, Technical Publications, 1000 Western Avenue, Lynn, MA 01910; telephone (781) 594–5102, fax (781) 594–2717. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CT58 series turboshaft engines was published in the **Federal Register** on April 3, 1997 (62 FR 15861). That action proposed to require removal from service of certain compressor rear shafts, initial and repetitive inspections of specific critical rotating parts, and replacement if found cracked, until those parts are removed from service and replaced with improved design parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public.

Since publication of the Notice of Proposed Rulemaking (NPRM), GE has issued Revision 2 to GE Aircraft Engines Service Bulletin (SB) No. (CT58) 72–181, CEB–284, dated July 15, 1997, which adds serial numbers (S/Ns) of certain affected Stage 1 and Stage 2 turbine wheels that require inspections. Revision 1 to GE Aircraft Engines SB No. (CT58) 72–181, CEB–284, dated November 29, 1995, is no longer current and is not an acceptable Alternative Method of Compliance (AMOC) for this AD.

In addition, GE has issued Revision 8 to GE Aircraft Engines SB No. (CT58) A72–162, CEB–258, dated June 16, 1997, that makes editorial changes to the SB. Revisions 5 through 7 of this SB are considered acceptable AMOCs for this AD.

Also, the FAA has revised the economic analysis to better reflect the lower number of affected engines, since not all Stage 1 and Stage 2 turbine wheels now require inspections, only those listed by S/Ns in GE Aircraft Engines SB No. (CT58) 72–181, CEB–284, dated July 15, 1997.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 400 engines of the affected design in the worldwide fleet. The FAA estimates that 126 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately zero additional work hours per engine to accomplish the required actions. Required parts will cost approximately $2,730 per engine, based on the estimated current part cost, as the manufacturer will prorate the cost to the operator downward by a factor equal to the quotient of the difference between the original life limit (4,000 hours time in service) and the total cycles of life consumed at time of removal, divided by the original life limit. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $56,650.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the rules docket. A copy of it may be obtained from the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–19–17 General Electric Company: Amendment 39–10137. Docket 97–ANE–15.

Applicability: General Electric Company (GE) Models CT58–100–2, –110–1/–2, –140–1/–2, and T58–GE–3/–5/–10/–100 turboshaft engines, installed on but not limited to Boeing Vertol 107 series, and Sikorsky S61 and S62 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking on specific critical rotating parts, which could result in failure of the part, causing an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Determine hours time in service (TIS) and cycles in service (CIS) in accordance with the improved methodology described in GE Aircraft Engines Service Bulletin (SB) No.

(CT58) A72–162, CEB–258, Revision 8, dated June 16, 1997.

(b) For engines that have engaged in repeated heavy lift (RHL) operations, as defined in paragraph (e) of this AD, accomplish the following:

(1) For compressor rear shafts, Part Numbers (P/N's) 4000T29P01/P03, 5016T95P01/P04, and 5013T86P03, accomplish the following:

(i) For compressor rear shafts, with either 2,975 or more hours TIS, or 9,550 or more CIS, on the effective date of this AD, remove compressor rear shafts and replace with a serviceable compressor rear shaft at the next light overhaul or next exposure of compressor rear shafts after the effective date of this AD, whichever occurs first.

(ii) For all other compressor rear shafts, remove compressor rear shafts and replace with a serviceable compressor rear shaft, prior to accumulating 3,000 hours TIS, or 9,600 CIS, whichever occurs first.

(iii) For all compressor rear shafts, remove from service and replace with a serviceable, redesigned compressor rear shaft, P/N 5016T95P06, not later than December 31, 1997.

(2) Initially inspect the ten rotating parts specified in paragraph (d) of this AD for cracks at the times specified in sub-paragraphs (i) and (ii) of this paragraph, and, thereafter, inspect at each light overhaul or major overhaul until the parts are retired from service. Perform the inspections in accordance with the procedures described in GE Aircraft Engines SB No. (CT58) 72–181, CEB–284, Revision 2, dated July 15, 1997. Prior to further flight, replace parts found cracked during these inspections with serviceable parts.

(i) For parts with greater than the baseline time in service (TIS) on the effective date of this AD, inspect at the earliest occurrence of the following after the effective date of this AD: the next light overhaul, the next major overhaul, or the next exposure of the affected parts.

(ii) For parts with less than or equal to the baseline TIS on the effective date of this AD, inspect within 1,000 hours TIS from the listed baseline TIS.

(c) For engines that have never engaged in RHL operations, accomplish the following:

(1) For compressor rear shafts, P/N's 4000T29P01/P03, 5016T95P01/P04, and 5013T86P03, remove compressor rear shafts and replace with a serviceable compressor rear shaft, prior to accumulating 9,600 CIS, or 9,000 hours TIS, whichever occurs first. Prior to December 31, 1999, replace compressor rear shafts with a serviceable, redesigned compressor rear shaft, P/N 5016T95P06.

(2) Initially inspect the ten rotating parts specified in paragraph (d) of this AD for cracks at the times specified in sub-paragraphs (i) and (ii) of this paragraph, and, thereafter, at each light overhaul or major overhaul until the parts are retired from service. Perform the inspections in accordance with the procedures described in GE Aircraft Engines SB No. (CT58) 72–181, CEB–284, Revision 2, dated July 15, 1997. Prior to further flight, replace parts found cracked during these inspections with serviceable parts.

(i) For parts with greater than the baseline TIS on the effective date of this AD, inspect at the earliest occurrence of the following after the effective date of this AD: the next light overhaul, the next major overhaul, or the next exposure.

(ii) For parts with less than or equal to the baseline TIS on the effective date of this AD, inspect within 2,000 hours TIS from the listed baseline hours.

(d) For the purpose of performing the inspections required by paragraphs (b)(2) and (c)(2) of this AD, the following baseline TIS are established:

(1) For compressor rotor spool assemblies, P/N's 6010T57G04 and 6010T57G08, whether or not used in RHL operations, baseline is 2,000 hours TIS.

(2) For turbine front shafts, P/N's 5003T35P01 and 573D358P002, whether or not utilized in RHL operation, baseline is 1,000 hours TIS.

(3) For turbine coupling shafts, P/N's 4001T26P01 and 278D987P002, if utilized in RHL operation, baseline is 1,000 hours TIS; if never utilized in RHL operations, baseline is 2,000 hours TIS.

(4) For turbine rear shafts, P/N's 4005T29P01 and 37D400244P101, whether or not utilized in RHL operation, baseline is 2,000 hours TIS.

(5) For Stage 1 front cooling plates, P/N's 37C300055P101, whether or not utilized in RHL operation, baseline is 1,000 hours TIS.

(6) For Stage 1 aft cooling plates, P/N's 3002T25P01 and 645C334P002, whether or not utilized in RHL operation, baseline is 1,000 hours TIS.

(7) For Stage 2 front cooling plates, P/N's 3000T88P02 and 645C332P002, whether or not utilized in RHL operation, baseline is 1,000 hours TIS.

(8) For Stage 2 aft cooling plates, P/N's 3002T27P01 and 645C336P002, whether or not utilized in RHL operation, baseline is 1,000 hours TIS.

(9) For Stage 1 turbine wheels, P/N 4002T17P02 TF3, listed by Serial Numbers (S/Ns) in paragraph 1.A. (3) of GE Aircraft Engines SB No. (CT58) 72–181, CEB–284, Revision 2, dated July 15, 1997, if utilized in RHL operation, baseline is 1,000 hours TIS; if never utilized in RHL operation, baseline is 2,000 hours TIS.

(10) For Stage 2 turbine wheels, P/N 4002T96P02 TF3, listed by S/Ns in paragraph 1.A. (3) of GE Aircraft Engines SB No. (CT58) 72–181, CEB–284, Revision 2, dated July 15, 1997, if utilized in RHL operation, baseline is 1,000 hours TIS; if never utilized in RHL operation, baseline is 2,000 hours TIS.

(e) For the purpose of this AD, the following definitions apply:

(1) RHL operation is defined as performing more than 10 lift-carry-drop cycles per hour TIS without landing, or more than 10 takeoffs and landings per hour TIS.

(2) Light overhaul is defined as scheduled engine maintenance that allows the engine to continue in service until scheduled major overhaul time is reached.

(3) Major overhaul is defined as scheduled engine maintenance including complete engine inspections and tests with repair or replacement of parts or components as necessary.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(h) The actions required by this AD shall be done in accordance with the following GE Aircraft Engines SBs:

Document number	Pages	Revision	Date
(CT58) 72–181, CEB–284	1–22	2	July 15, 1997.
Total pages	22		
(CT58) A72–162, CEB–258	1	7	April 25, 1997.
	2,3	8	June 16, 1997.
	4,5	5	May 12, 1994.
	6	7	April 25, 1997.
	7,8	5	May 12, 1994.
	9–11,	7	April 25, 1997.
	12–16	5	May 12, 1994.
	17	7	April 25, 1997.
	18–20	5	May 12, 1994.

Document number	Pages	Revision	Date
	21	8	June 16, 1997.
	22–24	5	May 12, 1994.
	25, 26	7	April 25, 1997.
	27	5	May 12, 1994.
Total pages	27		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, Technical Publications, 1000 Western Avenue, Lynn, MA 01910; telephone (781) 594–5102, fax (781) 594–2717. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on November 28, 1997.

Issued in Burlington, Massachusetts, on September 11, 1997.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–25581 Filed 9–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 960918265–7203–04]

RIN 0694–AB09

Satellite Fuel, Ground Support Equipment, Test Equipment, Payload Adapter/Interface Hardware, and Replacement Parts for the Preceding Items, When Included With a Specific Commercial Communications Satellite Launch

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Commerce Control List of the Export Administration Regulations by revising the List of Items Controlled, of Export Control Classification Number (ECCN) 9A004, to provide that satellite fuel, ground support equipment, test equipment, payload adapter/interface hardware and replacement parts for the preceding items are subject to Commerce jurisdiction when they are included with a specific commercial communications satellite. This rule amends the interim final rule of October 21, 1996 that transferred jurisdiction of all commercial communications satellites from the Department of State to the Department of Commerce.

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Gene Christiansen, Office of Strategic Trade, Telephone: (202) 482–2984.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1996, the Department of Commerce published an interim final rule in the **Federal Register** (61 FR 54540) that amended the Export Administration Regulations (EAR) by revising Export Control Classification Number (ECCN) 9A004 to control all commercial communications satellites. The interim final rule also imposed enhanced national security and foreign policy controls ("SI" controls for significant items) on all commercial communications satellites controlled under ECCN 9A004.a.

This final rule amends the Commerce Control List of the Export Administration Regulations by revising the List of Items Controlled, of Export Control Classification Number (ECCN) 9A004, to provide that satellite fuel, ground support equipment, test equipment, payload adapter/interface hardware and replacement parts for the preceding items are subject to Commerce jurisdiction when they are included with a specific commercial communications satellite.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, notice of August 15, 1995 (60 FR 42767), and August 14, 1996 (61 FR 42527); and August 13, 1997 (62 FR 43629).

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR Parts 730–799) is amended as follows:

PART 774—[AMENDED]

1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995, 3 CFR 1995 Comp. 501 (1996); Notice of August 14, 1996 (61 FR 42527, August 15, 1996); Notice of August 13, 1997 (62 FR 43629, August 15, 1997).

Supplement No. 1 to Part 774 [Amended]

2. In Supplement No. 1 to part 774, the Commerce Control List, Category 9 (Propulsion Systems, Space Vehicles, and Related Equipment), Export Control Classification Number (ECCN) 9A004 is amended by revising the List of Items Controlled to read as follows:

9A004 "Spacecraft", (not including their payloads) and specialty designed components therefor that are not subject to the authority of the Department of State. (See notes.)

* * * * *

List of Items Controlled

Unit: Equipment in number; systems, components, parts and accessories in $ value.

Related Controls: (1) The corresponding EU list number controls space launch vehicles (not including their payloads) and other "spacecraft" (not identified in this CCL entry). These items are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls (See 22 CFR part 121, Category XV). For the control status of products contained in "spacecraft" payloads, see the appropriate categories of the U.S. Munitions List (USML). (2) For the control status of items contained in "spacecraft" payloads subject to the EAR, see the appropriate entries on the CCL.

Related Definition: Transferring registration or operational control to any foreign person of any commercial communications satellite controlled by this entry must be authorized on a license issued by the Bureau of Export Administration. This requirement applies whether the commercial communications satellite is physically located in the United States or abroad.

Items

a. Commercial communications Satellites;

Technical Note: Commercial communications satellites are subject to Commerce licensing jurisdiction even if they include the individual munitions list systems, components, or parts identified in Category XV(f) of the United States Munitions List (USML). In all other cases, these Category XV(f) systems, components, or parts remain on the USML, except that satellite fuel, ground support equipment, test equipment, payload adapter/interface hardware, replacement parts for the preceding items, and non-embedded, solid propellant orbit transfer engines ("kick motors") are subject to Commerce licensing jurisdiction (and not controlled on the USML) when they are to be utilized for the specific commercial communications satellite launch, provided the solid propellant "kick motor" being utilized is not specifically designed or modified for military use or capable of being restarted after achievement of mission orbit (such orbit transfer engines are always controlled under Category IV of the USML). Technical data (as defined in § 120.10 of the International Traffic in Arms Regulations (ITAR)) and defense services (as defined in § 120.9 of the ITAR) related to the systems, components, or parts referred to in Category XV(f) of the USML are always controlled under the USML, even when the satellite itself is licensed by the Department of Commerce.

Notes: 1. Military communication satellites or multi-mission satellites, including commercial communications satellites having additional non-communication mission(s) or payload(s) are under the jurisdiction of the Department of State.

2. As indicated in the Technical Note, under some circumstances a license application under 9A004 includes other items, which are necessary for the commercial communications satellite launch, but are normally subject to State Department jurisdiction. Certain of these items (e.g., kickmotors, satellite fuel, etc.) are controlled by the Missile Technology Control Regime (MTCR) Equipment and Technology Annex.

b. [Reserved]

c. Other "spacecraft" not subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls under 22 CFR part 121, Category XV.

Notes: 1. ECCN 9A004.c includes the international space station being developed, launched and operated under the supervision of the U.S. National Aeronautics and Space Administration. Exporters requesting a license from the Department of Commerce for spacecraft other than the international space station or a commercial communications satellite specified in 9A004 must provide a statement from the Department of State, Office of Defense Trade Controls, verifying that the item intended for export is under the licensing jurisdiction of the Department of Commerce.

2. All other spacecraft, including all other satellites not controlled under 9A004 and components, parts, accessories, attachments, associated equipment, and ground support equipment therefor are subject to the export licensing authority of the Department of State.

3. Items on Category XV(f) of the USML and certain other USML items designated in the technical note, above, that are included in a commercial communications satellite to be exported under a Commerce license must be specifically listed on the Commerce license application. Such USML items when not included in a specific commercial communications satellite are under the jurisdiction of the Department of State.

4. Technical data provided to the launch provider (form, fit, function, mass, electrical, mechanical, dynamic/environmental, telemetry, safety, facility, launch pad access, and launch parameters) for commercial communications satellites that describe the interfaces for mating of the satellite to the launch vehicle and parameters for launch (e.g., orbit, timing) of the satellite, are under Commerce jurisdiction. Other technical data and all defense services and technical assistance for satellite and/or launch vehicles, including compatibility, integration, or processing data are controlled and subject to licensing by the Department of State, in accordance with 22 CFR parts 120 through 130. Approval for such technical assistance will require a Technical Assistance Agreement (TAA) and may require U.S. Government oversight.

5. Once a satellite is launched, items remaining unlaunched are required to be returned immediately to the United States. If the satellite launch is canceled or unduly delayed, the satellite and all support equipment must be returned immediately to the United States.

6. Detailed design, development, production, or manufacturing data for all spacecraft, including satellites, regardless of which agency has jurisdiction over the export, and all systems components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for articles under Category XV on the United States Munitions List (including software source code and operating algorithms) are subject to licensing by the Department of State. This does not include that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance that a U.S.-built item intended to operate in space has been designed, manufactured and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations) as well as data necessary for normal in-orbit satellite operations, to evaluate in-orbit anomalies, and to operate and maintain associated ground station equipment (except encryption hardware).

Dated: September 17, 1997.

William V. Skidmore,

Acting Assistant Secretary for Export Administration.

[FR Doc. 97–25765 Filed 9–26–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 247

Use of Columbia River Treaty Fishing Access Sites

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is promulgating regulations for application to the Columbia River Fishing Access Sites. The current regulations in part 248 do not apply to these new fishing sites which are being transferred to the Bureau from the U.S. Army Corps of Engineers. This proposed rule gives the Bureau the authority to manage and maintain these fishing sites for tribal fishermen. Part 248 is still required for the maintenance of the in-lieu fishing sites.

DATES: Interim rule effective September 29, 1997. Comments must be submitted on or before November 28, 1997.

ADDRESSES: Submit comments on this rule to Mr. Chuck James, Area Archeologist, Portland Area Office, Bureau of Indian Affairs, 911 N.E. 11 Ave., Portland, OR 97232, (503) 231–6229.

FOR FURTHER INFORMATION CONTACT: Chuck James (Area Archeologist), (503) 231–6229.

SUPPLEMENTARY INFORMATION: On November 1, 1988, the President signed into law Pub. L. 100–581, Title IV—Columbia River Treaty Fishing Access Sites. This bill, provides that certain designated Federal lands shall be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities for members of the Nez Perce, Umatilla, Warm Springs, and Yakima Indian Tribes. The law directs the Secretary of the Army to make various specified improvements to both existing and additional lands, with the Secretary of the Army maintaining such lands until they are transferred to the Secretary of the Interior.

One of the sites will be transferred to BIA jurisdiction at the time these regulations are published. Without a final rule, the BIA would not have regulations to follow in administering the sites.

Related regulations which cover the existing In-Lieu Fishing Sites appear at 25 CFR 248, and are being revised into plain English and published as a proposed rule at a future date. Because Treaty Fishing Access Sites are authorized through separate legislation and have different constraints than the In-Lieu Sites, different regulations are necessary.

The Bureau agreed that the States do not have regulatory jurisdiction or authority over the in-lieu fishing sites. The sites are federal properties held by the United States for the benefit of the Indian Tribes with treaty fishing rights in the Columbia River. The Bureau regulates and manages the sites as a matter of federal law, but, in the absence of specific Bureau regulations governing health, sanitation and safety requirements, the regulation provides for the incorporation by reference of state or U.S. Public Health Service standards. We addressed the issue of non-fish oriented commercial enterprises, as questions have arisen on that subject since the promulgation of the 248 regulations.

In August 1990, the United States Court of Appeals for the Ninth Circuit issued its opinion in *Sohappy* v. *Hodel*, 911 F.2d 1312 (9th Cir. 1990). In that opinion the court, focused on the 1945 law which authorized the in-lieu sites. The court determined that in enacting the 1945 Act, Congress intended that the existing conditions at the in-lieu sites were to continue. The court found that these conditions included year-round dwellings. Because the regulations published here cover sites authorized not under the 1945 Act, but under the 1988 Act, the Bureau believes that the *Sohappy* decision does not apply to the new fishing access sites. These regulations, therefore, address the limitations on constructing dwellings on the new sites.

One distinguishing feature of the 1988 Act is that different Tribes are included than those that Congress included under the 1945 Act. The 1988 Act, in addition to the Yakima, Warm Springs, and Umatilla Tribes, includes the Nez Perce Tribe. The 1945 Act includes only the Yakima, Umatilla, Warm Springs and other Columbia River Indians. If the existing regulations at 25 CFR 248 were to apply to these new fishing access sites, the Nez Perce Indians, although they may be able to fish in the area, would not have a legal basis for using these new sites.

Archaeologic and historic evidence indicates that some fishing areas have been used through historic and prehistoric times. Section 247.5(c) is intended to protect the historic and archaeologic resources. Authority for this regulatory activity comes from Archeological Resources Protection Act of 1979, as amended 16 U.S.C. 470, Pub. L. 96–95, and amendments (ARPA).

Section 247.13(a) explains that the Area Director may close temporarily, facilities at the sites for necessary maintenance during the winter or at other times if necessary, and that before closing the facilities, the Area Director will consult with delegated tribal representatives, if possible. The BIA intends to ensure access to fishing sites even during periods in which the facilities might be closed for maintenance. The BIA intends not to interfere with ceremonial fishing activities. If tribal members require the use of a facility during a period of planned closure, then a delegated tribal representative should contact the Area Director to arrange if possible for a particular facility to be opened during that time.

Interested parties involved in this rulemaking include: The Yakima Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, The Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Columbia River Inter Tribal Fisheries Commission (CRITFC). The legislation was passed for the benefit of the named tribes. Together, these tribes comprise CRITFC's constituency. CRITFC is a coordinating entity for Columbia River fisheries issues and law enforcement. The interested parties sent representatives to monthly task force meetings from 1989 through the present. Draft regulatory language was distributed at these meetings, and mailed to the tribal representatives, and the tribal governments. In addition to the task force meetings, the Portland Area Director and staff, and a Solicitor's office attorney met with the tribes on their reservations as requested.

We are publishing this interim rule by the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Our policy is to give the public an opportunity to participate in the rulemaking process by submitting written comments. We will consider all comments received during the public comment period. We will determine necessary revisions and publish those in the **Federal Register**. Please refer to this preamble's **ADDRESSES** section for where you must submit your written comments on this interim rule.

We certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule is not a significant rule under Executive Order 12866 and does not require approval by the Office of Management and Budget.

We determined this proposed rule:

(a) Does not constitute a major Federal action significantly affecting the human environment, and no detailed statement is needed under the Environmental Policy Act of 1969;

(b) Does not have significant takings implications in accordance with Executive Order 12630;

(c) Does not have significant Federalism effects;

(d) Does not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*); and

(e) Does not contain collections of information requiring approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

(f) Does not impose an unfunded mandate upon the public or state or local governments.

List of Subjects in 25 CFR Part 247

Fisheries, Fishing, Indians, Indians—claims, Indians—law.

For the reasons set out in the preamble, part 247 is added to 25 CFR as follows:

PART 247—USE OF COLUMBIA RIVER TREATY FISHING ACCESS SITES

Sec.

247.1 What definitions apply to this part?
247.2 What lands are subject to these regulations?
247.3 Who is eligible to use the sites?
247.4 How can eligible users be identified?
247.5 What laws and regulations apply to the people who use these sites?
247.6 What will happen if I damage Government-owned property?
247.7 Can I build a structure?
247.8 What am I responsible for if I use the facilities?
247.9 What other rules apply while I am using the facilities?
247.10 What will happen if I abandon property?
247.11 What other restrictions apply to use of the sites?
247.12 Will I have to pay to use a site?
247.13 Are the facilities available year around?
247.14 Can I hook up a campsite to on-site or off-site utilities?
247.15 May I reserve a campsite or drying shed?
247.16 What fire is permitted?
247.17 What are the restrictions on fires?
247.18 What are the sanitation prohibitions?
247.19 Can a site be used for commercial enterprises other than fishing enterprises by the tribes?
247.20 What are the road and trail prohibitions?
247.21 Can I appeal an administrative action?

Authority: 25 U.S.C. 2 and 9; Pub. L. 100–581, Title IV.

§ 247.1 What definitions apply to this part?

Abandoned property means property left at a site while the owner of the property is not actively engaged in fishing or drying or processing fish. Abandoned property may include:

(1) Vehicles;
(2) Mobile trailers;
(3) Campers;
(4) Tents;
(5) Tepees;
(6) Boats, or;
(7) Other personal property.

Archaeological Resource means material remains of prehistoric or historic human life or activities that are of archaeological interest and are at least 50 years of age, and the physical site, location, or context in which they are found.

Area Director means the position responsible for administration of the Portland Area of the Bureau of Indian Affairs.

Campfire means fire, not within any building, motor home or trailer, which is used for cooking, personal warmth, lighting, ceremonial or aesthetic purposes.

Damage means to injure, mutilate, deface, destroy, cut, chop, girdle, dig, excavate, kill or in any way harm or disturb.

Secretary means the Secretary of the Interior or his designee.

Sites means Treaty Fishing Access Sites.

Treaty Fishing Access Sites means all Federal lands acquired by the Secretary of the Army and Transferred to the Secretary of the Interior pursuant to Public Law 100–581, Title IV, November 1, 1988, to be administered to provide access to usual and accustomed fishing areas and ancillary fishing facilities.

Vehicle means any device in, upon, or by which any person or property is or may be transported, and including any motor, frame, chassis, or body of any motor vehicle, or camper shell, except devices used exclusively upon stationary rails or tracks.

§ 247.2 What lands are subject to these regulations?

(a) Any treaty fishing access sites and ancillary fishing facilities.

(b) These sites and facilities are managed for the exclusive use of members of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakima Indian Reservation.

(c) The Area Director may suspend or withdraw the privileges of use of any or all of the facilities at the sites for any violation of the regulations in this part or of any rules issued under the regulations in this part.

§ 247.3 Who is eligible to use the sites?

(a) You may use the sites for access to usual and accustomed fishing areas and ancillary fishing facilities if you are a member of the Confederated Tribes and Bands of the Yakima Indian Nation (Yakima), the Confederated Tribes of the Warm Springs Reservation of Oregon (Warm Springs), the Confederated Tribes of the Umatilla Indian Reservation (Umatilla), and the Nez Perce Tribe (Nez Perce).

(b) The general public or people fishing who do not belong to the tribes listed above cannot use these sites.

(c) Families of such Indians may camp on the sites.

(d) You may not deny access to these sites to any eligible user.

§ 247.4 How can eligible users be identified?

(a) In order to use these sites you must posses an identification card issued by your tribe identifying you as a member of that tribe.

(b) You must exhibit the identification upon request of authorized Federal, State, local or tribal officials.

§ 247.5 What laws and regulations apply to the people who use these sites?

You may use access sites only if you obey the following rules:

(a) You may not use any of the sites for any activity that is contrary to the provisions of your tribe or contrary to Federal law or regulation, or in the absence of Federal law or regulation governing health, sanitation, and safety requirements, State or U.S. Public Health Service standards.

(b) The Area Director may suspend or withdraw the privileges of use of any or all of the facilities at the sites for any violation of the regulations in this part or for any violation of any rules issued under the regulations in this part. You cannot dig in, destroy, or remove any portion of a prehistoric or historic archaeological site or artifact.

(c) Nothing contained in the regulations in this part is intended or shall be construed as limiting or affecting any treaty rights of any tribe nor as subjecting any Indian properly exercising tribal treaty rights to State fishing laws or regulations that are not compatible with those rights.

§ 247.6 What will happen if I damage Government-owned property?

If you commit any act of vandalism, depredation, destruction, theft, or misuse of the land, buildings, fences, signs, or other structures that are the property of the United States you will be subject to prosecution under applicable Federal or State law.

§ 247.7 Can I build a structure?

(a) You may not build any structures at the sites except as allowed under paragraph (d) of this section.

(b) You may use the camping facilities that have been constructed at the sites.

(c) In addition to these structures, you may camp in tents, tepees, campers, and mobile trailers. You must remove any tents, tepees, campers, temporary drying sheds, and mobile trailers from the sites at any time you are not actively engaged in fishing, drying fish, or processing fish by other means, and during the time a site is closed for maintenance.

(d) Where the Area Director has designated areas for the construction of temporary drying sheds, you may construct a temporary drying shed where space is available. You must remove any temporary drying shed you build.

(e) If you erect or maintain a structure in violation of this section, the Area Director may order it removed at any time.

(f) The Area Director:

(1) Is not required to notify you before removing the structure; and

(2) Will charge you the cost of disposing of the structure.

§ 247.8 What am I responsible for if I use the facilities?

You are responsible for:

(a) Campsites, drying sheds and other facilities during the time you occupy or use them; and

(b) Any personal property that you erect, place, or maintain on the site during the time you occupy the site, including:

(1) Tents;
(2) Tepees;
(3) Campers;
(4) Mobile trailers;
(5) Temporary drying sheds;
(6) Fishing platforms;
(7) Boats; and
(8) Other fishing equipment.

§ 247.9 What other rules apply while I am using the facilities?

(a) You cannot construct, take possession of, occupy or otherwise use any access site or structure for residential purposes at an access site.

(b) Neither the United States nor any officer or employee thereof warrants, makes any representation, or is responsible for the safety or condition of any personal property.

§ 247.10 What will happen if I abandon property?

If you abandon property at a site, it may be removed without your consent and disposed of at your expense, if the Area Director approves.

§ 247.11 What other restrictions apply to use of the sites?

The Area Director may prescribe and post at the sites regulations covering:

(a) Camping;
(b) Picnicking;
(c) Use of alcoholic beverages;
(d) Setting or use of fires;
(e) Use of the sites for cleaning fish;
(f) Deposit of garbage, paper, cans, bottles, or rubbish of any kind; or
(g) Use of the sites for any commercial activity (including commercial purchase of fish).

§ 247.12 Will I have to pay to use a site?

No. Neither you nor any member of your family will be charged for using a site in accordance with this part.

§ 247.13 Are the facilities available year around?

(a) The Area Director may close facilities at the sites for necessary maintenance during the winter or at other times if necessary. Before closing the facilities, the Area Director will consult with delegated tribal representatives, if possible.

(b) You will still be able to access your treaty fishing rights on the Columbia River through these sites while they are closed.

(c) If any sites are closed or restricted, any affected tribe can contact the Area Director and ask that the sites be opened. The Area Director will work together with the tribes to consider these requests.

§ 247.14 Can I hook up a campsite to on-site or off-site utilities?

(a) You must share access to all on-site facilities.

(b) Because there are a limited number of faucets available, only short-term hose use is allowed to ensure that others have access to water.

(c) You may not tap into electrical lines or outlets, or have electrical power brought in from an outside source for campsite use.

§ 247.15 May I reserve a campsite or drying shed?

No. You may not reserve a campsite, drying shed, or other facility.

(a) You must use campsites, drying sheds, and other facilities on a first-come, first-served basis.

(b) You may not occupy one or more campsites solely for the purpose of reserving a site for another tribal member.

§ 247.16 What fire is permitted?

(a) You may have a fire in designated fire places, and other areas designated for fires.

(b) You may have a fire inside a drying shed in a manner that does not jeopardize the structure.

§ 247.17 What are the restrictions on fires?

(a) You cannot burn timber, trees, slash, brush or grass unless you have a permit issued by the Area Director or his designee.

(b) You cannot build a fire in an unsafe location or leave a fire without completely extinguishing it.

(c) You must control all fire and not allow it to escape.

§ 247.18 What are the sanitation prohibitions?

(a) You cannot deposit in any toilet, toilet vault, or plumbing fixture anything that could damage or interfere with the operation or maintenance of the fixture.

(b) You must dispose of all garbage, including any paper, cans, bottle, sewage, waste water or material, either by removal from the site, or by depositing it into receptacles or at places provided for such purposes.

(c) You may not bring refuse, debris, or toxic or hazardous materials to the sites for disposal.

(d) All toxic or hazardous materials must be properly removed from the sites. You may not dispose of such materials in a sewer line, tank, drain, storm drain, or on the ground.

(e) You must not place in or near the river or other water any substance that pollutes or may pollute the water.

(f) If dumping stations are not available, you must transport sewage off site.

§ 247.19 Can a site be used for commercial enterprises other than fishing enterprises by the tribes?

(a) You may operate commercial activities during commercial fishing seasons, and subsistence activities, incidental to treaty fishing on the site.

(b) You may not construct or operate other types of commercial enterprises, such as firework stands.

§ 247.20 What are the road and trail prohibitions?

(a) You cannot damage or leave in a damaged condition any road, trail, or segment thereof.

(b) You cannot block, restrict, or otherwise interfere with the use of a road, trail, or gate.

§ 247.21 Can I appeal an administrative action?

You may appeal any decision made by the Area Director under this part to the Commissioner of Indian Affairs. You may appeal any decision of the Commissioner of Indian Affairs to the Secretary of the Interior in accordance with part 2 of this chapter.

Dated: September 16, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–25495 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA105–4066a; FRL–5897–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania, General Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision consists of Pennsylvania's rule for General Conformity which sets forth policy, criteria, and procedures for demonstrating and assuring conformity of non-transportation related Federal projects to all applicable implementation plans. The intended effect of this action is to approve Pennsylvania's General Conformity Rule as a SIP revision.

DATES: This action is effective November 28, 1997 unless notice is received on or before October 29, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III office or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the Region III address.

SUPPLEMENTARY INFORMATION: On June 12, 1997, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP) to meet the requirements of 40 CFR 51.851, General Conformity. Pennsylvania adopted the provisions of the Federal General Conformity Rule, 40 CFR part 93, subpart B, effective November 16, 1994. This action to approve General Conformity Rule (25 Pa. Code Chapter 127, §§ 127.801 and 127.802) is being taken under section 110 of the Clean Air Act (CAA).

Summary of the SIP Revision

The Commonwealth of Pennsylvania has adopted by reference the General Conformity Rule promulgated by the U.S. Environmental Protection Agency under section 176(c) of the CAA and the regulations codified at 40 CFR part 93, subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The Federal rule requires that all Federal actions conform to applicable air quality implementation plans. This rule only applies to areas designated nonattainment under section 107 of the CAA and described in the 40 CFR part 81 or areas with approved maintenance plans under section 175(A) of the CAA.

The Federal rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of non-transportation related Federal projects to all applicable implementation plans developed pursuant to section 110 and part D of the CAA. The rule generally applies to Federal actions except:

(1) Those required under the transportation conformity rule (40 CFR part 93, subpart A);

(2) Actions with associated emissions below specified de minimis levels; and

(3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

Some examples of Federal actions requiring conformity determination include: Airport Construction/ Modification grants; Leasing of Federal Land; Granting a Permit; Construction of Federal Office Buildings; Private Construction on Federal Land; Prescribed Burning; Reuse of Military Bases; and Water Treatment Plants.

At 40 CFR 51.851, State Implementation Plans, EPA promulgated the requirements that must be adopted by a state and submitted as a SIP revision to implement the General Conformity revisions. The provisions adopted by Pennsylvania are those contained in and required by the Federal rule. EPA has reviewed Pennsylvania General Conformity Rule, and has determined that it satisfies the requirements of 40 CFR 51.851. A Technical Support Document (TSD) has been prepared which details the EPA's evaluation of Pennsylvania's General Conformity Rule. Interested parties may obtain a copy of the TSD by contacting the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 28, 1997 unless, by October 29, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 28, 1997.

Final Action

EPA is approving Pennsylvania's 25 Pa. Code Chapter 127, §§ 127.801 and 127,802, General Conformity Rule submitted by Pennsylvania as a SIP revision on June 12, 1997, which was effective on November 9, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that included a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to the publication of the rule of today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 1997.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, on the Pennsylvania General Conformity Rule, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: September 16, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(126) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(126) Revisions to the Pennsylvania State Implementation Plan on June 12, 1997 by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) A letter of June 12, 1997 from the Pennsylvania Department of Environmental Protection transmitting the General Conformity Rule.

(B) 25 Pa. Code Chapter 127, §§ 127.801 and 127.802—General Conformity Rule, effective November 9, 1996.

(ii) Additional material from the Pennsylvani's June 12, 1997 submittal pertaining to 25 Pa. Code Chapter 127.

* * * * *

[FR Doc. 97–25654 Filed 9–26–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–103–21a; FRL–5898–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of a NO_X RACT Determination for Panther Creek Energy Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires nitrogen oxides (NO_X) reasonably available control technology (RACT) for Panther Creek Energy Facility located in Carbon County, Pennsylvania. The intended effect of this action is to approve a source-specific operating permit that establishes the above-mentioned RACT requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective November 28, 1997 unless notice is received on or before October 29, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David Campbell, Air, Radiation, and Toxics Division, Mailcode 3AT22, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Kelly L. Bunker, (215) 566–2177, at the EPA Region III office or via e-mail at Bunker.Kelly@epamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the Region III address.

SUPPLEMENTARY INFORMATION: On September 13, 1996 and January 21, 1997, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). Each source subject to this rulemaking will be identified and discussed below. Any plan approvals and operating permits submitted coincidentally with those being approved in this document, and not identified below, will be addressed in a separate rulemaking action.

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_X sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in sections 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The Pennsylvania submittal that is the subject of this document is meant to satisfy the RACT requirements for one source in Pennsylvania.

Summary of SIP Revision

The details of the RACT requirements for the source-specific operating permit can be found in the docket and accompanying technical support document (TSD) and will not be reiterated in this document. Briefly, EPA is approving a revision to the Pennsylvania SIP pertaining to the determination of RACT for one major source. The operating permit contains conditions irrelevant to the determination of NO_X RACT. Consequently, these provisions are not being included in this approval for source-specific NO_X RACT.

RACT Determination

The Panther Creek Energy Facility is a cogeneration utility located in Carbon County. NO_X RACT for the facility is addressed in operating permit # 13–0003. The majority of NO_X emissions at the facility are generated by two circulating fluidized bed (CFB) boilers. The facility is not a major VOC source. NO_X RACT for the two CFB boilers was determined to be continuation of current operating conditions which includes the operation of selective non-catalytic reduction (SNCR) controls. The RACT emission rate for each CFB boiler is never to exceed 0.15 pounds of NO_X/MMBtu and 72.5 pounds/hour, based on an one-hour average. Further information on the RACT requirements for this facility are summarized in the accompanying technical support document, which is available upon further request, from the EPA Region III office listed in the **Addresses** section of this document.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action is effective November 28, 1997 unless notice is received on or before October 29, 1997 that adverse or critical comments will be submitted.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 28, 1997. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn in the manner described here.

Final Action

EPA is approving one operating permit as NO_X RACT for Panther Creek Energy Facility.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 1997. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve a NO_X RACT determination for a one individual source in Pennsylvania as a revision to the Commonwealth—s SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 16, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c) (128) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(128) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to NO_X RACT, submitted on September 13, 1996 and January 21, 1997 by the Pennsylvania Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection).

(i) Incorporation by reference.

(A) Two letters submitted by the Pennsylvania Department of Environmental Resources (now, the Pennsylvania Department of Environmental Protection) transmitting source-specific NO_X RACT determinations in the form of an operating permit on the following dates: September 13, 1996 and January 21, 1997.

(B) *Operating permit (OP).* Panther Creek Energy Facility, Carbon County, OP # 13–0003, effective date of December 2, 1996, except for condition # 7 pertaining to particulate, PM–10, SO2, CO and VOC emission limits, condition # 10 pertaining to particulate emissions, condition # 11 pertaining to opacity, condition # 12 pertaining to the Standards of Performance for New Stationary Sources and the expiration date.

(ii) Additional material.

(A) Remainder of the Commonwealth of Pennsylvania's September 13, 1996 and January 21, 1997 submittals.

[FR Doc. 97–25755 Filed 9–26–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5898–7]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion, Bayou Sorrel superfund site.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Bayou Sorrel Superfund Site, located in Bayou Sorrel, Iberville Parish, Louisiana, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This action is being taken by EPA and the State of Louisiana because it has been determined that all appropriate response actions have been implemented and remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: September 29, 1997.

ADDRESSES: Comprehensive information on the Site is available through the public docket which is available for viewing at the Bayou Sorrel Superfund Site information repositories at the following locations: U.S. EPA Region 6 Library (12th Floor), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424 / 665–6427; Louisiana Department of Environmental Quality, 7290 Bluebonnet Road, Baton Rouge, Louisiana 70809, (504) 765–0487; Police Jury of Iberville Parish, 510 Meriam, Plaquemine, LA 70765, (504) 687–5190; Iberville Parish Library, 1501 J. Gerald Berret Blvd., Plaquemine, LA 70765, (504) 687–2520.

FOR FURTHER INFORMATION CONTACT: Stephen L. Tzhone, Remedial Project Manager (6SF-LP), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8409.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Bayou Sorrel Superfund Site, Bayon Sorrel, Iberville Parish, Louisiana. A Notice of Intent to Delete for this site was published on June 4, 1997 (62 FR 30554). The closing date for comments on the Notice of Intent to Delete was July 3, 1997. EPA received comments during and after the public comment period. All accepted comments, including those received after the comment period, and the responses by EPA have been included in the Responsiveness Summary (Appendix 1).

EPA identifies sites that appear to present significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those

sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future; § 300.425(2)(3) of the NCP. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous Waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water Pollution control, Water supply.

Dated: September 18, 1997.

Myron O. Knudson,

Acting Regional Administrator, U.S. EPA Region 6.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site "Bayou Sorrel Site, Bayou Sorrel, Louisiana."

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix 1—Responsiveness Summary, Bayou Sorrel Superfund Site, Bayou Sorrel, Iberville Parish, Louisiana

The Responsiveness Summary has been prepared to provide written responses to comments submitted regarding the Notice of Intent to Delete (62 FR 30554) for the Bayou Sorrel Superfund Site. All accepted comments are presented in the original, submitted format to the extent possible, with similar comments combined.

1. I support the decision to delete the Bayou Sorrel Superfund Site from the NPL.

EPA appreciates all public support and input for its decisions. The concerns of the community are a top priority in finalizing any actions taken by the agency. The decision to delete the Bayou Sorrel Superfund Site from the National Priorities List was only considered after all remedial activities have been completed and concurrence given by the State of Louisiana.

2. The people of the Bayou Sorrel area were not made aware of the pollution in the waterways, fish, crawfish, and wildlife. The Bayou Sorrel area residents were never informed of the dangers caused by the migration of toxic wastes from the Bayou Sorrel Superfund Site.

EPA has attempted in every possible way to share information on the Bayou Sorrel Superfund Site with area residents and communities. A Community Relations Plan (June 1984, revised July 1990) was developed with the help of area residents and many factsheets have been mailed out to interested citizens, congressional representatives, and the media. A public meeting was also held in January 1986 to discuss the cleanup remedy for the Bayou Sorrel Superfund Site. Supporting documentation concerning EPA action at the Bayou Sorrel Superfund Site can be found at the Iberville Parish Library, where a repository has been set up for the public.

3. ERM Southwest, Inc. discovered the pollution in 1984. We are not being advised of the results of monitor wells overseen by ERM Southwest, Inc., or the Louisiana Department of Environmental Quality.

ERM Southwest, Inc. is a company contracted out by the Bayou Sorrel Steering Committee for technical activities concerning the Bayou Sorrel Superfund Site. Sampling results from the monitoring wells are reviewed by both EPA and the State of Louisiana. These results currently do not suggest significant risk to public health or the environment. Data and results are available for public review at the information repositories.

4. On February 1994, President Clinton directed federal agencies to make sure minorities and the poor aren't disproportionately exposed to pollution and other environmental dangers. We feel that an environmental injustice is being done to our communities. We would welcome an investigation of these injustices in the very near future. Our civil rights are being violated.

EPA is very interested in any environmental justice issues concerning unfair biases of pollution exposure toward minorities and the poor. At the Bayou Sorrel Superfund Site, EPA has taken civil actions against responsible parties and implemented site remedial activities with cooperation from the responsible parties. However, if further actions pertaining to environmental justice are warranted, the Environmental Justice National Hotline at 1–800–962–6215, is available for the community to request an investigation into this matter.

5. The cap and slurry walls are not adequate to protect the environment. The clay can crack and leak, and the slurry walls can do the same. The leaking wastes will contaminate the crawfish, fish, rabbits and other animals/biota in the area that people consume for food (not just in the area, but all over the country). The clay can't be trusted to contain the wastes.

The integrity of the cap, slurry walls, and the underlying clay geology ensures that no leakage of the contained wastes can occur. Data collected from the continued monitoring of groundwater demonstrate that no significant risk to public health or the environment is posed by the hazardous materials remaining within the cap. The Bayou Sorrel Superfund Site is currently under an Operations & Maintenance plan which calls for water sampling from the monitoring wells and engineer inspections of the cap and site. Based on results from all these activities to date, and the public health consultation by the Agency for Toxic Substances and Disease Registry, EPA verifies the implemented site remedy is protective of human health and the environment.

6. Water wells aren't being tested—how do we know that chemicals from the site aren't leaching into residents' drinking water?

Data from the monitoring wells surrounding the capped areas would immediately reveal if structural integrity had been breached and wastes were leaching out. The sampling results from these monitoring wells have indicated that the cap and slurry walls are operational as planned. Also, in August 1993, the Louisiana Office of Public Health conducted a private well survey in the Bayou Sorrel vicinity to determine if shallow groundwater in the area had been contaminated. Most of the private wells that were used near the site in the early 1980's have been abandoned and are no longer in use except for one private well located in the town of Bayou Sorrel on Bayou Sorrel Road. A water sample from this well was analyzed for volatile organic compounds and metals including arsenic. No volatile organic compounds or metals were detected in the private well water. Municipal water for the town of Bayou Sorrel is supplied by the Iberville Parish Waterworks #3 which draws water out of the Intracoastal Waterway near the confluence with the Upper Grand River near Jack Miller's Landing. This new water system has been inspected and surveyed during the first year of operation and meets all Federal regulations for primary drinking water standards. Additional information can be found in the Health Consultation by the Agency for Toxic Substances and Disease Registry, dated May 8, 1995.

7. No one has ever followed up "on anything" at the site—only one rabbit and one fish were tested during the cleanup. How do we know that animals and fish aren't still being contaminated? Is animal/biota testing still taking place?

Seventy-five fish samples were taken in the area near the site and analyzed for polychlorinated biphenyls, pesticides, volatile organic compounds, and metals, including arsenic, mercury, and thallium. The samples were collected by the Louisiana Department of Environmental Quality and Louisiana Office of Public Health in June and July of 1993. No elevated levels of polychlorinated biphenyls and pesticides were detected in the fish. No volatile organic compounds were detected in the fish, either. Additional information can be found in the Health Consultation by the Agency for Toxic Substances and Disease Registry, dated May 8, 1995.

8. Pesticides and PCBs have been detected in channel catfish, crappie bass, * * *. Everybody in this area are consumers of the fish, crawfish, and wild game obtained in these waterways and woods. A fishing and hunting ban should be established in the area of the site.

EPA is unaware of the alleged pesticide and polychlorinated biphenyls detections in the fish. Sampling results and data collected from supporting state agencies and EPA indicate otherwise. In addition, EPA does not establish hunting and fishing bans. Those actions are taken by state and local health agencies.

9. The site should be fenced and clearly marked as a hazard—establish institutional controls.

Installation of fences around all capped areas to restrict access has been in place since the remedial construction activities were completed. The fences are inspected and maintained as part of the ongoing Operations & Maintenance site activities. Institutional controls such as deed restrictions were established along with posting of warning signs on all fenced areas. The gravel roads around the fenced areas allow for continued recreational use of adjacent lands and the borrow lake while diverting traffic around and away from the capped areas.

10. The site is adding to the overall pollution of the area—such as the "illegal" injection well in Bayou Sorrel. The permit for that well should have never been renewed—that well is "illegal."

The permits for injection wells in Louisiana are given by the Louisiana Department of Natural Resources and checked for federal regulations compliance by EPA. The permitted, legal injection well within Bayou Sorrel currently meets all federal standards and has satisfactorily passed state inspections.

11. The community unanimously objected to the cap/containment remedy for this site, but EPA, the State and the industries that polluted the site went ahead and did what they wanted to anyway. Has the public ever "gotten their wishes" when it comes to Superfund cleanups or permits? Or can someone high up in EPA tell them that the "fix is already in" so we can stop wasting our time commenting on things that have already been decided?

EPA encourages the community to participate at all points during the Superfund process. EPA invited the community to participate in selecting the remedy for the Bayou Sorrel Superfund Site during the Record of Decision phase in 1986. At that time, the community raised a number of questions and concerns regarding remediation of the site. These comments can be found in the Record of Decision dated November 14, 1986. As a result of the community's input and other considerations, the cap/containment remedy for the Bayou Sorrel Superfund Site was selected as the best alternative after evaluating performance, reliability, engineering implementability, public health and welfare, environmental impacts, institutional factors, and costs.

EPA solicited and reviewed comments regarding its intent to delete the Bayou Sorrel Superfund Site from the National Priorities List. The decision to delete any Superfund site from the National Priorities List is not final until EPA has extended an opportunity to the public to comment on the proposed action. At this time, EPA has decided to move forward with its decision to delete the Bayou Sorrel Superfund Site from the National Priorities List, but only after careful consideration and response to all public comments. EPA has also established a Superfund Ombudsman position to address any concerns from the public on the Superfund process. Please feel free to contact the EPA Region 6 Superfund Ombudsman at 1–800–533–3508, to share any concerns which were not resolved to your satisfaction.

[FR Doc. 97–25653 Filed 9–26–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–102; RM–8969]

Radio Broadcasting Services; Slidell and Kenner, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Phase II Broadcasting, reallots Channel 287C1 from Slidell to Kenner, Louisiana, and modifies Station WLTS-FM's license to specify Kenner as its community of license. *See* 62 FR 15869, April 3, 1997. Channel 287C1 can be allotted to Kenner in compliance with the Commission's minimum distance separation requirements at the site specified in Station WLTS-FM's license. The coordinates for Channel 287C1 at Kenner are 29–58–57 NL and 89–57–09 WL. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1997.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–102, adopted September 10, 1997, and released September 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Slidell, Channel 287C1 and adding Kenner, Channel 287C1.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 97–25591 Filed 9–26–97; 8:45 am]
BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–133; RM–9086]

Radio Broadcasting Services; Lake City, MN

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document allots Channel 235A to Lake City, Minnesota, as that community's second FM broadcast service in response to a petition filed by Phoenix Media Group, Inc. *See* 62 FR 27711, May 21, 1997. The coordinates for Channel 235A at Lake City are 44–22–58 and 92–21–45. There is a site restriction 10.6 kilometeres (6.6 miles) southwest of the communtiy. With this action, this proceeding is terminated.
DATES: Effective November 3, 1997. The window period for filing applications for Channel 235A at Lake City, Minnesota, will open on November 3, 1997, and close on December 4, 1997.
FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.
SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–133, adopted September 10, 1997, and released September 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 235A at Lake City.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 97–25590 Filed 9–26–97; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. 97–046; Notice 2]

RIN 2127–AG73

Schedule of Fees Authorized by 49 U.S.C. 30141; Fee for Review and Processing of Conformity Certificates for Nonconforming Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.
ACTION: Final rule.

SUMMARY: This rule amends NHTSA's regulations that prescribe a schedule of fees authorized by 49 U.S.C. 30141 for various functions performed by the agency with respect to the importation of motor vehicles. The amendment establishes a fee for the agency's review and processing of statements that registered importers submit to certify that vehicles that were not originally manufactured to conform to all applicable Federal motor vehicle safety standards have been brought into conformity with those standards. The fee, which is set at $14.00 for fiscal year 1998, applies to all vehicles for which conformity certificates are submitted to NHTSA, including vehicles imported from Canada, which currently account for over 98 percent of the nonconforming vehicles that are processed by NHTSA.
DATES: The amendment established by this final rule will become effective on October 29, 1997.

Any petitions for reconsideration must be received by NHTSA not later than November 13, 1997.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.
FOR FURTHER INFORMATION CONTACT: For non-legal issues: Clive Van Orden, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–2830). For legal issues: Coleman Sachs, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–5238).

SUPPLEMENTARY INFORMATION:

A. Background

This rule was preceded by a notice of proposed rulemaking (NPRM) that NHTSA published on July 15, 1997 (62 FR 37847), proposing to establish a fee for the agency's review and processing of conformity certificates submitted by registered importers and to set the fee for fiscal year (FY) 1998 at $17.00 per vehicle. The NPRM stated that 49 U.S.C. 30141 permits an importer who is registered with NHTSA (a "registered importer") to import a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS), provided that NHTSA has decided that the vehicle is eligible for importation. Once a motor vehicle has been declared eligible for importation, it is imported under bond by a registered importer or by an individual who has executed a contract or other agreement with a registered importer to bring the vehicle into compliance with applicable FMVSS. When the registered importer completes all necessary alterations, it must certify to NHTSA that the vehicle meets the FMVSS. See 49 U.S.C. 30146(b) and 49 CFR 592.6(e). This is accomplished by submitting, in accordance with regulations and guidance issued by NHTSA, a package containing photographic and documentary evidence of the vehicle's conformance with each applicable FMVSS. Each of these packages is reviewed by NHTSA's Office of Vehicle Safety Compliance (OVSC) to verify the accuracy of the information it contains. If NHTSA questions the registered importer's certification of compliance, the registered importer is notified pursuant to 49 CFR 592.8(c) to hold the vehicle for inspection. Acceptance of the certification ends the agency's involvement with the vehicle.

The NPRM noted that NHTSA staff expends much time reviewing and evaluating routine compliance packages, and even more time if a package does not indicate conformance with the FMVSS, necessitating follow-up action.

Based on figures accumulated to date, NHTSA expects to review over 21,000 compliance packages in FY 1997, which will end on September 30, 1997.

B. Authority for Fee

NHTSA is authorized under 49 U.S.C. 30141(a)(3) to establish an annual fee requiring registered importers to pay for the costs of carrying out the registered importer program. The agency is also authorized under this section to establish fees to pay for the costs of processing the conformance bonds that registered importers provide, and fees to pay for the costs of making agency decisions relating to the importation of noncomplying motor vehicles and equipment. As stated in the NPRM, NHTSA believes it is entitled to reimbursement under 49 U.S.C. 30141 for the costs of reviewing conformity packages submitted by registered importers to secure the release of the conformance bonds that cover noncomplying vehicles.

Because NHTSA's approval of the conformity package is a necessary predicate to the release of these bonds, NHTSA has concluded that the expense incurred by the agency in reviewing and processing each package may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. 30141(a)(3)(A).

Additionally, NHTSA's decision to approve the release of a bond based on its review of a conformity package qualifies as a "decision" under Subchapter III of Title 49, U.S. Code, for which the agency is authorized to set a fee under 49 U.S.C. 30141(a)(3)(B). Section 30141(e) provides that the amounts collected as fees from registered importers under section 30141(a)(3) "are only for use by the Secretary of Transportation—(1) in carrying out this section and sections 30146 (a)–(c)(1), (d), and (e) and 30147(b) of this title * * *." NHTSA's authority to review conformity packages is principally derived from section 30146(c). That provision authorizes the Secretary of Transportation to require the compliance certification submitted by a registered importer to "be accompanied by evidence of compliance the Secretary considers appropriate * * *." In light of the fact that section 30141(e) clearly authorizes the use of fees collected from registered importers under section 30141(a)(3) to support NHTSA's actions in reviewing conformity packages, NHTSA has concluded that it is authorized under 49 U.S.C. 30141(a)(3)(B) to charge fees for that purpose.

Even if such authority did not exist in Chapter 301 of Title 49, U.S. Code, the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701, provides ample authority for NHTSA to impose fees that are sufficient to recover the agency's full costs for the review and processing of conformity packages. By reviewing the conformity package and authorizing the release of the conformance bond that is posted upon entry of a nonconforming vehicle, NHTSA is performing a specific service for an identifiable beneficiary that can form the basis for the imposition of a fee under 31 U.S.C. 9701.

Courts have long recognized that federal agencies may impose fees under section 9701 for providing comparable services to regulated entities. *See*, e.g., *Seafarers International Union of North America* v. *U.S. Coast Guard*, 81 F.3d 179, 183 (D.C. Cir. 1996)(finding the Coast Guard authorized to charge reasonable foes for processing applications for merchant mariner licenses, certificates, and work documents); *Engine Manufacturers Association* v. *E.P.A.*, 20 F.3d 1177, 1180 (D.C. Cir. 1994)(finding the E.P.A. authorized to impose a fee to recover its costs for testing vehicles and engines for compliance with the emission standards of the Clean Air Act); and *National Cable Television Association, Inc.* v. *F.C.C.*, 554 F.2d 1094, 1101 (D.C. Cir. 1976) (finding the F.C.C. authorized to impose fees for issuing certificates of compliance to cable television operators).

In view of the language and judicial construction of 31 U.S.C. 9701, NHTSA is relying on this provision as an independent source of authority for the conformity package review fee. The agency believes that this provision and 49 U.S.C. 30141 each provide sufficient separate authority for this fee and the other fees that the agency has established under 49 CFR Part 594. Section 9701 was not cited as authority for the Part 594 fees previously established by the agency because each of those fees was expressly authorized under the language of 49 U.S.C. 30141 or its predecessor provision. When the prior fees were established, NHTSA did not recognize a need to impose a fee for the review and processing of conformity certificates because those actions accounted for a relatively small share of the work performed by OVSC. In the ensuing years, OVSC has devoted a substantially greater share of its work to those efforts, so that a fee is now necessary to offset the agency's costs for performing this work.

C. Comments

Three comments were submitted in response to the notice of proposed rulemaking. The first of these was from Philip Trupiano of Auto Enterprises, Inc. of Clawson, Michigan, a registered importer. In his comment, Mr. Trupiano contends that NHTSA lacks statutory authority to establish the proposed fee for the review and processing of conformity packages. Specifically, Mr. Trupiano states that the action taken by the agency on these packages cannot be characterized as a "decision" under Subchapter III of Title 49, U.S. Code, for which the agency is authorized to set a fee under 49 U.S.C. 30141(a)(3)(B). Mr. Trupiano asserts that NHTSA's claim to that effect is refuted by the letters that the agency issues to registered importers following its review of conformity packages, which Mr. Trupiano describes as merely acknowledging receipt of the importer's certification and stating that a determination of a vehicle's compliance with the FMVSS may only be made upon actual compliance testing by NHTSA.

Mr. Trupiano appears to have misconstrued the nature of the decision the agency makes upon its review of a conformity package. That decision is not whether the vehicle in fact conforms to all applicable FMVSS, but instead whether the bond that is issued to ensure such conformity may be released. The agency reaches its decision on whether the bond may be released based on its review of the conformity package submitted by the importer. If the conformity package provides sufficient evidence that the vehicle complies with all applicable FMVSS, NHTSA issues the release letter. As Mr. Trupiano has noted, the letter contains the caveat that it does not constitute an agreement on NHTSA's part that the vehicle in fact complies with all applicable FMVSS since testing must be performed to determine compliance with many of the standards. NHTSA's decision to release the conformance bond based on its review of the conformity package is nonetheless a decision under Subchapter III of Title 49, U.S. Code, for which the agency is authorized to set a fee under 49 U.S.C. 30141(a)(3)(B).

Mr. Trupiano also asserts that 31 U.S.C. 9701 does not provide alternate authority for establishment of the proposed fee because paragraph (c)(2) of section 9701 states that "[t]his section does not affect a law of the United States—* * * prescribing bases for determining charges * * *." Applying this language, Mr. Trupiano contends that section 9701 provides no authority for the proposed fee because Congress has elsewhere "prescribed the bases for which fees would be assessed for the registered importer program * * *."

Mr. Trupiano's contention that 31 U.S.C. 9701 does not provide alternate authority for the proposed fee also appears to be based on a misreading of that statute. The only provision that Mr. Trupiano cites in support of this contention is 49 U.S.C. 9701(c)(2), which states: "(c) this section does not affect a law of the United States—* * * (2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases." The legislative history of section 9701 reveals that it was derived from a provision previously codified at 31 U.S.C. 483a (1976), which stated, as one of its provisos, "[t]hat nothing contained in this section shall repeal or modify existing statutes prescribing bases for calculation of any fee, charge or price * * *." This provision has no bearing on 49 U.S.C. 30141(a)(3)(B), because that section merely authorizes the establishment of fees to pay for the costs of making decisions under Chapter 301, without prescribing any bases for the calculation of such fees. Contrary to Mr. Trupiano's apparent interpretation of subsection (b)(2) of 31 U.S.C. 9701, that subsection does not preclude an agency from establishing a fee under section 9701 where other statutory authority for the establishment of the fee may exist. The subsection instead merely states that if the other statute prescribes a basis for determining the amount of the fee, that basis shall be given effect.

Mr. Trupiano next challenges the finding by NHTSA in the regulatory analysis portion of the NPRM that the proposed fee would not have a significant economic impact on a substantial number of small businesses, precluding the need for the agency to prepare a regulatory flexibility analysis under the Regulatory Flexibility Act. As Mr. Trupiano notes, this finding was predicated on the agency's belief that importers could pass along the proposed fee, which is quite small in comparison to the value of the vehicles to which it would apply, to the ultimate purchasers of those vehicles. Mr. Trupiano instead contends that vehicles imported from Canada must compete with domestically produced versions of those vehicles and that the value of Canadian imports, which is set by the value of their domestic counterparts, would not be enhanced in any manner by payment of the proposed fee. As such, Mr. Trupiano asserts that the fee would have to be absorbed by the importer and that it could have significant cost consequences if the volume of imports by any one importer is sufficiently high. Additionally, Mr. Trupiano asserts that NHTSA did not provide advance notice to registered importers or their trade association prior to issuance of the NPRM, or seek alternatives that would reduce the cost of processing compliance packages. The alternatives that Mr. Trupiano identifies are: "(1) Electronic data transfer of the conformance package and bond release; (2) elimination of unnecessary film photographs of the vehicles; (3) reduction in the amount of the conformity bond required; and (4) shorter turnaround time in reviewing the conformity packages."

With regard to the cost impact of the proposed fee on registered importers, NHTSA notes that Mr. Trupiano did not identify the profit margin on which these businesses typically operate. From NHTSA's understanding of this industry, the agency believes that the fee, which was proposed at $17.00 but is being established in this final rule at $14.00 on the basis of more current data, is quite low in relation to the profit earned by the typical registered importer on each noncomplying vehicle that it imports. Even if this fee amount could not be passed on to the vehicle's ultimate purchaser, as Mr. Trupiano contends, the agency believes that the registered importer could absorb it without suffering undue financial strain. Based on informal contacts with registered importers prior to the issuance of the NPRM, NHTSA understood that they could reasonably accommodate a fee in the neighborhood of twenty to twenty-five dollars. The $14.00 fee that NHTSA is establishing in this final rule, which is based on the agency's analysis of the costs it actually incurs in the review and processing of conformity packages, is considerably short of this range.

With respect to the alternatives to the imposition of the proposed fee that were identified by Mr. Trupiano, NHTSA notes that the only one that would actually reduce the costs that NHTSA incurs in the review and processing of conformity packages is the electronic transfer of the bond release letter. The agency is currently studying the feasibility of implementing such a change. The agency is also examining the issue of allowing registered importers to transmit the contents of the conformity package electronically. It is the agency's understanding that any requirement for the electronic transfer of this data would actually increase costs to many registered importers since they lack the specialized equipment and expertise necessary to make such transmissions. Agency costs are also likely to increase with the electronic transfer of conformity data, as it would take longer for a reviewer to call up photographs on a computer than to examine hard copy photographs in a conformity package.

The principal impediment to the agency's approval of electronic transmissions is the existing requirement for actual photographs to be used to verify the certifications in the conformity package that the vehicle complies with all applicable standards. NHTSA requires actual photographs because they are less subject to manipulation than electronically transmitted images and therefore provide a more reliable means for identifying the vehicle that is the subject of the conformity package and ascertaining its conformity status. Nevertheless, NHTSA is still exploring ways to accommodate the interest in electronic transmission that has been expressed by some registered importers.

NHTSA requires the conformance bond that accompanies the entry of a noncomplying vehicle to be in an amount equal to 150% of the dutiable value of the vehicle. See 49 CFR 591.8. The agency is authorized under 49 U.S.C. 30141(d)(2) to require importers to provide bonds up to that amount. Since the full amount of the bond is released upon NHTSA's approval of a conformity package, any reduction in the amount of the bond should have negligible cost consequences for registered importers. The agency believes that it is necessary for the bond to be in the full amount authorized under section 30141(d)(2) to provide maximum assurance that nonconforming vehicles imported under bond are brought into compliance with all applicable standards.

Under 49 U.S.C. 30146(a), a registered importer may release custody of a vehicle that did not conform to all applicable FMVSS at the time of importation 30 days after it submits to NHTSA a conformity package covering the vehicle, unless the agency notifies the importer to hold the vehicle for inspection or notifies the importer that it has reason to question the validity of the certification. Currently, NHTSA is processing these packages well within the 30-day limit. Processing time is now averaging approximately one and one-half weeks, with an additional week taken, on average, if there is a need to communicate with the registered importer to address any problem that the agency may have with the package. Although the agency continually strives to streamline its administrative processes, given current staff and budgetary constraints, it would be difficult to achieve any significant reduction in the present turnaround time for the review and processing of conformity packages.

Mr. Trupiano next observes that NHTSA permits individuals to import vehicles from Canada that are not certified as complying with all applicable FMVSS provided that they furnish a letter from the vehicle's manufacturer stating that the vehicle meets those requirements. Mr. Trupiano contends that the agency expends many of the same resources in processing these imports as it does for vehicles imported by registered importers, leading him to question why it is not proposing a fee to cover those processing costs. Through an agreement that it entered with the U.S. Customs Service in April of this year, NHTSA's approval is no longer necessary for the importation of Canadian vehicles for personal use. The importer now furnishes the manufacturer's letter directly to the Customs Service. As a consequence, there is no longer a basis for the agency to impose a fee for processing these imports.

Mr. Trupiano's final contention is that the proposed fee "would serve to place an additional financial restriction on the entry of motor vehicles from Canada, where no such equivalent fee is paid to the Canadian government for importing a vehicle from the United States." As such, he asserts that the fee would constitute a non-tariff barrier to trade prohibited under Article 309 of the North American Free Trade Agreement (NAFTA).

Article 309 of NAFTA provides, with certain exceptions that are beyond the scope of this discussion, that "no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party * * *." NHTSA initially notes that the proposed fee would be assessed for the sole purpose of allowing the agency to recover its actual costs for the review and processing of conformity packages. Assessment of the proposed fee would not prohibit or restrict the entry of Canadian-certified vehicles into the United States, and, as such, it would not violate any provision of Article 309.

NHTSA further notes that Article 904 of NAFTA preserves the right of each Party to the agreement to "adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human * * * life or health * * * and any measure to ensure its enforcement or implementation." Article 904 further provides that "[s]uch measures include those to prohibit the importation of a good of another Party * * * that fails to comply with the applicable requirements of those measures or to complete the Party's approval procedures." The term "standard-related measure" is defined in Article 915 of NAFTA as including a "conformity assessment procedure." NHTSA's review of conformity packages is therefore governmental action that is specifically sanctioned by NAFTA and there is nothing in that agreement that restricts the right of any Party to impose a fee for taking such action.

The second comment was submitted by Lawrence A. Beyer, an attorney who has represented registered importers in matters before the agency. Mr. Beyer initially contends that the agency based its calculation of the proposed fee on a low estimate of nonconforming vehicle imports. Mr. Beyer characterizes the proposed fee as being based on projected imports of 16,000 in fiscal year 1998. In contrast to this figure, Mr. Beyer states that noncomplying imports thus far in fiscal year 1997 have averaged 1,727 per month, which translates to a total of 20,729 vehicles for the entire fiscal year, and that the existing trend is for the volume of noncomplying vehicle imports to increase each year. Based on these larger projected import figures, Mr. Beyer contends that NHTSA should reduce the amount of the proposed fee.

The agency has decided to accept this recommendation. As noted in the NPRM, the proposed fee was calculated on the basis of resources expended by NHTSA in processing the 16,000 noncomplying vehicles for which conformity packages were submitted in calendar year 1996. Since issuing the NPRM, NHTSA has received more complete data on the volume of noncomplying vehicles imported during the current fiscal year for which conformity packages must be processed by the agency. This indicates that 20,786 such vehicle were imported from October 1, 1996, the first day of fiscal year 1997, through September 16, 1997. Based on this volume, NHTSA anticipates that over 21,000 noncomplying vehicles will be imported by the end of this fiscal year on September 30, 1997. NHTSA has decided to use this figure in calculating the conformity package review fee for fiscal year 1998, as opposed to the 16,000 vehicle figure identified in the NPRM. Although NHTSA has also identified the need to increase one cost element used in calculating the fee in light of more accurate information received since issuing the NPRM, an overall reduction in the fee from the $17.00 originally proposed will be realized by allocating the agency's costs over a larger vehicle base. As noted in the NPRM, NHTSA will review the fee at least every two years to see if further adjustments are needed. The agency is bound to provide this review in order to insure that it recovers no more than its actual costs for the review and processing of conformity packages.

Mr. Beyer further contends that NHTSA failed to properly assess the impact of the proposed fee on small entities under the Regulatory Flexibility Act, and did not solicit the input of affected small entities before issuing the NPRM. He additionally contends that the proposed fee would constitute a non-tariff barrier to trade under NAFTA. Mr. Beyer also observes that the bond release letter issued by NHTSA states that it does not constitute agreement by the agency that the vehicle in question in fact conforms to all applicable standards. The agency has addressed each of these issues in its response to the previous comment. Mr. Beyer finally contends that "NHTSA has attempted to bypass its decision regarding VSA–1 eligible imports" by assigning new eligibility numbers. Mr. Beyer asserts that "[t]here is no substantive difference between the compliance issues for the VSA–1 determination which was paid for in 1989, and the new codes." What Mr. Beyer overlooks is that the payment that was made in 1989 covered the import eligibility decision that NHTSA had made regarding Canadian-certified vehicles. As noted in the NPRM, that fee is entirely distinct from the fee the agency has proposed to recover its costs for the review and processing of conformity packages. Given the high volume of conformity packages that NHTSA has had to process in recent years, and the fact that this responsibility now accounts for a large share of the work performed by the Equipment and Imports Division of the agency's Office of Vehicle Safety Compliance, there is clearly a need for NHTSA to now proceed with the implementation of a fee to recover its costs for performing this function.

The third comment was submitted by Brian Osler, Executive Director and Counsel for the North American Automobile Trade Association. Mr. Osler states that his association is in favor of NHTSA recovering reasonable costs for ensuring compliance with FMVSS. However, he asks the agency to consider waiving the requirement for the submission of photographs to substantiate compliance certifications. The agency has addressed this issue in its response to Mr. Trupiano's comment.

D. Fee Computation

NHTSA has computed all other fees that it collects under the authority of 49 U.S.C. 30141 on the basis of all direct

and indirect costs incurred by the agency in performing the function for which the fee is charged. See 54 FR 17792, 17793 (April 25, 1989). The Office of Management and Budget (OMB), in Circular A–25 establishing Federal policy for the assessment of user fees under 31 U.S.C. 9701, stated that such fees must be "sufficient to recover the full cost to the Federal Government * * * of providing the service, resource, or good when the Government is acting in its capacity as a sovereign." See 58 FR 38142, 38144 (July 15, 1993).

Applying an approach consistent with its past practices and the OMB Circular, the agency has calculated its direct and indirect costs in setting the fee for the review and processing of conformity certificates as follows:

The direct costs used to calculate the fee include the estimated cost of contract and professional staff time, computer costs, and costs for record assembly, marking, shipment and storage.

The estimated cost of contract and professional staff time is calculated on the basis of the full cost for time spent at the following currently prevailing rates: Data entry—$44,410 per year; computer programmer—$86,650 per year; compliance analyst—$60,092 per year. Three quarters of the total hours worked by a single data entry specialist on contract to OVSC are devoted to the processing of compliance packages. A second data entry specialist on contract to OVSC is engaged full time in the processing of compliance packages. Multiplying the annual contract cost for the hours worked by these contract support staff members ($44,410 each) by 1.75 (representing the one data entry position devoted fully to compliance package processing and the other in which three quarters of the total hours worked are devoted to that function) yields $77,715.50 in data entry labor costs that are incurred by NHTSA on an annual basis in the processing of compliance packages. Thirty-seven percent of the total hours worked by a single computer programmer on contract to OVSC is devoted to the processing of compliance packages. Multiplying the annual contract cost for the hours worked by this contract support staff member ($86,650) by 37 percent yields $32,060.50 in computer programming labor costs that are incurred by NHTSA on an annual basis in the processing of compliance packages. In the NPRM, NHTSA identified 18.75 percent of this computer programmer's time as being devoted to the processing of compliance packages, resulting in an annual cost of $16,246.88. At the time that NHTSA was preparing the NPRM, this computer programmer had recently begun her contract with the agency, resulting in a rough estimate of the time which she anticipated would be needed to process compliance packages. In the ensuing weeks, it has become apparent that the time this contractor spends in the processing of compliance packages was considerably underestimated, requiring adjustment to better reflect the hours that she actually devotes to this task. Ninety percent of the total hours worked by a single compliance analyst employed by OVSC is devoted to the review of compliance packages. Multiplying the annual rate of pay for this staff member ($60,092) by 90 percent yields $54,082.80 in compliance analyst labor costs that are incurred by NHTSA on an annual basis in the review of compliance packages.

Adding these amounts yields a total of $163,858.80 in contract and professional staff costs that NHTSA incurs each year for the processing and review of compliance packages. Dividing that amount by 21,000, the number of compliance packages reviewed by OVSC in fiscal year 1997, yields a direct cost of $7.80 for each compliance package reviewed.

Computer costs are calculated on the following basis: NHTSA pays $13,800 per year to maintain a link with the Customs Service computer. Ninety-five percent of the agency's usage of this computer is associated with the review of compliance packages, resulting in a cost of $13,110 that can be allocated to that use. Additionally, the agency pays $30,000 per year for the purpose of running OVSC's computers and performing necessary backups of data entries. Ninety percent of this usage is associated with the review of compliance packages, yielding a cost of $27,000 that can be allocated to that use. The agency also pays $4,000 per year for a maintenance contract on OVSC's computers, ninety percent of which can also be allocated to that office's review of compliance packages, yielding an annual cost of $3,600. Additionally, NHTSA pays a $9,360 annual licensing fee for the data base management system that is used in the processing of compliance packages. Because that system is not used for any other purpose, the full annual fee can be allocated to that use. Adding these costs produces the sum of $53,070 that is spent annually on computer usage associated with the review of compliance packages. Dividing this sum by 21,000, which, as previously indicated, is the number of compliance packages reviewed by OVSC in fiscal year 1997, yields a direct cost of $2.53 for each compliance package reviewed.

The average cost for record assembly, marking, and shipment is calculated at the rate of $16.56 per box. The average cost for record storage is calculated to be $7.92 per box for a storage period of three years. Based on an average of 110 records per box, these costs amount to 22 cents for each compliance package received by the agency. Adding the direct costs for contract and professional staff hours ($7.80), computer usage ($2.53), and record assembly, marking, shipment, and storage ($0.22) produces a total of $10.55 for each compliance package reviewed and processed by NHTSA.

The indirect costs include a pro rata allocation of the average benefits of persons employed in processing and reviewing conformity packages. Benefits provided by NHTSA amount to eighteen percent of the salary earned by its employees. Multiplying the $54,082.80 in professional staff costs that NHTSA incurs each year for the processing and review of compliance packages by eighteen percent yields a figure of $9,734.90.

The indirect costs also include a pro rata allocation of the costs attributable to the rental and maintenance of office space and equipment, the use of office supplies, and other overhead items. For fiscal year 1998, these costs are projected to average $21,131 for each employee and contract support staff member working at NHTSA headquarters. This figure was derived by dividing $13,566,000 in projected headquarters costs (reached by subtracting $482,000 in field operating costs from total agency costs of $14,048,000) by 642 (representing 510 full time equivalent positions that are authorized for NHTSA headquarters plus 132 on-site contract personnel). Multiplying that figure by 3.02, which represents the number of combined contract and professional staff-years devoted annually to the review and processing of compliance packages, yields a figure of $63,815.62. Adding this figure to $9,734.90 produces the sum of $73,550.52, representing the total indirect costs incurred by NHTSA in the review and processing of compliance packages. Dividing this amount by 21,000, which, as previously indicated, is the number of compliance packages reviewed by NHTSA in fiscal year 1997, yields $3.50 in indirect costs for each compliance package reviewed. Adding these indirect costs to the $10.55 in direct costs that NHTSA incurs in the review and processing of each compliance package yields a total of $14.05 in direct and indirect costs for each compliance package reviewed by the agency.

Based on the above factors, NHTSA is establishing $14.00 as the fee to recover its costs for the review and processing of a compliance package. This fee will have to be tendered with each compliance package submitted to the agency for processing.

E. Applicability of Fee to Canadian Vehicles

As noted in the NPRM, in recent years, Canadian imports have accounted for a growing share of NHTSA's oversight program that is directed at the importation of nonconforming vehicles. In NHTSA's Calendar Year 1995 Report to Congress concerning this program, the agency stated that 15,096 of the 15,332 nonconforming vehicles that were permanently imported into the country during that year (or over 98%) were from Canada. The report noted a continuing upward trend in the importation of noncomplying vehicles from Canada since 1993, and attributed that development to the exchange rate favoring the U.S. over the Canadian dollar.

In past years, NHTSA has not collected the per vehicle import eligibility determination fee established under 49 CFR 594.8 from the importers of vehicles that were certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards and that were eligible for importation under vehicle eligibility number VSA–1. As NHTSA explained in a final import eligibility decision covering Canadian-certified motor vehicles, published on May 13, 1997 at 62 FR 26348, the per vehicle import eligibility fee was never imposed on the importers of these vehicles because the first importer of a Canadian-certified motor vehicle paid the full $1560 fee that was established in 1989 to cover the agency's costs for an eligibility decision made on the Administrator's initiative. In the May 13, 1997 final decision, NHTSA rescinded VSA–1 as the eligibility number assigned to all eligible Canadian-certified vehicles, and replaced it with four separate eligibility numbers (VSA–80 through 83), based on vehicle classification and weight.

NHTSA will collect the fee established under this rule from all importers submitting conformity packages to the agency, including the importers of Canadian-certified vehicles eligible for importation under VSA–80 through 83. The agency deems this action to be necessary because the review and processing of conformity packages submitted for Canadian imports have assumed an increasing share of the staff time within OVSC's Equipment and Imports Division and now comprise a major portion of the work performed by that division. The imposition of such a fee is also consistent with OMB's policy for Federal agencies to obtain full cost reimbursement from the recipients of agency services.

Effective Date

Section 30141(e) of Title 49, U.S. Code requires the amount of fees imposed under section 30141(a) to be reviewed, and, if appropriate, adjusted by NHTSA at least every two years. It also requires that the fee for each fiscal year be established before the beginning of that year. The fee established under this final rule will first become effective in fiscal year 1998, which begins on October 1, 1997. NHTSA is meeting the requirements of section 30141(e) by publishing this final rule establishing the fee before that date. However, in keeping with the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, the final rule will not become effective until thirty days after its publication in the **Federal Register**. NHTSA will not collect the fee for any conformity certificates submitted before the final rule's effective date.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rule was not reviewed under E.O. 12866. NHTSA has analyzed this rule and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment resulting from this rulemaking will not have a significant economic impact on a substantial number of small entities. Although most registered importers would qualify as small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that these companies could not pay the fee established under this rule. This fee will in all likelihood be passed along to the purchaser of the vehicle for which a conformity package is submitted to NHTSA for review. Most nonconforming vehicles that are imported into the United States are of very recent vintage, and many would be considered luxury models. Given the nominal amount of the fee established under this rule, especially when viewed in relation to the purchase price of the vehicles to which it pertains, it will not appreciably increase the purchase price of those vehicles and is unlikely to have any significant impact on their importation and sale. For that reason, registered importers and small businesses, small organizations, and small governmental units that purchase motor vehicles will not be significantly affected by the proposed fee. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule would not significantly affect the human environment.

5. Civil Justice Reform

This rule does not have any retroactive effect. It does not repeal or modify any existing Federal regulations. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it will preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

List of Subjects in 49 CFR Part 594

Administrative practice and procedure, Imports, Motor vehicle safety.

In consideration of the foregoing, Part 594, *Schedule of Fees Authorized by 49 U.S.C. 30141*, in Title 49 of the Code of Federal Regulations is amended as follows:

PART 594—[AMENDED]

1. The authority citation for Part 594 is amended to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

2. Section 594.5 is amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and by adding a new paragraph (g), to read as follows:

§ 594.5 Establishment and payment of fees.

* * * * *

(g) A fee for the review and processing of a conformity certificate shall be submitted with each certificate of conformity furnished to the Administrator.

3. A new section 594.10 is added to part 594, to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

(a) Each registered importer shall pay a fee based on the agency's direct and indirect costs for the review and processing of each certificate of conformity furnished to the Administrator pursuant to § 591.7(e) of this chapter.

(b) The direct costs attributable to the review and processing of a certificate of conformity include the estimated cost of contract and professional staff time, computer usage, and record assembly, marking, shipment and storage costs.

(c) The indirect costs attributable to the review and processing of a certificate of conformity include a pro rata allocation of the average benefits of persons employed in reviewing and processing the certificates, and a pro rata allocation of the costs attributable to the rental and maintenance of office space and equipment, the use of office supplies, and other overhead items.

(d) For certificates of conformity submitted on and after October 29, 1997, the fee is $14.00.

* * * * *

Issued on: September 23, 1997.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 97–25665 Filed 9–26–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1011, 1118, 1130 and 1132

[STB Ex Parte No. 570]

Technical Amendments Concerning Employee Boards

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The Board revises its regulations to remove obsolete delegations of authority; update references to statutory provisions; eliminate several employee boards; delegate to designated offices and individuals certain of the matters formerly delegated to employee boards; and reserve to the Board the initial decision making authority for certain formerly delegated matters.

EFFECTIVE DATE: These rules are effective September 29, 1997.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 565–1578. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: The Board is revising its delegations of authority to reflect changes implemented by the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995) (ICCTA). The ICCTA abolished the Interstate Commerce Commission (ICC) and established the Board. Some of the ICC's functions were transferred to the Board and others were transferred to the Secretary of Transportation (and subsequently delegated to the Federal Highway Administration (FHWA)).

49 CFR 1011.6, the employee board section, establishes 10 employee boards: The Suspension/Special Permission (§ 1011.6(a)), the Insurance Board (§ 1011.6(b)(1)), the Motor Carrier Leasing Board (§ 1011.6(b)(2)), the Railroad Service Board (§ 1011.6(b)(3)), the Revocation Board (§ 1011.6(b)(4)), the Released Rates Board (§ 1011.6(c)), the Accounting Board (§ 1011.6(d)), the Special Docket Board (§ 1011.6(e)), the Regional Motor Carrier Boards (§ 1011.6(f)), and the Motor Carrier Board (§ 1011.6(g)).

Some of the delegations of authority under which these employee boards were established include matters over which the Board does not exercise jurisdiction. In particular, the remaining statutory bases for the Insurance Board, the Motor Carrier Leasing Board, the Revocation Board, and the Regional Motor Carrier Boards have been transferred to the Department of Transportation. Therefore, we are removing from the Code of Federal Regulations the regulations providing for these employee boards.

The other employee boards perform functions that continue under the Board's jurisdiction.[1] Except for the Accounting Board,[2] these employee boards are being eliminated, but their duties will be handled by the Board Members, Offices of the Board, or individuals to whom authority is being delegated.

Employee boards performed essential functions at a time when more comprehensive transportation regulation required the ICC to make a significantly greater number of decisions, and when literally thousands of decisions were made under delegations of authority each year. The elimination of much transportation regulation in recent years and the transfer of certain responsibilities to other agencies have, however, reduced the need for employee boards at the Board. In the current, less regulated environment, we believe that either delegating authority to individual Offices and employees of the Board or reserving matters for the entire Board will be a fully adequate and more efficient way of processing cases.

While the quantity of decisions issued by the agency has been reduced, certain delegations of authority continue to be warranted in areas where the action to be taken is clear under existing Board policies, and where prompt action is needed. By continuing to delegate authority in these areas, we can reduce both the time that Board members would otherwise be required to spend on routine matters, and the time and cost associated with taking the necessary actions. Nevertheless, we believe our current requirements can be more effectively met by delegations of authority to Offices and individual employees, rather than to employee boards. Actions to be taken under delegated authority can be handled more simply by an individual employee than by an employee board. Where more significant policy issues are involved, it is anticipated that staff will certify the cases to the Board for consideration in the first instance. Additionally, all actions taken pursuant to delegated authority can be appealed to the Board by the affected parties.

In some situations, cases that arise are likely to involve significant or difficult policy or legal issues. We believe that these matters should be handled by the Board in the first instance. We also note that such Board action is not unduly burdensome, because it is unlikely that there will be large numbers of these types of cases.

Specific Disposition of Retained Authority. As indicated previously, we are retaining the Accounting Board. We are eliminating the Motor Carrier Board, and relevant authorities retained at this agency pursuant to the ICCTA will be implemented by the entire Board in the first instance.

We are eliminating the Suspension/Special Permission Board, because its remaining functions can be effectively handled elsewhere.[3] The entire Board will consider investigation and suspension of collectively set motor carrier rates under 49 U.S.C. 13703(a)(5),[4] the reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2), and petitions for discovery of railroad transportation contracts submitted pursuant to 49 CFR 1313.10. We are delegating to the Office of Compliance and Enforcement (OCE) the determination of motor common carrier applicability disputes under 49 U.S.C. 13710(a)(2) and special tariff authority applications under 49 CFR 1312.2(e). *See* 49 CFR 1011.8(d)(3) and (4).

We are also eliminating the Released Rates Board. 49 CFR 1011.6(c). While under 49 U.S.C. 14706(f), household goods motor carriers and freight forwarders need Board authority to modify, establish, or eliminate rates limiting liability, we believe that this function can be handled efficiently by the entire Board and does not have to be delegated to an employee board.[5]

The Special Docket Board (49 CFR 1011.6(e)) handled carrier and shipper resolutions of undercharge and overcharge claims.[6] Tariff filing requirements are now found at 49 U.S.C. 13702 (noncontiguous domestic trade), and the authority to resolve undercharge and overcharge claims is found in 49 U.S.C. 14709. Because we do not believe that there will be many filings under section 14709, we are eliminating this board.

Instead, uncontested requests formerly handled by the Special Docket Board will be processed by OCE. We are amending 49 CFR 1132.2 to reflect this change. Contested matters will be decided by the Board. 49 CFR 1132.2(g)(4).

The Railroad Service Board (49 CFR 1011.6(b)(3) and (b)(6)) was delegated authority to act in equipment supply complaints and to issue emergency service orders. In recent years, the entire Board has acted on these matters. We will continue this practice and eliminate the employee board.

We are also eliminating other delegations. Under 49 CFR 1011.7(e), the Director of the former Office of Tariffs was delegated authority to enter reparation orders following the conclusion of a formal case where the amount of reparations could not be determined from the existing record. We will eliminate this provision, and reparation issues will be decided by the entire Board. Under 49 CFR 1011.8(d)(1), OCE, as successor to the Office of Tariffs, was delegated authority to reject tariffs, schedules, railroad contracts, and railroad contract summaries. We are maintaining this delegation but eliminating the obsolete references to schedules and rail contracts.[7]

We believe the revised delegations and procedures strike an appropriate balance between matters that should be handled by staff in the first instance and those that warrant consideration by the Board in the first instance. Further, the elimination of employee boards will produce operating efficiencies for the actions that continue to be taken under delegated authority. Because the substantive changes in the regulations relate solely to rules of agency organization, procedure or practice, they are being implemented without requesting public comment.

Small Entities

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1118

Administrative practice and procedure.

49 CFR Part 1130

Administrative practice and procedure.

49 CFR Part 1132

Administrative practice and procedure.

Decided: September 17, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, parts 1011, 1118, 1130 and 1132 of title 49, chapter X, of the Code of Federal Regulations are amended as follows:

PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 701, 721, 13702.

§ 1011.5 [Amended]

2. In § 1011.5, paragraph (b)(3)(iii) is removed.

3. Section 1011.6 is revised to read as follows:

§ 1011.6 Employee boards.

This section covers matters assigned to the Accounting Board, a board of employees of the Board.

(a) The Accounting Board has authority:

(1) To permit departure from general rules prescribing uniform systems of accounts for carriers and other persons under the revised Interstate Commerce Act (IC Act), subtitle IV of title 49 of the U.S. Code, and from the regulations governing accounting and reporting forms;

(2) To prescribe rates of depreciation to be used by railroad and water carriers;

(3) To issue special authorizations permitted by the regulations governing the destruction of records of carriers subject to the IC Act; and

(4) To grant extensions of time for filing annual, periodic, and special reports in matters that do not involve taking testimony at a public hearing or

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[1] While some of the functions of the Motor Carrier Board have either been eliminated or transferred to the Federal Highway Administration, under new 49 U.S.C. 14303, the Board has jurisdiction over motor passenger carrier finance applications and interim approval requests. These matters will be handled by the entire Board.

[2] The Accounting Board is an employee board that rules on technical issues dealing with accounting, reporting and record retention rules, and prescribes depreciation rates used by railroads. This board consists of three employees within the Office of Economics, Environmental Analysis and Administration who have strong accounting backgrounds, and, in light of the technical nature of the issues that are considered, we believe that the retention of this employee board is desirable. Procedural rules for this board are found in revised 49 CFR part 1118.

[3] Because 49 U.S.C. 10726, concerning long and short haul transportation, has been eliminated, the functions at 49 CFR 1011.6(a)(2) are no longer necessary. We will remove a section not pertaining to employee boards, 49 CFR 1011.5(b)(3)(iii), because this section is also based on former 49 U.S.C. 10726.

[4] We are also amending the investigation and suspension rules in part 1132.

[5] Currently, most carriers use the authority granted by the ICC in *Released Rates of Motor Carriers of HHG*, 9 I.C.C. 2d 523 (1993) as the basis for limiting their liability.

[6] These claims resulted from incorrect tariff provisions or billing errors due to the inadvertent failure to appropriately file and maintain agreed-upon rates in compliance with statutory provisions.

[7] Rail contracts are no longer filed with the Board.

the submission of evidence by opposing parties in the form of affidavits.

(b) The board may certify any matter assigned to it to the Board.

§ 1011.7 [Amended]

4. In § 1011.7, paragraph (e) is removed and reserved.

5. In § 1011.8, paragraph (d) is revised to read as follows:

§ 1011.8 Delegations of authority by the Board to specific offices of the Board.

* * * * *

(d) *Office of Compliance and Enforcement.* The Office of Compliance and Enforcement is delegated the authority to:

(1) Reject tariffs and railroad transportation contract summaries filed with the Board that violate applicable statutes, rules, or regulations. Any rejection of a tariff or contract summary may be by letter signed by or for the Director, Office of Compliance and Enforcement, or the Chief, Section of Tariffs, Office of Compliance and Enforcement.

(2) Issue, on written request, informal opinions and interpretations on carrier tariff provisions, which are not binding on the Board.

(3) Grant or withhold special tariff authority granting relief from the provisions of 49 CFR part 1312. Any grant or withholding of such relief may be by letter signed by or for the Director, Office of Compliance and Enforcement, or the Chief, Section of Tariffs, Office of Compliance and Enforcement.

(4) Resolve any disputes that may arise concerning the applicability of motor common carrier rates under 49 U.S.C. 13710(a)(2).

* * * * *

6. Part 1118 is revised to read as follows:

PART 1118—PROCEDURES IN INFORMAL PROCEEDINGS BEFORE EMPLOYEE BOARDS

Sec.

1118.1 Scope.
1118.2 Proceedings to be informal.
1118.3 Appeals.

Authority: 49 CFR 721.

§ 1118.1 Scope.

The rules in this part govern proceedings before employee boards.

§ 1118.2 Proceedings to be informal.

The proceedings in all matters governed by this part will be informal. No transcript of these proceedings will be made. Subpoenas will not be issued and, except when applications, petitions, or statements are required to be attested, oaths will not be administered.

§ 1118.3 Appeals.

(a) *Standing to appeal.* Appeals of the decisions of the employee boards subject to this part and replies to appeals may be filed by any person.

(b) *Number of copies.* The original and 10 copies of each pleading or paper permitted or required to be filed under this section should be furnished for the use of the Board.

(c) *Time for filing.* Appeals in proceedings governed by this part must be filed within 20 days after the date of service of the decision.

(d) *Where filed.* Appeals and replies to appeals of decisions issued by employee boards must be filed with the Secretary, Surface Transportation Board, 1925 K St., NW., Washington, DC 20423–0001.

(e) *Decisions on appeal.* An appeal from an employee board's initial decision in a matter subject to this part will be reviewed by the employee board, which may elect to modify its decision in light of new facts or arguments presented on appeal. If the employee board elects not to modify its prior decision, the appeal will be forwarded to the entire Board for determination. If a modified decision is issued by the employee board, a further appeal lies under this part.

PART 1130—INFORMAL COMPLAINTS

7. The authority citation for part 1130 is revised to read as follows.

Authority: 49 U.S.C. 721, 13301(f), 14709.

8. In § 1130.2, paragraph (e) is removed and reserved, and paragraphs (a), (c), the first two sentences of (f), (g)(1), and (g)(2) are revised to read as follows:

§ 1130.2 When damages sought.

(a) *Actual filing required.* Notification to the Board that an informal complaint may or will be filed later seeking damages is not a filing within the meaning of the statute.

* * * * *

(c) *Statement of prior claim.* A complaint filed under paragraph (b) of this section containing a claim which has been the subject of a previous informal or formal complaint must specifically refer to the previous complaint.

* * * * *

(f) *Notification to the parties; six months' rule.* If an informal complaint seeking damages (other than a contested tariff reconciliation petition) cannot be disposed of informally or is denied or withdrawn by complainant, the parties affected will be so notified in writing by the Board. Contested tariff reconciliation petitions either will be granted or denied by the entry of a decision. * * *

(g) * * *

(1) *Petitions to waive collection or permit payment.* Subject to Board review and approval, motor common carriers (other than household goods carriers) and shippers may resolve, by mutual consent, overcharge and undercharge claims under the provisions of 49 U.S.C. 14709. Petitions for appropriate authority may be filed by either the carrier, shipper or consignee on the Board's tariff reconciliation docket by submitting a letter of intent to depart from the filed rate. The petitions will be deemed the equivalent of an informal complaint and answer admitting the matters stated in the petition. Petitions shall be sent to the Office of Compliance and Enforcement, Surface Transportation Board, Washington, DC 20423. The petitions shall contain, at a minimum, the following information:

(i) The name(s) and address(es) of the payer(s) of the freight charges;

(ii) The name(s) of the carrier(s) involved in the traffic;

(iii) An estimate of the amount(s) involved;

(iv) The time period when the shipment(s) involved were delivered or tendered for delivery;

(v) A general description of the point(s) of origin and destination of the shipment(s);

(vi) A general description of the commodity(ies) transported;

(vii) A statement certifying that the carrier(s) and shipper(s) participating in the shipment(s) or the payer(s) of the freight charges concur(s) with the intent to depart from the filed rate; and

(viii) A brief explanation of the incorrect tariff provision(s) or billing error(s) causing the request to depart from the filed rate.

(2) *Public notice and protest.* Tariff reconciliation petitions (letters of intent) shall be served on all parties named in the petition by the party that files the petition and will be made available by the Board for public inspection in the Office of Compliance and Enforcement Public File, Surface Transportation Board, Washington, DC 20423. Any interested person may protest the granting of a petition by filing a letter of objection with the Office of Compliance and Enforcement within 30 days of Board receipt of the petition. Letters of objection shall identify the tariff reconciliation proceeding, shall clearly state the reasons for the objection, and shall certify that a copy of the letter of objection has been served on all parties named in the petition. The Board may initiate an investigation of the petition on its own motion.

* * * * *

9. Part 1132 is revised to read as follows:

PART 1132—PROTESTS REQUESTING SUSPENSION AND INVESTIGATION OF COLLECTIVE RATEMAKING ACTIONS

Sec.

1132.1 Protests against collective ratemaking actions.
1132.2 Procedures in certain suspension matters.

Authority: 49 U.S.C. 721, 13301(f), and 13703.

§ 1132.1 Protests against collective ratemaking actions.

(a) *Content.* The protested collective ratemaking action sought to be suspended, whether or not contained in a tariff filed with the Board, should be identified by making reference to: The name of the publishing carrier or collective ratemaking organization; the identification of the tariff, if applicable, or the identification of the collective ratemaking action publication if it is not contained in a tariff filed with the Board; the specific items or particular provisions protested; and the effective date of the tariff or other collective ratemaking action publication. Reference should also be made to the tariff or collective ratemaking action, and the specific provisions proposed to be superseded. The protest should state the grounds in support thereof, and indicate in what respect the protested collective ratemaking action is considered to be unlawful. Such protests will be considered as addressed to the discretion of the Board. Should a protestant desire to proceed further against a collective ratemaking action which is not suspended, or which has been suspended and the suspension vacated, a separate later formal complaint or petition should be filed.

(b) *When filed.* Protests against, and requests for suspension of, collective ratemaking actions will not be considered unless made in writing and filed with the Board at Washington, DC. If the protestant desires action by the Board before the effective date of the collective action, protests and requests for suspension shall reach the Board at least 12 days (except as provided in paragraph (c) of this section) before such effective date. If the protested collective ratemaking action is already in effect, or if the protestant does not desire action before its effective date, protests and requests for suspension can be filed at any time.

(c) *Motor carrier tariff bureau filings.* When motor common carrier tariff bureaus take collective actions subject to the special procedures adopted in Ex Parte No. MC–82, *New Procedures in Motor Carrier Rev. Proc.* 340 I.C.C. 1 (1971), and set forth at 49 CFR part 1139, protests must reach the Board at least 22 days before the effective dates of those actions if protestants desire action by the Board before such effective dates. All statements should be served by express mail or an equivalent expedited delivery service upon any party undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Board.

(d) *Copies; service.* In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC–82, *New Procedures in Motor Carrier Rev. Proc.* 339 I.C.C. 324, and set forth at 49 CFR part 1139, an original and 10 copies of every protest or reply filed under this section should be furnished for the use of the Board. Except as provided for proposals subject to the special procedures in Ex Parte No. MC–82, the original and 10 copies of each protest, or of each reply filed under this section, must be filed with the Board, and one copy simultaneously must be served upon the publishing carrier or collective ratemaking organization, and upon other persons known by protestant to be interested. These pleadings should be directed to the attention of the Secretary, Surface Transportation Board.

(e) *Reply to protest.* A reply to a protest filed at least 12 days before the effective date of proposed collective action provisions must reach the Board not later than the fourth working day prior to the scheduled effective date of the protested provisions unless otherwise provided. Replies to protests against motor carrier rate bureau proposals subject to Ex Parte No. MC–82 procedures, to be assured of consideration, must reach the Board no later than 14 days before the scheduled effective date of the protested provisions.

§ 1132.2 Procedures in certain suspension matters.

(a) A petition for reconsideration may be filed by any interested person within 20 days after the date of service of a Board decision which results in an order for:

(1) Investigation and suspension of collective ratemaking actions, or

(2) Investigation (without suspension) of collective ratemaking actions.

(b) Any interested person may file and serve a reply to any petition for reconsideration permitted under paragraph (a) of this section within 20 days after the filing of such petition with the Board, but if the facts stated in any such petition disclose a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the rules of general applicability of the Rules of Practice.

[FR Doc. 97–25734 Filed 9–26–97; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1022, 1030, 1091, 1131, 1143, 1156, and 1170

[STB Ex Parte No. 572]

Removal of Miscellaneous Obsolete Regulations

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is removing seven obsolete parts of the Code of Federal Regulations.

EFFECTIVE DATE: These rules are effective September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and established the Board. Section 204(a) of the ICCTA directs the Board to rescind all regulations established by the ICC that are based on provisions of law repealed and not substantively reenacted by the ICCTA. Pursuant to that directive, the Board has removed many such regulations. We have identified 6 additional parts of title 49, chapter X of the Code of Federal Regulations that should be removed because their statutory bases have been eliminated: Parts 1022, 1030, 1091, 1143, 1156, and 1170. A seventh part, 49 CFR part 1131, is being deleted because of revisions the Board is making in response to the ICCTA. Because it is clear that these regulations are obsolete, and in order to have these changes in place for the next issue of title 49, we are making the rule removals effective on the date of service.

Part 1022

In response to an amendment to former section 205(f) of the Interstate Commerce Act, the ICC issued the regulations now found at 49 CFR part 1022 concerning cooperative agreements with states. 31 FR 16402 (December 23, 1966). The statute authorized the ICC to make cooperative agreements with the States to enforce economic and safety laws and regulations of the States and the United States concerning highway transportation.[1] Section 205(f) was recodified,[2] as here relevant, at former 49 U.S.C. 11502.[3] This section has been removed by the ICCTA. Accordingly, we are removing the obsolete regulations at 49 CFR part 1022.

Part 1030

The regulations now found at 49 CFR part 1030 were originally published at 17 FR 7548 (August 19, 1952). This rule, concerning the filing of contracts with other carriers, was based on former section 6(5) of the Interstate Commerce Act, later recodified at former 49 U.S.C. 10764. That section has been eliminated by the ICCTA, and, accordingly, we are removing the part 1030 regulations based on that statute.

Part 1091

Part 1091 concerns tariff requirements for Alaskan motor-ocean-motor "substituted service," where water carriage is substituted for motor carriage for a portion of the transportation even though the motor carrier holds itself out to perform the entire movement. Under the ICCTA, tariffs no longer have to be filed with the Board for these movements. Now, the only motor carrier tariffs that must be filed with us are those concerning joint rates with water carriers in the noncontiguous domestic trade. 49 U.S.C. 13701(a)(1)(B).[4] It is unnecessary to file a "tariff where the entire service is held out by the motor carrier (notwithstanding that some of the service may be performed by a water carrier under substitute service rules.* * *)" *Id.*[5] Because substituted service is not a joint rate arrangement, the tariff requirements in part 1091 are obsolete and are being removed.

Part 1131

The rules at 49 CFR part 1131 concern the procedures for rate complaints and (§ 1131.4) petitions by railroads to review state intrastate rate decisions or applications to prescribe intrastate rates. We will remove these rules. Insofar as rate complaints are concerned, the ICC revised its regulations in 1982 to provide for two sets of formal complaint rules, one for rate complaints and another for all other complaints. *See Revision and Redesignation of the Rules of Practice*, Ex Parte No. 55 (Sub-No. 55) (ICC served Nov. 1, 1982) (47 FR 49572). By decision served on October 1, 1996, in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, Ex Parte No. 527, published in the **Federal Register** on October 8, 1996, 61 FR 52710, the Board adopted final rules at 49 CFR part 1111 to expedite the handling of challenges to the reasonableness of railroad rates, including the adoption of a procedural schedule applicable in stand-alone rate cases.[6] Part 1111 also contains procedures for non-rate complaint cases. It is therefore unnecessary, and confusing, to have a second set of rate complaint rules.

With respect to intrastate rate decisions, the intrastate rail rate rules in § 1131.4 are based on former 49 U.S.C. 11501. The parts of § 11501 pertaining to rail matters were eliminated by the ICCTA.[7] Because the statutory basis for the § 1131.4 rules was removed, we are deleting these obsolete regulations.

Part 1143

Part 1143 provides that if an interstate motor carrier of passengers has requested permission from a state authority to raise an intrastate rate, and that request has been denied in whole or in part or the state has not taken final action on the request within a 120 days, the carrier can petition the ICC for review. This provision was based on former 49 U.S.C. 11501(e). Section 211(b)(2) of Public Law 103–311, 108 Stat. 1673 (1994) removed the procedures of former section 11501(e) for petitioning the ICC. Moreover, the ICCTA broadened the preemption of state regulation of intrastate motor carrier of passenger rates. Prior to the ICCTA, states were preempted from regulating reductions in intrastate motor carrier passenger rates over interstate routes. Now, states are preempted from regulating all intrastate motor passenger rates over interstate routes. *See* 49 U.S.C. 14501(a). Accordingly, we are removing the part 1143 regulations.

Part 1158

Part 1156 concerns submission of cost data for reimbursement for directed service. Under former section 1(16)(b) of the Interstate Commerce Act (recodified at former 49 U.S.C. 11125), the directed carrier was to be reimbursed by the Federal Government in the amount that costs for routing, handling, and moving traffic over the other carrier's lines exceeded the direct revenues from that traffic. The regulations were originally issued in *Regional Rail Reorg. Act—Submission of Cost Data*, 348 I.C.C. 251 (1975). The directed service statute under the ICCTA is now found at 49 U.S.C. 11123, and the reimbursement provision has been eliminated. Now, section 11123(b)(3) states that "compensation for the directed operations shall derive only from revenues generated by the directed operations."[8] Accordingly, the regulations in part 1156 for providing cost data to justify reimbursement for directed service are obsolete and are being eliminated.

Part 1170

We are removing part 1170. These regulations concern reemployment rights for employees of motor passenger carriers who lose their jobs because of discontinuances or reductions of regular-route bus service. The rules were issued in response to section 27 of the Bus Regulatory Reform Act of 1982 and published as a note to former 49 U.S.C. 10935. *See Employee Protection—Motor Passenger Carriers*, 133 M.C.C. 140 (1983). By its terms, the provisions of section 27 expired 12 years after its November 1982 effective date. *See* Section 27(i). The ICCTA, moreover, repealed former section 10935.

Small Entities

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1022

Intergovernmental relations.

49 CFR Part 1030

Railroads.

49 CFR Part 1091

Alaska, Intermodal transportation, Motor carriers.

49 CFR Part 1131

Administrative practice and procedure, Investigations, Railroads.

49 CFR Part 1143

Administrative practice and procedure, Intergovernmental relations.

49 CFR Part 1156

Railroads, Uniform system of accounts.

49 CFR Part 1170

Administrative practice and procedure, Buses, Employment.

Decided: September 19, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

PART 1022—[REMOVED]

PART 1030—[REMOVED]

PART 1091—[REMOVED]

PART 1131—[REMOVED]

PART 1143—[REMOVED]

PART 1156—[REMOVED]

PART 1170—[REMOVED]

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X, of the Code of Federal Regulations is amended by removing parts 1022, 1030, 1091, 1131, 1143, 1156 and 1170.

[FR Doc. 97–25733 Filed 9–26–97; 8:45 am]
BILLING CODE 4910–00–P

[1] The regulations were later modified, removing references to safety. 55 FR 11196 (March 27, 1990).

[2] In 1978, the Interstate Commerce Act was recodified without substantive change pursuant to Pub. L. 95–473, Oct. 17, 1978.

[3] Part of former section 205(f) concerning joint boards was recodified at former 49 U.S.C. 10344. This section was also removed by the ICCTA.

[4] In *Exemption of Freight Forwarders in the Noncontiguous Domestic Trade from Rate Reasonableness and Tariff Filing Requirements*, STB Ex Parte No. 598, __ STB __ (Feb. 21, 1997), slip. op. at 5, we interpreted the language in 49 U.S.C. 13701(a)(1)(B) ("movement by or with a water carrier") as denoting, as here relevent, "joint rates in which a water carrier is a participant."

[5] *See also Sea-Land Freight Serv., Inc. et al.—Alaskan Trade Substituted Serv.—Petition for Declaratory Order*, Docket No. MC–C–10924, 1987 MCC Lexis 529, at *10 (ICC served Mar. 13, 1987): "[S]ubstituted service is not a through route/joint rate arrangement * * *."

[6] In an Advance Notice of Proposed Rulemaking, *Expedited Procedures for Processing Simplified Rail Rate Reasonobleness Proceedings*, Ex Parte No. 527 (Sub-No. 1) (served and published in the **Federal Register** on February 12, 1997 (62 FR 6506)), the Board solicited comments to establish a general procedural schedule for cases processed under the simplified rate evaluation procedures adopted in *Rate Guidelines—Non-Coal Proceedings*, Ex Parte No. 347 (Sub-No. 2). When final rules are issued in that proceeding, the Board will have in place rules applicable to all rate complaints.

[7] Under 49 U.S.C. 10501(a)(2)(A), the Board has jurisdiction over transportation between a place in one state and a place in the same state "as part of the interstate rail network." Accordingly, only if the intrastate movement is not part of the interstate rail system can a state exercise jurisdiction. In such limited areas, the Board does not have jurisdiction.

[8] The conference report accompanying the ICCTA notes that the statute "restricts directed rail transportation to situations where no Federal funding is involved, and compensation to the carrier providing the directed service comes entirely from the revenues generated by the service." H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 185 (1995), *reprinted in* 1995 U.S.C.C.A.N. 793, 870.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 091897A]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna Angling Category

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA).

ACTION: Closure.

SUMMARY: NMFS closes the fishery for school, large school, and small medium Atlantic bluefin tuna (ABT) conducted by Angling category fishermen in the waters off New Jersey and states north. Closure of this fishery is necessary because the annual quota of 57 metric tons (mt) of school ABT and 80 mt of large school/small medium ABT allocated for this subcategory in waters off New Jersey and states north is projected to be attained by October 1, 1997. The intent of this action is to prevent overharvest of the quotas established for this fishery.

DATES: Effective 11:30 p.m. local time on October 1, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Section 285.22(d)(1) of the regulations provides for annual quotas of 57 mt of school ABT and 80 mt of large school/small medium ABT to be harvested from waters off New Jersey and states north by individuals in the Angling category. The Assistant Administrator for Fisheries, NOAA (AA), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of those statistics, to project a date when the catch of ABT will equal any quota under § 285.22. The AA is further authorized under § 285.20(b)(1) to prohibit fishing for, or retention of, Atlantic bluefin tuna by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22.

The AA has determined, based on the reported catch and estimated fishing effort, that the annual quota of school, large school, and small medium ABT for those fishing in waters off New Jersey and states north will be attained by October 1, 1997. Fishing for, catching, possessing, or landing any school, large school, or small medium ABT (measuring 27 inches to less than 73 inches (69 cm to less than 185 cm)) in the closed area must cease at 11:30 p.m. local time on October 1, 1997. The southern area (the waters off Delaware and states south) fishery for school, large school, and small medium ABT was previously closed for the 1997 season (62 FR 44423, August 21, 1997; 62 FR 35447, July 1, 1997).

The fishery for large medium and giant ABT (measuring 73 inches or greater) is not affected by this closure and remains open in all areas until further notice, subject to the trophy fish limit of one-per-vessel-per-year. Such large medium or giant ABT must be reported to the nearest NMFS enforcement office as required under § 285.24. In North Carolina, trophy fish must be reported to the Coast Guard at 919–995–6403. Anglers should verify that the trophy category remains open by calling the NMFS 24–hour Information Line at 301–713–1279 prior to each fishing trip. In addition, anglers may continue to tag and release ABT of all sizes under the NMFS tag-and-release program (50 CFR 285.27).

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 23, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–25671 Filed 9–23–97; 4:59 pm]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7052–02; I.D. 092297D]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker/Rougheye Rockfish in the Eastern Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of shortraker/rougheye rockfish in the Eastern Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catches of shortraker/rougheye rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the 1997 total allowable catch (TAC) of shortraker/rougheye rockfish in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 23, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1997 TAC of shortraker/rougheye rockfish in the Eastern Regulatory Area of the GOA was established as 460 metric tons by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the 1997 TAC for shortraker/rougheye rockfish in the Eastern Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of shortraker/rougheye rockfish in the Eastern Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for shortraker/rougheye rockfish in the Eastern Regulatory Area of the GOA. Providing prior notice and an opportunity for public comment for this action is impracticable and contrary to public interest. The fleet has taken the 1997 TAC for shortraker/rougheye rockfish. Further delay would only result in overharvest and disrupt the FMP's objective of not exceeding the TAC throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 23, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–25670 Filed 9–23–97; 4:59 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 092297C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific cod in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulation implementing the FMP at subpart H of CFR part 600 and 50 CFR part 679.

In accordance with Sec. 679.20(d)(1)(iii)(A), the allowance for the Pacific cod TAC apportioned for vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area was established as 4,369 metric tons (mt) by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) and subsequent apportionment of reserve (62 FR 19062, April 18, 1997). The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 3,369 mt, and set aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. The fishery for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on February 19, 1997, in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (62 FR 8179, February 24, 1997).

NMFS has determined that as of September 13, 1997, 3,092 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA effective 1200 hrs, A.l.t., October 1, 1997.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and an opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP's objective of providing a portion of the Pacific cod TAC for processing by the offshore component in the Central Regulatory Area of the GOA. Without this action, the Pacific cod allocation for vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA would be underharvested, resulting in an economic loss of more than 1.7 million dollars. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 24, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–25777 Filed 9–26–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 188
Monday, September 29, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA105–4066b; FRL–5897–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania: General Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania, for the purpose of establishing the requirements for determining conformity of general Federal actions to applicable air quality implementation plans (General Conformity). In the Final Rules section of this **Federal Register**, EPA is approving Pennsylvania's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 29, 1997.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III address.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title (Pennsylvania General Conformity Rule) which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Incorporation by reference, Air pollution control.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 16, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–25855 Filed 9–26–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 103–21b; FRL–5898–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of NO_x RACT Determination for Panther Creek Energy Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing nitrogen oxides (NO_x) reasonably available control technology (RACT) for Panther Creek Energy Facility located in Carbon County, Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn in the manner described here.

DATES: Comments must be received in writing by October 29, 1997.

ADDRESSES: Written comments on this action should be addressed to David Campbell, Air, Radiation, and Toxics Division, Mailcode 3AT22, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Kelly L. Bunker, (215) 566–2177, at the EPA Region III office or via e-mail at Bunker.Kelly@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the Region III address.

SUPPLEMENTARY INFORMATION: See the information pertaining to this action, NO_x RACT determination for one individual source located in Pennsylvania, provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 16, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–25756 Filed 9–26–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–8; RM–8957]

Radio Broadcasting Services; Amelia, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of petition for rulemaking.

SUMMARY: The Commission denies the petition for rule making filed by Amelia Broadcasting of Louisiana, proposing the allotment of Channel 249C3 to Amelia, Louisiana. See 62 FR 3851, January 27, 1997. The proposal is denied because of the lack of a suitable transmitter site. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–8, adopted September 10, 1997, and released September 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–25589 Filed 9–26–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–264; RM–8977]

Radio Broadcasting Services; Roxton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of petition for rulemaking.

SUMMARY: This action dismisses a petition for rule making filed by Northeast Texas Broadcasters requesting the allotment of Channel 257A to Roxton, Texas, because of a short-spacing conflict with a one step application filed by OARA for Channel 257C2 at Linden, Texas. *See* 62 FR 2639, January 17, 1997. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–264, adopted September 10, 1997, and released September 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–25594 Filed 9–26–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–204, RM–9143; RM–9158]

Radio Broadcasting Services; McFarland and Coalinga, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately-filed, mutually-exclusive petitions for rule making seeking the allotment of Channel 247A. The first, filed on behalf of Kerner Broadcasting Company, requests the allotment of Channel 247A to McFarland, California, as that community's second local FM transmission service (RM–9143). The second proponent, James K. Zahn, seeks the allotment of Channel 247A to Coalinga, California, as that community's second local commercial FM service (RM–9158). Reference coordinates used for the McFarland proposal are 35–40–16 and 119–20–30. Those used for Coalinga are 36–08–30 and 120–21–18.

DATES: Comments must be filed on or before November 10, 1997, and reply comments on or before November 25, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, Esq., 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036 (counsel for Kerner Broadcasting Company); Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 1990 M Street, NW., Suite 510, Washington, DC 20036 (counsel for James K. Zahn).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–204, adopted September 10, 1997, and released September 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–25593 Filed 9–26–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 387

[FHWA Docket No. FHWA–97–2923; FHWA No. 97–11]

RIN 2125–AE06

Qualifications of Motor Carriers to Self-Insure Their Operations and Fees To Support the Approval and Compliance Process; Correction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to advance notice of proposed rulemaking (ANPRM) and request for comments.

SUMMARY: This document corrects the assigned FHWA docket number and the address for submission of comments to this ANPRM regarding standards to approve motor carriers as self-insurers which was published on Tuesday, September 23, 1997, at 62 FR 49654 in FR Doc. 97–24714. In addition, the authority citation is provided for issuance of the ANPRM.

DATES: This correction is effective September 29, 1997. Comments to the ANPRM must be received on or before November 24, 1997.

ADDRESSES: Signed, written comments should refer to FHWA Docket No. FHWA–97–2923 and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: John F. Grimm, Office of Motor Carriers, (202) 366–4039, or Stanley M. Braverman, Motor Carrier Law Division, Office of the Chief Counsel, (202) 358–7035, Federal Highway Administration, 400 Virginia Ave., SW., Suite 600, Washington, DC 20024. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: In FR Doc. 97–24714 which was published on Tuesday, September 23, 1997, make the following corrections:

On page 49654 in the first column, in the heading of the document, change the docket number to read as follows: [FHWA Docket No. FHWA–97–2923].

On page 49654, the information under the caption **ADDRESSES** should read as set forth above in this correction document.

The authority for publishing the ANPRM and this correction for 49 CFR Part 387 reads as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.48.

Issued on: September 24, 1997.

Edward V.A. Kussy,

Federal Highway Administration, Acting Chief Counsel.

[FR Doc. 97–25763 Filed 9–26–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Northern Goshawk in the Contiguous United States West of the 100th Meridian

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the northern goshawk (*Accipiter gentilis*) in the contiguous United States west of the 100th meridian under the Endangered Species Act, as amended. Due to court remands and the need to complete a thorough status review on this controversial species, the Service has determined that the petition presents substantial information indicating that listing of the northern goshawk (comprising portions of the subspecies *A.g. atricapillus* and *A.g. apache*) as a threatened or endangered species in the contiguous United States west of the 100th meridian may be warranted. The Service initiates a status review for the northern goshawk and will prepare a 12-month finding at the conclusion of the review. Through issuance of this notice, the Service is requesting additional information regarding the subspecies *A.g. atricapillus* and *A.g. apache* in the western contiguous United States. The Service vacates the previous finding for the same petitioned action dated June 6, 1996.

DATES: Comments and materials related to this petition finding must be received on or before December 29, 1997.

ADDRESSES: Information, comments, or questions concerning this petition may be submitted to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Rd., Suite 103, Phoenix, Arizona 85021. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sam Spiller, Field Supervisor (see **ADDRESSES** section) (telephone 602/640–2720).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (90-day finding), and notice of the finding is to be published promptly in the **Federal Register**. If a finding is made that substantial information was presented, the Service is required to promptly commence a status review of the species involved and determine whether the petitioned action is warranted.

On July 19, 1991, the Service received a petition from Dr. Robin Silver, M.D., Maricopa Audubon Society, Phoenix, Arizona (Silver *et al.* 1991), to list the northern goshawk (*Accipiter gentilis*) as an endangered species in Utah, Colorado, New Mexico, and Arizona with critical habitat. On September 26, 1991, a letter was received by the Service from Mr. Charles Babbitt, Maricopa Audubon Society, and a coalition of conservation organizations (Babbitt *et al.* 1991) requesting to amend the petition already under consideration by the Service. Co-sponsors of this request to amend the previous petition were the Arizona Audubon Council, Southwest New Mexico Audubon Society, Mesilla Valley Audubon Society, Forest Guardians, Friends of the Owls, Greater Gila Biodiversity Project, HawkWatch, Rio Grande

Chapter of the Sierra Club, and Southern Utah Wilderness Alliance. The coalition requested expanding the geographic region under consideration to include the "forested west." The *forested west* was subsequently defined as the forested United States west of the 100th meridian. Because the request to amend the previous petition required consideration of a listing action substantially broader in scope than the petition under review at that time, the Service informed the coalition that their request for an amendment would be considered as a separate, new petition.

On January 7, 1992, the Service published a finding that the first petition (on the northern goshawk in Utah, Colorado, New Mexico, and Arizona) did not present substantial information to indicate that the goshawk in that petitioned region constituted a listable entity (57 FR 546). However, the Service concluded that the petition presented substantial information indicating that northern goshawk population declines and loss or modification of habitat may be occurring. Therefore, the Service announced in a separate **Federal Register** notice (January 7, 1992; 57 FR 544) the initiation of a status review for the northern goshawk throughout its range in the United States. That status review specifically solicited information to be used in evaluation of the potential for distinct population segments within the range of the northern goshawk in North America.

On June 25, 1992 (57 FR 28474), the Service published a 90-day finding that the petition did not present substantial information to indicate that the northern goshawk in the western United States was a listable entity. The Service found that the petition presented no evidence of reproductive isolation or genetic differentiation between the goshawk in the west and the goshawk in the eastern United States, and that goshawk habitat was contiguous from the western United States to the eastern United States through Canada. The petitioners subsequently filed a lawsuit to have the finding set aside under the Administrative Procedure Act. On February 22, 1996, U.S. District Judge Richard M. Bilby found the June 25, 1992, not substantial petition finding to be arbitrary and capricious, and remanded the finding to the Service for a new 90-day determination and vacated the previous finding.

On June 6, 1996 (61 FR 28834), the Service published a notice vacating the petition finding of June 25, 1992, and published a new 90-day finding that the petition to list the northern goshawk in the western had not presented substantial information that the petitioned action may be warranted. The Service determined that since the entity petitioned for listing was comprised of more than one subspecies it did not meet the definition of a distinct vertebrate population as defined in the National Marine Fisheries Service and Fish and Wildlife Service Final Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS policy; February 7, 1996; 61 FR 4722).

The petitioners subsequently filed a lawsuit to have that finding set aside. On June 6, 1997, Judge Bilby found the June 6, 1996, finding to be arbitrary and capricious, and remanded the finding to the Service for another 90-day finding. On August 19, 1997, Judge Bilby clarified that the decision on remand was to be made using the Service's DPS policy without the "one subspecies" rule the Service had relied on in making its June 6, 1996, finding. In addition, on August 22, 1997, the petitioners amended their petition to seek listing of northern goshawks west of the 100th meridian in the contiguous 48 states.

The Service has determined that a substantial 90-day finding on the petition to list northern goshawks in the contiguous United States west of the 100th meridian is appropriate at this time in order to be responsive to the court ordered remand and to allow for a thorough status review of this species. This notice serves to inform the public of the Service's new 90-day finding and vacation of the Service's June 6, 1996, finding. This finding is based on various documents, including published and unpublished studies, agency files, field survey records, and consultation with Federal and state agency personnel and other management and research authorities. All documents on which this finding is based are on file in the Fish and Wildlife Service's Arizona Ecological Services Field Office (see **ADDRESSES** section).

Northern Goshawk Taxonomy and Distribution

The northern goshawk has a wide distribution and occurs in forested regions throughout the higher latitudes of the northern hemisphere. Approximately 12 subspecies have been recognized, with seven to nine occurring across northern Europe and Asia (Gladkov 1941, Palmer 1988). Three subspecies of northern goshawk have been recognized in North America. Queen Charlotte goshawk (*A.g. laingi*) is located in coastal British Columbia and southeastern Alaska and does not occur within the petitioned area.

The population segment of the northern goshawk under petition includes portions of the ranges of *A.g. atricapillus*, and *A.g. apache*. The most widespread subspecies, *A.g. atricapillus*, occurs from the northeastern United States across the boreal forests of Canada and Alaska, and southward through the upland forests of the western United States. The Apache goshawk (*A.g. apache*) occurs in montane areas in southern Arizona and New Mexico, extending southward into the Sierra Madre of Mexico (American Ornithologists' Union 1957, Hubbard 1978, Johnsgard 1990, Monson and Phillips 1981, Palmer 1988, Phillips *et al.* 1964, Reynolds *et al.* 1992, van Rossem 1938, Wattel 1973, Webster 1988).

The taxonomic distinctness of *A.g. apache* remains in debate. The American Ornithologist's Union (1957) did not include *A.g. apache* in its last listing of birds which included subspecies. However, *A.g. apache* is recognized by Brown and Amadon (1968), Hubbard (1978 and 1992), Hellmayer and Conover (1949), Johnsgard (1990), Monson and Phillips (1981), Phillips *et al.* (1964), Stresemann and Amadon (1979), van Rossem (1938), and Wattel (1973). Mensural analysis of various size and mass parameters conducted by Whaley and White (1994) provide additional support for the recognition of *A.g. apache*.

The primary nesting habitat of the goshawk is mature riparian, coniferous, or deciduous forests with large and tall trees (Crocker-Bedford and Chaney 1988, Fischer 1986, Hayward and Escano 1989, Kennedy 1988, Marquiss and Newton 1982, Moore and Henny 1983, Reynolds 1988, Reynolds *et al.* 1982, Reynolds *et al.* 1992, Saunders 1982, Schuster 1980). Some variation exists in habitat used for breeding, but even in atypical habitat, nest sites are generally located in wooded areas with the largest trees and greatest canopy closure (Bond 1940, Bull and Hohmann 1994, Hall 1984, Hargis *et al.* 1994, White et *al.* 1965, Woodbridge and Detrich 1994). In the drier areas of the west such as the Great Basin, goshawks also nest in high-elevation shrubsteppe habitat supporting small, highly fragmented stands of mature aspen (*Populus tremuloides*) (Younk and Bechard 1994).

Goshawks display a high degree of nest site fidelity, and are generally nonmigratory or weakly migratory (Johnsgard 1990, Kennedy 1989, McGowan 1975, Palmer 1988, Reynolds 1988, Snyder 1995). Reynolds (1988) believes the goshawk is more migratory

in the northern part of its range. Seasonal movements have been documented which appear to be along north-south axes (Hoffman 1991, Mueller and Berger 1987, Titus and Fuller 1990), on elevational gradients (Phillips *et al.* 1964), or in response to food availability on breeding areas during the winter (Squires and Reynolds 1997). Juvenile dispersal is generally less than 40 kilometers (25 miles) from the natal site (Anonymous 1990, Marquiss and Newton 1982, McGowan 1975, Widen 1985). However, goshawks are capable of moving very long distances and occasionally do so, especially subadults (Hoffman 1991). The best information available suggests that goshawks do not tend to make significant movements for the purpose of seeking new breeding sites. Migratory or other seasonal movements, by definition, typically do not provide for mixing of individuals from diverse geographic regions for reproductive purposes.

Distinct Population Segment Determination

A species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act. A species that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range may be declared a threatened species under the Act. The term "species" is defined by the Act to include "* * * subspecies * * * and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature * * *" (16 U.S.C. 1532 (15)).

The Service's decision on the issue of whether a particular population qualifies for listing under the Act is governed by the Service's DPS policy which requires that the Service consider (1) discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing.

For a listable entity, the information submitted with and referenced in the petition, and other available data, must represent "substantial information." This information must present both adequate and reliable data on the status of the species' biological vulnerability and the threats to the species and/or its habitat, and which tends to show that the petitioned action may be warranted. The standard for substantial information is stated at 50 CFR 424.14(b) as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted."

Population Discreteness

Under the DPS policy the Service must evaluate whether the northern goshawk in the contiguous United States west of the 100th meridian is a discrete population segment based on consideration whether—(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the Act.

The goshawk and its habitat in the United States are separable into two broad regions—(1) the forested east, including the Appalachian Mountains and far northern reaches of the Great Lakes region; and (2) the forested highlands west of the 100th meridian (Johnsgard 1990). The 100th meridian bisects the United States, passing north to south approximately through the center of North and South Dakota, Nebraska, Kansas, western Oklahoma, and Texas. The intervening Great Plains lack goshawk nesting habitat. However, in Canada north of the Great Plains, potential goshawk habitat is continuous across the continent from east to west.

Eastern and western subspecies of the "American Goshawk" were once recognized (Baird *et al.* 1874, cited in Taverner 1940). This taxonomy was recognized by Wolfe (1932), Dixon and Dixon (1938), and Abbott (1941). However, Taverner (1940) determined that the plumage variations on which these distinctions were made are related to age, not geographic variation. The degree of genetic interchange between goshawks in eastern and western United States is unknown, as is the degree of interchange across western United States between Canada and Mexico.

The range of the goshawk in the contiguous United States west of the 100th meridian includes portions of two identified subspecies and is bounded by the ecological barrier of the Great Plains to the east. Delimiting the northern boundary of the population segment as the United States-Canadian border, and the southern boundary as the United States-Mexico border, recognizes differences in management of habitat, control of exploitation, knowledge on the status of the species, and existing regulatory mechanisms across international boundaries. For example, the goshawks in the western United States occurring on Federal lands are managed under various United States laws, such as the National Forest Management Act (U. S. Forest Service), the Federal Land Policy and Management Act (Bureau of Land Management), and the Organic Act (National Park Service). While Canada and Mexico also have laws governing management of wildlife, the Service has insufficient information to determine whether there are differences that are significant to the conservation of the species. For these reasons, the Service concludes that the available information tends to support a finding that the 100th meridian and the U.S. borders with Canada and Mexico demarcate a discrete population segment of goshawks under the DPS policy. The Service seeks further information for purposes of making a 12-month finding on this issue, including information on the status of goshawks and relevant management practices in Canada and Mexico.

Population Significance

Under the DPS policy, the Service must next evaluate whether the northern goshawk in the lower 48 states west of the 100th meridian is a significant population segment. To do so, the Service must consider whether—(1) the population represents an ecological situation unique for the taxon; (2) whether the loss of the population would result in a significant gap in the range of the taxon; (3) whether the population represents the only surviving natural occurrence of a taxon occurring elsewhere as an introduced species; and/or (4) whether the population differs markedly in its genetic characteristics.

The Service has determined that the population of northern goshawks in the contiguous United States west of the 100th meridian constitutes a significant portion of the goshawk's range, and that loss of goshawks in the petitioned area would result in a significant gap in the species' range. Thus, the Service determines that goshawks in the contiguous United States west of the 100th meridian are significant in terms of the Service's DPS policy.

Population Status

The petition contends that goshawk numbers are few and declining, essential habitat is subject to widespread present and threatened destruction, and the existing regulatory mechanisms for protection are inadequate. In an overview prepared for a northern goshawk symposium, Block *et al.* (1994) reports that within the previous five years evidence has arisen which suggests that populations of northern goshawks have declined, particularly in the western United States. Declines in goshawk nest site occupancy and reproductive success have been suggested in Arizona, California, and Nevada (Crocker-Bedford 1990b; Reynolds *et al.* 1994 citing Herron *et al.* 1995 and Bloom *et al.* 1980; Snyder 1995; Zinn and Tibbitts 1990), Idaho (Patla 1991), and New Mexico (Kennedy 1989).

Keane and Morrison (1994) (citing Reynolds *et al.* 1992, Reynolds 1987, and Bloom *et al.* 1986) suggest that the major threat to the goshawk is the loss or degradation of mature forests used for nesting and foraging, due to timber harvesting and livestock grazing in some areas. Snyder (1995 citing Marshall 1957) attributes a probable decrease in goshawk carrying capacity to decreased habitat quality as a result of fire protection which has led to increased thickets of young trees, fuel buildup, and ultimately catastrophic wildfire that destroys large areas of habitat.

There exists much debate regarding the scientific validity and rigor of many of the studies citing goshawk population responses to forest management activities. The Service has not fully evaluated the scientific methods used in the studies cited in this finding, nor made determinations about the cause and effect relationships of population changes and the relationship of these changes to the range-wide status of the goshawk. The Service will do this during preparation of the 12-month finding.

The northern goshawk is known to experience fluctuations in population size, density, and nesting success, presumably in response to natural factors such as prey availability. Several authors (Doyle and Smith 1994, McGowan 1975, Mueller and Berger 1968, Snyder 1995, Widen 1985) speculated that goshawk nest site occupancy and seasonal movements may be affected by fluctuations in prey availability. Snyder (1995), studying the conservation biology of the Apache goshawk, found evidence to suggest some declines in nesting goshawk numbers over a ten year period on the Coronado National Forest in Arizona. However, Snyder was not able to conclude if this is within normal, expected variation in site occupancy due in part to drought affecting prey species. Additionally, past and potential future conflicts between people and birds is at issue due to close proximity of goshawk nest sites and human activity.

Timber extraction may significantly alter forest structure and ecology. Many studies have attempted to investigate the implications of forest management on goshawk populations. In Idaho, Patla (1991) found nest site occupancy dropped from 72 percent before timber harvesting to 18 percent following harvest. In Arizona, Crocker-Bedford (1990b) found productivity was associated with varying intensity of timber harvest, with 2.0 nestlings/nest in unharvested locales; 1.8 with 25 percent of acres harvested; 1.0 in areas 50 percent harvested; and 0.0 with 75 percent of acres harvested. Also in Arizona, Bright-Smith and Mannan (1994) found that timber harvest that creates large areas with sparse tree cover is potentially detrimental to goshawks.

In northern California, Woodbridge and Detrich (1994) found that despite intensive timber harvest and fragmentation of mature forest, their study area supported high densities of nesting goshawks. However, goshawks in this study were associated with the larger remaining patches of mature forest. Woodbridge and Detrich (1994) theorized that prey found in open habitat, in this case, the golden-mantled ground squirrel (*Spermophilus lateralis*), may offset losses of prey species associated with mature forest. Hargis *et al.* (1994) found in the Inyo National Forest of northern California, that goshawks nested in stands that were substantially more open than those used in other geographic areas. Goshawks in this study selected stands that were denser than the average available, both for nesting and foraging. In addition, Hargis *et al.* (1994) found that all goshawk territories associated with timber sales were active for approximately two-thirds of the years since the harvests, based on nesting records, over a period of 14 years.

The results of a population viability analysis conducted by the Arizona Game and Fish Department in 1992 for the goshawk on the Kaibab National Forest, North Kaibab Ranger District, Arizona, could not conclude that the population was stable, increasing, or decreasing (Maguire 1993). Kennedy (1997) concluded that there was no evidence to support the hypothesis that goshawk populations are declining. A panel with members from The Wildlife Society and American Ornithologist's Union found no evidence to indicate that northern goshawk populations are declining, threatened, or endangered in the southwest or anywhere within its range (Braum *et al.* 1996). However, the panel recognized a need to conduct additional research of goshawk demographics and additional inventory and monitoring of goshawk populations (Braum *et al.* 1996).

Presently, the northern goshawk is regarded as a management indicator species of specific habitat conditions in many regions of the U.S. Forest Service and is a Forest Service Sensitive Species within the Rocky Mountain, Intermountain, Southwest and Pacific Southwest Regions (Block *et al.* 1994; Squires and Reynolds 1997). The goshawk is not afforded sensitive status in the Pacific Northwest Region.

The Southwest Region of the Forest Service (National Forests in the states of Arizona and New Mexico) issued interim guidelines for the management of the goshawk in June 1992. These interim guidelines adopted the Management Recommendations for the Northern Goshawk in the Southwestern United States (Reynolds *et al.* 1992). Permanent guidelines were added to the Forest Service Directives System as a Regional Supplement in June, 1995 (U.S. Forest Service 1995), and the Southwestern Region of the Forest Service adopted Reynolds *et al.* (1992) in their Forest Plan Amendments in 1996 (U.S. Forest Service 1996). Management strategies for the goshawk in the Upper Columbia River Basin, including Idaho and portions of neighboring states, have been developed (Patla *et al.* 1995). The Northwest Forest Plan has established late successional reserves throughout the range of the northern spotted owl (*Strix occidentalis caurina*) in Oregon and Washington. The success of these and other strategies in the western United States will be evaluated during the status review and as the 12-month finding is prepared.

Because the court ordered the previous not substantial 90-day finding remanded and current literature offers conflicting views of goshawk population trends and threats facing goshawks in the contiguous United States west of the 100th meridian, the Service has determined that a status review is necessary to examine whether the northern goshawk warrants listing. Current literature presents contradicting views on the purported decline of goshawks. Threats to the goshawk's habitat and the effects of those threats also must be analyzed before the Service can issue a determination regarding the status of goshawks in the western contiguous United States. Current data need to be scrutinized to determine goshawk population trends and subspecies (*A. gentilis apache*) validity.

After a review of the petition, the references cited, and information otherwise available to the Service, the Service finds that, on the basis of the best scientific and commercial

information available, the petition presented substantial information that listing *A. gentilis* in the contiguous United States west of the 100th meridian as a threatened or endangered species may be warranted. The Service determines that, although significant disagreement may exist as to the status of this species, the petition presents substantial information that indicates northern goshawks in the petitioned region may be declining in response to habitat loss and modification, and lack of existing regulatory mechanisms. Upon completion of a thorough status review, a 12-month finding will be made to determine whether listing is warranted for the northern goshawk in the western contiguous United States.

The Service seeks any additional data, information, or comments from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning the status of *A.g. atricapillus* and *A.g. apache*. The Service is interested in information from throughout the subspecies' ranges in the United States, Canada, and Mexico. The following issues are of particular interest to the Service—

1. The genetic, morphological, and ecological differences, including variations or intergradation of *A.g. atricapillus* and *A.g. apache* within their range;
2. Data on historic and current population trends and dynamics, and documented or suspected influencing factors which may assist in determining population trends;
3. Reproduction trends and documented or suspected influencing factors;
4. Trends in loss, modification, and recovery of forested habitat of the two subspecies, and the extent and affect of habitat conversion and fragmentation on goshawks and their prey;
5. Taxonomic clarification of North American goshawk subspecies;
6. Migration and dispersal; and
7. Information on the status of the goshawk in Canada and Mexico, as well as information on its management and relevant regulatory mechanisms.

References Cited

A complete list of all references cited herein is available on request from the Field Supervisor, Arizona Ecological Services Field Office, (see **ADDRESSES** section).

Authors

The primary authors of this document are Michele James and Bruce K. Palmer, of the Arizona Ecological Services Field Office, (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: September 22, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–25695 Filed 9–26–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE37

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Virginia sneezeweed (Helenium virginicum), a Plant From the Shenandoah Valley of Virginia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Helenium virginicum* (Virginia sneezeweed) as a threatened species, under the authority of the Endangered Species Act of 1973, as amended (Act). This rare plant is restricted to seasonally inundated sinkhole ponds and meadows in Augusta and Rockingham counties, Virginia. Five of the 25 known extant populations are on U.S. Forest Service land; the others are on private land. This perennial plant is threatened by residential development, incompatible agricultural practices, filling and ditching of its wetland habitat and other disruptions of its habitat and the hydrology that maintains it. At several sites, ditches have been constructed to reduce the length of time that standing water is present. This has caused the *H. virginicum* population at one of the sites to be reduced to near extinction. *Helenium virginicum* is presently listed as endangered by the State of Virginia. This proposal, if made final, would implement Federal protection and recovery provisions afforded by the Act for this species.

DATES: Comments from all interested parties must be received by November 28, 1997. Public hearing requests must be received by November 13, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Chesapeake Bay Field Office, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, MD 21401. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Andy Moser, Chesapeake Bay Field Office (see ADDRESSES section) (telephone 410/573–4537; facsimile 410/269–0832).

SUPPLEMENTARY INFORMATION:

Background

Helenium virginicum (Virginia sneezeweed) is a perennial member of the aster family (Asteraceae) known only from Augusta and Rockingham counties, Virginia. The common name, sneezeweed, is based on the use of the dried leaves of these plants in making snuff, inhaled to cause sneezing that would supposedly rid the body of evil spirits (Niering 1979). *Helenium virginicum* stems grow to a height of 4 to 11 decimeters (1.5 to 3.5 feet) above a rosette of basal leaves. Coarse hairs are visible on the basal and lower stem leaves. The basal leaves may be broad in the middle tapering toward the ends, but otherwise may appear oblong. Stem leaves are lance-shaped, and become progressively smaller from the base to the tip of the stem. The stems are winged, the wings being continuous with the bases of the stem leaves. The flower ray petals are yellow, and wedge-shaped with three lobes at the ends. The central disk of the flower is nearly ball-shaped. Flowering occurs from July to October (Virginia Department of Conservation and Recreation 1995).

Helenium virginicum is similar to common sneezeweed (*Helenium autumnale*), but differs in having a sparsely-leaved stem, larger basal leaves, and longer pappus scales (appendages which crown the ovary or fruit). It is also differentiated by leaf shape, stem and leaf hairs, and habitat requirements.

Helenium virginicum was first described by S.F. Blake in 1936 from specimens collected near Stuart's Draft, Virginia. It is a perennial wetland species found only on the shores of shallow, seasonally flooded ponds in Virginia's Shenandoah Valley. From 1985 through 1995, extensive status survey work was conducted for *H. virginicum* in over 100 limestone sinkhole ponds along the western edge of the Blue Ridge Mountains in the Shenandoah Valley of Virginia. A total of 28 separate populations were located during these surveys. The ponds at these locations range in size from less than 0.04 hectare(ha) (0.1 acre (ac)) to 3 ha (8 ac) and are seasonally flooded, semipermanent, or permanent bodies of water. The ponds supporting *H.*

virginicum have poorly drained, acidic, silty loam soils, and are typically flooded from January through July.

Helenium virginicum is adapted to survive the water level fluctuations of the seasonal ponds, giving it a competitive advantage in this habitat. From year to year, the number of *H. virginicum* plants at any given site may vary greatly. A high water level one year may leave the ponds flooded, resulting in less shoreline for plants to become established or to survive. However, a high water level also eliminates the invading shrubs and trees that may compete with *H. virginicum* on the pond shores. When the water level is lower, more pond shore is exposed and the surviving plants and the seeds stored in the soil enable the *H. virginicum* populations to rebound (Virginia Department of Conservation and Recreation 1995).

Seeds of *Helenium virginicum* are dispersed in late fall and winter; germinating in late summer or early fall of the following year if conditions are suitable. Seeds will not germinate in the dark or under a standing column of water. In the first year of growth, the plant exists as a basal rosette with a diffuse root system. Plants seem to grow year-round, even while submerged. Flowering usually does not occur until the plant is more than one year old. One aerial stem bearing several flower heads is formed during the first flowering season; in subsequent years several flowering stems may be formed in a season. Plants may live for five years, flowering in consecutive years (J.S. Knox, Washington and Lee University, pers. comm. 1997).

Of the 28 populations of *Helenium virginicum* identified during the 10-year survey period, 25 currently are considered to be extant. The remaining three populations, where no *H. virginicum* have been seen in recent years, may be extirpated. Of the 25 extant populations, 5 are on U.S. Forest Service land and the remaining 20 are on private lands. The most recent status report (Van Alstine 1996) provides an excellent review of the status and trends for the species. The report indicates that the majority of sites on private land are in wetlands and have a range of disturbances and threats including ditching, filling, mowing, and grazing.

Previous Federal Action

Federal government actions on this species began on November 28, 1983, when the Service published a notice of review in the **Federal Register** (48 FR 53640) covering all native plants being considered for listing as endangered or threatened. *Helenium virginicum* was included in that notice as a category 2 species. Category 2 species were defined as those taxa for which the Service lacked information to determine if category 1 status was warranted. It was subsequently retained as a category 2 species when the Notice of Review for Native Plants was revised in 1985 (50 FR 39526), and again in 1990 (55 FR 61184).

In 1985, the Service contracted with The Nature Conservancy to conduct status survey work on *Helenium virginicum* and numerous other rare plant species. Their final report, dated October 20, 1986, recommended threatened status for this plant but indicated that additional ponds should be checked for the presence of this species.

In 1990 and 1991, the Virginia Department of Conservation and Recreation's Division of Natural Heritage conducted further fieldwork, funded in part by the Service, to locate additional *Helenium virginicum* populations. An exhaustive search resulted in the discovery of seven additional locations of the species, but three of these locations contained very few individuals. Based largely on this new information, *H. virginicum* was moved to category 1 when the Notice of Review for Plant Taxa was revised in 1993 (58 FR 51144). Category 1 species were defined as those taxa for which the Service had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), the Service ceased using category designations and included *H. virginicum* as a candidate species. As currently defined, candidate species are those taxa for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1513) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Helenium virginicum* Blake (Virginia sneezeweed) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat modification is the principal threat to *Helenium virginicum*. It is threatened by residential development, incompatible agricultural practices, filling and ditching of wetland habitats, groundwater withdrawal, and other disruptions of hydrology. Because the survival and maintenance of *H. virginicum* populations depend on seasonal water level fluctuations, either wetland drainage or increases in the time of inundation may result in high levels of mortality. Of the 18 populations visited in 1995, eight were located in relatively undisturbed wetlands, while the remaining 10 were in wetlands altered by ditching, mowing, grazing or filling (Van Alstine 1996). At least four of the sites where recently the species has dramatically declined have modified hydrology (Van Alstine and Ludwig 1991). Three of these sites have been either ditched or filled, thereby shortening or eliminating the wet phase.

Among the most threatened populations of *Helenium virginicum* are those in the area south and southwest of Lyndhurst, Virginia, where land use is increasingly being converted from agricultural to residential. Increased drainage control which accompanies such development will adversely affect many of the sites located on or near agricultural lands over the next 10 years (Van Alstine and Ludwig 1991).

One proposed project, the widening of Route 340 from two to four lanes in Augusta County, could have severe impacts on one of the largest populations of *Helenium virginicum*. However, it may be possible to avoid or reduce impacts by careful routing of the highway, controlling runoff, and maintaining current hydrology.

Cattle grazing and mowing affect many of the sites supporting the species. In general, the effects of moderate levels of grazing and mowing appear to be beneficial, since several of the regularly grazed or mowed sites are among the largest and best established populations. Nonetheless, there is a potential that overly frequent, or poorly timed mowing (and perhaps overgrazing) could have a long-term adverse effect on the species by interfering with flowering and seed production (Van Alstine and Ludwig 1991).

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Other species in the genus *Helenium* have been shown to contain compounds with antitumor properties. However, there is no information to show that *Helenium virginicum* is in commercial trade for these compounds. Overcollection has not been documented as a problem for the

species. Most collections, to date, have been for scientific purposes and have been taken from locally large populations which can tolerate these low levels of collection. Overcollection could become a problem at some of the sites supporting smaller populations of *H. virginicum*.

C. *Disease or predation.* Disease and predation are currently not believed to be factors affecting the continued existence of the species. Although grazing may affect *Helenium virginicum*, its effects are thought to be mostly positive, because most grazers appear to feed preferentially on competing vegetation while avoiding *H. virginicum*. The effects of long-term heavy grazing are not known.

D. *The inadequacy of existing regulatory mechanisms. Helenium virginicum* is currently listed as an endangered species by the State of Virginia. State law prohibits the taking of this species from State or private lands without consent of the landowner but does not protect the species' habitat. The Corps of Engineers' regulatory program provides limited regulation of the species' wetland habitats. This has not prevented draining and filling of sites supporting the species.

E. *Other natural or manmade factors affecting its continued existence.* Invasion of an exotic species, the purple loosestrife (*Lythrum salicaria*), is a potential threat. Purple loosestrife is slowly extending its range throughout freshwater wetland areas in Virginia and may invade *Helenium virginicum* habitats, outcompeting the species at affected sites. Climate changes (either natural or human-caused) are also a potential threat to the species. Several consecutive years of unusually wet or unusually dry weather can dramatically lower population numbers; at these times the populations may be especially vulnerable to the modifications to hydrology discussed under factor A.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Helenium virginicum* as a threatened species. This species is faced with increasing threats from loss and degradation of habitat due to development and related changes in hydrology as well as other activities incompatible with the species long-term survival. These threats are compounded by the species' restricted range and small number of populations. While not in immediate danger of extinction, *H. virginicum* is likely to become an endangered species in the foreseeable future if the present threats and declines in the number and sizes of populations continue. In accordance with the definitions for endangered and threatened species found in section 3 of the Act, threatened is the most appropriate classification for *H. virginicum*.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for conservation of the species. *Conservation* means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Helenium virginicum*, at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Twenty of the 25 known extant populations of *Helenium virginicum* are on private land. Most of these populations are located near or adjacent to residential areas or public roads. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required in a proposal for critical habitat, would make this plant vulnerable to incidents of collection and vandalism and, therefore, could contribute to the decline of the species. Although this species is not known to be sought by collectors, related members of the genus are commercially cultivated and at least one member of the genus, *H. amarum*, has been shown to contain compounds of possible medicinal value. The listing of this species as threatened also publicizes its rarity and, thus, may make this plant more attractive to researchers, collectors, and those wishing to see rare plants. The desirability and accessibility of the species, therefore, could make the plants subject to collection if their precise locations were publicized.

In addition, critical habitat designation for *Helenium virginicum* is not prudent due to lack of benefit. Five of the species' 25 known extant populations occur on Federal land in the George Washington and Jefferson National Forest. The U.S. Forest Service is aware of the locations of these populations and has protected four of them through designation as Special Interest Areas (Biological). The fifth population, discovered more recently, is likely to receive a similar designation. The Forest Service has indicated a commitment to assisting in the recovery of this species by protecting these sites. Because it is highly likely that a Forest Service activity which would cause adverse modification of critical habitat would also cause jeopardy to the species, the designation of critical habitat on Federal lands would not provide greater protection for this species or its habitat than that provided by listing.

The remaining 20 of the 25 known extant populations of *Helenium virginicum* are located on private lands. The owners and managers of these private lands were informed of the population locations and of the importance of protecting the species and its habitat. It is highly likely that an activity on private land involving Federal permitting or funding which causes adverse modification of critical habitat would also cause jeopardy to the species. For this reason, the designation of critical habitat on private lands would not provide greater protection for this species or its habitat than that provided by listing. As outlined above, the designation of critical habitat could cause additional threats but likely would provide no additional benefits for the species. Therefore, the Service concludes that designation of critical habitat for *H. virginicum* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed or proposed for listing as endangered or threatened and with respect to those species' designated or proposed critical habitat, if any. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the Federal agency must enter into formal consultation with the Service. Federal agency actions that may require conference and/or consultation include U.S. Forest Service land management activities and U.S. Army Corps of Engineers permitting of projects such as road construction and filling of wetlands subject to section 404 of the Clean Water Act (U.S.C. 1344 *et seq.*).

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. The protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, education purposes, or special purposes consistent with the purposes of the Act. In the case of *Helenium virginicum*, it is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation nor in the wild.

It is the policy of the Service published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. Collection, damage, or destruction of listed species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Such activities on non-Federal lands would constitute a violation of section 9, if conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that would affect *Helenium virginicum* and result in a violation of section 9. Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Chesapeake Bay Field Office (see **ADDRESSES** section).

Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, the Service hereby solicits comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Helenium virginicum;*

(2) The locations of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range and distribution of the species; and

(4) Current or planned activities in the subject area and their possible impacts on the species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Chesapeake Bay Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

Blake, S.F. 1936. A New Helenium from Virginia. Claytonia 3(2):13–15.

Niering, W.A. 1979. The Audubon Society Field Guide to North American Wildflowers—Eastern Region. Alfred A. Knopf, New York. p. 383.

Van Alstine, N.E. 1996. A Reassessment of the Status of the *Helenium virginicum* Populations in the Shenandoah Valley of Virginia. Natural Heritage Technical Report 96–6. VA Dept. of Conservation and Recreation, Richmond, VA. Unpublished report to the U.S. Fish and Wildlife Service. 36pp.

Van Alstine, N.E., and J.C. Ludwig. 1991. Natural Heritage Inventory: *Helenium virginicum*. 1990 Final Report. VA Dept. of Conservation and Recreation, Div. of Natural Heritage, Richmond, VA. Unpublished report. 50pp.

Virginia Department of Conservation and Recreation. 1995. Natural Resources Fact Sheet—Virginia Sneezeweed (*Helenium virginicum*). VA Dept. of Conservation and Recreation, Richmond, VA. 2pp.

Author

The primary author of this proposed rule is Andy Moser, Chesapeake Bay Field office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
•	•	•	•	•	•	•	•
Helenium virginicum	Virginia sneezeweed	U.S.A. (VA)	Asteraceae	T		NA	NA
•	•	•	•	•	•	•	•

Dated: September 15, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–25694 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 188

Monday, September 29, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Commission on Small Farms; Meeting

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of meeting.

SUMMARY: The Secretary of Agriculture by Departmental Regulation No. 1043–43 dated July 9, 1997, established the National Commission on Small Farms (Commission) and further identified the Natural Resources Conservation Service to provide support to the Commission. The purpose of the Commission is to gather and analyze information regarding small farms and ranches and recommend to the Secretary of Agriculture a national policy and strategy to ensure their continued viability. The Commission's next meeting is October 14 and 15, 1997.

PLACE, DATE AND TIME OF MEETING: The Commission's fifth meeting is October 14 and 15, 1997, at the U.S. Department of Agriculture, Jamie L. Whitten Building, Room 107A, 1400 Independence Avenue S.W., Washington, D.C. The meeting is open to the public. On each day the Commission will meet from 8:00 a.m. to 5:00 p.m. to conduct Commission business. The purpose of the meeting is to finalize the Commission's findings and recommendations for consideration by the Secretary of Agriculture.

ADDRESSES: National Commission on Small Farms, USDA, PO Box 2890, Room 5237, South Building, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Jennifer Yezak Molen, Director, National Commission on Small Farms, at the address above or at (202) 690–0648 or (202) 690–0673. The fax number is (202) 720–0596.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to gather and evaluate background information, studies, and data pertinent to small farms and ranches, including limited-resource farmers. On the basis of the review, the Commission shall analyze all relevant issues and make findings, develop strategies, and make recommendations for consideration by the Secretary of Agriculture toward a national strategy on small farms. The national strategy shall include, but not be limited to: changes in existing policies, programs, regulations, training, and program delivery and outreach systems; approaches that assist beginning farmers and involve the private sectors and government, including assurances that the needs of minorities, women, and persons with disabilities are addressed; areas where new partnerships and collaborations are needed; and other approaches that it would deem advisable or which the Secretary of Agriculture or the Chief of the Natural Resources Conservation Service may request the Commission to consider.

The Secretary of Agriculture has determined that the work of the Commission is in the public interest and within the duties and responsibilities of USDA. Establishment of the Commission also implements a recommendation of the USDA Civil Rights Action Report to appoint a diverse commission to develop a national policy on small farms. Individuals may submit written comments to the contact person listed above before or after the meeting.

Dated: September 24, 1997.

Pearlie S. Reed,

Acting Assistant Secretary for Administration.

[FR Doc. 97–25741 Filed 9–26–97; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–97–330]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products."

DATES: Comments on this notice must be received by November 28, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Mr. James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, DC 20090–6456, (202) 720–4693 telephone; (202) 690–1087 Fax.

SUPPLEMENTARY INFORMATION:

Title: "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products—7 CFR 52."

OMB Number: 0581–0123.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Information is needed to carry out inspection and grading services to evaluate products as to quality for compliance with the respective grade standards or product specifications. Affected public may include any partnership, association, business trust, corporation, organized group, and State, County or Municipal government, and any authorized agent that has a financial interest in the commodity involved.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.0538 hours per response.

Respondents: Applicants who are applying for grading and inspection services.

Estimated Number of Respondents: 1,700.

Estimated Number of Responses per Respondent: 12.189.

Estimated Total Annual Burden on Respondents: 1,114.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Mr. James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, DC 20090–6456, (202) 720–4693 telephone; (202) 690–1087 Fax.

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 23, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–25760 Filed 9–26–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–057–1]

General Conference Committee of the National Poultry Improvement Plan; Renewal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of renewal.

SUMMARY: We are giving notice that the Secretary of Agriculture has renewed the General Conference Committee of the National Poultry Improvement Plan for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, Suite A102, 1500 Klondike Road, Conyers, Georgia 30207–5115, (404) 922–3496.

SUPPLEMENTARY INFORMATION: The purpose of the General Conference Committee of the National Poultry Improvement Plan (Committee) is to maintain and ensure industry involvement in Federal administration of matters pertaining to poultry health.

The Committee Chairperson and the Vice Chairperson shall be elected by the Committee from among its members. There are seven members on the Committee with 4-year staggered terms. This Committee differs somewhat from other advisory committees in the selection process and composition of its membership. The poultry industry elects the members of the Committee. The members represent six geographic areas with one member-at-large. The membership is not subject to the U.S. Department of Agriculture's review, and a formal request for nominations for membership is not published in the **Federal Register**.

Done in Washington, DC, this 24th day of September 1997.

Pearlie S. Reed,

Acting Assistant Secretary for Administration.

[FR Doc. 97–25759 Filed 9–26–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension for an information collection currently approved in support of the Cotton Loan Program Regulations issued under authority of the CCC Charter Act (15 U.S.C. 714 *et seq.*).

DATES: Comments on this notice must be received on or before November 28, 1997 to be assured consideration.

ADDITIONAL INFORMATION: George A. Stickels, Agricultural Program Specialist, USDA, Farm Service Agency (FSA), Price Support Division, STOP 0512, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0512; telephone (202) 720–7935; e-mail gstickel@wdc.fsa.usda.gov; or facsimile (202) 690–3307.

SUPPLEMENTARY INFORMATION:

Title: Cotton Loan Program, 7 CFR part 1427.

1OMB Control Number: 0560–0074.

Expiration Date: January 31, 1998.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Control Number 0560–0074, as identified above, is needed to enable the FSA to effectively administer the regulation relating to all aspects of the cotton loan program.

USDA Service Centers, independent Cotton Clerks, Cooperative Marketing Associations and Loan Servicing Agents use various manual and automated forms to collect information from cotton producers for purposes of administering the cotton loan program. The public reporting burden for cotton loan program participants is shown in the following estimates:

Respondents: Cotton producers.

*Estimated Number of Respondents:*200,000.

Estimated Average Time to Respond: 15 minutes.

Estimated Total Annual Responses: 513,255.

Estimated Number of Reports Filed per Person: 2.56.

Estimated Total Burden Hours: 128,318 hours.

Topics for comments include, but are not limited to, the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to George A. Stickels, Program Specialist, USDA, Farm Service Agency, Price Support Division, STOP 0512, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0512; telephone (202) 720–7935; e-mail gstickel@wdc.fsa.usda.gov; e-mail copies of the information collection may be obtained from George A. Stickels at the above address. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, DC, on September 21, 1997.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–25674 Filed 9–26–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 08/21/97–09/17/97

Firm name	Address	Date Petition Accepted	Project
Voorwood Company	2350 Barney Street, Anderson, CA 96007	08/21/97	Woodworking and Finishing Equipment.
Freeway Corporation	9301 Allen Drive Cleveland, OH 44125	08/22/97	Steel Roller Bearings Assemblies, Washers, and Dimension Stampings.
Catahoula Manufacturing, Inc.	2901 Fourth Street, Jonesville, LA 71343	08/25/97	Fishing Nets.
Overhoff Technology Corporation	1160 U.S. Route 50, Milford, OH 45150	09/02/97	Tritium Monitors.
New Bedford Panoramex Corporation	1037 West Ninth Street, Upland, CA 91786.	09/03/97	Airfield Navagation Systems.
Granite Knitwear, Inc.	P.O. Box 498, Granite Quarry, NC 28072	09/08/97	Tee Shirts for Adults and Youth.
Hauser Corporation	3265 Blue Heron View, Macedon, NY 14502.	09/08/97	Auto Transmission Parts and Cases, Auto Gear parts, Water Pump housings, and Misc. Metal parts.
Greg Arceneaux Cabinetmakers	67230 Industry Lane, Covington, LA 70433.	09/09/97	Wooden Furniture.
Perfect Measuring Tape Company (The)	1116 Summit Street, Toledo, OH 43604	09/12/97	Printed Paper Measuring Tape and Tape Dispensers.
Dacor Corporation	161 Northfield Road, Northfield, IL 60093	09/12/97	Regulators for Scuba diving, Diving instruments for calculating depth, direction, time, etc.
Merrick Industries, Inc.	10 Arthur Drive, Lynn Haven, FL 32444	09/15/97	Scales for Continuous Weighing of Goods on conveyors.
Alloy Trailers, Inc.	P.O. Box 19208, Spokane, WA 99219	09/16/97	Truck Trailer and Related parts.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: September 19, 1997.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 97–25714 Filed 9–26–97; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091297A]

Marine Mammals; Pinniped Removal Authority

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of extension of letter of authorization.

SUMMARY: NMFS announces approval of a 4-year extension to the Letter of Authorization (LOA) to the State of Washington for the lethal removal of individually identifiable California sea lions that are having significant negative impact on the status and recovery of winter steelhead that migrate through

the Ballard Locks in Seattle, WA. This action is authorized under Section 120 of the Marine Mammal Protection Act (MMPA).

ADDRESSES: A copy of the LOA may be obtained by writing to William Stelle, Jr., Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115, or to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Joe Scordino (206) 526–6143, or Tom Eagle (301) 713–2322.

SUPPLEMENTARY INFORMATION: Pursuant to Section 120(b) of the MMPA, NMFS initially issued a 3-year Letter of Authorization (LOA) that was valid through June 30, 1997, to the Washington Department of Fish and Wildlife (WDFW) for the lethal removal of California sea lions that are having significant negative impact on the status and recovery of winter steelhead that migrate through the Ballard Locks in Seattle, WA. Information on Washington's application for lethal removal, the process for considering the application which included formation of a Pinniped-Fishery Task Force (Task Force), and the terms and conditions of the LOA issued to WDFW were published in the **Federal Register** on August 2, 1994 (59 FR 39325), September 27, 1994 (59 FR 49234), January 19, 1995 (60 FR 3841), August 15, 1995 (60 FR 42146), March 26, 1996 (61 FR 13153), and August 28, 1996 (61 FR 43737). Background information on the sea lion-steelhead conflict at the Ballard Locks and findings on the environmental consequences of issuance of the LOA are provided in two Environmental Assessments prepared by NMFS in 1995 and 1996 (available from **ADDRESSES**).

On October 10, 1996, the State of Washington requested that NMFS extend the LOA for an additional 8 years (with a new expiration date of June 30, 2005) citing a need to manage the problem of sea lion predation on winter steelhead beyond June 30, 1997.

The Task Force, which met in September 1996, also submitted a report to NMFS dated October 29, 1996, that recommended the LOA be extended because insufficient time had passed to evaluate the success of management actions at Ballard Locks. The majority of Task Force members recommended that the LOA be extended for 4 years.

Notice of the State's request and the Task Force recommendations and a request for public comments was published in the **Federal Register** on June 19, 1997 (62 FR 33396). The public comment period closed on July 21, 1997, and seven written comments were received. Five commenters supported an extension of the LOA and two opposed it. A summary of the comments received and responses to the comments is as follows.

Comment 1: Five commenters recommended extension of the LOA for 8 years to provide protection for two steelhead life cycles. One commenter recommended 8 years or until some significant change in status of the steelhead or the sea lions occurs. One commenter stated that 8 years would allow the steelhead stock two full cycles in their rebuilding process and allow time to measure the full benefit of changes which are ongoing at the Locks. Two commenters felt 8 years was a more reasonable time to determine the effectiveness of the program to protect steelhead from sea lions and to determine the success of WDFW efforts regarding steelhead recovery. Another stated that lethal removal of sea lions by WDFW for the next 8 years is needed to preserve and enhance the steelhead run through the Locks.

Response: NMFS agrees that there is a need to extend the LOA in order to continue protecting and enhancing the winter steelhead population and to allow sufficient time to evaluate the effectiveness of lethal removal. NMFS has determined, however, that a 4-year extension is appropriate at this time for providing steelhead continued protection from sea lion predation and allowing for collection of additional information to determine the effectiveness of the authorization. Also, the 4-year period is consistent with the Task Force recommendation.

Comment 2: It is essential that the current sea lion control program continue in order to ensure a reasonable chance of success for the steelhead supplementation program and the ultimate objective of sustainable tribal and sport fisheries in the Lake Washington watershed.

Response: NMFS agrees that reduction of sea lion predation should continue along with programs to monitor sea lion presence and activity in the Locks area and steelhead passage through the fishway. By reducing predation, thereby increasing escapement, WDFW may realize maximum benefit from other efforts contained in their comprehensive plan for steelhead recovery.

Comment 3: Removal of the "repeat offender" sea lions at the Ballard locks has been largely responsible for substantial increase in spawning escapement in 1997. It is essential that WDFW be permitted to continue with a lethal take authorization over the next several years to allow recovery of the severely depressed steelhead population.

Response: Preliminary data from 1997 indicate reductions in the presence of sea lions at the Locks due to the removal of the "repeat offender" sea lions. The three "repeat offender" sea lions (#17, 45 and 225) that were removed and placed into permanent captivity in 1996, along with one additional animal (#87) were responsible for about 60 percent of the sea lion presence and foraging at the Locks in 1996. Animal #87 was observed at the Locks in the fall of 1996, preying on salmon, but its presence ended abruptly in October. This animal has not been sighted during the 1997 steelhead season and is assumed to be dead. NMFS is concerned, however, that other unmarked sea lions may have developed the same behavior of repeatedly foraging at the Locks during the steelhead run and, therefore, agrees that the LOA should be extended to allow for continued removal of sea lions that may be identified as having significant negative impacts on the recovery of the winter steelhead population. In spite of the reduced sea lion presence in 1997, several unmarked sea lions did continue to enter the Locks area and forage in the presence of the acoustic deterrence devices. Four steelhead were observed killed by one unmarked sea lion in March 1997. It is not known whether the unmarked sea lions observed in 1997 represent "new" sea lions that have developed the predatory behavior, or unmarked sea lions that were present in the past but have yet to be marked for positive identification. Each year, there are a number of sightings of unmarked sea lions at the Locks, and it is unknown whether some of these unmarked sea lions have developed the behavior of repeated occurrence and foraging at the Locks during the steelhead run. Therefore, the sea lion marking program should continue so that individual pinnipeds may continue to be identified and monitored.

Comment 4: Available data indicate that the steelhead population is increasing significantly, and these data support the abolition of the LOA. The number of steelhead passing through the Locks tripled from 234 in 1996 to an estimated 610 in 1997.

Response: NMFS agrees that the 1997 steelhead returns are encouraging. One year's data, however, should not be interpreted as direct evidence of a significant population increase. The steelhead population consists of several year classes that return to spawn after spending 1–3 years at sea, and the returns from a single year cannot be used to predict the status or trend of the population.

Further, the spawning escapements in 1998 and 1999 are progeny of smaller spawning escapements than the 1997 return, so those escapements may not provide for a increasing trend in the population. Thus, the number returning to spawn in 1997 is not directly dependent upon the number that returned in 1995 or 1996, nor will it affect returns in 1998 and 1999. Additional details of steelhead life history are provided in the Environmental Assessment (EA) prepared for the initial LOA (January 1995) or may be found in the scientific literature (e.g., Shapovalov, L., and A. Taft. 1954. The life histories of the steelhead rainbow trout, *Salmo gairdneri gairdneri*, and silver salmon, *Onchorhynchus kisutch*. California Dept. of Fish and Game, Fish Bulletin No. 98. 375 pp.).

The Task Force recognized the complexity of assessing trends in the steelhead population during their discussions in 1996 and recommended that the LOA be extended because insufficient time had passed to evaluate the success of management actions at Ballard Locks. The Task Force opinions on the extension ranged from no extension to a period of 8 years (two steelhead cycles) with the majority of the Task Force favoring an extension of 4 years (one steelhead cycle). The October 1996 Report of the Task Force acknowledged that efforts to recover the Lake Washington steelhead will be a long-term undertaking and should be continued until such time as: (1) The escapement goal of 1600 fish is reached; or (2) it becomes clear that the process is unlikely to achieve the stated goal.

Comment 5: It is inappropriate for NMFS to consider extending the LOA given existing legal challenges. NMFS should postpone its consideration of the extension pending judicial resolution of legal challenges.

Response: Consistent with Task Force advice, NMFS believes the conditions that warranted the initial LOA (i.e., critically low numbers of returning steelhead) are still apparent. Therefore, the conservation objective of stabilizing and recovering the steelhead run necessitate continued lethal removal authority despite the unresolved status of the legal challenge.

Comment 6: There is no authority in Section 120 of the MMPA to extend the LOA.

Response: Section 120 of the MMPA does not specify any timeframes for authorizations. NMFS initially limited the LOA to three years so that the authorization would not be "open-ended." The Task Force, which was established in accordance with Section 120 of the MMPA to evaluate the effectiveness of the authorization, recommended that the LOA be extended because insufficient time had passed to evaluate the success of management actions at Ballard Locks. Based on the Task Force recommendations, the State's request, and consideration of public comments, NMFS has determined it is appropriate and consistent with the intent of Section 120 of the MMPA to extend the LOA for a discrete period coinciding with 1 steelhead life cycle.

Comment 7: Further review under the National Environmental Policy Act (NEPA) is required before an extension can be considered.

Response: NEPA requirements on this action have been fulfilled. The environmental impacts of an extension of the LOA are not different than those evaluated in prior EAs because all aspects of the conditions of the LOA are retained except for the expiration date. For example, the LOA authorized the lethal removal of up to 15 individually identifiable sea lions; up to the present no sea lions have been lethally removed under the LOA (although 3 sea lions were removed from the population and placed in permanent captivity for public display). Further, the proposed extension is within the scope of the Environmental Assessment prepared for the original LOA (NMFS, January 1995) and the supplemental EA prepared for the modified LOA (NMFS, March 1996). The State has requested no changes to the terms and conditions of the current authorization, except for the time period; the number of sea lions authorized for removal, the means of removal and other aspects of the current LOA would not be modified. Likewise, there is no other significant new circumstances or information that would indicate that the conclusions of the previous EAs would change. The environmental consequences of the extension of the authorization are expected to be the same as those previously assessed. Consequently, no further analysis under NEPA is necessary.

Comment 8: Any and all sea lions found southeast of a line between Meadow Point and West Point should be lethally removed.

Response: The LOA only authorizes lethal removal of individually identifiable sea lions that: (1) have been observed by biologists monitoring sea lion predation to have preyed on returning steelhead in the inner bay area of the Lake Washington Ship Canal (upstream of the railroad bridge); (2) have penetrated the acoustic barrier and have been observed foraging in the ensonified zone during the steelhead run since January 1, 1994, (when the acoustic deterrence program began); and (3) are observed engaging in foraging behavior in the inner bay area (upstream of the railroad bridge) during the current steelhead season between January 1 and May 31 by biologists monitoring sea lion predation at the Locks. NMFS does not intend to change this.

Comment 9: The steelhead run at the Ballard Locks has for too many years been dangerously close to extinction, and it seems appropriate to allow WDFW to continue the program for protecting steelhead and to monitor the situation closely.

Response: NMFS has extended the LOA for lethal removal of individually identifiable California sea lions that are having significant negative impact on the status and recovery of winter steelhead that migrate through the Ballard Locks in Seattle, WA.

NMFS Action

Based on the Task Force recommendations, the State's request, and consideration of public comments, NMFS has extended the LOA for 4 years to June 30, 2001. No other changes were made to the terms and conditions of the LOA. Copies of the LOA are available upon request (see **ADDRESSES**).

Dated: September 23, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–25778 Filed 9–26–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091997C]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Law Enforcement Advisory Panel (AP).

DATES: This meeting will be held on October 15, 1997, from 1:00 p.m. to 5:00 p.m.

ADDRESSES: This meeting will be held at the Quality Inn Beachside, 931 West Beach Boulevard, Gulf Shores, AL; telephone: 800–844–6913.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review management alternatives being considered by the Council as part of Draft Amendment 16 to the Fishery Management Plan (FMP) for Reef Fish in the Gulf of Mexico. Amendment 16 readdresses a 2-year phase-out of fish traps with allowances for retention of reef fish species taken in spiny lobster and stone crab traps; however, if the Council continues the present 10-year phase-out, this amendment also includes options for reducing the number of traps being fished over time. This amendment considers size limits, including a slot limit, and bag limits for some lesser amberjack species. Additionally, alternatives are presented that could effect the Council's continued management of sand perch, dwarf sand perch, queen triggerfish, and hog fish. Amendment 16 includes consideration of compatible size and bag limits with the state of Florida for various reef fish species, as well as additional regulations of speckled hind and warsaw grouper. Language that would modify the Framework Procedure for setting total allowable catch is also included.

The Law Enforcement AP will also review a Draft Amendment 9 to the Fishery Management Plan for Coastal Migratory Pelagic Resources (Mackerels). Draft Amendment 9 addresses a number of problems that have been discussed in the past, as well as recent concerns that have developed with regard to allocations and a derby fishery for king mackerel. Amendment 9 includes alternatives that would:

1. Modify the fishing year;
2. Prohibit sale of king and Spanish mackerel;
3. Require mandatory reporting;
4. Reallocate the king mackerel total allowable catch (TAC) by area in the Eastern Zone and user group (commercial/recreational);
5. Further subdivide the hook-and-line allocation of TAC for king mackerel on the west coast of Florida by area and/or season;
6. Establish subdivisions of the Western Zone allocation of TAC for king mackerel by area and/or season;
7. Establish trip limits for Gulf group king mackerel in the Western Zone;
8. Provide for further restrictions on the net fishery for king mackerel;
9. Increase the minimum size limit for king mackerel and/or establish a maximum size limit; and
10. Reestablish a purse seine allocation for Gulf group Spanish mackerel.

In addition to these draft amendments, the Law Enforcement AP will review the status of implementation of Amendment 9 to the Shrimp FMP and Amendment 15 to the Reef Fish FMP, as well as problems with having a "paper trail" to track imported seafood.

In a joint session with the Gulf States Marine Fisheries Commission's Law Enforcement Committee, which is comprised of basically the same members, the Law Enforcement AP will receive information from NMFS regarding its penalty schedule and a report on the use of satelllte transponders to track fishing vessels. It will also receive enforcement reports from the individual Gulf States.

The Law Enforcement AP consists of chief enforcement agents for the state and Federal fishery agencies in the Gulf area who advise the Council on fishery issues.

Although other issues not contained in this agenda may come before this Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 8, 1997.

Dated: September 22, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–25672 Filed 9–26–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Adminstration

[I.D. 072197E]

Marine Mammals

AGENCY: National Marine Fisheries (NMFS), National Oceanic and Atmospheric Adminstration (NOAA), Commerce.

ACTION: Issuance of photography permit no. 867–1388.

SUMMARY: Notice is hereby given that Moana Productions, Inc., 311 Portluck Road, Honolulu, Hawaii 96825, has been issued a permit to take by Level B harassment several species of non-threatened, non-endangered marine mammals for purposes of commerical photography.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Protected Species Program Manager, Pacific Area Office, NMFS, 2570 Dole Stree, Room 106 Honolulu, HI 96822–2396 (808/973–2987), and

Regional Director, Southeast Region, NMFS, 9731 Executive Center Drive, St. Petersburg, FL 33702–2434 (813/570–5301)

Director, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668 (907/585–7221).

SUPPLEMENTARY INFORMATION: On June 6, 1997, notice was published in the **Federal Register** (62 FR 31083 that the above-named applicant had submitted a request for a permit to take several species of marine mammals by Level B Harassment during the course of commerical photographic activities in Hawaii and South Carolina waters. The required permit has been issued, under the authority of S104 (c) (6) of the Marine Mammals Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: July 25, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office Of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–25673 Filed 9–26–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. No. 092497B]

Marine Mammals; Permits (758–1431 and 1024)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for permit and amendment to permit.

SUMMARY: Notice is hereby given that Dr. Kimberlee Beckmen, Institute of Arctic Biology, University of Alaska Fairbanks, P.O. Box 757000, Fairbanks, AK 99775–7000, has applied for a permit to take Northern fur seals (*Callorhinus ursinus*), and the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038–0271, has applied for amendment to Permit No. 1024 to take Antarctic fur seals (*Arctocephalus gazella*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before October 29, 1997.

ADDRESSES: The application and related documents are available for review upon written request or by appointment (see **SUPPLEMENTARY INFORMATION**):

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

(758–1431) - Dr. Kimberlee Beckmen requests a permit to vaccinate two captive female Northern fur seals with a benign antigen, Fort Dodge tetanus toxoid, in order to elicit an antibody response (produce immunoglobulin). The immunoglobulin will be purified from the serum and used to validate an enzyme-linked immunosorbent assay (ELISA). The ELISA will then be used to determine the antibody levels in frozen fur seal serum samples previously collected from free-ranging pups vaccinated with the same benign antigen. The research will provide a determination of the effects of environmental contaminants.

P772#69 - The Southwest Fisheries Science Center requests to amend section A.3. of Permit No. 1024 and to increase the number of animals taken annually. Permit No. 1024 authorizes: Level B harassment on southern elephant seals (*Mirounga leonina*), Antarctic fur seals (*Arctocephalus gazella*), crabeater seals (*Hydrurga leptonyx*), Weddell seals (*Leptonychotes weddellii*), and Ross seals (*Ommatophoca rossii*) annually during census surveys on Sea Island and Cape Shirreff; capture, handle and mark up to 105 *A. gazella* pups annually at Cape Shirreff, of which 100 would also be tagged with monel tags; section A.3. authorizes capture up to 50 perinatal female *A. gazella* and their pups. The females may be tagged and instrumented with TDRs and/or transmitters and recaptured to remove instruments, and the pups are authorized to be bleach marked and handled. Further, up to 110 pups may be collected on Seal Island and marked, handled and released; and samples, parts or whole specimens obtained from dead animals may be imported. The permit also authorizes the accidental mortality of one animal annually. The permittee now requests to amend A.3 by collecting one milk sample from 40 of the 50 perinatal females, and tagging and handling 40 of the 50 pups.

The permittee also wishes to increase the number animals to be taken in three additional studies. These studies are: Adult female foraging location and energetics, 40 female/pup pairs; pup energetics, 100 pups; and long-term tagging, 1000 pups.

For the adult female foraging location and energetics study, up to 40 adult females will be captured per year and tagged, instrumented with transmitters, anesthetized with diazepam and milk-sampled (up to 3 times, which includes injection of 5 I.U. oxytocin), given an enema, injected with tritiated water and oxygen–18 (90g isotopes), injected with Evan's Blue (1.5cc), and blood sampled (up to 4 times). Up to 40 pups will be captured per year and: tagged, bleach marked, gastrically intubated and lavaged, injected/intubated with 200g of doubly-labeled water (DLW), and blood sampled up to 3 times.

For the pup energetics study 100 pups will be captured, tagged, and bleached marked. Of these 100 pups, 30 pups will be: captured (9 additional times) gastrically lavaged and intubated (3 times), injected/intubated with 200g DLW (3 times), injected with 0.5cc Evan's Blue (3 times), and blood sampled (15 times).

For the long-term tagging study, the permittee requests to tag up to 1000 pups.

Additionally, the permittee requests to incidentally harass: up to 128 southern elephant seals (*Mirounga leonina*), 3468 Antarctic fur seals (*Arctocephalus gazella*), 2 crabeater seals (*Hydrurga leptonyx*), 16 Weddell seals (*Leptonychotes weddellii*), and 2 leopard seals (*Hydrurga leptonyx*); and accidentally kill up to 2 adults and 2 pups *A. gazella* during the conduct of these activities.

Addresses: Applications and related documents are available in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

(758–1431) - Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg., 1, Seattle, WA 98115–0070 (206/526–6150);

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–2166 (907/586–7221); and

(P772#69) - Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

Dated: September 24, 1997

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–25776 Filed 9–26–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Mexico

September 23, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased for swing.

The restrictions and consultation levels in the October 17, 1996 directive to the Commissioner of Customs do not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300-B, Chapter 4 and Annex 401 of the agreement. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 54986, published on October 23, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of Annex 300(B) of the North American Free Trade Agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 23, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 17, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997. The levels established in that directive do not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300-B, Chapter 4 and Annex 401 of NAFTA or to goods assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

Effective on September 30, 1997, you are directed to increase the limit for Category 443 to 197,414 numbers[1], pursuant to the provisions of the agreement between the Governments of the United States, Mexico and Canada.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–25735 Filed 9–26–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

September 23, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58043, published on November 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 23, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 1, 1997, you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement concerning textile products from Taiwan:

Category	Twelve-month limit[1]
Sublevel in Group I 300/301/607	1,781,302 kilograms of which not more than 1,484,417 kilograms shall be in Category 300, not more than 1,484,417 kilograms shall be in Category 301, and not more than 1,484,417 kilograms shall be in Category 607.
Group II 237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C[2], 359–H/659–H[3], 359–O[4], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S[5], 659–O[6], 831–844 and 846–859, as a group.	734,181,180 square meters equivalent.
Sublevels in Group II	
336	119,485 dozen.
838/339	963,832 dozen.
347/348	1,438,065 dozen.
352/652	2,971,396 dozen.
436	5,198 dozen.
438	29,344 dozen.
444	63,146 numbers.
445/446	142,831 dozen.
631	5,154,153 dozen pairs.
633/634/635	1,667,128 dozen of which not more than 953,707 dozen shall be in Categories 633/634 and not more than 867,079 dozen shall be in Category 635.
638/639	6,573,137 dozen.
642	839,303 dozen.
647/648	5,464,486 dozen of which not more than 5,141,289 dozen shall be in Categories 647–W/648–W[7].
Group II Subgroup 333/334/335, 341,342, 350/650, 351, 447/448, 636, 641 and 651, as a group.	76,086,284 square meters equivalent.
Within Group II Subgroup	
342	227,061 dozen.
351	353,271 dozen.
447/448	20,747 dozen.
636	400,814 dozen.
651	473,731 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[3] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[5] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[6] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[7] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–25736 Filed 9–26–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Description of Vessels, Description of Operations; ENG Forms 3931, 3932; OMB Number 0710–0009.

Type of Request: Extension.

Number of Respondents: 2,500.

Responses per Respondent: 1.

Annual Responses: 2,500.

Average Burden per Response: 48 minutes.

Annual Burden Hours: 2,000 hours.

Needs and Uses: This information collection is the basic data from which the Army Corps of Engineers (COE) compiles and publishes the "Waterborne Transportation Lines of the United States" (WTLUS), Volumes 1, 2 and 3. This publication provides information on the vessel operators and their American flag vessels operating or available for operation in the transportation of freight and passengers. The following information is included in this publication: (a) Summary of U.S. vessel inventory for current and previous year; (b) names of vessel operators with business address of each operator; (c) descriptive information for each vessel in the domestic fleet; and (d) a description of operations which includes the area of operation and principle commodities carried. The data is used extensively by the COE as a quality control mechanism by the Enforcement Office of the Waterborne Commerce Statistics Center. The data is also used by the U.S. Coast Guard and other Federal and State agencies involved in transportation.

Affected Public: Business or Other For-Profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed

information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for U.S. Army COE, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 22, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–25711 Filed 9–26–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: October 30, 1997 from 0800 to 1700.

Place: National Highway Institute Conference Room 302, 901 North Stuart Street, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Amy Levine, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Signature for Strategic Environmental Research and Development Program Notice.

Dated: September 23, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–25710 Filed 9–26–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Amended Language for Civilian Personnel Per Diem Bulletins 195, 196, and 197

AGENCY: DOD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Amended language for civilian personnel per diem bulletins 195, 196, and 197.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing amended language for the above Civilian Personnel Per Diem Bulletin Numbers. Bulletin 194, effective 1 May 1997, announced "the ceiling on reimbursements for actual subsistence expenses authorized civilian personnel when traveling to Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. For travel in those areas involving special or unique circumstances, the reimbursement of actual and necessary itemized daily subsistence expenses shall not exceed 300 percent of the applicable locality per diem allowance (rounded to the next higher dollar). For regulations governing maximum per diem rates and reimbursement of the actual and necessary subsistence expenses in the continental United States and the District of Columbia, see the Federal Travel Regulation (41 CFR 301–304), parts 301–7 and 301–8 issued by the General Services Administration, and maximum per diem rates and reimbursement of the actual and necessary subsistence expenses in foreign overseas locations, see 6 FAM 150 or Standardized Regulation, Section 925 issued by U.S. Department of State." This change remains in effect. Subsequent Civilian Personnel Bulletins 195, 196, and 197 revised only the per diem rates for the non-foreign areas.

EFFECTIVE DATE: September 18, 1997.

SUPPLEMENTARY INFORMATION: This document gives notice of amended language for Civilian Personnel Per Diem Bulletins 195, 196, and 197 previously published by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revision in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office.

Dated: September 23, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–25709 Filed 9–26–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to alter a record system.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The alteration will be effective without further notice on October 29, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Defense Logistics Agency, DLA-CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The specific changes to the record system being altered are set forth below followed by the notice, as altered, published in its entirety.

An altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 17, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 23, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S330.20 DLA-KS

SYSTEM NAME:

Complaints *(February 22, 1993, 58 FR 10881).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S180.10 CA.'

SYSTEM NAME:

Delete entry and replace with 'Congressional, Executive, and Political Inquiry Records.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals, organizations, and other entities who have asked the Congress, White House officials, or political figures to make inquiries on their behalf.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Records contain representative's name, constituent's name, details surrounding the issue being researched, and case number. The records may also contain the constituent's Social Security Number, home address, home telephone number, or related personal information provided by the representative making the inquiry.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental regulations; 5 U.S.C. 302, Delegation of authority; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; E.O. 9397 (SSN); and DoD Directive 5400.4, Provision of Information to Congress.'

PURPOSE(S):

Delete entry and replace with 'Information is collected in order to reply to queries and to determine the need for and course of action to be taken for resolution. Information may be used by the DLA Director, field commanders, and decision makers as a basis to institute policy or procedural changes.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Add a new paragraph 'To Federal and local government agencies having cognizance over or authority to act on the issues involved.'

* * * * *

STORAGE:

Delete entry and replace with 'Records are stored in paper and electronic form.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by constituent name, representative name, or case number.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in a secure, limited access, or monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to computer records is further restricted by the use of passwords which are changed periodically. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are destroyed after eight years.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Staff Director, Congressional and Public Affairs, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Commanders of the DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information is provided by constituent, the constituent's representative, and from agency files.'

* * * * *

S180.10 CA

SYSTEM NAME:

Congressional, Executive, and Political Inquiry Records.

SYSTEM LOCATION:

Records are maintained by the Office of Congressional and Public Affairs, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA, 22060–6221, and the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, organizations, and other entities who have asked the Congress, White House officials, or political figures to make inquiries on their behalf.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain representative's name, constituent's name, details surrounding the issue being researched, and case number. The records may also contain the constituent's Social Security Number, home address, home telephone number, or related personal information provided by the representative making the inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations; 5 U.S.C. 302, Delegation of authority; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; E.O. 9397 (SSN); and DoD Directive 5400.4, Provision of Information to Congress.

PURPOSE(S):

Information is collected in order to reply to queries and to determine the need for and course of action to be taken for resolution. Information may be used by the DLA Director, field commanders, and decision makers as a basis to institute policy or procedural changes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information is furnished to individuals or organizations who wrote to DLA on behalf of the complainant and who use it to respond to the complainant, or for other related purposes.

To Federal and local government agencies having cognizance over or authority to act on the issues involved.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Retrieved by constituent name, representative name, or case number.

SAFEGUARDS:

Records are maintained in a secure, limited access, or monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to computer records is further restricted by the use of passwords which are changed periodically. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Records are destroyed after eight years.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Congressional and Public Affairs, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Commanders of the DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, HQ DLA-CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Privacy Act Officer, HQ DLA-CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by constituent, the constituent's representative, and from agency files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–25712 Filed 9–26–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Alter a record system.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds new categories of records to the system of records notice.

DATES: The alteration will be effective without further notice on October 29, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

An altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 17, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427). The specific changes to the record system are set forth below followed by the system notice, as altered, in its entirety.

Dated: September 23, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.50 DMDC

SYSTEM NAME:

Defense Enrollment/Eligibility Reporting System (DEERS) *(June 25, 1996, 61 FR 32782).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Defense Eligibility Records'.

SYSTEM LOCATION:

Delete second paragraph.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Line seven, after 'Coast Guard personnel' add 'and their family members'.

Line sixteen, add 'civilian employees of the Department of Defense;'.

Line eighteen, after 'under the heath care program' add 'or to other DoD benefits and privileges;'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Line fourteen, after 'sponsor' add 'index fingerprints and photographs of beneficiaries,'.

Line fourteen, delete everything after 'sponsor;' and add 'index fingerprints and photographs of beneficiaries, blood test results, dental care eligibility codes and dental x-rays'.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Chapters 53, 54, 55, 58, and 75; 10 U.S.C. 136; 31 U.S.C. 3512(c); 50 U.S.C. Chapter 23 (Internal Security); DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System; DoD Instruction 1341.2, DEERS Procedures; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'The purpose of the system is to provide a database for determining eligibility to DoD entitlements and privileges; to support DoD health care management programs; to provide identification of deceased members; to record the issuance of DoD badges and identification cards; and to detect fraud and abuse of the benefit programs by claimants and providers.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending'.

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individuals, personnel pay, and benefit systems of the military and civilian departments and agencies of the Defense Department, the Coast Guard, the Public Health Service, the National Oceanic and Atmospheric Administration, Department of Commerce, and other Federal agencies.'

* * * * *

S322.50 DMDC

SYSTEM NAME:

Defense Eligibility Records.

SYSTEM LOCATION:

Primary location: W.R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93920–5000.

Back-up files: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Armed Forces and reserve personnel and their family members, retired Armed Forces personnel and their family members; surviving family members of deceased active duty or retired personnel; active duty and retired Coast Guard personnel and their family members; active duty and retired Public Health Service personnel (Commissioned Corps) and their family members; active duty and retired National Oceanic and Atmospheric Administration employees (Commissioned Corps) and their family members; and State Department employees employed in a foreign country and their family members; civilian employees of the Department of Defense; and any other individuals entitled to care under the health care program or to other DoD benefits and privileges; providers and potential providers of health care; and any individual who submits a health care claim.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer files containing beneficiary's name, Service or Social Security Number, enrollment number, relationship of beneficiary to sponsor, residence address of beneficiary or sponsor, date of birth of beneficiary, sex of beneficiary, branch of Service of sponsor, dates of beginning and ending eligibility, number of family members of sponsor, primary unit duty location of sponsor, race and ethnic origin of beneficiary, occupation of sponsor, rank/pay grade of sponsor, index fingerprints and photographs of beneficiaries, blood test results, dental care eligibility codes and dental x-rays.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Chapters 53, 54, 55, 58, and 75; 10 U.S.C. 136; 31 U.S.C. 3512(c); 50 U.S.C. Chapter 23 (Internal Security); DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System; DoD Instruction 1341.2, DEERS Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system is to provide a database for determining eligibility to DoD entitlements and privileges; to support DoD health care management programs; to provide identification of deceased members; to record the issuance of DoD badges and identification cards; and to detect fraud and abuse of the benefit programs by claimants and providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services; Department of Veterans Affairs; Department of Commerce; Department of Transportation for the conduct of health care studies, for the planning and allocation of medical facilities and providers, for support of the DEERS enrollment process, and to identify individuals not entitled to health care. The data provided includes Social Security Number, name, age, sex, residence and demographic parameters of each Department's enrollees and family members.

To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for the purpose of identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data matching against the SSA Master Beneficiary Record file for the purpose of identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare Program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

To each of the fifty states and the District of Columbia for the purpose of conducting an on going computer matching program with state Medicaid agencies to determine the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

To provide dental care providers assurance of treatment eligibility.

The 'Blanket Routine Uses' published at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes and disks, and are housed in a controlled computer media library.

RETRIEVABILITY:

Records about individuals are retrieved by an algorithm which uses name, Social Security Number, date of birth, rank, and duty location as possible inputs. Retrievals are made on summary basis by geographic characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution may be made using selection criteria based on geographic and demographic keys.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, administrative procedures (e.g., fire protection regulations). Exits used solely for emergency situations are secured to prevent unauthorized intrusion.

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subjects of the record or their authorized representatives. Access to personal information is further restricted by the use of passwords which are changed periodically.

All those officials whose duties require access to, or processing and maintenance of personal information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAV, 87 John J. Kingman Road, Suite 2533 Fort Belvoir, VA 22060–6221.

Written requests for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location. Identification should be corroborated with a driver's license or other positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAV, 87 John J. Kingman Road, Suite 2533 Fort Belvoir, VA 22060–6221.

Written requests for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location. Identification should be corroborated with a driver's license or other positive identification.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Individuals, personnel pay, and benefit systems of the military and civilian departments and agencies of the Defense Department, the Coast Guard, the Public Health Service, Department of Commerce, the National Oceanic and Atmospheric Administration, Department of Commerce, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–25713 Filed 9–26–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 28, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 23, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Survey of Middle School Parents on Level of Knowledge Concerning College Costs and Admission Requirements.

Frequency: One time.

Affected Public: Individuals or households.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 500.

Burden Hours: 42.

Abstract: This collection of information will provide baseline data on the level of knowledge concerning college costs and college admission requirements among parents of middle school children. The data will help the U.S. Department of Education to evaluate and refine its early awareness initiative.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Report of Financial Need and Certification Report for the Jacob K. Javits Fellowship Program.

Frequency: Annually.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 400.

Abstract: These instructions and forms provide the means to collect data in order to make funding determinations for fellows selected under the Jacob K. Javits Fellowship Program.

[FR Doc. 97–25721 Filed 9–26–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. This document is intended to notify the general public. Note: This teleconference meeting had to be arranged on short notice, therefore, we were unable to publish it 15 days in advance of the scheduled meeting date as required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: Tuesday, September 30, 1997, beginning at 11:00 a.m. and ending at approximately 12:30 p.m.

ADDRESSES: Advisory Committee on Student Financial Assistance, 1280 Maryland Avenue, S.W., Room 601, Portals Building, Washington, D.C. 20202–7582.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Pub. L. 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program and an in-depth study of student loan simplification. The Advisory Committee fulfills its charge by conducting objective, nonpartisan, and independent analyses of important student aid issues. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Congress assigned the Advisory Committee the major task of evaluating the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP). The Committee was directed to report to the Secretary and Congress on not less than an annual basis on the operation of both programs and submit a final report by January 1, 1997. The Committee submitted to Congress its final recommendations on the advisability of fully implementing the FDLP on December 11, 1996. The Advisory Committee has now focused its energies on activities related to reauthorization of the Higher Education Act of 1998.

The Advisory Committee will hold a teleconference meeting in Washington, D.C. on Tuesday, September 30, 1997, from 11:00 a.m. to approximately 12:30 p.m.

The proposed agenda includes (a) an update on activities related to reauthorization of the Higher Education Act; and (b) other Committee business. Space is limited and you are encouraged to contact the Advisory Committee staff at 202–708–7439 no later than 3:00 p.m. on Monday, September 29, if you wish to participate.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: September 24, 1997.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 97–25775 Filed 9–26–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–532–000]

Missouri Gas Energy, a Division of Southern Union Company v. Williams Natural Gas Company; Notice of Complaint

September 23, 1997.

Take notice that on September 19, 1997, pursuant to Section 5 of the Natural Gas Act, 15 U.S.C. ¶717d, and Rules 206 and 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 and 385.212, Missouri Gas Energy, A Division of Southern Union Company (MGE) filed a complaint requesting that the Commission order Williams Natural Gas Company (WNG) to comply with its tariff and allow MGE to nominate Trans-Storage Service (TSS) in its component parts. MGE states that WNG's FERC Gas Tariff, Service Revised Volume No. 1, in both the General Terms and Conditions, as well as the TSS Rate Schedule, describe TSS as being available in its component parts.

MGE argues that despite the clear language of WNG's Tariff, however, WNG has refused to allow MGE to nominate its new TSS (TA–0890) agreement in component parts. MGE requests that the Commission order WNG to honor the terms of its Tariff and allow customers to nominate TSS service in its component parts, before the commencement of the winter heating season in November. If the relief sought by MGE cannot be granted on the basis of the complaint, MGE requests a full and immediate evidentiary hearing.

MGE states that copies of the filing have been served upon each person designated on the official service list compiled by the Secretary of the Commission in this proceeding.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before October 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Answers to this complaint shall be due on or before October 3, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25720 Filed 9–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–755–000]

Northern Natural Gas Company; Notice of Application

September 23, 1997.

Take notice that on September 15, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed, in Docket No. CP97–755–000, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of certain compressor station facilities and a certificate of public convenience and necessity to construct and operate approximately 25 miles of 36-inch pipeline, with appurtenant facilities, all located in the state of Kansas, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to (1) abandon in place eleven (11) 1,600 HP horizontal compressor units (units 12 through 22) at its Bushton Compressor Station located in Rice County, Kansas; and (2) install and operate two pipeline stitches totaling approximately 25 miles of 36-inch pipeline and appurtenant facilities to connect and complete its existing "E-Line" between its Mullinville and Mackville Compressor Stations in Edward and Pawnee Counties, Kansas (Mullinville to Macksville Stitch) and between its Macksville and Bushton Compressor Stations in Barton and Rice Counties, Kansas (Macksville to Bushton Stitch). Northern states that, when compared to currently existing capacity, the overall capacity of Northern's mainline will be essentially the same when both the abandonment and pipeline stitches are completed. Northern estimates that the cost of the proposed project is approximately $25,655,000, which will be financed with internally generated funds. Northern requests that authorization be issued by early spring 1998 in order for the facilities to be constructed and placed in service during Spring 1998.

Northern asserts that the rate impact to its existing shippers is within the 5 percent threshold applied by the Commission for a presumption in favor of rolled-in rates. Northern states the proposed abandonment, in conjunction with the new pipeline segment, is integral to Northern's existing pipeline system to ensure pipeline reliability during peak periods of demand thereby meeting the operational standard for rolled-in rates.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 14, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commentors will not be required to serve copies of filed documents on all other parties. However, commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment and a grant of the certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25717 Filed 9–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–761–000]

Venice Gathering System, L.L.C., Notice of Application

September 23, 1997.

Take notice that on September 18, 1997, Venice Gathering System, L.L.C. (VGS), 1000 Louisiana, Suite 5800, Houston, Texas 77002–5050, filed an application with the Commission in Docket No. CP97–761–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a transportation service currently performed for Samedan Oil Corporation (Samedan), all as more fully set forth in the application which is open to public inspection.

VGS states that it currently transports natural gas on an interruptible basis for Samedan under the month-to-month evergreen provisions of an October 1, 1991, gathering agreement while VGS' request in Docket Nos. CP97–533–000, *et al.*, for a Part 284 blanket certificate is pending before the Commission.[1]

[1] The Commission declared VGS to be a jurisdictional entity subject to the Natural Gas Act in the order issued April 17, 1997, in Docket No. CP95–202–000, 79 FERC ¶ 61,037 (1997).

[2] The subject application was included, in the alternative, in VGS' answer to Samedan's emergency request.

[3] The lateral is owned by Venice Energy Services Company (VESCO), an affiliate of VGS.

VGS notified Samedan via a letter dated June 27, 1997, that it would terminate its transportation service for Samedan as of October 1, 1997. Samedan then filed with the Commission, as a complaint against VGS, an emergency request on September 12, 1997, for an order prohibiting unlawful abandonment and motion for shortened time to answer.[2]

VGS states that Samedan's gas reaches VGS' jurisdictional Venice system, offshore Louisiana, via a non-jurisdictional feeder lateral[3] between Samedan's South Timbalier Block 163 production platform and Chevron U.S.A. Inc.'s (Chevron) South Timbalier Block 141 platform. VGS states that it believes its interim service obligation to Samedan extends only to transportation service provided via the now jurisdictional Venice system and that VGS would continue to transport said gas for Samedan subject to capacity availability on the Venice system. VGS further states that following expiration of the gathering agreement's primary term, and in response to VESCO's open-season solicitation June 16–20, 1997, Samedan Chose not to submit a qualifying bid, instead submitting a bid for a limited-term commitment at a rate that was approximately one-half of VGS's cost-based rate and about one-half of the rate Samedan paid under the existing contract. VGS also states that while other shippers were willing to make long-term commitments at compensatory rates, Samedan would make only a limited commitment geared to securing cheap service until its alternative arrangements could be put into service.

Accordingly, to the extent necessary, VGS seeks to abandon the service provided under the gathering agreement. The subject service is a non-firm service that provides no guarantee of the availability or use of VGS' capacity. Further, VGS believes that to ignore these market signals and to require service to continue under manifestly non-competitive terms and conditions would fly in the face of the Commission's policies promoting allocative and productive efficiencies and the rational allocation of capacity.

No facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 30, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 15710). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person within to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for VGS to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25718 Filed 9–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4437–000, et al.]

The Detroit Edison Company et al.; Electric Rate and Corporate Regulation Filings

September 22, 1997.

Take notice that the following filings have been made with the Commission:

1. The Detroit Edison Company

[Docket No. ER97–4437–000]

Take notice that on September 2, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Network Integration Transmission Service (the Service Agreement) between Detroit Edison Transmission Operations and the City of Croswell, Michigan, under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of November 1, 1997. Detroit Edison requests that the Service Agreement be made effective as of November 1, 1997.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. The Detroit Edison Company

[Docket No. ER97–4438–000]

Take notice that on September 2, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and AYP Energy, Inc., dated as of June 30, 1997. The parties have not engaged in any transactions under the Service Agreement. Detroit Edison requests that the Service Agreement be made effective as of August 4, 1997.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Energy Corporation

[Docket No. ER97–4439–000]

Take notice that on September 2, 1997, Duke Power, a division of Duke Energy Corporation, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company (Duke), filed forms of service agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between Duke Power Company, as the Transmission Provider, and Duke Power Company, as the Transmission Customer, dated as of July 9, 1996.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER97–4440–000]

Take notice that on September 2, 1997, Puget Sound Energy, Inc. tendered for filing an unexecuted Amendment No. 1 to Transmission Agreement (the Amendment) with The City of Seattle, acting by and through its City Light Department (City of Seattle). A copy of the filing was served on City of Seattle.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Energy, Inc.

[Docket No. ER97–4441–000]

Take notice that on September 2, 1997, Puget Sound Energy, Inc. tendered for filing an unexecuted Parallel Operation Agreement with the Public Hospital District No. 1 of King County, doing business as Valley Medical Center (Valley Medical Center). A copy of the filing was served on Valley Medical Center.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Co.

[Docket No. ER97–4442–000]

Take notice that on September 2, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO). (collectively, "CSW Operating Companies) submitted for filing an unexecuted network integration transmission service agreement between WTU and PSO/SWEPCO. The submission of this agreement complies with *Allegheny Power System, Inc., et al.*, 80 FERC ¶ 61,143, slip op. at 23–24 (1997).

The CSW Operating Companies state that a copy of this filing has been served on the Public Utility Commission of Texas, the Arkansas Public Service Commission, the Louisiana Public Service Commission and Oklahoma Corporation Commission.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

[Docket No. ER97–4443–000]

Take notice that on September 2, 1997, Maine Public Service Company (Maine Public) filed an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with NorAm Energy Services, Inc.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Energy, Inc.

[Docket No. ER97–4444–000]

Take notice that on September 2, 1997, Puget Sound Energy, Inc., tendered for filing an unexecuted Amendment No. 2 to Transfer Agreement (the Amendment) with The City of Seattle, acting by and through its City Light Department (City of Seattle). A copy of the filing was served on City of Seattle.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

[Docket No. ER97–4445–000]

Take notice that on September 2, 1997, Commonwealth Edison Company (ComEd) submitted for filing a Firm Point-to-Point Transmission Service Agreement with Wisconsin Power and Light Company (WPL), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of September 1, 1997, for the service agreement, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon WPL and the Illinois Commerce Commission.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Vermont Public Service Corporation

[Docket No. ER97–4446–000]

Take notice that on September 2, 1997, Central Vermont Public Service Corporation tendered for filing a form of service agreement that reflects its use of the Phase I/Phase II HVDC Facilities to import 54 MW of capacity and energy from Hydro Quebec in the period July 1, 1996–June 30, 2001.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER97–4447–000]

Take notice that on September 2, 1997, PJM Interconnection, L.L.C. (PJM), tendered for filing forms of service agreements for point-to-point service under the PJM Open Access Tariff to cover uses of the PJM transmission system by transmission owners in PJM.

Copies of this filing were served upon the parties to the service agreements.

PJM requests an effective date of April 1, 1997, for the service agreements, with the exception of one agreement, for which it requests an effective date of July 1, 1997.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER97–4448–000]

Take notice that on September 2, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing a supplement to its Agreement with Consolidated Edison Company of New York, Inc. (Con Edison), designated Rate Schedule FERC No. 87. The supplement is made pursuant to the rate update provisions of the rate schedule.

NYSEG requests an effective date of September 1, 1997, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Union Electric Company

[Docket No. ER97–4449–000]

Take notice that on September 2, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and The Energy Authority, Rainbow Energy Marketing Corporation and Tennessee Power Company. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Union Electric Company

[Docket No. ER97–4450–000]

Take notice that on September 2, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between UE and Cinergy Services, Inc., The Power Company of America, LP and Tennessee Power Company. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER97–4451–000]

Take notice that on September 2, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing forms of service agreements for service to Entergy Services under the Entergy Services Open Access Transmission Tariff.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Idaho Power Company

[Docket No. ER97–4452–000]

Take notice that on September 2, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission non-firm and firm short term transmission service agreements between Idaho Power's Marketing Department and Idaho Power's Delivery Department.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PacifiCorp

[Docket No. ER97–4453–000]

Take notice that on September 2, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Service Agreement with Constellation Power Sources, Inc., under PacifiCorp's FERC Electric Tariff, Original Revised Volume No. 12.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Tucson Electric Power Company

[Docket No. ER97–4454–000]

Take notice that on September 2, 1997, Tucson Electric Power Company (TEP), tendered for filing two (2) service agreements for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under these agreements. The service agreements are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated August 11, 1997.

2. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing dated August 22, 1997.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. The Detroit Edison Company

[Docket No. ER97–4455–000]

Take notice that on September 2, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Network Integration Transmission Service (the Service Agreement) between Detroit Edison Transmission Operations and the Village of Sebewaing, Michigan, under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of November 1, 1997. Detroit Edison requests that the Service Agreement be made effective as of November 1, 1997.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Consumers Energy Company

[Docket No. ER97–4456–000]

Take notice that on September 2, 1997, Consumers Energy Company (Consumers), tendered for filing two service agreements for non-firm point-to-point transmission service pursuant to the Joint Open Access Transmission Tariff filed on December 31, 1996, by Consumers and The Detroit Edison Company (Detroit). The two transmission customers are Enron Power Marketing and Engage Energy US, L.P. A copy of the filing was served on the Michigan Public Service Commission, Detroit and the two transmission customers.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Carolina Power & Light Company

[Docket No. ER97–4457–000]

Take notice that on September 2, 1997, Carolina Power & Light Company (Carolina), tendered for filing an executed Service Agreement between Carolina and the following Eligible Entity: CMS Marketing, Services and Trading Company. Service to the Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Illinois Power Company

[Docket No. ER97–4458–000]

Take notice that on September 2, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Caterpillar Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 11, 1997.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Black Hills Power & Light Company

[Docket No. ER97–4459–000]

Take notice that on September 2, 1997, Black Hills Corporation, doing business as and operating its electric utility under the name Black Hills Power and Light Company, tendered for filing a transmission service agreement to provide non-firm transmission service under its open access transmission tariff for Black Hills Power and Light Company.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Pacific Gas and Electric Company

[Docket No. ER97–4460–000]

Take notice that on August 29, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing a true-up to rates pursuant to Contract No. 14–06–200–2948A, Rate Schedule FERC No. 79 (Contract 2948A), between PG&E and the Western Area Power Administration (Western).

Pursuant to Contract 2948A and the PG&E-Western Letter Agreement dated February 7, 1992, electric capacity and energy sales are made initially at rates based on estimated costs and then trued-up at rates based on recorded costs after the necessary data becomes available. The proposed rate change establishes recorded cost based rates for true-up of capacity sales and energy sales from Energy Account No. 2 made during 1994 and 1995, at rates based on estimated costs.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Florida Power Corporation

[Docket No. ER97–4461–000]

Take notice that on September 2, 1997, Florida Power Corporation (Florida Power), tendered for filing a Form of Service Agreement for Network Integration Transmission Service providing for Network Integration Transmission Service to itself pursuant

to Part III of Florida Power's open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on September 3, 1997.

Comment date: October 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25716 Filed 9–26–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Major License

September 23, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.
b. *Project No.:* 2674–003.
c. *Date Filed:* May 30, 1997.
d. *Applicant:* Green Mountain Power Corporation.
e. *Name of Project:* Vergennes Project.
f. *Location:* On Otter Creek in the city of Vergennes, Addison County, Vermont.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).
h. *Applicant Contact:* Craig T. Moyotte, Green Mountain Power Corporation, 25 Green Mountain Drive, P.O. Box 850, South Burlington, VT 05402, (802) 864–5731.
i. *FERC Contact:* Lee Emery (202) 219–2779.
j. *Deadline Date:* November 14, 1997.
k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The project as licensed consists of the following features: (1) Three concrete overflow dams, each about ten feet high, with a total length of 231 feet, each having a crest elevation of about 132.78 feet mean sea level (msl) surmounted by 1.5-foot-high flashboards, and a 29-foot-long, non-overflow dam; (2) an 8.8-mile long, 133 acre surface area reservoir having a 200 acre-foot useable storage capacity at normal water surface elevation of 134.28 feet msl; (3) the north forebay with trashracks, headgates and two 7-foot-diameter steel penstocks; (4) the north powerhouse known as Plant 9B, having a 1,000-KW generating unit; (5) the south forebay, with trashracks, headgates, two surge tanks, and two 10-foot-diameter penstocks; (6) the south powerhouse, known as Plant 9, having two 700-kW generating units; (7) the generator leads from Plant 9 to the Vergennes Substation and the 950-foot-long, 2,400-volt overhead generator leads from Plant 9B to the Vergennes Substation; and (8) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the project's average annual generation would be 9.455 Mwh and the Applicant owns all the existing project facilities.

m. *Purpose of Project:* All project energy generated would be sold to commercial and residential customers within the Applicant's own regional transmission and distribution system.

n. *This notice also consists of the following standard paragraphs:* B1, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1371. A copy is also available for inspection and reproduction at 25 Green Mountain Drive, South Burlington, VT 05402, (802) 864–5731 and at the City of Vergennes, City Manager's Office, Route 22A (Main Street), Vergennes, VT 05491, (802) 877–3637.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25719 Filed 9–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System Power Rates

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of extension.

SUMMARY: The Deputy Secretary of Energy, acting under Amendment No. 3 to Delegation Order No. 0204–108, dated November 10, 1993, 58 FR 59717, and pursuant to the implementation authorities in 10 CFR 903.22(h) and 903.23(b), has approved Rate Order No. SWPA–35 which extends the existing power rates for the Integrated System. This is an interim rate action effective October 1, 1997, and extending for a period of six months through March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101–1619, (918) 595–6696.

SUPPLEMENTARY INFORMATION: The existing rate schedules for the Integrated System were approved on a final basis by the Federal Energy Regulatory Commission on September 18, 1991, for the period ending September 30, 1994. These rates were extended on an interim basis by the Deputy Secretary of Energy on August 24, 1994, August 8, 1995, and September 23, 1996. The rates expire on September 30, 1996.

The FY 1997 Integrated System Power Repayment Study indicates the need for a 3.3 percent ($3,212,635) annual revenue increase. Based on the revenue requirement needed to meet repayment criteria, Southwestern Power Administration (Southwestern) has announced in the **Federal Register**, on August 22, 1997, its intention to file new Integrated System rates and provided for a 90-day public comment period pursuant to requirements set forth in 10 CFR 903. In order to provide time in which to complete the public participation process and implement the new rates by January 1, 1998, Southwestern is seeking a six-month extension of current rates. This extension will provide a three-month contingency period if unforeseen difficulties should arise that would create a delay in the January 1, 1998, implementation date, and avoiding the need for an additional extension.

The Deputy Secretary is authorized to implement such temporary extension based on authorities provided in 10 CFR 903.22(h) and 903.23(b) and Amendment No. 3 to Delegation Order No. 0204–108.

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA–35, which extends the existing Integrated System rates for six months beginning October 1, 1997.

Dated: September 19, 1997.

Elizabeth A. Moler,

Deputy Secretary.

Order Approving Extension of Power Rates on an Interim Basis

(October 1, 1997)

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect, on an interim basis, power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204–108 to delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. By Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, the Secretary of Energy re-delegated to the Deputy Secretary of Energy, the authority to confirm, approve and place into effect on an interim basis power and transmission rates of the Power Marketing Administrations. This rate order is issued by the Deputy Secretary pursuant to said Amendment to Delegation Order No. 0204–108.

This is a temporary rate extension. It is made pursuant to the authorities as implemented in 10 CFR 903.22(h) and 903.23(b).

Background

Southwestern Power Administration (Southwestern) currently has marketing responsibility for 2.2 million kilowatts of power from 24 multiple-purpose reservoir projects, with power facilities constructed and operated by the U.S. Army Corps of Engineers, generally in all or portions of the states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and Texas. The Integrated System, comprised of 22 of the projects, is interconnected through a transmission system presently consisting of 138- and 161-kV high-voltage transmission lines, 69-kV transmission lines, and numerous bulk power substations and switching stations. In addition, contractual transmission arrangements provide for integration of other projects into the system.

The remaining two projects, Sam Rayburn Dam and Robert Douglas Willis, are isolated hydraulically and electrically from the Southwestern transmission system, and their power is marketed under separate contracts through which the customer purchases the entire power output of the project at the dam. A separate Power Repayment Study (PRS) is prepared for each isolated project, and each has a special rate which is not a part of this study.

The existing rate schedules for the Integrated System were confirmed and approved on a final basis by the FERC on September 18, 1991, for the period October 1, 1990, through September 30, 1994. These rates were extended for one year periods on an interim basis by the Deputy Secretary of Energy on August 28, 1994, on August 8, 1995, and again on September 23, 1996. These rates are now scheduled to expire September 30, 1997.

Pursuant to implementing authority in 10 CFR 903.22(h) and 903.23(b), the Deputy Secretary of Energy may extend a FERC-approved rate on a temporary basis without advance notice or comment pending further action. Southwestern is in the process of its rate development and public participation process. The FY 1997 rate development process has been expanded to incorporate issues impacting Southwestern with respect to the Federal Energy Regulatory

Commission's Order No. 888 on open transmission access. Consequently, an extension of the current rates is needed to provide sufficient time in which to comply with the public participation process required by 10 CFR 903. Southwestern is developing open access tariffs consistent with Order No. 888. Southwestern has announced in the **Federal Register** on August 22, 1997, a 90-day public comment period on the FY 1997 proposed rates with a planned implementation on January 1, 1998.

Discussion

The existing Integrated System rates are based on the FY 1990 PRS. PRSs have been completed on the Integrated System each year since approval of the existing rates. Rate changes identified by the PRSs since that period have indicated the need for minimal rate increases or decreases. Since the revenue changes reflected by the PRSs were within Southwestern's plus-or-minus two percent Rate Adjustment Threshold, these rate adjustments were deferred in the best interest of the government and provided for the subsequent year's PRS to determine the appropriate level of revenues needed for the next rate period.

The FY 1997 PRS indicates the need for an annual revenue increase of 3.3 percent ($3,212,635). A rate adjustment of this magnitude, together with the need to revise rate schedules to address the intent of FERC's Order No. 888, requires a formal rate filing. With existing rates expiring on September 30, 1997, Southwestern proposes to extend the existing rates for a six-month period ending September 30, 1998, on a temporary basis under the implementation authorities noted in 10 CFR 903.22(h) and 903.23(b) to provide sufficient time to complete the FY 1997 proposed rate development.

Southwestern continues to make significant progress toward repayment of the Federal investment in the Integrated System. Through FY 1996, cumulative amortization for the Integrated System was over $369 million, which represents approximately 37 percent of the $1 billion cumulative Federal investment for the Integrated System. The repayment status has increased over 100 percent since the existing rates were placed in effect.

Inquiries regarding this rate extension may be addressed to Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74101–1619.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby extend on an interim basis, for the period of six months, effective October 1, 1997, the current FERC-approved Integrated System Rates for the sale of power and energy.

Dated: September 19, 1997.

Elizabeth A. Moler,

Deputy Secretary.

[FR Doc. 97–25747 Filed 9–26–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Notice of Firm Power Service Base Charge

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of base charge.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of the Base Charge and its components for the Boulder Canyon Project (BCP) firm power service. The Fiscal Year (FY) 1998 Base Charge and its components for BCP firm power are based on an Annual Revenue Requirement of $43,479,183. The Base Charge consists of an energy dollar amount of $22,527,359 and a capacity dollar amount of $20,951,824. This Base Charge and its components are used for calculating the monthly charges and forecast rates pursuant to Rate Schedule BCP–F5 as approved by the Federal Energy Regulatory Commission (FERC) on April 19, 1996 (Rate Order No. WAPA–70).

DATES: The Base Charge and its components, used in calculating the monthly charges and forecast rates pursuant to Rate Schedule BCP–F5, will be effective on the first day of the first full billing period beginning on or after October 1, 1997, and will be in effect through FY 1998.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453.

Mr. Joel K. Bladow, Assistant Administrator for Power Marketing Liaison, Western Area Power Administration, Room 8G–027, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0001, (202) 586–5581.

SUPPLEMENTARY INFORMATION: The Base Charge and its components were calculated in accordance with the methodology approved under Rate Order WAPA–70. The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western Area Power Administration (Western) in determining the Base Charge and its components. The following summarizes the steps taken by Western to ensure involvement of all interested parties in the determination of the Base Charge and its components:

1. On April 18, 1997, a letter was mailed from Western's Desert Southwest Customer Service Regional Office to all BCP customers and other interested parties. The letter provided a copy of the BCP Proposed Rate Adjustment data, dated April 18, 1997.

2. Discussion of the proposed Base Charge and its components was initiated at an informal BCP Contractor meeting held on May 6, 1997, in Phoenix, Arizona. At this informal meeting, representatives from Western and the Bureau of Reclamation (Reclamation) explained the basis for estimates used in the calculation of the Base Charge and its components. A question and answer session was convened for those persons attending.

3. A **Federal Register** Notice (FRN) was published on May 7, 1997 (62 FR 24913), officially announcing the proposed Base Charge adjustment process, initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

4. At the public information forum held on May 15, 1997, in Phoenix, Arizona, Western and Reclamation representatives explained the proposed Base Charge and its components for Rate Year 1998 in greater detail. A question and answer session was convened for those persons attending. A response to a data request from the public information forum was mailed to the customers on June 2, 1997.

5. A public comment forum was held on June 12, 1997, in Phoenix, Arizona, to give the public an opportunity to comment for the record. Three persons representing customers and customer groups made oral comments. A response to the comments and data requests from the public comment forum was mailed to the customers on July 18, 1997.

6. Three comment letters were received during the 90-day consultation and comment period. The consultation and comment period ended August 5, 1997. All submitted written comments have been considered in the preparation of this FRN. Most of the comments received during the public meetings dealt with Hydrology (surplus water), Realistic and Appropriate Costs, Rate Impacts and Philosophy, and Differences between Financial Documents. All comments were considered in developing the Base Charge for FY 1998. Additional written comments and responses, paraphrased for brevity, are presented below.

Issue: Contractor raised concern with the status of dispute regarding the blind vendor services at Hoover and requested to be kept informed and provided with all pertinent correspondence.

Response: Reclamation will continue to further evaluate the situation and will keep the contractors informed of the status to the blind vendor litigation.

Issue: Contractor requested Western to ask Reclamation to convene dialogue with Contractor representatives aimed at accelerating delivery of a $5 million revenue stream to offset certain construction costs on the visitors facilities.

Response: Western is committed to working with Reclamation in partnership with the Contractors to recover revenues as soon as possible to offset certain costs for the visitor facilities. Substantial progress has been made in meeting the $5 million revenue goal. Revenue opportunities, as well as expenses, are currently being discussed with the BCP Engineering and Operations Committee (E&OC) representatives utilizing the Revenue Subcommittee as the primary focal point of exploring new opportunities. As dialogue continues, Reclamation and Western will continue to support the E&OC process and welcome all suggestions for meeting the revenue goal as quickly as possible. Western will initiate an agenda item relating to this request at the October 1997 E&OC meeting.

Issue: Contractors shared concern on the estimates of, and cost responsibility for, Highway 93 rehabilitation work.

Response: Three bids received from local contractors were evaluated by a contract specialist and found to be reasonable. The evaluation revealed that the engineer's estimate appeared to be low in the areas of mobilization and removal/disposal of existing pavement. Mobilization bids were significantly higher. The low bidder plans to set up a batch plant on site. The engineer's estimate did not include cost consideration for offsite disposal requirements. Recognizing that cost estimates are not exact, cost estimating practices will be continually reviewed for improvement.

The cost responsibility for rehabilitation of Highway 93 has been the topic of previous discussions and correspondence with the BCP E&OC representatives. Reclamation attempted to obtain separate funding for rehabilitation of the roadway with no results.

The BCP E&OC was made aware of this effort by a letter dated June 2, 1994. It is critical the subject work be accomplished due to concern for public safety. Because no alternate funding sources have been identified, funding must come from revenues authorized under the Boulder Canyon Project Act.

Issue: The House and Senate committee reports on the Energy and Water Development Appropriation bills contain directions to Reclamation to involve customers in developing cost estimates prior to budget submission. Western is to initiate dialogue with Reclamation to ensure proper coordination with existing E&OC process.

Response: Western will initiate this dialogue and believes that both Western and Reclamation are committed to ensure the congressional directives to Reclamation and the E&OC process are consistent.

Issue: Contractor requested an assessment to determine justification for a specific replacement cost, and a reduction in costs for certain replacements.

Response: The assessment regarding the Station Service Electrical item was initially in the 1995 Ten Year Operating Plan scheduled for FY97 and budgeted at $445,000. The scope of work was to replace the station service transformer and station service circuit breaker. The transformer was being replaced due to age, and the circuit breaker was being replaced due to problems operating the breaker and inability to procure repair parts. The station service transformer provides the only tie to system power to augment and stabilize frequency for station power. Hoover had experienced power fluctuations when operating isolated on station service power that tripped equipment and limited operation of equipment that drew large amounts of power such as cranes, elevators and pumps. It was felt, at that time, these problems could be eliminated by replacing the transformer and the circuit breaker.

The first Technical Review Committee (Blue Ribbon Task Force) commented, unless testing showed the transformer was nearing the end of its service life, it should not be replaced. The committee also commented, replacing the transformer would not eliminate the problems encountered in running the plant isolated on station service. If the new transformer failed, instability would still be a problem.

Reclamation agreed with these comments and focused on minimizing the need to run the plant isolated on station service. Funding of $300,000 was budgeted for FY98 to eliminate the station service breaker and to procure a spare single phase transformer. Eliminating the station service breaker and providing a tie to the existing circuit breakers was a lower cost alternative to purchasing a new circuit breaker. Purchasing a spare single phase transformer would eliminate long lead times in procuring a new transformer in case of an in-service failure. The Project believes that the probability of multiple failures of the single phase transformer is unlikely and would accept that risk.

The Technical Review Committee that met in June 1997 questioned the need for a spare transformer since there were new governors on the Arizona station service generator and the Nevada station service generator that would likely correct frequency instability.

Reclamation will be simulating operating the plant isolated on station service in September. Based on this simulation, the Project will assess the need for a spare transformer. Reclamation will report on this assessment and our decision on the transformer at the October 1997 BCP E&OC meeting. If it is determined a spare transformer is not necessary, the program expenditures for the transformer would become carryover in the next fiscal year. The work to tie to existing circuit breakers also funded under this item would still proceed in FY 1998.

A meeting with customer representatives was held August 13, 1997, to review the communication and control system upgrades related to the Reclamation Alternative Modular SCADA System (RAMS) in use at Hoover Dam. No changes will be made to estimated costs in the proposed FY 1998 revenue requirements at this time, however, should the existing plans for future RAMS related investments be modified as a result of this review, changes to the items in the level of FY 1998 expenditures for these items may result. And lastly, the FY 1998 rate includes $150,000 for the piping replacements. In Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy (Secretary) delegated (1) the authority to develop long-term power and

transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

These charges and rates are established pursuant to section 302(a) of the DOE Organization Act, 42 U.S.C. § 7152(a), through which the power marketing functions of the Secretary of the Interior and Reclamation under the Reclamation Act of 1902, 43 U.S.C. § 371 et seq, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary.

Dated: September 19, 1997.

Elizabeth A. Moler,

Deputy Secretary.

[FR Doc. 97-25749 Filed 9-26-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Central Valley Project and California-Oregon Transmission Project—WAPA-77

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA-77 and Rate Schedules CV-F9, CV-FT3, CV-NFT3, CV-TPT4, CV-NWT1, CV-PSS1, CV-RFS1, CV-EID1, CV-SPR1, CV-SUR1, COTP-FT1, and COTP-NFT1 placing provisional rates for the Central Valley Project (CVP) commercial firm power and transmission services, power scheduling service, and ancillary services of the Western Area Power Administration (Western), and placing provisional rates for the California-Oregon Transmission Project (COTP) transmission services into effect on an interim basis. The provisional rates, will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period.

DATES: The provisional rates will be placed into effect on an interim basis on October 1, 1997, and will be in effect until FERC confirms, approves, and places the provisional rates in effect on a final basis for a 5-year period ending September 30, 2002, or until superseded.

FOR FURTHER INFORMATION CONTACT: Ms. Zola Jackson, Power Marketing Manager, Western Area Power Administration, Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, CA 95630-4710, Telephone (916) 353-4421 or Mr. Joel K. Bladow, Power Marketing Liaison Office, Room 8G-027, 1000 Independence Avenue SW., Washington, DC 20585-0001, Telephone (202) 586-5581.

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy, approved the existing Rate Schedule CV-F8 for CVP commercial firm power on September 19, 1995 (Rate Order No. WAPA-72, 60 FR 52671, October 10, 1995) and FERC confirmed and approved the rate schedule on March 14, 1996, under FERC Docket No. EF95-5012-000 (74 FERC ¶ 62,136). The existing Rate Schedule CV-F8 became effective on October 1, 1995, for the period ending April 30, 1998, and is being superseded by Rate Schedule CV-F9. Under Rate Schedule CV-F8, the composite rate on October 1, 1997, is 26.50 mills per kilowatt-hour (mills/kWh), the base energy rate is 16.93 mills/kWh, the energy tier rate is 26.48 mills/kWh, and the capacity rate is $4.58 per kilowatt-month (kW-month). The provisional rates for CVP commercial firm power in Rate Schedule CV-F9 will result in an overall composite rate of 20.95 mills/kWh on October 1, 1997, and will result in a decrease of approximately 21 percent when compared with the existing CVP commercial firm power rates under Rate Schedule CV-F8.

The Acting Assistant Secretary of Energy, approved the existing Rate Schedules CV-FT2, CV-NFT2, and CV-TPT3 for CVP transmission services, and the existing Rate Schedule CV-PC1 for peaking capacity service on April 12, 1993 (Rate Order No. WAPA-59, 58 FR 35933, July 2, 1993), and FERC confirmed and approved the rate schedules on September 22, 1993, under FERC Docket No. EF93-5011-000 (64 FERC ¶ 61,332). The existing rate schedules became effective on May 1, 1993, for the period ending April 30, 1998. Rate Schedule CV-PC1 is being terminated effective October 1, 1997. Rate Schedules CV-FT2, CV-NFT2, and CV-TPT3 are being superseded by Rate Schedules CV-FT3, CV-NFT3, and CV-TPT4. Under Rate Schedules CV-FT2 and CV-NFT2, the CVP transmission firm and non-firm services rates on October 1, 1997, are $0.43 per kW-month for firm service and 1.23 mills/kWh for non-firm service. On October 1, 1997, the provisional rates in Rate Schedules CV-FT3 and CV-NFT3 will be $0.51 per kW-month for firm CVP transmission service, an 18.6 percent increase when compared with the existing rate, and 1.00 mill/kWh for non-firm CVP transmission service, an 18.7 percent decrease when compared with the existing rate. The provisional rate for transmission of CVP power by others in Rate Schedule CV-TPT4 is a direct pass through cost and will result in no change on October 1, 1997, when compared with the existing rate under Rate Schedule CV-TPT3.

Since the COTP went into operation in 1993, Western has sold COTP transmission services on a short-term basis using rates approved by the Administrator of Western. Rate schedules are being promulgated for COTP firm and non-firm transmission services to be consistent with FERC Order No. 888. The provisional rates for firm transmission service for Western's share of the COTP will result in 9.9 percent (FY 1998) and 34.0 percent (FY 1999 through FY 2002) reductions in the existing rate of $2.03 per kW-month. The provisional rates are $1.83 per kW-month for FY 1998 and $1.34 per kW-month for FY 1999 through FY 2002. The provisional rates for non-firm COTP transmission service will result in 21.2 percent (FY 1998) and 47.8 percent (FY 1999 through FY 2002) reductions in the existing rate of 2.78 mills/kWh. The provisional rates are 2.19 mills/kWh for FY 1998 and 1.45 mills/kWh for FY 1999 through FY 2002.

Power scheduling service, network transmission service, and ancillary services are new services. The provisional rates are designed to recover only the cost incurred for providing the services.

Provisional Rates for CVP Commercial Firm Power

The provisional rates for CVP commercial firm power are designed to recover an annual revenue requirement that includes the investment repayment, interest, purchase power, and operation and maintenance expense. A cost of service study was used to allocate the projected annual revenue requirement for commercial firm power between capacity and energy. Based on this study the capacity revenue requirement includes 100 percent of capacity purchase costs, 50 percent of the CVP investment repayment, interest expense, and power operation and maintenance expense allocated to commercial power, and 100 percent of purchased transmission service expense. These annual costs are reduced by the projected revenue from sales of CVP transmission to determine the capacity revenue requirement. The energy revenue requirement includes 100 percent of energy purchase costs and 50 percent of the CVP investment repayment, interest expense, and power operation and maintenance expense allocated to commercial power. These annual costs are reduced by the projected revenue from sales of surplus power to determine the energy revenue requirement.

The provisional rates will also include an Annual Energy Rate Alignment (AERA). The AERA will be applied to energy purchases from Western under Rate Schedule CV-F9 at or above an average annual load factor of 80 percent, calculated at the end of each fiscal year. The AERA will provide revenues to cover the increased costs of purchased energy. The AERA is the difference between the estimated rate for short-term energy purchases used in the cost of service study for CVP commercial firm power and the provisional CVP energy rate. The AERA is in addition to the provisional CVP energy rate and replaces the existing energy tier rate in Rate Schedule CV-F8.

Adjustment Clauses Associated With the Provisional Rates for CVP Commercial Firm Power

Adjustments for power factors, low voltage losses, and revenue were included in Rate Schedule CV-F8, and will be continued in Rate Schedule CV-F9.

Power Factor Adjustment

The power factor adjustment is included in Rate Schedule CV-F9. The low power factor charge or LPF Charge is a charge that will be applied when the customer does not maintain a calculated 95 percent or greater power factor.

Low Voltage Loss Adjustment

A 1.035 loss adjustment factor will be applied to the billed amounts for low voltage CVP commercial firm power deliveries on the Pacific Gas and Electric system.

Revenue Adjustment

The revenue adjustment clause or RAC, is included in Rate Schedule CV-F9. The RAC, tracks variances in future revenues and expenses, and lessens the probability of significant revenue surplus or deficit to the CVP repayment. The methodology for computing the RAC is a comparison of estimated total revenues less estimated total expenses to actual total revenues less actual total expenses.

Provisional Rates for CVP Transmission Services

The provisional rates in Rate Schedules CV-FT3 and CV-NFT3 for CVP transmission services are based on a revenue requirement that recovers: (1) The CVP transmission system costs for facilities associated with providing all transmission services; and (2) the non-facility costs allocated to transmission services. These provisional firm and non-firm CVP transmission service rates include the costs for scheduling, system control and dispatch service, and reactive supply and voltage control service needed to provide the transmission service. The provisional rates are applicable to existing firm and non-firm CVP transmission services and future point-to-point transmission services. The rates charged for firm and non-firm CVP transmission services for a period of one year or less will be no higher than the provisional rates.

Provisional Rate for Transmission of CVP Power by Others

Transmission service costs incurred by Western in the delivery of CVP power over a third party's transmission system to a CVP customer, will be directly passed through to that CVP customer. The provisional rate in Rate Schedule CV-TPT4 is proposed to be automatically adjusted as third party transmission costs are adjusted.

Provisional Rate Formula for Network Transmission Service

Network transmission service, if offered by Western, will be made available consistent with FERC Order No. 888. Due to existing contractual arrangements and not being a control area operator for the CVP, Western may not be able to provide network transmission service but has included a rate formula in case Western offers the service. The provisional rate formula includes the costs for scheduling, system control and dispatch service, and reactive supply and voltage control service needed to provide network transmission service.

Provisional Rate for Power Scheduling Service

Power scheduling is a new service being offered by Western that provides for the scheduling of resources to meet loads and reserve requirements. The provisional rate for power scheduling service is designed to recover only the cost incurred for providing the service.

Provisional Rates for Ancillary Services

Western will provide six ancillary services consistent with FERC Order No. 888. Of the six ancillary services offered by Western, two will be provided in conjunction with the sale of CVP and/or COTP transmission services. These are scheduling, system control and dispatch service, and reactive supply and voltage control service. The remaining four ancillary services, regulation and frequency response service, energy imbalance service, spinning reserve service, and supplemental reserve service will be offered subject to availability. The availability and type of ancillary service will be determined based on excess resources available at the time the service is requested, except for the two ancillary services provided in conjunction with the sale of CVP and/or COTP transmission services. The costs associated with scheduling, system control and dispatch service, and for reactive supply and voltage control service are included in the appropriate transmission services rates.

Provisional Rates for COTP Transmission Services

The provisional rates in Rate Schedules COTP-FT1 and COTP-NFT1 for COTP transmission services include a revenue requirement that recovers the costs associated with: (1) Western's participation in the COTP; and (2) scheduling, system control and dispatch service, and reactive supply and voltage control service needed to provide the transmission service. The rates are applicable to existing firm and non-firm COTP transmission services and future point-to-point transmission services. The rates charged for firm and non-firm COTP transmission services for a period of one year or less will be no higher than the provisional rates.

The provisional rates for CVP commercial firm power and transmission services, power scheduling service, ancillary services, and for COTP transmission services are developed pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), through which the power marketing functions of the Secretary of the Interior and the Bureau of

Reclamation under the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993, (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR Part 903, effective on September 18, 1985 (50 FR 37835).

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of these provisional rates.

Rate Order No. WAPA–77, confirming, approving, and placing the proposed CVP commercial firm power and transmission services rates, power scheduling service, ancillary services, and the COTP transmission services rates into effect on an interim basis, is issued, and the new Rate Schedules CV–F9, CV–FT3, CV–NFT3, CV–TPT4, CV–NWT1, CV–PSS1, CV–RFS1, CV–EID1, CV–SPR1, CV–SUR1, COTP–FT1, and COTP–NFT1 will be submitted promptly to FERC for confirmation and approval on a final basis.

Dated: September 19, 1997.

Elizabeth A. Moler,

Deputy Secretary.

Order Confirming, Approving, and Placing the Central Valley Project; Commercial Firm Power and Transmission Services Rates, Power Scheduling Service and Ancillary Services Rates, and the California-Oregon Transmission Project Transmission Services Rates Into Effect on an Interim Basis

October 1, 1997.

These rates are developed pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of the Department of Energy (DOE).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR part 903.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Administrator: The Administrator of Western Area Power Administration.

AERA: Annual energy rate alignment. An energy rate applied at the end of each fiscal year to all energy purchases under Rate Schedule CV–F9 at or above an annual load factor of 80 percent.

Ancillary Services: Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission system in accordance with good utility practice. Ancillary services are generally described in Federal Energy Regulatory Commission Order No. 888, Docket Nos. RM95–8–000 and RM94–7–001, issued April 24, 1996.

California-Oregon Transmission Project (COTP): The 500-kilovolt transmission project in which Western has part ownership.

Capacity: The electric capability of a generator, transformer, transmission circuit or other equipment. It is expressed in kW.

Capacity Rate: The rate which sets forth the charges for capacity. It is expressed in $ per kW-month and applied to each kW delivered to each customer.

Central Valley Project (CVP): A multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River south of the City of Bakersfield.

Composite Rate: The rate for commercial firm power and is the total annual revenue requirement for capacity and energy divided by the total annual energy sales. It is expressed in mills/kWh and used for comparison purposes.

Contract 2947A: Western's contract with Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric Companies for extra high voltage transmission and exchange service; Contract No. 14–06–200–2947A, as amended.

Contract 2948A: Pacific Gas and Electric Company's contract with Western for the sale, interchange and transmission of power; Contract No. 14–06–200–2948A, as amended.

Corps: United States Army Corps of Engineers.

CRD: Contract rate of delivery. The maximum amount of capacity made available to a preference customer for a period specified under a contract.

Customer: An entity with a contract and receiving service from Western's Sierra Nevada Region.

DOE: United States Department of Energy.

DOE Order RA6120.2: An order dealing with power marketing administration financial reporting and rate making procedure.

EA2: Energy Bank Account No. 2 between Western and PG&E under Contract 2948A.

Energy: Measured in terms of the work it is capable of doing over a period of time. It is expressed in kWh.

Energy Rate: The rate which sets forth the charges for energy. It is expressed in mills/kWh and applied to each kWh delivered to each customer.

Energy Tier Rate: Existing energy rate in Rate Schedule CV–F8 applied to energy sales at a 70 percent and higher monthly load factor.

FERC: Federal Energy Regulatory Commission.

Firm: A type of product and/or service that is available at the time requested by the customer.

First Preference Customer: An entity qualified to use preference power within a county of origin (Trinity, Calaveras and Tuolumne) as specified under the Trinity River Division Act of August 12, 1955 (69 Stat. 719), and the Flood Control Act of 1962 (76 Stat. 1180).

FY: Fiscal year; October 1 to September 30.

Interior: United States Department of the Interior.

Intertie: Pacific Northwest-Pacific Southwest Intertie.

kV: Kilovolt—the electrical unit of measure of electric potential that equal one thousand volts.

kvar: Kilovolt-ampere reactive—the electrical unit of measurement for reactive power in a circuit that equals one thousand volt-amperes.

kW: Kilowatt—the electrical unit of capacity that equal one thousand watts.

kW-month: The electrical unit of the monthly amount of capacity.

kWh: Kilowatt-hour—the electrical unit of energy that equals one thousand watts in one hour.

Load Factor: The ratio of average load in kW supplied during a designated period to the peak or maximum load in kW occurring in that period.

LPF Charge: Low power factor charge.

Mill: A monetary denomination of the United States that equal one tenth of a cent or one thousandth of a dollar.

Mills/kWh: Mills per kilowatt-hour—the unit of charge for energy.

MW: Megawatt—the electrical unit of capacity that equal one million watts or one thousand kilowatts.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Net Revenue: Revenue remaining after paying all annual expenses.

Non-Firm: A type of product and/or service that is not always available at the time requested by the customer.

Northwest: Northwest United States.

O&M: Operation and maintenance.

PG&E: Pacific Gas and Electric Company.

Power: Capacity and energy.

Power Factor: The ratio of real to apparent power at any given point and time in an electrical circuit. Generally it is expressed as a percentage ratio.

Power Scheduling Service: A service that provides for the scheduling of resources to meet loads and reserve requirements.

Preference: The requirements of Reclamation law which provide that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, section 9(c), 43 U.S.C. 485h(c)).

Project Use: Power as defined by Reclamation law and/or used to operate CVP facilities.

Provisional Rates: Rates which have been confirmed, approved, and placed in effect on an interim basis by the Deputy Secretary of the Department of Energy.

PRS: Power repayment study.

RAC: Revenue Adjustment Clause.

Rate Brochure: A document prepared for public distribution explaining the rationale and background of the rate proposal contained in this rate order dated March 25, 1996.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework in which the Western Area Power Administration markets power.

Revenue Requirement: The revenue required to recover O&M expenses, purchase power and transmission service expenses, interest, deferred expenses, and repayment of Federal investments, or other assigned costs.

Sierra Nevada Region: The Sierra Nevada Customer Service Region of Western Area Power Administration.

Secretary: Secretary of Energy.

Western: United States Department of Energy, Western Area Power Administration.

Withdrawable: Power that may be withdrawn under certain conditions.

Effective Date

The new rates will become effective on an interim basis on the first day of the first full billing period beginning on or after October 1, 1997, and will be in effect pending FERC's approval of them or substitute rates on a final basis for a 5-year period ending September 30, 2002, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of these rates. The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. The proposed rate adjustment was initiated on May 1, 1996, when a letter announcing the first of four informal customer workshops was mailed to all CVP customers. The first workshop was held on May 13, 1996, in Folsom, California. Sequential workshops were held on August 21, October 25, and December 17, 1996, in Folsom, California. At these informal workshops, Western explained the rationale for the rate adjustment, presented rate designs and methodologies, and answered questions.

2. A **Federal Register** notice was published on March 4, 1997 (62 FR 9763), officially announcing the proposed rates for the CVP and COTP, initiating the public consultation and comment period, and announcing the public information and public comment forums.

3. On March 7, 1997, letters were mailed from Western's Sierra Nevada Regional Office to all CVP preference customers and interested parties transmitting the **Federal Register** notice of March 4, 1997, and announced the times and locations for the two public forums.

4. On March 25, 1997, beginning at 9 a.m. PST, the public information forum was held at Western's Sierra Nevada Regional Office in Folsom, California. At the public information forum Western provided detailed explanations of the proposed rates for the CVP and COTP, provided a list of issues that could change the proposed rates, and answered questions. Notice was given that additional information would be provided at the public comment forum. A rate brochure and an information handout were provided at the forum.

5. On April 24, 1997, beginning at 9 a.m. PDT, the public comment forum was held at Western's Sierra Nevada Regional Office in Folsom, California. At the start of the forum, Western presented the updated rates for the CVP and COTP, provided a detailed explanation of the changes to the proposed rates, and answered questions. A handout containing information regarding the updated rates was provided. After providing this information, Western gave the public an opportunity to comment for the record. Three representatives made oral comments.

6. Twelve comment letters were received during the consultation and comment period. The consultation and comment period ended June 2, 1997. All formally submitted comments have been considered in the preparation of this rate order.

Project History

The CVP is a large water and power system, initially authorized by Congress in 1935, which covers approximately one-third of the State of California. Legislatively defined purposes set the priorities for the CVP as: (1) River regulation; (2) improvement of navigation; (3) flood control; (4) irrigation; (5) domestic uses; and (6) power. In addition, the CVP Improvement Act of 1992 added fish and wildlife habitat as a priority to the list of CVP purposes.

The CVP is located within the Central Valley and Trinity River basins of California. The CVP includes 18 dams and reservoirs with a total storage capacity of 13 million acre-feet. The system includes 615 miles of canals, 5

pumping facilities, 11 powerplants with a maximum operating capability of about 2,044 MW, approximately 948 circuit-miles of high voltage transmission lines, 15 substations, and 23 communication sites. Reclamation operates the water control and delivery system and all of the powerplants with the exception of the San Luis Unit, which is operated by the State of California for Reclamation.

The Emergency Relief Appropriations Act of 1935 initially authorized the CVP to be constructed by Reclamation to include Shasta Dam on the Sacramento River in the north and Friant Dam on the San Joaquin River in the south. Located between these are the Tracy Pumping Plant; the Delta-Mendota, Contra Costa, Friant-Kern, and Madera canals; and the Delta Cross Channel. Powerplants at Shasta and Keswick dams were also included in the initial authorization, along with high voltage transmission lines designed to transmit power from Shasta and Keswick powerplants to the Tracy pumps, and to integrate the Federal hydropower into other electric systems.

In 1944, Congress authorized the American River Division, to be constructed by the Corps. This Division included Folsom Dam and Powerplant, Nimbus Dam and Powerplant, and the Sly Park Unit, all located on the American River. In 1949, the Division was reauthorized for integration into the CVP.

The Trinity River Division was authorized by Congress in 1955 to include Trinity Dam and Powerplant, Lewiston Dam and Powerplant, and the Lewiston Fish Facilities, all located on the Trinity River. The Trinity Division also includes Judge Francis Carr Powerplant, Whiskeytown Dam, and the Spring Creek Powerplant.

The San Luis Unit, including the B.F. Sisk San Luis Dam and San Luis Reservoir, San Luis Canal, Coalinga Canal, O'Neill and Dos Amigos pumping plants, and William R. Gianelli Pump-Generator, was authorized by Congress in 1960.

In 1965, Congress authorized construction of the Auburn-Folsom South Unit as an addition to the CVP. This unit included four subunits, three of which have been constructed; the Foresthill, Folsom-Malby, and Folsom South Canal subunits. Funding to complete the construction of the Auburn Dam, Reservoir and Powerplant, which is part of the fourth subunit, has not been authorized by Congress.

Congress authorized the San Felipe Division in 1967, and the Allen Camp Unit in 1976.

Three Corps projects, Buchannan, Hidden, and New Melones, were authorized for integration into the CVP in 1962. Black Butte, another Corps project completed in the 1960's, was added to the CVP in 1970 by the Black Butte Integration Act.

In 1964, Congress authorized the 500-kV Intertie, of which Western has a 400 MW entitlement of transmission capacity. On July 31, 1967, Western, PG&E, Southern California Edison Company, and San Diego Gas & Electric Company entered into Contract 2947A, as amended, to coordinate the operation of the Intertie for the purpose of transmitting electric power between the Northwest and the Pacific Southwest.

Western, in marketing the Federal hydroelectric power generated from the CVP, currently has 80 CVP preference and 34 CVP project use customers, serving an estimated two million people.

In 1967, PG&E and Western executed Contract 2948A. This contract provides for the sale, interchange, and transmission of electric capacity and energy between Western and PG&E. Contract 2948A also includes provisions for the integration of power generated from the CVP with the 400 MW of entitlement on the Intertie. The contract also provides that PG&E will support a maximum simultaneous demand of 1,152 MW for the preference customers through 2004. If CVP power cannot meet obligations to the preference customers, Contract 2948A provides Western with the right to purchase capacity and energy from PG&E to meet those requirements. Any energy in excess of Western's obligations to preference customers can be sold to PG&E through a banking provision in the contract. The energy made available under this banking arrangement allows Western to supplement CVP generation to meet preference customer load.

Power generated from the CVP is first dedicated to project use. The remaining power is allocated to various preference customers in California. Preference customers consist of: (1) Irrigation and water districts; (2) public utility districts; (3) municipalities; (4) Federal agencies; (5) State agencies; (6) rural electric cooperatives; (7) local and suburban passenger transportation entities; and (8) joint power authorities.

Each preference customer's CRD is composed of firm long-term power allocations, and may include withdrawable allocations that are currently allocated, but unused by another customer. For this rate adjustment it is assumed that all customer withdrawable CRDs can be withdrawn in the event the load level of 1,152 MW set forth in Contract 2948A is exceeded.

Western's preference customer load level is limited under Contract 2948A to a maximum simultaneous demand, excluding project loads, of 1,152 MW. The maximum simultaneous demand is the sum of each preference customer's demand for CVP power at a coincidental moment, adjusted to the load center at the Tracy Switchyard. Notwithstanding the simultaneous demand limit, Western has contractual obligations to serve approximately 1,470 MW of firm CRD to its preference customers. This level of CRD can be served because of the diversity in customers' loads.

The COTP is a 342-miles long 500-kV transmission project that electrically interconnects the Northwest to California with what is called the Third AC Intertie. Operational since March 1993, the COTP interconnects with the transmission systems of the Northwest at the Captain Jack Substation, and with the Pacific Southwest by its connection near the Tesla Substation to the existing Intertie. The project owners include Western as well as several non-Federal participants.

Power Repayment Study

Power repayment studies are prepared each fiscal year to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the CVP power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA6120.2, section 12b, requires that:

In addition to the recovery of the above costs (operation and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover: (1) Each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs.

CVP Transmission Service Rate Study

Transmission service rates are charged to CVP customers receiving transmission services over the CVP system for the transmission of non-CVP power. A transmission service rate study was prepared to ensure that transmission service rates are based on the cost of service of the CVP transmission system.

A review of the CVP transmission service rate study indicated that the existing firm and non-firm CVP transmission service rates under Rate Schedules CV–FT2 and CV–NFT2, needed to be adjusted. The provisional rate for firm CVP transmission service is $0.51 per kW-month, an 18.6 percent increase from the existing rate of $0.43 per kW-month. The provisional rate for non-firm CVP transmission service is 1.00 mill/kWh, an 18.7 percent reduction in the existing 1.23 mills/kWh rate. The change in the firm CVP transmission service rate is due to increases in transmission facilities costs and in the basis for assigning miscellaneous and non-facility investment and O&M costs to transmission to better reflect costs associated with transmission for all users. The change in the non-firm CVP transmission service rate is primarily due to a change in the load factor used in determining the denominator in the rate calculation. The same revenue requirement is used in determining the firm and non-firm CVP transmission service rates.

Existing and Provisional Rates

CVP Commercial Firm Power

The provisional rates for CVP commercial firm power are designed to recover an annual revenue requirement that includes the investment repayment, interest, purchase power, and O&M expenses. The provisional rates will also include an AERA. The AERA will be applied to energy purchases from Western under Rate Schedule CV–F9 at or above an average annual load factor of 80 percent, calculated at the end of each fiscal year. The AERA will provide revenues to cover the increased costs of purchased energy. The AERA is in addition to the provisional CVP energy rate and replaces the existing energy tier rate.

A comparison of the existing and provisional rates for CVP commercial firm power follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES

CVP Commercial firm power rate schedule			
Effective period	Existing (effective 10/01/97 to 04/30/98)	Provisional	Percent change from existing rate
Composite Rate (mills/kWh):			
10/01/97 to 04/30/98	26.50	20.95	(21)
05/1/98 to 09/30/98	.....	20.95	(21)
10/01/98 to 09/30/99	.....	19.31	(27)
10/01/99 to 09/30/00	.....	19.31	(27)
10/01/00 to 09/30/01	.....	18.56	(30)
10/01/01 to 09/30/02	.....	20.08	(24)
Capacity Rate ($ per kW-month):			
10/01/97 to 04/30/98	4.58	5.03	10
5/1/98 to 09/30/98	.....	5.03	10
10/01/98 to 09/30/99	.....	4.37	(5)
10/01/99 to 09/30/00	.....	4.31	(6)
10/01/00 to 09/30/01	.....	3.81	(17)
10/01/01 to 09/30/02	.....	4.02	(12)
Energy Rate (mills/kWh):			
10/01/97 to 04/30/98	16.93	10.31	(39)
05/1/98 to 09/30/98	.....	10.31	(39)
10/01/98 to 09/30/99	.....	10.06	(41)
10/01/99 to 09/30/00	.....	10.19	(40)
10/01/00 to 09/30/01	.....	10.51	(38)
10/01/01 to 09/30/02	.....	11.58	(32)
AERA Rate (mills/kWh) supersedes existing energy tier rate in Rate Schedule CV–F8.[1]			
10/01/97 to 04/30/98	(2)	2.86	.....
05/1/98 to 09/30/98	(2)	2.86	.....
10/01/98 to 09/30/99	(2)	3.57	.....
10/01/99 to 09/30/00	(2)	3.92	.....
10/01/00 to 09/30/01	(2)	4.09	.....
10/01/01 to 09/30/02	(2)	3.53	.....

[1] The existing energy tier rate under Rate Schedule CV–F8 is 26.48 mills/kWh and is effective for the period October 1, 1997, to April 30, 1998.
[2] None.

CVP Transmission Services and Transmission of CVP Power by Others

A comparison of the existing and provisional rates for CVP transmission services and for transmission of CVP power by others follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES

CVP Transmission rate schedules

Effective period	Existing (effective 10/01/97 to 04/30/98)	Provisional	Percent change from existing rate
Firm Transmission Rate ($ per kW-month);			
10/01/97 to 04/30/98	0.43	0.51	18.6
05/1/98 to 09/30/02	.....	0.51	18.6
Non-Firm Transmission Rate (mills/kWh):			
10/01/97 to 04/30/98	1.23	1.00	(18.7)
05/1/98 to 09/30/02	.....	1.00	(18.7)
Transmission of CVP Power by Others Rate Schedule:			
10/01/97 to 04/30/98	(1)	(1)	(2)
05/1/98 to 09/30/02	(1)	(1)	(2)

[1] Pass through cost.
[2] Not applicable.

Network Transmission Service

The provisional rate formula for network transmission service, if offered by Western, is the product of the network customer's load ratio share times one twelfth (1/12) of the annual network transmission revenue requirement. The load ratio share is based on the network customer's hourly load, including its designated network load not physically interconnected with the CVP transmission system, coincident with Western's monthly CVP transmission system peak minus coincident peak usage of all firm CVP (including reserved capacity) point-to-point transmission service. The provisional network transmission service rate formula includes the cost for scheduling, system control and dispatch service, and reactive supply and voltage control services associated with the transmission service. The provisional rate is effective for the period beginning October 1, 1997, through September 30, 2002.

Power Scheduling Service

Power scheduling service is a new service being offered by Western that provides for the scheduling of resources to meet load and reserve requirements. The provisional rate for power scheduling service is $75.80 per hour and will be applied based on an estimated time to provide the service to each customer receiving the service. The provisional rate is effective for the period beginning October 1, 1997, through September 30, 2002.

Ancillary Services

Of the six ancillary services offered by Western, two will be provided in conjunction with the sale of CVP and/or COTP transmission services. These are scheduling, system control and dispatch service, and reactive supply and voltage control service. The remaining four ancillary services, regulation and frequency response service, energy imbalance service, spinning reserve service, and supplemental reserve service will be offered subject to availability. The availability and type of ancillary service will be determined based on excess resources available at the time the service is requested, except for the two ancillary services provided in conjunction with the sale of CVP and/or COTP transmission services. The provisional rates and descriptions for the six ancillary services are as follow:

PROVISIONAL RATES

Ancillary services rate schedules

Ancillary service type	Rate
Scheduling, System Control and Dispatch Service—is required to schedule the movement of power through, out of, within, or into a control area.	Included in appropriate transmission rates.
Reactive Supply and Voltage Control Service—is reactive power support provided from generation facilities that is necessary to maintain transmission voltages within acceptable limits of the system.	Included in appropriate transmission rates.
Regulation and Frequency Response Service—providing generation to match resources and loads on a real-time continuous basis. Rate will be applied to resources reserved for this service.	Monthly: $1.48 per kW-month; Weekly: $0.3360 per kW-week; Daily: $0.0480 per kW-day.
Energy Imbalance Service—is provided when a difference occurs between the scheduled and actual delivery of energy to a load or from a generation resource within a control area over a single month. Hourly deviation (MW) is the net scheduled amount of energy for the hour minus the hourly net metered (actual delivered) amount.	*Within Limits of Deviation Band:* Accumulated deviations are to be corrected or eliminated within 30 days. Any net deviations that are accumulated at the end of the month (positive or negative) are to be exchanged with like hours of energy or charged at the composite rate for CVP commercial firm power, then in effect. *Outside Limits of Deviation Band:* (i) Positive Deviations—no charge, lost to the system. (ii) Negative Deviations—during on-peak hours, the greater of 3 times the composite.
Rate for CVP commercial firm power, then in	Effect, or any additional cost incurred. During off-peak hours, the greater of the composite rate for CVP commercial firm power, then in effect, or any additional cost incurred.

PROVISIONAL RATES—Continued

Ancillary services rate schedules

Ancillary service type	Rate
Spinning Reserve Service—is providing capacity that is available the first ten minutes to take load and is synchronized with the power system. Rate will be applied to resources reserved for this service.	Monthly: $1.35 per kW-month; Weekly: $0.3024 per kW-week; Daily: $0.0432 per kW-day; Hourly: $0.0018 per kWh.
Supplemental Reserve Service—is providing capacity that is not synchronized, but can be available to serve loads within ten minutes. Rate will be applied to resources reserved for this service.	Monthly: $1.27 per kW-month; Weekly: $0.2856 per kW-week; Daily: $0.0408 per kW-day; Hourly: $0.0017 per kWh.

Provisional Rates for COTP Transmission Services

A comparison of the existing and provisional rates for transmission services for Western's share of the COTP follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES

COTP Transmission rate schedules

Effective Period	Existing	Provisional	Percent change
Firm Transmission Rate ($ per kW-month):			
10/01/97 to 09/30/98	2.03	1.83	(9.9)
10/01/98 to 09/30/02	2.03	1.34	(34.0)
Non-Firm Transmission Rate (mills/kWh):			
10/01/97 to 09/30/98	2.78	2.19	(21.2)
10/01/98 to 09/30/02	2.78	1.45	(47.8)

Certification of Rate

Western's Administrator has certified that the CVP commercial firm power, CVP transmission services, transmission of CVP power by others, network transmission service, power scheduling service, and ancillary services rates, and COTP transmission services rates placed into effect on an interim basis herein are the lowest possible rates consistent with sound business principles. The provisional rates have been developed in accordance with administrative policies and applicable laws.

Discussion

CVP Commercial Firm Power

According to Reclamation law, Western must establish power rates sufficient to recover operation, maintenance, and purchased power expenses, and repay the Federal government's investment in generation and transmission facilities. Rates must also be set to cover interest expenses on the unpaid balance of facilities' investments, replacements and additions, and certain non-power costs in excess of the irrigation users' ability to repay.

The existing CVP commercial firm power rates were confirmed and approved by FERC for the period October 1, 1995 through April 30, 1998, in a FERC Order issued March 14, 1996. Under Rate Schedule CV–F8 for the FY 1998, the composite rate on October 1, 1997, is 26.50 mills/kWh, the base energy rate is 16.93 mills/kWh, the energy tier rate is 26.48 mills/kWh, and the capacity rate is $4.58 per kW-month. The provisional rates for CVP commercial firm power will result in an overall composite rate decrease of approximately 21 percent on October 1, 1997, when compared to the existing FY 1998 CVP commercial firm power rates in Rate Schedule CV–F8. On a composite rate basis, the proposed rates continue to decrease in four years of the 5-year period ending September 30, 2002. The renegotiation and termination of several long term firm purchase power contracts are the major factors contributing to this decrease.

The provisional rates consist of a capacity rate, an energy rate, and an annual energy rate alignment. The AERA will be an additional cost for energy purchases from Western under Rate Schedule CV–F9 at or above an average annual load factor of 80 percent, calculated at the end of each fiscal year. The AERA will provide revenues to cover the increased costs of purchased energy needed to meet the higher levels of sales. The AERA is the difference between the estimated rate for short-term energy purchases used in the cost of service study for CVP commercial firm power and the provisional CVP energy rate, as shown below.

Fiscal year	Estimated purchase rate (mills/kWh)	CVP commercial firm energy rate (mills/kWh)	AERA (mills/kWh)
1998	13.17	10.31	2.86
1999	13.63	10.06	3.57
2000	14.11	10.19	3.92
2001	14.60	10.51	4.09
2002	15.11	11.58	3.53

The AERA provides risk mitigation for the assumptions used in the cost of service study for CVP commercial firm power. If the estimated purchase costs are too low and customers increase their energy purchases from Western, then the AERA will provide additional revenues to cover the increased costs of energy. The AERA applies to only those customers who purchase energy from Western under Rate Schedule CV–F9 at or above an average annual load factor of 80 percent. The AERA is in addition to the provisional CVP energy rate and replaces the existing energy tier rate in Rate Schedule CV–F8. The billing for the AERA will be based on the customer's average annual load factor and will occur at the end of each fiscal year, based on the following formula:

AERA=(Total kWh − (ALF * Hours in fiscal year * 0.7999)) * AERA rate

Where:

AERA=Annual Energy Rate Alignment
kWh=Energy purchased from Western during a fiscal year.

ALF=Average of monthly billed capacity purchased from Western during a fiscal year.

An example of AERA billing follows:

Example of AERA Billing for FY 1998

Assumption: Average of monthly billed capacity purchased from Western during the FY 1998 is 50 MW and the total annual energy purchased from Western is 394,200,000 kWh.

Calculation of energy below 80 percent load factor:

50,000 kW × 8,760 hours × 0.7999=350,356,200 kWh

Energy at or above 80 percent load factor billed at AERA rate:

394,200,000 kWh − 350,356,200 kWh=43,843,800 kWh

43,843,800 kWh × 2.86 mills/kWh0=$125,393.27

In order to utilize the CVP power resources to their maximum benefit, Western supports CVP generation with capacity and energy purchases, mainly from Northwest resources and PG&E. The cost of the CVP power generation is split equally between the capacity and energy revenue requirements. The amount of capacity and energy available from the CVP hydroelectric system varies widely because of hydrologic conditions. These conditions can also impact the value of the capacity and energy. Due to this variability, an equal split between the capacity and energy revenue requirements for recovery of the cost of the CVP power generation is reflective of its actual costs associated with providing power to all CVP customers.

Currently, the existing rates under Rate Schedule CV–F8 reflect a split of 35 percent capacity and 65 percent energy. The provisional rates for CVP commercial firm power are based on the total annual CVP revenue requirement being allocated between capacity and energy in the following manner:

1. The capacity revenue requirement includes 100 percent of capacity purchase costs, 100 percent of purchased transmission service expense, and 50 percent of the annual CVP investment repayment, interest expense, and power O&M expense allocated to commercial power. These annual costs are reduced by the projected revenue from CVP transmission sales to determine the capacity revenue requirement.

2. The energy revenue requirement includes 100 percent of energy purchase costs and 50 percent of the annual CVP investment repayment, interest expense, and power O&M expense allocated to commercial power. These annual costs are reduced by the projected revenue from surplus power sales to determine the energy revenue requirement.

The resulting percentage splits between the capacity and energy revenue requirements for the provisional rates varies from 51 percent allocated to capacity in FY 1998 to 42 percent allocated to capacity in FY 2002 due to changes in costs and revenues each year. The average split for the 5-year period is 46 percent to capacity and 54 percent to energy. The annual percentage splits between the capacity and energy revenue requirements are as follow:

Effective period	Capacity (percent)	Energy (percent)
10/1/97—9/30/98	51	49
10/1/98—9/30/99	48	52
10/1/99—9/30/00	47	53
10/1/00—9/30/01	43	57
10/1/01—9/30/02	42	58
5-year average	46	54

Power Factor Adjustment

The power factor adjustment under existing Rate Schedule CV–F8 will continue and is included with the provisional rates for CVP commercial firm power. The low power factor charge or LPF Charge, will continue to encourage preference customers to monitor their power factors and maintain them at 95 percent or greater. Western will continue the existing LPF Charge under Rate Schedule CV–F9, which includes a rate of $2.50 per kvar for additional kvar required to raise the customer's power factor to 95 percent. The $2.50 per kvar rate represents the estimated cost of Western purchasing and installing equipment to increase a customer's power factor plus an additional charge to encourage customers to monitor poor power factors. The LPF Charge will be applied when the customer does not maintain a calculated 95 percent or greater power factor.

The customer's calculated power factor used to determine if a charge will be assessed is the arithmetic mean of the customer's measured monthly average power factor and the measured monthly on-peak power factor, rounded to the nearest whole percent with 0.5 percent or greater rounded to the next higher percent. The measured on-peak power factor is equal to the power factor measured during a customer's maximum peak demand for each month, as recorded at the customer's point of delivery. In the event of multiple occurrences of the same peak demand, the lowest associated power factor will be used. The measured average power factor will be the average power factor for the billing month. Those customers with multiple meter points will be charged for the "totalizer" of the multiple meter points. The monthly on-peak and average power factors are those recorded for CVP power only.

Low Voltage Loss Adjustment

The low voltage adjustment under existing Rate Schedule CV–F8 will continue and is included in the provisional rates for CVP commercial firm power. A 1.035 loss adjustment factor will be applied to the billed amounts for low voltage CVP power deliveries on PG&E's system under Contract 2948A.

Revenue Adjustment

The revenue adjustment clause or RAC, tracks variances in future revenues and expenses, and lessens the probability of significant revenue surplus or deficit to the CVP repayment. The methodology for computing the RAC is a comparison of estimated total revenues less estimated total expenses to actual total revenues less actual total expenses. If the actual net revenue is more than the estimated net revenue, CVP preference customers receive a credit. If actual net revenue is less than the estimated net revenue, CVP preference customers may have a surcharge, if needed to make a minimum investment payment. The limit for surcharges is $20 million. The limit for credits is $20 million plus the amount of EA2 credit or other purchase power contract adjustments used during the fiscal year for which the RAC is being calculated. The RAC is a carryover from Rate Schedule CV–F8.

CVP Transmission Services and Transmission of CVP Power by Others

The provisional rate for firm CVP transmission service is $0.51 per kW-month, an 18.6 percent increase from the existing rate of $0.43 per kW-month under Rate Schedule CV–FT2. The provisional rate for non-firm CVP transmission service is 1.00 mill/kWh, an 18.7 percent reduction in the existing 1.23 mills/kWh rate under Rate Schedule CV–NFT2. The change in the firm CVP transmission service rate is due to increases in transmission facilities costs and in the basis for assigning miscellaneous and non-facility O&M costs to transmission to better reflect costs associated with transmission for all users. The change in the non-firm CVP transmission service rate is primarily due to a change in the load factor used in determining the denominator in the rate calculation. The same revenue requirement is used in determining the firm and non-firm CVP transmission service rates.

The provisional rates for CVP transmission services are based on a revenue requirement that recovers: (1) The CVP transmission system costs for facilities associated with providing all transmission services; and (2) the non-facility costs allocated to transmission service. These provisional firm and non-firm CVP transmission service rates include the costs for scheduling, system control and dispatch service, and reactive supply and voltage control service needed to provide the transmission service. If scheduling, system control and dispatch service, and reactive supply and voltage control service are not provided by Western, the customers will be given credit for the cost associated with these services, as agreed by the parties. The provisional rates are applicable to existing firm and non-firm CVP transmission services and future point-to-point transmission services. The rates charged for firm and non-firm CVP transmission services for a period of one year or less will be no higher than the provisional rates.

Transmission service costs incurred by Western in the delivery of CVP power over a third party's transmission system to a CVP customer, will be directly passed through to that CVP customer. Both annual revenues and expenses are included in the PRS to account for all charges, even though the net effect is zero. Transmission pass through revenues and expenses are estimated using existing customer load forecasts and project use requirements, and applicable transmission service rates. Transmission pass through revenues and expenses primarily consist of payments to PG&E for transmission services to preference and project use loads, and payments to the Sacramento Municipal Utility District for transmission services to preference customers.

Network Transmission Service

Network transmission service is a new service and, if offered by Western, will be made available consistent with FERC Order No. 888. Due to existing contractual arrangements and not being a control area operator for the CVP, Western may not be able to provide network transmission service but has included a rate formula in case Western offers the service. The provisional rate formula for network transmission service is based on a revenue requirement that recovers the CVP transmission system costs for facilities associated with providing all transmission services and the non-facility costs allocated to transmission service. The provisional rate formula includes the costs for scheduling, system control and dispatch service, and reactive supply and voltage control service needed to provide the network transmission service.

Power Scheduling Service

Power scheduling is a new service being offered by Western that provides for the scheduling of resources to meet loads and reserve requirements. The provisional rate for power scheduling service is designed to recover only the cost incurred by Western for providing the service. The provisional rate includes two cost components. The first cost component is the FY 1997 hourly cost for dispatcher and/or scheduler resources, escalated for the rate adjustment period of FY 1998 through FY 2002 to obtain an average hourly cost. The second cost component is an estimated hourly cost for equipment necessary in providing the service.

Ancillary Services

Ancillary services are new services and, if offered by Western, will be made available consistent with FERC Order No. 888. Of the six ancillary services offered by Western, two will be provided in conjunction with the sale of CVP and/or COTP transmission services. These are scheduling, system control and dispatch service, and reactive supply and voltage control service. The remaining four ancillary services, regulation and frequency response service, energy imbalance service, spinning reserve service, and supplemental reserve service will be offered subject to availability. Western's sales of ancillary services are subject to the availability of its power resources because Western allocates most of its power resources to preference entities under long-term commitments. The availability and type of ancillary service will be determined based on excess resources available at the time the service is requested.

The provisional rates for ancillary services are designed to recover only the costs associated with providing the service(s). The costs for providing scheduling, system control and dispatch service, and reactive supply and voltage control service are included in the provisional transmission services rates. The provisional rate for energy imbalance service is based on standards and practices used in the electric utility industry. For the provisional rates for regulation and frequency response, spinning reserve, and supplemental reserve services, Western used a detailed cost of service study to determine these rates, which are based on CVP facilities that are used in providing the service(s). Only those CVP facilities costs are considered in the determination of rates for regulation and frequency response, spinning reserve, and supplemental reserve services. The CVP facilities that are used in providing regulation and frequency response, spinning reserve, and supplemental reserve services are the Shasta, Folsom, Trinity, New Melones, Spring Creek, and Judge F. Carr powerplants. The Nimbus and Keswick powerplants are not available because of river run conditions. There are no governors at the O'Neill and San Luis powerplants, which makes them unavailable for providing the services.

COTP Transmission Services

Since the COTP went into operation in 1993, Western has sold COTP transmission services on a short-term basis using rates approved by the Administrator. Rate schedules are being promulgated for COTP firm and non-firm transmission services to be consistent with FERC Order No. 888. The provisional rates for firm transmission service for Western's share of the COTP are $1.83 per kW-month for FY 1998 and $1.34 per kW-month for FY 1999 through FY 2002. These rates for firm COTP transmission service result in 9.9 percent (FY 1998) and 34.0 percent (FY 1999 through FY 2002) reductions in the existing rate of $2.03 per kW-month. The provisional rates for non-firm COTP transmission service are 2.19 mills/kWh for FY 1998 and 1.45 mills/kWh for FY 1999 through FY 2002. These rates for non-firm COTP transmission service result in 21.2 percent (FY 1998) and 47.8 percent (FY 1999 through FY 2002) reductions in the existing rate of 2.78 mills/kWh. These rates are lower than the existing rates for COTP firm and non-firm transmission services due to reduced costs for and the terminations of some contracts for COTP transmission capacity.

The provisional rates for COTP transmission services includes a revenue requirement that recovers the costs associated with: (1) Western's participation in the COTP; and (2) scheduling, system control and dispatch service, and reactive supply and voltage control service needed to provide the transmission service. If scheduling, system control and dispatch service, and reactive supply and voltage control service are not provided by Western, the customers will be given credit for the cost associated with these services, as agreed by the parties. The provisional rates are applicable to existing firm and non-firm COTP transmission services and future point-to-point transmission

services. The rates charged for firm and non-firm COTP transmission services for a period of one year or less will be no higher than the provisional rates.

Statement of Revenue and Related Expenses

The following table provides a summary of revenues and expenses for the 5-year provisional rate period and the 3-year existing rate period.

CVP COST EVALUATION RATE PERIOD REVENUES AND EXPENSES ($1,000)

	Provisional rate PRS FY 1998–02	Existing rate PRS FY 1996–98	Difference
Total Revenues	824,651	609,954	Not Applicable See Note below.
Revenue Distribution:			
O&M	216,776	105,521	Note: The revenues and expenses for the provisional rates are for 5 years. Those for the existing rates are for 3 years. Therefore, the difference is not applicable.
Purchase Power	390,689	407,804	
Transmission	80,335	45,098	
Interest	54,536	29,933	
Other	9,073	0	
Investment Repayment	73,242	21,598	
Capitalized Expenses	0	0	
Prior-Year Adjustment	0	0	

The following table provides a summary of the average annual revenues and expenses for the provisional and existing rate periods.

CVP COMPARISON OF COST EVALUATION RATE PERIOD AVERAGE ANNUAL REVENUES AND EXPENSES ($1,000)

	Provisional rate average annual	Existing rate average annual	Difference
Total Revenues	164,930	203,318	(38,388)
Revenue Distribution:			
O&M	43,355	35,174	8,181
Purchase Power	78,138	135,935	(57,797)
Transmission	16,067	15,033	(1,034)
Interest	10,907	9,978	(929)
Other	1,815	0	1,815
Investment Repayment	14,648	7,199	7,449
Capitalized Expenses	0	0	
Prior-Year Adjustment	0	0	

Basis for Rate Development

The existing rates for CVP commercial firm power, CVP transmission services and transmission of CVP power by others in Rate Schedules CV–F8, CV–FT2, CV–NFT2, and CV–TPT3 expire April 30, 1998. Reduced costs for and the terminations of some of Western's power purchase and COTP transmission contracts have occurred. Power scheduling, network transmission, and ancillary services are new services being offered by Western. The proposed rate adjustment is needed to put into place rates, which will replace the existing rates, that reflect reduced purchase power expenses due to a decrease in customers' CVP power purchases, reduced costs of transmission contracts, current methodology in rate design, and to provide rates for new services. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period. The provisional rates are scheduled to go in effect on October 1, 1997, to correspond with the start of the Federal fiscal year, and will remain in effect through September 30, 2002.

The provisions for power factor adjustment, low voltage loss adjustment, and revenue adjustment are part of the provisional rates for CVP commercial firm power. The provisions and methodologies for these adjustments are not being modified and will remain as specified in Rate Schedule CV–F8.

Comments

During the public consultation and comment period, Western received 12 written comments on the rate adjustment. In addition, three customer representatives commented during the April 24, 1997 public comment forum. All comments received by the end of the public consultation and comment period, June 2, 1997, were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Bookman-Edmonston Engineering, Inc. (California)
Calaveras Public Power Agency (California)
National Aeronautics and Space Administration, Ames Research Center (California)
Northern California Power Agency (California)
City of Palo Alto (California)
City of Redding (California)
City of Roseville (California)
Sacramento Municipal Utility District (California)
City of Santa Clara (California)
Trinity County Board of Supervisors (California)
Trinity County Public Utilities District (California)
Tuolumne Public Power Agency (California)

The comments received in correspondence dealt with the CVP commercial firm power rate design, specifically, the capacity and energy split for revenue recovery and the AERA, the CVP transmission service rate design, separate county-of-origin rate, and the RAC. All comments supported Western's efforts to reduce the rates. The following is a summary of the comments received by the end of the consultation and comment period and Western's responses to those comments. The comments and responses, paraphrased for brevity are presented below. Specific comments are used for clarification where necessary.

CVP Commercial Firm Power (Capacity and Energy Revenue Requirement Split)

The following comments relate to the change in CVP rate design from recovering 35 percent of the revenue requirement from capacity and 65 percent from energy, to capacity and energy revenue requirement percentage splits that varies from 51 percent allocated to capacity in FY 1998 to 42 percent allocated to capacity in FY 2002.

Comments: Five customers commented that they want the provisional rates for CVP commercial firm power to reflect a true cost of service allocation by including investment payment, interest expense, and O&M expense in the capacity revenue requirement. This would result in a capacity and energy revenue requirement split of 70 percent allocated to capacity and 30 percent allocated to energy. Three of the customers commented that they support a "phasing-in" approach in achieving a rate design toward the "true cost of service" allocation of 70 percent capacity and 30 percent energy. Two other customers commented that they also support the phasing-in approach, but want a split closer the existing rate design in the first year and eventually moving toward a split of 50 percent capacity and 50 percent energy. A representative that represents a coalition of fourteen agricultural CVP power customers, commented that it prefers the existing allocation split, but supports the proposed splits in the provisional rates as an effective balance among Western's customers.

Responses: Western believes its proposed revenue requirement percentage splits between capacity and energy reflects a "true cost of service" allocation. The cost of the CVP power generation is split equally between the capacity and energy revenue requirements. The amount of capacity and energy available from the CVP hydroelectric system varies widely because of hydrologic conditions. These conditions can also impact the value of the capacity and energy. Due to this variability, Western believes that an equal split between the capacity and energy revenue requirements for recovery of the cost of the CVP power generation is reflective of its actual costs associated with providing power to all CVP customers. However, in order to utilize the CVP power resources to their maximum benefit, Western supports the CVP generation with capacity and energy purchases, mainly from Northwest resources and from PG&E. Therefore, capacity purchase costs are allocated to capacity and energy purchase costs are allocated to energy. Western believes that all CVP customers benefit from this marketing approach and should pay for these benefits. Because the CVP costs vary annually, the percentage splits also vary annually.

In response to comments relating to "phasing-in" the change in the capacity and energy revenue requirement split, Western believes that it is inappropriate for this rate adjustment period. The annual changes in the revenue requirement splits reflect the change in annual costs for providing firm power service.

Comment: One customer commented that the rates being generated are for the benefit of the high load factor customers, and put the low load factor customers at a significant disadvantage. Also, this customer commented that it does not like the financial burden of supplemental thermal energy spread to all customers, since high load factor customers benefit from this arrangement. This customer wants to "unbundle" the cost of thermally generated supplemental energy from the cost of CVP hydroelectric power.

Response: Western markets power based on a pool of resources, all of which can be used to serve firm power contractual loads. It is Western's position that Western has an obligation to meet all its contractual commitments. The provisional rates reflect Western's actual costs associated with providing power to all CVP customers, not an individual customer's consumption of capacity or energy. All resources necessary to supply the total CVP commercial power obligation are considered in each kWh and kW of power sales. This results in a homogenous and nondiscriminatory rate design. The generalization that high load factor customers cause the purchase of energy in excess of CVP generation, while low load factor customer do not, is inaccurate. The annual CVP generation follows a pattern of high generation in the spring and summer months, and low generation in the fall and winter months. If low load factor customers were to peak significantly and have high loads in a fall or winter month, a substantial portion of the energy served by Western for such loads is likely from purchased power.

CVP Commercial Firm Power (AERA)

The following comments relate to the CVP annual energy rate alignment, which is an additional cost for firm energy purchases at or above an average load factor of 80 percent.

Comments: Two customers want to eliminate the AERA. They argued that given the conservatism of the forecasts used to develop the rates, the AERA is equivalent to "wearing both a belt and suspenders". One other customer wants a redefinition of the AERA to, "* * * is equal to the pass-through energy costs above the CVP commercial firm energy rate."

Responses: Western is adopting the change in the definition of the AERA to, "* * * the difference between the estimated rate for short term energy purchases used in the cost of service study for CVP commercial firm power and the provisional CVP energy rate." The AERA provides risk mitigation for the purchase rate assumptions used in this rate adjustment. If the estimated purchase costs are too low and customers increase their energy purchases from Western, then the AERA will provide additional revenues to cover the increased costs of energy. The AERA will be an additional cost for energy purchases from Western at or above an average annual load factor of 80 percent. The AERA replaces the existing energy tier rate and is designed to reduce the impact of purchasing additional CVP support energy on all customers. The AERA applies to only those customers who purchase energy from Western at or above an average annual load factor of 80 percent.

CVP Transmission Services Rates

The following comments relate to the provisional rates for CVP transmission services.

Comment: Three customers commented that the costs of non-transmission items and certain customer specific items in Western's plant-in-service study should not be included as part of the rates development. These customers believe that these items have been either paid for through other sources of funds or paid entirely by a particular customer, and therefore

should not be charged to all CVP customers. Examples of items, which the customers gave to be excluded from the calculations are Roseville Substation and COTP lands.

Response: Western reviewed the costs allocated under the non-facility specific O&M and concluded that the some costs allocated for COTP lands was incorrect. This amount totaling $4,060 was omitted from the final rate calculation. In response to the Roseville Substation, there were no plant-in-service costs allocated in the rate calculation, however, there were costs associated with interest expense at an 8.875 percent rate. The interest expense was revised, as explained below.

Comments: Three customers commented that certain interest expenses for various transmission facilities, those with higher interest rates, have been either retired or paid off by Western. It is their understanding that as a result of the 1992–93 settlement between Western and PG&E, Western was not able to refund the large cash settlement from PG&E through the RAC process, and therefore Western used some of the refund to purchase down some of the higher interest loans. These customers believe that it is inappropriate to be charged for interest obligations which do not exist. The three customers want the rate calculations to be based on only the actual interest rates for costs remaining, or be based on average system-wide interest costs.

Responses: Western reviewed the costs included in the plant-in-service study and determined that there was an error in the interest rate calculation for the facilities listed as plant in service (P–I–S). This error has been corrected, and as a result, all interest expenses for repaid investment was excluded from the transmission rate study. The interest associated with the Roseville Substation mentioned above was also excluded. Western applied interest to P–I–S facilities at the interest rates applicable to each project. When a specific interest rate was not identified, a 3.0 percent rate was applied. The average interest rate applied to P–I–S facilities in the CVP transmission rate study calculates to be 3.08 percent.

In order to recognize the P–I–S paid through transmission revenue, Western made an adjustment to account for repayment of transmission investment that have been made during FY 1993 to FY 1997 as follows:

1. The total investment amount for this rate adjustment was reduced by the total payment on investment for five years of the 50-year repayment period of the 1993 rate adjustment.

2. The remaining investment payment amount from the 1993 rate adjustment was amortized over 45 years.

3. The remainder of the total investment for this rate adjustment that was not included in the 1993 rate adjustment was amortized for 50 years, to calculate an annual payment for these investments. The result was deducted from the annual payment.

Comment: Two customers recommended that since the provisional rates represent a net 20 percent increase in the existing CVP transmission services rates, which is a significant change, a "phasing-in" approach would be better for them to have time to adjust. Also, this phasing-in approach would allow time to evaluate the possible impacts from the future California's Independent System Operator on transmission usage and costs.

Response: Western believes that the CVP transmission rates accurately reflect the cost of providing CVP transmission service. Therefore, Western will not be implementing a "phasing-in" period for the provisional CVP transmission services rates.

Comment: Three customers recommended a formation of a customer group to work with Western on the tracking, monitoring and allocating of Western's transmission expenses.

Response: At several meetings during the informal public process, Western discussed with the preference customers the transmission rate costs and rate design methodology. The comment recommending a formation of a customer group to work with Western on the tracking, monitoring, and allocating of Western's transmission expenses is outside the scope of this rate adjustment and public process.

County of Origin Rate for First Preference Customers

The following comments relate to inquiries for a separate county of origin rate for first preference customers.

Comments: Four customers commented that they believe there must be a county of origin rate for first preference customers and encourage Western to recognize the need to "treat first preference customers in a unique manner, since they are legislated recipients of CVP power". These customers want Western to establish a first preference county of origin rate which is reflective of the actual cost of power generation from CVP facilities in those counties. One customer commented that in the past, they have "been penalized by having to pay for purchased power to meet other customers' load requirements' and that they have been "deprived of most of the first preference benefits." Another customer argued that "the rights granted by Congress to them should be met first before other Western customers receive extra services" and that the provisional rates are "many times higher than the rates contemplated by Congress as partial mitigation".

Responses: The Flood Control Act of 1962 authorized construction of the New Melones Project and specifically granted first preference to preference customers in Calaveras and Tuolumne counties, in a quantity to the extent needed but not to exceed 25 percent of such additional CVP energy resulting from the construction of the New Melones Project power facility and its integration into the CVP system. The Act of August 12, 1955 authorized construction of the Trinity River Division and granted a similar first preference to preference customers in Trinity County, to the extent of 25 percent of such additional energy available from the CVP power system as a result of the construction of the Trinity River Project, as integrated into the CVP system, and who are ready, able and willing to enter into contracts for the energy.

The Acts entitled the preference customers in those counties who are ready, able and willing to enter contracts with Western to a first preference in the purchase of CVP energy to the extent needed, but not to exceed 25 percent and under certain conditions. The authorizing legislation also provides that the Trinity and New Melones projects be integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the CVP. In *Trinity County* v. *Harrington* the court determined first preference customers are not entitled to preferential rates based on the operating costs of Trinity and New Melones projects alone, as opposed to operating costs of the CVP system as a whole. The provisional rates for CVP commercial firm power are based on the operation costs of the CVP system as whole, and will be applied to all CVP customers who purchase CVP power from Western. In addition, since the CVP power service provided to first preference customers is the same as that provided to other customers who receive CVP power, the provisional rates for CVP commercial firm power charged to other CVP customers will be the same for the first preference customers.

Other Comments

The following comments relate to the RAC, project use power, allocation of multipurpose joint costs, EA2, energy tier rate, and general rate design.

Comment: The RAC distribution should be reset for each 6-month period rather than the 9-month period. This would enable Western to adjust revenues for wholesale customers more promptly.

Response: The annual maximum RAC credit is $20 million plus the use of EA2 credit from PG&E and/or other adjustments from purchase power contracts. Limiting the distribution of the RAC to 6 months would make it difficult to refund the maximum RAC credit allowed. Using a 9 month distribution ensures most, if not all customers, will receive maximum benefit from the RAC calculation.

Comment: Allocating larger portions of multipurpose joint costs to the CVP power customers must be stopped because it impairs Western's efforts to remain competitive in the new restructured California's electric market.

Response: The Bureau of Reclamation is responsible for the allocation of CVP multipurpose costs. Comments pertaining to the allocation of these costs should be directed to Reclamation during their public participation process on the CVP cost allocation.

Comment: Western needs to rethink its use of the EA2 energy based on its recent discussions with PG&E and work closely with the customers on this matter.

Response: Future use of EA2 can be impacted by many variables, some of which can not be evaluated at this time because information is not available. An example would be the possible impact on EA2 from the divesture of PG&E's generation. Western has based its projections for EA2 usage on the information currently available. The RAC is available to cover possible changes in the costs associated with EA2.

Comment: Project use customers have underpaid Western for project use power during past years in an amount between $15–20 million. Request that Western increase project use revenue collection to bring such balance to zero by the end of this 5-year rate adjustment period. Also request that the project use additional revenue be included in the initial setting of Western's rates, instead of allowing the additional revenue to roll through the RAC.

Response: The amount owed by the project use customers is still being determined. Western is anticipating full payment by December 2004, however the exact timing and magnitude of payments from the project use customers is not known. Given this uncertainty, Western believes it is prudent to exclude any estimated amount in the provisional rates. Any payments made will flow through the annual RAC calculation.

Comments: The proposed CVP energy component of the rates appears marginally competitive. Western should set the rates based on a "high use" scenario instead of the "average use" scenario. This will give lower rates and the scheduling customers will more likely utilize CVP power. In the event that CVP energy delivery is less than planned, the RAC would be used to meet revenue requirement. It would highly be unlikely that the $20 million RAC limit for revenue recovery would cause a revenue shortfall if rates are based on very high usage and lower than average usage occurred. Western should adopt a higher energy use basis in the derivation of rates.

Responses: In developing the provisional rates, Western performed studies that considered maximum, minimum and average use (power sales) scenarios based on historical sales. The results of these studies indicated that the maximum sales or high sales scenario was not justifiable because of the magnitude of increase from the FY 1996 recorded amounts for firm commercial power sales. The average sales scenario was an appropriate transition given the historical sales levels and the change to the power rates contained in this rate adjustment. Due to the volatility of the electric industry, the $20 million RAC limit may not be sufficient to cover the assumptions of average versus maximum power sales if the actual costs are substantially higher that those projected in this rate adjustment.

Comment: Western's energy forecast for FY 1999 is wrong and the proposed rates undercuts the 1999 market energy rates by over 50 percent. Believes this will have customers purchasing energy as much as possible from Western, thus depleting the EA2 energy and cause a clamor by the high load factor customers for Western to get back into procuring supplemental thermal energy.

Response: The studies Western performed in developing the provisional rates indicate that the EA2 energy will be available throughout the 5-year rate adjustment period. In fact, there is a balance remaining in EA2 after the 5-year period.

Comment: A customer commented it liked the tiered energy rate arrangement since it represented Western's effort toward "marginal cost" pricing and caused a reduction in consumption of Western's supplemental thermal energy. This customer recommends that Western adopts a rate form like the existing tier rate and establish a tier rate at the 2.2 to 2.4 cents per kWh range for energy sales over 70 percent load factor.

Response: Western performed an analysis that considered the implementation of an energy tier rate. The methodology and the assumptions used were the same as those used in developing the existing energy tier rate. The result of this analysis indicated that the difference between the base and energy tier rates was minimal. Therefore, Western decided an energy tier rate will not be implemented for this rate adjustment.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500 through 1508); and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding this rate adjustment, including power repayment studies, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the provisional rates, is available for public review in the Sierra Nevada Regional Office, Western Area Power Administration, Office of the Power Marketing Manager, 114 Parkshore Drive, Folsom, California 95630, and the Power Marketing Liaison Office, Room 8G–027, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective October 1, 1997, Rate Schedules CV–F9, CV–FT3, CV–NFT3, CV–TPT4, CV–NWT1, CV–PSS1, CV–RFS1, CV–EID1, CV–SPR1, CV–SUR1, COTP–FT1, and COTP–NFT1 for the Central Valley Project and for the California-Oregon Transmission Project of the Western Area Power Administration. The rate schedules will remain in effect on an interim basis, pending confirmation and approval on a final basis by the Federal Energy Regulatory Commission, through September 30, 2002, or until superseded.

Dated: September 19, 1997.

Elizabeth A. Moler,

Deputy Secretary.

Rate Schedule CV–F9

(Supersedes Schedule CV–F8)

Central Valley Project

Schedule of Rates for Commercial Firm Power

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To the commercial firm power customers for general power service supplied through one meter, at one point of delivery, unless otherwise provided by in the service agreement.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly rates: Period	Capacity (kW-Month)	Energy (mills/kWh)	AERA (mills/kWh)
10/01/97–09/30/98	$5.03	10.31	2.86
10/01/98–09/30/99	4.37	10.06	3.57
10/01/99–09/30/00	4.31	10.19	3.92
10/01/00–09/30/01	3.81	10.51	4.09
10/01/01–09/30/02	4.02	11.58	3.53

Billing: Demand: The rates listed above for capacity will be the charge per kW of billing demand. The billing demand is the highest 30-minute integrated demand measured or scheduled during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Energy: The rates listed above for energy will be a charge per kWh for all energy use up to, but not in excess of, the maximum kWh obligation of the United States during the month as established under the power sales contract.

Annual Energy Rate Alignment (AERA): The rates listed above for AERA will be an additional charge per kWh for energy purchases at or above an average annual load factor of 80 percent, calculated at the end of each Federal fiscal year (September 30). The AERA is in addition to the CVP energy rate. The billing for the AERA will be based on the following formula:

AERA=(Total kWh – (ALF * Hours in fiscal year * 0.7999)) * AERA rate

Where:

AERA=Annual Energy Rate Alignment
kWh = Energy purchased from Western during a fiscal year.
ALF=Average of monthly billed capacity purchased from Western during a fiscal year.

Adjustments

Billing for Unauthorized Overruns. For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for capacity and/or energy, such overrun will be billed at 10 times the applicable rates above.

For Revenue Adjustment. The following methodology will be used for the revenue adjustment clause (RAC) calculation:

1. If the actual net revenue is greater than the projected net revenue for the RAC calculation period, a revenue credit will be allocated during the RAC adjustment period. The credit will equal the difference between the actual net revenue and projected net revenue, represented by the following formula:

ANR>PNR; C=ANR – PNR

Where:

ANR=Actual Net Revenue
PNR=Projected Net Revenue
C=Credit

2. If actual net revenue is less than the projected net revenue for the RAC calculation period, a revenue surcharge will be allocated during the RAC adjustment period.

2.1 If the actual net revenue is negative, the surcharge will be equal to the minimum investment payment plus the annual deficit, represented by the following formula:

ANR<PNR and<0; S=MIP+AD

Where:

ANR=Actual Net Revenue
PNR=Projected Net Revenue
MIP=Minimum Investment Payment
AD=Annual Deficit
S=Surcharge

2.2 If the actual net revenue is positive, the surcharge will equal the minimum investment payment less the actual net revenue, represented by the following formula:

ANR<PNR and>0; S=MIP – ANR (if ANR>MIP, S=0)

Where:

ANR=Actual Net Revenue
PNR=Projected Net Revenue
MIP=Minimum Investment Payment
S=Surcharge

Provided, that if the actual net revenue is greater than the minimum investment payment, the surcharge will be equal to zero.

3. The maximum RAC credit allocation will equal $20 million plus the amount of the Pacific Gas and Electric Company refund credit applied to Western power bills for the fiscal year, or other purchase power contract adjustments used in recording associated expense.

4. The maximum allocation for a RAC surcharge will not exceed $20 million.

5. The RAC credit or surcharge will be allocated to each CVP commercial firm power customer based on the proportion of the customer's billed obligation to Western for CVP commercial firm capacity and energy to the total billed obligation for all CVP commercial firm power customers for CVP commercial firm capacity and energy for the RAC calculation period.

6. For purposes of the RAC calculation, the following terms are defined:

6.1 Actual Net Revenue—The recorded net revenue.

6.2 Annual Deficit—The amount the recorded annual expenses, including interest, exceeding recorded annual revenues.

6.3 Minimum Investment Payment—The lesser of 1 percent of the recorded unpaid investment balance at the end of the prior fiscal year that the RAC is being calculated, or the projected net revenue.

6.4 Projected Net Revenue—The annual net revenue available for investment repayment projected in the PRS for the rate case during the fiscal year that the RAC is being calculated (see Table 1).

6.5 RAC Adjustment Period—The period January 1 through September 30, following the RAC calculation period when credits or surcharges will be applied to the power bills.

6.6 RAC Calculation Period—The last recorded fiscal year (October 1 through September 30).

6.7 Recorded Net Revenue—The annual net revenue available for repayment recorded in the PRS for the fiscal year that the RAC is being calculated.

7. Subject to modification by a superseding rate schedule, the final RAC will be allocated to the customers during the period January 1, 2003, to September 30, 2003.

TABLE 1.—PROJECTED NET REVENUE AVAILABLE FOR INVESTMENT REPAYMENT FOR REVENUE ADJUSTMENT CLAUSE

Period	Projected net revenue
October 1, 1997–September 30, 1998.	$5,522,851
October 1, 1998–September 30, 1999.	9,534,973
October 1, 1999–September 30, 2000.	12,196,514
October 1, 2000–September 30, 2001.	17,039,731
October 1, 2001–September 30, 2002.	28,948,352

For Transformer Losses

If delivery is made at transmission voltage but metered on the low voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor Adjustment

The customer will be required to maintain a power factor at all points of measurement between 95 percent lagging and 95 percent leading. The low power factor charge (LPF Charge) will be applied when the customer does not maintain a 95 percent or greater power factor. The charge for additional kilovolt-ampere reactive (kvar) required to raise the customer's power factor to 95 percent will be calculated by multiplying the customer's monthly maximum peak demand by the LPF Charge for the customer's calculated power factor as provided in the Table 2. The kvar rate in the LPF Charge is $2.50 per kvar.

TABLE 2.—LOW POWER FACTOR CHARGE

Calculated power factor	LPF charge ($ per kW)
0.95	$0.00
0.94	0.09
0.93	0.17
0.92	0.24
0.91	0.32
0.90	0.39
0.89	0.46
0.88	0.53
0.87	0.60
0.86	0.66
0.85	0.73
0.84	0.79
0.83	0.86
0.82	0.92
0.81	0.99
0.80	1.05
0.79	1.12
0.78	1.18
0.77	1.25
0.76	1.32
0.75 & below	1.38

The rules and limitations of the LPF Charge are as follow:

(a) The calculated power factor used to determine if a charge will be assessed is the arithmetic mean of the customer's measured monthly average power factor and their measured monthly on-peak power factor, rounded to the nearest whole percent with 0.5 percent or greater rounded to the next higher percent.

(b) The measured on-peak power factor is equal to the power factor measured during the customer's maximum peak demand for each month, as recorded at the customer's point of delivery. In the event of multiple occurrences of the same peak demand, the lowest associated power factor will be used. The measured average power factor will be the average power factor for the billing month. If the customer has multiple points of delivery, the power factor will be determined from totalized information from the points of delivery. The monthly average and on-peak power factors are those recorded for CVP power only.

(c) The upper limit for both the monthly average and measured on-peak power factors is 95 percent. No credit will be given for customers operating between 100 percent and 95 percent power factors.

(d) The LPF Charge will be applicable to calculated power factors less than 95 percent, lagging or leading.

(e) Customers that have a monthly maximum peak demand less than or equal to 50 kW will not be subject to the LPF Charge.

(f) Western may waive the LPF Charge for good cause in whole or in part.

Rate Schedule CV–FT3

(Supersedes Schedule CV–FT2)

Central Valley Project

Schedule of Rate for Firm Transmission Service

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To firm transmission service where power is received into the CVP system at points of interconnection with other systems and transmitted and delivered to points of delivery on the CVP system as agreed to by the parties.

Character and Conditions of Service: Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery. Transmission service includes scheduling, system control and dispatch service, and reactive supply and voltage control service needed to support the transmission service provided.

Rate: Firm Transmission Service Charge: $0.51 per kW-month.

Billing: The rate listed above will be applied monthly to the maximum amount of capacity reserved, payable whether utilized or not.

Adjustments

For Losses

Losses incurred in connection with the transmission and delivery of power under this rate schedule will be accounted for as agreed to by the parties.

Rate Schedule CV–NFT3

(Supersedes Schedule CV–NFT2)

Central Valley Project

Schedule of Rate for Non-Firm Transmission Service

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To non-firm transmission service where power is received into the CVP system at points of receipt with other systems and transmitted and delivered, subject to the availability of transmission capacity, to points of

delivery on the CVP system as agreed to by the parties.

Character and Conditions of Service: Transmission service on an intermittent basis for capacity, three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery. Transmission service includes scheduling, system control and dispatch service, and reactive supply and voltage control service needed to support the transmission service provided.

Rate: Non-firm Transmission Service Charge: 1.00 mill per kWh.

Billing: The rate listed above will be applied monthly to the maximum amount of capacity reserved, payable whether utilized or not.

Adjustments

For Losses

Losses incurred in connection with the transmission and delivery of power under this rate schedule will be accounted for as agreed to by the parties.

Rate Schedule CV–TPT4

(Supersedes Schedule CV–TPT3)

Central Valley Project

Schedule of Rate for Transmission of CVP Power by Others

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To power service customers of the CVP who require transmission service by a third party to receive power sold by Western.

Character and Conditions of Service: Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery as agreed to by the parties.

Rate Formula: When Western utilizes transmission facilities, other than its own, in providing service under a customer's power sales contract, and costs are incurred by Western for the use of such facilities, the customer will pay all costs, including transmission losses, incurred in the delivery of such power. The transmission losses chargeable to the customer will be those losses which are in excess of the "at or above 44-kV" transmission losses specified by Contract No. 14–06–200–2948A. For billing purposes, transmission losses will be added to the meter readings of the power and energy delivered to the customer under the customer's power sales agreement with Western.

Rate Schedule CV–NWT1

Central Valley Project

Schedule of Rate for Network Transmission Service

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To customers of the CVP who receive network transmission service, subject to the availability of transmission capacity, to points of delivery specified in the service agreement.

Character and Conditions of Service: Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery. Transmission service includes scheduling, system control and dispatch service, and reactive supply and voltage control service needed to support the transmission service provided.

Rate Formula: The rate formula for network transmission service is the product of the network customer's load ratio share times one twelfth (1/12) of the annual network transmission revenue requirement. The load ratio share is based on the network customer's hourly load, including its designated network load not physically interconnected with the CVP transmission system, coincident with the monthly CVP transmission system peak minus the coincident peak for all firm CVP (including reserved capacity) point-to-point transmission service.

Billing: Billing determinants for the rate formula above will be as specified in the service agreement.

Adjustments

For Losses

Losses incurred in connection with the transmission and delivery of power under this rate schedule will be accounted for in accordance with the service agreement.

Rate Schedule CV–PSS1

Schedule of Rate for Power Scheduling Service

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To customers receiving power scheduling service from Western.

Character and Conditions of Service: Power scheduling service provides for the scheduling of resources to meet loads and reserve requirements.

Rate: $75.80 per hour.

Billing: The rate listed above will be applied to the number of hours required by Western staff to perform the power scheduling service. A power scheduling service charge will be specified in the service agreement.

Rate Schedule CV–RFS1

Central Valley Project

Schedule of Rates for Regulation and Frequency Response Service

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To customers receiving regulation and frequency response service from Western.

Character and Conditions of Service: Regulation and frequency response service provides generation to match resources and loads on a real-time continuous basis.

Rates: Regulation and Frequency Service Charge: Monthly: $1.48 per kW-month; Weekly: $0.3360 per kW-week; Daily: $0.0480 per kW-day.

Billing: The rates listed above will be applied to the maximum service amount in kilowatts agreed to in the service agreement, payable whether utilized or not.

Rate Schedule CV–EID1

Central Valley Project

Schedule of Rate for Energy Imbalance Service

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To customers receiving energy imbalance service from Western.

Character and Conditions of Service: Energy imbalance service provides energy when a difference occurs between the scheduled and actual delivery of energy to a load or from a generation resource within a control area over a single month. The hourly deviation, in megawatt units, is the net scheduled amount of energy for the hour minus the hourly net metered (actual delivered) amount.

Rates Formula

Within Limits of Deviation Band

Accumulated deviations are to be corrected or eliminated within 30 days. Any net deviations that are accumulated at the end of the month (positive or negative) are to be exchanged with like hours of energy or charged at the composite rate for CVP commercial firm power, then in effect.

Outside Limits of Deviation Band

(i) Positive Deviations—no charge, lost to the system.

(ii) Negative Deviations—during on-peak hours, the greater of (1) 3 times the composite rate for CVP commercial firm power, then in effect; or (2) any additional cost incurred. During off-peak hours, the greater of (1) the composite rate for CVP commercial firm power, then in effect; or (2) any additional cost incurred.

Billing: The billing determinants for the above rates formula will be specified in the service agreement.

Rate Schedule CV–SPR1

Central Valley Project

Schedule of Rates for Spinning Reserve Service

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To customers receiving spinning reserve service from Western.

Character and Conditions of Service: Spinning reserve service provides capacity that is available the first ten minutes to take load and is synchronized with the power system.

Rates: Spinning Reserve Service Charge: Monthly: $1.35 per kW-month; Weekly: $0.3024 per kW-week; Daily: $0.0432 per kW-day; Hourly: $0.0018 per kWh.

Billing: The rates listed above will be applied to the maximum service amount in kilowatts agreed to in the service agreement, payable whether utilized or not.

Rate Schedule CV–SUR1

Central Valley Project

Schedule of Rates for Supplemental Reserve Service

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To customers receiving supplemental reserve service from Western.

Character and Conditions of Service: Supplemental reserve service provides capacity that is not synchronized with the power system, but can be available to serve load within ten minutes.

Rates: Supplemental Reserve Service Charge: Monthly: $1.27 per kW-month; Weekly: $0.2856 per kW-week; Daily: $0.0408 per kW-day; Hourly: $0.0017 per kWh.

Billing: The rates listed above will be applied to the maximum service amount in kilowatts agreed to in the service agreement, payable whether utilized or not.

Rate Schedule COTP–FT1

California-Oregon Transmission Project

Schedule of Rates for Firm Transmission Service

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To firm transmission service customers where power is received into the COTP system at points of interconnection with other systems and transmitted and delivered to points of delivery on the COTP system as agreed to by the parties.

Character and Conditions of Service: Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery. Transmission service includes scheduling, system control and dispatch service, and reactive supply and voltage control service needed to support the transmission service provided.

Rates: October 1, 1997—September 30, 1998: $1.83 per kW-month. October 1, 1998—September 30, 2002: $1.34 per kW-month.

Billing: The rates listed above will be applied monthly to the maximum amount of capacity reserved, payable whether utilized or not.

Adjustments

For Losses

Losses incurred in connection with the transmission and delivery of power under this rate schedule will be accounted for as agreed to by the parties.

Rate Schedule COTP–NFT1

California-Oregon Transmission Project

Schedule of Rates for Non-Firm Transmission Service

Effective: October 1, 1997.

Available: Within the marketing area served by the Sierra Nevada Customer Service Region.

Applicable: To non-firm transmission service customers where power is received into the COTP system at points of receipt with other systems and transmitted and delivered, subject to the availability of transmission capacity, to points of delivery on the COTP system as agreed to by the parties.

Character and Conditions of Service: Transmission service on an intermittent basis for capacity, three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery. Transmission service includes scheduling, system control and dispatch service, and reactive supply and voltage control service needed to support the transmission service provided.

Rates: October 1, 1997–September 30, 1998: 2.19 mills per kWh; October 1, 1998–September 30, 2002: 1.45 mills per kWh.

Billing: The rates listed above will be applied monthly to the maximum amount of capacity reserved, payable whether utilized or not.

Adjustments

For Losses

Losses incurred in connection with the transmission and delivery of power and energy under this rate schedule will be accounted for as agreed to by the parties.

[FR Doc. 97–25746 Filed 9–26–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Colorado River Storage Project—Notice of Order Confirming and Approving an Extension of the Firm Transmission Service Rate—WAPA–74

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order

SUMMARY: This action is to extend the existing Colorado River Storage Project firm transmission rate until March 31, 1998. Without this action, the existing firm transmission rate will expire September 30, 1997 and no rate will be in effect for this service.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Sabo, CRSP Manager, CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public

participation in power rate adjustments at 10 CFR Part 903, Western's Colorado River Storage Project (CRSP) firm transmission rate case was submitted to the Federal Energy Regulatory Commission for confirmation and approval on August 13, 1992. On February 18, 1993, in Docket Nos. EF92–5172–000 and EF92–5172–001, at 62 FERC ¶ 61,159, FERC issued an order confirming, approving, and placing in effect on a final basis Rate Schedule SP–FT4 for firm transmission service over the CRSP transmission system. The rate was approved for the 4-year period beginning October 1, 1992, and ending September 30, 1996. The Deputy Secretary of Energy extended the rate through September 30, 1997, in an Order published at 61 FR 52338, on October 7, 1996.

Following review of Western's proposal within the Department of Energy, I approved rate order No. WAPA–74, which extends the existing CRSP firm transmission Rate Schedule SP–FT4 until March 31, 1998.

Dated: September 19, 1997.

Elizabeth A. Moler,

Deputy Secretary.

Order Confirming and Approving an Extension of the Colorado River Storage Project Firm Transmission Rate

October 1, 1997.

This firm transmission rate was established pursuant to Section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. § 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued pursuant to the Delegation Order and the DOE rate extension procedures at 10 CFR Part 903.

Background

In the order issued February 18, 1993, at 62 FERC ¶ 61,159, in Docket Nos. EF92–5172–000 and EF92–5172–001, the FERC confirmed, approved, and placed in effect on a final basis Rate Schedule SP–FT4 for firm transmission service over the Colorado River Storage Project (CRSP) transmission system. The rate was approved for the period from October 1, 1992, through September 30, 1996. The Deputy Secretary of Energy extended the rate through September 30, 1997, in an Order published at 61 FR 52448, on October 7, 1996. During the last firm-power rate adjustment for the Salt Lake City Area Integrated Projects, placed into effect on December 1, 1994 (SLIP–F5), the CRSP firm transmission rate was also examined for possible adjustment. It was determined that the existing firm transmission rate was adequate to meet revenue requirements.

Discussion

On September 30, 1997, Western's CRSP firm transmission rate will expire. This makes it necessary to extend the current Rate Schedule SP–FT4 pursuant to 10 CFR 903.23.

Western proposes to extend the existing CRSP transmission rate until March 31, 1998, to allow Western to develop transmission and ancillary services rates consistent with those required of public utilities under FERC Order No. 888 and the laws and regulations that govern Western's actions. Western began a public rate adjustment process with the publication of a notice in the **Federal Register** on June 25, 1997. That public rate adjustment process will include the proposal of transmission rates which are consistent with FERC Order No. 888. Western is developing open access tariffs consistent with FERC Order No. 888.

We anticipate that process, which will provide opportunities for public information and comment forums, will take several months to complete, given the complex issues Western and its interested public must address.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I hereby extend for a period effective October 1, 1997, until March 31, 1998, the existing Rate Schedule SP–FT4 for firm transmission service over the Colorado River Storage Project transmission system.

Dated: September 19, 1997.

Elizabeth A. Moler,

Deputy Secretary.

[FR Doc. 97–25748 Filed 9–26–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5899–5]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Cohen Property Superfund Site; Taunton, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* This document is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of the City of Taunton, Massachusetts and certain successors-in-title who may become parties to this agreement, for injunctive relief and for costs incurred or to be incurred by EPA in conducting response actions at the Cohen Property Superfund Site in Taunton, Massachusetts.

DATES: Comments must be provided on or before October 29, 1997.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RAA, Boston, Massachusetts 02203, and should refer to: In re: City of Taunton, Massachusetts, U.S. EPA Docket No. CERCLA–I–97–1079.

FOR FURTHER INFORMATION CONTACT: Beth Tomasello, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Mailcode SEL, Boston, Massachusetts 02203, (617) 565–3455.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, notice is hereby given of a proposed prospective purchaser agreement concerning the Cohen Property Superfund Site in Taunton, Massachusetts. The settlement was approved by EPA Region I on September 9, 1997, and by the U.S. Department of Justice on September 16, 1997 subject to review by the public pursuant to this document. The City of Taunton, Massachusetts has executed a signature page committing them to participate in the settlement. Under the proposed settlement, the City has agreed to: (1) Allow EPA to dispose of up to 15,000 tons of contaminated soil which passes EPA's Toxicity Characteristic Leaching Procedure ("TCLP") in the Taunton Landfill, saving EPA up to $1 million in response costs; (2) perform Operation & Maintenance and long-term monitoring on the Site, which will save EPA approximately $170,000 over 30 years; (3) pave a portion of the Site which eliminates the need for EPA to cover that portion of the Site with an impermeable cap; (4) purchase a portion of the Site from an adjoining property owner to consolidate the contaminated property under common ownership; and (5) abide by institutional controls and to provide access to the Site. In exchange, the Settling Respondent is granted a covenant not to sue under CERCLA and protection from contribution actions or claims under CERCLA with respect to the existing contamination at the site. EPA believes the settlement is fair and in the public interest.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this document.

A copy of the proposed administrative settlement may be obtained in person or by mail from Beth Tomasello, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode SEL, Boston, Massachusetts 02203, (617) 565–3455.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RAA, Boston, Massachusetts 02203 (U.S. EPA Docket No. CERCLA–I–97–1079).

Dated: September 16, 1997.

John P. DeVillars,

Regional Administrator.

[FR Doc. 97–25754 Filed 9–26–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5899–6]

Clean Water Act Class II: Proposed Administrative Penalty, Steven Kraus, Fenton, MO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Steven Kraus, Fenton, MO.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of civil Penalties and the Revocation of Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public document.

On August 27, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. (913) 551–7630, the following Complaint:

In the Matter of Steven Kraus, Fenton, Missouri, CWA Docket No. VII–97–W–0026.

The Complaint proposes a penalty of Ten Thousand Dollars ($10,000.00) for the discharge or causing to be discharged pollutants into a public sewer in violation of sections 301 and 307(d) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact Vanessa Cobbs, Regional Hearing Clerk at (913) 551–7630.

The Administrative Record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Steven Kraus is available as part of the Administrative Record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: September 17, 1997.

U. Gale Hutton,

Acting Regional Administrator.

[FR Doc. 97–25752 Filed 9–26–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5899–7]

Clean Water Act Class II: Proposed Administrative Penalty, Douglas Leach, St. Louis, MO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Douglas Leach, St. Louis, MO.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public document.

On August 27, 1997, EPA commenced the following Class II proceeding for the

assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 (913) 551–7830, the following Complaint:

In the Matter of Douglas Leach, St. Louis, Missouri, CWA Docket No. VII–97–W–0027.

The Complaint proposes a penalty of Two Thousand Dollars ($2,000.00) for the discharge or causing to be discharged pollutants into a public sewer in violation of sections 301 and 307(d) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact Vanessa Cobbs, Regional Hearing Clerk at (913) 551–7630.

The Administrative Record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Douglas Leach is available as part of the Administrative Record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: September 17, 1997.

U. Gale Hutton,

Acting Regional Administrator.

[FR Doc. 97–25753 Filed 9–26–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

September 23, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 29, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–XXXX.

Title: DTV Report on Construction Progress.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 24.

Estimated Time Per Response: 0.33 hours.

Cost to Respondents: N/A.

Total Annual Burden: 16 hours.

Needs and Uses: By letter to the Commission, 24 stations voluntarily committed to building DTV facilities within 18 months. These stations are requested to file reports at six-month intervals stating that their plans to meet these construction plans are on schedule or specifying any difficulties encountered in attempting to meet these deadlines. The data will be used by FCC staff to monitor the progress of DTV applicants in the construction of their DTV facilities.

OMB Approval Number: 3060–0034.

Title: Application for Construction Permit for Noncommercial Educational Broadcast Station.

Form Number: FCC Form 340.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 646.

Estimated Time Per Response: 37 and 114 hours. (This time varies depending on the type of application filed. This collection is contracted out to communications attorneys and consulting engineers for completion of the form).

Cost to Respondents: $5,9109,598.

Total Annual Burden: 2,736 hours.

Needs and Uses: The FCC Form 340 is used to apply for authority to construct a new noncommercial educational AM, FM, TV or DTV broadcast station, or to make changes in the existing facilities of such a station. The data is used by FCC staff to determine whether the applicant meets basic statutory requirements to become a Commission licensee. The form will be revised to add the new requirements regarding antenna two registration. This unique antenna registration number identifies an antenna structure and must be used on all filings related to the antenna structure. Several questions will be added to the engineering portions of the FCC 340 to collect this information. This collection also includes a third party disclosure requirement contained in Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for new or major changes in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–25676 Filed 9–26–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Warwick Community Bancorp, Inc., Warwick, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Warwick Savings Bank, Warwick, New York.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Trust No. 3 Under Will of Charles Henderson, Troy, Alabama, and Henderson Bancshares, Inc., Troy, Alabama; to acquire 100 percent of the voting shares of Pea River Capital, Corporation, Elba, Alabama, and thereby indirectly acquire Peoples Bank of Coffee County, Elba, Alabama.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Community Bancshares of West Plains, Inc., West Plains, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Community First National Bank of West Plains, West Plains, Missouri, a *de novo* bank.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. U.S. Bancorp, Minneapolis, Minnesota; to merge with Zappco, Inc., St. Cloud, Minnesota, and thereby indirectly acquire The First National Bank of Little Falls, Little Falls, Minnesota; Melrose State Bank, Melrose, Minnesota; and Zapp National Bank of St. Cloud, St. Cloud, Minnesota.

In connection with this application, Applicant also has applied to acquire Zapp Data, Inc., St. Cloud, Minnesota, and thereby engage in providing data processing services, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–25766 Filed 9–26–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Thursday, October 2, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 25, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–25856 Filed 9–25–97; 11:07 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

National Directory of New Hires; Submission for OMB Review; Comment Request

OMB No.: New.

Description: Public Law 104–193, the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," requires the Office of Child Support Enforcement (OCSE) to develop a National Directory of New Hires (NDNH) to improve the ability of State child support agencies to locate noncustodial parents and collect child support across State lines.

The NDNH will contain employment, earning and unemployment compensation data on all employees within the United States. The law requires States and territories to periodically transmit new hire data received from employers to the NDNH, and to transmit quarterly wage and unemployment compensation claims data to the NDNH on a quarterly basis.

Employers must report specified information (based on information reported on the IRS W–4 Form) on all new hires to State agencies for transmittal to the NDNH. States will transmit all data to the NDNH electronically. The purpose of the NDNH is to develop a repository of information on newly-hired employees, and on the earnings and unemployment compensation claims data on all employees, to provide the necessary information to locate child support obligors, and to establish and enforce child support orders.

Respondents: States and Employers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Hire: Employers Reporting Manually	[1] 5,166,00	[2] 3.484	.0417	750,531
New Hire: Employers Reporting Electronically [1]	[1] 1,134,000	[2] 37,037	[3] .00028	11,760
New Hire: States	54	[4] 83.333	[5] 266.668	1,200,001

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Multistate Employers' Notification Form	375,000	1	.050	18,750
Quarterly Wage and Unemployment Compensation	54	[6]4	.033	7.13

Estimated Total Annual Burden Hours: 1,981,049.

Footnotes:

The above numbers are based on the following:

[1] Eighteen percent of all employers will report manually and 82% will report electronically (based on SSA's experience).

[2] For the "Employers" tiers, "response" is defined as the number of new hire reports. Thirty percent of all new hire reports will be reported manually and 70% will be reported electronically (based on SSA's experience).

[3] Based on the assumption that employers reporting new hires electronically will most likely transmit their reports in a batch file, thus significantly reducing the per-response burden.

[4] For the "States" tiers, "response" is defined as the number of transmissions to the NDNH. All States are required by law to transmit new hire data to the NDNH electronically, within three business days after entering the data into the SDNH. There are 250 business days per year. States will send a transmission once every three business days, which is equal to 83.333 transmissions per year.

[5] Based on the average number of reports per transmission and the average burden per new hire report. The average number of reports per transmission is calculated by dividing 60,000,000 (total number of new hire reports) by 54 (total number of States). The result (1,111,111) is then divided by 83.333 (estimated number of transmission per State, see above explanation). Based on this calculation, the average number of reports per transmission is 13,333.39 reports. The average burden per new hire report is estimated to be .02 hours (1.2 minutes), which is based on a range of two seconds to four minutes. The burden is estimated to be two seconds per report for the 70% of new hire reports submitted to the State electronically. This two second burden estimate is based on the same batch-file assumption as above, and includes data receipt and data transmission. If the State has to manually enter the new hire data before transmitting to the NDNH (which is the case for 30% of all new hire reports), the burden is estimated to be four minutes (based on the number of characters in a record). The average burden hours per report (.02) multiplied by the average number of reports per transmission (13,333.39) is equal to the average burden hours per transmission (266.668).

[6] "Response" is defined here as the number to transmissions to the NDNH. States are required to transmit quarterly wage and unemployment compensation data four times a year.

RECORD LAYOUTS AND FIELD DESCRIPTIONS FOR INPUT TO THE NATIONAL DIRECTORY OF NEW HIRE (NDNH)

Field name	Location/position	Length	Alpha/numeric	Description remarks	Mandatory/optional
W4 Transmitter Record					
Record Identifier	1–2	2	A/N	'H4'	M.
Transmitter State Code	3–4	2	N	State FIPS code (for states only).	M for states.
Transmitter Agency Code	5–13	9	A/N	Federal Agency Code (for federal agencies only).	M for agencies.
Transmission Type	14–15	2	A/N	'W4' for W4 data	M.
Department of Defense Code	16	1	A	'A' for active duty 'C' for civilian. 'R' for reserves. States may leave this field blank.	M for DOD.
Version Control Number	17–18	2	A/N	Must be '01', controlled by OCSE.	M.
Date Stamp	19–26	8	N	Format = YYYYMMDD Must be current system date of file generation.	M.
Batch Number	27–32	6	N	Sequential number to identify a submission as unique.	M.
Filler	33–801	769	A/N	Spaces. To be used for future versions.	
W4 Total Record					
Record Identifier	1–2	2	A/N	'T4'	M.
Data Record Count	3–13	11	N	Total record for transmission, including header and trailer records.	M.
Filler	14–801	788	A/N	Spaces. To be used for future versions.	
W4 Data Record					
Record Identifier	1–2	2	A/N	'W4'	M.
Employee SSN	3–11	9	N	As reported by employee	M.
Employee Name:					
First Name	12–27	16	A	At least one character No special characters.	M.

RECORD LAYOUTS AND FIELD DESCRIPTIONS FOR INPUT TO THE NATIONAL DIRECTORY OF NEW HIRE (NDNH)—Continued

Field name	Location/position	Length	Alpha/numeric	Description remarks	Mandatory/optional
Middle Name	28–43	16	A	If non-blank, must be at least one character. No special characters.	O.
Last Name	44–73	30	A	At least one character No special characters, except for hyphen.	M.
Employee Addresses:					
Street Address (line 1)	74–113	40	A/N	Non-blank	M.
Street Address (line 2)	114–153	40	A/N	If your address line is less than 40 characters, do.	O.
Street Address (line 3)	154–193	40	A/N	Not concatenate into one line.	O.
City	194–218	25	A	At least two characters No special characters, except for hyphen.	M.
State	219–220	2	A	Valid state or territory abbreviation.	M.
Zip Code (1)	221–225	5	N	Must be numeric	M.
Zip Code (2)	226–229	4	A/N	If present, must be numeric	O.
Employee Foreign Address:					
Foreign Country Code	230–231	2	A/N	Refer to U.S. Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).	M for foreign address.
Foreign Country Name	232–256	25	A/N	If present, at least two characters.	O.
Foreign Zip Code	257–271	15	A/N		O.
Employee Date of Birth	272–279	8	A/N	If present, numberic Format—YYYYMMDD.	O.
Employee Date of Hire	280–287	8	A/N	If present, numeric Format—YYYYMMDD.	O.
Employee State of Hire	288–289	2	A	Alphabetic state or territory abbreviation.	O.
Federal EIN	290–298	9	N	Federal Employer Identification Number.	M.
State EIN	299–310	12	A/N	If no FEIN is available, send the State Ein. If present and less than 12 characters, left justify.	O.
Employer Name	311–355	45	A/N	At least two characters.	
Employer Address				FEIN address from W4.	
Street Address (line 1)	356–395	40	A/N	At least two characters	M.
Street Address (line 2)	396–435	40	A/N	If your address line is less than 40 characters, do.	O.
Street Address (line 3)	436–475	40	A/N	Not concatenate into one line.	O.
City	476–500	25	A	At least two characters	M.
State	501–502	2	A	Valid state or territory abbreviation.	M.
Zip Code (1)	503–507	5	N	Must be numeric	M.
Zip Code (2)	508–511	4	A/N	If present, must be numeric	O.
Employer Foreign Address:					
Foreign Country Code	512–513	2	A/N	Refer to U.S. Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).	M for foreign address.
Foreign Country Name	514–538	25	A/N	If present, at least two characters.	O.
Foreign Zip Code	539–553	15	A/N		O.
Employer Optional Address				This address will be blank if only collecting one address. If there is a second address, it should be the address where child support orders should be sent.	O.
Street Address (line 1)	554–593	40	A/N	If your address line is less than 40 characters, do.	O.
Street Address (line 2)	594–633	40	A/N	Not concatenate into one line.	O.
Street Address (line 3)	634–673	40	A/N		O.

RECORD LAYOUTS AND FIELD DESCRIPTIONS FOR INPUT TO THE NATIONAL DIRECTORY OF NEW HIRE (NDNH)—Continued

Field name	Location/position	Length	Alpha/numeric	Description remarks	Mandatory/optional
City	674–698	25	A	If present, at least two characters.	O.
State	699–700	2	A	If present, valid state or territory abbreviation.	O.
Zip Code (1)	701–705	5	A/N	If present, must be numeric	O.
Zip Code (2)	706–709	4	A/N	If present, must be numeric	O.
Employer Optional Foreign Address:					
Foreign Country Code	710–711	2	A/N	Refer to U.S. Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).	O.
Foreign Country Name	712–736	25	A/N	If present, at least two characters.	O.
Foreign Zip Code	737–751	15	A/N		O.
Filler	752–801	50	A/N	Spaces. To be used for future versions.	
Quarterly Wage Transmitter Record					
Record Identifier	1–2	2	A	'HQ'	M.
Transmitter State Code	3–4	2	N	State FIPS code (for states only).	M for states.
Transmitter Agency Code	5–13	9	A/N	Federal Agency Code (for federal agencies only).	M for agencies.
Transmission Type	14–15	2	A/N	'QW' for quarterly wage data	M.
Department of Defense Code	16	1	A	'A' for active duty 'C' for civilian. 'R' for reserves. States may leave this field blank.	M for DOD.
Version Control Number	17–18	2	A/N	Must be '01', controlled by OCSE.	M.
Date Stamp	19–26	8	N	Format=YYYYMMDD Must be current system date of file generation.	M.
Batch Number	27–32	6	N	Sequential number to identify a submission as unique.	M.
Filler	33–601	569	A/N	Spaces. To be used for future versions.	
Quarterly Wage Total Record					
Record Identifier	1–2	2	A	'TQ'	M.
Data Record Count	3–13	11	N	Total record count for transmission, including header and trailer record.	M.
Filler	14–601	588	A/N	Spaces. To be used for future versions.	
Quarterly Wage Data Record					
Record Identifier	1–2	2	A	'QW'	M.
Employee SSN	3–11	9	N	As reported by employee	M.
Employee Name:					
First Name	12–27	16	A	At least one character No special characters.	M.
Middle Name	28–43	16	A	If non-blank, must be at least one character. No special characters.	O.
Last Name	44–73	30	A	At least one character No special characters, except for hyphen.	M.
Employee Wage Amount	74–84	11	N	Last two positions are decimal places. No negative values, zeroes are allowed. Gross amount paid within the quarter.	M.

RECORD LAYOUTS AND FIELD DESCRIPTIONS FOR INPUT TO THE NATIONAL DIRECTORY OF NEW HIRE (NDNH)—Continued

Field name	Location/position	Length	Alpha/numeric	Description remarks	Mandatory/optional
Reporting Period	85–89	5	N	Format—QYYYY for Calendar year. Q=1 for Jan–Mar. Q=2 for Apr–Jun. Q=3 for Jul–Sep. Q=4 for Oct–Dec.	M.
Federal EIN	90–98	9	N	Federal Employer Identification Number.	M.
State EIN	99–110	12	A/N	If present and less than 12 characters, left justify.	O.
Employer Name	111–155	45	A/N	At least two characters	M.
Employer Address				FEIN address.	
Street Address (line 1)	156–195	40	A/N	At least two characters	M.
Street Address (line 2)	196–235	40	A/N	If your address line is less than 40 characters, do.	O.
Street Address (line 3)	236–275	40	A/N	Not concatenate into one line.	O.
City	276–300	25	A	At least two characters	M.
State	301–302	2	A	Valid state or territory abbreviation.	M.
Zip Code (1)	303–307	5	N		M.
Zip Code (2)	308–311	4	A/N	If present, must be numeric	O.
Employer Foreign Address:					
Foreign Country Code	312–313	2	A/N	Refer to U.S. Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).	M for foreign address.
Foreign Country Name	314–338	25	A/N	If present, at least two characters.	O.
Foreign Zip Code	339–353	15	A/N		O.
Employer Optional Address				This address will be blank if only collecting one address. If there is a second address, it should be the address where child support orders should be sent.	
Street Address (line 1)	354–393	40	A/N	At least two characters	O.
Street Address (line 2)	394–433	40	A/N	If your address is less than 40 characters, do.	O.
Street Address (line 3)	434–473	40	A/N	Not concatenate into one line.	O.
City	474–498	25	A	If present, at least two characters.	O.
State	499–500	2	A	If present, valid state or territory abbreviation.	O.
Zip Code (1)	501–505	5	A/N	If present, must be numeric	O.
Zip Code (2)	506–509	4	A/N	If present, must be numeric	O.
Employer Optional Foreign Address:					
Foreign Country Code	510–511	2	A/N	Refer to U.S. Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).	O.
Foreign Country Name	512–536	25	A/N	If present, at least two characters.	O.
Foreign Zip Code	537–551	15	A/N		O.
Filler	552–601	50	A/N	Spaces. To used for future versions.	
UI Transmitter Record					
Record Identifier	1–2	2	A	'HU'	M.
Transmitter State Code	3–4	2	N	State FIPS code (for states only).	M for states.
Transmitter Agency Code	5–13	9	A/N	Federal Agency Code (for federal agencies only).	M for agencies.
Transmission Type	14–15	2	A/N	'UI' for unemployment insurance data.	M.
Filler	16	1	A/N		M for DOD.

RECORD LAYOUTS AND FIELD DESCRIPTIONS FOR INPUT TO THE NATIONAL DIRECTORY OF NEW HIRE (NDNH)—Continued

Field name	Location/position	Length	Alpha/numeric	Description remarks	Mandatory/optional
Version Control Number	17–18	2	A/N	Must be '01', controlled by OCSE.	M.
Date Stamp	19–26	8	N	Format=YYYYMMDD Must be current system date of file generation.	M.
Batch Number 27–32	27–32	6	N	Sequential number to identify a submission as unique.	M.
Filler	32–295	263	A/N	Spaces. To be used for future versions.	
UI Total Record					
Record Identifier	1–2	2	A	'TU'	M.
Data Record Count	3–13	11	N	Total record count for transmission, including header and trailer record.	M.
Filler	14–295	282	A/N	Spaces. To be used for future versions.	
Record Identifier	1–2	2	A	'UI'	M.
Claimant SSN	3–11	9	N	As reported by claimant	M.
Claimant Name:					
First Name	12–27	16	A	At least one character No special characters.	M.
Middle Name	28–43	16	A	In non-blank, must be at least one character. No special characters.	O.
Last Name	44–73	30	A	At leest one character No special characters, except for hyphen.	M.
Claimant Address:					
Street Address (line 1)	74–113	40	A/N	Non-blank	M.
Street Address (line 2)	114–153	40	A/N	If your address line is less than 40 characters, do.	O.
Street Address (line 3)	154–193	40	A/N	Not concatenate into one line	O.
City	194–218	25	A	At least two characters No special characters, except for hyphen.	M.
State	219–220	2	A	Valid state or territory abbreviation.	M.
Zip Code (1)	221–225	5	N	Must be numeric	M.
Zip Code (2)	226–229	4	A/N	If present, must be numeric	O.
Benefit Amount	230–240	11	N	Last two positions are decimal places. No negative values, zeroes are allowed. Gross amound paid within the quarter before withholding offsets. This amount is a total of all benefits that are tracked electronically.	M.
Reporting Period	241–245	5	N	Format—QYYYY for Calendar year. Q=1 for Jan–Mar. Q=2 for Apr–Jun. Q=3 for Jul–Sep. Q=4 for Oct–Dec.	M.
Filler	246–295	50	A/N	Spaces. To be used for future versions.	

Supplement to New Hire Record Specifications

At the suggestion of the workgroup that assisted in developing the record specifications for the National Directory of New Hires (NDNH), this is an accompanying document that contains some additional clarification or explanation of items in the record specifications.

Mandatory Fields: The legislation mandates the collection of only the following six data elements from the W–4 form:

Employee SSN
Employee Name
Employee Address
Employee Name
Employee Address
Employee ID number

On the W–4 record specifications these fields are marked with (M) to designate mandatory. There are three additional optional fields that are highly desirable for the New Hire data base. These are:

Employee Date of Birth
Employee Date of Hire
Employee State of Hire

While the legislation precludes the federal government from mandating the collection and retention of additional data elements, the states are not bound by those rules. The New Hire record specifications were developed in collaboration with State child support enforcement staff, State Employment Security Agency (SESA) staff, and federal and Department of Defense staff. Consequently, the specifications include additional data elements that can be collected by the states and passed to the NDNH. These data elements can then be used by the states and other authorized users of NDNH data.

Following are some clarifying statements that apply to all of the NDNH data elements and record formats.

All data is to be in EBCDIC format.

All alphanumeric data are to be in upper case.

I. All alphanumeric data are to be left justified.

II: All numeric data are to right justified and zero filled.

III. All dates are to be in the Year 2000-complaint format of YYYYMMDD.

IV. Name and city data are to be stripped of special characters except for the hyphen.

State and territory abbreviations in addresses should be the US Postal Service abbreviations.

Name fields should not include suffixes such as "Jr.", "Sr.", and "III".

The NDNH will contain two addresses for the employer. The first address is that noted on the W–4 form. The second address is where child support orders should be sent. If only one address is available or known, use the first set of address data elements and leave the second set of data elements blank. National standard codes are to be used for foreign country code abbreviations as assigned by the Department of Commerce FIPS codes (FIPS PUB 10–4).

V. For Quarterly Wage data, the employee wage amount is to be the gross amount paid during the quarter, regardless of when the amount was earned.

For Unemployment Insurance data, the benefit amount is to be the gross amount paid within the quarter before any deductions or offsets are applied, regardless of when the benefit was earned or accrued.

When in doubt, send the data. While the NDNH wants to receive clean, edited data, we want to receive all data in a timely manner. Consequently, if some data is missing or incomplete at the time of transmission, include the record(s) in the transmission. Hopefully, this will also make processing easier at the State level.

Output records returned from the NDNH will contain all of the input data sent to the NDNH and indications of errors or changes that took place at the federal level.

VI. States have the option of receiving error records. The NDNH will maintain a matrix of which states want to be notified of errors and which do not.

Input Records

When sending data to the federal level, there will be three record types in each transmission of data. These will include a header record, a series of data records, and concluded by a trailer record.

Header Record

The header record will be the first record in the data set and will contain the following fields.

Field name	Comments
Record Identifier	Enter 'H4' for W4 data. Enter 'HQ' for Quarterly Wage data. Enter 'HU' for Unemployment Insurance data.
Transmitter State Code	Refer to US Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).
Transmitter Agency Code	Some federal agencies act as service bureaus for other federal agencies. Enter the Federal Employer Identification Number (FEIN) of the agency transmitting the data to the National Directory of New Hires.
Transmission Type	Identifies the type of data in this data set. Enter 'W4' for W4 data. Enter 'QW' for Quarterly Wage data. Enter 'UI' for Unemployment Insurance data.
Department of Defense Code	This field is mandatory only for DOD data transmissions. All others can ignore this field. DOD data is separated into several categories. This field indicates with category of data is being transmitted. Enter 'A' for active duty personnel. Enter 'C' for civilian personnel. Enter 'R' for reservist personnel.
Version Control Number	It is assumed that the system will be modified over time to accommodate future requirements. The version Control Number indicates which version of the system is in operation and will provide a means of communicating with data suppliers about record formats. Enter '01' until notified by OCSE to change this value.
Date Stamp	Enter the system generated date on the date the data set is transmitted to the federal level. Enter the date in the format YYYYMMDD.
Batch Number	A sequential number generated by the transmitting agency. This field is to uniquely identify a transmission. Do not repeat batch numbers.
Filler	Each record contains filler to be used for future versions of the record formats.

Total Record

Each data set is to be terminated with a Total Record which will contain the count of the total number of records transmitted in this data set.

Field name	Comments
Record Identifier	Enter 'T4' for W4 data. Enter 'TQ' for Quarterly Wage data. Enter 'TU' for Unemployment Insurance data.
Data Record Count	Enter the total number of records transmitted in this data set, including the header and trailer records. This will be used to verify that all records are received and processed.
Filler	Spaces. To be used for future versions of the system.

Data Record

Each of the data records for W4, Quarterly Wage, and UI is different in several ways. Following is further explanation of some of the data elements in those record layouts. See the Record Layout specifications for detailed information on all data elements.

Field name	Comments
Record Identifier	Enter 'W4' for the W4 record. Enter 'QW' for the Quarterly Wage record. Enter 'UI' for the Unemployment Insurance record.
Foreign Address Data Elements	If an address supplied for the employee or employer is outside the United States, include the Foreign Country Code for the address, the Foreign Country Name, and the Foreign Zip Code.
Employee Wage Amount (QW)	For Quarterly Wage data, provide the gross amount paid to the employee during the quarter, regardless of when the amount was earned.
Reporting Period	Use the quarters that correspond to the calendar year rather than quarters that correspond to fiscal accounting periods. Use the format QYYYY where: Q = 1 for January–March. Q = 2 for April–June. Q = 3 for July–September. Q = 4 for October–December.
Benefit Amount (UI)	The UI Benefit Amount is the gross amount paid within the reporting quarter before any withholding offsets are applied. This amount should be the sum of benefits received from all programs tracked electronically by the State. However, only include those benefits that are housed in the same hardware environment. Do not include benefits from sources that must be translated or imported to the mainframe environment.

Output Records

FPLS will return records to the data transmitters when errors were detected. The states can elect to have these records returned for error resolution or not as they choose. Federal agencies, however, will receive all error records from each transmittal.

The record formats for the error records are identical to the input record provided by the submitter except that error codes will be appended that explain the nature of the error. Errors can occur at the transmission level and at the individual record level.

Transmission Control Records: This is the output equivalent of the input TRANSMITTER RECORD and includes counts of records received, records rejected, error records returned, records posted to the National Director of New Hires, records posted to the Suspense File, and up to five Error Codes pertaining to the transmission level error conditions encountered.

Data Records: Each output version of the input DATA RECORD had appended to it up to five record level error codes that indicate the nature of the error encountered during editing. It also contains a Social Security Number Verification Indicator that indicates whether multiple valid SSNs were encountered during the SSN verification process. In addition, a corrected SSN is returned if during the SSN verification process the supplied SSN was determined to be incorrect and the verification procedure was able to provide the correct SSN.

Total Records: No transmission total records will be returned to the submitting State or federal agency.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

In addition, comments may also be forwarded to ACF at the following address: The Administration for Children and Families, Office of Information Services, Division of Information Resources, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: Reports Clearance Officer, Internet address: rjdriscoll@acf.dhhs.gov.

Dated: September 23, 1997.

Robert Driscoll,

Reports Clearance Officer.

[FR Doc. 97–25769 Filed 9–26–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0389]

FDA Approval of Animal Drugs for Minor Uses and Minor Species; Draft Guidance Document; Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment on a draft Level 1 guidance document entitled "FDA Approval of Animal Drugs for Minor Uses and for Minor Species." The guidance document defines minor species and minor uses and sets forth suggestions for generating safety and effectiveness data to support the approval of minor use and minor species drugs. The draft Level 1 guidance document sets forth substantive changes in policy that warrant input from affected parties.

DATES: Submit written comments on the draft guidance document by December 29, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857. Comments should be identified with the full title of the draft guidance document and the docket number found in brackets in the heading of this document.

Submit written requests for single copies of the draft guidance document to the Communications and Education Team (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Margaret R. Oeller, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1650. E-mail: moeller@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's draft guidance document entitled "FDA Approval of Animal Drugs for Minor Uses and for Minor Species," is a Level 1 guidance document by definition in the Good Guidance Practices (62 FR 8961, February 27, 1997). This notice of availability for comment should not be confused with the **Federal Register** document of June 23, 1997 (62 FR 33781), entitled "Request for Comments on Development of Options to Encourage Animal Drug Approvals for Minor Species and for Minor Uses," which dealt with the same subject matter but was issued to seek comment and suggestions on legislative and regulatory options which could be utilized if adopted in the future to facilitate approval of new animal drugs for minor uses and minor species.

This draft, when finalized, will replace the previous guidance entitled "Guidelines for the Preparation of Data to Satisfy the Requirements of Section 512 of the Act Regarding Minor Use of Animal Drugs," (guidelines) dated April 1986. In the **Federal Register** of May 30, 1986 (51 FR 19612), FDA issued a notice of availability of the guidelines. No comments were received on the guidelines. A previous version of the draft guidance document was made available in November 1996 to interested parties who requested a copy.

The draft guidance document suggests procedures that could be used to demonstrate the safety and efficacy of a minor use animal drug. Minor use animal drugs are defined as: (1) New animal drugs used in minor animal species or (2) new animal drugs used in any animal species for the control of a disease that occurs infrequently or in limited geographic areas. "Minor species" are defined by regulation as animals other than cattle, horses, swine, chickens, turkeys, dogs, and cats. According to current regulations, sheep are a minor species except with respect to human food safety data collection requirements, for which sheep are considered a major species. FDA intends to issue a proposed regulation in which sheep would be considered a minor species for all requirements of the drug approval process.

The procedures set forth in the draft guidance document for demonstrating the safety and efficacy of a minor use animal drug apply to production drugs as well as therapeutic drugs.

The draft guidance document has been organized in two parts. Part 1 includes general information on the document, an overview of the approval process, data extrapolation, advice on working with the Center for Veterinary Medicine (CVM), and definitions. Part 2 presents specific options for satisfying data requirements for minor uses in major species, minor avian species (gamebirds, semi-domestic waterfowl, and ratites), minor ruminants (goats, bison, semi-domestic deer), rabbits, and aquatic species (finfish, aquatic invertebrates, alligators, etc.). Each section in part 2 contains information on efficacy, target animal safety, human food safety, and environmental data requirements. The major data components, excluding manufacturing chemistry, of the animal drug approval process are represented in part 2.

When finalized, the draft guidance document will represent the agency's current thinking on the means of generating efficacy and safety data to support approval of new animal drug applications for minor use of new animal drugs. This draft guidance document will not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Request for Comments

Interested persons may, on or before December 29, 1997, submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document, and with the full title of the guidance document. The comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. After review of these comments, FDA will implement the guidance document with any appropriate changes. Thereafter, interested persons may submit written comment on the guidance document directly to the CVM Communications and Education Team (address above).

III. Electronic Access

A copy of the draft guidance document may be obtained from the CVM Home Page (http://www.cvm.fda.gov) on the Internet.

Dated: September 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–25667 Filed 9–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0282]

General Principles of Software Validation; Draft Guidance; Extension of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 30, 1997, the comment period for the notice announcing the availability of a draft guidance entitled "General Principles of Software Validation" that published in the **Federal Register** of July 25, 1997 (62 FR

40099). The draft guidance discusses how the general provisions of the Quality System Regulation apply to software and the agency's current approach to evaluating a software validation system. The agency is taking this action in response to a request for an extension to allow additional time for comment on this draft guidance document.

DATES: Written comments by December 30, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: E. Stewart Crumpler, Center for Devices and Radiological Health (HFZ–343), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 25, 1997 (62 FR 40099), FDA announced the availability of a draft guidance entitled "General Principles of Software Validation." The draft guidance discusses how the general provisions of the Quality System Regulation apply to software and the agency 's current approach to evaluating a software validation system. Interested persons were given until October 1, 1997, to submit written comments on the notice. FDA received a request from the Health Industry Manufacturers Association to extend the comment period for 90 days. This would give them sufficient time to review the document and ensure quality comments on the document.

FDA is extending the comment period for 90 days to assure adequate time for preparation of comments. Accordingly, FDA finds under section 520(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 360j(d)) that there is good cause for such an extension.

Interested persons may, on or before December 30, 1997, submit to the Docket Management Branch (address above) written comments regarding the notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 28, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–25669 Filed 9–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Application and Annual Report, Maternal and Child Health Block Grant Program (OMB No. 0915–0172)—Extension and Revision

The Health Resources and Services Administration (HRSA) has revised and reformatted the Maternal and Child Health Block Grant Guidance. This guidance is used annually by the 50 States and 9 jurisdictions in making application for Block Grants under Title V of the Social Security Act, and in preparing the required annual report. The revisions are designed to simplify and clarify the guidance and required forms and to reduce duplication, while still allowing for clear, concise, useful, and accurate communication about the States' programs. More specifically, the revisions are designed to: (1) Make the program descriptions more readable; (2) alleviate the disconnect between the application for the next fiscal year and the annual report for the previous fiscal year that makes programmatic and data reviews difficult; (3) clarify budget and expense tables, through better design of forms and by carrying totals from form to form; (4) report objectives in a standard format, including the relationship to Healthy People 2000 goals, to facilitate year-to-year comparisons and multi-State tabulations; and, (5) incorporate uniform performance measures across all States and jurisdictions as well as State/jurisdiction-specific performance measures.

The HRSA revision also combines the current three guidance documents into one document by eliminating the separate annual application and annual report in favor of a combined document, and every fifth year explicitly including the results of the needs assessment, which would be incorporated only by reference in the intervening years. The HRSA revision efforts are intended not only to simplify and expedite the rational submission of necessary data and reports, but also to reduce the burden on States and jurisdictions by eliminating duplicative requirements and streamlining the presentation of information. Estimates of burden to complete the application and annual report are as follows:

Type of form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Application and Annual Report, 1998–99 (without needs assessment):*				
States	50	1	500	25,000
Jurisdictions	9	1	200	1,800
Five-Year Application and Annual Report, 2000 (with needs assessment): *				
States	50	1	750	37,500
Jurisdictions	9	1	400	3,600
Weighted Annual Average (over next three years):				
States	50	1	555	29,167
Jurisdictions	9	1	267	2,400

*The Annual Application and Annual Report, without needs assessment, will be submitted in FY 1998 and FY 1999. The five-year Annual Application and Annual Report will be submitted in FY 2000. The average annual response burden for the next three years is 31,567 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 22, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–25727 Filed 9–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White Comprehensive AIDS Resources and Emergency (CARE) Act Women's Initiatives (WIN)—New

The Health Resources and Services Administration's HIV-AIDS Bureau proposes to collect information about HIV-related services provided to women of child-bearing age and their children. Information will be collected annually from eight grantees funded under Sections 2671 and 2691 of the Public Health Service Act and 320 of the individual and institutional providers who provide services to HIV-infected pregnant women in the grantee service areas. The eight funded sites will collect the information in person or by telephone from the providers in their service areas, and forward the data collection forms to a HRSA contractor. There are no plans to collect or transmit the data electronically.

The purpose is to document current care system characteristics and facilitate planning for services to women with HIV and their children. The information will be used within and outside HRSA to inform the administration and Congress about HIV counseling and testing services for pregnant women, services and referral resources for pregnant women with HIV, antiretroviral therapies, and outreach related to perinatal HIV transmission reduction. Annual burden estimates are as follows:

Type of respondent	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Providers	320	1	.75	240
Funded Sites	8	40	1	320
Total	328			560

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 22, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–25729 Filed 9–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Magnesium in Coronaries (MAGIC).

Date: October 15–16, 1997.

Time: 7:00 p.m.

Place: Holiday Inn Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, Maryland 20814.

Contact Person: Anthony M. Coelho, Ph.D., Two Rockledge Center, Room 7182, 6701 Rockledge Drive, Bethesda, MD 20892–7956, (301) 435–0288.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Demonstration and Education Research Applications (R18).

Date: October 28, 1997.

Time: 8:30 a.m.

Place: Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, Virginia 22202.

Contact Person: Louise Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute e clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 22, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25704 Filed 9–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following National Institute on Drug Abuse (NIDA) Initial Review Group and Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications and contract proposals.

Name of Committee: Human Development Research Subcommittee.

Date: October 6, 1997.

Time: 8:30 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA Special Emphasis Panel (Human Development).

Date: October 6, 1997.

Time: 2:00 p.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Basic Behavioral Science Research Subcommittee.

Date: October 7–8, 1997.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20818.

Contact Person: Mark Swieter, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2620.

Name of Committee: Epidemiology and Prevention Research Subcommittee.

Date: October 7–9, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA Special Emphasis Panel (Basic Behavioral Science).

Date: October 8, 1997.

Time: 11:00 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20818.

Contact Person: Khursheed Asghar, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2620.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: Neuropharmacology Research Subcommittee.

Date: October 14–16, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Syed Husain, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (Centers).

Date: October 16, 1997.

Time: 8:30 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Neurophysiology and Neuroanatomy Research Subcommittee.

Date: October 20–21, 1997.

Time: 8:30 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Molecular, Cellular and Chemical Neurobiology Research Subcommittee.

Date: October 22–24, 1997.

Time: 8:30 a.m.

Place: Marriott Hotel of New Orleans, 555 Cannal Street, New Orleans, LA 70130.

Contact Person: Rita Liu, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Health Service Research Subcommittee.

Date: October 28–29, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Treatment Research Subcommittee.

Date: October 28–30, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA Special Emphasis Panel (Treatment).

Date: October 29, 1997.

Time: 9:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Khursheed Asghar, Ph.D, Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (Contract Review).

Date: October 30, 1997.

Time: 9:00 a.m.

Place: Parklawn Bldg., 3rd Floor Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Mr. Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis panel (RFA DA–98–001—Neurobiological Substrates of Cognitive functioning in Drug Abuse).

Date: November 17–18, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, room 10–22, Telephone (301) 443–9042.

Name of Committee: AIDS Biomedical and Clinical Research Subcommittee.

Date: November 18–19, 1997.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20818.

Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

The meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278; Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: September 22, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25699 Filed 9–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Role of Human Milk in Infant Nutrition and Health.

Date: September 28–29, 1997.

Time: September 28–7:30 p.m.–10:00 p.m., September 29–8:30 a.m.-adjournment.

Place: Omni Waterside Hotel, 777 Waterside Drive, Norfolk, Virginia 23510.

Contact Person: Gopal Bhatnagar, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building–Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review a grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research Mothers and Children], National Institutes of Health)

Dated: September 22, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25700 Filed 9–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 7–October 8, 1997.

Time: 9 a.m.

Place: Holiday Inn, Silver Spring, 8777 Georgia Ave, Silver Spring, MD 20910–3763.

Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meeting will be closed in accordance with the provisions set forth in secs. 552b (c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and persona information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: September 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25705 Filed 9–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amend (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Environmental Health Sciences Review Committee.

Date: November 20–21, 1997.

Time: 8:30 a.m.

Place: National Institute of Environmental Health Sciences, South Campus, Building 101, Conference Room B, Research Triangle Park, North Carolina 27709.

Contact Person: Dr. Ethel B. Jackson, Scientific Review Administrator, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–7826.

Purpose: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Research and Manpower Development, National Institutes of Health)

Dated: September 23, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25706 Filed 9–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Statistical and Clinical Coordinating Center (SACCC) for Women and Infants Transmission Study (WITS).

Date: October 29, 1997.

Time: 8:30 p.m. to Adjournment.

Place: Bethesda Ramada Hotel and Conference Center, Ambassador II, 8400 Wisconsin Avenue, Bethesda, MD 20814, (301) 654–1000.

Contact Person: Dr. Allen C. Stoolmiller, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C05, Bethesda, MD 20892, (301) 496–7966.

Purpose/Agenda: To evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: September 22, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25707 Filed 9–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: November 5, 1997.

Time: 1:00 pm to adjournment.
Place: 6120 Executive Blvd., Rockville, MD 20892 (telephone conference call).
Date: November 17–18, 1997.
Time: November 17—8 am–5 pm; November 18—8 am to adjournment.
Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Richard S. Fisher, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, Bethesda MD 20892–7180, 301–496–8693.
Purpose/Agenda: To review and evaluate grant applications. The meetings will be closed in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 22, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25708 Filed 9–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Library of Medicine Special Emphasis Panel (SEP) meeting.

Name of SEP: National Library of Medicine Special Emphasis Panel.
Date: October 7–8, 1997.
Place: University of Pittsburgh, Pittsburgh, PA.
Contact: Frances Johnson, Acting Scientific Review Administrator, EP, 8600 Rockville Pike, Bldg. 38A, Rm. 5S–506, Bethesda, Maryland 20894, 301/496–4621.
Purpose/Agenda: To review Phase II IAIMS application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health)

Dated: September 22, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25701 Filed 9–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Multidisciplinary Sciences.
Date: October 29, 1997.
Time: 11:00 a.m.
Place: NIH, Rockledge 2, Room 5116, Telephone Conference.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.
Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: November 5–6, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Silver Spring, MD.
Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4206, Bethesda, Maryland 20892, (301) 435–1223.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: September 22, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25702 Filed 9–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Notice of Meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, October 22, 1997. The Board of Governors will meet at the National Institutes of Health, Clinical Center (Building 10), Medical Board Room (2C116), 9000 Rockville Pike, Bethesda, Maryland, from 9:00 a.m. until approximately 2:00 p.m.

The meeting will be open to the public form 9:00 a.m. to 12:30 p.m. and will include review of the minutes of the July 10 meeting, the Clinical Center Advisory Council, Report of the Medical Executive Committee, and closure of the FY 97 budget.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting may be closed to the public from approximately 12:30 p.m. to adjournment for discussion of personnel qualifications and salaries, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Attendance by the public will be limited to space available.

For further information, contact Ms. Maggi Stakem, Office of the Director, Warren Grant Magnuson Clinical Center, Building 10, Room 2C146, Bethesda, Maryland 20892, (301) 496–4114.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Stakem in advance of the meeting.

Dated: September 22, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–25703 Filed 9–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for California Freshwater Shrimp for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability, extension of public comment period.

SUMMARY: On July 21, 1997, the U.S. Fish and Wildlife Service announced the availability for public review of a draft recovery plan for the California freshwater shrimp (*Syncaris pacifica* Holmes 1895) listed as an endangered species on October 30, 1988 (53 FR 43889). The California freshwater shrimp occurs in the Marin, Sonoma and Napa counties north of San Francisco Bay, California. The Service extends the public review and comment period for this draft recovery plan.

DATES: Comments on the draft recovery received by October 29, 1997 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Written comments and material regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Please contact Karen Miller or Matthew Vandenberg, U.S. Fish and Wildlife Service, at 916/979–2752 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe the site specific management actions considered necessary for conservation and survival of the species, establish objectives, and measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires the public notice and an opportunity for public review and comment be provided during recovery plan development. The Service, and other affected Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The California freshwater shrimp is endemic to Marin, Sonoma, and Napa Counties. There are 16 coastal streams with extant shrimp populations. Management issues and concerns include introduced fish, deterioration or loss of habitat resulting from water diversion, impoundments, livestock and dairy activities, agricultural activities and developments, flood control activities, gravel mining, timber harvesting, migration barriers, and water pollution.

The California freshwater shrimp draft recovery plan has been reviewed by the appropriate Service staff in Region 1 and was developed with input from selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and material received during this comment period.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All biological comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 17, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region I, Portland, Oregon.

[FR Doc. 97–25725 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Technical/Agency Draft Recovery Plan for Pleodendron macranthum and Eugenia haematocarpa for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Fish and Wildlife Service announces the availability for public review of the technical/agency draft recovery plan for *Pleodendron macranthum* and *Eugenia haematocarpa*. Both species are known only from Puerto Rico *Pleodendron macranthum* occurs in the Caribbean National Forest and the Rio Abajo Commonwealth Forest. *Eugenia haematocarpa* occurs in the Caribbean National Forest and on private property adjacent to the Carite Commonwealth Forest. These two species, restricted in distribution and low in population numbers, are extremely vulnerable to habitat destruction or modification, impacts by plant collectors, forest management practices and hurricanes. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 28, 1997 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622 (Telephone 787/851–7297). Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Foote at the address and telephone shown above.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, The Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other

Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency draft is for *Pleodendron macranthum* and *Eugenia haematocarpa* two tree species endemic to Puerto Rico. *Pleodendron macranthum* (Chupacallos) has fewer than 50 individuals in five localities of the Subtropical Wet and the Subtropical Lower Montane Wet Forests of northern and eastern Puerto Rico (Caribbean National and Rio Abajo Commonwealth Forests). *Eugenia haematocarpa* (Uvillo) is known from six localities with fewer than 125 trees in the Caribbean National Forest and one population of 15 individuals on private land adjacent to the Carite Commonwealth Forest. This species is found only in Subtropical Lower Montane Wet Forests of the Sierra de Luquillo and Sierra de Cayey. These two species are threatened by habitat destruction and modification, plant collection, forest management practices and impacts by hurricanes.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this section is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 22, 1997.

James P. Oland,

Field Supervisor.

[FR Doc. 97–25758 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mission Valley Power Utility, Montana Power Rate Adjustment

ACTION: Notice of rate adjustment.

SUMMARY: The Bureau of Indian Affairs (BIA) is adjusting the electric power rates for customers of Mission Valley Power (MVP), the Confederated Salish and Kootenai Tribal entity operating the power facility of the Flathead Irrigation and Power Project of the Flathead Reservation under a Public Law 93–638 contract. The Notice of Proposed Rate Adjustment for MVP was published in the **Federal Register** on August 18, 1997, 62 FR 44013. The public and interested parties were provided an opportunity to submit written comments during the 30-day period subsequent to August 18, 1997. No comments were received. The following table illustrates the impact of the rate adjustment:

POWER RATE REVISION FOR MVP

Rate class	Present rate	Rate adjustment
Residential:		
Basic Rate	$11.00/mo. (includes 125 kwh)	$5.00/mo.
Energy Rate	$0.04828/KWH (over 125 kwh)	$0.04725/kwh.
Minimum Monthly Bill	Not Applicable	$10.00/mo—May 1 thru October 31. $20.00/mo—November 1 thru April 30.
#2 General:		
Basic Rate	$11.00/mo.(includes 107 kwh)	This rate is replaced by Small Commercial (without demand):
Energy Rate	$ 0.05604/KWH(over 107 kwh)	
Small Commercial (without demand):	Rate Replaces #2 General Above.	
Basic Rate		$5.00/mo.
Energy Rate		$0.05495/kwh.
Small and Large Commercial (with Demand):		
Basic Rate	None	Rate is replaced, See new separate rate structures for Small Commercial and Large Commercial
Monthly Minimum	$38.00	
Demand Rate	$4.514/kw of billing demand	
Energy Rate	$0.04345/kwh—First 18,000kwh $0.03592/kwh—Over 18,000kwh	
Small Commercial with Demand:	Rate Replaces Previous Small and Large Commercial.	
Basic Rate:.		
Single Phase		$20.00/mo.
Three Phase		$40.00/mo.
Demand Rate		$ 4.50/kw.
Energy Rate		$ 0.0405/kwh.
Large Commercial with Demand:	Rate Replaces Previous Small and Large Commercial.	
Basic Rate		$125.00/mo.
Monthly Minimum		None.
Demand Rate		$5.00/KW.
Energy Rate		$0.03115/kwh.
Irrigation:		
Horsepower Rate	$ 11.30/hp	$11.05/hp.
Energy Rate	$ 0.03642/kwh	$ 0.03572/kwh.
Minimum Seasonal Rate.	$132.00 or $8.00/hp, whichever is greater.	No Adjustment.

POWER RATE REVISION FOR MVP—Continued

Rate class	Present rate	Rate adjustment
Area Lights Installed on Existing Pole or Structure:	Monthly Rate	Monthly Rate
7,000 lumen unit, M.V.*.	$7.00	$6.85.
20,000 lumen unit, M.V.*.	10.00	9.80.
9,000 lumen unit, H.P.S.	6.50	6.35.
22,000 lumen unit, H.P.S.	8.75	8.58.
Area Lights Installed with New Pole:	Monthly Rate	Monthly Rate
7,000 lumen unit, M.V.*.	$8.75	$8.60.
20,000 lumen unit, M.V.*.	11.50	11.25.
9,000 lumen unit, H.P.S.	8.25	8.10.
22,000 lumen unit, H.P.S.	10.50	10.30.
Street Lighting (Metered):		
Basic Rate	$11.00/mo. (includes 107 kwh)	$5.00/mo.
Energy Rate:	$ 0.05615 (over 107 kwh)	$0.05495/kwh).
Street Lighting (Unmetered):	This rate class applies to municipalities or communities where there are ten or more lighting units billed in a group. This rate schedule is subject to a negotiated contract with MVP and is unchanged as part of this rate adjustment.	

*Continuing Service Only.

DATES: The new rates will become effective on October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702; or, General Manager, Mission Valley Power, P. O. Box 1269, Polson, Montana 59860–1269, telephone (406) 883–5361.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, Section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary-Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

Dated: September 22, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–25774 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–5101–00–K022, WYW–131027]

Availability of Final Environmental Impact Statement for the Greybull Valley Irrigation District Dam and Resevoir Project

AGENCIES: Bureau of Land Management, Interior, and U.S. Army Corps of Engineers, Defense.

ACTION: Notice of availability of the Final Environmental Impact Statement (FEIS) for the Greybull Valley Irrigation District Dam and Reservoir Project for public review and comment.

SUMMARY: The FEIS for a proposal from the Greybull Valley Irrigation District (GVID) to construct, operate, and maintain a 150-foot-high zoned-earth embankment dam and an associated 33,470 acre-foot impoundment in an unnamed drainage south of Roach Gulch, a tributary of the Greybull River, on public lands in Park County, Wyoming, is available for public review. The FEIS was prepared by WEST, Inc., a third-party contractor for the Bureau of Land Management (BLM) and the U.S. Army Corps of Engineers (COE) under the provisions of Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. The FEIS supplements the Draft Environmental Impact Statement (DEIS), providing additional information, changes, and corrections to the DEIS.

DATES: Written comments concerning the analysis will be accepted for 30 days following the date the Environmental Protection Agency (EPA) publishes the notice of filing of the FEIS in the **Federal Register**, which is expected to be on September 19, 1997.

ADDRESSES: Copies of the DEIS and the FEIS may be reviewed at the following locations: Worland District BLM Office, 101 South 23rd Street, (contact Don Ogaard, BLM Project Manager), Worland, WY; Wyoming State BLM Office, 5353 Yellowstone Road, Cheyenne, WY, (Jon Johnson, Environmental Protection Specialist); COE Cheyenne Regulatory Office, 2232 Dell Range Blvd., Suite 210, Cheyenne, WY (Chandler Peter, COE Project Manager); COE Omaha District Office, 215 N. 17th Street, Omaha, NE (Becky Latka, EIS Technical Manager); and county and city libraries near the proposed project.

FOR FURTHER INFORMATION CONTACT: Don Ogaard, BLM Project Manager, Bureau of Land Management, Worland District Office, P.O. Box 119, 101 South 23rd Street, Worland, WY 82401–0119, telephone 307–347–5100; or Chandler Peter, U.S. Army Corps of Engineers,

Cheyenne Regulatory Office, 2232 Dell Range Blvd., Suite 210, Cheyenne, WY 82009, telephone 307–772–2300.

SUPPLEMENTARY INFORMATION: The GVID proposes to construct a 150-foot-high zoned-earth embankment dam in an unnamed drainage south of Roach Gulch, a tributary of the Greybull River, in Park County, Wyoming. This dam would impound 33,470 acre-feet of water, inundating about 700 acres of public lands. The GVID's purpose and need for the proposal is primarily to provide early and late season water for irrigated crops and to allow better overall regulation of their system. The DEIS also studied an alternative location in Blackstone Gulch, another tributary of the Greybull River, as well as the "No Action" Alternative, under which no dam would be built.

The FEIS is not a decision document. The FEIS supplements the DEIS, providing additional information, changes, and corrections to the DEIS, as well as responses to comments received on the DEIS. The FEIS does not reiterate those sections of the DEIS which were not changed; therefore, the reader must have a copy of the DEIS to use the FEIS. The BLM's Preferred Alternative remains Alternative B, Proposed Action, as modified by the mitigation described in Chapter 5 of the DEIS. The COE does not identify a Preferred Alternative at this time.

Before GVID may construct the project, it must obtain Federal, State, county, and local permits. Because the reservoir would inundate public land administered by the BLM, GVID must obtain a Right-of-Way Grant from the Federal Government. A permit under Section 404 of the Clean Water Act to conduct operations in a Water of the United States, issued by COE, would also be required. As part of the process for granting the permits, these agencies must consider GVID's proposal under NEPA. The agencies will accept public comment on the FEIS for 30 days from the date of publication of EPA's Notice of Filing. At this time, comments will be most helpful if they focus on any remaining technical or factual errors in the final analysis, and factors the agencies should consider in reaching a decision. The BLM's and the COE's decisions will be documented in Records of Decision which could be issued anytime after the 30-day public comment period.

Comments, including names and street addresses of respondents will be available for public review at the Worland District Office, 101 South 23rd Street, Worland, WY, during regular business hours (7:30 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: September 18, 1997.

Alan R. Pierson,

State Director.

[FR Doc. 97–25726 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–5410–00–B092; CACA 38603]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private land described in this notice, aggregating 441.32 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interests will be conveyed in whole or in part upon favorable mineral examination. The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Kathy Gary, California State Office, 2135 Butano Drive, Sacramento, California 95825, (916) 978–4677.

Mount Diablo Meridian

T. 4 S., R. 16 E.,
Sec. 25, Lot 3;
Sec. 25, S½NE¼, SE¼NW¼, SW¼, N½ SE¼, SE¼SE¼.
T. 4 S. R. 16 E.,
Sec. 26, Lot 3.
County—Mariposa.

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

Dated: September 22, 1997.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 97–25724 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30313]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 2,916.31 acres of National Forest System land to protect the Arnett Creek/Picketpost Mountain Special Interest Area. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may be made of National Forest System land.

DATES: Comments and requests for a meeting should be received on or before December 29, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona 85006.

FOR FURTHER INFORMATION CONTACT: Jim Young, Tonto National Forest, 602–225–5200, or Stu Herkenhoff, Globe Ranger District, 520–402–6200.

SUPPLEMENTARY INFORMATION: On July 11, 1997, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Tonto National Forest

T. 2 S., R. 11 E.,
Sec. 12, S½ of lot 1, lots 2, 3, and 4, S½NW¼NE¼, SW¼NE¼, S½NE¼NW¼, SE¼NW¼, E½SW¼, and W½SE ¼;
Sec. 13, lots 1 to 4, inclusive, W½E½, and E½NE¼NW¼;
Sec. 24, lot 1.
T. 2 S., R. 12 E.,
Sec. 7, lots 2 to 12, inclusive, S½N½NE¼, S½NE¼NW¼, and NE¼SW¼;
Sec. 8, SW¼, S½N½SE¼, and S½SE¼, excluding MS 4677, and MS 4859;
Sec. 16, W½NW¼, excluding MS 4703, MS 4704, MS 4705, and MS 4859;
Sec. 17, N½, SW¼, and NW¼SE¼;
Sec. 18, lots 1 to 10, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 19, lot 1, N½NE¼, and NE¼NW¼.

The area described contains 2,916.31 acres in Pinal County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor, Tonto National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Forest Supervisor, Tonto National Forest within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: September 18, 1997.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 97–25723 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Preservation Technology and Training Board: Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the National Preservation Technology and Training Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on November 3, 4, and 5, 1997, in Natchitoches, Louisiana.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet on the campus of Northwestern State University of Louisiana in the Board Room of the Louisiana School for Math, Science and the Arts at 715 College Street, Natchitoches, Louisiana. Matters to be discussed will include, officer and committee reports; Northwestern University report; staff program updates; the establishment of non-Federal support for the Center's programs; budget review; grant program, five-year plan and cooperating organizations.

Monday, November 3 and Tuesday, November 4 the meeting will start at 8:30 am and end at 5:00 pm. On Wednesday, November 5, the meeting will begin at 8:30 am and end at 11:30 a.m. Meetings will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Elizabeth A. Lyon, Chair, National Preservation Technology and Training Board, P. O. Box 1269, Flowery Branch, Georgia 30542.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Chief, HABS/HAER, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, telephone: (202) 343–9573. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Preservation Assistance Division, Suite 200, 800 North Capitol Street, Washington, DC.

Dated: September 22, 1997.

E. Blaine Cliver,

Chief, Preservation Assistance Division, Designated Federal Official, National Park Service.

[FR Doc. 97–25722 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 20, 1997. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by October 14, 1997.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Drew County

Drew County Courthouse, 210 S. Main St., Monticello, 97001226

COLORADO

Jefferson County

Coors, Herman, House, 1817 Arapahoe St., Golden, 97001227

FLORIDA

Polk County

Babson Park Woman's Club, 1300 N. Scenic Hwy, Babson Park, 97001229

Munn Park Historic District, Roughly bounded by E. Bay St., N. Florida Ave., E. Orange St., and E. Main St., Lakeland, 97001228

TENNESSEE

Bedford County

Jenkins Lutheran Chapel and Cemetery, 364 Shofner Bridge Rd., Shelbyville vicinity, 97001231

Shofners' Lutheran Church and Cemetery, Alt US 41, 2 mi. W of jct. of Alt. US 41 and TN 130, Shelbyville vicinity, 97001232

Knox County

Savage House and Garden (Knoxville and Knox County MPS) 3237 Garden Dr., Knoxville, 97001230

TEXAS

Orange County

Lucas, Joseph and Annie, House, 812 W. Pine St., Orange, 97001233

[FR Doc. 97–25731 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Chugachuk Island, AK in the Possession of the University of Alaska Museum, Fairbanks, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects from Chugachuk Island, AK in the possession of the University of Alaska Museum, Fairbanks, AK.

A detailed assessment of the human remains was made by University of Alaska Museum professional staff in consultation with representatives of Chugach Alaska Corporation, Cook Inlet Region, Inc., Kenaitze Indian Tribe, Ninilchik Village Traditional Council, Port Graham Village Council, Nanwalek Village Council, Native Village of Salamatof, and the Seldovia Village Tribe.

In 1967, human remains representing five individuals were excavated from a large midden on the south side of Chugachuk Island, Kachemak Bay, AK by David Schimberg and Peter Schlederman during an archeological survey and salvage project sponsored by the University of Alaska-Fairbanks Department of Anthropology and the Institute of Arctic Biology. No known individuals were identified. The sixteen associated funerary objects include faunal remains.

Based on cultural material of the site, including chipped lithics, slate, modified cobbles, a stone lamp fragment, ochre, and worked bone, this midden site has been determined to be pre-European contact in age. The cultural material is consistent with objects found within sites known to be affiliated with Chugach Alaska Corporation, Cook Inlet Region, Inc., Kenaitze Indian Tribe, Ninichik Village Traditional Council, Port Graham Village Council, Nanwalek Village Council, Native Village of Salamatof, and the Seldovia Village Tribe, and Chugachuk Island lies within the traditional territories of these Native Alaska Villages and Native Corporations. Consultation with Native Elders of these Native Alaska Villages indicates there is a traditional association with Chugachuk Island and these villages.

Based on the above mentioned information, officials of the University of Alaska Museum have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of the University of Alaska Museum have also determined that, pursuant to 25 U.S.C. 3001(3)(A), the sixteen objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Alaska Museum have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Chugach Alaska Corporation, Cook Inlet Region, Inc., Kenaitze Indian Tribe, Ninilchik Village Traditional Council, Port Graham Village Council, Nanwalek Village Council, Native Village of Salamatof, and the Seldovia Village Tribe.

This notice has been sent to officials of the Chugach Alaska Corporation, Cook Inlet Region, Inc., Kenaitze Indian Tribe, Ninilchik Village Traditional Council, Port Graham Village Council, Nanwalek Village Council, Native Village of Salamatof, and the Seldovia Village Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Gray Selinger, Special Projects Manager, University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775–1200; telephone: (907) 474–6117, before November 28, 1997. Repatriation of the human remains and associated funerary objects to the Chugach Alaska Corporation, Cook Inlet Region, Inc., Kenaitze Indian Tribe, Ninilchik Village Traditional Council, Port Graham Village Council, Nanwalek Village Council, Native Village of Salamatof, and the Seldovia Village Tribe may begin after that date if no additional claimants come forward.

Dated: September 23, 1997.

Francis P. McManamon,

Department Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–25730 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 8:00 a.m., Tuesday, October 21, 1997.

PLACE: Sheraton National Hotel, 900 South Orme Street, Arlington, VA 22204.

STATUS: Open.

MATTERS TO BE CONSIDERED: Updates on NIC's strategic planning, the survey concerning civil commitment of sex offenders, interstate compact, the victims issues discussion points; amendment of the Bylaws; election of officers/liaisons; orientation for new Board members; and the Office of Justice Programs quarterly report.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 97–25682 Filed 9–26–97; 8:45 am]

BILLING CODE 4410–36–M

MARINE MAMMAL COMMISSION

Sunshine Act Meeting

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, November 18, 1997 from 8:45 a.m. to 9:45 a.m. The public sessions of the Commission and the Committee meeting will be held on Tuesday, November 18, from 10:00 a.m. to 6:00 p.m., on Wednesday, November 19, from 8:30 a.m. to 6:30 p.m., and on Thursday, November 20, from 9:00 a.m. to 1:00 p.m.

PLACE: The Fairbanks Princess Hotel, 4477 Pikes Landing Road, Fairbanks, Alaska, 99709.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed as time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. The focus of the meeting, however, will be on Arctic issues and on those marine mammal species that occur in Alaska. While subject to change, major issues that the Commission plans to consider at the meeting include: marine mammal co-management agreements; domestic and international polar bear and walrus programs; research and management issues related to bowhead whales, Steller sea lions, harbor seals, North Pacific fur seals, and sea otters; the Arctic Environmental Protection Strategy; the Arctic Council; marine mammal programs of the Russian Federation; the Bering Sea ecosystem; Hawaiian monk seals; and West Indian manatees.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD 20814, 301/504–0087.

Dated: September 24, 1997.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 97–25912 Filed 9–25–97; 12:46 pm]

BILLING CODE 8820–31–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–141]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Airframe Systems Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Airframe Systems Subcommittee meeting.

DATES: October 21, 1997, 8:00 p.m. to 4:30 p.m., October 22, 1997, 8:00 a.m. to 4:30 p.m., and October 23, 1997, 8:00 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23661–0001.

October 21, 1997: Building 1219, Room 225.

October 22, 1997:

Building 1229, Room 124 (Structures and Materials).

Building 1212, Room 200 (Aerodynamics and Aerothermodynamics).

Building 1268A, Room 1141 (Airborne Systems).

October 23, 1997: Building 1219, Room 225.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Hernandez, National Aeronautics and Space Administration, Mail Stop 113, Langley Research Center, Hampton, VA 23681–0001, 757/864–6033.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

- Status of the Airframe Systems Program
- Overview of the High-Speed Research Program
- Overview of the Advanced Subsonic Technology Program
- Overview of the Aviation Safety Program
- Review of Airframe Systems Structures and Materials Research
- Review of Airframe Systems Aerodynamics and Aerothermodynamics Research
- Review of Airframe Systems Airborne Systems Research

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated:September 22, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 97–25767 Filed 9–26–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–140]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Behavioral and Biomedical Research; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Behavioral and Biomedical Research.

DATES: October 23, 1997, 8:00 a.m. to 4:30 p.m.; and October 24, 1997, 8:00 a.m. to 10:30 a.m.

ADDRESSES: NASA Headquarters, Room 7H46, 300 E Street SW, Washington, DC 20546

FOR FURTHER INFORMATION CONTACT: Dr. Joan Vernikos, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2530.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- OLMSA/NIH Overview
- Biology Pillars Update
- National Space Biomedical Research Institute Briefing
- Update of NASA–NIH Activities
- Neurovestibular NSCORT
- Protein Crystallography
- Remote Sensing/Disease Prediction Program
- Recent Flight Research Findings

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 22, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–25768 Filed 9–26–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON THE COST OF HIGHER EDUCATION

Meeting

AGENCY: National Commission on the Cost of Higher Education.

ACTION: Notice of public meetings

TIMES AND DATES: Thursday, October 16, 1997; 8:15 A.M.–5:30 A.M.; Monday, October 27, 1997; 9:00 A.M.–11:30 A.M. and 1:00 P.M.–3:00 P.M.; Friday, November 7, 1997; 8:15 A.M.–5:30 P.M.; Monday & Tuesday, November 17–18, 1997; 8:15 A.M.–5:30 P.M.

SUMMARY: The National Commission on the Cost of Higher Education was created by the Congress to submit to the President and the Congress a report which shall contain a detailed statement of the findings and conclusions of the Commission on the issues of what is

truly happening with respect to the cost of a college education and what steps can or should be taken to ensure that a quality post secondary education remains affordable. This report is to include the Commission's recommendations for administrative and legislative actions that the Commission considers advisable on the issues it is investigating. The Commission announces its meeting schedule, thereby notifying the general public of their opportunity to attend. These meetings are designed to give interested parties the opportunity to present the Commission with information these parties believe will assist the Commission in its task.

DATE AND TIME: October 16, 1997; 8:15 A.M.–5:30 P.M. Agenda items and topics to be discussed: Chairman's report; update on research agenda and work plan as this relates to the functions of the Commission established by statute; laws, regulations, and mandates in higher education; student financial aid policies and programs; instructional, administrative, and technological cost factors in higher education; and other substantive items raised by Commission members or Commission working groups.

LOCATION: Herbert Hoover Memorial Building, Stauffer Auditorium, Serra and Galvez Streets, Stanford, California. Parking is available for a fee in the lot on Galvez Street.

DATE AND TIME: October 27, 1997; 9:00 A.M.–11:30 A.M. and 1:00 P.M.–3:00 P.M. A hearing will be held at which interested members of the public will be given an opportunity to present representatives of the Commission with information on the issues which the Commission has been charged with considering. The period for submitting comments in writing begins with the publication of this notice. Only comments received by COB October 20 will be considered for possible oral testimony on October 27. The Commission may need to limit the number of individuals who appear before it and the time allotted to these individuals. Persons also may be assigned a specific time to appear. A schedule will be announced by COB October 23.

DATE AND TIME: November 7, 1997; 8:15 A.M.–5:30 P.M. Agenda items and topics to be discussed: Chairman's report; update on research agenda and work plan as this relates to the functions of the Commission established by statute; laws, regulations, and mandates in higher education; student financial aid policies and programs; instructional, administrative, and technological cost factors in higher education; and other substantive items raised by Commission members or Commission working groups.

LOCATION: Boston, Massachusetts.

DATE AND TIME: November 17–18, 1997, 8:15 A.M.–5:30 P.M., each day. Agenda items and topics to be discussed: Chairman's report; update on research agenda and work plan as this relates to the functions of the Commission established by statute; laws, regulations, and mandates in higher education; student financial aid policies and programs; instructional, administrative, and technological cost factors in higher education; and other substantive items raised by Commission members or Commission working groups.

LOCATION: Belmont University, 1900 Belmont Boulevard, Nashville, Tennessee.

DATE AND TIME: December 4, 1997, 8:15 A.M.–5:00 P.M.

LOCATION: Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, National Commission on the Cost of Higher Education, 1615 M Street, N.W., Suite 240, Washington, D.C. 20036. Telephone (202) 634–6501. Facsimile: (202) 634–6038.

SUPPLEMENTARY INFORMATION: The National Commission on the Cost of Higher Education was established by Public Law 105–18, dated June 12, 1997. Transcripts are kept of all public Commission proceedings and are available for public inspection at the offices of the National Commission on the Cost of Higher Education, 1615 M Street, N.W., Suite 240, Washington, D.C. 20036. Contact Carmelita Pratt at the phone number listed above.

Carmelita Pratt,

Administrative Officer.

[FR Doc. 97–25681 Filed 9–26–97; 8:45 am]

BILLING CODE 6820–DR–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39109; File No. 265–19]

Consumer Affairs Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission ("Commission") Consumer Affairs Advisory Committee ("Commission").

SUMMARY: The Securities and Exchange Commission's Consumer Affairs Advisory Committee will meet on Tuesday, October 14, 1997, in Room 1C30 at the Commission's Headquarters, 450 Fifth Street, N.W., Washington, D.C., beginning at 9:30 a.m. The meeting will be open to the public. This notice also serves to invite the public to submit written comments to the Committee.

ADDRESSES: You should submit written comments in triplicate and refer to File No. 265–19. Send your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Geraldine M. Walsh, Special Counsel to the Director, Office of Investor Education and Assistance, (202) 942–7040; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, requires the Securities and Exchange Commission to give notice that the Consumer Affairs Advisory Committee will meet on October 14, 1997, in Room 1C30 at the Commission's Headquarters, 450 Fifth Street, N.W., Washington, D.C., beginning at 9:30 a.m. The meeting will be open to the public.

The Committee's responsibilities include assisting the Commission in identifying investor problems and being more responsive to their needs. The Committee will explore fundamental issues of concern to investors, including matters currently under consideration by the Commission and topics of emerging concern to investors and the financial services industry.

Dated: September 22, 1997.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 97–25693 Filed 9–26–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39115; File No. SR–CBOE–96–75]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Listing and Trading of Packaged Butterfly Spreads

September 22, 1997.

I. Introduction

On December 16, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to list for trading Packaged Butterfly Spreads based upon the S&P 100 and the S&P 500 Indexes.

Notice of the proposal was published for comment and appeared in the **Federal Register** on February 4, 1997.[3] The Exchange filed with the Commission Amendment Nos. 1,[4] 2,[5] and 3[6] to the proposal on March 18, May 2, and June 5, 1997, respectively.

No comment letters were received on the proposed rule change. This order orders the Exchange's proposal, as amended.

II. Description of the Proposal

The Exchange proposes to list for trading Packaged Butterfly Spreads based upon the S&P 100 index and the S&P 500 index. A Packaged Butterfly Spread is a packaged European-style option that replicates the behavior and payout of a butterfly spread[7] composed of standard index option contracts. The Exchange proposes that the Packaged Butterfly Spreads on the S&P 100 and 500 indexes will have a multiplier of 100. Because Packaged Butterfly Spreads composed of puts are identical to those composed of calls the Exchange will not list both puts and calls; there will be only one call option listed for each strike price and butterfly interval.

The Exchange believes Packaged Butterfly Spreads on the Indexes will provide advantages to the investing public that are not provided for by standard index options. First, the Exchange believes Packaged Butterfly spreads offer investors a relatively low risk security which results because Packaged Butterfly Spreads, by their nature, have a maximum gain and loss that can be realized regardless of the movement in the index level. Packaged Butterfly Spreads allow investors to profit from trendless markets with limited risk. Second, the "packaging" of a strategy of four option positions into one option product reduces transaction-related expenses because the investor will only have to enter into one transaction. Third, in the case of Packaged Butterfly Spreads overlying the S&P 100, the investor will have the opportunity to invest in an option product that has European-style exercise.[8] Standard S&P 100 options ("OEX") have American-style exercise.[9] The Exchange expects Packaged Butterfly Spreads to be supported enthusiastically by market-makers because butterfly spread trading is a familiar strategy to professional traders and the Packaged Butterfly Spreads can be easily incorporated into the overall risk profile of the market-maker's trading strategy in standard index options.

The Exchange proposes to amend Rule 24.1 to describe the new product[10] as well as the term "butterfly spread interval".[11]

Position and Exercise Limits

The Exchange is proposing position limits for Packaged Butterfly Spreads overlying the S&P 100 of 25,000 contracts. The Exchange is proposing position limits for Packaged Butterfly Spreads overlying the S&P 500 of 100,000 contracts. For position limit purposes, Packaged Butterfly Spreads will be aggregated with option contracts on the same index. These position limits are consistent with the position limits that have been established for standard index options on the S&P 100 and 500 indexes, respectively. The exercise limits for Packaged Butterfly Spreads will be equal to the position limits set forth above in accordance with the terms of CBOE Rule 24.5.

Margin

With respect to margin, risk exposure is limited in Packaged Butterfly Spreads, and therefore, the maximum margin requirements should not exceed the maximum exposure amount which, for each Packaged Butterfly Spread option contract equals the butterfly spread interval times the index multiplier. The proposed amendments state that the maximum margin required for a Packaged Butterfly Spread option contract carried in a short position shall not exceed this maximum exposure amount. In addition, margin requirements for spread positions set forth in Rule 24.11(c)(1)(B) does not apply for spread positions where one or both positions comprising the spread are Packaged Butterfly Spreads. If a spread position involves a Packaged Butterfly Spread, as either the long position or the short position, the minimum margin required on such a position will be the full purchase price on the long position plus the margin required in Rule 24.11(b) for the short position.[12]

Listing of Series. The Exchange expects to list contracts having butterfly spread intervals of ranging from 10 to 50 points. The Exchange does not intend to simultaneously open series with more than one butterfly spread interval. However, the CBOE may introduce a

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38213 (January 28, 1997), 62 FR 5265 (February 4, 1997).

[4] In Amendment No. 1, the Exchange provided a new definition for "butterfly spread interval" and several revisions to the margin rules, as described more fully herein. *See* Letter from Tim Thompson, Senior Attorney, CBOE, to John Ayanian, Special Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated March 18, 1997 ("Amendment No. 1").

[5] In Amendment No. 2, the Exchange amended its margin rules as they apply to spread positions where the long index option contract is a Packaged Butterfly Spread. Amendment No. 2, also verified that CBOE will list and add series for Packaged Butterfly Spreads in accordance with Rule 24.9, Interpretation and Policy .01(c). Finally, in Amendment No. 2, the Exchange indicated that position limits for Packaged Butterfly Spreads based on the S&P 500 and 100 will be the same as existing position limits for the respective index options and will be aggregated with other option contracts on the same index. *See* Letter from William M. Speth, Sr. Research Analyst, Product Development, Research Department, CBOE, to Howard L. Kramer, Senior Associate Director, OMS, Market Regulation, Commission, dated May 2, 1997 ("Amendment No. 2").

[6] In Amendment No. 3, the Exchange made several technical, non-substantive changes to the proposal. In addition, the Exchange made changes to the margin rules. In particular, the Exchange amended its margin rules (and modified Amendment No. 2), to indicate that margin treatment for spread positions set forth in Rule 24.11(c)(1)(B) do not apply for spread positions where one or both positions comprising the spread are Packaged Butterfly Spreads. As proposed in new Rule 24.11(c)(1)(D), if a spread position involves a Packaged Butterfly Spread, as either the long options position or the short options position, the minimum margin required on such a position will be the full purchase price on the long position plus the margin required in Rule 24.11(b) for the short position. The Exchange also clarified its policy for changing butterfly spread intervals, as described more fully herein. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to John Ayanian, Special Counsel, OMS, Market Regulation, Commission, dated June 4, 1997 ("Amendment No. 3").

[7] A butterfly spread is a combination of four option positions of the same type (put or call) and the same expiration on thee same underlying interest using three different strike prices. For example, using only calls, a butterfly spread would consist of buying one call at the lowest strike price, selling two calls at the middle strike price and buying one call at the highest strike price. A butterfly spread with a butterfly spread interval of 30 might consist of one long December (expiration month) 670 (strike price) call option, two short December 700 call options, and one long December 730 call option.

[8] Only European-style Packaged Butterfly Spreads will be available to investors. A European-style option is one that may be exercised only during a limited period of time prior to expiration.

[9] An American-style option is one that may be exercised at any time prior to expiration.

[10] *See* Amendment No. 3, *supra* note 6.

[11] Specifically, the "butterfly spread interval" means a value specified by the Exchange which, when added to the exercise price and subtracted from the exercise price defines a range of index values over which the option has an exercise settlement amount greater than $0. *See* Amendment No. 1, *supra* note 4.

[12] See Rule 24.11(c)(a)(D) and Amendment No. 3, *supra* note 6.

new series with a new butterfly spread interval with a new ticker symbol resulting in a brief period (1 or 2 months) of open series with two butterfly spread intervals. Initially, the Exchange intends to list an at-the-money and various strikes around the at-the-money in the first two near-term months in accordance with Rule 24.9, Interpretation and Policy .01(c).[13] New strikes will be added when the underlying trades through the highest or lowest strike available.

Settlement

The expiration date for Packaged Butterfly Spreads will be the Saturday immediately following the third Friday of the expiration month. Exercise will result in the delivery of cash on the business day following expiration. The exercise settlement amount is equal to the greater of: (1) Butterfly spread interval minus the difference between the index settlement value and the midpoint of the butterfly multiplied by the multiplier ($100), and (2) $0. Packaged Butterfly Spreads will have a European-style of exercise.

Miscellaneous

CBOE will use the same surveillance methods it currently employs with respect to their broad-based index options.

CBOE has also been informed that the Options Price Reporting Authority recently added another outgoing high speed line from OPRA processor and thus, has the capacity to support the new series associated with the listing of Packaged Butterfly Spreads.[14]

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[15] Moreover, the Exchange's proposal to list and trade Package Butterfly Spreads on the S&P 100 and S&P 500 indexes strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system while protecting investors and the public interest.[16] Specifically, the Commission finds that the Packaged Butterfly Spreads are an innovative financial product that will provide investors with additional choices and flexibility in their use of derivatives.[17] In addition, Packaged Butterfly Spreads offer both holders and writers of options a means to participate in the options markets at a predetermined maximum gain or loss. Under the terms of Packaged Butterfly Spreads, the option writer's (holder's) maximum loss (gain) is established at the time of the investment by the option's butterfly spread interval. Accordingly, Packaged Butterfly Spreads permit investors to participate in the options market at a known cost. In addition, the Commission believes that Packaged Butterfly Spreads, which replicate the combination of four separate option positions on the same underlying interest and expiration, likely will benefit investors by providing them with a more efficient and cost effective method of executing spread transactions.

The Commission also finds that the specific rules proposed by the CBOE to accommodate Packaged Butterfly Spreads are consistent with the Act.[18] Specifically, the Commission believes that it is reasonable for the Exchange to set a butterfly spread interval range from 10 to 50 points. In response to the Commission's concerns about investor confusion by having series of Packaged Butterfly Spreads simultaneously open with different butterfly spread intervals, the Exchange does not intend to simultaneously open series with more than one butterfly spread interval. However, the CBOE may introduce a new series with a new butterfly spread interval with a new ticker symbol resulting in a brief period (1 or 2 months) of open series with two butterfly spread intervals.[19] The Commission notes that the Exchange may submit a "noncontroversial filing" pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder if it decided to change the present butterfly spread range (currently 10 to 50 points) and the proposal does not raise any other regulatory issues.

The Commission also notes that Packaged Butterfly Spreads on the S&P 500 and S&P 100 indexes will be subject to the same position and exercise limit requirements that currently apply to S&P 500 and S&P 100 index options, respectively. In particular, Packaged Butterfly Spreads on the S&P 500 will be aggregated with all other S&P 500 index options, subject to a 100,000 contract limit under Rule 24.4(b). Packaged Butterfly Spreads on the S&P 100 index will be aggregated with all other S&P 100 index options, subject to a 25,000 contract limit under Rule 24.4(b).

The Commission believes that the proposed margin treatment for Packaged Butterfly Spreads in cash and margin accounts is consistent wit the Act. Specifically, the Commission believes that, similar to short capped options positions,[20] it is reasonable to permit short Packaged Butterfly Spreads positions in a cash account so long as the maximum exposure (the butterfly spreads interval) is deposited. This position is the equivalent of a completely covered position, because the maximum risk of loss is already on deposit. In addition, the Commission believes that the proposed margin requirements for Packaged Butterfly Spreads in margin accounts is reasonable because they are virtually identical to the margin requirements for traditional short stock index options positions held in margin accounts, except that a limit equal to the maximum exposure to the option writer is placed on the margin requirement. It is reasonable to limit the margin in this way because the margin would cover 100% of the writer's exposure, thereby requiring no additional margin calls.

The Commission also believes it is reasonable to require for any spread position involving a Packaged Butterfly Spread a minimum margin deposit equal to the full purchase price on the long position plus the margin required in Rule 24.11(b) for the short position.[21] Accordingly, the Commission believes it is reasonable under such circumstances to prohibit application of margin requirements for spread positions involving a Packaged Butterfly Spread because the required margin deposit would not always cover 100% of the writer's exposure. For example, a spread involving a long 670 S&P 500 index call option and a short 650 Packaged Butterfly Spread on the S&P 500, with a butterfly spread interval of 50, the margin deposit requirement under the margin rule for spread transactions would be the lesser of (1) The difference in aggregate exercises prices ((670−650)×100=$2,000) and (2) the butterfly spread interval times the multiplier (i.e., 50×100=$5,000). The margin deposit requirement under the spread rule, if allowed, would be $2,000. The writer's maximum exposure (when the current index level is 650), however, is $3,000.[22] For this spread position, the margin requirement under proposed CBOE Rule 24.11(c)(1)(D) will be the full purchase price of the long position (premium×$100) *plus* the butterfly spread interval times the index multiplier (50×$100) of the short position.

In summary, the Commission believes that the Packaged Butterfly Spreads on the S&P 500 and S&P 100 Indexes will provide investors with additional choices and flexibility in their use of derivatives and offer both holders and writers of options a means to participate in the options markets at a predetermined maximum gain or loss. Further, the Commission notes that in order to promote investor protection and to ensure adequate disclosure in connection with Packaged Butterfly Spreads, the rules pertaining to standardized options and the requirements of Exchange Act Rule 9b–1 will apply to trading in Packaged Butterfly Spreads. The Commission believes it is important to provide investors with information regarding the rights and characteristics of Packaged Butterfly Spreads. In this regard, Packaged Butterfly Spread investors will receive a special supplement to the Options Clearing Corporation's ("OCC") Options Disclosure Document ("ODD Supplement") explaining in detail the risks and characteristics of Packaged Spreads.[23]

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 to CBOE's proposal set forth a new definition for "butterfly spread interval" and several technical revisions to the margin rules, as described above.

Amendment No. 2 to CBOE's proposal: (1) Verifies that CBOE will list and add series for Packaged Butterfly Spreads in accordance with Rule 24.9, Interpretation and Policy .01(c); and (2) sets position limits for Packaged Butterfly Spreads based on the S&P 500 and 100 to equal existing position limits for the respective index options.[24]

The first change described above is clarifying in nature and will prevent undue proliferation of options series on Packaged Butterfly Spreads. The Commission believes the Exchange's proposed reduction in position limits from those originally proposed presents no new regulatory issues and can be approved on an accelerated basis. Further, the originally proposed higher position limits were subject to the full 21-day comment period without any comments being received by the Commission.

Amentment No. 3 to CBOE's proposal also makes several technical non-substantive changes. In addition, the Exchange amended the definition of Packaged Butterfly Spread to further clarify that the product is intended to replicate the behavior of the combination of four separate options, as described above. Finally, Amendment No. 3 provides that margin requirements for spread positions set forth in Rule 24.11(c)(1)(B) do not apply for spread positions where one or both positions comprising the spread are Packaged Butterfly Spreads. [25] The Commission believes that the proposed changes to the margin requirements present no new regulatory issues and further strengthens the Exchange's proposal by ensuring that adequate margin will be deposited by those with positions involving Packaged Butterfly Spreads.

The Commission believes that the changes proposed in Amendment Nos. 1, 2, and 3, unless otherwise stated above, merely clarify in the rule text what was originally proposed by the Exchange and will help to ensure that investors understand the specifications and trading characteristics of the Packaged Butterfly Spread contracts. In addition, the Commission notes that the original proposal was published for the full 21-day comment period without any comments being received by the Commission. Moreover, the Commission believes that the foregoing amendments raise no new regulatory issues.

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve Amendment Nos. 1, 2, and 3 to the proposed rule change, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–96–75 and should be submitted by October 20, 1997.

V. Conclusion

Based upon the aforementioned factors, the Commission finds that the proposed changes relating to the listing and trading of Packaged Butterfly Spreads on the S&P 500 and 100 are consistent with the requirements of Section 6(b)(5) and the rules and regulations thereunder. The initiation of Packaged Butterfly Spread trading, however, is conditioned upon the issuance of an order approving an ODD Supplement, pursuant to Rule 9b–1 of the Act.

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[13] *See* Amendment No. 2, *supra* note 5.

[14] *See* Memorandum from Joe Corrigan, OPRA, to Eileen Smith, CBOE, dated November 21, 1996.

[15] 15 U.S.C. 78f(b)(5).

[16] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. in this regard, the trading of Packaged Butterfly Spreads on the S&P 500 and 100 will provide investors with another hedging vehicle that should reflect the overall movement of the U.S.-listed stock market.

[18] The Commission notes that CBOE Rule 24.1, as amended, defines Packaged Butterfly Spreads. Because the current Exchange proposed definition is limited to Packaged Butterfly Spreads on the S&P 500 and 100 Indexes, the Exchange is required to submit a rule filing pursuant to Section 19(b) of the Act in order to list Packaged Butterfly Spreads on another stock index or individual security.

[19] The Exchange represents that it would not allow margin offset, pursuant to Rule 24.11(c), between spread with different spreads intervals. *See* Amendment No. 3, *supra* note 6.

[20] *See* Securities Exchange Act Release No. 29865 (October 28, 1991), 56 FR 56255 (November 1, 1991).

[21] *See supra* note 12.

[22] The writer's maximum exposure of this spread position is determined as follows:
short loss − long gain=maximum exposure
$5,000 − (670 − 650)×100
$5,000 − (20)×100
$500 − $2,000=($3,000)

[23] In reviewing any disclosure materials submitted, the Commission intends to assure that the materials specifically describe the risks and characteristics associated with trading Packaged Spreads. Trading trading of Packaged Butterfly Spreads is Packaged Spreads. The trading of Packaged Butterfly Spreads is expressly contingent upon the Commission's approval of such an ODD supplement.

[24] As described above, Packaged Butterfly Spreads on the S&P 500 and 100 indexes will be aggregated with other options on the same index.

[25] Accordingly, this proposed amendment eliminates the provision in Amendment No. 2 which would have allowed spread positions involving long Packaged Butterfly Spread positions to receive margin treatment under the spread rule. *See* Amendment No. 3, *supra* note 6.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (File No. SR–CBOE–96–75), is amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25688 Filed 9–26–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39116; File No. SR–CBOE–96–76]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Listing and Trading of Packaged Vertical Spreads

September 22, 1997.

I. Introduction

On December 16, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to list for trading Packaged Vertical Spreads based upon the S&P 100 and the S&P 500 Indexes.

Notice of the proposal was published for comment and appeared in the **Federal Register** on February 4, 1997.[3] The Exchange filed with the commission Amendment Nos. 1,[4] 2,[5] and 3[6] to the proposal on March 18, May 2, and June 5 1997, respectively.

No comment letters were received on the proposed rule change. This order approves the Exchange's proposal, as amended.

II. Description of the Proposal

The Exchange proposes to list for trading Packaged vertical Spreads based upon the S&P 100 index and the S&P 500 index ("Indexes"). A Packaged Vertical Spread is a packaged European-style option that replicates the behavior and payout of a vertical spread[7] composed of standard index option contracts. The Exchange proposes that the Packaged Vertical Spreads may have a multiplier of 100 (as with standard index options overlying the S&P 100 and the S&P 500) or a multiplier of 500. To date, the Exchange has not determined whether Packaged Vertical Spreads will initially have a multiplier of 100 or 500. The Exchange, however, does not intend to simultaneously open series with both a 100 and a 500 multiplier. If the Exchange introduces Packaged Vertical Spreads with a new multiplier with a new tricker symbol, it will only result in a brief period (1 or 2 months) of open series with both a 100 and a 500 multiplier. The Exchange represents further that it will notify the Commission so that it can be determined what appropriate steps should be taken prior to listing Packaged Vertical Spreads with the different multiplier.[8]

The Exchange believes Packaged Vertical Spreads on the Indexes will provide advantages to the investing public that are not provided for by standard index options. First, the Exchange believes the Packaged Vertical Spreads on the Indexes will offer investors a relatively low risk security which results because Packaged Vertical Spreads, by their nature, have a maximum gain and loss that can be realized regardless of the movement in the index level. These options are the equivalent of standard vertical spreads (*i.e.*, the combination of one long and one short options position with the same expiration) traded as a single security. Second, the "packaging" of a strategy of two option positions into one option product reduces transaction-related expenses because the investor will only have to enter into one transaction. In the case of Packaged Vertical Spreads with a multiplier of 500, the transaction-related expenses would be substantially reduced from a comparable trade involving standard index options which currently have a 100 multiplier. Third, in the case of Packaged Vertical Spreads overlying the S&P 100, the investor will have the opportunity to invest in an option product that has European-style exercise.[9] Standard S&P 100 options ("OEX") have American-style exercise.[10] Accordingly, with Packaged Vertical Spreads there is no early exercise risk. The Exchange expects Packaged Vertical Spreads on the Indexes to be supported enthusiastically by market-makers because vertical spread trading is a familiar strategy to professional traders and the Packaged Vertical Spreads can be easily incorporated into the overall risk profile of the market-maker's trading strategy in standard index options.

The Exchange proposes to amend Rule 24.1 to describe the new product[11] as well as the term "vertical spread interval".[12]

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[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38213 (January 28, 1997), 62 FR 5265 (February 4, 1997).

[4] In Amendment No. 1, the Exchange provided a new definition for "vertical spread interval" and several technical non-substantive revisions to the margin rules. *See* Letter from Tim Thompson, Senior Attorney, CBOE, to John Ayanian, Special Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated March 18, 1997 ("Amendment No. 1").

[5] In Amendment No. 2, the Exchange amended its spread rules for margin when the short index option of a spread position is a Packaged Vertical Spread, as described more fully herein. Amendment No. 2 also verified that CBOE will list and add series for Packaged Vertical Spreads in accordance with Rule 24.9, Interpretation and Policy .01(c). Finally, in Amendment No. 2, the Exchange indicated that position limits for Packaged Vertical Spreads based on the S&P 500 and 100 will be the same as existing position limits for the respective index options and will be aggregated with other option contracts on the same index. *See* Letter from William M. Speth, Sr. Research Analyst, Product Development, Research Department, CBOE, to Howard L. Kramer, Senior Associate Director, OMS, Market Regulation, Commission, dated May 2, 1997 ("Amendment No. 2").

[6] In Amendment No. 3, the Exchange made several non-substantive changes to the proposal. In addition, added Rule 24.4(e) to reflect that position limits for Packaged Vertical Spreads with multipliers of 500 would have position limits equal to 1/5th of the position limits for products with multipliers of 100. The Exchange also clarified that for Packaged Vertical Spreads with multipliers of 500, the spread rules for margin would only apply when there are 5 contracts with a 100 multiplier offsetting one contract with a 500 multiplier. Finally, the Exchange also clarified its policy for changing the multiplier and/or the vertical spread intervals, as described more fully herein. *See* vertical spread intervals, as described more fully herein. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to John Ayanian, Special Counsel, OMS, Market Regulation, Commission, dated June 4, 1997 ("Amendment No. 3").

[7] A vertical spread is the combination of one long and one short options position having the same expiration. A call vertical spread will have a lower strike price on the long options and a put spread will have a higher strike price on the long option. For example, a call vertical spread might consist of one long December (expiration month) 700 (strike price) call option and one short December 690 call option.

[8] *See* Amendment No. 3, *supra* note 6.

[9] Only European-style Packaged Vertical Spreads will be available to investors. A European-style option is one that may be exercised only during a limited period of time prior to expiration.

[10] An American-style option is one that may be exercised at any time prior to expiration.

[11] *See* Amendment No. 3, *supra* note 6.

[12] Specifically, the "vertical spread interval" means a value specified by the Exchange which, when added to the exercise price for call series or subtracted from the exercise price for put series defines the index level over which (for calls) and under which (for puts) the value of the contract will have its maximum value at expiration. *See* Amendment No. 1, *supra* note 4.

Position and Exercise Limits

The Exchange is proposing position limits for Packaged Vertical Spreads overlying the S&P 100 of 25,000 contracts. The Exchange is proposing position limits for Packaged Vertical Spreads overlying the S&P 500 of 100,000 contracts. For position limit purposes, Packaged Vertical Spreads will be aggregated with option contracts on the same index. These position limits are consistent with the position limits that have been established for standard index options on the S&P 100 and 500 indexes, respectively. The exercise limits for Packaged Vertical Spreads will be equal to the position limits set forth above in accordance with the terms of CBOE Rule 24.5.

To the extent that the Exchange lists and a member holds Packaged Vertical Spread positions with multipliers other than 100 (*e.e.*, 500), the contract will be counted for position limit purposes as the number of contracts times the contract multiplier divided by 100. For example, each Packaged Vertical Spread based on the S&P 100 with a multiplier of 500 would count as 5 Packaged Vertical Spread contracts for the purpose of determining compliance with the position limits.[13] In addition, if a member holds Packaged Vertical Spread positions with different multipliers, that overlie the same index, these positions would be aggregated in determining compliance with the position limits.

Margin

With respect to margin requirements, risk exposure is limited in Packaged Vertical Spreads, and therefore, the maximum margin requirements should not exceed the maximum exposure amount which, for each Vertical Spread option contract equals the vertical spread interval times the index multiplier. The proposed amendments state that the maximum margin required for a put or call Vertical Spread option contract carried in a short position shall not exceed this maximum exposure amount. In addition, the amendment provides that for each put or call Vertical Spread option contract carried in a short position in a cash account, the customer must deposit cash equal to the maximum exposure amount. The rules will also provide that the required margin for a spread when the exercise price of the long call index option is greater than the exercise price of the short call index option where at least one leg of the spread is a CAPS or Vertical Spread would be the lesser of (1) The difference in the aggregate exercise prices or (2) the cap interval or the vertical spread interval as appropriate. For Packaged Vertical Spreads with multipliers of 500, the spread rules for margin would only apply when there are 5 contracts with a 100 multiplier offsetting a contract with a 500 multiplier.[14]

Listing of Series

The Exchange expects to list contracts having vertical spread intervals of ranging from 10 to 50 points. The Exchange does not intend to simultaneously open series with more than one vertical spread interval. However, the CBOE may introduce a new series with a new vertical spread interval with a new ticker symbol resulting in a brief period (1 or 2 months) of open series with two vertical spread intervals.[15]

Initially, the Exchange intends to list an at-the-money and various strikes around the at-the-money in the first two near-term months in accordance with Rule 24.9, Interpretation and Policy .01(c).[16] New strikes will be added when the underlying trades through the highest or lowest strike available.

Settlement

The expiration date for Packaged Vertical Spreads will be the Saturday immediately following the third Friday of the expiration month. Exercise will result in the delivery of cash on the business day following expiration. The exercise settlement amount will be equal to the difference between the OEX or SPX settlement value, as appropriate, and the strike price of the Packaged Vertical Spread contract; or the amount of the spread interval, whichever is less, multiplied by the multiplier, *i.e.*, either $100 or $500. As noted above, Packaged Vertical Spreads will have a European-style of exercise.

Miscellaneous

CBOE will use the same surveillance methods it currently employs with respect to their broad-based index options.

CBOE has also been informed that the Options Price Reporting Authority recently added another outgoing high speed line from OPRA processor and thus, has the capacity to support the new series associated the listing of Packaged Vertical Spreads.[17]

By adopting rules that will provide for the trading of index options that will provide investors with certain advantages over current products in the way of reduced transaction costs and risk reduction, CBOE believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[18] Moreover, the Exchange's proposal to list and trade Package Vertical Spreads on the S&P 100 and S&P 500 indexes strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.[19] Specifically, the Commission finds that the Packaged Vertical Spreads are an innovative financial product that will provide investors with additional choices and flexibility in their use of derivatives,[20] In addition, Packaged Vertical Spreads offer both holders and writers of options a means to participate in the options markets at a predetermined maximum gain or loss. Under the terms of Packaged Vertical Spreads, the option writer's (holder's) maximum loss (gain) is established at the time of the investment by the option's vertical spread interval. Accordingly, Packaged Vertical Spreads permit investors to participate in the

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[13] *See* Amendment No. 3, *supra* note 6.

[14] *See* Amendment No. 3, *supra* note 6.

[15] The Exchange represents that it would not allow margin offset, pursuant to Rule 24.11(c), between spreads with different spread intervals. *See* Amendment No. 3, *supra* note 6.

[16] *See* Amendment No. 2, *supra* note 5.

[17] *See* Memorandum from Joe Corrigan, OPRA, to Eileen Smith, CBOE, dated November 21, 1996.

[18] 15 U.S.C. 78f(b)(5).

[19] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of Packaged Vertical Spreads will provide investors with another hedging vehicle that should reflect the overall movement of the U.S.-listed stock market.

options market at a known cost. In addition, the Commission believes that Packaged Vertical Spreads, which replicate the combination of two options at different exercise prices, on the same underlying interest and expiration, likely will benefit investors by providing them with a more efficient and cost effective method of executing spread transactions.

The Commission also finds that the specific rules proposed by the CBOE to accommodate Packaged Vertical Spreads are consistent with the Act.[21] Specifically, the Commission believes that it is reasonable for the Exchange to set a vertical spread interval range from 10 to 50 points. In response to the Commission's concerns that having series of Packaged Vertical Spreads simultaneously open with different vertical spread intervals might be confusing to investors, the Exchange does not intend to simultaneously open series with more than one vertical spread interval. However, the CBOE may introduce a new series with a new vertical spread interval with a new ticker symbol resulting in a brief period (1 or 2 months) of open series with two vertical spread intervals.[22] The Commission notes that the Exchange may submit a "noncontroversial filing" pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder if it decided to change the present vertical spread range (currently 10 to 50 points) and the proposal does not raise any other regulatory issues.

Similarly, the Commission believes it is reasonable for the Exchange to list Packaged Vertical Spreads with either a 100 or 500 multiplier. In response to the Commission's concerns that having series of Packaged Vertical Spreads simultaneously open with different multipliers might be confusing to investors, the Exchange does not intend to simultaneously open series with two different multipliers. However, the CBOE may introduce a new series with a new multiplier with a new ticker symbol resulting in a brief period (1 or 2 months) of open series with two multipliers. The Commission notes that it will be notified by the Exchange to determine what appropriate steps should be taken prior to listing Packaged Vertical Spreads with the different multiplier.[23]

The Commission also notes that Packaged Vertical Spreads on the S&P 500 and S&P 100 indexes will be subject to the same position and exercise limit requirements that currently apply to S&P 500 and S&P 100 index options, respectively. In particular, Packaged Vertical Spreads on the S&P 500 will be aggregated with all other S&P 500 index options, subject to a 100,000 contract limit under Rule 24.4(b). Packaged Vertical Spreads on the S&P 100 index will be aggregated with all other S&P 100 index options, subject to a 25,000 contract limit under Rule 24.4(b).[24]

The Commission believes that the proposed margin treatment for Packaged Vertical Spreads in cash and margin accounts is consistent with the Act. Specifically, the Commission believes that, similar to short capped options positions,[25] it is reasonable to permit short Packaged Vertical Spreads positions in a cash account so long as the maximum exposure (the vertical spreads interval) is deposited. This position is the equivalent of a completely covered position, because the maximum risk of loss is already on deposit. In addition, the Commission believes that the proposed margin requirements for Packaged Vertical Spreads in margin accounts is reasonable because they are virtually identical to the margin requirements for traditional short stock index options positions held in margin accounts, except that a limit equal to the maximum exposure to the option writer is placed on the margin requirement. It is reasonable to limit the margin in this way because the margin would cover 100% of the writer's exposure, thereby requiring no additional margin calls.

The Commission also believes that the proposed margin treatment for a spread transaction where: (1) The short leg of the spread is a Packaged Vertical Spread; (2) the long leg of the spread is a long call index option (not a Packaged Butterfly Spread);[26] and (3) the exercise price of the long call index option is greater than the exercise price of the short call Packaged Vertical Spread is consistent with the Act. Specifically, it is reasonable to limit the margin in this case to the lesser of the difference in aggregate exercise prices or the vertical spread interval because the margin would cover 100% of the writer's exposure, thereby requiring no additional margin calls.[27] For example, a spread involving a long 670 S&P 500 index call option and a short 650 Packaged Vertical Spread on the S&P 500, with a vertical spread interval of 10, the margin deposit requirement would be the lesser of: (1) The difference in aggregate exercise prices $((670-650)\times 100 = \$2{,}000)$ and (2) the vertical spread interval times the multiplier (i.e., $10\times 100 = \$1{,}000$). The margin requirement in this case would be $1,000. The writer's maximum exposure is when the current index level is 650, and is limited to $1,000.

For the same spread transaction where the vertical spread interval is 50, the margin deposit requirement would be the lesser of: (1) The difference in aggregate exercise prices $((670-650)\times 100 = \$2{,}000)$ and (2) the vertical spread interval times the multiplier (i.e., $50\times 100 = \$5{,}000$). The margin deposit requirement in this case would be $2,000. The writer's maximum exposure is when the current index level is 700, and is limited to $2,000.[28]

In summary, the Commission believes that the Packaged Vertical Spreads on the S&P 500 and S&P 100 Indexes will provide investors with additional choices and flexibility in their use of derivatives and offer both holders and writers of options a means to participate in the options markets at a predetermined maximum gain or loss. Further, the Commission notes that in order to promote investor protection and to ensure adequate disclosure in connection with Packaged Vertical Spreads, the rules pertaining to standardized options and the requirements of Exchange Act Rule 9b–1 will apply to trading in Packaged Vertical Spreads. The Commission believes it is important to provide investors with information regarding the rights and characteristics of Packaged Vertical Spreads. In this regard, Packaged Vertical Spread investors will receive a special supplement to the Options Clearing Corporation's ("OCC") Options Disclosure Document ("ODD Supplement") explaining in detail the risks and characteristics of Packaged Spreads.[29]

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 to CBOE's proposal set forth a new definition for "vertical spread interval" and several technical non-substantive revisions to the margin rules.

Amendment No. 2 to CBOE's proposal describes changes to its spread rules for margin when the short index option of a spread position is a Packaged Vertical Spread, as described above; (2) verifies that CBOE will list and add series for Packaged Vertical Spreads in accordance with Rule 24.9, Interpretation and Policy .01(c); and (3) sets position limits for Packaged Vertical Spreads based on the S&P 500 and 100 to equal existing position limits for the respective index options.[30] The Commission believes the Exchange's proposed reduction in position limits from those originally proposed presents no new regulatory issues and can be approved on an accelerated basis. Further, the originally proposed higher position limits were subject to the full 21-day comment period without any comments being received by the Commission. Amendment No. 3 to CBOE's proposal also makes several technical non-substantive changes. In addition, the Exchange amended the definition of Packaged Vertical Spread to further clarify the structure of the product.

The Commission believes that the changes proposed in Amendment Nos. 1, 2, and 3, unless otherwise stated above, merely clarify in the rule text what was originally proposed by the Exchange and will help to ensure that investors understand the specifications and trading characteristics of the Packaged Vertical Spread contracts. In addition, the Commission notes that the original proposal was published for the full 21-day comment period without any comments being received by the Commission.

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve Amendment Nos. 1, 2 and 3 to the proposed rule change, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–96–76 and should be submitted by October 20, 1997.

V. Conclusion

Based upon the aforementioned factors, the Commission finds that the proposed changes relating to the listing and trading of Packaged Vertical Spreads on the S&P 500 and 100 are consistent with the requirements of Section 6(b)(5) and the rules and regulations thereunder. The initiation of Packaged Vertical Spread trading, however, is conditioned upon the issuance of an order approving an ODD Supplement, pursuant to Rule 9b–1 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (File No. SR–CBOE–96–76), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,
Deputy Secretary.

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[21] The Commission notes that CBOE Rule 24.1, as amended, defines Packaged Vertical Spreads. Because the current Exchange proposed definition is limited to Packaged Vertical Spreads on the S&P 500 and 100 Indexes, the Commission believes the Exchange is required to submit a rule filing pursuant to Section 19(b) of the Act in order to list Packaged Vertical Spreads on another stock index or individual security.

[22] The Exchange represents that it would not allow margin offset, pursuant to Rule 24.11(c), between spreads with different spread intervals. *See* Amendment No. 3, *supra* note 6.

[23] *See* Amendment No. 3, *supra* note 6.

[24] If the Exchange introduces Packaged Vertical Spreads with a multiplier of 500, it will count each Packaged Vertical Spreads as 5 Packaged Vertical Spread contracts for the purpose of determining compliance with the position limits.

[25] *See* Securities Exchange Act Release No. 29865 (October 28, 1991), 56 FR 56255 (November 1, 1991).

[26] For any long Packaged Butterfly Spread position which is offset by a short option position of any type, the minimum margin required on such a position shall be the full purchase price on the Packaged Butterfly Spread plus the margin required in Rule 24.11(b) for the short position. *See* Rule 24.11(c)(1)(D). In addition, for any long Packaged Vertical Spread position which is offset by short position that is not a capped option or a Packaged Vertical Spread, the minimum margin required on such a position is the full purchase price of the long Packaged Vertical Spread position plus the margin required in Rule 24.11(b) for the short position. *See* Rule 24.11(c)(1)(C).

[27] In addition, the long contract must be paid in full. The proceeds from the short option can be used to pay for the long contract.

[28] The writer's maximum exposure for this spread position is determined as follows:

short loss − long gain = maximum exposure
$\$5{,}000-(700-670)\times 100$
$\$5{,}000-(30)\times 100$
$\$5{,}000-\$3{,}000 = (\$2{,}000)$

[29] In reviewing any disclosure materials submitted, the Commission intends to assure that the materials specifically describe the risks and characteristics associated with trading Packaged Spreads. The trading of Packaged Vertical Spreads is expressly contingent upon the Commission's approval of such an ODD supplement.

[30] As described above, Packaged Vertical Spreads on the S&P 500 and 100 indexes will be aggregated with other options on the same index.

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39117; File No. SR–CHX–96–14]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to Trading of Particular Investment Company Units

September 22, 1997.

I. Introduction

On April 23, 1996, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19(b)–4 thereunder,[2] a proposed rule change to amend Article XXVIII of the CHX's Rules to permit them to trade certain units representing an interest in a registered investment company ("Units") on CHX.

The proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 37228 (May 20, 1996) 61 FR 26940 (May 29, 1996). One comment letter was received in response to the proposal.[3]

II. Background and Description

In SR–CHX–96–12, the Exchange requested and received approval of proposed rule changes allowing the listing and/or trading of Units.[4] CHX is proposing to apply its existing listing standards for the trading of Units to the trading of World Equity Benchmark Securities ("WEBS") pursuant to unlisted trading privileges ("UTP"). CHX is also proposing to amend Article

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James F. Duffy, Executive Vice President and General Counsel, Legal and Regulatory Policy, American Stock Exchange ("Amex"), to Jonathan G. Katz, Secretary, Commission, dated June 20, 1996 ("Amex letter").

[4] *See* Securities Exchange Act Release Nos. 37121 (April 17, 1996), 61 FR 17932 (April 23, 1996) (notice of File No. SR–CHX–96–12) and 37589 (August 21, 1996), 61 FR 44370 (August 28, 1996) (approval order). In that rule filing, the Exchange also stated its intent to trade CountryBasket securities, pursuant to a request for unlisted trading privileges. CountryBasket securities are Units designed to track the performance of specific foreign indices, more fully described in SR–CHX–96–12 and SR–NYSE–95–23. *Id. See also* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (order approving File No. SR–NYSE–95–23).

XXVIII, Rule 24, to add Interpretation and Policy .02 to specifically allow the Exchange to trade WEBS pursuant to unlisted trading privileges. WEBS currently are approved for trading on the American Stock Exchange ("Amex").[5] If at a later time CHX desires to list WEBS, rather than only trade WEBS pursuant to UTP, the Exchange will request Commission approval for that listing in a separate proposed rule change filed pursuant to Section 19(b) of the Act.[6]

Structure of WEBS

Rules to accommodate the trading of Index Fund Shares generally on Amex, along with Amex's trading of WEBS, were previously approved by the Commission.[7] The information provided below is intended to provide a description of how WEBS are created and traded and is similar to that discussed in the original Amex WEBS Approval Order.

WEBS are issued by Foreign Fund, Inc., and based on seventeen Morgan Stanley Capital International ("MSCI") Indices (each individually an "MSCI Index" or "Index" and collectively "MSCI Indices" or "Indices"). The countries whose markets are represented by those indices are: Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia, Mexico, Netherlands, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

The investment objective of each WEBS series is to seek to provide investment results that correspond generally to the price and yield performance of public securities traded in the aggregate in particular foreign markets, as represented by specific MSCI Indices. Each WEBS series will use a "passive" or indexing investment approach which attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures.

A WEBS series normally will invest at least 95% of its total assets in stocks that are represented in the relevant MSCI Index and will at all times invest at least 90% of its total assets in such stocks. A WEBS series will not hold all of the issues that comprise the subject MSCI Index, but will attempt to hold a representative sample of the securities in the Index in a technique known as "portfolio sampling."

Foreign Fund, Inc. will issue and redeem WEBS of each Index Series only in aggregations of shares specified for each Index Series (each aggregation a "Creation Unit"). The number of shares per Creation Unit will range from 40,000 to 600,000. In its original filing to list and trade WEBS, Amex anticipated that the value of a Creation Unit at the start of trading would range from $450,000 to $10,000,000, and the net asset value ("NAV") of an individual WEBS would range from $10 to $20.

The MSCI Indices

MSCI generally seeks to have 60% of the capitalization of a country's stock market index reflected in the MSCI Index for such country. Thus, the MSCI Indices seek to balance the inclusiveness of an "all share" index against the replicability of a "blue chip" index. MSCI applies the same criteria and calculation methodology across all markets for all indices, developed and emerging.

All single-country MSCI Indices are market capitalization weighted. For countries that restrict foreign ownership, MSCI calculates two Indices. The additional Indices are called "free" Indices, and they exclude companies and share classes not purchasable by foreigners. Free Indices are currently calculated for Singapore, Mexico, the Philippines, and Venezuela, and for those regional and international indices which include such markets. The Mexico and Singapore WEBS series will be based on the free Indices for those countries. There are no WEBS series corresponding to the Philippines and Venezuela MSCI Indices.

All MSCI Indexes are calculated daily. The calculation method weights stocks in an index by their beginning-of-period market capitalization. Share prices are "swept clean" daily and adjusted for any rights issues, stock dividends or splits. The MSCI Indices currently are calculated in local currency and in U.S. dollars, without dividends and with gross dividends reinvested.

Prices used to calculate the MSCI Indices are the official exchange closing prices. All prices are taken from the dominant exchange in each market. To calculate the applicable foreign currency exchange rate, MSCI uses WM/Reuters Closing Spot Rates for all developed and emerging markets except those in Latin America. Because of the high volatility of currencies in some Latin American countries, MSCI continue to calculate its own rates for those countries. Under exceptional circumstances MSCI may elect to use an alternative exchange rate for any country if the WM/Reuters rate is believed not to be representative for a given currency on a particular day.

Each MSCI Index on which a WEBS series is based is calculated by MSCI for each trading day in the applicable foreign exchange market based on official closing prices in such exchange market. For each trading day, MSCI publicly disseminates each Index value for the previous day's close. MSCI Indices are reported periodically in major financial publications and also are available through vendors of financial information.

Foreign Fund, Inc. will cause to be made available daily the names and required number of shares of each of the securities to be deposited in connection with the issuance of WEBS in Creation Unit size aggregations for each WEBS series, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such WEBS series. This information will be made available by the Fund Advisor to any National Securities Clearing Corporation ("NSCC") participant requesting such information. In addition, other investors can request such information directly from the Fund distributor. The NAV for each WEBS series will be calculated directly by the Fund administrator, PFPC, Inc. NAVs will be made available to the public from the Fund distributor by means of a toll-free number, and also will be available to NSCC participants through data made available from NSCC.

To provide current WEBS pricing information, Amex represented that it anticipated it would disseminate through the facilities of the Consolidated Tap Association ("CTA") an indicative optimized portfolio value" ("Value") for each WEBS series as calculated by Bloomberg, L.P. ("Bloomberg"). The Value will be disseminated on a per WEBS basis every fifteen seconds during regular Amex trading hours of 9:30 A.M. to 4:00 P.M. New York time.[8]

The Value likely will not reflect the value of all securities included in the applicable benchmark MSCI Index. In addition, the Value will not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each WEBS series at a particular moment. Therefore, the Value on a per WEBS basis disseminated during Amex trading hours should not be viewed as a real-time update of the net asset value of the Fund, which is calculated only once a day. It is expected, however, that during the trading day the Value will closely approximate the value per WEBS share of the portfolio of securities for each WEBS series except under unusual circumstances.

The Exchange will distribute an information circular to its members in connection with the trading of WEBS. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other issues, will discuss what WEBS are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing WEBS prior to or concurrently with the confirmation of a WEBS transaction, applicable Exchange rules, dissemination information, trading information, and the applicability of suitability rules.[9] The Exchange also intends to utilize its existing surveillance procedures to surveil trading in WEBS, including surveilling specialist compliance with Article XXX, Rule 23(a), which contemplates specialists engaging in transactions with the issuer of WEBS under certain circumstances.

III. Summary of Comments

Amex filed a comment letter to the proposed rule change.[10] Amex states that CHX, or any market trading or proposing to trade WEBS, should be required to submit for Commission review an information circular to distribute to their members prior to trading WEBS on the exchange. Amex also states that any such information circular should adequately explain the unique characteristics and risks of this type of security, including member responsibilities, and identify the Exchange personnel who can be contacted to discuss any issues or answer any inquiries relating to the trading of WEBS.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[11] The Commission believes that the Exchange's proposal to trade WEBS pursuant to unlisted trading privileges will provide investors with a convenient way of participating in foreign securities markets and could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that CHX's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell at negotiated prices throughout the trading day securities that replicate the performance of several portfolios of stock,[12] and by increasing the availability of WEBS as an investment tool. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[13]

As the Commission noted in greater detail in the order approving WEBS for listing and trading on Amex,[14] the estimated cost of an individual WEBS[15] should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of foreign stocks. The Commission also notes that WEBS should provide investors with several advantages over standard open-end investment companies; in particular, investors can trade WEBS continuously throughout the day in secondary markets at negotiated prices.[16] In contrast, Investment Company Act Rule 22c–1[17] limits holders and prospectus holders of open-end management investment company shares to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors. Thus, WEBS should allow investors to respond quickly to market changes through intra-day trading opportunities, expand the opportunity for retail investors to engage in hedging strategies, and reduce transaction costs for trading a portfolio of stocks. The Commission notes that under the proposed rule change, these benefits of WEBS will now be available to investors trading on CHX and believes that the addition of their trading on CHX pursuant to UTP could produce added benefits to investors through the increased competition.

The Commission notes that although the value of WEBS are based on the value of the securities and cash held in the Fund, WEBS are not leveraged instruments. WEBS are essentially equity securities that represent an interest in a portfolio of stocks designed to reflect substantially the applicable MSCI Index. Accordingly, it is appropriate to regulate WEBS in a manner similar to other equity securities. Nonetheless, the Commission believes that the unique nature of WEBS raises certain, disclosure, trading, and other issues that need to be addressed. The remainder of this section addresses these issues, although they are discussed in greater detail in the Amex WEBS Approval Order, where the Commission initially approved WEBS for trading as a new product.

Trading of WEBS On CHX

The Commission notes that, pursuant to Rule 12f–5 under the Act,[18] prior to trading a particular class or type of security pursuant to UTP, CHX must

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[5] *See* Securities Exchange Act Release No. 38947 (March 8, 1996), 61 FR 10606 (March 14, 1996) ("Amex WEBS Approval Order").

[6] The remainder of this section discusses the structure of WEBS, the details of which are taken from SR–Amex–95–43 and its Amendments Nos. 1, 2, 3. The information provided here is significantly condensed from Amex's filing. CHX notes that the Amex has represented that customers who purchase WEBS will receive a detailed prospectus from the issuer.

[7] *See* Amex WEBS Approval Order, *supra* note 5.

[8] These are the same trading hours as at the CHX.

[9] The Commission notes that CHX has filed a proposed rule change (SR–CHX–97–21) which would require, in part, that any CHX member, before recommending a transaction in any security, have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

[10] *See supra* note 3.

[11] 15 U.S.C. 78f(b)(5).

[12] The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in WEBS can redeem them in creation unit size aggregations only.

[13] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* Amex WEBS Approval Order, *supra* note 5. The Commission hereby incorporates by reference the discussion and rational for approving WEBS provided in the Amex WEBS Approval Order.

[15] As noted in the Background and Description section *supra*, the estimated cost at the time of the approval for trading on Amex was $10 to $20 per individual WEBS.

[16] The Commission believes that WEBS will not trade at a material discount or premium in reletion to their net asset value, because of potential arbitrage opportunities. *See* Amex WEBS Approval Order, *supra* note 5, at 31. the mere potential for arbitrage should keep the market price of WEBS comparable to their net asset values; therefore, arbitrage activity likely will not be significant. In addition, the Fund will redeem in-kind, thereby enabling the Fund to invest virtually all of its assets in securities comprising the MSCI Indices.

[17] 17 CFR 270.22c–1. Investment Company Act Rule 22c–1 generally provides that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of an open-end management investment company generally is computed once daily Monday to Friday as designated by the investment company's board of directors. The Commission granted WEBS an exemption from this provision to allow them to trade in the secondary market at negotiated prices. *See* Amex WEBS Approval Order, *supra* note 5.

[18] 17 CFR 240.12f–5.

have listing standards comparable to those of the primary market on which the security is listed. The Commission finds that adequate rules and procedures exist to govern the trading of WEBS on CHX, pursuant to UTP. WEBS will be deemed equity securities subject to CHX's rules governing the trading of equity securities. Accordingly, the Exchange's existing general rules that currently apply to the trading of equity securities will also apply to WEBS. In addition, CHX's Article XXVIII, rule 24,[19] which contains specific listing and delisting criteria to accommodate the trading of Units, will apply to the trading of WEBS.[20] These criteria should help to ensure that a minimum level of liquidity will exist in each WEBS series to allow for the maintenance of fair and orderly markets. The delisting criteria allow the Exchange to consider the suspension of trading and the delisting of a series of Units, including suspending trading in WEBS traded on the Exchange pursuant to UTP, if an event were to occur that made further dealings in such securities inadvisable. This will give the Exchange flexibility to suspend trading in WEBS if circumstances warrant such action. Accordingly, the Commission believes that CHX's equity rules in general, and CHX's Article XXVIII, Rule in 24 particular, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.[21]

The Commission notes that once CHX receives approval to trade WEBS pursuant to UTP, CHX intends to request that WEBS be declared an Intermarket Trading System ("ITS") ellgible security. WEBS could then be traded through ITS, subjecting the trading of WEBS to all the ITS rules and procedures, including the ITS trade-through rule.

Disclosure

The Commission believes that CHX's proposal should provide for adequate disclosure to investors relating to the terms, characteristics, and risks of trading WEBS. All WEBS investors, including those purchasing WEBS on CHX pursuant to UTP, will receive a prospectus regarding the product. Because WEBS trading on CHX pursuant to UTP will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply to both the initial investors and to investors purchasing such securities in the secondary market on CHX. The prospectus addresses the special characteristics of WEBS, including a statement regarding their redeemability and method of creation, and that WEBS are not individually redeemable.

CHX has also drafted an information circular that will be sent to all CHX members prior to the commencement of trading of WEBS. The Commission notes that it has reviewed this draft information circular and believes it adequately explains the unique characteristics and risks of WEBS. The circular will note, for example, Exchange member responsibilities, including that before an Exchange member undertakes to recommend a transaction in WEBS, it should make a determination that it is in compliance with applicable rules of other self-regulatory organizations of which it is a member, including suitability rules.[22] The circular will also address members' responsibility to deliver a prospectus to all investors purchasing WEBS, as well as highlight the characteristics of WEBS, including that they are only redeemable in Creation Unit size aggregation.[23] The Commission also notes that CHX's draft circular is essentially the same as the Amex WEBS circular previously reviewed by the Commission. The Commission also believes that CHX's draft information circular adequately addresses Amex's comments.[24]

Dissemination of WEBS Portfolio Information

The Commission believes that since Amex is disseminating the Values for the seventeen WEBS series, investors will be provided with timely and useful information concerning the value of WEBS, on per WEBS basis. The Commission notes that information is disseminated through facilities of the CTA and reflects the currently available information concerning the value of the assets comprising the Deposit securities. The information is disseminated every 15 seconds during the hours of 9:30 a.m. to 4:00 p.m., Eastern standard time and will be available to all investors, irrespective of where the transaction is executed. Also, since the value is expected to closely track the applicable WEBS series, the Commission believes the Values will provide investors with adequate information to determine the intra-day value of a given WEBS series.[25] In the Amex WEBS Approval Order, the Commission noted that it expected Amex to monitor the disseminated Value, and if Amex determines that the Value does not closely track applicable WEBS series, it will arrange to disseminate an adequate alternative.

Surveillance

The Commission notes that CHX has submitted surveillance procedures for WEBS and believes that those procedures are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with specialists purchasing and redeeming Creation Units. The Exchange has represented that its surveillance procedures should allow it to identify situations where specialists purchase or redeem Creation Units to ensure compliance with CHX Article XXX, Rule 23(a), which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security.[26]

Specialists

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such security and facilitate a specialist's market making responsibilities. In addition, because the specialist only will be able to purchase and redeem WEBS on the same terms and conditions as any other investor (and only at the NAV), and Creation transactions must occur through the distributor and not directly with the issuer, the Commission believes that concerns regarding potential abuse are minimized. As noted above, the Exchange's surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.[27]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–CHX–96–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25687 Filed 9–26–97; 8:45 am]

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[19] The Commission approved generic rules for the listing and/or trading of investment company units on CHX in 1996. *See* Securities Exchange Act Release No. 37589 (August 21, 1996), 61 FR 44370 (August 28, 1996).

[20] The Commission notes the listing and delisting criteria is similar to those adopted by Amex to trade WEBS.

[21] The Commission also believes that the proposed rule change should help protect investors and the public interest, and help perfect the mechanisms of a national market system, in that it will allow for the trading of WEBS on CHX pursuant to UTP, making WEBS more broadly available to the investing public.

[22] *See supra* note 9.

[23] The Commission notes that the information circular also discusses exemptive relief granted by the Commission from certain rules under the Act, exemptions that CHX members can rely upon. The applicable rules are: Rule 10b–10(e); Rule 10b–13; Rule 10b–17(b)(2); Rule 11(d)(1); Rules 15cl–5 and 15cl–6; and Regulation M to the extent it superseded Rules 10b–6 and 10b–7.

[24] In particular, in response to the comments in Amex's comment letter, the Commission notes it has reviewed CHX's draft information circular and that it believes the circular adequately explains the unique characteristics and risks of WEBS, including member responsibilities, and that it identifies the Exchange personnel to contact regarding issues relating to the trading of WEBS.

[25] In addition, the Amex WEBS Approval Order states that the statement of additional information ("SAI") to the preliminary prospectus states that each series will calculate its NAV per share at the close of the regular trading session for the NYSE on each day that the Amex is open for business. NAV generally will be based on the last quoted sales price on the exchange where the security primarily is traded. *See* Amex WEBS Approval Order, *supra* note 5.

[26] The Commission notes that, in the Amex WEBS Approval Order, it discussed the concerns raised when a broker-dealer is involved in the development and maintenance of e stock index upon which a product such as WEBS is based. Adequate procedures to prevent the misuse of material, non-public information regarding changes to component stocks in an MSCI index have been adopted and should help to address concerns raised by Morgen Stanley's involvement in the management of the Indices.

[27] The Commission notes that with respect to WEBS, broker-dealers and other persons are cautioned in the prospectus and/or the Fund's SAI that some ectivities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933.

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39114; File No. SR–DTC–97–15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Coupon Collection Service

September 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 15, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises DTC's fee schedule for its coupon collection service ("CCS"). DTC will give participants that use CCS a discount of $0.25 per shell for any month in which the participant's shell deposit volume is 6,250 or greater. If a participant's year-end shell deposit volume is 75,000 or greater, DTC will rebate to the participant the $0.25 per shell for any month(s) in that year for which the participant did not receive a discount because its shell deposit volume was less than 6,250.

In addition, DTC will charge participants $0.60 per shell received without a valid CUSIP number. This additional fee is designed to serve as an incentive to Participants to identify their shells properly. As all of DTC's fees are reviewed on an annual basis, this surcharge will be reevaluated each year, based on the proportion of shells that DTC receives without a valid CUSIP number.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CCS provides participants with a method for the collection of interest relating to coupons from municipal bearer bonds.[3] Participants using CCS are required to deposit coupons in a standard sealed envelope or "shell" each of which may contain no more than 200 coupons. Participants also must identify each shell properly, which includes labeling each shell with a valid CUSIP number.[4] After verifying the contents of the shells, DTC credits the participants with the interest due on the coupons contained in the shells.

The purpose of the proposed rule change is to revise the fees associated with CCS. DTC continually strives to align service fees with estimated service costs and the subject revisions are part of that effort.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among DTC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Not applicable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(e)(2) thereunder[7] because the proposal establishes or changes a due, fee, or other charge imposed by DTC.[8] At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a more detailed description of CCS, refer to Securities Exchange Act Release No. 35750 (January 22, 1996), 61 FR 2852 [File No. SR–DTC–95–18] (order approving proposed rule change).

[4] The coupons contained in a shell must all be for the same CUSIP number, series, and payable date.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(e)(2).

[8] DTC's rule filing originally was submitted for consideration pursuant to Section 19(b)(2) of the Act. 15 U.s.C. 78s(b)(2). However, DTC subsequently requested that the Commission consider the rule filing pursuant to Rule 19(b)(3)(A) of the Act. Letter from Larry Thompson, Senior Vice President and Deputy General-Counsel, DTC (September 22, 1997).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–97–15 and should be submitted by October 20, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25692 Filed 9–26–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39110; File No. SR–NSCC–97–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of a Proposed Rule Change Relating to Changes in Membership Standards

September 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 5, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend NSCC's membership standards to increase the minimum excess net capital requirements imposed on members and applicants for membership.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend NSCC's membership standards to increase the amount of net capital required over the Commission's minimum net capital requirements ("excess net capital").[3] Currently, the excess net capital requirement for all members is $50,000. The proposed amendments: (i) Will increase the excess net capital requirement for full service members to $500,000 except for municipal securities brokers' brokers[4] for which the excess net capital requirement will be $100,000[5] and (ii) will increase the excess net capital requirement for members that clear for other broker-dealers to $1,000,000.

NSCC's current excess net capital requirements were implemented in 1976 when NSCC was formed. The environment in which NSCC members operate has changed significantly since that time. In terms of the change in the value of money alone, $50,000 in 1976 dollars is worth nearly $150,000 today. Trading volumes and the average value of securities traded have increased even more significantly. The Commission also has changed its minimum net capital requirements for most NSCC members during this time period from $25,000 (*i.e.*, one-half of NSCC's current excess net capital requirement) to $250,000 (*i.e.*, one-half of NSCC's proposed excess net capital requirement).[6]

As a result of the changing environment, it has been NSCC's recent experience that when a member with less than $500,000 in excess net capital has problems with even one transaction that would not be considered large by today's standards, concerns arise with respect to that member's ability to settle on a timely basis and to post additional required collateral with NSCC. Additionally, even though the size of the exposure due to the failure of any one of these small firms is relatively small, NSCC believes that the time and resources that it must spend addressing problems related to small firms is disproportionate to the magnitude of the potential loss and is unjustifiably disruptive of NSCC's daily surveillance process.

NSCC also believes that the owners or principals of an NSCC member should have a meaningful amount of their own assets at stake to absorb losses before a member's excess net capital falls below regulatory minimums and the member is required to cease doing business. NSCC believes that this provides a strong motivation for firms to implement appropriate risk management controls on their own. In today's environment, NSCC does not believe that $50,000 is a meaningful amount and believes that $500,000 is a more appropriate amount.[7]

In addition, NSCC has recognized that members that clear for other broker-dealers present special risks to the clearance and settlement process. These firms become legally responsible for the settlement of transactions of other firms and generally do not have complete control over those transactions. Many of these firms have surveillance procedures and other risk controls in place and can cease clearing for a correspondent broker-dealer if they perceive that a risk has developed. But the clearing arrangements of these firms and marketplace rules generally require that the clearing firm (*i.e.*, the NSCC member) take on settlement responsibility for most of the correspondent broker-dealer's transactions before the clearing firm has had a chance to review such transactions. This increases the possibility that a clearing firm will be responsible for problematic or risky transactions. In light of the higher risk presented by these firms, NSCC believes that they should be subject to higher minimum capital standards.

Currently, twenty-nine NSCC members do not meet the proposed $500,000 standard for full service members. For this reason, NSCC proposes that the new standard become effective on the later of (a) one year from the date of publication in the **Federal Register** of the notice of the filing of this rule change or (b) the date of Commission approval of this rule change. NSCC believes that this effective date will give those firms sufficient time to obtain appropriate capital infusions or make other clearing arrangements.

In addition, two NSCC members that clear for other broker-dealers do not meet the $1,000,000 standard. Therefore, NSCC proposes that this new standard become effective on the later of (a) six months from the date of publication in the **Federal Register** of the notice of the filing of this rule change or (b) the date of Commission approval of this rule change. NSCC believes that this effective date will give those firms sufficient time to obtain appropriate capital infusions.

During the interim period, if any, between Commission approval of this rule change and its effective date, NSCC will not consider applicants that do not meet the new minimum capital standards other than those firms applying for membership in connection with the agreement between NSCC and the Stock Clearing Corporation of Philadelphia ("SCCP") under which SCCP has agreed to cease operations as a clearing corporation.

In view of the facts that: (i) The costs of surveillance and of collateral collection procedures in both time and resources falls on NSCC and all of its members and that these costs are disproportionately high relative to the size of the potential loss for members with less than $500,000 in excess net capital, (ii) the default or insolvency of any settling member potentially imposes burdens and costs on NSCC and all of its members, and (iii) the changes proposed by this filing are meant to reduce these burdens and costs, NSCC believes that this filing is consistent with Section 17A of the Act[8] and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose a burden on competition. In fact, NSCC believes that the proposed rule change will rectify a burden on competition that has slowly developed due to changing circumstances by having the costs of risk management more equitably borne by all NSCC members and by requiring all firms to have a meaningful amount of capital at risk. NSCC believes the increased capital requirements better reflect current marketplace realities.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–97–07 and should be submitted by October 20, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25690 Filed 9–26–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39098; File No. SR–NYSE–97–14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Shareholder Approval Policy

September 19, 1997.

I. Introduction

On May 16, 1997, the New York Stock Exchange, Inc., ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to its Shareholder Approval Policy.[3] The proposed rule change was published for comment in Securities Exchange Act Release No. 38716 (June 5, 1997), 62 FR 32135 (June 12, 1997). No comment letters were received, however, on August 8, 1997, the Exchange submitted a letter in support of its filing.[4]

II. Description of the Proposal

Currently, the Exchange's shareholder approval policy requires a listed company to obtain shareholder approval in four situations:

• Related-Party Transactions: when selling more than one percent of the company's stock, for either cash or other assets, to a "related party," define to mean officers, directors and holders of five percent or more of the company's common stock (or stock with five

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] The minimum net capital requirements are set forth in Rule 13c3–1(a) under the Act. 17 CFR 240.15c3–1(a).

[4] "Municipal securities brokers' broker" is defined in Rule 15c3–1(a)(8) under the Act. 17 CFR 240.15c3–1(a)(8).

[5] NSCC believes that this is consistent with the Commission's approach of maintaining separate capital rules for municipal securities brokers' brokers.

[6] *See* 17 CFR 240.15c3–1(a)(2)(i).

[7] Under the proposed rule change, NSCC will maintain its current right to impose higher capital requirements on members depending on the circumstances and type of business that the member is in.

[8] 15 U.S.C. 78q–1.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NYSE's Shareholder Approval Policy is contained in Paragraphs 312.03 through 312.05 of the Exchange's Listed Company Manual.

[4] Letter from Noreen M. Culhane, Senior Vice President, Listings and Client Service, NYSE, to Howard Kramer, Associate Director, Division of Market Regulation, Commission (August 7, 1997).

percent or more of the company's voting power);

• Private Sales: when selling 20 percent or more of the company's stock, other than in a public offering for cash;

• Stock Option Plans: when adopting stock option plans that are not "broadly-based"; or

• Change of Control: with respect to any issuance of stock that results in the change of control of the company.

The Exchange is modifying the first two of these requirements to provide listed companies with flexibility in their financing plans. In addition, the rule change restructures the wording of the Policy in order to simplify the language. With the exception of the two changes to the shareholder approval policy described below, this restructuring does not substantially change the Exchange's shareholder approval policy.

Related-Party Transactions

Issuers sometimes seek cash financing from one or more of their "substantial" security holders (which the Exchange defines as a person holding either five percent of the company's stock or five percent of the company's voting power). The Exchange now requires shareholder approval if a sale to a substantial security holder results in a one percent dilution.

The Exchange is proposing that cash sales of stock to a substantial security holder be exempt from the Policy if the issuance is limited to five percent of the issuer's stock. Further, the exemption from the policy would apply only if the sale is at a price at least as high as each of the book and market value of the stock. Shareholder approval for issuances that result in a dilution of more than one percent of the issuer's stock would continue to be required under the policy for sales of stock to any related party (including substantial security holders) for assets other than cash and cash sales to officers and directors.

Private Sales

The Exchange requires approval of all issuances that result in a 20 percent dilution, except for public offerings for cash. The Exchange proposes to make a private cash sale of 20 percent or more of a company's stock exempt from the policy if (i) the sales is at a price at least as high as each of the book and market value of the stock and (ii) the sale is a "bona fide financing." A bona fide financing is a cash sale either (i) in which a registered broker-dealer acts as an intermediary in the transaction or (ii) directly by an issuer to multiple purchases in which no one purchase, or group of related purchases, acquires more than five percent of the issuer's common stock or voting power. The five percent limit ensures that control persons do not disproportionately increase their ownership in a listed company through privately-negotiated sales, even if the sale price is at the market.[5]

The Exchange has consulted with several committees, including its Legal Advisory Committee, the Listed Company Advisory Committee, and the Individual Investor Advisory Committee, and represents that the committees have reviewed the proposal and encourage approval of the proposed change.

The Exchange believes the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

III. Discussion

The Commission believes NYSE's proposal is consistent with the requirements of Section 6(b)(5) of the Act.[7] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and in general, to further investor protection and the public interest.

NYSE is proposing to amend its Shareholder Approval Policy to exempt cash sales of stock to a substantial security holder if the issuance is limited to five percent of the issuer's stock. The exemption would apply only if the sale is at a price at least as high as each of the book and market value of the stock. The Commission believes the proposed amendment is reasonable and consistent with the Act. Specifically, the Commission believes that cash sales do not create the same valuation concerns as do sales of stock for non-cash assets, and that such an exemption offers issuers flexibility when selling a limited percentage of stock for cash to a substantial security holder. Furthermore, the Commission notes that the Exchange will continue to require shareholder approval for certain issuances resulting in a dilution of more than one percent of the issuer's common stock, including sales of stock to any related party for assets other than cash, and cash sales to officers and directors.

The Exchange is also proposing to make a private cash sale of 20 percent or more of a company's stock exempt from the Shareholder Approval Policy if the sale is at a price at least as high as each of the book and market value of the stock, and the sale is a "bona fide financing." The Exchange defines a "bona fide financing" as a sale through a broker-dealer acting as an intermediary or a sale to multiple parties in which no one person acquires more than five percent of the issuer's stock. In its letter of support the Exchange states that it has historically exempted public cash offerings from Section 312.03(c) of the Manual because there is a certain amount of disclosure and pricing discipline in public offerings to protect stock holders from potential abuse. The Exchange states that it believes market practices and changes to the Commission's rules have blurred the differences between public and private sales. The Exchange further notes that companies now engage in broad-based sales of securities convertible into listed common stock under Commission Rule 144A. In these transactions, the NYSE states that registered broker-dealers perform functions similar to that of underwriters by conducting due diligence, buying the securities from the issuer, and reselling them to qualified institutional buyers. Similarly, companies can raise capital by selling securities privately in direct transactions with multiple parties. The NYSE believes that in both cases the offerings have characteristics similar to public offerings, noting that such sales can more closely resemble public offerings for cash than sales of stock pursuant to a shelf registration which are currently exempt from the shareholder approval policy.

While the Commission recognizes that certain types of private offerings, such as those structured to facilitate resales exclusively between and among institutional investors pursuant to Commission Rule 144A, have certain characteristics that may make them resemble public offerings, there are certain elements that sharply distinguish private offerings from public offerings such as the "restricted" status of the privately placed securities,[8] and the absence of both a prescribed public disclosure document and a Section 11 remedy.[9] Nevertheless, the Commission believes that the limitations on price and the requirement that the sales be bona fide financing appropriately limit the availability of the exemption and should provide reasonable protections for shareholders.

In particular, requiring that private cash sales be made to multiple, unrelated purchasers in which no one purchaser or group of related purchasers can acquire more than five percent of the issuer's common stock or voting power should help to prevent the exemption from being used by issuers to avoid a shareholder vote when placing large blocks of stock with a particular purchaser. Moreover, as the NYSE states, this requirement should also help to impose pricing discipline on the transaction, as well as to ensure that control persons do not disproportionately increase their ownership in a company through private sales. Further, as the NYSE indicates, the alternative requirement that a broksr dealer act as an intermediary to qualify for the private cash offering exemption is meant to cover Rule 144A sales. We agree with the NYSE that market practices in this area have developed involving both due diligence and pricing that could serve to protect shareholders from abuse of unfair stock placements. The Commission also believes that the existing disclosure requirements for private equity offerings also act as an effective safeguard against potential abuse of private cash offerings.[10] In summary, the Commission believes that the limitation of the exemption to only a "bona fide private financing", as defined above, coupled with the requirement that the sale be at a price at least as high as each of the book and market value of the stock provides sufficient safeguards for shareholders to support the exemption to the Policy in these limited circumstances.

VI. Conclusion

The Commission believes the proposed change should provide listed companies with flexibility in their financing plans, while still substantially preserving the significant shareholder rights afforded under the Policy. Finally, the Commission believes the restructuring of the wording of the Policy should simplify and clarify the Policy.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NYSE, and in particular Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–NYSE–97–14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25770 Filed 9–26–97; 8:45 am]

BILLING CODE 8010–01–M

[5] The rule change also clarifies that shareholder approval is required if any one of the four requirements is triggered, notwithstanding the fact that the other requirements of the Policy have not been triggered. For example, a direct sale by a company of more than 20 percent of its stock is a bona fide financing still would require shareholder approval as a related-party transaction if the company sells more than one percent of the stock to an officer or director.

[6] 15 U.S.C. § 78f(b)(5).

[7] 15 U.S.C. § 78f(b)(5).

[8] *See* Preliminary note six, and Preliminary notes three and four to Securities Act Rule 144A (Reg. § 230.144A).

[9] 15 U.S.C. § 77k.

[10] *See* Exchange Act Form 10–Q, Item 2(c); and Exchange Act Form 8–K, Item 9.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 19, 1997

The following Applications for Certificate of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases, a final order without further proceedings.

Docket Number: OST–97–2913.
Date Filed: September 17, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 15, 1997.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102 and 41108, and Subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity authorizing Delta to engage in scheduled foreign air transportation of persons, property and mail between the following terminal points: (1) Atlanta, Georgia and Tokyo, Japan; (2) Portland, Oregon and Osaka, Japan; and (3) Portland, Oregon and Fukuoka, Japan.

Docket Number: OST–97–2914.
Date Filed: September 17, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 15, 1997.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 370 (segment 1) (Dallas/Ft. Worth-London/Amsterdam/Brussels), as reissued by Order 96–5–9, May 12, 1996.

Docket Number: OST–97–2918.
Date Filed: September 17, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 15, 1997.
Description: Application of Pan American World Airways, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for issuance of a certificate of public convenience and necessity authorizing foreign air transportation. Specifically, Pan Am is seeking authority to engage in scheduled foreign air transportation of persons, property and mail between: (1) The co-terminal points Miami, Florida, and New York, New York, on the one hand, and Santo Domingo, Dominican Republic, on the other; and (2) the co-terminal points Fort Lauderdale, and Miami, Florida, and New York, New York on the one hand, and Nassau, Bahamas, on the other.

Docket Number: OST–97–2919.
Date Filed: September 19, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 17, 1997.
Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for renewal of its Route 383 certificate authority to provide scheduled foreign air transportation of persons, property and mail between Newark, New Jersey, and London, U.K., and to integrate its Route 383 authority with Continental authority at other points.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–25764 Filed 9–26–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 165–30]

Designation of Acting Commissioner of Customs; Authority Delegation

Dated: September 17, 1997.

Pursuant to the authority vested in the Secretary of the Treasury, including the

authority vested by 31 U.S.C. 321(b) and 19 U.S.C. 2072(b), and it is ordered that:

1. Samuel H. Banks, Deputy Commissioner, United States Customs Service, shall act as Commissioner of Customs until a new Commissioner of Customs who is appointed pursuant to 19 U.S.C. 2071 executes the oath of office. Mr. Banks is authorized to use the title of Acting Commissioner of Customs.

2. All duties and powers carried out by the Commissioner of Customs prior to the effective date of this Order shall be carried out by the Acting Commissioner of Customs.

3. *Effective Date.* The foregoing arrangements are effective as of September 1, 1997. To the extent that any action heretofore taken consistent with this Order may require ratification, it is hereby approved and ratified.

4. *Cancellation.* This temporary Order shall terminate without any further action when a new Commissioner of Customs who is appointed pursuant to 19 U.S.C. 2071 executes the oath of office.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 97–25737 Filed 9–26–97; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 97–101]

The Department of the Treasury's Odor Recognition Proficiency Standard for Explosives Detection Canines (97R–2543P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of availability.

SUMMARY: The Department of the Treasury has established an odor recognition proficiency standard for explosives detection canines. This standard includes a minimum odor recognition proficiency test which may be used by agencies employing explosives detection canines. Further testing and validation of this standard will continue for a one year period beginning on October 1, 1997 and ending on September 30, 1998. A copy of this standard is available to all interested persons.

ADDRESSES: To receive a copy of the Department of the Treasury's Odor Recognition Proficiency Standard, send a written request, on official law enforcement or government letterhead, to: Chief, Canine Operations Unit, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Room 6200, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT:

Rhonda Bokorney, Chief, Canine Operations Unit, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Washington, DC 20226 (202–927–7930).

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1998, the Omnibus Consolidated Appropriations Act of 1997, Pub. L. 104–208, authorized the Secretary of the Treasury to establish a standard for explosives detection canines. Section 653(a) of the Act provides the following: Sec. 653. (a) Authorization.—The Secretary of the Treasury is authorized to establish scientific certification standards for explosives detection canines, and shall provide, on a reimbursable basis, for the certification of explosives detection canines employed by Federal agencies, or other agencies providing explosives detection services at airports in the United States.

The Secretary of the Treasury requested the Bureau of Alcohol, Tobacco and Firearms (ATF) to develop the standard. The standard establishes a minimum Odor Recognition Proficiency Test which may be used by law enforcement agencies employing explosives detection canines. ATF solicited recommendations from other Federal law enforcement agencies employing explosives detection canines. These recommendations were incorporated into the standard.

Additionally, ATF has agreed to test this standard for validation for a one year period. This standard is available for consideration and use by law enforcement agencies. A copy of this standard is available to all interested persons.

Authority and Issuance

Authority: Sec. 653, Pub. L. 104–208, 110 Stat. 3009.

Raymond W. Kelly,

Under Secretary.

[FR Doc. 97–25647 Filed 9–26–97; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New]

Submission for OMB Emergency Review; Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

Dated: September 22, 1997.

In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., Chapter 35), this notice announces that the Office of Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) utilizing emergency review procedures. OMB approval has been requested by September 30, 1997. A copy of this PRA submission, with applicable supporting documentation, may be obtained from Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981.

Comments must be submitted on or before September 29, 1997. Send comments and recommendations on the proposal for the collection of information to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650.

OMB is particularly interested in comments which: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected, and (4) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Request for IRS 1099–MISC Tax Collection and Federal 1057 Socio-Economic Status, VA Form Letter 4–555.

OMB Control Number: 2900—New.

Type of Review: New Collection.

Abstract: Federal agencies are required to collect Internal Revenue Service (IRS) 1099 tax reporting and Federal 1057 socio-economic information on Federal I.M.P.A.C. (International Merchant Purchase Authorization Card) credit card transactions. The Department of Veterans Affairs (VA), with the assistance of an outside entity, will send VA Form Letter 4–555 to collect the necessary information from merchants the Federal governments has done business with using the I.M.P.A.C. credit card so that they may provide adequate reporting for CY 1997. The form letter will support the validity and urgency for the collection of information and provide a standardized format for reporting. The General Services Administration (GSA) could not issue this type of collection of information at this time, due to the current re-procurement status for the purchase credit card.

It is essential to the VA's reporting requirements that this type of information be collected for our I.M.P.A.C. card transactions during CY 1997. By law, VA as well as all Federal agencies, must report 1099 status and also have requirements to report the socio-economic status of the merchants with whom we do business.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 62,500 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 750,000.

Dated: September 22, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–25771 Filed 9–26–97; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Persian Gulf Expert Scientific Committee; Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with P.L. 92–463, gives notice that a meeting of the VA Persian Gulf Expert Scientific Committee will be held on:

Monday, November 17, 1997, at :30 a.m.–5:00 p.m.

Tuesday, November 18, 1997, at 8:30 a.m.–1:30 p.m.

The location of the meeting will be 810 Vermont Avenue, N.W., Washington, D.C., Room 230.

The Committee's objectives are to advise the Under Secretary for Health about medical findings affecting Persian Gulf era veterans.

At this meeting the Committee will review all aspects of patient care and medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development, veterans benefits and/or training aspects for patients and staff.

All portions of the meeting will be open to the public except from 4:00 p.m. until 5:00 p.m. on November 17 and from 12:30 p.m. to 1:30 p.m. on November 18, 1997. During these executive sessions, discussions and recommendations will deal with medical records of specific patients and individually identifiable patient medical histories. The disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. Closure of this portion of the meeting is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(6).

The agenda for November 17 will begin with presentations on Depleted Uranium and a Follow-up on ill Persian Gulf Veterans. The first days' agenda will also cover a presentation on Chemical/Biological Agents.

On November 18 the Committee will hear updates on the Chronic Fatigue Syndrome and Leishmania.

Additional information concerning these meetings may be obtained from the Executive Secretary, Office of Public Health & Environmental Hazards, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: September 23, 1997.

By direction of the Secretary-Designate:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–25772 Filed 9–26–97; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Development at the VAMC, North Little Rock, AR

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Veterans Affairs Medical Center at North Little Rock, Arkansas, for an Enhanced-Use lease development. The Department intends to enter into a long-term lease of real property with the developer whose proposal will provide the most advantageous combination of services and revenue as consideration to the VA while retaining the therapeutic benefit of golf for patients at no cost to the Department.

FOR FURTHER INFORMATION CONTACT: Jacob Gallun, Office of Asset and Enterprise Development (189), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC, 20420, (202) 565–4307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Sec 8161 *et seq.* specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: September 22, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97–25715 Filed 9–26–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 188
Monday, September 29, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Notice of Public Hearing and Request for Comments on Procedures for Recording Patent Prosecution File Histories

Correction

In notice document 97–25068 beginning on page 49471, in the issue of Monday, September 22, 1997, make the following corrections:

1. On page 49471, in the second column, in the fourth line, "Mr." should read "M.".

2. On the same page, in the same column, under **Background**, in the second line, "persecution" should read "prosecution".

3. On the same page, in the same column, in the last line, "consist" should read "consists".

4. On page 49473, in the third column, in the 29th line, "transactions" should read "transcriptions".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-177-006]

Steuben Gas Storage Company; Notice of Compliance Filing

Correction

In notice document 97–25290 appearing on page, 49968 in the issue of Wednesday, September 24, 1997, make the following correction:

On page 49968, in the third column, the docket number is corrected to read as set forth above.

BILLING CODE 1505-01-D

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AB75

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Cumulative Voting

Correction

In rule document 97–25262 beginning on page 49907, in the issue of Wednesday, September 24, 1997, make the following correction:

On page 49907, in the second column, in the **DATES** section, in the second line, "October 24, 1997" should read "30 days after publication in the **Federal Register**".

BILLING CODE 1505-01-D

federal register

Monday
September 29, 1997

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1997–1998 Late Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AE14

Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1997–98 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This responds to tribal requests for Service recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of seasons and bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATE: This rule takes effect on October 1, 1997.

ADDRESSES: The public may inspect comments received during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. The public should send communications regarding the documents to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Room 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 11, 1997, **Federal Register** (62 FR 43042), the Service proposed special migratory bird hunting regulations for the 1997–98 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) on-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 - September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the March 13, 1997, **Federal Register** (62 FR 2054), the Service requested that tribes desiring special hunting regulations in the 1997–98 hunting season submit a proposal including details on:

(1) requested season dates and other regulations to be observed;

(2) harvest anticipated under the requested regulations;

(3) methods that will be employed to measure or monitor harvest;

(4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and

(5) tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. The Service has successfully used the guidelines since the 1985–86 hunting season. The Service finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season hunting was addressed in the rulemaking published in the **Federal Register** on September 2, 1997 (62 FR 46420). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

This year, the Service's annual breeding duck survey estimated total ducks in the traditional survey area was 42.6 million, an increase of 13 percent from that in 1996 and 31 percent higher than the long-term average. The total duck fall flight forecast is approximately 92 million birds, compared to 90 million last year. This estimate is the highest recorded since calculations were initiated in 1970. As a result, the Service has responded by proposing Flyway frameworks that are slightly expanded from those of last season for the 1997–98 waterfowl hunting season (August 25, 1997, **Federal Register**, 62 FR 45078). The tribal seasons established below generally reflect the Flyway frameworks.

Tribal Proposals

For the 1997–98 migratory bird hunting season, the Service proposed regulations for 20 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 15 tribes made proposals with late seasons. Twelve tribes were represented in the early-season regulations. Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on August 11, 1997, closed on August 21, 1997.

Public Comments On Tribal Proposals

The Service received a letter from the Washington Department of Fish and Wildlife (WDFW), dated August 18, 1997, concerning the potential impacts of proposed tribal member seasons on brant populations. The WDFW was concerned that several tribes had proposed long brant seasons that could potentially impact populations. The WDFW encouraged a more conservative approach for all tribal brant hunting seasons in Puget Sound by limiting seasons to the existing Federal framework of 16 days.

In general, Flyway frameworks are liberally interpreted when application is made to tribal member regulations. This results from the special status of Native Americans and specific treaty rights. Seasons for non-tribal members are established within the general Flyway framework of 16 days with a daily bag limit of 2 brant. While the Service shares the concern of the WDFW for Pacific brant populations, we believe that current populations of brant can support the tribes' limited harvest. Further, we note that most of the tribes have very limited hunting opportunity for brant. However, the Service will continue to monitor brant populations and encourages the tribes to closely monitor their harvest.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service. Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

Endangered Species Act Considerations

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations were conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption ADDRESSES.

Executive Order (E.O.) 12866

Collectively, the rules covering the overall frameworks for migratory bird hunting are economically significant and are reviewed by the Office of Management and Budget (OMB) under E.O. 12866. This rule is a small portion of the overall migratory bird hunting frameworks and was not individually submitted and reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress and has been declared major. Because this rule establishes hunting seasons, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Regulatory Flexibility Act

Overall, migratory bird hunting regulations have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). In the March 13, 1997, **Federal Register**, the Service reported measures it took to comply with requirements of the Act. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses in 1996. Copies of the Analysis are available upon request from the Office of Migratory Bird Management.

Paperwork Reduction Act

The Department examined these regulations under the Paperwork Reduction Act of 1995 and found no information collection requirements.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the tribes would have insufficient time to communicate these seasons to their member and non-tribal hunters and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 et seq.), prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this final rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

AUTHORITY: 16 U.S.C. 703–712 and 16 U.S.C. 742 a—j.

(Editorial Note: The following annual hunting regulations provided for by § 20.110 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.)

2. Section 20.110 is amended by revising paragraphs (a), (c), (e), (f), (h), (k) and (l); and by adding paragraphs (m), (n), (o), (p), (q), (r), (s), and (t) to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters)

Doves

Season Dates: Open September 1, close September 15, 1997; then open November 16, close January 15, 1998.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

Ducks (including mergansers)

Season Dates: Begin October 4, 1997, close January 5, 1998.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 pintails, 2 redheads, 2 Mexican ducks, 2 hen mallards, and 1 canvasback. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate. The possession limit is twice the daily bag limit.

Geese

Season Dates: Begin October 18, 1997, end January 18, 1998.

Daily Bag and Possession Limits: 5 geese, including no more than 2 dark (Canada) geese and 3 white (snow, blue, Ross's) geese. The possession limit is 5.

General Conditions: All persons 12 years and older must possess a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

* * * * *

(c) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

Ducks

Michigan, 1836 Treaty Zone:

Season Dates: Open September 20, 1997, close January 20, 1998.

Daily Bag Limit: 10 ducks, which may include no more than 1 pintail, 1 canvasback, 1 black duck, 1 hooded merganser, 2 wood ducks, 2 redheads, and 5 mallards (only 2 hen mallards).

Canada Geese

Michigan, 1836 Treaty Zone:

Season Dates: Open September 1, close November 30, 1997, and open January 1, 1998, close February 8, 1998.

Daily Bag Limit: 5 geese.

Other Geese (Brant, Blue, Snow, and White-fronted)

Michigan, 1836 Treaty Zone:

Season Dates: Begin October 1, end November 30, 1997.

Daily Bag Limit: 5 geese.

Sora Rails

Michigan 1836 Treaty Zone:

Season Dates: Open September 1, close November 14, 1997.

Daily Bag Limit: 5 rails.

Common Snipe

Michigan 1836 Treaty Zone:

Season Dates: Open September 1, close November 14, 1997.

Daily Bag Limit: 5 snipe.

Woodcock

Michigan 1836 Treaty Zone:

Season Dates: Open September 1, close November 14, 1997.

Daily Bag Limit: 5 woodcock.

General Conditions: Persons twelve years and older must possess a valid Grand Traverse Band Tribal license before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

* * * * *

(e) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Non-tribal Hunters).

Tribal Members Only

Ducks

Season Dates: Open September 15, 1997, close January 31, 1998.

Daily Bag and Possession Limits: 7 ducks, including no more than 3 pintails, 2 hen mallards, and 1 canvasback.

Geese

Season Dates: Open September 15, 1997, close January 31, 1998.

Daily Bag and Possession Limits: 4 geese, including 4 dark geese but not more than 3 light geese. The possession limit is twice the daily bag limit.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

Non-tribal Hunters

Ducks

Season Dates: Open October 4, 1997, close January 18, 1998. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays and for a continuous period in the month of December. Nontribal hunters should contact the tribe for more detail on hunting days.

Daily Bag and Possession Limits: 7 ducks, including no more than 3 pintails, 2 hen mallards, and 1 canvasback.

Geese

Season Dates: Begin October 4, 1997, close January 11, 1998.

Daily Bag and Possession Limits: 4 geese, including 4 dark geese but not more than 3 light geese. The possession limit is twice the daily bag limit.

General: Hunters must observe all State and Federal regulations, such as those contained in 50 CFR part 20 and including the possession of a validated Migratory Bird Hunting and Conservation Stamp.

(f) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Band-tailed Pigeons

Season Dates: Open September 1, close September 30, 1997.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 1997.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (including mergansers)

Season Dates: Begin October 4, 1997, close January 18, 1998.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 3 pintails, 1 canvasback and 2 redheads. The possession limit is twice the daily bag limit.

Dark Geese

Season Dates: Begin October 4, 1997, end January 11, 1998.

Daily Bag and Possession Limits: 2 and 4 geese, respectively.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and moorhens, singly or in the aggregate.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (duck stamp) signed in ink across the stamp face. Special regulations established by the Navajo Nation also apply on the reservation.

* * * * *

(h) Point No Point Treaty Tribes, Kingston, Washington (Tribal Members and Non-tribal Hunters)

Tribal Members Only

Ducks

Season Dates: Open September 15, 1997, close January 15, 1998.

Daily Bag and Possession Limits: 7 ducks, including no more than 1 female mallard, 2 pintails, 1 canvasback and 2 redheads. The season on wood ducks and harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 1997, close January 15, 1998.

Daily Bag and Possession Limits: 4 geese, and may include no more than 3 light geese. The season on Aleutian and Cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, close January 15, 1997.

Daily Bag and Possession Limits: 2 and 4 brant, respectively.

Coots

Season Dates: Open September 15, 1997, close January 15, 1998.

Daily Bag Limits: 25 coots.

Non-tribal Members

Mourning Doves

Season Dates: Open September 1, close September 30, 1997.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 1, close December 16, 1997.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Ducks (including Mergansers)

Season Dates: Begin October 4, 1997, end January 18, 1998.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 3 pintails, 1 canvasback and 2 redheads. The season is closed on wood ducks and harlequin ducks. The possession limit is twice the daily bag limit.

Geese

Season Dates: Begin October 4, 1997, end January 11, 1998.

Daily Bag and Possession Limits: 4 geese, including not more than 3 light geese. The season is closed on Aleutian Canada geese and cackling Canada geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Begin January 3, end January 18, 1998.

Daily Bag and Possession Limits: 2 and 4 brant, respectively.

* * * * *

(k) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Non-tribal Hunters)

Tribal Members

Ducks/Coot

Season Dates: Open September 15, 1997, and close February 1, 1998.

Daily Bag and Possession Limits: 6 and 12 ducks, respectively; except that bag and possession limits are restricted for blue-winged teal, canvasback, harlequin, pintail, and wood duck to those established for the Pacific Flyway by final Federal frameworks, to be announced.

Geese

Season Dates: Open September 15, 1997, and close February 1, 1998.

Daily Bag and Possession Limits: 6 and 12 geese, respectively; except that the bag limits for brant and cackling and dusky Canada geese are those established for the Pacific Flyway in accordance with final Federal frameworks, to be announced. The tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

Snipe

Season Dates: Open September 15, 1997, and close February 1, 1998.

Daily Bag and Possession Limits: 6 and 12 snipe, respectively.

Non-tribal Hunters

Ducks

Season Dates: Begin October 4, 1997, end January 18, 1998.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 3 pintails, 1 canvasback and 2 redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Begin October 11, 1997, end January 18, 1998.

Daily Bag and Possession Limits: 4 geese, including 4 dark geese but no more than 3 light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Begin January 3, end January 18, 1998.

Daily Bag and Possession Limits: 2 and 4 brant, respectively.

Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 12 snipe, respectively.

General Conditions: All waterfowl hunters, members and non-members, must obtain and possess while hunting a valid hunting permit from the Tulalip tribes. Also, non-tribal members sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a validated Federal Migratory Bird Hunting and Conservation Stamp and a validated State of Washington Migratory Waterfowl Stamp. All Tulalip tribal members must possess while hunting, or accompanying another, their valid tribal identification card. All hunters are required to adhere to a number of other special regulations enforced by the tribes and available at the tribal office.

(l) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

Band-tailed Pigeons

Season Dates: Open September 1, close September 10, 1997.

Daily Bag and Possession Limits: 3 and 6 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 10, 1996.

Daily Bag and Possession Limits: 8 and 16 doves, respectively.

General Conditions: All non-tribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands must possess a valid White

Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all non-tribal hunters hunting band-tailed pigeons must possess a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

Ducks (Including Mergansers)

Season Dates: Begin October 25, 1997, end January 18, 1998.

Daily Bag and Possession Limits: 4 ducks, including no more than 3 mallards (including no more than 1 female mallard), 2 redheads or 1 canvasback and 1 redhead, and 1 pintail. The possession limit is twice the daily bag limit.

Coots, Moorhens and Gallinules

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots, moorhens, and gallinules, singly or in the aggregate. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Same as ducks.

Bag and Possession Limits: 2 and 4 geese, respectively.

General Conditions:

(1) The area open to hunting in the above seasons consists of: the entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. Tanks located below the Mongollon Rim, within Wildlife Management Units 2 and 3 will be open to waterfowl hunting. The remaining reservation waters are closed to waterfowl hunting during the 1997–98 hunting season.

(2) Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

(3) See other special regulations established by the White Mountain Apache Tribe that apply on the reservation, available from the reservation Game and Fish Department.

(m) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Nontribal Hunters)

Ducks (including mergansers)

Season Dates: Begin October 4, 1997, end January 18, 1998.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 3 pintails, 1 canvasback and 2 redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: The daily bag and possession limit is 25.

Geese

Dark Geese

Season Dates: Begin October 4, 1997, end January 11, 1998.

Daily Bag and Possession Limits: 4 and 8 geese, respectively.

Light Geese

Season Dates: Begin October 4, 1997, end January 11, 1998.

Daily Bag and Possession Limits: 3 and 6 geese, respectively.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(n) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

Ducks

Season Dates: Begin October 4, 1997, end January 8, 1998.

Daily Bag and Possession Limits: 6 ducks, including no more than 5 mallards (including no more than 2 female mallards), 1 mottled duck, 1 canvasback, 2 redheads, 3 pintails, and 2 wood ducks. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 mergansers, including no more than 1 hooded merganser. The possession limit is twice the daily bag limit.

Dark Geese

Canada, Brant and White-fronted Geese

Season Dates: Begin October 4, 1997, end January 4, 1998.

Daily Bag and Possession Limits: 2 dark geese, including no more than 1 white-fronted goose (or brant). The possession limit is twice the daily bag limit.

Light Geese

Season Dates: Begin October 5, 1997, close January 5, 1998, then open February 25, close March 10, 1998.

Daily Bag and Possession Limits: 10 and 40 geese, respectively.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(o) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

Ducks (including mergansers)

Season Dates: Begin October 4, end November 30, 1997.

Daily Bag and Possession Limits: The daily bag limit is 7, including no more than 2 female mallards, 3 pintails, 2 redheads, and 1 canvasback. The possession limit is twice the daily bag limit.

Geese

Season Dates: Begin October 4, 1997, end January 11, 1998.

Daily Bag and Possession Limits: 4 geese, including 4 dark geese but no more than 3 light geese. The possession limit is twice the daily bag limit. The 1997–98 Canada goose season is closed.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(p) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

Ducks

Season Dates: Begin October 1, 1997, end January 31, 1998.

Daily Bag and Possession Limits: 9 and 16 ducks, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 6 and 12 geese, respectively.

General: The Klamath Tribe provides regulations enforcement authority in its game management officers, biologists and wildlife technicians, and has a court system with judges that hear cases and set fines.

(q) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

Ducks (including mergansers)

Season Dates: Begin October 4, 1997, end January 8, 1997.

Daily Bag and Possession Limits: 6 ducks, including no more than 5 mallards (only 1 of which may be a hen), 2 pintails, 1 mottled duck, 2 redheads, 1 canvasback, 2 wood ducks, and 1 hooded merganser. The possession limit is twice the daily bag limit.

Geese

Dark Geese

Season Dates: Begin October 18, 1997, end January 11, 1997.

Daily Bag and Possession Limits: 3 geese, including no more than 1 white-fronted goose. The possession limit is twice the daily bag limit.

White Geese

Season Dates: Begin October 18, 1997, end January 11, 1998, open February 18, end March 10, 1998.

Daily Bag and Possession Limits: 10 and 20 geese, respectively.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot. Nontribal hunters must possess a validated Migratory Waterfowl Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the tribe.

(r) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Ducks (including Mergansers)

Season Dates: Begin October 4, 1997, end January 17, 1998.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 3 pintails, 1 canvasback and 2 redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 10 and 20 coots, respectively.

Geese

Season Dates: Begin October 4, 1997, end January 11, 1998.

Daily Bag and Possession Limits: 4 geese, including not more than 3 light geese and 2 white-fronted geese. The possession limit is twice the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(s) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

Ducks (including mergansers)

Season Dates: Begin October 4, 1997, end February 18, 1998.

Daily Bag and Possession Limits: 10 ducks, including no more than 2 female mallards, 3 pintails, 1 canvasback and 2 redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 28 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 7 geese, including 7 dark geese but no more than 6 light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

General Conditions: The Swinomish Tribal Community has established additional special regulations for on-reservation hunting. Tribal hunters should consult the tribal office for additional information.

(t) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

Ducks (including Mergansers)

Season Dates: Begin October 18, end December 30, 1997.

Daily Bag and Possession Limits: 6 ducks, including no more than 5 mallards (no more 2 female mallards), 2 redheads, 3 pintails, 1 hooded merganser, 1 canvasback, and 2 wood ducks. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 15 and 30 coots, respectively.

Dark Geese

Season Dates: Begin November 1, 1997, end January 31, 1998.

Daily Bag and Possession Limits: 2 geese, including no more than 1 white-fronted goose (or brant). The possession limit is twice the daily bag limit.

White Geese

Season Dates: Begin November 1, 1997, end January 25, 1998, then open February 18, close March 10, 1998.

Daily Bag and Possession Limits: 10 and 40 geese, respectively.

General Conditions: (1) The waterfowl hunting regulations established by this final rule apply to tribal and trust lands within the external boundaries of the reservation.

(2) Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the

Yankton Sioux Tribe also apply on the reservation.

Dated: September 22, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–25743 Filed 9–26–97; 8:45 am]

BILLING CODE 4310–55–F

federal register

Monday
September 29, 1997

Part III

Department of Education

Privacy Act of 1974; Computer Matching Program; Notices

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program; Notice

AGENCY: Department of Education.

ACTION: Notice—Computer matching between the Department of Education and the Immigration and Naturalization Service (INS), Department of Justice.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the computer matching program between the Department of Education (ED) (the recipient agency), and the Immigration and Naturalization Service (INS), Department of Justice (the source agency).

Notice of the matching program was originally published in the **Federal Register** on March 23, 1995 (60 FR 15428); the program became effective on April 26, 1995. Duration was 18 months plus a one-year extension permitted by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a(o)(2)(D)). The one-year extension will expire on October 26, 1997. The following notice represents the approval of a new agreement by the Department of Justice and Department of Education Data Integrity Boards to continue the matching program (on the effective date as indicated below).

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Final Guidance on Interpreting the Provisions of Pub. L. 100–503, Computer Matching and Privacy Act of 1988 (54 FR 25818, June 19, 1989), and OMB Bulletin 89–22, the following information is provided:

1. Name of Participating Agencies

The Department of Education (ED) and the Department of Justice (DOJ).

2. Purpose of the Match

The matching program entitled "Systematic Alien Verification for Entitlement (SAVE) INS/ED" will permit ED to confirm the immigration status of alien applicants for, or recipients of, assistance as authorized by Title IV, section 484(a)(5), of the Higher Education Act of 1965, as amended (HEA). The Title IV programs include: the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, Federal Perkins Loan, State Student Incentive Grant, Federal Family Education Loan, and William D. Ford Direct Loan Programs.

3. Authority for Conducting the Matching Program

The information contained in the INS data base is referred to as the Alien Status Verification Index (ASVI), and is authorized under the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603. ED seeks access to this data base under the Higher Education Act of 1965, as amended (section 484(g)). The INS is authorized to confirm immigration status under authority of section 103 of the Immigration and Nationality Act.

4. Categories of Records and Individuals Covered

The records to be used in the match and the roles of the matching participants are described as follows:

Through the use of user identification codes and passwords, authorized persons from ED will transmit electronically to INS data from its Privacy Act system of records entitled, "Federal Student Aid Application File (18–40–0014)." The data will include the alien registration number and date of birth of the alien applicant for, or recipient of, Title IV assistance. This action will initiate a search for corresponding data elements in an INS Privacy Act system of records entitled "Alien Status Verification Index (JUSTICE/INS–009)." Where there is a match of records, the system will provide to ED the immigration status code of the alien applicant or recipient. In accordance with 5 U.S.C. 552a(p), ED will verify any adverse finding (independently or through the alien applicant or recipient) and provide the alien applicant or recipient with 30 days notice and opportunity to contest such finding.

5. Effective Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Claude Denton, Program Specialist, Student Eligibility and Verification Section, Policy Development Division, U.S. Department of Education, 600 Independence Avenue, SW, (Room 3045, ROB–3), Washington, DC 20202, Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**.

Dated: September 19, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–25744 Filed 9–24–97; 8:45 am]

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Federal Register

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

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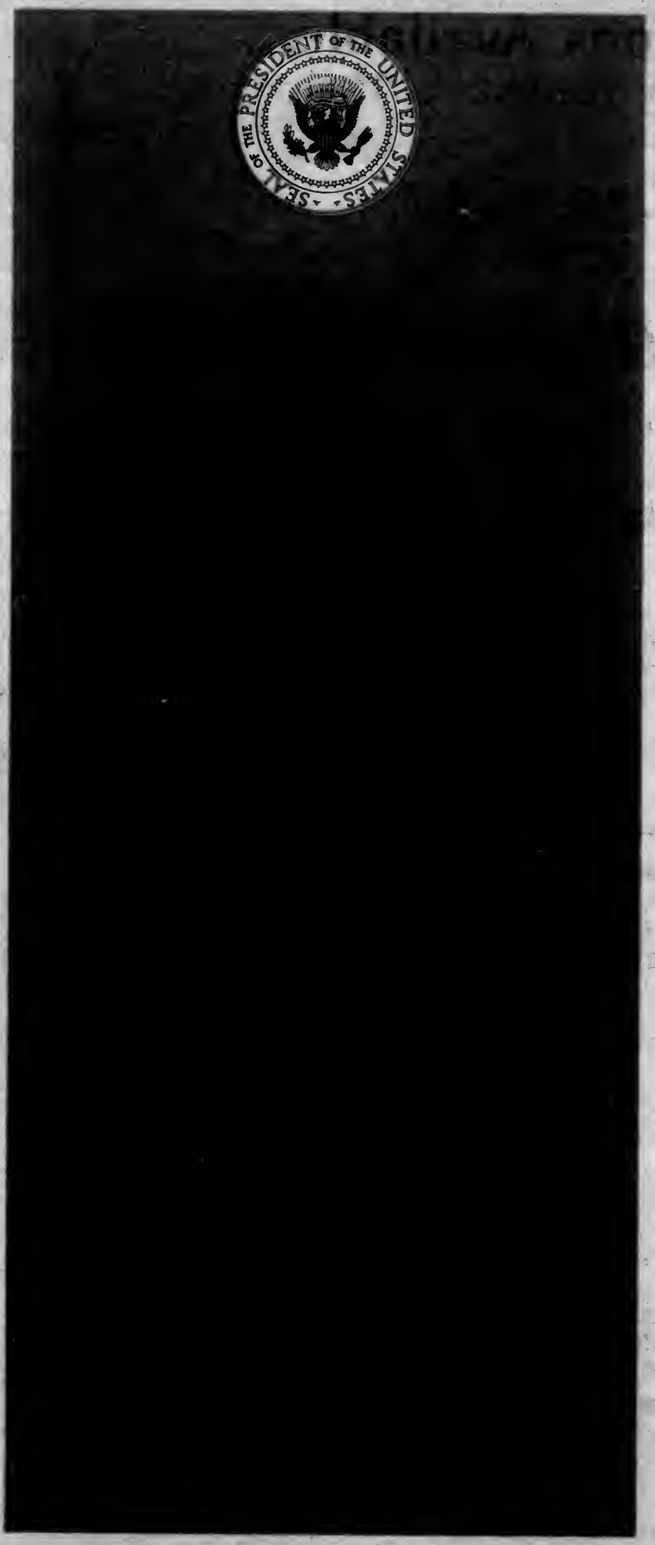
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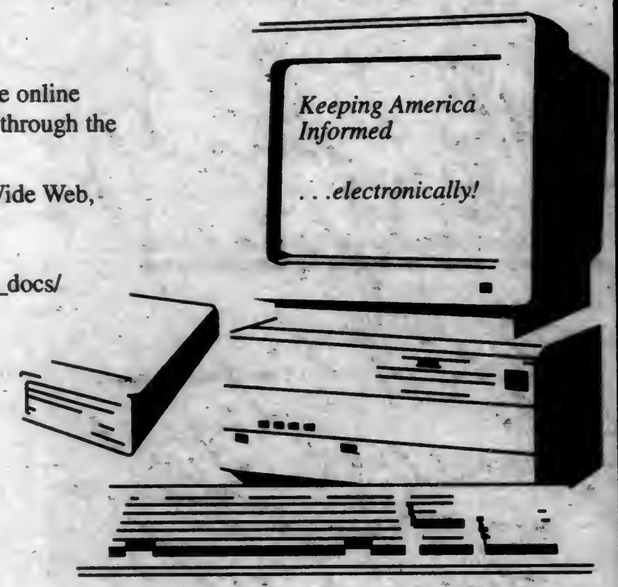
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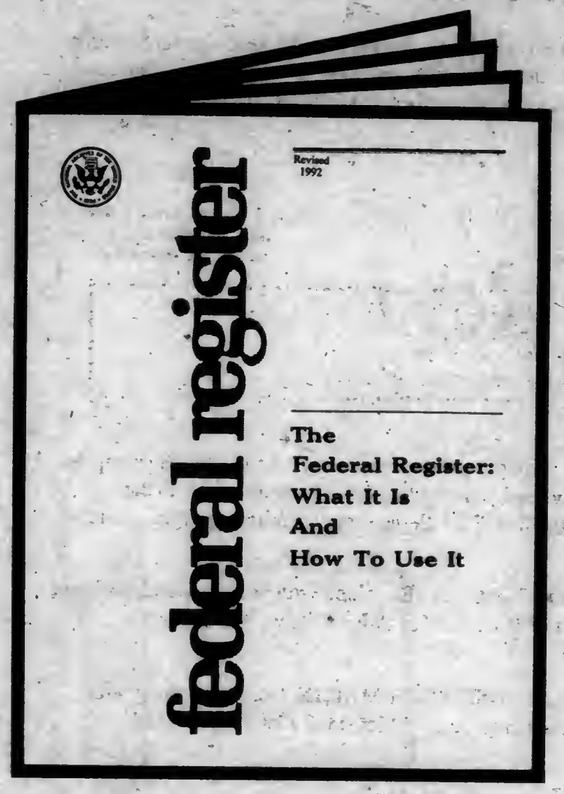
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 837, 842, 846, 870, and 890

RIN 3206–AI02

Retirement, Health, and Life Insurance Coverage for Certain Employees of the District of Columbia Under the National Capital Revitalization and Self-Government Improvement Act of 1997

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the provisions of sections 11202, 11232, and 11246 of the National Capital Revitalization and Self-Government Improvement Act of 1997. These provisions of the Act require that nonjudicial employees of the District of Columbia Courts, and, under certain conditions, the District of Columbia Corrections Trustee and the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee (Trustees) and their respective employees (Trustee Employees) be considered Federal employees for purposes of Federal retirement, health, and life insurance coverage. The Act requires that judicial employees (judges) of the District of Columbia Courts be considered Federal employees for the purposes of Federal health, and life insurance coverage. These regulations are necessary to put the new coverage into effect.

DATES: Interim rules effective October 1, 1997; comments must be received on or before December 1, 1997.

ADDRESSES: Send comments to John E. Landers, Chief, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC. Comments may also be submitted by electronic mail to combox@opm.gov.

FOR FURTHER INFORMATION CONTACT: Patrick Jennings, (202) 606–0299 concerning retirement coverage, or Karen Leibach (202) 606–0004 concerning health and life insurance coverage.

SUPPLEMENTARY INFORMATION: The National Capital Revitalization and Self-Government Improvement Act of 1997 (the Act), title XI of Public Law 105–33, 111 Stat. 251, was enacted on August 5, 1997. Section 11202 of the Act establishes a District of Columbia Department of Corrections Trustee, and section 11232 of the Act establishes a District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee. These sections of the Act require a former Federal employee appointed with a break in service of 3 days of less to be treated as a Federal employee for the purpose of chapter 83 (the Civil Service Retirement System—CSRS) or chapter 84 (the Federal Employees Retirement System—FERS); chapter 87 (the Federal Employees' Group Life Insurance Program—FEGLI); and chapter 89 (the Federal Employees Health Benefits Program—FEHB) of title 5, United States Code, during service as a Trustee or Trustee employee.

Section 11246 of the Act requires nonjudicial employees of the District of Columbia Courts to be treated as Federal employees for the purposes of chapters 81 (relating to compensation for work injuries), 83, 84, 87, and 89. This section also requires judges of the District of Columbia Courts to be treated as Federal employees for the purposes of chapters 81 (relating to compensation for work injuries), 87, and 89.

As employees of the District of Columbia Government, employees of the District of Columbia Courts have not been eligible for coverage under FERS and, therefore, were not allowed to elect to be covered by FERS. When the regulations take effect, nonjudicial employees of the District of Columbia Courts will be deemed to be Federal employees for this purpose and, because they will not have had an opportunity to elect FERS coverage, these regulations will allow them to elect FERS if now subject to CSRS, in the same way as new Federal hires who are oligible for CSRS may elect FERS.

Federal employees may be detailed to the District of Columbia Department of Corrections Trustee or the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee under the provisions of part 334 of title 5, Code of Federal Regulations, which addresses assignments of Federal employees to State governments, and the District of Columbia. The Act authorizes such details to a Trustee at the request of a Trustee with the approval of the head of the employee's Federal department or agency. Employees detailed under part 334 retain their status as Federal employees and, therefore, retain Federal benefits coverage.

With respect to employees of the District of Columbia Courts, section 11246(b)(3) of the Act requires that the amendments shall apply with respect to all months beginning after the date on which OPM issues regulations to implement the new coverage provisions. Accordingly, the amendments made by section 11246 of the Act are effective October 1, 1997.

With respect to the District of Columbia Department of Corrections Trustee and the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee, and the Trustees' employees, sections 11202 and 11232 of the Act do not establish a specific effective date for the beginning of Federal employee status. Accordingly, the regulations to implement the new coverage provisions for a Trustee and a Trustee's employees become effective on the date of a Trustee's appointment.

In addition, these regulations make technical amendments to retirement coverage provisions governing employees of the District of Columbia Financial Responsibility and Management Assistance Authority, conforming amendments to provisions governing reemployed annuitants, and non-substantive clarifying amendment to retirement coverage provisions governing certain employees of St. Elizabeths Hospital.

Waiver of General Notice of Proposed Rulemaking

Under section 553(b) (3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking

and for making these rules effective in less than 30 days. These regulations will affect the retirement and insurance coverage of certain employees of the District of Columbia Courts on and after October 1, 1997, and the retirement and insurance coverage of a Trustee and the Trustee's employees on and after the appointment of the Trustee. Publication of a general notice on proposed rulemaking would be contrary to the public interest because it would delay the commencement of Federal employee benefits of employees of the District of Columbia Courts and eligible individuals employed during the initial staffing of the District of Columbia Department of Corrections Trustee, and the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect a small number of former Federal employees of the Trustee of the District of Columbia Department of Corrections and the Trustee of District of Columbia Pretrial Services, Defense Service, Parole, Adult Probation and Offender Supervision, and employees of the District of Columbia Courts.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Parts 831, 837, 842 and 846

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

Accordingly, OPM is amending 5 CFR parts 831, 837, 842, 846, 870 and 890 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(8) also issued under 5 U.S.C. 7701(b)(2); § 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105–33, 111 Stat. 251; § 831.204 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, 104 Stat. 1388–328.

2. Section 831.201 is amended by revising paragraph (g) to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(g) Individuals first employed by the government of the District of Columbia on or after October 1, 1987, in a position subject to subchapter III of chapter 83 of title 5, United States Code, are excluded from such subchapter, except:

(1) Employees of St. Elizabeths Hospital who were covered under subchapter III of chapter 83 of title 5, United States Code, before October 1, 1987, appointed by the District of Columbia government on October 1, 1987, as provided in section 6 of Pub. L. 98–621, and deemed employed by the District of Columbia government before October 1, 1987, under section 109 of Pub. L. 100–238;

(2) Effective on and after October 1, 1997, the effective date of section 11246 of Pub. L. 105–33, 111 stat. 251, nonjudicial employees of the District of Columbia Courts employed in a position which is not excluded from CSRS under the provisions of this section;

(3) The District of Columbia Department of Corrections Trustee, authorized by section 11202 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less; and in the case of an employee of the Trustee is employed in a position which is not excluded from CSRS under the provisions of this section;

(4) The District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee, authorized by section 11232 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less, and in the case of an employee of the Trustee is employed in a position which is not excluded from CSRS under the provisions of this section, and;

(5) Subject to an election under § 831.204, employees of the District of Columbia Financial Responsibility and Management Assistance Authority.

* * * * *

PART 837—REEMPLOYMENT OF ANNUITANTS

3. The authority citation for part 837 continues to read as follows:

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468; and section 302 of Pub. L. 99–335, June 6, 1986, as amended.

4. Section 837.101 is amended by revising paragraph (a)(2) to read as follows:

§ 837.101 Applicability.

(a) * * *

(2) Reemployment of an annuitant by the government of the District of Columbia when the annuitant had been employed subject to CSRS by the District of Columbia prior to October 1, 1987, or is an employee of the government of the District of Columbia not excluded from CSRS under § 831.201(g) or is an employee of the government of the District of Columbia who is deemed to be a Federal employee for FERS purposes under § 842.107; and

* * * * *

5. Section 837.102 is amended by revising the definition for *Reemployed* to read as follows:

§ 837.102 Definitions.

* * * * *

Reemployed means reemployed in an appointive or elective position with the Federal Government, or reemployed in an appointive or elective position with the District of Columbia (when the annuitant was first employed subject to CSRS by the District of Columbia before October 1, 1987, or is an employee of the government of the District of Columbia not excluded from CSRS under § 831.201(g) or is an employee of the government of the District of Columbia who is deemed to be a Federal employee for FERS purposes under § 842.107 of this chapter), whether the position is subject to CSRS, FERS, or another retirement system, but does not include appointment as a Governor of the Board of Governors of the United States Postal Service, or reemployment under the provisions of law that exclude offset of pay by annuity, that is, sections 8344 (l), (j), or (k), or 8468 (f), (g), or (h) of title 5, United States Code.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

6. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105–33; 111 Stat. 251; §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8416; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

7. Section 842.107 is added to read as follows:

§ 842.107 Employees covered under the National Capital Revitalization and Self-Government Improvement Act of 1997.

The following categories of employees of the District of Columbia Government are deemed to be Federal employees for FERS purposes on and after October 1, 1997:

(a) Nonjudicial employees of the District of Columbia Courts;

(b) The District of Columbia Department of Corrections Trustee, authorized by section 11202 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less;

(c) The District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee, authorized by section 11232 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less.

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

8. The authority citation for part 846 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); § 846.201(b) also issued under 5 U.S.C. 7701(b)(2); § 846.201(d) also issued under section 11246(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105–33, 111 Stat. 251; § 846.202 also issued under section 301(d)(3) of Pub. L. 99–335; § 846.201(b)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321.

9. Section 846.201 is amended by revising paragraph (d)(1) to read as follows:

§ 846.201 Elections to become subject to FERS.

* * * * *

(d) *Exceptions.* (1) An individual who is an employee of the government of the District of Columbia may not elect to become subject to FERS except an individual so employed who is covered by CSRS and eligible for FERS coverage by operation of section 11246, of Pub. L. 105–33, 111 Stat. 251.

* * * * *

PART 870—BASIC LIFE INSURANCE

10. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; § 870.202(c) also issued under 5 U.S.C. 7701(b)(2); subpart J also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.202 also issued under sections 11202(f), 11232(e), and 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251.

11. Section 870. 202 is amended by revising paragraph (a)(8) to read as follows:

§ 870.202 Exclusions.

(a) * * *

(8) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to:

(i) Employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621 (98 Stat. 3379);

(ii) The Corrections Trustee and the Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee and employees of these Trustees who accept employment with the District of Columbia government within 3 days after separating from the Federal Government; and

(iii) Effective October 1, 1997, judges and nonjudicial employees of the District of Columbia Courts, as provided by Pub. L. 105–33 (111 Stat. 251).

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

12. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251.

13. Section 890.102 is amended by revising paragraph (c)(8) to read as follows:

§ 890.102 Coverage.

* * * * *

(c) * * *

(8) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to:

(i) Employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621 (98 Stat. 3379);

(ii) The Corrections Trustee and the Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee and employees of these Trustees who accept employment with the District of Columbia government within 3 days after separating from the Federal Government; and

(iii) Effective October 1, 1997, judges and nonjudicial employees of the District of Columbia Courts, as provided by Pub. L. 105–33 (111 Stat. 251).

[FR Doc. 97–25869 Filed 9–29–97; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 217

[INS No. 1786–96]

RIN 115–AB93

Adding Slovenia to the List of Countries Authorized To Participate in the Visa Waiver Pilot Program and Designating Ireland as a Permanent Participating Country (Formerly With Probationary Status)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service ("Service") regulations by adding Slovenia to the list of countries designated to participate in the Visa Waiver Pilot Program (VWPP), thereby permitting nationals of Slovenia to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. This interim rule also eliminates probationary entry status in the VWPP and designates Ireland (the only country formerly designated as a participating country with probationary status) as a permanent participating country. This action will facilitate travel to the United States and benefit United States business.

DATES: *Effective Date.* This interim rule is effective September 30, 1997.

Comment Date: Written comments must be submitted on or before December 1, 1997.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling please reference INS number 1786–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT:

Dominica Gutierrez, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 4064, Washington, DC 20536, Telephone number: (202) 305–2969.

SUPPLEMENTARY INFORMATION:

Public Law 99–603

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, added section 217 to the Immigration and Nationality Act (Act), 8 U.S.C. 1187, which established the VWPP. The VWPP waives the nonimmigrant visa requirement for the admission of certain aliens to the United States for a period not to exceed ninety (90) days. That original provision authorized the participation of eight countries in the Pilot Program. Accordingly, the Service designated by regulations published in the **Federal Register**, the following eight (8) countries to participate in the VWPP:

Country	Effective date	Federal Register citation
(1) United Kingdom.	July 1, 1988	53 FR 24901, June 30, 1988.
(2) Japan	Dec. 15, 1988.	53 FR 50161, Dec. 13, 1988.
(3) France	July 1, 1989	54 FR 27120, June 27, 1989.
(4) Switzerland.	July 1, 1989	54 FR 27120, June 27, 1989.
(5) Germany	July 15, 1989	54 FR 27120, June 27, 1989.
(6) Sweden ...	July 15, 1989	54 FR 27120, June 27, 1989.
(7) Italy	July 29, 1989	54 FR 27120, June 27, 1989.
(8) Netherlands.	July 29, 1989	54 FR 27120, June 27, 1989.

Public Law 101–649

Section 201 of the Immigration Act of 1990 (IMMACT 90), Pub. L. 101–649, dated November 29, 1990, further amended the VWPP removing the eight-country cap and extending the provisions to all countries that met the qualifying provisions contained in section 217 of the Act. In addition, section 201 of IMMACT 90 also extended the period for the VWPP until September 30, 1994. Subsequently, the Service designated by regulations published in the **Federal Register**, the following sixteen (16) additional countries to participate in the VWPP:

Country	Effective date	Federal Register citation
(1) Andorra ...	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(2) Austria	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(3) Belgium ...	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(4) Denmark	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(5) Finland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(6) Iceland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(7) Liechtenstein.	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(8) Luxembourg.	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
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(10) New Zealand.	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
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(13) Spain	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(14) Brunei ...	July 29, 1993	58 FR 40581, July 29, 1993.
(15) Argentina	July 8, 1996	61 FR 35598, July 8, 1996.
(16) Australia	July 29, 1996	61 FR 39271, July 29, 1996.

Public Law 103–416

Section 210 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, dated October 25, 1994, extended the expiration date of the VWPP until September 30, 1996.

Public Law 104–208

On September 30, 1996, the President signed Pub. L. 104–208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Section 635 of this law again amended section 217 of the Act by extending the Program until September 30, 1997. This law also named the Attorney General as the principal designator of VWPP countries, eliminated probationary VWPP qualification status and made countries then in such status (Ireland being the only country) permanent participating VWPP countries subject to the same disqualification criteria established for other VWPP countries.

Requirements for VWPP Participation (Addition of Slovenia)

For a country to qualify as participant in the VWPP, the country must agree to waive the visa requirement for nationals of the United States entering for business or pleasure for ninety (90) days or less, must meet statutorily prescribed limits on rates of exclusion at Ports-of-Entry and on overstay rates, and must have a machine readable passport program. The Attorney General, in consultation with the Secretary of State, has determined that Slovenia has met these requirements, and Slovenia, therefore, is added, effective September 30, 1997 as a participating country in the Visa Waiver Pilot Program. (See the Department of State rule published elsewhere in this issue of the **Federal Register**.)

Good Cause Exemption

The Service's implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553 (b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: This interim rule relieves a restriction and will facilitate business and tourist travel to the United States and Slovenia.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely removes a restriction for both the traveling public and United States businesses.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 217

Administrative practices and procedures, Aliens, Nonimmigrants, Passports and visas.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. In § 217.2 paragraph (a) is amended by revising the definition for *"Designated country"* to read as follows:

§ 217.2 Eligibility.

(a) * * *

* * * * *

Designated country refers to Andorra, Argentina, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, San Marino, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries.

* * * * *

Dated: September 25, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–25982 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 245

[EOIR No. 119I; A.G. ORDER No. 2117–97]

RIN 1125–AA20

Adjustment of Status to That of Person Admitted for Permanent Residence

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule enables the Executive Office for Immigration Review to complete adjudication of timely filed section 245(i) adjustment applications after September 30, 1997.

DATES: *Effective Date:* This rule is effective September 30, 1997. *Comment Date:* Written comments must be received on or before December 1, 1997.

ADDRESSES: Please submit written comments to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia, 22041.

FOR FURTHER INFORMATION CONTACT:

Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia, 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: On August 26, 1994, Congress enacted the Department of Commerce, Justice, State, and the Judiciary and Related Agencies Appropriations Act of 1995, Pub. L. 103–317. Section 506(b) of this law added a new section 245(i) to the Immigration and Nationality Act (the Act) which allows certain persons already in the United States to adjust

status, despite the provisions of section 245 (a) and (c) of the Act, upon payment of a fee in addition to the base filing fee for an adjustment of status application.

On July 23, 1997, the Immigration and Naturalization Service (Service) published an interim rule with request for comments (62 FR 39417) concerning adjustment of status applications filed pursuant to section 245(i) of the Act. The supplementary information to the interim rule reiterates that the provisions of section 245(i) apply only to applications filed on or after October 1, 1994, and before October 1, 1997. *See* section 506(c) of Pub. L. 103–317. By law, benefits may not be granted pursuant to section 245(i) of the Act to aliens who attempt to file anew application for adjustment of status under that subsection after September 30, 1997. All applications for adjustment of status filed pursuant to section 245 of the Act which are submitted after September 30, 1997, must be adjudicated pursuant to section 245(a) of the Act.

This interim rule is published in order that all applications for adjustment of status filed pursuant to section 245(i) be adjudicated in a consistent manner. Since applications for adjustment of status may be adjudicated by either the Service or the Executive Office for Immigration Review (EOIR) (which includes the Immigration Courts and the Board of Immigration Appeals), this interim rule enables the Executive Office for Immigration Review to complete adjudication of timely filed section 245(i) adjustment applications after September 30, 1997, and makes it clear that neither the Service nor EOIR may approve an application for adjustment of status pursuant to section 245(i) of the Act if such application was filed either before October 1, 1994, or after September 30, 1997. However, both the Service and EOIR may complete adjudication of timely filed section 245(i) adjustment applications after September 30, 1997.

The implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553 (b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: Immediate implementation of this rule will ensure that all applications for adjustment of status filed pursuant to section 245(i) are adjudicated in the same manner and will avoid any delay in the processing of these applications.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only those aliens who are applying to adjust their status under section 245(i) of the Immigration and Nationality Act. Therefore, this rule does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $110 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Executive Order 12988

This rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1103, 1103, 1182, 1255; 8 CFR part 2.

§ 245.10 [Amended]

2. In § 245.10 paragraphs (c) and (f) are revised to read as follows:

* * * * *

(c) *Application period.* Neither the Service nor the Executive Office for Immigration Review may approve an application for adjustment of status pursuant to section 245(i) of the Act if such application was filed either before October 1, 1994, or after September 30, 1997. If an alien attempts to file an adjustment of status application under the provisions of section 245(i) after September 30, 1997, the Service will accept the application and base filing fee, as set forth in § 103.7(b)(1) of this chapter, return the additional sum of $1,000 to the alien, and either the Service or the Executive Office for Immigration Review will adjudicate the application pursuant to section 245(a) of the Act. If the alien, in such a case, is not eligible for adjustment of status; either the Service will issue a written notice advising the alien of the denial of the application for adjustment of status, or the Executive Office for Immigration Review will deny the application for adjustment of status.

* * * * *

(f) *Completion of processing of pending applications.* (1) An application for adjustment of status filed subsequent to September 30, 1994, and prior to October 1, 1997, shall be adjudicated to completion by an officer of the Service or by the Executive Office for Immigration Review, regardless of whether the final decision is made after September 30, 1997. The provisions of paragraph (d) of this section regarding amended applications shall apply to all such applications. The Service or the Executive Office for Immigration Review may consider a motion to reopen or reconsider an application for adjustment of status on the basis of section 245(i) of the Act only if:

(i) The application for adjustment of status was filed on or after October 1, 1994, and before October 1, 1997, and

(ii) Prior to October 1, 1997, the applicant submitted Supplement A to Form I-485, any additional sum required by section 245(i), and any other required documentation.

(2) Any application for adjustment of status submitted pursuant to section 245(i) and considered in deportation or removal proceedings must be filed between October 1, 1994, and October 1, 1997.

* * * * *

Dated: September 24, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–25931 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274a

[INS NO. 1818–96]

RIN 1115–AE94

Interim Designation of Acceptable Documents for Employment Verification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended existing law by removing certain documents from the list of acceptable documents for use in the employment eligibility verification process. By law, those changes take effect no later than September 30, 1997, and this rule implements those changes. Although the Immigration and Naturalization Service (Service) is in the process of developing proposed rules to revise and streamline the employment verification process, together with revised forms and guidance, those rules are not yet ready to be promulgated. Thus, in promulgating this interim rule to implement the changes striking certain documents from the statutory list, the Service is also exercising available regulatory authority to restore many of the existing documents, insofar as possible, by designating them to be retained on the list of acceptable documents until further notice. This notice is intended to retain the status quo as much as possible at this time, pending the completion of action on the document reduction program, which will be accomplished in a separate rulemaking action.

DATES: This interim rule is effective September 30, 1997.

Comment date: Written comments must be submitted on or before December 1, 1997.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1818–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Marion Metcalf, Special Assistant, HQIRT, 425 I Street NW., Washington, DC, 20536; (202) 307–6596; or email at metcalfm@justice.usdoj.gov. Please note that the email address is for further information only and may not be used for the submission of comments.

SUPPLEMENTARY INFORMATION: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, enacted on September 30, 1996, amended the employer sanctions provisions of section 274A of the Immigration and Nationality Act (Act) to require a reduction in the number of documents acceptable for completion of the Employment Eligibility Verification form (Form I–9). These amendments must be in effect no later than September 30, 1997. This interim rule is necessary to implement the changes required by IIRIRA.

The Service is currently developing a document reduction initiative which will result in a number of changes in this area, including eliminating various documents from the existing lists, revising the Form I–9, and developing new guidance for employers and employees regarding the employment verification process. Those changes, when finalized, will implement the changes enacted by IIRIRA as well as respond to other concerns about the present process. However, that initiative, which the Service intends to publish as a proposed rule in a separate rulemaking action within the next 6 months, is not yet ready for promulgation.

At this time, the Service must amend its rules to take account of the statutory changes that take effect September 30, 1997. However, although IIRIRA deleted certain documents from the statutory list of acceptable documents, the Act also retained (in amended form) the authority of the Attorney General to designate specific documents as acceptable in addition to the statutory list. Accordingly, in amending existing regulations to take account of these statutory changes, the Service at the same time is also acting to restore the use of some of those documents by exercising available authority (as amended by IIRIRA) to continue to designate certain documents as acceptable for employment verification until completion of the separate document reduction initiative.

By this means, as discussed in more detail below, the Service is acting to designate foreign passports with specified Service work authorization stamps in two instances as "List A" documents—that is, as documents evidencing both identity and work authorization. This rule also expands the existing receipt rule to ensure that certain refugees and lawful permanent residents will still be able to meet the employment verification requirements even though they do not yet have a required document. Finally, even though IIRIRA eliminates birth certificates as a specific statutory "List C" document—this is, as a document evidencing employment authorization—this rule reflects a determination (as a matter of discretionary regulatory authority) to designate birth certificates as an acceptable document for this purpose. (This designation of birth certificates will continue only until completion of the separate rulemaking proceeding. The Service intends to propose elimination of the use of birth certificates, as well as certain other existing documents, in that proposed rule.)

The result of the statutory changes and the new designations embodied in this interim rule is that all of the existing "List A" documents will be retained, except for the following three kinds of documents: a Certificate of U.S. Citizenship; a Certificate of Naturalization; and a foreign passport not meeting the standards set forth in this interim rule, as discussed below. As to those three documents, there is no statutory authority to retain them on "List A." In addition, there will be no change at all at this time with respect to either "List B" documents (evidencing identity) or "List C" documents (evidencing employment authorization).

The purpose of this interim rule is to maintain the status quo as much as possible during this transitional period so as to avoid confusion and disruption in the employment verification process at this time. Although some changes are required by law, the Service recognizes that these changes are necessarily being implemented with little advance public notice, and without any revisions to the existing Form I–9 and the published Handbook for Employers (Form M–274). Accordingly, as explained below, in order to minimize confusion and disruption, the Service will exercise its discretion to forgo enforcement actions against employers who continue to act in reliance upon and in compliance with existing employment verification

forms, guidance, and procedures. This policy will remain in effect until the new document reduction program, together with a revised Form I–9 and guidance to employers, can be implemented in the separate rulemaking proceeding.

The following discussion explains in more detail the background of this regulatory action; the specific changes being made in this interim rule; and the basis for the interim designations of certain documents as implemented in this rule.

Background on Document Reduction

The Act, as amended, currently requires persons or entities to verify the employment eligibility and identity of all new hires. The Employment Eligibility Verification form (Form I–9) was designated for that purpose. Newly hired individuals must attest to the status that makes them eligible to work and present documents that establish their identity and eligibility to work. Employers and recruiters and referrers for a fee (as defined in section 274(a)(1)(B)(ii) of the Act and 9 CFR 274a.2(a)) must examine and documents and attest that they appear to be genuine and to relate to the individual. They may not specify a document or combination of documents that the individual must present. To do so may violate section 274B of the Act.

The statutory framework, implemented by regulation at 8 CFR 274a.2, provides for three lists of documents: documents that establish both identity and employment eligibility (List A documents); documents that establish identity only (List B documents); and documents that establish employment eligibility only (List C documents).

Scope of the Interim Rule

To implement IIRIRA, this interim rule amends the regulations to:

(1) Remove the certificate of United States citizenship and the certification of naturalization as documents acceptable under List A;

(2) Retain the designation of a foreign passport with temporary evidence of permanent resident status as a document acceptable under List A, and limit the use of a foreign passport with a Form I–94 to those nonimmigrants who are authorized to work for a specific employer; and

(3) Clarify and expand the receipt rule under which work-eligible individuals who are unable to present a required document may present a receipt under certain circumstances.

This interim rule also exercises regulatory authority to continue the designation of birth certificates as documents acceptable under List C. Accordingly, no change to List C is necessary at this time.

Enforcement Postponed for Employers and Recruiters or Referrers for a Fee With Respect to Changes Made to the List of Acceptable Documents in This Interim Rule

To minimize confusion among the employment community and the potential for discriminatory hiring practices, this rule makes at this time only those changes to the current regulations needed to ensure that the current regulations conform with the statutory amendments made by IIRIRA. Consequently, this rule reduces the list of documents acceptable for employment verification under List A, and retains birth certificates (which are currently on List C) as acceptable for employment verification purposes. This means that List C remains in effect without change.

This rule does not include a revised Form I–9. Employers and recruiters and referrers for a fee are to continue to use the current version of the Form I–9 (edition 11/21/91) to complete the employment verification process until the Form I–9 is revised. As a result, the Service has determined in its prosecutorial discretion not to seek a civil money penalty, until further notice, for any violations based upon the changes made by this rule to the list of acceptable documents.

The Service intends to propose more comprehensive changes to the employment verification process, a further reduction in the number of acceptable documents, and a revision to the Form I–9 in a forthcoming rulemaking. The public will be provided an opportunity to comment on any proposed changes at that time. Thus, the Service will withhold enforcement of civil money penalties for violations associated with these changes and committed before the effective date of a final rule containing the revised Form I–9, so that employers or recruiters or referrers for a fee will not be penalized if they accept documents that were previously acceptable but were removed from the list by this interim rule.

Section 412(a) of IIRIRA—Amending the Documents Acceptable Under List A and List C

Section 412(a) of IIRIRA amends the Act with respect to List A and List C documents. To implement this provision in a way that would cause the least confusion to the public and to minimize the potential for discriminatory hiring practices, this rule amends the regulations to reduce the current number of List A documents but to designate certain foreign passports in two instances. This rule does not reduce the current number of List C documents. Instead, this rule retains the documents currently listed as List C documents in the regulations as acceptable List C documents under IIRIRA.

A. Documents Evidencing Both Identity and Employment Eligibility (List A)

Section 412(a) of IIRIRA amends section 274A(b)(1)(B) of the Act which governs the documents that individuals may present to establish both identity and employment eligibility. Section 412(a) of IIRIRA eliminates three documents from the statutory list: (1) Certificate of United States citizenship; (2) certificate of naturalization; and (3) an unexpired foreign passport with an endorsement that indicates eligibility for employment. The documents remaining on the list by statute are: a United States passport; a resident alien card; an alien registration card; or other document designated by the Attorney General. Each document designated by the Attorney General must meet three conditions: The document must not only contain a photograph and personal identifying information, and constitute evidence of employment authorization, but it now must also contain "security features to make it resistant to tampering, counterfeiting, and fraudulent use."

To implement section 412(a) of IIRIRA, this rule amends the current regulations to limit the documents that evidence both identity and employment authorization to:

(1) A United States passport;

(2) An Alien Registration Receipt Card or Permanent Resident Card (Form I–551);

(3) A foreign passport with a Temporary I–551 stamp;

(4) An Employment Authorization Document (EAD) issued by the Service which contains a photograph (Form I–766), Form I–688, Form I–688A, or Form I–688B); and,

(5) In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with an Arrival-Departure Record (Form I–94) bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

1. Service-Issued Employment Authorization Document

This rule retains the Employment Authorization Document (Forms I–766, I–688, I–688A, and I–688B) as an acceptable List A document. These forms meet the three statutory conditions that limit the Attorney General's authority to designate additional List A documents. First, these Service-issued forms all contain a photograph and additional identifying information of the bearer, including a fingerprint of the bearer and the bearer's date of birth. Second, the forms are evidence that the Service has granted employment authorization to the bearer. Third, the Service has designed each of the forms to contain security features that make them resistant to tampering, counterfeiting, and fraudulent use.

2. Foreign Passports With an I–551 Stamp

This rule designates foreign passports as acceptable evidence of identity and employment authorization, but limited to two instances. The first relates to aliens lawfully admitted for permanent residence under section 101(a)(20) of the Act. Persons newly admitted for or adjusted to lawful permanent residence may receive evidence of that status through a stamp in their passports. The stamp serves as temporary evidence of permanent resident status until the individual receives Form I–551 from the Service. If the stamped endorsement includes an expiration date, the document must be reverified by the employer on the Form I–9. The newest versions of the Form I–551 also bear an expiration date but the actual Form I–551 need to be reverified when the card expires; only the stamp must be reverified when expired.

3. Foreign Passports With Form I–94

The second instance in which a foreign passport is designated as a List A document is when it is presented with Form I–94 indicating a nonimmigrant classification that enables the alien to work with a specific employer incident to his or her nonimmigrant status until the expiration date specified on the form.

Aliens in classes identified in § 274a.12(b) are authorized employment with a specific employer incident to status. The Service does not currently require aliens in these classes to obtain an employment authorization document—i.e., a Form I–688B or Form I–766—and does not plan to implement such a requirement at this time. The documentation that a nonimmigrant alien is issued to demonstrate that he or she is authorized to work incident to status with a specific employer is the Form I–94 with an endorsement that specifies the alien's nonimmigrant status. In addition to the regulations at § 274a.12(b), the current version of the Handbook for Employers (M–274) enumerates for employers and recruiters or referrers for a fee the applicable nonimmigrant classifications. These classifications include: foreign government officials and their employees (A–1, A–2, A–3); foreign government officials in transit (C–2, C–3); nonimmigrant treaty traders or investors (E–1, E–2); nonimmigrant students engaged in on-campus employment or curricular practical training (F–1); representatives of international organizations and their employees (G–1, G–2, G–3, G–4, G–5); temporary workers or trainees (H–1, H–2A, H–2B, H–3); information media representatives (I); exchange visitors (J–1); intra-company transferees (L–1); aliens having extraordinary ability in the sciences, arts, education, business, or athletics and accompanying aliens (O–1, O–2); athletes, artists or entertainers (P–1, P–2, P–3); international cultural exchange visitors (Q); aliens having a religious occupation (R); officers and personnel of the armed services of nations of the North Atlantic Treaty Organization and representatives, officials, and staff employees of NATO (NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, NATO–6); and citizens of Canada or Mexico pursuant to the provisions of the North American Free Trade Agreement (TN).

The IIRIRA provides that the Attorney General "may prohibit or place conditions on "specific document if the Attorney General finds that the document "does not reliably establish [employment] authorization or identity or is being used fraudulently to an unacceptable degree." The Service finds that documentation issued to or used by nonimmigrants does not reliably establish employment eligibility except for documentation indicating a nonimmigrant classification that authorizes employment with a specific employer incident to status. The interim rule, therefore, places the following condition on the foreign pasaport with a Form I–94: that the foreign passport with the Form I–94 is only acceptable where the individual is authorized to work incident to status with a particular employer, and the Form I-94 indicates an employer-specific nonimmigrant classification. Such documentation may be used only for purposes of establishing eligibility to work for the approved employer. This restriction does not relieve employers of the requirement to abide by any terms or conditions specified on any documentation issued by the Service. Similarly, the restriction does not permit employers to require individuals to present a specific document. The restriction does mean that a Form I–94 endorsed to permit employment incident to status with a specific employer may not be accepted as evidence of eligibility to work for other employers.

4. Conditions Qualifying Foreign Passports With the I–551 Stamp or Form I–94 as a Proper Designation

The Service finds that, in the above instances, foreign passports meet the three conditions that authorize the Attorney General to add documents to List A. First, foreign passports bear a photograph and identifying information (such as the birth date and physical characteristics of the bearer). Second, they are evidence of employment authorization when they bear a temporary I–551 stamp or are presented together with Form I–94 endorsed with a nonimmigrant classification that authorizes employment with a specific employer incident to status. Finally, foreign passports contain security features to make them resistant to tampering, counterfeiting, and fraudulent use. Temporary I–551 stamps are made with secure ink and meet internal Service standards. Form I–94 is only acceptable with a foreign passport in employer-specific situations in which the employer examining the Form I–94 for employment verification purposes is the same employer who petitioned for the alien to receive his or her nonimmigrant status or is otherwise approved to accept the alien for employment. Note that employers are required to reverify the individual's eligibility to work when the stamped authorization expires.

B. Documents Evidencing Employment Authorization (List C)

Section 412(a) of IIRIRA amends section 274A(b)(1)(C) of the Act by removing the certificate of birth in the United States (or other certificate found acceptable by the Attorney General as establishing United States nationality at birth) from the statutory list of acceptable documents that may be used to establish employment authorization for compliance with the employment verification requirements.

The inclusion of the unrestricted social security account number card on List C remains undisturbed by section 412(a) of IIRIRA. Thus, this rule does not amend the current regulations with

respect to the social security account numbered card; it remains on the list of acceptable documents as before.

Under section 274A(b)(1)(C)(ii), as amended, it is within the Attorney General's authority to designate "other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section." Exercising that authority, the Attorney General finds that the remaining documents listed in the current regulations are acceptable List C documents. These documents are:

(1) A Certification of Birth Abroad issued by the Department of State, Form FS–545;

(2) A Certification of Birth Abroad issued by the Department of State, Form DS–1350;

(3) An original or certified copy of a birth certificate issued by a State, county, municipal authority, or outlying possession of the United States bearing an official seal;

(4) A Native American tribal document;

(5) A United States Citizen Identification Card, INS Form I–197;

(6) An identification card for use of a resident citizen in the United States, INS Form I–179; and

(7) An unexpired employment authorization document issued by the Service.

The finding to retain all the List C documents currently listed in the regulations for this rule is necessary to minimize confusion and the potential for discriminatory hiring practices that otherwise might result if this rule removed documents from the current list without first providing an opportunity for public comment or an education period. This rule enables employers and recruiters or referrers for a fee to continue to rely upon the List C documents that are stated on the current version of the Form I–9.

The Service is aware of the congressional intent expressed by section 412(a) of IIRIRA to remove the birth certificate from the statutory list of acceptable documents. The designation of birth certificates for purposes of this interim rule is an exercise of the Attorney General's regulatory authority only during this transitional period until the document reduction initiative is complete. The Service will propose removal of the birth certificate as well as certain other List C documents in a future proposed rule that will follow this interim rule. The Service will consider public comments before implementing such a change. The Service, therefore, retains the birth certificate in this interim rule because its abrupt removal potentially would cause much confusion to the public.

Receipts

As a result of this rule's amendments to the regulations governing List A documents, this rule must concurrently amend the regulations governing the use of receipts, § 274a.2(b)(1)(vi). This amendment is necessary to ensure that certain refugees and lawful permanent residents will be equipped to meet the employment verification requirements if they are unable to present a required document as a result of the reduction to the list of acceptable List A documents required by IIRIRA. In so doing, this amendment restructures the current rule relating to receipts.

1. Current Regulations

Current regulations permit individuals to present a receipt showing that they have applied for a replacement document if the individual is unable to provide a required document or documents at the time of hire. The individual must then present the required document or documents within 90 days of the hire. This provision provides flexibility in situations where, for example, an individual has lost a document.

2. Interim Rule

The interim rule provides that an employer or recruiter or referrer for a fee must accept a receipt that appears to be genuine on its face and appears to relate to the individual presenting it in lieu of the required document, unless the individual indicates or the employer or recruiter or referrer for a fee has actual or constructive knowledge that the individual is not authorized to work. It reinforces that a receipt for an application for initial work authorization or an extension of expiring work authorization is not acceptable. It also extends that receipt rule to reverification.

(1) *Three instances in which receipts are acceptable.*

(a) *Application for a replacement document.* The rule permits the use of receipts in three instances. The first instance is when the individual presents a receipt for the application for a replacement document. An application for initial work authorization or an extension of expiring work authorization, however, its not acceptable.

(b) *Form I–94 indicating temporary evidence of permanent resident status.* The second instance is when the individual presents the arrival portion of the Form I–94 that the Service has marked with a temporary I–551 stamp and has affixed with the alien's picture. The Service may issue this document if an alien is not in possession of his or her passport and requires evidence of lawful permanent resident status. Although this document provides temporary evidence of permanent resident status, it does not contain sufficient security features. Consequently, it does not meet the statutory requirements provided by IIRIRA for inclusion on List A. This rule, therefore, extends the receipt rule to include the Form I-94 with a temporary I–551 stamp and the alien's picture. This document serves as a receipt for Form I–551 for 180 days.

(c) *Form I–94 indicating refugee status.* The third instance is when the individual presents the departure portion of Form I–94 containing a refugee admission stamp. The Service recognizes the importance of newly admitted refugees being able to seek employment promptly upon arrival in the United States. The Service has been working with the Social Security Administration (SSA) to ensure prompt issuance of social security cards which carry no employment restrictions to refugees. In most instances, the Service believes that refugees will receive social security cards timely and will be able to present them to employers. The Service also intends to give refugees the option of obtaining a Form I–766 EAD, but recognizes that in most instances refugees will be able to obtain a social security card faster. Refugees may wish to obtain the Form I–766 EAD so that they will have a Service-issued document with a photograph. In order to ensure that refugees are still able to work if they encounter delays in obtaining cards from either the SSA or the Service, the Service introduces a special receipt rule. Under this rule, a Form I–94 with a refugee admission stamp constitutes a receipt evidencing eligibility to work. It is not, however, a receipt for a specific document. The refugee is permitted to present either an unrestricted social security card or a Form I–766 EAD at the end of the 90-day receipt period. If the refugee presents a social security card, the refugee will also need to present a List B document. If the refugee presents a Form I–766 EAD, he or she does not need to present another document.

(2) *Receipts are not acceptable where the individual is hired for less than three business days.*

To correspond to this interim rule's expansion in the use of receipts, this rule amends 8 CFR 274a.2(b)(1)(iii) in which a reference to receipts is made. This paragraph of the regulations

governs the employment verification requirements in the case of an individual whose employment is less than three business days. Currently, the regulations preclude an individual hired for less than three business days from presenting a receipt for the application of a replacement document in lieu of a required document. This rule extends this prohibition to any type of receipt.

Good Cause Exception

This interim rule is effective on September 30, 1997, although the Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553.

Pursuant to section 412(e)(1) of IIRIRA, the document reduction provisions of section 412(a) of IIRIRA are effective on September 30, 1997, unless the Attorney General designates an earlier date. If the Attorney General does not designate a date through this interim rule, the provisions will go into effect without regulations, and a gap will be left wherein certain individuals who are authorized to work will not be in possession of an acceptable document under the Act as amended by IIRIRA for employment verification purposes. In addition, the Form I–9 will not be revised at this time. The Service is concerned that mass confusion among the employment community would result over which documents currentiy listed in the regulations and on the Form I–9 would remain acceptable to meet the employment verification requirements. This confusion would heighten the potential for discriminatory hiring practices.

To prevent the potential for confusion of the public and discriminatory hiring practices, and to ensure that documents acceptable for employment verification are designated to correspond to all classes of individuals authorized to work in the United States, the Service is issuing this rule. In order to respond to these concerns, this rule designates additional documents as acceptable, beyond those documents specifically enumerated in the Act as revised. In the absence of this action by the Service, the changes made by IIRIRA would result in an immediate further narrowing of the list of acceptable documents. Because of the imminent effective date of the statutory changes made by IIRIRA, this rule is being made effective as of September 30, 1997, without prior comments from the public. For these reasons, the Service finds that it would be unnecessary and contrary to the public interest to delay the effective date of this rule.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this interim rule and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is a short-term measure and very limited in scope, only modifying a small portion of the entire employment verification process. It also does not introduce new forms. As a result, this rule would not require small entities to significantly change established practices. In addition, until further notice, the Service will not penalize persons or entities that commit violations based upon the changes to the list of acceptable documents made by this rule.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it has been submitted and approved by the Office of Management and Budget.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This interim rule does not impose any new reporting or recordkeeping requirements. The information collection requirements pertaining to the employment verification process have been approved for use by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The OMB control number for this collection is contained in 8 CFR 299.5, Display of control numbers.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, aliens, employment, penalties, reporting and recordkeeping requirements.

Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C 1101, 1103, 1324a; 8 CFR part 2.

2. Section 274a.2 is amended by:

a. Revising paragraph (b)(1)(iii);

b. Revising paragraph (b)(1)(v)(A); and by

c. Revising paragraph (b)(11)(vi), to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(iii) An employer who hires an individual for employment for a duration of less than three business days must comply with paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section at the time of the hire. An employer may not accept a receipt, as described in paragraph (b)(1)(vi) of this section, in lieu of the required

document if the employment is for less than three business days.

* * * * *

(v) * * *

(A) The following documents, so long as they appear to relate to the individual presenting the document, are acceptable to evidence both identity and employment eligibility:

(*1*) United States passport (unexpired or expired);

(*2*) Alien Registration Receipt Card or Permanent Resident Card, Form I–551;

(*3*) An unexpired foreign passport that contains a temporary I–551 stamp;

(*4*) An unexpired Employment Authorization Document issued by the Immigration And Naturalization Service which contains a photograph, Form I–766; Form I–688, Form I–688A; or Form I–688B;

(*5*) In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, an unexpired foreign passport with an Arrival-Departure Record, Form I–94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

* * * * *

(vi) *Special rules for receipts.* Except as provided in paragraph (b)(1)(iii) of this section, unless the individual indicates or the employer or recruiter or referrer for a fee has actual or constructive knowledge that the individual is not authorized to work, an employer or recruiter or referrer for a fee must accept a receipt for the application for a replacement document or a document described in paragraphs (b)(1)(vi)(B)((*1*) and (b)(1)(vi)(C)((*1*) of this section in lieu of the required document in order to comply with any requirement to examine documentation imposed by this section, in the following circumstances:

(A) *Application for a replacement document.* The individual:

(*1*) Is unable to provide the required document within the time specified in this section because the document was lost, stolen, or damaged;

(*2*) Presents a receipt for the application for the replacement document within the time specified in this section; and

(*3*) Presents the replacement document within 90 days of the hire or, in the case of reverification, the date employment authorization expires; or

(B) *Form I–94 indicating temporary evidence of permanent resident status.* The individual indicates in section 1 of the Form I–9 that he or she is a lawful permanent resident and the individual:

(*1*) Presents the arrival portion of Form I–94 containing an unexpired "Temporary I–551" stamp and photograph of the individual, which is designated for purposes of this section as a receipt for Form I–551; and

(*2*) Presents the Form I–551 within 180 days of the hire or, in the case of reverification, the date employment authorization expires; or

(C) *Form I–94 indicating refugee status.* The individual indicates in section 1 of the Form I–9 that he or she is an alien authorized to work and the individual:

(*1*) Presents the departure portion of Form I–94 containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for either the Form I–766 or a social security account number card that contains no employment restrictions; and

(*2*) Presents, within 90 days of the hire or, in the case of reverification, the date employment authorization expires, either an unexpired Form I–766; or a social security account number card that contains no employment restrictions together with a document described under paragraph (b)(1)(v)(B) of this section.

* * * * *

Dated: September 25, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–25920 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–0892]

Consumer Leasing; Delay of Compliance Date

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; delay of compliance date.

SUMMARY: Following a review under the Board's Regulatory Planning and Review Program, the Board published a revised Regulation M, which implements the Consumer Leasing Act on October 7, 1996. The final rule contains a significant number of substantive revisions to the regulation. It essentially establishes a new disclosure scheme that should substantially improve consumer understanding of automobile transactions. The new disclosure scheme required the preparation of new forms and the reprogramming of computer software. Mandatory compliance with the revised rule was to begin on October 1, 1997. The Board is delaying that compliance date until January 1, 1998, to facilitate compliance with the regulation and to ensure that consumers receive accurate and meaningful disclosures.

DATES: The mandatory compliance date for the final rule published at 61 FR 52246 (Oct. 7, 1996) is delayed until January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller or Obrea O. Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667. For users of Telecommunications Device for the Deaf (TDD), please contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION: The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The Board was given rulewriting authority, and its Regulation M (12 CFR part 213) implements the CLA.

The CLA generally governs consumer leases of personal property involving $25,000 or less and a term of more than four months. An automobile lease is the most common type of consumer lease covered by the CLA. Like the credit provisions of the TILA, the CLA requires lessors to provide uniform cost and other disclosures in consumer lease transactions and in lease advertising. Prior to entering into a lease agreement, lessors must give consumers fifteen to twenty disclosures, including the amount of initial charges to be paid, an identification of leased property, a payment schedule, the responsibilities for maintaining the leased property, and the liability for terminating a lease early.

Following a review under the Board's Regulatory Planning and Review Program, the Board published a revised Regulation M on October 7, 1996 (61 FR 52246), and a new staff commentary on April 4, 1997 (62 FR 16053). The final rule, which contains a significant number of substantive revisions to the regulation, essentially establishes a new disclosure scheme that should substantially improve consumer understanding of automobile transactions. The new disclosure scheme required the preparation of new forms and the reprogramming of computer software.

The Board has been asked by representatives of the automobile leasing industry—including leasing companies, automobile dealerships, and vendor support services—to delay the mandatory compliance date of the new Regulation M rules beyond October 1, 1997. The request is based on the current state of implementation of the new leasing software at the 22,500 new-car dealerships that arrange for automobile leases provided through approximately 9,000 independent lessors. Based on the information that they have shared, less than half of the dealerships have the necessary software programs in place that would enable them to produce computer-generated disclosure statements by October 1, 1997. In some cases, they would have in place only one of the five or six lessor programs that they typically make available to consumers. The alternative is to complete the leasing forms manually, with resultant delays and a great potential for errors that would subsequently have to be corrected.

The Board believes that consumers will not be well served by proceeding on the October 1 schedule. Accordingly, to better ensure that consumers receive accurate and meaningful lease disclosures, the Board has delayed the mandatory compliance date to January 1, 1998.

By order of the Board of Governors of the Federal Reserve System, September 25, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–25921 Filed 9–29–97; 8:45 am]

BILLING CODE 6210–01–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN 3052–AB64

Loan Policies and Operations; Definitions; Loan Underwriting

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), through the FCA Board (Board), issues a final rule amending its regulations relating to loan underwriting in response to comments received from the Board's initiative to reduce regulatory burden and in an effort to streamline the regulations and set clear minimum regulatory standards where appropriate. The Board's action eliminates unnecessary regulations, requires each Farm Credit System (System or FCS) institution to adopt loan underwriting policies and standards, and makes other changes to the regulations governing prudent credit administration.

EFFECTIVE DATE: These regulations shall be effective upon the expiration of 30 days during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Regulation Development Division, Office of Policy Development and Risk Control, 703) 883–4498, TDD (703) 883–4444;

or

Joy E. Strickland, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On April 15, 1996, the Board published proposed amendments to the regulations relating to loan underwriting, loan sale and purchase transactions, and the lending authority of production credit associations (PCAs). The amendments were proposed largely in furtherance of comments received on the Board's request for public comment on the appropriateness of requirements that the FCA regulations impose on the System. *See* 58 FR 34003 (June 23, 1993). The FCA has addressed many of those comments in previous rulemakings. The proposed amendments addressed the remaining regulatory burden issues that relate to loan underwriting and the independent credit judgment rule for loan sale and purchase transactions through agents. In addition to responding to the regulatory burden comments, the FCA also proposed other amendments to refocus regulatory requirements for loan underwriting, make the regulations more understandable and useful to the reader, set minimum regulatory standards, and make conforming amendments.

The FCA received a total of 20 comments on the proposed amendments. Seventeen (17) Farm Credit institutions and the Farm Credit Council (FCC) submitted comments. The FCA also received comments from the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, and the American Society of Farm Managers and Rural Appraisers, Inc. (collectively, appraisal groups). In general, all of the System commenters expressed support for the proposed regulation and its goal of reducing regulatory burden. Most of the System commenters also supported FCA's proposals to streamline the regulations governing the bank/association relationship and place more decision-making authority and accountability with direct lender associations. One association commented favorably on the entire proposal and suggested no changes. Other System commenters stated that although the proposal is a large step toward reducing regulatory burden, it did not reduce enough burden in certain areas. Also, some banks and associations requested clarification of the proposed new responsibilities of associations and the remaining areas of bank direction and supervision of associations. The appraisal groups commented that although they understood the FCA's reasons for the proposed changes to §§ 614.4245 and 614.4250, the changes were inconsistent with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal groups suggested alternatives for the FCA to achieve its objectives and ensure that appraisals remain in compliance with USPAP.

Specific comments and changes to the proposed amendments will be addressed in the section-by-section analysis of the comments that follows. Except for changes noted in the section-by-section analysis, the FCA adopts the proposed amendments as final. Specific comments relating to proposed § 614.4200(b), which contained requirements for obtaining borrower financial statements, will be addressed in the discussion of Subparts C and D—Bank/Association Lending Relationship and General Loan Policies for Banks and Associations. In order to provide readers with a guideline for the amended regulations, the following is a list of changes this final rule will make to parts 614 and 619:

Subpart A—Lending Authorities

§§ 614.4000 through 614.4050—Revised.

Subpart C—Bank/Association Lending Relationship

§§ 614.4100, 614.4110, and 614.4130—No changes made.
§ 614.4120—Revised.
§§ 614.4135 through 614.4145—Deleted.

Subpart D—General Loan Policies for Banks and Associations

§ 614.4150—Revised.
§ 614.4160—Deleted.
§ 614.4165—Revised.

Subpart E—Loan Terms and Conditions

§ 614.4200—Revised.

§§ 614.4210 through 614.4230—Deleted.

§ 614.4231—Revised.
§§ 614.4232 and 614.4233—No changes made.

Subpart F—Collateral Evaluation Requirements

§ 614.4245—Revised.

Subpart H—Loan Purchases and Sales

§ 614.4325—Revised.

Subpart J—Lending Limits

§§ 614.4355 and 614.4358—Revised.

Subpart O—Banks for Cooperatives Financing International Trade

§ 614.4810—Revised.

Part 619—Definitions

§§ 619.9165 and 619.9290—Removed.

I. Subpart A—Lending Authorities

The FCA received 12 comments on proposed § 614.4040, which codifies guidance that the FCA has provided to institutions regarding loans made by PCAs that have amortization schedules longer than 7 years. The commenters were evenly split, with 6 commenters expressing support for the proposal and 6 commenters objecting to the proposal. The comments received in support of the proposal generally stated that the provisions are appropriate for PCA lending and should not be broadened or modified. Two PCA commenters noted that the proposal was more than adequate to offer direction to direct lenders.

All except one of the commenters requesting modification of the proposal generally believe that it is too restrictive. They object to the proposed 15-year limitation on amortization periods for PCA loans because they assert that the statutory 15-year limit applies only to the term of the loan, not the loan amortization. Those commenters also stated that the prohibition against a PCA making loans solely to acquire real estate is without statutory basis and inconsistent with a PCA's ability to take "owned" real estate as collateral. They asserted their belief that the loan purpose restriction was implemented only to minimize competition between System institutions. These commenters suggested the following changes: (1) Apply the 15-year amortization restriction only to loans with 7 to 10-year terms; (2) delete any loan purpose restriction; and (3) clarify that the authorizing policy is the bank's not the association's. One PCA expressed agreement with the comments regarding the 15-year and loan purpose restrictions, but differed from the foregoing comments by urging that the authority for amortizing these loans should be through association policy rather than bank policy and control. One jointly managed PCA/Federal land bank association (FLBA) agreed with this PCA commenter and suggested that bank approval should not be required for association policies to exercise these authorities and that association board policies on this issue need only comply with general policies and standards of the funding bank.

A bank and a FLBA requested clarification of four issues regarding the loan purpose restriction under § 614.4040(a)(2): (1) Is the purpose of the loan limited only to financing of facilities; (2) if real estate is purchased along with a facility, must the real estate be integral to the operation or can the real estate be separate, unimproved land, such as two parcels that the seller will only sell together; (3) if the real estate can be separate, is there a limit on the value of the real estate versus the value of the facility; and (4) can a PCA make a loan solely for the purchase of real estate if the PCA has another production loan to the borrower?

With regard to the comment that Congress intended the 15-year limitation to apply only to loan term, rather than loan amortization, the FCA agrees, in part, with the commenters' interpretation of the Farm Credit Act of 1971, as amended (Act), and its legislative history. Under the Act, Federal land credit associations (FLCAs) have the authority to make loans with terms of greater than 15 years, while PCAs are limited to loan terms of less than 15 years. Although the 15-year limitation technically applies only to a loan's term, rather than a loan's amortization, 15 years is the outward limit of PCA loan-making authority approved by Congress. The FCA concludes that the 15-year limitation is consistent with the differing lending authorities of PCAs and FLCAs and recognizes the importance of the Act's distinction between long-term real estate lenders and short-and intermediate-term lenders. Based on the outward limits placed on loan term and the differences between PCA and FLCA lending authorities, the FCA continues to believe that the 15-year limitation is appropriate and adopts the limitation and the loan purpose restrictions as proposed. The FCA clarifies that the loan purpose restriction only applies to loans amortized for longer than the maximum loan term otherwise authorized for PCAs in § 614.4040(a)(1).

Since there is a possibility of competition between short- and long-term lenders in some areas if PCAs amortize loans over periods longer than their maximum authorized loan terms, the FCA believes that System borrowers would be best served if the institutions affected by this issue develop the policies to address it. Because both long- and short-term lenders are represented at the bank level, the bank, through its association directors and stockholders, is in the best position to develop a policy that appropriately considers the needs of the borrowers and the relationships and conditions existing in each district. Therefore, the FCA adopts as final the requirement that association authority to amortize loans under § 614.4040(a)(2) is pursuant to funding bank approval. The FCA also notes that, pursuant to section 1.10 of the Act, bank approval continues to be required for PCA authority to make loans with terms of more than 7, but not more than 10 years.

In response to the questions raised regarding the loan purpose restriction in § 614.4040(a)(2), the FCA concludes that the amortization authority in § 614.4040(a)(2) can be used for any authorized purpose for PCA lending, with the exception that it may not be used solely to finance the acquisition of unimproved real estate. Although the restriction excludes loans for the purpose of purchasing unimproved real estate (the real estate will be considered unimproved even though it may include minimal improvements, such as fencing), the authority in § 614.4040(a)(2) clearly provides for the acquisition of production facilities and the land upon which the facilities are located. There are many types of loans that fall between these two boundaries, including those addressed in the bank's questions. The FCA believes that the institutions involved should establish reasonable standards for judging compliance with the loan purpose restrictions for the same reasons that it believes that authority for the amortization period should be addressed in bank policy, i.e., it allows the amortization authority to be best tailored to the needs of the borrowers and the relationships between the institutions in each district. Therefore each PCA's policy, subject to bank approval, for implementing the authority in § 614.4040(a)(2) should clearly state under what circumstances such financing will occur. In response to the bank's fourth question, however, PCAs are not authorized to finance the acquisition of unimproved real estate under this authority solely because they also have outstanding production or equipment loans to the borrower.

Commenters also suggested two technical changes to § 614.4040(a)(2): (1) Change the point at which the underwriting criteria must be met for refinancing from "maturity" to the time of "refinancing" because a loan may be refinanced prior to its maturity date; and (2) change the term "real estate" to "land" to more clearly authorize the financing of buildings. The FCA agrees that the term "refinance" is more appropriate than "maturity" and has amended the regulation accordingly. A borrower may wish to refinance a loan prior to the maturity date, and any refinancing cannot extend the ultimate repayment of the loan more than 15 years from the date of the original loan. The FCA believes that the clarifications provided in the previous paragraph should clear up any doubt that this authority may be used to finance buildings and other facilities. Therefore, the FCA adopts in final the term "real estate" as proposed.

The FCA also received 2 comments stating that the amended PCA amortization authority could result in agricultural credit associations (ACAs) having less authority to make short-and intermediate-term loans than PCAs. Although the FCA agrees with the commenters that ACAs should have at least the same authorities as PCAs, applying the provisions of § 614.4040(a)(2) to ACAs would have the unintended result of unnecessarily restricting ACAs' authority. Since there are no limitations in the Act on the length of amortizations for loans and the existing requirement in § 614.4220(c) that short-and intermediate-term loans with maturities in excess of 7 years must be amortized over the term of the loan will be deleted by this rule, there will be no restrictions on amortizations of loans made by an ACA. As stated above, the restriction on a PCA's amortization authority derives from the Act's distinction between long-and short-term lenders. Because an ACA may make short-, intermediate-, and long-term loans, there is no need to restrict amortizations for ACA loans. Therefore, the FCA believes that applying § 614.4040(a)(2) would unnecessarily restrict ACA lending and is not making the change requested.

II. Subparts C and D—Bank/Association Lending Relationship and General Loan Policies for Banks and Associations

The FCA proposed to clarify the role of Farm Credit Banks (FCBs) and agricultural credit banks (ACBs) in the supervision of associations' credit operations. The FCA believes that autonomy in association operations promotes accountability in many areas, including prudent lending operations. Also, the FCA believes that each direct lender, through its board of directors, should adopt and follow its own policies and procedures for operations. As noted previously, most of the commenters were in support of this change and philosophy. The final rule deletes existing §§ 614.4135, 614.4140, and 614.4145 as proposed. However, in taking this action, the FCA recognizes the continuing importance of general bank oversight of association credit activities that may have a material impact on the bank and on the association's ability to perform on its direct loan(s) from the bank.

The FCA proposed a new regulation, § 614.4150, to address credit supervision by each institution's board of directors and to require that loan policies and underwriting standards must be adopted by each direct lending institution. The FCA received six comment letters on proposed § 614.4150. The commenters sought clarification of the term "measurable standards" in § 614.4150(g) and stated that loan underwriting standards should not include specific ratios, such as debt coverage and liquidity, on which to base each loan decision. The commenters also felt that while there is support for measurable standards, documenting each loan not in compliance with each standard (§ 614.4150(i)) is unduly burdensome. They contend that standards should be applicable only to the primary portion of the loan portfolio or a majority of the industry or market that the lender finances and that the focus should be on documenting those loans in significant noncompliance with the standards as a whole. The FCC also suggested alternative language for § 614.4150(i) to encompass this philosophy.

The commenters are concerned that § 614.4150(i) requires that a single set of standards be applicable to all loans. In response, the FCA does not intend to require institutions to establish specific ratios that necessarily apply to all loans. It may be prudent to apply distinct ratios to differing loans. In developing standards, each direct lender is expected to identify the similar types of loans in their portfolios, based on such items as similar operations, sources of repayment, collateral, and economic or geographic characteristics, and to establish loan underwriting standards tailored to address the strengths and weaknesses of each type of loan and the institution's ability to absorb the risk posed by such loans. Such standards should include ratios, measures, scoring, and other specific credit evaluation tools appropriate to the portion of the portfolio being addressed and the institution's risk-bearing capacity. In addition to specific standards, general lending guidelines that have applicability to different types of loans can be useful in identifying risk and may be necessary for unusual loans that do not fit within any of the lenders' primary lending areas. A number of things will affect the level of detail in standards, such as the importance of loan type to the institution's portfolio and the level of risk in the type of loan, and the regulations do not prescribe a set formula.

Regarding documentation of noncompliance with the loan underwriting standards, the regulation requires that whenever a loan does not meet any of the standards established for that type of loan, the reason for making an exception to the standards and accepting the loan must be documented. The FCA believes that this documentation is critical on an individual loan basis and any burden that arises from this documentation is outweighed by the importance of the documentation to sound credit administration. The amount of loans that may require documentation of noncompliance and the detail of such documentation will vary according to the standards developed by each institution, and any burden of such documentation can be reduced by well-tailored, specific standards. Therefore, the FCA believes the requirements of § 614.4150 (g) and (i) are appropriate and adopts them as proposed with minor syntactical changes to paragraph (g).

The commenters also noted that proposed § 614.4150(h) does not entirely serve the purpose of existing § 614.4160(e) because a loan's structure should be determined not only by the loan's purpose, as required by § 614.4150(h), but also by the terms, conditions, and collateral, which are referenced in existing § 614.4160(e). The FCA has revised paragraph (h) to state that loan terms and conditions must be appropriate for the loan. Use of the term "loan" includes the requirement that the terms and conditions must be appropriate for the purpose of the loan and any other relevant criteria of the loan, such as collateral. The commenters also requested clarification that underwriting standards do not have to be included in the policies adopted by the institutions' boards of directors pursuant to § 614.4150. The FCA clarifies that loan underwriting standards must be adopted pursuant to board policies but are not required to be contained in board policies.

An FCB commenter asserted that the regulations should not be interpreted to prohibit banks from establishing "bright line" credit standards for associations in general financing agreements (GFAs). Further, the bank asserts that as long as the FCA approves GFAs, it can review any "bright line" standards for appropriateness through that avenue. If, on the other hand, the FCA removes the banks' "regulatory authority" to establish credit standards for direct lenders, the FCA should eliminate its

approval of GFAs and make clear that the GFAs can include bank approval of association credit standards and/or compliance with bank collateral requirements. The FCC requested clarification about the apparent conflict between the proposal and section 2.4(a) of the Act, which appears to say that PCAs are required to make loans under standards approved by the bank. Association commenters requested clarification that banks do not have to approve association lending policies.

In response to the comments regarding what should be included in GFAs, it is the FCA's general belief that banks can establish credit criteria for associations as appropriate to reflect the risks in the direct loans. This issue will be addressed in revisions to the regulations governing GFAs [1]. The provisions of this regulation reflect the FCA's views that detailed underwriting standards for direct lender loans are the responsibility of that lender.

Some commenters questioned whether § 614.4150 conflicts with the provisions of section 1.5(17) of the Act. Section 1.5(17) of the Act authorizes banks to adopt standards for lending. Nothing in the revised regulation prohibits the banks from continuing to adopt standards for making direct loans to direct lender associations and for FLBA lending. Some comments also questioned whether § 614.4150 is consistent with section 2.4(a) of the Act. In response, the banks will continue to develop standards appropriate to ensure repayment of the direct loan, which in turn helps ensure the safety and soundness of all of the institutions in the district. The FCA believes that section 2.4(a) neither requires that banks prescribe detailed association lending standards nor prohibits associations from adopting standards to govern their own lending operations. Therefore, the FCA believes that § 614.4150 is consistent with the Act.

The FCA received comments from the FCC and nine institutions regarding the proposed requirements for obtaining borrower financial statements in § 614.4200(b). Most of the commenters urged deleting all of proposed paragraph (b) except the first sentence. The commenters strongly believe that even though the financial statement provision was a significant reduction over existing requirements, the proposal did not go far enough. They asserted that the proposal was inconsistent with the FCA regulatory philosophy statement, the FCA Board Chairman's remarks in the FCA's 1995 annual report, Congressional intent in the Act, proposed § 614.4150, and the FCA's role as an arms-length regulator. They also asserted that the proposal was not necessary for safety and soundness. According to the commenters, this provision of the regulation micro-manages this one aspect of lending operations, which is in stark contrast with the overall objective of the proposed regulation to put loan underwriting in the hands of direct lenders. Commenters asserted that the thresholds for obtaining financial statements should not be set by regulation. Instead the standards should be set by each direct lender institution according to the institution's financial position, capital strength, risk-bearing ability, credit quality, portfolio, and operations of the individual institutions and borrowers (as applicable). The commenters contend that in this way safety and soundness will be better measured because standards will be developed on an institution-specific basis.

In addition, the commenters noted that a regulation requiring institutions to request financial statements at loan origination for all loans above a set threshold limits the institutions' ability to use credit scoring with creditworthy customers. They urged that a borrower's total lending relationship, if quite large, should not prevent the use of credit scoring on small transactions. Also, obtaining financial statements at each material servicing action is vague and could be costly to the System, especially where actions such as release of collateral pose no risk to the lender. The commenters also asserted that requesting financial statements can cause problems in enforcement. They stated that in their experience, very few borrowers respond to requests, requiring considerable time and money on the institution's part to obtain the statements, and that it has been especially difficult to enforce a financial statement submission requirement if a borrower meets all other loan obligations. Finally, the commenters stated that the requirement can needlessly drive away good borrowers and create a competitive disadvantage.

One commenter suggested that if the FCA maintains a requirement regarding financial statements, the requirement should only apply to adversely classified loans above $100,000. Another stated that if the requirement is maintained, "material servicing action" should be changed to "any servicing action that materially increases the borrower's access to credit, reduces the institution's collateral protection, or otherwise materially increases the institution's risk position." Also, the threshold should be changed to $250,000. This commenter also urged changing "less than acceptable" to "Substandard, Doubtful, and Loss." Finally, one PCA commenter supported the proposal and believes that the requirements for financial statements are appropriate.

After careful consideration of the issues surrounding borrower financial statements and the comments received on the proposed regulation, the FCA concludes that requiring each direct lender to develop standards for obtaining financial statements and other financial information is appropriate. The FCA does not adopt proposed § 614.4200(b) and, instead, incorporates the substance of the first sentence of this paragraph into the loan underwriting standards required by § 614.4150. This relocation reflects the decision to treat this issue as a loan underwriting standard rather than as loan terms and conditions. Section 614.4150(a) now requires that an institution's policies and procedures must prescribe the minimum supporting credit and financial information necessary and the frequency for collection of such information.

The final regulation requires that each institution include in its policies and procedures how and when to obtain and use financial information, including financial statements, to determine creditworthiness for repayment of loans. The policies must be specific as to when collection of items such as balance sheets, income statements, and statements of cashflows will be required and must address the times for their collection, such as at loan inception, when taking servicing actions, and periodically during the term of the loan. The requirements for setting parameters of when to obtain and use financial information must take into consideration basic criteria including, but not limited to, loan size, loan type, loan classification, frequency of payment, source of repayment, applicant's operation, and capital position and risk bearing capacity of the institution. The FCA will evaluate and determine the appropriateness of each institution's policies and procedures on lending practices, including collection of financial information, during the examination process.

As noted in the preamble to the proposed regulations, there are no industrywide standards for the size or complexity of loans warranting current and complete financial information. However, prudent credit practices dictate that risk be assessed in each loan. The FCA continues to believe that the best method for assessing risk in certain loans is through analysis of items such as a balance sheet and income statement and considers the absence of information necessary to document loan performance expectations to be an unsafe and unsound lending practice. The FCA also notes that the approach for addressing the collection and use of financial statements in credit analysis in this final rule is consistent with the approach taken by other Federal financial institution regulatory agencies.

Finally, the FCA notes the commenters' concerns regarding potential reluctance of some borrowers to submit financial statements and requiring them to do so. However, the FCA believes that for loans where prudent lending dictates obtaining and evaluating financial statements, the safety and soundness benefits to the institution outweigh the potential negative reactions of borrowers. Thus, adequate controls for enforcing institution policies regarding obtaining financial statements are expected with implementation of this regulation.

Other than the changes previously noted to paragraphs (a), (h), and (i), the FCA adopts § 614.4150 as proposed. The FCA also notes that in instances where direct lending authority has not been transferred to the FLBAs, the banks must develop lending policies and standards that all FLBAs within their respective districts must follow in making credit decisions for the bank. Additionally, in certain circumstances where loss exposure accrues to individual FLBAs through loss-sharing agreements with the FCB, loan policies and standards may be needed by FLBAs to augment and supplement those established by their supervisory banks.

The FCA received three comments on proposed § 614.4165, which requires that bank lending policies give special consideration to the credit needs of young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products. The commenters recommended revising existing paragraph (e) to place the responsibilities for grouping specialized enterprises according to risk with the direct lender, whether bank or association. The FCA agrees with the comment and has revised existing paragraph (e) (now redesignated as paragraph (c)) to place the responsibility for grouping specialized enterprises with direct lenders, rather than with the banks, consistent with other changes in this final rule. Commenters were also concerned that the proposed changes in the regulation will result in additional regulatory burden by increasing reporting requirements. They requested clarification of narrative reporting requirements, asked whether definitions will be in call reports, and asked how the changes will reflect the requirements for special enterprises. In response to the commenters, the FCA clarifies that the reporting requirements, which are statutory, will not change as a result of the final amendments to § 614.4165. The amendments merely eliminate the duplication and inconsistencies that exist between the call reports and regulations. Also, necessary definitions will continue to be included in the call reports as they are now and may be modified as the young, beginning, and small farmer lending environment changes. Therefore, other than the changes noted to redesignated paragraph (c), the amendments to § 614.4165 are adopted as proposed.

III. Subpart E—Loan Terms and Conditions

The FCA received two comments on proposed § 614.4200(a)(1). The commenters suggested that the FCA change the language to refer solely to a "written document or documents," because loan terms and conditions may be set forth in more than one document. The FCA recognizes that terms and conditions may be included in more than one document and to alleviate any confusion, amends § 614.4200(a)(1) to refer to a "written document or documents." However, the FCA continues to list sample documents in the regulation and reiterates that the list is illustrative only, and does not require that terms and conditions be set forth in any particular written document.

The FCA also received three comments on § 614.4200(c)(1) regarding the security requirements for long-term real estate loans. An ACA commented that the proposed requirement that collateral taken to secure long-term real estate mortgages must consist primarily of agricultural real estate limits a System institution's ability to serve diversified agriculture and creditworthy customers. It asserted that properties in metropolitan areas, such as nurseries and properties purchased for the purpose of farming in the future, have high non-agricultural or commercial values, often over the agricultural value of the property. An FCB commenter supported the concept of the proposed amendment but stated that rather than focusing on the value of the collateral, the amount of agricultural collateral required should be based on the amount of the loan. The bank suggests that a better approach to preserve the rural focus of System lending is to require that the amount of money that may be loaned on the non-agricultural collateral cannot exceed the amount that could be loaned on the agricultural collateral. Finally, the commenter suggested that the FCA add "buildings or improvements thereto" after "agricultural land" because such improvements add value to the land.

The FCA believes that the requirement that the primary collateral must be more than 50 percent agricultural or rural land is consistent with the mandate in section 1.7(a)(1) of the Act that FCS institutions make real estate mortgage loans in rural areas. The FCA also recognizes and supports the position that lenders should take the maximum collateral possible and appropriate to ensure safe and sound lending. In order to clarify § 614.4200(b)(1), the FCA is specifying in the regulation that the collateral taken to meet the loan-to-value limitation in § 614.4200(b)(1) must be primarily agricultural or rural property. If collateral is available in addition to the collateral taken to meet the loan-to-value requirement, the lender can, and is strongly encouraged to, take any additional collateral that appropriately secures the loan. There is no requirement that this additional collateral be agricultural or rural property. In response to the commenters' questions, if the value of the non-agricultural or non-rural property taken as additional collateral is greater than the value of the collateral taken to meet the loan-to-value limitation, the excess value of such additional collateral will not result in a violation of this section.

Regarding the suggestion to add the words "buildings and improvements" after "agricultural land," the FCA interprets the term "agricultural land" to include any buildings and improvements that have been made to the land and modifies proposed § 614.4200(c)(1) (now paragraph (b)(1)) to reference "agricultural land and improvements made thereto." Such improvements are normally considered in establishing the value of the land for collateral purposes.

The FCA received a comment that institutions should have the authority to take a second lien on property serving as primary collateral to meet the loan-to-value ratio for agricultural loans, as long as the lender also holds the first lien on the property. Similar authority was proposed in § 614.4200(c)(4) for rural home loans, and the commenter stated that it should apply to agricultural loans as well. According to the commenter, having a second lien on property while already holding a first

[1] The FCA published proposed amendments to the regulations governing GFAs on March 24, 1997 (62 FR 13842).

lien to collateralize another loan results in the same level of security for the lender as having only a first lien position in another piece of property. Also, the commenter stated that the security requirements in the Act are the same for both rural home loans and agricultural loans. The FCA agrees with the commenters that the first lien loan security requirements in the Act are the same for all real estate mortgage loans. Therefore, the FCA amends § 614.4200(b)(1) to authorize lenders to take a second lien interest in real property if the lender already holds a first lien interest in the property, because the effective result of both liens is a first lien on the property. Except for this change, the clarification of agricultural land, and the changes previously discussed regarding relocating requirements for collection of financial information to § 614.4150 (and the redesignation of paragraphs as a result), § 614.4200 is adopted as proposed.

IV. Subpart F—Collateral Evaluation Requirements

The FCA received comments from two appraisal groups and four System institution commenters regarding proposed modifications to §§ 614.4245 and 614.4250. The appraisal groups concurred that there is a need to simplify the appraisal process in low-risk, small loan programs, but thought that the amendments proposed were not the best way to accomplish the simplification. The appraisal groups suggested that the USPAP contains sufficient flexibility to meet the collateral evaluation needs of small loan programs. They further suggested that if the use of limited appraisals under USPAP rule 1 and summary and restricted reports under rule 2 are not sufficient, the FCA could specify appropriate additional departures in regulations, which would allow appraisers to use the USPAP jurisdictional exception.

Since the publication of the collateral evaluation regulations in 1995, the FCA has received several requests to review those regulations, because institutions have asserted that certain provisions are potentially burdensome. The FCA proposed amendments to §§ 614.4245 and 614.4250 in an attempt to address those concerns. After reviewing the comments on the proposed amendments and reconsidering the requirements of the regulations and comments received on the collateral evaluation regulation subsequent to publication, the FCA has decided to withdraw the majority of the proposed amendments to §§ 614.4245 and 614.4250 and modify others.

The FCA believes that the departure provisions of USPAP are sufficient to meet the needs of System institutions in their small loan programs and encourages institutions to follow those provisions in developing small loan programs. Once those provisions are implemented, the FCA will consider whether modifications to the regulations are necessary to create a jurisdictional exception.[2] The FCA also welcomes institutions to contact the FCA for guidance in using the USPAP departure provisions in small loan programs.

The FCA received comments from System institutions to withdraw the $100,000 loan size limitation on small loan programs referenced in the proposed amendment to § 614.4245 and provide more flexibility for small real estate loans and loans for the purchase of new equipment and vehicles. The FCA agrees with the commenters that a $100,000 blanket limitation for all small loan programs is not appropriate. Regarding added flexibility, the FCA believes that the institutions can make use of the USPAP provisions mentioned above for both small real estate loans and loans for the purchase of new equipment and vehicles and that changes are not necessary. Therefore, the FCA withdraws the proposed amendments to § 614.4250. The FCA adopts as final the proposed amendments to § 614.4245(d), except that the word "modified," the reference to § 614.4250(b), and the limitation that small loan programs consist of loans of $100,000 or less are removed and the term "minimum information program" is added in place of small loan program. With regard to these changes, the FCA notes that institutions with minimum information programs must set the parameters of those programs in their policies and loan underwriting standards. Such parameters should include, but are not necessarily limited to, portfolio limitations, maximum loan size, collateral requirements, and information required for documentation of repayment capacity.

V. Subpart H—Loan Purchases and Sales

The FCA received three comments, two from associations and one from the FCC, regarding the proposed restrictions in § 614.4325 on the funding bank serving as an agent for an association in purchasing loans. The commenters stated that restricting the funding bank from acting as an association's agent limits the System's potential for cooperating on a regional or national basis to serve rural America. They offered trade credit projects and other situations in which the FCA has said that the use of credit scoring is appropriate as examples of projects that would be impeded if the funding bank were prohibited from serving as an association's agent. The commenters also noted that the restriction is inconsistent with the FCA's recognition of direct lender associations' autonomy and responsibility for their own lending operations. Further, it is the commenters' belief that there are different relationships between banks and associations in different districts, and the FCA should not impinge on those relationships by regulation. Finally, the commenters suggested that if the FCA is unwilling to remove the restriction entirely, the FCA should adopt the position that the funding bank can be an association's agent, but the association has the authority to terminate the agency relationship with a 90-day notice to the bank.

In response to the commenters, the FCA notes that the restriction on a funding bank serving as an association's agent may appear inconsistent with the philosophy the FCA has adopted in these loan underwriting regulations that associations adopt their own lending standards and oversee their lending operations. However, the relationship between a funding bank and its associations can result in unequal bargaining positions between banks and associations and create conflicts with an association's ability to hold its agent, the funding bank, responsible for acting in the association's best interest. Thus, notwithstanding potential inconsistencies with association autonomy, the FCA believes it is necessary to take steps to minimize any damages caused by these conflicts. As suggested by the commenters, one way to minimize problems is to require institutions to include in the agency agreement a provision authorizing an association to terminate the agreement with notice to the funding bank. The FCA agrees with the commenters, but believes that termination alone would not be sufficient to remedy the damages caused by a bank's failure to act appropriately if an association has purchased loans prior to terminating the agency agreement. As a result, the FCA withdraws the proposed prohibition in § 614.4325 against a funding bank serving as an association's agent. The final regulation contains a provision for termination of the agency agreement with no more than a 60-day notice to the bank, and in addition, requires a provision in the agreement that the bank would be required to purchase from the association any loans that the association, in its sole discretion, determines do not comply with the terms of the agency agreement or the association's loan underwriting standards. The added provision will provide a remedy to an association injured by a bank's breach of the agency agreement and minimize any possible effect of an unequal bargaining position between a bank and an association. In addition, although the commenters suggested 90 days, the FCA believes that a shorter time period for the notice provides greater flexibility for an association to act in situations in which the association believes that the bank may not be acting in its interest. Further, 60 days should give banks sufficient notice to make any arrangements necessary as result of termination of the agency agreement. In addition, the parties may, by mutual agreement, specify a notice period of less than 60 days. Other than withdrawing the funding bank restriction and adding the termination and damages provisions, the FCA adopts the amendments to subpart H as proposed.

Finally, except where previously noted in this supplementary information, the proposed amendments, including the many conforming amendments within subparts A, C, H, J, and Q of part 614 and in part 619, are adopted as final without change.

[2] A jurisdictional exception is intended to provide a saving or severability clause intended to preserve the balance of USPAP if one or more of the parts of USPAP are determined to be contrary to the law or public policy of a jurisdiction. FCA would have to establish a jurisdictional exception by regulation.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 619

Agriculture, Banks, Banking, Rural areas.

For the reasons stated in the preamble, parts 614 and 619 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4101b, 4106, and 4128; Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—Lending Authorities

2. Section 614.4000 is amended by removing the words "agricultural credit association of a Federal land credit association" and adding in its place, the words "agricultural credit association or a Federal land credit association" in the introductory text of paragraph (f), and revising paragraph (a) to read as follows:

§ 614.4000 Farm Credit Banks.

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, Farm Credit Banks are authorized, subject to the requirements in § 614.4200 of this part, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

* * * * *

3. Section 614.4010 is amended by removing the reference "§ 614.4230" and adding in its place, the reference "§ 614.4200" in paragraphs (d)(1) and (d)(2); and revising paragraph (a) to read as follows:

§ 614.4010 Agricultural credit banks.

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, agricultural credit banks are authorized, subject to the requirements of § 614.4200, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

* * * * *

§ 614.4020 [Amended]

4. Section 614.4020 is amended by removing the reference "614.4230" and adding in its place, the reference "614.4200" in paragraphs (a)(1) and (a)(2).

5. Section 614.4030 is amended by revising paragraph (a) to read as follows:

§ 614.4030 Federal land credit associations.

(a) *Long-term real estate lending.* Federal land credit associations are authorized, subject to the requirements of § 614.4200, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

* * * * *

6. Section 614.4040 is amended by removing paragraph (b); redesignating paragraphs (c) and (d) as new paragraphs (b) and (c), respectively; removing the reference "paragraph (c)(2)" and adding in its place, the reference "paragraph (b)(2)" in newly designated paragraph (b)(1); and by revising paragraph (a) to read as follows:

§ 614.4040 Production credit associations.

(a) *Loan terms.* (1) Production credit associations are authorized to make or guarantee loans and other similar financial assistance for the following terms:

(i) Not more than 7 years

(ii) More than 7 years, but not more than 10 years, subject to authorization in policies approved by the funding bank

(iii) Not more than 15 years to producers or harvesters of aquatic products for major capital expenditures, including but not limited to the purchase of vessels, construction or purchase of shore facilities, and similar purposes directly related to the producing or harvesting operation

(2) Subject to policies approved by the funding bank, production credit associations may amortize loans over a period greater than the loan terms authorized under paragraph (a)(1) of this section, provided that:

(i) The loan is amortized over a period not to exceed 15 years

(ii) The loan may be refinanced only if the lender determines, at the time of refinancing, that the loan meets its loan policy and underwriting criteria;

(iii) Any refinancing may not extend repayment beyond 15 years from the date of the original loan; and

(iv) The loan is not being made solely for the purpose of acquiring unimproved real estate; and

(3) Short-and intermediate-term loans shall be made with maturities that are appropriate for the purpose and underlying collateral of the loan and that comply with an institution's loan underwriting standards adopted pursuant to § 614.4150 and the general requirements of § 614.4200 of this part.

* * * * *

7. Section 614.4050 is amended by adding introductory text and by revising paragraphs (a) and (b) to read as follows:

§ 614.4050 Agricultural credit associations.

Agricultural credit associations are authorized to make or guarantee, subject

to the requirements of § 614.4200 of this part:

(a) *Long-term real estate mortgage loans* with maturities of not less than 5 nor more than 40 years, and continuing commitments to make such loans; and

(b) *Short-and intermediate-term loans* and provide other similar financial assistance for a term of not more than 10 years (15 years for aquatic producers and harvesters).

* * * * *

Subpart C—Bank/Association Lending Relationship

§ 614.4120 [Amended]

8. Section 614.4120 is amended by removing the words "the factors set forth in §§ 614.4150 and 614.4160" and adding in their place, the words "the loan underwriting policies and standards adopted pursuant to § 614.4150" in the last sentence of paragraph (a).

§§ 614.4135, 614.4140, and 614.4145 [Removed]

9. Sections 613.4135, 613.4140, and 614.4145 are removed.

Subpart D—General Loan Policies for Banks and Associations

§§ 614.4150, 614.4160, 614.4170 [Removed]

10. Sections 614.4150, 614.4160, and 614.4170 are removed.

11. New section 614.4150 is added to read as follows:

§ 614.4150 Lending policies and loan underwriting standards.

Under the policies of its board, each institution shall adopt written standards for prudent lending and shall issue written policies, operating procedures, and control mechanisms that reflect prudent credit practices and comply with all applicable laws and regulations. Written policies and procedures shall, at a minimum, prescribe:

(a) The minimum supporting credit and financial information, frequency for collection of information, and verification of information required in relation to loan size, complexity and risk exposure

(b) The procedures to be followed in credit analysis

(c) The minimum standards for loan disbursement, servicing and collections

(d) Requirements for collateral and methods for its administration

(e) Loan approval delegations and requirements for reporting to the board

(f) Loan pricing practices

(g) Loan underwriting standards that include measurable standards:

(1) For determining that an applicant has the operational, financial, and management resources necessary to repay the debt from cashflow

(2) That are appropriate for each loan program and the institution's risk-bearing ability; and

(3) That consider the nature and type of credit risk, amount of the loan, and enterprise being financed

(h) Requirements that loan terms and conditions are appropriate for the loan; and

(i) Such other requirements as are necessary for the professional conduct of a lending organization, including documentation for each loan transaction of compliance with the loan underwriting standards or the compensating factors or extenuating circumstances that establish repayment of the loan notwithstanding the failure to meet any one or more loan underwriting standard.

12. Section 614.4165 is amended by removing paragraphs (b) and (c); redesignating paragraphs (d) and (e) as new paragraphs (b) and (c) respectively; and revising paragraph (a) and the last sentence of newly designated paragraph (c) to read as follows:

§ 614.4165 Special credit needs.

(a) The board of each direct lender institution shall adopt policies to establish programs to provide credit and related services to young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products.

* * * * *

(c) * * * Where such programs are authorized, the direct lender institution board shall adopt appropriate policies that define criteria for the selection of specialized high-risk enterprises.

Subpart E—Loan Terms and Conditions

13. Section 614.4200 is revised to read as follows:

§ 614.4200 General requirements.

(a) *Terms and conditions.* (1) The terms and conditions of each loan made by a Farm Credit bank or association shall be set forth in a written document or documents, such as a loan agreement, promissory note, or other instrument(s) appropriate to the type and amount of the credit extension, in order to establish loan conditions and performance requirements. Copies of all documents executed by the borrower in connection with the closing of a loan made under titles I or II of the Act shall be provided to the borrower at the time of execution and at any time thereafter that the borrower requests additional copies.

(2) The terms and conditions of all loans shall be adequately disclosed in writing to the borrower not later than loan closing. For loans made under titles I and II of the Act, the institution shall provide prompt written notice of the approval of the loan.

(3) Applicants shall be provided notification of the action taken on each credit application in compliance with the requirements of 12 CFR 202.9.

(b) *Security.* (1) Long-term real estate mortgage loans must be secured by a first lien interest in real estate, except that the loans may be secured by a second lien interest if the institution also holds the first lien on the property. No funds shall be advanced, under a legally binding commitment or otherwise, if the outstanding loan balance after the advance would exceed 85 percent (or 97 percent as provided in section 1.10(a) of the Act) of the appraised value of the real estate, except that a loan on which private mortgage insurance is obtained may exceed 85 percent of the appraised value of the real estate to the extent that the loan amount in excess of 85 percent is covered by such insurance. The real estate that is used to satisfy the loan-to-value limitation must be comprised primarily of agricultural or rural property, including agricultural land and improvements thereto, a farm-related business, a marketing or processing operation, a rural residence, or real estate used as an integral part of an aquatic operation.

(2) Notwithstanding the requirements of paragraph (b)(1) of this section, the lending institution may advance funds for the payment of taxes or insurance premiums with respect to the real estate, reschedule loan payments, grant partial releases of security interests in the real estate, and take other actions necessary to protect the lender's collateral position. Any action taken that results in exceeding the loan-to-value limitation shall be in accordance with a policy of the institution's board of directors and adequately documented in the loan file.

(3) Short- and intermediate-term loans may be secured or unsecured as the documented creditworthiness of the borrower warrants.

(4) In addition to the requirements in paragraph (b)(1) of this section, a long-term, non-farm rural home loan, including a revolving line of credit, shall be secured by a first lien on the property, except that it may be secured by a second lien if the institution also holds the first lien on the property. A short- or intermediate-term loan on a rural home, including a revolving line of credit, must be secured by a lien on the property unless the financing is provided exclusively for repairs, remodeling, or other improvements to the rural home, in which case the loan may be secured by other property or unsecured if warranted by the documented creditworthiness of the borrower.

(5) Except as provided in § 614.4231, loans made under title III of the Act may be secured or unsecured, as appropriate for the purpose of the loan and the documented creditworthiness of the borrower.

§§ 614.4210, 614.4220, 614.4222, 614.4230 [Removed]

14. Sections 614.4210, 614.4220, 614.4222, and 614.4230 are removed.

15. Section 614.4231 is revised to read as follows:

§ 614.4231 Certain seasonal commodity loans to cooperatives.

Loans on certain commodities that are part of government programs shall comply with the criteria established for those programs. Security taken on program commodities shall be consistent with prudent lending practices and ensure compliance with the government program. The bank shall provide for periodic review by bank officials of any custodial activities and shall provide notice to the custodians that their activities are subject to review and examination by the Farm Credit Administration.

Subpart F—Collateral Evaluation Requirements

16. Section 614.4245 is amended by adding a new paragraph (d) to read as follows:

§ 614.4245 Collateral evaluation policies.

* * * * *

(d) An institution's board of directors may adopt specific collateral evaluation requirements, consistent with the regulations in this subpart, for loans designated as part of a minimum information program.

Subpart H—Loan Purchases and Sales

17. Section 614.4325 is amended by removing the reference "§ 614.4160" and adding in its place, the words "the loan underwriting standards adopted pursuant to § 614.4150" in the fourth sentence of paragraph (e); revising paragraph (a)(1); and adding new paragraph (h) to read as follows:

§ 614.4325 Purchase and sale of interests in loans.

(a) * * *

(1) *Interests in loans* means ownership interests in the principal amount, interest payments, or any aspect of a loan transaction and transactions involving a pool of loans, including servicing rights.

* * * * *

(h) *Transactions through agents.* Transactions pertaining to purchases of loans, including the judgment on creditworthiness, may be performed through an agent, provided that:

(1) The institution establishes the necessary criteria in a written agency agreement that outlines, at a minimum, the scope of the agency relationship and obligates the agent to comply with the institution's underwriting standards;

(2) The institution periodically reviews the agency relationship to determine if the agent's actions are in the best interest of the institution;

(3) The agent must be independent of the seller or intermediate broker in the transaction; and

(4) If an association's funding bank serves as its agent, the agency agreement must provide that:

(i) The association can terminate the agreement upon no more than 60 days notice to the bank;

(ii) The association may, in its discretion, require the bank to purchase from the association any interest in a loan that the association determines does not comply with the terms of the agency agreement or the association's loan underwriting standards.

Subpart J—Lending Limits

§ 614.4355 [Amended]

18. Section 614.4355 is amended by removing the word "seasonal" and adding in its place, the word "commodity" the second place it appears in paragraphs (a)(6) and (b)(1) respectively, and in paragraph (a)(8).

§ 614.4358 [Amended]

19. Section 614.4358 is amended by removing the words "on the credit factors set forth in § 614.4160" and adding in their place, the words "under the loan underwriting standards adopted pursuant to § 614.4150" in paragraph (a)(1)(ii).

Subpart O—Banks for Cooperatives Financing International Trade

§ 614.4810 [Amended]

20. Section 614.4810 is amended by removing the words "credit factors listed in § 614.4160" and adding in their place, the words "the loan underwriting standards adopted pursuant to § 614.4150" in paragraph (b).

PART 619—DEFINITIONS

21. The authority citation for part 619 continues to read as follows:

Authority: Secs. 1.7, 2.4, 4.9, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8 of the Farm Credit Act (12 U.S.C. 2015, 2075, 2160, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2).

§§ 619.9165 and 619.9290 [Removed]

22. Sections 619.9165 and 619.9290 are removed.

Dated: September 24, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–25934 Filed 9–29–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–218–AD; Amendment 39–10143; AD 97–20–05]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all British Aerospace Model HS 748 series airplanes. This action requires installation of a modified aileron cable pulley guard and rubbing strips. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent jamming or restricting of the aileron cable, which could lead to the loss of aircraft roll control.

DATES: Effective October 15, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 1997.

Comments for inclusion in the Rules Docket must be received on or before October 30, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen

Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2148; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model HS 748 series airplanes. The CAA advises that it received a report indicating that jamming or restricting of the aileron cables located in the wing trailing edge structure can occur due to insufficient tension of the cables. Such jamming or restricting, if not corrected, could result in the loss of aircraft roll control.

Explanation of Relevant Service Information

The manufacturer has issued Service Bulletin HS 748–27–70, Revision 2, dated May 20, 1994, which describes procedures for installation of a modified aileron cable pulley guard and rubbing strips. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 009–05–94, dated May 9, 1994, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this amendment would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

None of the Model HS 748 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 11 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would cost approximately $100. Based on these figures, the cost impact of this AD would be $760 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–218–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–20–05 British Aerospace: Amendment 39–10143. Docket 97–NM–218–AD.

Applicability: All Model HS 748 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming or restricting of the aileron cable, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a modified aileron cable pulley guard and rubbing strips in accordance with British Aerospace Service Bulletin HS 748–27–70, Revision 2, dated May 20, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Jetstream Service Bulletin HS 748–27–70, Revision 2, dated May 20, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 15, 1997.

Note 3: The subject of this AD is addressed in British airworthiness directive 009–05–94, dated May 9, 1994.

Issued in Renton, Washington, on September 17, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25165 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–215–AD; Amendment 39–10146; AD 97–20–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300, A300–600, and A310 series airplanes, that requires inspecting the bearings located in the mechanical control linkage of the nose landing gear (NLG) free-fall mechanism for discrepancies, replacing any discrepant bearings with stainless steel bearings, and conducting a test to ensure that the NLG free-fall mechanism extends properly. This amendment is prompted by a report indicating that, during an operational test of the NLG, the landing gear failed to extend. The actions specified by this AD are intended to prevent the bearings from seizing, which could lead to the loss of NLG free-fall extension capability.

DATES: Effective November 4, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 4, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2589; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300, A300–600, and A310 series airplanes was published in the **Federal Register** on April 1, 1997 (62 FR 15441). That action proposed to require inspecting the bearings located in the mechanical control linkage of the nose landing gear (NLG) free-fall mechanism for discrepancies, replacing any discrepant bearings with stainless steel bearings, and conducting a test to ensure that the NLG free-fall mechanism extends properly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 127 Model A300, A300–600, and A310 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $552 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $176,784, or $1,392 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–20–08 Airbus Industrie: Amendment 39–10146. Docket 96–NM–215–AD.

Applicability: All Model A300, A300–600, and A310 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the bearings in the mechanical control linkage of the nose landing gear (NLG) free-fall mechanism from seizing, which could lead to the loss of NLG free-fall extension capability, accomplish the following:

(a) Within 30 days after the effective date of this AD, conduct an inspection to determine whether carbon steel or stainless steel bearings are installed in the mechanical control linkage of the NLG free-fall mechanism, in accordance with Airbus Service Bulletin A300–32–0418 (for Model A300 series airplanes), A300–32–6061 (for Model A300–600 series airplanes), or A310–32–2098 (for Model A310 series airplanes), all Revision 1, all dated April 29, 1996.

(b) If stainless steel bearings are installed, prior to further flight, conduct a test to ensure that the NLG free-fall mechanism extends properly, in accordance with Airbus Service Bulletin A300–32–0418 (for Model A300 series airplanes), A300–32–6061 (for Model A300–600 series airplanes), or A310–32–2098 (for Model A310 series airplanes), all Revision 1, all dated April 29, 1996.

(c) If carbon steel bearings are installed, prior to further flight, replace them with stainless steel bearings, and conduct a test to ensure that the NLG free-fall mechanism extends properly, in accordance with Airbus Service Bulletin A300–32–0418 (for Model A300 series airplanes), A300–32–6061 (for Model A300–600 series airplanes), or A310–32–2098 (for Model A310 series airplanes), all Revision 1, all dated April 29, 1996.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with the following Airbus service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
A300–32–0418, Revision 1, April 29, 1996	1–6, 10–13	1 Original	April 29, 1996.
	7–9, 14–23		October 5, 1995.
A310–31–2098, Revision 1, April 29, 1996	1–6, 8, 9, 11–14	1 Original	April 29, 1996.
	7, 10, 15–25		October 5, 1995.
A300–32–6061, Revision 1, April 29, 1996	1–5, 8, 9, 11–14	1 Original	April 29, 1996.
	6, 7, 10, 15–25		October 5, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 4, 1997.

Issued in Renton, Washington, on September 17, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25167 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–23–AD; Amendment 39–10109; AD 96–12–03 R1]

RIN 2120–AA64

Airworthiness Directives; Aviat Aircraft, Inc. Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes (Formerly Known as Pitts Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes); Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the airworthiness directive (AD) number of an amendment that was published in the **Federal Register** on August 22, 1997 (62 FR 44535), and concerns Aviat Aircraft, Inc. Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes. The referenced amendment revises AD 96–12–03, but was inadvertently assigned the number of AD 97–17–07 instead of AD 96–12–03 R1. The AD currently requires repetitively inspecting the aft lower fuselage wing attach fitting on both wings for cracks and modifying any cracked aft lower fuselage wing attach fitting. Modifying the aft lower fuselage wing attach fitting on both wings eliminates the repetitive inspection requirement of the AD. This action corrects the amendment to reflect the right AD number throughout the entire document.

EFFECTIVE DATE: October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 E. 68th Avenue, Room 214, Denver, Colorado 80249; telephone (303) 342–1086; facsimile (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Discussion

On August 13, 1997, the FAA issued Amendment 10109 (62 FR 44535, August 22, 1997), which applies to Aviat Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes. This action revises AD 96–12–03 by retaining the requirements of repetitively inspecting the aft lower fuselage wing attach fitting on both wings for cracks, and modifying any cracked aft lower fuselage wing attach fitting; except the action eliminates from the applicability those airplanes that were equipped with aft lower fuselage wing attach fittings, either P/N 76090, 2–2107–1, or 1–210–102, at manufacture. These aft lower fuselage wing attach fittings were incorporated at manufacture on the Model S–2B airplanes beginning with serial number 5349. AD 96–12–03 applied to all serial numbers of the Model S–2B airplanes.

Need for the Correction

The AD number of this action is incorrectly referenced as AD 97–17–07 instead of AD 96–12–03 R1 throughout the document. Referencing the action as AD 97–17–07 may not allow operators of the affected airplanes that accomplished the intent of AD 96–12–03 to realize that the AD contains the same actions as contained in the original AD. The operators may spend unnecessary time tracking down information and approvals for "unless already accomplished" credit for the AD action.

Correction of Publication

Accordingly, the publication of August 22, 1997 (62 FR 44535), of Amendment 39–10109; AD 97–17–07, which was the subject of FR Doc. 97–22046, is corrected as follows:

§39.13 [Corrected]

On page 44535, in the third column, 5th line from the top of the column, correct "AD 97–17–07" to "AD 96–12–03 R1".

On page 44536, in the third column, section 39.13, the sixth line in this section and the 19th line from the top of the column, correct "97–17–07" to "96–12–03 R1".

Action is taken herein to correct this reference in Amendment 39–10109 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains October 3, 1997.

Issued in Kansas City, Missouri on September 24, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25831 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–15–AD; Amendment 39–10148; AD 97–20–11]

RIN 2120–AA64

Airworthiness Directives; Socata—Groupe Aerospatiale Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Socata—Groupe Aerospatiale (Socata) Model TBM 700 airplanes. This AD requires removing the main landing gear (MLG) inboard doors and the door locking control mechanism (MOD 70–065–32). This AD is the result of an incident on one of the affected airplanes where the MLG inboard door locking hooks (hinges) corroded, caused the doors to jam, and prevented the MLG from extending. The Federal Aviation Administration's analysis reveals that removing the MLG inboard doors will not cause any airplane safety or performance problems. The actions specified by this AD are intended to prevent the MLG from failing to extend because of corroded MLG inboard locking hinges, which could result in loss of control of the airplane during landing operations.

DATES: Effective November 13, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Socata—Groupe Aerospatiale, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone 62.41.74.26; facsimile 62.41.74.32; or the Product Support Manager, Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile (954) 964–1668. This information may also be examined at

the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–15–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Socata Model TBM 700 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 9, 1997 (62 FR 17125). The NPRM proposed to require removing the MLG inboard doors and the door locking control mechanism (MOD 70–065–32). Accomplishment of the proposed actions as specified in the NPRM would be in accordance with the Technical Instruction of Modification OPT70 KO59–32, dated December 1995, as referenced in Socata Service Bulletin 70–073, Amdt. 1, dated June 1996.

The NPRM was the result of an incident on one of the affected airplanes where the MLG inboard door locking hooks (hinges) corroded, caused the doors to jam, and prevented the MLG from extending. The FAA's analysis reveals that removing the MLG inboard doors will not cause any airplane safety or performance problems.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received by one commenter.

Comment 1: No Justification for AD Action

The commenter states that the FAA does not have substantiating engineering data to justify the unsafe condition proposed in the NPRM. This commenter believes that if the pilot-in-command is adequately accomplishing the preflight checks, then any corrosion in the MLG inboard door locking hooks (hinges) would be detected and then corrected. Thus, the MLG doors would not jam and prevent the MLG from extending.

The FAA does not concur that the commenter's determination that an unsafe condition does not exist is justified. The FAA analyzed the preflight procedures of the Socata TBM 700 airplanes and the preflight procedures of similar design airplanes. From this analysis, the FAA has determined that inspecting this area for corrosion is considered action over and above normal preflight procedures that the pilot is authorized to perform. In addition, the FAA always tries to mandate modifications or replacements rather than repetitive inspections. Removing the MLG doors and the door locking control mechanism is a modification that would eliminate the need for repetitive inspections, eliminate the unsafe condition identified by this AD, and not cause any adverse operational effects on the affected airplanes. No changes have been made to the final rule as a result of this comment.

Comment 2: Proposed Alternative Method of Compliance

The commenter states that removing the MLG inboard doors as proposed in the NPRM results in approximately 3–4 knots of performance degradation, and raises the level of cabin noise in the aircraft. Socata has issued SB No. 70–076–32, which specifies actions to address the noise issue (the FAA does not mandate accomplishment of this SB through AD action). The commenter explains that accomplishing this noise modification imposes substantial expense on the affected airplanes owners. For these reasons, the commenter has submitted a proposed alternative method of compliance (AMOC) that includes procedures for lubricating the inner landing gear door hinges and repetitively inspecting the inner landing gear door hinges every 50 hours time-in-service (TIS). The proposed AMOC also includes preflight visual inspections of the main landing gear doors prior to each flight. The commenter would like the proposed AMOC approved as an alternative to the proposed requirement of removing the MLG inboard doors and door locking control mechanisms.

The FAA is currently in the process of reviewing the information contained in the proposed AMOC and is working with the commenter toward approving this AMOC. All owners/operators of Socata TBM 700 airplanes may contact the FAA at the address specified in paragraph (d) of the AD to receive this AMOC (when and if it is approved) and to obtain the necessary documents pertinent to this AMOC.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The unsafe condition specified in this AD develops primarily because of slush/debris accumulating in theMLG inboard doors area while landing in certain runway environments. Corrosion could have already developed on an airplane previously operated in certain slush/debris runway environments, regardless of future operation of the airplane. For this reason, the FAA has determined that the compliance time of this AD should be specified in both hours time-in-service (TIS) and calendar time (whichever occurs first), in order to assure that corrosion is not allowed to go undetected over time.

Cost Impact

The FAA estimates that 47 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish this AD, and that the average labor rate is approximately $60 an hour. Socata will provide parts at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $8,460. This figure is based on the presumption that no owner/operator of the affected airplanes has accomplished the required actions.

Socata has informed the FAA that parts have been distributed to equip approximately 30 of the affected airplanes. Presuming that each set of parts is incorporated on an affected airplane, the cost impact upon U.S. airplane owners/operators is reduced by $5,400 from $8,460 to $3,060.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the rules docket. A copy of it may be obtained by contacting the rules docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–20–11 Socata—Groupe Aerospatiale: Amendment 39–10148; Docket No. 97–CE–15–AD.

Applicability: Model TBM 700 airplanes (serial numbers 1 through 109), certificated in any category, that do not have the main landing gear (MLG) inboard doors and the door locking control mechanism removed (MOD 70–065–32) in accordance with the Technical Instruction of Modification OPT70 KO59–32, dated December 1995, as referenced in Socata Service Bulletin (SB) 70–073, Amdt. 1, dated June 1996.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD or within the next 6 calendar months after the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent the MLG from failing to extend because of corroded MLG inboard locking hinges, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Remove the MLG inboard doors and the door locking control mechanism (MOD 70–065–32) in accordance with the Technical Instruction of Modification OPT70 KO59–32, dated December 1995, as referenced in Socata SB 70–073, Amdt. 1, dated June 1996.

(b) As of the effective date of this AD, no person may undo MOD 70–065–32 on any affected airplane, by reinstalling the MLG inboard doors and the door locking control mechanism.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The removal required by this AD shall be done in accordance with the Technical Instruction of Modification OPT70 KO59–32, dated December 1995, as referenced in Socata Service Bulletin 70–073, Amdt. 1, dated June 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(e) and 1 CFR part 51. Copies may be obtained from Socata—Groupe Aerospatiale, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or the Product Support Manager Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment (39–10148) becomes effective on November 13, 1997.

Issued in Kansas City, Missouri, on September 24, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

(FR Doc. 97–25832 Filed 9–29–97; 8:45 am)

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0119]

21 CFR Part 801

Natural Rubber-Containing Medical Devices; User Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule requiring labeling statements on medical devices, including device packaging containing natural rubber that contacts humans. The rule requires labeling of medical devices containing natural rubber latex that contacts humans to state: "Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions."; labeling of medical devices containing dry natural rubber that contacts humans to state: "This Product Contains Dry Natural Rubber."; labeling of medical devices containing natural rubber latex in their packaging that contacts humans to state: "Caution: The Packaging of This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions."; labeling of medical devices containing dry natural rubber in their packaging that contacts humans to state: "The Packaging of This Product Contains Dry Natural Rubber."; and that the claim of hypoallergenicity be removed from the labeling of medical devices that contain natural rubber. These requirements are being established in response to numerous reports of severe allergic reactions and deaths related to a wide range of medical devices containing natural rubber.

EFFECTIVE DATE: This final rule is effective September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20850, 301–443–2444, FAX 301–443–2296.

SUPPLEMENTARY INFORMATION:

I. Background

Natural latex is a milky fluid obtained in commercial quantities primarily from the *Heavea brasiliensis* (rubber) tree. There is often confusion concerning the terminology used to describe the raw agricultural materials derived from rubber-producing plants; products made from various intermediate forms of the

raw agricultural material (e.g., natural rubber latex, dry natural rubber); formulations of synthetic latex and synthetic rubber to which natural rubber has been added; and synthetic rubber and synthetic latex formulations that do not contain natural rubber.

"Natural latex," for the purposes of this rule, is defined as a milky fluid that consists of extremely small particles of rubber obtained from plants, principally from the *H. brasiliensis* (rubber) tree, dispersed in an aqueous medium. It contains a variety of naturally occurring substances, including cis-1,4-polyisoprene in a colloidal suspension (Ref. 1) and plant proteins, which are believed to be the primary allergen (Refs. 2, 3, and 4).

"Natural rubber," for the purposes of this rule, includes all materials made from or containing natural latex. Products that contain natural rubber are made using two commonly employed manufacturing processes, the natural rubber latex (NRL) process, and the dry natural rubber (DNR) process.

The NRL manufacturing process involves the use of natural latex in a concentrated colloidal suspension. Products are formed from natural rubber latex by dipping, extruding, or coating, and are typically referred to as containing or made of "natural rubber latex." Examples of products that may contain natural rubber latex include medical gloves, catheters, tracheostomy tubes, and condoms.

The DNR manufacturing process involves the use of coagulated natural latex in the form of dried or milled sheets. Products are formed from dry natural rubber by compression molding, extrusion, or by converting the sheets into a solution for dipping. These products are typically referred to as containing or made of dry natural rubber or "crepe" rubber. Examples of products that may contain dry natural rubber include syringe plungers, vial stoppers, and injection ports on intravascular tubing.

The phrase, "contains natural rubber," as used herein, also includes products described as made of "synthetic latex" or "synthetic rubber" that include natural rubber in their formulations. This rule does not apply to products made from synthetic latex or synthetic rubber that do not include natural rubber in their formulations.

FDA has noted an increase in the number of reports submitted to its medical device reporting system regarding sensitivity to natural latex proteins contained in medical devices, including deaths following barium enemas. These deaths were associated with anaphylactic reactions to the natural rubber latex cuff on the tip of barium enema catheters. Scientific studies and case reports have documented sensitivity to natural latex proteins found in a wide range of medical devices (see Refs. 2 through 23).

Based upon this information, the agency published a proposed rule on June 24, 1996 (61 FR 32618), to require labeling statements on medical devices containing natural rubber that contact humans. This final rule is based upon comments submitted in response to the June 24, 1996 proposed rule.

II. Highlights of the Final Rule

A. Natural Rubber-Containing Devices; Labeling

FDA is requiring the labeling for medical devices containing natural rubber that contacts humans to include a statement regarding the presence of natural rubber. The agency is issuing this rule because medical devices composed of natural rubber, or which contain components formulated from natural rubber, may pose a significant health risk to some consumers or health care providers who are sensitized to natural latex proteins. A statement in the labeling of medical devices identifying the presence of natural rubber latex is considered to be necessary for the safe and effective use of such devices.

"Contacts humans," for the purposes of this rule, means that the natural rubber contained in a medical device is intended to contact or is likely to contact the user or patient. This includes contact when the natural rubber containing device is connected to the patient by a liquid path or an enclosed gas path; or the natural rubber containing device is powdered, and the powder may carry natural latex proteins that may contaminate the environment of the user or patient.

The device may bear one or more of four labeling statements depending on the type of natural rubber in the device and depending on whether the natural rubber is in the device itself or in its packaging. The reasoning for requiring one or more of four separate statements is discussed more fully in comments 3 and 6 in section III of this document.

Medical devices containing rubber produced by the NRL process that contacts humans shall bear labeling with the following statement in bold print: "Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions." Representative examples of devices that contain NRL include: Cuffed enema/enterolysis catheters, latex condoms (with or without spermicidal lubricant), wound drains, cuffed airways, latex surgical gloves, and latex examination gloves.

The agency is also requiring that medical devices containing rubber produced by the DNR process that contacts humans include the following statement in bold print in their labeling: "This Product Contains Dry Natural Rubber." Representative examples of devices that contain DNR include: Anesthesia masks, electrode pads, contraceptive diaphragms, crutch pads and tips, wheelchair tires, elastic components of bandages/face masks, syringe plungers, parenteral drug vial stoppers, and intravenous injection ports.

The agency is further requiring medical devices having packaging that contains natural rubber that contacts humans bear labeling with one of the following statements in bold print: "Caution: The Packaging of This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions." or "The Packaging of This Product Contains Dry Natural Rubber.", as appropriate. The purpose of such statements is to inform individuals who are sensitive to natural rubber about the presence of natural rubber in the packaging of devices that may be, by themselves, natural rubber-free.

B. Hypoallergenicity

FDA believes that it is also necessary to prohibit certain labeling statements on medical devices that contain natural rubber. FDA believes that the labeling statement "hypoallergenic," traditionally used with respect to medical gloves, cosmetics, and other products produced for individuals with chemical allergies, is interpreted by consumers to mean that the risk of allergic reactions to any component of the device would be minimal. This is not the case with devices that contain natural rubber. FDA has received reports of allergic reactions to medical gloves labeled as "hypoallergenic."

Use of the "hypoallergenic" label has been based on results of the modified (human) Draize test. While this test may be appropriate for detecting sensitization to residual levels of processing chemicals, the test does not detect sensitivity to natural latex proteins.

Thus, there is no reasonable assurance that the risk of allergic reactions to products that contain natural rubber, yet have reduced levels of processing chemicals, will be reduced for individuals who are sensitive to natural latex proteins. Therefore, the agency believes that the term "hypoallergenic" on the labeling of a device that contains natural rubber is misleading in that it incorrectly implies that such device may be used safely by persons sensitive to natural latex proteins. For these reasons, FDA is requiring that the hypoallergenic claim be removed from the labeling of devices that contain natural rubber.

C. Effects of This Regulation on Premarket Submission Requirements

FDA will not require a new submission under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) based upon labeling changes made to comply with this rule, provided that no other changes requiring a new 510(k) submission under 21 CFR 807.81 are made to the device. Devices subject to an approved premarket approval application, however, must submit any change to the device labeling that is required by this rule in the next interim report under 21 CFR 814.39(e). Combination products that have device and drug components but are regulated under drug premarket approval provisions shall indicate the labeling change in a supplement for changes that may be made before FDA approval, as required by 21 CFR 314.70(c). Combination products that have device and biological components, but that are regulated under the biologic premarket approval provisions, shall inform the agency of the labeling change in the manner described under 21 CFR 601.12.

III. Summary of Comments

The agency received 62 comments, all of which supported the principle of natural rubber labeling for the protection of natural rubber sensitive individuals. The comments, however, differed greatly in their specific approaches.

1. A few comments suggested using the term "crepe rubber," instead of "dry rubber," and suggested using the term "synthetic rubber" instead of "synthetic latex."

The agency agrees that "synthetic rubber" should be used to describe components of certain natural rubber products covered by this regulation and has added that term in the definition of "natural rubber" in § 801.437(b) (21 CFR 801.437(b)). Although the agency has discussed the meaning of crepe rubber in the preamble to this regulation, the agency does not agree that the term "crepe rubber" should be used in place of "dry natural rubber" in the regulation because the agency believes the term "dry natural rubber" is the term most commonly used to describe rubber manufactured by the DNR process.

2. One comment pointed out that there are other sources of natural rubber besides that identified in the preamble of the proposed rule, the *H. brasiliensis* tree.

The agency agrees and has clarified in the preamble of this regulation that there are other sources of plant-derived natural rubber used in the manufacture of devices that are subject to this rule. The preamble notes that the *H. brasiliensis* tree is the primary source of commercial natural latex, instead of the only source.

3. Several comments claimed that there is no information to suggest that dry natural rubber has caused allergic reactions in individuals sensitive to natural latex proteins; therefore, dry natural rubber should not be included in the labeling requirement.

The agency recognizes that there are lower levels of natural latex proteins in products produced by the dry natural rubber process. The agency, however, does not agree that there is no information to suggest that dry natural rubber has caused allergic reactions in individuals sensitive to natural latex proteins. To the contrary, there are numerous reports that levels of natural latex proteins found in dry rubber can cause allergic reactions (Refs. 24 through 27). Accordingly, the agency has concluded that it is in the best interest of the public health to provide labeling information that a product contains dry natural rubber, so that individuals who are sensitive to the levels of natural latex proteins found in dry natural rubber may make an informed decision regarding the use of the product.

While the agency believes that persons who may respond to the levels of natural latex proteins found in dry natural rubber need to be informed of the dry rubber content in a device, the agency does not believe that those individuals need to be informed of the health consequences associated with dry natural rubber. Because allergy is a dose-response phenomenon, persons who may react to natural latex protein levels found in dry rubber would have already experienced previous allergic reactions to the higher levels of natural latex proteins found in natural rubber latex products (see Ref. 28). Therefore, those individuals would generally be aware that dry natural rubber may cause them to suffer an allergic reaction. Accordingly, FDA is requiring that products that contain only dry rubber have labeling that informs consumers of the dry rubber content, but is not requiring that such products bear labeling that states the potential health consequences from the use of the product. Therefore, FDA is requiring in the final regulation, § 801.437(e), that devices that contain dry natural rubber bear labeling with the following statement: "This Product Contains Dry Natural Rubber."

Persons who would not react to the levels of natural latex proteins found in dry rubber, but would react to the higher levels of natural latex proteins found in natural rubber latex products, however, may never have been aware of previous allergic reactions (Ref. 28). These persons, therefore, need to be advised of the potential health consequences of natural rubber latex products. Accordingly, FDA is requiring products containing natural rubber latex to carry labeling that states the potential health consequences of such products, as well as a natural rubber latex content statement. Therefore, FDA is requiring in the final regulation, § 801.437(d), that devices containing natural rubber latex have labeling with the following statement in bold print: "Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions."

This statement is also required if a device contains both natural rubber latex and dry natural rubber that may contact humans. In this instance, the single statement will serve to advise a person who may not be aware that natural rubber may cause reactions, and will also advise a person who is aware of his or her sensitivity to natural rubber that the product contains an ingredient that may cause a reaction.

4. Some comments claimed that the applicability of the labeling statement to devices that contain natural rubber "that may directly or indirectly contact humans" is overly broad. One comment suggested that the labeling statement be required only on devices that have an "intended use" that may lead to contact with humans. Other comments suggested the statement be limited to devices which would directly contact tissues.

The agency does not believe that the application of the labeling statement to devices that contain natural rubber "that may directly or indirectly contact humans" is overly broad. Latex proteins may elicit an allergic reaction in individuals who are sensitive to natural rubber, even if the proteins are introduced to the individual through an indirect route. The agency, however, recognizes that the term "indirect contact" may be interpreted more broadly than the agency intends. Therefore, in order to avoid confusion, the agency has modified the regulation to require the labeling statements only if the natural rubber contacts humans. The final regulation, § 801.437(b), defines the term "contacts humans" to mean that the natural rubber contained

in a device is intended to contact or is likely to contact the user or patient (e.g., latex medical gloves or latex enema tips). This includes contact when the device that contains natural rubber is connected to the patient by a liquid path or an enclosed gas path (e.g., intervenous administration sets, or blood collection or transfusion tubing with natural rubber injection ports, injection syringes with natural rubber plungers, or natural rubber tubing or connector components used in anesthesia or endoscopic insufflator circuits). This also includes contact when the device that contains natural rubber is fully or partially coated with a powder, and such powder may carry natural rubber proteins that may contaminate the environment of the user or patient (e.g., latex tourniquets). This definition makes it clear that the labeling statement is required on devices that have an intended use that could reasonably be expected to introduce natural latex proteins to humans.

5. Several comments suggested that the natural rubber labeling statement be expanded to apply to nonmedical natural rubber latex gloves and other consumer products that contain natural rubber. Other comments suggested that medical devices sold over-the-counter (OTC) to the consumer be exempt from the labeling requirements in order to avoid confusion regarding the natural rubber-content of other consumer goods that would not be subject to this labeling regulation.

The agency disagrees that the regulation should apply to nonmedical natural rubber latex gloves and other consumer products that contain natural rubber. The regulation of such products is beyond the scope of this rule. FDA's authority under the act to impose labeling requirements is restricted to products that meet the definition of foods, drugs, cosmetics, animal drugs, biologics, and devices, as those terms are defined under the act. This rule applies to devices as defined under section 201(h) of the act (21 U.S.C. 321(h)). Under section 201(h) of the act, a device is:

> * * * an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is * * * intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals * * *, and which does not achieve any of its principle intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

Latex gloves and other products are subject to this rule, only if they meet the definition of device under section 201(h) of the act. Latex gloves that are not used in the cure, mitigation, treatment or prevention of disease are not devices within the meaning of section 201(h) of the act, and, therefore, are not subject to this rule. Latex medical gloves that are subject to this regulation include surgeon's gloves, as classified at 21 CFR 878.4460, and patient examination gloves, as classified at 21 CFR 880.6250.

FDA also does not agree with the suggestion that OTC medical devices be exempted from the labeling requirements in order to avoid confusion with natural rubber products that are not subject to this rule. The purpose of the labeling requirement is to provide essential information for individuals sensitive to natural latex proteins. An individual who is sensitive to natural latex proteins is equally likely to react to an OTC device that contains natural rubber, as to a prescription device that contains natural rubber. Therefore, it is equally important to provide essential information about OTC devices that contain natural rubber, as it is to provide information about prescription devices that contain natural rubber. Moreover, the agency does not believe that labeling, as required by this rule, on OTC devices, will cause significant confusion regarding the natural rubber content of consumer products that are not devices.

6. Several comments requested clarification on the applicability of the requirements to certain devices. Specifically, the comments asked whether the rule would apply to: Bandages with natural rubber in the adhesive; natural rubber-free devices packaged in a wrapper using natural rubber in the adhesive, especially where the adhesive would contact human tissue while unwrapping the device; foods or natural rubber-free devices handled or applied with natural rubber latex gloves; covered elastic stretch bands used to attach an accessory or component to a device; or, devices intended to contact only subcutaneous tissue.

A labeling statement is required for devices that contain natural rubber when the natural rubber contacts humans, as described in § 801.437(b) of the final rule. Accordingly, devices intended to contact subcutaneous tissue would be required to bear the appropriate statement.

Moreover, bandages with natural rubber in the adhesive would require the labeling statement. For this product, the natural rubber is intended to be applied directly to the skin. If natural rubber-containing adhesives in tapes, bindings, and similar items are intended to contact, or are likely to contact, the user or the patient, they are required to be labeled under this regulation. Covered elastic bands would not be considered to be in contact with humans, provided the covering blocks the migration of natural rubber proteins to the patient and user.

FDA does not believe it would be appropriate to require natural rubber labeling statements for natural rubber-free devices or foods that may be handled with latex gloves. As described previously in comment 5 of this document, requiring natural rubber labeling for products, such as foods, that are not devices is beyond the scope of this regulation. Moreover, FDA does not believe that requiring products that are handled by latex gloves, regardless of whether such products could be within the scope of this regulation as devices, is appropriate if such products do not contain natural rubber. Requiring labeling on products that may or may not come into contact with latex gloves would confuse consumers and would be impracticable to implement. Furthermore, FDA is not aware of any reports of allergic reactions to rubber-free products that latex gloves have contacted.

Under the final rule, natural rubber-containing packaging adhesives that typically are in areas that hold the flaps of packaging together would meet the criteria to subject the product to this rule only if they contact the patient or user. However, the agency is not aware of any evidence or reports of reactions to packaging adhesives. Given the pervasiveness of the use of adhesives that contain some amount of natural rubber latex, the lack of evidence that these adhesives cause adverse reactions, and the ability to open packaging with adhesives without coming into contact with the adhesives, the agency concludes that the adhesives in device packaging are not intended to contact humans and are not likely to contact humans. Therefore, if such adhesives are the sole source of natural rubber in the device packaging or the device itself, a device with such packaging would not be subject to this rule.

The agency stresses, however, that it considers device packaging to be an integral part of a device. Under section 201(h) of the act, a device includes any components, parts, or accessories. As an accessory to a device, the packaging is a device under section 201(h) of the act. A device that contains natural rubber in its packaging, beyond that found in the adhesive (e.g., a device packaged in a latex sheath) is likely to contact the user or patient and must be labeled as containing natural rubber.

In order to avoid confusion and to clarify to the consumer whether it is the device itself or its packaging that contains natural rubber, however, the agency believes that a distinct labeling statement is appropriate for devices that have packaging that contains natural rubber that contacts humans. Accordingly, under § 801.437(f) and (g) of the final regulation, such devices shall have labeling with one of the following statements: "Caution: The Packaging of This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions." or "The Packaging of This Product Contains Dry Natural Rubber."

The agency notes that if one of these packaging statements is required, it shall appear regardless of whether there is a natural rubber statement relating to the product itself. For example, a device that contains dry natural rubber that contacts humans and is also packaged in dry natural rubber that contacts humans shall be labeled with both the statements: "Caution: The Packaging of This Product Contains Dry Natural Rubber." and "This Product Contains Dry Natural Rubber."

7. Several comments suggested that the labeling statements be required only on finished medical devices, and that device components be exempt.

The agency agrees in part. The regulation applies to all finished devices and components that are intended to contact or are likely to contact the user or patient. The labeling statement does not apply to components shipped directly to a manufacturer or processor for use in the manufacture of a device because these components, during the time before distribution to consumers, would not be intended to contact, or likely to contact the user or patient. Under these circumstances, the parts or components are not accessible to health care workers or patients. If, however, a device component is sold directly to a consumer, including a patient or health care worker, and it is intended to contact or likely to contact a user or patient, it is required to be labeled under this regulation, regardless of whether it must be attached, inserted, or used in conjunction with other devices. Replacement parts marketed as accessories for medical devices that are intended to contact or likely to contact a user or patient also require the labeling statement.

8. One comment suggested that in vitro diagnostic devices be exempt because only dry natural rubber is used, there is usually no patient contact with the natural rubber components, and space is very limited for labeling. One comment suggested that other devices that do not contact the patient be exempted, regardless of whether the natural rubber contacts the tissues of the health care worker.

The agency believes that in vitro diagnostic devices should be exempt only to the extent that the natural rubber used in vitro diagnostic devices is not intended to contact or is not likely to contact the user or the patient. FDA, however, is requiring labeling for such devices if they are intended to contact or are likely to contact health care workers or other users, as well as the patient, because all latex-sensitive persons who use the device need to be informed of the product's natural rubber content.

9. One comment requested an exemption for the labeling of natural rubber latex condoms because such condoms clearly contain latex. The comment also believed an exemption should apply to latex condoms because space for labeling is limited, a warning regarding allergic reactions may have a chilling effect on the use by individuals who are not sensitive to natural rubber, and the statement may lead to confusion in differentiating between latex and natural skin condoms because natural skin condoms also contain some natural rubber latex and would require the statement as well.

The agency disagrees and will require latex condoms to bear a labeling statement that the product contains natural rubber latex that may cause allergic reactions. Even though consumers may be aware that the product contains latex, FDA believes that the additional information that natural rubber latex may cause allergic reactions is essential information to individuals who are not aware that natural rubber latex may cause allergic reactions. The agency believes that there is sufficient room on condom packaging for the required statement.

FDA does not believe that the statement will have a chilling effect on the use of condoms by individuals who are not sensitive to natural latex proteins. The statement, however, would clearly provide important information to individuals who are sensitive to natural latex proteins.

The agency further disagrees with the suggestion that the labeling statement would be required on natural skin condoms, and thereby confuse consumers with respect to the differences between latex and natural skin condoms. Although natural skin condoms do contain a natural rubber elastic band, this band is wrapped within the natural skin sheath, and there is no evidence to indicate that the natural rubber ever contacts the user. Therefore, natural skin condoms that have a latex component that is not intended to contact or likely to contact the user do not require the labeling statement. Accordingly, the absence of any latex labeling requirement for natural skin condoms obviates the comments concern about confusion that may result from latex labeling statements on both latex and natural skin condoms.

10. Although most comments supported the requirements of standard labeling requirements, some comments suggested that the proposed labeling statements were overly prescriptive, and that manufacturers should have wide latitude in the wording of the statement provided it contain a general latex ingredient statement. Other comments stated that the labeling statements did not provide sufficient warnings, and suggested that the agency require a caution stating that use of the device may lead to chronic asthma, dermatitis, or even anaphylactic shock and death.

The agency does not agree with comments suggesting the labeling should state possible reactions with specificity. FDA believes that the statement advising consumers that a product may cause an allergic reaction is specific enough to provide adequate warning.

The agency also does not believe that the required labeling statements are overly prescriptive and that manufacturers should be given wide latitude in the wording of labeling statements. The agency has determined that requiring standardized statements for devices containing natural rubber is the best approach for providing the essential information in a clear, consistent, and accurate manner.

FDA realizes that there may be some circumstances where it may be appropriate to tailor specific information concerning a device. If a manufacturer believes use of statements that vary from those prescribed by this regulation is appropriate, § 801.437(i) of the final regulation provides that the manufacturer may petition the agency for an exemption or variance from these requirements by submitting a citizen petition under 21 CFR 10.30. Unless the agency has specifically granted an exemption or variance, the agency will consider any variation from the required statement to be noncompliant, and the device will be deemed misbranded.

11. Several comments suggested that the agency recommend the use of

natural rubber-free devices, or require a labeling statement that nonnatural rubber alternatives are available. In contrast, some comments supported natural rubber labeling provided that the label be "ergonomically equitable" (sic) (i.e., not giving natural rubber-free devices a perceived advantage).

The agency does not recommend the use of one legally marketed device over another. Rather the agency is requiring that labeling for devices that contain natural rubber provide information upon which an individual may make an informed choice regarding the use of the device. The benefits of devices that contain natural rubber are well established, and the agency does not intend to discourage their use by persons who are not sensitive to natural rubber. Therefore, the agency will not require the labeling statement to recommend the use of rubber-free devices.

Furthermore, because the agency is not requiring a statement that recommends the use of natural rubber-free devices, the agency does not believe that this rule gives natural rubber-free devices an advantage over devices that contain rubber. Accordingly, the agency does not believe that further modifications to the required statements are necessary to address comments that suggested the labeling not give the impression that natural rubber-free products have an advantage over products that contain natural rubber.

12. One comment requested clarification on the labeling of combination products consisting of drugs that are packaged in device container vials with dry natural rubber stoppers.

This final regulation provides authority to require natural rubber labeling on all devices containing natural rubber, including devices that are contained within combination products. As discussed in more detail in this comment, FDA intends to apply the natural rubber labeling requirement to combination products, such as drugs in device containers that are regulated currently under drug authorities.

In a final rule that published in the **Federal Register** of November 21, 1991 (56 FR 58754), the agency explained that "the term combination product means a product comprised of two or more different regulated entities, e.g., drug, device, or biologic * * *" or two or more different regulated entities that are produced together as a single entity, packaged together, or used together to achieve the intended effect (see 21 CFR 3.2(e)). The fact that a single product contains two or more regulated entities does not in itself change the regulatory status of the individual entities.

Because the entities that comprise a combination product meet more than one jurisdictional definition, the agency may apply one or more sets of regulatory provisions to the product. The agency, for example, has applied both drug and device authorities, and both biological and device authorities, to certain combination products. (See Intercenter Agreement Between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health (the Drug/Device Agreement (Ref. 29)), and Intercenter Agreement Between the Center for Biologics Evaluation and Research and the Center for Devices and Radiological Health (the Biologics/Device Agreement (Ref. 30)) (hereinafter referred to collectively as the Intercenter Agreements).)

Device container vials with dry natural rubber stoppers, when used in combination with a drug product, may be subject to regulation under the statutes and regulations applicable to devices. A vial that has a natural rubber stopper meets the definition of a device under section 201(h) of the act, in that such vial is "an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or some other similar or related article, including any component, part, or accessory * * *" that is intended to cure, mitigate, treat, or prevent disease, which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes. The agency regulates these empty vials, as well as other empty drug or biologic containers (such as stoppered vials for use in blood collection, intravenous containers, and blood bags), as devices.

When the drug is contained in a vial, however, the result is a combination product. The combination status of devices that serve as containers for drugs is specifically recognized in the Drug/Device Agreement. (See Ref. 29, p. 14.) To date, these combination products have been regulated only under the drug authorities (*Id*).

The agency intends to require that all combination products that contain natural rubber device components be labeled in accordance with this regulation. Although the agency could require all combination natural rubber products to comply with the regulation on its effective date, this regulation will be applied as follows: Natural rubber combination products that are currently listed in the Intercenter Agreements as being regulated under device labeling provisions will be required to comply with this rule on its effective date; natural rubber combination products that are listed in the Intercenter Agreements as being regulated under drug or biologic labeling provisions, however, will be subject to this regulation at the time of the effective date of this regulation, or at the time the Intercenter Agreements are amended to provide that these types of combination products are subject to this labeling regulation, whichever is later. FDA will provide notice in the **Federal Register** of the amendments to the Intercenter Agreements to apply this natural rubber labeling provision to all combination products that contain natural rubber device components.

At this time, the agency anticipates that the Drug/Device Intercenter Agreement will be amended to reflect that prefilled drug vial containers, transdermal patches, infusion pumps, and prefilled syringes that presently are regulated under drug authorities are also subject to this regulation. The agency believes, however, that this requirement will not affect many drug vial containers, because most drug stoppers are not being manufactured from dry natural rubber.

13. A few comments requested clarification on the applicability of the requirements to devices already in the marketplace or intended solely for export.

This rule is not intended to require manufacturers to recall any devices already in interstate commerce. Therefore, this rule does not apply to devices initially introduced or initially delivered for introduction into interstate commerce before the effective date of this regulation.

Devices intended solely for export will not be deemed misbranded for failure to comply with this regulation provided that the exporter meets the criteria of sections 801(e) and 802 of the act (21 U.S.C. 381(e) and 382). Nevertheless, FDA encourages the application of a natural rubber content statement to all exported devices containing natural rubber that may contact humans.

14. A few comments suggested that devices containing less than a minimum quantity of natural rubber, the amount to be determined by the agency, be exempt from the labeling requirement. One comment suggested that devices be labeled with the extractable natural latex protein content.

The agency agrees in principle, however, insufficient information currently exists regarding the minimum amount of extractable natural latex protein that would not elicit an allergic reaction for this option to be practicable. Evidence indicates that some persons are reactive to extremely low levels of proteins (Ref. 31). The agency is unable to determine what minimum amount of natural latex proteins fails to elicit a reaction in some individuals, and, therefore, cannot exempt devices containing less than that minimum.

15. Several comments requested clarification on the level of packaging that would require a labeling statement. Some comments requested additional flexibility in the placement of the statement so that the statement may be put on the device labeling other than the label, especially where the device label may be too small to carry such a statement. Another comment recommended that the statement be required not only on the label and in other labeling, but on the device itself if the device is dispensed in bulk, as in the case with natural rubber latex examination gloves. Other comments suggested that bulk devices either remain in the original package in order to preserve the label, or that the agency require the user facility to educate and monitor the use of bulk devices containing natural rubber. Still another comment suggested that where bulk devices are removed to a separate dispensing container, the dispensing container also be required to be labeled with a natural rubber content statement.

FDA believes that the required labeling statements may be fitted on small labels. Because of the importance of the information contained in the labeling statements for individuals sensitive to natural latex proteins, the agency will require the appropriate statements concerning the natural rubber content of the products to be prominently and legibly displayed on all device labels, and other labeling, and to appear on the principal display panel of the device packaging, the outside package, container or wrapper, and the immediate device package, container, or wrapper.

This means, for example, that the labeling statement for adhesive bandages that are individually wrapped and sold in a box would appear on each individually wrapped bandage, on the box, and on any individual pieces of labeling, such as an instructions for use sheet included in the box. Devices packaged and sold in bulk dispensing containers would be required to display the appropriate statement on the dispensing container, as it is the immediate device container or package.

If the packaging of a device contains natural rubber, the final regulation requires that a separate statement that specifically cautions the user that the natural rubber is contained in the packaging itself. Statements relating to the natural rubber content of the packaging do not have to appear on the same levels of labeling as the cautionary statements relating to natural rubber content in the actual product. The statements cautioning the user that the packaging contains natural rubber shall appear, instead, only on the packaging that contains the natural rubber, and the outside package, container, or wrapper. Placement of cautionary statements in these locations should warn consumers adequately of the possible risks of allergic reactions to the packaging, while avoiding the potential for confusion that the actual products contain natural rubber.

FDA believes that requiring devices to remain in their original package at the user site, requiring labeling statements on dispensers that are sold separately from the natural rubber containing devices, and requiring user facilities to provide education concerning latex products and to monitor bulk product use, is impracticable and beyond the scope of the regulation. Furthermore, because of the potential manufacturing difficulties, the agency will not require devices to be embossed, imprinted, or otherwise labeled on the individual, unwrapped device. The agency believes that the labeling requirements in this regulation will provide adequate protection to the users and patients.

16. The vast majority of comments supported the removal of the "hypoallergenic" claim from the labeling of medical devices that contain natural rubber. Those comments that expressed unease about the removal of the claim stated that the term does convey meaningful information to the user. These comments suggested that an alternative term be applied, or that the regulation allow device labeling to state that the device presents a reduced potential for sensitizing users to natural rubber, or that the device contains less than a specified limit of natural latex proteins or processing chemicals as established by the agency. One comment stated that, until the agency proves that the tests currently employed are insufficient to support the "hypoallergenic" claim, the claim should be allowed.

The agency agrees that the term "hypoallergenic" provides important information to the consumer who is sensitive to processing chemicals, but believes that the term "hypoallergenic" on products containing natural rubber will mislead consumers to conclude erroneously that the product may not cause latex protein allergic reactions.

In the past, manufacturers have labeled their products "hypoallergenic" on the basis of results of the modified (human) Draize test. While this test may be appropriate for detecting sensitivity to residual levels of processing chemicals, the test cannot detect the presence of natural latex proteins. Furthermore, current manufacturing processes cannot reduce the levels of natural latex proteins below that to which some individuals may react.

The agency disagrees that the "hypoallergenic" label should be allowed to remain on devices that contain natural rubber until the agency proves that the tests currently employed are insufficient to support the "hypoallergenic" claim, or that claims should be allowed regarding reduced levels of latex proteins. The agency has received reports of allergic reactions to natural rubber gloves labeled as hypoallergenic. Given that the modified (human) Draize Test is not designed to detect levels of natural latex proteins that would not induce allergic responses, and that the agency is not aware of any current manufacturing processes that are designed to remove latex proteins below a level that may cause adverse reactions, the agency believes that it has sufficient evidence that the tests currently employed do not support the claim "hypoallergenic" with respect to the potential for allergic reactions to natural latex proteins.

The agency does agree that alternative statements should be applied to convey information about devices with reduced residual chemical levels to consumers who are sensitive to chemicals. For this reason, the agency is developing guidance for manufacturers who want to make claims relating to latex devices that have reduced manufacturing chemical residues. FDA will announce the availability of this draft guidance document entitled "Testing for Skin Sensitization to Chemicals in Latex Products" in a future issue of the **Federal Register**.

17. A few comments stated that the reference to the draft guidance document entitled "Testing for Skin Sensitization to Chemicals in Latex Products" in the preamble to the June 24, 1996 proposed rule, upon which this final rule is based, was inappropriate because the document is still in draft form, while another comment suggested the agency reference the draft guidance document in the regulation itself.

The agency does not believe it is appropriate to incorporate a draft guidance document into a regulation. The agency, however, does believe that

it is appropriate to use the preambles of a proposed and final rule relating to latex devices to inform the public that the agency is in the process of developing a guidance document relating to claims about the sensitizing potential of manufacturing chemical residues in latex devices.

18. The vast majority of comments supported the use of a symbol to indicate the presence of natural rubber in a device. These comments stated that the symbol would promote consumer recognition and could be used on devices that have labels that are too small to fit the full text of the statement. One comment suggested that the symbol be stamped on the actual devices, especially those sold in bulk packages. Some comments stated that the symbol should supplement, not replace the text of the statement. Those comments not supporting the use of a natural rubber symbol cautioned that a symbol should not be used until it is universally accepted. Another comment suggested that the agency establish the symbol and require its use.

The agency agrees that a symbol would be useful. The agency stresses, however, that any symbol is intended to supplement, not replace the required written labeling statements, and its use would be voluntary. The agency appreciates the comments and the suggested symbol designs that were submitted, but does not believe that there is sufficient acceptance of a symbol to require the use of a symbol at this time.

19. Several comments stated that the health benefits of the labeling statement are potentially so great that the effective date of the requirement should be less than 180 days from the date of publication of this final rule. Other comments complained that a 180-day implementation period is not sufficient to change the labeling on the numerous devices affected by this rule. These comments requested at least a 12-month implementation period. One of these comments further requested that implementation be a two-stage process, and that devices containing dry natural rubber not be required to carry the labeling statement until 24 months after publication of this final rule. Another comment requested a two-stage implementation process so that devices that only indirectly contact humans would not be required to carry the labeling statement until 36 months after publication, or that such devices not be required to carry any labeling statement.

The agency agrees that the public health concerns relating to allergic responses to natural rubber are great. The agency also acknowledges, however, that at the time of the publication of this regulation, manufacturers have labeling in stock that does not have the required statements. In order to minimize the burden to manufacturers of discarding labeling that has already been printed, and to allow sufficient time to reformat labeling, the agency is providing that the effective date of this final rule is 1 year after the date of publication. This effective date will allow most manufacturers sufficient time, before the effective date of this rule, to exhaust their existing supply of labeling stock. If a manufacturer uses the existing labeling stock before the effective date of this rule, however, FDA encourages manufacturers to add the required labeling statement at that time.

The agency does not believe that a two-stage implementation process is necessary, or that a period of longer than 1 year is necessary because 1 year should be adequate time to phase in new labeling, and reformat the labeling. Furthermore, the agency believes that a longer delay in the implementation of this rule would not be in the interest of the public health. The comment suggesting that devices that only indirectly contact humans not carry any natural rubber labeling statement is addressed in comment 4 of this document.

20. One comment suggested that manufacturers, distributors, and user facilities all be responsible for following the labeling requirements.

The agency agrees with the underlying concern that the labeling statement remain on devices. It is only necessary, however, to require manufacturers to properly label their products to ensure that consumers receive appropriate information concerning natural rubber products. Distributors and user facilities may not alter the device labeling. Any such alteration may be grounds for a charge of misbranding a device under sections 201(n) and 502(a), (c), and (f) of the act (21 U.S.C. 352(a), (c), and (f)).

21. A few comments complained that the rule could be misinterpreted to require labeling on all devices containing any natural rubber whatsoever. Others stated that the requirement would have a major impact on multinational companies, costing at least $15,000 per device for labeling. Another comment stated that the agency underestimated the impact of the rule, as each manufacturer will need to draft, review, and relabel primary and secondary packages of hundreds, if not thousands of devices.

The agency has clarified the scope of this regulation in order to minimize the possibility of misinterpretation. Under final § 801.437(b), an appropriate labeling statement is required on medical devices that contain natural rubber latex or dry natural rubber that contacts humans. The agency does not believe that this rule would require relabeling for hundreds or thousands of devices. In fact, the agency has only identified approximately 70 generic types of medical devices including combination products that are subject to this rule.

Furthermore, FDA does not agree that this rule will have a major impact on multinational companies because it would cost at least $15,000 per device for labeling. FDA estimates that the cost to revise the labeling would be between $1,000 and $2,000 for each type of device that is relabeled. Moreover, the cost of implementing this regulation is further minimized because the 1-year effective date of this regulation should allow most manufacturers to exhaust their current labeling stock prior to using the labeling that is required under this regulation.

IV. Paperwork Reduction Act of 1995

The warning statements required by this regulation are "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public * * *" (5 CFR 1320.3(c)(2)). Accordingly, FDA concludes that the labeling requirements in this final rule are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule primarily requires a labeling change which would not have a significant economic impact on small entities. Although this rule will require a labeling change on a substantial number of medical devices, manufacturers will be allowed up to 1 year after the effective date of this regulation to exhaust their existing supply of labeling, therefore, most manufacturers would exhaust their existing supply of labels. Moreover, the cost of reformatting the labeling, which is $1,000 to $2,000 for each different kind of device, is not significant. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 801 is amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. Section 801.437 is added to subpart H to read as follows:

§ 801.437 User labeling for devices that contain natural rubber.

(a) Data in the Medical Device Reporting System and the scientific literature indicate that some individuals are at risk of severe anaphylactic reactions to natural latex proteins. This labeling regulation is intended to minimize the risk to individuals sensitive to natural latex proteins and protect the public health.

(b) This section applies to all devices composed of or containing, or having packaging or components that are composed of, or contain, natural rubber that contacts humans. The term "natural

rubber" includes natural rubber latex, dry natural rubber, and synthetic latex or synthetic rubber that contains natural rubber in its formulation.

(1) The term "natural rubber latex" means rubber that is produced by the natural rubber latex process that involves the use of natural latex in a concentrated colloidal suspension. Products are formed from natural rubber latex by dipping, extruding, or coating.

(2) The term "dry natural rubber" means rubber that is produced by the dry natural rubber process that involves the use of coagulated natural latex in the form of dried or milled sheets. Products are formed from dry natural rubber by compression molding, extrusion, or by converting the sheets into a solution for dipping.

(3) The term "contacts humans" means that the natural rubber contained in a device is intended to contact or is likely to contact the user or patient. This includes contact when the device that contains natural rubber is connected to the patient by a liquid path or an enclosed gas path; or the device containing the natural rubber is fully or partially coated with a powder, and such powder may carry natural rubber proteins that may contaminate the environment of the user or patient.

(c) Devices containing natural rubber shall be labeled as set forth in paragraphs (d) through (h) of this section. Each required labeling statement shall be prominently and legibly displayed in conformance with section 502(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(c)).

(d) Devices containing natural rubber latex that contacts humans, as described in paragraph (b) of this section, shall bear the following statement in bold print on the device labeling:

"Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions."

This statement shall appear on all device labels, and other labeling, and shall appear on the principal display panel of the device packaging, the outside package, container or wrapper, and the immediate device package, container, or wrapper.

(e) Devices containing dry natural rubber that contacts humans, as described in paragraph (b) of this section, that are not already subject to paragraph (d) of this section, shall bear the following statement in bold print on the device labeling:

"This Product Contains Dry Natural Rubber."

This statement shall appear on all device labels, and other labeling, and shall appear on the principal display panel of the device packaging, the outside package, container or wrapper, and the immediate device package, container, or wrapper.

(f) Devices that have packaging containing natural rubber latex that contacts humans, as described in paragraph (b) of this section, shall bear the following statement in bold print on the device labeling:

"Caution: The Packaging of This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions."

This statement shall appear on the packaging that contains the natural rubber, and the outside package, container, or wrapper.

(g) Devices that have packaging containing dry natural rubber that contacts humans, as described in paragraph (b) of this section, shall bear the following statement in bold print on the device labeling:

"The Packaging of This Product Contains Dry Natural Rubber."

This statement shall appear on the packaging that contains the natural rubber, and the outside package, container, or wrapper.

(h) Devices that contain natural rubber that contacts humans, as described in paragraph (b) of this section, shall not contain the term "hypoallergenic" on their labeling.

(i) Any affected person may request an exemption or variance from the requirements of this section by submitting a citizen petition in accordance with § 10.30 of this chapter.

(j) Any device subject to this section that is not labeled in accordance with paragraphs (d) through (h) of this section and that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this regulation is misbranded under sections 201(n) and 502(a), (c), and (f) of the act (21 U.S.C. 321(n) and 352(a), (c), and (f)).

Dated: September 22, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97-25728 Filed 9-29-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 2610]

Bureau of Consular Affairs; Visas: Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule with request for comments.

SUMMARY: Section 217 of the Immigration and Nationality Act (INA), as amended, extends the Visa Waiver Pilot Program (VWPP) to nationals of all countries that qualify under the provisions of the Pilot Program and which are designated by the Secretary of State and the Attorney General as countries whose nationals benefit from the waiver of the nonimmigrant B-1/B-2 visa requirement. This interim rule eliminates probationary entry status in the pilot program, designates Ireland (the only country formerly designated as a participating country with probationary status) as a permanent participating country and extends the VWPP to Slovenia.

DATES: This interim rule is effective September 30, 1997. Written comments are invited and must be received on or before October 30, 1997.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Room L-603C, Department of State, Washington, D.C. 20520-0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, D.C. 20522-0113 (202) 663-1203.

SUPPLEMENTARY INFORMATION: This interim rule amends Part 41, Title 22 of the Code of Federal Regulations concerning visas for nonimmigrants pursuant to section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, as amended by Pub. L. 103-415, (108 Stat. 4299, October 25,1994), Pub. L. 103-416, (108 Stat. 4305, October 25, 1994), and Pub. L. 104-208, (110 Stat. 3009-702, September 30, 1996).

Pub. L. 99-603

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, amended the INA by adding a new section 217 (8 U.S.C. 1187). Section 217 provides for a nonimmigrant visa waiver pilot program (VWPP) which waives the nonimmigrant visa requirement for the admission of certain aliens into the United States for a period not to exceed ninety days. This original provision authorized the participation of eight countries in the VWPP to be designated by the Secretary of State and the Attorney General, acting jointly from among countries meeting specific criteria. These original qualifying countries included: France; the Federal Republic of Germany; Italy; Japan; the Netherlands; Sweden; Switzerland; and the United Kingdom. (See **Federal Register** publications 53 FR 24903-24904, June 30, 1988; 53 FR 50161-50162, December 13, 1988; and 54 FR 27120-27121, June 27, 1989.)

Pub. L. 101-649

On November 29, 1990, the President signed the Immigration Act of 1990 (Pub. L. 101-649, 104 Stat. 4978). Section 201 revised the VWPP set forth in section 313 of IRCA (Sec. 217 INA, 8 U.S.C. 1187). It removed the eight-country cap and extended the provisions of the VWPP to all countries that meet the qualifying criteria of the Visa Waiver Pilot Program and were designated by the Secretary of State and the Attorney General in consultation with the Secretary of State as Pilot Program countries thereunder.

Effective October 1, 1991, Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain, having met all of the requirements for participants in the nonimmigrant Visa Waiver Pilot Program, were added as participants in the Program. (See 56 FR 46716-46717, September 13, 1991.) Brunei was designated as a participant in the Visa Waiver Pilot Program in an interim rule published at 58 FR 40581-40586 of the **Federal Register** of July 26, 1993.

Pub. L. 103-415

Section 1(m) of Pub. L. 103-415 again amended section 217 of the INA to extend the Visa Waiver Pilot Program through September 30, 1995.

Pub. L. 103-416

Section 210 of the Immigration and Nationality Technical Corrections Act of 1994 (INTC) (Pub. L. 103-416) amended section 217 of the INA extending the Visa Waiver Pilot Program to September 30, 1996. Section 211 of INTC created and established criteria for a new probationary qualification status for countries which met the criteria for that status under the VWPP and which were designated by the Secretary of State and the Attorney General, acting jointly, as countries whose nationals benefitted from the waiver of the nonimmigrant B-1/B-2 visa requirement.

The Department published an interim rule (59 FR 15872) to implement the provisions of sections 210 and 211 (Pub. L. 103-416) on March 28, 1995. Ireland was determined to be the only country which met the criteria set forth for such probationary qualification status. On July 8, 1996 Argentina was added as a non-probationary VWPP country (61 FR 35628-35629) and Australia became a non-probationary participating country on July 29, 1996 (61 FR 39318).

Pub. L. 104-208

On September 30, 1996 the President signed Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, (IIRIRA). Section 635 of this law again amended INA 217 by extending the Program until September 30, 1997. This law also named the Attorney General as the principal designator of VWPP countries, eliminated probationary VWPP qualification status and made countries then in such status (Ireland being the only country) permanent participating VWPP countries subject to the same disqualification criteria established for other VWPP countries.

Requirements for VWPP Participation

For a country to qualify as a participant in the VWPP, the country must agree to waive the visa requirement for nationals of the United States entering for business or pleasure for ninety (90) days or less, must meet statutorily prescribed limits on visa refusal rates for the prior two year period as well as the prior year; must meet statutorily prescribed limits on rates of exclusion at ports of entry and on overstay rates, and must have a machine readable passport program. The Attorney General, in consultation with the Secretary of State, has determined that Slovenia has met these requirements, and Slovenia, therefore, is added effective September 30, 1997 as a participating country in the Visa Waiver Pilot Program. (See the Immigration and Naturalization Service rule also published in this issue of the **Federal Register**.)

Interim Rule

The implementation of this rule as an interim rule, with a 30-day provision for post-promulgation public comments, is based upon the "good cause" exceptions set forth at 5 U.S.C. 553(b)(B) and 553(d)(3). Because this rule will facilitate tourist and business travel to and from Slovenia, delay for pre-promulgation public comment would be contrary to the public interest. This rule will, therefore, become effective upon publication in the **Federal Register**.

In accordance with 5 U.S.C. 605(b) (Regulatory Flexibility Act), it is certified that this rule does not have a "significant adverse economic impact" on a substantial number of small entities, because it is inapplicable. This rule is exempt from E.O. 12866 (Regulatory Planning and Review) but has been coordinated with the Immigration and Naturalization Service because action by the Attorney General is required under section 217 of the INA, as amended. The rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. This rule has been reviewed as required by E.O. 12988 (Civil Justice Reform) and is certified to be in compliance therewith.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary Visitors, Waivers.

This interim rule, with request for comments, amends Part 41, Title 22 by eliminating the pilot program which allowed countries to participate in the Program with probationary status and by adding Ireland and Slovenia to the list of participating countries in the Visa Waiver Pilot Program.

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read:

Authority: 8 U.S.C. 1104.

2. Accordingly, paragraph (l) of § 41.2 is revised to read as follows:

§ 41.2 Waiver by the Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(l) *Visa waiver pilot program.* (1) Notwithstanding the provisions of paragraphs (a) through (k) of this section, a visa is not required of any person who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure and who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant.

(2) Countries designated as pilot program countries under paragraph (l)(1), of this section are: the United Kingdom (effective July 1, 1988); Japan (effective December 15, 1988); France and Switzerland (effective July 1, 1989); The Federal Republic of Germany and Sweden (effective July 15, 1989); Italy and The Netherlands (effective July 29, 1989); Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain (effective October 1, 1991); Brunei (effective July 29, 1993); Ireland (effective April 1, 1995); Argentina (effective July 8, 1996); Australia (effective July 29, 1996) and Slovenia (effective September 30, 1997).

* * * * *

Dated: September 25, 1997.
Mary A. Ryan,
Assistant Secretary for Consular Affairs.
[FR Doc. 97–25951 Filed 9–29–97; 8:45 am]
BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300554; FRL–5744–8]

RIN 2070-AB78

Carfentrazone-ethyl; Temporary Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: This regulation establishes a temporary tolerance for combined residues of the herbicide carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate) and its major wheat metabolites in or on corn (fodder, forage, and grain) and wheat (grain, hay, and straw). FMC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1966 (Pub. L. 104–170).

DATES: This regulation is effective September 30, 1997. Objections and requests for hearings must be received by EPA on or before December 1, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300554, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, OPP–300554], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300554. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 1997 (62 FR 27040) (FRL–5717–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) for tolerance by FMC Corporation, 1735 Market St., Philadelphia, PA 19103. This notice included a summary of the petition prepared by FMC Corporation, the registrant. There were no comments received in response to the notice of filing. The petition requested that 40 CFR part 180 be amended by establishing a temporary tolerance for combined residues of the herbicide carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate), and its metabolite in or on field corn forage, fodder, and grain at 0.15 ppm; and for wheat hay, straw, and grain at 0.20 ppm part per million (ppm). This tolerance will expire on May 8, 1998. This tolerance request was submitted along with an application for an experimental use permit (EUP). The EUP proposed the experimental use of carfentrazone-ethyl on corn and wheat. Under FIFRA, section 5 for experimental use permits, a temporary tolerance level must be established if a pesticide may reasonably be expected to result in any residue in or on food or feed use.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants <1 year old) was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of carfentrazone-ethyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a temporary tolerance for combined residues of carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-

(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate) and its metabolites on wheat at 0.20 ppm and corn at 0.15 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by carfentrazone-ethyl are discussed below.

1. A battery of acute toxicity studies placed technical carfentrazone in Toxicity Categories III and IV. No evidence of sensitization was observed following dermal application in guinea pigs.

2. A 90–day subchronic toxicity study was conducted in rats, with dietary intake levels of 58, 226, 4,700, 831 and 1,197 milligrams/kilograms/day (mg/kg/day) in males and 72, 284, 578, 1,008 and 1,427 mg/kg/day in females, respectively. A NOEL of 226 mg/kg/day (males) and 5,778 mg/kg/day (females) was established. LOELs of 470 mg/kg/day (males) and 578 mg/kg/day (females) was established based on decreases in body weights and/or gains, reductions in food consumption, alterations in clinical chemistry parameters, and histopathological lesions.

3. A reverse gene mutation assay (*salmonella typhirmurium*) yielded negative results, both with and without metabolic activation.

4. An *in vitro* mutation assay test yielded negative results, there was no indication of an increased incidence of gene mutation at the HGPRT locus as a result of exposure.

5. An *in vitro* mammalian cytogenetic test yielded positive under nonactivated conditions in this assay.

6. An *in vivo* micronucleus cytogenetic assay study was conducted in mice by IP injection of 600, 1,200 and 2,400 mg/kg to groups of five males and five females. There was no indication of an increased incidence in micronucleated polychromatic erythrocytes associated with exposure to the test material.

7. A 13–week study was conducted on four pure breed Beagle dogs/sex/group for 90 days at dietary intake levels of 0, 50, 150, 500 and 1,000 mg/kg/day. NOELs of 500 mg/kg/day for both sexes and the LOEL of 150 mg/kg/day, based on systemic toxicity (decrease in the rate of weight gain in females and an increase in porphyrin levels in both sexes).

8. An oral prenatal developmental study was administered by gavage to pregnant female New Zealand white rabbits (20/group) on days 7-19 of gestation at dose levels of 0, 10, 40, 150, or 300 mg/kg/day. There was no evidence of treatment-related prenatal developmental toxicity. The developmental LOEL was not determined. The developmental NOEL ≥ of 300 mg/kg/day.

B. Toxicological Endpoints

1. *Acute toxicity.* The Agency does not have a concern for an acute dietary assessment since the available data do not indicate any evidence of significant toxicity from a 1 day or single event exposure by the oral route, therefore an acute (food and water) risk assessment was not required.

2. *Chronic toxicity.* EPA has established the RfD for carfentrazone-ethyl at 0.06 mg/kg/day. This RfD is based on the NOEL of 60 mg/kg/day from a 90–day rat study with a 1,000 fold uncertainty factor.

3. *Carcinogenicity.* No concern for cancer risks were identified. Data from available studies do not indicate a treatment-related tumor problem, and cancer risk endpoints have not been identified.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have not yet been established for the combined residues of carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate), and its metabolites, in or on a variety of raw agricultural commodities. Due to the non-quantifiable carfentrazone-ethyl residues in/on the treated RAC's (except wheat forage, however, there is a label feeding restriction) fed to livestock and the limited number of acres involved, there is no expectation of secondary residues in livestock commodities of meat, meat-by-products, fat, milk, and eggs. Risk assessments were conducted by EPA to assess dietary exposures and risks from carfentrazone-ethyl as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. No short and intermediate endpoints for occupational and residential exposure were identified.

ii. *Chronic exposure and risk.* The chronic dietary analysis indicates that exposure from the proposed temporary tolerances for use of carfentrazone-ethyl in/on corn and wheat for the U.S. population would account for less than 1% of the RfD. For children (1-6 years), the subgroup with the highest exposure, 1% of the RfD would be utilized. This chronic analysis for carfentrazone is an upper-bound estimate of dietary exposure with all residues at tolerance level and assuming 100% of the commodities to be treated. Since only 4,000 acres of wheat and 4,000 acres of corn will be treated under the EUP program (which represents less than 1% of the total wheat and corn harvested in the United States, this dietary analysis represents an over estimate of the percent RfD that will be utilized by the proposed temporary tolerances. Therefore, the chronic dietary risk resulting from the proposed temporary tolerances for carfentrazone-ethyl will not exceed the Agency's level of concern.

2. *From drinking water.* A chronic dietary risk assessment from drinking water was not conducted because of the short duration of the EUP (2 years) and the small percentage of treated acres for corn and wheat as a result of the proposed use (<1% of the total U.S. production for both commodities).

i. *Acute exposure and risk.* As part of the hazard assessment process, the Agency reviews the available toxicological data base to determine the endpoints of concern for acute dietary risk. There is no concern since the available data do not indicate any evidence of significant toxicity from a 1 day or single event exposure by the oral route. Therefore an acute dietary risk assessment was not required.

ii. *Chronic exposure and risk.* Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the

increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause carfentrazone-ethyl to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with carfentrazone-ethyl in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* The proposed uses for this pesticide does not include uses that would result in a non-dietary, non-occupational exposure.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical-specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether carfentrazone-ethyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, carfentrazone-ethyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that carfentrazone-ethyl has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The Agency does not have a concern for acute dietary assessment since the available data do not indicate any evidence of significant toxicity from a 1 day or single event exposure by the oral route. An acute dietary risk assessment was not required.

2. *Chronic risk.* The chronic dietary analysis indicates that exposure from the proposed temporary tolerances for use of carfentrazone-ethyl in/on corn and wheat for the U.S. population would account for less than 1% of the RfD. For children (1-6 years), the subgroup with the highest exposure, 1% of the RfD would be utilized. A chronic dietary risk (food and water) was not conducted for the following reasons: the short duration of the EUP, the small percentage of treated acres for corn and wheat as a result of the proposed use (<1% of the total U.S. production for both commodities; and the fact that these commodities are blended before consumption). This chronic analysis for carfentrazone-ethyl is an upper-bound estimate of dietary exposure with all residues at tolerance level and assuming 100% of the commodities to be treated. Since only 4,000 acres of wheat and 4,000 acres of corn will be treated under the EUP program, which represents less than 1% of the total wheat and corn harvested in the United States, this dietary analysis represents an over estimate of the percent RfD that will be utilized by the proposed temporary tolerances. Therefore, the chronic dietary risk resulting from the proposed temporary tolerances for carfentrazone-ethyl will not exceed the Agency's level of concern. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to carfentrazone-ethyl residues.

E. Aggregate Cancer Risk for U.S. Population

The chronic dietary analysis indicates that exposure from the proposed temporary tolerances for use of carfentrazone-ethyl in/on corn and wheat for the U.S. population would account for less than 1% RfD. There is no concern for cancer risks identified. Data from available studies do not indicate a treatment-related tumor problem, and cancer endpoints have not been identified.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of carfentrazone-ethyl, EPA considered data from developmental toxicity studies in the rat and rabbit. Developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional 10-fold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under

existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

b. *Developmental toxicity studies.* i. A prenatal oral developmental toxicity study in rabbits with dose levels of 0, 10, 40, 150, or 300 mg/kg/day with a maternal LOEL of 300/mg/kg/day and the maternal NOEL of ≥150 mg/kg/day. There was not evidence of treatment-related prenatal developmental toxicity.

ii. A prenatal oral developmental toxicity study in the rat at dose levels of 0, 100, 600, or 1,250 mg/kg/day with a maternal LOEL of 600 mg/kg/day based on staining of the abdominogential area and of the cage pan liner; and with the maternal NOEL of 100 mg/kg/day. The developmental NOEL of 1,250 mg/kg/day was based upon a significant increase in the litter incidences of wavy and thickened ribs and with the developmental NOEL of 600 mg/kg/day.

c. *Reproductive toxicity study.* Under Title 40 of the Code of Federal Regulations, part 158, § 158.340, a 2-generation reproduction study is not required for an EUP when the TMRC is less than 50% of the RfD. Exposure from the proposed temporary tolerance of carafentrazone-ethyl from use on wheat and corn will account for less than 1% of the RfD.

d. *Pre- and post-natal sensitivity.* There was no evidence of pre-and post-natal sensitivity in the prenatal oral developmental studies discussed above.

e. *Conclusion.* All required toxicology studies have been completed for this phase of the registration process. The required developmental studies show no pre-natal sensitivity. Based on these findings as well as the generally low toxicity seen in all of the carfentrazone studies, EPA concludes there is reliable data supporting not using an additional 10-fold safety factor for the protection of infants and children. EPA believes the 1,000-fold safety factor used in assessing the carfentrazone risk is adequate to protect all consumers. The 1,000-fold safety factor includes a 100-fold factor for intra- and inter-species differences and a 10-fold factor because the RfD was based on subchronic study.

2. *Chronic risk.* EPA has concluded that aggregate exposure to carfentrazone-ethyl from food will utilize 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to carfentrazone-ethyl in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to carfentrazone-ethyl residues.

III. Other Considerations

A. Metabolism in Plants and Animals

The metabolism of carfentrazone-ethyl in plants is adequately understood for the purposes of these tolerances. For the purposes of the EUP, the residues of concern are the parent carfentrazone-ethyl and its two major metabolites. The nature of the residue in animals has not been reported. Due to the non-quantifiable carfentrazone-ethyl residues in/on the treated RACs, except wheat forage (there is a label feeding restriction in the EUP) fed to livestock and the limited number of acres involved, there is no expectation of secondary residues in livestock commodities of meat, meat-by-products, fat, milk, and eggs.

B. Analytical Enforcement Methodology

There is a practical analytical method for detecting and measuring levels of carfentrazone and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The proposed analytical method for determining residues is hydrolysis followed by gas chromatographic separation. For the parent carfentrazone-ethyl, acceptable method recoveries were established at a limit of quantitation (LOQ) of 0.05 ppm, and a limit of detection (LOD) was set at 0.01 ppm for all the field corn and wheat crop matrices. The methodology can also be used to determine major plant metabolites with similar LOQs and LODs. No analytical method for meat, milk and eggs has been submitted by the registrant. Since no temporary tolerances have been proposed for animal RACs, an analytical enforcement method for animals is not required for the EUP.

C. Magnitude of Residues

The magnitude of the residue in animals has not been reported. These data will not be required for the EUP due to the non-quantifiable carfentrazone-ethyl residues in/on treated RACs (corn forage, fodder, and grain, and wheat hay, straw, and grain) fed to livestock and the limited number of acres involved. Residues were only found in wheat forage, therefore for the EUP only, a grazing restriction must be included to prohibit the grazing and harvesting of wheat forage as a feedstuff.

D. International Residue Limits

There is no Codex proposal, no Canadian or Mexican limits for residues of carfentrazone-ethyl in corn or wheat. A compatibility issue is not relevant to the proposed tolerances for either crop.

IV. Conclusion

Therefore, the temporary tolerance is established for combined residues of carfentrazone (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate) and its metabolites in wheat at 0.20 ppm and corn at 0.15 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by December 1, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility

that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number OPP–300554 (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a temporary tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the temporary tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 22, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding § 180.515, to read as follows:

§ 180.515 Carfentrazone-ethyl; temporary tolerances for residues.

(a) *General.* Temporary tolerances are established for combined residues of the herbicide carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate) and its major wheat metabolites carfentrazone-ethyl chloropropionic acid (alpha,2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid),3-hydroxymethyl-F8426-chloropropionic acid (alpha,2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) and 3-desmethyl-F8426 chloropropionic acid (alpha,2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) and in or on the following food commodities:

Commodity	Parts per million	Expiration/ revocation date
Corn fodder	0.15	5/8/98
Corn forage	0.15	5/8/98
Corn grain	0.15	5/8/98
Wheat hay	0.2	5/8/98
Wheat grain	0.2	5/8/98
Wheat straw	0.2	5/8/98

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–25891 Filed 9–29–97; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1, 2, 4, 5, 10, 12, 24, 25, 26, 28, 30, 31, 32, 34, 35, 36, 39, 42, 44, 46, 54, 56, 58, 61, 62, 63, 64, 69, 76, 77, 92, 95, 96, 98, 107, 108, 109, 110, 111, 114, 115, 116, 117, 119, 122, 125, 147, 147A, 153, 154, 159, 160, 161, 162, 170, 171, 174, 175, 176, 177, 178, 180, 182, 183, 185, 188, 190, 193, 194, 195, and 199

[CGD 97–057]

Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes and Conforming Amendments

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends Title 46, Code of Federal Regulations to reflect recent agency organizational changes. It also makes editorial changes throughout the title to correct addresses, update cross-references, make conforming amendments and make other technical corrections. This rule will have no substantive effect on the regulated public.

EFFECTIVE DATE: This rule is effective on September 30, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

FOR FURTHER INFORMATION CONTACT: Janet Walton, Project Manager, Standards Evaluation and Development Division (G–MSR–2), 202–267–0257.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Each year Title 46 of the Code of Federal Regulations is recodified on October 1. This rule makes miscellaneous editorial changes, conforming amendments, and revisions relating to recent Coast Guard organizational changes, to be included in the 1997 recodification of Title 46.

Discussion of Changes

As part of its Headquarters reorganization, the Coast Guard changed senior management position titles from "Chief" to "Assistant Commandant" for the Acquisition, Civil Rights, Marine Safety and Environmental Protection, Operations, and Systems and Human Resources programs. This rule revises the Marine Safety and Environmental Protection title to conform to the current organization.

The rule also makes editorial changes throughout the title, corrects addresses, updates cross-references, and makes other technical corrections. This rule does not change any substantive requirements of existing regulations.

Sections 1.03–15, 1.03–30, 1.03–35, and 1.03–40

In sections 1.03–15((h) (2) and (3), 1.03–30 (a) and (b), and 1.03–35(a), the Coast Guard revises the appeal process concerning appeals to the Commandant and to the Marine Safety Center involving tonnage measurement; and removes both paragraph (c) of section 1.03–35 and section 1.03–40.

Section 2.10–25

Section 2.10–25 revises the definition for *Offshore supply vessel or OSV* to conform to the definition published in the Offshore Supply Vessels; Alternate Tonnage final rule; interpretation (61 FR 66613), published on December 18, 1996.

Sections 24.10–17 and 25.30–20

In section 24.10–17 and Table 25.30–20(a)(1), the Coast Guard removes references to motorboat classes "A, 1, 2, or 3" because the recreational boating safety regulations no longer refer to motorboat classes, but rely solely on vessel length category.

Sections 69.15, 69.17, 69.19 and 69.23

In sections 69.15, 69.17, 69.19 and 69.23, the Coast Guard changes the term "Organizations authorized to measure vessels" to "Authorized measurement organizations" for tonnage measurement and, in addition, makes available a current listing of authorized measurement organizations.

Section 69.63

This rule corrects a codification error, and subsequent publication errors, that dropped an element of the formula from § 69.63, Net tonnage.

Sections 98.30–4, 98.30–5, 98.33–3, 147.40, 147.45, and 147.A.11

The Coast Guard revises sections 98.30–4(a)(1), 98.30–5(a)(4), (b), and (e), 98.33–3 (a) and (b), 147.40 (a)(1) and (a)(2), 147.45(f)(3), and 147A.11(b)(5)(iii) to conform to 49 CFR Chapter I, Subchapter C (HAZARDOUS MATERIALS REGULATIONS), and the 1990 comprehensive revision and reorganization of that Subchapter.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than 30 days after publication in the **Federal Register.** Therefore, this final rule is effective on September 30, 1997.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. As this rule involves internal agency practices and procedures, it will not impose any costs on the public.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with paragraphs 2.B.2.e.(34) (a) and (b), concerning regulations that are editorial or procedural and concerning internal agency functions or organization. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate," is a new or additional enforceable duty, imposed on any State, local or tribal government, or the private sector. If any Federal mandate causes those entities, to spend, in the aggregate, $100 million or more in any one year the UMRA analysis is required. This rule does not impose Federal mandates on any State, local or tribal governments or the private sector.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 4

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 5

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Reporting and recordkeeping requirements, Seamen.

46 CFR Part 24

Marine safety.

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 34

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 36

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 39

Cargo vessels, Fire prevention, Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 42

Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 44

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 46

Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 58

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 62

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 63

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 64

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 69

Measurement standards, Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 76

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 77

Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 92

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 110

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 111

Vessels.

46 CFR Part 114

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 115

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 116

Marine safety, Passenger vessels.

46 CFR Part 117

Marine safety, Passenger vessels.

46 CFR Part 119

Marine safety, Passenger vessels.

46 CFR Part 122

Alcohol and alcoholic beverages, Drugs, Hazardous materials, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 125

Administrative practice and procedures, Authority delegation, Hazardous materials transportation, Incorporation by reference, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 147

Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting and recordkeeping requirements.

46 CFR Part 147A

Fire prevention, Hazardous substances, Occupational safety and health, Pesticides and pests, Seamen, Vessels.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 159

Business and industry, Laboratories, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 161

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 171

Marine safety, Passenger vessels.

46 CFR Part 174

Marine safety, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 177

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 178

Marine safety, Passenger vessels.

46 CFR Part 180

Marine safety, Passenger vessels.

46 CFR Part 182

Marine safety, Passenger vessels.

46 CFR Part 183

Marine safety, Passenger vessels.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 190

Fire prevention, Marine safety, Occupational safety and health, Oceanographic research vessels.

46 CFR Part 193

Fire prevention, Marine safety, Oceanographic research vessels.

46 CFR Part 194

Explosives, Hazardous materials transportation, Marine safety, Oceanographic research vessels.

46 CFR Part 195

Marine safety, Navigation (water), Oceanographic research vessels.

46 CFR Part 199

Cargo vessels, Incorporation by reference, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 1, 2, 4, 5, 10, 12, 24, 25, 26, 28, 30, 31, 32, 34, 35, 36, 39, 42, 44, 46, 54, 56, 58, 61, 62, 63, 64, 69, 76, 77, 92, 95, 96, 98, 107, 108, 109, 110, 111, 114, 115, 116, 117, 119, 122, 125, 147, 147A, 153, 154, 159, 160, 161, 162, 170, 171, 174, 175, 176, 177, 178, 180, 182, 183, 185, 188, 190, 193, 194, 195, and 199 as follows:

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 49 CFR 1.45, 1.46; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

§ 1.01–15 [Amended]

2. In § 1.01–15(b), in the undesignated paragraph after the note, remove the words "parts 10, 12 or 187" and add, in their place, the words "parts 10 or 12".

§ 1.01–25 [Amended]

3. In § 1.01–25(b), remove the word "the" immediately before the word "Marine".

4. In § 1.03–15, in paragraphs (g) and (j), remove the word "Chief," and add, in its place, the words "Assistant Commandant for"; and revise paragraphs (h)(2) and (h)(3) to read as follows:

§ 1.03–15 General.

* * * * *

(h) * * *

(2) Commandant (G-MS) for appeals involving vessel plan review or tonnage measurement issues; or

(3) Director, National Maritime Center, for appeals involving vessel documentation issues.

* * * * *

5. Revise § 1.03–30 to read as follows:

§ 1.03–30 Appeals from decisions or actions of the Marine Safety Center.

(a) Any person directly affected by a decision or action of the Marine Safety Center involving tonnage measurement or which otherwise affects a new vessel or plans for a vessel to be built may, after requesting reconsideration of the decision or action by the Commanding Officer, Marine Safety Center, make a formal appeal, of that decision or action, via the Commanding Officer, Marine Safety Center, to the Commandant, in accordance with the procedures contained in § 1.03–15 of this subpart.

(b) Any person directly affected by a decision or action of the Marine Safety Center not involving tonnage measurement but which otherwise affects an existing vessel, prior to initiating a formal appeal, must request review of that decision or action by the cognizant OCMI. Following review by the cognizant OCMI, the decision or action under review may be appealed to the District Commander, in accordance with the procedures contained in § 1.03–20 of this subpart.

§ 1.03–35 [Amended]

6. In § 1.03–35(a), add the words ", tonnage measurement, or load line assignment" immediately before the words "on behalf of"; and remove paragraph (c).

§ 1.03–40 [Removed]

7. Remove § 1.03–40.

§§ 1.01–10 and 1.01–25 [Amended]

8. In addition to the amendments set forth above, in 46 CFR part 1, remove the word "Chief, Marine Safety and Environmental Protection" and add, in its place, the words "Assistant Commandant for Marine Safety and Environmental Protection" in the following places:

(a) Section 1.01–10(b)(1) introductory text (2 places);

(b) Section 1.01–10(b)(1)(i) introductory text;

(c) Section 1.01–10(b)(1)(i)(A);

(d) Section 1.01–10(b)(1)(i)(B);

(e) Section 1.01–10(b)(1)(i)(C);

(f) Section 1.01–10(b)(1)(ii) introductory text;

(g) Section 1.01–10(b)(1)(ii)(A);

(h) Section 1.01–10(b)(1)(ii)(B);

(i) Section 1.01–10(b)(1)(ii)(C);

(j) Section 1.01–10(b)(1)(iii);

(k) Section 1.01–10(b)(1)(iv); and

(l) Section 1.01–25(b).

PART 2—VESSEL INSPECTIONS

9. The authority citation for part 2 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 33 U.S.C. 1903; 43 U.S.C. 1333, 1356; 46 U.S.C. 2110, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 [see 46 U.S.C. App. note prec. 1].

§ 2.01–1 [Amended]

10. In § 2.01–1(c), after "J (Electrical Engineering)", add "K (Small Passenger Vessels Carrying More Than 150 Passengers Or With Overnight Accommodations For More Than 49 Passengers), L (Offshore Supply Vessels),".

11. Revise § 2.01–7(b)(4) to read as follows:

§ 2.01–7 Classes of vessels (including motorboats) examined or inspected and certificated.

* * * * *

(b) * * *

(4) For small passenger vessels see part 114 of subchapter K (Small Passenger Vessels Carrying More Than 150 Passengers or with Overnight Accommodations for More Than 49 Passengers) and part 175 of subchapter T (Small Passenger Vessels) of this chapter.

* * * * *

§ 2.01–13 [Amended]

12. In § 2.01–13(c), remove the number "§ 146.02–2" and add, in its place, the number "§ 147.1".

§ 2.01–15 [Amended]

13. In § 2.01–15, in paragraph (a) introductory text, in the first sentence, remove the words "a vessel or her machinery" and add, in their place, the words "the vessel or its machinery"; in paragraph (a)(2), remove the number "176.20–1" and add, in its place, the number "176.700"; and in paragraph (b)(2), remove the number "176.01–27" and add, in its place, the words "subpart B".

§ 2.01–60 [Amended]

14. In § 2.01–60(a), remove the words "authorized by 46 U.S.C. 382b and regulations in part 143 of this chapter" and add, in their place, the words "authorized by 46 U.S.C. 2111 and regulations in part 9 of this chapter".

§ 2.10–25 [Amended]

15. In § 2.10–25, revise the definition of "Offshore Supply Vessel" to read as follows:

§ 2.10–25 Definitions.

* * * * *

Offshore supply vessel or *OSV* means a vessel that—

(1) Is propelled by machinery other than steam;

(2) Does not meet the definition of a passenger-carrying vessel in 46 U.S.C. 2101(22) or 46 U.S.C. 2101(35);

(3) Is more than 15 but less than 500 gross tons (as measured under the Standard, Dual, or Simplified Measurement System under part 69, subpart C, D, or E of this chapter) or less than 6,000 gross tons (as measured under the Convention Measurement System under part 69, subpart B of this chapter); and

(4) Regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

* * * * *

§ 2.20–1 [Removed]

16. Remove § 2.20–1.

§ 2.20–50 [Amended]

17. In § 2.20–50, remove the numbers "33.01–20, 34.01–5, 78.33–10, and 97.30–10" and add, in their place, the numbers "78.33–10 and 97.30–10".

§ 2.75–1 [Amended]

18. In § 2.75–1(c), remove the words "Chief, Office of Marine Safety, Security and Environmental Protection" and add, in their place, the words "Assistant Commandant for Marine Safety and Environmental Protection".

§ 2.75–50 [Amended]

19. In § 2.75–50(c), remove the words "(Commandant (G–M))" and add, in their place, the words "(G–M)".

§§ 2.75–1, 2.75–5 and 2.75–60 [Amended]

20. In addition to the amendments set forth above, in 46 CFR part 2, remove the word "Chief, Marine Safety and Environmental Protection" and add, in its place, the words "Assistance Commandant for Marine Safety and Environmental Protection" in the following places:

(a) Section 2.75–1(c);

(b) Section 2.75–5(a); and

(c) Section 2.75–50(c).

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

21. The authority citation for part 4 continues to read as follows:

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

§ 4.03–2 [Amended]

22. In § 4.03–2(a)(3), remove "§ 4.05–1(f)" and add, in its place, "§ 4.05–1(a)(7)".

§ 4.06–60 [Amended]

23. In § 4.06–60(a), remove the word "Serous" and add, in its place, the word "Serious".

§ 4.07–1 [Amended]

24. In § 4.07–1(c)(3), remove the word "man" and add, in its place, the word "person"; and remove "title 46, U.S. Code, section 239" and add, in its place, "46 U.S.C. 6301".

§ 4.07–10 [Amended]

25–26. In § 4.07–10, in paragraph (a), introductory text remove the word "indorsement" and add, in its place, the word "endorsement"; and, in paragraph (b), remove the words "Commander, Coast Guard District Activities Europe" and "Commander, Coast Guard Activities Europe" wherever they appear and add, in their place, the words "Commander, Coast Guard MIO Europe".

PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

27. The authority citation for part 5 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7301, 7701; 49 CFR 1.46.

§ 5.507 [Amended]

28. In § 5.507(a), remove the word "possbile" and add, in its place, the word "possible".

§ 5.521 [Amended]

29. In § 5.521(a), remove the word "Adminstrative" and add, in its place, the word "Administrative".

§ 5.527 [Amended]

30. In § 5.527(c), remove the word "Adminstrative" and add, in its place, the word "Administrative".

§ 5.537 [Amended]

31. In § 5.537(c), remove the word "the" immediately before the word "rules".

PART 10—LICENSING OF MARITIME PERSONNEL

32. The authority citation for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

§ 10.112 [Amended]

33. In § 10.112(b), remove the word "G–MRP" and add, in its place, the word "G–MOC".

PART 12—CERTIFICATION OF SEAMEN

34. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

§ 12.01–6 [Amended]

35. In § 12.01–6, in definition of *Conviction*, remove the word "Untied" and add, in its place, the word "United".

Subpart 12.10–9—[Amended]

36. In the final rule published June 26, 1997 (62 FR 34537), in the third column, under amendatory instruction 16, remove the words "Subpart 12.10–9" and add, in their place, the words "§ 12.10–9."

Subpart 12.30—[Amended]

37. In the final rule published June 26, 1997 (62 FR 34538), in the second column, in text of subpart 12.30, after the section heading "*§ 12.30–1 Purpose of regulations.*", remove the section heading "*§ 12.30–3 Definitions.*" the first time it appears.

PART 24—GENERAL PROVISIONS

38. The authority citation for part 24 continues to read as follows:

Authority: 46 U.S.C. 2113; 3306, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 24.10–17 [Amended]

39. In § 24.10–17(a), remove the word "classes" and add, in its place, the words "length categories"; and in the last four sentences, which are a list of classes of motorboats, remove "Class A—", "Class 1—", "Class 2—", and Class 3—".

PART 25—REQUIREMENTS

40. The authority citation for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

§ 25.25–5 [Amended]

41. In § 25.25–5(e), remove the number "160.071" and add, in its place, the number "160.171".

§ 25.30–20 [Amended]

42. In § 25.30–20(a), revise Table 25.30–20(a)(1) to read as follows:

§ 25.30–20 Fire extinguishing equipment required.

(a) * * *

TABLE 25.30–20(a)(1)

Length, feet	Minimum number of B–1 hand portable fire extinguishers required[1]	
	No fixed fire extinguishing system in machinery space	Fixed fire extinguishing system in machinery space
Under 16	1	0
16 and over, but under 26	1	0
26 and over, but under 40	2	1
40 and over, but not over 65	3	2

[1] One B–11 hand portable fire extinguisher may be substituted for two B–I hand portable fire extinguishers.

* * * * *

§§ 25.25–5 and 25.25–13 [Amended]

43. In addition to the amendments set forth above, in 46 CFR part 25, remove the words "exposure suit" and add, in its place, the words "immersion suit" in the following places:

(a) Section 25.25–5(e) (2 places),

(b) Section 25.25–13(b); and

(c) Section 25.25–13(c).

PART 26—OPERATIONS

44. The authority citation for part 26 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 26.03–10 [Amended]

45. In § 26.03–10(a), remove the paragraph (a) designation.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS.

46. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

§ 28.40 [Amended]

47. In § 28.40(b), under the entry for International Maritime Organization (IMO), remove the word "England" and add, in its place, the words "United Kingdom"; and under the entry for Underwriters Laboratories, Inc. (UL), remove the words "333 Pfingsten Rd., Northbrook, IL 60062" and add, in their place, the words "12 Laboratory Drive, Research Triangle Park, NC 27709–3995".

PART 30—GENERAL PROVISIONS

48. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.01–5 [Amended]

49. In § 30.01–5(g), remove the words "Table 30.25–5" and add, in their place, the words "Table 30.25–1".

§ 30.30–9 [Amended]

50. In § 30.30–9, remove the words "parts 5, 10, and 12 of this chapter" and add, in their place, the words "parts 5, 10, and 13 of this chapter."

PART 31—INSPECTION AND CERTIFICATION

51. The authority citation for part 31 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306;.46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703, 8105; 49 U.S.C. App 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 31.01–1 [Amended]

52. In § 31.01–1(a), remove the word "oftener" and add, in its place, the words "more often".

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

53. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101–360, 104 Stat. 515.

§ 32.01–1 [Amended]

54. In § 32.01–1(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

§ 32.53–1 [Amended]

55. In § 32.53–1(a)(2), remove the citation "46 U.S.C. 391a(2)" and add, in its place, "46 U.S.C. 3701".

§ 32.53–3 [Amended]

56. In § 32.53–3(a), remove the word "Chief," and add, in its place, the words "Assistant Commandant for"; and in (d) and (e), remove the words "Chief, Office of" and add, in their place, the words "Assistant Commandant for".

PART 34—FIREFIGHTING EQUIPMENT

57. The authority citation for part 34 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 34.01–15 [Amended]

58. In § 34.01–15(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 35—OPERATIONS

59. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 35.01–3 [Amended]

60. In § 35.01–3(b), under the entry for American Society for Testing and Materials, remove the words "1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 36—ELEVATED TEMPERATURE CARGOES

61. The authority citation for part 36 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 36.01–1 [Amended]

62. In § 36.01–1(c), remove the words "part 146" and add, in their place, the words "part 148".

PART 39—VAPOR CONTROL SYSTEMS

63. The authority citation for part 39 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. 3306, 3703, 3715(b); 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 39.10–5 [Amended]

64. In § 39.10–5(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

65. The authority citation for part 42 is revised to read as follows:

Authority: 46 U.S.C. 5101–5116; 49 CFR 1.46; section 42.01–5 also issued under the authority of 44 U.S.C. 3507.

§ 42.01–1 [Amended]

66. In § 42.01–1, remove the words "the International Voyage Load Line Act of 1973, as amended (46 U.S.C. 86–86i), and Coastwise Load Line Act of 1935, as amended (46 U.S.C. 88–88i)" and add, in their place, the words "46 U.S.C. 5101–5116".

§ 42.03–5 [Amended]

67. In § 42.03–5(b)(1)(ii), remove the words "section 445 of Title 46, U.S. Code" and add, in their place, the words "46 U.S.C. 2113".

§ 42.03–10 [Amended]

68. Amend § 42.03–10 as follows:

a. In paragraph (a), remove the words "the International Load Line Act of 1973, as amended (46 U.S.C. 86–86i)" and add, in their place, the words "46 U.S.C. 5101–5116", and remove the words "the Coastwise Load Line Act of 1935, as amended (46 U.S.C. 88–88i)" and add, in their place, the words "46 U.S.C. 5101–5116";

b. In paragraph (b), remove the words "the International Load Line Act of 1973, as amended (46 U.S.C. 86–86i) and the Coastwise Load Line Act of 1935, as amended (46 U.S.C. 88–88i)" and add, in their place, the words "46 U.S.C. 5101–5116";

c. In paragraph (c), remove the words "the International Load Line Act of 1973, as amended, the Coastwise Load Line Act of 1935, as amended" and add, in their place, the words "46 U.S.C. 5101–5116"; and

d. In paragraph (d)(2), remove the words "International Loan Line Convention" and add, in their place, the words "International Load Line Convention".

§ 42.07–50 [Amended]

69. Amend § 42.07–50 as follows:

a. In paragraph (a), remove the words "title 46, United States Code, sections 86i and 88g" and add, in their place, the words "46 U.S.C. 5116";

b. In paragraph (b)(1), remove the words "46 United States Code, section 86g or 88c in accordance with section 86h or 88f" and add, in their place, the words "46 U.S.C. 5112, in accordance with 46 U.S.C. 5113";

c. In paragraph (b)(2), remove the words "title 46, United States Code, sections 86i and 88g" and add, in their

place, the words "46 U.S.C. 5112 and 5116";

d. In paragraph (b)(3), remove the words "title 46, U. S. Code, section 86i or 88g" and add, in their place, the words "46 U.S.C. 5112 or 5116";

e. In paragraph (b)(5), remove the words "under the provisions of title 46, United States Code, section 239, and the regulations prescribed thereunder in part 137 of subchapter K (Marine Investigations and Suspension and Revocation Proceedings) of this chapter" and add, in their place, the words "under the provisions of 46 U.S.C. Chapter 77, and the regulations in 46 CFR part 5";

f. Revise the text of paragraph (c) to read as set forth below.

g. In paragraph (d), remove the words "title 46, United States Code, section 86i or 88g" and add, in their place, the words "46 U.S.C. 5116".

The revised text is set forth as follows:

§ 42.07–50 Penalties for violations

* * * * *

(c) In determining offenses, 46 U.S.C. 5116 provides that 'Each day of a continuing violation is a separate violation.'; and

PART 44—SPECIAL SERVICE LIMITED DOMESTIC VOYAGES

70. The authority citation for part 44 is revised to read as follows:

Authority: 46 U.S.C. 5101–5116; 49 CFR 1.46.

PART 46—SUBDIVISION LOAD LINES FOR PASSENGER VESSELS

71. The authority citation for part 46 is revised to read as follows:

Authority: 46 U.S.C. 3306; 46 U.S.C. 5101–5116; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

72. Revise the subpart heading for Subpart 46.01 to read as follows:

Subpart 46.01—Purpose

§ 46.01–5 [Removed]

73. Remove § 46.01–5.

§ 46.01–15 [Amended]

74. In paragraph (d), remove the words "the International Load Line Act of 1973 as amended (46 U.S.C. 86–86i) or the Coastwise Load Line Act of 1935, as amended (46 U.S.C. 88–88i)" and add, in their place, the words "46 U.S.C. 5101–5116".

§ 46.01–20 [Amended]

75. In paragraph (a), remove the words "the International Load Line Act of 1973, as amended (46 U.S.C. 86–86i), or the Coastwise Load Line Act of 1935, as amended (46 U.S.C. 88–88i)" and add, in their place, the words "46 U.S.C. 5101–5116".

PART 54—PRESSURE VESSELS

76. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 54.01–1 [Amended]

77. In § 54.01–1(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 56—PIPING SYSTEMS AND APPURTENANCES

78. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 56.01–2 [Amended]

79. In § 56.01–2(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

80. The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3, CFR 1980 Comp., p. 277; 49 CFR 1.46.

§ 58.03–1 [Amended]

81. In § 58.03–1(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959"; and under the entry for International Maritime Organization (IMO), add the words "Publications Section" immediately before the words "4 Albert Embankment" and remove the word "England" and add, in its place, the words "United Kingdom".

PART 61—PERIODIC TESTS AND INSPECTIONS

82. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 61.03–1 [Amended]

83. In § 61.03–1(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 62—VITAL SYSTEM AUTOMATION

84. The authority citation for part 62 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 6105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 62.05–1 [Amended]

85. In § 62.05–1(a), remove the word "the" immediately preceding the word "Marine".

PART 63—AUTOMATIC AUXILIARY BOILERS

86. The authority citation for part 63 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 63.05–1 [Amended]

87. In § 63.05–1(b), remove the words "Underwriters" Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, Illinois 60062" and add, in their place, the words "Underwriters Laboratories, Inc. (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709–3995".

PART 64—MARINE PORTABLE TANKS AND CARGO HANDLING SYSTEMS

88. The authority citation for part 64 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. app. 1804; 49 CFR 1.46.

§ 64.2 [Amended]

89. In § 64.2(b), under the entry for American Society of Mechanical Engineers, remove the word "1345" and add, in its place, the word "345".

PART 69—MEASUREMENT OF VESSELS

90. The authority citation for part 69 continues to read as follows:

Authority: 46 U.S.C. 2301, 14103; 49 CFR 1.46.

91. In § 69.15 revise the heading and paragraph (a) to read as follows:

§ 69.15 Authorized measurement organizations.

(a) Except as under paragraphs (c) and (d) of this section, all U.S. vessels to be measured or remeasured under the Convention, Standard, or Dual Measurement Systems must be measured by an authorized measurement organization meeting the requirements of § 69.27. A current listing of authorized measurement organizations can be obtained from Commanding Officer, U.S. Coast Guard Marine Safety Center (MSC–3), 400 7th Street S.W., Washington, DC 20590–0001.

* * * * *

92. Revise § 69.17(a) to read as follows:

§ 69.17 Application for measurement services.

(a) Applications for measurement are available from and, once completed, are submitted to the authorized measurement organization that will perform the services. The contents of the application are described in this part under the requirement for each system.

* * * * *

93. Revise § 69.19(a) to read as follows:

§ 69.19 Remeasurement and adjustment of tonnage.

(a) If a vessel that is already measured is to undergo a structural alteration or if the use of a space within that vessel is to be changed, a remeasurement may be required. Vessel owners shall report immediately to an authorized measurement organization any intent to structurally alter the vessel or to change the use of a space within the vessel. The organization advises the owner if remeasurement is necessary. Spaces not affected by the alteration or change need not be remeasured.

* * * * *

94. Revise § 69.23 to read as follows:

§ 69.23 Fees.

Measurement organizations are authorized to charge a fee for measurement services. Information on fees is available directly from the organizations.

§ 69.27 [Amended]

95. In § 69.27, in paragraphs (b)(5), (d) introductory text, and (d)(4)(vii), remove the words "Memorandum of Agreement" and add, in their place, the words "written agreement"; and remove paragraph (e).

96. Revise § 69.63 to read as follows:

§ 69.63 Net tonnage.

Net tonnage (NT) is determined by the formula:

$$NT = K_2 V_c \left(\frac{4d}{3D}\right)^2 + K_3 \left(N_1 + \frac{N_2}{10}\right)$$

in which:

V_c = total volume of cargo spaces in cubic meters.

$K_2 = 0.2 + 0.02 \log_{10} V_c$.

$$K3 = 1.25\left(\frac{GT + 10{,}000}{10{,}000}\right)$$

D = molded depth amidships in meters, as "molded depth" is defined in § 69.53.

d = molded draft amidships in meters, as "molded draft" is defined in § 69.53.

N_1 = number of passengers in cabins with not more than eight berths, as "passenger" is defined in § 69.53.

N_2 = number of other passengers, as "passenger" is defined in § 69.53.

GT = gross tonnage as determined under § 69.57.

N_1 plus N_2 must equal the total number of passengers the vessel is permitted to carry as indicated on the ship's Passenger Certificate. If N_1 plus N_2 is less than 13, both N_1 and N_2 are zero.

$\left(\frac{4d}{3D}\right)^2$ must not be greater than unity.

$K_2 V_c \left(\frac{4d}{3D}\right)^2$ must not be less than 0.25 GT.

NT must not be less than 0.30 GT.

§ 69.73 [Amended]

97. In § 69.73(a), remove the word "supart" and add, in its place, the word "subpart".

§ 69.111 [Amended]

98. In § 69.111(c)(3), remove the word "breaths" and add, in its place, the word "breadths".

§ 69.117 [Amended]

99. In § 69.117, in paragraph (e)(2)(ii), add the word "length" immediately before the words "of the vessel" the second time they appear; and in paragraph (e)(3), remove the word "or" immediately before the words "more than two feet" and add, in its place, the word "of".

§ 69.209 [Amended]

100. In § 69.209(a)(4), remove the words "that is indicated as a houseboat on Coast Guard Form CG–5397".

PART 76—FIRE PROTECTION EQUIPMENT

101. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 76.01–2 [Amended]

102. In § 76.01–2(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

103. The authority citation for part 77 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 77.01–3 [Amended]

104. In § 77.01–3(b), under the entry for American Society for Testing and Materials, remove the words "1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 92—CONSTRUCTION AND ARRANGEMENT

105. The authority citation for part 92 is revised to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 92.01–2 [Amended]

106. In § 92.01–2(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 95—FIRE PROTECTION EQUIPMENT

107. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 95.01–2 [Amended]

108. In § 95.01–2(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

109. The authority citation for part 96 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 96.01–3 [Amended]

110. In § 96.01–3(b), under the entry for American Society for Testing and Materials, remove the words "1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

111. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 98.30–1 [Amended]

112. In § 98.30–1(b)(3), remove the words "Director, Office of Hazardous Materials Transportation (OHMT)" and add, in their place, the words "Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration (AAHMS)".

§ 98.30–4 [Amended]

113. In § 98.30–4, in paragraphs (a)(2) introductory text, (a)(2)(ii), and (c), remove the words "Director, OHMS" and "Director, OHMT" and add, in their place, the word "AAHMS"; remove footnote 1 to paragraph (a)(1); and revise paragraph (a)(1) to read as follows:

§ 98.30–4 Vessels carrying portable tanks other than MPTs.

(a) * * *

(1) An IM 101 or IM 102 tank authorized for its contents in accordance with Columns 7 and 8C of the Hazardous Materials Table of 49 CFR 172.101.

114. In § 98.30–5 revise paragraphs (a)(4), (b), and (e) to read as follows:

§ 98.30–5 Materials authorized for transfer to and from a portable tank.

(a) * * *

(4) Any environmentally hazardous substance, liquid, N.O.S., Class 9, listed in table 1 of appendix A of 49 CFR 172.101, and any aqueous solution of an environmentally hazardous substance, solid, N.O.S., Class 9, listed in that table, that meets the definition of "hazardous substance" in 49 CFR 171.8; and

* * * * *

(b) Grade D and Grade E combustible liquids with a flash point of 100°F (38°C) or higher by closed cup test that are not listed by name in the Table of 49 CFR 172.101 may be transferred to and from an MPT or an IM 102 portable tank conforming to the entry for note "T1" of 49 CFR 172.102(c)(7)(i).

* * * * *

(e) Environmentally hazardous substances (see paragraph (a)(4) of this section) may be transferred only to or from an IM 101 or IM 102 portable tank or an MPT.

* * * * *

115. In § 98.33–1(b)(2), remove the words "176.340(a)(2)" and add, in their place, the words "176.340(b)"; and add note 1 to paragraph (b)(1) to read as follows:

§ 98.33–1 Applicability.

* * * * *

(b) * * *

(1) * * *

Note to paragraph (b)(1): Copies of Specifications 178.251 and 178.253 may be obtained from the Commandant (G-MSO–3).

* * * * *

116. In § 98.33–3, in paragraph (a), remove the words "except hazardous substance 'ORM–E' " and revise paragraph (b) to read as follows:

§ 98.33–3 Cargoes authorized.

* * * * *

(b) Any environmentally hazardous substance, liquid N.O.S., Class 9, listed in table 1 of appendix A of 49 CFR 172.101, and any aqueous solution of an environmentally hazardous substance, solid, N.O.S., Class 9, listed in that table, that meets the definition of "Hazardous substance" in 49 CFR 171.8.

* * * * *

PART 107—INSPECTION AND CERTIFICATION

117. The authority citation for part 107 is revised to read as follows:

Authority: 43 U.S.C. 1333, 46 U.S.C. 3306; 46 U.S.C. 3316 as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

§ 107.115 [Amended]

118. In § 107.115, in paragraph (b), under the entry for International Cargo Gear Bureau, remove the words ", 17 Battery Place" and add, in their place, the words "Inc., 90 West Street—Suite 1612"; and under the entry for Underwriters Laboratory, remove the words "Laboratory, 333 Pfingsten Road, Northbrook, Illinois 60062" and add, in their place, the words "Laboratories, 12 Laboratory Drive, Research Triangle Park, NC 27709–3995".

PART 108—DESIGN AND EQUIPMENT

119. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; 49 CFR 1.46.

§ 108.101 [Amended]

120. In § 108.101(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959"; and under the entry for International Maritime Organization (IMO), add the words "Publications Section" immediately before the words "4 Albert Embankment" and remove the word "England" and add, in its place, the words "United Kingdom".

PART 109—OPERATIONS

121. The authority citation for part 109 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; 49 CFR 1.46.

Appendix A—[Amended]

122. In the heading to Appendix A of part 109, remove the number "3–78" and add, in its place, the number "4–78".

PART 110—GENERAL PROVISIONS

123. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 110.01–2 also issued under 44 U.S.C. 3507.

§ 110.10–1 [Amended]

124. In § 110.10–1(b), under the entry for International Maritime Organization (IMO), add the words "Publications Section" immediately before the words "4 Albert Embankment" and remove the word "England" and add in its place, the words "United Kingdom"; and under the entry for Underwriters Laboratories, Inc. (UL), remove the words "ATTN: Publications Stock, 333 Pfingsten Rd., Northbrook, IL 60062–2096" and add, in their place, the words "12 Laboratory Drive, Research Triangle Park, NC 27709–3995".

PART 111—ELECTRICAL SYSTEMS—GENERAL REQUIREMENTS

125. The authority citation for part 111 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

§ 111.50–3 [Amended]

126. In § 111.50–3(b)(2), remove the words "Subpart 111.93" and add, in its place, "subchapter F of this chapter".

PART 114—GENERAL PROVISIONS

127. The authority citation for part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 114.900 also issued under authority of 44 U.S.C. 3507.

§ 114.400 [Amended]

128. In the definition of *Corrision-resistant material or corrosion-resistant*, remove the word "Corrision-resistant" and add, in its place, the word "Corrosion-resistant"; in the definition of *High seas*, remove the word "Untied" and add, in its place, the word "United"; and in the definition of *High Speed Craft*, remove the word "the" and add, in its place, the word "that" immediately before the word "alternative".

§ 114.600 [Amended]

129. In § 114.600(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959"; and under the entry for International Maritime Organization (IMO), add the words Publications Section" immediately before the words "4 Albert Embankment" and add the words "United Kingdom" following the word "7SR".

PART 115—INSPECTION AND CERTIFICATION

130. The authority citation for part 115 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 115.920 [Amended]

131. In § 115.920(d), remove the word "changes" and add, in its place, the word "change" immediately before the words "the information".

§ 115.930 [Amended]

132. In § 115.930, remove the word "as" immediately before the word "least" and add, in its place, the word "at".

§§ 115.103 and 115.808 [Amended]

133. In addition to the amendments set forth above, in 46 CFR part 115—

Remove the words "lifejacket", and "lifejackets" wherever they appear, and add, in their place, the words "life jacket" or "life jackets in the following sections:

(a) Section 115.103; and

(b) Section 115.808 (a)(2), (a)(4), (d), (e) introductory text (2 places), and (e)(2).

PART 116—CONSTRUCTION AND ARRANGEMENT

134. The authority citation for part 116 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 116.500 [Amended]

135. In § 116.500(k)(1), remove the word "passager" and add, in its place, the word "passenger".

§ 116.510 [Amended]

136. In § 116.510(b)(2), remove the word "be" and add, in its place, the word "Be".

§ 116.820 [Amended]

137. In § 116.820(d) (1) and (2), remove the word "meter" and add, in its place, the word "meters".

PART 117—LIFESAVING EQUIPMENT AND ARRANGEMENTS

138. The authority citation for part 117 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 117.10 [Amended]

139. In § 117.10, remove the words "subchapter H" and add, in their place, the words "subchapter W".

§ 117.70 [Amended]

140. In § 117.70(a)(1), remove the word "diamter" and add, in its place, the word "diameter".

§ 117.71 [Amended]

141. Amend § 117.71 as follows:

a. In paragraph (b), remove the word "the" immediately before the word "persons";

b. In paragraph (d), remove the word "lifejackets" wherever it appears, and add, in its place, the words "life jackets"; and

c. In paragraph (d), add a comma immediately following the word "1999".

§ 117.130 [Amended]

142. In § 117.130(a)(2), remove the word "stowed" and add, in its place, the word "Stowed".

PART 119—MACHINERY INSTALLATION

143. The authority citation for part 119 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 119.405 [Amended]

144. In § 119.405, add the word "the" immediately before the word "Commandant".

§ 119.510 [Amended]

145. In § 119.510(b), remove the word "is" and add, in its place, the word "in".

PART 122—OPERATIONS

146. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 122.610 [Amended]

147. In § 122.610, remove the word "marking" and add, in its place, the word "markings".

§ 122.910 [Amended]

148. In § 122.910, remove the word "is" immediately before the word "subchapter" and add, in its place, the word "in".

PART 125—GENERAL

149. The authority citation for part 125 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.46.

§ 125.180 [Amended]

150. In § 125.180(b), under the entry for American Society of Mechanical Engineers (ASME), remove the word "10027" and add, in its place, the word "10017"; under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959"; under the entry for International Maritime Organization (IMO), remove the word "England" and add, in its place, the words "United Kingdom"; and under the entry for Underwriters Laboratories, Inc. (UL), remove the words "333 Pfingsten Rd., Northbrook, IL 60062" and add, in their place, the words "12 Laboratory Drive,

Research Triangle Park, NC 27709–3995".

PART 147—HAZARDOUS SHIPS' STORES

151. The authority citation for part 147 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 147.3 [Amended]

152. Amend § 147.3 as follows:

a. Remove the number "173.115(b)" and add, in its place, the number "173.120(b)" in the definition for *Combustible liquid;*

b. Remove the number "173.300" and add, in its place, the number "173.115" in the definition for *Compressed gas;* and

c. Remove the number "173.115(a)" and add, in its place, the number "173.120(a)" in the definition for *Flammable liquid.*

§ 147.7 [Amended]

153. In § 147.7(c), under the entry for Underwriters Laboratories, Inc. (UL), remove the words "Publications Stock, 333 Pfingsten Road, Northbrook, IL 60062" and add, in their place, the words "12 Laboratory Drive, Research Triangle Park, NC 27709–3995".

§ 147.30 [Amended]

154. In § 147.30(a)(3), remove the numbers "172.101 and 173.2" and add, in their place, the numbers "172.101, 173.2, and 173.2(a)".

155. Revise §§ 147.40 (a)(1) and (a)(2) to read as follows:

§ 147.40 Materials requiring Commandant (G–MSO) approval.

(a) * * *

(1) Poison gases of Class 2, Division 2.3 and toxic liquids of Class 6, Division 6.1 which are poisonous by inhalation in Hazard Zone A.

(2) Explosives of Divisions 1.1 or 1.2.

* * * * *

156. Revise § 147.45(f)(3) to read as follows:

§ 147.45 Flammable and Combustible liquids.

* * * * *

(f) * * *

(3) A non-bulk packaging authorized for Class 3 (flammable) liquids or combustible liquids under 49 CFR 173.201, 173.202, or 173.203, as referenced for the specific liquid in column 8B of the Hazardous Materials Table of 49 CFR 172.101.

* * * * *

§ 147.95 [Amended]

157. Amend § 147.95 as follows:

a. In paragraph (a), remove the words "176.135 through 176.159" and add, in their place, the words "176.122 through 176.138'; and

b. In paragraph (c)(2), remove the word "176.83" and add, in its place, the words "176.140 through 176.146".

PART 147A—INTERIM REGULATIONS FOR SHIPBOARD FUMIGATION

158. The authority citation for part 147A continues to read as follows:

Authority: 46 U.S.C. App. 1804; 49 CFR 1.46.

159. Revise § 147A.11(b)(5)(iii) to read as follows:

§ 147A.11 Person in charge of fumigation; before fumigation.

* * * * *

(b) * * *

(5) * * *

(iii) In accordance with 49 CFR 173.9(c) or section 8.10 of the *General Introduction of the International Maritime Dangerous Goods Code.* The word "unit" on the warning sign may be replaced with "vessel," "barge," "hold," or "space," as appropriate.

* * * * *

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

160. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

§ 153.4 [Amended]

161. In § 153.4(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

162. The authority citation for part 154 continues to read as follows:

Authority: 46 U.S.C. 3703, 9101; 49 CFR 1.46.

§ 154.1 [Amended]

163. In § 154.1(b), under the entry for American Society for Testing and Materials, remove the words "1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959"; under the entry for International Maritime Organization, remove the words "4 Albert Embankment, Lndon SE1 75R, U.K." and add, in their place, the words "Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom; and under the entry for Underwriters Laborstories, Inc., remove the words "333 Pfingsten Rd., Northbrook, IL 60062" and add, in their place, the words "12 Laboratory Drive, Research Triangle Park, NC 27709–3995".

PART 159—APPROVAL OF EQUIPMENT AND MATERIALS

164. The authority citation for part 159 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; Section 159.001–9 also issued under the authority of 44 U.S.C. 3507.

§ 159.001–4 [Amended]

165. In § 159.001–4(b), under the entry for International Maritime Organization (IMO), remove the word "England" and add, in its place, the words "United Kingdom".

PART 160—LIFESAVING EQUIPMENT

166. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 160.051–0 [Amended]

167. In § 160.051–0(b), under the entry for American Society for Testing and Materials, remove the words "1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

§ 160.055–1 [Amended]

168. In § 160.055–1(c), remove the words "1916 Race Street, Philadelphia, Pa. 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

§ 160.076–11 [Amended]

169. In § 160.076–11(b), under the entry for Underwriters Laboratories (UL), remove the words "P.O. Box 13995" and add, in their place, the words "12 Laboratory Drive".

§ 160.171–3 [Amended]

170. In § 160.171–3(b), under the entry for American Society for Testing and Materials, remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959"; and under the entry for Underwriters Laboratories, Inc., remove the words "333 Pfingston Rd., Northbrook, IL 60062" and add, in their place, the words "12 Laboratory Drive, Research Triangle Park, NC 27709–3995".

§ 160.174–3 [Amended]

171. In § 160.174–3(b), under the entry for American Society for Testing and Materials, remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

§ 160.176–4 [Amended]

172. In § 160.176–4(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959"; and under the entry for Underwriters Laboratories (UL), remove the words "P.O. Box 13995" and add, in their place, the words "12 Laboratory Drive".

PART 161—ELECTRICAL EQUIPMENT

173. The authority citation for part 161 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 161.002–1 [Amended]

174. In § 160.161.002–1(b), under the entry for International Maritime Organization (IMO), add the words "Publications Section" immediately before the words "4 Albert Embankment" and remove the word "England" and add, in its place, the words "United Kingdom"; and under the entry for Underwriters Laboratories, Inc. (UL), remove the words "ATTN: Publication Stock, 333 Pfingsten Road, Northbrook, IL 60062–2096" and add, in their place, the words "12 Laboratory Drive, Research Triangle Park, NC 27709–3995".

§ 161.010–1 [Amended]

175. In § 161.010–1(b), under the entry for Underwriters Laboratories, Inc., remove the words "333 Pfingsten Road, Northbrook, Illinois 60062" and add, in their place, the words "12 Laboratory Drive, Research Triangle Park, NC 27709–3995".

PART 162—ENGINEERING EQUIPMENT

176. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–75 Comp., p. 793; 49 CFR 1.46.

§ 162.027–1 [Amended]

177. § 162.027–1(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

178. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 170.015 [Amended]

179. In § 170.015(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959"; and under the entry for International Maritime Organization (IMO), add the words "United Kingdom" immediately following the word "7SR".

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

180. The authority citation for part 171 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 171.080 [Amended]

181. In § 171.080(a), remove the word "(d)" and add, in its place, the words "(e), (f), or (g)".

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

182. The authority citation for part 174 continues to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 174.007 [Amended]

183. In § 174.007(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 175—GENERAL PROVISIONS

184. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 175.900 also issued under the authority of 44 U.S.C. 3507.

§ 175.400 [Amended]

185. In § 175.400, in the definition of *High Seas*, remove the word "Untied" and add, in its place, the word "United".

§ 175.600 [Amended]

186. In § 175.600(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959"; and under the entry for International Maritime Organization (IMO), add the words "Publications Section" immediately before the words "4 Albert Embankment" and add the words "United Kingdom" immediately following the word "7SR".

PART 176—INSPECTION AND CERTIFICATION

187. The authority citation for part 176 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 176.114 [Amended]

188. In § 176.114(a), remove the word "certificate" and add, in its place, the word "Certificate".

§ 176.302 [Amended]

189. Amend § 176.302 as follows:

a. Remove the word "posed" and add, in its place, the word "posted";

b. Add the word "in" immediately before the words "an open"; and

c. Remove the word "boats" and add, in its place, the word "boat".

§ 176.306 [Amended]

190. In § 176.306, remove the word "posed" and add, in its place, the word "posted".

§ 176.801 [Amended]

191. In § 176.801(a), remove the word "it's" immediately before the word "passengers" and add, in its place, the word "its".

PART 177—CONSTRUCTION AND ARRANGEMENT

192. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 177.100 [Amended]

193. In § 177.100, remove the word "certificate" and add, in its place, the word "Certificate".

§ 177.710 [Amended]

194. In § 177.710, remove the word "Overnigt" and add, in its place, the word "Overnight".

§ 177.810 [Amended]

195. In § 177.810(c), remove the word "Construction" and add, in its place, the word "construction".

PART 178—INTACT STABILITY AND SEAWORTHINESS

196. The authority citation for part 178 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 178.340 [Amended]

197. In § 178.340(c), remove the number "178.330(c)" and add, in its place, the number "178.330(a)".

PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

198. The authority citation for part 180 continues to read as follows:

Authority: 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 180.70 [Amended]

199. In § 180.70(a)(2), remove the word "buoys" and add, in its place, the word "buoy".

§ 180.71 [Amended]

200. In § 180.71(b) introductory text, remove the words "the person" and add, in their place, the word "persons"; and in paragraph (d), remove the word "lifejackets", wherever it appears, and add, in its place, the words "life jackets".

§ 180.150 [Amended]

201. In § 180.150(b), remove the word "A" at the beginning of the first sentence, and add, in its place, the word "An".

§ 180.207 [Amended]

202. In § 180.207(d), remove the word "lake" and add, in its place, the word "lakes".

§ 180.208 [Amended]

203. In § 180.208(b), remove the word "certificate" and add, in its place, the word "certificated".

§ 180.410 [Amended]

PART 182—MACHINERY INSTALLATION

204–205. The authority citation for part 182 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 180 Comp., p. 277; 49 CFR 1.46.

§ 182.405 [Amended]

206. In § 182.405, remove the words "case by case" and add, in their place, the words "case-by-case"; and add the word "the" before the word "Commandant".

§ 182.458 [Amended]

207. In § 182.458(b), remove the word "Projected" and add, in its place, the word "Project".

§ 182.460 [Amended]

208. In § 182.460(a)(1)(ii), remove the words "or the bilge" and add, in their place, the words "of the bilge".

§ 182.520 [Amended]

209. In § 182.520(b)(2), remove the word "fo" and add, in its place, the word "of".

§ 182.620 [Amended]

210. In § 182.620(a)(2), remove the word "is" immediately before the words "not more" and add, in its place, the word "in".

PART 183—ELECTRICAL INSTALLATION

211. The authority citation for part 183 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 183.130 [Amended]

212. In § 183.130(b), add the words "of this part" at the end of the last sentence.

§ 183.330 [Amended]

213. In § 183.330(j), add the words "in Subchapter J" immediately after the word "§ 111.30–19(a)".

§ 183.340 [Amended]

214. In § 183.340(q)(3), remove the word "and" and add, in its place, the word "end".

§ 183.352 [Amended]

215. In § 183.352(a), remove the word "kilowatt" and add, in its place, the word "kilowatts".

§ 183.380 [Amended]

216. In § 183.380(h)(2), add the words "in Subchapter J" immediately after word "§ 111.70–1".

PART 185—OPERATIONS

217. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 185.210 [Amended]

218. In § 185.210(b)(2), remove the word "use" and add, in its place, the word "used".

§ 185.220 [Amended]

219. In § 185.220, remove the words "of employee" and add, in their place, the words "or employee".

§ 185.506 [Amended]

220. In § 185.506(a)(1), remove the word "exists" and add, in its place, the word "exits".

§ 185.518 [Amended]

221. In § 185.518(a), remove the word "instruction" and add, in its place, the word "instructions".

§ 185.728 [Amended]

222. In § 185.728(a), remove the words "is an inflatable" and add, in their place, the words "in an inflatable".

PART 188—GENERAL PROVISIONS

223. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 188.10–71 [Amended]

224. In § 188.10–71, remove the words "Title 53 of the Revised Statutes and acts amendatory thereof or supplementary thereto" and add, in their place, the words "Title 46, United States Code".

PART 190—CONSTRUCTION AND ARRANGEMENT

225. The authority citation for part 190 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 190.01–3 [Amended]

226. In § 190.01–3(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 193—FIRE PROTECTION EQUIPMENT

227. The authority citation for part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 193.01–3 [Amended]

228. § 193.01–3(b), under the entry for American Society for Testing and Materials, remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 194—HANDLING, USE, AND CONTROL OF EXPLOSIVES AND OTHER HAZARDOUS MATERIALS

229. The authority citation for 194 continues to read as follows:

Authority: 46 U.S.C. 2103, 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 194.05–3 [Amended]

230. In § 194.05–3(b), add "(G-MSO)" immediately following the word "Commandant".

§ 194.05–7 [Amended]

231. In § 194.05–7(c)(1), remove the number "176.83" and add, in its place, the number "176.144".

§ 194.10–35 [Amended]

232. In § 194.10–35(e), remove the number "176.150" and add, in its place, the number "176.137".

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

233. The authority citation for part 195 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 195.01–3 [Amended]

234. In § 195.01–3(b), under the entry for American Society for Testing and Materials, remove the words "1916 Race St., Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959".

PART 199—LIFESAVING APPLIANCES AND ARRANGEMENTS

235. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 46 CFR 1.46.

§ 199.05 [Amended]

236. In § 199.05(b), under the entry for American Society for Testing and Materials (ASTM), remove the words "1916 Race Street, Philadelphia, PA 19103" and add, in their place, the words "100 Barr Harbor Drive, West Conshohocken, PA 19428–2959"; and under the entry for International Maritime Organization (IMO), add the words "Publications Section" immediately before the words "4 Albert Embankment" and remove the word "England" and add, in its place, the words "United Kingdom".

Dated: September 19, 1997.

R.C. North,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–25573 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[DA 97–1994]

Commission Organization and Agency Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is amending part 1 of the Commission's Rules to remove specific references which are either superseded by the Office of Government Ethics' regulations or which are rendered obsolete because there is no equivalent language in the revised statute. The Commission is also amending part 0 to correct an oversight in the functions of the Managing Director and authority delegated to the General Counsel to clarify that the Designated Agency Ethics Official is responsible for making determinations concerning waivers of section 4(b) of the Communications Act and the Federal conflict of interest statutes.

EFFECTIVE DATE: September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Sharon B. Kelley, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

Adopted: September 15, 1997.
Released: September 16, 1997.

1. The rule changes below remove from part 1 of the Commission's rules on Commission Practice and Procedure specific references to 18 U.S.C. § 207 which are either superseded by the Office of Government Ethics' (OGE's) regulations found at 5 CFR 2641, or rendered obsolete because there is no equivalent language in revised 18 U.S.C. § 207.

2. There have been several significant amendments to 18 U.S.C. § 207. Under the Ethics Reform Act of 1989, Public Law 101–194 (1989), sections 207 (g) and (j) were removed. A subsequent amendment to section 207(c)(2)(A)(ii) substituted "level 5 of the Senior Executive Service" for "level 5 of the Executive Schedule" and an amendment to section 207(j) provided an additional exception from the one-year bar found at 18 U.S.C. §§ 207 (c) and (d) for certain political activity by senior Federal employees. *OGE Reauthorization Act of 1996,* Public Law 104–179, §§ 5, 6 (1996). Because the references to section 207 contained in part 0 of the Commission's rules have been superseded by OGE regulations or made obsolete by subsequent changes to section 207, we are removing them herein.

3. In compliance with the OGE's new government-wide Standards of Ethical Conduct (5 CFR 2635), on July 20, 1994, the Commission adopted an *Order* delegating authority to the General Counsel to assume the responsibilities of serving as the Commission's Designated Agency Ethics Official (DAEO). 59 FR 39703 (August 4, 1994), 9 FCC Rcd. 3596 (1994); 5 CFR 2638.201–2638.202; 47 CFR 0.251(a). Although determinations concerning waivers of the applicability of section 4(b) of the Communications Act and the Federal conflict of interest statutes (*i.e.*, 18 U.S.C. §§ 203, 205 and 208) fall within the broad delegated authority given to the DAEO, *see* 5 CFR 2638.201, corresponding revisions were not made to the functions of the Office of the Managing Director and authority delegated to the General Counsel in part 0 of the Commission's rules. 47 CFR 0.11(a) (9)and 0.251. To correct this oversight, we are amending these sections to reflect that the DAEO is responsible for making determinations concerning waivers of section 4(b) of the Communications Act and the Federal conflict of interest statutes.

4. The revisions adopted in this *Order* apply to internal rules of agency personnel organization, management, practice and procedure for which notice and comment is not required. 5 U.S.C. §§ 553 (a)(2), (b)(3)(A) and (d).

5. Accordingly, effective upon publication in the **Federal Register**, parts 0 and 1 of the Commission's rules, as set forth below, pursuant to the authority contained in sections 4(i), 5(c) and 303(r) of the Communications Act, 47 U.S.C. §§ 154(i), 155(c) and 303(r), and section 0.231(b) of the Commission's regulations, 47 CFR 0.231(b).

List of Subjects

47 CFR Part 0

Commission Organization.

47 CFR Part 1

Practice and Procedure.

Federal Communications Commission.
Andrew S. Fishel,
Managing Director.

Rule Changes

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

§ 0.11 Functions of the office.

2. In § 0.11, remove and reserve paragraph (a)(9).

§ 0.231 Authority delegated.

3. In § 0.231, remove and reserve paragraphs (c) and (f).

§ 0.251 Authority delegated.

4. In § 0.251, add new paragraph (i) to read as follows:

* * * * *

(i) The General Counsel is delegated authority to make determinations regarding and waive the applicability of section 4(b) of the Communications Act (47 U.S.C. § 154(b)) and the Federal conflict of interest statutes (18 U.S.C. §§ 203, 205 and 208).

PART 1—PRACTICE AND PROCEDURE

5. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 207, 303 and 309(j) unless otherwise noted.

§ 1.25 [Removed and Reserved]

6. Section 1.25 is removed and reserved.

§ 1.28 [Removed and Reserved]

7. Section 1.28 is removed and reserved.

§ 1.29 [Removed and Reserved]

8. Section 1.29 is removed and reserved.

[FR Doc. 97–25853 Filed 9–29–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73, and 74

[MM Docket No. 96–58, FCC 97–290]

Certain Minor Changes in Broadcast Facilities Without a Construction Permit

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Report and Order* (R&O) in MM Docket No. 96–58 adopts proposals made by the Commission in the *Notice of Proposed Rulemaking* (61 FR 15439, April 8, 1996) in this proceeding to streamline the Commission's rules and processes applicable to broadcast stations. These rule and process changes eliminate the construction permit requirement for certain minor changes to broadcast facilities, replacing the present two-step construction permit/license application process with a one-step modification-of-license application, filed after the broadcaster has implemented the permitted changes. The types of modifications permitted under the new process were chosen so that interference to other facilities would not be created by the changes. Additional rules sections were revised to make clarifications and to conform the rules to present policy.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Dale Bickel, Mass Media Bureau, Audio Services Division, (202) 418–2720, or via the Internet at dbickel@fcc.gov. For additional information concerning the information collections contained in the R&O, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is the synopsis of the Commission's *Report and Order* in MM Docket No. 96–58, adopted August 14, 1997, and released August 22, 1997. The complete text of this *Report and Order*, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., at (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036. The complete text is also available as a Word Perfect 5.1 file through the Internet at http://www.fcc.gov/Bureaus/Mass_Media/Orders/1997/fcc97290.wp .

Synopsis of the Report and Order

1. The rule and procedure changes adopted in the *Report and Order* in MM Docket 96–58 were enabled by Congress' change, at the Commission's request, of Section 403(m) in the Communications Act in its Telecommunications Act of 1996. Subsequently, in the *Notice of Proposed Rulemaking*, the Commission proposed to eliminate the requirement for a construction permit in certain instances of modifications to broadcast facilities, replacing the two-step construction permit/application process with a single step modification of license application, which would be filed by the permittee or licensee of the station once the permitted modifications had been made.

2. The circumstances in which "one step" modifications may be made through the filing of a license application are as follows, briefly:

(1) Most commercial FM stations which comply with § 73.207 spacing rules with respect to all other stations, and which are not operating with the maximum permitted facilities, may increase effective radiated power (ERP) to the maximum permitted for the station class.

(2) Commercial FM stations and most TV stations presently operating with zero or reduced vertically polarized power, may increase the vertically polarized ERP up to the authorized horizontal ERP without a construction permit.

(3) Noncommercial educational FM stations presently operating with zero or reduced vertically polarized ERP may also increase the vertical ERP up to the authorized horizontal ERP, provided that the FM station is not located within a specified radius of a TV Channel 6 station.

(4) Decreases in ERP will be permitted for FM stations, provided that the required coverage to the community of license is maintained.

(5) The § 73.215 contour protection designation for an FM commercial station may be deleted where a short-spaced station has moved away, allowing the contour protection station to become licensed per § 73.207.

(6) If an FM or TV antenna is replaced, or for installation of a new antenna, the applicant may mount the antenna up to 2 meters above or 4 meters below the value specified on its license or construction permit.

(7) FM and TV directional antennas may be replaced under certain circumstances.

(8) Former licensed main auxiliary applications for FM and TV stations may be relicensed as auxiliary (backup) facilities without a construction permit, even at changed power or where the auxiliary facility must change frequency to match that of the main station. AM stations may reduce power for an auxiliary facility which was previously licensed on the same frequency as the primary station.

(9) Commercial stations may file a modification-of-license application to become licensed as noncommercial educational. Conversely, some noncommercial educational stations in the commercial FM band or television bands may become licensed as commercial via the same means.

3. The Commission also changed several other rules sections, discussed briefly as follows:

(1) FM directional stations may commence program test operations at half power while awaiting staff review of the license application. This eliminates a 10 day wait between final installation of the antenna and the start of operations.

(2) Requests for waiver of the main studio rule (47 CFR 73.1125) may be submitted by letter, eliminating the requirement for a Form 301 or Form 340 construction permit application.

(3) A new rule 47 CFR 73.316(c)(9) is added to codify the policy which requires that the measured FM directional pattern be at least 85% of the authorized composite FM directional pattern for contour protection stations authorized under §§ 73.215 or 73.509.

(4) A new rule 47 CFR 73.1692 is added which will codify the current conditions imposed on construction permits for AM, FM, and TV stations which are authorized to construct on or near AM stations.

(5) A new rule 47 CFR 73.525(e)(1)(vii) is added to address the matter of FM noncommercial educational stations which propose to locate very near (within the 90 dBu contour) of a TV Channel 6 station.

4. The rules set forth in the *Report and Order* are intended to reduce the amount of processing time, cost, and burden on both applicants and the Commission. By eliminating the construction permit requirement for the circumstances described in the previous paragraph, an applicant can save the 4 months' minor change construction permit application time, as well as several hundred dollars in processing fees in addition to the costs inherent in preparing the application.

Final Paperwork Reduction Act of 1995 Analysis

5. This *Report and Order* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 ("*PRA*"). It has been submitted to the Office of Management and Budget ("OMB") for review under the *PRA*.

6. This *Report and Order* eliminates the requirement for a minor change application in several instances of minor changes to broadcast facilities for which approval was almost automatic under the existing process, and in which the elimination of the construction permit would be unlikely to have an adverse impact on existing broadcast stations. These changes will cause revisions in the following collections:

OMB Approval Number: 3060–0506.
Title: Application for FM Broadcast Station License.
Form No.: FCC 302–FM.
Type of Review: Revision of a currently approved collection.
Respondents: Businesses or other for-profit, not-for-profit institutions.
Number of Respondents: 757.
Estimated time per response: 4 hours—33 hours (This time varies depending on the type of application filed. This collection is contracted out to communications attorneys and consulting engineers for completion of the form.).
Total annual burden: 2,082.
Needs and Uses:

7. Licensees and permittees of FM broadcast stations are required to file FCC Form 302–FM to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations.

8. On August 14, 1997 the Commission adopted a *Report and Order* in MM Docket No. 96–58 which adopted the changes as proposed in the *NPRM* and as approved by OMB on July 2, 1996. Additionally, the Commission adopted revisions to the FCC Form 302–FM. The revisions for FCC 302–FM are contained in Appendix C of the *Report and Order*. Until such times as the forms are revised to incorporate this information, applicants using the one-step licensing process must file this supplement with the FCC 302–FM.

9. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302–FM for inclusion in the subsequent license to operate the station. Applications using the new one-step process will be reviewed to ensure that the minor changes made by the station will not have any significant impact on other stations and the public.

OMB Approval Number: 3060–0029.
Title: Application for TV Broadcast Station License.
Form No.: FCC 302–TV.
Type of Review: Revision of a currently approved collection.
Respondents: Businesses or other for-profit, not-for-profit institutions.
Number of Respondents: 83.
Estimated time per response: 21 hours—29 hours (This time varies depending of the type of application filed. This collection is contracted out to communications attorneys and consulting engineers for completion of the form.).
Total annual burden: 210.
Needs and Uses:

10. Licensees and permittees of FM broadcast stations are required to file FCC Form 302-TV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations.

11. On August 14, 1997 the Commission adopted a *Report and Order* in MM Docket No. 96–58 which adopted the changes as proposed in the *NPRM* and as approved by OMB on July 2, 1996. Additionally, the Commission adopted revisions to the FCC Form 302–TV. The revisions for FCC 302–TV are contained in Appendix D of the Report and Order. Until such times as the forms are revised to incorporate this information, applicants using the one-step licensing process must file this supplement with the FCC 302–TV.

12. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302–TV for inclusion in the subsequent license to operate the station. Applications using the new one-step process will be reviewed to ensure that the minor changes made by the station will not have any significant impact on other stations and the public.

OMB Approval Number: 3060–0171.
Title: Section 73.1125—Station main studio location.
Form No.: None.
Type of Review: Revision of a currently approved collection.
Respondents: Businesses or other for-profit, not-for-profit institutions.
Number of Respondents: 155.
Estimated time per response: 0.5 hours—5 hours (This time varies depending of the type of application filed. The waiver request is contracted out to communications attorneys and consulting engineers for completion of the form.).
Total annual burden: 108.
Needs and Uses:

13. Section 73.1125(a) requires AM, FM or TV licensees to locate their main studio at any point within the station's

principal community contours. If the station relocates its main studio from one point to another within the principal community contour or from a point outside the principal community contour to one within it, the licensee is required to notify the FCC pursuant to § 73.1125(b)(1).

14. On August 14, 1997 the Commission adopted a *Report and Order* in MM Docket No. 96–58 which adopted the changes as proposed in the *NPRM* and as approved by OMB on July 2, 1996. The revision to § 73.1125(b)(2) will eliminate the delay and expense of completing the construction permit application and will enable licensees/permittees to make this change with minimal delay.

15. The notification required by § 73.1125(b)(1) is used by FCC staff to assure that the station main studio is located within the principal community contour and many times serves to notify us of a change in the mailing address. The data received as justification for waiver of § 73.1125(b)(2) will enable FCC staff to determine whether the circumstances are sufficient to warrant waiver of the Commission's main

Final Regulatory Flexibility Analysis

16. As required by the *Regulatory Flexibility Act*, 5 U.S.C. Section 603 ("RFA"),[1] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in *Amendment of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes Without A Construction Permit.*[2] The Commission sought written public comments on the proposals in the *NPRM*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Report and Order* conforms to the RFA as amended.[3]

A. Need For and Objectives of the Proposed Rules:

17. The Commission's Rules currently require a construction permit for virtually all minor changes to AM, FM, and TV broadcast stations. This procedure was required by Section 319(d) of the Communications Act. In 1996, at the request of the Commission, Congress modified Section 319(d) in the *Telecommunications Act of 1996*, Pub. L. 104–104, 110 Stat. 56 (1996), to eliminate the prohibition against waiving the permit requirement for applicants wanting to make minor changes to broadcast station facilities.[4] The Commission therefore proposed revisions to its broadcast regulations to replace, in certain instances, the two step construction permit-license process with a single step licensing procedure.

18. By making these changes, the present four month period presently required to process and grant a construction permit will be eliminated for those applicants choosing to use these new procedures. In addition, the present minor change application filing fee (presently $690.00) will not be required from applicants for one-step license applications, thereby easing the financial burden for simple changes. The changes will also expedite new and improved service to the public, with minimal impact on existing stations. The specified changes may be made without prior authorization from the Commission; however, it is the licensee's or permittee's responsibility to determine whether the particular installation complies with the Commission's rules and regulations. The circumstances in which the Commission will permit the filing of one-step licensing applications are listed in 47 CFR 73,1690(c).

B. Summary of Significant Issues Raised by the Public Comments in Response to the IFRA.

19. No comments were received specifically in response to the IFRA contained in the *Notice of Proposed Rulemaking*. However, commenters did address the effects of the proposed rule changes on FM and TV licensees, including small businesses. Generally, commenters favored the rule changes proposed, with minor changes, some of which have been incorporated into the rules specified in the Appendix. *See* Comments at paragraphs 8, 14, 17, 23, 28, 28–29, 34, 38, 43–46, 48, 52, 55–58, 66, 68, 73, 75, 77, 80, 83 and 85 of the *Report and Order*.

C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply.

20. *Definition of a "Small Business".* The RFA generally defines "small entity" as having the same meaning as the terms "small organizations", "small businesses", and "small governmental jurisdictions", and the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").[6] According to the SBA's regulations, entities engaged in radio or television broadcasting (Standard Industrial Classification ("SIC") Code 4833 for television and 4832 for radio) may have a maximum of $5.0 million or $10.5 million, respectively, in annual receipts in order to qualify as a small business concern.[7] 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

21. Pursuant to 5 U.S.C. Section 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."[8] While we believe that the foregoing definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small business, we did not propose an alternative definition in the IRFA. Accordingly, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations and to consider further the issue of the number of small entities that are radio and television broadcasters in the future. Further, in this RFA, we will identify the different classes of small radio and television stations that may be impacted by the rules adopted in this *Report and Order*.

22. *Commercial Radio and Television Services:* The proposed rules and policies adopted in this *Report and Order* will apply to full service television broadcasting licensees, radio broadcasting licensees, potential licensees of either service and may have an effect on FM and TV translators stations as well as low power TV stations ("LPTV"). The rules will also apply to full service television stations and may have an effect on TV translator facilities and low power TV stations ("LPTV"). The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[9] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[10] Included in this industry are commercial, religious, educational, and other television stations.[11] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[12] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[13] There were 1,509 television stations operating in the nation in 1992.[14] That number has remained fairly constant as indicated by the approximately 1,560 operating television broadcasting stations in the nation as of June, 1997.[15] For 1992 [16] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[17]

23. Additionally, the SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[18] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[19] Included in this industry are commercial religious, educational, and other radio stations.[20] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[21] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[22] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[23] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[24] As of June, 1997 official Commission records indicate that 12,177 radio stations were operating.[25]

24. Thus, the proposed rules will affect approximately 1,560 television stations; approximately 1,201 of those stations are considered small businesses.[26] Additionally, the proposed rules will affect 12,177 radio stations, approximately 11,689 of which are small businesses.[27] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. We recognize that the proposed rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and

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[1] See 47 U.S.C. Section 603.

[2] *Notice of Proposed Rulemaking* in MM Docket No. 96–58, 11 FCC Rcd 8800, 61 FR 15439 (April 8, 1996).

[3] See 5 U.S.C. Section 604. The *Regulatory Flexibility Act*, see 5 U.S.C. Section 601 *et. seq.* has been amended by the *Contract With America Advancement Act of 1996*, Public Law 104–104, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the *Small Business Regulatory Enforcement Act of 1996* ("SBREFA").

[4] Section 319(d) has been modified to read in relevant part as follows: "With respect to any broadcasting station, the Commission shall not have authority to waive the requirement of a permit for construction, except that the Commission may by regulation determine that a permit shall not required for minor changes in the facilities of authorized broadcast stations." Public Law 104–104, Section 403(m), 110 Stat 56 (1996).

[5] *Small Business Act*, 15 U.S.C. Section 632 (1996).

[6] 5 U.S.C. Section 601(b) (incorporating by reference the definition of "small business concern" in 15 U.S.C. Section 632). Pursuant to 5 U.S.C. Section 601(b), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy if the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[7] This revenue cap appears to apply to noncommercial educational television stations, as well as to commercial television stations. *See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

[8] While we believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio and television stations. However, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the rules adopted in this *Report and Order* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. *See Report and Order* in MM Docket 93–48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737–38, 61 FR 43981 (August 27, 1996), citing 5 U.S.C. 601 (3). In our *Notice of Inquiry* in GN Docket No. 96–113B, *In the matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 11 FCC Rcd 6280, 61 FR 33066 (June 26, 1996), we requested commenters to provide profile data about small telecommunications businesses in particular services, including television and radio, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rulemaking in MM Docket 96–16, In the Matter of Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*, 11 FCC Rcd 5154, 61 FR 9964 (March 12, 1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

[9] 13 CFR 121.201, Standard Industrial Code (SIC) 4833 (1996).

[10] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S–1, Appendix A–9 (1995).

[11] *Id. See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[12] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S–1, Appendix A–9 (1995).

[13] Id. SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[14] FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A–9.

[15] FCC News Release No. 75604, July 31, 1997.

[16] Census for Communications' establishments are performed every five years ending with a "2" or "7". *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, III.

[17] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[18] 13 CFR 121.201, SIC 4832.

[19] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A–9.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[24] FCC News Release No. 31327, January 13, 1993.

[25] FCC News Release No. 77504, July 31, 1997.

[26] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1551 TV stations to arrive at 1,194 stations categorized as small businesses.

[27] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,135 individual station count to arrive at 11,649 individual stations as small businesses.

controlled 37 (3.0%) of 1,221 commercial television stations and 293 (2.9%) of the commercial radio stations in the United States. [28] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations and 394 (3.8%) of 10,244 commercial and non-commercial radio stations in the United States. [29] We recognize that the numbers of minority and women broadcast owners may have changed due to an increase in license transfers and assignments since the passage of the 1996 Act.

25. It should also be noted that the foregoing estimates do not distinguish between network-affiliated [30] stations and independent stations. As of April 1996, the BIA Publications, Inc. Master Access Television Analyzer Database indicates that about 73% of all commercial television stations were affiliated with the ABC, CBS, NBC, Fox, UPN, or WB networks. Moreover, 7% of those affiliates have secondary affiliations. [31]

26. There are currently 4991 TV translators, and 2001 LPTV stations which may be affected by the new rules, if they decide to convert to digital television. [32] The FCC does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most, if not all, LPTV stations and translator stations, could be classified as small businesses, if considered by themselves. Thus, translator stations generally can be considered affiliates, as that term is defined in the SBA regulations, with full service stations. Given this situation, these stations would likely have annual revenues that exceed the SBA maximum to be designated as small businesses.

27. In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown.

28. Additionally, the proposed changes to the cable/MDS cross-ownership attribution rule will apply to cable and MDS entities. The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of $11 million or less. [33] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. [34] This figure is overinclusive since it includes other pay television services, not only cable and MDS.

29. *Alternative Classification of Small Stations.* An alternative way to classify small radio and television stations is the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity (EEO) for broadcasting. [35] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record-keeping requirements. [36]

30. *Cable Systems.* The Communications Act contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." [37] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. [38] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. [39] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

31. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. [40] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. [41] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the proposal adopted in this Notice. Under the Commission's rules, a small cable system is a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers over all of its cable systems.

32. *MDS.* The Commission redefined the definition of "small entity" for the auction of MDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. [42] This definition of a small entity in the context of MDS auctions has been approved by the SBA. [43]

33. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MDS is a service heavily encumbered with approximately 1,573 previously authorized and proposed MDS facilities and information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We conclude that for purposes of this FRFA, there are approximately 1,634 small MDS providers as defined by the SBA and the Commission's auction rules.

34. *Newspapers.* Some of the proposals delineated above may also apply to daily newspapers that hold or seek to acquire an interest in a broadcast station that would be treated as attributable under the proposals. A newspaper is an establishment that is primarily engaged in publishing newspapers, or in publishing and printing newspapers. [44] The SBA defines a newspaper that has 500 or fewer employees as a small business. [45] Based on data from the U.S. Census Bureau, there are a total of approximately 6,715 newspapers, and 6,578 of those meet the SBA's size definition. [46] However, we recognize that some of these newspapers may not be independently owned and operated and, therefore, would not be considered a "small business concern" under the Small Business Act. [47] We are unable to estimate at this time how many newspapers are affiliated with larger entities. Moreover, the proposal would apply only to daily newspapers, and we are unable to estimate how many newspapers that meet the SBA's size definition are daily newspapers. Consequently, we estimate that there are fewer than 6,578 newspapers that may be affected by the proposed rules.

D. Description of Recordkeeping and Other Projected Compliance Requirements

35. Applicants filing a one-step license application will be required to provide a reduced amount of information as compared to that currently required for a construction permit. This information may consist of a radiofrequency radiation analysis to insure public safety, directional antenna information to insure protection to other stations, etc. as set forth Appendices C and D of the *Report and Order.* The information required in Appendices C and D with a one-step license application generally is the minimum necessary for the Commission to verify compliance with its rules and regulations.

36. It must be noted that a permittee or licensee is not required to subject itself to the new one-step license requirements if it chooses not to do so. Any permittee or licensee may, at its option, use the present two-step process of obtaining a construction permit, followed by the filing of a license application once construction is complete. However, in many instances, the new procedures will reduce the time and expense required to implement certain minor changes to broadcast stations.

37. Most permittees and licensees retain professional consulting engineers or legal counsel, or both in preparing construction permit applications. We do not expect this to change significantly by the adoption of the new rules and procedures. However, the time needed for the preparation of the simplified one-step applications will be reduced, translating into time and money savings for the broadcast applicant.

E. Steps Taken To Minimize Burden on Small Entities and Significant Alternatives Considered and Rejected

38. Pursuant to the RFA, 5 U.S.C. § 603(c), we have considered whether there is a significant economic impact on a substantial number of small entities. The action taken does not impose additional burdens on small entities. Indeed, the opposite is true. The minor change application filing fee will be eliminated for applicants which meet the criteria for eligibility for applicants which meet the criteria for eligibility in 47 CFR 73.1690 as set forth below. One-step license applications also require that lesser amounts of information be submitted to the Commission as compared to a construction permit application. The rule and policy changes will have a positive economic impact, as eligible entities, including small entities, will be able to increase their service or make certain modifications without prior Commission authorization and with fewer legal challenges. All entities will still be able to file informal objections against a one-step license application, just as they may do now against a construction permit application. This should address the concerns of those commenters who sought a special notice and comment period for each one-step license application.

F. Report to Congress

39. The Commission shall send a copy of this Final Regulatory Flexibility Analysis along with this *Report and Order* in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. Section 801(a)(1)(A). A copy of this RFA will

[28] *Minority Commercial Broadcast Ownership in the United States,* U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program ("MTDP") (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[29] *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, *Women-Owned Business,* WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking,* 10 FCC Rcd 2788, 2797, 61 FR 6068 (February 1, 1995).

[30] In this context, "affiliation" refers to any local broadcast television station that has a contractural arrangement with a programming network to carry the network's signal. This definition of affiliated station includes both stations owned and operated by a network and stations owned by other entities.

[31] Secondary affiliations are secondary to the primary affiliation of the station and generally afford the affiliate additional choice of programming.

[32] FCC News Release No. 72712, March 6, 1997, Broadcast Station Totals as of February 28, 1997.

[33] 13 CFR 121.201.

[34] 1992 Census, *supra,* at Firm Size 1–123. *See Memorandum Opinion and Order and Notice of Proposed Rule Making* in MM Docket No. 92–266 and CS Docket No. 96–157, 11 FCC Rcd 9517, 953, 61 FR 45356 (1996).

[35] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(e) of the *Small Business Act,* 15 U.S.C. Section 632, as amended by Section 222 of the *Small Business Credit and Business Opportunity Enhancement Act of 1992,* Public Law 102–366, Section 222(b)(1), 106 Stat. 999 (1992), as further amended by the *Small Business Administration Reauthorization and Amendments Act of 1994,* Public Law 103–403, Section 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

[36] *See, e.g.,* 47 CFR Section 73.3612 (Requirement to file annual employment reports on FCC Form 395 applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket 96–16 (Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines),* 11 FCC Rcd 5154 (1996), 61 FR 09964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

[37] 47 U.S.C. § 543(m)(2).

[38] 47 CFR 76.1403(b).

[39] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[40] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 7393, 60 FR 10534 (February 27, 1995).

[41] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[42] 47 CFR 21.961(b)(1).

[43] *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–31 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 60 FR 36524 (July 17, 1995).

[44] 13 CFR 121.201 (SIC 2711).

[45] *Id.*

[46] U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 3, SIC Code 2711 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[47] 15 U.S.C. § 632.

also be published in the **Federal Register**.

Ordering Clauses

40. Accordingly, it is ordered that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 CFR Parts 1, 73, and 74 are amended as set forth below.

41. It is further ordered that the requirements and regulations established in this *Report and Order* will become effective December 1, 1997 or upon receipt by Congress of a report in compliance with the Contract with America Advancement Act of 1996, Public Law 104–121, whichever date is later.

42. For further information contact Dale Bickel of the Audio Services Division, Mass Media Bureau at (202) 418–2720, or by e-mail at dbickel@fcc.gov.

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

47 CFR Part 74

Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services.

Federal Communications Commission
Shirley Suggs,
Chief, Publications Branch.

Rule Changes

Parts 1, 73, and 74 of title 47 are amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 154, 158.

2. Section 1.1104 is amended by adding entries in the table for 1. b.(1), 2. b.(1), and 3. b.(1) to read as follows:

§ 1.1104 Schedule of charges for applications and other filings in the mass media services.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. * * * b. * * * (1) Main Studio Request.	159 & Corres.	690	MPT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
2. * * * b. * * * (1) Main Studio Request.	159 & Corres.	690	MPT	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
3. * * * b. * * * (1) Main Studio Request.	159 & Corres.	690	MPT	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.

PART 73—RADIO BROADCAST SERVICES

3. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

4. Section 73.14 is amended by adding the following new definition in alphabetical order to read as follows:

§ 73.14 AM Broadcast definitions.

* * * * *

Auxiliary facility. An auxiliary facility is an AM antenna tower(s) separate from the main facility's antenna tower(s), permanently installed at the same site or at a different location, from which an AM station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (*e.g.*, where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (*See* § 73.1675).

* * * * *

5. Section 73.310(a) is amended by adding the following definitions in alphabetical order to read as follows:

§ 73.310 FM technical definitions.

* * * * *

Auxiliary facility. An auxiliary facility is an antenna separate from the main facility's antenna, permanently installed on the same tower or at a different location, from which a station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (*e.g.*, where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (*See* § 73.1675).

* * * * *

Composite antenna pattern. The composite antenna pattern is a relative field horizontal plane pattern for 360 degrees of azimuth, for which the value at a particular azimuth is the greater of the horizontally polarized or vertically polarized component relative field values. The composite antenna pattern is normalized to a maximum of unity (1.000) relative field.

* * * * *

6. Section 73.316 is amended by adding new paragraph (c)(9), revising paragraph (e), and removing paragraphs (f), (g), (h), and (i) to read as follows:

§ 73.316 FM antenna systems.

* * * * *

(c) * * *

(9) In the case of an application for license upon completion of antenna construction for a station authorized pursuant to § 73.215 or § 73.509, a showing that the root mean square (RMS) of the measured composite antenna pattern (encompassing both the horizontally and vertically polarized radiation components (in relative field)) is at least 85% of the RMS of the authorized composite directional antenna pattern (in relative field). The RMS values, for a composite antenna pattern specified in relative field values, may be determined from the following formula:

RMS = the square root of:

$$\frac{[(\text{relative field value 1})^2 + (\text{relative field value 2})^2 + \cdots + (\text{last relative field value})^2]}{\text{number of relative field values summed}}$$

where the relative field values are taken from at least 36 evenly spaced radials for the entire 360 degrees of azimuth. The application for license must also demonstrate that coverage of the community of license by the 70 dBu contour is maintained for stations authorized pursuant to § 73.215 on Channels 221 through 300, as required by § 73.315(a), while noncommercial educational stations operating on Channels 201 through 220 must show that the 60 dBu contour covers at least a portion of the community of license.

* * * * *

(e) Where an FM licensee or permittee proposes to mount its antenna on an AM antenna tower, or locate within 3.2 km of an AM antenna tower, the FM licensee or permittee must comply with § 73.1692.

7. Section 73.525 is amended by adding new paragraph (e)(1)(vii) to read as follows:

§ 73.525 TV Channel 6 protection.

* * * * *

(e) * * *

(1) * * *

(vii) In cases where the predicted interference area to Channel 6 television from a noncommercial educational FM station will be located within the 90 dBu F(50,50) contour of the television Channel 6 station, the location of the FM interfering contour must be determined using the assumption that the Channel 6 field strength remains constant at 90 dBu everywhere within the 90 dBu TV contour. The FM to Channel 6 U/D signal strength ratio specified in § 73.599 corresponding to the Channel 6 TV field strength of 90 dBu shall be used.

* * * * *

8. Section 73.681 is amended by adding the following new definition in alphabetical order to read as follows:

§ 73.681 Definitions.

* * * * *

Auxiliary facility. An auxiliary facility is an antenna separate from the main facility's antenna, permanently installed on the same tower or at a different location, from which a station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (*e.g.*, where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (*See* § 73.1675).

* * * * *

9. Section 73.685 is amended by revising paragraph (h) to read as follows:

§ 73.685 Transmitter location and antenna system.

* * * * *

(h) Where a TV licensee or permittee proposes to mount an antenna on an AM antenna tower, or locate within 3.2 km of an AM antenna tower, the TV licensee or permittee must comply with § 73.1692.

10. Section 73.1125 is amended by revising paragraph (b)(2) to read as follows.

§ 73.1125 Station main studio location.

* * * * *

(b) * * *

(2) Written authority to locate a main studio outside a station's principal community contour for the first time must be obtained from the Audio Services Division, Mass Media Bureau for AM and FM stations, or the Television Branch, Video Services Division, Mass Media Bureau for television stations before the studio may be moved to that location. Where the main studio is already authorized at a location outside the station's principal community contour, and the licensee or permittee desires to specify a new location also located outside the station's principal community contour, written authority must also be received from the Commission prior to the relocation of the main studio. Authority for these changes may be requested by filing a letter with an explanation of the proposed changes with the appropriate division. Licensees or permittees should be aware that the filing of a letter request for written authority to locate the main studio outside the principal community contour does not imply approval of the relocation request, because each request is addressed on a case-by-case basis. A filing fee is required for commercial AM, FM, or TV licensees or permittees filing a letter request under this section (*see* § 1.1104).

* * * * *

11. Section 73.1620 is amended by revising paragraph (a)(2), adding paragraphs (a)(3) and (e)(4), and revising paragraph (b) to read as follows:

§ 73.1620 Program tests.

(a) * * *

(2) The permittee of an FM station with a directional antenna system must file an application for license on FCC Form 302–FM requesting authority to commence program test operations at full power with the FCC in Washington, D.C. This license application must be filed at least 10 days prior to the date on which full power operations are desired to commence. The application for license must contain any exhibits called for by conditions on the construction permit. The staff will review the license application and the request for program test authority and issue a letter notifying the applicant whether full power operation has been approved. Upon filing of the license application and related exhibits, and while awaiting approval of full power operation, the FM permittee may operate the directional antenna at one half (50%) of the authorized effective radiated power. Alternatively, the permittee may continue operation with its existing licensed facilities pending the issuance of program test authority at the full effective radiated power by the staff.

(3) FM licensees replacing a directional antenna pursuant to § 73.1690 (c)(2) without changes which require a construction permit (*see* § 73.1690(b)) may immediately commence program test operations with the new antenna at one half (50%) of the authorized ERP upon installation. If the directional antenna replacement is an EXACT duplicate of the antenna being replaced (i.e., same manufacturer, antenna model number, AND measured composite pattern), program tests may commence with the new antenna at the full authorized power upon installation. The licensee must file a modification of license application on FCC Form 302–FM within 10 days of commencing operations with the newly installed antenna, and the license application must contain all of the exhibits required by § 73.1690(c)(2). After review of the modification-of-license application to cover the antenna change, the

Commission will issue a letter notifying the applicant whether program test operation at the full authorized power has been approved for the replacement directional antenna.

(4) The permittee of an AM station with a directional antenna system must file an application for license on FCC Form 302–AM requesting program test authority with the FCC in Washington, DC at least ten (10) days prior to the date on which it desires to commence program test operations. The application must provide an AM directional antenna proof of performance, containing the exhibits required by § 73.186. After review of the application to cover the construction permit, the Commission will issue a letter notifying the applicant whether program test operations may commence. Program test operations may not commence prior to issuance of staff approval.

(b) The Commission reserves the right to revoke, suspend, or modify program tests by any station without right of hearing for failure to comply adequately with all terms of the construction permit or the provisions of § 73.1690(c) for a modification of license application, or in order to resolve instances of interference. The Commission may, at its discretion, also require the filing of a construction permit application to bring the station into compliance the Commission's rules and policies.

* * * * *

12. Section 73.1675 is amended by revising paragraph (c) to read as follows:

§ 73.1675 Auxiliary facilities.

* * * * *

(c) (1) Where an FM or TV licensee proposes to use a formerly licensed main facility as an auxiliary facility, or proposes to modify a presently authorized auxiliary facility, and no changes in the height of the antenna radiation center are required in excess of the limits in § 73.1690(c)(1), the FM or TV licensee may apply for the proposed auxiliary facility by filing a modification of license application. The modified auxiliary facility must operate on the same channel as the licensed main facility. An exhibit must be provided with this license application to demonstrate compliance with § 73.1675(a). All FM and TV licensees may request a decrease from the authorized facility's ERP in the license application. An FM or TV licensee may also increase the ERP of the auxiliary facility in a license modification application, provided the application contains an analysis demonstrating compliance with the Commission's radiofrequency radiation guidelines, and an analysis showing that the auxiliary facility will comply with § 73.1675(a). Auxiliary facilities mounted on an AM antenna tower must also demonstrate compliance with § 73.1692 in the license application.

(2) Where an AM licensee proposes to use a former licensed main facility as an auxiliary facility with an ERP less than or equal to the ERP specified on the former main license, the AM station may apply to license the proposed auxiliary facility by filing a modification of license application on Form 302-AM. The proposed auxiliary facilities must have been previously licensed on the same frequency as the present main facility. The license application must contain an exhibit to demonstrate compliance with § 73.1675(a).

13. Section 73.1690 is amended by revising paragraphs (b) and (c) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(b) The following changes may be made only after the grant of a construction permit application on FCC Form 301 for commercial stations or Form 340 for noncommercial educational stations:

(1) Any construction of a new tower structure for broadcast purposes, except for replacement of an existing tower with a new tower of identical height and geographic coordinates.

(2) Any change in station geographic coordinates, including coordinate corrections. FM and TV directional stations must also file a construction permit application for any move of the antenna to another tower structure located at the same coordinates.

(3) Any change which would require an increase along any azimuth in the composite directional antenna pattern of an FM station from the composite directional antenna pattern authorized (*see* § 73.316), or any increase from the authorized directional antenna pattern for a TV station (*see* § 73.685).

(4) Any change in the directional radiation characteristics of an AM directional antenna system. *See* § 73.45 and § 73.150.

(5) Any decrease in the authorized power of an AM station or the ERP of a TV station, or any decrease or increase in the ERP of an FM commercial station, which is intended for compliance with the multiple ownership rules in § 73.3555.

(6) For FM noncommercial educational stations, any of the following:

(i) Any increase in the authorized maximum ERP, whether horizontally or vertically polarized, for a noncommercial educational FM station operating on Channels 201 through 220, or a Class D FM station operating on Channel 200..

(ii) For those FM noncommercial educational stations on Channels 201 to 220, or a Class D FM station operating on Channel 200, which are within the separation distances specified in Table A of § 73.525 with respect to a Channel 6 television station, any increase in the horizontally or vertically polarized ERP from the presently authorized ERP.

(iii) For those FM noncommercial educational stations on Channels 201 through 220 which are located within the separation distances in § 73.525 with respect to a Channel 6 television station, or a Class D FM station operating on Channel 200, any decrease in the presently authorized horizontal effective radiated power which would eliminate the horizontal ERP to result in use of vertical ERP only.

(iv) For those FM noncommercial educational stations which employ separate antennas for the horizontal ERP and the vertical ERP, mounted at different heights, the station may not increase or decrease either the horizontal ERP or the vertical ERP without a construction permit.

(7) Any increase in the authorized ERP of a television station, FM commercial station, or noncommercial educational FM station, except as provided for in §§ 73.1690(c)(4), (c)(5), or (c)(7), or § 73.1675(c)(1) in the case of auxiliary facilities.

(8) A commercial TV or noncommercial educational TV station operating on Channels 14 or Channel 69 may increase its horizontally or vertically polarized ERP only after the grant of a construction permit. A television station on Channels 15 through 21 within 341 km of a cochannel land mobile operation, or 225 km of a first-adjacent channel land mobile operation, must also obtain a construction permit before increasing the horizontally or vertically polarized ERP (*see* Part 74, § 74.709(a) and (b) for tables of urban areas and corresponding reference coordinates of potentially affected land mobile operations).

(c) The following FM and TV station modifications may be made without prior authorization from the Commission. A modification of license application must be submitted to the Commission within 10 days of commencing program test operations pursuant to § 73.1620. With the exception of applications filed solely pursuant to Sections (c)(6), (c)(9), or (c)(10), the modification of license application must contain an exhibit demonstrating compliance with the

Commission's radiofrequency radiation guidelines. In addition, except for applications solely filed pursuant to Sections (c)(6) or (c)(9), where the installation is located within 3.2 km of an AM tower or is located on an AM tower, an exhibit demonstrating compliance with § 73.1692 is also required.

(1) Replacement of an omnidirectional antenna with one of the same or different number of antenna bays, provided that the height of the antenna radiation center is not more than 2 meters above or 4 meters below the authorized values. Any concurrent change in ERP must comply with § 73.1675(c)(1), 73.1690(4), (c)(5), or (c)(7). Program test operations at the full authorized ERP may commence immediately upon installation pursuant to § 73.1620(a)(1).

(2) Replacement of a directional FM antenna, where the measured composite directional antenna pattern does not exceed the licensed composite directional pattern at any azimuth, where no change in effective radiated power will result, and where compliance with the principal coverage requirements of § 73.315(a) will be maintained by the measured directional pattern. The antenna must be mounted not more than 2 meters above or 4 meters below the authorized values. The modification of license application on Form 302-FM to cover the antenna replacement must contain all of the data in the following sections (i) through (v). Program test operations at one half (50%) power may commence immediately upon installation pursuant to § 73.1620(a)(3). However, if the replacement directional antenna is an exact replacement (i.e., no change in manufacturer, antenna model number, AND measured composite antenna pattern), program test operations may commence immediately upon installation at the full authorized power.

(i) A measured directional antenna pattern and tabulation on the antenna manufacturer's letterhead showing both the horizontally and vertically polarized radiation components and demonstrating that neither of the components exceeds the authorized composite antenna pattern along any azimuth.

(ii) Contour protection stations authorized pursuant to § 73.215 or § 73.509 must attach a showing that the RMS (root mean square) of the composite measured directional antenna pattern is 85% or more of the RMS of the authorized composite antenna pattern. *See* § 73.316(c)(9). If this requirement cannot be met, the licensee may include new relative field values with the license application to reduce the authorized composite antenna pattern so as to bring the measured composite antenna pattern into compliance with the 85% requirement.

(iii) A description from the manufacturer as to the procedures used to measure the directional antenna pattern. The antenna measurements must be performed with the antenna mounted on a tower, tower section, or scale model equivalent to that on which the antenna will be permanently mounted, and the tower or tower section must include transmission lines, ladders, conduits, other antennas, and any other installations which may affect the measured directional pattern.

(iv) A certification from a licensed surveyor that the antenna has been oriented to the proper azimuth.

(v) A certification from a qualified engineer who oversaw installation of the directional antenna that the antenna was installed pursuant to the manufacturer's instructions.

(3) A directional TV station on Channels 2 through 13 or 22 through 68, or a directional TV station on Channels 15 through 21 which is in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation (*see* Part 74, § 74.709(a) and (b) for tables of urban areas and reference coordinates of potentially affected land mobile operations), may replace a directional TV antenna by a license modification application, if the proposed horizontal theoretical directional antenna pattern does not exceed the licensed horizontal directional antenna pattern at any azimuth and where no change in effective radiated power will result. The modification of license application on Form 302–TV must contain all of the data set forth in § 73.685(f).

(4) Commercial and noncommercial educational FM stations operating on Channels 221 through 300 (except Class D), NTSC TV stations operating on Channels 2 through 13 and 22 through 68, and TV stations operating on Channels 15 through 21 that are in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation [*see* Part 74, § 74.709(a) and (b) for tables of urban areas and reference coordinates of potentially affected land mobile operations], which operate omnidirectionally, may increase the vertically polarized effective radiated power up to the authorized horizontally polarized effective radiated power in a license modification application. Noncommercial educational FM licensees and permittees on Channels 201 through 220, that do not use separate antennas mounted at different heights for the horizontally polarized ERP and the vertically polarized ERP, and are located in excess of the separations from a Channel 6 television station listed in Table A of § 73.525(a)(1), may also increase the vertical ERP, up to (but not exceeding) the authorized horizontally polarized ERP via a license modification application. Program test operations may commence at full power pursuant to § 73.1620(a)(1).

(5) Those Class A FM commercial stations which were permitted to increase ERP pursuant to MM Docket No. 88–375 by a modification of license application remain eligible to do so, provided that the station meets the requirements of § 73.1690 (c)(1) and is listed on one of the Public Notices as authorized to increase ERP, or by a letter from the Commission's staff authorizing the change. These Public Notices were released on November 3, 1989; November 17, 1989; December 8, 1989; March 2, 1990; and February 11, 1991. The increased ERP must comply with the multiple ownership requirements of § 73.3555. Program test operations may commence at full power pursuant to § 73.1620(a)(1).

(6) FM contour protection stations authorized pursuant to § 73.215 which have become fully spaced under § 73.207 may file a modification of license application to delete the § 73.215 contour protection designation with an exhibit to demonstrate that the station is fully spaced in accordance with § 73.207. The contour protection designation will be removed upon grant of the license application. Applications filed under this rule section will be processed on a first come / first served basis with respect to conflicting FM commercial minor change applications and modification of license applications (including those filed pursuant to § 73.1690 (b) and (c)(6) and (c)(7)).

(7) FM omnidirectional commercial stations, and omnidirectional noncommercial educational FM stations operating on Channels 221 through 300 (except Class D), which are not designated as contour protection stations pursuant to § 73.215 and which meet the spacing requirements of § 73.207, may file a license modification application to increase ERP to the maximum permitted for the station

class, provided that any change in the height of the antenna radiation center remains in accordance with § 73.1690(c)(1). Program test operations may commence at full power pursuant to § 73.1620(a)(1). All of the following conditions also must be met before a station may apply pursuant to this section:

(i) The station may not be a "grandfathered" short-spaced station authorized pursuant to § 73.213 or short-spaced by a granted waiver of § 73.207;

(ii) If the station is located in or near a radio quiet zone, radio coordination zone, or a Commission monitoring station (*see* § 73.1030 and § 0.121(c)), the licensee or permittee must have secured written concurrence from the affected radio quiet zone, radio coordination zone, or the Commission's Compliance and Information Bureau in the case of a monitoring station, to increase effective radiated power PRIOR to implementation. A copy of that concurrence must be submitted with the license application to document that concurrence has been received;

(iii) The station does not require international coordination as the station does not lie within the border zones, or clearance has been obtained from Canada or Mexico for the higher power operation within the station's specified domestic class and the station complies with § 73.207(b)(2) and (3) with respect to foreign allotments and allocations;

(iv) The increased ERP will not cause the station to violate the multiple ownership requirements of § 73.3555.

(8) FM commercial stations and FM noncommercial educational stations may decrease ERP on a modification of license application provided that exhibits are included to demonstrate that all six of the following requirements are met:

(i) Commercial FM stations must continue to provide a 70 dBu principal community contour over the community of license, as required by § 73.315(a). Noncommercial educational FM stations must continue to provide a 60 dBu contour over at least a portion of the community of license. The 60 and 70 dBu contours must be predicted by use of the standard contour prediction method in § 73.313(b), (c), and (d).

(ii) For both commercial FM and noncommercial educational FM stations, the location of the main studio remains within the 70 dBu principal community contour, as required by § 73.1125, or otherwise complies with that rule. The 70 dBu contour must be predicted by use of the standard contour prediction method in § 73.313(b), (c), and (d).

(iii) For commercial FM stations only, there is no change in the authorized station class as defined in § 73.211.

(iv) For commercial FM stations only, the power decrease is not necessary to achieve compliance with the multiple ownership rule, § 73.3555.

(v) Commercial FM stations, noncommercial educational FM stations on Channels 221 through 300, and noncommercial educational FM stations on Channels 200 through 220 which are located in excess of the distances in Table A of § 73.525 with respect to a Channel 6 TV station, may not use this rule to decrease the horizontally polarized ERP below the value of the vertically polarized ERP.

(vi) Noncommercial educational FM stations on Channels 201 through 220 which are within the Table A distance separations of § 73.525, or Class D stations on Channel 200, may not use the license modification process to eliminate an authorized horizontally polarized component in favor of vertically polarized-only operation. In addition, noncommercial educational stations operating on Channels 201 through 220, or Class D stations on Channel 200, which employ separate horizontally and vertically polarized antennas mounted at different heights, may not use the license modification process to increase or decrease either the horizontal ERP or vertical ERP without a construction permit.

(9) The licensee of an AM, FM, or TV commercial station may propose to change from commercial to noncommercial educational on a modification of license application, provided that the application contains completed Sections II and IV of FCC Form 340. In addition, a noncommercial educational AM licensee, a TV licensee on a channel not reserved for noncommercial educational use, or an FM licensee on Channels 221 to 300 (except Class D FM) on a channel not reserved for noncommercial educational use, may apply to change from educational to commercial via a modification of license application, and no exhibits are required with the application. The change will become effective upon grant of the license application.

(10) Replacement of a transmission line with one of a different type or length which changes the transmitter operating power (TPO) from the authorized value, but not the ERP, must be reported in a license modification application to the Commission.

* * * * *

14. New § 73.1692 is added to read as follows:

§ 73.1692 Broadcast station construction near or installation on an AM broadcast tower.

Where a broadcast licensee or permittee proposes to mount a broadcast antenna on an AM station tower, or where construction is proposed within 0.8 km of an AM nondirectional tower or within 3.2 km of an AM directional station, the broadcast licensee or permittee is responsible for ensuring that the construction does not adversely affect the AM station, as follows:

(a) *Installations on an AM nondirectional tower.* During installation of the broadcast antenna and related equipment, the AM station shall determine operating power by the indirect method (*see* § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made, and, prior to or simultaneously with the filing of the license application covering the broadcast station installation, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement.

(b) *Installations on an AM directional array.* Prior to commencing construction, the broadcast permittee or licensee shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (*see* § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Both prior to the commencement of construction and upon completion of construction, a partial proof of performance (as defined by § 73.154) shall be conducted to establish that the AM array has not been adversely affected. Prior to or simultaneously with filing of the license application to cover the broadcast station construction, the results of the partial proof of performance shall be filed with the Commission on Form 302–AM.

(c) *Tower erections or modifications within 0.8 km of an AM nondirectional tower.* Prior to commencing the construction of tower modifications, or the erection of a new tower, within 0.8 km of an AM nondirectional tower, the broadcast permittee or licensee is required to notify the AM station so that the AM station may commence determining operating power by the indirect method (*see* § 73.51). The broadcast licensee or permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects on the radiation pattern of the AM station. Both prior to construction of the tower modifications and upon completion of construction, antenna impedance measurements of the AM station shall be made. In addition, sufficient field strength measurements taken at a minimum of 10 locations along each of 8 equally spaced radials, shall be made to establish that the AM radiation pattern is essentially omnidirectional. Prior or simultaneously with the filing of the application for license to cover this permit, the results of the impedance measurements and the field strength measurements shall be filed with the Commission on FCC Form 302–AM for the AM station to return to the direct method of power determination.

(d) *Tower erections or modifications within 3.2 km of an AM directional station.* Prior to commencing construction of tower modifications, or the erection of a new tower structure, within 3.2 km of an AM directional array, the broadcast permittee or licensee shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (*see* § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. The broadcast licensee or permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to the commencement of construction and upon completion of construction, a partial proof of performance (as defined by § 73.154) shall be conducted to establish that the AM array has not been adversely affected. Prior to or simultaneously with filing of the license application to cover the broadcast station construction, the results of the partial proof of performance shall be filed with the Commission on Form 302–AM.

15. Section 73.3500 is amended by removing the entry for "Form 302" and adding the following entries in the order of the form number to read as follows:

§ 73.3500 Application and report forms.

* * * * *

Form 302–AM—Application for AM Broadcast Station License

Form 302–TV—Application for Television Broadcast Station License

* * * * *

16. Section 73.3536 is amended by revising paragraph (b)(1) to read as follows:

§ 73.3536 Application for license to cover construction permit.

* * * * *

(b) * * *

(1)(i) Form 302–AM for AM stations, "Application for New AM Station Broadcast License."

(ii) Form 302–FM for FM stations, "Application for FM Station License."

(iii) Form 302–TV for television stations, "Application for TV Station Broadcast License."

* * * * *

17. Section 73.3537 is amended to read as follows:

§ 73.3537 Application for license to use former main antenna as an auxiliary.

See § 73.1675, *Auxiliary facility.*

18. Section 73.3538 is amended by revising the introductory text, the introductory text of paragraph (a), paragraphs (a)(1), (a)(2), and (a)(3), and by removing paragraphs (a)(5), (a)(6) and (a)(7) and adding paragraph (b)(3) to read as follows:

§ 73.3538 Application to make changes in an existing station.

Where prior authority is required from the FCC to make changes in an existing station, the following procedures shall be used to request that authority:

(a) An application for construction permit using the forms listed in § 73.3533 must be filed for authority to:

(1) Make any of the changes listed in § 73.1690(b).

(2) Change the hours of operation of an AM station, where the hours of operation are specified on the license or permit.

(3) Install a transmitter which has not been approved (type accepted) by the FCC for use by licensed broadcast stations.

* * * * *

(b) * * *

(3) Relocation of a main studio outside the principal community contour may require the filing and approval of a letter request for authority to make this change prior to implementation. *See* § 73.1125.

19. Section 73.3544 is amended by revising paragraph (a) to read as follows:

§ 73.3544 Application to obtain a modified station license.

* * * * *

(a) The changes specified in § 73.1690(c) may be made by the filing of a license application using the forms listed in § 73.3536(b)(1).

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER DISTRIBUTIONAL SERVICES

20. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 307, 554.

21. Section 74.780 is amended by adding the following entry in numerical order to read as follows:

§ 74.780 Broadcast regulations applicable to translators, low power, and booster stations.

* * * * *

Section 73.1692—Construction near or installation on an AM broadcast tower.

* * * * *

22. Section 74.1235 is amended by revising paragraph (h) to read as follows:

§ 74.1235 Power limitations and antenna systems.

* * * * *

(h) All applications must comply with § 73.316, paragraphs (d) and (e) of this chapter.

* * * * *

23. Section 74.1237 is amended by adding paragraph (e) to read as follows:

§ 74.1237 Antenna location.

* * * * *

(e) A translator or booster station to be located on an AM antenna tower or located within 3.2 km of an AM antenna tower must comply with § 73.1692 of this chapter.

[FR Doc. 97–25788 Filed 9–29–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 43, and 64

[CC Docket No. 96–193; FCC 97–145]

Reform of Filing Requirements and Carrier Classifications; Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule, Correction.

SUMMARY: This document contains a correction to the final rule which was published Thursday, July 24, 1997, (62 FR 39776). This rule defined the "Indexed revenue threshold for a given year" in § 32.9000.

EFFECTIVE DATE: August 25, 1997.

FOR FURTHER INFORMATION CONTACT: Warren Firschein, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0844.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1997, the Commission published a Report and Order, which defined the "Indexed revenue threshold for a given year" in § 32.9000, Glossary of terms. This new definition in § 32.9000 is the subject of this correction.

Correction

Accordingly, in the publication of 62 FR 39776, July 24, 1997 of the final rule on page 39777, column 3, remove instruction number 3, and on page 39778, in the final column, remove the definition in § 32.9000 for "Index revenue threshold for a given year."

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–25738 Filed 9–29–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 64

[CC Docket No. 90–337, FCC 96–459]

Regulation of International Accounting Rates

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission amended its rules to permit U.S. carriers to negotiate alternative settlement payment arrangements. Certain of these rules contained new and modified information collection requirements. These rules became effective on March 21, 1997.

EFFECTIVE DATE: The amendments to 47 CFR §§ 43.61 and 64.1002 became effective on March 21, 1997 (62 FR 5535, February 6, 1997).

FOR FURTHER INFORMATION CONTACT: Kathryn O'Brien, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: On November 26, 1996, the Commission adopted an order permitting flexibility in international accounting rate policies, a summary of which was published in the **Federal Register**. See 62 FR 5535, February 6, 1997. Certain amendments to the Commission's rules imposed new or modified information collection requirements. We stated that "the amendments to §§ 43.61 and 64.1002 take effect either upon approval by the Office of Management and Budget (OMB) or March 10, 1997, whichever occurs later. When approval is received, the agency will publish a document announcing the effective date." The information collections were approved by OMB on March 21, 1997. See OMB Nos. 3060–0106 and 3060–0764. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules.

List of Subjects in 47 CFR Parts 43 and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–25679 Filed 9–29–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 87–124; FCC 97–242]

Access to Telecommunications Equipment and Services by Persons With Disabilities (Hearing Aid Compatibility); Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of August 14, 1997 (62 FR 43481), an *Order on Reconsideration* that amended rules for the provision of telephones with volume control. This document corrects a typographical error in the regulatory text of the amended rules.

EFFECTIVE DATE: September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Andy Firth, Attorney, 202/418–1898, Fax 202/418–2345, TTY 202/418–2224, afirth@fcc.gov, Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: In FR Doc. 97–20899, published in the **Federal Register** of August 14, 1997 (62 FR 43481), a typographical error appeared in § 68.112(b)(3) of the amended rules. The following correction removes the error.

Correction

§ 68.112 [Corrected]

On page 43484, in the second column, in § 68.112, in paragraph (b)(3)(iii) introductory text, line 3, the reference "(b)(3)(i)(A)" is corrected to read "(b)(3)(i)".

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–25790 Filed 9–29–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket 85–06; Notice 13]

RIN 2127–AG35

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Passenger Car Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation

ACTION: Final rule.

SUMMARY: This document extends the requirements of Federal motor vehicle safety standard (FMVSS) No. 135, Passenger Car Brake Systems, to trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 3,500 kilograms (7,716 pounds) or less. Manufacturers of such vehicles have the option of complying with either FMVSS No. 105, Hydraulic Brake Systems, or FMVSS No. 135 for an interim period of five years, after which all such vehicles with a GVWR of 3,500 kilograms or less must comply with FMVSS No. 135. This amendment is consistent with the agency's policy of achieving international harmonization whenever such harmonization is also consistent with the statutory authority to ensure motor vehicle safety.

DATES: Effective Date: The amendments of this final rule are effective December 1, 1997. As of this date, manufacturers have the option of complying with either FMVSS No. 105 or FMVSS No. 135. Compliance with FMVSS No. 135 becomes mandatory on September 1, 2002.

Petitions for Reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than November 14, 1997.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Daniel, Jr., Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington D.C. 20590 (202) 366–4921.

SUPPLEMENTARY INFORMATION:

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I. Background

A. History of FMVSS No. 135

On February 2, 1995, NHTSA published in the **Federal Register** (60 FR 6411) a final rule (Docket 85–06, Notice 8) to establish Federal motor vehicle safety standard (FMVSS) No. 135, Passenger Car Brake Systems. The intent of the new standard is to provide international harmonization of light passenger vehicle brake system test procedures and requirements. Although Standard No. 135 currently applies to passenger cars only, the agency stated in the final rule preamble that it would consider applying FMVSS No. 135 to additional light vehicles at a later date. A petition for reconsideration filed by General Motors (GM) in response to the final rule included the recommendation that the standard be extended to cover light trucks and vans (LTVs). GM indicated that the harmonized European light vehicle standard, Economic Commission for Europe (ECE) Regulation, R13–H, is applicable to passenger cars and vehicles that are analogous to LTVs in this country.

In this final rule, after considering the public comments to the Notice of Proposed Rulemaking (NPRM), Notice 11 of Docket 85–06, NHTSA has extended the applicability of FMVSS No. 135 to LTVs with a GVWR of 3,500 kilograms or less. This document explains the changes incorporated in the final rule and the reasons for the agency's decision.

B. Harmonization of U.S. and European Braking Regulations

In order to eliminate any unnecessary non-tariff barriers to trade in accordance with the General Agreement on Tariffs and Trade (GATT), the United States has participated in discussions held within the Meeting of Experts on Brakes and Running Gear (GRRF) of the United Nations Economic Commission for Europe (ECE). As a result of these discussions, NHTSA has developed and published FMVSS No. 135 for passenger cars, and the GRRF has also developed and published a new Regulation, R13–H, which would be compatible with FMVSS No. 135.

NHTSA has emphasized throughout the rulemaking that any requirements it adopts must also be consistent with the need for safety and the Safety Act. The agency repeats that safety will not be compromised in its efforts to harmonize the FMVSS with ECE Regulations.

C. Summary of Notice of Proposed Rulemaking

On May 2, 1996, NHTSA published in the **Federal Register** (61 FR 19602) an NPRM (Docket 85–06, Notice 11) proposing to apply FMVSS No. 135 to trucks, buses and multipurpose passenger vehicles with a GVWR of 4536 kilograms (10,000 pounds) or less. The NPRM further proposed that manufacturers of such vehicles have the option of complying with either FMVSS No. 105 or FMVSS No. 135 for an interim period of five years, after which time all vehicles with a GVWR of 10,000 pounds or less would be required to comply with Standard No. 135. Notice 11 stated that the extension of the applicability of Standard No. 135 to LTVs would be consistent with the agency policy of achieving international harmonization whenever possible and consistent with the agency's statutory mandate to ensure motor vehicle safety.

II. Summary of Comments (Docket 85–06, Notice 11)

The agency received eight written comments in response to the NPRM, five from vehicle manufacturers, two from vehicle trade associations, and one from a safety advocacy group. In general, the vehicle manufacturers and the trade associations conditionally supported the rulemaking for LTVs up to 8,000 pounds GVWR while the safety advocacy group opposed it.

A. Gross Vehicle Weight Limit for FMVSS No. 135 Applicability

Notice 11 proposed to extend Standard No. 135 to passenger vehicles with a GVWR of 10,000 pounds (4,536 kg) or less, including trucks, buses, and multipurpose vehicles (LTVs).

GM indicated that it participated in the development of the American Automobile Manufacturers Association (AAMA) response to this NPRM. The AAMA submission requested that the requirements of Standard No. 135 be applied to vehicles with a GVWR of 8000 pounds (3,629 kilograms) or less. According to GM, AAMA believes the 500-Newton pedal force specified in Standard No. 135 is inappropriate for vehicles with a GVWR above 8,000 pounds.

The Japanese Automobile Manufacturers Association (JAMA) supported the extension of Standard No. 135 to LTVs, but was concerned that adoption of the requirements as proposed would not further international harmonization, a goal stated by the agency in the preamble. JAMA recommended that NHTSA consult further with the ECE and JAMA before moving ahead with the proposed amendment. JAMA contended that extending Standard No. 135 to LTVs with a GVWR of 10,000 pounds or less would decrease the similarity between Standard No. 135 and R13–H. R13–H is applicable to the "M1" vehicle category in the European classification scheme, which includes all types of passenger vehicles with a maximum capacity of eight. A table in the JAMA submission shows that the test conditions and requirements in No. 105 and ECE R13 are similar and are applicable to vehicles of similar weight. The table also highlights the differences between test conditions and requirements in Standard No. 135 and the conditions and requirements for LTVs in Standard No. 105 and ECE R13.

Chrysler indicated that it was an active participant in the discussions that culminated in the publication of FMVSS No. 135, which Chrysler contends was intended for passenger cars. Chrysler pointed out that the proposed extension of the applicability of Standard No. 135 to LTVs up to 10,000 pounds GVWR would result in the standard being applicable to some of the vehicles in four different categories of the European vehicle classification system. These four categories include passenger vehicles with a capacity of eight or less, passenger vehicles with a capacity greater than eight and a GVWR of 11,023 pounds (5,000 kilograms) or less, non-passenger vehicles with a GVWR of

7,716 pounds (3,500 kilograms) or less, and non-passenger vehicles with a GVWR up to 26,455 pounds (12,000 kilograms). Vehicles in the latter three categories are not currently required to meet R13–H, the European counterpart of No. 135.

Nissan does not support the application of FMVSS No. 135 to LTVs with a GVWR of 10,000 pounds or less. Nissan stated that the proposed rule would decrease the similarity between Standard No. 135 and ECE R13–H, resulting in a negative impact on international harmonization. Nissan indicated that LTVs with a GVWR of 10,000 pounds or less could fall into one of four European categories, "M1", "M2", "N1", or "N2", which would make harmonization of the R13 very difficult. Nissan also stated that there is no apparent activity among ECE members to apply the harmonized light duty passenger vehicle standard, R13–H, to vehicles in the M2, N1, or N2 classes.

AAMA stated that its member companies would support extending Standard No. 135 to LTVs with a GVWR of 8,000 pounds (3,629 kilograms) or less. An 8,000-pound weight limit would better harmonize No. 135 with the requirements of ECE R13–H, which applies to category "M1" vehicles.

Ford supported the extension of Standard No. 135 to LTVs with a GVWR of 8,000 pounds or less in the interest of international harmonization. In its initial comments to this rulemaking proposal, Ford indicated that several of that company's vehicles with a GVWR below 8,000 pounds would require substantial redesign to meet all applicable Standard No. 135 requirements. In a supplemental submission, however, Ford indicated that the Standard No. 135 requirements could be met by all its vehicles with a GVWR of 8,000 pounds or less, within the proposed leadtime, without major modification or economic burden.

Advocates for Highway and Auto Safety (Advocates) did not specifically address the weight range issues cited by most commenters. Advocates is opposed to extending No. 135 to cover LTVs, regardless of vehicle weight, stating that the agency failed to demonstrate the desirability of extending No. 135 applicability to LTVs. Advocates cited a lack of actual cost or safety benefits data in the proposed rule and further indicated that the organization believes No. 135 represents a decrease in the overall brake system safety level when compared to No. 105. For example, Advocates points out that the pre-burnish, water, and dynamic emergency brake tests of No. 105 are not included in No. 135 and longer stopping distances are permitted in No. 135 than in No. 105.

B. Brake Standard for Light Trucks and Vans With GVWR Above Standard No. 135 Limit

GM indicated that AAMA recommended that the Notice 11 proposal be modified for LTVs with a GVWR between 8,000 and 10,000 pounds to allow a maximum pedal force of 700 Newtons. GM believes the brake systems on its vehicles in this weight range would meet all requirements with a 500-Newton maximum pedal force and that company supports rulemaking as proposed in Notice 11.

JAMA supported the rulemaking proposal, but recommended that NHTSA consult further with the ECE and JAMA to enhance international harmonization of Standard No. 135 and ECE R13–H before proceeding with the proposed amendment.

Chrysler recommended that Standard No. 135 requirements be extended to include LTVs with a GVWR up to 8,000 pounds. Chrysler also recommended that a pedal force limit of 700 Newtons be allowed for vehicles with a GVWR between 8,000 pounds and 10,000 pounds vehicles, consistent with the ECE Regulations and Standard No. 105.

Nissan did not support the application of Standard No. 135 to LTVs with a GVWR below 10,000 pounds. Nissan stated that there is no apparent activity among ECE members to apply R13–H, which is harmonized with Standard No. 135, to vehicles in this class.

Volkswagen supported the proposed rule as written.

AAMA supported the extension of the applicability of Standard No. 135 to vehicles with a GVWR above 8,000 pounds provided the pedal force limit is raised from 500 Newtons to 700 Newtons for vehicles with a GVWR between 8,000 and 10,000 pounds.

Ford stated that the agency should include two provisions in the rulemaking for vehicles with a GVWR over 8000 pounds (3,629 kilograms). Ford requested that a provision be included in Standard No. 135 to allow a maximum pedal force of 700 Newtons for vehicles with a GVWR above 8,000 pounds and also requested that the stopping distance be increased for the "Engine Off" tests. Ford indicated that Standard No. 105 specifies unique performance requirements for vehicles with a GVWR between 8,000 and 10,000 pounds. Application of the No. 105 test conditions and requirements to vehicles with a GVWR between 8,000 pounds and 10,000 pounds (4,536 kilograms) would more closely align the proposed rulemaking with ECE R13–H, the harmonized European braking standard.

III. NHTSA Decision

A. Overview

A1. Lighter Vehicles

The U.S. automobile manufacturers and the AAMA indicated that many LTVs with a GVWR less than 10,000 pounds are currently being used as passenger vehicles (small trucks, vans, and sport utility vehicles) and should meet passenger car brake system requirements. According to Ward's Automotive Yearbook, an average of about 9.4 million passenger cars and 5.6 million LTVs with a GVWR under 10,000 pounds have been sold annually in the U.S. in recent years.

Most commenters recommended that the cut-off GVWR for an extension of No. 135 applicability to LTVs be substantially less than 10,000 pounds, the value proposed in Notice 11. GM, Chrysler, Ford, and AAMA indicated that brake performance requirements are more stringent in No. 135 than in No. 105. These commenters indicated that the heavier vehicles in the weight range may not meet the performance requirements of No. 135 without substantial brake system redesign. These commenters also indicated that brake systems for vehicles with a GVWR above 8,000 pounds may have undesirable consumer characteristics such as increased noise, wear, and pedal travel, if these systems are designed to meet No. 135 requirements.

Advocates opposed the rulemaking proposed in Notice 11, stating that No. 135 represents a reduction in the safety level of brake systems when compared with Standard No. 105. Advocates made arguments in their comments to Notice 8 of Docket 85–06, the final rule establishing Standard No. 135, that are similar to its Notice 11 comments. Advocates stated in response to Notice 8 that No. 135 was less stringent than Standard No. 105 since Standard No. 135 did not include several Standard No. 105 test procedures and allowed longer stopping distances. Advocates' comparison of stopping distances is based on a simplistic conversion of stopping distances from English to metric units, which indicates that the allowed stopping distances in No. 135 are longer than No. 105 stopping distances for comparable test speeds. Advocates' evaluation, however, did not consider the conditioning of the brakes prior to a given test, which is an important factor in determining the stringency of brake performance requirements. More importantly, the current extension of No. 135 will require LTVs to meet the same levels of braking performance required for passenger cars, something that is not required currently under No. 105. NHTSA believes that No. 135 should be applied to LTVs despite Advocates' objections. The final rule for No. 135, which did not quantify the safety benefits associated with the rulemaking, was issued over the objections of Advocates and others.

Vehicle manufacturers and the AAMA also stated that the rulemaking proposed in Notice 11 would decrease the harmonization between Standard No. 135, and the European standard for light duty passenger vehicles, ECE R13–H. Most of the vehicles covered by R13–H have a loaded weight below 8,000 pounds (3,629 kilograms), whereas the NPRM proposed extending No. 135 to LTVs with a GVWR up to 10,000 pounds (4,536 kilograms).

GM indicated that the vehicles manufactured by that company could meet the requirements of No. 135 within the 5-year leadtime proposed. However, Chrysler, Ford, and AAMA recommended that No. 135 be applied only to vehicles with a GVWR below 8,000 pounds. Based on the comments on this issue, NHTSA believes that the maximum GVWR for the application of No. 135 to LTVs should be below 8,000 pounds.

The agency estimates, based on Ward's Automotive Yearbook figures, that about 75 percent of the 5.6 million LTVs with a GVWR of 10,000 pounds or less sold annually in the US are Class 1 vehicles with a GVWR below 6,000 pounds (2,722 kilograms). NHTSA further estimates the annual sales of LTVs with a GVWR between 8,000 and 10,000 pounds to be 0.5 to 0.7 million vehicles, or about 10 to 13 percent of all LTVs with a GVWR below 10,000 pounds. The agency believes, therefore, that brake system redesign for these vehicles alone could be particularly burdensome. Also, any safety benefit that would result from the application of the Standard No. 135 requirements to this group of LTVs would be limited by the low sales volume.

The agency believes that there are two values that should be considered for the maximum weight of No. 135 applicability to LTVs. Standard No. 135 would be consistent with Standard No. 105 if the extension to LTVs covered vehicles with a maximum GVWR up to 8,000 pounds, since Standard No. 105 contains unique braking performance requirements for vehicles with a GVWR between 8,000 and 10,000 pounds. As previously stated, an 8,000-pound GVWR limit for the extension is supported by the AAMA, Ford, and Chrysler and would cover 85 to 90 percent of all LTVs with a GVWR below 10,000 pounds.

The agency believes the effects on international harmonization that would result from the extension of Standard No. 135 as proposed in Notice 11 (10,000 pound cut-off) should be considered. The European equivalent of Standard No. 135, ECE R13–H, is applicable to vehicles in the M1 category, passenger vehicles with a passenger capacity of eight. Although there is no weight limit specified for the M1 class, these vehicles rarely have a weight capacity above 7,000 pounds. The proposed 10,000-pound GVWR limit would extend the applicability of Standard No. 135 to vehicles in three European vehicle classes not covered by R13–H. The standard that applies to these classes, R13, is not consistent with No. 135 with regard to test conditions and performance requirements; hence harmonization of Standard No. 135 and ECE R13 would be difficult.

The agency believes that 3,500 kg is a logical value for the maximum applicable GVWR for No. 135 extension to LTVs since this value is used in the European system as the maximum GVWR for vehicles in the "N1" class, or light duty non-passenger vehicles. Therefore, harmonization of Standard No. 135 and R13 would not affect all European light duty vehicles. Also, since 3,500 kilograms (7716 pounds) and 3,629 kilograms (8,000 pounds) are similar quantities, the number of vehicles affected by either choice is similar.

A2. Heavier Vehicles

The brake test specifications in No. 135 allow a maximum pedal force during braking of 500 Newtons for most of the performance test series including, Cold Effectiveness, Hot Performance, Power Brake Unit or Brake Power Assist Unit Inoperative. Most manufacturers indicated that 500 Newtons is insufficient pedal force for vehicles with a GVWR above 8,000 pounds and inconsistent with the pedal force requirements in No. 105 and ECE R13 for these vehicles.

GM indicated that it participated in the development of the AAMA response to Notice 11 of Docket 85–06 and acknowledged the reasons AAMA requested that the maximum allowable pedal force in No. 135, 500 Newton, be increased to 700 Newton for vehicles with a GVWR above 8,000 pounds. However, GM indicated vehicles manufactured by that company could meet the current No. 135 requirements over the five-year leadtime period proposed in the NPRM. GM cited several reasons for supporting Notice 11 including the following: LTVs are being widely used to transport people; the proposed five-year leadtime should be sufficient to make necessary LTV brake changes; and, M1 class European vehicles are analogous to the vehicles that would be covered by adoption of the NPRM.

JAMA submitted a table highlighting brake test conditions and performance requirements for FMVSS No. 135, FMVSS No. 105, and ECE R13, the European standard for light weight commercial vehicles. According to the table, Standard No. 105, and R13, which applies to light duty vehicles not covered by R13–H, allow a maximum pedal force of 680 Newtons and 700 Newtons, respectively, whereas No. 135 allows a maximum pedal force of 500 Newtons. JAMA suggested that NHTSA consult further with Europe and Japan before proceeding with rulemaking based on the NPRM since the proposed rule would represent a significant divergence between the US and European light duty vehicle brake standards.

Chrysler believes that the pedal force limit of 500 Newtons specified in No. 135 is appropriate for vehicles up to 8,000 pounds GVWR. That company recommended, however, that the standard be modified to allow a pedal force of 700 Newtons for vehicles with a GVWR between 8,000 and 10,000 pounds. Chrysler indicated that a 500-Newton pedal force limit for vehicles with a GVWR above 8,000 pounds could result in braking systems that have a negative impact on customer satisfaction. Compliant braking systems for such vehicles could require higher friction linings and higher brake pedal ratios resulting in increased brake noise, wear, and pedal travel.

Nissan opposed the NPRM, claiming that the harmonization of No. 135 and R13–H would be adversely affected. According to Nissan, Notice 11 proposes applying No. 135 to vehicles in this country, that are equivalent to European M2, N1, and N2 vehicles, which are not covered by the harmonized standard, R13–H.

VW supported issuance of a final rule based on the NPRM.

AAMA stated that it would support the Notice 11 NPRM if the No. 135 test conditions were changed to allow for a 700-Newton maximum pedal force for vehicles with a GVWR above 8,000 pounds. AAMA cited several reasons to justify the change including the following: improved harmonization of No. 135 with the European standard (R13–H), since the standard covering

most European vehicles that are comparable to LTVs in this country, allows a 700-Newton pedal force; the 700-Newton pedal force would affect mostly commercial, non-passenger vehicles; most sport utility vehicles and other small trucks would be required to meet the more stringent No. 135 requirements.

Ford requested that a provision be included in No. 135 to allow a maximum pedal force of 700 Newtons for vehicles with a GVWR above 8,000 pounds. Allowance of a 700-Newton pedal force is consistent with ECE R13 requirements, according to Ford, for light passenger vehicles and would more closely align and harmonize the US and European requirements.

Several vehicle manufacturers and the AAMA requested that the agency apply No. 135, modified to allow a 700-Newton peak pedal force, to LTVs with a GVWR above 8,000 pounds, instead of No. 135 as currently written, which limits pedal force to 500 Newtons.

International harmonization was cited by the commenters as a major reason for requesting that the maximum allowable pedal force be raised to 700 Newtons for vehicles with a GVWR above 8,000 pounds. The European equivalent of Standard No. 135, R13–H, applies to passenger vehicles with maximum passenger capacity of eight and allows a maximum pedal force of 500 Newtons. Although a maximum GVWR is not specified for these M1 class vehicles, their loaded weight rarely exceeds 7,000 pounds (3,175 kilograms). Other light duty vehicle classes in the European system are allowed a maximum pedal force of 700 Newtons during brake performance testing. The commenters also stated that No. 105 allows a maximum pedal force of 680 Newtons (150 pounds) for all vehicles with a GVWR of 10,000 pounds or less. Additionally, Ford, Chrysler, and AAMA indicated that a 500-Newton brake pedal force limit for vehicles in the 8,000 to 10,000-pound range could result in brake systems with low customer satisfaction due to increased noise, lining and rotor wear, and brake pedal travel.

The agency notes that GM stated that No. 135 requirements could be met by that company's LTVs, including those in the 8,000 to 10,000-pound GVWR range. GM cited several reasons for supporting Notice 11 including the observation that M1 class European vehicles are analogous to the vehicles in this country that would be covered if the NPRM were adopted. NHTSA disagrees with GM regarding the international harmonization issue. As noted above, M1 vehicles rarely exceed 7,000 pounds GVWR. Most commenters argued that vehicles with a loaded weight above 8,000 pounds are not analogous to M1 vehicles and are not subject to the same braking requirements as M1 vehicles.

The comments and analytical data provided by Ford indicate that several of that company's 8,000 to 10,000-pound vehicles may not be able to comply with No. 135, based on computer simulations. NHTSA believes that the data provided by Ford indicate that the five-year leadtime would be adequate to obtain compliance with No. 135 (500-Newton pedal force) for its vehicles in this weight class, without a major cost burden.

The agency does not have data relating to the Chrysler and AAMA observation that brake systems meeting the No. 135 requirements for vehicles with a GVWR above 8,000 pounds would have low customer satisfaction. There is the potential for systems with low customer satisfaction, but NHTSA believes that sufficient leadtime will avoid this problem.

Advocates for Highway and Auto Safety (Advocates) objected to the proposed rulemaking stating that the agency had not addressed the associated costs and benefits. The agency has no data specifically addressing the incremental cost associated with the application of No. 135 to LTVs with a GVWR less than 10,000 pounds. NHTSA believes the cost of LTV compliance with No. 135 will be similar to the cost incurred for passenger cars, especially for the smaller LTVs. Although several manufacturers indicated that substantial brake system redesign would be necessary for vehicles with a loaded weight above 8,000 pounds to meet No. 135, none provided cost information. Additionally, the agency has not attempted to quantify the benefits that would be realized if these vehicles were in compliance with No. 135.

Currently, Standard No. 105 utilizes 4,536 kilograms (10,000 pounds) as the maximum GVWR for light duty vehicles and the braking test conditions, procedures, and requirements are different for vehicles with a GVWR above 4536 kilograms. The agency will continue to use 4,536 kilograms to separate light and heavy duty vehicles with regard to brake system standards. This would ensure continued consistency with FHWA's Office of Motor Carriers, which also utilizes 10,000 pounds as the GVWR to separate light and heavy duty vehicles for application of that agency's safety regulations.

There are several options when considering the appropriate brake system standard for vehicles with a GVWR between 3,500 and 4536 kilograms. Both Standards No. 105 and No. 135 could be applied to these vehicles as well as Standard No. 135 modified to allow a 700-Newton brake pedal force, as requested by several commenters. The provisions in No. 135 specify wheel lock sequence performance, to address directional stability during braking, whereas No. 105 has no related requirements. The pre-burnish test, water test, and dynamic emergency brake test are provisions in Standard No. 105 that are not included in Standard No. 135. The agency believes that Standard No. 105 should be applied to vehicles with a GVWR above 3,500 kg for continuity with present requirements. Specifying Standard No. 105 compliance for these vehicles would provide most of the benefits of Standard No. 135 while alleviating the manufacturer concerns about significant brake system redesign if Standard No. 135 were applied to these vehicles.

In response to Notice 11, most vehicle manufacturers and the AAMA recommended that the agency issue a final rule in which No. 135, modified to allow 700 Newtons pedal force, be applied to vehicles with a GVWR between 3,500 and 4536 kilograms. The agency is conducting brake system testing/analyses on vehicles in this weight range in addition to reviewing the testing data from Ford. After it finishes these testing/analyses, NHTSA will publish a separate notice for the brake systems of LTVs with a GVWR between 3,500 and 4,536 kilograms.

B. Application

B1. Lighter Vehicles

After considering the public comments to the NPRM (Notice 11), the agency has decided, with this final rule, to extend the applicability of No. 135 to LTVs with a maximum GVWR of 3,500 kilograms (7,716 pounds) instead of the 4,536 kilograms (10,000 pounds) proposed in Notice 11 of Docket 85–06. Accordingly, the title of No. 135 will be modified to reflect the extension to LTVs, as proposed in Notice 11, and the applicability section of No. 135 proposed in Notice 11 will be modified.

B2. Heavier Vehicles

Notice 11 of Docket 85–06 proposed to extend the applicability of Standard No. 135 to LTVs with a GVWR of 4,536 kilograms (10,000 pounds) or less. Most motor vehicle manufacturers objected to the proposal as written, indicating that compliance with No. 135 may require major brake system modifications for vehicles with a GVWR above 3,629 kilograms (8,000 pounds). After considering the public comments to the NPRM (Notice 11), NHTSA has decided not to extend the applicability of Standard No. 135 to LTVs with a GVWR between 3,500 kilograms (7,716 pounds) and 4,536 kilograms (10,000 pounds). The agency has further decided that No. 105 will still be applicable to LTVs with a GVWR between 3,500 and 4536 kilograms at this time.

IV. Leadtime

The five-year leadtime for the application of FMVSS No. 135 to LTVs is consistent with the leadtime provided for No. 135 applicability to passenger cars in the final rule for No. 135 (Docket 85–06, Notice 8). As is the case with passenger car applicability of No. 105, compliance with FMVSS No. 105 is optional between December 1, 1997 and September 1, 2002. It is anticipated that this leadtime is sufficient to allow manufacturers of LTVs with a GVWR of 3,500 kilograms and below to complete any required brake system modifications during scheduled redesign periods so that the economic burden will be minimal.

As previously stated, the agency is reviewing data submitted by Ford and data from recently conducted brake testing to assess the performance of vehicles with a GVWR between 3,500 and 4,536 kilograms relative to FMVSS No. 135. The agency will publish a separate notice on these vehicles in the future. If the agency determines that these vehicles should be covered by FMVSS No. 135, sufficient leadtime will be provided to ensure vehicle modifications will not cause significant burden.

V. Regulatory Analysis

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impacts of this rulemaking action and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency believes that application of FMVSS No. 135 to LTVs with a GVWR of 3,500 kilograms or less will ensure an equivalent level of safety for those aspects of performance covered by FMVSS No. 105. This final rule will add brake performance and offer safety benefits in areas not addressed in FMVSS No. 105.

In the final rule for FMVSS No. 135 (60 FR 6411), the agency indicated that the incremental cost of passenger car compliance with No. 135 as compared to No. 105 compliance would be minor. These minor incremental costs are associated with differences in the actual compliance testing costs and minor brake system redesign for some marginal brake systems. Compliance testing costs were estimated to be slightly less for No. 135 testing than for No. 105 testing since the No. 135 procedures are shorter. The agency also believes the Adhesion Utilization (AU) properties of LTVs may be different from the AU properties of most passenger cars. The NHTSA estimates that some brake system adjustments will be required for LTVs to comply with the AU, or directional stability test in Standard No. 135. The agency stated in the Notice of proposed rulemaking (61 FR 19603) that the application of Standard No. 135 to LTVs would not impose significant costs on vehicle manufacturers. The agency further stated that the cost impacts are so minimal as not to warrant a full regulatory evaluation and NHTSA believes that the impact assessment in the NPRM is still valid. The substantial lead time proposed for mandatory LTV compliance should enable manufacturers to incorporate necessary changes as part of model change over, in phases if necessary.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of both this proposal under the Regulatory Flexibility Act. I hereby certify that it would not have a substantial economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

NHTSA concluded that the FMVSS No. 135 final rule had no significant impact on a substantial number of small entities. That conclusion is also valid for this final rule since most of the vehicles affected by this rulemaking are manufactured by entities that also manufacture passenger cars. Accordingly, the incremental cost would be small and would not likely affect vehicle sales.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act of 1969. The agency has determined that implementation of this action will not have any significant effect on the quality of human environment. This final rule will result in no changes to motor vehicle or motor vehicle equipment production or disposal processes.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency believes that this rulemaking action will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. There are no State laws affected by this final rule.

E. Executive Order 12778 (Civil Justice Reform)

This rulemaking will have no retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles produced for use in that State. The 49 U.S.C. 30161 sets forth a procedure for judicial review of rulemakings establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency amends Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.105 is amended by revising S3, to read as follows:

Part 571.105—Standard No. 105; Hydraulic Brake Systems

* * * * *

S3. Application. This standard applies to hydraulically-braked vehicles with a GVWR greater than 3,500 kilograms (7,716 pounds). This standard applies to hydraulically-braked passenger cars manufactured before September 1, 2000, and to hydraulically-braked multipurpose passenger vehicles, trucks and buses with a GVWR of 3,500 kilograms or less that are manufactured before September 1, 2002. At the option of the

manufacturer, hydraulically-braked passenger cars manufactured before September 1, 2000, and hydraulically-braked multipurpose passenger vehicles, trucks and buses with a GVWR of 3,500 kilograms (7,716 pounds) or less manufactured before September 1, 2002, may meet the requirements of Federal Motor Vehicle Safety Standard No. 135, Light Vehicle Brake Systems instead of this standard.

* * * * *

3. Section 571.135 is amended by revising the heading and section S3 to read as follows:

Part 571.135—Standard No. 135; Light Vehicle Brake Systems

* * * * *

S3. Application. This standard applies to passenger cars manufactured on or after September 1, 2000 and to multi-purpose passenger vehicles, trucks and buses with a gross vehicle weight rating (GVWR) of 3,500 kilograms (7,716 pounds) or less, manufactured on or after September 1, 2002. In addition, at the option of the manufacturer, passenger cars manufactured before September 1, 2000, and multi-purpose passenger vehicles, trucks and buses with a GVWR of 3,500 kilograms (7,716 pounds) or less, manufactured before September 1, 2002, may meet the requirements of this standard instead of Federal Motor Vehicle No. 105, Hydraulic Brake Systems.

* * * * *

Issued on: September 18, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–25907 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 62, No. 189
Tuesday, September 30, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 312, 314, and 601

[Docket No. 97N–0165]

RIN 0910–AB20

Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of a public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss issues related to the agency's proposed rule on regulations requiring manufacturers to assess the safety and effectiveness of new drugs and biological products in pediatric patients. The proposed rule, previously announced in the **Federal Register**, requested written comments and proposed new regulations requiring pediatric studies of certain new drug and biological products. The purpose of the meeting is to provide experts in the field and interested individuals an opportunity to discuss specific issues raised by the proposed rule. The agency is seeking comment and specific data on the proposed rule.

DATES: The public meeting will be held on October 27, 1997, from 9 a.m. to 6 p.m. Please arrive no later than 8:30 a.m. to allow time for security clearance. Written requests for oral presentations should be received by the agency on or before October 14, 1997. Written comments must be submitted on or before November 13, 1997.

ADDRESSES: The public meeting will be held at the Cohen Bldg., auditorium, 330 C St. SW., Washington, DC. Submit written requests for oral presentations to Lisa Barclay, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. To expedite processing, fax written requests for oral presentations to 301–594–6777. To ensure timely handling, the outer envelope or facsimile cover sheet should be clearly marked with: Docket No. 97N–0165, "Pediatric Labeling Meeting," ATTN: Lisa Barclay. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Khyati N. Roberts, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779, FAX 301–594–5493, e-mail robertsk@cder.fda.gov, or
Elaine C. Esber, Center for Biologics Evaluation and Research (HFM–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0641, FAX 301–827–0644, e-mail esber@1.cber.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 15, 1997 (62 FR 43900), the agency published a proposed rule for new regulations requiring pediatric studies of certain new drug and biological products. The proposed rule would attempt to partially address a lack of pediatric use information by requiring that manufacturers of a limited class of new drug and biological products provide sufficient data and information to support directions for pediatric use for the claimed indications before, or soon after, approval. Manufacturers of a limited class of already marketed drugs and biologics would also, in compelling circumstances, have to provide such data. The proposed rule is part of a comprehensive effort to increase the number of new drug and biological products with clinically significant use in children that carry adequate labeling for use in that subpopulation.

Because of the importance of ensuring the safety and effectiveness of the medications administered to children and the need to address the absence of pediatric labeling in the most effective manner possible, FDA, in cooperation with the American Academy of Pediatrics, is announcing a public meeting at which recognized experts in the field, members of the pharmaceutical industry, and other interested parties will have an opportunity to discuss certain issues raised by the proposed rule. FDA will consider information presented and discussed at the meeting and written comments submitted to the Dockets Management Branch in the development of the final rule. There is no fee for this public meeting.

II. Scope of Meeting

The purpose of this meeting is to complement the process for gathering written comments and recommendations on certain issues raised by the proposed rule. The meeting will provide recognized experts in the field, members of the pharmaceutical industry, and other interested parties an opportunity to discuss these issues. The agency is specifically seeking comment and data on the following:

(1) What should be considered a "substantial number" of pediatric patients?

(2) Whether the rule should be restricted to new chemical entities, including new (never-before-approved) drugs, antibiotics and biological products, or whether it should be applied more broadly (e.g., to applications for chemical variations of approved products, new indications, new dosage forms or routes of administration)?

(3) Whether the proposed grounds for waiving the pediatric study requirement are adequate and whether additional grounds may exist?

(4) What would constitute sufficient data or an adequate pediatric clinical trial? and

(5) How should dose and safety levels for each of the different pediatric age groups or stages of development be established? Relevant to this issue, the agency solicits comment on special problems associated with studies in neonates and young infants.

III. Requests for Oral Presentations

Persons who wish to participate in the meeting must file a written or facsimile request for oral presentation with the Office of Policy (address and fax numbers above). The request for oral presentation should contain the speaker's name, address, telephone and fax numbers, title, business affiliation, if any, topic, a brief summary of the

presentation, and approximate amount of time requested for the presentation.

The agency requests that persons or groups having similar interests consolidate their presentations and present them through a single representative. Because presentations will be limited to 1 day, the agency may not be able to accommodate all requests for oral presentations. FDA will allocate the time available for the meeting among the persons who properly file requests for oral presentations. If time permits at the conclusion of the meeting, FDA may allow participation from both interested persons attending the meeting who did not submit a written request for an oral presentation and those who requested an opportunity to make a presentation, but, due to the time limitations, were not granted the request.

IV. Requests for Comments

Interested persons may, on or before November 13, 1997, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Special Accommodations

In order to accommodate the need for space or technical support, persons who are planning on using audiovisual equipment during their oral presentations are urged to provide advance notice of their planned attendance to one of the contact persons identified above. If you need special accommodations due to a disability, please contact one of the contact persons listed above at least 7 days in advance.

VI. Transcripts

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: September 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–25937 Filed 9–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA–156P]

RIN #1117–aa43

Listed Chemicals; Proposed Establishment of Thresholds for Iodine and Hydrochloric Gas (Hydrogen Chloride Gas)

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Comprehensive Methamphetamine Control Act of 1996 (MCA) establishes that, effective October 3, 1996, iodine and hydrogen chloride gas are List II chemicals under the Controlled Substances Act (CSA). The inclusion of these chemicals under the CSA requires that each regulated person must keep records and file reports as specified in Title 21 Code Federal Regulations (21 CFR) Part 1310. Since the MCA did not establish thresholds for iodine and hydrogen chloride gas, recordkeeping and reporting requirements became applicable to all domestic transactions of these chemicals. While this notice of proposed rulemaking is proposing a domestic threshold of 0.0 kilograms for hydrogen chloride gas, it proposes to set a domestic threshold of 0.4 kilograms for iodine. This iodine threshold will remove the recordkeeping requirement for many iodine transactions.

This notice of proposed rulemaking also proposes to reinsert the table in 21 CFR 1310.04(f)(2)(iv), listing thresholds for exports, transshipments, and international transactions to designated countries set forth in 1310.08(b). The DEA's final rule regarding implementation of the Domestic Chemical Diversion Control Act of 1993, published on June 22, 1995 [60 FR 32447] inadvertently omitted the table from the section.

DATES: Written comments or objections must be received on or before December 1, 1997.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: The MCA was signed into law on October 3, 1996, Section 204 of the MCA amends Section 102(35) of the CSA (21 U.S.C. 802(35)) to include iodine and hydrogen chloride gas as List II chemicals. Section 204(b)(1) and (2) of the MCA also states that "iodine shall not be subject to the requirements for listed chemicals provided in section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971)." Therefore, the MCA does not impose import/export requirements on iodine. The MCA, however, does not "limit the authority of the Attorney General to impose the requirements for listed chemicals provided in section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971)." Although the DEA is not imposing import/export restrictions on iodine at this time, the DEA is currently reviewing available data on iodine to determine if such controls are warranted.

Prior to the MCA, hydrogen chloride gas, also known as anhydrous hydrochloric acid, was already a List II chemical under the CSA (21 CFR 1310.02(b)(8)). Pursuant to 21 CFR 1310.08, all domestic and import transactions of hydrogen chloride gas have been exempt from the regulatory controls under the CSA. In addition, all exports, transshipments and international transactions of hydrogen chloride gas have been exempt from the regulatory controls except those to all South American countries and Panama. Exports to all South American countries and Panama above a threshold of 27 kilograms have been regulated transactions (21 CFR 1310.08(b)). The MCA amends the CSA to impose only domestic controls on iodine and domestic and international controls on hydrogen chloride gas.

The majority of the clandestine laboratories seized in the United States manufacture methamphetamine, a Schedule II controlled substance. Since 1990, more than 2,400 methamphetamine laboratories have been seized in the United States by the DEA. The most frequently used synthesis among clandestine laboratory operators today is the ephedrine/pseudoephedrine reduction method which utilizes hydriodic acid. Hydriodic acid is a List I chemical with a domestic threshold of one liter. With the increased controls on hydriodic acid, clandestine laboratory operators have turned to producing their own hydriodic acid or using iodine directly in the synthesis. Clandestine laboratory operators, since 1992, have been utilizing iodine either directly in the ephedrine/pseudoephedrine reduction method or have been using iodine to produce hydriodic acid, the traditional reducing agent in the ephedrine/pseudoephedrine reduction method. Hydrogen chloride gas, on the other hand, can be used in the clandestine synthesis of most controlled substances to convert the basic form of a controlled substance to its hydrochloride salt. It is often used in the illicit production of methamphetamine.

Certain provisions of the CSA and its regulations are applicable only to regulated transactions involving listed chemicals. For purposes of defining a regulated transaction (21 U.S.C. 802(39)), the CSA provides that the Attorney General may impose a threshold amount for each listed chemical. A threshold amount is established to determine whether a receipt, sale, importation or exportation within a calendar month or multiple transactions by an individual within a calendar month are considered regulated transactions. If the transaction is considered a regulated transaction, then they are recordkeeping and reporting requirements as specified in 21 CFR 1310.

The DEA examined several types of information in proposing a domestic threshold for iodine: legitimate use in industry, including the quantities normally required for such uses; quantities purchased by clandestine laboratory operators; quantities seized at clandestine laboratory sites; and its use in the production of methamphetamine. The number of clandestine laboratories using iodine in the synthesis of methamphetamine has increased drastically in the past five years. In 1992, the DEA documented that 18 of the 228 (approximately 6 percent) methamphetamine clandestine laboratories seized by DEA used iodine. During 1996, at least 290 methamphetamine clandestine laboratories seized by DEA used iodine. The majority of these clandestine laboratories are producing small quantities (i.e., less than one-half kilogram) of methamphetamine. Seizures of iodine at the clandestine laboratory sites ranged from approximately 10 grams to 3,000 kilograms. The DEA cannot determined the source of all of the iodine seized at clandestine laboratory sites due to clandestine laboratory operators removing the original labels or transferring the iodine to other unmarked containers. At those sites where iodine was seized in its original containers, DEA identified that the iodine was being purchased from either veterinary supply stores, feed and tack/farm supply stores or chemical distributors.

The DEA sought information from legitimate handlers of iodine (i.e., manufacturers, end-users, distributors, and veterinary, feed and farm supply stores/companies) to determine the uses of iodine and the quantities typically found in legitimate transactions. Of particular interest to DEA was the sale of relatively small quantities of iodine for cauterization of a hoof wound and for the treatment of thrush. The DEA sought information from over 300 veterinary suppliers and feed and farm supply stores to determine if the stores sold iodine. Of the 300 stores and suppliers which provided information, only nine sold iodine. Several suppliers and end-users stated that a two-ounce bottle of iodine would last a rancher or a farrier several months and that, typically, an individual would purchase at the most 3–2 ounce bottles (approximately 0.2 kilograms) at a time.

Based on this information, the DEA is proposing a domestic threshold of 0.4 kg for iodine. This would ensure the most effective controls on the diversion of iodine while minimizing the impact on industry, particularly for small businesses such as veterinary, feed, and farm supply stores.

The proposed domestic threshold of hydrogen chloride gas is based upon several items: its legitimate use in industry; quantities used by legitimate industry; and quantities of hydrogen chloride gas seized at clandestine laboratories.

Hydrogen chloride gas is sold in cylinders. Traditionally, cylinders of hydrogen chloride gas have been seen mostly at methamphetamine clandestine laboratory sites in the western part of the United States. Most of the cylinders seized at the clandestine laboratory sites contain approximately 60 pounds of hydrogen chloride gas. Small cylinders which contain 0.5 pounds of hydrogen chloride gas have also been seen at some laboratory sites.

The DEA gathered information on the legitimate uses of hydrogen chloride gas in the United States. The major uses of hydrogen chloride gas were determined to be in the cotton industry, the electronic/silicon industry, the pharmaceutical industry and other industries for use in chemical syntheses. All of these industries use large quantities of hydrogen chloride gas for their manufacturing processes. Generally, thousands of pounds are involved in single transactions with the exception of smaller quantities (i.e., single or multiple cylinders) being used by research, analytical or synthetic laboratories. There are also safety issues regarding the handling of hydrogen chloride gas. Since the majority of hydrogen chloride gas transactions involve thousands of pounds and to ensure the most effective controls on the diversion of hydrogen chloride gas, the DEA proposes a domestic threshold of 0 kg for hydrogen chloride gas. A threshold of 0 kg means that all sales of hydrogen chloride gas would be regulated.

Before the MCA was passed, hydrogen chloride gas, also known as anhydrous hydochloric acid, was already a List II chemical under the CSA (21 CFR 1310.02(b)(8)). All domestic and import transactions, and exports, transshipments and international transactions, except those to all South American countries and Panama, have been exempt from regulatory controls under the CSA. Exports, transshipments and international transactions of hydrogen chloride gas to all South American countries and Panama above a threshold of 27 kilograms have been regulated transactions pursuant to 21 CFR 1310.08(b). These transactions became regulated due to the DEA having evidence that hydrogen chloride gas was being diverted from illicit channels to illicit channels for cocaine hydrochloride production in these countries. With the passage of the MCA, both domestic and international controls apply to hydrogen chloride gas.

The DEA is also including in this proposed **Federal Register** notice the reinsertion of the table in 21 CFR 1310.04(f)(2)(iv), listing thresholds for exports, transshipments, and international transactions to designated countries set forth in 1310.08(b). The DEA's final rule regarding implementation of the Domestic Chemical Diversion Control Act of 1993, published on June 22, 1995 [60 FR 32447] inadvertently omitted the table from the section.

The Deputy Assistant Administrator of DEA's Office of Diversion Control hereby certifies that this proposed rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Controls on iodine apply to iodine crystals. These controls do not pertain to common household products such as iodine tinctures of iodide salts. The proposed iodine rulemaking applies only to those companies manufacturing and distributing iodine in larger volumes. Recordkeeping requirements will not impact researchers or other end-users. Further, this proposed rule is not a significant regulatory action

pursuant to the criteria of Executive Order 12866, since the 0.4 kg iodine threshold does not affect small businesses and since there is not a large industry for hydrogen chloride gas. Therefore, this proposed rule has not been reviewed by the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1310 is proposed to be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is proposed to be amended by revising paragraph (b)(8) and adding paragraph (b)(11) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(b) List II chemicals:

* * * * *

(8) Hydrochloric acid (Including Hydrogen chloride gas)

* * * * *

(11) Iodine

* * * * *

3. Section 1310.04 is proposed to be amended by adding new paragraphs (f)(2)(ii) (H) and (I), and revising (f)(2)(iv) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(ii) Domestic Sales

Chemical	Threshold by volume	Threshold by weight
.	.	.
(H) Iodine ..	N/A	0.4 kilograms.
(I) Hydrogen chloride gas.	N/A	0.0 kilograms.

(iii) * * *

(iv) Exports, Transshipments and International Transactions to Designated Countries As Set Forth in § 1310.08(b).

Chemical	Threshold by volume	Threshold by weight
(A) Hydrochloric acid.	50 gallons ...	N/A.
(1) Hydrogen chloride gas.	N/A	27 kilograms.
(B) Sulfuric acid.	50 gallons ...	N/A.

* * * * *

4. Section 1310.08 is proposed to be amended by adding new paragraphs (f) and (g) to read as follows:

§ 1310.08 Excluded transactions

* * * * *

(f) Import and export transactions of iodine.

(g) Import transactions of hydrogen chloride gas.

Dated: July 21, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 97–25362 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–09–M

LEGAL SERVICES CORPORATION

45 CFR Part 1643

Restriction on Assisted Suicide, Euthanasia, and Mercy Killing

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This rule is intended to implement a new statutory restriction that amends the Legal Services Corporation Act ("LSC" or "Corporation") and is applicable to recipients of grants from the Legal Services Corporation. The restriction prohibits the use of LSC funds by recipients for legal or other assistance that would cause, assist in, advocate for, or fund assisted suicide, euthanasia, or mercy killing.

DATES: Comments should be received on or before October 30, 1997.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, (202) 336–8817.

SUPPLEMENTARY INFORMATION: The Assisted Suicide Funding Restriction Act of 1997 ("Assisted Suicide Act" or "Act"), Pub. L. 105–12, was enacted and became effective on April 30, 1997. Several provisions of the Assisted Suicide Act expressly apply to the Legal Services Corporation, one of which amends Section 1007(b) of the LSC Act, 42 U.S.C. 2996f(b)(11). This rule is intended to implement this legislation as it applies to the Corporation and its recipients.

Background and Summary of Law

The stated purpose of the Assisted Suicide Act is to maintain current Federal policy that Federal funds not be used to support, assist in, or advocate for assisted suicide, euthanasia or mercy killing. H. Rep. No. 46, 105th Cong., 1st Sess. at 3 (April 8, 1997). Although assisted suicide, euthanasia and mercy killing are illegal in almost all states, Congress was concerned that pending litigation might change the status quo and wanted to make it clear by legislation that, regardless of a change in State law, Federal policy would remain the same. H. Rep. at 3–4. Subsequent to the passage of the Act, the Supreme Court upheld as constitutional laws in the States of New York and Washington which prohibit assisted suicide and euthanasia. *See Vacco* v. *Quill*, 117 S. Ct. 2293 (1997); *Washington* v. *Glucksberg*, 117 S. Ct. 2302 (1997). The State of Oregon, on the other hand, adopted an initiative in 1996 that legalized physician-assisted suicide for competent, terminally ill adults. H. Rep. at 4. Court challenges have kept the law from going into effect and a new initiative to repeal the law will be on the ballot this November. See Associated Press, September 15, 1997 (1997 WL 2549490); *Lee* v. *Oregon*, 107 F.3d 1382 (9th Cir. Feb. 27, 1997); Petition for Certiorari Filed, 65 USLW 3783 (May 16, 1997) (No. 96–1824).

The Assisted Suicide Act applies to numerous Federally funded health care programs and facilities, such as Medicare, Medicaid, CHAMPUS and the veterans' and military health care systems. It also applies to certain legal aid and advocacy programs, including the Legal Services Corporation.

Section 9 of the Assisted Suicide Act amends Section 1007(b) of the LSC Act to provide that " No funds made available by the Corporation under this title, either by grant or contract, may be used * * * to provide legal assistance in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997." Section 5 of the Assisted Suicide Act sets out the restrictions as they apply to LSC funds by generally prohibiting the use of appropriated funds for legal or other assistance for the purpose of (1) securing or funding any

activity or service that would assist in or cause the suicide, euthanasia, or mercy killing of an individual; (2) compelling any person or entity to provide funding or service for such purposes; or (3) asserting or advocating a legal right to assisted suicide, euthanasia or mercy killing. Finally, Section 3(b) clarifies what activities are not included within the restrictions.

This proposed rule implements those sections of the Act that apply to the Corporation. A section-by-section analysis of this proposed rule is set out below.

Section 1643.1 Purpose

The purpose of this proposed rule is to ensure that LSC recipients do not use any LSC funds to engage in legal assistance activities inconsistent with the Assisted Suicide Act.

Section 1643.2 Definitions

The definitions in this section are all based primarily on the House Report for the Assisted Suicide Act and the common dictionary definitions of the terms. H. Rep. at 12; Random House Webster's College Dictionary (1997) ("Webster's"). Assisted suicide is defined as providing any means to another person to enable or assist that person to commit suicide. See Webster's at 80 (suicide aided by a person, esp. a physician, who organizes the logistics of the suicide). For example, if a doctor provided a person with a lethal drug overdose so that the person could commit suicide by ingesting the lethal overdose, the action of providing the drug overdose would constitute assisted suicide.

Euthanasia and mercy killing have the same meaning. The consistent use of both terms throughout the Act might suggest that they are two different activities. However, both the House Report and Webster's Dictionary give them the same meaning. Apparently, State laws commonly use the terms together or use one term or the other to mean the same activity.[1] Euthanasia and mercy killing are defined as the active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person who is killed consents to be killed. According to the House Report, such a death is often considered merciful because the person is deemed to be dying or suffering or the person is considered to be a burden on family, community or society. H. Rep. at 12.

Suicide is defined as the taking of one's own life voluntarily and intentionally and is included in this rule to clarify its meaning within the term assisted suicide.

Section 1643.3 Prohibition

This section prohibits the use of LSC funds by recipients for legal or other assistance for those activities delineated therein. Paragraph (a) prohibits a recipient from using LSC funds for any action that would cause or assist in causing the suicide, euthanasia or mercy killing of an individual. This would include, for example, providing a client with assistance to obtain the means of death or providing a client the financial means for death by suicide or euthanasia

Paragraph (b) prohibits the use of LSC funds for compelling any person or private or governmental entity to engage in the activities prohibited in paragraph (a). For example, a recipient could not provide legal assistance to a client for the purpose of suing a public or private hospital to permit the individual to receive assistance in committing suicide in its facilities.

Paragraph (c) implements Section 5(a)(3) of the Assisted Suicide Act and prohibits asserting or advocating a legal right to cause or assist in causing the suicide, euthanasia, or mercy killing of an individual. This means, for example, that legal assistance could not be provided to assert that a law or regulation prohibiting or regulating assisted suicide, euthanasia, or mercy killing is unconstitutional or otherwise in violation of the law. It would also prohibit any lobbying efforts to promote or advocate for passage of legislation that would legalize assisted suicide, euthanasia, or mercy killing.

Section 1643.4 Applicability

Paragraph (a) of this section is based on Section 3 (b) of the Assisted Suicide Act, which clarifies that the Act's restrictions do not apply to or affect any limitation relating to certain activities. Subparagraphs (a)(1) through (a)(3) clarify that the restrictions are intended to include the use of active means of causing death, such as by lethal injection or the provision of a lethal oral drug overdose, but do not apply to or affect any limitation relating to decisions to withhold or withdraw medical care, medical treatment, nutrition, or hydration. Nor do the restrictions apply to or affect limitations relating to abortion activities. This means that the Corporation's current restrictions on abortion activities are unaffected by this rule and are still in full force and effect in their current status, see 45 CFR § 1610.2 (a)(7) and (b)(10).

LSC recipients traditionally do not become involved in legal assistance in the area of assisted suicide or euthanasia, but they do provide legal assistance to clients in preparing advance directives, such as living wills and powers of attorney. The preparation of such documents will generally be unaffected by this rule, because the rule's restriction only applies to active means of causing death. Advance directives normally apply to passive actions, such as withholding or withdrawing nutrition or medical care. Only if an advance directive includes a directive to secure death by active means, that is, by assisted suicide, euthanasia or mercy killing, would it be restricted by this rule. This is unlikely since such actions are illegal in most States.

Subparagraph (a)(4) clarifies that the restriction does not include treatment aimed solely at alleviating suffering, even if the treatment has the unintended consequence of risking or shortening life. Thus, the restriction would not include the administration of morphine for the purpose of alleviating pain, even if its use might risk causing death or risk shortening life because it might also have the side effect of suppressing respiratory functions. The restriction, however, would include treatment that has a two-fold purpose of alleviating pain or discomfort and causing death.

Paragraph (b) clarifies that the prohibition on LSC funds does not apply to a recipient's non-LSC funds. Section 5 of the Assisted Suicide Act expressly applies the restriction only to "funds appropriated by Congress." This is also reflected in the House Report, which provides:

Section 5 is not intended to have the effect of de-funding an entire program, such as a Legal Services program or other legal or advocacy program, simply because some State or privately funded portion of that program may advocate for or file suit to compel funding or services for assisted suicide. This section is intended only to restrict Federal funds from being used for such activities.

House Report at 19–20. Recipients may have other Federal grants restricted by various provisions of the Assisted Suicide Act. This paragraph does not affect the recipient's obligation to comply with all the terms of such a grant. Although this rule restricts only the use of LSC grant funds, a recipient's other funds are still subject to any

[1] The terms are found in statutes from 45 States and the District of Columbia, which disapprove of euthanasia, mercy killing, suicide, or assisted suicide in their natural death/living will statutes, or in their durable power of attorney for health care acts. For citations to these statutes, see Relief or Reproach?: Euthanasia Rights in the Wake of Measure 16, 74 Oregon Law Review, 449, 462 notes 44 and 45 (Summer 1995).

restrictions that are included in other grant agreements.

Section 1643.5 Recipient Policies, Procedures and Recordkeeping

This section requires the recipient to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule. Recipients are also required to maintain sufficient documentation to demonstrate compliance with this part. The type of recordkeeping necessary to demonstrate compliance with this rule would be documentation that only non-LSC funds were used for any activities prohibited by this rule.

List of Subjects in 45 CFR Part 1643

Grants, Health Care, Legal Services, Lobbying.

For reasons set forth in the preamble, LSC proposes to amend Chapter XVI of Title 45 by adding part 1643 as follows:

PART 1643—RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING

Sec.
1643.1 Purpose.
1643.2 Definitions.
1643.3 Prohibition.
1643.4 Applicability.
1643.5 Recipient policies, procedures and recordkeeping.

Authority: Pub. L. 105–12; 42 U.S.C. 2996f (b)(11).

§ 1643.1 Purpose.

This part is intended to ensure that recipients do not use any LSC funds for any assisted suicide, euthanasia or mercy killing activities prohibited by this part.

§ 1643.2 Definitions.

(a) Assisted suicide means the provision of any means to another person with the intent of enabling or assisting that person to commit suicide.

(b) Euthanasia (or mercy killing) is the active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person killed consents to be killed.

(c) Suicide means the act or instance of taking one's own life voluntarily and intentionally.

§ 1643.3 Prohibition.

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

(a) Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;

(b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose; or

(c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

§ 1643.4 Applicability.

(a) The restriction in § 1643.3 shall not apply to or affect any limitation relating to:

(1) The withholding or withdrawing of medical treatment or medical care;

(2) The withholding or withdrawing of nutrition or hydration;

(3) Abortion; or

(4) The use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death.

(b) This part does not apply to activities funded with a recipient's non-LSC funds.

§ 1643.5 Recipient policies, procedures and recordkeeping.

The recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: September 25, 1997.

Suzanne B. Glasow,

Senior Assistant General Counsel.

[FR Doc. 97–25913 Filed 9–29–97; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 653 and 654

[Docket No. FTA–97–2925]

RIN 2132–AA56

Prevention of Prohibited Drug Use in Transit Operations; Prevention of Alcohol Misuse in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a request from a transit agency, the Federal Transit Administration (FTA) proposes to allow employers to use the results of post-accident drug and alcohol tests administered by State or local law enforcement personnel when the State and local law enforcement officials have independent authority for the tests and the employer obtains the results in conformance with State and local law. In short, in a very limited number of cases, the employer would be relieved of administering post-accident drug and alcohol tests. If this amendment is adopted, it could ease the burden of employers in testing "safety-sensitive" employees after an accident has occurred; it may also relieve some "safety-sensitive" employees from taking duplicative post-accident drug and alcohol tests.

DATES: Comments on this proposed rule must be submitted by December 1, 1997.

ADDRESSES: Written comments must refer to the docket number that appears above and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, S.W. Washington, D.C. 20590. All comments received will be available for inspection at the above address from 10 a.m. to 5 p.m., e.t. Monday through Friday, except Federal holidays. Those desiring the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments.

FOR FURTHER INFORMATION CONTACT: For program issues: Judy Meade, Director of the Office of Safety and Security (202) 366–2896 (telephone) or (202) 366–7951 (fax). For legal issues: Nancy Zaczek, Office of the Chief Counsel (202) 366–4011 (telephone) or (202) 366–3809 (fax). Electronic access to this and other rules may be obtained through FTA's Transit Safety and Security Bulletin Board at 1–800–231–2061 or through the FTA World Wide Web home page at http://www.fta.bts.gov; both services are available seven days a week.

SUPPLEMENTARY INFORMATION:

I. Background

On February 14, 1994, FTA issued 49 CFR parts 653 and 654, which require recipients of certain categories of FTA funding to test safety-sensitive employees for the use of five prohibited drugs and the misuse of alcohol. In addition to five other types of testing, not relevant to this discussion, the rules require employers to conduct post-accident testing of certain safety-sensitive employees within eight hours of the accident for the misuse of alcohol and within 32 hours for the use of prohibited drugs. (The standards for determining which "safety-sensitive" employees must be tested are set out in the rule and are not relevant to this discussion.) If an employer cannot test such employees within the specified time period, the rules require the employer to prepare and maintain a record stating why such test was not promptly administered.

On February 6, 1996, Mr. William Millar, as Executive Director of the Port Authority of Allegheny County (Port Authority), asked FTA to accept the results of a post-accident drug and alcohol test administered by a State or local law enforcement official or emergency medical personnel as meeting the requirements of FTA's drug and alcohol rules, in other words, to "federalize" these locally administered tests.

Mr. Millar's request was prompted by a collision between two buses that had occurred on January 12, 1996 on the Martin Luther King Busway in Pittsburgh, Pennsylvania. Mr. Millar described the accident as follows:

> At approximately 7:10 a.m., in adverse weather conditions, a bus traveling from [d]owntown Pittsburgh crossed the center line and collided with an inbound bus. The driver of the inbound vehicle was killed. The operator of the outbound bus was severely injured and taken to a local hospital for emergency surgery. He remained on the hospital's 'critical' list for approximately four days and underwent additional surgery.
>
> Due to the driver's medical condition and unconsciousness, Port Authority's Drug and Alcohol Program personnel were unable to conduct substance tests meeting federal standards. Nevertheless, it appears that blood tests were taken on both operators which could determine their use of alcohol or prohibited drugs. Reports from local law enforcement officials have revealed that neither driver had drugs or alcohol in their systems. However, if drugs or alcohol had been found, Federal regulations make clear that tests administered by either the hospital or law enforcement officials on the surviving bus operator would not have met [F]ederal standards, regardless of the quality of the hospital, the legality of the police investigation or the proficiency of the laboratories used to conduct the tests.

To remedy this situation, Mr. Millar suggested that FTA amend the regulations to allow a "post-accident medical emergency testing procedure," which would include

> (a) The permissible use by a public transit agency of a blood or urine sample drawn by hospital personnel and submitted by the transit agency to a laboratory certified by the Department of Health and Human Services when the blood or urine is collected: (i) in the course of routine medical procedures; or (ii) upon the request of law enforcement or regulatory personnel; or (iii) upon the request of authorized personnel of the transit agency's Drug and Alcohol Program[.]
>
> (b) The permissible use of blood or urine test results when said tests, whether initiated by hospitals or law enforcement personnel, meet the requirements of state law with respect to chain of custody of the samples and medical certification or expertise of the laboratories.

Mr. Millar further suggested that a post-accident medical emergency be presumed by the employer whenever, following an accident involving death or personal injury to any person:

> (a) A covered employee has reported to or been transported to a medical facility for the receipt of emergency medical care; or (b) a covered employee is a patient in a medical facility and is unconscious or substantially impaired to prevent testing by transit agency personnel.

II. FTA's Response

As Mr. Millar's letter illustrates, conducting post-accident tests within the timeframes specified by the rules is frequently difficult and sometimes impossible. FTA provided for this situation by allowing employers to prepare and maintain a record stating why a test was not promptly administered. Mr. Millar's letter, however, highlights a "gap" in FTA's rules; in some instances, an employer may not be able to test a "safety-sensitive" employee, although the employee has undergone drug and alcohol tests administered by local police or by medical personnel. Should the employer be able to use those results to meet the requirements of the rules, and if so, under what circumstances?

Mr. Millar suggested that an employer should be able to direct medical personnel to perform blood, breath, and urine tests on "safety-sensitive" employees who are receiving medical treatment after an accident has occurred. FTA, however, does not have the authority to require medical personnel to perform these tests; hence, we have not adopted this particular suggestion.

Mr. Millar further suggested that an employer be permitted to use the results of any tests performed by medical personnel as part of the routine post-accident medical examination of the "safety-sensitive" employee. Again, FTA does not have the authority to require medical personnel to provide the results of these tests to the employer. Hence, we do not propose to adopt this suggestion.

Mr. Millar also suggested that an employer use the results of any tests conducted by State or local law enforcement personnel as part of their accident investigation. This proposed amendment could strike a reasonable balance: the "safety-sensitive" employee is protected by the standards and procedures of State and local law, and the traveling public is protected by allowing the employer to use the test results, if necessary, to remove a "safety-sensitive" employee from his or her "safety-sensitive" position. However, it must be emphasized that the tests must be conducted in conformance with State and local law and the results be obtained by the employer in conformance with State and local law.

Although FTA proposes this change to the rules, we do not believe that employers would be able to use it frequently, based on the experience of the Federal Highway Administration (FHWA). Currently, FHWA allows employers to use the results of post-accident tests conducted by State or local law enforcement officials if the employer can obtain those results; because of privacy concerns, however, employers frequently cannot obtain them. Moreover, this rule, if adopted, could not provide an employer any authority to require the police to perform the tests for the employer or to give the employer the results of tests performed at the police's initiative.

In the few cases when the employer can obtain the results from the police, this amendment could be extremely useful. First, it would allow an employer to use the results of a blood test, which is not authorized under FTA's rules. Second, an employer could use the test results, so long as the test was administered in accordance with State or local law, which means that the employer is not obligated, in this very narrow class of cases, to follow the procedures specified in 49 CFR part 40. In other words, for these cases, State or local law would supersede part 40.

We seek comment on this proposed amendment.

III. Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no significant Federalism implications to warrant the preparation of a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities; allowing employers to use the results of a post-accident drug and alcohol test administered by or under the direction of State or local law enforcement personnel is unlikely to significantly increase the costs for employers.

List of Subjects in 49 CFR Parts 653 and 654

Alcohol testing, Drug testing, Grant programs—transportation, Mass transportation, Reporting and

recordkeeping requirements, Safety and transportation.

For the reasons set forth in the preamble, FTA proposes to amend Title 49 Code of Federal Regulations, part 653 and 654 as follows:

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority citation for part 653 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

§ 653.45 [Amended]

2. Section 653.45 is amended by adding paragraph (d) to read as follows:

* * * * *

(d) The results of a blood or urine test for the use of prohibited drugs, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer.

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

3. The authority citation for part 654 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.52.

§ 654.33 [Amended]

4. Section 654.33 is amended by adding paragraph (d) to read as follows:

* * * * *

(d) The results of a blood or breath test for the misuse of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State, or local testing requirements, and that the results of the tests are obtained by the employer.

Issued on: September 24, 1997.

Gordon J. Linton,

Administrator.

[FR Doc. 97–25742 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–57–U

Notices

Federal Register

Vol. 62, No. 189

Tuesday, September 30, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 97–056–6]

Declaration of Extraordinary Emergency Because of the Mediterranean Fruit Fly

A serious outbreak of the Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), has occurred in Florida.

The Mediterranean fruit fly is one of the most destructive pests of over 200 species of fruits, nuts, and vegetables, especially citrus and stone fruits. The pest can develop rapidly and spread easily, causing severe damage to entire citrus and other fruit and vegetable growing areas. At least 43 countries are known to regulate in some manner for the Mediterranean fruit fly.

As of August 1997, infestations of the Mediterranean fruit fly had been found in portions of Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL. The presence of this fruit fly in the continental United States could severely disrupt the fruit and vegetable industry due to the loss of export markets. The Florida agricultural industry, worth an estimated $6 billion annually, is based on continued trade in international markets. According to industry sources, in 1996 the value of Florida citrus exports, in fresh and juice form, was estimated at approximately $940 million.

Control and eradication of Mediterranean fruit fly is difficult. Management of the pest is through quarantine and containment of regulated articles. Initial emergency action was taken by the State of Florida and the Animal and Plant Health Inspection Service (APHIS). Since shortly after the first Mediterranean fruit fly was detected in Hillsborough County, FL, on May 28, 1997, APHIS and the State of Florida have been conducting a coordinated program to eradicate this fruit fly infestation in Florida. The program, which involves trapping, malathion bait spray treatments, sterile fly releases, and restrictions on the movement of Mediterranean fruit fly host material, has proven successful. The last detection of the pest came on August 26, 1997, in Polk County, FL. Additional treatments, followed by a period of intensive trapping, are still necessary to complete the program. However, on September 19, 1997, a State administrative law judge in Florida ruled that several of the emergency regulations under which the State's eradication program has operated were invalid. Without such regulations, the State of Florida is unable to continue to take action necessary to control and eradicate the Mediterranean fruit fly in Florida.

This infestation of Mediterranean fruit fly represents a threat to United States fruit and vegetable crops. It constitutes a real danger to the national economy and seriously burdens interstate and foreign commerce. Therefore, the U.S. Department of Agriculture has determined that an extraordinary emergency exists because of the existence of Mediterranean fruit fly in Florida and the inability of the State of Florida to continue to take action necessary to control and eradicate it.

Therefore, in accordance with 7 U.S.C. 150dd, this declaration of extraordinary emergency authorizes the Secretary to: (1) Seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as the Secretary deems appropriate, any product or article of any character whatsoever, or means of conveyance that the Secretary has reason to believe is infested with or contains Mediterranean fruit fly; and (2) quarantine, treat, or apply other remedial measures to, in such manner as the Secretary deems appropriate, any premises, including articles on such premises, that the Secretary has reason to believe are infested with Mediterranean fruit fly. The Governor of Florida has been informed of these facts.

Effective Date: This declaration of extraordinary emergency shall become effective September 24, 1997.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 97–25857 Filed 9–29–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[PY–97–007]

United States Grade Standards for Poultry and Rabbits

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is soliciting comments on its proposal to change the United States Grade Standards for Poultry. Specifically, AMS proposes to change existing grade standards for boneless parts, skinless carcasses and parts, and boneless, skinless parts. New grade standards would be added for ready-to-cook (raw), boneless, skinless drumsticks and legs; and raw size-reduced boneless, skinless products. AMS proposes also to clarify existing standards for defeathering by detailing specific feather tolerances for grades A-B-, and C-quality carcasses and parts. Additionally, AMS proposes to terminate the authority to grade-identify boneless, skinless products under three tentative standards that were used to develop the proposed new grade standards. From time to time, sections in the standards are affected by changes in poultry processing technology and marketing. This notice updates the standards to reflect these changes.

DATES: Comments must be received on or before December 1, 1997.

ADDRESSES: Written comments may be submitted to Douglas C. Bailey at the Standardization Branch, Poultry Division, AMS, USDA, Room 3944-South Bldg., STOP 0259, 1400 Independence Avenue, SW, Washington, D.C. 20250–0259; or faxed to (202) 690–0941.

All comments received will be available for public inspection during regular business hours (8 a.m.–4:30 p.m. eastern time).

The current United States Grade Standards for Poultry and Rabbits, along with the proposed changes, are available either through the above address or by accessing AMS's Internet site at: www.ams.usda.gov/standards/standpy.htm.

FOR FURTHER INFORMATION CONTACT: Contact Rex A. Barnes at (202) 720–3271.

SUPPLEMENTARY INFORMATION: Poultry grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.*, and is offered on a fee-for-service basis. Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *" AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities.

On December 4, 1995, the Voluntary United States Grade Standards for Poultry and Rabbits were removed from the Code of Federal Regulations (CFR) as part of the National Performance Review program to eliminate unnecessary regulations and to improve those that remain in force. AMS will continue to administer the voluntary standards, maintaining their existing numbering system, and will make copies of the official standards available upon request. The United States Grade Standards for Poultry are now referred to as AMS 70.200 *et seq.* and the United States Grade Standards for Rabbits are now referred to as AMS 70.300 *et seq.*

On March 30, 1995, June 12, 1995, and February 15, 1996, AMS published in the **Federal Register** tentative standards for: (1) Raw boneless, skinless legs and drumsticks; (2) raw boneless, skinless products, without added ingredients; and (3) cooked boneless, skinless products, without added ingredients, respectively.

The tentative standards for raw and cooked products have been in effect for over a year, permitting the determination of production requirements, the evaluation of consumer acceptance, and the collection of other necessary data.

Processor feedback has indicated that they are pleased with the marketing capabilities of grade-identified raw products under the tentative standards. The Agency received no requests to grade product under the cooked boneless, skinless product tentative standard, and little feedback about the cooked standard.

In response to findings from the use of tentative standards and feedback from industry and graders responsible for applying the standards, AMS proposes to change the standards for poultry to include raw boneless, skinless legs, drumsticks, and size-reduced products. The proposal would also allow the use of clear to semi-clear marinades and sauces for grade-identified products, provided the ingredients do not alter the applicable grade factors or detract from the appearance of the product. At the same time, AMS would terminate the authority for the use of the three tentative standards.

AMS proposes to add poultry tenderloins and wing portions to the standards and make each eligible for grade identification. Tenderloins would be identified as grade A-quality; and wing portions would be identified as grade A-, B-, or C-quality parts. The current standards cover these parts, but do not clearly define how each part is cut.

The proposal would update the feather criteria in grade A-, B-, and C-quality poultry carcasses and parts and grade A-quality poultry roasts. Current standards require that poultry either be "free of feathers" or possess only a few feathers when examined at normal grading speeds. The proposed standards would specify the number and length of protruding feathers allowed on poultry for each grade, and limit the length of hair and/or down permitted on ducks and geese. The proposal reflects the Agency's actual grading interpretation and practices, and does not require a change in existing procedures.

The following proposed changes would extend additional flexibility in the marketing of grade identified poultry products:

(1) The standards for boneless parts would be revised to include drumsticks and legs, address boneless, skin-on parts only, and exclude tenderloins. Tenderloins and other boneless, skinless parts, and their respective requirements, would be covered under a proposed new section. This change organizes requirements for each product type by section and makes the standards clearer and more "user friendly."

(2) For trimming of boneless, skinless poultry legs and drumsticks, the proposed standard would require at least one-half of the drumstick and leg remain intact, and the part need no longer retain the meat yield of the original part. This change was revised from requirements in the tentative standard which were not based on the Agency's long-standing policy that parts must be in recognizable portions for identification purposes and that the "one-half" requirement provides a minimum relationship to the meat yield.

(3) A proposed new section for grade A-quality tenderloins and other whole muscle boneless, skinless parts would update current criteria by: (a) Including all such parts; (b) allowing only slight discolorations on the flesh; and (c) requiring parts to be free of bone, cartilage, blood clots, bruises, cuts, tears, and holes.

The following proposed changes would establish standards for size-reduced poultry products:

(1) Requirements for Grade A-quality raw size-reduced boneless, skinless products in the form of sliced, diced, and other similarly cut poultry products would be added to the standards. To date, the standards have only addressed raw poultry carcasses, parts, and roasts.

(2) The section title under the tentative standard would be revised from "Ready-to-Cook, Boneless-Skinless Poultry Products, Without Added Ingredients" to "Size-Reduced Poultry Products." This change clarifies that this section covers size-reduced poultry products exclusively.

(3) The requirements for the "size-reduced" section would be revised from the tentative standards to require uniformity in product size and shape to be dictated by the size-reduction process. This change is necessary because it is improbable that all products of this nature would be uniform, especially since new technology, including slicing and dicing procedures, will constantly be improved, advanced, and discovered.

(4) Requirements for products labeled "sliced (part)" would be added to the standards. The product will consist of the specific part (such as breast, thigh, etc.) indicated. Additionally, these products shall: (a) Originate from the slicing of the boneless, skinless part and (b) collectively approximate the shape of the original part prior to slicing. Further, the slices need not come from the same part. These requirements are consistent with current guidelines for cut-up chickens labeled as "whole chicken, cut-up," where all parts need not come from the same chicken.

Other miscellaneous changes are proposed to remove obsolete material and otherwise clarify, update, simplify, and technically correct the standards. These changes to the poultry grade standards are editorial or housekeeping in nature and impose no new requirements.

Dated: September 24, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 97–25918 Filed 9–29–97; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–091–1]

AgrEvo USA Co.; Receipt of Petition for Determination of Nonregulated Status for Canola Genetically Engineered for Glufosinate Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for canola designated as Transformation Event T45, which has been genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this canola presents a plant pest risk.

DATES: Written comments must be received on or before December 1, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–091–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–091–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James Lackey, Biotechnology Evaluation, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On July 24, 1997, APHIS received a petition (APHIS Petition No. 97–205–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for canola (*Brassica napus* L.) designated as Transformation Event T45 (event T45), which has been genetically engineered for tolerance to the herbicide glufosinate. The AgrEvo petition states that the subject canola should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, event T45 canola has been genetically engineered to contain the *pat* gene derived from *Streptomyces viridochromogenes*. The *pat* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. Expression of the *pat* gene is controlled by the 35S promoter and terminator derived from the plant pathogen cauliflower mosaic virus. The *Agrobacterium tumefaciens* method was used to transfer the added genes into the parental cultivar *B. napus* var. AC EXCEL.

Event T45 canola has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pests. The subject canola has been field tested in Canada since 1995, and in the U.S. since 1996 under APHIS permits. In the process of reviewing the permit applications for field trials of this canola, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination. Event T45 canola has been approved for commercial sale in Canada.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U. S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. AgrEvo has begun consultation with FDA on the subject canola.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of AgrEvo's event T45 canola, and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 24th day of September 1997.

Terry L. Medley,

Aministrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–25858 Filed 9–29–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On June 20, 1997, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers nine producers/exporters of subject merchandise. The period of review is November 1, 1995, through October 31, 1996.

We gave interested parties an opportunity to comment on the preliminary results. Since we received no comments from interested parties, the final results are the same as our preliminary results. The final dumping margin is listed below the section entitled *"Final Results of the Review."*

EFFECTIVE DATE: September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Andrea Chu or Robin Gray, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to19 CFR Part 353 (April 1997).

Background

On June 20, 1997, the Department published the preliminary results of administrative review (62 FR 33601) of the antidumping duty order on fresh garlic from the PRC (November 16, 1994, 59 FR 59209). Because we determined that one named respondent, Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd., failed to submit a complete response to our questionnaire and the remaining named respondents failed to respond at all to our questionnaires, we preliminarily determined to use facts otherwise available for cash deposit and assessment purposes for all PRC producers/exporters of the subject merchandise. We received no comments from interested parties on our preliminary results.

We have conducted this administrative review in accordance with section 751 of the Tariff Act.

Scope of the Review

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing and level of decay.

The scope of this order does not include: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Final Results of the Review

As a result of our review, we determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise from the PRC for the period November 1, 1995 through October 31, 1996.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) for all PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 376.67 percent; and (2) for other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1997).

Dated: September 11, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–25784 Filed 9–29–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Western Michigan University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–053. *Applicant:* Western Michigan University, Kalamazoo, MI 49008–5167. *Instrument:* Electron Energy Analyzer. *Manufacturer:* Scienta Instrument AB, Sweden. *Intended Use:* See notice at 62 FR 40334, July 28, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides highest energy resolution of 5.0 meV with resolving power to 1500. The National Institute of Standards and Technology and Brookhaven National Laboratory advised on May 27, 1997 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–25785 Filed 9–29–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 970829215–7215–01]

RIN 0648–ZA34

NOAA Pan-American Climate Studies (PACS), Program Announcement

AGENCY: Office of Global Programs, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Pan-American Climate Studies (PACS) Program is a contribution to the National Oceanic and Atmospheric Administration (NOAA) Climate and Global Change Program, and as such is designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. This program builds on NOAA's mission requirements and longstanding capabilities on global change research and prediction. The PACS Program is a contributing element of the U.S. Global Change Research Program (USGCRP), which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agency contributions to that national effort. The PACS Program has a timeframe of 1995–2004.

DATES: Strict deadlines for submission to the FY 1998 process are: Letters of intent must be received at OGP no later than Friday, October 3, 1997. Full proposals must be received at OGP no later than Friday, December 5, 1997. Applicants who have not received a response to their letter of intent by Friday, October 17, 1997 should contact Michael Patterson at, 301–427–2089 ext. 12, patterson@ogp.noaa.gov; Andrea Ray, 303–497–6000, ajr@cdc.noaa.gov; or Roxane Ronca, 301–427–2089 ext. 507, ronca@ogp.noaa.gov. We anticipate that review of full proposals will occur during early 1998 and funding should begin during the spring of 1998 for most approved projects. May 1, 1998, should be used as the proposed start date on proposals, unless otherwise directed by a program manager. Applicants should be notified of their status within 6 months. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

ADDRESSES: Proposals may be submitted to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5603, Attn.: Michael Patterson.

FOR FURTHER INFORMATION CONTACT: Michael Patterson at the above address, 301–427–2089, ext. 12, patterson@ogp.noaa.gov; Andrea Ray, 303–497–6000, ajr@cdc.noaa.gov; or Roxane Ronca, 301–427–2089, ext. 507, ronca@ogp.noaa.gov.

SUPPLEMENTARY INFORMATION:

Funding Availability

This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, over a period of up to three years. Actual funding levels will depend upon the final FY 1998 budget appropriations, current plans are for approximately $1.2 million to be available for new (or renewing) PACS awards. The funding instrument for extramural awards will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between NOAA or NOAA scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. NOAA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement. Matching share is not required by this program.

Program Authority

Authority: 49 U.S.C. 44720(b); 33 U.S.C. 883d, 883e; 15 U.S.C. 2904; 15 U.S.C. 2931 et seq.

(CFDA No. 11.431)—Climate and Atmospheric Research

Program Objectives

The overall goal of PACS is to extend the scope and improve the skill of operational seasonal-to-interannual climate prediction over the Americas. Particular emphasis is placed on understanding the mechanisms associated with warm season rainfall and its potential predictability. In addition to seasonal mean rainfall and temperature, PACS is concerned with the frequency of occurrence of significant weather events over the course of a season or seasons.

The scientific objectives of PACS are to promote a better understanding and more realistic simulation of (1) The role of boundary processes in forcing of seasonal-to-interannual climate variability over the Americas, (2) the structure and evolution of tropical SST fields, (3) the seasonally varying mean climate over the Americas and adjacent ocean regions, (4) the structure, variability, and influence on climate in the Americas of the ITCZ/cold tongue complex and subtropical status cloud decks, (5) the relevant land surface processes that shape the distribution of continental precipitation.

Consistent with the above objectives, PACS has initiated an integrated program with the GEWEX Continental-Scale International Project (GCIP) focusing on warm season rainfall over North America. In this collaboration, PACS will supply the larger-scale ocean/atmosphere modeling and diagnostics expertise and the observations in and above the oceans and GCIP will provide the more locally focused land/atmosphere modeling and diagnostics and continental observations. This research will require the use of mesoscale models applied in a climatological setting. Proposals in this emerging research area are invited under this announcement.

Program Priorities

The FY 1998 PACS Program Announcement invites empirical and modeling studies in the following areas:

(1) Investigations into large-scale atmosphere-ocean interactions in the tropical Atlantic and eastern Pacific in the context of the climatological-mean annual march and/or seasonal-to-interannual climate variability.

(2) Investigations into the climatological mean and interannual variability of warm season rainfall over the Americas on Spatial scales ranging from tens to thousands of kilometers, emphasizing links between that variability and the adjacent oceans. Field, monitoring, and/or observational efforts are not encouraged at this time. PACS intends to invite proposals for a field program in the FY 1999 Announcement as a U.S. contribution to an international field program in the tropical Eastern Pacific to be conducted in 2000.

Eligibility

Extramural eligibility is not limited and is encouraged with the objective of developing a strong partnership with the academic community. Non-academic proposers are urged to seek collaboration with academic institutions. Universities, non-profit organizations, for profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement. Funding for non-U.S. institutions is not available under this announcement.

Letters of Intent

Letters of Intent (LOI): (1) Letters should be no more than two pages in length and include the name and institution of principal investigator(s), a statement of the problem, brief summary of work to be completed, and approximate cost of the project. (2) Evaluation will be by program management. (3) It is in the best interest of applicants and their institutions to submit letters of intent; however, it is not a requirement. (4) Facsimile and electronic mail are acceptable for letters of intent only. (5) Projects deemed unsuitable during LOI review will not be encouraged to submit full proposals.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address one of the Program Priorities listed below and meet the following evaluation criteria:

(1) Scientific Merit (20%): Intrinsic scientific value of the subject and the study proposed.

(2) Relevance (20%): Importance and relevance to the goal of the Climate and Global Change Program and to the research areas listed above.

(3) Methodology (20%): Focused scientific objective and strategy, including measurement strategies and data management considerations; project milestones; and final products.

(4) Readiness (20%): Nature of the problem; relevant history and status of existing work; level of planning, including existence of supporting documents; strength of proposed scientific and management team; past performance record of proposers.

(5) Linkages (10%): Connections to existing or planned national and international programs; partnerships with other agency or NOAA participants, where appropriate.

(6) Costs (10%): Adequacy of proposed resources; appropriate share of total available resources; prospects for joint funding; identification of long-term commitments.

Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by (1) independent peer mail review, and/or (2) independent peer panel review; both NOAA and non-NOAA experts in the field may be used in this process. Their recommendations and evaluations will be considered by the program managers in final selections. Those ranked by the panel and program as not recommended for funding will not be given further consideration and will be notified of non-selection. For the proposals rated either Excellent, Very Good or Good, the program managers will: (a) ascertain which proposals meet the objectives, fit the criteria posted, and do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other federal agencies, hence, awards may not necessarily be made to the highest-scored proposals, (b) select the proposals to be funded, (c) determine the total duration of funding for each proposal, and (d) determine the amount of funds available for each proposal.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Full Proposals

(1) Proposals submitted to the NOAA Climate and Global Change Program must include the original and two unbound copies of the proposal. (2) Investigators are not required to submit more than 3 copies of the proposal, however, the normal review process requires 20 copies. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5 x 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. (3) Proposals must be limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for one to three year duration. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. (4) Proposals should be sent to the NOAA Office of Global Programs at the above address. (5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(b) Required Elements

All proposals should include the following elements:

(1) Signed title page: The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigator(s), total proposed cost and budget period.

(3) *Results from prior research:* The results of related projects supported by NOAA and other agencies should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency, award number, PIs, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) *Statement of work:* The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and the program priorities listed above. Benefits of the proposed project to the general public and the scientific community should be discussed. A year-by-year summary of proposed work must be included clearly indicating that each year's proposed work is severable and can easily be separated into annual increments of meaningful work. The statement of work, including references but excluding figures and other visual materials, must not exceed 15 pages of text. Investigators wishing to submit group proposals that exceed the 15 page limit should discuss this possibility with the appropriate program officer prior to submission. In general, proposals from 3 or more investigators may include a statement of work containing up to 15 pages of overall project description plus up to 5 additional pages for individual project descriptions.

(5) *Budget:* Applicants must submit a Standard Form 424 (4–92) "Application for Federal Assistance", including a detailed budget using the Standard Form 424a (4–92), "Budget Information—Non-Construction Programs". The form is included in the standard NOAA application kit. The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Additional text to justify expenses should be included as necessary.

(6) *Vitae:* Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(7) *Current and pending support:* For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(8) *List of suggested reviewers:* The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposal. Such lists may be considered at the discretion of the program officers.

(c) Other Requirements

(1) Applicants may obtain a standard NOAA application kit from the Program Office.

Primary Applicant Certification—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying". Applicant are also hereby notified of the following:

1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

(1) Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure Form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(2) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(3) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover preaward costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations", and 15 CFR Part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and

Local Governments", as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(5) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) a negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(8) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change Program. The NOAA Climate and Global Change Program does not have direct TDD (Telephonic Device for the deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800–735–2258, between the hours of 8:00 am–4:30 pm.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: September 23, 1997.

J. Michael Hall,

Director, Office of Global Programs, National Oceanic and Atmospheric Administration.

[FR Doc. 97–25781 Filed 9–29–97; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

September 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 56523, published on November 1, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 24, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 28, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 2, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit
331	531,568 dozen pairs.
338/339	1,423,057 dozen of which not more than 755,394 dozen shall be in Category 338 and not more than 839,904 dozen shall be in Category 339.
347/348	1,121,818 dozen of which not more than 631,654 dozen shall be in Category 347 and not more than 491,287 dozen shall be in Category 348.
604	976,975 kilograms.
631	619,405 dozen pairs.
639	3,790,643 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–25799 Filed 9–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Futures Contracts in Corn and Soybeans; Proposed Disapproval of Exchange Listing for Trading of January 1999 Soybean Futures Contract and March 1999 Corn Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of, and Request for Public Comment on, Proposed Disapproval of Contract Listing and Proposed Disapproval and Proposed Order to Change and to Supplement Chicago Board of Trade Proposal on Contract Specifications.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has issued a Proposed Order to the Board of Trade of the City of Chicago ("CBT"), under sections 5a(a)(10) and 15 of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(a)(10) and 19, to change and to supplement its proposal regarding the delivery terms of the CBT corn and soybean futures contracts. Notice of the Commission's Proposed Order was published in the **Federal Register** on Monday, September 22, 1997. 62 FR 49474. The Proposed Order proposed a number of changes and supplements to the CBT proposal for its corn and soybean futures contracts. The Commission also proposed to disapprove, to change and to supplement the terms of the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts proposed by the CBT.

The Commission has become aware that the Board of Trade of the City of Chicago (CBT) notified its members on September 19, 1997, of its intent to propose listing for trading the January 1999 soybean futures contract and the March 1999 corn futures contract. By letter dated September 23, 1997, the Commission notified the CBT that the Commission is proposing under sections 5a(a)(10), 5a(a)(12), 8a(7) and 15 of the Act to disapprove the listing for trading and to disapprove, to change and to supplement the terms of the January 1999 soybean futures contract and the March 1999 corn futures contract on the same basis and for the same reasons as it has determined in its Proposed Order of September 15, 1997, to propose to disapprove, to change and to supplement the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts.

The Commission has determined that publication of the notice to the CBT proposing to disapprove the listing and to disapprove, to change and to supplement the terms of the January 1999 soybean futures contract and the March 1999 corn futures contract is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comment must be received by October 22, 1997.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to "Corn and Soybean Delivery Points—Additional Delivery Months."

FOR FURTHER INFORMATION CONTACT: John Mielke, Acting Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, Mr. Architzel at [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION: Section 5a(a)(10) of the Act provides that as a condition of contract market designation, boards of trade are required to:

permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market an opportunity to make appropriate changes in such rules and regulations. If the contact market within seventy-five days fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * *.

The Commission, on September 15, 1997, issued a Proposed Order under sections 5a(a)(10) and 15 of the Act to change and to supplement the proposal of the CBT relating to the delivery specifications of the corn and soybean futures contracts. That proposal was submitted in response to prior Commission notification to the CBT that its futures contracts for corn and soybeans no longer were in compliance with the requirements of section 5a(a)(10) of the Act. The text of the Proposed Order was published in the **Federal Register**, and public comment was requested thereon. 62 FR 49474 (September 22, 1997).

The Commission has become aware that the CBT notified its members on September 19, 1997, of its intent to propose listing for trading of the January 1999 soybean futures contract and the March 1999 corn futures contract. By letter dated September 23, 1997, the Commission notified the CBT that it is proposing under sections 5a(a)(10), 5a(a)(12), 8a(7) and 15 of the Act to disapprove the listing for trading and to disapprove, to change and to supplement the terms of the January 1999 soybean futures contract and the March 1999 corn futures contract on the same basis and for the same reasons as it has determined in its Proposed Order of September 15, 1997, to propose to disapprove, to change and to supplement the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts.

A public hearing on the Proposed Order has been scheduled for October 15, 1997, (or at an earlier date if the CBT requests) at the Commission's Washington, D.C. office. The CBT also will have an opportunity at that public hearing to make an oral presentation before the Commission on the matters raised in this notice to disapprove the listing and to disapprove, to change and to supplement the January 1999 soybean futures contract and the March 1999 corn futures contract. The Commission will also accept written comments from the CBT on this issue on or before the date of the hearing. The text of this notification is as follows:

September 23, 1997.

Mr. Patrick Arbor,

Chairman of the Board, Board of Trade of the City of Chicago, 141 W. Jackson Blvd., Chicago, Illinois 60604–2994.

Re: Proposed Disapproval of Exchange Listing for Trading of January 1999 Soybean Futures Contract and March 1999 Corn Futures Contract

Dear Mr. Arbor: The Commission is aware that the Board of Trade of the City of Chicago (CBT) notified its members on September 19, 1997, of its intent to propose listing for trading the January 1999 soybean futures contract and the March 1999 corn futures contract.

The Commodity Futures Trading Commission (Commission) hereby notifies the CBT that listing the above contract months is not consistent with the abbreviated review provisions of Commission rule 1.41(l), 17 CFR 1.41(l), and will be subject to the usual review and approval procedures under section 5a(a)(12) of the Commodity Exchange Act (Act) and rule 1.41(b). Commission rule 1.41(l) provides that all changes in contract months shall be deemed approved by the Commission ten days after notice of the change is received by the Commission if consistent with the Act and the Commission's regulations.[1]

The Commission, by letter dated December 19, 1996, notified the CBT that the delivery terms of its corn and soybean futures contracts are not consistent with the requirements of section 5a(a)(10) of the Act. In its December 19, 1996 notification, the Commission stated:

[i]n light of the Commission's determination that the CBT's futures contracts in corn and soybeans no longer comply with the requirements of section 5a(a)(10) of the Act, the CBT should refrain from listing additional months for trading in those contracts during the pendency of these proceedings.

61 FR 67998, 67999 (December 26, 1997).

On September 15, 1997, the Commission issued a proposed Order to change and to supplement the CBT's response to the December 19, 1996 section 5a(a)(10) notice and to disapprove, to change and to supplement the terms proposed by the CBT for the July and December 1999 corn and July and November 1999 soybean futures contracts, which were listed by the CBT without Commission approval. The Commission has notified the CBT under the proposed Order that the CBT will have an opportunity to be heard by the Commission on October 15, 1997, or sooner if the CBT requests.

The delivery specifications intended by the CBT to be applicable to the January 1999 soybean futures contract and the March 1999 corn futures contract are the same as those that the Commission proposed to disapprove for application to the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts in its Proposed Order of September 15, 1997. Listing additional delivery months under either the contract terms found by the Commission to violate the provisions of section 5a(a)(10) or under proposed terms on which the Commission already has taken action proposing disapproval is not consistent with the provisions and policies of the Act. The Commission proposes to disapprove the listing of these contract months on those grounds.

Because the Commission finds that listing these trading months is not consistent with Commission rule 1.41(l) and that Commission review and approval under section 5a(a)(12) and rule 1.41(b) is required prior to their listing, their listing for trading by the CBT is not legally authorized at the present time. Moreover, the Commission proposes under sections 5a(a)(10), 5a(a)(12), 8a (7) and 15 of the Act to disapprove the listing for trading and to disapprove, to change and to supplement the terms of the January 1999 soybean futures contract and the March 1999 corn futures contract on the same bases and for the same reasons as it has stated in its December 19, 1996 notification and its Proposed Order of September 15, 1997.

A public hearing on the Proposed Order of September 15, 1997, has been scheduled for October 15, 1997, (or at an earlier date if the CBT requests) at the Commission's Washington, D.C. office. The CBT also will have an opportunity at that public hearing to make an oral presentation before the Commission on the matters raised in this notice to disapprove the listing and to disapprove, to change and to supplement the January 1999 soybean futures contract and the March 1999 corn futures contract. The Commission will also accept written comments from the CBT on this issue on or before the date of the hearing.

The Commission also reserves all of its authority under the Act to bring appropriate legal action against the CBT for the violation of section 5a(a)(12) of the Act and Commission rules 1.41(b) and 1.41(l) which require the CBT to obtain approval by the Commission prior to listing new delivery months for trading. Such reservation of authority relates to the January, July and November 1999 soybeans futures contracts and the March, July and December 1999 corn futures contracts, as well as any contract months CBT attempts to list without prior approval hereafter.[2] As the Commission noted in its Proposed Order of September 15, 1997, the Commission is prepared to approve immediately the listing of delivery months which incorporate the Commission's proposed changes and supplements.

The Commission hereby instructs the CBT that it must notify all market participants that the Commission has not approved the listing of these contract months as required by law and that the Commission has proposed to disapprove the listing and to disapprove, to change and to supplement the terms proposed by the CBT.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

The Commission has determined that publication of this Proposed Disapproval of Contract Listing and Proposed Order to Disapprove, to Change and to Supplement the Chicago Board of Trade Proposal on Contract Specifications relating to the January 1999 soybean futures contract and the March 1999 corn futures contract for public comment will assist the Commission in its consideration of these issues. Accordingly, the Commission is requesting written comments from interested members of the public.

Issued in Washington, D.C., this 23rd day of September, 1997, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25779 Filed 9–29–97; 8:45 am]

BILLING CODE 6351–01–P

[1] Commission rule 1.41(l) provides, in part, that:

Notwithstanding the provisions of paragraph (b) of this section, all changes in trading months shall be deemed approved by the Commission ten days after written notice of such a change is received by the Commission if:

(i) The change is consistent with a rule of the contract market governing the listing of trading months which has been approved by the Commission, and with the Act and the Commission's regulations; * * *.

[2] In this regard, the Commission notes that the listing of contract months under the current contract terms prior to the December notification's finding that the contracts' terms are in violation of section 5a(a)(10) of the Act is fundamentally different from the listing of trading months after such a finding has been made.

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science & Technology Panel Review of Air Force Research Laboratory (AFRL), in support of the HQ USAF Scientific Advisory Board, will meet in Dayton, OH on November 3–7, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information, receive briefings and review AFRL.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–25887 Filed 9–29–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science and Technology (S&T) Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet at ANSER, Arlington, VA on December 2–3, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–25888 Filed 9–29–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Notification of the U.S. Army Freedom of Information Act (FOIA) Electronic Reading Room on the Internet

AGENCY: U.S. Army.

ACTION: Notice.

SUMMARY: In compliance with the Freedom of Information Act, as amended by the "Electronic Freedom of Information Act Amendments of 1996", the United States Army has implemented an Electronic Reading Room. The Electronic Reading Room may be accessed on the World Wide Web at the following Internet address: http://www.rmd.belvoir.army.mil/err.htm

FOR FURTHER INFORMATION CONTACT: Questions regarding the Freedom of Information Act should be addressed to Rose Marie Christensen, phone (703) 607–3377, Chief, Department of the Army Freedom of Information/Privacy Acts Office, Suite 201, 1725 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act requires that records described in Title 5 U.S.C. Section 552(a)(2) (A), (B), (C), and (D) created on or after November 1, 1996 shall be made available electronically by November 1, 1997. These electronic records will be released in the Electronic Reading Room and are available for public review 24 hours a day.

Eric E. Tolbert,

Chief, Records Management Program Services.

[FR Doc. 97–25932 Filed 9–29–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patent Application for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: U.S. Army Chemical and Biological Defense Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 announcement is made of the availability for licensing of U.S. Patent application for non-exclusive, exclusive, or partially exclusive licensing. The patent application listed below has been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

Title: Rapidly Deployable, Man-Portable, Inflatable, Chemical, Biological, Radiological & Explosive Containment System.

Description: This invention relates to a relatively light weight containment system which can be used to contain or mitigate the effects of explosively disseminated chemical and/or biological devices.

Patent Application Number: 08/871,665.

Filing Date: June 9, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. John Biffoni, Patent Attorney, U.S. Army CBDCOM, AMSCB–GC, APG, MD 21010–5423, Phone (410) 671–1158.

SUPPLEMENTARY INFORMATION: Written objections must be filed on or before October 30, 1997.

Gregory D. Showalter,

Army Federal Register, Liaison Officer.

[FR Doc. 97–25933 Filed 9–29–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

RIN 1850–ZA01

21st Century Community Learning Centers Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Secretary proposes priorities for the 21st Century Community Learning Centers Program, administered by the Office of Educational Research and Improvement (OERI). The Secretary may use these priorities in fiscal year 1998 and subsequent years. The Secretary takes this action to focus Federal assistance on stimulating and expanding significant learning programs available to children and youth beyond regular school hours. The proposed absolute priority is also designed to ensure wide and effective use of program funds to support centers that provide expanded learning opportunities for children and youth in a safe and drug-free environment, and engage the support of citizens in those efforts. The proposed competitive priorities concern serving early adolescents and middle school students and services related to core academic subjects.

DATES: Comments must be received on or before November 14, 1997.

ADDRESSES: All comments concerning the proposed priority should be addressed to Dr. Robert Stonehill, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, Room 504, Washington, DC 20208–5644. Comments may also be sent by fax (202–219–2198) or e-mail (robert__stonehill@ed.gov).

FOR FURTHER INFORMATION CONTACT: Carol J. Mitchell or Amanda Clyburn, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, Room 504, Washington, DC 20208–5644. E-mail addresses are: carol__j.__mitchell@ed.gov or amanda__clyburn@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The 21st Century Community Learning Centers Act authorizes the Secretary to award grants to rural and inner-city public elementary or secondary schools, or consortia of such schools, to enable them to plan, implement, or expand projects that benefit the educational, health, social service, cultural and recreational needs of a rural or inner-city community.

A Community Learning Center established in a local public school can, among other things, be a stimulating, safe, supervised and cost-effective after-school, weekend or summer haven for

children and youth—and their families. As reported in the recent Department of Education publication Keeping Schools Open as Community Learning Centers: Extending Learning in a Safe, Drug-free Environment Before and After School, recent research shows that a stimulating environment of this type can improve thinking and language performance of participating children and youth. Research also indicates that these programs reduce crime, delinquency, and victimization of children and youth. However, although the number of after-school child care programs has grown over the last 20 years, there are still far too few communities that offer effective, organized and extended opportunities for learning outside the regular school day. Of the 49,000 before- and after-school programs available in the U.S. in 1991, only about a third were housed in public schools. And, for in-school and out-of-school care programs, only a tiny percent served older children and youth. In 1995, there were 23.5 million school-age children with parents in the workforce. But as recently as the 1993–94 school year, only 3.4 percent of children in public elementary and combined schools were enrolled in any of the estimated 18,000 before- or after-school programs at public schools. Seventy percent of all public elementary and combined schools did not have before- or after-school programs.

The needs and demands are clear: a 1994 survey of parents found that 56 percent think that many parents leave their children alone too much after school, and a 1989 survey of school principals found that 84 percent agreed that there is a need for before- and after-school programs. But even though the number of after-school programs is growing, the demand is growing faster, as thousands of parents who currently care for their children during the day are encouraged to enter the workforce.

After-school programs are well positioned to reduce the incidence of drug use and violence and their detrimental effects on learning. Research by the Federal Bureau of Investigation indicates that the hours between 3 and 6 p.m. are when youth aged 12 to 17 are most at risk of committing or of being victims of violent acts. After-school programs located at Community Learning Centers will give youth a safe and supervised place to go during these hours. For that reason, the Secretary is proposing a competitive priority for those applicants for Community Learning Centers that will serve early adolescents and middle-school students.

Priorities

The proposed absolute priority supports centers that have a goal of providing learning opportunities for students in a safe and drug-free environment. For example, before- and after-school programs can be a place in which tutors provide reading help to younger children or in which mentors guide older children to take challenging mathematics and science courses that pave the way to college, and help them succeed in those courses. However, programs applying for assistance are required to carry out at least four of the activities listed in section 10905 of the Elementary and Secondary Education Act (20 U.S.C. 8245), and should propose an array of inclusive and supervised services that include extended learning opportunities (such as enriched instruction, tutoring or homework help) but may also include safety and drug-free interventions; recreational, musical and artistic activities; and opportunities to use advanced technology, particularly for those children who do not have access to computers or telecommunications at home. Although the proposed absolute priority requires that children and youth be served, applicants may propose projects that also serve and involve other members of the community.

The proposed priorities authorize the Department to give a preference to applicants that propose to serve the academic needs of participating children and youth. These can include services that will assist students who need additional support to master reading and literacy skills, both by directly providing reading services as well as tutoring and mentoring programs in supervised locations. For younger children who are not reading as well as they should, Community Learning Centers can provide extended time in which to overcome the obstacles that have in the past prevented them from becoming good readers. The proposed priorities will also encourage schools to develop strategies to address the needs of students who can benefit from additional enrichment or challenge in mathematics or science, or who are not performing as well as they should. Community learning centers can provide extended hours for students to learn and review basic concepts they may have missed during class, to delve deeper into a more challenging curriculum, or to participate in enjoyable hands-on activities and experiments.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the content of the final priorities, the quality of the applications received, and the requirements in the law for equitable representation nationally and within states of rural and inner-city programs. The first cycle of awards will be made from fiscal year 1998 funds. If applications of high quality remain unfunded, additional awards may be made in fiscal year 1999, pending availability of funds. The publication of the proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities. If you would like your name to be put on a mailing list to receive an application package, you may fax your request to Annie Thompson at (202) 219–2198, or e-mail it to her at: annie__ thompson@ed.gov.

Proposed Absolute Priority

Under 34 CFR 75.105 (c)(3), the Secretary proposes to give an absolute preference to applications that meet the proposed absolute priority in the next paragraph. The Secretary proposes to fund under this competition only applications that meet this absolute priority.

Activities to Expand Learning Opportunities

The Secretary proposes to fund *only* those applications for 21st Century Community Learning Centers grants that include, among the array of services required and authorized by the statute, activities that offer significant expanded learning opportunities for children and youth in the community and that contribute to reduced drug use and violence.

Proposed Competitive Priorities

Under 34 CFR 75.105 (c)(2)(i), the Secretary proposes to give preference to applications that meet one or both of the two competitive priorities in the next two paragraphs. The Secretary proposes to give up to five (5) points for each competitive priority addressed in an application (for a maximum of 10 points if an application addresses both competitive priorities). These points would be in addition to any points the application earns under the selection criteria which will be published in the application package.

Proposed Competitive Priority 1—Projects that propose to serve early adolescents and middle-school students.

Proposed Competitive Priority 2—Projects designed to assist students to meet or exceed state and local standards in core academic subjects such as reading, mathematics or science, as appropriate to the needs of the participating children.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, the Secretary has determined that the benefits of the proposed priorities justify the costs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed priorities without impeding the effective and efficient administration of the program.

Summary of Potential Costs and Benefits

There are no identified costs associated with this notice of proposed priorities. Announcement of the priorities will not result in costs to State and local governments or to recipients of grant funds.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this notice of proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 504, 555 New Jersey Avenue, NW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m. Eastern Time, Monday through Thursday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed priorities. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m., and 8 p.m., Eastern time, Monday through Friday.

Electronic Access to this Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf), on the World Wide Web at either of the following sites:

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8241–8247.

(Catalog of Federal Domestic Assistance Number 84.287, 21st Century Community Learning Centers Program)

Dated: September 19, 1997.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–25917 Filed 9–29–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4097–000]

Bangor Hydro Electric Company; Notice of Filing

September 24, 1997.

Take notice that on September 3, 1997, Bangor Hydro Electric Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 7, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25809 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–529–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 24, 1997.

Take notice on September 17, 1997, Chandeleur Pipe Line Company (Chandeleur), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Tariff Sheet No. 43, to be effective October 1, 1997.

Chandeleur states that the filing is being made to comply the Commission's Order 636C; Order on Remand.

Chandeleur states that copies of the filing are being served on its customers, state commissions and interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426,

in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25817 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–525–000]

CNG Transmission Corporation; Notice of Section 4 Filing

September 24, 1997.

Take notice that on September 17, 1997, CNG Transmission Corporation (CNG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of service on line H–13805 in Sherman District, Calhoun County, West Virginia.

CNG states that it is selling this line to Pocono Energy Corporation. CNG further states that no contract for transportation service with CNG will be canceled or terminated as a result of the proposed abandonment of service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. Under section 154.210 of the Commission's Regulation, all such motions or protests should be filed on or before September 29, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25816 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–743–000]

Columbia Gas Transmission Corporation; Notice of Application

September 24, 1997.

Take notice that on September 10, 1997, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed an abbreviated application pursuant to Section 7(b) of the Natural Gas Act seeking permission to abandon its Justus, Gore, Utica, Coshocton, and Swan Compressor Stations, including all associated equipment, appurtenances and buildings. All of these facilities are located in Ohio.

Columbia states the facilities proposed for abandonment were constructed as gas supply facilities to compress locally produced gas into Columbia's pipeline system for delivery to various markets in Ohio. Due to a decline in the production and Columbia's termination release program of producer contracts, the stations proposed for abandonment are no longer needed and uneconomical to operate.

Columbia estimates the cost of retiring associated with these stations to be $210,100 with an estimated net debit to accumulated provision for depreciation of $1,619,250.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 15, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25804 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–34–003]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 24, 1997.

Take notice that on September 19, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1, bearing an effective date of November 1, 1997:

First Revised Sheet No. 500B

On July 31, 1997, Columbia filed with the Federal Energy Regulatory Commission (Commission) an original tariff sheet that referenced Columbia's service agreement with the West Ohio Gas Company. By the Commission's letter order issued August 26, 1997, in these proceedings, the Commission accepted the filing. However, the West Ohio Gas Company has merged with the East Ohio Gas Company and assumed the name of the East Ohio Gas Company. The instant filing reflects the name change from the West Ohio Gas Company to the East Ohio Gas Company on the tariff sheet identifying the service agreement.

Columbia states that copies of this filing have been mailed to all of its customers, affected state regulatory commissions, and all parties to this proceeding, and in Docket No. RP95–408. This filing is also available for public inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia; and 700 Thirteenth Street, NW., Suite 900, Washington, DC.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, Dockets Room, Office of the Secretary, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. A copy of this filing is on file with the Commission and is available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25810 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–762–000]

East Tennessee Natural Gas; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 19, 1997, East Tennessee Natural Gas (East Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP97–762–000 a request pursuant to Sections 157.205, 157.212(a), and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212(a), and 157.216(b) for authorization to modify the Coatney Road Measurement Station (Coatney Rd. Station) and to abandon the existing portable rotary meter station which serves Knoxville Utilities Board (KUB), a local distribution company, all in Knox County, Tennessee, under the blanket certificate issued in Docket No. CP82–412–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee states that the existing meter at the Coatney Rd. Station is rated for only 275 psig. East Tennessee notes that KUB has a pressure regulation station located immediately downstream of the Coatney Rd. Station which is designed and constructed for East Tennessee's mainline pressure of 640 psig. According to East Tennessee, KUB has requested that the Coatney Rd. Station be at 640 psig. In order to meet KUB's request, East Tennessee proposes to perform the following modifications to the Coatney Rd. Station: (1) Replace the existing portable measurement and regulation station which includes removing screwed pipe; (2) relocate approximately sixteen feet of two-inch diameter piping between East Tennessee and KUB from above ground to underground; (3) install one Energy Economics high pressure positive displacement meter; (4) install a block valve and a by-pass valve; (5) replace the existing shelter with a new shelter which will be approximately 10'L x 10' W x 8'H; and (6) install new meter run piping which is two-inch diameter piping that would extend approximately five feet on each side of the meter.

East Tennessee estimates that cost that it will pay for the project will be $98,000. East Tennessee contends that it will own, operate and maintain the facilities. East Tennessee asserts that there will be no impact on peak or annual deliveries because it is not proposing to increase KUB's maximum contract quantity. East Tennessee states it has attached copies of its blanket clearance letters from the U.S. Fish and Wildlife Service and the Tennessee Historical Commission. Additionally, East Tennessee states that it sent a notification of the request to the Tennessee Public Service Commission of the proposed abandonment of this facility. East Tennessee states that the proposal is not prohibited by an existing tariff, and East Tennessee has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers. East Tennessee submitted the letter dated September 11, 1997 from KUB to East Tennessee, in which KUB notes its consent to the abandonment of the old meter.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulation under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25807 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–732–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 8, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP97–732–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct, own, and operate a new delivery point, located in Vermilion Parish, Louisiana, under FGT's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct, own, and operate a delivery point in Vermilion Parish, Louisiana, to accommodate FGT's transportation and delivery of gas, on an interruptible basis, to Magnum Gas Marketing, Inc. (Magnum) to serve the City of Kaplan. FGT states the proposed delivery point will include 2-inch tap, approximately 25 feet of 2-inch pipeline, electronic flow measurement (EFM) equipment, and any related appurtenant facilities necessary for FGT to deliver up to 600 Mcf per day into Magnum's meter station.

FGT declares Magnum has elected to construct their meter station and to reimburse FGT for all costs directly and indirectly incurred for the construction of the tap, connecting pipe, and EFM equipment. FGT states the proposed delivery point is estimated to cost $39,800 inclusive of tax gross-up.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25801 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–297–002]

Florida Gas Transmission Company; Notice of Refund Report

September 24, 1997.

Take notice that on September 19, 1997, Florida Gas Transmission Company ("FGT") tendered for filing with the Federal Energy Regulatory Commission a report of transition cost recovery ("TCR") refunds distributed to FGT's eligible shippers on August 29, 1997. In compliance with the Commission's Letter Order dated July 29, 1997 in Docket No. RP97–297–001, FGT allocated a total refund of $1,349,573.55, including interest through the refund date, on a pro rata basis based on actual recoveries from FGT's shippers during the month of April, 1997, the month in which the TCR overcollections occurred.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25815 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–531–000]

Florida Gas Transmission Company; Notice of Filing

September 24, 1997.

Take notice that on September 19, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheet:

Fourth Revised Sheet No. 131
Sixth Revised Sheet No. 132
Second Revised Sheet No. 133

FGT states that it proposes two changes in order to achieve the original purpose of the Cash-Out provisions as contained in Section 14.B of the General Terms and Conditions of FGT's tariff. First, FGT proposes that the Cash-Out indices be modified such that: (1) For imbalances due FGT the Posted Price equal the highest of the monthly average spot prices for Mustang Island (Tivoli), Vermilion Parish or St. Helena Parish, as reported in Natural Gas Week, and (2) for imbalances due the Imbalance Party the Posted Price equal the lowest of the monthly average spot prices for Mustang Island (Tivoli), Vermilion Parish or St. Helena Parish, as reported in Natural Gas Week. FGT believes that these changes may work to achieve a portion of the previous price premium of the St. Helena Parish over the Mustang Island (Tivoli). In addition, FGT proposes that the Imbalance Level Factors for imbalance levels of up to 5% be modified such that: (1) For imbalances due FGT the Imbalance Level Factor be increased from the current 1.00 to 1.05 and (2) for imbalances due the Imbalance Party, the Imbalance Level Factor be decreased from 1.00 to 0.95. FGT believes that modification of the Imbalance Level Factor is required because the differential between the high index and low index may be very small and therefore insufficient to discourage gaming. FGT believes that absent the proposed changes, FGT's Cash-Out provisions no longer provide a disincentive for shippers to swing on FGT's system line pack.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25819 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–161–009]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

September 24, 1997.

Take notice that on September 17, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 1, 1997:

Sixth Revised Sheet No. 47
Original Sheet No. 47A
First Revised Sheet No. 50A
Second Revised Sheet No. 57A
Second Revised Sheet No. 57B
Original Sheet No. 57C

Seventh Revised Sheet No. 59
Fifth Revised Sheet No. 60
First Revised Sheet No. 64A
First Revised Sheet No. 64B
Second Revised Sheet No. 106
Third Revised Sheet No. 120

In addition, Iroquois also tendered the following sheet to become effective June 1, 1997:

Substitute Original Revised Sheet No. 64B

Iroquois states that the primary purpose of filing all these sheets, except Substitute Original Sheet No. 64B, is to comply with the Commission's June 27, 1997 Order in this docket accepting Iroquois' pro forma tariff sheets. Substitute Original Sheet No. 64B is being filed because Iroquois discovered that, in making tariff filings in compliance with previous Commission orders in this docket, it had inadvertently filed two Original Sheets No. 64B, each with only part of the text that should have been included on that sheet. Substitute Original Sheet No. 64B includes all of the text from those two sheets on one substitute original sheet. No other changes were made on this sheet.

Iroquois also states that copies of this filing were served upon all customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25814 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–116–006]

Koch Gateway Pipeline Company; Notice of Compliance Filing

September 24, 1997.

Take notice that on September 19, 1997, Koch Gateway Pipeline Company ("Koch") tendered for filing the following tariff sheets in its FERC Gas Tariff, Fifth Revised Volume No. 1, to be effective January 1, 1997:

Fifth Revised Volume No. 1

Substitute Third Revised Sheet No. 1410
Substitute Fourth Revised Sheet No. 1411
Eighth Revised Sheet No. 1412
Substitute First Revised Sheet No. 1413
Second Revised Sheet No. 1414

Koch is submitting the above-referenced tariff sheets pursuant to the Commission's Letter Order dated September 16, 1997, regarding Docket No. RP97–116–005. As directed, Koch has revised the tariff sheets to allow Customers requesting new firm transportation thirty (30) days to execute a service agreement under certain circumstances.

Koch also states that it has served copies of this filing upon each person on the official service list complied by the Secretary in the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protest must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25813 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–530–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 24, 1997.

Take notice that on September 19, 1997, Koch Gateway Pipeline Company ("Koch") tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective October 19, 1997:

Fifth Revised Volume No. 1

Third Revised Sheet No. 1702
Sixth Revised Sheet No. 1907
Fourth Revised Sheet No. 1908
Second Revised Sheet No. 4010
1st Rev Sixth Revised Sheet No. 5200

Koch states that the above referenced tariff sheets are being submitted to make minor miscellaneous changes to its tariff. The changes include correction of typographical errors, and revising tariff references to reflect new Section numbers.

Koch also states that copies of the instant filing have been served upon each affected customer, state commissions, and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25818 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–737–000]

Mississippi River Transmission Corporation; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 8, 1997, Mississippi River Transmission Corporation (MRT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP97–737–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate certain facilities in Sauget, Illinois, under MRT's blanket certificate issued in Docket No. CP82–489–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, MRT proposes to install and operate a 4-inch tap to serve an industrial customer, Industrial Products, Inc., (Industrial Products), in St. Clair, Illinois. MRT states that the total estimated volumes to be delivered to these facilities are 500,000 MMBtu annually and 3,500 MMBtu on a peak day. The estimated total cost of the facilities is $102,965, and Industrial Products will reimburse MRT all of the actual construction costs.

Any person or the Commission's staff may, within 45 days after issuance of

the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25803 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–67–003]

Montaup Electric Company; Notice of Filing

September 24, 1997.

Take notice that on August 29, 1997, Montaup Electric Company tendered for filing Revised sheets Nos. 45, 59 and 50 to its open access transmission filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25811 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–757–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 17, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP97–757–000 a request pursuant to Sections 157.205, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon points of delivery in Allegany County, New York under National Fuel's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, National Fuel proposes to abandon seven points of delivery which provide service to seven residential gas customers of National Fuel Gas Distribution Corporation. National Fuel states that these points of delivery are located along non-jurisdictional production pipelines that will be conveyed to Alma Gas Company, Inc who will assume service obligations to these customers following the conveyance of these facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25805 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3559–000]

Niagara Mohawk Power Corporation; Notice of Filing

September 24, 1997.

Take notice that on August 6, 1997, Niagara Mohawk Power Corporation tendered for filing a Certificate of Concurrence in the above referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25808 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–730–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 8, 1997, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP97–730–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a tap in Hughes County, Oklahoma to serve ARKLA, a division of NorAM Energy Corp. (ARKLA), under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, NGT proposes to construct and operate a 2-inch delivery tap and first-cut regulator to serve ARKLA. NGT says the tap will be installed on its Line 2–AD in Section 36, Township 5 North, Range 9 East, Hughes County, Oklahoma. NGT indicates that ARKLA will install the domestic meter setting. NGT relates that the estimated volumes to be delivered to this tap are approximately 160 MMBtu annually and 1 MMBtu on a peak day. NGT states that the tap and first-cut regulator are to be constructed at an estimated cost of $2,600.00 and that ARKLA will reimburse NGT the cost of construction.

NGT states that it will transport gas to ARKLA and provide service under its tariff; that the volumes delivered are within ARKLA's certificated entitlement; and that NGT's tariff does not prohibit the addition of new delivery points. NGT says it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25800 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–734–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 8, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska, 68124–1000, filed in Docket No. CP97–734–000 a request pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.212) for approval to install and operate a new delivery point located in Clark County, South Dakota, to accommodate interruptible natural gas deliveries to Northwest Public Service Company (NWPS), under Northern's blanket certificate authority issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to install and operate the proposed new delivery point to accommodate natural gas deliveries to NWPS under currently effective throughput service agreements. Northern asserts that NWPS has requested the proposed facility for service to four grain dryers and three Hutterite Colonies who have not previously been served by natural gas. Northern further asserts that the estimated volumes of natural gas to be delivered to NWPS at the proposed point are 1,020 MMBtu on a peak day and 52,000 MMBtu on an annual basis. Northern states that the estimated cost to construct the new delivery point is $67,000, which NWPS will reimburse Northern.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25802 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–759–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 18, 1997, Northern Natural Gas Company (Northern), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed in Docket No. CP97–759–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon 17 small volume measuring stations, located in Iowa and Nebraska, under Northern's blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to abandon 17 small volume measuring stations due to requests from its end-users for the removal of the measuring station from their property. Northern states the facilities to be abandoned are located in Dickinson, Lyon, and O'Brien Counties, Iowa and Dakota, Gaye, and Lancaster Counties, Nebraska.

Northern asserts the facilities to be abandoned are jurisdictional facilities under the Natural Gas Act and were constructed pursuant to superseded Section 2.55 regulations, budget, or blanket authority, depending on the year the facilities were originally placed in-service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25806 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory System

[Docket Nos. RP96–189–002 and TM98–1–73–002 (not consolidated)]

Ozark Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

September 24, 1997.

Take notice that on September 19, 1997, Ozark Gas Transmission System (Ozark) filed to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with respective July 1, 1997, and October 1, 1997, effective dates:

First Revised Fifteenth Revised Sheet No. 4
Second Substitute Sixteenth Revised Sheet No. 4

Ozark states that it is filing to revise this rate sheet to reflect: (1) Reduced rates effective July 1, 1997, in compliance with article I of the Stipulation and Agreement approved by the Commission in Docket No. RP96–189–000 on September 16, 1997; and (2) the new Commission-approved Annual Charge Adjustment (ACA) rate that will take effect on October 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25812 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–121–000, et al.]

Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 24, 1997.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER97–121–000]

Take notice that on September 4, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc. and Kansas City Power & Light Co.

[Docket No. EC97–56–000]

Take notice that on September 18, 1997, Western Resources, Inc. (Western Resources), and Kansas City Power & Light Co. (KCPL) (collectively, Applicants), filed, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824 (1988), and part 33 of the Commission's Regulations, 18 CFR part 33, an application for an order authorizing and approving a proposed merger to combine their jurisdictional facilities. After obtaining the necessary regulatory approvals, Western Resources will acquire all of the jurisdictional facilities of KCPL and KCPL's affiliated power marketer, Northwest Power Marketing Company, through a tax-free, stock-for-stock transaction between Western Resources and KCPL. KCPL will become a division of Western Resources, with its headquarters remaining in Kansas City, Missouri.

The Applicants have submitted testimony and other evidence in support of the request that the merger be approved. In a separate filing, the Applicants have submitted an open access transmission tariff which will provide comparable service on the merged system at single system rates.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Company

[Docket No. ER97–4044–000]

Take notice that on September 12, 1997, Wisconsin Power and Light Company (WPL) tendered for filing a request to withdraw its filing in Docket No. ER97–4044–000 and a request that the firm and non-firm point-to-point transmission service agreements filed in Docket No. ER96–614–000 be redesignated as an agreement under WPL's transmission tariff pursuant to WPL's August 15, 1997, filing in Docket No. OA96–20–000.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of New Mexico

[Docket No. ER97–4289–000]

Take notice that on August 20, 1997, Public Service Company of New Mexico (PNM), submitted for filing executed service agreement for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff with the following transmission service customers: Williams Energy Services Company (2 agreements, dated May 28, 1997 for Non-Firm Service and Short Term Firm Service), Coral Power, L.L.C. (dated May 19, 1997 for Non-Firm Service), Citizens Lehman Power Sales (dated February 18, 1997 for Short Term Firm Service), Federal Energy Sales, Inc. (dated July 11, 1997 for Non-Firm Service), Vitol Gas & Electric L.L.C. (2 agreements dated June 25, 1997 for Short Term Firm Service and Non-Firm Service), Kansas City Power & Light Co. (dated July 15, 1997 for Non-Firm Service), Constellation Power Source, Inc. (dated July 21, 1997 for Non-Firm Service), and Western Resource, Inc. (dated July 22, 1997 for Non-Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER97–4422–000]

Take notice that on September 9, 1997, Cinergy Services, Inc., tendered an amendment in the above-referenced docket.

Comment date: October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. MidAmerican Energy Company

[Docket No. ER97–4555–000]

Take notice that on September 9, 1997, MidAmerican Energy Company (MidAmerican) tendered for filing changes to its Open Access Transmission Tariff (OATT) for the purpose of offering Market Access Service (MAS).

MidAmerican states that MAS will be an unbundled retail access service available to certain retail industrial and commercial customers of MidAmerican in Iowa. Such service will be offered through OATT changes filed in this proceeding and Price Schedule MAS which has been filed by MidAmerican with the Iowa Utilities Board (IUB) in compliance with the Settlement Agreement approved by the IUB in its Docket Nos. APP–96–1 and RPU–96–8. MidAmerican further states that Phase I of MAS, or a portion thereof, will be considered an experimental retail transmission program of short duration as described in the Commission's order in Portland General Electric Company, 78 FERC ¶61,219 (1997).

MidAmerican proposes an effective date of November 8, 1997, for the rate schedule. MidAmerican has requested the IUB to make Price Schedule MAS effective on the same date.

Copies of the filing were served on all customers having service agreements under the MidAmerican OATT, the IUB, the Illinois Commerce Commission, the South Dakota Public Utilities Commission and all parties to IUB Docket Nos. APP–96–1 and RPU–96–8.

Comment date: October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER97–4568–000]

Take notice that on September 9, 1997, Niagara Mohawk Power Corporation (Niagara Mohawk) filed a Request for Approval of (1) a Form Transmission Service Agreement for service under Niagara Mohawk's Open Access Transmission Tariff, as filed with the Commission and as modified by an Offer of Settlement that is pending before the Commission in Docket No. OA96–194–000, and (2) a Form Power Sales Agreement for service under Niagara Mohawk's Market-Based Rate Power Sales Tariff, as filed with the Commission in Docket No. ER96–2585–000.

These Service Agreements are for use in a retail access pilot program that was ordered by the New York State Public Service Commission in Case No. 96–E–0948, and are necessary to implement those components of the pilot program that are subject to the jurisdiction of this Commission. Niagara Mohawk seeks waiver of certain provisions of its Open Access Transmission Tariff for the limited purposes of the pilot program.

A copy of this filing has been served on the New York State Public Service Commission and on the parties to New York Public Service Commission Case No. 96–E–0948.

Comment date: October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. De Pere Energy L.L.C.

[Docket No. ER97–4586–000]

De Pere Energy L.L.C. (De Pere) petitioned the Commission on September 11, 1997, for acceptance for filing of the power purchase agreement between De Pere and Wisconsin Public Service Corporation and to accept the rates thereunder as just and reasonable under Section 205(a) of the Federal Power Act, 16 U.S.C. § 824d(a); for the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and for the waiver of certain Commission Regulations. De Pere is a limited liability company that proposes to engage in the wholesale sale of electric power in the state of Wisconsin and is headquartered in Northbrook, Illinois.

Comment date: October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc. and Kansas City Power & Light Company

[Docket No. ER97–4669–000]

Take notice that Western Resources, Inc. (Western Resources), and Kansas City Power & Light Company (KCPL) (collectively Applicants), on September 18, 1997, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824b (1988), and Part 35 of the Commission's Regulations, 18 CFR part 35, tendered for filing a proposed transmission tariff to provide open-access transmission service on their merged system at single-system rates. The filing was made in connection with a separate filing for authorization and approval of the proposed merger of Western Resources and KCPL. Applicants request that the proposed tariff become effective contemporaneous with the consummation of their proposed merger.

Copies of this filing were served upon the Applicants' jurisdictional customers, intervenors in proceedings involving each of the Applicants' Order Nos. 888 and 888–A compliance filings, and upon the affected state public service commissions.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Consumers Energy Company

[Docket No. OA97–721–000]

Take notice that on September 8, 1997, Consumers Energy Company (Consumers) tendered a compliance filing unbundling amendment to its Coordinated Operating Agreement with the City of Holland covering transactions from January 1, 1997 through August 30, 1997. A copy of the filing was served on the Michigan Public Service Commission and the City of Holland.

Comment date: October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25914 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER94–1377–000, et al.]

Delmarva Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

September 23, 1997.

Take notice that the following filings have been made with the Commission:

1. Delmarva Power & Light Company

[Docket No. ER94–1377–000]

Take notice that on August 8, 1997, Delmarva Power & Light Company, Public Service Electric and Gas Company, and Old Dominion Electric Cooperative jointly filed an offer of settlement in this proceeding. The three entities filing the offer of settlement describe it as a settlement of all issues in the proceeding.

Comment date: October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Sierra Pacific Power Company

[Docket No. ER97–4462–000]

Take notice that on September 2, 1997, Sierra Pacific Power Company

(Sierra Pacific), filed its compliance filing in the above-captioned docket pursuant to the Commission's July 31, 1997 omnibus compliance order regarding the filing of transmission service agreements.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER97–4463–000]

Take notice that on August 28, 1997, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively referred to as NSP), hereby submits an amendment to its Electric Services Tariff.

NSP requests this amendment be made effective September 1, 1997.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Texas Utilities Electric Company

[Docket No. ER97–4464–000]

Take notice that on August 29, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing one transmission service agreement (TSA) under which TU Electric will provide transmission service to Tex-La Electric Cooperative of Texas, Inc. under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on the customer and the Public Utility Commission of Texas.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Power and Light Company

[Docket No. ER97–4465–000]

Take notice that on September 2, 1997, Wisconsin Power and Light Company (WPL), tendered for filing Form Of Service Agreements for short-Term Firm and Non-Firm Point-to-Point Transmission Service establishing Wisconsin Power and Light Company as a point-to-point transmission customer under the terms of WPL's transmission tariff.

WPL requests effective dates of July 9, 1996, through April 13, 1997, and; accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. MidAmerican Energy Company

[Docket No. ER97–4466–000]

Take notice that on September 2, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing pursuant to the Commission's Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures in Allegheny Power Systems, Inc., et al., 80 FERC ¶61,143 (1997), various service agreements entered into under MidAmerican's Open Access Transmission Tariff (OATT) by MidAmerican, as transmission provider, with MidAmerican, as wholesale merchant. These service agreements cover MidAmerican's use of its transmission system under the OATT commencing on July 9, 1996.

The filing includes a Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement between MidAmerican, as transmission provider, and MidAmerican, as wholesale merchant. The filing also includes Network Integration Transmission Service Agreements between MidAmerican, as transmission provider, and MidAmerican, as wholesale merchant for the Iowa Cities of Auburn, Breda, Buffalo, Callender, Carlisle, Denver, Eldridge, Estherville, Fonda, Hudson, Indianola, Lake View, Livermore, Neola, Pocahontas and Wall Lake.

As required by the Commission's order in Allegheny Power, MidAmerican proposes an effective date of July 9, 1996 for each of the service agreements.

Copies of the filing were served on all parties in Docket No. OA96–42–000.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER97–4467–000]

Take notice that on September 2, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and ENRON Power Marketing, Inc. (ENRON).

Cinergy and ENRON are requesting an effective date of July 29, 1997.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company Of New York, Inc.

[Docket No. ER97–4469–000]

Take notice that on September 2, 1997, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the Village of Freeport (Freeport).

Con Edison states that a copy of this filing has been served by mail upon Freeport.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company Of New York, Inc.

[Docket No. ER97–4470–000]

Take notice that on September 2, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the Village of Rockville Centre (Rockville).

Con Edison states that a copy of this filing has been served by mail upon Rockville.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company Of New York, Inc.

[Docket No. ER97–4471–000]

Take notice that on September 2, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the Village of Greenport (Greenport).

Con Edison states that a copy of this filing has been served by mail upon Greenport.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Central Maine Power Company

[Docket No. ER97–4472–000]

Take notice that on September 2, 1997, Central Maine Power Company (CMP), tendered for filing a form of service agreement for Non-Firm Local Point-to-Point Transmission Service entered into with itself. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc., The Cincinnati Gas & Electric Co. and PSI Energy, Inc.

[Docket No. ER97–4473–000]

Take notice that on September 2, 1997, Cinergy Services, Inc. (Cinergy), on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., filed its compliance filing in the above-captioned docket.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. The Washington Water Power Company

[Docket No. ER97–4474–000]

Take notice that on September 2, 1997, The Washington Water Power Company, tendered for filing the 1997 Agreement For The Hourly Coordination of Projects on the Mid-Columbia River entered into as of July 1, 1997. WWP requests as effective date of November 1, 1997.

A copy of this filing has been mailed to each of the parties to the 1997 Agreement for Hourly Coordination of Projects on the Mid-Columbia River.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Black Hills Power & Light Company

[Docket No. ER97–4475–000]

Take notice that on September 2, 1997, Black Hills Corporation, doing business as and operating its electric utility under the name Black Hills Power and Light Company, tendered for filing a revised tariff sheet, Attachment E, Index of Point-to-Point Transmission Service Customers, to its open access transmission tariff.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Interstate Power Company

[Docket No. ER97–4476–000]

Take notice that on August 28, 1997, Interstate Power Company (IPW) hereby submits forms of service agreements by which IPW provides service to itself under IPW's compliance tariff (Docket No. OA96–213–000). Also submitted are corrected attachments previously submitted under the same Order.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Pacific Gas and Electric Company

[Docket No. ER97–4477–000]

Take notice that on August 29, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing a Form of Service Agreement with itself for Non-Firm Point-to-Point Transmission Service under PG&E's Open Access Tariff filed in compliance with FERC Order No. 888-A and with FERC's Order in Docket OA96–18–000, et al.

Copies of this filing have been served upon the California Public Utilities Commission and all other parties listed in the official Service List compiled by the Federal Energy Regulatory Commission (Commission) in Docket No. OA96–28–000.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Western Resources, Inc.

[Docket No. ER97–4478–000]

Take notice that on August 29, 1997, Western Resources, Inc.(Western Resources), tendered for filing the required forms of service agreements for non-firm point-to-point and network transmission service. Agreements for firm point-to-point service required by the utility have been and will continue to be filed for each transaction requiring such service.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Central Hudson Gas & Electric Corporation

[Docket No. ER97–4479–000]

Take notice that on September 2, 1997, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Central Hudson Gas & Electric Corp. (as transmission customer). The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM97–7–001 and amended in compliance with Commission Order dated May 28, 1997. CHG&E also has requested wavier of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–4480–000]

Take notice that on September 3, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with Delhi Energy Services, Inc., and NP Energy, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to § 205 of the Federal Power Act.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Northeast Utilities Service Company

[Docket No. ER97–4481–000]

Take notice that on September 3, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, an unexecuted Service Agreement with the Virginia Electric and Power Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Virginia Electric and Power Company.

NUSCO requests that the Service Agreement become effective September 3, 1997.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Northeast Utilities Service Company

[Docket No. ER97–4482–000]

Take notice that on September 3, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with The Cleveland Electric Illuminating Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to The Cleveland Electric Illuminating Company.

NUSCO requests that the Service Agreement become effective August 25, 1997.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Northeast Utilities Service Company

[Docket No. ER97–4483–000]

Take notice that on September 3, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with The Toledo Edison Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to The Toledo Edison Company.

NUSCO requests that the Service Agreement become effective August 25, 1997.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Northeast Utilities Service Company

[Docket No. ER97–4484–000]

Take notice that on September 3, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Northeast Energy Services, Inc. (NORESCO), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to NORESCO.

NUSCO requests that the Service Agreement become effective September 1, 1997.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Northeast Utilities Service Company

[Docket No. ER97–4485–000]

Take notice that on September 3, 1997, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Service Agreement with Northeast Energy Services, Inc. (NORESCO) under the Northeast Utilities System Companies' Sale for Resale Tariff No. 7 Market Based Rates. NUSCO requests an effective date of September 1, 1997.

NUSCO states that a copy of its submission has been mailed or delivered to NORESCO.

Comment date: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Illinois Power Company

[Docket No. ES97–49–000]

Take notice that on September 16, 1997, Illinois Power Company filed an application under § 204 of the Federal Power Act requesting authorization to issue not more than $500 million of short-term notes on or before December 31, 1999, with a final maturity date no later than December 31, 2000.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Golden Spread Electric Cooperative, Inc.

[Docket No. ES97–50–000]

Take notice that on September 18, 1997, Golden Spread Electric Cooperative, Inc. (Golden Spread), filed an application under Section 204 of the Federal Power Act requesting authorization to obtain a long-term loan, in the amount of $1,250,000, for the purpose of financing the ownership of a 115/12.47 kV substation and associated equipment located southeast of Guymon, Oklahoma for one of its member cooperatives, Tri-County Electric Cooperative, Inc.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25915 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5900–9]

Agency Information Collection Activity: Submission for OMB Review; Comment Requested; Questionnaire for Operations and Maintenance (O&M), Biosolids Use (Biosolids), Combined Sewer Overflow (CSO), and Storm Water (SW) Awards Nominees Under the Annual National Wastewater Management Excellence Awards Program (NWMEAP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Questionnaire for Operations and Maintenance (O&M), Biosolids Use (Biosolids), Combined Sewer Overflow (CSO), and Storm Water (SW) awards nominees under the annual National Wastewater Management Excellence Awards Program (NWMEAP), OMB Control No. 2040–0101, expires October 31, 1997. This ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 30, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1287.05.

SUPPLEMENTARY INFORMATION:

Title: Questionnaire for Operations and Maintenance (O&M), Biosolids Use (Biosolids), Combined Sewer Overflow (CSO), and Storm Water (SW) awards nominees under the annual National Wastewater Management Excellence Awards Program (NWMEAP) (OMB Control No. 2040–0101; EPA ICR No. 1287.05) expires October 31, 1997. This is a request for extension of a currently approved collection.

Abstract: This ICR requests re-approval to collect information from EPA's NWMEAP nominees. The awards are for the following program categories: O&M, Biosolids, CSO and SW management. (Note: Information collection approval for the Pretreatment awards program is included in the National Pretreatment Program ICR (OMB No. 2040–0009, EPA ICR No. 0003.08), expiring October 31, 1999). The NWMEAP is managed by EPA's Office of Wastewater Management (OWM). The NWMEAP is authorized under section 501(e) of the Clean Water Act, as amended. The NWMEAP is intended to provide recognition to communities and industries which have demonstrated outstanding technological achievements, innovative processes, or other outstanding methods in their waste treatment and pollution abatement programs. Approximately 50 awards are presented annually. The achievements of these award winners are summarized in reports, news articles and national publications.

Submission of information on behalf of the respondents is voluntary. No confidential information is requested. The agency only collects information from award nominees under a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 7/22/97 (62 FR 39239); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 14 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities applying for National Wastewater Management Excellence Award.

Estimated Number of Respondents: 200.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 2800.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1287.05 and OMB Control No. 2040–0101 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: September 25, 1997.

Joseph Retzer, Director,

Regulatory Information Division.

[FR Doc. 97–25877 Filed 9–29–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5900–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Annual Updates of Emission Data to the Aerometric Information System (AIRS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Annual Updates of Emission Data to the Aerometric Information System (AIRS), OMB Control Number 2060-0088, which expires October 31, 1997. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before October 30, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0916.08.

SUPPLEMENTARY INFORMATION:

Title: Annual Updates of Emission Data to the Aerometric Information System (AIRS) (OMB Control Number 2060–0088; EPA ICR No. 0916.08) expiring 10/31/97. This is a request for extension of a currently approved collection.

Abstract: The general authority for the collection of emission information derives from 40 CFR 51.321, 51.322, and 51.323. The respondents (States and Territories) are required to annually update information on stationary sources emitting at least prescribed threshold amounts of pollutants regulated by NAAQS. For all respondents, activities include the resolution of errors and anomalies identified through EPA edits. Over a three year period all of the respondents will also be involved in reconciling emission and compliance data stored in EPA's Aerometric Information Retrieval System (AIRS). Approximately one-third of the respondents will be involved in this reconciliation during any one year. The EPA's Office of Air Quality Planning and Standards (OAQPS) uses the annual emission reports to update the national database of emissions from stationary sources that it has maintained since 1974. The data are used in developing emission standards, applying dispersion models, and in preparing national trend assessments and other special analyses and reports.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/7/96 (61 FR 9160); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 212 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States and Territories.

Estimated Number of Respondents: 54.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 11,448 hours.

Estimated Total Annualized Cost Burden: $29,580.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0916.08 and OMB Control No. 2060–0088 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory

Information Division (2137), 401 M Street, SW, Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: September 24, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–25880 Filed 9–29–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5900–2]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Request for Nominations.

SUMMARY: The Environmental Protection Agency (EPA) is inviting nominations to fill vacancies on its National Advisory Council for Environmental Policy and Technology (NACEPT). The Agency is seeking qualified senior level decision makers from diverse sectors throughout the U.S. to be considered for appointments. Nominations will be accepted until close of business October 20, 1997.

ADDRESSES: Submit nominations to: Mr. Gordon Schisler, Deputy Director, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency, 1601–F, 401 M Street, SW, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, PL 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues.

NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing.

Maintaining a balance and diversity of experience, knowledge, and judgment is an important consideration in the selection of members.

The Administrator has asked NACEPT to concentrate on several policy and regulatory components associated with Reinvention, Information, and Capital Markets.

The following standing NACEPT committees were formed to address different aspects of these efforts.

- The Reinvention Criteria Committee (RCC) will provide advice and recommendations on criteria to measure the progress and success of improving public confidence, fostering flexibility and environmental innovation, and increasing accountability for environmental results. This committee will also provide advice on: how EPA can promote an internal culture change that goes beyond specific reinvention programs and incorporates reinvention philosophies into general EPA practices, and identify a mechanism that EPA can use to ensure management accountability for reinvention programs.
- The Environmental Information and Public Access Committee will focus on providing stakeholder input into key information management infrastructure issues, including: access to, and validation of environmental statistics; the long-term role of the Center for Environmental Information & Statistics and how it fits within the Agency's current information management model; updating of the Agency's information management strategic plan; implementation of legislation in EPA such as the Government Performance & Results (GPRA) and the Paperwork Reduction Act; the expanded role of the Chief Information Officer (CIO); and other key information management strategies.
- The Environmental Capital Markets Committee will provide stakeholder inputs on the potential utility of using Environmental Management Systems as an investment service. The ultimate goal of the committee is to identify concrete actions EPA can take, on its own or in cooperation with other Federal and State agencies could take to help the financial services industry incorporate this environmental information into its decision-making processes.

EPA is seeking nominees for representatives from all sectors, especially, state, local and tribal agencies, industry, academia, environmental, organizations, and NGOs.

Nominations for membership must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number.

NACEPT also has four (4) other committees, but we are not soliciting membership to those committees at this time. The four committees include: The Toxics Data Reporting Committee (TDR), Total Maximum Daily Load Committee (TMDL), Waste Isolation Pilot Plant Committee (WIPP), and the Effluent Guidelines Committees (EGC).

FOR FURTHER INFORMATION CONTACT: Clarence Hardy, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency, 1601–F, Washington, D.C. 20460; telephone (292) 260–9741.

Dated: September 19, 1997.

Gordon Schisler,

Designated Federal Officer.

[FR Doc. 97–25881 Filed 9–29–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00492; FRL–5734–5]

Existing Stocks for Labeling Changes in PR Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its final policy in a Pesticide Registration (PR) Notice entitled "Existing Stocks for Labeling Changes in PR Notices." EPA proposed this policy for 60 days of public comment on January 11, 1995. Interested parties may request a copy of the Agency's final policy by contacting the person listed in the ADDRESSES unit of this notice.

ADDRESSES: The PR Notice is available from: By mail: Melissa L. Chun, Policy and Regulatory Services Branch, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1116A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–4027, e-mail: chun.melissa@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: By mail: Melissa L. Chun, Policy and Regulatory Services Branch, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1116A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–4027, e-mail: chun.melissa@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet

Electronic copies of this document and the PR Notice are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under "Regulations" (http://www.epa.gov/fedrgstr/).

Fax on Demand

Using a faxphone call 202–401–0527 and select item 6103 for a copy of the PR Notice.

II. Background

EPA is announcing its policy in a PR Notice entitled "Existing Stocks for Labeling Changes in PR Notices." This PR Notice describes the Agency's policy to establish an annual date by which registrants will normally implement labeling changes specified in Pesticide Registration (PR) Notices, **Federal Register** Notices, or other documents. The policy outlined in the PR Notice will help streamline the Agency's processing of labeling changes, improve the coordination of EPA's labeling activities, and lessen the economic impact on registrants and supplemental distributors of making labeling changes throughout the year. The annual compliance date generally provides more time for registrants and supplemental distributors to distribute or sell products bearing old labeling than under EPA's current Existing Stocks Policy. The Agency has determined that generally it will not set a compliance date for persons other than registrants and supplemental distributors to comply with labeling changes specified in PR Notices and similar notices, so that "old" labels in channels of trade are distributed or sold until supplies are exhausted. Further, the Agency has determined that the existing stocks provisions will normally be based on the "released for shipment" date. EPA will generally follow these policies unless different measures are necessary to protect human health and the environment, or it is otherwise in the public interest.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 19, 1997.

Anne E. Lindsay,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 97–25896 Filed 9-29-97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30441; FRL–5747–2]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products and a product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 1, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30441] and the file symbols to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The contact person listed in the table below:

Contact Person	Office location/telephone number	Address
Denise Greenway	5th floor, CS1, 703–308–8263, e-mail: greenway.denise@epamail.epa.gov.	Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA.
Willie Nelson	5th floor, CS1, 703–308–8682, e-mail: nelson.willie@epamail.epa.gov.	Do.
Edward Allen	5-W55, CS1, 703–308–8699, e-mail: allen.edward@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and a product involving a changed use pattern pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing New Active Ingredients Not Previously Registered

1. File Symbol: 56261–G. Applicant: Phero Tech Inc., 7572 Progress Way, Delta, B.C. V4G 1E9 Canada. Product Name: Verbenone Pouch. Pheromone Pesticide. Active ingredient: Verbenone (4,6,6-trimethylbicyclo (3.1.1) hept-3-en-2 one) at 73.4 percent. Proposed classification/Use: General. For use to control pest on forestry. (Willie Nelson)

2. File Symbol: 69129–E. Applicant: Cela Flor GmbH, c/o Biologic Inc., 115 Obtuse Hill, Brookfield, CT 06804. Product Name: Nexa Ant Stop. Insecticide. Active ingredient: Isoborneol at 15 percent. Proposed classification/Use: General. For outdoor control of ants. (Ed Allen)

II. Product Involving a Change Use Pattern

File Symbol: 10772–U. Applicant: Church and Dwight Co., Inc., 469 N. Harrison St., Princeton, NJ 08543. Product Name: Armicarb 100. Fungicide. Active ingredient: Potassium Bicarbonate at 85 percent. Proposed classification/Use: None. To include in its presently registered use, a new use to control powdery mildew and other diseases on ornamentals and other food/feed crop plants. (Denise Greenway)

Comments received within the specified time period will be considered

before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30441] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30441]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Written comments filed pursuant to this notice, will be available in the Public Information and Records Integrity Branch, Information Resources and Services Division at the address provided, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703-305-5805) to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: September 23, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–25894 Filed 9-29-97; 8:45 am]
BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30427A; FRL–5744–4]

W. Neudorff GmbH KG; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product NEU 1165M Slug and Snail Bait, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Sheryl Reilly, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS #1, 5th floor, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8265; e-mail: reilly.sheryl@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register**-Environmental Documents entry for this document under "Regulations" (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of January 22, 1997 (62 FR 3287; FRL–5582–4), which announced that W. Neurdorff GmbH KG, Postfach 1209, and der Muhle 3, D-31860 Emmerthal, Germany, had submitted an application to register the product NEU 1165M Slug and Snail Bait (EPA File Symbol 67702–G), containing the new active ingredient iron phosphate at 1.0 percent, an active ingredient not included in any previously registered product.

The application was approved on August 14, 1997, as NEU 1165M Slug and Snail Bait for domestic/non-commercial food use on vegetable gardens, fruits (including citrus), and berries; also for outdoor ornamentals, greenhouses, and lawns (EPA Registration Number 67702–3).

The Agency has considered all required data on risks associated with the proposed use of iron phosphate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of iron phosphate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on iron phosphate.

A copy of this fact sheet, which provides a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 23, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–25895 Filed 9-29-97; 8:45 am]
BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42107E; FRL–5744–3]

RIN 2070–AB94

Testing Consent Order for 1,6-Hexamethylene Diisocyanate (HDI)

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of consent agreement.

SUMMARY: Pursuant to section 4 of the Toxic Substances Control Act (TSCA), EPA has issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) with ARCO Chemical Company, Bayer Corporation, and Rhone-Poulenc Inc. (collectively, the Companies). The Companies have agreed to perform certain health effects tests on 1,6-hexamethylene diisocyanate (HDI) (CAS No. 822–06–0). This notice announces the ECA and Order for HDI and summarizes the terms of the ECA.

EFFECTIVE DATES: The effective date of the ECA and Order is September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. ET–543B, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov. For specific information regarding this notice, or the ECA and Order, contact Keith J. Cronin, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–8157; fax: (202) 260–1096; e-mail: cronin.keith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

ELECTRONIC AVAILABILITY: Electronic copies of this document and various support documents are available from the EPA Home Page at the Federal Register - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

This notice announces the ECA and Order for HDI and summarizes the terms of the ECA.

I. Introduction

HDI is an aliphatic diisocyanate. HDI is used in the manufacture of higher molecular biuret polyisocyanate resins and trimer polyisocyanate resins used in polyurethane paint systems. The production and use of HDI in polyurethane paint systems result in potential exposures to substantial numbers of workers. The greatest potential for occupational exposure to HDI is coating application operations, with an estimated 153,000 auto body repair workers having a potential for some exposure to paints containing HDI biuret and trimer.

In the **Federal Register** of May 20, 1988 (53 FR 18196), the Interagency Testing Committee (ITC) designated HDI for health effects testing for chronic toxicity, oncogenicity, and reproductive and developmental effects. EPA responded to the ITC's designation of HDI by issuing a proposed test rule in the **Federal Register** of May 17, 1989 (54 FR 21240), requiring that HDI be tested for oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, neurotoxicity, pharmacokinetics, and hydrolysis under section 4 of TSCA. The proposed rule contains a chemical profile of HDI, a discussion of EPA's TSCA section 4(a) findings, and the proposed test standards and reporting requirements. EPA based its proposal on section 4(a)(1)(B) of TSCA, finding that HDI is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, and use.

EPA has reviewed significant new scientific data developed since publication of the proposed rule in 1989. The new data—which address chronic toxicity, subchronic toxicity, mutagenicity, and hydrolysis—significantly affect the final scope of testing needs for this chemical substance. In view of the impact of these developments on the scope of needed HDI testing, EPA published a notice on June 12, 1995 (60 FR 30874) (FRL–4938–2) soliciting testing proposals for HDI.

II. Enforceable Consent Agreement Negotiations

In response to EPA's offer to negotiate an ECA, the Chemical Manufacturers Association (CMA) HDI Panel submitted a proposal for a testing program (Ref. 1).

EPA held a public meeting to negotiate an ECA for HDI on September 25, 1996. This meeting was attended by representatives of the Companies and other interested parties. During the public meeting, consensus was reached on the ECA, and on the tests to be included in the ECA. On August 26, 1997, EPA received the ECA signed by the Companies. On September 23, 1997, EPA signed the ECA and accompanying Order.

III. Proposed Test Rule

EPA has decided not to finalize the proposed test rule for HDI (54 FR 21240, May 17, 1989). EPA has instead reached agreement with the Companies that the testing requirements for HDI in the proposed rule will be met by implementing the ECA and Order, and that the issuance of the ECA and Order constitutes final EPA action for purposes of 5 U.S.C. 704. Should EPA decide in the future that it requires additional data on HDI, EPA will initiate a separate action.

IV. Testing Program

The following table 1 describes the required testing, test standards, and reporting requirements under the ECA for HDI. This testing program will allow EPA to characterize further the potential health hazards resulting from exposure to HDI. The appendices referenced in this table are specific to the enforceable consent agreement and are not appendices in 40 CFR part 798.

Table 1.—Required Testing, Test Standards and Reporting Requirements for HDI

Description of test	Test standard	Deadline for final report[1] (months)	Interim reports[2] required (number)
Genotoxicity:			
1. Mammalian cells in culture	798.5300 (40 CFR)	12	1
2. Salmonella Typhimurium	798.5265 (40 CFR)	12	1

Table 1.—Required Testing, Test Standards and Reporting Requirements for HDI—Continued

Description of test	Test standard	Deadline for final report[1] (months)	Interim reports[2] required (number)
3. In vivo Cytogenetics	798.5385 (40 CFR) (Appendix I)	12	1
Developmental Toxicity: One species (rat), inhalation	798.4900 (40 CFR) (Appendix II)	21	3
Reproductive developmental screen with functional observational battery; One species (rat), via inhalation	OECD 422 (Appendix III)	21	3
2-generation reproductive study[3]	798.4700 as proposed for revision (59 FR 42272, August 17, 1994) (Appendix IV)	24[4]	3

[1] Number of months after the effective date of the testing consent order.

[2] Interim reports are required every 6 months from the effective date until the final report is submitted. This column shows the number of interim reports required for each test.

[3] This study must be conducted if the Agency determines that the results of the reproductive/developmental screening test show statistically or biologically significant adverse reproductive or developmental effects. If the results of the reproductive/developmental screening test are equivocal, the 2-generation reproductive/developmental study will not be required unless the Agency concludes that the use of HDI may present an unreasonable risk to human health or the environment in light of (1) a weight-of-the-evidence evaluation of HDI's reproductive/developmental effects, and (2) worker exposure practices and/or manufacturer product stewardship activities. The Agency shall, in any event, provide the Panel with an opportunity to meet and discuss the screening test results with the Agency before making a determination under this paragraph.

[4] Figure indicates the reporting deadline, in months, calculated from the date of notification to the test sponsor by certified letter of FEDERAL REGISTER notice that the Agency has determined this required testing must be performed.

V. Export Notification

At a later date EPA will propose to amend 40 CFR 799.5000 by adding HDI to the list of chemicals subject to testing consent orders, thereby subjecting all persons who export or who intend to export HDI, of any purity, to the export notification requirements of section 12(b) of TSCA.

VI. Public Record

EPA has established an official record for this ECA and Order under docket number OPPTS–42107E, which is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center in Rm. NE–B607, 401 M St., SW., Washington, DC 20460. Information claimed as Confidential Business Information (CBI), while part of the record, is not available for public review. This record contains the basic information considered in developing this ECA and Order and includes the following information.

A. Supporting Documentation

(1) Testing Consent Order for HDI, with incorporated Enforceable Consent Agreement and associated testing protocols attached as appendices.

(2) **Federal Register** notices pertaining to this notice, the Testing Consent Order and the Enforceable Consent Agreement, consisting of:

(a) Notice of Proposed Rulemaking for HDI (54 FR 21240, May 17, 1989).

(b) Notice of Solicitation of Testing Proposals for 1,6-Hexamethylene Diisocyanate for Negotiation of a TSCA Section 4 Enforceable Consent Agreement (60 FR 30874, June 12, 1995).

(3) Communications consisting of:

(a) Written letters.

(b) Meeting summaries.

(4) Reports—published and unpublished factual materials.

B. References

1. The Hexamethylene Diisocyanate Panel of the Chemical Manufacturers Association. Letter from Langley A. Spurlock to EPA. Enforceable Testing Agreement Proposal for 1,6-Hexamethylene Diisocyanate. Washington, DC (August 11, 1995).

List of Subjects

Environmental protection.

Dated: September 23, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

[FR Doc. 97–25893 Filed 9-29-97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Additional Item To Be Considered at Open Meeting Thursday, September 25, 1997

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 a.m., Thursday, September 25, 1997, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau; and Subject

3—Wireless Telecommunications—Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for C Block Personal Communications Service (PCS) Licenses. (WT Docket No. 97–82). Summary: The Commission will consider action concerning resumption of installment payments for PCS C and F Block licensees and other repayment options for C Block licensees.

The prompt and orderly conduct of the Commission business requires that less than 7-days notice be given consideration of this additional item.

Action by the Commission September 25, 1997, Chairman Hundt and Commissioners Quello, Ness and Chong voting to consider this item.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460, or TTY (202) 418–1398; fax numbers (202) 418–2809 or (202) 418–7286.

Federal Communications Commission

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–26013 Filed 9–29–97; 2:41 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

September 19, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0292.
Expiration Date: 09/30/2000.
Title: Access Charges—Part 69.
Form No.: N/A.
Respondents: Business or other for profit.
Estimated Annual Burden: 1458 respondents; 23.19 hours per response (avg.); 33,825 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion; semi-annually; monthly; one-time requirement.
Description: Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies on or after January 1, 1984. Part 69 essentially consists of rules or the procedures for the computation of access charges. Section 69.3 requires the annual submission of access charge tariffs. Section 69.116(c) and 69.117(c) require local exchange carriers to file information with NECA semi-annually pertaining to the number of lines in their study areas and the interexchange carriers to which such lines are presubscribed. This information will be used by NECA to assess revenue requirements needed to fund the Universal Service Fund and Lifeline Assistance programs. (No. of respondents: 1458; hours per response: 5 hrs.; total annual hours: 14,580 hrs.). Section 69.104(k)(1) requires that a state or local telephone company wishing to implement an end user common line reduction or waiver for its subscribers file information with the Commission demonstrating that its state lifeline assistance plan meets certain criterie. This is an one-time filing requirement. (No. of respondents: 50; hours per response: 20 hrs.; total annual burden 1000 hrs.). Section 69.104(1) requires local telephone carriers to calculate for NECA their projected revenue requirements for the lifeline assistance program. (No. of respondents: 1459; hours per response: 3.5 hrs; total annual burden: 5103 hrs). Section 69.605 requires carriers who are participating in the pool to report access revenues and cost data so that NECA may compute monthly pool revenues distributions. (No. of respondents: 1548; hours per response: .75 hrs; total annual burden: 13,122 hrs). The information is used to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither process could be implemented without the information. You are required to respond.

OMB Control No.: 3060–0577.
Expiration Date: 09/30/2000.
Title: Expanded Interconnection with Local Telephone Company Facilities.
Form No.: N/A.
Respondents: Business or other for profit.
Estimated Annual Burden: 16 respondents; 15 hours per response (avg.); 240 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $10,000.
Frequency of Response: On occasion.
Description: In September 1992, the Commission adopted an order requiring Tier 1 local exchange carriers (LECs), excluding NECA pool members, to offer expanded interconnection for special access to all interested parties, permitting competitors and high volume users to terminate their own transmission facilities at LEC central offices. (*Special Access Order,* CC Docket No. 91–141, *Expanded Interconnection with Local Telephone Company Facilities*). Under the rules adopted in the *Special Access Order,* Tier 1 LECs (those with over $100 million in annual regulated revenues for a sustained period of time), except for NECA pool members, are required to provide physical collocation to all interconnectors that request it, with exemptions for LEC offices that do not have enough space for physical collocation, and, under certain circumstances, for states with regulatory policies favoring virtual collocation or LEC choice of the form of collocation. Interconnectors and LECs will be free to negotiate virtual collocation arrangements if both parties prefer such arrangements over physical collocation. In the *Second Memorandum Opinion and Order on Reconsideration* in CC Docket No. 91–141 (*Reconsideration Order*), the Commission reconsidered some of the particularly time-sensitive requirements of the *Special Access Order.* In particular, the *Reconsideration Order* reconsiders *de novo* the fresh look issues addressed in the *Special Access Order,* clarifies and expands the Commission's requirements concerning the application of nonrecurring charges, modifies the requirement for tariffing virtual collocation arrangements, and specifies certain standards that must be met for a connection charge rate structure to be considered reasonable. In order to comply with these requirements, Tier 1 LECs will have to make certain tariff revisions. In addition, LECs must make tariff filings to provide public notice of the start of the "fresh look" period at each of their

offices where expanded interconnection is implemented. Sections 201, 202, 203, 204, and 205 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 202, 203, 204, and 205, require that common carriers establish just and reasonable charges, practices, and regulations for the services they provide, and prohibit any unjust or unreasonable discrimination, preference, or advantage. The LEC schedules containing these charges, practices, and regulations must be filed with the Commission: The tariff filings required by the *Reconsideration Order* are necessary to ensure the effectiveness of the fresh look opportunity that the Commission adopted in order to allow eligible customers to assess the new alternatives available in a more competitive market. The tariff filings that will be needed to comply with the Commission's rules on nonrecurring charges and connection charges are necessary to ensure that the rates charged to all LEC customers are just, reasonable, and nondiscriminatory. Without this information, the FCC would be unable to determine whether the tariffs for these services are just, reasonable, nondiscriminatory, and otherwise in accordance with the law and its rules. Obligation to respond is mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–25787 Filed 9–29–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Atlantic Cargo, Inc., 5635 NW 74th Avenue, Miami, FL 33166, Officer: Allan D. Silverman, President

Boston Logistics, Inc., 186A Lee Burbank Highway, Revere, MA 02151, Officer: Anthony M. Puleio, Jr., President

Dated: September 25, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–25830 Filed 9–29–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants; Correction

In the **Federal Register** notice published July 14, 1997 (62 FR 37585) the reference to "RJB Import/Export Consultants Corp." is corrected to read: "R.J.G. Import/Export Consultants Corp."

Dated: September 24, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–25829 Filed 9–29–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 15, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Charles Michael Hazard, Boston, Massachusetts; to acquire 18.3 percent of the voting shares of Boston Private Bancorp, Inc., Boston, Massachusetts, and thereby indirectly acquire Boston Private Bank & Trust Company, Boston, Massachusetts.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. John Francis Davis and Carman Lee Davis, both of Concordia, Kansas; to acquire voting shares of Tri-County Bancshares, Inc., Linn, Kansas, and thereby indirectly acquire Tri-County National Bank, Washington, Kansas.

Board of Governors of the Federal Reserve System, September 25, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–25936 Filed 9-29-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Alabama National BanCorporation, Birmingham, Alabama; to merge with First American Bancorp, Decatur, Alabama, and thereby indirectly acquire First American Bank, Decatur, Alabama.

2. Hibernia Corporation, New Orleans, Louisiana; to merge with Northwest Bancshares of Louisiana, Inc., Mansfield, Louisiana, and thereby indirectly acquire First National Bank in Mansfield, Mansfield, Louisiana.

3. Riverside Gulf Coast Banking Company, Cape Coral, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Riverside Bank of the Gulf Coast (in organization), Cape Coral, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Fischer Bancorp, Inc., Fischer, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Fisher National Bank, Fisher, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Security State Bancshares, Inc., Charleston, Missouri; to acquire 100 percent of the voting shares of Merchants and Planters Bank of Hornersville, Hornersville, Missouri.

Board of Governors of the Federal Reserve System, September 25, 1997

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–25935 Filed 9-29-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–125]

Availability of the Final Child Health Workgroup Report, Healthy Children—Toxic Environments

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of the final report, Healthy Children-Toxic Environments, by the ATSDR Board of Scientific Counselors' Child Health Workgroup.

ADDRESSES: The report is accessible or available through the following three methods:

—The Internet at http://atsdr1.atsdr.cdc.gov:8080/child/chw497.html

—A request to the ATSDR Information Center, Mailstop E57, 1600 Clifton Rd., Atlanta, GA 30333, telephone 404–639–6357 or 1–800–447–1544

—A request via email to: atsdric@cdc.gov

FOR FURTHER INFORMATION CONTACT: The ATSDR Information Center, telephone (404) 639–6357 or 1–800–447–1544.

SUPPLEMENTARY INFORMATION: In 1996, the Agency for Toxic Substances and Disease Registry (ATSDR), an operating division of the U.S. Department of Health and Human Services, launched a Child Health Initiative. A Child Health Workgroup was appointed by ATSDR's external Board of Scientific Counselors. Members of the workgroup were selected for their knowledge of children's environmental health. The workgroup assessed ATSDR's activities as they pertain to individuals during prenatal life, infancy, children, and adolescence. The workgroup reviewed the four divisions of ATSDR separately. This effort included the review of published goals and objectives for each division, recent annual reports, and many other publications from each division. For each division, a meeting was held between members of the workgroup and the leadership of the division.

The workgroup members determined that, although key information gaps could be identified, the most important activity was to offer a critique of current processes and suggestions for change that would improve the quality of the data, the pediatric impact of prevention, and the future benefit of the ATSDR's activities for the children being served. The availability of draft report for public comment was announced in the **Federal Register** on June 17, 1997 (62 FR 32812). The availability of the final report documenting this effort, Healthy Children-Toxic Environments, is being announced through this **Federal Register** notice.

Dated: September 24, 1997.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–25836 Filed 9–29–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates:

8:30 a.m.–4:45 p.m., October 22, 1997.

8:30 a.m.–1:15 p.m., October 23, 1997.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. § 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the Page 2 appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: Under the authority of 42 U.S.C. § 1396s, the Committee will consider revision of the ACIP VFC program resolution for Adolescent Hepatitis B immunization.

Other topics include: updates on the National Vaccine Program, the Vaccine Injury Compensation Program, and the influenza pandemic preparedness plan; discussions on rabies postexposure prophylaxis, the recommendations on the use of Rotashield® (Rotavirus vaccine) as part of the routine childhood immunization schedule, ACIP guidelines on combination vaccines, the harmonized immunization schedule, public health laboratory capacity for vaccine-preventable disease surveillance, immunization of bone marrow transplant (BMT) recipients, the report from work group on algorithms for immunization registries, and the isolation of influenza type A(H5N1) in Hong Kong. There will also be presentations on the efficacy of live attenuated influenza vaccine and the Swedish acellular pertussis mass vaccination project. Other matters of relevance among the Committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Gloria A. Kovach, Committee

Management Specialist, CDC, 1600 Clifton Road, NE, M/S D50, Atlanta, Georgia 30333, telephone 404/639–7250.

Dated: September 24, 1997.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–25834 Filed 9–29–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section; NIOSH Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.-5:30 p.m., October 29–30, 1997.

Place: National Institute for Occupational Safety and Health, 1095 Willowdale Road, Morgantown, West Virginia, 26505–2888.

Status: Open business session, 8 a.m.-8:30 a.m., October 29, 1997; Closed evaluation sessions 8:30 a.m.-5:30 p.m., October 29, 1997; and 8 a.m.-5:30 p.m., October 30, 1997.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas. It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene in open session from 8 a.m.-8:30 a.m. on October 29, 1997, to address matters related to the conduct of Study Section business. The meeting will proceed in closed session from 8:30 a.m. until scheduled adjournment (5:30 p.m.) on October 29, 1997. The meeting will continue in closed session from 8 a.m. until scheduled adjournment (5:30 p.m.) or earlier on October 30, 1997. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c) (4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, telephone 304/285–5979.

Dated: September 18, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–25948 Filed 9–29–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0385]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 30, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance:

Premarket Approval of Medical Devices—Part 814 (OMB Control Number 0910–0231—Reinstatement)

Section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e) sets forth requirements for premarket approval of certain medical devices. Under section 515 of the act, an application must contain several pieces of information, including: Full reports of all information concerning investigations showing whether the device is safe and effective; a statement of components; a full description of the methods used in, and the facilities and controls used for, the manufacture and processing of the device; and labeling specimens. The implementing regulations, contained in part 814 (21 CFR part 814), further specify the contents of a premarket approval application (PMA) for a medical device and the criteria FDA will employ in approving, denying, or withdrawing approval of a PMA. The purpose of these regulations is to establish an efficient and thorough procedure for FDA's review of PMA's for class III (premarket approval) medical devices, in order to facilitate the approval of PMA's for devices that have been shown to be safe and effective and otherwise meet the statutory criteria for approval and to ensure the disapproval of PMA's for devices that have not been shown to be safe and effective and that do not otherwise meet the statutory criteria for approval.

Under § 814.15, an applicant may submit in support of a PMA studies from research conducted outside the United States, but an applicant must explain in detail any differences between standards used in a study to support the PMA's and those standards found in the Declaration of Helsinki. Section 814.20 provides a list of information required in the PMA, including: A summary of information in the application, a complete description of the device, technical and scientific information, and copies of proposed labeling. Section 814.37 provides requirements for an applicant who seeks to amend a pending PMA. Under § 814.39, an applicant must submit a supplement to the PMA before making a change affecting the safety or effectiveness of the device. Section 814.82 sets forth postapproval requirements FDA may propose, including periodic reporting on safety, effectiveness, reliability, and display in the labeling and advertising of certain warnings. Section 814.82 requires the maintenance of records to trace patients and the organizing and indexing of records into identifiable files to enable FDA to determine whether there is reasonable assurance of the device's continued safety and effectiveness. Section 814.84 specifies the contents of periodic reports. The applicant determines what records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practices for medical devices regulation part 820 (21 CFR part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required to be maintained as conditions of approval to ensure the device's continuing safety and effectiveness.

Respondents to this information collection are persons filing an application for approval of a Class III medical device. Part 814 defines a person as any individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit, or other legal entity. These respondents include manufacturers of commercial medical devices in distribution prior to May 28, 1976 (the enactment date of the Medical Device Amendments).

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.15, 814.20, and 814.37	52	1	52	837.28	43,539
814.39	493	1	493	73.15	36,063
814.82	545	1	545	9.14	4,983
814.84	545	1	545	18.29	9,966
Total					94,551

There are no capital costs or operating and maintenance costs associated with this collection of information.

In March 1997, while completing work on the CDRH Annual Information Collection Budget, an error was discovered on this information collection's burden hours by CDRH program staff. This error was not discovered until after the publishing of this information collection's 60-day notice in the **Federal Register** of January 7, 1997 (62 FR 995), Docket No. 96N–0491. The narrative portion of the **Federal Register** notice correctly stated that 52 original PMA's and 493 PMA Supplements were processed each year. The burden chart, however, incorrectly stated that 545 original PMA's and 545 PMA Supplements were processed each year (the 545 figure was derived by adding the 52 original and 493 PMA supplements together). When the correct number of respondents was plugged into the burden hour table and the numbers recalculated, the new total burden hours equals 104,020 hours, a savings of 416,583 hours from the original 1997 figure of 520,603.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.82 (a) (5) and (a) (6)	567	1	567	16.7	9,469
Total					9,469

There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that the cost to device manufacturers to comply with the requirements for premarket approval of medical devices is approximately $34.95 million per year. The industry-wide cost estimate for PMA's is based on an average fiscal year annual rate of receipt of 52 PMA original applications and 493 PMA supplements, using fiscal years 1991 through 1995 data.

The cost data for PMA's is based on data provided by manufacturers in 1985 by device type and cost element. The specific cost elements for which FDA has data are as follows:

(1) Clinical investigations: 67 percent of total cost estimate,

(2) Submitting additional data or information to FDA during a PMA review: 12 percent,

(3) Additional device development cost (e.g., testing): 10 percent and,

(4) PMA and PMA supplement preparation and submissions, and development of manufacturing and controls data: 11 percent.

A weighted average calculation in 1985 produced a total cost of $280,000 for a PMA application. These cost estimates are considered to be solely attributable to PMA requirements. FDA does not have more recent data on the cost to manufacturers of collecting, analyzing, and preparing the data needed for a PMA submission. FDA has adjusted the 1985 estimate for inflation (using an average of 7.5 percent per year for the health care sector) and multiplied it by 52 (the average number of PMA's submitted annually) to yield an annual cost attributable to PMA's of $32,323,200 ($280,000 x index of 2.22 x 52).

FDA estimates that 493 PMA supplements will be submitted annually. No recent information on the cost of PMA supplements has been collected from medical device manufacturers. However, the agency has taken an earlier cost estimate for PMA supplements ($2,400 per supplement) and adjusted it for inflation. The annual cost of PMA supplements is estimated to be $2,626,704 (493 x $2,400 x 2.22 index factor).

Thus, the cost estimate for PMA's and PMA supplements is $34,949,904. This figure represents the burden on industry due to the PMA approval requirement. This cost includes both the effect of the statutory requirement and the effect of the agency's implementation of the statute.

The recordkeeping burden in this section requires the maintenance of

records to trace patients, and the organization and indexing of records into identifiable files to ensure the device's continued safety and effectiveness. These requirements are to be performed only by those manufacturers who have an approved PMA and who had original clinical research in support of that PMA. For a typical year's submissions, 70 percent of the PMA's are eventually approved and 75 percent of those have original clinical trial data. Therefore, about 27 PMA's a year would be subject to these requirements. Also, because the requirements apply to all active PMA's, all holders of active PMA applications must maintain these records. PMA's have been required since 1976, so there are around 567 active PMA's that could be subject to these requirements (21 years x 27 per year). Each study has about approximately 200 subjects, and, at an average of 5 minutes per subject, there is a total burden per study of 1,000 minutes, or 16.7 hours. The aggregate burden for all 567 holders of approved original PMA's, therefore, is 9,469 hours (567 approved PMA's with clinical data x 16.7 hours per PMA).

The applicant determines what records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the Current Good Manufacturing Practices for medical devices regulation part 820 may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required as conditions to approval to ensure the device's continuing safety and effectiveness.

With the additional 9,469 hours or recordkeeping, the total annual burden is 104,020 hours.

Dated: September 23, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–25938 Filed 9-29-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part D, Chapter DE, Office of External Affairs (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 60 FR 56605, November, 9, 1995, and in pertinent part at 56 FR 29484, June 27, 1991) is amended to reflect the title change of the Industry and Small Business Liaison Staff. The title is being changed to more accurately reflect the expanding concerns and community issues in the jurisdictions containing various FDA headquarter facilities. The Industry and Small Business Liaison Staff will be retitled as the Industry, Small Business and Community Affairs Staff. The current functions remain the same with the addition of two new functions.

Delete the **Industry and Small Business Liaison Staff** (DE–1) in its entirety and insert the following:

Industry, Small Business and Community Affairs Staff (DE–1). Advises and assists the Commissioner and other Agency officials on industry-related issues which have an impact on policy, directions, and goals.

Serves as the Agency focal point for overall industry liaison and communication activities within FDA, including FDA Centers, and between FDA and FDA-regulated industry, industry trade associations, and scientific associations.

Serves as liaison with other Agency components to provide advice and assistance to small manufacturers and scientific associations to promote their understandings of and compliance with FDA regulations.

Develops and maintains effective channels of communication with regulated industry, professional societies, and trade and scientific associations.

Serves as liaison with local civic organizations in jurisdictions containing or contiguous to the various FDA headquarters facilities.

Provides official contact point within the Agency for discussion and resolution of community issues and concerns arising in connection with the construction, renovation, or ongoing operation of FDA's widely dispersed physical point.

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: September 2, 1997.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

[FR Doc. 97–25782 Filed 9–29–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–211]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* State Child Health Plan and Supporting Information Collection Requirements Referenced in Title XXI of the Social Security Act; *Form No.:* HCFA–R–211, OMB # 0938–0707; *Use:* This Model template will enable states to apply for funds under Title XXI of the Social Security Act, to initiate and expand the provision of child health insurance to uninsured, low income children in a effective and efficient manner that is coordinated with other sources of health coverage for children; *Affected Public:* State, Local or Tribal Government; Number of Respondents: 56; *Total Annual Responses:* 56; *Total Annual Hours:* 8,960.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 19, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–25909 Filed 9–29–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–192]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Evaluation of the Oregon Medicaid Reform Demonstration: Adult Interview, Pediatric Asthma Interview, Insulin-Dependent Diabetes Interview, Low Back Pain Interview, Medical Provider Questionnaire; *Form No.:* HCFA-R–192; *Use:* The survey instruments listed above are for use in the Evaluation of the Oregon Medicaid Reform Demonstration. The Adult and Child Interviews are designed to collect information related to health status, access to care, satisfaction with care and past health insurance status for adult and child members of the Oregon Health Plan (OHP). The Pediatric Asthma Interview, Insulin-Dependent Diabetes Interview and Low Back Pain Interview collect information on quality of care, utilization of care, satisfaction with care and health status of OHP members with selected "tracer conditions". The Medical Provider Questionnaire is designed to collect information on how both participating and non-participating physicians view OHP; *Frequency:* Other One-Time Submission; *Affected Public:* Not-for-profit institutions, individuals and households, business or other for-profit; *Number of Respondents:* 5,533; *Total Annual Responses:* 5,533; *Total Annual Hours:* 2,242.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 19, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–25910 Filed 9–29–97; 8:45 am]

BILLING CODE 4120–03–P

HEALTH RESOURCES AND SERVICES ADMINISTRATION

Guidelines for the Use of Antiretroviral Agents in Pediatric HIV Infection

AGENCY: Health Resources and Services Administration, Department of Health and Human Services.

ACTION: Request for comments.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting comments from all interested parties on the following document: "Guidelines for Use of Antiretroviral Agents in Pediatric HIV Infection". The document was developed by specialists in the care of HIV-infected infants, children and adolescents, family members of HIV-infected children, and governmental agency representatives at a meeting on July 9 and 10, 1997, convened by the National Pediatric and Family HIV Resource Center (NPHRC) and HRSA. While the pathogenesis of HIV infection and the general virologic and immunologic principles underlying the use of antiretroviral therapy are similar for all HIV infected individuals, there are therapeutic and management considerations that are unique to HIV infected infants, children and adolescents. These include acquisition of infection through perinatal exposure for many infected children; in utero exposure to zidovudine (ZDV) and other antiretroviral medications in many perinatally-infected children; differences in diagnostic evaluation in perinatal infection; differences in immunologic markers (eg. CD4+ lymphocyte count) in young children; changes in pharmacokinetic parameters with age due to the continuing development and maturation of organ systems involved in drug metabolism and clearance; differences in the clinical and virologic manifestations of perinatal HIV infection secondary to the occurrence of primary infection in a still-developing, immunologically naive individual; and special considerations related to treatment adherence in children and adolescents. This document addresses the pediatric-specific issues related to antiretroviral treatment and provides general guidelines to physicians caring for infected children and adolescents.

DATES: Comments on the proposed guidelines must be received on or before October 30, 1997 in order to ensure that HRSA will be able to consider the comments in preparing the final guidelines.

ADDRESSES: Written comments to this notice should be submitted to: The HIV/AIDS Treatment Information Service, P.O. Box 6303, Rockville, MD 20849–6303. Only written comments will be accepted. After consideration of the comments, the final document will be published in the Centers for Disease Control and Prevention (CDC) "Morbidity and Mortality Weekly Report" (MMWR).

FOR FURTHER INFORMATION CONTACT: Copies of the "Guidelines for the Use of Antiretroviral Agents in Pediatric HIV Infection" are available from the National AIDS Clearinghouse (1–800–458–5231) and on the Clearinghouse Web sites (http://www.cdcnac.org) and from the HIV/AIDS Treatment Information Service (1–800–448–0440; Fax: 301–519–6616; TTY: 1–800–243–7012) and on their Web site (http://www.hivatis.org).

SUPPLEMENTARY INFORMATION: A Working Group on Antiretroviral Therapy and Medical Management of HIV-Infected Children composed of

specialists in the care of HIV-infected infants, children and adolescents, family members of HIV-infected children, and governmental agency representatives was convened by the National Pediatric and Family HIV Resource Center (NPHRC), sponsored by the Health Resources and Services Administration (HRSA), on July 9 and 10, 1997, to establish and finalize a new set of guidelines for the treatment of HIV-infected infants, children and adolescents. The Working Group was co-chaired by Dr. James Oleske, University of Medicine and Dentistry of New Jersey (UMDNJ)-New Jersey Medical School, Newark, NJ and Dr. Gwendolyn Scott, University of Miami, Miami, FL. The treatment recommendations provided in this document are based on published and unpublished data on HIV infection and treatment in adults and children and, when no definitive data were available, the consensus of the Working Group participants in the treatment of pediatric HIV infection. It is the intent of the Working Group that the guidelines be regarded as flexible and not supplant the clinical judgement of experienced health care providers. It is recognized that these guidelines will need to be modified as new information and experience become available.

Dated: September 24, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–25773 Filed 9–29–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 62 FR 37587, July 14, 1997, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the reorganization of the National Library of Medicine as follows: The functional statements of the Division of Extramural Programs (DEP) and the DEP's Office of the Director are updated to reflect current responsibilities.

Section N–B, Organization and Functions, under the heading National Library of Medicine (NL, formerly HNL), is amended as follows: Delete the functional statements in their entirety for the Division of Extramural Programs (NL5, formerly HNL5) and its Office of the Director (NL51, formerly HNL51) and replace them with the following:

Division of Extramural Programs (NL5, formerly HNL5) (1) Administers programs to augment and strengthen the health sciences libraries of the Nation and to improve biomedical communications and information management through grants to, or contracts with, non-Federal and private institutions; (2) analyzes and evaluates extramural programs in relation to program objectives and national needs to achieve balanced and effective support; and (3) provides grants management, grants processing, and administrative management services.

Office of the Director (NL51, formerly HNL51) (1) Plans, directs, and administers the operations of the extramural programs; (2) coordinates collaborative efforts with other NIH components and Federal agencies in the general areas of informatics, information management, networking, health library support, and publications; and (3) provides technical and management assistance to advisory and review committees.

Dated: September 19, 1997.

Ruth Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 97–25822 Filed 9–29–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–0525.

1998 National Household Survey on Drug Abuse —Revision—The National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the United States, age 12 and over. The data are used to determine the prevalence of use of cigarettes, alcohol, and illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources. For 1998, the core NHSDA questionnaire will remain unchanged. Special topic modules related to substance abuse prevention have been added. The total annual burden estimate is 34,662 hours as shown below:

Instrument	No. of respondents	Responses/respondent	Hours/response	Total hour burden
Screening Form	82,741	1	0.050	4,137
Questionnaire and Verification Form	25,089	1	1.200	30,107
Screening Verification	2,482	1	0.067	166
Interview Verification	3,763	1	0.067	252
Total				34,662

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Dan Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Substance Abuse and Mental Health Services Administration Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide the opportunity for public comment on proposed information collection activities, the Substance Abuse and Mental Health Services Administration publishes periodic summaries of proposed activities. To request more information on the proposed activities or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

(1) Substance Abuse Prevention and Treatment Block Grant—45 CFR Part 96—Extension with no change—This interim final rule provides guidance to States regarding the Substance Abuse Prevention and Treatment Block Grant legislation. The rule implements the reporting and recordkeeping requirements of 42 U.S.C. 300x 21–35 & 51–64 by specifying the content of the States' annual report on and application for block grant funds. The reporting burden hours will be counted towards the total burden for the FY 1999 SAPT Block Grant Application Format for which separate OMB approval will be requested. The total annual reporting and recordkeeping burden estimate is shown below:

	No. of respondents	Responses/respondent	Hours/response	Total hour burden
Reporting Burden—45 CFR 96				
Annual Report:				
96.122(f)	60	1	152	9120
96.134(d)	60	1	16	960
State Plan:				
96.122(g)	60	1	162	9720
96.124(c)(1)	60	1	40	2400
96.127(b)	60	1	8	480
96.131(f)	60		8	480
96.133(a)	60	1	80	4800
Waivers[1]:				
96.132(d)	60	1	16	960
96.134(b)	60	1	40	2400
96.135(d)	60	1	8	480
Total Reporting Burden	60	1	530	31,800
Recordkeeping Burden—45 CFR 96				
96.129(a)(13)	60	1	16	960

[1] For the purpose of burden calculation, it is assumed that all States would apply for each waiver. In reality it expected that only a small number will apply.

(2) Tobacco Regulation for Substance Abuse Prevention and Treatment—45 CFR 96—Extension with no change—This final rule provides guidance to States regarding compliance with section 1926 of the Public Health Service Act related to sale and distribution of tobacco to minors. The final rule implements section 1926 by specifying annual reporting requirements to be in compliance with this section. The reporting burden shown below represents the average total hours to assemble, format, and produce the block grant provision on minors' access to tobacco, in accordance with the requirements of 45 CFR 96. These burden hours will be counted towards the total burden for the FY 1999 SAPT Block Grant Application Format for which separate approval will be requested.

	No. of respondents	Responses/respondent	Hours/response	Total hour burden
Annual Report: 96.122 (f)	59	1	0	[2]0
96.130(e) (1–3)	59	1	15	885
State Plan:				
96.122 (g) (21)	0	0	0	[2]0
96.130 (e) (4,5)	59	1	14	826
96.130 (g)	59	1	5	295
Total			34	2,006

[1] This section describes requirements for the first applicable year. For seven States, FY 1995 was the first applicable year. States are required to provide a copy of the statute enacting the law and are asked to provide a description of the previous year's activities, if they so desire. For the second and subsequent fiscal years, States are to provide a copy of any amendments. No burden is associated with these requests.

[2] This section duplicates the information collection language in section 96.130(e). The burden is shown for 96.130(e).

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 17, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–25849 Filed 9–29–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: Substance Abuse and Mental Health Services Administration, HHS

ACTION: Revisions to the Mandatory Guidelines

SUMMARY: On November 16, 1995, the Department of Health and Human Services (HHS) published a notice in the **Federal Register** at 60 FR 57587 proposing to revise the Mandatory Guidelines for Federal Workplace Drug Testing Programs, 59 FR 29916 (June 9, 1994). Specifically, the Department proposed to change the drug testing levels for opiate metabolites and to require the testing for a metabolite of heroin in urine specimens collected as part of the Federal Workplace Drug Testing Program. After considering the comments, this Department is revising the Mandatory Guidelines to add such requirements. The goals of the revised new opiate testing policy are to substantially reduce the total number of specimens laboratories report positive for opiates that Medical Review Officers verify as negative, to shift the emphasis of testing for opiates back to the proper deterrence and detection of heroin use, and to reduce any unnecessary/excessive costs to drug testing without compromising the original drug deterrent objectives.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Donna M. Bush, Chief, Drug Testing Section, Division of Workplace Programs, SAMHSA/CSAP, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857, tel. (301) 443–6014.

SUPPLEMENTARY INFORMATION: After considering comments received from the public, the Department is revising the guidelines entitled "Mandatory Guidelines for Federal Workplace Drug Testing Program," (Mandatory Guidelines) which were initially published in the **Federal Register** on April 11, 1988 (53 FR 11979) and revised on June 9, 1994 (59 FR 29908). This revision and the Mandatory Guidelines are developed in accordance with Executive Order 12564 dated September 15, 1986, and section 503 of Public Law 100–71, 5 U.S.C. section 7301 note, the Supplemental Appropriations Act for fiscal year 1987 dated July 11, 1987. This revision incorporates changes based on the comments received during the public comment period and the Department's experience in implementing and administering these Mandatory Guidelines.

Background and Summary of Public Comments

A. Proposed Changes to the Testing Cutoff Levels for Opiates

The changes proposed in the notice published in the **Federal Register** on November 16, 1995, 60 FR 57587, are summarized here to facilitate the discussion of the comments received during the public comment period.

The Department proposed increasing the initial testing cutoff level for opiate metabolites and the confirmatory testing cutoff levels for morphine and codeine from 300 ng/mL to 2,000 ng/mL and establishing a new requirement to test for 6-acetylmorphine (6–AM), a metabolite that comes only from heroin, using a 10 ng/mL confirmatory level for specimens that have tested positive on the initial test.

The Department evaluated results on 1.1 million urine specimens tested for opiates in five certified laboratories and 317,500 specimens that were reviewed by three Medical Review Officer (MRO) groups. Based on the information obtained from the MROs, 87% of all opiate positives reported by the laboratories were verified as negatives by the MROs. The reasons given for reporting negative results included the use of prescription medications, poppy seed consumption, no clinical evidence of heroin use, or other unspecified reason. The reversal of most opiate positive results clearly indicates that the current opiate testing cutoff levels used by the laboratories are identifying too many individuals who are not opiate abusers. The 300 ng/mL testing levels had been selected to provide the greatest opportunity to identify anyone who may have used heroin. However, many who have not used heroin but had taken a prescribed codeine or morphine medication or eaten poppy seeds (which may contain morphine and/or codeine) have also tested positive. Since the purpose of the workplace drug testing program is to deter and detect use of illegal drugs, establishing the testing cutoff levels for opiates at these higher levels will eliminate the identification of most individuals who are legitimately taking prescription medications that contain morphine or codeine or have ingested poppy seeds.

With regard to testing for 6–AM, the laboratory results indicate that of the approximately 1.1 million specimens tested, 7294 specimens were reported positive for codeine and/or morphine. Within this group of 7294 opiate positives, 848 were also tested for 6–AM and 16 of these 848 were reported positive for 6–AM. Of particular interest, was that 14 of these 16 6–AM positives had morphine concentrations greater than 2,000 ng/mL. In light of these results, the Department proposed to establish a requirement to test for 6–AM in specimens positive for opiates on the initial test because of the increased probability of detecting 6–AM when the morphine concentration was greater than 2000 ng/mL. Since 6–AM has a very short half-life (i.e., detectable for only a few hours after heroin use), it is essential that a laboratory use a sensitive analytical procedure to test for 6–AM. From the data available, it appears 10 ng/mL is the lowest testing level that can reasonably be used to consistently and accurately identify and quantitate the presence of 6–AM.

The Department believes that raising the testing levels for opiates and establishing a requirement to test for 6–AM will not reduce the deterrent value of the Federal Workplace Drug Testing Program. Additionally, the cost to Federal agencies may be reduced since there will be fewer specimens screened positive for opiates, fewer specimens sent to confirmatory testing, and fewer opiate positive results requiring extensive MRO review.

B. Public Comments and the Department's Response

The Department received 22 public comments on the proposed changes to the testing levels for opiates from individuals, companies, and laboratories. More than 50% of the commenters supported all or part of the proposed changes, while five commenters disagreed with the entire proposal. The remaining commenters expressed concern only with the implementation of a new policy and did not provide any comments to either support or disagree with the proposed changes. All written comments were reviewed and taken into consideration in setting the new testing levels. The substantive concerns raised in the public comments and the Department's responses to the comments are discussed below. Similar comments are considered together.

1. Raising the Initial Testing Cutoff Level

More than 50% of the commenters supported raising the initial testing level for opiates as proposed. They agreed that the current initial testing level was unnecessarily identifying a large number of specimens as positive for opiates that were verified negative by the Medical Review Officer (MRO). Five commenters, however, were opposed to raising the initial testing level because it would no longer identify a number of individuals that misuse prescription medications that contain morphine or codeine. The Department recognizes that a very small percentage of individuals who abuse opiates that are currently reported positive using the 300 ng/mL initial test level would no longer be reported positive. However, the Department believes that the benefits from not reporting a large number of positives that are verified as negatives by an MRO outweigh the small risk of not detecting misuse of prescription drugs.

One commenter opposed deleting the footnote that had established an initial testing level of 25 ng/mL for free morphine and suggested a new level be established by applying the same factor that was used for the proposed opiate testing level. The Department disagrees with this comment. Since heroin, codeine, and morphine are excreted as varying concentrations of unchanged drug, glucuronide conjugates, and other metabolites, the Department believes it is more appropriate to use initial test kits that have a cross-reactivity with these metabolites rather than using a test kit that only detects free morphine. Because of this cross-reactivity, the Department believes it is appropriate to continue to list the initial test level as "opiate metabolites" rather than as morphine.

One commenter agreed that the initial test level should be raised, but suggested that the Department specify the analyte to be used for the test kit calibrators, that is, either morphine, morphine-3-glucuronide, or codeine. The Department agrees that the specific analyte used to calibrate a test kit has a direct impact on its ability to detect the presence of a drug or metabolite in a urine specimen. Therefore, test kit manufacturers should continue using morphine to prepare the calibrators for the revised opiate test kits as they had been using for the current opiate test kits.

2. Raise the Confirmatory Test Levels for Morphine and Codeine

The majority of the commenters agreed that raising the confirmatory test levels for morphine and codeine was appropriate and that the levels should correspond to the level established for the initial test. However, two commenters suggested that the confirmatory test level for morphine be raised to 4,000 ng/mL to make the test level consistent with that established by the Department of Defense (DoD) for its testing program. The Department does not agree that the two programs must use the same confirmatory testing levels. In light of the information found in the study of 1.1 million specimens noted above, the Department believes that the 2,000 ng/mL is the cutoff level that should be used at this time for agency testing.

3. Establish a Confirmatory Test Level for 6-Acetylmorphine

A majority of the commenters supported establishing a confirmatory test level for 6-acetylmorphine (6-AM); however, there was disagreement that it should be tested for on each specimen that was positive on the initial test. There were suggestions that a laboratory only test for 6-AM when the morphine concentration exceeds 2,000 or 4,000 ng/mL, or when the MRO requests a 6-AM analysis. Several commenters stated that testing for 6-AM on all presumptive positives places an unnecessary burden on the laboratory to conduct a second separate confirmatory test which will increase the cost of testing. In addition, there were suggestions that presumptive positives be tested only for 6-AM since the focus of the opiate testing is to identify heroin use. The Department believes that since the number of presumptive positives going to confirmation testing at a 2,000 ng/mL initial test level will be reduced significantly, there will not be a significant increase in the cost associated with testing for 6-AM. However, we do agree that testing for 6-AM on each presumptive positive may be unnecessary. Based on the pharmacology of heroin metabolism, 6-AM is likely present only when morphine is present in the specimen and its concentration exceeds 2,000 ng/mL. The concentration of codeine has no bearing on the possible presence of 6-AM. Therefore, the Department agrees with the commenters that 6-AM should only be tested for after a laboratory confirms that the morphine concentration exceeds 2,000 ng/mL rather than testing for 6-AM on each specimen that was positive on the initial test as had been proposed. In other words, a positive codeine without morphine present or with morphine less than 2,000 ng/mL will not automatically require a test for 6-AM. The final revisions to the Mandatory Guidelines have been changed accordingly.

4. Implementation

Several commenters expressed concern that the new testing levels could not be implemented immediately because the test kit manufacturers will need sufficient time to reformulate their kits and to get them cleared by the Food and Drug Administration (FDA). Additionally, the laboratories will need time to validate new confirmatory test procedures using the new testing levels. The Department agrees that a sufficient time must be allowed for the new levels to be implemented and, therefore, the effective date is 180 days from the date of this publication.

Information Collection Requirements: There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

Dated: April 18, 1997.

Nelba Chavez,

Administrator, Substance Abuse and Mental Health Services Administration.

Dated: June 11, 1997.

Donna E. Shalala,

Secretary.

The following amendments are made to the Mandatory Guidelines for Federal Workplace Drug Testing Programs published on June 9, 1994 (59 FR 29916):

Subpart B

1. Section 2.4(e)(1), the initial test level for opiate metabolites appearing in the table, is amended by changing the value of "300" to "2,000" and deleting the footnote that had specified a 25 ng/mL testing level if the immunoassay test was specific for free morphine.

2. Section 2.4(f)(1), the confirmatory test level for morphine appearing in the table, is amended by changing the value of "300" to "2,000."

3. Section 2.4(f)(1), the confirmatory test level for codeine appearing in the table, is amended by changing the value of "300" to "2,000."

4. Section 2.4(f)(1), the table of confirmatory test levels, is amended by adding a new line under opiates to read as follows:

6-Acetylmorphine [4]	10 ng/mL

5. Section 2.4(f)(1), the table of confirmatory test levels, is amended by

[4] Test for 6-AM when the morphine concentration exceeds 2,000 ng/mL.

adding a new footnote under the table to read as follows:

[FR Doc. 97–25823 Filed 9–29–97; 8:45 am]
BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4285–N–01]

Debenture Recall

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces a debenture recall of certain Federal Housing Administration debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, Room B133, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 755–7510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to Section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all Federal Housing Administration debentures, with a coupon rate of 6.75% or above, except for those debentures subject to "debenture lock agreements," that have been registered on the books of the Federal Reserve Bank of Philadelphia, and are, therefore, "outstanding" as of September 30, 1997. The date of the call is January 1, 1998.

The debenture will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debentures will be paid with the principal at redemption. During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1997. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on January 1, 1998, will be made automatically to the registered holder.

Dated: September 25, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–25985 Filed 9–29–97; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–834589

Applicant: R.D. Zande & Associates, Inc., Columbus, Ohio; Robert F. Madej, principal investigator.

The applicant requests a permit to take (capture and release; survey hibernacula) gray bat *(Myotis grisescens)* and Indiana bat *(Myotis sodalis);* take (capture and release; collect one voucher specimen per site) American burying (=giant carrion) beetle *(Nicrophorus americanus);* take (capture and release) Hine's (=Ohio) emerald dragonfly *(Somatochlora hineana);* and take (survey habitat) Mitchell's satyr butterfly *(Neonympha mitchellii mitchellii)* throughout their ranges. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

PRT–834596

Applicant: 3D/International, Inc. Environmental Group, Cincinnati, Ohio.

The applicant requests a permit to take (capture and release; collect empty shells) clubshell mussel *(Pleurobema clava)* and northern riffleshell mussel *(Epioblasma torulosa rangiana)* and to take (capture and release) American burying (=giant carrion) beetle *(Nicrophorus americanus)* and Hine's (=Ohio) emerald dragonfly *(Somatochlora hineana)* at Wright Patterson Air Force Base, Ohio. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received on or before October 30, 1997.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x224); FAX: (612/725–3526).

Dated: September 26, 1997.

John A. Blankenship,

Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 97–25908 Filed 9–29–97; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Oahu Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Recovery Plan for Oahu Plants. There are 66 plant taxa included in this plan, all listed as endangered. All 66 taxa are endemic to Hawaii. Sixty are restricted to the island of Oahu and six occur on Oahu and other main Hawaiian Islands.

DATES: Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3108, Box 50088, Honolulu, Hawaii 96850 (phone 808/541–3441); and Hawaii State Library, 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Brooks Harper, Field Supervisor, Ecological Services, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Scott Johnston, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

This draft Recovery Plan for Oahu Plants covers 66 plant taxa (full species, subspecies, and varieties), all of which are listed as endangered. Fifty-six of these taxa are endemic to the island of Oahu. The following taxa also currently have populations outside of the island of Oahu: *Gouania meyenii* and *Lobelia niihauensis* on Kauai; *Hesperomannia arborescens* on Molokai and Maui; *Hesperomannia arbuscula* on West Maui; *Nototrichium humile* and *Phyllostegia mollis* on East Maui; and *Tetramolopium lepidotum* spp. *lepidotum* on Hawaii. Historically, two of the taxa were known from Molokai (*Eugenia koolauensis* and *Phyllostegia mollis*), two from Lanai (*Hesperomannia arborescens* and *Tetramolopium lepidotum* ssp. *lepidotum*), and one each from Kauai (*Phlegmariurus nutans*), West Maui (*Gouania vitifolia*), Niihau (*Lobelia niihauensis*), and Hawaii (*Gouania vitifolia*). The plants covered by the draft recovery plan are: *Abutilon sandwicense* (no common name (NCN)), *Alsinidendron obovatum* (NCN), *Alsinidendron trinerve* (NCN), *Chamaesyce celastroides* var. *kaenana* (akoko), *Chamaesyce deppeana* (akoko), *Chamaesyce herbstii* (akoko), *Chamaesyce kuwaleana* (akoko), *Chamaesyce rockii* (akoko), *Cyanea acuminata* (haha), *Cyanea crispa* (NCN), *Cyanea grimesiana* ssp. *obatae* (haha), *Cyanea humboldtiana* (haha), *Cyanea koolauensis* (haha), *Cyanea longiflora* (haha), *Cyanea pinnatifida* (haha), *Cyanea st.-johnii* (haha), *Cyanea superba* (NCN), *Cyanea truncata* (haha), *Cyrtandra crenata* (haiwale), *Cyrtandra dentata* (haiwale), *Cyrtandra polyantha* (haiwale), *Cyrtandra subumbellata* (haiwale), *Cyrtandra viridiflora* (haiwale), *Delissea subcordata* (oha), *Diellia falcata* (NCN), *Diellia unisora* (NCN), *Dubautia herbstobatae* (naenae), *Eragrostis fosbergii* (NCN), *Eugenia koolauensis* (nioi), *Gardenia mannii* (nanu), *Gouania meyenii* (NCN), *Gouania vitifolia* (NCN), *Hedyotis degeneri* (NCN), *Hedyotis parvula* (NCN), *Hesperomannia arborescens* (NCN), *Hesperomannia arbuscula* (NCN), *Labordia cyrtandrae* (kamakahala), *Lepidium arbuscula* (anaunau), *Lipochaeta lobata* var. *leptophylla* (nehe), *Lipochaeta tenuifolia* (NCN), *Lobelia gaudichaudii* ssp. *koolauensis* (NCN), *Lobelia monostachya* (NCN), *Lobelia niihauensis* (NCN), *Lobelia oahuensis* (NCN), *Melicope lydgatei* (alani), *Melicope saint-johnii* (alani), *Myrsine juddii* (kolea), *Neraudia angulata* (NCN), *Nototrichium humile* (kului), *Phlegmariurus nutans* (wawaeiole), *Phyllostegia hirsuta* (NCN), *Phyllostegia kaalaensis* (NCN), *Phyllostegia mollis* (NCN), *Pritchardia kaalae* (loulu), *Sanicula mariversa* (NCN), *Schiedea kaalae* (NCN), *Schiedea kealiae* (NCN), *Silene perlmanii* (NCN), *Stenogyne kanehoana* (NCN), *Tetramolopium filiforme* (NCN), *Tetramolopium lepidotum* ssp. *lepidotum* (NCN), *Tetraplasandra gymnocarpa* (oheohe), *Trematolobelia singularis* (NCN), *Urera kaalae* (opuhe), *Viola chamissoniana* ssp. *chamissoniana* (pamakani), and *Viola oahuensis* (NCN).

The 66 taxa included in this draft plan grow in a variety of vegetation communities (shrublands, forests, and mixed communities), elevational zones (coastal to subalpine), and moisture regimes (dry to wet). These taxa and their habitats have been variously affected or are currently threatened by one or more of the following: competition for space, light, water, and nutrients by introduced vegetation; habitat degradation by wild, feral or domestic animals (goats, pigs, and cattle); agricultural and recreational activities; habitat loss and damage to plants from fires; predation by animals (cattle, pigs, goats, rats, slugs and snails, and insects); and natural disasters such as hurricanes. In addition, due to the small number of existing individuals and their very narrow distributions, these taxa and most of their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events.

The objective of the draft recovery plan is to provide a framework for the recovery of these 66 taxa so that their protection by the Endangered Species Act (ESA) is no longer necessary. The interim objective is to stabilize all existing populations of the Oahu plants. To be considered stable, each taxon must be managed to control threats (e.g., fenced) and be represented in an *ex situ* (such as a nursery or arboretum) collection. In addition, a minimum total of three populations of each taxon should be documented on islands where they now occur or occurred historically. Each of these populations must be naturally reproducing and increasing in number, with a minimum of 25 mature individuals per population for long-lived perennials (*Eugenia koolauensis, Hesperomannia arborescens, Hesperomannia arbuscula, Melicope lydgatei, Melicope saint-johnii, Pritchardia kaalae, Tetraplasandra gymnocarpa,* and *Urera kaalae*) and a minimum of 50 mature individuals per population for short-lived perennials (*Abutilon sandwicense, Alsinidendron obovatum, Alsinidendron trinerve, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *obatae, Cyanea humboldtiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia falcata, Diellia unisora, Dubautia herbstobatae, Eragrostis fosbergii, Gardenia mannii, Gouania meyenii, Gouania vitifolia, Hedyotis degeneri, Hedyotis parvula, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Myrsine juddii, Neraudia angulata, Nototrichium humile, Phlegmariurus nutans,*

Phyllostegia hirsuta, Phyllostegia kaaloensis, Phyllostegia mollis, Sanicula mariversa, Schiedea kaalae, Schiedea kealiae, Silene perlmanii, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum ssp. *lepidotum, Trematolobelia singularis, Viola chamissoniana ssp. chamissoniana*, and *Viola oahuensis*).

For downlisting, a total of five to seven populations of each taxon should be documented on islands where they now occur or occurred historically. In certain cases, however, a particular taxon may be eligible for downlisting even if all five to seven of the populations are on only one island, provided all of the other recovery criteria have been met and the populations in question are widely distributed and secure enough that one might reasonably conclude that the taxon is not in danger of extinction throughout all or a significant part of its range.

Each of these populations must be naturally reproducing, stable or increasing in number, and secure from threats, with a minimum of 100 mature individuals per population for long-lived perennials, a minimum of 300 mature individuals per population for short-lived perennials and a minimum of 500 mature individuals per population for the annuals. Each population should persist at this level for a minimum of five consecutive years before downlisting is considered. A total of eight to ten populations of each taxon should be documented on islands where they now occur or occurred historically. As with downlisting, there may be certain cases in which a particular taxon may be eligible for delisting even if all eight to ten of the populations are on only one island, provided all of the other recovery criteria have been met and the populations in question are widely distributed and secure enough that one might reasonably conclude that the taxon is not in danger of extinction throughout all or a significant part of its range. Each of these populations must be naturally reproducing, stable or increasing in number, and secure from threats, with a minimum of 100 mature individuals per population for long-lived perennials, a minimum of 300 mature individuals per population for short-lived perennials and a minimum of 500 mature individuals per population for the annual taxon. Each population should persist at this level for a minimum of five consecutive years.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

Michael J. Spear,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–25837 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Two Insects and Four Plants From the Santa Cruz Mountains for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Recovery Plan for Two Insects and Four Plants from the Santa Cruz Mountains. The two insects and four plants occur on sandy soils in the Santa Cruz Mountains, Santa Cruz County, California.

DATES: Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805/644–1766). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to, Ms. Diane K. Noda, Field Supervisor, at the above Ventura address.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Botanist, at the above Ventura address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The two insects and three of the four plants addressed in this recovery plan are listed as endangered. The fourth plant (Scotts Valley polygonum) is a species of concern to the Service.

The Mount Hermon June beetle (*Polyphylla barbata*) is known from 28 collection sites in the area generally bounded by Ben Lomond, Mount Hermon, and Scotts Valley. Populations receiving some protection occur on Quail Hollow Ranch. The remaining populations occur on private land.

The Zayante band-winged grasshopper (*Trimerotropis infantilis*) is known from 10 collection sites in the area generally bounded by Ben Lomond, Mount Hermon, and Mission Springs. All populations occur on private land.

Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) is known from 21 populations; most occur between Ben Lomond, Mount Hermon, and Glenwood. Outlying populations are located near Bonny Doon, Boulder Creek, and Big Basin State Park. Populations receiving some protection occur on Bonny Doon Ecologic Preserve, Quail Hollow Ranch, and Big Basin State Park. The remaining populations are found on private land.

Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*) is known from three sites on private land north of Scotts Valley.

Ben Lomond wallflower (*Erysimum teretifolium*) is known from 15 populations; most occur between Ben Lomond, Mount Hermon, and Glenwood. Outlying populations are located near Bonny Doon. Populations receiving some protection occur on Bonny Doon Ecologic Preserve and Quail Hollow Ranch. The remaining populations are found on private land.

Scotts Valley polygonum (*Polygonum hickmanii*) is known from four colonies north of Scotts Valley, all of which occur in the same general area as *Chorizanthe robusta* var. *hartwegii*.

These taxa are variously threatened by one or more of the following: sand mining, urban development, agricultural conversion, equestrian use, recreational activities, alteration in fire cycles, and competition with nonnatives vegetation. For the two insect taxa, collection and pesticide use are recognized as potential threats. In addition, the very low numbers of individuals and populations of some of these taxa put them at great risk of extinction due to random naturally occurring events.

The objective of this plan is to provide a framework for the recovery of the two insects and the four plants so that protection by the Act is no longer necessary. Actions necessary to accomplish this objective include: protecting species habitats through acquisition, conservation easements, and Habitat Conservation Plans; managing species habitats; conducting management-oriented research on the ecology and biology of the species; reviewing and revising management and recovery guidelines; and locating additional populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to final approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 18, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–25838 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Nightingale Reed-Warbler (Acrocephalus luscinia) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the nightingale reed-warbler (*Acrocephalus luscinia*). This species is known only from the Mariana Islands and is currently limited to essentially 2 islands, with a remnant population on a third island, in this archipelago with a total population of approximately 6,225–6,230 individuals.

DATES: Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3108, P.O. Box 50088, Honolulu, Hawaii 96850 (phone: 808/541–3441); the Northern Marianas College Library, P.O. Box 1250, Asterlaje Campus, Saipan, MP 96950 (phone: 670/234–5498, extension 1121/2); and University of Guam, RFK Memorial Library, UOG Station, Mangilao, Guam 96923 (phone: 671/734–9412). Requests for copies of the draft recovery plan and written comments and materials regarding the plan should be addressed to Brooks Harper, Field Supervisor-Ecological Services of the Pacific Islands Office at the Honolulu address given above.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor-Endangered Species, at the Honolulu address given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States, its Territories and Commonwealths. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is the nightingale reed-warbler (*Acrocephalus luscinia*). The species is historically known from five islands in the Marianas archipelago: Guam, Aguiguan, Saipan, Alamagan, and Pagan. It is now extirpated from Guam and Pagan, and near extirpation on Aguiguan. Destruction of wetland areas and predation by the introduced brown tree snake (*Boiga irregularis*) are believed to have caused the extinction on Guam. Habitat destruction due to feral ungulates and, ultimately, vulcanism, are believed to have extirpated the Pagan population. Large areas of reed-warbler habitat were converted to agriculture during the German (1899–1917) and Japanese (1917–1944) administrations and native forest was further damaged during World War II battles. Although populations of reed-warblers flourished on Saipan with the reversion of former agricultural land to scrubby habitats after World War II, this trend has reversed recently as land has been developed for agriculture, homesteads, and tourist-related facilities. Hence, the amount of suitable habitat has been declining. Habitat on Aguiguan and Alamagan has been severely degraded by the continuing presence of large feral goat populations. All of these factors have led to reduction or extirpation of reed-warbler populations from most of the Mariana Islands. A small remnant population persists on Aguiguan, while larger populations persist on Saipan and

Alamagan. Habitat loss and exotic predators, such as the brown tree snake, monitor lizard (*Varanus indicus*), rat (*Rattus* spp.), and domestic cat (*Felis catus*), continue to be the greatest threats to the survival of the nightingale reed-warbler.

The nightingale reed-warbler is currently represented by populations on three islands with a total number of individuals estimated to be 6,225–6,230 birds. The objective of this plan is to provide a framework for the recovery of this species so that protection by the Endangered Species Act (ESA) is no longer necessary. Recommended recovery actions emphasize protection of the existing populations from introduction of the brown tree snake and from existing threats, such as other predators, feral ungulates, and habitat alteration. It is recommended that populations be established on at least three additional islands in the Mariana Island chain. Further research on population dynamics is also needed.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the data specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

Michael J. Spear,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–25839 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Endangered Speckled Dace of Clover and Independence Valleys (Rhinichthys osculus lethoporus and Rhinichthys osculus oligoporus) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the endangered speckled dace of Clover and Independence Valleys in Elko County, Nevada. This plan undertakes a multispecies approach by discussing the recovery needs of two native, endangered fish species.

DATES: Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, Nevada State Office, Fish and Wildlife Service, 4600 Kietzke Lane, Suite 125C, Reno, Nevada 89502 (telephone: 702/784–5227). Written comments and materials regarding the plan should be addressed to the State Supervisor at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada address.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Byers at the above Reno, Nevada address (telephone: 702/784–5227).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels needed to downlist or delist them, and estimate time and cost for implementing the necessary recovery measures.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans. Individualized responses to comments will not be provided.

Independence Valley speckled dace inhabit the Independence Valley Warm Springs system in Elko County, Nevada, and it is the only system from which these fish are known. Clover Valley speckled dace reside in three spring systems in Clover Valley in Elko County, Nevada. These springs are Clover Valley Warm Springs, Bradish Spring, and Wright Ranch Spring. Current population distributions and abundances are unknown for either dace. Primary threats to each species at the time of listing were a limited distribution, habitat manipulation, small population size, and nonnative fish introductions. Recovery of these species will require removal and/or control of nonnative fishes and cooperative agreements with landowners to protect habitat.

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to revision and approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

Michael J. Spear,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–25840 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the El Segundo Blue Butterfly for Review and Comment

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the El Segundo blue butterfly (*Euphilotes battoides allyni*). The El Segundo blue butterfly occurs on local and private lands in southwestern Los Angeles County, California. The Service solicits review and comment from the public on this plan.

DATES: Comments on the draft recovery plan must be received on or before December 29, 1997 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor at the following address: Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Telephone requests may be made by calling 760/431–9440. Comments and material received are available for public inspection by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Nagano at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species. They establish criteria for the recovery levels necessary for downlisting or delisting the species. They also provide an estimation of time and cost of implementing the recovery measures needed.

The Endangered Species Act of 1973, as Amended (U.S.C. 1531 *et seq.*) (Act) requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, to provide an opportunity for public review and comment, be given during plan development. The Service will consider all significant information presented during a public comment period, prior to the approval of each new or revised Recovery Plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

The El Segundo blue butterfly has an extremely limited distribution, and there are only three known extant populations. The animal is currently known only from southwestern Los Angeles County, California. The threats to the species include habitat loss and invasive exotic species. Protection and management of its habitat and a captive breeding program are the primary goals of the recovery effort.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All significant comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533(f)).

Dated: September 24, 1997.

Michael J. Spear,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–25841 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Carbonate Endemic Plants for Review and Comment

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service announces the availability for public review of a draft recovery plan for five plant species endemic to carbonate substrates in montane southern California. Four of the plants, *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Astragalus albens* (Cushenbury milk-vetch), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca), is endangered, and a fifth species, *Erigeron parishii* (Parish's daisy) is threatened. The five species were listed on August 24, 1994 (59 **Federal Register** 48652). The Service solicits review and comment from the public on this plan.

DATES: Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor at the following address: Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Telephone requests may be made by calling 619/431–9440. Comments and material received are available for public inspection by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Marjorie Nelson or Jon Avery at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species. Plans also establish criteria for the recovery levels necessary for downlisting or delisting the species. They also provide an estimation of time and cost of implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (U.S.C. 1531 *et seq.*) (Act) requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

All five of the plant species addressed in the draft recovery plan are endemic to carbonate substrates of the San Bernardino Mountains, San Bernardino County, California. *Erigeron parishii* is also found in the Little San Bernardino Mountains, also in San Bernardino County. The five species occur on federal, state, and private lands. The plants are perennials except *Oxytheca parishii* var. *goodmaniana*, which is an annual. The five species occur in the understory of several plant communities, including Jeffrey pine-western juniper woodland, pinyon-juniper woodland, pinyon woodland, and blackbush scrub. The primary threat to the five species is limestone mining. Protection and management of the species' habitat are the primary goals of the recovery effort.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All significant comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533(f)).

Dated: September 24, 1997.
Michael J. Spear,
Regional Director.
[FR Doc. 97–25842 Filed 9–29–97; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Morro Shoulderband Snail and Four Plants From Western San Luis Obispo County, California for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County. The snail and the four plants occur in coastal habitats between Nipomo and San Simeno Creek in Western San Luis Obispo County, California. These taxa were listed by the U.S. Fish and Wildlife Service on December 15, 1994 (59 FR 64613).

DATES: Comments on the draft recovery plan received by December 29, 1997, will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor at the following address: U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805/644–1766). Comments and material received are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Steeck, Botanist, or Kim Touneh, Invertebrate Zoologist, at the above Ventura address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels needed to downlist or delist them, and estimate time and cost for implementing the necessary recovery measures.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans. Individualized responses to comments will not be provided.

This recovery plan includes one snail species that is listed as endangered, three plant taxa that are listed as endangered and one plant taxon that is listed as threatened. All are endemic to western San Luis Obispo County, California. The currently known range of the Morro shoulderband snail (*Helminthoglypta walkeriana*) includes the Morro Spit and those areas south of Morro Bay, west of Los Osos Creek and north of Hazard Canyon that still support coastal dune and sage scrub habitats. Morro manzanita (*Arctostaphylos morroeniss*) is restricted to Baywood fine sands to the south of Morro Bay in stands of varying size scattered over approximately 890 acres. Five of the six known occurrences of Indian Knob mountainbalm (*Eriodictyon altissimum*) also occur south of Morro Bay, typically at the margins of chaparral and coastal sage scrub communities; the sixth occurrence, for which the species was named, is located about 15 miles to the south, at Indian Knob. Inland, Chorro Creek bog thistle (*Cirsium fontinale* var. *obispoense*) is known from nine locations between San Simeon and Pismo Beach, where it is restricted to serpentine seeps and springs. Pismo clarkia (*Clarkia speciosa* ssp. *immaculata*) is known from about a dozen locations in the area between Pismo Beach and Nipomo Mesa, where it is restricted to grasslands.

The Morro shoulderband snail is threatened principally by habitat destruction and degradation due to increasing development, invasion of non-native plant species (i.e. veldt grass), senescence of dune vegetation, and recreational use (e.g. off-road vehicle activity). Competition with the brown garden snail (*Helix aspersa*), molluscicides, and increased likelihood of extinction due to the small size and isolation of populations are potential threats. Morro manzanita and Indian Knob mountainbalm are threatened with habitat destruction and degradation due to development, and possibly by invasion of non-native plant species, and senescence resulting from alteration in fire cycles. Threats to the Chorro Creek bog thistle include water diversion, road maintenance, excessive cattle trampling and, potentially, invasive non-native plants. The principal threat to the Pismo clarkia is habitat destruction and degradation due to development. Road maintenance activities, overgrazing, and competition with non-native grasses may also be threats.

This plan provides for the recovery of the snail, Morro manzanita, and Indian knob mountainbalm so that protection by the Act is no longer necessary. It provides for downlisting Chorro Creek bog thistle and Pismo clarkia to threatened status.

Protection and management of the species' habitat are the primary goals of the recovery effort.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments recovery by the data specified above will be considered prior to revision and approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.
Michael J. Spear,
Regional Director, Region 1, Portland, Oregon.
[FR Doc. 97–25843 Filed 9–29–97; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Seven Coastal Plants and the Myrtle's Silverspot Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for Seven Coastal Plants and the Myrtle's Silverspot Butterfly. The seven plants and the butterfly occur in coastal habitats from Humboldt County to Santa Barbara County.

DATES: Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, 3310 El Camino Ave., Suite 130, Sacramento, California 95821–6340 (phone: 916/979–2710); U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Diane Noda, Field Supervisor, at the above Ventura address.

FOR FURTHER INFORMATION CONTACT: Tim Thomas, Botanist, at the above Ventura address (phone: 805/644–1766).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

These species are listed as endangered except for the threatened *Chorizanthe pungens* var. *pungens*. *Chorizanthe howellii* is known from 3 populations with 23,700 individuals; *Chorizanthe pungens* var. *pungens* is known from 7 populations with 14 million individuals; *Chorizanthe valida*, one population with 30,000 individuals; *Erysimum menziesii* (three subspecies), 16 populations with 33,300 individuals; *Gilia tenuiflora* ssp. *arenaria*, 15 populations with 110,400 individuals; *Layia carnosa*, 19 populations with 300,000 individuals; *Lupinus tidestromii*, 7 populations with 433 individuals; and the Myrtle's Silverspot butterfly, 3 populations with 10,000 individuals. The plants are restricted to the foredunes and dune scrub vegetation and adjacent sandy habitats occupied by coastal scrub or coastal prairie of northern and central coastal California. The butterfly occurs in the coastal grasslands and scrub, with the larval host plant (a violet) in the immediate vicinity of Point Reyes, Marin County. All of these species are threatened by competition from non-native plants, loss of habitat from commercial and residential development, and habitat disturbance from recreation and grazing.

The objective of this plan is to conserve the seven plants and the butterfly so that protection by the Act is no longer necessary. The plant species will be recovered by restoring and protecting dune habitats on which they depend. Assuring long-term protection of public and privately-owned habitat is essential. Habitat conservation planning, as provided for listed animals by the Endangered Species Act will be helpful. Once land is protected, the primary means to accomplish recovery is by controlling non-native invasive plant species. Long-term commitment of resources by public agencies to maintain weed control and other management measures will be essential. Artificial creation of new populations is recommended only as a last resort.

The recovery strategy for the Myrtle's silverspot butterfly is to protect, manage and secure the three known population sites. Monitoring will be required for at least 10 consecutive years to determine if butterfly populations (numbers) are relatively stable and the sites adequately protected, so the Myrtle's silverspot may be considered for de-listing. Some new populations may be established in areas from which the species has been extirpated, if suitable sites are found.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.
Michael J. Spear,
Regional Director, Region 1, Portland, Oregon.
[FR Doc. 97–25844 Filed 9–29–97; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Shasta Crayfish (Pacifastacus fortis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft Recovery Plan for the Shasta Crayfish (*Pacifastacus fortis*). This distribution of this crayfish is limited to the Pit River drainage in Shasta County, California. This taxa was listed as an endangered species by the U.S. Fish and Wildlife Service on September 30, 1988 (53 FR 38460).

DATES: Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor at the following address: U.S. Fish and Wildlife Service, 3310 El Camino Ave., Suite 130, Sacramento, California 95821 (phone: 916/979–2710). Comments and material received are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ann Chrisney, Fish and Wildlife Biologist, or Karen Miller, Recovery Coordinator, at the above Sacramento address.

SUPPLEMENTARY INFORMATION:

Background

The distribution of the Shasta crayfish is limited to the midsections of the Pit River drainage, primarily the Fall River and Hat Creek subdrainages in Shasta County, California. Overall, Shasta crayfish populations have low abundance and fragmented distribution with migration and genetic exchange between populations limited by hydroelectric development and habitat loss. The limits of its geographic distribution appear to have changed little over time. Currently, there are

seven populations of Shasta crayfish ranging in size from approximately fewer than 50 to 5,000.

Shasta crayfish primarily live in cool, clear, spring-fed headwaters that are characterized by clean volcanic cobbles and boulders on top of sand or gravel. The volcanic cobble and boulders are essential habitat components because they provide protective cover for the crayfish. The main threats to Shasta crayfish include: major land reclamation, water diversion projects, and the introduction of nonnative species of crayfish and fishes.

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels needed to downlist or delist them, and estimate time and cost for implementing the necessary recovery measures.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans. Individualized responses to comments will not be provided.

This plan provides for the recovery of the Shasta crayfish (*Pacifastacus fortis*) so that protection by the Act is no longer necessary. Protection and management of the species' habitat are the primary goals of the recovery effort.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to revision and approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

Michael J. Spear,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–25845 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for Upland Species of the San Joaquin Valley, CA, for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of the Draft Recovery Plan for Upland Species of the San Joaquin Valley, California. This recovery plan includes 34 species, of which 11 species are federally listed as endangered or threatened. The draft plan includes recovery criteria and measures for the plants—California jewelflower *(Caulanthus californicus)*, palmate-bracted bird's-beak *(Cordylanthus palmatus)*, Kern mallow *(Eremalche kernensis)*, Hoover's woolly-star *(Eriastrum hooveri)*, San Joaquin woolly-threads *(Lembertia congdonii)*, Bakersfield cactus *(Opuntia basilaris* var. *treleasei)*; and the animals—giant kangaroo rat *(Dipodomys ingens)*, Fresno kangaroo rat *(Dipodomys nitratoides exilis)*, Tipton kangaroo rat *(Dipodomys nitratoides nitratoides)*, blunt-nosed leopard lizard *(Gambelia sila)*, and San Joaquin kit fox *(Vulpes macrotis mutica)*. Long-term conservation of three candidate species, the Buena Vista Lake shrew *(Sorex ornatus relictus)*, the riparian brush rabbit *(Sylvilagus bachmani riparius)*, and riparian woodrat *(Neotoma fuscipes riparia)*; and an additional 20 species of plants and animals of concern to the Service are addressed in the draft recovery plan.

DATES: Comments on the draft recovery plan received by January 28, 1998 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain copies by contacting: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California (telephone 916–979–2725).

FOR FURTHER INFORMATION CONTACT: Karen Miller, Fish and Wildlife Biologist, at the above Sacramento address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Appropriate Federal or other entities will take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The 34 species of plants and animals covered in the draft recovery plan are restricted primarily to the San Joaquin Valley of California. The majority of the species occur in arid grasslands and scrublands of the San Joaquin Valley and adjacent foothills and valleys. The riparian woodrat and riparian brush rabbit inhabit forested river corridors of the eastern San Joaquin Valley. Conversion of habitat to agricultural, industrial, and urban uses has eliminated the listed, candidate, and species of concern from the majority of their historic ranges. The remaining natural communities are highly fragmented, and many are marginal habitats in which these species may not persist during catastrophic events, such as fire or drought.

The objectives of this recovery plan are two-fold: (1) to delist the plants—California jewelflower, palmate-bracted bird's-beak, Kern mallow, Hoover's woolly-star, San Joaquin woolly-threads, Bakersfield cactus; and the animals—giant kangaroo rat, Fresno kangaroo rat, Tipton kangaroo rat, blunt-nosed leopard lizard, and San Joaquin kit fox by protecting, enhancing, restoring, and appropriately managing their habitat; and (2) to ensure the long-term conservation of the three candidates and additional 20 species of concern by protecting, enhancing, restoring, and appropriately managing their habitat.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

Michael J. Spear,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–25846 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Big Island II: Addendum to the Recovery Plan for the Big Island Plant Cluster (USFWS 1996)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Big Island II: Addendum to the Recovery Plan for the Big Island Plant Cluster (USFWS 1996). There are 13 taxa of plants included in this plan, all are listed as endangered. All 13 are known only from the island of Hawaii (Big Island).

DATES: Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, room 3108, P.O. Box 50088, Honolulu, Hawaii 96850 (phone 808/541–3441); Kailua-Kona Public Library 75–138 Hualalai Rd., Kailua-Kona, HI 96740; Hilo Public Library, 300 Waianuenue Ave., Hilo, HI 96720. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to, Field Supervisor, Ecological Services, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Karen "Kitti" Jensen, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

This addendum to the Recovery Plan for the Big Island Plant Cluster covers 13 plant taxa, all are listed as endangered. All of these taxa are endemic to the island of Hawaii (Big Island), Hawaiian Islands. The plants included in the plan are: *Clermontia drepanomorpha* (oha wai), *Cyanea platyphylla* (haha), *Hibiscadelphus giffardianus* (hau kuahiwi), *Hibiscadelphus hualalaiensis* (hau kuahiwi), *Melicope zahlbruckneri* (alani), *Neraudia ovata* (no common name (NCN)), *Phyllostegia racemosa* (kiponapona), *Phyllostegia velutina* (NCN), *Phyllostegia warshaueri* (NCN), *Pleomele hawaiiensis* (hala pepe), *Pritchardia schattaueri* (loulu), *Sicyos alba* (anunu), and *Zanthoxylum dipetalum* var. *tomentosum* (ae).

The 13 taxa included in this addendum grow in a variety of vegetation communities (shrublands, forests, and mixed communities), elevational zones (lowland to montane), and moisture regimes (dry to wet). These taxa and their habitats have been variously affected or are currently threatened by one or more of the following: competition for space, light, water, and nutrients by introduced vegetation; habitat degradation by feral or domestic animals (goats, pigs, sheep and cattle); agricultural and recreational activities; habitat loss and damage to plants from fires; predation by rats and insects; and natural disasters such as volcanic activity. In addition, due to the small number of existing individuals and their very narrow distributions, these taxa are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events.

The objective of the Addendum to the Recovery Plan for the Big Island Plant Cluster (USFWS 1996) is to provide a framework for the recovery of these 13 taxa so that their protection by the Endangered Species Act (ESA) is no longer necessary. The interim objective is to stabilize all existing populations of the Big Island II taxa. To be considered stable, each taxon must be managed to control threats (e.g., fenced) and be represented in an *ex situ* (such as a nursery or arboretum) collection. In addition, a minimum total of three populations of each taxon should be documented on the Big Island, where they now occur or occurred historically. Each of these populations must be naturally reproducing and increasing in number, with a minimum of 25 mature individuals per population for long-lived perennials (*Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Melicope zahlbreuckneri, Pritchardia schattaueri, and* Zanthoxylum tomentosum var. *dipetalum* and a minimum of 50 mature individuals per population for short-lived perennials (*Clermontia drepanomorpha, Cyanea platyphylla, Neraudia ovata, Pleomele hawaiiensis, Phyllostegia racemosa, Phyllostegia velutina, and Phyllostegia warshaueri*) and a minimum of 100 mature individuals per population for the annual taxon *Sicyos alba*. For downlisting, a total of five to seven populations of each taxon should be documented on the Big Island where they now occur or occurred historically. Each of these populations must be naturally reproducing, stable or increasing in number, and secure from

threats, with a minimum of 100 mature individuals per population for long-lived perennials, a minimum of 300 mature individuals per population for short-lived perennials, a minimum of 500 mature individuals per population for the annual taxon. Each population should persist at this level for a minimum of 5 consecutive years before downlisting is considered. For delisting, a total of 8 to 10 populations of each taxon should be documented on Kauai where they now occur or occurred historically. Each of these populations must be naturally reproducing, stable or increasing in number, and secure from threats, with a minimum of 100 mature individuals per population for long-lived perennials, a minimum of 300 mature individuals per population for short-lived perennials, and a minimum of 500 mature individuals per population for the annual taxon. Each population should persist at this level for a minimum of 5 consecutive years.

Public Comments Solicited

The Service solicits written comments on the Addendum to the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of this addendum.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

Thomas J. Dwyer,

Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 97–25847 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Residential Development Proposal called Tidewater Condominiums, in the City of Orange Beach, Baldwin County, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Tidewater Associates, L.L.C. (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as amended (Act). The ITP would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse, *Peromyscus polionotus ammobates* (ABM). While surveys did not confirm the presence of ABM on the Applicant's 4.3-acre tract, ABM have been trapped on land adjacent to the Applicant's in Orange Beach, Alabama. It was the Applicant's decision to go forward with the Section 10 process. The project would be called Tidewater Condominiums and consists of 102 residential units. The residential component will include a single, 12-story condominium complex with 102 units. Associated landscaped grounds and parking areas, recreational amenities, and a dune walkover structure would also be constructed. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined the Applicant's Habitat Conservation Plan (HCP) and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6). The Service specifically requests comment on the appropriateness of the "No Surprises" assurances should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a "No Surprises" Policy for applicants seeking ITPs. Copies of the Service's "No Surprises" Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the "No Surprises" Policy to this application and HCP.

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before October 30, 1997.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Drawer 1190, Daphne, Alabama 36526. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be processed. Please reference permit number PRT–832539 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110; or Ms. Celeste South, Fish and Wildlife Biologist, Daphne, Alabama, Field Office (see **ADDRESSES** above), telephone: 334/441–5181.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse (ABM), *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse, *Peromyscus polionotus*, and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys on the Applicant's property did not reveal habitat occupied by ABM; however, the Applicant is seeking compliance with the Act in an abundance of caution. The Applicant's property does not contain designated critical habitat for the ABM. Construction of the Project may result in the death of, or injury to, ABM. Habitat alterations due to condominium placement and subsequent human habitation of the Project may reduce available habitat for food, shelter, and reproduction.

The EA considers the environmental consequences of several alternatives. One action proposed is the issuance of the ITP based upon submittal of the HCP as proposed. This alternative provides for restrictions that include conserving almost 75 percent of the Project's dune fields (essentially primary and secondary dunes), establishment of one walkover structure across primary and secondary dune features, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, restoration of dune systems, the creation of educational and information brochures on ABM conservation, and the minimization and control of outdoor lighting. Further, the HCP proposes to provide an endowment of $17,773 to acquire ABM habitat offsite or otherwise perform some other conservation measure for the ABM. The HCP provides a funding source for these mitigation measures, as well as monitoring of the HCP, should an ITP be issued by the Service. Another alternative is consideration of a different project design that might result in more impacts to the ABM and its habitat. A third alternative is no-action, or deny the request for authorization to incidentally take the ABM.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly effecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

- Issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of the effected species in the wild.
- The HCP contains provisions which sufficiently minimize and/or mitigate the impacts of issuing the ITP.
- Issuance of the ITP would not have significant effects on the human environment in the project area.
- The proposed take is incidental to an otherwise lawful activity.
- Adequate funding will be provided to implement the measures proposed in the submitted HCP and authorizing ITP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: September 24, 1997.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 97–25835 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force (TF) will meet from 9:00 a.m. to 5:00 p.m. on Wednesday, October 15, 1997 and from 8:00 a.m. to 4:00 p.m. on Thursday, October 16, 1997.

PLACE: The meeting will be held in the Windmill Ashland Hills Inn (2525 Ashland Street), Ashland, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: The principal agenda items at this meeting will be (1) A decision on whether or how to proceed with the Upper Basin Amendment and assignments; (2) an update on Klamath Compact Commission water supply initiative; (3) an update on subbasin planning; (4) a report from National Marine Fisheries Service and Siskiyou County regarding the Five Counties Coho Initiative and Plan; (5) a report on the American Heritage Rivers Initiative; (6) private landowner awards; and (7) an update on scoping of the Klamath River Basin Instream Flow Incremental Methodology (IFIM) flow study.

For background information on the TF, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: September 22, 1997.

Thomas J. Dwyer,

Acting Regional Director.

[FR Doc. 97–25833 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–07–1120–00: GP7–0304]

Notice of Meetings of Southeast Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is given that there will be meetings of the Southeast Oregon Resource Advisory Council.

DATES: The Southeast Oregon Resource Advisory Council meetings will begin at 8:00 a.m. and run to 5:00 p.m. October 27, 1997. Public comments are scheduled from 12:00 noon to 12:15 p.m., October 27, 1997. On October 28, 1997, the meeting will run from 8:00 a.m. to 12:00 noon. At an appropriate time, the council will recess for approximately one hour for lunch. Topics to be discussed during the meeting are administrative activities of the Council, the workload for fiscal year 1998, noxious weeds, fuels and prescribed fire, water quality issues, and such other issues as to properly come before the Council.

ADDRESSES: The Southeast Oregon Resource Advisory Council meetings will take place at the Malheur National Forest Headquarters, Federal Building, 431 Patterson Bridge Road, John Day, Oregon 97845.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon

Street, Vale, OR 97918, (Telephone 541–473–3144).

Edwin J. Singleton,

District Manager.

[FR Doc. 97–25820 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–07–1430–01; ILES–31854]

Notice of Realty Action: Recreation and Public Purposes Transfer of Public Land in Kane County, Illinois

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following land has been found suitable for sale under authority of the Recreation and Public Purposes Act of 1926. The land will not be transferred until at least 60 days after the date of this notice.

Illinois Meridian, Kane County, Illinois

T.10 N., R.8 E.

Sec. 10, Lots 1 and 5.

Containing 0.28 acres and 0.89 acres, respectively.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

These parcels will be transferred to the Kane County Forest Preserve District under the Recreation and Public Purposes Act of 1926 (43 U.S.C. 869, *et seq.*). The mineral interest will not be conveyed.

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations, as well as specific conditions of the sale, are available for review at the Bureau of Land Management, Milwaukee Field Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin.

DATES: Interested parties may submit comments until November 14, 1997. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Comments should be sent to: Bureau of Land Management, Milwaukee Field Office, P.O. Box 631; Milwaukee, Wisconsin 53201–0631.

FOR FURTHER INFORMATION CONTACT: Howard Levine, Planning and Environmental Coordinator, Milwaukee Field Office, (414) 297–4463.

Dated: September 18, 1997.

James W. Dryden,

Field Office Manager.

[FR Doc. 97–25311 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: G7–0287]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 19 S., R. 1 E., accepted August 20, 1997
T. 39 S., R. 3 E., accepted September 4, 1997
T. 3 S., R. 5 E., accepted August 13, 1997
T. 3 S., R. 5 E., accepted September 4, 1997
T. 30 S., R. 6 E., accepted July 21, 1997
T. 31 S., R. 7½ E., accepted July 21, 1997
T. 17 S., R. 8 W., accepted August 4, 1997
T. 1 S., R. 9 W., accepted September 4, 1997

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (1515 S.W. 5th Avenue), P.O. Box 2965, Portland, Oregon 97208.

Dated: September 11, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 97–25911 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Electronic Commerce in the Minerals Management Service

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of an electronic commerce presentation.

SUMMARY: The Minerals Management Service (MMS) is giving an Electronic Commerce (EC) presentation in New Orleans, Louisiana, on October 31, 1997. This presentation will assist those individuals considering EC implementation or pilot testing with MMS.

DATES: The EC presentation is Friday, October 31, 1997.

LOCATION: Hyatt Regency New Orleans, 500 Poydras Plaza, New Orleans, Louisiana 70113, telephone number: (504) 561–1234.

The Hyatt Regency New Orleans is located at the intersection of Poydras and Loyola Avenue, near the Louisiana Superdome.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy C. Allard, Systems Management Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3140, Denver, Colorado, 80225–0165, telephone numbers (800) 619–4593 and (303) 275–7007, fax number (303) 275–7099, e-mail Timothy__Allard@mms.gov or Mr. Stephen Adams, Information Technology Division, Offshore Minerals Management, Minerals Management Service, 1201 Elmwood Park Blvd., MS 4061, Jefferson, Louisiana, 70123, telephone number (504) 731–3033, fax number (504) 731–3004, e-mail Stephen__Adams@mms.gov.

SUPPLEMENTARY INFORMATION: MMS is offering an EC presentation at no cost to companies and interested parties that are considering EC implementation or pilot testing with the MMS. The presentation will be held in conjunction with the American Petroleum Institute (API), Petroleum Industry Data Exchange (PIDX), Electronic Commerce Conference and Trade Show in New Orleans, Louisiana. If you plan to attend the API PIDX User Group meetings scheduled for October 26, through 30, 1997, a registration fee may apply. Instructors are MMS employees of the Royalty Management Program, Systems Management Division and the Offshore Minerals Management, Information Technology Division.

Agenda

Morning Session: 9:00 a.m.–11:30 a.m.

Subject: MMS EC activities, capabilities, current status, implementation planning and schedules.

Afternoon Session: 1:00 p.m.–4:00 p.m.

Subject: Electronic Data Interchange (EDI) technical issues and mapping walk-throughs for the transmittal of regulatory report data via Accredited Standards Committee (ASC) X12 EDI standards. The mapping walk-throughs will focus on the Report of Sales and Royalty Remittance, Form MMS–2014 and the Semiannual Well Test Report, Form MMS–126.

Attendees of the afternoon session will be provided copies of the new *MMS EDI Handbook for Payors and Reporters* for the following reporting forms and electronic payments:

Report of Sales and Royalty Remittance, Form MMS–2014; Monthly Report of Operations, Form MMS–3160; Oil and Gas Operations Report (OGOR), Form MMS–4054–A, B, and C;

MMS Bill for Collection, Invoice Form DI–1040; Semiannual Well Test Report, Form MMS–126; Well Potential Test Report and Request for MPR, Form MMS–128; and National Automated Clearing House Association (NACHA) Electronic Payments.

If you plan to attend the EC presentation, please leave a message for Tim Allard or Stephen Adams at the telephone and FAX numbers or the e-mail address in the information contact section of this notice no later than October 24, 1997.

Dated: September 23, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 97–25848 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Sixty-day Notice of Intention To Request Clearance of Collection of Information—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) Social Science Program is considering submitting to the Office of Management and Budget (OMB) a request for clearance of a three year program of collections of information that would conduct surveys of the public regarding park visitors and visitor services. The NPS is publishing this notice to inform the public of this proposed three year program and to request comments on the program and the proposed approach.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the NPS, including whether the information will have practical utility; (b) the accuracy of the NPS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

DATES: Public comments will be accepted on or before December 1, 1997.

SEND COMMENTS TO: Dr. John G. Dennis, NPS Washington Office Social Science Program Coordinator, Natural Resources (3223 MIB), National Park Service, 1849 C Street, N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. John G. Dennis. Voice: 202–208–5193, Fax: 202–208–4620, Email: < john__dennis@nps.gov >.

Proposed Request for Clearance of a Three Year Program of Collections of Information: A Proposed Process for OMB Approval of NPS-Sponsored Public Surveys.

1.0 Introduction

The National Park System preserves the nation's natural and cultural heritage and provides for its enjoyment by citizens and visitors from throughout the world. The management of park resources is necessarily the management of people. Visitors, employees, concessioners, nearby communities, interest groups, local governments—all affect and are affected by units of the National Park System. An accurate understanding of the relationship between people and parks is critical to achieving the dual mission of the National Park System: protecting resources unimpaired and providing for public enjoyment. Such understanding requires a sound scientific basis. Hence, social science research is a necessary and important function of the National Park Service (NPS).

NPS managers face unprecedented needs to better understand the public's values, attitudes and behaviors with respect to parks. Park visitation for recreation and other purposes is expected to rise 34% by the year 2000. Indirect use of parks via print, audio-visual, and electronic media also is expected to increase. Management of these uses of parks and of services provided by NPS and park concessioners will require state-of-the-art techniques. Interactions between park managers and government or private managers and owners of lands surrounding the parks will increase in frequency and intensity as differing management goals meet at common boundaries. The people who live and work in communities near the parks are affected by the ways park uses grow and the ways managers of park and adjacent lands interact. The increased emphasis on securing public participation in NPS decision-making requires greater knowledge about these many different publics and their needs. New laws and initiatives, such as the Government Performance and Results Act (GPRA), have created additional needs for the information that NPS social science research can provide.

The NPS has established a new social science program and is implementing a strategic program plan (Usable Knowledge: A Plan for Furthering Social Science and the National Parks, 1996). The plan calls for increased social science research related to the NPS mission. This research in turn will increase the need for efficient and effective data collection from the many different publics who may be affected by NPS efforts to carry out the mission.

This notice describes a proposed 3-year trial effort to "reinvent" the Paperwork Reduction Act process by which NPS secures Office of Management and Budget (OMB) approval for NPS-sponsored surveys to

collect data from one specific segment of these publics—the park visitors. The benefits of this experiment in reinvention will be significant to the NPS, Department of the Interior (DOI), OMB, NPS cooperators, and the public. In addition, such a program, if it proves fully successful, could be adopted by other federal agencies that routinely conduct studies of visitors to the nation's public lands.

1.1 Definitions

Collection of Information—obtaining information or causing information to be obtained by or for an agency by means of identical questions posed to ten or more persons.

Data—material serving as a basis for discussion, inference, or determination of policy, for example, individual numbers or short phrases that provide bits of information about a subject.

DOI—Department of the Interior.

GPRA—Government Performance and Results Act, enacted in 1993 to increase the quality and responsiveness to the American people of the federal government.

Information—facts or figures ready for use, for example, all forms of data, written analyses, and graphical presentations that together provide a body of knowledge about a subject

Information Collection Burden—the effort that a person must make to respond to a request for information, usually measured in minutes or hours.

Information Collection Survey—a generic, written or orally presented format for a collection of information that asks a person to answer a pre-established set of questions.

Metadata—information about information or about how to access information, such as information about the characteristics of a set of data, or a description of data collection categories, or coding instructions used to store information.

OMB—Office of Management and Budget.

NPS—National Park Service.

National Park System—all 375 units, totaling approximately 83 million acres, of federal land that have been assigned to the National Park Service to manage, including among other designations, parks, monuments, recreation areas, lakeshores, seashores, preserves, historic sites, and battlefields.

NPS Visiting Chief Social Scientist—the individual who, on a rotating basis, heads the National Park Service Social Science Program.

Paperwork Reduction Act—the 1995 statute that directs the Federal government to reduce the information collection burden it imposes on the public.

Peer Review—quality assurance review of data, documents, projects, or programs conducted by reviewers who have equal or greater levels of technical training and experience than do the preparers of the data, documents, projects, or programs being reviewed

PI (Principal Investigator)—the person or persons responsible for conducting a research project.

Survey Topic—a specific type of information needed for planning, management, operations, and evaluation of performance related to the NPS mission and responsibilities. Any given survey topic area may include several variables of interest.

Variables of Interest—characteristics that can be measured, including the specific kinds of information within a survey topic that would be sought through questions.

Visitor Survey—a structured, written or oral method for obtaining from park visitors information that is used to educate park managers and others about the views of visitors regarding park programs and resources

83-I Package—a form and attached statements that federal agencies must submit to OMB to request permission to present a collection of information to more than 9 members of the public.

2.0 Overview of This Notice

2.1 Summary of Need for Change

NPS needs to sponsor information collection surveys of the public to provide to park managers information for improving the quality and utility to the public of park programs. NPS finds the current process by which it secures OMB approval of proposed collections of information can be improved with respect to securing public comment and can be made more efficient for the federal government through reducing current levels of personnel and funding necessary for preparing and reviewing the proposed collections of information. NPS believes it has developed an alternative approach for processing proposed collections of information that will be both more effective and more efficient. The proposal presented in this notice is designed to test the alternative approach using one subset of NPS information collection surveys for a 3-year test period.

2.2 Summary of this Proposal

NPS is considering submitting to OMB this proposal to request that OMB approve an alternative set of practices and procedures by which OMB determines whether or not to approve proposed NPS information collection surveys of the public regarding topic areas relating to visitors and visitor services. Under this proposal, NPS would request that OMB review NPS procedures for these surveys as a program, rather than reviewing each and every individual survey of the public related to visitors and visitor services that NPS seeks to conduct. Under the procedures proposed here, NPS and DOI would conduct the necessary quality control through requiring peer review of appropriate program elements, maintaining an ongoing process for improving the scientific quality and efficiency of survey instruments related to visitors and visitor services, and proactively soliciting public review of this proposed alternative set of practices and procedures. NPS also would maintain an information base of public surveys conducted in parks on all topic areas to be used to increase the efficiency of future surveys. Under this proposal, NPS would request that OMB assign an OMB number, expiration date, and total number of information collection burden hours to NPS for the topic areas relating to visitors and visitor services. NPS would then allocate this OMB number, expiration date, and appropriate number of burden hours to each survey within these topic areas that NPS recommends and DOI approves. NPS would request that management oversight of its actions be maintained by having DOI be responsible for the final decision on all individual surveys that NPS proposes within the topic areas and by having OMB monitor NPS actions through its review and decision regarding this proposed NPS request, its review of NPS annual reports of actions taken under the OMB number and expiration date that NPS would request be assigned, and comments that OMB receives directly from the public.

2.3 Summary of Benefits of this Proposal

Adoption of the proposed program presented in this notice would benefit NPS management of its public survey process by increasing the efficiency of NPS personnel time and funding allocations, by improving NPS receipt of effective public and peer comments, and by improving NPS access to usable information while minimizing the burden on the public. DOI and OMB would benefit through greater efficiencies of their review and oversight functions and through the testing of alternative procedures for managing the information collection process. The public would benefit directly through a more effective and less burdensome process for obtaining its review of NPS proposed information collection activities, the more efficient expenditure of NPS federal funds used to develop and approve surveys and manage their application, and a more efficient use of burden hours. The scientific community would benefit through a more efficient management review process, greater focus on use of peer review to improve the scientific quality of information collection, increased attention to methodological improvements, and better administration and wider sharing of data and information obtained from surveys of the public.

3.0 Details of the Elements of this Proposed Process

The following paragraphs discuss each of the elements of this proposal that NPS is considering presenting to OMB. The discussion includes: topic areas to be covered by the proposed process, techniques for ensuring appropriate and effective public involvement in the review of proposed survey purposes and activities, the approach for obtaining peer review of proposed survey methodologies, procedures for involving parks and the NPS in the administration of public surveys, the procedure by which OMB would assign and NPS would allocate OMB numbers and related expiration dates and burden hours, responsibilities and procedures for reporting results of surveys and the use of allotted OMB numbers and related expiration dates and burden hours, procedures by which DOI and OMB would maintain effective program oversight, designation of responsibilities and responsible officials, and relationship to other NPS initiatives.

3.10 Topic Areas

Topic areas are specific types of information needed for planning, management, operations, and evaluation of performance related to the NPS mission and responsibilities. Each topic area may include several variables of interest. This proposal would focus on topic areas related to visitors and visitor services. The topic areas and variables of interest covered in this proposal are identified in detail in Section 4.0.

3.20 Public Involvement

The OMB regulations regarding information collections require sponsors of such collections to seek adequate, widespread, and useful public review of proposed information collection activities. The regulations specifically require publication in the **Federal Register** of a notice of opportunity for the public to review a proposed survey at two different stages during development of the survey instrument. NPS experience to date suggests that this process does not achieve the desired public review and comment for NPS sponsored surveys.

The Visitor Services Project, for example, has conducted 100 very similar studies, has published its survey methodology in peer-reviewed scientific papers, has solicited peer review of its questionnaires and questions as they have been revised or new questions added, and has obtained individual OMB approvals study by study. Despite its following of established procedures for securing widespread review, the Visitor Services Project has received very few public and a handful of governmental inquiries, and no substantive comments, in response to the opportunities for public review. Similarly, based on limited reports from practitioners who recently have conducted other types of surveys in parks, of about 15 surveys that went through the old or new **Federal Register** review process, only 3 received any public inquiry, with the inquiries leading to no specific feedback to NPS. Beyond this required process, all of these surveys received review by the affected managers and most received peer review as well.

The individual visitor studies sponsored by the NPS thus have received little benefit from individually conducting the standard review process established in response to the Paperwork Reduction Act. They instead have experienced delays associated with the additional time periods involved in the review process. They have experienced **Federal Register** publication costs which, under the current requirement for two notices per study, will amount to approximately $500.00 per study with no return of comments from the public for this cost to the taxpayers. They have imposed potential additional burdens on the public by requesting that the public separately review each and every one of the individual study plans and questionnaires, despite the similarities in purpose, topic areas, methodology, and planned uses of results.

Using the knowledge gained from this past experience, NPS is initiating a different approach to achieving public review of its survey process that it believes will be both more comprehensive and more effective. NPS is publishing this 60 day notice of intent to submit to OMB for approval a proposed collection of information to conduct all surveys prepared under this proposed process. In publishing this notice, NPS specifically requests public, scientific, and management comments on the appropriateness, suitability, and effectiveness of each element of the proposed process. NPS asks that respondents offer specific comments on the proposed topic areas. NPS asks for reactions to the proposal's discussion of benefits for program management, for involving the public with the minimum amount of burden, and for improving the methodologies for conducting surveys in and about parks. After addressing all public, scientific, and management comments received in response to this notice, NPS proposes to submit a revised version of this proposal to OMB and to publish a 30 day **Federal Register** notice to announce to the public that it has submitted a formal collection of information proposal to OMB to seek approval for all surveys that would be conducted during the 3 year test of the revised proposal.

NPS thus in this notice is soliciting public review and comment on a proposed public survey process that would deal with a group of selected, common topic areas related to visitors and visitor services, not on individual survey instruments. NPS believes this proposed approach will reduce the burden to the public for reviewing documents and will increase the level of public participation in development of useful topics and survey approaches.

As part of this broad public review process, NPS also will directly inform public interest organizations that have a clear interest in parks, park management, and visitor uses of parks about the opportunity to comment on this **Federal Register** notice. Such organizations to be contacted directly as representatives of large segments of the public will include: National Recreation and Park Association, National Parks and Conservation Association, Conference of National Park Cooperating Associations, National Association of State Park Directors, National Association of Interpreters, National Inholders Association, National Association of Counties, National Association of Conservation Districts, National Governors Association, Appalachian Trail Conference, American Hiking Society, Partners in Parks, National Tour Foundation, and National Association of Park Concessioners. By means of this notice, NPS requests other interested organizations to identify their interest and to provide NPS with comments regarding this proposed process for NPS to use in seeking OMB approval of NPS-sponsored public surveys.

3.30 Peer Involvement

In accordance with standard scientific practice, peer review occurs throughout the research process for developing objectives, methods, sampling design, questionnaire design, target populations, and data analysis strategies for prospective research. This peer involvement contributes significantly to improving the quality of research and its potential to address applied problems of the national parks. Each Principal Investigator (PI) or program manager, as appropriate, would be responsible for managing the process of obtaining, documenting, responding to, and summarizing the results of peer review on the PI's or program manager's research activities. NPS proposes to monitor the peer review that is obtained during four stages in the visitor survey process: (1) determination of appropriate topic area variables, (2) problem identification for each research project, (3) development and pre-testing of research instruments, and (4) preparation of reports for individual research projects and for this test of a program of collections of information.

3.31 Program Topic Area Variables

As part of publication of this notice, NPS will solicit peer review of the scientific appropriateness of the topic area variables included in this proposal. Peer reviewers will be asked to comment on the appropriateness, inclusiveness, and description of the variables proposed for each identified topic area.

3.32 Research Project Problem Identification

Under terms of this proposal, for each proposed, NPS-sponsored public survey, the principal investigators (PIs) intending to conduct the survey would work with park staff to identify and develop the objectives, scope, and target audience for research to address the management problem identified by the park manager. For new or significantly modified existing surveys, the PIs also would be expected to consult with peer researchers to ensure that the selected objectives, scope, and target audience are scientifically valid and have a high probability of yielding results useful for addressing the identified management problem.

3.33 Development and Pre-testing of Research Instruments

Whenever they are developing sampling strategies, questions to ask, layout of questionnaires, or statistical techniques to be used for analyzing results for new or significantly modified surveys, the PIs would consult, as appropriate, with their research peers. In these cases, the PIs also may test drafts of their proposed survey instruments on small samples of students or colleagues, as appropriate. The PIs would use such peer review comments and test results to provide insight on probable park visitor perspectives about the research instruments. They also would use the information to identify any trouble-spots in the proposed questionnaires regarding syntax, layout, and design to guide their revising the questionnaires in ways that will minimize the burden to the public that will be asked to respond to the questionnaires. The PIs also would request comments on the planned research design and proposed questionnaires from key individuals in the park or parks under study. Following this consultation, testing, and review by peers and managers, the PIs would complete their improvements to the proposed research and questionnaire designs and prepare final versions of their research plans and questionnaires.

3.34 Research Project and Program Report Preparation

As they prepare their project reports, the PIs would submit a draft of each proposed report for review by NPS staff and by research scientists where appropriate. The PIs would use the review comments they receive to help them prepare final reports that are clearly articulated, scientifically sound, and have maximum applicability for addressing the identified management problem. Similarly, the NPS Social Science Program would solicit and use appropriate peer review as part of its preparation of technical reports about NPS Social Science Program findings.

3.35 NPS Documentation of Peer Review

NPS would document peer review in four ways. First, NPS would provide in the required 30-day **Federal Register** notice that is part of the OMB collection of information decision process an analysis of the peer review it received on the topic area variables in response to this 60-day **Federal Register** notice. Second, NPS would require, at the time each NPS sponsored PI submits a final report, that the PI either describe the nature of the peer review the PI obtained or explain why the PI did not obtain peer review. Third, NPS would encourage PIs to publish their NPS sponsored surveys in peer reviewed publications. Fourth, NPS would provide in each NPS annual report to DOI and OMB that would be required by this proposed process a summary of all the peer review activities conducted during the year being reported.

3.40 Park or NPS Program Involvement

To ensure that NPS-sponsored public surveys provide information of use to management decision-making, NPS park and central office managers would maintain appropriate levels of involvement throughout the survey process. NPS park or central office managers would initiate the process when they identify needs for information about visitors to parks and request that a survey be conducted. NPS social science cooperators would respond to the request by proposing specific visitor survey projects. The requesting NPS manager then would work with the cooperators to ensure that the proposed projects can be accommodated within existing park management or NPS policy constraints and that the projected results of the proposed research will provide the information and levels of precision the requesting manager needs for decision-making. Park managers would provide in-park logistic and public relations support to the research cooperators as appropriate. The requesting managers would receive the project reports from the social scientists who conduct the surveys and would apply the findings to their management decision-making as appropriate. Park and central office managers also would monitor the public's response to the survey process and report to the NPS Visiting Chief Social Scientist any concerns or suggestions about the process that warrant consideration or follow-up action.

The NPS Social Science Program would serve as the program manager for the proposed process. Its specific proposed responsibilities are described later in this proposal.

3.50 Assignment of OMB Number, Expiration Date, and Allowed Information Collection Budget

Under terms of this proposed collection of information that NPS is considering submitting to OMB, NPS would propose that OMB assign a single number and three year expiration date to NPS for NPS to allocate without further review from OMB to all surveys that NPS might sponsor within the topic variables and limits regarding visitors and visitor services identified in this proposal. NPS further would propose that OMB assign NPS an annual Information Collection Budget from which NPS would distribute burden hours to the approved surveys according to need. NPS would not allocate the assigned number, an expiration date, and a specific number of burden hours to any proposed questionnaire until NPS had secured approval of the questionnaire from DOI. Once it had received that approval, NPS would allocate to the approved survey the number, a date that does not exceed three years, and an appropriate number of burden hours, and would notify the applicant that the survey is approved. NPS also would assign a unique NPS identification number to each survey NPS approves to ensure that each survey receiving the common OMB number is identifiable. Once NPS had distributed the total number of OMB authorized annual burden hours for any given year, NPS would stop using this pilot process for approving requests for surveys in these topical areas and would process all additional such requests in that year through the existing review system. Alternatively, NPS might request OMB to approve additional burden hours under terms of this proposed process.

3.60 Annual Information Collection Budget

NPS in recent years has used a total of between 4,000 and 7,000 burden hours per year for conducting public surveys related to visitors and visitor surveys. Under the terms of this proposal, and given that NPS expects to add some new public surveys to meet its GPRA responsibilities, NPS would propose to request that OMB approve a total annual information collection budget for the surveys that NPS would process under the terms of this proposal of 8,000 burden hours. This annual burden would be approximately 2.7% of the total burden hours NPS reported for Fiscal Year 1997 and 0.2% of the total that DOI reported for the same year.

3.70 NPS Reporting Responsibilities

NPS would submit annually to DOI and OMB a report that would describe for the past year: (a) NPS survey activities undertaken, (b) improvements achieved in data collection activities (including savings in NPS full time equivalent personnel (FTE) and funds), (c) results of peer evaluation of NPS planned surveys and reports of completed surveys, (d) public comments about NPS surveys and public responses to the opportunity to review this proposal provided through the two **Federal Register** Notice publications, and (e) plans for the next year. Toward the end of the three year period identified in this proposal, NPS would submit a triennial report that would summarize the entire experience of the authorized activities and make recommendations for futher action.

3.80 DOI and OMB Oversight

Under this proposed process, DOI would meet its statutory responsibilities by reviewing and approving or rejecting each individual NPS proposal to allocate the OMB number to an NPS sponsored survey instrument that is elligible within the terms of this proposal. DOI would review the NPS annual and triennial reports and, based on its review, forward the reports to OMB or return them to NPS for further work. DOI would review all individual survey instruments that NPS submits separately from this proposed process and would act on them in accordance with existing procedures.

OMB would review this NPS request for a 3 year pilot test to conduct public surveys and approve or reject the proposal. Should OMB approve this proposal, OMB would use the NPS annual reports to monitor NPS decisions and actions regarding the allocation of the OMB number to NPS-sponsored survey instruments. OMB would review all NPS survey instruments that do not qualify for this proposed process and act on them in accordance with existing procedures.

3.90 Program Responsibilities and Responsible Officials

3.91 National Park Service

The NPS Visiting Chief Social Scientist, working through the NPS Social Science Program, will secure public review of this program proposal through the two step **Federal Register** notification process, will obtain other forms of public review of this proposal, and will solicit peer review of the proposal prior to preparing the final proposal package that would be submitted for OMB decision.

The NPS Visiting Chief Social Scientist, working through the NPS Social Science Program, would provide guidance for and, as requested, assist the preparation, public review, and technical review as appropriate of all NPS-sponsored individual survey instruments. For those survey instruments submitted under this proposed program and for which, therefore, individual public review would not be conducted, the Visiting Chief Social Scientist would review the instruments for compliance with technical standards and programmatic guidelines. The Visiting Chief Social Scientist would reject survey instruments that do not comply with the minimum requirements, would determine appropriate burden hours and expiration dates for those that do comply, and would recommend to DOI for approval those instruments that meet the requirements. Once the Visiting Chief Social Scientist had received approval from DOI, the Visiting Chief Social Scientist would allocate the OMB number and an expiration date and number of burden hours to, and authorize the PI to use, the approved instrument. Should a PI question a decision by the Visiting Chief Social Scientist, the PI would submit an appeal to the Associate Director, Natural Resource Stewardship and Science, for a decision.

For those information collection activities that would fall outside the OMB-approved topic areas included in this proposal, the responsible park or other NPS manager would prepare and submit through the NPS Visiting Chief Social Scientist to DOI and through DOI to OMB individual standard Paperwork Reduction Act submissions. This process would include the associated two-fold opportunities for individual public review in keeping with the existing public notification and timing requirements.

3.92 Department of the Interior

The DOI Office responsible for oversight of DOI information collection activities, currently the Office of Policy Analysis, would provide oversight of NPS within-approved-limits activities. The DOI Office of Policy Analysis also would review, accept, and forward to OMB the NPS annual reports of information collection activities. In addition, the DOI Office of Policy Analysis would review and submit to OMB those NPS applications for proposed survey activities that would fall outside whatever topic areas would be approved by OMB should OMB approve this proposal.

3.93 Office of Management and Budget

The OMB Office of Information and Regulatory Affairs would review and act on DOI recommended NPS requests for approvals of information collection topic areas, requests for approvals of information collection activities that are outside existing approved limits, and NPS annual reports.

3.100 Additional, Related NPS Initiatives

The NPS would engage in three initiatives related to this proposed request to OMB. One is preparing a strategic plan for visitor surveys. The second is sponsoring research on survey methods. The third is developing an archive of NPS survey results. Each is briefly described below.

3.101 A Strategic Plan for Visitor Surveys

Currently, NPS surveys respond to park-specific requests for data to meet individual park management needs. While this approach successfully supports those parks that are able to provide funds and attract researchers, it does not necessarily also contribute to needs of other parks or of the NPS as a whole. The exception is the Visitor Services Project, which uses a common survey format for all parks surveyed and relies on an Advisory Committee that meets annually to recommend to the NPS Associate Director, Natural Resource Stewardship and Science, for final decision the approximately 10 parks that will receive visitor studies during the year. The Advisory Committee develops its decisions using an established set of criteria and a formal nomination process.

Within 12 months following approval of this proposal, NPS would develop a strategic plan for determining where, why, and when to conduct visitor surveys in units of the National Park System. The plan would be developed in consultation with park managers, social scientists, NPS and DOI officials, and OMB. While focusing on ensuring that visitor surveys meet the needs of the specific parks requesting them, the plan also would develop an approach for strategically aggregating the results from the parks selected for study. It also would explore how to identify a set of possible "indicator parks" and how best to use those parks to represent the National Park System. In addition, it would determine other actions that would make NPS data collection at individual parks more cost-effective, more representative of large classes of visitors, and thus more useful for both park and national levels of analysis and decision-making. The experience gained from this strategic analysis of visitor surveys would form the basis of future strategic analyses of other classes of information collection activities.

3.102 Research on Survey Methods

Studies conducted by NPS within the topics of visitors and visitor services offer opportunities to conduct methodological research useful to both the NPS and other agencies with similar user populations and data collection needs. Research on improving response rates, reducing non-response bias, improving survey and interview design, reducing sampling error, increasing validity of measures, and improving public review of survey instruments are all important and possible. As an integral part of this proposal, NPS would initiate a modest program of research on these and other questions regarding survey methods. At least one project would be completed in the fiscal year following OMB approval of this proposal, submitted to a scientific journal for publication, and shared with OMB and other agencies.

3.103 Archive of NPS Survey Results

To support its research on survey methods and to increase the efficiency and effectiveness of its use of past information surveys, NPS would build a social science data and information archival system that would incorporate the existing Visitor Services Project (VSP) data base, which currently includes all visitor surveys conducted by the VSP. This archive ultimately would include survey metadata, survey data, and written reports for all NPS sponsored surveys. This archive would be available to the public under existing guidelines.

4.0 Topic Areas

This proposal focuses on the general subject of visitors and visitor services. It covers the specific kinds of information needed by NPS for planning, management, operations, and evaluation of performance related to meeting needs of visitors. The specific topic areas included in this proposal are: visitor characteristics, trip/visit characteristics, visitor activities and uses of park resources, visitor expenditures, visitor evaluations of park services, visitor perceptions of their park experiences, and visitor opinions on park management. For each topic area, this proposal provides definition, scope, justification for data collection, and a few examples of typical questions that could be asked and variables that could be expected as answers. The specific questions to be prepared for any individual survey would have to relate to one or more of the approved topic areas and would have to be approved by NPS and DOI as part of the review and approval process requested in this proposal.

4.10 Topic Area on Visitor Characteristics

4.11 Definition

Visitor characteristics are attributes of individual park visitors or visitor groups. Some examples include: age, zip code or country of residence, group type, ethnicity, disabilities/impairments, language abilities, socio-economic status, and visit frequency.

4.12 Scope

Visitor characteristics relevant to the mission, management, and/or operations of National Park System units are included.

4.13 Justification for Data Collection

The diverse units of the National Park System cater to the total diversity of the U.S. population and a cross section of international visitors. Qualitative and quantitative data about the nature and breadth of this diversity of park users provide NPS managers with information they need to ensure that park visitor services, education programs, facilities, and management operations respond appropriately to the capabilities, needs, and concerns of park visitors.

4.14 Examples of Typical Questions and Variables Expected as Answers

A. For you and your group on this visit, please indicate:

	Current age	U.S. Zip Code or name of foreign country	Number of visits made to this park (including this visit)
Yourself			
Member #2			
Member #3			
Member #4			
Member #5			
Member #6			
Member #7			

B. On this visit, what kind of group were you with? Please check only one.

Alone
Family
Friends
Family and Friends
Other (Please describe: ____)

C. What languages do you or members of your group regularly speak at home? Please check all that apply.

(Answer choices should reflect the languages most frequently spoken by visitors to the park)

D. Does anyone in your group have any physical disabilities which limited their ability to visit (park)? yes/no

If yes, what kind of disability? Please check all that apply.

Hearing
Visual
Mobility
Learning
Mental

4.20 Topic Area on Trip/Visit Characteristics

4.21 Definition

Trip/visit characteristics include travel factors which affect a trip or decisions which visitors make prior to, during, or following their trip to a park.

Examples include use of overnight accommodations, transportation, trip route, trip origin, trip destination(s), entrance/user fees, ability to obtain tickets, and length of trip.

4.22 Scope

Trip characteristics relevant to the mission, management, and/or operations of National Park System units are included.

4.23 Justification for Data Collection

Information about how visitors plan their trips, about features of their trips, and about their visits in the parks support park managers' efforts to provide park-access and park-specific information to visitors before they arrive at the parks; to work with local and regional planners dealing with transportation alternatives, facilities, and services that support visitors traveling to and from parks; to assist park concession managers in providing appropriate trip planning information to prospective visitors; and to more effectively handle visitors' trip-related needs (such as fees, tickets, permits, facilities, and services) once the visitors have arrived in the parks.

4.24 Examples of Typical Questions and Variables Expected as Answers

A. On this trip, how much time did you and your group spend in (park)?
If less than 24 hours:
Number of Hours: ____
If 24 hours or more:
Number of Days: ____ (Please list partial days as ¼, ½, etc.)

B. On this visit, what forms of transportation did you and your group use to get to (park)? Please check all that apply.

(Choices of answer should be appropriate for the park situation.)

C. On this visit, what were your reasons for visiting (park)? Please check all that apply.

(Choices of answer should be appropriate for the park situation.)

D. Prior to this visit, how did you and your group get information about (park)? Please check all that apply.

Received No Information Prior to Visit ____
Go on to Question ____
Friends/Relatives ____
Travel Agency ____

(Answer choices should be appropriate for the park situation.)

4.30 Topic Area on Visitor Activities and Uses of Park Resources

4.31 Definition

Visitors participate in a variety of activities during their visits to parks or related areas. While there are hundreds of activities in which visitors can engage, some important examples include: sightseeing, visiting visitor centers, day hiking, backpacking, picnicking, camping, shopping, observing wildife, attending ranger-led programs, taking photographs, boating, fishing, and many others.

Visitors also use a variety of park or related area resources including natural and cultural resources as well as infrastructure when they visit these areas. Some examples include roads, trails, restrooms, parking lots, drinking water, viewpoints/overlooks, visitor centers, gift shops, stores, lodges/motels, etc. Depending on the site, visitors may harvest berries, fish, game animals, fire wood, or sea shells; travel cross-country in roadless and trailless parts of the park; travel through historic structures or landscapes; or handle historic objects.

4.32 Scope

Visitor activities or uses of resources which are relevant to the mission, management, and/or operations of National Park System units are included.

4.33 Justification for Data Collection

Park and related area managers and planners use knowledge about visitor activities to design and operate interpretation, resource management and preservation, law enforcement, safety, and facility management activities to meet the needs of the visitors. They also use this information to support all aspects of planning, from buildings, roads, and trails, to exhibits. In addition, they must have the collected data available to track visitor use trends and project future demands for visitor uses. In conducting their management, planning, and monitoring activities, managers also use the information to effectively allocate their limited personnel and financial resources to the highest priority elements of their visitor services programs.

4.34 Examples of Typical Questions and Variables Expected as Answers

A. On the list below, please check all of the activities that you and your group participated in during this visit to (park).

(Answer choices should include all appropriate activities and "other" for write-in answers)

To gain additional information, the above question can be asked in different ways:

(a) On the list below, please check the activities that you and your group did at (park) on this visit. Please check all that apply.

(b) For your past visits to (park), please check the activities that you and your group have done. Please check all that apply.

B. Please check the services which you or your group used at (park) during this visit.

(Answer choices should include all appropriate services.)

4.40 Topic Area on Visitor Expenditures

4.41 Definition

The visitor expenditures topic area deals with the time and dollar costs that vistors experience in association with visiting parks and surrounding areas.

4.42 Scope

Visitor expenditures data include information related to direct visitor expenditure patterns in the park or surrounding area (direct expenditures) and to visitor expenditures associated with their travels to access the park or surrounding area (indirect expenditures).

4.43 Justification for Data Collection

Park and related area managers and business managers, planners, and other members of communities around the parks use visitor expenditure information to identify relationships between parks and local/regional economic development. Visitor expenditure data also provide insight to government and business managers regarding pricing issues related to entrance and user fees, costs of services in parks and related areas, concession fees, and to estimate the value of parks and park-related attributes for visitor uses.

4.44 Examples of Typical Questions and Variables Expected as Answers

A. We are interested in the expenditures your group made within (name of state). Please indicate the amount of dollars spent by your group in each of the following categories regarding your trip to (name of park).

a. transportation to (name of park) $____
b. equipment and supplies $____
c. lodging $____
d. raft outfitters $____
e. food and beverage $____
f. other, please specify $____

4.50 Topic Area on Visitor Evaluation of Park Services

4.51 Definition

Visitor evaluation data include quality and importance ratings of services which visitors used or

potentially could have used during their park or nearby area visit.

4.52 Scope

Services or facilities provided in parks by NPS, concessioners, or other cooperators that are used by visitors, available to visitors but not used, or potentially available to visitors are included.

4.53 Justification for Data Collection

Planners and managers of parks and related areas use data from visitor evaluations of services and facilities to improve customer service directly onsite; improve the efficiency of other park or related area operations that results in improved customer service; improve agency operations at the local, regional, and national levels to remove institutional barriers that prevent the providing of better services to visitors; develop a long-term data base to permit monitoring any changes in the provision of visitor services over time; and compile information that can satisfy reporting requirements of the Government Performance and Results Act of 1993.

4.54 Examples of Typical Questions and Variables Expected as Answers

Typically an evaluation asks visitors to rate services and facilities such as the courtesy of employees, the cleanliness of facilities, and quality of brochures and maps. Visitors rate these services and facilities on a scale from excellent to poor. For example:

A. Overall, how would you rate the quality of the visitor services provided to you and your group at (park) during this visit?

(a) Please check the visitor facilities or services in (park) which you or your group used during this trip.

(b) Next, for only those facilities or services which you or your group used, please rate their importance to you on a scale from 1–5, with 5 being of great importance and 1 being of no importance.

(c) Finally, for only those facilities or services which you or your group used, please rate their quality from 1–5, with 5 being of high quality and 1 being of low quality.

(a) Use facility/service in (park)

(b) If used, how important

(c) If used, what quality?

[Check if Used]

	Not important			Extremely important		Very poor			Very good	
	1	2	3	4	5	1	2	3	4	5
Restrooms										
Trails										
Etc.										

(Answer choices should be appropriate to the park)

4.60 Topic Area on Visitor Perceptions of Their Park Experiences

4.61 Definition

Visitor perception data deal with the visitors' awareness of elements of the natural and social environments in the parks they visit, their observations about those elements, and how their awareness and observations influence their overall park experiences.

4.62 Scope

Involves visitor experiences regarding park natural and cultural resources, other visitors to the park, park and other employees, and park infrastructure and services. Also includes visitors' perceptions of their experiences while in the park and surrounding areas.

4.63 Justification for Data Collection

Park managers use visitor perception information to guide decision-making about resource and visitor activity management to ensure that park programs both provide visitors with high quality experiences that meet the visitors' expectations and also protect the integrity of the resources and visitor activities that the visitors come to experience. Managers use visitor perception information to develop specific, measurable indicators and standards of quality for both the visitor experiences and resource conditions. Managers also may use the information to identify what personal and social norms to use for developing these indicators and standards of quality. The indicators of quality show what levels of quality of experience result from the various different levels of management effort. The standards of quality show the levels of quality that visitor experiences must equal or exceed to be considered acceptable outcomes. NPS will need visitor perception data and associated indicators and standards of quality to be able to benchmark the GPRA standards for acceptable outcomes that NPS established in 1996. Meeting these outcomes will ensure that NPS achieves its mission of providing high quality visitor experiences while protecting park natural and cultural resources.

4.64 Examples of Typical Questions and Variables Expected as Answers

Visitor perception questions seek to identify indicators of quality and standards of quality. For example:

A. What have you enjoyed most about your visit to (park) today?

B. Has anything detracted from the quality of your visit to (park) today? If so, what?

C. How much of a problem do you feel the following issues are at (park)? (Visitors are presented a list of potential indicators of quality and asked to judge—using a standardized response scale—the degree to which each issue is a problem.)

D. We are interested in how many people you feel could visit this place at any one time without your feeling too crowded. To help judge this, we have developed a series of photographs that show different numbers of people at this place. Please rate each of the photographs by indicating how acceptable you feel each one is based on the number of people shown. (Visitors are presented a series of photographs and asked to judge—using a standardized response scale—the acceptability of each photograph.)

4.70 Topic Area on Visitor Opinions on Park Management

4.71 Definition

Visitor opinions about park management include the ideas, beliefs, attitudes, preferences, and values that visitors express regarding all aspects of NPS park management.

4.72 Scope

Includes visitor opinions about how the park manages its natural and cultural resources, maintains its physical structures, guides human uses of park resources and facilities, and provides educational and other services to the visitor.

4.73 Justification for Data Collection

NPS manages park resources according to general and specific park plans that interpret general legislation, specific park enabling legislation, and NPS policy. Surveys that include visitor opinions on park management provide an important avenue for securing the public involvement that permits the NPS to understand what visitors know and think about park resource and other management actions. Such surveys will be necessary to evaluate fee and any other demonstration projects directed by the Congress. These surveys also help NPS to determine whether or not park educational efforts about park management actions are addressing the proper avenues of thought, are being presented effectively and in the most productive venues, are being understood by the recipients, and are useful to the recipients. Park managers use this knowledge to improve park planning, resource management, visitor education, maintenance, and visitor services.

4.74 Examples of Typical Questions and Variables Expected as Answers

A. The park's lake naturally contained no fish and the fish that are there now resulted from humans planting fish in the lake. How would your use of the lake area be affected if all the fish were removed from the lake? (Circle a number to indicate your response)

1 Would come to the area more often
2 No change in use of the area
3 Would come to the area less often
4 Would stop coming to the area
5 Would stop visiting the park

5.0 Benefits

NPS expects the procedure proposed in this notice for processing proposed collections of information related to the topic areas involving visitors and visitor services will provide substantial benefits to NPS, DOI, and OMB management of the information collection program, to public review of proposed collections of information, to the public burden related to reviewing proposed collections of information and responding to approved surveys, and to the science of conducting surveys of those members of the public who use parks.

5.10 Benefit to Program Management

5.11 NPS

By managing surveys related to visitors and visitor services as a coherent, single information collection program, NPS would increase the efficiency of its use of personnel and fiscal resources, improve the timing and focus of the public and peer review it obtains about its activities, reduce duplication of survey effort, develop improvements in procedures used to estimate the burden imposed by surveys of visitors to parks, improve the delivery of usable knowledge to park managers, and improve the archiving, use, and availability to the public of the results of past surveys.

5.12 DOI

In overseeing NPS management of the topic areas relating to visitors and visitor services as a coherent, single program, DOI would benefit by receiving more systematic and technically current survey instruments to review, having available to it the information contained in the NPS archive, and having available the NPS annual reports as tools for monitoring the responsiveness of the NPS program. The more efficient, effective, and independent position provided to DOI for overviewing NPS conduct of a program of surveys related to topic areas dealing with visitors and visitor services also would reduce financial costs and administrative burdens experienced by DOI.

5.13 OMB

OMB would benefit by having better public and peer review of a program of surveys, by having the NPS annual report available for efficient program monitoring and oversight, by testing a process for improving agency management of the review of proposed collections of information, by testing alternative procedures for conducting information collections in ways that minimize the burden to the public, and by receiving information from several NPS initiatives, including elements of research methodology and administration (see Section 5.3), related to the topic areas of visitors and visitor services. In addition, OMB would experience a reduction in its administrative burden with respect to reviewing proposed collections of information.

5.20 Benefit to the Public

The OMB approval process proposed in this notice would result in substantial benefits to the public. The public's opportunity and ability to assess the entire program of NPS surveys of visitors would benefit because of the general streamlining of the review process, enhanced coordination of survey research efforts, and more efficient and effective communication with the public. The public also would benefit because better coordination of the information derived from visitor surveys will contribute to more productive use of social science information in the management of the national parks, resulting in better customer service and resource protection. Additionally, both of these sets of benefits would result in more efficient use of public funds, including through reducing expenditures and government personnel time spent on preparing and publishing individual **Federal Register** notices.

5.21 Involvement of the Public

The public would be engaged in meaningful dialogue about the social science survey process through its opportunity to review the program proposal at two stages of proposal development and through the reports that would be provided by the proposed, coordinated annual and triennial reporting process.

This notice in itself benefits the public by providing information in a concise and comprehendable way about the purposes for which NPS conducts surveys of the public, the types of questions NPS asks of the public, and how NPS uses the responses to those questions to meet management needs for information. By focusing public review on the development and administration of a collection of information program rather than on individual, apparently unrelated survey instruments, NPS is encouraging greater public involvement in assessing the program and is making that involvement easier, more encompassing, more intelligible, and more productive.

The annual reports to be prepared as part of the proposed program would summarize the research activities conducted within the topical areas identified in this proposal. The triennial report would provide a synthesis of what has been learned during the three year cycle and, should the program perform as envisioned, describe topical study areas that NPS would propose for a subsequent three year planning cycle. These reports together would inform the public of the underlying purposes of proposed survey research and of the results of already conducted research.

5.22 Burden Efficiency

By shifting the timing and focus of public review of NPS sponsored public

surveys from individual surveys to a program of surveys, the process initiated with this notice is reducing the potential number of public burden hours expended on reviewing proposed public survey questionnaires and is increasing the efficiency and effectiveness of those burden hours that the public does expend. By building methodological research into its overall strategy, the proposed process would stimulate development of improved and more efficient survey questions, survey designs, and sampling approaches, thus reducing the public burden in responding to surveys while at the same time making the application of that burden have broader utility.

5.30 Benefit to Science

5.31 Peer Review

Currently, individual scientists are responsible by DOI policy to obtain peer review for social science work plans and reports associated with in-house survey research. The extent of this review varies widely by individual scientist and the type of project.

The proposed OMB approval process identified in this notice would result in a comprehensive series of survey and program reports and records that are reflective of the overall NPS program of social science research and its methodologies. Consequently, NPS would be able more easily to solicit peer review that focuses on Servicewide efforts and methodologies. This type of review would represent a significant benefit beyond that received from current individual peer review contributions. In addition, the NPS Social Science Program Office under the proposed plan would monitor individual requests for information collection and would require that requestors document the peer review they already have obtained and explain the absence of peer review where such review is lacking.

Within 12 months following approval by OMB of a proposal of the type contained in this notice, NPS would develop an expanded peer review process to ensure that all social science activities receive appropriate levels of peer review at appropriate stages in the development of the activities. NPS would involve both scientists and managers in this development and would ensure that the resulting process reflects academic, NPS, DOI, and OMB guidance regarding peer review.

5.32 Methodological Development

One of the significant advantages of this proposal is that it clearly establishes an incentive for methodological development and improvement. This would work in two ways. First, there would be stronger incentives for constructive peer review. Second, the proposed process would remove an unintended consequence of any reliance on a question catalog. In the past, NPS projects to conduct public surveys experienced a strong incentive to use an NPS question catalog because its use offered a somewhat reduced time for achieving OMB review. However, an unintended consequence of the use of the question catalog was the emergence of a disincentive to develop more valid and reliable measures for more complex items because of the burden of securing OMB review and approval. Because the application of survey research and social science concepts to park management is still developing, this disincentive is actually counter-productive to stimulating the methodological improvement needed in many research areas.

Under the proposed process, individual projects would receive peer review requested by individual researchers. All survey proposals would be reviewed by the Visiting Chief Social Scientist. Many projects would receive and benefit from additional peer review requested by the NPS social science program. Within this umbrella of increased professional dialogue and oversight, individual researchers would be encouraged to scientifically develop questions and other items that provide better data for NPS managers. Improvements in methodology, because they would be closely monitored by the NPS social science program, would be more quickly transmitted to all parks and researchers who could benefit.

The proposed process would lead to more competent planning and administration of survey research in the National Park System. Research would be more focused on topics which have high research and management priority. Researchers, themselves, would be more efficient because of reduced waiting time for questionnaire approvals. The more centralized research focus and repository of survey research findings would encourage a greater degree of synergy in survey research in the National Park System.

5.33 Data Management

The activities envisioned in this proposal would include an effort to develop and implement protocols for data management, data set documentation, and sampling methodology documentation that would benefit the exchange of data among scientists and the consolidation and assessment of data across individual research projects. The development of a data archive system and a clearly stated requirement that all publicly funded research projects must deposit a complete data set in the archive would increase the availability of data to the broad research community.

5.34 Efficiency of the Proposed Process for Scientists and Science

The proposed review process would increase the focus of scientists on dealing with the scientific effectiveness of their planned surveys. The proposed changes would foster the evolution of methods and questions that must occur for the survey process to become more efficient and effective. The growing availability over time of park data from the proposed archive would support comparative, longitudinal, multi-park, and National Park Systemwide analyses that would increase scientific understanding about visitors in parks. The data archive would provide baseline analyses that can make future scientific surveys and assessments more efficient at a lower overall burden cost to the public.

6.0 Conclusion: An Important Experiment

The approach for review and decision-making proposed in this notice regarding collections of information provides NPS, DOI, and OMB with a voluntary test of an alternative method for improving the productivity, efficiency, and effectiveness of a Federal information collection program. This test may affirm a method by which NPS can reduce the potential future information burden on the public, increase useful public review and comment, reduce duplication and increase collaboration in the information collection and analysis effort, meet shared data needs with shared resources, enhance access to information through use of electronic formats for both researchers and the public, and contribute to meeting NPS information collection and technology needs. It is an important experiment in reinventing government.

7.0 Contributing Authors

John Dennis, Jean Haley, Darryll Johnson, Dave Lime, Margaret Littlejohn, Gary Machlis, Bob Manning, John Peine, and Bill Stewart contributed to preparation of this proposal.

8.0 Selected Literature

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SUPPLEMENTARY INFORMATION:

Title: A Proposed Process for OMB Approval of NPS-Sponsored Public Surveys.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service needs information concerning park visitors and visitor services to provide to park managers information for improving the quality and utility to the public of park programs.

Automated data collection: At the present time, there is no automated way to gather this information, since the information gathering process involves asking visitors to evaluate services and facilities that they used during their park visits. The intrusion on individual visitors is minimized by rigorously designing visitor surveys to maximize the ability of the surveys to use small samples of visitors to represent large populations of visitors and by coordinating a program of surveys to maximize the ability of new surveys to build on the findings of prior surveys.

Description of Respondents: A sample of visitors to parks or of people who have relationships to parks.

Estimated average number of respondents: The proposal does not identify the number of respondents because that number will differ from individual survey to individual survey, depending on the purpose and design of each individual survey.

Estimated average number of responses: The proposal does not identify the average number of responses because that number will differ from individual survey to individual survey, depending on the purpose and design of each individual survey. For most surveys, each respondent will be asked to respond only one time, so in those cases the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: The proposal does not identify the average burden hours per response because that number will differ from individual survey to individual survey, depending on the purpose and design of each individual survey.

Frequency of response: Most individual surveys will request only 1 response per respondent.

Estimated annual reporting burden: The proposal identifies the requested total number of burden hours annually for all of the surveys to be conducted under its auspices to be 8000 burden hours per year. The total annual burden per survey for most surveys conducted under the auspices of this proposal would be within the range of 100 to 300 hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 97–25850 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision, Gulf Islands National Seashore, FL

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of Boundary Revision, Gulf Islands National Seashore, FL.

SUMMARY: Pub. L. 91–660 (84 Stat. 1967) dated January 8, 1971, authorized the establishment of the Gulf Islands National Seashore. Sections 7(c)(i) and 7(c)(ii) of the Land and Water Conservation Fund Act, as amended by the Act of June 10, 1977 (Pub. L. 95–42, 91 Stat. 210), the Act of March 10, 1980 (Pub. L. 96–203, 94 Stat. 81) and the Act of November 12, 1996 (Pub. L. 104–333, 110 Stat. 4194) further authorized the Secretary to make minor revisions in the boundaries whenever the Secretary of the Interior determines that it is necessary for the preservation, protection, interpretation or management of an area.

Notice is given that the boundary of Gulf Islands National Seashore has been revised pursuant to the above Acts, to encompass lands as depicted on Segment Map 05 of Gulf Islands National Seashore prepared by the National Park Service. The revisions to the boundary are along the western boundary of the Perdido Key, Florida Unit of the Seashore.

This map is on file and available for inspection in the Land Resources Division, Southeast Regional Office, 100 Alabama Street, S.W., Atlanta, Georgia 30303, and in the Offices of the National Park Service, Department of the Interior, Washington, DC 20013–7127.

Dated: September 4, 1997.

Jerry Belson,

Regional Director, Southeast Region, National Park Service.

[FR Doc. 97–25851 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, October 17, 1997. The meeting will convene at 7:00 p.m. in the Ste-Agathe Parish Hall on Main Street, Saint Agatha, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

- The development and implementation of an interpretive program of Acadian culture in the state of Maine.
- The selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary report of the meeting held August 15, 1997
2. A talk by Charlotte Cormier of Moncton, New Brunswick, on "Acadian Folk Songs"
3. Report of the National Park Service Maine Acadian project staff
4. Opportunity for public comment
5. Proposed agenda, place, and date of the next Commission meeting

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5472.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 97–25852 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Revision of National Environmental Policy Act Procedures: Extension of Time for Filing Public Comments

AGENCY: National Park Service, Interior.

ACTION: Revision of National Environmental Policy Act Procedures, Extension of Time for Filing Public Comments.

SUMMARY: The National Park Service (NPS) requested public comments on August 26, 1997 about its revisions to its procedures under the National Environmental Policy Act (NEPA), 62 FR 45270. In order to provide for additional time for the public to review and provide comments to the NPS the review period has been extended.

DATES: Comments must be submitted by November 3, 1997.

ADDRESSES: Documents can be requested from and comments should be sent to National Park Service Environmental Quality Division, Room 2749, 1849 C Street, N.W., Washington, D.C. 20240. Comments can also be sent electronically to the following Internet address: jacob__hoogland@nps.gov. Electronic copies of the draft document can be downloaded from the Internet at the NPS's web page at http://www.nps.gov/planning/nepa.

FOR FURTHER INFORMATION CONTACT: Jacob J. Hoogland, Chief, Environmental Quality Division, National Park Service Room 2749, 1849 C Street, N.W. Washington, D.C. 20240. Telephone (202) 208–5214. Internet address: jacob__hoogland@nps.gov.

Michael Soukup,

Associate Director, Natural Resource Stewardship and Science.

[FR Doc. 97–25854 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Realty Action; California

Notice of Realty Action for Minor Boundary Revision and Proposed Exchange of Federally-owned land for Privately-owned land in Marin County, California.

In order to resolve the minor and unintentional encroachment of a private residence on Federal land, it is necessary for the National Park Service to effect a minor boundary revision and land exchange at Point Reyes National Seashore. The park boundary will be revised to include a 0.12 acre parcel of land adjacent to the boundary and delete a 0.10 acre parcel of land within the boundary. Upon approval of the boundary revision, the National Park Service will acquire the 0.12 acre parcel and convey the 0.10 acre encroachment parcel to the private landowner. The subject properties are located on Blackberry Lane, Inverness, Marin County, California.

The authority for the minor boundary revision is Section 318 (a) of Public Law 95–625, approved November 10, 1978; 16 U.S.C. 459c–1(a). The authority for the land exchange is Section 3 (a) of Public Law 87–657, approved September 13, 1962, 16 USC 459c–2.

The National Park Service has determined that there will be no adverse impacts as a consequence of the exchange. The value of the lands to be exchanged are of equal value. Each site was surveyed for the presence of hazardous substances and none were found. The mineral rights of both properties will be conveyed.

The land to be conveyed by the United States of America and deleted from the boundary is identified as Tract No. P13–130. Title to the land will be conveyed subject to title encumbrances of record as well as existing easements for public roads and highways, public utilities and pipelines.

The private land to be included in the boundary and acquired for Point Reyes National Seashore is owned by Sherburne and Susan Slack and is identified as Tract No. P13–132. The land will be administered by the National Park Service as part of the Point Reyes National Seashore. The land will be acquired in fee simple with no reservations and subject only to rights of way and easements of record.

Detailed information concerning the boundary revision and land exchange including legal descriptions, map, Land Protection Plan and Categorical Exclusion are available at the National Park Service, 600 Harrison Street, Suite 600, San Francisco, California 94107. The lands which are the subject of this notice are identified on Boundary Proposal Map, Drawing No. 612/80,034, dated May 1997.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments regarding the exchange proposal to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: July 9, 1997.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 97–25855 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Hawaiian Cement*, Civil Action No. 97–01204 ACK was lodged on September 16, 1997 with the United States District Court for the District of Hawaii. The consent decree settles a civil judicial enforcement action brought under Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), for Hawaiian Cement's failure to achieve the emission limitations for particulate matter established by the Hawaii State Implementation Plan for defendant's Kapolei, Oahu, Hawaii, portland cement manufacturing plant, and for violations at that plant of applicable new source performance standards. Under the proposed settlement, Hawaiian Cement has committed to a comprehensive program of injunctive relief that will ensure that it achieves, and remains in, permanent, consistent compliance with the Clean Air Act. In addition, under the terms of the proposed settlement Hawaiian Cement has agreed to pay a civil penalty into the United States Treasury of $1,162,500.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree, Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Hawaiian Cement*, DOJ Ref. #90–5–2–1–2083. The proposed consent decree may be examined at the office of the United States Attorney, District of Hawaii, PJKK Federal Building, Room 6100, 300 Ala Moana Boulevard, Honolulu, Hawaii, 96850; the Region IX Office of the United States Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $13.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–25886 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the ATM Forum

Notice is hereby given that, on July 24, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the ATM Forum ("Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organizations have joined the Forum: Telstra Corporation, Clayton, Australia; Virginia Polytechnic Institute and State University (Virginia Tech), Blacksburg, VA. Additionally, the following Forum members have been involved in acquisitions: Ascend Communications Inc. acquired Cascade Communications Corporation. The following members have changed their names: CSIRO Radiophysics to CSIRO TIP; Telematics International Ltd. to ECI Telecom Ltd. The following have changed their membership from principal members to auditing members: Ipsilon Networks, Inc.; and NETWORK Programs NETWORK Machines, Inc. Ascend Communications, Inc. has upgraded from an auditing member to a principal member.

No changes have been made in the planning activities of the Forum. Membership remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On April 19, 1993, the Forum filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on June 2, 1993 (58 FR 31415). The last notification was filed on April 28, 1997 and a notice was published in the **Federal Register** on May 22, 1997 (62 FR 28065).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 97–25884 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Commercenet Consortium

Notice is hereby given that, on July 21, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), CommerceNet Consortium, ("CommerceNet") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organizations have joined CommerceNet

as Portfolio Members: Wipro, Cupertino, CA.; Netbot, Inc., Seattle, WA; Internet Mall, San Jose, CA.

No other changes have been made in either the membership or planned activities of CommerceNet. Membership remains open and CommerceNet intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, CommerceNet filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on August 31, 1994 (59 FR 45012). The last notification was filed with the Department on May 15, 1997, and a notice was published in the **Federal Register** on June 13, 1997 (62 FR 32370).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–25883 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rotorcraft Industry Technology Association, Inc.

Notice is hereby given that, on March 10 and May 2, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Rotorcraft Industry Technology Association, Inc. ("RITA") filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following universities have become Associate Members: The University of Alabama, Tuscaloosa, AL; The University of Illinois at Chicago, Chicago, IL; Rensselaer Polytechnic Institute, Troy, NY; and Naval Postgraduate School, Monterey, CA. Additionally, Allison Engine Company has become a Supporting Member.

No other changes have been made in either the membership or planned activity of the Corporation.

On September 28, 1995, RITA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1996 (61 FR 14817).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–25885 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB Emergency Approval; Extension of a Currently Approved Collection: Application to Pay Off or Discharge Alien Crewmen.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13 (a)(1)(i) and (a)(2)(i) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. This information collection is needed prior to the expiration of established time periods. OMB approval has been requested by October 31, 1997. If granted, the emergency approval is only valid for 90 days. All comments and/or questions pertaining to this pending request for emergency approval Must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may be forwarded by facsimile to Ms. Bond at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until December 1, 1997. During the 60-day regular review ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S.. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Your comments should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Payoff or Discharge Alien Crewman.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–408. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This information collection is required by Section 256 of the Immigration and Nationality Act for use in obtaining permission from the Attorney General by master or commanding officer for any vessel or aircraft, to pay off or discharge any alien crewman in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent of respond:* 85,000 respondents at 25 minutes (.416) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 35,360 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: September 24, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–25792 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB Emergency Approval; Extension of a Currently Approved Collection: Application for Waiver of Passport and/or Visa.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13 (a)(1)(i) and (a)(2)(i) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. This information collection is needed prior to the expiration of established time periods. OMB approval has been requested by September 30, 1997. If granted, the emergency approval is only valid for 90 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may be forwarded by facsimile to Ms. Bond at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until December 1, 1997.

During the 60-day regular review ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Your comments should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Passport and/or Visa.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–193. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief obstract:* Primary: Individuals or Households. This information is needed to determine whether an applicant is eligible for entry into the United States under 8 CFR Parts 211.1(b)(3)–Waiver of Visas- and 212.1(g)–Unforeseen Emergency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 respondents at 10 minutes (.166) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,150 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 24, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–25793 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1864–97]

Pilot Programs To Deny Driver's Licenses and Identification Cards to Aliens Who Are Not Lawfully Present in the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice prescribing guidelines under which states may conduct pilot programs to deny driver's licenses and identification cards to aliens who are not lawfully present in the United States and inviting states to contact the Immigration and Naturalization Service (Service) to express interest in participating in such a pilot program.

SUMMARY: The Commissioner of the Service invites each state to contact the Service if it is interested in participating in a pilot program to deny driver's licenses and identification cards to aliens who are not lawfully present in the United States. Guidelines are prescribed for the pilot programs. This notice and pilot programs are required by section 502 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009 (IIRIRA).

DATES: Written responses must be submitted on or before October 30, 1997.

ADDRESSES: Please submit your response in triplicate to: John E. Nahan, Immigration and Naturalization Service, 425 I Street, NW., ULLICO Building, 4th Floor, Washington, DC 20536, Attention: SAVE Program.

FOR FURTHER INFORMATION CONTACT: John E. Nahan, Immigration and Naturalization Service, 425 I Street, NW., ULLICO Building, 4th Floor, Washington, DC 20536, telephone (202) 514–2317.

SUPPLEMENTARY INFORMATION:

Background and Statutory Authority

Pursuant to the authority contained in section 502 of IIRIRA, all states may conduct pilot programs, pursuant to guidelines prescribed by the Attorney General, to deny driver's licenses and identification cards to aliens who are not lawfully present in the United States. For the purpose of these pilot programs, the Service is using the definition of "an alien who is lawfully present in the United States" provided by 8 CFR 103.12(a) for the purposes of applying for Title II Social Security benefits. An alien who is "not lawfully present in the United States" is any alien not included in section 103.12(a). This definition is subject to change based upon any definition of lawful presence for the purpose of determining eligibility for public benefits and services that may be made in the future by the Attorney General. The Service construes section 502's reference to "driver's licenses" also to include identification cards issued by a state in a similar manner as driver's licenses, but that do not confer driving privileges. The Service is using the definition of "state" provided by section 101(a)(36) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(36), as including the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States in addition to the 50 states.

Purpose

The purpose of these pilot programs is to determine the viability, advisability, and cost-effectiveness of states' denying driver's licenses and identification cards to aliens who are not lawfully present in the United States.

Guidelines

The Service prescribes the following guidelines applicable to pilot programs under authority of section 502 of IIRIRA:

- The pilot program must provide for the denial of driver's licenses and identification cards to applicants who are not lawfully present in the United States, as defined by the Attorney General at 8 CFR 103.12.
- The pilot program must require the accurate verification of whether a driver's license or identification care applicant is lawfully present in the United States, as defined by the Attorney General at 8 CFR 103.12.
- The pilot program must not violate Federal law by resulting in illegal discrimination on the basis of race, national origin, gender, religion, age, or disability, or in any other way violate the Constitution and laws of the United States.
- The pilot program must not violate any provision of state law in the state in which it operates.
- The pilot program must be designed to result in a determination of the viability, advisability, and cost-effectiveness of the state's denying driver's licenses and identification cards to aliens who are not lawfully present in the United States, as defined by the Attorney General.

Eligibility for Participation

Any state may participate in a pilot program under section 502 of IIRIRA provided it meets the guidelines stated above.

Project Restrictions

The Service may deny or limit state participation in the pilot program depending upon available resources.

Description of Section 502 Pilot Programs

The purposes of this notice are to provide the basic guidelines applicable to all pilot programs conducted under section 502 of IIRIRA, and to invite initial statements of interest from states. Further details of each pilot program will be determined on the basis of the specific needs, desires, and abilities of each state and the Service, and will be memorialized in a Memorandum of Understanding between the state and the Service, setting forth the terms and conditions of the pilot program. All pilot programs must comply with the basic guidelines, but the details, duration, and scope of pilot programs may differ among participating states. The Service plans to be flexible in working with states to formulate pilot programs that best meet their needs, and is open to new proposals and ideas from the states. Detailed below is one example of a section 502 pilot program approach that appears promising to the Service, but is not meant to be exclusive:

Applicants for driver's licenses or identity cards will state on the application under penalty of perjury whether they are citizens, non-citizens, or nationals of the United States, and will present documentary evidence of their identity and citizenship or immigration status to the state. Applicants who are not citizens or nationals of the United States must present alien registration documentation or other proof of immigration registration from the Service that includes the individual's alien registration number or alien admission number. The Service will make available and maintain an immigration status records system which provides information on aliens' immigration status. The system is known as the Alien Status Verification Index (ASVI) (Justice/INS 009). The ASVI data base contains information on approximately 60 million immigrant and nonimmigrant aliens and is updated on a daily basis. The ASVI data base was originally designed as an information service for agencies and institutions issuing entitlement benefits, and is used by the Systematic Alien Verification for Entitlements (SAVE) and Employment Verification Pilot (EVP) programs.

The states will have access to the information contained in the ASVI data base via a personal computer with a modem. To perform a primary query of ASVI, the user inputs the alien's identification number (registration number or admission number) and other limited information. When the user accesses the ASVI data base to perform a primary query, ASVI will respond within 3–5 seconds of the query. When the response from a primary query directs the user to institute a secondary verification because it cannot positively verify a particular alien's status, the user provides additional information, i.e., full name, date of birth, etc., to the Service to assist the Service in verifying the immigration status. The ASVI data base has proven to be an effective, secure, and economical method of verifying the immigration status of aliens.

Information To Be Included in the Response

Each response should include the complete name of the Department of Motor Vehicles or other agency of the responding state that will be responsible for implementing the pilot program; headquarters address; listing of additional locations, if any; and the name and phone number of the contact person for this pilot. Other information that is not mandatory, but which will be of assistance to the Service in evaluating the response and which may be included is: a description of legal authority under state law for denying driver's licenses and identification cards to aliens not lawfully present in the United States; a description of any current policies or procedures regarding verification of identity or citizenship or immigration status of applicants; a description of any current policies or procedures regarding the issuance of driver's licenses or identification cards to aliens; the estimated number of alien applicants annually, and proposals or comments regarding the desired scope and format of the pilot program within the State.

OMB Reporting Burden

The public reporting burden for this collection of information is estimated to be 2 hours, including gathering the information needed, and completing and reviewing the collections of information. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Immigration and Naturalization Service, 425 I Street, NW., HQPDI, Room 5307, Washington, DC 20536. These requirements have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, and are recorded as OMB Control Number 1115–0126, with an expiration date of December 31, 1997.

Dated: September 21, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–25786 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 25, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley (202 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503, (202 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Guidelines for the State Employment Security Agency Program and Budget Plan for the Unemployment Insurance Program.

OMB Number: 1205–0132 (revision).

Frequency: Annual.

Affected Public: Federal Government; State, Local or Tribal Government.

Activity	Respondents	Average time per respondent (hours)
ETA 8632A	53	1
ETA 8632	53	27
ETA 8632 (QC)	37	4
ETA 5633, 8633A	53	1

Total Burden Hours: 2,109.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $60,700.

Description: The Program Budget Plan (PBP) is the annual planning and budget instrument for the Unemployment Insurance system nationwide. It facilitates State planning and allows for the development of Corrective Action Plans for deficient performance, as well as, plans for program enhancements made possible by increased funding allocation requests. This is the 14th edition of this document.

Agency: Bureau of Labor Statistics.

Title: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220–0045 (revision).

Frequency: Annual.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Form No.	Respondents	Average time per respondent (minutes)
BLS 9300	230,000	50
Renotification Package	150,000	9

Total Burden Hours: 207,291.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Survey of Occupational Injuries and Illnesses is the primary indicator of the Nation's progress in providing every working man and woman safe and healthful working conditions. Survey data are also used to evaluate the effectiveness of the Federal and State programs and to prioritize scarce resources.

Agency: Employment Standards Administration.

Title: Health Insurance Claim form.

OMB Number: 1215–0055 (extension).

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 763,516.

Estimated Time Per Respondent: 13 minutes.

Total Burden Hours: 167,868.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $2,800.

Description: This information is collected to ensure payment of appropriate benefits or charges of diagnostic and treatment services under both the Federal Employees' and Black Lung Compensation mandates, and for reporting payment information required by the Internal Revenue Service are made.

Agency: Occupational Safety and Health Administration.

Title: Telecommunications (29 CFR 1910.268(c))—Training Certifications.

OMB Number: 1218–0new (formerly 1218–0210) (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 213,980.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 17,118.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The training certification required in 29 CFR 1910.268© is necessary to assure compliance with the requirement that employees have been trained in the various precautions and safe practices in telecommunications.

Agency: Occupational Safety and Health Administration.
Title: Manlifts (29 CFR 1910.68(e)(3)—Inspection Certifications.
OMB Number: 1218–0new (formerly 1218–0210) (extension).
Frequency: Weekly, Monthly.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 3,000.
Estimated Time Per Respondent: 1.15 hours.
Total Burden Hours: 51,005.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The information collection requirement of this standard is necessary to assure compliance with the requirements for manlifts by a competent person. The inspection is intended to assure that the manlifts are in safe operating condition, and all safety devices, such as belt switches, are working properly. The failure of belts of switches could cause serious injury or death to an employee.

Agency: Occupational Safety and Health Administration.
Title: Construction Records for Tests and Inspections for Personnel Hoists (29 CFR 1926.552 (c)(15)).
OMB Number: 1218–0new (formerly 1218–0210) (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 14,400.
Estimated Time Per Respondent: 15 minutes (every 3 months).
Total Burden Hours: 15,840.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The construction standard on personnel hoists requires employers to conduct tests and inspections for hoists that their employees use. The certification records, which attest to the safety of the hoists, are necessary to ensure compliance with the standard.

Agency: Occupational Safety and Health Administration.
Title: Aerial Lifts (29 CFR 1910.67(b)(2)—Manufacturer's Certification.
OMB Number: 1218–0new (formerly 1218–0120) (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 900.
Estimated Time Per Respondent: 5 minutes.
Total Burden Hours: 72.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: This standard requires that when aerial lifts are "field modified" for uses other than those intended by the manufacturer, the modification must be certified in writing by the manufacturer or by any other equivalent entity, such as a nationally recognized testing laboratory to be in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA standard, to be at least as safe as the equipment was before modification.

Agency: Occupational Safety and Health Administration.
Title: Recording and Reporting Occupational Injuries and Illnesses (29 CFR 1904).
OMB Number: 1218–0176 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.
Number of Respondents: 816,766.
Estimated Time Per Respondent: 1.9 hours.
Total Burden Hours: 1,492,710.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): $31,032,694.
Description: The OSH Act and 29 CFR 1904 prescribe that certain employers maintain records of job related injuries and illnesses. The data are needed by OSHA to carry out intervention and enforcement activities to guarantee workers a safe and healthful workplace. The data are also needed by the Bureau of Labor Statistics to produce national statistics on occupational injuries and illnesses. Approximately 816,000 employers keep these records. Only 65 percent must record a case.

Agency: Occupational Safety and Health Administration.
Title: Access to Employee Exposure and Medical Records (29 CFR 1910–1020).
OMB Number: 1218–0065 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 747,874.
Estimated Time Per Respondent: 9 minutes.
Total Burden Hours: 448,886.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The purpose of the Access to Employee Exposure and Medical Records Standard and its information collection requirements are to provide employees and their designated representatives the right to access relevant exposure and medical records, and to provide representatives of the Assistant Secretary the right of access to these records in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees, their representatives, and the Assistant Secretary is necessary to yield both direct and indirect improvement in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this standard, but the activities involved in complying with the access to medical provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records.

Agency: Occupational Safety and Health Administration.
Title: Formaldehyde Standard (29 CFR 1910.1048).
OMB Number: 1218–0145 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 112,066.
Estimated Time Per Respondent: Time ranges from 5 minutes to maintain records to 1 hour for medical exams.
Total Burden Hours: 521,110.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): $54,209,103.
Description: The Formaldehyde Standard and its information collection is designed to provide protection for employees from the adverse effects associated with occupational exposure to formaldehyde.

The standard requires employers to monitor employee exposure to formaldehyde and provide notification to employees of their exposure to formaldehyde. Employers are required to make available medical exams to employees who are or may be exposed to formaldehyde at or above the action level (0.5 parts per million calculated as an eight hour time-weighted average), or exceeding the short term exposure limit (two parts formaldehyde per million parts per air). Exposure monitoring and medical records are to be retained for prescribed amounts of time, and under certain circumstances such records may be transferred to the National Institute for Occupational Safety and Health. Employers are also required to communicate the hazards associated with exposure to formaldehyde through signs, labels, material safety data sheets, and training.

Agency: Occupational Safety and Health Administration.
Title: Construction Fall Protection Plans and Records (29 CFR 1926.502 and 1926.503).
OMB Number: 1218–0197 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 6,000 (sites of net installation certification); 100,000 (sites using fall protection plan); and 4 million (workers trained).
Estimated Time Per Respondent: 5 minutes (safety net certification records); 1 hour 5 minutes (fall protection plan); 5 minutes (training certification records).
Total Burden Hours: 767,246.
Total annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The construction standard for fall protection allows employers to develop alternative procedures to the use of conventional fall protection systems when the systems are infeasible or create a greater hazard. The alternative procedures (plan) must be written. Also, employers who use safety net systems may certify that the installation meets the standard's criteria in lieu of performing a drop-test on the net. In addition, employers are required to prepare training certification records for their employees. The plan and certification records ensure that employers comply with the requirements to protect workers from falls,which account for the largest number of fatalities among construction workers.

Agency: Occupational Safety and Health Administration.
Title: Forging Machines (29 CFR 1920.218(a)(2)(I) and (ii))—Inspection Certifications.
OMB Number: 1210-0 new (formerly 1218–1210) (extension).
Frequency: Bi-weekly.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 27,700.
Estimated Time Per Respondent: 10 Minutes.
Total Burden Hours: 244,868.
Total annualized capital/startup costs: 0
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The inspection certifications required by 29 CFR 1910.218(a)(2)(I) and (ii) are necessary to assure compliance with the requirements for forging machines They are intended to assure that the forging machines have periodic and regular maintenance checks and that guards and point of operation protection devices have scheduled and record inspections.

Agency: Occupational Safety and Health Administration.
Title: Aboveground Tank Venting Devices (29 CFR 1910.106(b)(v)(I) and 29 CFR 1926.152(I)(2)(v)(I)—Withdrawal of Paperwork for Manufacturer's Certification of Test.
OMB Number: 1218-0 new (formerly 1218–0210) (withdrawal).
Frequency: On occasion.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 0.
Estimated Time Per Respondent: 0.
Total Burden Hours: 0.
Total annualized capital/startup costs: 0
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The requirements for the testing of venting devices on aboveground flammable and combustible liquid tanks are found at 29 CFR 1910.106(b)(2)(v)(I) and 29 CFR 1926.152(I)(2)(v)(I). The requirements are for a one-time test of the flow capacity of each type and size of tank venting devices 12 inches or smaller in nominal pipe size installed on aboveground tanks. 29 CFR 1910.106(b)(2)(v)(I) and 29 CFR 1926.152(I)(2)(v)(I) are two of 33 provisions currently contained in the paperwork package entitled "Certification Records for Tests, Inspections, Maintenance Checks and Training (OMB Control Number 1218–0210); however, OSHA has determined that there are no collections of information required by these provisions. These provisions contain no explicit requirements for the collection of information regarding that testing.

Theresa M. O'Malley,
Departmental Clearance Officer.

[FR Doc. 97–25919 Filed 9–29–97; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,694; Gasbane Products, Inc., Dubois, PA
TA–W–33,742; Dana Corp., Spicer Trailer Products, Berwick, PA
TA–W–33,728; Rayloc, Inc., Atlanta, GA
TA–W–33,491; Coats American, Rossville Plant, Rossville, GA
TA–W–33,353; TechnoTrim, Incorporated, Greencastle, IN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,746; Pathmark Stores, Inc., Store #548, Allentown, PA

TA–W–33,711; Amax Apparel Co., El Paso, TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,576; Microenergy, Inc., Memphis, MO

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–33,628; Ametek, U.S. Gauge Div., Sellerville, PA

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA–W–33,696; Cooper Slide Sales, Inc., Genesee, PA

TA–W–33,727; CMS Nomeco Oil and Gas Co., Jackson, MI

TA–W–33,741; Bel/Kaukauna USA, Inc., Leitchfield, KY

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–33,673; Lawson Mardon Wheaton, Inc., Easton, MD: June 1, 1996.

TA–W–33,763; SL Auburn, Inc., Auburn, NY: August 15, 1996.

TA–W–33,590; Maine Shoe, Inc., Lewiston, ME: June 6, 1996.

TA–W–33,646; Stanley Door Systems, Div. of Stanley Works, Troy, MI: June 13, 1996.

TA–W–33,667; August Embroideries, Fairview, NJ: June 25, 1996.

TA–W–33,738; Diamond Multimedia Communications Div., Albany, OR: August 4, 1996.

TA–W–33,662; Batesville Manufacturing, Clarkesville, GA: July 1, 1996.

TA–W–33,500; Trendline Home Fashions, Inc., Miami, FL: May 5, 1996.

TA–W–33,710; Innovative Acquisition Corp., D/B/A Innovative Textile, New York, NY: July 23, 1996.

TA–W–33,687; Bend Manufacturing Co., Inc., Bend, OR: July 15, 1996.

TA–W–33,701; J.B.J. Fabrics, Inc., New York, NY: July 22, 1996.

TA–W–33,494 & TA–W–33,495; Wearever Shirt Co., Inc, New York, NY and Freeburg, PA: May 7, 1996.

TA–W–33,745; Pro-Tech Respirators, Inc., Div., of Bacon USA, Buchanon, MI: August 5, 1996.

TA–W–33,620; Allegiance Healthcare, Inc., Riverside, CA: and Temporary Workers of VIP Temporary Services, Ontario, CA: June 16, 1996.

TA–W–33,670; Kimberly Clark Corp., Winslow Plant, Winslow, ME: June 23, 1996.

TA–W–33,626; Plews/Edelman Lubrimatic Div. of Stant Corp., Spencer, IA: June 23, 1996

TA–W–33,691; Cosco, Inc., Bremen, GA: July 16, 1996.

TA–W–33,704; Elberton Manufacturing, Elberton, GA: July 23, 1996.

TA–W–33,651; BASF Corp., Holyoke, MA: June 25, 1996.

TA–W–33,698; Eveready Battery Co., Inc., Fremont, OH: July 24, 1996.

TA–W–33,767; Fruit of the Loom, Martin Mills, Inc., St. Martinville, LA; & Operating at the Following Locations: A; Abbeville Mills, Div of Martin Mills, Inc., Abbeville, LA, B; Port Barre Mills Div of Martin Mills, Inc., Port Barre, LA, C; Fruit of The Loom Texas, Inc, Harlingen, TX, D; Fruite of The Loom, Jamestown, KY and E; Fruit of The Loom, Sherman, MS: August 14, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of September, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01749; Glades H & P, Belle Glade, FL

NAFTA–TAA–01716; Domi AGR, Inc., (Workers Leased to Untied States Sugar Corp), Clewiston, FL

NAFTA–TAA–01710; Black Gold Farms, Inc., Belle Glade, FL

NAFTA–TAA–01837; Vanity Dayton Walther, Portsmouth, OH

NAFTA–TAA–01829; Gasbarre Products, Inc., DubBois, PA

NAFTA–TAA–01866; Dana Corp., Spicer Trailer Products, Berwick, PA

NAFTA–TAA–01645; Coats American Rossville Plant, Rossville, GA

NAFTA–TAA–01853; Rayloc, Inc., Atlanta, GA

NAFTA–TAA–01745; Morrison Farms, Inc., McAlpin, FL

NAFTA–TAA–01725; Trendline Home Fashions, Inc., Miami, FL

NAFTA–TAA–01840; Brandon Apparel Group, Inc., Columbus, WI

NAFTA–TAA–01863; U.S. Can Co., Racine, WI

NAFTA–TAA–01871; Hasser Enterprises, Inc., Lafayette, IN

NAFTA–TAA–01773; Fresh Picks Farms, Inc., Princeton, FL

NAFTA–TAA–01712; Osceola Farms, Pahokee, FL

NAFTA–TAA–01648; Honeywell, Inc., Arlington Heights Operation, Arlington Heights, IL

NAFTA–TAA–01736; Okeelanta Corp., Palm Beach, FL

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01880; Amex Apparel Co., El Paso, TX

NAFTA–TAA–01847; Northwest Agricultural Cooperative Association, Inc., Finished Fleet Div., Ontario, OR

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–01816; United Steering System, Inc., Grabill, IN

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision) have not become totally or partially separated from employment.

NAFTA–TAA–01703; Microenergy, Inc., Memphis, MO

The investigation revealed that criteria (2) has not been met. Sales or production or both did not decline during the relevant period for certification.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determinations.

NAFTA–TAA–01833; Port Clyde Canning Co., Rockland, ME: July 17, 1996.

NAFTA–TAA–01848; Greco Manufacturing, Inc., Puyallup, WA: July 21, 1996.

NAFTA–TAA–01806; Scotch Maid, Inc., Sara Lee Bodywear, Allentown, PA: July 1, 1996.

NAFTA–TAA–01822: Bausch and Lomb, Frame Center, Rochester, NY: July 9, 1996.

NAFTA–TAA–01843; Eveready Battery Co., Inc., Fremont, OH: July 8, 1996.

NAFTA–TAA–01889; Shure Electronics, Douglas, AZ: August 22, 1996.

NAFTA–TAA–01886; SL Auburn, Inc., Auburn, NY: August 15, 1996.

NAFTA–TAA–01827; Bend Manufacturing Co., Inc., Bend, OR: July 15, 1996.

NAFTA–TAA–01890; Noma Appliance and Electronics, Nogales, AZ: August 13, 1996.

NAFTA–TAA–01860; Diamond Multimedia, Communications Div., Albany OR: August 4, 1996.

NAFTA–TAA–01777; Stanley Door Systems, Div. of Stanley Works, Troy, MI: June 18, 1996.

NAFTA–TAA–01802; Batesville Manufacturing, Clarkesville, GA: July 1, 1996.

NAFTA–TAA–01744; Lear Corp., Fair Haven Plant, Fair Haven, MI: June 12, 1996.

NAFTA–TAA–01850; Stuffed Shirt, Inc., Slidell, LA: July 24, 1996.

NAFTA–TAA–01851; Alliant Techsystems, Inc., Radford Army Ammunition Plant, Radford, VA: June 23, 1996.

NAFTA–TAA–01780; Arkady Industries, Inc., Malern, AR: June 20, 1996.

NAFTA–TAA–01893; Conaway-Winter, Inc., Compo Shoes Div., Birch Tree, MO: August 17, 1996.

NAFTA–TAA–01601; Desert Clearners, Inc., El Paso, TX: March 26, 1996.

NAFTA–TAA–01771; Zenith Goldline Pharmaceuticals, Inc., Fort Lauderdale, FL: May 27,1996.

I hereby certify that the aforementioned determinations were issued during the month of September, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 18, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25868 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determined whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioner or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 10, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 10, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 15th day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 09/15/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,815	Amity Dying and Finishing (UNITE)	Augusta, GA	09/02/97	Dyeing and Finishing of Greige Goods.
33,816	Seymour Housewares (Wkrs)	Mooresville, NY	08/28/97	Sorts and Hold Laundry Housewares.
33,817	Amex Manufacturing (Co.)	El Paso, TX	08/18/97	Sew Curtains and Baby Products.
33,818	Sew More, Inc (Co.)	Albemarle, NC	08/25/97	T-shirts.
33,819	Collegiate Sportswear (Wkrs)	Kingston, TN	08/27/87	NBA & NFL Replica Jerseys.
33,820	Fisher Rosemount Petro. (Co.)	Statesboro, GA	08/20/97	Magnetic Flow Meters.
33,821	Universal Friction (Co.)	Manheim, PA	09/03/97	Clutch Facings & Brake Linings.

APPENDIX—PETITIONS INSTITUTED ON 09/15/97—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,822	Dana Design (Co.)	Bozeman, MT	08/26/97	Backpacks.
33,823	Princeton Carpets (Wkrs)	Adairsville, GA	08/28/97	Woven Area Rugs.
33,824	Wolverine World Wide (Wkrs)	Jonesboro, AR	08/21/97	Women's Shoes.
33,825	Solomon Company (The) (Co.)	Leeds, AL	08/28/97	Men's Dress Slacks.

[FR Doc. 97–25864 Filed 9–29–97; 8:45 am]
BILLING CODE 4310–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,690]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance Bemis Company, Incorporated, Memphis, Tennessee

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 21, 1997, applicable to all workers of Bemis Company, Incorporated located in Cordova, Tennessee. The notice will be published soon in the **Federal Register**.

At the request of the Company, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly identified the subject firm location. The investigation conducted for the subject firm was conducted on behalf of the workers at the paper bags for produce and paper industrial bags production facility located in Memphis, Tennessee. Cordova, Tennessee in the Division office of the subject firm and is not the subject of the investigation. The Department is amending the certification determination to correctly identify the city to read Memphis, Tennessee.

The amended notice applicable to TA–W–33,690 is hereby issued as follows:

"All workers of Bemis Company, Incorporated, Memphis, Tennessee who became totally or partially separated from employment on or after July 11, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 12th day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 96–25871 Filed 9–29–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 10, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 10, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 09/08/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,791	Ergodyne Corp (Wrks)	Pence, WI	08/22/97	Ergodynamic Products.
33,792	Label Art/Short Run Label (UNITE)	Linthicum Hgts, MD	08/27/97	Diecut Self-Adhesive Printed Labels.
33,793	Thomas and Betts (Wkrs)	Sanford, ME	08/07/97	Electronic Connectors.
33,794	Remington Apparel Co. (Comp)	Graham, TX	08/21/97	Men's Neck Ties.
33,795	Patrilda Sportswear (Comp)	Montgomery, PA	08/25/97	Children's Sportswear.
33,796	Drummond Co., Inc. (UMWA)	Graysville, AL	08/20/97	Coal Mining.
33,797	SMS Textile Mills (Wkrs)	Allentown, PA	08/21/97	Elastic Fabrics.
33,798	Concept Apparel 2000, Inc (Comp)	El Paso, TX	08/16/97	Women's Denim Jeans, Shorts.
33,799	West Virginia Shoe Co (Comp)	Marlinton, WV	08/25/97	Handsewn Shoes—Casual, Dress.
33,800	Milco Industries, Inc. (TGWA)	Bloomsburg, PA	08/25/97	Women's Intimate Apparel and Sleepwear.
33,801	Louisville Manufacturing (Wkrs)	Louisville, GA	08/26/97	Fleece Shirt, Jersey Shirts.
33,802	ACER TI Corp. USA (Wkrs)	Temple, TX	08/25/97	Provide Info on Tex. Instrument Computers.
33,803	Precise Polestar, Inc (Wkrs)	Phillipsburg, PA	08/15/97	Medical Components for Endo Surgery.
33,804	Prewash and Pressing (Comp)	El Paso, TX	08/20/97	Industrial Laundry Service.

APPENDIX.—PETITIONS INSTITUTED ON 09/08/97—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,805	Marsey Lace (Wkrs)	Guttenberg, NJ	08/18/97	Embroidery for Garment Industry.
33,806	Creative Embroidery Corp (Comp)	Bloomfield, NJ	08/25/97	Infant's Garments.
33,807	Superior Farms, Inc (UFCW)	Ellensburg, WA	08/20/97	Lamb Meat Products
33,808	MagneTek (Wkrs)	Huntington, IN	07/07/97	Converters and Transformers.
33,809	3C Alliance, L.L.P. (Comp)	Mebane, NC	08/21/97	Rechargeable Batteries.
33,810	Lenzing Fibers Corp (Wkrs)	Lowland, TN	08/25/97	Rayon Staple Fiber.
33,811	Philips Technologies (Wkrs)	Cambridge, MD	08/27/97	Circuit Breakers—Protective Devices.
33,812	Cumberland Apparel (Wkrs)	Monticello, KY	08/27/97	Childrens Sleepwear, Sportswear.
33,813	BASF Coatings & Colorants (Wkrs)	Morganton, NC	08/29/97	Materials for Auto Paint.
33,814	Bourns, Inc (Comp)	Riverside, CA	08/20/97	Pressure Transducers.

[FR Doc. 97–25865 Filed 9–29–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,767]

Fruit of the Loom; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Martin Mills, Inc., D/B/A St. Martinville Mills, Including Former Employees of Jeanerette Mills, St. Martinville, Louisiana
TA–W–33,767A, Abbeville Mills, Division of Martin Mills, Inc., Including Former Employees of Jeanerette Mills, Abbeville, Louisiana
TA–W–33,767B, Port Barre Mills, Division of Martin Mills, Inc., Including Former Employees of Jeanerette Mills, Port Barre, Louisiana
and
TA–W–33,767D, Fruit of the Loom, Jamestown, Kentucky

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 29, 1997, applicable to workers of Fruit of the Loom, Martin Mills, Inc., located in St. Martinville, Abbeville, and Port Barre, Louisiana, and Jamestown, Kentucky. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of T-shirts, briefs, boxers and layette. Findings on review show that some of the workers at the subject firm locations in Louisiana have had their wages reported to the separate Unemployment Insurance tax account for Jeanerette Mills, a subsidiary of Fruit of the Loom. Other new findings show that Martin Mills, Inc. in St. Martinville, Louisiana is doing business as St. Martinville Mills. Based on this new information, the Department is amending the certification to reflect these matters.

Further review of the Jamestown, Kentucky certification for workers of Fruit of the Loom shows that workers were covered under a previous TAA certification, TA–W–31,144, which expired on July 31, 1997. To avoid overlap in worker coverage, the Department is amending the new TAA certification for workers of Fruit of the Loom located in Jamestown, Kentucky to reflect the new impact date of August 1, 1997.

The amended notice applicable to TA–W–33,767 is hereby issued as follows:

"All workers of Fruit of the Loom, Martin Mills, Inc., doing business as St. Martinville Mills, including former employees of Jeanerette Mills, St. Martinville, Louisiana (TA–W–33,767), Abbeville Mills, Division of Martin Mills, Inc., including former employees of Jeanerette Mills, Abbeville, Louisiana (TA–W–33,767A), Port Barre Mills, Division of Martin Mills Inc., including former employees of Jeanerette Mills, Port Barre, Louisiana (TA–W–33,767B), who became totally or partially separated from employment on or after August 14, 1996; and all workers of Fruit of the Loom, Jamestown, Kentucky (TA–W–33,767D) who became totally or partially separated from employment on or after August 1, 1997, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, D.C. this 14th day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25860 Filed 9–29–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Levi Strauss and Company;
TA–W–33,513; Goodyear Cutting Facility and El Paso Field Headquarters; 1440 Goodyear, El Paso, Texas;
TA–W–33,513W; Kastrin Street Plant; 1000 Kastrin Street, El Paso, Texas

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations have occurred at the Kastrin Street Plant and the El Paso Field Headquarters, El Paso, Texas locations of Levi Strauss and Company. The Kastrin Street Plant is a sewing facility for Levi's manufacturing facilities. The El Paso Field Headquarters at 1440 Goodyear in El Paso, Texas is an administrative office servicing the western regional manufacturing facilities of Levi Strauss. The 1440 Goodyear location is also a cutting facility. The workers are engaged in employment related to the production of men's, women's and youth's denim jeans and jackets. Based on this new information, the Department is amending the certification to cover the subject firm's Kastrin Street Plant and the El Paso Field Headquarters, El Paso, Texas.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by increased imports

of men's, women's and youth's denim jeans and jackets.

The amended notice applicable to TA–W–33,513 is hereby issued as follows:

"All workers of Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas (TA–W–33,513) and Kastrin Street Plant, El Paso Texas (TA–W–33,513W) engaged in employment related to the production of men's, women's and youth's denim jeans and jackets who became totally or partially separated from employment on or after May 13, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 14th day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25874 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,487 Corporate Office, Medford OR; TA–W–33,487A MDF Plant, Medford OR; TA–W–33,487B Veneer Division, Rogue River, OR and NAFTA 01649 Corporate Office, Medford OR; NAFTA 01649A MDF Plant, Medford OR; NAFTA 01649B Veneer Division, Rogue River, OR]

Medite Corporation; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of August 11, 1997, the State of Oregon transmitted the subject firm's request for administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–33,487 and NAFTA petition number 01649. The denial notice was signed on July 16, 1997 and published in the **Federal Register** on August 1, 1997 (62 FR 41423).

The subject firm asserts that there are imports of like and directly competitive articles from foreign sources which caused the employment separations and provided additional information to substantiate the claim.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 22nd day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25864 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 10, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 10, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 09/02/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,768	Mr. Casuals (Co.)	Independence, VA	08/12/97	Trousers, Shorts, Skirts.
33,769	Colorforms (Wkrs)	Ramsey, NJ	08/15/97	Toys.
33,770	Appleton Papers (UPIU)	Newton Falls, NY	09/07/97	Coated Papers.
33,771	Tara Lee Sportswear (Co.)	New Berlin, PA	08/18/97	Sew Knit Tops and Sweatshirts.
33,772	CW Sportswear, Inc (Co.)	Tellico Plains, TN	08/14/97	M–65 Field Jackets.
33,773	Banner Pharmacaps (Wkrs)	Elizabeth, NJ	07/11/97	Pharmaceutical Gelatin Capsules.
33,774	Noma Appliance and Elect (Co.)	Nogales, AZ	08/20/97	Appliance Harnesses.
33,775	CTS Corporation (Wkrs)	Baldwin, WI	08/19/97	Electronic Connectors and Back Panels.
33,776	Appalachian Finishing (Co).	Knoxville, TN	08/18/97	Dyeing & Finishing Tubular Knits.
33,777	U.S. Ring Binder Corp (Wkrs)	New Bedford, MA	08/15/97	Off. & Warehouse of 3-Ring Binder Mech.
33,778	Oneita Industries (Co.)	Cullman, AL	08/14/97	Administrative & Mgnt Duties.
33,779	True Form Intimate (UNITE)	Sharon Hill, PA	08/21/97	Intimate Apparel for Women.
33,780	Coleman Company, Inc (Wkrs)	Hastings, NE	08/22/97	Cold Water Pressure Washers.
33,781	Mitsubishi Consumer Elec. (Co).	Santa Ana, CA	08/21/97	Projection Televisions.
33,782	General Motors Corp. (Co.)	Livonia, MI	08/13/97	Leaf Springs for Trucks.
33,783	General Electric Co. (IUE)	Ft. Wayne, IN	08/19/97	Permanent Magnetic & AC Motors.
33,784	Pridecraft Enterprises (Co.)	Forsyth, GA	08/18/97	Hospital and Medical Textiles.
33,785	Pridecraft Enterprises (Co.)	Georgiana, AL	08/18/97	Hospital and Medical Textiles.
33,786	Strauss Underwear Corp. (Wkrs)	Jersey City, NJ	07/16/97	Intimate Apparel.
33,787	Stanley Hardware (IAM)	New Britain, CT	08/19/97	Household Hardware.
33,788	Conaway Winter, Inc. (Wkrs)	Birch Tree, MD	08/17/97	Children's Shoes.

APPENDIX.—PETITIONS INSTITUTED ON 09/02/97—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,789	Indian Valley Industries (Wkrs)	Johnson City, NY	08/06/97	Mesh and Burlap Bags.
33,790	Bassett Walker, Inc (Co.)	No. Wilkesboro, NC	08/20/97	Tree Shirts and Sweat Suits.

[FR Doc. 97–25862 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,522]

North Safety Products, Cranston, Rhode Island; Including Leased Workers of Kelly Services, Incorporated, Warwick, Rhode Island; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 18, 1997, applicable to all workers of North Safety Products, located in Cranston, Rhode Island. The notice was published in the **Federal Register** on September 4, 1997 (62 46775).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers of North Safety Products were leased from Kelly Services, Incorporated to produce respiratory and eye and face protective devices. Based on these findings, the Department is amending the certification to include leased workers from Kelly Services, Incorporated, Warwick, Rhode Island.

The intent of the Department's certification is to include all workers of North Safety Products adversely affected by imports.

The amended notice applicable to TA–W–33,522 is hereby issued as follows:

All workers of North Safety Products, Cranston, Rhode Island, and leased workers of Kelly Services, Incorporated, Warwick, Rhode Island engaged in employment related to the production of respiratory and eye and face protection devices for North Safety Products, Cranston, Rhode Island who became totally or partially separated from employment on or after May 14, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25875 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,326]

Owens-Illinois Closure, Inc., Erie, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 5, 1997, applicable to workers of Owens-Illinois Closure, Inc., located in Erie, Pennsylvania. The notice was published in the **Federal Register** on June 27, 1997 (62 FR 34710).

At the request of the State agency the Department reviewed the certification for workers of the subject firm. Findings show that the petition investigation was conducted on behalf of workers at Owens-Illinois Closure Inc., producing metal cans and lids. The TAA certification, however, covered all workers of Owens-Illinois Closure, Inc., in Erie, Pennsylvania.

Other findings of the investigation review show that the decision document inadvertently reported that the plant closed on December 31, 1996. The plant, however, continues in operation. There is another worker group at the subject plant that produce plastic products.

Since the workers are separately identifiable by product line, the Department is amending the worker group certification to limit coverage to only those workers of Owens-Illinois Closure, Inc., in Erie, Pennsylvania producing metal cans and lids.

The intent of the Department's certification is to include only those workers of Owens-Illinois Closure, Inc., who were affected by increased imports.

The amended notice applicable to TA–W–33,326 is hereby issued as follows:

All workers of Owens-Illinois Closure, Inc., Erie, Pennsylvania, engaged in employment related to the production of metal cans and lids, who became totally or partially separated from employment on or after February 28, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25869 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–32,487; Savannah Manufacturing Corporation, Savannah, Tennessee;
TA–W–32,487C; Hickory Hills Industries, Incorporated, New York, New York

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 3, 1996, applicable to all workers of Savannah Manufacturing Corporation, Savannah, Tennessee. The notice was published in the **Federal Register** on August 2, 1996 (61 FR 40454).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at Hickory Hills Industries, Incorporated, New York, New York when it closed in October, 1996. The workers at the New York, New York location provided sales office functions and designing to support production of children's sportswear at Hickory Hills Industries, Incorporated, also known as Savannah Manufacturing. Accordingly, the Department is amending the certification to cover workers at Hickory Hills Industries, Incorporated, New York, New York.

The intent of the Department's certification is to include all workers of Savannah Manufacturing Corporation adversely affected by increased imports.

The amended notice applicable to TA–W–32,487 is hereby issued as follows:

"All workers of Savannah Manufacturing Corporation, Savannah, Tennessee (TA–W–32,487), and Hickory Hills Industries, Incorporated, New York, New York (TA–W–32,487C) who became totally or partially separated from employment on or after June 7, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 12th day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25872 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,740]

Stein Steel Mill Services, Inc., Cleveland, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 18, 1997 in response to a worker petition which was filed on behalf of workers at Stein Steel Mill Services, Inc., Cleveland, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 14th day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25881 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("The Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 10, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 10, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 25th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 08/25/97

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
33,754	Unique Finishing, Inc (Wkrs)	Wrightsville, GA	08/08/97	Men's and Boy's Slacks.
33,755	Sealed Power Div. of Dana (Wkrs)	Rochester, IN	08/06/97	Cylinder Liners.
33,756	Gurney Industries (Wkrs)	Prattville, AL	08/09/97	T-Shirts.
33,757	International Titanium (USWA)	Cedartown, GA	08/11/97	Grinding of Steel Bars.
33,758	Guess, Inc (Wkrs)	Los Angeles, GA	07/24/97	Jeans, Casualwear.
33,759	Dyna-Craft Industries (Wkrs)	Murrysville, PA	08/09/97	Lead Frames for Computers.
33,760	Brandt, Inc (IAM)	Watertown, WI	07/30/97	Currency Counting Machines.
33,761	CNG Transmission Corp (Comp)	Clarksburg, WV	08/13/97	Natural Gas Sales.
33,762	Eddie Mowad Manufacturing (Wkrs)	El Paso, TX	08/11/97	Jean Jackets, Hunting Jackets.
33,763	SL Auburn, Inc (UPIU)	Auburn, NY	08/15/97	Industrial Products.
33,764	Kaiser Aluminum (Wkrs)	Erie, PA	08/14/97	Aluminum Forging for Autos.
33,765	Landis and Gyr (Wkrs)	Lafayette, IN	08/12/97	Electricity Meters.
33,766	Versa Technologies, Inc (Comp)	Wausau, WI	08/15/97	Silcone Rubber Products.
33,767	Fruit of the Loom (Comp)	St. Martinville, LA	08/14/97	T-Shirts, and Underwear.

[FR Doc. 97–25863 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed new collection of the Lifelong Learning Demonstration Follow-Up Survey. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES; Written comments must be submitted on or before December 1, 1997.

The Employment and Training Administration is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Send comments to Jon Messenger, Office of Policy and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–5631, Washington, D.C. 20210—(202) 219–8680, Extension 113 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL) is conducting a pilot project, the Lifelong Learning Demonstration, to encourage investment in education and training by currently employed workers. This pilot project addresses demands created by increasingly volatile global labor markets, in which workers must move with greater frequency to new jobs and new careers that require more knowledge and job-related skills. The project will make it easier for currently employed adults with substantial work experience to explore new career directions, plan for potential skill needs, and take action to pursue the education and training that will help them prosper in an increasingly competitive global labor market.

A public information campaign undertaken by DOL with the assistance of the U.S. Department of Education (ED) targeted currently-employed adults with substantial work experience as a group likely to benefit from more information on its education and career options. The project will examine whether comprehensive information on educational opportunities—plus the availability of affordable financing through new and expanded Federal financial aid programs—prompts incumbent workers to seek additional education to upgrade their job-related skills and improve their careers. The promotion of post-secondary education and student financial aid is thus a means of increasing the skills and improving the labor market outcomes of these workers.

The Lifelong Learning Demonstration provided targeted workers with comprehensive information about post-secondary education and training opportunities, and streamlined referrals of interested workers to participating educational institutions. This demonstration project is a controlled experiment, with random assignment of adult workers to a treatment group that received brochures promoting education and training and offering further information about local schools and opportunities for student financial aid, and a control group that does not receive this information. Public information campaigns aimed at targeted workers were conducted in the Greater Baltimore, Maryland, area in the summer and fall of 1996.

The Lifelong Learning Demonstration Follow-Up Survey will be a telephone survey of 5,000 individuals in the Greater Baltimore area (2,500 treatment group members and 2,500 control group members). With an estimated 80 percent response rate, 4,000 individuals will complete the survey. Those individuals who have recently obtained additional schooling will be over sampled to allow more detailed analysis of their experiences.

The first objective of the proposed survey is to determine the impact of the Lifelong Learning Demonstration on sample group members. Questions in the survey ask about the respondent's education, employment experiences, and use of student financial aid since June 1996, the start of the demonstration in Baltimore. Background questions on the person's age, gender, race/ethnicity, household composition, and pre-demonstration level of education and use of student financial aid are also asked so that the impacts can be separately determined for various subgroups.

The second objective of the survey is to collect information needed for a cost-benefit analysis of the demonstration. Questions ask about the respondent's earnings and income including benefits from government programs. For respondents who participated in education or training programs since the start of the demonstration, the survey also contains questions on the costs of schooling, sources of funds for schooling, and time spent doing course work outside of class.

The third objective of the survey is to learn about financial and non-financial barriers for adult workers in getting additional education and training to inform any future public information campaigns and for other ETA and ED programs affecting the education and training of adults in the U.S. work force. Questions ask about the value of additional education and training for the respondent, and the financial and non-financial barriers people who have enrolled or applied to school have encountered, as well as barriers other adults think they will encounter if they decided to participate in education or training programs.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Lifelong Learning Demonstration Follow-Up Survey.

Affected Public: Individuals.

Total Respondents: 4,000.

Frequency: One-time.

Total Responses:

Average Time per Response: 35 minutes.

Estimated Total Burden Hours: 2,333 hours.

Total Burden Cost to Respondents (capital/startup): $0.

Total Burden Cost to Respondents (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget Approval of the information collection request: they also will become a matter of public record.

Dated at Washington, D.C. this 23rd day of September 1997.

Gerard F. Fiala,

Adminstrator, Office of Policy and Research, Employment and Training Administration.

[FR Doc. 97–25783 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Native American Employment and Training Council; Notice of Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and Section 401(h)(1) of the Job Training Partnership Act, as amended (29 U.S.C. 1671(h)(1)). notice is hereby given of an open meeting of the Native American Employment and Training Council.

Time and Date: The meeting will begin at 9:00 a.m. on October 23, 1997, and continue until approximately 5:00 p.m.; and will reconvene at 9:00 a.m. on October 24, 1997, and adjourn at approximately 5:00 p.m. From 3:00 p.m. to 5:00 p.m. on October 23 will be reserved for participation and presentations by members of the public. Interested persons may send comments, views, statements or data for consideration by the Council, preferably with twenty copies to: Mr. Thomas M. Dowd, at the address presented below.

Place: U.S. Department of Labor, Washington, D.C., Frances Perkins Building, 200 Constitution Avenue, N.W., Room N–3437 A–D.

Status: The meeting will be open to the public.

Matters To Be Considered: The agenda will focus on the following topics: (1) Welfare-to-Work; (2) New Performance Measures; (3) Evaluation progress of the Section 401 program; (4) Partnership update; and (5) One Stop Shops.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Dowd, Chief, Division of Indian and Native American Programs. Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–4641, Washington, D.C. 20210. Telephone: (202) 219–8502 (this is not a toll-free number).

Persons with disabilities, who need special accommodations, should call Mr. Dowd before October 16, 1997.

Signed at Washington, D.C., this 23rd day of Sept., 1997.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

[FR Doc. 97–25876 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01881]

Fruit of the Loom; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Martin Mills, Inc., D/B/A St. Martinville Mills, Including Former Employees of Jeanerette Mills, St. Martinville, Louisiana
NAFTA–01881A, Abbeville Mills, Division of Martin Mills, Inc., Including Former Employees of Jeanerette Mills, Abbeville, Louisiana
and
NAFTA–01881B, Port Barre Mills, Division of Martin Mills, Inc., Including Former Employees of Jeanerette Mills, Port Barre, Louisiana

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 29, 1997, applicable to workers of Fruit of the Loom, Martin Mills, Inc., located in St. Martinville, Abbeville, and Port Barre, Louisiana. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of T-shirts, briefs, boxers and layette. Findings on review show that some of the workers at the subject firm locations in Louisiana have had their wages reported to the separate Unemployment Insurance tax account for Jeanerette Mills, a subsidiary of Fruit of the Loom. Other new findings show that Martin Mills, Inc., in St. Martinville, Louisiana is doing business as St. Martinville Mills. Based on this new information, the Department is amending the certification to reflect these matters.

The amended notice applicable to NAFTA–01881 is hereby issued as follows:

"All workers of Fruit of the Loom, Martin Mills, Inc., doing business as St. Martinville Mills, including former employees of Jeanerette Mills, St. Martinville, Louisiana (NAFTA–01881), Abbeville Mills, Division of Martin Mills, Inc., including former employees of Jeanerette Mills, Abbeville, Louisiana (NAFTA–01881A), and Port Barre Mills, Division of Martin Mills Inc., including former employees of Jeanerette Mills, Port Barre, Louisiana (NAFTA–01881B), who became totally or partially separated from employment on or after August 14, 1996, are eligible to apply for adjustment assistance under Section 250 of the Trade Act of 1974."

Signed in Washington, D.C. this 14th day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25859 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

NAFTA–01068; Hickory Hills Industries, Incorporated; Savannah Manufacturing Company, Savannah, Tennessee;
NAFTA–01068C; Hickory Hills Industries, Incorporated, New York, New York

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on July 22, 1996, applicable to all workers of Hickory Hills Industries, Incorporated, Savannah Manufacturing Company, Savannah, Tennessee. The notice was published in the **Federal Register** on August 6, 1996 (61 FR 40853).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at Hickory Hills Industries, Incorporated, New York, New York when it closed in October, 1996. The workers at New York, New York location provided sales office functions and designing to support production of children's sportswear at Savannah Manufacturing. Accordingly, the Department is amending the certification to cover workers at the Hickory Hills Industries, Incorporated, New York, New York.

The intent of the Department's certification is to include all workers of Hickory Industries, Incorporated adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–01068 is hereby issued as follows:

All workers of Hickory Hills Industries, Incorporated, Savannah Manufacturing Company, Savannah, Tennessee (NAFTA–01068) and Hickory Hills Industries, Incorporated, New York, New York (NAFTA–01068C) who became totally or partially separated from employment on or after June 7, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25873 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01548 and TA–W–33,336]

Inland Paperboard and Packaging, Erie, PA; Notice of Negative Determination on Reconsideration

On July 31, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The United Paperworkers International Union (UPIU) asserted that production of boxes in Mexico will increase when the Erie plant closes. The notice was published in the **Federal Register** on August 13, 1997 (62 FR 43354).

The Department initially denied NAFTA–TAA to workers of Inland Paperboard and Packaging, Inc. because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no company imports of corrugated shipping boxes from Mexico or Canada, nor was there a shift in production from the workers' firm to Mexico or Canada. The layoffs were attributable to company's decision to close the Erie plant and open a new production facility in Ohio.

The Department initially denied TAA to workers of Inland Paperboard and Packaging, Inc. because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that the company decided to close the Erie plant and open a new production facility in Ohio. The parent company retained the Erie customer base.

The UPIU request for reconsideration asserts that Inland is exporting boxes to Mexico where they are loaded with Mexican products and returned to the United States. Inland's exports of corrugated shipping containers to Mexico or any other country is not a basis for a worker group certification. The Department is required examine import impact of articles like or directly competitive with the product produced at the worker's firm. Shipping containers filled with articles produced in foreign countries and shipped to the United States cannot be considered like or directly competitive with the articles produced at the Erie plant.

The UPIU also asserts that Inland Paperboard and Packaging, Inc. is increasing production at their Mexican corrugated box factory, and is building production capacity abroad. The Erie workers could be certified only if the company or customers of the subject firm were increasing imports of corrugated shipping containers. The company reported no imports of shipping containers.

Investigation on reconsideration shows that there was no corporate-wide decline in sales or production of corrugated shipping containers at Inland Paperboard and Packaging. New information provided by the company reveals that production at the Erie plant served a regional market. Customer accounts serviced by Erie are being handled by other Inland facilities in the region. Since there was no decline in sales, a customer survey was not conducted.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Inland Paperboard and Packaging, Erie, Pennsylvania, under Section 250 and Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25878 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Levi Strauss and Company;
NAFTA—01807; Goodyear Cutting Facility and El Paso Field Headquarters; 1440 Goodyear El Paso, Texas;
NAFTA—01807W; Kastrin Street Plant 1000 Kastrin Street El Paso, Texas

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance of August 7, 1997, applicable to workers of Levi Strauss and Company, in El Paso, Texas. The notice will be published soon in the **Federal Register.**

At the request of the company, the Department reviewed the certification for workers of the subject firm. The findings show that worker separations have occurred at the Kastrin street Plant and at the El Paso Field Headquarters, El Paso, Texas locations of Levi Strauss and Company. The Kastrin Street Plant is a sewing facility for Levi's manufacturing plants. The El Paso Filed Headquarters at 1440 Goodyear, in El Paso, Texas, is an administrative office servicing the western regional manufacturing facilities of Levi Strauss. The 1440 Goodyear location is also a cutting facility. The workers are engaged in employment related to the production of men's, women's and youth's denim jeans and jackets. Based on this new information, the Department is amending the certification to cover workers at the subject firm's Kastrin Street Plant and the El Paso Field Headquarters, El Paso, Texas.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by imparts from Mexico.

The amended notice applicable to NAFTA–01807 is hereby issued as follows:

"All workers of Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas (NAFTA–01807) and Kastrin Street Plant, El Paso, Texas (NAFTA–01807) who were engaged in employment related to cutting, sewing, or finishing or men's, women's and/or youth's denim jeans or jackets who became totally or partially separated from employment on or after July 9, 1996 are eligible to apply for

NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 14th day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–25866 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–3 CARP CD 90–92]

Determination of the Distribution of the 1991 Cable Royalties in the Music Claimants Category

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of the schedule for the proceeding.

SUMMARY: The Copyright Office of the Library of Congress is announcing the schedule for the 180 day arbitration period for the Copyright Arbitration Royalty Panel (CARP) proceeding that shall determine the distribution of the cable royalty fees in the Music Claimants category which were collected for secondary transmissions of broadcast signals during 1991 pursuant to a compulsory license.

DATES: Filings must be submitted according to the announced schedule, except as otherwise provided by order of the Copyright Arbitration Royalty Panel.

ADDRESSES: Parties shall deliver an original and five copies of all written filings concerning this proceeding to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, at: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

A. Background

On February 15, 1996, the Library of Congress published a notice requesting interested parties to comment on the existence of Phase II controversies for the distribution of the 1990, 1991, and 1992 cable royalty funds. 61 FR 6040 (February 15, 1996). The parties who filed comments and Notices of Intent to Participate identified two unsettled categories that would require resolution before a CARP. The first controversy, between James Cannings and Broadcast Music, Inc., the American Society of Composers, Authors and Publishers, and SESAC, Inc. (collectively, "the Music Claimants"), concerns the distribution of the 1991 royalty funds in the Music Claimants category and is the subject of the current proceeding. The second controversy, however, between the National Association of Broadcasters (NAB) and the Public Broadcasting Service (PBS), has been resolved through further negotiation. On June 3, 1997, NAB and PBS notified the Copyright Office that they had reached settlement concerning all matters related to their Phase II dispute over the distribution of the 1990–1992 royalty funds, leaving a single dispute for resolution by a CARP.

The parties in the remaining controversy conducted precontroversy discovery according to the schedule which the Register of Copyrights established by order for this 45-day period. *See* Order in Docket No. 94–3 CRP CD 90–92 (February 14, 1997), vacated and reset at the request of the Music Claimants, Order in Docket No. 94–3 CARP CD 90–92 (May 21, 1997). Then, on August 28, 1997, the Copyright Office published a notice initiating the 180 day period for this proceeding. 62 FR 45687 (August 28, 1997). In this notice, the Office also announced September 4, 1997, as the date of the first meeting between the arbitration panel and the parties. However, due to scheduling conflicts, the parties agreed to reschedule the meeting for September 10, 1997. The Office further announced that it would publish a schedule of the proceedings, as required by 37 CFR 251.11(b), when it became available.

Section 251.11(b) of the regulations governing the Copyright Arbitration Royalty Panels, 37 CFR subchapter B, provides that:

> At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the **Federal Register** at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and places of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and if so, which ones, and the name and telephone number of the person to contact for further information.

This notice fulfills those requirements of § 251.11(b) for the proceeding to determine the distribution of the 1991 cable royalty fees in the Music Claimants category.

B. The Schedule

On September 10, 1997, the parties to this proceeding met with the arbitrators for the purpose of setting a schedule and discussing the procedural aspects of this proceeding. A key procedural issue before the panel which required action by the panel at the outset of the proceeding was consideration of the issue designated to the CARP by the Register of Copyrights of whether to suspend formal hearings and make the determination as to the distribution of the 1991 cable royalty fees on the written pleadings. *See* Order in Docket No. CARP CD 90–92 (August 15, 1997). After hearing argument from all parties, the panel announced its decision to waive the requirement of oral evidentiary hearings and proceed upon the written record alone. The panel stated its reasons for this decision and the specifics of the agreed upon schedule for the proceeding in a written order, as follows:

> Upon consideration of the issue designated to the CARP by the Register of Copyrights of whether to suspend formal hearings and decide the controversy as to the Phase II distribution of the 1991 cable royalty fund on the written pleadings, and after hearing the arguments of all parties, the Panel has determined that for good cause shown it is in the public interest to waive the requirement of an oral evidentiary hearing and to proceed on the written pleadings along, provided that those pleadings are supplemented by written rebuttal cases, proposed findings of fact and conclusions of law, and reply findings of fact and conclusions of law.
>
> Accordingly, and with the consent of all parties, the following procedural schedule is hereby established:
>
> 1. Mr. Cannings will provide to BMI by September 17, 1997, his request for a sample of WWOR–TV music cue sheets for 1991, as granted by Ruling No. 3 in the Register's Order dated August 15, 1997.
>
> 2. BMI will make such sample cue sheets available to Mr. Cannings for inspection and copying on or before October 1, 1997.
>
> 3. Written rebuttal cases are to be filed on October 30, 1997. Any study or analysis shall be accompanied by the information specified in Rule § 251.48 (e) and (f), and all underlying data and tabulations shall be made available as discovery that same date to opposing parties. No other discovery will be allowed.
>
> 4. Any motions addressed to rebuttal cases shall be filed on November 7, 1997. Responses shall be filed on November 19, 1997, and any replies on November 26, 1997.
>
> 5. Proposed findings of fact and conclusions of law are to be filed December 5, 1997.
>
> 6. Reply findings of fact and conclusions of law are to be filed December 19, 1997.

Order, Docket No 94–3 CARP CD 90–92 (September 16, 1997).

At this time, the parties have not moved to close any portion of the proceeding to the public. Further refinements to the schedule will be announced in open meetings and issued as orders to the parties participating in the proceeding. All changes will be noted in the docket file of the proceeding, as required by the Copyright Office regulations governing the administration of CARP proceedings. 37 CFR 251.11(c).

Dated: September 25, 1997.

Nanette Petruzzelli,

Acting General Counsel.

[FR Doc. 97–25890 Filed 9–29–97; 8:45 am]

BILLING CODE 1410–33–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review; Comment Request

September 24, 1997.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Director of Administration, Laurence M. Baden [(202) 682–5408]. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 682–5496 between 10:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 [(202) 395–7316], within 30 days from the date of this publication in the **Federal Register.**

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of all of its funding application guidelines and grantee reporting requirements. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.

Title: Blanket Justification for NEA Funding Application Guidelines FY 1998–FY 2001.

OMB Number: 3135–0112.

Frequency: Annually.

Affected Public: Nonprofit organizations, state & local arts agencies, and individuals.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 19.29 hours (plus 8 hours reporting if a grant is awarded).

Total Burden Hours: 105,250.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0

Description: Guideline instructions and applications elicit relevant information from individuals, nonprofit organizations, and state and local arts agencies that apply for funding from the NEA. Current Endowment categories include, but are not limited to: Grants to Organizations, Partnership Agreements, Literature Fellowships, American Jazz Masters, National Heritage Fellowships in the Folk & Traditional Arts, and Leadership Initiatives (including Millennium). This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process. According to OMB Circulars A–102 and A–110, recipients of Federal funds are required to report on project activities and expenditures.

ADDRESSES: Laurence M. Baden, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 628, Washington, DC 20506–0001, telephone (202) 682–5408 (this is not a toll-free number), fax (202) 682–5798.

Murray R. Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 97–25916 Filed 9–29–97; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Theater Section A (Creation & Presentation category) to the National Council on the Arts will be held on October 20–24, 1997. The panel will meet from 9:30 a.m. to 6:00 p.m. on October 20–22, from 10:00 a.m. to 6:00 p.m. on October 23, and from 9:30 a.m. to 5:30 p.m. on October 24, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506. A portion of this meeting, from 10:00 a.m. to 12:00 p.m. on Thursday, October 23, will be open to the public for a policy discussion of guidelines, planning, Leadership Initiatives, and field needs and trends.

The remaining portions of this meeting, from 9:30 a.m. to 6:00 p.m. on October 20–22; from 12:00 p.m. to 6:00 p.m. on October 23, and from 9:30 a.m. to 5:30 p.m. on October 24, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection c4, and 6 and 9B of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the

Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: September 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–25922 Filed 9–29–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Dance Section (Planning & Stabilization category) to the National Council on the Arts will be held on October 23–24, 1997. The panel will meet from 10:00 a.m. to 6:00 p.m. on October 23 and from 9:00 a.m. to 1:00 p.m. on October 24, in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506. A portion of this meeting, from 9:00 a.m. to 10:30 a.m. on October 24, will be open to the public for a policy discussion of guidelines, planning, Leadership Initiatives, and field needs and trends.

The remaining portions of this meeting, from 10:00 a.m. to 6:00 p.m. on October 23 and 10:30 a.m. to 1:00 p.m. on October 24, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: September 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–25923 Filed 9–29–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee; Committee Management; Renewal

The Assistant Director for Mathematical and Physical Science has determined that renewal of the DOE/NSF Nuclear Science Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NFS), by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration. Authority for the Advisory Committees will expire on October 1, 1999, unless renewed.

The purpose of the committee is to provide advice on a continuing basis to both the Department of Energy and the National Science Foundation on priorities for basic nuclear science research in the United States.

For more information, please contact Dr. Bradley Keister, Program Director, Nuclear Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 (703) 306–1891.

Dated: September 24, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–25797 Filed 9–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research #1203.

Date and Time: 14 October 1997, 8:00 a.m.–5:00 p.m.

Place: Room 1060, National Science Foundation; 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Liselotte J. Schioler, Program Director, Ceramics Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1836, (703) 306–0515.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for Ceramic Program awards.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 24, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–25798 Filed 9–29–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Time: 9:30 a.m., Tuesday, October 7, 1997.

Place: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

Status: Open.

Matters to be Discussed:

6813A—*Railroad Special Investigation Report:* Derailment of Amtrak Train No. 12 and Sideswipe of Amtrak Train No. 79 on Portal Bridge Near Secaucus, New Jersey, November 23, 1996.

News Media Contact: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 314–6065.

Dated: September 26, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–26056 Filed 9–26–97; 2:57 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR 72, issued to the Florida Power Corporation, (FPC or the licensee), for operation of the Crystal River Nuclear generating Unit 3 (CR3) located in Citrus County, Florida.

The proposed amendment involves a revision to the Emergency Diesel Generator (EDG) protective relaying scheme at CR3, as described in the Final Safety Analysis Report (FSAR) Chapter 8. FPC has evaluated the proposed modifications pursuant to 10 CFR 50.59 and has determined that these modifications constitute an unreviewed safety question (USQ) based on a resulting increase in the probability of a malfunction of equipment important to safety. Therefore, FPC is requesting amendment of the CR3 license to resolve that USQ. The proposed modification will add new protective relays to each EDG generator output breaker to provide additional protection for a potential electrical fault or overpower condition.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The EDGs perform a support function for Design Basis Accident mitigation by providing a source of emergency AC electrical power for the Engineered Safeguards loads. For most Design Basis Accidents, a coincident Loss-of-Offsite-Power is postulated to occur and any single random electrical failure is considered credible including complete failure for one EDG to energize the associated 4160V ES bus. The failure of an EDG to energize the associated 4160V ES bus is not a precursor for any postulated Design Basis Accident except Station Blackout (SBO). The failure of both EDGs concurrent with a Loss-of-Offsite-Power causes a Station Blackout. Therefore, any increase in the probability that an EDG will not energize the associated 4160V ES bus will increase the probability of a Station Blackout.

The new relaying added to each EDG has a small probability of spuriously actuating, resulting in a small increase in the probability of an EDG failing to energize the associated 4160V ES bus. Spurious actuation of the overcurrent relaying for the load carrying 4160V ES bus offsite power source breaker will cause a loss of power on the 4160V ES bus and prevent the EDG from re-energizing the bus. In addition, a spurious actuation of the device-32X directional power auxiliary relay can cause a loss of offsite power for the associated 4160V ES bus. This spurious actuation also increases the probability of a Station Blackout. The only new system interfaces are between the EDG and 4160V ES bus systems. The modified relaying will not directly affect the fuel cladding, the Reactor Coolant System (RCS) pressure boundary, or the containment building.

The increase in the probability of a Station Blackout is negligible. Although EDG availability is a contributor to the risk of Station Blackout, the CR–3 licensing basis assumes this event without regard to EDG reliability. Therefore, the probability of previously evaluated accidents is not significantly increased. The new protective relaying could shorten the duration of an actual Station Blackout if a 4160V ES bus fault or other similar problem was a contributor to the event by limiting the damage to the station power systems.

The modified relaying will not increase the consequences of a Station Blackout since both EDGs and offsite power are assumed to be unavailable. The new protective relaying will not create any new timing or sequencing impact to the ES loads supplied from the 4160V ES bus. The small increase in probability that an EDG will not energize the associated 4160V ES bus does not invalidate the Design Basis Accident assumption that one EDG successfully energizes the associated 4160V ES bus (single failure proof). Therefore, the conclusions concerning fission product releases in the FSAR will not be changed.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The modified relaying will not directly affect the fuel cladding, the Reactor Coolant System (RCS) pressure boundary, or the containment building. The modifications only impact the EDGs and 4160V ES buses.

The failure of one of the EDGs to energize the associated 4160V ES bus during a Design Basis Accident is a standard "single failure" for determining the acceptability of an accident mitigation system. A standby EDG and the associated 4160V ES bus are not capable of creating an accident such as a Loss-of-Coolant Accident (LOCA) or Main Steam Line Break (MSLB).

There is a small increase in the probability that an EDG will not successfully energize the associated 4160V ES bus. However, the Design Basis Accident assumption that one EDG does successfully energize the bus remains valid. Therefore, no new accident involving the failure of both EDGs other than a Station Blackout needs to be postulated. The proposed modifications to the EDG relaying and the small increase in the probability that an EDG will not energize the associated 4160V ES bus do not introduce any new interfaces or mechanisms that could challenge any fluid system or fission product barrier in a different way than previously evaluated. Therefore, the modifications cannot create the possibility of an accident of a different type than previously evaluated in the FSAR.

3. Does not involve a significant reduction in the margin of safety.

The Bases of the CR–3 technical specifications do not identify a "margin of safety" for the EDGs or 4160V ES buses that is applicable to the proposed EDG relaying modifications. Therefore, the plant response to Design Basis Accidents was evaluated. The accident analysis assumptions remain valid with the existing and proposed changes to the EDG and 4160V ES bus protective relaying. Plant response will remain as evaluated in the accident analysis and the calculated primary and secondary pressures and temperatures during evaluated accidents will not be increased by the changes. The reliability of each EDG and associated 4160V ES bus is being insignificantly reduced in order to increase the availability of the EDG and associated 4160V ES bus after a fault or overcurrent condition occurs. A spurious actuation of one of the added relays might cause one EDG to fail to energize one 4160V ES bus but would not result in failure of the other EDG to perform its function. Therefore, the changes do not reduce the margin of safety in the bases for any Improved Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 30, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 12, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Dated at Rockville, Maryland, this 23rd day of September 1997.

For The Nuclear Regulatory Commission.

L. Raghavan, Sr.,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–25899 Filed 9–29–97; 8:45 am]

BILLING CODE 2590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338]

In the Matter of Virginia Electric and Power Company North Anna Power Station, Unit Nos. 1 and 2; Exemption and 50–339

I

The Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. NPF–4 and NPF–7, which authorize operation of the North Anna Power Station (NAPS), Unit Nos. 1 and 2. The licenses provide, among other things, that the licensee be subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in Louisa County, Virginia.

II

The Code of Federal Regulations at 10 CFR 70.24, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection, sensitivity and coverage capabilities of the monitors required by 10 CFR 70.24(a). Subsection (a)(3) requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored.

Subsection (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why it should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

By letter dated January 28, 1997, as supplemented March 24, 1997, Virginia Electric and Power Company requested an exemption from 10 CFR 70.24(a). The Commission technical staff has reviewed the licensee's submittal and has determined that inadvertent criticality is not likely to occur in SNM handling or storage areas at NAPS, Units 1 and 2.

At North Anna, SNM is present principally as nuclear fuel. Other small quantities of SNM are used on site. However, the total amount used in non-fuel applications is significantly less than the quantity specified in 10 CFR 70.24(a). The small quantity of non-fuel SNM present, and the form in which it is stored and used, precludes an inadvertent criticality. Therefore, SNM used as nuclear fuel is the only material on site subject to the requirements of 10 CFR 70.24(a).

Nuclear fuel is stored in the new fuel storage area and the spent fuel pool. New fuel is stored dry (in air) in the new fuel storage area. The spent fuel pool is used to store irradiated fuel under water after its discharge from the reactor, and new fuel prior to loading into the reactor.

The new fuel storage area is used to receive and store new fuel in a dry condition upon arrival on site and prior to loading in the reactor or spent fuel pool. The spacing between new fuel assemblies in the storage racks is sufficient to maintain the array in a subcritical condition even under accident conditions assuming the presence of moderator. The maximum nominal enrichment of 4.3 wt% U–235 for the new fuel assemblies results in a maximum k_{eff} of less than 0.95 under conditions of accidental flooding by unborated water and k_{eff} less than 0.98 under conditions of low-density optimum moderation. The staff has found the design of the licensee's new fuel storage racks to be adequate to store fuel enriched to 4.3 wt% U–235.

Consistent with Technical Specification Section 5.6.1.1, the spent fuel pool is designed to store the fuel in a geometric array that precludes criticality. The spent fuel racks are designed such that the effective neutron multiplication factor, k_{eff}, will remain less than or equal to 0.95 under all normal and accident conditions for fuel of maximum nominal enrichment of 4.3 wt% U–235.

Nuclear fuel is moved between the shipping container, the new fuel storage racks, the reactor vessel, and the spent fuel pool to accommodate refueling operations. In all cases, fuel movements are procedurally controlled and designed to preclude conditions involving criticality concerns.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of nuclear material, personnel would be alerted to that fact and would take appropriate action. Although the staff has determined that such an accident is not likely to occur, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors have associated area alarms and control room annunciators and would detect excessive radiation levels and will alert personnel to allow them to initiate appropriate emergency procedures and safety actions. The low probability of an inadvertent criticality together with the licensee's adherence to General Design Criterion 63 constitute good cause for granting an exemption to the requirements of 10 CFR 70.24(a).

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest; therefore, the Commission hereby grants Virginia Electric and Power Company the exemption from the requirements of 10 CFR 70.24(a) for North Anna Power Station, Unit Nos. 1 and 2, relating to criticality accident monitoring requirements.

V

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (62 FR 49540).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of September 1997.

For The Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–25900 Filed 9–29–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Video-Conferencing Locations for Public Workshop: Demonstrating Compliance With the Radiological Criteria for License Termination—License Termination Under Restricted Conditions

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Additional information regarding notice of meeting.

SUMMARY: NRC previously announced in the **Federal Register** (62 FR 49264, September 19, 1997) that it is holding a public workshop in Rockville, Maryland to receive input from licensees and the public on a working paper on "License Termination Under Restricted Conditions" being developed as a section of an upcoming Regulatory Guide. NRC also announced in that FR that the workshop would be video-conferenced at other locations and indicated that further information on those locations would be made available. The locations that will be used for the video-conferencing are NRC's Region II Offices in Atlanta Georgia, and NRC's Region III Offices in Lisle, Illinois. All interested licensees and members of the public are invited to attend the workshop at the Rockville location or either of the two video-conferencing locations.

DATES: The workshop will be held in Rockville, Maryland on October 15, 1997, beginning at 9 a.m. and ending at about 5 p.m (EDT).

Video-conferencing of the workshop will be available in NRC's Region II Office in Atlanta, Georgia from 9 a.m. through 12 noon (EDT); audio capabilities will be available from 1 p.m. through 5 p.m.

Video-conferencing of the workshop will be available in NRC's Region III Office in Lisle, Illinois from 12 noon through 4 p.m. (CDT); audio capabilities will be available from 8 a.m. through 11 a.m. (CDT).

Interested parties, unable to attend the workshop location or the video-conferencing locations, are encouraged to provide written comments by November 30, 1997.

ADDRESSES: The public workshop will be held in the NRC's ACRS meeting room at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. The two video-conferencing locations are NRC's Region II office at the Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta Georgia, and NRC's Region III Office at 801 Warrenville Road, Lisle, Illinois.

A copy of the working paper to be discussed can be obtained electronically at the NRC Technical Conference Forum Website under the topic "Final Rule for License Termination" at http: // techconf.llnl.gov/cgi-bin/topics or from the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343.

Comments may be posted electronically on the NRC Technical Conference Forum Website mentioned above. Comments submitted electronically can also be viewed at that website.

Comments may also be mailed to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION: For general information on the meeting, contact Jayne McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone 301–415–6219, fax 301–415–5385, E-mail: JMM2@NRC.GOV. Information on the Region II and III locations can be obtained from Cynde Albee, telephone 404–562–4825, fax 404–562–4900, E-mail: CMA1@NRC.GOV, and Cheryl Hausman, telephone 630–829–9551, fax 630–515–1078, E-mail: CAH3@NRC.GOV, respectively. For technical information or questions, contact Stephen A. McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6204, fax 301–415–5385, E-mail: SAM2@NRC.GOV.

Directions to each of the locations can be obtained by fax by calling toll-free 1–888–415-2627. Directions can also be obtained on the NRC Website at the Location "Getting to NRC Facilities" located at http://www.nrc.gov/NRC/WHATIS/directio.html.

SUPPLEMENTARY INFORMATION: This workshop is one of a series of interactions with the Agreement States, licensees, and the public to gather suggestions and ideas to ensure the success in developing a Regulatory Guide on "Demonstrating Compliance With the Radiological Criteria for License Termination." The workshop will begin with a brief introduction on some of the more important questions that were considered in developing the Regulatory Guide working paper on "License Termination under Restricted Conditions." After the introduction, the Working Paper will be reviewed section-by-section. Attendees will be asked for questions and comments on each section. The NRC will ask questions on the approach that it has developed. Written comments that have been received from the public will be discussed.

Participants at the two regional locations will be able to ask questions and provide comments through a moderator both during the periods that the workshop is available through video-conferencing and through audio connection.

There is no visitor parking at Region II in the Atlanta Federal Center (AFC) building. There are several hourly parking lots located near the AFC (behind the AFC tower and on the corner of Forsyth Street and Martin Luther King, Jr. Drive). The AFC is located near the Five Point Station on the MARTA train line. There are two locations for visitor parking at Region III. A visitor parking lot is located on the north end of the building (between the office building and Warrenville Road), and a parking garage is located on the west side of the building (visitors can park on the street level or upper level). Seating for the public at each location will be on a first-come, first-served basis.

A transcript of this workshop will be available for inspection, and copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555, on or about October 31, 1997.

Dated at Rockville, Maryland this 24th day of September, 1997.

For the Nuclear Regulatory Commission.

Cheryl A. Trottier,

Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 97–25898 Filed 9–29–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 29, October 6, 13, and 20, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

There are no meetings scheduled for the week of September 29.

Week of October 6—Tentative

Wednesday, October 8

3:30 p.m. Affirmation Session (Public Meeting) (if needed)

Week of October 13—Tentative

Tuesday, October 14

10:00 a.m. Briefing on EEO Program (Public Meeting) (Contact: Ed Tucker, 301–415–7382)

1:00 p.m. Briefing on Severe Accident Master Integration Plan (Public Meeting)

Wednesday, October 15

10:00 a.m. Briefing on PRA Implementation Plan (Public Meeting) (Contact: Gary Holahan, 301–415–2884)

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

Week of October 20

Tuesday, October 21—Tentative

10:30 a.m. Affirmation Session (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 4–0 on September 19, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that "Affirmation of Louisiana Energy Services (Claiborne Enrichment Center): Citizens Against Nuclear Trash's Motion for Reconsideration of CLI–97–11" be held on September 19, and on less than one week's notice to the public.

Affirmation of "Sequoyah Fuels Corp. & General Atomic: Docket No. 40–8027—EA; LBP–95–18 and LBP–96–24, Memoranda and Orders (Approving Settlement)" was postponed from Friday, September 19. No new date has been set.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill, (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: September 26, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–26051 Filed 2–14–97; 8:45 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, et al. San Onofre Nuclear Generating Station; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated June 23, 1997, Patricia Borchmann (Petitioner) requested that in accordance with 10 CFR 2.206, the U.S. Nuclear Regulatory Commission (Commission or NRC) not allow San Onofre Nuclear Generating Station (SONGS) Unit 3 to restart from its current refueling outage until her concerns were fully resolved. This letter was supplemented by letters dated June 28 and July 11, 1997, in which the Petitioner requested the staff to take the same action for SONGS Unit 2. On July 8, 1997, the NRC verbally notified the petitioner that the issues discussed in the submittals did not contain enough information to warrant the NRC taking action to prevent the SONGS units from restarting. By NRC letter dated September 22, 1997, the NRC denied the Petitioner's requests that the NRC take immediate action to not allow SONGS Units 2 and 3 to restart.

The Petitioner's letters contained a variety of issues in support of the requested actions, which the staff grouped into three categories for the purpose of evaluating the request for immediate action. These categories are fully described in the NRC's letter of September 22, 1997, denying the Petitioner's request.

As a result of its evaluation detailed in its letter of September 22, 1997, the NRC staff found that there was insufficient basis to warrant the immediate action requested to prevent SONGS Units 2 and 3 from restarting. Therefore, the request for immediate action was denied. As provided by 10 CFR 2.206, appropriate action will be taken with regard to the concerns raised by the Petitioner within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public Document Room at 2120 L Street, NW, Washington, DC 20555–0001, and the Local Public Document Room at the Main Library, University of California, P.O. Box 19557, Irvine, CA 92713.

Dated at Rockville, Maryland, this 22nd day of September 1997.

For The Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–25897 Filed 9–29–97; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Postal Service Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 12:30 p.m., Monday, October 6, 1997; 8:30 a.m., Tuesday, October 7, 1997.

PLACE: Norman, Oklahoma, at the University of Oklahoma, 900 Asp Avenue, in the Oklahoma Memorial Union Ballroom.

STATUS: October 6 (Closed); October 7 (Open).

MATTERS TO BE CONSIDERED:

Monday, October 6—12:30 p.m. (Closed)

1. Status Report on the Tray Management System.
2. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC97–4, Bulk Parcel Return Service and Shipper Paid Forwarding.
3. Budget Outlook.

Tuesday, October 7—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, September 8–9, 1997.
2. Remarks of the Postmaster General/Chief Executive Office.
3. Board of Governors 1998 Meeting Schedule.
4. Office of the Governors FY 1998 Budget.
5. Consideration of Postal Square Development Project.
6. Fiscal Year 1998 Operating Budget.
7. Review of the Five-Year Capital Investment Plan.
8. Tentative Agenda for the November 3–4, 1997, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–100. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–26038 Filed 9–26–97; 1:04 p.m.]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39120; File No. SR–NSAD–97–70]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the Effectiveness of the NASD's Excess Spread Rule Until October 13, 1997

September 23, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C.. 78s(b)(1), notice is hereby given that on September 15, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by The Nasdaq Stock Market, Inc. ("Nasdaq"). The Commission is publishing this notice to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4613(d) to extend the effectiveness of its current excess spread rule through October 13, 1997. The excess spread rule is applicable to Nasdaq National Market ("NNM") securities and provides that a registered market maker in a security listed on Nasdaq shall be precluded from being a registered market maker in that issue for twenty (20) business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month. The text of the proposed rule change is as follows. Additions are italicized and deletions bracketed.

NSAD Rule 4613

(d) Reasonably Competitive Quotations.

A registered market maker in a Nasdaq National Market security will be withdrawn as a registered market maker and precluded from re-registering as a market maker in such issue for 20 business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month. This subparagraph shall not apply to market makers in Nasdaq SmallCap securities.

(1) If a registered market maker has not satisfied the average spread requirement set forth in this subparagraph (d) for a particular Nasdaq National Market security, its registration in such issue shall be withdrawn commencing on the next business day following the business day on which the market maker was sent notice of its failure to comply with the requirement. A market maker may request reconsideration of the withdrawal notification. Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members. A request for reconsideration shall not operate as a stay of the withdrawal or toll the twenty business day period noted in subparagraph (d) above.

(2) Grounds for requests for reconsideration shall be limited to claims that Nasdaq's calculation of the market maker's average spread for the month was in error.

(3) This subparagraph (d) shall be in effect until *October 13, 1997* (September 30, 1997).

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

Prior to January 20, 1997, the NASD's excess spread rule (the "Rule" or the "Excess Spread Rule") provided that registered market makers in Nasdaq securities could not enter quotations that exceeded 125 percent of the average of the three narrowest market maker spreads in that issue, provided, however, that the maximum allowable spread could never be less than ¼ of a point ("125% Rule"). The Rule was originally designed to bring a measure of quality to the Nasdaq market by preventing firms from holding themselves out as market makers without having a meaningful quote in the system. Despite the regulatory objectives underlying the rule, however, many market participants believed the rule produced a variety of unintended consequences that undermined the integrity of Nasdaq. Most notably, the SEC found in its 21(a) Report on the NASD and Nasdaq that "the interdependence of quotes mandated by the rule may deter market makers from narrowing their dealer spreads, because, once the spread is tightened, the rule in some instances precludes a market maker from widening the spread to earlier levels."[1] As a result, the SEC found that the Excess Spread Rule created an economic incentive for market makers to discourage one another from narrowing their quotes, thereby interfering with the "free flow of prices in the market and imped[ing] attempts by the market to reach the optimal competitive spread."[2] Accordingly, the SEC requested that the NASD "modify the rule to eliminate its undesirable effects, or to repeal it."[3]

In response to the SEC's 21(a) Report, the NASD submitted a proposal, which was approved by the SEC and which amended the Excess Spread Rule on a pilot basis through July 1, 1997.[4] Under the revised Excess Spread Rule, a registered market marker in a Nasdaq security is precluded from being a registered market maker in that issue for twenty business days if its average spread in the security over the course of any full calendar month exceeded 150 percent of the average of all dealer spreads in such issue for the month ("150% Rule).[5]

In formulating the 150% Rule, Nasdaq Committees and Nasdaq staff felt that it was important to strike a reasonable balance between the need to eliminate any constraints that the Excess Spread

[1] *See* "Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market," at p. 98 ("21(a) Report") (S.E.C., Aug. 8, 1996).

[2] *Id.* at p. 99.

[3] *Id.*

[4] *See* Securities Exchange Act Rel. No. 38180 (January 16, 1997), 62 FR 3725 ("Pilot Program Approval Order"). The pilot originally was set to expire on July 1, 1997, but was extended through September 30, 1997. *See* Securities Exchange Act Rel. No. 38804 (July 1, 1997), 62 FR 36588.

[5] On February 28, 1997, the SEC approved the NASD's proposal to exclude Nasdaq Small-Cap Securities from the Excess Spread Rule. This rule change was necessary because, unlike the manner in which Nasdaq National Market securities are handled for purposes of the rule, Nasdaq does not presently calculate and display through the Nasdaq system the average spread of all market makers in a particular SmallCap issue or a comparison of the size of an individual market maker's quoted spread relative to the average spread of all market makers. Thus, Nasdaq does not presently afford market makers in SmallCap securities with any indication as to whether they are satisfying the requirements of the 150% Rule.

Rule places on firms to adjust their quotations and the need to avoid fostering a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of being a market maker (*e.g.*, affirmative determination exemption and preferential margin treatment). Nasdaq also believed it was critical to transform the Excess Spread Rule into a performance standard used to determine market maker eligibility, instead of a strict regulatory requirement applicable to every quote update in a Nasdaq security, violations of which were punishable by disciplinary action. Based on its experience with the Rule, the Nasdaq Board of Directors in June 1997 approved a resolution to seek permanent approval of the 150% Rule "as is," without modifications. In addition, the NASD ratified the Nasdaq Board resolution in July of 1997 and Nasdaq planned to seek permanent approval shortly thereafter.

However, the Commission has expressed, and continues to express, serious concerns about the effects of the Rule on market maker activity. More specifically, in its approval order of the 150% Rule, the SEC stated that "[a]lthough the amended excess spread rule may reduce some of the anticompetitive concerns outlined in the 21(a) Report, the Commission believes that the amendment * * * may not completely satisfy the NASD'S obligations under the Commission's Order with regard to the excess spread rule. Specifically, it may not remove completely the anticompetitive incentives for market makers to refrain from narrowing quotes because the market makers' quotation obligation continues to be dependent to some extent upon quotations of other market makers in the stock."[6]

Additionally, in recent discussions, SEC staff has indicated that it believes that the 150% Rule may not have completely eliminated the concerns outlined in the 21(a) Report and may not completely satisfy the NASD's obligations under the Commission's Order. SEC staff further has stated that it believes that the Rule should be completely eliminated, or at the very least, be eliminated for stocks with a small number of market makers.

In light of the foregoing, the NASD is proposing to extend the Excess Spread Rule only until October 13, 1997. Additionally, Nasdaq staff will ask the Nasdaq Board of Directors ("Board") at its September 23, 1997 board meeting to reconsider its previous decision to seek permanent approval of the Rule, in light of the Commission's concerns that the Rule does not remove completely incentives for market makers to refrain from narrowing quotes. Nasdaq will inform the Commission by letter of the final disposition of the Board's reconsideration of this matter as soon as possible.

The NASD and Nasdaq believe that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Exchange Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules much be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Specifically, the NASD and Nasdaq believe that the 150% Rule has promoted the integrity of quotations on the Nasdaq market and has enhanced competition among market makers, thereby contributing to greater market liquidity, improved price discovery, and the best execution of customer orders. The Rule has helped to ensure that all registered market makers are providing some threshold level of market making support in their issues, and has helped to avoid a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of being a market maker. Thus, a continuation of the Rule until October 13, 1997, will address the Commission's aforementioned concerns while preserving the Rule's benefits (such as ensuring meaningful market maker quotes) until the Nasdaq Board reconsiders its previous position on the Rule. Additionally, the proposed to extend the pilot program for a limited period is consistent with the Exchange Act and will ensure continuity of regulation until the Nasdaq Board reconsiders its previous position on the Rule.

[6] Pilot Program Approval Order, *supra* note 4.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–97–70 and should be submitted by October 21, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has determined to approve the extension of the 150% Rule pilot until October 13, 1997. As noted previously, the Commission has identified anticompetitive concerns associated with the 125% Rule in place prior to January 20, 1997. Further, in the Pilot Program Approval Order, the Commission recognized that while the

150% Rule could reduce, to some degree, the Commission's concerns regarding the 125% Rule, the Commission was not convinced that permanent approval of the 150% rule would sufficiently address those concerns. The Commission believes that the pilot should continue to operate on a temporary basis through October 13, 1997, while the Nasdaq Board reconsiders its position on permanent approval. Consequently an extension will ensure that the Rule remains in effect on an uninterrupted basis until the Nasdaq Board has had an opportunity to fully evaluate the most appropriate permanent solution regarding the excess spread rule.

In addition, the Commission believes that the temporary rule can remain limited to National Market securities. Due to Nasdaq's current systems limitations, market makers in Nasdaq SmallCap securities are unable to monitor compliance with the Rule. However, the NASD has stated that it anticipates that market makers in Nasdaq SmallCap securities will be subject to the same excess spread requirements, if any, as market makers in Nasdaq National Market securities when a permanent resolution is reached.

Accordingly, the Commission finds that the NASD's proposal is consistent with Sections 11A and 15A of the Exchange Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 11A(a)(1)(C), 15A(b)(6), 15A(b)(9), and 15A(b)(11). Further, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**. In addition to the reasons discussed above, the Commission believes that accelerated approval of the NASD's proposal is appropriate given the fact that the proposal is a temporary extension of the 150% Rule that has been in effect since January 1997. An uninterrupted application of the 150% Rule for a short period of time should be less disruptive to market makers while the Nasdaq Board reconsiders its permanent approach to the concerns raised by the Commission regarding the excess spread rule.[7]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NASD–97–70) is approved through October 13, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[F.. Doc. 97–25794 Filed 9–29–97; 8:45 am]

BILLING CODE 8010–01–M

[7] The Commission notes that a failure to extend the 150% Rule past the October 13, 1997 date would result in no excess spread standard for Nasdaq market makers.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39106; File No. SR–PCX–97–32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Extension of its LMM Book Pilot Program for One Year

September 22, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule change

The Exchange is proposing to extend its LMM Book Pilot Program for one year. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 11, 1996, the Commission approved an Exchange proposal to establish its LMM Book Pilot Program, under which a limited number of Lead Market Makers ("LMMs".) are able to assume operational responsibility for the options limit order book ("Book") in certain options issues.[3] Subsequently, on October 28, 1996, the Commission approved an Exchange proposal to adopt a new change applicable to LMMs who participate in the program.[4] In addition on April 1, 1997, the Commission approved an Exchange proposal to expand the scope of the pilot program to allow up to nine LMMs to participate and up to 150 symbols to be used.[5] The Exchange is now proposing to extend the pilot program for one year, to October 12, 1998.

Under the pilot program, the approved LMMs manage the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services. The program allows LMMs to have greater control over their operations on the Exchange floor by allowing them, among other things, to set their own rates for execution services provided to customers. The LMMs who participate during the pilot program are selected by the Options Floor Trading Committee based on certain designated factors. Approved LMMs must maintain "minimum net capital," as provided in SEC Rule 15c–1,[6] and must also maintain a cash or liquid asset position of at least $500,000, plus $25,000 for each issue over 5 issues for which they perform the function of an Order Book Official. Only multiply-traded option issues are eligible during the pilot phase.

The Exchange is requesting a one-year extension to the pilot program so that it will have an opportunity to continue reviewing and evaluating the program before seeking permanent approval. In that regard, on May 29, 1997, the Exchange submitted a report to the Commission responding to particular questions set forth in the Pilot Approval Order. The Exchange believes that the program is operating successfully and without any problems, and on that basis, the Exchange believes that a one-year extension of the program is warranted. At this time, the Exchange is not seeking to modify the pilot program.

[3] *See* Exchange Act Release No. 37810 (October 10, 1997), 61 FR 54481 (October 18, 1996) ("Pilot Program Approval Order").

[4] *See* Exchange Act Release No. 37874 (October 28, 1996), 61 FR 213 (November 1, 1996).

[5] *See* Exchange Act Release No. 38462 (April 1, 1997), 62 FR 16886 (April 8, 1997). Each option issue typically has only one symbol associated with it, unless LEAPs are traded on that issue, in which case there would usually be two additional symbols related to the issue, or unless a contract adjustment is necessary due, for example, to a merger or stock split, in which case one additional symbol would usually be added. Previously, the pilot program was limited to allow up to 3 LMMs to participate and up to 40 option symbols to be used.

[6] 17 CFR 240.15c–1.

Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[7] in general, and Section 6(b)(5),[8] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has closely reviewed the proposed LMM Book Pilot program and has concluded that it should be extended for another year. The Commission believes that the pilot program, whereby the approved LLMs manager the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services, is consistent with the Act and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the LLM Book Pilot Program allows LMMs to have greater control over their operations on the Exchange floor, and the Commission agrees with the Exchange that a one-year extension of the program is warranted to allow the Exchange to continue its evaluation of the program.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order to ensure that PCX officials have a continuous period to review and evaluate the program before seeking permanent approval. The LLM Book Pilot Program was first established on October 11, 1996 and, with a few modest changes, has been operating continuously since that date. Based on the representations made by the Exchange in its 1997 LLM Book Pilot Program report, the Commission concludes that the pilot program has contributed to the Exchange's ability to provide fair and orderly markets. Based on these findings, the Commission concurs that a one-year extension of the program is warranted. Because the pilot program is scheduled to expire October 12, 1997, the Commission believes it is appropriate to extend the pilot program before that date to allow the uninterrupted continuation of the program.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–32 and should be submitted by October 21, 1997.

It is therefore ordered, pursuant to Section 19(b)(2)[10] of the act, that the proposed rule change is approved and, accordingly, the Lead Market Maker Book Pilot Program is extended until October 12, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25795 Filed 9–29–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. § 78f(b).

[8] 15 U.S.C. § 78f(b)(5).

[9] *Id.*

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Technical corrections to the Harmonized Tariff Schedule of the United States (HTSUS); effective date.

SUMMARY: The United States Trade Representative (USTR) is making technical corrections to the HTSUS, pursuant to authority granted to the President in section 604 of the Trade Act of 1974 and delegated by the President to the USTR in Proclamation 6969 (62 FR 4415). These modifications will correct errors in prior proclamations, so that the intended tariff treatment is accorded.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Barbara Chattin, Director For Tariff Affairs, (202) 395–5097, or Catherine Field, Senior Counsel For Multilateral Affairs, (202) 395–3432.

CORRECTION: The HTS is modified as set forth below with respect to goods entered, or withdrawn from warehouse for consumption, on or after the effective dates specified for the enumerated actions.

BILLING CODE 3190–01–M

[10] 15 U.S.C. § 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

1. Effective on January 1, 1994, the HTS is modified as follows:

(a) the article description for subheading 2208.90.72 is modified by deleting "Mescal" and by inserting in lieu thereof "Mezcal"

2. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 1, 1997, the following new provision is inserted in numerical sequence in subchapter II of chapter 99 of the HTS, with the new material inserted in the columns headed "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", "Rates of Duty 2", and "Effective Period", respectively:

"9902.84.77	Automated multi-plunger transfer presses, suitable for use in the encapsulation with thermosetting materials of diodes, transistors, and similar semiconductor devices or electronic integrated circuits (provided for in subheading 8477.10.70)	Free	No change	No change	On or before 12/31/2000"

BILLING CODE 3190-01-C

Explanation of Correction: The action designated in section 1, would correct the misspelling in the article description of a tariff category created to implement a concession under the NAFTA, effective as of the date of entry into force of that agreement. The new tariff provision created in section 2 would correct the inadvertent deletion by Pres. Proclamation 7011 of a pre-existing temporary duty suspension on particular semiconductor machinery. Proclamation 7011 implemented the Information Technology Agreement (ITA) for the United States. Annex B to that Proclamation failed to continue a pre-existing duty suspension provision, since the goods covered by the duty suspension now fall in another provision of chapter 84. The duty suspension provision of chapter 99 must be amended accordingly to reflect the tariff subheading now applicable to these goods. The continuation of the duty suspension (which is scheduled to continue through the close of 2000) allows the subject products to continue to enter the customs territory free of duty, rather than to enter at the rates of duty (being reduced in stages) provided under the ITA.

Frederick L. Montgomery,

Executive Secretary.

[FR Doc. 97–25824 Filed 9–29–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Foreign Air Carriers; Unfair and Deceptive Advertising; Enforcement Policy

AGENCY: Office of the Secretary (DOT).

ACTION: Notice.

SUMMARY: The Department's Office of Aviation Enforcement and Proceedings issues this notice to clarify its enforcement policy with regard to the advertising of service to or from the U.S. by foreign carriers. The notice advises foreign carriers that advertising service for which they lack the requisite economic authority from the Department violates the authority provisions of 49 U.S.C. § 41301 and is an unfair and deceptive practice under 49 U.S.C. § 41712 that may warrant enforcement action, even if the carrier has an application for such authority pending before the Department.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Tel. No. (202) 366–9349.

United States of America, Department of Transportation, Office of the Secretary, Washington, D.C.

Advertising of Scheduled Service in Foreign Air Transportation—Use of the Notation "Subject to Government Approval"

Notice

During a recent investigation, it came to the attention of the Office of Aviation Enforcement and Proceedings (AEP) that some foreign air carriers may be holding out service from the U.S. to foreign points for which they lack U.S. economic authority under 49 U.S.C. § 41301. The issue arose in connection with listings by a foreign carrier on the internet and in the Official Airline Guide (OAG) which related to service that was the subject of its application for authority. The application was pending at the time the advertisements appeared. The carrier included with the listings in question a statement that the service was "subject to government approval," to indicate that the service was contingent on receiving Department approval and might not be provided. It also stated to AEP that it accepted no reservations for the service in the U.S. We asked the carrier to remove the listings in question and it agreed. Since similar practices may be widespread, we believe it appropriate to disseminate AEP's policy on matters of this kind to all foreign carriers operating or planning to operate from the U.S.

AEP has in the past applied and will continue to apply the same standards to the advertisement of proposed service by foreign carriers as it currently applies under Department regulations to U.S. applicants for certificate authority. Section 201.5 of the Department's rules (14 CFR 201.5) provides that U.S. applicants for certificate authority may not "advertise, list schedules or accept reservations" or "accept payment or issue tickets" for their proposed service until the relevant application has been approved by the Department.[1] Although section 201.5 is specifically limited to U.S. applicants for air carrier authority, we will continue our practice of following a consistent policy in evaluating the advertisements and schedule listings of foreign air carriers. We will therefore consider it an unfair and deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. § 41712, as well as a violation of the authority provisions of 49 U.S.C. § 41301, for a foreign air carrier to hold out service in the U.S. for which it does not have all requisite authorizations from the Department at the time of the holding out.

By the term "*holding out,*" we refer to listing or advertising service in any medium reasonably likely to reach the U.S. public, such as computer reservations systems (CRSs), the internet, or published media, such as the Official Airline Guide. Clearly, if the appropriate authority is the subject of an application pending with the Department, the service may not be listed or advertised. A note stating that the listed service is "subject to government approval" where an application is pending within the Department is not sufficient to avoid a violation of 49 U.S.C. § 41712 and § 41301. Moreover, a violation is not avoided by refusing to take reservations or accept payment for tickets. On the other hand, a carrier may hold out service with a notation that service is "subject to government approval" if the carrier has the requisite U.S. authority but is awaiting *approvals from foreign governments only* for the service advertised.

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings, C–70, 400 7th St., S.W., Washington, D.C. 20590. A copy of this notice will be published in the **Federal Register**.

Dated: September 24, 1997.

By:

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

An electronic version of this document is available on the World Wide Web at http://www.dot.gov.

[FR Doc. 97–25903 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–62–P

[1] Section 201.5 further prohibits issuance of tickets or acceptance of payment for a carrier's proposed service until its authority has become effective or the Department specifically authorizes sales. Under the rule, after Department approval but prior to receipt of effective authority, a carrier may advertise, take reservations and publish schedules (but not accept payment), provided such advertising or schedules prominently state the following: "This service is subject to receipt of government operating authority."

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on six currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before December 1, 1997.

ADDRESSES: Comments on any of these collections may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following are short synopses of the six, currently approved public information collection activities, which will be submitted to OMB for review and renewal:

1. 2120–0021, Certification: Pilots and Flight Instructors. The FAA is empowered to issue airmen certificates to properly qualified persons. This clearance request covers the burden imposed on airmen directly responsible for the control of aircraft. 14 CFR part 61 prescribes requirements for pilot and flight instructor certificates. 14 CFR part 143 prescribes requirements for ground instructors. The current burden for this collection is estimated to be 8020 hours reporting and 248,675 hours in recordkeeping. Information collected is used to determine compliance and applicant eligibility. The number of respondents is estimated to be 709,540.

2. 2120–0022, Certification: Mechanics. Repairmen, Parachute Riggers—14 CFR part 65. The regulation prescribes requirements for mechanics, repairmen, parachute riggers, and inspection authorizations. Information collected shows applicant eligibility. Certification is required to perform these job functions. The current burden associated with this collection is 31,559 hours of reporting burden, and 26,250 hours of recordkeeping burden. The number of respondents is estimated to be 39,639.

3. 2120–0036, Notice of Landing Area Proposal. 14 CFR part 157 requires that each person who intends to construct, activate, deactivate, or change the status of an airport, runway, or taxiway shall notify the FAA. FAA Form 7480–1, Notice of Landing Area Proposal, is used to collect the required information on an as needed basis. The current burden is estimated to be 2,989 hours with 3,986 respondents.

4. 2120–0075, Airport Security—part 107 of the Federal Aviation Regulations (14 CFR Ch. I, part 107). Airport security programs, training records and screening, bomb threats, and arrest reports are needed to ensure protection of persons and property in air transportation against acts of criminal violence, ensure passenger screening procedures are effective and that information is available to comply with Congressional reporting requirements. The current burden is estimated at 15,268 hours of reporting and 59,546 hours of recordkeeping on 465 respondents.

5. 2120–0085, Certification and Operations, 14 CFR part 125. The FAA is authorized to issue Air Carrier Operation Certificates. 14 CFR part 125 prescribes requirements for leased aircraft, Aviation Service Firms and Air Travel Clubs. Information collected shows compliance and applicant's eligibility. The current burden is estimated at 11,683 reporting hours annually and 17,762 recordkeeping hours annually by 57 respondents.

6. 2120–00573, Special Federal Aviation regulation—SFAR–64 was effective on June 3, 1993, and permitted certain operations of noise-restricted aircraft without a formal grant of exemption under 14 CFR part 11. Absent this SFAR, there is no regulatory basis for approval of limited special flight authorization for noncomplying aircraft under 14 CFR part 91, subpart I. Operators of these aircraft would need to petition for and receive a grant of exemption under 14 CFR part 11, which is costly and time consuming for both the petitioner and the FAA. The FAA believes that it is in the public interest to allow limited operations of certain airplanes that do not meet the noise standards of 14 CFR part 91, subpart I, for the purpose of delivering the airplane to a foreign purchaser or flying it to the site of a modifier in the United States who will bring it into compliance with 14 CFR 91.805. Under this SFAR, operators would be able to apply for a special flight authorization to allow limited nonrevenue operations at specific U.S. airports. The information will be used by the FAA to issue special flight authorizations for operations of Stage 1 or Stage 2 airplanes at U.S. airports. The current number of respondents is estimated at 25 for a total annual burden of 38 hours.

Issued in Washington, DC., on September 24, 1997.

Steve Hopkins,

Manager, Corporate Information Division, ABC–100.

[FR Doc. 97–25827 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee; Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, October 23, 1997, from 8:00 a.m. to 1:15 p.m. in Room 2230 of the Department of Transportation's Headquarters building at 400 Seventh Street, SW, in Washington, DC. This will be the twenty-sixth meeting of the COMSTAC.

The agenda for the meeting will include reports from the respective COMSTAC Working Groups; a legislative update on Congressional activities involving commercial space transportation; an activities report from FAA's Acting Associate Administrator for Commercial Space Transportation (formerly the Office of Commercial Space Transportation [60 FR 62762, December 7, 1995]); and other related topics. The meeting is open to the public; however, space is limited.

Meetings of the Technology and Innovation, Risk Management, and Launch Operations and Support Working Groups will be held on Wednesday, October 22, 1997. For specific information concerning the times and locations of these meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST-200), Office of the Associate Administrator for Commercial Space Transportation (AST), 400 7th Street SW, Room 5415, Washington, DC 20590, telephone (202) 366–2932.

Dated: September 19, 1997.

Patricia G. Smith,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 97–25904 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 169; Aeronautical Data Link Applications

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–169 meeting to be held October 14–16, 1997, starting at 9 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: October 14–15, Working Group (WG)–2, Required Communications Performance; October 16–17, WG–4, Data Communication Coordination Plan. (WG–4 will meet after the Plenary Session on October 16 and, if necessary, on October 17.) October 16, Plenary Session: (1) Plenary Administration: Chairman's Introductory Remarks; Review and Approval of Meeting Agenda; Review and Approval of Minutes from the Previous Meeting; Review of Outstanding Action Items; (2) WG Progress: WG–1; Air Traffic Services Data Link Communications; WG–2, Required Communications Performance; WG–3, Flight Information Services Communications; WG–4, Coordination of Communications Capability Implementation; WG–5, Ground/Ground Traffic Flow Management Applications; WG–6, Human Factors Guidelines; (3) Plenary Business: Review of SARP Compliant Documents; Discussion of Future of SC–169 Work Efforts; (4) Other Business; (5) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 24, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–25825 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Special Committee 192; National Airspace Review Planning and Analysis

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 192 meeting to be held October 15–16, 1997, starting at 9:00 a.m. The meeting will be held at MITRE Corporation, 1820 Dolley Madison Boulevard, Westgate Building, McLean, VA 22102.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Approval of Proposed Meeting Agenda; (3) Review and Approval of Summary of the Previous Meeting; (4) Information Briefings; (5) Report from Design and Infrastructure Work Group; (6) Report from Modeling and Measurement Work Group; (7) Other Business; (8) Set Agenda for Next Meeting; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 24, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–25826 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–064; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1993 BMW K1 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1993 BMW K1 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1993 BMW K1 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 30, 1997

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1990–1993 BMW K1 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1990–1993 BMW K1 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1990–1993 BMW K1 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1990–1993 BMW K1 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1990–1993 BMW K1 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.—model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR Part 565 will be affixed to non-U.S. certified 1990–1993 BMW K1 motorcycles.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 24, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance

[FR Doc. 97–25901 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–065; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1986–1997 Suzuki GSXR 1100 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1986–1997 Suzuki GSXR 1100 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1986–1997 Suzuki GSXR 1100 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 30, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1986–1997 Suzuki GSXR 1100 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1986–1997 Suzuki GSXR 1100 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1986–1997 Suzuki GSXR 1100 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1986–1997 Suzuki GSXR 1100 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1986–1997 Suzuki GSXR 1100 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR Part 565 will be affixed to non-U.S. certified 1986–1997 Suzuki GSXR 1100 motorcycles.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 24, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–25902 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–066; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1972–1979 Volkswagen Beetle convertibles and 1972–1977 Volkswagen Beetle sedans are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 30, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety

standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are the 1972–1979 Volkswagen Beetle Convertible and 1972–1977 Volkswagen Beetle Sedan that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Volkswagenwerke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1972–1979

Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that non-U.S. certified 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's seating position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer. The petitioner also states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button in the front designated seating positions, and with combination lap and shoulder restraints that release by means of a single push button in the rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on non-U.S. certified 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans must be reinforced, or U.S.-model bumper components must be installed, to comply with the Bumper Standard found in 49 CFR Part 581.

Additionally, the petitioner states that a vehicle identification number plate must be affixed to non-U.S. certified 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Sedans to comply with the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 24, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–25905 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received requests from Canadian National Railway Company (WB525—9/22/97), and from the Alliance for Rail Competition (WB527—9/19/97) for permission to use certain data from the Board's Carload Waybill Samples. A copy of these requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 565–1542.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25926 Filed 9–29–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 190X)]

Norfolk Southern Railway Company—Abandonment Exemption—In Fayette County, AL

On September 10, 1997, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Berry-Belk Line, extending from railroad milepost 862.8 at Berry, AL to railroad milepost 884.9 at or near Belk, (Covin), AL, a distance of 22.1 miles in Fayette County, AL. The line traverses U.S. Postal Service ZIP Code 35545 and includes the stations of Berry (milepost 862.8), Fayette (milepost 878.6), and Covin (Belk) (milepost 884.9).

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 29, 1997.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $900 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.[1] Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 20, 1997. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 190X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) James R. Paschall, General Attorney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: September 24, 1997.

[1] Although NSR believes that the line is not suitable for public use, we will nevertheless entertain public use/trail use requests.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–25925 Filed 9–29–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Modification of National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: A notice published in the **Federal Register** on February 6, 1997, announced Customs plan to conduct a prototype test of reconciliation. This document is a replacement for that notice. This document notifies the trade community of changes to the prototype test and sets forth the policy which makes this prototype the exclusive means to reconcile entries, pursuant to 19 U.S.C. 1484(b). The prototype will henceforth be referred to as the Automated Commercial System (ACS) Reconciliation Prototype.

This document invites public comments concerning any aspect of the planned test, informs interested members of the public of the requirements for voluntary participation, and establishes the process for developing evaluation criteria. To participate in this prototype, certain information, as outlined in this notice, must be filed with Customs prior to filing Reconciliations. It is important to note that resources expended by the trade and Customs on these prototypes may not carry forward to the final program.

EFFECTIVE DATE: The testing period of this prototype will commence no earlier than October 1, 1998, will run for approximately two years, and may be extended. The prototype will be limited to consumption entries filed on or after October 1, 1998, through September 30, 2000. Comments concerning the test are requested by November 14, 1997. A subsequent notice will be published in the **Federal Register** to announce the opening date of the application period, and specify any changes made to this prototype as a result of the comments received from the public.

ADDRESSES: Written comments regarding this notice should be addressed to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1301 Constitution Ave, NW, Room 1315, Washington, DC, 20229–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Shari McCann, at (202) 927–1106, or Mr. Don Luther at (202) 927–0915.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub.L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of Title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Section 637 of the Act amended Section 484 of the Tariff Act of 1930 to establish a new subsection (b), entitled "Reconciliation", a planned component of the NCAP. Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See*, TD 95–21. This test is established pursuant to those regulations. This document modifies the prototype test of reconciliation that was announced in the **Federal Register** (62 FR 5673) on February 6, 1997, and replaces that document.

In General

Concurrent with this Automated Commercial System (ACS) Reconciliation Prototype, Customs is designing a reconciliation component under the National Customs Automation Program Prototype (NCAP/P) in the Automated Commercial Environment (*see*, 62 FR 14731, dated March 27, 1997).

Thus, except for participation in the NCAP/P and upon implementation of this prototype, any party who elects to reconcile entries pursuant to 19 U.S.C. 1484(b) may only do so through this prototype. This prototype will serve as the exclusive means to reconcile entries for (1) value, (2) classification, (3) merchandise entered under Harmonized Tariff Schedule of the United States (HTSUS) heading 9802 or (4) merchandise entered under the North American Free Trade Agreement (NAFTA). All practices with respect to block liquidation/block appraisement (liquidating one entry summary or some entry summaries for a periodic adjustment affecting many entry summaries) will cease and such post-entry adjustments will take place via the ACS Reconciliation Prototype. All importers may apply for this prototype. Details on the application process are explained below.

The Concept of Reconciliation

When certain information (other than that related to the admissibility of merchandise) is not determinable at the time of entry summary, an importer may later provide Customs with that information on a Reconciliation. A Reconciliation is treated as an entry for purposes of liquidation, reliquidation, and protest.

A notice of intention to file a reconciliation ("Notice of Intent") identifies an undeterminable issue, transfers that issue to a Reconciliation and permits the liquidation of the underlying entry as to all issues other than those which are transferred to the Reconciliation. During this prototype, the importer will "flag" the underlying entries with an electronic indicator, which will serve as the Notice of Intent. By providing a Notice of Intent, an importer is requesting that a certain issue or group of issues be separated from the entry summary. The importer voluntarily requests and accepts that the issue(s) identified in the notice of intent remain open and outstanding. The importer remains responsible for filing a Reconciliation, and liable for any duties, fees, and taxes resulting from the filing and/or liquidation of the Reconciliation. The Notice of Intent creates an obligation on the importer to file the Reconciliation. Importers participating in this prototype will recognize that the liquidation of the underlying entries pertains only to those issues not identified by the importer on the notice of intent.

Upon liquidation of any underlying entry summary, any decision by Customs entering into that liquidation, *e.g.*, classification, may be protested pursuant to 19 U.S.C. 1514. When the outstanding issue, *e.g.*, value as determined by the actual costs, is later furnished in the Reconciliation, the Reconciliation will be liquidated. The liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation, and may be protested pursuant to 19 U.S.C. 1514, but the protest may only pertain to the issue(s) flagged for reconciliation (*i.e.*, the protest may not re-visit issues previously liquidated on the underlying entry summary).

Under the statutory mandate of 19 U.S.C. 1484, the importer is responsible for using reasonable care in declaring at entry the proper value, classification and rate of duty applicable to imported merchandise. The public is reminded that the obligation to use reasonable care applies to all aspects of this prototype, including the filing and flagging of the underlying entries and the filing of the Reconciliation.

Inherent in the concept of reconciliation is the fact that, because certain issues are kept open pending filing of the Reconciliation, the information regarding these issues and the resulting liability for the duties, taxes and fees previously asserted by the importer may change when the Reconciliation is filed. Therefore, for the duration of this prototype, Customs will not accept drawback claims or drawback certificates on underlying entries flagged for reconciliation until the Reconciliation is filed with all duties, taxes and fees paid. In the case of a drawback claim and a reconciliation refund against the same underlying entries, the importer is responsible for ensuring that claims for refunds in excess of the duties paid are not filed with Customs and for substantiating how the separate refund requests apply to different merchandise.

Prototype Objectives

The Reconciliation team's objectives for this prototype are to:

1. Work with the trade community, other agencies, and other parties affected by this program in the design, conduct, and evaluation of the prototype;

2. Obtain experience through the prototype for use in the design of operational procedures, automated systems, and regulations; and

3. Implement reconciliation on a national level in conjunction with the Trade Compliance Redesign.

Description of the ACS Reconciliation Prototype

1. Issues To Be Reconciled

The ACS Reconciliation Prototype will allow the following issues to be flagged for reconciliation: value, HTSUS heading 9802, NAFTA, and classification on a limited basis.

a. *Value*—The ACS Reconciliation Prototype is open to reconciliation of all value issues.

b. *9802*—The issue of 9802 includes only the value aspect involved with this HTSUS provision, *e.g.*, reconciling the estimated to actual costs.

c. *NAFTA*—Reconciliation may be used as a vehicle to file post-importation refund claims under 19 U.S.C. 1520(d). NAFTA Reconciliations are subject to the obligations under 19 CFR part 181, subpart D. Presentation of the NAFTA Certificate of Origin to Customs is waived for the purposes of this prototype, but the filer must retain these documents, which shall be provided to Customs upon request. Filers are reminded that interest shall accrue from the date on which the claim for NAFTA eligibility is made (the date of the Reconciliation) to the date of liquidation or reliquidation of the Reconciliation.

The obligation opened by the Notice of Intent applies to all Reconciliations, including NAFTA, even if the participant finally concludes it cannot file a valid 520(d) claim, in which instance the NAFTA Reconciliation would be filed with no change.

d. *Classification*—Classification issues will be eligible for reconciliation only when such issues have been formally established as the subject of a pending administrative ruling, protest or court action.

A Reconciliation of value, 9802 and/or classification shall be filed within 15 months of the date of the oldest entry summary flagged for and grouped on that Reconciliation. A Reconciliation may cover any combination of value, 9802 and classification. Should the issues of value, 9802 and/or classification on one entry summary be flagged for reconciliation, one Reconciliation covering all three issues will be filed.

A NAFTA Reconciliation must be filed within 12 months of the date of importation of the oldest entry summary flagged for and grouped on that Reconciliation. NAFTA Reconciliations will not be combined with other issues, because of NAFTA's unique nature and different due dates, and so that Customs may expedite the processing of such refunds.

2. Chain of Events

a. *Initial application*—As part of an importer's application to participate in the ACS Reconciliation Prototype, the importer will provide information including descriptions of the specific issues to be reconciled, the merchandise and Harmonized Tariff Schedule (HTSUS) classification, and which ports the importer uses or intends to use.

b. *Entries flagged for reconciliation*—

i. Any entry summary (see below for eligible entry types) that is flagged for reconciliation must be filed via the Automated Broker Interface (ABI). An electronic indicator, or "flag," signifying that these entries are to be reconciled, must be provided at the header level. The flag designates that the indicated issue(s) for the entire entry summary (not just a specific line) is subject to reconciliation.

ii. For purposes of this prototype, the "flag" serves as the importer's Notice of Intent to file a Reconciliation.

iii. The importer must use reasonable care in filing the entry summary, including but not limited to declaring the proper value, classification and rate of duty on the underlying entry summary. The importer must provide a good faith value estimate, and deposit the appropriate duties, taxes, and fees at time of entry summary.

iv. Entry summaries flagged for reconciliation will require a continuous bond, which must be accompanied by a rider. The rider shall read as follows:

By this rider to the Customs Form 301, No. _____, executed on _____, by _____, as principal, importer No. _____, an _____, as surety, code No. _____, which is effective on _____, the principal and surety agree that this bond covers all Reconciliations pursuant to 19 U.S.C. 1484(b) that are elected on any entries secured by this bond, and that all conditions set out in Section 113.62, Customs Regulations, are applicable thereto.

The continuous bond obligated on the underlying entries, along with the rider, will be used to cover the Reconciliation.

v. All entries subject to one Reconciliation must be covered by one surety. Each Reconciliation must be covered by one surety, i.e., two sureties cannot cover the same Reconciliation.

vi. Entry summaries may be flagged for reconciliation until the close of the test period. Reconciliations may be filed after the close of the test period.

c. *Liquidation of underlying entry summaries*—Liquidation of the underlying entry summary will occur as with any entry summary. Importers who choose to participate in this prototype will recognize that the liquidation of the underlying entries pertains only to those issues not identified by the importer as reconcilable. Upon liquidation of the underlying entries, any decisions of the Customs Service entering into that liquidation can be protested pursuant to 19 U.S.C. 1514. The liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation, and any decision of the Customs Service pertaining to that liquidation may also be protested (pursuant to 19 U.S.C. 1514).

d. *Importer Electronically Transmits the Reconciliation via ABI*—

i. When the importer has finalized the outstanding information, and has the answer to the issue in question, the filer will electronically (via ABI) transmit the Reconciliation to Customs. The Reconciliation will be a new entry type 09.

ii. Transmission of a Reconciliation for value, 9802 and/or classification must occur within 15 months of the date of the oldest entry summary flagged for and grouped on that Reconciliation. Transmission of a NAFTA Reconciliation must occur within 12 months of the date of importation of the oldest entry summary flagged for and grouped on that Reconciliation.

iii. Each Reconciliation will be limited to one importer of record, *i.e.*, the underlying entries and the Reconciliation must have the same importer of record.

iv. This prototype will allow up to 9,999 underlying entries per Reconciliation.

v. The importer must clearly document how the information in the Reconciliation was derived, and provide all supporting documentation to Customs when the Reconciliation is filed. The Reconciliation must include complete supporting documentation for the information provided, to substantiate the importer's claim. The supporting documentation must include details at the entry line level. Supporting documents may include, but are not limited to:

(a) CF 247—Cost Submission
(b) detailed line-level spreadsheets
(c) landed cost analysis sheets
(d) invoices, purchase orders, and contracts.

vi. While entry summaries may be flagged until the close of the test period, Reconciliations may be filed and liquidated after the closing date of the test.

vii. The structure of the Reconciliation will include a header, association file, and line item data:

(a) Header—The Reconciliation header will include the following data elements:

(i) Reconciliation entry number
(ii) Reconciliation entry type (09)
(iii) Reconciliation date (date of filing)
(iv) Issue(s) being reconciled
(v) IRS number
(vi) Surety code
(vii)Port of entry code (= processing port)
(viii) Summary date of oldest underlying entry (if the reconciliation issue is value, 9802 or classification)
(ix) Date of import of oldest underlying entry (if the reconciliation issue is NAFTA)
(x) The total of the original duties, taxes, and fees (fees broken out by "class code") which were deposited on the underlying entries
(xi) The total of the reconciled duties, taxes, and fees (fees broken out by "class code") which should have been paid for the underlying entries, had the complete information been available to the importer at the time of filing the underlying entries
(xii) The total amount of interest deposited on filing of the Reconciliation, if the filer elects to do so
(xiii) Comment field: This field is to be used to explain any details of the Reconciliation, *e.g.*, Assist declaration on part XYZ for the period 10/1/98 –9/30/99.

(b) Association file—The association file will include the list of underlying entry numbers and the Reconciliation revenue adjustment, broken out by entry. The association file will consist of the following data elements:

(i) The underlying entry numbers and ports of entry which were previously flagged and grouped on this Reconciliation
(ii) The original amount of duties, taxes and fees (fees broken out by "class code") per underlying entry which were deposited at entry summary
(iii) The reconciled amount of duty, taxes and fees (fees broken out by "class code") which should have been paid for each of the underlying entries, had the complete information been available to the importer at the time of filing the underlying entry summary
(iv) If the Reconciliation results in additional duties due Customs, the filer may deposit interest at time of filing the Reconciliation. Interest must be calculated by and broken out to each underlying entry.

(c) Line item data—Aggregate line item data will be manually submitted via hard copy CF 7501. Each reconciliation line item will be consolidated for all of the underlying entries listed in the association file. Each combination of HTSUS, country of origin, SPI and month of release will require a separate line. The Reconciliation line data elements will include:

(i) HTS
(ii) SPI (if changed)
(iii) Country of origin
(iv) Quantity (if changed)
(v) Value
(vi) Month of release

The reconciled line information will be provided below the original information, as follows:

(Original) HTS SPI C/O Quantity Value Release month
(Reconciled) HTS SPI C/O Quantity Value Release month

e. *Payment*—If the Reconciliation results in a revenue change, Customs will issue one bill or refund per Reconciliation. If the Reconciliation results in additional duties due Customs, payment must be made via check, statement or Automated Clearing House at the time of filing the Reconciliation. The filer may deposit interest at time of Reconciliation filing. If the Reconciliation results in additional duties due the importer,

Customs will issue a refund within 30 days of liquidation of the Reconciliation. Final interest will be assessed or refunded as appropriate.

f. *Liquidation of Reconciliation*—

i. The Reconciliation will be reviewed and liquidated, and one bill or refund issued if a revenue change is appropriate. Bill/refund amounts will be calculated against the duty as shown in the association file upon liquidation of the Reconciliation. Importers will recognize that there may be instances where no bill or refund is necessary. Interest will be calculated in accordance with 19 U.S.C. 1505.

ii. On a matter of dispute, the importer may follow normal protest procedures (pursuant to 19 U.S.C. 1514) with regard to the Reconciliation.

II. Eligibility Criteria

1. Reconciliation is to be used to group entries together for a common, outstanding issue. Entries flagged for reconciliation which have the same outstanding information should all be grouped on one Reconciliation, *e.g.*, entries flagged for reconciliation over a one year period awaiting finalization of assist information should be grouped on one Reconciliation where the assist information is provided.

2. Adequate bond coverage must exist for the Reconciliation.

3. Participants must be capable of filing the underlying entry and Reconciliation information electronically, via the Automated Broker Interface (ABI).

4. The following entries types are eligible for reconciliation under this prototype:

a. Entry type 01: Free and dutiable consumption entries

b. Entry type 02*: Quota/visa consumption entries

c. Entry type 03*: Antidumping/ Countervailing duty (AD/CVD) consumption entries

d. Entry type 06: Foreign Trade Zone consumption entries

e. Entry type 07*: Quota/visa and AD/CVD combination consumption entries

*Quota and AD/CVD entries may be reconciled for value, classification, 9802 and/or NAFTA. The issues of AD/CVD final rate and scope determination, quota category or any admissibility issue are not eligible reconciliation issues under this prototype.

5. The underlying entries flagged for a Reconciliation may be filed at any port, including any combination of ports.

6. The Reconciliation and supporting documentation may be filed at any port location. Certain ports will be established as reconciliation processing ports. The ABI transmission of the Reconciliation must reflect one of the Customs-identified processing ports in the port code field. Customs will identify and announce the reconciliation processing ports in the **Federal Register**.

Utilizing the logic of the Remote Location Filing programming, participant profiles will be established in ACS. Participants must identify those locations from where the ABI transmissions will be filed.

7. Participants must agree to participate in the evaluation of this test.

Application to Participate in the ACS Reconciliation Prototype

This prototype is open to all importers. As stated above, this prototype will serve as the exclusive authority to reconcile entries, outside of any other Customs-designated prototypes. This notice requests importers to apply for participation in this prototype by submitting the following information:

1. Importer name and IRS number
2. Broker name(s) and filer code(s)
3. Surety name(s) and surety code(s)
4. Bond coverage (reconciliation rider mentioned above)

A copy of the rider and identification of the port in which the continuous bond and rider are filed must be included in the application.

5. Commodities covered under the Reconciliation
6. Processing port which will be used
7. Port(s) at which underlying entries and Reconciliation will be filed
8. Port location from where ABI transmission is sent (may be same as #7)
9. Number of entries anticipated to be covered by the Reconciliation
10. Description of specific issue(s) which will be reconciled
11. Point of contact and telephone number
12. Any comments on prototype participation

The application may be submitted by the importer's broker and/or attorney, if duly authorized. This information should be submitted to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1301 Constitution Ave, NW, Room 1315, Washington, DC, 20229. A subsequent notice will be published in the **Federal Register** to announce the opening date of the application period. By applying to participate in this test, the importer is agreeing to participate pursuant to the terms of the test as defined in this notice.

Applications may be submitted throughout the duration of the prototype. Applicants will be notified in writing of their acceptance or denial into the prototype. An applicant who has been denied participation in the prototype may re-apply after 30 days of the notice of denial.

Interested candidates should note that participation in this test will not constitute confidential information, and that lists of participants will be made available on the Customs Electronic Bulletin Board.

Misconduct Under Prototype

If a filer attempts to submit data relating to prohibited merchandise, abuses reconciliation by using it when the reconciliation issue is not truly undeterminable at time of entry summary; submits entry types not authorized for reconciliation; is consistently late in filing the Reconciliation or depositing the duties, fees and taxes; fails to supply Customs with sufficient supporting documentation for the Reconciliation; is habitually delinquent in the payment of bills from Customs; or otherwise fails to follow the procedures outlined herein, or applicable laws and regulations, then the filer may be subject to liquidated damages, penalties and/or other administrative sanctions and/or prevented from participation in future prototypes.

Regulatory Provisions Suspended

Certain requirements of § 113.62 of the Customs Regulations (19 CFR 113.62), pertaining to basic importation and entry bond conditions, will be suspended during this prototype. Certain provisions in parts 141 and 142 of the Customs Regulations (19 CFR 141 and 19 CFR 142), pertaining to entry, and of part 159 of the Customs Regulations (19 CFR part 159), pertaining to liquidation of duties, will also be suspended during this prototype.

Absent any specified alternate procedure, the current regulations apply.

III. Test Evaluation Criteria

Once the initial comment period has closed, Customs will review all public comments received concerning any aspect of the test program or procedures, answer any questions in light of those comments, and establish baseline measures and evaluation methods and criteria. Interim evaluations of the prototype will be published on the Customs Electronic Bulletin Board, and the results of the final prototype evaluation will be published in the **Federal Register** as required by 19 CFR 101.9(b). The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through dataqueries and questionnaires
2. Reports to be run through use of dataquery throughout the prototype
3. Questionnaires from both trade participants and Customs to be used before, during and after the prototype period.

Customs may assess any or all of the following evaluation criteria from both Customs and the trade participants:

1. Workload impact (workload shifts/ volume, cycle times, etc.)
2. Cost savings (staff, interest, issuance of fewer checks or bills, tracking refunds/bills, reduction in contingent liabilities, etc.)
3. Policy and procedure accommodation
4. Trade compliance impact
5. Problem resolution
6. System efficiency
7. Operational efficiency
8. Other issues identified by the participant group.

Customs will request that test participants be active in the evaluation, identifying costs and savings experienced in this prototype.

Dated: September 25, 1997.

Albert W. Tennant,

Acting Assistant Commissioner, Office of Field Operations

[FR Doc. 97–25930 Filed 9–29–97; 8:45 am]

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federal register

Tuesday
September 30, 1997

Part II

Department of Transportation

Coast Guard

33 CFR Parts 155 and 159
46 CFR Part 2, et al.
Harmonization With International Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 155 and 159

46 CFR Parts 2, 3, 4, 6, 7, 10, 12, 15, 16, 24, 25, 26, 28, 30, 31, 32, 34, 35, 39, 50, 56, 58, 61, 63, 68, 69, 70, 71, 72, 76, 77, 78, 80, 90, 91, 92, 93, 95, 96, 97, 105, 108, 109, 147A, 148, 150, 151, 153, 154, 160, 164, 166, 167, 168, 170, 172, 188, 189, 193, 195, 196, and 197

[CGD 95–028]

RIN 2115–AF10

Harmonization With International Safety Standards

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: As part of its ongoing response to the President's Regulatory Reinvention Initiative, the Coast Guard amends its regulations for both inspected and uninspected vessels by removing obsolete, unnecessary or excessive provisions, and harmonizing regulations with international safety standards. These amendments will reduce the regulatory burden to industry by removing differences between requirements that apply to U.S. vessels in international trade and those that apply to similar vessels in international trade that fly the flag of responsible foreign nations.

DATES: This rule is effective October 30, 1997. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on October 30, 1997.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Lundy, project manager, Office of Design and Engineering Standards (G–MSE), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, telephone 202–267–0024.

SUPPLEMENTARY INFORMATION:

Regulatory History

On November 19, 1996, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Harmonization with International Safety Standards in the **Federal Register** (61 FR 58804). The Coast Guard received 12 letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

This rule was sparked by several calls for regulatory review and reform. For example, on March 4, 1995, the President issued a memorandum calling on executive agencies to review regulations with the goals of: (1) Cutting obsolete regulations; (2) focusing on results instead of process and punishment; (3) convening meetings with the regulated community; and (4) expanding efforts to promote consensual rulemaking. The President's memorandum coincided with U.S. maritime industry requests for greater alignment of Coast Guard regulations with internationally accepted standards to reduce cost disadvantages and thereby improve the competitiveness of the U.S. industry.

The ongoing National Performance Review effort, which stresses reducing red tape and maximizing results, provides an impetus for the harmonization of regulations with appropriate, successful international safety standards. Additionally, the Coast Guard recognizes the need to eliminate outdated regulations and to increase available compliance options for the regulated community. In the May 31, 1995 **Federal Register** (60 FR 28376), the Coast Guard reiterated its intention to harmonize Coast Guard regulations with international safety standards.

To accomplish these goals and respond to calls for regulatory reform, the Coast Guard expanded its ongoing Coast Guard Regulatory Reform (CGRR) initiative. Under CGRR, the Coast Guard is examining ways to remove disincentives for ship owners to fly the American flag, while also ensuring maritime safety and the protection of the marine environment. The Coast Guard is doing this principally by making existing regulations more efficient and, wherever possible, aligning U.S. marine safety regulations with internationally accepted standards.

As part of the CGRR initiative, the Coast Guard initiated three regulatory projects to remove unnecessary and excessive provisions from Coast Guard regulations. The first of these projects, "Inspected and Uninspected Commercial Vessels; Removal of Obsolete and Unnecessary Regulations," had a final rule published in the September 18, 1995 **Federal Register** (60 FR 48044). That rulemaking focused on regulations for which no adverse public comment was expected, such as requirements for nuclear vessels, ocean incinerator ships, and ocean thermal energy conversion plantships. The second project, "Adoption of Industry Standards," had a final rule published in the May 23, 1996 **Federal Register** (61 FR 25984). That rule made substantial changes, removed or amended unnecessary provisions, and adopted appropriate industry standards and practices in place of Coast Guard specific requirements.

This rulemaking, the third project, continued the Coast Guard's effort to reform its regulations. These changes removed superfluous and outdated requirements and aligned the regulations more closely with international standards.

Discussion of Comments and Changes

Comments were received which recommended the adoption of class rules as a means of compliance with certain sections and subparts. These comments focused on areas not covered in this rulemaking. On December 27, 1996, the Coast Guard published, in the **Federal Register** (61 FR 68510), an interim rule entitled, Alternative Compliance via Recognized Classification Society and U.S. Supplement to Rules (CGD 95–010). The Alternative Compliance Program (ACP) allows for the inspection of a vessel by a recognized classification society that has been authorized to participate in the ACP. The American Bureau of Shipping (ABS) is currently the only recognized classification society authorized to participate in the ACP.

Under the ACP, vessels receive Coast Guard certification based on compliance with classification society rules, international conventions, and the U.S. Supplement which represents Coast Guard requirements not embodied by either classification society rules or international conventions. All requirements of the interim rule, which became effective July 31, 1997, reduce the burden on the vessel owner by requiring compliance with only those Coast Guard regulations which are not embodied by either classification society rules or international conventions.

The Coast Guard, in its continuing effort to harmonize its regulations with industry and international standards, is evaluating the issues raised by these comments, which are outside the scope of this rulemaking, and will take appropriate future action based on its review. However, in the interim, vessels owners can receive the benefit of inspection in accordance with ABS classification rules and international standards by choosing to participate in the ACP.

Comments to 46 CFR parts 50–59, concerning marine engineering, which were outside the scope of this rulemaking, recommended allowing rules or surveys from the ABS or another recognized classification society. The ACP program allows for rules or surveys from a recognized class society for 46 CFR parts 50–59. No changes were made to the regulatory text.

One comment to 46 CFR subpart 91.01, concerning inspection and certification, indicated an inability to obtain early commencement of a biennial inspection in a particular Officer in Charge, Marine Inspection (OCMI) office, or the continuation of the inspection by another OCMI office. Inspection for certification may be requested at any time during the period of validity of the current certificate. Further, the ACP allows a vessel the opportunity to obtain an abbreviated annual exam which is capable of being conducted at one port call, by one OCMI. No changes were made to the regulatory text.

One comment to 46 CFR 91.40, concerning drydocking, recommended that regulations be revised to conform with recognized classification society rules. A regulatory change is not needed because drydocking intervals remain twice in a five year period, and not more than three years between each exam whether or not the vessel is enrolled in the ACP. Drydocking/Internal Structural Exam (ISEs) intervals may be extended 90 days by an ACP classification society for ships enrolled in the ACP. Additionally, the ACP allows the recognized classification society to make recommendations to Commandant (G–MOC) on Underwater Inspection in Lieu of Dry-docking (UWILDs), even for vessels over 15 years old. No changes were made to the regulatory text.

One comment to 46 CFR part 94, concerning lifesaving equipment, recommended allowing ABS or other approved classification society rules for approval. 46 CFR part 94 was removed by the interim rule concerning Lifesaving Equipment (84–069), published in the **Federal Register** on May 20, 1996 (61 FR 25272). Because there are no classification society rules for this equipment, the ACP is not applicable.

One comment to 46 CFR 91.27, concerning reinspection, recommended that the Coast Guard initiate a program of mid-period self-inspection which rewards companies that take a pro-active approach to regulatory compliance and vessel safety in general. There is a proposal for a Streamlined Inspection Program (CGD 96–055) for which an NPRM was published on April 8, 1997 (62 FR 17022). No changes were made to this section.

One comment to 46 CFR 98.30, concerning portable tanks, recommended that these regulations be revised for ocean going vessels with the "incorporation by reference" of the International Maritime Dangerous Goods (IMDG) Code requirements for carriage of hazardous liquids or materials in portable tanks. These regulations, among other things, concern the transfer of certain hazardous materials to or from portable tanks. The IMDG Code has provisions for the design and carriage of portable tanks, but does not have equivalent provisions governing the transfer of certain hazardous materials to or from portable tanks, and assumes that no transfer of cargo occurs on board vessel. Consequently, the proposed incorporation by reference is not appropriate. However, the acceptability of International Maritime Organization (IMO) type portable tanks and other bulk packagings, specified by the IMDG Code, are being reviewed and the Coast Guard may take future action based on its review.

One comment recommended that 46 CFR 50.05–5(c) be revised to permit replacement of existing boiler equipment and piping systems with similar equipment. The Coast Guard has generally accepted replacement in kind for general repairs and maintenance work. This section addresses reboilering. Reboilering is not considered as a repair. Reboilering constitutes a major replacement equivalent to installing a new boiler. This section recognizes the extreme hazards of high pressure steam and the necessity for proper boiler piping. Failure of boiler piping means immediate release of steam. The requirement to use more modern materials, welding techniques/requirements is in keeping with industry standards and is consistent with classification society rules. No changes were made to this section.

One comment to 46 CFR 61.05–15, concerning boiler mountings and attachments, recommended that regulations be revised to clearly state that boiler mountings and studs do not have to be removed when an external examination is possible. No revision to this section is necessary because the section is clear that the mountings and studs are not required to be removed, but allows the inspector the option to have them removed if the inspector believes removal is needed during the course of the inspection.

One comment to the proposed 46 CFR 56.20–15(b) stated that this paragraph was confusing as to whether or not it pertained to all valves or just valves employing resiliently seated material. It is not the Coast Guard's intention to restrict the use of valves with metal to metal seats. This paragraph is meant to pertain only to valves employing resiliently seated material, and the Coast Guard has revised this section to clarify that those valves which employ resilient seats are divided into the three listed categories.

One comment recommended that the proposed 46 CFR 56.50–103, concerning fixed oxygen-acetylene piping systems, be revised to include copper alloys containing less that 65% copper for certain components in acetylene distribution systems. This recommendation is consistent with industry practice. The Coast Guard agrees, and a new paragraph (c) allows for this industry practice. Further, this section has been reorganized from the presentation in the NPRM in order to be more clearly understood. Old paragraph (f) in the NPRM, which required all fittings to be welded, has been re-written as a new paragraph (g) which requires all fittings on the low pressure side of the regulator to be welded. This change recognizes that the regulator will be physically located next to the pressure vessel and that all piping will be downstream of the regulator.

Three comments were received opposing proposed modifications to 46 CFR 34.20–5 to harmonize deck foam regulations with the applicable International Convention for the Safety of Life at Sea (SOLAS) provisions. One comment mentioned an incident in which a tanker, which did not have USCG-approved foam fire fighting system, was severely damaged and sank. There is no indication, however, as to whether the vessel's foam system met the SOLAS arrangement and application rates or that some other system would have been effective. Additionally, there has been no casualty data to suggest that the current SOLAS provisions are inadequate. Current Coast Guard regulations require a slightly greater minimum foam application rate for tanker deck foam systems than SOLAS requirements, based on total cargo area. Therefore, consistent with the Coast Guard's intention to harmonize its regulations with international safety standards, this section is harmonized with the applicable SOLAS foam application rates. No changes were made to this proposed section. Currently, the Coast Guard is working with the National Fire Protection Association to develop a new industry

standard. It is the Coast Guard's intention that this new standard will be taken to the IMO.

One comment suggested that the Coast Guard should fully articulate the preemptive effect of its regulations. In *Ray* v. *ARCO*, 435 U.S. 151 (1978), the Supreme Court recognized that design, construction, equipment, and manning standards are matters of national attention, and recognized a decided congressional preference for arriving at international standards for building vessels. Consistent with *Ray* v. *ARCO*, it is the Coast Guard's position that vessel design, construction, equipment, and manning standards fall within the exclusive province of the Federal Government.

This rulemaking concerned the removal of obsolete, unnecessary or excessive provisions; and harmonizing regulations with international standards. To the extent this rulemaking revised regulations to incorporate national industry and international standards, these revised regulations concerned subject matter that, as determined under *Ray* v. *ARCO*, are within the exclusive province of the Federal Government. The ability of the states to regulate in these areas was preempted when the regulations were initially promulgated. The revision of these regulations does not alter their preemptive effect.

One comment suggested that the Coast Guard extend the opportunity to participate in the UWILD program to passenger vessels operating exclusively in fresh water that have not had a grounding since their last drydock. The ability of these vessels to participate in the UWILD program is being reviewed. The Coast Guard may take further action based on its review.

One comment requested that the Coast Guard justify the option of allowing tank vessels to comply with SOLAS vent height and distance requirements, which reduces the height from 4 meters to 2 meters. By permitting the option of SOLAS vent height requirements, the Coast Guard reduced the allowable height of vents from the 4 meters, required in 46 CFR 32.55–20, to 2 meters only when high velocity vents are used. The Coast Guard finds that allowing such a reduction will not degrade safety. The Coast Guard has accepted chemical carriers certified under international rules which permit similar reductions in vent height requirements when high velocity vents are used, and there has not been a reduction in safety. No changes were made to the proposed regulatory text.

One comment recommended retaining the provision in 46 CFR 32.57–10(d)(4) for kickout panels because of a concern that fire doors could warp and trap occupants. The Coast Guard is not aware of a casualty history of doors warping in a fire and trapping occupants. Additionally, section 32.02–1 requires two means of escape from all passageways leading to living quarters, and places where a crew member may be employed, so that in the event that one means of escape became unusable, a second means of escape would be available. The proposed change only removed the requirement for a kickout panel; vessel owners may install them if they so desire. No changes were made to this proposed section.

One comment questioned the ability to use the fire control symbols contained within ASTM Adjunct F 1626, as the American Society for Testing and Materials (ASTM) publication is copyright protected. ASTM was contacted and the copyright protects against the unauthorized copying of the ASTM publication rather than the use of the symbols to identify the details of a fire control plan.

One comment stated that there is an IMO standard set of symbols which should be utilized instead of the ASTM standard to implement uniform symbols for fire control plans. ASTM Adjunct F 1626 adopts the symbols contained in IMO Assembly resolution A.654(16). The Coast Guard agrees that the IMO resolution should also be incorporated, and has revised the incorporation sections accordingly.

Two comments concerned the application date and use of the ASTM Adjunct F 1626 standardized symbols for fire control plans. The use of the standard symbols applies to new construction and existing vessels which have the master plan redrawn. Editorial revisions to regulatory text have been made to clarify the application of ASTM Adjunct F 1626. The comments also recommended a change to the material incorporated by reference. ASTM Adjunct F 1626 contains the symbols, and the incorporation by reference has been changed to reflect the correct cite.

One comment objected to the removal of sentinel valves. The Coast Guard recognizes that boilers on older vessels require sentinel valves. Technology, however, has rendered the use of sentinel valves on new boilers obsolete. Recognizing that removal of § 56.50–30(b)(6) would eliminate the requirement for sentinel valves for older boiler systems, this paragraph has been redrafted. Sentinel valves will not be required for new construction, or for existing vessels which have shown to the satisfaction of the cognizant OCMI, or the Coast Guard Marine Safety Center, that a sentinel valve is not necessary.

One comment expressed concern over the Coast Guard's proposal to remove the requirements for Coast Guard inspectors to set and seal boiler safety valves. The Coast Guard disagrees. With present day boiler automation and built in safety factors, the Coast Guard has not experienced a problem of tampering with safety valves. Based upon the lack of a tampering problem, as well as the reliability of current steam propulsion systems, the Coast Guard has determined the sealing of boiler safety valves to be of little value. Therefore, § 35.25–15 will be removed as originally proposed.

One comment suggested that the Coast Guard extend the interval for inspection of sea valves to every 10 years for those vessels operating in freshwater. The Coast Guard disagrees. Sea valves are subject to mechanical damage. An extension of the interval means, that, during a 20 year period, sea valves would only be opened once at the midpoint. If additional data supports that valves can last 10 years in freshwater with no operational difficulties, the Coast Guard will reconsider revising this requirement.

One comment noted that an applicability date should be specified in 46 CFR 63.25–9 for incinerators to meet the requirements of IMO resolution MEPC.59(33). The Coast Guard agrees and the regulatory text is changed.

Two comments were received on the proposal to replace current Coast Guard regulations concerning design of automatic sprinkler systems by incorporating National Fire Protection Association Standard No. 13 by reference. One comment supported this proposal, and one comment voiced concern with the Coast Guard's policy of incorporating industry standards by reference. The Coast Guard's incorporation of industry standards directly supports the President's goals on revitalizing the American shipping industry and the Regulatory Reinvention Initiative. Benefits include increased input from subject matter experts into Coast Guard regulations, greater industry access into development of regulations, and regular updating of standards which facilitates regulations keeping pace with technology. Although there is an added responsibility for members of industry to stay abreast of changes to standards which are referenced in the Code of Federal Regulations (CFR), the Coast Guard finds that the benefits far outweigh the disadvantages. No changes were made to this section.

One comment opposed the proposed replacement of prescriptive requirements for fire hose coupling threads with a performance requirement that a uniform hose coupling be provided for each hose diameter throughout the vessel. The comment further stated that the basis of the comment was a concern that a vessel owner or operator could purchase fire hose or nozzles with the wrong thread style, and not realize the discrepancy until after the vessel has left port. Current Coast Guard regulations which require a minimum of one fire hose per hydrant, and that a fire hose be connected to hydrants at all times mitigate concerns about incompatibility of fire fighting equipment. However, these sections have been revised to their original text, with a new option added to indicate that couplings other than National Standard couplings may be used if all of the couplings are identical. Additionally, the Coast Guard will revise its inspection guidance to advise vessel inspectors to check compatibility of fire fighting equipment.

Another comment noted that the Coast Guard has proposed removing prescriptive requirements for hose coupling threads from 46 CFR 34.10–10, 76.10–10, and 95.10–10, but a similar proposal was not made with respect to 46 CFR 108.425(b). The Coast Guard agrees and the revision has been added to § 108.425(b).

There was an error in the proposed rule text for 46 CFR 164.013–6. In the last sentence of "Production tests, inspections, and marking," it directed manufacturers to provide markings in accordance with the requirements in 46 CFR 164.023–15. The correct cite for markings is 46 CFR 164.013–7. However, because the sentence was extraneous, it was deleted.

One comment suggested that the Coast Guard add the American Bureau of Shipping's (ABS) Houston address to 46 CFR 170.100 under addresses for submittal of plans and calculations. The Coast Guard agrees and the regulations are revised.

One comment suggested that that 46 CFR 170.110(b), which directs stability booklets to be approved by the Coast Guard Marine Safety Center or the ABS, be removed because it is redundant with § 170.085. The Coast Guard disagrees. Section 170.085 refers to stability test plans which is separate from approval of stability booklets, thus there is no redundancy. No changes were made to this section.

The NPRM proposed removal or revision of several sections which were or are being addressed by other rulemakings. These sections will not be addressed by this rulemaking. The sections and corresponding dockets are: 46 CFR 16.207(b) is being addressed in CGD 95–011, Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel for which an interim rule was published on December 18, 1996 (61 FR 66612); 46 CFR 2.50 and subpart 26.10 were addressed in the final rule for CGD 96–052, Civil Monetary Penalties Inflation Adjustment, published April 8, 1997 (62 FR 16695); 46 CFR 2.75–19 and 2.75–50 were addressed in the final rule for CGD 93–055, Approval of Inflatable Personnel Flotation Devices for Recreational Boaters, published March 28, 1996 (61 FR 13920); 46 CFR 28.12 was addressed in the interim rule for CGD 90–046, Commercial Fishing Industry Vessel Regulations, published November 5, 1996 (61 FR 57268); and 46 CFR 159.007 was addressed in the final rule for CGD 85–205, Inflatable Personnel Flotation Devices, published May 9, 1997 (62 FR 25525).

In addition to the above changes, minor editorial revisions have been made to clarify the regulatory text. The Coast Guard is also removing the incorporation by reference contained in 46 CFR 159.2 which was inadvertently added to the NPRM. The revision to 46 CFR 160.035–3 was set out in full for clarity. 46 CFR 160.050–5 was revised for clarity by adding the requirements of the footnote to a new paragraph (b)(1)(iv) and by deleting paragraph (g)(4).

Incorporation by Reference

The Director of the Federal Register has approved the material in 33 CFR 155.140, and 46 CFR 34.01–15, 35.01–3, 56.01–2, 63.05–1, 76.01–2, 78.01–2, 95.01–2, 97.01–2, 108.101, 109.105, 164.013–2, 172.020, and 193.01–3 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in those sections.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The economic impact of this rule is so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation removes obsolete, unnecessary or excessive provisions, and harmonizes existing regulations with current international and national safety standards, which have already been adopted as industry practices, therefore, the economic impact of this regulation is minimal.

Vessel owners or operators are not required to purchase the international and national standards incorporated by reference in this final rule. If purchased, the total one-time cost of all the reference materials included in this rule is estimated to be $250. The Coast Guard did not itemize the cost of reference materials by vessel type. However, the cost of purchasing these materials is estimated to be significantly less than $250 per vessel because the vessel owner or operator will only need to reference materials for standards that apply to their vessel type(s). Vessels owners or operators needing to reference these publications can choose to purchase them. However, most of the reference materials are available in the public forum at no cost.

A portion of the tank vessel industry may be affected by the cost of fitting additional emergency towing equipment. These vessels were required under 33 CFR part 155 to install emergency towing equipment on either the bow or stern by 1997. This rule makes the arrangement required on both ends of a vessel at an estimated one-time cost per vessel of $47,175 by 1999 as required currently in SOLAS. This rule affects oil tankships between 20,000 to 50,000 deadweight tons that are not presently subject to SOLAS. In some cases, the Coast Guard has allowed delayed compliance of 33 CFR part 155 for existing oil tankships until 1999. This rule changes the existing 33 CFR part 155 implementation date of 1997 to 1999 for all tankships including those ships that may require an additional towing arrangement installation. This delay will allow tank vessel owners or operators the flexibility to comply without additional drydocking expense and provides them the time to research and compare installation costs.

Furthermore, harmonizing Coast Guard regulations to international and national standards will benefit the maritime industry by simplifying the requirements to which their vessels are subject.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities.

"Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will have no significant economic impact on small entities because it amends portions of regulations that: (1) Are purely administrative; (2) do not reflect common marine industry practice; (3) do not have general applicability; or (4) are repeated in other sections (see Regulation Evaluation section of this document for cost estimates). In cases where small entities may need to use publications, referred to in this rule, they are available in the public forum at no cost or can be purchased at minimal cost. In addition, the requirement to install an emergency towing arrangement only affects oil tankships between 20,000 and 50,000 deadweight tons not presently subject to SOLAS. The Coast Guard is not aware of any vessels in this category owned or operated by a small entity.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Assistance with provisions of this final rule can be obtained by contacting Commandant (G–MSE), Office of Design and Engineering Standards, 2100 Second Street, SW., Washington, DC 20593–0001, telephone 202–267–2967.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns the "manning, documentation, admeasurement, inspection, and equipping of vessels" as well as, "equipment approval and carriage requirements" within the meaning of subparagraphs 2.B.2.e(34) (d) and (e) of the above instruction. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR 155

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

33 CFR 159

Incorporation by reference, Sewage disposal, Vessels.

46 CFR 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR 3

Oceanographic research vessels, Reporting and recordkeeping requirements, Research.

46 CFR 4

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR 6

Navigation (water), Reporting and recordkeeping requirements, Vessels.

46 CFR 7

Law enforcement, Vessels.

46 CFR 10

Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR 12

Reporting and recordkeeping requirements, Seamen.

46 CFR 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR 24

Marine safety.

46 CFR 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR 34

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety.

46 CFR 35

Cargo vessels, Incorporation by reference, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR 39

Cargo vessels, Fire prevention, Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR 50

Reporting and recordkeeping requirements, Vessels.

46 CFR 56

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR 58

Reporting and recordkeeping requirements, Vessels.

46 CFR 61

Reporting and recordkeeping requirements, Vessels.

46 CFR 63

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

46 CFR 68

Vessels.

46 CFR 69

Measurement standards, Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR 72

Fire prevention, Marine safety, Occupational safety and health, Passenger vessels, Seamen.

46 CFR 76

Fire prevention, Incorporation by reference, Marine safety, Passenger vessels.

46 CFR 77

Marine safety, Navigation (water), Passenger vessels.

46 CFR 78

Incorporation by reference, Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR 80

Advertising, Marine safety, Passenger vessels, Penalties, Travel.

46 CFR 90

Cargo vessels, Marine safety.

46 CFR 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR 92

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Seamen.

46 CFR 93

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR 95

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety.

46 CFR 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR 97

Cargo vessels, Incorporation by reference, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR 105

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum, Seamen.

46 CFR 108

Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR 109

Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR 147A

Fire prevention, Hazardous substances, Occupational safety and health, Pesticides and pests, Seamen, Vessels.

46 CFR 148

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR 164

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR 166

Schools, Seamen, Vessels.

46 CFR 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR 168

Occupational safety and health, Schools, Seamen, Vessels.

46 CFR 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR 172

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety.

46 CFR 188

Marine safety, Oceanographic research vessels.

46 CFR 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR 193

Fire prevention, Incorporation by reference, Marine safety, Oceanographic research vessels.

46 CFR 195

Marine safety, Navigation (water), Oceanographic research vessels.

46 CFR 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR 197

Benzene, Diving, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 155 and 159; and 46 CFR parts 2, 3, 4, 6, 7, 10, 12, 15, 16, 24, 25, 26, 28, 30, 31, 32, 34, 35, 39, 50, 56, 58, 61, 63, 68, 69, 70, 71, 72, 76, 77, 78, 80, 90, 91, 92, 93, 95, 96, 97, 105, 108, 109, 147A, 148, 150, 151, 153, 154, 160, 164, 166, 167, 168, 170, 172, 188, 189, 193, 195, 196, and 197 as follows:

33 CFR

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§§ 155.100–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 36, 150, 151, and 153.

2. In § 155.140(b), add, in alphabetical order to the organizations referenced, the following standards:

§ 155.140 Incorporation by reference.

* * * * *

(b) * * *

International Maritime Organization (IMO)

* * * * *

Resolution MSC.35(63), Adoption of Guidelines for Emergency Towing Arrangement on Tankers, May 20, 1994—155.235

* * * * *

3. Revise § 155.235 to read as follows:

§ 155.235 Emergency towing capability for oil tankers.

An emergency towing arrangement shall be fitted at both ends on board all oil tankers of not less than 20,000 deadweight tons (dwt), constructed on or after September 30, 1997. For oil tankers constructed before September 30, 1997, such an arrangement shall be fitted at the first scheduled dry-docking, but not later than January 1, 1999. The design and construction of the towing arrangement shall be in accordance with IMO resolution MSC.35(63).

PART 159—MARINE SANITATION DEVICES

4. The authority citation for part 159 continues to read as follows:

Authority: Sec. 312(b)(1), 86 Stat. 871 (33 U.S.C. 1322(b)(1)); 49 CFR 1.45(b) and 1.46 (l) and (m).

5. In § 159.3, add the definition, in alphabetical order, to read as follows:

§ 159.3 Definitions.

* * * * *

Length means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments are not to be included in the measurement.

* * * * *

6. Revise § 159.5 to read as follows:

§ 159.5 Requirements for vessel manufacturers.

No manufacturer may manufacture for sale, sell, offer for sale, or distribute for sale or resale any vessel equipped with installed toilet facilities unless it is equipped with:

(a) An operable Type II or III device that has a label on it under § 159.16 or that is certified under § 159.12 or § 159.12a; or

(b) An operable Type I device that has a label on it under § 159.16 or that is certified under § 159.12, if the vessel is 19.7 meters (65 feet) or less in length.

§ 159.7 [Amended]

7. In § 159.7, remove the note and revise the section to read as follows:

§ 159.7 Requirements for vessel operators.

(a) No person may operate any vessel equipped with installed toilet facilities unless it is equipped with:

(1) An operable Type II or III device that has a label on it under § 159.16 or that is certified under § 159.12 or § 159.12a; or

(2) An operable Type I device that has a label on it under § 159.16 or that is certified under § 159.12, if the vessel is 19.7 meters (65 feet) or less in length.

(b) When operating a vessel on a body of water where the discharge of treated or untreated sewage is prohibited by the Environmental Protection Agency under 40 CFR 140.3 or 140.4, the operator must secure each Type I or Type II device in a manner which prevents discharge of treated or untreated sewage. Acceptable methods of securing the device include—

(1) Closing the seacock and removing the handle;

(2) Padlocking the seacock in the closed position;

(3) Using a non-releasable wire-tie to hold the seacock in the closed position; or

(4) Locking the door to the space enclosing the toilets with a padlock or door handle key lock.

(c) When operating a vessel on a body of water where the discharge of untreated sewage is prohibited by the Environmental Protection Agency under 40 CFR 140.3, the operator must secure each Type III device in a manner which prevents discharge of sewage. Acceptable methods of securing the device include—

(1) Closing each valve leading to an overboard discharge and removing the handle;

(2) Padlocking each valve leading to an overboard discharge in the closed position; or

(3) Using a non-releasable wire-tie to hold each valve leading to an overboard discharge in the closed position.

8. Revise § 159.201 to read as follows:

§ 159.201 Recognition of facilities.

A recognized facility is an independent laboratory accepted by the Coast Guard under 46 CFR 159.010 to perform the tests and inspections required under this part. A list of accepted laboratories is available from the Commandant (G–MSE–4).

§ 159.205 [Removed]

9. Remove § 159.205.

46 CFR

PART 2—VESSEL INSPECTIONS

10. The authority citation for part 2 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 33 U.S.C. 1903; 43 U.S.C. 1333, 1356; 46 U.S.C. 2110, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act, Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

11. In § 2.01–1, revise paragraphs (a)(1) and (d)(2) to read as follows:

§ 2.01–1 Applications for inspections.

(a) * * *

(1) Applications for inspections of vessels required to be inspected under Subtitle II, Title 46 of the U.S. Code, Title 46 and Title 33 U.S. Code, or under 50 U.S.C. 198 shall be made by the master, owner or agent on the following Coast Guard forms which are obtainable from the Officer in Charge, Marine Inspection, at any local U.S. Coast Guard Marine Safety Office.

* * * * *

(d) * * *

(2) Foreign-built vessels are not permitted to engage in the U.S. coastwise trade (domestic trade) unless specifically authorized by law. Therefore, when foreign-built vessels are intended for use in the coastwise trade as defined by the U.S. Customs Service, such vessels will not be inspected and certificated unless specifically authorized by law to engage in the coastwise trade.

12. In § 2.01–10, revise the first sentence of paragraph (b) to read as follows:

§ 2.01–10 Inspection requirements—domestic vessels.

* * * * *

(b) The Coast Guard on its own initiative may examine or inspect or reinspect at any time any vessel subject to inspection under Subtitle II, Title 46 of the U.S. Code, Title 46 and Title 33 U.S. Code. * * *

* * * * *

13. Revise § 2.01–20 to read as follows:

§ 2.01–20 Revocation of certificates of inspection.

Under the authority of 46 U.S.C. 3313 and 46 U.S.C. 3710, a certificate of inspection issued to a vessel may be suspended or revoked if a vessel is found not to comply with the terms of its certificate or fails to meet a standard required by this chapter.

14. Revise § 2.01–40(a) to read as follows:

§ 2.01–40 Passengers or persons in addition to crew on cargo or tank vessels.

(a) Under the authority of 46 U.S.C. 3304, a documented vessel transporting cargo may be allowed by its certificate of inspection to carry not more than 12 individuals in addition to the crew on international voyages and not more than 16 individuals in addition to the crew on other voyages.

* * * * *

15. Revise § 2.01–45(a) to read as follows:

§ 2.01–45 Excursion permit.

(a) Under the authority of 46 U.S.C. 2113, a passenger vessel may be permitted to engage in excursions and carry additional numbers of passengers. For details see part 71 of subchapter H (Passenger Vessels) of this chapter.

* * * * *

16. Revise § 2.01–50(a) to read as follows:

§ 2.01–50 Persons other than crew on towing, oyster, or fishing steam vessels.

(a) A steam vessel engaged in towing, oyster dredging and planting, and fishing may be permitted to carry persons in addition to its crew.

* * * * *

Subpart 2.45—[Removed]

17. Remove subpart 2.45, consisting of §§ 2.45–1 through 2.45–20.

18. Revise § 2.85–1 to read as follows:

§ 2.85–1 Assignment of load lines.

Most U.S. vessels, and foreign vessels in U.S. waters are required to have load line assignments in accordance with 46 U.S.C. Chapter 51. The load lines marks when placed on a vessel indicate the maximum draft to which such vessel can be lawfully submerged, in the various circumstances and seasons applicable to such vessel. See subchapter E (Load Lines) of this chapter for applicable details governing assignment and marking of load lines.

PART 3—DESIGNATION OF OCEANOGRAPHIC RESEARCH VESSELS

19. The authority citation for part 3 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 CFR 1.46.

§ 3.01–1 [Amended]

20. In § 3.01–1, remove the words "46 U.S.C. 441" and add, in their place, the words "46 U.S.C. 2101 (18)".

§ 3.01–3 [Removed]

21. Remove § 3.01–3.

§ 3.03–1 [Amended]

22. In § 3.03–1, remove the words "46 U.S.C. 441" and add, in their place, the words "46 U.S.C. 2101(18)".

§ 3.10–1 [Amended]

23. In § 3.10–1(a), remove the words "under the provisions of 46 U.S.C. 441".

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

24. The authority citation for part 4 continues to read as follows:

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

25. Add § 4.01–3(d) to read as follows:

§ 4.01–3 Reporting exclusion.

* * * * *

(d) Except as provided in subpart 4.40, public vessels are excluded from the requirements of this part.

26. Revise § 4.03–40 to read as follows:

§ 4.03–40 Public vessels.

Public vessel means a vessel that—

(a) Is owned, or demise chartered, and operated by the U.S. Government or a government of a foreign country, except a vessel owned or operated by the Department of Transportation or any corporation organized or controlled by the Department (except a vessel operated by the Coast Guard or Saint Lawrence Seaway Development Corporation); and

(b) Is not engaged in commercial service.

§ 4.40–3 [Amended]

27. In § 4.40–3(b), remove the words "R.S. 4450 (46 U.S.C. 239)" and add, in their place, the words "46 U.S.C. Chapter 63".

28. Revise § 4.40–5(a) to read as follows:

§ 4.40–5 Definitions.

* * * * *

(a) *Act* means title III of Public Law 93–633, the Independent Safety Board Act of 1974 (49 U.S.C. 1131).

* * * * *

§ 4.40–30 [Amended]

29. In § 4.40–30(f), remove the words "R.S. 4450 (46 U.S.C. 239)" and add, in their place, the words "46 U.S.C. Chapter 63".

PART 6—WAIVERS OF NAVIGATION AND VESSEL INSPECTION LAWS AND REGULATIONS

30. The authority citation for part 6 continues to read as follows:

Authority: Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1); 49 CFR 1.46.

§ 6.07 [Amended]

31. In § 6.07(a), remove the words "subsection (h) of R.S. 4551, as amended (46 U.S.C. 643)" and add, in their place, the words "46 U.S.C. 10311 (c)" and, in paragraph (b), remove the words "R.S. 4551(h), as amended (46 U.S.C. 643)" and add, in their place, the words "46 U.S.C. 10311 (c)".

§ 6.15 [Removed]

32. Remove § 6.15.

PART 7—BOUNDARY LINES

33. The authority citation for part 7 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 151; 49 CFR 1.46.

§ 7.1 [Amended]

34. In § 7.1, remove the words "46 U.S.C. 88, the Coastwise Loadline Act;" and add, in their place, the words "46 U.S.C. 5102(b)(6), which exempts from load line requirements certain vessels on domestic voyages;".

PART 10—LICENSING OF MARITIME PERSONNEL

35. The authority citation for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

§ 10.202 [Amended]

36. In § 10.202(e), remove the last sentence.

§ 10.470 [Amended]

37. In § 10.470, in paragraphs (b)(2)(ii), (d)(2)(ii), (f)(2)(ii), (h)(2)(i), and (j)(2)(ii), remove the last two sentences.

§ 10.472 [Amended]

38. In § 10.472(a)(2)(ii), remove the last two sentences.

§ 10.474 [Amended]

39. In § 10.474(a)(2)(ii), remove the last two sentences.

PART 12—CERTIFICATION OF SEAMEN

40. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

§ 12.01–5 [Removed]

41. Remove § 12.01–5.

§ 12.02–19 [Amended]

42. In § 12.02–19, remove the words "R.S. 4450, as amended (46 U.S.C. 239)" and add, in their place, the words "46 U.S.C. Chapter 77".

Subpart 12.07—[Removed]

43. Remove subpart 12.07 consisting of §§ 12.07–1 through 12.07–20.

§ 12.15–13 [Amended]

44. In § 12.15–13, remove paragraph (a)(1) and redesignate paragraphs (a)(2) through (a)(4) as paragraphs (a)(1) through (a)(3), respectively.

§ 12.15–15 [Amended]

45. In § 12.15–15, remove paragraph (a)(1) and redesignate paragraphs (a)(2) through (a)(4) as paragraphs (a)(1) through (a)(3), respectively.

Subpart 12.17—[Removed]

46. Remove subpart 12.17 consisting of §§ 12.17–1 through 12.17–20.

47. Revise § 12.25–1 to read as follows:

§ 12.25–1 Certification required.

Every person employed in a rating other than able seaman or qualified member of the engine department of U.S. merchant vessels requiring such certificated persons shall produce a merchant mariner's document to the master, or person in charge if appropriate, before signing a shipping articles agreement.

§ 12.25–35 [Amended]

48. In § 12.25–35(b), remove the words "under the provisions of title 53 of the Revised Statutes and the regulations in this subchapter".

PART 15—MANNING REQUIREMENTS

49. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; 49 CFR 1.45 and 1.46.

§ 15.815 [Amended]

50. In § 15.815(c), remove the words "On or after June 1, 1995," and capitalize the "e" in the word "each".

PART 16—CHEMICAL TESTING

51. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

§ 16.205 [Amended]

52. In § 16.205, remove paragraphs (a) through (e); and redesignate paragraphs (f) and (g) as paragraphs (a) and (b), respectively.

PART 24—GENERAL PROVISIONS

53. The authority citation for part 24 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

54. In subpart 24.01, revise the title to read as follows:

Subpart 24.01—Purpose

55. Revise § 24.01–1 to read as follows:

§ 24.01–1 Purpose of regulations.

The purpose of the regulations in this subchapter is to set forth uniform minimum requirements for uninspected commercial vessels, certain motor vessels, vessels propelled by sail carrying passengers for hire, and barges carrying passengers for hire.

§ 24.01–5 [Removed]

56. Remove § 24.01–5.

§ 24.10–9 [Amended]

57. In § 24.10–9, remove the words "title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder" and add, in their place, the words "Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes".

§ 24.10–15 [Amended]

58. In § 24.10–15, remove the words "title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder" and add, in their place, the words "Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes".

§ 24.10–17 [Amended]

59. In § 24.10–17(a), remove the words ", since such a boat is also subject to the Act of April 25, 1940, as amended (46 U.S.C. 526–526u), and the regulations promulgated thereunder".

§ 24.10–21 [Amended]

60. In § 24.10–21, remove the words "title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder" and add, in their place, the words "Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes".

§ 24.15–5 [Amended]

61. In § 24.15–5, remove the paragraph designation (a) and remove the words "the Motor Boat Act of 1940 (46 U.S.C. 526–526u) and the regulations in".

PART 25—REQUIREMENTS

62. The authority citation for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903 (b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

§ 25.26–5 [Amended]

63. In § 25.26–5, in paragraphs (b) introductory text and (c) introductory text, remove the words "After March 10, 1994," and capitalize the letter "t" in the word "the".

§ 25.26–20 [Amended]

64. In § 25.26–20, in paragraphs (a) introductory text and (b) introductory text, remove the words "After March 10, 1994," and capitalize the letter "t" in the word "the".

65. In § 25.40–1, revise paragraph (c) and (d) introductory text to read as follows:

§ 25.40–1 Tanks and engine spaces.

* * * * *

(c) Boats built after July 31, 1980, which are manufactured or used primarily for noncommercial use; which are leased, rented or chartered to another for the latter's noncommercial use; which are engaged in the carriage of six or fewer passengers; or which are in compliance with the requirements of 33 CFR part 183 are exempted from these requirements.

(d) Boats built after July 31, 1978, which are manufactured or used primarily for noncommercial use; which are rented, leased or chartered to another for the latter's noncommercial use; or which are engaged in conveying six or fewer passengers are exempted from the requirements of paragraph (a) for fuel tank compartments that:

* * * * *

PART 26—OPERATIONS

66. The authority citation for part 26 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 6105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

67. Revise § 26.03–5 to read as follows:

§ 26.03–5 Action required after accident.

(a) Whenever an undocumented vessel is involved in a marine casualty, the master or individual in charge shall—

(1) Render necessary assistance to each individual affected to save that affected individual from danger caused by a marine casualty, so far as the master or individual in charge can do so without serious danger to the master's or the individual's vessel or to individuals on board; and

(2) Give the master's or individual's name and address and identification of the vessel to the master or individual in charge of any other vessel involved in the casualty, to any individual injured, and to the owner of any property damaged.

(b) Undocumented vessels involved in marine casualties shall report the casualty in accordance with the requirements of 33 CFR part 173, subpart C.

Subpart 26.10 [Removed]

68. Remove subpart 26.10 consisting of §§ 26.10–1 and 26.10–5.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

69. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

70. In § 28.380(b), insert the words "electrical heating tape," between the words "galley uptake," and "or similar source of ignition."

PART 30—GENERAL PROVISIONS

71. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.01–3 [Removed]

72. Remove § 30.01–3.

§ 30.01–15 [Amended]

73. In § 30.01–15, remove paragraph (a) and the paragraph designation (b).

§ 30.01–20 [Removed]

74. Remove § 30.01–20.

§ 30.10–19 [Amended]

75. In § 30.10–19, remove the words "title 52, R.S., acts amendatory thereof or supplemental thereto, rules and regulations thereunder and the inspections required thereby" and add, in their place, the words "Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes".

§ 30.10–43 [Amended]

76. In § 30.10–43, remove the words "title 52, R.S., acts amendatory thereof or supplemental thereto, rules and regulations thereunder, and the inspections required thereby" and add, in their place, the words "Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes".

§ 30.10–47 [Amended]

77. In § 30.10–47, remove the words "title 52, R.S., acts amendatory thereof or supplemental thereto, rules and regulations thereunder and the inspections required thereby" and add, in their place, the words "Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes".

Subpart 30.20 [Removed]

78. Remove subpart 30.20 consisting of §§ 30.20–1 through 30.20–50.

PART 31—INSPECTION AND CERTIFICATION

79. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

80. Revise § 31.10–5(a)(1) to read as follows:

§ 31.10–5 Inspection of new tank vessels—TB/ALL.

(a) * * *

(1) The plans and specifications shall include the arrangement of the cargo gear. Plans and specifications for cargo gear shall be approved by either a recognized classification society or the International Cargo Gear Bureau, Inc., whose home office is located at 90 West Street, Suite 1612, New York, NY 10006, prior to submission to the Officer in Charge, Marine Inspection.

* * * * *

81. In § 31.10–16, revise paragraphs (a), (b)(3), (c), and (e) to read as follows:

§ 31.10–16 Inspection and certification of cargo gear—TB/ALL.

(a) The owner, operator or master shall provide the Officer in Charge, Marine Inspection with all current valid certificates and registers of cargo gear issued by competent persons or a recognized organization or nonprofit association approved by the Commandant to certify the suitability of the cargo gear.

(b) * * *

(3) Indicate that the cargo gear described in the certificate or register complies with the standards of the organization or association authorized to issue the certificate or register.

(c) Competent persons for the purposes of this section are defined as—

(1) Surveyors of a classification society recognized by the Commandant under 46 U.S.C. 3316;

(2) Surveyors of a recognized cargo gear organization; or

(3) Responsible officials or employees of the testing laboratories, companies, or organizations who conduct tests of pieces of loose cargo gear, wire rope, or the annealing of gear as may be required by the standards of the organization or association authorized to issue the certificate or register.

* * * * *

(e) The authorization for an organization to perform the required inspection is granted at the discretion of the Commandant (G–MOC), and will continue until suspended, canceled, or modified. The following organization is currently recognized, by the Commandant (G–MOC), as having the technical competence to handle the required inspection:

The International Cargo Gear Bureau, Inc., with home office at 90 West Street, Suite 1612, New York, NY 10006.

82. In § 31.10–20, revise paragraphs (a) and (d) to read as follows:

§ 31.10–20 Definitions relating to hull examinations—TB/ALL.

* * * * *

(a) *Drydock examination* means hauling out of a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings.

* * * * *

(d) *Underwater survey* means the examination, while the vessel is afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings.

83. In § 31.10–21, revise paragraphs (d)(4), (e) introductory text, and (e)(1) to read as follows:

§ 31.10–21 Drydock examination, internal structural examination, cargo tank internal examination, and underwater survey intervals—TB/ALL.

* * * * *

(d) * * *

(4) The means that will be provided for examining through-hull fittings.

* * * * *

(e) Vessels otherwise qualifying under paragraph (d) of this section, that are 15 years of age or older, may be considered for continued participation in or entry into the underwater survey program on a case-by-case basis if—

(1) Before the vessel's next scheduled drydocking, the owner or operator submits a request for participation or continued participation to Commandant (G–MOC);

* * * * *

§ 31.10–33 [Removed]

84. Remove § 31.10–33.

Subpart 31.37—[Removed]

85. Remove subpart 31.37 consisting of §§ 31.37–1 through 31.37–85.

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

86. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

87. Revise § 32.53–1(c) to read as follows:

§ 32.53–1 Application—T/ALL.

* * * * *

(c) This part does not apply to vessels as stated in 46 U.S.C. 3702.

§ 32.53–10 [Amended]

88. In § 32.53–10, remove paragraphs (c) through (f) and revise paragraph (b) to read as follows:

§ 32.53–10 General—T/ALL.

* * * * *

(b) Each inert gas system must be designed, constructed and installed in accordance with the provisions of SOLAS II–2, regulation 62, with the following provisions:

(1) Acceptable types of water seals include the wet and semiwet type. Other types of seals may be accepted on a case by case basis if approval is given by the Coast Guard Marine Safety Center.

(2) If a vapor collection system required to meet part 39 of this subchapter is connected to the inert gas system, the instruction manual required by SOLAS II–2, regulation 62.21 must include procedures relating to vapor collection operations.

§ 32.53–15 [Removed]

89. Remove § 32.53–15.

§ 32.53–20 [Removed]

90. Remove § 32.53–20.

§ 32.53–25 [Removed]

91. Remove § 32.53–25.

§ 32.53–30 [Removed]

92. Remove § 32.53–30.

§ 32.53–35 [Removed]

93. Remove § 32.53–35.

§ 32.53–40 [Removed]

94. Remove § 32.53–40.

§ 32.53–45 [Removed]

95. Remove § 32.53–45.

§ 32.53–50 [Removed]

96. Remove § 32.53–50.

§ 32.53–55 [Removed]

97. Remove § 32.53–55.

§ 32.53–60 [Removed]

98. Remove § 32.53–60.

§ 32.53–65 [Removed]

99. Remove § 32.53–65.

§ 32.53–70 [Removed]

100. Remove § 32.53–70.

§ 32.53–75 [Removed]

101. Remove § 32.53–75.

§ 32.53–80 [Removed]

102. Remove § 32.53–80.

§ 32.53–85 [Removed]

103. Remove § 32.53–85.

104. Add § 32.55–20(e) to read as follows:

§ 32.55–20 Venting of cargo tanks of tankships constructed on or after July 1, 1951—T/ALL.

* * * * *

(e) Tank vents which meet the requirements of SOLAS will be considered equivalent to the provisions of this section.

§ 32.55–40 [Removed]

105. Remove § 32.55–40.

106. In § 32.56–1, redesignate the text as paragraph (a) and add paragraph (b) to read as follows:

§ 32.56–1 Application—T/ALL.

* * * * *

(b) SOLAS-certificated vessels may be considered equivalent to the provisions of this subpart.

107. Add § 32.57–1(b) to read as follows:

§ 32.57–1 Application—TB/ALL.

* * * * *

(b) SOLAS-certificated vessels may be considered equivalent to the provisions of this subpart.

108. Revise § 32.57–10(d)(4) to read as follows:

§ 32.57–10 Construction —TB/ALL.

* * * * *

(d) * * *

(4) The integrity of any deck in way of a stairway opening, other than a stairtower, shall be maintained by means of "A" or "B" Class divisions or bulkheads and doors at one level. The integrity of a stairtower shall be maintained by "A" Class doors at every level. The doors shall be of the self-closing type. No means shall be provided for locking such doors, except that crash doors or locking devices capable of being easily forced in an emergency may be employed provided a permanent and conspicuous notice to this effect is attached to both sides of the door. Holdback hooks or other means of permanently holding the door open will not be permitted. However, magnetic holdbacks operated from the bridge or from other suitable remote control positions are acceptable.

* * * * *

§ 32.60–25 [Amended]

109. In § 32.60–25, remove paragraph (b) and remove the designation of paragraph (a).

PART 34—FIREFIGHTING EQUIPMENT

110. The authority citation for part 34 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

111. In § 34.01–15(b), add in alphabetical order to the organization referenced, the following standard:

§ 34.01–15 Incorporation by reference.

* * * * *

(b) * * *

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269–9101.

NFPA 13–1996, Standard for the Installation of Sprinkler Systems—34.30–1

§ 34.10–5 [Amended]

112. Revise § 34.10–5(f) to read as follows:

§ 34.10–5 Fire pumps—T/ALL.

* * * * *

(f) Fire pumps may be used for other purposes provided at least one of the required pumps is kept available for use on the fire system at all times. In no case shall a pump having connection to an oil line be used as a fire pump. Branch lines connected to the fire main for purposes other than fire and deck wash shall be arranged so that the requirements of paragraph (b) of this section and any other services installed on the fire main can be met simultaneously.

* * * * *

§ 34.10–10 [Amended]

113. Revise § 34.10–10(i) to read as follows:

§ 34.10–10 Fire station hydrants, hose and nozzles—T/ALL.

* * * * *

(i) Fire station hydrant connections shall be brass, bronze, or other equivalent metal. Couplings shall either:

(1) Use National Standard fire hose coupling threads for the 1½ inch (38 millimeter) and 2½ inch (64 millimeter) hose sizes, i.e., 9 threads per inch for 1½ inch hose, and 7½ threads per inch for 2½ inch hose; or

(2) Be a uniform design for each hose diameter throughout the vessel.

* * * * *

§ 34.15 [Amended]

114. In § 34.15–5, remove paragraph (d) and redesignate paragraph (e) as paragraph (d).

114a. Revise § 34.20–5(b)(1) to read as follows:

§ 34.20–5 Quantity of foam required—T/ALL.

* * * * *

(b) * * *

(1) For usual petroleum products the rate of supply of foam solution shall be not less than the greatest of the following:

(i) 0.6 liters/min per square meter of cargo tanks deck area, where cargo tanks deck area means the maximum breadth of the ship multiplied by the total longitudinal extent of the cargo tank spaces;

(ii) 6 liters/min per square meter of the horizontal sectional area of the single tank having the largest such area; or

(iii) 3 liters/min per square meter of the area protected by the largest monitor, such area being entirely forward of the monitor, but not less than 1,250 liters/min.

* * * * *

115. Add subpart 34.30, consisting of § 34.30–1, to read as follows:

Subpart 34.30—Automatic Sprinkler Systems, Details

§ 34.30–1 Application—TB/ALL.

Automatic sprinkler systems shall comply with NFPA 13–1996.

PART 35—OPERATIONS

116. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 35.01–3 [Amended]

117. In § 35.01–3(b), remove the Philadelphia address for ASTM and add, in its place, a new address and add in numerical order of the incorporated standards the following standard:

§ 35.01–3 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

* * * * *

ASTM Adjunct F 1626, Symbols for Use in Accordance with Regulation II–2/20 of the 1974 SOLAS Convention, PCN 12–616260–01, © 1996—35.10–3

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom.

Resolution A.654(16), Graphical Symbols for Fire Control Plans—35.10–3

* * * * *

§ 35.01–40 [Removed]

118. Remove § 35.01–40.

§ 35.07–10 [Amended]

119. In § 35.07–10, in paragraph (b)(2), remove the words "46 U.S.C., sections 85e and 88e, and" and in paragraph (c)(2), remove the words "See 46 U.S.C. 85e and 88e."

120. Revise § 35.10–3 to read as follows:

§ 35.10–3 Display of plans—TB/ALL.

Barges with sleeping accommodations for more than six persons and all self-propelled vessels shall have permanently exhibited for the guidance of the officer in charge of the vessel the following plans:

(a) General arrangement plans showing for each deck the fire control stations, the various sections enclosed by fire-resisting bulkheads, together with particulars of the fire alarms, detecting systems, the sprinkler installation (if any), the fire extinguishing appliances, means of access to different compartments, decks, etc., and the ventilating systems including particulars of the master fan controls, the positions of dampers, the location of the remote means of stopping fans, and identification numbers of the ventilating fans serving each section. If cargo compartments are "specially suitable for vehicles," they shall be so indicated on the plan. Alternatively, at the discretion of the Commandant, the aforementioned details may be set out in any other medium, such as a booklet or on computer software, provided that the aforementioned details are available to each officer and a copy is retained on board at all times and is accessible during emergencies. For vessels constructed on or after September 30, 1997 or for existing vessels which have their plans redrawn, the symbols used to identify the aforementioned details shall be in accordance with IMO Assembly resolution A.654(16). These identical symbols can also be found in ASTM Adjunct F 1626.

(b) Plans showing clearly for each deck the boundaries of the watertight compartments, the openings therein with the means of closure and position of any controls thereof, and the arrangements for the correction of any list due to flooding.

(c) The information contained in the plans shall be kept up-to-date, and any changes shall be recorded as soon as possible.

Subpart 35.12 [Removed]

121. Remove subpart 35.12 consisting of §§ 35.12–1 through 35.12–5.

122. Revise § 35.25–15 to read as follows:

§ 35.25–15 Carrying of excess steam—TB/ALL.

It shall be the duty of the chief engineer of any tank vessel to see that a steam pressure is not carried in excess of that allowed by the certificate of inspection, and to see that the safety valves, once set by the inspector, are in no way tampered with or made inoperative.

§ 35.25–20 [Removed]

123. Remove § 35.25–20.

§ 35.30–20 [Amended]

124. In § 35.30–20(d), remove the first sentence.

§ 35.30–40 [Amended]

125. In § 35.30–40, remove paragraph (b), redesignate paragraph (a) as introductory text, and redesignate old

paragraphs (a)(1) through (a)(3) as paragraphs (a) through (c), respectively.

126. Revise § 35.35–85 to read as follows:

§ 35.35–85 Air compressors—TB/ALL.

No person may operate, install, or reinstall an air compressor in a cargo area described in § 32.35–15 of this subchapter.

PART 39—VAPOR CONTROL SYSTEMS

127. The authority citation for part 39 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. 3306, 3703, 3715(b); 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 39.10–13 [Amended]

128. In § 39.10–13, remove paragraph (b) and redesignate paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively.

PART 50—GENERAL PROVISIONS

129. The authority citation for part 50 continues to read as follows:

Authority: 43 U.S.C 1333; 46 U.S.C 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 50.01–20 also issued under the authority of 44 U.S.C 3507.

§ 50.01–5 [Removed]

130. Remove § 50.01–5.

§ 50.10–5 [Amended]

131. In § 50.10–5, remove the words "title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder" and add, in their place, the words "Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations under these statutes".

§ 50.10–10 [Amended]

132. In § 50.10–10, remove the words "title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder," and add, in their place, the words "Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations under these statutes".

§ 50.10–15 [Amended]

133. In § 50.10–15, remove the words "title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder," and add, in their place, the words "Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations under these statutes".

PART 56—PIPING SYSTEMS AND APPURTENANCES

134. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 56.01–2 [Amended]

135. Amend § 56.01–2(b) as follows:

a. Remove the words "ASTM B 154–82, Mercurous Nitrate Test for Copper and Copper Alloy, 56.60–2";

b. Remove the words "ASTM F 1173–88" and add, in their place, the words "ASTM F 1173–95";

c. Remove the Philadelphia address for ASTM and add, in its place, a new address; and

d. Add, in alphabetical order to the organizations whose standards are incorporated by reference, the following additional standards:

§ 56.01–2 Incorporation by reference.

* * * * *

(b) * * *

American Society for Testing and Materials (ASTM)

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

* * * * *

ASTM B 858M–95 Standard Test Method for Determination of Susceptibility to Stress Corrosion Cracking in Copper Alloys Using an Ammonia Vapor Test—Table 56.60–2(a)

* * * * *

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom. Resolution A.753(18) Guidelines for the Application of Plastic Pipes on Ships—56.60–25

* * * * *

136. In § 56.07–10, revise paragraphs (c) and (e) to read as follows:

§ 56.07–10 Design conditions and criteria (modifies 101–104.7).

* * * * *

(c) *Ship motion dynamic effects (replaces 101.5.3).* Piping system designs shall account for the effects of ship motion and flexure, including weight, yaw, sway, roll, pitch, heave, and vibration.

* * * * *

(e) *Pressure design (modifies 102.3, 104.1.2 and 104.4).*

(1) Materials for use in piping must be selected as described in § 56.60–1(a) of this part. Tabulated allowable stress values for these materials shall be measured as indicated in 102.3.1 of ANSI–B–31.1, Tables 56.60–1(a) and 56.60–2(a).

(2) Allowable stress values, as found in the ASME Code, which are restricted in application by footnote or are italicized shall not be used. Where multiple stresses are listed for a material, the lowest value of the listing shall be used unless otherwise approved by the Commandant. In all cases the temperature is understood to be the actual temperature of the component.

(3) Where the operator desires to use a material not listed, permission must be obtained from the Commandant. Requirements for testing found in § 56.97–40(a)(2) and § 56.97–40(a)(4) may affect design and should be considered. Special design limitations may be found for specific systems. Refer to subpart 56.50 for specific requirements.

* * * * *

137. Revise § 56.10–5(d) to read as follows:

§ 56.10–5 Pipe.

* * * * *

(d) *Nonmetallic pipe.* Plastic pipe may be used subject to the conditions described in § 56.60–25.

138. Revise § 56.20–15 to read as follows:

§ 56.20–15 Valves employing resilient material.

(a) A valve in which the closure is accomplished by resilient nonmetallic material instead of a metal to metal seat shall comply with the design, material, construction and testing for valves specified in this part.

(b) Valves employing resilient material shall be divided into three categories, Positive shutoff, Category A, and Category B, and shall be tested and used as follows:

(1) *Positive shutoff valves.* The closed valve must pass less than 10 ml/hr (0.34 fluid oz/hr) of liquid or less than 3 l/hr (0.11 cubic ft/hr) of gas per inch nominal pipe size through the line after removal of all resilient material and testing at full rated pressure. Packing material must be fire resistant. Piping subject to internal head pressure from a tank containing oil must be fitted with positive shutoff valves located at the tank in accordance with § 56.50–60(d). Otherwise positive shutoff valves may be used in any location in lieu of a required Category A or Category B valve.

(2) *Category A valves.* The closed valve must pass less than the greater of 5 percent of its fully open flow rate or 15 percent divided by the square root of the nominal pipe size (NPS) of its fully open flow rate through the line after complete removal of all resilient seating material and testing at full rated pressure; as represented by the formula: (15% / √ NPS) (Fully open flow rate). Category A valves may be used in any location except where positive shutoff valves are required by § 56.50–60(d). Category A valves are required in the following locations:

(i) Valves at vital piping system manifolds;

(ii) Isolation valves in cross-connects between two piping systems, at least one of which is a vital system, where failure of the valve in a fire would prevent the vital system(s) from functioning as designed.

(iii) Valves providing closure for any opening in the shell of the vessel.

(3) *Category B valves.* The closed valve will not provide effective closure of the line or will permit appreciable leakage from the valve after the resilient material is damaged or destroyed. Category B valves are not required to be tested and may be used in any location except where a Category A or positive shutoff valve is required.

(c) If a valve designer elects to use either calculations or actual fire testing in lieu of material removal and pressure testing, the proposed calculation method or test plan must be accepted by the Commandant (G–MSE).

139. Revise § 56.50–30(b)(6) to read as follows:

§ 56.50–30 Boiler feed piping.

* * * * *

(b) * * *

(6) A sentinel valve is not required for vessels constructed after September 30, 1997, and for other vessels to which it has been shown to the satisfaction of the cognizant Officer in Charge, Marine Inspection or the Coast Guard Marine Safety Center, that a sentinel valve is not necessary for the safe operation of the particular boiler.

* * * * *

§ 56.50–50 [Amended]

140. In § 56.50–50, remove paragraph (c)(3); redesignate paragraph (c)(4) as paragraph (c)(3); and revise paragraph (c)(2) to read as follows:

§ 56.50–50 Bilge and ballast piping.

* * * * *

(c) * * *

(2) Each passenger vessel on an international voyage must comply with the provisions of SOLAS II–1/21.

* * * * *

§ 56.50–90 [Amended]

141. In § 56.50–90(e), remove the sentence "No perforations or openings will be permitted throughout the length of a sounding pipe where fitted to oil tanks."

142. Add § 56.50–103 to read as follows:

§ 56.50–103 Fixed oxygen-acetylene distribution piping.

(a) This section applies to fixed piping installed for the distribution of oxygen and acetylene carried in cylinders as vessels stores.

(b) The distribution piping shall be of at least standard wall thickness and shall include a means, located as close to the supply cylinders as possible, of regulating the pressure from the supply cylinders to the suitable pressure at the outlet stations.

(c) Acetylene distribution piping and pipe fittings must be seamless steel. Copper alloys containing less than 65 percent copper may be used in connection with valves, regulators, gages, and other equipment used with acetylene.

(d) Oxygen distribution piping and pipe fittings must be seamless steel or copper.

(e) When more than two cylinders are connected to a manifold, the supply pipe between each cylinder and manifold shall be fitted with a non-return valve.

(f) Except for the cylinder manifolds, acetylene is not to be piped at a pressure in excess of 100 kPa (14.7 psi).

(g) Pipe joints on the low pressure side of the regulators shall be welded.

(h) Branch lines shall not run through unventilated spaces or accommodation spaces.

(i) Relief valves or rupture discs shall be installed as relief devices in the piping system if the maximum design pressure of the piping system can be exceeded. The relief device set pressure shall not exceed the maximum design pressure of the piping system. Relief devices shall discharge to a location in the weather at least 3 m (10 ft) from sources of ignition or openings to spaces or tanks.

(j) Outlet stations are to be provided with suitable protective devices which will prevent the back flow of gas into the supply lines and prevent the passage of flame into the supply lines.

(k) Shutoff valves shall be fitted at each outlet.

§ 56.60–2 [Amended]

143. In § 56.60–2, remove paragraph (a). Redesignate paragraph (b) introductory text as introductory text to the section. Redesignate paragraphs (b)(1), (b)(2), (b)(3), (b)(3)(i), (b)(3)(i)(A), and (b)(3)(i)(B) as paragraphs (a), (b), (c), (c)(1), (c)(1)(i), and (c)(1)(ii), respectively. Redesignate the text of paragraph (b)(3)(ii) as paragraph (c)(2) and revise (c)(2), and in table 56.60–2(a), revise footnotes 7 and 9 to read as follows:

§ 56.60–2 Limitations on materials.

* * * * *

(c) * * *

(2) For those specifications in which no filler material is used in the welding process, the ultrasonic examination as required by item S–6 in ASTM A–376 shall be certified as having been met for service above 800 °F.

Table 56.60–2(a)—Adopted Specifications not Listed in the ASME Code

* * * * *

7 An ammonia vapor test, in accordance with ASTM B 858M–95, shall be performed on a representative model of each finished product design.

* * * * *

9 An ammonia vapor test, in accordance with ASTM B 858M–95, shall be performed on a representative model for each finished product design. Tension tests shall be performed to determine tensile strength, yield strength, and elongation. Minimum values shall be those listed in table 3 of ASTM B283.

§ 56.60–25 [Amended]

144. In § 56.60–25, remove paragraph (b); redesignate paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively; and revise paragraph (a) to read as follows:

§ 56.60–25 Nonmetallic materials.

(a) Plastic pipe installations shall be in accordance with the International Maritime Organization (IMO) resolution A.753(18), Guidelines for the Application of Plastic Pipes on Ships and the following supplemental requirements:

(1) Materials used in the fabrication of plastic pipe shall comply with the appropriate standards listed in § 56.01–2 of this chapter.

(2) Plastic pipe is not permitted in a concealed space in an accommodation or service area, such as behind ceilings or linings or between double bulkheads, unless—

(i) Each trunk or duct containing such piping is completely surrounded by "A" class divisions; or

(ii) An approved smoke-detection system is fitted in the concealed space and each penetration of a bulkhead or deck and each installation of a draft stop is made in accordance with IMO resolution A.753(18) to maintain the integrity of fire divisions.

(3) Plastic pipe used outboard of the required metallic shell valve in any piping system penetrating the vessel's shell (see § 56.50–95(f)) shall have the same fire endurance as the metallic shell valve. Where the shell valve and the plastic pipe are in the same unmanned space, the valve shall be operable from above the freeboard deck.

(4) Pipe that is to be used for potable water shall bear the seal of approval or NSF mark of the National Sanitation Foundation Testing Laboratory, Incorporated, School of Public Health, University of Michigan, Ann Arbor, MI 48103.

* * * * *

145. Revise § 56.95–10(a)(1) and footnote 1 to read as follows:

§ 56.95–10 Type and extent of examination required.

(a) * * *

(1) 100 percent radiography [1] is required for all Class I, I–L, and II–L piping with wall thickness equal to or greater than 10 mm (.375 in.).

* * * * *

146. Add § 56.97–40(a)(10) to read as follows:

§ 56.97–40 Installation tests.

(a) * * *

(10) Fixed oxygen-acetylene system piping.

* * * * *

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

147. The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 58.10–10 [Amended]

148. In § 58.10–10, remove paragraph (b) and redesignate paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

PART 61—PERIODIC TESTS AND INSPECTIONS

149. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

150. Revise § 61.05–20 to read as follows:

§ 61.05–20 Boiler safety valves.

Each safety valve for a drum, superheater, or reheater of a boiler shall be tested at the interval specified by table 61.05–10.

151. In § 61.10–5, revise paragraphs (a) and (b) to read as follows:

§ 61.10–5 Pressure vessels in service.

(a) *Basic requirements.* Each pressure vessel must be examined or tested every 5 years. The extent of the test or examination should be that necessary to determine that the pressure vessel's condition is satisfactory and that the pressure vessel is fit for the service intended.

(b) *Internal and external tests and inspections.* (1) Each pressure vessel listed on the Certificate of Inspection must be thoroughly examined externally every 5 years.

(2) In addition, each pressure vessel listed on the Certificate of Inspection that is fitted with a manhole or other inspection opening so it can be satisfactorily examined internally, must be opened for internal examination every 5 years.

(3) No pressure vessel need be hydrostatically tested except when a defect is found that, in the marine inspector's opinion, may affect the safety of the pressure vessel. In this case, the pressure vessel should be hydrostatically tested at a pressure of 1 ½ times the maximum allowable working pressure.

* * * * *

152. Revise § 61.15–12(b) to read as follows:

§ 61.15–12 Nonmetallic expansion joints.

* * * * *

(b) A nonmetallic expansion joint must be replaced 10 years after it has been placed into service if it is located in a system which penetrates the side of the vessel and both the penetration and the nonmetallic expansion joint are located below the deepest load waterline. The Officer in Charge, Marine Inspection may grant an extension of the ten year replacement to coincide with the vessel's next drydocking.

153. Revise § 61.20–5(b) to read as follows:

§ 61.20–5 Drydock examination.

* * * * *

(b) Sea chests, sea valves, sea strainers, and valves for the emergency bilge suction shall be opened up for examination every 5 years at the time of drydocking.

PART 63—AUTOMATIC AUXILIARY BOILERS

154. The authority citation for part 63 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

155. In § 63.05–1(b), add, in alphabetical order to the organizations referenced, the following standards:

§ 63.05–1 Incorporation by reference.

* * * * *

(b) * * *

* * * * *

American Society for Testing and Materials (ASTM)

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

Standard Specifications for Shipboard Incinerators, ASTM F 1323–90—63.25–9

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom.

Resolution MEPC.59(33), Revised Guidelines for the Implementation of Annex V of MARPOL 73/78—63.25–9

International Organization for Standardization

Case postale 56, CH–1211, Geneve 2009.

Shipbuilding-Shipboard Incinerators-Requirements, 13617 (1995)—63.25–9

* * * * *

§ 63.25–3 [Amended]

156. In § 63.25–3(j), remove the last sentence.

157. Revise § 63.25–9 to read as follows:

§ 63.25–9 Incinerators.

Incinerators installed on or after March 26, 1998 must meet the requirements of IMO resolution MEPC.59(33). Incinerators in compliance with ISO standard 13617 (1995), "Shipbuilding-Shipboard Incinerators-Requirements" are considered to meet the requirements of IMO resolution MEPC.59(33). Incinerators in compliance with both ASTM F–1323–90, "Standard Specifications for Shipboard Incinerators" and Annexes A1–A3 of IMO resolution MEPC.59(33) are considered to meet the requirements of IMO resolution MEPC.59(33).

PART 68—DOCUMENTATION OF VESSELS PURSUANT TO EXTRAORDINARY LEGISLATIVE GRANTS

158. The authority citation for part 68 continues to read as follows:

Authority: 46 U.S.C. 2103; 49 CFR 1.46. Subpart 68.01 also issued under 46 U.S.C. App. 676; subpart 68.05 also issued under 46 U.S.C. 12106(d).

[1] Where for some reason, such as a joint configuration, radiography is not applicable, another approved examination may be utilized.

Subpart 68.01—[Amended]

159. In Subpart 68.01, revise the heading to read as follows:

Subpart 68.01—Regulations Implementing Provisions for 46 U.S.C. App. 833–1

§ 68.01–1 [Amended]

160. In § 68.01–1, in the definition of "*Act*" and the definition of "*883–1 citizen*" or "*883–1 corporation*" remove the words "(46 U.S.C. 883–1)" and add, in their place, the words "(46 U.S.C. App. 883–1)".

§ 68.01–3 [Amended]

161. In § 68.01–3, in the introductory paragraph, remove the words "(46 U.S.C. 883–1)" and add, in their place, the words "(46 U.S.C. App. 883–1)" and revise the section heading to read as follows:

§ 68.01–3 Requirements for citizenship under 46 U.S.C. App. 883–1.

162. In § 68.01–15(c), revise the introductory text to read as follows:

§ 68.01–15 Restrictions.

* * * * *

(c) A vessel owned by an 883–1 corporation may be operated under demise or bareboat charter to a common or a contract carrier subject to 49 U.S.C. Chapter 101 if the corporation is a U.S. citizen as defined in 46 U.S.C. App. 802.

* * * * *

PART 69—MEASUREMENT OF VESSELS

163. The authority citation for part 69 continues to read as follows:

Authority: 46 U.S.C. 2301, 14103; 49 CFR 1.46.

§ 69.11 [Amended]

164. In § 69.11; remove paragraph (a)(2)(iv), and redesignate paragraphs (a)(2)(v) and (a)(2)(vi) as paragraphs (a)(2)(iv) and (a)(2)(v), respectively. In paragraph (a)(5), remove the words "After July 18, 1994," and capitalize the word "A" directly following.

165. In § 69.117(f)(4), revise the introductory text to read as follows:

§ 69.117 Spaces exempt from inclusion in gross tonnage.

* * * * *

(f) * * *

(4) If the total of all water ballast spaces to be exempted from gross tonnage exceeds 30 percent of the vessel's gross tonnage (as calculated under this subpart without any allowance for water ballast), a justification of the operating conditions that require the water ballast must be submitted to the measuring organization for approval. Although a single condition may justify all water ballast spaces, several conditions may be necessary in other cases. However, a particular tank is not justified by a condition if another tank already justified by another condition could be used as effectively. The justification must—

* * * * *

PART 70—GENERAL PROVISIONS

166. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

§ 70.01–1 [Amended]

167. In § 70.01–1(a), remove the paragraph designation (a) and remove the words "in accordance with the intent of title 52 of the Revised Statutes and acts amendatory thereof or supplemental thereto, as well as to implement various International Conventions for Safety of affect the merchant marine".

§ 70.01–5 [Removed]

168. Remove § 70.01–5.

§ 70.05–15 [Removed]

169. Remove § 70.05–15.

§ 70.05–25 [Removed]

170. Remove § 70.05–25.

§ 70.10–11 [Amended]

171. In § 70.10–11, remove the words "title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder" and add, in their place, the words "Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes".

§ 70.10–25 [Amended]

172. In § 70.10–25, remove the words "title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder" and add, in their place, the words "Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes".

§ 70.10–33 [Amended]

173. In § 70.10–33, remove the words "title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder" and add, in their place, the words "Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes".

Subpart 70.30 [Removed]

174. Remove subpart 70.30 consisting of §§ 70.30–1 through 70.30–5.

PART 71—INSPECTION AND CERTIFICATION

175. The authority citation for part 71 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 71.01–10 [Amended]

176. In § 71.01–10(a), remove the words "except for those vessels subject only to the Act of May 10, 1956 (46 U.S.C. 390–390g), when the certificates will be issued for a period of 3 years".

§ 71.25–25 [Amended]

177. In § 71.25–25, revise paragraphs (a)(5), (b)(3), and (c) to read as follows and remove paragraph (e):

§ 71.25–25 Hull equipment.

(a) * * *

(5) The owner, operator or master shall provide the Officer in Charge, Marine Inspection with all current valid certificates and registers of cargo gear issued by an organization recognized by the Commandant under § 31.10–16.

(b) * * *

(3) Indicate that the cargo gear described in the certificate or register complies with the standards of the organization or association authorized to issue the certificate or register.

(c) Competent persons for the purposes of this section are defined as—

(1) Surveyors of a classification society recognized by the Commandant under 46 U.S.C. 3316.

(2) Surveyors of a cargo gear organization recognized by the Commandant under § 31.10–16.

(3) Responsible officials or employees of the testing laboratories, companies, or organizations who conduct tests of pieces of loose cargo gear, wire rope, or the annealing of gear as may be required by the standards of the organization or association authorized to issue the certificate or register.

* * * * *

§ 71.30–1 [Amended]

178. In § 71.30–1, remove paragraph (b) and remove the paragraph designation (a).

Subpart 71.47 [Removed]

179. Remove subpart 71.47 consisting of §§ 71.47–1 through 71.47–85.

180. Revise § 71.50–1(a) to read as follows:

§ 71.50–1 Definitions relating to hull examinations.

* * * * *

(a) *Drydock examination* means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings.

* * * * *

181. Add § 71.65–1(c) to read as follows:

§ 71.65–1 General.

* * * * *

(c) Plans and specifications for cargo gear shall be approved by either a recognized classification society or a recognized cargo gear organization as defined in § 71.25–25.

PART 72—CONSTRUCTION AND ARRANGEMENT

182. The authority citation for part 72 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

183. Revise § 72.01–1 to read as follows:

§ 72.01–1 Application.

The provisions of this subpart, with the exception of § 72.01–90, shall apply to all vessels contracted for on or after November 19, 1952. Vessels contracted for prior to November 19, 1952, shall meet the requirements of § 72.01–90.

§ 72.05–10 [Amended]

184. In § 72.05–10, remove paragraph (m). Redesignate paragraphs (n) through (q) as paragraphs (m) through (p), respectively.

§ 72.30–5 [Removed]

185. Remove § 72.30–5.

PART 76—FIRE PROTECTION EQUIPMENT

186. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306, E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

187. In § 76.01–2(b), add, in alphabetical order to the organizations referenced, the following standard:

§ 76.01–2 Incorporation by reference.

* * * * *

(b) * * *

National Fire Protection Association (NFPA)

1 Batterymarch Park, Quincy, MA 02269–9101.

NFPA 13–1996, Standard for the Installation of Sprinkler Systems—76.25–1

188. Revise § 76.10–5(f) to read as follows:

§ 76.10–5 Fire pumps.

* * * * *

(f) Fire pumps may be used for other purposes provided at least one of the required pumps is kept available for use on the fire system at all times. In no case shall a pump having connection to an oil line be used as a fire pump. Branch lines connected to the fire main for purposes other than fire and deck wash shall be arranged so that the requirements of paragraphs (b) and (c) of this section and any other services installed on the fire main can be met simultaneously.

* * * * *

189. In § 76.10–10, revise the heading and paragraph (n)(1) to read as follows:

§ 76.10–10 Fire station hydrants, hose and nozzles—T/ALL.

* * * * *

(n) * * *

(1) Fire station hydrant connections shall be brass, bronze, or other equivalent metal. Couplings shall either—

(i) Use National Standard fire hose coupling threads for the 1½ inch (38 millimeter) and 2½ inch (64 millimeter) hose sizes, i.e., 9 threads per inch for 1½ inch hose, and 7½ threads per inch for 2½ inch hose; or

(ii) Be a uniform design for each hose diameter throughout the vessel.

* * * * *

§ 76.15–5 [Remove and Reserve]

190. Remove and reserve § 76.15–5(d).

191. Revise § 76.25–1 to read as follows:

§ 76.25–1 Application.

Where an automatic sprinkling system is installed, the systems shall comply with NFPA 13–1996.

192. Revise § 76.25–90 to read as follows:

§ 76.25–90 Installations contracted for prior to September 30, 1997.

(a) Existing arrangements, materials, and facilities previously approved shall be considered satisfactory so long as they meet the minimum requirements of this paragraph, and they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and replacements may be made to the same standards as the original installation.

(b) The details of the system shall be in general agreement with NFPA 13–1996 insofar as is reasonable and practicable. Existing piping, pumping facilities, sprinkler heads, and operating devices may be retained provided a reasonable coverage of the spaces protected is assured.

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

193. The authority citation for part 77 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

194. In § 77.35–10(a), add the following sentence to the end of the paragraph: "In lieu of the flame safety lamp, vessels may carry an oxygen depletion meter which is listed by a Coast Guard recognized independent laboratory as intrinsically safe."

PART 78—OPERATIONS

195. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

196. Add § 78.01–2 to read as follows:

§ 78.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20002, and at the U.S. Coast Guard, Lifesaving and Fire Safety Division (G–MSE–4), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

American Society for Testing and Materials (ASTM)

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

ASTM Adjunct F 1626, Symbols for Use in Accordance with Regulation 11–2/20 of the 1974 SOLAS Convention, PCN 12–616260–01, • 1996—78.45–1

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom.

Resolution A.654(16), Graphical Symbols for Fire Control Plans—78.45–1

197. Revise § 78.17–30 to read as follows:

§ 78.17–30 Examination of boilers and machinery.

It shall be the duty of the chief engineer when assuming charge of the boilers and machinery of a vessel to examine them thoroughly. If any parts thereof are in bad condition, the fact shall immediately be reported to the master, owner or agent, and the Officer in Charge, Marine Inspection.

§ 78.33–20 [Removed]

198. Remove § 78.33–20.

§ 78.37–10 [Amended]

199. In § 78.37–10(b) introductory text, remove the words "(R.S. 4467, as amended, 46 U.S.C. 460)".

Subpart 78.43—[Removed]

200. Remove subpart 78.43 consisting of § 78.43–1.

201. Revise § 78.45–1 to read as follows:

§ 78.45–1 When required.

(a) Vessels of 1,000 gross tons and over, and vessels of any tonnage on an international voyage shall have permanently exhibited for the guidance of the officer in charge of the vessel the following plans:

(1) General arrangement plans showing for each deck the fire control stations, the various sections enclosed by fire-resisting bulkheads, together with particulars of the fire alarms, detecting systems, the sprinkler installation (if any), the fire extinguishing appliances, means of access to different compartments, decks, etc., and the ventilating systems including particulars of the master fan controls, the positions of dampers, the location of the remote means of stopping fans, and identification numbers of the ventilating fans serving each section. If cargo compartments are "specially suitable for vehicles," they shall be so indicated on the plan. Alternatively, at the discretion of the Commandant, the listed details may be set out in a different medium, such as a booklet or on computer software, provided that the details are available to each officer and a written copy is retained on board at all times and is accessible during emergencies.

(2) For vessels constructed on or after September 30, 1997, and for existing vessels which have their plans redrawn, the symbols used to identify the aforementioned details shall be in accordance with IMO Assembly resolution A.654(16). The identical symbols can be found in ASTM Adjunct F 1626.

(3) Plans showing clearly for each deck and hold the boundaries of the watertight compartments, the openings therein with the means of closure and position of any controls thereof, and the arrangements for the correction of any list due to flooding.

(4) The aforementioned information required for this section shall be kept up-to-date, any alteration being recorded in the applicable medium as soon as practicable.

202. Revise § 78.47–27 to read as follows:

§ 78.47–27 Self-contained breathing apparatus.

Lockers or spaces containing self-contained breathing apparatus shall be marked "SELF-CONTAINED BREATHING APPARATUS."

Subpart 78.53 [Removed]

203. Remove subpart 78.53 consisting of §§ 78.53–1 through 78.53–5.

204. Revise § 78.55–1 to read as follows:

§ 78.55–1 Master and chief engineer responsible.

It shall be the duty of the master and the engineer in charge of the boilers of any vessel to require that a steam pressure is not carried in excess of that allowed by the certificate of inspection, and to require that the safety valves, once set by the inspector, are in no way tampered with or made inoperative.

205. Revise § 78.65–1 to read as follows:

§ 78.65–1 Licensed officers.

All licensed officers on a vessel shall have their licenses conspicuously displayed.

PART 80—DISCLOSURE OF SAFETY STANDARDS AND COUNTRY OF REGISTRY

206. The authority citation for part 80 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

207. Revise § 80.01 to read as follows:

§ 80.01 Purpose.

The purpose of the regulations in this part is to implement 46 U.S.C. 3504.

§ 80.40 [Amended]

208. In § 80.40, remove the words "46 U.S.C. 362(b)" and add, in their place, the words "46 U.S.C. 3504".

PART 90—GENERAL PROVISIONS

209. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

210. Revise § 90.01–1 to read as follows:

§ 90.01–1 Purpose of regulations.

The purpose of the regulations in this subchapter is to set forth uniform minimum requirements for cargo and miscellaneous vessels, as listed in Column 5 of table 90.05–1(a).

§ 90.01–5 [Removed]

211. Remove § 90.01–5.

§ 90.05–30 [Removed]

212. Remove § 90.05–30.

213. Revise § 90.10–9 to read as follows:

§ 90.10–9 Coast Guard District Commander.

This term means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within the officer's district, which include the inspection, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

214. Revise § 90.10–21 to read as follows:

§ 90.10–21 Marine inspector or inspector.

These terms mean any person from the civilian or military branch of the Coast Guard assigned under the superintendence and direction of an Officer in Charge, Marine Inspection, or any other person as may be designated for the performance of duties with respect to inspection, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

215. Revise § 90.10–23 introductory text to read as follows:

§ 90.10–23 Motorboat.

This term means any vessel indicated in Column 5 of table 90.05–1(a) 65 feet in length or less which is propelled by machinery (including steam). The length shall be measured from end to end over the deck excluding sheer. This term includes a boat temporarily or permanently equipped with a detachable motor. For the purpose of this subchapter, motorboats are included under the term "vessel" unless specifically noted otherwise. The various classes of motorboats are as follows:

* * * * *

216. Revise § 90.10–27 to read as follows:

§ 90.10–27 Officer in Charge, Marine Inspection (OCMI).

This term means any person from the civilian or military branch of the Coast

Guard designated as such by the Commandant and who, under the superintendence and direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties with respect to the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

217. In § 90.10–36, revise the first sentence to read as follows:

§ 90.10–36 Seagoing barge.

A seagoing barge is a nonself-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line (as defined in 46 CFR part 7). * * *

Subpart 90.30–1 [Removed]

218. Remove subpart 90.30–1 consisting of §§ 90.30–1 through 90.30–5.

PART 91—INSPECTION AND CERTIFICATION

219. The authority citation for part 91 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 91.25–25 [Amended]

220. In § 91.25–25, revise paragraphs (a)(3), (b)(3), and (c) to read as follows and remove paragraph (e):

§ 91.25–25 Hull equipment.

(a) * * *

(3) The owner, operator or master shall provide the Officer in Charge, Marine Inspection with all current valid certificates and registers of cargo gear issued by an organization recognized by the Commandant under § 31.10–16.

(b) * * *

(3) Indicate that the cargo gear described in the certificate or register complies with the standards of the organization or association authorized to issue the certificate or register.

(c) Competent persons for the purposes of this section are defined as—

(1) Surveyors of a classification society recognized by the Commandant under 46 U.S.C. 3316.

(2) Surveyors of a cargo gear organization recognized by the Commandant under § 31.10–16.

(3) Responsible officials or employees of the testing laboratories, companies, or organizations who conduct tests of pieces of loose cargo gear, wire rope, or the annealing of gear as may be required by the standards of the organization or association authorized to issue the certificate or register.

* * * * *

Subpart 91.37 [Removed]

221. Remove subpart 91.37 consisting of §§ 91.37–1 through 91.37–85.

222. In § 91.40–1, revise paragraphs (a) and (d) to read as follows:

§ 91.40–1 Definitions relating to hull examinations.

* * * * *

(a) *Drydock examination* means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings.

* * * * *

(d) *Underwater survey* means the examination, while the vessel is afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings.

223. In § 91.40–3, revise paragraphs (d)(4), (e) introductory text, and (e)(1) to read as follows:

§ 91.40–3 Drydock examination, internal structural examination, cargo tank internal examination, and underwater survey intervals.

* * * * *

(d) * * *

(4) The means that will be provided for examining through-hull fittings.

* * * * *

(e) Vessels otherwise qualifying under paragraph (d) of this section, that are 15 years of age or older, may be considered for continued participation in or entry into the underwater survey program on a case-by-case basis if—

(1) Before the vessel's next scheduled drydocking, the owner or operator submits a request for participation or continued participation to Commandant (G–MOC);

* * * * *

224. Add § 91.55–1(c) to read as follows:

§ 91.55–1 General.

* * * * *

(c) Plans and specifications for cargo gear shall be approved by either a recognized classification society or a recognized cargo gear organization, as specified in § 91.25–25.

PART 92—CONSTRUCTION AND ARRANGEMENT

225. The authority citation for part 92 continues to read as follows:

Authority: 46 U.S.C. 3306; 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

226. Add § 92.07–1(c) to read as follows:

§ 92.07–1 Application.

* * * * *

(c) SOLAS-certificated vessels complying with method IC, as described in SOLAS 74, regulation II–2/42, may be considered equivalent to the provisions of this subpart.

PART 93—STABILITY

227. The authority citation for part 93 continues to read as follows:

Authority: 46 U.S.C. 3306; 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 93.20 [Removed]

228. Remove subpart 93.20 consisting of §§ 93.20–1 through 93.20–20, including table 93.17–15.

PART 95—FIRE PROTECTION EQUIPMENT

229. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

230. In § 95.01–2(b), add, in alphabetical order of the organizations referenced, the following standard:

§ 95.01–2 Incorporation by reference.

* * * * *

(b) * * *

National Fire Protection Association (NFPA)

1 Batterymarch Park, Quincy, MA 02269–9101.

NFPA 13–1996, Standard for the Installation of Sprinkler Systems—95.30–1

231. Revise § 95.10–5(f) to read as follows:

§ 95.10–5 Fire pumps.

* * * * *

(f) Fire pumps may be used for other purposes provided at least one of the required pumps is kept available for use on the fire system at all times. In no case shall a pump having connection to an oil line be used as a fire pump. Branch lines connected to the fire main for purposes other than fire and deck wash shall be so arranged that adequate water can be made continuously available for firefighting purposes.

* * * * *

232. Revise § 95.10–10(n)(1) to read as follows:

§ 95.10–10 Fire hydrants and hose.

* * * * *

(n) * * *

(1) Fire station hydrant connections shall be brass, bronze, or other equivalent metal. Couplings shall either:

(i) Use National Standard fire hose coupling threads for the 1½ inch (38 millimeter) and 2½ inch (64 millimeter) hose sizes, i.e., 9 threads per inch for 1½ inch hose, and 7½ threads per inch for 2½ inch hose; or

(ii) Be a uniform design for each hose diameter throughout the vessel.

* * * * *

§ 95.15–5 [Amended]

233. In § 95.15–5, remove paragraph (d) and redesignate paragraphs (e) and (f) as paragraphs (d) and (e), respectively.

234. Add subpart 95.30 to read as follows:

Subpart 95.30—Automatic Sprinkler Systems, Details

§ 95.30–1 Application.

Automatic sprinkler systems shall comply with NFPA 13–1996.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

235. The authority citation for part 96 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

236. In § 96.35–10(a), add the following sentence to the end of the paragraph: "In lieu of the flame safety lamp, vessels may carry an oxygen depletion meter which is listed by a Coast Guard recognized independent laboratory as intrinsically safe."

PART 97—OPERATIONS

237. The authority citation for part 97 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

238. Add § 97.01–2 to read as follows:

§ 97.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20002, and at the U.S. Coast Guard, Lifesaving and Fire Safety Division (G–MSE–4), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

American Society for Testing and Materials (ASTM)

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

ASTM Adjunct F 1626, Symbols for Use in Accordance with Regulation 11–2/20 of the 1974 SOLAS Convention, PCN 12–616260–01, © 1996—97.36–1

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom.

Resolution A.654(16), Graphical Symbols for Fire Control Plans—97.36–1

239. Revise § 97.15–15 to read as follows:

§ 97.15–15 Examination of boilers and machinery.

It shall be the duty of the chief engineer when assuming charge of the boilers and machinery of a vessel to examine them thoroughly. If any parts thereof are in bad condition, the fact shall immediately be reported to the master, owner or agent, and the Officer in Charge, Marine Inspection.

§ 97.30–20 [Removed]

240. Remove § 97.30–20.

241. Revise § 97.36–1 to read as follows:

§ 97.36–1 When required.

Barges with sleeping accommodations for more than six persons and all self-propelled vessels shall have permanently exhibited for the guidance of the officer in charge of the vessel the following plans:

(a) General arrangement plans showing for each deck the fire control stations, the various sections enclosed by fire-resisting bulkheads, together with particulars of the fire alarms, detecting systems, the sprinkler installation (if any), the fire extinguishing appliances, means of access to different compartments, decks, etc., and the ventilating systems including particulars of the master fan controls, the positions of dampers, the location of the remote means of stopping fans, and identification numbers of the ventilating fans serving each section. If cargo compartments are "specially suitable for vehicles," they shall be so indicated on the plan. Alternatively, at the discretion of the Commandant, the aforementioned details may be set out in any other medium, such as a booklet or on computer software, provided that the aforementioned details are available to each officer and a copy is retained on board at all times and is accessible during emergencies. For vessels constructed on or after September 30, 1997 or for existing vessels which have their plans redrawn, the symbols used to identify the aforementioned details shall be in accordance with IMO Assembly resolution A.654(16). These identical symbols can also be found in ASTM Adjunct F 1626.

(b) Plans showing clearly for each deck and hold the boundaries of the watertight compartments, the openings therein with the means of closure and position of any controls thereof, and the arrangements for the correction of any list due to flooding.

(c) The aforementioned information shall be kept up-to-date, any alteration being recorded in the applicable medium as soon as practicable.

242. In § 97.37–20, revise the heading to read as follows:

§ 97.37–20 Self-contained breathing apparatus.

* * * * *

Subpart 97.43—[Removed]

243. Remove subpart 97.43 consisting of §§ 97.43–1 to 97.43–5.

244. Revise § 97.45–1 to read as follows:

§ 97.45–1 Master and chief engineer responsible.

It shall be the duty of the master and the chief engineer of any vessel to require that a steam pressure is not carried in excess of that allowed by the certificate of inspection, and to require that the safety valves, once set by the inspector, are in no way tampered with or made inoperable.

245. Revise § 97.53–1 to read as follows:

§ 97.53–1 Licensed officers.

All licensed officers on a vessel shall have their licenses conspicuously displayed.

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

246. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 4502; 49 U.S.C. App.1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

247. Revise § 105.01–1 to read as follows:

§ 105.01–1 Purpose.

The purpose of the regulations in this part is to provide adequate safety in the transporting and handling of inflammable or combustible cargo in bulk on board certain commercial fishing vessels and tenders.

§ 105.10–1 [Removed]

248. Remove § 105.10–1.

249. Revise § 105.35–1(a) to read as follows:

§ 105.35–1 General.

(a) In addition to the requirements in § 28.160 of subchapter C of this chapter, at least two B–II dry chemical or foam portable fire extinguishers bearing the marine type label of the Underwriter's Laboratories, Inc., shall be located at or near each dispensing area.

* * * * *

PART 108—DESIGN AND EQUIPMENT

250. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; 49 CFR 1.46.

251. In § 108.101(b), add, in alphabetical order of the organizations referenced, the following standard:

§ 108.101 Incorporation by reference.

* * * * *

(b) * * *

National Fire Protection Association (NFPA)

1 Batterymarch Park, Quincy, MA 02269–9101.

NFPA 13–1996, Standard for the Installation of Sprinkler Systems—108.430

252. Revise § 108.417(e) to read as follows:

§ 108.417 Fire pump components and associated equipment.

* * * * *

(e) An oil line must not be connected to a fire pump.

253. Revise § 108.425(b) to read as follows:

§ 108.425 Fire hoses and associated equipment.

* * * * *

(b) Fire station hydrant connections shall be brass, bronze, or other equivalent metal. Couplings shall either:

(1) Use National Standard fire hose coupling threads for the 1½ inch (38 millimeter) and 2½ inch (64 millimeter) hose sizes, i.e., 9 threads per inch for 1½ inch hose, and 7½ threads per inch for 2½ inch hose; or

(2) Be a uniform design for each hose diameter throughout the vessel.

* * * * *

254. In Subpart D, after § 108.429, add an undesignated centerhead and § 108.430 to read as follows:

Automatic Sprinkling Systems

§ 108.430 General.

Automatic Sprinkler Systems shall comply with NFPA 13–1996.

§ 108.435 [Removed]

255. Remove § 108.435.

PART 109—OPERATIONS

256. The authority citation for part 109 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115, 6101, 10104; 49 CFR 1.46.

257. Add § 109.105 to read as follows:

§ 109.105 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20002, and at the U.S. Coast Guard, Office of Design and Engineering Standards (G–MSE), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

ASTM Adjunct F 1626, Symbols for Use in Accordance with Regulation 11–2/20 of the 1974 SOLAS Convention, PCN 12–616260–01, © 1996—109.563

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom.

Resolution A.654.(16), Graphical Symbols for Fire Control Plans—109.563

§ 109.121 [Amended]

258. In § 109.121, remove paragraph (b) and redesignate paragraph (c) as paragraph (b).

§ 109.423 [Removed]

259. Remove § 109.423.

260. Revise § 109.431(a) to read as follows:

§ 109.431 Logbook.

(a) The master or person in charge of a unit, that is required by 46 U.S.C. 11301 to have an official logbook, shall maintain the logbook on Form CG–706. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

* * * * *

261. Revise § 109.555(b) to read as follows:

§ 109.555 Propulsion boilers.

* * * * *

(b) The safety valves, once set, are not tampered with or made inoperative.

262. Add § 109.563(a)(6) to read as follows:

§ 109.563 Posting of documents.

* * * * *

(a) * * *

(6) For units constructed on or after September 30, 1997, and for existing units which have their plans redrawn, the symbols used to identify the aforementioned details shall be in accordance with IMO Assembly resolution A.654(16). The identical symbols can be found in ASTM Adjunct F 1626.

* * * * *

PART 147A—INTERIM REGULATIONS FOR SHIPBOARD FUMIGATION

263. The authority citation for part 147A is revised to read as follows:

Authority: 46 U.S.C. 5103; 49 CFR 1.46.

PART 148—CARRIAGE OF SOLID HAZARDOUS MATERIALS IN BULK

264. The authority citation for part 148 is revised to read as follows:

Authority: 49 U.S.C. 5103; 49 CFR 1.46.

265. Revise § 148.01–1(c) to read as follows:

§ 148.01–1 Purpose and applicability.

* * * * *

(c) For purposes of this part, the term *vessel* means a "cargo vessel or barge" which is not exempted under 49 U.S.C. 5107(d).

* * * * *

SUBCHAPTER O—CERTAIN BULK DANGEROUS CARGOES

Subchapter O [Amended]

266. In Subchapter O, remove the Note which precedes part 150.

PART 150—COMPATIBILITY OF CARGOES

267. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46. Section 150.105 issued under 44 U.S.C. 3507; 49 CFR 1.45.

268. Revise § 150.110 to read as follows:

§ 150.110 Applicability.

This subpart prescribes rules for identifying incompatible hazardous materials and rules for carrying these materials in bulk as cargo in permanently attached tanks or in tanks that are loaded or discharged while aboard the vessel. The rules apply to all vessels that carry liquid dangerous cargoes in bulk that are subject to 46 U.S.C. Chapter 37.

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

269. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

270. Revise § 151.03–30(c) (the Note remains unchanged) to read as follows:

§ 151.03–30 Hazardous material.

* * * * *

(c) Designated a hazardous material under 49 U.S.C. 5103.

* * * * *

271. Revise § 151.03–41 to read as follows:

§ 151.03–41 Officer in Charge, Marine Inspection (OCMI).

This term means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the superintendence and direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties with respect to the enforcement and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

272. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1606 also issued under 33 U.S.C. 1903(b).

273. In § 153.2, paragraph (3) (but not the Note) in the definition of Hazardous material is revised to read as follows:

§ 153.2 Definitions and acronyms.

* * * * *

Hazardous material means a liquid material or substance that is—

* * * * *

(3) Designated a hazardous material under 49 U.S.C. 5103.

* * * * *

§ 153.470 [Amended]

274. In § 153.470, remove the Note at the end of the section.

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

275. The authority citation for part 154 continues to read as follows:

Authority: 46 U.S.C. 3703, 9101; 49 CFR 1.46.

§ 154.1445 [Removed]

276. Remove § 154.1445.

PART 160—LIFESAVING EQUIPMENT

277. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

278. Revise § 160.001–1 to read as follows:

§ 160.001–1 Scope.

(a) This subpart contains the general:

(1) Characteristics of life preservers (Type I personal flotation devices (PFDs));

(2) Approval procedures for life preservers; and

(3) Production oversight requirements for life preservers.

(b) Other subparts in this part specify the detailed requirements for standard type life preservers and may supplement the requirements in this subpart.

279. In § 160.001–2, revise paragraphs (b) and (d) to read as follows:

§ 160.001–2 General characteristics of life preservers.

* * * * *

(b) A life preserver must be capable of supporting a minimum of 22 pounds in fresh water for 48 hours.

* * * * *

(d) A life preserver must be:

(1) Simple in design;

(2) Capable of being:

(i) Worn inside-out,

(ii) worn clearly in only one way, or

(iii) Donned correctly without demonstration, instructions, or assistance by at least 75 percent of persons unfamiliar with the design; and

(3) Capable of being quickly adjusted for a secure fit to the body of wearers for which it is intended.

* * * * *

280. Revise § 160.001–3 to read as follows:

§ 160.001–3 Procedure for approval.

(a) *General.* Designs of life preservers are approved only by the Commandant, U.S. Coast Guard. Manufacturers seeking approval of a life preserver design shall follow the procedures of this section and subpart 159.005 of this chapter.

(b) Each application for approval of a life preserver must contain the information specified in § 159.005–5 of this chapter. The application and, except as provided in paragraphs (c) and (d)(2) of this section, a prototype life preserver must be submitted to the Commandant for preapproval review. If a similar design has already been approved, the Commandant may waive the preapproval review under §§ 159.005–5 and 159.005–7 of this chapter.

(c) If the life preserver is of a standard design, as described by subpart 160.002, 160.005, or 160.055, the application:

(1) Must include the following: A statement of any exceptions to the standard plans and specifications, including drawings, product description, construction specifications, and/or bill of materials.

(2) Need not include: The information specified in § 159.005–5(a)(2).

(d) If the life preserver is of a non-standard design, the application must include the following:

(1) Plans and specifications containing the information required by § 159.005–12 of this chapter, including drawings, product description, construction specifications, and bill of materials.

(2) The information specified in § 159.005–5(a)(2)(i) through (iii) of this chapter, except that, if preapproval review has been waived, the manufacturer is not required to send a prototype PFD sample to the Commandant.

(3) Performance testing results of the design performed by an independent laboratory, that has a Memorandum of Understanding with the Coast Guard under § 159.010–7 of this subchapter covering the in-water testing of personal flotation devices, showing equivalence to the standard design's performance in all material respects.

(4) The Approval Type sought (Type I or Type V).

(5) Any special purpose(s) for which the life preserver is designed and the

vessel(s) or vessel type(s) on which its use is intended.

(6) Buoyancy and other relevant tolerances to be complied with during production.

(7) The text of any optional marking to be included on the life preserver in addition to the markings required by the applicable approval subpart.

(8) For any conditionally approved life preserver, the intended approval condition(s).

(e) The description of quality control procedures required by § 159.005–9 of this chapter may be omitted if the manufacturer's planned quality control procedures meet the requirements of those accepted by the Commandant for the independent laboratory performing production inspections and tests.

(f) *Waiver of tests.* A manufacturer may request that the Commandant waive any test prescribed for approval under the applicable subpart. To request a waiver, the manufacturer must submit to the Commandant and the laboratory described in § 159.010, one of the following:

(1) Satisfactory test results on a PFD of sufficiently similar design as determined by the Commandant.

(2) Engineering analysis demonstrating that the test for which a waiver is requested is not appropriate for the particular design submitted for approval or that, because of its design or construction, it is not possible for the PFD to fail that test.

281. Add § 160.001–5 to read as follows:

§ 160.001–5 Production oversight.

(a) *General.* Production tests and inspections must be conducted in accordance with this section, subpart 159.007 of this chapter, and if conducted by an independent laboratory, the independent laboratory's procedures for production inspections and tests as accepted by the Commandant. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subchapter.

(b) *Oversight.* In addition to responsibilities set out in part 159 of this chapter and the accepted laboratory procedures for production inspections and tests, each manufacturer of a life preserver and each laboratory inspector shall comply with the following, as applicable:

(1) *Manufacturer.* Each manufacturer must—

(i) Perform all tests and examinations necessary to show compliance with this subpart and subpart under which the life preserver is approved on each lot before any inspector's tests and inspection of the lot;

(ii) Follow established procedures for maintaining quality control of the materials used, manufacturing operations, and the finished product; and

(iii) Allow an inspector to take samples of completed units or of component materials for tests required by this subpart and for tests relating to the safety of the design.

(2) *Laboratory.* An inspector from the accepted laboratory shall oversee production in accordance with the laboratory's procedures for production inspections and tests accepted by the Commandant. During production oversight, the inspector shall not perform or supervise any production test or inspection unless—

(i) The manufacturer has a valid approval certificate; and

(ii) The inspector has first observed the manufacturer's production methods and any revisions to those methods.

(3) At least quarterly, the inspector shall check the manufacturer's compliance with the company's quality control procedures, examine the manufacturer's required records, and observe the manufacturer perform each of the required production tests.

(c) *Test facilities.* The manufacturer shall provide a suitable place and apparatus for conducting the tests and inspections necessary to determine compliance of life preservers with this subpart. The manufacturer shall provide means to secure any test that is not continuously observed, such as the 48 hour buoyancy test. The manufacturer must have the calibration of all test equipment checked in accordance with the test equipment manufacturer's recommendation and interval but not less than at least once every year.

(d) *Lots.* A lot may not consist of more than 1000 life preservers. A lot number must be assigned to each group of life preservers produced. Lots must be numbered serially. A new lot must be started whenever any change in materials or a revision to a production method is made, and whenever any substantial discontinuity in the production process occurs. The lot number assigned, along with the approval number, must enable the PFD manufacturer to determine the supplier's identifying information for the component lot.

(e) *Samples.* (1) From each lot of life preservers, manufacturers shall randomly select a number of samples from completed units at least equal to the applicable number required by table 160.001–5(e) for buoyancy testing. Additional samples must be selected for any tests, examinations, and inspections required by the laboratory's production inspections and tests procedures.

TABLE 160.001–5(e).—SAMPLING FOR BUOYANCY TESTS

Lot size	Number of life preservers in sample
100 and under	1
101 to 200	2
201 to 300	3
301 to 500	4
501 to 750	6
751 to 1000	8

(2) For a lot next succeeding one from which any sample life preserver failed the buoyancy test, the sample shall consist of not less than ten specimen life preservers to be tested for buoyancy in accordance with paragraph (f) of this section.

(f) *Buoyancy test.* The buoyancy of the life preservers must be determined by measuring the upward force exerted by the individual submerged unit. The buoyancy measurement must be made at the end of the 24 or 48 hours of submersion, as specified in the applicable approval subpart, during which period the pad inserts must not be disturbed.

(g) *Buoyancy required.* The buoyancy must meet the requirements of the applicable approval subpart.

(h) *Lot inspection.* On each lot, the laboratory inspector shall perform a final lot inspection to be satisfied that the life preservers meet this subpart. Each lot must demonstrate—

(1) First quality workmanship;

(2) That the general arrangement and attachment of all components, such as body straps, closures, tie tapes, and drawstrings, are as specified in the approved plans and specifications;

(3) Compliance with the marking requirements in the applicable approval subpart; and

(4) The information pamphlet specified in 33 CFR part 181 subpart G, if required, is securely attached to the device, with the PFD selection information visible and accessible prior to purchase.

(i) *Lot acceptance.* When the independent laboratory has determined that the life preservers in the lot are of a type officially approved in the name of the company, and that such life preservers meet the requirements of this subpart, they shall be plainly marked in waterproof ink with the independent laboratory's name or identifying mark.

(j) *Lot rejection.* Each nonconforming unit must be rejected. If three or more nonconforming units are rejected for the same kind of defect, lot inspection must be discontinued and the lot rejected. The inspector must discontinue lot inspection and reject the lot if examination of individual units or the records for the lot shows noncompliance with either this subchapter or the laboratory's or the manufacturer's quality control procedures. A rejected unit or lot may be resubmitted for testing and inspection if the manufacturer first removes and destroys each defective unit or, if authorized by the laboratory, reworks the unit or lot to correct the defect. A rejected lot or rejected unit may not be sold or offered for sale under the representation that it meets this subpart or that it is Coast Guard-approved.

282. Revise § 160.002–5 to read as follows:

§ 160.002–5 Sampling, tests, and inspections.

(a) Production tests and inspections must be conducted by the manufacturer of a life preserver and the accepted laboratory inspector in accordance with this section and § 160.001–5.

(b) *Buoyancy test.* The buoyancy of the pad inserts from the life preserver shall be determined according to § 160.001–5(f) of this part with each compartment of the buoyant pad insert covers slit so as not to entrap air. The period of submersion must be at least 48 hours.

(c) *Buoyancy required.* The buoyant pad inserts from Model 3 adult life preservers shall provide not less than 25 pounds buoyancy in fresh water, and the pads from Model 5 child life preservers shall provide not less than 16.5 pounds buoyancy.

283. Revise § 160.002–7 to read as follows:

§ 160.002–7 Procedure for approval.

General. Manufacturers seeking approval of a life preserver design shall follow the procedures of subpart 159.005 of this chapter, as explained in § 160.001–3 of this part.

284. Revise § 160.005–5 to read as follows:

§ 160.005–5 Sampling, tests, and inspections.

(a) Production tests and inspections must be conducted by the manufacturer of a life preserver and the accepted laboratory inspector in accordance with this section and § 160.001–5.

(b) *Buoyancy test.* The buoyancy of the pad inserts from the life preserver shall be determined according to § 160.001–5(f) of this part with each compartment of the buoyant pad insert covers slit so as not to entrap air. The period of submersion must be at least 48 hours.

(c) *Buoyancy required.* The buoyant pad inserts from Model 3 adult life preservers shall provide not less than 25 pounds buoyancy in fresh water, and the pads from Model 5 child life preservers shall provide not less than 16.5 pounds buoyancy.

285. Revise § 160.005–7 to read as follows:

§ 160.005–7 Procedure for approval.

General. Manufacturers seeking approval of a life preserver design shall follow the procedures of subpart 159.005 of this chapter, as explained in § 160.001–3 of this part.

286. In subpart 160.006, revise the heading to read "Subpart 160.006—Life Preservers: Repairing."

§ 160.006–1 [Removed]

287. Remove § 160.006–1.

§ 160.006–4 [Removed]

288. Remove § 160.006–4.

§ 160.006–5 [Removed]

289. Remove § 160.006–5.

§ 160.013–4 [Removed]

290. Remove § 160.013–4.

§ 160.013–6 [Removed]

291. Remove § 160.013–6.

§ 160.016–3 [Removed]

292. Remove § 160.016–3.

§ 160.024–6 [Removed]

293. Remove § 160.024–6 and figure 160.024–6(a).

§ 160.026–6 [Amended]

294. In § 160.026–6, remove table 160.026–6(f), remove paragraphs (f) and (g), and revise paragraph (a), the text of paragraphs (c) and (d), and paragraph (e) to read as follows:

§ 160.026–6 Sampling, inspection, and tests of production lots.

(a) *General.* Containers of emergency drinking water must be tested in accordance with the provisions of this section by an independent laboratory accepted by the Coast Guard under 46 CFR 159.010.

* * * * *

(c) *Visual inspection of containers.* The independent laboratory inspector shall select at random from each lot the number of sample filled containers indicated in table 160.026–6(c), which shall be examined visually for compliance with the requirements of this subpart. If the number of defective cans exceeds the acceptance number shown in the table for the samples selected, the lot shall be rejected.

* * * * *

(d) *Laboratory tests of containers and water.* The manufacturer shall select at random from each lot the number of sets of 11 filled sample containers indicated in Table 160.026–6(d1), which shall be forwarded to an independent laboratory accepted by the Coast Guard under 46 CFR 159.010. The independent laboratory shall perform the tests outlined in Table 160.026–6(d2). If any sample is found to be non-conforming in any of these tests, the lot shall be rejected.

* * * * *

(e) *Lot acceptance.* When the independent laboratory is satisfied that the emergency drinking water meets the requirements of this subpart, the lot shall be accepted. When permitted by the independent laboratory, rejected lots may be resubmitted for official inspection, provided all containers in the lot have been reworked by the packer, and all defective units removed. Emergency drinking water from rejected lots may not, unless subsequently accepted, be sold or offered for sale under representation as being in compliance with this subpart or as being approved for use on merchant vessels.

295. Revise § 160.026–7 to read as follows:

§ 160.026–7 Procedure for approval.

(a) *General.* Emergency drinking water for lifeboats and liferafts on merchant vessels is approved only by the Commandant, U.S. Coast Guard.

(b) *Pre-approval samples and plans.* Packers who desire to pack approved emergency drinking water shall have the required tests in accordance with § 160.026–5 performed by an independent laboratory accepted by the Coast Guard under 46 CFR 159.010. A copy of the independent laboratory's report will be forwarded to the Commandant for examination, and, if satisfactory, an official approval number will be assigned to the manufacturer for the emergency drinking water.

§ 160.035–2 [Amended]

296. In § 160.035–2, remove paragraph (e).

297. Revise § 160.035–3 to read as follows:

§ 160.035–3 Construction of steel oar-propelled lifeboats.

(a) *Type.* Lifeboats shall have rigid sides and be fitted with internal buoyancy so arranged that the boats will float in the flooded condition when

fully loaded with persons and equipment. The capacity of an oar-propelled lifeboat is limited to a maximum of 59 persons. Lifeboats designed to carry 60, but not more than 100, persons shall be either hand-propelled or motor-propelled. Lifeboats designed to carry more than 100 persons shall be motor-propelled, except that a lifeboat designed to carry more than 100 persons may be hand-propelled if it is a replacement for a previously approved hand-propelled lifeboat.

(b) *Materials.* (1) Plating for shell, floors, air tanks, etc., shall be made by the open-hearth or electric furnace process in accordance with ASTM Standards A–525 Class 1.25 Commercial. The bend tests required by these specifications shall be made after the galvanizing or other anticorrosive treatment has been applied.

(2) Rivets and rolled or extruded shapes such as keel, stem, sternpost, gunwales, etc., shall be made by the open-hearth or electric furnace process in accordance with ASTM Standard Specification A–36. Consideration will be given to the use of other steels having equivalent strength where longitudinal cold forming is necessary.

(c) *Riveting.* (1) Riveting of the shell plating to the keel, stem, and sternpost shall be button head rivets, staggered with not less than 12 rivets to the foot. The distance from the edge of the plate to the centers of the rivets in the nearest row shall be not less than ½ inch nor more than ¾ inch. Rivets connecting the shell to the gunwale shall be spaced not more than 3 inches on centers. The size of the rivets for connecting the shell plating to the keel, stem, sternpost, and gunwale shall be ¼-inch diameter for boats 28 feet and under and 5/16-inch diameter for boats over 28 feet.

(2) The connection of the floors to the shell shall be a single row of rivets not less than 3/16 inch in diameter and spaced not more than 3 inches on centers.

(d) *Welding.* Welding may be substituted for riveting in any location. It shall be performed by welders qualified by the U.S. Coast Guard, American Bureau of Shipping, or U.S. Navy Department, and only approved electrodes shall be used. Details of the joints shall be indicated on the construction drawings submitted for approval.

(e) *Gunwale braces.* (1) The gunwale braces shall be bolted to the thwarts with at least two carriage bolts of a size not less than that noted in table 160.035–3(e)(1) and riveted or welded to the gunwales. Where riveted to the gunwale, at least two rivets of a size not less than that noted in table 160.035–3(e)(1) shall be used.

TABLE 160.035–3(E)(1)

Length of lifeboat	Brace size (inches)	Bolts and rivets diameter (inch)
22 feet and under.	3 x ¼	5/16
Over 22 feet and not over 28.	3 x 5/16	⅜
Over 28 feet	3 x ⅜	7/16

(2) Bracket type gunwale braces will be given special consideration.

(f) *Seats.* (1) The thwarts, side benches, and end benches shall be of fir, yellow pine, fibrous glass reinforced plastic (FRP), or approved equivalent.

(2) The edges of all thwarts, side, and end benches shall be well rounded.

(3) Suitable foot rests shall be furnished at a distance of between 17 and 20 inches below the thwarts and side benches. This may be accomplished by raising the footings from the bottom of the boat.

(4) The leading edge of the thwart or end bench shall be located a minimum of 3 inches and a maximum of 6 inches distance from the Rottmer release gear.

(g) *Stretchers.* Stretchers of sufficient size and strength shall be fitted in suitable positions for rowing.

(h) *Disengaging apparatus.* (1) Connections for the disengaging apparatus shall have a minimum factor of safety of six.

(2) For construction and capacity of disengaging apparatus, see subpart 160.033.

(i) *Plugs.* Each lifeboat shall be fitted with an automatic plug so designed and installed as to insure complete drainage at all times when the boat is out of the water. The automatic plug shall be provided with a cap attached to the lifeboat by a suitable chain. The location of drain plug is to be marked on the vertical surface in the vicinity of the plug below the side bench with the word "plug" in 3-inch white letters and with an arrow pointing in the direction of the drain plug.

(j) *Protection against corrosion.* (1) All steel or iron entering into the construction of lifeboats shall be galvanized by the hot dipped process. All fabricated pieces or sections are to be galvanized after fabrication. Other methods of corrosion prevention will be given special consideration.

(2) Where welded construction is employed, the material shall be galvanized after welding unless impractical to do so in which case consideration will be given to equivalent protection.

(3) Provisions shall be made to obtain a satisfactory bond between the metal and the paint.

(k) *Rudders.* (1) Each lifeboat shall be fitted with a rudder and tiller. The rudder shall be fitted with a ½-inch diameter manila lanyard of such length as to permit the rudder to be shipped without untying the lanyard.

(2) A suitable hinged or pivoted tiller shall be provided.

(3) Rudder stops shall be provided to limit the rudder angle to approximately 45 degrees each side of the centerline.

(l) *Buoyancy tanks.* (1) All lifeboats shall have inherent buoyancy, or shall be fitted with buoyancy tanks or other equivalent noncorrodible buoyancy units, which shall not be adversely affected by oil or oil products, sufficient to float the boat and its equipment when the boat is flooded and open to the sea. An additional volume of buoyancy, or buoyancy units, equal to at least one-tenth the cubic capacity of the lifeboat shall be provided.

(2) At least 50 percent of the buoyancy shall be located along the sides of the boat and shall be so located that the boat will be on even keel when flooded.

(3) The tops of the buoyancy tanks or buoyancy units shall be protected by the side benches or other suitable means. The construction shall be such that water will not collect on the tops of the tanks.

(4) *Built-in buoyancy tanks.* Each built-in buoyancy tank shall be filled with buoyancy material. The amount of material required shall be determined by the flooding test in accordance with § 160.035–11(b)(2). The buoyancy materials used shall meet the requirements set forth for core materials as follows:

Core	Polystyrene ..	MIL–P–40619.
		MIL–P–19644.
	Polyurethane	MIL–P–21929.

(m) *Equipment stowage.* (1) Provision lockers, water tanks, and special equipment lockers shall be watertight and so designed and located as to fit under the side benches, end benches, or footings without projecting into the accommodation spaces of the lifeboat. In special cases, stowage under the thwarts will be permitted. Standard ¼ inch pipe size testing nipples shall be fitted to all such lockers or tanks.

(2) Water tanks shall be constructed of at least 18 USSG material. An opening with a dogged type cover shall be provided for removal of water cans. This opening shall be at least 7 inches in diameter, but in any case shall be of sufficient size that all water cans can be removed. In addition, built-in water tanks shall have an opening at least 13 inches in diameter with a bolted cover for the purpose of inspection and maintenance. A 2-inch diameter fill cap shall be installed for the purpose of storing rain water. A standard ¼-inch pipe size drainage nipple with hexagonal cap shall be fitted in the bottom of the tank in an accessible location and may be used for air testing the water tank.

(n) *Grab rails.* Grab rails shall be substantially attached to each lifeboat below the turn of the bilge and extend approximately one-half of the length of the lifeboat on each side. The ends of the grab rails shall be faired to prevent fouling and all connections of the rails to the lifeboat shall be made by riveting the palms of the brackets to a small plate and riveting the plate to the shell. To prevent rupture of the shell if the grab rail is carried away, more rivets shall be used in attaching the plate to the shell than in fastening the bracket to the plate. The clearance between the grab rail pipe and the hull shall be at least 1½ inches. The connections of the rails to a fibrous glass reinforced plastic lifeboat hull will be given special consideration.

(o) *Hand rails.* All lifeboats intended for use in ocean and coastwise service shall be fitted with hand rails approximately 18 inches in length, constructed and attached to the lifeboat in the same manner as the grab rails required by paragraph (n) of this section. The clearance between the hand rail pipe and the hull shall be at least 1½ inches. The hand rails shall be located approximately parallel to and at both ends of the grab rails and spaced midway between the grab rail and the gunwale and midway between the grab rail and the keel on both sides of the lifeboat provided that, when the distance from grab rail to gunwale or to the keel exceeds 4 feet, two hand rails shall be fitted so as to provide equal spacing. In no case shall the hand rails project beyond the widest part of the boat. Recessed hand rails or other alternate arrangements will be given consideration.

§ 160.035–4 [Removed]

298. Remove § 160.035–4.

§ 160.035–6 [Amended]

299. In § 160.035–6, remove the text of paragraphs (b), (d), (f), (g), and (h) and redesignate paragraphs (c), (e), and (i) as paragraphs (b), (c), and (d), respectively.

Table 160.035–6(d)(1) [Removed]

300. Remove table 160.035–6(d)(1).

§ 160.035–7 [Removed]

301. Remove § 160.035–7.

§ 160.035–9 [Amended]

302. In § 160.035–9, remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

§ 160.041–5 [Amended]

303. In § 160.041–5, remove paragraph (a) and redesignate paragraphs (b) through (f) as paragraphs (a) through (e), respectively.

§ 160.041–7 [Removed]

304. Remove § 160.041–7.

§ 160.043–7 [Removed]

305. Remove § 160.043–7.

§ 160.044–4 [Amended]

306. In § 160.044–4, remove paragraph (a) and redesignate paragraphs (b) through (d) as paragraphs (a) through (c), respectively. In the newly designated paragraph (a), replace the word "pump" with the words "bilge pump" wherever it appears.

§ 160.044–6 [Removed]

307. Remove § 160.044–6.

§ 160.048 [Amended]

308. In § 160.048–6, remove paragraph (c) and in paragraph (a)(1) revise the entry following "If pads become waterlogged, replace device:" to read as follows:

§ 160.048–6 Marking.

(a) * * *
(1) * * *

Approved for use on recreational boats only as a throwable device.

* * * * *

§ 160.049.8 [Amended]

309. In § 160.049–6, remove paragraph (c) and in paragraph (a)(1) revise the entry following "Dry out thoroughly when wet." to read as follows:

§ 160.049–6 Marking.

(a) * * *
(1) * * *

Approved for use on recreational boats only as a throwable device.

* * * * *

§ 160.050–5 [Amended]

310. Amend § 160.050–5 as follows:

a. Remove footnote 1;

b. Revise paragraphs (a) through (f);

c. Add paragraphs (g) through (i);

d. Redesignate table 160.050–5(b) as table 160.050–5(e); and

e. Revise the new table 160.050–5(e) to read as follows:

§ 160.050–5 Sampling, tests, and inspection.

(a) *General.* Production tests and inspections must be conducted in accordance with this section, subpart 159.007 of this chapter, and if conducted by an independent laboratory, the independent laboratory's procedures for production inspections and tests as accepted by the Commandant. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subchapter.

(b) *Oversight.* In addition to responsibilities set out in part 159 of this chapter and the accepted laboratory procedures for production inspections and tests, each manufacturer of a ring life buoy and each laboratory inspector shall comply with the following, as applicable:

(1) *Manufacturer.* Each manufacturer must—

(i) Perform all tests and examinations necessary to show compliance with this subpart and the subpart under which the ring life buoy is approved on each lot before any inspector's tests and inspection of the lot;

(ii) Follow established procedures for maintaining quality control of the materials used, manufacturing operations, and the finished product; and

(iii) Allow an inspector to take samples of completed units or of component materials for tests required by this subpart and for tests relating to the safety of the design.

(iv) Meet 33 CFR 181.701 through 33 CFR 181.705 which requires an instruction pamphlet for each device that is sold or offered for sale for use on recreational boats, and must make the pamphlet accessible prior to purchase.

(2) *Laboratory.* An inspector from the accepted laboratory shall oversee production in accordance with the laboratory's procedures for production inspections and tests accepted by the Commandant. During production oversight, the inspector shall not perform or supervise any production test or inspection unless—

(i) The manufacturer has a valid approval certificate; and

(ii) The inspector has first observed the manufacturer's production methods and any revisions to those methods.

(3) At least quarterly, the inspector shall check the manufacturer's compliance with the company's quality control procedures, examine the

manufacturer's required records, and observe the manufacturer perform each of the required production tests.

(c) *Test facilities.* The manufacturer shall provide a suitable place and apparatus for conducting the tests and inspections necessary to determine compliance of ring life buoys with this subpart. The manufacturer shall provide means to secure any test that is not continuously observed, such as the 48 hour buoyancy test. The manufacturer must have the calibration of all test equipment checked in accordance with the test equipment manufacturer's recommendation and interval but not less than at least once every year.

(d) *Lots.* A lot may not consist of more than 1000 life buoys. A lot number must be assigned to each group of life buoys produced. Lots must be numbered serially. A new lot must be started whenever any change in materials or a revision to a production method is made, and whenever any substantial discontinuity in the production process occurs. The lot number assigned, along with the approval number, must enable the ring life buoy manufacturer to determine the supplier's identifying information for the component lot.

(e) *Samples.* (1) From each lot of ring life buoys, manufacturers shall randomly select a number of samples from completed units at least equal to the applicable number required by table 160.050–5(e) for buoyancy testing. Additional samples must be selected for any tests, examinations, and inspections required by the laboratory's production inspections and tests procedures.

TABLE 160.050–5(E).—SAMPLING FOR BUOYANCY TESTS

Lot size	Number of life buoys in sample
100 and under	1
101 to 200	2
201 to 300	3
301 to 500	4
501 to 750	6
751 to 1000	8

(2) For a lot next succeeding one from which any sample ring life buoy failed the buoyancy or strength test, the sample shall consist of not less than ten specimen ring life buoys to be tested for buoyancy in accordance with paragraph (f) of this section.

(f) *Tests—(1) Strength test.* The buoy body shall be suspended by a 2-inch-wide strap. A similar strap shall be passed around the opposite side of the buoy and a 200-pound weight suspended by it from the buoy. After 30 minutes, the buoy body shall be examined, and there shall be no breaks, cracks or permanent deformation.

(2) *Resistance to damage test.* The buoy body shall be dropped three times from a height of 6 feet onto concrete, and there shall be no breaks or cracks in the body.

(3) *Buoyancy test.* To obtain the buoyancy of the buoy, proceed as follows:

(i) Weigh iron or other weight under water. The weight shall be more than sufficient to submerge the buoy.

(ii) Attach the iron or other weight to the buoy and submerge with the top of the buoy at least 2 inches below the surface for 48 hours.

(iii) After the 48-hour submergence period, weigh the buoy with the weight attached while both are still under water.

(iv) The buoyancy is computed as paragraph (f)(3)(i) minus paragraph (f)(3)(iii) of this section.

(4) *Buoyancy required.* The buoys shall provide a buoyancy of not less than 16.5 pounds for the 20-and 24-inch sizes, and not less than 32 pounds for the 30-inch size.

(g) *Lot inspection.* On each lot, the laboratory inspector shall perform a final lot inspection to be satisfied that the ring life buoys meet this subpart. Each lot must demonstrate—

(1) First quality workmanship;

(2) That the general arrangement and attachment of all components are as specified in the approved plans and specifications; and

(3) Compliance with the marking requirements in the applicable approval subpart.

(h) *Lot acceptance.* When the independent laboratory has determined that the ring life buoys in the lot are of a type officially approved in the name of the company, and that such ring life buoys meet the requirements of this subpart, they shall be plainly marked in waterproof ink with the independent laboratory's name or identifying mark.

(i) *Lot rejection.* Each nonconforming unit must be rejected. If three or more nonconforming units are rejected for the same kind of defect, lot inspection must be discontinued and the lot rejected. The inspector must discontinue lot inspection and reject the lot if examination of individual units or the records for the lot shows noncompliance with either this subchapter or the laboratory's or the manufacturer's quality control procedures. A rejected unit or lot may be resubmitted for testing and inspection if the manufacturer first removes and destroys each defective unit or, if authorized by the laboratory, reworks the unit or lot to correct the defect. A rejected lot or rejected unit may not be sold or offered for sale under the representation that it meets this subpart or that it is Coast Guard-approved.

§ 160.050–6 [Amended]

311. In § 160.050–6(a), remove the sentence "Approved for use on recreational boats less than 16 feet in length and all canoes and kayaks, and only as a throwable device on all other vessels." and replace it with the sentence "Approved for use on recreational boats only as a throwable device.", and remove paragraph (c).

312. Revise § 160.050–7 to read as follows:

§ 160.050–7 Procedure for approval.

(a) *General.* Designs of ring life buoys are approved only by the Commandant, U.S. Coast Guard. Manufacturers seeking approval of a ring life buoy design shall follow the procedures of this section and subpart 159.005 of this chapter.

(b) Each application for approval of a ring life buoy must contain the information specified in § 159.005–5 of this chapter. The application and, except as provided in paragraphs (c) and (d)(2) of this section, a prototype ring life buoy must be submitted to the Commandant for preapproval review. If a similar design has already been approved, the Commandant may waive the preapproval review under §§ 159.005–5 and 159.005–7 of this chapter.

(c) If the ring life buoy is of a standard design, the application:

(1) Must include the following: A statement of any exceptions to the standard plans and specifications, including drawings, product description, construction specifications, and/or bill of materials.

(2) Need not include: The information specified in § 159.005–5(a)(2).

(d) If the ring life buoy is of a non-standard design, the application must include the following:

(1) Plans and specifications containing the information required by § 159.005–12 of this chapter, including drawings, product description, construction specifications, and bill of materials.

(2) The information specified in § 159.005–5(a)(2) (i) through (iii) of this chapter, except that, if preapproval review has been waived, the manufacturer is not required to send a prototype ring life buoy sample to the Commandant.

(3) Performance testing results of the design performed by an independent laboratory that has a Memorandum of Understanding with the Coast Guard under § 159.010–7 of this subchapter covering the in-water testing of personal flotation devices showing equivalence to the standard design's performance in all material respects.

(4) Buoyancy and other relevant tolerances to be complied with during production.

(5) The text of any optional marking to be included on the ring life buoy in addition to the markings required by the applicable approval subpart.

(6) For any conditionally approved ring life buoy, the intended approval condition(s).

(e) The description of quality control procedures required by § 159.005–9 of this chapter may be omitted if the manufacturer's planned quality control procedures meet the requirements of those accepted by the Commandant for the independent laboratory performing production inspections and tests.

(f) *Waiver of tests.* A manufacturer may request that the Commandant waive any test prescribed for approval under the applicable subpart. To request a waiver, the manufacturer must submit to the Commandant and the laboratory described in § 159.010, one of the following:

(1) Satisfactory test results on a ring life buoy of sufficiently similar design as determined by the Commandant.

(2) Engineering analysis demonstrating that the test for which a waiver is requested is not appropriate for the particular design submitted for approval or that, because of its design or construction, it is not possible for the ring life buoy to fail that test.

§ 160.053–1 [Amended]

313. In § 160.053–1, remove paragraph (c).

314. Revise § 160.053–6 to read as follows:

§ 160.053–6 Procedure for approval.

(a) *General.* Work vests for use on merchant vessels are approved only by the Commandant, U.S. Coast Guard. Manufacturers seeking approval of a work vest shall follow the procedures of this section and subpart 159.005 of this chapter.

(b) If the work vest is of a standard design, as described by § 160.053–3, in order to be approved, the work vest must be tested in accordance with § 160.053–4 by an independent laboratory accepted by the Coast Guard under 46 CFR 159.010.

(c) If the work vest is of a non-standard design, the application must include the following:

(1) Plans and specifications containing the information required by § 159.005–12 of this chapter, including drawings, product description, construction specifications, and bill of materials.

(2) The information specified in § 159.005–5(a)(2)(i) through (iii) of this chapter, except that, if preapproval review has been waived, the manufacturer is not required to send a prototype work vest sample to the Commandant.

(3) Performance testing results of the design performed by an independent laboratory, that has a Memorandum of Understanding with the Coast Guard under § 159.010–7 of this subchapter covering the in-water testing of personal flotation devices, showing equivalence to the standard design's performance in all material respects.

(4) Any special purpose(s) for which the work vest is designed and the vessel(s) or vessel type(s) on which its use is intended.

(5) Buoyancy and other relevant tolerances to be complied with during production.

(6) The text of any optional marking to be included on the work vest in addition to the markings required by § 160.053.

§ 160.054–5 [Amended]

315. In § 160.054–5, remove paragraph (a) and redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

§ 160.054–7 [Amended]

316. In § 160.054–7, remove paragraph (a) and redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

§ 160.055–7 [Amended]

317. Revise § 160.055–7 to read as follows:

§ 160.055–7 Sampling, tests, and inspections.

(a) Production tests and inspections must be conducted by the manufacturer of a life preserver and the accepted laboratory inspector in accordance with this section and § 160.001–5.

(b) *Buoyancy test.* The buoyancy of the pad inserts from the life preserver shall be determined according to § 160.001–5(f) of this part with each compartment of the buoyant pad insert covers slit so as not to entrap air. The period of submersion must be at least 48 hours.

(c) *Buoyancy required.* The buoyant pad inserts from Model 3 adult life preservers shall provide not less than 25 pounds buoyancy in fresh water, and the pads from Model 5 child life preservers shall provide not less than 16.5 pounds buoyancy.

318. Revise § 160.055–9(a) to read as follows:

§ 160.055–9 Procedure for approval—standard and nonstandard life preservers.

(a) *General.* Manufacturers seeking approval of a life preserver design shall follow the procedures of subpart 159.005 of this chapter, as explained in § 160.001–3 of this part.

* * * * *

§ 160.056–5 [Removed]

319. Remove § 160.056–5.

§ 160.058–6 [Removed]

320. Remove § 160.058–6.

§ 160.061–6 [Removed]

321. Remove § 160.061–6.

§ 160.061–7 [Removed]

322. Remove § 160.061–7.

323. Revise § 160.062–6 to read as follows:

§ 160.062–6 Procedure for approval.

General. Hydraulic releases for use on lifesaving equipment for merchant vessels are approved only by the Commandant, U.S. Coast Guard. In order to be approved, the hydraulic releases must be tested in accordance with § 160.062–4(c) by an independent laboratory accepted by the Coast Guard under 46 CFR 159.010. The independent laboratory will forward the report to the Commandant for examination, and if satisfactory an official approval number will be assigned to the manufacturer for the model hydraulic release submitted.

§ 160.064–4 [Amended]

324. In § 160.064–4(a)(1), remove the sentence "Approved for use on all recreational boats and on uninspected commercial vessels less than 40 feet in length not carrying passengers for hire by persons weighing (more than 90 lb., 50 to 90 lb., 30 to 50 lb., or less than 30 lb.)." and add, in its place, the sentence "Approved for use on recreational boats only as a throwable device.", and remove paragraph (c).

PART 164—MATERIALS

325. The authority citation for part 164 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

326. Revise subpart 164.013 to read as follows:

Subpart 164.013—Foam, Unicellular Polyethylene (Buoyant, Slab, Slitted Trigonal Pattern)

Sec.
164.013–1 Scope.
164.013–2 Incorporation by reference.
164.013–3 Material properties and workmanship
164.013–4 Samples submitted for acceptance.
164.013–5 Acceptance tests.
164.013–6 Production tests, inspections, and marking.
164.013–7 Marking.

§ 164.013–1 Scope.

(a) This subpart contains performance requirements, acceptance tests, and production testing and inspection requirements for polyethylene foam used in the construction of personal flotation devices (PFDs) approved under part 160 of this subchapter. Manufacturers shall also comply with the requirements of subpart 164.019 of this chapter.

(b) All polyethylene foams accepted under this subpart are non-standard components. Acceptance of polyethylene foam prior to being incorporated into finished PFDs, or during the course of manufacture, shall in no case be construed as a guarantee of the acceptance of the finished PFD.

§ 164.013–2 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material incorporated by reference may be inspected at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC 20002, and at the U.S. Coast Guard, Lifesaving and Fire Safety Division (G-MSE–4), Washington, DC 20593–0001, and is available from the source indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this subpart, and the sections affected are as follows:

Underwriters Laboratories (UL)

Underwriters Laboratories, Inc., P.O. Box 13995, Research Triangle Park, NC 27709–3995 (Phone (919) 549–1400; Facsimile: (919) 549–1842).

UL 1191, Standards for Components for Personal Flotation Devices, May 16, 1995—164.013–3; 160.013–5.

(c) *Copies on file.* Copies of the specifications and letter of acceptance shall be kept on file by the manufacturer.

§ 164.013–3 Material properties and workmanship.

(a) *General.* The unicellular polyethylene foam shall be all new material complying with the requirements outlined in this specification. Unicellular polyethylene foam must comply with the requirements of UL 1191, sections 24, 25, and 26 and its assigned Use Code. Thickness tolerances of the foam must permit the manufacture of PFDs complying with their required buoyancy tolerances.

(b) *Use Codes 4BC, 4H.* Each foam which has a C-factor of at least 94 according to UL 1191 may be assigned Use Codes 4BC and 4H.

(c) *Use Codes 2, 3, 5R.* Each foam which has a V-factor of at least 85 according to UL 1191 may be assigned Use Codes 2, 3, 5R (recreational use applications).

§ 164.013–4 Samples submitted for acceptance.

Application samples. A product sample submitted for acceptance as required by § 164.019–7(c)(4) must consist of at least one square foot by the thickness of foam produced.

§ 164.013–5 Acceptance tests.

Manufacturers shall ensure that the performance and identification tests described in UL 1191, as appropriate, are performed on a minimum of five samples in each of the lightest and darkest colors submitted for acceptance by a recognized laboratory accepted under § 164.019.

§ 164.013–6 Production tests, inspections, and marking.

Manufacturers shall provide in-plant quality control of polyethylene foam in accordance with the requirements of § 164.019–13 and any requirements of the recognized laboratory. The manufacturer of the foam has primary responsibility for quality control over the production of the foam.

§ 164.013–7 Marking.

(a) *General.* The manufacturer must ensure that each shipping label, and each unit of put-up, is permanently and clearly marked in a color which contrasts with the color of the surface on which the marking is applied. Each label must be marked with —

(1) The manufacturer's or supplier's name, trade name, or symbol;

(2) The unique style, part, or model number of the material;

(3) The thickness of the material;

(4) The lot number of the material; and

(5) The product Use Code or Codes.

(b) Each unit of put-up must be marked with the appropriate recognized laboratory's certification marking(s).

PART 166—DESIGNATION AND APPROVAL OF NAUTICAL SCHOOL SHIPS

327. The authority citation for part 166 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 8105; 46 U.S.C. App. 1295g; 49 CFR 1.46.

328. Revise § 166.01(a) to read as follows:

§ 166.01 Approval of nautical school ships.

(a) Under 46 U.S.C. 7315, graduation from a nautical school vessel may be substituted for the service requirements for able seaman and qualified member of the engine department endorsements or merchant mariner's documents.

* * * * *

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

329. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

330. Revise § 167.01–1 to read as follows:

§ 167.01–1 Basis and purpose of part.

The rules and regulations in this part are prescribed and apply to public nautical school ships, except vessels of the Navy or Coast Guard. It is the intent of the regulations in this part to provide minimum standards for vessels used as nautical school ships in accordance with the various inspection statutes and to obtain their correct and uniform application. This part is not applicable to civilian nautical school ships.

331. Revise § 167.05–15 to read as follows:

§ 167.05–15 Coast Guard District Commander.

This term means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within the officer's district, which include the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

332. Revise § 167.05–20 to read as follows:

§ 167.05–20 Marine inspector or inspector.

These terms mean any person from the civilian or military branch of the Coast Guard assigned under the superintendence and direction of an Officer in Charge, Marine Inspection, or any other person as may be designated for the performance of duties with respect to the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

333. Revise § 167.05–30 to read as follows:

§ 167.05–30 Officer in Charge, Marine Inspection.

This term means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the superintendence and direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties with respect to the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

334. Revise § 167.10–1 to read as follows:

§ 167.10–1 Enforcement.

The Officer in Charge, Marine Inspection, is responsible for the performance of duties within the officer's jurisdiction with respect to inspection of nautical school ships.

§ 167.25–20 [Removed]

335. Remove § 167.25–20.

336. Revise § 167.45–60(a) to read as follows:

§ 167.45–60 Emergency breathing apparatus and flame safety lamps.

* * * * *

(a) Two pressure-demand, open circuit, self-contained breathing apparatus, approved by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) and having at a minimum a 30-minute air supply, a full face piece, and a spare charge for each. A self-contained compressed-air breathing apparatus previously approved under part 160, subpart 160.011, of this chapter may continue in use as required equipment if it was part of the vessel's equipment on November 23, 1992, and as long as it is maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

* * * * *

§ 167.45–75 [Amended]

337. In § 167.45–75, remove the last two sentences.

§ 167.65–45 [Amended]

338. In § 167.65–45(c), remove the words "3d," and "12th,".

PART 168—CIVILIAN NAUTICAL SCHOOL VESSELS

339. The authority citation for part 168 continues to read as follows:

Authority: 46 U.S.C. 3305, 3306; 49 CFR 1.46.

§ 168.01–5 [Removed]

340. Remove § 168.01–5.

§ 168.01–10 [Removed]

341. Remove § 168.01–10.

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

342. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

343. In § 170.075, revise the introductory text of paragraph (a) to read as follows:

§ 170.075 Plans.

(a) Except as provided in paragraph (b) of this section, each applicant for an original certificate of inspection and approval of plans must also submit three copies for plan review being conducted by the Coast Guard Marine Safety Center or four copies for plan review being conducted by the American Bureau of Shipping (ABS) of each of the following plans:

* * * * *

344. Revise § 170.080 to read as follows:

§ 170.080 Stability booklet.

Before issuing an original certificate of inspection, the following number of copies of the stability booklet required by § 170.110 must be submitted for approval; three copies for plan review being conducted by the Coast Guard Marine Safety Center or four copies for plan review being conducted by the ABS.

345. Revise § 170.085 to read as follows:

§ 170.085 Information required before a stability test.

If a stability test is to be performed, a stability test procedure that contains the information prescribed in § 170.185(g) must be submitted to the Coast Guard Marine Safety Center or the ABS at least two weeks before the test.

346. Revise § 170.093 to read as follows:

§ 170.093 Specific approvals.

Certain rules in this subchapter require specific approval of equipment or arrangements by the Commandant, OCMI, or Coast Guard Marine Safety Center. These approval determinations will be made as a part of the plan review process. When plan review is conducted by the ABS, ABS is authorized to make the approval.

§ 170.098 [Removed]

347. Remove § 170.098.

348. Revise § 170.100 to read as follows:

§ 170.100 Addresses for submittal of plans and calculations.

The plans, information, and calculations required by this subpart must be submitted to one of the following:

(a) The Marine Safety Office in the zone where the vessel is to be built or altered.

(b) Commanding Officer, U.S. Coast Guard Marine Safety Center, 400 Seventh St., SW., Washington, DC 20590–0001.

(c) The American Bureau of Shipping (ABS), Two World Trade Center, 106th Floor, New York, NY 10048.

(d) The American Bureau of Shipping (ABS), ABS Plaza, 16855 North Chase Dr., Houston, TX 77060–6008.

349. Revise § 170.110(b) to read as follows:

§ 170.110 Stability booklet.

* * * * *

(b) Each stability booklet must be approved by the Coast Guard Marine Safety Center or the ABS.

* * * * *

350. Revise § 170.120(a) to read as follows:

§ 170.120 Stability letter.

(a) Except as provided in paragraph (b) of this section, each vessel must have a stability letter issued by the Coast Guard or the ABS before the vessel is placed into service. This letter sets forth conditions of operation.

* * * * *

351. In § 170.170, revise paragraphs (b) and (d) to read as follows:

§ 170.170 Calculations required.

* * * * *

(b) If approved by the Coast Guard Marine Safety Center or the ABS, a larger value of T may be used for a

vessel with a discontinuous weather deck or abnormal sheer.

* * * * *

(d) The criterion specified in this section is generally limited in application to flush deck, mechanically powered vessels of ordinary proportions and form that carry cargo below the main deck. On other types of vessels, the Coast Guard Marine Safety Center or the ABS requires calculations in addition to those in paragraph (a) of this section. On a mechanically powered vessel under 328 feet (100 meters) in length, other than a tugboat or a towboat, the requirements in § 170.173 are applied.

352. In § 170.173, revise the introductory text to paragraph (a) to read as follows:

§ 170.173 Criterion for vessels of unusual proportion and form.

(a) If required by the Coast Guard Marine Safety Center or the ABS, each mechanically powered vessel less than 328 feet (100 meters) LLL, other than a tugboat or towboat, must be shown by design calculations to comply with—

* * * * *

353. In § 170.175, revise paragraphs (b) through (d) to read as follows:

§ 170.175 Stability test: General.

* * * * *

(b) An authorized Coast Guard or ABS representative must be present at each stability test conducted under this section.

(c) The stability test may be dispensed with, or a deadweight survey may be substituted for the stability test, if the Coast Guard or the A7BS has a record of, or is provided with, the approved results of a stability test of a sister vessel.

(d) The stability test of a vessel may be dispensed with if the Coast Guard or the ABS determines that an accurate estimate of the vessel's lightweight characteristics can be made and that locating the precise position of the vessel's vertical center of gravity is not necessary to ensure that the vessel has adequate stability in all probable loading conditions.

354. In § 170.180, revise the introductory paragraph to read as follows:

§ 170.180 Plans and information required at the stability test.

The owner of a vessel must provide the following Coast Guard or ABS approved plans and information to the authorized Coast Guard or ABS representative at the time of the stability test:

* * * * *

355. Revise § 170.185(b) to read as follows:

§ 170.185 Stability test preparations.

* * * * *

(b) Each tank vessel must be empty and dry, except that a tank may be partially filled or full if the Coast Guard Marine Safety Center or the ABS determines that empty and dry tanks are impracticable and that the effect of filling or partial filling on the location of the center of gravity and on the displacement can be accurately determined.

* * * * *

356. Revise § 170.190 to read as follows:

§ 170.190 Stability test procedure modifications.

The authorized Coast Guard or ABS representative present at a stability test may allow a deviation from the requirements of §§ 170.180 and 170.185 if the representative determines that the deviation would not decrease the accuracy of the test results.

§ 170.210 [Removed]

357. Remove § 170.210.

358. Revise § 170.235(b) to read as follows:

§ 170.235 Fixed ballast.

* * * * *

(b) Fixed ballast may not be removed from a vessel or relocated unless approved by the Coast Guard Marine Safety Center or the ABS. However, ballast may be temporarily moved for vessel examination or repair if done under the supervision of the OCMI.

PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

359. The authority citation for part 172 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

360. Add §§ 172.010 through 172.040 to subpart B to read as follows:

Subpart B—Bulk Grain

Sec.

172.010 Applicability.
172.015 Document of authorization.
172.020 Incorporation by reference.
172.030 Exemptions for certain vessels.
172.040 Certificate of loading.

Subpart B—Bulk Grain

§ 172.010 Applicability.

This subpart applies to each vessel that loads grain in bulk, except vessels engaged solely on voyages on rivers, lakes, bays, and sounds or on voyages between Great Lake ports and St. Lawrence River ports as far east as a straight line drawn from Cape de Rosiers to West Point, Anticosti Island and as far east of a line drawn along the 63rd meridian from Anticosti Island to the north shore of the St. Lawrence River.

§ 172.015 Document of authorization.

(a) Except as specified in § 172.030, each vessel that loads grain in bulk must have a Document of Authorization issued in accordance with one of the following:

(1) Section 3 of the International Code for the Safe Carriage of Grain in Bulk if the Document of Authorization is issued on or after January 1, 1994. As used in the Code, the term "Administration" means "U.S. Coast Guard".

(2) Regulation 10 part (a) of the Annex to IMO Assembly resolution A.264(VIII) if the Document of Authorization was issued before January 1, 1994.

(b) The Commandant recognizes the National Cargo Bureau, Inc., 30 Vesey Street, New York, NY 10007–2914, for the purpose of issuing Documents of Authorization in accordance with paragraph (a)(1) of this section.

§ 172.020 Incorporation by reference.

(a) Certain material is incorporated by reference into this part under approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be made available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC 20002, and at the U.S. Coast Guard, Naval Architecture Division, Office of Design and Engineering Standards, 2100 Second Street SW., Washington, DC 20593–0001, and is available for the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom.

Amendment to Chapter VI of the International Convention for the Safety of Life at Sea, 1960, Resolution A.264(VIII)—172.015

Publication No. 240–E, International Code for the Safe Carriage of Grain in Bulk—172.015

§ 172.030 Exemptions for certain vessels.

(a) Vessels are exempt from 172.015 on voyages between:

(1) United States ports along the East Coast as far south as Cape Henry, VA;

(2) Wilmington, NC and Miami, FL;

(3) United States ports in the Gulf of Mexico;

(4) Puget Sound ports and Canadian west coast ports or Columbia River ports, or both;

(5) San Francisco, Los Angeles, and San Diego, CA.

(b) Vessels exempt by paragraph (a) of this section must comply with the following conditions:

(1) The master is satisfied that the vessel's longitudinal strength is not impaired.

(2) The master ascertains the weather to be encountered on the voyage.

(3) Potential heeling moments are reduced to a minimum by carrying as few slack holds as possible.

(4) Each slack surface must be leveled.

(5) The transverse metacentric height (GM), in meters, of the vessel throughout the voyage, after correction for liquid free surface, has been shown by stability calculations to be in excess of the required GM (GMR), in meters.

(i) The GMR is the sum of the increments of GM (GMI) multiplied by the correction factor, f and r.

Where: r = (available freeboard) (beam) of the vessel and

f = 1 if r is > 0.268 or

f = (0.268 r) if r is < 0.268.

(ii) The GMI for each compartment which has a slack surface of grain, i.e., is not trimmed full, is calculated by the following formula:

GMI = (B3xLx0.0661) (Disp. x SF)

where: B = breadth of slack grain surface (m)

L = Length of compartment (m)

Disp. = Displacement of vessel (tons)

SF = Stowage factor of grain in compartment (cubic meters/tons)

(c) Vessels which do not have the Document of Authorization required by § 172.015 may carry grain in bulk up to one third of their deadweight tonnage provided the stability complies with the requirements of Section 9 of the International Code for the Safe Carriage of Grain in Bulk.

§ 172.040 Certificate of loading.

(a) Before it sails, each vessel that loads grain in bulk, except vessels engaged solely on voyages on the Great Lakes, rivers, or lakes, bays, and sounds, must have a certificate of loading issued by an organization recognized by the Commandant for that purpose. The certificate of loading may be accepted as prima facie evidence of compliance with the regulations in this subpart.

(b) The Commandant recognizes the National Cargo Bureau, Inc., 30 Vesey Street, New York, NY, 10007–2914, for the purpose of issuing certificates of loading.

PART 188—GENERAL PROVISIONS

361. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

362. Revise § 188.01–1 to read as follows:

§ 188.01–1 Purpose of regulations.

The purpose of the regulations in this subchapter is to set forth uniform minimum requirements for oceanographic research vessels designated in accordance with § 3.10–1 of this title and subject to Coast Guard inspection requirements. The regulations are necessary to carry out the provisions of applicable laws governing inspection and certification of oceanographic research vessels and have the force of law.

§ 188.01–3 [Amended]

363. In § 188.01–3, remove paragraph (b) and the paragraph designation (a).

§ 188.01–5 [Removed]

364. Remove § 188.01–5.

§ 188.05–2 [Amended]

365. In § 188.05–2, remove paragraph (a) and redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

366. Revise § 188.05–10(b)(2) to read as follows:

§ 188.05–10 Application to vessels on an international voyage.

* * * * *

(b) * * *

(2) Is numbered in accordance with 46 U.S.C. Chapter 123.

* * * * *

§ 188.05–30 [Removed]

367. Remove § 188.05–30.

368. Revise § 188.10–13 to read as follows:

§ 188.10–13 Coast Guard District Commander.

This term means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within the officer's district, which include the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

369. Revise § 188.10–45 to read as follows:

§ 188.10–45 Marine inspector or inspector.

These terms mean any person from the civilian or military branch of the Coast Guard assigned under the superintendence and direction of an Officer in Charge, Marine Inspection, or any other person as may be designated for the performance of duties with respect to the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

370. Revise § 188.10–49 to read as follows:

§ 188.10–49 Numbered vessel.

This term means a vessel which is numbered under the provisions of 46 U.S.C. Chapter 123.

371. Revise § 188.10–55 to read as follows:

§ 188.10–55 Officer in Charge, Marine Inspection.

This term means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the superintendence and direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties with respect to the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

372. Revise § 188.10–65 to read as follows:

§ 188.10–65 Seagoing barge.

A seagoing barge is a nonself-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line (as defined in 46 CFR part 7).

PART 189—INSPECTION AND CERTIFICATION

373. The authority citation for part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

374. Revise § 189.35–9(c)(2) to read as follows:

§ 189.35–9 Plans.

* * * * *

(c) * * *

(2) Other weight handling gear will be evaluated on the basis of the standards of a recognized organization or association recognized by the Commandant under § 31.10–6.

* * * * *

375. In § 189.40–1, revise paragraphs (a) and (c) to read as follows:

§ 189.40–1 Definitions relating to hull examinations.

* * * * *

(a) *Drydock examination* means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings.

* * * * *

(c) *Underwater survey* means the examination, while the vessel is afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings.

376. In § 189.40–3, revise the heading and paragraphs (d)(4), (d)(5), (e) introductory text, and (e)(1) to read as follows:

§ 189.40–3 Drydock examination, internal structural examination, cargo tank internal examination, and underwater survey intervals.

* * * * *

(d) * * *

(4) The means that will be provided for examining through-hull fittings.

(5) The means that will be provided for taking shaft bearing clearances.

* * * * *

(e) Vessels otherwise qualifying under paragraph (d) of this section, that are 15 years of age or older, may be considered for continued participation in or entry into the underwater survey program on a case-by-case basis if—

(1) Before the vessel's next scheduled drydocking, the owner or operator submits a request for participation or continued participation to Commandant (G–MOC);

* * * * *

PART 193—FIRE PROTECTION EQUIPMENT

377. The authority citation for part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

378. In § 193.01–3(b), add, in alphabetical order of the organizations referenced, the following standard:

§ 193.01–3 Incorporation by reference.

* * * * *

(b) * * *

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269–9101.

NFPA 13–1996, Standard for the Installation of Sprinkler Systems—193.30–1

379. Revise § 193.10–5(f) to read as follows:

§ 193.10–5 Fire pumps.

* * * * *

(f) Fire pumps may be used for other purposes provided at least one of the required pumps is kept available for use on the fire system at all times. In no case shall a pump having connection to an oil line be used as a fire pump. Branch lines connected to the fire main for purposes other than fire and deck wash shall be so arranged that adequate water can be made continuously available for firefighting purposes.

* * * * *

380. Add subpart 193.30 to read as follows:

Subpart 193.30—Automatic Sprinkler Systems

§ 193.30–1 Application.

Automatic sprinkling systems shall comply with NFPA 13–1996.

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

381. The authority citation for part 195 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 195.30–90 [Amended]

382. In § 195.30–90(c), remove the words "After November 23, 1994," and capitalize the "e" in the word "each".

§ 195.35–90 [Amended]

383. In § 195.35–90(c), remove the words "After November 23, 1994," and capitalize the "e" in the word "each".

PART 196—OPERATIONS

384. The authority citation for part 196 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2213, 3306, 5115, 6101; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 196.05–1 [Amended]

385. In § 196.05–1(c), remove the words "3d," and "12th,".

386. Revise § 196.53–1 to read as follows:

§ 196.53–1 Licensed officers.

All licensed officers on a vessel shall have their licenses conspicuously displayed.

PART 197—GENERAL PROVISIONS

387. The authority citation for part 197 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 6101; 49 CFR 1.46.

388. Revise § 197.462 to read as follows:

§ 197.462 Pressure vessels and pressure piping.

(a) The diving supervisor shall ensure that each pressure vessel, including each volume tank, cylinder and PVHO, and each pressure piping system is examined and tested as required by this section and after any repair, modification or alteration to determine that they are in satisfactory condition and fit for the service intended.

(b) Pressure vessels and pressure piping shall be examined annually for mechanical damage or deterioration. Any defect that may impair the safety of the pressure vessel or piping shall be repaired and pressure tested to the satisfaction of the Officer in Charge, Marine Inspection.

(c) The following tests shall be conducted at least every three years:

(1) All piping permanently installed on a PVHO shall be pressure tested.

(2) PVHOs subject to internal pressure shall be leak tested at the maximum allowable working pressure using the breathing mixture normally used in service.

(3) Equivalent nondestructive testing may be conducted in lieu of pressure testing. Proposals to use nondestructive testing in lieu of pressure testing shall be submitted to the Officer in Charge, Marine Inspection.

(d) Unless otherwise noted, pressure tests conducted in accordance with this section shall be either hydrostatic tests or pneumatic tests.

(1) When a hydrostatic test is conducted on a pressure vessel, the test pressure shall be no less than 1.25 times the maximum allowable working pressure.

(2) When a pneumatic test is conducted on a pressure vessel, the test pressure shall be the maximum allowable working pressure stamped on the nameplate.

(3) When a pneumatic test is conducted on piping, the test pressure shall be no less than 90 percent of the setting of the relief device.

(4) Pressure tests shall be conducted only after suitable precautions are taken to protect personnel and equipment.

(5) When pressure tests are conducted on pressure vessels or pressure piping, the test pressure shall be maintained for a period of time sufficient to allow examination of all joints, connections and high stress areas.

389. In § 197.480, revise paragraphs (a) and (b) to read as follows:

§ 197.480 Logbooks.

(a) The person-in-charge of a vessel or facility, that is required by 46 U.S.C. 11301 to have an official logbook, shall maintain the logbook on form CG–706.

(b) The person-in-charge of a vessel or facility not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, a logbook for making the entries required by this subpart.

* * * * *

390. Revise § 197.540(b) to read as follows:

§ 197.540 Determination of personal exposure.

* * * * *

(b) *Initial exposure monitoring.* When benzene is first loaded as a cargo on board a vessel, an initial monitoring of each type of operation must be conducted to determine accurately the representative personal exposure of persons involved in the operation.

* * * * *

Dated: September 22, 1997.

R. C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine, Safety and Environmental Protection.

[FR Doc. 97–25572 Filed 9–29–97; 8:45 am]

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Tuesday
September 30, 1997

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 1, et al.

Federal Acquisition Regulation; Part 15 Rewrite; Contracting by Negotiation and Competitive Range Determination; Final Rule

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53

[FAC 97–02; FAR Case 95–029]

RIN 9000–AH21

Federal Acquisition Regulation; Part 15 Rewrite; Contracting by Negotiation and Competitive Range Determination

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to issue Federal Acquisition Circular 97–02, a final rule which revises Part 15 of the Federal Acquisition Regulation (FAR) and makes conforming changes to other parts of the FAR. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Effective Date: October 10, 1997.

Applicability Date: The policies, provisions, and clauses of this final rule are effective for all solicitations issued on or after October 10, 1997. However, agencies may delay implementation of this final rule until January 1, 1998, at which time it becomes mandatory for all solicitations issued on or after that date. Agencies using the new policies, provisions, and clauses before January 1, 1998, shall ensure that the cover page of the solicitation for each acquisition subject to this rule, and issued before January 1, 1998, contains a notice that this rule applies to that acquisition. Any solicitation issued before January 1, 1998, that does not contain such a solicitation notice or the new provisions and clauses is automatically conducted in accordance with the FAR excluding changes made by this final rule.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules; For clarification of content, Ralph DeStefano at (202) 501–1758 or Melissa Rider at (703) 602–0131; For contract pricing issues Jerry Olson at (202) 501–3221 or Melissa Rider at (703) 602–0131. Please cite FAC 97–02, FAR case 95–029.

SUPPLEMENTARY INFORMATION:

A. Background

On January 29, 1996, the FAR Council tasked an *ad hoc* interagency committee to rewrite FAR Part 15, Contracting by Negotiation. The rewrite originally was to be accomplished in two phases. Phase I, consisting of the rewrite of FAR 15.000, 15.1, 15.2, 15.3, 15.4, 15.6, and 15.10, covering acquisition techniques and source selection, was published for public comment in the **Federal Register** at 61 FR 48380 on September 12, 1996. In the interest of increasing outreach to small entities, two public meetings were held to discuss the proposed rule: in Washington, DC, on November 8, 1996, and in Kansas City, MO, on November 18, 1996. The public comment period closed on November 26, 1996. The Government received 1541 comments from 100 respondents and considered all comments in drafting revisions to the rule. Due to the significant changes made as a result of public comments, the FAR Council decided to publish a revised proposed rule, that included previously unpublished, Phase II, proposed changes covering Subparts 15.5, 15.7, 15.8, and 15.9, and that incorporated changes made as a result of public comments submitted in response to FAR Case 96–303, Competitive Range Determinations. The revised proposed rule was published in the **Federal Register** on May 14, 1997 (62 FR 26639). The public comment period closed on July 14, 1997. The Government received 841 comments from 80 respondents and considered all the comments in drafting the final rule.

Case Summary

This final rule modifies concepts and processes in the current FAR Part 15, introduces new policies, and incorporates changes in pricing and unsolicited proposal policy. In addition, the sequence in which the information is presented has been revised to facilitate use of the regulation. The final rule does not alter the full and open competition provisions of FAR Part 6. The goals of this rewrite are to infuse innovative techniques into the source selection process, simplify the process, and facilitate the acquisition of best value. The rewrite emphasizes the need for contracting officers to use effective and efficient acquisition methods, and eliminates regulations that impose unnecessary burdens on industry and on Government contracting officers.

The following were considered in drafting this final rule: information received in connection with public meetings held on January 25, 1996, November 8, 1996, and November 18, 1996; public comments received in response to three advance notices of proposed rulemaking (60 FR 63023, December 8, 1995; 60 FR 65360, December 19, 1995; and 60 FR 67113, December 28, 1995); public comments received in response to publication of the Phase I proposed rule in the **Federal Register** (61 FR 48380, September 12, 1996); public comments received in response to publication of the revised proposed rule in the **Federal Register** (62 FR 26639, May 14, 1997); public comments received in response to publication of the Competitive Range Determinations proposed rule in the **Federal Register** (61 FR 40116, July 31, 1996); inputs received over the Acquisition Reform Network (an Internet forum); inputs received from members of Congress and Congressional staff, Government agencies, the Defense Acquisition Regulations Council, the Civilian Agency Acquisition Council, and the Office of Federal Procurement Policy (OFPP); inputs received in response to other notices of the rewrite in various print media and conferences; and inputs received from Government fora such as the Front-Line Professional's Forum and the Federal Procurement Executive Association.

Summary of Changes

This final rule reengineers the processes used to contract by negotiation, with the intent of reducing the resources necessary for source selection and reducing time to contract award. The goals of the FAR Part 15 Rewrite are to ensure that the Government, when contracting by negotiation, receives the best value, while ensuring the fair treatment of offerors. The final rule reengineers the acquisition process in the current FAR and incorporates changes to the proposed rule by:

- Supporting more open exchanges between the Government and industry, allowing industry to better understand the requirement and the Government to better understand industry proposals;
- Reestablishing the "late is late" rule for receipt of proposals, responses to requests for information, and modifications;
- Emphasizing that no offeror, otherwise eligible to submit a proposal in response to a Government solicitation, will be excluded from the competitive range without its proposal being initially reviewed and evaluated solely against all the evaluation factors and significant subfactors in the solicitation;
- Reiterating that all proposals received will be evaluated based upon the criteria in the solicitation;
- Reducing the bid and proposal costs for industry by providing early feedback as to whether a proposal is truly competitive;
- Eliminating mandatory forms currently used as cover sheets for submitting cost or pricing data (SF 1411) and information other than cost or pricing data (SF 1448);
- Simplifying the exception to obtaining cost or pricing data for modifications to contracts for commercial items;
- Revising guidance pertaining to field pricing to reflect the need for greater flexibility and teamwork in today's acquisition environment;
- Simplifying guidance pertaining to unbalanced pricing to reflect its use as a proposal analysis technique designed to assess risk and protect the Government's economic interest;
- Eliminating the requirement for a separate determination and findings supporting cost-plus-fixed-fee contracts;
- Realigning fee limitations with statute, and permitting the contracting officer's signature on the price negotiation memorandum or other documentation of the negotiated price to serve as a determination that fee limits have not been exceeded;
- Increasing the scope of discussions;
- Requiring that adverse past performance to which an offeror has not had an opportunity to respond be brought to the offeror's attention before it can be the determining factor for exclusion from the competitive range;
- Requiring that all adverse past performance information be brought to the offeror's attention during discussions, if the offeror is placed in the competitive range;
- Changing the standard for admission into the competitive range (to all proposals most highly rated) and implementing Section 4103 of the Clinger-Cohen Act of 1996 (Pub. L. 104–106); and
- Streamlining the post-competitive range process by enhancing the ability of the parties to communicate and document understandings reached during discussions.

B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. Because of the broad range of acquisitions impacted by this rule and the extensive public response to both of the proposed rules, the Final Regulatory Flexibility Analysis is published in its entirety:

Final Regulatory Flexibility Analysis

[FAR Case 95–029, FAR Part 15 Rewrite]

This final regulatory flexibility analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

1. *Succinct statement of the need for, and the objectives of, the rule.*

Historically, the executive branch has undertaken a continuous improvement approach to the acquisition process, particularly since the end of World War II. In 1947, the National Security Act established an acquisition process for the Department of Defense. Since that time, at least six major executive branch commissions have separately examined the problems of effectively managing Federal acquisition. In 1972, the Commission on Government Procurement recommended that a consolidated Federal Acquisition Regulation (FAR) be established. Later, the Packard Commission called for a simpler and clearer acquisition framework. In addition, the FAR System, composed of the Defense Acquisition Regulations Council, the Civilian Agency Acquisition Council, and the Federal Acquisition Regulatory Council, has been active in the maintenance and continuous improvement of the FAR for many years now.

Congress has also participated substantially in the reform of Federal acquisition practices. Section 800 of Public Law 101–510 (the National Defense Authorization Act for Fiscal Year 1991) directed the Department of Defense to establish the "DoD Advisory Panel on Streamlining and Codifying Acquisition Laws." The panel recommended changes to acquisition statutes in order to improve the efficiency and effectiveness of the acquisition process, while keeping in mind the need to provide a fair and open acquisition system. The panel's recommendations, published in January 1993, formed the basis of the reforms contained in the Federal Acquisition Streamlining Act of 1994 and the Clinger-Cohen Act of 1996.

The Part 15 rewrite is a normal product of the continuous improvement process employed for maintenance of the FAR. It is worth noting that in the past few years several other parts of the FAR have also been rewritten, including Part 13, Simplified Acquisition Procedures; Part 37, Service Contracting; and Part 45, Government Property. The Part 15 rewrite, like the rewrite of these other FAR parts, conforms with the general reform philosophy espoused by the Clinton-Gore Administration. Vice President Gore, in the *Report of the National Performance Review: Creating a Government that Works Better & Costs Less* recognized the need for deregulation in the acquisition process. The report, published in 1993, emphasized that acquisition regulations should be rewritten to provide for empowerment and flexibility. According to the report, the acquisition regulations should: shift from rigid rules to guiding principles; promote decision making at the lowest possible level; end unnecessary regulatory requirements; foster competitiveness and commercial practices; and shift to a new emphasis on choosing "best value" products.

We decided to revise Part 15 for several reasons. In 1995, DoD conducted a survey of the defense industry, military departments, and defense agencies to ascertain which parts of the FAR were most in need of revision. The responses indicated a general consensus that Part 15 was one of the parts that would most benefit from such an effort. Secondly, within the Government, the preponderance of contracting expenditures are accomplished using Part 15 procedures. Finally, the results of a 1991 FAR Improvement Study conducted by the General Services Administration indicated that Subparts 15.6, Source Selection, and 15.8, Price Negotiation, were the most difficult parts of the FAR to use.

On January 29, 1996, the FAR Council tasked an ad hoc interagency committee to rewrite FAR Part 15, Contracting by Negotiation. The rewrite was to be accomplished in two phases. Phase I, consisting of the rewrite of FAR Subparts 15.000, 15.1, 5.2, 15.3, 15.4, 15.6, and 15.10 covering acquisition techniques and source selection, was published for public comment in the **Federal Register** at 61 FR 48380 on September 12, 1996. In the interest of increasing outreach to small entities, two public meetings were held to discuss the proposed rule: in Washington, DC, on November 8, 1996, and in Kansas City, MO, on November 18, 996. In addition, the opportunity for an evening public meeting was publicized in the September 12, 1996, **Federal Register** notice to accommodate schedule constraints that may prevent small entities from being represented at the public meetings. The public comment period closed on November 26, 1996. We received 1541 comments from 100 respondents. Due to the significant changes made as a result of analyzing and resolving public comments, we decided to publish a second proposed rule. All of the comments received were considered in drafting the second proposed rule. The rule was expanded to include the Phase II proposed changes, covering Subparts 15.5, 15.7, 15.8, and 15.9. The revised rule also subsumed FAR Case 96–303, Competitive Range Determinations, and addressed the related public comments. The second proposed rule was published in the **Federal Register** on May 14, 1997 (62 FR 26639). We received 841 comments from 80 respondents and considered all the comments in drafting the final rule.

The goal of the rewrite is to infuse innovative techniques into the source selection process, simplify the acquisition process, incorporate changes in pricing and unsolicited proposal policy, and facilitate the acquisition of best value products and services. The rewrite emphasizes the use of effective and efficient acquisition methods and eliminates unnecessary burdens imposed on industry and Government. Elimination of burdens and creation of a simplified, efficient, and impartial acquisition process benefits all participants in Government contracting, especially small businesses. In addition, the rule revises the sequence in which Part 15 information is presented to facilitate use of the regulation.

2. Summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Several significant issues were raised by the public comments. We have addressed these issues as follows:

• Competitive range determinations. Some respondents expressed concern that the shift in competitive range policy to encourage retaining only those offerors rated most highly rather than all those with a reasonable chance of award may inhibit awards to small entities. This revision is consistent with the philosophy of Section 4103 of the Clinger-Cohen Act of 1996. The competitive range guidance in the final rule indicates that contracting officers shall establish a competitive range comprised of only those proposals most highly rated. In contrast, the current FAR advises contracting officers "when there is doubt as to whether a proposal is in the competitive range, the proposal should be included." We considered retaining the existing FAR standard for inclusion in the competitive range, but ultimately rejected it because there are readily discernible benefits from including only the most highly rated offers in the competitive range. First, those included will know that they have a good chance of winning the competition—making it in their best interests to compete aggressively. Second, those eliminated from the range are spared the cost of pursuing an award they have little or no chance of winning. Retaining marginal offers in the range imposes additional, and largely futile, effort and cost on both the Government and industry. We also note that comments received from Government agencies indicate that award is nearly always made to one of the three most highly rated offerors in the competitive range. Therefore, including an offeror that is not most highly rated in the competitive range would not likely impact the final award decision. This final rule ensures that offerors with little probability of success, are advised early on that their competitive position does not merit additional expense in a largely futile attempt to secure the contract.

This knowledge will benefit both large and small entities, but will be especially beneficial to small entities that have constrained budgets. These entities will be able to conserve scarce bid and proposal funds and employ their resources on more productive business opportunities. In addition, the new standard has the derivative benefit of encouraging offerors to submit better, more robust initial proposals in recognition of the fact that only the most highly rated proposals will be included in the competitive range.

• Limiting the competitive range in the interest of efficiency. Some respondents expressed concern that allowing the contracting officer to limit the competitive range in the interest of efficiency would provide a level of discretion to contracting officers that could lead to abuses. The comments expressed a concern that offerors might be excluded from the competitive range for arbitrary reasons unrelated to the actual procurement. In addition, one small business submitted a public comment in support of the efficient competitive range.

This language implements the requirements of Section 4103 of the Clinger-Cohen Act of 1996 to permit contracting officers, in certain circumstances, to reduce the number of proposals in the competitive range to the "greatest number that will permit an efficient competition among the offerors rated most highly." Under this final rule, source selection officials will continue to establish evaluation factors and identify them in the solicitation, including any preferences for small entities. The contracting officer may further reduce the number of proposals that would otherwise be in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offerors only if offerors have been advised of this possibility in the solicitation, and only after evaluating all proposals received in accordance with the criteria specified in the solicitation.

• Expanded exchanges throughout the acquisition process. Some respondents expressed concerns that the increased exchanges between the Government and industry throughout the acquisition process increased the risk of unfair practices. The final rule encourages earlier and more meaningful exchanges of information between the Government and potential contractors to achieve a better understanding of the Government's requirements and the offerors' proposals. This rule contains limits on exchanges that preclude favoring one offeror over another, revealing offerors' technical solutions, revealing prices without the offerors' permission, and knowingly furnishing source selection information. In addition, the guidance in the final rule has been revised to alert contracting officers of the safeguards contained at 3.104, Procurement Integrity, and 24.2, Freedom of Information Act.

• Use of neutral past performance evaluations. Some respondents expressed concerns that neutral past performance evaluations are not adequately defined, and that the rule does not contain sufficient implementing guidance. One respondent suggested that, to avoid abuses of neutral rating, offerors granted such ratings should be required to submit a record of their lack of opportunity to acquire a record of relevant past performance. The second proposed rule contained a definition of neutral rating, and asked respondents to provide suggestions for a better definition. We received only one such suggestion, and, upon analysis, we found that the suggestion did not actually provide a definition of neutral rating but, rather, provided a way to limit the application of neutral ratings. Instead, the final rule includes language based on 41 U.S.C. 405(j)(2) providing offerors, without a previous performance history, a rating that neither rewards nor penalizes the offeror. We selected this alternative to allow the facts of the instant acquisition to be used in determining what rating scheme would satisfy requirements of the statute.

• Ability of offerors to address adverse past performance information before it can be used in a source selection. Respondents, especially the small business community, expressed concerns that offerors might be excluded from a competition on the basis of incorrect past performance information that they have not had the opportunity to address. In response to this concern, the final rule provides that, when conducting communications prior to establishing the competitive range, offerors, including small entities, shall be granted the opportunity to explain situations that contributed to an adverse past performance rating to which they have not had a previous opportunity to respond, before such ratings can be the determining factor for exclusion from the competitive range.

• Impact of oral presentations on small entities. Respondents expressed concerns that the use of oral presentations may present barriers to the participation of small entities in Government procurement because they may be costly and require skills that small entities may not easily attain. The final rule requires contracting officers to consider, among other factors, the impact on small businesses, including cost, before using oral presentations. In fact, based on a recommendation from the Small Business Administration, the final rule also contains guidance on selecting alternatives to in-person presentations (*e.g.*, teleconferencing). Generally, oral presentations are expected to be less costly to prepare than formal written proposals. Experience accumulated by agencies that have already used oral presentations indicates that use of this technique has either improved participation by small entities, or has had no adverse impact on their level of participation.

• The Nuclear Regulatory Commission (NRC) and the Departments of the Army, Energy, HHS, and Treasury submitted comments describing their experiences in using oral presentations. The Department of Energy (DoE) indicated that small businesses that had not previously participated in DoE procurements, competed on procurements using oral presentations. Ft. Sam Houston in San Antonio indicated that by using oral presentations, the lead time on a recent procurement for outpatient clinics was five months, compared to a lead-time of 13–15 months on previous procurements that did not use oral presentations. They further indicated that proposals that previously required "at least two trips with a two-wheel dolly" were reduced to one envelope as a result of using oral presentations. The Centers for Disease Control (CDC) stated that in using oral presentations they have always been able to award the contract ahead of their 180-day lead-time target and have been able to save the Government thousands of dollars. The CDC has used oral presentations almost exclusively on small business set-asides, and comments from the offerors have been very positive. The NRC reports that in no case did a large business receive an award for work that was previously performed by a small business.

• Estimate of the number of small entities affected by the rule. Several respondents representing small entities expressed concerns regarding the estimate in the initial regulatory flexibility analysis of small entities impacted by the proposed rule. We have researched the statistics available in the Federal Procurement Data System, and have revised our estimate. Our discussion of the revised estimate is included in paragraph 3.

• Whether or not this is a major rule, subject to OMB review and analysis under Executive Order 12866. Respondents expressed concern as to whether this rule should be deemed a major rule. The Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, has determined that this is a significant rule, under Executive Order 12866, subject to OMB review and analysis. However, this is not a major rule, as defined in the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 804, because it does not meet the criteria identified at 5 U.S.C. 804(2). In accordance with the requirements of 5 U.S.C. 801 (as added by Subtitle E of Public Law 104–121), a copy of the rule will be provided to Congress and GAO.

3. Description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

This rule will apply to all entities, large and small, (including educational and nonprofit), that offer supplies or services to the Government in acquisitions using the Part 15 procedures. As a result of comments received in response to the proposed rule and the initial regulatory flexibility analyses, we have revised our estimate of the number of small entities that will be impacted by the rule.

• Upon further review and analysis, we have identified an error in the supporting data for the initial regulatory flexibility analyses. The figure of 602,000 was described as "Estimated number of entities impacted by rule" while in fact that figure is actually the product of the estimated number of actions impacted by the rule multiplied by the average number of participants in each action. This figure is not the estimated number of entities impacted by the rule, as it does not take into account the average number of actions in which each entity participated, and therefore is significantly larger than the actual number of entities impacted by the rule. In the next step in the supporting data calculation, this amount was properly divided by 25, the estimated number of actions in which each entity participates. The result, 24,080, was properly identified as the "Estimated total number of entities affected by the rule."

• Based on Federal Procurement Data System (FPDS) statistics for fiscal year 1996, we estimate that 17,717 small businesses received awards valued at $100,000 or more. This statistic includes small businesses receiving awards in response to Part 15 procedures as well as sealed bids. This statistic does not include small entities other than small businesses, *e.g.*, small nonprofit organizations and small local governments. Current data collection categories do not provide this information. Information quantifying the number of unsuccessful offerors that are small entities is not collected at this time. Therefore, although we recognize that the number of small entities impacted by this rule is greater than the number of small entities receiving awards under Part 15 procedures, we do not have data that quantifies this difference.

• One respondent to the proposed rule indicated that approximately 28,000 to 30,000 small businesses participate in DoD acquisitions, and estimated that 200,000 to 500,000 participate Governmentwide. We cannot confirm either estimate, however, available data seems to contradict the Governmentwide estimate. According to the 1994 Report on Small Business and Competition, submitted to the President by the Administrator and the Chief Counsel for Advocacy of the Small Business Administration for inclusion in *The State of Small Business: A Report of the President 1994*, estimates of the number of individual companies competing for Federal contract awards vary between 42,000 and 50,000 (Atch 1). This includes large as well as small entities. The 1995 Report (the most recent version available at the time this final regulatory flexibility analysis was prepared) does not update this estimate. However, the 1995 Report does indicate that the overall number of small businesses in the U.S. economy has increased.

• FPDS statistics for fiscal year 1996 (the most recent FPDS statistics available at the time this analysis was prepared) indicate that there were 17,717 small businesses that received government contract awards over $100,000 (Atch 2). FPDS advises that, of the approximately 17,717 Governmentwide small business awardees, 10,696 received contract awards from DoD (Atch 3). Application of the resulting ratio to the upper limit of the respondent's estimated range (28,000 to 30,000 small businesses participating in DoD procurement) provides an estimate of about 49,692 small businesses participating in Governmentwide acquisitions. This estimate is probably higher than the actual number of such small businesses, as it is close to the estimates referenced in the President's report cited above that include both large and small entities.

• Based on this analysis, we estimate that the number of small entities affected by this rule is no more than 49,692, or approximately 50,000.

4. Description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

This rule will impose no new reporting or recordkeeping requirements on large or small entities. The rule removes the requirement for the use of certain Government forms and formats in responding to requests for proposal. Offerors may extend the proposal acceptance period as part of proposal revisions instead of having to submit a separate, formal confirmation of the extension. Offerors may identify their authorized negotiators without using a Government-required format. The Standard Form 1417, Presolicitation Notice and Response, is no longer required for negotiated acquisitions using Part 15 procedures.

5. Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

In developing the policies and procedures contained in the final rule, we considered the available alternative approaches, and the impacts, adverse and beneficial, of each of the alternatives to large offerors, small offerors, and the Government. Some of the options were bounded by statutory requirements and a preference for an impartial, efficient, and accessible acquisition system in which appropriate information is readily available to all participants. The final rule does not provide for flexible compliance by small entities because source selection officials will continue to establish evaluation factors as provided in FAR 15.3, Source selection, including any applicable preferences for small entities.

There are five significant areas in which we were able to minimize the impact on small entities:

• Competitive range policy. We considered alternatives in the following areas in order to minimize the impact on small entities—

(a) *Total bid and proposal costs borne by offerors, including small entities.* As an alternative to the language contained in the final rule, we considered whether the potential payoff of receiving an award outweighed the additional cost to an offeror of staying in a competition without having a realistic chance of winning, *i.e.*, whether the long shots came in often enough to make it worth the extra cost of taking the chance. We also note that information provided by agencies in public comments responding to the proposed rule indicates that award is nearly always made to one of the three most highly rated offerors. We have received no comments that contradict this understanding. The benefits to offerors of including only the most highly rated offers in the competitive range are that those included will know that they have a good chance of winning the competition, making it in their best interests to compete aggressively, and those eliminated from the range are spared the cost of pursuing an award when they have little, if any, chance of winning.

(b) *Impacts on resources and cash flow.* A smaller competitive range enables faster progress toward contract award. Therefore, all offerors excluded from the competitive range expend less resources on a competition they have little or no chance of winning. The resources of these offerors can then be applied to the pursuit of other more promising business opportunities. Successful offerors receive contract awards faster, thereby improving their cash flow. Therefore, we decided not to retain the current FAR standard of including all proposals with a reasonable chance of being selected for award, and including any proposals for which there is doubt, *i.e.*, "when in doubt, leave them in," because this standard

prolongs the award process and increases the costs to offerors with little or no chance of winning.

(c) *Perception of barriers to submitting a proposal.* The initial proposed rule contained a solicitation provision that identified a target number of offerors to be included in the competitive range. Public comments indicated that this created a perception that proposals would not be properly evaluated against the evaluation criteria in the solicitation prior to establishment of the competitive range. Respondents indicated that they would view this as a barrier to submitting proposals and competing on Government contracting opportunities. Therefore, we have revised the final rule to eliminate this solicitation provision, and to emphasize that all proposals received are evaluated against all the evaluation factors and significant subfactors in the solicitation before the competitive range is established.

(d) *Limiting the competitive range in the interest of efficiency.* The language in the final rule implements Section 4103 of the Clinger-Cohen Act of 1996, that allows contracting officers, in certain circumstances, to reduce the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offerors. We considered three alternatives to the language contained in the final rule—

(1) Include at least one small business proposal in the competitive range. At the suggestion of the Small Business Administration Office of Advocacy, we considered imposing a requirement to have at least one small business in the competitive range whenever any small businesses submit proposals. We did not adopt this alternative for two reasons. First, as noted above, public comments from agencies indicate that awards are nearly always made to the one of the three most highly rated proposals going into the competitive range. This is true even when small businesses win full and open competitions. The incidence of award to an offeror other than one of the three such proposals is so small that it does not support keeping any business, particularly a small business with limited bid and proposal resources, in a competition that the business has virtually no chance of winning. Second, this recommendation could conflict with the requirements of Section 4103 of the Clinger-Cohen Act to include the most highly rated proposals in the competitive range, if the small business proposal is not among the most highly rated.

(2) Provide examples of the factors to be considered in limiting the competitive range. The proposed rule contained a list of factors for the contracting officer to consider in establishing the competitive range. As a result of public comments raising concerns about the list, we revised the final rule to delete the list of factors. This permits the facts of the instant acquisition to guide the judgment of the contracting officer in exercising this authority, instead of attempting to impose a static list on all circumstances. Both small and large offerors should benefit from this flexibility. The goal of our final rule language is to allow all participants in the process, both industry and Government, to optimize their resources.

(3) Provide a definition of efficiency. The proposed rule did not define an efficient competition. We received several public comments suggesting that such a definition be provided. Our assessment is that the definition of an efficient competition depends on the facts of the instant acquisition. Instead of imposing a definition that may not be appropriate in certain circumstances, we chose to describe the process for limiting the competitive range for the purpose of efficiency. This enables the contracting officer to exercise this authority appropriately in varying circumstances—all offerors should benefit from this approach.

(e) *Responding to adverse past performance information.* We considered alternatives reletng to two issues in this area.

(1) Prohibition on the use of certain types of past performance information. The proposed rule did not prohibit the use of edverse past performance information. Several public comments suggested that past performance information on contracts in litigation or dispute should not be used until the litigation or dispute is resolved. The rule requires the contracting officer to evaluate the currency, relevance, source, context, and general trend of the past performance information. We did not adopt this alternative because the requirement to evaluate the context of the information already addresses this concern. In addition, we were concerned that the suggested alternative may encourage litigation for the purpose of avoiding the inclusion of adverse past performance information in future acquisitions.

(2) Responding to adverse past performance information. The proposed rule did not require contracting officers to allow offerors to respond to adverse past performance information prior to discussions. Some public comments recommended that contracting officers identify any adverse past performance information to the offeror immediately upon receiving the information. They further suggested that the offeror be allowed to respond to such information regardless of the stage of the acquisition. Other public comments recommended that offerors be afforded an opportunity to respond to adverse past performance information on which they had not previously had an opportunity to respond. We revised the final rule to accommodate these recommendations. The initial proposed rule authorized communication regarding adverse past performance information. In the second proposed rule, we revised this guidance to state that contracting officers, when conducting communications with offerors before establishment of the competitive range, shall address adverse past performance information on which the offeror has not previously had the opportunity to comment. We revised the final rule to require that offerors, including small entities, shall be granted the opportunity to explain situations that contributed to an adverse past performance rating to which they have not had a previous opportunity to respond before such ratings can be the determining factor for exclusion from the competitive range. These revisions, together with the requirement to discuss all deficiencies and significant weaknesses with those offerors in the competitive range, ensure that adverse past performance to which an offeror has not had the opportunity to respond will be addressed any time it can affect the outcome of the acquisition. We did not revise the rule to permit offerors to address past performance information to which they have already had an opportunity to respond because the solicitation provides offerors with the opportunity to address problems encountered on previous contracts and related corrective actions. In addition, FAR Subpart 42.15, Contractor performance information, already contains formal rebuttal procedures. We did not revise the rule to permit all offerors to address past performance information to which they have not had a previous opportunity to comment because it would prolong the evaluation process by allowing such exchanges when they will not make a difference in the source selection decision.

(f) *Neutral past performance evaluations.* We considered alternatives relating to two aspects of neutral past performance ratings—

(1) Definition of neutral past performance evaluations. The proposed rules provided a definition of neutral past performance evaluations. Public comments recommended that we revise the definition and provide detailed instructions on how to apply neutral past performance ratings in any source selection. 41 U.S.C. 405(j)(2) requires offerors without a previous performance history, to be given a rating that neither rewards nor penalizes the offeror. We did not adopt the public comment recommendations, opting instead to revise the final rule to reflect the statutory language, so that the facts of the instant acquisition would be used in determining what rating scheme is appropriate. This alternative provides for flexible compliance to satisfy requirements of the statute.

(2) Limiting the instances of neutral evaluations. The proposed rule listed examples of information that may be considered to avoid assigning neutral past performance ratings. One public comment recommended that, in the interest of fairness to all businesses, as well as the minority contractors represented by the respondent, the Government should assign neutral past performance ratings only where the preponderance of the evidence demonstrates that the offeror lacked an opportunity to acquire a record on relevant past performance. In order to minimize the use of neutral past performance ratings, we revised the final rule to indicate that contracting officers "should" (rather than "may") take into account a broad range of information related to past performance when performing past performance evaluations.

(g) *Providing for increased exchanges between the Government and industry throughout the acquisition process.*

(1) Clarifications. We drafted the rule to allow as much free exchange of information between offerors and the Government as possible, while still permitting award without discussions and complying with applicable statutes. The proposed rule did not differentiate between exchanges of information when award without discussions was contemplated versus when a competitive range would be established. Public comment pointed out that the proposed rule language may allow exchanges beyond what is permitted by applicable statute when making award without discussions. In drafting the second proposed rule, we limited these exchanges. The resulting language still permits more exchange of information between offerors and the Government than the current FAR. This policy is expected to help offerors, especially small entities that may not be familiar with proposal preparation, by permitting easy clarification of limited aspects of their proposals.

(2) Communications. Public comments indicated that the second proposed rule did not establish a "bright line" distinction between when communications conducted in order to establish a competitive range end, and when discussions begin. Small businesses were concerned that the Government may conduct inappropriate communications with selected offerors prior to the establishment of the competitive range to the detriment of small businesses. We revised the final rule to accommodate this concern by clearly defining when discussions begin. We adopted this alternative to preclude the occurrence of the inappropriate communications that concerned small businesses.

(3) Discussions. The initial proposed rule contained the existing FAR guidance regarding the type and amount of information that should be exchanged during discussions.

In response to public comments, the second proposed rule requires a more robust exchange of information during discussions. The language requires the Government to identify, in addition to significant weaknesses and deficiencies, other aspects of an offeror's proposal that could be enhanced materially to improve the offeror's potential for award. This change should benefit all offerors, including small businesses, because it permits offerors to develop a better understanding of the Government's evaluation of their proposal, and permits them to optimize their potential for award.

(h) Oral presentations. The existing FAR does not address oral presentations. The proposed rule included general guidelines for the use of oral presentations to provide consistent and impartial Governmentwide application of this technique. We considered alternatives in two aspects of oral presentations.

(1) Methods for recording oral presentations. Some public comments in response to the second proposed rule recommended that the rule should require the Government to prepare a formal, verifiable record of each oral presentation, to place the record in the source selection files, and to provide copies of their own records to offerors. We revised the final rule to allow contracting officers to provide each offeror a copy of that offeror's record, but did not require the Government to make a verifiable record. A requirement for the Government to make a verifiable record of each presentation is not consistent with the objective of this rule to streamline the acquisition process.

(2) Oral presentations and award without discussions. The second proposed rule text on oral presentations did not refer users to the limits on communications set forth elsewhere in the rule. Public comments expressed concerns that the oral presentations might be detrimental to small businesses because, depending on the stage of the acquisition, the atmosphere of oral presentations could be conducive to inappropriate exchanges of information between selected offerors and the Government. We revised the final rule to help users of this technique understand the limits on exchanges of information during the conduct of oral presentations.

C. Paperwork Reduction Act

The following information collection requirements have been approved by the Office of Management and Budget (OMB) and apply to FAR Part 15: 9000–0037, Standard Form 1417, Presolicitation Notice and Response; 9000–0044, Bid/Offer Acceptance Period; and 9000–0048, Authorized Negotiators. While the Paperwork Reduction Act applies because the rule revises existing information collection requirements, resulting in a slight decrease in the estimated burden, it has been determined that this rule does not materially affect the burden already approved by OMB. Optional forms 307, 308, and 309 do not require independent clearance under the Paperwork Reduction Act because they do not request information beyond identity, date, address, and contact. Therefore, no adjustments to these information collection requirements are sought at this time.

List of Subjects in 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53

Government procurement.

Dated: September 22, 1997

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular—FAC 97–02

Federal Acquisition Circular (FAC) 97–02 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrtator for the National Aeronatics and Space Administration.

The policies, provisions, and clauses of this final rule are effective for all solicitations issued on or after October 10, 1997. However, agencies may delay implementation of this final rule until January 1, 1998, at which time it becomes mandatory for all solicitations issued on or after that date. Agencies using the new policies, provisions, and clauses before January 1, 1998, shall ensure that the cover page of the solicitation for each acquisition subject to this rule, and issued before January 1, 1998, contains a notice that this rule applies to that acquisition. Any solicitation issued before January 1, 1998, that does not contain such a solicitation notice or the new provisions and clauses is automatically conducted in accordance with the FAR excluding changes made by this final rule.

Dated: September 19, 1997.

Eleanor R. Spector,

Director, Defense Procurement, Department of Defense.

Dated: September 10, 1997.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: September 10, 1997.

Tom Luedtke,

Deputy Associate Administrator for Procurement National Aeronautics and Space Administration.

Therefore, 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, , 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.102–2 is amended by adding paragraph (c)(3) to read as follows:

1.102–2 Performance standards.

* * * * *

(c) * * *

(3) The Government shall exercise discretion, use sound business judgment, and comply with applicable laws and regulations in dealing with contractors and prospective contractors. All contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same.

* * * * *

3. Section 1.106 is amended in the table following the introductory paragraph by removing the following entries:

1.106 OMB Approval under the Paperwork Reduction Act.

FAR segment	OMB control No.
• • • •	•
SF 1411	9000–0013

FAR segment	OMB control No.
. . . .	
SF 1448	9000–0013
. . . .	

PART 2—DEFINITIONS OF WORDS AND TERMS

4. Section 2.101 is amended by inserting, in alphabetical order, the definition "Best value" to read as follows:

2.101 Definitions.

* * * * *

Best value means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

5. Subpart 4.10 is added to read as follows:

Subpart 4.10—Contract Line Items

4.1001 Policy.

Contracts may identify the items or services to be acquired as separately identified line items. Contract line items should provide unit prices or lump sum prices for separately identifiable contract deliverables, and associated delivery schedules or performance periods. Line items may be further subdivided or stratified for administrative purposes (*e.g.*, to provide for traceable accounting classification citations).

PART 5—PUBLICIZING CONTRACT ACTIONS

6. Section 5.102 is amended by adding paragraph (a)(7) to read as follows:

5.102 Availability of solicitations.

(a) * * *

(7) If electronic commerce is employed in the solicitation process, availability of the RFP may be limited to the electronic medium.

* * * * *

PART 6—COMPETITION REQUIREMENTS

7. Section 6.101 is amended by revising paragraph (b) to read as follows:

6.101 Policy.

* * * * *

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure(s) contained in this subpart that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently (10 U.S.C. 2304 and 41 U.S.C. 253).

PART 7—ACQUISITION PLANNING

8. Section 7.105 is amended by revising paragraph (b)(5) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(5) *Budgeting and funding.* Include budget estimates, explain how they were derived, and discuss the schedule for obtaining adequate funds at the time they are required (see subpart 32.7).

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

9. Section 11.002 is amended at the end of paragraph (d) by adding the following sentence:

11.002 Policy.

* * * * *

(d) * * * Environmental objectives, such as pollution prevention (*e.g.*, promoting waste reduction, source reduction, energy efficiency and maximum practicable recovered material content) (see part 23) shall be considered when describing Government requirements for supplies and services, and when developing source selection factors for competitive negotiated acquisitions (see 15.304), when appropriate.

* * * * *

10. Subpart 11.8 is added to read as follows:

Subpart 11.8—Testing

11.801 Preaward in-use evaluation.

Supplies may be evaluated under comparable in-use conditions without a further test plan, provided offerors are so advised in the solicitation. The results of such tests or demonstrations may be used to rate the proposal, to determine technical acceptability, or otherwise to evaluate the proposal (see 15.305).

PART 14—SEALED BIDDING

14.201–6 [Amended]

11. Section 14.201–6 is amended by removing and reserving paragraph (n).

12. Section 14.404–1 is amended in paragraph (e)(1) by removing the reference "15.103" and inserting "paragraph (f) of this subsection"; and by adding paragraph (f) to read as follows:

14.404–1 Cancellation of invitations after opening.

* * * * *

(f) When the agency head has determined, in accordance with paragraph (e)(1) of this subsection, that an invitation for bids should be canceled and that use of negotiation is in the Government's interest, the contracting officer may negotiate (in accordance with part 15, as appropriate) and make award without issuing a new solicitation provided—

(1) Each responsible bidder in the sealed bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations; and

(2) The award is made to the responsible bidder offering the lowest negotiated price.

13. Part 15 is revised to read as follows:

PART 15—CONTRACTING BY NEGOTIATION

Sec.

15.000 Scope of part.
15.001 Definitions.
15.002 Types of negotiated acquisition.

Subpart 15.1—Source Selection Processes and Techniques

15.100 Scope of subpart.
15.101 Best value continuum.
15.101–1 Tradeoff process.
15.101–2 Lowest price technically acceptable source selection process.
15.102 Oral presentations.

Subpart 15.2—Solicitation and Receipt of Proposals and Information

15.200 Scope of subpart.
15.201 Exchanges with industry before receipt of proposals.
15.202 Advisory multi-step process.
15.203 Requests for proposals.
15.204 Contract format.
15.204–1 Uniform contract format.

Table 15–1—Uniform Contract Format

15.204–2 Part I—The Schedule.
15.204–3 Part II—Contract Clauses.
15.204–4 Part III—List of Documents, Exhibits, and Other Attachments.
15.204–5 Part IV—Representations and Instructions.
15.205 Issuing solicitations.
15.206 Amending the solicitation.
15.207 Handling proposals and information.
15.208 Submission, modification, revision, and withdrawal of proposals.
15.209 Solicitation provisions and contract clauses.
15.210 Forms.

Subpart 15.3—Source Selection

15.300 Scope of subpart.
15.301 Definitions.
15.302 Source selection objective.
15.303 Responsibilities.
15.304 Evaluation factors and significant subfactors.
15.305 Proposal evaluation.
15.306 Exchanges with offerors after receipt of proposals.
15.307 Proposal revisions.
15.308 Source selection decision.

Subpart 15.4—Contract Pricing

15.400 Scope of subpart.
15.401 Definitions.
15.402 Pricing policy.
15.403 Obtaining cost or pricing data.
15.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).
15.403–2 Other circumstances where cost or pricing data are not required.
15.403–3 Requiring information other than cost or pricing data.
15.403–4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).
15.403–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.
15.404 Proposal analysis.
15.404–1 Proposal analysis techniques.
15.404–2 Information to support proposal analysis.
15.404–3 Subcontract pricing considerations.
15.404–4 Profit.
15.405 Price negotiation.
15.406 Documentation.
15.406–1 Prenegotiation objectives.
15.406–2 Certificate of Current Cost or Pricing Data.
15.406–3 Documenting the negotiation.
15.407 Special cost or pricing areas.
15.407–1 Defective cost or pricing data.
15.407–2 Make-or-buy programs.
15.407–3 Forward pricing rate agreements.
15.407–4 Should-cost review.
15.407–5 Estimating systems.
15.408 Solicitation provisions and contract clauses.

Table 15–2—Instructions for Submitting Cost or Pricing Data Are Required

Subpart 15.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

15.501 Definition.
15.502 Applicability.
15.503 Notifications to unsuccessful offerors.
15.504 Award to successful offeror.
15.505 Preaward debriefing of offerors.
15.506 Postaward debriefing of offerors.
15.507 Protests against award.
15.508 Discovery of mistakes.
15.509 Forms.

Subpart 15.6—Unsolicited Proposals

15.600 Scope of subpart.
15.601 Definitions.
15.602 Policy.
15.603 General.
15.604 Agency points of contact.
15.605 Content of unsolicited proposals.
15.606 Agency procedures.
15.606–1 Receipt and initial review.
15.606–2 Evaluation.
15.607 Criteria for acceptance and negotiation of an unsolicited proposal.
15.608 Prohibitions.
15.609 Limited use of data.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

15.000 Scope of part.

This part prescribes policies and procedures governing competitive and noncompetitive negotiated acquisitions. A contract awarded using other than sealed bidding procedures is a negotiated contract (see 14.101).

15.001 Definitions.

As used in this part—

Proposal modification is a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.

15.002 Types of negotiated acquisition.

(a) *Sole source acquisitions.* When contracting in a sole source environment, the request for proposals (RFP) should be tailored to remove unnecessary information and requirements; *e.g.*, evaluation criteria and voluminous proposal preparation instructions.

(b) *Competitive acquisitions.* When contracting in a competitive environment, the procedures of this part are intended to minimize the complexity of the solicitation, the evaluation, and the source selection decision, while maintaining a process designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to selection of the proposal representing the best value to the Government (see 2.101).

Subpart 15.1—Source Selection Processes and Techniques

15.100 Scope of subpart.

This subpart describes some of the acquisition processes and techniques that may be used to design competitive acquisition strategies suitable for the specific circumstances of the acquisition.

15.101 Best value continuum.

An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.

15.101–1 Tradeoff process.

(a) A tradeoff process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

(b) When using a tradeoff process, the following apply:

(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation; and

(2) The solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

(c) This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file in accordance with 15.406.

15.101–2 Lowest price technically acceptable source selection process.

(a) The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

(b) When using the lowest price technically acceptable process, the following apply:

(1) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. If the contracting officer documents the file pursuant to 15.304(c)(3)(iii), past performance need not be an evaluation factor in lowest price technically acceptable source selections. If the contracting officer elects to consider past performance as

an evaluation factor, it shall be evaluated in accordance with 15.305. However, the comparative assessment in 15.305(a)(2)(i) does not apply. If the contracting officer determines that a small business' past performance is not acceptable, the matter shall be referred to the Small Business Administration for a Certificate of Competency determination, in accordance with the procedures contained in subpart 19.6 and 15 U.S.C. 637(b)(7)).

(2) Tradeoffs are not permitted.

(3) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

(4) Exchanges may occur (see 15.306).

15.102 Oral presentations.

(a) Oral presentations by offerors as requested by the Government may substitute for, or augment, written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, and are subject to the same restrictions as written information, regarding timing (see 15.208) and content (see 15.306). Oral presentations provide an opportunity for dialogue among the parties. Pre-recorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations for the purposes of this section, although they may be included in offeror submissions, when appropriate.

(b) The solicitation may require each offeror to submit part of its proposal through oral presentations. However, certifications, representations, and a signed offer sheet (including any exceptions to the Government's terms and conditions) shall be submitted in writing.

(c) Information pertaining to areas such as an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks (or other types of tests) may be suitable for oral presentations. In deciding what information to obtain through an oral presentation, consider the following:

(1) The Government's ability to adequately evaluate the information;

(2) The need to incorporate any information into the resultant contract;

(3) The impact on the efficiency of the acquisition; and

(4) The impact (including cost) on small businesses. In considering the costs of oral presentations, contracting officers should also consider alternatives to on-site oral presentations (*e.g.*, teleconferencing, video teleconferencing).

(d) When oral presentations are required, the solicitation shall provide offerors with sufficient information to prepare them. Accordingly, the solicitation may describe—

(1) The types of information to be presented orally and the associated evaluation factors that will be used;

(2) The qualifications for personnel that will be required to provide the oral presentation(s);

(3) The requirements for, and any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations;

(4) The location, date, and time for the oral presentations;

(5) The restrictions governing the time permitted for each oral presentation; and

(6) The scope and content of exchanges that may occur between the Government's participants and the offeror's representatives as part of the oral presentations, including whether or not discussions (see 15.306(d)) will be permitted during oral presentations.

(e) The contracting officer shall maintain a record of oral presentations to document what the Government relied upon in making the source selection decision. The method and level of detail of the record (*e.g.*, videotaping, audio tape recording, written record, Government notes, copies of offeror briefing slides or presentation notes) shall be at the discretion of the source selection authority. A copy of the record placed in the file may be provided to the offeror.

(f) When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information shall be put in writing. Incorporation by reference of oral statements is not permitted.

(g) If, during an oral presentation, the Government conducts discussions (see 15.306(d)), the Government must comply with 15.306 and 15.307.

Subpart 15.2—Solicitation and Receipt of Proposals and Information

15.200 Scope of subpart.

This subpart prescribes policies and procedures for—

(a) Exchanging information with industry prior to receipt of proposals;

(b) Preparing and issuing requests for proposals (RFPs) and requests for information (RFIs); and

(c) Receiving proposals and information.

15.201 Exchanges with industry before receipt of proposals.

(a) Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information must be consistent with procurement integrity requirements (see 3.104). Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government's requirements, and enhancing the Government's ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(c) Agencies are encouraged to promote early exchanges of information about future acquisitions. An early exchange of information among industry and the program manager, contracting officer, and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions. Some techniques to promote early exchanges of information are—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research, as described in part 10;

(4) One-on-one meetings with potential offerors (any that are substantially involved with potential contract terms and conditions should include the contracting officer; also see paragraph (f) of this section regarding restrictions on disclosure of information);

(5) Presolicitation notices;

(6) Draft RFPs;

(7) RFIs;

(8) Presolicitation or preproposal conferences; and

(9) Site visits.

(d) The special notices of procurement matters at 5.205(c), or electronic notices, may be used to publicize the Government's requirement or solicit information from industry.

(e) RFIs may be used when the Government does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract. There is no required format for RFIs.

(f) General information about agency mission needs and future requirements may be disclosed at any time.

After release of the solicitation, the contracting officer shall be the focal point of any exchange with potential offerors. When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information shall be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a particular offeror in response to that offeror's request shall not be disclosed if doing so would reveal the potential offeror's confidential business strategy, and would be protected under 3.104 or subpart 24.2. When a presolicitation or preproposal conference is conducted, materials distributed at the conference should be made available to all potential offerors, upon request.

15.202 Advisory multi-step process.

(a) The agency may publish a presolicitation notice (see 5.204) that provides a general description of the scope or purpose of the acquisition and invites potential offerors to submit information that allows the Government to advise the offerors about their potential to be viable competitors. The presolicitation notice should identify the information that must be submitted and the criteria that will be used in making the initial evaluation. Information sought may be limited to a statement of qualifications and other appropriate information (*e.g.*, proposed technical concept, past performance, and limited pricing information). At a minimum, the notice shall contain sufficient information to permit a potential offeror to make an informed decision about whether to participate in the acquisition. This process should not be used for multi-step acquisitions where it would result in offerors being required to submit identical information in response to the notice and in response to the initial step of the acquisition.

(b) The agency shall evaluate all responses in accordance with the criteria stated in the notice, and shall advise each respondent in writing either that it will be invited to participate in the resultant acquisition or, based on the information submitted, that it is unlikely to be a viable competitor. The agency shall advise respondents considered not to be viable competitors of the general basis for that opinion. The agency shall inform all respondents that, notwithstanding the advice provided by the Government in response to their submissions, they may participate in the resultant acquisition.

15.203 Requests for proposals.

(a) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals. RFPs for competitive acquisitions shall, at a minimum, describe the—

(1) Government's requirement;

(2) Anticipated terms and conditions that will apply to the contract:

(i) The solicitation may authorize offerors to propose alternative terms and conditions, including the contract line item number (CLIN) structure; and

(ii) When alternative CLIN structures are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement (*e.g.*, place of performance or payment and funding requirements) (see 15.206);

(3) Information required to be in the offeror's proposal; and

(4) Factors and significant subfactors that will be used to evaluate the proposal and their relative importance.

(b) An RFP may be issued for OMB Circular A–76 studies. See subpart 7.3 for additional information regarding cost comparisons between Government and contractor performance.

(c) Electronic commerce may be used to issue RFPs and to receive proposals, modifications, and revisions. In this case, the RFP shall specify the electronic commerce method(s) that offerors may use (see subpart 4.5).

(d) Contracting officers may issue RFPs and/or authorize receipt of proposals, modifications, or revisions by facsimile.

(1) In deciding whether or not to use facsimiles, the contracting officer should consider factors such as—

(i) Anticipated proposal size and volume;

(ii) Urgency of the requirement;

(iii) Availability and suitability of electronic commerce methods; and

(iv) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the designated proposal delivery location.

(2) If facsimile proposals are authorized, contracting officers may request offeror(s) to provide the complete, original signed proposal at a later date.

(e) Letter RFPs may be used in sole source acquisitions and other appropriate circumstances. Use of a letter RFP does not relieve the contracting officer from complying with other FAR requirements. Letter RFPs should be as complete as possible and, at a minimum, should contain the following:

(1) RFP number and date;

(2) Name, address (including electronic address and facsimile address, if appropriate), and telephone number of the contracting officer;

(3) Type of contract contemplated;

(4) Quantity, description, and required delivery dates for the item;

(5) Applicable certifications and representations;

(6) Anticipated contract terms and conditions;

(7) Instructions to offerors and evaluation criteria for other than sole source actions;

(8) Proposal due date and time; and

(9) Other relevant information; *e.g.*, incentives, variations in delivery schedule, cost proposal support, and data requirements.

(f) Oral RFPs are authorized when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government and a notice is not required under 5.202 (*e.g.*, perishable items and support of contingency operations or other emergency situations). Use of an oral RFP does not relieve the contracting officer from complying with other FAR requirements.

(1) The contract files supporting oral solicitations should include—

(i) A description of the requirement;

(ii) Rationale for use of an oral solicitation;

(iii) Sources solicited, including the date, time, name of individuals contacted, and prices offered; and

(iv) The solicitation number provided to the prospective offerors.

(2) The information furnished to potential offerors under oral solicitations should include appropriate items from paragraph (e) of this section.

15.204 Contract format.

The use of a uniform contract format facilitates preparation of the solicitation

and contract as well as reference to, and use of, those documents by offerors, contractors, and contract administrators. The uniform contract format need not be used for the following:

(a) Construction and architect-engineer contracts (see part 36).

(b) Subsistence contracts.

(c) Supplies or services contracts requiring special contract formats prescribed elsewhere in this part that are inconsistent with the uniform format.

(d) Letter requests for proposals (see 15.203(e)).

(e) Contracts exempted by the agency head or designee.

15.204–1 Uniform contract format.

(a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in Table 15–1 of this subsection.

(b) Solicitations using the uniform contract format shall include Parts I, II, III, and IV (see 15.204–2 through 15.204–5). Upon award, contracting officers shall not physically include Part IV in the resulting contract, but shall retain it in the contract file. Section K shall be incorporated by reference in the contract.

TABLE 15–1.—UNIFORM CONTRACT FORMAT

Section	Title
Part I—The Schedule	
A	Solicitation/contract form.
B	Supplies or services and prices/costs.
C	Description/specifications/statement of work.
D	Packaging and marking.
E	Inspection and acceptance.
F	Deliveries or performance.
G	Contract administration data.
H	Special contract requirements.
Part II—Contract Clauses	
I	Contract clauses.
Part III—List of Documents, Exhibits, and Other Attachments	
J	List of attachments.
Part IV—Representations and Instructions.	
K	Representations, certifications, and other statements of offerors or respondents.
L	Instructions, conditions, and notices to offerors or respondents.
M	Evaluation factors for award.

15.204–2 Part I—The Schedule.

The contracting officer shall prepare the contract Schedule as follows:

(a) *Section A, Solicitation/contract form.* (1) Optional Form (OF) 308, Solicitation and Offer-Negotiated Acquisition, or Standard Form (SF) 33, Solicitation, Offer and Award, may be used to prepare RFPs.

(2) When other than OF 308 or SF 33 is used, include the following information on the first page of the solicitation:

(i) Name, address, and location of issuing activity, including room and building where proposals or information must be submitted.

(ii) Solicitation number.

(iii) Date of issuance.

(iv) Closing date and time.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Brief description of item or service.

(viii) Requirement for the offeror to provide its name and complete address, including street, city, county, state, and zip code, and electronic address (including facsimile address), if appropriate.

(ix) Offer expiration date.

(b) *Section B, Supplies or services and prices/costs.* Include a brief description of the supplies or services; *e.g.*, item number, national stock number/part number if applicable, nouns, nomenclature, and quantities. (This includes incidental deliverables such as manuals and reports.)

(c) *Section C, Description/specifications/statement of work.* Include any description or specifications needed in addition to Section B (see part 11, Describing Agency Needs).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any.

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (see part 46, Quality Assurance).

(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see subpart 11.4, Delivery or Performance Schedules, and 47.301–1).

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form. Include a statement that the offeror should include the payment address in the proposal, if it is different from that shown for the offeror.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

15.204–3 Part II—Contract Clauses.

Section I, Contract clauses. The contracting officer shall include in this section the clauses required by law or by this part and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format. An index may be inserted if this section's format is particularly complex.

15.204–4 Part III—List of Documents, Exhibits, and Other Attachments.

Section J, List of attachments. The contracting officer shall list the title, date, and number of pages for each attached document, exhibit, and other attachment. Cross-references to material in other sections may be inserted, as appropriate.

15.204–5 Part IV—Representations and Instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of offerors.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(b) *Section L, Instructions, conditions, and notices to offerors or respondents.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or respondents in preparing proposals or responses to requests for information. Prospective offerors or respondents may be instructed to submit proposals or information in a specific format or severable parts to facilitate evaluation. The instructions may specify further organization of proposal or response parts, such as—

(1) Administrative;

(2) Management;

(3) Technical;

(4) Past performance; and

(5) Cost or pricing data (see Table 15–2 of 15.408) or information other than cost or pricing data.

(c) *Section M, Evaluation factors for award.* Identify all significant factors and any significant subfactors that will be considered in awarding the contract and their relative importance (see 15.304(d)). The contracting officer shall insert one of the phrases in 15.304(e).

15.205 Issuing solicitations.

(a) The contracting officer shall issue solicitations to potential sources in accordance with the policies and procedures in 5.102, 19.202–4, and part 6.

(b) A master solicitation, as described in 14.203–3, may also be used for negotiated acquisitions.

15.206 Amending the solicitation.

(a) When, either before or after receipt of proposals, the Government changes its requirements or terms and conditions, the contracting officer shall amend the solicitation.

(b) Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.

(c) Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.

(d) If a proposal of interest to the Government involves a departure from the stated requirements, the contracting officer shall amend the solicitation, provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see 15.207(b) and 15.306(e)).

(e) If, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

(f) Oral notices may be used when time is of the essence. The contracting officer shall document the contract file and formalize the notice with an amendment (see subpart 4.5, Electronic Commerce in Contracting).

(g) At a minimum, the following information should be included in each amendment:

(1) Name and address of issuing activity.

(2) Solicitation number and date.

(3) Amendment number and date.

(4) Number of pages.

(5) Description of the change being made.

(6) Government point of contact and phone number (and electronic or facsimile address, if appropriate).

(7) Revision to solicitation closing date, if applicable.

15.207 Handling proposals and information.

(a) Upon receipt at the location specified in the solicitation, proposals and information received in response to a request for information (RFI) shall be marked with the date and time of receipt and shall be transmitted to the designated officials.

(b) Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. (See 3.104 regarding the disclosure of source selection information (41 U.S.C. 423)). Information received in response to an RFI shall be safeguarded adequately from unauthorized disclosure.

(c) If any portion of a proposal received by the contracting officer electronically or by facsimile is unreadable, the contracting officer immediately shall notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal. The method and time for resubmission shall be prescribed by the contracting officer after consultation with the offeror, and documented in the file. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness under 15.208(a), provided the offeror complies with the time and format requirements for resubmission prescribed by the contracting officer.

15.208 Submission, modification, revision, and withdrawal of proposals.

(a) Offerors are responsible for submitting offers, and any revisions and modifications to them, so as to reach the Government office designated in the solicitation on time. If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b) Proposals, and modifications to them, that are received in the designated Government office after the exact time specified are "late and shall be considered only if—

(1) They are received before award is made; and

(2) The circumstances meet the specific requirements of 52.215–1(c)(3)(i).

(c) The contracting officer shall promptly notify any offeror if its proposal, modification, or revision was received late, and shall inform the offeror whether or not it will be considered, unless contract award is imminent and the notice prescribed in 15.503(b) would suffice.

(d) When a late proposal or modification is transmitted to a contracting office in the United States or Canada by registered or certified mail or by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee and is received before award, the offeror shall be promptly notified substantially in accordance with the notice in 14.304–2, appropriately modified to relate to proposals.

(e) Late proposals and modifications that are not considered shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(f) The following shall, if available, be included in the contracting office files for each late proposal, response to request for information, or modification:

(1) The date of mailing, filing, or delivery.

(2) The date and hour of receipt.

(3) Whether or not considered for award.

(4) The envelope, wrapper, or other evidence of date of submission.

(g) Proposals may be withdrawn at any time before award. Written proposals are withdrawn upon receipt by the contracting officer of a written notice of withdrawal. Oral proposals in response to oral solicitations may be withdrawn orally. The contracting officer shall document the contract file when such oral withdrawals are made. One copy of withdrawn proposals should be retained in the contract file (see 4.803(a)(10)). Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror's request. Extremely bulky proposals shall only be returned at the offeror's request and expense.

(h) Upon withdrawal of an electronically transmitted proposal, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

15.209 Solicitation provisions and contract clauses.

When contracting by negotiation—

(a) The contracting officer shall insert the provision at 52.215–1, Instructions to Offerors—Competitive Acquisition, in all competitive solicitations where the

Government intends to award a contract without discussions.

(1) If the Government intends to make award after discussions with offerors within the competitive range, the contracting officer shall use the basic provision with its Alternate I.

(2) If the Government would be willing to accept alternate proposals, the contracting officer shall alter the basic clause to add a paragraph (c)(9) substantially the same as Alternate II.

(b)(1) The contracting officer shall insert the clause at 52.215–2, Audit and Records-Negotiation (10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A–133), in solicitations and contracts except those for—

(i) Acquisitions not exceeding the simplified acquisition threshold;

(ii) The acquisition of utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge; or

(iii) The acquisition of commercial items exempted under 15.403–1.

(2) For facilities acquisitions, the contracting officer shall use the clause with its Alternate I.

(3) For cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

(4) When the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at 52.215–3, Request for Information or Solicitation for Planning Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) The contracting officer shall insert the provision at 52.215–4, Type of Business Organization, in all solicitations.

(e) The contracting officer shall insert the provision at 52.215–5, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.203(d)).

(f) The contracting officer shall insert the provision at 52.215–6, Place of Performance, in solicitations unless the place of performance is specified by the Government.

(g) The contracting officer shall insert the provision at 52.215–7, Annual Representations and Certifications—Negotiation, in solicitations if annual representations and certifications are used (see 14.213).

(h) The contracting officer shall insert the clause at 52.215–8, Order of Precedence—Uniform Contract Format, in solicitations and contracts using the format at 15.204.

15.210 Forms.

Prescribed forms are not required to prepare solicitations described in this part. The following forms may be used at the discretion of the contracting officer:

(a) Standard Form 33, Solicitation, Offer, and Award, and Optional Form 308, Solicitation and Offer—Negotiated Acquisition, may be used to issue RFPs and RFIs.

(b) Standard Form 30, Amendment of Solicitation/Modification of Contract, and Optional Form 309, Amendment of Solicitation, may be used to amend solicitations of negotiated contracts.

(c) Optional Form 17, Offer Label, may be furnished with each request for proposal.

Subpart 15.3—Source Selection

15.300 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions.

15.301 Definitions.

Deficiency, as used in this subpart, is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Weakness, as used in this subpart, is a flaw in the proposal that increases the risk of unsuccessful contract performance. A "significant weakness" in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

15.302 Source selection objective.

The objective of source selection is to select the proposal that represents the best value.

15.303 Responsibilities.

(a) Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

(b) The source selection authority shall—

(1) Establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers;

(2) Approve the source selection strategy or acquisition plan, if applicable, before solicitation release;

(3) Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation (10 U.S.C. 2305(b)(1) and 41 U.S.C. 253b(d)(3));

(5) Consider the recommendations of advisory boards or panels (if any); and

(6) Select the source or sources whose proposal is the best value to the Government (10 U.S.C. 2305(b)(4)(B) and 41 U.S.C. 253b(d)(3)).

(c) The contracting officer shall—

(1) After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;

(2) After receipt of proposals, control exchanges with offerors in accordance with 15.306; and

(3) Award the contract(s).

15.304 Evaluation factors and significant subfactors.

(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(b) Evaluation factors and significant subfactors must—

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A) (ii) and 41 U.S.C. 253a(c)(1)(B)) (also see part 36 for architect-engineer contracts);

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 2305(a)(3) (A)(i) and 41 U.S.C. 253a(c)(1)(A)); and (3)(i) Except as set forth in paragraph (c)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed $1,000,000.

(ii) Except as set forth in paragraph (c)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions issued on or after January 1, 1999, for acquisitions expected to exceed $100,000. Agencies should develop phase-in schedules that meet or exceed this schedule.

(iii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition (OFPP Policy Letter 92–5).

(d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (10 U.S.C. 2305(a)(2)(A)(i) and 41 U.S.C. 253a(b)(1)(A)) (see 15.204-5(c)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.

(e) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price (10 U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).

15.305 Proposal evaluation.

(a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

(1) *Cost or price evaluation.* Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis (see 15.403–1(c)(1)(i)(B)) may be appropriate to establish reasonableness of the otherwise successful offeror's price. When contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract. Cost realism analyses may also be used on fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts (see 15.404-1(d)(3)). The contracting officer shall document the cost or price evaluation.

(2) *Past performance evaluation.* (i) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered (41 U.S.C. 401). This comparative assessment of past performance information is separate from the responsibility determination required under subpart 9.1.

(ii) The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror corrective actions. The Government shall consider this information, as well as information obtained from any other sources, when evaluating the offeror past performance. The source selection authority shall determine the relevance of similar past performance information.

(iii) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(iv) In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

(3) *Technical evaluation.* When tradeoffs are performed (see 15.101–1), the source selection records shall include—

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

(4) *Cost information.* Cost information may be provided to members of the technical evaluation team in accordance with agency procedures.

(b) The source selection authority may reject all proposals received in response to a solicitation, if doing so is in the best interest of the Government.

(c) For restrictions on the use of support contractor personnel in proposal evaluation, see 37.203(d).

15.306 Exchanges with offerors after receipt of proposals.

(a) *Clarifications and award without discussions.* (1) Clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated.

(2) If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (*e.g.*, the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(3) Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions. If the solicitation contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so shall be documented in the contract file (see the provision at 52.215–1) (10 U.S.C. 2305(b)(4)(A)(ii) and 41 U.S.C. 253b(d)(1)(B)).

(b) *Communications with offerors before establishment of the competitive range.* Communications are exchanges, between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established, these communications—

(1) Shall be limited to the offerors described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section and—

(i) Shall be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Such communications shall address adverse past performance information to which

an offeror has not had a prior opportunity to respond; and

(ii) May only be held with those offerors (other than offerors under paragraph (b)(1)(i) of this section) whose exclusion from, or inclusion in, the competitive range is uncertain;

(2) May be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Such communications may be considered in rating proposals for the purpose of establishing the competitive range;

(3) Are for the purpose of addressing issues that must be explored to determine whether a proposal should be placed in the competitive range. Such communications shall not provide an opportunity for the offeror to revise its proposal, but may address—

(i) Ambiguities in the proposal or other concerns (*e.g.*, perceived deficiencies, weaknesses, errors, omissions, or mistakes (see 14.407)); and

(ii) Information relating to relevant past performance; and

(4) Shall address adverse past performance information to which the offeror has not previously had an opportunity to comment.

(c) *Competitive range.* (1) Agencies shall evaluate all proposals in accordance with 15.305(a), and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the contracting officer shall establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section.

(2) After evaluating all proposals in accordance with 15.305(a) and paragraph (c)(1) of this section, the contracting officer may determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency (see 52.215–1(f)(4)), the contracting officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals (10 U.S.C. 2305(b)(4) and 41 U.S.C. 253b(d)).

(3) If the contracting officer, after complying with paragraph (d)(3) of this section, decides that an offeror's proposal should no longer be included in the competitive range, the proposal shall be eliminated from consideration for award. Written notice of this decision shall be provided to unsuccessful offerors in accordance with 15.503.

(4) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing (see 15.505 and 15.506).

(d) *Exchanges with offerors after establishment of the competitive range.* Negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.

(1) Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range.

(2) The primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.

(3) The contracting officer shall, subject to paragraphs (d)(4) and (e) of this section and 15.307(a), indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. The scope and extent of discussions are a matter of contracting officer judgment. In discussing other aspects of the proposal, the Government may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums, and the Government may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

(4) If, after discussions have begun, an offeror originally in the competitive range is no longer considered to be among the most highly rated offerors being considered for award, that offeror may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the offeror has been afforded an opportunity to submit a proposal revision (see 15.307(a) and 15.503(a)(1)).

(e) *Limits on exchanges.* Government personnel involved in the acquisition shall not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals an offerors price without that offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable (41 U.S.C. 423(h)(1)(2));

(4) Reveals the names of individuals providing reference information about an offeror's past performance; or

(5) Knowingly furnishes source selection information in violation of 3.104 and 41 U.S.C. 423(h)(1)(2).

15.307 Proposal revisions.

(a) If an offerors proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

(b) The contracting officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision. The contracting officer is required to establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the Government intends to make award without obtaining further revisions.

15.308 Source selection decision.

The source selection authority's (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

Subpart 15.4—Contract Pricing

15.400 Scope of subpart.

This subpart prescribes the cost and price negotiation policies and procedures for pricing negotiated prime contracts (including subcontracts) and contract modifications, including modifications to contracts awarded by sealed bidding.

15.401 Definitions.

Cost or pricing data (10 U.S.C. 2306a(h)(1) and 41 U.S.C. 254b) means all facts that, as of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.406–2. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as: vendor quotations; nonrecurring costs; information on changes in production methods and in production or purchasing volume; data supporting projections of business prospects and objectives and related operations costs; unit-cost trends such as those associated with labor efficiency; make-or-buy decisions; estimated resources to attain business goals; and information on management decisions that could have a significant bearing on costs.

Cost realism means that the costs in an offeror's proposal are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the various elements of the offeror's technical proposal.

Forward pricing rate agreement means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. Such rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for such things as labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

Forward pricing rate recommendation means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

Information other than cost or pricing data means any type of information that is not required to be certified in accordance with 15.406–2 and is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

Price, as used in this subpart, means cost plus any fee or profit applicable to the contract type.

Subcontract, as used in this subpart, also includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor (10 U.S.C. 2306a(h)(2) and 41 U.S.C. 254b(h)(2)).

15.402 Pricing policy.

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary. To the extent that cost or pricing data are not required by 15.403–4, the contracting officer shall generally use the following order of preference in determining the type of information required:

(1) No additional information from the offeror, if the price is based on adequate price competition, except as provided by 15.403–3(b).

(2) Information other than cost or pricing data:

(i) Information related to prices (*e.g.*, established catalog or market prices or previous contract prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror. When obtaining information from the offeror is necessary, unless an exception under 15.403–1(b) (1) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.

(ii) Cost information, that does not meet the definition of cost or pricing data at 15.401.

(3) *Cost or pricing data.* The contracting officer should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data. Contracting officers shall not require unnecessarily the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead time, and consumes additional contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor; or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

15.403 Obtaining cost or pricing data.

15.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a) Cost or pricing data shall not be obtained for acquisitions at or below the simplified acquisition threshold.

(b) *Exceptions to cost or pricing data requirements.* The contracting officer shall not require submission of cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) When the contracting officer determines that prices agreed upon are based on adequate price competition (see standards in paragraph (c)(1) of this subsection);

(2) When the contracting officer determines that prices agreed upon are based on prices set by law or regulation (see standards in paragraph (c)(2) of this subsection);

(3) When a commercial item is being acquired (see standards in paragraph (c)(3) of this subsection);

(4) When a waiver has been granted (see standards in paragraph (c)(4) of this subsection); or

(5) When modifying a contract or subcontract for commercial items (see standards in paragraph (c)(3) of this subsection).

(c) *Standards for exceptions from cost or pricing data requirements*—(1) *Adequate price competition.* A price is based on adequate price competition if—

(i) Two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement and if—

(A) Award will be made to the offeror whose proposal represents the best value (see 2.101) where price is a substantial factor in source selection; and

(B) There is no finding that the price of the otherwise successful offeror is unreasonable. Any finding that the price is unreasonable must be supported by a statement of the facts and approved at a level above the contracting officer;

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if—

(A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that—

(*1*) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and

(*2*) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(B) The determination that the proposed price is based on adequate price competition, is reasonable, and is approved at a level above the contracting officer; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(2) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to set a price.

(3) *Commercial items.* Any acquisition for an item that meets the commercial item definition in 2.101, or any modification, as defined in paragraph (c)(1) or (2) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for cost or pricing data.

(4) *Waivers.* The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of cost or pricing data in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the HCA has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless an exception otherwise applies to the subcontract or the waiver specifically includes that subcontract.

15.403–2 Other circumstances where cost or pricing data are not required.

(a) The exercise of an option at the price established at contract award or initial negotiation does not require submission of cost or pricing data.

(b) Cost or pricing data are not required for proposals used solely for overrun funding or interim billing price adjustments.

15.403–3 Requiring information other than cost or pricing data.

(a) *General.* (1) The contracting officer is responsible for obtaining information that is adequate for evaluating the reasonableness of the price or determining cost realism. However, the contracting officer should not obtain more information than is necessary for determining the reasonableness of the price or evaluating cost realism. To the extent necessary to determine the reasonableness of the price, the contracting officer shall require submission of information from the offeror. Unless an exception under 15.403–1(b)(1) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price (10 U.S.C. 2306a(d)(1) and 41 U.S.C. 254b(d)(1)).

(2) The contractor's format for submitting such information should be used (see 15.403–5(b)(2)).

(3) The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.406–2.

(b) *Adequate price competition.* When adequate price competition exists (see 15.403–1(c)(1)), generally no additional information is necessary to determine the reasonableness of price. However, if there are unusual circumstances where it is concluded that additional information is necessary to determine the reasonableness of price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(c) *Limitations relating to commercial items (10 U.S.C. 2306a(d)(2) and 41 U.S.C. 254b(d)).* (1) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(2) The contracting officer shall, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror as part of its commercial operations.

(3) Information obtained relating to commercial items that is exempt from disclosure under 24.202(a) or the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed outside the Government.

15.403–4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) Cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.403–1(b) applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver under the exception at 15.403–1(b)(4) should be considered. The threshold for obtaining cost or pricing data is $500,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data (but see waivers at 15.403–1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases (*e.g.*, a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if the total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection, or the partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

(2) Unless prohibited because an exception at 15.403–1(b) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection, provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.406–2, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data as defined in 15.401 and shall not be certified in accordance with 15.406–2.

(d) The requirements of this subsection also apply to contracts entered into by an agency on behalf of a foreign government.

15.403–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(a) Taking into consideration the policy at 15.402, the contracting officer shall specify in the solicitation (see 15.408 (l) and (m))—

(1) Whether cost or pricing data are required;

(2) That, in lieu of submitting cost or pricing data, the offeror may submit a request for exception from the requirement to submit cost or pricing data;

(3) Any information other than cost or pricing data that is required; and

(4) Necessary preaward or postaward access to offeror's records.

(b)(1) Unless required to be submitted on one of the termination forms specified in Subpart 49.6, the contracting officer may require submission of cost or pricing data in the format indicated in Table 15–2 of 15.408, specify an alternative format, or permit submission in the contractor's format.

(2) Information other than cost or pricing data may be submitted in the offeror's own format unless the contracting officer decides that use of a specific format is essential and the format has been described in the solicitation.

(3) Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a form acceptable to the contracting officer.

15.404 Proposal analysis.

15.404–1 Proposal analysis techniques.

(a) *General.* The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.

(1) The contracting officer is responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this section may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

(2) Price analysis shall be used when cost or pricing data are not required (see paragraph (b) of this subsection and 15.404–3).

(3) Cost analysis shall be used to evaluate the reasonableness of individual cost elements when cost or pricing data are required. Price analysis should be used to verify that the overall price offered is fair and reasonable.

(4) Cost analysis may also be used to evaluate information other than cost or pricing data to determine cost reasonableness or cost realism.

(5) The contracting officer may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.

(6) Recommendations or conclusions regarding the Government's review or analysis of an offeror's or contractor's proposal shall not be disclosed to the offeror or contractor without the concurrence of the contracting officer. Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data submitted in support of a proposal shall be brought to the contracting officer's attention for appropriate action.

(7) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a five-volume set of Contract Pricing Resource Guides to guide pricing and negotiation personnel. The five guides are: I Price Analysis, II Quantitative Techniques for Contract Pricing, III Cost Analysis, IV Advanced Issues in Contract Pricing, and V Federal Contract Negotiation Techniques. These references provide detailed discussion and examples

applying pricing policies to pricing problems. They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only. Free copies of the references are available on the World Wide Web, Internet address http://www.gsa.gov/fai.

(b) *Price analysis.* (1) Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

(2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances surrounding the acquisition. Examples of such techniques include, but are not limited to the following:

(i) Comparison of proposed prices received in response to the solicitation.

(ii) Comparison of previously proposed prices and contract prices with current proposed prices for the same or similar end items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.

(iii) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(iv) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(v) Comparison of proposed prices with independent Government cost estimates.

(vi) Comparison of proposed prices with prices obtained through market research for the same or similar items.

(c) *Cost analysis.* (1) Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

(2) The Government may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition. Such techniques and procedures include the following:

(i) Verification of cost or pricing data and evaluation of cost elements, including—

(A) The necessity for, and reasonableness of, proposed costs, including allowances for contingencies;

(B) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(C) Reasonableness of estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships; and

(D) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.

(ii) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, the contracting officer should perform a trend analysis of basic labor and materials, even in periods of relative price stability.

(iii) Comparison of costs proposed by the offeror for individual cost elements with—

(A) Actual costs previously incurred by the same offeror;

(B) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(C) Other cost estimates received in response to the Government's request;

(D) Independent Government cost estimates by technical personnel; and

(E) Forecasts of planned expenditures.

(iv) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in part 31 and, when applicable, the requirements and procedures in 48 CFR Chapter 99 (Appendix to the FAR looseleaf edition), Cost Accounting Standards.

(v) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.

(vi) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs (see 15.407–2).

(d) *Cost realism analysis.* (1) Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

(2) Cost realism analyses shall be performed on cost-reimbursement contracts to determine the probable cost of performance for each offeror.

(i) The probable cost may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The probable cost shall be used for purposes of evaluation to determine the best value.

(ii) The probable cost is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

(3) Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors proposed costs have resulted in quality or service shortfalls. Results of the analysis may be used in performance risk assessments and responsibility determinations. However, proposals shall be evaluated using the criteria in the solicitation, and the offered prices shall not be adjusted as a result of the analysis.

(e) *Technical analysis.* (1) The contracting officer may request that personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, special tooling, facilities, the reasonableness of scrap and spoilage, and other associated factors set forth in the proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.

(2) At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.

(f) *Unit prices.* (1) Except when pricing an item on the basis of adequate price competition or catalog or market price, unit prices shall reflect the intrinsic value of an item or service and shall be in proportion to an item's base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs to line items that distorts the unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

(2) Except for the acquisition of commercial items, contracting officers shall require that offerors identify in their proposals those items of supply that they will not manufacture or to which they will not contribute significant value, unless adequate price competition is expected (10 U.S.C. 2304 and 41 U.S.C. 254(d)(5)(A)(i)). Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in all other negotiated contracts when appropriate.

(g) *Unbalanced pricing.* (1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when—

(i) Startup work, mobilization, first articles, or first article testing are separate line items;

(ii) Base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(2) All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the contracting officer shall—

(i) Consider the risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) Consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(3) An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.

15.404–2 Information to support proposal analysis.

(a) *Field pricing assistance.* (1) The contracting officer should request field pricing assistance when the information available at the buying activity is inadequate to determine a fair and reasonable price. Such requests shall be tailored to reflect the minimum essential supplementary information needed to conduct a technical or cost or pricing analysis.

(2) Field pricing assistance generally is directed at obtaining technical, audit, and special reports associated with the cost elements of a proposal, including subcontracts. Information on related pricing practices and history may also be obtained. Field pricing assistance may also include information relative to the business, technical, production, or other capabilities and practices of an offeror. The type of information and level of detail requested will vary in accordance with the specialized resources available at the buying activity and the magnitude and complexity of the required analysis.

(3) When field pricing assistance is requested, contracting officers are encouraged to team with appropriate field experts throughout the acquisition process, including negotiations. Early communication with these experts will assist in determining the extent of assistance required, the specific areas for which assistance is needed, a realistic review schedule, and the information necessary to perform the review.

(4) When requesting field pricing assistance on a contractor's request for equitable adjustment, the contracting officer shall provide the information listed in 43.204(b)(5).

(5) Field pricing information and other reports may include proprietary or source selection information (see 3.104–4 (j) and (k)). Such information shall be appropriately identified and protected accordingly.

(b) *Reporting field pricing information.* (1) Depending upon the extent and complexity of the field pricing review, results, including supporting rationale, may be reported directly to the contracting officer orally, in writing, or by any other method acceptable to the contracting officer.

(i) Whenever circumstances permit, the contracting officer and field pricing experts are encouraged to use telephonic and/or electronic means to request and transmit pricing information.

(ii) When it is necessary to have written technical and audit reports, the contracting officer shall request that the audit agency concurrently forward the audit report to the requesting contracting officer and the administrative contracting officer (ACO). The completed field pricing assistance results may reference audit information, but need not reconcile the audit recommendations and technical recommendations. A copy of the information submitted to the contracting officer by field pricing personnel shall be provided to the audit agency.

(2) Audit and field pricing information, whether written or reported telephonically or electronically, shall be made a part of the official contract file (see 4.807(f)).

(c) *Audit assistance for prime contracts or subcontracts.* (1) The contracting officer may contact the cognizant audit office directly, particularly when an audit is the only field pricing support required. The audit office shall send the audit report, or otherwise transmit the audit recommendations, directly to the contracting officer.

(i) The auditor shall not reveal the audit conclusions or recommendations to the offeror/contractor without obtaining the concurrence of the contracting officer. However, the auditor may discuss statements of facts with the contractor.

(ii) The contracting officer should be notified immediately of any information disclosed to the auditor after submission of a report that may significantly affect the audit findings and, if necessary, a supplemental audit report shall be issued.

(2) The contracting officer shall not request a separate preaward audit of indirect costs unless the information already available from an existing audit, completed within the preceding 12 months, is considered inadequate for determining the reasonableness of the proposed indirect costs (41 U.S.C. 254d and 10 U.S.C. 2313).

(3) The auditor is responsible for the scope and depth of the audit. Copies of updated information that will significantly affect the audit should be provided to the auditor by the contracting officer.

(4) General access to the offeror's books and financial records is limited to the auditor. This limitation does not preclude the contracting officer or the ACO, or their representatives, from requesting that the offeror provide or make available any data or records necessary to analyze the offeror's proposal.

(d) *Deficient proposals.* The ACO or the auditor, as appropriate, shall notify the contracting officer immediately if the data provided for review is so deficient as to preclude review or audit, or if the contractor or offeror has denied access to any records considered essential to conduct a satisfactory review or audit. Oral notifications shall

be confirmed promptly in writing, including a description of deficient or denied data or records. The contracting officer immediately shall take appropriate action to obtain the required data. Should the offeror/contractor again refuse to provide adequate data, or provide access to necessary data, the contracting officer shall withhold the award or price adjustment and refer the contract action to a higher authority, providing details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

15.404–3 Subcontract pricing considerations.

(a) The contracting officer is responsible for the determination of price reasonableness for the prime contract, including subcontracting costs. The contracting officer should consider whether a contractor or subcontractor has an approved purchasing system, has performed cost or price analysis of proposed subcontractor prices, or has negotiated the subcontract prices before negotiation of the prime contract, in determining the reasonableness of the prime contract price. This does not relieve the contracting officer from the responsibility to analyze the contractor's submission, including subcontractor's cost or pricing data.

(b) The prime contractor or subcontractor shall—

(1) Conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices;

(2) Include the results of these analyses in the price proposal; and

(3) When required by paragraph (c) of this subsection, submit subcontractor cost or pricing data to the Government as part of its own cost or pricing data.

(c) Any contractor or subcontractor that is required to submit cost or pricing data also shall obtain and analyze cost or pricing data before awarding any subcontract, purchase order, or modification expected to exceed the cost or pricing data threshold, unless an exception in 15.403–1(b) applies to that action.

(1) The contractor shall submit, or cause to be submitted by the subcontractor(s), cost or pricing data to the Government for subcontracts that are the lower of either—

(i) $10,000,000 or more; or

(ii) Both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, unless the contracting officer believes such submission is unnecessary.

(2) The contracting officer may require the contractor or subcontractor to submit to the Government (or cause submission of) subcontractor cost or pricing data below the thresholds in paragraph (c)(1) of this subsection that the contracting officer considers necessary for adequately pricing the prime contract.

(3) Subcontractor cost or pricing data shall be submitted in the format provided in Table 15–2 of 15.408 or the alternate format specified in the solicitation.

(4) Subcontractor cost or pricing data shall be current, accurate, and complete as of the date of price agreement, or, if applicable, an earlier date agreed upon by the parties and specified on the contractor's Certificate of Current Cost or Pricing Data. The contractor shall update subcontractor's data, as appropriate, during source selection and negotiations.

(5) If there is more than one prospective subcontractor for any given work, the contractor need only submit to the Government cost or pricing data for the prospective subcontractor most likely to receive the award.

15.404–4 Profit.

(a) *General.* This subsection prescribes policies for establishing the profit or fee portion of the Government prenegotiation objective in price negotiations based on cost analysis.

(1) Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they represent that element of the potential total remuneration that contractors may receive for contract performance over and above allowable costs. This potential remuneration element and the Government's estimate of allowable costs to be incurred in contract performance together equal the Government's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual realized profit or fee may vary from negotiated profit or fee, because of such factors as efficiency of performance, incurrence of costs the Government does not recognize as allowable, and the contract type.

(2) It is in the Government's interest to offer contractors opportunities for financial rewards sufficient to stimulate efficient contract performance, attract the best capabilities of qualified large and small business concerns to Government contracts, and maintain a viable industrial base.

(3) Both the Government and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of profit, are not in the Government's interest. Negotiation of extremely low profits, use of historical averages, or automatic application of predetermined percentages to total estimated costs do not provide proper motivation for optimum contract performance.

(b) *Policy.* (1) Structured approaches (see paragraph (d) of this subsection) for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered. Subject to the authorities in 1.301(c), agencies making noncompetitive contract awards over $100,000 totaling $50 million or more a year—

(i) Shall use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis; and

(ii) May prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate.

(2) Agencies may use another agency's structured approach.

(c) *Contracting officer responsibilities.* (1) When the price negotiation is not based on cost analysis, contracting officers are not required to analyze profit.

(2) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach shall use it to analyze profit. When not using a structured approach, contracting officers shall comply with paragraph (d)(1) of this subsection in developing profit or fee prenegotiation objectives.

(3) Contracting officers shall use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective. Before applying profit or fee factors, the contracting officer shall exclude any facilities capital cost of money included in the cost objective amounts. If the prospective contractor fails to identify or propose facilities capital cost of money in a proposal for a contract that will be subject to the cost principles for contracts with commercial organizations (see subpart 31.2), facilities capital cost of money will not be an allowable cost in any resulting contract (see 15.408(i)).

(4)(i) The contracting officer shall not negotiate a price or fee that exceeds the following statutory limitations, imposed by 10 U.S.C. 2306(e) and 41 U.S.C. 254(b):

(A) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall not exceed 15 percent of the contract's estimated cost, excluding fee.

(B) For architect-engineer services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(C) For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.

(ii) The contracting officer's signature on the price negotiation memorandum or other documentation supporting determination of fair and reasonable price documents the contracting officer's determination that the statutory price or fee limitations have not been exceeded.

(5) The contracting officer shall not require any prospective contractor to submit breakouts or supporting rationale for its profit or fee objective but may consider it, if it is submitted voluntarily.

(6) If a change or modification calls for essentially the same type and mix of work as the basic contract and is of relatively small dollar value compared to the total contract value, the contracting officer may use the basic contract's profit or fee rate as the prenegotiation objective for that change or modification.

(d) *Profit-analysis factors*—(1) *Common factors.* Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (d)(1)(i) through (vi) of this subsection shall be considered by agencies in developing their structured approaches and by contracting officers in analyzing profit, whether or not using a structured approach.

(i) *Contractor effort.* This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The subfactors in paragraphs (d)(1)(i)(A) through (D) of this subsection shall be considered in determining contractor effort, but they may be modified in specific situations to accommodate differences in the categories used by prospective contractors for listing costs—

(A) *Material acquisition.* This subfactor measures the managerial and technical effort needed to obtain the required purchased parts and material, subcontracted items, and special tooling. Considerations include the complexity of the items required, the number of purchase orders and subcontracts to be awarded and administered, whether established sources are available or new or second sources must be developed, and whether material will be obtained through routine purchase orders or through complex subcontracts requiring detailed specifications. Profit consideration should correspond to the managerial and technical effort involved.

(B) *Conversion direct labor.* This subfactor measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, and manufacturing labor skills required and the amount and quality of supervision and coordination needed to perform the contract task.

(C) *Conversion-related indirect costs.* This subfactor measures how much the indirect costs contribute to contract performance. The labor elements in the allocable indirect costs should be given the profit consideration they would receive if treated as direct labor. The other elements of indirect costs should be evaluated to determine whether they merit only limited profit consideration because of their routine nature, or are elements that contribute significantly to the proposed contract.

(D) *General management.* This subfactor measures the prospective contractor's other indirect costs and general and administrative (G&A) expense, their composition, and how much they contribute to contract performance. Considerations include how labor in the overhead pools would be treated if it were direct labor, whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract, and whether the elements require routine as opposed to unusual managerial effort and attention.

(ii) *Contract cost risk.* (A) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume as a result of the contract type contemplated and considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance. This factor should compensate contractors proportionately for assuming greater cost risks.

(B) The contractor assumes the greatest cost risk in a closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm-fixed-price contracts may entail substantially less cost risk than others because, for example, the contract task is less complex or many of the contractor's costs are known at the time of price agreement, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

(C) In evaluating assumption of cost risk, contracting officers shall, except in unusual circumstances, treat time-and-materials, labor-hour, and firm-fixed-price, level-of-effort term contracts as cost-plus-fixed-fee contracts.

(iii) *Federal socioeconomic programs.* This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, women-owned small business concerns, handicapped sheltered workshops, and energy conservation. Greater profit opportunity should be provided contractors that have displayed unusual initiative in these programs.

(iv) *Capital investments.* This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(v) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to measures taken by the prospective contractor that result in productivity improvements, and other cost-reduction accomplishments that will benefit the Government in follow-on contracts.

(vi) *Independent development.* Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item without Government assistance. The contracting officer should consider whether the development cost was recovered directly or indirectly from Government sources.

(2) *Additional factors.* In order to foster achievement of program objectives, each agency may include additional factors in its structured approach or take them into account in the profit analysis of individual contract actions.

15.405 Price negotiation.

(a) The purpose of performing cost or price analysis is to develop a negotiation position that permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. A fair and reasonable price does not require that agreement be reached on every element of cost, nor is it mandatory that the agreed price be within the contracting officer's initial negotiation position. Taking into consideration the advisory recommendations, reports of contributing specialists, and the current status of the contractor's purchasing system, the contracting officer is responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement. However, when significant audit or other specialist recommendations are not adopted, the contracting officer should provide rationale that supports the negotiation result in the price negotiation documentation.

(b) The contracting officer's primary concern is the overall price the Government will actually pay. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government. Therefore, the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result—a price that is fair and reasonable to both the Government and the contractor.

(c) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract.

(d) If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall refer the contract action to a level above the contracting officer. Disposition of the action should be documented.

15.406 Documentation.

15.406–1 Prenegotiation objectives.

(a) The prenegotiation objectives establish the Government's initial negotiation position. They assist in the contracting officer's determination of fair and reasonable price. They should be based on the results of the contracting officer's analysis of the offeror's proposal, taking into consideration all pertinent information including field pricing assistance, audit reports and technical analysis, fact-finding results, independent Government cost estimates and price histories.

(b) The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, the contracting officer shall document the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.

15.406–2 Certificate of Current Cost or Pricing Data.

(a) When cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and shall include the executed certificate in the contract file.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403–4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of ____* are accurate, complete, and current as of ____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____

Signature _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to. (End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(c) The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (*e.g.*, actual indirect costs). Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(e) If cost or pricing data are requested by the Government and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be certified in accordance with this subsection.

15.406–3 Documenting the negotiation.

(a) The contracting officer shall document in the contract file the principal elements of the negotiated agreement. The documentation (*e.g.*, price negotiation memorandum (PNM)) shall include the following:

(1) The purpose of the negotiation.

(2) A description of the acquisition, including appropriate identifying numbers (*e.g.*, RFP No.).

(3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.

(4) The current status of any contractor systems (*e.g.*, purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation.

(5) If cost or pricing data were not required in the case of any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it.

(6) If cost or pricing data were required, the extent to which the contracting officer—

(i) Relied on the cost or pricing data submitted and used them in negotiating the price;

(ii) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated; or

(iii) Determined that an exception applied after the data were submitted and, therefore, considered not to be cost or pricing data.

(7) A summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government's negotiation objective, and the negotiated position. Where the determination of price reasonableness is based on cost analysis, the summary shall address each major cost element. When determination of price reasonableness is based on price analysis, the summary shall include the source and type of data used to support the determination.

(8) The most significant facts or considerations controlling the establishment of the prenegotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions.

(9) To the extent such direction has a significant effect on the action, a discussion and quantification of the impact of direction given by Congress, other agencies, and higher-level officials (*i.e.*, officials who would not normally exercise authority during the award and review process for the instant contract action).

(10) The basis for the profit or fee prenegotiation objective and the profit or fee negotiated.

(11) Documentation of fair and reasonable pricing.

(b) Whenever field pricing assistance has been obtained, the contracting officer shall forward a copy of the negotiation documentation to the office(s) providing assistance. When appropriate, information on how advisory field support can be made more effective should be provided separately.

15.407 Special cost or pricing areas.

15.407–1 Defective cost or pricing data.

(a) If, before agreement on price, the contracting officer learns that any cost or pricing data submitted are inaccurate, incomplete, or noncurrent, the contracting officer shall immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price. The contracting officer shall consider any new data submitted to correct the deficiency, or consider the inaccuracy, incompleteness, or noncurrency of the data when negotiating the contract price. The price negotiation memorandum shall reflect the adjustments made to the data or the corrected data used to negotiate the contract price.

(b)(1) If, after award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price or an earlier date agreed upon by the parties given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract one of the clauses prescribed in 15.408 (b) and (c) and is set forth in the clauses at 52.215–10, Price Reduction for Defective Cost or Pricing Data, and 52.215–11, Price Reduction for Defective Cost or Pricing Data—Modifications. The clauses give the Government the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

(2) In arriving at a price adjustment, the contracting officer shall consider the time by which the cost or pricing data became reasonably available to the contractor, and the extent to which the Government relied upon the defective data.

(3) The clauses referred to in paragraph (b)(1) of this subsection recognize that the Government's right to a price adjustment is not affected by any of the following circumstances:

(i) The contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position;

(ii) The contracting officer should have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(iv) Cost or pricing data were required; however, the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data relating to the contract.

(4) Subject to paragraphs (b)(5) and (6) of this subsection, the contracting officer shall allow an offset for any understated cost or pricing data submitted in support of price negotiations, up to the amount of the Government's claim for overstated pricing data arising out of the same pricing action (*e.g.*, the initial pricing of the same contract or the pricing of the same change order).

(5) An offset shall be allowed only in an amount supported by the facts and if the contractor—

(i) Certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and

(ii) Proves that the cost or pricing data were available before the "as of" date specified on the Certificate of Current Cost or Pricing Data but were not submitted. Such offsets need not be in the same cost groupings (*e.g.*, material, direct labor, or indirect costs).

(6) An offset shall not be allowed if—

(i) The understated data were known by the contractor to be understated before the "as of" date specified on the Certificate of Current Cost or Pricing Data; or

(ii) The Government proves that the facts demonstrate that the price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on the Certificate of Current Cost or Pricing Data.

(7)(i) In addition to the price adjustment, the Government is entitled to recovery of any overpayment plus interest on the overpayments. The Government is also entitled to penalty

amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments do not result from amounts paid for contract financing, as defined in 32.902.

(ii) In calculating the interest amount due, the contracting officer shall—

(A) Determine the defective pricing amounts that have been overpaid to the contractor;

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation shall be the date payment was made for the related completed and accepted contract items; or for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

(C) Apply the underpayment interest rate(s) in effect for each quarter from the time of overpayment to the time of repayment, utilizing rate(s) prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

(iii) In arriving at the amount due for penalties on contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

(iv) In the demand letter, the contracting officer shall separately include—

(A) The repayment amount;

(B) The penalty amount (if any);

(C) The interest amount through a specified date; and

(D) A statement that interest will continue to accrue until repayment is made.

(c) If, after award, the contracting officer learns or suspects that the data furnished were not accurate, complete, and current, or were not adequately verified by the contractor as of the time of negotiation, the contracting officer shall request an audit to evaluate the accuracy, completeness, and currency of the data. The Government may evaluate the profit-cost relationships only if the audit reveals that the data certified by the contractor were defective. The contracting officer shall not reprice the contract solely because the profit was greater than forecast or because a contingency specified in the submission failed to materialize.

(d) For each advisory audit received based on a postaward review that indicates defective pricing, the contracting officer shall make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. The contracting officer shall prepare a memorandum documenting both the determination and any corrective action taken as a result. The contracting officer shall send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the administrative contracting officer (ACO). A copy of the memorandum or other notice of the contracting officer's determination shall be provided to the contractor.

(e) If both the contractor and subcontractor submitted, and the contractor certified, or should have certified, cost or pricing data, the Government has the right, under the clauses at 52.215–10, Price Reduction for Defective Cost or Pricing Data, and 52.215–11, Price Reduction for Defective Cost or Pricing Data—Modifications, to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether these data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.

(f) If Government audit discloses defective subcontractor cost or pricing data, the information necessary to support a reduction in prime contract and subcontract prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, the contracting officer should make this information available to the prime contractor or appropriate subcontractors, upon request. If release of the information would compromise Government security or disclose trade secrets or confidential business information, the contracting officer shall release it only under conditions that will protect it from improper disclosure. information made available under this paragraph shall be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, the contracting officer should give the prime contractor reasonable advance notice before determining to reduce the prime contract price.

(1) When a prime contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between the subcontract price used for pricing the prime contract, and either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual subcontract price is based are not themselves defective.

(2) Under cost-reimbursement contracts and under all fixed-price contracts except firm-fixed-price contracts and fixed-price contracts with economic price adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor cost or pricing data shall be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.408 (b) and (c). The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

15.407–2 Make-or-buy programs.

(a) *General.* The prime contractor is responsible for managing contract performance, including planning, placing, and administering subcontracts as necessary to ensure the lowest overall cost and technical risk to the Government. When make-or-buy programs are required, the Government may reserve the right to review and agree on the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices, satisfactory performance, or implementation of socioeconomic policies. Consent to subcontracts and review of contractors' purchasing systems are separate actions covered in part 44.

(b) *Definitions.* As used in this subsection—

Buy item means an item or work effort to be produced or performed by a subcontractor.

Make item means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions.

Make-or-buy program means that part of a contractor's written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted.

(c) *Acquisitions requiring make-or-buy programs.* (1) Contracting officers may require prospective contractors to submit make-or-buy program plans for negotiated acquisitions requiring cost or pricing data whose estimated value is $10 million or more, except when the proposed contract is for research or development and, if prototypes or hardware are involved, no significant follow-on production is anticipated.

(2) Contracting officers may require prospective contractors to submit make-or-buy programs for negotiated acquisitions whose estimated value is under $10 million only if the contracting officer—

(i) Determines that the information is necessary; and

(ii) Documents the reasons in the contract file.

(d) *Solicitation requirements.* When prospective contractors are required to submit proposed make-or-buy programs, the solicitation shall include—

(1) A statement that the program and required supporting information must accompany the offer; and

(2) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of small, small disadvantaged, and women-owned small business concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved.

(e) *Program requirements.* To support a make-or-buy program, the following information shall be supplied by the contractor in its proposal:

(1) *Items and work included.* The information required from a contractor in a make-or-buy program shall be confined to those major items or work efforts that normally would require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional facilities to produce. Raw materials, commercial items (see 2.101), and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. Normally, make-or-buy programs should not include items or work efforts estimated to cost less than 1 percent of the total estimated contract price or any minimum dollar amount set by the agency.

(2) The offeror's program should include or be supported by the following information:

(i) A description of each major item or work effort.

(ii) Categorization of each major item or work effort as "must make," "must buy, or "can either make or buy."

(iii) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or to "buy."

(iv) Reasons for categorizing items and work efforts as "must make" or "must buy," and proposing to "make" or to "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the evaluation factors described in the solicitation and must be in sufficient detail to permit the contracting officer to evaluate the categorization or proposal.

(v) Designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(vi) Identification of proposed subcontractors, if known, and their location and size status (also see Subpart 19.7 for subcontracting plan requirements).

(vii) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(viii) Any other information the contracting officer requires in order to evaluate the program.

(f) *Evaluation, negotiation, and agreement.* Contracting officers shall evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award.

(1) When the program is to be incorporated in the contract and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, the contracting officer shall notify the prospective contractor in writing that these items or efforts, when identifiable, shall be added under the clause at 52.215–9, Changes or Additions to Make-or-Buy Program.

(2) Contracting officers normally shall not agree to proposed "make items" when the products or services are not regularly manufactured or provided by the contractor

and are available—quality, quantity, delivery, and other essential factors considered—from another firm at equal or lower prices, or when they are regularly manufactured or provided by the contractor, but are available—quality, quantity, delivery, and other essential factors considered— from another firm at lower prices. However, the contracting officer may agree to these as "make items" if an overall lower Governmentwide cost would result or it is otherwise in the best interest of the Government. If this situation occurs in any fixed-price incentive or cost-plus-incentive-fee contract, the contracting officer shall specify these items in the contract and state that they are subject to paragraph (d) of the clause at 52.215–9, Changes or Additions to Make-or-Buy Program (see 15.408(a)). If the contractor proposes to reverse the categorization of such items during contract performance, the contract price shall be subject to equitable reduction.

(g) *Incorporating make-or-buy programs in contracts.* The contracting officer may incorporate the make-or-buy program in negotiated contracts for—

(1) Major systems (see part 34) or their subsystems or components, regardless of contract type; or

(2) Other supplies and services if—

(i) The contract is a cost-reimbursable contract, or a cost-sharing contract in which the contractor's share of the cost is less than 25 percent; and

(ii) The contracting officer determines that technical or cost risks justify Government review and approval of changes or additions to the make-or-buy program.

15.407–3 Forward pricing rate agreements.

(a) When cost or pricing data are required, offerors are required to describe any forward pricing rate agreements (FPRA's) in each specific pricing proposal to which the rates apply and to identify the latest cost or pricing data already submitted in accordance with the agreement. All data submitted in connection with the agreement, updated as necessary, form a part of the total data that the offeror certifies to be accurate, complete, and current at the time of agreement on price for an initial contract or for a contract modification.

(b) Contracting officers will use FPRA rates as bases for pricing all contracts, modifications, and other contractual actions to be performed during the period covered by the agreement. Conditions that may affect the agreement's validity shall be reported promptly to the ACO. If the ACO determines that a changed condition invalidates the agreement, the ACO shall notify all interested parties of the extent of its effect and status of efforts to establish a revised FPRA.

(c) Contracting officers shall not require certification at the time of agreement for data supplied in support of FPRA's or other advance agreements. When a forward pricing rate agreement or other advance agreement is used to price a contract action that requires a certificate, the certificate supporting that contract action shall cover the data supplied to support the FPRA or other

advance agreement, and all other data supporting the action.

15.407–4 Should-cost review.

(a) *General.* (1) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods because they do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, facilities, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(2) There are two types of should-cost reviews—program should-cost review (see paragraph (b) of this subsection) and overhead should-cost review (see paragraph (c) of this subsection). These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

(b) *Program should-cost review.* (1) A program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually associated with the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(2) A program should-cost review should be considered, particularly in the case of a major system acquisition (see part 34), when—

(i) Some initial production has already taken place;

(ii) The contract will be awarded on a sole source basis;

(iii) There are future year production requirements for substantial quantities of like items;

(iv) The items being acquired have a history of increasing costs;

(v) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(vi) Sufficient time is available to plan and adequately conduct the should-cost review; and

(vii) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(3) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. The expertise of on-site Government personnel should be used, when appropriate. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(4) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. The contracting officer shall consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the ACO a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(5) When a program should-cost review is planned, the contracting officer should state this fact in the acquisition plan or acquisition plan updates (see subpart 7.1) and in the solicitation.

(c) *Overhead should-cost review.* (1) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, facilities and equipment, depreciation, plant maintenance and security, taxes, and general and administrative activities.

It is normally used to evaluate and negotiate an FPRA with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(2) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

(i) Dollar amount of Government business.

(ii) Level of Government participation.

(iii) Level of noncompetitive Government contracts.

(iv) Volume of proposal activity.

(v) Major system or program.

(vi) Corporate reorganizations, mergers, acquisitions, or takeovers.

(vii) Other conditions (*e.g.*, changes in accounting systems, management, or business activity).

(3) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, and identify and recommend corrective actions regarding inefficient and uneconomical practices. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating an FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

15.407–5 Estimating systems.

(a) Using an acceptable estimating system for proposal preparation benefits both the Government and the contractor by increasing the accuracy and reliability of individual proposals. Cognizant audit activities, when it is appropriate to do so, shall establish and manage regular programs for reviewing selected contractors' estimating systems or methods, in order to reduce the scope of reviews to be performed on individual proposals, expedite the negotiation process, and increase the reliability of proposals. The results of estimating system reviews shall be documented in survey reports.

(b) The auditor shall send a copy of the estimating system survey report and a copy of the official notice of corrective action required to each contracting office and contract administration office having substantial business with that contractor. Significant deficiencies not corrected by the contractor shall be a consideration in subsequent proposal analyses and negotiations.

15.408 Solicitation provisions and contract clauses.

(a) *Changes or Additions to Make-or-Buy Program.* The contracting officer shall insert the clause at 52.215–9, Changes or Additions to Make-or-Buy Program, in solicitations and contracts when it is contemplated that a make-or-buy program will be incorporated in the contract. If a less economical "make" or "buy" categorization is selected for one or more items of significant value, the contracting officer shall use the clause with—

(1) Its Alternate I, if a fixed-price incentive contract is contemplated; or

(2) Its Alternate II, if a cost-plus-incentive-fee contract is contemplated.

(b) *Price Reduction for Defective Cost or Pricing Data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–10, Price Reduction for Defective Cost or Pricing Data, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.403–4).

(c) *Price Reduction for Defective Cost or Pricing Data—Modifications.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–11, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.403–4) for the pricing of contract modifications, and the clause prescribed in paragraph (b) of this section has not been included.

(d) *Subcontractor Cost or Pricing Data.* The contracting officer shall insert the clause at 52.215–12, Subcontractor Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (b) of this section is included.

(e) *Subcontractor Cost or Pricing Data— Modifications.* The contracting officer shall insert the clause at 52.215–13, Subcontractor Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (c) of this section is included.

(f) *Integrity of Unit Prices.* (1) The contracting officer shall insert the clause at 52.215–14, Integrity of Unit Prices, in solicitations and contracts except for—

(i) Acquisitions at or below the simplified acquisition threshold;

(ii) Construction or architect-engineer services under part 36;

(iii) Utility services under part 41;

(iv) Service contracts where supplies are not required;

(v) Acquisitions of commercial items; and

(vi) Contracts for petroleum products.

(2) The contracting officer shall insert the clause with its Alternate I when contracting without adequate price competition or when prescribed by agency regulations.

(g) *Termination of Defined Benefit Pension Plans.* The contracting officer shall insert the clause at 52.215–15, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(h) *Facilities Capital Cost of Money.* The contracting officer shall insert the provision at 52.215–16, Facilities Capital Cost of Money, in solicitations expected to result in contracts that are subject to the cost principles for contracts with commercial organizations (see subpart 31.2).

(i) *Waiver of Facilities Capital Cost of Money.* If the prospective contractor does not propose facilities capital cost of money in its offer, the contracting officer shall insert the clause at 52.215–17, Waiver of Facilities Capital Cost of Money, in the resulting contract.

(j) *Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.* The contracting officer shall insert the clause at 52.215–18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(k) *Notification of Ownership Changes.* The contracting officer shall insert the clause at 52.215–19, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to subpart 31.2.

(l) *Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.* Considering the hierarchy at 15.402, the contracting officer may insert the provision at 52.215–20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, in solicitations if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception. The contracting officer shall—

(1) Use the provision with its Alternate I to specify a format for cost or pricing data other than the format required by Table 15–2 of this section;

(2) Use the provision with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the provision with its Alternate III if submission via electronic media is required; and

(4) Replace the basic provision with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in 15.403–3.

(m) *Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.* Considering the hierarchy at 15.402, the contracting officer may insert the clause at 52.215–21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception. The contracting officer shall—

(1) Use the clause with its Alternate I to specify a format for cost or pricing data other than the format required by Table 15–2 of this section;

(2) Use the clause with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the clause with its Alternate III if submission via electronic media is required; and

(4) Replace the basic provision with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in 15.403–3.

Table 15–2—Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data Are Required

This document provides instructions for preparing a contract pricing proposal when cost or pricing data are required.

Note 1: There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later information comes into your possession, it should be submitted promptly to the Contracting Officer in a manner that clearly shows how the information relates to the offeror's price proposal. The requirement for submission of cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

Note 2: By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of

factual information (regardless of form or whether the information is specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

I. General Instructions

A. You must provide the following information on the first page of your pricing proposal:

(1) Solicitation, contract, and/or modification number;

(2) Name and address of offeror;

(3) Name and telephone number of point of contact;

(4) Name of contract administration office (if available);

(5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpriced order, or other);

(6) Proposed cost; profit or fee; and total;

(7) Whether you will require the use of Government property in the performance of the contract, and, if so, what property;

(8) Whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS, and, if yes, an explanation; whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with your established estimating and accounting principles and procedures and FAR Part 31, Cost Principles, and, if not, an explanation;

(9) The following statement: This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.403–5(b)(1) and Table 15–2. By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

(10) Date of submission; and

(11) Name, title and signature of authorized representative.

B. In submitting your proposal, you must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, you must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.

C. As part of the specific information required, you must submit, with your proposal, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined at FAR 15.401). You must clearly identify on your cover sheet that cost or pricing data are included as part of the proposal. In addition, you must submit with your proposal any information reasonably required to explain your estimating process, including—

(1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(2) The nature and amount of any contingencies included in the proposed price.

D. You must show the relationship between contract line item prices and the total contract price. You must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the "Formats for Submission of Line Item Summaries" section of this table. You must furnish supporting breakdowns for each cost element, consistent with your cost accounting system.

E. When more than one contract line item is proposed, you must also provide summary total amounts covering all line items for each element of cost.

F. Whenever you have incurred costs for work performed before submission of a proposal, you must identify those costs in your cost/price proposal.

G. If you have reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.

H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal, you must, under the conditions stated in FAR 15.406–2, submit a Certificate of Current Cost or Pricing Data.

II. Cost Elements

Depending on your system, you must provide breakdowns for the following basic cost elements, as applicable:

A. *Materials and services.* Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, *etc.*). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold in FAR 15.403–4. Submit the subcontractor cost or pricing data as part of your own cost or pricing data as required in paragraph IIA(2) of this table. These requirements also apply to all subcontractors if required to submit cost or pricing data.

(1) *Adequate Price Competition.* Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding, or expected to exceed, the appropriate threshold set forth at FAR 15.403–4 priced on the basis of adequate price competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see FAR 31.205–26(e)).

(2) *All Other.* Obtain cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding the threshold set forth in FAR 15.403–4 and not otherwise exempt, in accordance with FAR 15.403–1(b) (*i.e.*, adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either $10,000,000 or more, or both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price. The Contracting Officer may require you to submit cost or pricing data in support of proposals in lower amounts. Subcontractor cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or pricing data and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's cost or pricing data is required as described in this paragraph, it must be included along with your own cost or pricing data submission, as part of your own cost or pricing data. You must also submit any other cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

B. *Direct Labor.* Provide a time-phased (*e.g.*, monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

C. *Indirect Costs.* Indicate how you have computed and applied your indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

D. *Other Costs.* List all other costs not otherwise included in the categories described above (*e.g.*, special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.

E. *Royalties.* If royalties exceed $1,500, you must provide the following information on a separate page for each separate royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers.

(4) Patent application serial numbers, or other basis on which the royalty is payable.

(5) Brief description (including any part or model numbers of each contract item or component on which the royalty is payable).

(6) Percentage or dollar rate of royalty per unit.

(7) Unit price of contract item.

(8) Number of units.

(9) Total dollar amount of royalties.

(10) If specifically requested by the Contracting Officer, a copy of the current license agreement and identification of applicable claims of specific patents (see FAR 27.204 and 31.205–37).

F. *Facilities Capital Cost of Money.* When you elect to claim facilities capital cost of money as an allowable cost, you must submit Form CASB-CMF and show the calculation of the proposed amount (see FAR 31.205–10).

III. Formats for Submission of Line Item Summaries

A. New Contracts (Including Letter Contracts)

Cost elements (1)	Proposed contract estimate—total cost (2)	Proposed contract estimate—unit cost (3)	Reference (4)

Column and Instruction

(1) Enter appropriate cost elements.

(2) Enter those necessary and reasonable costs that, in your judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (*e.g.*, under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them.

(3) Optional, unless required by the Contracting Officer.

(4) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

B. Change Orders, Modifications, and Claims

Cost elements (1)	Estimated cost of all work deleted (2)	Cost of deleted work already performed (3)	Net cost to be deleted (4)	Cost of work added (5)	Net cost of change (6)	Reference (7)

Column and Instruction

(1) Enter appropriate cost elements.

(2) Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.

(3) Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from your accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if you desire to retain these items or any portion of them, indicate the amount offered for them.

(4) Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4).

(5) Enter your estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached supporting schedule.

(6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses.

(7) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

C. Price Revision/Redetermination

Cutoff date (1)	Number of units completed (2)	Number of units to be completed (3)	Contract amount (4)	Redetermination proposal amount (5)	Difference (6)	Cost elements (7)	Incurred cost—preproduction (8)	Incurred cost—completed units (9)	Incurred cost—work in process (10)	Total incurred cost (11)	Estimated cost to complete (12)	Estimated total cost (13)	Reference (14)

(Use as applicable).

Column and Instruction

(1) Enter the cutoff date required by the contract, if applicable.

(2) Enter the number of units completed during the period for which experienced costs of production are being submitted.

(3) Enter the number of units remaining to be completed under the contract.

(4) Enter the cumulative contract amount.

(5) Enter your redetermination proposal amount.

(6) Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parentheses. Column (4) minus Column (5) equals Column (6).

(7) Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price-incentive and fixed-price-redeterminable arrangements should be net of the fair market value of such inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.

(8) Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from your books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from your records, enter in this column your best estimates. Explain the basis for each estimate and how the costs are charged on your accounting records (*e.g.*, included in production costs as direct engineering labor, charged to manufacturing overhead). Also show how the costs would be allocated to the units at their various stages of contract completion.

(9) Enter in Column (9) the production costs from your books and records (exclusive of preproduction costs reported in Column (8)) of the units completed as of the cutoff date.

(10) Enter in Column (10) the costs of work in process as determined from your records or inventories at the cutoff date. When the amounts for work in process are not available in your records but reliable estimates for them can be made, enter the estimated amounts in Column (10) and enter in Column (9) the differences between the total incurred costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, *etc.* Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which your proposal relates.

(11) Enter total incurred costs (Total of Columns (8), (9), and (10)).

(12) Enter those necessary and reasonable costs that in your judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which your proposal relates.

(13) Enter total estimated cost (Total of Columns (11) and (12)).

(14) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

Subpart 15.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

15.501 Definition.

Day, as used in this subpart, has the meaning set forth at 33.101.

15.502 Applicability.

This subpart applies to competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). The procedures in 15.504, 15.506, 15.507, 15.508, and 15.509, with reasonable modification, should be followed for sole source acquisitions and acquisitions described in 6.102(d)(1) and (2).

15.503 Notifications to unsuccessful offerors.

(a) *Preaward notices*—(1) *Preaward notices of exclusion from competitive range.* The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business set-asides.* In addition to the notice in paragraph (a)(1) of this section, when using a small business set-aside (see subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that

(i) The Government will not consider subsequent revisions of the offeror's proposal; and

(ii) No response is required unless a basis exists to challenge the small business size status of the apparent successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see 19.805–2).

(b) *Postaward notices.* (1) Within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award (10 U.S.C. 2305(b)(5) and 41 U.S.C. 253b(c)) or had not been previously notified under paragraph (a) of this section. The notice shall include—

(i) The number of offerors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and

(v) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraph (b)(1) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in part 13.

(3) Upon request, the contracting officer shall provide the information in paragraph (b)(1) of this section to unsuccessful offerors that received a preaward notice of exclusion from the competitive range.

15.504 Award to successful offeror.

The contracting officer shall award a contract to the successful offeror by furnishing the executed contract or other notice of the award to that offeror.

(a) If the award document includes information that is different than the latest signed proposal, as amended by the offeror's written correspondence, both the offeror and the contracting officer shall sign the contract award.

(b) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the proposal acceptance period.

(c) If the Optional Form (OF) 307, Contract Award, Standard Form (SF) 26, Award/Contract, or SF 33, Solicitation, Offer and Award, is not used to award the contract, the first page of the award document shall contain the Government's acceptance statement from Block 15 of that form, exclusive of the Item 3 reference language, and shall contain the contracting officer's name, signature, and date. In addition, if the award document includes information that is different than the signed proposal, as amended by the offeror's written correspondence, the first page shall include the contractor's agreement statement from Block 14 of the OF 307 and the signature of the contractor's authorized representative.

15.505 Preaward debriefing of offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award (10 U.S.C. 2305(b)(6)(A) and 41 U.S.C. 253b(f)–(h)).

(a)(1) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

(2) At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed until after award, it shall include all information normally provided in a postaward debriefing (see 15.506(d)). Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

(3) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable, but may refuse the request for a debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that time. The rationale for delaying the debriefing shall be documented in the contract file. If the contracting officer delays the debriefing, it shall be provided no later than the time postaward debriefings are provided under 15.506. In that event, the contracting officer shall include the information at 15.506(d) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offerors proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in 15.506(e).

(g) An official summary of the debriefing shall be included in the contract file.

15.506 Postaward debriefing of offerors.

(a)(1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) An offeror that was notified of exclusion from the competition (see 15.505(a)), but failed to submit a timely request, is not entitled to a debriefing.

(4)(i) Untimely debriefing requests may be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to 15.505(a)(2), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to 15.505(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price (including unit prices), and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;

(3) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) An official summary of the debriefing shall be included in the contract file.

15.507 Protests against award.

(a) Protests against award in negotiated acquisitions shall be handled in accordance with part 33. Use of agency protest procedures that incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If a protest causes the agency, within 1 year of contract award, to—

(1) Issue a new solicitation on the protested contract award, the contracting officer shall provide the information in paragraph (c) of this section to all prospective offerors for the new solicitation; or

(2) Issue a new request for revised proposals on the protested contract award, the contracting officer shall provide the information in paragraph (c) of this section to offerors that were in the competitive range and are requested to submit revised proposals.

(c) The following information will be provided to appropriate parties:
(1) Information provided to unsuccessful offerors in any debriefings conducted on the original award regarding the successful offeror's proposal; and
(2) Other nonproprietary information that would have been provided to the original offerors.

15.508 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award shall be processed substantially in accordance with the procedures for mistakes in bids at 14.407–4.

15.509 Forms.

Optional Form 307, Contract Award, Standard Form (SF) 26, Award/Contract, or SF 33, Solicitation, Offer and Award, may be used to award negotiated contracts in which the signature of both parties on a single document is appropriate. If these forms are not used, the award document shall incorporate the agreement and award language from the OF 307.

Subpart 15.6—Unsolicited Proposals

15.600 Scope of subpart.

This subpart sets forth policies and procedures concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

15.601 Definitions.

As used in this subpart—
Advertising material means material designed to acquaint the Government with a prospective contractor's present products, services, or potential capabilities, or designed to stimulate the Government's interest in buying such products or services.
Commercial item offer means an offer of a commercial item that the vendor wishes to see introduced in the Government's supply system as an alternate or a replacement for an existing supply item. This term does not include innovative or unique configurations or uses of commercial items that are being offered for further development and that may be submitted as an unsolicited proposal.
Contribution means a concept, suggestion, or idea presented to the Government for its use with no indication that the source intends to devote any further effort to it on the Government's behalf.
Unsolicited proposal means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

15.602 Policy.

It is the policy of the Government to encourage the submission of new and innovative ideas in response to Broad Agency Announcements, Small Business Innovation Research topics, Small Business Technology Transfer Research topics, Program Research and Development Announcements, or any other Government-initiated solicitation or program. When the new and innovative ideas do not fall under topic areas publicized under those programs or techniques, the ideas may be submitted as unsolicited proposals.

15.603 General.

(a) Unsolicited proposals allow unique and innovative ideas or approaches that have been developed outside the Government to be made available to Government agencies for use in accomplishment of their missions. Unsolicited proposals are offered with the intent that the Government will enter into a contract with the offeror for research and development or other efforts supporting the Government mission, and often represent a substantial investment of time and effort by the offeror.
(b) Advertising material, commercial item offers, or contributions, as defined in 15.601, or routine correspondence on technical issues, are not unsolicited proposals.
(c) A valid unsolicited proposal must—
(1) Be innovative and unique;
(2) Be independently originated and developed by the offeror;
(3) Be prepared without Government supervision, endorsement, direction, or direct Government involvement;
(4) Include sufficient detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and
(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.
(d) Unsolicited proposals in response to a publicized general statement of agency needs are considered to be independently originated.

15.604 Agency points of contact.

(a) Preliminary contact with agency technical or other appropriate personnel before preparing a detailed unsolicited proposal or submitting proprietary information to the Government may save considerable time and effort for both parties (see 15.201). Agencies shall make available to potential offerors of unsolicited proposals at least the following information:
(1) Definition (see 15.601) and content (see 15.605) of an unsolicited proposal acceptable for formal evaluation.
(2) Requirements concerning responsible prospective contractors (see subpart 9.1), and organizational conflicts of interest (see subpart 9.5).
(3) Guidance on preferred methods for submitting ideas/concepts to the Government, such as any agency: upcoming solicitations; Broad Agency Announcements; Small Business Innovation Research programs; Small Business Technology Transfer Research programs; Program Research and Development Announcements; or grant programs.
(4) Agency points of contact for information regarding advertising, contributions, and other types of transactions similar to unsolicited proposals.
(5) Information sources on agency objectives and areas of potential interest.
(6) Procedures for submission and evaluation of unsolicited proposals.
(7) Instructions for identifying and marking proprietary information so that it is protected and restrictive legends conform to 15.609.
(b) Only the cognizant contracting officer has the authority to bind the Government regarding unsolicited proposals.

15.605 Content of unsolicited proposals.

Unsolicited proposals should contain the following information to permit consideration in an objective and timely manner:
(a) Basic information including—
(1) Offeror's name and address and type of organization; e.g., profit, nonprofit, educational, small business;
(2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
(3) Identification of proprietary data to be used only for evaluation purposes;
(4) Names of other Federal, State, or local agencies or parties receiving the proposal or funding the proposed effort;
(5) Date of submission; and
(6) Signature of a person authorized to represent and contractually obligate the offeror.
(b) Technical information including—
(1) Concise title and abstract (approximately 200 words) of the proposed effort;

(2) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;
(3) Names and biographical information on the offeror's key personnel who would be involved, including alternates; and
(4) Type of support needed from the agency; e.g., facilities, equipment, materials, or personnel resources.
(c) Supporting information including—
(1) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
(2) Period of time for which the proposal is valid (a 6-month minimum is suggested);
(3) Type of contract preferred;
(4) Proposed duration of effort;
(5) Brief description of the organization, previous experience, relevant past performance, and facilities to be used;
(6) Other statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and
(7) The names and telephone numbers of agency technical or other agency points of contact already contacted regarding the proposal.

15.606 Agency procedures.

(a) Agencies shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals consistent with the requirements of this subpart. The procedures shall include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.
(b) Agencies shall establish agency points of contact (see 15.604) to coordinate the receipt and handling of unsolicited proposals.

15.606–1 Receipt and initial review.

(a) Before initiating a comprehensive evaluation, the agency contact point shall determine if the proposal—
(1) Is a valid unsolicited proposal, meeting the requirements of 15.603(c);
(2) Is suitable for submission in response to an existing agency requirement (see 15.602);
(3) Is related to the agency mission;
(4) Contains sufficient technical and cost information for evaluation;
(5) Has been approved by a responsible official or other representative authorized to obligate the offeror contractually; and
(6) Complies with the marking requirements of 15.609.
(b) If the proposal meets these requirements, the contact point shall promptly acknowledge receipt and process the proposal.
(c) If a proposal is rejected because the proposal does not meet the requirements of paragraph (a) of this subsection, the agency contact point shall promptly inform the offeror of the reasons for rejection in writing and of the proposed disposition of the unsolicited proposal.

15.606–2 Evaluation.

(a) Comprehensive evaluations shall be coordinated by the agency contact point, who shall attach or imprint on each unsolicited proposal, circulated for evaluation, the legend required by 15.609(d). When performing a comprehensive evaluation of an unsolicited proposal, evaluators shall consider the following factors, in addition to any others appropriate for the particular proposal:
(1) Unique, innovative and meritorious methods, approaches, or concepts demonstrated by the proposal;
(2) Overall scientific, technical, or socioeconomic merits of the proposal;
(3) Potential contribution of the effort to the agency's specific mission;
(4) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives;
(5) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the proposal objectives; and
(6) The realism of the proposed cost.
(b) The evaluators shall notify the agency point of contact of their recommendations when the evaluation is completed.

15.607 Criteria for acceptance and negotiation of an unsolicited proposal.

(a) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. The agency point of contact shall return an unsolicited proposal to the offeror, citing reasons, when its substance—
(1) Is available to the Government without restriction from another source;
(2) Closely resembles a pending competitive acquisition requirement;
(3) Does not relate to the activity's mission; or
(4) Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.
(b) The contracting officer may commence negotiations on a sole source basis only when—
(1) An unsolicited proposal has received a favorable comprehensive evaluation;
(2) A justification and approval has been obtained (see 6.302–1(a)(2)(i) for research proposals or other appropriate provisions of subpart 6.3, and 6.303–2(b));
(3) The agency technical office sponsoring the contract furnishes the necessary funds; and
(4) The contracting officer has complied with the synopsis requirements of subpart 5.2.

15.608 Prohibitions.

(a) Government personnel shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.
(b) Government personnel shall not disclose restrictively marked information (see 3.104 and 15.609) included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

15.609 Limited use of data.

(a) An unsolicited proposal may include data that the offeror does not want disclosed to the public for any purpose or used by the Government except for evaluation purposes. If the offeror wishes to restrict the data, the title page must be marked with the following legend:

Use and Disclosure of Data

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of—or in connection with—the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets [*insert numbers or other identification of sheets*].

(b) The offeror shall also mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(c) The agency point of contact shall return to the offeror any unsolicited proposal marked with a legend different from that provided in paragraph (a) of this section. The return letter will state that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend.

(d) The agency point of contact shall place a cover sheet on the proposal or clearly mark it as follows, unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal:

Unsolicited Proposal—Use of Data Limited

All Government personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data in accordance with FAR 3.104, and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use. This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction. This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal.

(e) The notice in paragraph (d) of this section is used solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, the use of this notice shall not be used to justify the withholding of a record, nor to improperly deny the public access to a record, where an obligation is imposed on an agency by the Freedom of Information Act, 5 U.S.C. 552, as amended. A prospective offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see paragraph (a) of this section).

(f) When an agency receives an unsolicited proposal without any restrictive legend from an educational or nonprofit organization or institution, and an evaluation outside the Government is necessary, the agency point of contact shall—

(1) Attach a cover sheet clearly marked with the legend in paragraph (d) of this section;

(2) Change the beginning of this legend to read "All Government and non-Government personnel * * * "; and

(3) Require any non-Government evaluator to agree in writing that data in the proposal will not be disclosed to others outside the Government.

(g) If the proposal is received with the restrictive legend (see paragraph (a) of this section), the modified cover sheet shall also be used and permission shall be obtained from the offeror before release of the proposal for evaluation by non-Government personnel.

(h) When an agency receives an unsolicited proposal with or without a restrictive legend from other than an educational or nonprofit organization or institution, and evaluation by Government personnel outside the agency or by experts outside of the Government is necessary, written permission must be obtained from the offeror before release of the proposal for evaluation. The agency point of contact shall—

(1) Clearly mark the cover sheet with the legend in paragraph (d) or as modified in paragraph (f) of this section; and

(2) Obtain a written agreement from any non-Government evaluator stating that data in the proposal will not be disclosed to persons outside the Government.

PART 16—TYPES OF CONTRACTS

14. Section 16.306 is amended by revising paragraph (c) to read as follows:

16.306 Cost-plus-fixed-fee contracts.

* * * * *

(c) *Limitations.* No cost-plus-fixed-fee contract shall be awarded unless the contracting officer complies with all limitations in 16.301–3.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

15. Section 36.520 is added to read as follows:

36.520 Contracting by negotiation.

The contracting officer shall insert in solicitations for construction the provision at 52.236–28, Preparation of Offers—Construction, when contracting by negotiation.

PART 42—CONTRACT ADMINISTRATION

16. Section 42.705–1 is amended by revising paragraph (b)(2) to read as follows:

42.705–1 Contracting officer determination procedure.

* * * * *

(b) * * *

(2) The auditor shall submit to the contracting officer an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

* * * * *

42.705–2 [Amended]

17. Section 42.705–2 is amended by removing paragraph (b)(2)(iii) and redesignating paragraphs (b)(2)(iv) and (b)(2)(v) as (b)(2)(iii) and (b)(2)(iv).

18. Section 42.1502 is amended by revising the first sentence of paragraph (a) to read as follows:

42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract in excess of $1,000,000 (regardless of the date of contract award) and for each contract in excess of $100,000 beginning not later than January 1, 1998 (regardless of the date of contract award), at the time the work under the contract is completed. * * *

* * * * *

19. Section 42.1503 is amended in paragraph (b) by adding a sentence to the end of the paragraph to read as follows:

42.1503 Procedures.

* * * * *

(b) * * * A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.

* * * * *

20. Subpart 42.17 is added to read as follows:

Subpart 42.17—Forward Pricing Rate Agreements

42.1701 Procedures.

(a) Negotiation of forward pricing rate agreements (FPRA's) may be requested by the contracting officer or the contractor or initiated by the administrative contracting officer (ACO). In determining whether or not to establish such an agreement, the ACO should consider whether the benefits to be derived from the agreement are commensurate with the effort of establishing and monitoring it. Normally, FPRA's should be negotiated only with contractors having a significant volume of Government contract proposals. The cognizant contract administration agency shall determine whether an FPRA will be established.

(b) The ACO shall obtain the contractor's proposal and require that it include cost or pricing data that are accurate, complete, and current as of the date of submission. The ACO shall invite the cognizant contract auditor and contracting offices having a significant interest to participate in developing a Government objective and in the negotiations. Upon completing negotiations, the ACO shall prepare a price negotiation memorandum (PNM) (see 15.406–3) and forward copies of the PNM and FPRA to the cognizant auditor and to all contracting offices that are known to be affected by the FPRA. A Certificate of Current Cost or Pricing Data shall not be required at this time (see 15.407–3(c)).

(c) The FPRA shall provide specific terms and conditions covering expiration, application, and data requirements for systematic monitoring to ensure the validity of the rates. The agreement shall provide for cancellation at the option of either party and shall require the contractor to submit to the ACO and to the cognizant contract auditor any significant change in cost or pricing data.

(d) When an FPRA is invalid, the contractor should submit and negotiate a new proposal to reflect the changed conditions. If an FPRA has not been established or has been invalidated, the ACO will issue a forward pricing rate recommendation (FPRR) to buying activities with documentation to assist negotiators. In the absence of an FPRA or FPRR, the ACO shall include support for rates utilized.

(e) The ACO may negotiate continuous updates to the FPRA. The FPRA will provide specific terms and conditions covering notification, application, and data requirements for systematic monitoring to ensure the validity of the rates.

PART 43—CONTRACT MODIFICATIONS

21. Section 43.301 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

43.301 Use of forms.

(a)(1) The Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, exclusive of actions processed under part 15, shall (except for the options stated in 43.301(a)(2) or actions processed under part 15) be used for—

* * * * *

PART 49—TERMINATION OF CONTRACTS

22. Section 49.208 is amended by revising the third sentence of the introductory paragraph to read as follows:

49.208 Equitable adjustment after partial termination.

* * * The contractor shall submit the proposal in the format of Table 15–2 of 15.408.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

23. Section 52.215–1 is added to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

As prescribed in 15.209(a), insert the following provision:

Instructions to Offerors—Competitive Acquisition (Oct 1997)

(a) Definitions. As used in this provision—

Discussions are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

In writing or written means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

Proposal modification is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

Time, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.* (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show—

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) *Late proposals and revisions.* (i) Any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers will not be considered unless it is received before award is made and—

(A) It was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(B) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(C) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays;

(D) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(E) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement; or

(F) It is the only proposal received.

(ii) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as

in subparagraphs (c)(3)(i)(A) through (c)(3)(i)(E) of this provision.

(iii) The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, response to a request for information, or modification or revision shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(iv) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(v) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c)(3)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(vi) Notwithstanding paragraph (c)(3)(i) of this provision, a late modification or revision of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(vii) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(viii) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Proposals submitted in response to this solicitation shall be in English and in U.S. dollars, unless otherwise permitted by the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall—

(1) Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with— the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award.* (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iii) A summary of the rationale for award; and

(iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror. (End of provision)

Alternate I (Oct 1997). As prescribed in 15.209(a)(1), substitute the following paragraph (f)(4) for paragraph (f)(4) of the basic provision:

(f)(4) The Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

Alternate II (Oct 1997). As prescribed in 15.209(a)(2), add a paragraph (c)(9) substantially the same as the following to the basic clause:

(9) Offerors may submit proposals that depart from stated requirements. Such proposals shall clearly identify why the acceptance of the proposal would be advantageous to the Government. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government, shall be clearly identified and explicitly defined. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

24. Sections 52.215–3 through 52.215–15 are revised to read as follows:

52.215–3 Request for Information or Solicitation for Planning Purposes.

As prescribed in 15.209(c), insert the following provision:

Request for Information or Solicitation for Planning Purposes (Oct 1997)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as an allowable cost under other contracts as provided in subsection 31.205–18, Bid and proposal costs, of the Federal Acquisition Regulation.

(b) Although "proposal" and "offeror" are used in this Request for Information, your response will be treated as information only. It shall not be used as a proposal.

(c) This solicitation is issued for the purpose of: [*state purpose*]. (End of provision)

52.215–4 Type of Business Organization.

As prescribed in 15.209(d), insert the following provision:

Type of Business Organization (Oct 1997)

The offeror or respondent, by checking the applicable box, represents that—

(a) It operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation incorporated under the laws of the State of _____.

(b) If the offeror or respondent is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in (country) _____.

(End of provision)

52.215–5 Facsimile Proposals.

As prescribed in 15.209(e), insert the following provision:

Facsimile Proposals (Oct 1997)

(a) *Definition. Facsimile proposal,* as used in this provision, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is: [*insert telephone number*].

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—

(1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;

(2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal. (End of provision)

52.215–6 Place of Performance.

As prescribed in 15.209(f), insert the following provision:

Place of Performance (Oct 1997)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks "intends" in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of performance (street address, city, state, county, zip code)	Name and address of owner and operator of the plant or facility if other than offeror or respondent

(End of provision)

52.215–7 Annual Representations and Certifications—Negotiation.

As prescribed in 15.209(g), insert the following provision:

Annual Representations and Certifications—Negotiation (Oct 1997)

The offeror has [*check the appropriate block*]:

☐ (a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ [*insert date of signature on submission*] that are incorporated herein by reference, and are current, accurate, and complete as of the date of this proposal, except as follows [*insert changes that affect only this proposal; if "none," so state*]:

☐ (b) Enclosed its annual representations and certifications. (End of provision)

52.215–8 Order of Precedence—Uniform Contract Format.

As prescribed in 15.209(h), insert the following clause:

Order of Precedence—Uniform Contract Format (Oct 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications. (End of clause)

52.215–9 Changes or Additions to Make-or-Buy Program.

As prescribed in 15.408(a), insert the following clause:

Changes or Additions to Make-or-Buy Program (Oct 1997)

(a) The Contractor shall perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor shall, reasonably in advance of the proposed change, (1) notify the Contracting Officer in writing, and (2) submit justification in sufficient detail to permit evaluation. Changes in the place of performance of any "make" items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor shall, at the earliest possible time—

(1) Notify the Contracting Officer of each proposed addition; and

(2) Provide justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions shall be effective upon the Contractor's receipt of the Contracting Officer's written approval. (End of clause)

Alternate I (Oct 1997). As prescribed in 15.408(a)(1) add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of "make" or "buy" for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data when permitted and necessary to support evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause

or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.

Alternate II (Oct 1997). As prescribed in 15.408(a)(2), add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of "make" or "buy," for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data to permit evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract's total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause of this contract.

52.215–10 Price Reduction for Defective Cost or Pricing Data.

As prescribed in 15.408(b), insert the following clause:

Price Reduction for Defective Cost or Pricing Data (Oct 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent. (End of clause)

52.215–11 Price Reduction for Defective Cost or Pricing Data—Modifications.

As prescribed in 15.408(c), insert the following clause:

Price Reduction for Defective Cost or Pricing Data—Modifications (Oct 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4, except that this clause does not apply to any modification if an exception under FAR 15.403–1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent. (End of clause)

52.215–12 Subcontractor Cost or Pricing Data.

As prescribed in 15.408(d), insert the following clause:

Subcontractor Cost or Pricing Data (Oct 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403–1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406–2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403–4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215–13, Subcontractor Cost or Pricing Data—Modifications. (End of clause)

52.215–13 Subcontractor Cost or Pricing Data—Modifications.

As prescribed in 15.408(e), insert the following clause:

Subcontractor Cost or Pricing Data—Modifications (Oct 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403–1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406–2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403–4 on the date of agreement on price or the date of award, whichever is later. (End of clause)

52.215–14 Integrity of Unit Prices.

As prescribed in 15.408(f)(1), insert the following clause:

Integrity of Unit Prices (Oct 1997)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products. (End of clause)

Alternate I (Oct 1997). As prescribed in 15.408(f)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

52.215–15 Termination of Defined Benefit Pension Plans.

As prescribed in 15.408(g), insert the following clause:

Termination of Defined Benefit Pension Plans (Oct 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205–6(j)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g). (End of clause)

52.215–16 [Removed]

25. Section 52.215–16 is removed.

52.215–30 [Redesignated as 52.215–16 and Amended]

26. Section 52.215–30 is redesignated as 52.215–16, amended in the introductory text by removing the reference "15.904(a)" and inserting "15.408(h)," and revising the clause date to read "(OCT 1997)".

15.215–17 [Removed]

27. Section 52.215–17 is removed.

52.215–31 [Redesignated as 52.215–17 and Amended]

28. Section 52.215–31 is redesignated as 52.215–17, amended in the introductory text by removing the reference "15.904(b)" and inserting "15.408(i)," and revising the clause date to read "(OCT 1997)".

29. Sections 52.215–18 through 52.215–21 are revised to read as follows:

52.215–18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.

As prescribed in 15.408(j), insert the following clause:

Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Oct 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205–6(o)(6). The Contractor shall include the

substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j). (End of clause)

52.215–19 Notification of Ownership Changes.

As prescribed in 15.408(k), insert the following clause:

Notification of Ownership Changes (Oct 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall—

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintsin depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k). (End of clause)

52.215–20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.

As prescribed in 15.408(l), insert the following provision:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (Oct 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include–

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15–2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2. (End of provision)

Alternate I (Oct 1997). As prescribed in 15.408(l), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit cost or pricing data and supporting attachments in the following format:

Alternate II (Oct 1997). As prescribed in 15.408(l), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (Oct 1997). As prescribed in 15.408(l), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignate the following paragraph as paragraph (d)).

(c) Submit the cost portion of the proposal via the following electronic media: *[Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.]*

Alternate IV (Oct 1997). As prescribed in 15.408(l), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: *[Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403–3.]*

52.215–21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.

As prescribed in 15.408(m), insert the following clause:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications (Oct 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403–4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Information on modifications of contracts or subcontracts for commercial items.* (A) If—

(*1*) The original contract or subcontract was granted an exception from cost or pricing dats requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(*2*) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(*B*) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—

(*1*) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(*2*) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(*3*) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15–2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2. (End of clause)

Alternate I (Oct 1997). As prescribed in 15.408(m), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(1) The Contractor shall submit cost or pricing data and supporting attachments prepared in the following format:

Alternate II (Oct 1997). As prescribed in 15.408(m), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (Oct 1997). As prescribed in 15.408(m), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate the following paragraph as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: *[Insert media format]*

Alternate IV (Oct 1997). As prescribed in 15.408(m), replace the text of the basic clause with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: *[Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403–3.]*

52.215–22 through 52.215–42 [Removed]

30. Sections 52.215–22 through 52.215–42 are removed.

31. Section 52.216–5 is amended by revising the clause date to read "(OCT 1997)", paragraph (d)(1)(i)(A), and the introductory text of (d)(1)(ii) to read as follows:

52.216–5 Price Redetermination—Prospective.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(A) An estimate and breakdown of the costs of these supplies or services in the format of Table 15–2, FAR 15.408, or in any other form on which the parties may agree;

* * * * *

(ii) A statement of all costs incurred in performing this contract through the end of the _____ month (see Note (3)) before the submission of proposed prices in the format of Table 15–2, FAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

* * * * *

32. Section 52.216–6 is amended by revising the clause date to read "(OCT 1997)", and paragraph (c)(1)(ii) to read as follows:

52.216–6 Price Redetermination—Retroactive.

* * * * *

(c) * * *

(1) * * *

(ii) A statement in the format of Table 15–2, FAR 15.408, or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

* * * * *

33. Section 52.216–16 is amended by revising the clause date to read (OCT 1997), and paragraph (c)(1) introductory text to read as follows:

52.216–16 Incentive Price Revision—Firm Target.

* * * * *

(c) *Data submission.* (1) Within _____ *[Contracting Officer insert number of days]* days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this clause, the Contractor shall sumbit in the format of Table 15–2, FAR 15.408, or in any other form on which the parties agree—

* * * * *

34. Section 52.216–17 is amended by revising the date of the clause to read "(OCT 1997)", the introductory text of paragraphs (c)(1)(ii) and (iii), and the introductory text of paragraph (e) to read as follows:

52.216–17 Incentive Price Revision—Successive Targets.

* * * * *

(c)(1) * * *

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, in the format of Table 15–2, FAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

* * * * *

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, in the format of Table 15–2, FAR 15.408 (or in any other form on which the parties may agree), together with—

* * * * *

(e) *Submitting data for final price revision.* Unless a firm fixed price has been established in accordance with paragraph (d) of this section within _____ *[Contracting Officer insert number of days]* days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this section, the Contractor shall submit in the format of Table 15–2, FAR 15.408 (or in any other form on which the parties agree)—

* * * * *

35. Section 52.236–28 is added to read as follows:

52.236–28 Preparation of Proposals—Construction.

As prescribed in 36.520, insert the following provision:

Preparation of Proposals—Construction (Oct 1997)

(a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a proposal must initial each erasure or change appearing on any proposal form.

(b) The proposal form may require offerors to submit proposed prices for one or more items on various bases, including—

(1) Lump sum price;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words "no proposal" in the space provided for any item on which no price is submitted.

(d) Alternate proposals will not be considered unless this solicitation authorizes their submission.

(End of provision)

PART 53—FORMS

36. Section 53.213 is amended by revising the section heading and paragraph (a) to read as follows:

53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, and 1449, and OF's 336, 347, and 348).

* * * * *

(a) *SF 18 (Rev. 6/95), Request for Quotations, or SF 1449 (10/95 Ed.), olicitation/Contract/Order for Commercial Items.* SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107. SF 1449, as prescribed in 53.212, or other agency forms/automated formats, may also be used to obtain price, cost, delivery, and related information from suppliers as specified in 13.107.

* * * * *

37. Section 53.214 is amended by revising the first sentence of paragraph (a), paragraph (c); and the first sentence of paragraph (d) to read as follows:

53.214 Sealed bidding.

* * * * *

(a) *SF 26 (4/85), Award/Contract.* SF 26 is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer and Award, as specified in 14.408–1(d)(1). * * *

* * * * *

(c) *SF 33 (Rev. 4/85), Solicitation, Offer and Award.* SF 33 is prescribed for use in soliciting bids for supplies or services and for awarding the contracts that result from the bids, as specified in 14.201–2(a)(1), unless award is accomplished by SF 26. Pending issuance of a new edition of the form, the reference in block 1 should be amended to read 15 CFR 700 and in the Caution statement of "block 9" revise 52.215–10 to read 52.215–1.

(d) SF 1447 (5/88), Solicitation/ Contract. SF 1447 is prescribed for use in soliciting supplies or services and for awarding contracts that result from the bids. * * *

* * * * *

38. Section 53.215–1 is revised to read as follows:

53.215–1 Solicitation and receipt of proposals.

The following forms are prescribed, as stated in the following paragraphs, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

(a) *SF 26 (Rev. 4/85), Award/Contract.* SF 26, prescribed in 53.214(a), may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.509(b).

(b) *SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for amending requests for proposals and for amending requests for information, as specified in 15.210(b).

(c) *SF 33 (Rev. 4/85), Solicitation, Offer and Award.* SF 33, prescribed in 53.214(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either OF 307, SF 33, or SF 26, as specified in 53.214(c) and 15.509. Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700" and in the Caution statement of "block 9" revise 52.215–10 to read 52.215–1.

(d) *OF 17 (Rev. 12/93), Offer Label.* OF 17 may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in 15.210(c).

(e) *OF 307 (9/97), Contract Award.* OF 307 may be used to award negotiated contracts as specified in 15.509(a).

(f) *OF 308 (9/97), Solicitation and Offer-Negotiated Acquisition.* OF 308 may be used to support solicitation of negotiated contracts as specified in 15.210(a). Award of such contracts may be made by OF 307, as specified in 15.509(a).

(g) *OF 309 (9/97), Amendment of Solicitation.* OF 309 may be used to amend solicitations of negotiated contracts, as specified in 15.210(b).

53.215–2 [Removed]

39. Section 53.215–2 is removed.

40. Section 53.243 is amended by revising the introductory paragraph to read as follows:

53.243 Contract modifications (SF 30).

SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in amending invitation for bids, as specified in 14.208; modifying purchase and delivery orders, as specified in 13.503(b); and modifying contracts, as specified in 42.1203(f), 43.301, 49.602–5, and elsewhere in this chapter. The form may also be used to amend solicitations for negotiated contracts, as specified in 15.210(b). Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date), is revised in paragraphs (3) and (5) as follows:

* * * * *

41. Section 53.249 is amended by adding a sentence to the end of paragraphs (a)(2), (a)(3), and (a)(4) to read as follows:

53.249 Termination of contracts.

(a) * * *

(2) * * * Pending issuance of a new edition of the form, in the "Note" of the Certification on page 4, revise the references 15.804–2, 15.804–2(a), and 15.804–6 to read 15.403, 15.406–2, and 15.408, Table 15–2, respectively.

(3) * * * Pending issuance of a new edition of the form, in the "Note" of the Certification on page 4, revise the references "15.804–2, 15.804–2(a), and 15.804–6" to read "15.403, 15.406–2, and 15.408, Table 15–2," respectively.

(4) * * * Pending issuance of a new edition of the form, in the "Note" of the Certification, revise the references "15.804–2, 15.804–2(a), and 15.804–6" to read "15.403, 15.406–2, and 15.408, Table 15–2," respectively.

* * * * *

53.301–1411 [Removed]

42. Section 53.301–1411 is removed.

53.301–1448 [Removed]

43. Section 53.301–1448 is removed.

44. Sections 53.302–307 through 53.302–309 are added to read as follows:

53.302–307 Optional Form 307, Contract Award.

BILLING CODE 6820–EP–P

CONTRACT AWARD — PAGE ___ OF ___ PAGES

1. CONTRACT NUMBER	2. EFFECTIVE DATE	3. SOLICITATION NUMBER	4. REQUISITION/PROJECT NUMBER
5. ISSUED BY CODE		6. ADMINISTERED BY (If other than Item 5) CODE	
7. NAME AND ADDRESS OF CONTRACTOR CODE		8. PAYMENT WILL BE MADE BY	
9A. DUNS NUMBER	9B. TAXPAYER'S IDENTIFICATION NO.	10. SUBMIT INVOICES (4 copies unless otherwise specified) TO ☐ ITEM 5 ☐ ITEM 6 ☐ ITEM 8 ☐ OTHER (Specify)	

11. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

12. BRIEF DESCRIPTION

13. TOTAL AMOUNT OF CONTRACT ▶	
14. CONTRACTOR'S AGREEMENT. Contractor agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.	15. AWARD. The Government hereby accepts your offer on the solicitation identified in item 3 above as reflected in this award document. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.
☐ A. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN FOUR COPIES TO THE ISSUING OFFICE. (Check if applicable)	
B. SIGNATURE OF PERSON AUTHORIZED TO SIGN	A. UNITED STATES OF AMERICA (Signature of Contracting Officer)
C. NAME OF SIGNER	
D. TITLE OF SIGNER	B. NAME OF CONTRACTING OFFICER
E. DATE	C. DATE

OPTIONAL FORM 307 (9-97)
Prescribed by GSA - FAR (48 CFR) 53.215-1(e)

53.302–308 Optional Form 308, Solicitation and Offer—Negotiated Acquisition.

SOLICITATION AND OFFER - NEGOTIATED ACQUISITION	PAGE	OF	PAGES

I. SOLICITATION

1. SOLICITATION NUMBER	2. DATE ISSUED	3. OFFERS DUE BY	4. OFFERS VALID FOR 60 DAYS UNLESS A DIFFERENT PERIOD IS ENTERED HERE
5. ISSUED BY		6. ADDRESS OFFER TO *(If other than Item 5)*	

7. FOR INFORMATION CALL *(No collect calls)*

A. NAME	B. TELEPHONE		C. E-MAIL ADDRESS
	AREA CODE	PHONE NUMBER	

8. BRIEF DESCRIPTION

9. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV - REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

II. OFFER

The undersigned agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to the resultant contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

10A. PERSONS AUTHORIZED TO NEGOTIATE	10B. TITLE	10C. TELEPHONE	
		AREA CODE	NUMBER

11. NAME AND ADDRESS OF OFFEROR	12A. SIGNATURE OF PERSON AUTHORIZED TO SIGN	
	12B. NAME OF SIGNER	
	12C. TITLE OF SIGNER	
	12D. DATE	12E. TELEPHONE
		AREA CODE / NUMBER

OPTIONAL FORM 308 (9-97)
Prescribed by GSA - FAR (48 CFR) 53.215-1(f)

53.302–309 Optional Form 309, Amendment of Solicitation.

AMENDMENT OF SOLICITATION *(Negotiated Procurements)*	PAGE	OF	PAGES

NOTICE: Offerors must acknowledge receipt of this amendment in writing, by the date and time specified for proposal submissions or the date and time specified in Block 6, whichever is later. IF YOUR ACKNOWLEDGMENT IS NOT RECEIVED AT THE DESIGNATED LOCATION BY THE SPECIFIED DATE AND TIME, YOUR OFFER MAY BE REJECTED. If, by virtue of this amendment, you wish to change your offer, such change must make reference to the solicitation and this amendment and be received prior to the date and time specified in Block 6.

I. AMENDMENT

1. SOLICITATION NUMBER	2. SOLICITATION DATE	3. AMENDMENT NUMBER	4. AMENDMENT DATE
5. ISSUED BY		6. DUE DATE THIS AMENDMENT DOES NOT CHANGE THE DATE BY WHICH OFFERS ARE DUE, UNLESS A DATE AND TIME IS INSERTED BELOW. A. DATE / B. TIME	

7. FOR INFORMATION CALL *(No collect calls)*

A. NAME	B. TELEPHONE		C. E-MAIL ADDRESS
	AREA CODE	PHONE NUMBER	

8. DESCRIPTION OF AMENDMENT

Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.

II. ACKNOWLEDGMENT OF AMENDMENT

In lieu of other written methods of acknowledgment, the offeror may complete Blocks 9 and 10 and return this amendment to the address in Block 5.

9. NAME AND ADDRESS OF OFFEROR	10A. OFFEROR *(Signature of person authorized to sign)*
	10B. NAME OF SIGNER
	10C. TITLE OF SIGNER
	10D. DATE

OPTIONAL FORM 309 (9-97)
Prescribed by GSA - FAR (48 CFR) 53.215-1(g)

BILLING CODE 6820–EP–C

45. Amend the internal references throughout Chapter 1 as indicated in the following table:

Location	Remove	Insert
1.106	15.106	15.209
1.106	15.404	15.2
1.106	15.7	15.407–2
1.106	15.8	15.4
1.106	15.804–8	15.408
1.106	15.812–1(b)	15.404–1(f)
1.106	15.813–1	
1.106	15.813–2	
1.106	15.813–3	
1.106	15.813–6	
1.106	52.215–6	52.215–4
1.106	52.215–11	52.215–1(c)(2)(iv)
1.106	52.215–19	52.215–1(d)
1.106	52.215–20	52.215–6
1.106	52.215–21	52.215–9
1.106	52.215–24	52.215–12
1.106	52.215–25	52.215–13
1.106	52.215–26	52.215–14
1.106	52.215–40	52.215–19
1.106	52.215–41	52.215–20
1.106	52.215–42	52.215–21
2.101 (definition of "offer")	15.5	15.6
3.104–3 (paragraph (5) of definition "Contractor bid or proposal information").	52.215–12	52.215–1(e)
3.104–5(b)	15.411 and 15.413	15.207
3.104–5(d)(3) introductory text	52.215–12	52.215–1(e)
3.501–2(c)	15.804–6(f)	15.408, Table 15–2, paragraph A., column (2) under "Formats for Submission of Line Item Summaries".
3.501–2(c)	15.803(d)	15.405
5.204	15.404	15.201
5.303(b)(2)	15.1003(b)	15.503(b)
6.302–1(d)(2)	(See 15.402(h))	
7.105(a)(3)(iii)	15.810	15.407–4
7.105(b)(3)	15.6	15.3
7.105(b)(11)	15.7	15.407–2
7.306(b)	15.6	15.3
9.306(j)	15.814	15.404–1(g)
12.206	15.6	15.3
12.209	15.8	15.4
12.301(c)(2)	15.6	15.3
12.503(c)(2)	15.804	15.403
12.504(a)(9)	(see Subpart 15.1)	15.209(b)
12.504(c)(2)	15.8	15.4
12.602(b)	15.6	15.3
13.106–2(c)(3)	15.1003(b)(2)	15.503(b)(2)
13.108(a)	(See 15.402(e))	
14.103–1(d)	15.804–2	15.403–4(a)(1)(iii)
14.105	15.405	15.201(e)
14.201–7(a)	15.804–2(a)(1)	15.403–4(a)(1)
14.201–7(b)(1)	15.804–2(a)(1)	15.403–4(a)(1)
14.201–7(c)(1)	15.804–2(a)(1)	15.403–4(a)(1)
14.207	15.409	15.201
14.404–2(g)	15.814	15.404–1(g)
14.408–2(a)	15.805–2	15.404–1(b)
14.408–2(b)	15.814	15.404–1(g)
14.503–1(c)(2)	15.413	15.609
14.503–1(g)	15.1005 and 15.1006	15.505 and 15.506
14.503–1(h)	15.412	15.208(b) and (c)
16.104(b)	15.808–2	15.404–1(b)
16.301–3(a)(3)	15.903(d)	15.404–4(c)(4)(i)
16.505(b)(3)	15.804–1(b)(1)	15.403–1(c)(1)
16.603–2(c)(3)	15.8	15.4
16.603–4(b)(3)	15.804–1	15.403–1
17.106–1(c)(1)	15.804–6	15.408, Table 15–2, Formats for Submission of Line Items Summaries C(8).
19.202–6(a)	15.805–2	15.405
19.302(d)(1)	15.1003(a)(2)	15.503(a)(2)
19.806(a)	15.8 both times it appears	15.4
24.202(b)	15.804–5(b)	15.403–3(b)

Location	Remove	Insert
25.405(e)	15.1003	15.503
25.901(b)	15.106(b)	15.209(b)
27.204–1(b)	FAR 15.804	15.403
27.204–2	15.804	15.403
27.407(a)(1)	15.4 or 15.5	15.2 or 15.6
27.407(b)	15.4 or 15.5	15.2 or 15.6
28.101–4(b)	15.610(a)	15.306(a)(2)
31.000	15.805–3	15.404–1(c)
31.103(a)	15.805–3	15.404–1(c)
31.105(b)	15.805–3	15.404–1(c)
31.106–1 introductory paragraph	15.805–3	15.404–1(c)
31.109(g)	15.808, Price negotiation memorandum	15.406–3
31.204(b)	15.805–3	15.404–1(c)
31.205–6(j)(4)	certified (see 15.804)	(see 15.403–4)
31.205–18(c)(1)(i)(A)	15.804	15.403–4
31.205–18(c)(1)(i)(B)	15.804	15.403–4
31.205–33(c)(1)	52.215–12	52.215–1(e)
31.205–26(e)	15.804–1	15.403–1(b)
31.205–42(c) introductory paragraph	(See 15.804–6(f))	
32.204	15.606	15.206
33.103(f)(3)	15.1006	15.505 or 15.506
33.104(c)(1)	15.1006	15.505 or 15.506
33.207(d)	15.804–2(a)(1)(iii)	15.403–4(a)(1)(iii)
34.005–2(a)(2)	15.404	15.201
35.007(d)	15.406–5(b)	15.204–5(b)
35.007(e) introductory paragraph	15.605(e)	15.304
35.007(g)	15.409	15.201
35.007(i)	15.5	15.6
35.008(d)	15.10	15.5
35.008(e)	15.805	15.404–1(c)
36.214(b)(1)	15.804–1 and 15.804–2	15.403–1 and 15.403–2
36.215	15.903(d)(1)(iii)	15.404–4(c)(4)(i)
36.303–2(a)	15.605	15.304
36.606(a)	15.903(d)(1)(ii)	15.404–4(c)(4)(i)
36.607(b)	15.1004, 15.1006(b) through (f), 15.1007(c); 15.1006(d)(2) through (d)(5).	15.503, 15.506(b) through (f), 15.507(c), 15.506(d)(2) through (d)(5)
42.302(a)(4)	15.8	15.4
42.302(a)(5)	15.809	15.407–3
43.204(b)(4)	15.805	15.404–1(c)
44.202–2(a)(1)	Subpart 15.7	15.407–2
44.305–3(a)(1)	15.804	15.403
45.103(b)(1)	15.804–1	15.403–1
45.106(b)(2)(i)	15.804–1	15.403–1
45.302–2(c)	Subpart 15.9	15.404–4
48.102(e)	15.903(d)	15.404–4(c)(4)(i)
49.105(c)(15)	15.804–4(h) and 15.804	15.403–4(a)(1) and 15.403–4
49.110(a)	15.808(a) and 15.808(b)	15.406–3 (twice).
50.203(c)	15.103	14.404–1(f)
52.212–2 provision date	(Oct 1995)	(Oct 1997).
52.212–2(a)	15.605	15.304
52.214–26 clause date	(Oct 1995)	(Oct 1997).
52.214–26(e)	15.804–2(a)(1)	15.403–4(a)(1)
52.214–27 clause date	(Oct 1995)	(Oct 1997).
52.214–27(a)	15.804–2(a)(1) and 15.804–1	15.403–4(a)(1) and 15.403–1(b)
52.214–28 clause date	(Oct 1995)	(Oct 1997).
52.214–28(a)(1)	15.804–2(a)(1)	15.403–4(a)(1)
52.214–28(b)	15.804–2(a)(1) both times it appears	15.403–4 (a)(1)
52.214–28(c)	15.804–1	15.403–1(b)
52.214–28(d)	15.804–4	15.406–2
52.214–34 introductory text	15.804–2(a)(1)	15.403–4(a)(1)
52.214–35 introductory text	15.407(l)	
52.215–2 introductory text	15.407(m)	
Alternate I	15.106(b)	15.209(b)
Alternate II	15.106(c)	15.209(b)(2)
Alternate III	15.106(c)	15.209(b)(3)
52.216–25 clause date	15.106(c)	15.209(b)(4)
52.216–25(c)	(Apr 1984)	(Oct 1997).
52.217–2 clause date	15.8	15.4
52.217–2(f)(1)	(Jul 1996)	(Oct 1997).
52.219–10 clause date	15.8	15.4
52.219–10(c)	(Oct 1995)	(Oct 1997).
52.244–1 clause date	Subpart 15.9	15.404–4
52.244–1(g)	(Feb 1995)	(Oct 1997).
	15.903(d)	15.404–4(c)(4)(i)

Location	Remove	Insert
52.244–2 clause date	(Feb 1997)	(Oct 1997).
52.244–2(g)	15.903(d)	15.404–4(c)(4)(i)
52.244–3 clause date	(Apr 1985)	(Oct 1997).
52.244–3(b)	15.903(d)	15.404–4(c)(4)(i)

[FR Doc. 97–25666 Filed 9–29–97; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 97–02 which amends the FAR. Further information regarding this rule may be obtained by referring to FAC 97–02 which precedes this notice. This document may be obtained from the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

Part 15 Rewrite; Contracting by Negotiation and Competitive Range Determination [FAC 97–02, FAR Case 95–029]

The final rule revises Part 15, Contracting by Negotiation. The final rule infuses innovative techniques into the source selection process, simplifies the acquisition process, incorporates changes in pricing and unsolicited proposal policy, and facilitates the acquisition of best value products and services. The final rule emphasizes the use of effective and efficient acquisition methods and eliminates unnecessary burdens imposed on industry and Government. In addition, the rule revises the sequence in which Part 15 information is presented to facilitate use of the regulation.

Dated: September 22, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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Part IV

Department of Veterans Affairs

38 CFR Parts 3, 17 and 21
Monetary Allowance Under 28 U.S.C. 1805 for a Child Suffering From Spina Bifida Who Is a Child of a Vietnam Veteran; Final Rule
Provision of Health Care to Vietnam Veterans' Children With Spina Bifida; Final Rule
Provision of Vocational Training and Rehabilitation to Vietnam Veterans' Children With Spina Bifida; Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI70

Monetary Allowance Under 38 U.S.C. 1805 for a Child Suffering From Spina Bifida Who Is a Child of a Vietnam Veteran

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of a monetary allowance to a child suffering from spina bifida who is a child of a Vietnam veteran. The intended effect of this amendment is to implement legislation authorizing VA to provide such benefits.

DATES: *Effective Date:* October 1, 1997.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7230.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Pub. L. 102–4, 105 Stat. 11, directed the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academy of Sciences (NAS) for a series of reports to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era, and each disease suspected to be associated with such exposure. In its most recent report, entitled "Veterans and Agent Orange: Update 1996," which was released on March 14, 1996, NAS noted what it considered "limited/suggestive evidence of an association" between herbicide exposure and spina bifida in the offspring of Vietnam veterans.

Since VA did not have the statutory authority to provide benefits to children of veterans based on birth defects, the Secretary announced on May 28, 1996, that he would seek legislation to provide an appropriate remedy. VA submitted proposed legislation to Congress in July of that year. Section 421 of Pub. L. 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children suffering from spina bifida who are the natural children of veterans who served in the Republic of Vietnam during the Vietnam era. VA published a proposal to implement section 421 of Pub. L. 104–204 in the **Federal Register** of May 1, 1997 (62 FR 23724–23731). Interested persons were invited to submit written comments on or before June 30, 1997. We received a total of thirty-two comments from: the Vietnam Veterans of America, Inc.; the Vietnam Veterans of America (Illinois State Council Service Program); a combined comment from the National Veterans Legal Services Program (NVLSP), the Spina Bifida Association of America, and the National Alliance of Veteran Family Service Organizations; the Veterans of Foreign Wars of the United States (VFW); The American Legion; the Paralyzed Veterans of America (PVA); Senator Tom Daschle; Senator John D. Rockefeller IV; and twenty-four other concerned individuals.

A number of commenters specifically recommended changes to the statutory language of title 38, United States Code, chapter 18. Others recommended that in the regulation we change the amount of the monetary allowance associated with the three levels of disability; add additional payment levels for the monetary allowance; pay the monetary allowance retroactive to dates prior to October 1, 1997; provide automobile adaptive equipment or an automobile allowance and specially adapted housing to children with spina bifida; pay the benefit to children with spina bifida occulta; pay the benefit to grandchildren of Vietnam veterans; and pay the benefit to the children of certain individuals who do not meet the statutory definition of the term "veteran." No changes are made based on these comments. VA has no legal authority to make any of these changes.

One commenter suggested that in the regulation VA use the term "biological child" of a Vietnam veteran rather than "natural child."

Section 1801(1) of title 38, United States Code, defines the term "child" for purposes of this benefit as meaning, among other things, a "natural child" of a Vietnam veteran. The term "natural" as used in the statute means relating naturally rather than by adoption (Webster's New World Dictionary, Third College Ed., 1988, 903), so in our judgment the terms "natural child" and "biological child" are synonymous. Using a term in the regulation that is inconsistent with the statutory language might imply a difference that we do not intend. Therefore, we make no change based on this suggestion.

One commenter stated that a child with spina bifida who is the legally adopted child of a Vietnam veteran should be eligible for this benefit.

The statute clearly defines the term "child" as used in determining eligibility for spina bifida benefits as meaning the natural child of a Vietnam veteran (see 38 U.S.C. 1801 (1)). Since VA has no authority to expand that statutory definition, we make no change based on this comment.

We proposed to terminate the monetary allowance effective the last day of the month before the month in which the beneficiary dies. A commenter suggested that we terminate not only this benefit, but benefits to veterans and survivors as well, effective the first day of the month following the month of death.

Because 38 U.S.C. 5112(b)(1) requires VA to discontinue compensation, dependency and indemnity compensation, or pension payments on the last day of the month before the death of the beneficiary, we have no discretion with respect to these benefits. Although Pub. L. 104–204 is silent on the issue of effective dates for discontinuing the monetary allowance, there is no indication in chapter 18 of title 38, United States Code, or its legislative history that Congress intended VA to administer the monetary allowance for children with spina bifida any differently than compensation, dependency and indemnity compensation, or pension in this respect, and we make no change based on this suggestion.

We proposed to define the term "Vietnam veteran," for purposes of this benefit, to include an individual with service in the waters offshore and service in other locations "if the conditions of service involved duty or visitation in the Republic of Vietnam." One commenter recommended that we eliminate the phrase "if the conditions of service involved duty or visitation in the Republic of Vietnam."

VA defines the term *service in the Republic of Vietnam*, for the purposes of presuming herbicide exposure, to include service in the waters offshore and service in other locations "if the conditions of service involved duty or visitation in the Republic of Vietnam" (see 38 CFR 3.307(a)(6)(iii)). Because herbicides were not applied in waters off the shore of Vietnam, limiting the scope of the term *service in the Republic of Vietnam* to persons whose service involved duty or visitation in the Republic of Vietnam limits the focus of the presumption of exposure to persons who may have been in areas where herbicides could have been encountered. Since the purpose of this rulemaking is to provide a monetary allowance to the children of those same veterans that VA presumes to be herbicide-exposed if the children are born with spina bifida, it would be inappropriate to revise the presumption of exposure for the purposes of this benefit. We make no change based on this comment.

VA proposed to amend 38 CFR 3.263 and 3.275 to implement the provisions of 38 U.S.C. 1805(c) that specify that the monetary allowance not be considered income or resources in determining eligibility for benefits under any Federal program. One commenter stated that not only should the monetary allowance be excluded from VA net worth calculations but that assets purchased with the monetary allowance should also be excluded from those calculations.

Both §§ 3.263 and 3.275 define "net worth" to mean the market value, less mortgages or other encumbrances, of all real and personal properties owned by the claimant, except the claimant's dwelling (single family unit), including a reasonable lot area, and personal effects suitable and consistent with the claimant's reasonable mode of life. In our judgment, that definition allows reasonable exclusions from net worth for purposes of VA's income-based benefit programs, and we make no change based on this comment.

Several commenters suggested that VA provide an outreach plan as part of the final regulation. Although we intend informally to advise potentially eligible claimants that benefits are available and to solicit claims, we see no reason to include a statement regarding this matter in the regulations, since those who read the regulations necessarily would know about the program.

Several commenters stated that spina bifida claimants should have the same due process and appellate rights as other VA claimants.

38 CFR 3.103, Procedural due process and appellate rights, clearly states that its provisions apply to all claims for benefits and relief within the purview of VA's adjudication regulations (38 CFR part 3). Since the regulatory framework for the monetary allowance to children with spina bifida (38 CFR 3.814) is codified within 38 CFR part 3, the due process and appellate rights provided by § 3.103 apply to spina bifida claimants.

One commenter requested that the comment period for this rulemaking proceeding be extended until the end of the comment period for the proposed rule regarding vocational training and rehabilitation for Vietnam veterans' children who suffer from spina bifida.

Such an extension is unwarranted. An understanding of the issues in the rulemaking proceeding regarding vocational training and rehabilitation is not necessary to make informed comments regarding this rulemaking proceeding.

Another commenter recommended that VA use its Schedule for Rating Disabilities (title 38, Code of Federal Regulations, part 4) to evaluate the severity of disabilities for the purpose of furnishing the monetary allowance for spina bifida.

38 U.S.C. 1155, the statutory authority for VA's Schedule for Rating Disabilities, provides that evaluations of disabled veterans be based, as far as practicable, upon average impairment of earning capacity resulting from similar disabilities in civil occupations, and be at one of ten grades in 10 percent increments. 38 U.S.C. 1805(b) authorizes VA to pay a monetary allowance to an eligible child with spina bifida at one of three levels based on the degree of disability suffered by the child, as determined in accordance with a schedule for rating such disabilities to be prescribed by the Secretary. By requiring evaluations at three levels rather than 10, and by not directing that evaluations be based on average impairment of earning capacity or be expressed in percentages, Congress established requirements for evaluating spina bifida so different from the requirements for evaluating disabilities for compensation and pension purposes that they are incompatible with the Schedule for Rating Disabilities. By codifying the requirement to establish rating criteria for spina bifida other than under the authority of 38 U.S.C. 1155, Congress further indicated its expectation that children with spina bifida would be evaluated under different criteria. For these reasons, we make no change based on this comment.

Section 1805 of title 38, United States Code, provides a monetary allowance at one of three levels to eligible individuals based on the degree of disability to be determined according to a rating schedule prescribed by the Secretary. We proposed to base the three levels of disability on neurological deficit, as manifested by impairment of functioning of: the extremities; bowel or bladder; and intellect; and to evaluate each of those at one of three levels of severity. Several commenters objected that those criteria are too narrow because they fail to include all disabilities "related to, or secondary to, spina bifida," such as hydrocephalus, Arnold-Chiari malformation, sexual/reproductive dysfunction, latex allergy, seizure disorders, etc.

While spina bifida is commonly associated with other developmental defects and congenital abnormalities, 38 U.S.C. 1805 authorizes VA to pay the monetary allowance for any "disability resulting from" spina bifida. Neurological deficit is the main determinant of disability for individuals with spina bifida (Long-term Outcome in Surgically Treated Spina Bifida Cystica, Isao Date, M.D., Yasunori Yagyu, M.D., Shoji Asari, M.D., and Takshi Ohmoto, M.D., *Surg. Neurol.* 1993, 40:471–5).

Conditions that are commonly associated with spina bifida, such as Arnold-Chiari malformation, hydrocephalus, etc., generally affect one or more of the same functions we proposed to use for rating spina bifida. The evaluation criteria do not require the raters to rate impairment of those functions only to the extent that it is due to spina bifida, but allow them to take into account the effect on those functions of associated conditions. In our judgment, the rating criteria that we proposed constitute a reasonable method for differentiating between three levels of disability, as Congress required, and we make no change based on these comments.

Several commenters felt that the payment criteria do not take into account the synergistic effect of disabilities and recommended that an individual with more than one Level II disability be rated at Level III.

Congress mandated rating criteria supporting three levels of payment. If we are to administer this monetary allowance equitably, and in the manner we believe Congress intended, in assigning an intermediate (Level II) payment based on combined aspects of neurological impairment, we must consider not only that some beneficiaries with spina bifida may be less severely disabled than a particular individual, but that some may be more severely disabled. Someone with even four Level II disabilities, for example, would not be as severely disabled as someone with any of the Level III disabilities, because the criteria used to assess each disability represent incremental degrees of severity from least (Level I) through most severe (Level III). Since Congress established three levels of payment, it would not be equitable, in our judgment, to pay someone with Level II impairment of each neurological function considered in the criteria the same amount as someone with Level III impairment of each neurological function considered. The criteria as proposed represent a reasonable and equitable method for distinguishing three levels of disability, and we make no change based on this comment.

We proposed to measure impairment of intellectual functioning using

intelligence quotient (I.Q.). A number of commenters stated that I.Q. is not the best representation of intellectual functioning as it relates to level of disability. Some recommended that we use "performance I.Q." or "assessed intellectual functioning" instead.

According to a recent British study, it is, in fact, I.Q. that is one of the two main determinants of disability and dependency in individuals with spina bifida, neurological deficit being the other (Open spina bifida: a complete cohort reviewed 25 years after closure, Urology Department, Addenbrooke's Hospital, Cambridge, UK, *Dev Med Child Neurol* 1995 Jan; 37(1):19–29). Furthermore, it is important to keep the criteria as simple and objective as possible to ensure consistent ratings and timely resolution of claims. Although I.Q. can be measured by any of several standardized tests that are in general use, we are not aware of any comparable standard objective measures for the other aspects of intellectual functioning that the commenters suggested we use. For these reasons, we make no change based on these comments.

One commenter felt that the payment criteria should take into account emotional suffering due to past surgical procedures.

38 U.S.C. 1805 authorizes a monetary allowance for disability resulting from spina bifida. In normal usage, the term "disability" implies a lack of the ability to function normally, physically or mentally (Dorland's Illustrated Medical Dictionary, 27th ed. 1988, 480). In our judgment, mental suffering due to prior surgeries is not a disability as that term is used in the statute, and we make no change based on this comment.

We proposed to evaluate impairment of bowel and bladder function from least (Level I) to most (Level III) severely impaired based on whether an individual is continent of urine and feces, requires drugs or mechanical means to maintain proper bladder or bowel function, or is completely incontinent of urine or feces. A number of commenters stated that these criteria penalize individuals for receiving appropriate treatment and are a financial disincentive to seeking treatment.

The issue is not whether impairment of bowel or bladder function is severely disabling—we can concede that it is—but the degree of severity. An individual who is continent at least part of the time, by whatever means, is clearly less disabled than one who is unable to attain any degree of continence by any means. Even in cases where an individual has attained continence of either bowel or bladder function through drugs or mechanical means, other factors would influence the payment level. For example, some individuals may be able to attain continence for either bowel or bladder function but not both. In such a case, the payment level would remain at Level III. Furthermore, individuals with impairment of bowel or bladder function will, in many cases, have other impairments that affect the payment level, so that a change from incontinence to continence might not warrant any change in the payment level. In our judgment, the fact that a beneficiary might, in rare cases, receive a higher monthly payment if he or she does not follow procedures designed to alleviate, or at least manage, incontinence will not outweigh for most individuals with spina bifida the incentives, from both health and social perspectives, to follow such a program. We therefore make no change based on this comment.

Two commenters pointed out that because the degree of continence may change, the payment level may need to change. One recommended that we not reduce the payment from Level II (based on the fact that an individual requires drugs to maintain urinary continence) to Level I, until one year after he or she becomes continent without drugs, in order to ascertain whether continence can be maintained without medication.

The payment level is based on a combination of specified functional impairments. For that reason, a change in the severity of one type of impairment would not necessarily affect the payment level. A reduction from Level II to Level I based on the fact that an individual has achieved urinary continence, for example, would occur only if all other specified impairments (bowel, ambulation, I.Q., upper extremities) were also at Level I. Under the provisions of 38 CFR 3.814, VA will reevaluate the disability level whenever there is an indication of material change in an individual's condition; these evaluations will generally be based on medical reports from the beneficiary's primary care physician or the medical institution where he or she receives treatment. Should the health-care provider indicate that the long-term effect of withdrawing treatment cannot yet be determined, the rating activity could defer the reevaluation if it had any potential effect on the payment level. The length of any deferment should be based on medical evidence rather than a fixed period set by regulation, however, and we make no change based on this comment.

Because all children less than one year of age, whether or not they are suffering from spina bifida, are essentially helpless, incontinent, unable to walk, and too young for I.Q. to be measured, we proposed to pay children under the age of one at Level I. Several commenters objected to this provision.

One commenter stated that this provision is unfair because it is at odds with the likely disability once the child is old enough to be properly examined, and arbitrary because it treats infants with spina bifida differently than older individuals with spina bifida without a rational basis.

The rating criteria for spina bifida are based on impairment of specified neurological functions. These functions have not yet developed in newborns, regardless of their spina bifida status. We do not dispute the fact that an infant with spina bifida has disabilities due to the condition. However, since it would be purely speculative to assess the severity of impairment of neurological functions until such time as those functions would have developed, in our judgment, there is a rational basis for setting the level of the monthly allowance at the lowest rate established by statute. As for the comment that Level I may not reflect the eventual severity of the child's disability, we believe that the monetary allowance is meant to reflect the current, rather than potential, level of severity, and that the requirement to reevaluate at age one is sufficient to ensure the child will be paid according to the actual impairment of neurological function once it is possible to objectively assess that impairment.

Three commenters felt that a child under the age of one should be paid at Level III. One commenter gave as a reason that this is the period of most intensive medical and surgical treatment. Another said a child with hydrocephalus could have multiple shunt malfunctions.

The issue is impairment of specific functions that are not yet developed in any infant. A child eligible for the monetary allowance is also entitled to health care from VA, including medical care, supplies, transportation, etc. Such a child will not be deprived of needed medical care because of the amount of monetary allowance. Furthermore, a child under the age of one may be evaluated at Level III if a pediatric neurologist or pediatric neurosurgeon certifies that there is a neurologic deficit present that will prevent the individual from ambulating, that will preclude self-care and feeding self because of sensory or motor impairment of the upper extremities, or that will make it impossible for the individual to achieve urinary or fecal continence. For these reasons, we make no change based on this comment.

One commenter said this inequity of presuming a Level I could continue for years if the parents or VA fail to arrange a reevaluation.

No changes are made based on this comment. These regulations require VA to reevaluate a child when it reaches one year of age and thereafter at intervals of not more than five years. That is adequate protection against the inequity the commenter foresees. Anything beyond that would be a duty beyond the scope of VA's responsibility. Furthermore, a child, parent, or guardian may submit evidence that the disability has worsened at any time after the child is one year of age, and VA will determine whether that evidence warrants a change in the amount of monetary allowance.

Several commenters felt that the provision requiring certification by a pediatric neurologist for an infant to be paid at Level III is too stringent. Some commenters suggested that in addition to pediatric neurologists the certification also should be allowed to be made by pediatric neurosurgeons. We agree that such determinations could also be made by pediatric neurosurgeons. However, due to the difficulty of making an objective prognosis for infants with this complex disability, we believe that only pediatric neurologists and pediatric neurosurgeons have sufficient expertise to ensure that the option of rating the infant at Level III is equitably and consistently applied. Accordingly, the final rule limits such certifications to pediatric neurologists and pediatric neurosurgeons.

Some commenters said that infants with spina bifida, particularly those in rural areas, might not have access to a pediatric neurologist and recommended that VA accept certifications from other health-care practitioners.

Hospitals even in rural areas offer referral services for treatment or evaluation of severely disabled children. Under the provisions of 38 U.S.C. 1803, VA will provide an eligible child with spina bifida any health care, including transportation expenses, that it determines is necessary. If VA determines that evaluation by a pediatric neurologist or a pediatric neurosurgeon qualifies as a reasonable need, the services of a pediatric neurologist or a pediatric neurosurgeon will be available to any eligible disabled child who needs them, and we make no change based on this comment.

We proposed to rate impairment of neurological function of the lower extremities at Level I if the individual is able to walk without braces or other external support; at Level II if he or she is ambulatory, but only with braces or other external support; and at Level III if he or she is unable to ambulate. One commenter said that the need to wear braces should warrant a Level III determination, and another said that some who can walk without braces still have very severe disability.

This comment raises the same issue, i.e., the degree of severity, discussed above in conjunction with the synergistic effects of disabilities. In order to administer this monetary allowance equitably, it is important that we consider not only that some beneficiaries may be less severely disabled than an individual rated at Level II, but also that some may be more severely disabled. While spina bifida is undoubtedly a very disabling condition, the statute requires us to establish rating criteria that distinguish three levels of disability. A person able to ambulate with braces or other external support is unquestionably less severely disabled than an individual who is unable to ambulate. We believe, therefore, the proposed criteria establish a clear and reasonable separation between the intermediate and most severe levels of impairment of neurological functioning of the lower extremities, and we make no change based on this comment.

We proposed to reevaluate individuals with spina bifida at the age of one year and then at intervals of no more than five years until the individual reaches the age of 21. One commenter proposed that VA waive further reevaluation if the child's primary caregiver states that it is unlikely that the overall level of disability will improve.

Periodic reevaluations are necessary because, until maturity, the level of neurological functioning may fluctuate. Virtually all children can be taught to ambulate with sufficient bracing and external support, for example, but those with lesions at L2 or higher will usually revert to wheelchairs in the teenage period (*Diseases of the Nervous System*, Arthur K. Asbury, M.D., Guy M. McKhann, M.D., and W. Ian McDonald, Ph. D., 1986, 712). The purpose of the reevaluations is to ensure that the beneficiary is being paid at the level commensurate with the severity of the disability. Although reevaluation will generally be based on private medical evidence, it is the VA adjudicator, rather than the caregiver, who is responsible for determining how that medical evidence compares to the requirements set forth in VA regulations. We therefore make no change based on this comment.

One commenter noted that the application form asked for parents' Social Security numbers. The commenter asserted that the form should clearly state that this is optional information. No change to the form is made based on this comment. The form clearly and prominently states in the material under the heading "Privacy Act information" that disclosure of Social Security numbers is voluntary.

One commenter also noted that the application form asked for the parents' VA claim numbers and asserted that such information is irrelevant and should be eliminated from the form. No change to the form is made based on this comment. Not all parents will have VA claim numbers. However, for those who do, the corresponding claims file should provide relevant information that would eliminate the need for other searching. For example, the file should establish whether the parent had service in the Republic of Vietnam during the Vietnam era.

For the sake of clarity, we have made some non-substantive editorial changes to the proposed language.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale set forth in the proposed rule and this document, the provisions of the proposed rule are adopted with the changes noted above.

Executive Order 12866

This final rule has been reviewed by OMB under Executive Order 12866.

Administrative Procedure Act

There is good cause for making this final rule effective without regard to a 30 day delay. This final rule does not adversely affect anyone, and the affected children need the benefits from the rule as soon as possible.

Paperwork Reduction Act

Information collection requirements associated with this final rule concerning the Application for Spina Bifida Benefits (38 CFR 3.814) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and have been assigned OMB Control Number 2900–0572.

This collection of information included in 38 CFR 3.814 concerns an application for eligibility for the monetary allowance based on spina bifida that must be submitted on VA Form 21–0304, which has been approved.

OMB assigns a control number for each collection of information it approves. VA may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at the end of the affected section of the regulations.

Two collection of information comments were received and are discussed above.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This final rule would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There is no Catalog of Federal Domestic Assistance program number for this benefit.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Reporting and recordkeeping requirements, Veterans, Vietnam.

Approved: September 11, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for Part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.27, paragraph (c) is redesignated as paragraph (d), a new paragraph (c) is added, and newly redesignated paragraph (d) and its authority citation are revised to read as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(c) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(b)(3))

(d) *Publishing requirements.* Increases in pension rates, parents' dependency and indemnity compensation rates and income limitation, and the monthly allowance under 38 U.S.C. 1805 for a child suffering from spina bifida made under this section shall be published in the **Federal Register.**

(Authority: 38 U.S.C. 5312(c)(1), 1805(b)(3))

3. In § 3.105, paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), respectively; in paragraphs (d), (e), (f) and newly redesignated paragraph (h) remove "paragraph (h)" each time it appears and add, in its place, "paragraph (i)"; in newly redesignated paragraph (i)(1) remove "paragraphs (d) through (g)" and add, in its place, "paragraphs (d) through (h)"; in newly redesignated paragraph (i)(2) introductory text remove "paragraph (d), (e), (f) or (g)" and add, in its place, "paragraph (d), (e), (f), (g) or (h)"; in newly redesignated paragraph (i)(2)(ii) remove "paragraph (f)" and add, in its place, "paragraphs (f) and (g)"; in newly redesignated paragraph (i)(2)(iii) remove "paragraph (g)" and add, in its place, "paragraph (h)"; and add a new paragraph (g) to read as follows:

§ 3.105 Revision of decisions.

* * * * * * *

(g) *Reduction in evaluation—monetary allowance to a child suffering from spina bifida under 38 U.S.C. 1805.* Where a change in disability level warrants a reduction of the monthly allowance currently being paid, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefor, and allow the beneficiary 60 days to present additional evidence to show that the monthly allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following sixty days from the date of notice to the payee of the proposed reduction.

(Authority: 38 U.S.C. 501)

* * * * *

§ 3.158 [Amended]

4. In § 3.158, paragraphs (a) and (c) are amended by removing "or dependency and indemnity compensation" and adding, in its place, "dependency and indemnity compensation, or monetary allowance under the provisions of 38 U.S.C. 1805".

5. In § 3.261, paragraph (a)(40) is added to read as follows:

§ 3.261 Character of income; exclusions and estates.

* * * * *

(a) * * *

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See—
(40) Monetary allowance under 38 U.S.C. 1805 for children suffering from spina bifida who are children of Vietnam Veterans (38 U.S.C. 1805(d)).	Excluded	Excluded	Excluded	Excluded	§ 3.262(y).

* * * * *

6. In § 3.262, paragraph (y) is added immediately preceding the final authority citation at the end of the section to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(y) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.* There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

* * * * *

7. In § 3.263, paragraph (g) is added to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(g) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

8. In § 3.272, paragraph (u) is added to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(u) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.* Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

9. In § 3.275, paragraph (i) is added to read as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(i) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

10. In § 3.403, the introductory text and paragraphs (a) through (e) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) through (a)(5), respectively, and paragraph (b) is added to read as follows:

§ 3.403 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran (§ 3.814).* An award of the monetary allowance under 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran will be either date of birth if claim is received within one year of that date, or, date of claim, but not earlier than October 1, 1997.

(Authority: 38 U.S.C. 1806, 5110(n); sec. 422(c), Pub. L. 104–204, 110 Stat. 2926)

11. In § 3.503, the introductory text and paragraphs (a) through (j) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) through (a)(10), respectively, and paragraph (b) is added to read as follows:

§ 3.503 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran (§ 3.814).* The effective date of discontinuance of the monthly allowance under 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran will be the last day of the month before the month in which the death of the child occurred.

(Authority: 38 U.S.C. 501)

12. Section 3.814 is added under the undesignated centerheading "Special Benefits" to read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.

(a) VA shall pay a monthly allowance based upon the level of disability determined under the provisions of paragraph (d) of this section to or for a child who it has determined is suffering from spina bifida and who is a child of a Vietnam veteran. Receipt of this allowance shall not affect the right of the child, or the right of any individual based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA. If a child suffering from spina bifida is the natural child of two Vietnam veterans, he or she is entitled to only one monthly allowance under this section.

(b) Applicants for the monetary allowance under this section must submit an application to the VA regional office and include the information mandated on the following VA form entitled "Application for Spina Bifida Benefits":

BILLING CODE 8320-01-P

OMB Approved No. 2900-0572
Respondent Burden: 10 Minutes

Department of Veterans Affairs

APPLICATION FOR SPINA BIFIDA BENEFITS

PRIVACY ACT INFORMATION: The social security number and other information on this form is requested under 38 U.S.C. chapter 18, which provides benefits to Vietnam veterans' children with spina bifida. Any information on this form may be disclosed outside VA only if authorized under 38 U.S.C. 5701 and the Privacy Act, including the routine uses identified in the VA system of records, SRVA21/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Routine disclosures may be made for the following purposes: Debt collection, civil or criminal law enforcement, communications with members of Congress or other representatives, benefits delivery, administration of programs, and personnel administration. Disclosure of the social security numbers and other requested information is voluntary; however, failure to furnish that information would impose administrative difficulties which may result in a delay in processing your application for spina bifida benefits.

RESPONDENT BURDEN: VA may not conduct or sponsor, and respondent is not required to respond to this collection of information unless it displays a valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have comments regarding this burden estimate or any other aspect of this collection of information, call 1-800-827-1000 for mailing information on where to send your comments.

1. NAME OF CLAIMANT-CHILD *(First, middle, last)*	2. SOCIAL SECURITY NUMBER OF CLAIMANT-CHILD *(If available)*
3. CLAIMANT-CHILD'S DATE OF BIRTH *(Mo.,day,yr.)*	4. CLAIMANT-CHILD'S PLACE OF BIRTH *(City and state)*
5. ADDRESS OF CLAIMANT-CHILD *(Include number and street or rural route, city or P.O., State and ZIP Code)*	6. TELEPHONE NUMBER OF CLAIMANT-CHILD *(Include Area Code)* ( )
7. NAME(S) OF NATURAL PARENT(S) *(Please provide information for both)*	
A. FATHER *(First, middle, last)*	B. MOTHER *(First, middle, last)*
8. ADDRESS,TELEPHONE NUMBER AND VETERAN STATUS OF NATURAL PARENT(S)	
A. FATHER *(Include number and street or rural route, city or P.O., State and ZIP Code)* ( )	C. MOTHER *(Include number and street or rural route, city or P.O., State and ZIP Code)* ( )
B. VIETNAM SERVICE? *(If "Yes," provide dates below)* ☐ YES ☐ NO *(From:____ To:____)*	D. VIETNAM SERVICE? *(If "Yes," provide dates below)* ☐ YES ☐ NO *(From:____ To:____)*
9. SOCIAL SECURITY NUMBER(S) OF NATURAL PARENT(S)	
A. FATHER	B. MOTHER
10. VA CLAIM NUMBER(S) OF NATURAL PARENT(S) *(If veteran previously applied to VA for any benefit)*	
A. FATHER	B. MOTHER
11. IF CHILD IS UNDER AGE 18 WHO HAS CUSTODY, IF OTHER THAN NATURAL PARENT? *(Complete Items 11A, 11B and 11C)*	
A. NAME OF CUSTODIAN/GUARDIAN OF CLAIMANT-CHILD	B. RELATIONSHIP TO CHILD ☐ ADOPTIVE PARENT ☐ GUARDIAN ☐ OTHER *(Specify)* ____
C. ADDRESS OF CUSTODIAN/GUARDIAN OF CLAIMANT-CHILD	
12A. IF CLAIMANT-CHILD IS AGE 18 OR OLDER HAS THE CLAIMANT-CHILD BEEN DECLARED INCOMPETENT? ☐ YES ☐ NO *(If "Yes," complete Items 12B and 12C)*	
12B. NAME AND ADDRESS OF THE COURT WHICH MADE THE FINDING OF INCOMPETENCY?	12C. NAME AND ADDRESS OF THE GUARDIAN
13. NAME AND ADDRESS OF PRIMARY HEALTH CARE PROVIDER FOR THE CLAIMANT-CHILD	
14A. HAS THE CHILD BEEN DIAGNOSED WITH SPINA BIFIDA? ☐ YES ☐ NO *(If "Yes," complete Items 14B and 14C)*	14B. DATE OF DIAGNOSIS *(Mo.,day,yr.)*
14C. IF THE CLAIMANT-CHILD HAS BEEN TREATED/HOSPITALIZED FOR SPINA BIFIDA RELATED DISABILITIES WITHIN THE LAST YEAR, PLEASE PROVIDE THE NAME AND ADDRESS OF EACH HOSPITAL OR OTHER INSTITUTION WHERE THE TREATMENT WAS PROVIDED *(Use reverse or attach a separate sheet if more space is needed)*	
I/We, the undersigned, hereby authorize the hospital or physician shown in Items 13 and 14C to disclose and release to the Department of Veterans Affairs (VA) any information that may have been obtained in connection with the physical examination or treatment of the child.	
15A. SIGNATURE(S) OF PARENT/GUARDIAN/ADULT CHILD	15B. DATE SIGNED
16A. SIGNATURE OF WITNESS (Required)	16B. DATE SIGNED
I/We, the undersigned, declare under penalty of perjury that the information provided is true and correct and that the child named in Item 1 above is the natural child of the person(s) named above in Item 7.	
17A. SIGNATURE	17B. DATE SIGNED
18A. SIGNATURE	18B. DATE SIGNED

VA FORM JUL 1997 **21-0304**

BILLING CODE 8320-01-C

(c) *Definitions.*—(1) *Vietnam veteran.* For the purposes of this section, the term "Vietnam veteran" means a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. *Service in the Republic of Vietnam* includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Child.* For the purposes of this section, the term "child" means a natural child of a Vietnam veteran, regardless of age or marital status, conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of § 3.204(a)(1), VA shall require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish in the judgment of the Secretary that a child is the natural child of a Vietnam veteran.

(3) *Spina bifida.* For the purposes of this section, the term "spina bifida" means any form and manifestation of spina bifida except spina bifida occulta.

(d)(1) VA shall determine the level of disability suffered by the child in accordance with the following criteria:

(i) *Level I.* The child is able to walk without braces or other external support (although gait may be impaired), has no sensory or motor impairment of upper extremities, has an IQ of 90 or higher, and is continent of urine and feces.

(ii) *Level II.* Provided that none of the child's disabilities are severe enough to be evaluated at Level III, and the child: is ambulatory, but only with braces or other external support; or, has sensory or motor impairment of upper extremities, but is able to grasp pen, feed self, and perform self care; or, has an IQ of at least 70 but less than 90; or, requires drugs or intermittent catheterization or other mechanical means to maintain proper urinary bladder function, or mechanisms for proper bowel function.

(iii) *Level III.* The child is unable to ambulate; or, has sensory or motor impairment of upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or, has an IQ of 69 or less; or, has complete urinary or fecal incontinence.

(2) Provided that they are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section, VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination. In the absence of such information, VA will schedule an examination for the purpose of assessing the level of disability.

(3) Unless or until VA is able to obtain medical evidence adequate to assess the level of disability due to spina bifida, or to reassess the level of disability when required to do so under the provisions of paragraph (d)(4) or (5) of this section, VA will rate the disability of a person eligible for this monetary allowance at no higher than Level I.

(4) Children under the age of one year will be rated at Level I unless a pediatric neurologist or a pediatric neurosurgeon certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the child from ambulating; from grasping a pen, feeding him or herself, or performing self care; or from achieving urinary or fecal continence. If such a deficit is present, the child will be rated at Level III. In either case, VA will reassess the level of disability when the child reaches the age of one year.

(5) VA will reassess the level of disability due to spina bifida whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it will reassess the level of disability at intervals of not more than five years. Thereafter, it will reassess the level of disability only if evidence indicates there has been a material change in the level of disability or that the current rating may be incorrect.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0572.)

(Authority: 38 U.S.C. 501, 1805)

PART 3—[AMENDED]

13. The Cross Reference following § 3.57 is amended by removing "§ 3.403(a)" and "§ 3.503(c)" and adding, in their places, "§ 3.403(a)(1)" and "§ 3.503(a)(3)", respectively.

14. Each Cross Reference following §§ 3.659 and 3.703 is amended by removing "§ 3.503(g)" and adding, in its place, "§ 3.503(a)(7)".

15. The Cross Reference following § 3.707 is amended by removing "§ 3.503(h)" and adding, in its place, "§ 3.503(a)(8)".

16. The Cross Reference following § 3.807 is amended by removing "§ 3.503(h)" and adding, in its place, "§ 3.503(a)(8)."

[FR Doc. 97–25863 Filed 9–29–97; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AI65

Provision of Health Care to Vietnam Veterans' Children With Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes regulations regarding Vietnam veterans' children with spina bifida. The regulations concern the provision of health care needed for the spina bifida or any disability that is associated with such condition. This action is necessary to establish a mechanism for providing health care to such children in accordance with recently enacted legislation.

DATES: *Effective Date:* October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robert De Vesty, Health Systems Specialist, Office of Public Health and Environmental Hazards (13), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC, 20420, telephone (202) 273–8575.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on May 1, 1997 (62 FR 23731), we proposed to amend the "Medical" regulations (38 CFR part 17) by setting forth new §§ 17.900–17.905 regarding the provision of health care to Vietnam veterans' children with spina bifida. Spina bifida is a congenital birth defect, characterized by defective closure of the bones surrounding the spinal cord. The spinal cord and its covering (the meninges) may protrude through the defect.

The provisions of 38 U.S.C. Chapter 18 (Pub. L. 104–204, section 421, September 26, 1996) provide for three separate types of benefits for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances, (2) provision of health care needed for the spina bifida or any disability that is associated with such condition, and (3) provision of vocational training and rehabilitation.

This document establishes a final rule to set forth a mechanism regarding provision of health care to Vietnam veterans' children with spina bifida.

We requested that comments to the proposed rule be submitted on or before June 30, 1997. We received 33 comments. Based on the rationale set forth in the proposed rule and this document, the proposed rule is adopted as a final rule with changes explained below.

Comments regarding issues concerning monthly monetary allowances for Vietnam veterans' children who suffer from spina bifida and the provision of vocational training and rehabilitation for such children will be addressed in separate final rules that specifically concern these issues.

Some of the suggested changes cannot be made because they would be inconsistent with statutory authorities. There is no authority for VA to pay for services provided before October 1, 1997, or to pay for services prior to the date of receipt of application. There is no authority to provide comprehensive health care coverage or insurance (health care is limited to care for spina bifida or disabilities associated with such condition). There is no authority to provide such health care unless the child is a child of a Vietnam veteran who was not dishonorably discharged (see Pub. L. 104–204, 38 U.S.C. 101, 1801–1806).

Commenters asserted that the final rule should state specifically that the provision of health care would cover durable medical equipment and medical supplies, including catheters, diapers, pads, etc. Because this appeared to be a concern from many of the commenters, the final rule is clarified, consistent with the intent of the proposed rule, to state specifically that these types of equipment and supplies are covered when provided by VA or authorized by an approved health care provider (see § 17.900(b) and the definition of "health care" in § 17.901).

One commenter questioned what standard would apply for replacing durable medical equipment, particularly when a child has outgrown medical equipment. In this regard, the provisions of § 17.902 provide that medical equipment will be covered based on a demonstrated medical need.

Commenters questioned whether the final rule would cover adaptive housing and vehicles. VA is authorized to provide health care determined to be medically necessary. In our view, coverage for adaptive housing and vehicles is outside the scope of this authorization.

One commenter questioned whether treatment of behavioral problems such as attention deficit disorder would be covered under the final rule. This would have to be determined on a case-by-case basis. Any health care determined to be needed for the spina bifida or any disability that is associated with such condition would be covered.

One commenter questioned whether payment would be made for services if the child suffering from spina bifida has died. Covered services provided for an eligible child prior to death would be paid even if the child died after the services were provided.

One commenter questioned whether complications during pregnancy of a Vietnam veterans' child who suffer from spina bifida would be covered. Another commenter questioned whether hydrocephalus and Arnold-Chiari malformation would be covered for such children. Another questioned whether other abnormalities would be covered. These conditions would be covered insofar as they constitute a disability associated with spina bifida.

One commenter questioned whether care at the Department of Defense (DOD) facilities would be paid by VA. Costs for care provided by DOD is the responsibility of DOD.

One commenter asserted that preventive care should be listed specifically as a covered benefit. No changes are made based on this comment. The definition of "health care" in § 17.901 specifically states that "preventive care" is covered.

One commenter asserted that payment should be made for experimental or investigative care. No changes are made based on this comment. We have no way to determine whether such care would be effective and not harmful.

Commenters asserted that payment for respite care and home care (including attendant care) and case management services should not be limited to approved health care providers and should include health care providers that are not certified or licensed. The terms "health care provider" and "approved health care provider" are defined in § 17.901. No changes are made based on these comments. This final rule does not preclude services from individuals who do not qualify as "approved health care providers." However, VA will pay only for services rendered by "approved health care providers." We believe that the utilization of approved health care providers as defined in § 17.901 is necessary to ensure appropriate quality standards for services paid by VA.

A number of commenters expressed concern that their ability to utilize Medicaid, Medicare, or other health insurance would be limited by the spina bifida program. In this regard, the spina bifida regulations provide for VA to be the exclusive payer only for services paid under the spina bifida regulations. Also, by statute monetary benefits are not considered income or resources in determining eligibility for or the amount of benefits under any Federal or Federally-assisted program, including Medicaid and Medicare. Consistent with these concepts, we added language to the final rule to state that in the usual case claims for health care for other than covered services for spina bifida and disabilities associated with spina bifida would be submitted to an insurer, Medicare, Medicaid, health plan, or other program providing health care coverage.

One commenter expressed concern that charges could exceed the amount reimbursed by VA and that providers would charge patients for the excess. In this regard, the regulations state that VA is the exclusive payer for services paid under the spina bifida regulations. Accordingly, the amount paid by VA would constitute payment in full.

Several commenters questioned whether they could have a choice regarding their provider. Recipients will be able to choose any provider meeting the criteria in § 17.901.

One commenter suggested that the preauthorization procedures are unnecessarily restrictive and burdensome, and that there should be an emergency exception for preauthorization. The preauthorization procedures apply to that type of care most likely to cause disagreement with respect to medical need. These procedures will help avoid unexpected liabilities for noncovered services. Further, it would be rare that an emergency would arise for the types of care requiring preauthorization. Even so, we have added provisions stating that preauthorization would not be required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. A provision also is added stating that such emergency care should be reported by telephone within 72 hours of the emergency. These provisions would ensure that preauthorization procedures would not impede the provisions of emergent health care and would help ensure that recipients understand in a timely manner what health care is covered under this final rule.

The preauthorization provisions state that care will be authorized only in those cases where there is a demonstrated medical need. One commenter asserted that the burden of proof should rest on VA regarding whether care is medically necessary. No changes are made based on this comment. The statutory provisions of 38 U.S.C. 1803(a) state that the Secretary shall provide "such health care as the Secretary determines is needed for the child for the spina bifida or any disability associated with such condition." Even so, VA will consider any evidence from providers or others that might support a claim.

One commenter asserted that Vietnam veterans' children who suffer from spina bifida should have the same appeal rights as other VA claimants. In this regard, § 17.904 sets forth an appeal process and the note to this section states that there are further appellate rights for an appeal to the Board of Veterans' Appeals. This is equivalent to the appellate process afforded veterans for other matters.

The proposed regulations provided that "if a health care provider, Vietnam veteran's child or representative disagrees with a determination concerning provision of health care or a health care provider disagrees with a determination concerning payment, the person or entity may request reconsideration." The proposed regulations further provided that "such request must be submitted in writing within one year of the date of the initial determination to the Chief, Administrative Division, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025." Moreover, the proposed regulations provided that "if the person or entity seeking reconsideration is still dissatisfied, within 30 days of the date of the decision he or she may make a written request for review by the Director, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025." Commenters asserted that the 30-day period for further reconsideration should be extended to 90 or 180 days. In this regard, they argued that 30 days might not be enough time for individuals on travel or who get their mail irregularly. The final rule extends the time period from 30 days to 90 days. This should be adequate to allow sufficient time for the preparation of an appeal.

One commenter asserted that the date for satisfying the period for filing an appeal be the date the appeal is postmarked. The provisions of § 17.904 are amended to state that an appeal would be filed at the time it was delivered to VA or the time it was released for submission to VA (postmark would constitute evidence of release for submission to VA).

One commenter asserted that the review appeal decisions should be required to include a statement of findings and reasons. The regulations are clarified to specifically require inclusion of findings and reasons.

One commenter asserted that ID cards should be issued so that children suffering from spina bifida could more easily identify themselves to health care providers as eligible for benefits under the VA's spina bifida regulations. It is anticipated that ID cards will be issued.

One commenter requested that the comment period for this rule making proceeding be extended until the end of the comment period for the proposed rule regarding vocational training and rehabilitation for Vietnam veterans' children who suffer from spina bifida. Such an extension is unwarranted. An understanding of the issues in the rule making proceeding regarding vocational training and rehabilitation is not necessary to make informed comments regarding this rule making proceeding.

Additional changes are made to the final rule for purposes of clarification.

Executive Order 12866

This final rule has been reviewed by OMB under Executive Order 12866.

Administrative Procedure Act

There is good cause for making this final rule effective without regard to a 30 day delay. This final rule does not adversely affect anyone and the affected children need the benefits from the rule as soon as possible.

Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule (38 CFR 17.902, 17.903, 17.904) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0577.

The provisions of 38 CFR 17.902 will require individuals to submit to a preauthorization specialist of the Health Administration Center a preauthorization application for health care consisting of case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services or travel (other than mileage at the General Services Administration rate for privately owned automobiles). The preauthorization application will contain the child's name and social security number; the type of service requested; the medical justification; the estimated cost; and the name, address, and telephone number of the provider. Such information is necessary to make preauthorization determinations in accordance with § 17.902.

The provisions of 38 CFR 17.903 will require that, as a condition of payment, claims from "approved health care providers" for health care provided under 38 CFR 17.900 must include the following information, as appropriate: with respect to patient identification information: the veteran's and patient's full name, social security numbers, patient's address, and date of birth; with respect to patient treatment information (inpatient and outpatient services): full name and address (such as hospital or physician), remittance address, physical location where services were rendered, individual provider's professional status (M.D., Ph.D., R.N., etc.), and provider tax identification number (TIN) or social security number (SSN); with respect to patient treatment information (inpatient institutional services): dates of service (specific and inclusive); summary level itemization (by revenue code); dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed; principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization; all secondary diagnoses; all procedures performed; discharge status of the patient; and institution's Medicare provider number; with respect to patient treatment information for all other health care providers and ancillary outpatient services: diagnosis, procedure code for each procedure, service or supply for each date of service, and individual billed charge for each procedure, service or supply for each date of service; with respect to prescription drugs and medicines: name and address of pharmacy where drug was dispensed, name of drug, National Drug Code (NDC) for drug provided, strength, quantity, date dispensed, and pharmacy receipt for each drug dispensed. Such information will be necessary to make payment determinations in accordance with 38 CFR 17.903.

The provisions of 38 CFR 17.904 will establish a review process regarding disagreements by a Vietnam veteran's child or representative with a determination concerning authorization of health care or a health care provider's disagreement with a determination regarding payment. The person or entity requesting reconsideration of such determination will be required to submit such request to the Chief, Administrative Division, Health Administration Center, in writing within one year of the date of initial determination. The request must state why the decision is in error and include any new and relevant information not previously considered. After reviewing the matter, a benefits advisor will issue a written determination to the person or entity seeking reconsideration. If such person or entity remains dissatisfied with the determination, the person or entity will be permitted to make a written request for review by the

Director, Health Administration Center. The information to be collected under § 17.904 is necessary to make review and appeal determinations.

Interested parties were invited to submit comments on the collection of information. However, no comments were received.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collections of information in this final rule is displayed at the end of each of the affected sections of the regulations.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only between 600 and 2,000 Vietnam veterans' children who suffer from spina bifida. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b), the final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers for this final rule.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 11, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is amended as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, an undesignated center heading and new §§ 17.900 through 17.905 are added to read as follows:

Health Care for a Vietnam Veteran's Child With Spina Bifida

Sec.

17.900 Spina bifida—provision of health care.
17.901 Definitions.
17.902 Preauthorization.
17.903 Payment.
17.904 Review and appeal process.
17.905 Medical records.

Health Care for a Vietnam Veteran's Child With Spina Bifida

§ 17.900 Spina bifida—provision of health care.

(a) VA shall provide a Vietnam veteran's child who has been determined under § 3.814 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for the spina bifida or any disability that is associated with such condition. This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida.

(b) Health care provided under this section shall be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.

(Authority: 38 U.S.C. 101(2), 1801–1806)

Note to § 17.900: VA provides payment under this section only for health care relating to spina bifida or a disability that is associated with such condition. VA is the exclusive payer for services paid under this section regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida and not constituting a disability that is associated with such condition (accordingly, in the usual case claims for health care for other than covered services for spina bifida and disabilities associated with spinal bifida would be submitted to an insurer, Medicare, Medicaid, health plan, or other program providing health care coverage).

§ 17.901 Definitions.

For purposes of §§ 17.900 through 17.905—

Approved health care provider means a health care provider approved by the Health Care Financing Administration (HCFA), Department of Defense Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or any health care provider approved for providing health care pursuant to a state license or certificate. An entity or individual shall be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

Child means the same as defined at § 3.814(c) of this title.

Habilitative and rehabilitative care means such professional counseling, guidance services and treatment programs (other than vocational training under 38 U.S.C. 1804) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

Health care means home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care; and includes the training of appropriate members of a child's family or household in the care of the child; and the provision of such pharmaceuticals, supplies (including continence-related supplies such as catheters, pads, and diapers), equipment (including durable medical equipment), devices, appliances, assistive technology, direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants), and other materials as the Secretary determines necessary.

Health care provider means any entity or individual who furnishes health care, including specialized spina bifida clinics, health care plans, insurers, organizations, and institutions.

Home care means medical care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to an individual in the individual's home or other place of residence.

Hospital care means care and treatment furnished to an individual who has been admitted to a hospital as a patient.

Nursing home care means care and treatment furnished to an individual who has been admitted to a nursing home as a resident.

Outpatient care means care and treatment, including preventive health services, furnished to an individual other than hospital care or nursing home care.

Preventive care means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.

Respite care means care furnished on an intermittent basis for a limited period to an individual who resides primarily in a private residence when such care will help the individual continue residing in such private residence.

Spina bifida means all forms and manifestations of spina bifida except spina bifida occulta (this includes complications or associated medical conditions which are adjunct to spina bifida according to the scientific literature).

Vietnam veteran means the same as defined at § 3.814(c) of this title.

(Authority: 38 U.S.C. 101(2), 1801–1806)

§ 17.902 Preauthorization.

(a) Preauthorization from a preauthorization specialist of the Health Administration Center is required for health care consisting of case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services, or travel (other than mileage at the General Services Administration rate for privately owned automobiles). This care will be authorized only in those cases where there is a demonstrated medical need. Applications for provision of health care requiring preauthorization shall either be made by telephone at (800) 733–8387, or in writing to Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The application shall contain the following:

(1) Name of child,

(2) Child's social security number,

(3) Name of veteran,

(4) Veteran's social security number,

(5) Type of service requested,

(6) Medical justification,

(7) Estimated cost, and

(8) Name, address, and telephone number of provider.

(b) Notwithstanding the provisions of paragraph (a) of this section, preauthorization shall not be required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. Such emergency care should be reported by telephone at (800) 733–8387 to the Health Administration Center, Denver, CO within 72 hours of the emergency. (Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0577.)

(Authority: 38 U.S.C. 101(2), 1801–1806)

§ 17.903 Payment.

(a)(1) Payment under this section will be determined utilizing the same payment methodologies as provided for under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see 38 CFR 17.84).

(2) As a condition of payment, the services must have occurred on or after October 1, 1997, and must have occurred on or after the date the child was determined eligible for benefits under § 3.814 of this title. Also, as a condition of payment, claims from approved health care providers for health care provided under this section must be filed with the Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025, no later than:

(i) One year after the date of service; or

(ii) In the case of inpatient care, one year after the date of discharge; or

(iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of authorization.

(3) Claims for health care provided under the provisions of §§ 17.900 through 17.905 shall contain, as appropriate, the information set forth in paragraphs (a)(3)(i) through (a)(3)(v) of this section.

(i) Patient identification information:

(A) Full name,

(B) Address,

(C) Date of birth, and

(D) Social Security number.

(ii) Provider identification information (inpatient and outpatient services):

(A) Full name and address (such as hospital or physician),

(B) Remittance address,

(C) Address where services were rendered,

(D) Individual provider's professional status (M.D., Ph.D., R.N., etc.), and

(E) Provider tax identification number (TIN) or Social Security number.

(iii) Patient treatment information (long-term care or institutional services):

(A) Dates of service (specific and inclusive),

(B) Summary level itemization (by revenue code),

(C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,

(D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization,

(E) All secondary diagnoses,

(F) All procedures performed,

(G) Discharge status of the patient, and

(H) Institution's Medicare provider number.

(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites and independent laboratories:

(A) Diagnosis,

(B) Procedure code for each procedure, service or supply for each date of service, and

(C) Individual billed charge for each procedure, service or supply for each date of service.

(v) Prescription drugs and medicines and pharmacy supplies:

(A) Name and address of pharmacy where drug was dispensed,

(B) Name of drug,

(C) Drug Code for drug provided,

(D) Strength,

(E) Quantity,

(F) Date dispensed,

(G) Pharmacy receipt for each drug dispensed (including billed charge), and

(H) Diagnosis.

(b) Health care payment shall be provided in accordance with the provisions of §§ 17.900 through 17.905. However, the following are specifically excluded from payment:

(1) Care as part of a grant study or research program,

(2) Care considered experimental or investigational,

(3) Drugs not approved by the U.S. Food and Drug Administration for commercial marketing,

(4) Services, procedures or supplies for which the beneficiary has no legal obligation to pay, such as services obtained at a health fair,

(5) Services provided outside the scope of the provider's license or certification, and

(6) Services rendered by providers suspended or sanctioned by a Federal agency.

(c) Payments made in accordance with the provisions of §§ 17.900 through 17.905 shall constitute payment in full. Accordingly, the health care provider or agent for the health care provider may not impose any additional charge for any services for which payment is made by VA.

(d) Explanation of benefits (EOB). When a claim under the provisions of §§ 17.900 through 17.905 is adjudicated, an EOB will be sent to the beneficiary or guardian and the provider. The EOB provides at a minimum, the following information:

(1) Name and address of recipient,

(2) Description of services and/or supplies provided,

(3) Dates of services or supplies provided,

(4) Amount billed,

(5) Determined allowable amount,

(6) To whom payment, if any, was made, and

(7) Reasons for denial (if applicable).

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0577.)

(Authority: 38 U.S.C. 101(2), 1801–1806)

§ 17.904 Review and appeal process.

If a health care provider, Vietnam veteran's child or representative disagrees with a determination concerning provision of health care or a health care provider disagrees with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing within one year of the date of the initial determination to the Chief, Administrative Division, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The request must state why it is concluded that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination (with a statement of findings and reasons) to the person or entity seeking reconsideration that affirms, reverses or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 90 days of the date of the decision he or she may make a written request for review by the Director, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The Director will review the claim and any relevant supporting documentation and issue a decision in writing (with a statement of findings and reasons) that affirms, reverses or modifies the previous decision. An appeal under this section would be considered as filed the time it was delivered to the VA or at the time it was released for submission to the VA (for example, this could be evidenced by the postmark, if mailed).

Note to § 17.904: The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans Appeals.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0577.)

(Authority: 38 U.S.C. 101(2), 1801–1806)

§ 17.905 Medical records.

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment, and that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905, must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1801–1806)

[FR Doc. 97–25664 Filed 9–29–97; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI72

Provision of Vocational Training and Rehabilitation to Vietnam Veterans' Children With Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes Department of Veterans Affairs (VA) regulations for providing vocational training and rehabilitation to Vietnam veterans' children with spina bifida. This is necessary for providing vocational training and rehabilitation to these children under recently enacted legislation that authorizes this benefit.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Charles A. Graffam, Veterans Claims Examiner, Vocational Rehabilitation and Counseling Service (28), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420; (202) 273–7410.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 1, 1997 (62 FR 35454), we proposed to amend the Vocational Rehabilitation and Education regulations (38 U.S.C. part 21) to add a new subpart M regarding the provision of vocational training, services, and assistance to Vietnam veterans' children with spina bifida. Spina bifida is a congenital birth defect, characterized by defective closure of the bones surrounding the spinal cord. The spinal cord and its covering (the meninges) may protrude through the defect.

The provisions of 38 U.S.C. chapter 18 (Public Law 104–204, sections 421 and 422, September 26, 1996) provide for three separate types of benefits for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances, (2) provision of health care needed for the spina bifida or any disability that is associated with such condition, and (3) provision of vocational training and rehabilitation.

This document establishes a final rule to set forth a mechanism regarding provision of vocational training and rehabilitation to Vietnam veterans' children with spina bifida.

We requested that comments on the proposed rule be submitted on or before September 2, 1997. We received five comments. VA appreciates the comments submitted in response to the proposed rule. Based on the rationale set forth in the proposed rule and this document, the provisions of the proposed rule are adopted with the changes discussed below.

Comments regarding issues concerning monthly monetary allowances for Vietnam veterans' children who suffer from spina bifida and provision of health care for such children are addressed in separate final rules that specifically concern these issues.

Commenters recommended that we reimburse children for vocational training received prior to October 1, 1997; pay for the purchase and ongoing expenses of owning and operating a vehicle; provide automobile adaptive equipment; provide for specially adapted housing; pay a subsistence allowance to individuals receiving vocational training; allow concurrent receipt of benefits under 38 U.S.C. chapter 35 and the vocational training program; provide comprehensive medical and dental care for conditions unrelated to spina bifida; provide a work-study program; and provide vocational training for children of certain individuals who do not meet the statutory definition of the term "veteran." No changes are made based on these comments since VA has no legal authority to do so.

Commenters asserted that benefits should be provided to grandchildren and other direct descendants of Vietnam veterans. No changes are made based on these comments. Under the provisions of 38 U.S.C. 1801, benefits are limited to natural children of a Vietnam veteran. In our view, this includes only the immediate offspring of a Vietnam veteran and does not include grandchildren or other descendants.

One commenter asserted that all Vietnam veterans' children suffering from spina bifida should receive vocational training and that there should be a gradation of vocational training benefits based on disability so that the most in need would receive the maximum benefit. No changes are made based on this comment. The vocational training regulations are designed to provide for training based on the individual capabilities of those who suffer from spina bifida. Thus, each child will receive only those services needed and the level of services will accord with the needs of the individual child. Even so, not all Vietnam veterans' children who suffer from spina bifida will be eligible for vocational training. The statutory authority limits vocational training to children for whom VA has found that achievement of a vocational goal is reasonably feasible.

The provisions of proposed § 21.8050 stated that VA may provide to vocational training program participants vocationally oriented independent living services, but only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided. Commenters asserted that VA should provide a full range of independent living services for children seeking vocational training. In this regard, one commenter asserted that the terms "indispensable" and "significant portion" are not sufficiently precise and would not allow for adequate independent living services. More specifically the commenter asserted that the regulation should allow independent living services as long as they do not constitute a majority of the vocational rehabilitation services provided.

No changes are made based on these comments. We believe that the current language should be retained. Under the provisions of 38 U.S.C. 1804(c)(1)(A), a child's program is to consist of vocationally oriented services and training. Thus, the focus of a child's program must be on vocational training. Taking extensive time for independent living services would hamper the ability to achieve a vocational goal. Further, it is unlikely that a child who requires a significant amount of independent living services would meet the criteria for entrance into a vocational training program; i.e., it must be reasonably feasible for the child to achieve a vocational goal.

Two commenters questioned whether the vocational training could include professional training. Under the provisions of 38 U.S.C. 1804, the training may include a program of education at an institution of higher education if the program of education is predominantly vocational in content and the vocational goal can be achieved within 24 months.

Commenters asserted that the final rule should allow for further training after the initial training. Proposed § 21.8072(b) already provided for additional training. It provided that a child who has previously achieved a vocational goal in a vocational training program may not receive additional training unless a counseling psychologist or a vocational rehabilitation counselor sets aside the child's achievement of that vocational goal based on a finding under § 21.8284(a) that "the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal" or under § 21.8284(b) that "[t]he occupation that was the child's vocational goal * * * is now unsuitable."

A commenter asserted that additional training should be allowed for the other reasons stated in § 21.8284(c) through (e); i.e.:

"(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;

"(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or

"(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:

"(1) Performing the duties of the occupation for which VA provided training, services, or assistance, or in a related occupation; or

"(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation."

We agree that the provisions of paragraphs (c) through (e) in § 21.8284 set forth appropriate bases for allowing additional vocational training. The final rule in § 21.8072 is changed accordingly.

Proposed § 21.8370 provided for VA to reimburse certain children for the actual cost of transportation necessary for the child to pursue a vocational training program (and for a limited period thereafter), not to exceed $70 per month. Three commenters asserted that the maximum amount should be increased. Two of them suggested an amount, $200 per month. We agree that that the maximum amount should be increased to $200 per month and a corresponding change is made to the final rule. This amount would more closely compare to maximum amounts paid veterans for costs of transportation under the vocational rehabilitation program authorized under 38 U.S.C. chapter 31.

The provisions of § 21.8080 state that a counseling psychologist or vocational rehabilitation counselor will work in consultation with each eligible child to develop an individualized written plan of services and assistance to meet the child's vocational training needs. One commenter asserted that this would limit the child's freedom of choice for training opportunities. No changes are made based on this comment. Under the provisions of the regulations, the child will be an active participant in the decisionmaking. However, the determination of the counseling psychologist or vocational rehabilitation counselor is essential to ensure that the vocational training is reasonable and appropriate for the child's condition.

One comment asserted that the final rule should require VA to utilize vocational rehabilitation specialists, vocational rehabilitation counselors, and counseling psychologists who have substantial experience in serving persons with developmental disabilities. The comment further asserted that the final rule should state that VA will contract for such services if they are unavailable within VA. No changes are made based on this comment. VA is committed to providing competent and comprehensive services. The regulations provide for certain determinations to be made by counseling psychologists, vocation rehabilitation counselors, or vocational rehabilitation specialists. When VA determines that it is necessary to contract for services of individuals to gain additional expertise in developmental disabilities, VA intends to exercise its authority to do so. However, there is no need to address these internal issues in the regulations.

One commenter stated that insofar as authorized by the child, the evaluation for vocational training should include all pertinent records that have been developed outside VA; e.g., school transcripts, counseling records, personal assessments. No changes are made based on this comment. VA uses all available resources in evaluating claimants, including non-VA records authorized by affected individuals.

Commenters asserted that the vocational training regulations should specifically set forth the appeal rights for adverse decisions. Commenters further asserted that the appeal rights should be the same as for other VA claimants. No changes are made based on these comments. The provisions of § 21.8380 make applicable the informal appeal rights of § 21.420. Also, §§ 21.420(d) and 21.59 inform claimants of additional appeal rights to the Board of Veterans' Appeals. These appeal

rights are comparable to appeal rights in other VA programs.

One commenter objected to the establishment of regulations that separately address: (1) Monthly monetary allowances, (2) provision of health care needed for the spina bifida or any disability that is associated with such condition, and (3) provision of vocational training and rehabilitation. The commenter asserted that this approach ignored "internal coordination." No changes are made based on this comment. The regulations are consistent with the provisions of 38 U.S.C. chapter 18 which specify three separate types of benefits for Vietnam veterans' children who suffer from spina bifida.

For the sake of clarity, we have made some nonsubstantive editorial changes to the proposed language.

Administrative Procedure Act

There is good cause for making this final rule effective without regard to a 30-day delay. This final rule does not adversely affect anyone and the affected children need the benefits from the rule as soon as possible.

Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule (38 CFR 21.8014, 21.8016, and 21.8370) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control numbers 2900–0579, 2900–0581, and 2900–0580; respectively.

Section 21.8014 will prescribe the information to be submitted for an application for a Vietnam veteran's child suffering from spina bifida to participate in a VA vocational training program. It will establish a requirement that a child with spina bifida submit an application for vocational training to be considered for this benefit. VA needs to know sufficient identifying information about the applicant and the applicant's natural parent who was a Vietnam veteran to be able to relate the claim to other existing VA records. The information collected allows the Vocational Rehabilitation and Counseling (VR&C) Division to review the existing records and to set up an appointment for an applicant to meet with a VR&C staff member to evaluate the claim.

Section 21.8016 will require a written election, and permit a written reelection, of which benefit a child with spina bifida wants to receive if the child is eligible for training under both 38 U.S.C. chapter 35 and Vocational Training Benefits for Vietnam Veterans' Children for Spina Bifida. 38 U.S.C. 1804(e)(1) specifically bars the concurrent receipt of benefits under these two programs. VA will use the collected information to provide the benefit the child wants to receive.

Section 21.8370 will permit a child receiving vocational training to request VA reimbursement for certain transportation costs and will require submission of supporting documentation to receive reimbursement. VA must determine that the child would be unable to pursue training or employment without this assistance. A child must specifically request VA assistance with transportation expenses. This allows VA to investigate the child's situation to establish that the child would be unable to pursue training or employment without VA travel assistance. To receive payment, the child must provide supportive documentation of actual expenses incurred for the travel. This prevents VA from making payment erroneously or for fraudulently claimed travel.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to each collection of information in this final rule is displayed at the end of the affected sections of the regulations.

Interested persons were invited to submit comments on the collections of information. However, no comments were received.

Executive Order 12866

This final rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only between 600–2,000 Vietnam veterans' children who suffer from spina bifida. They are widely dispersed geographically, and the services provided to them will not have a significant impact on any small businesses. Moreover, the institutions capable of providing appropriate services and vocational training to children with spina bifida generally are large capitalization facilities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance program number for this benefit.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interest, Defense Department, Education, Employment, Government contracts, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Personnel training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 16, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 21 is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

In part 21, subpart M is added to read as follows:

Subpart M—Vocational Training and Rehabilitation for Vietnam Veterans' Children With Spina Bifida

Sec.

General

21.8010 Vocational training program for certain Vietnam veterans' children with spina bifida.
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21.8014 Application.
21.8016 Nonduplication of benefits.

Basic Entitlement Requirements

21.8020 Entitlement to vocational training and employment assistance.
21.8022 Entry and reentry.

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21.8030 Requirement for evaluation of child.
21.8032 Evaluations.

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21.8070 Basic duration of a vocational training program.
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21.8074 Computing the period for vocational training program participation.

Individualized Written Plan of Vocational Rehabilitation

21.8080 Requirement for an individualized written plan of vocational rehabilitation.
21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.

Counseling

21.8100 Counseling.

Vocational Training, Services, and Assistance

21.8120 Vocational training, services, and assistance.

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21.8140 Evaluation and improvement of vocational potential.

Supplies

21.8210 Supplies.

Program Costs

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Vocational Training Program Entrance, Termination, and Resources

21.8280 Effective date of induction into a vocational training program.
21.8282 Termination of a vocational training program.
21.8284 Additional vocational training.
21.8286 Training resources.

Rate of Pursuit

21.8310 Rate of pursuit.

Authorization of Services

21.8320 Authorization of services.

Leaves of Absence

21.8340 Leaves of absence.

Satisfactory Conduct and Cooperation

21.8360 Satisfactory conduct and cooperation.

Transportation Services

21.8370 Authorization of transportation services.

Additional Applicable Regulations

21.8380 Additional applicable regulations.

Delegation of Authority

21.8410 Delegation of authority.

Subpart M—Vocational Training and Rehabilitation for Vietnam Veterans' Children With Spina Bifida

Authority: 38 U.S.C. 101, 501, 512, 1151 note, 1801–1806, 5112, unless otherwise noted.

General

§ 21.8010 Vocational training program for certain Vietnam veterans' children with spina bifida.

VA will provide an evaluation to a Vietnam veteran's child who VA has determined under § 3.814 of this title suffers from spina bifida. If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to enable the child to achieve a vocational goal, including employment.

(Authority: 38 U.S.C. 1804)

§ 21.8012 Definitions and abbreviations.

(a) *Program-specific definitions and abbreviations.* For the purposes of this subpart:

Child has the same meaning as § 3.814(c) of this title provides.

Employment assistance means employment counseling, placement and post-placement services, and personal and work adjustment training.

Institution of higher education has the same meaning that § 21.4200 provides for the term *institution of higher learning.*

Program of employment services means the services a child may receive if the child's entire program consists only of employment assistance.

Program participant means a child who, following an evaluation in which VA finds the child's achievement of a vocational goal is reasonably feasible, elects to participate in a vocational training program under this subpart.

Spina bifida means any form and manifestation of spina bifida except spina bifida occulta.

Vietnam veteran has the same meaning as § 3.814(c) of this title provides.

Vocational training program means the vocationally oriented training services, and assistance, including placement and post-placement services, and personal and work-adjustment training that VA finds necessary to enable the child to prepare for and participate in vocational training or employment. A vocational training program may include a program of education offered by an institution of higher education only if the program is predominantly vocational in content.

VR&C refers to the Vocational Rehabilitation and Counseling activity (usually a division) in a Veterans Benefits Administration regional office, the staff members of that activity in the regional office or in outbased locations, and the services that activity provides.

(Authority: 38 U.S.C. 101, 1801, 1802, 1804)

(b) *Other terms and abbreviations.* The following terms and abbreviations have the same meaning or explanation that § 21.35 provides:

(1) CP (Counseling psychologist);
(2) Program of education;
(3) Rehabilitation facility;
(4) School, educational institution, or institution;
(5) Training establishment;
(6) Vocational goal;
(7) VRC (Vocational rehabilitation counselor);
(8) VRS (Vocational rehabilitation specialist); and
(9) Workshop.

(Authority: 38 U.S.C. 1801, 1804)

§ 21.8014 Application.

(a) *Filing an application.* To participate in a vocational training program, the child (or the child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:

(1) Be in writing over the signature of the applicant or the individual applying on the child's behalf;

(2) Provide the child's full name, address, and VA claim number, if any, and the Vietnam veteran's full name and Social Security number or VA claim number, if any; and

(3) Clearly identify the benefit sought.

(Authority: 38 U.S.C. 1804(a)).

(b) *Time for filing.* An application under this subpart may be filed at any time after September 30, 1997.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0579.)

(Authority: 38 U.S.C. 1801, 1804)

§ 21.8016 Nonduplication of benefits.

(a) *Election of benefits—chapter 35.* A child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive.

(Authority: 38 U.S.C. 1804(e)(1))

(b) *Reelections of benefits—chapter 35.* A child receiving benefits under this subpart or under 38 U.S.C. chapter 35

may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in a child receiving benefits under both programs for the same period of training.

(Authority: 38 U.S.C. 1804(e)(1))

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which a child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0581.)

(Authority: 38 U.S.C. 1804(e)(2))

Basic Entitlement Requirements

§ 21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for a child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&C staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal.

(Authority: 38 U.S.C. 1804(b))

(b) *Services and assistance.* A child found eligible and entitled to be a vocational training program participant may receive the services and assistance described in § 21.8050(a). The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under that subpart:

(1) Section 21.250(a) and (b)(2);
(2) Section 21.252;
(3) Section 21.254;
(4) Section 21.256 (not including paragraph (e)(2);
(5) Section 21.257; and
(6) Section 21.258.

(Authority: 38 U.S.C. 1804)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the child:

(1) Has achieved a vocational objective;

(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes.

(Authority: 38 U.S.C. 1804)

(d) *Additional employment services and assistance.* If a child has received employment assistance and obtains a suitable job, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement.

(Authority: 38 U.S.C. 1804)

(e) *Program entitlement usage*—(1) *Basic entitlement period.* A child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* The child may receive an extension of the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation or the part-time equivalent. VA may authorize an extension only if VA first determines that:

(i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and

(ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in § 21.8032) on the same basis as VA would charge entitlement usage for providing the same training, services, or assistance to a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate of pursuit criteria in § 21.8310. The provisions concerning reduced work tolerance under § 21.312 or less than half-time training under § 21.314 do not apply under this subpart.

(Authority: 38 U.S.C. 1804)

§ 21.8022 Entry and reentry.

(a) *Dates of entry.* VA may not evaluate a child for a vocational training program before the later of the following dates:

(1) The date VA first receives an application for a vocational training program for the child; or

(2) October 1, 1997.

(Authority: 38 U.S.C. 1151 note, 1804, 1806)

(b) *Reentry.* If a child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance.

(Authority: 38 U.S.C. 1804)

Evaluation

§ 21.8030 Requirement for evaluation of child.

(a) *Children to be evaluated.* The VR&C Division will evaluate each child who:

(1) Applies for a vocational training program; and

(2) Has been determined under § 3.814 of this title to suffer from spina bifida.

(Authority: 38 U.S.C. 1804(a))

(b) *Purpose of evaluation.* The evaluation has two purposes:

(1) To ascertain whether achievement of a vocational goal by the child is reasonably feasible; and

(2) If a vocational goal is reasonably feasible, to develop an individualized plan of integrated training, services, and assistance that the child needs to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804)

§ 21.8032 Evaluations.

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program will be comparable to an evaluation of the reasonable feasibility of achieving a vocational goal for a veteran under 38 U.S.C. chapter 31 and §§ 21.50(b)(5) and 21.53(b) and (d).

(Authority: 38 U.S.C. 1804(a))

(b) *Specific services to determine the reasonable feasibility of achieving a vocational goal.* As a part of the evaluation of reasonable feasibility of achieving a vocational goal, VA may provide the following specific services, as appropriate:

(1) Assessment of feasibility by a CP or VRC;

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical, testing, and other diagnostic services to ascertain the child's capacity for training and employment; and

(4) Evaluation of employability by professional staff of an educational or rehabilitation facility, for a period not to exceed 30 days.

(Authority: 38 U.S.C. 1804(a))

(c) *Responsibility for evaluation.* A CP or VRC will make all determinations as to the reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1804(a), (b))

Services and Assistance to Program Participants

§ 21.8050 Scope of training, services, and assistance.

(a) *Allowable training, services, and assistance.* VA may provide to vocational training program participants:

(1) Vocationally oriented training, services, and assistance, to include:

(i) Training in an institution of higher education if the program is predominantly vocational; and

(ii) Tuition, fees, books, equipment, supplies, and handling charges.

(2) Employment assistance including:

(i) Vocational, psychological, employment, and personal adjustment counseling;

(ii) Services to place the individual in suitable employment and post-placement services necessary to ensure satisfactory adjustment in employment; and

(iii) Personal adjustment and work adjustment training.

(3) Vocationally oriented independent living services only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided.

(4) Other vocationally oriented services and assistance of the kind VA provides veterans under the 38 U.S.C. chapter 31 program, except as paragraph (c) of this section provides, that VA determines the program participant needs to prepare for and take part in vocational training or in employment.

(Authority: 38 U.S.C. 1804(c))

(b) *Vocational training program.* VA will provide either directly or by contract, agreement, or arrangement with another entity, and at no cost to the beneficiary, the vocationally oriented training, other services, and assistance that VA approves for the individual child's program under this subpart. Authorization and payment for approved services will be made in a comparable manner to that VA provides for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c))

(c) *Prohibited services and assistance.* VA may not provide to a vocational training program participant any:

(1) Loan;
(2) Subsistence allowance;
(3) Automobile adaptive equipment;
(4) Training at an institution of higher education in a program of education that is not predominantly vocational in content;
(5) Employment adjustment allowance;
(6) Room and board in a special rehabilitation facility for a period in excess of 30 days; or
(7) Independent living services, except those that are incidental to the pursuit of the vocational training program.

(Authority: 38 U.S.C. 1804(c))

Duration of Vocational Training

§ 21.8070 Basic duration of a vocational training program.

(a) *Basic duration of a vocational training program.* The duration of a vocational training program, as § 21.8020(e)(1) and (e)(2) provide, may not exceed 24 months of full-time training, services, and assistance or the part-time equivalent, except as § 21.8072 allows.

(Authority: 38 U.S.C. 1804(d))

(b) *Responsibility for estimating the duration of a vocational training program.* While preparing the individualized written plan of vocational rehabilitation, the CP or VRC will estimate the time the child needs to complete a vocational training program.

(Authority: 38 U.S.C. 1804(c))

(c) *Duration and scope of training must meet general requirements for entry into the selected occupation.* The child will receive training, services, and assistance, as § 21.8120 describes, for a period that VA determines the child needs to reach the level employers generally recognize as necessary for entry into employment in a suitable occupational objective.

(Authority: 38 U.S.C. 1804(c))

(d) *Approval of training beyond the entry level.* To qualify for employment in a particular occupation, the child may need training that exceeds the amount a person generally needs for employment in that occupation. VA will provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the child's vocational goal in the area where the child lives or will seek employment exceed those job seekers generally need for that type of employment;

(2) The child is preparing for a type of employment in which he or she will be at a definite disadvantage in competing with nondisabled persons and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited, and additional training will enhance the child's employability in one of the feasible occupations; or

(4) The number of employment opportunities within a feasible occupation is restricted.

(Authority: 38 U.S.C. 1804(c))

(e) *Estimating the duration of the training period.* In estimating the length of the training period the child needs, the CP or VRC must determine that:

(1) The proposed vocational training would not normally require a person without a disability more than 24 months of full-time pursuit, or the part-time equivalent, for successful completion; and

(2) The program of training and other services the child needs, based upon VA's evaluation, will not exceed 24 months or the part-time equivalent. In calculating the proposed program's length, the CP or VRC will follow the procedures in § 21.8074(a).

(Authority: 38 U.S.C. 1804(d))

(f) *Required selection of an appropriate vocational goal.* If the total period the child would require for completion of an initial vocational training program in paragraph (e) of this section is more than 24 months, or the part-time equivalent, the CP or VRC must work with the child to select another suitable initial vocational goal.

(Authority: 38 U.S.C. 1804(d)(2))

§ 21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.

(a) *Extension of the duration of a vocational training program.* VA may authorize an extension of a vocational training program when necessary to provide additional training, services, and assistance to enable the child to achieve the vocational or employment goal identified before the end of the child's basic entitlement period, as stated in the individualized written plan of vocational rehabilitation under § 21.8080. A change from one occupational objective to another in the same field or occupational family meets the criterion for prior identification in the individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(d)(2), (e)(2))

(b) *Extensions for prior participants in the program.* (1) Except as paragraph (b)(2) of this section provides, VA may authorize additional training, limited to the use of remaining program entitlement including any allowable extension, for a child who previously participated in vocational training under this subpart. The additional training must:

(i) Be designed to enable the child to complete the prior vocational goal or a different vocational goal; and

(ii) Meet the same provisions as apply to training for new participants.

(2) A child who has previously achieved a vocational goal in a vocational training program under this subpart may not receive additional training under paragraph (b)(1) of this section unless a CP or VRC sets aside the child's achievement of that vocational goal under § 21.8284.

(Authority: 38 U.S.C. 1804(b) through (e))

(c) *Responsibility for authorizing a program extension.* A CP or VRC may approve extensions of the vocational training program the child is pursuing up to the maximum program limit of 48 months if the CP or VRC determines that the child needs the additional time to successfully complete training and obtain employment, and the following conditions are met:

(1) The child has completed more than half of the planned training; and

(2) The child is making satisfactory progress.

(Authority: 38 U.S.C. 1804(d)(2))

§ 21.8074 Computing the period for vocational training program participation.

(a) *Computing the participation period.* To compute the number of months and days of a child's participation in a vocational training program:

(1) Count the number of actual months and days of the child's:

(i) Pursuit of vocational education or training;

(ii) Receipt of extended evaluation-type services and training, or services and training to enable the child to prepare for vocational training or employment, if a veteran in a 38 U.S.C. chapter 31 program would have received a subsistence allowance while receiving the same type of services and training; and

(iii) Receipt of employment and post-employment services (any period of employment or post-employment services is considered full-time program pursuit).

(2) Do not count:

(i) The initial evaluation period;

(ii) Any period before the child enters a vocational training program under this subpart;

(iii) Days of authorized leave; and

(iv) Other periods during which the child will not pursue training, such as periods between terms.

(3) Convert part-time training periods to full-time equivalents.

(4) Total the months and days under paragraphs (a)(1) through (a)(3) of this section. This sum is the period of the child's participation in the program.

(Authority: 38 U.S.C. 1804(d))

(b) *Consistency with principles for charging entitlement.* Computation of the program participation period under this section will be consistent with the principles for charging entitlement under § 21.8020.

(Authority: 38 U.S.C. 1804(d))

Individualized Written Plan of Vocational Rehabilitation

§ 21.8080 Requirement for an individualized written plan of vocational rehabilitation.

(a) *General.* A CP or VRC will work in consultation with each child for whom a vocational goal is feasible to develop an individualized written plan of vocational rehabilitation services and assistance to meet the child's vocational training needs. The CP or VRC will develop this individualized written plan of vocational rehabilitation in a manner comparable to the rules governing the development of an individualized written rehabilitation plan (IWRP) for a veteran for 38 U.S.C. chapter 31 purposes, as §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), and 21.96 provide.

(Authority: 38 U.S.C. 1804(b))

(b) *Selecting the type of training to include in the individualized written plan of vocational rehabilitation.* If training is necessary, the CP or VRC will explore a range of possibilities, to include paid and unpaid on-job training, institutional training, and a combination of on-job and institutional training to accomplish the goals of the program. Generally, a child's program should include on-job training, or a combination of on-job and institutional training, when this training:

(1) Is available;

(2) Is as suitable as using only institutional training for accomplishing the goals of the program; and

(3) Will meet the child's vocational training program needs.

(Authority: 38 U.S.C. 1804(b), (c))

§ 21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.

(a) *Inability to timely complete an individualized written plan of vocational rehabilitation or achieve identified goal.* After a vocational training program has begun, the VR&C case manager may determine that the child cannot complete the vocational training program described in the child's individualized written plan of vocational rehabilitation within the time limits of the individualized written plan of vocational rehabilitation or cannot achieve the child's identified vocational goal. Subject to paragraph (b) of this section, VR&C may assist the child in revising or selecting a new individualized written plan of vocational rehabilitation or goal.

(b) *Allowable changes in the individualized written plan of vocational rehabilitation or goal.* Any change in the child's individualized written plan of vocational rehabilitation or vocational goal is subject to the child's continuing eligibility under the vocational training program and the provisions governing duration of a vocational training program in §§ 21.8020(c) and 21.8070 through 21.8074.

(Authority: 38 U.S.C. 1804(d), 1804(e))

(c) *Change in the individualized written plan of vocational rehabilitation or vocational goal.* (1) The individualized written plan of vocational rehabilitation or vocational goal may be changed under the same conditions as provided for a veteran under § 21.94 (a) through (d), and subject to § 21.8070 (d) through (f), if:

(i) The CP or VRC determines that achievement of a vocational goal is still reasonably feasible and that the new individualized written plan of vocational rehabilitation or goal is necessary to enable the child to prepare for and participate in vocational training or employment; and

(ii) Reentrance is authorized under § 21.8284 in a case when the child has completed a vocational training program under this subpart.

(2) A CP or VRC may approve a change of vocational goal from one field or occupational family to another field or occupational family if the child can achieve the new goal:

(i) Before the end of the basic 24-month entitlement period that § 21.8020(c)(1) describes; or

(ii) Before the end of any allowable extension under §§ 21.8020(c)(2) and 21.8072 if the new vocational goal in another field or occupational family was identified during the basic 24-month entitlement period.

(3) A change from one occupational objective to another in the same field or occupational family does not change the planned vocational goal.

(4) The child must have sufficient remaining entitlement to pursue the new individualized written plan of vocational rehabilitation or goal, as § 21.8020 provides.

(Authority: 38 U.S.C. 1804(d))

(d) *Assistance if child terminates planned program before completion.* If the child elects to terminate the planned vocational training program, he or she will receive the assistance that § 21.80(d) provides in identifying other resources through which to secure the desired training or employment.

(Authority: 38 U.S.C. 1804(c))

Counseling

§ 21.8100 Counseling.

A child requesting or receiving services and assistance under this subpart will receive professional counseling by VR&C and other qualified VA staff members, and by contract counseling providers, as necessary, in a manner comparable to VA's provision of these services to veterans under the 38 U.S.C. chapter 31 program, as §§ 21.100 and 21.380 provide.

(Authority: 38 U.S.C. 1803(c)(8), 1804(c))

Vocational Training, Services, and Assistance

§ 21.8120 Vocational training, services, and assistance.

(a) *Purposes.* A child eligible for a vocational training program may receive training, services, and assistance to enable the child to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), (c))

(b) *Training permitted.* VA and the child will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or direct placement in employment. The educational and training services to be provided include:

(1) Remedial, deficiency, and refresher training; and

(2) Training that leads to an identifiable vocational goal. Under this program, VA may authorize all forms of programs that §§ 21.122 through 21.132 describe. This includes education and training programs in institutions of higher education. VA may authorize the education and training at an undergraduate or graduate degree level, only if the degree program is predominantly vocational in nature. For a child to participate in a graduate degree program, the graduate degree must be a requirement for entry into the child's vocational goal. For example, a master's degree is required to engage in social work. The program of training is predominantly vocational in content if the majority of the instruction provides the technical skills and knowledge employers generally regard as specific to, and required for, entry into the child's vocational goal.

(c) *Cost of education and training services.* The CP or VRC will consider the cost of training in selecting a facility when:

(1) There is more than one facility in the area in which the child resides that:

(i) Meets the requirements for approval under §§ 21.290 through 21.298 (except as provided by § 21.8286(b)),

(ii) Can provide the training, services and other supportive assistance the child's individualized written plan of vocational rehabilitation specifies, and

(iii) Is within reasonable commuting distance; or

(2) The child wishes to train at a suitable facility in another area, even though a suitable facility in the area where the child lives can provide the training. In considering the costs of providing training in this case, VA will use the provisions of § 21.120 (except 21.120(a)(3)), § 21.370 (however, the words "under § 21.282" in § 21.370(b)(2)(iii)(B) do not apply), and § 21.372 in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(b), (c))

(d) *Accessible courses not locally available.* If suitable vocational training courses are not available in the area in which the child lives, or if they are available but not accessible to the child, VA may make other arrangements. These arrangements may include, but are not limited to:

(1) Transportation of the child, but not the child's family, personal effects, or household belongings, to another area where necessary services are available; or

(2) Use of an individual instructor to provide necessary training in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program, as § 21.146 describes.

(Authority: 38 U.S.C. 1804(b), (c))

Evaluation and Improvement of Vocational Potential

§ 21.8140 Evaluation and improvement of vocational potential.

(a) *General.* A CP or VRC may use the services that paragraph (d) of this section describes to:

(1) Evaluate vocational training and employment potential;

(2) Provide a basis for planning:

(i) A program of services and assistance to improve the child's preparation for vocational training and employment; or

(ii) A vocational training program;

(3) Reevaluate the vocational training feasibility of a child participating in a vocational training program; and

(4) Remediate deficiencies in the child's basic capabilities, skills, or knowledge to give the child the ability to participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b))

(b) *Periods when evaluation and improvement services may be provided.* A CP or VRC may authorize the services described in paragraph (d) of this section, except those in paragraph (d)(4) of this section, for delivery during:

(1) An initial evaluation; or

(2) Pursuit of a vocational training program.

(Authority: 38 U.S.C. 1804(c))

(c) *Duration of services.* The duration of services needed to improve vocational training and employment potential, furnished on a full-time basis either as a preliminary part or all of a vocational training program, may not exceed 9 months. If VA furnishes these services on a less than full-time basis, the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training.

(Authority: 38 U.S.C. 1804(c))

(d) *Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Referral for medical care and treatment for the spina bifida or related conditions;

(4) Vocationally oriented independent living services indispensable to pursuing a vocational training program;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services to assist the child in functioning in the proposed training or work environment.

(Authority: 38 U.S.C. 1804(c))

(e) *Applicability of chapter 31 rules on special rehabilitation services.* The provisions of § 21.140 do not apply to this subpart. Subject to the provisions of this subpart, the following provisions apply to the vocational training program under this subpart in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program: § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150 other than paragraph (b); § 21.152 other than paragraph (b); § 21.154 other than paragraph (b); and § 21.156.

(Authority: 38 U.S.C. 1804(c))

Supplies

§ 21.8210 Supplies.

(a) *Purpose of furnishing supplies.* VA will provide the child with the supplies that the child needs to pursue training, to obtain and maintain employment, and otherwise to achieve the goal of his or her vocational training program.

(Authority: 38 U.S.C. 1804(c))

(b) *Types of supplies.* VA may provide books, tools, and other supplies and equipment that VA determines are necessary for the child's vocational training program and are required by similarly circumstanced veterans pursuing such training under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 1804(c))

(c) *Periods during which VA may furnish supplies.* VA may provide supplies to a child receiving:

(1) An evaluation;

(2) Vocational training, services, and assistance to reach the point of employability; or

(3) Employment services.

(Authority: 38 U.S.C. 1804(c))

(d) *Other rules.* The provisions of §§ 21.212 through 21.224 apply to children pursuing a vocational training program under this subpart in a comparable manner as VA provides supplies to veterans under 38 U.S.C. chapter 31, except the following portions:

(1) Section 21.216(a)(3) pertaining to special modifications, including automobile adaptive equipment;

(2) Section 21.220(a)(1) pertaining to advancements from the revolving fund loan;

(3) Section 21.222(b)(x) pertaining to discontinuance from an independent living services program.

(Authority: 38 U.S.C. 1804(c))

Program Costs

§ 21.8260 Training, services, and assistance costs.

The provisions of § 21.262 pertaining to reimbursement for training and other program costs apply, in a comparable manner as provided under the 38 U.S.C. chapter 31 program for veterans, to payments to facilities, vendors, and other providers for training, supplies, and other services they deliver under this subpart.

(Authority: 38 U.S.C. 1804(c))

Vocational Training Program Entrance, Termination, and Resources

§ 21.8280 Effective date of induction into a vocational training program.

Subject to the limitations in § 21.8022, the date a child is inducted into a vocational training program will be the date the child first begins to receive training, services, or assistance under an individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(c), (d))

§ 21.8282 Termination of a vocational training program.

A case manager may terminate a child's vocational training program for cause, including lack of cooperation, failure to pursue the individualized written plan of vocational rehabilitation, fraud, or administrative error. A child for whom a vocational goal is reasonably feasible remains eligible for the program subject to the rules of this subpart unless the child's eligibility for or entitlement to a vocational training program under this subpart resulted from fraud or administrative error.

(a) *Fraud.* If a child establishes eligibility for or entitlement to benefits under this subpart through fraud, VA will terminate the award of vocational training and rehabilitation as of the date VA first began to pay benefits.

(b) *Administrative error.* If a child who is not entitled to benefits under this subpart receives those benefits through VA administrative error, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training unless VA has already obligated payment for the training.

(c) *Lack of cooperation or failure to pursue individualized written plan of vocational rehabilitation.* If reasonable VR&C efforts to motivate a child do not resolve a lack of cooperation or failure to pursue an individualized written plan of vocational rehabilitation, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training. VA will deobligate payment for training in the new quarter, semester, or other term of training.

(Authority: 38 U.S.C. 1804)

§ 21.8284 Additional vocational training.

VA may provide an additional period of training or services under a vocational training program to a child who has completed training for a vocational goal and/or been suitably employed under this subpart, if the child is otherwise eligible and has remaining program entitlement as provided in § 21.8072(b), only under one of the following conditions:

(a) Current facts, including any relevant medical findings, establish that the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal under this subpart;

(b) The occupation that was the child's vocational goal under this subpart is now unsuitable;

(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;

(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or

(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:

(1) Performing the duties of the occupation for which VA provided training, services, or assistance, or in a related occupation; or

(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation.

(Authority: 38 U.S.C. 1804(c))

§ 21.8286 Training resources.

(a) *Applicable 38 U.S.C. chapter 31 resource provisions.* The provisions of § 21.146 and §§ 21.290 through 21.298 apply to children pursuing a vocational training program under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, except as paragraph (b) of this section specifies.

(Authority: 38 U.S.C. 1804(c))

(b) *Limitations.* The provisions of § 21.294(b)(1)(i) and (b)(1)(ii) pertaining to independent living services do not apply to this subpart. The provisions of § 21.294(b)(1)(iii) pertaining to authorization of independent living services as a part of an individualized written plan of vocational rehabilitation apply to children under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program only to the extent § 21.8050 allows.

(Authority: 38 U.S.C. 1804(c))

Rate of Pursuit

§ 21.8310 Rate of pursuit.

(a) *General requirements.* VA will approve a child's pursuit of a vocational training program at a rate consistent with his or her ability to successfully pursue training, considering:

(1) Effects of his or her disability;

(2) Family responsibilities;

(3) Travel;

(4) Reasonable adjustment to training; and

(5) Other circumstances affecting the child's ability to pursue training.

(Authority: 38 U.S.C. 1804(c))

(b) *Continuous pursuit.* A child should pursue a program of vocational training with as little interruption as necessary, considering the factors in paragraph (a) of this section.

(Authority: 38 U.S.C. 1804(c))

(c) *Responsibility for determining the rate of pursuit.* VR&C staff members will consult with the child when determining the rate and continuity of pursuit of a vocational training program. These staff members will also confer with the medical consultant and the Vocational Rehabilitation Panel described in §§ 21.60 and 21.62, as necessary. This rate and continuity of pursuit determination will occur during development of the individualized written plan of vocational rehabilitation, but may change later, as necessary to enable the child to complete training.

(Authority: 38 U.S.C. 1804(c))

(d) *Measurement of training time used.* VA will measure the rate of pursuit in a comparable manner to rate of pursuit measurement under § 21.310 for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c))

Authorization of Services

§ 21.8320 Authorization of services.

The provisions of § 21.326, pertaining to the commencement and termination dates of a period of employment services, apply to children under this subpart in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program. References in that section to an individualized employment assistance plan IEAP should be considered as referring to the child's individualized written plan of vocational rehabilitation under this subpart.

(Authority: 38 U.S.C. 1804(c))

Leaves of Absence

§ 21.8340 Leaves of absence.

(a) *Purpose of leave of absence.* The purpose of the leave system is to enable the child to maintain his or her status as an active program participant.

(Authority: 38 U.S.C. 1804(c))

(b) *Basis for leave of absence.* The VR&C case manager may grant the child leaves of absence for periods during which the child fails to pursue a vocational training program. For prolonged periods of absence, the VR&C case manager may approve leaves of absence only if the case manager determines the child is unable to pursue a vocational training program through no fault of the child.

(Authority: 38 U.S.C. 1804(c))

(c) *Effect on entitlement.* During a leave of absence, the running of the basic 24-month period of entitlement, plus any extensions thereto, shall be suspended until the child resumes the program.

(Authority: 38 U.S.C. 1804(c))

Satisfactory Conduct and Cooperation

§ 21.8360 Satisfactory conduct and cooperation.

The provisions for satisfactory conduct and cooperation in §§ 21.362 and 21.364, except as otherwise provided in this section, apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. If a child fails to meet these requirements for satisfactory conduct or cooperation, the VR&C case manager will terminate the child's vocational training program. VA will not grant a child reentrance to a vocational training program unless the reasons for unsatisfactory conduct or cooperation have been removed.

(Authority: 38 U.S.C. 1804(c))

Transportation Services

§ 21.8370 Authorization of transportation services.

(a) *General.* VA shall authorize transportation services necessary for a child to pursue a vocational training program. The sections in subpart A of this part that are referred to in this paragraph (a) shall apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. Transportation services include:

(1) Transportation for evaluation or counseling under § 21.376;

(2) Intraregional travel under § 21.370 (except that assurance that the child meets all basic requirements for induction into training will be determined without regard to the provisions of § 21.282) and interregional travel under § 21.372;

(3) Special transportation allowance under § 21.154; and

(4) Commuting to and from training and while seeking employment, subject to paragraphs (c) and (d) of this section.

(Authority: 38 U.S.C. 1804(c))

(b) *Reimbursement.* For transportation services that VA authorizes, VA will normally pay in arrears and in the same manner as tuition, fees, and other services under this program.

(Authority: 38 U.S.C. 1804(c))

(c) *Payment for commuting expenses for training and seeking employment.* VA may pay for transportation during the period of vocational training and the first 3 months the child receives employment services. VA may reimburse the child's costs, not to exceed $200 per month, of commuting to and from training and seeking employment if he or she requests this assistance and VA determines, after careful examination of the child's situation and subject to the limitations in paragraph (d) of this section, that the child would be unable to pursue training or employment without this assistance. VA may:

(1) Reimburse the facility at which the child is training if the facility provided transportation or related services; or

(2) Reimburse the child for his or her actual commuting expense if the child paid for the transportation.

(Authority: 38 U.S.C. 1804(c))

(d) *Limitations.* Payment of commuting expenses under paragraph (a)(4) of this section may not be made for any period when the child:

(1) Is gainfully employed;

(2) Is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs; or

(3) Can commute to school with family, friends, or fellow students.

(Authority: 38 U.S.C. 1804(c))

(e) *Documentation.* VA must receive supportive documentation with each request for reimbursement. The individualized written plan of vocational rehabilitation will specify whether VA will pay monthly or at a longer interval.

(Authority: 38 U.S.C. 1804(c))

(f) *Nonduplication.* A child eligible for reimbursement of transportation services both under this section and under § 21.154 will receive only the benefit under § 21.154.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0580.)

(Authority: 38 U.S.C. 1804(c))

Additional Applicable Regulations

§ 21.8380 Additional applicable regulations.

The following regulations are applicable to children in this program in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program: §§ 21.380, 21.412, 21.414 (except paragraphs (c), (d), and (e)), 21.420, and 21.430.

(Authority: 38 U.S.C. 1804, 5112)

Delegation of Authority

§ 21.8410 Delegation of authority.

The Secretary delegates authority for making findings and decisions under 38 U.S.C. 1804 and the applicable regulations, precedents, and instructions for the program under this subpart to the Under Secretary for Benefits and to VR&C supervisory or non-supervisory staff members.

(Authority: 38 U.S.C. 512(a))

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federal register

Tuesday
September 30, 1997

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AE14

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 1997–98 season.

DATE: This rule takes effect on September 30, 1997.

ADDRESSES: The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1997

On March 13, 1997, the Service published in the **Federal Register** (62 FR 39712) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. These regulations were proposed for certain designated members of the avian families Anatidae (ducks, geese, and swans), Columbidae (doves and pigeons), Gruidae (cranes), Rallidae (rails, coots, moorhens, and gallinules), and Scolopacidae (woodcock and snipe), designated as "migratory game birds" in conventions between the United States and several foreign nations for their protection and management. All other birds designated as migratory (under 10.13 of Subpart B of 50 CFR part 10) in the aforementioned conventions may not be hunted. On June 6, 1997, the Service published in the **Federal Register** (62 FR 31298) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. The June 6 supplement also provided detailed information on the 1997–98 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

On June 27, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13 and June 6 **Federal Registers**, to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 23, 1997, the Service published in the **Federal Register** (62 FR 39712) a fourth document specifically dealing with proposed early-season frameworks for the 1997–98 season.

On August 7, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13, June 6, and July 23 **Federal Registers**, to review the status of waterfowl and discuss proposed hunting regulations for late seasons. On August 20, 1997, the Service published a fifth document containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. On August 25, 1997, (62 FR 44229), the Service published a sixth document containing proposed frameworks for the 1997–98 late-season migratory bird hunting regulations. On August 29, 1997, the Service published in the **Federal Register** (62 FR 46512) a seventh document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

The Service published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1997–98 in an eighth document in the September 26, 1997, **Federal Register**.

The final rule described here is the ninth and final in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for 1997–98 and deals specifically with amending subpart K of 50 CFR part 20 to set hunting seasons, hours, areas, and limits for species subject to late-season regulations and those for early seasons that States previously deferred.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations were conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have modified some regulatory measures previously proposed. The final frameworks here reflect any such modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and Office of Migratory Bird Management, at the address indicated under the caption **ADDRESSES**.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress and has been declared major. Because this rule establishes hunting seasons, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Regulatory Flexibility Act

These regulations have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq). In the March 13, 1997, **Federal Register**, the Service reported measures it took to comply with requirements of the Act. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses in 1996. Copies of the Analysis are available upon request from the MBMO.

Paperwork Reduction Act

The Department examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Act, information collections must be approved by the Office of Management and Budget (OMB). The Service uses the various information collection requirements contained in this rule to develop future migratory game bird hunting regulations. Specifically, the information collection requirements of the Migratory Bird Harvest Information Program have been approved by OMB and assigned clearance number 1018–0015. This information is used to provide a sampling frame for voluntary national surveys to improve Service harvest estimates for all migratory game birds in order to better manage these populations. The information collection requirements of the Sandhill Crane Harvest Questionnaire have been approved by OMB and assigned clearance number 1018–0023. The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States and Territories would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

Unfunded Mandates Reform Act

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 23, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K is amended as follows.

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; and 16 U.S.C. 742 a–j.

BILLING CODE 4310–55–F

Note - The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.104 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 20 and September 29 Federal Registers.

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 1997, Federal Register (62 FR 46152).

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16
ATLANTIC FLYWAY				
. . . . .				
Maryland	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 25-Nov. 14 & Jan. 2-Jan. 10	Sept. 17-Nov. 28 & Dec. 15-Jan. 17
Massachusetts (4)	Sept. 1-Nov. 8	Closed	Oct. 18-Nov. 15	Sept. 1-Dec. 16
. . . . .				
Vermont	Closed	Closed	Oct. 6-Nov. 4	Oct. 4-Dec. 7
MISSISSIPPI FLYWAY				
. . . . .				
Tennessee				
Reelfoot Zone	Nov. 15-Nov. 16 & Nov. 22-Jan. 18	Closed	Oct. 11-Nov. 24	Nov. 14-Feb. 28
State Zone	Nov. 15-Nov. 22 & Nov. 28-Jan. 18	Closed	Oct. 11-Nov. 24	Nov. 14-Feb. 28
Wisconsin				
North Zone	Oct. 4-Dec. 2	Closed	Sept. 20-Nov. 3	Oct. 4-Dec. 2
South Zone	Oct. 4-Dec. 2	Closed	Sept. 20-Nov. 3	Oct. 4-Dec. 2
CENTRAL FLYWAY				
. . . . .				
New Mexico (15)				
North Zone	Oct. 11-Oct. 26 & Oct. 30-Jan. 18	Closed	Closed	Oct. 11-Oct. 26 & Oct. 30-Jan. 18
South Zone	Oct. 14-Jan. 18	Closed	Closed	Oct. 14-Jan. 18
. . . . .				
Texas	Sept. 13-Sept. 21 & Nov. 8-Jan. 7	Sept. 13-Sept. 21 & Nov. 8-Jan. 7	Dec. 16-Jan. 31	Oct. 25-Feb. 8
Wyoming	Sept. 13-Nov. 18	Closed	Closed	Sept. 13-Dec. 14
PACIFIC FLYWAY				
Arizona (16)				
North Zone	Closed	Closed	Closed	Oct. 10-Jan. 18
South Zone	Closed	Closed	Closed	Oct. 10-Jan. 18
California	Closed	Closed	Closed	Oct. 4-Jan. 18
. . . . .				
Nevada				
Lincoln & Clark County	Closed	Closed	Closed	Oct. 4-Jan. 17
Rest of State	Closed	Closed	Closed	Oct. 4-Jan. 17
New Mexico (15)	Oct. 4-Jan. 18	Closed	Closed	Oct. 4-Jan. 18

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States.

. . . . . .

(4) In Massachusetts, the sora bag limit is 5 daily and 5 in possession; the Virginia rail bag limit is 10 daily and 10 in possession.

. . . . . .

(15) In New Mexico, the rail limits are 10 daily and 10 in possession.
(16) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

3. In Section 20.105, paragraphs (e), (f), and (f) are amended by adding the entries for the following States in alphabetical order and paragraph (e) is revised to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 20 and September 29 Federal Registers.

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Oregon				
Zone 1	Closed	Closed	Closed	Oct. 5-Jan. 18
Zone 2	Closed	Closed	Closed	Oct. 5-Jan. 18
Utah				
Zone 1	Closed	Closed	Closed	Oct. 4-Jan. 18
Washington				
East Zone	Closed	Closed	Closed	Oct. 4-Jan. 17
West Zone	Closed	Closed	Closed	Oct. 4-Jan. 17
. . . . .				

(e) Common Moorhens and Purple Gallinules
(Atlantic, Mississippi, and Central Flyways)

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 1997, Federal Register (62 FR 46152). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season Dates	Limits: Bag	Limits: Possession
ATLANTIC FLYWAY			
. . . . .			
Georgia	Nov. 22-Jan. 20	15	30
. . . . .			
Virginia	Oct. 8-Oct. 11 & Nov. 17-Jan. 20	15 15	30 30
West Virginia			
Zone 1	Oct. 1-Oct. 15 & Nov. 28-Jan. 17	15 15	30 30
Zone 2	Oct. 1-Oct. 15 & Nov. 14-Jan. 3	15 15	30 30
MISSISSIPPI FLYWAY			
. . . . .			
Michigan			
North Zone	Oct. 4-Dec. 2	15	30
Middle Zone	Oct. 4-Dec. 2	15	30
South Zone	Oct. 11-Dec. 9	15	30
Minnesota (2)	Oct. 4-Dec. 2	15	30
. . . . .			
Tennessee			
Reelfoot Zone	Nov. 15-Nov. 16 & Nov. 22-Jan. 18	15 15	30 30
State Zone	Nov. 15-Nov. 22 & Nov. 28-Jan. 18	15 15	30 30

	Season Dates	Limits Bag	Limits Possession
Wisconsin			
North Zone	Oct. 4-Dec. 2	5	10
South Zone	Oct. 4-Dec. 2	5	10
CENTRAL FLYWAY			
New Mexico (1)			
North Zone	Oct. 11-Oct. 26 &	1	2
	Oct. 30-Jan. 18	1	2
South Zone	Oct. 14-Jan. 18	1	2
• • • • •			
PACIFIC FLYWAY			
All States	Seasons are in aggregate with coots and listed in paragraph (e).		

(1) The season applies to common moorhens only.
(2) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots, moorhens, and gallinules in the aggregate.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway)

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 1997, Federal Register (62 FR 46152).

Within the special sea duck areas, the daily bag limit is 7 sea ducks of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Limits Possession
Connecticut	Oct. 8-Jan. 20	7	14
• • • • •			
Georgia	Nov. 22-Jan. 20	7	14
Maine	Oct. 1-Jan. 20	7	14
Maryland	Oct. 8-Jan. 20	5	10
Massachusetts	Oct. 8-Jan. 20	7	14
• • • • •			
North Carolina	Oct. 1-Jan. 20	7	14
• • • • •			
South Carolina	Oct. 8-Jan. 20	7	14
Virginia	Oct. 8-Jan. 20	7	14

Note: Notwithstanding the provisions of this part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia, and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(c) Waterfowl, Coots, and Pacific Flyway Seasons for Common Moorhens and Purple Gallinules

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, brant (except in California, Oregon, Washington, and the entire Atlantic Flyway) and all other geese except light geese.

ATLANTIC FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (2 female mallards), 3 pintails, 1 black duck, 1 canvasback, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits Bag	Limits Possession
Connecticut (1)			
Ducks (2):			
North Zone	Oct. 18-Nov. 1 &	6	12
	Nov. 11-Jan. 3	6	12
South Zone	Oct. 18-Oct. 25 &	6	12
	Nov. 20-Jan. 20	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Closed	–	–
South Zone	Closed	–	–
(special season)	Jan. 15-Feb. 14	State Permit Only	
Light Geese	Oct. 18-Jan. 31	10	30
Brant:			
North Zone	Nov. 28-Dec. 27	2	4
South Zone	Dec. 13-Jan. 11	2	4
Delaware			
Ducks (3)	Oct. 1-Oct. 4 &	6	12
	Oct. 31-Nov. 6 &	6	12
	Nov. 27-Jan. 17	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Closed	–	–
Light Geese:			
Bombay Hook NWR	Nov. 14-Nov. 23	10	30
Statewide	Oct. 8-Oct. 11 &	10	30
	Oct. 20-Nov. 13 &	10	30
	Nov. 24-Jan. 17 &	10	30
	Feb. 10-Mar. 10	10	30
Brant	Nov. 24-Jan. 20	2	4

	Season Dates	Limits Bag	Limits Possession
Florida			
Ducks	Nov. 22-Jan. 20	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese	Nov. 22-Nov. 30 &	2	4
	Jan. 10-Jan. 31	2	4
Georgia			
Ducks	Nov. 22-Jan. 20	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese (special season) (4)	Nov. 15-Nov. 30	State Permit Only	
	Jan. 10-Jan. 31	State Permit Only	
Light Geese	Same as for ducks	2	4
Brant	Closed	–	–
Maine			
Ducks (5):			
North Zone	Oct. 1-Nov. 22	4	8
South Zone	Oct. 1-Oct. 21 &	4	8
	Nov. 15-Dec. 17	4	8
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Closed	–	–
South Zone	Closed	–	–
Light Geese	Oct. 1-Jan. 31	5	10
Brant	Oct. 1-Nov. 27	2	4
Maryland			
Ducks (6)	Oct. 11-Oct. 15 &	4	8
	Nov. 1-Nov. 26 &	4	8
	Dec. 15-Jan. 20	4	8
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Closed	–	–
Western Area	Nov. 15-Nov. 26 &	2	4
	Dec. 15-Jan. 14	2	4
(special season)	Jan. 15-Feb. 14	3	6
Light Geese	Oct. 31-Nov. 28 &	10	30
	Dec. 4-Mar. 10	10	30
Brant	Nov. 8-Nov. 28 &	2	4
	Dec. 15-Jan. 20	2	4

	Season Dates	Limits: Bag	Limits: Possession
Massachusetts			
Ducks (7):			
Western Zone	Oct. 13-Dec. 20	6	12
Central Zone	Oct. 14-Nov. 28 A	6	12
	Dec. 15-Jan. 5	6	12
Coastal Zone	Oct. 14-Oct. 28 A	6	12
	Nov. 15-Jan. 10	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Western Zone	Closed	-	-
Central Zone	Closed	-	-
	Jan. 15-Feb. 5	5	10
Coastal Zone	Closed	-	-
	Jan. 15-Feb. 5	3	10
Light Geese:			
Western Zone	Same as for ducks	5	10
Central Zone	Same as for ducks	5	10
Coastal Zone	Same as for ducks	5	-
Brant:			
Western & Central Zone	Closed	-	4
Coastal Zone	Nov. 15-Nov. 29 A	2	4
	Dec. 9-Jan. 20	2	
New Hampshire			
Ducks (8):			
Inland Zone	Oct. 2-Nov. 4 A	6	12
	Nov. 19-Dec. 14	6	12
Coastal Zone	Oct. 3-Oct. 18 A	6	12
	Nov. 19-Dec. 31	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Inland Zone	Closed	-	-
Coastal Zone	Closed	-	-
Light Geese:			
Inland Zone	Oct. 2-Dec. 31	10	30
Coastal Zone	Oct. 3-Dec. 31	10	30
Brant:			
Inland Zone	Oct. 2-Nov. 4 A	2	4
	Nov. 19-Dec. 4	2	4
	Oct. 3-Oct. 18 A	2	4
Coastal Zone	Nov. 19-Dec. 21	2	4

	Season Dates	Limits: Bag	Limits: Possession
New York (cont.)			
Canada Geese:			
Long Island Zone	Closed	-	-
Lake Champlain Zone	Closed	-	-
Northeastern Zone	Closed	-	-
Southeastern Zone	Closed	-	-
Western Zone	Closed	-	-
Southwest Unit	Nov. 18-Jan. 23	2	4
Special season	Jan. 18-Feb. 18	5	10
Light Geese:			
Long Island Zone	Oct. 1-Oct. 21 A	10	30
	Nov. 21-Nov. 29 A	10	30
	Dec. 1-Feb. 15	10	30
Lake Champlain Zone	Oct. 4-Jan. 15	10	30
Northeastern Zone	Oct. 4-Oct. 21 A	10	30
	Feb. 11-Mar. 10	10	30
Southeastern Zone	Oct. 11-Dec. 21A	10	30
	Feb. 4-Mar. 10	10	30
Western Zone	Oct. 16-Jan. 4 A	10	30
	Feb. 13-Mar. 10	10	30
Brant:			
Long Island Zone	Nov. 21-Nov. 29 A	2	4
	Dec. 11-Jan. 20	2	4
Lake Champlain Zone	Oct. 4-Nov. 22	2	4
Northeastern Zone	Oct. 4-Nov. 22	2	4
Southeastern Zone	Oct. 11-Nov. 29	2	4
Western Zone	Oct. 16-Dec. 4	2	4
North Carolina			
Ducks (11)	Oct. 1-Oct. 4 A	6	12
	Nov. 17-Jan. 20	6	12
Mergansers	Same as for ducks	15	30
Coots	Same as for ducks	-	-
Canada Geese	Closed	-	-
Western Unit	Oct. 1-Nov. 15	2	4
Light Geese	Oct. 24-Nov. 15	10	30
	Nov. 19-Mar. 10	10	30
Brant	Nov. 24-Jan. 20	10	2
Pennsylvania			
Ducks:			
North Zone	Oct. 11-Nov. 15	6	10
	Nov. 8-Dec. 20	6	10
South Zone	Oct. 11-Oct. 25 A	6	10
	Nov. 10-Jan. 2	6	10
Northwest Zone	Oct. 11-Oct. 25 A	6	10
	Nov. 8-Dec. 20	6	10
Lake Erie Zone	Oct. 27-Nov. 9 A	6	10
	Nov. 13-Jan. 7	6	10
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30

	Season Dates	Limits: Bag	Limits: Possession
Pennsylvania (cont.)			
Canada Geese:			
North Zone	Closed	-	-
South Zone	Closed	-	-
Western Zone	Nov. 18-Dec. 31	1	4
	Jan. 18-Feb. 14	2	10
	Oct. 11-Oct. 18 A	2	4
Northwest Zone	Nov. 18-Jan. 27	2	4
	Oct. 11-Oct. 18 A	2	4
Crawford County	Nov. 3-Dec. 4	2	6
	Jan. 7-Mar. 10	2	6
Light Geese	Nov. 3-Jan. 2 A	20	60
	Jan. 7-Mar. 10	20	60
Brant	Oct. 11-Oct. 28 A	2	4
	Nov. 3-Dec. 13	2	4
Rhode Island	Oct. 10-Oct. 14 A	6	12
Ducks	Nov. 22-Nov. 30 A	6	12
	Dec. 6-Jan. 20	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Closed	-	-
(special season)	Jan. 18-Feb. 15	5	10
Light Geese	Oct. 10-Jan. 20	10	30
Brant	Nov. 22-Nov. 30 A	2	4
	Dec. 11-Jan. 20	2	4
South Carolina	Nov. 15-Nov. 29 A	6	12
Ducks (12)	Dec. 6-Jan. 20	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese (special season) (3)	Nov. 15-Nov. 29 A	5	-
	Dec. 6-Jan. 24	5	10
Light Geese	Same as for ducks	10	30
Brant	Same as for ducks	4	4
Vermont	Oct. 4-Oct. 19 A	6	12
Ducks (13):	Oct. 25-Dec. 7	6	12
Lake Champlain Zone	Oct. 4-Dec. 2	6	12
Interior Zone	Same as for ducks	5	10
Mergansers	Same as for ducks	15	30
Coots	Closed	-	-
Canada Geese	Oct. 4-Jan. 18	6	24
Light Geese	Oct. 4-Nov. 22	6	24
Brant			

(10) In New York, the season is closed for black ducks November 18 through December 7 in the Northeastern Zone, October 11 through November 11 in the Southeastern Zone, October 18 through October 31 and January 1 through January 4 in the Western Zone, and December 1 through December 10 in the Long Island Zone; the season is closed for scaup December 1 through December 10 in the Long Island Zone; in addition to the daily bag limit, 2 additional teal may be taken.
(11) In North Carolina, the season is closed for black ducks October 1 through October 4 and November 17 through November 30.
(12) In South Carolina, the daily bag limit of 6 may not exceed 4 mallards and may not exceed 1 black duck, mottled duck, or Florida mallard in the aggregate, and not more than 2 pintails (1 hen pintail).
(13) In Virginia, in addition to the daily bag limit, 2 additional teal may be taken.

MISSISSIPPI FLYWAY

Remainder Jurisdiction

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 black duck, 3 pintails, 1 canvasback, 2 redheads, and 2 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits: Bag	Limits: Possession
Alabama			
Ducks:			
North Zone	Nov. 15-Nov. 30 &	6	12
	Dec. 6-Jan. 18	6	12
South Zone	Nov. 13-Nov. 18 &	6	12
	Nov. 24-Jan. 18	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Dark Geese:			
North Zone:			
S.SIP Zone	Dec. 18-Jan. 18	2	4
Rest of North Zone	Nov. 15-Nov. 30 &	2	4
	Dec. 6-Jan. 28	2	4
South Zone	Nov. 13-Nov. 18 &	2	4
	Nov. 24-Jan. 28	2	4
Light Geese	Same as for dark geese	5	6
Arkansas			
Ducks	Nov. 15-Nov. 30 &	6	12
	Dec. 4-Dec. 23 &	6	12
	Dec. 26-Jan. 18	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:			
Canada (1):			
East Zone	Jan. 17-Feb. 8	2	4
West Zone	Jan. 17-Feb. 1	2	4
White-fronted	Nov. 23-Jan. 31	1	2
Brant	Closed		
Light Geese	Nov. 15-Mar. 1	10	30

	Season Dates	Limits: Bag	Limits: Possession
Alaska			
Ducks	Oct. 8-Oct. 11 &	5	10
	Nov. 17-Jan. 20	5	10
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Black Bay Area	Closed		
Remainder of State	Closed	—	—
Western Unit	Dec. 22-Jan. 14	2	4
(special season)	Jan. 15-Feb. 7	3	6
Light Geese	Nov. 6-Mar. 10	10	30
Brant	Nov. 24-Jan. 20	2	4
New Mexico			
Ducks:			
Zone 1	Oct. 1-Oct. 19 &	6	12
	Nov. 28-Jan. 17	6	12
Zone 2	Oct. 1-Oct. 19 &	6	12
	Nov. 14-Jan. 3	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Zone 1	Oct. 1-Oct. 19 &	3	6
	Nov. 17-Jan. 17	3	6
Zone 2	Oct. 1-Nov. 1 &	3	6
	Dec. 1-Jan. 17	3	6
Light Geese:			
Zone 1	Same as for Canada geese	5	10
Zone 2	Same as for Canada geese	5	10
Brant	Nov. 21-Jan. 17	2	4

(1) In Connecticut, the shooting hours on October 18 are 7:00 a.m. to sunset.
(2) In Connecticut, the season is closed for black ducks prior to November 24 in the North Zone and prior to December 8 in the South Zone; the daily bag limit may include no more than 4 scaup and 2 pintails.
(3) In Delaware, the season on black ducks is only open November 24 through January 3.
(4) State permit required.
(5) In Maine, the season is closed for black ducks October 1 through October 10.
(6) In Maryland, the daily bag limit may include no more than 2 pintails and 1 redhead; the black duck season is closed October 11 through October 18 and November 1 through November 23; and the canvasback season is open only December 22 through January 20; in addition to the daily bag, 2 additional teal may be taken during October 11 through October 18 and November 1 through November 24.
(7) In Massachusetts, the season is closed for black ducks December 1 through December 9 and January 5 through January 10 in the Coastal Zone, and November 10 through November 22 in the Western and Central Zones; the daily bag limit may include no more than 2 pintails or 4 of any single species in addition to the hyvrvwide bag restrictions.
(8) In New Hampshire, the season is closed for black duck from October 2 through October 13.
(9) In New Jersey, the season is closed for black ducks October 11 through October 28 in the South Zone and December 29 to January 10 in the Coastal Zone; the daily bag limit may include no more than 2 pintails; in addition to the daily bag limit, 2 additional teal may be taken.

	Season Dates	Limits: Bag	Limits: Possession
Indiana (cont.)			
Geese:			
Canada (2):			
North Zone:			
S.SIP Area	Oct. 18-Oct. 26 &	2	4
	Nov. 27-Dec. 28	2	4
Rest of North Zone	Oct. 18-Oct. 26 &	2	4
	Nov. 8-Jan. 2	2	4
South Zone:			
Posey County (2)	Nov. 28-Jan. 31	2	4
Rest of South Zone	Oct. 28-Oct. 27 &	2	4
	Nov. 22-Jan. 22	2	4
Ohio River Zone:			
Posey County (2)	Nov. 28-Jan. 31	2	4
Rest of Ohio River Zone	Nov. 28-Jan. 31	2	4
White-fronted and Brant	Same as for Canada geese	2	4
Light Geese	Nov. 15-Mar. 1	10	30
Iowa			
Ducks:			
North Zone	Sept. 20-Sept. 24 &	6	12
	Oct. 11-Dec. 4	6	12
South Zone	Sept. 30-Sept. 24 &	6	12
	Oct. 18-Dec. 11	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:			
Canada Geese:			
North Zone	Oct. 4-Dec. 12	2	4
South Zone	Oct. 4-Oct. 12 &	2	4
	Oct. 18-Dec. 17	2	4
White-fronted:			
North Zone	Same as Canada geese	2	4
South Zone	Same as Canada geese	2	4
Brant:			
North Zone	Same as Canada geese	2	4
South Zone	Same as Canada geese	2	4
Light Geese	Oct. 4-Dec. 31 &	10	30
	Feb. 21-Mar. 10	10	30
Kentucky			
Ducks:			
West Zone	Nov. 1-Nov. 2 &	6	12
	Nov. 23-Jan. 18	6	12
East Zone	Nov. 1-Nov. 2 &	6	12
	Nov. 22-Jan. 18	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30

	Season Dates	Limits: Bag	Limits: Possession
Illinois			
Ducks:			
North Zone	Oct. 4-Dec. 2	6	12
Central Zone	Oct. 18-Dec. 16	6	12
South Zone	Nov. 8-Jan. 6	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:			
Canada (2):			
North Zone:			
Northern Illinois Quota Zone (2)	Oct. 4-Oct. 12 &	2	10
	Oct. 31-Jan. 7	2	10
Rest of North Zone	Oct. 4-Oct. 12 &	2	10
	Oct. 31-Jan. 7	2	10
Central Zone:			
Central Illinois Quota Zone (2)	Oct. 18-Oct. 19 &	2	10
	Nov. 15-Jan. 29	2	10
Rest of Central Zone	Oct. 18-Oct. 19 &	2	10
	Nov. 15-Jan. 29	2	10
South Zone:			
Southern Illinois Quota Zone (2)(3)	Nov. 15-Jan. 31	2	10
Rend Lake Quota Zone (2)(3)	Nov. 15-Jan. 31	2	10
Rest of South Zone	Nov. 15-Jan. 31	2	10
White-fronted and Brant:			
North Zone	Oct. 31-Jan. 7	2	4
Central Zone	Nov. 21-Jan. 29	2	4
South Zone	Nov. 23-Jan. 31	2	4
Light Geese:			
North Zone	Oct. 4-Jan. 7 &	10	30
	Feb. 28-Mar. 10	10	30
Central Zone	Oct. 18-Jan. 14 &	10	30
	Feb. 21-Mar. 10	10	30
South Zone	Nov. 19-Mar. 1	10	30
Indiana			
Ducks:			
North Zone	Oct. 18-Dec. 7 &	6	12
	Dec. 20-Dec. 28	6	12
South Zone	Oct. 25-Oct. 27 &	6	12
	Nov. 8-Jan. 3	6	12
Ohio River Zone	Nov. 20-Jan. 18	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30

	Season Dates	Limits	
		Bag	Possession
Kalamazoo			
Geese:			
Canada (2):			
Western Goose Zone (2):			
Fulton County	Oct. 4-Feb. 15	2	4
Ballard Reporting Area	Oct. 4-Jan. 29	2	4
Rest of Zone	Dec. 6-Jan. 31	2	4
Pennfield/Calhoun Zone	Oct. 25-Jan. 31	2	4
Rest of State	Dec. 13-Jan. 31	2	4
White-fronted:			
Ballard Reporting Area	Nov. 27-Jan. 29	2	4
Rest of State	Nov. 27-Jan. 31	2	4
Brant	Same as Whitefronts	2	4
Light Geese:			
Western Goose Zone:			
Fulton County	Nov. 27-Mar. 10	30	30
Ballard Reporting Area	Nov. 27-Jan. 20 [A]	10	30
	Feb. 14-Mar. 10	10	30
Rest of Zone	Nov. 27-Mar. 10	10	30
Rest of State	Nov. 27-Mar. 10	10	30
Ludington			
Ducks:			
Weir Zone	Nov. 8-Nov. 30 [A]	6	12
	Dec. 13-Jan. 18	6	12
East Zone:			
Coldwater Lake Area	Nov. 15-Dec. 14 [A]	6	12
	Dec. 20-Jan. 18	6	12
Rest of East Zone	Nov. 15-Dec. 14 [A]	6	12
	Dec. 20-Jan. 18	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:			
Canada (4)	Jan. 28-Jan. 28	1	2
White-fronted (4) and Brant	Nov. 8-Nov. 30 [A]	2	4
	Dec. 13-Jan. 29	2	4
Light Geese	Nov. 8-Feb. 22	10	30
Michigan			
Ducks (5):			
North Zone	Oct. 4-Dec. 2	6	12
Middle Zone	Oct. 11-Dec. 9	6	12
South Zone	Same as for ducks	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30

	Season Dates	Limits	
		Bag	Possession
Ohio			
Pymatuning Area:			
Ducks (6):	Oct. 11-Oct. 25 [A]	6	10
	Nov. 3-Dec. 28	6	10
Mergansers	Same as for ducks	5	10
Coots	Oct. 11-Oct. 19 [A]	15	30
Canada Geese	Nov. 3-Dec. 4	1	2
	Nov. 3-Jan. 24	10	30
Light Geese	Jan. 7-Mar. 10	10	30
Brant	Oct. 11-Oct. 25 [A]	2	4
	Nov. 3-Dec. 18	2	4
Rest of State:			
Ducks:			
North Zone	Oct. 18-Nov. 30 [A]	6	12
	Dec. 7-Dec. 22	6	12
South Zone	Oct. 18-Nov. 2 [A]	6	12
	Oct. 6-Jan. 18	6	12
Ohio River Zone	Oct. 18-Nov. 2 [A]	6	12
	Dec. 6-Jan. 18	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:			
Canada:			
North Zone:			
Lake Erie SJBP Zone	Nov. 17-Nov. 30 [A]	1	2
	Dec. 13-Dec. 28	1	2
Rest of North Zone	Oct. 18-Nov. 30 [A]	2	4
	Dec. 13-Jan. 7	2	4
South Zone	Oct. 18-Nov. 2 [A]	2	4
	Dec. 6-Jan. 28	2	4
Ohio River Zone	Oct. 18-Nov. 2 [A]	2	4
	Dec. 6-Jan. 18	2	4
White-fronted and Brant	Same as for Canada geese	2	4
Light Geese	Same as for Canada geese	10	30
Tennessee			
Ducks:			
Reelfoot Zone	Nov. 15-Nov. 16 [A]	6	12
	Nov. 22-Jan. 18	6	12
State Zone	Nov. 15-Nov. 22 [A]	6	12
	Nov. 26-Jan. 18	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:			
Canada (2)(10):			
Northwest Zone (2)	Nov. 26-Feb. 15	2	4
Southeast Zone	Nov. 26-Jan. 31	2	4
Kentucky/Barkley Lakes Zone (2)	Dec. 13-Jan. 31	2	4
Rest of State (10)	Oct. 4-Oct. 12 [A]	2	4
	Dec. 2-Jan. 31	2	4
White-fronted and Brant	Nov. 22-Jan. 29	2	4
Light Geese	Nov. 22-Mar. 7	10	30
Minnesota			
Ducks:			
Zone 1	Nov. 15-Nov. 16 [A]	6	12
	Nov. 22-Jan. 18	6	12
Zone 2	Nov. 15-Nov. 16 [A]	6	12
	Nov. 22-Jan. 18	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:			
Canada	Nov. 23-Jan. 31	3	6
White-fronted and Brant	Nov. 23-Jan. 31	2	4
Light Geese	Nov. 22-Mar. 6	10	30
Missouri			
Ducks and Mergansers:			
North Zone	Oct. 23-Dec. 21	6	12
Middle Zone	Oct. 30-Dec. 28	6	12
South Zone	Nov. 13-Jan. 11	6	12
Coots	Same as for ducks	15	30
Geese:			
Canada:			
North Zone:			
Swan Lake Zone	Oct. 23-Oct. 28 [A]	2	4
	Nov. 28-Jan. 2	2	4
Rest of North Zone	Oct. 4-Oct. 12 [A]	2	4
	Oct. 23-Nov. 2 [A]	2	4
	Nov. 28-Jan. 16	2	4
Middle Zone:			
Schell-Osage Zone	Nov. 28-Jan. 6	2	4
Rest of Middle Zone	Oct. 30-Nov. 3 [A]	2	4
	Nov. 28-Jan. 31	2	4
South Zone	Nov. 13-Nov. 17 [A]	2	4
	Nov. 28-Jan. 31	2	4
White-fronted and Brant:			
North Zone:			
Swan Lake Zone	Oct. 23-Oct. 28 [A]	2	4
	Nov. 28-Jan. 16	2	4
Rest of North Zone	Oct. 4-Oct. 12 [A]	2	4
	Oct. 23-Nov. 2 [A]	2	4
	Nov. 28-Jan. 16	2	4
Middle Zone	Oct. 30-Nov. 3 [A]	2	4
	Nov. 28-Jan. 31	2	4
South Zone	Nov. 13-Nov. 17 [A]	2	4
	Nov. 28-Jan. 31	2	4
Light Geese:			
North Zone	Oct. 23-Jan. 18 [A]	10	30
	Feb. 17-Mar. 6	10	30
Middle Zone	Oct. 30-Nov. 3 [A]	10	30
	Nov. 28-Mar. 6	10	30
South Zone	Nov. 13-Nov. 17 [A]	10	30
	Nov. 28-Mar. 6	10	30

(4) In Louisiana, during the Canada goose season, the daily bag limit is 2 Canada and white-fronted geese in the aggregate, no more than 1 of which may be a Canada goose. The possession limit is twice the daily bag limit. A special permit is required by the State.
(5) In Michigan, the daily bag limit includes no more than 1 hen mallard.
(6) In Michigan, the seasons for white-fronted geese, brant, and light geese are as follows: in the Allegan County GMU, the season opens on October 18 and runs continuously through November 28. In the Muskegon Wastewater GMU, the season runs concurrently with the Canada geese season. In the remainder of the State, the seasons open concurrently with the duck seasons and run continuously through the end of the duck seasons.
(7) In Minnesota, the daily bag limit is 10 and the possession limit is 30, coots, mergansers, and gallinules in the aggregate.
(8) In Minnesota, in the Lac Qui Parle Zone, seasons for white-fronted geese, brant, and light geese are open only when the Canada geese season is open.
(9) In Ohio, in the Pymatuning Area, the restrictions of the duck bag limit for Pennsylvania apply.
(10) In Tennessee, see State regulations for permit requirements and additional restrictions.

CENTRAL FLYWAY

Shorebirds, Rails, Moorhens, and Gallinules

Bag Limits: The daily bag limit of 6 ducks may include no more than 5 mallards (2 female mallards), 1 mottled duck, 3 pintails, 2 redheads, 1 canvasback, and 2 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers with 10 in possession and may include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits: Bag	Limits: Possession
Colorado			
Ducks,		6	12
	Oct. 4-Oct. 29 A		
	Nov. 1-Nov. 30 B	6	12
	Dec. 8-Jan. 18	6	12
Coots	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Dark Geese:			
Northern Front Range Unit	Oct. 4-Oct. 19 B	4	8
	Nov. 1-Jan. 31	4	8
South Park/San Luis Valley Unit (1)	Oct. 4-Oct. 19 B	2	4
	Nov. 1-Jan. 31	2	4
North Park Unit (1)	Oct. 4-Oct. 19 B	2	4
	Nov. 1-Jan. 1	2	4
Arkansas Valley Unit (2)	Nov. 15-Jan. 31	4	8
Pueblo County	Dec. 15-Jan. 31	2	4
Rest of State in Central Flyway	Nov. 1-Jan. 31	4	8
Light Geese:			
Northern Front Range Unit	Nov. 1-Jan. 31	5	10
South Park/San Luis Valley Unit (2)	Nov. 1-Jan. 31	2	4
North Park Unit (1)	Nov. 1-Jan. 1	2	4
Arkansas Valley Unit	Nov. 15-Jan. 31	5	10
Pueblo County	Nov. 1-Jan. 31	5	10
Eastern Colorado Late Light Geese Unit	Nov. 1-Jan. 31 A	5	10
	Feb. 22-Mar. 8	5	10
Rest of State in Central Flyway	Nov. 1-Jan. 31	5	10

	Season Dates	Limits: Bag	Limits: Possession
Kansas			
Ducks (3):			
High Plains	Sept. 20-Dec. 21	Tag System—See State Regulations	
	Sept. 20-Nov. 21 A	Tag System—See State Regulations	
	Dec. 1-Dec. 8	Tag System—See State Regulations	
Low Plains:			
Early Zone	Oct. 4-Dec. 14	1	2
	Oct. 4-Dec. 12	1	2
Late Zone	Sept. 27-Dec. 28	1	2
	Oct. 4-Jan. 4	1	3
Mergansers	Sept. 20-Nov. 28	2	4
Coots	Sept. 20-Nov. 21 A	2	4
Dark Geese:	Dec. 1-Dec. 8	2	4
Early Zone:			
Rest Prairie Subzone	Oct. 4-Dec. 12	2	4
Missouri River Subzone	Oct. 4-Dec. 13	2	4
Rest of Eastern Zone:			
North Duck Zone	Sept. 27-Dec. 8	2	4
South Duck Zone	Oct. 4- Dec. 12	2	4
Light Geese:			
Northern Zone	Sept. 20-Dec. 21	10	30
Collins Zone	Sept. 20-Nov. 21 A	10	30
	Dec. 1-Dec. 5	10	30
Eastern Zone:			
Rest Prairie Subzone	Oct. 4-Dec. 14	10	30
Missouri River Subzone	Oct. 4-Dec. 12	10	30
Rest of Eastern Zone:			
North Duck Zone	Sept. 27-Dec. 28	10	30
South Duck Zone	Oct. 4-Jan. 4	10	30

(1) In Adams, shooting hours for Canada geese are one-half hour before sunrise to noon.
(2) Harvest of Canada geese will be limited by quotas established in the September 26, 1997, Federal Register. When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Northern and Kirtsville/Ramsey Lakes Zones in Tennessee, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective area (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as may be deemed necessary.
(3) In Illinois, shooting hours for geese in the Southern Illinois and Rend Lake Quota Zones through January 28 shall close at 3 p.m.

	Season Dates	Limits: Bag	Limits: Possession
Nebraska (cont.)			
Light Geese:			
Rainwater Basin Area - East (5)	Oct. 4-Dec. 21 A	10	40
	Feb. 11-Mar. 10	10	40
Rainwater Basin Area - West	Oct. 4-Dec. 21	10	40
	Oct. 4-Dec. 21 A	10	40
Rest of State	Feb. 11-Mar. 10	10	40
New Mexico			
Ducks and Mergansers (6):			
North Zone	Oct. 11-Oct. 26 A	6	12
	Oct. 30-Jan. 18	6	12
South Zone	Oct. 14-Jan. 18	6	12
	Same as for ducks	15	30
Coots	Same as for ducks	15	30
Dark Geese (7):			
Middle Rio Grande Valley Unit	Dec. 27-Jan. 4	1	4
	Oct. 17-Jan. 31	1	4
Rest of State	Nov. 8-Feb. 22	10	40
Light Geese			
North Dakota			
Ducks:			
Statewide	Oct. 4-Dec. 14	6	12
High Plains	Dec. 15-Jan. 4	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Dark Geese (8):		2	4
Statewide:			
Canada	Oct. 4-Nov. 16	2	4
White-fronted	Oct. 4-Nov. 16	2	4
Missouri River Zone	Nov. 17-Dec. 28	2	4
Light Geese (9)	Oct. 4-Dec. 28	10	40
Oklahoma			
Ducks:			
High Plains	Oct. 11-Jan. 18	6	12
Low Plains:			
Zone 1	Oct. 25-Dec. 7 A	6	12
	Dec. 13-Jan. 11	6	12
Zone 2	Nov. 1-Dec. 7 A	6	12
	Dec. 13-Jan. 18	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Dark Geese:			
Canada	Nov. 1-Jan. 26	2	4
White-fronted	Nov. 1-Jan. 26	2	4
Light Geese	Nov. 1-Jan. 26 A	10	40
	Feb. 7-Feb. 27	10	40

	Season Dates	Limits: Bag	Limits: Possession
Kansas			
Ducks (3):			
High Plains	Oct. 4-Jan. 4 A	6	12
	Jan. 15-Jan. 18	6	12
Low Plains:			
Early Zone	Oct. 4-Dec. 7 A	6	12
	Dec. 20-Dec. 28	6	12
	Oct. 25-Dec. 14 A	6	12
Late Zone	Dec. 20-Jan. 11	6	12
Mergansers	Same as for ducks	15	30
Coots	Same as for ducks	15	30
Dark Geese (4):		2	4
Canada	Nov. 1-Jan. 25	2	4
White-fronted	Nov. 1-Jan. 25	1	2
Light Geese:			
Zone 1	Nov. 22-Mar. 8	10	40
Zone 2	Oct. 25-Nov. 21 A	10	40
	Dec. 30-Mar. 8	10	40
Montana			
Ducks:			
Zone 1	Oct. 4-Jan. 8	6	12
Zone 2	Oct. 4-Jan. 8	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:			
Dark Geese	Oct. 4-Jan. 18	4	8
Light Geese	Oct. 4-Jan. 18	5	10
Nebraska			
Ducks:			
High Plains	Oct. 4-Dec. 18 A	6	12
	Dec. 18-Jan. 11	6	12
Low Plains:			
Zones 1 and 2	Oct. 11-Dec. 21 A	6	12
	Dec. 27-Dec. 28	6	12
	Oct. 4-Dec. 14 A	6	12
Zones 3 and 4	Dec. 20-Dec. 21	6	12
	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Dark Geese:			
Northern Unit:			
Canada	Oct. 11-Dec. 7 A	2	4
	Dec. 22-Jan. 18	2	4
White-fronted	Oct. 11-Dec. 7 A	1	2
	Dec. 22-Jan. 18	1	2
East Unit:			
Canada	Oct. 4-Dec. 28	2	4
White-fronted	Oct. 4-Dec. 28	1	2
West Unit:			
Canada	Oct. 4-Oct. 12 A	2	4
	Oct. 27-Jan. 11	2	4
White-fronted	Oct. 4-Oct. 12 A	1	2
	Oct. 27-Jan. 11	1	2

	Season Dates	Limits: Bag	Limits: Possession
Wyoming (cont.):			
Light Geese	Oct. 4-Dec. 24 & Feb. 14-Mar. 10	10	40
		10	40

(1) In Colorado, in the North Park and South Park/Baca Late Valley Units, the bag limit for the November 1 through January 31 pintails, respectively, are 2 geese. The possession limit is twice the daily bag limit.
(2) In Colorado, in the Arkansas Valley Unit, shooting hours are one-half hour before sunrise to noon November 16 through November 29.
(3) In Colorado, the daily bag limit may include no more than 1 hen mallard.
(4) In Kansas, except the dark geese season are as follows: Season dates in the Marais des Cygnes Valley Unit 1), Southeast Unit 2), and Flint Hills Unit 3) Units are December 20, 1997 through January 25, 1998. Dark Unit 1), Southeast Unit 2), and Flint Hills Unit 3) Units are December 20, 1997 through January 25, 1998. Dark geese in these three units (Unit 1, Unit 2, and Unit 3) are restricted to the Kansas Department of Wildlife, and Parks are required to hunt dark geese in these three units. Limited Permits are available in all three Units, with a maximum of one permit per individual per Unit. In the Marais Des Cygnes Valley and Southeast Units six geese per permit are allowed. In the Flint Hills Unit the daily bag limit is one Canada and one white-fronted goose. Shooting hours in the Marais des Cygnes Valley Unit will be one-half hour before sunrise to 1:00 p.m. Shooting hours in all other Units shall be one-half hour before sunrise to sunset.
(5) In Louisiana, the State regulations for additional restrictions during February 11 through March 10.
(6) In Nebraska, the daily bag limit for ducks and mergansers may include no more than 6 mergansers (1 hooded).
(7) In New Mexico, the season for dark geese is closed in Bernalillo, Sandoval, Sierra, Socorro, and Valencia Counties.
(8) In North Dakota, the shooting hours for geese are one-half hour before sunrise to 1 p.m. through October 26 and until 2 p.m. the remainder of the season.
(9) In South Dakota, the daily bag limit may include no more than 1 hen mallard and 2 pintails.
(10) In South Dakota, the dark geese daily bag limit may include no more than 1 white-fronted goose or 1 brant.
(11) In Wyoming, the shooting hours for geese in Goshen County are one-half hour before sunrise to 1 p.m., except on January 3-4, 10-11, 17-18, 24-25, and 31 when shooting hours are until sunset. In Platte County, shooting hours for geese in the area east of Interstate Highway 25 and north of Wyoming Highway 160 are 1/2 hour before sunrise to sunset. In the remainder of Platte County, shooting hours for geese are 1/2 hour before sunrise to 1 p.m. except on January 3-4, 10-11, 17-18, 24-25, and 31 when shooting hours are until sunset.

PACIFIC FLYWAY

Recreational Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including mergansers) may include no more than 2 female mallards, 3 pintails, 2 redheads and 1 canvasback. The possession limit is twice the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

Goose Limits: Daily bag limits for geese may not exceed 2 white-fronted geese and 3 light geese. The possession limit is twice the daily bag limit.

Aleutian Canada Geese: The season is closed throughout the Flyway.

	Season Dates	Limits: Bag	Limits: Possession
California (cont.):			
White-fronted:			
Sacramento Valley Closure	Nov. 1-Dec. 14	2	4
Rest of Zone	Nov. 1-Jan. 13	2	4
Light Geese	Nov. 1-Jan. 18	3	6
Brant	Nov. 1-Nov. 30	2	4
Colorado	Oct. 4-Jan. 17	7	14
Ducks	Same as for ducks	25	25
Coots			
Geese:			
West Central Colorado Unit	Oct. 25-Jan. 18	2	4
Rest of State	Oct. 4-Oct. 18 & Oct. 25-Jan. 17	2	4
Idaho			
Ducks:			
Zone 1	Oct. 4-Jan. 17	7	14
Zone 2	Oct. 4-Jan. 17	7	14
Zone 3	Oct. 4-Jan. 17	7	14
Coots	Same as for ducks	25	25
Geese:			
Zone 1:			
Dark	Oct. 4-Jan. 11	4	8
Light	Oct. 4-Jan. 11	4	8
Zone 2:			
Dark	Oct. 4-Jan. 11	3	6
Light	Oct. 4-Jan. 11	3	6
Zone 3:			
Light	Oct. 4-Jan. 11	3	6
Zone 4 (6):	Oct. 4-Jan. 11	3	6
Light	Oct. 4-Jan. 11	4	8
Zone 5	Oct. 4-Jan. 11	4	8
Montana			
Ducks	Oct. 4-Jan. 17	7	14
Coots (6):	Same as for ducks	25	25
Dark	Oct. 4-Jan. 11	4	8
Light	Oct. 4-Jan. 11	3	6
Nevada			
Ducks:	Oct. 4-Jan. 17	7	14
Lincoln & Clark Counties	Oct. 4-Jan. 17	7	14
Rest of State	Same as for ducks	25	25
Coots and moorhens			
Dark Geese:			
Lincoln & Clark Counties	Nov. 15-Jan. 17	2	4
Rest of State	Oct. 18-Jan. 17	3	6
Light Geese:			
Lincoln & Clark Counties	Nov. 15-Jan. 17	3	6
Rest of State (7)	Oct. 18-Jan. 17	3	6

	Season Dates ⁹	Limits: Bag	Limits: Possession
South Dakota	Oct. 4-Jan. 8	6	12
Ducks (9):			
High Plains	Oct. 4-Dec. 16	6	12
Low Plains:	Oct. 4-Dec. 16	6	12
North Zone	Oct. 11-Dec. 23	6	12
Middle Zone	Same as for ducks	5	10
South Zone	Same as for ducks	15	30
Mergansers		2	4
Coots	Oct. 4-Dec. 28	2	4
Dark Geese (10):	Oct. 11-Jan. 4	2	4
Unit 1	Oct. 18-Jan. 11	2	4
Unit 2	Oct. 4-Dec. 28 &	10	40
Unit 3	Feb. 18-Mar. 10	10	40
Light Geese			
Texas	Oct. 11-Oct. 14 &	6	12
Ducks:	Oct. 18-Jan. 18	6	12
High Plains			
Low Plains:	Oct. 25-Nov. 2 &	6	12
North Zone	Nov. 15-Jan. 18	6	12
South Zone	Oct. 25-Nov. 30 &	6	12
	Dec. 13-Jan. 18	6	12
Mergansers	Same as for ducks	15	30
Coots			
Geese:			
East Tier:			
Dark Geese:	Nov. 1-Jan. 18 &	2	4
Cooks	Jan. 19-Jan. 25	1	2
	Nov. 1-Jan. 25	2	4
White-fronted	Nov. 1-Feb. 15	10	40
Light Geese			
West Tier:			
Dark Geese:	Nov. 1-Feb. 15	5	10
Cooks	Nov. 1-Feb. 15	1	2
White-fronted	Nov. 1-Feb. 15	5	10
Light Geese			
Utah	Oct. 4-Oct. 26 &	6	12
Ducks:	Nov. 1-Jan. 18	6	12
Zone 1	Oct. 4-Jan. 8	6	12
Zone 2	Same as for ducks	15	30
Mergansers	Same as for ducks		
Coots			
Dark Geese:			
Area 1	Oct. 4-Jan. 18	4	8
Area 2 (11)	Oct. 18-Jan. 31	4	8
Area 3	Oct. 4-Jan. 18	4	8
Area 4 (11)	Nov. 15-Jan. 31	4	8

	Season Dates	Limits: Bag	Limits: Possession
Arizona			
Ducks (1):			
North Zone	Oct. 10-Jan. 18	7	14
South Zone	Oct. 10-Jan. 18	7	14
Coots and moorhens	Same as for ducks	25	25
Geese:		6	6
Dark (2):	Nov. 15-Jan. 18	2	2
GMU 22 & 23	Jan. 1-Jan. 18	2	2
GMU 1 & 27	Oct. 11-Jan. 18	2	2
Balance of State			
Light (2):	Same as dark geese	3	3
GMU 22 & 23	Same as dark geese	3	3
Rest of State			
California			
Ducks:			
Northeastern Zone	Oct. 4-Jan. 11	7	14
Colorado River Zone	Oct. 10-Jan. 18	7	14
Southern Zone	Oct. 11-Jan. 18	7	14
Southern San Joaquin Valley Zone	Oct. 11-Jan. 18	7	14
Balance-of-State Zone	Oct. 11-Jan. 18	7	14
Coots and moorhens:			
Northeastern Zone	Same as for ducks	25	25
Colorado River Zone	Same as for ducks	25	25
Southern Zone	Same as for ducks	25	25
Southern San Joaquin Valley Zone	Same as for ducks	25	25
Balance-of-State Zone	Same as for ducks	25	25
Geese:			
Northeastern Zone:	Oct. 4-Jan. 4	3	6
Canada Geese	Oct. 4-Oct. 29	2	4
Cackling Geese	Oct. 4-Oct. 29	2	4
White-fronted Geese	Oct. 4-Jan. 4	2	4
Light Geese		5	10
Colorado River Zone:	Oct. 11-Jan. 18	2	4
Canada Geese	Oct. 11-Jan. 18	2	4
White-fronted Geese	Oct. 11-Jan. 18	3	6
Light Geese		5	10
Southern Zone:		2	4
Dark Geese:	Oct. 18-Jan. 18	2	4
Canada	Oct. 18-Jan. 18	2	4
Cackling Geese	Oct. 18-Jan. 18	3	6
White-fronted Geese	Oct. 18-Jan. 18	3	6
Light Geese		4	8
Balance-of-State Zone:			
Dark Geese (3):			
Canada:			
Del Norte & Humboldt	Closed	—	—
Sacramento Valley Area	Closed	—	—
San Joaquin Valley Area	Nov. 1-Nov. 22	2	4
Rest of Zone	Nov. 1-Jan. 18	2	4

	Season Dates	Limits: Bag	Limits: Possession
Utah (12)			
Ducks:			
Zone 1	Oct. 4-Jan. 12	7	14
Zone 2	Oct. 4-Jan. 17	7	14
Coots	Same as for ducks	25	25
Moorhens (9)	Same as for ducks	1	2
Geese:			
San Juan County (8):			
Dark	Oct. 4-Oct. 26 A	3	6
	Nov. 8-Jan. 15	3	6
Light	Oct. 4-Oct. 26 A	1	2
	Nov. 8-Jan. 15	1	2
Rest of State:			
Dark	Oct. 11-Jan. 18	2	4
Light	Oct. 11-Jan. 18	1	2
Virginia			
Ducks:			
Zone 1:			
Columbia Basin Unit	Oct. 4-Jan. 12	7	14
Rest of Zone 1	Oct. 4-Jan. 17	7	14
Zone 2	Oct. 4-Jan. 17	7	14
Coots	Same as for ducks	25	25
Geese:			
Northwest General Goose Zone:			
Dark Geese	Oct. 11-Jan. 11	4	8
Light Geese	Oct. 11-Jan. 11	3	6
Northwest Special Permit Zone (10):			
Dark Geese	Dec. 1-Feb. 28	3	6
Dusky Canada geese		1 per season	
Cackling Canada geese		2	4
Light Geese	Dec. 1-Feb. 28	3	6
Southwest General Zone (11):			
Dark Geese	Oct. 11-Jan. 18	4	8
Light Geese	Oct. 11-Jan. 18	3	6
Eastern Zone:			
Klamath, Harney, Lake, and Malheur Counties:			
Dark Geese	Oct. 5-Jan. 11	4	8
Cackling Canada geese		1	2
White-fronted geese		2	4
Light Geese	Oct. 5-Jan. 11	3	6
Remainder of Eastern Zone:			
Dark Geese	Oct. 11-Jan. 18	4	8
Cackling Canada geese		1	2
White-fronted geese		2	4
Light Geese	Oct. 11-Jan. 18	3	6
Brant	Dec. 27-Jan. 11	2	4

(1) In Alaska, the daily limit may include no more than either 2 female mallards or 2 Mexican-like ducks, or 1 of each and not more than 4 female mallards, 4 Mexican-like ducks, or 2 of each, may be in possession.
(2) In Alaska, in Yuma County, La Paz County, Game Management Units 13B, 19, and that portion of Unit 16 lying within Mohave County, the bag and possession limit is 2 and 4 for Canada geese and 3 and 6 for light geese, respectively.
(3) In California, the daily bag limit for cackling geese is 1.
(4) State permit is required.
(5) In Idaho, the season on light geese is closed in Fremont and Teton Counties.
(6) In Montana, check State regulations for special seasons/exceptions in Pressonet Lake WMA; Canyon Ferry; Redrock; Door Lodge County; and Missoula County.
(7) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties, White River Valley of Nye County, and Pahranagat Valley of Lincoln County.

	Season Dates	Limits: Bag	Limits: Possession
New Mexico	Oct. 4-Jan. 18	7	14
Ducks (6)	Same as for ducks	10	30
Coots	Same as for ducks	1	2
Moorhens (9)			
Geese:			
San Juan County (8):			
Dark	Oct. 4-Oct. 26 A	3	6
	Nov. 8-Jan. 15	3	6
Light	Oct. 4-Oct. 26 A	1	2
	Nov. 8-Jan. 15	1	2
Rest of State:			
Dark	Oct. 11-Jan. 18	2	4
Light	Oct. 11-Jan. 18	1	2
Oregon			
Ducks:			
Zone 1:			
Columbia Basin Unit	Oct. 5-Jan. 18	7	14
Rest of Zone 1	Oct. 5-Jan. 18	7	14
Zone 2	Oct. 5-Jan. 18	7	14
Coots	Same as for ducks	25	25
Geese:			
Northwest General Goose Zone:			
Dark Geese	Oct. 11-Jan. 11	4	8
Light Geese	Oct. 11-Jan. 11	3	6
Northwest Special Permit Zone (10):			
Dark Geese	Dec. 1-Feb. 28	3	6
Dusky Canada geese		1 per season	
Cackling Canada geese		2	4
Light Geese	Dec. 1-Feb. 28	3	6
Southwest General Zone (11):			
Dark Geese	Oct. 11-Jan. 18	4	8
Light Geese	Oct. 11-Jan. 18	3	6
Eastern Zone:			
Klamath, Harney, Lake, and Malheur Counties:			
Dark Geese	Oct. 5-Jan. 11	4	8
Cackling Canada geese		1	2
White-fronted geese		2	4
Light Geese	Oct. 5-Jan. 11	3	6
Remainder of Eastern Zone:			
Dark Geese	Oct. 11-Jan. 18	4	8
Cackling Canada geese		1	2
White-fronted geese		2	4
Light Geese	Oct. 11-Jan. 18	3	6
Brant	Dec. 27-Jan. 11	2	4

(8) In New Mexico, duck and geese hunting is closed in San Juan County from October 27 through November 7 and December 8 through December 19.
(9) In New Mexico, the bag limit is 1 common moorhen daily and 2 in possession; there is no open season on the purple gallinule.
(10) In Oregon, the Northwest Special Permit Zone is closed to all goose hunting, except for designated areas. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
(11) In Oregon, that portion of Coos, Curry, and Douglas Counties west of US 101 is closed to all Canada goose hunting.
(12) In Utah, the shooting hours are 8:00 a.m. to sunset on October 4 and November 1.
(13) In Utah, the Washington County season is for Canada geese only.
(14) In Washington, daily bag and possession limits may include no more than 3 and 6 light geese, respectively.
(15) In Washington, in State Goose Area 1, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Area 2, hunting is everyday. See State regulations for details, including shooting hours.
(16) In Washington, see State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
(17) In Washington, brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.

(f) Youth Waterfowl Hunting Day

The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

Definition

Youth Hunters: Includes youths 15 years of age or younger.

NOTE: The following seasons are in addition to the seasons published previously in the August 28, 1997, Federal Register (62 FR 45102). Bag and possession limits will conform to those set for the regular season.

	Season Dates
ATLANTIC FLYWAY	
Connecticut	
Ducks, mergansers, and coots:	
Statewide	Nov. 8
Delaware	
Ducks, mergansers, coots, moorhens, and gallinules	Oct. 25
Florida	
Ducks, gallinules, and coots	Jan. 24
Georgia	
Ducks, mergansers, coots, moorhens, and gallinules	Nov. 15
Maine (1)	
Ducks, mergansers, coots, moorhens, and gallinules:	
Statewide	Sept. 20
Maryland (2)	
Ducks, mergansers, and coots (3)	Oct. 25
Massachusetts	
Ducks, mergansers, and coots:	
Statewide	Oct. 11
New Hampshire	
Ducks, mergansers, and coots:	
Statewide	Nov. 8
New Jersey	
Ducks, mergansers, coots, moorhens, and gallinules:	
Statewide	Sept. 27
New York	
Ducks, mergansers, and coots:	
Long Island Zone	Nov. 30
Lake Champlain Zone	Sept. 27
Northeastern Zone	Sept. 28
Southeastern Zone	Sept. 28
Western Zone	Oct. 12
North Carolina	
Ducks, mergansers, and coots	Jan. 24
Pennsylvania	
Ducks, mergansers, coots, and moorhens:	
Statewide	Oct. 4
Rhode Island	
Ducks, mergansers, and coots	Oct. 25
South Carolina	
Ducks	Jan. 24
Vermont	
Ducks, mergansers, and coots:	
Statewide	Sept. 27
Virginia	
Ducks, mergansers, coots, moorhens, and gallinules:	
Statewide	Oct. 18
MISSISSIPPI FLYWAY	
Alabama	
Ducks, mergansers, coots, moorhens, and gallinules:	
Statewide	Jan. 24
Arkansas	
Ducks, mergansers, coots, moorhens, and gallinules:	
Statewide	Dec. 24

	Season Dates
CENTRAL FLYWAY	
Colorado	
Ducks, mergansers, and coots	Sept. 27
Kansas (4)	
Ducks, mergansers, and coots	Sept. 27
High Plains	Sept. 27
Low Plains:	
Early Zone	Oct. 18
Late Zone	
Montana	
Ducks, mergansers, and coots	Sept. 27
Nebraska	
Ducks, mergansers, and coots:	
High Plains:	Oct. 4
Zones 1 & 2	Sept. 27
Zones 3 & 4	
New Mexico	
Ducks and coots	Oct. 4
Zone 1	Oct. 11
Zone 2	
North Dakota	
Ducks, mergansers, and coots:	Sept. 27
Statewide	
Oklahoma	
Ducks, mergansers, and coots:	Oct. 8
High Plains	Oct. 18
Low Plains:	Oct. 26
Zone 1	
Zone 2	
South Dakota	
Ducks, mergansers, and coots:	Sept. 27
Statewide	
Texas	
Ducks, mergansers, and coots:	Oct. 4
High Plains	Oct. 18
Low Plains:	Oct. 18
North	
South	
Wyoming	
Ducks, mergansers, and coots:	Sept. 27
Statewide	
Illinois	
Ducks, mergansers, and coots:	Sept. 27
North Zone	Oct. 11
Central Zone	Nov. 1
South Zone	
Indiana	
Ducks, mergansers, coots, moorhens, and gallinules:	Oct. 11
North Zone	Nov. 1
South Zone	Nov. 8
Ohio River Zone	
Iowa	
Ducks, mergansers, and coots:	Sept. 27
Statewide	
Kentucky	
Ducks, mergansers, and coots:	Oct. 11
Statewide	
Louisiana	
Ducks, mergansers, coots, moorhens, and gallinules:	Jan. 24
Statewide	
Michigan	
Ducks, mergansers, coots, moorhens, and gallinules:	Sept. 20
Statewide	
Minnesota	
Ducks, mergansers, coots, and moorhens	Sept. 20
Mississippi	
Ducks, mergansers, and coots:	Jan. 24
Statewide	
Missouri	
Ducks, mergansers, and coots:	Oct. 18
North Zone	Oct. 25
Middle Zone	Nov. 8
South Zone	
Ohio	
Ducks, mergansers, coots, and moorhens:	Oct. 4
Pymatuning Area	Oct. 11
Rest of State	
Tennessee	
Ducks, mergansers, coots, moorhens, and gallinules:	Jan. 24
Statewide	
Wisconsin	
Ducks, mergansers, coots, moorhens, and gallinules:	Sept. 27
Statewide	

(4) In Kansas, the adult accompanying the youth must possess any license and/or stamps required by law for that individual to hunt waterfowl.

(5) In the Pacific Flyway, the daily bag limit for ducks includes mergansers.

(6) In Alabama, the youth hunter must be 14 years old or less.

4. Section 20.109 is amended by adding the entries for the following States in alphabetical order to read as follows:

§ 20.109 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, cranes seen in hunting, respective open seasons (dates inclusive), shooting and hunting hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and hunting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 20, 1997, Federal Register (62 FR 44229).

Note: The following seasons are in addition to the seasons published previously in the August 20, 1997, Federal Register (62 FR 44152).

	Season Dates	Limits: Bag	Limits: Possession
CENTRAL FLYWAY			
Kansas (1)(2)	Nov. 1-Dec. 28	3	6
Oklahoma	Oct. 25-Jan. 25	3	6
Texas (1):			
Zone A	Nov. 8-Feb. 8	3	6
Zone B	Nov. 25-Feb. 8	3	6
Zone C	Jan. 3-Feb. 8	3	6

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit complete without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

	Season Dates
PACIFIC FLYWAY (6)	
Arizona (6)	
Ducks, coots, and moorhens:	
North Zone	Oct. 4
South Zone	Jan. 24
California	
Ducks:	
Northeastern Zone	Sept. 27
Colorado River Zone	Jan. 24
Southern Zone	Jan. 24
Southern San Joaquin Valley Zone	Jan. 24
Balance-of-State Zone	Jan. 24
Colorado	
Ducks and coots	Sept. 27
Idaho	
Ducks and coots:	
Statewide	Sept. 27
Montana	
Ducks and coots	Sept. 27
Nevada	
Ducks, coots, and moorhens:	
Clark and Lincoln Counties	Jan. 24
Rest of State	Sept. 27
Oregon	
Ducks and coots:	
Statewide	Sept. 27
Utah	
Ducks and coots:	
Statewide	Sept. 27
Washington	
Ducks and coots:	
Statewide	Sept. 27
Wyoming	
Ducks and coots	Sept. 27

(1) In Maine, the special season is closed on black ducks; shooting hours are sunrise to sunset.

(2) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). The accompanying adult may not shoot or possess a firearm.

(3) In Maryland, the special season is closed on canvasbacks.

6. Section 20.109 is amended by adding the entries for the following States in alphabetical order to read as follows:

§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
North Carolina	Oct. 20-Jan. 31	1 sandhill crane per season	
Virginia	Dec. 1-Jan. 31	1 sandhill crane per season	
CENTRAL FLYWAY (1)			
Montana	Oct. 4-Jan. 4	1 sandhill crane per season	
North Dakota	Oct. 4-Nov. 30	1 sandhill crane per season	
South Dakota	Oct. 4-Nov. 30	1 sandhill crane per season	
PACIFIC FLYWAY (1)(2)			
Montana	Oct. 18-Dec. 1	1 crane per season	
Nevada (3) (4)	Oct. 18-Jan. 4	1 crane per season	
Utah (3)	Oct. 4-Dec. 7	1 crane per season	

(1) See State regulations for description of area open to crane hunting.
(2) Any species of crane may be taken.
(3) Harvest of nonresident cranes will be limited by quotas established in the September 26, 1997, Federal Register. When it has been determined that the quota of nonresident cranes allotted to Nevada and Utah will have been filled, the season for taking of any crane species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary. (4) All harvested cranes and tags must be checked at the Nevada Division of Wildlife within 5 days of harvest.

	Extended Falconry Dates
New Jersey (cont.)	
Ducks:	
North Zone	Oct. 1-Oct. 10 & Nov. 3-Nov. 17 & Jan. 6-Jan. 16
South Zone	Oct. 1-Oct. 10 & Oct. 27-Nov. 10 & Jan. 6-Jan. 16
Coastal Zone	Oct. 1-Oct. 31 & Nov. 17 only & Jan. 12-Jan. 16
New York	
Ducks and coots:	
Long Island Zone	Nov. 1-Nov. 20 & Nov. 30 only & Jan. 21-Jan. 31
Northeastern Zone	Oct. 1-Oct. 3 & Oct. 20-Oct. 24 & Dec. 8-Dec. 31
Southeastern Zone	Oct. 1-Oct. 10 & Oct. 20-Oct. 31 & Dec. 22-Dec. 31
Western Zone	Oct. 1-Oct. 15 & Nov. 28-Dec. 19
Pennsylvania	
Ducks:	
North Zone	Nov. 3-Nov. 7 & Dec. 26-Feb. 5
South Zone	Oct. 27-Nov. 8 & Jan. 3-Feb. 5
Northwest Zone	Oct. 27-Nov. 1 & Dec. 27-Feb. 5
Lake Erie Zone	Nov. 10-Nov. 12 & Jan. 8-Feb. 20

	Extended Falconry Dates
Maryland	
Ducks	Oct. 18-Oct. 21 & Jan. 21-Mar. 9
Canada Geese	Closed
Brant	Jan. 21-Mar. 10
Massachusetts	
Ducks, mergansers, and coots:	
Western Zone	Oct. 6-Oct. 12 & Dec. 21-Jan. 20
Central Zone	Oct. 6-Oct. 13 & Nov. 30-Dec. 14 & Jan. 6-Jan. 20
Coastal Zone	Oct. 6-Oct. 13 & Oct. 28-Nov. 14 & Jan. 11-Jan. 20
New Hampshire	
Ducks, mergansers, and coots:	
Inland Zone	Nov. 6-Nov. 19 & Dec. 15-Jan. 15
Coastal Zone	Jan. 24-Mar. 10
New Jersey:	
Woodcock:	
North Zone	Oct. 1-Oct. 9 & Oct. 19-Oct. 31 & Nov. 18-Jan. 15
South Zone	Oct. 1-Nov. 7 & Nov. 23-Dec. 19 & Dec. 28-Jan. 15

	Extended Falconry Dates
Illinois	
Ducks, mergansers, and coots:	
North Zone	Sept. 30-Oct. 3 & Dec. 3-Dec. 6 & Feb. 10-Mar. 10
Central Zone	Oct. 14-Oct. 17 & Dec. 17-Dec. 20 & Feb. 10-Mar. 10
South Zone	Nov. 4-Nov. 7 & Jan. 7-Jan. 10 & Feb. 10-Mar. 10
Indiana	
Ducks, mergansers, and coots:	
North Zone	Sept. 23-Oct. 17 & Dec. 8-Dec. 18
South Zone	Oct. 7-Oct. 24 & Oct. 28-Nov. 7 & Jan. 4-Jan. 11
Ohio River Zone	Oct. 14-Nov. 19
Iowa	
Ducks, mergansers, and coots:	
Statewide	Dec. 18-Jan. 28
Dark Geese:	
North Zone	Dec. 13-Jan. 18
South Zone	Oct. 13-Oct. 17 & Dec. 18-Jan. 18
Pennsylvania (cont.)	
Canada Geese:	
North Zone	Closed
South Zone	Closed
Western Zone	Jan. 1-Jan. 12
Erie, Mercer, and Butler	Oct. 20-Dec. 31
Crawford	Oct. 20-Nov. 16 & Dec. 8-Jan. 7
Brant	Oct. 27-Nov. 14 & Dec. 18-Feb. 4
South Carolina	
Ducks, mergansers, and coots	Oct. 7-Nov. 19 & Nov. 30-Dec. 7
Alaska	
Ducks, mergansers, coots, moorhens, and gallinules	Nov. 1-Nov. 19 & Jan. 21-Feb. 27
Canada Geese	Dec. 13-Dec. 20 & Feb. 9-Feb. 28
Brant	Nov. 6-Nov. 22 & Jan. 21-Mar. 10
ARKANSAS-PLYMAY	
Arizona	
Mourning dove	Nov. 1-Dec. 12 & Jan. 5-Jan. 9
Ducks, mergansers, and coots	Dec. 24-Dec. 25 & Jan. 19-Feb. 22

	Extended Falconry Dates
Minnesota (cont.)	
Canada geese, white-fronted geese, and brant:	
West Zone:	
West Central Zone	Oct. 4-Oct. 10 & Nov. 10-Dec. 16
Rest of West Zone	Nov. 13-Dec. 16
Northwest Zone	Nov. 13-Dec. 16
Rest of State	Dec. 13-Dec. 19
Mississippi	
Mourning doves	Dec. 1-Dec. 19 & Jan. 11-Feb. 7
Ducks, mergansers, and coots	Nov. 17-Nov. 21 & Feb. 7-Mar. 10
Missouri	
Ducks, mergansers, and coots:	
North Zone	Sept. 13-Sept. 21 & Oct. 4-Oct. 22 & Dec. 22-Jan. 11
Middle Zone	Sept. 13-Sept. 21 & Oct. 5-Oct. 29 & Dec. 26-Jan. 11
South Zone	Sept. 13-Sept. 21 & Oct. 5-Nov. 12
Ohio	
Ducks, mergansers, and coots:	
Pymatuning Area	Oct. 27-Nov. 1 & Dec. 27-Jan. 18
North Zone	Dec. 6 only & Dec. 25-Jan. 18
South Zone	Nov. 3-Nov. 30
Ohio River Zone	Nov. 3-Nov. 30
Kentucky	
Ducks, mergansers, and coots:	
Statewide	Nov. 5-Nov. 28 & Jan. 19-Jan. 31
Canada Geese:	
Western Goose Zone	Nov. 5-Dec. 5
Pennyroyal/Coalfield Zone	Nov. 5-Dec. 27
Rest of State	Nov. 5-Dec. 12
White-fronted geese and brant:	
Western Goose Zone	Nov. 5-Nov. 26
Rest of State	Nov. 5-Nov. 26
Light Geese	Nov. 24-Nov. 26
Michigan	
Ducks, mergansers, coots, and moorhens:	
North Zone	Sept. 7-Oct. 3 & Dec. 3-Dec. 12 & Mar. 1-Mar. 10
Middle Zone	Sept. 7-Oct. 3 & Dec. 3-Dec. 12 & Mar. 1-Mar. 10
South Zone	Sept. 7-Oct. 10 & Dec. 10-Dec. 12 & Mar. 1-Mar. 10
Minnesota	
Rails and snipe	Nov. 8-Dec. 16
Woodcock	Nov. 4-Dec. 16
Ducks, mergansers, coots, moorhens, and gallinules	Sept. 1-Oct. 3 & Dec. 3-Dec. 16

	Extended Falconry Dates
Nebraska	
Ducks, mergansers, and coots:	
High Plains	Sept. 20-Oct. 3 & Dec. 15-Oct. 19
Low Plains:	
Zones 1 and 2	Sept. 20-Oct. 19 & Dec. 22-Dec. 26 & Dec. 28-Jan. 11
Zone 3 & 4	Sept. 20-Oct. 3 & Dec. 15-Dec. 19 & Dec. 22-Jan. 11
Oklahoma	
Ducks, mergansers, and coots:	
Low Plains:	
Zone 1	Oct. 6-Oct. 19 & Oct. 20-Oct. 24 & Dec. 6-Dec. 12
Zone 2	Dec. 6-Dec. 12 & Jan. 19-Feb. 8
South Dakota	
Ducks, mergansers, and coots:	
Low Plains:	
North Zone	Sept. 4-Sept. 28 & Sept. 29-Oct. 3 & Dec. 17-Dec. 18
Middle Zone	Sept. 4-Sept. 28 & Sept. 29-Oct. 3 & Dec. 17-Dec. 19
South Zone	Sept. 6-Sept. 28 & Sept. 29-Oct. 10
High Plains	Sept. 4-Sept. 12
Woodcock	
Rails, snipe, moorhens, and gallinules:	
North Zone	Sept. 1-Oct. 3 & Dec. 3-Dec. 15
South Zone	Sept. 1-Oct. 2 & Dec. 3-Dec. 16
Woodcock	Sept. 1-Sept. 15 & Nov. 4-Dec. 16
Doves, mergansers, and coots:	
Statewide	Sept. 13-Oct. 3 & Dec. 3-Dec. 9 & Feb. 20-Mar. 10
CENTRAL FLYWAY	
Kansas	
Ducks, mergansers, and coots:	
Low Plains:	
Early Zone	Dec. 6-Dec. 14 & Feb. 21-Mar. 8
Late Zone	Oct. 10-Oct. 17 & Oct. 18-Oct. 24 & Feb. 28-Mar. 8
Montana (4)	
Ducks, mergansers, and coots:	
Zone 1	Sept. 24-Sept. 28 & Sept. 29-Oct. 3
Zone 2	Sept. 24-Sept. 28 & Sept. 29-Oct. 3
Nebraska	
Ducks, mergansers, and coots:	
Statewide	Sept. 19-Oct. 28
Nevada	
Rails, snipe, moorhens, and gallinules:	
North Zone	Sept. 1-Oct. 3 & Dec. 3-Dec. 15
South Zone	Sept. 1-Oct. 2 & Dec. 3-Dec. 16
Woodcock	Sept. 1-Sept. 15 & Nov. 4-Dec. 16
Doves, mergansers, and coots:	
Statewide	Sept. 13-Oct. 3 & Dec. 3-Dec. 9 & Feb. 20-Mar. 10
CENTRAL FLYWAY	
Kansas	
Ducks, mergansers, and coots:	
Low Plains:	
Early Zone	Dec. 6-Dec. 14 & Feb. 21-Mar. 8
Late Zone	Oct. 10-Oct. 17 & Oct. 18-Oct. 24 & Feb. 28-Mar. 8
Montana (4)	
Ducks, mergansers, and coots:	
Zone 1	Sept. 24-Sept. 28 & Sept. 29-Oct. 3
Zone 2	Sept. 24-Sept. 28 & Sept. 29-Oct. 3

	Extended Falconry Dates
California (cont.)	
White-fronted Geese:	
Northeastern Zone	Oct. 27-Jan. 17
Southern Zone	Oct. 11-Oct. 17 & Jan. 18-Jan. 25
Balance-of-State Zone:	
Sacramento Valley Closure	Oct. 11-Oct. 31 & Dec. 15-Jan. 25
Rest of Zone	Oct. 11-Oct. 31 & Jan. 5-Jan. 25
Brant	Oct. 4-Oct. 31 & Dec. 1-Jan. 17
Light Geese:	
Northeastern Zone	Jan. 5-Jan. 17
Southern Zone	Oct. 11-Oct. 17 & Jan. 18-Jan. 25
Balance-of-State Zone (5)	Oct. 11-Oct. 31 & Jan. 19-Jan. 25
Mexico (2)	
Geese	Jan. 12-Jan. 18
New Mexico (2)	
Geese (6)	Oct. 4-Oct. 10
Utah	
Light Geese	Jan. 12-Jan. 18
Dark Geese:	
Washington County	Oct. 4-Oct. 10
Rest	Jan. 12-Jan. 18
Wyoming	
Rails	Sept. 1-Sept. 12 & Nov. 17-Dec. 14
Texas	
Ducks, mergansers, and coots:	
Low Plains	Jan. 18-Feb. 10
Woodcock	Nov. 24-Dec. 17 & Feb. 14-Mar. 10
PACIFIC FLYWAY	
Arizona	
Ducks and mergansers:	
North Zone	Oct. 5-Oct. 9
South Zone	Jan. 26-Jan. 29
California	
Ducks, mergansers, and coots:	
Northeastern Zone	Jan. 12-Jan. 17
Colorado River Zone	Jan. 25-Jan. 29
Southern Zone	Jan. 18-Jan. 25
Balance-of-State Zone	Jan. 18-Jan. 25
Southern San Joaquin Zone	Jan. 18-Jan. 25
Canada Geese:	
Northeastern Zone	Jan. 5-Jan. 17
Southern Zone	Oct. 11-Oct. 17 Jan. 18-Jan. 25
Balance-of-State Zone (5): San Joaquin Valley Area	Oct. 11-Oct. 31 & Nov. 23-Jan. 25
Rest of Zone	Oct. 11-Oct. 31 & Jan. 18-Jan. 25

(5) In California, the falconry season for Canada geese is closed in Del Norte and Humboldt Area, and the Sacramento Valley Area.

(6) In New Mexico, the daily bag limit for light geese is 1 and the possession limit is 3.

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federal register

Tuesday
September 30, 1997

Part VI

Department of Transportation

Coast Guard

46 CFR Part 170, et al.
Small Passenger Vessel Inspection and Certification; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 170, 171, and 173 and Chapter I, Subchapters K and T

[CGD 85–080]

RIN 2115–AC 22

Small Passenger Vessel Inspection and Certification

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting, as a final rule with some changes, the interim final rule which completely revised the regulations affecting small passenger vessels of less than 100 gross tons. This rule creates a separate subchapter for small passenger vessels carrying more than 150 passengers or having overnight accommodations for more than 49 passengers, provides additional alternatives to certain required lifesaving equipment, adopts additional industry standards, and establishes new upper-limit breakpoints above which a passenger vessel of less than 100 gross tons must comply with the same construction and outfitting requirements applicable to a passenger vessel of 100 gross tons or more. It also updates the regulations to accommodate the advanced technology, larger size, and increased passenger-carrying capacity of small passenger vessels.

DATES: This rule is effective October 30, 1997. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on October 30, 1997.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric P. Christensen, Project Manager, Office of Operating and Environmental Standards, (G–MSO–2), phone 202–267–1181, telefax 202–267–4570.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rulemaking (NPRM), published in the **Federal Register** (54 FR 4412) of January 30, 1989, contained a proposed revision of 46 CFR chapter I, subchapter T, concerning the inspection and certification of small passenger vessels. The NPRM also proposed a revision to those portions of 46 CFR chapter I, subchapter S, affecting the subdivision and stability of small passenger vessels. The NPRM comment period was originally scheduled to expire on May 31, 1989, but was extended to July 31, 1989. Public meetings were held on the NPRM in Washington, DC, St. Louis, New Orleans, San Francisco, Chicago, and Boston. Over 225 people attended and 116 presented their views at the meetings.

The Coast Guard received over 300 comment letters on the NPRM providing both support and criticism of the various proposed changes. Based on the comments received, the Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) (59 FR 1994) on January 13, 1994. The SNPRM significantly changed the NPRM by proposing (1) the creation of a separate, new subchapter (46 CRF chapter I, subchapter K) just for small passenger vessels carrying more than 150 passengers or having overnight accommodations for more than 49 passengers; (2) alternatives to certain required lifesaving equipment; (3) greater recognition of industry standards; and (4) the establishment of new upper limits above which a vessel would have to comply with the construction and outfitting requirements applicable to a passenger vessel of more than 100 gross tons. During the 150 day comment period, the Coast Guard received over 160 letters raising over 900 separate issues. Public meetings were held on the SNPRM in New London, Seattle, Chicago, Annapolis, Tampa, Cincinnati, and Long Beach. Over 225 persons attended and 80 presented their views at the meetings.

On January 10, 1996, the Coast Guard published an Interim Final Rule (IFR) in the **Federal Register** (61 FR 864). During the 150 day comment period, the Coast Guard received 37 letters containing over 350 comments. Public meetings were held on the IFR in St. Louis, Oakland, Mobile, and New Haven. Over 130 persons attended and 36 members of the public presented their views on the IFR at the meetings.

Background and Purpose

Subchapter T contained the regulations for the inspection and certification of small passenger vessels, including requirements for construction, outfitting of lifesaving and fire protection equipment, machinery and electrical installations, and operations. Since the subchapter's last major revision in 1963, significant changes have occurred affecting the small passenger vessel fleet, including (1) statutory changes, (2) increases in vessel size and passenger carrying capacity,(3) increases in the services offered by the owners and operators of small passenger vessels, (4) expansions of vessel routes, and (5) technological advances. Consequently, this rulemaking is necessary to respond to these changes.

Summary of Changes to the IFR

This final rule adopts, as is, the interim final rule published on January 10, 1996, with the following notable changes:

(1) Small passenger vessels are no longer grouped into three categories for regulatory purposes, as provided in the IFR. Separate treatment of small passenger vessels carrying more than 600 passengers or having overnight accommodations for more 150 passengers (the group known as "K'" or "K prime") has been removed. In this final rule, all small passenger vessels are grouped into two categories. Vessels carrying more than 150 passengers or having overnight accommodations for more than 49 passengers are under subchapter K (46 CFR parts 114 through 122). All other small passenger vessels are under subchapter T (46 CFR parts 175 through 185).

(2) The only change to the IFR that could have a substantial economic impact results from the removal of the K' category. It is the requirement for stairtowers landing areas, which is restored for vessels having overnight accommodations for more than 49 passengers. However, because this type of vessel was built to the guidelines in Coast Guard NVIC 11–83 ("Regulations for Very Large 46 CFR Subchapter T Vessels"), which called for stairtower landing areas in accordance with subchapter H, this change will have no affect on existing vessels. In addition, it will provide consistency for boat builders who have built this type of vessel for the past 13 years.

The remaining changes, for the most part, are made to realign the text after the removal of the K' category, to correct errors in the Code of Federal Regulations, and to fine-tune the IFR in response to comments.

Discussion of Comments and Changes

(a) *General.*

(1) Eleven comments recommended that the breakpoint between subchapter K and K' be raised from 600 to 1,000 passengers to be in line with two compartment subdivision. Two comments noted that over the course of the rulemaking process, several vessels have been built which would fall into the K' category (600+ passengers). Though not required to be built to the extensive subchapter H standards (passenger vessels of 100 gross tons or more) called for in K' these vessels have operated safely for years, and it was recommended that the breakpoint for these vessels be increased to 1,000 passengers.

The Coast Guard partially agrees. Two-compartment subdivision begins at 600 passengers. Of the 450 subchapter K vessels identified in the IFR, only 35 carried over 600 passengers. Some of these vessels were built as far back as 1944. The operating record of these vessels is satisfactory. However, the Coast Guard is concerned with the trend of building larger vessels by manipulating the exemptions to the tonnage rules. The Coast Guard has determined that additional requirements for vessels carrying overnight or large numbers of passengers are appropriate. However, the Coast Guard agrees that adherence to all of the requirements in subchapters H, F, and J is not warranted on small passenger vessels.

NVIC 11–83, "Regulations for very large 46 CFR Subchapter T vessels," identified additional safety requirements for vessels carrying more than 49 overnight passengers that could be applied by the OCMI based on the increased size of the vessel. These additional requirements were taken from subchapters F, H, J and S. In July, 1995, Change 1 to the NVIC added vessels carrying more than 600 passengers to the NVIC's applicability. Many of the recommendations contained in the NVIC were incorporated into subchapter K under the SNPRM and IFR. The Coast Guard stated that subchapter K was to be the middle ground between traditional small passenger vessels under subchapter T and large passenger vessels under subchapter H.

In order to determine a course of action, the Coast Guard compared the recommendations of NVIC 11–83, including Change 1, to the regulations contained in the IFR for subchapter K and K' vessels. In addition, vessels identified in the Marine Safety Information System (MSIS) as carrying more than 600 passengers and admeasuring less than 100 gross tons had their systems and equipment compared to the NVIC. Based upon these reviews, the Coast Guard decided to eliminate the K' thresholds and place, in subchapter K, additional requirements on vessels carrying more than 600 passengers to focus on the safety concerns of larger vessels. The elimination of 200 feet and 150 overnight passenger thresholds from subchapter K was based on the data collected by the Coast Guard. Only 3 of the vessels identified were over 200 feet in length. This equates to less than a tenth of one percent of the total small passenger vessel fleet of over 5,500 vessels. Clearly, it is not the industry standard to build vessels over 200 feet that admeasure less than 100 gross tons. As for the elimination of the 150 overnight passenger threshold, the Coast Guard has determined that the additional requirements, formerly applied in accordance with NVIC 11–83 to vessels carrying more than 49 overnight passengers and now included in this rule, are appropriate for small passenger vessels carrying more than 150 overnight passengers. The Coast Guard has identified only one vessel, the QUEEN OF THE WEST, that is a subchapter K vessel carrying more than 150 overnight passengers.

Specific changes to the subchapter K regulations include the requirements for an independently-driven fire pump, two electrical generating sets, exit lights, floodlights for lifeboat and liferaft embarkation stations, and emergency lighting for vessels carrying more than 600 passengers. These requirements already exist in the IFR for vessels carrying more than 49 overnight passengers. In addition, stairtower landing aree requirements for vessels carrying more than 600 passengers have been placed in § 116.438, and fire hydrant requirements have been placed in § 118.310. The fire hydrant valve requirement was believed to be omitted from the IFR and is considered good marine practice.

Both the stairtower and fire main requirements were contained in NVIC 11–83. Therefore, the Coast Guard has determined that the changes in the final rule should have no impact on vessels carrying more than 49 overnight passengers because this type of vessel has been designed and built to the NVIC for over 13 years.

The Coast Guard has determined that by specifically addressing the additional requirements in subchapter K, rather than referring to part 72 in subchapter H for structural fire protection or to applicable parts of subchapters F and J for machinery and electrical requirements, a consistent minimum level of safety is achieved. It also eliminates confusion in interpreting the word "applicable." In addition, the Coast Guard has determined that although this is a relatively significant change to the regulations, the overall impact to the subchapter K vessel fleet is a reduction in regulations for constructing vessels carrying more than 600 passengers.

(2) Two comments recommended that indices for subchapters K and T be added to title 46, Code of Federal Regulations. They appear in the October 1, 1996, edition of title 46.

(3) Two comments noted that these regulations have not used grandfathering as extensively as in previous regulations despite the absence of specific dangers to public safety.

As discussed in the preambles of the NPRM and SNPRM, the Coast Guard considers the use of grandfathering and phase-in periods in this rule appropriate. The Coast Guard uses grandfathering extensively in this rule. Existing vessels are grandfathered for construction and arrangement, electrical, and machinery requirements unless the vessel undergoes a major conversion or adds new equipment. Additional requirements in firefighting, lifesaving, and vessel operations (crew training) are considered appropriate. The Coast Guard acknowledges that the small passenger vessel industry is safe; however, casualties still occur and life and property are lost as a result. The revised regulations contained in the IFR and final rule will result in an increased level of safety for passengers and crew alike.

(4) Two comments asked for a list of all documents, such as Navigation and Vessel Inspection Circulars (NVIC's), Policy File Memorandums from G–MCO (formerly G–MVI), Coast Guard Headquarters (HQ) policy letters, and Marine Safety Manual (MSM) sections, that are canceled or revised as a result of this rule. They are:

NVIC 11–83 with Change 1 "Regulations for Very Large 46 CFR Subchapter T Passenger Vessels" (Canceled).

G–MVI Policy letter 13–86 "Certificated Small Passenger Vessels Carrying Six or Less Passengers" (Canceled).

G–MVI Policy letter 22–89 "Watertight Doors in Subdivision Bulkheads on Small Passenger Vessels" (Canceled).

G–MVI Policy letter 16–93 "Drydock Extensions for Small Passenger Vessels (T-Boats)" (Canceled).

G–MVI Policy letter 05–95 "Policy on Rail Heights for Passenger Vessels and Small Passenger Vessels" (Revised).

Policy File Memorandum (PFM) 1–94 on very low fire load options (still in effect and will be incorporated into NVIC 6–80 on structural fire protection).

(5) Two comments concerned 46 CFR chapter I, subchapter Q, which contains requirements for the specification and approval of equipment, construction, and materials and which is referenced in subchapters K and T. They

recommend that subchapter Q be repealed because the practice of approving equipment is outdated in this age of comprehensive consensus standards, corporate quality control, and the rapidly evolving technology in materials and innovative equipment.

The Coast Guard disagrees that subchapter Q is unnecessary. Where certain items of equipment are required by statute or regulation to be carried on a vessel, the Coast Guard equipment approval system is an invaluable resource for ship operators who would otherwise be uncertain if a particular item would be acceptable. It ensures that requirements are applied uniformly to all vessels and eliminates the need for case-by-case evaluations by an Officer in Charge, Marine Inspection (OCMI). Some specifications in subchapter Q are outdated and in need of revision. However, acceptance standards are still needed to ensure that critical materials and equipment meet minimum national or international safety standards. As resources allow, the Coast Guard intends to revise subchapter Q to maximize the use of performance standards and suitable industry consensus standards. The Coast Guard is very active in encouraging and assisting in the development of industry and international standards.

(6) Two comments suggested that the recommendations of the National Transportation Safety Board (NTSB) (M–95–37 through 39) resulting from the ARGO COMMODORE casualty should be implemented before publishing a final rule.

The Coast Guard has provided a response to the NTSB regarding those recommendations. The recommendations were considered in developing these regulations; however, problems surrounding the onboard firefighting efforts in this casualty were more related to personnel and training than to equipment.

(7) Two comments asked why there were 55 outstanding NTSB requirements concerning the safety of small passenger vessels.

The Coast Guard has resolved virtually all of the previously outstanding NTSB recommendations concerning small passenger vessels.

(8) Six comments stated that there were too many new regulations; industry cannot take any more.

The Coast Guard notes that many of the rulemaking projects published in the last year have centered around the adoption of industry standards and the removal of obsolete regulations. These regulations are designed to ease the burden on industry. Other new rulemakings, such as the implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and the revision of 46 CFR chapter I, subchapter W, (Lifesaving Appliances) are in response to changes in the International Convention for the Safety of Life at Sea, 1974, (SOLAS) and are mandated by international treaty. Where possible, the Coast Guard tries to minimize the impact of SOLAS amendments on the domestic fleet. The small passenger vessel rulemaking has been in development since 1985 and industry has commented on three different versions of proposed and interim regulations. Because of the extensive public participation in this rulemaking at the 17 public meetings and by the submission of written comments, the new small passenger vessel regulations will be a viable, flexible standard for the next 30 years.

(9) One comment recommended that the operators of passenger vessels be held accountable for the safety of the passengers who consume alcoholic beverages on the vessels.

The master is already responsible for the safety of the passengers and crew on board the vessel. The Coast Guard has determined that additional regulations are not required to clarify this point.

(10) One comment noted that accident and risk analysis criteria needed to be better developed if used in developing regulations. The comment also noted that the statistics for passenger vessel casualties included foreign flag vessels. The comment stated that 35 percent of casualties occurred on diving boats where the casualty had nothing to do with the vessel's equipment. In addition, a number of casualties were dockside and had nothing to do with the operation of the vessel. It recommended that the Coast Guard rethink how it handles casualties. Just because vessels are getting bigger does not mean that they are not as safe.

The Coast Guard notes that there are several related efforts that have been undertaken to improve risk analysis. They are as follows:

(a) A Risk-Based Technologies (RBT) Management Team has been established to guide risk analysis development. The RBT Management Team is coordinating the risk activities of the Coast Guard Headquarter's Office of Marine Safety with reference to other government agencies and the International Maritime Organization (IMO).

(b) A Marine Board study entitled "Risk Assessment and Management of Marine Systems" and is slated to be completed in mid 1997. The goal of this project is to learn to understand and use the different risk assessment methodologies.

(c) An internal instruction providing guidance in risk-based decision-making to the Captain of the Port (COTP), due in December 1997, will provide technical and administrative guidance to the field on how risk assessment and management can and should be used in support of Commandant (G–M)'s Business Plan goals.

(d) The Marine Safety Evaluation Program (MSTEP) is based on the use of risk-based technologies and is designed to improve the current process of assessing the safety of marine systems that are within the Coast Guard's regulatory domain.

In formulating these regulations, the Coast Guard focused on casualties to small passenger vessels. The Coast Guard has commended the industry throughout the rulemaking process on its history of safe-operations and tried to keep new requirements narrowed to the areas of most concern.

(b) *Comments on and Changes to Particular Provisions of the IFR*

Sections 114.110 and 175.110 General Applicability

(1) One comment recommended that the breakpoint for subchapter T boats carrying overnight passengers needs to be increased from 49 to 100 passengers based on the safe operating record of these vessels.

The Coast Guard disagrees. Many of the requirements for subchapter K vessels with 50 or more overnight passengers were in existence under the old small passenger vessel policy in the form of NVIC 11–83. The safe operating record of this segment of the industry may be the result of Coast Guard guidelines that have been in place for years.

(2) One comment suggested that 200 feet not be used as a breakpoint for limit for subchapter K'. Tonnage is the self limiting criteria. One comment stated that the American Bureau of Shipping (ABS) rules for vessels less than 200 feet will be revised to apply to vessels less than 300 feet.

The Coast Guard has determined that gross tonnage is not a self-limiting criteria. While the Coast Guard agrees that an upper size-limit is necessary to address manning and passenger safety concerns, historically, small passenger vessels rarely exceed 200 feet in length. According to Coast Guard data, the longest subchapter K vessel is 230 feet. The Coast Guard has determined that the requirements applicable to vessels carrying more than 600 passengers or more than 49 overnight passengers adequately address the minimum

construction and equipment requirements for larger, small passenger vessels. Future rulemakings regarding alternate tonnage will set a size threshold for subchapter K vessels and maintain the subchapter-K-class vessel as the middle ground between vessels under subchapters T and H. Once the ABS Rules are published, the Coast Guard will consider incorporating the new rules by reference in these regulations.

(3) One comment recommended that the applicability sections of these regulations be aligned with the Passenger Vessel Safety Act of 1993.

The Coast Guard agrees and the regulations in §§ 114.110 and 175.110 have been so aligned.

Sections 114.400 and 175.400 Definitions of Terms Used in This Subchapter

(1) One comment recommended that the definition of "accommodation space" be revised to allow space-heating equipment with an element temperature in excess of 250 °F (121 °C).

The Coast Guard concurs. The intent of the 121 °C temperature limitation was to ensure that cooking equipment normally associated with a galley would not be installed in an accommodation space. The definition of "accommodation space" has been amended to use the same terminology as the definition of "galley."

(2) One comment suggested that the definition of "cold water" allow for more OCMI discretion for vessels that operate in cold water for only a couple of months of the year.

The Coast Guard disagrees because the OCMI has adequate authority under § 114.550 to give special consideration to the application of the cold water requirements if warranted by the circumstances.

(3) Four comments noted that, under the definition of "exposed waters," the definition for winter season in the Great Lakes infers that all waters inside 20 nautical miles are partially protected waters. The definition of "partially protected waters" does not contradict this. The comment asked if the change was intended.

The definition of "exposed waters" for the Great Lakes did not change with the publication of the IFR. OCMI's have always had the authority to declare certain waters within 20 miles of a harbor of safe refuge exposed for the purpose of stability.

(4) One comment noted that the definition of "hardwood," as used in the wood industry, is not based on specific gravity. The performance intended is the resistance to fire and hardwoods normally possess good fire-resistance qualities. In general, hardwoods have specific gravity between 0.5 and 0.8. Coast Guard policy, written in 1980 (NVIC 6–80), states "oak or similar hardwood." The word "similar" refers to properties involving the material's resistance to fire. Although it can reasonably be concluded that dense woods such as those with a specific gravity in excess of 0.66 would be resistant to fire, such a definition is not necessary for regulatory purposes and has not presented a problem for at least the past 16 years.

The Coast Guard has revised the definition to specifically mention oak and its fire resistant properties.

(5) One comment noted that the definition of "hazardous condition" includes illness of a person on board. Though seasickness is not considered an illness by most people in the sport fishing community, prolonged seasickness can have a profound effect on a person's ability to think clearly and to maintain balance.

The Coast Guard agrees that seasickness can be quite debilitating and create a hazardous condition. If an individual can no longer function, possibly due to dehydration, the master should consider either providing medical attention on board or removing the individual from the vessel.

(6) Four comments requested that the definition of "High Speed Craft" (HSC) be clarified. They asked if the IMO HSC Code applies only to international conventions? Could STCW bring in the HSC criterion? What does the phrase "the aforementioned generality" mean? Could a basic, every-day, mono-hull boat under subchapters K and T that is in domestic service and equipped with extra horsepower for prolonged engine life or operating conditions be considered an HSC? Sections 114.540 and 175.540 state that the IMO HSC Code can be used as an equivalent to the requirements contained in subchapters K and T, respectively.

The Coast Guard does not make a determination on whether a vessel is an HSC without the owner of the vessel applying for HSC Code equivalency. The requirements under STCW contain no additional requirements for vessels meeting the HSC Code definition. Vessels operating on domestic voyages are allowed to apply for the HSC equivalency, but do not necessarily need to receive SOLAS HSC certification. However, once the Coast Guard has granted HSC equivalency to a small passenger vessel, the code must be complied with in its entirety. In order to avoid confusion and make the HSC Code definition more readable, the term "aforementioned generality" has been removed.

(7) Twelve comments recommended that paragraph (3) of the definition "major conversion" be deleted. The comments remarked that operators should not be discouraged from doing things to substantially prolong the life of their vessels. Normal maintenance itself prolongs the life of a vessel. The comments also noted that the definition is too broad. One comment recommended the definition be changed to mean a conversion of a vessel that, as determined by the Commandant, substantially adds to the length, beam, height, or draft of the vessel in order to accommodate an increase of more than 15 percent of the passengers currently authorized.

The definitions of "major conversion" are based upon statute. The Coast Guard agrees that normal maintenance prolongs a vessel's life and supports continuous maintenance. Normal maintenance does not constitute a major conversion. However, the Coast Guard does not agree that an arbitrary 15 percent should be added to the definition. The Coast Guard will continue to use the current definition and apply it to vessels on a case-by-case basis.

(8) One comment recommended that the last sentence of the definition of "means of escape" be deleted because the terms "exit," "exit access," and "exit discharge" are not familiar to the maritime community. The terms are used in National Fire Protection Association (NFPA) 101.

The Coast Guard agrees in part. A key difference between the means of escape under subchapters K and T and under subchapter H is that protected escape routes are not required in vessels constructed to subchapter T. However, vessels constructed to subchapters K or H must have protected escape routes culminating at protected areas where passengers are separated from the effects of fire or flooding. The terms "exit," "exit access," and "exit discharge" are intended to indicate that protected escape routes are made up of many differing components, including corridors, stairways, and stairtowers, which must provide continuously protected access from a space to an area of refuge. The last sentence of the definition in subchapter T has been deleted.

(9) Six comments recommended that the definition of "new vessel" be changed to allow vessels started before March 11, 1996, to be completed after September 11, 1996.

The Coast Guard advises that this practice has been done on a case-by-case

basis. Extending the date would only cause confusion and another round of appeals. By the time this rule is published, this issue will be moot.

(10) Three comments recommended that the definition of "pantry" be aligned with the IMO definition of pantry, which refers to a space that does not contain heat sources with temperatures exceeding 425°F.

The Coast Guard disagrees. The IMO definition, as contained in SLS.17/Circ.3, uses terms such as "appliances consuming small amounts of electrical power" and "hot plates for keeping food warm." Since these terms are somewhat vague, they are more difficult to apply and enforce. No changes were made to the definition.

(11) One comment requested that definitions for the following terms be added to allow for better use of the regulations and to assist personnel in answering questions on Coast Guard exams. The terms include "enclosed space," "partially enclosed space," "fire station," "floodable length," "bulkhead deck," "collision bulkhead," "coaming," "hull strainer," "hydrostatic release unit," "pendant," "lifeline" (by revising 46 CFR 160.010–3(g) and 160.027 to correct problems with life float and buoyant apparatus lifelines and pendants), "positive action valve" (defined so a store clerk can understand), "pressure vessel," and "ships service."

The Coast Guard has determined that adding these definitions would not add any value to the regulation. Instead of adding a definition for "fire station," the Coast Guard has changed the term "fire station(s)" to "fire hydrant(s)" throughout the rule. The Coast Guard is unclear as to what the "problems" with lifelines and pendants are; the current specifications have been used successfully since 1982. Changes to the buoyant apparatus and lifefloat specification subparts in subchapter Q are beyond the scope of this rulemaking.

(12) Based on a working review and use of the IFR, the Coast Guard has made the following additional changes to this section in order to correct any errors and make it more readable. The definition of "atrium" has been modified by removing "escalator opening" from the list of purposes an atrium could not be used for to resolve a conflict with § 116.440. Section 116.440 allows an escalator to be installed in an atrium, provided that the footprint of the escalator is subtracted from opening area computations.

(13) The Coast Guard has amended the definition of "auxiliary machinery space" to include spaces that contain refrigeration equipment.

Accordingly, spaces that contain refrigeration equipment are removed from the definition of "machinery space."

(14) Definitions of "low risk service space" and "high risk service space" are amended to change motion picture rooms from high risk to low risk. Motion picture rooms have not posed a significant fire risk since nitrocellulose film was phased out several years ago. Additionally, the break point for cleaning gear lockers has been changed from a fire load basis to a size and contents basis to be consistent with the interpretation of subchapter H. Additionally, "small" cleaning gear lockers (less than 5 square meters) may be considered type 6 spaces if they do not contain flammable liquids.

(15) Changes are made to the definitions of "accommodations space," "high risk accommodations space," "overnight accommodations or overnight accommodations space," and "passenger accommodations space" to recognize the addition of a type 6 space. See the discussion on § 116.415 in this preamble for information on the addition of type 6 spaces.

Sections 114.540 and 175.540 Equivalents

The Coast Guard is amending §§ 114.540(b) and 175.540(b) by removing the word "pending" because IMO adopted the HSC code on May 20, 1994.

Sections 114.560 and 175.560 Appeals

Nine comments recommended that the Coast Guard be required to answer industry appeals within 30 days of receipt.

The Coast Guard acknowledges that recent appeals, such as that for the SCHOONER AMERICA, illustrate that short-turnaround appeals can be completed within 24 hours. The Coast Guard has determined that 30 days is an appropriate length of time for responding to most industry inquiries or appeals. Internally, the Coast Guard places a 30-day due date on correspondence received from the public. In such a case, the respondent should receive a response within 45 days, including mail delays. However, some issues are more complex and require more research and time to arrive at an appropriate response. Conversely, some appeals come up out of the blue and need an immediate resolution. Like any concern with over 10,000 customers, the Coast Guard prioritizes tasks and accomplishes them as resources allow. As stated in the preamble to the IFR, a revision to 46 CFR 1.03 is beyond the scope of this rulemaking.

Sections 114.600 and 175.600 Incorporation by Reference

Several standards incorporated by reference have been changed to reference the most recent edition. In addition, based on revisions to §§ 116.300, 177.300, and 177.410, the ABS Guide for High Speed Craft and MIL-R–21607E(SH) "Resins, Polyester, Low Pressure Laminating, Fire Retardant" have been added.

Sections 114.800 and 175.800 Approved Equipment and Material.

The statement regarding equipment approvals in §§ 114.800 and 175.800 has been deleted by the Coast Guard, because this practice has not been done in years.

Sections 115.107 and 176.107 Period of Validity.

Eight comments expressed concern over inspection creep. The comments recommended that the Certificate of Inspection (COI) should expire on the last day of the month and year of inspection. An additional comment suggested that, with the three-year inspection interval, operators have an opportunity to enter into a trial streamline-inspection program. Reinspections could be done by the company and the Coast Guard could monitor the effectiveness of the inspection program during the vessel's triennial exam.

The Coast Guard notes that the three-year inspection interval is statutory in nature. The Coast Guard's Compliance Division (G-MOC) is examining the feasibility of establishing policies to reduce inspection creep. The streamlined-inspection program is being addressed under a separate Coast Guard rulemaking (CGD 96–055) and is beyond the scope of the this rulemaking.

Sections 115.113 and 176.113 Passengers Permitted

Two comments stated that existing vessels would suffer capacity losses under the criteria which establishes additional exceptions to the rail and area rules of thumb. They stated that, because there was no problem with the old system of determining passenger capacity, there is no need for change.

The prohibition of length of rail criteria used in conjunction with either fixed seating or deck area is not understood. The Coast Guard states that the new sections merely clarify what has been accepted practice by the Coast Guard for many years. Length of rail criteria was not allowed to be combined with deck area or fixed seating under old § 176.01–25(b). Existing vessels should not be affected by this clarification of the old requirement.

Sections 115.114 and 176.114 Alternative Requirements for a Vessel Operating as Other Than a Small Passenger Vessel

(1) Three comments stated that, to be of any value to the industry, the ability to operate as other than an inspected vessel must come without the route, manning, and other restrictions in paragraph (c) of these sections.

The Coast Guard disagrees. The operating endorsements required under paragraphs (c) are placed on the COI to ensure the vessel meets the requirements for the intended uninspected service.

(2) Two comments stated that the wording is confusing and the intent of these sections needs to be explained in the preamble.

As stated in the preambles of the NPRM, SNPRM, and IFR, the intent of this section is to allow an inspected small passenger vessel to operate as an uninspected or recreational vessel by an endorsement on the vessel's COI. Under 46 U.S.C. 3313(a), a small passenger vessel must be in compliance with its COI at all times. Sections 115.114 and 176.114 are intended to provide for alternatives and allow small passenger vessels to remain competitive with uninspected vessels.

(3) Three comments recommended that the Coast Guard automatically endorse vessel COI's with an endorsement to operate under subchapter C.

The Coast Guard disagrees with automatic endorsement. As stated in the SNPRM preamble, by requiring an owner to request an endorsement, the Coast Guard can better ensure that the owner is aware of the implications of the endorsement and the applicable uninspected vessel requirements in 46 CFR chapter I, subchapter C, or recreational boat requirements in 33 CFR chapter I, subchapter S.

(4) One comment stated that paragraph (b)(2) is confusing with regard to minimum manning specified on the vessel's COI. According to the comment, minimum manning is always above what an owner may be requesting in accordance with this section.

The intent of paragraph (b)(2) is to allow the OCMI to state, on the COI, the required manning on the vessel based upon the type of operation and number of passengers carried. For example, many COI's have an endorsement stating that, when carrying less than 6 passengers, a deckhand is not required.

(5) Two comments asked why freight service is excluded. Freight service is less prone to safety issues than passenger service.

Freight service is not excluded. A small passenger vessel of more than 15 gross tons must meet the requirements of subchapters K or T as appropriate when carrying freight for hire. A vessel of 15 gross tons or less is an uninspected vessel when carrying freight for hire and, therefore, must meet the applicable requirements for an uninspected vessel.

Sections 115.204 and 176.204 Permit to Carry Excursion Party

Three comments recommended removing paragraph (c) so that the only limits on loading a vessel with an excursion permit are sufficient stability and appropriate lifesaving equipment. One comment noted that there has been a change to the old regulations that requires that the number of passengers be limited based on seating, deck area, and rail space.

The Coast Guard disagrees. The purpose of the excursion permit is to allow a passenger vessel to carry additional passengers or operate on a more severe route, or both, for a limited period of time, if the cognizant OCMI believes it can be done safely. The OCMI will not normally allow a vessel to carry more passengers than there is space available, regardless of sufficient stability. Overcrowding a vessel presents unique hazards, such as inadequate crowd control. The Coast Guard has determined that this is an unacceptable operating condition.

Many vessel operators limit the number of passengers carried on a routine basis for various reasons including survival-craft capacity, fire-pump requirements, and operator comfort. The vessel may have adequate stability and space available for additional passengers, but the operator may choose to carry fewer than the maximum calculated. In this case, an excursion permit would allow the operator to carry additional passengers without overcrowding the vessel and to stay within stability limitations.

The requirement to base passenger load on the passengers permitted criteria is taken from the Coast Guard's Marine Safety Manual. This practice has been in effect since 1960 and was placed in the SNPRM as a result of comments to the NPRM.

Sections 115.310 and 176.310 Certification Expiration Date Stickers

Four comments recommended that the Coast Guard eliminate the prohibition of operating in the event that the Certification Expiration Date Sticker is damaged or lost.

The Coast Guard disagrees. In the event the sticker is damaged, the owner should call the Coast Guard for another sticker. The function of the sticker is clearly defined in the regulations. Operating without a visible sticker may result in an at-sea Coast Guard boarding to verify the legality of the charter.

Sections 115.402 and 176.402 Initial Inspection for Certification

One comment recommended that builders be allowed to submit plans as well as owners.

The Coast Guard agrees. It is common practice for a builder to submit plans, on behalf of an owner, to the Coast Guard. However, it is the owner's responsibility to request an initial inspection for certification, which is the basis of the requirement. Once the application package is sent to the Coast Guard (including the plans from the builder), the owner may inform the Coast Guard to deal directly with the builder, as appropriate.

Sections 115.404 and 176.404 Subsequent Inspections for Certification

Two comments asked why language was added to this section allowing the OCMI to require the vessel to get underway. The comments also noted that this is not required of other inspected vessels.

The Coast Guard advises that the practice of getting vessels underway as part of the COI exam is common in many Marine Safety Office (MSO) zones. The language merely reaffirms the OCMI's authority to use an underway test to verify the condition of the vessel's internal structure, as well as machinery and steering. In addition, any drills the inspector may wish to conduct must be as if an actual emergency is taking place. A man-overboard drill at the dock lacks realism and is not as effective as an underway drill.

Sections 115.500 and 176.500 When Required

Two comments recommended that the wording be changed to reflect that a reinspection can take place 60 days on either side of the COI anniversary date, if that is the intent of the paragraph.

The Coast Guard advises that it is their practice to allow a 60 day window on either side of the COI date. No changes were made to these sections based on comments.

Sections 115.600 and 176.600 Drydock and Internal Structural Examination Intervals

(1) One comment noted that the drydock and internal structural examinations are written as if they are two separate examinations.

The Coast Guard advises that internal structural exams can be done with the vessel in or out of the water. In the past, some operators have hauled their vessels out of the water for only a short period of time and continued the internal exam back in the water. This option remains in place with the wording in the IFR.

(2) One comment stated that vessels less than 65 feet carrying less than 12 passengers on an international voyage are being adversely affected by the new annual drydock and internal exam requirement required by paragraph (b).

It is not the Coast Guard's intent to require vessels, not subject to SOLAS requirements, to meet standards derived from international standards. Language is added to the rule to indicate vessels subject to SOLAS requirements are to be hauled out annually.

Sections 115.610 and 176.610 Scope of Drydock and Internal Structural Examinations

One comment recommended that propeller shafts should not be examined and rudders should not be removed, unless there is obvious damage or the inspector can otherwise justify the action.

The Coast Guard agrees. These sections were revised as a result of comments to the SNPRM. Since these sections do not contradict the comment, no changes have been made to the rule.

Sections 115.612 and 176.612 Notice and Plans Required

Four comments stated that the wording in paragraph (b) is constrictive and is contrary to good maintenance practice in the field and in industry. The comments recommended that the words "but not limited to" be added after the word "maintenance."

The Coast Guard agrees and has added these words in both sections.

Sections 115.630 and 176.630 Tailshaft Examinations

Four comments recommended that tailshafts not be drawn, unless there is obvious damage or the inspector can otherwise reasonably justify the action.

The Coast Guard agrees. These sections were revised as a result of comments to the SNPRM. Since these sections do not contradict the comment, no changes have been made to the rule.

Sections 115.700 and 176.700 Permission for Repairs and Alterations

Five comments recommended that repairs in kind to maintain a vessel's material state should not require the permission of the OCMI.

Only repairs that involve altering a vessel's substantive characteristics or the safety of passengers must be reported to the OCMI for approval. The Coast Guard has determined that the language of this section satisfactorily addresses the comment. Repairs involving the replacement of plating, refastening, or other items covered in paragraph (a) require Coast Guard involvement because they affect passenger safety.

Sections 115.802 and 176.802 Hull

Six comments recommended that specific wording be added to paragraph (c) to reference the working of "wood" hulls. One comment queried that if underway inspections were not required for large vessels, then why are they required on small vessels other than wood vessels? Two comments stated that seasonal vessels do not keep crews on board year round so the personnel are not normally present for inspections. If personnel were required to be on hand, then it would be an added cost burden to an already overburdened industry. Two comments recommended that underway drills should be confined to dinner-cruise and excursion vessels, where passengers tend to be less aware of vessel operations than they are on fishing and dive boats.

As stated previously, underway inspections are commonplace at many MSO's regardless of hull material. Underway inspections verify the integrity of the hull structure regardless of hull material. Secondary bonds in fiberglass reinforced plastic (FRP) vessels and welds in aluminum and steel vessels can fail, resulting in an unsafe condition. Because the term "working of the hull" is more geared to wood hulls, the Coast Guard has deleted the words "working of" and added the words "and internal structure" to paragraph (c) to clarify the requirements. In addition, the operation of the main engines and steering gear under normal operating load can only be done underway. Performance of man overboard drills can also be better determined underway. With the new drill and crew training requirements in place, there should be a crew member on board during an inspection. The Coast Guard has determined that the days of inspections during "winter lay-up" are over. The owner will have to schedule an inspection when the vessel is completely ready for inspection. The Coast Guard has not determined that there is a significant cost burden to industry in order to comply with an underway inspection at the vessel's inspection for certification.

Sections 115.808 and 176.808 Lifesaving

In order to correct inconsistencies contained in the IFR, the Coast Guard has amended these sections to include the term "inflatable buoyant apparatus."

Sections 115.812 and 176.812 Pressure Vessels and Boilers

Four comments stated that referencing § 61.05 of subchapter F for pressure valves has reduced the inspection interval from three years to two. It was recommended that pressure vessel examinations be eliminated altogether due to the lack of casualty data and the cost to industry.

The Coast Guard notes that items not inspected become neglected. To say that, because there have been no problems with pressure vessels, they no longer need to be inspected, does not take into consideration the idea that it is the inspection that has reduced the risk. However, the Coast Guard has determined that the three-year interval is appropriate for the types of air receivers found on small passenger vessels and has amended these sections accordingly.

Sections 115.920 and 176.920 Exemptions

Two comments recommended that the Coast Guard add exemptions to the STCW-driven regulations.

This request is beyond the scope of this rulemaking but may be addressed under the Coast Guard's on-going rulemaking on STCW (CGD 95–062).

Sections 116.202 and 177.202 Plans and Information Required

(1) Five comments suggested that, with the Coast Guard's initiatives to streamline vessel inspections, plan approval will, most likely, be delegated to third parties. It was recommended that a time frame within which plans must be approved by the Coast Guard or a third-party organization be added to the rule.

The Coast Guard does not intend to delegate all plan review functions to third parties. However, depending on the type of vessel and plan, there may be options available for the use of classifications societies or professional engineers. The Coast Guard notes that time-frames are dependent on the number of plans submitted and personnel available for review. In addition, requirements for plan approval were relaxed in the IFR by requiring that only basic scantling plans be approved before construction. By reducing the number of plans that require approval before construction and by enabling classification societies and professional engineers to review construction plans, the delays experienced in the past should be minimized.

(2) Two comments stated that cross curves of stability are not appropriate for subchapter T boats and are generally no longer used because of computers.

The Coast Guard notes that cross curves contain the calculation of righting arms for the various angles of heel. This data is necessary for evaluating the stability of a vessel. However, the Marine Safety Center (MSC) may accept, on a case-by-case basis, computer tabulated righting arm data, if calculated at a close enough interval to accurately approximate the righting arm curves.

(3) Two comments noted that electrical plant analysis is a new and time-consuming requirement for T-boats.

The Coast Guard advises that electrical plant load analysis is not necessarily required on T-boats. Section 177.202(b) contains the plans and information that may be required by an OCMI or MSC. For the electrical plant load analysis requirement, sufficient capacity of the electrical system needs to be determined by the Coast Guard. If the Coast Guard cannot determine that sufficient capacity exists, then the owner is required to provide evidence that the electrical system is of sufficient capacity.

(4) Two comments asked what constitutes reasonable destructive testing?

Reasonable destructive testing includes burnout tests for fiberglass reinforced plastic laminates to determine resin content and bend tests on welding coupons, when required.

Sections 116.300 and 177.300 Structural Design

One comment recommended that the ABS 1990 High Speed Craft guide be acceptable for scantlings of aluminum.

The Coast Guard agrees and has added this to the rule. In addition, the ABS rules are also acceptable for vessels constructed of fiberglass reinforced plastic.

Sections 116.340 and 177.340 Alternate Design Considerations

Four comments wondered what happened to the five-year rule.

The Coast Guard advises that the five-year rule has been retained from the SNPRM in § 177.310 of subchapter T.

Section 116.405 General Arrangement and Outfitting

(1) The requirements for plastic pipe in concealed spaces, as written in the IFR, are inaccurate and contradict subchapter F and current Coast Guard policy. As a result, the current text in § 116.405 (f)(1) and (f)(2) has been deleted and § 116.405(f) has been rewritten, requiring plastic pipe to be regulated in accordance with subchapter F and current Coast Guard policy.

(2) Seven comments to § 116.405(i) stated that heavy-duty, plastic waste receptacles are the industry standard, because they are non-rusting and lightweight. The comments requested that the use of plastic waste receptacles be authorized.

The Coast Guard states that the requirement for waste receptacles to be constructed of noncombustible materials is consistent with subchapter H and the old subchapter T. The new regulations in the IFR state the desired performance. This provides vessel owners with potential options by not explicitly restricting the use of plastics, as long as an equivalent level of safety can be achieved.

Section 116.415 Fire Control Boundaries

(1) The Coast Guard provides the following comments on Type 6 spaces. Tables 116.415(b) and (c) were modified in the IFR to be more consistent with subchapter H. However, for ease of application, the three types of accommodations spaces in subchapter H were simplified to two in subchapter K. Specifically, type 6 and type 7 spaces in subchapter H were consolidated into a single category (type 7) in subchapter K. This consolidation increased the boundary requirements for a number of spaces that would have been classified as type 6 in subchapter H. Therefore, the type 6 category has been added to subchapter K. Additionally, the bulkhead requirement in table 116.415(b) for a boundary between a type 5 and 7 space has been reduced from A–15 to B–15, in order to be consistent with subchapter H.

(2) Table 116.415(b) is amended to clarify that distinct stairtowers must be separated with A–0 bulkheads.

Section 116.422 Ceilings, Linings, Trim, Interior Finish, and Decorations

(1) Three comments recommended restoring the provision from the NPRM that allowed the use of gypsum wall board in boundaries not required to be structural fire control boundaries.

This issue was addressed in the preamble to the IFR. The regulations explicitly state the performance without making detailed reference to specific construction materials. Approved, noncombustible-faced gypsum board is available from several suppliers at a comparable cost to paper-faced gypsum board.

(2) One comment suggested that the term "combined area of the bulkheads" in § 116.422(c)(2) include the ceiling.

The Coast Guard agrees and has changed this section to include the ceiling.

Section 116.423 Furniture and Furnishings

(1) Four comments questioned that, if CAL TB 133 is the same as UL 1056, then why is CAL TB 133 not included in the regulations or incorporated by reference? Commercial sources recognize and rely on CAL TB 133.

The Coast Guard advises that CAL TB 133 is acceptable as discussed in the preamble of the IFR. It is not incorporated by reference because it applies to a particular State. UL 1056 was developed to provide a national standard and, thus, there is no need to reference any particular, local government requirement. However, revised NVIC 6–80 will state that CAL TB 133 is an acceptable alternative to UL 1056.

(2) Three comments recommended that carpet should be allowed on bulkheads because of its sound and acoustical control. The comments stated that the use of rated carpet should not be a problem. The Coast Guard was reminded that airlines use carpeting on bulkheads. The comments pointed out that carpeting is easier to maintain than a painted surface. As a minimum, one comment recommended that it be allowed at least on chair rails.

The Coast Guard disagrees. The issue of carpeting on bulkhead walls was adequately addressed in the preamble to the IFR.

Section 116.427 Fire Load of Accommodation and Service Spaces

The Coast Guard advises that paragraph (a) of this section has been amended to indicate that fire load calculations are not required for low risk service spaces.

Section 116.433 Windows and Air Ports in Fire Control Boundaries

The Coast Guard has concluded that the use of glass in stairtowers needs some clarification and text is added to this section, accordingly. A-class doors

should include limitations on glass consistent with those in subchapter H. The text is amended to read similar to subchapter H, § 72.05–25(b)(4). Along with this change, § 116.435(c)(9) is amended to allow unrestricted use of glass in doors opening out onto open decks.

Section 116.435 Doors

(1) One comment requested that the Coast Guard consider using ASTM F 1384 instead of UL 10B as the standard for fire testing doors.

The Coast Guard stated that the regulations, which contain prescriptive requirements for doors, do not specifically call out UL 10B. NVIC 6–80 discusses acceptable tests, such as UL 10B. Revised NVIC 6–80 will state that test requirements, such as ASTM F 1384 and UL 10B, are available as options to the minimum requirements in the regulations.

(2) Four comments recommended that the Coast Guard not ban horizontal doors and consider gravity neutral hatches.

Horizontal doors are not banned. They simply cannot be used in passenger areas. Horizontal doors are not appropriate for use by passengers because of the awkward situation caused by opening or closing these devices during egress.

Section 116.438 Stairtowers, Stairways, Ladders, and Elevators

(1) Two comments suggested that, for vessels in domestic service, appropriately located and protected exterior stairways should be equivalent to stairtowers.

The Coast Guard states that, in addition to protection from the effects of fire, indoor stairtowers afford protection from severe weather. No changes were made to this section.

(2) One comment recommended that this section include a maximum vertical height on intermediate stairway landings similar to subchapter H requirements.

The Coast Guard disagrees. Because of the nature of vessels, particularly vessels constructed to subchapter K, inherent limitations on vessel construction make it impractical to install stairways which have large flights uninterrupted by landings. No changes were made to this section.

(3) After further review of § 116.438, the Coast Guard revised this section as follows. Paragraph (k)(2) is revised to require that stairtowers give access to either an embarkation station, as opposed to an embarkation deck, or an area of refuge. The term "embarkation station" was used for consistency with the term used in § 116.510. Paragraph (k)(3) is revised to clarify which spaces constitute "enclosed spaces in which a fire is likely to originate." Paragraph (l)(6) is revised for clarity by deleting the words "satisfactory" and "vertical." By deleting these words, the paragraph requires that, in the absence of stairtowers, stairs must provide a means of escape, which refers back to the definition of "means of escape" in § 114.400.

Section 116.439 Balconies

Paragraph (d) is revised to require that sprinkler systems be designed in accordance with NFPA 13 (which has recently been modified to address marine sprinkler systems) as opposed to § 76.25. Paragraph (e) is reworded to clarify that the open area in a balcony space must be at least 93 square meters (1,000 square feet), unless other provisions are installed.

Section 116.440 Atriums

Paragraph (c) is revised to require that sprinkler systems be designed in accordance with NFPA 13 (which has recently been modified to address marine sprinkler systems) as opposed to § 76.25.

Section 116.500 Means of Escape

Paragraph (a) is revised to indicate that a ladder and a deck scuttle are acceptable as a second means of egress for crew spaces on any vessel, regardless of length. Difficulty has been encountered in the application of paragraph (h). In the IFR, this paragraph indicates that the maximum allowable travel distance to a means of egress could not exceed 46 meters (150 ft). Means of egress is (and was in the IFR) defined as "a continuous and unobstructed way of exit travel from any point in a vessel to an embarkation station or area of refuge." The intent of § 116.500(h) is to limit the distance of travel to a protected area, such as a stairway, area of refuge, or embarkation station. Section 116.500(h) is revised to clarify that travel distance to an exit may not exceed 46 meters, measured as actual walking distance. A definition was added to § 114.400 to define "exit" as either an area protected as a stairway, or a door which leads to an area of refuge or an embarkation station. Paragraph (p)(1) is amended to change the maximum dimension for a space that is permitted to have a single means of escape from 3.6 meters to 30 square meters to be consistent with other subchapters.

Section 116.520 Emergency Evacuation Plan

Paragraph (b) is amended to clarify that evacuation procedures must be developed for all possible casualty scenarios determined as required by paragraph (a). Since promulgation of the IFR, some difficulties have been encountered in determining acceptable standards for refuge areas. The preamble to the IFR indicated that standards for a refuge area are intended to be performance based. In the absence of a systematic approach which considers plausible fire scenarios and methods used to protect passengers while the crew attempts fire suppression or passengers await embarkation of lifesaving appliances, the Coast Guard considers the following minimum provisions acceptable: (1) minimum separation from other spaces other than voids, cofferdams, and tanks of A–60 integrity; (2) ventilation systems shall only service a single area of refuge, unless separated from other spaces by smoke and fire dampers; and (3) the refuge area shall be located in a public space above the bulkhead deck.

Sections 116.600 and 177.600 Ventilation of Enclosed and Partially Enclosed Spaces

One comment queried about requirements for ventilation of passenger accommodation spaces.

The Coast Guard acknowledges that reference to passenger accommodation spaces was inadvertently deleted during the revision of this section for the IFR. Wording is added to the final rule.

Section 116.610 Ventilation Ducts

Four comments stated that Heating Ventilation and Air Conditioner (HVAC) return air should not require ducting if there is adequate air grille area near the HVAC unit, and does not require penetration of a Class A barrier. Another comment stated that the enclosed ceiling area should be able to be used as a return plenum.

The Coast Guard advises that there are numerous arrangements for ventilation which may meet the intended performance. There are current Coast Guard policies on this issue and the revision of NVIC 6–80 on structural fire protection will formally incorporate many of these. It is not realistic to include all of this information in the text of the regulations. The text of the regulations includes only the basic requirements which permit flexibility for the designer. The Coast Guard has changed the regulations by removing the requirement that non-steel ducts must be fitted with steel sleeves at each A-Class or B-Class fire control boundary penetrated. In addition, the regulations prohibiting a stairway or stairtower to serve as an air return for another space; a duct in a bulkhead or overhead designed for the passage of air from one space to another; or the use of concealed spaces as return ventilation plenums or ducts have been removed.

Sections 116.820 and 177.820 Seating

Two comments recommended restoring the SNPRM wording "by permanent or temporary means." This option permits the rearranging of furnishings for different functions.

The Coast Guard notes that the wording in the SNPRM was removed due to a comment that stated the wording was confusing and unnecessary. The change was considered editorial in nature and did not affect the section. The Coast Guard has not determined that paragraph(d)(4) precludes operators from moving furniture to accommodate a particular charter. The bottom line is that the seats must be secured to prevent injury to passengers.

Section 177.900 Deck Rails

(1) One comment questioned whether the requirements of paragraph (g)(1) applied to a vessel applying for an excursion permit. The comment noted that the cost of installing new rails, chain link fence, or bars may be prohibitive.

The Coast Guard states that paragraph (g)(1) does apply. Small passenger vessels should already meet the requirements for rail course spacing.

(2) One comment suggested that as older vessels come up for recertification, the new rail height requirements should be applied. Another comment recommended that Commandant institute a change to 46 CFR 177.35–1(d) and require sport fishing vessels that travel ocean routes be required to have rails at least 42 inches high, or sea rails from 30 to 42 inches. This will increase safety by requiring higher rails on vessels that encounter heavier sea conditions. A third comment recommended that all rail heights on passenger carrying vessels should be at least 40 inches. Where angling equipment requires a lower rail, a ten inch hinged section can be incorporated.

The Coast Guard's position since the NPRM in 1989 is that 1 meter rails are consistent with SOLAS standards, and appropriate for small passenger vessels. Retrofitting railing on existing vessels was considered in the original cost benefit analysis, but the cost could not be justified based on the casualty statistics. Therefore, no changes were made to these sections.

Section 116.960 Guards for Exposed Hazards

Three comments addressed a question posed by the Coast Guard in the IFR regarding non-skid surfaces on stairs and open hatch protection. The comments stated the need for non-skid surfaces on stairways, and open hatch protection are best left to the operators. Common sense is a better guide than prescriptive standards.

The Coast Guard thanks the industry for providing this input. No further action will be taken at this time.

Section 116.1030 Operating Station Visibility

One comment urged the Coast Guard to make a clear, non-technical statement concerning the use of tinted glass in the operating station.

The Coast Guard advises that the use of industry standards is intended to aid the industry in complying with the regulations. Owners and operators wishing to tint their pilothouse windows must communicate the standards to the vendor who will make sure the correct products are used.

Section 116.1160 Watertight Integrity

The Coast Guard received eight comments regarding the 6" coaming requirement. The requirement for 6" coamings is a problem for some vessels, especially vessels that are designed with a small aft cockpit used as a boarding area. It is difficult to let people know that there is a coaming to negotiate as they enter the vessel. It should be noted that more than 65% of passenger injuries occur in this area of a vessel. The comment desired to know if there is some way to minimize the coaming in this area. The comment understands the requirement for fore deck areas, but an aft cockpit area may have better than 40" of bulwark. Two comments also understand downflooding, but passenger injuries should take precedence. The Coast Guard notes that § 171.122 only applies to vessels of at least 100 gross tons. These comments were considered in developing § 179.360. Ensuring that passengers and crew are aware of potential trip and fall hazards is the responsibility of the vessel owner/operator. Warning signs, safety instructions and adequate embarking and disembarking points should assist in accommodating these issues. The Coast Guard reminds owners and operators of small passenger vessels that 46 CFR subparts 114.540 and 175.540 accommodate the issue of equivalents for subchapter K and T vessels respectively. "The Commandant may approve any arrangement * * * which provides a level of safety equivalent to that established * * *" may assist an owner or operator in determining equivalent or alternative coaming requirements.

Section 177.410 Structural Fire Protection

Internal review by the Coast Guard identified possible misinterpretation of the requirements for fiber reinforced plastic, specifically the text of § 177.410(b) in the IFR. Coast Guard policy has allowed resin systems that do not meet MIL–R–21607 to be accepted as fire retardant resins if they have a flame spread rating of 25 or less when tested to ASTM Standard E–84 (per NVIC 8–87 with Change 1). This policy was changed with the publication of the IFR which raised the maximum E–84 flame spread rating to 100 for qualifying fire retardant resins. The text of § 177.410(b) of this rule is amended to retain the allowance of fire retardant resins meeting MIL–R–21607 that was previously in subchapter T regulations for vessels that carry 150 passengers or less. For polyester resins that have not been accepted under MIL–R–21607 or other resin types such as epoxy, phenolic, and vinyl ester, alternate acceptance criteria using ASTM E–84 have been established. The end result is that the spirit of NVIC 8–87 requirements for fire retardant resins has been effectively incorporated into the regulation. In order to qualify resin systems using ASTM E–84, either the resin manufacturer or the shipbuilder must submit test results of the resin system as tested in a glass fiber laminate form. The regulation does not specify a laminate schedule for testing, but rather specifies a range of laminate thickness and a minimum resin content by percent weight. The glass fiber reinforcement may be in any form (i.e., chopped strand mat, woven roving, cloth, chopped fiberglass) as long as the test laminate contains a minimum of 40 percent resin content by weight. This resin content was chosen in order to be consistent with the requirements of MIL–R–21607 which specifies a resin content between 38 and 44 percent. A resin system that passes the ASTM E–84 requirements may be used in any laminate, of any thickness, resin content, and with any type of fiber reinforcement including glass fiber, polymer fiber, and carbon fiber. The Coast Guard has determined that this provides an acceptable equivalent to the MIL–R–21607 requirements for a fire retardant rating. Note that the 1 year weathering criteria is not required for

laminates tested to ASTM E–84. If a builder, using a certain lay-up process and laminate schedule, is able to attain the required flame spread rating even though the particular resin system used has not previously qualified as fire retardant, then a request for consideration for qualifying that specific laminate schedule in a particular vessel may be submitted to the MSC.

Section 178.310 Applicability Based on Length and Passenger Capacity

One comment noted that following references to three or four different regulations is extremely complicated for individuals with limited reading skills.

The Coast Guard appreciates the concern with the complicated nature of the regulations, and agrees that they can be confusing. However, continuous efforts are being made to simplify the format. The regulatory cites in paragraphs (a) and (b) provide options for compliance with intact stability standards. To repeat wording on the same page or out of subchapter S would be redundant and make the regulations more confusing.

Section 178.325 Intact Stability Requirements for a Sailing Vessel

One comment questioned why sailing school vessel stability standards are included in this part.

The Coast Guard states that part 169 refers to subchapter S, parts 170–174, for stability requirements, as does § 178.325. Sailing school vessels can also be inspected as subchapter T boats. For this reason, reference to them must be included in this subchapter.

Section 178.330 Simplified Stability Proof Test

The Coast Guard has reevaluated this section. The simplified stability test on passenger vessels less than 65 feet is done in accordance with § 178.330 (§ 171.030 in old subchapter T). The vessel is to be loaded as described in § 178.330(a)(4). The traditional method for conducting the simplified test is provided on Coast Guard form, CG–4006 (Rev. 8–79). This form dates back to "Ancient" subchapter T in § 179.10–1, but the verbiage in new subchapter T is quite similar. Basically, the total weight of all persons and other loads are to be on board and "distributed so as to provide normal operating trim and to simulate the vertical center of gravity (VCG), causing the least stable condition that is likely to occur in service." Form CG–4006 goes one step further. On page 2 of 8, paragraph (2), the weight distribution on board a vessel "having one upper deck above the main deck available to passengers . . .," has an additional safety factor thrown in that is not currently taken from or referenced in the regulations. The weight located on the one upper deck is the equivalent of 1.33 times the actual weight of passengers to be located there. The rationale for doing so is understood, however, one problem is it appears "arbitrary" with no reference in the regulations and no other apparent basis. It certainly does help to ensure the conservatism of the test, which has been proven by the test of time since it appears no subchapter T boats have been lost due to stability who have performed this simple stability test. The Coast Guard affirms keeping the 1.33 safety factor for weight distribution on the upper deck, and put it in § 178.330(a)(4) of the new regulation. The simplified stability test is written in accordance with § 171.030, and all other test parameters are referenced in this section. Although there does not appear to be any formal explanation as to the origin of the ⅓ safety factor applied to the passenger weight distribution on the upper deck, the simplified stability test has clearly withstood the test of time. It has been double checked and validated in numerous casualty investigations, and this change will be made in subchapter S, under § 171.030(c).

Section 179.212 Watertight Bulkheads for Subdivision

Two comments supported the watertight division requirements for wooden hull vessels.

The Coast Guard thanks the industry for this input.

Section 179.230 Damage Stability Requirements

One comment noted that in the new regulations, vessels demonstrating intact stability through calculation were no longer required to meet damage stability requirements, and urged the Coast Guard to reinstate the requirement.

The Coast Guard agrees. The damage stability requirements for vessels less than 19.8 meters (65 feet) carrying more than 49 passengers and vessels carrying more than 12 passengers on an international voyage were inadvertently deleted in the SNPRM. In order to remain consistent with subchapter S, reference to § 179.212(b) has been removed. This will ensure that any vessel required to meet intact stability and Type II subdivision standards in subchapter S will also have to meet damage stability.

Section 179.240 Foam Flotation Material

One comment questioned why there is a length limitation of 65 feet for the use of foam flotation in subchapter T when there is no such limitation in subchapter S (§ 170.245). It was recommended that the length limitation from subchapter T be removed and leave the decision to the OCMI.

The Coast Guard agrees that the regulations should be consistent. The NPRM originally proposed the limit on foam flotation for small passenger vessels, understanding that proper subdivision for larger vessels should not be an issue. When subchapter K was created in the SNPRM, subchapter K vessel stability was addressed in subchapter S. Subchapter S should have been revisited to address the use of foam flotation for subchapter K vessels. However, since approval of the use of foam as flotation material remains with the cognizant OCMI and/or the MSC, and in view of MSC experiences, the length restriction of subchapter T is removed and does not weaken the intent of the regulation. In addition, the text in § 179.240(b)(1) to meet the requirements for fire resistance in MIL–P–21929 has been removed. The Coast Guard approval process for flotation foams does not currently require these materials to meet the fire resistance criteria in MIL–P–21929.

Section 179.350 Openings in the Side of a Vessel Below the Bulkhead or Weather Deck

One comment wanted to know if a flap-operated check valve would be considered a positive action valve.

The Coast Guard says no. Positive action valves are gate, ball, barrel, or globe valves.

Section 179.360 Watertight Integrity

One comment recommended that the Coast Guard reconsider six inch coaming requirements due to trips and falls of passengers. Another comment recommended that the Coast Guard consider the use of removable coamings that could be used in the event of severe weather to minimize downflooding.

The coaming issue has been previously discussed under § 116.1160. The use of removable coamings is not specifically prohibited in the regulations. However, the Coast Guard has determined that a coaming installed only part of the time would add to passenger confusion and injuries in the event of an emergency such as rough weather.

Sections 117.10 and 180.10 Applicability to Vessels on an International Voyage

One comment asked what subchapter W is? Another comment recommended a vessel less than 65 feet carrying less than 12 passengers on an international voyage should not have to meet SOLAS requirements and carry life rafts.

The Coast Guard advises that reference to subchapter W (46 CFR chapter I, subchapter W) was a proactive step designed to minimize the number of revisions to the final rule. Subchapter W was published as an interim rule on May 20, 1996. The Coast Guard also states that it was not its intention to require vessels, not subject to SOLAS, to meet requirements based upon international standards. Both sections are revised to indicate requirements for vessels subject to SOLAS.

Sections 117.15 and 180.15 Applicability to Existing Vessels

Two comments stated that all existing vessels should have the option of a ten year phase-in period regarding survival craft installation.

The Coast Guard disagrees. The Coast Guard's stand on grandfathering has not changed since the publication of the SNPRM and the IFR.

Sections 117.64 and 180.64 Emergency Position Indicating Radiobeacons (EPIRB)

One comment stated that the Coast Guard should not require EPIRBs until a cost benefit analysis shows the need for these devices.

In the report "A Study of Lifesaving Systems," the Coast Guard determined that more lives would have been saved if the vessels involved would have had EPIRBs rather than inflatable survival craft. The successes seen in the fishing vessel industry as a result of the required 406MHz satellite EPIRB supports the need for the small passenger vessel industry to upgrade to the more accurate and reliable device.

Sections 117.68 and 180.68 Distress Flares and Smoke Signals

(1) One comment questioned the exemption of not requiring vessels on short runs to carry distress signals. The comment noted that recreational vessels are required to carry distress signals.

The Coast Guard advises that the exemption is designed for ferries and other vessels on set schedules and operating not far from shore. No changes have been made to these sections.

(2) After review of the IFR, the Coast Guard has included "limited coastwise" as an applicable route in paragraph (a) of both sections.

Section 180.70 Ring Life Buoys

(1) One comment recommended that the term "ring life buoy" be used in the title for subpart C.

The Coast Guard agrees. In both subchapters K and T, the heading for subpart C reads "Ring Life Buoys and Life Jackets."

(2) After review of §§ 117.70(c)(5) and 180.70(c)(5), the Coast Guard has changed the term "510 kilograms" to "5 kilonewtons" to indicate force units.

Sections 117.71 and 180.71 Life Jackets

(1) Six comments stated that the allowance for additional personal flotation devices (PFDs) to be carried for a temporary need and not marked with a vessel's name, but with another name or a company's name, needs to be addressed in this section.

This change would reduce the amount of confusion and misinterpretation within the Coast Guard and industry. The Coast Guard agrees. Language is included in § 122.604 to allow another vessel's name or a company's name to be on life jackets used to meet a temporary need.

(2) One comment recommended that all passengers be required to wear an inflatable life vest which fits the body and can be, in an emergency, inflated by pulling a string.

The Coast Guard has not determined that this is a practical solution for reducing the number of fatalities due to an individual falling overboard. The master of a vessel is responsible for the passengers and crew of that vessel. In instances of rough weather or other potentially dangerous situations, the master is responsible for ensuring that the passengers and crew are properly outfitted for an emergency.

Section 180.75 Life Jacket Lights

One comment recommended that ferries and vessels operating within 20 miles from a harbor of safe refuge be required to carry life jacket lights.

The Coast Guard disagrees. The Coast Guard has determined that vessels operating within 20 miles from a harbor of safe refuge are close enough to search and rescue resources so that, by the time assistance arrives on scene, persons in the water should not become separated too far from survival craft (inflatable buoyant apparatus (IBA), life floats, and buoyant apparatus) equipped with marker lights. This is especially true with the rapid distress notification proven with the Category 1, 406 MHz, satellite EPIRB that is required for vessels operating on a limited coastwise route.

Sections 117.130 and 180.130 Stowage of Survival Craft

After review of the IFR, the Coast Guard amends these sections by referring to the approval series 160.062 and 160.162 for hydrostatic release units.

Sections 117.150 and 180.150 Survival Craft Embarkation Arrangements

The Coast Guard revises §§ 117.150(a) and 180.150(a) to correct a discrepancy noted when trying to apply the survival craft embarkation standards. A launching appliance approved under the approval series 160.032 is not suitable for liferafts. For davit-launched liferafts, a liferaft launching appliance approved under the 160.163 series (with an automatic release hook approved under the 160.070 or 160.170 series) is the appropriate requirement. For throw-over liferafts and inflatable buoyant apparatus where the embarkation station is greater than four and one-half meters (15 feet) above the waterline, a marine evacuation system approved under the 160.175 series is the appropriate requirement.

Sections 117.175 and 180.175 Survival Craft Equipment

One comment suggested that the wording "12-thread manila" is confusing and outdated. Another comment stated that inflatable buoyant apparatus equipment packs are not the same as rigid buoyant apparatus.

The Coast Guard agrees. Wording is changed to reflect a ⅜ inch lanyard made of ultraviolet resistant material. Additionally, these sections are revised to state that an equipment pack in an inflatable buoyant apparatus is required to meet standards set by the manufacturer.

Sections 117.200 and 180.200 Survival Craft—General

(1) One comment noted that the reference to § 160.151 is not appropriate because it does not exist in 46 CFR. Another comment stated that there is no reference to inflatable buoyant apparatus in § 160.010, and IBAs are not defined in § 175.400.

The Coast Guard states that the approval series in § 160.151 has been used for years to indicate liferafts approved as complying with SOLAS. An upcoming revision to subchapter Q will contain the approval series in § 160.151. However, a change to the text in subchapters K and T, referring to the approval series, would be more appropriate. As for inflatable buoyant apparatus and other survival craft, the same reference to approval series should remove the confusion.

(2) Three comments stated that subchapter K and K" vessels are their own best survival craft. The comments also stated that there should be no

difference between the survival craft requirements between subchapters K and T. Two comments suggested that since subchapter T boats can install watertight bulkheads to avoid carrying IBAs, subchapter K vessels should have the benefit of the lesser requirement.

The Coast Guard disagrees. The Coast Guard's concern is putting large numbers of passengers in cold water offshore. Warm water requirements are similar between subchapters K and T. The Coast Guard recognizes that subchapter K vessels are built to more stringent standards; however, survival craft standards are driven by the number of passengers on board. The industry should recognize that there is a difference between carrying 100 passengers, 20 miles offshore and 400 passengers on the same route. All things being equal (i.e., Steel vessel of similar dimensions), a subchapter K vessel requires structural fire protection and out of the water survival craft for 67 percent of the passenger capacity (will accommodate 100 percent of passengers). The Coast Guard considers these increased requirements necessary to address the vessels operating environment, proximity to adequate rescue resources, and number of passengers carried.

(3) Three comments noted that three miles is used as a breakpoint for survival craft operating on a limited, coastwise route. Offshore casino vessels operate beyond three miles, but no further, and should receive the same treatment. The comments recommended moving the breakpoint to five miles.

The Coast Guard disagrees. The three mile breakpoint resulted from new EPIRB requirements. The EPIRB provides an equivalent level of safety for vessels electing to not carry additional survival craft within three miles. Vessels operating beyond three miles and not wanting to carry required survival craft must convince the OCMI that they have provided an equivalent level of safety.

(4) One comment noted that in Table 117.200, Footnote 9, § 117.207(e) should read § 117.207(f).

The Coast Guard agrees and the change is made. In addition, Footnote 8 is changed to read § 117.207(e).

(5) The Coast Guard deletes the term "citation in brackets" in paragraph (c) in both sections.

Section 180.202 Survival Craft—Vessels Operating on Oceans Routes

One comment stated that 67 percent inflatable buoyant apparatus does not provide enough capacity for all passengers carried.

The Coast Guard disagrees. As stated in the preamble to the IFR, IBAs are tested to a 150 percent overload capacity. This means that a vessel with 67 percent IBA capacity can accommodate 100 percent of the persons on board.

Section 180.204 Survival Craft—Vessels Operating on Coastwise Routes

(1) One comment recommended that life floats be phased out because they do not provide adequate out of the water hypothermia protection.

As stated in the preamble to the IFR, the Coast Guard reduced survival craft requirements from those proposed in the SNPRM due to the casualty history of the small passenger vessel industry. Even the Coast Guard's own study of subchapter T boat casualties concluded that more people would have been saved if the vessels were equipped with EPIRBs rather than inflatable survival craft.

(2) One comment stated that life floats do not provide adequate shark protection.

The OCMI has the latitude to require additional survival craft in areas considered hazardous. This may include shark infested waters. However, casualty statistics do not indicate a trend in fatalities due to shark attacks.

Sections 117.205 and 180.205 Survival Craft—Vessels Operating on Limited Coastwise Routes

(1) Two comments recommended that the Coast Guard authorize vessels to reduce the number of IBAs required during winter months when fewer passengers are carried.

The Coast Guard advises that the OCMI has the authority to endorse the COI with a cold water restriction.

(2) One comment suggested that the reference to § 180.204(d) is confusing. It was recommended that the requirements be spelled out in each section.

The Coast Guard disagrees. The Coast Guard is trying to reduce redundant wording in the regulation.

(3) One comment stated that wood vessels less than 65 feet operating on limited coastwise (LCW) routes are just as safe as FRP vessels in cold water and should not be required to carry inflatable buoyant apparatus.

The Coast Guard advises that wood vessels account for over 90% of the loss of vessel/loss of life casualties over the past 20 years. Statistics indicate that the route of a vessel did not matter. Existing wood vessels less than 65 feet also have the option of installing watertight bulkheads in lieu of carrying inflatable survival craft.

Section 117.207 Survival Craft—Vessels Operating on Lakes, Bays, and Sounds Routes

One comment recommended that vessels meeting paragraph (f) should use the existing 30 percent life float requirement. The comment further recommended changing the wording in paragraph (f) "may be granted a reduction* * *" to "be provided with life floats of an aggregate capacity that will accommodate at least 30 percent of the total number of persons on board."

The Coast Guard disagrees. The wording in the IFR appropriately allows the OCMI latitude in reducing the amount of primary lifesaving equipment on board a certain vessel.

Sections 117.208 and 180.208 Survival Craft—Vessels Operating on River Routes

(1) One comment recommended the Coast Guard revisit the issue of not requiring vessels operating within one mile of shore on a rivers route to carry survival craft.

The Coast Guard states that the one mile exemption is carried over from the old small passenger vessels regulations. Casualty statistics do not warrant increased survival craft requirements on vessels operating in such close proximity to shore.

(2) Two comments recommended adding a three mile equivalent or alternative to the 15 minute radio communication schedule.

The Coast Guard states that the three mile distance criteria applied to other bodies of water is not practical in a rivers route. Most vessels will be exempt from survival craft requirements because they will operate within one mile of shore. For vessels that do operate beyond one mile from shore, a 15 minute communications schedule or participation in a Vessel Traffic Service (VTS) allows the vessel to quickly notify the Coast Guard in the event of a casualty.

Sections 117.210 and 180.210 Rescue Boats

One comment stated that rescue boat is not well defined. It also stated that the reference to subchapter H is not specific as to which part. Two comments stated that the subchapter Q standard for a rescue boat ignores 50 years of experience. They noted that even the Coast Guard uses rigid hull inflatable boats with great success. The comments recommended that the Coast Guard consider the use of rescue boats other than those approved by subchapter Q. The Coast Guard agrees that rescue boats of the rigid-hull inflatable type can provide satisfactory service. In the past, OCMIs have approved boats such as rigid-hull inflatables as "equivalents" to straight 160.056 rowboat-type rescue boats. This practice will not change. With the publication of subchapter W on May 20, 1996 (61 FR 25272), the reference to subchapter H in §§ 117.810 and 180.810 is no longer appropriate since § 75.10–5(e) no longer exists. In order to maintain the intent of the rescue boat section, performance language from the old subchapter H requirement has been added to both subchapters K and T. In addition, the approval series 160.056 has been retained for vessels operating on protected waters. The 160.156 approval series cited as the rescue boat standard in subchapter W allows the use of rigid-hull inflatable and entirely inflatable rescue boats. The Coast Guard has determined that by adding performance language, retaining the 160.056 standard for vessels operating on protected waters, and adding the 160.156 approval series for vessels operating on exposed and partially protected waters, the intent of the former subchapter H cross reference is maintained.

As resources allow, rescue boat requirements in subchapter Q will be updated to reflect the variety of available, suitable boats.

Sections 118.300 and 181.300 Fire Pumps

(1) One comment noted that the word "manual" is confusing when discussing local operation of the fire pump. The comment wanted clarification as to what is meant and is it the intent of the Coast Guard to require a manual electric switch at the pump? Two comments recommended the section be reworded to read "A fire pump must be capable of operation from both the control station and the pump location."

The Coast Guard acknowledges that the intent is to be able to operate the pump from the operating station and locally at the pump. How that is to be accomplished is up to the owner or operator of the vessel. In order to reduce confusion, the word "manual" is deleted.

(2) Two comments suggested that the fire pump required in § 181.300(b) for vessels less than 65 feet carrying more than 49 passengers is excessive and should be reconsidered using casualty data. In addition, fixed extinguishing systems will be required, so the fires encountered will be put out with portable extinguishers.

The Coast Guard disagrees. Subchapter T previously required a fire pump on vessels that carry over 49 passengers. Casualty history available to the Coast Guard may not accurately reflect the number of fires on these vessels, since fires which were extinguished using the fire pump may not have been reported. The Coast Guard has determined that vessels which carry more than 49 passengers represent a risk that warrants requiring a fire pump, regardless of vessel size. No changes were made to this section.

(3) With regard to the comment about fires encountered being put out with portable extinguishers, the Coast Guard disagrees, in that portable extinguishers are not an acceptable replacement for a firemain system. Portable extinguishers are adequate only for small incipient fires, have limited amount of agent, and provide the fire fighting agent for a short duration. On the other hand, hose streams off of a firemain system provide unlimited water supply.

Sections 118.310 and 181.310 Fire Main and Hydrants

As previously discussed in §§ 114.400 and 175.400, the Coast Guard amends § 118.310 by adding a new paragraph (d) requiring vessels carrying more than 600 passengers or with overnight accommodations for more than 49 passengers to meet subchapter H fire main and hydrant standards. This is already required under the IFR for vessels carrying more than 600 passengers, and was a recommended and accepted practice in NVIC 11–83 for vessels with overnight accommodations for more than 49 passengers. In addition, §§ 118.310 and 181.310 are amended by adding paragraph (c) that requires isolation valves on fire hydrants to allow damaged hoses to be removed and replaced while the fire main is charged. This is a common marine design practice that the Coast Guard has determined must be maintained.

Sections 118.320 and 181.320 Fire Hoses and Nozzles

As previously discussed in §§ 114.400 and 175.400, the Coast Guard amends §§ 118.320(a) and 181.320(a) by replacing "fire stations" with "fire hydrants."

Section 181.400 Where Required

(1) One comment recommended that the documentation for a fixed CO^2 fire extinguishing system be retained. The comment reiterated the NTSB recommendation M–95–37 from the ARGO COMMODORE fire casualty requiring that plan approval records for fixed fire extinguishing systems be maintained for the life of the vessel.

The Coast Guard has not determined that it is necessary to issue a regulation requiring vessel owners to retain plan approval records for their vessels. NVIC 13–83 encourages vessel owners and operators to keep a complete set of vessel plans, including fixed firefighting system plans.

(2) Four comments stated that the industry is still concerned over automatic shutdown of main engines and ventilation, and recommended that fire and heat detectors are a better alternative.

The Coast Guard advises that detection systems are required by § 181.400. It is true that manual systems are still required to shutdown machinery and ventilation, because one of the keys to fighting a fire is keeping the extinguishing agent in the space protected.

(3) Three comments stated that fire extinguishing systems should not be retrofitted to all existing wood and FRP vessels. They stated the casualties do not justify the cost to the industry.

As for justification and cost, the Coast Guard's position has not changed since the SNPRM and IFR. The vessels most at risk are wood and FRP.

(4) One comment noted that by definition a wheelhouse is a control space. The comment asked if § 118.400(e)(1) and (e)(2) require a smoke activated and manual fire detection system in the wheelhouse?

The Coast Guard acknowledges that the wording used in the IFR would lead someone to believe that a detection system is required in the wheelhouse. However, from a practical standpoint, the Coast Guard has determined that placing an automatic and manual fire detection system in a continuously manned operating station is unnecessary. This section is revised accordingly.

Sections 118.410 and 181.410 Fixed Gas Fire Extinguishing Systems

(1) After further review of the IFR, the Coast Guard has determined that paragraph (b)(2) of these sections needed to be revised to clarify when release of an extinguishing agent requires two distinct operations. The reference to paragraph (c)(2) may be confusing to the reader. The Coast Guard has amended these sections by removing any confusing references.

(2) Section 118.410(d)(7)(ii) has been revised to be consistent with § 181.410(d)(7)(ii), which requires the distribution lines to undergo a test similar to that conducted on the manifold system. This correction is needed to allow for the 300 PSI pressure

drop that is indicated in paragraph (d)(7)(i).

Sections 118.500 and 181.500 Required Number, Type, and Location

One comment recommended that the regulations should better describe the different types of extinguishers or define portable or semi-portable; the old regulations did.

The Coast Guards states that the new regulations contain the same information as the old regulations, but in a slightly different format.

Sections 119.320 and 182.320 Water Heaters

One comment stated that the requirements for water heaters are confusing. It was recommended that the Coast Guard reduce the amount of technical data. Hooking up a water heater is not a difficult task.

The Coast Guard partially agrees that the language is confusing. Most water heater installations will meet the exception criteria in paragraph (b). The Coast Guard has determined that there also needs to be a reference to larger, higher capacity installations. The Coast Guard redesignates paragraph (b) as (a) and vice versa in order to reduce any confusion.

Section 182.415 Carburetors

One comment noted that Coast Guard Approval Numbers 162.015, 162.042, and 162.043 are not in the current subchapter Q. In addition, Approval Number 162.043 cannot be found in the Coast Guard's Equipment lists (COMDTINST M16714.3E) and is confusing.

The Coast Guard agrees that the referenced Approval Numbers are old, and were used prior to SAE and UL standards. The intent is that older gas engine installations can remain in service using previously approved equipment as long as that equipment is in good and serviceable condition.

Section 119.425 Engine Exhaust Cooling

One comment recommended allowing the injection of engine exhaust cooling water farther down stream if the exhaust line forward of the cooling water injection is properly insulated. This has been accepted by MSC in the past.

The Coast Guard partially agrees. Equivalencies are granted on a case by case basis, and this practice will continue. If the designer is concerned about water injection, consider a dry horizontal system.

Sections 119.430 and 182.430 Engine Exhaust Pipe Installation

Two comments stated that check valves installed in exhaust lines impede the flow of exhaust. They recommended changing the wording to read "deter or minimize the in flow of water."

The Coast Guard partially agrees. The intent of paragraph (d) is to prevent cold water from entering the exhaust system. There is no requirement for a check valve to be installed. However, in the interest of clarity, the Coast Guard has determined that paragraph (c) provides enough guidance as to the exhaust installation, and has removed paragraph (d).

Section 182.435 Integral Fuel Tanks

In the recent past; the Coast Guard has been asked to make this section performance based, rather than limited to strictly closed cell polyvinyl chloride (PVC).

The Coast Guard agrees this should be done, and has revised this section to allow for equivalents to closed call PVC foam.

Section 182.445 Fill and Sounding Pipes for Fuel Tanks

Four comments stated that paragraph (b) of this section is entirely unnecessary. The comments also stated that sounding pipes are not always practical, and gages are expensive and troublesome. Small passenger vessels, especially ferries, operate on scheduled runs so fueling is done on a schedule corresponding to that vessel. Recordkeeping should be an acceptable alternative.

The Coast Guard disagrees. Fuel tank level monitoring is an indispensable part of not only fuel management, but also damage control. If a tank is in communication with the sea, bilge, cargo, or any other tank, no matter what the contents, the proper level must be able to be determined for stability and environmental protection concerns.

Sections 119.458 and 182.458 Portable Fuel Systems

One comment questioned whether the prohibition against the use of portable fuel systems also restricts the carriage of emergency gasoline-operated pumps and generators.

The Coast Guard states that generators that use gasoline or any other fuel must meet the requirements of parts 119 and 120 or 182 and 183 in subchapters K and T, respectively. As for emergency dewatering pumps, the Coast Guard has determined that their use should not be prohibited. Sections 119.458 and 182.458 are revised to allow dewatering pumps. Additional guidance on the carriage of spare fuel is in Volume II, page 10–3, of the Coast Guard MSM.

Section 119.465 Ventilation of Spaces Containing Diesel Machinery

The Coast Guard notes that the prohibition of dampers in machinery space supply air ducts in paragraph (f) is contradictory to § 116.610(f) which requires automatic fire dampers in ducts serving machinery spaces.

The Coast Guard has determined that the requirements designed to contain a fire within a machinery space take precedence over the damper prohibition. Paragraph (f) in § 119.465 is revised to reflect the requirements in § 116.610(f).

Section 182.465 Ventilation of Spaces Containing Diesel Machinery

One comment asked what if there is only one exhaust outlet for multiple ventilation intakes? Does the area of the exhaust have to be proportionally increased with the number of inlets?

The Coast Guard advises that paragraph (c) of this section requires at least two intake and two exhaust ventilation ducts. Each duct must have the open area indicated in the paragraph. Where additional ducts are installed, each additional duct must meet the requirements of this section.

Section 182.520 Bilge Pumps

(1) One comment stated that bilge pumps are not dewatering pumps. They are used for the maintenance removal of accumulated water. A 25 gallon per minute (GPM) pump is larger than needed on vessels less than 65 feet carrying more than 49 passengers. The comment suggested a ten GPM pump.

The Coast Guard states that a 25 GPM pump has been the standard for 30 years, and the Coast Guard sees no reason to change to a less conservative standard.

(2) One comment recommended that the discharge hose mentioned in paragraph (b)(2) of this section be long enough to discharge the water over the side of a vessel.

The Coast Guard agrees. The wording in paragraph (b)(2) is revised to read the same as § 119.520(b)(2).

Sections 119.530 and 182.530 Bilge High Level Alarms

(1) One comment suggested that bilge alarms are okay for vessels without one compartment subdivision, but excessive for other vessels.

The Coast Guard disagrees that only vessels without one compartment subdivision need a high bilge level alarm. The time to discover that your vessel has taken on water is not when you start to "feel" the vessel move differently. In an emergency situation, time is everything and can mean the difference between life and death.

(2) Two comments suggested a bilge pump resettable counter in lieu of an indicator light. Sometimes, the bright sunlight makes it hard to see the indicator light, and the operator may not be aware of how many times the bilge pump has cycled on and off.

The Coast Guard states that the regulation only calls for a visual indicator. The intent of the requirement is to give the operator an indication when the automatic bilge pumps are running. Where lights are not practical, the OCMI considers alternatives proposed by the owner or operator.

(3) One comment questioned if a separate light is required to indicate that the automatic pump is running. This point is not clear.

The Coast Guard states that a separate indicating light is required because a "pump running" light is not an alarm as required by paragraph (a). No additional clarification is required.

Section 182.610 Main Steering Gear

One comment noted that paragraph (f)(1) of this section references 46 CFR 111.93–11(d). This cite does not exist. The comment also questioned why is overload protection prohibited for steering gear systems?

The Coast Guard acknowledges that the reference to § 111.93–11 is outdated. The new subchapter F cite of § 58.25–55(d) is added to subchapter T. The Coast Guard advises that overload protection is prohibited on steering gear systems to ensure that the steering gear will continue to run until failure in an emergency. Only short-circuit protection is allowed for the reasons of preventing catastrophic damage to motors, wiring, and the possibility of fire.

Section 182.720 Nonmetallic Piping Materials

(1) Two comments noted that this regulation means that the operator cannot replace a fuel or hydraulic hose with make up fittings. Ordinary practice is to assemble replacement hoses using material that far exceeds the pressure demands of the system. If a hose is replaced in an 80 pound per square inch (psi) system with a 1000 psi hose, the proof test, at twice the rated pressure, is not possible.

The Coast Guard agrees. The wording in paragraph 182.720(e)(1) is changed to "twice the maximum operating pressure of the system."

(2) After review, the Coast Guard has revised paragraph 182.720(e)(3)(ii) to include watertight decks in addition to watertight bulkheads.

Section 183.322 Multiple Generators

One comment noted that the revision of subchapter J is complete. The IFR references subchapter J prior to its revision. Which version is to be used?

The Coast Guard states that a review of the newly revised subchapter J has been done to ensure that the referenced cites are still accurate and appropriate. The cites listed in this rule are appropriate.

Sections 120.340 and 183.340 Cable and Wiring Requirements

One comment noted that the revision to subchapter J allows the use of wire nuts for wire and cable connections. Subchapters K and T specifically prohibit the use of wire nuts. The regulations need to be consistent and not allow the use of wire nuts.

The Coast Guard states that wire nuts are allowed in subchapter J subject to very specific conditions outlined in § 111.60–17. The Coast Guard has determined that reiterating those conditions in paragraph (i) of these sections is appropriate in order to be consistent with subchapter J.

Section 183.376 Grounded Distribution Systems (Neutral Grounded)

One comment noted that this cite correctly assumes that there could be a dual voltage system not fed by a dual voltage generator and, therefore, could be of the ungrounded or floating neutral type. Because this is possible, a reference needs to be made to § 111.05–25 of subchapter J for ground detection of ungrounded systems. This will avoid confusion during the plan approval process for both the Coast Guard and industry.

The Coast Guard agrees. Text in subchapter J is added to subchapters K and T under new §§ 120.378 and 183.378 entitled "Ungrounded Systems."

Section 183.430 Portable Lights

One comment suggested that small (30 feet or less), outboard powered, open boat (or small boat with no enclosed engine space) should be required to carry only one operable, portable light.

The Coast Guard advises that this type of request should be made to the OCMI. It is reasonable to assume that, if the vessel is not equipped with a separate machinery space, then the portable light required to be outside that space is not required. A regulatory change is not necessary.

Sections 120.432 and 183.432 Emergency Lighting

Two comments stated that the requirement for an emergency light to have a continuous operating capacity of six hours is excessive. Standard industrial units have a two hour capacity.

The Coast Guard agrees. Emergency lighting used to escape from below deck spaces on a small passenger vessel should not need to run more than two hours. The six hour criterion is reduced to two hours.

Sections 121.220 and 183.220 Cooking Equipment

One comment recommended that the Coast Guard require UL approval on cooking appliances, and the requirement for heavy duty hinges is unclear.

The Coast Guard has determined that the general requirements contained in this section adequately address the safety concerns regarding cooking equipment on board vessels. UL, NFPA, and American Boat and Yacht Council (ABYC) standards were considered in drafting this requirement in 1989. The Coast Guard agrees that the words "heavy duty" add no value to the requirement and has removed those words from both § 121.220 in subchapter K and § 184.220 in subchapter T.

Section 184.402 Compasses

One comment asked if existing vessels were supposed to be exempt from the illuminated compass requirement.

The Coast Guard acknowledges that existing vessels are exempt unless the OCMI decides that due to the route or service of the vessel an illuminated compass is required. All new vessels, unless exempted by paragraph (b), are required to have an illuminated compass.

Section 121.404 Rodars

Three comments wanted to know who decides if a radar is suitable. There are no criteria to determine a standard. How can a designer or builder know what to look for? Different Coast Guard Districts may have different standards. The Coast Guard should either set performance standards or let the master decide what is appropriate, and hold the master responsible for the safe operation of the vessel.

The Coast Guard agrees that performance standards are needed to determine if a radar is suitable. As stated in the SNPRM preamble, the Radio Technical Commission for Maritime Services (RTCM) was developing recommended standards for

radar on small vessels. The Coast Guard received those recommendations after the drafting and publication of the IFR and, therefore, could not publish them for public comment. The Coast Guard has determined that the recommendations of the RTCM are acceptable for determining the suitability of radar on towing vessels (61 FR 35064) and that the same standards should apply to small passenger vessels. However, the recommended standards cannot be incorporated into the Final Rule without public comment. Therefore, the Coast Guard will establish policy guidance for owners, operators, builders, and OCMIs to help determine the suitability of radar installations on small passenger vessels. The policy will be based on the RTCM standards, but will also allow flexibility in the event that certain recommended standards are impractical for small passenger vessels. Based upon feedback to the policy, the Coast Guard will consider revising the radar requirements for small passenger vessels in a future rulemaking.

Sections 121.420 and 184.420 Charts and Nautical Publications

Two comments stated that charts and nautical publications are not necessary for ferries which run from point A to B and back day after day.

The Coast Guard agrees that not all vessels require the same charts and nautical publications. The OCMI has discretion as provided by the words "As appropriate..." in paragraph (a) to allow relaxation of certain requirements based on a particular vessel's operation.

Sections 121.506 and 184.506 Emergency Broadcast Placard

Two comments stated that the emergency broadcast placard is unnecessary. Federal Communications Commission (FCC) licensed radio operators and the crews are aware of the contents of a distress call. Even if an individual was unaware of the proper procedures, in an emergency, correct procedure does not take precedence; saving time and lives do.

The Coast Guard disagrees. A lack of proper procedure in an emergency may be the difference between a quick and a delayed response by the Coast Guard. In many emergencies, a vessel's crew has one chance to get a distress call off. Valuable information regarding the location, number of passengers, or conditions on scene could be left out and thus hamper rescue efforts. The Coast Guard has determined that the placard serves a real purpose as a memory jogger for individuals using the radio in an emergency.

Sections 121.702 and 184.702 Oil Pollution Prevention Equipment and Procedures

Even though the text of these sections refers to 33 CFR part 155, the title of these sections does not take into consideration the garbage plan requirements of 33 CFR 155.540. The Coast Guard amends the title of these sections to read "Pollution prevention equipment and procedures."

Sections 121.710 and 184.710 First Aid Kits

Four comments stated that the rule on first aid kits is unacceptable and must be withdrawn. The subchapter Q approval must be rewritten before it can be used as a standard for subchapter T vessels. The approval is 46 years old and outdated. Two comments noted that the requirement to have or dispense drugs, even the over-the-counter variety, needs careful consideration. Many vessels will not dispense aspirin, sea-sick pills, etc., but might have them available for sale to reduce or remove their liability. One comment suggested that the routes and missions of vessels need to be considered when determining the type of first-aid kit required. Two comments recommended that the "Good Samaritan" provision is needed in the rewrite of § 160.041 of subchapter Q. OSHA approved first aid kits should be an approved substitute instead of the Coast Guard approved kits.

The Coast Guard agrees that the approval published in subchapter Q is outdated and should not be used as the basis of a required first aid kit. As a matter of policy, the Coast Guard provides manufacturers seeking approval of first-aid kits under approval series 160.041 with much more basic guidelines. The following is a list of items required to be in a Coast Guard Approved first-aid kit under approval series 160.041:

(2) Units of Adhesive Bandage Compresses (16 per unit).
(2) Units of 5 cm (2 in.) Bandage Compresses (4 per unit).
(3) Units of 10 cm (4 in.) Bandage Compresses (1 per unit).
(2) Units of Triangular Bandages (1 per unit).
(2) Units of Absorbent Gauze Compresses (1 per unit).
(2) Units of 10 cm (4 in.) Gauze Roller Bandages (1 per unit).
(1) Aluminum Splint.
(1) Tourniquet.
(1) Unit of Eye Dressing Packet (Pads and Strips) (4 per unit).
(2) Units of 30 ml (1 oz) Eye Wash Solution.
(1) Unit of Ammonia Inhalants (10 per unit).
(1) Unit of Antiseptic Swabs (10 per unit).
(2) Units of 3.0 gram (0.11 oz) Burn Treatment Compound (6 per unit).
(2) Units of 324 milligram (5 grain) Aspirin Tablets (48 per unit).

This list is provided for operators who wish to build an equivalent kit as allowed by the regulations. The Coast Guard has determined that a first aid kit is important as an initial response tool for major and minor injuries on board small passenger vessels. The Coast Guard notes that some state marine boards required first aid kits above and beyond the old Coast Guard regulations. These kits were basic, yet afforded the master an opportunity to effectively respond to cuts, fish hooks and other minor injuries. The Coast Guard has revised the wording in subchapters K and T to reference the approval series 160.041, instead of citing the specification in subchapter Q.

Sections 122.202 and 185.202 Notice of Casualty

Eleven comments suggested that the term "treatment beyond first aid" be better defined. The comments recommended that the Coast Guard adopt the "Report of the Quality Action Team (QAT) on Marine Safety Investigations."

The Coast Guard agrees that "treatment beyond first aid" could be better defined. The Coast Guard has initiated a rulemaking project to address the recommendations in the QAT report. It is beyond the scope of this rulemaking to make changes to 46 CFR Part 4.

Section 185.280 Official Logbook for Foreign Voyages

(1) One comment asked where an individual could obtain official logbooks. The comment noted that they could not be obtained from the Government Printing Office.

The Coast Guard advises that the "Official Logbook, Merchant Marine" (CG–706B) can be obtained free of charge to the public through the General Services Administration (GSA). The supply number for the form is 753000F010040. In addition, the publication is not subject to copyright; it may be reproduced by anyone who desires to do so. However, care should be given not to create the appearance that the Coast Guard approves of an individual, entity, or group of either, as the appropriate source to obtain an official logbook. This can be done by including a statement in the book that the official logbook can be obtained for free from the GSA.

(2) One comment stated that the laws cited in official logbooks are outdated; 46 CFR was revised in 1983.

As for the out of date regulatory cites, the Coast Guard does not guarantee either that the citations are all inclusive or current. The Coast Guard expressly retains the discretion to allocate limited resources to perform tasks that preclude the updating of the statutory and regulatory authorities governing the matters addressed in the logbook.

(3) One comment suggested that logbooks needed to include the number of hours a crewmember is on watch. Crews on passenger vessels should not be allowed to work upwards of 30+ hours in a single stint.

The Coast Guard states that the updating of logbooks is beyond the scope of this rulemaking. Besides, small passenger vessels are required to carry alternate crews when operating more than 12 hours in any 24 hour period.

Sections 122.304 and 185.304 Navigation Underway

(1) One comment recommended that senior deckhands should be allowed to control the movement of the vessel.

The Coast Guard states that the master of a vessel has ultimate responsibility for the operation of that vessel. If the master places a deckhand, senior or otherwise, in control of the vessel, the master is still responsible for the deckhand's actions while at the helm.

(2) One comment recommended that paragraph (a)(6) of these sections be reworded with "visual and/or radar contacts" so that visual contacts are not ignored.

The Coast Guard agrees that a clarification is warranted and revises these paragraphs.

Sections 122.335 and 185.335 Loading Doors

One comment noted that paragraph (a) of these sections requires loading doors to be closed watertight. The comment noted that vessels with Load Lines are only required watertight hatches below the freeboard deck. It was recommended that the paragraphs be revised to allow for weathertight loading doors.

The Coast Guard agrees. The reference to watertight is removed. Loading doors that are required to be watertight should be watertight when closed and secured. The same goes for weathertight hatches.

Sections 122.410 and 185.410 Watchmen

One comment recommended that these sections be expanded to include language that a watchman shall provide assistance and protection to ill passengers located in deck areas. Another comment recommended that Commandant institute a change to 46 CFR 185.22 and require that at all times during which bunks in passenger areas below the main deck are occupied, the vessel's patrolman be required to guard against missing passengers as well as fire and other dangers. This will increase safety by minimizing the possible length of time before a passenger is discovered missing.

The Coast Guard agrees. Any passenger at risk of falling overboard should be identified and dealt with properly by the crew in order to prevent a man overboard situation. The sections are revised to include guarding against a man overboard situation.

Sections 122.420 and 185.420 Crew Training

(1) Two comments recommended the words "once every three months" be removed from paragraph (a). Sections 122.520 and 122.524 require monthly drills and training.

The Coast Guard disagrees. Certain aspects of the emergency instruction placard and Station Bill are not covered in the monthly drills. In addition, the once every three month requirement is intended to be used as a refresher and review of the vessel's safety procedures. Drills need not be carried out during this crew training.

(2) Five comments noted that many companies operate sister or comparably equipped vessels. The term "sister vessel" should be incorporated into this section.

The Coast Guard agrees that sister vessels within a fleet should be considered for crew training and drill purposes. A new paragraph (b) is added to address training on sister vessels.

(3) Two comments suggested paragraph (a) is contrary to good crew training. To bring a fresh, new crew member up to par, especially in a multiple boat fleet, is impossible without on the job training. Experience and shepherding from senior crew members are the best training methods, especially when backed up by company training sessions. The Coast Guard states that as with any job, new crew members will have fewer responsibilities than the more senior crew members. The Coast Guard does not see how requiring a company to indoctrinate new employees is contrary to good crew training. If individuals are going to be placed in a position of responsibility during an emergency, then they should have the requisite level of training.

(4) One comment stated that drill documentation needs to be better explained in §§ 122.420, 122.520, and 122.524. One comment recommended that language should be revised or added to state that when a vessel gets underway with passengers on board, the crew shall have sufficient training to handle an emergency. Three comments agreed with drill documentation; one disagreed. One comment stated that crew training requirements are too costly, especially for seasonal operations.

The Coast Guard considers the language of the crew training sections of subchapters K and T to be appropriate and does not see the need to shorten or further generalize the language.

(5) One comment suggested that crew training should be amended to include the identification of seasickness, with extreme nausea, as a hazardous condition.

The Coast Guard has not determined that additional language regarding seasickness is appropriate under the crew training sections. Sections covering man overboard, rough seas, and the revised Watchman sections provide adequate guidance to the master concerning their responsibilities and that of their crew to prevent or respond to a man overboard situation.

(6) One comment stated that logging drills is common sense, however, there is no requirement to keep attendance records on who has been trained. It was recommended that this requirement be added to the rule.

The Coast Guard notes that it is the master's responsibility to provide training to all members of a vessel's crew. The Coast Guard agrees that attendance records would be beneficial in determining compliance with the crew training requirements. However, the Coast Guard does not want to limit the compliance options currently open to vessel operators. During the comment period other options such as training cards carried by each crewmember were discussed.

Sections 122.504 and 185.504 Passenger Count

Seven comments stated that passenger counts are not accurate. The intent of these sections is understood, but the problem is with compliance for some operators, especially ferry vessel operators. One comment suggested that the requirement to keep a count of disembarking passengers should not be required for ferry vessels. Another comment recommended that a passenger count should not be required on vessels traveling less than a mile or on a run of less than 30 minutes.

The Coast Guard's position on passenger lists and counts has not changed from what was stated in the IFR. The Coast Guard needs to be informed of the number of people on board a vessel in the event of a casualty or other emergency requiring Coast Guard assistance. The requirements leave compliance methods up to the operator. The Coast Guard has determined that the maximum amount of flexibility has been built into the requirements while still maintaining the integrity of the law in 46 U.S.C. 3502.

Sections 122.506 and 185.506 Passenger Safety Orientation

(1) Two comments stated that passengers do not listen to the passenger safety orientation presentation. Eight comments recommended that the use of placards on bulkheads, especially on ferries and vessels in short (less than 30 minutes) and multiple stop service, be authorized. One comment stated that placards and handouts would only be read by those who read the PFD placards, that is, no one.

The Coast Guard advises that the intent of the regulation is to inform passengers of basic safety equipment locations and emergency procedures in the event of an emergency. This will help reduce the amount of confusion among passengers when crew members are trying to maintain control in an emergency.

(2) Two comments recommended authorizing the use of a tape recording on orientation when §§ 121.610 and 184.610 become mandated. Another comment recommended authorizing the use of handouts on vessels operating on oceans and coastwise routes. The Coast Guard agrees that all vessels should be able to use the alternative announcement in paragraph (b).

(3) One comment suggested that paragraph (b)(2) is counterproductive, would alarm passengers, and prove to be a boon to ambulance chasers. One comment stated that the requirement for overnight passengers to don PFDs and receive a safety orientation in paragraph (d) trickled down from subchapters H and K and should be eliminated from subchapter T.

The Coast Guard disagrees. Some operators commented that the announcement is not practical due to vessel design, operating environment, duration of voyage, or other restrictions. The Coast Guard agrees that the requirement could be more flexible, especially for ferries on short (less than 15 minute) runs. A new paragraph (c) has been added to allow the OCMI latitude in the use of bulkhead placards for ferries under unique operating conditions.

(4) Two comments recommended changing the language in paragraph (a) to read "as soon as possible after getting underway" to allow for some flexibility in the passenger orientation requirement.

The Coast Guard agrees. Paragraph (a) is changed to allow flexibility in when the orientation is given.

(5) One comment recommended adding zero tolerance language to safety orientation.

The Coast Guard indicates there are no plans to add zero tolerance language to safety orientation. However, vessel operators are not precluded from adding their company's zero tolerance language to the passenger orientation.

(6) One comment recommended that the Coast Guard should emphasize that seasickness is a hazardous condition, and that ill passengers should notify the crew, find a "buddy" to assist them during the illness, and don a PFD.

The Coast Guard agrees that all passengers who become ill have the right to contact a crewmember or the master. It is the master's responsibility to look after the passengers on his or her vessel. Afterall, this is a service industry and passengers should expect to be taken care of once on board a vessel. However, the Coast Guard has not determined that it is necessary to require the master of a vessel to announce that if passengers are ill, to report to a crewmember.

(7) One comment recommended that operators of older vessels, with lower than legal handrails.

The Coast Guard states since grandfathered vessels are allowed to have rails at a height previously approved, they are not illegal.

(8) Two comments suggested that the welcome aboard speech should not contain language that states that the master will require passengers to don PFDs in the event of a hazardous condition. Sea conditions that would require the donning of PFDs are avoided by operators.

The Coast Guard disagrees. The language is consistent with §§ 122.508 and 185.508. Informing passengers that in an emergency, they shall be required to don life jackets as directed by the Captain should not put them under any undue duress.

Section 185.508 Wearing of Life Jackets

(1) One comment suggested that crewmembers should be required to wear type 5 inflatable PFDs on deck when the master determines it is necessary due to weather or other extreme operating conditions. "The failure of the master to give such an order under such circumstances is gross negligence."

The Coast Guard emphasizes that the master of a vessel has the authority to require the crew to don PFDs due to operating or weather conditions. Inflatable PFDs are allowed as per § 117.73 (c) and (d), and § 180.73 (c) and (d) as work vests as long as they are approved as such under the 160.053 or 160.077 series.

(2) One comment was uncomfortable with the wording that the master shall require passengers to don life jackets under certain circumstances including "severe weather." Severe weather needs to be better defined or the word "shall" be changed to "may."

The Coast Guard states that replacing "shall" with "may" defeats the purpose of the requirement. This section outlines the master's responsibility for getting passengers and crew into life jackets under certain circumstances. No changes to this section were made.

(3) One comment stated that paragraph (a)(4) requires passengers to don PFDs when the vessel is under tow. This wording should be changed to "disabled vessels under tow" in order to avoid the interpretation that when the vessel is using an assist tug to come alongside a pier, the passengers must don PFDs.

The Coast Guard disagrees that paragraph (a)(4) should be clarified with the proposed language in the comment.

(4) One comment recommended adding paragraph (c) "The master of the vessel shall strongly recommend that if passengers become seasick and remain on deck, they should don a lifejacket."

The Coast Guard agrees with the intent of the comment about seasick passengers donning life jackets. However, the master of the vessel is responsible for safety of the passengers while on board his or her vessel. A prudent mariner, noting a passenger in distress to the point of being in danger of falling overboard, will take the appropriate action to ensure that passenger's safety. The Coast Guard has determined that no changes to this section of the regulations are required at this time.

Section 185.510 Emergency Instructions

One comment recommended including seasickness with nausea in the emergency instructions and indicate appropriate cautionary actions to be undertaken by the crew. The emergency instructions are geared toward emergencies affecting the entire vessel.

The Coast Guard has not determined that it is appropriate to address individual seasickness in this section.

Section 122.520 Abandon Ship and Man Overboard Drills and Training

Three comments stated that the requirement that a vessel cannot get underway if more than 25% of the crew has not received training is burdensome. Abandon ship and man overboard drill techniques, once mastered, are transferable. It is recommended that paragraph (2) be deleted as written. Restate as a goal that the master shall ensure that each crewmember is trained to respond in an emergency. Four comments recommended allowing for crossover training on sister vessels. As stated previously, the Coast Guard modified the paragraph's language to allow for sister vessel training. However, paragraph (b)(2) will be retained so that new employees will receive the proper indoctrination prior to getting underway with passengers.

The Coast Guard agrees that certain drill techniques are transferable, however, vessel specific items such as fire hydrant location and survival craft type are not.

Section 122.524 Fire Fighting Drills and Training

Three comments stated that fire fighting drills are supported as long as the master's duty is cast as a goal instead of a prescriptive standard.

The Coast Guard contends that the requirements are appropriate as written.

Sections 122.602 and 185.602 Hull Markings

One comment stated that the hull marking requirements, specifically, the loading and draft mark requirements, are not necessary. Another comment noted that paragraph (c)(2) requires three draft marks. It was recommended that the rule define the center mark as the limiting draft, and that the fore and aft marks are the limiting trim in either direction.

The Coast Guard's position on hull markings has not changed. The Coast Guard agrees that paragraph (c)(2) could be better written. Both sections have been rewritten to clarify the hull marking requirements.

Section 122.604 Lifesaving Equipment Markings

Two comments stated that referencing IMO resolutions is not practical for small passenger vessel owners. These publications are difficult to locate and expensive to purchase. It was recommended to not cite the reference, but quote the specific language.

The Coast Guard advises that the referenced IMO publication for lifesaving equipment markings is used as an alternative to the standards spelled out in §§ 122.604(f) and 185.604(f). These symbols can be obtained at the local MSO, and it is not necessary to purchase the publication.

Sections 122.730 and 185.730 Servicing of Inflatable Liferafts, Inflatable Buoyant Apparatus, Inflatable Life Jackets, and Inflated Rescue Boats

After review, the Coast Guard has determined that liferafts and IBAs should be required to be serviced at a facility approved, by the Commandant, to service that particular brand. The reference in the IFR to the procedures in § 160.151 is troublesome because § 160.151 does not exist. A reference to § 160.051, which does exist, would be obsolete and require revision soon. However, both current and proposed rules require that approved servicing facilities perform approved servicing in accordance with the applicable regulations.

Section 170.173 Criterion for Vessels of Unusual Proportion and Form

One comment recommended that this section be revised to incorporate intact stability standards and policy (NVICs, PFMs, and MTNs) currently used by the MSC for vessels that operate on protected and partially protected waters.

The Coast Guard agrees. Criteria used successfully in the past and listed in MSC's PFM 1–89 are incorporated into this rule.

Part 171—Special Rules Pertaining to Vessels Carrying Passengers

Public comments brought to the Coast Guard's attention that certain sections regarding bulkhead penetrations, watertight integrity, and deck drainage for vessels less than 100 gross tons had mistakenly been deleted from subchapter S. The Coast Guard has determined that the error occurred during the creation of subchapter K. When the NPRM was published in 1989, the Coast Guard proposed that the stability requirements in subchapter S for vessels less than 100 gross tons be moved back into subchapter T for the convenience of the reader. The proposal also involved the removal of redundant language in subchapter S. When subchapter K was proposed in the 1994 SNPRM, language was added to part 116 requiring subchapter K vessels to meet applicable stability standards in subchapter S with some exceptions noted in subpart K. However, the proposed revisions to subchapter S deleting certain requirements for vessels of less than 100 gross tons were not removed from the rulemaking document. In February, 1997, the MSC sent out bulletin 01–97 to naval architects, designers, and boat builders throughout the United States explaining the error and providing interim guidance until publication of the final rule. The Coast Guard has amended part 171 in this final rule by reinstating §§ 171.110, 171.114, 171.115, 171.119, 171.120, 171.122, 171.124, 171.130, 171.140, 171.145, 171.150, and 171.155 as published in the October 1, 1995 edition of 46 CFR parts 166 to 199. The Coast Guard apologizes for any confusion this error may have caused to the small passenger vessel industry.

Incorporation by Reference

The Director of the Federal Register has approved the material in §§ 114.600 and 175.600 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in those sections.

Regulatory Evaluation

This Final rule is a significant regulatory action under section 3(f) of Executive order 12866 and has been reviewed by the Office of Management and Budget (OMB) under that Order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A regulatory evaluation, with addendum, is available in the docket for inspection and copying where indicated under **ADDRESSES.**

A draft regulatory evaluation was prepared for the SNPRM based on comments to the NPRM and placed in the rulemaking docket. The evaluation contained information on the methodology and data sources used in determining costs and benefits, details on the costs and benefits of over 70 changes, alternatives to proposed changes, costs for sample small passenger vessels, and a profile of the small passenger fleet and its casualty history. The Coast Guard received several comments stating that the draft evaluation for contained outdated costs and objecting to the risk-assessment methodology used and the cost/benefit analysis.

The SNPRM identified the three most significant monetary cost/benefit items of this rulemaking as—

1. Liferafts or inflatable buoyant apparatus for certain vessels;
2. Passenger/crew lists; and
3. Fixed fire extinguishing systems in machinery spaces.

As a result of the comments received on the draft evaluation and the SNPRM

as a whole, the Coast Guard significantly reduced the cost of the rulemaking by incorporating the following changes in the IFR:

1. Reduced the number of vessels required to carry inflatable survival craft.

2. Revised the passenger and crew list requirements.

In addition, the Coast Guard made other significant changes in the IFR that resulted in reduced costs to the small passenger vessel industry. For example, the IFR—

1. Provided more options to meet structural fire protection requirements;

2. Eliminated the requirement to install overspeed trip devices for main propulsion engines and generators; and

3. Deleted the requirement to have wooden vessels more than 20 years old drydocked annually.

In order to address the impact of these changes, the Coast Guard provided an addendum to the draft regulatory evaluation prepared for the SNPRM. The addendum updated the changes in cost associated with the elimination of some of the inflatable lifesaving equipment and of the requirements to maintain passenger and crew list for certain vessels. In order to provide consistency with the draft evaluation, the addendum used the same methods of calculating the total and Average Annual Cost (AAC) of the requirements. However, the information used to calculate the number of vessels affected and the cost of required equipment were updated to provide an accurate estimate.

The Coast Guard determined that by adopting these changes, the overall costs of this rule to the industry was reduced by 63 percent. The comments from industry on the IFR confirmed the significant cost reductions and applauded the Coast Guard's efforts.

The Coast Guard has determined that the changes made by this final rule, including the elimination of the K' threshold, will not change the impact of this rule significantly. As a result, no further changes were made to the final regulatory evaluation adopted in the IFR.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As discussed at length in Small Entities section of the preamble to the IFR (61 FR 883), this rule will affect the operators of small passenger vessels. These firms come under the Standard Industrial Code (SIC) categories 4489 (Water Transportation of Passengers) and 4482 (Ferries), both of which are considered small entities if they have 500 or less employees.

We received numerous comments pointing out an error in the Small Entities section in the IFR. The comments disagreed with the statement that few small entities operate the 405 vessels carrying more than 150 passengers. In fact, nearly all owners and operators of small passenger vessels, including vessels carrying more than 150 passengers, constitute small entities under the SIC. Owners and operators of vessels carrying more than 150 passengers are subject to higher costs than other small passenger vessels due to additional requirements, such as structural fire protection. The Coast Guard contends that, despite these additional requirements, this rule still should not have a significant economic impact on owners and operators vessels carrying more than 150 passengers because of the size of their operations and volume of their business.

As very likely all of the entities affected by this rulemaking are small entities, the entire regulatory evaluation prepared for this rulemaking is applicable to small entities. For a discussion of the impacts of this rulemaking, see the Regulatory Evaluation section in this preamble.

The only potential impact that the changes to the IRF will have results from the removal of the K^1 category. The requirement for stairtowers landing areas is restored for vessels having overnight accommodations for more than 49 passengers. However, because this type of vessel was built to the guidelines in NVIC 11–83, which required stairtower landing areas in accordance with subchapter H, this change will have no effect on existing vessels. In addition, it will provide consistency for boat builders who have built this type of vessel for the past 13 years. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard will answer questions by small entities concerning information on, and advice about, compliance with statutes and regulations; interpreting and applying the law to specific sets of facts supplied by the small entity. For questions concerning this rule, contact the Vessel Compliance Division (G-MOC–2) at 202–267–1464.

Collection of Information

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by 5 U.S.C. 3507(d), the Coast Guard submitted a copy of this rule to the Office of Management and Budget (OMB) for review of the collection of information. OMB has approved the collection. The sections providing for a collection are listed in the discussion of collection of information in the preamble to the interim final rule (61 FR 884). The corresponding approval number from OMB is OMB Control Number 2115–0578, which expires on August 13, 1999. The collections concern the inspection and certification of vessels, including the preparation and submittal of applications and plans for certificates and the marking vessels and equipment.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraphs 2.B.2.e.(34)(c) through (e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns the inspection, certification, and equipping of vessels and the training of maritime personnel. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Parts 114 and 175

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Parts 115 and 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Parts 116, 117, 119, 171, 178, 179, 180, and 182

Marine safety, Passenger vessels.

46 CFR Parts 118 and 181

Fire prevention, Marine safety, Passenger vessels.

46 CFR Parts 120 and 183

Electric power, Marine safety, Passenger vessels.

46 CFR Parts 121 and 184

Communications equipment, Marine safety, Navigation (water), Passenger vessels.

46 CFR Parts 122 and 185

Alcohol and alcoholic beverages, Drugs, Hazardous materials, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 173

Marine safety, Vessels.

46 CFR Part 177

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard adopts the interim rule amending 46 CFR parts 114 through 122, 170, 171, 173, and 175 through 185, which was published at 61 FR 864 on January 10, 1996, as a final rule with the following changes:

Subchapter K—Small Passenger Vessels Carrying More Than 150 Passengers or With Overnight Accommodations for More Than 49 Passengers

PART 114—GENERAL PROVISIONS

1. The authority citation for part 114 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Sec. 114.900 also issued under 44 U.S.C. 3507.

2. In § 114.110, revise paragraph (a) to read as follows; remove paragraphs (b) and (c); redesignate paragraph (f) as paragraph (b); redesignate paragraphs (d) and (e) as paragraphs (c) and (d), respectively; and remove paragraph (g) and table 114.110(g):

§ 114.110 General applicability.

(a) Except as in paragraph (b) of this section, this subchapter applies to each vessel of less than 100 gross tons that carries more than 150 passengers, or has overnight accommodations for more than 49 passengers, and that—

(1) Carries at least one passenger for hire;

(2) Is chartered with or without a crew provided or specified by the owner or the owner's representative; or

(3) If a submersible vessel, carries at least one passenger for hire.

Note to paragraph (a): For a vessel of less than 100 gross tons that carries 150 or less passengers or has overnight accommodations for 49 or less passengers, see subchapter T of this chapter.

* * * * *

3. In § 114.400, in paragraph (b), revise the definitions for "accommodation space" introductory text, "atrium," "auxiliary machinery space," "cold water," "hardwood," "high risk accommodation space," "high risk service spaces," "High Speed Craft," "low risk service spaces," "machinery space," "overnight accommodations or overnight accommodation space," and "passenger accommodation space" and add, in alphabetical order, a definition for "approval series" and "exit" to read as follows:

§ 114.400 Definitions of terms used in this subchapter.

* * * * *

(b) * * *

Accommodation space (5, 6, or 7 depending on size, fire load, and furnishings) means a space that does not contain any cooking appliance other than a microwave oven or other low heat (maximum heating element temperature less than 121°C (250°F)) appliance used as a—

* * * * *

Approval series means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of subchapter Q of this chapter, the approval series corresponds to the number of the subpart. A listing of approved equipment, including all of the approval series, is published periodically by the Coast Guard in Equipment Lists (COMDTINST M16714.3 series), available from the Superintendent of Documents.

* * * * *

Atrium (5 or 7 depending on fire load and furnishings) means a continuous deck opening connecting more than two deck levels within an accommodation space that is covered at the top of the series openings and is used for purposes other than an enclosed stairway, or a utility trunk for pipe, cable, or ductwork.

Auxiliary machinery space (12) means a space containing only pumps, tanks, electrical machinery, ventilation or air conditioning equipment, refrigeration machinery, resistors steering machinery, etc., with not more than 2.5 kilograms per square meter (0.5 pounds per square foot) of combustible storage.

* * * * *

Cold water means water where the monthly mean low water temperature is normally 15 degrees Celsius (59 degrees Fahrenheit) or less.

* * * * *

Exit means—

(1) A stairtower or a stairway which terminates at an area of refuge or embarkation station; or

(2) A door which leads directly to an area of refuge or embarkation station.

* * * * *

Hardwood means oak or a similar wood with a specific gravity of approximately 0.6 and having fire resistant properties similar to oak.

* * * * *

High risk accommodation space (6 or 7 depending on size) means an accommodation space that contains a fire load greater than 15 kilograms per square meter (3 pounds per square foot), or a cleaning gear locker which contains storage space for materials other than flammable liquids and which has a deck area less than 5 square meters.

High risk service spaces (9) include—

(1) Galley;

(2) Large laundry or drying room;

(3) Garbage or trash disposal storage area;

(4) Paint or lamp locker;

(5) Cleaning gear locker or small storeroom in an accommodation area;

(8) Mail or baggage room; and

(7) Pantries and storerooms which contain flammable liquids or have a deck area not less than 5 square meters including connecting alleyways and stairs.

* * * * *

High Speed Craft means a craft that is operable on or above the water and has characteristics so different from those of conventional displacement ships, to which the existing international conventions, particularly SOLAS, apply, that alternative measures should be used to achieve an equivalent level of safety. In order to be considered a high speed craft, the craft must be capable of a maximum speed equal to or exceeding $V=3.7 X displ^{1667}$ h, where "V" is the maximum speed and "displ" is the vessel displacement corresponding to the design waterline in cubic meters.

Low risk service spaces (8) include—
(1) Cleaning gear lockers which have a deck area less than 5 meters containing only slop sinks, and having no room for stowing materials other than brooms, mops, or soap;
(2) Small laundries or drying rooms containing only a tub, washing machine, and/or household type electric dryer;
(3) Workshops that are not part of a machinery space;
(4) Washrooms and toilet spaces; and
(5) Motion picture projection rooms.
* * * * *

Machinery space (10) means a space, including a trunk, alleyway, stairway, or duct to such a space, that contains—
(1) Propulsion machinery of any type;
(2) Steam or internal combustion machinery;
(3) Oil transfer equipment;
(4) Electrical motors of more than 10 hp;
(5) One or more oil-fired boilers or heaters; or
(6) Electrical generating machinery.
* * * * *

Overnight accommodations or overnight accommodation space (5, 6 or 7 depending on size, fire load and furnishings) means an accommodation space for use by passengers or by crew members, that has one or more berths, including beds or bunks, for passengers or crew members to rest for extended periods. Staterooms, cabins, and berthing areas are normally overnight accommodation spaces. Overnight accommodations do not include spaces that contain only seats, including reclining seats.
* * * * *

Passenger accommodation space (5, 6 or 7 depending on size, fire load, and furnishings) means an accommodation space designated for the use of passengers.
* * * * *

§ 114.540 [Amended]

4. In § 114.540(b), remove the word "pending".

5. In § 114.600(b), under the entry for American Bureau of Shipping, add a new entry for "Guide for High Speed Craft" at the end and, under the entry for National Fire Protection Association, remove the words "NFPA 13–1994", "NFPA 70–1993", "NFPA 92B–1991", and "NFPA 701–1989" and add, in their place, the words "NFPA 13–1996", "NFPA 70–1996", "NFPA 92B–1995", and "NFPA 701–1996", respectively:

§ 114.600 Incorporation by reference.
* * * * *
(b) * * *
* * * * *

American Bureau of Shipping (ABS)
* * * * *

Guide for High Speed Craft, 1997	116.300

* * * * *

6. Revise § 114.800(b) to read as follows:

§ 114.800 Approved equipment and material.
* * * * *

(b) Coast Guard publication COMDTINST M16714.3 (Series) "Equipment Lists, Items Approved, Certificated or Accepted under Marine Inspection and Navigation Laws," lists approved equipment by type and manufacturer. COMDTINST M16714.3 (Series) may be obtained from New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

PART 115—INSPECTION AND CERTIFICATION

7. The authority citation for part 115 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

8. In § 115.600(b), revise the first sentence to read as follows:

§ 115.600 Drydock and internal structural examination intervals.
* * * * *

(b) A vessel making an international voyage subject to SOLAS requirements must undergo a drydock examination at least once every 12 months. * * *
* * * * *

§ 115.612 [Amended]

9. In § 115.612(b), remove the words "such as" and add, in their place, the words "including, but not limited to,".

§ 115.802 [Amended]

10. In § 115.802(c), remove the words "the working of the hull" and add, in their place, the words "the hull and internal structure".

§ 115.808 [Amended]

11. In § 115.808, in paragraph (a)(1), remove the words § 71.25–15 in subchapter H (Passenger Vessels) of this chapter" and add, in their place, the words "§ 122.520 of this chapter" and, in paragraph (a)(4), after the word "liferaft", add the words, inflatable buoyant apparatus,".

§ 115.810 [Amended]

12. In § 115.810(b), in table 115.810(b), in the "Test" column, in the fourth sentence for the entry "Carbon dioxide", remove the word "Inspection" and add, in its place, the word "Inspect".

13. Revise § 115.812(a) to read as follows:

§ 115.812 Pressure vessels and boilers.

(a) Pressure vessels must be tested and inspected in accordance with part 61, subpart 61.10, of this chapter; except that, they must be inspected once every 3 years instead of at the intervals in § 61.10–5(a), (b), and (d) of this chapter.
* * * * *

PART 116—CONSTRUCTION AND ARRANGEMENT

14. The authority citation for part 116 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

15. In § 116.300, in paragraph (b)(1)(ii), remove the words "Aluminum Vessels;" and add in their place, the words "Aluminum Vessels; or" and add paragraph (b)(2) to read as follows:

§ 116.300 Structural design.
* * * * *
(b) * * *
(2) ABS Guide for High Speed Craft.
* * * * *

16. Revise § 116.405(f) to read as follows:

§ 116.405 General arrangement and outfitting.
* * * * *

(f) Nonmetallic piping in concealed spaces. The use of nonmetallic (plastic) pipe within a concealed space in a control space, accommodation space, or service space is permitted in nonvital service only if the piping material has a flame spread rating of not more than 20 and a smoke developed rating of not more than 10 when tested in accordance with ASTM E–84 or UL 723 by an independent laboratory.
* * * * *

17. In § 116.415, revise paragraph (a)(1), table 116.415(b), and table 116.415(c) to read as follows:

§ 116.415 Fire control boundaries.

(a) * * *

(1) Major hull structure—The hull, structural bulkheads, columns and stanchions, superstructures, and deckhouses must be composed of steel or equivalent material.
* * * * *

TABLE 116.415(b)—BULKHEADS

Spaces	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Control Space (1)	B–0	A–0	A–0	A–0	A–15	A–60	A–60	A–0	A–60	A–60	A–60	A–0	A–0
Stairway (2)		A–0[4]	A–0	A–0	A–0	A–60	A–60	A–0	A–15	A–15	A–15	A–0	A–0
Corridor (3)			C	A–0	B–0	B–0	A–0	B–0	A–0	A–0	A–0	A–0	A–0
Embarkation Station (4)				C	A–0	A–0	A–0	A–0	A–0	A–0	A–0	C[1]	C
Low Risk Accommodation (5).					B–0	B–15	B–15	B–0[2]	A–15	A–15	A–15	A–0	A–0
High Risk Accommodation (6) (≤50 sq. m.).						B–15	A–30	B–0[2]	A–60	A–60	A–60	A–0	A–0
High Risk Accommodation (7) (>50 sq. m.).							A–60	B–0[2]	A–60	A–60	A–60	A–0	A–0
Low Risk Service Spaces (8).								C	A–0	A–0	A–0	A–0	A–0
High Risk Service Spaces (9).									C[3]	A–0	A–0	A–0	A–0
Machinery Spaces (10)										C	A–0	A–0	A–0
Cargo Spaces (11)											A–0	A–0	A–0
Auxiliary Machinery spaces, voids, fuel and water tanks (12).												C[1]	C[1]
Open decks (not safety areas) (13).													C

[1] Boundaries of fuel tanks, auxiliary machinery spaces, and voids that contain a fire load in excess of 2.5kg/m² (0.5 pounds per square foot) must be minimum A–0 Class construction.
[2] Toilet space boundaries may be reduced to C–Class.
[3] C–Class bulkheads may be used between two similar spaces, such as between two storerooms; however, an A–0 Class bulkhead shall be used between two dissimilar spaces, such as a storeroom and a workshop.
[4] Separation is not required within a single stairtower. A–0 construction is required between two distinct stairtowers.
* * * * * * * *

TABLE 116.415(c)—DECKS

Space Above / Space Below:	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Control Space (1)	A–0	A–0	A–15	A–0	A–0	A–15	A–30	A–0	A–0	A–0	A–0	A–0	A–0
Stairway (2)	A–0	C	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0
Corridor (3)	A–0	A–0	A–0	A–0	A–0	A–0	A–15	A–0	A–0	A–0	A–0	A–0	A–0
Embarkation Station (4).	A–0	A–0	A–0	C	A–0	A–0	A–0	A–0	A–0	A–0	A–0	C[1]	C
Low Risk Accommodation (5).	A–15	A–15	A–0	A–0	A–0	A–0	A–15	A–0	A–0	A–0	A–0	A–0	A–0
High Risk Accommodation(6) (≤50 sq. m.).	A–60	A–60	A–30	A–15	A–0	A–30	A–60	A–0	A–0	A–0	A–0	A–0	A–0
High Risk Accommodation (7) (>50 sq. m.).	A–60	A–60	A–60	A–30	A–15	A–60	A–60	A–0	A–0	A–0	A–0	A–0	A–0
Low Risk Service Spaces (8).	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0
High Risk Service Spaces (9).	A–60	A–30	A–30	A–30	A–15	A–60	A–60	A–0	A–0	A–0	A–0	A–0	A–0
Machinery Spaces (10)	A–60	A–60	A–60	A–30	A–15	A–60	A–60	A–0	A–0	C	A–0	A–0	A–0
Cargo Spaces (11)	A–60	A–30	A–30	A–30	A–15	A–60	A–60	A–0	A–0	A–0	A–0	A–0	A–0
Auxiliary Machinery Spaces, voids, fuel and water tanks (12).	A–0	A–0	A–0	C[1]	A–0	A–0	A–0	A–0	A–0	A–0	A–0	C[1]	A–0[1]
Open decks (not safety areas) (13).	A–0	A–0	A–0	C	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0[1]	C

[1] Boundaries of fuel tanks, auxiliary machinery spaces, and voids that contain a fire load in excess of .025 kPa (0.5 pounds per square foot) must be minimum A–0 Class construction.

§ 116.422 [Amended]

18. In § 116.422, in paragraphs (b)(2) and (c)(1), remove the words "20 millimeters" and add, in their place, the words "2 millimeters" and, in paragraph (c)(2), add, after the word "bulkheads", the words "and ceiling".

19. Revise § 116.427(a)(1) to read as follows:

§ 116.427 Fire load of accommodation and service spaces.

(a) * * *

(1) A space is designated as a low risk accommodation space by the owner; or
* * * * *

20. In § 116.433, add paragraph (g) to read as follows:

§ 116.433 Windows and air ports in fire control boundaries.

* * * * *

(g) Windows complying with paragraphs (a) through (d) of this section may be installed in the external boundaries of stairtowers if there are no unprotected openings in the side of the vessel below the windows and if the windows are not exposed to any other parts of the vessel at an angle of less than 180 degrees.

21. In § 116.435, add two sentences at the end of paragraph (c)(9) and add paragraph (c)(10) to read as follows:

§ 116.435 Doors.

* * * * *

(c) * * *

(9) * * *. In any case, no restriction as to the area of glass will be made for the doors insofar as this subpart is concerned. Only glass of the wire-inserted type may be fitted in the doors.

(10) Except as noted in paragraph (c)(9) of this section, doors may be fitted with not more than 0.065 square meters (100 square inches) of glass, which must be of the wire-inserted type.

* * * * *

22. In § 116.438, redesignate paragraphs (a) through (m) as paragraphs (b) through (n) respectively; add new paragraph (a); and revise newly redesignated paragraphs (m)(2), (m)(3), and (m)(6) to read as follows:

§ 116.438 Stairtowers, stairways, ladders, and elevators.

(a) A vessel carrying more than 600 passengers or with overnight accommodations for more than 49 passengers must meet the requirements for stairways, ladders, and elevators in § 72.05–20 of this chapter.

* * * * *

(m) * * *

(2) Each stairtower must give access to an embarkation station or an area of refuge identified in the emergency escape plan required by § 116.520.

(3) Stairtowers must not give direct access to overnight accommodations or spaces of type 9, 10, 11, or 12.

* * * * *

(6) For vessels in which a stairtower is not required, a stairway must provide a means of escape for each deck of the main vertical zone.

* * * * *

23. In § 116.439, in paragraph (d), remove the words "the requirements of § 76.25 in subchapter H of this chapter" and add, in their place, the words "NFPA 13" and revise paragraph (e) to read as follows:

§ 116.439 Balconies.

* * * * *

(e) If the unobstructed balcony opening area is less than 93 square meters (1,000 square feet), the opening must be protected in accordance with NFPA 13 or other standard specified by the Commandant. The horizontal projection area of stairs, escalators, statues, etc. must be subtracted from the total balcony opening area for purposes of computation of unobstructed balcony opening area.

§ 116.440 [Amended]

24. In § 116.440(c), remove the words "the requirements of § 76.25 in subchapter H of this chapter" and add, in their place, the words "NFPA 13'.

25. In § 116.500, revise paragraph (h); in paragraph (k)(1), remove the words "space; and" and add, in their place, the words "space; or"; and revise paragraph (p)(1) to read as follows:

§ 116.500 Means of escape.

* * * * *

(h) The maximum allowable travel distance, measured as actual walking distance from the most remote point in a space to the nearest exit, must not be more than be 46 meters (150 feet).

* * * * *

(p) * * *

(1) The space has a deck area less than 30 square meters (322 square feet);

* * * * *

26. In § 116.520, revise the introductory text of paragraph (b) to read as follows:

§ 116.520 Emergency evacuation plan.

* * * * *

(b) Provide procedures for evacuating all affected spaces for each casualty identified as required by paragraph (a) of this section without abandoning the vessel, including—

* * * * *

§ 116.600 [Amended]

27. In § 116.600(c), after the word "enclosed", add the words "passenger or".

§ 116.610 [Amended]

28. In § 116.610, remove paragraphs (f)(3), (i), (j), and (k) and redesignate paragraphs (f)(4) through (f)(8) as paragraphs (f)(3) through (f)(7), respectively.

§ 116.810 [Amended]

29. In § 116.810, in paragraph (b), remove the word "millimeter" and add, in its place, the word "millimeters" and, in paragraph (c), after the number "1,065", add the word "millimeters".

PART 117—LIFESAVING EQUIPMENT AND ARRANGEMENTS

30. The authority citation for part 117 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

31. Revise § 117.10 to read as follows:

§ 117.10 Applicability to vessels on an international voyage.

A vessel on an international voyage subject to the International Convention for Safety of Life at Sea, 1974, as amended, (SOLAS) must meet the requirements in subchapter W of this chapter for passenger vessels in the same service, instead of the requirements of this part.

32. In § 117.68, revise the paragraph heading and introductory text of paragraph (a) to read as follows:

§ 117.68 Distress flares and smoke signals.

(a) *Oceans, coastwise, limited coastwise, and Great Lakes routes.* A vessel on an oceans, coastwise, limited coastwise, or Great Lakes route must carry—

* * * * *

33. In subpart C, revise the subpart heading to read as follows:

Subpart C—Ring Life Buoys and Life Jackets

§ 117.70 [Amended]

34. In § 117.70(c)(5), remove "510 kilograms" and add, in its place, "5 kilonewtons".

35. Add § 117.71(e) to read as follows:

§ 117.71 Life jackets.

* * * * *

(e) Each life jacket carried on board the vessel must be marked in accordance with § 122.604 of this chapter.

§ 117.130 [Amended]

36. In § 117.130(b), remove the words "in accordance with § 160.062 in subchapter Q of this chapter, or other" and add, in their place, the words "under part 160, subparts 160.062 or 160.162, of this chapter or a".

37. Revise § 117.150(a) introductory text to read as follows:

§ 117.150 Survival craft embarkation arrangements.

(a) A launching appliance approved under part 160, subpart 160.163, of this chapter or a marine evacuation system approved under part 160, subpart 160.175, of this chapter must be provided for each inflatable liferaft and inflatable buoyant apparatus when either—

* * * * *

38. In § 117.175, redesignate paragraphs (c) through (f) as paragraphs (d) through (g), respectively; add a new paragraph (c); and revise newly redesignated paragraph (f)(4) to read as follows:

§ 117.175 Survival craft equipment.

* * * * *

(c) *Inflatable buoyant apparatus.* Each inflatable buoyant apparatus must be equipped in accordance with the manufacturer's approved servicing manual.

* * * * *

(f) * * *

(4) *Light.* The light must be a floating waterlight approved under part 161, subpart 161.010, of this chapter or a standard specified by the Commandant. The floating waterlight must be attached around the body of the life float or buoyant apparatus by a 10 mm (3/8 inch) lanyard, resistant to deterioration from ultraviolet light, and at least 5.5 meters (18 feet) in length.

* * * * *

39. In § 117.200, in paragraph (a)(1), remove the words "Subpart 160.151 in subchapter Q" and add, in their place, the words "Approved under part 160, subpart 160.151,"; in paragraph (a)(2), remove the words "Subpart 160.027 in subchapter Q" and add, in their place, the words "Approved under part 160, subpart 160.027,"; in paragraphs (a)(3) and (a)(4), remove the words "Subpart 160.010 in subchapter Q" and add, in their place, the words "Approved under part 160, subpart 160.010,"; in paragraph (b), remove the words "buoyant apparatus or"; in paragraph (c), remove the last sentence; and, in table 117.200(c), revise footnotes 8 and 9 to read as follows:

§ 117.200 Survival craft—general.

* * * * *

(c) * * *

Table 117.200(c)

* * * * *

Footnotes:

* * * * *

[8] Shallow water exception—§ 117.207(e).

[9] OCMI may reduce survival craft requirements based upon the route, communications schedule, and participation in VTS—§ 117.207(f) and § 117.208(e).

* * * * *

40. In § 117.210, redesignate paragraph (b) as paragraph (c); add a new paragraph (b); and revise newly redesignated paragraph (c) to read as follows:

§ 117.210 Rescue boats.

* * * * *

(b) In general, a rescue boat must be a small, light-weight boat with built-in buoyancy and be capable of being readily launched and easily maneuvered. In addition, it must be of adequate proportion to permit taking an unconscious person on board without capsizing.

(c) On a vessel of more than 19.8 meters (65 feet) in length operating on protected waters, a rescue boat complying with part 160, subpart 160.056, of this chapter is acceptable in meeting the intent of this section. On a vessel of more than 19.8 meters operating on exposed or partially protected waters, a rescue boat approved under part 160, subpart 160.156, of this chapter is acceptable in meeting the intent of this section. On a vessel of not more than 19.8 meters (65 feet) in length, a required rescue boat must be acceptable to the cognizant OCMI.

PART 118—FIRE PROTECTION EQUIPMENT

41. The authority citation for part 118 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

42. In § 118.300, revise paragraph (c) to read as follows and, in paragraph (e), remove the ", manual":

§ 118.300 Fire pumps.

* * * * *

(c) On a vessel carrying more than 600 passengers or with overnight accommodations for more than 49 passengers, the fire pump must meet § 76.10–5 of this chapter.

* * * * *

43. In § 118.310, revise paragraph (a) and add paragraphs (c) and (d) to read as follows:

§ 118.310 Fire main and hydrants.

(a) Except as required by paragraph (d) of this section, a vessel must have a sufficient number of fire hydrants to reach any part of the vessel using a single length of fire hose.

* * * * *

(c) Each fire hydrant must have a valve installed to allow the fire hose to be removed while the fire main is under pressure.

(d) On a vessel carrying more than 600 passengers or with overnight accommodations for more than 49 passengers, the fire main and hydrants must meet § 76.10–10 of this chapter.

§ 118.320 [Amended]

44. In § 118.320, in paragraph (a), remove the words "fire stations located an" and add, in their place, the words "fire hydrants located on" and, in paragraph (c)(1), remove "§ 162.027 in subchapter Q" and add, in its place "part 162, subpart 162.027,".

§ 118.400 [Amended]

45. In § 118.400(e), after the word "Except", add the words "for continuously manned operating stations".

46. In § 118.410, revise paragraphs (b)(2) and (c)(2)(ii); in paragraph (d)(1), remove the words "fitting or" and add, in their place, the words "fitting of"; in paragraph (d)(7)(i), remove the word "value" and add, in its place, the word "valve"; revise the first sentence of paragraph (d)(7)(ii) to read as follows; in paragraph (d)(8)(iii), remove the word "value" and add, in its place, the word "valve"; in paragraph (f)(4)(v), remove the words "millimeters is determined" and add, in their place, the words "millimeters (inches) is determined" and, after the word "kilograms", add the word "(pounds)"; and, in paragraph (f)(5)(i), after the word "kilograms", add the word "(pounds)".

§ 118.410 Fixed gas fire extinguishing systems.

* * * * *

(b) * * *

(2) Except for a normally unoccupied space of less than 170 cubic meters (6000 cubic feet), release of an extinguishing agent into a space must require two distinct operations.

* * * * *

(c) * * *

(2) * * *

(ii) Have manual controls in compliance with paragraph (b) of this section except for paragraph (b)(3) of this section.

* * * * *

(d) * * *

(7) * * *

(ii) A distribution line to a space protected by the system must be subjected to a test similar to that described in paragraph (d)(7)(i) of this section, except that the pressure used must be 4,136 kPa (600 psi). * * *

* * * * *

§ 118.500 [Amended]

47. In § 118.500(a), in table 118.500(a), in the column entitled "Min. size", remove the entry "2.3 kg (5 lb)" and add, in its place, the entry "4.5 kg (10 lb)".

PART 119—MACHINERY INSTALLATION

48. The authority citation for part 119 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 119.320 [Amended]

49. In § 119.320, redesignate paragraph (a) as paragraph (b) and paragraph (b) as paragraph (a).

§ 119.430 [Amended]

50. In § 119.430, remove paragraph (d) and redesignate paragraphs (e) through (l) as paragraphs (d) through (k), respectively.

§ 119.458 [Amended]

51. In § 119.458(a), add, after the word "for", the words "portable dewatering pumps or".

52. Revise § 119.465(f) to read as follows:

§ 119.465 Ventilation of spaces containing diesel machinery.

* * * * *

(f) Except as required by § 116.610(f) of this chapter, dampers may not be fitted in a supply duct.

* * * * *

PART 120—ELECTRICAL INSTALLATION

53. The authority citation for part 120 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 120.312 [Amended]

54. In § 120.312, in the introductory text, after the word "length", add the words "carrying more than 600 passengers or".

§ 120.320 [Amended]

55. In § 120.320(b)(2), after "40°", add the letter "C".

56. In § 120.340(i), revise the last sentence and add new paragraphs (i)(1) and (i)(2) to read as follows:

§ 120.340 Cable and wiring requirements.

* * * * *

(i) * * *. The use of twist-on type wire nuts is permitted under the following conditions:

(1) The connections must be made within an enclosure and the insulated cap of the connector must be secured to prevent loosening due to vibration.

(2) Twist-on type connectors may not be used for making joints in cables, facilitating a conductor splice, or extending the length of a circuit.

* * * * *

57. Add § 120.378 to read as follows:

§ 120.378 Ungrounded systems.

Each ungrounded system must be provided with a suitably sensitive ground detection system, located at the respective switchboard, that provides continuous indication of circuit status to ground with a provision to momentarily remove the indicating device from the reference ground.

§ 120.380 [Amended]

58. In § 120.380(f), before "§ 111.93–11", add the word "of".

§ 120.432 [Amended]

59. In § 120.432(b)(4), remove the number "6" and add, in its place, the number "2" and, in paragraph (c), after the word "length", add the words "carrying more than 600 passengers or".

§ 120.434 [Amended]

60. In § 120.434, after the word "length", add the words "carrying more than 600 passengers or".

PART 121—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

61. The authority citation for part 121 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 121.220 [Amended]

62. In § 121.220(a), remove the words "heavy duty".

§ 121.240 [Amended]

63. In § 121.240, in paragraph (c)(3), remove the word "mut" and add, in its place, the word "must" and, in paragraph (c)(4), remove the word "secgion" and add, in its place, the word "section".

64. Revise the section heading to § 121.702 to read as follows:

§ 121.702 Pollution prevention equipment and procedures.

65. Revise § 121.710 to read as follows:

§ 121.710 First-aid kits.

A vessel must carry either a first-aid kit approved under part 160, subpart 160.041, of this chapter or a kit with equivalent contents and instructions. For equivalent kits, the contents must be stowed in a suitable, watertight container that is marked "First-Aid Kit". A first-aid kit must be easily visible and readily available to the crew.

PART 122—OPERATIONS

66. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 122.304 [Amended]

67. In § 122.304(a)(6), remove the words "each closing radar contact" and add, in their place, the words "radar contact".

§ 122.335 [Amended]

68. In § 122.335(a), remove the word "watertight".

§ 122.356 [Amended]

69. In § 122.356, remove the number "179" and add, in its place, the number "176".

§ 122,410 [Amended]

70. In § 122.410, remove the words "or other danger" and add, in their place, the words ", a man overboard, or other dangerous situation".

71. In § 122.420, redesignate paragraph (b) as paragraph (c) and add a new paragraph (b) to read as follows:

§ 122.420 Crew training.

* * * * *

(b) Training conducted on a sister vessel may be considered equivalent to the initial and quarterly training requirements contained in paragraph (a) of this section.

* * * * *

72. In § 122.506, revise the introductory text of paragraphs (a) and (b); redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and add a new paragraph (c) to read as follows:

§ 122.506 Passenger safety orientation.

(a) Except as allowed by paragraphs (b) and (c) of this section, before getting underway on a voyage or as soon as practicable thereafter, the master of a vessel shall ensure that suitable public announcements are made informing all passengers of—

* * * * *

(b) As an alternative to an announcement that complies with paragraph (a) of this section, the master or other designated person may—

* * * * *

(c) Ferries operating on short runs of less than 15 minutes may substitute bulkhead placards or signs for the announcement required in paragraphs (a) and (b) of this section if the OCMI determines that the announcements are not practical due to the vessel's unique operation.

* * * * *

§ 122.518 [Amended]

73. In § 122.516(b), remove the words "or other standard specified by the Commandant,".

§ 122.520 [Amended]

74. In § 122.520(b)(2), after the words "particular vessel", add the words "or sister vessel".

75. Revise § 122.524(c)(3) to read as follows:

§ 122.524 Fire fighting drills and training.

* * * * *

(c) * * *

(3) Instructions in the use and location of fire alarms, extinguishers, and any other fire fighting equipment on board.

* * * * *

76. Section 122.602 is revised to read as follows:

§ 122.602 Hull markings.

(a) Each vessel must be marked as required by part 67, subpart I, of this chapter.

(b) Paragraphs (c) through (g) of this section apply to each vessel that fits into any one of the following categories:

(1) A vessel of more than 19.8 meters (65 feet) in length.

(2) A vessel authorized to carry more than 12 passengers on an international voyage.

(3) A vessel with more than one deck above the bulkhead deck exclusive of a pilot house.

(c) Each vessel that complies with the stability requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter or with § 178.310 of this chapter must—

(1) Have permanent draft marks at each end of the vessel; or

(2) Have permanent loading marks placed on each side of the vessel forward and aft to indicate the maximum allowable trim and amidships to indicate the maximum allowable draft.

(d) A loading mark required by paragraph (c)(2) of this section must be a horizontal line of at least 205 millimeters (8 inches) in length and 25 millimeters (1 inch) in height, with its upper edge passing through the point of maximum draft. The loading mark must be painted in a contrasting color to the sideshell paint.

(e) On a vessel that has a load line, the amidships marks required by paragraph (c)(2) of this section must be those required by the International Convention on Load Lines, 1966.

(f) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

(g) On a vessel on which the number of passengers permitted on upper decks is limited by stability criteria, as indicated by the vessel's stability letter, the maximum number of passengers allowed on an upper deck must be indicated by a durable marking of at least 25 millimeters (1 inch) numbers and letters at the entranceway to that deck.

§ 122.604 [Amended]

77. In § 122.604(b), remove the words "vessel marked" and add, in their place, the words "vessel or company marked".

§ 122.612 [Amended]

78. In § 122.612(b), remove the words "in clearly legible letters" and remove the word "ALARMS" and add, in its place, the word "ALARM" and, in paragraph (f), remove the word "cleared" and add, in its place, the word "clearly".

79. Revise § 122.730(b)(2) to read as follows:

§ 122.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable life jackets, and inflated rescue boats.

* * * * *

(b) * * *

(2) At a servicing facility approved by the Commandant to service that particular brand.

* * * * *

Subchapter S—Subdivision and Stability

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

80. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2130, 3306, 3703; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

81. Add § 170.173(e) to read as follows:

§ 170.173 Criterion for vessels of unusual proportion and form.

* * * * *

(e) For the purpose of demonstrating acceptable stability on the vessels described in § 170.170(d) as having unusual proportion and form, compliance with paragraphs (a) through (d) of this section or the following criteria is required:

(1) For partially protected routes, there must be—

(i) Positive righting arms to at least 35 degrees of heel;

(ii) No down flooding point to at least 20 degrees; and

(iii) At least 15 foot-degrees of energy to the smallest of the following angles:

(A) Angle of maximum righting arm.

(B) Angle of down flooding.

(C) 40 degrees.

(2) For protected routes, there must be—

(i) Positive righting arms to at least 25 degrees of heel;

(ii) No down flooding point to at least 15 degrees; and

(iii) At least 10 foot-degrees of energy to the smallest of the following angles:

(A) Angle of maximum righting arm.

(B) Angle of down flooding.

(C) 40 degrees.

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

82. The authority citation for part 171 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

83. In § 171.110, designate the text as paragraph (a) and add paragraph (b) to read as follows:

§ 171.110 Specific applicability.

* * * * *

(b) Section 171.114 applies to each vessel under 100 gross tons.

84. Add § 171.114 to subpart E to read as follows:

§ 171.114 Penetrations and openings in watertight bulkheads in a vessel less than a 100 gross tons.

(a) Penetrations and openings in watertight bulkheads must—

(1) Be kept as high and as far inboard as practicable; and

(2) Have means to make them watertight.

(b) Watertight bulkheads must not have sluice valves.

(c) Each main traverse watertight bulkhead must extend to the bulkhead deck.

85. In § 171.115, designate the text as paragraph (a) and add paragraph (b) to read as follows:

§ 171.115 Specific applicability.

* * * * *

(b) Section 171.119 applies to each vessel under 100 gross tons.

86. Add § 171.119 to subpart F to read as follows:

§ 171.119 Openings below the weather deck in the side of a vessel less than 100 gross tons.

(a) If a vessel operates on exposed or partially protected waters, an opening port light is not permitted below the weather deck unless—

(1) The sill is at least 30 inches (76.2 centimeters) above the deepest subdivision load line; and

(2) It has an inside, hinged dead cover.

(b) Except for engine exhausts, each inlet or discharge pipe that penetrates the hull below a line drawn parallel to and at least 6 inches (15.2 centimeters) above the deepest subdivision load line must have means to prevent water from entering the vessel if the pipe fractures or otherwise fails.

(c) A positive action valve or cock that is located as close as possible to the hull is an acceptable means for complying with paragraph (b) of this section.

(d) If an inlet or discharge pipe is inaccessible, the means for complying with paragraph (b) of this section must be a shut-off valve that is—

(1) Operable from the weather deck or other accessible location above the bulkhead deck; and

(2) Labeled at the operating point for identity and direction of closing.

(e) Any connecting device or valve in a hull penetration must not be cast iron.

(f) Each plug cock in an inlet or discharge pipe must have a means, other than a cotter pin, to prevent its loosening or removal from the body.

87. Revise § 171.120 to read as follows:

§ 171.120 Specific applicability.

Each vessel that is 100 gross tons or more must comply with § 171.122 and each vessel under 100 gross tons must comply with § 171.124.

§ 171.122 [Amended]

88. In § 171.122, in paragraph (f)(1), remove "Table 171.122" and add, in its place, "table 171.124(d)" and, following paragraph (g), remove table 171.122.

89. Add § 171.124 to subpart G to read as follows:

§ 171.124 Watertight integrity above the margin line in a vessel less than 100 gross tons.

(a) Each hatch exposed to the weather must be watertight; except that, the following hatches may be weathertight:

(1) Each hatch on a watertight trunk that extends at least 12 inches (30.5 centimeters) above the weather deck.

(2) Each hatch in a cabin top.

(3) Each hatch on a vessel that operates only on protected waters.

(b) Each hatch cover must—

(1) Have securing devices; and

(2) Be attached to the hatch frame or coaming by hinges, captive chains, or to other devices to prevent its loss.

(c) Each hatch that provides access to crew or passenger accommodations must be operable from either side.

(d) Except as provided in paragraph (e) of this section, a weathertight door with permanent watertight coamings that comply with the height requirements in table 171.124(d) must be provided for each opening located in a deck house or companionway that—

(1) Gives access into the hull; and

(2) Is located in—

(i) A cockpit;

(ii) A well; or

(iii) An exposed location on a flush deck vessel.

TABLE 171.124(d)

Route	Height of coaming
Exposed or partially protected.	6 inches (15.2 centimeters).
Protected	3 inches (7.6 centimeters).

(e) If an opening in a location specified in paragraph (d) of this section is provided with a Class 1 watertight door, the height of the watertight coaming need only be sufficient to accommodate the door.

90. In § 171.130, designate the text as paragraph (a) and add paragraph (b) to read as follows:

§ 171.130 Specific applicability.

* * * * *

(b) Sections 171.140, 171.145, 171.150, and 171.155 apply to each vessel under 100 gross tons.

91. Add § 171.140 to read as follows:

§ 171.140 Drainage of a flush deck vessel.

(a) Except as provided in paragraph (b) of this section, the weather deck on a flush deck vessel must be watertight and have no obstruction to overboard drainage.

(b) Each vessel with a flush deck may have solid bulwarks in the forward one-third length of the vessel if—

(1) The bulwarks do not form a well enclosed on all sides; and

(2) The foredeck of the vessel has sufficient sheer to ensure drainage aft.

92. Add § 171.145 to read as follows:

§ 171.145 Drainage of a vessel with a cockpit.

(a) Except as follows, the cockpit must be watertight:

(1) A cockpit may have companionways if they comply with § 171.124(d).

(2) A cockpit may have ventilation openings along its inner periphery if—

(i) The vessel operates only on protected or partially protected waters;

(ii) The ventilation openings are located as high as possible in the side of the cockpit; and

(iii) The height of the ventilation opening does not exceed 2 inches (5 centimeters).

(b) The cockpit must be designed to be self-bailing.

(c) Scuppers installed in a cockpit must be located to allow rapid clearing of water in all probable conditions of list and trim.

(d) Scuppers must have a combined area of at least the area given by either of the following equations:

$A=0.1(D)$ square inches.

$A=6.94(D)$ square centimeters.

Where—

A = the combined area of the scuppers in square inches (square centimeters).

D = the area of the cockpit in square feet (square meters).

(e) The cockpit deck of a vessel that operates on exposed or partially protected waters must be at least 10 inches (24.5 centimeters) above the deepest subdivision load line, unless the vessel complies with—

(1) The intact stability requirements of § 171.150;

(2) The Type II subdivision requirements in §§ 171.070, 171.072, and 171.073; and

(3) The damage stability requirements in § 171.080.

(f) The cockpit deck of all vessels that do not operate on exposed or partially protected waters must be located as high above the deepest subdivision load line as practicable.

93. Add § 171.150 to read as follows:

§ 171.150 Drainage of a vessel with a well deck.

(a) Each well deck on a vessel must be watertight.

(b) Except as provided in paragraphs (c) and (d) of this section, the area required for freeing ports in the bulwarks that form a well must be determined as follows:

(1) If a vessel operates on exposed or partially protected waters, it must have at least 100 percent of the freeing port area derived from table 171.150.

(2) If a vessel operates only on protected or partially protected waters and complies with the requirements in the following sections for a vessel that operates on exposed waters, it must have at least 50 percent of the freeing port area derived from table 171.150:

(i) The intact stability requirements of §§ 171.030 or 171.050 and § 171.170.

(ii) The subdivision requirements of §§ 171.040, 171.043, or 171.070.

(iii) The damage stability requirements of § 171.080.

(3) If a vessel operates only on protected waters, the freeing port area must be at least equal to the scupper area required by § 171.145(d) for a cockpit of the same size.

(c) The freeing ports must be located to allow rapid clearing of water in all probable conditions of list and trim.

(d) If a vessel that operates on exposed or partially protected waters does not have free drainage from the foredeck aft, then the freeing port area must be derived from table 171.150 using the entire bulwark length rather than the bulwark length in the after two-thirds of the vessel as stated in the table.

TABLE 171.150

Height of solid bulwark in inches (centimeters)	Freeing port area [1] [2]
6(15)	2(42.3)
12(30)	4(84.7)
18(46)	8(169.3)
24(61)	12(253.9)
30(76)	16(338.6)
36(91)	20(423.2)

[1] Intermediate values of freeing port area can be obtained by interpolation.

[2] In square inches per foot (square centimeters per meter) of bulwark length in the after ⅔ of the vessel.

94. Add § 171.155 to read as follows:

§ 171.155 Drainage of an open boat.

The deck within the hull of an open boat must drain to the bilge. Overboard drainage of the deck is not permitted.

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 175—GENERAL PROVISIONS

95. The authority citation for part 175 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Sec. 175.900 also issued under 44 U.S.C. 3507.

96. In § 175.110, revise paragraph (a) to read as follows; remove paragraph (b); redesignate paragraph (c) as paragraph (b); and remove paragraph (d) and table 175.100(d):

§ 175.110 General applicability.

(a) Except as in paragraph (b) of this section, this subchapter applies to each vessel of less than 100 gross tons that carries 150 or less passengers, or has overnight accommodations for 49 or less passengers, and that—

(1) Carries more than six passengers, including at least one for hire;

(2) Is chartered with a crew provided or specified by the owner or the owner's representative and is carrying more than six passengers;

(3) Is chartered with no crew provided or specified by the owner or the owner's representative and is carrying more than 12 passengers; or

(4) If a submersible vessel, carries at least one passenger for hire.

Note to § 175.110: For a vessel of less than 100 gross tons that carries more than 150 passengers or has overnight accommodations for more than 49 passengers, see subchapter K of this chapter.

* * * * *

97. In § 175.400, revise the definitions for "cold water", "High Speed Craft", "means of escape", and "weather deck" and add, in alphabetical order, a definition for "approval series" to read as follows:

§ 175.400 Definitions of terms used in this subchapter.

* * * * *

Approval series means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of subchapter Q of this chapter, the approval series corresponds to the number of the subpart. A listing of approved equipment, including all of the approval series, is published periodically by the Coast Guard in Equipment Lists (COMDTINST M16714.3 series), available from the Superintendent of Documents.

* * * * *

Cold water means water where the monthly mean low water temperature is normally 15 degrees Celsius (59 degrees Fahrenheit) or less.

* * * * *

High speed craft means a craft that is operable on or above the water and has characteristics so different from those of conventional displacement ships, to which the existing international conventions, particularly SOLAS, apply, that alternative measures should be used to achieve an equivalent level of safety. In order to be considered a high speed craft, the craft must be capable of a maximum speed equal to or exceeding $V=3.7 \times displ^{1667}$ h, where "V" is the maximum speed and "displ" is the vessel displacement corresponding to the design waterline in cubic meters.

* * * * *

Means of escape means a continuous and unobstructed way of exit travel from any point in a vessel to an embarkation station. A means of escape can be both vertical and horizontal, and include doorways, passageways, stairtowers, stairways, and public spaces. Cargo spaces, machinery spaces, rest rooms, hazardous areas determined by the cognizant Officer in Charge Marine Inspection, escalators, and elevators must not be any part of the means of escape.

* * * * *

Weather deck means a deck that is partially or completely exposed to the weather from above or from at least two sides, except that for the purposes of parts 178 and 179 of this chapter, "weather deck" means the uppermost deck exposed to the weather to which a weathertight sideshell extends.

* * * * *

98. In § 175.600(b), under the entry for American Bureau of Shipping, add a new entry for "Guide for High Speed Craft"; under the entry for National Fire Protection Association, remove the words "NFPA 70–1993" and add, in their place, the words "NFPA 70–1996"; and, under the entry for Naval Publications and Forms Center, remove the number "21929B (1970)" and add, in its place, the number "21929C (1991)" and add a new entry for "Military Specification MIL–R–21607E" to read as follows:

§ 175.600 Incorporation by reference.

* * * * *

(b) * * *

* * * * *

American Bureau of Shipping (ABS)

* * * * *

Guide for High Speed Craft, 1997 ..... 177.300

* * * * *

Naval Publications and Forms Center

* * * * *

Military Specification MIL–R–21607E(SH) (1990)

Resins, Polyester, Low Pressure Laminating, Fire Retardant 177.410

* * * * *

99. Revise § 175.800(b) to read as follows:

§ 175.800 Approved equipment and material.

* * * * *

(b) Coast Guard publication COMDTINST M16714.3 (Series) "Equipment Lists, Items Approved, Certificated or Accepted under Marine Inspection and Navigation Laws" lists approved equipment by type and manufacturer. COMDTINST M16714.3 (Series) may be obtained from New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

PART 176—INSPECTION AND CERTIFICATION

100. The authority citation for part 176 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p.

743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 176.105 [Amended]

101. In the section heading to § 176.105, remove the section number "170.105" and, add in its place, the number "176.105".

§ 176.400 [Amended]

102. In § 176.400(a), remove the word "Certification" and add, in its place, the word "Certificate".

103. In § 176.600(b), revise the first sentence to read as follows:

§ 176.600 Drydock and internal structural examination intervals.

* * * * *

(b) A vessel making an international voyage subject to SOLAS requirements must undergo a drydock examination at least once every 12 months. * * *

* * * * *

§ 176.612 [Amended]

104. In § 176.612(b), remove the words "such as" and add, in their place, the words "including, but not limited to,".

§ 176.802 [Amended]

105. In § 176.802(c), remove the words "the working of the hull" and add, in their place, the words "the hull and internal structure".

§ 176.808 [Amended]

106. In § 176.808, in paragraph (a)(1), remove the words "§ 71.25–15 in subchapter H of this chapter" and add, in their place, the words "§ 185.520 of this chapter"; and, in paragraph (a)(4), after the word "liferaft", add the words ", inflatable buoyant apparatus,".

§ 176.810 [Amended]

107. In § 176.810(b), in table 176.810(b), in the "Test" column, in the fourth sentence for the entry "Carbon dioxide", remove the word "Inspection" and add, in its place, the word "Inspect".

108. Revise § 176.812(a) to read as follows:

§ 176.812 Pressure vessels and boilers.

(a) Pressure vessels must be tested and inspected in accordance with part 61, subpart 61.10, of this chapter; except that, they must be inspected once every 3 years instead of at the intervals in § 61.10–5(a), (b), and (d) of this chapter.

* * * * *

PART 177—CONSTRUCTION AND ARRANGEMENT

109. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

110. In § 177.300,in paragraph (c)(2), after the word "ABS;", add the word "or"; add a new paragraph (c)(3); in paragraph (d)(1)(ii), after the words "Aluminum Vessels;", add the word "or"; and add a new paragraph (d)(2) to read as follows:

§ 177.300 Structural design.

* * * * *

(c) * * *

(3) ABS Guide for High Speed Craft; or

(d) * * *

(2) ABS Guide for High Speed Craft;

* * * * *

111. In § 177.410, revise paragraph (b) and the introductory text for paragraph (c) to read as follows:

§ 177.410 Structural fire protection.

* * * * *

(b) *Composite materials.* When the hull, bulkheads, decks, deckhouse, or superstructure of a vessel is partially or completely constructed of a composite material, including fiber reinforced plastic, the resin used must be fire retardant as accepted by the Commandant as meeting MIL–R–21607. Resin systems that have not been accepted as meeting MIL–R–21607 may be accepted as fire retardant if they have an ASTM E–84 flame spread rating of not more than 100 when tested in laminate form. The laminate submitted for testing the resin system to ASTM E–84 must meet the following requirements:

(1) The test specimen laminate total thickness must be between 3.2 and 6.4 millimeters (⅛ to ¼ inch).

(2) The test specimen laminate must be reinforced with glass fiber of any form and must have a minimum resin content of 40 percent by weight.

(3) Tests must be performed by an independent laboratory.

(4) Test results must include, at a minimum, the resin manufacturer's name and address, the manufacturer's designation (part number) for the resin system including any additives used, the test laboratory's name and address, the test specimen laminate schedule, and the flame spread index resulting from the ASTM E–84 test.

(5) Specific laminate schedules, regardless of resin type, that have an ASTM E–84 flame spread rating of not more than 100 may be considered as equivalent to the requirement in this section to use a fire retardant resin. Requests for qualifying a specific laminate schedule as fire retardant for use in a particular vessel may be submitted for consideration to the Commanding Officer, U.S. Coast Guard Marine Safety Center, 400 Seventh Street, SW., Washington, DC 20590–0001.

(c) *Use of general purpose resin.* General purpose resins may be used instead of fire retardant resins if the following additional requirements are met:

* * * * *

§ 177.600 [Amended]

112. In § 177.600(c), after the word "enclosed", add the words "passenger or".

PART 178—INTACT STABILITY AND SEAWORTHINESS

113. The authority citation for part 178 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 178.310 [Amended]

114. In § 178.310(b) introductory text, remove the word "ad" and add, in its place, the word "and".

115. In § 178.330, add paragraph (a)(4)(v) to read as follows and, in paragraph (d)(2), remove the word "freebound" and add, in its place, the word "freeboard":

§ 178.330 Simplified stability proof test.

(a) * * *

(4) * * *

(v) On vessels having one upper deck above the main deck available to passengers, the weight distribution must not be less severe than the following:

Total Test Weight (W) = ____

Passenger Capacity of Upper Deck: ____

$$\text{Weight on Upper Deck} = \frac{\text{Weight on Main Deck} = \text{Total Test Weight} - \text{Weight on Upper Deck}}{\text{\# of Passengers on Upper Deck}} \times \frac{}{\text{Wt/Passenger}} \times 1.33$$

* * * * *

§ 178.410 [Amended]

116. In § 178.410(a), after the words "flush deck", add the word "vessel".

PART 179—SUBDIVISION, DAMAGE STABILITY, AND WATERTIGHT INTEGRITY

117. The authority citation for part 179 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

118. Revise the part heading to read as shown above.

§ 179.230 [Amended]

119. In § 179.230, remove "§ 179.212(b)" and add, in its place, "§ 179.212".

120. Revise § 179.240(a) and (b) (1) to read as follows:

§ 179.240 Foam flotation material.

(a) Foam may only be installed as flotation material on a vessel when approved by the cognizant OCMI.

(b) * * *

(1) All foam must comply with MIL–P–21929C. The fire resistance test is not required.

* * * * *

PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

121. The authority citation for part 180 continues to read as follows:

Authority: 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

122. Section 180.10 is revised to read as follows:

§ 180.10 Applicability to vessels on an international voyage.

A vessel on an international voyage subject to the International Convention for the Safety of Life at Sea, 1974, (SOLAS) must meet the requirements in subchapter W of this chapter for passenger vessels in the same service, instead of the requirements of this part.

123. In § 180.68(a), revise the paragraph heading and the introductory text to read as follows:

§ 180.68 Distress flares and smoke signals.

(a) *Oceans, coastwise, limited coastwise, and Great lakes routes.* A vessel on an oceans, coastwise, limited coastwise, or Great Lakes route must carry—

* * * * *

124. In subpart C, revise the subpart heading to read as follows:

Subpart C—Ring Life Buoys and Life Jackets

§ 180.70 [Amended]

125. In § 180.70(c)(5), remove the words "510 kilograms", and add, in their place, "5 kilonewtons".

126. Add § 180.71(e) to read as follows:

§ 180.71 Life jackets.

* * * * *

(e) Each life jacket carried on board the vessel must be marked in accordance with § 185.604 of this chapter.

§ 180.130 [Amended]

127. In § 180.130(b), remove the words "in accordance with § 160.062 in subchapter Q of this chapter," and add, in their place, the words "under part 160, subparts 160.062 or 160.162, of this chapter".

128. Revise § 180.150(a) introductory text to read as follows:

§ 180.150 Survival craft embarkation arrangements.

(a) A launching appliance approved under approval series 160.163 or a marine evacuation system approved under approval series 160.175 must be provided for each inflatable liferaft and inflatable buoyant apparatus when either—

* * * * *

129. In § 180.175, redesignate paragraphs (c) through (f) as paragraphs (d) through (g), respectively; add a new paragraph (c); and revise newly redesignated paragraph (f)(4) to read as follows:

§ 180.175 Survival craft equipment.

* * * * *

(c) *Inflatable buoyant apparatus.* Each inflatable buoyant apparatus must be equipped in accordance with the manufacturer's approved servicing manual.

* * * * *

(f) * * *

(4) *Light.* The light must be a floating waterlight approved under approval series 161.010 or other standard specified by the Commandant. The floating waterlight must be attached around the body of the life float or buoyant apparatus by a 10 mm (3/8 inch) lanyard, resistant to deterioration from ultraviolet light, and at least 5.5 meters (18 feet) in length.

§ 180.200 [Amended]

130. In § 180.200, in paragraph (a)(1), remove the words "Subpart 160.151 in subchapter Q of this chapter," and add, in their place, the words "Approved under approval series 160.151"; in paragraph (a)(2), remove the words "Subpart 160.027 in subchapter Q of this chapter," and add, in their place, the words "Approved under approval series 160.027"; in paragraphs (a)(3)and (a)(4), remove the words "Subpart 160.010 in subchapter Q of this chapter," and add, in their place, the words "Approved under approval series 160.010"; in paragraph (b), remove the words "the buoyant apparatus or"; in paragraph (c) remove the last sentence; and, in table 180.200(c), in the "Survival craft requirements" column for the entry "Oceans", remove "(c) warm" and add, in its place, "(b) warm".

§ 180.202 [Amended]

131. In § 180.202, in the section heading, remove the word "an" and add, in its place, the word "on".

§ 180.206 [Amended]

132. In § 180.206, in paragraph (a), remove the word "§ 180.204" and add, in its place, the word "§ 180.205" and, in paragraph (b), remove the words "craft is" and add, in their place, the words "craft if".

133. In § 180.210, redesignate paragraph (c) as paragraph (d); add a new paragraph (c); and revise newly redesignated paragraph (d) to read as follows:

§ 180.210 Rescue boats.

* * * * *

(c) In general, a rescue boat must be a small, lightweight boat with built-in buoyancy and capable of being readily launched and easily maneuvered. In addition, it must be of adequate proportion to permit taking an unconscious person on board without capsizing.

(d) On a vessel of more than 19.8 meters (65 feet) in length operating on protected waters, a rescue boat approved under approval series 160.056 is acceptable in meeting the intent of this section. On a vessel of more than 19.8 meters operating on exposed or partially protected waters, a rescue boat complying with approval series 160.056 is acceptable in meeting the intent of this section. On a vessel of not more than 19.8 meters (65 feet) in length, a required rescue boat must be acceptable to the cognizant OCMI.

PART 181—FIRE PROTECTION EQUIPMENT

134. The authority citation for part 181 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 181.300 [Amended]

135. In § 181.300(e), remove the word ", manual".

136. Add § 181.310(c) to read as follows:

§ 181.310 Fire main and hydrants.

* * * * *

(c) Each fire hydrant must have a valve installed to allow the fire hose to be removed while the fire main is under pressure.

§ 181.320 [Amended]

137. In § 181.320, in paragraph (a), remove the words "fire stations" and add, in their place, the words "fire hydrants"; and, in paragraph (d)(1), remove "§ 160.027 in subchapter Q of this chapter" and add, in its place "approval series 162.027".

§ 181.400 [Amended]

138. In § 181.400(b)(5)(i), remove the word "Cylinders" is removed and add, in its place, the words "The cylinder".

§ 181.410 [Amended]

139. In § 181.410, in paragraph (b)(2), remove the words "Except as provided in paragraph (c)(2) of this section" and add, in their place, the words "Except for a normally unoccupied space of less than 170 cubic meters (6000 cubic feet)"; in paragraph (b)(10), remove the word "agency" and add in its place, the word "agent"; in paragraph (c)(2)(ii), remove the words "paragraphs (b)(2) and" and add, in their place, the word "paragraph"; in paragraph (f)(4)(v), after the first occurrence of the word "millimeters", add the word "(inches)" and, after the word "kilograms", add the word "(pounds)"; and, in paragraph (f)(5)(i), after the word "kilograms", add the word "(pounds)".

§ 181.500 [Amended]

140. In § 181.500, in table 181.500(a), under the column entitled "Minimum No. required", remove the number "2.500" and add, in its place, the number "2,500"; under the column entitled "Medium", remove "C02", wherever it appears, and add, in its place, "CO2"; and under the column entitled "Min size", remove "2.3 kg (5 lb)" and add, in its place, "4.5 kg (10 lb)".

§ 181.610 [Amended]

141. In § 181.610, remove the number "181.610" and add, in its place, the number "181.300".

PART 182—MACHINERY INSTALLATION

142. The authority citation for part 182 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 182.320 [Amended]

143. In § 182.320, redesignate paragraph (a) as paragraph (b) and paragraph (b) as paragraph (a).

§ 182.430 [Amended]

144. In § 182.430, remove paragraph (d) and redesignate paragraphs (e) through (l) as paragraphs (d) through (k), respectively.

§ 182.435 [Amended]

145. In § 182.435, in paragraph (b)(3)(ii), after the word "chloride", add the words "or equivalent" and, in paragraph (c), remove the word "that" and add, in its place, the word "which".

§ 182.458 [Amended]

146. In § 182.458(a), after the word "for", add the words "portable dewatering pumps or".

147. Revise § 182.520(b)(2) to read as follows:

§ 182.520 Bilge pumps.

* * * * *

(b) * * *

(2) Provided with suitable suction hose capable of reaching the bilge of each watertight compartment and discharging overboard.

* * * * *

§ 182.610 [Amended]

148. In § 182.610(f)(1), remove "§§ 111.93–11(d) and (e) in subchapter J" and add, in its place, "§ 58.25–55(d)".

§ 182.610 [Amended]

149. In § 182.720, in paragraph (e)(1), remove the words "rated pressure stamped thereon" and add, in their place, the words "maximum operating pressure of the system" and, in paragraph (e)(3)(ii), after the word "watertight", add the words "decks or".

PART 183—ELECTRICAL INSTALLATION

150. The authority citation for part 183 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

151. In § 183.340, in paragraph (i), revise the last sentence and add paragraphs (i)(1) and (i)(2) to read as follows; in paragraph (p), after the word "Conductors", add the words "for direct current systems"; and, in paragraph (q)(3), remove the word "and" and add, in its place, the word "end".

§ 183.340 Cable and wiring requirements.

* * * * *

(i) * * * The use of twist-on type wire nuts is permitted under the following conditions:

(1) The connections must be made within an enclosure and the insulated cap of the connector must be secured to prevent loosening due to vibration; and

(2) Twist-on type connectors may not be used for making joints in cables, facilitating a conductor splice, or extending the length of a circuit.

* * * * *

152. Add § 183.378 to read as follows:

§ 183.378 Ungrounded systems.

Each ungrounded system must be provided with a suitably sensitive ground detection system located at the respective switchboard that provides continuous indication of circuit status to ground with a provision to momentarily remove the indicating device from the reference ground.

§ 183.432 [Amended]

153. In § 183.432(b)(4), remove the number "6" and add, in its place, the number "2".

PART 184—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

154. The authority citation for part 184 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 184.220 [Amended]

155. In § 184.220(a), remove the words "heavy duty".

§ 184.410 [Amended]

156. In § 184.410, remove the word "fixed" and add, in its place, the word "fixes".

§ 184.420 [Amended]

157. In § 184.420(a), remove the word "intend" and add, in its place, the word "intended".

§ 184.506 [Amended]

158. In § 184.506, remove the word "mut" and add, in its place, the word "must".

159. Revise the section heading to § 184.702 to read as follows:

§ 184.702 Pollution prevention equipment and procedures.

160. Revise § 184.710 to read as follows:

§ 184.710 First-aid kits.

A vessel must carry either a first-aid kit approved under approval series 160.041 or a kit with equivalent contents and instructions. For equivalent kits, the contents must be stowed in a suitable, watertight container that is marked "First-Aid Kit". A first-aid kit must be easily visible and readily available to the crew.

PART 185—OPERATIONS

161. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 185.304 [Amended]

162. In § 185.304(a)(6), remove the words "each closing radar contact" and add, in their place, the words "radar contact".

§ 185.335 [Amended]

163. In § 185.335(a),remove the word "watertight".

§ 185.356 [Amended]

164. In § 185.356, remove the number "179" and add, in its place, the number "176".

§ 185.410 [Amended]

165. In § 185.410, remove the words "or other danger" and add, in their place, the words ", man overboard, or other dangerous situation".

166. In § 185.420, redesignate paragraph (b) as paragraph (c) and add a new paragraph (b) to read as follows:

§ 185.420 Crew training.

* * * * *

(b) Training conducted on a sister vessel may be considered equivalent to the initial and quarterly training requirements contained in paragraph (a) of this section.

* * * * *

167. In § 185.506, revise the introductory text of paragraphs (a) and (b); redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and add a new paragraph (c) to read as follows:

§ 185.506 Passenger safety orientation.

(a) Except as allowed by paragraphs (b) and (c) of this section, before getting underway on a voyage or as soon as practicable thereafter, the master of a vessel shall ensure that suitable public announcements are made informing all passengers of the following:

* * * * *

(b) As an alternative to an announcement that complies with paragraph (a) of this section, the master or other designated person may—

* * * * *

(c) Ferries operating on short runs of less than 15 minutes may substitute bulkhead placards or signs for the announcement required in paragraphs (a) and (b) of this section if the OCMI determines that the announcements are not practical due to the vessel's unique operation.

* * * * *

§ 185.518 [Amended]

168. In § 185.518(b), remove the words "in subchapter Q of this chapter, or other standard specified by the Commandant" and add, in their place, the words "of this chapter".

§ 185.524 [Amended]

169. In § 185.524(b)(3), remove the words "of fire extinguishers" and add, in their place, the words "and location of fire alarms, extinguishers,".

170. Revise § 185.602 to read as follows:

§ 185.602 Hull markings.

(a) Each vessel must be marked as required by part 67, subpart I, of this chapter.

(b) Paragraphs (c) through (g) of this section apply to each vessel that fits into any one of the following categories:

(1) A vessel of more than 19.8 meters (65 feet) in length.

(2) A vessel authorized to carry more than 12 passengers on an international voyage.

(3) A vessel with more than 1 deck above the bulkhead deck exclusive of a pilot house.

(c) Each vessel that complies with the stability requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter, or in accordance with § 178.310 of this chapter, must—

(1) Have permanent draft marks at each end of the vessel; or

(2) Have permanent loading marks placed on each side of the vessel forward and aft to indicate the maximum allowable trim and amidships to indicate the maximum allowable draft.

(d) A loading mark required by paragraph (c)(2) of this section must be a horizontal line of at least 205 millimeters (8 inches) in length and 25 millimeters (1 inch) in height, with its upper edge passing through the point of maximum draft. The loading mark must be painted in a contrasting color to the sideshell paint.

(e) On a vessel that has a load line, the amidships marks required by paragraph (c)(2) of this section must be those required by the International Convention on Load Lines, 1966.

(f) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

(g) On a vessel on which the number of passengers permitted on upper decks is limited by stability criteria, as indicated by the vessel's stability letter, the maximum number of passengers allowed on an upper deck must be indicated by a durable marking of at least 25 millimeters (1 inch) numbers and letters at the entranceway to that deck.

§ 185.604 [Amended]

171. In § 185.604(b), remove the words "vessel marked" and add, in their place, the words "vessel or company marked".

172. In § 185.730, paragraph (b)(2) is revised to read as follows:

§ 185.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable life jackets, and inflated rescue boats.

* * * * *

(b) * * *

(2) At a servicing facility approved by the Commandant to service that particular brand.

* * * * *

Dated: September 19, 1997.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 97–25599 Filed 9–29–97; 8:45 am]

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federal register

Tuesday
September 30, 1997

Part VII

The President

Proclamation 7027—Austrian-American Day, 1997
Proclamation 7028—Gold Star Mother's Day, 1997

Federal Register
Vol. 62, No. 189
Tuesday, September 30, 1997

Presidential Documents

Title 3—

The President

Proclamation 7027 of September 25, 1997

Austrian-American Day, 1997

By the President of the United States of America

A Proclamation

For more than 200 years, the life of our Nation has been enriched and renewed by the many people who have come here from around the world, seeking a new life for themselves and their families. Austrian Americans have made their own unique and lasting contributions to America's strength and character, and they continue to play a vital role in the peace and prosperity we enjoy today.

As with so many other immigrants, the earliest Austrians came to America in search of religious freedom. Arriving in 1734, they settled in the colony of Georgia, growing and prospering with the passing of the years. One of these early Austrian settlers, Johann Adam Treutlen, was to become the first elected governor of the new State of Georgia.

In the two centuries that followed, millions of other Austrians made the same journey to our shores. From the political refugees of the 1848 revolutions in Austria to Jews fleeing the anti-Semitism of Hitler's Third Reich, Austrians brought with them to America a love of freedom, a strong work ethic, and a deep reverence for education. In every field of endeavor, Austrian Americans have made notable contributions to our culture and society. We have all been enriched by the lives and achievements of such individuals as Supreme Court Justice Felix Frankfurter; Joel Elias Spingarn, who helped to found the NAACP; psychiatrist and educator Alexandra Adler; lyricist Frederick Loewe, who helped to transform American musical theater; and architects John Smithmeyer and Richard Neutra.

Americans of Austrian descent have also helped to nurture the strong ties of friendship between the United States and Austria, a friendship that has survived the upheaval of two World Wars and the subsequent division of Europe between the forces of East and West. On September 26, 1945, a conference was convened in Vienna among the nine Austrian Federal States that helped to unify the nation and paved the way for recognition by the United States and the Allied Forces of the first postwar Provisional Austrian Government. Setting the date for the first free national elections, this important meeting laid the foundation for the strong, prosperous, and independent Austria we know today.

In recognition of the significance of this date to the relationship between our Nation and the Federal Republic of Austria, and in gratitude for the many gifts that Austrian Americans bring to the life of our country, it is appropriate that we pause to celebrate Austrian-American Day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, September 26, 1997, as Austrian-American Day. I encourage all Americans to recognize and celebrate the important contributions that millions of Americans of Austrian descent have made—and continue to make—to our Nation's strength and prosperity.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of September, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-26120
Filed 9-29-97; 10:59 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7028 of September 25, 1997

Gold Star Mother's Day, 1997

By the President of the United States of America

A Proclamation

As a free people, Americans have always sought to live our lives in peace; but history's harsh lessons have taught us that to remain free, we must be prepared for war. At many times and in many ways throughout the year, we remember the millions of selfless Americans whose wartime service helped preserve our freedom and the values we hold dear; and it is fitting that we should do so. But we must also remember that not all of the sacrifices that sustained us were made on the battlefield.

Long after the devastation of war ceases, the destruction left in its wake continues to afflict those who survive. For America's Gold Star Mothers—who have lost a child in the service of our country—the grief is particularly acute. The sons and daughters they cherished through the years, whom they guided and comforted through all the joys and heartaches of childhood and adolescence, were torn from their lives forever with cruel and sudden force. These mothers must live the rest of their lives knowing that the talents and ambitions of their children will never be fulfilled, that each family gathering or celebration will be shadowed by the absence of a dearly loved son or daughter.

Yet despite the enormity of their loss, America's Gold Star Mothers have continued to do what comes naturally to mothers: to comfort, to nurture, to give of themselves for the benefit of others. Through their devotion to our disabled veterans and their families, their generous community service, and their dedication to preserving the memory of the fallen, Gold Star Mothers remind us in so many poignant ways that true love of country often calls for both service and sacrifice.

For these reasons and more, and in recognition of the special burden that Gold Star Mothers bear on behalf of all of us, we set aside this day each year to honor and thank them and to rededicate ourselves to creating a world in which the kind of sacrifice they have been called upon to make need never be repeated. The Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1895), has designated the last Sunday in September as "Gold Star Mother's Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Sunday, September 28, 1997, as Gold Star Mother's Day. I call upon all government officials to display the United States flag on government buildings on this solemn day. I encourage the American people also to display the flag and to hold appropriate meetings in their homes, places of worship, or other suitable places as a public expression of the sympathy and respect that our Nation holds for our Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of September, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Agricultural Marketing Service
Irish potatoes grown in—
Colorado; published 9-26-97

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Maine; published 8-1-97
North Carolina; published 8-1-97
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Vermont; published 8-1-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Carfentrazone-ethyl; published 9-30-97

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Hearing aid compatible wireline telephones in workplaces, confined settings, etc.
Correction; published 9-30-97
Practice and procedure:
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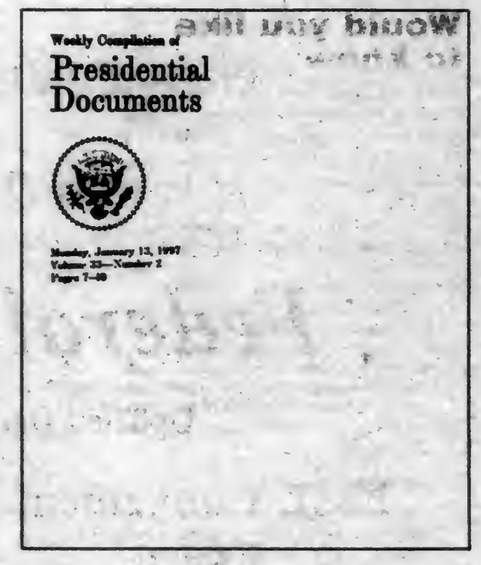
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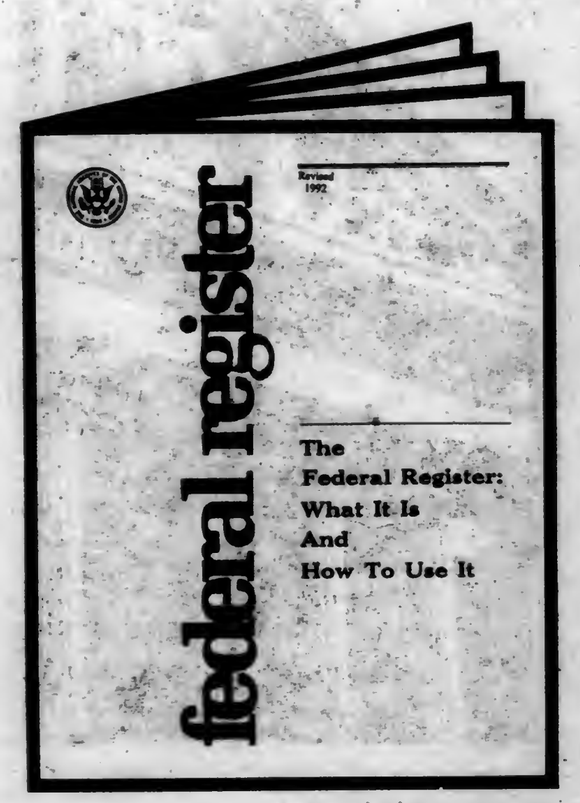
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INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA, assisted by Brian Swidal. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Jim Wickliffe. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

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◆800–End	(869–032–00044–1)	22.00	Jan. 1, 1997
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◆0–999	(869–032–00045–0)	30.00	Jan. 1, 1997
◆1000–End	(869–032–00046–8)	34.00	Jan. 1, 1997
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◆200–239	(869–032–00049–2)	32.00	Apr. 1, 1997
◆240–End	(869–032–00050–6)	40.00	Apr. 1, 1997
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◆400–End	(869–032–00052–2)	14.00	Apr. 1, 1997
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◆141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
◆200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
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◆1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
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◆500–End	(869–032–00058–1)	42.00	Apr. 1, 1997
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◆200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
◆300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
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◆300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
●23	(869–028–00076–2)	21.00	Apr. 1, 1996
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◆1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
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◆§§ 1.441-1.500	(869–032–00082–4)	22.00	Apr. 1, 1997
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100–499	(869–028–00109–2)	12.00	July 1, 1996
500–899	(869–028–00110–6)	48.00	July 1, 1996
900–1899	(869–028–00111–4)	20.00	July 1, 1996
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1910 (§§ 1910.1000 to end)	(869–028–00113–1)	27.00	July 1, 1996
1911–1925	(869–028–00114–9)	19.00	July 1, 1996
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1927–End	(869–028–00116–5)	38.00	July 1, 1996
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700–End	(869–028–00119–0)	38.00	July 1, 1996
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200–End	(869–028–00121–1)	33.00	July 1, 1996
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1–39, Vol. II		19.00	[2]July 1, 1984
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630–699	(869–028–00125–4)	14.00	[5]July 1, 1991
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◆52	(869–028–00142–4)	51.00	July 1, 1996
◆53–59	(869–028–00143–2)	14.00	July 1, 1996
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◆61–71	(869–028–00145–9)	47.00	July 1, 1996
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◆81–85	(869–028–00147–5)	31.00	July 1, 1996
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◆150–189	(869–028–00151–3)	33.00	July 1, 1996
◆190–259	(869–028–00152–1)	22.00	July 1, 1996
◆260–299	(869–028–00153–0)	53.00	July 1, 1996
◆300–399	(869–028–00154–8)	28.00	July 1, 1996
◆400–424	(869–028–00155–6)	33.00	July 1, 1996
◆425–699	(869–028–00156–4)	38.00	July 1, 1996
◆700–789	(869–028–00157–2)	33.00	July 1, 1996
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[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 through March 31, 1994. The CFR volume issued as of April 1, 1990 should be retained.

[5]No amendments to this volume were promulgated during the period July 1, 1991 through June 30, 1994. The CFR volume issued as of July 1, 1991 should be retained.

[6]No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued as of January 1, 1993 should be retained.

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890.807 (c) heading, (1) and (e) revised 38441
890.808 (e) revised 38442
890.1105 Heading, (b), (c), (d) and (f) revised; (g) added 38442
890.1108 Revised 38442
900.604 (b)(3) and (4) revised 33971
900.606 Removed 33971
900.601—900.606 (Subpart F) Appendix A revised 33971
930.201 Regulation at 61 FR 39267 confirmed 6448

Chapter II—Merit Systems Protection Board (Parts 1200—1299)

1201 Authority citation revised 17044
1201.3 (b) amended; interim 17044
(c)(1)(ii) revised; (c)(1)(iii) added; (c)(2) amended; interim 17045
1201.37 Heading revised; (a) and (b) designation and heading removed; (b)(1), (2) and (3) redesignated as (a), (b) and (c); interim 17045
1201.55 (b) amended; interim 17045
1201.111 (b)(6) amended; interim 17045
1201.112 (a)(3) amended; interim 17045

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1201.121 Heading and (b) revised; interim 17045
1201.131 Revised; interim 17045
1201.163 (a) and (c) amended; interim 17045
1201.201—1201.205 (Subpart H) Added; interim 17045
1209.3 Amended; interim 17048
1209.4 (a)(9) amended; (a)(10) redesignated as (a)(11); new (a)(10) added; new (a)(11) revised; interim 17048
1209.13 (Subpart E) Added; interim 17048

Chapter III—Office of Management and Budget (Parts 1300—1399)

1305 Added 29285
1312 Revised 25426

Chapter VI—Federal Retirement Thrift Investment Board (Parts 1600—1699)

1603 Authority citation revised 33968
1603.1 Revised 33968
1603.2 Heading, (b) and (c) revised; (d) added 33969
1603.3 (a) and (b) introductory text revised 33969
1620 Authority citation revised 18234
1620.102 (b)(3) removed 18234
1640.1 Amended 34154
1640.2 Revised 34155
1640.3 Introductory text, (c)(2), (d) and (e) revised 34155
1640.4 Revised 34155
1640.5 Revised 34155
1640.6 Revised 34155
1651 Added 32429
1655 Regulation at 55 FR 979 confirmed 18019
1655.1 Regulation at 61 FR 58755 confirmed 18019
1655.2 Regulation at 61 FR 58755 confirmed 18019
1655.3 Regulation at 61 FR 58755 confirmed 18019
1655.4 Regulation at 61 FR 58755 confirmed 18019
1655.9 Regulation at 61 FR 58755 confirmed 18019
1655.10 Regulation at 61 FR 58755 confirmed 18019
1655.11 Regulation at 61 FR 58755 confirmed 18019
1655.12 Regulation at 61 FR 58755 confirmed 18019
1655.13 Regulation at 61 FR 58756 confirmed 18019
1655.15 Regulation at 61 FR 58756 confirmed 18019
1655.16 Regulation at 61 FR 58757 confirmed 18019
1655.17 Regulation at 61 FR 58757 confirmed 18019
1655.18 Regulation at 61 FR 58757 confirmed 18019
1655.19 Regulation at 61 FR 58757 confirmed 18019
1655.21 Regulation at 61 FR 58757 confirmed 18019
1655.22 Regulation at 61 FR 58757 confirmed 18019
1655.23 Regulation at 61 FR 58757 confirmed 18019
1655.24 Regulation at 61 FR 58757 confirmed 18019
1690 Regulation at 52 FR 43315 confirmed 32473

Chapter XIV—Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

2423 Revised 40916
2429.1 Removed 40922
2429.7 Amended; heading and (c) through (f) revised 40922
2429.11 Revised 40923
2429.12 (a) and (c) revised 40923
2429.13 Revised 40923
2429.14 Revised 40923
2429.21 (b) revised 40923
2429.22 Revised 40923
2429.24 (e) revised 40924
2429.25 Revised 40924
2429.27 (b) and (d) revised 40924
2473 Heading and authority citation correctly added 2547

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2634.601 (a) revised; (d) added; OMB number 33976

2634.905 Introductory text revised; (b)(2) and (c) amended; (d) added 33976
2635.204 Regulation at 61 FR 50691 confirmed 12531
2635.801 Regulation at 61 FR 50691 confirmed 12531
2635.808 Regulation at 61 FR 50691 confirmed 12531
2638 Technical correction 14737
2638.701 Revised; interim 11312
Regulation at 62 FR 11312 eff. date corrected to 6–10–97 13213
2638.702 (a) designation and (b) removed; (a)(1), (2) and (3) redesignated as (a), (b) and (c); new (b)(i) through (v) redesignated as (b)(1) through (5); new (b) introductory text and new (5) amended; new (c) revised; interim 11312
Regulation at 62 FR 11312 eff. date corrected to 6–10–97 13213
2638.703 (a)(3) amended; (b)(1) and (2) revised; interim 11313
Regulation at 62 FR 11312 eff. date corrected to 6–10–97 13213
2638.704 (b)(4) amended; (b)(6) removed; (b)(7) redesignated as (b)(6); heading, (a), (b)(5), new (6), (c) introductory text and (d) revised; interim 11313
Regulation at 62 FR 11312 eff. date in part corrected to 6–10–97 13213
2640.201 (c)(1) note corrected 1361
2640.202 (b)(1) correctly designated 1361
2640.203 (a)(2) amended 23128
2641 Appendixes A and B amended 26917
Appendixes A and B corrected 31865

Chapter XXII—Federal Deposit Insurance Corporation (Parts 3201—3299)

3201.102 (c)(1)(i), (2), (3) and (d)(2) amended; (c)(1)(ii) revised; (c)(1)(iii) added 3772

Chapter XXVIII—Department of Justice (Part 3801)

3801 Revised 23942
3801.106 (b)(1)(ii) corrected 31865

Chapter XXXV—Office of Personnel Management (Part 4501)

4501.103 (a)(3) corrected 32859

Chapter LXI—National Labor Relations Board (Parts 7101—7199)

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Chapter LXII—Equal Employment Opportunity Commission (Part 7201)

Chapter LXII Regulation at 61 FR 7066 confirmed 36447

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Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

1.1—1.12 (Subpart A) Authority citation revised 33978
1.1 Revised 33978
1.2 (a) and (b) amended 33978
1.3 (a)(2) amended 33978
1.4 (a) introductory text, (1) through (4), (b) introductory text, (3) and (4) amended; (b)(5) and (6) revised 33978

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1.5 (b) amended 33978
1.6 (a) amended 33978
(b), (c), (e), (f) and (g) amended; (h) revised 33979
1.8 (a) introductory text, (b), (d) introductory text, (e), (f) and (g) amended 33979
1.9 (a) amended; (b) revised; (c) removed 33979
1.10 (a) and (b) amended; (c) revised 33979
1.11 (a) introductory text amended 33979
1.13 (b) and (c) amended 33979
1.14 (a) and (b)(3) amended 33979
1.16 Revised 33979
1.18 (a)(7), (b) and (c) amended 33979
1.26—1.29 (Subpart B) Appendix A amended 33980
1.110—1.123 (Subpart G) Authority citation revised 33981
1.110 Amended 33981
1.112 (a) introductory text amended 33981
1.113 (a) through (e) amended 33981
1.114 (d) and (e) amended 33981
1.116 (a) introductory text and (b) amended 33981
1.117 (a) introductory text, (2), (b), (d)(3), (e)(2) and (3) amended 33981
1.118 (c), (d), (e) introductory text and (1) amended 33981
(e)(2) amended 33982
1.121 Amended 33982
1.122 Amended 33982
1.110—1.122 (Subpart G) Appendix A amended 33982
2.16 (a)(2)(iv) removed 1031
(a)(4) and (b)(3) revised 19900
(a)(3)(x) revised 40253
2.20 (a)(9) added 1031
2.22 (a)(1)(viii)(XX) through (BBB) and (b)(1)(iv) through (xxii) added 40254
2.42 (a)(31) removed 1031
(a)(41) removed 19901
2.43 (a)(24) revised 40254
2.44 Added 19901
2.61 (a)(25) added 1031
2.79 (b) removed 37485
(a)(8)(lviii) through (lxii) added 40255
3.91 (Subpart E) Added 40925
5 Authority citation revised 8361
Nomenclature change 8361
5.2 Amended 8361
20 Appendix 1 amended 10412

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

28.909 (b) revised 25800
28.911 (a) amended 25800
29.8001 Table amended 24559
33.10 Regulation at 61 FR 50422 confirmed; (b) revised; (c) and (d) redesignated as (d) and (e); new (c) added 1033
35.11 Regulation at 61 FR 54082 confirmed 27494
46.2 (j) revised; (hh) and (ii) added 15086
46.9 (i) revised 15087
46.10 Revised 15087
46.17 Revised 15087
46.27 (a) revised 15087
46.28 (a) revised 15087
46.45 Introductory text revised 15088
46.46 (a) removed; (b) through (g) redesignated as (a) through (f); new (c), new (e)(2) and new (f) revised 15088
46.49 Added 15089
51.300 Revised; interim 28981
51.301 Revised; interim 28981
51.319 (f) revised; interim 28981
51.323 (c) introductory text revised; interim 28982
51.760 Introductory text revised 2897
51.761 Revised 2897
51.1151 Introductory text revised 2897
51.1152 Revised 2897
51.1820 Introductory text revised 2897
51.1821 Revised 2898
51.2075—51.2091 (Subpart) Revised 2892
51.2105—51.2131 (Subpart) Revised 2894
56.46 (b) and (c) revised 18021
56.47 Revised 18021
56.52 (a)(4) revised 18021
56.54 (a)(2) revised 18021
70.71 (b) and (c) revised 18021

70.72 Revised 18021
70.76 (a)(2) revised 18021
70.77 (a)(4) and (5) revised 18021
80.1—80.14 (Subpart A) Revised; interim 29650
Regulation at 62 FR 29650 confirmed 40730
80.4 Amended 40730
80.5 (a) revised 40730
80.6 (a)(5) revised 40731

Chapter II—Food and Consumer Service, Department of Agriculture (Parts 210—299)

210.2 Amended 10189
210.9 (b)(20) added; interim 901
210.10 (k)(2) table and (n)(3)(iv) amended; (k)(3)(iii) added 10189
210.10a (c) table and (j)(3) amended; (d)(2)(iii) added 10190
210.19 (f) added; interim 901
220.2 (bb) added 10190
220.8 (g)(2) table amended 10190
220.8a (a)(2) table amended 10191
225.16 (d)(1) table and (2) table amended 10191
226.2 Amended; interim 901, 23617
226.4 (c) and (g)(1) revised; interim 901
226.5 (b) revised; interim 23618
226.6 (f)(2) and (l) introductory text amended; (f)(9), (10) and (11) added; interim 902
(b)(8) and (c)(11) revised; interim 23618
226.10 (c) revised; interim 23618
226.11 (b) and (c) introductory text revised; interim 23618
226.13 (b) and (c) revised; (d) added; interim 902
(d)(3)(ii) corrected 5519
226.14 (a) introductory text amended; interim 903
226.15 (e)(3) revised; (f) through (j) redesignated as (g) through (k); new (f) added; interim 903
(a) amended; (b)(6) revised; interim 23619
226.17 (b)(2) and (4) amended; interim 23619
226.18 (b)(11) and (12) added; (e) and (f) amended; interim 903
226.19 (b)(2) and (5) amended; interim 23619
226.19a (b)(3), (4) and (10) amended; interim 23619
226.20 (a)(2)(i)(C) added; (c)(2) table, (3) table and (d)(1) amended 10191
226.23 (b) amended; (e)(1)(i) and (iv) revised; (h)(6) added; interim 904
(h)(6) corrected 5519
(c)(2), (d), (e)(1)(i), (ii)(F), (iii)(E), (v) introductory text, (A), (h)(2)(i), (iii)(D), (v)(C) and (vi) amended; (e)(1)(iv), (v)(B), (2)(vii)(A), (B), (h)(2)(iii)(A), (iv) and (v)(A) revised; interim 23619
250 Authority citation revised 8365
250.3 Amended 8365
250.43 Revised 8365
250.44 Revised 8366
272.1 (g)(153) added 29658
275.3 (c) introductory text amended; (c)(1)(iii) and (4) revised (OMB number pending) 29658
275.11 (g) amended 29658
275.12 (d)(2)(vii) introductory text, (A) and (D) revised 29659
275.23 (e)(5) through (10) redesignated as (e)(6) through (11); (d)(1)(iii), (e)(1), (4) heading, (i) and new (8)(i)(D), (ii), (iii)(A), (B), (9), (10)(i) and (11)(iii) amended; new (e)(5) added; new (e)(7) revised 29659
278.6 (a) and (b) amended 40928

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

300.1 (a) introductory text revised 595, 36974
301 Authority citation revised 10416
Regulatory flexibility analysis 15809, 24753
Technical correction 28108
301.45 (a) amended; interim 29287
301.45–3 (a) amended; interim 29287, 36646
301.51–1—301.51–9 (Subpart) Added; interim 10416
301.52 (a) amended; interim 23945
301.52–2a Amended; interim 23945
301.78–1 Amended; interim 33538

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301.78–2 (a) amended; interim 33538
301.78–3 (c) revised; interim 33538
(c) amended; interim 36977
301.89–1 Amended; interim 23624
Amended 24751
301.89–3 (d) amended; (e) and (f) revised; interim 23624
301.89–4 Revised; interim 23627
301.89–5 Footnote 2 redesignated as footnote 1; interim 23627
301.89–6 Footnotes 2 and 3 redesignated as footnotes 1 and 2; (b) revised; (d) removed; interim 23627
301.89–7 Footnote 5 redesignated as footnote 4; interim 23628
301.89–9 Footnote 6 redesignated as footnote 5; interim 23628
301.81–1—301.81–10 (Subpart) Appendix amended; interim 30740
301.89–14 Revised 24751
301.89–1—301.89–14 (Subpart) Appendix removed; interim 23628
318.13–1 Amended 36974
318.13–3 (b)(3) added 36974
318.13–4e Added 36974
318.13–4f Revised 36974
319.56–2q Added 595
319.56–2t Table amended; OMB number 596
319.56–2x (a) table amended 597
319.56–2ff Added 5313
330 Authority citation revised 29662
330.400 (g)(1) amended 19903
340 Authority citation revised 19915, 23956, 29663
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340.0 (a) introductory text amended 19915
Regulation at 62 FR 19915 withdrawn 23628
(a) introductory text amended 23956
340.1 Amended 19915
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340.3 Footnote 5 added; (b)(1), (5), (d)(4), (e)(1) and (4) revised; (d)(1), (3) introductory text, (5), (e)(2) and (3) amended 19915
Regulation at 62 FR 19915 withdrawn 23628
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340.4 Footnotes 5, 6 and 7 redesignated as footnotes 7, 8 and 9 19915
Footnote 6 added; (a), (b) footnote 8, introductory text, (c) introductory text, (1), (2), (e), (f) introductory text, (7), (8), (10), (11)(ii), (g), (h)(1), (2) and (3) amended; (f)(9) revised 19916
Regulations at 62 FR 19915 and 19916 withdrawn 23628
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Footnote 6 added; (a), (b) footnote 8, introductory text, (c) introductory text, (1), (2), (e), (f) introductory text, (7), (8), (10), (11)(ii), (g), (h)(1), (2) and (3) amended; (f)(9) revised 23957
340.5 Footnote 10 added; (a), (b), (c)(1), (2), (3) introductory text and (ii) amended 19916
Regulation at 62 FR 19916 withdrawn 23628
Footnote 10 added; (a), (b), (c)(1), (2), (3) introductory text and (ii) amended 23957
340.6 (e) redesignated as (f); footnote 11, (c)(5) and new (e) added; (a), (b), (c)(4), (d)(1), (2), (3) introductory text, (ii) and new (f)(1) amended 19916
Regulation at 62 FR 19916 withdrawn 23628
(e) redesignated as (f); footnote 11, (c)(5) and new (e) added; (a), (b), (c)(4), (d)(1), (2), (3) introductory text, (ii) and new (f)(1) amended 23957
340.7 (b) introductory text amended 19917
Regulation at 62 FR 19916 withdrawn 23628
(b) introductory text amended 23958
340.8 Footnote 8 redesignated as footnote 12 19915
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340.9 Footnote 9 redesignated as footnote 13 19915
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351 Authority citation revised 29663
354.3 (b)(1), (c)(1), (3)(i) introductory text, (d)(1), (e)(1) and (f)(1) revised; (f)(4)(i)(C) added 39754
372 Authority citation revised 29663

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

400.301—400.309 (Subpart O) Authority citation revised 22876
400.301 Revised 22876
400.302 Amended 22876
400.303 (a) revised; (b) redesignated as (c); (b), (d) and (e) added 22876
400.305 (b) and (c) introductory text revised 22877
400.307 Revised 22877
400.309 (e) removed; (f) redesignated as (e); (a) and new (e) revised 22877
400.401 (a) and (b)(1) through (4) revised 28608
400.402 Revised 28608
400.403 Revised 28608
400.404 Revised 28608
400.405 Redesignated as 400.406 28608
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400.407 Redesignated as 400.408; new 400.407 redesignated from 400.406 28608
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400.408 Redesignated as 400.409; new 400.408 redesignated from 400.407 28608
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400.410 Redesignated as 400.411; new 400.410 redesignated from 400.409 28608
400.411 Redesignated as 400.412; new 400.411 redesignated from 400.410 28608
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400.412 Redesignated as 400.413; new 400.412 redesignated from 400.411 28608
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400.454 (a) introductory text amended 40928
401 Heading correctly revised 13983
401.20 Introductory text revised 28310
401.110 Introductory text amended 25108
401.126 Introductory text revised 28613
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401.130 Introductory text revised 33741
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401.137 Introductory text revised 14777
401.138 Introductory text revised 14783
401.139 Introductory text revised 14777
401.142 Introductory text revised 12070
401.146 Introductory text revised 33735
403 Authority citation revised 39923
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403.1—403.7 (Subpart) Heading removed 39923
403.7 (d) introductory text revised 39923
414 Authority citation revised 13291
414.1—414.7 (Subpart) Heading revised 13291
414.7 (d) introductory text revised 13291
415 Authority citation revised 14285
415.1—415.7 (Subpart) Heading revised 14285
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433.7 (d) introductory text revised 6105
445 Authority citation revised....14789
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445.7 (d) introductory text revised....14789
446.1—446.7 (Subpart) Heading revised....20091
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454 Heading revised 23631
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455 Authority citation revised....35659, 35664
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457.124 Added 12070
457.127 Added 14287
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457.132 Added....5905
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457.138 Added 33741
457.139 Added 14777
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457.148 Added 14789
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457.157 Added 33735

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601 Revised 16660

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701 Authority citation revised....40930
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704 Removed....7625
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723 Nomenclature change; interim 15600
723.111 (e) added 24800
723.112 (e) added 30230
723.208 (b)(6)(v) added; interim....15600
723.209 (c) added; interim....15600
729.102 Regulation at 61 FR 36999 confirmed 25437
729.103 Regulation at 61 FR 36999 confirmed 25437
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729.215 Regulations at 61 FR 36999 and 37001 confirmed 25437
729.216 Regulations at 61 FR 36999 and 37001 confirmed 25437
735 Nomenclature change 33540
735.2 (gg), (hh) and (ii) amended 33540
735.35 Revised 33540
735.46 Removed 33540
735.52 Amended 33540
735.87 Revised 33540
735.100 Amended 33540
735.101 (k) amended; (n) removed; (o), (p) and (q) redesignated as (n), (o) and (p) 33540
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800.71 Amended 31702
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916.350 (d) revised; interim....15360
916.356 (a)(1) introductory text, (iii), (3) introductory text, (4) introductory text, (5) introductory text and (6) introductory text revised; (a)(1)(i) table added; interim....15360
917.442 (d) revised; interim 15361
917.459 (a)(1) introductory text, (iii), (5) introductory text

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and (6) introductory text revised; (a)(1)(i) table added; interim 15361
925.215 (Subpart) Added; interim 2549
Regulation at 62 FR 2548 confirmed 10420
929.105 (b)(1) and (2) amended 916
932.149 Revised 1242
932.150 Revised 1244
932.152 (a), (b), (c)(2), (d) heading, (1), (g)(1) introductory text and (2) introductory text revised 1244
932.153 Heading and (a) revised 1244
932.155 (c) revised 1244
932.230 (Subpart) Added; interim 2550
Regulation at 62 FR 2550 confirmed 11316
944.106 Regulation at 61 FR 64253 confirmed 7657
944.209 Reinstated; interim 30432
944.401 (a)(8), (b)(1), (g) and (j) revised 1244
946.248 Amended; interim 18023
Regulation at 62 FR 18023 confirmed 36200
947.114 Added; interim 27171
947.247 Amended; interim 27171
956.162 Added 18026
956.163 Added 18026
959.237 (Subpart) Added; interim 918
Regulation at 62 FR 918 confirmed 10421
959.322 (Subpart) Heading added; interim 918
Regulation at 62 FR 918 confirmed 10421
Introductory text revised; interim 19668
Regulation at 62 FR 19668 confirmed; introductory text amended 38204
966.234 (Subpart) Regulation at 60 FR 60512 confirmed 6852
966.323 (Subpart) Regulation at 60 FR 60512 confirmed 6852
Regulation at 61 FR 55731 confirmed 7659
979.219 (Subpart) Added; interim 7660
Regulation at 62 FR 7660 confirmed 30980
979.304 (Subpart) Heading added; interim 7660
Regulation at 62 FR 7660 confirmed 30980
981.442 (a)(4) redesignated as (a)(4)(i); (a)(4)(ii) added; interim 37488
981.472 (a) amended 37488
982 Marketing percentages 1037, 18029
984.347 (Subpart) Regulation at 61 FR 60513 confirmed 6111
985 Marketing percentages 1249, 31707, 36650
987.112a (b)(2) and (c)(2) amended 7663
989 Marketing percentages 18032, 32476
997.20 Revised 1259
997.30 Revised 1260
997.40 Revised 1263
997.50 Revised 1264
997.51 Revised 1264
997.52 Revised 1264
997.53 Revised 1264
997.54 Revised 1265
998.100 Revised 1265
998.200 Revised 1266
999.600 Revised 1269
(a)(10) correctly revised 9071

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1005.30 (a)(5), (6) and (c)(3) revised; (a)(7) and (8) redesignated as (a)(8) and (9); new (a)(7) added 39739
1005.32 (a) added 39740
1005.61 (a)(4) removed; (a)(5) and (6) redesignated as (a)(4) and (5) 39740
1005.77 Revised 39740
1005.78 Introductory text amended 39740
1005.81 (a) and (b) revised; (c) removed 39740
1005.82 Revised 39740
1006.7 (c) introductory text and (2) stayed in part 36651
1007.30 (a)(5), (6) and (c)(3) revised; (a)(7) and (8) redesignated as (a)(8) and (9); new (a)(7) added 39741
1007.32 (a) added 39742

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1007.61 (a)(4) removed; (a)(5) and (6) redesignated as (a)(4) and (5) 39742
1007.78 Introductory text amended 39742
1007.81 (a) and (b) revised; (c) removed 39742
1007.82 Revised 39742
1011.61 Heading revised; (a) introductory text and (6) amended; (b) removed 918
1046.30 (a)(5), (6) and (c)(3) revised; (a)(7) and (8) redesignated as (a)(8) and (9); new (a)(7) added 39743
1046.32 (c) redesignated as (d); new (c) added 39743
1046.61 Heading revised; (a) introductory text and (6) amended; (b) removed 918
(a)(4) removed; (a)(5) and (6) redesignated as (a)(4) and (5) 39743
1046.77 Revised 39743
1046.78 Introductory text amended 39744
1046.81 (a) and (b) revised; (c) removed 39744
1046.82 Revised 39744
1079.7 (b) introductory text amended; eff. 12-1-96 through 3-31-97 920
1124.2 Amended 2
1124.30 (a)(1)(i), (ii), (c)(1) and (3) revised 2
1124.31 (a)(1) and (b)(1) revised 2
1124.50 (f) introductory text and (g) revised; (h) added 3
1124.53 Revised 3
1124.60—1124.63 Undesignated center heading revised 3
1124.60 (f) through (m) redesignated as (g) through (n); heading, (e), new (g) introductory text, new (3), new (h)(3) and new (6) revised; new (f) added; new (h) introductory text amended 3
1124.61 Heading, introductory text, (a), (d) and (e) revised 3
1124.62 Removed; new 1124.62 redesignated from 1124.63 and revised 3
1124.63 Redesignated as 1124.62 3
1124.71 (a)(1) and (b)(3) revised; (b)(1) amended 3
1124.73 (a)(2)(ii) through (vi), (c) introductory text, (1) and (f)(2) revised; (a)(2)(vii) added; (c)(2) and (d)(2) amended 4
1124.74 (c) amended 4
1124.75 (a)(1)(i) amended 4
1124.85 (b) amended 4
1131.7 (c) stayed in part; eff. 4-1-97 through 3-31-99 26736
(b) stayed in part; eff. 9-1-97 through 2-28-99 35948
1137.12 (a)(1) stayed in part; eff. 9-1-97 through 8-31-99 35948
1160.108 (a) revised 3983
1160.112 Revised 3983
1160.113 Revised 3983
1160.116 Removed 3983
1160.200 (a) amended 3983
1160.201 (b) revised 3983
1160.209 (b) revised 3983
1160.211 (a)(1) and (2) revised 3983
1160.501 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c); new (a) and new (b)(2) revised; new (c) amended 3983
1160.604 (a) amended 3984
1160.605 Revised 3984

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1205.10—1205.30 (Subpart) Added 1660
1205.510 (b)(5) revised 22878
1205.520 (b) introductory text revised 22879
1208.50 Note added 40257
1208.200—1208.207 (Subpart C) Added; eff. 5-14-97 through 8-15-97 18036
1215 Added; eff. 3-22-97 through 8-31-97 13535
Added 39389
1220.201 (a) table revised 37489
1230.110 Revised 26206
1280 Removed 38898

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Chapter XIII—Northeast Dairy Compact Commission (Parts 1300—1399)

Chapter XIII Added 29638
Referendum results 29646
1381 Revised; interim 35065
1381.3 (h) correctly revised 36651

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1410 Revised 7625
1414 Removed; interim 33985
1415 Removed; interim 33985
1416 Removed; interim 33985
1427.5 (b)(2) revised 19023
1427.11 Heading and (a) revised 19023
1434 Removed; interim 33985
1435.1 (a) and (b) designation removed 34612
1435.2 Amended 34612
1435.105 (a) and (g) revised; (h) added 34612
1437 Removed; interim 33985
Reinstated 36978
1439.402 (a) revised; interim 3197
1439.800—1439.810 (Subpart) Added; interim 33984
1464.2 (a) amended 3198
1464.8 (h) removed; (i) redesignated as (h) 3198
1464.11 Amended; (f) removed 3198
1464.12 (e) added 24800
1464.19 (e) added 30230
1464.102 Revised 3198
1464.104 (b) revised 3198
1464.106 (a)(1) revised 3198
1464.108 Amended 3199
1466 Added 28284
1468 Removed; interim 33985
1477 Removed; interim 33985
1479 Removed; interim 33985
1489 Removed; interim 33985
1493.20 (z) revised 24561
1493.50 (a) revised 24561
1493.90 (a) revised 24561
1493.410 (x) revised 24561
1493.440 (a) revised 24561
1493.480 (a) revised 24561
1494.201 (gg) revised 24561
1494.501 (c)(20)(xi) revised 24561
1499.1 Corrected 2719
1499.8 (h)(3) corrected 2719
1499.9 Heading correctly added 2719
1499.12 (d) corrected 2719

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

Chapter XVII Policy statement 6449
1703.100—1703.140 (Subpart D) Revised 32437
1710 Effective date confirmation 18037
1710.7 (b)(3) revised 27930
1710.106 (e) revised; interim 7922
1710.113 (c) redesignated as (c)(1); (c)(2) added 7665
1753.39 (c) revised 32477
1755.97 Table amended 23959
1755.98 Table amended 23959
1755.217 Added 7138
1755.400 Added 23960
1755.401 Added 23960
1755.402 Added 23960
1755.403 Added 23962
1755.404 Added 23989
Corrected 25017
1755.405 Added 23996
1755.406 Added 23998
1755.407 Added 24000
1775 Redesignated from 1942.451—1942.500 (Subpart J) and revised 33469
1777 Redesignated from 4284.401—4284.500 (Subpart E) and revised 33473
1778 Redesignated from 4284.501—4284.550 (Subpart K) and revised 33475
1780 Added 33478
1781 Redesignated from 1942.401—1942.424 (Subpart E) and revised 33500
1786.75—1786.86 (Subpart D) Removed 32478

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1901.204 (a)(28) added; interim 16468
(a)(25) revised 33510

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1910.1 (a) amended; interim 9353
1910.3 (c) amended; interim 9353
1910.4 (b)(19) removed; (b)(20) through (23) redesignated as (b)(19) through (22); (f) amended; interim 9353
1910.5 (c) introductory text revised; (c)(6) removed; interim 28618
1910.10 (a)(1) revised; interim 9353
1930 Authority citation revised 25065
Hearing 28982
1930.105 (b)(10) revised; interim 25065
1930.106 Added; interim 25065
1930.101—1930.150 (Subpart C) Exhibits B, B–1 and E amended; interim 25065
Exhibit B amended; interim 25066
1940 Authority citation revised 33510
1940.586 Removed 33510
1940.587 Removed 33510
1940.592 Added; interim 16468
1941 Authority citation revised 26919
1941.4 Amended; interim 9353, 9354
1941.12 (a)(8) through (11) and (b)(9) through (12) added; interim 9354
(a)(8), (11), (b)(9) and (12) revised; interim 28618
1941.14 Removed; interim 9354
1941.15 Removed; interim 9354
1941.16 Revised; interim 9354
(i)(2) amended; interim 28618
1941.17 (a) and (f) removed; (b) through (e) redesignated as (a) through (d); interim 9354
1941.32 Revised; interim 9355
1941.88 Introductory text and (c) removed; (a) and (b) redesignated as (b) and (c); new (a) added; new (c) revised; (d) amended; interim 9355
(c) amended; interim 28618
1941.970—1941.991 (Subpart C) Added; interim 26919
1942.1 (a) revised 33510
1942.17 Heading and (p)(6)(i) introductory text revised 33510
1942.308 (c) revised 33510
1942.349 Revised 33510
1942.351—1942.386 (Subpart H) Removed 33510
1942.401—1942.424 (Subpart I) Redesignated as Part 1781 33500
1942.451—1942.500 (Subpart J) Redesignated as Part 1775 33469
1942.501—1942.550 (Subpart K) Redesignated as Part 1778 33475
1943.4 Amended; interim 9355
(e) amended; interim 28619
1943.12 (a)(3) and (b)(4)(ii) amended; (a)(8) through (11) and (b)(8) through (11) added; interim 9355
(a)(11) and (b)(11) revised; interim 28619
1943.13 (a)(2) removed; (a)(3), (4) and (5) redesignated as (a)(2), (3) and (4); (a) introductory text, (1), new (3), (b) introductory text and (1) amended; interim 28619
1943.16 Revised; interim 9356
(b) amended; interim 28619
1943.17 (a)(4) and (5) removed; interim 9356
1943.18 (b)(2) revised; (c) added; interim 9356
1943.19 (a)(1) and (d)(3) amended; interim 9356
1943.23 (g)(1) amended; (g)(3) and (4) removed; interim 9356
1943.24 (a), (b)(1) and (c) amended; (b)(1)(iv), (d)(3), (4) and (f) removed; (d)(1) revised; (d)(2) and (g) through (k) redesignated as (d)(3) and (f) through (j); new (d)(2) added; interim 9356
1943.25 (b) revised; interim 9356
1943.54 Amended; interim 9356
1944 Authority citation revised 25066
Hearing 28982
1944.205 Amended; interim 25066
1944.211 (a)(13)(i) amended; interim 25065
(a)(2) introductory text revised; (a)(15) added 25074
1944.212 (b) introductory text amended 25074
1944.213 (b) introductory text, (d)(1)(i) and (ii) amended; interim 25065
(b) introductory text and (d) introductory text amended; (a), (f) heading, (2)(i) and (3) revised; interim 25066

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1944.215 (a)(1), (r)(1), (2), (4) introductory text, (i), (ii), (vii) and (7) amended; interim 25067
(n)(1) and (2) revised; (x) added 25075
1944.221 (a) introductory text revised 25075
1944.224 (a)(4), (6) and (7) amended; interim 25065
(a)(5) introductory text amended; interim 25067
1944.228 Added; interim 25067
1944.229 Added; interim 25067
1944.230 Added; interim 25068
1944.231 Revised; interim 25068
1944.233 Added 25075
1944.234 Added 25076
1944.235 (h) introductory text amended; interim 25065
1944.237 (a) amended; interim 25069
1944.201—1944.250 (Subpart E) Exhibit A, A–7 and E amended; interim 25065
Exhibit A amended; interim 25069
Exhibits A–7 and A–9 amended; Exhibit A–10 removed; interim 25070
Exhibit A–7 amended 25076
1944.651 (a) and (d) amended; (b) revised 26208
1944.652 Revised 26208
1944.653 Amended 26209
1944.656 Amended 26209
1944.658 (a)(2) amended 26209
1944.659 Added 26209
1944.661 (a) amended; (b)(2) introductory text and (3) revised 26209
1944.664 (d) through (g) redesignated as (e) through (h); heading, (a), new (h)(1) and new (3) revised; new (d) added; new (f) introductory text and new (g) introductory text amended 26210
1944.665 Amended; heading revised 26210
1944.666 (b)(3) and (6) amended 26210
1944.667 (a) introductory text amended 26210
1944.670 (b) revised 26210
1944.671 (a) introductory text amended; (a)(2) revised 26210
1944.672 (a), (b) and (d) revised 26210
1944.673 Heading and (b) revised 26211
1944.683 (b)(3) through (7) redesignated as (b)(4) through (8); new (b)(3) added; new (b)(4)(i) and new (8) amended 26211
1944.700 Revised 26211
1945.154 Amended; interim 9356
1945.156 (b)(2)(i) introductory text and (ii) introductory text amended; interim 9356
1945.162 (a) through (m) redesignated as (b) through (n); new (a) added; interim 9356
1945.163 (e) revised; interim 9357
1945.166 (a)(1) amended; (b)(5) and (c)(3) removed; (c)(4) redesignated as (c)(3); interim 9357
1945.167 Heading revised; (a) and (i) removed; (b) through (h) redesignated as (c) through (i); new (a) and new (b) added; interim 9357
(a) amended; interim 28619
1945.169 (l) revised; interim 9357
1945.175 (c)(3) removed; (c)(4) redesignated as (c)(3); (c)(2) and new (3) revised; interim 9357
(c)(3) amended; interim 28619
1945.469 (l) correctly designated 11953
1951 Authority citation revised 16469
Hearing 28982
1951.201 Amended; interim 16469
Revised 33510
1951.262 (f)(1) and (2) revised; interim 10120
1951.454 Amended; interim 10120
1951.504 Amended; interim 25070
1951.506 (a)(5)(iv) removed; (a)(5)(v) redesignated as (a)(5)(iv); new (a)(5)(iv) amended; interim 25070
1954.509 Removed; interim 25070
1951.517 (b)(4)(i)(A), (B), (ii)(A), (B) and (iii) amended; interim 25065
1951.501—1951.550 (Subpart K) Exhibit B amended; interim 25070
1952.455 (a), (b), (c), (e), (f), (g) introductory text, (2), (h), (i) and (j) amended; (g)(1) and (4) removed; (g)(2), (3) and (5) redesignated as (g)(1), (2) and (3); interim 10120
1951.457 (a) revised; interim 10120
1951.458 Revised; interim 10120
1951.901 Revised; interim 10120
1951.902 Revised; interim 10120
1951.903 Revised; interim 10121
1951.904 Added; interim 10121
1951.906 Revised; interim 10121
1951.907 (c), (d) and (e) revised; (f) removed; interim 10123
1951.908 Revised; interim 10124
1951.909 Revised; interim 10124
1951.910 Revised; interim 10132
1951.911 Revised; interim 10132
1951.914 (a)(5)(iii) removed; (a)(5)(iv), (v), and (vi) redesignated as (a)(5)(iii), (iv) and (v); interim 10134
1951.917 Removed; interim 10134
1951.918 Removed; interim 10134
1951.901—1951.950 (Subpart S) Exhibit A revised; interim 10134
Exhibit B revised; interim 10143
Exhibits C, C–1 and E revised; interim 10144
Exhibit F revised; interim 10146
Exhibit H revised; interim 10147
Exhibit J–1 revised; interim 10149
Exhibits K, L and M revised; interim 10156
Exhibits N through Q removed; interim 10157
1951.958 (a)(2) amended; interim 10157
1956 Authority citation revised 10157
1956.51—1956.100 (Subpart B) Heading revised; interim 10157
1956.54 Amended; interim 10157
1956.57 (b) amended; (k) revised; (l) added; interim 10157
1956.66 Introductory text and (a) introductory text amended; interim 10157
Revised 33511
1962.13 (a)(1) amended; interim 10157
1962.34 (b)(3) and (d) amended; (b)(6) added; interim 10157
1962.40 (a), (b)(1) and (2) introductory text amended; interim 10157
1962.41 (a) amended; (c) through (f) revised; interim 10157
1962.42 (a) introductory text, (1)(i), (iii), (iv) and (b)(1) amended; (a)(1)(v) and (2) revised; interim 10158
1962.46 (g)(2)(iv) added; interim 10158
1962.1—1962.49 (Subpart A) Exhibit D–1 removed; interim 10158
1965 Hearing 28982
1965.1—1965.50 (Subpart A) Heading revised; interim 10158
1965.26 (a)(1)(iv), (2), (b), (c)(1), (3), (f)(4), (5)(ii) and (6) revised; (f)(5)(iii) added; interim 10158
1965.27 Introductory text, (c)(2), (d), (e) and (f) amended; interim 10159
1965.65 (a) introductory text revised; interim 25070
1965.68 (c)(9) removed; interim 25070
1965.210 Revised; interim 25070
1965.213 (a), (b) and (c) redesignated as (b), (c) and (d); new (a) added; new (b) introductory text and new (1) revised; interim 25071
1980.20 (a) introductory text amended; interim 9357
1980.106 (b) amended; interim 9357
Amended; interim 28619
1980.108 (a)(3)(ii) revised; interim 9357
1980.119 (d) revised; interim 9357
1980.174 Added; interim 9358
(a) introductory text revised; interim 28619
1980.175 (b) introductory text, (c)(1), (2) and (d)(1) revised; (d)(7) removed; (d)(2) through (6) redesignated as (d)(3) through (7); new (d)(2) added; (i)(3) amended; interim 9358
(b), (c)(2)(ii) and (d)(1) amended; interim 28619
1980.176 Removed; interim 9358
1980.180 (c) revised; (d)(4) and (5) removed; interim 9358
(a), (c)(1) and (5) amended; interim 28619
1980.190 (e) amended; interim 28619
2003 Authority citation revised 16469
2003.1—2003.5 (Subpart A) Exhibit A amended; interim 16469

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Chapter XXXIV—Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)

3403 Revised 25800
3405 Added 39317
3406 Added 39331

Chapter XXXV—Rural Housing Service, Department of Agriculture (Parts 3500—3599)

3570 Added; interim 16469

Chapter XLII—Rural Development Administration, Department of Agriculture (Part 4200—4299)

4284.401—4284.500 (Subpart E) Redesignated as Part 1777 33473

Proposed Rules:

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28 12577
29 ..... 11773, 35452
46 ..... 15129, 33574
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70 4662
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251 12108
253 12108
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301 ..... 4664, 37159, 40756
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321 24849
330 24849
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416 ..... 23680, 26750
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981 ..... 17569, 36233
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1005 ..... 27525, 39470
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1131 9381
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1205 ..... 4666, 31012
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1220 23393
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1300—1399 (Ch. XIII) 23032, 24849, 25140
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1703 ..... 18678, 23394
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1753 32552
1767 23298
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3403 11256
4279 17107
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TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

1 Authority citation revised 10330
1.1 (l) revised; (q) through (t) added; interim 10330
3.1 (b)(11) added 9072
(b)(1), (2), (3), (7), (9) and (10) revised; interim 10330
(b)(7) corrected 15362
3.2 Heading, (b)(2), (c)(2), (3), (d), (e), (f) and (g)(1) revised; interim 10330
3.4 Amended; interim 10331
3.9—3.11 (Subpart B) Heading revised; interim 10331
3.9 Revised; interim 10331
3.10 Revised; interim 10331
3.11 Revised; interim 10331
3.12—3.41 (Subpart C) Heading revised; interim 10331
3.12 Amended; interim 10331
3.13 Revised; interim 10332
3.14 (a) revised; (c) added; interim 10332
3.15 (b) introductory text and (6) amended; (c) redesignated as (d); heading and new (d) revised; new (c) added; interim 10332
3.16 (b) amended; interim 10332
3.17 (a) amended; interim 10332
3.18 Revised; interim 10332
3.19 (a) and (d) amended; (h) removed; interim 10332
3.20 (a) revised; interim 10332
3.23 Heading and (b) revised; interim 10332
(b)(4)(ii) corrected 15362
(b)(1) introductory text corrected 17048
3.25 Revised; interim 10334
3.26 (c) revised; (d) added; interim 10334
(c)(2) corrected 15362
3.27 (c) revised; interim 10334
3.30 Revised; interim 10335
3.35 Revised; interim 10335
3.42 Added; interim 10335
3.61—3.65 (Subpart E) Added 9073
103.1 (f)(3)(iii)(U) removed 9074
(g)(3)(ii) revised; interim 10336
103.5 (a)(1)(iii)(B) and (5)(iii) removed; (a)(1)(iii)(C) through (F) redesignated as (a)(1)(iii)(B) through (E); interim 10336
103.5a (c)(1) revised; interim 10336
103.6 (a) revised; interim 10336
103.7 (b)(1) amended; interim 10336
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208.24 Added 9911
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61.2 (a), (b)(1) and (c)(1) corrected 40894
61.3 (a), (b) introductory text and (c)(2)(iv) corrected; (c)(1), (d) and (i) correctly revised 40894
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61.11 (a)(2), (b) introductory text and (c) corrected; (g) correctly removed 40895
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61.23 (a)(3)(iv), (b)(5), (7), (8), (c)(1)(iii) and (2)(ii) corrected 40895
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61.51 (c)(2)(i)(B) redesignated as (c)(2)(i)(C); new (c)(2)(i)(B) added 13790
(b)(1)(ii) and (iii) corrected 40897
(b)(1)(iv), (2)(v), (3)(iii), (d), (e)(1) introductory text, (i), (ii), (4) introductory text, (i), (iii), (f) introductory text, (g)(1), (2), (3) introductory text, (4), (h)(1), (2)(ii) and (i)(2) introductory text corrected; (i)(3) correctly revised 40898
61.55 (b)(3) revised 13790
(b)(2) introductory text, (i) and (g) corrected 40898
61.56 (d) removed; (e) redesignated as (d); new (d) revised; new (e) added 13790
(h)(1) correctly removed; (h)(2), (3) and (4) correctly redesignated as (h)(1), (2) and (3); (c)(1), (2), (g), new (h)(1), (2) and (3) corrected 40898
61.57 (e)(2) revised 13790
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(c) introductory text, (1) introductory text, (d) introductory text, (1)(ii) and (2)(iv) corrected 40899
61.58 Correctly revised 40899
61.63 Heading correctly revised; (a), (c)(4), (d)(5), (e) introductory text and (2) corrected 40899
(i) correctly removed; (j), (k) and (l) correctly redesignated as (i), (j) and (k); (e)(3), (4)(i), (5)(i), (10), (f) introductory text, (2), (3), (4)(i), (5)(i), (g) introductory text, (2), (3), (4)(i), (5)(i), (h) introductory text, new (i), new (j) and new (k) corrected; new (h) heading, (i) heading, (j) heading and (k) heading correctly added 40900
61.64 (b)(2), (c)(2) and (e)(10) revised 13790
(e)(10) corrected 16892
61.65 (g)(1) and (2) revised 13790
61.65 (a)(1), (5), (8)(i), (ii), (c) introductory text, (e) introductory text, (1) and (2) corrected 40900
61.67 (b)(2)(i), (c)(3)(ii), (iv), (v), (d)(2)(i) and (v) corrected 40900
61.68 (b)(2)(i), (c)(3)(iv), (v) introductory text and (d)(2)(i) introductory text corrected 40900
61.68 (d)(2)(v) corrected 40901
61.69 (a)(3) introductory text, (4) and (6)(i) corrected 40901
61.71 (b)(1) and (2) corrected 40901
61.73 (c)(2) corrected 40901
61.77 Correctly revised 40901
61.87 (a), (i)(4), (10), (11) and (m)(2) corrected; (m)(3) correctly removed; (m)(4) correctly redesignated as (m)(3) 40902
61.93 (c)(2)(ii) correctly removed; (c)(2)(iii) correctly redesignated as (c)(2)(ii); (a)(2)(iv), (b)(1)(ii), (iv), (2)(ii) and new (c)(2)(ii)(C) corrected 40902
61.95 (a)(2) corrected 40902
61.96 (b)(6) corrected 40902
61.97 (b)(3) corrected 40902
61.98 (a) corrected 40902
61.105 (b)(3) corrected 40902
61.109 (h) redesignated as (f) 13790
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61.110 (b)(1) and (2) introductory text corrected 40904
61.111 (c) corrected 40904
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61.129 (b) revised 13790
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61.131 (b)(2) introductory text corrected 40905

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61.133 (a)(2)(i)(B), (C), (D), (ii)(B) and (C) corrected; (a)(2)(i)(E) and (ii)(D) correctly added 40905
61.153 (d)(3) corrected 40905
61.157 (g) revised 13791
(b)(3), (c), (f)(1) introductory text and (g) introductory text corrected; (c) heading and (d) heading correctly added 40905
(g)(1), (2), (3)(i), (4)(i), (h) introductory text, (1), (2), (3)(i), (4)(i), (i) introductory text, (1), (2), (3)(i) and (4)(i) corrected 40906
61.159 (a)(3)(i), (ii), (iii), (5), (c)(1) introductory text, (i), (iii), (d)(1) and (2) corrected 40906
61.161 (b) introductory text, (1), (2) and (3) corrected 40906
61.163 (a)(4)(i), (ii), (iii) and (b) corrected 40906
61.165 (b) introductory text and (c) introductory text corrected; (e) correctly added 40906
61.167 (b)(2) and (c) introductory text corrected 40907
61.183 (c)(2) introductory text, (e) introductory text and (h)(2) corrected 40907
61.185 (b) introductory text corrected 40907
61.187 (c)(2) corrected 40907
61.191 (b) corrected 40907
61.193 Corrected 40907
61.195 (j) heading correctly added 40907
61.197 (b) revised 13791
(c) corrected 40907
61.217 Heading and (b) correctly revised 40907
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91 SFAR No. 78 Added 1205
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SFAR No. 79 added 20078
SFAR No. 67 amended; eff. 5-9-97 through 5-10-98 26792
91.23 (b)(1)(ii) revised 13253
91.323 (a)(1) revised 13253
91.703 (a)(4) and (b) amended 17487
91.705 Revised 17487
91.706 Added 17487
91 Appendix C amended; Appendix G added 17487
93 Technical correction 11768, 12687
93.301 Corrected 2445
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107.3 (e) revised 13744
108 Technical correction 1024, 15752
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108.7 (c)(4) and (5) revised 13744
109 Technical correction 15752
109.3 (c) revised 13744
119 SFAR No. 78 Added 1205
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119.3 Amended 13253
119.5 (k) and (l) added 13253
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119.9 (b) revised 13253
119.21 (a)(1) revised 13254
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119.67 (e) revised 13255
119.71 (b) introductory text and (d) introductory text revised; (f) amended 13255
121 SFAR No. 78 Added 1205
Technical correction 7674, 11768, 12687
SFAR No. 50–2 reinstated and amended 8864
SFAR No. 80 added 13255
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121.2 (d)(1)(iv) and (e)(1)(iv) added 13256
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121.305 (f) amended; (j) revised 13256
121.310 (b)(2)(i) and (ii) amended; (b)(2)(iii) added 13256
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121.431 (a)(2) revised 13791
121.437 (b) removed; (c) redesignated as (b); new (b) amended 13257
121.441 Amended 13791
121.579 (a) amended; (d) added 27922
121.590 (a) amended 13257
121.713 (b)(2) revised 13257
121 Appendix M added 38382
125.71 (f) revised 13257
125.226 Added 38387
125.329 (a) amended; (e) added 27922
125 Appendix E added 38390
129 Technical correction 15752
129.1 (b) amended 38396
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135.2 (d)(1)(i) introductory text, (2)(i) introductory text and (e)(1)(ii) amended; (d)(1)(iv) and (e)(1)(iv) added 13257
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135.93 (a) amended; (e) redesignated as (f); new (e) added 27923
135.152 (a) and (f) revised; (d) amended; (h) through (k) added 38396
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135 Appendixes B and C amended 38397
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141.41 (a)(4) corrected 40908
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141.63 (a)(5), (b)(3) and (4) corrected 40908
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141.85 (a)(1) and (2) corrected 40908
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141.95 (a) corrected 40908
141.101 (e) corrected 40908
141 Appendixes A and B corrected 40908
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142.11 (e)(4) removed; (e)(5) redesignated as (e)(4) 13791
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143 Removed 16367
187.1 Amended 13503
187.15 (d) added 13503
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187 Appendix B added 13503, 24286
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191 Revised 13744
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217.5 (b)(12) and (13) added 6718
241 Sec. 19–5 (c)(7), (8) and (18) revised 6718
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374 Authority citation revised 25841
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15 Authority citation revised 19669
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15.1—15.3 (Subpart A) Redesignated from Part 15; nomenclature change 19669
15.1 (c) amended 19670
15.11—15.18 (Subpart B) Redesignated from Part 15A; nomenclature change 19669
15.16 Introductory text amended 19670
15.17 Amended 19670
15.21—15.25 (Subpart C) Redesignated from Part 15B; nomenclature change 19669
15.24 (b) amended 19670
15.31—15.32 (Subpart D) Added 19670
15A Redesignated as 15.11—15.18 (Subpart B) 19669
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Chapter VII—Bureau of Export Administration, Department of Commerce (Parts 700—799)

730.9 (c) revised 25453
732.1 (a)(1) introductory text revised 25453
732.2 Introductory text, (b)(1) and (d) introductory text revised; (d)(3) and (f)(3)(ii) amended 25453
732.3 (h)(2) revised 25453
732 Supplement No. 1 redesignated as Supplement No. 3; new Supplement No. 1 and Supplement No. 2 added 25453
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734 Supplements Nos. 1 and 2 amended 25456
736.2 (b)(2)(ii), (6)(ii) and (8)(i) revised 25456
738.2 (d)(1)(iii) added; (d)(2)(i)(A) amended; (d)(2)(ii) revised 25456
738 Supplement No. 1 revised 6683
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740.1 (a) and (e) revised; (d)(2) amended 25457
740.2 (a) revised 25457
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740.9 (a)(2)(i) amended; (a)(2)(iv), (viii)(A) introductory text, (b)(1)(ii) and (2)(ii)(B) revised 25457

740.11 (b)(2)(iii) and (iv) revised 25457
740.12 (b)(1) amended 25458
740.13 (d)(3)(i) revised 25458
740.14 (a) and (b) introductory text revised; (d) amended 25458
740.16 (a)(2) and (3)(ii) revised; (j) added 25458
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742.2 (a)(1)(ii), (2)(iii) introductory text and (3)(ii) revised; (b)(2) amended 25458
742.7 (a)(1), (2) and (3) revised 25458
742.9 (b)(1)(iv) revised 25459
742 Supplement No 1. amended 25459
744 Authority citation revised 4910
744.1 (c) added 4910
744.2 (c) amended 25459
744.3 (a) amended 25459
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744.5 (a) amended 25459
744.6 (a)(1)(i) introductory text and (e) revised 25459
744 Supplement No. 4 added 4910
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Supplement No. 4 amended 26923, 35334, 35335
746.1 Introductory text and (b) revised; (c) amended 25459
746.2 (b)(4) added 9364
(a)(1) revised; (b)(3)(ii) amended 25459
746.3 (a)(1) revised 25460
746.4 (b) and (c)(3) introductory text revised; (e) and (f) redesignated as (d) and (e) 25460
746.5 (a)(1) and (b)(1) revised 25460
748.3 (b)(1) amended; (b)(2) revised 25460
748.9 (a)(7) added; (b)(1)(ii), (2)(ii) and (c)(2) revised 25461
748.10 (b)(1) and (3) introductory text revised 25461
748.11 (e)(1)(ii) revised 25461
748.12 (b) revised 25461
748.13 (a)(1) amended 25461
748 Supplement No. 1 amended 25461
Supplement No. 2 amended 25462
Supplements Nos. 4 and 5 amended 25463
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750.5 (a) revised 25463
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750.10 (c) amended 25463
752.1 (a)(1) amended 25463
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752.5 (c)(8)(i) introductory text, (ii) and (iii) introductory text revised 25463
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752.11 (c)(13)(i) revised 25466
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752 Supplements Nos. 1 and 3 revised; Supplement No. 2 amended 25466
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754.6 (c) revised 25467
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758.1 (b)(2), (e)(1)(i)(A) and (C) revised; (d)(2)(vi) and (f)(2)(ii) amended 25468
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758.3 (f)(1) introductory text, (g), (h)(1), (m)(3)(ii)(C) introductory text, (iii) and (o)(2) revised 25468
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764.2 (f) revised 25469
764.3 (b)(1), (2)(i), (ii) and (iii) revised 25469
764.5 (c)(4)(ii) revised; (c)(7) amended 25469
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770.2 (k) amended 6686
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770.3 (c)(1) and (2) amended; (d)(1)(i)(B), (ii) and (2)(ii) revised 25470
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921.20 Amended 12540
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921.60 (b) amended 12541
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922.47 (b) revised (effective date pending) 4607
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922.48 (a) and (b) revised (effective date pending) 4607
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922.50 (a)(1) introductory text and (iii) amended (effective date pending) 4608
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930 Authority citation revised 12541
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937 Removed 4622
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249.105 Amended; Form 5 amended 35341
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275.204–1 Revised 28135
275.204–2 (a) introductory text revised; (k) added 28135
275.205–3 Heading and (a) revised 28135
275.206(3)–2 (a) introductory text revised 28135
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12.104g (a) amended 19492
(a) and (b) amended 31721
19 Authority citation amended 15834
19.1 (a)(9) amended; (c) removed 15834
19.2 Heading, (b)(2) and (g) revised; (a) amended 15834
19.4 Revised 15834
19.6 (a)(1) and (d)(2) amended; (d)(1) revised; (d)(4) redesignated as (d)(5); new (d)(4) added 15836
19.11 (h) revised 15836
19.12 Revised 15836
19.13 (g) amended 15839
19.13a Introductory text amended; (b) revised 15839
19.35 (c) introductory text, (2), (e)(2) and (f) revised 15839
19.36 (e) and (g) amended 15840
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19.39 (c)(2) and (3) amended; (c)(4)(ii), (iii) and (iv) redesignated as (c)(4)(iii), (iv) and (v); new (c)(4)(ii) added; (c)(5) and (e) revised 15840
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101.3 (b)(1) amended 37133
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404.430 (c)(1)(ii)(A)(*1*), (*2*) and (2) amended 38450
404.452 (a)(1), (2) and (d) revised; (b) amended 15610
404.460 (b)(4)(ii) and (7) introductory text amended 38450
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416.2202 Introductory text amended 38456
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416.2227 (a), (b) and (c) amended 38456
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422.107 (a) amended 38456
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1.35 Removed 39440
5.10 (a)(38) added 28628
(a)(39) added 33349
5.31 (h) added 19493
10.30 (b) amended 40592
10.40 (b)(1)(ix) revised 40592
16.1 (b)(2) amended 40444
20.100 (c)(3) revised 40592
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50.21 Removed 39440
50.40—50.48 (Subpart C) Removed 39440
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74.2101 (a) correctly revised; CFR correction 15389
101.12 (h)(12) revised 40598
101.13 (j)(1)(i)(B) amended 31339
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101.69 (h) revised; (m)(1), (n)(1) and (o)(1) amended 40598
101.70 (j)(4) added 28232
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170.35 (c)(1)(viii) revised 40599
170.39 (c)(6) and (e) amended 40599
171.1 (c) amended 40599
172.712 Added 26228
172.841 (c) revised 30985
175.105 (c)(5) table amended 33996, 39937

176.170 (a)(5) table amended 39939
176.200 (d)(3) table amended 39772
177.1345 (d) amended 34628
177.1500 (c) redesignated as (d); new (c) added; new (d)(5)(ii) amended 22886
178.2010 (b) table amended 29009, 30455, 34629, 34630, 36983, 39441
178.3130 (b) table amended 31511
178.3297 (e) table amended 19221, 25476
178.3400 (c) table amended 33997
184.1472 Revised 30756
201.64 (a) through (h) stayed; (i) revised 19925
211 Compliance date extension 40447
211.1 (d) added 19497
310.305 (a) and (f)(1) revised; (b)(5) and (c)(4) removed; (c)(5) and (6) redesignated as (c)(4) and (5); new (c)(4) amended 34167
312.20 (c) amended 32479
312.23 (a)(7)(iv)(e) revised 40599
314.50 (d)(1)(iii) revised 40599
314.70 (g) added 39900
314.80 (c)(1)(ii) removed; (c)(1)(iii) and (iv) redesignated as (c)(1)(ii) and (iii); (a), new (c)(1)(ii) introductory text, (d)(1) and (l) amended; (f)(1) revised 34168
314.101 (d)(4) revised 40599
352 Announcement 23350
510 Technical correction 23534
510.600 Regulation at 62 FR 14300 eff. date corrected to 4–7–97 15751
(c)(1) table and (2) table amended 22887, 27691, 29010, 34631, 35075, 38906, 39442, 40931
511.1 (b)(10) revised 40599
514.1 (b)(14) revised 40599
514.8 (a)(1) amended 40600
514.110 (b)(10) revised 40600
514.111 (a)(9) revised 40600
520.23 (a)(2) amended 35075
520.390a (a)(2) amended 35076
520.445b (b) amended 27691, 35076
520.580 (b)(2) amended 35076
520.600 (c) amended 35076
520.622a (a)(6) amended 35076
520.622b (c)(2) amended 35076
(a)(2) amended 38906
520.622c (b)(6) amended 35076
(b)(6) corrected 40932
520.763a (c) amended 35076
520.763b (c) amended 35076
520.763c (b) amended 35076
520.812 (c) redesignaed as (d); new (d) revised 38906
520.1010a (b) amended 35076
520.1044a (b) amended 34169
520.1044b (b) amended 29011
520.1044c (b) amended 29013
520.1408 (b) amended 35076
520.1446 Added 28629
520.1451 Added 37713
520.1616 Added 29012
520.1660d (a)(6) and (b)(6) added 23356
(b)(3), (e)(1)(ii)(A)(3), (B)(3) and (C)(3) amended 35076
520.1900 (b) amended 35076
520.2043 (b)(2) revised 37712
520.2098 Added 34632
520.2220a (b) amended 23357
(b) amended 40932
520.2260b (f)(1) and (h)(1) amended 35076
520.2325a (a)(4) added 37712
520.2345d (a)(1), (d)(1)(iii) and (2)(iii) amended 35076
520.2455 (b) amended 35076
520.2456 (b) amended 35076
520.2481 (b) amended 35076
520.2640 (e)(1)(iii), (2)(iii) and (3)(iii) amended 39443
522.23 (c) amended 35076
522.56 (b) amended 23357
522.518 (b) amended 28630
522.540 (a)(2) amended 37713
522.812 (c) redesignated as (d); new (d)(2) revised 38907
522.970 (b) revised 22888
522.1010 (b) amended 35076
522.1044 (b)(3) amended 35076
522.1044b (b) amended 22889
522.1182 (b)(2)(i) amended 35076
522.1183 (e)(1) amended 35076
522.1222a (c) amended 22888, 35076
522.1410 (b) amended 35076
522.1660 (c) redesignated as (d); new (d)(1) heading, new (ii), new (iii) and new (2)(ii) amended 27692
522.1662a (a)(2), (g)(2) and (h)(2) amended 35076
522.1680 (b) amended 35076, 38906
522.1720 (b)(2) amended 38906
522.2220 (a)(2)(iii) added 23128
(c)(2) amended 35076

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522.2424 (b) amended 35076
522.2476 (b) amended 29013
522.2477 (a) revised 28629
522.2483 (b) amended 35077
522.2640a (b)(2) amended 35077
522.2662 (b) amended 35077
524.814 Added 33997
524.981a (b) amended 40932
524.981b (b) amended 40932
524.981c (b) amended 40932
524.1193 (d)(2) amended 38908
524.1580b (b) amended 35077
524.1580c (b) amended 35077
529.50 (b) amended 23358
529.1044a (b) amended 35077
529.1115 (b) amended 29014
530.41 Revised 27947
556.52 Revised 40933
556.75 Corrected 15391
556.227 Added 33998
558 Technical correction 23534
558.4 (d) table amended 25477
558.128 (a)(4) and (d)(1) table amended 27692
558.155 (a)(1) and (2) amended 35077
558.195 (c)(2) added; (d) table amended 23129
558.205 (a) amended 35077
558.274 Regulation at 62 FR 14301 eff. date corrected to 4-7-97 15751
(a)(7) and (c)(1) table amended 27692
558.311 (e)(3)(i) table amended 28630
558.366 (a) and (c) table amended 29011
558.485 Regulation at 62 FR 14301 eff. date corrected to 4-7-97 15751
(a)(11) amended 27692
558.550 (b) redesignated as (d); (d)(1)(xvii) added 29014
558.600 (a) amended 35077
558.618 (d)(1) corrected 15391
558.625 Regulation at 62 FR 14301 eff. date corrected to 4-7-97 15751
(b)(10) and (52) amended 27692
558.630 Regulation at 62 FR 14301 eff. date corrected to 4-7-97 15751
(b)(3), (8) and (10) amended 27692
570.35 (c)(1)(viii) revised 40600
571.1 (c) amended 40600
589 Authority citation revised 30976
589.2000 Added (OMB number pending) 30976
600.3 (ff) and (gg) added 39901
600.80 (c)(1)(ii) removed; (c)(1)(iii) and (iv) redesignated as (c)(1)(ii) and (iii); (a), new (c)(1)(ii) introductory text, (d)(1) and (m) amended; (f)(1) revised 34168
601.2 (a) and (c)(2) amended 40600
601.12 Revised 39901
610.9 Revised 39903
640.120 (a) revised 39903
806 Added 27191
812 Authority citation revised 26229
812.18 (b) revised 26229
812.20 (b)(9) revised 40600
814.20 (b)(11) revised 40600
814.102 Reinstated 38026
814.104 Reinstated 38026
814.106 Reinstated 38026
814.108 Reinstated 38026
814.110 (a) reinstated 38026
814.112 (b) reinstated 38026
814.116 (b) reinstated 38026
814.118 (d) reinstated 38026
814.120 (b) reinstated 38026
814.124 (b) reinstated 38026
814.126 (b)(1) reinstated 38026
872.6730 (c) amended 31512
880.5130 Revised 33350
882.5800 (c) revised 30457
886.5918 Revised 30987
886.5928 Revised 30988
886.5933 Removed 30988
898 Added 25497
898.14 Stayed 25498
1270 Revised 40444

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1300.02 (b)(28)(i)(D)(*1*), (*2*) and (29) correctly revised 15392
1308 Controlled substance schedules 29288, 29289
1310.09 Reinstated 15392
Revised 27693

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161 29313

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201 33379
207 40765
211 40489
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510 40765
511 25152
514 ..... 25152, 25153, 40765
515 40765
558 40765
570 18938
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812 31023
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868 33044
872 38231
878 31771
884 33044
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1308 ..... 24620, 27214, 28923, 37004

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

41.112 (b) revised 24332
41.113 (c), (h) and (k) removed; (d) through (g), (i) and (j) redesignated as (c) through (h); (a), (b) and new (c) through new (f) revised 24333
41.107 Regulation at 59 FR 25325 confirmed 24334
42.72 (a) and (e)(4) amended; (e)(1) revised 27694
(e)(4) corrected 32196
122.3 (a) revised 27497
126.1 (a) amended 37133

Chapter II—Agency for International Development, International Development Cooperation Agency (Parts 200—299)

201 Nomenclature change 38027
201.11 (b), (e) and (j) revised 38027
201.12 (d) revised; (e) added 38027
201.13 (a), (b) and (c) revised 38027
201.14 Amended 38027

Chapter IV—International Joint Commission, United States and Canada (Parts 400—499)

430 Added 39935

Chapter V—United States Information Agency (Parts 500—599)

514 Policy statement 19925
514.31 (c) through (j) revised; interim 34633
514.44 (g) revised; (h) removed 19222
(c) revised 28803

Chapter VI—United States Arms Control and Disarmament Agency (Parts 600—699)

606 Revised 27948

Proposed Rules:

22 32558

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

470 Authority citation revised 33355
470.101—470.115 (Subpart A) Revised; interim 33355
625 Revised; eff. 5-1-97 15397
658 Appendix A amended 30758

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200--1299)

1200 Revised; interim 34402
1200.4 Revised; interim 34405
1205.5 Removed; interim 34405

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1327.6 (f) and (g) redesignated as (g) and (h); new (f) added; interim 27195

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TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.410 (d)(1)(i) amended 27125
5.609 Regulation at 61 FR 54502 confirmed 24337
5.617 (b)(3) revised.....27125
24.110 (a)(3)(ii) revised 20081
25.2 Amended.....20081
25.3 Amended.....20081
25.9 (x) and (cc) revised.....20081
30.320 (k) revised.....20081
50.19 (a), (b)(14), (17) and (c) revised; (b) heading and (24) added.....15802
55.12 (b)(3) revised; (b)(4) added 15802
81.2 Regulation at 62 FR 63947 confirmed; (b) amended.....28977
81.91—81.99 (Subpart H) Regulation at 62 FR 63948 confirmed 28977
81.92 (a) revised.....28977
81.93 (c)(1) amended 28977
81.94 (a) and (b)(2) amended 28977
81.96 (d) amended.....28977
92.50 (d)(1) revised.....28928
92.202 (b) revised 28928
92.203 (a)(1) introductory text, (b)(1) and (c) revised.....28928
92.205 (d) amended 28928
92.206 (a)(5) added 28928
92.209 (c)(2) and (j)(5) revised 28928
92.214 (a)(6) revised 28929
92.219 (b)(1)(i) and (2)(iv) revised 28929
92.220 (a)(10) amended; (b)(4) revised.....28929
92.250 (a) revised 28929
92.251 (a) revised 28929
92.252 (h) amended 28929
92.300 (a)(1) amended; (f) heading revised.....28930
92.350 Revised 28930
92.353 (c)(2)(i)(C)(*1*)(*ii*) revised.....28930
92.355 Revised 28930
92.356 (f)(1) revised.....28930
92.358 Added.....28930
92.500 (d) revised 28930
92.505 (c) added 28930

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

103.215 Regulation at 61 FR 41482 confirmed 15797

Chapter II—Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200.10 Revised 20081
200.926 (a)(2)(i) revised 30225
200.926d (c)(4)(vii) revised 30225
201.10 (g) amended 20082
201.20 (a)(3) added 20082
201.26 (a)(1)(iii) revised 20082
202 Revised 20082
202.3 (c)(2)(v)(A) revised.....30225
202.8 (b)(9) revised.....30225
203.1—203.7 Undesignated center heading revised 30225
203.1 Revised.....30225
203.3 (d)(1)(iii) revised.....20088
203.4 Added 30226
203.5 (c) amended 20088
(b) revised.....30226
203.6 Added 30226
203.7 Introductory text revised 30226
203.43i (d) introductory text, (g) introductory text and (2) revised.....30226
203.50 (h) revised.....30226
203.249 Revised.....30226
203.255 (a) revised; (f) added (OMB number pending) 30227
203.257 Revised.....30227
203.415 (b) revised.....30227
203.499 Revised.....30227
206.3 Amended 30227
206.7 Revised.....30227
206.9 (b) revised.....20088
206.15 Revised 30227
241.1040 Revised 20088
266.100 (a) amended 20088

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

570.416 Added 17493
572.5 Amended 34145
572.100 (a)(2) amended 34145
572.135 (d) revised.....34145
572.210 Revised.....34145
572.230 Revised.....34145
572.300 Revised.....34145
572.305 Removed.....34145
572.310 Removed.....34145
572.320 Removed.....34145
572.420 (a)(1) amended 34145
573.3 (i) revised 24574
585.100—585.107 (Subpart B) Removed.....31955
Regulation at 62 FR 31955 eff. date corrected to 7-11-97 33156
586 Revised 37479

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

941.103 Amended 27125
950 Authority citation revised.....27126
950.102 Regulation at 61 FR 46346 confirmed 24337
950.660 (a)(3) revised.....27126
968.102 (b) revised.....27126
968.112 (d)(3)(ii) amended 27126
968.335 (a)(3) revised.....27126

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3280 Policy statement.....24337
3282 Policy statement.....24337
3500.2 Amended.....20088

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TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

12 Revised.....15611
142 Revised 18516
151 Determination 19927

Chapter IV—Office of Navajo and Hopi Indian Relocation (Parts 700—799)

700.801—700.843 (Subpart R) Revised 35078

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TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Authority citation amended.....25506, 37492, 38028
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1.103-8 (a)(5) revised.....25506
1.103-8T Removed 25506
1.142-4 Added 25506
1.148-0 (c) amended 25506
1.148-1 (b) amended; (c)(4)(ii)(A) revised; (e) added.....25507
1.148-1T Redesignated as 1.148-1A 25507
1.148-2 (b)(2)(ii) revised 25507

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1.148–2T Redesignated as 1.148–2A 25507
1.148–3 (h)(3) amended 25507
1.148–3T Redesignated as 1.148–3A 25507
1.148–4 (h)(2)(vi) and (vii) removed; (h)(2)(ii) through (v), (viii) and (ix) redesignated as (h)(2)(iii) through (viii); (b)(5), (g), (h)(1), (2) introductory text, (i), new (iv), new (v), new (vi), new (viii), (3), (4) and (5) revised; new (h)(2)(ii) and (6) added 25507
1.148–4T Redesignated as 1.148–4A 25507
1.148–5 (b)(2)(iii), (c)(2)(i), (3)(ii), (d)(3)(ii), (e)(2)(ii)(B) and (iii) revised 25511
1.148–5T Redesignated as 1.148–5A 25507
1.148–6 (d)(3)(iii)(C) revised 25512
1.148–6T Redesignated as 1.148–6A 25507
1.148–9 (c)(2)(ii)(B) and (h)(4)(vi) revised 25512
1.148–9T Redesignated as 1.148–9A 25507
1.148–10 (b)(2), (c)(2)(viii), (ix) and (e) revised; (c)(2)(x) added 25512
1.148–10T Redesignated as 1.148–10A 25507
1.148–11 (a), (b)(1), (c)(1) and (g) revised; (b)(3) added; (h) and (i) removed 25512
1.148–11T Redesignated as 1.148–11A 25507
1.149(d)–1 (f)(3) revised; (g)(3) added 25513
1.149(d)–1T Redesignated as 1.149(d)–1A 25513
1.150–1 (a)(2), (c)(1), (4)(iii) revised; (c)(8) added 25513
1.150–1T Redesignated as 1.150–1A 25513
1.148–1A—1.148–11A Undesignated center heading added 25507
1.148–1A Redesignated from 1.148–1T; heading amended 25507
1.148–2A Redesignated from 1.148–2T; heading amended 25507
1.148–3A Redesignated from 1.148–3T; heading amended 25507
1.148–4A Redesignated from 1.148–4T; heading amended 25507
1.148–5A Redesignated from 1.148–5T; heading amended 25507
1.148–6A Redesignated from 1.148–6T; heading amended 25507
1.148–9A Redesignated from 1.148–9T; heading amended 25507
1.148–10A Redesignated from 1.148–10T; heading amended 25507
1.148–11A Redesignated from 1.148–11T; heading amended 25507
(i) revised 25513
1.149(d)–1A Redesignated from 1.149(d)–1T; heading amended 25513
1.150–1A Redesignated from 1.150–1T; heading amended 25513
1.163–8T (c)(2)(e) redesignated as (c)(3) 40270
1.302–2 (c) introductory text amended 38028
1.446–1 (e)(3)(i) amended 26741
1.446–1T Added 26741
(e)(3)(i)(B) corrected 28631
1.501(c)(5)–1 (b) redesignated as (c); new (b) added 40449
1.704–1 (b)(2)(iv)(*d*)(*1*), (*l*) and (5) Example 13 amended 25499
1.704–2 (m) Example 1 reinstated; CFR correction 34634
1.704–3 (a)(2) and (3)(i) amended 25500
1.704–4 (a)(4)(ii) and (c)(3) revised 25500
1.708–1 (b)(1)(ii) amended; (b)(1)(iv) revised; (b)(1)(v) added 25500
1.737–2 (a) revised; (d)(1) amended 25501
1.743–1 (d) added 25501
1.761–1 (e) added 25501
1.894–1T Added 35676
1.1059(e)–1 Added 38028
1.1502–5 (b)(5) corrected 23657
1.6013–2 (b)(1) amended 39117
1.6302–1 (b) heading revised; (b) redesignated as (b)(1); new (b)(1) heading and (2) added; OMB number 37492
1.6302–1T Removed 37492
1.6302–2 (b) heading revised; (c) redesignated as (b)(6); new (c) added; OMB number 37492
1.6302–2T Removed 37492
1.6302–3 (c) revised 37492

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1.6302–3T Removed 37492
1.6302–4 Added 37492
1.6302–4T Removed 37492
26.2652–1 (a)(4) and (5) Examples 9 and 10 removed; (a)(5), (6) and Example 11 redesignated as (a)(4), (5) and Example 9 27498
31 Authority citation amended 33009, 37492
31.0–1 (a) amended 37492
31.0–3 (f) amended 37493
31.3406(j)–1 Added 33009
31.6302–1 (h) redesignated as (i); new (h) added 37493
31.6302–1T Removed 37494
31.6302(c)–3 (b) heading and (c) revised; (d) added 37494
31.6302(c)–3T Removed 37494
35a Authority citation amended 33009
35a.3406–3 Removed 33009
40 Authority citation amended 37494
40.6302(c)–1 (d) redesignated as (d)(1); (d)(1) heading and (2) added 37494
40.6302(c)–1T Removed 37494
54 Authority citation amended 16927
Technical correction 17004
54.9801–1T Added; interim 16927
(c) corrected 31691
54.9801–2T Added; interim 16928
Corrected 31691
54.9801–3T Added; interim 16929
(a)(1)(iii) and (b)(1)(ii) Example corrected 31691
54.9801–4T Added; interim 16930
(a)(2) and (b)(2)(iv) corrected 31669
(b)(2)(iv) Examples 6 and 7 and (v)(B) Example corrected 31691
54.9801–5T Added; interim 16932
(a)(6) and (b)(2) corrected 31669
(a)(1)(i), (iv)(B)(*1*), (*2*) Example, (2)(iv) Examples 4 and 5 and (5)(i)(A) corrected 31691
(a)(5)(i)(B) Example, (6)(ii), (c)(2)(ii) and (d)(3) Example 3 corrected 31692
54.9801–6T Added; interim 16937
(a)(3) corrected 31669
(b)(2), (4) introductory text and (6) corrected 31692
54.9802–1T Added; interim 16938
54.9804–1T Added; interim 16939
(a) and (b)(4) corrected 31670
54.9806–1T Added; interim 16940
(a)(1), (2), (d), (e)(1)(i) and (iv) corrected 31692
301.6109–1 (d)(2)(iii) added 25502
301.6334–1 (a)(2) and (e) revised; (a)(3) and (11)(i) amended; (f) added 39117
301.6601–1 (f)(3) and (4) revised; (f)(5) redesignated as (f)(6); new (f)(5) added 39117
301.6651–1 (a)(3) revised; (g) added 39117
301.6656–3 Added 39118
301.7122–1 (e) revised 39118
301.7430–0 Amended 39118
301.7430–1 (b)(4) added 39118
301.7430–2 (b)(2), (c)(3) introductory text and (ii)(C) amended; (c)(3)(i)(B) revised 39118
301.7430–4 (b)(3)(i), (iii)(B), (C), (D) and (c)(2)(ii) amended; (b)(3)(ii) revised 39118
301.7430–5 (a) revised; (c)(3) added 39119
301.7430–6 Revised 39119
301.9100–1T (h) amended 26741
301.9100–3T (c)(2)(i) revised 26741
601.204 (b) amended 26741
601.204T Added 26741
(b)(2) corrected 28631
602.101 (c) table amended (OMB numbers) 25514, 35905

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1 ..... 17572, 18730, 19072, 19957, 19958, 23408, 26755, 27563, 30785, 32054, 35752, 35755, 37818, 37819, 38197, 40316
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TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

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4.28 (e) added 16490
(e)(2) corrected 33747
24.148 Revised 29666

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24.278 Revised; OMB number.....29666
24.279 Revised; OMB number.....29667
178.11 Amended 19444, 34638
178.32 (e) added 34639
178.124 (c) introductory text and (f) amended; (c)(1), (d) and (e) revised.....19444
178.125 (f) introductory text amended; (f)(1), (2) and (3) added.....19445
178.130 (a)(2) revised.....19445

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2.62 (a)(6) and (h)(5) amended.....40270
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32.1—32.2 (Subpart A) Heading revised.....37715
32.1 (a) amended.....37715
32.2 (a) introductory text amended.....37715
32.3—32.9 (Subpart B) Heading removed.....37715
32.3—32.9 Undesignated center heading added.....37715
32.10—32.15 (Subpart C) Heading removed.....37715
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32.10 (a) introductory text amended.....37715
32.16—32.18 (Subpart D) Heading removed.....37715
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32.19—32.22 Undesignated center heading added.....37715
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1917.28 Heading revised; text removed 40198
1917.30 Added 40198
1917.42 (b)(4), (c)(1), (d), (h)(4), (5) and (j)(1) revised; (g)(2)(vi) added 40198
1917.43 (e)(1)(i) and (6)(iii) revised; (f)(3) added 40198
1917.44 (a), (i), (o)(3)(i), (ii) introductory text and (o)(4) introductory text revised 40198
1917.45 Heading, (f)(4)(iii), (5), (7), (13)(ii), (iii)(A), (i)(5)(i) introductory text, (j)(1)((iii)(D) and (2) revised; (g)(11), (j)(9) and (10) added 40199
1917.46 Heading, (a)(1)(ii) and (viii)(A) revised 40199
1917.48 (d)(2) revised 40200
1917.50 (i) redesignated as (j); heading, (c)(5) and new (j) revised; new (i) added 40200
1917.71 (b)(6), (7), (c), (e) and (f)(1)(i) revised; (b)(8), (f)(4) and (5) added 40200
1917.73 Heading revised 40201
1917.91 Heading and (a)(1) revised 40201
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1917.126 (b) revised 40201
1917.152 Heading revised; footnote 8 redesignated as footnote 12 40202
1917.153 Heading revised 40202
1917.156 (b)(3)(iii)(D) revised 40202
1917.157 (n) revised 40202
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2200.11 Amended 35963
2200.40 (a) amended 35963
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2200.60 Amended 35963
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2200.91 (b) amended; (h) revised 35963
2200.93 (h) revised 35963
2200.101 Amended 35963
2200.201 (a) designation and (b) removed 40934
2200.202 Revised 40934
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2520.104b–1 OMB number 36205
2520.104b–3 OMB number 36205
2570 Authority citation revised 40699
2570.100—2570.502c–3 (Subpart E) Added 40699
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4007 Authority citation revised 36663
4007.10 Heading revised; (a) amended; (c) and (d) added 36663

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4011.3 (c) amended 36994
4043.3 (e) amended 36994
4044 Appendix B amended 37718
4071 Added 36994
4302 (Subchapter K) Added 36995
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250.163 (b) amended 39775
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946.25 (a) table amended 35968

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176 Revised 35346
199.13 (i) added; interim 39941
270 Added; interim 39942
286 Revised 35351
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286.12 (a)(1) and (2) corrected 38197
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100.35T–05–043 Added (temporary) 35391
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165 Effective date confirmation 35392
165.T01–040 Added (temporary) 35395
165.T01–041 Added (temporary) 35404
165.T01–042 Added (temporary) 35403
165.T01–047 Added (temporary) 35681
165.T01–048 Added (temporary) 35969
165.T05–058 Added (temporary) 39446
165.T08–041 Added (temporary) 38457

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165.T13–011 Added (temporary) 37136
165.T13–016 Added (temporary) 40277
165.T96–073 Removed 35406
165.T13006 Added (temporary) 35394
165.T13007 Added (temporary) 35396
165.T13009 Added (temporary) 35397
165.T13010 Added (temporary) 35399
165.T13008 Added (temporary) 35400
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165.T08037 Added (temporary) 35401
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75.253 (c) revised 40424
75.261 (a) and (b) redesignated as (c) and (d); new (a) and (b) added; new (c) introductory text revised; new (c)(4)(iii)(C) and (d) amended 40424
75.263 Added 40425
75.264 Added 40425

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222.4 Revised; eff. 7–31–97 35412
222.7 Authority citation amended; eff. 7–31–97 35412
222.9 Authority citation amended; eff. 7–31–97 35412
222.10 Authority citation amended; eff. 7–31–97 35412
222.11 Introductory text and authority citation amended; eff. 7–31–97 35412
222.12 Added; eff. 7–31–97 35412
222.13 Redesignated as 222.19; eff. 7–31–97 35412
Added; eff. 7–31–97 35413
222.14 Added; eff. 7–31–97 35413
222.15 Added; eff. 7–31–97 35413
222.16 Added; eff. 7–31–97 35413
222.17 Added; eff. 7–31–97 35413
222.18 Added; eff. 7–31–97 35414
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222.22 (c) and (d) revised; eff. 7–31–97 35414
222.23 Added; eff. 7–31–97 35414
222.36 (b)(1) and (2) revised; eff. 7–31–97 35415
222.50 Authority citation amended; eff. 7–31–97 35412
222.80—222.85 (Subpart F) Added; eff. 7–31–97 35415
222.94 Authority citation amended; eff. 7–31–97 35412
222.95 Authority citation amended; eff. 7–31–97 35412
(g) introductory text revised; OMB number 35416
222.103 Authority citation amended; eff. 7–31–97 35412
222.104 Authority citation amended; eff. 7–31–97 35412
222.108 Authority citation amended; eff. 7–31–97 35412
222.109 Authority citation amended; eff. 7–31–97 35412
222.110 Authority citation amended; eff. 7–31–97 35412
222.111 Authority citation amended; eff. 7–31–97 35412
222.112 Authority citation amended; eff. 7–31–97 35412
222.113 Authority citation amended; eff. 7–31–97 35412
222.114—222.122 Undesignated center heading added; eff. 7–31–97 35416
222.114 Added; eff. 7–31–97 35416
222.115 Added; eff. 7–31–97 35416
222.116 Added; eff. 7–31–97 35416
222.117 Added; eff. 7–31–97 35417
222.118 Added; eff. 7–31–97 35417
222.119 Added; eff. 7–31–97 35418
222.120 Added; eff. 7–31–97 35418
222.121 Added; eff. 7–31–97 35418
222.122 Added; eff. 7–31–97 35418
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222.151 Heading and (b)(1) revised; eff. 7–31–97 35418
222.152 (b) and (c) revised; eff. 7–31–97 35418
222.154 (e) revised; eff. 7–31–97 35419
222.156 (g) amended; eff. 7–31–97 35419
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222.161 (c) amended; eff. 7–31–97 35419
222.162 (a) revised; eff. 7–31–97 35419
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685 Appendix A revised 35602

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1.18 Revised 40452
1.19 (a)(2) and (3) revised 40452
1.20 (c), (e), (f), (g), (i)(1), (2), (j)(1) (2) and (3) revised 40453
1.21 (a)(1)(ii), (6) and (j) revised 40453
1.445 (a) revised 40453
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201.2 (b)(5) amended 35421
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202.20 (c)(2)(vii)(A)(*2*) and (D)(*1*) amended 35421
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3.20 (c) added 35422
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3.810 (a) amended; (d) added 35422
3.811 Added; interim 35971
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9 Nomenclature change 35970
9.2 (a) and (b)(1) revised 35970
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21.4233 (c) revised; (d) amended 40280
21.4253 (d)(1) revised 35424
21.4267 (a) authority citation, (b) authority citation and (i) revised; (f) added 40280
21.7000—21.7320 (Subpart K) Authority citation revised 40280
21.7112 (c) revised 40280
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50.6 Heading revised; (d) added 38711
50.7 Added 38711
50.9 Revised 38894
50.10 Added 38894
50 Appendix K revised 38712
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52 Technical correction 37724
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(c)(185)(i)(A)(*9*), (198)(i)(K), (207)(i)(B)(*2*) and (225)(i)(B)(*3*) added 37138
52.222 (a)(2) and (3) added 40937
52.420 (c)(58) added 37724
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52.470 (c)(37) added 40937
52.520 (c)(98) added 38919
52.726 (p), (q) and (r) added 37506
52.770 (c)(109) added 38922
52.777 (k) added 38464
52.870 (c)(33) added 36213
52.930 Regulation at 62 FR 28637 withdrawn 40281
52.1072 Added 40944
52.1076 Added 40458
52.1120 (c)(114) added; interim 37509
(c)(113) added 37514
52.1125 Added 37514
52.1219 (b) added 39123
52.1270 Redesignated as 52.1281; new 52.1270 added 35442
(c) table amended 37726
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52.1281 Redesignated from 52.1270; heading and (a) revised 35442
52.1885 Regulation at 62 FR 28637 withdrawn 40281
52.2020 (c)(125) added 38917
52.2036 (j) added 38917
52.2120 Redesignated as 52.2134; new 52.2120 added 35444
52.2134 Redesignated fron 52.2120; heading and (a) revised 35444
52.2220 (c)(147) added 35683
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(c)(158) added 40460
(c)(155) added 40735
52.2310 Added; interim 37144
52.2320 (c)(38) added 38216
52.2350 Added 38217
52.2351 Added 38217
52.2420 (c)(115) and (116) added 38914
52.2428 Existing text designated as (a); (b) added 38932
52.2585 (l) added 39448
53.1—53.16 (Subpart A) Revised 38784
53.30—53.34 (Subpart C) Revised 38792
53.50—53.59 (Subpart E) Added 38799
53.60—53.66 (Subpart F) Added 38814
58.1 Amended 38830
58.13 (b) and (d) revised; (e) and (f) added 38831
58.14 Revised 38832
58.20 Heading, (d) and (e) introductory text revised; (f) redesignated as (h); concluding text designated as (i); new (f) and (g) added; new (i) amended 38832
58.23 Introductory text revised; (c) added 38832

58.26 Heading and (b) introductory text revised; (d) and (e) added 38833
58.30 (a) introductory text revised 38833
58.31 (f) revised 38833
58.34 Introductory text revised 38833
58.35 (b) amended 38833
58 Appendix A revised 38833
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60 Determinations 36664
62.9350 (b)(4) and (c)(4) added 36997
62.9505 Undesignated center heading and section added 36997
63 Authority delegation notices 36460
63.485 (o) introductory text revised 37722
63.502 (a) revised; (j) added 37722
63.1331 (a) introductory text revised; (a)(10) added 37722
70 Appendix A amended 37516
81.318 Regulation at 62 FR 28637 withdrawn 40281
81.331 Amended 35972
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81.345 Amended 38217
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180.383 Existing text redesignated as (a); new (a) heading and (b) added 39974
180.433 Existing text designated as (a); (a) heading and (b) added 36684
180.438 Revised 36671
180.443 (b) introductory text revised; (b) table amended 36678
180.466 Existing text designated as (a); (a) heading and (b) added 37521
180.472 (b) added 36697
180.482 (a) heading added; (b) introductory text revised; (b) table amended 35689
180.493 (b) revised 39961
180.503 (b) introductory text revised; (b) table amended 39956
180.507 (a) added 36690
180.510 Added 39967
180.511 Added 40741
185.1850 Removed 38474
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258.60 (b)(3) added 40713
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300 Appendix B amended 35447, 35690, 35974, 36997, 37522
403 Authority citation revised 38414
403.8 (c) and (f)(6) revised 38414
403.11 (b)(1)(i)(A) and (B) revised 38414
403.12 (i)(4) redesignated as (i)(5); (i)(3) revised; new (i)(4) added 38414
403.18 Revised 38414
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721.3020 Removed 35691
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50.604 Correctly added; CFR correction 56631
50.605 Correctly added; CFR correction 56632
50.606 Correctly added; CFR correction 56632
52 Authority citation revised 55105
52.1 Revised 55105
52.2 Revised 55105
52.3 Revised 55105
52.4 Revised 55105
52.6 (a) amended; (b) through (e) redesignated as (c) through (f); new (b) added; new (c)(2) and new (d) revised 55105
52.8 Revised 55106
52.9 Heading revised 55106
52a Authority citation revised 55108
52a.1 Revised 55108
52a.2 Amended 55108
52a.3 (a) and (b) revised 55109
52a.7 Revised 55109
52a.8 Amended; heading revised 55109
52a.9 Revised 55110
54a Removed 55108
57.101—57.112 (Subpart B) Removed 65478
57.2405 (c) revised 51788
63a Added 55111
65a Added 55114
67 Revised 12908
67.15 (d)(2)(i)(A) corrected 37124
72 Authority citation revised 55197
72.6 Added 55197
72.7 Added 55199
72 Appendix A amended 55199
100 Authority citation revised 7687
100.3 (a) table, (b)(2)(i), (6) and (c) revised; (b)(7) through (11) added 7688
(b)(10) corrected 10626

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401 Authority citation revised 63748
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401.601 (d)(1) and (2)(iii) amended 63748
401.607 (d)(1) amended 63748
403.310 (a) amended 63748
405 Technical correction 69034
405.370—405.376 Undesignated center heading revised 63745
405.370 Redesignated as 405.371; new 405.370 added 63745
405.371 Redesignated as 405.372; new 405.371 redesignated from 405.370 63745
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405.372 Redesignated as 405.373; new 405.372 redesignated from 405.371 63745
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405.373 Redesignated as 405.374; new 405.373 redesignated from 405.372 63745
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405.375 Redesignated as 405.377 63745
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405.376 Redesignated as 405.378; new 405.376 redesignated from 405.374 63745
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405.378 Redesignated from 405.376 63745
405.705 (d) amended 63749
405.708 (a) and (b) amended 25855
405.711 Amended 25855
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405.720 Amended 25855
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TITLE 42 Chapter IV—Con.

405.732 Added 25852
405.747 Amended 25855
405.750 Heading and (b) introductory text revised 25853
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405.801 Revised 25853
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405.806 Revised 25853
405.807 (b) amended 25855
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405.821 (c) amended 25855
405.831 Heading amended 25855
405.832 (a) and (c)(1) amended 25855
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405.836 Redesignated from 405.860 and revised 25854
405.841 (b) amended 25855
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405.860 Redesignated as 405.836; new 405.860 added 25854
405.871 Amended 25855
405.1801 (a)(4) amended **63749**
405.1803 (c) revised **63748**
410 Technical correction 7946
410.32 (a) and (b) redesignated as (d) and (e); new (a), new (b) and (c) added **59554**
411.28 (b) amended **63749**
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412.63 Regulation at 61 FR 46224 eff. 10–1–96 ..... **51217**
412.105 Regulation at 61 FR 46224 eff. 10–1–96 ..... **51217**
412.246 Regulation at 61 FR 46224 eff. 10–1–96 ..... **51217**
412.302 Regulation at 61 FR 46224 eff. 10–1–96 ..... **51217**
413 Technical correction **66919**
Technical correction 27210
413.1 (a)(1)(ii)(C) through (J) redesignated as (a)(1)(ii)(D) through (K); new (a)(1)(ii)(C) added 31
413.5 (c)(3) removed **63748**
413.20 (e) amended **63749**
413.24 (f)(4)(i) through (iv) redesignated as (f)(4)(ii) through (v); new (f)(4)(i) added; new (f)(4)(ii) through (v) revised 31
413.40 Regulation at 61 FR 46225 eff. 10–1–96 ..... **51217**
413.53 (a)(1)(ii) introductory text, (C) and (2) revised; (b) amended **51616**
Corrected **58631**
413.86 Regulation at 61 FR 46225 eff. 10–1–96 ..... **51217**
413.90 (b)(2) revised **63748**
413.114 (c)(1) revised; (c)(2) removed; (c)(3) redesignated as (c)(2) **51616**
413.153 (a)(1)(ii) and (b)(2) revised **63748**
(a)(1)(iii) amended **63749**
415 Technical correction 7946
415.152 Amended **59554**
415.174 (a)(4)(iii) amended **59554**
417.479 (b), (f) introductory text, (5), (g)(1)(iv), (2)(ii), (h)(1)(iv), (v) and (2) revised; (g)(2)(iii) removed **69049**
417.600 (b)(3)(ii) revised 23374
417.604 (b)(4) revised 23374
417.606 (a)(4) added 23374
417.608 (a), (b)(2) and (c) revised 23375
417.609 Added 23375
417.612 (a) amended 25855
417.614 Revised 23375
417.616 (a)(4) added 23375
417.617 Added 23375
417.618 Revised 23375
417.620 (c), (d) and (e) revised 23376
417.626 Amended 25855
417.632 (b) amended 25855
417.634 Revised 25855
431.407 (a)(2) and (b) revised; (d) added **58143**
433.139 (b)(3) added 23140
434.44 (a)(1) revised **69050**
434.70 (a)(3) revised **69050**
435.1003 Heading revised; (c) added 1685
440.40 Heading revised; (c) added **59188**
447.31 (a) amended **63749**
473.38 Heading and (a) amended 25855
473.46 (a) revised 25855
473.48 (a)(1), (2) and (b) amended 25855
489 Technical correction **66919**

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489.27 Regulation at 61 FR 46225 eff. 10–1–96 ..... **51217**
493 Authority citation revised 25858
493.1202 Heading amended 25858
493.1203 Heading amended 25858
493.1443 (b)(3)(ii) introductory text and (C) amended 25858
493.1834 (i)(1)(ii) amended **63749**

Chapter V—Office of Inspector General–Health Care, Department of Health and Human Services (Parts 1000—1999)

1003.103 (c) revised **52301**
1004.20 Revised 23143
1004.80 (b)(8), (c)(4) and (5) revised; (c)(6) removed 23143
1004.100 (b), (d)(6) and (7) revised; (d)(8) removed 23143
1004.110 (d)(1)(i) and (2) revised 23143
1008 Added; interim 7357

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413 ..... 14851, 22995, 29902
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489 29902
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TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

10.12 Added; interim 1821
12 Authority citation revised **68667**
12.700 Revised **68667**
12.705 Amended **68668**
12.710 (a), (b) and (c) revised **68668**

Chapter I—Bureau of Reclamation, Department of the Interior (Parts 200—499)

426 Revised; eff. 1–1–98 ..... **66805**
426.10 (e) amended; (g) removed; (n) through (q) added **66826**
427 Added; eff. 1–1–98 ..... **66825**

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

3800 Authority citation revised 9099
Technical correction 26966
3809.0–1—3809.6 (Subpart 3809) Authority citation removed 9099
3809.0–9 Added 9099
3809.1–8 Removed 9100
3809.1–9 Revised 9100
3809.3–1 (b) revised 9102
3809.3–2 (e) revised; (f) added 9103
4180.2 (f) introductory text revised **59835**
4750.4–2 Revised 5339
5470 Authority citation revised **53861**
5475.0–3—5475.7 (Subpart 5475) Removed **53861**

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1810 ..... **58843, 67517**
1820 ..... **54120, 58160**
1840 ..... **54120, 58160**
1850 ..... **54120, 58160**
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3430 ..... **54120, 58160**
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6400 ..... **56651**
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TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

61 Appendix A(1) amended 8397
Appendix A(2) amended 8398
Appendix A(3) amended 8399
62.23 Revised; eff. 10–31–96 ..... **51219**
62 Appendix B revised; eff. 10–31–96 ..... **51221**
Appendix A revised 39910
64.6 Table amended ... **51227, 51229, 54564, 57573, 59339**
Table amended 1686, 1689, 4916, 5535, 8177, 9373, 13343, 16085, 19506, 24344, 27504, 31521, 33570, 39449, 40946
65.4 Table amended; interim **54566, 60038, 66926**
Table amended **54568, 60035, 66924**
Table amended; interim 3224, 6879, 9686, 16088, 17560, 23146, 30283, 33027, 37727, 39124
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(c) revised 5736
65.5 Heading and (d) revised 5736
65.6 (g) revised 5736
65.8 Revised 5736
65.9 Heading and (h) revised 5736
67.11 Flood elevation determinations **54574, 60041, 66927**
Flood elevation determinations 3229, 6884, 9690, 16090, 17563, 23147, 25859, 30285, 37729, 39127
70 Authority citation revised 5736
70.9 Revised 5736
72 Authority citation revised 5736
72.1 Revised 5736
72.2 Revised 5737
72.3 Revised 5737
72.4 Revised 5737
72.5 Revised 5738
72.6 Revised 5738
72.7 Revised 5738
78 Added; interim 13347

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2 16129
25 16129
62 23736
67 ..... **54593, 60062, 66974**, 2989, 3260, 6910, 9722, 16125, 17572, 23197, 25880, 30296, 33048, 37834, 39203
206 ..... **55122, 55123, 55262**, 5957

TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services (Parts 1—199)

Subtitle A Heading revised; interim 16955
Technical correction 17005
Subchapter A Designation and heading added; interim 16955
6 Removed **54744**
8 Removed **54744**
16.3 (c) amended 38218
16 Appendix A amended 38218
46 Waiver **51531**
74.62 (b) amended 38218
74.90 (b) amended 38218
75 Removed 38218
79 Authority citation revised **52301**
79.3 (a)(1) and (b)(1) revised **52301**
95.513 Removed 38218
95.519 (b)(1) designation and (2) removed; new (b) amended 38218
144—146 (Subchapter B) Added; interim 16955
144.103 Corrected 31670, 31693
146.111 (a)(1) correctly designated as (a)(1)(i) 31670
(a)(1)(i)(C) Example 3, (iii), (b)(1)(ii) Example and (c) corrected 31693
OMB number 35906
146.113 (b)(2)(v)(B) corrected 31670
(b)(2)(iv) Example 6, (c)(1), (7)(ii) and (iii) Example corrected 31693
146.115 (a)(1)(i), (ii), (iv)(B)(*1*) and (*2*) Example corrected 31693
(a)(2)(i), (ii) introductory text, (A), (iii), (iv) Examples 4 and 5, (3)(i)(B)(3), (5)(i)(A), (iii)(B), (6)(ii), (c)(2)(ii), (iv) Example and (d)(3) Example corrected 31694
OMB number 35906
146.117 (b)(2), (4) introductory text and (6) corrected 31694

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OMB number 35906
146.121 (a)(1)(ii) and (vi) corrected 31694
146.125 (c), (d), (e)(3)(i) and (iv) corrected 31694
146.145 (b)(4)(i) corrected 31670
146.150 (a)(2) and (d)(5) corrected 31694
OMB number 35906
146.152 (b)(1) corrected 31670
OMB number 35906
146.160 OMB number 35906
146.180 (a) introductory text, (2), (c)(4) and (i)(2) corrected 31694
OMB number 35906
148 Added; interim 16995
148.102 (a)(1) and (2) heading correctly added; (b) correctly revised 31695
148.120 OMB number pending 16996
(c)(1) heading correctly added; (f)(3) Example 2 corrected 31696
148.120 OMB number 35906
148.122 OMB number pending 16998
(c)(1) and (e)(2) corrected 31696
OMB number 35906
148.124 OMB number pending 16998
(a)(2)(i), (b)(1) introductory text, (ii), (2)(i)(A), (B) introductory text, (iii), (3)(i), (4)(iii) heading, (A) and (B) corrected; (a)(2)(iii) and (b)(5) correctly added; (b)(4)(iii)(E) removed; (b)(4)(iii)(C) and (c)(2) correctly revised 31696
OMB number 35906
148.126 OMB number pending 17000
148.128 (a)(2)(i) and (ii)(B) corrected 17005
(c)(2), (e)(4)(ii)(B) and (h) corrected; (e)(2) heading correctly added 31696
(a)(2)(i) introductory text and (ii)(B) corrected 31696
OMB number 35906
148.200 OMB number pending 17002
148.202 OMB number pending 17002
(i)(1) corrected 31696
148.220 (b)(4) corrected 31696

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

205 Authority citation revised 58143
205.50 (a)(4) introductory text and (i) revised; (a)(4)(iv) and (b) added 58143

Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

301.1 Amended 67240
301.15 (a)(1) and (e) amended 67240
302.15 (b) removed; (a) introductory text, (1) introductory text, (i) through (vii) and (2) redesignated as introductory text, (a) introductory text, (1) through (7) and (b) 67240
302.33 (c)(1) and (e) removed; (c)(2) and (3) redesignated as (c)(1) and (2) 67240
302.34 (a) amended; (b) removed 67240
302.36 (a) introductory text amended; (a)(1) through (5) removed 67240
302.37 Removed 67241
302.54 (a) removed; (b) and (c) redesignated as (a) and (b); new (a)(2) revised; new (b)(1)(i) amended 67241
302.80 (a) amended 67241
302.85 (a)(2) amended 67241
303.10 Removed 67241
303.31 (b)(6) and (7) amended 67241
303.73 Revised 67241
303.100 (g)(3) amended 67241
304.10 Amended 67241
304.20 (b)(1)(iii), (vi), (3)(iv), (8) and (11) amended 67241
304.23 (g) amended 67241
304.95 Removed 67241
306 Removed 67241

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307.5 (a) amended 67241
307.15 (b)(2) amended 67241

Chapter VI—National Science Foundation (Parts 600—699)

672 Authority citation revised 59027
672.24 Added 59027
675 Added 31522
680 Authority citation revised 59837
Heading revised; interim 59837
680.10—680.13 (Subpart A) Revised; interim 59837
680.20 Removed; new 680.20 redesignated from 680.21; interim 59839
680.21 Redesignated as 680.20; interim 59839
681 Removed; interim 59839
682 Removed; interim 59839
683 Removed; interim 59839
684 Removed; interim 59839

Chapter VIII—Office of Personnel Management (Parts 800—899)

801 Appendix A amended 64999

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1301 Authority citation revised 57225
1301.31 Revised; eff. 1–1–98 57225
1303.14 (b)(4) revised; eff. 1–1–98 57226
1304 Revised; eff. 1–1–98 57210
1304.20 OMB number pending 57212
1304.22 OMB number pending 57214
1304.23 OMB number pending 57215
1304.40 OMB number pending 57216
1304.50 OMB number pending 57219
1304.51 OMB number pending 57222
1304.60 OMB number pending 57225
1305.1 Amended; eff. 1–1–98 57226
1305.3 Heading, (b) introductory text, (c) introductory text, (d) and (f)(1) revised; eff. 1–1–98 57226
1306 Authority citation revised 57226
1306.1 Revised; eff. 1–1–98 57226
1306.20 (a) through (e) redesignated as (b) through (f); new (a) added; eff. 1–1–98 57226
1306.21 Revised; eff. 1–1–98 57226
1306.30 (c) revised; eff. 1–1–98 57226
1306.33 (c)(3) revised; eff. 1–1–98 57227
1308.6 (b)(1) revised; eff. 1–1–98 57227
1311 Added 1400
1355—1357 (Subchapter G) Heading revised 58653
1355.10 Revised 58653
1355.20 (a) amended 58653
1355.21 (c) revised 58654
1355.25 Added 58654
1355.30 Revised 58654
1356.10 Revised 58655
1356.80 Added 58655
1357.10 Revised 58655
1357.15 Revised (OMB number pending) 58656
1357.16 Added (OMB number pending) 58659
1357.20 Revised 58660
1357.30 Revised 58660
1357.32 Added 58661
1357.40 Revised 58661
1357.50 Added 58662
1386.30 (f)(4) correctly designated 51751

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1609 Revised 19399
1610 Revised 63752
Revised; interim 12102
Revised 27698
1611 Appendix A revised 12752
1612 Revised 19404
1612.2 (b)(2) corrected 22895
1617 Revised 63755
1620 Revised 19408
1626 Revised 19414
Technical correction 24054
1626.2 (f) and (g) revised; interim 19414
1626.4 Revised; interim 19414
1626.10 (e) corrected 22895
Appendix corrected 24159
1627 Heading revised 19418
Authority citation revised 19418
1627.2 (c) revised 19418
1627.4 Revised 19418
1627.7 Revised 19418
1627.8 Revised 19418
1632 Revised 63756
1633 Revised 63758
1636 Revised 19420
Heading corrected 22895

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TITLE 45 Chapter XVI—Con.

1637 Revised 19422
1638 Revised 19424
1639 Revised 30766
1640 Revised 19426
1642 Revised 25864

Chapter XXI—Commission on Fine Arts (Parts 2100—2199)

2101 Revised 4646
2102 Revised 4647
2103 Revised 4649

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98 39610
99 39610
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1639 14382

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

2 Authority citation revised 16703, 19232
Technical correction 28760
2.01–30 Added 17748
2.10–1 (b) revised; interim 19232
2.10–5 Revised; interim 19232
2.10–25 Amended; interim 19232
2.10–101 Table amended; interim 19232
2.10–135 (a) amended 16703
2.50–1 (Subpart 2.50) Heading revised 16703
2.50–1 Added 16703
8 Added; interim **68517**
Regulation at 61 FR 68517 eff. date corrected to 12–27–96 3335
8.120 (b) corrected 3335
8.130 (a)(4) and (5) corrected 3335
8.320 (b)(9) corrected 3335
10 Authority citation revised 34528
10.101 (a) and (c) revised; interim 34528
10.102 Added; interim 34529
10.103 Amended; interim 34529
10.107 (b)(3) added; interim 34529
10.201 (a) revised; interim 34529
10.202 Heading revised; (j), (k) and (l) added; interim 34529
(k)(2) and (l)(1) corrected 40140
(k) and (l) corrected 40281
10.205 Heading revised; (l) through (p) added; interim 34530
(l), (n)(1)(ii) and (2) corrected 40281
10.207 Heading, (c) heading and (1) revised; interim 34530
10.209 Heading revised; (k) added; interim 34531
(k) corrected 40281
10.304 Heading revised; (e) through (h) added; interim 34531
10.305 Revised 11303
10.306 Revised 11304
10.309 Added; interim 34531
10.401—10.482 (Subpart D) Heading revised; interim 34532
10.480 Revised 11305
10.491 Added; interim 34532
10.493 Added; interim 34532
10.495 Added; interim 34532
10.497 Added; interim 34532
10.551 Added; interim 34532
Corrected 40140
10.553 Added; interim 34532
10.555 Added; interim 34533
10.601 Revised; interim 34533
10.603 Heading revised; (d) and (e) added; interim 34533
10.901—10.950 (Subpart I) Heading revised; interim 34533
10.901 (c) and (d) added; interim 34533
10.903 (c) and (d) added; interim 34533
10.1001—10.1005 (Subpart J) Added; interim 34534
12.01–1 Revised; interim 34534
12.01–3 Added; interim 34534
(b) corrected 40140
12.01–6 Amended; interim 34534
12.01–9 Added; interim 34535
12.02–7 (d), (e) and (f) added; interim 34535
12.02–11 Heading revised; (h) and (i) added; interim 34535
12.02–17 (e) added; interim 34535
12.03–1 (Subpart 12.03) Added; interim 34536

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12.05–3 Introductory text and (a) through (e) redesignated as (a) introductory text, (1) through (5); new (b) and new (c) added; interim 34537
(c) corrected 40140
12.05–7 (a)(5) added; interim 34537
(a)(5) corrected 40140
12.05–11 Heading and (a) revised; interim 34537
12.10–3 Heading and (a)(6) revised; (c) added; interim 34537
12.10–5 (d) added; interim 34537
12.10–7 Revised; interim 34537
Corrected 40140
12.10–9 Added; interim 34537
12.13–1—12.13–3 (Subpart 12.13) Added; interim 34537
12.15–3 (d) and (e) added; interim 34538
12.15–7 (c) added; interim 34538
(c) corrected 40140
12.25–45 Added; interim 34538
12.30–1—12.30–5 (Subpart 12.30) Added; interim 34538
13.103 Amended 25127
13.107 (a) through (e) revised; (g) added 25127
13.111 (a), (b) and (c) revised; (f) added 25128
13.113 Heading, (a) introductory text, (c), (d) introductory text, (1)(i), (ii), (iii), (2), (e)(1)(ii), (iii) and (f) revised; (d)(3) added 25128
Table revised 25129
13.115 Revised 25129
13.117 Revised 25130
13.120 Revised 25130
13.121 (c), (d)(3), (4), (f) and (g) revised; (d)(5), (6), (h), (i) and (j) added 25130
Table 13.121(f) revised 25131
Table 13.121(g) revised 25133
13.127 Heading, (a) introductory text and (b)(6) revised; (b)(9) added 25133
13.129 Table revised 25133
13.203 Heading, (a)(1), (2), (3) and (b) introductory text revised 25134
13.207 Heading revised 25134
13.209 Revised 25134
13.303 Heading, (a)(1) and (b) introductory text revised 25134
13.305 Revised 25134
13.307 Heading and (a) revised 25134
13.309 Revised 25134
13.401 (e)(2) revised 25134
13.403 Heading and (a)(1) revised 25134
13.405 (a) introductory text, (2) and (b)(2) introductory text revised 25134
13.407 Heading revised 25134
13.409 Revised 25134
13.501 (d) revised 25134
13.503 Heading, (a)(1), (2), (3) and (b) revised 25134
13.505 (a) introductory text, (2) and (b) revised 25135
13.507 Heading revised 25135
13.509 Revised 25135
14 Revised **56637**
15 Authority citation revised 34538
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1.229 (f) amended 4171
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1.2106 (b) revised 13543
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13.104 (b) revised 265
13.106–2 (c)(3) amended **69289**
(a)(1), (2), (3), (4) introductory text, (5), (6), (b)(1), (3), (c)(1), (2), (d)(3) and (4)(ii) revised; (a)(6), (7) and (8) redesignated as (a)(7), (8) and (9); new (a)(6) and (10) added 265
(a)(3), (5) and (b)(1) corrected 10710
13.107 (a) revised 266
13.111 (g) removed; (h) and (i) redesignation (g) and (h) **69292**
13.202 (b)(2) revised 266
13.204 (a) and (b) revised 266
13.601—13.602 (Subpart 13.6) Added 266
13.602 (a) introductory text corrected 12720
14.201–6 Regulation at 59 FR 545 confirmed 261
14.202–1 (a) amended 272
14.205–1 (d)(2) amended; interim **67410**
14.209 (b) revised 12692
14.211 (a) amended 272
14.304–1 (a)(2) and (c) revised **69293**
(a)(4) revised 12693
14.404–2 (m) removed 232
14.405 (f) amended 236
14.408–1 Regulation at 59 FR 545 confirmed 261
14.503–1 (g) amended **69289**
15.106 Revised 258
15.106–1 Removed 258
15.106–2 Removed 258
15.407 Regulation at 59 FR 545 confirmed 261
15.410 (b) amended 12693
15.412 (d) amended **69289**
(c)(2) revised **69293**
15.413 Revised 233
15.413–2 (f)(6) removed 233
15.509 (f)(4) revised; (h)(3) removed 233
(h)(1) and (2) corrected 10710
15.609 (c) amended **69289**
15.612 (f) revised **69289**
15.802 (a) introductory text and (1) amended 258
15.804–1 (b)(2), (c) and (d) removed; (b)(3) through (6) redesignated as (b)(2) through (5); (a), new (b)(3) and new (5) revised 258
15.804–2 (a)(1) introductory text and (ii) amended; (a)(2) revised 258
15.804–5 Revised 258
15.804–6 (a)(5) amended 259
Table 15–2 amended 40236
15.805–5 (j) revised; (k) removed 233
15.812–1 (b) revised; (c) amended 259
15.812–2 (a)(3) and (5) revised; (a)(6) added 259
15.1001—15.1008 (Subpart 15.10) Revised **69289**
15.1001 Regulation at 59 FR 545 confirmed 261
15.1006 (e) introductory text amended 257
16.203–4 (a)(1)(ii) and (b)(1)(ii) revised 259
16.204 Amended 12695
16.304 Amended 12695
16.305 Amended 12695
16.306 (d)(2) amended 236
16.307 (a) redesignated as (a)(1); (a)(2) added **67419**
16.401 (c) amended; (d) added 12695
16.402–1 (b) amended 12696
16.404 Redesignated as 16.405; new 16.404 added 12696

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16.404–1 Redesignated as 16.405–1 12696
16.404–2 Redesignated as 16.405–2 12696
16.405 Redesignated as 16.406; new 16.405 redesignated from 16.404 12696
16.405–1 Redesignated from 16.404–1 12696
16.405–2 Redesignated from 16.404–2 12696
16.406 Redesignated from 16.405; (e) introductory text revised 12696
17.203 Regulation at 59 FR 545 confirmed 261
19.001 Amended; interim 67410
(b) amended 236
19.102 (f)(1) amended; interim 67410
19.301 (a) amended 236
19.302 (d)(1) amended 69289
19.303 (c)(2) introductory text revised; (c)(2)(vi) and (3) amended 236
(c)(2)(iv) corrected 10710
19.501 (h)(1) and (2) amended 69289
(h) removed 236
19.502–1 Introductory text amended 67430
19.508 (c) and (d) amended 67430
(f) removed 236
19.601—19.602–4 (Subpart 19.6) Heading revised; interim 67410
19.601 (c) removed; (d) redesignated as (c); interim 67410
19.702 Regulation at 61 FR 2638 confirmed; (d) amended 67420
(d) amended 40236
19.703 (a)(2) amended 236
19.801 Removed; interim 67421
19.803 (a)(3) amended; interim 67410
19.804–2 (b) revised; (c) added; interim 67421
19.804–3 (c) removed; interim 67421
19.805–1 (c) redesignated as (d); new (c) added; new (d) amended; interim 67421
19.805–2 (c) introductory text revised; interim 67421
19.808–1 (b) revised; interim 67421
19.809 Amended; interim 67421
19.811–1 (b)(5) removed; interim 67421
(d) removed 233
19.811–2 (b) removed; (c) redesignated as (b) 233
19.811–3 (a), (b) and (d)(1) revised; (d)(2) removed; (d)(3) redesignated as (d)(2); new (d)(2) amended; interim 67421
19.1001 Amended 67422
19.1006 (b)(1) amended 67422
22.601 Removed; interim 67410
22.602 Revised; interim 67410
22.604–2 (b) removed; (c) redesignated as (b); interim 67410
22.606 Removed; interim 67410
22.606–1 Removed; interim 67410
22.606–2 Removed; interim 67410
22.607 Removed; interim 67410
22.608 Revised; interim 67411
22.608–1 Removed; interim 67411
22.608–2 Removed; interim 67411
22.608–3 Removed; interim 67411
22.608–4 Removed; interim 67411
22.608–5 Removed; interim 67411
22.608–6 Removed; interim 67411
22.610 Revised; interim 67411
23.102 (d) amended 236
23.302 (d)(1) revised 236
23.504 (a) introductory text, (3) and (b) revised; (c) removed; (d) redesignated as (c); (a)(4)(ii), (5), (6) and new (c) amended 69292
23.505 (a)(2) amended; (b) removed; (c) redesignated as (b); heading, (a) introductory text and new (b) introductory text revised 69292
23.506 (d) revised 69292
23.601 (c) revised 236
23.1001—23.1005 (Subpart 23.10) Added; interim 12697
24.202 Redesignated as 24.203; new 24.202 added 257
24.203 Redesignated from 24.202 257
25 Technical correction 10710
25.101 Regulation at 59 FR 545 confirmed 261
25.106 (b) amended 12698
25.109 Regulation at 59 FR 545 confirmed 261
25.201 Amended 12698
25.202 Regulation at 59 FR 545 confirmed 261
Revised 12698
25.203 Revised 12698
25.204 Revised 12699
25.205 Regulation at 59 FR 546 confirmed 261
Revised 12699
25.206 Added 12699
25.207 Added 12699
25.300 Regulation at 59 FR 546 confirmed 261
25.305 Regulations at 59 FR 546 and 61 FR 31647 confirmed 261
25.400 Regulation at 59 FR 546 confirmed 261
25.401 Regulation at 59 FR 546 confirmed 261
Amended 268
25.402 Regulations at 59 FR 546 and 61 FR 31647 confirmed 261
(b) revised 269
25.403 Regulation at 59 FR 546 confirmed 261
25.405 (e) amended 69289
Regulation at 59 FR 546 confirmed 261
25.406 Regulation at 59 FR 547 confirmed 261
25.407 Regulation at 59 FR 547 confirmed 261
25.408 Regulations at 59 FR 547 and 61 FR 31647 confirmed; (a)(3) amended 261
25.901 (b) amended 259
25.1003 Regulation at 59 FR 547 confirmed 261
26.103 (b) amended 40236
26.300—26.304 (Subpart 26.3) Added 12703
27.208 Regulation at 59 FR 547 confirmed 261
27.302 (a) amended 40237
27.303 (e) revised 236
27.406 (c) revised; (d)(1), (2) and (3) amended 236
27.409 (q) amended 236
29.302 (b) amended 237
29.304 (d)(3) amended 40237
29.305 (a)(3) amended; (b)(3) revised 237
30.000 Amended 40237
30.101 (c) amended 40237
30.102 Amended 40237
30.201 Amended 40237
30.201–1 Amended 40237
30.201–2 Amended 40237
30.201–3 (a) and (b) amended 40237
30.201–4 (a)(1), (2), (b)(1), (2), (c), (e)(1) and (2) amended 40237
30.201–5 Amended 40237
30.201–6 Amended 40237
30.201–7 Amended 40237
30.202–1 Amended 40237
30.202–2 Amended 40237
30.202–3 Amended 40237
30.202–4 Amended 40237
30.202–5 Amended 40237
30.202–6 (a) amended 40237
30.202–7 (a) amended 40237
30.202–8 (b) amended 40237
30.3 (Subpart) Note amended 40237
30.4 (Subpart) Note amended 40237
30.5 (Subpart) Note amended 40237
30.602 Introductory text amended 40237
31.001 Amended; interim 69288
31.109 (h)(10) removed; (h)(11) through (17) redesignated as (h)(10) through (16); interim 69288
31.110 (a) amended 237
31.205 (b)(2) revised; interim 67425
31.205–1 (f)(5) revised 67423
(d)(2) amended 12704
31.205–2 Removed; interim 69288
31.205–6 (g)(1) amended 67430
(e)(2) revised; interim 69295
(f) revised 259
(p) added; interim 270
31.205–11 Regulation at 60 FR 64255 confirmed; (o) revised 67424
31.205–16 Regulation at 60 FR 64255 confirmed; (g) revised 67424
31.205–18 (e) revised 12705
31.205–22 (d) removed; (e) and (f) redesignated as (d) and (e); new (d) amended 237
31.205–36 (a) amended; interim 69288
31.205–38 (c)(2) revised 12704
31.205–46 (a)(2)(i) amended 40237
32.102 (d) revised 12706
32.304–8 (b)(3) amended 237
32.503–7 Introductory text amended 40237
32.805 (a)(1)(iii) amended 237
32.902 Amended 12706
32.903 Revised 12706
32.904 Revised 12707
32.905 Revised 12707
32.906 (a) amended 12709
32.907–1 (a), (b), (d) and (g) revised 12709
(g)(3)(i) revised 40237
32.908 Revised 12710
33.102 (a) amended; interim 67411
(f) added 233

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33.103 (f)(3) amended **69289**
(c), (e), (f)(1) and (2) amended; (f)(4) added; (d)(2)(i), (4), (g) and (h) revised 270
(f)(4) corrected 10710
33.104 (c)(1) amended **69289**
(h)(3) introductory text revised 12718
35.017–2 (i) revised 12694
36.102 Amended 272
36.104 Added 272
36.205 (b)(3) revised 237
36.213 Redesignated from 36.301—36.304 (Subpart 36.3) heading and revised 272
36.213–1 Redesignated from 36.301 272
36.213–2 Redesignated from 36.302 272
36.213–3 Redesignated from 36.303 272
36.213–4 Redesignated from 36.304 272
36.214 Redesignated from 36.402; heading revised 272
36.215 Redesignated from 36.403; heading revised 272
36.300—36.303–2 (Subpart 36.3) Added 272
36.301—36.304 (Subpart 36.3) Heading redesignated as 36.213 272
36.301 Redesignated as 36.213–1 272
36.302 Redesignated as 36.213–2 272
36.303 Redesignated as 36.213–3 272
36.303–1 Introductory text corrected 10710
36.304 Redesignated as 36.214–1 272
36.402—36.403 (Subpart 36.4) Heading removed 272
36.402 Redesignated as 36.214 272
36.403 Redesignated as 36.215 272
36.607 (b) revised **69291**
37.000 Revised 12694
37.102 (d) through (g) added 12694
37.103 (c) removed; (d) redesignated as (c) 233
37.402 Revised 237
37.500—37.504 (Subpart 37.5) Added 12694
38.101 (a) amended 40237
38.201 (b) amended 40237
39.002 Amended; interim 274
39.106 Redesignated as 39.107; new 39.106 added; interim 274
39.107 Redsignated from 39.106; interim 274
42.102 (a) amended 40237
42.302 (a)(18) amended 237
(a)(11) introductory text amended 40237
42.703–1 (a) revised 274
42.703–2 (a), (c)(1) and (f) revised; (c)(2)(ii) and (d) amended 237
(a) revised 274
(f)(1) corrected 10710
42.704 (e) added **69296**
42.705 Revised **69296**
43.102 (c) revised; interim **69298**
43.106 Removed 233
44.302 Revised 12719
44.303 Introductory text revised 12719
44.304 (a) revised 12719
44.305–1 Revised 12719
44.305–2 (a) revised 12719
44.306 Revised 12719
44.307 Revised 12719
45.606–1 (a) designation and (b) removed 237
45.606–5 (a)(2) amended 237
45.607–2 (b) amended 40237
45.608–6 (b) amended 40237
46.6 (Subpart) Existing text designated as 46.601; heading added 40237
46.601 Heading added 40237
46.804 Amended 259
46.806 Removed **67425**
47.303–17 (d)(3)(ii) revised 237
47.305–11 Introductory text amended; (a) designation removed; (a)(1), (2) and (3) redesignated as (a), (b) and (c) 237
47.403–3 (a) amended; (c) revised 237
47.404 (b)(2) revised 237
49.108–3 (b) revised 237
50.104 (b) introductory text amended 40237
51.102 (c)(1), (4) and (e)(3)(iii) amended 40237
52.101 (b)(1) amended 40237
52.102–1 (c)(1) amended 40237
52.106 Removed 40237
52.200 amended 40237
52.203–3 Regualtion at 61 FR 39200 confirmed 12690
52.203–8 Revised 233
Corrected 10710

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52.203–9 Removed 233
52.203–10 Amended; introductory text revised 233
52.203–11 (b) introductory text amended 40237
52.203–12 Amended 40237
52.203–13 Removed 233
52.204–3 Amended 40238
52.204–5 Introductory text revised; interim **67412**
52.208–1 Removed 238
52.208–2 Removed 238
52.208–8 Amended 40238
52.208–9 Amended **67430**
52.209–3 Amended 238
52.209–4 Amended 238
52.209–7 Removed 238
52.209–8 Removed 238
52.211–1 Amended 40238
52.211–2 Amended 40238
52.211–4 Amended **67430**
52.211–5 Amended **67430**
52.211–6 Amended **67430**
52.211–7 Amended **67430**
52.211–8 Amended 40238
52.211–9 Amended 40238
52.211–13 Amended **67430**
52.212–1 Amended 40238
52.212–3 Amended 233
Amended 238
Regulation at 61 FR 31648 confirmed; amended 261
52.212–4 Amended 12711
52.212–5 Regulation at 61 FR 31648 confirmed 261
52.214–5 Amended **69293**
Corrected 12721
52.214–7 Amended **69293**
Amended 12693
Corrected 12721
52.214–23 Amended **69293**
Amended 12693
Corrected 12721
52.214–30 Revised 238
52.214–32 Amended **69293**
Amended 12693
Corrected 12721
52.214–33 Amended **69293**
Amended 12693
Corrected 12721
52.215–2 Introductory text amended 259
52.215–9 Amended **69294**
Corrected 12721
52.215–10 Amended **69294**
Amended 12693, 40238
Corrected 12721
52.215–15 Revised 12693
52.215–26 Amended **67425**
Revised 259
52.215–35 Revised 238
52.215–36 Amended **69294**
Amended 12693
Corrected 12721
52.215–41 Amended 259
52.215–42 Amended 260
52.215–43 Removed 260
52.216 Amended **67419**
52.216–2 Amended 238
Amended; introductory text revised 260
52.216–3 Amended 238
Amended; introductory text revised 261
Corrected 10710
52.216–4 Amended 238
52.216–5 Amended **67425**
52.216–6 Amended **67425**
52.216–7 Amended **69296**
Corrected 12721
52.216–8 Amended **69296**
Corrected 12721
52.216–9 Amended **69296**
Corrected 12721
52.216–10 Amended **69296**
Corrected 12721
52.216–13 Amended **69296**
Corrected 12721
52.216–16 Amended **67426**
Amended 12696
52.216–17 Amended **67426**
Amended; introductory text revised 12696
52.219–1 Amended; interim **67422**
Amended 238
52.219–8 Amended 40238
52.219–11 Amended; interim **67422**
52.219–12 Amended; interim **67422**
52.219–14 Amended; interim **67411**
52.219–15 Removed 238
52.219–17 Amended; interim **67422**
52.219–18 Amended; interim **67422**
Amended 238
Corrected 12720
52.219–19 Amended 238
52.219–21 Amended 238
52.222–1 Amended **67426**
52.222–19 Removed; interim **67411**
52.222–20 Amended; interim **67411**
52.223–3 Amended 238
52.223–5 Removed **69292**
Added; interim 12697

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52.223–6 Amended **69292**
52.223–7 Amended 239
52.225–3 Regulation at 59 FR 547 confirmed 261
52.225–5 Amended; introductory text revised 12700
Amended 40238
52.225–8 Regulation at 59 FR 547 confirmed 261
52.225–9 Regulation at 59 FR 547 confirmed 261
52.225–12 Added 12700
52.225–13 Added 12701
52.225–15 Regulation at 59 FR 548 confirmed 261
Amended; introductory text revised 12701
Amended 40238
52.225–17 Regulation at 59 FR 548 confirmed 261
52.225–19 Regulation at 59 FR 548 confirmed 261
52.225–20 Regulations at 59 FR 548 and 61 FR 31648 confirmed 261
Amended 262
52.225–21 Regulations at 59 FR 548 and 61 FR 31649 confirmed 261
Amended 262
Corrected 10710
52.225–22 Regulation at 61 FR 31649 confirmed 261
Amended 12702
52.226–2 Added 12703
52.227–11 Amended 40238
52.227–12 Amended 239
52.227–13 Amended 239
52.227–16 Amended 40238
52.227–21 Amended 239
52.228–5 Amended 239
52.228–8 Amended 239
52.228–9 Amended 239
52.228–14 Amended **67430**
52.232–5 Amended 12711
52.232–7 Amended **67419**
52.232–8 Amended 12712
52.232–25 Revised 12712
Amended 40238
52.232–26 Revised 12713
Amended 40238
52.232–27 Revised 12715
Amended 40238
52.232–32 Amended 12720
52.236–21 Amended **67426**
52.237–3 Amended 40238
52.237–7 Amended 239
52.239–1 Introductory text amended; interim 274
52.242–4 Amended; heading revised 239
52.244–2 Amended **67426**
52.244–5 Regulation at 61 FR 2638 confirmed; amended **67420**
52.245–8 Amended; introductory text revised 239
52.246–23 Amended **67426**
52.246–24 Amended **67426**
52.246–25 Amended **67426**
52.247–2 Amended; introductory text revised 240
52.247–54 Removed 240
52.247–63 Amended 240
52.247–64 Amended 40238
52.247–67 Amended 40238
52.301 Note added 40239
53.103 (b) amended 40239
53.203 Removed 233
53.204–2 (a) and (b) amended **67427**
53.214 (e) heading revised 240
53.215–1 (f) heading revised 240
53.219 (a) and (b) amended; interim **67413**
53.222 (g) heading revised 240
53.229 Amended 240
53.245 (c) heading, (f) heading, (g) heading, (h) heading, (i) heading and (j) heading revised 240
53.301–25 Revised 40240
53.301–28 Revised 40242
53.301–129 Revised 240
53.301–279 Amended **67427**
53.301–281 Heading revised 40244
53.301–294 Revised; interim **67413**
53.301–1094 Revised 243
53.301–1094A Revised 247
53.301–1408 Heading revised 40244
53.301–1412 Removed 40244
53.301–1419 Removed 40244
53.301–1423 Revised 249
53.301–1426 Revised 250
53.301–1428 Revised 251
53.301–1430 Revised 252
53.301–1432 Revised 253
53.301–1434 Revised 254
53.301–1445 Revised 255
53.302–333 Removed 233
53.302–336 Amended 40244

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201.603–2 (1) introductory text revised 34121
202.101 Amended 34121
203.104–4 Removed 2612
203.104–5 (e)(4) redesignated as (d)(4); new (d)(4) amended 2612
203.170 Removed 2612
203.170–1 Removed 2612
203.170–2 Removed 2612
203.170–3 Removed 2612
203.170–4 Removed 2612
203.405 Redesignated from 203.409 34121
203.409 Redesignated as 203.405 34121
203.570–5 Amended 34121
204.670–1 (c)(4) revised 34121
204.670–2 (a)(1) revised 34121
204.670–9 Introductory text and (a) revised 34121
204.805 Amended 40472
204.7003 (a)(1)(i)(G) revised 34121
204.7202–1 (c)(5) redesignated as (d) 34121
204.7202–2 Introductory text and (b)(1) introductory text amended 34121
208.002 (f) revised 34121
208.7203 (d) removed; (e), (f) and (g) redesignated as (d), (e) and (f); (c) and new (d) revised 34121
209.104–1 (g)(ii)(C) introductory text amended; (g)(ii)(D) added; (g)(iii) removed 34121
209.104–70 Heading revised; (c) and (d) removed 34122
209.470–1 Regulation at 61 FR 25408 confirmed 34120
209.470–2 Regulation at 61 FR 25408 confirmed 34120
212 Heading revised; interim 5780
212.301 (f)(iii) amended 34122
212.504 (a)(xix), (xx) and (xxi) removed **58488**
(a)(i) removed; interim 5780
214.406 Redesignated as 214.407 34122
214.406–3 Redesignated as 214.407–3 34122
214.407 Redesignated from 214.406 34122
214.407–3 Redesignated from 214.406–3; (e) introductory text amended; (e)(v) revised 34122
215.608 (b) amended 2612
215.801 Removed 40472
215.804 Revised 40472
215.804–1 Revised 40472
215.804–3 Removed 40472
215.804–6 (b)(2)(A) and (B) redesignated as (b)(1)(A) and (B) 40472
215.805–5 (a)(1)(A) revised 40472
215.805–70 (b) revised 40472
215.811–70 (b)(2), (g)(3)(ii) and (h) revised 40472
215.872 Removed 40472
215.872–1 Removed 40472
215.872–2 Removed 40472
215.872–3 Removed 40472
215.872–4 (d)(1) revised 34122
Removed 40472
215.873 (d) revised 2613
216.203–4 (d)(xvi) amended 40472
216.203–4–70 (c) added 34122
(a) revised; (b)(4) and (6) removed; (b)(5) and (7) redesignated as (b)(4) and (5) 40472
216.306 Revised 1058
(c)(ii)(B)(*2*) corrected 1817
216.307 Removed 34122
219 Regulation at 61 FR 39900 confirmed 34120
219.301 (b) revised 2613
219.302–70 (d) and (e) revised 2613
219.602—219.602–3 (Subpart 219.6) Heading revised 34122
219.602–3 (c)(i)(A) amended 34122
219.702 Regulation at 61 FR 39900 confirmed 34120
219.704 (b) amended **54346**
219.708 Regulation at 61 FR 39901 confirmed 34120
219.808 Removed 34122
219.808–1 Removed 34122
219.811 Removed 34122
219.811–1 Removed 34122
219.811–3 Removed 34122
219.1005 (a) introductory text removed 34122
219.1006 (b)(2) revised 34122
222.7200—222.7201 (Subpart 222.72) Added 34122
224.202 Redesignated as 224.203 34122
224.203 Redesignated from 224.202 34122

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225.202 (b) redesignated as (a)(3) 34122
225.205 Removed 34122
225.205–70 Removed 34122
225.212–7001 Amended **58489**
225.225–7017 Removed **58489**
225.225–7040 Removed **58489**
225.403 Regulation at 61 FR 37841 confirmed 34120
(c) and (d)(1)(A) redesignated as (b) and (c)(1)(A) 34122
225.403–70 Amended 2615
Regulation at 61 FR 37841 confirmed 34120
225.603 (1)(iii)(C)(*2*) revised 2613
225.872–1 (d) added; interim 34122
225.872–2 (a)(3) revised; interim 34123
225.971 Added 34123
225.972 Added 34123
225.7000—225.7023–3 (Subpart 225.70) Heading revised 34123
225.7000 (a) revised; interim 2856
Regulation at 62 FR 2856 confirmed 34120
225.7002–1 (a) introductory text, (7) and (9) revised; interim 5780
225.7002–2 (e) and (j) revised; interim 5780
225.7003 Added; interim 2856
Regulation at 62 FR 2856 confirmed 34120
225.7004 Removed **58489**
Added; interim 2857
Regulation at 62 FR 2857 confirmed 34120
225.7004–1 Removed **58489**
225.7004–2 Removed **58489**
225.7004–3 Removed **58489**
225.7004–4 Removed **58489**
225.7004–5 Removed **58489**
225.7004–6 Removed **58489**
225.7005 Revised **58489**
(a)(3) revised 2616
Revised; interim 34123
225.7007–1 Revised; interim 34123
225.7007–3 Revised; interim 34123
225.7007–4 Revised **58489**
Revised; interim 34123
225.7009 Removed 34123
225.7010–1 Introductory text and (a) revised; interim 34123
225.7010–2 Revised; interim 34123
225.7010–3 Revised **58489**
Revised; interim 34123
225.7013 Removed 34123
225.7013–1 Removed 34123
225.7013–2 Removed 34123
225.7016–1 Revised; interim 34123
225.7016–2 Revised; interim 34124
225.7016–3 Revised **58489**
Revised; interim 34124
225.7019–1 (b) revised **58489**
(a) revised; interim 34124
225.7019–3 (a)(1)(iv) revised 2616
(a)(1)(iv) revised; interim; (a)(2) and (3) redesignated as (a)(3) and (4); new (a)(2) added 34124
225.7020 Removed 34124
225.7020–1 Removed 34124
225.7020–2 Removed 34124
225.7022–1 (b) revised; interim 34124
225.7022–2 Revised; interim 34124
225.7022–3 Revised **58489**
Revised; interim 34124
225.7100—225.7103–3 (Subpart 225.71) Revised; interim 34124
225.7302 (a)(1) removed; (a)(2) through (5) redesignated as (a)(1) through (4); interim 2617
225.7303–4 Revised; interim 2617
225.7307 Revised 34125
225.7307–1 Removed 34125
225.7307–2 Removed 34125
225.7308 (a) revised; interim 2617
226.7005 (b) introductory text and (1) revised 2613
226.7008 (b) amended 2613
227.676 Added 34125
227.7004 (a)(6) amended 2613
227.7103–6 (e)(3) amended 2613
227.7104 (e)(5) amended 2614
228.370 (f) added 34125
229.101 (d)(i), (ii) and (iii) redesignated as (d)(iii), (iv) and (v); new (d)(i), new (ii) and (vi) added 34125
229.402—229.402–70 (Subpart 229.4) Added 34125
229.7000—229.7002–4 (Subpart 229.70) Added 34125
231.205–6 (f)(1) revised; interim **58490**
(a)(2)(i) and (ii) redesignated as (a)(2)(i)(A) and (B); new (a)(2)(ii) added; interim **65479**
Regulations at 61 FR 36306, 58490 and 65479 confirmed 34120
231.205–70 (a) revised; (c)(3) and (d)(10) added; interim **64635**
Regulation at 61 FR 64635 confirmed 34120
231.303 Regulation at 61 FR 36306 confirmed 34120
231.603 Regulation at 61 FR 36306 confirmed 34120
231.703 Regulation at 61 FR 36306 confirmed 34120
232.502–1–71 (b)(3) revised 40473
232.806 Revised 34126
233.214 Redesignated as 233.215 34126
233.215 Redesignated from 233.214 34126
233.215–70 Added 34126
233.7000—233.7001 (Subpart 233.70) Removed 2614
234.003 Revised 34126
234.005–70 Revised; interim 9991
234.005–71 Added; interim 9991
(b) corrected 11953
235.006 (b)(1)(C)(*1*)(*iii*) amended 34126
235.010 (b) amended 34126
235.7001 (a) removed; (b) and (c) redesignated as (a) and (b) 16100
235.7002 (a) introductory text, (b) and (d) revised 16100
235.7003 Removed 16100
235.7005 Heading and introductory text revised 16100
235.7006 Revised 16100
(d) amended; interim 37147
236.102 (4) added; interim 2857
Regulation at 62 FR 2857 confirmed 34120
236.274 Introductory text, (a), (b) introductory text and (1) through (8) redesignated as (b) introductory text, (1), (2) introductory text and (i) through (viii); new (a) added; interim 2856
Regulation at 62 FR 2856 confirmed 34120
(b)(2)(viii) revised 34127
236.570 (c) added; interim 2856
Regulation at 62 FR 2856 confirmed 34120
(d) added 34127
236.602–70 Added; interim 2857
Regulation at 62 FR 2858 confirmed 34120
236.609–70 Heading revised; (a) introductory text, (1), (2) and (b) redesignated as (a)(1) introductory text, (i), (ii) and (2); new (b) added; interim 2858
Regulation at 62 FR 2858 confirmed 34120
Heading revised 34127
237.7102 (a) and (b) amended 34127
239 Heading revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.001 Removed; interim 1059
Regulation at 62 FR 1059 confirmed 34120
239.002 Removed; interim 1059
Regulation at 62 FR 1059 confirmed 34120
239.7000—239.7003 (Subpart 239.70) Revised; interim 1059
Regulation at 62 FR 1059 confirmed 34120
239.7003 (f)(1) amended 34127
239.7102–3 (a) designation and (b) removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
Revised 34127
239.7201 Removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7202 (a) and (b) revised; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7300 Revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7301 (a) revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7302 (a), (b) introductory text and (2) revised; interim 1060
(b) introductory text and (1) revised; interim 9376
Regulations at 62 FR 1060 and 9376 confirmed 34120
(b)(2)(i) revised 34127
239.7303 Revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7304 (c) revised; interim 1060
Removed; interim 9376
Regulations at 62 FR 1060 and 9376 confirmed 34120
239.7305 Removed; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7400 Revised; interim 1060

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Regulation at 62 FR 1060 confirmed 34120
239.7402 (b)(4) amended; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7406 Revised 40473
239.7411 (a)(7) amended; (a)(8) and (9) removed 40473
239.7500 Amended 34127
239.7501 Revised; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7501-1 Removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7501-2 Removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239 Table 39-1 removed; interim 9376
Regulation at 62 FR 9376 confirmed 34120
242.101 (d)(i) introductory text and (ii) amended; (d)(i)(A) revised 34127
242.102 (b)(ii) introductory text amended 34127
242.302 (a)(41) revised; interim 9991
242.1107-70 Revised; interim 9991
Heading and (a) corrected 11953
242.1404-2-70 Revised 34127
242.7000—242.7004 (Subpart 242.70) Removed 34127
243.105 Regulation at 61 FR 25408 confirmed 34130
243.204-70 Added; interim 37147
243.205-72 Added; interim 37147
244.403 (Subpart 244.4) Added; interim 5780
245.302-1 (a)(4)(A)(*2*), (C) introductory text and (b)(1) revised 34127
245.407 (a)(ii) amended 34127
245.505-6 (2) amended 34127
245.608-5 (a)(2)(B)(*2*) and (*4*) revised; (d) removed 34128
245.608-71 (a) revised; (b)(1) introductory text, (2)(i), (ii)(C), (3)(iii), (c) and (d) amended 34128
245.608-72 Added 34128
245.7206 Introductory text and (j)(2) amended 34128
246.710 (4) added 34128
249.102 Removed 67952
249.110 Table 49-1 amended 34128
249.7003 Revised; interim 64637
(c) corrected 66077
Regulation at 61 FR 64637 confirmed 34120
252.203-7000 Removed 2612
252.203-7001 Amended 34128
252.209-7003 Removed 34128
252.209-7004 Removed 34128
252.212-7001 Amended 2614
Amended; interim 2617, 5780, 37147
252.215-7000 Introductory text amended 40473
252.215-7002 Amended 40473
252.216-7000 Amended 2614, 40473
252.216-7001 Amended 2614, 40473
252.216-7002 Removed 34128
252.216-7003 Added 34128
252.217-7005 Amended 2614
252.219-7000 Amended 2614
Amended 34128
252.219-7004 Regulation at 61 FR 39901 confirmed 34120
Amended 34129
252.219-7006 Amended 34129
252.219-7007 Removed 34129
252.222-7002 Added 34129
252.222-7003 Added 34129
252.222-7004 Added 34129
252.225-7004 Removed 34129
252.225-7006 Revised 34129
252.225-7007 Regulation at 61 FR 37842 confirmed 34120
Revised 34130
Amended 37148
252.225-7009 Amended 2614
252.225-7010 Amended 2614
252.225-7012 Amended; interim 5780
252.225-7014 Amended; interim 5780
252.225-7016 Amended 34131
252.225-7018 Amended 2614
252.225-7022 Revised 34131
252.225-7025 Revised 34131
252.225-7027 Revised; interim 2617
252.225-7029 Revised; interim 34131
252.225-7034 Removed 34131
252.225-7037 Amended 2614
252.225-7041 Added 34132
252.225-7042 Added 34132
252.226-7001 Amended; heading revised 2614
252.227-7030 Introductory text amended 34132
252.227-7036 Revised 2614
252.228-7006 Added 34132
252.229-7000 Added 34132

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252.229-7001 Added 34132
252.229-7002 Added 34133
252.229-7003 Added 34133
252.229-7004 Added 34133
252.229-7005 Added 34133
252.229-7006 Added 34134
252.229-7007 Added 34134
252.229-7008 Added 34134
252.229-7009 Added 34134
252.229-7010 Added 34134
252.232-7008 Added 34134
252.233-7000 Removed 2614
252.233-7001 Added 34135
252.234-7000 Revised; interim 9991
Amended 34135
252.234-7001 Revised; interim 9992
Amended 34135
252.236-7003 Amended 2614
252.236-7006 Amended 2614
252.236-7010 Added; interim 2857
Regulation at 62 FR 2857 confirmed 34120
252.236-7011 Added; interim 2858
Regulation at 62 FR 2858 confirmed 34120
252.239-7006 Amended 40473
252.239-7007 Amended 2614
252.239-7009 Removed 40473
252.239-7010 Removed 40473
252.242-7002 Removed 34135
252.242-7003 Introductory text amended 34135
252.242-7005 Amended 34135
Revised; interim 9992
252.242-7006 Amended 34135
Added; interim 9992
252.243-7000 Amended 40473
252.243-7002 Added; interim 37147
252.244-7000 Added; interim 5780
252.246-7002 Added 34135
252.247-7001 Amended 2615
252.249-7001 Removed 67952
252.249-7002 Revised; interim 64637
Regulation at 61 FR 64637 confirmed 34120
253.204-70 (b)(2) heading, (13)(i)(E) introductory text, (F), (iv)(C), (c)(2), (4)(iv)(A), (viii)(B)(*8*)(*i*), (d)(5)(i)(J), (ii)(B), (iv)(E)(*1*) and (x)(B)(*14*) 34135
253.204-71 (c)(1) amended; (d)(6)(i)(B) revised 34136
253 Note amended 34136
Chapter 2 Appendix I amended 54346
Appendix G amended 34136
Appendix I amended 34141

Chapter 4—Department of Agriculture (Parts 400—499)

Chapter 4 Revised 53646

Chapter 5—General Services Administration (Parts 500—599)

501.402—501.404 (Subpart 501.4) Revised 51374
552.238-72 Amended 38476
552.238-77 Amended 38476
570.106 (c) introductory text, (1), (2) and (3) revised 5166

Chapter 7—Agency for International Development (Parts 700—799)

Chapter 7 Nomenclature change 40466
701.105 (a) table amended 40466
701.373 (b) amended 40466
701.376-3 Revised 40466
701.601 (a) and (b) amended; (b)(3) removed; (b)(4) and (5) redesignated as (b)(3) and (4) 40466
701.602-1 Added 40466
701.704 Amended 40466
702.170-3 (a) amended 40466
702.170-10 (a)(1) amended; (a)(1)(ii) removed; (a)(1)(iii) and (iv) redesignated as (a)(1)(ii) and (iii) 40466
702.170-13 (b) corrected 51234
702.170-15 Amended 40466
702.170-17 Added 40466
703.104-11 Added 40467
703.403 (Subpart 703.4) Removed 40467
704.404 Amended 40467
704.803 Removed 40467
705.002 Existing text designated as (a); (b) added 40467
705.207 (a) amended 40467
706.302-5 Amended 40467
706.302-70 (c)(4) revised 40467
706.302-71 (a)(2) and (b) corrected 51235
(a) revised; (b)(1) amended 40467
708 Removed 40467
709.402 Removed 40467
709.403 Added 40467
709.503 Amended 40467

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711.002–70 Redesignated from 711.022–70; (b)(1) and (3) amended 40467
711.002–71 Amended 40466
711.022–70 Redesignated as 711.002–70 40467
715 Technical correction **51235**
715.413–2 (b) revised; (c) amended 40467
715.613–71 (a), (b) and (c) revised; (d) and (e) removed; (f) redesignated as (d); new (d)(3)(i) and new (4) amended 40467
716 Technical correction **51235**
719.270 Amended 40466
(d) amended; (k) removed 40468
719.271–2 Amended 40466
(b)(8) amended 40468
719.271–3 (j) amended 40468
719.271–6 Amended 40466
(a) introductory text and (3) amended 40468
722.103 Corrected **53996**
722.103–2 Correctly redesignated from 722.103–71 ..... **52497**
722.103–4 Correctly redesignated from 722.103–723 ..... **52497**
722.103–70 Correctly removed **51235**
722.103–71 Correctly redesignated as 722.103–2 ..... **52497**
722.103–72 Correctly redesignated as 722.103–4 ..... **52497**
722.170 Amended 40466
722.805–70 (d)(3) amended 40468
725.701 Revised 40468
725.703 Amended 40466
725.704 Revised 40468
725.705 Revised 40468
725.706 (a) revised 40468
726.301—726.302 (Subpart 726.3) Removed **51235**
726.302 Correctly redesignated as 726.7008 ..... **51235**
726.7001 Amended 40468
726.7003 Introductory text and (c) amended 40468
726.7005 Amended 40468
726.7006 (a) amended 40468
726.7007 (a) and (b) amended 40468
726.7008 Correctly redesignated from 726.302 ..... **51235**
728.305–70 Amended 40466
728.307–2 Amended 40466
728.309 Amended 40466
728.313 Amended 40466
731.205–6 (d) amended 40468
731.371 (b)(1) amended 40469
732.401 (a) amended 40469
733.103–71 (b) and (c) corrected **51235**
733.103–72 (b) correctly revised **51235**
733.270–1 Correctly designated **51235**
733.270–2 Correctly designated **51235**
(e) amended 40469
737 Technical correction **51235**
750.7101 (a) amended 40469
750.7109–3 Amended 40469
750.7110 Revised 40469
750.7110–1 Revised 40469
750.7110–2 Revised 40469
750.7110–3 Revised 40469
750.7110–4 Revised 40469
750.7110–5 Revised 40469
752.200 Amended 40469
752.204–2 Amended 40469
752.209–70 Removed 40469
752.211–70 Amended 40466
752.219–8 Amended 40469
752.225–9 Amended 40470
752.225–70 Added 40470
752.225–71 Added 40470
752.226–1 Introductory text amended 40470
752.226–2 Amended 40470
752.226–3 Introductory text amended 40470
752.228–7 Amended 40470
752.245–70 Amended 40470
752.245–71 Introductory text revised 40470
752.7001 Revised 40470
752.7002 Amended 40466
752.7003 Amended 40466
752.7004 Amended 40466
Revised 40470
752.7007 Amended 40470
752.7008 Introductory text amended 40470
752.7009 Amended 40466
752.7010 Introductory text amended 40470
752.7015 Amended 40471
752.7017 Removed 40471
752.7027 Amended 40471
752.7028 Corrected **51235**
752.7029 Introductory text amended 40471
752.7033 Amended 40471
753.107 Amended 40471
Chapter 7 Appendix D revised 39453
Appendixes A, C, G and H removed 40471

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Chapter 8—Department of Veterans Affairs (Parts 800—899)

807 Authority citation revised 18300
807.302 Removed 18300
807.304–72 Removed 18300
837 Authority citation revised **52709**
837.403 (Subpart 837.4) Added **52709**
852 Authority citation revised 18300
852.207–71 Removed 18300
852.207–72 Removed 18300
852.237–7 Added **52710**

Chapter 9—Department of Energy (Parts 900—999)

901.105 Amended (OMB numbers) 34861
904.601–71 (Subpart 904.6) Removed 2312
904.702 (b) amended 2312
906.303–70 Removed 2312
908.7121 (b) amended 2312
909.503—909.507–2 (Subpart 909.5) Revised 40751
915.401 Amended 2312
917.600 Amended 34861
917.601 Added 34861
917.602 Regulation at 61 FR 32586 confirmed 34873
917.605 Regulation at 61 FR 32586 confirmed 34873
923.7002 (d) amended 2312
925 Authority citation revised 2311
926.7101—926.7104 (Subpart 926.71) Added 34861
945.608–2 (b)(1)(ii) revised 2312
950.7101 (c)(2) removed; (c)(1) redesignated as (c) 34861
952 Authority citation revised 2311, 34862
952.202–1 Amended; (b) introductory text revised 2312
952.204–2 Amended 2312
952.204–71 Amended 2312
952.204–72 Amended 2312
952.204–73 Amended 2312
952.209–8 Added 40752
952.209–70 Removed 40752
952.209–72 Revised 40752
952.211–72 Removed 2312
952.211–73 Removed 2312
952.216–15 Amended 2312
952.223–71 Heading revised 34862
952.223–74 Removed 34862
952.223–75 Introductory text revised 34862
952.224–70 Amended 2312
952.226–74 Added 34862
952.227–75 Amended 2312
952.227–76 Amended 2312
952.227–77 Amended 2312
952.227–78 Amended 2312
952.227–79 Amended 2312
952.227–82 Amended 2312
952.235–70 Amended 2312
952.236–71 Amended 2312
952.247–70 Amended 2312
952.249–70 Amended 2312
970.0001 Regulation at 61 FR 32586 confirmed 34873
970.0404–3 (a) and (b) amended 2312
970.0406 Removed 2312
970.0407 Removed 34862
970.0407–1 Added 34862
970.0407–2 Added 34862
970.0407–3 Added 34862
970.0470 Added 34862
970.0470–1 Added 34862
970.0470–2 Added 34862
970.0803 Redesignated as 970.4100 2312
970.0905 Revised 40753
970.1001 Revised 34862
970.1002 Heading revised 34863
970.1507 Added 34863
970.1507–1 Added 34863
970.1507–2 Added 34863
970.1507–3 Added 34864
970.1509–2 (a) revised 34864
970.17 Regulation at 61 FR 32586 confirmed 34873
970.1702–1 Regulation at 61 FR 32586 confirmed 34873
970.1702–2 Regulation at 61 FR 32587 confirmed 34873
970.2273 (a)(3) through (6) and (c)(1) introductory text amended 2312
970.2275 Added 34864
970.2275–1 Added 34864
970.2275–2 Added 34864
970.2302–2 (c), (d) and (e) removed 34864
970.2601 Existing text designated as (a); (b) added 34864
970.2601–1 Added 34864
970.2601–2 Added 34864
970.2830 Added 34864
970.2903 Revised 2312
970.3101–3 (a)(1) revised 34865
970.3102–21 Revised 34865
970.3102–22 Removed 34865

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970.3103 (d) added 34865
970.4100 (Subpart 970.41) Heading added 2312
970.4100 Redesignated from 970.0803; (a) and (c) amended; (d) removed 2312
970.4501 (Subpart 970.45) Added 34865
970.5204-2 Revised 34865
970.5204-12 Amended 2313
970.5204-13 Amended; introductory text revised 34866
970.5204-14 Amended; introductory text revised 34866
970.5204-15 Amended 2313
970.5204-16 Amended 2313
Amended; introductory text revised 34867
970.5204-17 Amended 2313
970.5204-18 Amended 2313
Removed 34867
970.5204-20 Amended 2313
970.5204-21 Amended 2313
Amended; introductory text revised 34867
970.5204-23 Introductory text amended 2313
970.5204-24 Amended 2313
970.5204-26 Amended 2313
Removed 34868
970.5204-31 Amended 2313
Revised 34868
970.5204-32 (a) and (b) amended 2313
Removed 34869
970.5204-33 (a) and (b) amended 2313
970.5204-35 Amended 2313
970.5204-38 Amended 2313
970.5204-41 Amended 2313
Removed 34869
970.5204-43 Amended 2313
970.5204-44 (b)(11) amended 2313
(b)(15) revised 40753
970.5204-45 Amended 2313
970.5204-50 Removed 2313
970.5204-52 Revised 2313
970.5204-54 Amended 2313
970.5204-55 Amended 2313
Removed 34869
970.5204-56 Amended 2313
Removed 34869
970.5204-57 Amended 2313
970.5204-60 Amended 2313
970.5204-61 Amended 2313
Amended; introductory text revised 34869
970.5204-62 Removed 34869
970.5204-73 Regulation at 61 FR 32587 confirmed 34873
970.5204-74 Regulation at 61 FR 32587 confirmed 34873
970.5204-75 Added 34869
970.5204-76 Added 34870
970.5204-77 Added 34870
970.5204-78 Added 34870
970.5204-79 Added 34871
970.5204-80 Added 34871
970.7105 (a)(3) amended 2313

Chapter 12—Department of Transportation (Parts 1200—1299)

1201.301-70 (a)(4) removed; (a)(5) redesignated as (a)(4); (b) introductory text amended 26419
1201.304 (a) revised 26420
1202.1 (f) and (g) revised; (i)(7) amended 26420
1203.405 Redesignated from 1203.409 26420
1203.409 Redesignated as 1203.405 26420
1211.104—1211.104-70 (Subpart 1211.1) Added 26420
1211.204-70 (Subpart 1211.2) Added 26420
1212 Clarification 53677
Correctly removed 54490
1213 Clarification 53677
1214.303 (b) amended 26420
1237.104—1237.104-90 (Subpart 1237.1) Added 26420
1246.701-70 Amended 26420
1252.219-70 (b) removed; (c) redesignated as (b) 26420
1253.303 (Subpart 1253.3) Appendix amended 26421

Chapter 14—Department of the Interior (Parts 1400—1499)

1401.106 (Subpart 1401.1) Revised 18054
1401.303 (Subpart 1401.3) Revised 18054
1401.601—1401.670-4 (Subpart 1401.6) Removed 18054

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1501.103 Redesignated as 1501.104 33572

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1501.104 Redesignated as 1501.105; new 1501.104 redesignated from 1501.103 and revised 33572
1501.104-1 Redesignated as 1501.105-1 33572
1501.104-2 Redesignated as 1501.105-2 33572
1501.104-3 Redesignated as 1501.105-3 33572
1501.105 Redesignated from 1501.104 33572
1501.105-1 Redesignated from 1501.104-1 33572
1501.105-2 Redesignated from 1501.104-2 and amended 33572
1501.105-3 Redesignated from 1501.104-3 33572
1501.602-3 (d)(1)(v) amended 57337
(a) removed; (b) through (f) redesignated as (a) through (e) 33572
1503.905 (Subpart 1503.9) Added 57337
1505.203 Amended 33572
1505.405 (Subpart 1505.4) Removed 55118
1509.404 Revised 57337
1509.507-1 (b) amended 57337
(b) revised 33572
1509.507-2 (a), (b) and (c) amended; (d) revised 57337
1510 Removed 57337
1511 Added 57337
1512 Removed 57338
1513 Revised 57338
1513.403 Redesignated from 1515.404 33572
1513.404 Redesignated as 1515.403 33572
1513.505 Redesignated from 1513.505-2 33572
1513.505-2 Redesignated as 1513.505 33572
1514.000 Removed 33572
1514.201-6 (a) and (b) designation removed 55118
1514.205 Added 37148
1514.205-5 Removed 33572
1514.413 (c) removed; (d) through (g) redesignated as (c) through (f) 33572
1515.600 Removed 33572
1515.603 Removed 33572
1515.604 (a) amended; (d) removed 37148
1515.608 (a)(1) and (2) revised 33572
1515.609 (a) revised; (b) removed; (c) redesignated as (b); new (b)(1) and new (2) revised 33572
1515.611 Removed 33573
1515.612 (a) amended; (a)(1)(vi) and (vii) removed; (a)(2) introductory text, (iii) and (c) revised; (a)(3) added 37148
1516.000 Removed 33573
1516.307 (c) amended 57338
1516.404-270 Removed 33573
1516.404-271 Removed 33573
1517.200 Removed 33573
1519 Heading amended; nomenclature change 57338
1519.000 Removed 33573
1519.201-1 Redesignated as 1519.201-71 57339
1519.201-2 Redesignated as 1519.201-72 57339
1519.201-71 Redesignated from 1519.201-1 57339
1519.201-72 Redesignated from 1519.201-2; (b) and (c)(3) amended 57339
1522.000 Removed 33573
1527.409 Amended 57339
1532.000 Removed 33573
1532.201 (Subpart 1532.2) Added 57339
1533.000 Removed 33573
1533.103-70 Removed 57339
1535.007 Revised 38477
1535.007-70 (c) amended 57339
1537.200—1537.205 (Subpart 1537.2) Removed 55118
1542.000 Removed 33573
1542.700 Removed 33573
1542.703-2 Added 57339
1542.705-70 Revised 33573
1545.000 Removed 33573
1546.000 Removed 33573
1548.102 (Subpart 1548.1) Removed 55118
1552.209-70 Introductory text revised; (a), (b) and (c) removed 33573
1552.209-71 (c) revised 57339
1552.209-74 Amended 5348
1552.209-75 Redesignated from 1552.210-80 57339
Introductory text amended 33573
1552.210-70 Redesignated as 1552.211-70 57339
1552.210-72 Redesignated as 1552.211-72 57339

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1552.210–75 Redesignated as 1552.211–75 ..... **57339**
1552.210–76 Redesignated as 1552.211–76 ..... **57339**
1552.210–77 Redesignated as 1552.211–77 ..... **57339**
1552.210–78 Redesignated as 1552.211–78 ..... **57339**
1552.210–79 Redesignated as 1552.211–79 ..... **57339**
1552.210–80 Redesignated as 1552.209–75 ..... **57339**
1552.211–70 Redesignated from 1552.210–70 ..... **57339**
Introductory text amended 33573
1552.211–72 Redesignated from 1552.210–72 ..... **57339**
Introductory text amended 33573
1552.211–73 Redesignated from 1552.212–70 ..... **57339**
Introductory text amended 33573
1552.211–74 Redesignated from 1552.212–71 ..... **57339**
Introductory text amended 33573
1552.211–75 Redesignated from 1552.210–75 ..... **57339**
Introductory text amended 33573
1552.211–76 Redesignated from 1552.210–76 ..... **57339**
Introductory text amended 33573
1552.211–77 Redesignated from 1552.210–77 ..... **57339**
Introductory text amended 33573
1552.211–78 Redesignated from 1552.210–78; amended **57339**
Introductory text amended 33573
1552.211–79 Redesignated from 1552.210–79 ..... **57339**
Introductory text amended 33573
1552.212–70 Redesignated as 1552.211–73 ..... **57339**
1552.212–71 Redesignated as 1552.211–74 ..... **57339**
1552.214–70 Removed **55118**
1552.215–70 Amended **57339**
1552.217–73 Amended 37149
1552.217–74 Amended 37149
1552.235–72 Removed **38478**
1552.235–74 Removed **38478**
1552.235–76 Amended **57339**
1552.235–77 Amended **38478**
1552.235–78 Amended **38478**

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1803.101–1 Amended 14016
1803.101–2 Amended 14016
1803.104 Revised 36704
1803.104–3 Revised 36704
1803.104–5 (d)(1)(A) amended 14016
1803.104–10 Revised 36704
1803.470–3 Redesignated as 1803.470–4; new 1803.470–3 added 36705
1803.470–4 Redesignated from 1803.470–3 36705
1805.303–71 Heading, (a) introductory text and (3) revised 4466
1805.402 Revised 14016
1807.105 (b)(1) added 36705
1807.7000 (Subpart 1807.70) Added 36705
1809.106–3 (a) designation removed 36705
1812.301 (f)(1)(J) added 14017
1813 Revised 36705
1815 Revised; interim **52325**
Regulation at 61 FR 52325 confirmed 3464
Revised 3465
1815.508–70 Amended 36706
1815.605–71 Added 14017
1815.611 (d)(iii) amended 36706
1815.612 Added 14017
1815.612–70 (g) removed; (h) through (k) redesignated as (g) through (i) 14017
1815.804–1 (b)(2)(iii) removed 36706
1815.805–5 (a)(1)(E) added 36706
1815.807 (b)(ii) revised 4467
1815.1003 Redesignated as 1815.1004 36706
1815.1004 Redesignated from 1815.1003; introductory text amended 36706
1815.1004–70 Redesignated as 1815.1006–70 36706
1815.1006 Added 36706
1815.1006–70 Redesignated from 1815.1004–70; heading revised 36706
1816 Revised; interim **52338**
Regulation at 61 FR 52328 confirmed 3464
Revised 3478
1816.404 Redesignated as 1816.405 36706

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1816.404–2 Redesignated as 1816.405–2 36706
1816.404–270 Redesignated as 1816.405–270 36706
1816.404–271 Redesignated as 1816.405–271 36706
1816.404–272 Redesignated as 1816.405–272 36706
1816.404–273 Redesignated as 1816.405–273 36706
1816.404–274 Redesignated as 1816.405–274 36706
1816.404–275 Redesignated as 1816.405–275 36706
1816.405 Redesignated as 1816.406; new 1816.405 redesignated from 1815.404 36706
1816.405–2 Redesignated from 1816.404–2 36706
1816.405–70 Redesignated as 1816.406–70 36706
1816.405–270 Redesignated from 1816.404–270; (b)(2)(iii) revised 36706
1816.405–271 Redesignated from 1816.404–271; (a) and (b) amended 36706
1816.405–272 Redesignated from 1816.404–272 36706
1816.405–273 Redesignated from 1816.404–273 36706
(c) amended; (e) added 36707
1816.405–274 Redesignated from 1816.404–274 36706
(d)(2) and (e) amended; (f) and (g) redesignated as (g) and (h); new (f) added 36707
1816.405–275 Redesignated from 1816.404–275 36706
(d) amended 36707
1816.406 Redesignated from 1815.406 36706
1816.406–70 Redesignated from 1815.406–70 36706
(a) and (b) amended 36707
1817 Revised **55753**
1819 Revised 36707
1819.7211 (b)(1) revised 14036
1822 Revised **55755**
1822.604–2 (c) redesignated as (b) 36713
1822.608 Removed 36713
1822.608–4 Removed 36713
1823 Revised **55757**
1824 Revised **55758**
1824.202 Redesignated as 1824.203 36713
1824.203 Redesignated from 1824.202 36713
1825 Revised 36713
1827 Revised 36715
1828 Revised **55765**
1829 Revised **55767**
1830 Revised **55767**
1831 Revised **55768**
1831.205–18 Removed 24345
1831.205–670 Added 4467
1831.205–671 Added 4467
1832 Revised **55768**
1832.409–170 (5) redesignated as (e) 36721
1832.412 (a)(i) amended 36721
1832.903 Removed 36721
1832.908 (c) revised 36721
1832.970 Revised 36721
1833 Revised **55771**
1833.103 Revised; interim 11108
1833.106–70 Added; interim 11108
1834 Revised 4467
1835 Revised 4469
1835.016–70 (b)(2) amended 14017
1836 Revised 4471
1836.213 Added 36721
1836.213–3 Added 36721
1836.213–4 Added 36721
1836.213–70 Added 36721
1836.303—1836.370 (Subpart 1836.3) Removed 36721
1837 Revised 4472
1837.110–70 (c) amended 36721
1839 Revised 4473
1839.106 Redesignated as 1839.107 36721
1839.106–70 Redesignated as 1839.107–70 36721
1839.107 Redesignated from 1839.106 36721
1839.107–70 Redesignated from 1839.107–70 36721
1841 Revised 4474
1842 Revised 14017
Technical correction 37335
1842.708 Revised 36228
1842.7202 Revised 36721
1843 Revised 14022
1843.7101—1843.7102 (Subpart 1843.71) Added **64823**
1844 Revised 14023
1844.302–70 (a) revised 36721
1845 Revised 36722
1845.302–73 (b) amended 14036

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TITLE 48 Chapter 18—Con.

1846 Revised 14024
1847 Revised 14028
1848 Revised 14029
1849 Revised 14030
1850 Revised 14031
1851 Revised 14032
1852.204–76 Introductory text amended 36733
1852.211–72 Removed 14033
1852.211–74 Removed 14033
1852.215–70 Removed; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
1852.215–71 Removed; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
1852.215–72 Removed; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
1852.215–73 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3482
1852.215–74 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3482
1852.215–75 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3483
1852.215–76 Removed; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
1852.215–77 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3483
1852.215–78 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3483
1852.215–79 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3483
1852.215–80 Removed; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
1852.215–81 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3483
1852.215–82 Revised; interim **52343**
Regulation at 61 FR 52344 confirmed 3464
Revised 3483
1852.215–83 Removed; interim **52344**
Regulation at 61 FR 52344 confirmed 3464
1852.215–84 Revised; interim **52344**
Corrected **56271**
Regulation at 61 FR 52344 confirmed 3464
Revised 3484
1852.216–72 Removed; interim **52344**
Regulation at 61 FR 52344 confirmed 3464
1852.216–73 Revised; interim **52344**
Regulation at 61 FR 52344 confirmed 3464
Revised 3484
1852.216–74 Revised; interim **52344**
Regulation at 61 FR 52344 confirmed 3464
Revised 3484
1852.216–75 Revised; interim **52344**
Regulation at 61 FR 52344 confirmed 3464
Revised 3484
1852.216–76 Revised; interim **52344**
Regulation at 61 FR 52345 confirmed 3464
Revised 3484
Amended 36733
1852.216–77 Revised; interim **52345**
Regulation at 61 FR 52345 confirmed 3464
Revised 3485
Amended 36733
1852.216–78 Revised; interim **52345**
Regulation at 61 FR 52345 confirmed 3464
Revised 3485
1852.216–79 Removed; interim **52345**
Regulation at 61 FR 52345 confirmed 3464
1852.216–80 Revised; interim **52345**
Regulation at 61 FR 52345 confirmed 3464
Revised 3485
1852.216–81 Revised; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
Revised 3486
1852.216–82 Removed; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
1852.216–83 Revised; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
Revised 3486

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Introductory text amended 36733
1852.216–84 Revised; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
Revised 3486
Introductory text amended 36733
1852.216–85 Revised; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
Revised 3486
Introductory text amended 36733
1852.216–86 Removed; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
1852.216–87 Revised; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
Revised 3486
1852.216–88 Revised; interim **52347**
Regulation at 61 FR 52347 confirmed 3464
Revised 3486
Introductory text amended 36733
1852.216–89 Revised; interim **52347**
Regulation at 61 FR 52347 confirmed 3464
Revised 3486, 36733
Corrected 40309
1852.219–73 Revised 36733
Corrected 40309
1852.219–75 Revised 36733
Corrected 40309
1852.219–76 Revised 36733
Corrected 40309
1852.219–77 Revised 36734
Corrected 40309
1852.219–78 Removed 36734
1852.219–79 Revised 36734
Corrected 40309
1852.222–70 Removed 36734
1852.222–71 Removed **55758**
1852.223–70 Amended 14033
1852.223–72 Removed **55758**
1852.223–73 Amended **55758**
Amended 14033
1852.225–71 Introductory text amended 36734
1852.227–11 Introductory text amended 36734
1852.227–14 Introductory text amended 36734
1852.227–17 Introductory text amended 36734
1852.227–19 (a) and (b) amended 36734
1852.227–70 Introductory text amended 36734
1852.227–71 Introductory text amended 36734
1852.227–72 Amended 36734
Corrected 40309
1852.227–84 Introductory text amended 36735
1852.227–85 Introductory text amended 36735
1852.227–86 Introductory text amended 36735
1852.228–70 Revised **55772**
1852.228–71 Amended **55774**
1852.228–74 Removed **55774**
1852.228–77 Removed **55774**
1852.231–71 Removed **55774**
Added 4474
1852.232–12 Removed **55774**
1852.232–70 Removed **55774**
1852.232–83 Removed **55774**
1852.232–84 Removed **55774**
1852.233–70 Added; interim 11108
1852.234–70 Amended; heading revised 4474
1852.234–71 Amended; heading revised 4474
1852.235–72 Revised 4475
1852.236–71 Introductory text amended 4476
1852.236–72 Introductory text amended 4476
1852.236–73 Introductory text amended 4476
1852.236–74 Introductory text amended 4476
1852.237–70 Introductory text amended 4476
1852.237–71 Revised 4477
1852.237–72 Revised 4477
1852.239–70 Introductory text amended 4477, 36735
1852.241–70 Amended 4477
1852.242–70 Introductory text amended 36735
1852.242–72 Amended 36735
1852.242–73 Revised 36735
Corrected 40309
1852.242–74 Removed 36735
1852.243–70 Revised 14033
Amended 36735
Corrected 40309
1852.243–71 Added **64824**
Revised 14033
1852.244–70 Introductory text amended 14034
1852.245–70 Revised 36735
Corrected 40309

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1852.245–71 Revised 36735
Corrected 40309
1852.245–77 Revised 36736
Corrected 40309
1852.245–79 Revised 36736
Corrected 40309
1852.246–70 Revised 14034
1852.246–71 Introductory text amended 14035
1852.246–73 Revised 14035
1852.246–74 Removed 14035
1852.246–75 Removed 14035
1852.247–70 Removed 14035
1852.247–72 Introductory text amended 14035
1852.247–73 Amended 14035
1853 Revised 36737
1870 Removed 36738
1870.201—1870.203 (Subpart 1870.2) Removed 4477
1870.301—1870.303 (Subpart 1870.3) Removed; interim 52347
1870.406–1 (a)(2) revised; (a)(3) added 4477
1870.501—1870.503 (Subpart 1870.5) Removed 4477
1871 Revised 55758
1872 Added 4477

Chapter 35—Panama Canal Commission (Parts 3500—3599)

3509.400—3509.471 (Subpart 3509.4) Regulation at 61 FR 3846 confirmed 11770

Chapter 61—General Services Administration Board of Contract Appeals (Parts 6100—6199)

6101 Revised 52349
6102 Added 52369
6103 Revised 25867
6104 Authority citation revised 67242
Revised 25869
6104.9 Added; interim; eff. 12–20–96 through 7–26–97 67242
6105 Added 25871
Corrected 32241

Chapter 99—Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

9903.201–1 (b)(6) revised 31295
9903.201–4 Amended 31295
9904.406–4 Added 31308
9904.412–50 (d)(2) introductory text amended 58011
9904.413–60 (c)(7), (8), (12), (13) and (24) amended 58011

Proposed Rules:

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38 52844
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242 ..... 374, 11142
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245 ..... 30832, 37185
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932 30558
950 ..... 53185, 53699
952 ..... 53185, 53699, 59072
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970 ..... 53185, 53699, 59072
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1535 55126
1552 ..... 55126, 57623
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1834 66643
1842 55264
1845 66643
1852 ..... 55264, 66643
1870 ..... 66643, 52232
9903 37654

TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.44 (o) revised 11383
1.46 (ccc) added 55583
(eee) added 67474
(ddd) added 67952
(s) revised; (ll) amended 11383
(hhh) added 17100
(fff) and (ggg) added 19936
(iii) through (lll) revised 38478
1.48 Second (jj) redesignated as (d); (h) and (i) added 68163
(kk) added 28807
1.53 (b)(5) added 68163
1.59 (d) revised 16499
(e)(9) added 23661
1.64 Added 16499
1.66 (v) added 64030
(x) added 2617
(aa) added 11383
1.71 (b) added 68163
6 Authority citation revised 19233
6.1 Amended 19233
6.3 Revised 19233
6.5 (a) revised 19233
6.7 (a), (b)(1), (2) and (5) amended; (b)(6) added 19234
6.9 (a) and (b) revised; (c) and (d) added 19234
6.11 (b) amended 19234
6.25 (c) amended 19234
7 Revised 19516
8 Revised 23661
10.1 (a) designation, (b), (c) and (d) removed 23666
10.5 Amended 23667
10.11 Amended 23667
10.23 Introductory text revised 23667
10.31 (a) revised 23667
10.35 (a) introductory text revised; (a)(12) added 23667
10.37 Amended 23667
10.39 Revised 23667

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10.41 Revised 23667
10.51 (c) and (h) revised 23667
10.63 Introductory text revised 23667
10 Appendix A redesignated as Appendix; Appendixes B through J removed 23667
27 Authority citation revised **56424**
Nomenclature change **56424**
27.5 Amended **56424**
27.71 Revised **56424**
27.72 Added **56424**
(c)(2) corrected 17
27.77 Added **56425**
29.100 Regulation at 60 FR 33040 and 33064 confirmed 15621
29.105 Regulation at 60 FR 33041 and 33064 confirmed 15621
29.110 Regulation at 60 FR 33041 and 33064 confirmed 15621
29.200 Regulation at 60 FR 33041 and 33064 confirmed 15621
29.215 Regulation at 60 FR 33041 and 33064 confirmed 15621
29.220 Regulation at 60 FR 33041 and 33064 confirmed 15621
29.225 Regulation at 60 FR 33041 and 33064 confirmed 15621
29 Regulation at 60 FR 33042 and 33064 confirmed 15621
31.3 (a)(1) introductory text, (iv), (b)(1) introductory text and (ii) revised 6720
40 Certification 19057

Chapter I—Research and Special Programs Administration, Department of Transportation (Parts 100—199)

Chapter I Advisory guidance **65479, 65480**
106 Technical correction **64030**
106.1 Amended **51336**
106.3 Revised **51336**
106.13 Revised **51336**
106.17 (b) amended **51336**
106.21 Revised **51336**
106.25 Amended **51336**
106.27 (c) amended **51336**
106.29 Amended **51336**
106.31 (a), (c) introductory text and (d) amended **51336**
106.33 (b), (c) and (d) revised **51336**
106.35 (b) amended **51337**
106.37 (a) revised **51337**
107 Authority citation revised 2971, 24057
107.14 Added 24057
(a)(1) corrected 34415
107.202 (d) amended **51337**
107.329 (a) and (b) amended 2971
107.299—107.339 (Subpart D) Appendix A amended 2972, 2977
107.502 (f) removed **51337**
107.503 (b) introductory text amended; (b)(1) and (2) removed **51337**
107.601 (c) amended **51337**
171 Petition denial **51235**
Authority citation revised 2977, 7647
Clarification and workshop date change 16107
Petitions for reconsideration 31363
171.1 Revised 1215
(c) added 2977
171.4 (d) removed **51337**
171.5 Added; eff. 2–19–97 through 8–15–97; interim 7647
171.7 (a)(3) table amended **51337, 65959**
(a)(3) table amended 24699, 24700
171.8 Amended **51337**
Regulation at 61 FR 26419 confirmed **68954**
Amended 1215, 1227, 24700
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398
171.11 (d)(9)(iii) amended 1227
(d)(4) revised; (d)(9)(i) amended; (d)(14) added 24700
(d)(15) added 30770
Regulation at 62 FR 30770 eff. date delayed to 8-7-97 34667
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398
171.12 (b)(8)(iii) amended 1227
(b)(8)(i) amended; (b)(13) removed; (b)(17) added 24700
(b)(18) added 30770
Regulation at 62 FR 30770 eff. date delayed to 8-7-97 34667
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398
171.12a (b)(5)(iii) amended 1227
(b)(5)(i) amended; (b)(12) removed; (b)(16) added 24700
(b)(17) added 30770
Regulation at 62 FR 30770 eff. date delayed to 8-7-97 34667
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398

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171.14 (b) revised 1227
(d) added 24700
(c) redesignated as (c)(1); (c)(2) added 29676
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398
Heading, introductory text and (b) revised; (e) added; eff. 10–1–98 39404
172 Petition denial **51236**
172.101 Table amended **51240, 51337, 51338**
(g) table amended 1227
(c)(10)(iii) revised 14337
Table amended 14338, 24714, 24716, 30771, 34669
(c)(14), (15) and (l)(3) added; (f) and table amended 24701
Table and Appendix B amended 24717
Regulation at 62 FR 30771 eff. date delayed to 8-7-97 34667
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398
(g) table amended; eff. 10–1–98 39404
172.102 (c)(1) amended **51240**
(c)(1) and (3) amended **51338**
(c)(1), (3), (5) and (7)(ii) amended 24718
(c)(1) amended 24719, 34669
(c)(1) and (2) amended 30772
Regulation at 62 FR 30772 eff. date delayed to 8-7-97 34667
172.203 (j) removed; (k)(3) and (m)(3) amended 24719
172.301 (a)(1) revised; (a)(3) added; (f)(1) and (2) removed 1227
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398
(a)(3) revised; eff. 10–1–98 39404
172.302 (g) added 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
172.313 (a) revised; (c) added 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
Introductory text added; (b) and (c) revised; eff. 10–1–98 39405
172.328 (a)(3) added 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
(a)(3) revised; eff. 10–1–98 39405
172.331 (c) added 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
172.332 (a) revised 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
172.400 (b) table revised 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
(b) table amended; eff. 10–1–98 39405
172.402 (e)(1) revised; eff. 10–1–98 39405
172.416 Revised 1229
Regulation at 62 FR 1229 eff. date delayed to 10-1-98 39398
Revised; eff. 10–1–98 39405
172.429 Added 1229
Regulation at 62 FR 1229 eff. date delayed to 10-1-98 39398
Revised; eff. 10–1–98 39406
172.502 (a)(2) revised; (b)(3) added 1230
Regulation at 62 FR 1230 eff. date delayed to 10-1-98 39398
(b)(3) revised; eff. 10–1–98 39407
172.504 (b) and (e) revised; (f)(11) added 1230
Regulation at 62 FR 1230 eff. date delayed to 10-1-98 39398
(e) table amended; eff. 10–1–98 39407
172.505 (a) revised 1231
Regulation at 62 FR 1231 eff. date delayed to 10-1-98 39398
172.510 (b) removed; (c) redesignated as (b); new (b) amended 1231
Regulation at 62 FR 1231 eff. date delayed to 10-1-98 39398
172.540 Revised 1231
Regulation at 62 FR 1231 eff. date delayed to 10-1-98 39398
Revised; eff. 10–1–98 39408
172.555 Added 1233
Regulation at 62 FR 1233 eff. date delayed to 10-1-98 39398
Revised; eff. 10–1–98 39409
172.602 (c)(1) revised 1234
Regulation at 62 FR 1234 eff. date delayed to 10-1-98 39398
172.606 Added 1234
Regulation at 62 FR 1234 eff. date delayed to 10-1-98 39398
(c) added; eff. 10–1–98 39409
173 Authority citation revised **68954**
Meeting 37149

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173.3 (c)(1) amended; (c)(3) revised; (c)(7) added 24719
173.5 Revised 1215
173.6 Added 1216
173.7 (a) introductory text amended 51338
173.8 Added 1216
173.9 Revised 1234
Regulation at 62 FR 1234 eff. date delayed to 10-1-98 39398
173.21 Regulation at 61 FR 26419 confirmed; (k) revised 68954
(f) introductory text amended 24719
173.22a (c) amended 51242
173.28 (b)(4)(ii) corrected 51495
(b)(4)(i) table amended 14338
173.29 (b)(1) revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398
173.31 (a)(6)(i) removed; (a)(6)(ii) through (v) redesignated as (a)(6)(i) through (iv); new (a)(6)(i) through (iv), (b)(5), (c)(3) and (d)(1)(vii) amended 51338
173.32c (j) amended 24719
173.34 (e)(10), (13) and (19)(ii) amended; (e)(19) introductory text amended 51240
(e)(18)(i) table amended 24719
173.60 Revised 24719
173.62 Revised 24720
173.120 (a)(3) revised; (b)(3), (c)(1)(i)(A) and (B) amended; (c)(1)(i)(C) added 24731
173.124 (a)(1) introductory text, (2)(i)(D)(2), (3)(ii), (iii), (b)(1), (2) and (c) amended 24731
173.125 (b), (c)(2)(i), (ii), (d)(1), (2) and (3) revised 24731
173.127 Revised 24732
173.128 (c)(3) and (e) amended 24732
173.132 (c) redesignated as (d); (b)(3)(iii) and new (c) added 24732
173.136 (c) added 24732
173.137 (b) and (c)(2) amended 24733
173.152 (b)(4) added 24733
173.162 Amended 24733
173.166 Heading and (e) revised; (a) removed; (b) introductory text, (2), (4), (c), (d)(1), (2) and (f) amended 24733
173.170 (c) amended 14338
173.185 Revised 24733
173.189 (b) amended 51338
173.201 (b) and (c) amended 24734
173.202 (b) and (c) amended 24734
173.203 (b) and (c) amended 24734
173.211 (b) and (c) amended 24734
173.212 (b) and (c) amended 24734
173.213 (b) and (c) amended 24734
173.220 (c)(3) revised 24734
173.224 (c)(1) and (2) amended 51338
(b) table revised 24734
(c)(3) removed; (c)(4) redesignated as (c)(3); (c)(1) and (3)(ii) amended 24735
173.225 (e)(1) amended 51338
(b)(2) amended; (b)(4)(ii), (6), table, (d) and (e)(5) revised 24735
(c)(2), (3) and (e)(2)(i)(B) removed; (c)(4), (5) and (e)(3)(i)(C) redesignated as (c)(2), (3) and (e)(3)(i)(B); (c)(1), new (2)(ii) and (e)(2) amended 24741
173.226 (c)(1) amended 24741
173.300a (c) amended 51338
173.302 (c)(3) amended 51240
173.306 (b)(3) amended 51338
173.309 (b) revised 51240
173.315 (e) and (i)(3) amended 51339
(a) table amended 24741
173.316 (d) added 24741
173.318 (f)(4) added 24741
173 Appendixes E and F removed 24741
174.26 Revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398
174.81 (g) introductory text amended 51339
174.83 (b) introductory text amended 51339
174.85 (d) table amended 51339
174.101 (h) and (o) introductory text amended 51339
174.112 (b) amended 51339
174.680 (a) revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398
175.10 (a)(22) amended 24741
175.320 (a) table amended 51339
175.630 Revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398
176.78 (k) revised 24741
176.84 (b) table amended 24742
176.194 (c) and (e) amended 51339

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176.340 (b)(1), (3), (4) and (5) amended 51339
176.600 (a) revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398
176.905 Revised 24742
177.835 (g) introductory text revised 51339
177.841 (e)(1) and (2) revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398
178.2 (f) added 14338
178.320 (a) amended 51339
178.337–1 (b), (c)(1), (2) introductory text, (i), (ii), (d), (e)(1), (2) and (f) amended 51340
178.337–2 (a)(1) through (4), (b) heading, (1) introductory text, (2) introductory text and (c) amended 51340
178.337–3 (b), (c)(1)(iii)(A), (B) introductory text, (C), (iv)(A), (B), (C), (e), (f), (g) introductory text and (1) amended 51340
178.337–4 (b) and (c) amended 51340
178.337–6 (b) amended 51340
178.337–8 (a)(1) amended 51340
178.337–9 (a)(2), (3), (b)(1), (6), (c) and (d)(1) amended 51340
178.337–11 (a)(1)(ii) through (v), (2)(i), (ii), (b), (c)(1) and (3) amended 51340
178.337–13 (a) through (d) amended 51340
178.337–14 (b)(2) amended 51340
178.337–15 (a) amended 51340
178.337–16 (a), (b)(1), (2) and (c) amended 51340
178.337–17 (a) amended 51340
178.337–18 (a) introductory text, (3) and (b) amended 51340
178.338–9 (c)(1) amended 51340
178.345–1 (c) amended 51340
178.345–2 (a)(1), (c)(1) and (2) amended 51341
178.345–3 (a)(1), (b) introductory text, (c)(1) introductory text, (iii)(A), (B) introductory text, (C), (iv)(A), (B), (C), (2) introductory text, (iii)(A), (B) introductory text, (C), (iv)(A), (B), (C) and (f)(2) amended 51341
178.345–4 (a) amended 51341
178.345–6 (a) and (b) amended 51341
178.345–7 (a) introductory text, (c), (d)(2) and (5) amended; (d)(2) table revised 51341
178.345–8 (a)(1) introductory text, (3), (4), (b) introductory text, (2), (c)(1), (2), (d) introductory text, (1), (2) introductory text, (ii) and (e) amended 51341
178.345–9 (e) and (h) amended 51341
178.345–10 (a), (c), (e) introductory text and (1) amended 51341
178.345–11 (a), (b) introductory text and (d) amended 51341
(b)(2) amended 51342
178.345–12 Amended 51342
178.345–13 (a), (b) introductory text, (1) and (2) amended 51342
178.345–14 (a) revised; (b)(4), (5) and (d) amended 51342
178.345–15 (b)(2) and (d) amended 51342
178.511 Heading, (a), (b) introductory text and (1) revised; (b)(2) through (6) redesignated as (b)(3) through (7); new (b)(2) added 24742
178.703 (b)(6) added 24743
178.707 (c)(2) and (3) amended; (c)(6) added 24743
178.815 (c)(3) amended 24743
179.103–5 (a)(1) amended 51342
179.300–7 (a) amended 51342
180.403 Amended 51342
180.407 (c) table, (d)(2)(vi), (f)(3), (g)(1)(viii), (ix), (h)(1) introductory text, (i) and (ii) amended 51342
180.409 (a) revised; (b) redesignated as (d); new (b) and (c) added 1217
180.413 (e) amended 51342
180.415 (b) amended 51343
180.417 (c)(2) amended 51343
190 Technical correction 64030
Authority citation revised 24057
190.11 Added 24057
(a)(1) corrected 34415
192.381 (a)(3)(i) and (d) revised 2619
193.2019 Added 8404
Removed 36466
193.2057 Amended; (b) and (c)(1) revised 8404

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193.2059 (c) introductory text and (d)(1)(ii) revised; (c)(4) added 8404
193 Appendix A amended 8404
195.1 (b)(3) revised; eff. 10–7–97 31367
199 Notice 60206
Authority citation revised 65365
Confirmation of effective dates 7946
199.25 (d) revised 65365
199.229 (c) revised 65365

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

214 Authority citation revised 65975
Petitions for reconsideration 19234
214.4 Added 65975
214.7 Amended 65975
214.301—214.355 (Subpart C) Added 65976
214 Appendix A amended 65981
219 Authority citation revised 60634
Determination 13349
219.5 Amended 60634, 67490
219.201 (a)(1) introductory text, (2) introductory text and (4) revised 60634
225 Authority citation revised 59371
225.3 Introductory text, (a), (b), (c) introductory text and (1) through (4) redesignated as (a) introductory text, (1), (2), (3) introductory text and (i) through (iv); new (a) introductory text revised; new (b), new (c) and (d) added 67490
225.5 Amended 59371, 67490
225.19 (e) revised 60634
(c) amended 67490
225.25 (c) revised 59371
(h) introductory text amended; (h)(12) and (13) revised; (h)(15) added 67491
225.27 (a) amended 67491
225.33 (a)(10)(ii) amended 59371
(a) introductory text amended 67491
225.35 Amended 59371
225 Appendix B added 60634
232 Authority citation revised 294
Petitions for reconsideration 30461
232.19 Heading and (a) revised; (h) removed 294
232.21 Added 294
232.23 Added 294
232.25 Added 295
232 Appendix A amended 295

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

Chapter III Regulatory guide 16370
355 Authority citation revised 37151
355 Appendix A amended 37151
356 Added 32041
365 Authority citation added 54707
Heading redesignated from Part 1160 heading 54707
365.101—365.123 (Subpart A) Redesignated from 1160.1—1160.12 (Subpart A) 54707
365.201—365.207 (Subpart B) Redesignated from 1160.40—1160.43 (Subpart B) 54707
365.301—365.309 (Subpart C) Redesignated from 1160.60—1160.64 (Subpart C) 54707
365.401—365.413 (Subpart D) Redesignated from Part 1181 54707
366 Redesignated from Part 1044 54707
367 Redesignated from Part 1023 54707
367 Authority citation revised 15420
367.1 (a), (b) and (c) amended 15420
367.3 (c) amended 15420
367.4 (a), (b) introductory text, (c)(2), (3), (d) and (h) amended 15420
367.5 Regulation at 60 FR 30012 stayed through 1–1–98; regulation at 60 FR 39875 eff. date extended through 12–31–97 64295
(a) introductory text and (b) amended 15420
367.6 (c) amended 15420
367 Appendix A amended 15420
368 Redesignated from Part 1171 54707
Authority citation revised 15420
Heading revised 15420
368.1 Revised 15420
368.2 (a), (b)(1), (2), (c)(2), (d), (e) and (f) revised 15421
368.3 (a) and (c) revised; (d) removed 15421
368.5 Revised 15421

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368.6 Amended; heading and (b) introductory text revised; (b)(2) amended; (c) removed 15421
368.7 Revised 15421
369 Redesignated from Part 1167 54707
Removed 38035
370 Added 32042
371 Redesignated from Part 1045 54707
Authority citation revised 15421
371.1 Amended 15421
371.3 (a) introductory text revised; (a)(2) amended; (a)(6) concluding text removed 15421
371.7 Amended 15421
371.10 Amended 15421
372 Heading added 54708
Authority citation added 54708
372.11 (a) and (b) amended 38036
372.101—372.117 (Subpart A) Redesignated from Part 1047 54708
372.101 Amended 15421
372.103 Amended 15421
372.105 Removed 15421
372.113 Removed 38036
372.115 Heading revised 54708
Amended 15421
372.117 (a), (c), (d)(1), (2) and (3) amended 15421
372.201—372.243 (Subpart B) Redesignated from Part 1048 54708
372.201 Introductory text amended 15422
372.203 Introductory text amended 15422
372.205 Introductory text amended 15422
372.207 Introductory text amended 15422
372.209 Introductory text amended 15422
372.211 Introductory text amended 15422
372.213 Introductory text amended 15422
372.215 Introductory text amended 15422
372.217 Introductory text amended 15422
372.219 Introductory text amended 15422
372.221 Introductory text amended 15422
372.223 Introductory text amended 15422
372.225 Introductory text amended 15422
372.227 Introductory text amended 15422
372.229 Introductory text amended 15422
372.231 Introductory text amended 15422
372.233 Introductory text amended 15422
372.235 Introductory text amended 15422
372.237 (a) and (b) amended 15422
372.241 Introductory text amended 15422
372.243 Introductory text amended 15422
372.301—372.303 (Subpart C) Redesignated from Part 1049 54708
372.300 Added 15422
372.301 Revised 15422
372.303 Introductory text and (a) revised 15423
373 Heading added 54708
Authority citation added 54708
373.101—373.105 (Subpart A) Redesignated from Part 1051; heading revised 54708
373.101 Heading revised 54708
(e) amended 15423
373.103 Amended 15423
373.105 Amended 15423
373.201 (Subpart B) Redesignated from Part 1081; heading revised 54708
373.201 Heading revised 54708
374 Heading added 54709
Authority citation added 54709
374.101—374.113 (Subpart A) Redesignated from Part 1055 54709
374.101 Amended 15423
374.103 Amended 15423
374.105 Amended 15423
374.107 Amended 15423
374.109 Amended 15423
374.111 Amended 15423
374.113 (b) amended 15423
374.201 (Subpart B) Redesignated from Part 1061 54709
374.201 (a) and (c) amended 15423
374.301—374.319 (Subpart C) Redesignated from Part 1063 54709
374.307 (c)(1), (2)(iv) and (g) amended 15423

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374.311 (b) amended 15423
374.319 (a) and (b) amended 15423
374.401—374.405 (Subpart D) Redesignated from Part 1064 ..... **54709**
374.401 (a) introductory text and (3) amended 15423
374.403 (a) and (b) amended 15423
374.405 Amended 15423
374.501—374.505 (Subpart E) Redesignated from Part 1054 ..... **54709**
374.501 Amended 15423
374.505 (d) amended 15423
375 Redesignated from Part 1056 ..... **54707**
376 Redesignated from Part 1057 ..... **54707**
Authority citation revised 15423
376.1 Introductory text, (a) and (c) amended 15423
376.2 (a) amended 15424
376.11 Introductory text, (a) and (c)(1) amended 15424
376.12 Introductory text, (b), (c)(3), (4), (j)(1) and (l) amended 15424
376.21 Introductory text and (b) amended 15424
376.22 (a), (c)(2) and (4) amended 15424
376.26 Amended 15424
376.31 (b) and (d)(1) amended 15424
376.42 Amended 15424
377 Heading added **54708**
Authority citation added **54708**
377.101—377.105 (Subpart A) Redesignated from Part 1052 ..... **54708**
377.101 Amended 15424
377.103 Amended 15424
377.105 Amended 15424
377.201—377.217 (Subpart B) Redesignated from Part 1320; heading revised **54709**
377.201 (a) amended 15424
377.205 (d)(3) amended; (e) removed 15424
377.211 Amended 15424
377.213 Removed 15424
377.215 (a) and (b)(1) amended 15424
377.217 Amended 15424
378 Redesignated from Part 1008 ..... **54707**
Authority citation revised 15424
378.1 Amended 15424
378.2 (a), (b) and (d) amended 15424
378.4 (a) and (d) amended 15424
378.5 (a) amended 15424
(b) and (c) amended 15425
378.6 Amended 15425
379 Added 32044
382.103 (c) revised 1296
382.115 Revised 37151
382.401 (c)(6)(iii) and (iv) amended; (c)(6)(v) removed; (e)(1) revised 37151
383 Authority citation revised 1296
383.3 (b) revised 1296
383.5 Amended 37151
383.51 (b)(2)(ii) and (v) revised; (b)(3)(i), (ii) and (d)(2)(iv) amended 37151
383.111 (a) amended 37151
384.101 Revised 37152
384.301 Revised 37152
384.305 (b) revised (OMB number) 37152
384.309 Revised 37152
385.9 Existing text designated as (a); (b) added; interim; eff. 5-28-97 through 11-28-97 28809
385 Appendix designated as Appendix A; Appendix B added; interim; eff. 5-28-97 through 11-28-97 28809
387 Authority citation revised **54709**
Authority citation revised 16709
387.5 Amended 16709
387.301—387.323 (Subpart C) Redesignated from Part 1043 ..... **54709**
Heading revised **54710**
387.317 Heading revised **54710**
387.401—387.419 (Subpart D) Redesignated from Part 1084; heading revised **54710**
387.415 Heading revised **54710**
389 Authority citation revised 37152
389.1 Revised 37152
389.3 Revised 37152
389.11 Revised 37152
390 Authority citation revised **54710**
Authority citation revised 1296
390.3 (b) removed; (c) through (g) redesignted as (b) through (f) 1296
390.5 Amended 16709
390.50—390.60 (Subpart C) Removed 1296
390.401—390.407 (Subpart D) Redesignated from Part 1058 ..... **54710**
391.15 (c)(2)(ii) and (iii) revised 37152
391.41 (b)(12) revised; (c) removed 37152

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391.43 Amended; (a)(1) designation and (2) removed 37152
391.61—391.125 (Subpart H) Removed 37152
392.4 (a)(1) revised 37153
395.8 (f)(5) revised 16709
397 Report availability **54744**
350—399 (Subchapter B) Appendix H removed 1296
Appendixes D and E removed 37153

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

531.5 (b)(12) added **67492**
(b)(2) revised 17101
(b)(6) table amended 37154
533.5 (a) table revised 15860
541 Appendixes A, A-I and A-II amended 1691
Appendix A revised 40951
Appendix A-I and A-II revised 40952
544 Authority citation revised 33756
544.2 Revised 33756
544.4 (a) revised 33756
544.5 (a) revised 33756
544 Appendixes A, B and C revised 33756
571 Petitions for reconsideration 19523
Petition denial 31008
571.101 Amended 32542, 32543
571.105 Corrected; CFR correction 35107
571.108 Amended 10716, 10717, 16714, 40953
Corrected; CFR correction 31367
571.114 Amended 2978
571.121 Amended **60636**
571.201 Revised 16725
571.208 Amended **60215, 60217, 64298, 65188**
Amended **32**, 806, 1402, 12974, 12975
Amended; interim 26427
571.213 Amended **60220, 60221**
Amended; interim 18724, 30466
572.30 (b) revised **67955**
(b) revised; interim 27514
572.31 (b) removed; (c) through (f) redesignated as (b) through (e); (a)(1), (3), (4) and new (d) revised **67955**
(a)(1) through (5) revised; interim 27514
572.32 (a) and (b) revised; interim 27514
572.33 (a), (b) and Figures 20 and 21 revised; interim 27514
572.34 (b) revised; interim 27518
572.35 (a), (b) and (c) revised; Figures 25, 26 and 27 added **67955**
572.36 (c) through (f), (h) and (i) revised; interim 27518
578 Added 5169
583.6 (c)(6) revised 33761
589.1 Revised 16735
589.2 Revised 16735
589.3 Revised 16735
589.5 Revised 16735
589.6 Revised 16735
589.7 Revised 16735
589.8 Revised 16735
593 Authority citation revised **51243**
593 Appendix A added **51243**

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

613 Authority citation revised **67175**
614 Revised **67175**
653 Random drug and alcohol testing rate **67962**
654 Random drug and alcohol testing rate **67962**
659.33 (a) and (b) revised **67493**
659.45 (b) amended **67493**
661.11 Appendixes A, B and C added 40954

Chapter VIII—National Transportation Safety Board (Parts 800—899)

801 Authority citation revised 27703
801.13 Removed 27703
831 Authority citation revised 3806
831.2 Revised 3806
831.3 Revised 3806
831.4 Revised 3806
831.5 Revised 3807
831.6 Revised 3807
831.7 Revised 3807
831.8 Revised 3807
831.9 (a) revised 3807
831.11 Revised 3808
831.12 Revised 3808
831.13 (b) revised 3808
831.14 Revised 3808

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837 Added 27703

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

1002.1 (a), (b), (c) and (e)(1) revised; (f)(6) amended 3487
1002.2 (f) table amended 66230
(f) revised 3488
(d)(1) and (f)(38) through (41) revised; interim 9715
Regulation at 62 FR 9715 confirmed 28376
1008 Redesignated as Part 378 54707
1011 Authority citation revised 52710
1011.7 (b)(1) amended; (b)(2) removed 52710
Regulation at 61 FR 52710 eff. date delayed to 11–16–96 57340
1023 Redesignated as Part 367 54707
1039.11 (a) table amended 66231
1040—1069 Undesignated center heading removed 54710
1043 Redesignated as 387.301—387.323 (Subpart C) 54709
1044 Redesignated as Part 366 54707
1045 Redesignated as Part 371 54707
1047 Redesignated as 372.101—372.117 (Subpart A) 54708
1047.20—1047.23 Undesignated center heading removed 54708
1047.25 Undesignated center heading removed 54708
1047.45 Undesignated center heading removed 54708
1048 Redesignated as 372.201—372.243 (Subpart B) 54708
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648.105 (a) amended 37157
648.106 Introductory text revised 14651
648.120 (b)(1), (c) and (d) revised; (b)(2) through (8) redesignated as (b)(4) through (10); new (b)(2), new (3) and (e) added 27984
648.121 Revised 27985
648.123 (b)(3) added 56126
(a)(1) revised 12107
648.140—648.146 (Subpart I) Added 58467
648.144 (b) revised 25138
648.160—648.163 (Subpart J) Added 13300
649.2 Amended 10750
649.8 (a) introductory text, (b), (c) introductory text, (1)(iv), (2) and (4) revised; (c)(1)(v) added 9993
(c)(11), (12) and (13) added 10750
649.23 Added 10750
649.24 Added 9993
649.44 (e), (f) and (g) redesignated as (f), (g) and (h); heading and (f)(3) revised; new (e) added 1405
660 Temporary regulations 51670
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660.14 (f)(2) revised 27524
660.42 (a)(4) removed; (a)(5) through (8) redesignated as (a)(4) through (7); new (a)(8), (9) through (12) and (b)(5) added 35349
660.48 (a)(7) and (8) added; eff. in part 1–1–98 35350
660.50 (b)(4) added 35350
660.61 (a) revised 8638
660.306 (b) amended; (j), (k), (m), (q) and (r) revised; (u), (v) and (w) added 27521
(s) and (t) added 34674
660.323 (a)(3)(i), (iv) and (4) revised 27522
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660.333 (a), (d) and (h)(2)(iii) revised; (c)(1) amended 34674
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660.335 (a) revised 34674
660.336 Revised 34674

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660.410 Heading and (a) revised; (c) added 35351
660.501—660.513 (Subpart I) Added 19043
660.513 Corrected 20066
662 Removed 19045
674 Removed 19687
678 Temporary regulations 4192, 16656, 38942
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678.22 (d) added 16656
678.23 (b) and (c) revised 16656
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678.24 (b) revised 16656
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679.3 (d) revised 2045
(f) added 19688
679.4 (g) removed; (f)(1)(i), (ii) and (2)(ii) revised **56430**
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(h) added 19688
679.5 (a)(2) revised **56431**
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679.42 (f)(1), (2) and (3) revised 7948
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679.43 (a) revised 17753
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INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA, assisted by Brian Swidal. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Jim Wickliffe. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

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◆400–End	(869–032–00052–2)	14.00	Apr. 1, 1997
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◆1–140	(869–032–00053–1)	33.00	Apr. 1, 1997
◆141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
◆200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
20 Parts:			
◆1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
◆400–499	(869–032–00057–3)	46.00	Apr. 1, 1997
◆500–End	(869–032–00058–1)	42.00	Apr. 1, 1997
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◆100–169	(869–032–00060–3)	27.00	Apr. 1, 1997
◆170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
◆200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
◆300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
◆600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
◆800–1299	(869–032–00066–2)	31.00	Apr. 1, 1997
◆1300–End	(869–032–00067–1)	13.00	Apr. 1, 1997
22 Parts:			
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◆300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
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24 Parts:			
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200–499	(869–032–00072–7)	29.00	Apr. 1, 1997
500–699	(869–032–00073–5)	18.00	Apr. 1, 1997
◆700–1699	(869–032–00074–3)	42.00	Apr.1, 1997
◆1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
●25	(869–032–00076–0)	42.00	May 1, 1997
26 Parts:			
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◆§§1.170–1.300	(869–032–00079–4)	31.00	Apr. 1, 1997
◆§§1.301–1.400	(869–032–00080–8)	22.00	Apr. 1, 1997
◆§§1.401–1.440	(869–032–00081–6)	39.00	Apr. 1, 1997
◆§§1.441–1.500	(869–032–00082–4)	22.00	Apr. 1, 1997
◆§§1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
◆§§1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
◆§§1.851–1.907	(869–032–00085–9)	34.00	Apr. 1, 1997
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◆§§1.1001–1.1400	(869–032–00087–5)	35.00	Apr. 1, 1997
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300–499	(869–032–00093–0)	33.00	Apr. 1, 1997
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600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
27 Parts:			
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29 Parts:			
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500–899	(869–028–00110–6)	48.00	July 1, 1996
900–1899	(869–028–00111–4)	20.00	July 1, 1996
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1910 (§§1910.1000 to end)	(869–028–00113–1)	27.00	July 1, 1996
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1926	(869–028–00115–7)	30.00	July 1, 1996
1927–End	(869–028–00116–5)	38.00	July 1, 1996
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1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
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630–699	(869–028–00125–4)	14.00	[5]July 1, 1991
700–799	(869–028–00126–2)	28.00	July 1, 1996
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125–199	(869–028–00129–7)	35.00	July 1, 1996
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34 Parts:			
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300–399	(869–028–00132–7)	27.00	July 1, 1996
400–End	(869–028–00133–5)	48.00	July 1, 1996
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39	(869–028–00140–8)	23.00	July 1, 1996
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♦52	(869–028–00142–4)	51.00	July 1, 1996
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♦150–189	(869–028–00151–3)	33.00	July 1, 1996
♦190–259	(869–028–00152–1)	22.00	July 1, 1996
♦260–299	(869–028–00153–0)	53.00	July 1, 1996
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♦400–424	(869–032–00152–9)	33.00	[7] July 1, 1996
♦425–699	(869–032–00153–7)	40.00	July 1, 1997
♦700–789	(869–028–00157–2)	33.00	July 1, 1996
♦790–End	(869–028–00158–7)	19.00	July 1, 1996
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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
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♦1000–end	(869–028–00167–0)	45.00	Oct. 1, 1996
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♦200–399	(869–028–00198–0)	39.00	Oct. 1, 1996
♦400–999	(869–028–00199–8)	49.00	Oct. 1, 1996
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♦200–599	(869–028–00203–0)	22.00	Oct. 1, 1996
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Complete 1997 CFR set		951.00	1997
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[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 through March 31, 1994. The CFR volume issued as of April 1, 1990 should be retained.

[5]No amendments to this volume were promulgated during the period July 1, 1991 through June 30, 1994. The CFR volume issued as of July 1, 1991 should be retained.

[6]No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued as of January 1, 1993 should be retained.

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591.201—591.211 (Subpart B) Appendix A revised; interim 14188
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701 Authority citation revised 40930
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718.11 (b) revised 25437
723 Nomenclature change; interim 15600
723.111 (e) added 24800
723.112 (e) added 30230
723.113 (e) added 43922
723.114 (e) added 43922
723.115 (e) added 43922
723.116 (e) added 43922
723.117 (e) added 43922
723.208 (b)(6)(v) added; interim 15600
723.209 (c) added; interim 15600
729.102 Regulation at 61 FR 36999 confirmed 25437
729.103 Regulation at 61 FR 36999 confirmed 25437
(b) amended 25438
729.104 Regulation at 61 FR 36999 confirmed 25437
(d)(3) amended 25438
729.108 Regulation at 61 FR 36999 confirmed 25437
729.201 Regulation at 61 FR 36999 confirmed 25437
729.204 Regulation at 61 FR 36999 confirmed 25437
(e) added 25438
729.205 Regulations at 61 FR 36999 and 37000 confirmed 25437
(a)(1) amended; (c) redesignated as (e); (a)(2)(ii), (b) and new (e) revised; new (c) and (d) added 25438
729.206 Regulations at 61 FR 36999 and 37000 confirmed 25437
729.207 Regulations at 61 FR 36999 and 37000 confirmed 25437
729.208 Regulations at 61 FR 36999 and 37000 confirmed 25437
729.209 Regulation at 61 FR 36999 confirmed 25437
729.210 Regulations at 61 FR 36999 and 37000 confirmed 25437
729.211 Regulation at 61 FR 36999 confirmed 25437
729.212 Regulation at 61 FR 36999 confirmed 25437
729.213 Regulations at 61 FR 36999 and 37000 confirmed 25437
729.214 (l) correctly designated 2719
Regulations at 61 FR 36999 and 37001 confirmed 25437
(b)(5)(ii) amended 25438
(d)(2)(iv), (e)(1), (f)(1)(iii)(A) and (l) amended; (f)(3)(i) and (m) revised 25439
729.215 Regulations at 61 FR 36999 and 37001 confirmed 25437
729.216 Regulations at 61 FR 36999 and 37001 confirmed 25437
735 Nomenclature change 33540
735.2 (gg), (hh) and (ii) amended 33540
735.35 Revised 33540
735.46 Removed 33540
735.52 Amended 33540
735.87 Revised 33540
735.100 Amended 33540
735.101 (k) amended; (n) removed; (o), (p) and (q) redesignated as (n), (o) and (p) 33540
735.102 (b) amended 33540
736 Nomenclature change 33540
736.5 Removed 33540
736.22 Revised 33540
736.32 Revised 33540
736.33 (f) revised 33540
736.59 Amended 33540
737 Nomenclature change 33540
737.19 Revised 33540
737.42 Revised 33540
737.46 Revised 33540
737.47 Removed 33540
737.50 Amended 33540
737.76 Revised 33541
738 Nomenclature change 33540
738.19 Revised 33541
738.30 Revised 33541
738.32 Removed 33541
738.45 Revised 33541
738.48 Amended 33541
738.70 Revised 33541
739 Nomenclature change 33540
739.19 Revised 33541
739.40 Revised 33541
739.52 Removed 33541
739.53 Revised 33541
739.57 Amended 33541
739.78 Revised 33541
740 Nomenclature change 33540
740.21 Revised 33541
740.27 Revised 33541
740.49 Removed 33541
740.54 Revised 33541
740.58 Amended 33541
741 Nomenclature change 33540
741.19 Revised 33541
741.36 Revised 33542
741.46 Revised 33542

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741.50 Amended 33542
741.71 Revised 33542
742 Nomenclature change 33540
742.20 Revised 33542
742.43 Revised 33542
742.49 Reinstated; CFR correction 33339
742.55 Revised 33542
742.60 Amended 33542
742.82 Revised 33542
743 Removed 33542

Chapter VIII—Grain Inspection, Packers and Stockyard Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

800.71 Amended 31702
(a) amended 34342
868.101—868.103 (Subpart B) Added 6706

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

905.306 Regulation at 61 FR 64253 confirmed 7657
906.122 Removed 11758
906.151 (c) amended 3603
911.311 Reinstated; interim 30432
Regulation at 62 FR 30432 confirmed 45146
911.329 Reinstated; interim 30432
Regulation at 62 FR 30432 confirmed 45146
911.344 (a)(3) reinstated; interim 30432
Regulation at 62 FR 30432 confirmed 45146
916.350 (d) revised; interim 15360
916.356 (a)(1) introductory text, (iii), (3) introductory text, (4) introductory text, (5) introductory text and (6) introductory text revised; (a)(1)(i) table added; interim 15360
917.442 (d) revised; interim 15361
917.459 (a)(1) introductory text, (iii), (5) introductory text and (6) introductory text revised; (a)(1)(i) table added; interim 15361
918 Removed 43924
920.112 Revised 45295
920.213 Amended; interim 45148
922.235 Amended; interim 41807
923.236 Amended; interim 41807
924.236 Amended; interim 41807
925.215 (Subpart) Added; interim 2549
Regulation at 62 FR 2548 confirmed 10420
927.236 Amended; interim 44204
929.105 (b)(1) and (2) amended 916
930.100 Added; interim 44883
931.231 Amended; interim 44886
932.149 Revised 1242
932.150 Revised 1244
932.152 (a), (b), (c)(2), (d) heading, (1), (g)(1) introductory text and (2) introductory text revised 1244
932.153 Heading and (a) revised 1244
932.155 (c) revised 1244
932.230 (Subpart) Added; interim 2550
Regulation at 62 FR 2550 confirmed 11316
944.106 Regulation at 61 FR 64253 confirmed 7657
944.209 Reinstated; interim 30432
Regulation at 62 FR 30432 confirmed 45146
944.401 (a)(8), (b)(1), (g) and (j) revised 1244
946.248 Amended; interim 18023
Regulation at 62 FR 18023 confirmed 36200
947.114 Added; interim 27171
Regulation at 62 FR 27171 confirmed 43459
947.247 Amended; interim 27171
Regulation at 62 FR 27171 confirmed 43459
956.162 Added 18026
956.163 Added 18026
959.237 (Subpart) Added; interim 918
Regulation at 62 FR 918 confirmed 10421
959.322 (Subpart) Heading added; interim 918
Regulation at 62 FR 918 confirmed 10421
Introductory text revised; interim 19668

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Regulation at 62 FR 19668 confirmed; introductory text amended 38204
966.234 (Subpart) Regulation at 60 FR 60512 confirmed 6852
966.323 (Subpart) Regulation at 60 FR 60512 confirmed 6852
Regulation at 61 FR 55731 confirmed 7659
979.219 (Subpart) Added; interim 7660
Regulation at 62 FR 7660 confirmed 30980
979.304 (Subpart) Heading added; interim 7660
Regulation at 62 FR 7660 confirmed 30980
981.343 Amended 43461
981.442 (a)(4) redesignated as (a)(4)(i); (a)(4)(ii) added; interim 37488
981.472 (a) amended 37488
982 Marketing percentages 1037, 18029
984.347 (Subpart) Regulation at 61 FR 60513 confirmed 6111
985 Marketing percentages 1249, 31707, 36650
985.153 (c) revised 43465
987.112a (b)(2) and (c)(2) amended 7663
989 Marketing percentages 18032, 32476
993.347 Amended; interim 41810
997.20 Revised 1259
997.30 Revised 1260
997.40 Revised 1263
997.50 Revised 1264
997.51 Revised 1264
997.52 Revised 1264
997.53 Revised 1264
997.54 Revised 1265
998.100 Revised 1265
998.200 Revised 1266
999.600 Revised 1269
(a)(10) correctly revised 9071

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

1005.30 (a)(5), (6) and (c)(3) revised; (a)(7) and (8) redesignated as (a)(8) and (9); new (a)(7) added 39739
1005.32 (a) added 39740
1005.61 (a)(4) removed; (a)(5) and (6) redesignated as (a)(4) and (5) 39740
1005.77 Revised 39740
1005.78 Introductory text amended 39740
1005.81 (a) and (b) revised; (c) removed 39740
1005.82 Revised 39740
1006.7 (c) introductory text and (2) stayed in part 36651
1007.30 (a)(5), (6) and (c)(3) revised; (a)(7) and (8) redesignated as (a)(8) and (9); new (a)(7) added 39741
1007.32 (a) added 39742
1007.61 (a)(4) removed; (a)(5) and (6) redesignated as (a)(4) and (5) 39742
1007.78 Introductory text amended 39742
1007.81 (a) and (b) revised; (c) removed 39742
1007.82 Revised 39742
1011.61 Heading revised; (a) introductory text and (6) amended; (b) removed 918
1046.30 (a)(5), (6) and (c)(3) revised; (a)(7) and (8) redesignated as (a)(8) and (9); new (a)(7) added 39743
1046.32 (c) redesignated as (d); new (c) added 39743
1046.61 Heading revised; (a) introductory text and (6) amended; (b) removed 918
(a)(4) removed; (a)(5) and (6) redesignated as (a)(4) and (5) 39743
1046.77 Revised 39743
1046.78 Introductory text amended 39744
1046.81 (a) and (b) revised; (c) removed 39744
1046.82 Revised 39744
1079.7 (b) introductory text amended; eff. 12-1-96 through 3-31-97 920
1124.2 Amended 2
1124.30 (a)(1)(i), (ii), (c)(1) and (3) revised 2
1124.31 (a)(1) and (b)(1) revised 2
1124.50 (f) introductory text and (g) revised; (h) added 3
1124.53 Revised 3

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1124.60—1124.63 Undesignated center heading revised 3
1124.60 (f) through (m) redesignated as (g) through (n); heading, (e), new (g) introductory text, new (3), new (h)(3) and new (6) revised; new (f) added; new (h) introductory text amended 3
1124.61 Heading, introductory text, (a), (d) and (e) revised 3
1124.62 Removed; new 1124.62 redesignated from 1124.63 and revised 3
1124.63 Redesignated as 1124.62 3
1124.71 (a)(1) and (b)(3) revised; (b)(1) amended 3
1124.73 (a)(2)(ii) through (vi), (c) introductory text, (1) and (f)(2) revised; (a)(2)(vii) added; (c)(2) and (d)(2) amended 4
1124.74 (c) amended 4
1124.75 (a)(1)(i) amended 4
1124.85 (b) amended 4
1126.7 (d) introductory text and (e) introductory text stayed in part; eff. 8-1-97 through 7-31-99 41812
1126.13 (e)(1) and (3) stayed in part; (e)(2) stayed; eff. 8-1-97 through 7-31-99 41812
1131.7 (c) stayed in part; eff. 4-1-97 through 3-31-99 26736
(b) stayed in part; eff. 9-1-97 through 2-28-99 35948
1137.12 (a)(1) stayed in part; eff. 9-1-97 through 8-31-99 35948
1160.108 (a) revised 3983
1160.112 Revised 3983
1160.113 Revised 3983
1160.116 Removed 3983
1160.200 (a) amended 3983
1160.201 (b) revised 3983
1160.209 (b) revised 3983
1160.211 (a)(1) and (2) revised 3983
1160.501 (a) removed; (b), (c) and (d) redesignated as (a), (b) and (c); new (a) and new (b)(2) revised; new (c) amended 3983
1160.604 (a) amended 3984
1160.605 Revised 3984

Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1205.10—1205.30 (Subpart) Added 1660
1205.510 (b)(5) revised 22878
1205.520 (b) introductory text revised 22879
1208.50 Note added 40257
1208.200—1208.207 (Subpart C) Added; eff. 5-14-97 through 8-15-97 18036
1215 Added; eff. 3-22-97 through 8-31-97 13535
Added 39389
1220.201 (a) table revised 37489
Table corrected 41485
1230.110 Revised 26206
1280 Removed 38898

Chapter XIII—Northeast Dairy Compact Commission (Parts 1300—1399)

Chapter XIII Added 29638
Referendum results 29646
1381 Revised; interim 35065
1381.3 (h) correctly revised 36651

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1410 Revised 7625
1414 Removed; interim 33985
1415 Removed; interim 33985
1416 Removed; interim 33985
1427.5 (b)(2) revised 19023
1427.11 Heading and (a) revised 19023
1434 Removed; interim 33985
1435.1 (a) and (b) designation removed 34612
1435.2 Amended 34612
1435.105 (a) and (g) revised; (h) added 34612
1437 Removed; interim 33985
Reinstated 36978
1439.402 (a) revised; interim 3197
(a) revised 44392
1439.601 Added 44392
1439.602 Added 44392

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1439.701 Added 44393
1439.702 Added 44393
1439.800—1439.810 (Subpart) Added; interim 33984
1464.2 (a) amended 3198
1464.8 (h) removed; (i) redesignated as (h) 3198
1464.11 Amended; (f) removed 3198
1464.12 (e) added 24800
1464.13 (e) added 43922
1464.14 (e) added 43922
1464.15 (e) added 43922
1464.16 (e) added 43922
1464.17 (e) added 43922
1464.19 (e) added 30230
1464.102 Revised 3198
1464.104 (b) revised 3198
1464.106 (a)(1) revised 3198
1464.108 Amended 3199
1466 Added 28284
1468 Removed; interim 33985
1477 Removed; interim 33985
1479 Removed; interim 33985
1489 Removed; interim 33985
1493.20 (z) revised 24561
1493.50 (a) revised 24561
1493.90 (a) revised 24561
1493.200—1493.330 (Subpart C) Added; interim 42656
1493.410 (x) revised 24561
1493.440 (a) revised 24561
1493.480 (a) revised 24561
1494.201 (gg) revised 24561
1494.501 (c)(20)(xi) revised 24561
1499.1 Corrected 2719
1499.8 (h)(3) corrected 2719
1499.9 Heading correctly added 2719
1499.12 (d) corrected 2719

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

Chapter XVII Policy statement 6449
1703.100—1703.140 (Subpart D) Revised 32437
1710 Effective date confirmation 18037
1710.7 (b)(3) revised 27930
1710.106 (e) revised; interim 7922
1710.113 (c) redesignated as (c)(1); (c)(2) added 7665
1753.39 (c) revised 32477
1755.97 Table amended 23959
1755.98 Table amended 23959
1755.217 Added 7138
1755.400 Added 23960
1755.401 Added 23960
1755.402 Added 23960
1755.403 Added 23962
1755.404 Added 23989
Corrected 25017
1755.405 Added 23996
1755.406 Added 23998
1755.407 Added 24000
1767 Authority citation revised 42289
1767.13 (a) and (d) revised 42289
1767.17 (a) and (b) revised 42290
1767.21 Amended 42290
1767.27 Amended 42291
1767.28 Amended 42311
Corrected 43201
1767.29 Amended 42313
1767.30 Amended 42315
1767.31 Amended 42317
1767.41 Introductory text revised 42319
Amended 42320, 42321, 42323, 42330
1775 Redesignated from 1942.451—1942.500 (Subpart J) and revised 33469
1777 Redesignated from 4284.401—4284.500 (Subpart E) and revised 33473
1778 Redesignated from 4284.501—4284.550 (Subpart K) and revised 33475
1780 Added 33478
1781 Redesignated from 1942.401—1942.424 (Subpart E) and revised 33500
1786.75—1786.86 (Subpart D) Removed 32478

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1901.204 (a)(28) added; interim 16468
(a)(25) revised 33510
(a)(27) amended 42387
1910.1 (a) amended; interim 9353
1910.3 (c) amended; interim 9353
1910.4 (b)(19) removed; (b)(20) through (23) redesignated as (b)(19) through (22); (f) amended; interim 9353
1910.5 (c) introductory text revised; (c)(8) removed; interim 28618
1910.10 (a)(1) revised; interim 9353
1930 Authority citation revised 25065
Hearing 28982
1930.105 (b)(10) revised; interim 25065
1930.106 Added; interim 25065
1930.101—1930.150 (Subpart C) Exhibits B, B-1 and E amended; interim 25065
Exhibit B amended; interim 25066
1940 Authority citation revised 33510
1940.586 Removed 33510
1940.587 Removed 33510
1940.592 Added; interim 16468
1941 Authority citation revised 26919
1941.4 Amended; interim 9353, 9354
1941.12 (a)(8) through (11) and (b)(9) through (12) added; interim 9354
(a)(8), (11), (b)(9) and (12) revised; interim 28618
1941.14 Removed; interim 9354
1941.15 Removed; interim 9354
1941.16 Revised; interim 9354
(i)(2) amended; interim 28618
1941.17 (a) and (f) removed; (b) through (e) redesignated as (a) through (d); interim 9354
1941.32 Revised; interim 9355
1941.88 Introductory text and (c) removed; (a) and (b) redesignated as (b) and (c); new (a) added; new (c) revised; (d) amended; interim 9355
(c) amended; interim 28618
1941.970—1941.991 (Subpart C) Added; interim 26919
1942.1 (a) revised 33510
1942.17 Heading and (p)(6)(i) introductory text revised 33510
1942.308 (c) revised 33510
1942.349 Revised 33510
1942.351—1942.386 (Subpart H) Removed 33510
1942.401—1942.424 (Subpart I) Redesignated as Part 1781 33500
1942.451—1942.500 (Subpart J) Redesignated as Part 1775 33469
1942.501—1942.550 (Subpart K) Redesignated as Part 1778 33475
1943.4 Amended; interim 9355
(e) amended; interim 28619
1943.12 (a)(3) and (b)(4)(ii) amended; (a)(8) through (11) and (b)(8) through (11) added; interim 9355
(a)(11) and (b)(11) revised; interim 28619
1943.13 (a)(2) removed; (a)(3), (4) and (5) redesignated as (a)(2), (3) and (4); (a) introductory text, (1), new (3), (b) introductory text and (1) amended; interim 28619
1943.16 Revised; interim 9356
(b) amended; interim 28619
1943.17 (a)(4) and (5) removed; interim 9356
1943.18 (b)(2) revised; (c) added; interim 9356
1943.19 (a)(1) and (d)(3) amended; interim 9356
1943.23 (g)(1) amended; (g)(3) and (4) removed; interim 9356
1943.24 (a), (b)(1) and (c) amended; (b)(1)(iv), (d)(3), (4) and (f) removed; (d)(1) revised; (d)(2) and (g) through (k) redesignated as (d)(3) and (f) through (j); new (d)(2) added; interim 9356
1943.25 (b) revised; interim 9356
1943.54 Amended; interim 9356
1944 Authority citation revised 25066
Hearing 28982
1944.205 Amended; interim 25066
1944.211 (a)(13)(i) amended; interim 25065
(a)(2) introductory text revised; (a)(15) added 25074
1944.212 (b) introductory text amended 25074
1944.213 (b) introductory text, (d)(1)(i) and (ii) amended; interim 25065
(b) introductory text and (d) introductory text amended; (a), (f) heading, (2)(i) and (3) revised; interim 25066
1944.215 (a)(1), (r)(1), (2), (4) introductory text, (i), (ii), (vii) and (7) amended; interim 25067

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(n)(1) and (2) revised; (x) added 25075
1944.221 (a) introductory text revised 25075
1944.224 (a)(4), (6) and (7) amended; interim 25065
(a)(5) introductory text amended; interim 25067
1944.228 Added; interim 25067
1944.229 Added; interim 25067
1944.230 Added; interim 25068
1944.231 Revised; interim 25068
1944.233 Added 25075
1944.234 Added 25076
1944.235 (h) introductory text amended; interim 25065
1944.237 (a) amended; interim 25069
1944.201—1944.250 (Subpart E) Exhibit A, A–7 and E amended; interim 25065
Exhibit A amended; interim 25069
Exhibits A–7 and A–9 amended; Exhibit A–10 removed; interim 25070
Exhibit A–7 amended 25076
1944.651 (a) and (d) amended; (b) revised 26208
1944.652 Revised 26208
1944.653 Amended 26209
1944.656 Amended 26209
1944.658 (a)(2) amended 26209
1944.659 Added 26209
1944.661 (a) amended; (b)(2) introductory text and (3) revised 26209
1944.664 (d) through (g) redesignated as (e) through (h); heading, (a), new (h)(1) and new (3) revised; new (d) added; new (f) introductory text and new (g) introductory text amended 26210
1944.665 Amended; heading revised 26210
1944.666 (b)(3) and (6) amended 26210
1944.667 (a) introductory text amended 26210
1944.670 (b) revised 26210
1944.671 (a) introductory text amended; (a)(2) revised 26210
1944.672 (a), (b) and (d) revised 26210
1944.673 Heading and (b) revised 26211
1944.683 (b)(3) through (7) redesignated as (b)(4) through (8); new (b)(3) added; new (b)(4)(i) and new (8) amended 26211
1944.700 Revised 26211
1945.154 Amended; interim 9356
1945.156 (b)(2)(i) introductory text and (ii) introductory text amended; interim 9356
1945.162 (a) through (m) redesignated as (b) through (n); new (a) added; interim 9356
1945.163 (e) revised; interim 9357
1945.166 (a)(1) amended; (b)(5) and (c)(3) removed; (c)(4) redesignated as (c)(3); interim 9357
1945.167 Heading revised; (a) and (i) removed; (b) through (h) redesignated as (c) through (i); new (a) and new (b) added; interim 9357
(a) amended; interim 28619
1945.169 (l) revised; interim 9357
1945.175 (c)(3) removed; (c)(4) redesignated as (c)(3); (c)(2) and new (3) revised; interim 9357
(c)(3) amended; interim 28619
1945.469 (l) correctly designated 11953
1951 Authority citation revised 16469, 41798
Hearing 28982
1951.101 Revised; interim 41798
1951.102 Revised; interim 41799
1951.103 Removed; interim 41799
1951.104 Removed; interim 41799
1951.105 Removed; interim 41799
1951.111 Introductory text revised; (a) introductory text, (1), (2) and (b)(1) amended; interim 41799
1951.201—1951.250 (Subpart E) Heading amended 42387
1951.201 Amended; interim 16469
Revised 33510
Amended 42387
1951.262 (f)(1) and (2) revised; interim 10120
1951.454 Amended; interim 10120
1951.504 Amended; interim 25070
1951.506 (a)(5)(iv) removed; (a)(5)(v) redesignated as (a)(5)(iv); new (a)(5)(iv) amended; interim 25070
1954.509 Removed; interim 25070

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1951.517 (b)(4)(i)(A), (B), (ii)(A), (B) and (iii) amended; interim 25065
1951.501—1951.550 (Subpart K) Exhibit B amended; interim 25070
1952.455 (a), (b), (c), (e), (f), (g) introductory text, (2), (h), (i) and (j) amended; (g)(1) and (4) removed; (g)(2), (3) and (5) redesignated as (g)(1), (2) and (3); interim 10120
1951.457 (a) revised; interim 10120
1951.458 Revised; interim 10120
1951.901 Revised; interim 10120
1951.902 Revised; interim 10120
1951.903 Revised; interim 10121
1951.904 Added; interim 10121
1951.906 Revised; interim 10121
1951.907 (c), (d) and (e) revised; (f) removed; interim 10123
1951.908 Revised; interim 10124
1951.909 Revised; interim 10124
1951.910 Revised; interim 10132
1951.911 Revised; interim 10132
1951.914 (a)(5)(iii) removed; (a)(5)(iv), (v), and (vi) redesignated as (a)(5)(iii), (iv) and (v); interim 10134
1951.917 Removed; interim 10134
1951.918 Removed; interim 10134
1951.901—1951.950 (Subpart S) Exhibit A revised; interim 10134
Exhibit B revised; interim 10143
Exhibits C, C–1 and E revised; interim 10144
Exhibit F revised; interim 10146
Exhibit H revised; interim 10147
Exhibit J–1 revised; interim 10149
Exhibits K, L and M revised; interim 10156
Exhibits N through Q removed; interim 10157
1951.953 (a) removed; (b) revised 41252
1951.954 (a)(1) amended; (b)(2) and (4) revised 41252
1951.957 (b)(7) revised 41253
1951.958 (a)(2) amended; interim 10157
1955.3 Amended; interim 44395
1955.4 (a) amended; interim 44395
1955.9 Revised; interim 44395
1955.1—1955.50 (Subpart A) Exhibits G and G–1 amended 44396
1955.53 Amended; interim 44396
1955.63 Introductory text, (a) and (b) revised; interim 44396
1955.66 Revised; interim 44397
1955.102 Amended; interim 44399
1955.103 Amended; interim 44399
1955.105 (a) and (d) amended; interim 44399
1955.106 (a) and (c) revised; interim 44399
1955.107 Revised; interim 44399
1955.108 Revised; interim 44401
1955.109 (a) amended; interim 44401
1955.122 (b) removed; (c) through (g) redesignated as (b) through (f); interim 44401
1955.130 (c)(5) and (6) amended; interim 44401
1955.137 Added; interim 44401
1955.139 (a)(3) introductory text and (c) revised; interim 44402
1955.140 Revised; interim 44403
1955.148 Revised; interim 44404
1956 Authority citation revised 10157
1956.51—1956.100 (Subpart B) Heading revised; interim 10157
1956.54 Amended; interim 10157
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109.3 (c) revised 13744
119 SFAR No. 78 Added 1205
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119.3 Amended 13253
119.5 (k) and (l) added 13253
(l) corrected 15570
119.9 (b) revised 13253
119.21 (a)(1) revised 13254
119.35 Revised 13254
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119.36 Added 13254
(c)(1) and (d)(2) corrected 15570
119.67 (e) revised 13255
119.71 (b) introductory text and (d) introductory text revised; (f) amended 13255
121 SFAR No. 78 Added 1205
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SFAR No. 50-2 reinstated and amended 8864
SFAR No. 80 added 13255
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121.2 (d)(1)(iv) and (e)(1)(iv) added 13256
121.99 Revised 13256
121.137 (c) revised 13256
121.139 (a) revised 13256
(a) corrected 15570
121.305 (f) amended; (j) revised 13256
121.310 (b)(2)(i) and (ii) amended; (b)(2)(iii) added 13256
121.333 (c)(2) revised 13256
(c)(2)(ii) corrected 15570
121.344 Revised 38378
121.344a Added 38380
121.402 (a) amended 13791
121.409 (b)(4) revised 23120
121.412 (c)(1) corrected 3739
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121.413 (c)(1) corrected 3739
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121.414 (c)(1) corrected 3739
121.431 (a)(2) revised 13791
121.437 (b) removed; (c) redesignated as (b); new (b) amended 13257
121.441 Amended 13791
121.579 (a) amended; (d) added 27922
121.590 (a) amended 13257
121.713 (b)(2) revised 13257
121 Appendix M added 38382
125.71 (f) revised 13257
125 Technical correction 44408
125.226 Added 38387
125.329 (a) amended; (e) added 27922
125 Appendix E added 38390
129 Technical correction 15752, 44408
129.1 (b) amended 38396
129.20 Added 38396
129.31 Added 13744
135 Authority citation revised 1205
SFAR No. 78 Added 1205
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SFAR No. 50-2 reinstated and amended 8864
SFAR No. 81 added (OMB number pending) 42373
135.2 (d)(1)(i) introductory text, (2)(i) introductory text and (e)(1)(ii) amended; (d)(1)(iv) and (e)(1)(iv) added 13257

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135.21 (f) revised 13257
135.25 (b) amended 13257
135.64 (a) designation and (b) removed 13257
135.93 (a) amended; (e) redesignated as (f); new (e) added 27923
135.101 Revised; eff. 5-4-98 42374
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135.103 Removed; eff. 5-4-98 42374
Regulation at 62 FR 42374 eff. date corrected to 5-4-94 45014
135.152 (a) and (f) revised; (d) amended; (h) through (k) added 38396
135.153 (a) revised; (b) removed 13257
135.163 (f), (g) and (h) revised; eff. 5-4-98 42374
Regulation at 62 FR 42374 eff. date corrected to 5-4-94 45014
135.181 (a)(1) and (c) revised; eff. 5-4-98 42374
Regulation at 62 FR 42374 eff. date corrected to 5-4-94 45014
135.324 (b)(4) revised 13791
135.338 (c)(1) corrected 3739
135.339 (a)(2) corrected 3739
135.340 (a)(2) corrected 3739
135.411 (c) added; eff. 5-4-98 42374
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135.427 (d) added 13257
135.1421 (c), (d) and (e) added; eff. 5-4-98 42374
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135 Appendixes B and C amended 38397
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141 Revised 16347
141.5 (d) corrected 40907
141.31 (b)(1) and (2) corrected 40907
141.33 (a)(2) and (b) corrected 40907
141.35 (a)(1), (2), (5) and (6) corrected; (a)(7) correctly removed 40907
141.36 (a)(1), (2) and (5) corrected 40907
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141.38 (b)(2) corrected 40907
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141.39 Introductory text corrected 40908
141.41 (a)(4) corrected 40908
141.53 (c)(1) corrected 40908
141.63 (a)(5), (b)(3) and (4) corrected 40908
141.67 (d)(2) corrected 40908
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141.77 (c)(4) corrected 40908
141.79 (d)(1) introductory text, (i), (ii) and (2) corrected 40908
141.81 (a) and (c) corrected 40908
141.83 (e) corrected 40908
141.85 (a)(1) and (2) corrected 40908
141.91 (a) corrected 40908
141.93 (a) introductory text, (3) introductory text and (v) corrected 40908
141.95 (a) corrected 40908
141.101 (e) corrected 40908
141 Appendixes A and B corrected 40908
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142.11 (e)(4) removed; (e)(5) redesignated as (e)(4) 13791
142.53 (a)(7)(ii) revised 13791
143 Removed 16367
187.1 Amended 13503
187.15 (d) added 13503
(d) corrected 23295
187 Appendix B added 13503, 24286
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191 Revised 13744
191.1 (b) corrected 15752

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217.5 (b)(12) and (13) added 6718
241 Sec. 19-5 (c)(7), (8) and (18) revised 6718
Sec. 19-6 (b) introductory text revised 6719
Sec. 19-7 (b) revised; Appendix A amended 43280
Sec. 19-7 Appendix A amended 43281, 43283
310 Removed 25841
374 Authority citation revised 25841
374.1 Revised 25841
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382.39 (a)(2) corrected 17

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1260.126 (a), (b) and (c) revised 45939, 45940
1273.26 (a), (b) introductory text and (1) revised 45939, 45940

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15 Authority citation revised 19669
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15.1 (c) amended 19670
15.11—15.18 (Subpart B) Redesignated from Part 15A; nomenclature change 19669
15.16 Introductory text amended 19670
15.17 Amended 19670
15.21—15.25 (Subpart C) Redesignated from Part 15B; nomenclature change 19669
15.24 (b) amended 19670
15.31—15.32 (Subpart D) Added 19670
15A Redesignated as 15.11—15.18 (Subpart B) 19669
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24.26 (a), (b) introductory text and (1) revised 45939, 45940

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280 Implementation date extension 19041

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730.9 (c) revised 25453
732.1 (a)(1) introductory text revised 25453
732.2 Introductory text, (b)(1) and (d) introductory text revised; (d)(3) and (f)(3)(ii) amended 25453
732.3 (h)(2) revised 25453
732 Supplement No. 1 redesignated as Supplement No. 3; new Supplement No. 1 and Supplement No. 2 added 25453
Supplement No. 3 amended 25456
734.3 (b)(4) revised 25456
734.4 (c) introductory text and (d) introductory text revised; (c)(3) amended 25456
734.8 (a), (b)(6) and (d)(1) amended 25456
734 Supplements Nos. 1 and 2 amended 25456
736.2 (b)(2)(ii), (6)(ii) and (8)(i) revised 25456
738.2 (d)(1)(iii) added; (d)(2)(i)(A) amended; (d)(2)(ii) revised 25456
738 Supplement No. 1 revised 6683
Supplement No. 1 corrected 31473
Supplement No. 1 amended 42048
740 Supplement No. 1 amended 42048
740.1 (a) and (e) revised; (d)(2) amended 25457
740.2 (a) revised 25457
740.4 Revised 25457
740.9 (a)(2)(i) amended; (a)(2)(iv), (viii)(A) introductory text, (b)(1)(ii) and (2)(ii)(B) revised 25457
740.11 (b)(2)(iii) and (iv) revised 25457
740.12 (b)(1) amended 25458
740.13 (d)(3)(i) revised 25458
740.14 (a) and (b) introductory text revised; (d) amended 25458
740.16 (a)(2) and (3)(ii) revised; (j) added 25458
740 Supplement No. 1 amended 6685, 25458
742.1 (d) and (f) amended 25458
742.2 (a)(1)(ii), (2)(iii) introductory text and (3)(ii) revised; (b)(2) amended 25458
742.7 (a)(1), (2) and (3) revised 25458
742.9 (b)(1)(iv) revised 25459
742 Supplement No 1. amended 25459
744 Authority citation revised 4910
744.1 (c) added 4910
744.2 (c) amended 25459
744.3 (a) amended 25459
744.4 (a) amended 25459
744.5 (a) amended 25459
744.6 (a)(1)(i) introductory text and (e) revised 25459
744 Supplement No. 4 added 4910
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746.1 Introductory text and (b) revised; (c) amended 25459
746.2 (b)(4) added 9364
(a)(1) revised; (b)(3)(ii) amended 25459
746.3 (a)(1) revised 25460
746.4 (b) and (c)(3) introductory text revised; (e) and (f) redesignated as (d) and (e) 25460
746.5 (a)(1) and (b)(1) revised 25460
748.3 (b)(1) amended; (b)(2) revised 25460
748.9 (a)(7) added; (b)(1)(ii), (2)(ii) and (c)(2) revised 25461
748.10 (b)(1) and (3) introductory text revised 25461
748.11 (e)(1)(ii) revised 25461
748.12 (b) revised 25461
748.13 (a)(1) amended 25461
748 Supplement No. 1 amended 25461
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750.5 (a) revised 25463
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752.1 (a)(1) amended 25463
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752.5 (c)(8)(i) introductory text, (ii) and (iii) introductory text revised 25463
752.6 (b)(1) revised 25464
752.9 (a)(2) introductory text revised 25464
752.10 Revised 25464
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752.15 (b) amended 25466
752 Supplements Nos. 1 and 3 revised; Supplement No. 2 amended 25466
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756.1 (a) amended 25467
756.2 (b)(4)(ii) revised 25467
758.1 (b)(2), (e)(1)(i)(A) and (C) revised; (d)(2)(vi) and (f)(2)(ii) amended 25468
758.2 (c) amended 25468
758.3 (f)(1) introductory text, (g), (h)(1), (m)(3)(ii)(C) introductory text, (iii) and (o)(2) revised 25468
758.7 (b)(6) amended 25469
762.3 (a)(7) amended 25469
764.2 (f) revised 25469
764.3 (b)(1), (2)(i), (ii) and (iii) revised 25469
764.5 (c)(4)(ii) revised; (c)(7) amended 25469
768.1 (d) amended 25469
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770.3 (c)(1) and (2) amended; (d)(1)(i)(B), (ii) and (2)(ii) revised 25470
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774 Supplement No. 1, Category 1 amended (ECCN 1C350) 6686
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902.1 (b) table amended (OMB numbers) 1831, 13299, 13986, 27182, 34396, 43470
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921.1 (f) amended 12540
921.20 Amended 12540
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921.32 (c) amended 12541
921.50 (b) amended 12541
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922 Nomenclature change 3789
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922.44 Revised (effective date pending) 4607, 14815
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922.45 (a) revised (effective date pending) 4607
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922.48 (a) and (b) revised (effective date pending) 4607
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922.49 Revised (effective date pending) 4608
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922.50 (a)(1) introductory text and (iii) amended (effective date pending) 4608
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922.160—922.167 (Subpart P) Added (effective date pending) 4608
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923 Authority citation revised 12541
923.121 (a) amended; (g) revised 12541
923.122 (b)(9) added 12541
929 Removed 4622
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930 Authority citation revised 12541
930.130 (b) removed; (c) and (d) redesignated as (b) and (c) 12541
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946 Appendix A amended 38903
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1.41a (a)(2) and (3) revised 17701
4.1 (c) and (d) added 39115
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11 Authority citation revised 17702
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12 Advisory 43930
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15.00 (b) and (l) revised 24031
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16.00 (a)(5) revised 24031
16.01 Heading and (d) revised; (a)(5) and (6) removed; (a)(7) and (c) redesignated as (a)(5) and (b)(3); new (c) added 24032
16.06 Revised 24032
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17.00 (a), (d), (e) and (g) revised 24032
17.02 (a) revised 24033
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30 Appendix C amended 16690
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190 Appendix B amended 31710

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202 Policy statement 15604
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228 Authority citation revised 36455, 39761
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228.10 (a)(1) amended 26388
228.601 (a) amended; (c)(1)(ii) note designated as (c)(1)(ii) Note 1; (c)(1)(ii) Note 2 and (2)(iii) note added; (c)(1)(v) revised 36455
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416.1236 (a)(2) revised; (a)(12) amended; (a)(13), (16) and (19) removed; (a)(14), (15), (17), (18) and (20) redesignated as (a)(13) through (17); new (a)(18) added 30983
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177.1500 (c) redesignated as (d); new (c) added; new (d)(5)(ii) amended 22886
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241.1040 Revised 20088
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950.660 (a)(3) revised 27126
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968.112 (d)(3)(ii) amended 27126
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142 Revised 18516
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1.103–8T Removed 25506
1.142–4 Added 25506
1.148–0 (c) amended 25506
1.148–1 (b) amended; (c)(4)(ii)(A) revised; (e) added 25507
1.148–1T Redesignated as 1.148–1A 25507
1.148–2 (b)(2)(ii) revised 25507
1.148–2T Redesignated as 1.148–2A 25507
1.148–3 (h)(3) amended 25507
1.148–3T Redesignated as 1.148–3A 25507
1.148–4 (h)(2)(vi) and (vii) removed; (h)(2)(ii) through (v), (viii) and (ix) redesignated as (h)(2)(iii) through (viii); (b)(5), (g), (h)(1), (2) introductory text, (i), new (iv), new (v), new (vi), new (viii), (3), (4) and (5) revised; new (h)(2)(ii) and (6) added 25507
1.148–4T Redesignated as 1.148–4A 25507
1.148–5 (b)(2)(iii), (c)(2)(i), (3)(ii), (d)(3)(ii), (e)(2)(ii)(B) and (iii) revised 25511
1.148–5T Redesignated as 1.148–5A 25507
1.148–6 (d)(3)(iii)(C) revised 25512
1.148–6T Redesignated as 1.148–6A 25507
1.148–9 (c)(2)(ii)(B) and (h)(4)(vi) revised 25512
1.148–9T Redesignated as 1.148–9A 25507
1.148–10 (b)(2), (c)(2)(viii), (ix) and (e) revised; (c)(2)(x) added 25512
1.148–10T Redesignated as 1.148–10A 25507
1.148–11 (a), (b)(1), (c)(1) and (g) revised; (b)(3) added; (h) and (i) removed 25512
1.148–11T Redesignated as 1.148–11A 25507
1.149(d)–1 (f)(3) revised; (g)(3) added 25513
1.149(d)–1T Redesignated as 1.149(d)–1A 25513
1.150–1 (a)(2), (c)(1), (4)(iii) revised; (c)(6) added 25513
1.150–1T Redesignated as 1.150–1A 25513
1.148–1A—1.148–11A Undesignated center heading added 25507
1.148–1A Redesignated from 1.148–1T; heading amended 25507
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1.162–12 (a) amended 44546
1.163–8T (c)(2)(e) redesignated as (c)(3) 40270
1.263A–0 Amended 42054
1.263A–0T Added 44546
1.263A–1 (a)(2)(i) amended 42054
(b)(3) and (4) amended 44546
1.263A–4T Revised 44546
1.263A–7 Added 42054
1.263A–7T Removed 42062
1.263A–15 Amended 42062
1.302–2 (c) introductory text amended 38028
1.401(b)–1 (c), (d) and (e) redesignated as (d), (e) and (f); new

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(d)(2) undesignated text designated as (d)(3) and (4); (a), (b)(1), new (d)(1)(ii), (iii), (2) introductory text, (3), (4), (e)(1)(ii)(C), (2)(ii)(C), (3) introductory text, (4), (5) introductory text and (iii) amended 41273
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1.446–1 (e)(3)(i) amended 26741
1.446–1T Added 26741
(e)(3)(i)(B) corrected 28631
1.471–6 (c), (d) and (f) amended 44551
1.501(c)(5)–1 (b) redesignated as (c); new (b) added 40449
1.704–1 (b)(2)(iv)(*d*)(*1*), (*l*) and (5) Example 13 amended 25499
1.704–2 (m) Example 1 reinstated; CFR correction 34634
1.704–3 (a)(2) and (3)(i) amended 25500
(a)(11) added; (f) revised 44215
1.704–4 (a)(4)(ii) and (c)(3) revised 25500
1.708–1 (b)(1)(ii) amended; (b)(1)(iv) revised; (b)(1)(v) added 25500
1.737–2 (a) revised; (d)(1) amended 25501
1.743–1 (d) added 25501
1.761–1 (e) added 25501
1.894–1T Added 35676
1.1059(e)–1 Added 38028
1.1245–1 (e)(2) revised 44216
1.1502–5 (b)(5) corrected 23657
1.6013–2 (b)(1) amended 39117
1.6302–1 (b) heading revised; (b) redesignated as (b)(1); new (b)(1) heading and (2) added; OMB number 37492
1.6302–1T Removed 37492
1.6302–2 (b) heading revised; (c) redesignated as (b)(6); new (c) added; OMB number 37492
1.6302–2T Removed 37492
1.6302–3 (c) revised 37492
1.6302–3T Removed 37492
1.6302–4 Added 37492
1.6302–4T Removed 37492
26.2652–1 (a)(4) and (5) Examples 9 and 10 removed; (a)(5), (6) and Example 11 redesignated as (a)(4), (5) and Example 9 27498
31 Authority citation amended 33009, 37492
31.0–1 (a) amended 37492
31.0–3 (f) amended 37493
31.3406(j)–1 Added 33009
31.6302–1 (h) redesignated as (i); new (h) added 37493
31.6302–1T Removed 37494
31.6302(c)–3 (b) heading and (c) revised; (d) added 37494
31.6302(c)–3T Removed 37494
35a Authority citation amended 33009
35a.3406–3 Removed 33009
40 Authority citation amended 37494
40.6302(c)–1 (d) redesignated as (d)(1); (d)(1) heading and (2) added 37494
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54 Authority citation amended 16927
Technical correction 17004
54.9801–1T Added; interim 16927
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54.9801–2T Added; interim 16928
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54.9801–3T Added; interim 16929
(a)(1)(iii) and (b)(1)(ii) Example corrected 31691
54.9801–4T Added; interim 16930
(a)(2) and (b)(2)(iv) corrected 31669
(b)(2)(iv) Examples 6 and 7 and (v)(B) Example corrected 31691
54.9801–5T Added; interim 16932
(a)(6) and (b)(2) corrected 31669
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(a)(5)(i)(B) Example, (6)(ii), (c)(2)(ii) and (d)(3) Example 3 corrected 31692
54.9801–6T Added; interim 16937
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54.9802–1T Added; interim 16938
54.9804–1T Added; interim 16939
(a) and (b)(4) corrected 31670
54.9806–1T Added; interim 16940
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301.6334–1 (a)(2) and (e) revised; (a)(3) and (11)(i) amended; (f) added 39117
301.6601–1 (f)(3) and (4) revised; (f)(5) redesignated as (f)(6); new (f)(5) added 39117
301.6651–1 (a)(3) revised; (g) added 39117
301.6656–3 Added 39118
301.7122–1 (e) revised 39118
301.7430–0 Amended 39118
301.7430–1 (b)(4) added 39118
301.7430–2 (b)(2), (c)(3) introductory text and (ii)(C) amended; (c)(3)(i)(B) revised 39118
301.7430–4 (b)(3)(i), (iii)(B), (C), (D) and (c)(2)(ii) amended; (b)(3)(ii) revised 39118
301.7430–5 (a) revised; (c)(3) added 39119
301.7430–6 Revised 39119
301.9100–1T (h) amended 26741
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601.204 (b) amended 26741
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4.28 (e) added 16490
(e)(2) corrected 33747
24.148 Revised 29666
24.278 Revised; OMB number 29666
24.279 Revised; OMB number 29667
178.11 Amended 19444, 34638
178.32 (e) added 34639
178.124 (c) introductory text and (f) amended; (c)(1), (d) and (e) revised 19444
178.125 (f) introductory text amended; (f)(1), (2) and (3) added 19445
178.130 (a)(2) revised 19445*

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TITLE 28—JUDICIAL ADMINISTRATION

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0.100—0.104 (Subart R) Appendix amended 38029
2.62 (a)(6) and (h)(5) amended 40270
16.99 (i) and (j) added 44083
17 Revised 36984
32.1—32.2 (Subpart A) Heading revised 37715
32.1 (a) amended 37715
32.2 (a) introductory text amended 37715
32.3—32.9 (Subpart B) Heading removed 37715
32.3—32.9 Undesignated center heading added 37715
32.10—32.15 (Subpart C) Heading removed 37715
32.10—32.15 Undesignated center heading added 37715
32.10 (a) introductory text amended 37715
32.16—32.18 (Subpart D) Heading removed 37715
32.16—32.18 Undesignated center heading added 37715
32.16 (a) amended 37715
32.19—32.22 (Subpart E) Heading removed 37715
32.19—32.22 Undesignated center heading added 37715
32.23—32.24 (Subpart F) Heading removed 37715
32.23—32.24 Undesignated center heading added 37715
32.25 (Subpart G) Heading removed 37716
32.25 Undesignated center heading added 37716
32.31—32.40 (Subpart B) Added 37716
32.35 (b) corrected 39120
66.26 (a), (b) introductory text and (1) revised 45939, 45942
70.26 (a), (b) and (c) revised; (d) added 45939, 45942

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544.42 (d) revised 39916
548.12 Revised 44836
548.16 (c) amended 44836
548.20 (a) and (b) amended 44836
550.30—550.31 (Subpart D) Revised 45292

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50 45184
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97.26 (a), (b) introductory text and (1) revised 45939, 45942

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1470.26 (a), (b) introductory text and (1) revised 45939, 45942

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1600.735–101—1600.735–106 (Subpart A) Regulation at 61 FR 7067 confirmed 36447
1600.735–201—1600.735–206 (Subpart B) Regulation at 61 FR 7067 confirmed 36447
1600.735–301 (Subpart C) Regulation at 61 FR 7067 confirmed 36447
1600.735–401—1600.735–406 (Subpart D) Regulation at 61 FR 7067 confirmed 36447
1600.101 Regulation at 61 FR 7067 confirmed 36447
1600.735–501—1600.735.519 (Subpart E) Regulation at 61 FR 7067 confirmed 36447
1650.101—1650.119 (Subpart A) Regulation at 61 FR 7067 confirmed 36447

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1910.8 Table amended....42666
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1910.11—1910.19 (Subpart B) Authority citation revised....40195
1910.16 (a), (b) and (c)(4) revised....40195
1910.1000—1910.1450 (Subpart Z) Authority citation revised....42666
1910.1000 Table Z–1 and Z–3 corrected....42018
1910.1052 (n)(2)(i)(C) revised....42667
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1917.1 (a) introductory text and (2)(i) through (x) revised; (a)(2)(xi), (xii), (xiii) and (b) added....40196
1917.2 Amended....40196
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1917.13 (g) revised; (h) and (i) added....40197
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1917.23 Heading, (b)(1) and (d) introductory text revised....40197
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1917.26 (c) and (d) revised....40197
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1917.28 Heading revised; text removed....40198
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1917.42 (b)(4), (c)(1), (d), (h)(4), (5) and (j)(1) revised; (g)(2)(vi) added....40198
1917.43 (e)(1)(i) and (6)(iii) revised; (f)(3) added....40198
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1917.46 Heading, (a)(1)(ii) and (viii)(A) revised....40199
1917.48 (d)(2) revised....40200
1917.50 (i) redesignated as (j); heading, (c)(5) and new (j) revised; new (i) added....40200
1917.71 (b)(6), (7), (c), (e) and (f)(1)(i) revised; (b)(8), (f)(4) and (5) added....40200
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52.120 (c)(73), (74)(i)(B), (77)(i)(A)(*1*) removed; (c)(74)(i)(A) revised; (c)(74)(i)(A)(*2*) redesignated as (c)(77)(i)(A)(*1*); (c)(88) added 41864
52.123 (f) added 41864
52.124 (b) added 41864
52.220 (c)(196)(i)(D), (202)(i)(F) and (245) added 36216
(c)(185)(i)(A)(*9*), (198)(i)(K), (207)(i)(B)(*2*) and (225)(i)(B)(*3*) added 37138
(c)(239)(i)(D) added 41867
(c)(197)(i)(B)(*2*) added 44909
(c)(224)(i)(D) added 44912
52.222 (a)(2) and (3) added 40937
(b)(2) added 43647
52.420 (c)(58) added 37724
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52.470 (c)(37) added 40937
52.520 (c)(98) added 38919
52.570 (c)(50) added; interim 42918
52.720 (c)(106)(i)(D) added; (c)(109) revised 43102
52.726 (p), (q) and (r) added 37506
52.770 (c)(109) added 38922
52.776 (q) added 45171
52.777 (k) added 38464
52.870 (c)(33) added 36213
52.930 Regulation at 62 FR 28637 withdrawn 40281
52.1036 (e) added 41277
52.1070 (c)(122), (123) and (124) added 41856
52.1072 Added 40944
52.1076 Added 40458
52.1120 (c)(114) added; interim 37509
(c)(113) added 37514
52.1125 Added 37514
52.1219 (b) added 39123
52.1270 Redesignated as 52.1281; new 52.1270 added 35442
(c) table amended 37726
(c) table corrected 40139
52.1281 Redesignated from 52.1270; heading and (a) revised 35442
52.1320 (c)(99) added 44221
(c)(96) revised 45166
(c)(100) added 45167
52.1570 (c)(63) added 42413
52.1605 Table amended 42414
52.1770 (c)(94) added 41280
52.1885 Regulation at 62 FR 28637 withdrawn 40281
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(a)(6) added 44907
52.2020 (c)(125) added 38917
(c)(127) added 43104
(c)(119) added 44415
52.2036 (j) added 38917
52.2120 Redesignated as 52.2134; new 52.2120 added 35444
(c) table amended 44219
52.2134 Redesignated fron 52.2120; heading and (a) revised 35444
52.2220 (c)(147) added 35683
(c)(156) added 38912
(c)(158) added 40460
(c)(155) added 40735
(c)(151) added 42070
(c)(154) added 43108
(c)(157) added 43645
52.2270 (c)(102) added 44087
52.2303 (a) revised 44088
52.2310 Added; interim 37144
52.2320 (c)(38) added 38216
52.2350 Added 38217
52.2351 Added 38217
52.2370 (c)(23) added 41282
(c)(24) added 41869
52.2375 Table revised 41869
52.2381 Table amended 41282, 41870
52.2420 (c)(115) and (116) added 38914
52.2428 Existing text designated as (a); (b) added 38932
Removed 43472
52.2470 (c)(73) added 42217
52.2585 (l) added 39448
53.1—53.16 (Subpart A) Revised 38784

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53.30—53.34 (Subpart C) Revised 38792
53.50—53.59 (Subpart E) Added 38799
53.60—53.66 (Subpart F) Added 38814
55.14 (e)(2)(i)(A) revised 41871
55 Appendix A amended 41871
58.1 Amended 38830
58.13 (b) and (d) revised; (e) and (f) added 38831
58.14 Revised 38832
58.20 Heading, (d) and (e) introductory text revised; (f) redesignated as (h); concluding text designated as (i); new (f) and (g) added; new (i) amended 38832
58.23 Introductory text revised; (c) added 38832
58.26 Heading and (b) introductory text revised; (d) and (e) added 38833
58.30 (a) introductory text revised 38833
58.31 (f) revised 38833
58.34 Introductory text revised 38833
58.35 (b) amended 38833
58 Appendix A revised 38833
Appendix C amended 38843
Appendix D amended 38844
Appendixes E and F amended 38854
60 Determinations 36664
60.30b—60.39b (Subpart Cb) Heading revised 45119
60.31b Amended 45119, 45121
60.32b (a) and (b) introductory text revised; (b)(2) amended; (m) added 45119
(b)(1), (d), (e), (f)(1) and (i)(1) amended 45125
60.33b (a)(1)(i), (iii), (2)(i), (iii), (3), (b)(1)(i), (2)(i), (c)(1) introductory text, (d) Table 1 and (1)(i) amended; (a)(1)(ii), (2)(ii), (iv), (b)(1)(ii), (2)(ii) and (c)(2) removed 45119
(a)(4), (b)(3) and (d)(3) added; (d) Table 2 amended; (d)(1)(i)(B) revised 45120
(a)(3) amended 45125
60.34b (a) amended 45120, 45125
60.35b Amended 45120
60.38b (b) amended; (c) removed 45120
60.39b (b), (c)(1) introductory text, (2), (4)(ii), (iii) introductory text and (5) amended; (c)(3) and (4)(i) removed; (d) revised; (e) and (f) added 45120
(c)(4)(iii)(B) amended 45125
60.50b—60.59b (Subpart Eb) Heading revised 45120
60.50b (b)(2) amended 45120
(a) and (b) introductory text revised; (p) added 45121
(b)(1), (e), (f), (g)(1) and (i)(1) amended 45125
(j) introductory text amended 45126
60.51b Amended 45121, 45126
60.52b (c)(1) amended 45121
(a)(1) through (5), (b)(1), (2) and (c)(2) amended 45126
60.53b (a) introductory text, Table 1, (b) introductory text and (c) introductory text amended 45126
60.54b (a), (b), (c) introductory text, (d), (e) introductory text and (f) introductory text amended; (c)(1) and (ii) redesignated as (c)(1) and (2) 45126
60.55b (a) amended 45126
60.56b Amended 45126
60.57b (a) introductory text, (b) introductory text and (c) amended 45126
60.58b (b) introductory text, (3), (5)(i), (c)(2), (4), (7), (9), (11), (d)(1)(ii), (v), (vii), (2)(ii), (vii), (viii), (ix), (e)(3), (12)(i)(B), (f)(4), (7), (g)(2), (5) introductory text, (i), (iii), (8), (h)(2), (3), (4), (10) introductory text, (i)(B), (i)(3)(ii)(B), (5), (j)(1) introductory text, (i), (2) and (m)(3) introductory text amended; (b)(7), (h) introductory text and (k) introductory text revised; (c)(10), (d)(1)(viii), (ix), (2)(x), (f)(8) and (g)(5)(ii) removed; (k)(4) added 45126
60.59b (a) introductory text and (b) introductory text amended 45121

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(b)(4), (d) introductory text, (2)(i)(C), (ii)(B), (3), (6)(ii), (8), (11), (12)(ii), (f) introductory text, (g) introductory text, (h) introductory text and (l) amended 45127
62.3912 Undesignated center heading and section added 41873
62.4177 Undesignated center heading and section added 41874
62.4620 (b)(4) added 45732
62.4931—62.4932 Undesignated center heading and sections added 45732
62.6356 Undesignated center heading and section added 41874
62.6912 Undesignated center heading and section added 41874
62.9350 (b)(4) and (c)(4) added 36997
62.9505 Undesignated center heading and section added 36997
63 Authority delegation notices 36460
63.342 (f)(3)(i) introductory text amended 42920
63.343 (b)(1) revised; (c)(1)(ii), (2)(ii), (4)(ii), (5)(ii) introductory text and (6)(ii) introductory text amended 42920
63.347 (e)(4) revised 42921
63.485 (o) introductory text revised 37722
63.502 (a) revised; (j) added 37722
63.1331 (a) introductory text revised; (a)(10) added 37722
68 Interpretation 45134
68.130 Tables 1 and 2 amended 45132
68 Appendix A amended 45132
69.11 (d) added 44416
70 Appendix A amended 37516, 45167, 45734
80.94 Added 45563
81.315 Table amended 45171
81.318 Regulation at 62 FR 28637 withdrawn 40281
81.331 Amended 35972
81.336 Regulation at 62 FR 28638 withdrawn 40281
81.344 Amended 44088
81.345 Amended 38217
81.346 Amended 41283, 41870
81.350 Amended 39448
86 Authority citation revised 44875
86.094–13 (a)(1), (c)(1), (d)(1), (e)(1) and (f)(1) amended 44875
86.094–26 (a)(2), (b)(2)(i) and (ii) amended 44875
86.1710–97 (c)(7) corrected 45289
86 Appendix XVIII corrected 45289
90.103 (a)(3) revised 42643
90.107 (h) added 42643
90.1003 (b)(5) added 42644
91.1103 (b)(4) added 42644
93.100—93.128 (Subpart A) Revised 43801
131.33 Added 41183
148 Notice 43109
180.205 (b) table amended 45754
180.353 Existing text redesignated as (a); new (a) heading and (b) added 45747
180.364 (b) amended 42927
180.380 Revised 38474
180.383 Existing text redesignated as (a); new (a) heading and (b) added 39974
180.407 Revised 44595
180.412 (b) added 44565
180.414 Revised 45741
180.433 Existing text designated as (a); (a) heading and (b) added 36684
180.434 (b) table amended 43291
180.438 Revised 36671
180.443 (b) introductory text revised; (b) table amended 36678
Introductory text revised; table amended 42690
180.449 Revised 44095
180.462 Existing text redesignated as (a); (b) added 44558
180.466 Existing text designated as (a); (a) heading and (b) added 37521
180.472 (b) added 36697
180.482 (a) heading added; (b) introductory text revised; (b) table amended 35689
180.493 (b) revised 39961
180.503 (b) introductory text revised; (b) table amended 39956
180.507 (a) added 36690
180.509 Added 42684
180.510 Added 39967
180.511 Added 40741
180.512 Added 41292
180.513 Added 44571
180.1001 (b)(1) amended 41286
180.1181 Added 41877
180.1182 Added 43657
180.1183 Added 43653

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180.1184 Added 44582
180.1185 Added 44575
180.1186 Added 44579
185.1850 Removed 38474
185.4700 Removed 45754
186.1850 Removed 38474
186.4700 Removed 45754
186.5650 Removed 44595
228.15 (d)(6) revised 46149
258.21 (d) added 40713
258.23 (e) added 40713
258.60 (b)(3) added 40713
268.39 (c) revised 37699
268.40 (g) amended 45572
268.48 (a) table amended 45572
271 State hazardous waste management program authorizations 43111
271.1 (j) Table 1 amended 45572
281 State underground storage tank program authorizations 36698
300 Notice 42414
300 Appendix B amended 35447, 35690, 35974, 36997, 37522, 41292
403 Authority citation revised 38414
403.8 (c) and (f)(6) revised 38414
403.11 (b)(1)(i)(A) and (B) revised 38414
403.12 (i)(4) redesignated as (i)(5); (i)(3) revised; new (i)(4) added 38414
403.18 Revised 38414
721.2815 Removed 35692
721.3020 Removed 35691
721.3040 Removed 35691
721.3060 Correctly removed 40742
721.3764 Revised 42692
721.5225 (a)(2)(v) revised 42692
721.7046 (a)(1) revised 42692
721.7210 (a)(1) revised 42692
721.8350 (a)(2)(iv) added 42692
799.1 (d) added 43824
799.9135—799.9780 (Subpart H) Added 43824

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51 ..... 41138, 44926
52 ..... 35756, 36249, 37007, 37172, 37175, 37526, 37527, 37832, 38949—38951, 39199, 39202, 39795, 40493, 40783, 41002, 41004, 41325, 41326, 41905, 41906, 42079, 42087, 42088, 42221, 43133, 43134, 43139, 43140, 43679, 43681, 43684, 43959, 44104, 44247, 44429, 44928, 44929, 45199
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TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

60–1 Authority citation revised 44188
60–1.3 Amended 44188
60–1.8 Revised 44188
60–1.12 Added 44188
60–1.20 Heading, (a) and (d) revised; (e), (f) and (g) added 44189
60–1.26 Revised 44190
60–1.27 Revised 44191
60–1.30 Revised 44191
60–1.31 Revised 44192
60–1.32 Revised 44192
60–1.34 (a)(4) added 44192
60–1.42 (a) revised 44192
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60–60 Removed 44192

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101–17—101–21 (Subchapter D Appendix) Amended; interim 42070
101–37.100 Amended 43472
101–37.600—101–37.610 (Subpart 101–37.6) Added 43472

Chapter 105—General Services Administration (Parts 105–1—105–999)

105–71.126 (a), (b) introductory text and (1) revised 45939, 45944
105–72.306 (a), (b) and (c) revised 45939, 45944

Chapter 301—Travel Allowances (Parts 301–1—301–99)

301–8.3 (b)(1)(ii) revised; (c) removed; (d) redesignated as (c); (a)(1), (b)(1)(i) and new (c) amended 42928

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TITLE 42—PUBLIC HEALTH

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50.604 Correctly added; CFR correction 56631
50.605 Correctly added; CFR correction 56632
50.606 Correctly added; CFR correction 56632
52 Authority citation revised 55105
52.1 Revised 55105
52.2 Revised 55105
52.3 Revised 55105
52.4 Revised 55105
52.6 (a) amended; (b) through (e) redesignated as (c) through (f); new (b) added; new (c)(2) and new (d) revised 55105
52.8 Revised 55106
52.9 Heading revised 55106
52a Authority citation revised 55108
52a.1 Revised 55108
52a.2 Amended 55108
52a.3 (a) and (b) revised 55109
52a.7 Revised 55109
52a.8 Amended; heading revised 55109
52a.9 Revised 55110
54a Removed 55108
57.101—57.112 (Subpart B) Removed 65478
57.2405 (c) revised 51788
63a Added 55111
65a Added 55114
67 Revised 12908
67.15 (d)(2)(i)(A) corrected 37124
72 Authority citation revised 55197
72.6 Added 55197
72.7 Added 55199
72 Appendix A added 55199
100 Authority citation revised 7687
100.3 (a) table, (b)(2)(i), (6) and (c) revised; (b)(7) through (11) added 7688
(b)(10) corrected 10626

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400.202 Amended 46025
401 Authority citation revised 63748
Technical correction 69034
401.601 (d)(1) and (2)(iii) amended 63748
401.607 (d)(1) amended 63748
403.310 (a) amended 63748
405 Technical correction 69034
405.370—405.376 Undesignated center heading revised 63745
405.370 Redesignated as 405.371; new 405.370 added 63745
405.371 Redesignated as 405.372; new 405.371 redesignated from 405.370 63745
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405.372 Redesignated as 405.373; new 405.372 redesignated from 405.371 63745
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405.373 Redesignated as 405.374; new 405.373 redesignated from 405.372 63745
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405.374 Redesignated as 405.376; new 405.374 redesignated from 405.373 63745
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405.375 Redesignated as 405.377 63745
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405.376 Redesignated as 405.378; new 405.376 redesignated from 405.374 63745
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405.377 Redesignated from 405.375 63745
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405.378 Redesignated from 405.376 63745
405.705 (d) amended 63749
405.708 (a) and (b) amended 25855
405.711 Amended 25855
405.712 Amended 25855
405.714 Amended 25855
405.715 Amended 25855
405.716 Amended 25855
405.717 Revised 25852
405.718 Revised 25852
405.718a Removed 25852
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405.718d Removed 25852
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405.720 Amended 25855
405.722 Amended 25855
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405.730 Revised 25852
405.732 Added 25852
405.747 Amended 25855
405.750 Heading and (b) introductory text revised 25853
(a) amended 25855
405.801 Revised 25853
405.802 Amended 25853
405.803 Revised 25853
405.806 Revised 25853
405.807 (b) amended 25855
405.812 Amended 25855
405.821 (c) amended 25855
405.831 Heading amended 25855
405.832 (a) and (c)(1) amended 25855
405.833 Revised 25853
405.834 Revised 25854
405.835 Revised 25854
405.836 Redesignated from 405.860 and revised 25854
405.841 (b) amended 25855
405.842 (b) amended 25855
405.853 Added 25854
405.855 Added 25854
405.856 Added 25854
405.857 Added 25854
405.860 Redesignated as 405.836; new 405.860 added 25854
405.871 Amended 25855
405.1801 (a)(4) amended **63749**
405.1803 (c) revised **63748**
409.1 (c) amended 46037
409.5 Amended 46037
409.10—409.19 (Subpart B) Heading revised 46037
409.10 (a) introductory text, (3) and (b) amended 46037
409.11 (b)(1)(ii), (iii), (3) introductory text and (ii) amended 46037
409.12 Heading, (a) and (b) amended 46037
409.13 (a) introductory text, (1), (2), (3) and (b) amended 46037
409.14 (a) introductory text, (1), (2), (b) introductory text, (1) and (2) amended 46037
409.15 Introductory text amended 46037
409.16 Introductory text, (a), (b) and (c) amended 46037
409.20 (a) introductory text and (c)(3) amended 46037
409.27 Amended 46037
409.30 (a)(1) revised 46025
Introductory text, (a)(2), (b)(1), (2) and footnote 1 amended 46037
409.31 (b)(2)(i) and (ii) amended 46037
409.60 (a) and (b)(1)(ii) amended 46037
409.61 (a) heading, (1)(i), (2), (3), (b) and (c) amended 46037
409.64 (a)(2)(ii) amended 46037
409.65 (a)(1), (3), (4), (d)(1), (2), (3), (e)(1), (2) introductory text, (i) and (ii) amended 46037
409.66 (b) and (c)(2) amended 46037
409.68 Heading, (a) introductory text, (1) through (4), (b)(2) and (c) amended 46037
409.80 (a)(1) and (2) amended 46037
409.82 (a)(1) and (c) amended 46037
409.83 (a)(1) and (c)(1) amended 46037
409.87 (a)(3) and (b)(1) amended 46037
410 Technical correction 7946
410.2 Amended 46025
410.3 (a)(1) amended 46037
410.10 (c) and (d) amended 46037
410.28 Heading, (a) introductory text, (1), (2) and (4) amended 46037
410.32 (a) and (b) redesignated as (d) and (e); new (a), new (b) and (c) added 59554
(b)(1) amended 46037
410.38 (b) amended 46037
410.40 (a), (b)(3) introductory text, (i), (c)(1), (2), (3), (e)(1), (2) and (3) amended 46037
410.60 (b) and (d) amended 46037
410.62 (b) and (c) amended 46037
410.150 (b)(12) amended 46037
410.152 (k) revised 46025
410.155 (a) and (b) introductory text amended 46025
410.161 (b)(2) amended 46037
411.15 (m)(1) amended 46037
411.28 (b) amended **63749**
412 Technical correction **66919**
412.2 (f)(8) revised 46025
412.8 (b) revised 46025
412.22 (a) revised; (e), (f) and (g) added 46026
412.23 (e) and (f) revised 46026
412.30 (a) through (d) redesignated as (b) through (e); new (b)(4) redesignated as (b)(5); new (a) and new (b)(4) added; new (d)(1)(ii) revised 46027
412.63 Regulation at 61 FR 46224 eff. 10–1–96 ..... **51217**
(p) revised; (q), (r) and (s) redesignated as (u), (v) and (w); new (q) through (t) added 46027
412.80 Revised 46028
412.82 (a) amended 46028
412.84 (a) amended; (g) removed 46028
412.86 Amended 46028
412.90 (i) and (j) redesignated as (j) and (k); new (i) added; new (j) and new (k) revised 46028
412.96 (c)(1) introductory text and (g) revised; (f) removed 46028
412.105 Regulation at 61 FR 46224 eff. 10–1–96 ..... **51217**
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412.106 (a)(2) and (d)(1) revised; (e) added 46029
412.107 Added 46030
412.108 (a)(1) and (c)(2)(ii) revised 46030
412.109 (c) and (d) removed; (e), (f) and (g) redesignated as (c), (d) and (e); (a), new (c)(3)(ii), new (d) and new (e) revised 46030
412.113 (d) revised 43667
412.115 (b) revised 46030
412.204 Revised 46030
412.210 (e) amended 46030
412.230 (a)(5)(ii), (e)(1) introductory text and (iv)(B) revised; (e)(3) and (4) added 46031
412.232 (c)(2) revised 46031
412.234 (b)(2) revised 46031
412.246 Regulation at 61 FR 46224 eff. 10–1–96 ..... **51217**
412.256 (a)(2) and (c)(1) revised 46031
412.274 (b) revised 46031
412.302 Regulation at 61 FR 46224 eff. 10–1–96 ..... **51217**
412.308 (b)(4) and (5) added 46031
412.328 (e)(4) revised; (e)(5) and (6) added 46031
412.348 (c)(2) revised 46032
412.374 Revised 46032
413 Technical correction **66919**
Technical correction 27210
413.1 (a)(1)(ii)(C) through (J) redesignated as (a)(1)(ii)(D) through (K); new (a)(1)(ii)(C) added 31
(a)(1)(ii)(G) revised 46032
(a)(2)(i) amended 46037
413.5 (c)(3) removed **63748**
413.13 (c)(2)(iv) removed 46032
413.20 (e) amended **63749**
413.24 (f)(4)(i) through (iv) redesignated as (f)(4)(ii) through (v); new (f)(4)(i) added; new (f)(4)(ii) through (v) revised 31
413.40 Regulation at 61 FR 46225 eff. 10–1–96 ..... **51217**
(b)(1)(iv), (v), (c)(3)(vii), (viii), (d)(4), (5) and (j) added; (c)(3)(vi), (4), (d)(2), (3), (f)(1), (2), (g)(1) and (5) revised 46032
413.53 (a)(1)(ii) introductory text, (C) and (2) revised; (b) amended **51616**
Corrected **58631**
413.70 Revised 46034
413.86 Regulation at 61 FR 46225 eff. 10–1–96 ..... **51217**
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413.90 (b)(2) revised **63748**
413.114 (c)(1) revised; (c)(2) removed; (c)(3) redesignated as (c)(2) **51616**
(b) amended 46037
413.124 (a) amended 46037
413.130 (j)(1) amended 46037
413.153 (a)(1)(ii) and (b)(2) revised **63748**
(a)(1)(iii) amended **63749**
413.170—413.203 (Subpart H) Added 43667
414.60 (b) amended 46037
414.313 (a) amended 43674
414.314 (a)(5) amended 43674
415 Technical correction 7946
415.152 Amended **59554**
415.174 (a)(4)(iii) amended **59554**
417.479 (b), (f) introductory text, (5), (g)(1)(iv), (2)(ii), (h)(1)(iv), (v) and (2) revised; (g)(2)(iii) removed **69049**

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TITLE 42 Chapter IV—Con.

417.600 (b)(3)(ii) revised 23374
417.604 (b)(4) revised 23374
417.606 (a)(4) added 23374
417.608 (a), (b)(2) and (c) revised 23375
417.609 Added 23375
417.612 (a) amended 25855
417.614 Revised 23375
417.616 (a)(4) added 23375
417.617 Added 23375
417.618 Revised 23375
417.620 (c), (d) and (e) revised 23376
417.626 Amended 25855
417.632 (b) amended 25855
417.634 Revised 25855
418.306 (c) revised 42882
424.1 (a)(1) amended 46035
424.15 Heading and (a) revised 46035
(a) and (b) amended 46037
424.20 Introductory text amended 46037
431.108 Added 43935
431.151 (a)(3) added 43935
431.153 (b)(5) added 43935
431.407 (a)(2) and (b) revised; (d) added **58143**
431.610 (e)(1) and (2) amended; (e)(3) added 43936
433.139 (b)(3) added 23140
434.44 (a)(1) revised **69050**
434.70 (a)(3) revised **69050**
435.1003 Heading revised; (c) added 1685
440.40 Heading revised; (c) added **59188**
440.170 (g) heading, (1) and (2) amended 46037
442 Heading revised 43936
442.13 Revised 43936
447.31 (a) amended **63749**
473.38 Heading and (a) amended 25855
473.46 (a) revised 25855
473.48 (a)(1), (2) and (b) amended 25855
485.601—485.645 (Subpart F) Heading revised 46035
485.601 (a) and (b) amended 46037
485.602 Amended 46037
485.603 (a)(1) and (2) revised; (c) added 46035
485.604 Introductory text amended 46037
485.606 Revised 46036
485.608 Introductory text, (a), (c) and (d) amended 46037
485.610 Revised 46036
485.612 Revised 46036
485.614 Removed 46036
485.616 Revised 46036
485.618 Introductory text, (b) introductory text and (e) amended 46037
485.620 Revised 46036
485.623 (d)(1) and (2) amended 46036
(a), (b) introductory text, (c) introductory text, (4) and (d)(1) through (4) amended 46037
485.627 (a), (b) introductory text, (1) and (2) amended 46037
485.631 (a)(1), (3), (4), (5), (b)(1)(i), (ii), (iii), (2), (c)(1) introductory text, (i), (2)(i), (ii) and (3) amended 46037
485.635 (a)(1), (2), (3)(i), (iii), (vii), (4), (b)(1), (2) introductory text, (3), (4), (c)(1) introductory text, (iii), (iv), (2), (3), (4) introductory text, (i), (ii), (d)(1) and (2) amended 46037
485.638 (a)(1), (4), (b)(1) and (2) amended 46037
485.639 Introductory text, (a) introductory text, (b) and (c) introductory text amended 46037
485.641 (a)(1) introductory text, (i), (iii), (b) introductory text, (3), (4), (5)(i), (ii) and (iii) amended 46037
485.645 Heading, introductory text and (a) revised; (b) introductory text amended 46036
(c) introductory text amended 46037
488.1 Amended 46037
488.6 (a) amended 46037
488.10 (d) amended 46037
488.11 Revised 43936
488.18 (d) amended 46037
488.24 (b) amended 46037
488.53 (a)(10) and (b) introductory text amended 46037
488.436 (a) amended 44221
489 Technical correction **66919**
489.1 (d) added 43936
489.2 (b)(7) amended 46037
489.11 (c)(1) and (2) amended 43937
489.13 Revised 43936
489.20 (d) and (e) amended 46037
489.27 Regulation at 61 FR 46225 eff. 10–1–96 ..... **51217**

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Amended 46037
489.53 (b) heading, (c)(1) and (2) revised 43937
(a)(14) removed 46037
489.102 (a) amended 46037
493 Authority citation revised 25858
493.1202 Heading amended 25858
493.1203 Heading amended 25858
493.1443 (b)(3)(ii) introductory text and (C) amended 25858
493.1834 (i)(1)(ii) amended **63749**
498.2 Amended 46037
498.3 (a) and (d) introductory text revised; (b)(14), (d)(14) and (15) added 43937

Chapter V—Office of Inspector General–Health Care, Department of Health and Human Services (Parts 1000—1999)

1003.103 (c) revised **52301**
1004.20 Revised 23143
1004.80 (b)(8), (c)(4) and (5) revised; (c)(6) removed 23143
1004.100 (b), (d)(6) and (7) revised; (d)(8) removed 23143
1004.110 (d)(1)(i) and (2) revised 23143
1008 Added; interim 7357

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424 32715
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TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

10.1 (b)(3) amended 41293
10.2 (a)(5) and (f) heading revised; (d) introductory text, (1) and (2) introductory text amended 41293
10.4 (d)(2) amended 41293
10.5 (e)(9) revised; (f) amended 41293
10.6 (a) introductory text, (2)(i), (iii) introductory text and (A) amended 41293
10.8 (d)(1)(A), (B) and (C) redesignated as (d)(1)(i), (ii) and (iii); (d)(3) amended; (d)(4)(iii) revised 41293
10.9 (b)(4)(iii) and (e)(1) amended 41293
10.10 (a)(1)(i), (3) and (b)(1)(i) revised 41294
10.12 Added; interim 1821
10.15 Heading, (a)(1) and (2) amended 41294
12 Authority citation revised **68667**
Authority citation revised 45944
12.2 (a) and (b) revised 45944
12.11—12.31 (Subpart B) Removed 45945
12.66 (a), (b) introductory text and (1) revised 45939, 45945
12.700 Revised **68667**
12.705 Amended **68668**
12.710 (a), (b) and (c) revised **68668**
12.926 (a), (b) and (c) revised 45939, 45945

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426 Revised; eff. 1–1–98 ..... **66805**
426.10 (e) amended; (g) removed; (n) through (q) added **66826**
427 Added; eff. 1–1–98 ..... **66825**

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

3400 Authority citation revised 44369
3400.0–5 Introductory text and (rr)(6) revised 44369
3470 Authority citation revised 44369
3472.1–2 (e)(1)(i), (6)(ii)(D) and (E) revised 44369
3480 Authority citation revised 44370
3481.4 Added 44370

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3481.4–1 Added 44370
3481.4–2 Added 44370
3481.4–3 Added 44370
3481.4–4 Added 44370
3483.3 Heading, (a) introductory text and (1) revised 44370
3487.1 (g) and (h) redesignated as (h) and (i); (f)(6) and new (g) added; (e)(6), (f) introductory text, (2) and new (h)(4) revised 44370
3800 Authority citation revised 9099
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3809.0–1—3809.6 (Subpart 3809) Authority citation removed 9099
3809.0–9 Added 9099
3809.1–8 Removed 9100
3809.1–9 Revised 9100
3809.3–1 (b) revised 9102
3809.3–2 (e) revised; (f) added 9103
4180.2 (f) introductory text revised 59835
4750.4–2 Revised 5339
5470 Authority citation revised 53861
5475.0–3—5475.7 (Subpart 5475) Removed 53861

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TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

13.26 (a), (b) introductory text and (1) revised 45939, 45945
61 Appendix A(1) amended 8397
Appendix A(2) amended 8398
Appendix A(3) amended 8399
62.23 Revised; eff. 10–31–96 51219
62 Appendix B revised; eff. 10–31–96 51221
Appendix A revised 39910
64.6 Table amended 51227, 51229, 54564, 57573, 59339
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65.4 Table amended; interim 54566, 60038, 66926
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65.5 Heading and (d) revised 5736
65.6 (g) revised 5736
65.8 Revised 5736
65.9 Heading and (h) revised 5736
67.11 Flood elevation determinations 54574, 60041, 66927
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70 Authority citation revised 5736
70.9 Revised 5736
72 Authority citation revised 5736
72.1 Revised 5736
72.2 Revised 5737
72.3 Revised 5737
72.4 Revised 5737
72.5 Revised 5738
72.6 Revised 5738
72.7 Revised 5738
78 Added; interim 13347
206 Authority citation revised 45330
206.227 Revised 45330

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TITLE 45—PUBLIC WELFARE

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6 Removed.....**54744**
8 Removed.....**54744**
16.3 (c) amended.....38218
16 Appendix A amended.....38218
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74 Authority citation revised.....41878
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74.26 (a) and (c) amended.....41878
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74.44 (e) introductory text revised; (e)(3), (4) and (5) amended.....41878
74.46 Amended.....41878
74.48 (a) and (d) amended.....41878
74.62 (b) amended.....38218
74.90 (b) amended.....38218
74 Appendix A amended; Appendix I removed.....41878
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75 Removed.....38218
79 Authority citation revised.....**52301**
79.3 (a)(1) and (b)(1) revised.....**52301**
92.26 (a), (b) introductory text and (1) revised.....45939, 45945
95.513 Removed.....38218
95.519 (b)(1) designation and (2) removed; new (b) amended.....38218
96 Authority citation revised.....45963
96.31 Revised; interim.....45963
144—146 (Subchapter B) Added; interim.....16955
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146.111 (a)(1) correctly designated as (a)(1)(i).....31670
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146.121 (a)(1)(ii) and (vi) corrected.....31694
146.125 (c), (d), (e)(3)(i) and (iv) corrected.....31694
146.145 (b)(4)(i) corrected.....31670
146.150 (a)(2) and (d)(5) corrected.....31694
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146.152 (b)(1) corrected.....31670
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146.160 OMB number.....35906
146.180 (a) introductory text, (2), (c)(4) and (i)(2) corrected.....31694
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148 Added; interim.....16995
148.102 (a)(1) and (2) heading correctly added; (b) correctly revised.....31695
148.120 OMB number pending.....16996
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148.120 OMB number.....35906
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148.124 OMB number pending.....16998
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Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

205 Authority citation revised.....**58143**
205.50 (a)(4) introductory text and (i) revised; (a)(4)(iv) and (b) added.....**58143**

Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

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302.15 (b) removed; (a) introductory text, (1) introductory text, (i) through (vii) and (2) redesignated as introductory text, (a) introductory text, (1) through (7) and (b).....**67240**
302.33 (c)(1) and (e) removed; (c)(2) and (3) redesignated as (c)(1) and (2).....**67240**
302.34 (a) amended; (b) removed.....**67240**
302.36 (a) introductory text amended; (a)(1) through (5) removed.....**67240**
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602.26 (a), (b) introductory text and (1) revised.....45939, 45946
672 Authority citation revised.....**59027**
672.24 Added.....**59027**
675 Added.....31522
680 Authority citation revised.....**59837**
Heading revised; interim.....**59837**
680.10—680.13 (Subpart A) Revised; interim.....**59837**
680.20 Removed; new 680.20 redesignated from 680.21; interim.....**59839**
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681 Removed; interim.....**59839**
682 Removed; interim.....**59839**
683 Removed; interim.....**59839**
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Chapter XI—National Foundation on the Arts and the Humanities (Parts 1100—1199)

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Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1301 Authority citation revised **57225**
1301.31 Revised; eff. 1–1–98 ..... **57225**
1303.14 (b)(4) revised; eff. 1–1–98 ..... **57226**
1304 Revised; eff. 1–1–98 ..... **57210**
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1305.3 Heading, (b) introductory text, (c) introductory text, (d) and (f)(1) revised; eff. 1–1–98 ..... **57226**
1306 Authority citation revised **57226**
1306.1 Revised; eff. 1–1–98 ..... **57226**
1306.20 (a) through (e) redesignated as (b) through (f); new (a) added; eff. 1–1–98 ..... **57226**
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1306.33 (c)(3) revised; eff. 1–1–98 ..... **57227**
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1355—1357 (Subchapter G) Heading revised **58653**
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1355.21 (c) revised **58654**
1355.25 Added **58654**
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1602.5 (a) revised 45755
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1609 Revised 19399
1610 Revised **63752**
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1611 Appendix A revised 12752
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1617 Revised **63755**
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1627 Heading revised 19418
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190.01–3 (a) corrected **52497**
197.510 (a) corrected **52497**
199.10 (i)(1)(i), (ii) and (iii) stayed; interim 7361
199.190 (g)(3) introductory text and (i) revised 25557

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221.61 Revised **56901**
295 Added **53862**
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349 Added 5159

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501.3 (l) revised **51231**
501.4 (c) revised **51231**
(e) revised; (h) removed **66617**
501.5 (i) introductory text and (6) introductory text revised **51231**
(e) and (h) amended; (g) revised **66616**

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501.26 (a), (d) and (p) removed; (l) introductory text and (m) amended **66617**
501.28 (b) revised **51231**
501.41 (a) amended; (d) revised **51231**
501 Appendix A amended **51231**
502 Authority citation revised **51233**
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502.27 (a)(2) amended 6132
502.41 Amended **66617**
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502.74 (b) amended **66617**
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502.118 (b)(5) amended **66617**
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502.221 (c) amended **51233**
502.227 (a)(6) amended **66617**
502.271 (b) removed **66617**
502.604 (g) amended **51233**
502.601—502.605 (Subpart W) Appendix A amended **51233**
504.4 (a)(5), (9) and (22) amended; (a)(8), (17) and (21) removed **66617**
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510 Authority citation revised 6132
510.12 (a)(2) amended 6132
514.1 (d)(1) amended; (d)(2) revised **66617**
514.2 Amended **66617**
514.3 (a)(1), (8)(ii) and (e) amended; (a)(3), (5), (6) and (10) removed; (a)(7) introductory text, (b)(3) and (5) revised **66618**
514.7 (m)(3) revised **51233**
514.9 (b)(1)(i)(B), (9)(i)(B) and (24)(ii)(B) removed; (b)(7) revised; (b)(1)(i)(A) and (9)(i)(A) redesignated as (1)(i) and (9)(i) **66618**
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560 Removed **66618**
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2.917 (d) removed 10470
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2.925 (b)(4), (d) introductory text and (f) revised; (g) removed 10470
2.926 (e) amended 10471
2.927 (a) and (b) revised; (d) removed 10471
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2.983 (h) removed; (i) amended 10473
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2.1005 (a), (c) introductory text, (4) and (d) revised 10473
2.1033 (b)(10) removed; (b)(11) amended 10473
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2.1093 (c) revised 4655
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15.101 (a) table revised 41881
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15.205 (a) table amended 4655
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15.255 (a) and (b) revised 45333
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36.601 (a) and (c) revised 32947
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36.611 Revised 32947
36.612 (a) introductory text revised 32947
36.613 (a) introductory text amended 32948
36.621 (a)(4) revised 32948
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36.622 (c) revised; (d) added 32948
36.701 (c) added 32948
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42.10—42.11 Undesignated center heading added **59366**
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42.11 Added **59366**
43 Authority citation revised 39778
43.01 (b) revised; (c) added 39778
43.21 (d) revised 5165
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43.22 Removed 39779
43.41 Removed 5165
43.43 (a) revised 39779

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43.51 (a)(2) amended; (a)(3) removed; (a)(4) and (d) redesignated as (a)(3) and (e); new (d) added **59200**
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51.505 Stayed 662
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51.507 Stayed 662
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51.509 Stayed 662
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52.31 (a) revised 18295
52.101—52.109 (Subpart D) Added 20127
52 Appendix revised 18295
53 Added 2967
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53.203 OMB number pending 2968
53.209 Added (OMB number pending) 2926
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53.213 Added (OMB number pending) 2927
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54 Added 32948
54.5 Amended 41303
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54.500 (b) through (h) redesignated as (c) through (i); new (b) added 40748
54.504 (b)(1) and (3) amended; (b)(2)(vii) revised 41304
54.505 (b)(3) introductory text and (c) introductory text revised 41304
54.507 (f) redesignated as (g); new (f) added 40748
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54.509 (a) amended; (b) and (c) revised 41304
54.516 (b) revised 41304
54.603 (b)(2), (4) and (5) revised; (b)(3) amended 41304
54.609 (b) amended 41305
54.701 Amended 41305
54.709 Added 41305
54.711 Added 41305
54.713 Added 41306
54.715 Added 41306
59 Added (OMB number pending) 9713
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(s) revised 5777
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61.20 Redesignated as 61.21; new 61.20 added **59366**
61.21 Redesignated as 61.22; new 61.21 redesignated from 61.20 ..... **59366**
61.22 Redesignated as 61.23; new 61.22 redesignated from 61.21 ..... **59366**
61.23 Redesignated as 61.24; new 61.23 redesignated from 61.22 ..... **59366**
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61.42 (d)(1), (2), (3), (e)(1) and (2)(vi) revised; (d)(6) added (OMB number pending) 31930
61.45 (c) introductory text redesignated as (c)(1) introductory text; (b) introductory text, (1) and new (c)(1) introductory text revised; (c)(2), (d)(1)(ix) and (l) through (l) added (OMB number pending) 31930
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61.46 (d) introductory text and (e) redesignated as (d)(1) and (e)(1); new (d)(1) and new (e)(1) revised; (d)(2), (e)(2), (g) and (h) added; eff. 1–1–98 31931
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63.11 (b) revised 32964
63.18 (e)(3)(i)(B) revised 32965
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63.21 (a) revised; eff. 1–1–98 45762
63.52 (b) amended **59201**
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63.100 (b), (c), (d), (e) introductory text, (2) and (h)(2) amended 39452
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64.703 (b)(2) amended; (b)(3) redesignated as (b)(4); new (b)(3) added **52323**
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64.804 (g) introductory text amended 5166
64.903 (a) introductory text and (b) revised 39779
64.904 (a) revised 39779
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64.1001 (Subpart J) Heading revised 5541
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64.1002 Added 5541
64.1100 (a) revised; eff. 1–12–98 43481
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64.1300—64.1340 (Subpart M) Heading revised **54345**
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64.1509 (b)(2) amended **55582**
64.1601 (a), (b), (d) introductory text, (1), (2) and (3) revised; (d)(4) added 34015
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65.830 (a)(3) and (c) revised 15118
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68.110 (c) added 36464
68.112 (b)(3)(ii), (iii), (iv), (5)(ii) and (6)(i) revised 43484
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68.215 Heading revised 36465
68.300 Second (c) correctly designated as (d) **54953**
68.308 (h)(3) heading revised; (h)(4) added 9989
68.500 Introductory text amended 36465
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69.104 (a) revised; (d) redesignated as (d)(1); (d)(2) added **65364**
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69.111 (b) and (f) removed; (a), (c), (d), (e) and (g) revised; (l) added (OMB number pending) 31933
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69.203 (f) revised; (g)(1) amended 32962
69.303 (a) and (b) designation removed 31938
69.304 (c) removed 31938
69.305 (b) and (d) revised; (e) added; eff. 1–1–98 31938
69.306 (c), (d) and (e) revised; eff. 1–1–98 31938
69.307 (c) removed 31939
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69.603 (c), (d) and (e) revised; (f) removed; (g), (h) and (i) redesignated as (f), (g) and (h) 41306
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69.614 Added 41307
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74.15 (d) introductory text and (f) revised 5347
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74.703 (a), (b) and (c) revised 26721
74.705 Heading, (b)(4) and (5) revised; (e) added 26721
74.706 Added 26721
74.707 (b)(3) revised; (d)(5) and (6) removed; (d)(7) redesignated as (d)(5); (e) added 26722
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101.7 (b)(3) and (5) removed; (b)(4) and (6) redesignated as (b)(3) and (4); new (b)(3) amended **55581**
101.11 (a) revised 23164
101.13 (c) amended 24581
101.15 (a) revised 23164
101.19 (a)(5) revised 23164
101.21 Introductory text revised; (g) added 23164
101.29 (a) revised 23164
101.35 (e) added 23164
101.37 (a)(1), (3) and (5) revised; (e) added 23164
101.45 (b) introductory text revised 23164
(h) added 24582
101.47 (f) introductory text revised 23164
101.49 Removed 24582
101.57 (a) revised 23164
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(b)(1), (c)(1)(i) and (2)(i) revised; (c)(2)(ii) removed; (c)(2)(iii) redesignated as (c)(2)(ii) 24582
101.61 (b) introductory text, (3) and (d) revised; (c)(9) and (10) added 23165
101.63 (a) revised 23165
101.69 Revised 12758
101.71 Revised 12758
101.73 (a) revised 12758
101.77 Heading and (a) revised 12758
(a)(1) revised; eff. 10–17–97 18936
101.79 Heading and (a) revised 12758
101.81 Heading and introductory text revised 12759
101.101 Table amended 23165, 24582
101.103 (b) revised; (g) and (h) added 23165
101.107 (a) table amended 23167
101.109 (c) table amended 23167, 24582
101.111 (a)(4) introductory text revised 24582
101.113 (a) table amended 23167, 24582
101.115 (c) revised 4924
(c) table amended 24582
101.141 (a) introductory text revised 24583
101.147 (b)(1) and (2) amended; eff. 10–17–97 18936
(a) amended; (x) removed; (t) through (w) redesignated as (u) through (x); new (t) added; new (u) revised 23168

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(a), (r)(9) table and (10) amended; (r) heading and (9) introductory text revised 24583
101.305 (a), (b) and (c) revised 23168
101.311 Revised 23168
101.501 Revised 24583
101.505 Revised 24583
101.507 Revised 24583
101.509 (c) introductory text revised 24583
101.601 Revised; eff. 10–17–97 18936
101.803 (a) and (d) amended; (e) removed; (f), (g) and (h) redesignated as (e), (f) and (g) 23168
101.1001—101.1017 (Subpart L) Added 23168
101.1101—101.1112 (Subpart M) Added 23172
101.1112 (d)(11) added 28375

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80 37533
87 ..... **60673**
90 ..... **51879, 54980, 59852, 68698**
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95 7431
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TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular No. 90–43 ..... **67410**
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Federal Acquisition Circular 97–1 44802

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1.102–4 (e) amended; eff. 10–21–97 44804
1.105–3 Amended 40236
1.106 Table amended (OMB numbers); interim **67410, 69287**
Table amended (OMB numbers) **67430**
Table amended (OMB numbers) 227, 235, 271
Regulation at 61 FR 67410 confirmed 44805
Table amended (OMB numbers); eff. 10–21–97 ..... 44806, 44810
Regulation at 61 FR 69287 confirmed 44809
1.107 Added; eff. 10–21–97 44813
1.201–2 (b)(2) removed; (b)(3), (4) and (5) redesignated as (b)(2), (3) and (4) 40236
1.403 Amended **67411**
1.404 Introductory text amended **67411**
1.405 (d) and (e) revised **67411**
2.101 Amended **69288**
Amended 256
3.104 Revised 227
3.104–1 Revised 227
3.104–2 Revised 227
3.104–3 Revised 227
Corrected 10709
3.104–4 Revised 228
3.104–5 Revised 229
3.104–6 Revised 230
3.104–7 Revised 230
3.104–8 Revised 231
3.104–9 Revised 231
3.104–10 Revised 231
3.104–11 Revised 231
3.104–12 Removed 227
3.202 Regulation at 61 FR 39200 confirmed 12690
3.502–2 (i)(1) revised 235
3.700 (a) revised 232
3.701 Revised 232
3.703 Existing text designated as (a); (b) added 232
3.704 (b) amended; (c) added 232
3.705 (c)(3) amended; (d)(3) revised 232
4.102 (d) amended 235
4.602 (d) revised; interim **67412**
(b) amended 40236
4.603 Revised; interim **67412**
4.702 (a)(3) removed 258
4.802 (e) revised 232
4.803 (a)(11) amended **67430**
(a)(42) removed; (a)(43) redesignated as (a)(42) 232
5.101 (a)(2)(iv) amended 12692
5.201 (d) amended 40236
5.202 Regulation at 59 FR 545 confirmed 261
5.203 (a) revised; (h) added 263
(a) corrected 10710
5.204 Amended 271
5.207 (e)(3) revised 263
(a)(2) amended 40236
5.303 (b)(2) amended **69289**
6.001 (a) revised 263
(d) and (e)(2) corrected 10710
6.302–3 (b)(1)(vi) and (vii) amended; (b)(1)(viii) removed 235
6.305 (1) amended 257
7.102 Regulation at 60 FR 28495 confirmed 44810
7.103 (m) amended 40236
Regulation at 60 FR 28495 confirmed 44810
(q) added; eff. 10–21–97 44814
7.105 (b)(13)(ii) and (iii) amended 40236
Regulation at 60 FR 28495 confirmed 44810
Introductory text amended, (a)(1), (4) and (b)(6) revised; (b)(18), (19) and (20) redesignated as (b)(19), (20) and (21); new (b)(18) added; eff. 10–21–97 44814
7.307 (b) amended 40236
7.403 (b)(2) revised 40236
7.503 (d)(11) amended 40236
8.002 (a) removed; (b) through (f) redesignated as (a) through (e); new (a) and new (d) revised 235
8.201—8.203–3 (Subpart 8.2) Removed 235
8.401 Revised; eff. 10–21–97 44817
8.402 Added; eff. 10–21–97 44818
8.404 (a), (b) and (c) heading revised; eff. 10–21–97 44818
8.501 Amended 40236
8.502 Introductory text, (b)(1)(i) and (ii) amended 40236
8.504 (a) and (b) amended 40236
8.901 (b) amended 40236
9.103 (b) amended; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
(b) revised; interim 44819

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9.104–1 (a), (c), (e) and (f) amended; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
9.104–3 (a) removed; (b) through (e) redesignated as (a) through (d); interim **67410**
Regulation at 61 FR 67410 confirmed 44805
(a) amended; (d) existing text redesignated as (d)(1); (d)(2) added; interim 44820
9.105–3 (c) amended 232
9.106–3 (a) designation and (b) removed 232
9.404 (d)(1)(ii) amended 40236
9.406–2 (b)(1)(ii) revised **69291**
Regulation at 61 FR 41473 confirmed 267
9.406–4 Regulation at 61 FR 41473 confirmed 267
9.407–2 (a)(4) revised **69291**
9.505 (b)(1) and (2) amended 232
9.505–3 Revised 12694
9.505–4 (c) amended 235
9.506 (a) and (d)(3) amended; (d)(4) removed 235
9.507–1 (b), (c) and (d) removed; (a) introductory text and (1) through (4) redesignated as introductory text and (a), new (b), new (c) and new (d) 235
Corrected 10710
9.702 (d) removed; (e) and (f) redesignated as (d) and (e); interim **67410**
Regulation at 61 FR 67410 confirmed 44805
10.001 Regulation at 60 FR 28495 confirmed 44810
10.002 Regulation at 60 FR 28495 confirmed 44810
10.004 Regulation at 60 FR 28495 confirmed 44810
10.010 Regulation at 60 FR 28495 confirmed 44810
10.011 Regulation at 60 FR 28496 confirmed 44810
11.001 Revised; eff. 10–21–97 44810
11.002 (a)(1)(ii) revised; (e) added 263
(d) amended; eff. 10–21–97 44810
11.004 Regulation at 60 FR 28496 confirmed 44810
11.101 (b) revised; eff. 10–21–97 44810
11.104 (a) revised 263
(a) and (b) corrected 10710
11.201 (d) amended 40236
11.301—11.302 (Subpart 11.3) Added; eff. 10–21–97 44810
11.701 (c) introductory text amended 40236
12.202 (b) revised 264
12.203 Amended 264
12.204 Revised 264
12.205 (c) revised 264
12.209 Revised 258
12.213 Revised 264
12.214 Added **67418**
Amended 40236
12.301 (b)(1), (3), (c)(1), (d) and (e)(1) amended **67430**
12.302 (a) revised 264
12.503 (c)(3) revised **67418**
(b)(4) removed; (b)(5) and (6) redesignated as (b)(4) and (5) 232
(b)(1) and (4) revised 236
(b)(4) corrected 10710
12.504 (c)(3) revised **67418**
(b)(3) removed; (b)(4) redesignated as (b)(3) 232
(a)(16) removed 236
12.602 (a) revised 264
12.603 (c)(3)(ii) revised 264
13.000 Revised 264
13.103 (b), (c) and (j) revised 264
13.104 (b) revised 265
13.106–2 (c)(3) amended **69289**
(a)(1), (2), (3), (4) introductory text, (5), (6), (b)(1), (3), (c)(1), (2), (d)(3) and (4)(ii) revised; (a)(6), (7) and (8) redesignated as (a)(7), (8) and (9); new (a)(6) and (10) added 265
(a)(3), (5) and (b)(1) corrected 10710
13.107 (a) revised 266
13.111 (g) removed; (h) and (i) redesignation (g) and (h) **69292**
(h) revised; eff. 10–21–97 44810
13.202 (b)(2) revised 266
(a)(4) added; (c)(3) revised; eff. 10–21–97 44818
13.204 (a) and (b) revised 266
13.601—13.602 (Subpart 13.6) Added 266
13.602 (a) introductory text corrected 12720
14.201–6 Regulation at 59 FR 545 confirmed 261

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14.202–1 (a) amended 272
14.205–1 (d)(2) amended; interim 67410
Regulation at 61 FR 67410 confirmed 44805
14.209 (b) revised 12692
14.211 (a) amended 272
14.304–1 (a)(2) and (c) revised 69293
(a)(4) revised 12693
14.404–2 (m) removed 232
14.405 (f) amended 236
14.408–1 Regulation at 59 FR 545 confirmed 261
14.503–1 (g) amended 69289
15.106 Revised 258
15.106–1 Removed 258
15.106–2 Removed 258
15.407 Regulation at 59 FR 545 confirmed 261
15.410 (b) amended 12693
15.412 (d) amended 69289
(c)(2) revised 69293
15.413 Revised 233
15.413–2 (f)(6) removed 233
15.509 (f)(4) revised; (h)(3) removed 233
(h)(1) and (2) corrected 10710
15.601 Regulation at 60 FR 28496 confirmed; amended; eff. 10–21–97 44810
15.605 Regulation at 60 FR 28496 confirmed; (b)(1)(iv) revised; eff. 10–21–97 44810
15.609 (c) amended 69289
15.612 (f) revised 69289
15.802 (a) introductory text and (1) amended 258
15.804–1 (b)(2), (c) and (d) removed; (b)(3) through (6) redesignated as (b)(2) through (5); (a), new (b)(3) and new (5) revised 258
15.804–2 (a)(1) introductory text and (ii) amended; (a)(2) revised 258
15.804–5 Revised 258
15.804–6 (a)(5) amended 259
Table 15–2 amended 40236
15.805–5 (j) revised; (k) removed 233
15.812–1 (b) revised; (c) amended 259
15.812–2 (a)(3) and (5) revised; (a)(6) added 259
15.1001—15.1008 (Subpart 15.10) Revised 69289
15.1001 Regulation at 59 FR 545 confirmed 261
15.1006 (e) introductory text amended 257
16.104 (k) added; eff. 10–21–97 44814
16.203–4 (a)(1)(ii) and (b)(1)(ii) revised 259
16.204 Amended 12695
16.304 Amended 12695
16.305 Amended 12695
16.306 (d)(2) amended 236
16.307 (a) redesignated as (a)(1); (a)(2) added 67419
16.401 (c) amended; (d) added 12695
16.402–1 (b) amended 12696
16.402–2 (b) through (g) redesignated as (c) through (h); new (b) added; heading, (a) and new (e) revised; eff.10–21–97 44815
16.404 Redesignated as 16.405; new 16.404 added 12696
16.404–1 Redesignated as 16.405–1 12696
16.404–2 Redesignated as 16.405–2 12696
16.405 Redesignated as 16.406; new 16.405 redesignated from 16.404 12696
16.405–1 Redesignated from 16.404–1 12696
(b)(1) introductory text; (b)(2) amended; eff. 10–21–97 44815
16.405–2 Redesignated from 16.404–2 12696
16.406 Redesignated from 16.405; (e) introductory text revised 12696
17.203 Regulation at 59 FR 545 confirmed 261
19.001 Amended; interim 67410
(b) amended 236
Regulation at 61 FR 67410 confirmed 44805
Amended; interim 44820
Amended; eff. 10–21–97 44822
19.102 (f)(1) amended; interim 67410
Regulation at 61 FR 67410 confirmed 44805
19.201 (c) introductory text amended; interim 44820
19.301 (a) amended 236
19.302 (d)(1) amended 69289
(c)(1), (d) introductory text, (g)(2), (i)(1), (2), (3) and (j) amended; interim 44820

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19.303 (c)(2) introductory text revised; (c)(2)(vi) and (3) amended 236
(c)(2)(iv) corrected 10710
19.501 (h)(1) and (2) amended 69289
(h) removed 236
19.502–1 Introductory text amended 67430
19.508 (c) and (d) amended 67430
(f) removed 236
(e) revised; interim 44820
19.601—19.602–4 (Subpart 19.6) Heading revised; interim 67410
Regulation at 61 FR 67410 confirmed 44805
Heading revised; interim 44820
19.601 (c) removed; (d) redesignated as (c); interim 67410
Regulation at 61 FR 67410 confirmed 44805
(a) revised; (c) redesignated as (e); new (c) and (d) added; interim 44820
19.602–1 (a) introductory text, (2), (c) introductory text and (2) revised; (e) added; interim 44820
19.602–2 Revised; interim 44820
19.602–3 Revised; interim 44821
19.702 Regulation at 61 FR 2638 confirmed; (d) amended 67420
(d) amended 40236
19.703 (a)(2) amended 236
19.801 Removed; interim 67421
Regulation at 61 FR 67421 confirmed 44823
19.803 (a)(3) amended; interim 67410
Regulation at 61 FR 67410 confirmed 44805
19.804–2 (b) revised; (c) added; interim 67421
Regulation at 61 FR 67421 confirmed; (b)(2) and (c) revised; interim; eff. 10–21–97 44823
19.804–3 (c) removed; interim 67421
Regulation at 61 FR 67421 confirmed 44823
19.805–1 (c) redesignated as (d); new (c) added; new (d) amended; interim 67421
Regulation at 61 FR 67421 confirmed 44823
19.805–2 (c) introductory text revised; interim 67421
Regulation at 61 FR 67421 confirmed 44823
19.808–1 (b) revised; interim 67421
Regulation at 61 FR 67421 confirmed 44823
19.809 Amended; interim 67421
Regulation at 61 FR 67421 confirmed 44823
19.811–1 (b)(5) removed; interim 67421
(d) removed 233
Regulation at 61 FR 67421 confirmed 44823
19.811–2 (b) removed; (c) redesignated as (b) 233
19.811–3 (a), (b) and (d)(1) revised; (d)(2) removed; (d)(3) redesignated as (d)(2); new (d)(2) amended; interim 67421
Regulation at 61 FR 67421 confirmed 44823
19.1001 Amended 67422
19.1006 (b)(1) amended 67422
22.601 Removed; interim 67410
Regulation at 61 FR 67410 confirmed 44805
22.602 Revised; interim 67410
Regulation at 61 FR 67410 confirmed 44805
22.604–2 (b) removed; (c) redesignated as (b); interim 67410
Regulation at 61 FR 67410 confirmed 44805
22.606 Removed; interim 67410
Regulation at 61 FR 67410 confirmed 44805
22.606–1 Removed; interim 67410
Regulation at 61 FR 67410 confirmed 44805
22.606–2 Removed; interim 67410
Regulation at 61 FR 67410 confirmed 44805
22.607 Removed; interim 67410
Regulation at 61 FR 67410 confirmed 44805
22.608 Revised; interim 67411
Regulation at 61 FR 67411 confirmed 44805
22.608–1 Removed; interim 67411
Regulation at 61 FR 67411 confirmed 44805
22.608–2 Removed; interim 67411
Regulation at 61 FR 67411 confirmed 44805
22.608–3 Removed; interim 67411
Regulation at 61 FR 67411 confirmed 44805
22.608–4 Removed; interim 67411

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Regulation at 61 FR 67411 confirmed 44805
22.608–5 Removed; interim 67411
Regulation at 61 FR 67411 confirmed 44805
22.608–6 Removed; interim 67411
Regulation at 61 FR 67411 confirmed 44805
22.610 Revised; interim 67411
Regulation at 61 FR 67411 confirmed 44805
22.1200—22.1208 (Subpart 22.12) Added; interim 44824
23.102 (d) amended 236
23.201 Regulation at 60 FR 28496 confirmed 44810
23.203 Regulation at 60 FR 28496 confirmed 44811
23.302 (d)(1) revised 236
23.400—23.405 (Subpart 23.4) Regulation at 60 FR 28496 confirmed 44810
23.400 Revised; eff. 10–21–97 44811
23.401 (c) amended; eff. 10–21–97 44811
Amended 44828
23.402 Amended; eff. 10–21–97 44811
23.404 Revised; eff. 10–21–97 44811
23.405 Revised; eff. 10–21–97 44811
23.504 (a) introductory text, (3) and (b) revised; (c) removed; (d) redesignated as (c); (a)(4)(ii), (5), (6) and new (c) amended 69292
23.505 (a)(2) amended; (b) removed; (c) redesignated as (b); heading, (a) introductory text and new (b) introductory text revised 69292
23.506 (d) revised 69292
23.601 (c) revised 236
23.701—23.706 (Subpart 23.7) Regulation at 60 FR 28497 confirmed 44810
23.703 Amended; eff. 10–21–97 44811
23.704 Revised; eff. 10–21–97 44811
23.1001—23.1005 (Subpart 23.10) Added; interim 12697
24.202 Redesignated as 24.203; new 24.202 added 257
24.203 Redesignated from 24.202 257
25 Technical correction 10710
25.101 Regulation at 59 FR 545 confirmed 261
25.108 (b) amended 12698
25.109 Regulation at 59 FR 545 confirmed 261
25.201 Amended 12698
25.202 Regulation at 59 FR 545 confirmed 261
Revised 12698
25.203 Revised 12698
25.204 Revised 12699
25.205 Regulation at 59 FR 546 confirmed 261
Revised 12699
25.206 Added 12699
25.207 Added 12699
25.300 Regulation at 59 FR 546 confirmed 261
25.305 Regulations at 59 FR 546 and 61 FR 31647 confirmed 261
25.400 Regulation at 59 FR 546 confirmed 261
25.401 Regulation at 59 FR 546 confirmed 261
Amended 268
25.402 Regulations at 59 FR 546 and 61 FR 31647 confirmed 261
(b) revised 269
25.403 Regulation at 59 FR 546 confirmed 261
25.405 (e) amended 69289
Regulation at 59 FR 546 confirmed 261
25.406 Regulation at 59 FR 547 confirmed 261
25.407 Regulation at 59 FR 547 confirmed 261
25.408 Regulations at 59 FR 547 and 61 FR 31647 confirmed; (a)(3) amended 261
25.901 (b) amended 259
25.1003 Regulation at 59 FR 547 confirmed 261
26.103 (b) amended 40236
26.300—26.304 (Subpart 26.3) Added 12703
27.208 Regulation at 59 FR 547 confirmed 261
27.302 (a) amended 40237
27.303 (e) revised 236
27.406 (c) revised; (d)(1), (2) and (3) amended 236
27.409 (q) amended 236
28.000 Revised; eff. 10–21–97 44806
28.001 Regulation at 61 FR 31652 confirmed; amended; eff. 10–21–97 44805

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28.100—28.106–8 (Subpart 28.1) Heading revised; eff. 10–21–97 44806
28.100 Revised; eff. 10–21–97 44806
28.102–2 (b)(1) introductory text, (2), (c)(1) and (2) revised; eff. 10–21–97 44806
28.102–3 Heading revised; (b) amended; eff. 10–21–97 44806
28.106–3 Revised; eff. 10–21–97 44806
28.106–8 Revised; eff. 10–21–97 44807
28.200—28.204–4 (Subpart 28.2) Heading revised; eff. 10–21–97 44807
28.200 Revised; eff. 10–21–97 44807
28.201 Heading revised; (b) amended; eff. 10–21–97 44807
28.204 (a) amended; eff. 10–21–97 44807
28.204–3 (b), (c), (f) introductory text, (2) introductory text, (ii)(B), (g) introductory text, (1) and (h) revised; eff. 10–21–97 44807
29.302 (b) amended 237
29.304 (d)(3) amended 40237
29.305 (a)(3) amended; (b)(3) revised 237
30.000 Amended 40237
30.101 (c) amended 40237
30.102 Amended 40237
30.201 Amended 40237
30.201–1 Amended 40237
30.201–2 Amended 40237
30.201–3 (a) and (b) amended 40237
30.201–4 (a)(1), (2), (b)(1), (2), (c), (e)(1) and (2) amended 40237
30.201–5 Amended 40237
30.201–6 Amended 40237
30.201–7 Amended 40237
30.202–1 Amended 40237
30.202–2 Amended 40237
30.202–3 Amended 40237
30.202–4 Amended 40237
30.202–5 Amended 40237
30.202–6 (a) amended 40237
30.202–7 (a) amended 40237
30.202–8 (b) amended 40237
30.3 (Subpart) Note amended 40237
30.4 (Subpart) Note amended 40237
30.5 (Subpart) Note amended 40237
30.602 Introductory text amended 40237
31.001 Amended; interim 69288
Regulation at 61 FR 69288 confirmed 44809
31.109 (h)(10) removed; (h)(11) through (17) redesignated as (h)(10) through (16); interim 69288
Regulation at 61 FR 69288 confirmed 44809
31.110 (a) amended 237
31.205–1 (f)(5) revised 67423
(d)(2) amended 12704
31.205–2 Removed; interim 69288
Regulation at 61 FR 69208 confirmed 44809
31.205–6 (g)(1) amended 67430
(e)(2) revised; interim 69295
(f) revised 259
(p) added; interim 270
Regulation at 61 FR 69295 confirmed 44828
31.205–11 Regulation at 60 FR 64255 confirmed; (o) revised 67424
31.205–16 Regulation at 60 FR 64255 confirmed; (g) revised 67424
31.205–18 (e) revised 12705
31.205–22 (b)(2) revised; interim 67425
(d) removed; (e) and (f) redesignated as (d) and (e); new (d) amended 237
Regulation at 61 FR 67425 confirmed 44829
31.205–36 (a) amended; interim 69288
Regulation at 61 FR 69288 confirmed 44809
31.205–38 (c)(2) revised 12704
31.205–46 (a)(2)(i) amended 40237
32.102 (d) revised 12706
32.304–8 (b)(3) amended 237
32.503–7 Introductory text amended 40237
32.805 (a)(1)(iii) amended 237
32.902 Amended 12706
32.903 Revised 12706
32.904 Revised 12707
32.905 Revised 12707
32.906 (a) amended 12709
32.907–1 (a), (b), (d) and (g) revised 12709
(g)(3)(i) revised 40237
32.908 Revised 12710
33.102 (a) amended; interim 67411
(f) added 233
Regulation at 61 FR 67411 confirmed 44805
33.103 (f)(3) amended 69289

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(c), (e), (f)(1) and (2) amended; (f)(4) added; (d)(2)(i), (4), (g) and (h) revised 270
(f)(4) corrected 10710
33.104 (c)(1) amended **69289**
(h)(3) introductory text revised 12718
35.017–2 (i) revised 12694
36.102 Amended 272
36.104 Added 272
36.203 (a) amended; eff. 10–21–97 44829
36.205 (b)(3) revised 237
36.213 Redesignated from 36.301—36.304 (Subpart 36.3) heading and revised 272
36.213–1 Redesignated from 36.301 272
36.213–2 Redesignated from 36.302 272
36.213–3 Redesignated from 36.303 272
36.213–4 Redesignated from 36.304 272
36.214 Redesignated from 36.402; heading revised 272
36.215 Redesignated from 36.403; heading revised 272
36.300—36.303–2 (Subpart 36.3) Added 272
36.301—36.304 (Subpart 36.3) Heading redesignated as 36.213 272
36.301 Redesignated as 36.213–1 272
36.302 Redesignated as 36.213–2 272
36.303 Redesignated as 36.213–3 272
36.303–1 Introductory text corrected 10710
36.304 Redesignated as 36.214–1 272
36.402—36.403 (Subpart 36.4) Heading removed 272
36.402 Redesignated as 36.214 272
36.403 Redesignated as 36.215 272
36.601–3 Regulation at 60 FR 28498 confirmed 44810
(a) revised; eff. 10–21–97 44812
36.602–1 Regulation at 60 FR 28498 confirmed 44810
(a)(2) revised; eff. 10–21–97 44812
36.602–3 Regulation at 60 FR 28498 confirmed 44810
(c) revised; eff. 10–21–97 44812
36.605 (a) amended; eff. 10–21–97 44829
36.607 (b) revised **69291**
37.000 Revised 12694
Amended; eff. 10–21–97 44815
37.101 Amended; eff. 10–21–97 44815
37.102 (d) through (g) added 12694
(a) through (g) as (b) through (h); new (a) added; eff. 10–21–97 44815
37.103 (c) removed; (d) redesignated as (c) 233
(c) and (d) redesignated as (d) and (e); new (c) added; eff. 10–21–97 44815
37.106 (c) added; eff. 10–21–97 44815
37.115 Added; eff. 10–21–97 44815
37.115–1 Added; eff. 10–21–97 44815
37.115–2 Added; eff. 10–21–97 44815
37.115–3 Added; eff. 10–21–97 44815
37.402 Revised 237
37.500—37.504 (Subpart 37.5) Added 12694
37.600—37.602–5 (Subpart 37.6) Added; eff. 10–21–97 44815
38.101 (a) amended 40237
38.201 (b) amended 40237
39.002 Amended; interim 274
Regulation at 62 FR 274 confirmed; amended; eff. 10–21–97 44830
39.106 Redesignated as 39.107; new 39.106 added; interim 274
Regulation at 62 FR 274 confirmed 44830
39.107 Redsignated from 39.106; interim 274
Regulation at 62 FR 274 confirmed 44830
42.102 (a) amended 40237
42.302 (a)(18) amended 237
(a)(11) introductory text amended 40237
Regulation at 60 FR 28498 confirmed 44810
(a)(68) introductory text and (i) revised; interim; eff. 10–21–97 44812
42.703–1 (a) revised 274
42.703–2 (a), (c)(1) and (f) revised; (c)(2)(ii) and (d) amended 237
(a) revised 274
(f)(1) corrected 10710
42.704 (e) added **69296**
42.705 Revised **69296**
42.1102 Amended; eff. 10–21–97 44816
43.102 (c) revised; interim **69298**
Regulation at 61 FR 69298 confirmed 44831
43.106 Removed 233

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44.302 Revised 12719
44.303 Introductory text revised 12719
44.304 (a) revised 12719
44.305–1 Revised 12719
44.305–2 (a) revised 12719
44.306 Revised 12719
44.307 Revised 12719
45.606–1 (a) designation and (b) removed 237
45.606–5 (a)(2) amended 237
45.607–2 (b) amended 40237
45.608–6 (b) amended 40237
46.103 (a) revised; eff. 10–21–97 44816
46.401 (a) revised; eff. 10–21–97 44816
46.407 (f) introductory text amended; eff. 10–21–97 44816
46.6 (Subpart) Existing text designated as 46.601; heading added 40237
46.601 (Subpart) Heading added 40237
46.804 Amended 259
46.806 Removed **67425**
47.303–17 (d)(3)(ii) revised 237
47.305–11 Introductory text amended; (a) designation removed; (a)(1), (2) and (3) redesignated as (a), (b) and (c) 237
47.403–3 (a) amended; (c) revised 237
47.404 (b)(2) revised 237
49.108–3 (b) revised 237
50.104 (b) introductory text amended 40237
51.102 (c)(1), (4) and (e)(3)(iii) amended 40237
51.103 (c) removed; (d) redesignated as (c); eff. 10–21–97 44819
52.101 (b)(1) amended 40237
52.102–1 (c)(1) amended 40237
52.106 Removed 40237
52.200 amended 40237
52.203–3 Regualtion at 61 FR 39200 confirmed 12690
52.203–8 Revised 233
Corrected 10710
52.203–9 Removed 233
52.203–10 Amended; introductory text revised 233
52.203–11 (b) introductory text amended 40237
52.203–12 Amended 40237
52.203–13 Removed 233
52.204–3 Amended 40238
52.204–5 Introductory text revised; interim 67412
52.208–1 Removed 238
52.208–2 Removed 238
52.208–8 Amended 40238
52.208–9 Amended 67430
52.209–3 Amended 238
52.209–4 Amended 238
52.209–7 Removed 238
52.209–8 Removed 238
52.210–5 Regulation at 60 FR 28498 confirmed 44810
52.210–6 Regulation at 60 FR 28498 confirmed 44810
52.210–7 Regulation at 60 FR 28499 confirmed 44810
52.211–1 Amended 40238
52.211–2 Amended 40238
52.211–4 Amended 67430
52.211–5 Amended 67430
Revised; eff. 10–21–97 44812
52.211–6 Amended 67430
Removed; eff. 10–21–97 44812
52.211–7 Amended 67430
Removed; eff. 10–21–97 44812
52.211–8 Amended 40238
52.211–9 Amended 40238
52.211–13 Amended 67430
52.212–1 Amended 40238
52.212–3 Amended 233
Amended 238
Regulation at 61 FR 31648 confirmed; amended 261
52.212–4 Amended 12711
52.212–5 Regulation at 61 FR 31648 confirmed 261
52.214–5 Amended 69293
Corrected 12721
52.214–7 Amended 69293
Amended 12693
Corrected 12721
52.214–23 Amended 69293
Amended 12693
Corrected 12721
52.214–30 Revised 238
52.214–32 Amended 69293
Amended 12693
Corrected 12721
52.214–33 Amended 69293
Amended 12693
Corrected 12721
52.215–2 Introductory text amended 259
52.215–9 Amended 69294
Corrected 12721
52.215–10 Amended 69294

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Amended 12693, 40238
Corrected 12721
52.215–15 Revised 12693
52.215–26 Amended 67425
Revised 259
52.215–35 Revised 238
52.215–36 Amended 69294
Amended 12693
Corrected 12721
52.215–41 Amended 259
52.215–42 Amended 260
52.215–43 Removed 260
52.216 Amended 67419
52.216–2 Amended 238
Amended; introductory text revised 260
52.216–3 Amended 238
Amended; introductory text revised 261
Corrected 10710
52.216–4 Amended 238
52.216–5 Amended 67425
52.216–6 Amended 67425
52.216–7 Amended 69296
Corrected 12721
52.216–8 Amended 69296
Corrected 12721
52.216–9 Amended 69296
Corrected 12721
52.216–10 Amended 69296
Corrected 12721
52.216–13 Amended 69296
Corrected 12721
52.216–16 Amended 67426
Amended 12696
52.216–17 Amended 67426
Amended; introductory text revised 12696
52.219–1 Amended; interim 67422
Amended 238
Regulation at 61 FR 67422 confirmed 44823
52.219–8 Amended 40238
52.219–11 Amended; interim 67422
Regulation at 61 FR 67422 confirmed 44823
52.219–12 Amended; interim 67422
Regulation at 61 FR 67422 confirmed 44823
52.219–14 Amended; interim 67411
Regulation at 61 FR 67411 confirmed 44805
52.219–15 Removed 238
52.219–17 Amended; interim 67422
Regulation at 61 FR 67422 confirmed 44823
52.219–18 Amended; interim 67422
Amended 238
Corrected 12720
Regulation at 61 FR 67422 confirmed 44823
52.219–19 Amended 238
52.219–21 Amended 238
52.222–1 Amended 67426
52.222–19 Removed; interim 67411
Regulation at 61 FR 67411 confirmed 44805
52.222–20 Amended; interim 67411
Regulation at 61 FR 67411 confirmed 44805
52.222–50 Added; interim 44826
52.223–3 Amended 238
52.223–4 Regulation at 60 FR 28499 confirmed 44810
Revised; eff. 10–21–97 44812
52.223–5 Removed 69292
Added; interim 12697
52.223–6 Amended 69292
52.223–7 Amended 239
52.223–8 Regulation at 60 FR 28499 confirmed 44810
Removed; eff. 10–21–97 44812
52.223–9 Regulation at 60 FR 28499 confirmed 44810
Revised; eff. 10–21–97 44812
52.223–10 Regulation at 60 FR 28499 confirmed 44810
Amended; eff. 10–21–97 44813
52.225–3 Regulation at 59 FR 547 confirmed 261
52.225–5 Amended; introductory text revised 12700
Amended 40238
52.225–8 Regulation at 59 FR 547 confirmed 261
52.225–9 Regulation at 59 FR 547 confirmed 261
52.225–12 Added 12700
52.225–13 Added 12701
52.225–15 Regulation at 59 FR 548 confirmed 261
Amended; introductory text revised 12701
Amended 40238
52.225–17 Regulation at 59 FR 548 confirmed 261
52.225–19 Regulation at 59 FR 548 confirmed 261
52.225–20 Regulations at 59 FR 548 and 61 FR 31648 confirmed 261
Amended 262

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52.225–21 Regulations at 59 FR 548 and 61 FR 31649 confirmed 261
Amended 262
Corrected 10710
52.225–22 Regulation at 61 FR 31649 confirmed 261
Amended 12702
52.226–2 Added 12703
52.227–11 Amended 40238
52.227–12 Amended 239
52.227–13 Amended 239
52.227–16 Amended 40238
52.227–21 Amended 239
52.228–2 Regulation at 61 FR 31653 confirmed 44806
Amended; eff. 10–21–97 44807
52.228–5 Amended 239
52.228–8 Amended 239
52.228–9 Amended 239
52.228–13 Regulation at 61 FR 31653 confirmed 44806
Amended; eff. 10–21–97 44807
52.228–14 Amended 67430
Regulation at 61 FR 31653 confirmed 44806
Amended; eff. 10–21–97 44808
52.232–5 Amended 12711
52.232–7 Amended 67419
52.232–8 Amended 12712
52.232–25 Revised 12712
Amended 40238
52.232–26 Revised 12713
Amended 40238
52.232–27 Revised 12715
Amended 40238
52.232–32 Amended 12720
52.236–21 Amended 67426
52.237–3 Amended 40238
52.237–7 Amended 239
52.237–10 Added; eff. 10–21–97 44816
52.239–1 Introductory text amended; interim 274
Regulation at 62 FR 274 confirmed 44830
52.242–4 Amended; heading revised 239
52.244–2 Amended 67426
52.244–5 Regulation at 61 FR 2638 confirmed; amended 67420
52.245–8 Amended; introductory text revised 239
52.246–23 Amended 67426
52.246–24 Amended 67426
52.246–25 Amended 67426
52.247–2 Amended; introductory text revised 240
52.247–54 Removed 240
52.247–63 Amended 240
52.247–64 Amended 40238
52.247–67 Amended 40238
52.301 Note added 40239
53.103 (b) amended 40239
53.203 Removed 233
53.204–2 (a) and (b) amended 67427
53.214 (e) heading revised 240
53.215–1 (f) heading revised 240
53.219 (a) and (b) amended; interim 67413
53.222 (g) heading revised 240
53.229 Amended 240
53.245 (c) heading, (f) heading, (g) heading, (h) heading, (i) heading and (j) heading revised 240
53.301–25 Revised 40240
53.301–26 Revised 40242
53.301–129 Revised 240
53.301–279 Amended 67427
53.301–281 Heading revised 40244
53.301–294 Revised; interim 67413
53.301–1094 Revised 243
53.301–1094A Revised 247
53.301–1408 Heading revised 40244
53.301–1412 Removed 40244
53.301–1419 Removed 40244
53.301–1423 Revised 249
53.301–1426 Revised 250
53.301–1428 Revised 251
53.301–1430 Revised 252
53.301–1432 Revised 253
53.301–1434 Revised 254
53.301–1445 Revised 255
53.302–333 Amended 233
53.302–336 Amended 40244

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201.603–2 (1) introductory text revised 34121
202.101 Amended 34121
203.104–4 Removed 2612
203.104–5 (e)(4) redesignated as (d)(4); new (d)(4) amended 2612
203.170 Removed 2612
203.170–1 Removed 2612
203.170–2 Removed 2612
203.170–3 Removed 2612
203.170–4 Removed 2612
203.405 Redesignated from 203.409 34121
203.409 Redesignated as 203.405 34121
203.570–5 Amended 34121

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204.670–1 (c)(4) revised 34121
204.670–2 (a)(1) revised 34121
(c) revised 44222
204.670–9 Introductory text and (a) revised 34121
204.805 Amended 40472
204.7003 (a)(1)(i)(G) revised 34121
204.7202–1 (c)(5) redesignated as (d) 34121
204.7202–2 Introductory text and (b)(1) introductory text amended 34121
208.002 (f) revised 34121
208.7203 (d) removed; (e), (f) and (g) redesignated as (d), (e) and (f); (c) and new (d) revised 34121
209.104–1 (g)(ii)(C) introductory text amended; (g)(ii)(D) added; (g)(iii) removed 34121
209.104–70 Heading revised; (c) and (d) removed 34122
209.470–1 Regulation at 61 FR 25408 confirmed 34120
209.470–2 Regulation at 61 FR 25408 confirmed 34120
211.273 Added; interim 44224
211.273–1 Added; interim 44224
211.273–2 Added; interim 44224
211.273–3 Added; interim 44224
211.273–4 Added; interim 44224
212 Heading revised; interim 5780
212.301 (f)(iii) amended 34122
212.504 (a)(xix), (xx) and (xxi) removed **58488**
(a)(i) removed; interim 5780
214.406 Redesignated as 214.407 34122
214.406–3 Redesignated as 214.407–3 34122
214.407 Redesignated from 214.406 34122
214.407–3 Redesignated from 214.406–3; (e) introductory text amended; (e)(v) revised 34122
215.608 (b) amended 2612
215.801 Removed 40472
215.804 Revised 40472
215.804–1 Revised 40472
215.804–3 Removed 40472
215.804–6 (b)(2)(A) and (B) redesignated as (b)(1)(A) and (B) 40472
215.805–5 (a)(1)(A) revised 40472
215.805–70 (b) revised 40472
215.811–70 (b)(2), (g)(3)(ii) and (h) revised 40472
215.872 Removed 40472
215.872–1 Removed 40472
215.872–2 Removed 40472
215.872–3 Removed 40472
215.872–4 (d)(1) revised 34122
Removed 40472
215.873 (d) revised 2613
216.203–4 (d)(xvi) amended 40472
216.203–4–70 (c) added 34122
(a) revised; (b)(4) and (6) removed; (b)(5) and (7) redesignated as (b)(4) and (5) 40472
216.306 Revised 1058
(c)(ii)(B)(*2*) corrected 1617
216.307 Removed 34122
219 Regulation at 61 FR 39900 confirmed 34120
219.301 (b) revised 2613
219.302–70 (d) and (e) revised 2613
219.602—219.602–3 (Subpart 219.6) Heading revised 34122
219.602–3 (c)(i)(A) amended 34122
219.702 Regulation at 61 FR 39900 confirmed 34120
219.704 (b) amended **54346**
219.708 Regulation at 61 FR 39901 confirmed 34120
219.808 Removed 34122
219.808–1 Removed 34122
219.811 Removed 34122
219.811–1 Removed 34122
219.811–3 Removed 34122
219.1005 (a) introductory text removed 34122
219.1006 (b)(2) revised 34122
222.7200—222.7201 (Subpart 222.72) Added 34122
224.202 Redesignated as 224.203 34122
224.203 Redesignated from 224.202 34122
225 Technical correction 44225
225.202 (b) redesignated as (a)(3) 34122
225.205 Removed 34122
225.205–70 Removed 34122
225.212–7001 Amended **58489**
225.225–7017 Removed **58489**
225.225–7040 Removed **58489**
225.403 Regulation at 61 FR 37841 confirmed 34120
(c) and (d)(1)(A) redesignated as (b) and (c)(1)(A) 34122
225.403–70 Amended 2615

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Regulation at 61 FR 37841 confirmed 34120
225.603 (1)(iii)(C)(*2*) revised 2613
225.872–1 (d) added; interim 34122
225.872–2 (a)(3) revised; interim 34123
225.971 Added 34123
225.972 Added 34123
225.7000—225.7023–3 (Subpart 225.70) Heading revised 34123
225.7000 (a) revised; interim 2856
Regulation at 62 FR 2856 confirmed 34120
225.7002–1 (a) introductory text, (7) and (9) revised; interim 5780
225.7002–2 (e) and (j) revised; interim 5780
225.7003 Added; interim 2856
Regulation at 62 FR 2856 confirmed 34120
225.7004 Removed **58489**
Added; interim 2857
Regulation at 62 FR 2857 confirmed 34120
225.7004–1 Removed **58489**
225.7004–2 Removed **58489**
225.7004–3 Removed **58489**
225.7004–4 Removed **58489**
225.7004–5 Removed **58489**
225.7004–6 Removed **58489**
225.7005 Revised **58489**
(a)(3) revised 2616
Revised; interim 34123
225.7007–1 Revised; interim 34123
225.7007–3 Revised; interim 34123
225.7007–4 Revised **58489**
Revised; interim 34123
225.7009 Removed 34123
225.7010–1 Introductory text and (a) revised; interim 34123
225.7010–2 Revised; interim 34123
225.7010–3 Revised **58489**
Revised; interim 34123
225.7013 Removed 34123
225.7013–1 Removed 34123
225.7013–2 Removed 34123
225.7016–1 Revised; interim 34123
225.7016–2 Revised; interim 34124
225.7016–3 Revised **58489**
Revised; interim 34124
225.7019–1 (b) revised **58489**
(a) revised; interim 34124
225.7019–3 (a)(1)(iv) revised 2616
(a)(1)(iv) revised; interim; (a)(2) and (3) redesignated as (a)(3) and (4); new (a)(2) added 34124
225.7020 Removed 34124
225.7020–1 Removed 34124
225.7020–2 Removed 34124
225.7022–1 (b) revised; interim 34124
225.7022–2 Revised; interim 34124
225.7022–3 Revised **58489**
Revised; interim 34124
225.7100—225.7103–3 (Subpart 225.71) Revised; interim 34124
225.7302 (a)(1) removed; (a)(2) through (5) redesignated as (a)(1) through (4); interim 2617
225.7303–4 Revised; interim 2617
225.7307 Revised 34125
225.7307–1 Removed 34125
225.7307–2 Removed 34125
225.7308 (a) revised; interim 2617
226.7005 (b) introductory text and (1) revised 2613
228.7008 (b) amended 2613
227.676 Added 34125
227.7004 (a)(6) amended 2613
227.7103–6 (e)(3) amended 2613
227.7104 (e)(5) amended 2614
228.370 (f) added 34125
229.101 (d)(i), (ii) and (iii) redesignated as (d)(iii), (iv) and (v); new (d)(i), new (ii) and (vi) added 34125
229.402—229.402–70 (Subpart 229.4) Added 34125
229.7000—229.7002–4 (Subpart 229.70) Added 34125
231.205–6 (f)(1) revised; interim **58490**
(a)(2)(i) and (ii) redesignated as (a)(2)(i)(A) and (B); new (a)(2)(ii) added; interim **65479**
Regulations at 61 FR 36306, 58490 and 65479 confirmed 34120
231.205–70 (a) revised; (c)(3) and (d)(10) added; interim **64635**
Regulation at 61 FR 64635 confirmed 34120
231.303 Regulation at 61 FR 36306 confirmed 34120
231.603 Regulation at 61 FR 36306 confirmed 34120
231.703 Regulation at 61 FR 36306 confirmed 34120
232.502–1–71 (b)(3) revised 40473
232.806 Revised 34126
233.214 Redesignated as 233.215 34126
233.215 Redesignated from 233.214 34126

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233.215–70 Added 34126
233.7000—233.7001 (Subpart 233.70) Removed 2614
234.003 Revised 34126
234.005–70 Revised; interim 9991
234.005–71 Added; interim 9991
(b) corrected 11953
235.006 (b)(1)(C)(*1*)(*iii*) amended 34126
235.010 (b) amended 34126
235.7001 (a) removed; (b) and (c) redesignated as (a) and (b) 16100
235.7002 (a) introductory text, (b) and (d) revised 16100
235.7003 Removed 16100
235.7005 Heading and introductory text revised 16100
235.7006 Revised 16100
(d) amended; interim 37147
236.102 (4) added; interim 2857
Regulation at 62 FR 2857 confirmed 34120
236.274 Introductory text, (a), (b) introductory text and (1) through (8) redesignated as (b) introductory text, (1), (2) introductory text and (i) through (viii); new (a) added; interim 2856
Regulation at 62 FR 2856 confirmed 34120
(b)(2)(viii) revised 34127
236.570 (c) added; interim 2856
Regulation at 62 FR 2856 confirmed 34120
(d) added 34127
236.602–70 Added; interim 2857
Regulation at 62 FR 2858 confirmed 34120
236.609–70 Heading revised; (a) introductory text, (1), (2) and (b) redesignated as (a)(1) introductory text, (i), (ii) and (2); new (b) added; interim 2858
Regulation at 62 FR 2858 confirmed 34120
Heading revised 34127
237.7102 (a) and (b) amended 34127
239 Heading revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.001 Removed; interim 1059
Regulation at 62 FR 1059 confirmed 34120
239.002 Removed; interim 1059
Regulation at 62 FR 1059 confirmed 34120
239.7000—239.7003 (Subpart 239.70) Revised; interim 1059
Regulation at 62 FR 1059 confirmed 34120
239.7003 (f)(1) amended 34127
239.7102–3 (a) designation and (b) removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
Revised 34127
239.7201 Removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7202 (a) and (b) revised; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7300 Revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7301 (a) revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7302 (a), (b) introductory text and (2) revised; interim 1060
(b) introductory text and (1) revised; interim 9376
Regulations at 62 FR 1060 and 9376 confirmed 34120
(b)(2)(i) revised 34127
239.7303 Revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7304 (c) revised; interim 1060
Removed; interim 9376
Regulations at 62 FR 1060 and 9376 confirmed 34120
239.7305 Removed; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7400 Revised; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7402 (b)(4) amended; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7406 Revised 40473
239.7411 (a)(7) amended; (a)(8) and (9) removed 40473
239.7500 Amended 34127
239.7501 Revised; interim 1060
Regulation at 62 FR 1060 confirmed 34120

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239.7501–1 Removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7501–2 Removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239 Table 39–1 removed; interim 9376
Regulation at 62 FR 9376 confirmed 34120
242.101 (d)(1) introductory text and (ii) amended; (d)(1)(A) revised 34127
242.102 (b)(ii) introductory text amended 34127
242.302 (a)(41) revised; interim 9991
242.302 (a)(S–70) added; interim 44224
242.1107–70 Revised; interim 9991
Heading and (a) corrected 11953
242.1404–2–70 Revised 34127
242.7000—242.7004 (Subpart 242.70) Removed 34127
243.105 Regulation at 61 FR 25408 confirmed 34130
243.204–70 Added; interim 37147
243.205–72 Added; interim 37147
244.403 (Subpart 244.4) Added; interim 5780
245.302–1 (a)(4)(A)(*2*), (C) introductory text and (b)(1) revised 34127
245.407 (a)(ii) amended 34127
245.505–6 (2) amended 34127
245.608–5 (a)(2)(B)(*2*) and (*4*) revised; (d) removed 34128
245.608–71 (a) revised; (b)(1) introductory text, (2)(i), (ii)(C), (3)(iii), (c) and (d) amended 34128
245.608–72 Added 34128
245.7206 Introductory text and (j)(2) amended 34128
246.710 (4) added 34128
249.102 Removed 67952
249.110 Table 49–1 amended 34128
249.7003 Revised; interim 64637
(c) corrected 66077
Regulation at 61 FR 64637 confirmed 34120
252.203–7000 Removed 2612
252.203–7001 Amended 34128
252.209–7003 Removed 34128
252.209–7004 Removed 34128
252.211–7005 Added; interim 44224
252.212–7001 Amended 58489
Amended 2614
Amended; interim 2617, 5780, 37147
252.215–7000 Introductory text amended 40473
252.215–7002 Amended 40473
252.216–7000 Amended 2614, 40473
252.216–7001 Amended 2614, 40473
252.216–7002 Removed 34128
252.216–7003 Added 34128
252.217–7005 Amended 2614
252.219–7000 Amended 2614
Amended 34128
252.219–7004 Regulation at 61 FR 39901 confirmed 34120
Amended 34129
252.219–7006 Amended 34129
252.219–7007 Removed 34129
252.222–7002 Added 34129
252.222–7003 Added 34129
252.222–7004 Added 34129
252.225–7004 Removed 34129
252.225–7006 Revised 34129
252.225–7007 Regulation at 61 FR 37842 confirmed 34120
Revised 34130
Amended 37148
252.225–7009 Amended 2614
252.225–7010 Amended 2614
252.225–7012 Amended; interim 5780
252.225–7014 Amended; interim 5780
252.225–7016 Amended 34131
252.225–7017 Removed 58489
252.225–7018 Amended 2614
252.225–7022 Revised 34131
252.225–7025 Revised 34131
252.225–7027 Revised; interim 2617
252.225–7029 Revised; interim 34131
252.225–7034 Removed 34131
252.225–7037 Amended 2614
252.225–7040 Removed 58489
252.225–7041 Added 34132
252.225–7042 Added 34132
252.226–7001 Amended; heading revised 2614
252.227–7030 Introductory text amended 34132
252.227–7036 Revised 2614
252.228–7006 Added 34132
252.229–7000 Added 34132
252.229–7001 Added 34132
252.229–7002 Added 34133
252.229–7003 Added 34133
252.229–7004 Added 34133
252.229–7005 Added 34133
252.229–7006 Added 34134
252.229–7007 Added 34134

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252.229–7008 Added 34134
252.229–7009 Added 34134
252.229–7010 Added 34134
252.232–7008 Added 34134
252.233–7000 Removed 2614
252.233–7001 Added 34135
252.234–7000 Revised; interim 9991
Amended 34135
252.234–7001 Revised; interim 9992
Amended 34135
252.236–7003 Amended 2614
252.236–7006 Amended 2614
252.236–7010 Added; interim 2857
Regulation at 62 FR 2857 confirmed 34120
252.236–7011 Added; interim 2858
Regulation at 62 FR 2858 confirmed 34120
252.239–7006 Amended 40473
252.239–7007 Amended 2614
252.239–7009 Removed 40473
252.239–7010 Removed 40473
252.242–7002 Removed 34135
252.242–7003 Introductory text amended 34135
252.242–7005 Amended 34135
Revised; interim 9992
252.242–7006 Amended 34135
Added; interim 9992
252.243–7000 Amended 40473
252.243–7002 Added; interim 37147
252.244–7000 Added; interim 5780
252.246–7002 Added 34135
252.247–7001 Amended 2615
252.249–7001 Removed 67952
252.249–7002 Revised; interim 64637
Regulation at 61 FR 64637 confirmed 34120
253.204–70 (b)(2) heading, (13)(i)(E) introductory text, (F), (iv)(C), (c)(2), (4)(iv)(A), (viii)(B)(*8*)(*i*), (d)(5)(i)(J), (ii)(B), (iv)(E)(*1*) and (x)(B)(*14*) 34135
(b)(10)(i), (13)(i)(C), (G), (c)(2), (4)(xi), (d)(5)(vii)(A) and (e)(4) revised; (b)(14), (d)(5)(vii)(D) and (e)(5) added 44222
253.204–71 (c)(1) amended; (d)(6)(i)(B) revised 34136
(a)(3) revised 44223
253 Note amended 34136
Chapter 2 Appendix I amended 54346
Appendix G amended 34136
Appendix I amended 34141

Chapter 4—Department of Agriculture (Parts 400—499)

Chapter 4 Revised 53646

Chapter 5—General Services Administration (Parts 500—599)

Chapter 5 Compliance guide 44526
501.105 Regulation at 61 FR 6164 confirmed 44521
501.402—501.404 (Subpart 501.4) Revised 51374
504.803 Regulation at 61 FR 6165 confirmed 44521
507.103 Regulation at 61 FR 6165 confirmed 44521
510 Regulation at 61 FR 6165 confirmed 44251
510.001 Regulation at 61 FR 6165 confirmed 44521
510.002 Regulation at 61 FR 6165 confirmed 44251
510.004 Regulation at 61 FR 6165 confirmed 44521
510.004–70 Regulation at 61 FR 6165 confirmed 44521
510.004–71 Regulation at 61 FR 6165 confirmed 44521
510.007 Regulation at 61 FR 6165 confirmed 44521
510.007–70 Regulation at 61 FR 6165 confirmed 44521
510.011 Regulation at 61 FR 6165 confirmed 44251
510.070 Regulation at 61 FR 6165 confirmed 44521
510.070–1 Regulation at 61 FR 6165 confirmed 44521
510.070–2 Regulation at 61 FR 6165 confirmed 44521
510.070–3 Regulation at 61 FR 6165 confirmed 44521
510.070–4 Regulation at 61 FR 6165 confirmed 44521
510.071 Regulation at 61 FR 6165 confirmed 44521
511 Regulation at 61 FR 6165 confirmed 44521
511.001 Regulation at 61 FR 6165 confirmed 44251
511.002 Regulation at 61 FR 6165 confirmed 44251
511.003 Regulation at 61 FR 6165 confirmed 44521
511.070 Regulation at 61 FR 6165 confirmed 44521

511.103—511.170 (Subpart 511.1) Regulation at 61 FR 6165 confirmed 44521
511.204 (Subpart 511.2) Regulation at 61 FR 6166 confirmed 44251
511.204 Regulation at 61 FR 6165 confirmed 44251
511.401—511.404 (Subpart 511.4) Regulation at 61 FR 6166 confirmed 44251
511.401 Regulation at 61 FR 6166 confirmed 44521
511.404 Regulation at 61 FR 6166 confirmed 44521
512 Regulation at 61 FR 6166 confirmed 44521
512.104—512.104 (Subpart 512.1) Regulation at 61 FR 6166 confirmed 44521
512.101 Regulation at 61 FR 6166 confirmed 44521
512.104 Regulation at 61 FR 6166 confirmed 44521
512.201—512.209 (Subpart 512.2) Regulation at 61 FR 6166 confirmed 44521
512.301—512.303 (Subpart 512.3) Regulation at 61 FR 6166 confirmed 44521
514.201–70 Regulation at 61 FR 6167 confirmed 44521
515.106–70 Revised 44521
515.412 Regulation at 61 FR 6167 confirmed 44521
515.414–70 Regulation at 61 FR 6166 confirmed 44521
515.804 Regulation at 61 FR 6167 confirmed 44521
515.804–3 Regulation at 61 FR 6167 confirmed 44521
515.804–6 Regulation at 61 FR 6167 confirmed 44521
Revised 44522
538 Regulation at 61 FR 6168 confirmed 44521
538.000 Regulation at 61 FR 6169 confirmed 44521
538.270 Regulation at 61 FR 6169 confirmed 44521
Revised; interim 44523
538.271 Regulation at 61 FR 6169 confirmed 44521
(a) revised 44524
539 Regulation at 61 FR 6169 confirmed 44521
539.000 Regulation at 61 FR 6169 confirmed 44521
543.205 Regulation at 61 FR 6169 confirmed 44521
(c) revised 44524
546.710 Regulation at 61 FR 6169 confirmed 44521
552.209–73 Regulation at 61 FR 6169 confirmed 44521
552.210–70 Regulation at 61 FR 6169 confirmed 44521
552.210–71 Regulation at 61 FR 6169 confirmed 44521
552.210–72 Regulation at 61 FR 6169 confirmed 44521
552.210–73 Regulation at 61 FR 6169 confirmed 44521
552.210–74 Regulation at 61 FR 6169 confirmed 44521
552.210–75 Regulation at 61 FR 6169 confirmed 44521
552.210–76 Regulation at 61 FR 6170 confirmed 44521
552.210–77 Regulation at 61 FR 6170 confirmed 44521
552.210–78 Regulation at 61 FR 6170 confirmed 44521
552.210–79 Regulation at 61 FR 6170 confirmed 44521
552.211–1 Regulation at 61 FR 6170 confirmed 44521
552.211–71 Regulation at 61 FR 6169 confirmed 44521
552.211–72 Regulation at 61 FR 6169 confirmed 44521
552.211–73 Regulation at 61 FR 6169 confirmed 44521
552.211–74 Regulation at 61 FR 6170 confirmed 44521
552.211–75 Regulation at 61 FR 6170 confirmed 44521
552.211–76 Regulation at 61 FR 6170 confirmed 44521
552.211–77 Regulation at 61 FR 6170 confirmed 44521
552.211–78 Regulation at 61 FR 6170 confirmed 44521
552.211–79 Regulation at 61 FR 6169 confirmed 44521
552.211–80 Regulation at 61 FR 6169 confirmed 44521
552.211–81 Regulation at 61 FR 6170 confirmed 44521
552.211–82 Regulation at 61 FR 6170 confirmed 44521

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552.211–83 Regulation at 61 FR 6170 confirmed 44521
552.211–84 Regulation at 61 FR 6170 confirmed 44521
552.212–1 Regulation at 61 FR 6170 confirmed 44521
552.212–70 Regulation at 61 FR 6170 confirmed 44521
Revised 44524
552.212–71 Regulations at 61 FR 6170 and 6171 confirmed 44521
Amended 44524
552.212–72 Regulations at 61 FR 6170 and 6171 confirmed 44521
552.212–73 Regulation at 61 FR 6171 confirmed 44521
Revised 44524
552.212–74 Regulation at 61 FR 6170 confirmed 44521
552.215–70 Regulation at 61 FR 6172 confirmed 44521
552.215–71 Regulation at 61 FR 6172 confirmed 44521
Revised 44525
552.215–72 Regulation at 61 FR 6172 confirmed 44251
Revised 44525
552.216–71 Regulation at 61 FR 6172 confirmed 44521
552.238–72 Amended 38476
552.238–74 Regulation at 61 FR 6172 confirmed 44521
552.238–77 Amended 38476
552.243–72 Regulation at 61 FR 6172 confirmed 44521
mended 44425
552.246–73 Regulation at 61 FR 6173 confirmed 44521
552.253–70 Regulation at 61 FR 6173 confirmed 44521
552.308–2 Regulation at 61 FR 6173 confirmed 44521
552.602–2 Regulation at 61 FR 6173 confirmed 44521
570.106 (c) introductory text, (1), (2) and (3) revised 5166
570.308–2 (e) revised 44425

Chapter 7—Agency for International Development (Parts 700—799)

Chapter 7 Nomenclature change 40466
Nomenclature correction 45334
701.105 (a) table amended 40466
701.373 (b) amended 40466
701.376–3 Revised 40466
701.601 (a) and (b) amended; (b)(3) removed; (b)(4) and (5) redesignated as (b)(3) and (4) 40466
701.602–1 Added 40466
701.704 Amended 40466
702.170–3 (a) amended 40466
702.170–10 (a)(1) amended; (a)(1)(ii) removed; (a)(1)(iii) and (iv) redesignated as (a)(1)(ii) and (iii) 40466
702.170–13 (b) corrected 51234
702.170–15 Amended 40466
702.170–17 Added 40466
703.104–11 Added 40467
703.403 (Subpart 703.4) Removed 40467
704.404 Amended 40467
704.803 Removed 40467
705.002 Existing text designated as (a); (b) added 40467
705.207 (a) amended 40467
706.302–5 Amended 40467
706.302–70 (c)(4) revised 40467
706.302–71 (a)(2) and (b) corrected 51235
(a) revised; (b)(1) amended 40467
708 Removed 40467
709.402 Removed 40467
709.403 Added 40467
709.503 Amended 40467
711.002–70 Redesignated from 711.022–70; (b)(1) and (3) amended 40467
711.002–71 Amended 40466
Corrected 45334
711.022–70 Redesignated as 711.002–70 40467
715 Technical correction 51235
715.413–2 (b) revised; (c) amended 40467
715.613–71 (a), (b) and (c) revised; (d) and (e) removed; (f) redesignated as (d); new (d)(3)(i) and new (4) amended 40467
(c)(1) correctly revised 45334
716 Technical correction 51235
719.270 Amended 40466
(d) amended; (k) removed 40468
719.271–2 Amended 40466
(b)(8) amended 40468
719.271–3 (j) amended 40468
719.271–6 Amended 40466
(a) introductory text and (3) amended 40468

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722.103 Corrected 53996
722.103–2 Correctly redesignated from 722.103–71 52497
722.103–4 Correctly redesignated from 722.103–723 52497
722.103–70 Correctly removed 51235
722.103–71 Correctly redesignated as 722.103–2 52497
722.103–72 Correctly redesignated as 722.103–4 52497
722.170 Amended 40466
Corrected 45334
722.805–70 (d)(3) amended 40468
725.701 Revised 40468
725.703 Amended 40466
725.704 Revised 40468
725.705 Revised 40468
725.706 (a) revised 40468
726.301—726.302 (Subpart 726.3) Removed 51235
726.302 Correctly redesignated as 726.7008 51235
726.7001 Amended 40468
726.7003 Introductory text and (c) amended 40468
726.7005 Amended 40468
726.7006 (a) amended 40468
726.7007 (a) and (b) amended 40468
726.7008 Correctly redesignated from 726.302 51235
728.305–70 Amended 40466
728.307–2 Amended 40466
Corrected 45334
728.309 Amended 40466
Corrected 45334
728.313 Amended 40466
Corrected 45334
731.205–6 (d) amended 40468
731.371 (b)(1) amended 40469
732.401 (a) amended 40469
733.103–71 (b) and (c) corrected 51235
733.103–72 (b) correctly revised 51235
733.270–1 Correctly designated 51235
733.270–2 Correctly designated 51235
(e) amended 40469
737 Technical correction 51235
750.7101 (a) amended 40469
750.7109–3 Amended 40469
750.7110 Revised 40469
750.7110–1 Revised 40469
750.7110–2 Revised 40469
750.7110–3 Revised 40469
750.7110–4 Revised 40469
750.7110–5 Revised 40469
752.200 Amended 40469
752.204–2 Amended 40469
752.209–70 Removed 40469
752.211–70 Amended 40466
Corrected 45334
752.219–8 Amended 40469
752.225–9 Amended 40470
752.225–70 Added 40470
Corrected 45334
752.225–71 Added 40470
Corrected 45334
752.226–1 Introductory text amended 40470
752.226–2 Amended 40470
752.226–3 Introductory text amended 40470
752.228–7 Amended 40470
752.245–70 Amended 40470
752.245–71 Introductory text revised 40470
752.7001 Revised 40470
Corrected 45334
752.7002 Amended 40466
Corrected 45334
752.7003 Amended 40466
Corrected 45334
752.7004 Amended 40466
Revised 40470
Corrected 45334
752.7007 Amended 40470
752.7008 Introductory text amended 40470
752.7009 Amended 40466
752.7010 Introductory text amended 40470
752.7015 Amended 40471
Corrected 45334
752.7017 Removed 40471
752.7027 Amended 40471
752.7028 Corrected 51235
752.7029 Introductory text amended 40471
752.7033 Amended 40471
Corrected 45334
753.107 Amended 40471
Chapter 7 Appendix D revised 39453
Appendixes A, C, G and H removed 40471
Appendix J revised 42929

Chapter 8—Department of Veterans Affairs (Parts 800—899)

807 Authority citation revised 18300
807.302 Removed 18300
807.304–72 Removed 18300
837 Authority citation revised 52709
837.403 (Subpart 837.4) Added 52709
852 Authority citation revised 18300

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852.207–71 Removed 18300
852.207–72 Removed 18300
852.237–7 Added 52710

Chapter 9—Department of Energy (Parts 900—999)

901.105 Amended (OMB numbers) 34861
904.601–71 (Subpart 904.6) Removed 2312
904.702 (b) amended 2312
904.7003 (d) revised 42073
904.7005 (a) revised 42074
904.7103 (a) revised 42074
906.303–70 Removed 2312
908.7121 (b) amended 2312
909.104–1 (h) revised 42074
909.503—909.507–2 (Subpart 909.5) Revised 40751
915.401 Amended 2312
917.600 Amended 34861
917.601 Added 34861
917.602 Regulation at 61 FR 32586 confirmed 34873
917.605 Regulation at 61 FR 32586 confirmed 34873
923.570–2 (a) revised 42074
923.570–3 (b)(2) and (3) revised; (b)(4) removed 42074
923.7002 (d) amended 2312
925 Authority citation revised 2311
926.7007 (d) revised 42074
926.7101—926.7104 (Subpart 926.71) Added 34861
945.608–2 (b)(1)(ii) revised 2312
950.7101 (c)(2) removed; (c)(1) redesignated as (c) 34861
952 Authority citation revised 2311, 34862
952.202–1 Amended; (b) introductory text revised 2312
952.204–2 Amended 2312, 42074
952.204–71 Amended 2312
952.204–72 Amended 2312
952.204–73 Amended 2312, 42074
952.209–8 Added 40752
952.209–70 Removed 40752
952.209–72 Revised 40752
952.211–72 Removed 2312
952.211–73 Removed 2312
952.216–15 Amended 2312
952.223–71 Heading revised 34862
952.223–74 Removed 34862
952.223–75 Introductory text revised 34862
952.224–70 Amended 2312
952.226–73 Amended 42074
952.226–74 Added 34862
952.227–13 Amended 42074
952.227–75 Amended 2312
952.227–76 Amended 2312
952.227–77 Amended 2312
952.227–78 Amended 2312
952.227–79 Amended 2312
952.227–80 Removed 42075
952.227–81 Removed 42075
952.227–82 Amended 2312
952.227–83 Introductory text revised 42075
952.235–70 Amended 2312
952.236–71 Amended 2312
952.247–70 Amended 2312
952.249–70 Amended 2312
970.0001 Regulation at 61 FR 32586 confirmed 34873
970.0404–3 (a) and (b) amended 2312
970.0406 Removed 2312
970.0407 Removed 34862
970.0407–1 Added 34862
970.0407–2 Added 34862
970.0407–3 Added 34862
970.0470 Added 34862
970.0470–1 Added 34862
970.0470–2 Added 34862
970.0803 Redesignated as 970.4100 2312
970.0905 Revised 40753
970.1001 Revised 34862
970.1002 Heading revised 34863
970.1507 Added 34863
970.1507–1 Added 34863
970.1507–2 Added 34863
970.1507–3 Added 34864
970.1509–2 (a) revised 34864
970.17 Regulation at 61 FR 32586 confirmed 34873
970.1702–1 Regulation at 61 FR 32586 confirmed 34873
970.1702–2 Regulation at 61 FR 32587 confirmed 34873
970.2273 (a)(3) through (6) and (c)(1) introductory text amended 2312
970.2275 Added 34864
970.2275–1 Added 34864
970.2275–2 Added 34864
970.2302–2 (c), (d) and (e) removed 34864
970.2305–4 (a) revised 42075
970.2305–5 (b)(2) revised 42075
970.2601 Existing text designated as (a); (b) added 34864

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970.2601–1 Added 34864
970.2601–2 Added 34864
970.2830 Added 34864
970.2903 Revised 2312
970.3101–3 (a)(1) revised 34865
970.3102–21 Revised 34865
970.3102–22 Removed 34865
970.3103 (d) added 34865
970.4100 (Subpart 970.41) Heading added 2312
970.4100 Redesignated from 970.0803; (a) and (c) amended; (d) removed 2312
970.4501 (Subpart 970.45) Added 34865
970.5204–2 Revised 34865
970.5204–12 Amended 2313
970.5204–13 Amended; introductory text revised 34866
970.5204–14 Amended; introductory text revised 34866
970.5204–15 Amended 2313
970.5204–16 Amended 2313
Amended; introductory text revised 34867
970.5204–17 Amended 2313
970.5204–18 Amended 2313
Removed 34867
970.5204–20 Amended 2313
970.5204–21 Amended 2313
Amended; introductory text revised 34867
970.5204–23 Introductory text amended 2313
970.5204–24 Amended 2313
970.5204–26 Amended 2313
Removed 34868
970.5204–31 Amended 2313
Revised 34868
970.5204–32 (a) and (b) amended 2313
Removed 34869
970.5204–33 (a) and (b) amended 2313
970.5204–35 Amended 2313
970.5204–38 Amended 2313
970.5204–41 Amended 2313
Removed 34869
970.5204–43 Amended 2313
970.5204–44 (b)(11) amended 2313
(b)(15) revised 40753
970.5204–45 Amended 2313
970.5204–50 Removed 2313
970.5204–52 Revised 2313
970.5204–54 Amended 2313
970.5204–55 Amended 2313
Removed 34869
970.5204–56 Amended 2313
Removed 34869
970.5204–57 Amended 2313, 42075
970.5204–60 Amended 2313
970.5204–61 Amended 2313
Amended; introductory text revised 34869
970.5204–62 Removed 34869
970.5204–73 Regulation at 61 FR 32587 confirmed 34873
970.5204–74 Regulation at 61 FR 32587 confirmed 34873
970.5204–75 Added 34869
970.5204–76 Added 34870
970.5204–77 Added 34870
970.5204–78 Added 34870
970.5204–79 Added 34871
970.5204–80 Added 34871
970.7105 (a)(3) amended 2313

Chapter 12—Department of Transportation (Parts 1200—1299)

1201.301–70 (a)(4) removed; (a)(5) redesignated as (a)(4); (b) introductory text amended 26419
1201.304 (a) revised 26420
1202.1 (f) and (g) revised; (i)(7) amended 26420
1203.405 Redesignated from 1203.409 26420
1203.409 Redesignated as 1203.405 26420
1211.104—1211.104–70 (Subpart 1211.1) Added 26420
1211.204–70 (Subpart 1211.2) Added 26420
1212 Clarification 53677
Correctly removed 54490
1213 Clarification 53677
1214.303 (b) amended 26420
1237.104—1237.104–90 (Subpart 1237.1) Added 26420
1246.701–70 Amended 26420
1252.219–70 (b) removed; (c) redesignated as (b) 26420
1253.303 (Subpart 1253.3) Appendix amended 26421

Chapter 14—Department of the Interior (Parts 1400—1499)

1401.106 (Subpart 1401.1) Revised 18054
1401.303 (Subpart 1401.3) Revised 18054
1401.601—1401.670–4 (Subpart 1401.6) Removed 18054

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Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1501.103 Redesignated as 1501.104 33572
1501.104 Redesignated as 1501.105; new 1501.104 redesignated from 1501.103 and revised 33572
1501.104–1 Redesignated as 1501.105–1 33572
1501.104–2 Redesignated as 1501.105–2 33572
1501.104–3 Redesignated as 1501.105–3 33572
1501.105 Redesignated from 1501.104 33572
1501.105–1 Redesignated from 1501.104–1 33572
1501.105–2 Redesignated from 1501.104–2 and amended 33572
1501.105–3 Redesignated from 1501.104–3 33572
1501.602–3 (d)(1)(v) amended 57337
(a) removed; (b) through (f) redesignated as (a) through (e) 33572
1503.905 (Subpart 1503.9) Added 57337
1505.203 Amended 33572
1505.405 (Subpart 1505.4) Removed 55118
1509.404 Revised 57337
1509.507–1 (b) amended 57337
(b) revised 33572
1509.507–2 (a), (b) and (c) amended; (d) revised 57337
1510 Removed 57337
1511 Added 57337
1512 Removed 57338
1513 Revised 57338
1513.403 Redesignated from 1515.404 33572
1513.404 Redesignated as 1515.403 33572
1513.505 Redesignated from 1513.505–2 33572
1513.505–2 Redesignated as 1513.505 33572
1514.000 Removed 33572
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Authority citation revised...2977, 7647, 44048
Clarification and workshop date change.....16107
Reconsideration petitions.....31363
Effective date confirmation.....44913
171.1 Revised.....1215
(c) added.....2977
171.4 (d) removed.....51337
171.5 Added; eff. 2-19-97 through 8-15-97; interim.....7647
Added.....44048
171.7 (a)(3) table amended.....51337, 65959
(a)(3) table amended.....24699, 24700
171.8 Amended.....51337
Regulation at 61 FR 26419 confirmed.....68954
Amended.....1215, 1227, 24700
Regulation at 62 FR 1227 eff. date delayed to 10-1-98.....39398
171.11 (d)(9)(iii) amended.....1227
(d)(4) revised; (d)(9)(i) amended; (d)(14) added.....24700
(d)(15) added.....30770
Regulation at 62 FR 30770 eff. date delayed to 8-7-97.....34667
Regulation at 62 FR 1227 eff. date delayed to 10-1-98.....39398
171.12 (b)(8)(iii) amended.....1227

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(b)(8)(i) amended; (b)(13) removed; (b)(17) added 24700
(b)(18) added 30770
Regulation at 62 FR 30770 eff. date delayed to 8-7-97 34667
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398
171.12a (b)(5)(iii) amended 1227
(b)(5)(i) amended; (b)(12) removed; (b)(16) added 24700
(b)(17) added 30770
Regulation at 62 FR 30770 eff. date delayed to 8-7-97 34667
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398
171.14 (b) revised 1227
(d) added 24700
(c) redesignated as (c)(1); (c)(2) added 29676
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398
Heading, introductory text and (b) revised; (e) added; eff. 10–1–98 39404
172 Petition denial 51236
172.101 Table amended 51240, 51337, 51338
(g) table amended 1227
(c)(10)(iii) revised 14337
Table amended 14338, 24714, 24716, 30771, 34669
(c)(14), (15) and (l)(3) added; (f) and table amended 24701
Table and Appendix B amended 24717
Regulation at 62 FR 30771 eff. date delayed to 8-7-97 34667
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398
(g) table amended; eff. 10–1–98 39404
Table corrected 45702
172.102 (c)(1) amended 51240
(c)(1) and (3) amended 51338
(c)(1), (3), (5) and (7)(ii) amended 24718
(c)(1) amended 24719, 34669
(c)(1) and (2) amended 30772
Regulation at 62 FR 30772 eff. date delayed to 8-7-97 34667
172.203 (j) removed; (k)(3) and (m)(3) amended 24719
172.301 (a)(1) revised; (a)(3) added; (f)(1) and (2) removed 1227
Regulation at 62 FR 1227 eff. date delayed to 10-1-98 39398
(a)(3) revised; eff. 10–1–98 39404
172.302 (g) added 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
172.313 (a) revised; (c) added 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
Introductory text added; (b) and (c) revised; eff. 10–1–98 39405
Corrected 45702
172.328 (a)(3) added 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
(a)(3) revised; eff. 10–1–98 39405
172.331 (c) added 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
172.332 (a) revised 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
172.400 (b) table revised 1228
Regulation at 62 FR 1228 eff. date delayed to 10-1-98 39398
(b) table amended; eff. 10–1–98 39405
172.402 (e)(1) revised; eff. 10–1–98 39405
172.416 Revised 1229
Regulation at 62 FR 1229 eff. date delayed to 10-1-98 39398
Revised; eff. 10–1–98 39405
172.429 Added 1229
Regulation at 62 FR 1229 eff. date delayed to 10-1-98 39398
Revised; eff. 10–1–98 39406
172.502 (a)(2) revised; (b)(3) added 1230
Regulation at 62 FR 1230 eff. date delayed to 10-1-98 39398
(b)(3) revised; eff. 10–1–98 39407
172.504 (b) and (e) revised; (f)(11) added 1230
Regulation at 62 FR 1230 eff. date delayed to 10-1-98 39398
(e) table amended; eff. 10–1–98 39407
172.505 (a) revised 1231
Regulation at 62 FR 1231 eff. date delayed to 10-1-98 39398
172.510 (b) removed; (c) redesignated as (b); new (b) amended 1231
Regulation at 62 FR 1231 eff. date delayed to 10-1-98 39398
172.540 Revised 1231

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Regulation at 62 FR 1231 eff. date delayed to 10-1-98 39398
Revised; eff. 10–1–98 39408
172.555 Added 1233
Regulation at 62 FR 1233 eff. date delayed to 10-1-98 39398
Revised; eff. 10–1–98 39409
172.602 (c)(1) revised 1234
Regulation at 62 FR 1234 eff. date delayed to 10-1-98 39398
172.606 Added 1234
Regulation at 62 FR 1234 eff. date delayed to 10-1-98 39398
(c) added; eff. 10–1–98 39409
173 Authority citation revised 68954
Meeting 37149
173.3 (c)(1) amended; (c)(3) revised; (c)(7) added 24719
173.5 Revised 1215
173.6 Added 1216
173.7 (a) introductory text amended 51338
173.8 Added 1216
173.9 Revised 1234
Regulation at 62 FR 1234 eff. date delayed to 10-1-98 39398
173.21 Regulation at 61 FR 26419 confirmed; (k) revised 68954
(f) introductory text amended 24719
173.22a (c) amended 51242
173.28 (b)(4)(ii) corrected 51495
(b)(4)(i) table amended 14338
173.29 (b)(1) revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398
173.31 (a)(6)(i) removed; (a)(6)(ii) through (v) redesignated as (a)(6)(i) through (iv); new (a)(6)(i) through (iv), (b)(5), (c)(3) and (d)(1)(vii) amended 51338
173.32c (j) amended 24719
173.34 (e)(10), (13) and (19)(ii) amended; (e)(19) introductory text amended 51240
(e)(18)(i) table amended 24719
173.60 Revised 24719
173.62 Revised 24720
Table corrected 45702
173.120 (a)(3) revised; (b)(3), (c)(1)(i)(A) and (B) amended; (c)(1)(i)(C) added 24731
173.124 (a)(1) introductory text, (2)(i)(D)(2), (3)(ii), (iii), (b)(1), (2) and (c) amended 24731
173.125 (b), (c)(2)(i), (ii), (d)(1), (2) and (3) revised 24731
173.127 Revised 24732
173.128 (c)(3) and (e) amended 24732
173.132 (c) redesignated as (d); (b)(3)(iii) and new (c) added 24732
(c)(3) corrected 45702
173.136 (c) added 24732
173.137 (b) and (c)(2) amended 24733
173.152 (b)(4) added 24733
173.162 Amended 24733
173.166 Heading and (e) revised; (a) removed; (b) introductory text, (2), (4), (c), (d)(1), (2) and (f) amended 24733
173.170 (c) amended 14338
173.185 Revised 24733
173.189 (b) amended 51338
173.201 (b) and (c) amended 24734
173.202 (b) and (c) amended 24734
173.203 (b) and (c) amended 24734
173.211 (b) and (c) amended 24734
173.212 (b) and (c) amended 24734
173.213 (b) and (c) amended 24734
173.220 (c)(3) revised 24734
173.224 (c)(1) and (2) amended 51338
(b) table revised 24734
(c)(3) removed; (c)(4) redesignated as (c)(3); (c)(1) and (3)(ii) amended 24735
(b) table corrected 45702
173.225 (e)(1) amended 51338
(b)(2) amended; (b)(4)(ii), (6), table, (d) and (e)(5) revised 24735
(c)(2), (3) and (e)(2)(i)(B) removed; (c)(4), (5) and (e)(3)(i)(C) redesignated as (c)(2), (3) and (e)(3)(i)(B); (c)(1), new (2)(ii) and (e)(2) amended 24741
173.226 (c)(1) amended 24741
173.300a (c) amended 51338
173.302 (c)(3) amended 51240
173.306 (b)(3) amended 51338
173.309 (b) revised 51240
173.315 (e) and (i)(3) amended 51339
(a) table amended 24741
173.316 (d) added 24741
173.318 (f)(4) added 24741
173 Appendixes E and F removed 24741
174.26 Revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398

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174.81 (g) introductory text amended **51339**
174.83 (b) introductory text amended **51339**
174.85 (d) table amended **51339**
174.101 (h) and (o) introductory text amended **51339**
174.112 (b) amended **51339**
174.680 (a) revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398
175.10 (a)(22) amended 24741
175.320 (a) table amended **51339**
175.630 Revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398
176.78 (k) revised 24741
176.84 (b) table amended 24742
176.194 (c) and (e) amended **51339**
176.340 (b)(1), (3), (4) and (5) amended **51339**
176.600 (a) revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398
176.905 Revised 24742
177.835 (g) introductory text revised **51339**
177.841 (e)(1) and (2) revised 1236
Regulation at 62 FR 1236 eff. date delayed to 10-1-98 39398
178.2 (f) added 14338
178.320 (a) amended **51339**
178.337–1 (b), (c)(1), (2) introductory text, (i), (ii), (d), (e)(1), (2) and (f) amended **51340**
178.337–2 (a)(1) through (4), (b) heading, (1) introductory text, (2) introductory text and (c) amended **51340**
178.337–3 (b), (c)(1)(iii)(A), (B) introductory text, (C), (iv)(A), (B), (C), (2)(iii)(A), (B) introductory text, (C), (iv)(A), (B), (C), (e), (f), (g) introductory text and (1) amended **51340**
178.337–4 (b) and (c) amended **51340**
178.337–6 (b) amended **51340**
178.337–8 (a)(1) amended **51340**
178.337–9 (a)(2), (3), (b)(1), (6), (c) and (d)(1) amended **51340**
178.337–11 (a)(1)(ii) through (v), (2)(i), (ii), (b), (c)(1) and (3) amended **51340**
178.337–13 (a) through (d) amended **51340**
178.337–14 (b)(2) amended **51340**
178.337–15 (a) amended **51340**
178.337–16 (a), (b)(1), (2) and (c) amended **51340**
178.337–17 (a) amended **51340**
178.337–18 (a) introductory text, (3) and (b) amended **51340**
178.338–9 (c)(1) amended **51340**
178.345–1 (c) amended **51340**
178.345–2 (a)(1), (c)(1) and (2) amended **51341**
178.345–3 (a)(1), (b) introductory text, (c)(1) introductory text, (iii)(A), (B) introductory text, (C), (iv)(A), (B), (C), (2) introductory text, (iii)(A), (B) introductory text, (C), (iv)(A), (B), (C) and (f)(2) amended **51341**
178.345–4 (a) amended **51341**
178.345–6 (a) and (b) amended **51341**
178.345–7 (a) introductory text, (c), (d)(2) and (5) amended; (d)(2) table revised **51341**
178.345–8 (a)(1) introductory text, (3), (4), (b) introductory text, (2), (c)(1), (2), (d) introductory text, (1), (2) introductory text, (ii) and (e) amended **51341**
178.345–9 (e) and (h) amended **51341**
178.345–10 (a), (c), (e) introductory text and (1) amended **51341**
178.345–11 (a), (b) introductory text and (d) amended **51341**
(b)(2) amended **51342**
178.345–12 Amended **51342**
178.345–13 (a), (b) introductory text, (1) and (2) amended **51342**
178.345–14 (a) revised; (b)(4), (5) and (d) amended **51342**
178.345–15 (b)(2) and (d) amended **51342**
178.511 Heading, (a), (b) introductory text and (1) revised; (b)(2) through (6) redesignated as (b)(3) through (7); new (b)(2) added 24742
178.703 (b)(6) added 24743
178.707 (c)(2) and (3) amended; (c)(6) added 24743
178.815 (c)(3) amended 24743
179.103–5 (a)(1) amended **51342**
179.300–7 (a) amended **51342**
180.403 Amended **51342**

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180.407 (c) table, (d)(2)(vi), (f)(3), (g)(1)(viii), (ix), (h)(1) introductory text, (i) and (ii) amended **51342**
180.409 (a) revised; (b) redesignated as (d); new (b) and (c) added 1217
180.413 (e) amended **51342**
180.415 (b) amended **51343**
180.417 (c)(2) amended **51343**
190 Technical correction **64030**
Authority citation revised 24057
190.11 Added 24057
(a)(1) corrected 34415
192.381 (a)(3)(i) and (d) revised 2619
193.2019 Added 8404
Removed 36466
Added; eff. 10–15–97 41312
193.2057 Amended; (b) and (c)(1) revised 8404
193.2059 (c) introductory text and (d)(1)(ii) revised; (c)(4) added 8404
193 Appendix A amended 8404
195.1 (b)(3) revised; eff. 10–7–97 31367
199 Notice **60206**
Authority citation revised **65365**
Confirmation of effective dates 7946
199.25 (d) revised **65365**
199.229 (c) revised **65365**

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214 Authority citation revised **65975**
Reconsideration petitions 19234
214.4 Added **65975**
214.7 Amended **65975**
214.301—214.355 (Subpart C) Added **65976**
214 Appendix A amended **65981**
219 Authority citation revised **60634**
Determination 13349
219.5 Amended **60634, 67490**
219.201 (a)(1) introductory text, (2) introductory text and (4) revised **60634**
225 Authority citation revised **59371**
225.3 Introductory text, (a), (b), (c) introductory text and (1) through (4) redesignated as (a) introductory text, (1), (2), (3) introductory text and (i) through (iv); new (a) introductory text revised; new (b), new (c) and (d) added **67490**
225.5 Amended **59371, 67490**
225.19 (e) revised **60634**
(c) amended **67490**
225.25 (c) revised **59371**
(h) introductory text amended; (h)(12) and (13) revised; (h)(15) added **67491**
225.27 (a) amended **67491**
225.33 (a)(10)(ii) amended **59371**
(a) introductory text amended **67491**
225.35 Amended **59371**
225 Appendix B added **60634**
232 Authority citation revised 294
Reconsideration petitions 30461
232.19 Heading and (a) revised; (h) removed 294
232.21 Added 294
232.23 Added 294
232.25 Added 295
232 Appendix A amended 295

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355 Authority citation revised 37151
355 Appendix A amended 37151
356 Added 32041
365 Authority citation added **54707**
Heading redesignated from Part 1160 heading **54707**
365.101—365.123 (Subpart A) Redesignated from 1160.1—1160.12 (Subpart A) **54707**
365.201—365.207 (Subpart B) Redesignated from 1160.40—1160.43 (Subpart B) **54707**
365.301—365.309 (Subpart C) Redesignated from 1160.60—1160.64 (Subpart C) **54707**
365.401—365.413 (Subpart D) Redesignated from Part 1181 ..... **54707**
366 Redesignated from Part 1044 ..... **54707**
367 Redesignated from Part 1023 ..... **54707**
367 Authority citation revised 15420
367.1 (a), (b) and (c) amended 15420
367.3 (c) amended 15420
367.4 (a), (b) introductory text, (c)(2), (3), (d) and (h) amended 15420

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367.5 Regulation at 60 FR 30012 stayed through 1-1-98; regulation at 60 FR 39875 eff. date extended through 12-31-97 ..... **64295**
(a) introductory text and (b) amended 15420
367.6 (c) amended 15420
367 Appendix A amended 15420
368 Redesignated from Part 1171 ..... **54707**
Authority citation revised 15420
Heading revised 15420
368.1 Revised 15420
368.2 (a), (b)(1), (2), (c)(2), (d), (e) and (f) revised 15421
368.3 (a) and (c) revised; (d) removed 15421
368.5 Revised 15421
368.6 Amended; heading and (b) introductory text revised; (b)(2) amended; (c) removed 15421
368.7 Revised 15421
369 Redesignated from Part 1167 ..... **54707**
Removed 38035
370 Added 32042
371 Redesignated from Part 1045 ..... **54707**
Authority citation revised 15421
371.1 Amended 15421
371.3 (a) introductory text revised; (a)(2) amended; (a)(6) concluding text removed 15421
371.7 Amended 15421
371.10 Amended 15421
372 Heading added **54708**
Authority citation added **54708**
372.11 (a) and (b) amended 38036
372.101—372.117 (Subpart A) Redesignated from Part 1047 ..... **54708**
372.101 Amended 15421
372.103 Amended 15421
372.105 Removed 15421
372.113 Removed 38036
372.115 Heading revised **54708**
Amended 15421
372.117 (a), (c), (d)(1), (2) and (3) amended 15421
372.201—372.243 (Subpart B) Redesignated from Part 1048 ..... **54708**
372.201 Introductory text amended 15422
372.203 Introductory text amended 15422
372.205 Introductory text amended 15422
372.207 Introductory text amended 15422
372.209 Introductory text amended 15422
372.211 Introductory text amended 15422
372.213 Introductory text amended 15422
372.215 Introductory text amended 15422
372.217 Introductory text amended 15422
372.219 Introductory text amended 15422
372.221 Introductory text amended 15422
372.223 Introductory text amended 15422
372.225 Introductory text amended 15422
372.227 Introductory text amended 15422
372.229 Introductory text amended 15422
372.231 Introductory text amended 15422
372.233 Introductory text amended 15422
372.235 Introductory text amended 15422
372.237 (a) and (b) amended 15422
372.241 Introductory text amended 15422
372.243 Introductory text amended 15422
372.301—372.303 (Subpart C) Redesignated from Part 1049 ..... **54708**
372.300 Added 15422
372.301 Revised 15422
372.303 Introductory text and (a) revised 15423
373 Heading added **54708**
Authority citation added **54708**
373.101—373.105 (Subpart A) Redesignated from Part 1051; heading revised **54708**
373.101 Heading revised **54708**
(e) amended 15423
373.103 Amended 15423
373.105 Amended 15423
373.201 (Subpart B) Redesignated from Part 1081; heading revised **54708**
373.201 Heading revised **54708**

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374 Heading added **54709**
Authority citation added **54709**
374.101—374.113 (Subpart A) Redesignated from Part 1055 ..... **54709**
374.101 Amended 15423
374.103 Amended 15423
374.105 Amended 15423
374.107 Amended 15423
374.109 Amended 15423
374.111 Amended 15423
374.113 (b) amended 15423
374.201 (Subpart B) Redesignated from Part 1061 ..... **54709**
374.201 (a) and (c) amended 15423
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374.307 (c)(1), (2)(iv) and (g) amended 15423
374.311 (b) amended 15423
374.319 (a) and (b) amended 15423
374.401—374.405 (Subpart D) Redesignated from Part 1064 ..... **54709**
374.401 (a) introductory text and (3) amended 15423
374.403 (a) and (b) amended 15423
374.405 Amended 15423
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374.501 Amended 15423
374.505 (d) amended 15423
375 Redesignated from Part 1056 ..... **54707**
376 Redesignated from Part 1057 ..... **54707**
Authority citation revised 15423
376.1 Introductory text, (a) and (c) amended 15423
376.2 (a) amended 15424
376.11 Introductory text, (a) and (c)(1) amended 15424
376.12 Introductory text, (b), (c)(3), (4), (j)(1) and (l) amended 15424
376.21 Introductory text and (b) amended 15424
376.22 (a), (c)(2) and (4) amended 15424
376.26 Amended 15424
376.31 (b) and (d)(1) amended 15424
376.42 Amended 15424
377 Heading added **54708**
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377.101—377.105 (Subpart A) Redesignated from Part 1052 ..... **54708**
377.101 Amended 15424
377.103 Amended 15424
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377.201—377.217 (Subpart B) Redesignated from Part 1320; heading revised **54709**
377.201 (a) amended 15424
377.205 (d)(3) amended; (e) removed 15424
377.211 Amended 15424
377.213 Removed 15424
377.215 (a) and (b)(1) amended 15424
377.217 Amended 15424
378 Redesignated from Part 1008 ..... **54707**
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378.1 Amended 15424
378.2 (a), (b) and (d) amended 15424
378.4 (a) and (d) amended 15424
378.5 (a) amended 15424
(b) and (c) amended 15425
378.6 Amended 15425
379 Added 32044
382.103 (c) revised 1296
382.115 Revised 37151
382.401 (c)(6)(iii) and (iv) amended; (c)(6)(v) removed; (e)(1) revised 37151
383 Authority citation revised 1296
383.3 (b) revised 1296
383.5 Amended 37151
383.51 (b)(2)(ii) and (v) revised; (b)(3)(i), (ii) and (d)(2)(iv) amended 37151
383.111 (a) amended 37151
384.101 Revised 37152
384.301 Revised 37152
384.305 (b) revised (OMB number) 37152
384.309 Revised 37152
385.9 Existing text designated as (a); (b) added; interim; eff. 5-28-97 through 11-28-97 28809
385 Appendix designated as Appendix A; Appendix B added; interim; eff. 5-28-97 through 11-28-97 28809
387 Authority citation revised **54709**
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387.5 Amended 16709
387.301—387.323 (Subpart C) Redesignated from Part 1043 ..... **54709**
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387.317 Heading revised **54710**
387.401—387.419 (Subpart D) Redesignated from Part 1084; heading revised **54710**
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389 Authority citation revised.....37152
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390 Authority citation revised.....54710
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390.3 (b) removed; (c) through (g) redesignted as (b) through (f).....1296
390.5 Amended.....16709
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391.15 (c)(2)(ii) and (iii) revised.....37152
391.41 (b)(12) revised; (c) removed.....37152
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397 Report availability.....54744
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544 Authority citation revised.....33756
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544.2 Revised.....33756
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571.105 Corrected; CFR correction.....35107
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571.114 Amended.....2978
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(a)(7) added; (b) revised 58464
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(a)(1)(i)(E)(*2*), (6)(i)(B)(*1*), (c)(2)(ii)(A) and (B) revised 14646
(c)(2)(iii) revised; interim 15386
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648.5 (a) revised 58465
648.6 (a) revised 58465
648.7 (a)(1)(i), (b)(1)(i) and (iii) amended; (a)(2)(i) and (f)(3) revised 58465
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648.9 (e) revised 14646

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648.10 (a) table amended; (e) removed; (f) redesignated as (e); (b) introductory text, (1), (c)(1), (2), (3), (5) and new (e) introductory text revised; new (f) added 14647
(c)(3) and (f) revised; interim 15386
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(a), (b) and (c) added 37156
648.13 (a) revised 28642
648.14 (t) reinstated **53866**
(a)(43) revised **54106**
(a)(52) revised; (a)(89) added **55776**
(k)(12) added **56126**
(a)(8) revised; (u) redesignated as (w); (a)(90) through (95), new (u), (v) and (w)(7) added **58466**
(a)(96) added 1842
(a)(89) revised; (c)(11) added 9379
(a)(97), (98) and (99) added 10748
(w) redesignated as (x); new (w) added 13300
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(a)(96) reinstated; (a)(101) correctly added 18300
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(b)(2) revised; (g) added 43470
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648.56 Added 1831
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648.86 (a)(2)(iii) revised; (b) removed; (c) redsignated as (b) 14650
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TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Rob Sheehan was Chief Editor of the LSA, assisted by Brian Swidal. The LSA was prepared under the direction of Raymond A. Mosley, assisted by Jim Wickliffe. INQUIRIES, telephone 202–523–5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Raymond A. Mosley, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 or e-mail info@fedreg.nara.gov.

CHECKLIST OF CFR VOLUMES FOR THIS MONTH

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
●1, 2 (2 Reserved)	(869–032–00001–8)	$5.00	Feb. 1, 1997
●3 (1996 Compilation and Parts 100 and 101).	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
●4	(869–032–00003–4)	7.00	Jan. 1, 1997
5 Parts:			
◗1–699	(869–032–0004–2)	34.00	Jan. 1, 1997
◗700–1199	(869–032–00005–1)	26.00	Jan. 1, 1997
◗1200–End, 6 (6 Reserved)	(869–032–00006–9)	33.00	Jan. 1, 1997
7 Parts:			
◗0–26	(869–032–00007–7)	26.00	Jan. 1, 1997
◗27–52	(869–032–00008–5)	30.00	Jan. 1, 1997
◗53–209	(869–032–00009–3)	22.00	Jan. 1, 1997
◗210–299	(869–032–00010–7)	44.00	Jan. 1, 1997
◗300–399	(869–032–00011–5)	22.00	Jan. 1, 1997
◗400–699	(869–032–00012–3)	28.00	Jan. 1, 1997
◗700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
◗900–999	(869–032–00014–0)	40.00	Jan. 1, 1997
◗1000–1199	(869–032–00015–8)	45.00	Jan. 1, 1997
◗1200–1499	(869–032–00016–6)	33.00	Jan. 1, 1997
◗1500–1899	(869–032–00017–4)	53.00	Jan. 1, 1997
◗1900–1939	(869–032–00018–2)	19.00	Jan. 1, 1997
◗1940–1949	(869–032–00019–1)	40.00	Jan. 1, 1997
◗1950–1999	(869–032–00020–4)	42.00	Jan. 1, 1997
◗2000–End	(869–032–00021–2)	20.00	Jan. 1, 1997
●8	(869–032–00022–1)	30.00	Jan. 1, 1997
9 Parts:			
◗1–199	(869–032–00023–9)	39.00	Jan. 1, 1997
◗200–End	(869–032–00024–7)	33.00	Jan. 1, 1997
10 Parts:			
◗0–50	(869–032–00025–5)	39.00	Jan. 1, 1997
◗51–199	(869–032–00026–3)	31.00	Jan. 1, 1997
◗200–499	(869–032–00027–1)	30.00	Jan. 1, 1997
◗500–End	(869–032–00028–0)	42.00	Jan. 1, 1997
●11	(869–032–00029–8)	20.00	Jan. 1, 1997
12 Parts:			
◗1–199	(869–032–00030–1)	16.00	Jan. 1, 1997
◗200–219	(869–032–00031–0)	20.00	Jan. 1, 1997
◗220–299	(869–032–00032–8)	34.00	Jan. 1, 1997
◗300–499	(869–032–00033–6)	27.00	Jan. 1, 1997
◗500–599	(869–032–00034–4)	24.00	Jan. 1, 1997
◗600–End	(869–032–00035–2)	40.00	Jan. 1, 1997
●13	(869–032–00036–1)	23.00	Jan. 1, 1997
14 Parts:			
◗1–59	(869–032–00037–9)	44.00	Jan. 1, 1997
◗60–139	(869–032–00038–7)	38.00	Jan. 1, 1997
140–199	(869–032–00039–5)	16.00	Jan. 1, 1997
◗200–1199	(869–032–00040–9)	30.00	Jan. 1, 1997
◗1200–End	(869–032–00041–7)	21.00	Jan. 1, 1997
15 Parts:			
0–299	(869–032–00042–5)	21.00	Jan. 1, 1997
◗300–799	(869–032–00043–3)	32.00	Jan. 1, 1997

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♦0–999	(869–032–00045–0)	30.00	Jan. 1, 1997
♦1000–End	(869–032–00046–8)	34.00	Jan. 1, 1997
17 Parts:			
♦1–199	(869–032–00048–4)	21.00	Apr. 1, 1997
♦200–239	(869–032–00049–2)	32.00	Apr. 1, 1997
♦240–End	(869–032–00050–6)	40.00	Apr. 1, 1997
18 Parts:			
♦1–399	(869–032–00051–4)	46.00	Apr. 1, 1997
♦400–End	(869–032–00052–2)	14.00	Apr. 1, 1997
19 Parts:			
♦1–140	(869–032–00053–1)	33.00	Apr. 1, 1997
♦141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
♦200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
20 Parts:			
♦1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
♦400–499	(869–032–00057–3)	46.00	Apr. 1, 1997
♦500–End	(869–032–00058–1)	42.00	Apr. 1, 1997
21 Parts:			
♦1–99	(869–032–00059–0)	21.00	Apr. 1, 1997
♦100–169	(869–032–00060–3)	27.00	Apr. 1, 1997
♦170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
♦200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
♦300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
♦500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
♦600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
♦800–1299	(869–032–00066–2)	31.00	Apr. 1, 1997
♦1300–End	(869–032–00067–1)	13.00	Apr. 1, 1997
22 Parts:			
1–299	(869–032–00068–9)	42.00	Apr. 1, 1997
♦300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
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200–499	(869–032–00072–7)	29.00	Apr. 1, 1997
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♦700–1699	(869–032–00074–3)	42.00	Apr.1, 1997
♦1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
●25	(869–032–00076–0)	42.00	Apr. 1, 1997
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♦§§ 1.61–1.169	(869–032–00078–6)	44.00	Apr. 1, 1997
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♦§§ 1.301–1.400	(869–032–00080–8)	22.00	Apr. 1, 1997
♦§§ 1.401–1.440	(869–032–00081–6)	39.00	Apr. 1, 1997
♦§§ 1.441–1.500	(869–032–00082–4)	22.00	Apr. 1, 1997
♦§§ 1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
♦§§ 1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
♦§§ 1.851–1.907	(869–032–00085–9)	34.00	Apr. 1, 1997
♦§§ 1.908–1.1000	(869–032–00086–7)	34.00	Apr. 1, 1997
♦§§ 1.1001–1.1400	(869–032–00087–5)	35.00	Apr. 1, 1997
♦§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997

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♦2–29	(869–032–00089–1)	36.00	Apr. 1, 1997
30–39	(869–032–00090–5)	25.00	Apr. 1, 1997
♦40–49	(869–032–00091–3)	17.00	Apr. 1, 1997
♦50–299	(869–032–00092–1)	18.00	Apr. 1, 1997
300–499	(869–032–00093–0)	33.00	Apr. 1, 1997
500–599	(869–032–00094–8)	6.00	[4] Apr. 1, 1990
♦600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
27 Parts:			
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200–End	(869–032–00097–2)	17.00	Apr. 1, 1997
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♦43–end	(869–032–00099–9)	30.00	July 1, 1997
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♦0–99	(869–032–00100–5)	27.00	July 1, 1997
♦100–499	(869–032–00101–4)	12.00	July 1, 1997
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1910 (§§ 1910.1000 to end)	(869–028–00113–1)	27.00	July 1, 1996
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1927–End	(869–028–00116–5)	38.00	July 1, 1996
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200–699	(869–032–00110–3)	28.00	July 1, 1997
700–End	(869–032–00111–1)	32.00	July 1, 1997
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191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–032–00116–2)	33.00	July 1, 1997
630–699	(869–032–00117–1)	22.00	July 1, 1997
700–799	(869–032–00118–9)	28.00	July 1, 1997
800–End	(869–032–00119–7)	27.00	July 1, 1997
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125–199	(869–032–00121–9)	36.00	July 1, 1997
200–End	(869–028–00130–1)	32.00	July 1, 1996
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♦52	(869–028–00142–4)	51.00	July 1, 1996
♦53–59	(869–028–00143–2)	14.00	July 1, 1996
60	(869–028–00144–1)	47.00	July 1, 1996
61–62	(869–032–00140–5)	19.00	July 1, 1997
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♦72–80	(869–028–00146–7)	34.00	July 1, 1996
♦81–85	(869–028–00147–5)	31.00	July 1, 1996
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♦87-135	(869–028–00149–1)	35.00	July 1, 1996
♦136–149	(869–032–00146–4)	35.00	July 1, 1997
♦150–189	(869–028–00151–3)	33.00	July 1, 1996
♦190–259	(869–028–00152–1)	22.00	July 1, 1996
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♦300–399	(869–028–00154–8)	28.00	July 1, 1996
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♦430–End	(869–028–00165–3)	44.00	Oct. 1, 1996
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♦1000–end	(869–028–00167–0)	45.00	Oct. 1, 1996
●44	(869–028–00168–8)	31.00	Oct. 1, 1996
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♦200–499	(869–028–00170–0)	14.00	[5]Oct. 1, 1995
♦500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996

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♦156–165	(869–028–00178–5)	20.00	Oct. 1, 1996
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♦200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
♦500–End	(869–028–00181–5)	17.00	Oct. 1, 1996
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♦20–39	(869–028–00183–1)	26.00	Oct. 1, 1996
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♦186–199	(869–028–00197–1)	14.00	Oct. 1, 1996
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♦200–599	(869–028–00203–0)	22.00	Oct. 1, 1996
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CFR Index and Findings Aids	(869–032–00047–6)	45.00	Jan. 1, 1997
Complete 1997 CFR set		951.00	1997
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1997
Individual copies		1.00	1997
Complete set (one-time mailing)		264.00	1996
Complete set (one-time mailing)		264.00	1995

[1]Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2]The July 1, 1985 edition of 32 CFR Parts 1 to 189 contains a note only for Parts 1 to 39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1 to 39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3]The July 1, 1985 edition of 41 CFR Chapters 1 to 100 contains a note for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the 11 CFR volumes issued as of July 1, 1984, containing those chapters.

[4]No amendments to this volume were promulgated during the period April 1, 1990 through March 31, 1994. The CFR volume issued as of April 1, 1990 should be retained.

[5]No amendments to this volume were promulgated during the period July 1, 1991 through June 30, 1994. The CFR volume issued as of July 1, 1991 should be retained.

[6]No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued as of January 1, 1993 should be retained.

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Yearly subscription	25.00	
CFR Index and Finding Aids	45.00	1997

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Chapter IV—Miscellaneous Agencies (Parts 400—500)

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TITLE 3—THE PRESIDENT

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July 24, 1875 Revoked in part by PLO 7249 12836
July 2, 1910 Revoked by PLO 7236 3053
July 9, 1910 Revoked in part by PLO 7272 35221
Jan. 7, 1911 Revoked by PLO 7277 40540
Jan. 22, 1912 Revoked by PLO 7230 3519
Apr. 13, 1912 Revoked in part by PLO 7268 33104
Feb. 21, 1913 Revoked by PLO 7252 17633
Aug. 11, 1913 Revoked by PLO 7278 45266
Dec. 5, 1913 Modified and revoked in part by PLO 7261 27773
Dec. 15, 1913 Revoked by PLO 7250 14438
Mar. 21, 1914 Modified and revoked in part by PLO 7261 27773

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June 24, 1914 Modified and revoked in part by PLO 7261 27773
Feb. 6, 1915 Revoked by PLO 7239 5244
Feb 29, 1916 Revoked in part by PLO 7261 27773
Aug. 2, 1916 Modified by PLO 7261 27773
Oct. 24, 1916 Revoked by PLO 7237 3911
Jan. 3, 1917 Revoked in part by PLO 7261 27773
July 24, 1917 Revoked in part by PLO 7278 45266
May 4, 1918 Revoked by PLO 7245 7796
Feb. 25, 1919 Modified by PLO 7261 27773
Oct. 24, 1920 Revoked in part by PLO 7261 27773
May 25, 1921 Revoked in part by PLO 7261 27773
Apr. 17, 1926 Modified by PLO 7261 27773
3406 Revoked in part by PLO 7269 33103
5327 Revoked in part by PLO 7276 40541
Revoked in part by PLO 7283 49024
5449 *See* PLO 7263 31450
5672 Modified by PLO 7261 27773
5947 *See* PLO 7263 31450
6025 Revoked in part by PLO 7261 27773
11246 *See* Final Rule of Aug. 12, 1997 44174
12171 Amended by EO 13039 12529
12543 Continued by Notice of Jan. 2, 1997 587
12544 Continued by Notice of Jan. 2, 1997 587
12552 Revoked by EO 13048 32467
12566 Revoked by EO 13043 19217
12606 Revoked by EO 13045 19885
12613 Revoked in part by EO 13059 44531
12637 Revoked by EO 13048 32467
12721 *See* EO 13054 36965
12722 *See* Notice of July 31, 1997 41803
12752 Amended by EO 13044 19665
12808 *See* Notice of May 28, 1997 29283
12810 *See* Notice of May 28, 1997 29283
12818 Revoked by EO 13048 32467
12831 *See* Notice of May 28, 1997 29283
12846 *See* Notice of May 28, 1997 29283
12852 Amended by EO 13053 39945
12865 *See* Notice Sept. 24, 1997 50477
12924 Continued by Notice of Aug. 13, 1997 43629
12933 *See* Final Rule of May 16, 1997 28177
12934 *See* Notice of May 28, 1997 29283
12947 Continued by Notice of Jan. 21, 1997 3439
12957 Continued by Notice of Mar. 5, 1997 10185
Revoked in part by EO 13059 44531
12958 *See* Order of Feb. 26, 1997 9349
See Final Rule of Mar. 26, 1997 17683
See Final Rule of July 1, 1997 34984
12959 Revoked in part by EO 13059 44531
12961 Continued by EO 13034 5137
12968 *See* Final Rule of Mar. 26, 1997 17683
See Final Rule of Mar. 26, 1997 34984
12975 Amended by EO 13046 27685
12982 *See* Department of Defense Notice of Feb. 11, 1997 6593
13010 Amended by EO 13041 19885
13017 Amended by EO 13040 14773
Amended by EO 13056 39415
13034 5137
13035 7131
13036 7653
13037 10185
13038 12065
13039 12529
13040 14773
13041 17039
13042 18017
13043 19217
13044 19665
13045 19885
13046 27685
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13047 28301
13048 32467
13049 32471
13050 32987
13051 34609
13052 35659
13053 35945
13054 36965
13055 39099
13056 39415
13057 41249
13058 43451
13059 44531
13060 45139
13061 48445

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Apr. 14, 1997 23123
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No. 97–13 of Dec. 27, 1996 3979
No. 97–14 of Dec. 27, 1996 1379
No. 97–15 of Dec. 27, 1996 1381
No. 97–16 of Feb. 12, 1997 13981
No. 97–17 of Feb. 21, 1997 9903
No. 97–18 of Feb. 28, 1997 11589
No. 97–19 of Mar. 11, 1997 13531
No. 97–20 of Mar. 18, 1997 15353
No. 97–21 of Apr. 24, 1997 23939
No. 97–22 of May 5, 1997 28295
No. 97–23 of May 5, 1997 28297
No. 97–24 of May 23, 1997 30737
No. 97–25 of May 28, 1997 31313
No. 97–26 of May 30, 1997 32015
No. 97–27 of June 3, 1997 32017
No. 97–28 of June 3, 1997 32019
No. 97–29 of June 13, 1997 34157
No. 97–30 of Aug. 7, 1997 44065
No. 97–31 of Aug. 16, 1997 47907
No. 97–32 of Sept. 12, 1997 48729

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Office of Personnel Management (Parts 1—1199)

213 Authority citation revised 19900
213.103 (a) amended 18505
213.104 (a)(1) revised 18505
213.3101 (a) designation and (c) through (f) removed 19900
213.3199 (a) amended; (b) introductory text revised 18505
300 Authority citation revised 23125
300.801—300.802 (Subpart H) Removed 23125
315.708 Revised; interim 3193
Revised 44199
330.102 (b) revised 31320
330.301 Revised 31320
330.601—330.611 (Subpart F) Revised 31320
Regulation at 62 FR 31320 eff. date corrected to 6–26–97 34385
330.701—330.711 (Subpart G) Revised 31323
334.103 Revised 23127
334.104 Revised 23127
334.105 Revised 23127
334.106 Revised 23127
338 Authority citation revised 44535
Technical correction 46553
338.202 (Subpart B) Removed 19900
338.301 (Subpart C) Added 44535
351.506 (b) revised; interim 10682
351.606 Revised; interim 10682
351.608 Revised; interim 10682
362 Revised; interim 3194
362 Revised 44199
530.303 (i) added; interim 25425
531.301 Amended; interim 25425
531.602 Amended; interim 25425
532 Technical correction 16465
532.201—532.285 (Subpart B) Regulation at 61 FR 48817 confirmed 3195
Appendixes B and D amended; interim 28978
532.504 Added; interim 28307
532.513 Revised; interim 28307
550.114 (a) and (b) revised; interim 28307

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550.714 Added 49127
551.531 (a) and (c) revised; interim 28307
591 Technical correction 16218
591.201 Amended; interim 25425
591.210 (a), (b)(1) and (c) amended; (f) revised; interim 25425
591.201—591.211 (Subpart B) Appendix A revised; interim 14188
610.202 (b) revised; (c) added; interim 28308
630.212 Added; interim 10683
831 Authority citation revised 50996
831.109 (c) removed; (f) redesignated as (f)(1); (f)(2) added 22873
831.201 (g) revised; interim 50996
837.101 (a)(2) revised; interim 50996
837.102 Amended; interim 50996
842 Authority citation revised 50997
842.107 Added; interim 50997
846 Authority citation revised 50997
846.201 (d)(1) revised; interim 50997
870 Revised 48731
870 Authority citation revised 50997
870.202 (a)(8) revised; interim 50997
871 Removed 48746
872 Removed 48746
873 Removed 48746
874 Removed 48746
890 Authority citation revised 50997
890.101 (a) amended 38435
890.102 (c)(8) revised; interim 50997
890.103 (c) and (d) redesignated as (d) and (e); new (c) added 38435
Corrected 49557
890.301—890.307 (Subpart C) Heading revised 38435
890.301 Revised 38435
(b) and (c) introductory text corrected; (1) correctly designated 49557
890.302 (f) revised 38437
890.303 (a)(1) amended; (a)(3) revised 38437
Heading corrected 49557
890.304 (a)(2) and (b)(1) amended; (d) revised 38437
890.306 Revised 38437
890.602 Amended 38440
890.603 (a)(3)(i) amended 38440
890.605 (a)(2)(v) amended 38440
890.803 (a)(3)(i) corrected 41485
890.806 Revised 38440
(1) correctly designated 49557
890.807 (c) heading, (1) and (e) revised 38441
890.808 (e) revised 38442
890.1105 Heading, (b), (c), (d) and (f) revised; (g) added 38442
890.1108 Revised 38442
900.604 (b)(3) and (4) revised 33971
900.606 Removed 33971
900.601—900.606 (Subpart F) Appendix A revised 33971
930.201 Regulation at 61 FR 39267 confirmed 6448
1001.101 Regulation at 61 FR 36996 confirmed 42899
1001.735.101—1001.735.103 (Subpart A) Regulation at 61 FR 36996 confirmed 42899
1001.735–201 Regulation at 61 FR 36996 confirmed 42899
1001.735–202 Regulation at 61 FR 36996 confirmed 42899
1001.735–203 Regulation at 61 FR 36996 confirmed 42899
1001.735–204 Regulation at 61 FR 36996 confirmed 42899
1001.735–205 Regulation at 61 FR 36996 confirmed 42899
1001.735–205a Regulation at 61 FR 36996 confirmed 42899
1001.735–206 Regulation at 61 FR 36996 confirmed 42899
1001.735–207 Regulation at 61 FR 36996 confirmed 42899
1001.735–208 Regulation at 61 FR 36996 confirmed 42899
1001.735–209 Regulation at 61 FR 36996 confirmed 42899
1001.735–210 Regulation at 61 FR 36996 confirmed 42899
1001.735–211 Regulation at 61 FR 36996 confirmed 42899
1001.735–212 Regulation at 61 FR 36996 confirmed 42899
1001.735–213 Regulation at 61 FR 36996 confirmed 42899
1001.735–214 Regulation at 61 FR 36996 confirmed 42899
1001.735–301—1001.735–304 (Subpart C) Regulation at 61 FR 36996 confirmed 42899
1001.735–401—1001.735–412 (Subpart D) Regulation at 61 FR 36996 confirmed 42899

Chapter II—Merit Systems Protection Board (Parts 1200—1299)

1200.10 (Subpart B) Revised 49589

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1201 Authority citation revised 17044
1201.3 (b) amended; interim 17044
(c)(1)(ii) revised; (c)(1)(iii) added; (c)(2) amended; interim 17045
1201.33 Existing text designated as (a); (b) and (c) added 48935
1201.37 Heading revised; (a) and (b) designation and heading removed; (b)(1), (2) and (3) redesignated as (a), (b) and (c); interim 17045
1201.55 (b) amended; interim 17045
1201.111 (b)(6) amended; interim 17045
1201.112 (a)(3) amended; interim 17045
1201.115 (b)(1) amended 43631
1201.121—1201.148 (Subpart D) Revised; interim 48451
1201.121 Heading and (b) revised; interim 17045
1201.131 Revised; interim 17045
1201.163 (a) and (c) amended; interim 17045
1201.182 (a) and (b) amended; (c) revised 48935
1201.201—1201.205 (Subpart H) Added; interim 17045
1209.3 Amended; interim 17048
1209.4 (a)(9) amended; (a)(10) redesignated as (a)(11); new (a)(10) added; new (a)(11) revised; interim 17048
1209.13 (Subpart E) Added; interim 17048

Chapter III—Office of Management and Budget (Parts 1300—1399)

1305 Added 29285
1312 Revised 25426

Chapter VI—Federal Retirement Thrift Investment Board (Parts 1600—1699)

1603 Authority citation revised 33968
1603.1 Revised 33968
1603.2 Heading, (b) and (c) revised; (d) added 33969
1603.3 (a) and (b) introductory text revised 33969
1605.9 (a)(1) amended 48936
1620 Authority citation revised 18234
1620.102 (b)(3) removed 18234
1639 Added; interim 49417
1640.1 Amended 34154
1640.2 Revised 34155
1640.3 Introductory text, (c)(2), (d) and (e) revised 34155
1640.4 Revised 34155
1640.5 Revised 34155
1640.6 Revised 34155
1650 Revised 49113
1651 Added 32429
1655 Regulation at 55 FR 979 confirmed 18019
1655.1 Regulation at 61 FR 58755 confirmed 18019
1655.2 Regulation at 61 FR 58755 confirmed 18019
1655.3 Regulation at 61 FR 58755 confirmed 18019
1655.4 Regulation at 61 FR 58755 confirmed 18019
1655.9 Regulation at 61 FR 58755 confirmed 18019
1655.10 Regulation at 61 FR 58755 confirmed 18019
1655.11 Regulation at 61 FR 58755 confirmed 18019
1655.12 Regulation at 61 FR 58755 confirmed 18019
1655.13 Regulation at 61 FR 58756 confirmed 18019
1655.15 Regulation at 61 FR 58756 confirmed 18019
1655.16 Regulation at 61 FR 58757 confirmed 18019
1655.17 Regulation at 61 FR 58757 confirmed 18019
1655.18 Regulation at 61 FR 58757 confirmed 18019
1655.19 Regulation at 61 FR 58757 confirmed 18019
1655.21 Regulation at 61 FR 58757 confirmed 18019
1655.22 Regulation at 61 FR 58757 confirmed 18019
1655.23 Regulation at 61 FR 58757 confirmed 18019
1655.24 Regulation at 61 FR 58757 confirmed 18019
1690 Regulation at 52 FR 43315 confirmed 32473

TITLE 5

Chapter XIV—Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

2423 Revised 40916
Clarification 46175
2429 Clarification 46175
2429.1 Removed 40922
2429.7 Amended; heading and (c) through (f) revised 40922
2429.11 Revised 40923
2429.12 (a) and (c) revised 40923
2429.13 Revised 40923
2429.14 Revised 40923
2429.21 (b) revised 40923
2429.22 Revised 40923
2429.24 (e) revised 40924
2429.25 Revised 40924
2429.27 (b) and (d) revised 40924
2473 Heading and authority citation correctly added 2547

Chapter XVI—Office of Government Ethics (Parts 2600—2699)

2634.105 (i) amended 48747
2634.601 (a) revised; (d) added; OMB number 33976
2634.905 Introductory text revised; (b)(2) and (c) amended; (d) added 33976
2635 Authority citation revised 48747
2635.202 (c)(4)(i) and (ii) amended; (c)(4)(iii) removed 48747
2635.204 Regulation at 61 FR 50691 confirmed 12531
Example 5 removed; (l)(1) amended 48747
2635.401 Amended 48747
2635.402 (a) note, (c) introductory text, (d) heading, introductory text, (2)(ii) and (3)(ii) amended; (d)(1) revised 48748
2635.403 (a) amended 48748
2635.501 (b) amended 48748
2635.602 (a) introductory text and (2) amended 48748
2635.605 (a) amended 48748
2635.606 (a) amended 48748
2635.704 (b)(2) Examples 1 and 3 amended 48748
2635.801 Regulation at 61 FR 50691 confirmed 12531
(d)(7) amended; (d)(8) removed; (d)(9) redesignated as new (d)(8) 48748
2635.803 Amended 48748
2635.805 (c) introductory text amended 48748
2635.807 (a)(1)(i) and (a)(1)(iii) Example 1 removed; (a)(1)(ii) and (iii) redesignated as new (1)(1)(i) and (ii); (a)(3)(ii) Example 1 amended 48748
2635.808 Regulation at 61 FR 50691 confirmed 12531
2635.902 (f), (h) and (bb) revised; (l) and (n) removed 48748
2635 Appendixes A through D removed 48748
2638 Technical correction 14737
2638.701 Revised; interim 11312
Regulation at 62 FR 11312 eff. date corrected to 6–10–97 13213
2638.702 (a) designation and (b) removed; (a)(1), (2) and (3) redesignated as (a), (b) and (c); new (b)(i) through (v) redesignated as (b)(1) through (5); new (b) introductory text and new (5) amended; new (c) revised; interim 11312
Regulation at 62 FR 11312 eff. date corrected to 6–10–97 13213
2638.703 (a)(3) amended; (b)(1) and (2) revised; interim 11313
Regulation at 62 FR 11312 eff. date corrected to 6–10–97 13213
2638.704 (b)(4) amended; (b)(6) removed; (b)(7) redesignated as (b)(6); heading, (a), (b)(5), new (6), (c) introductory text and (d) revised; interim 11313
Regulation at 62 FR 11312 eff. date in part corrected to 6–10–97 13213
2640.201 (c)(1) note corrected 1361
2640.202 (b)(1) correctly designated 1361
2640.203 (a)(2) amended 23128
2641 Appendixes A and B amended 26917
Appendixes A and B corrected 31865

Chapter XXII—Federal Deposit Insurance Corporation (Parts 3201—3299)

3201.102 (c)(1)(i), (2), (3) and (d)(2) amended; (c)(1)(ii) revised; (c)(1)(iii) added 3772

Chapter XXVIII—Department of Justice (Part 3801)

3801 Revised 23942
3801.106 (b)(1)(ii) corrected 31865

Chapter XXXV—Office of Personnel Management (Part 4501)

4501 Regulation at 61 FR 36996 confirmed 42899
Authority citation correctly revised 42899
4501.103 (a)(3) corrected 32859

Chapter LXI—National Labor Relations Board (Parts 7101—7199)

Chapter LXI Established; interim 6447

Chapter LXII—Equal Employment Opportunity Commission (Part 7201)

Chapter LXII Regulation at 61 FR 7066 confirmed 36447

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178 45060
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251 19525
293 ..... 5174, 7298
336 1695
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531 5174
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550 40475
551 ..... 9995, 45064, 50435
581 31763
582 31763
591 13354
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831 2323
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1603 25558
1640 25559
1650 42418
1651 14653
2423 28378
2429 28378
2634 2048

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture (Parts 0—26)

1.1—1.12 (Subpart A) Authority citation revised 33978
1.1 Revised 33978
1.2 (a) and (b) amended 33978
1.3 (a)(2) amended 33978
1.4 (a) introductory text, (1) through (4), (b) introductory text, (3) and (4) amended; (b)(5) and (6) revised 33978
1.5 (b) amended 33978
1.6 (a) amended 33978
(b), (c), (e), (f) and (g) amended; (h) revised 33979
1.8 (a) introductory text, (b), (d) introductory text, (e), (f) and (g) amended 33979
1.9 (a) amended; (b) revised; (c) removed 33979
1.10 (a) and (b) amended; (c) revised 33979
1.11 (a) introductory text amended 33979
1.13 (b) and (c) amended 33979
1.14 (a) and (b)(3) amended 33979
1.16 Revised 33979
1.18 (a)(7), (b) and (c) amended 33979
1.26—1.29 (Subpart B) Appendix A amended 33980
1.110—1.123 (Subpart G) Authority citation revised 33981
1.110 Amended 33981
1.112 (a) introductory text amended 33981
1.113 (a) through (e) amended 33981
1.114 (d) and (e) amended 33981
1.116 (a) introductory text and (b) amended 33981
1.117 (a) introductory text, (2), (b), (d)(3), (e)(2) and (3) amended 33981
1.118 (c), (d), (e) introductory text and (1) amended 33981

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(e)(2) amended 33982
1.121 Amended 33982
1.122 Amended 33982
1.110—1.122 (Subpart G) Appendix A amended 33982
2.16 (a)(2)(iv) removed 1031
(a)(4) and (b)(3) revised 19900
(a)(3)(x) revised 40253
2.20 (a)(9) added 1031
2.22 (a)(1)(viii)(XX) through (BBB) and (b)(1)(iv) through (xxii) added 40254
2.42 (a)(31) removed 1031
(a)(41) removed 19901
2.43 (a)(24) revised 40254
2.44 Added 19901
2.61 (a)(25) added 1031
2.79 (b) removed 37485
(a)(8)(lviii) through (lxii) added 40255
3.91 (Subpart E) Added 40925
3.91 (b)(2)(ix) through (xvii) correctly designated 42887
5 Authority citation revised 8361
Nomenclature change 8361
5.2 Amended 8361
20 Appendix 1 amended 10412

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

28.909 (b) revised 25800
28.911 (a) amended 25800
29.6001—29.6054 Undesignated center heading and sections added; interim 43433
29.6081 Undesignated center heading and section added; interim 43436
29.6086—29.6104 Undesignated center heading and sections added; interim 43436
29.6126—29.6131 Undesignated center heading and sections added; interim 43437
29.6155 Undesignated center heading and section added; interim 43438
29.6161 Undesignated center heading and section added; interim 43438
29.8001 Table amended 24559
31 Added; interim 43438
32 Added; interim 43439
33.10 Regulation at 61 FR 50422 confirmed; (b) revised; (c) and (d) redesignated as (d) and (e); new (c) added 1033
35.11 Regulation at 61 FR 54082 confirmed 27494
36 Added; interim 43439
46.2 (j) revised; (hh) and (ii) added 15086
46.6 Revised 43455
46.9 (i) revised 15087
46.10 Revised 15087
46.17 Revised 15087
46.27 (a) revised 15087
46.28 (a) revised 15087
46.45 Introductory text revised 15088
46.46 (a) removed; (b) through (g) redesignated as (a) through (f); new (c), new (e)(2) and new (f) revised 15088
46.49 Added 15089
51.300 Revised; interim 28981
51.301 Revised; interim 28981
51.319 (f) revised; interim 28981
51.323 (c) introductory text revised; interim 28982
51.760 Introductory text revised 2897
51.761 Revised 2897
51.1151 Introductory text revised 2897
51.1152 Revised 2897
51.1820 Introductory text revised 2897
51.1821 Revised 2898
51.2075—51.2091 (Subpart) Revised 2892
51.2105—51.2131 (Subpart) Revised 2894
52.721—52.729 (Subpart) Removed; interim 43440
52.1511—52.1520 (Subpart) Removed; interim 43440
52.1661—52.1674 (Subpart) Removed; interim 43440
52.2321—52.2330 (Subpart) Removed; interim 43440
53.201—53.206 (Subpart B) Removed; interim 43440
54.102—54.107 (Subpart B) Removed; interim 43440
56.36 (a)(2) and (b)(2) corrected; CFR correction 44881
56.46 (b) and (c) revised 18021

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56.47 Revised 18021
56.52 (a)(4) revised 18021
56.54 (a)(2) revised 18021
58.2465—58.2471 (Subpart I) Removed; interim 43441
58.2525—58.2541 (Subpart L) Removed; interim 43441
58.2750—58.2759 (Subpart U) Removed; interim 43441
70.71 (b) and (c) revised 18021
70.72 Revised 18021
70.76 (a)(2) revised 18021
70.77 (a)(4) and (5) revised 18021
80.1—80.14 (Subpart A) Revised; interim 29650
Regulation at 62 FR 29650 confirmed 40730
80.4 Amended 40730
80.5 (a) revised 40730
80.6 (a)(5) revised 40731

Chapter II—Food and Consumer Service, Department of Agriculture (Parts 210—299)

201.38 Amended 48459
201.101—201.106 Undesignated center heading and sections removed 48460
201.201—201.207 Undesignated center heading and sections removed 48460
201.208—201.219 Undesignated center heading and sections removed 48460
201.220 Undesignated center heading and section removed 48460
201.221—201.222 Undesignated center heading and sections removed 48460
201.223—201.224 Undesignated center heading and sections removed 48460
201.225—201.227 Undesignated center heading and sections removed 48460
201.228—201.228a Undesignated center heading and sections removed 48460
201.229 Undesignated center heading and section removed 48460
201.230 Undesignated center heading and section removed 48460
210.2 Amended 10189
210.9 (b)(20) added; interim 901
210.10 (k)(2) table and (n)(3)(iv) amended; (k)(3)(iii) added 10189
210.10a (c) table and (j)(3) amended; (d)(2)(iii) added 10190
210.19 (f) added; interim 901
220.2 (bb) added 10190
220.8 (g)(2) table amended 10190
220.8a (a)(2) table amended 10191
225.16 (d)(1) table and (2) table amended 10191
226.2 Amended; interim 901, 23617
226.4 (c) and (g)(1) revised; interim 901
226.5 (b) revised; interim 23618
226.6 (f)(2) and (1) introductory text amended; (f)(9), (10) and (11) added; interim 902
(b)(8) and (c)(11) revised; interim 23618
226.10 (c) revised; interim 23618
226.11 (b) and (c) introductory text revised; interim 23618
226.13 (b) and (c) revised; (d) added; interim 902
(d)(3)(ii) corrected 5519
226.14 (a) introductory text amended; interim 903
226.15 (e)(3) revised; (f) through (j) redesignated as (g) through (k); new (f) added; interim 903
(a) amended; (b)(6) revised; interim 23619
226.17 (b)(2) and (4) amended; interim 23619
226.18 (b)(11) and (12) added; (e) and (f) amended; interim 903
226.19 (b)(2) and (5) amended; interim 23619
226.19a (b)(3), (4) and (10) amended; interim 23619
226.20 (a)(2)(i)(C) added; (c)(2) table, (3) table and (d)(1) amended 10191
226.23 (b) amended; (e)(1)(i) and (iv) revised; (h)(6) added; interim 904
(h)(6) corrected 5519
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911.344 (a)(3) reinstated; interim 30432
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Chapter XI—Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

1205 Technical correction 50244
1205.10—1205.30 (Subpart) Added 1660
1205.510 (b)(5) revised 22878
(b)(2) and (3)(ii) Table revised 46414
1205.520 (b) introductory text revised....22879
1207.322 (a) suspended; (b), (c), (d) introductory text and (1) through (5) suspended in part; interim 46179
1207.503 (a), (b) and (c) revised; interim....46179
1207.505 Revised; interim 46179
1207.513 (c)(2) revised; interim 46179

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1208.50 Note added 40257
1208.200—1208.207 (Subpart C) Added; eff. 5-14-97 through 8-15-97 18036
1215 Added; eff. 3-22-97 through 8-31-97 13535
Added 39389
1220.201 (a) table revised 37489
Table corrected 41485
1230.110 Revised 26206
1280 Removed 38898

Chapter XIII—Northeast Dairy Compact Commission (Parts 1300—1399)

Chapter XIII Added 29638
Referendum results 29646
1381 Revised; interim 35065
1381.3 (h) correctly revised 36651

Chapter XIV—Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

1410 Revised 7625
1414 Removed; interim 33985
1415 Removed; interim 33985
1416 Removed; interim 33985
1427.5 (b)(2) revised 19023
1427.11 Heading and (a) revised 19023
1434 Removed; interim 33985
1435.1 (a) and (b) designation removed 34612
1435.2 Amended 34612
1435.105 (a) and (g) revised; (h) added 34612
1437 Removed; interim 33985
Reinstated 36978
1439.402 (a) revised; interim 3197
(a) revised 44392
1439.601 Added 44392
1439.602 Added 44392
1439.701 Added 44393
1439.702 Added 44393
1439.800—1439.810 (Subpart) Added; interim 33984
1464.2 (a) amended 3198
1464.8 (h) removed; (i) redesignated as (h) 3198
1464.11 Amended; (f) removed 3198
1464.12 (e) added 24800
1464.13 (e) added 43922
1464.14 (e) added 43922
1464.15 (e) added 43922
1464.16 (e) added 43922
1464.17 (e) added 43922
1464.19 (e) added 30230
1464.102 Revised 3198
1464.104 (b) revised 3198
1464.106 (a)(1) revised 3198
1464.108 Amended 3199
1466 Added 28284
1468 Removed; interim 33985
1477 Removed; interim 33985
1478 Removed; interim 50850
1479 Removed; interim 33985
1489 Removed; interim 33985
1493.20 (z) revised 24561
1493.50 (a) revised 24561
1493.90 (a) revised 24561
1493.200—1493.330 (Subpart C) Added; interim 42656
1493.410 (x) revised 24561
1493.440 (a) revised 24561
1493.480 (a) revised 24561
1494.201 (gg) revised 24561
1494.501 (c)(20)(xi) revised 24561
1499.1 Corrected 2719
1499.8 (h)(3) corrected 2719
1499.9 Heading correctly added 2719
1499.12 (d) corrected 2719

Chapter XVI—Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

1610.6 (d) added 46869
1610.11 (c) added 46869

Chapter XVII—Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

Chapter XVII Policy statement 6449
1703.100—1703.140 (Subpart D) Revised 32437
1710 Effective date confirmation 18037
1710.7 (b)(3) revised 27930
1710.106 (e) revised; interim 7922
1710.113 (c) redesignated as (c)(1); (c)(2) added 7665
1717 Authrity citation revised 50491
1717.1200—1717.1208 (Subpart Y) Added 50491
1735 Heading and authority citation revised 46869
1735.2 Amended 46869
1735.3 Amended 46870
1735.17 (c) revised 46870

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1735.22 (f) revised; (g) redesignated as (i); new (g) and (h) added 46870
1735.31 (d) and (e) redesignated as (e) and (f); new (d) added 46870
1735.32 (b) amended; (c) revised 46870
1735.33 Added 46870
1735.43 Heading and (a) revised; (b) redesignated as (f); new (b) added 46871
1735.46 (b), (c) and (d) revised; (e) and (f) removed; (g) and (h) redesignated as (e) and (f) 46871
1735.60 (a) introductory text amended; (a)(3) removed 46871
1735.76 Amended 46871
1737 Heading and authority citation revised 46871
Heading correctly revised 49557
1737.70 (d) removed 46872
1739 Removed 46872
1746 Removed 46872
1753.39 (c) revised 32477
1755.97 Table amended 23959
1755.98 Table amended 23959
1755.217 Added 7138
1755.400 Added 23960
1755.401 Added 23960
1755.402 Added 23960
1755.403 Added 23962
1755.404 Added 23989
Corrected 25017
1755.405 Added 23996
1755.406 Added 23998
1755.407 Added 24000
1767 Authority citation revised 42289
1767.13 (a) and (d) revised 42289
1767.17 (a) and (b) revised 42290
1767.21 Amended 42290
1767.27 Amended 42291
1767.28 Amended 42311
Corrected 43201
1767.29 Amended 42313
1767.30 Amended 42315
1767.31 Amended 42317
1767.41 Introductory text revised 42319
Amended 42320, 42321, 42323, 42330
1775 Redesignated from 1942.451—1942.500 (Subpart J) and revised 33469
1777 Redesignated from 4284.401—4284.500 (Subpart E) and revised 33473
1778 Redesignated from 4284.501—4284.550 (Subpart K) and revised 33475
1780 Added 33478
1781 Redesignated from 1942.401—1942.424 (Subpart E) and revised 33500
1786.75—1786.86 (Subpart D) Removed 32478

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

1901.204 (a)(28) added; interim 16468
(a)(25) revised 33510
(a)(27) amended 42387
1910.1 (a) amended; interim 9353
1910.3 (c) amended; interim 9353
1910.4 (b)(19) removed; (b)(20) through (23) redesignated as (b)(19) through (22); (f) amended; interim 9353
1910.5 (c) introductory text revised; (c)(6) removed; interim 28618
1910.10 (a)(1) revised; interim 9353
1924.5 (h) corrected; CFR correction 49907
1930 Authority citation revised 25065
Hearing 28982
1930.105 (b)(10) revised; interim 25065
1930.106 Added; interim 25065
1930.101—1930.150 (Subpart C) Exhibits B, B-1 and E amended; interim 25065
Exhibit B amended; interim 25066
1940 Authority citation revised 33510
1940.586 Removed 33510
1940.587 Removed 33510
1940.592 Added; interim 16468
1941 Authority citation revised 26919
1941.4 Amended; interim 9353, 9354
1941.12 (a)(8) through (11) and (b)(9) through (12) added; interim 9354
(a)(8), (11), (b)(9) and (12) revised; interim 28618
1941.14 Removed; interim 9354

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1941.15 Removed; interim 9354
1941.16 Revised; interim 9354
(i)(2) amended; interim 28618
1941.17 (a) and (f) removed; (b) through (e) redesignated as (a) through (d); interim 9354
1941.32 Revised; interim 9355
1941.88 Introductory text and (c) removed; (a) and (b) redesignated as (b) and (c); new (a) added; new (c) revised; (d) amended; interim 9355
(c) amended; interim 28618
1941.970—1941.991 (Subpart C) Added; interim 26919
1942.1 (a) revised 33510
1942.17 Heading and (p)(6)(i) introductory text revised 33510
1942.308 (c) revised 33510
1942.349 Revised 33510
1942.351—1942.386 (Subpart H) Removed 33510
1942.401—1942.424 (Subpart I) Redesignated as Part 1781 33500
1942.451—1942.500 (Subpart J) Redesignated as Part 1775 33469
1942.501—1942.550 (Subpart K) Redesignated as Part 1778 33475
1943.4 Amended; interim 9355
(e) amended; interim 28619
1943.12 (a)(3) and (b)(4)(ii) amended; (a)(8) through (11) and (b)(8) through (11) added; interim 9355
(a)(11) and (b)(11) revised; interim 28619
1943.13 (a)(2) removed; (a)(3), (4) and (5) redesignated as (a)(2), (3) and (4); (a) introductory text, (1), new (3), (b) introductory text and (1) amended; interim 28619
1943.16 Revised; interim 9356
(b) amended; interim 28619
1943.17 (a)(4) and (5) removed; interim 9356
1943.18 (b)(2) revised; (c) added; interim 9356
1943.19 (a)(1) and (d)(3) amended; interim 9356
1943.23 (g)(1) amended; (g)(3) and (4) removed; interim 9356
1943.24 (a), (b)(1) and (c) amended; (b)(1)(iv), (d)(3), (4) and (f) removed; (d)(1) revised; (d)(2) and (g) through (k) redesignated as (d)(3) and (f) through (j); new (d)(2) added; interim 9356
1943.25 (b) revised; interim 9356
1943.54 Amended; interim 9356
1944 Authority citation revised 25066
Hearing 28982
1944.205 Amended; interim 25066
1944.211 (a)(13)(i) amended; interim 25065
(a)(2) introductory text revised; (a)(15) added 25074
1944.212 (b) introductory text amended 25074
1944.213 (b) introductory text, (d)(1)(i) and (ii) amended; interim 25065
(b) introductory text and (d) introductory text amended; (a), (f) heading, (2)(i) and (3) revised; interim 25066
1944.215 (a)(1), (r)(1), (2), (4) introductory text, (i), (ii), (vii) and (7) amended; interim 25067
(n)(1) and (2) revised; (x) added 25075
1944.221 (a) introductory text revised 25075
1944.224 (a)(4), (6) and (7) amended; interim 25065
(a)(5) introductory text amended; interim 25067
1944.228 Added; interim 25067
1944.229 Added; interim 25067
1944.230 Added; interim 25068
1944.231 Revised; interim 25068
1944.233 Added 25075
1944.234 Added 25076
1944.235 (h) introductory text amended; interim 25065
1944.237 (a) amended; interim 25069
1944.201—1944.250 (Subpart E) Exhibit A, A–7 and E amended; interim 25065
Exhibit A amended; interim 25069
Exhibits A–7 and A–9 amended; Exhibit A–10 removed; interim 25070
Exhibit A–7 amended 25076
1944.651 (a) and (d) amended; (b) revised 26208
1944.652 Revised 26208
1944.653 Amended 26209
1944.656 Amended 26209
1944.658 (a)(2) amended 26209

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1944.659 Added 26209
1944.661 (a) amended; (b)(2) introductory text and (3) revised 26209
1944.664 (d) through (g) redesignated as (e) through (h); heading, (a), new (h)(1) and new (3) revised; new (d) added; new (f) introductory text and new (g) introductory text amended 26210
1944.665 Amended; heading revised 26210
1944.666 (b)(3) and (6) amended 26210
1944.667 (a) introductory text amended 26210
1944.670 (b) revised 26210
1944.671 (a) introductory text amended; (a)(2) revised 26210
1944.672 (a), (b) and (d) revised 26210
1944.673 Heading and (b) revised 26211
1944.683 (b)(3) through (7) redesignated as (b)(4) through (8); new (b)(3) added; new (b)(4)(i) and new (8) amended 26211
1944.700 Revised 26211
1945.154 Amended; interim 9356
1945.156 (b)(2)(i) introductory text and (ii) introductory text amended; interim 9356
1945.162 (a) through (m) redesignated as (b) through (n); new (a) added; interim 9356
1945.163 (e) revised; interim 9357
1945.166 (a)(1) amended; (b)(5) and (c)(3) removed; (c)(4) redesignated as (c)(3); interim 9357
1945.167 Heading revised; (a) and (i) removed; (b) through (h) redesignated as (c) through (i); new (a) and new (b) added; interim 9357
(a) amended; interim 28619
1945.169 (l) revised; interim 9357
1945.175 (c)(3) removed; (c)(4) redesignated as (c)(3); (c)(2) and new (3) revised; interim 9357
(c)(3) amended; interim 28619
1945.469 (l) correctly designated 11953
1951 Authority citation revised 16469, 41798
Hearing 28982
1951.101 Revised; interim 41798
1951.102 Revised; interim 41799
1951.103 Removed; interim 41799
1951.104 Removed; interim 41799
1951.105 Removed; interim 41799
1951.111 Introductory text revised; (a) introductory text, (1), (2) and (b)(1) amended; interim 41799
1951.201—1951.250 (Subpart E) Heading amended 42387
1951.201 Amended; interim 16469
Revised 33510
Amended 42387
1951.262 (f)(1) and (2) revised; interim 10120
1951.454 Amended; interim 10120
1951.457 (a) revised; interim 10120
1951.458 Revised; interim 10120
1951.504 Amended; interim 25070
1951.506 (a)(5)(iv) removed; (a)(5)(v) redesignated as (a)(5)(iv); new (a)(5)(iv) amended; interim 25070
1951.517 (b)(4)(i)(A), (B), (ii)(A), (B) and (iii) amended; interim 25065
1951.501—1951.550 (Subpart K) Exhibit B amended; interim 25070
1951.901 Revised; interim 10120
1951.902 Revised; interim 10120
1951.903 Revised; interim 10121
1951.904 Added; interim 10121
1951.906 Revised; interim 10121
1951.907 (c), (d) and (e) revised; (f) removed; interim 10123
1951.908 Revised; interim 10124
1951.909 Revised; interim 10124
1951.910 Revised; interim 10132
1951.911 Revised; interim 10132
1951.914 (a)(5)(iii) removed; (a)(5)(iv), (v), and (vi) redesignated as (a)(5)(iii), (iv) and (v); interim 10134
1951.917 Removed; interim 10134
1951.918 Removed; interim 10134
1951.901—1951.950 (Subpart S) Exhibit A revised; interim 10134
Exhibit B revised; interim 10143
Exhibits C, C–1 and E revised; interim 10144
Exhibit F revised; interim 10146
Exhibit H revised; interim 10147
Exhibit J–1 revised; interim 10149
Exhibits K, L and M revised; interim 10156

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Exhibits N through Q removed; interim 10157
1951.953 (a) removed; (b) revised 41252
1951.954 (a)(1) amended; (b)(2) and (4) revised 41252
1951.957 (b)(7) revised 41253
1951.958 (a)(2) amended; interim 10157
1952.455 (a), (b), (c), (e), (f), (g) introductory text, (2), (h), (i) and (j) amended; (g)(1) and (4) removed; (g)(2), (3) and (5) redesignated as (g)(1), (2) and (3); interim 10120
1954.509 Removed; interim 25070
1955.3 Amended; interim 44395
1955.4 (a) amended; interim 44395
1955.9 Revised; interim 44395
1955.1—1955.50 (Subpart A) Exhibits G and G–1 amended 44396
1955.53 Amended; interim 44396
1955.63 Introductory text, (a) and (b) revised; interim 44396
1955.66 Revised; interim 44397
1955.102 Amended; interim 44399
1955.103 Amended; interim 44399
1955.105 (a) and (d) amended; interim 44399
1955.106 (a) and (c) revised; interim 44399
1955.107 Revised; interim 44399
1955.108 Revised; interim 44401
1955.109 (a) amended; interim 44401
1955.122 (b) removed; (c) through (g) redesignated as (b) through (f); interim 44401
1955.130 (c)(5) and (6) amended; interim 44401
1955.137 Added; interim 44401
1955.139 (a)(3) introductory text and (c) revised; interim 44402
1955.140 Revised; interim 44403
1955.148 Revised; interim 44404
1956 Authority citation revised 10157
1956.51—1956.100 (Subpart B) Heading revised; interim 10157
1956.54 Amended; interim 10157
1956.57 (b) amended; (k) revised; (l) added; interim 10157
1956.66 Introductory text and (a) introductory text amended; interim 10157
Revised 33511
1962.13 (a)(1) amended; interim 10157
1962.34 (b)(3) and (d) amended; (b)(6) added; interim 10157
1962.40 (a), (b)(1) and (2) introductory text amended; interim 10157
1962.41 (a) amended; (c) through (f) revised; interim 10157
1962.42 (a) introductory text, (1)(i), (iii), (iv) and (b)(1) amended; (a)(1)(v) and (2) revised; interim 10158
1962.46 (g)(2)(iv) added; interim 10158
1962.1—1962.49 (Subpart A) Exhibit D–1 removed; interim 10158
1965 Hearing 28982
1965.1—1965.50 (Subpart A) Heading revised; interim 10158
1965.26 (a)(1)(iv), (2), (b), (c)(1), (3), (f)(4), (5)(ii) and (6) revised; (f)(5)(iii) added; interim 10158
1965.27 Introductory text, (c)(2), (d), (e) and (f) amended; interim 10159
1965.65 (a) introductory text revised; interim 25070
1965.68 (c)(9) removed; interim 25070
1965.210 Revised; interim 25070
1965.213 (a), (b) and (c) redesignated as (b), (c) and (d); new (a) added; new (b) introductory text and new (1) revised; interim 25071
1980.20 (a) introductory text amended; interim 9357
1980.106 (b) amended; interim 9357
Amended; interim 28619
1980.108 (a)(3)(ii) revised; interim 9357
1980.119 (d) revised; interim 9357
1980.174 Added; interim 9358
(a) introductory text revised; interim 28619
1980.175 (b) introductory text, (c)(1), (2) and (d)(1) revised; (d)(7) removed; (d)(2) through (6) redesignated as (d)(3) through (7); new (d)(2) added; (i)(3) amended; interim 9358
(b), (c)(2)(ii) and (d)(1) amended; interim 28619
1980.176 Removed; interim 9358

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1980.180 (c) revised; (d)(4) and (5) removed; interim 9358
(a), (c)(1) and (5) amended; interim 28619
1980.190 (e) amended; interim 28619
2003 Authority citation revised 16469
2003.1—2003.5 (Subpart A) Exhibit A amended; interim 16469

Chapter XXX—Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)

Chapter XXX Heading revised; interim 45949
3015.1 (a)(2) revised; interim 45949
3015.70—3015.77 (Subpart I) Removed; interim 45949
3016.26 (a), (b) introductory text and (1) revised; (a)(1) added 45939
3019.26 (a), (b) and (c) revised; (e) added 45939
3051 Removed; interim 45949
3052 Added; interim 45949

Chapter XXXIV—Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)

3403 Revised 25800
3405 Added 39317
3406 Added 39331

Chapter XXXV—Rural Housing Service, Department of Agriculture (Parts 3500—3599)

3570 Added; interim 16469

Chapter XLII—Rural Development Administration, Department of Agriculture (Part 4200—4299)

4284.401—4284.500 (Subpart E) Redesignated as Part 1777 33473
4284.501—4284.600 (Subpart F) Revised 42387

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TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice (Parts 1—499)

1 Authority citation revised 10330
1.1 (l) revised; (q) through (t) added; interim 10330
3.1 (b)(11) added 9072
(b)(1), (2), (3), (7), (9) and (10) revised; interim 10330
(b)(7) corrected 15362
3.2 Heading, (b)(2), (c)(2), (3), (d), (e), (f) and (g)(1) revised; interim 10330
3.4 Amended; interim 10331
3.9—3.11 (Subpart B) Heading revised; interim 10331
3.9 Revised; interim 10331
3.10 Revised; interim 10331
3.11 Revised; interim 10331
3.12—3.41 (Subpart C) Heading revised; interim 10331
3.12 Amended; interim 10331
3.13 Revised; interim 10332
3.14 (a) revised; (c) added; interim 10332
3.15 (b) introductory text and (6) amended; (c) redesignated as (d); heading and new (d) revised; new (c) added; interim 10332
3.16 (b) amended; interim 10332
3.17 (a) amended; interim 10332
3.18 Revised; interim 10332
3.19 (a) and (d) amended; (h) removed; interim 10332
3.20 (a) revised; interim 10332
3.23 Heading and (b) revised; interim 10332
(b)(4)(ii) corrected 15362
(b)(1) introductory text corrected 17048
3.25 Revised; interim 10334
3.26 (c) revised; (d) added; interim 10334
(c)(2) corrected 15362
3.27 (c) revised; interim 10334
3.30 Revised; interim 10335
3.31 (b) amended 45149
3.35 Revised; interim 10335
3.42 Added; interim 10335
3.61—3.65 (Subpart E) Added 9073
103.1 (f)(3)(iii)(U) removed 9074
(g)(3)(ii) revised; interim 10336
103.5 (a)(1)(iii)(B) and (5)(iii) removed; (a)(1)(iii)(C) through (F) redesignated as (a)(1)(iii)(B) through (E); interim 10336
103.5a (c)(1) revised; interim 10336
103.6 (a) revised; interim 10336
103.7 (b)(1) amended; interim 10336

(b)(1) and (c)(1) amended; interim 39423
(b)(1) amended 45149
204.2 (a)(1)(iii) introductory text revised; (a)(1)(iii)(A), (B) and (C) removed; (a)(1)(iii)(D) through (I) redesignated as (a)(1)(iii)(A) through (F); interim 10336
204.5 Regulation at 61 FR 33305 confirmed 4631
204.10 Regulation at 60 FR 54030 confirmed 6708
204.11 (f) amended 45150
207 Authority citation revised 10336
207.1 (a) revised; (e) removed; interim 10336
207.3 Revised; interim 10336
207.8 Amended; interim 10336
208 Revised; interim 10336
208.2 (b)(2)(i) corrected 15362
209 Authority citation revised 10346
209.1 (a)(1) amended; interim 10346
209.2 (c) amended; interim 10346
211 Revised; interim 10346
212.3 Regulation at 61 FR 59825 confirmed 43467
212.5 (a), (b), (c) introductory text, (1) and (d)(2)(i) revised; interim 10348
212.6 (d)(1) amended 9074
(a)(2) revised; interim 10349
212.7 Regulation at 60 FR 26681 confirmed; (c)(9) introductory text, (iv), undesignated text, and (vi) amended; (c)(9)(i)(A) revised 18508
213 Authority citation revised 10349
213.1 Amended; interim 10349
214.1 (c)(4)(iv) revised; interim 10349
214.2 (h)(1)(ii)(A), (B)(*1*), (2)(i)(A), (D), (13)(ii) and (15)(ii)(A) revised; (h)(9)(iii)(A) removed; (h)(9)(iii)(B), (C) and (D) redesignated as (h)(9)(iii)(A), (B) and (C); interim 10424
(h)(9)(iii)(B)(*2*)(*ii*) amended; interim 10425
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95.25 (a) through (d), (g), (h) and (i) revised; (j) added 17693
95.27 Revised 17693
95.29 Revised 17693
95.31 Revised 17694
95.33 Revised 17694
95.36 Revised 17694
95.37 Revised 17695
95.39 Revised 17696
95.41 Revised 17697
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95.53 Revised 17697
95.55 Revised 17698
95.57 Revised 17698
95.59 Revised 17698
110.64 (e) amended 27495
110.81 (b) amended 27495
110.89 (a) amended 27495
150.20 (b)(2), (3) and (4) redesignated as (b)(3), (4) and (5); (a), (b) introductory text, (1), new (3), new (4) and (c) introductory text revised; new (b)(2) added 1665
(b) introductory text revised 28973
170.11 (a)(11) added 29207
170.20 Revised 29207
170.21 Introductory text revised; table amended 29207
Table corrected 32682
170.31 Amended 1665
Revised 29208
171.13 Revised 29213
171.15 (a), (b), (c) introductory text, (1), (2), (e) and (f) revised 29213
171.16 (c) introductory text, (1), (4), (d) and (e) revised 29213
(d) corrected 32682
171.17 Introductory text, (a), (b) introductory text and (1) revised 29216
171.19 (b), (c) and (d) revised 29217

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207 Authority citation revised 46183
207.7 (c)(1) amended 46183
218 Authority citation revised 46183
218.42 (b)(1), (2) and (3) revised 46183
420 Regulation at 61 FR 35895 confirmed 26726
420.2 Amended 26726
420.13 Heading, (a), (b)(4)(iii), (v), (5) and (6) revised 26727
420.14 Heading and (a) revised 26727
420.15 (a)(2) and (d)(1) revised 26727
420.17 (a)(3) introductory text, (i) and (7) revised 26727
420.18 (e) introductory text, (3) and (5) revised; (e)(6) introductory text, (i) and (ii) redesignated as (f) introductory text, (1) and (2) 26727
430 Authority citation revised 46183
430.1 Revised 29237
Regulation at 62 FR 29237 eff. date delayed to 10–18–97 35067
430.2 Amended; eff. 7–1–01 23115
Amended 26156, 29237
Regulation at 62 FR 29237 eff. date delayed to 10–18–97 35067
Amended; eff. 10–1–00 50148
430.21—430.27 (Subpart B) Appendix J revised; eff. 2–23–98 45501
(Subpart B) Appendix J1 added; eff. 2–23–98 45508
430.22 (a)(3)(iv) added; (a)(4) amended 26156
(a)(3) and (4) removed; (b) redesignated as (c); (a) heading, (1), (2)(ii) and new (c)(1) revised; new (b) added 29239
Regulation at 62 FR 29239 eff. date delayed to 10–18–97 35067
430.23 (n)(1)(i), (ii), (3)(i), (ii) and (4) amended; (o)(2) and (p)(1) revised 26156
(r) revised 29239
Regulation at 62 FR 29239 eff. date delayed to 10–18–97 35067
(j) revised; eff. 2–23–98 45500
(a)(1)(ii), (2)(ii), (3)(ii), (4)(i)(B), (ii)(B) and (5) amended; (a)(7), (8) and (9) added 47539
430.24 (r) revised 29239
Regulation at 62 FR 29239 eff. date delayed to 10–18–97 35067

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430.25 Revised 29240
Regulation at 62 FR 29240 eff. date delayed to 10–18–97 35067
430.21—430.27 (Subpart B) Appendix N revised 26157
Appendix O amended 26162
Appendix R revised 29240
Regulation at 62 FR 29240 eff. date delayed to 10–18–97 35067
Appendix J revised; eff. 2–23–98 45501
Appendix J1 added; eff. 2–23–98 45508
Appendix A1 amended 47539, 47540
430.32 (a) revised; eff. 7–1–01 23116
(b) revised; eff. 10–1–00 50148
430.61 (b) amended 46183
430.62 (b) and (c) revised 29240
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(a)(2) amended; eff. 2–23–98 45514
(a)(2) amended 47541
450 Regulation at 61 FR 35903 confirmed 26726
490 Authority citation revised 46183
490.604 (a) revised 46183
501 Authority citation revised 46183
501.181 (c)(1) revised 46183
600.126 (a), (b) and (c) revised 45939, 45940
600.226 (a), (b) introductory text and (1) revised 45939, 45940
601 Authority citation revised 46183
601.400 (a), (b) and (e) revised 46183
601 Appendix A amended 46184

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703 Removed 24805
820 Authority citation revised 46184
820.80—820.81 (Subpart G) Added 46184

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1013 Authority citation revised 46184
1013.3 (a)(1)(iv) and (b)(1)(ii) revised 46184
1017 Authority citation revised 46184
1017.18 (a) introductory text amended 46184
1023 Authority citation added 24805
1023.1—1023.9 Undesignated center heading revised 24806
1023.1 Added 24806
Section removed from Subpart A 24808
1023.2 Added 24806
Section removed from Subpart A 24808
1023.3 Added 24806
Section removed from Subpart A 24808
1023.4 Added 24807
Section removed from Subpart A 24808
1023.5 Added 24807
Section removed from Subpart A 24808
1023.6 Added 24807
Section removed from Subpart A 24808
1023.7 Added 24807
1023.8 Added 24807
1023.9 Added 24808
1023.20 Redesignated as 1023.120 24808
1023.101 Added 24808
1023.102 Added 24808
1023.120 Redesignated from 1023.20 and amended 24808
1023.200—1023.203 (Subpart B) Removed 24808
1023.327 Amended 24808
1050 Authority citation revised 46184
1050.303 (d) amended 46184

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1703 FOIA fee schedule adjustments 30432

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9 46922
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30 ..... 19071, 23394, 32552
32 ..... 32552, 49132
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70 ..... 6672, 19071, 23394

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171 ..... 8885, 10626
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104.7 (b)(1) and (3) revised (effective date pending) 23336
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104.18 Regulation at 61 FR 42376 eff. 4–28–97 22881
111 Authority citation revised 11317
111.24 Added 11317
(b) corrected 18167
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100 ..... 13355, 24367, 33040, 40982
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Chapter I—Comptroller of the Currency, Department of the Treasury (Parts 1—199)

4 Authority citation revised 6452
4.6 Added; interim 6452
13 Added 13283
19 Authority citation revised 3199
19.240—19.241 (Subpart O) Added 3200
25 Heading and authority citation revised 47734
25.11 (a)(1) revised 47734
25.61—25.65 (Subpart E) Added 47734

Chapter II—Federal Reserve System (Parts 200—299)

203.3 (a)(1)(ii) amended 3603
(a)(1)(ii) revised 28623
203.5 (b) and (e) revised; (c) amended 28623
203 Appendix A and Supplement I amended 3604
Appendix A amended 28623, 28624
Supplement I amended 28626
Appendix A correctly revised 33340
204.3 (b) revised 34616
205 Authority citation revised 43469
205.15 (a) revised 43469
207 OTC margin stock lists 3773, 22881, 40257
208 Authority citation revised 6452, 13285, 47735
208.8 (k) removed 9911
208.24 Added 9911
208.25 Added 13285
208.26 Added; interim 6452
208.28 Added 47735
208.129 Added 13285
(b) corrected 15601
209.15 Added 34616
210.2 (a) and (b) through (p), redesignated as (b) and (d) through (r); new (a) and (c) added; new (d), new (g) introductory text and (2) revised; eff. 1–2–98 48171
210.3 (a) amended; eff. 1–2–98 48171
210.4 Revised; eff. 1–2–98 48171
210.5 (a)(1) and (c) revised; (d) amended; eff. 1–2–98 48171
210.6 (a)(1) and (b) revised; eff. 1–2–98 48172
210.7 (c) introductory text and (d) revised; eff. 1–2–98 48172
210.8 Revised; eff. 1–2–98 48172
210.9 (a) through (e) redesignated as (b) through (f); new (a) added; new (b) and new (c) revised; new (f) amended; eff. 1–2–98 48172
210.10 Revised; eff. 1–2–98 48173
210.11 (b) amended; eff. 1–2–98 48173

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210.12 (a), (b), (c)(1) (f) and (h) revised; (d), (g) and (i) amended; eff. 1–2–98 48173
211 Authority citation revised 13286, 47736
211.22 (d) added 47736
211.24 Heading revised; (h) added 13286
213 Compliance date delay 51006
213.1 (a) revised 15367
213.2 (f) amended 15367
213.4 (b), (f)(1), (n), (o)(1) heading and (2) heading revised; (t) added 15367
213.5 (d)(1) revised 15367
213.7 (d)(1)(ii) and (2)(iv) removed; (d)(1)(iii), (2)(v) and (vi) redesignated as (d)(1)(ii), (2)(iv) and (v); (b)(1), (d)(1)(i), (2)(ii), (iii), new (iv) and new (v) revised 15367
213 Appendix A amended 15369
Supplement I revised 16058
215.2 (d) introductory text, (1), (2) and (3) redesignated as (d)(1) introductory text, (i), (ii) and (iii); new (d)(2), new (3) and (e)(3) added 13298
215.4 (a)(2) introductory text revised 13298
217.101 (a)(1) amended; (b) added 26737
220 OTC margin stock lists 3773, 22881, 40257
221 OTC margin stock lists 3773, 22881, 40257
224 OTC margin stock lists 3773, 22881, 40257
225.1—225.7 (Subpart A) Revised 9319
225.11—225.17 (Subpart B) Revised 9324
225.21—225.28 (Subpart C) Revised 9329
225.31 (d)(2)(ii) amended 9338
225.32 Removed 9338
225.41—225.44 (Subpart E) Revised 9338
225.51 Removed 9341
225.61—225.67 (Subpart G) Heading revised 9341
225.71—225.73 (Subpart H) Revised 9341
225.125 (f) and (g) revised 9343
225.145 (a) amended 9343
225.200 Undesignated center heading and section added 45306
225 Appendix C revised 9343
226 Supplement I amended 10196, 10197, 10198, 10199
229.2 (e) concluding text and (s) revised; (pp) redesignated as (qq); new (pp) added 13809
229.13 (g)(1) introductory text and (ii)(A) amended; (g)(1)(i)(B), (E) and (h)(4) revised; (g)(1)(ii)(A) designation and (B) removed; (g)(4) redesignated as (g)(5); new (g)(4) added 13809
229.16 (c)(2)(i)(B) revised 13810
229.19 (a)(1) revised; (a)(5)(ii) amended 13810
229.30 (c) revised 13810
229.34 Heading and (c)(4) revised; (f) added 13810
229.36 Heading and (e)(1)(ii) revised; (c) amended 13810
229.39 (b) revised 13810
229.42 Revised 13810
229.43 Added 13810
229 Appendix C amended 13811, 48752
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265.4 (a)(4) added 14792
265.5 (f) added 34617
265.6 (a)(5) removed 45150

Chapter III—Federal Deposit Insurance Corporation (Parts 300—399)

303.0 (b)(12) revised 16664
304.1 Amended 4896
304.2 Revised 4896
304.3 Revised 4896
304.4 Revised 4896
304.5 Revised 4897
304 Appendix A revised 4897
Appendix B removed 4899
327.8 Introductory text added; (f) and (g) revised 27176
327.9 (b) revised 27176
327.41—327.45 (Subpart C) Removed 27177
329.103 (a)(1) amended; (e) added 40732
335 Revised 6856
337 Authority citation revised 6453
337.12 Added; interim 6453
338 Authority citation revised 36204

338.1 Revised 36204
338.3 (a)(1) and (2) revised 36204
338.4 Heading and (a) revised 36204
338.5—338.9 (Subpart B) Heading revised 36204
338.5 Revised 36204
338.6 Revised 36204
338.7 Revised 36204
338.8 Revised 36204
338.9 Revised 36204
338.5—338.9 (Subpart B) Appendixes A and B removed 36204
344 Revised 9919
350.3 Revised 10200
350.4 Revised 10200
350.5 Revised 10200
350.6 Revised 10200
350.12 Revised 10201
368 Added 13287
369 Added 47737

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502 Authority citation revised 3780
502.1 (f) revised 3780
516.3 (a)(1)(i), (b)(1)(i) and (c) revised 3780
543.2 (g)(1)(iv), (v) and (vi) amended; (g)(2) removed; (g)(3) redesignated as (g)(2) 27180
543.3 Added 27180
(c)(1)(v) corrected 28963
543.8 Heading and (a) revised 45309
543.9 (a) and (c) introductory text revised 45309
552.2–1 (a) amended; (b)(2) removed 27181
560.3 Amended; introductory text revised 15825
562.4 (b)(1) and (c)(4) revised 3780
563 Authority citation revised 6453
563.41 (e)(2)(ii)(A) revised 3781
563.171 Added; interim 6453
565.4 (b)(2)(iii)(B), (3)(iii)(B) and (c)(2) revised 3781
571.6 Removed 27181
574.9 (a)(5)(i)(A) revised 3781

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600.5 Regulation at 61 FR 67185 eff. 3–4–97 18037
602 Authority citation revised 41253
602.260 Revised 41254
602.261 (a) and (d) revised; (e) added 41254
603.310 Regulation at 61 FR 67185 eff. 3–4–97 18037
611.1030 Regulation at 61 FR 67185 eff. 3–4–97 18037
611.1135 (b)(1) corrected 13213
Regulation at 61 FR 67185 eff. 3–4–97 18037
611.1140—611.1145 (Subpart J) Regulation at 61 FR 67186 eff. 3–4–97 18037
611.1155—611.1158 (Subpart K) Regulation at 61 FR 67186 eff. 3–4–97 18037
611.1160—611.1169 (Subpart L) Regulation at 61 FR 67186 eff. 3–4–97 18037
611.1170—611.1176 (Subpart M) Regulation at 61 FR 67186 eff. 3–4–97 18037
611.1180—611.1183 (Subpart N) Regulation at 61 FR 67186 eff. 3–4–97 18037
611.1190—611.1198 (Subpart O) Regulation at 61 FR 67186 eff. 3–4–97 18037
611.1200 Regulation at 61 FR 67186 eff. 3–4–97 18037
611.1250 Regulation at 61 FR 67186 eff. 3–4–97 18037
611.1255 Regulation at 61 FR 67186 eff. 3–4–97 18037
611.1266 Regulation at 61 FR 67186 eff. 3–4–97 18037
613 Authority citation revised 4441
613.3000—613.3030 (Subpart A) Revised (effective date pending) 4441
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613.3100—613.3200 (Subpart B) Revised (effective date pending) 4442
Regulation at 62 FR 4442 eff. 3–11–97 11071
613.3100 (b)(1)(iv) corrected 33746
613.3110—613.3120 (Subpart D) Removed (effective date pending) 4441
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613.3145—613.3175 (Subpart E) Redesignated as 626 (effective date pending) 4441

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613.3200 (Subpart C) Revised (effective date pending) 4444
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613.3200 Correctly designated 11071
614.4000 (a) revised; (f) introductory text amended 51013
614.4010 (d)(4) and (5) amended; (d)(6) and (7) added (effective date pending) 4445
Regulation at 62 FR 4445 eff. 3–11–97 11071
(a) revised; (d)(1) and (2) amended 51013
614.4020 (a)(4) and (5) amended; (a)(6) and (7) added (effective date pending) 4445
Regulation at 62 FR 4445 eff. 3–11–97 11071
(a)(1) and (2) amended 51013
614.4030 (a) revised 51013
614.4040 (a) revised; (b) removed; (c) and (d) redesignated as (b) and (c); new (b)(1) amended 51013
614.4050 Introductory text added; (a) and (b) revised 51013
614.4120 (a) amended 51014
614.4135 Removed 51014
614.4140 Removed 51014
614.4145 Removed 51014
614.4150 Revised 51014
614.4160 Removed 51014
614.4165 (a) revised; (b) and (c) removed; (d) and (e) redesignated as (b) and (c) 51014
614.4170 Removed 51014
614.4200 Revised 51014
614.4210 Removed 51015
614.4220 Removed 51015
614.4222 Removed 51015
614.4230 Removed 51015
614.4231 Revised 51015
614.4233 Introductory text revised (effective date pending) 4445
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614.4245 (d) added 51015
614.4321 Regulation at 61 FR 67186 eff. 3–4–97 18037
614.4325 (a)(1) revised; (e) amended; (h) added 51015
614.4355 (a)(6), (8) and (b)(1) amended 51015
614.4358 (a)(1)(ii) amended 51015
614.4440 Regulation at 61 FR 67187 eff. 3–4–97 18037
614.4444 Regulation at 61 FR 67187 eff. 3–4–97 18037
614.4510 Regulation at 61 FR 67187 eff. 3–4–97 18037
614.4515 Regulation at 61 FR 67187 eff. 3–4–97 18037
614.4516 Regulation at 61 FR 67187 eff. 3–4–97 18037
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614.4517 Regulation at 61 FR 67187 eff. 3–4–97 18037
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614.4610 Amended (effective date pending) 4445
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614.4700—614.4900 (Subpart Q) Heading amended (effective date pending) 4445
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614.4700 (a) introductory text, (b) and (h) amended (effective date pending) 4445
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614.4710 Introductory text, (a)(1) introductory text, (i), (ii), (3), (5), (b)(1) and (c) amended (effective date pending) 4445
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614.4720 Introductory text amended (effective date pending) 4445
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614.4810 (a) introductory text and (b) amended (effective date pending) 4445
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615 Authority citation revised 4445
615.5120 Regulation at 61 FR 67187 eff. 3–4–97 18037
615.5140 Regulation at 61 FR 67187 eff. 3–4–97 18037
615.5143 Regulation at 61 FR 67187 eff. 3–4–97 18037
615.5200 (a) and (b) introductory text revised (effective date pending) 4446
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615.5201 (g) amended; (j)(5) and (6) redesignated as (j)(6) and (7); new (j)(5) added (effective date pending) 4446
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615.5205 Revised (effective date pending) 4446
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615.5210 (e)(7) and (f)(2)(i)(C) revised; (e)(10) added; (f)(2)(i)(D) and (v)(D) removed; (f)(2)(v)(E) redesignated as (f)(2)(v)(D) (effective date pending) 4446
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615.5216 Removed (effective date pending) 4446
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615.5220 (f) removed; (g), (h) and (i) redesignated as (f), (g) and (h); (d), (e) and new (f) amended (effective date pending) 4446
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615.5230 (b)(1) amended (effective date pending) 4446
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(a)(2)(ii) revised 49908
615.5240 (b) removed; introductory text and (a) redesignated as (a) and (b); new (a) and new (b)(2) revised; (b)(3) and (c) added (effective date pending) 4446
Regulation at 62 FR 4446 eff. 3–11–97 11071
615.5250 (c) removed; (d) and (e) redesignated as (c) and (d); (a)(4)(ii), (iii) and new (c)(3) amended (effective date pending) 4447
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615.5260 (a)(2)(i) and (ii) amended; (a)(2)(iii) and (d) removed (effective date pending) 4447
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615.5270 Amended (effective date pending) 4447
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615.5280 (a) corrected 13213
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615.5301—615.5336 (Subpart K) Revised (effective date pending) 4447
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615.5301 (b)(2) corrected 19219
615.5330 (b)(1) corrected 11071
615.5350—615.5354 (Subpart L) Added (effective date pending) 4448
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615.5355—615.5361 (Subpart M) Added (effective date pending) 4449
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617 Revised (effective date pending) 24566
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618.8005 (a) and (b) amended (effective date pending) 4450
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618.8340 Regulation at 61 FR 67188 eff. 3-4-97 18037
618.8360 Regulation at 61 FR 67188 eff. 3-4-97 18037
618.8370 Regulation at 61 FR 67188 eff. 3-4-97 18037
618.8380—618.8420 (Subpart I) Regulation at 61 FR 67188 eff. 3-4-97 18037
618.8440 (b)(6) amended (effective date pending) 4450
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619.9030 Removed (effective date pending) 4450
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619.9040 Removed (effective date pending) 4450
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619.9060 Regulation at 61 FR 67188 eff. 3-4-97 18037
619.9065 Removed (effective date pending) 4450
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619.9080 Removed (effective date pending) 4450
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619.9090 Removed (effective date pending) 4450
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619.9100 Removed (effective date pending) 4450
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619.9120 Removed (effective date pending) 4450
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619.9160 Removed (effective date pending) 4450
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232.903 Removed 36458
239.9 Form SB–1 amended 39763
239.10 Form SB–2 amended 39763
239.11 Form S–1 amended 39764
239.12 Form S–2 amended 36458, 39764
239.13 (b)(1) and Form S–3 amended 26388
Form S–3 amended 36458, 39764
239.15A Form N–1A amended 47939
239.16 Form S–6 amended 47938
239.17a Form N–3 amended 47939
239.17b Form N–4 amended 47939, 47940
239.18 Form S–11 amended 39764
239.23 Form N–14 amended 47938
239.25 Form S–4 amended 39765
239.31 Form F–1 amended 39765
239.32 (b)(2)(i) and Form F–2 amended 26388
Form F–2 amended 36459, 39765
239.33 (b)(1) and Form F–3 amended 26388
Form F–3 amended 36459
239.34 Form F–4 amended 39766
Form F–4 corrected 43581
239.61 Removed; Form SR removed 39766
239.144 (c) and Form 144 amended 35340
239.500 Form D amended 39766
240 Compliance dates 18514
Authority citation amended 35340
Compliance dates revision 40732
Technical correction 43581, 45289
240.0–1 (a)(5) revised 36459
240.12a–8 Added 39766
240.12b–2 Amended 26389
240.12d1–1—240.12d2–2 Undesignated center heading revised 39766
240.12d1–2 (b) revised; (c) added 39766
240.12g–3 Revised 39767
240.13a–1 Revised 39767
240.13a–2 Removed 39768
240.13d–2 (c) revised 36459
240.13d–101 Amended 35340
240.13d–102 Amended 35340
240.13e–4 (f)(12) amended 36459
240.14a–101 Amended 36459
240.14d–100 Amended 35341
240.14e–1 (e) revised 36459
240.15d–3 Revised 39768
240.15d–5 (a) revised 39768
240.17a–5 (g)(1) correctly revised; CFR correction 42664
249 Technical correction 43581
249.103 Amended; Form 3 amended 35341
249.104 Amended; Form 4 amended 35341
249.105 Amended; Form 5 amended 35341
249.208a (c) revised; (d) added; Form 8–A amended 39768
249.208b Removed; Form 8–B removed 39769
249.210 Form F–10 amended 39769
249.220f Form 20–F amended 39769
249.308a Form 10–Q amended 39769
249.308b Form 10–QSB amended 39770
249.310 Form 10–K amended 26389
Form 10–K amended 39770
249.310b Form 10–KSB amended 26389, 39770
249.1100 Form MSD amended 35341
249b.100 Form TA–1 amended 35341
260.0–2 (g) revised 36459
269.2 Amended; Form T–2 amended 35342
270 Authority citation amended 47938
270.2a51–1 Added 17526
270.2a51–2 Added 17528
270.2a51–3 Added 17528
270.3c–1 Added 17529
270.3c–5 Added 17529
270.3c–6 Added 17529
270.10f–3 Revised 42408
270.17f–5 Revised 26932
270.24e–1 Amended 47938

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270.24e–2 Removed 47938
270.24f–1 Removed 47938
270.24f–2 Revised 47938
274.11a Form N–1A amended 47939
274.11b Form N–3 amended 47939
274.11c Form N–4 amended 47939, 47940
274.24 Form 24F–2 revised 47940
275 Authority citation revised 28132
275.203(b)(3)–1 Revised 28132
275.203A–1 Added 28133
275.203A–2 Added 28133
275.203A–3 Added 28134
275.203A–4 Added 28134
275.203A–5 Added 28134
275.204–1 Revised 28135
275.204–2 (a) introductory text revised; (k) added 28135
275.205–3 Heading and (a) revised 28135
275.206(3)–2 (a) introductory text revised 28135
275.206(4)–1 (a) introductory text revised 28135
275.206(4)–2 (a) introductory text revised 28135
275.206(4)–3 (a)(1)(ii)(C) amended 28135
275.206(4)–4 (a) introductory text revised 28135
275.222–1 Added 28135
275.222–2 Added 28136
279.1 Form ADV amended 28136
(d) corrected 33008
279.3 Revised 28136

Proposed Rules:

1 47612
30 47612
32 ..... 31375, 33379
33 47612
190 ..... 19530, 47612
202 38495
230 ..... 24160, 32705, 38495, 45359
232 ..... 36467, 38495
239 ..... 24160, 38495
240 ..... 30485, 36467, 40316, 50682
249 36467
270 ..... 24160, 24161, 38495
274 ..... 24160, 38495

TITLE 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

2 Order 33341
2.500 Undesignated center heading and section added 15830
35 Order 36657
35.32 Revised 33348
35.33 Revised 33348
153 Revised 30446
284 Order 19921, 25842
381.302 (a) amended 36982
381.303 (a) amended 36982
381.304 (a) amended 36982
381.305 (a) amended 36982
381.402 Removed 36982
381.403 Amended 36982
381.505 (a) amended 36982
381.801 Amended 36982

Chapter XIII—Tennessee Valley Authority (Parts 1300—1399)

1314.2 (g), (h), (t) and (v) revised; (i) amended 29288
1314.3 (a)(3) amended 29288
1314.4 (a) introductory text, (b) and (d) amended 29288

Proposed Rules:

1—399 (Ch. I) 22897
4 25874
101 40987
116 40987
154 ..... 24853, 34187
201 40987
216 40987
352 40987
375 25874
401 45766
430 25569

TITLE 19—CUSTOMS DUTIES

Chapter I—United States Customs Service, Department of the Treasury (Parts 1—199)

7 Authority citation revised 46439

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TITLE 19 Chapter I—Con.

7.2 Added 46439
7.3 Added 46439
7.4 Redesignated from 10.181; (b), (g) and (h) amended 46441
7.8 Removed 46441
10 Authority citation amended 42211, 46441
10.41a (f) revised; (g), (h) and (i) redesignated as (h), (i) and (j); new (g) added 42211
(f)(1) and (g)(1) corrected 46553
10.181 Redesignated as 7.4 46553
12.104g (a) amended 19492
(a) and (b) amended 31721
(a) table amended 49596
(b) table amended 49597
19 Authority citation amended 15834
19.1 (a)(9) amended; (c) removed 15834
19.2 Heading, (b)(2) and (g) revised; (a) amended 15834
19.4 Revised 15834
19.6 (a)(1) and (d)(2) amended; (d)(1) revised; (d)(4) redesignated as (d)(5); new (d)(4) added 15836
19.11 (h) revised 15836
19.12 Revised 15836
19.13 (g) amended 15839
19.13a Introductory text amended; (b) revised 15839
19.35 (c) introductory text, (2), (e)(2) and (f) revised 15839
19.36 (e) and (g) amended 15840
19.37 (a) amended 15840
19.39 (c)(2) and (3) amended; (c)(4)(ii), (iii) and (iv) redesignated as (c)(4)(iii), (iv) and (v); new (c)(4)(ii) added; (c)(5) and (e) revised 15840
24.24 (b)(1) amended; interim 30449
(b)(1) corrected; interim 45157
101.3 (b)(1) amended 37133
113.63 (a)(4) redesignated as (a)(5); new (a)(4) and (b)(4) added; (b)(2), (3) and (d) amended 15840
122.15 (b) amended 37133
122.24 (b) amended 24815
123.1 (a) and (b) amended 32031
133.42 (c) amended 19493
133.44 (a) amended 19493
133.47 Removed 19493
134 Policy statement 49597
134.36 Revised 44214
134.46 Revised 44214
144.34 (c) added 15840
144.36 (c) and (f) revised; (g)(4) and (5) amended; (g)(6) added 15841
144.37 (h)(2)(v) revised; (h)(3) concluding text amended 15842
144.39 Amended 15842
144.41 (c) revised 15842
148.2 (b) amended 46441
148.12 (b)(1)(i) revised 46441
148.17 (b) and (c) amended 46441
148.31 (a) and (b) amended 46441
148.32 (d)(2) amended 46441
148.33 (a), (b), (d) and (f) revised 46441
148.34 (a) amended 46442
148.35 (a) and (b) revised 46442
148.36 Amended 46442
148.37 Amended 46442
148.38 Amended 46442
148.51 (a)(2) revised 46442
148.64 (a) amended 46442
148.74 (c)(3) amended 46442
148.101 Amended 46442
148.102 (a) and (b) revised 46442
148.104 (c) amended 46443
148.110—148.116 (Subpart K) Heading amended 46443
148.110 Amended 46443
148.111 (a) amended 46443
148.113 (a) amended 46443
178.2 Table amended (OMB numbers) 46443, 49150

Chapter II—United States International Trade Commission (Parts 200—299)

201.7 Correctly revised; CFR correction 39438
201.201—201.208 (Subpart H) Added; interim 38019

Chapter III—International Trade Administration, Department of Commerce (Parts 300—399)

351 Added 27379
353 Removed 27379
355 Removed 27379

Proposed Rules:

4 40992
10 31383
24 19704

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101 37526
111 ..... 19704, 24374
118 44102
122 40992
123 ..... 31383, 40992
128 31383
134 43958
141 31383
142 19534
143 ..... 19704, 31383
145 31383
148 ..... 31383, 40992
162 19704
163 ..... 19704, 24374
192 40992
351 ..... 19719, 25874, 38948, 41322, 46445

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board (Parts 200—399)

222.55 Amended 47138
229.42 (f) amended; (g) added 47138
261 Added 45713
335.3 (a)(8) and (9) amended; (a)(10) added 44408
340.13 Amended; interim 41271
367 Technical correction 49049
367.1 Revised; interim 19220
Regulation at 62 FR 19220 confired 44409
367.2 (a), (f) introductory text, (2) and (j) revised; (f)(3) and (k) added; interim 19220
Regulation at 62 FR 19220 confired 44409
367.3 (a) and (b) revised; (c) amended; interim 19220
Regulation at 62 FR 19220 confired 44409

Chapter III—Social Security Administration (Parts 400—499)

404.1 (q) amended 38450
404.2 (b) revised; (c)(1) amended 38450
404.3 (b) amended 38450
404.143 (a)(2) amended 38450
404.101—404.146 (Subpart B) Appendix amended 38450
404.203 (a) amended 38450
404.403 (d)(2) amended 38450
404.408 (a)(1)(ii), (e)(2), (f), (k), (l)(2)(ii) amended 38450
404.430 (c)(1)(ii)(A)(*1*), (*2*) and (2) amended 38450
404.452 (a)(1), (2) and (d) revised; (b) amended 15610
404.460 (b)(4)(ii) and (7) introductory text amended 38450
404.464 (a) and (c) amended 38450
404.468 (d) amended 38450
404.520 (a) amended 38450
404.942 (g) revised 35074
404.966 Added 49602
404.983 Amended 38450
404.984 (a), (b)(2), (3), (c) and (d) amended 38450
404.985 (c)(2) amended 38450
404.1200 (a) amended 38450
404.1202 (b) amended 38450
404.1206 (d) amended 38451
404.1211 (a) amended 38451
404.1214 (a), (c)(1), (2), (d)(3), (4), (e) and (f) amended 38451
404.1215 (b) and (d) amended 38451
404.1216 (b)(3) amended 38451
404.1225 (a)(4) amended 38451
404.1232 (a) and (b) amended 38451
404.1249 (b)(2)(i), (ii) and (iv) amended 38451
404.1267 Amended 38451
404.1282 (a) amended 38451
404.1283 (a)(1), (2), (b) introductory text and (1) amended 38451
404.1285 (a) amended 38451
404.1286 (a) and (b) amended 38451
404.1287 (a)(1), (2) introductory text and (b) through (e) amended 38451
404.1289 Introductory and concluding text amended 38451
404.1290 (a) and (b) designation removed 38451
404.1296 Amended 38451
404.1297 (a) amended 38451
404.1413 Introductory text amended 38451
404.1501—404.1599 (Subpart P) Appendix 1 amended 30747
404.1502 Amended 38451
404.1503 (a), (b) introductory text, (1), (c) introductory text and (e) amended 38451
404.1526 (b) and (c) amended 38451
404.1527 (e) heading and (2) amended 38451
404.1529 (b) amended 38451
404.1546 Amended 38451

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TITLE 20 Chapter III—Con.

404.1597a (j)(1) and (2) amended 38451
404.1599 (a) and (b) amended 38451
404.1601 Introductory text, (a), (b), (c), (e), (f) and (h) amended 38452
404.1602 Amended 38452
404.1613 (a) amended 38452
404.1615 (d) amended 38452
404.1616 (b)(2) amended 38452
404.1626 (e) amended 38452
404.1627 (b) heading and (1) amended 38452
404.1641 (a) amended 38452
404.1682 Amended 38452
404.1691 (a) amended 38452
404.1694 Amended 38452
404.1735 Amended 38452
404.1745 Introductory text amended 38452
404.1750 (a) and (d) amended 38452
404.1765 (a) and (e) amended 38452
404.1799 (c) and (e) amended 38452
404.1902 Amended 38452
404.2102 Introductory text amended 38452
404.2103 Amended 38452
404.2117 Amended 38452
404.2120 (c) amended 38452
404.2127 (a), (b) and (c) amended 38452
410.101—410.130 (Subpart A) Authority citation amended 38452
410.110 (c) removed; (d) through (r) redesignated as (c) through (q); new (d), new (e) and new (f) amended 38452
410.120 Amended 38452
410.130 Amended 38453
410.200—410.250 (Subpart B) Authority citation revised 38453
410.300—410.395 (Subpart C) Authority citation revised 38453
410.400—410.490 (Subpart D) Authority citation revised 38453
410.401 (c) amended 38453
410.474 Amended 38453
410.490 (a) amended 38453
410.501—410.591 (Subpart E) Authority citation revised 38453
410.601—410.699a (Subpart F) Authority citation revised 38453
410.601 (a) and (b) amended 38453
410.629a (a) and (d) amended 38453
410.629d (a)(1), (b)(2) and (5) amended 38453
410.629e Amended 38453
410.629f Amended 38453
410.634 Amended 38453
410.635 Amended 38453
410.639 Amended 38453
410.644 Amended 38453
410.650 (a) amended 38453
410.669 (b) amended 38453
410.670b (a), (b)(1) and (4) amended 38453
410.670c (c)(2) amended 38453
410.686e Amended 38453
410.687 (d) amended 38453
410.688 Revised 38453
410.689 Amended 38453
410.690 Amended 38453
410.691 Amended 38453
410.692 (a), (b), (d) and (e) amended 38454
410.693 (a)(2) amended 38454
410.697 Amended 38454
410.699 (a) and (c) amended 38454
410.700—410.707 (Subpart G) Authority citation revised 38454
410.700 (b) amended 38454
410.704 (a)(1) amended 38454
416.101 (j) amended 38454
416.105 Amended 38454
416.110 (f)(1) amended 38454
416.120 (b) and (d) amended; (b)(1) removed; (b)(2) and (3) redesignated as (b)(1) and (2) 38454
416.211 Regulation at 62 FR 1055 confirmed 42412
416.212 Regulation at 62 FR 1055 confirmed 42412
416.250 (a) and (b) amended 38454
416.414 Regulation at 62 FR 1056 confirmed 42412
416.420 (a) revised; (c) redesignated as (d); new (c) added 30751
416.501—416.571 (Subpart E) Authority citation revised 49439
416.537 (a) amended 38454
416.580 Added 49439
416.581 Added 49439
416.582 Added 49439
416.583 Added 49439
416.584 Added 49439
416.585 Added 49440
416.586 Added 49440
416.903 (a), (b) introductory text, (1), (c) introductory text and (e) amended 38454

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416.927 (e) heading and (2) amended 38454
416.929 (b) amended 38454
416.946 Amended 38454
416.994a (e)(1) and (f)(4) correctly revised; CFR correction 36460
416.1001 Introductory text, (a), (b), (c), (e), (f) and (h) amended 38454
416.1002 amended 38454
416.1013 (a) introductory text amended 38455
416.1015 (d) amended 38455
416.1016 (b)(2) amended 38455
416.1026 (e) amended 38455
416.1027 (b) heading and (1) amended 38455
416.1041 (a) amended 38455
416.1082 Amended 38455
416.1091 (a) heading amended 38455
416.1100—416.1182 (Subpart K) Appendix amended 30982
416.1149 Regulation at 62 FR 1056 confirmed 42412
416.1165 Regulation at 62 FR 1056 confirmed 42412
416.1167 (c) added 42411
416.1202 Regulation at 62 FR 1056 confirmed 42412
416.1236 (a)(2) revised; (a)(12) amended; (a)(13), (16) and (19) removed; (a)(14), (15), (17), (18) and (20) redesignated as (a)(13) through (17); new (a)(18) added 30983
416.1245 (b)(3)(ii) introductory text revised 30983
416.1400—416.1499 (Subpart N) Authority citation revised 49440
416.1403 (a)(15) and (16) amended; (a)(17) added 49440
416.1442 (g) revised 35075
416.1453 (b)(2)(ii) amended 38455
416.1466 Added 49603
416.1483 Amended 38455
416.1484 (a), (b)(2), (3), (c) and (d) amended 38455
416.1485 (c)(2) amended 38455
416.1503 Amended 38455
416.1535 Amended 38455
416.1550 (a) and (d) amended 38455
416.1565 (a) and (e) amended 38455
416.1599 (c) and (e) amended 38455
416.1902 Amended 38455
416.2001 (c) amended 38455
416.2030 (a) amended 38455
416.2035 (b)(1) amended 38455
416.2065 Introductory text amended 38455
416.2070 (a) introductory text amended 38455
416.2075 (a) and (b) amended 38455
416.2095 (a)(5) amended 38455
416.2096 (c)(6) added 30984
(a)(1) introductory text and (d) amended 38455
416.2099 (a) introductory text, (b), (c) and (d) amended 38455
416.2176 (b) amended 38456
416.2202 Introductory text amended 38456
416.2203 Amended 38456
416.2217 Amended 38456
416.2220 (c) amended 38456
416.2227 (a), (b) and (c) amended 38456
422.1 (a) amended 38456
422.107 (a) amended 38456
422.210 (a), (c) and (d) amended 38456
422.602 Amended 38456
429 Added 24329
430 Added 39935

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10 40418
200 43295
220 50056
222 27989
229 27989
295 40995
335 19072
402 43489
404 ..... 26997, 42439, 46682, 48963, 49636, 50266, 50270
416 ..... 26997, 33778, 48963, 50266, 50270
422 42439
702 35715
718 ..... 27000, 27562, 28760, 33043
722 ..... 27000, 27562, 28760, 33043
725 ..... 27000, 27562, 28760, 33043
726 ..... 27000, 27562, 28760, 33043
727 ..... 27000, 27562, 28760, 33043

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

Chapter I Comment response 49881

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TITLE 21 Chapter I—Con.

1.31 Removed 39440
1.35 Removed 39440
5.10 (a)(38) added 28628
(a)(39) added 33349
5.20 (f)(4) added 48757
5.31 (h) added 19493
5.40 Added 43471
5.100 Added 48757
10 Technical correction 47760
10.30 (b) amended 40592
10.40 (b)(1)(ix) revised 40592
16.1 (b)(2) amended 40444
20 Technical correction 47760
20.100 (c)(3) revised 40592
25 Revised 40592
Technical correction 47760
50 Meeting 46198
50.3 (j) removed; (k) through (n) redesignated as (j) through (m) 39440
50.21 Removed 39440
50.40—50.48 (Subpart C) Removed 39440
56 Meeting 46198
71 Technical correction 47760
71.1 (c) amended 40598
74.2101 (a) correctly revised; CFR correction 15389
101 Technical correction 47760
101.2 (b) and (f) amended; (c)(1), (2), (3) and (5)(iii) removed; (c)(5)(iv) redesignated as (c)(5)(iii); (c)(4) and (5) redesignated as (c)(1) and (2) 43074
(b), (d)(1) and (f) revised; eff. 3–23–99 49847
101.3 (g) added; eff. 3–23–99 49847
101.4 (a)(1) revised; (g) and (h) added; eff. 3–23–99 49847
101.8 Removed 43074
101.9 (k)(2) and (5) removed; (k)(3), (4) and (6) redesignated as (k)(2), (3) and (4); (c)(8)(iii), (v), (d)(7)(i), (j)(6) and new (k)(4) revised; eff. 3–23–99 49848
101.12 (h)(12) revised 40598
(b) Table 2 amended; eff. 3–23–99 49848
101.13 (j)(1)(i)(B) amended 31339
(a) and (b) introductory text revised; (q)(3) redesignated as (q)(3)(i); (q)(3)(ii) added; eff. 3–23–99 49867
101.14 (a)(4) removed; (a)(5) and (6) redesignated as new (a)(4) and (5); (b)(3)(i) and (d)(3) revised; eff. 3–23–99 49867
101.29 Removed 43074
101.36 Revised; eff. 3–23–99 49849
101.54 (e)(1) introductory text and (2) introductory text amended 31339
(b)(1), (c)(1) and (e)(1) introductory text revised; eff. 3–23–99 49867
Heading revised; (f) and (g) added; eff. 3–23–99 49880
101.60 (c)(1)(iii)(A) revised; eff. 3–23–99 49881
101.65 (d)(2)(ii)(C) and (4)(ii)(B) stayed; eff. 4–1–97 through 1–1–00 15391
(b)(4) revised; eff. 3–23–99 49858
101.69 (h) revised; (m)(1), (n)(1) and (o)(1) amended 40598
101.70 (j)(4) added 28232
(f) amended 40599
101.93 (b) through (e) added; eff. 3–23–99 49867
Added; eff. 3–23–99 49886
113.40 (b)(10)(ii) amended 31722
165.110 (b)(4)(i)(A) table corrected; CFR correction 36460
170 Technical correction 47760
170.35 (c)(1)(viii) revised 40599
170.39 (c)(6) and (e) amended 40599
171 Technical correction 47760
171.1 (c) amended 40599
172.712 Added 26228
172.841 (c) revised 30985
175.105 (c)(5) table amended 33996, 39937
175.300 (b)(3)(viii)(*b*) 43076
176.170 (a)(5) table amended 39939
176.200 (d)(3) table amended 39772
177.1345 (d) amended 34628
177.1500 (c) redesignated as (d); new (c) added; new (d)(5)(ii) amended 22886
177.1520 (b) table corrected; CFR correction 42050, 49908
178.2010 (b) table amended 29009, 30455, 34629, 34630, 36983, 39441, 41272
178.3130 (b) table amended 31511
178.3297 (e) table amended 19221, 25476
178.3400 (c) table amended 33997, 42051
184.1472 Revised 30756
190 Added; eff. 3–23–99 49891
201.57 (f)(10) added; eff. 8–27–98 45325
201.64 (a) through (h) stayed; (i) revised 19925

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211 Compliance date extension 40447
211.1 (d) added 19497
310.305 (a) and (f)(1) revised; (b)(5) and (c)(4) removed; (c)(5) and (6) redesignated as (c)(4) and (5); new (c)(4) amended 34167
312 Meeting 46198
Technical correction 47760
312.20 (c) amended 32479
312.23 (a)(7)(iv)(*e*) revised 40599
312.70 (a) and (b) amended 46876
314 Meeting 44891, 46198
Technical correction 47760
314.50 (d)(1)(iii) revised 40599
314.70 (g) added 39900
314.80 (c)(1)(ii) removed; (c)(1)(iii) and (iv) redesignated as (c)(1)(ii) and (iii); (a), new (c)(1)(ii) introductory text, (d)(1) and (l) amended; (f)(1) revised 34168
314.101 (d)(4) revised 40599
314.110 (a)(3) and (b) amended 43639
314.120 (a)(3) amended 43639
314.440 (a)(3) amended 43639
352 Announcement 23350
510 Technical correction 23534
510.600 Regulation at 62 FR 14300 eff. date corrected to 4–7–97 15751
(c)(1) table and (2) table amended 22887, 27691, 29010, 34631, 35075, 38906, 39442, 40931, 48939
511 Technical correction 47760
511.1 (b)(10) revised 40599
514 Technical correction 47760
514.1 (b)(14) revised 40599
514.8 (a)(1) amended 40600
514.110 (b)(10) revised 40600
514.111 (a)(9) revised 40600
520.23 (a)(2) amended 35075
520.390a (a)(2) amended 35076
520.445b (b) amended 27691, 35076
520.447 (b) revised 46669
520.580 (b)(2) amended 35076
520.600 (c) amended 35076
520.622a (a)(6) amended 35076
520.622b (c)(2) amended 35076
(a)(2) amended 38906
520.622c (b)(6) amended 35076
(b)(6) corrected 40932
520.763a (c) amended 35076
520.763b (c) amended 35076
520.763c (b) amended 35076
520.812 (c) redesignaed as (d); new (d) revised 38906
520.1010a (b) amended 35076
520.1044a (b) amended 34169
520.1044b (b) amended 29011
520.1044c (b) amended 29013
520.1408 (b) amended 35076
520.1446 Added 28629
520.1451 Added 37713
520.1452 Added 42902
520.1616 Added 29012
520.1660d (a)(8) and (b)(6) added 23356
(b)(3), (e)(1)(ii)(A)(*3*), (B)(*3*) and (C)(*3*) amended 35076
520.1900 (b) amended 35076
520.2043 (b)(2) revised 37712
520.2098 Added 34632
520.2220a (b) amended 23357
(b) amended 40932
520.2260b (f)(1) and (h)(1) amended 35076
520.2325a (a)(4) added 37712
520.2345d (a)(1), (d)(1)(iii) and (2)(iii) amended 35076
(a)(1) amended 46668
520.2455 (b) amended 35076
520.2456 (b) amended 35076
520.2481 (b) amended 35076
520.2640 (e)(1)(iii), (2)(iii) and (3)(iii) amended 39443
522.23 (c) amended 35076
522.56 (b) amended 23357
522.518 (b) amended 28630
522.540 (a)(2) amended 37713
522.770 (d)(2) revised 44410
522.812 (c) redesignated as (d); new (d)(2) revised 38907
522.970 (b) revised 22888
522.1010 (b) amended 35076
522.1044 (b)(3) amended 35076
(b)(3) and (4) added 45157
522.1044b (b) amended 22889
522.1182 (b)(2)(i) amended 35076
522.1183 (e)(1) amended 35076
522.1222a (c) amended 22888, 35076
522.1410 (b) amended 35076
522.1660 (c) redesignated as (d); new (d)(1) heading, new (ii), new (iii) and new (2)(ii) amended 27692
522.1662a (a)(2), (g)(2) and (h)(2) amended 35076
522.1680 (b) amended 35076, 38906
522.1720 (b)(2) amended 38906
522.1850 (d) added 45158

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TITLE 21 Chapter I—Con.

522.2220 (a)(2)(iii) added 23128
(c)(2) amended 35076
522.2424 (b) amended 35076
522.2476 (b) amended 29013
522.2477 (a) revised 28629
522.2483 (b) amended 35077
522.2610 (b)(2) corrected; CFR correction 41272
522.2640a (b)(2) amended 35077
522.2662 (b) amended 35077
524.575 (c)(2) revised 48940
524.814 Added 33997
524.981a (b) amended 40932
524.981b (b) amended 40932
524.981c (b) amended 40932
524.1193 (d)(2) amended 38908
524.1580b (b) amended 35077
524.1580c (b) amended 35077
529.50 (b) amended 23358
529.1044a (b) amended 35077
529.1115 (b) amended 29014
530.41 Revised 27947
556.52 Revised 40933
556.75 Corrected 15391
556.227 Added 33998
558 Technical correction 23534, 44892
558.4 (d) table amended 25477
558.128 (a)(4) and (d)(1) table amended 27692
558.155 (a)(1) and (2) amended 35077
558.195 (c)(2) added; (d) table amended 23129
558.205 (a) amended 35077
558.274 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 15751
(a)(7) and (c)(1) table amended 27692
558.311 (e)(3)(i) table amended 28630
558.366 (a) and (c) table amended 29011
558.485 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 15751
(a)(11) amended 27692
(a)(28) added 46444
558.550 (b) redesignated as (d); (d)(1)(xvii) added 29014
558.600 (a) amended 35077
558.618 (d)(1) corrected 15391
558.625 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 15751
(b)(10) and (52) amended 27692
558.630 Regulation at 62 FR 14301 eff. date corrected to 4–7–97 15751
(b)(3), (8) and (10) amended 27692
570 Technical correction 47760
570.35 (c)(1)(viii) revised 40600
571 Technical correction 47760
571.1 (c) amended 40600
573.920 Regulation at 60 FR 53703 confirmed 44894
589 Authority citation revised 30976
589.2000 Added (OMB number pending) 30976
600 Meeting 44891
600.3 (ff) and (gg) added 39901
600.80 (c)(1)(ii) removed; (c)(1)(iii) and (iv) redesignated as (c)(1)(ii) and (iii); (a), new (c)(1)(ii) introductory text, (d)(1) and (m) amended; (f)(1) revised 34168
601 Meeting 44891, 46198
Technical correction 47760
601.2 (a) and (c)(2) amended 40600
601.12 Revised 39901
610 Meeting 44891
610.9 Revised 39903
610.12 (f) revised 46175
640 Meeting 44891
640.120 (a) revised 39903
730 Removed 43074
801.435 Added 50501
801.437 Added; eff. 9–30–98 51029
806 Added 27191
812 Authority citation revised 26229
Meeting 46198
Technical correction 47760
812.18 (b) revised 26229
812.20 (b)(9) revised 40600
812.36 Added 48947
812.150 (b)(5) revised 48948
814 Meeting 46198
Technical correction 47760
814.20 (b)(11) revised 40600
814.102 Reinstated 38026
814.104 Reinstated 38026
814.106 Reinstated 38026
814.108 Reinstated 38026
814.110 (a) reinstated 38026
814.112 (b) reinstated 38026
814.116 (b) reinstated 38026
814.118 (d) reinstated 38026
814.120 (b) reinstated 38026
814.124 (b) reinstated 38026
814.126 (b)(1) reinstated 38026
872.6730 (c) amended 31512

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880.5130 Revised 33350
882.5800 (c) revised 30457
886.5918 Revised 30987
886.5928 Revised 30988
886.5933 Removed 30988
898 Added 25497
898.14 Stayed 25498
1270 Revised 40444

Chapter II—Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

1300.02 (b)(28)(i)(D)(*1*), (*2*) and (29) correctly revised 15392
1308 Controlled substance schedules 29288, 29289
1310.09 Reinstated 15392
Revised 27693

Chapter III—Office of National Drug Control Policy (Parts 1400—1499)

1403.26 (a), (b) introductory text and (1) revised 45939, 45941

Proposed Rules:

1—1299 (Ch. I) 24619, 33781, 36243
50 40996
101 ..... 28234, 29313, 36749
111 ..... 30678, 44247, 48968
120 45593
161 29313
170 18938
184 18938
186 18938
200 49638
201 ..... 33379, 43900, 51071
207 40765
211 40489
225 40765
310 ..... 46223, 47532
312 ..... 43900, 49946, 51071
314 ..... 43900, 51071
330 33379
334 46223
336 45767
338 45767
341 45767
348 45767
358 33379
501 29313
510 40765
511 25152
514 ..... 25152, 25153, 40765
515 40765
558 40765
570 18938
589 18728
600 49642
601 ..... 43900, 51071
606 49642
808 33783
812 31023
814 34680
868 33044
872 38231
878 31771
884 ..... 33044, 46682
890 33044
1308 ..... 24620, 27214, 28923, 37004
1310 51072

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State (Parts 1—199)

22 Authority citation revised 42666
22.1 Amended 42666
41 Authority citation revised 48154
41.2 (l) revised; interim 51031
41.51 Revised 48154
41.112 (b) revised 24332
41.113 (c), (h) and (k) removed; (d) through (g), (i) and (j) redesignated as (c) through (h); (a), (b) and new (c) through new (f) revised 24333
41.107 Regulation at 59 FR 25325 confirmed 24334
42.72 (a) and (e)(4) amended; (e)(1) revised 27694
(e)(4) corrected 32196
122.3 (a) revised 27497
126.1 (a) amended 37133
135.26 (a), (b) introductory text and (1) revised 45939, 45941
145.26 (a), (b) and (c) revised 45939, 45941
171 Authority citation revised 48758
171.12 Revised; interim 48758

Chapter II—Agency for International Development, International Development Cooperation Agency (Parts 200—299)

201 Nomenclature change 38027
201.11 (b), (e) and (j) revised 38027

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TITLE 22 Chapter II—Con.

201.12 (d) revised; (e) added 38027
201.13 (a), (b) and (c) revised 38027
201.14 Amended 38027
226.26 (a), (b) and (c) revised 45939, 45941

Chapter IV—International Joint Commission, United States and Canada (Parts 400—499)

430 Added 39935

Chapter V—United States Information Agency (Parts 500—599)

514 Policy statement 19925
514.31 (c) through (j) revised; interim 34633
Regulation at 62 FR 34633 confirmed 46876
514.44 (g) revised; (h) removed 19222
(c) revised 28803
518.26 (a), (b) and (c) revised 45939, 45941

Chapter VI—United States Arms Control and Disarmament Agency (Parts 600—699)

606 Revised 27948

Proposed Rules:

22 32558
201 42712

TITLE 23—HIGHWAYS

Chapter I—Federal Highway Administration, Department of Transportation (Parts 1—999)

140.904 (b)(1) revised; interim 45328
140.922 (b) revised; interim 45328
470 Authority citation revised 33355
470.101—470.115 (Subpart A) Revised; interim 33355
625 Revised; eff. 5-1-97 15397
646 Authority citation revised 45328
646.200 (c) revised; (f) removed; interim 45328
646.202 Removed; interim 45328
646.204 Amended; interim 45328
646.208 Revised; interim 45328
646.212 (b) revised; interim 45328
646.214 (a)(2) revised; interim 45328
646.216 (d)(3)(ii) amended; (e)(1) revised; interim 45328
646.200—646.220 (Subpart B) Appendix amended; interim 45328
658 Appendix A amended 30758
772.13 Regulation at 61 FR 45321 confirmed 42904

Chapter II—National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

1200 Revised; interim 34402
1200.4 Revised; interim 34405
1205.5 Removed; interim 34405

Chapter III—National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

1327.6 (f) and (g) redesignated as (g) and (h); new (f) added; interim 27195

Proposed Rules:

777 33047

TITLE 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

5.410 (d)(1)(i) amended 27125
5.609 Regulation at 61 FR 54502 confirmed 24337
5.617 (b)(3) revised 27125
24.110 (a)(3)(ii) revised 20081
25.2 Amended 20081
25.3 Amended 20081
25.9 (x) and (cc) revised 20081
30.320 (k) revised 20081
50.19 (a), (b)(14), (17) and (c) revised; (b) heading and (24) added 15802
55.12 (b)(3) revised; (b)(4) added 15802
81.2 Regulation at 62 FR 63947 confirmed; (b) amended 28977
81.91—81.99 (Subpart H) Regulation at 62 FR 63948 confirmed 28977

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81.92 (a) revised 28977
81.93 (c)(1) amended 28977
81.94 (a) and (b)(2) amended 28977
81.96 (d) amended 28977
92.50 (d)(1) revised 28928
92.202 (b) revised 28928
92.203 (a)(1) introductory text, (b)(1) and (c) revised 28928
92.205 (d) amended 28928
92.206 (a)(5) added 28928
92.209 (c)(2) and (j)(5) revised 28928
92.214 (a)(6) revised 28929
92.219 (b)(1)(i) and (2)(iv) revised 28929
92.220 (a)(10) amended; (b)(4) revised 28929
(a)(1)(iii)(B)(*2*) and (*3*) revised; (a)(1)(iii)(B)(*4*) added 44840
92.250 (a) revised 28929
92.251 (a) revised 28929
92.252 (h) amended 28929
(i)(2) amended 44840
92.300 (a)(1) amended; (f) heading revised 28930
92.350 Revised 28930
92.353 (c)(2)(i)(C)(*1*)(*ii*) revised 28930
92.355 Revised 28930
92.356 (f)(1) revised 28930
92.358 Added 28930
92.453 Revised 44840
92.500 (d) revised 28930
92.505 (c) added 28930
92.507 Revised 44840
92.552 (b) revised 44840

Chapter I—Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

103.215 Regulation at 61 FR 41482 confirmed 15797

Chapter II—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

200.10 Revised 20081
200.926 (a)(2)(i) revised 30225
200.926d (c)(4)(vii) revised 30225
201.10 (g) amended 20082
201.20 (a)(3) added 20082
201.26 (a)(1)(iii) revised 20082
202 Revised 20082
202.3 (c)(2)(v)(A) revised 30225
202.8 (b)(9) revised 30225
203.1—203.7 Undesignated center heading revised 30225
203.1 Revised 30225
203.3 (d)(1)(iii) revised 20088
203.4 Added 30226
203.5 (c) amended 20088
(b) revised 30226
203.6 Added 30226
203.7 Introductory text revised 30226
203.43i (d) introductory text, (g) introductory text and (2) revised 30226
203.50 (h) revised 30226
203.249 Revised 30226
203.255 (a) revised; (f) added (OMB number pending) 30227
203.257 Revised 30227
203.415 (b) revised 30227
203.499 Revised 30227
206.3 Amended 30227
206.7 Revised 30227
206.9 (b) revised 20088
206.15 Revised 30227
241.1040 Revised 20088
266.100 (a) amended 20088

Chapter V—Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

Chapter V Notice 47344
570.416 Added 17493
572.5 Amended 34145
572.100 (a)(2) amended 34145
572.135 (d) revised 34145
572.210 Revised 34145
572.230 Revised 34145
572.300 Revised 34145
572.305 Removed 34145
572.310 Removed 34145
572.320 Removed 34145
572.420 (a)(1) amended 34145
573.3 (i) revised 24574
585.100—585.107 (Subpart B) Removed 31955
Regulation at 62 FR 31955 eff. date corrected to 7-11-97 33156
586 Revised 37479

TITLE 24

Chapter VIII—Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

888 Fair market rent schedules 50724

Chapter IX—Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

941.103 Amended 27125
950 Authority citation revised 27126
950.102 Regulation at 61 FR 46346 confirmed 24337
950.660 (a)(3) revised 27126
968.102 (b) revised 27126
968.112 (d)(3)(ii) amended 27126
968.335 (a)(3) revised 27126
971 Added; interim 49576

Chapter XX—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

3280 Policy statement 24337
3282 Policy statement 24337
3500.2 Amended 20088

Proposed Rules:

0—99 (Ch. I) 18306
200 27486
201 36194
202 36194
207 35716
251 35716
252 35716
255 35716
266 35716
291 32251
570 31944
888 23552
960 25728
950 35718
953 35718
955 35718
966 25728
968 47740
1000 ..... 35718, 43131, 47783
1003 ..... 35718, 43131, 47783
1005 ..... 35718, 43131, 47783
3500 ..... 25740, 38489

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

12 Revised 15611
46 Added 44081
142 Revised 18516
151 Determination 19927
247 Added; interim 50868

Chapter IV—Office of Navajo and Hopi Indian Relocation (Parts 700—799)

700.801—700.843 (Subpart R) Revised 35078

Proposed Rules:

41 15446
181 27000
502 46227

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury (Parts 1—799)

1 Authority citation amended 25506, 37492, 38028, 41273, 50503, 50505
Technical correction 40270
1.42–15 Added 50505
1.42–16 Added 50503
1.42–16T Removed 50503
1.61–4 Amended 44546
1.103–8 (a)(5) revised 25506
1.103–8T Removed 25506
1.142–4 Added 25506
1.148–0 (c) amended 25506
1.148–1 (b) amended; (c)(4)(ii)(A) revised; (e) added 25507
1.148–1T Redesignated as 1.148–1A 25507
1.148–2 (b)(2)(ii) revised 25507
1.148–2T Redesignated as 1.148–2A 25507

1.148–3 (h)(3) amended 25507
1.148–3T Redesignated as 1.148–3A 25507
1.148–4 (h)(2)(vi) and (vii) removed; (h)(2)(ii) through (v), (viii) and (ix) redesignated as (h)(2)(iii) through (viii); (b)(5), (g), (h)(1), (2) introductory text, (i), new (iv), new (v), new (vi), new (viii), (3), (4) and (5) revised; new (h)(2)(ii) and (6) added 25507
1.148–4T Redesignated as 1.148–4A 25507
1.148–5 (b)(2)(iii), (c)(2)(i), (3)(ii), (d)(3)(ii), (e)(2)(ii)(B) and (iii) revised 25511
1.148–5T Redesignated as 1.148–5A 25507
1.148–6 (d)(3)(iii)(C) revised 25512
1.148–6T Redesignated as 1.148–6A 25507
1.148–9 (c)(2)(ii)(B) and (h)(4)(vi) revised 25512
1.148–9T Redesignated as 1.148–9A 25507
1.148–10 (b)(2), (c)(2)(viii), (ix) and (e) revised; (c)(2)(x) added 25512
1.148–10T Redesignated as 1.148–10A 25507
1.148–11 (a), (b)(1), (c)(1) and (g) revised; (b)(3) added; (h) and (i) removed 25512
1.148–11T Redesignated as 1.148–11A 25507
1.149(d)–1 (f)(3) revised; (g)(3) added 25513
1.149(d)–1T Redesignated as 1.149(d)–1A 25513
1.150–1 (a)(2), (c)(1), (4)(iii) revised; (c)(6) added 25513
1.150–1T Redesignated as 1.150–1A 25513
1.148–1A—1.150–1A Undesignated center heading added 25507
1.148–1A Redesignated from 1.148–1T; heading amended 25507
1.148–2A Redesignated from 1.148–2T; heading amended 25507
1.148–3A Redesignated from 1.148–3T; heading amended 25507
1.148–4A Redesignated from 1.148–4T; heading amended 25507
1.148–5A Redesignated from 1.148–5T; heading amended 25507
1.148–6A Redesignated from 1.148–6T; heading amended 25507
1.148–9A Redesignated from 1.148–9T; heading amended 25507
1.148–10A Redesignated from 1.148–10T; heading amended 25507
1.148–11A Redesignated from 1.148–11T; heading amended 25507
(i) revised 25513
1.149(d)–1A Redesignated from 1.149(d)–1T; heading amended 25513
1.150–1A Redesignated from 1.150–1T; heading amended 25513
1.162–12 (a) amended 44546
1.163–8T (c)(2)(e) redesignated as (c)(3) 40270
1.263A–0 Amended 42054
1.263A–0T Added 44546
1.263A–1 (a)(2)(i) amended 42054
(b)(3) and (4) amended 44546
1.263A–4T Revised 44546
1.263A–7 Added 42054
1.263A–7T Removed 42062
1.263A–15 Amended 42062
1.302–2 (c) introductory text amended 38028
1.401(b)–1 (c), (d) and (e) redesignated as (d), (e) and (f); new (d)(2) undesignated text designated as (d)(3) and (4); (a), (b)(1), new (d)(1)(ii), (iii), (2) introductory text, (3), (4), (e)(1)(ii)(C), (2)(ii)(C), (3) introductory text, (4), (5) introductory text and (iii) amended 41273
(b)(2)(iii) removed; (b)(3), (c) and (d)(1)(iv) added 41274
1.401(b)–1T Added 41274
1.446–1 (e)(3)(i) amended 26741
1.446–1T Added 26741
(e)(3)(i)(B) corrected 28631
1.471–6 (c), (d) and (f) amended 44551
1.501(c)(5)–1 (b) redesignated as (c); new (b) added 40449
1.704–1 (b)(2)(iv)(*d*)(*1*), (*l*) and (5) Example 13 amended 25499
1.704–2 (m) Example 1 reinstated; CFR correction 34634
1.704–3 (a)(2) and (3)(i) amended 25500
(a)(11) added; (f) revised 44215

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1.704–4 (a)(4)(ii) and (c)(3) revised 25500
1.708–1 (b)(1)(ii) amended; (b)(1)(iv) revised; (b)(1)(v) added 25500
1.737–2 (a) revised; (d)(1) amended 25501
1.743–1 (d) added 25501
1.761–1 (e) added 25501
1.894–1T Added 35676
(d)(1), (6) Example 11 corrected 46877
1.1059(e)–1 Added 38028
1.1245–1 (e)(2) revised 44216
1.1502–5 (b)(5) corrected 23657
1.6013–2 (b)(1) amended 39117
1.6302–1 (b) heading revised; (b) redesignated as (b)(1); new (b)(1) heading and (2) added; OMB number 37492
1.6302–1T Removed 37492
1.6302–2 (b) heading revised; (c) redesignated as (b)(6); new (c) added; OMB number 37492
1.6302–2T Removed 37492
1.6302–3 (c) revised 37492
1.6302–3T Removed 37492
1.6302–4 Added 37492
1.6302–4T Removed 37492
1.6662–6 (d)(2)(ii)(E) amended 46877
26.2652–1 (a)(4) and (5) Examples 9 and 10 removed; (a)(5), (6) and Example 11 redesignated as (a)(4), (5) and Example 9 27498
31 Authority citation amended 33009, 37492
31.0–1 (a) amended 37492
31.0–3 (f) amended 37493
31.3406(j)–1 Added 33009
31.6302–1 (h) redesignated as (i); new (h) added 37493
31.6302–1T Removed 37494
31.6302(c)–3 (b) heading and (c) revised; (d) added 37494
31.6302(c)–3T Removed 37494
35a Authority citation amended 33009
35a.3406–3 Removed 33009
40 Authority citation amended 37494
40.6302(c)–1 (d) redesignated as (d)(1); (d)(1) heading and (2) added 37494
40.6302(c)–1T Removed 37494
54 Authority citation amended 16927
Technical correction 17004
54.9801–1T Added; interim 16927
(c) corrected 31691
54.9801–2T Added; interim 16928
Corrected 31691
54.9801–3T Added; interim 16929
(a)(1)(iii) and (b)(1)(ii) Example corrected 31691
54.9801–4T Added; interim 16930
(a)(2) and (b)(2)(iv) corrected 31669
(b)(2)(iv) Examples 6 and 7 and (v)(B) Example corrected 31691
54.9801–5T Added; interim 16932
(a)(6) and (b)(2) corrected 31669
(a)(1)(i), (iv)(B)(*1*), (*2*) Example, (2)(iv) Examples 4 and 5 and (5)(i)(A) corrected 31691
(a)(5)(i)(B) Example, (6)(ii), (c)(2)(ii) and (d)(3) Example 3 corrected 31692
54.9801–6T Added; interim 16937
(a)(3) corrected 31669
(b)(2), (4) introductory text and (6) corrected 31692
54.9802–1T Added; interim 16938
54.9804–1T Added; interim 16939
(a) and (b)(4) corrected 31670
54.9806–1T Added; interim 16940
(a)(1), (2), (d), (e)(1)(i) and (iv) corrected 31692
301.6109–1 (d)(2)(iii) added 25502
301.6334–1 (a)(2) and (e) revised; (a)(3) and (11)(i) amended; (f) added 39117
301.6601–1 (f)(3) and (4) revised; (f)(5) redesignated as (f)(6); new (f)(5) added 39117
301.6651–1 (a)(3) revised; (g) added 39117
301.6656–3 Added 39118
301.7122–1 (e) revised 39118
301.7430–0 Amended 39118
301.7430–1 (b)(4) added 39118
301.7430–2 (b)(2), (c)(3) introductory text and (ii)(C) amended; (c)(3)(i)(B) revised 39118
301.7430–4 (b)(3)(i), (iii)(B), (C), (D) and (c)(2)(ii) amended; (b)(3)(ii) revised 39118
301.7430–5 (a) revised; (c)(3) added 39119
301.7430–6 Revised 39119
301.9100–1T (h) amended 26741

CHANGES APRIL 1, 1997 THROUGH SEPTEMBER 30, 1997

301.9100–3T (c)(2)(i) revised 26741
601.204 (b) amended 26741
601.204T Added 26741
(b)(2) corrected 28631
602.101 (c) table amended (OMB numbers) 25514, 35905

Proposed Rules:

1 ..... 17572, 18730, 19072, 19957, 19958, 23408, 26755, 27563, 30785, 32054, 35752, 35755, 37818, 37819, 38197, 40316, 41322, 43295, 44103, 44607, 49183
25 ..... 19072, 44103
54 16977
301 ..... 26755, 30785, 30796, 37819, 38197, 40316, 50533
601 26755

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

Chapter I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

4.28 (e) added 16490
(e)(2) corrected 33747
24.148 Revised 29666
24.278 Revised; OMB number 29666
24.279 Revised; OMB number 29667
178.11 Amended 19444, 34638
178.32 (e) added 34639
178.124 (c) introductory text and (f) amended; (c)(1), (d) and (e) revised 19444
178.125 (f) introductory text amended; (f)(1), (2) and (3) added 19445
178.130 (a)(2) revised 19445*

Proposed Rules:

9 ..... 16502, 24622, 34027, 39984
24 29681
178 ..... 19446, 45364

CHANGES JULY 1, 1997 THROUGH SEPTEMBER 30, 1997

TITLE 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice (Parts 0—199)

0.100—0.104 (Subart R) Appendix amended 38029
2.62 (a)(6) and (h)(5) amended 40270
16.99 (i) and (j) added 44083
17 Revised 36984
32.1—32.2 (Subpart A) Heading revised 37715
32.1 (a) amended 37715
32.2 (a) introductory text amended 37715
32.3—32.9 (Subpart B) Heading removed 37715
32.3—32.9 Undesignated center heading added 37715
32.10—32.15 (Subpart C) Heading removed 37715
32.10—32.15 Undesignated center heading added 37715
32.10 (a) introductory text amended 37715
32.16—32.18 (Subpart D) Heading removed 37715
32.16—32.18 Undesignated center heading added 37715
32.16 (a) amended 37715
32.19—32.22 (Subpart E) Heading removed 37715
32.19—32.22 Undesignated center heading added 37715
32.23—32.24 (Subpart F) Heading removed 37715
32.23—32.24 Undesignated center heading added 37715
32.25 (Subpart G) Heading removed 37716
32.25 Undesignated center heading added 37716
32.31—32.40 (Subpart B) Added 37716
32.35 (b) corrected 39120
66.26 (a), (b) introductory text and (1) revised 45939, 45942
70.26 (a), (b) and (c) revised; (d) added 45939, 45942

Chapter V—Bureau of Prisons, Department of Justice (Parts 500—599)

523 Authority citation revised 50787
523.20 (Subpart C) Added; interim 50787
541.13 (a)(1) through (4) revised; Tables 3 through 6 amended 50789
541.14 (a) amended 50791
544.42 (d) revised 39916
544.70—544.75 (Subpart H) Revised; interim 50793
548.12 Revised 44836
548.16 (c) amended 44836
548.20 (a) and (b) amended 44836
550.30—550.31 (Subpart D) Revised 45292

Proposed Rules:

2 40316
16 45184
50 45184
79 45774
540 47894

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

95.26 (a), (b) and (c) revised ... 45939, 45942
97.26 (a), (b) introductory text and (1) revised 45939, 45942

Chapter XII—Federal Mediation and Conciliation Service (Parts 1400—1499)

1404.17—1404.21 (Subpart D) Added 48949
1470.26 (a), (b) introductory text and (1) revised 45939, 45942

Chapter XIV—Equal Employment Opportunity Commission (Parts 1600—1699)

1600.735-101—1600.735-106 (Subpart A) Regulation at 61 FR 7067 confirmed 36447
1600.735-201—1600.735-206 (Subpart B) Regulation at 61 FR 7067 confirmed 36447
1600.735-301 (Subpart C) Regulation at 61 FR 7067 confirmed 36447
1600.735-401—1600.735-406 (Subpart D) Regulation at 61 FR 7067 confirmed 36447
1600.101 Regulation at 61 FR 7067 confirmed 36447

TITLE 29 Chapter XIV—Con.

1600.735–501—1600.735.519 (Subpart E) Regulation at 61 FR 7067 confirmed 36447
1650.101—1650.119 (Subpart A) Regulation at 61 FR 7067 confirmed 36447

Chapter XVII—Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

1904.30 Added (OMB numbers) 44552
1910.8 Table amended 42666
Table corrected 43581
1910.11—1910.19 (Subpart B) Authority citation revised 40195
1910.16 (a), (b) and (c)(4) revised 40195
1910.1000—1910.1450 (Subpart Z) Authority citation revised 42666
1910.1000 Table Z–1 and Z–3 corrected 42018
1910.1052 (n)(2)(i)(C) revised 42667
(n)(2)(iii)(C) revised 48176
1917 Authority citation revised 40195
1917.1 (a) introductory text and (2)(i) through (x) revised; (a)(2)(xi), (xii), (xiii) and (b) added 40196
1917.2 Amended 40196
1917.3 Added 40196
1917.11 (d) added 40196
1917.13 (g) revised; (h) and (i) added 40197
1917.17 (i), (j) and (k) revised 40197
1917.20 Revised 40197
1917.23 Heading, (b)(1) and (d) introductory text revised 40197
1917.24 (a) revised 40197
1917.25 (a) and (c) revised; (g) added 40197
1917.26 (c) and (d) revised 40197
1917.27 (a)(2) revised; note added 40197
1917.28 Heading revised; text removed 40198
1917.30 Added 40198
1917.42 (b)(4), (c)(1), (d), (h)(4), (5) and (j)(1) revised; (g)(2)(vi) added 40198
1917.43 (e)(1)(i) and (6)(iii) revised; (f)(3) added 40198
1917.44 (a), (i), (o)(3)(i), (ii) introductory text and (o)(4) introductory text revised 40198
1917.45 Heading, (f)(4)(iii), (5), (7), (13)(ii), (iii)(A), (i)(5)(i) introductory text, (j)(1)((iii)(D) and (2) revised; (g)(11), (j)(9) and (10) added 40199
1917.46 Heading, (a)(1)(ii) and (viii)(A) revised 40199
1917.48 (d)(2) revised 40200
1917.50 (i) redesignated as (j); heading, (c)(5) and new (j) revised; new (i) added 40200
1917.71 (b)(6), (7), (c), (e) and (f)(1)(i) revised; (b)(8), (f)(4) and (5) added 40200
1917.73 Heading revised 40201
1917.91 Heading and (a)(1) revised 40201
1917.93 (a) and (b) revised 40201
1917.94 Revised 40201
1917.95 (b)(2) revised 40201
1917.112 (a)(1) revised 40201
1917.118 (d)(2)(i) and (f)(2) revised 40201
1917.119 (b)(1), (c), (d)(2) and (f)(4) revised 40201
1917.121 (b)(3) revised 40201
1917.123 Footnote 7 redesignated as footnote 9 40201
1917.124 Heading and (d)(1) revised; (c)(5), (6) and (d)(5) added 40201
1917.126 (b) revised 40201
1917.152 Heading revised; footnote 8 redesignated as footnote 12 40202
1917.153 Heading revised 40202
1917.156 (b)(3)(iii)(D) revised 40202
1917.157 (n) revised 40202
1918 Revised 40202
1926 Meeting and signing ceremony 37134
1952.105 (a) revised 49909
1952.107 (f) added 49910
1952.365 Revised 49911
1952.367 (b) added 49911

Chapter XX—Occupational Safety and Health Review Commission (Parts 2200—2499)

2200.7 (g) revised 35963
2200.8 (d)(2) revised 35963
2200.11 Amended 35963
2200.40 (a) amended 35963

2200.57 Amended; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added 35963
2200.60 Amended 35963
2200.67 Amended 35963
2200.90 (b)(2) amended 35963
2200.91 (b) amended; (h) revised 35963
2200.93 (h) revised 35963
2200.101 Amended 35963
2200.201 (a) designation and (b) removed 40934
2200.202 Revised 40934
2200.206 (a) revised 40934
2200.207 (a) revised 40934
2200.209 (a) revised 40934
2203.3 (b)(10) amended 35963
2204.107 (b) amended 35964
2204.301 Revised 35964

Chapter XXV—Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

2520.102–3 OMB number 36205
2520.104b–1 OMB number 36205
2520.104b–3 OMB number 36205
2570 Authority citation revised 40699
2570.100—2570.502c–3 (Subpart E) Added 40699
2590.701–3 OMB number 35905
2590.701–4 OMB number 35905
2590.701–5 OMB number 35905
2590.701–6 OMB number 35905

Chapter XL—Pension Benefit Guaranty Corporation (Parts 4000—4999)

4000.2 Table amended 36994
4001.2 Amended 35342
4007 Authority citation revised 36663
4007.10 Heading revised; (a) amended; (c) and (d) added 36663
4010.13 Amended 36994
4011.3 (c) amended 36994
4043.3 (e) amended 36994
4044 Appendix B amended 37718, 43640, 48176
4071 Added 36994
4302 (Subchapter K) Added 36995
4901—4907 (Subchapter K) Redesignated as Subchapter L 36994

Proposed Rules:

70a 40406
71 40406
1910 41002
2204 42957
2560 47262
2580 49894

TITLE 30—MINERAL RESOURCES

Chapter II—Minerals Management Service, Department of the Interior (Parts 200—299)

210.55 Revised; interim 42066
218.52 Revised; interim 42066
227 Added 43084
228 Authority citation revised 43091
228.3 Added 43091
229 Authority citation revised 43091
229.3 Added 43091
250.1 (c)(5) and (d)(1) revised 42671
250.126 Revised 42671
250.160 (a) amended 39775
250.163 (b) amended 39775
250.200—250.209 (Subpart N) Revised 42668
256.53 Corrected 36995
256.64 (a)(8) amended 39775

Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

870 Authority citation revised 45924
870.5 Amended 45924
870.18 Revised 45924
870.19 Added 45925
870.20 Added 45928
902.15 Regulation at 62 FR 15116 eff. date corrected to 4–7–97 35342
904 Technical correction 44894
914 Technical correction 49049
914.15 Table amended 44896, 44898, 47140
914.16 (cc) and (dd) removed 47330
917.15 Table amended 45717
925.15 Table amended 41844
934.15 Table amended 44900
944.15 Table amended 41850
944.16 (e), (f)(1), (g), (h) and (i) removed 41850
944.25 Table amended 41850
946.15 Table amended 48765

TITLE 30 Chapter VII—Con.

946.25 (a) table amended 35968

Proposed Rules:

75 50541
202 38509
206 ..... 36030, 38509, 49460, 50544
211 38509
250 37819
773 47617
870 47617
914 42713
917 46933
920 49183
924 40773
934 ..... 46695, 48807
935 ..... 36248, 38509
936 42715
946 44924

TITLE 31—MONEY AND FINANCE: TREASURY

Chapter I—Monetary Offices, Department of the Treasury (Parts 51—199)

27 Added; interim 42213
27.7 (c)(3)(ii)(F) corrected 44036
103.22 Regulation at 61 FR 18209 confirmed; (a)(1) amended; (h) revised 47147

Chapter II—Fiscal Service, Department of the Treasury (Parts 200—399)

202 Authority citation revised 45520
202.1 Revised 45520
202.2 (a)(1) revised; (a)(2) removed; (a)(3) and (4) redesignated as (a)(2) and (3); authority citation removed 45521
202.3 (a), (b)(1) introductory text, (2) introductory text and (i) revised; authority citation removed 45521
202.4 Heading, introductory text, (c), (d) and (e) revised; authority citation removed 45521
202.6 (b) and (e)(1) revised; authority citation removed 45521
202.7 (a) revised; authority citation removed 45521
285 Authority citation revised 36210
285.1 Added; interim 36210
343 Revised 49914
344.1 (f) through (j) redesignated as (g) through (k); new (f) added; new (g)(3) revised 46445
344.3 (b)(3)(iii) revised 46446
356.12 (c)(1)(i) revised 43093
356.13 (a) revised 43093
356 Appendix B and Exhibit A amended 43094
357.22 (b) through (e) redesignated as (c) through (f); new (b) added 46861
357 Appendix B amended 43284

Chapter V—Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

500 Authority citation revised 45101
500.101 (Subpart A) Heading revised 45101
500.101 (a) amended 45101
500.201 (e) added 45101
500.306 Note amended 45101
500.508 (f) removed; note added 45101
500.601 (Subpart F) Revised 45101
500.701 (a) introductory text amended 45101
500.801 Revised 45101
500.802 Removed; new 500.802 redesignated from 500.807 45101
500.803 Removed; new 500.803 redesignated from 500.808 45101
500.804 Removed 45101
500.805 Removed 45101
500.806 Removed 45101
500.807 Redesignated as 500.802 45101
500.808 Redesignated as 500.803 45101
500.809 Removed 45101
500.901 Revised 45101
501 Added 45101
505 Authority citation revised 45106
505.40 Amended 45106
505.60 Revised 45106
515 Authority citation revised 45106
515.101 (a) amended 45106
515.201 (e) added 45106
515.306 Note amended 45106
515.508 (f) removed; note added 45106
515.601 (Subpart F) Revised 45106
515.701 (a) introductory text amended 45106
515.801 Revised 45106
515.802 Removed; new 515.802 redesignated from 515.807 45106

515.803 Removed; new 515.803 redesignated from 515.808 45106
515.804 Removed 45106
515.805 Removed 45106
515.806 Removed 45106
515.807 Redesignated as 515.802 45106
515.808 Redesignated as 515.803 45106
515.901 Revised 45106
535 Authority citation revised 45106
535.101 (a) amended 45107
535.508 (f) removed; note added 45107
535.601 (Subpart F) Revised 45107
535.701 (a) introductory text amended 45107
535.801 (Subpart H) Revised 45107
535.905 Revised 45107
536 Authority citation revised 45107
536.101 (a) amended 45107
536.201 Existing text designated as (a); (b) added 45107
536.312 Note added 45107
536.503 (a) revised; note added 45107
536.601 (Subpart F) Revised 45107
536.801 Revised 45107
536.802 Removed; new 536.802 redesignated from 536.805 45108
536.803 Removed 45108
536.804 Removed 45108
536.805 Redesignated as 536.802 45108
536.806 Removed 45108
536.901 Revised 45108
550 Authority citation revised 45108
550.101 (a) amended 45108
550.209 (c) added 45108
550.304 Note amended 45108
550.511 (g) removed; (h) redesignated as (g); new (g) amended; note added 45108
550.601 (Subpart F) Revised 45108
550.701 (a) introductory text amended 45108
550.801 Revised 45108
550.802 Removed; new 550.802 redesignated from 550.805 45108
550.803 Removed; new 550.803 redesignated from 550.807 45108
550.804 Removed 45108
550.806 Removed 45108
550.805 Redesignated as 550.802 45108
550.807 Redesignated as 550.803 45108
550.901 Revised 45108
560 Authority citation revised 41852, 45108
560.101 (a) amended 45109
560.510 (d) introductory text, (1) and (2) revised 41852
560.525 (a)(3) and (5)(i) revised 41852
560.601 Revised 45109
560.602 Removed 45109
560.701 (a) introductory text amended 45109
560.801 Revised 45109
560.802 Removed; new 560.802 redesignated from 560.805 45109
560.803 Removed; new 560.803 redesignated from 560.806 45109
560.804 Removed 45109
560.807 Removed 45109
560.805 Redesignated as 560.802 45109
560.806 Redesignated as 560.803 45109
560.901 Revised 45109
575 Authority citation revised 45109
575.101 (a) amended 45109
575.201 (c) added 45109
575.306 Note amended 45109
575.503 (h) removed; note added 45109
575.601 (Subpart F) Revised 45109
575.701 (a) introductory text amended 45109
575.801 Revised 45109
575.802 Removed; new 575.802 redesignated from 575.805 45109
575.803 Removed 45109
575.804 Removed 45109
575.805 Redesignated as 575.802 45109
575.806 Removed 45109
575.901 Revised 45110
585 Authority citation revised 45110
585.101 (a) amended 45110
585.201 (c) note amended; (e) added 45110
585.311 Note amended 45110
585.503 (a) revised; note added 45110
585.601 (Subpart F) Revised 45110
585.701 (a) introductory text amended 45110
585.801 Revised 45110
585.802 Removed; new 585.802 redesignated from 585.805 45110
585.803 Removed 45110
585.804 Removed 45110
585.805 Redesignated as 585.802 45110
585.806 Removed 45110
585.901 Revised 45110
590 Authority citation revised 45110
590.101 (a) amended 45111
590.601 (Subpart F) Revised 45111
590.701 (a) introductory text amended 45111
590.801 Revised 45111
590.802 Removed; new 590.802 redesignated from 590.805 45111

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590.803 Removed.....45111
590.804 Removed.....45111
590.805 Redesignated as 590.802.....45111
590.806 Removed.....45111
590.901 Revised.....45111
595 Authority citation revised.....45111
595.101 (a) amended.....45111
595.201 Existing text designated as (a); (b) added.....45111
595.311 Note amended.....45111
595.503 (a) revised; note added.....45111
595.601 (Subpart F) Revised.....45111
595.701 (a) introductory text amended.....45111
595.801 Revised.....45111
595.802 Removed; new 595.802 redesignated from 595.805.....45111
595.803 Removed.....45111
595.804 Removed.....45111
595.805 Redesignated as 595.802.....45111
595.806 Removed.....45111
595.901 Revised.....45111
596 Authority citation revised.....45112
596.101 (a) amended.....45112
596.601 (Subpart F) Revised.....45112
596.801 Revised.....45112
596.802 Removed; new 596.802 redesignated from 596.805.....45112
596.803 Removed.....45112
596.804 Removed.....45112
596.805 Redesignated as 596.802.....45112
596.806 Removed.....45112
596.901 Revised.....45112
Chapter V Appendixes A and B amended.....41851, 48178

Proposed Rules:

1.....42443
27.....42220
103...36475, 38511, 40778, 40779, 45365, 47156
208.....48714
212.....46428

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense (Parts 1—399)

Subchapter A Heading added.....40734
33.26 (a), (b) introductory text and (1) revised.....45939, 45943
176 Revised.....35346
199 Technical correction.....42905
199.2 (b) amended.....46878
199.4 (c)(2) heading, (xiii), (xvi), (3)(xi), (g)(37) and (47) revised.....46878
199.5 (b)(1)(iii), (e)(2), (3) and (4) revised.....42904
199.13 (i) added; interim.....39941
247 Revised.....42905
270 Added; interim.....39942
286 Revised.....35351
286.3 Amended.....42916
286.4 (b), (h)(1), (5) and (n)(2) corrected.....38197
286.12 (a)(1) and (2) corrected.....38197
286.28 (d)(3)(i)(A) corrected.....38197
(d)(3)(ii)(A) amended.....42916
311.7 (c)(10)(i), (ii) and (iii) added.....46446

Chapter V—Department of the Army (Parts 400—699)

505.5 (e)(20) removed.....48480

Chapter VI—Department of the Navy (Parts 700—799)

706.2 Table Five amended.....37719, 40450
Tables Four and Five amended.....47945

Proposed Rules:

178.....50796
199.....45196
311.....41323

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

27.3 Table correctly revised.....35385
Table corrected.....39313
100 Temporary regulations lists.....42671
100.35T-05-043 Added (temporary).....35391
100.35-T05-055 Added (temporary).....39776
100.35T-05-065 Added (temporary).....45718
100.35T-05-069 Added (temporary).....48768
100.35-T08-026 Added (temporary).....44410

100.35-T08-027 Added (temporary).....44411
100.35-T08-028 Added (temporary).....44411
Heading correctly revised.....46553
100.35-T08-034 Added (temporary).....48767
100.35-T08-035 Added (temporary).....48766
100.35-T08-038 Added (temporary).....50506
100.35-T08-039 Added (temporary).....50507
100.102 Revised; eff. 7-26-97.....35388
100.114 Implementation (temporary).....35388, 35391, 45158, 48766
100.201 Implementation (temporary).....43284
100.501 (c) revised; Table 1 added.....46670
100.508 Implementation (temporary).....45718
100.509 Implementation (temporary).....35390
100.510 (b)(1) and (c) revised; Table 1 added.....42067
100.728 Added.....43641
100.1101 Implementation (temporary).....45158
100.1301 (a) stayed; (j) added; eff. 8-7-97 through 8-11-97.....39444
117 Temporary drawbridge operation regulations...46879, 46880, 50253
117.559 Revised.....38909
117.603 Revised.....50510
117.604 Removed.....50510
117.633 (b) and (c) revised.....43098
117.637 (a)(1) revised.....43931
117.753 Revised.....45160
117.1045 (a) revised.....43097
144.01-15 (d) correctly revised.....35392
151 Effective date confirmation.....46446
155 Compliance date delay.....37134
Compliance date extension.....48769
Authority citation and note revised.....48773
155.100 (a) introductory text revised; (c) added.....48773
155.480 (b) introductory text and (f) revised.....48773
157.455 Regulation at 61 FR 60189 stay lifted; revised.....49608
162.138 (a)(1)(i) suspended; (a)(1)(iv) added; eff. 7-25-97 through 12-15-97.....45720
164.72 (a)(1)(iv) redesignated as (a)(1)(v); (a)(1)(iii), new (v), (c) and table revised; new (a)(1)(iv) added.....40272
165 Effective date confirmation.....35392
Temporary regulations lists.....42671
165.T01-040 Added (temporary).....35395
165.T01-041 Added (temporary).....35404
165.T01-042 Added (temporary).....35403
165.T01-047 Added (temporary).....35681
165.T01-048 Added (temporary).....35969
165.T01-063 Added (temporary).....42677
165.T01-082 Added (temporary).....45721
165.T01-085 Added (temporary).....45722
165.T01-089 Added (temporary).....46671
165.T02-050 Added (temporary).....43100
165.T05-058 Added (temporary).....39446
165.T05-063 Added (temporary).....42676
165.T07-035 Added (temporary).....41275
165.T08036 Added (temporary).....35401
165.T08037 Added (temporary).....35401
165.T08038 Added (temporary).....35402
165.T08-041 Added (temporary).....38457
165.T11-060 Added (temporary).....43099
165.T13006 Added (temporary).....35394
165.T13007 Added (temporary).....35396
165.T13009 Added (temporary).....35397
165.T13010 Added (temporary).....35399
165.T13-011 Added (temporary).....37136
165.T13-014 Added (temporary).....42674
165.T13-015 Added (temporary).....42675
165.T13008 Added (temporary).....35400
165.T13-016 Added (temporary).....40277
165.T13-022 Added (temporary).....50511
165.T96-073 Removed.....35406
165.T14-002 Added (temporary).....46672
165.510 Revised.....40275
165.726 Added.....50512
165.1307 (a) revised.....39445

Chapter II—Corps of Engineers, Department of the Army (Parts 200—399)

334.1125 Added; interim.....40278

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84.....36037
95.....45197
100.....38042, 45197, 45198, 50544
110.....38511
117.....35453, 38043, 43131, 43958, 46697
148.....45774
149.....45774
150.....45774

TITLE 33 *Proposed Rules:—Con.*

165 ..... 41324, 45775
167 44428
173 45197
174 45197
175 ..... 45197, 50280
177 45197
179 45197
181 45197
183 45197
334 47166

TITLE 34—EDUCATION

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)

74.26 (a), (b) and (c) revised ... 45939, 45943
75.253 (c) revised 40424
75.261 (a) and (b) redesignated as (c) and (d); new (a) and (b) added; new (c) introductory text revised; new (c)(4)(iii)(C) and (d) amended 40424
75.263 Added 40425
75.264 Added 40425
80.26 (a), (b) introductory text and (1) revised 45939, 45943
80 Appendix removed 45943

Chapter II—Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

222.4 Revised; eff. 7–31–97 35412
222.7 Authority citation amended; eff. 7–31–97 35412
222.9 Authority citation amended; eff. 7–31–97 35412
222.10 Authority citation amended; eff. 7–31–97 35412
222.11 Introductory text and authority citation amended; eff. 7–31–97 35412
222.12 Added; eff. 7–31–97 35412
222.13 Redesignated as 222.19; eff. 7–31–97 35412
Added; eff. 7–31–97 35413
222.14 Added; eff. 7–31–97 35413
222.15 Added; eff. 7–31–97 35413
222.16 Added; eff. 7–31–97 35413
222.17 Added; eff. 7–31–97 35413
222.18 Added; eff. 7–31–97 35414
222.19 Redesignated from 222.13; eff. 7–31–97 35412
222.22 (c) and (d) revised; eff. 7–31–97 35414
222.23 Added; eff. 7–31–97 35414
222.36 (b)(1) and (2) revised; eff. 7–31–97 35415
222.50 Authority citation amended; eff. 7–31–97 35412
222.80—222.85 (Subpart F) Added; eff. 7–31–97 35415
222.94 Authority citation amended; eff. 7–31–97 35412
222.95 Authority citation amended; eff. 7–31–97 35412
(g) introductory text revised; OMB number 35416
222.103 Authority citation amended; eff. 7–31–97 35412
222.104 Authority citation amended; eff. 7–31–97 35412
222.108 Authority citation amended; eff. 7–31–97 35412
222.109 Authority citation amended; eff. 7–31–97 35412
222.110 Authority citation amended; eff. 7–31–97 35412
222.111 Authority citation amended; eff. 7–31–97 35412
222.112 Authority citation amended; eff. 7–31–97 35412
222.113 Authority citation amended; eff. 7–31–97 35412
222.114—222.122 Undesignated center heading added; eff. 7–31–97 35416
222.114 Added; eff. 7–31–97 35416
222.115 Added; eff. 7–31–97 35416
222.116 Added; eff. 7–31–97 35416
222.117 Added; eff. 7–31–97 35417
222.118 Added; eff. 7–31–97 35417
222.119 Added; eff. 7–31–97 35418
222.120 Added; eff. 7–31–97 35418
222.121 Added; eff. 7–31–97 35418
222.122 Added; eff. 7–31–97 35418
222.150 (b)(1) amended; eff. 7–31–97 35418
222.151 Heading and (b)(1) revised; eff. 7–31–97 35418
222.152 (b) and (c) revised; eff. 7–31–97 35418
222.154 (e) revised; eff. 7–31–97 35419
222.156 (g) amended; eff. 7–31–97 35419
222.157 Heading, (a) and (b)(1) revised; eff. 7–31–97 35419

225.158 Heading, introductory text and (b) revised; eff. 7–31–97 35419
222.161 (c) amended; eff. 7–31–97 35419
222.162 (a) revised; eff. 7–31–97 35419
222.164 (a)(2) and (b) revised; OMB number; eff. 7–31–97 35419
222.165 (e), (f) and (h) revised; eff. 7–31–97 35420

Chapter VI—Office of Postsecondary Education, Department of Education (Parts 600—699)

674.6 (a)(1) and (2) amended; (a)(3) removed 50847
674.9 (a) amended 50847
674.19 (b) amended 50847
674.31 (b)(2)(i)(D) revised 50848
674.33 (b)(6)(ii) amended; (d)(8) added 50848
674.34 (h) revised 50848
674.35 (c)(1), (3) and (4) amended; (g) removed; (h) and (i) redesignated as (i) and (g); new (h) added 50848
674.36 (c)(1), (2), (3) and (f) amended 50848
674.37 (c)(1), (2), (3) and (d) amended 50848
674.45 (c)(1)(ii)(A) amended 50848
674.52 (d)(2) amended 50848
675.9 (a) amended 50848
675.19 (a)(3) amended 50848
675.20 (b)(1) amended 50848
675.22 Heading amended 50848
675.27 Authority citation revised 50848
676.9 (a) amended 50848
676.19 (a)(2) amended 50848
685 Appendix A revised 35602

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303 ..... 48924, 50435
682 50462
685 50462

TITLE 35—PANAMA CANAL

Chapter I—Panama Canal Regulations (Parts 1—299)

104 Revised 48179

TITLE 36—PARKS, FORESTS, AND PUBLIC PROPERTY

Chapter II—Forest Service, Department of Agriculture (Parts 200—299)

242.24 (a)(1) table amended 45725
242.25 (k)(6)(iii) table amended 45725
(k)(7)(iii) table, (10)(ii) table, (11)(i) table, (12)(i) table, (13)(iii) table, (15)(iii) table, (20)(iii) table and (22)(ii) table, amended 45726
(k)(23)(iii) table, (24)(iii) table, (25)(iii) and (26)(iii) table amended 45727

Chapter VII—Library of Congress (Parts 700—799)

703 Revised 50254

Chapter XII—National Archives and Records Administration (Parts 1200—1299)

1207 Authority citation revised 45943
1207.26 (a), (b) introductory text and (1) revised 45939, 45943
1210.26 (a), (b) and (c) revised 45939, 45943

Proposed Rules:

4 40317
242 39987
292 47167
1190 43133
1191 43133

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent and Trademark Office, Department of Commerce (Parts 1—199)

1 Technical correction 43100
1.16 (a), (b), (d) and (f) through (i) revised 40452
1.17 (b) through (g), (j), (m) through (p), (r) and (s) revised 40452
1.18 Revised 40452
1.19 (a)(2) and (3) revised 40452

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1.20 (c), (e), (f), (g), (i)(1), (2), (j)(1) (2) and (3) revised 40453
1.21 (a)(1)(ii), (6) and (j) revised 40453
1.445 (a) revised 40453
1.482 (a)(1)(i), (ii) and (2)(ii) revised 40453
1.492 (a), (b) and (d) revised 40453
2 Technical correction 43100
2.6 (b)(4) and (10) revised 40453

Chapter II—Copyright Office, Library of Congress (Parts 200—299)

201.1 (a) and (b) amended 35420
(c) and (d) amended 35421
(b) amended 40457
201.2 (b)(5) amended 35421
201.5 (c)(2) amended 35421
202.3 (b)(2) amended 35421
202.20 (c)(2)(vii)(A)(*2*) and (D)(*1*) amended 35421
203.2 (a) amended 35421

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TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Department of Veterans Affairs (Parts 0—99)

1 Nomenclature change 35970
Nomenclature correction 47532
3 Nomenclature change 35970
Nomenclature corrected 47532
3.2 (f) revised 35422
3.20 (c) added 35422
3.27 (c) redesignated as (d); new (c) added; new (d) and authority citation revised 51278
3.57 Cross reference amended 51281
3.105 (g) and (h) redesignated as (h) and (i); (d), (e), (f) and new (h), (i)(1), (i)(2) introductory text, (ii) and (iii) amended; new (g) added 51278
3.158 (a) and (c) amended 51278
3.261 (a)(40) added 51278
3.262 (y) added 51278
3.263 (g) added 51279
3.272 (u) added 51279
3.275 (i) added 51279
3.307 (a)(6)(i) and (iii) amended; (a)(6)(i) authority citation added; (a)(6)(iii) authority citation revised 35422
3.403 Introductory text and (a) through (e) redesignated as new (a) introductory text and (a)(1) through (5); new (b) added 51279
3.503 Introductory text and (a) through (j) redesignated as (a) introductory text and (1) through (10); new (b) added 51279
3.659 Cross reference amended 51281
3.703 Cross reference amended 51281
3.707 Cross reference amended 51281
3.807 Cross reference amended 51281
3.810 (a) amended; (d) added 35422
3.811 Added; interim 35971
3.814 Added 51279
3.1000 (a) introductory text amended; authority citation added 35423
3.1600 (c) amended 35423
9 Nomenclature change 35970
Nomenclature corrected 47533
9.2 (a) and (b)(1) revised 35970
9.8 (b) amended 35970
17.900—17.905 Undesignated center heading and sections added 51284
21.4001—21.4280 (Subpart D) Authority citation revised 40280
21.4233 (c) revised; (d) amended 40280
21.4253 (d)(1) revised 35424
21.4267 (a) authority citation, (b) authority citation and (i) revised; (f) added 40280
21.7000—21.7320 (Subpart K) Authority citation revised 40280
21.7112 (c) revised 40280
21.7612 (b) revised 40280
21.8010—21.8410 (Subpart M) Added 51288
43.26 (a), (b) introductory text and (1) revised 45939, 45943

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17 ..... 39197, 40492
19 36038
21 ..... 35454, 45596, 48969
36 37824

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TITLE 39—POSTAL SERVICE

Chapter I—United States Postal Service (Parts 1—999)

3 Authority citation amended 41853
3.3 (v) redesignated as (w); new (v) added 41853
(e)(3) added 43642
3.4 (h) added 41853
20 IMM amended; incorporation by reference; interim 45163, 47559, 49917
111 DMM amended; incorporation by reference 39947

Chapter III—Postal Rate Commission (Parts 3000—3099)

3001.7 (a)(1)(iii) amended 45530
3001.12 (e) amended 45530
3001.31 (k)(2)(i) through (iv) redesignated as (k)(2)(ii) through (v); new (k)(2)(i) added; new (k)(2)(ii) and (3)(i)(*i*) amended; (k)(3)(i)(e) revised 45729
3001.43 (f)(1) amended 45530
3001.61—3001.69c (Subpart C) Appendix A amended 35425
3002 Auhority citation revised 45530
3002.4 Heading revised; (a) amended 45530
3002.5 Removed 45530

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20 47394
111 ..... 45366, 47178, 48191
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777 42958
778 42958

TITLE 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency (Parts 1—799)

3 Removed 43269
9.1 Table amended (OMB number) 37722, 44413, 47119
30.26 (a), (b) and (c) revised 45939, 45944
31.26 (a), (b) introductory text and (1) revised 45939, 45944
32.105 Amended 47149
32.335 (a) through (d) amended 47149
32.430 (a) through (d) amended 47149
50 Announcement 38762
Comment period extendsion 43642
50.3 Revised 38711
50.6 Heading revised; (d) added 38711
50.7 Added 38711
50.9 Revised 38894
50.10 Added 38894
50 Appendix K revised 38712
Appendix L added 38714
Appendix M added 38753
Appendix N added 38755
Appendixes D and H amended; Appendix E removed; Appendix I added 38895
51 Authority citation revised 43801, 44903
51.100 (s) introductory text and (1) revised 44903
51.390 (Subpart T) Revised 43801
52 Technical correction 37724
State implementation plan determinations 43647, 45531
52.66 Added 49158
52.120 (c)(73), (74)(i)(B), (77)(i)(A)(*1*) removed; (c)(74)(i)(A) revised; (c)(74)(i)(A)(*2*) redesignated as (c)(77)a(i)(A)(*1*); (c)(88) added 41864
52.123 (f) added 41864
52.124 (b) added 41864
52.220 (c)(196)(i)(D), (202)(i)(F) and (245) added 36216
(c)(185)(i)(A)(*9*), (198)(i)(K), (207)(i)(B)(*2*) and (225)(i)(B)(*3*) added 37138
(c)(239)(i)(D) added 41867
(c)(197)(i)(B)(*2*) added 44909
(c)(224)(i)(D) added 44912
Regulation at 62 FR 41867 withdrawn 47369
(c)(26)(ix)(B), (xvi)(E), (27)(vii)(C), (39)(viii)(D), (ix)(C), (x)(C) and (246) added 48483
(c)(229)(i)(A)(*2*) added 48485
52.222 (a)(2) and (3) added 40937
(b)(2) added 43647
52.420 (c)(58) added 37724
Regulation at 62 FR 37722 eff. date corrected to 8–14–97 40139
52.470 (c)(37) added 40937
52.520 (c)(98) added 38919
52.570 (c)(50) added; interim 42918

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52.720 (c)(106(i)(D) added; (c)(109) revised 43102
52.726 (p), (q) and (r) added 37506
Regulation at 62 FR 37506 withdrawn 46447
52.770 (c)(109) added 38922
52.776 (q) added 45171
52.777 (k) added 38464
52.870 (c)(33) added 36213
52.930 Regulation at 62 FR 28637 withdrawn 40281
52.1020 (c)(44) added 49611
52.1031 Table amended 49611
52.1036 (e) added 41277
52.1070 (c)(122), (123) and (124) added 41856
(c)(126) and (127) added 46201
52.1072 Added 40944
(b) added 49616
52.1076 Added 40458
52.1120 (c)(114) added; interim 37509
(c)(113) added 37514
52.1125 Added 37514
52.1174 (p) added 50514
52.1219 (b) added 39123
52.1270 Redesignated as 52.1281; new 52.1270 added 35442
(c) table amended 37726
(c) table corrected 40139
52.1281 Redesignated from 52.1270; heading and (a) revised 35442
52.1320 (c)(99) added 44221
(c)(96) revised 45166
(c)(100) added 45167
(c)(101) added 46881
52.1323 (k) added 46881
52.1570 (c)(63) added 42413
52.1605 Table amended 42414
52.1620 (c)(66) added 50518
52.1670 (c)(91) added 49619
52.1770 (c)(94) added 41280
52.1870 (c)(115) added 49442
52.1885 Regulation at 62 FR 28637 withdrawn 40281
Regulation at 62 FR 26399 eff. date delayed to 1–9–98 43109
(a)(6) added 44907
52.1890 Added 47947
52.1970 (c)(122) added 46210
52.2020 (c)(125) added 38917
(c)(127) added 43104
(c)(119) added 44415
(c)(126) added 50871
(c)(128) added 50873
52.2036 (j) added 38917
52.2070 (c)(48) and (49) added 46207
52.2081 Table amended 46207
52.2120 Redesignated as 52.2134; new 52.2120 added 35444
(c) table amended 44219, 47761
52.2134 Redesignated fron 52.2120; heading and (a) revised 35444
52.2220 (c)(147) added 35683
(c)(156) added 38912
(c)(158) added 40460
(c)(155) added 40735
(c)(151) added 42070
(c)(154) added 43108
(c)(157) added 43645
52.2270 (c)(102) added 44087
(c)(91) removed 49154
52.2303 (a) revised 44088
52.2310 Added; interim 37144
52.2320 (c)(38) added 38216
52.2350 Added 38217
52.2351 Added 38217
52.2370 (c)(23) added 41282
(c)(24) added 41869
52.2375 Table revised 41869
52.2381 Table amended 41282, 41870
52.2420 (c)(115) and (116) added 38914
52.2428 Existing text designated as (a); (b) added 38932
Removed 43472
52.2450 (b)(1) and (3) amended; (b)(2) revised 49152
52.2470 (c)(73) added 42217
(c)(75) added 49444
52.2585 (l) added 39448
53.1—53.16 (Subpart A) Revised 38784
53.30—53.34 (Subpart C) Revised 38792
53.50—53.59 (Subpart E) Added 38799
53.60—53.66 (Subpart F) Added 38814
55.2 Amended 46408
55.3 (c) revised 46408
55.6 (d)(2) revised 46408
55.11 (a) revised; (j) added 46408
55.14 (e)(2)(i)(A) revised 41871
55 Appendix A amended 41871
58.1 Amended 38830
58.13 (b) and (d) revised; (e) and (f) added 38831
58.14 Revised 38832
58.20 Heading, (d) and (e) introductory text revised; (f) redesignated as (h); concluding text designated as (i); new (f) and (g) added; new (i) amended 38832

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58.23 Introductory text revised; (c) added 38832
58.26 Heading and (b) introductory text revised; (d) and (e) added 38833
58.30 (a) introductory text revised 38833
58.31 (f) revised 38833
58.34 Introductory text revised 38833
58.35 (b) amended 38833
58 Appendix A revised 38833
Appendix C amended 38843
Appendix D amended 38844
Appendixes E and F amended 38854
60 Determinations 36664
Authority citation revised 48379
60.17 (b)(1) amended; (k) and (l) added 48379
60.30 Revised 48379
60.30b—60.39b (Subpart Cb) Heading revised 45119
60.31b Amended 45119, 45121
60.32b (a) and (b) introductory text revised; (b)(2) amended; (m) added 45119
(b)(1), (d), (e), (f)(1) and (i)(1) amended 45125
60.33b (a)(1)(i), (iii), (2)(i), (iii), (3), (b)(1)(i), (2)(i), (c)(1) introductory text, (d) Table 1 and (1)(i) amended; (a)(1)(ii), (2)(ii), (iv), (b)(1)(ii), (2)(ii) and (c)(2) removed 45119
(a)(4), (b)(3) and (d)(3) added; (d) Table 2 amended; (d)(1)(i)(B) revised 45120
(a)(3) amended 45125
60.34b (a) amended 45120, 45125
60.35b Amended 45120
60.38b (b) amended; (c) removed 45120
60.39b (b), (c)(1) introductory text, (2), (4)(ii), (iii) introductory text and (5) amended; (c)(3) and (4)(i) removed; (d) revised; (e) and (f) added 45120
(c)(4)(iii)(B) amended 45125
60.30e—60.39e (Subpart Ce) Added 48379
60.50b—60.59b (Subpart Eb) Heading revised 45120
60.50b (b)(2) amended 45120
(a) and (b) introductory text revised; (p) added 45121
(b)(1), (e), (f), (g)(1) and (i)(1) amended 45125
(j) introductory text amended 45126
60.51b Amended 45121, 45126
60.52b (c)(1) amended 45121
(a)(1) through (5), (b)(1), (2) and (c)(2) amended 45126
60.53b (a) introductory text, Table 1, (b) introductory text and (c) introductory text amended 45126
60.54b (a), (b), (c) introductory text, (d), (e) introductory text and (f) introductory text amended; (c)(i) and (ii) redesignated as (c)(1) and (2) 45126
60.55b (a) amended 45126
60.56b Amended 45126
60.57b (a) introductory text, (b) introductory text and (c) amended 45126
60.58b (b) introductory text, (3), (6)(i), (c)(2), (4), (7), (9), (11), (d)(1)(ii), (v), (vii), (2)(ii), (vii), (viii), (ix), (e)(3), (12)(i)(B), (f)(4), (7), (g)(2), (5) introductory text, (i), (iii), (8), (h)(2), (3), (4), (10) introductory text, (i)(B), (i)(3)(ii)(B), (5), (j)(1) introductory text, (i), (2) and (m)(3) introductory text amended; (b)(7), (h) introductory text and (k) introductory text revised; (c)(10), (d)(1)(viii), (ix), (2)(x), (f)(8) and (g)(5)(ii) removed; (k)(4) added 45126
60.59b (a) introductory text and (b) introductory text amended 45121
(b)(4), (d) introductory text, (2)(i)(C), (ii)(B), (3), (6)(ii), (8), (11), (12)(ii), (f) introductory text, (g) introductory text, (h) introductory text and (l) amended 45127
60.50c—60.58c (Subpart Ec) Added 48382
62.3912 Undesignated center heading and section added 41873

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62.4177 Undesignated center heading and section added 41874
62.4620 (b)(4) added 45732
62.4931—62.4932 Undesignated center heading and sections added 45732
62.6356 Undesignated center heading and section added 41874
62.6912 Undesignated center heading and section added 41874
62.9350 (b)(4) and (c)(4) added 36997
62.9505 Undesignated center heading and section added 36997
(b) correctly removed 48950
63 Authority delegation notices 36460
63.342 (f)(3)(i) introductory text amended 42920
63.343 (b)(1) revised; (c)(1)(ii), (2)(ii), (4)(ii), (5)(ii) introductory text and (6)(ii) introductory text amended 42920
63.347 (e)(4) revised 42921
63.485 (o) introductory text revised 37722
63.502 (a) revised; (j) added 37722
63.1331 (a) introductory text revised; (a)(10) added 37722
68 Interpretation 45134
68.130 Tables 1 and 2 amended 45132
68 Appendix A amended 45132
69.11 (d) added 44416
70 Appendix A amended 37516, 45167, 45734
80.94 Added 45563
81.315 Amended 45171
81.318 Regulation at 62 FR 28637 withdrawn 40281
81.331 Amended 35972
81.336 Regulation at 62 FR 28638 withdrawn 40281
81.338 Amended 46210
81.344 Amended 44088
81.345 Amended 38217
81.346 Amended 41283, 41870
81.350 Amended 39448
86 Authority citation revised 44875, 47119
86.1 (b)(1) table and (2) table amended 47119
86.094–8 (c) revised 47120
86.094–9 (a)(1)(i) introductory text, (ii) introductory text, (iii) and (c) revised 47120
86.094–11 (b)(1) introductory text revised 47120
86.094–13 (a)(1), (c)(1), (d)(1), (e)(1) and (f)(1) amended 44875
86.094–26 (a)(2), (b)(2)(i) and (ii) amended 44875
86.096–8 (c) revised 47120
86.096–11 (a) introductory text and (c) revised 47120
86.113–94 (b)(2) table and (3) table revised 47120
86.119–90 (b)(3) revised; (b)(8) added 47121
86.144–94 (c)(8)(ii)(B) revised 47122
86.884–7 (a)(2)(i), (3) and (4) revised 47122
86.884–8 (c) revised 47122
86.884–9 (b)(2)(i) through (iv) and (c)(1) revised 47122
86.884–10 (a)(8) revised 47123
86.884–13 (b)(6)(ii) and (iii) revised 47123
86.884–14 Revised 47123
86.1008–90 (a)(1)(iii) added 47123
86.1008–96 (a)(1) revised 47123
86.1008–2001 (a)(1)(iii) added 47123
86.1111–87 (a)(4) redesignated as (a)(5); new (a)(4) added 47123
86.1310–90 (b)(1)(iv)(C), (3)(v), (vi), (b)(6) introductory text and (7)(iv) revised 47124
86.1312–88 (a) revised 47124
86.1313–91 (b)(2) revised 47125
86.1313–94 (b)(2) revised 47125
86.1313–98 Added 47126
86.1316–90 (b)(1) revised; (f) added 47126
86.1316–94 (b)(1) revised; (f) added 47126
86.1319–84 (d)(3) revised; (d)(8) added 47127
86.1319–90 (d)(3) revised; (d)(8) added 47127
86.1321–90 (a) and (b)(3) revised 47128
86.1321–94 (a) and (b)(3) revised 47128
86.1322–84 (b)(3) revised 47128
86.1323–84 (b)(3) revised 47129
86.1324–84 (c) revised 47129
86.1325–94 (c) revised 47129
86.1327–90 (b), (f)(1), (2) introductory text and (i) revised 47129
86.1327–94 (b), (f)(1), (2) introductory text and (i) revised 47129
86.1327–96 (b), (f)(1), (2) introductory text and (i) revised 47130
86.1327–98 Added 47130

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86.1330–84 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added 47131
86.1330–90 (b)(1), (2) and (f)(1)(i) revised; (b)(5) added 47131
86.1333–90 (c), (d) introductory text, (d)(1), (2) and (e)(2) revised; (d)(3) and (4) removed 47131
86.1334–84 (a)(2) revised 47131
86.1335–90 Revised 47131
86.1337–90 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed 47132
86.1337–96 (a)(9), (10)(i), (ii), (11), (13), (23) and (26) revised; (a)(10)(iii) removed 47133
86.1338–84 Revised 47133
86.1339–90 Revised 47134
86.1341–90 (b), (c) and (d) revised; (e) through (h) removed 47134
86.1341–98 Added 47135
86.1342–90 (h)(2)(i) through (vii) removed; (i) added 47135
86.1342–94 (e) through (h) revised; (i) added 47135
86.1343–88 (b) introductory text revised; (b)(2)(i) through (v) ans (b)(2)(ii) through (vi); new (b)(2)(i) added 47135
86.1710–97 (c)(7) corrected 45289
86 Appendix XVIII corrected 45289
Appendix I amended 47136
90.103 (a)(3) revised 42643
90.107 (h) added 42643
90.1003 (b)(5) added 42644
91.1103 (b)(4) added 42644
93.100—93.128 (Subpart A) Revised 43801
131.33 Added 41183
136.3 (a) Table 1C amended 48403
(b)(1) and (e) Table II amended 48404
136 Appendix A amended 48405
148 Notice 43109
159 Added 49388
167.90 (b) amended 49620
180.110 Revised 49924
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180.205 (b) table amended 45754
180.293 Existing text designated as (a)(1); (a) heading and (b) added; (a)(2) designated from 185.2650 text 49931
180.353 Existing text redesignated as (a); new (a) heading and (b) added 45747
180.364 (b) amended 42927
180.380 Revised 38474
180.383 Existing text redesignated as (a); new (a) heading and (b) added 39974
180.407 Revised 44595
180.410 Heading, (b) and (c) revised; (a) heading added; (a) table transferred in part from 185.800 table and 186.800 table 47568
180.412 (b) added 44565
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180.417 (a) heading added; (a) existing text and (b) redesignated as (a)(1) and (a)(2); (b) added 46894
180.421 (a) and (b) redesignated as (a)(1) and (2); (a) heading and new (b) added; (a)(1) table transferred in part from 186.3200(a) table; (a)(2) table transferred in part from 185.3200 table and 186.3200(b) table 49937
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180.434 (b) table amended 43291
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180.442 (b) table amended 46900
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485.639 Introductory text, (a) introductory text, (b) and (c) introductory text amended 46037
485.641 (a)(1) introductory text, (i), (iii), (b) introductory text, (3), (4), (5)(i), (ii) and (iii) amended 46037
485.645 Heading, introductory text and (a) revised; (b) introductory text amended 46036

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TITLE 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

10.1 (b)(3) amended 41293
10.2 (a)(5) and (f) heading revised; (d) introductory text, (1) and (2) introductory text amended 41293
10.4 (d)(2) amended 41293
10.5 (e)(9) revised; (f) amended 41293
10.6 (a) introductory text, (2)(i), (iii) introductory text and (A) amended 41293
10.8 (d)(1)(A), (B) and (C) redesignated as (d)(1)(i), (ii) and (iii); (d)(3) amended; (d)(4)(iii) revised 41293
10.9 (b)(4)(iii) and (e)(1) amended 41293
10.10 (a)(1)(i), (3) and (b)(1)(i) revised 41294
10.12 Added; interim 1821
10.15 Heading, (a)(1) and (2) amended 41294
12 Authority citation revised **68667**
Authority citation revised 45944
12.2 (a) and (b) revised 45944
12.11—12.31 (Subpart B) Removed 45945
12.66 (a), (b) introductory text and (1) revised 45939, 45945
12.700 Revised **68667**
12.705 Amended **68668**
12.710 (a), (b) and (c) revised **68668**

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TITLE 43 Subtitle A—Con.

12.926 (a), (b) and (c) revised 45939, 45945

Chapter I—Bureau of Reclamation, Department of the Interior (Parts 200—499)

426 Revised; eff. 1–1–98 66805
426.10 (e) amended; (g) removed; (n) through (q) added 66826
427 Added; eff. 1–1–98 66825

Chapter II—Bureau of Land Management, Department of the Interior (Parts 1000—9999)

1810 Authority citation revised 47569
1813 Removed 47569
3190 Authority citation revised 49586
3190.2–2 (b)(2) revised 49586
3192.1—3192.18 (Subpart 3192) Revised 49586
3400 Authority citation revised 44369
3400.0–5 Introductory text and (rr)(6) revised 44369
3470 Authority citation revised 44369
3472.1–2 (e)(1)(i), (6)(ii)(D) and (E) revised 44369
3480 Authority citation revised 44370
3481.4 Added 44370
3481.4–1 Added 44370
3481.4–2 Added 44370
3481.4–3 Added 44370
3481.4–4 Added 44370
3483.3 Heading, (a) introductory text and (1) revised 44370
3487.1 (g) and (h) redesignated as (h) and (i); (f)(6) and new (g) added; (e)(6), (f) introductory text, (2) and new (h)(4) revised 44370
3800 Authority citation revised 9099
Technical correction 26966
3809.0–1—3809.6 (Subpart 3809) Authority citation removed 9099
3809.0–9 Added 9099
3809.1–8 Removed 9100
3809.1–9 Revised 9100
3809.3–1 (b) revised 9102
3809.3–2 (e) revised; (f) added 9103
4180.2 (f) introductory text revised 59835
4750.4–2 Revised 5339
5470 Authority citation revised 53861
5475.0–3—5475.7 (Subpart 5475) Removed 53861

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8560 ..... 57605, 58843, 66008, 66968, 2636, 7203, 19247
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TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

Chapter I—Federal Emergency Management Agency (Parts 0—399)

13.26 (a), (b) introductory text and (1) revised 45939, 45945
61 Appendix A(1) amended 8397
Appendix A(2) amended 8398
Appendix A(3) amended 8399
62.23 Revised; eff. 10–31–96 51219
62 Appendix B revised; eff. 10–31–96 51221
Appendix A revised 39910
64.6 Table amended 51227, 51229, 54564, 57573, 59339
Table amended 1686, 1689, 4916, 5535, 8177, 9373, 13343, 16085, 19506,

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TITLE 44 Chapter I—Con.

24344, 27504, 31521, 33570, 39449, 40946, 43292, 49446, 49448
65.4 Table amended; interim **54566, 60038, 66926**
Table amended **54568, 60035, 66924**
Table amended; interim 3224, 6879, 9686, 16088, 17560, 23146, 30283, 33027, 37727, 39124, 45573
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(c) revised 5736
65.5 Heading and (d) revised 5736
65.6 (g) revised 5736
65.8 Revised 5736
65.9 Heading and (h) revised 5736
67.11 Flood elevation determinations **54574, 60041, 66927**
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70 Authority citation revised 5736
70.9 Revised 5736
72 Authority citation revised 5736
72.1 Revised 5736
72.2 Revised 5737
72.3 Revised 5737
72.4 Revised 5737
72.5 Revised 5738
72.6 Revised 5738
72.7 Revised 5738
78 Added; interim 13347
206 Authority citation revised 45330
206.227 Revised 45330

Proposed Rules:

2 16129
25 16129
62 23736
67 ..... **54593, 60062, 66974**
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206 ..... **55122, 55123, 55262**
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TITLE 45—PUBLIC WELFARE

Subtitle A—Department of Health and Human Services (Parts 1—199)

Subtitle A Heading revised; interim 16955
Technical correction 17005
Subchapter A Designation and heading added; interim 16955
6 Removed **54744**
8 Removed **54744**
16.3 (c) amended 38218
16 Appendix A amended 38218
46 Waiver **51531**
74 Authority citation revised 41878
74.2 Amended 41878
74.26 (a) and (c) amended 41878
(a), (b) and (c) revised 45939
(a), (b) and (c) revised; (d) revised 45945
74.44 (e) introductory text revised; (e)(3), (4) and (5) amended 41878
74.46 Amended 41878
74.48 (a) and (d) amended 41878
74.62 (b) amended 38218
74.90 (b) amended 38218
74 Appendix A amended; Appendix I removed 41878
Appendix J removed 41879
75 Removed 38218
79 Authority citation revised **52301**
79.3 (a)(1) and (b)(1) revised **52301**
92.26 (a), (b) introductory text and (1) revised 45939, 45945
95.513 Removed 38218
95.519 (b)(1) designation and (2) removed; new (b) amended 38218
96 Authority citation revised 45963
96.31 Revised; interim 45963
144—146 (Subchapter B) Added; interim 16955
144.103 Corrected 31670, 31693
146.111 (a)(1) correctly designated as (a)(1)(i) 31670
(a)(1)(i)(C) Example 3, (iii), (b)(1)(ii) Example and (c) corrected 31693
OMB number 35906
146.113 (b)(2)(v)(B) corrected 31670
(b)(2)(iv) Example 6, (c)(1), (7)(ii) and (iii) Example corrected 31693
146.115 (a)(1)(i), (ii), (iv)(B)(*1*) and (*2*) Example corrected 31693
(a)(2)(i), (ii) introductory text, (A), (iii), (iv) Examples 4 and 5, (3)(i)(B)(*3*), (5)(i)(A), (iii)(B), (6)(ii), (c)(2)(ii), (iv) Example and (d)(3) Example corrected 31694
OMB number 35906

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146.117 (b)(2), (4) introductory text and (6) corrected 31694
OMB number 35906
146.121 (a)(1)(ii) and (vi) corrected 31694
146.125 (c), (d), (e)(3)(i) and (iv) corrected 31694
146.145 (b)(4)(i) corrected 31670
146.150 (a)(2) and (d)(5) corrected 31694
OMB number 35906
146.152 (b)(1) corrected 31670
OMB number 35906
146.160 OMB number 35906
146.180 (a) introductory text, (2), (c)(4) and (i)(2) corrected 31694
OMB number 35906
148 Added; interim 16995
148.102 (a)(1) and (2) heading correctly added; (b) correctly revised 31695
148.120 OMB number pending 16996
(c)(1) heading correctly added; (f)(3) Example 2 corrected 31696
148.120 OMB number 35906
148.122 OMB number pending 16998
(c)(1) and (e)(2) corrected 31696
OMB number 35906
148.124 OMB number pending 16998
(a)(2)(i), (b)(1) introductory text, (ii), (2)(i)(A), (B) introductory text, (iii), (3)(i), (4)(iii) heading, (A) and (B) corrected; (a)(2)(iii) and (b)(5) correctly added; (b)(4)(iii)(E) removed; (b)(4)(iii)(C) and (c)(2) correctly revised 31696
OMB number 35906
148.126 OMB number pending 17000
148.128 (a)(2)(i) and (ii)(B) corrected 17005
(c)(2), (e)(4)(ii)(B) and (h) corrected; (e)(2) heading correctly added 31696
(a)(2)(i) introductory text and (ii)(B) corrected 31696
OMB number 35906
148.200 OMB number pending 17002
148.202 OMB number pending 17002
(i)(1) corrected 31696
148.220 (b)(4) corrected 31696

Chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

205 Authority citation revised **58143**
205.50 (a)(4) introductory text and (i) revised; (a)(4)(iv) and (b) added **58143**

Chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

301.1 Amended **67240**
301.15 (a)(1) and (e) amended **67240**
302.15 (b) removed; (a) introductory text, (1) introductory text, (i) through (vii) and (2) redesignated as introductory text, (a) introductory text, (1) through (7) and (b) **67240**
302.33 (c)(1) and (e) removed; (c)(2) and (3) redesignated as (c)(1) and (2) **67240**
302.34 (a) amended; (b) removed **67240**
302.36 (a) introductory text amended; (a)(1) through (5) removed **67240**
302.37 Removed **67241**
302.54 (a) removed; (b) and (c) redesignated as (a) and (b); new (a)(2) revised; new (b)(1)(i) amended **67241**
302.80 (a) amended **67241**
302.85 (a)(2) amended **67241**
303.10 Removed **67241**
303.31 (b)(6) and (7) amended **67241**
303.73 Revised **67241**
303.100 (g)(3) amended **67241**
304.10 Amended **67241**
304.20 (b)(1)(iii), (vi), (3)(iv), (8) and (11) amended **67241**
304.23 (g) amended **67241**
304.95 Removed **67241**
306 Removed **67241**
307.5 (a) amended **67241**
307.15 (b)(2) amended **67241**

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TITLE 45

Chapter VI—National Science Foundation (Parts 600—699)

602.26 (a), (b) introductory text and (1) revised 45939, 45946
650.4 Amended 49938
650.19 Added 49938
672 Authority citation revised **59027**
672.24 Added **59027**
675 Added 31522
680 Authority citation revised **59837**
Heading revised; interim **59837**
680.10—680.13 (Subpart A) Revised; interim **59837**
680.20 Removed; new 680.20 redesignated from 680.21; interim **59839**
680.21 Redesignated as 680.20; interim **59839**
681 Removed; interim **59839**
682 Removed; interim **59839**
683 Removed; interim **59839**
684 Removed; interim **59839**

Chapter VIII—Office of Personnel Management (Parts 800—899)

801 Appendix A amended **64999**

Chapter XI—National Foundation on the Arts and the Humanities (Parts 1100—1199)

1157.26 (a), (b) introductory text and (1) revised 45939, 45946
1174.26 (a), (b) introductory text and (1) revised 45939, 45946
1183.26 (a), (b) introductory text and (1) revised 45939, 45946

Chapter XIII—Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

1301 Authority citation revised **57225**
1301.31 Revised; eff. 1–1–98 ..... **57225**
1303.14 (b)(4) revised; eff. 1–1–98 ..... **57226**
1304 Revised; eff. 1–1–98 ..... **57210**
1304.20 OMB number pending **57212**
1304.22 OMB number pending **57214**
1304.23 OMB number pending **57215**
1304.40 OMB number pending **57216**
1304.50 OMB number pending **57219**
1304.51 OMB number pending **57222**
1304.60 OMB number pending **57225**
1305.1 Amended; eff. 1–1–98 ..... **57226**
1305.3 Heading, (b) introductory text, (c) introductory text, (d) and (f)(1) revised; eff. 1–1–98 ..... **57226**
1306 Authority citation revised **57226**
1306.1 Revised; eff. 1–1–98 ..... **57226**
1306.20 (a) through (e) redesignated as (b) through (f); new (a) added; eff. 1–1–98 ..... **57226**
1306.21 Revised; eff. 1–1–98 ..... **57226**
1306.30 (c) revised; eff. 1–1–98 ..... **57226**
1306.33 (c)(3) revised; eff. 1–1–98 ..... **57227**
1308.6 (b)(1) revised; eff. 1–1–98 ..... **57227**
1311 Added 1400
1355—1357 (Subchapter G) Heading revised **58653**
1355.10 Revised **58653**
1355.20 (a) amended **58653**
1355.21 (c) revised **58654**
1355.25 Added **58654**
1355.30 Revised **58654**
1356.10 Revised **58655**
1356.80 Added **58655**
1357.10 Revised **58655**
1357.15 Revised (OMB number pending) **58656**
1357.16 Added (OMB number pending) **58659**
1357.20 Revised **58660**
1357.30 Revised **58660**
1357.32 Added **58661**
1357.40 Revised **58661**
1357.50 Added **58662**
1386.30 (f)(4) correctly designated 51751

Chapter XVI—Legal Services Corporation (Parts 1600—1699)

1602 Authority citation revised 45754
1602.4 Revised 45754
1602.5 (a) revised 45755
1602.7 Heading and (b) revised 45755
1602.8 (a), (b)(4) and (5) revised 45755
1602.12 (a) revised 45755
1609 Revised 19399
1610 Revised **63752**
Revised; interim 12102
Revised 27698
1611 Appendix A revised 12752
1612 Revised 19404
1612.2 (b)(2) corrected 22895
1617 Revised **63755**
1620 Revised 19408
1626 Revised 19414
Technical correction 24054
1626.2 (f) and (g) revised; interim 19414
(f) revised 45757
1626.4 Revised; interim 19414
1626.10 (e) corrected 22895
Appendix corrected 24159
1627 Heading and authority citation revised 19418
1627.2 (c) revised 19418
1627.4 Revised 19418
1627.7 Revised 19418
1627.8 Revised 19418
1632 Revised **63756**
1633 Revised **63758**
1636 Revised 19420
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1637 Revised 19422
1638 Revised 19424
1639 Revised 30766
1640 Revised 19426
1642 Revised 25864

Chapter XXI—Commission on Fine Arts (Parts 2100—2199)

2101 Revised 4646
2102 Revised 4647
2103 Revised 4649

Chapter XXV—Corporation for National and Community Service (Parts 2500—2599)

2541.260 (a), (b) introductory text and (1) revised 45939, 45947
2543.26 (a), (b) and (c) revised 45939, 45947

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74 10009
75 10009
95 10009
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1201 38241
1630 45778
1639 14382
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TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation (Parts 1—199)

1.01–10 (b)(1) introductory text, (i) introductory text, (A), (B), (C), (ii) introductory text, (A), (B), (C), (iii) and (iv) amended 51041
1.01–15 (b) amended 51040
1.01–25 (b) amended 51040, 51041
1.03–15 (g) and (j) amended; (h)(2) and (3) revised 51040
1.03–30 Revised 51040
1.03–35 (a) amended; (c) removed 51041
1.03–40 Removed 51041
2 Authority citation revised 16703, 19232
Technical correction 28760
2.01–1 (c) amended 51041
(a)(1) and (d)(2) revised; eff. 10–30–97 51194
2.01–7 (b)(4) revised 51041
2.01–10 (b) amended; eff. 10–30–97 51194
2.01–13 (c) amended 51041
2.01–15 (a) introductory text, (2) and (b)(2) amended 51041
2.01–20 Revised; eff. 10–30–97 51195
2.01–30 Added 17748
2.01–40 (a) revised; eff. 10–30–97 51195
2.01–45 (a) revised; eff. 10–30–97 51195
2.01–50 (a) revised; eff. 10–30–97 51195
2.01–60 (a) amended 51041
2.10–1 (b) revised; interim 19232
2.10–5 Revised; interim 19232
2.10–25 Amended; interim 19232, 51041
2.10–101 Table amended; interim 19232
2.10–135 (a) amended 16703
2.20–1 Removed 51041
2.20–50 Amended 51041
2.45–1—2.45–20 (Subpart 2.45) Removed; eff. 10–30–97 51195
2.50–1 (Subpart 2.50) Heading revised 16703
2.50–1 Added 16703
2.75–1 (c) amended 51041
2.75–5 (a) amended 51041
2.75–50 (c) amended 51041
2.85–1 Revised; eff. 10–30–97 51195
3.01–1 Amended; eff. 10–30–97 51195
3.01–3 Removed; eff. 10–30–97 51195

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TITLE 46 Chapter I—Con.

3.03–1 Amended; eff. 10–30–97 51195
3.10–1 (a) amended; eff. 10–30–97 51195
4.01–3 (d) added; eff. 10–30–97 51195
4.03–2 (a)(3) amended 51041
4.03–40 Revised; eff. 10–30–97 51195
4.06–60 (a) amended 51041
4.07–1 (c)(3) amended 51041
4.07–10 (a) introductory text and (b) amended 51042
4.40–3 (b) amended; eff. 10–30–97 51195
4.40–5 (a) revised; eff. 10–30–97 51195
4.40–30 (f) amended; eff. 10–30–97 51195
5.507 (a) amended 51042
5.521 (a) amended 51042
5.527 (c) amended 51042
5.537 (c) amended 51042
6.07 (a) and (b) amended; eff. 10–30–97 51195
6.15 Removed; eff. 10–30–97 51195
7.1 Amended; eff. 10–30–97 51195
8 Added; interim **68517**
Regulation at 61 FR 68517 eff. date corrected to 12–27–96 3335
8.120 (b) corrected 3335
8.130 (a)(4) and (5) corrected 3335
8.320 (b)(9) corrected 3335
10 Authority citation revised 34528
10.101 (a) and (c) revised; interim 34528
10.102 Added; interim 34529
10.103 Amended; interim 34529
10.107 (b)(3) added; interim 34529
10.112 (b) amended 51042
10.201 (a) revised; interim 34529
10.202 Heading revised; (j), (k) and (l) added; interim 34529
(k)(2) and (l)(1) corrected 40140
(k) and (l) corrected 40281
(e) amended; eff. 10–30–97 51195
10.205 Heading revised; (l) through (p) added; interim 34530
(l), (n)(1)(ii) and (2) corrected 40281
10.207 Heading, (c) heading and (1) revised; interim 34530
10.209 Heading revised; (k) added; interim 34531
(k) corrected 40281
10.304 Heading revised; (e) through (h) added; interim 34531
10.305 Revised 11303
10.306 Revised 11304
10.309 Added; interim 34531
10.401—10.482 (Subpart D) Heading revised; interim 34532
10.470 (b)(2)(ii), (d)(2)(ii), (f)(2)(ii), (h)(2)(i) and (j)(2)(ii) amended; eff. 10–30–97 51195
10.472 (a)(2)(ii) amended; eff. 10–30–97 51195
10.474 (a)(2)(ii) amended; eff. 10–30–97 51196
10.480 Revised 11305
10.491 Added; interim 34532
10.493 Added; interim 34532
10.495 Added; interim 34532
10.497 Added; interim 34532
10.551 Added; interim 34532
Corrected 40140
10.553 Added; interim 34532
10.555 Added; interim 34533
10.601 Revised; interim 34533
10.603 Heading revised; (d) and (e) added; interim 34533
10.901—10.950 (Subpart I) Heading revised; interim 34533
10.901 (c) and (d) added; interim 34533
10.903 (c) and (d) added; interim 34533
10.1001—10.1005 (Subpart J) Added; interim 34534
12.01–1 Revised; interim 34534
12.01–3 Added; interim 34534
(b) corrected 40140
12.01–5 Removed; eff. 10–30–97 51196
12.01–6 Amended; interim 34534
Amended 51042
12.01–9 Added; interim 34535
12.02–7 (d), (e) and (f) added; interim 34535
12.02–11 Heading revised; (h) and (i) added; interim 34535
12.02–17 (e) added; interim 34535
12.02–19 Amended; eff. 10–30–97 51196
12.03–1 (Subpart 12.03) Added; interim 34536
12.05–3 Introductory text and (a) through (e) redesignated as (a) introductory text, (1) through (5); new (b) and new (c) added; interim 34537
(c) corrected 40140
12.05–7 (a)(5) added; interim 34537
(a)(5) corrected 40140
12.05–11 Heading and (a) revised; interim 34537

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12.07–1—12.07–20 (Subpart 12.07) Removed; eff. 10–30–97 51196
12.10–3 Heading and (a)(6) revised; (c) added; interim 34537
12.10–5 (d) added; interim 34537
12.10–7 Revised; interim 34537
Corrected 40140
12.10–9 Added; interim 34537
Correctly designated 51042
12.13–1—12.13–3 (Subpart 12.13) Added; interim 34537
12.15–3 (d) and (e) added; interim 34538
12.15–7 (c) added; interim 34538
(c) corrected 40140
12.15–13 (a)(1) removed; (a)(2), (3) and (4) redesignated as (a)(1), (2) and (3); eff. 10–30–97 51196
12.15–15 (a)(1) removed; (a)(2), (3) and (4) redesignated as (a)(1), (2) and (3); eff. 10–30–97 51196
12.17–1—12.17–20 (Subpart 12.17) Removed; eff. 10–30–97 51196
12.25–1 Revised; eff. 10–30–97 51196
12.25–35 (b) amended; eff. 10–30–97 51196
12.25–45 Added; interim 34538
12.30–1—12.30–5 (Subpart 12.30) Added; interim 34538
12.30–3 Designation and heading correctly removed 51042
13.103 Amended 25127
13.107 (a) through (e) revised; (g) added 25127
13.111 (a), (b) and (c) revised; (f) added 25128
13.113 Heading, (a) introductory text, (c), (d) introductory text, (1)(i), (ii), (iii), (2), (e)(1)(ii), (iii) and (f) revised; (d)(3) added 25128
Table revised 25129
13.115 Revised 25129
13.117 Revised 25130
13.120 Revised 25130
13.121 (c), (d)(3), (4), (f) and (g) revised; (d)(5), (6), (h), (i) and (j) added 25130
Table 13.121(f) revised 25131
Table 13.121(g) amended 25133
13.127 Heading, (a) introductory text and (b)(6) revised; (b)(9) added 25133
13.129 Table revised 25133
13.203 Heading, (a)(1), (2), (3) and (b) introductory text revised 25134
13.207 Heading revised 25134
13.209 Revised 25134
13.303 Heading, (a)(1) and (b) introductory text revised 25134
13.305 Revised 25134
13.307 Heading and (a) revised 25134
13.309 Revised 25134
13.401 (e)(2) revised 25134
13.403 Heading and (a)(1) revised 25134
13.405 (a) introductory text, (2) and (b)(2) introductory text revised 25134
13.407 Heading revised 25134
13.409 Revised 25134
13.501 (d) revised 25134
13.503 Heading, (a)(1), (2), (3) and (b) revised 25134
13.505 (a) introductory text, (2) and (b) revised 25135
13.507 Heading revised 25135
13.509 Revised 25135
14 Revised **56637**
15 Authority citation revised 34538
Technical correction 40139
15.102 Added; interim 34538
15.103 (d) through (g) added; interim 34538
15.105 Added; interim 34539
15.301 (a) amended 25135
(b)(7) and (10) amended; (b)(11) and (c)(7) added; interim 34539
15.815 (c) amended; eff. 10–30–97 51196
15.860 (h) added; Table 860(a)(1) amended 25135
15.1101—15.1111 (Subpart J) Added; interim 34539
16.205 (a) through (e) removed; (f) and (g) redesignated as (a) and (b); eff. 10–30–97 51196
16.207 Revised **66613**
Regulation at 61 FR 66613 confirmed 34015
24.01–1—24.01–7 (Subpart 24.01) Heading revised 51196
24.01–1 Revised; eff. 10–30–97 51196
24.01–5 Removed; eff. 10–30–97 51196
24.10–9 Amended; eff. 10–30–97 51196
24.10–15 Amended; eff. 10–30–97 51196
24.10–17 (a) amended 51042
(a) amended; eff. 10–30–97 51196
24.10–21 Amended; eff. 10–30–97 51196

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24.15–5 Amended; eff. 10–30–97 51196
25.25–5 (e) amended 51042
25.25–13 (b) and (c) amended 51042
25.26–5 (b) introductory text and (c) introductory text amended; eff. 10–30–97 51196
25.26–20 (a) introductory text and (b) introductory text amended; eff. 10–30–97 51196
25.30–20 (a)(1) table revised 51042
25.40–1 (c) and (d) introductory text revised; eff. 10–30–97 51196
26.03–5 Revised; eff. 10–30–97 51197
26.03–10 (a) designation removed 51042
26.10–1—26.10–5 (Subpart 26.10) Removed; eff. 10–30–97 51197
28 Authority citation revised 57272
28.40 (b) amended 51042
28.50 Amended; interim 57272
Regulation at 61 FR 57272 eff. date delayed to 3–20–97 68161
Regulation at 61 FR 57272 confirmed 46675
28.60 Added; interim 57273
Regulation at 61 FR 57273 eff. date delayed to 3–20–97 68161
Regulation at 61 FR 57273 confirmed; revised; eff. 10–6–97 46675
28.65 Added; interim 57273
Regulation at 61 FR 57273 eff. date delayed to 3–20–97 68161
Regulation at 61 FR 57273 confirmed 46675
(b)(11) and (c) revised; eff. 10–6–97 46676
28.80 (a)(2) and (d)(1) revised; interim 57273
Regulation at 61 FR 57273 eff. date delayed to 3–20–97 68161
Regulation at 61 FR 57273 confirmed 46675
28.120 Revised; interim 57273
Regulation at 61 FR 57273 eff. date delayed to 3–20–97 68161
Table corrected 68162
Regulation at 61 FR 57273 confirmed 46675
Tables (a), (b) and (c) revised; eff. 10–6–97 46676
28.225 (a)(3)(i) amd (ii) revised; interim 57275
Regulation at 61 FR 57275 eff. date delayed to 3–20–97 68161
Regulation at 61 FR 57275 confirmed 46675
(a)(3)(i) and (ii) revised; eff. 10–6–97 46677
28.270 (c) revised; interim 57275
Regulation at 61 FR 57275 eff. date delayed to 3–20–97 68161
Regulation at 61 FR 57275 confirmed 46675
(c) revised; eff. 10–6–97 46677
28.275 Added; interim 57275
Regulation at 61 FR 57275 eff. date delayed to 3–20–97 68161
Regulation at 61 FR 57275 confirmed 46675
(a)(2) revised; (a)(3) and note added; eff. 10–6–97 46677
28.320 (b) revised; interim 57275
Regulation at 61 FR 57275 eff. date delayed to 3–20–97 68161
Regulation at 61 FR 57275 confirmed 46675
28.380 (j) revised; interim 57275
Regulation at 61 FR 57275 eff. date delayed to 3–20–97 68161
Regulation at 61 FR 57275 confirmed 46675
(b) amended; eff. 10–30–97 51197
28.555 (c) and (d) revised; interim 57276
Regulation at 61 FR 57276 eff. date delayed to 3–20–97 68161
Regulation at 61 FR 57276 confirmed 46675
30.01–3 Removed; eff. 10–30–97 51197
30.01–5 (g) amended 51043
30.01–15 (a) and (b) designation removed; eff. 10–30–97 51197
30.01–20 Removed; eff. 10–30–97 51197
30.10–19 Amended; eff. 10–30–97 51197
30.10–43 Amended; eff. 10–30–97 51197
30.10–47 Amended; eff. 10–30–97 51197
30.10–62 Added 25135
30.10–65 Revised 25135
30.10–67 Revised 25135
30.10–69 Revised 25135
30.20–1—30.20–50 (Subpart 30.20) Removed; eff. 10–30–97 51197
30.30–9 Amended 51043
31 Authority citation revised 68521
Authority citation revised 51043
31.01–1 (a) amended 51043
31.01–3 Added; interim 68521
Regulation at 61 FR 68521 eff. date corrected to 12–27–96 3335

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31.10–5 (a)(1) revised; eff. 10–30–97 51197
31.10–16 (a), (b)(3), (c) and (e) revised; eff. 10–30–97 51197
31.10–20 (a) and (d) revised; eff. 10–30–97 51197
31.10–21 (d)(4), (e) introductory text and (1) revised; eff. 10–30–97 51198
31.10–33 Removed; eff. 10–30–97 51198
31.37–1—31.37–85 (Subpart 31.37) Removed; eff. 10–30–97 51198
32 Authority citation revised 14830
32.01–1 (b) amended 51043
32.22T–1 Added; eff. 4–28–97 through 4–28–99 14830
35.35–30 Heading, (a) and (b) revised 25135
35.35–35 Introductory text revised; (f) added 25135
32.53–1 (a)(2) amended 51043
(c) revised; eff. 10–30–97 51198
32.53–3 (a), (d) and (e) amended 51043
32.53–10 (b) revised; (c) through (f) removed; eff. 10–30–97 51198
32.53–15 Removed; eff. 10–30–97 51198
32.53–20 Removed; eff. 10–30–97 51198
32.53–25 Removed; eff. 10–30–97 51198
32.53–30 Removed; eff. 10–30–97 51198
32.53–35 Removed; eff. 10–30–97 51198
32.53–40 Removed; eff. 10–30–97 51198
32.53–45 Removed; eff. 10–30–97 51198
32.53–50 Removed; eff. 10–30–97 51198
32.53–55 Removed; eff. 10–30–97 51198
32.53–60 Removed; eff. 10–30–97 51198
32.53–65 Removed; eff. 10–30–97 51198
32.53–70 Removed; eff. 10–30–97 51198
32.53–75 Removed; eff. 10–30–97 51198
32.53–80 Removed; eff. 10–30–97 51198
32.53–85 Removed; eff. 10–30–97 51198
32.55–20 (e) added; eff. 10–30–97 51198
32.55–40 Removed; eff. 10–30–97 51198
32.56–1 Existing text designated as (a); (b) added; eff. 10–30–97 51198
32.57–1 (b) added; eff. 10–30–97 51198
32.57–10 (d)(4) revised; eff. 10–30–97 51198
32.60–25 (a) designation and (b) removed; eff. 10–30–97 51198
34.01–15 (b) amended 51043
(b) amended; eff. 10–30–97 51198
34.10–5 (f) revised; eff. 10–30–97 51198
34.10–10 (i) revised; eff. 10–30–97 51199
34.15–5 (d) removed; (e) redesignated as (d); eff. 10–30–97 51199
34.20–5 (b)(1) revised; eff. 10–30–97 51199
34.30–1 (Subpart 34.30) Added; eff. 10–30–97 51199
35.01–3 (b) amended 51043
(b) amended; eff. 10–30–97 51199
35.01–40 Removed; eff. 10–30–97 51199
35.07–10 (b)(2) and (c)(2) amended; eff. 10–30–97 51199
35.10–3 Revised; eff. 10–30–97 51199
35.12–1—35.12–5 (Subpart 35.12) Removed; eff. 10–30–97 51199
35.25–15 Revised; eff. 10–30–97 51199
35.25–20 Removed; eff. 10–30–97 51199
35.30–20 (d) amended; eff. 10–30–97 51199
35.30–40 (b) removed; (a) introductory text, (1), (2) and (3) redesignated as introductory text, (a), (b) and (c); eff. 10–30–97 51199
35.35–85 Revised; eff. 10–30–97 51200
36.01–1 (c) amended 51043
39.10–5 (b) amended 51043
39.10–13 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); eff. 10–30–97 51200
42 Authority citation revised 51043
42.01–1 Amended 51043
42.03–5 (b)(1)(ii) amended 51043
42.03–10 (a), (b), (c) and (d)(2) amended 51043
42.07–50 (a), (b)(1), (2), (3), (5) and (d) amended; (c) revised 51043
44 Authority citation revised 51044
46 Authority citation revised 51044
46.01–1—46.01–20 (Subpart 46.01) Heading revised 51044
46.01–5 Removed 51044
46.01–15 (d) amended 51044
46.01–20 (a) amended 51044
50.01–5 Removed; eff. 10–30–97 51200
50.10–5 Amended; eff. 10–30–97 51200
50.10–10 Amended; eff. 10–30–97 51200
50.10–15 Amended; eff. 10–30–97 51200
54.04–1 (b) amended 51044
56.01–2 (b) amended 51044
(b) amended; eff. 10–30–97 51200
56.07–10 (c) and (e) revised; eff. 10–30–97 51200
56.10–5 (d) revised; eff. 10–30–97 51200
56.20–15 Revised; eff. 10–30–97 51200
56.50–30 (b)(6) revised; eff. 10–30–97 51201

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56.50–50 (c)(2) revised; (c)(3) removed; (c)(4) redesignated as (c)(3); eff. 10–30–97 51201
56.50–90 (e) amended; eff. 10–30–97 51201
56.50–103 Added; eff. 10–30–97 51201
56.60–2 (a) removed; (b) introductory text, (1), (2), (3) introductory text, (i) introductory text, (A), (B) and (ii) redesignated as introductory text, (a), (b), (c) introductory text, (1) introductory text, (i), (ii) and (2); Table 56.02(a) amended; eff. 10–30–97 51201
56.60–25 (a) revised; (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); eff. 10–30–97 51201
56.95–10 (a)(1) revised; eff. 10–30–97 51202
56.97–40 (a)(10) added; eff. 10–30–97 51202
58.03–1 (b) amended 51044
58.10–10 (b) removed; (c) and (d) redesignated as (b) and (c); eff. 10–30–97 51202
61.03–1 (b) amended 51044
61.05–20 Revised; eff. 10–30–97 51202
61.10–5 (a) and (b) revised; eff. 10–30–97 51202
61.15–12 (b) revised; eff. 10–30–97 51202
61.20–5 (b) revised; eff. 10–30–97 51202
61.20–17 (f)(2) corrected **52497**
62.05–1 (a) amended 51044
63.05–1 (b) amended 51044
(b) amended; eff. 10–30–97 51202
63.25–3 (j) amended; eff. 10–30–97 51202
63.25–9 Revised; eff. 10–30–97 51202
64.2 (b) amended 51044
68.01–1—68.01–17 (Subpart 68.01) Heading revised; eff. 10–30–97 51203
68.01–1 Amended; eff. 10–30–97 51203
68.01–3 Introductory text amended; eff. 10–30–97 51203
68.01–15 (c) introductory text revised; eff. 10–30–97 51203
69.11 (a)(2)(iv) removed; (a)(2)(v) and (vi) redesignated as (a)(2)(iv) and (v); (a)(5) amended; eff. 10–30–97 51203
69.15 Heading and (a) revised 51045
69.17 (a) revised 51045
69.19 (a) revised 51045
69.23 Revised 51045
69.27 (b)(5), (d) introductory text and (4)(vii) amended; (e) removed 51045
69.63 Revised 51045
69.73 (a) amended 51045
69.111 (c)(3) amended 51045
69.117 (e)(2)(ii) and (3) amended 51045
(f)(4) introductory text revised; eff. 10–30–97 51203
69.209 (a)(4) amended 51045
70.01–1 (a) amended; eff. 10–30–97 51203
70.01–5 Removed; eff. 10–30–97 51203
70.05–15 Removed; eff. 10–30–97 51203
70.05–25 Removed; eff. 10–30–97 51203
70.10–11 Amended; eff. 10–30–97 51203
70.10–25 Amended; eff. 10–30–97 51203
70.10–33 Amended; eff. 10–30–97 51203
70.30–1—70.30–5 (Subpart 70.30) Removed; eff. 10–30–97 51203
71 Authority citation revised **68521**
71.01–10 (a) amended; eff. 10–30–97 51203
71.15–5 Added; interim **68521**
Regulation at 61 FR 68521 eff. date corrected to 12–27–96 3335
71.25–25 (a)(5), (b)(3) and (c) revised; (e) removed; eff. 10–30–97 51203
71.30–1 (a) designation and (b) removed; eff. 10–30–97 51203
71.47–1—71.47–85 (Subpart 71.47) Removed; eff. 10–30–97 51203
71.50–1 (a) revised; eff. 10–30–97 51204
71.65–1 (c) added; eff. 10–30–97 51204
72.01–1 Revised; eff. 10–30–97 51204
72.05–10 (m) removed; (n) through (q) redesignated as (m) through (p); eff. 10–30–97 51204
72.30–5 Removed; eff. 10–30–97 51204
76.01–2 (b) amended 51045
(b) amended; eff. 10–30–97 51204
76.10–5 (f) revised; eff. 10–30–97 51204
76.10–10 Heading and (n)(1) revised; eff. 10–30–97 51204
76.15–5 (d) removed; eff. 10–30–97 51204
76.25–1 Revised; eff. 10–30–97 51204
76.25–90 Revised; eff. 10–30–97 51204
77.01–3 (b) amended 51045
77.35–10 (a) amended; eff. 10–30–97 51204
78.01–2 Added; eff. 10–30–97 51204

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78.17–30 Revised; eff. 10–30–97 51205
78.33–20 Removed; eff. 10–30–97 51205
78.37–10 (b) introductory text amended; eff. 10–30–97 51205
78.43–1 (Subpart 78.43) Removed; eff. 10–30–97 51205
78.45–1 Revised; eff. 10–30–97 51205
78.47–27 Revised; eff. 10–30–97 51205
78.53–1—78.53–5 (Subpart 78.53) Removed; eff. 10–30–97 51205
78.55–1 Revised; eff. 10–30–97 51205
78.65–1 Revised; eff. 10–30–97 51205
80.01 Revised; eff. 10–30–97 51205
80.40 Amended; eff. 10–30–97 51205
90.01–1 Revised; eff. 10–30–97 51205
90.01–5 Removed; eff. 10–30–97 51205
90.05–20 Revised; eff. 10–20–97 49321
90.05–30 Removed; eff. 10–30–97 51205
90.10–9 Revised; eff. 10–30–97 51205
90.10–21 Revised; eff. 10–30–97 51205
90.10–23 Introductory text; eff. 10–30–97 51205
90.10–27 Revised; eff. 10–30–97 51205
90.10–36 Amended; eff. 10–30–97 51206
90.10–40 Revised; eff. 10–20–97 49321
90.30–1—90.30–5 (Subpart 90.30) Removed; eff. 10–30–97 51206
90.30–10 Regulation at 60 FR 57640 confirmed 49321
91 Authority citation revised **68521**
91.15–5 Added; interim **68521**
Regulation at 61 FR 68521 eff. date corrected to 12–27–96 3335
91.25–25 (a)(3), (b)(3) and (c) revised; (e) removed; eff. 10–30–97 51206
91.37–1—91.37–85 (Subpart 91.37) Removed; eff. 10–30–97 51206
91.40–1 (a) and (d) revised; eff. 10–30–97 51206
91.40–3 (d)(4), (e) introductory text and (1) revised; eff. 10–30–97 51206
91.55–1 (c) added; eff. 10–30–97 51206
92 Authority citation revised 51045
92.01–2 (b) amended 51045
92.07–1 (c) added; eff. 10–30–97 51206
93.20–1—93.20–20 (Subpart 93.20) Removed; eff. 10–30–97 51206
95.01–2 (b) amended 51045
(b) amended; eff. 10–30–97 51206
95.10–5 (f) revised; eff. 10–30–97 51206
95.10–10 (n)(1) revised; eff. 10–30–97 51207
95.15–5 (d) removed; (e) and (f) redesignated as (d) and (e); eff. 10–30–97 51207
95.30–1 (Subpart 95.30) Added; eff. 10–30–97 51207
96.01–3 (b) amended 51046
96.35–10 (a) amended; eff. 10–30–97 51207
97.01–2 Added; eff. 10–30–97 51207
97.15–15 Revised; eff. 10–30–97 51207
97.30–20 Removed; eff. 10–30–97 51207
97.36–1 Revised; eff. 10–30–97 51207
97.37–20 Heading revised; eff. 10–30–97 51207
97.43–1—97.43–5 (Subpart 97.43); eff. 10–30–97 51207
97.45–1 Revised; eff. 10–30–97 51207
97.53–1 Revised; eff. 10–30–97 51207
98.30–1 (b)(3) amended 51046
98.30–4 (a)(1) revised; (a)(2) introductory text, (ii) and (c) amended 51046
98.30–5 (a)(4), (b) and (e) revised 51046
98.30–17 (b)(2) revised; (b)(3) removed 25135
98.33–1 (b)(1) note added; (b)(2) amended 51046
98.33–3 (a) amended; (b) revised 51046
98.312–5—98.31–15 (Subpart 98.31) Regulation at 60 FR 57640 confirmed; new subpart 98.31 added; eff. 10–20–97 49321
105.01–1 Revised; eff. 10–30–97 51208
105.10–1 Removed; eff. 10–30–97 51208
105.35–1 (a) revised; eff. 10–30–97 51208
105.90–1 (b)(3) revised 25136
107 Authority citation revised **68521**
Authority citation revised 51046
107.115 (b) amended 51046
107.205 Added; interim **68521**
Regulation at 61 FR 68521 eff. date corrected to 12–27–96 3335
108 Policy statement **51789**
108.101 (b) amended 51046
(b) amended; eff. 10–30–97 51208
108.170 Regulation at 61 FR 28270 confirmed 23906
108.181 Regulation at 61 FR 28270 confirmed 23906
108.185 Regulation at 61 FR 28270 confirmed 23906
108.417 (e) revised; eff. 10–30–97 51208
108.425 (b) revised; eff. 10–30–97 51208

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108.430 Undesignated center heading and section added; eff. 10–30–97 51208
108.435 Removed; eff. 10–30–97 51208
109 Authority citation revised 51046
109.105 Added; eff. 10–30–97 51208
109.121 (b) removed; (c) redesignated as (b); eff. 10–30–97 51208
109.301 (g)(3)(ii) revised 35392
109.423 Removed; eff. 10–30–97 51208
109.431 (a) revised; eff. 10–30–97 51208
109.555 (b) revised; eff. 10–30–97 51208
109.563 (a)(6) added; eff. 10–30–97 51208
109 Appendix A amended 51046
110 Policy statement **51789**
110.01–1 Regulation at 61 FR 28271 confirmed 23906
(b) amended 51046
110.01–3 Regulation at 61 FR 28271 confirmed; (b) and (c) revised 23906
110.10–1 Regulation at 61 FR 28271 confirmed; (b) amended 23906
110.15–1 Regulation at 61 FR 28274 confirmed 23906
Amended 23907
Corrected 27659
110.20–1 Regulation at 61 FR 28274 confirmed 23906
110.25–1 Regulation at 61 FR 28275 confirmed 23906
(l)(6) revised 23907
110.25–3 Regulation at 61 FR 28275 confirmed 23906
110.30–1 Regulation at 61 FR 28275 confirmed 23906
110.30–7 Regulation at 61 FR 28275 confirmed 23906
111 Policy statement **51789**
Policy statement 35105
111.01–1 Regulation at 61 FR 28275 confirmed 23906
Introductory text, (a), (b) and (c) redesignated as (a) introductory text, (1), (2) and (3); new (a)(1) amended; new (b) added 23907
111.01–5 Regulation at 61 FR 28275 confirmed 23906
111.01–7 Regulation at 61 FR 28275 confirmed 23906
111.01–9 Regulation at 61 FR 28275 confirmed 23906
(a) and (c) amended; (b) and note revised 23907
111.01–15 Regulation at 61 FR 28276 confirmed 23906
(c) revised 23907
111.01–17 Regulation at 61 FR 28276 confirmed 23906
111.01–19 Regulation at 61 FR 28276 confirmed 23906
(a) introductory text revised 23907
111.05–1 Regulation at 61 FR 28276 confirmed 23906
111.05–7 Regulation at 61 FR 28276 confirmed 23906
111.05–9 Regulation at 61 FR 28276 confirmed 23906
Revised 23907
111.05–19 Regulation at 61 FR 28276 confirmed 23906
(b) revised 23907
111.05–23 Regulation at 61 FR 28276 confirmed 23906
(d) amended; (d) note added 23907
111.05–25 Regulation at 61 FR 28276 confirmed 23906
111.05–27 Regulation at 61 FR 28276 confirmed 23906
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111.05–29 Regulation at 61 FR 28276 confirmed 23906
111.05–33 Regulation at 61 FR 28276 confirmed 23906
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(a) amended 23907
111.10–3 Regulation at 61 FR 28276 confirmed 23906
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111.10–7 Regulation at 61 FR 28277 confirmed 23906
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111.52–5 Regulation at 61 FR 28279 confirmed 23906
111.53–1 Regulation at 61 FR 28279 confirmed 23906
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160.151–1—160.151–61 (Subpart 160.151) Added 25547
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175.800 (b) revised; eff. 10–30–97.....51355
176 Authority citation revised.....51355
176.105 Designation amended; eff. 10–30–97.....51356
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176.302 Amended 51049
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176.400 (a) amended; eff. 10–30–97 51356
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176.612 (b) amended; eff. 10–30–97 51356
176.801 (a) amended 51049
176.802 (c) amended; eff. 10–30–97 51356
176.808 (a)(1) and (4) amended; eff. 10–30–97 51356
176.810 (b) table amended; eff. 10–30–97 51356
176.812 (a) revised; eff. 10–30–97 51356
177.100 Amended 51050
177.300 (c)(2) and (d)(1)(ii) amended; (c)(3) and (d)(2) added; eff. 10–30–97 51356
177.410 (b) and (c) introductory text revised; eff. 10–30–97 51356
177.600 (c) amended; eff. 10–30–97 51356
177.710 Amended 51050
177.810 (c) amended 51050
178 Authority citation revised 51356
178.310 (b) introductory text amended; eff. 10–30–97 51356
178.330 (a)(4)(v) added; (d)(2) amended; eff. 10–30–97 51356
178.340 (c) amended 51050
178.410 (a) amended; eff. 10–30–97 51357
179 Authority citation revised 51357
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179.230 Amended; eff. 10–30–97 51357
179.240 (a) and (b)(1) revised; eff. 10–30–97 51357
180.10 Revised; eff. 10–30–97 51357
180.68 (a) heading and introductory text revised; eff. 10–30–97 51357
180.70—180.78 (Subpart C) Heading revised; eff. 10–30–97 51357
180.70 (a)(2) amended 51050
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180.200 (a)(1) through (4), (b) and (c) amended; eff. 10–30–97 51357
180.202 Heading amended; eff. 10–30–97 51357
180.206 (a) and (b) amended; eff. 10–30–97 51357
180.207 (d) amended 51050
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180.210 (c) redesignated as (d); new (c) added; new (d) revised; eff. 10–30–97 51357
181 Authority citation revised 51358
181.300 (e) amended; eff. 10–30–97 51358
181.310 (c) added; eff. 10–30–97 51358
181.320 (a) and (d)(1) amended; eff. 10–30–97 51358
181.400 (b)(5)(i) amended; eff. 10–30–97 51358
181.410 (b)(2), (10), (c)(2)(ii), (f)(4)(v) and (5)(i) amended; eff. 10–30–97 51358
181.500 (a) table amended; eff. 10–30–97 51358
181.610 Amended; eff. 10–30–97 51358
182.320 (a) and (b) redesignated as (b) and (a); eff. 10–30–97 51358
182.405 Amended 51050
182.430 (d) removed; (e) through (l) redesignated as (d) through (k); eff. 10–30–97 51358
182.435 (b)(3)(ii) and (c) amended; eff. 10–30–97 51358
182.458 (b) amended 51050
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182.460 (a)(1)(ii) amended 51050
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182.610 (f)(1) amended; eff. 10–30–97 51358
182.620 (a)(2) amended 51050
182.720 (e)(1) and (3)(ii) amended; eff. 10–30–97 51358
183.130 (b) amended 51050
183.330 (j) amended 51050
183.340 (q)(3) amended 51050
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183.352 (a) amended 51050
183.378 Added; eff. 10–30–97 51358
183.380 (h)(2) amended 51050
183.432 (b)(4) amended; eff. 10–30–97 51358
184.220 (a) amended; eff. 10–30–97 51358
184.410 Amended; eff. 10–30–97 51358

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184.420 (a) amended; eff. 10–30–97 51358
184.506 Amended; eff. 10–30–97 51358
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185.210 (b)(2) amended 51050
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185.304 (a)(6) amended; eff. 10–30–97 51359
185.335 (a) amended; eff. 10–30–97 51359
185.356 Amended; eff. 10–30–97 51359
185.410 Amended; eff. 10–30–97 51359
185.420 (b) redesignated as (c); new (b) added; eff. 10–30–97 51359
185.506 (a)(1) amended 51050
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185.518 (a) amended 51050
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185.728 (a) amended 51050
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188.05–2 (a) removed; (b) and (c) redesignated as (a) and (b); eff. 10–30–97 51219
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188.10–65 Revised; eff. 10–30–97 51219
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189.35–9 (c)(2) revised; eff. 10–30–97 51219
189.40–1 (a) and (c) revised; eff. 10–30–97 51220
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193.10–5 (f) revised; eff. 10–30–97 51220
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194.05–3 (b) amended 51051
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TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

Chapter 1—Federal Acquisition Regulation (Parts 1—99)

Chapter 1 Federal Acquisition Circular No. 90-43 ..... **67410**
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Federal Acquisition Circular 97-1 ..... **44802**
1.102-2 (c)(3) added; eff. 10-10-97 51229
1.102-4 (e) amended; eff. 10-21-97 ..... **44804**
1.105-3 Amended 40236
1.106 Table amended (OMB numbers); interim **67410, 69287**
Table amended (OMB numbers) **67430**
Table amended (OMB numbers) 227, 235, 271
Regulation at 61 FR 67410 confirmed **44805**
Table amended (OMB numbers); eff. 10-21-97 ..... **44806, 44810**
Regulation at 61 FR 69287 confirmed **44809**
Table amended (OMB numbers); eff. 10-10-97 51229
Amended; eff. 10-10-97 51270
1.107 Added; eff. 10-21-97 ..... **44813**
1.201-2 (b)(2) removed; (b)(3), (4) and (5) redesignated as (b)(2), (3) and (4) **40236**
1.403 Amended **67411**
1.404 Introductory text amended **67411**
1.405 (d) and (e) revised **67411**
2.101 Amended **69288**
Amended 256
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3.104 Revised 227
3.104-1 Revised 227
3.104-2 Revised 227
3.104-3 Revised 227
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Amended; eff. 10-10-97 51270
3.104-4 Revised 228
3.104-5 Revised 229
(b) and (d)(3) introductory text amended; eff. 10-10-97 51270
3.104-6 Revised 230
3.104-7 Revised 230
3.104-8 Revised 231
3.104-9 Revised 231
3.104-10 Revised 231
3.104-11 Revised 231
3.104-12 Removed 227
3.202 Regulation at 61 FR 39200 confirmed 12690
3.501-2 (c) amended; eff. 10-10-97 51270
3.502-2 (i)(1) revised 235
3.700 (a) revised 232
3.701 Revised 232
3.703 Existing text designated as (a); (b) added 232
3.704 (b) amended; (c) added 232
3.705 (c)(3) amended; (d)(3) revised 232
4.102 (d) amended 235
4.602 (d) revised; interim **67412**
(b) amended 40236
4.603 Revised; interim **67412**
4.702 (a)(3) removed 258
4.802 (e) revised 232
4.803 (a)(11) amended **67430**
(a)(42) removed; (a)(43) redesignated as (a)(42) 232
4.1001 (Subpart 4.10) Added; eff. 10-10-97 51230
5.101 (a)(2)(iv) amended 12692
5.102 (a)(7) added; eff. 10-10-97 51230
5.201 (d) amended 40236
5.202 Regulation at 59 FR 545 confirmed 261
5.203 (a) revised; (h) added 263
(a) corrected 10710
5.204 Amended 271
Amended; eff. 10-10-97 51270
5.207 (e)(3) revised 263
(a)(2) amended 40236
5.303 (b)(2) amended **69289**
(b)(2) amended; eff. 10-10-97 51270
6.001 (a) revised 263
(d) and (e)(2) corrected 10710
6.101 (b) revised; eff. 10-10-97 51230
6.302-1 (d)(2) amended; eff. 10-10-97 51270
6.302-3 (b)(1)(vi) and (vii) amended; (b)(1)(viii) removed 235
6.305 (1) amended 257
7.102 Regulation at 60 FR 28495 confirmed 44810
7.103 (m) amended 40236
Regulation at 60 FR 28495 confirmed 44810
(q) added; eff. 10-21-97 44814
7.105 (b)(13)(ii) and (iii) amended 40236
Regulation at 60 FR 28495 confirmed 44810
Introductory text amended, (a)(1), (4) and (b)(6) revised; (b)(18), (19) and (20) redesignated as (b)(19), (20) and (21); new (b)(18) added; eff. 10-21-97 44814
(b)(5) revised; eff. 10-10-97 51230
(a)(3)(iii), (b)(3) and (11) amended; eff. 10-10-97 51270
7.306 (b) amended; eff. 10-10-97 51270
7.307 (b) amended 40236
7.403 (b)(2) revised 40236
7.503 (d)(11) amended 40236
8.002 (a) removed; (b) through (f) redesignated as (a) through (e); new (a) and new (d) revised 235
8.201—8.203-3 (Subpart 8.2) Removed 235
8.401 Revised; eff. 10-21-97 44817
8.402 Added; eff. 10-21-97 44818
8.404 (a), (b) and (c) heading revised; eff. 10-21-97 44818
8.501 Amended 40236
8.502 Introductory text, (b)(1)(i) and (ii) amended 40236
8.504 (a) and (b) amended 40236
8.901 (b) amended 40236
9.103 (b) amended; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
(b) revised; interim 44819
(b) corrected 48921
9.104-1 (a), (c), (e) and (f) amended; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
9.104-3 (a) removed; (b) through (e) redesignated as (a) through (d); interim **67410**
Regulation at 61 FR 67410 confirmed 44805
(a) amended; (d) existing text redesignated as (d)(1); (d)(2) added; interim 44820
9.105-3 (c) amended 232

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9.106–3 (a) designation and (b) removed 232
9.306 (j) amended; eff. 10–10–97 51270
9.404 (d)(1)(ii) amended 40236
9.406–2 (b)(1)(ii) revised **69291**
Regulation at 61 FR 41473 confirmed 267
9.406–4 Regulation at 61 FR 41473 confirmed 267
9.407–2 (a)(4) revised **69291**
9.505 (b)(1) and (2) amended 232
9.505–3 Revised 12694
9.505–4 (c) amended 235
9.506 (a) and (d)(3) amended; (d)(4) removed 235
9.507–1 (b), (c) and (d) removed; (a) introductory text and (1) through (4) redesignated as introductory text and (a), new (b), new (c) and new (d) 235
Corrected 10710
9.702 (d) removed; (e) and (f) redesignated as (d) and (e); interim **67410**
Regulation at 61 FR 67410 confirmed 44805
10.001 Regulation at 60 FR 28495 confirmed 44810
10.002 Regulation at 60 FR 28495 confirmed 44810
10.004 Regulation at 60 FR 28495 confirmed 44810
10.010 Regulation at 60 FR 28495 confirmed 44810
10.011 Regulation at 60 FR 28496 confirmed 44810
11.001 Revised; eff. 10–21–97 44810
11.002 (a)(1)(ii) revised; (e) added 263
(d) amended; eff. 10–21–97 44810
(d) amended; eff. 10–10–97 51230
11.004 Regulation at 60 FR 28496 confirmed 44810
11.101 (b) revised; eff. 10–21–97 44810
11.104 (a) revised 263
(a) and (b) corrected 10710
11.201 (d) amended 40236
11.301—11.302 (Subpart 11.3) Added; eff. 10–21–97 44810
11.701 (c) introductory text amended 40236
11.801 (Subpart 11.8) Added; eff. 10–10–97 51230
12.202 (b) revised 264
12.203 Amended 264
12.204 Revised 264
12.205 (c) revised 264
12.206 Amended; eff. 10–10–97 51270
12.209 Revised 258
Amended; eff. 10–10–97 51270
12.213 Revised 264
12.214 Added **67418**
Amended 40236
12.301 (b)(1), (3), (c)(1), (d) and (e)(1) amended **67430**
(c)(2) amended; eff. 10–10–97 51270
12.302 (a) revised 264
12.503 (c)(3) revised **67418**
(b)(4) removed; (b)(5) and (6) redesignated as (b)(4) and (5) 232
(b)(1) and (4) revised 236
(b)(4) corrected 10710
(c)(2) amended; eff. 10–10–97 51270
12.504 (c)(3) revised **67418**
(b)(3) removed; (b)(4) redesignated as (b)(3) 232
(a)(16) removed 236
(a)(9) and (c)(2) amended; eff. 10–10–97 51270
12.602 (a) revised 264
(b) amended; eff. 10–10–97 51270
12.603 (c)(3)(ii) revised 264
13.000 Revised 264
13.103 (b), (c) and (j) revised 264
13.104 (b) revised 265
13.106–2 (c)(3) amended **69289**
(a)(1), (2), (3), (4) introductory text, (5), (6), (b)(1), (3), (c)(1), (2), (d)(3) and (4)(ii) revised; (a)(6), (7) and (8) redesignated as (a)(7), (8) and (9); new (a)(6) and (10) added 265
(a)(3), (5) and (b)(1) corrected 10710
(c)(3) amended; eff. 10–10–97 51270
13.107 (a) revised 266
13.108 (a) amended; eff. 10–10–97 51270
13.111 (g) removed; (h) and (i) redesignation (g) and (h) **69292**
(h) revised; eff. 10–21–97 44810
13.202 (b)(2) revised 266
(a)(4) added; (c)(3) revised; eff. 10–21–97 44818
13.204 (a) and (b) revised 266
13.601—13.602 (Subpart 13.6) Added 266
13.602 (a) introductory text corrected 12720

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14.103–1 (d) amended; eff. 10–10–97 51270
14.105 Amended; eff. 10–10–97 51270
14.201–6 Regulation at 59 FR 545 confirmed 261
(n) removed; eff. 10–10–97 51230
14.201–7 (a), (b)(1) and (c)(1) amended; eff. 10–10–97 51270
14.202–1 (a) amended 272
14.205–1 (d)(2) amended; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
14.207 Amended; eff. 10–10–97 51270
14.209 (b) revised 12692
14.211 (a) amended 272
14.304–1 (a)(2) and (c) revised **69293**
(a)(4) revised 12693
14.404–1 (e)(1) amended; (f) added; eff. 10–10–97 51230
14.404–2 (m) removed 232
(g) amended; eff. 10–10–97 51270
14.405 (f) amended 236
14.408–1 Regulation at 59 FR 545 confirmed 261
14.408–2 (a) and (b) amended; eff. 10–10–97 51270
14.503–1 (g) amended **69289**
(c)(2), (g) and (h) amended; eff. 10–10–97 51270
15 Revised; eff. 10–10–97 51230
15.106 Revised 258
15.106–1 Removed 258
15.106–2 Removed 258
15.407 Regulation at 59 FR 545 confirmed 261
15.410 (b) amended 12693
15.412 (d) amended **69289**
(c)(2) revised **69293**
15.413 Revised 233
15.413–2 (f)(6) removed 233
15.509 (f)(4) revised; (h)(3) removed 233
(h)(1) and (2) corrected 10710
15.601 Regulation at 60 FR 28496 confirmed; amended; eff. 10–21–97 44810
15.605 Regulation at 60 FR 28496 confirmed; (b)(1)(iv) revised; eff. 10–21–97 44810
15.609 (c) amended **69289**
15.612 (f) revised **69289**
15.802 (a) introductory text and (1) amended 258
15.804–1 (b)(2), (c) and (d) removed; (b)(3) through (6) redesignated as (b)(2) through (5); (a), new (b)(3) and new (5) revised 258
15.804–2 (a)(1) introductory text and (ii) amended; (a)(2) revised 258
15.804–5 Revised 258
15.804–6 (a)(5) amended 259
Table 15–2 amended 40236
15.805–5 (j) revised; (k) removed 233
15.812–1 (b) revised; (c) amended 259
15.812–2 (a)(3) and (5) revised; (a)(6) added 259
15.1001—15.1008 (Subpart 15.10) Revised **69289**
15.1001 Regulation at 59 FR 545 confirmed 261
15.1006 (e) introductory text amended 257
16.104 (k) added; eff. 10–21–97 44814
(b) amended; eff. 10–10–97 51270
16.203–4 (a)(1)(ii) and (b)(1)(ii) revised 259
16.204 Amended 12695
16.301–3 (a)(3) amended; eff. 10–10–97 51270
16.304 Amended 12695
16.305 Amended 12695
16.306 (d)(2) amended 236
(c) revised; eff. 10–10–97 51258
16.307 (a) redesignated as (a)(1); (a)(2) added **67419**
16.401 (c) amended; (d) added 12695
16.402–1 (b) amended 12696
16.402–2 (b) through (g) redesignated as (c) through (h); new (b) added; heading, (a) and new (e) revised; eff.10–21–97 44815
16.404 Redesignated as 16.405; new 16.404 added 12696
16.404–1 Redesignated as 16.405–1 12696
16.404–2 Redesignated as 16.405–2 12696
16.405 Redesignated as 16.406; new 16.405 redesignated from 16.404 12696
16.405–1 Redesignated from 16.404–1 12696
(b)(1) introductory text; (b)(2) amended; eff. 10–21–97 44815
16.405–2 Redesignated from 16.404–2 12696

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16.406 Redesignated from 16.405; (e) introductory text revised 12696
16.505 (b)(3) amended; eff. 10–10–97 51270
16.603–2 (c)(3) amended; eff. 10–10–97 51270
16.603–4 (b)(3) amended; eff. 10–10–97 51270
17.106–1 (c)(1) amended; eff. 10–10–97 51270
17.203 Regulation at 59 FR 545 confirmed 261
19.001 Amended; interim **67410**
(b) amended 236
Regulation at 61 FR 67410 confirmed 44805
Amended; interim 44820
Amended; eff. 10–21–97 44822
19.102 (f)(1) amended; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
19.201 (c) introductory text amended; interim 44820
19.202–6 (a) amended; eff. 10–10–97 51270
19.301 (a) amended 236
19.302 (d)(1) amended **69289**
(c)(1), (d) introductory text, (g)(2), (i)(1), (2), (3) and (j) amended; interim 44820
(d)(1) amended; eff. 10–10–97 51270
19.303 (c)(2) introductory text revised; (c)(2)(vi) and (3) amended 236
(c)(2)(iv) corrected 10710
19.501 (h)(1) and (2) amended **69289**
(h) removed 236
19.502–1 Introductory text amended **67430**
19.508 (c) and (d) amended **67430**
(f) removed 236
(e) revised; interim 44820
19.601—19.602–4 (Subpart 19.6) Heading revised; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
Heading revised; interim 44820
19.601 (c) removed; (d) redesignated as (c); interim **67410**
Regulation at 61 FR 67410 confirmed 44805
(a) revised; (c) redesignated as (e); new (c) and (d) added; interim 44820
19.602–1 (a) introductory text, (2), (c) introductory text and (2) revised; (e) added; interim 44820
19.602–2 Revised; interim 44820
19.602–3 Revised; interim 44821
19.702 Regulation at 61 FR 2638 confirmed; (d) amended **67420**
(d) amended 40236
19.703 (a)(2) amended 236
19.801 Removed; interim **67421**
Regulation at 61 FR 67421 confirmed 44823
19.803 (a)(3) amended; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
19.804–2 (b) revised; (c) added; interim **67421**
Regulation at 61 FR 67421 confirmed; (b)(2) and (c) revised; interim; eff. 10–21–97 44823
19.804–3 (c) removed; interim **67421**
Regulation at 61 FR 67421 confirmed 44823
19.805–1 (c) redesignated as (d); new (c) added; new (d) amended; interim **67421**
Regulation at 61 FR 67421 confirmed 44823
19.805–2 (c) introductory text revised; interim **67421**
Regulation at 61 FR 67421 confirmed 44823
19.806 (a) amended; eff. 10–10–97 51270
19.808–1 (b) revised; interim **67421**
Regulation at 61 FR 67421 confirmed 44823
19.809 Amended; interim **67421**
Regulation at 61 FR 67421 confirmed 44823
19.811–1 (b)(5) removed; interim **67421**
(d) removed 233
Regulation at 61 FR 67421 confirmed 44823
19.811–2 (b) removed; (c) redesignated as (b) 233
19.811–3 (a), (b) and (d)(1) revised; (d)(2) removed; (d)(3) redesignated as (d)(2); new (d)(2) amended; interim **67421**
Regulation at 61 FR 67421 confirmed 44823
19.1001 Amended **67422**
19.1006 (b)(1) amended **67422**
22.601 Removed; interim **67410**

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Regulation at 61 FR 67410 confirmed 44805
22.602 Revised; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
22.604–2 (b) removed; (c) redesignated as (b); interim **67410**
Regulation at 61 FR 67410 confirmed 44805
22.606 Removed; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
22.606–1 Removed; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
22.606–2 Removed; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
22.607 Removed; interim **67410**
Regulation at 61 FR 67410 confirmed 44805
22.608 Revised; interim **67411**
Regulation at 61 FR 67411 confirmed 44805
22.608–1 Removed; interim **67411**
Regulation at 61 FR 67411 confirmed 44805
22.608–2 Removed; interim **67411**
Regulation at 61 FR 67411 confirmed 44805
22.608–3 Removed; interim **67411**
Regulation at 61 FR 67411 confirmed 44805
22.608–4 Removed; interim **67411**
Regulation at 61 FR 67411 confirmed 44805
22.608–5 Removed; interim **67411**
Regulation at 61 FR 67411 confirmed 44805
22.608–6 Removed; interim **67411**
Regulation at 61 FR 67411 confirmed 44805
22.610 Revised; interim **67411**
Regulation at 61 FR 67411 confirmed 44805
22.1200—22.1208 (Subpart 22.12) Added; interim 44824
23.102 (d) amended 236
23.201 Regulation at 60 FR 28496 confirmed 44810
23.203 Regulation at 60 FR 28496 confirmed 44811
23.302 (d)(1) revised 236
23.400—23.405 (Subpart 23.4) Regulation at 60 FR 28496 confirmed 44810
23.400 Revised; eff. 10–21–97 44811
23.401 (c) amended; eff. 10–21–97 44811
Amended 44828
23.402 Amended; eff. 10–21–97 44811
23.404 Revised; eff. 10–21–97 44811
23.405 Revised; eff. 10–21–97 44811
23.504 (a) introductory text, (3) and (b) revised; (c) removed; (d) redesignated as (c); (a)(4)(ii), (5), (6) and new (c) amended **69292**
23.505 (a)(2) amended; (b) removed; (c) redesignated as (b); heading, (a) introductory text and new (b) introductory text revised **69292**
23.506 (d) revised **69292**
23.601 (c) revised 236
23.701—23.706 (Subpart 23.7) Regulation at 60 FR 28497 confirmed 44810
23.703 Amended; eff. 10–21–97 44811
23.704 Revised; eff. 10–21–97 44811
23.1001—23.1005 (Subpart 23.10) Added; interim 12697
24.202 Redesignated as 24.203; new 24.202 added 257
(b) amended; eff. 10–10–97 51270
24.203 Redesignated from 24.202 257
25 Technical correction 10710
25.101 Regulation at 59 FR 545 confirmed 261
25.108 (b) amended 12698
25.109 Regulation at 59 FR 545 confirmed 261
25.201 Amended 12698
25.202 Regulation at 59 FR 545 confirmed 261
Revised 12698
25.203 Revised 12698
25.204 Revised 12699
25.205 Regulation at 59 FR 546 confirmed 261
Revised 12699
25.206 Added 12699
25.207 Added 12699
25.300 Regulation at 59 FR 546 confirmed 261
25.305 Regulations at 59 FR 546 and 61 FR 31647 confirmed 261
25.400 Regulation at 59 FR 546 confirmed 261
25.401 Regulation at 59 FR 546 confirmed 261

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Amended 268
25.402 Regulations at 59 FR 546 and 61 FR 31647 confirmed 261
(b) revised 269
25.403 Regulation at 59 FR 546 confirmed 261
25.405 (e) amended **69289**
Regulation at 59 FR 546 confirmed 261
(e) amended; eff. 10–10–97 51271
25.406 Regulation at 59 FR 547 confirmed 261
25.407 Regulation at 59 FR 547 confirmed 261
25.408 Regulations at 59 FR 547 and 61 FR 31647 confirmed; (a)(3) amended 261
25.901 (b) amended 259
(b) amended; eff. 10–10–97 51271
25.1003 Regulation at 59 FR 547 confirmed 261
26.103 (b) amended 40236
26.300—26.304 (Subpart 26.3) Added 12703
27.204–1 (b) amended; eff. 10–10–97 51271
27.204–2 Amended; eff. 10–10–97 51271
27.208 Regulation at 59 FR 547 confirmed 261
27.302 (a) amended 40237
27.303 (e) revised 236
27.406 (c) revised; (d)(1), (2) and (3) amended 236
27.407 (a)(1) and (b) amended; eff. 10–10–97 51271
27.409 (q) amended 236
28.000 Revised; eff. 10–21–97 44806
28.001 Regulation at 61 FR 31652 confirmed; amended; eff. 10–21–97 44805
28.100—28.106–8 (Subpart 28.1) Heading revised; eff. 10–21–97 44806
28.100 Revised; eff. 10–21–97 44806
28.101–4 (b) amended; eff. 10–10–97 51271
28.102–2 (b)(1) introductory text, (2), (c)(1) and (2) revised; eff. 10–21–97 44806
28.102–3 Heading revised; (b) amended; eff. 10–21–97 44806
28.106–3 Revised; eff. 10–21–97 44806
28.106–8 Revised; eff. 10–21–97 44807
28.200—28.204–4 (Subpart 28.2) Heading revised; eff. 10–21–97 44807
28.200 Revised; eff. 10–21–97 44807
28.201 Heading revised; (b) amended; eff. 10–21–97 44807
28.204 (a) amended; eff. 10–21–97 44807
28.204–3 (b), (c), (f) introductory text, (2) introductory text, (ii)(B), (g) introductory text, (1) and (h) revised; eff. 10–21–97 44807
29.302 (b) amended 237
29.304 (d)(3) amended 40237
29.305 (a)(3) amended; (b)(3) revised 237
30.000 Amended 40237
30.101 (c) amended 40237
30.102 Amended 40237
30.201 Amended 40237
30.201–1 Amended 40237
30.201–2 Amended 40237
30.201–3 (a) and (b) amended 40237
30.201–4 (a)(1), (2), (b)(1), (2), (c), (e)(1) and (2) amended 40237
30.201–5 Amended 40237
30.201–6 Amended 40237
30.201–7 Amended 40237
30.202–1 Amended 40237
30.202–2 Amended 40237
30.202–3 Amended 40237
30.202–4 Amended 40237
30.202–5 Amended 40237
30.202–6 (a) amended 40237
30.202–7 (a) amended 40237
30.202–8 (b) amended 40237
30.3 (Subpart) Note amended 40237
30.4 (Subpart) Note amended 40237
30.5 (Subpart) Note amended 40237
30.602 Introductory text amended 40237
31.000 Amended; eff. 10–10–97 51271
31.001 Amended; interim **69288**
Regulation at 61 FR 69288 confirmed 44809
31.103 (a) amended; eff. 10–10–97 51271
31.105 (b) amended; eff. 10–10–97 51271
31.106–1 Introductory text amended; eff. 10–10–97 51271
31.109 (h)(10) removed; (h)(11) through (17) redesignated as (h)(10) through (16); interim **69288**
Regulation at 61 FR 69288 confirmed 44809
(g) amended; eff. 10–10–97 51271

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31.110 (a) amended 237
31.204 (b) amended; eff. 10–10–97 51271
31.205–1 (f)(5) revised **67423**
(d)(2) amended 12704
31.205–2 Removed; interim **69288**
Regulation at 61 FR 69208 confirmed 44809
31.205–6 (g)(1) amended **67430**
(e)(2) revised; interim **69295**
(f) revised 259
(p) added; interim 270
Regulation at 61 FR 69295 confirmed 44828
(j)(4) amended; eff. 10–10–97 51271
31.205–11 Regulation at 60 FR 64255 confirmed; (o) revised **67424**
31.205–16 Regulation at 60 FR 64255 confirmed; (g) revised **67424**
31.205–18 (e) revised 12705
(c)(1)(i)(A) and (B) amended; eff. 10–10–97 51271
31.205–22 (b)(2) revised; interim **67425**
(d) removed; (e) and (f) redesignated as (d) and (e); new (d) amended 237
Regulation at 61 FR 67425 confirmed 44829
31.205–26 (e) amended; eff. 10–10–97 51271
31.205–33 (c)(1) amended; eff. 10–10–97 51271
31.205–36 (a) amended; interim **69288**
Regulation at 61 FR 69288 confirmed 44809
31.205–38 (c)(2) revised 12704
31.205–42 (c) introductory text amended; eff. 10–10–97 51271
31.205–46 (a)(2)(i) amended 40237
32.102 (d) revised 12706
32.204 Amended; eff. 10–10–97 51271
32.304–8 (b)(3) amended 237
32.503–7 Introductory text amended 40237
32.805 (a)(1)(iii) amended 237
32.902 Amended 12706
32.903 Revised 12706
32.904 Revised 12707
32.905 Revised 12707
32.906 (a) amended 12709
32.907–1 (a), (b), (d) and (g) revised 12709
(g)(3)(i) revised 40237
32.908 Revised 12710
33.102 (a) amended; interim **67411**
(f) added 233
Regulation at 61 FR 67411 confirmed 44805
33.103 (f)(3) amended **69289**
(c), (e), (f)(1) and (2) amended; (f)(4) added; (d)(2)(i), (4), (g) and (h) revised 270
(f)(4) corrected 10710
(f)(3) amended; eff. 10–10–97 51271
33.104 (c)(1) amended **69289**
(h)(3) introductory text revised 12718
(c)(1) amended; eff. 10–10–97 51271
33.207 (d) amended; eff. 10–10–97 51271
34.005–2 (a)(2) amended; eff. 10–10–97 51271
35.007 (d), (e) introductory text, (g) and (i) amended; eff. 10–10–97 51271
35.008 (d) and (e) amended; eff. 10–10–97 51271
35.017–2 (i) revised 12694
36.102 Amended 272
36.104 Added 272
36.203 (a) amended; eff. 10–21–97 44829
36.205 (b)(3) revised 237
36.213 Redesignated from 36.301—36.304 (Subpart 36.3) heading and revised 272
36.213–1 Redesignated from 36.301 272
36.213–2 Redesignated from 36.302 272
36.213–3 Redesignated from 36.303 272
36.213–4 Redesignated from 36.304 272
36.214 Redesignated from 36.402; heading revised 272
(b)(1) amended; eff. 10–10–97 51271
36.215 Redesignated from 36.403; heading revised 272
Amended; eff. 10–10–97 51271
36.300—36.303–2 (Subpart 36.3) Added 272
36.301—36.304 (Subpart 36.3) Heading redesignated as 36.213 272
36.301 Redesignated as 36.213–1 272
36.302 Redesignated as 36.213–2 272
36.303 Redesignated as 36.213–3 272
36.303–1 Introductory text corrected 10710

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36.303–2 (a) amended; eff. 10–10–97 51271
36.304 Redesignated as 36.214–1 272
36.402—36.403 (Subpart 36.4) Heading removed 272
36.402 Redesignated as 36.214 272
36.403 Redesignated as 36.215 272
36.520 Added; eff. 10–10–97 51258
36.601–3 Regulation at 60 FR 28498 confirmed 44810
(a) revised; eff. 10–21–97 44812
36.602–1 Regulation at 60 FR 28498 confirmed 44810
(a)(2) revised; eff. 10–21–97 44812
36.602–3 Regulation at 60 FR 28498 confirmed 44810
(c) revised; eff. 10–21–97 44812
36.605 (a) amended; eff. 10–21–97 44829
36.606 (a) amended; eff. 10–10–97 51271
36.607 (b) revised **69291**
(b) amended; eff. 10–10–97 51271
37.000 Revised 12694
Amended; eff. 10–21–97 44815
37.101 Amended; eff. 10–21–97 44815
37.102 (d) through (g) added 12694
(a) through (g) as (b) through (h); new (a) added; eff. 10–21–97 44815
37.103 (c) removed; (d) redesignated as (c) 233
(c) and (d) redesignated as (d) and (e); new (c) added; eff. 10–21–97 44815
37.106 (c) added; eff. 10–21–97 44815
37.115 Added; eff. 10–21–97 44815
37.115–1 Added; eff. 10–21–97 44815
37.115–2 Added; eff. 10–21–97 44815
37.115–3 Added; eff. 10–21–97 44815
37.402 Revised 237
37.500—37.504 (Subpart 37.5) Added 12694
37.600—37.602–5 (Subpart 37.6) Added; eff. 10–21–97 44815
38.101 (a) amended 40237
38.201 (b) amended 40237
39.002 Amended; interim 274
Regulation at 62 FR 274 confirmed; amended; eff. 10–21–97 44830
39.106 Redesignated as 39.107; new 39.106 added; interim 274
Regulation at 62 FR 274 confirmed 44830
39.107 Redsignated from 39.106; interim 274
Regulation at 62 FR 274 confirmed 44830
42.102 (a) amended 40237
42.302 (a)(18) amended 237
(a)(11) introductory text amended 40237
Regulation at 60 FR 28498 confirmed 44810
(a)(68) introductory text and (i) revised; interim; eff. 10–21–97 44812
(a)(4) and (5) amended; eff. 10–10–97 51271
42.703–1 (a) revised 274
42.703–2 (a), (c)(1) and (f) revised; (c)(2)(ii) and (d) amended 237
(a) revised 274
(f)(1) corrected 10710
42.704 (e) added **69296**
42.705 Revised **69296**
42.705–1 (b)(2) revised; eff. 10–10–97 51258
42.705–2 (b)(2)(iii) removed; (b)(2)(iv) and (v) redesignated as (b)(2)(iii) and (iv); eff. 10–10–97 51258
42.1102 Amended; eff. 10–21–97 44816
42.1502 (a) amended; eff. 10–10–97 51258
42.1503 (b) amended; eff. 10–10–97 51258
42.1701 (Subpart 42.17) Added; eff. 10–10–97 51258
43.102 (c) revised; interim **69298**
Regulation at 61 FR 69298 confirmed 44831
43.106 Removed 233
43.204 (b)(4) amended; eff. 10–10–97 51271
43.301 (a)(1) introductory text revised; eff. 10–10–97 51259
44.202–2 (a)(1) amended; eff. 10–10–97 51271
44.302 Revised 12719
44.303 Introductory text revised 12719
44.304 (a) revised 12719
44.305–1 Revised 12719
44.305–2 (a) revised 12719
44.305–3 (a)(1) amended; eff. 10–10–97 51271
44.306 Revised 12719
44.307 Revised 12719

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45.103 (b)(1) amended; eff. 10–10–97 51271
45.106 (b)(2)(i) amended; eff. 10–10–97 51271
45.302–2 (c) amended; eff. 10–10–97 51271
45.606–1 (a) designation and (b) removed 237
45.606–5 (a)(2) amended 237
45.607–2 (b) amended 40237
45.608–6 (b) amended 40237
46.103 (a) revised; eff. 10–21–97 44816
46.401 (a) revised; eff. 10–21–97 44816
46.407 (f) introductory text amended; eff. 10–21–97 44816
46.601 Designation and heading added 40237
46.804 Amended 259
46.806 Removed **67425**
47.303–17 (d)(3)(ii) revised 237
47.305–11 Introductory text amended; (a) designation removed; (a)(1), (2) and (3) redesignated as (a), (b) and (c) 237
47.403–3 (a) amended; (c) revised 237
47.404 (b)(2) revised 237
48.102 (e) amended; eff. 10–10–97 51271
49.105 (c)(15) amended; eff. 10–10–97 51271
49.108–3 (b) revised 237
49.110 (a) amended; eff. 10–10–97 51271
49.208 Introductory text amended; eff. 10–10–97 51259
50.104 (b) introductory text amended 40237
50.203 (c) amended; eff. 10–10–97 51271
51.102 (c)(1), (4) and (e)(3)(iii) amended 40237
51.103 (c) removed; (d) redesignated as (c); eff. 10–21–97 44819
52.101 (b)(1) amended 40237
52.102–1 (c)(1) amended 40237
52.106 Removed 40237
52.200 amended 40237
52.203–3 Regualtion at 61 FR 39200 confirmed 12690
52.203–8 Revised 233
Corrected 10710
52.203–9 Removed 233
52.203–10 Amended; introductory text revised 233
52.203–11 (b) introductory text amended 40237
52.203–12 Amended 40237
52.203–13 Removed 233
52.204–3 Amended 40238
52.204–5 Introductory text revised; interim **67412**
52.208–1 Removed 238
52.208–2 Removed 238
52.208–8 Amended 40238
52.208–9 Amended **67430**
52.209–3 Amended 238
52.209–4 Amended 238
52.209–7 Removed 238
52.209–8 Removed 238
52.210–5 Regulation at 60 FR 28498 confirmed 44810
52.210–6 Regulation at 60 FR 28498 confirmed 44810
52.210–7 Regulation at 60 FR 28499 confirmed 44810
52.211–1 Amended 40238
52.211–2 Amended 40238
52.211–4 Amended **67430**
52.211–5 Amended **67430**
Revised; eff. 10–21–97 44812
52.211–6 Amended **67430**
Removed; eff. 10–21–97 44812
52.211–7 Amended **67430**
Removed; eff. 10–21–97 44812
52.211–8 Amended 40238
52.211–9 Amended 40238
52.211–13 Amended **67430**
52.212–1 Amended 40238
52.212–2 Amended; eff. 10–10–97 51271
52.212–3 Amended 233
Amended 238
Regulation at 61 FR 31648 confirmed; amended 261
52.212–4 Amended 12711
52.212–5 Regulation at 61 FR 31648 confirmed 261
52.214–5 Amended **69293**
Corrected 12721
52.214–7 Amended **69293**
Amended 12693
Corrected 12721
52.214–23 Amended **69293**
Amended 12693
Corrected 12721
52.214–26 Amended; eff. 10–10–97 51271
52.214–27 Amended; eff. 10–10–97 51271
52.214–28 Amended; eff. 10–10–97 51271

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52.214–30 Revised 238
52.214–32 Amended **69293**
Amended 12693
Corrected 12721
52.214–33 Amended **69293**
Amended 12693
Corrected 12721
52.214–34 Amended; eff. 10–10–97 51271
52.214–35 Amended; eff. 10–10–97 51271
52.215–1 Added; eff. 10–10–97 51259
52.215–2 Introductory text amended 259
Amended; eff. 10–10–97 51271
52.215–3 Revised; eff. 10–10–97 51261
52.215–4 Revised; eff. 10–10–97 51261
52.215–5 Revised; eff. 10–10–97 51261
52.215–6 Revised; eff. 10–10–97 51261
52.215–7 Revised; eff. 10–10–97 51261
52.215–8 Revised; eff. 10–10–97 51261
52.215–9 Amended **69294**
Corrected 12721
Revised; eff. 10–10–97 51261
52.215–10 Amended **69294**
Amended 12693, 40238
Corrected 12721
Revised; eff. 10–10–97 51262
52.215–11 Revised; eff. 10–10–97 51262
52.215–12 Revised; eff. 10–10–97 51263
52.215–13 Revised; eff. 10–10–97 51263
52.215–14 Revised; eff. 10–10–97 51263
52.215–15 Revised 12693
Revised; eff. 10–10–97 51263
52.215–16 Removed; new 52.215–16 redesignated from 52.215–30 and amended; eff. 10–10–97 51263
52.215–17 Removed; new 52.215–17 redesignated from 52.215–31 and amended; eff. 10–10–97 51263
52.215–18 Revised; eff. 10–10–97 51263
52.215–19 Revised; eff. 10–10–97 51264
52.215–20 Revised; eff. 10–10–97 51264
52.215–21 Revised; eff. 10–10–97 51264
52.215–22 Removed; eff. 10–10–97 51265
52.215–23 Removed; eff. 10–10–97 51265
52.215–24 Removed; eff. 10–10–97 51265
52.215–25 Removed; eff. 10–10–97 51265
52.215–26 Amended **67425**
Revised 259
Removed; eff. 10–10–97 51265
52.215–27 Removed; eff. 10–10–97 51265
52.215–30 Redesignated as 52.215–16; eff. 10–10–97 51263
52.215–31 Redesignated as 52.215–17; eff. 10–10–97 51263
52.215–33 Removed; eff. 10–10–97 51265
52.215–34 Removed; eff. 10–10–97 51265
52.215–35 Revised 238
Removed; eff. 10–10–97 51265
52.215–36 Amended **69294**
Amended 12693
Corrected 12721
Removed; eff. 10–10–97 51265
52.215–38 Removed; eff. 10–10–97 51265
52.215–39 Removed; eff. 10–10–97 51265
52.215–40 Removed; eff. 10–10–97 51265
52.215–41 Amended 259
Removed; eff. 10–10–97 51265
52.215–42 Amended 260
Removed; eff. 10–10–97 51265
52.215–43 Removed 260
52.216 Amended **67419**
52.216–2 Amended 238
Amended; introductory text revised 260
52.216–3 Amended 238
Amended; introductory text revised 261
Corrected 10710
52.216–4 Amended 238
52.216–5 Amended **67425**
Amended; eff. 10–10–97 51265
52.216–6 Amended **67425**
Amended; eff. 10–10–97 51265
52.216–7 Amended **69296**
Corrected 12721
52.216–8 Amended **69296**
Corrected 12721
52.216–9 Amended **69296**
Corrected 12721
52.216–10 Amended **69296**
Corrected 12721
52.216–13 Amended **69296**
Corrected 12721
52.216–16 Amended **67426**
Amended 12696
Amended; eff. 10–10–97 51265
52.216–17 Amended **67426**
Amended; introductory text revised 12696

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Amended; eff. 10–10–97 51265
52.216–25 Amended; eff. 10–10–97 51271
52.217–2 Amended; eff. 10–10–97 51271
52.219–1 Amended; interim **67422**
Amended 238
Regulation at 61 FR 67422 confirmed 44823
52.219–8 Amended 40238
52.219–10 Amended; eff. 10–10–97 51271
52.219–11 Amended; interim **67422**
Regulation at 61 FR 67422 confirmed 44823
52.219–12 Amended; interim **67422**
Regulation at 61 FR 67422 confirmed 44823
52.219–14 Amended; interim **67411**
Regulation at 61 FR 67411 confirmed 44805
52.219–15 Removed 238
52.219–17 Amended; interim **67422**
Regulation at 61 FR 67422 confirmed 44823
52.219–18 Amended; interim **67422**
Amended 238
Corrected 12720
Regulation at 61 FR 67422 confirmed 44823
52.219–19 Amended 238
52.219–21 Amended 238
52.222–1 Amended **67426**
52.222–19 Removed; interim **67411**
Regulation at 61 FR 67411 confirmed 44805
52.222–20 Amended; interim **67411**
Regulation at 61 FR 67411 confirmed 44805
52.222–50 Added; interim 44826
52.223–3 Amended 238
52.223–4 Regulation at 60 FR 28499 confirmed 44810
Revised; eff. 10–21–97 44812
52.223–5 Removed **69292**
Added; interim 12697
52.223–6 Amended **69292**
52.223–7 Amended 239
52.223–8 Regulation at 60 FR 28499 confirmed 44810
Removed; eff. 10–21–97 44812
52.223–9 Regulation at 60 FR 28499 confirmed 44810
Revised; eff. 10–21–97 44812
52.223–10 Regulation at 60 FR 28499 confirmed 44810
Amended; eff. 10–21–97 44813
52.225–3 Regulation at 59 FR 547 confirmed 261
52.225–5 Amended; introductory text revised 12700
Amended 40238
52.225–8 Regulation at 59 FR 547 confirmed 261
52.225–9 Regulation at 59 FR 547 confirmed 261
52.225–12 Added 12700
52.225–13 Added 12701
52.225–15 Regulation at 59 FR 548 confirmed 261
Amended; introductory text revised 12701
Amended 40238
52.225–17 Regulation at 59 FR 548 confirmed 261
52.225–19 Regulation at 59 FR 548 confirmed 261
52.225–20 Regulations at 59 FR 548 and 61 FR 31648 confirmed 261
Amended 262
52.225–21 Regulations at 59 FR 548 and 61 FR 31649 confirmed 261
Amended 262
Corrected 10710
52.225–22 Regulation at 61 FR 31649 confirmed 261
Amended 12702
52.226–2 Added 12703
52.227–11 Amended 40238
52.227–12 Amended 239
52.227–13 Amended 239
52.227–16 Amended 40238
52.227–21 Amended 239
52.228–2 Regulation at 61 FR 31653 confirmed 44806
Amended; eff. 10–21–97 44807
52.228–5 Amended 239
52.228–8 Amended 239
52.228–9 Amended 239
52.228–13 Regulation at 61 FR 31653 confirmed 44806
Amended; eff. 10–21–97 44807
52.228–14 Amended **67430**
Regulation at 61 FR 31653 confirmed 44806
Amended; eff. 10–21–97 44808
52.232–5 Amended 12711
52.232–7 Amended **67419**
52.232–8 Amended 12712
52.232–25 Revised 12712
Amended 40238

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52.232–26 Revised 12713
Amended 40238
52.232–27 Revised 12715
Amended 40238
52.232–32 Amended 12720
52.236–21 Amended **67426**
52.237–3 Amended 40238
52.237–7 Amended 239
52.237–10 Added; eff. 10–21–97 44816
52.239–1 Introductory text amended; interim 274
Regulation at 62 FR 274 confirmed 44830
52.242–4 Amended; heading revised 239
52.244–1 Amended; eff. 10–10–97 51271
52.244–2 Amended **67426**
Amended; eff. 10–10–97 51272
52.244–3 Amended; eff. 10–10–97 51272
52.244–5 Regulation at 61 FR 2638 confirmed; amended **67420**
52.245–8 Amended; introductory text revised 239
52.246–23 Amended **67426**
52.246–24 Amended **67426**
52.246–25 Amended **67426**
52.247–2 Amended; introductory text revised 240
52.247–54 Removed 240
52.247–63 Amended 240
52.247–64 Amended 40238
52.247–67 Amended 40238
52.301 Note added 40239
53.103 (b) amended 40239
53.203 Removed 233
53.204–2 (a) and (b) amended **67427**
53.213 Heading revised; eff. 10–10–97 51266
53.214 (e) heading revised 240
(a) and (d) amended; (c) revised; eff. 10–10–97 51266
53.215–1 (f) heading revised 240
Revised; eff. 10–10–97 51266
53.215–2 Removed; eff. 10–10–97 51266
53.219 (a) and (b) amended; interim **67413**
53.222 (g) heading revised 240
53.229 Amended 240
52.236–28 Added; eff. 10–10–97 51265
52.243 Introductory text revised; eff. 10–10–97 51266
53.245 (c) heading, (f) heading, (g) heading, (h) heading, (i) heading and (j) heading revised 240
53.249 (a)(2), (3) and (4) amended; eff. 10–10–97 51266
53.301–25 Revised 40240
53.301–28 Revised 40242
53.301–129 Revised 240
53.301–279 Amended **67427**
53.301–281 Heading revised 40244
53.301–294 Revised; interim **67413**
53.301–1094 Revised 243
53.301–1094A Revised 247
53.301–1408 Heading revised 40244
53.301–1411 Removed; eff. 10–10–97 51266
53.301–1412 Removed 40244
53.301–1419 Removed 40244
53.301–1423 Revised 249
53.301–1426 Revised 250
53.301–1428 Revised 251
53.301–1430 Revised 252
53.301–1432 Revised 253
53.301–1434 Revised 254
53.301–1445 Revised 255
53.301–1448 Removed; eff. 10–10–97 51266
53.302–307 Added; eff. 10–10–97 51266
53.302–308 Added; eff. 10–10–97 51268
53.302–309 Added; eff. 10–10–97 51269
53.302–333 Amended 233
53.302–336 Amended 40244

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201.603–2 (1) introductory text revised 34121
202.101 Amended 34121
203.104–4 Removed 2612
203.104–5 (e)(4) redesignated as (d)(4); new (d)(4) amended 2612
203.170 Removed 2612
203.170–1 Removed 2612
203.170–2 Removed 2612
203.170–3 Removed 2612
203.170–4 Removed 2612
203.405 Redesignated from 203.409 34121
203.409 Redesignated as 203.405 34121
203.570–5 Amended 34121
204.670–1 (c)(4) revised 34121
204.670–2 (a)(1) revised 34121
(c) revised 44222
204.670–6 (b)(1)(iii) and (iv) corrected 49304
204.670–9 Introductory text and (a) revised 34121
204.805 Amended 40472
204.7003 (a)(1)(i)(G) revised 34121

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204.7201 (b) amended 48181
204.7202–1 (c)(5) redesignated as (d) 34121
204.7202–2 Introductory text and (b)(1) introductory text amended 34121
Revised 48181
204.7202–4 Removed 48181
204.7204 Revised 48181
204.7204–1 Removed 48182
204.7204–2 Removed 48182
204.7206 Introductory text amended 48182
208.002 (f) revised 34121
208.7203 (d) removed; (e), (f) and (g) redesignated as (d), (e) and (f); (c) and new (d) revised 34121
209.104–1 (g)(ii)(C) introductory text amended; (g)(ii)(D) added; (g)(iii) removed 34121
209.104–70 Heading revised; (c) and (d) removed 34122
209.470–1 Regulation at 61 FR 25408 confirmed 34120
209.470–2 Regulation at 61 FR 25408 confirmed 34120
211.273 Added; interim 44224
211.273–1 Added; interim 44224
211.273–2 Added; interim 44224
211.273–3 Added; interim 44224
211.273–4 Added; interim 44224
212 Heading revised; interim 5780
Regulation at 62 FR 5780 confirmed 47154
212.301 (f)(iii) amended 34122
212.504 (a)(xix), (xx) and (xxi) removed **58488**
(a)(i) removed; interim 5780
Regulation at 62 FR 5780 confirmed 47154
214.406 Redesignated as 214.407 34122
214.406–3 Redesignated as 214.407–3 34122
214.407 Redesignated from 214.406 34122
214.407–3 Redesignated from 214.406–3; (e) introductory text amended; (e)(v) revised 34122
215.608 (b) amended 2612
215.801 Removed 40472
215.804 Revised 40472
215.804–1 Revised 40472
215.804–3 Removed 40472
215.804–6 (b)(2)(A) and (B) redesignated as (b)(1)(A) and (B) 40472
215.805–5 (a)(1)(A) revised 40472
215.805–70 (b) revised 40472
215.811–70 (b)(2), (g)(3)(ii) and (h) revised 40472
215.872 Removed 40472
215.872–1 Removed 40472
215.872–2 Removed 40472
215.872–3 Removed 40472
215.872–4 (d)(1) revised 34122
Removed 40472
215.873 (d) revised 2613
216.203–4 (d)(xvi) amended 40472
216.203–4–70 (c) added 34122
(a) revised; (b)(4) and (6) removed; (b)(5) and (7) redesignated as (b)(4) and (5) 40472
216.306 Revised 1058
(c)(ii)(B)(*2*) corrected 1817
(c)(i) and (ii)(B) corrected 49305
216.307 Removed 34122
219 Regulation at 61 FR 39900 confirmed 34120
219.301 (b) revised 2613
219.302–70 (d) and (e) revised 2613
219.602—219.602–3 (Subpart 219.6) Heading revised 34122
219.602–3 (c)(i)(A) amended 34122
219.702 Regulation at 61 FR 39900 confirmed 34120
219.704 (b) amended **54346**
219.708 Regulation at 61 FR 39901 confirmed 34120
219.808 Removed 34122
219.808–1 Removed 34122
219.811 Removed 34122
219.811–1 Removed 34122
219.811–3 Removed 34122
219.1005 (a) introductory text removed 34122
219.1006 (b)(2) revised 34122
222.7200—222.7201 (Subpart 222.72) Added 34122
224.202 Redesignated as 224.203 34122
224.203 Redesignated from 224.202 34122
225.202 (b) redesignated as (a)(3) 34122
225.205 Removed 34122
225.205–70 Removed 34122
225.212–7001 Amended **58489**
225.225–7017 Removed **58489**
225.225–7040 Removed **58489**

NOTE: **Boldface page numbers indicate 1996 changes.**

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225.403 Regulation at 61 FR 37841 confirmed 34120
(c) and (d)(1)(A) redesignated as (b) and (c)(1)(A) 34122
225.403–70 Amended 2615
Regulation at 61 FR 37841 confirmed 34120
225.603 (1)(iii)(C)(*2*) revised 2613
225.872–1 (d) added; interim 34122
225.872–2 (a)(3) revised; interim 34123
225.971 Added 34123
225.972 Added 34123
225.7000—225.7023–3 (Subpart 225.70) Heading revised 34123
225.7000 (a) revised; interim 2856
Regulation at 62 FR 2856 confirmed 34120
225.7002–1 (a) introductory text, (7) and (9) revised; interim 5780
Regulation at 62 FR 5780 confirmed; (a)(9) revised 47154
Correctly designated 49305
225.7002–2 (e) and (j) revised; interim 5780
Regulation at 62 FR 5780 confirmed; (j) revised 47154
225.7003 Added; interim 2856
Regulation at 62 FR 2856 confirmed 34120
225.7004 Removed **58489**
Added; interim 2857
Regulation at 62 FR 2857 confirmed 34120
225.7004–1 Removed **58489**
225.7004–2 Removed **58489**
225.7004–3 Removed **58489**
225.7004–4 Removed **58489**
225.7004–5 Removed **58489**
225.7004–6 Removed **58489**
225.7005 Added **58489**
(a)(3) revised 2616
Revised; interim 34123
Corrected 44225
225.7007–1 Revised; interim 34123
225.7007–3 Revised; interim 34123
225.7007–4 Revised **58489**
Revised; interim 34123
225.7009 Removed 34123
225.7010–1 Introductory text and (a) revised; interim 34123
225.7010–2 Revised; interim 34123
225.7010–3 Revised **58489**
Revised; interim 34123
225.7013 Removed 34123
225.7013–1 Removed 34123
225.7013–2 Removed 34123
225.7016–1 Revised; interim 34123
225.7016–2 Revised; interim 34124
225.7016–3 Revised **58489**
Revised; interim 34124
225.7019–1 (b) revised **58489**
(a) revised; interim 34124
225.7019–3 (a)(1)(iv) revised 2616
(a)(1)(iv) revised; interim; (a)(2) and (3) redesignated as (a)(3) and (4); new (a)(2) added 34124
225.7020 Removed 34124
225.7020–1 Removed 34124
225.7020–2 Removed 34124
225.7022–1 (b) revised; interim 34124
225.7022–2 Revised; interim 34124
225.7022–3 Revised **58489**
Revised; interim 34124
225.7100—225.7103–3 (Subpart 225.71) Revised; interim 34124
225.7302 (a)(1) removed; (a)(2) through (5) redesignated as (a)(1) through (4); interim 2617
225.7303–4 Revised; interim 2617
225.7307 Revised 34125
225.7307–1 Removed 34125
225.7307–2 Removed 34125
225.7308 (a) revised; interim 2617
226.7005 (b) introductory text and (1) revised 2613
226.7008 (b) amended 2613
227.676 Added 34125
227.7004 (a)(6) amended 2613
227.7103–6 (e)(3) amended 2613
227.7104 (e)(5) amended 2614
228.370 (f) added 34125
229.101 (d)(i), (ii) and (iii) redesignated as (d)(iii), (iv) and (v); new (d)(i), new (ii) and (vi) added 34125
229.402—229.402–70 (Subpart 229.4) Added 34125
229.7000—229.7002–4 (Subpart 229.70) Added 34125
231.205–6 (f)(1) revised; interim **58490**
(a)(2)(i) and (ii) redesignated as (a)(2)(i)(A) and (B); new (a)(2)(ii) added; interim **65479**
Regulations at 61 FR 36306, 58490 and 65479 confirmed 34120
231.205–22 Revised 47155
231.205–70 (a) revised; (c)(3) and (d)(10) added; interim **64635**
Regulation at 61 FR 64635 confirmed 34120
(c)(3)(ii) corrected 49304
231.303 Regulation at 61 FR 36306 confirmed 34120
(4) added 47155
231.603 Regulation at 61 FR 36306 confirmed 34120
Existing text designated as (1); (2) added 47155
231.703 Regulation at 61 FR 36306 confirmed 34120
Existing text designated as (1); (2) added 47155
232.502–1–71 (b)(3) revised 40473
232.806 Revised 34126
233.214 Redesignated as 233.215 34126
233.215 Redesignated from 233.214 34126
233.215–70 Added 34126
233.7000—233.7001 (Subpart 233.70) Removed 2614
234.003 Revised 34126
234.005–70 Revised; interim 9991
234.005–71 Added; interim 9991
(b) corrected 11953, 49305
235.006 (b)(1)(C)(*1*)(*iii*) amended 34126
235.010 (b) amended 34126
235.7001 (a) removed; (b) and (c) redesignated as (a) and (b) 16100
235.7002 (a) introductory text, (b) and (d) revised 16100
235.7003 Removed 16100
235.7005 Heading and introductory text revised 16100
235.7006 Revised 16100
(d) amended; interim 37147
Exhibit corrected 49305
236.102 (4) added; interim 2857
Regulation at 62 FR 2857 confirmed 34120
236.274 Introductory text, (a), (b) introductory text and (1) through (6) redesignated as (b) introductory text, (1), (2) introductory text and (i) through (viii); new (a) added; interim 2856
Regulation at 62 FR 2856 confirmed 34120
(b)(2)(viii) revised 34127
236.570 (c) added; interim 2856
Regulation at 62 FR 2856 confirmed 34120
(d) added 34127
236.602–70 Added; interim 2857
Regulation at 62 FR 2858 confirmed 34120
236.609–70 Heading revised; (a) introductory text, (1), (2) and (b) redesignated as (a)(1) introductory text, (i), (ii) and (2); new (b) added; interim 2858
Regulation at 62 FR 2858 confirmed 34120
Heading revised 34127
237.7102 (a) and (b) amended 34127
239 Heading revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.001 Removed; interim 1059
Regulation at 62 FR 1059 confirmed 34120
239.002 Removed; interim 1059
Regulation at 62 FR 1059 confirmed 34120
239.7000—239.7003 (Subpart 239.70) Revised; interim 1059
Regulation at 62 FR 1059 confirmed 34120
239.7003 (f)(1) amended 34127
(f)(2)(iv) corrected 49305
239.7102–3 (a) designation and (b) removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
Revised 34127
239.7201 Removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7202 (a) and (b) revised; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7300 Revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7301 (a) revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7302 (a), (b) introductory text and (2) revised; interim 1060
(b) introductory text and (1) revised; interim 9376
Regulations at 62 FR 1060 and 9376 confirmed 34120
(b)(2)(i) revised 34127
239.7303 Revised; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7304 (c) revised; interim 1060

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Removed; interim 9376
Regulations at 62 FR 1060 and 9376 confirmed 34120
239.7305 Removed; interim 9376
Regulation at 62 FR 9376 confirmed 34120
239.7400 Revised; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7402 (b)(4) amended; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7406 Revised 40473
239.7411 (a)(7) amended; (a)(8) and (9) removed 40473
239.7500 Amended 34127
239.7501 Revised; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7501–1 Removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239.7501–2 Removed; interim 1060
Regulation at 62 FR 1060 confirmed 34120
239 Table 39–1 removed; interim 9376
Regulation at 62 FR 9376 confirmed 34120
242.101 (d)(i) introductory text and (ii) amended; (d)(i)(A) revised 34127
242.102 (b)(ii) introductory text amended 34127
242.302 (a)(41) revised; interim 9991
242.302 (a)(S–70) added; interim 44224
242.1107–70 Revised; interim 9991
Heading and (a) corrected 11953
Correctly designated; (a) corrected 49305
242.1404–2–70 Revised 34127
242.7000—242.7004 (Subpart 242.70) Removed 34127
243.105 Regulation at 61 FR 25408 confirmed 34130
243.204–70 Added; interim 37147
243.205–72 Added; interim 37147
244.403 (Subpart 244.4) Added; interim 5780
Regulation at 62 FR 5780 confirmed 47154
Corrected 49305
245.302–1 (a)(4)(A)(*2*), (C) introductory text and (b)(1) revised 34127
245.407 (a)(ii) amended 34127
245.505–6 (2) amended 34127
245.608–5 (a)(2)(B)(*2*) and (*4*) revised; (d) removed 34128
245.608–71 (a) revised; (b)(1) introductory text, (2)(i), (ii)(C), (3)(iii), (c) and (d) amended 34128
245.608–72 Added 34128
245.7206 Introductory text and (j)(2) amended 34128
246.710 (4) added 34128
249.102 Removed 67952
249.110 Table 49–1 amended 34128
249.7003 Revised; interim 64637
(c) corrected 66077
Regulation at 61 FR 64637 confirmed 34120
(b)(2) corrected 49304
252.203–7000 Removed 2612
252.203–7001 Amended 34128
252.209–7003 Removed 34128
252.209–7004 Removed 34128
252.211–7005 Added; interim 44224
252.212–7001 Amended 58489
Amended 2614
Amended; interim 2617, 5780, 37147
Regulation at 62 FR 5780 confirmed 47154
252.215–7000 Introductory text amended 40473
252.215–7002 Amended 40473
252.216–7000 Amended 2614, 40473
252.216–7001 Amended 2614, 40473
252.216–7002 Removed 34128
252.216–7003 Added 34128
252.217–7005 Amended 2614
252.219–7000 Amended 2614
Amended 34128
252.219–7004 Regulation at 61 FR 39901 confirmed 34120
Amended 34129
252.219–7006 Amended 34129
252.219–7007 Removed 34129
252.222–7002 Added 34129
252.222–7003 Added 34129
252.222–7004 Added 34129
252.225–7004 Removed 34129
252.225–7006 Revised 34129
252.225–7007 Regulation at 61 FR 37842 confirmed 34120
Revised 34130
Amended 37148

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252.225–7009 Amended 2614
252.225–7010 Amended 2614
252.225–7012 Amended; interim 5780
Regulation at 62 FR 5780 confirmed; amended 47154
252.225–7014 Amended; interim 5780
Regulation at 62 FR 5780 confirmed; amended 47154
252.225–7016 Amended 34131
252.225–7017 Removed 58489
252.225–7018 Amended 2614
252.225–7022 Revised 34131
252.225–7025 Revised 34131
252.225–7027 Revised; interim 2617
252.225–7029 Revised; interim 34131
252.225–7034 Removed 34131
252.225–7037 Amended 2614
252.225–7040 Removed 58489
252.225–7041 Added 34132
252.225–7042 Added 34132
252.226–7001 Amended; heading revised 2614
252.227–7030 Introductory text amended 34132
252.227–7036 Revised 2614
252.228–7006 Added 34132
Correctly designated 49305
252.229–7000 Added 34132
252.229–7001 Added 34132
252.229–7002 Added 34133
252.229–7003 Added 34133
(d)(1) corrected 49305
252.229–7004 Added 34133
252.229–7005 Added 34133
252.229–7006 Added 34134
252.229–7007 Added 34134
252.229–7008 Added 34134
252.229–7009 Added 34134
252.229–7010 Added 34134
252.232–7008 Added 34134
252.233–7000 Removed 2614
252.233–7001 Added 34135
252.234–7000 Revised; interim 9991
Amended 34135
(a) corrected 49305
252.234–7001 Revised; interim 9992
Amended 34135
Corrected 49305
252.236–7003 Amended 2614
252.236–7006 Amended 2614
252.236–7010 Added; interim 2857
Regulation at 62 FR 2857 confirmed 34120
252.236–7011 Added; interim 2858
Regulation at 62 FR 2858 confirmed 34120
252.239–7006 Amended 40473
252.239–7007 Amended 2614
252.239–7009 Removed 40473
252.239–7010 Removed 40473
252.242–7002 Removed 34135
252.242–7003 Introductory text amended 34135
252.242–7005 Amended 34135
Revised; interim 9992
252.242–7006 Amended 34135
Added; interim 9992
252.243–7000 Amended 40473
252.243–7002 Added; interim 37147
Corrected 49306
252.244–7000 Added; interim 5780
Regulation at 62 FR 5780 confirmed 47154
252.246–7002 Added 34135
(c) corrected 49306
252.247–7001 Amended 2615
252.249–7001 Removed 67952
252.249–7002 Revised; interim 64637
Regulation at 61 FR 64637 confirmed 34120
253.204–70 (b)(2) heading, (13)(i)(E) introductory text, (F), (iv)(C), (c)(2), (4)(iv)(A), (viii)(B)(*8*)(*i*), (d)(5)(i)(J), (ii)(B), (iv)(E)(*1*) and (x)(B)(*14*) 34135
(b)(10)(i), (13)(i)(C), (G), (c)(2), (4)(xi), (d)(5)(vii)(A) and (e)(4) revised; (b)(14), (d)(5)(vii)(D) and (e)(5) added 44222
(b)(5)(ii)(A) revised 48182
(b)(3)(ii) and (13)(i)(D) correctly designated; (b)(5)(i), (ii)(C), (6)(i), (iv) introductory text, (B)(*1*), (*2*), (C), (12)(i) introductory text, (C), (13)(i)(B)(*5*), (iv)(G), (c)(4)(iii) introductory text, (B)(*3*), (viii)(B)(*3*), (xii)(B), (F), (d)(3), (5)(i)(I), (iii)(E) corrected 49304
253.204–71 (c)(1) amended; (d)(6)(i)(B) revised 34136
(a)(3) revised 44223
(c)(1), (e)(2)(i)(B), (g)(2)(ii)(A), (B)(*2*), (3) and (4) corrected 49304
253 Note amended 34136
Chapter 2 Appendix I amended 54346
Appendix G amended 34136
Appendix I amended 34141

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TITLE 48

Chapter 4—Department of Agriculture (Parts 400—499)

Chapter 4 Revised 53646

Chapter 5—General Services Administration (Parts 500—599)

Chapter 5 Compliance guide 44526
501.105 Regulation at 61 FR 6164 confirmed 44521
501.402—501.404 (Subpart 501.4) Revised 51374
504.803 Regulation at 61 FR 6165 confirmed 44521
507.103 Regulation at 61 FR 6165 confirmed 44521
510 Regulation at 61 FR 6165 confirmed 44251
510.001 Regulation at 61 FR 6165 confirmed 44521
510.002 Regulation at 61 FR 6165 confirmed 44251
510.004 Regulation at 61 FR 6165 confirmed 44521
510.004–70 Regulation at 61 FR 6165 confirmed 44521
510.004–71 Regulation at 61 FR 6165 confirmed 44521
510.007 Regulation at 61 FR 6165 confirmed 44521
510.007–70 Regulation at 61 FR 6165 confirmed 44521
510.011 Regulation at 61 FR 6165 confirmed 44251
510.070 Regulation at 61 FR 6165 confirmed 44521
510.070–1 Regulation at 61 FR 6165 confirmed 44521
510.070–2 Regulation at 61 FR 6165 confirmed 44521
510.070–3 Regulation at 61 FR 6165 confirmed 44521
510.070–4 Regulation at 61 FR 6165 confirmed 44521
510.071 Regulation at 61 FR 6165 confirmed 44521
511 Regulation at 61 FR 6165 confirmed 44521
511.001 Regulation at 61 FR 6165 confirmed 44251
511.002 Regulation at 61 FR 6165 confirmed 44251
511.003 Regulation at 61 FR 6165 confirmed 44521
511.070 Regulation at 61 FR 6165 confirmed 44521
511.103—511.170 (Subpart 511.1) Regulation at 61 FR 6165 confirmed 44521
511.204 (Subpart 511.2) Regulation at 61 FR 6166 confirmed 44251
511.204 Regulation at 61 FR 6165 confirmed 44251
511.401—511.404 (Subpart 511.4) Regulation at 61 FR 6166 confirmed 44251
511.401 Regulation at 61 FR 6166 confirmed 44521
511.404 Regulation at 61 FR 6166 confirmed 44521
512 Regulation at 61 FR 6166 confirmed 44521
512.104—512.104 (Subpart 512.1) Regulation at 61 FR 6166 confirmed 44521
512.101 Regulation at 61 FR 6166 confirmed 44521
512.104 Regulation at 61 FR 6166 confirmed 44521
512.201—512.209 (Subpart 512.2) Regulation at 61 FR 6166 confirmed 44521
512.301—512.303 (Subpart 512.3) Regulation at 61 FR 6166 confirmed 44521
514.201–70 Regulation at 61 FR 6167 confirmed 44521
515.106–70 Revised 44521
515.412 Regulation at 61 FR 6167 confirmed 44521
515.414–70 Regulation at 61 FR 6166 confirmed 44521
515.804 Regulation at 61 FR 6167 confirmed 44521
515.804–3 Regulation at 61 FR 6167 confirmed 44521
515.804–6 Regulation at 61 FR 6167 confirmed 44521
Revised 44522
538 Regulation at 61 FR 6168 confirmed 44521
538.000 Regulation at 61 FR 6169 confirmed 44521
538.270 Regulation at 61 FR 6169 confirmed 44521
Revised; interim 44523
538.271 Regulation at 61 FR 6169 confirmed 44521
(a) revised 44524
539 Regulation at 61 FR 6169 confirmed 44521

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539.000 Regulation at 61 FR 6169 confirmed 44521
543.205 Regulation at 61 FR 6169 confirmed 44521
(c) revised 44524
546.710 Regulation at 61 FR 6169 confirmed 44521
552.209–73 Regulation at 61 FR 6169 confirmed 44521
552.210–70 Regulation at 61 FR 6169 confirmed 44521
552.210–71 Regulation at 61 FR 6169 confirmed 44521
552.210–72 Regulation at 61 FR 6169 confirmed 44521
552.210–73 Regulation at 61 FR 6169 confirmed 44521
552.210–74 Regulation at 61 FR 6169 confirmed 44521
552.210–75 Regulation at 61 FR 6169 confirmed 44521
552.210–76 Regulation at 61 FR 6170 confirmed 44521
552.210–77 Regulation at 61 FR 6170 confirmed 44521
552.210–78 Regulation at 61 FR 6170 confirmed 44521
552.210–79 Regulation at 61 FR 6170 confirmed 44521
552.211–1 Regulation at 61 FR 6170 confirmed 44521
552.211–71 Regulation at 61 FR 6169 confirmed 44521
552.211–72 Regulation at 61 FR 6169 confirmed 44521
552.211–73 Regulation at 61 FR 6169 confirmed 44521
552.211–74 Regulation at 61 FR 6170 confirmed 44521
552.211–75 Regulation at 61 FR 6170 confirmed 44521
552.211–76 Regulation at 61 FR 6170 confirmed 44521
552.211–77 Regulation at 61 FR 6170 confirmed 44521
552.211–78 Regulation at 61 FR 6170 confirmed 44521
552.211–79 Regulation at 61 FR 6169 confirmed 44521
552.211–80 Regulation at 61 FR 6169 confirmed 44521
552.211–81 Regulation at 61 FR 6170 confirmed 44521
552.211–82 Regulation at 61 FR 6170 confirmed 44521
552.211–83 Regulation at 61 FR 6170 confirmed 44521
552.211–84 Regulation at 61 FR 6170 confirmed 44521
552.212–1 Regulation at 61 FR 6170 confirmed 44521
552.212–70 Regulation at 61 FR 6170 confirmed 44521
Revised 44524
552.212–71 Regulations at 61 FR 6170 and 6171 confirmed 44521
Amended 44524
552.212–72 Regulations at 61 FR 6170 and 6171 confirmed 44521
552.212–73 Regulation at 61 FR 6171 confirmed 44521
Revised 44524
552.212–74 Regulation at 61 FR 6170 confirmed 44521
552.215–70 Regulation at 61 FR 6172 confirmed 44521
552.215–71 Regulation at 61 FR 6172 confirmed 44521
Revised 44525
552.215–72 Regulation at 61 FR 6172 confirmed 44251
Revised 44525
552.216–71 Regulation at 61 FR 6172 confirmed 44521
552.238–72 Amended 38476
552.238–74 Regulation at 61 FR 6172 confirmed 44521
552.238–77 Amended 38476
552.243–72 Regulation at 61 FR 6172 confirmed 44521
mended 44425
552.246–73 Regulation at 61 FR 6173 confirmed 44521
552.253–70 Regulation at 61 FR 6173 confirmed 44521
552.308–2 Regulation at 61 FR 6173 confirmed 44521
552.602–2 Regulation at 61 FR 6173 confirmed 44521
570.106 (c) introductory text, (1), (2) and (3) revised 5166
570.308–2 (e) revised 44425

Chapter 7—Agency for International Development (Parts 700—799)

Chapter 7 Nomenclature change 40466
Nomenclature correction 45334
701.105 (a) table amended 40466
701.373 (b) amended 40466

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701.376–3 Revised 40466
701.601 (a) and (b) amended; (b)(3) removed; (b)(4) and (5) redesignated as (b)(3) and (4) 40466
701.602–1 Added 40466
701.704 Amended 40466
702.170–3 (a) amended 40466
702.170–10 (a)(1) amended; (a)(1)(ii) removed; (a)(1)(iii) and (iv) redesignated as (a)(1)(ii) and (iii) 40466
702.170–13 (b) corrected **51234**
702.170–15 Amended 40466
702.170–17 Added 40466
703.104–11 Added 40467
703.403 (Subpart 703.4) Removed 40467
704 Technical correction
704.404 Amended 40467
704.803 Removed 40467
705.002 Existing text designated as (a); (b) added 40467
705.207 (a) amended 40467
706.302–5 Amended 40467
706.302–70 (c)(4) revised 40467
706.302–71 (a)(2) and (b) corrected **51235**
(a) revised; (b)(1) amended 40467
708 Removed 40467
709.402 Removed 40467
709.403 Added 40467
709.503 Amended 40467
711.002–70 Redesignated from 711.022–70; (b)(1) and (3) amended 40467
711.002–71 Amended 40466
Corrected 45334
711.022–70 Redesignated as 711.002–70 40467
715 Technical correction **51235**
715.413–22 (b) revised; (c) amended 40467
Corrected 47532
715.613–71 (a), (b) and (c) revised; (d) and (e) removed; (f) redesignated as (d); new (d)(3)(i) and new (4) amended 40467
(c)(1) correctly revised 45334
(c)(2) correctly revised 47532
716 Technical correction **51235**
719.270 Amended 40466
(d) amended; (k) removed 40468
719.271–2 Amended 40466
(b)(8) amended 40468
719.271–3 (j) amended 40468
719.271–6 Amended 40466
(a) introductory text and (3) amended 40468
722.103 Corrected **53996**
722.103–2 Correctly redesignated from 722.103–71 ..... **52497**
722.103–4 Correctly redesignated from 722.103–723 ..... **52497**
722.103–70 Correctly removed **51235**
722.103–71 Correctly redesignated as 722.103–2 ..... **52497**
722.103–72 Correctly redesignated as 722.103–4 ..... **52497**
722.170 Amended 40466
Corrected 45334
722.805–70 (d)(3) amended 40468
725.701 Revised 40468
725.703 Amended 40466
725.704 Revised 40468
725.705 Revised 40468
725.706 (a) revised 40468
726.301—726.302 (Subpart 726.3) Removed **51235**
726.302 Correctly redesignated as 726.7008 ..... **51235**
726.7001 Amended 40468
726.7003 Introductory text and (c) amended 40468
726.7005 Amended 40468
726.7006 (a) amended 40468
726.7007 (a) and (b) amended 40468
(b) corrected 47532
726.7008 Correctly redesignated from 726.302 ..... **51235**
728.305–70 Amended 40466
728.307–2 Amended 40466
Corrected 45334
728.309 Amended 40466
Corrected 45334
728.313 Amended 40466
Corrected 45334
731.205–6 (d) amended 40468
731.371 (b)(1) amended 40469
732.401 (a) amended 40469
733.103–71 (b) and (c) corrected **51235**
733.103–72 (b) correctly revised **51235**
733.270–1 Correctly designated **51235**
733.270–2 Correctly designated **51235**
(e) amended 40469
737 Technical correction **51235**
750.7101 (a) amended 40469
750.7109–3 Amended 40469
750.7110 Revised 40469
750.7110–1 Revised 40469
750.7110–2 Revised 40469
750.7110–3 Revised 40469
750.7110–4 Revised 40469

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750.7110–5 Revised 40469
Corrected 47532
752.200 Amended 40469
752.204–2 Amended 40469
752.209–70 Removed 40469
752.211–70 Amended 40466
Corrected 45334
752.219–8 Amended 40469
752.225–9 Amended 40470
752.225–70 Added 40470
Corrected 45334
752.225–71 Added 40470
Corrected 45334
752.226–1 Introductory text amended 40470
752.226–2 Amended 40470
752.226–3 Introductory text amended 40470
752.228–7 Amended 40470
752.245–70 Amended 40470
752.245–71 Introductory text revised 40470
752.7001 Revised 40470
Corrected 45334, 47532
752.7002 Amended 40466
Corrected 45334
752.7003 Amended 40466
Corrected 45334
752.7004 Amended 40466
Revised 40470
Corrected 45334
752.7007 Amended 40470
752.7008 Introductory text amended 40470
752.7009 Amended 40466
752.7010 Introductory text amended 40470
752.7015 Amended 40471
Corrected 45334
752.7017 Removed 40471
752.7027 Amended 40471
752.7028 Corrected **51235**
752.7029 Introductory text amended 40471
752.7033 Amended 40471
Corrected 45334
753.107 Amended 40471
Chapter 7 Appendix D revised 39453
Appendixes A, C, G and H removed 40471
Appendix J revised 42929

Chapter 8—Department of Veterans Affairs (Parts 800—899)

807 Authority citation revised 18300
807.302 Removed 18300
807.304–72 Removed 18300
837 Authority citation revised **52709**
837.403 (Subpart 837.4) Added **52709**
852 Authority citation revised 18300
852.207–71 Removed 18300
852.207–72 Removed 18300
852.237–7 Added **52710**

Chapter 9—Department of Energy (Parts 900—999)

901.105 Amended (OMB numbers) 34861
904.601–71 (Subpart 904.6) Removed 2312
904.702 (b) amended 2312
904.7003 (d) revised 42073
904.7005 (a) revised 42074
904.7103 (a) revised 42074
906.303–70 Removed 2312
908.7121 (b) amended 2312
909.104–1 (h) revised 42074
909.503—909.507–2 (Subpart 909.5) Revised 40751
915.401 Amended 2312
917.600 Amended 34861
917.601 Added 34861
917.602 Regulation at 61 FR 32586 confirmed 34873
917.605 Regulation at 61 FR 32586 confirmed 34873
923.570–2 (a) revised 42074
923.570–3 (b)(2) and (3) revised; (b)(4) removed 42074
923.7002 (d) amended 2312
925 Authority citation revised 2311
926.7007 (d) revised 42074
926.7101—926.7104 (Subpart 926.71) Added 34861
945.608–2 (b)(1)(ii) revised 2312
950.7101 (c)(2) removed; (c)(1) redesignated as (c) 34861
952 Authority citation revised 2311, 34862
952.202–1 Amended; (b) introductory text revised 2312
952.204–2 Amended 2312, 42074
952.204–71 Amended 2312
952.204–72 Amended 2312
952.204–73 Amended 2312, 42074
952.209–8 Added 40752
952.209–70 Removed 40752
952.209–72 Revised 40752
952.211–72 Removed 2312
952.211–73 Removed 2312
952.216–15 Amended 2312
952.223–71 Heading revised 34862

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952.223–74 Removed 34862
952.223–75 Introductory text revised 34862
952.224–70 Amended 2312
952.226–73 Amended 42074
952.226–74 Added 34862
952.227–13 Amended 42074
952.227–75 Amended 2312
952.227–76 Amended 2312
952.227–77 Amended 2312
952.227–78 Amended 2312
952.227–79 Amended 2312
952.227–80 Removed 42075
952.227–81 Removed 42075
952.227–82 Amended 2312
952.227–83 Introductory text revised 42075
952.235–70 Amended 2312
952.236–71 Amended 2312
952.247–70 Amended 2312
952.249–70 Amended 2312
970.0001 Regulation at 61 FR 32586 confirmed 34873
970.0404–3 (a) and (b) amended 2312
970.0406 Removed 2312
970.0407 Removed 34862
970.0407–1 Added 34862
970.0407–2 Added 34862
970.0407–3 Added 34862
970.0470 Added 34862
970.0470–1 Added 34862
970.0470–2 Added 34862
970.0803 Redesignated as 970.4100 2312
970.0905 Revised 40753
970.1001 Revised 34862
970.1002 Heading revised 34863
970.1507 Added 34863
970.1507–1 Added 34863
970.1507–2 Added 34863
970.1507–3 Added 34864
970.1509–2 (a) revised 34864
970.17 Regulation at 61 FR 32586 confirmed 34873
970.1702–1 Regulation at 61 FR 32586 confirmed 34873
970.1702–2 Regulation at 61 FR 32587 confirmed 34873
970.2273 (a)(3) through (6) and (c)(1) introductory text amended 2312
970.2275 Added 34864
970.2275–1 Added 34864
970.2275–2 Added 34864
970.2302–2 (c), (d) and (e) removed 34864
970.2305–4 (a) revised 42075
970.2305–5 (b)(2) revised 42075
970.2601 Existing text designated as (a); (b) added 34864
970.2601–1 Added 34864
970.2601–2 Added 34864
970.2830 Added 34864
970.2903 Revised 2312
970.3101–3 (a)(1) revised 34865
970.3102–21 Revised 34865
970.3102–22 Removed 34865
970.3103 (d) added 34865
970.4100 (Subpart 970.41) Heading added 2312
970.4100 Redesignated from 970.0803; (a) and (c) amended; (d) removed 2312
970.4501 (Subpart 970.45) Added 34865
970.5204–2 Revised 34865
970.5204–12 Amended 2313
970.5204–13 Amended; introductory text revised 34866
970.5204–14 Amended; introductory text revised 34866
970.5204–15 Amended 2313
970.5204–16 Amended 2313
Amended; introductory text revised 34867
970.5204–17 Amended 2313
970.5204–18 Amended 2313
Removed 34867
970.5204–20 Amended 2313
970.5204–21 Amended 2313
Amended; introductory text revised 34867
970.5204–23 Introductory text amended 2313
970.5204–24 Amended 2313
970.5204–26 Amended 2313
Removed 34868
970.5204–31 Amended 2313
Revised 34868
970.5204–32 (a) and (b) amended 2313
Removed 34869
970.5204–33 (a) and (b) amended 2313
970.5204–35 Amended 2313
970.5204–38 Amended 2313
970.5204–41 Amended 2313
Removed 34869
970.5204–43 Amended 2313
970.5204–44 (b)(11) amended 2313
(b)(15) revised 40753
970.5204–45 Amended 2313
970.5204–50 Removed 2313

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970.5204–52 Revised 2313
970.5204–54 Amended 2313
970.5204–55 Amended 2313
Removed 34869
970.5204–56 Amended 2313
Removed 34869
970.5204–57 Amended 2313, 42075
970.5204–60 Amended 2313
970.5204–61 Amended 2313
Amended; introductory text revised 34869
970.5204–62 Removed 34869
970.5204–73 Regulation at 61 FR 32587 confirmed 34873
970.5204–74 Regulation at 61 FR 32587 confirmed 34873
970.5204–75 Added 34869
970.5204–76 Added 34870
970.5204–77 Added 34870
970.5204–78 Added 34870
970.5204–79 Added 34871
970.5204–80 Added 34871
970.7105 (a)(3) amended 2313

Chapter 12—Department of Transportation (Parts 1200—1299)

1201.301–70 (a)(4) removed; (a)(5) redesignated as (a)(4); (b) introductory text amended 26419
1201.304 (a) revised 26420
1202.1 (f) and (g) revised; (i)(7) amended 26420
1203.405 Redesignated from 1203.409 26420
1203.409 Redesignated as 1203.405 26420
1211.104—1211.104–70 (Subpart 1211.1) Added 26420
1211.204–70 (Subpart 1211.2) Added 26420
1212 Clarification 53677
Correctly removed 54490
1213 Clarification 53677
1214.303 (b) amended 26420
1237.104—1237.104–90 (Subpart 1237.1) Added 26420
1246.701–70 Amended 26420
1252.219–70 (b) removed; (c) redesignated as (b) 26420
1253.303 (Subpart 1253.3) Appendix amended 26421

Chapter 14—Department of the Interior (Parts 1400—1499)

1401.106 (Subpart 1401.1) Revised 18054
1401.303 (Subpart 1401.3) Revised 18054
1401.601—1401.670–4 (Subpart 1401.6) Removed 18054

Chapter 15—Environmental Protection Agency (Parts 1500—1599)

1501.103 Redesignated as 1501.104 33572
1501.104 Redesignated as 1501.105; new 1501.104 redesignated from 1501.103 and revised 33572
1501.104–1 Redesignated as 1501.105–1 33572
1501.104–2 Redesignated as 1501.105–2 33572
1501.104–3 Redesignated as 1501.105–3 33572
1501.105 Redesignated from 1501.104 33572
1501.105–1 Redesignated from 1501.104–1 33572
1501.105–2 Redesignated from 1501.104–2 and amended 33572
1501.105–3 Redesignated from 1501.104–3 33572
1501.602–3 (d)(1)(v) amended 57337
(a) removed; (b) through (f) redesignated as (a) through (e) 33572
1503.905 (Subpart 1503.9) Added 57337
1505.203 Amended 33572
1505.405 (Subpart 1505.4) Removed 55118
1509.404 Revised 57337
1509.507–1 (b) amended 57337
(b) revised 33572
1509.507–2 (a), (b) and (c) amended; (d) revised 57337
1510 Removed 57337
1511 Added 57337
1512 Removed 57338
1513 Revised 57338
1513.403 Redesignated from 1515.404 33572
1513.404 Redesignated as 1515.403 33572
1513.505 Redesignated from 1513.505–2 33572
1513.505–2 Redesignated as 1513.505 33572
1514.000 Removed 33572
1514.201–6 (a) and (b) designation removed 55118
1514.205 Added 37148

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1514.205–5 Removed 33572
1514.413 (c) removed; (d) through (g) redesignated as (c) through (f) 33572
1515.600 Removed 33572
1515.603 Removed 33572
1515.604 (a) amended; (d) removed 37148
1515.608 (a)(1) and (2) revised 33572
1515.609 (a) revised; (b) removed; (c) redesignated as (b); new (b)(1) and new (2) revised 33572
1515.611 Removed 33573
1515.612 (a) amended; (a)(1)(vi) and (vii) removed; (a)(2) introductory text, (iii) and (c) revised; (a)(3) added 37148
1516.000 Removed 33573
1516.307 (c) amended **57338**
1516.404–270 Removed 33573
1516.404–271 Removed 33573
1517.200 Removed 33573
1519 Heading amended; nomenclature change **57338**
1519.000 Removed 33573
1519.201–1 Redesignated as 1519.201–71 ..... **57339**
1519.201–2 Redesignated as 1519.201–72 ..... **57339**
1519.201–71 Redesignated from 1519.201–1 ..... **57339**
1519.201–72 Redesignated from 1519.201–2; (b) and (c)(3) amended **57339**
1522.000 Removed 33573
1527.409 Amended **57339**
1532.000 Removed 33573
1532.201 (Subpart 1532.2) Added **57339**
1533.000 Removed 33573
1533.103–70 Removed **57339**
1535.007 Revised 38477
1535.007–70 (c) amended **57339**
1537.200—1537.205 (Subpart 1537.2) Removed **55118**
1542.000 Removed 33573
1542.700 Removed 33573
1542.703–2 Added **57339**
1542.705–70 Revised 33573
1545.000 Removed 33573
1546.000 Removed 33573
1548.102 (Subpart 1548.1) Removed **55118**
1552.209–70 Introductory text revised; (a), (b) and (c) removed 33573
1552.209–71 (c) revised **57339**
1552.209–74 Amended 5348
1552.209–75 Redesignated from 1552.210–80 ..... **57339**
Introductory text amended 33573
1552.210–70 Redesignated as 1552.211–70 ..... **57339**
1552.210–72 Redesignated as 1552.211–72 ..... **57339**
1552.210–75 Redesignated as 1552.211–75 ..... **57339**
1552.210–76 Redesignated as 1552.211–76 ..... **57339**
1552.210–77 Redesignated as 1552.211–77 ..... **57339**
1552.210–78 Redesignated as 1552.211–78 ..... **57339**
1552.210–79 Redesignated as 1552.211–79 ..... **57339**
1552.210–80 Redesignated as 1552.209–75 ..... **57339**
1552.211–70 Redesignated from 1552.210–70 ..... **57339**
Introductory text amended 33573
1552.211–72 Redesignated from 1552.210–72 ..... **57339**
Introductory text amended 33573
1552.211–73 Redesignated from 1552.212–70 ..... **57339**
Introductory text amended 33573
1552.211–74 Redesignated from 1552.212–71 ..... **57339**
Introductory text amended 33573
1552.211–75 Redesignated from 1552.210–75 ..... **57339**
Introductory text amended 33573
1552.211–76 Redesignated from 1552.210–76 ..... **57339**
Introductory text amended 33573
1552.211–77 Redesignated from 1552.210–77 ..... **57339**
Introductory text amended 33573
1552.211–78 Redesignated from 1552.210–76; amended **57339**
Introductory text amended 33573
1552.211–79 Redesignated from 1552.210–79 ..... **57339**
Introductory text amended 33573
1552.212–70 Redesignated as 1552.211–73 ..... **57339**
1552.212–71 Redesignated as 1552.211–74 ..... **57339**
1552.214–70 Removed **55118**
1552.215–70 Amended **57339**
1552.217–73 Amended 37149
1552.217–74 Amended 37149
1552.235–72 Removed 38478

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1552.235–74 Removed 38478
1552.235–76 Amended **57339**
1552.235–77 Amended 38478
1552.235–78 Amended 38478

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

1602.170–1 Revised; eff. 10–10–97 47573
1602.170–2 (a) revised; eff. 10–10–97 47573
1602.170–5 Redesignated as 1602.170–6; new 1602.170–5 added; eff. 10–10–97 47574
1602.170–6 Redesignated as 1602.170–7; new 1602.170–6 redesignated from 1602.170–5; eff. 10–10–97 47574
1602.170–7 Redesignated as 1602.170–8; new 1602.170–7 redesignated from 1602.170–6; eff. 10–10–97 47574
1602.170–8 Redesignated as 1602.170–9; new 1602.170–8 redesignated from 1602.170–7; eff. 10–10–97 47574
1602.170–9 Redesignated as 1602.170–10; new 1602.170–9 redesignated from 1602.170–8 and revised; eff. 10–10–97 47574
1602.170–10 Redesignated as 1602.170–12; new 1602.170–10 redesignated from 1602.170–9; eff. 10–10–97 47574
1602.170–11 Redesignated as 1602.170–13; new 1602.170–11 added; eff. 10–10–97 47574
1602.170–12 Redesignated as 1602.170–14; new 1602.170–12 redesignated from 1602.170–10; eff. 10–10–97 47574
1602.170–13 Redesignated from 1602.170–11 and revised; eff. 10–10–97 47574
1602.170–14 Redesignated from 1602.170–12; eff. 10–10–97 47574
1603.701 Redesignated as 1603.7001; eff. 10–10–97 47574
1603.702 Redesignated as 1603.7002; eff. 10–10–97 47574
1603.703 Redesignated as 1603.7003; eff. 10–10–97 47574
1603.7001 Redesignated from 1603.701; eff. 10–10–97 47574
1603.7002 Redesignated from 1603.702; eff. 10–10–97 47574
1603.7003 Redesignated from 1603.703; eff. 10–10–97 47574
1604.705 Amended; eff. 10–10–97 47574
1615.802 Revised; eff. 10–10–97 47574
1615.804–70 Revised; eff. 10–10–97 47575
1615.804–71 Removed; eff. 10–10–97 47575
1615.804–72 Revised; eff. 10–10–97 47575
1615.805–70 (a) revised; eff. 10–10–97 47575
1616.102 Revised; eff. 10–10–97 47575
1616.270—1616.271 (Subpart 1616.2) Removed; eff. 10–10–97 47575
1616.7001—1616.7002 (Subpart 1616.70) Added; eff. 10–10–97 47575
1629 Added; eff. 10–10–97 47575
1631.205–75 (b) revised; eff. 10–10–97 47575
1643 Added; eff. 10–10–97 47575
1644.170 Revised; eff. 10–10–97 47575
1644.270 Revised; eff. 10–10–97 47576
1645 Added; eff. 10–10–97 47576
1649.101–71 Added; eff. 10–10–97 47576
1649.101–72 Added; eff. 10–10–97 47576
1652.000 Revised; eff. 10–10–97 47576
1652.203–70 Amended; eff. 10–10–97 47576
1652.204–70 Revised; eff. 10–10–97 47576
1652.204–72 Amended; eff. 10–10–97 47576
1652.215–70 Revised; eff. 10–10–97 47576
1652.215–71 Amended; eff. 10–10–97 47577
1652.216–70 Revised; eff. 10–10–97 47577
1652.216–71 Introductory text revised; eff. 10–10–97 47577
1652.229–70 Added; eff. 10–10–97 47577
1652.232–70 Amended; eff. 10–10–97 47578
1652.232–71 Amended; eff. 10–10–97 47578
1652.243–70 Added; eff. 10–10–97 47578
1652.244–70 Amended; eff. 10–10–97 47578
1652.245–70 Added; eff. 10–10–97 47578
1652.249–71 Added; eff. 10–10–97 47579
1652.249–72 Added; eff. 10–10–97 47579
1652.370 Amended; eff. 10–10–97 47580
Table corrected 50435

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1653 Table amended; eff. 10-10-97 47583

Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1803.101-1 Amended 14016
1803.101-2 Amended 14016
1803.104 Revised 36704
1803.104-3 Revised 36704
1803.104-5 (d)(1)(A) amended 14016
1803.104-10 Revised 36704
1803.470-3 Redesignated as 1803.470-4; new 1803.470-3 added 36705
1803.470-4 Redesignated from 1803.470-3 36705
1805.303-71 Heading, (a) introductory text and (3) revised 4466
1805.402 Revised 14016
1807.105 (b)(1) added 36705
1807.7000 (Subpart 1807.70) Added 36705
1809.106-3 (a) designation removed 36705
1812.301 (f)(i)(J) added 14017
1813 Revised 36705
1815 Revised; interim **52325**
Regulation at 61 FR 52325 confirmed 3464
Revised 3465
1815.508-70 Amended 36706
1815.605-71 Added 14017
1815.611 (d)(iii) amended 36706
1815.612 Added 14017
1815.612-70 (g) removed; (h) through (k) redesignated as (g) through (i) 14017
1815.804-1 (b)(2)(iii) removed 36706
1815.805-5 (a)(1)(E) added 36706
1815.807 (b)(ii) revised 4467
1815.1003 Redesignated as 1815.1004 36706
1815.1004 Redesignated from 1815.1003; introductory text amended 36706
1815.1004-70 Redesignated as 1815.1006-70 36706
1815.1006 Added 36706
1815.1006-70 Redesignated from 1815.1004-70; heading revised 36706
1816 Revised; interim **52338**
Regulation at 61 FR 52328 confirmed 3464
Revised 3478
1816.404 Redesignated as 1816.405 36706
1816.404-2 Redesignated as 1816.405-2 36706
1816.404-270 Redesignated as 1816.405-270 36706
1816.404-271 Redesignated as 1816.405-271 36706
1816.404-272 Redesignated as 1816.405-272 36706
1816.404-273 Redesignated as 1816.405-273 36706
1816.404-274 Redesignated as 1816.405-274 36706
1816.404-275 Redesignated as 1816.405-275 36706
1816.405 Redesignated as 1816.406; new 1816.405 redesignated from 1815.404 36706
1816.405-2 Redesignated from 1816.404-2 36706
1816.405-70 Redesignated as 1816.406-70 36706
1816.405-270 Redesignated from 1816.404-270; (b)(2)(iii) revised 36706
1816.405-271 Redesignated from 1816.404-271; (a) and (b) amended 36706
1816.405-272 Redesignated from 1816.404-272 36706
1816.405-273 Redesignated from 1816.404-273 36706
(c) amended; (e) added 36707
1816.405-274 Redesignated from 1816.404-274 36706
(d)(2) and (e) amended; (f) and (g) redesignated as (g) and (h); new (f) added 36707
1816.405-275 Redesignated from 1816.404-275 36706
(d) amended 36707
1816.406 Redesignated from 1815.406 36706
1816.406-70 Redesignated from 1815.406-70 36706
(a) and (b) amended 36707
1817 Revised **55753**
1819 Revised 36707
1819.7211 (b)(1) revised 14036
1822 Revised **55755**
1822.604-2 (c) redesignated as (b) 36713
1822.608 Removed 36713
1822.608-4 Removed 36713

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1823 Revised **55757**
1824 Revised **55758**
1824.202 Redesignated as 1824.203 36713
1824.203 Redesignated from 1824.202 36713
1825 Revised 36713
1827 Revised 36715
1828 Revised **55765**
1829 Revised **55767**
1830 Revised **55767**
1831 Revised **55768**
1831.205-18 Removed 24345
1831.205-670 Added 4467
1831.205-671 Added 4467
1832 Revised **55768**
1832.409-170 (5) redesignated as (e) 36721
1832.412 (a)(i) amended 36721
1832.903 Removed 36721
1832.908 (c) revised 36721
1832.970 Revised 36721
1833 Revised **55771**
1833.103 Revised; interim 11108
1833.106-70 Added; interim 11108
1834 Revised 4467
1835 Revised 4469
1835.016-70 (b)(2) amended 14017
1836 Revised 4471
1836.213 Added 36721
1836.213-3 Added 36721
1836.213-4 Added 36721
1836.213-70 Added 36721
1836.303—1836.370 (Subpart 1836.3) Removed 36721
1837 Revised 4472
1837.110-70 (c) amended 36721
1839 Revised 4473
1839.106 Redesignated as 1839.107 36721
1839.106-70 Redesignated as 1839.107-70 36721
1839.107 Redesignated from 1839.106 36721
1839.107-70 Redesignated from 1839.107-70 36721
1841 Revised 4474
1842 Revised 14017
Technical correction 37335
1842.708 Revised 36228
1842.7202 Revised 36721
1843 Revised 14022
1843.7101—1843.7102 (Subpart 1843.71) Added **64823**
1844 Revised 14023
1844.302-70 (a) revised 36721
1845 Revised 36722
1845.302-73 (b) amended 14036
1846 Revised 14024
1847 Revised 14028
1848 Revised 14029
1849 Revised 14030
1850 Revised 14031
1851 Revised 14032
1852.204-76 Introductory text amended 36733
1852.211-72 Removed 14033
1852.211-74 Removed 14033
1852.215-70 Removed; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
1852.215-71 Removed; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
1852.215-72 Removed; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
1852.215-73 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3482
1852.215-74 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3482
1852.215-75 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3483
1852.215-76 Removed; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
1852.215-77 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3483
1852.215-78 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3483
1852.215-79 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3483
1852.215-80 Removed; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
1852.215-81 Revised; interim **52343**
Regulation at 61 FR 52343 confirmed 3464
Revised 3483
1852.215-82 Revised; interim **52343**

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Regulation at 61 FR 52344 confirmed 3464
Revised 3483
1852.215–83 Removed; interim **52344**
Regulation at 61 FR 52344 confirmed 3464
1852.215–84 Revised; interim **52344**
Corrected **56271**
Regulation at 61 FR 52344 confirmed 3464
Revised 3484
1852.216–72 Removed; interim **52344**
Regulation at 61 FR 52344 confirmed 3464
1852.216–73 Revised; interim **52344**
Regulation at 61 FR 52344 confirmed 3464
Revised 3484
1852.216–74 Revised; interim **52344**
Regulation at 61 FR 52344 confirmed 3464
Revised 3484
1852.216–75 Revised; interim **52344**
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1852.216–76 Revised; interim **52344**
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1852.216–77 Revised; interim **52345**
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1852.216–78 Revised; interim **52345**
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1852.216–79 Removed; interim **52345**
Regulation at 61 FR 52345 confirmed 3464
1852.216–80 Revised; interim **52345**
Regulation at 61 FR 52345 confirmed 3464
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1852.216–81 Revised; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
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1852.216–82 Removed; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
1852.216–83 Revised; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
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Introductory text amended 36733
1852.216–84 Revised; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
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Introductory text amended 36733
1852.216–85 Revised; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
Revised 3486
Introductory text amended 36733
1852.216–86 Removed; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
1852.216–87 Revised; interim **52346**
Regulation at 61 FR 52346 confirmed 3464
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1852.216–88 Revised; interim **52347**
Regulation at 61 FR 52347 confirmed 3464
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Introductory text amended 36733
1852.216–89 Revised; interim **52347**
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1852.219–75 Revised 36733
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1852.219–76 Revised 36733
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1852.219–77 Revised 36734
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1852.219–78 Removed 36734
1852.219–79 Revised 36734
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1852.222–70 Removed 36734
1852.222–71 Removed **55758**
1852.223–70 Amended 14033
1852.223–72 Removed **55758**
1852.223–73 Amended **55758**
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1852.225–71 Introductory text amended 36734
1852.227–11 Introductory text amended 36734
1852.227–14 Introductory text amended 36734
1852.227–17 Introductory text amended 36734
1852.227–19 (a) and (b) amended 36734
1852.227–70 Introductory text amended 36734
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1852.227–84 Introductory text amended 36735
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1852.227–86 Introductory text amended 36735
1852.228–70 Revised **55772**
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1852.228–77 Removed **55774**
1852.231–71 Removed **55774**
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1852.232–12 Removed **55774**
1852.232–70 Removed **55774**
1852.232–83 Removed **55774**
1852.232–84 Removed **55774**
1852.233–70 Added; interim 11108
1852.234–70 Amended; heading revised 4474
1852.234–71 Amended; heading revised 4474
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1852.236–73 Introductory text amended 4476
1852.236–74 Introductory text amended 4476
1852.237–70 Introductory text amended 4476
1852.237–71 Revised 4477
1852.237–72 Revised 4477
1852.239–70 Introductory text amended 4477, 36735
1852.241–70 Amended 4477
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1852.242–74 Removed 36735
1852.243–70 Revised 14033
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1852.244–70 Introductory text amended 14034
1852.245–70 Revised 36735
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1852.245–71 Revised 36735
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1852.245–77 Revised 36736
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1852.246–70 Revised 14034
1852.246–71 Introductory text amended 14035
1852.246–73 Revised 14035
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1852.247–70 Removed 14035
1852.247–72 Introductory text amended 14035
1852.247–73 Amended 14035
1853 Revised 36737
1870 Removed 36738
1870.201—1870.203 (Subpart 1870.2) Removed 4477
1870.301—1870.303 (Subpart 1870.3) Removed; interim **52347**
1870.406–1 (a)(2) revised; (a)(3) added 4477
1870.501—1870.503 (Subpart 1870.5) Removed 4477
1871 Revised **55758**
1872 Added 4477

Chapter 35—Panama Canal Commission (Parts 3500—3599)

3509.400—3509.471 (Subpart 3509.4) Regulation at 61 FR 3846 confirmed 11770

Chapter 61—General Services Administration Board of Contract Appeals (Parts 6100—6199)

6101 Revised **52349**
6102 Added **52369**
6103 Revised 25867
6104 Authority citation revised **67242**
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6104.9 Added; interim; eff. 12–20–96 through 7–26–97 ..... **67242**
6105 Added 25871
Corrected 32241

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Chapter 99—Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

9903.201–1 (b)(6) revised 31295
9903.201–4 Amended 31295
9904.406–61 Added 31308
9904.412–50 (d)(2) introductory text amended **58011**
9904.413–60 (c)(7), (8), (12), (13) and (24) amended **58011**

Proposed Rules:

1 ..... **52998, 57622**; 26640, 27214
2 ..... **52998, 57622**; 26640, 27214
3 ..... **52232**; 26640, 27214
4 ..... **52232**; 19465, 26640, 27214, 30186, 36250
5 ..... 26640, 27214
6 ..... **52232, 52999, 58622**; 26640, 27214
7 ..... 26640, 27214, 30186, 36250
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9 ..... **52232**; 26640, 27214
11 ..... 17960, 26640, 27214
12 ..... **52232, 52999**; 19200, 25786, 26640, 27214, 37847
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14 ..... **52232, 52998, 57622**; 19200, 25786, 26640, 27214, 37847
15 ..... **52998, 52999, 57622, 58622, 65306**; 19200, 25786, 26640, 27214, 30186, 36250, 37847, 49900
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17 ..... 26640, 27214, 30186, 36250
19 ..... **52232**; 17960, 25786, 26640, 27214, 37847
22 ..... **52232**; 19465, 30186, 36250
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25 ..... **52232**; 26640, 27214
26 19200
27 ..... **52232**; 26640, 27214, 30186, 36250
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29 ..... **52232**
31 ..... **52232, 52998, 58452**; 26640, 27214, 30186, 35900, 36250, 49900, 49903
32 ..... **52232**; 23740, 26640, 27214, 30186, 36250
33 ..... 25786, 26640, 27214, 37847
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44 ..... 19465, 26640, 27214, 30186, 36250
45 ..... **52232**; 26640, 27214, 30186, 36250
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47 ..... **52232, 65306**
49 ..... **52232**; 26640, 27214, 30186, 36250
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51 ..... **52844**; 30186, 36250
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53 ..... **52232, 52998, 57622**; 17960, 25786, 26640, 27214, 30186, 36250, 37847
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TITLE 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation (Parts 1—99)

1.44 (o) revised 11383
1.46 (ccc) added **55583**
(eee) added **67474**
(ddd) added **67952**
(s) revised; (ll) amended 11383
(hhh) added 17100
(fff) and (ggg) added 19936
(iii) through (lll) revised 38478
1.48 Second (jj) redesignated as (d); (h) and (i) added **68163**
(kk) added 28807
1.53 (b)(5) added **68163**
1.59 (d) revised 16499
(e)(9) added 23661
1.64 Added 16499
1.66 (v) added **64030**
(x) added 2617
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1.71 (b) added **68163**
6 Authority citation revised 19233
6.1 Amended 19233
6.3 Revised 19233
6.5 (a) revised 19233
6.7 (a), (b)(1), (2) and (5) amended; (b)(6) added 19234
6.9 (a) and (b) revised; (c) and (d) added 19234
6.11 (b) amended 19234
6.25 (c) amended 19234
7 Revised 19516
8 Revised 23661
10.1 (a) designation, (b), (c) and (d) removed 23666
10.5 Amended 23667
10.11 Amended 23667
10.23 Introductory text revised 23667
10.31 (a) revised 23667
10.35 (a) introductory text revised; (a)(12) added 23667
10.37 Amended 23667
10.39 Revised 23667
10.41 Revised 23667
10.51 (c) and (h) revised 23667
10.63 Introductory text revised 23667
10 Appendix A redesignated as Appendix; Appendixes B through J removed 23667
18.26 (a), (b) introductory text and (1) revised 45939
(a), (b) introductory text and (1) revised; (d) and (e) removed 45947
19.26 (a), (b) and (c) revised 45939, 45947
27 Authority citation revised **56424**
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27.77 Added **56425**
29.100 Regulation at 60 FR 33040 and 33064 confirmed 15621
29.105 Regulation at 60 FR 33041 and 33064 confirmed 15621
29.110 Regulation at 60 FR 33041 and 33064 confirmed 15621
29.200 Regulation at 60 FR 33041 and 33064 confirmed 15621
29.215 Regulation at 60 FR 33041 and 33064 confirmed 15621
29.220 Regulation at 60 FR 33041 and 33064 confirmed 15621
29.225 Regulation at 60 FR 33041 and 33064 confirmed 15621
29 Regulation at 60 FR 33042 and 33064 confirmed 15621
31.3 (a)(1) introductory text, (iv), (b)(1) introductory text and (ii) revised 6720
40 Certification 19057

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107 Authority citation revised.....2971, 24057
107.14 Added.....24057
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171.4 (d) removed.....51337
171.5 Added; eff. 2-19-97 through 8-15-97; interim.....7647
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171.7 (a)(3) table amended.....51337, 65959
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171.8 Amended.....51337
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171.11 (d)(9)(iii) amended.....1227
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(d)(15) added.....30770
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171.12 (b)(8)(iii) amended.....1227
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171.12a (b)(5)(iii) amended.....1227
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171.14 (b) revised.....1227
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172.102 (c)(1) amended.....51240
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172.203 (j) removed; (k)(3) and (m)(3) amended.....24719
172.301 (a)(1) revised; (a)(3) added; (f)(1) and (2) removed.....1227
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172.302 (g) added.....1228
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172.313 (a) revised; (c) added.....1228
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172.328 (a)(3) added.....1228
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172.331 (c) added.....1228
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172.332 (a) revised.....1228
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172.400 (b) table revised.....1228
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172.402 (e)(1) revised; eff. 10-1-98.....39405
172.416 Revised.....1229
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172.429 Added.....1229
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172.502 (a)(2) revised; (b)(3) added.....1230
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172.504 (b) and (e) revised; (f)(11) added.....1230
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172.505 (a) revised.....1231
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172.510 (b) removed; (c) redesignated as (b); new (b) amended.....1231
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172.540 Revised.....1231
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172.555 Added.....1233
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172.602 (c)(1) revised.....1234
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172.606 Added.....1234
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173 Authority citation revised.....68954
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173.3 (c)(1) amended; (c)(3) revised; (c)(7) added.....24719
173.5 Revised.....1215
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173.6 Added.....1216
(a)(1) introductory text, (2), (b)(4) and (d) revised; (a)(1)(iii) amended; (e) added.....49566
173.7 (a) introductory text amended.....51338
173.8 Added.....1216
(d)(3) amended.....49567
173.9 Revised.....1234
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173.21 Regulation at 61 FR 26419 confirmed; (k) revised.....68954
(f) introductory text amended.....24719
173.22a (c) amended.....51242
173.28 (b)(4)(ii) corrected.....51495
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173.29 (b)(1) revised.....1236

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173.31 (a)(6)(i) removed; (a)(6)(ii) through (v) redesignated as (a)(6)(i) through (iv); new (a)(6)(i) through (iv), (b)(5), (c)(3) and (d)(1)(vii) amended **51338**
173.32c (j) amended 24719
173.34 (e)(10), (13) and (19)(ii) amended; (e)(19) introductory text amended **51240**
(e)(18)(i) table amended 24719
173.60 Revised 24719
173.62 Revised 24720
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173.120 (a)(3) revised; (b)(3), (c)(1)(i)(A) and (B) amended; (c)(1)(i)(C) added 24731
173.124 (a)(1) introductory text, (2)(i)(D)(*2*), (3)(ii), (iii), (b)(1), (2) and (c) amended 24731
173.125 (b), (c)(2)(i), (ii), (d)(1), (2) and (3) revised 24731
173.127 Revised 24732
173.128 (c)(3) and (e) amended 24732
173.132 (c) redesignated as (d); (b)(3)(iii) and new (c) added 24732
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173.136 (c) added 24732
173.137 (b) and (c)(2) amended 24733
173.152 (b)(4) added 24733
173.162 Amended 24733
173.166 Heading and (e) revised; (a) removed; (b) introductory text, (2), (4), (c), (d)(1), (2) and (f) amended 24733
173.170 (c) amended 14338
173.185 Revised 24733
173.189 (b) amended **51338**
173.201 (b) and (c) amended 24734
173.202 (b) and (c) amended 24734
173.203 (b) and (c) amended 24734
173.211 (b) and (c) amended 24734
173.212 (b) and (c) amended 24734
173.213 (b) and (c) amended 24734
173.220 (c)(3) revised 24734
173.224 (c)(1) and (2) amended **51338**
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173.225 (e)(1) amended **51338**
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(c)(2), (3) and (e)(2)(i)(B) removed; (c)(4), (5) and (e)(3)(i)(C) redesignated as (c)(2), (3) and (e)(3)(i)(B); (c)(1), new (2)(ii) and (e)(2) amended 24741
173.226 (c)(1) amended 24741
173.300a (c) amended **51338**
173.302 (c)(3) amended **51240**
173.306 (b)(3) amended **51338**
173.309 (b) revised **51240**
173.315 (e) and (i)(3) amended **51339**
(a) table amended 24741
173.316 (d) added 24741
173.318 (f)(4) added 24741
173 Appendixes E and F removed 24741
174.26 Revised 1236
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174.81 (g) introductory text amended **51339**
174.83 (b) introductory text amended **51339**
174.85 (d) table amended **51339**
174.101 (h) and (o) introductory text amended **51339**
174.112 (b) amended **51339**
174.680 (a) revised 1236
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174.705 Removed 46216
175.10 (a)(22) amended 24741
175.320 (a) table amended **51339**
175.630 Revised 1236
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175.706 Removed 46216
176.78 (k) revised 24741
176.84 (b) table amended 24742
176.194 (c) and (e) amended **51339**
176.340 (b)(1), (3), (4) and (5) amended **51339**
176.600 (a) revised 1236
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176.703 Removed 46216
176.905 Revised 24742
177.827 Removed 46216
177.835 (g) introductory text revised **51339**
177.841 (e)(1) and (2) revised 1236

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178.2 (f) added 14338
178.320 (a) amended **51339**
178.337–1 (b), (c)(1), (2) introductory text, (i), (ii), (d), (e)(1), (2) and (f) amended **51340**
178.337–2 (a)(1) through (4), (b) heading, (1) introductory text, (2) introductory text and (c) amended **51340**
178.337–3 (b), (c)(1)(iii)(A), (B) introductory text, (C), (iv)(A), (B), (C), (2)(iii)(A), (B) introductory text, (C), (iv)(A), (B), (C), (e), (f), (g) introductory text and (1) amended **51340**
178.337–4 (b) and (c) amended **51340**
178.337–6 (b) amended **51340**
178.337–8 (a)(1) amended **51340**
178.337–9 (a)(2), (3), (b)(1), (6), (c) and (d)(1) amended **51340**
178.337–11 (a)(1)(ii) through (v), (2)(i), (ii), (b), (c)(1) and (3) amended **51340**
178.337–13 (a) through (d) amended **51340**
178.337–14 (b)(2) amended **51340**
178.337–15 (a) amended **51340**
178.337–16 (a), (b)(1), (2) and (c) amended **51340**
178.337–17 (a) amended **51340**
178.337–18 (a) introductory text, (3) and (b) amended **51340**
178.338–9 (c)(1) amended **51340**
178.345–1 (c) amended **51340**
178.345–2 (a)(1), (c)(1) and (2) amended **51341**
178.345–3 (a)(1), (b) introductory text, (c)(1) introductory text, (iii)(A), (B) introductory text, (C), (iv)(A), (B), (C), (2) introductory text, (iii)(A), (B) introductory text, (C), (iv)(A), (B), (C) and (f)(2) amended **51341**
178.345–4 (a) amended **51341**
178.345–6 (a) and (b) amended **51341**
178.345–7 (a) introductory text, (c), (d)(2) and (5) amended; (d)(2) table revised **51341**
178.345–8 (a)(1) introductory text, (3), (4), (b) introductory text, (2), (c)(1), (2), (d) introductory text, (1), (2) introductory text, (ii) and (e) amended **51341**
178.345–9 (e) and (h) amended **51341**
178.345–10 (a), (c), (e) introductory text and (1) amended **51341**
178.345–11 (a), (b) introductory text and (d) amended **51341**
(b)(2) amended **51342**
178.345–12 Amended **51342**
178.345–13 (a), (b) introductory text, (1) and (2) amended **51342**
178.345–14 (a) revised; (b)(4), (5) and (d) amended **51342**
178.345–15 (b)(2) and (d) amended **51342**
178.511 Heading, (a), (b) introductory text and (1) revised; (b)(2) through (6) redesignated as (b)(3) through (7); new (b)(2) added 24742
178.703 (b)(6) added 24743
178.707 (c)(2) and (3) amended; (c)(6) added 24743
178.815 (c)(3) amended 24743
179.103–5 (a)(1) amended **51342**
179.300–7 (a) amended **51342**
180.403 Amended **51342**
180.407 (c) table, (d)(2)(vi), (f)(3), (g)(1)(viii), (ix), (h)(1) introductory text, (i) and (ii) amended **51342**
180.409 (a) revised; (b) redesignated as (d); new (b) and (c) added 1217
180.413 (e) amended **51342**
180.415 (b) amended **51343**
180.417 (c)(2) amended **51343**
190 Technical correction **64030**
Authority citation revised 24057
190.11 Added 24057
(a)(1) corrected 34415
192.381 (a)(3)(i) and (d) revised 2619
193 Technical correction 48496
Confirmation of effective date 48952
193.2019 Added 8404
Removed 36466
Added; eff. 10–15–97 41312
193.2057 Amended; (b) and (c)(1) revised 8404
193.2059 (c) introductory text and (d)(1)(ii) revised; (c)(4) added 8404
193 Appendix A amended 8404
195.1 (b)(3) revised; eff. 10–7–97 31367
199 Notice **60206**

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TITLE 49 Chapter I—Con.

Authority citation revised 65365
Confirmation of effective dates 7946
199.25 (d) revised 65365
199.229 (c) revised 65365

Chapter II—Federal Railroad Administration, Department of Transportation (Parts 200—299)

214 Authority citation revised 65975
Reconsideration petitions 19234
214.4 Added 65975
214.7 Amended 65975
214.301—214.355 (Subpart C) Added 65976
214 Appendix A amended 65981
219 Authority citation revised 60634
Determination 13349
219.5 Amended 60634, 67490
219.201 (a)(1) introductory text, (2) introductory text and (4) revised 60634
225 Authority citation revised 59371
225.3 Introductory text, (a), (b), (c) introductory text and (1) through (4) redesignated as (a) introductory text, (1), (2), (3) introductory text and (i) through (iv); new (a) introductory text revised; new (b), new (c) and (d) added 67490
225.5 Amended 59371, 67490
225.19 (e) revised 60634
(c) amended 67490
225.25 (c) revised 59371
(h) introductory text amended; (h)(12) and (13) revised; (h)(15) added 67491
225.27 (a) amended 67491
225.33 (a)(10)(ii) amended 59371
(a) introductory text amended 67491
225.35 Amended 59371
225 Appendix B added 60634
232 Authority citation revised 294
Reconsideration petitions 30461
232.19 Heading and (a) revised; (h) removed 294
232.21 Added 294
232.23 Added 294
232.25 Added 295
232 Appendix A amended 295

Chapter III—Federal Highway Administration, Department of Transportation (Parts 300—399)

Chapter III Regulatory guide 16370
355 Authority citation revised 37151
355 Appendix A amended 37151
356 Added 32041
365 Redesignated from Part 1160 54707
365.101 (e) and (f) amended 49940
365.107 (c) and (e)(2) amended 49940
365.205 (d) amended 49940
365.401—365.413 (Subpart D) Redesignated from Part 1181 54707
365.405 (a)(2), (b)(1)(vii), (viii) and (2)(ii) amended 49940
365.409 (a) and (c) amended 49940
365.413 (a) introductory text amended 49940
366 Redesignated from Part 1044 54707
Authority citation revised 49940
366.1 Amended 49940
366.3 Amended 49940
366.6 Amended 49940
367 Redesignated from Part 1023 54707
367 Authority citation revised 15420
367.1 (a), (b) and (c) amended 15420
367.3 (c) amended 15420
367.4 (a), (b) introductory text, (c)(2), (3), (d) and (h) amended 15420
367.5 Regulation at 60 FR 30012 stayed through 1-1-98; regulation at 60 FR 39875 eff. date extended through 12-31-97 64295
(a) introductory text and (b) amended 15420
367.6 (c) amended 15420
367 Appendix A amended 15420
368 Redesignated from Part 1171 54707
Heading and authority citation revised 15420
368.1 Revised 15420
368.2 (a), (b)(1), (2), (c)(2), (d), (e) and (f) revised 15421
368.3 (a) and (c) revised; (d) removed 15421
368.5 Revised 15421
368.6 Amended; heading and (b) introductory text revised; (b)(2) amended; (c) removed 15421

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368.7 Revised 15421
369 Redesignated from Part 1167 54707
Removed 38035
370 Added 32042
371 Redesignated from Part 1045 54707
Authority citation revised 15421
371.1 Amended 15421
371.3 (a) introductory text revised; (a)(2) amended; (a)(6) concluding text removed 15421
371.7 Amended 15421
371.10 Amended 15421
372 Heading added 54708
Authority citation added 54708
372.11 (a) and (b) amended 38036
372.101—372.117 (Subpart A) Redesignated from Part 1047 54708
372.101 Amended 15421
372.103 Amended 15421
372.105 Removed 15421
372.109 Introductory text amended 49940
372.111 (b)(8) and (9)(iii) amended 49940
372.113 Removed 38036
372.115 Heading revised 54708
Amended 15421
372.117 (a), (c), (d)(1), (2) and (3) amended 15421
372.201—372.243 (Subpart B) Redesignated from Part 1048 54708
372.201 Introductory text amended 15422
372.203 Introductory text amended 15422
372.205 Introductory text amended 15422
372.207 Introductory text amended 15422
372.209 Introductory text amended 15422
372.211 Introductory text amended 15422
372.213 Introductory text amended 15422
372.215 Introductory text amended 15422
372.217 Introductory text amended 15422
372.219 Introductory text amended 15422
372.221 Introductory text amended 15422
372.223 Introductory text amended 15422
372.225 Introductory text amended 15422
372.227 Introductory text amended 15422
372.229 Introductory text amended 15422
372.231 Introductory text amended 15422
372.233 Introductory text amended 15422
372.235 Introductory text amended 15422
372.237 (a) and (b) amended 15422
372.241 Introductory text amended 15422
372.243 Introductory text amended 15422
372.301—372.303 (Subpart C) Redesignated from Part 1049 54708
Note removed 49940
372.300 Added 15422
372.301 Revised 15422
372.303 Introductory text and (a) revised 15423
373 Heading added 54708
Authority citation added 54708
373.101—373.105 (Subpart A) Redesignated from Part 1051; heading revised 54708
373.101 Heading revised 54708
(e) amended 15423
373.103 Amended 15423
373.105 Amended 15423
373.201 (Subpart B) Redesignated from Part 1081; heading revised 54708
373.201 Heading revised 54708
374 Heading added 54709
Authority citation added 54709
374.101—374.113 (Subpart A) Redesignated from Part 1055 54709
374.101 Amended 15423
374.103 Amended 15423
374.105 Amended 15423
374.107 Amended 15423
374.109 Amended 15423
374.111 Amended 15423
374.113 (b) amended 15423
374.201 (Subpart B) Redesignated from Part 1061 54709
374.201 (a) and (c) amended 15423
374.301—374.319 (Subpart C) Redesignated from Part 1063 54709

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374.307 (c)(1), (2)(iv) and (g) amended 15423
374.311 (b) amended 15423
374.319 (a) and (b) amended 15423
374.401—374.405 (Subpart D) Redesignated from Part 1064 ..... **54709**
374.401 (a) introductory text and (3) amended 15423
374.403 (a) and (b) amended 15423
374.405 Amended 15423
374.501—374.505 (Subpart E) Redesignated from Part 1054 ..... **54709**
374.501 Amended 15423
374.505 (d) amended 15423
375 Redesignated from Part 1056 ..... **54707**
Authority citation revised 49940
375.2 (a) introductory text amended 49940
(a)(2), (3) and (b)(2) amended 49941
375.3 (a) and (b) amended 49941
375.4 (a) amended 49941
375.5 (a) introductory text amended 49941
375.6 (a) and (b)(4) amended 49941
375.7 (a) introductory text amended 49941
375.8 (a)(1) and (3) amended 49941
375.11 (a) amended 49941
375.12 (a) amended 49941
375.13 (a) amended 49941
375.15 (a) and (b) amended 49941
375.16 (a) introductory text and (b) amended 49941
375.17 (a) and (c) amended 49941
375.18 (a) amended 49941
375.19 Amended 49941
376 Redesignated from Part 1057 ..... **54707**
Authority citation revised 15423
376.1 Introductory text, (a) and (c) amended 15423
376.2 (a) amended 15424
376.11 Introductory text, (a) and (c)(1) amended 15424
376.12 Introductory text, (b), (c)(3), (4), (j)(1) and (l) amended 15424
376.21 Introductory text and (b) amended 15424
376.22 (a), (c)(2) and (4) amended 15424
376.26 Amended 15424
376.31 (b) and (d)(1) amended 15424
376.42 Amended 15424
377 Heading added **54708**
Authority citation added **54708**
377.101—377.105 (Subpart A) Redesignated from Part 1052 ..... **54708**
377.101 Amended 15424
377.103 Amended 15424
377.105 Amended 15424
377.201—377.217 (Subpart B) Redesignated from Part 1320; heading revised **54709**
377.201 (a) amended 15424
377.205 (d)(3) amended; (e) removed 15424
377.211 Amended 15424
377.213 Removed 15424
377.215 (a) and (b)(1) amended 15424
377.217 Amended 15424
378 Redesignated from Part 1008 ..... **54707**
Authority citation revised 15424
378.1 Amended 15424
378.2 (a), (b) and (d) amended 15424
378.4 (a) and (d) amended 15424
378.5 (a) amended 15424
(b) and (c) amended 15425
378.6 Amended 15425
379 Added 32044
382.103 (c) revised 1296
382.115 Revised 37151
382.401 (c)(6)(iii) and (iv) amended; (c)(6)(v) removed; (e)(1) revised 37151
383 Authority citation revised 1296
383.3 (b) revised 1296
383.5 Amended 37151
383.51 (b)(2)(ii) and (v) revised; (b)(3)(i), (ii) and (d)(2)(iv) amended 37151
383.111 (a) amended 37151
384.101 Revised 37152
384.301 Revised 37152
384.305 (b) revised (OMB number) 37152
384.309 Revised 37152
385.9 Existing text designated as (a); (b) added; interim; eff. 5-28-97 through 11-28-97 28809
385 Appendix designated as Appendix A; Appendix B added; interim; eff. 5-28-97 through 11-28-97 28809
387 Authority citation revised **54709**
Authority citation revised 16709
387.5 Amended 16709
387.301—387.323 (Subpart C) Redesignated from Part 1043 ..... **54709**

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Heading revised **54710**
387.301 (a)(1), (2) and (b) amended 49941
387.303 (b)(1) introductory text, (1), (2) and (4) amended 49941
387.309 (a)(2) and (b) amended 49941
387.311 (a) and (b) amended 49941
387.313 (a)(2), (3), (4) and (d) amended 49941
387.317 Heading revised **54710**
Amended 49942
387.321 Amended 49942
387.323 (c) amended 49942
387.401—387.419 (Subpart D) Redesignated from Part 1084; heading revised **54710**
387.403 (a) and (b) amended 49942
387.405 Amended 49942
387.407 (a) amended 49942
387.411 (b) amended 49942
387.413 (a) amended 49942
387.415 Heading revised **54710**
387.417 (a) and (b) amended 49942
387.419 Amended 49942
389 Authority citation revised 37152
389.1 Revised 37152
389.3 Revised 37152
389.11 Revised 37152
390 Authority citation revised **54710**
Authority citation revised 1296
390.3 (b) removed; (c) through (g) redesignted as (b) through (f) 1296
390.5 Amended 16709, 49942
390.21 (a) amended 49942
390.50—390.60 (Subpart C) Removed 1296
390.401—390.407 (Subpart D) Redesignated from Part 1058 ..... **54710**
390.401 (a) amended 49942
390 Appendix F Amended 49942
391.15 (c)(2)(ii) and (iii) revised 37152
391.41 (b)(12) revised; (c) removed 37152
391.43 Amended; (a)(1) designation and (2) removed 37152
391.81—391.125 (Subpart H) Removed 37152
392.4 (a)(1) revised 37153
395.8 (f)(5) revised 16709
397 Report availability **54744**
350—399 (Subchapter B) Appendix H removed 1296
Appendixes D and E removed 37153

Chapter V—National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

531.5 (b)(12) added **67492**
(b)(2) revised 17101
(b)(6) table amended 37154
533.5 (a) table revised 15860
541 Appendixes A, A-I and A-II amended 1691
Appendix A revised 40951
Appendix A-I and A-II revised 40952
Theft data 44416
544 Authority citation revised 33756
Technical correction 41882
544.2 Revised 33756
544.4 (a) revised 33756
544.5 (a) revised 33756
544 Appendixes A, B and C revised 33756
571 Reconsideration petitions 19523
Petition denial 31008
571.101 Amended 32542, 32543
571.105 Corrected; CFR correction 35107
Amended; eff. 10-20-97 46915
Amended; eff. 12-1-97 51069
571.108 Amended 10716, 10717, 16714, 40953
Corrected; CFR correction 31367
571.114 Amended 2978
571.121 Amended **60636**
571.135 Amended; eff. 10-20-97 46917
Amended; eff. 12-1-97 51070
571.201 Revised 16725
571.208 Amended **60215, 60217, 64298, 65188**
Amended 32, 806, 1402, 12974, 12975
Amended; interim 26427, 45175
571.213 Amended **60220, 60221**
Amended; interim 18724, 30466
572.30 (b) revised **67955**
(b) revised; interim 27514
572.31 (b) removed; (c) through (f) redesignated as (b) through (e); (a)(1), (3), (4) and new (d) revised **67955**
(a)(1) through (5) revised; interim 27514
572.32 (a) and (b) revised; interim 27514
572.33 (a), (b) and Figures 20 and 21 revised; interim 27514
572.34 (b) revised; interim 27518

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572.35 (a), (b) and (c) revised; Figures 25, 26 and 27 added **67955**
572.36 (c) through (f), (h) and (i) revised; interim 27518
572.70 (b)(1) revised 44226
572.71 (a)(1) and (b) revised 44226
572.74 (a) revised 44227
572.78 (d) revised 44227
575 Reconsideration petition 46447
578 Added 5169
580 Authority citation revised 47763
580.6 Redesignated as 580.17; interim 47765
580.17 Redesignated from 580.6; interim 47765
583.6 (c)(6) revised 33781
589.1 Revised 16735
589.2 Revised 16735
589.3 Revised 16735
589.5 Revised 16735
589.6 Revised 16735
589.7 Revised 16735
589.8 Revised 16735
593 Authority citation revised **51243**
593 Appendix A added **51243**
594 Authority citation revised 50881
594.5 (g) and (h) redesignated as (h) and (i); new (g) added; eff. 10–29–97 50882
594.10 Added; eff. 10–29–97 50882

Chapter VI—Federal Transit Administration, Department of Transportation (Parts 600—699)

613 Authority citation revised **67175**
614 Revised **67175**
653 Random drug and alcohol testing rate **67962**
654 Random drug and alcohol testing rate **67962**
659.33 (a) and (b) revised **67493**
659.45 (b) amended **67493**
661.11 Appendixes A, B and C added 40954

Chapter VIII—National Transportation Safety Board (Parts 800—899)

801 Authority citation revised 27703
801.13 Removed 27703
831 Authority citation revised 3806
831.2 Revised 3806
831.3 Revised 3806
831.4 Revised 3806
831.5 Revised 3807
831.6 Revised 3807
831.7 Revised 3807
831.8 Revised 3807
831.9 (a) revised 3807
831.11 Revised 3808
831.12 Revised 3808
831.13 (b) revised 3808
831.14 Revised 3808
837 Added 27703

Chapter X—Surface Transportation Board, Department of Transportation (Parts 1000—1399)

Chapter X Nomenclature change 42075
1000 Heading and authority citation revised 48954
1000.1—1000.10 (Subpart A) Heading removed 48954
1000.1 Removed 48954
1000.5 Removed 48954
1001 Revised 48954
1002 Technical correction 48497
1002.1 (a), (b), (c) and (e)(1) revised; (f)(6) amended 3487
1002.2 (f) table amended **66230**
(f) revised 3488
(d)(1) and (f)(38) through (41) revised; interim 9715
Regulation at 62 FR 9715 confirmed 28376
1002.2 (f)(87) added; eff. 10–2–97 46217
1003 Authority citation revised 50524
1005 Authority citation revised 50524
1007 Authority citation revised 50524
1008 Redesignated as Part 378 ..... **54707**
Technical correction 48497
1011 Authority citation revised **52710**
Heading and authority citation revised 48955
Authority citation correctly revised 50257
1011.5 Heading revised; (a)(9) added 48955
(b)(3)(iii) removed 50883
1011.6 Revised 50883
1011.7 (b)(1) amended; (b)(2) removed **52710**
Regulation at 61 FR 52710 eff. date delayed to 11–16–96 ..... **57340**

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(e) removed 50884
1011.8 (d) revised 50884
1012 Authority citation revised 50524
1013 Authority citation revised 50524
1016 Authority citation revised 50524
1018 Authority citation revised 50524
1019 Authority citation revised 50524
1021 Authority citation revised 50524
1022 Removed 50887
1023 Redesignated as Part 367 ..... **54707**
1030 Removed 50887
1033 Authority citation revised 50524
1034 Authority citation revised 50524
1035 Authority citation revised 50524
1037 Heading and authority citation revised 50524
1039.11 (a) table amended **66231**
1040—1069 Undesignated center heading removed **54710**
1043 Redesignated as 387.301—387.323 (Subpart C) **54709**
1044 Redesignated as Part 366 ..... **54707**
1045 Redesignated as Part 371 ..... **54707**
1047 Redesignated as 372.101—372.117 (Subpart A) **54708**
1047.20—1047.23 Undesignated center heading removed **54708**
1047.25 Undesignated center heading removed **54708**
1047.45 Undesignated center heading removed **54708**
1048 Redesignated as 372.201—372.243 (Subpart B) **54708**
1049 Redesignated as 372.301—372.303 (Subpart C) **54708**
1051 Redesignated as 373.101—373.105 (Subpart A) **54708**
1052 Redesignated as 377.101—377.105 (Subpart A) **54708**
1054 Redesignated as 374.501—374.505 (Subpart E) **54709**
1055 Redesignated as 374.101—374.113 (Subpart A) **54709**
1056 Redesignated as Part 375 ..... **54707**
1057 Redesignated as Part 376 ..... **54707**
1058 Redesignated as 390.401—390.407 (Subpart D) **54710**
1061 Redesignated as 374.201 (Subpart B) **54709**
1063 Redesignated as 374.301—374.319 (Subpart C) **54709**
1064 Redesignated as 374.401—374.405 (Subpart D) **54709**
1067 Removed **54707**
1070 Removed **54105**
1071 Removed **54105**
1080—1089 Undesignated center heading removed **54710**
1081 Redesignated as 373.201 (Subpart B) **54708**
1084 Redesignated as 387.401—387.419 (Subpart D) **54710**
1090 Authority citation revised 50524
1091 Removed 50887
1100 Authority citation revised 50524
1101 Authority citation revised 50524
1102 Authority citation revised 50524
1103 Authority citation revised 50524
1104 Authority citation revised **52711**
Heading revised **52711**
1104.1 (a) amended; (d) added **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.3 (a) and (b) amended; (a)(1) and (2) added **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
(a)(2) revised **58491**
1104.4 (b) amended **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.5 (b) amended **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.6 Amended **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.7 (b) amended **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.8 Amended **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.10 (a) and (b) amended **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.11 (b) amended **52711**

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Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.12 (a) and (b) amended **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.13 (a) amended **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.14 (b) amended **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.15 (a) revised **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1104.23 (b), (c), (d)(1) and (2) amended **52713**
1105 Authority citation revised **67882**
1105.7 (a), (b)(11) and (c) amended; (b) introductory text revised **67882**
1105.8 (c) revised **67883**
1105.12 Appendix amended **67883**
1108 Added; eff. 10–2–97 46217
1109 Authority citation revised 50524
1110 Authority citation revised 50524
1111 Revised **52711**
Regulation at 61 FR 52711 eff. date delayed to 11–16–96 ..... **57340**
1111.3 Amended **58491**
1111.8 Corrected **53996**
1112 Authority citation revised **52712, 58491**
1112.1 Amended **52712**
Regulation at 61 FR 52712 eff. date delayed to 11–16–96 ..... **57340**
1112.2 Amended **58491**
1112.4 (a) introductory text amended; (c) removed **52712**
Regulation at 61 FR 52712 eff. date delayed to 11–16–96 ..... **57340**
1112.7 Amended **52712**
Regulation at 61 FR 52712 eff. date delayed to 11–16–96 ..... **57340**
1112.10 Revised **52712**
Regulation at 61 FR 52712 eff. date delayed to 11–16–96 ..... **57340**
1113 Authority citation revised **52712**
1113.1 (a) amended; (c)(3) removed **52712**
Regulation at 61 FR 52712 eff. date delayed to 11–16–96 ..... **57340**
1113.2 (a), (b)(1) and (d) amended **52712**
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Presidential Documents

Title 3—

The President

Memorandum of August 5, 1997

Delegation of Authority Under Section 803(a) of the Intelligence Authorization Act for Fiscal Year 1997

Memorandum for Director of Central Intelligence

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate the functions conferred upon the President by section 803(a) of the Intelligence Authorization Act for Fiscal Year 1997, 50 U.S.C. section 404d, to the Director of Central Intelligence.

You are authorized and directed to publish this memorandum in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, August 5, 1997.

[FR Doc. 97–26191
Filed 9–30–97; 8:45 am]
Billing code 6310–02–M

Rules and Regulations

Federal Register
Vol. 62, No. 190
Wednesday, October 1, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FARM CREDIT ADMINISTRATION

12 CFR Part 650

RIN 3052–AB72

Federal Agricultural Mortgage Corporation; Receivers and Conservators; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 650 on August 15, 1997 (62 FR 43633). The final rule amends the regulations that apply to the Federal Agricultural Mortgage Corporation by adding a subpart to govern a receivership or conservatorship. The final rule implements the receivership/conservatorship authorities granted to the FCA by the Farm Credit System Reform Act of 1996, Pub. L. 104–105 (Feb. 10, 1996) and by previous law. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 1, 1997.

EFFECTIVE DATE: The regulation amending 12 CFR part 650 published on August 15, 1997 (62 FR 43633) is effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Larry W. Edwards, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4051, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: September 26, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–25978 Filed 9–30–97; 8:45 am]
BILLING CODE 6705–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 744

[Docket No. 970428099–7227–04]

RIN 0694–AB60

Revision to Entity List: Bharat Electronics, Ltd. (aka Baharat Electronics, Ltd.), India

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (EAR) provide that the Bureau of Export Administration (BXA) may inform exporters, individually or through amendment to the EAR, that a license is required for exports or reexports to certain entities. The EAR contains a list of such entities. This rule amends the Entity List by revising the entry "Bharat Electronics LTD, (aka Baharat Electronics, Ltd.) located in India, for all items subject to the EAR". The entry will now read, "Bharat Electronics Limited (BEL) in Bangalore, India; and Bharat Electronics Limited (BEL) in Hyderabad, India; for all items subject to the EAR having a classification other than EAR99. In addition, exporters are reminded to follow "BXA's Know Your Customer Guidance and Red Flags", see Supplement No. 3 to part 732 of the EAR, with regard to specific end-use of any item subject to the EAR destined to any Bharat Electronics Limited located in India.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Eileen M. Albanese, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

General Prohibition Five (§ 736.2(b)(5) of the EAR) prohibits exports to certain end-users or end-uses, as described in Part 744, without a license. In the form of Supplement No. 4 to part 744, BXA maintains an "Entity List" to provide notice informing the public of certain entities subject to such licensing requirements.

This rule narrows the scope of products subject to the end-user license requirement and clarifies the end-user by specifying the facilities of Bharat Electronics by city name. Other Bharat Electronics Limited entities would be subject to normal licensing procedures, with the caveat that you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR, per general prohibition five.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, notice of August 15, 1995 (60 FR 42767), and August 14, 1996 (61 FR 42527); and August 13, 1997 (62 FR 43629).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. this rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under

5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended, as follows:

PART 744—[AMENDED]

1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); Notice of August 14, 1996 (61 FR 42527, August 15, 1996); and Notice of August 13, 1997 (62 FR 43629, August 15, 1997).

2. Section 744.1 is amended by revising paragraph (c) to read as follows:

§ 744.1 General provisions.

* * * * *

(c) A list of entities is included in Supplement No. 4 to this part 744 of the EAR (Entity List). Exporters are hereby informed that these entities are ineligible to receive any items subject to the EAR without a license to the extent specified in the supplement. License applications will be reviewed under the license review standards set forth in this part 744. No License Exceptions are available for exports or reexports to listed entities of specified items.

3. Supplement No. 4 to part 744 is amended by removing the entity "Bharat Electronics LTD" and adding in its place the following entity to read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Bharat Electronics Limited (BEL) in Bangalore, India; and Bharat Electronics Limited (BEL) in Hyderabad, India; for all items subject to the EAR having a classification other than EAR99. In addition, exporters are reminded to follow "BXA's Know Your Customer Guidance and Red Flags", see Supplement No. 3 to part 732 of the EAR, with regard to the specific end-use of any item subject to the EAR destined to any Bharat Electronics Limited located in India.

* * * * *

Dated: September 26, 1997.

James A. Lewis,

Acting Assistant Secretary for Export Administration.

[FR Doc. 97–26048 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–166F]

Schedules of Controlled Substances Placement of Butorphanol Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Acting Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance butorphanol, including its salts and optical isomers, into Schedule IV of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of Schedule IV will be applicable to the manufacture, distribution, dispensing, importation and exportation of butorphanol and products containing butorphanol.

EFFECTIVE DATE: October 31, 1997.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Butorphanol is classified as an opioid agonist-antagonist analgesic that is marketed as a prescription drug under the trade name Stadol® for the relief of moderate to severe pain in humans. It is also marketed as a veterinary product under the trade names Torbugesic® and Torbutrol® for use in horses and dogs. It was first marketed as an injectable product in 1979. Although there was limited abuse of the injectable product among certain populations, significant abuse was not observed until after the nasal spray was introduced in 1992.

The Acting Deputy Administrator of the DEA received a letter dated September 30, 1996, from the Assistant Secretary for Health, on behalf of the Secretary of the Department of Health and Human Services (DHHS), recommending that the drug product, Stadol® NS Nasal Spray, be placed into Schedule IV of the CSA. Enclosed with the September 30, 1996, letter from the Assistant Secretary was a scientific and medical evaluation prepared by the Food and Drug Administration (FDA). The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)). Correspondence from the Acting Assistant Secretary for Health dated June 19, 1997, confirmed that the DHHS recommendation included the substance butorphanol and its salts and isomers. The Acting Deputy Administrator of the DEA, in a July 10, 1997, **Federal Register** notice (62 FR 37004 proposed to place butorphanol into Schedule IV of the CSA. The notice provided an opportunity for all interested persons to submit their comments, objections, or requests for a hearing in writing on the proposed scheduling of butorphanol until August 11, 1997. DEA received nine comments regarding the proposal. Comments in support of the proposal were received from six organizations: National Association of Boards of Pharmacy, Missouri Department of Mental Health, Missouri Department of Health, Missouri Department of Economic Development's State Board of Registration for the Healing Arts, Texas State Board of Pharmacy and Public Citizen. The American Veterinary Medical Association noted that controlled substances are subject to additional recordkeeping and storage requirements, but recognized the abuse potential of butorphanol. It recommended that if butorphanol is to be controlled, it be classified at a level no greater than Schedule IV.

Bristol-Myers Squibb commented that the abuse potential of butorphanol nasal spray is low, as evidenced by the low number of adverse reaction reports received by the company per number of prescriptions. Bristol-Myers Squibb did support the placement of butorphanol in Schedule IV. Fort Dodge Animal Health commented that there was little abuse of the butorphanol veterinary products and did not support the scheduling of the veterinary products. This scheduling action, however, is based on the abuse and dependence potentials of the substance butorphanol. It was determined that butorphanol, whether administered orally, intravenously, or intranasally, had an abuse potential consistent with control in Schedule IV of the CSA. Furthermore, available data does not differentiate the abuse potential of butorphanol-containing

human products from that of veterinary products. Fort Dodge presented no additional data in this regard.

Based on the scientific and medical evaluation and the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act [21 U.S.C. 811(b)], and the independent review of the DEA, the Acting Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Butorphanol has a low potential for abuse relative to the drugs or other substances in Schedule III;

(2) Butorphanol has a currently accepted medical use in treatment in the United States; and

(3) Abuse of butorphanol may lead to limited physical dependence and psychological dependence relative to the drugs or other substances in Schedule III.

Based on these findings, the Acting Deputy Administrator of the DEA concludes that butorphanol, including its salts and isomers, warrants control in Schedule IV in the CSA. The Schedule IV controls of butorphanol will be effective on October 31, 1997, except as indicated below. In the event that the regulations impose special hardships on the registrants, the DEA will entertain any justified request for an extension of time to comply with the Schedule IV regulations regarding butorphanol. The applicable regulations are as follows:

1. Registration. Any person who manufactures, distributes, dispenses, imports or exports butorphanol activities or who engages in research or conducts instructional activities with butorphanol, or who proposes to engage in such activities, must submit an application for Schedule IV registration in accordance with Part 1301 of Title 21 of the Code of Federal Regulations. Any person who is currently lawfully engaged in any of the above activities must submit an application for registration by October 31, 1997. Any such person may then continue their lawful activities until the Administration has approved or denied that application.

2. Security. Butorphanol must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. Labeling and Packaging. All labels on commercial containers of, and all labeling of, butorphanol which is distributed on and after April 1, 1998 shall comply with the requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations. Any commercial containers of butorphanol packaged on or before April 1, 1998 and not meeting the requirements specified in §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations shall not be distributed on or after July 1, 1998.

4. Inventory. Registrants possessing butorphanol are required to take inventories pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations.

5. Records. All registrants must keep records pursuant to §§ 1304.03, 1304.04 and 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

6. Prescriptions. All prescriptions for butorphanol are to be issued pursuant to §§ 1306.03–1306.06 and 1306.21–1306.26 of Title 21 of the Code of Federal Regulations. All prescriptions for products containing butorphanol issued on or before October 31, 1997, if authorized for refilling, shall as of that date be limited to five refills and shall not be refilled after April 1, 1998.

7. Importation and Exportation. All importation and exportation of butorphanol shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

8. Criminal Liability. Any activity with butorphanol not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful on or after October 31, 1997.

In accordance with the provisions of 21 U.S.C. 811(a) of the CSA, this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, section 3(d)(1). The Acting Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small-business entities. Butorphanol products are prescription products. Handlers of butorphanol also handle other controlled substances which are already subject to the regulatory requirements of the CSA.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform act of 1995.

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Acting Deputy Administrator pursuant to 28 CFR 0.104, the Acting Deputy Administrator hereby amends 21 CFR part 1308 as follows.

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is amended by adding a new paragraph (f)(2) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(f) * * *

(2) Butorphanol (including its optical isomers)—9720

Dated: September 22, 1997.

James S. Milford,

Acting Deputy Administration.

[FR Doc. 97–25969 Filed 9–30–97; 8:45 am]

BILLING CODE 4410–09–M

POSTAL SERVICE

39 CFR Part 111

Classification Changes; Bound Printed Matter

AGENCY: Postal Service.
ACTION: Final rule.

SUMMARY: This rule sets forth the Domestic Mail Manual (DMM) standard to increase the weight of Bound Printed Matter from 10 pounds to 15 pounds adopted by the Postal Service to implement the Decision of the Governors of the Postal Service on Postal Rate Commission Docket No. MC97–3.

EFFECTIVE DATE: October 5, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bennett, (202) 268–6350.

SUPPLEMENTARY INFORMATION: In response to requests from Bound Printed Matter customers, the Postal Service proposed to increase the maximum weight limit for Bound Printed Matter from 10 to 15 pounds in Docket No. MC97–2, Parcel Classification Reform. This increase was to include single-piece, carrier route bulk, and basic bulk Bound Printed Matter. No change in existing rates was proposed for the subclass. Rather, the existing per-piece and per-pound rate elements were to remain in place, with the per-pound elements applied to the additional pounds. After the Postal Service withdrew its request in Docket No. MC97–2, a joint motion was filed by the Advertising Mail Marketing Association (AMMA), the Association of American Publishers (AAP), and the Direct Marketing Association (DMA), requesting that the PRC initiate the current proceeding in order to consider extending the weight limit for Bound Printed Matter.

Pursuant to 39 U.S.C. 3624 on September 4, 1997, the PRC issued its Recommended Decision in Docket No. MC97–3 to increase the weight limit for Bound Printed Matter from 10 pounds to 15 pounds, to the Governors of the Postal Service. Pursuant to 39 U.S.C. 3625, the Governors approved the PRC's recommendation, and the Board of Governors set an implementation date of October 5, 1997, for the increase in weight limit for Bound Printed Matter to take effect.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Amend the Domestic Mail Manual as set forth below:

Domestic Mail Manual (DMM)

C CHARACTERISTICS AND CONTENT

* * * * *

C600 Standard Mail

1.0 DIMENSIONS

* * * * *

1.2 Standard Mail (B)

[Amend 1.2a by replacing "10 pounds" with "15 pounds" to read as follows:]

These dimensional standards apply to Standard Mail (B):

a. No piece may weigh more than 70 pounds, except matter at Bound Printed Matter rates may not weigh more than 15 pounds.

* * * * *

E ELIGIBILILTY

* * * * *

E600 Standard Mail

* * * * *

E620 Nonautomation Nonpresort Rates

* * * * *

3.0 BOUND PRINTED MATTER

3.1 Description

[Amend 3.1 by replacing "10 pounds" with "15 pounds" to read as follows:]

Bound Printed Matter is Standard Mail weighing at least 1 pound but not more than 15 pounds and meeting the standards in E611 and E613. Bound Printed Matter rates are based on zones and on the weight of the piece.

* * * * *

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

* * * * *

P013 Rate Application and Computation

* * * * *

5.0 RATE APPLICATION—STANDARD MAIL (B)

* * * * *

5.3 Single-Piece Bound Printed Matter

[Amend 5.3 by replacing "10 pounds" with "15 pounds" to read as follows:]

The single-piece Bound Printed Matter rate is charged per half-pound from 1.5 through 5 pounds, and per pound from more than 5 through 15 pounds. For pieces weighing 1 through 5 pounds or less, any fraction of a half-pound is considered a whole half-pound. For pieces weighing more than 5 but not more than 15 pounds, any fraction of a pound is considered a whole pound. * * *

* * * * *

R RATES AND FEES

* * * * *

R600 Standard Mail

* * * * *

7.0 BOUND PRINTED MATTER

[Amend 7.0 by adding the rates for 11 pounds through 15 pounds in 7.1b, 7.3a, and 7.3b to read as follows:]

7.1 Single-Piece

* * * * *

b. Computed Bound Printed Matter Single-Piece;

Weight not over (pounds)	Zone							
	Local	1 & 2	3	4	5	6	7	8
11.0	$1.40	$2.00	$2.24	$2.62	$3.21	$3.83	$4.58	$5.22
12.0	1.43	2.06	2.31	2.73	3.38	4.05	4.87	5.56
13.0	1.46	2.11	2.39	2.84	3.54	4.27	5.15	5.91
14.0	1.49	2.17	2.46	2.95	3.71	4.49	5.44	6.25
15.0	1.53	2.22	2.54	3.06	3.87	4.71	5.73	6.60

* * * * *

7.3 Bulk Rate Computed Postage Amount With Postage Affixed

a. Basic Bulk Bound Printed Matter:

Weight not over (pounds)	Zone							
	Local	1 & 2	3	4	5	6	7	8
11.0	$0.783	$1.173	$1.393	$1.789	$2.372	$2.999	$3.747	$4.385
12.0	.806	1.216	1.456	1.888	2.524	3.208	4.024	4.720
13.0	.829	1.259	1.519	1.987	2.676	3.417	4.301	5.055
14.0	.852	1.302	1.582	2.086	2.828	3.626	4.578	5.390
15.0	.875	1.345	1.645	2.185	2.980	3.835	4.855	5.725

b. Carrier Route Bulk Bound Printed Matter:

Weight not over (pounds)	Zone							
	Local	1 & 2	3	4	5	6	7	8
11.0	$0.720	$1.110	$1.330	$1.726	$2.309	$2.936	$3.684	$4.322
12.0	.743	1.153	1.393	1.825	2.461	3.145	3.961	4.657
13.0	.766	1.196	1.456	1.924	2.613	3.354	4.238	4.992
14.0	.789	1.239	1.519	2.023	2.765	3.563	4.515	5.327
15.0	.812	1.282	1.582	2.122	2.917	3.772	4.792	5.662

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 97–26031 Filed 9–30–97; 8:45 am]
BILLING CODE 7710–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 57

RIN 0906–AA47

Grants for Residency Training and Advanced Education in the General Practice of Dentistry

AGENCY: Health Resources and Services Administration, HHS.
ACTION: Final rule.

SUMMARY: This technical amendment revises the regulations governing the program for Grants for Residency Training and Advanced Education in the General Practice of Dentistry, authorized by section 749 of the Public Health Service Act (the Act), to modify the application and review criteria to be consistent with current Agency streamlining efforts.

DATES: These regulations are effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Bernice Parlak, Acting Director, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–101, Rockville, Maryland 20857; telephone: (301) 443–6853.

SUPPLEMENTARY INFORMATION: This final rule amends the existing regulations for Grants for Residency Training and Advanced Education in the General Practice of Dentistry, governed by section 749 of the Public Health Service (PHS) Act (42 U.S.C. 293m) to remove redundant application and project requirements, and to revise the evaluation criteria to eliminate duplication and bring the language into compliance with current grants policy. Specific changes are discussed below according to the section numbers and headings of the regulations affected.

Section 57.1104 How must an entity apply for a grant?

Section 57.1104 is revised to remove the phrase "in particular the requirements of § 57.1105" because this language is unnecessary and redundant.

Section 57.1105 What requirements must a project meet?

The project requirements listed in paragraphs (a), (c), (d), and (f) of this section are being removed because they are redundant to the accreditation standards published by the American Dental Association Commission on Dental Accreditation. Compliance with these accreditation standards is an eligibility requirement of the grant program, as described in § 57.1103. The paragraphs (a), (c), (d) and (f) in § 57.1105 that are being removed are as follows:

(a) The project staff must plan, develop, and/or operate an approved residency or advanced educational program in the general practice of dentistry.

(c) If the training site provides medical care, then the medical and dental care of patients must be coordinated.

(d) If a primary care medical residency program is conducted by the applicant, then joint training experiences must be provided. For purposes of this paragraph, primary care means internal medicine, family medicine, or pediatrics.

(f) The training program, the performance of each participant, and the quality of patient care must be evaluated.

Section 57.1106 What are the criteria for deciding which applications are to be funded?

The heading of the section is being revised to read, *"How will applications be evaluated?"*

Further, the evaluation criteria are being revised to reflect current Agency initiatives to streamline and standardize the review of health professions education grant applications. The revision shifts the language of the criteria from passive to active voice, and reflects increased attention to measurable performance goals and outcomes. The introductory text of the section will be designated as paragraph (a). The following paragraphs (1) through (8) list the revised evaluation criteria:

(1) The proposal addresses the legislative intent of the program and has a well-documented rationale;

(2) The objectives of the proposed project are consistent with the program's rationale, and are measurable and achievable within the project period;

(3) The proposed project's methodology is consistent with the objectives and explained in appropriate detail;

(4) The evaluation is linked to the objectives and addresses the project outcomes;

(5) The applicant demonstrates the administrative and managerial capability to carry out the proposed project;
(6) The proposed budget is complete, appropriate, cost-effective, and clearly justified;
(7) The plan for institutionalizing the project outcomes is specific and realistic; and
(8) The proposal plans to attract, maintain, and graduate minority and disadvantaged students.

A new paragraph (b) is added to indicate the following:
(b) In determining the funding of applications approved, under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

Justification for Omitting Notice of Proposed Rulemaking

These technical changes do not change the focus or intent of the grant program; they are "housekeeping measures" which are intended to update the existing regulations to be consistent with current grants policy. Further, in the last two years, the Agency has had numerous concerns about the duplication of the evaluation criteria as well as the project requirements from peer reviewers evaluating the grant applications and from the grantees for compliance in meeting project requirements. These amendments address the concerns raised by our customers.

Since these amendments are of a technical nature, the Secretary has determined, pursuant to 5 U.S.C. 553 and departmental policy, that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective date of these regulations.

Economic Impact

Executive Order 12866 requires all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are "significant" because of costs, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department believes the resources required to implement the requirements in this final rule are minimal. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Fairness Act of 1996 which amended the RFA, the Secretary certifies these regulations will not have a significant impact on a substantial number of small entities. For the same reasons, the Secretary also has determined this is not a "significant" rule under Executive Order 12866.

Academic and Community Partnerships

As part of its long-range planning, the Health Resources and Services Administration will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Paperwork Reduction Act of 1995

This final rule does not affect the recordkeeping or reporting requirements in the existing regulations for the Grants for Residency Training and Advanced Education in the Practice of General Dentistry Program. The reporting requirements for data collections under § 57.1804 are currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 under OMB No. 0915–0060.

List of Subjects Under 42 CFR Part 57

Aged, Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Student aid, Reporting and recordkeeping requirements, Scholarships and fellowships.

(Catalog of Federal Domestic Assistance, No. 93.897, Grants for Residency Training and Advanced Education in the General Practice of Dentistry.)

Approved: September 26, 1997.

Claude Earl Fox,

Acting Administrator, Health Resources and Services Administration.

Accordingly, 42 CFR part 57, subpart L is amended as set forth below:

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart L—Grants for Residency Training and Advanced Education in the General Practice of Dentistry

1. The authority for 42 CFR part 57, subpart L continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 786(b) of the Public Health Service Act, 90 Stat. 2317, as amended by 99 Stat. 540–541 (42 U.S.C. 295g–6(b)); redesignated as sec. 785 and amended by 102 Stat. 3130–3131 (42 U.S.C. 295g–5); renumbered as sec. 749, as amended by Pub. L. 102–408, 106 Stat. 2043–2044 (42 U.S.C. 293m).

§ 57.1104 [Amended]

2. Section 57.1104, is amended by removing the phrase ", in particular the requirements of § 57.1105" at the end of paragraph (c) (1).

3. Section 57.1105 is revised to read as follows:

§ 57.1105 What requirements must a project meet?

A project supported under this subpart must meet the following requirements:
(a) The general practice residency or advanced education program in general dentistry must be accredited by the American Dental Association Commission on Dental Accreditation;
(b) Each project must have at least two participants enrolled in the training program; and
(c) Each participant who receives stipend support must sign a statement of intent to work in the practice of general dentistry.

4. Section 57.1106 is revised to read as follows:

§ 57.1106 How will applications be evaluated?

(a) As required by section 798(a) of the Act, each application for a grant under this subpart shall be submitted to a peer review group, composed principally of non-Federal experts, for an evaluation of the merits of the proposal as contained in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval. The Secretary will award grants to applicants whose projects will best promote the purposes of section 749 of the Act. The Secretary will approve or disapprove applications filed in accordance with § 57.1104, taking into consideration, among other factors, the degree to which:
(1) The proposal addresses the legislative intent of the program and has a well-documented rationale;
(2) The objectives of the proposed project are consistent with the program's rationale, and are measurable and achievable within the project period;
(3) The proposed project's methodology is consistent with the objectives and explained in appropriate detail;
(4) The evaluation is linked to the objectives and addresses the project outcomes;
(5) The applicant demonstrates the administrative and managerial capability to carry out the proposed project;
(6) The proposed budget is complete, appropriate, cost-effective, and clearly justified;
(7) The plan for institutionalizing the project outcomes is specific and realistic; and
(8) The proposal plans to attract, maintain, and graduate minority and disadvantaged students.
(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

[FR Doc. 97–26114 Filed 9–29–97; 10:50 am]
BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

[WO–350–1430–00–24 1A]

RIN 1004–AC65

Nonmineral Entries on Mineral Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends part 2090 of Title 43 of the Code of Federal Regulations (CFR) to completely remove subpart 2093 because it is redundant and unnecessary. Subpart 2093 sets forth the various statutory authorities governing nonmineral entries on mineral lands, and describes BLM procedures for processing claims and other actions under those statutes.

EFFECTIVE DATE: October 31, 1997.

ADDRESSES: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street NW., Washington, DC. 20240.

FOR FURTHER INFORMATION CONTACT: Frances Watson, Telephone: (202) 452–5006 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

Contents

I. Background and Discussion of Final Rule
II. Procedural Matters

I. Background and Discussion of Final Rule

The regulations at 43 CFR part 2090, subpart 2093 repeat language of various statutes dating back to 1902 that govern nonmineral entries on mineral lands, and describe BLM's procedures for processing claims and other actions under those statutes. This subpart is duplicative and unnecessary, and BLM has not used it in over 10 years. The portions of subpart 2093 that contain internal procedures have become largely obsolete since nonmineral entries on mineral lands are extremely rare and are unlikely to become any more widespread, given the scarcity of land on which such entries could be available in the foreseeable future and the repeal of the homestead laws. However, should any applications be submitted in the future, BLM will consider each application based on the guidance provided by applicable statutes; no formal procedural program is necessary. Moreover, internal operating procedures are best suited for publication in the BLM Manual. For these reasons, removing subpart 2093 from the CFR is appropriate.

In the November 1, 1996, **Federal Register** (61 FR 56496), BLM published a proposed rule to completely remove subpart 2093 from 43 CFR. The public was given a 30-day period, ending on December 2, 1996, in which to submit comments on the proposed rule. BLM did not receive any comments , so the final rule is being published unchanged.

II. Procedural Matters

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA), and has found that the rule will not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record, 1620 L Street, NW, Room 401, Washington, DC. BLM invites the public to review these documents at this address during regular business hours, 7:45 a.m. to 4:15 p.m., Monday through Friday.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the discussion in the preamble above, that the rule merely removes redundant and unnecessary requirements, BLM anticipates that this final rule will have no significant impact on the public at large. Therefore, BLM has determined under the RFA that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Removal of 43 CFR subpart 2093 will not result in any unfunded mandate to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Executive Order 12630

The final rule does not represent a government action that interferes with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the final rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property, or require further discussion

of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Report to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, BLM submitted a report containing this rule and other required information to the U.S. Senate, U.S. House of Representatives, and the Comptroller General of the General Accounting Office before publication of the rule in today's **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indians—lands, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawal, Seashores, Veterans.

For the reasons set forth in the preamble and under the authority of 43 U.S.C. 1740, part 2090 of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 2090—SPECIAL LAWS AND RULES

1. The authority citation for part 2090 is revised to read as follows:

Authority: 43 U.S.C. 1740; 43 U.S.C. 1201.

Subpart 2093—[Removed]

2. Part 2090 is amended by removing subpart 2093.

Dated: September 25, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 97–26007 Filed 9–30–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5510

RIN 1004–AC92

Use by Settlers and Homesteaders of Timber on Their Pending Claims and Free Use of Timber Upon Oil and Gas Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule completely removes certain sections of Title 43, Code of Federal Regulations (CFR), which govern the free use of timber on public lands and upon oil and gas leases. The rule also removes cross references to these sections. These regulations are obsolete and have not been used in many years. Removing them meets one of the objectives of President Clinton's regulatory reform initiative—to eliminate outdated and unnecessary regulations from the CFR.

EFFECTIVE DATE: October 31, 1997.

ADDRESSES: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren, (202) 452–7779 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

Contents

I. Background and Discussion of Final Rule
II. Procedural Matters

I. Background and Discussion of Final Rule

Section 5511.1–2 of 43 CFR describes procedures that homesteaders may use to obtain free use of timber on public lands. However, no applications have been submitted to the Bureau of Land Management (BLM) under this subpart for many years, principally because of two laws. First, the Taylor Grazing Act of June 28, 1934, 43 U.S.C. 315–315r, requires that lands be classified for the proposed use before occupancy on the land is allowed. Secondly, section 702 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2787), repealed the homestead laws which, in effect, rendered unnecessary the regulatory requirements of Section 5511.1–2.

Similarly, the procedures under Section 5511.1–4, which lessees must use to obtain free use of timber on oil and gas leases, are outmoded. No applications under this subpart have been submitted to BLM in many years, principally because oil and gas lessees no longer need to use timber on their leases because they now have access to modern industrial techniques.

Because Sections 5511.1–2 and 5511.1–4 are obsolete and have no pending applications, the BLM published a proposed rule in the September 13, 1996, **Federal Register**, 61 FR 48455, to completely remove them from 43 CFR. The public was given a 30-day period in which to submit comments on the proposed rule. BLM did not receive any comments.

BLM is making a conforming change to the final rule that will remove the cross references to Sections 5511.1–2 and 5511–1–4 that appear at 5511.2–1(a), 5511.2–5, and 5511.4(b)(2) in 43 CFR. In all other respects, the final rule is the same as the proposed rule.

II. Procedural Matters

National Environmental Policy Act of 1969

BLM has prepared an environmental assessment (EA) and has found that this rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). No environmental impact statement will be prepared. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record, Room 401, 1620 L Street, NW, Washington, D.C. The notice of proposed rulemaking inaccurately reported at 61 FR 48456 that the rule was categorically excluded from the NEPA process.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the discussion in the preamble above, that the rule merely removes redundant and unnecessary requirements, BLM anticipates that this final rule will have no significant impact on the public at large. Therefore, BLM has determined under the RFA that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Removal of sections 5511.1–2, 5511–1.4, 5511.2–1(a), 5511.2–5, and 5511–4(b)(2) of 43 CFR will not result in any unfunded mandate to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Executive Order 12630

The final rule does not represent a government action capable of interference with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the final rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Report to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, BLM submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office before publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Author

The principal author of this final rule is Frances Watson, Regulatory Affairs Group, Bureau of Land Management, 1849 C Street, N.W., Room 401 LS, Washington, D.C. 20240; Telephone 202/452–5006.

List of Subjects in 43 CFR Part 5510

Forests and forest products, Public lands.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, Part 5510 of Title 43 of the Code of Federal Regulations is amended as follows:

PART 5510—[AMENDED]

1. The authority citation for part 5510 continues to read as follows:

Authority: 61 Stat. 681, as amended; 69 Stat. 367; 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, R.S. 2478, sec. 32, 41 Stat. 450; 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 48 U.S.C. 423, 43 U.S.C. 1201, 30 U.S.C. 189.

§ 5511.1–2 [Removed]

2. Section 5511.1–2 is removed.

§ 5511.1–4 [Removed]

3. Section 5511.1–4 is removed.

§ 5511.2–1 [Amended]

4. Section 5511.2–1 is amended by removing paragraph (a) and removing the paragraph designation (b).

§ 5511.2–5 [Removed]

5. Section 5511.2–5 is removed.

§ 5511.4 [Amended]

6. Section 5511.4 is amended by removing and reserving paragraph (b)(2).

Dated: September 25, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 97–26005 Filed 9–30–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 74

Miscellaneous Amendments; Correction

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: HHS published a final rule on August 4, 1997 (62 FR 41877) which made several changes to HHS grant regulations which included updating items to conform them to the Federal Acquisition Streamlining Act of 1994. This document clarifies one of the amendatory instructions in that final rule.

DATES: This correction is effective September 3, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Gale, Director, Office of Grants Management, 202–690–6377; for the hearing impaired only: TDD 202–690–6415.

SUPPLEMENTARY INFORMATION: In the final rule published on August 4, 1997, amendatory instruction number 6. was ambiguous as to whether the entire section was being revised, or only the introductory text. This correction clarifies that instruction.

In final rule document 97–20402, beginning on page 41877, in the issue of Monday, August 4, 1997, make the following correction:

§ 74.44 [Corrected]

On page 41878, in the third column, amendatory instruction 6. is corrected to read "6. Section 74.44 is amended by revising paragraph (e) introductory text to read as follows:".

Dated: September 25, 1997.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 97–25984 Filed 9–30–97; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 61, and 63

[IB Docket No. 95–118, FCC 96–79]

Streamlining the International Section 214 Authorization Process and Tariff Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rules; announcement of effective date.

SUMMARY: The Commission's amendments to the international Section 214 authorization process and tariff requirements, which contained new and modified information collection requirements, became effective on June 13, 1996.

EFFECTIVE DATES: The amendments to §§ 1.767, 61.20, 61.21, 61.22, 63.01, 63.02, 63.05, 63.10, 63.11, 63.12, 63.13, 63.14, 64.15, 63.17, 63.18, 63.19, 63.20, and 63.21 became effective on June 13, 1996 (61 FR 15724 April 9, 1996).

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Chief, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: On February 29, 1996, the Commission adopted new rules to streamline the international Section 214 authorization process and tariff requirements, a summary of which was published in the **Federal Register**. See 61 FR 15724, April 9, 1996. Because the rules and regulations imposed new and modified information collection requirements, we stated that "§ 63.23(c) became effective on May 9, 1996. All other regulations take effect either May 9, 1996 or upon approval by the Office of Management and Budget (OMB), whichever occurs later." We also stated that "when approval is received, the agency will publish a document announcing the effective date." The information collections were approved by OMB on June 13, 1996. See OMB Nos. 3060–0686. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rules.

List of Subjects in 47 CFR Parts 1, 61, and 63

Administrative practice and procedure, Communications common carriers.

Federal Communications Commission.
Shirley S. Suggs,
Chief, Publications Branch.

[FR Doc. 97–25677 Filed 9–30–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 95–117; FCC 96–425]

Satellite Application and Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communication Commission published in the **Federal Register** of February 10, 1997, a document concerning changes to the Commission's rules in 47 CFR part 25. Only the introductory text of § 25.143(e)(1) should have been corrected and a typographical error appeared in § 25.212(c). This document corrects these errors.

EFFECTIVE DATE: Effective upon October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Campbell, International Bureau, Satellite Policy Branch (202) 418–0753.

SUPPLEMENTARY INFORMATION: In December 1996, the Commission adopted modifications to its rules in 47 CFR Part 25. On February 10, 1997, a summary of the final rules was published in the **Federal Register**, 62 FR 5924 (February 10, 1997). This document corrects two errors contained in that summary. The amendatory language for § 25.143 in Item 16 was incorrect and a typographical error appeared in § 25.212(c) of Item 20.

1. The amendatory language of Item 16, page 5930, is corrected to read as follows:

16. Section 25.143(e)(1) is amended by revising the introductory sentence to read as follows:

§ 25.212 [Corrected]

2. In Item 20, page 5931, in § 25.212, paragraph (c) is corrected to read as follows:

* * * * *

(c) In the 14 GHz band, an earth station with an equivalent diameter of 1.2 meters or greater may be routinely licensed for transmission of narrowband analog services with bandwidths up to 200 kHz if the maximum input power density into the antenna does not exceed −8 dBW/4 kHz and the maximum transmitted satellite carrier EIRP density does not exceed 13 dBW/4 kHz, and for transmission of narrowband and/or wideband digital services, if the maximum input power density into the antenna does not exceed −14 dBW/4 kHz and the maximum transmitted satellite carrier EIRP density does not exceed +6.0 dBW/4 kHz.

* * * * *

Federal Communications Commission.
Shirley S. Suggs,
Chief, Publications Branch.

[FR Doc. 97–26053 Filed 9–30–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 90–337, FCC 96–160]

Regulation of International Accounting Rates

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The rule amended by the Commission establishing standards for reporting when a carrier interconnects an international private line to the U.S. Public Switched Network (PSN), shall become effective October 1, 1997. The decision, which contained new information collection requirements, was published in the **Federal Register** on November 21, 1996.

EFFECTIVE DATE: The amendment to 47 CFR § 43.51 published at 61 FR 59198 (November 21, 1996) is effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Susan O'Connell, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: On April 9, 1996, the Commission adopted a *Third Report and Order and Order on Reconsideration* ("Order") (FCC 96–160) establishing standards for reporting when a carrier interconnects an international private line to the U.S. Public Switched Network (PSN), a summary of which was published in the **Federal Register**. See 61 FR 59198, November 21, 1996. We stated that the "rule was effective December 23, 1996, except § 43.51(d), which contains new information collections which will not become effective until approval by the Office of Management and Budget (OMB)." We also stated that "the Commission will publish a document in the **Federal Register** at a later date establishing the effective date." This statement requires further action by the Commission to establish the effective date, notwithstanding the preceding statement in the summary that the rule change would become effective upon OMB approval. In order to resolve this matter in a manner that most appropriately provides interested parties with proper notice, the rule changes adopted in the Order shall become effective October 1, 1997. The information collection contained in § 43.51(d) was approved by OMB on January 6, 1997. See OMB No. 3060–0751.

List of Subjects in 47 CFR Part 43

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.
Shirley S. Suggs,
Chief, Publications Branch.

[FR Doc. 97–25680 Filed 9–30–97; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16, 36, 37, and 52

Federal Acquisition Regulation; Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Corrections and technical amendments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing corrections and technical amendments to documents previously published in the **Federal Register** in order to meet the October 1, 1997, deadline for issuance of title 48 of the Code of Federal Regulations. Corrections are being made to provisions relating to the types of contracts available to the Government and contractors, construction and architect-engineer contracts, and service contracting.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson at (202) 501–4786, General Services Administration, FAR Secretariat, Washington, DC 20405.

List of Subjects in 48 CFR Parts 16, 36, 37, and 52

Government procurement.

Corrections

The authority citation for 48 CFR part 16 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 16—TYPES OF CONTRACTS

1. At 48 CFR 16.402–1, paragraph (b) introductory text is corrected to read as follows:

16.402–1 Cost incentives.

* * * * *

(b) Except for award-fee contracts (see 16.404 and 16.405–2), incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides that—

* * * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.602–1 [Technical amendment]

2. At 62 FR 44812, August 22, 1997, in the first column, instruction 18 is corrected to read as follows:

18. Section 36.602–1 is amended by revising paragraph (a)(2), and removing paragraph (a)(6) and redesignating (a)(7) as (a)(6) to read as follows:

PART 37—SERVICE CONTRACTING

37.103 [Corrected]

3. At 62 FR 44815, August 22, 1997, in the second column, instruction 10 is revised to read as follows:

10. Section 37.103 is amended by redesignating paragraph (c) as (d) and adding new paragraph (c) to read as follows:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.247–64 [Corrected]

4. In the Editorial and Technical Changes document appearing in the issue of July 25, 1997 (62 FR 40238), in the third column under section 52.247–64, paragraph (f) is corrected to read as follows:

(f) * * * Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202–366–4610.

Dated: September 22, 1997.
Edward C. Loeb,
Director, Federal Acquisition Policy Division.

[FR Doc. 97–25684 Filed 9–30–97; 8:45 am]
BILLING CODE 6820–EP–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 400 to 999, revised as of October 1, 1996, make the following correction:

On page 482, in § 571.208, in the first column, paragraph S4.5.3.5 should be added immediately following paragraph S4.5.3.4 to read as follows:

S4.5.3.5 A replacement automatic belt shall be meet the requirements of S4.1(k) of Standard No. 209.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1241

[Ex Parte No. 431 (Sub–No. 2)]

Review of the General Purpose Costing System

AGENCY: Surface Transportation Board.

ACTION: Policy Statement; Final Rules; Request for Comments.

SUMMARY: The Surface Transportation Board (Board) is modifying the procedures used to determine the variable costs associated with certain types of rail movements; discontinuing the collection of data on switching and terminal companies; and requesting comments on a modification of the procedure for determining the variable cost of using privately-owned rail cars.

DATES: The amendments to 49 CFR part 1241, and the policy statement revising the procedures for costing intermodal traffic and the train switching conversion factor, are effective October 1, 1997. The policy statement modifying the costing of privately-owned cars is effective December 1, 1997; if this effective date is delayed, timely notice will be published in the **Federal Register**.

Comments are due October 31, 1997.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 431 (Sub-No. 2) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423–001.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 565–1567. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: To provide consistent and comparable information on railroad costs, the Board maintains a general purpose costing system known as the Uniform Railroad Costing System (URCS). This rulemaking was instituted to review the procedures used by the URCS to develop the variable cost of providing

rail service. As a result of the comments received, the Board is discontinuing the collection of cost data on switching and terminal companies found in 49 CFR 1241.14. The Board is also adopting certain modifications to the procedures used to develop the costs associated with movements of intermodal traffic and revising the train switching conversion factor used in its costing procedures. All other proposals previously made in this proceeding are withdrawn. (The Board's decision may be reviewed at the agency's offices in Washington, DC during normal business hours and is available for a charge by calling DC NEWS & DATA INC. at (202) 289–4357.) Finally, as discussed below, the Board modifies the procedures for determining the variable cost of using privately-owned rail cars (an issue which has not been previously noticed for comment), subject to receiving no objections within 30 days.

Privately-Owned Car Costing

In the past, with the exception of unit-coal trains, the Board developed the variable cost associated with using privately-owned rail cars by applying an average car rental cost for privately-owned cars if no mileage rate for that particular car was shown in the Car Hire Rate Master (CHARMS) file.[1] In its comments in Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings*,[2] the AAR pointed out that more than 43% of all U.S.-based rail cars are now owned by entities other than railroads, and that increasingly shippers that provide their own cars obtain lower rates in return for the railroad not incurring any cost for the use of the privately-owned cars.

In view of this current practice, we believe that more accurate costs will be obtained by applying a zero car rental cost to privately-owned cars that do not have mileage rates shown in CHARMS. Thus, we will tentatively modify our costing procedures to assume that all privately-owned car types that show no mileage allowance in the CHARMS file incur no car cost, except for railroad-owned pool cars (for which an allowance is always paid).[3] For such pool cars, we will continue to use an average car rental cost, because it is the best estimate available to us. Absent the receipt of comments voicing opposition to this modification within 30 days of this decision, it will become a permanent change effective December 1, 1997. If the effective date of this modification is delayed, timely notice will be published in the **Federal Register**.

The Board certifies that the new procedures will not have a significant economic effect on a substantial number of small entities. The impact on small entities, if any, will be to provide them with better cost estimates.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1241

Administrative practice and procedure, Railroads.

Decided: September 19, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, 49 CFR Chapter X is amended as set forth below:

PART 1241—ANNUAL, SPECIAL, OR PERIODIC REPORTS—CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

1. The authority citation for part 1241 is revised to read as follows:

Authority: 49 U.S.C. 11145.

§ 1241.14 [Removed]

2. Section 1241.14 is removed.

[FR Doc. 97–26029 Filed 9–30–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The CHARMS file is maintained by the Association of American Railroads (AAR) and contains all car-hire rates.

[2] See Verified statement of Rockey and Railroad Costing Officers at 17, filed Feb. 20, 1996.

[3] Railroad-owned pool cars are cars that are owned by companies that are themselves owned and controlled by the railroads. Railroad-owned pool cars are generally committed to pools for the benefit of certain shippers. A rental rate is paid for the use of these cars.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970318057–7158–02; I.D. 022097C]

RIN 0648–AJ42

Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Recreational Measures for the 1997 Summer Flounder Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final rule.

SUMMARY: NMFS issued a final rule which was published in the **Federal Register** on July 11, 1997 (62 FR 37154). This final rule implemented management measures for the 1997 summer flounder recreational fishery and also made minor technical changes to 50 CFR part 648 that were unrelated to the implementing management measures. The technical changes included the redesignation of two paragraphs. As a result of the redesignation, several errors occured in cross-references to these renumbered paragraphs. This document corrects those cross-references.

DATES: Effective July 8, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Tokarcik, 978–281–9326.

SUPPLEMENTARY INFORMATION:

Background

NMFS is correcting the final regulations published on July 11, 1997 (62 FR 37154). In addition to implementing management measures for the 1997 summer flounder recreational fishery, the final rule made minor technical changes to 50 CFR part 648 that were unrelated to implementing the management measures. The technical changes merely corrected omissions and errors that occurred in making earlier revisions to the consolidated Northeast fisheries regulations. A final rule published on April 1, 1997 (62 FR 15381) was worded as if a paragraph (j) was added to § 648.82, when in effect it actually inadvertently overwrote the original paragraph (j). In the July 11, 1997, final rule, paragraph (j) was redesignated as (k) and the original (j) was added to § 648.82. In § 648.82, cross-references to (j) were revised to reflect its redesignation.

Need for the Correction

The final rule published July 11, 1997, revised the cross-references discussed above contained in § 648.82. However, the cross-references to paragraph § 648.82(k) were not revised in the definition of "Days-at-Sea (DAS)" in § 648.2, and paragraphs 648.4(c)(2)(iii)(B) and 648.10(f)(2). This correction document revises those cross-references to reflect accurately the redesignated paragraph (k).

Correction

Accordingly, the publication on July 11, 1997, of the final regulations (I.D. 022097C), which was the subject of FR Doc. 97–18117 is corrected as follows:

Correction to Preamble

On page 37155, in the third column, fifth paragraph, add the following

sentence to the end of the paragraph: "The redesignation of paragraph (j) as (k) effects three additional cross-references in 50 CFR part 648. Therefore, the cross-references to paragraph (j) contained in the following paragraphs are also revised to reflect paragraph (k). In § 648.2, the cross-reference to § 648.82(j)(1)(iv) contained in the definition for "Day(s)-at-Sea (DAS)" is revised to read "§ 648.82(k)(1)(v)". In § 648.4(c)(2)(iii)(B), the cross-reference to § 648.80(j) is revised to read "§ 648.82(k)". In § 648.10(f)(2), the cross-reference to § 648.82(j)(1)(iii) is revised to read "§ 648.82(k)(1)(iv)".

Correction to Regulatory Text

On page 37156, in the first column, the following amendatory instructions are added after the authority citation to read as follows:

1a. In § 648.2, the definition for "Days-at-Sea (DAS)" is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Day(s)-at-Sea (DAS), with respect to the NE multispecies and scallop fisheries, except as described in § 648.82(k)(1)(v), means the 24–hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land, or fishes for, possesses, or lands regulated species or scallops.

* * * * *

1b. In § 648.4, the first sentence of paragraph (c)(2)(iii)(B) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(B) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). * * *

* * * * *

1c. In § 648.10, paragraph (f)(2) is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(f) * * *

(2) *Gillnet call-in.* Vessels subject to the gillnet restriction described in § 648.82(k)(1)(iv) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 25, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–25981 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 961227373–6373–01; I.D. 092497C]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Nontrawl Sablefish Mop-Up Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of nontrawl sablefish mop-up fishery; fishing restrictions; request for comments.

SUMMARY: NMFS announces adjustments to the management measures for the Pacific Coast groundfish fishery off Washington, Oregon, and California. This action establishes beginning and ending dates and the cumulative period landings limit for the mop-up fishery for nontrawl limited entry sablefish, and sets daily and cumulative trip limits for the nontrawl limited entry sablefish fishery after the mop-up fishery. These actions are intended to provide for harvest of the remainder of the 1997 limited entry nontrawl allocation for sablefish.

DATES: The nontrawl sablefish mop-up fishery will begin at 1201 hours local time (l.t.), October 1, 1997, and will end at 1200 hours l.t., October 15, 1997, at which time the limited entry daily trip limit fishery resumes. The daily trip limits for the nontrawl sablefish fishery will remain in effect until the effective date of the 1998 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted until October 15, 1997.

ADDRESSES: Comments on these actions should be sent to William Stelle, Jr., Administrator, Northwest Region, (Regional Administrator), NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070; or to William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these actions has been compiled in aggregate form and is available for public review during business hours at the office of the Regional Administrator.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Svein Fougner at 562–980–4034.

SUPPLEMENTARY INFORMATION: The regulations at 50 CFR 660.323(a)(2) (62 FR 45350, August 27, 1997) established a new season structure for the limited entry nontrawl sablefish fishery in 1997. The "regular season" was an equal cumulative limit fishery during which each limited entry permit holder with a sablefish endorsement had the opportunity to fish under an equal cumulative limit. Other than the large, equal cumulative limit, the only trip limit in this fishery was for sablefish smaller than 22 inches (56 cm). The 1997 regular season started at noon on August 25, 1997, and lasted for 9 days to noon on September 3, 1997.

Preseason estimates of the likely total harvest in the regular season fishery were conservative in order to minimize the risk of the fishery exceeding its total allocation. Because of the conservative projections, the regular fishery was not expected to harvest all of the limited entry, fixed gear allocation for north of 36° N. lat. in excess of that required for the daily trip limit fishery. The Regional Administrator is authorized to announce a mop-up fishery for any excess, if it is large enough, about 3 weeks after the end of the regular season and consisting of one cumulative trip limit for each vessel.

Only individuals holding limited entry permits with sablefish endorsements may participate in the mop-up fishery. No more than one cumulative limit may be landed on each limited entry permit with a sablefish endorsement. Approximately 3 weeks are needed for the Pacific Fishery Management Council (Council) Groundfish Management Team to compile all of the landings receipts from the regular season and to calculate the amount available for the mop-up season, if any. This notice establishes the 1997 mop-up fishery for limited entry, fixed gear permit holders with sablefish endorsements.

Following the mop-up fishery, daily trip limits are reimposed until the end of the year. At the September 8–12, 1997, Council meeting, the Council recommended that the limited entry, fixed gear daily trip limits for sablefish

taken north of 36° N. lat. following the mop-up season would be 300 lb (136 kg) per day, with no more than 1,500 lb (680 kg) taken in any one calendar month. Similar changes to the open access trip limits for sablefish taken north of 36° N. lat. will be announced in a separate notice.

A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24–hour period. Daily trip limits may not be accumulated. If a trip lasts more than 1 day, only one daily trip limit is allowed. Daily trip limits were in effect until the beginning of the regular season, and went back into effect after the post-season closure ended on September 5, 1997. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips.

The 1997 limited entry nontrawl sablefish allocation is 2,754 mt (6,071,468 lb). At its June meeting, the Council recommended restricting the total 1997 limited entry daily trip limit catch to 499 mt (1,100,000 lb), leaving 2,255 mt (4,971,373 lb) for the primary limited entry, fixed gear sablefish fishery. The best available information on September 22, 1997, indicated that approximately 1,643 mt (3,622,300 lb) of sablefish were landed during the regular season. Therefore, 612 mt (1,349,215 lb) remains available to the mop-up fishery. The Regional Administrator, after consulting with the Council on September 11, 1997, has determined that the mop-up fishery will occur, and that a cumulative trip limit of 8,500 lb (3,851 kg) (round weight) in a 2-week period (October 1–15, 1997) would provide for the expected fishery participants, leaving enough sablefish for small daily trip limits outside the mop-up fishery, through the end of the year. The trip limit for sablefish smaller than 22 inches (56 cm) total length, or 15.5 inches (39 cm) for sablefish that are headed, that was in effect during the regular season continues during the mop-up season.

The mop-up cumulative trip limit applies to each vessel and permit where the permit is a valid limited entry permit endorsed for pot or longline gear, and with a sablefish endorsement. No more than one cumulative limit may be landed on each permit, and no vessel may land more than one cumulative limit. Once a vessel has landed its 8,500 lb (3,851 kg) cumulative limit, it may not land more sablefish until the daily trip limits resume at 1201 hours on October 15, 1997. There is no limited entry, daily trip limit fishery during the mop-up fishery period. Therefore, holders of limited entry permits without sablefish endorsements may not land any sablefish during the mop-up period. Similarly, once a permit has been used to land its 8,500 lb (3,851 kg) cumulative trip limit, it may not be used to land more sablefish until the daily trip limits resume. Also, acquiring additional limited entry permits does not entitle a vessel to more than one cumulative limit.

The sablefish daily trip limit for the limited entry fishery after the mop-up season is 300 lb (136 kg) per day, with no more than 1,500 lb (680 kg) to be taken in any one calendar month. Since the daily trip limits apply to a 24–hour day starting at 0001 hours, but the mop-up fishery begins and ends at 1200 hours, it will be legal for a vessel in the limited entry fishery to land a daily trip limit between 0001 hours and 1200 hours on October 1, 1997, just before the start of the mop-up season, and between 1201 hours and 2400 hours on October 15, 1997, following the mop-up season.

NMFS Actions

NMFS announces the dates of the nontrawl sablefish limited entry mop-up fishery and the amounts of sablefish that may be taken with limited entry nontrawl gear during and after the limited entry mop-up fishery in 1997. All other provisions remain in effect. In the 1997 annual management measures, paragraph IV.E.(2)(c) at 62 FR 700, January 6, 1997, is revised to read as follows:

IV. * * *

E. * * *

(2) Limited Entry Fishery. * * *

(c) Nontrawl trip and size limits. (i) Daily trip limits. Effective 1201 hours October 15, 1997. The daily trip limit for sablefish taken and retained with nontrawl gear north of 36°00' N. lat. is 300 lb (136 kg), not to exceed 1,500 lb (680 kg) cumulative in a calendar month.

(A) The daily trip limit for sablefish taken and retained with nontrawl gear south of 36°00' N. lat. is (1) 350 lb (159 kg) with no cumulative limit on the amount of sablefish that may be retained in a month; or, (2) one landing of sablefish per week above 350 lb (159 kg) but not to exceed 1,050 lb (476 kg). A week is 7 consecutive days, from 0001 hours (l.t.) Sunday through 2400 hours (l.t.) Saturday.

(ii) Trip limits for small sablefish. During the regular and mop-up seasons, sablefish smaller than 22 inches (56 cm) (total length) may comprise no more than 1,500 lb (680 kg), or 3 percent of all legal sablefish on board 22 inches (56 cm) or larger, whichever is greater. (See paragraph IV.A.(6) of the annual management measures at 62 FR 700, January 6, 1997, regarding length measurement.)

(iii) Mop-Up Fishery. Effective 1201 hours October 1, 1997, until 1200 hours (local time) October 15, 1997, the cumulative trip limit for sablefish caught with nontrawl gear in the limited entry fishery is 8,500 lb (3,851 kg) per vessel.

(Note: The States of Washington, Oregon, and California use a conversion factor of 1.6 to convert dressed sablefish to its round-weight equivalent. Therefore, 8,500 lb (3,851 kg) round weight corresponds to 5,313 lb (2,407 kg) for dressed sablefish.)

Classification

These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Administrator (see **ADDRESSES**) during business hours. Because of the need for immediate action to start the mop-up fishery for sablefish, and because the public had an opportunity to comment on these actions at the September 1997 Council meeting in Portland, OR, NMFS has determined that providing an opportunity for public notice and comment would be impracticable, unnecessary, and contrary to public interest. Participants in the regular season sablefish fishery are anxious to begin fishing. Delay of this rule could push the mop-up season into bad winter weather. Therefore, the agency finds that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(a)(2), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 25, 1997

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26058 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 62, No. 190

Wednesday, October 1, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–183–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 and A321 series airplanes. This proposal would require a revision to the Airplane Flight Manual (AFM) to include procedures for the flightcrew to follow in the event of radio altimeter height malfunction. This proposal also would require replacement of certain radio altimeter antennas with improved antennas, at which time the AFM revision would no longer be required. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent output of erroneous radio altimeter height information to the flightcrew and autopilot, which could result in reduced ability of the flightcrew to cope with adverse operating conditions.

DATES: Comments must be received by October 27, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2589; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–183–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 and A321 series airplanes. The DGAC advises that it has received a report indicating that erroneous radio altimeter height information was provided to the flightcrew and to the autopilot on an Airbus Model A320 series airplane. This resulted in a premature autopilot engagement of the FLARE mode during approach, and other aural and visual flight deck indications associated with the radio altimeter height malfunction. Subsequent investigation revealed that a manufacturing flaw in the solder connection of the radio altimeter antenna caused the erroneous indications. This condition, if not corrected, could result in output of erroneous radio altimeter height information to the flightcrew and autopilot, which could result in reduced ability of the flightcrew to cope with adverse operating conditions.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) 34–03, dated February 20, 1996, which describes procedures for replacement of a certain antenna of the radio altimeter with an improved antenna. This AOT states that the operational procedures described in Airbus Flight Operation Telex (FOT) 945.0968/96 must be applied as long as the affected antennas are installed. This FOT has been incorporated into Airbus A319/320/321 Flight Manual Temporary Revision (TR) 2.05.00/13 (not dated) which describes procedures for revising the Limitations Section of the Airplane Flight Manual (AFM) to provide procedures for the flightcrew to follow in the event of radio altimeter malfunction.

Accomplishment of the actions specified in this service information is intended to adequately address the identified unsafe condition. The DGAC classified the AOT as mandatory and issued French airworthiness directive (CN) 96–172–084(B), dated August 28, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service information described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, and 1 work hour per airplane to accomplish the proposed antenna replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,000, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 97–NM–183–AD.

Applicability: Model A320 and A321 series airplanes; equipped with Collins radio altimeter antennas having part number (P/N) 622–8701–002 and a serial number below 2014; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent output of erroneous radio altimeter height information to the flightcrew and autopilot, due to inadequate antenna solder connections, which could result in reduced ability of the flightcrew to cope with adverse operating conditions, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by incorporating Airbus A319/320/321 Flight Manual Temporary Revision (TR) 2.05.00/13 (not dated) into the AFM to provide procedures for the flightcrew to follow in the event of radio altimeter malfunction.

(b) Within 6 months after the effective date of this AD, replace any COLLINS radio altimeter antenna having P/N 622–8701–002, a serial number below 2014, and white paint on the inner side of the C-sink hole, with a new antenna having the same P/N that is fitted with metallic C-sink inserts in its attaching holes; in accordance with Airbus All Operators Telex (AOT) 34–03, dated February 20, 1996. Accomplishment of the actions specified in this paragraph constitutes terminating action for the AFM revision required by paragraph (a) of this AD.

(c) As of the effective date of this AD, no person shall install a Collins radio altimeter antenna having P/N 622–8701–002 and a serial number below 2014, unless the antenna is fitted with metallic C-sink inserts in its attaching holes.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–172–084(B), dated August 28, 1996.

Issued in Renton, Washington, on September 25, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25976 Filed 9–30–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–140–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 1000 series airplanes. This proposal would require modifying the aft core cowl nozzles of the engine nacelles. This proposal is prompted by a report indicating that the sealant on the core cowl nozzles may extend higher than the forward flange of the core cowl nozzles, which could result in contact between the cowl sealant surface and the lever of the engine mechanical over-speed control system. The actions specified by the proposed AD are intended to prevent such contact, which could cause result in the over-speed system to function improperly and consequent engine structural failure.

DATES: Comments must be received by October 27, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–140–AD, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager, Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Randy Griffith, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4145; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the rules docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–NM–140–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–140–AD, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

Discussion

The FAA received a report indicating that sealant, which is applied on a portion of the aft core cowl nozzle of the engine nacelle to provide fluid drainage, may extend higher than the forward flange of the core cowl nozzle. This may allow the lever of the mechanical engine over-speed system to contact the cowl sealant surface. This condition, if not corrected, could cause the over-speed system to function improperly and consequent engine structural failure.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB.71–48–25F021B, dated May 20, 1997, which describes procedures for modification of the aft core cowl nozzles of the left- and right-hand engine nacelles. (The service bulletin references Nordam Hawker 1000 Service Bulletin PW300 71–9, dated April 29, 1995, as the appropriate source of service information for accomplishment of the modification.) The modification involves replacing the sealant on the aft core cowl nozzle with a filler made from aluminum. Accomplishment of the modification will prevent contact between the surface of the core cowl sealant and the lever of the engine mechanical over-speed control system.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the aft core cowl nozzles of the left- and right-hand engine nacelles. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 52 Model Hawker 1000 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 14 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,360, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the rules docket. A copy of it may be obtained by contacting the rules docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company (Formerly Raytheon Aircraft Corporation; Beech Aircraft Corporation; Raytheon Corporate Jets, Inc.; British Aerospace, PLC; deHavilland; Hawker Siddeley): Docket 97–NM–140–AD.

Applicability: Model Hawker 1000 series airplanes, serial numbers 258151, 258159, and 259003 through 259052 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent contact between the cowl sealant surface and the lever of the engine mechanical over-speed control system, which could cause the over-speed system to function improperly and consequent engine structural failure, accomplish the following:

(a) Within 150 flight hours or 3 months after the effective date of this AD, whichever occurs first, modify the aft core cowl nozzles of the left-and right-hand engine nacelles in accordance with Raytheon Service Bulletin SB.71–48–25F021B, dated May 20, 1997.

Note 2: The Raytheon service bulletin references Nordam Hawker 1000 Service Bulletin PW300 71–9, dated April 29, 1995, as the appropriate source of service information for accomplishment of the modification.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 25, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25975 Filed 9–30–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–146–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes. This proposal would require a one-time inspection of the tailplane (horizontal stabilizer) leading edges and surrounding area for discrepancies, and corrective action, if necessary. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent separation of the horizontal stabilizer from the fin, which could lead to reduced controllability of the airplane.

DATES: Comments must be received by October 27, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–146–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 McLearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Ranton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2148; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–146–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–146–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace (Jetstream) Model 4101 airplanes. The CAA advises that it has received reports of corrosion on the attachment bolts of the tailplane (horizontal stabilizer). This corrosion has been attributed to water contamination caused by the failure of weather seals between the closing panel of the horizontal stabilizer leading edge and the fin. This condition, if not corrected, could result in separation of the horizontal stabilizer from the fin, which could lead to reduced controllability of the airplane.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin J41–55–002, Revision 1, dated July 25, 1996, which describes procedures for a one-time inspection of the attachment bolts and surrounding area of the horizontal stabilizer for damage or corrosion, and to ensure that the weather seals are positioned correctly; and repair or repositioning of the weather seals, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–06–96 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,420, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]: Docket 97–NM–146–AD.

Applicability: Jetstream Model 4101 airplanes, constructors numbers 41005 through 41069 inclusive, and 41071 through 41078 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the tailplane (horizontal stabilizer) from the fin, which could lead to reduced controllability of the airplane, accomplish the following:

(a) Within 3,000 hours time-in-service or 11 months after the effective date of this AD, whichever occurs first, perform a one-time inspection of the attachment bolts and surrounding area of the horizontal stabilizer leading edges for discrepancies, in accordance with Jetstream Service Bulletin J41–55–002, Revision 1, dated July 25, 1996. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager,

tandardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–06–96.

Issued in Renton, Washington, on September 25, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25974 Filed 9–30–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–140–AD]

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, –320 series airplanes. This proposal would require an inspection to detect corrosion of the rear spars of the wings, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct possible corrosion on the rear spars of the wings, which could result in reduced structural integrity of the wings.

DATES: Comments must be received by October 27, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the rules docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–140–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes. The DGAC advises that it has received three reports indicating that, during routine inspections, corrosion was found on the rear spar lower flange of the outer wing. This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletin ATR42–57–0044, dated May 30, 1995, and Revision 1, dated June 28, 1995, which describe procedures for performing a one-time detailed visual inspection to detect corrosion of the rear spars of the wings. The service bulletins also describe procedures for repair of corrosion within certain limits, and application of a protective compound to certain areas. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive (CN) 95–127–063(B), dated August 2, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Differences Between the Proposal and the Related Service Bulletins

The proposed rule would differ from Aerospatiale Service Bulletins ATR42–57–0044, dated May 30, 1995, and Revision 1, dated June 28, 1995, in that it would not permit further flight following removal of corrosion. The FAA has determined that, due to the safety implications and consequences associated with the removal of small amounts of metal from the load-carrying structural elements of the rear spars of the wings (a normal and unavoidable result of the process of removing corrosion), the subject rear spars that are found to be corroded must be repaired prior to further flight. The repair would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 16 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $23,040, or $1,440 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the rules docket. A copy of it may be obtained by contacting the rules docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 95–NM–140–AD.

Applicability: Model ATR42–200, –300, and –320 series airplanes, as listed in Aerospatiale Service Bulletin ATR42–57–0044, dated May 30, 1995, or Revision 1, dated June 28, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion on the rear spars of the wings, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time detailed visual inspection to detect corrosion of the rear spars of the wings, in accordance with Aerospatiale Service Bulletin ATR42–57–0044, dated May 30, 1995, or Revision 1, dated June 28, 1995.

(1) If no corrosion is detected, prior to further flight, apply a protective compound to the areas specified in the service bulletin, in accordance with the service bulletin.

(2) If any corrosion is detected, prior to further flight, repair it in a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 95–127–063(B), dated August 2, 1995.

Issued in Renton, Washington, on September 25, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–25977 Filed 9–30–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 700

[Docket No. 970827205–7205–01]

RIN 0694–AA02

Defense Priorities and Allocations System

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Department of Commerce proposes to revise the Defense Priorities and Allocations System (DPAS) regulation by updating, modifying or clarifying a number of its provisions. The DPAS implements the priorities and allocations authority of Title I of the Defense Production Act of 1950, as amended, and the priorities authority of Section 18 of the Selective Service Act of 1948 and related authorities, as these authorities pertain to industrial resources.

Provisions to be modified include the time period within which a supplier must accept or reject a rated order, the order of precedence to be given to conflicting rated orders which have equal priority status, and the combining of defense rated requirements with commercial (unrated) requirements.

The Department also proposes to remove all controlled materials provisions and references from the DPAS because the controlled materials program (essentially an emergency preparedness measure) is obsolete and has been deactivated.

These revisions, including a number of other changes to update and clarify the text, are intended to improve the administration of the DPAS and make it more effective and efficient in the post-Cold War era.

The Department will consider public comment on these proposed revisions and on any other provision that may be hindering effective and efficient DPAS administration or implementation.

DATES: Comments must be received no later than October 31, 1997.

ADDRESSES: Address written comments (six copies) to Richard V. Meyers, DPAS Program Manager, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230. The public record of this proposed rule will be available at the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, DPAS Program Manager, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3634, FAX (202) 482–5650, and E-Mail rmeyers@bxa.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The current Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700; formerly 15 CFR part 350) was published by the Department of Commerce as a final rule on July 30, 1984 (49 FR 30412), superseding the regulations of the Defense Materials System and Defense Priorities System. The DPAS regulation implements the priorities and allocations authority of Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*), and the priorities authority of Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468), 10 U.S.C. 2538 and 2539, and 50 U.S.C. 82, as these authorities pertain to industrial resources.

The Department has received a number of oral and written comments suggesting the need to modify or clarify several provisions of the DPAS which relate to: (1) The time period within which a supplier must accept or reject a rated order [section 700.13(d)(1)]; (2) the order of precedence to be given by contractors and suppliers to conflicting rated orders of equal priority status (section 700.14); and (3) the combining by a contractor of defense rated requirements with commercial (unrated) requirements on one purchase order to a supplier [section 700.17(d)]. Accordingly, for the reasons discussed in the PROPOSED REVISIONS section below, the Department proposes to revise these DPAS rules.

The Department also proposes to remove the controlled materials provisions from the DPAS (sections 700.30–700.31) and delete all other references to the program from throughout the regulation for the following reasons.

During World War II and the Korean War, the production and distribution of certain critical materials called "controlled materials"—steel, copper, and aluminum—were managed under Controlled Materials Plans. From 1953 to 1988, these materials, with nickel alloys added in 1958, continued to be subject to government allocations regulations.

A 1987 Department of Commerce study of the controlled materials program found that the program had little relevance to current defense requirements for the controlled materials or to the current ability of industry to supply the controlled materials to meet these requirements. The study recommended that the controlled materials procedures be deactivated. An interagency committee, comprised of Commerce and three of the DPAS Delegate Agencies (Federal Emergency Management Agency and the Departments of Defense and Energy), concurred with this recommendation. Action was subsequently taken by these agencies to deactivate the program, including action by Commerce to discontinue the information collection burden imposed upon controlled materials producers, distributors, and users to supply information about controlled materials requirements and shipments. This information was used to support administration of the controlled materials program.

Finally, the Department proposes to make various jurisdictional, technical, administrative, and miscellaneous revisions to a number of DPAS provisions to address changes to delegated authority, to incorporate the delegation of additional authority, to update and clarify the text, and to improve generally the administration, effectiveness, and efficiency of the DPAS in support of our nation's post-Cold War defense requirements and its ability to respond fully to a national security or major disaster emergency situation.

Proposed Revisions

Proposed revisions to the DPAS regulation are described in the following section-by-section analysis.

1. Customer Notification of Acceptance or Rejection of Rated Orders

Section 700.13(d) (Customer notification requirements) of the current DPAS requires a supplier to accept or reject a rated order in writing within ten (10) working days after receipt of a DO rated order and within five (5) working days after receipt of a DX rated order. Subcontractors and suppliers have complained that it is very difficult to comply with this requirement due to production scheduling complexities and other administrative factors.

The proposed rule would revise subparagraph (1) of section 700.13(d) by extending the time within which a person must accept or reject a rated order by five (5) working days. Accordingly, a person must accept or reject a rated order within fifteen (15) working days after receipt of a DO rated order, and within ten (10) working days after receipt of a DX rated order. The Department believes that this change will not significantly impact upon the timely delivery of items against these orders.

The revised subparagraph would also specifically reference electronic data interchange of the acceptance or rejection of rated orders. Electronic placement of rated orders is acceptable provided that the transmission complies in substance with section 700.12 (Elements of a rated order). This section would also be revised to reference the electronic placement of rated orders.

2. Precedence of Rated Orders of Equal Priority Status

A number of companies have requested clarification of the preference to be given to rated orders which have equal priority status (DX or DO) when production scheduling conflicts or other problems arise following acceptance of the rated orders.

The proposed rule would revise paragraph (c) of section 700.14 (Preferential scheduling) of the current DPAS to provide that if a person finds that production, delivery, or performance against any accepted rated orders conflicts with production, delivery, or performance against any other accepted rated orders of equal priority status, preference shall be given to the conflicting rated orders in the sequence in which they were received (not to the required delivery dates). However, if the conflicting rated orders were received on the same day, the person shall give preference to those orders which have the earliest delivery dates. If under these rules, the production, delivery, or performance conflicts cannot be resolved, or if the customer objects to the rescheduling of the customer's rated order, the proposed rule provides that special priorities assistance should be requested promptly under sections 700.50–700.54 of the DPAS.

Some of the confusion over preferential scheduling appears to have been caused by including paragraph (c) in section 700.14 (Preferential scheduling) of the current DPAS. This paragraph covers acceptance or rejection of rated orders of equal priority status received on the same day. The proposed rule would incorporate this paragraph into section 700.13 (Acceptance and rejection of rated orders).

3. Combining Defense Rated Requirements With Commercial (Unrated) Requirements

Paragraph (d) of section 700.17 (Use of rated orders) of the current DPAS permits a contractor to combine rated and unrated order quantities on a purchase order to a supplier provided that the rated quantities are clearly and separately identified. These quantities must also be contained in a separate rated order which conforms to the requirements of section 700.12 (Elements of a rated order). A special statement and the physical attachment of the separate rated order to the combined order are also required. A number of companies have complained that the requirement for a separate rated order is expensive to implement, an administrative burden, and incompatible with their automated procurement systems.

The proposed rule would eliminate the requirement for a separate rated order but would retain the requirement for clear and separate identification of rated order quantities. It also would require a special statement on the combined purchase order to notify the supplier that the order contains rated quantities certified for national defense use and that the provisions of the DPAS apply only to the rated quantities. This change should contribute to contractor efficiency and cost savings while minimizing the possibility of supplier confusion. The growing commercialization of defense procurement and the development of dual-use products and technology further underscores the need for this change.

4. National Security Emergency Preparedness and Removal of the Controlled Materials Provisions

The proposed rule would remove from the DPAS all provisions and references pertaining to the controlled materials, including the controlled materials information in section 700.4 of Subpart B (Overview), the definitions relating to controlled materials in section 700.8, the special rules for controlled materials in Subpart F (sections 700.30–700.31), and the authorized programs for controlled materials (C8 and H2–H4) listed in Schedule 1 to Part 700. Also removed would be Schedule II to Part 700, which lists the controlled materials, Schedule III to Part 700, which defines the controlled materials, and Schedules IV and V to Part 700, which establish the set-aside base and percentages for copper and nickel alloys producers.

The heading of Subpart F would be renamed "National Security Emergency Preparedness and Critical Items.", and the heading of section 700.30 would be retitled "Priorities and Allocations in a National Security Emergency." The text of section 700.30 would be revised to provide a statement as to how the DPAS may be expanded in a national security emergency to ensure rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent defense or major disaster emergency requirements of approved programs.

Included is a discussion of emergency official actions, the allocation of critical and scarce items and facilities to meet emergency requirements, and the delegation of authority under the DPAS to the Regional Emergency Coordinators in the ten Standard Federal Region Council cities in the event that communications with Commerce headquarters in Washington, D.C. is severed as a result of the emergency.

Section 700.4 in Subpart B (Overview) would also be revised to summarize the revised Subpart F, with the section heading retitled "Priorities and Allocations in a National Security Emergency."

In Subpart G, section 700.40 (General provisions) would be removed and section 700.41 (Metalworking machines) would be moved into Subpart F and redesignated as section 700.31. Subpart G would be "Reserved" for future use.

The removal of the controlled materials provisions would necessitate amendment of DPAS Delegation 1 to the Secretary of Defense (Appendix I to Part 700) and the Memorandum of Understanding on Priorities and Allocations Support Between the U.S. Department of Commerce and the Canadian Public Works and Government Services Canada (formerly Department of Supply and Services) (Appendix IV to Part 700) to delete references to the controlled materials program within these documents.

5. New Approved Programs

The proposed rule would revise Schedule 1 to the current DPAS to retitle it "Approved Programs and Delegate Agencies", to include two new programs, "Special Projects" and "Food Resources (combat rations)", and to change the "N1" Federal Emergency Management Agency program name to "Emergency Preparedness Activities".

The "Special Projects" program would be assigned to the Department of Commerce as Delegate Agency and identified by the Program Identification Symbol "H8". It would provide the Department with greater administrative flexibility in authorizing the use of priority ratings, as needed on a case-by-case basis by non-Delegate Agencies to support defense related procurement, where use of a current approved program identification would not be appropriate. Such priority rating authority would be granted only after establishing the appropriate national defense or civil emergency preparedness nexus for the project in consultation with the Department of Defense (DOD), Department of Energy, or Federal Emergency Management Agency, as provided under section 202 of E.O. 12919.

The "Food Resources (combat rations)" program would be assigned to DOD as Delegate Agency and identified by the Program Identification Symbol "C1". This would enable DOD to place rated orders under the DPAS for food resources to meet troop support requirements for combat rations under the authority delegated to DOD by Commerce in DPAS Delegation 1 (see Appendix I to Part 700). This program was established by agreement between the Departments of Commerce and Agriculture, dated January 28, 1991, and approved by FEMA on February 1, 1991 (see Attachment A to DPAS Delegation 1). It is consistent with the Memorandum of Understanding between the Departments of Agriculture and Commerce Concerning Priorities

and Allocations Jurisdiction and Responsibilities for Foods Which Have Industrial Uses and the Domestic Distribution of Farm Equipment (see Appendix II to Part 700).

The "N1" program name change would reflect the expansion of Defense Production Act (Title I) priorities and allocations authority to cover emergency preparedness activities as provided under Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act) (42 U.S.C. 5195, *et seq.*).

6. Other Revisions

Because of recent amendments to the Defense Production Act, the Stafford Act, and the issuance and subsequent amendment of Executive Order 12919 (revision of Executive Order 10480), technical revisions to several sections of the DPAS, including section 700.18(b)(1) (Jurisdictional limitations), are required. The proposed rule sets forth these changes.

Also, on January 8, 1991, priorities authority with respect to industrial resources was delegated to the Department of Commerce under the Selective Service Act of 1948 (50 U.S.C. app. 468), 10 U.S.C. 2538 and 2539, and 50 U.S.C. 82 by Executive Order 12742 (56 FR 1079). The proposed rule would incorporate a reference to these authorities where appropriate, throughout the regulation.

Finally, the proposed rule would make various other technical, administrative, and miscellaneous changes to the current DPAS rules. Among these revisions are improvements to the clarity of the text in section 700.2(b) (Introduction) and subparagraph (2) of section 700.13(d) (Customer notification requirements), and increasing the minimum rated order amount from $5000 to $100,000 in paragraph (f) of section 700.17 (Use of rated orders) to conform with the current simplified Federal Acquisition Regulation small order acquisition threshold. Revision of section 700.21 (Application for priority rating authority) in Subpart E (Industrial Priorities for Energy Programs), section 700.72 (Compulsory process), section 700.80 (Adjustments or exceptions), section 700.81 (Appeals), and section 700.93 (Communications), is necessary to reflect office name, address, telephone number, and Departmental organization changes.

7. Appendices to Part 700

All DPAS Appendices (Appendix I—DPAS Delegations of Authority to the Departments of Defense and Energy, the General Services Administration, and the Federal Emergency Management Agency; Appendix II—Interagency Memoranda of Understanding with the Departments of Agriculture, Energy, and the Interior; Appendix III—Form ITA–999—Request for Special Priorities Assistance; and Appendix IV—Memorandum of Understanding on Priorities and Allocations Support Between the U.S. Department of Commerce and the Canadian Department of Supply and Services) require updating and revision to address various substantive and technical changes, including changes in statutory and delegated authority and removal of obsolete provisions. Of special note is an expanded restriction in each of the DPAS Delegations of Authority on the use of rated orders by the Delegate Agencies to support procurement of any items which are commonly available in commercial markets for general consumption, do not require major modification when purchased for approved program use, and are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements.

A new Appendix V (DPAS Emergency Documents) will be added, containing, for information purposes only, DPAS Emergency Delegation 1. This document will delegate authority to the Regional Emergency Coodinators in the ten Federal Regional Council cities to administer the DPAS if a catastrophic national security emergency situation severs communications with Department of Commerce headquarters in Washington, D.C.

Because the documents in these Appendices are of limited public interest, they will not be published in draft for public comment. They will, however, be reviewed by all involved departments and agencies and copies of the executed originals will be published with the Notice of Final Rulemaking.

Public Comment Requested

Public comment on the sufficiency and reasonableness of these proposed revisions is solicited. In addition, comments are solicited concerning any other DPAS provision. The Department's objective is to ensure that the DPAS is effective, efficient, easy to understand and use, and properly designed not only to ensure the timely delivery of industrial resources in support of current national defense programs with minimal disruption to normal commercial activities, but also to support future emergency requirements.

Section 709 of the Defense Production Act exempts the promulgation of rules and regulations from the rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 551–559). However, the Defense Production Act does require **Federal Register** publication of these proposed revisions and opportunity for public comment, consistent with the requirements 5 U.S.C. 553(b). Therefore, all persons who desire to comment are encouraged to do so at the earliest possible time to receive the fullest consideration of their views. Only those comments received on or before October 31, 1997 will be considered.

In the interest of accuracy and completeness, the Department requires written comments (six copies) which should be sent to the address indicated in the address section above. Oral comments should be directed to Richard V. Meyers, DPAS Program Manager [tel.: (202) 482–3634], and must be followed by written memorandum to Mr. Meyers. All such written comments and memoranda will be placed in the public rulemaking docket and will be available for public review and copying. However, communications from agencies of the U.S. Government or foreign governments will not be made available for public inspection. Written comments accompanied by a request that part or all of the material contained be treated confidentially will not be considered in developing the final rule. Such comments and materials will be returned to the submitter.

The public rulemaking docket concerning this regulation will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, at the address indicated in the address section above. Records in this facility may be inspected and copied in accordance with regulations published in 15 CFR part 4. Information pertaining to the inspection and copying of records may be obtained from Ms. Margaret Cornejo, Freedom of Information Officer, at the Records Inspection Facility, or by calling (202) 482–5653.

Rulemaking Requirements

The Department has made certain determinations with respect to the following rulemaking requirements:

1. Classification Under E.O. 12866

This proposed revision of the current DPAS regulation (15 CFR part 700) has been determined to be "not significant" for the purpose of Executive Order 12866.

2. Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule to revise the DPAS, if adopted, will not have a significant economic impact on a substantial number of small entities. These revisions would merely update, modify, or clarify a number of provisions to make the current DPAS more effective and efficient in the post Cold War era. Many of the proposed changes are being made in response to comments and recommendations received from the business community, thus ensuring that the updated DPAS will conform to current business practices and enable all business entities subject to its requirements to increase the efficiency of their operations and realize certain cost savings. In addition, some DPAS provisions must be revised to conform the regulation to recent statutory and organizational changes while other provisions must be deleted because they are obsolete.

Because of the self-administered nature of the DPAS, there is no way to accurately estimate the number of business entities throughout the U.S. industrial base to whom the DPAS is applicable. However, it has been roughly estimated that there are at least 18,000 business entities during any one year that on at least one or more occasions must respond to its requirements. It is also estimated that given the nature of defense production, relatively few of these entities are small entities.

The DPAS regulation has been in effect since 1984 and is the successor to priorities and allocations regulations that were first promulgated in the mid-1950s. Thus, most business entities engaged in defense production under the DPAS, including small entities, can and do respond to applicable DPAS requirements in the ordinary course of their business with very little, if any, economic impact. The DPAS revisions, in and of themselves, would impose no economic impact on any business entity, including small entities, and if adopted, will further reduce whatever minimal economic impact is associated with DPAS compliance.

3. Paperwork Reduction Act

The information collection requirements imposed by the DPAS regulation have been submitted to the Office of Management and Budget (OMB) for review under the provisions of Section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) (OMB Control Number 0694–0053). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with these information collection requirements unless the information collection displays a currently valid OMB Control Number.

The collection of information requirements in the DPAS apply to all persons who receive priority rated orders under the DPAS. These requirements are necessary to support proper administration of the DPAS and ensure its effectiveness and efficiency. The total annual public burden per respondent for this collection of information is estimated at 14,476.5 hours. This estimate includes (a) 11,667 total extra record keeping hours to create a record of the receipt of a priority rated order (700,000 priority rated orders annually × 1 minute per order); (b) 972 total hours to provide notice of acceptance of a priority rated order (699,650 priority rated orders accepted annually × 5 seconds per order); (c) 87.5 total hours to provide notice of rejection of a priority rated order (350 total priority rated orders rejected annually × 15 minutes per order); and (d) 1,750 total hours to provide notice of delayed delivery against a priority rated order (7000 total priority rated orders annually against which delivery will be delayed × 15 minutes per order).

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of agency functions, which includes proper administration of the DPAS and ensuring its effectiveness and efficiency; (b) the accuracy of the public burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to further minimize the public information collection burden, including the use of automated collection techniques or other forms of information technology. Written comments should be sent within 30 days of publication of this Notice in the **Federal Register** to Ms. Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Office of Management and Budget, Washington, D.C. 20230; and to Mr. Stephen Baker, BXA Information Collection Officer, Room 6877, U.S. Department of Commerce, Washington, D.C. 20230.

4. Executive Order 12612

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

For the reasons stated in the preamble, part 700 of Subchapter A, National Security Industrial Base Regulations (15 CFR part 700), is proposed to be amended as follows:

1. The authority citation for 15 CFR part 700 is revised to read as follows:

Authority: Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), and Executive Order 12919 of June 3, 1994 (59 FR 29525), as amended; Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468), 10 U.S.C. 2538 and 2539, 50 U.S.C. 82, and Executive Order 12742 of January 8, 1991 (56 FR 1079), as amended; and Executive Order 12656 of November 18, 1988 (53 FR 226), as amended.

PART 700—[AMENDED]

2. Section 700.1 is amended:

a. By revising the phrase "materials and facilities" to read "materials, services, and facilities", and revising the phrase "materials and equipment" to read "materials, equipment, and services", in paragraph (a);

b. By revising paragraph (b);

c. By redesignating paragraph (c) as paragraph (e); and

d. By adding new paragraphs (c) and (d); as follows:

§ 700.1 Purpose of this regulation.

* * * * *

(b) Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468) (Selective Service Act) authorizes the President to place an order with a supplier for any articles or materials required for the exclusive use of the U.S. armed forces whenever the President determines that in the interest of national security, prompt delivery of the articles and materials is required. The supplier must give precedence to the order so as to deliver the articles or materials in a required time period. 10 U.S.C. 2538 and 2539, and 50 U.S.C. 82, provide similar authority specifically for Department of Defense procurement, but only in time of war or when war is imminent.

(c) Section 602(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(b)) provides that the terms "national defense" and "defense" as used in the Defense Production Act includes "emergency preparedness activities" conducted pursuant to Title VI of the Stafford Act. The definition of "national defense" in Section 702(13) of the

Defense Production Act provides that this term includes "emergency preparedness activities" conducted pursuant to Title VI of the Stafford Act.

(d) The Defense Priorities and Allocations System (DPAS) regulation implements the priorities and allocations authority of the Defense Production Act and as this authority pertains to Title VI of the Stafford Act, and the priorities authority of the Selective Service Act and related statutes, all with respect to industrial resources. The DPAS ensures the timely availability of industrial resources for approved programs and provides a regulatory framework to support rapid industrial response to a national security or major disaster emergency.

* * * * *

3. Section 700.2 is amended by revising paragraphs (a) and (b) to read as follows:

§ 700.2 Introduction.

(a) Certain national defense and energy programs (including emergency preparedness activities) are approved for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are "approved programs." A complete list of currently approved programs is provided at Schedule 1 to this regulation.

(b) The Department of Commerce administers the DPAS to ensure the timely delivery of industrial items to meet approved program requirements.

* * * * *

§ 700.3 [Amended]

4. Section 700.3(a) is amended by revising the term "authorized program" to read "approved program".

5. Section 700.4 is amended:

a. By revising the section heading;

b. By revising paragraphs (a) and (b); and

c. By removing paragraphs (c), (d), and (e); as follows:

§ 700.4 Priorities and allocations in a national security emergency.

(a) In the event of a national security emergency, special rules may be established as needed to supplement this regulation, thus ensuring rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent defense or major disaster emergency requirements of approved programs.

(b) The special rules established in response to the emergency may include provisions for the taking of certain emergency official actions and the allocation of critical and scarce materials and facilities.

6. Section 700.7(a) is amended by adding the phrase "and the Selective Service Act and related statutes" following the phrase "the Defense Production Act".

7. Section 700.8 is amended:

a. By removing the following definitions: "Authorized program", "Controlled materials", "Controlled materials suppliers", "Distributors of controlled materials", "Further conversion", "Lead time", "Minimum mill quantity", and "Person";

b. By amending the definition of "Delegate Agency", revising the term "authorized programs" to read "approved programs";

c. By amending the definition of "Official action", adding a comma followed by the phrase "the Selective Service Act and related statutes," following the phrase "the Defense Production Act,";

d. By amending the definition of "Rated order", revising the term "authorized program" to read "approved program"; and

e. By revising the introductory sentence after the section heading, and adding new definitions in alphabetical order; as follows:

§ 700.8 Definitions.

In addition to the definitions provided in Section 702 of the Defense Production Act, the following definitions pertain to all sections of the regulation:

Approved program. A program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Director, Federal Emergency Management Agency, under the authority of the Defense Production Act, the Stafford Act, and Executive Order 12919, or the Selective Service Act and related statutes and Executive Order 12742.

* * * * *

Person. Any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any State or local government or agency thereof; and for purposes of administration of this regulation, includes the United States Government and any foreign government or agency thereof, delegated authority under this regulation.

* * * * *

Selective Service Act and related statutes. Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468), 10 U.S.C. 2538 and 2539, and 50 U.S.C. 82.

* * * * *

Stafford Act. Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195, *et seq.*).

8. Section 700.10 is amended:

a. By revising paragraph (a); and

b. By revising the phrase "Office of Industrial Resource Administration" to read "Office of Strategic Industries and Economic Security", and revising the phrase "authorized programs" to read "approved programs", in paragraph (b); as follows:

§ 700.10 Delegation of authority.

(a) The priorities and allocations authorities given to the President in Title I of the Defense Production Act with respect to industrial resources, have been delegated to the Secretary of Commerce under Executive Order 12919 of June 3, 1994 (59 FR 29525), as amended. The priorities authorities given to the President in the Selective Service Act and related statutes with respect to industrial resources, have also been given delegated to the Secretary of Commerce under Executive Order 12742 of January 8, 1991 (56 FR 1079), as amended.

* * * * *

§ 700.11 [Amended]

9. Section 700.11(b) is amended by revising the term "authorized programs" to read "approved programs".

10. Section 700.12 is amended by revising paragraph (c) to read as follows:

§ 700.12 Elements of a rated order.

* * * * *

(c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature or use of the name certifies that the rated order is authorized under this regulation and that the requirements of this regulation are being followed; and

* * * * *

11. Section 700.13 is amended:

a. By adding a new paragraph (b)(4);

b. By removing paragraphs (c)(5), (c)(6), and (c)(7);

c. By redesignating paragraph (c)(8) as paragraph (c)(5) and amending redesignated paragraph (c)(5) by adding the phrase "or the Selective Service Act and related statutes" following the phrase "the Defense Production Act";

d. By revising paragraph (d); and

e. By adding an OMB control number; as follows:

§ 700.13 Acceptance and rejection of rated orders.

* * * * *

(b) Mandatory rejection. * * *

(4) If a person is unable to fill all the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

* * * * *

(d) *Customer notification requirements.* (1) A person must accept or reject a rated order in writing or electronically within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must give reasons in writing (not electronically) for the rejection.

(2) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days.

[The information collection requirements in paragraphs (d)(1) and (d)(2) are approved by the Office of Management and Budget under control number 0694–0053.]

12. Section 700.14 is amended by revising paragraph (c) to read as follows:

§ 700.14 Preferential scheduling.

* * * * *

(c) *Conflicting rated orders.* (1) If a person finds that production, delivery, or performance against any accepted rated orders conflicts with production, delivery, or performance against other accepted rated orders of equal priority status, the person shall give preference to the conflicting orders in the sequence in which they were received (not to the required delivery dates). If the conflicting rated orders were received on the same day, the person shall give preference to those orders which have the earliest delivery dates.

(2) If a person is unable to resolve rated order production, delivery, or performance conflicts under these rules, the person should promptly seek special priorities assistance as provided in §§ 700.50 through 700.54. If the person's customer objects to the rescheduling of a rated order, the customer should promptly seek special priorities assistance as provided in §§ 700.50 through 700.54. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 700.13(d)(2).

* * * * *

13. Section 700.17 is amended:

a. By removing the parenthetical phrase "(except as provided in § 700.31(d)—Controlled materials program identification symbols)" in paragraph (b)(2);

b. By removing the parenthetical phrase "(not applicable to controlled materials producers)" in paragraph (b)(3);

c. By removing the phrase found at the end of the paragraph, "except as provided in § 700.31(d) (Controlled materials program identification symbols)", in paragraph (c).

d. By revising paragraph (d)(1);

e. By redesignating paragraph (d)(2) as (d)(3);

f. By adding a new paragraph (d)(2); and

g. By revising paragraph (f); as follows:

§ 700.17 Use of rated orders.

* * * * *

(d) *Combining rated and unrated orders.* (1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The four elements of a rated order, as required by § 700.12, are included on the order with the statement required in § 700.12(d) modified to read in substance:

> This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700) only as it pertains to the rated quantities.

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 700.13 and give preferential treatment only to the rated quantities as required by this regulation. This regulation may not be used to give preferential treatment to the unrated portion of the order.

* * * * *

(f) A person is not required to place a priority rating on an order for less than $100,000 provided that delivery can be obtained in a timely fashion without the use of the priority rating.

14. Section 700.18 is amended:

a. By adding a new paragraph (a)(2)(v);

b. By revising paragraph (b)(1); and

c. By removing the first item listed, "communication services", and the parenthetical phrase, "(as defined in Schedule III)" which follows the item, "Copper raw materials", in paragraph (b)(3); as follows:

§ 700.18 Limitations on placing rated orders.

(a) * * *

(2) * * *

(v) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons.

(b) *Jurisdictional limitations.* (1) The priorities and allocations authority for certain items has been delegated under Executive Orders 12919 and 12742, other executive order, or interagency Memoranda of Understanding to other agencies. Unless otherwise agreed to by the concerned agencies, the provisions of this regulation are not applicable to these items which include:

(i) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (Department of Agriculture—see Attachment A to DPAS Delegation 1 in Appendix I to Part 700 concerning combat rations);

(ii) All forms of energy, including radioisotopes, stable isotopes, source material, and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy (Department of Energy);

(iii) Health resources (Department of Health and Human Services);

(iv) All forms of civil transportation (Department of Transportation);

(v) Water resources (Department of Defense/U.S. Army Corps of Engineers);

(vi) Communications services (National Communications System under Executive Order 12472 of April 3, 1984); and

(vii) Mineral resources and mineral processing facilities (Department of the Interior/U.S. Geological Survey—see Memorandum of Understanding Between Interior and Commerce in DPAS Appendix II to Part 700).

* * * * *

15. Section 700.21 is amended:

a. By revising paragraph (a);

b. By revising the phrase "materials or equipment" to read "materials, equipment, or services" in paragraphs (b)(2), (c) introductory text, (c)(1) introductory text, and (d); and

c. By revising the term "authorized programs" to read "approved programs" in paragraph (f); as follows:

§ 700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical, and essential supplies of materials, equipment, and services (related to the production of materials or equipment, or the installation, repair, or maintenance of equipment) by submitting DOE Form PR 437 to the Department of Energy. Blank applications and further information may be obtained from the U.S. Department of Energy, Office of Clearance and Support, Field/Headquarters Support Division, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Attn.: PR–132.

* * * * *

16. Subpart F is amended:

a. By revising the Subpart heading;

b. By revising § 700.30; and

c. By removing § 700.31; as follows:

Subpart F—National Security Emergency Preparedness and Critical Items

§ 700.30 Priorities and allocations in a national security emergency.

(a) In the event of a national security emergency, special rules may be established as needed to supplement this regulation, thus ensuring rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent defense or major disaster emergency requirements of approved programs.

(1) *National security emergency.* A "national security emergency" is defined in section 101(a) of E.O. 12656 (November 18, 1988), as amended, as any occurrence, including a natural disaster or an accidental or man-caused major disaster event such as military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national or economic security of the United States.

(2) *Emergency official actions.* (i) As needed, this regulation may be supplemented to include additional definitions to cover civilian emergency preparedness industrial items, support for essential civilian programs, and provisions for the taking of certain emergency official actions under sections 700.60 through 700.63.

(ii) Emergency official actions may include:

(A) Controlling inventories of critical and scarce defense and/or emergency preparedness items;

(B) Restricting the purchase, use, or distribution of critical and scarce defense and/or emergency preparedness items, or the use of production or distribution facilities, for non-essential purposes; and

(C) Converting the production or distribution of non-essential items to the production or distribution of critical and scarce defense and/or emergency preparedness items.

(3) *Allocation of critical and scarce items and facilities.* (i) As needed, this regulation may be supplemented to establish special rules for the allocation of scarce and critical items and facilities to ensure the timely availability of these items and facilities for approved programs, and to provide for an equitable and orderly distribution of requirements for such items among all suppliers of the items. These rules may provide for the allocation of individual items or they may be broad enough to direct general industrial activity as required in support of emergency requirements.

(ii) Allocation rules (i.e., controlled materials programs) were established in response to previous periods of national security emergency such as World War II and the Korean Conflict. The basic elements of the controlled materials programs were the set-aside (the amount of an item for which a producer or supplier must reserve order book space in anticipation of the receipt of rated orders), the production directive (requires a producer to supply a specific quantity, size, shape, and type of an item within a specific time period), and the allotment (the maximum quantity of an item authorized for use in a specific program or application). These elements can be used to assure the availability of any scarce and critical item for approved programs. Currently, a set-aside applies only to metalworking machines (see § 700.31).

(4) In the event that certain critical items become scarce, and approved program requirements for these items cannot be met without creating a significant dislocation in the civilian market place so as to create appreciable hardship, Commerce may establish special rules under section 101(b) of the Defense Production Act to control the general distribution of such items in the civilian market.

(b) *Regional Emergency Coordinators.* (1) If due to a catastrophic national security emergency event, communications with Commerce headquarters in Washington, D.C. are severed, DPAS Emergency Delegation 1 will provide authority to the Regional Emergency Coordinators (REC) located in the Standard Federal Region Council cities (Boston, New York, Philadelphia, Atlanta, Dallas, Kansas City, Chicago, Denver, San Francisco, and Seattle) to represent the Secretary of Commerce, and as necessary, act for the Secretary to carry out the emergency industrial production and distribution control functions of Commerce as set forth in this regulation, in any supplement thereto, or other applicable authority. See DPAS Emergency Delegation 1 (Appendix V to Part 700) for further information about the authority and duties of the RECs, and the effective date of the Delegation.

(2) If DPAS Delegation 1 is implemented due to a catastrophic national security emergency event, requests for special priorities assistance under sections 700.50–55 of this regulation should be filed with the nearest Regional Emergency Coordinator located in one of the Standard Federal Region Council cities as provided in DPAS Delegation 1 (Appendix V to Part 700).

17. Subpart G is amended:

a. By removing § 700.40;

b. By redesignating § 700.41 as § 700.31 in Subpart F; and

c. By removing the subpart heading and reserving Subpart G for future use; as follows:

Subpart G—[Reserved]

18. Section 700.50(c) is amended by revising the term "ITA–999" to read "BXA–999" each of the three times it appears in the paragraph; by revising the term "(OMB #0625–0015)" to read "(OMB #0694–0057)"; and by removing the comma followed by the phrase "any Commerce District Office".

19. Section 700.54 is amended by revising the section heading and the second sentence of the introductory text, as follows:

§ 700.54 Instances where assistance may not be provided.

* * * * *

Examples where assistance may not be provided include situations when a person is attempting to:

* * * * *

§ 700.55 [Amended]

20. Section 700.55 is amended:

a. By revising the term "authorized programs" to read "approved programs" in paragraph (a);

b. By revising the term "Canadian Department of Supply and Services" to read "Canadian Public Works and Government Services Canada" in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6); and

c. By revising the term "ITA–999" to read "BXA–999" in paragraph (b)(6).

§§ 700.70, 700.71, 700.72, 700.23, 700.75, 700.80, 700.91 [Amended]

21. The phrase "the Selective Service Act and related statutes," is added following the phrase "the Defense Production Act," wherever it appears in the following places:

Sec.
700.70(a)
700.71(a)
700.71(c)(1)
700.71(c)(2)
700.71(c)(3)
700.72(a)
700.73(a)
700.73(b)
700.75
700.80(a)(2)
700.91(d)

22. Section 700.72(b) is amended by revising the term "Assistant General Counsel for International Trade" to read "Chief Counsel for Export Administration".

23. Section 700.74 is amended:

a. By revising paragraph (a);

b. By removing paragraph (b);

c. By redesignating paragraph (c) as paragraph (b), and paragraph (d) as paragraph (c); as follows:

§ 700.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or Sections 705 or 707 of the Defense Production Act, the priorities provisions of the Selective Service Act and related statutes, this regulation, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a $10,000 fine, or one year in prison, or both. The maximum penalty provided by the Selective Service Act and related statutes is a $50,000 fine, or three years in prison, or both.

* * * * *

24. The term "Office of Industrial Resource Administration" is revised to read "Office of Strategic Industries and Economic Security" in the following places:

§§ 700.80, 700.81, 700.93 [Amended]

Sec.
700.80(a)
700.80(c)
700.80(d)
700.81(a)
700.81(b)
700.93

25. The phrase "Assistant Secretary for Trade Administration" is revised to read "Assistant Secretary for Export Administration" in the following places:

Sec.
700.80(d)
700.81(a)
700.81(b)
700.81(d)
700.81(e)
700.81(f)
700.81(g)
700.81(h)

26. Section 700.81(b) is amended by revising the term "International Trade Administration" to read "Bureau of Export Administration".

27. Section 700.91(a) is amended by revising the term "(OMB #0625–0107)" to read "(OMB #0694–0053)".

28. Section 700.93 is amended by revising the phrase "telephone: (202) 377–4506" to read "telephone: (202) 482–3634, or FAX: (202) 482–5650".

Schedule 1 to Part 700—[Amended]

29. Schedule 1 to Part 700 is amended:

a. By revising the column heading "Authorized Program" to read: "Approved Program"; and by revising the title of the Schedule and the first paragraph of the two paragraph explanation of the Schedule;

b. By removing the following program identification symbols and associated authorized program names from the Schedule: "C8—Controlled materials for Defense Industrial Supply Center (DISC)", "H2—Controlled materials producers", "H3—Further converters (controlled materials)", and "H4—Distributors of controlled materials";

c. By removing the term "Federal Aviation Administration" from the list of Associated Agencies of the Department of Defense contained in footnote 1;

d. By adding the following program identification symbols and associated approved program names to the Schedule: "C1—Food resources (combat rations)" under the "Defense Programs" heading; and "H8—Special projects", under the "Other Defense, Energy and Related Programs" heading;

e. By revising the "Other Energy Programs" heading to read: "Domestic Energy Programs"; and revising the "F3" program name "Construction and Maintenance" to read: "Construction, repair, and maintenance"; and

f. By revising the "N1" program name "Approved civil defense programs" to read "Emergency Preparedness Activities"; as follows:

Defense Priorities and Allocations System

Schedule 1 to Part 700—Approved Programs and Delegate Agencies

The programs listed in this schedule have been approved for priorities and allocations support under this regulation. They have equal preferential status.

* * * * *

Schedule II to Part 700—[Amended]

30. Schedule II to part 700 (Controlled Materials), Schedule III to part 700 (Technical Definitions of Controlled Materials Products), Schedule IV to part 700 (Copper Controlled Materials Producers' Set-aside Base and Percentages), and Schedule V to part 700 (Nickel Alloys Controlled Materials Producers' Set-aside Base and Percentages) are removed.

Issued: September 29, 1997.

William V. Skidmore,

Assistant Secretary (Acting) for Export Administration.

[FR Doc. 97–26109 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–DT–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300558; FRL–5746–3]

RIN 2070–AC18

Various Inert Ingredients; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA proposes to establish exemptions from the requirement of a tolerance for residues of 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate when used as inert ingredients in pesticide formulations applied to growing crops, crops after harvest, and/or animals. EPA is proposing this regulation on its own initiative.

DATES: Comments, identified by the docket control number [OPP–300558], must be received on or before December 1, 1997.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VII of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Fourth Floor, CS #1, 2800 Crystal Drive, Arlington, VA, (703) 308–8380; e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Prior to the enactment of the Food Quality Protection Act of 1996 (FQPA), EPA proposed that exemptions from the requirement of a tolerance be established for residues of 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate in response to various pesticide petitions submitted pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e). Each of these proposals is summarized at the end of this section.

Pursuant to section 408(e)(1)(B) of FFDCA, the Agency is reproposing upon its own initiative the following tolerance exemptions in view of the new FQPA amendments to the FFDCA.

1. *2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate.* In the **Federal Register** of May 16, 1996 (61 FR 24738)(FRL–5365–3), EPA proposed that an exemption from the requirement of a tolerance be established for residues of 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate (CAS Reg. No. 107568–10–5) when used as an inert ingredient (binding agent) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. This proposed rule was issued in response to pesticide petition (PP) 5E04568 submitted by Japan Technical Information Center on behalf of Nippon Goshei (U.S.A.) Co., Ltd., 775 South 23rd Street, Arlington, VA 22202. No comments were received in response to the proposed rule.

2. *Polyvinyl pyrrolidone butylated polymer.* In the **Federal Register** of July 10, 1996 (61 FR 36331)(5380–5), EPA proposed that an exemption from the requirement of a tolerance be established for residues of polyvinyl pyrrolidone butylated polymer (CAS Reg No. 26160–96–3) when used as an inert ingredient (surfactants, related adjuvant of surfactants and binder) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. This proposed rule was issued in response to pesticide petition (PP) 6E4644 submitted by International Specialty Products, 1361 Alps Road, Wayne, NJ 07470. No comments were received in response to the proposed rule.

3. *Vinyl pyrrolidone-acrylic acid copolymer.* In the **Federal Register** of June 14, 1996 (61 FR 30202)(FRL–5374–4), EPA proposed that an exemption from the requirement of a tolerance be established for residues of vinyl pyrrolidone-acrylic acid copolymer when used as an inert ingredient (adhesive, dispersion stabilizer and coating for sustained release granules) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. This proposed rule was issued in response to pesticide petition (PP) 6E4659 submitted by International Specialty Products, 1361 Alps Road, Wayne, NJ 07470. No comments were received in response to the proposed rule.

4. *Maleic anhydride-diisobutylene copolymer, sodium salt.* In the **Federal Register** of July 10, 1996 (61 FR 36329)(FRL–5374–3), EPA proposed that an exemption from the requirement of a tolerance be established for residues of maleic anhydride-diisobutylene copolymer, sodium salt (CAS Reg. No. 37199–81–8) when used as an inert ingredient (suspending agent and dispersing agent) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. This proposed rule was issued in response to pesticide petition (PP) 6E4665 submitted by Rhone-Poulenc North America Chemicals Inc., CN 5255, Princeton, NJ 08543–5255. A comment was received in response to the proposal that stated the proposed deletion of the tolerance exemption for growing crops only under 40 CFR 180.1001(d) for maleic anhydride-diisobutylene copolymer, sodium salt needed to be accompanied by an adjustment in the molecular weight range proposed for maleic anhydride-diisobutylene copolymer, sodium salt under 40 CFR 180.1001(c) and (e) to allow for the other permissible molecular weights of maleic anhydride-diisobutylene copolymer, sodium salt polymers. The Agency agrees with the commentor and has revised the proposed molecular weight range of maleic anhydride-diisobutylene copolymer, sodium salt accordingly.

5. *Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate.* In the **Federal Register** of July 18, 1996 (61 FR 37433)(FRL–5376–4), EPA proposed that an exemption from the requirement of a tolerance be established for residues of vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate when used as an inert ingredient (water soluble resin) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. This proposed rule was issued in response to pesticide petition (PP) 6E4718 submitted by Mitsui Plastics, Inc., 11 Martine Ave., White Plains, NY 10606. No comments were received in response to the proposed rule.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures.

New section 408(c)(2)(A)(i) allows EPA to establish an exemption from the requirement of a tolerance for a pesticide chemical residue on food only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue" and specifies factors EPA is to consider in establishing an exemption.

II. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert ingredient in conjunction with possible exposure to residues of the inert ingredient in food, drinking water, and other non-occupational exposures. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(c)(2)(B) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of the proposed actions. EPA has sufficient data to assess the hazards of 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; and vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerance exemptions for the residues of 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; and vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate on growing crops, raw agricultural commodities after harvest and animals. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

The data submitted in the petitions and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient.

A. Toxicological Profile

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting these criteria will present minimal or no risk. 2-Propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; and vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate, all conform to the definition of a polymer given in 40 CFR 723.250(b) and meet the following criteria that are used to identify low risk polymers:

1. They are not cationic polymers, nor is it reasonably anticipated they will become cationic polymers in a natural aquatic environment.

2. They contain as an integral part of their composition the atomic elements carbon, hydrogen, and oxygen.

3. They do not contain as an integral part of their composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

4. They are not designed, nor are they reasonably anticipated to substantially degrade, decompose or depolymerize.

5. They are not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. They are not water absorbing polymers.

7. The minimum number-average molecular weight of each of the above polymers is greater than 1,000 daltons. Substances with molecular weights (MW) greater than 400 generally are not absorbed through the intact skin, and substances with MW greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

8. Each of the above-listed polymers has an oligomer content less than 2 percent below MW 500 and less than 5 percent MW 1,000.

Based on these chemicals' conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation or dermal exposure to 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; and vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate.

B. Exposures and Risks

1. *From food and feed uses, drinking water, and non-dietary exposures.* For the purposes of assessing the potential dietary exposure under these exemptions, EPA considered that under these exemptions 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; and vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate could be present in all raw and processed agricultural commodities and drinking water and that non-occupational, non-dietary exposure was possible. EPA concluded that, based on these chemicals' categorization as polymers conforming to the definition of a polymer under 40 CFR 723.250(b) that also meet the criteria used to identify low risk polymers, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable.

2. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity."

In the case of 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; and vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate, the lack of expected toxicity of these substances based on their conformance to the definition of polymers as given in 40 CFR 723.250(b) as well as the criteria that identify low risk polymers results in no expected cumulative effects; a cumulative risk assessment is therefore not necessary.

C. Aggregate Risks and Determination of Safety for U.S. Population

Based on these chemicals' conformance to the definition of a polymer given in 40 CFR 723.250(b) as well as the criteria that are used to identify low risk polymers, EPA concludes that there is a reasonable certainty that no harm to the U.S. population will result from aggregate exposure to 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; and vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate. EPA believes these compounds present no dietary risk under reasonably foreseeable circumstances.

D. Aggregate Risks and Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through the use of margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the low expected toxicity of these compounds, EPA has not used a safety factor analysis in assessing the risk of these compounds. For the same reasons the additional safety factor is unnecessary.

V. Other Considerations

The Agency proposes to establish exemptions from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that analytical methods are not required for enforcement purposes for 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; and vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate.

There are no Codex Alimentarius Commission (Codex), Canadian or Mexican residue limits for 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; and vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate.

VI. Conclusion

Based on the information and data considered, EPA proposes that the exemptions from the requirement of a tolerance be established as set forth in this document.

VII. Public Record and Electronic Submissions

Under FFDCA 408(e)(2), EPA must provide for a public comment period before issuing a final tolerance or tolerance exemption under 408(e)(1). Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket control number, [OPP–300558]. All written comments filed in response to this petition will be available in the Public Information and Records Integrity Branch at the Virginia address given above from 8:30 a.m. to 4 p.m. Monday through Friday, except legal holidays.

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300558] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300558]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

VIII. Regulatory Assessment Requirements

This action proposes an exemption from the tolerance requirement under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IX. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural Commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 is revised to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredients, and the table in paragraph (d) is amended by removing the entry for "Maleic anhydride diisobutylene copolymer, sodium salt."

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Maleic anhydride-diisobutylene copolymer, sodium salt (CAS Reg. No. 37199–81–8), minimum number average molecular weight (in amu) 5,000–18,000.		Suspending agent and dispersing agent.
* * *	* * *	* * *
Polyvinylpyrrolidone butylated polymer (CAS Reg No. 26160–96–3), minimum number average molecular weight (in amu) 9,500.		Surfactants, related adjuvant of surfactants and binder.
* * *	* * *	* * *
2-Propene-1-sulfonic acid sodium salt, polymer with ethenol and ethenyl acetate, number average molecular weight (in amu) 6,000 – 12,000.		Binding Agent.
* * *	* * *	* * *
Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate, minimum number average molecular weight (in amu) 20,000.		Water soluble resin.
* * *	* * *	* * *
Vinyl pyrrolidone-acrylic acid copolymer (CAS Reg. No. 28062–44–4), minimum number average molecular weight (in amu) 6,000.		Adhesive, dispersion stabilizer and coating for sustained release granules.
* * *	* * *	* * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Maleic anhydride-diisobutylene copolymer, sodium salt (CAS Reg. No. 37199–81–8), minimum number average molecular weight (in amu) 5,000–18,000.		Suspending agent and dispersing agent.
* * *	* * *	* * *
Polyvinylpyrrolidone butylated polymer (CAS Reg No. 26160–96–3), minimum number-average molecular weight (in amu) 9,500.		Surfactants, related adjuvant of surfactants and binder.
* * *	* * *	* * *
2-Propene-1-sulfonic acid sodium salt, polymer with ethenol and ethenyl acetate, number average molecular weight (in amu) 6,000 – 12,000.		Binding Agent.

Inert ingredients	Limits	Uses
•	•	•
Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate, minimum number average molecular weight (in amu) 20,000.		Water soluble resin.
•	•	•
Vinyl pyrrolidone-acrylic, acid copolymer (CAS Reg. No. 28062–44–4), minimum number average molecular weight (in amu) 6,000.		Adhesive, dispersion stabilizer and coating for sustained release granules.
•	•	•

[FR Doc.97–26015 Filed 9–30–97; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[WO–350–1430–00–24 1A]

RIN 1004–AC83

Application Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to revise 43 CFR part 1820, which addresses general application procedures, to streamline, modernize and clarify the existing provisions, and remove obsolete and unnecessary requirements. The proposed rule describes how to file an application or other documents with BLM; provides guidance on how BLM determines priority for applications filed simultaneously; and contains procedures for payments and refunds, and requirements for publication and posting of notices.

DATES: *Comments:* Any comments must be received by BLM at the address below by December 1, 1997. BLM will not necessarily consider any comments received after the above date during its decisionmaking on the proposed rule.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bureau of Land Management, Administrative Record, Room 401LS,1849 C Street, NW, Washington, D.C. 20240. You may also comment via the internet to WOComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "attn: AC 83"" and your name and return address in your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly at (202) 452–5030.

Finally, you may hand-deliver comments to BLM at 1620 L Street, NW, Room 401, Washington, D.C. Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours, 7:45 a.m. to 4:15 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality, which BLM will consider on a case-by-case basis. If you wish to request that BLM consider withholding your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Mary Linda Ponticelli, Telephone: (202) 452–0364, or Frances Watson, Telephone: (202) 452–5006 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background

Since public land records contain the basic land title information for over two-thirds of the nation's real property, BLM places great importance on providing standardized methods for processing applications for public lands to ensure that BLM processes all applications received in an equitable and efficient manner. When the public lands were open to settlement under various laws, BLM established specific procedures for filing each type of application pertaining to land use authorizations. Despite the existence of detailed application procedures for specific BLM programs, BLM recognized the need to have general procedures applicable to all BLM land use authorization programs addressed in a centralized location in the Code of Federal Regulations. Although there may be certain variances among application procedures for specific land use authorizations, for example, filing fees, the general procedures covered in these regulations have assisted BLM in determining priority among those applications (sometimes numbering in the thousands) competing for the same claim or parcel.

These general procedural regulations continue to serve important functions, such as informing members of the public of proposed BLM actions or decisions through publication and posting of notices. Thus, there is still a need for general procedural direction to ensure consistency in processing documents and uniformity in treatment of all BLM's customers.

III. Discussion of Proposed Rule

This proposed rule, which would revise the application procedures at 43 CFR part 1820, provides general information on how to file documents with BLM, such as applications for various BLM resource programs. The proposed rule will continue to provide addresses and geographical areas of jurisdiction of BLM State Offices, as well as standardized requirements for such things as application procedures, filing times and locations for filing. This proposed rule also contains guidance as to how BLM determines "first in line" priority for applications filed simultaneously; procedures for payments and refunds; and requirements for posting and publication of notices.

Many of the changes in the proposed rule would have no substantive effect on the current regulatory framework, but rather merely rewrite the existing provisions in Plain English, and rename and renumber subparts and sections. To keep the focus of the regulations on general application procedures, we have removed certain regulatory provisions that pertain to specific BLM resource programs, for example, section 1821.5–3 (mining claims), as these provisions are addressed in program-specific regulations found in other parts and subparts of this title. (See 43 CFR 3862.1–1(c).)

The proposed rule also would remove subpart 1823 (Proofs and Testimony) and subpart 1826 (Reinstatement of Cancelled Entries) in their entirety, as their applicability is now limited to desert land entries and pertinent provisions are addressed in part 2520 of this title, Desert Land Entries. Many procedural requirements that are no longer applicable would also be removed, e.g., requirements addressed in section 1821.6, pertaining to time constraints for applications filed in BLM offices in Alaska; and requirements addressed in section 1822.3 (Act of June 16, 1880), pertaining to homesteads. Existing subpart 1822 (Payments and Repayments) would be renamed Payments and Refunds and redesignated subpart 1823, and a new subpart 1822 would be added. We have changed the general rule in § 1821.5 that applications relating to lands in more than one land district must be filed in each office having jurisdiction over the lands. Instead, proposed § 1822.16 would provide that the application could be filed with any BLM State Office having jurisdiction over the lands. This proposed change adopts as the general rule the practice now followed for right-of-way grants, as provided in 43 CFR 2802.2–1(d). We specifically invite comment on this change.

With respect to requests for refunds filed by heirs, executors, administrators, assignees, and mortgagees, we are removing from redesignated subpart 1823 listings of detailed information that adverse claimants may submit for refunds. Very rarely does BLM receive a request for a refund from anyone other than an applicant and, therefore, it is counterproductive to BLM's efforts to streamline and to clarify its regulations to list all the various types of documentation that third parties can file with BLM as proof of entitlement for a refund. Upon request, BLM offices will provide information regarding appropriate documentation. We have deleted details of publishing a notice from subpart 1824, as those details are addressed in program-specific regulations. (See, for example, 43 CFR 2541.5(a).) We have also deleted the specific requirements in § 1824.1–1 regarding qualifications of newspapers in which notices are published.

The more notable substantive changes include proposed section 1822.13, which would allow certain applications that do not require an original signature to be filed electronically, and redesignated section 1823.10, which would provide that BLM now accept payments by Visa or Master Card in addition to more traditionally accepted forms of payment.

The most significant change is the conversion to Plain English, a process that BLM believes will significantly clarify what an applicant must do to complete a successful application. By making its procedures streamlined, modern and easier to understand, BLM can improve its relationship with its customers and use its resources more efficiently. The conversion of part 1820 is, therefore, a key step in BLM's overall regulatory reform effort.

These general regulations are supplemented by specific BLM program regulations. If there is a conflict, the specific program regulations will govern.

IV. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA), and has found that the proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously. BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**), and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the *Written Comments* section above, or contact us directly.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the discussion contained in this preamble above—that the proposed rule would merely convert text to Plain English, update existing provisions, and abolish unnecessary requirements—BLM anticipates that this proposed rule will have no significant impact on the public at large. Therefore, BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Revising 43 CFR 1820 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the rule is the conversion to Plain English and to abolish unnecessary regulatory provisions, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or

require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this rule is Mary Linda Ponticelli, Planning Assessment, and Community Support Group, Telephone: 202–452–0364 (Commercial or FTS), assisted by Frances Watson, Regulatory Affairs Group, Telephone: 202–452–5006, and Ted Bingham of the Arizona State Office.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure; Archives and records; Public lands.

Dated: September 25, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary—Land and Minerals Management.

Accordingly, BLM proposes to revise Part 1820 of Group 1800, subchapter A, chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 1820—APPLICATION PROCEDURES

Subpart 1821—General Information

1821.10 Where are BLM offices located?
1821.11 During what hours may I file an application?
1821.12 Are these the only regulations that will apply to my application or other required document?

Subpart 1822—Filing a Document With BLM

1822.10 How should my name appear on applications and other required documents that I submit to BLM?
1822.11 What must I do to make an official filing with BLM?
1822.12 Where do I file my application or other required documents?
1822.13 May I file electronically?
1822.14 What if I try to file a required document on the last day of the stated period for filing, but the BLM office where it is to be filed is officially closed all day?
1822.15 If I miss filing a required document or payment within the specified period, can BLM consider it timely filed anyway?
1822.16 Where do I file an application that involves lands under the jurisdiction of more than one BLM State Office?
1822.17 When are documents considered filed simultaneously?
1822.18 How does BLM decide in which order to accept documents that are simultaneously filed?

Subpart 1823—Payments and Refunds

1823.10 How may I make my payments to BLM?
1823.11 What is the authority for BLM issuing a refund of payment?
1823.12 When and how may I obtain a refund?
1823.13 Is additional documentation needed when a third party requests a refund?

Subpart 1824—Publication and Posting Notices

1824.10 What is a publication?
1824.11 What does it mean to post a notice?
1824.12 Why must I post a notice?
1824.13 If I must post a notice on the land, what are the requirements?
1824.14 How does BLM choose a newspaper in which to publish a notice?
1824.15 How many times must BLM publish a notice?
1824.16 Who pays for publication?
1824.17 Does the claimant or applicant pay for an error by the printer of the paper in which the notice appears?

Subpart 1825—Relinquishments

1825.10 If I relinquish my interest (such as a claim or lease) in public land, am I relieved of all further responsibility associated with that interest?
1825.11 When are relinquishments effective?
1825.12 When does relinquished land become available again for other application or appropriation?

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

§ 1821.10 Where are BLM offices located?

(a) In addition to the national Headquarters Office in Washington, D.C. and five specialty centers, BLM operates 12 State Offices, each having several subsidiary offices called District Offices and Resource Area Offices. The addresses of the State Offices and their respective geographical areas of jurisdiction are as follows:

State Offices and Areas of Jurisdiction:

Alaska State Office, 222 West 7th Avenue, #13, Anchorage, AK 99513–7599—ALASKA

Arizona State Office, 3707 North 7th Street, Phoenix, AZ 85014–5080; Mail: P.O. Box 16563, Phoenix, AZ 85011–6563—ARIZONA

California State Office, 2135 Butano Drive, Sacramento, CA 95825—CALIFORNIA

Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215–7076—COLORADO

Eastern States Office, 7450 Boston Boulevard, Springfield, VA 22153—ARKANSAS, IOWA, LOUISIANA, MINNESOTA, MISSOURI, AND ALL STATES EAST OF THE MISSISSIPPI RIVER

Idaho State Office, 3380 Americana Terrace, Boise, ID 83706–2500—IDAHO

Montana State Office, Granite Tower, 222 North 32nd Street, Billings, MT 59101; Mail: P.O. Box 36800, Billings, MT 59107–6800—MONTANA, NORTH DAKOTA AND SOUTH DAKOTA

Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520–0006—NEVADA

New Mexico State Office, 1474 Rodeo Drive, Santa Fe, NM 87505; Mail: P.O. Box 27115, Santa Fe, NM 87502–0115—KANSAS, NEW MEXICO, OKLAHOMA AND TEXAS

Oregon State Office, 1515 S.W. 5th Avenue, P.O. Box 2965, Portland, OR 97208–2965—OREGON AND WASHINGTON

Utah State Office, CFS Financial Center, 324 South State Street, Salt Lake City, UT 84111–2303 Mail: P.O. Box 45155, Salt Lake City, UT 84145–0155—UTAH

Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82003; Mail: P.O. Box 1828, Cheyenne, WY 82003—WYOMING AND NEBRASKA

(b) A list of the names, addresses and geographical areas of jurisdiction of all District and Resource Area Offices of the Bureau of Land Management can be obtained at these addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

§ 1821.11 During what hours may I file an application?

You may file applications or other documents or inspect official records during BLM office hours. Each BLM office will prominently display a notice of the hours during which that particular office will be open. Except for offices which are open periodically, for example, every Wednesday or the 3rd Wednesday of the month, all offices will be open Monday through Friday, excluding national holidays, at least from 9 a.m. to 3 p.m., local time.

§ 1821.12 Are these the only regulations that will apply to my application or other required document?

No. The regulations in this part are supplemented by specific program regulations. If there is a conflict, the specific program regulations will govern.

Subpart 1822—Filing a Document With BLM

§ 1822.10 How should my name appear on applications and other required documents that I submit to BLM?

Your full name should appear on your application and other required documents.

§ 1822.11 What must I do to make an official filing with BLM?

You must file your application and any other required documents during regular office hours at the appropriate BLM office having jurisdiction over the lands or records involved. You must file any document with BLM through personal delivery or by mailing via the United States Postal Service or other delivery service, except for those applications that may be filed electronically under § 1822.13, or unless a more specific regulation or law specifies the mode of delivery. The date of mailing is not the date of filing.

§ 1822.12 Where do I file my application or other required documents?

You should file your application or other required documents at the BLM office having jurisdiction over the lands or records involved. The specific BLM office (such as a State Office or District Office) where you are to file your application is usually referenced in the BLM regulations which pertain to the filing you are making. If the regulations do not name the specific office, or if you have questions as to where you should file your application or other required documents, you should contact your local BLM office for information.

§ 1822.13 May I file electronically?

For certain types of applications BLM will accept your electronic filing if an original signature is not required. If BLM requires your signature, you must file your application or document by personal delivery or by mailing. If you have any questions regarding which types of applications can be electronically filed, you should check with the BLM office where you intend to file your application.

§ 1822.14 What if I try to file a required document on the last day of the stated period for filing, but the BLM office where it is to be filed is officially closed all day?

BLM considers the document timely filed if we receive it in the office on the next day it is officially open.

§ 1822.15 If I miss filing a required document or payment within the specified period, can BLM consider it timely filed anyway?

BLM can consider it timely filed if:
(a) The law permits BLM to do so;
(b) No intervening third party interests or rights have been created or established during the intervening period; and
(c) BLM decides filing after the specified period would not interfere with the orderly conduct of business.

§ 1822.16 Where do I file an application that involves lands under the jurisdiction of more than one BLM State Office?

You may file your application with any BLM State Office having jurisdiction over the subject lands. You should consult the regulations of the particular BLM resource program involved for more specific information.

§ 1822.17 When are documents considered filed simultaneously?

(a) BLM considers two or more documents simultaneously filed when:
(1) They are received at the appropriate BLM office at the same time; or
(2) They are filed in conjunction with an order that specifies that documents received by the appropriate office during a specified period of time will be considered as simultaneously filed.
(b) An application or document that arrives at the BLM office where it is to be filed when the office is closed for the entire day will be considered as filed on the day and hour the office next officially opens.
(c) Nothing in this section will deny any preference right granted by applicable law or regulation or validate a document which is invalid under applicable law or regulation.

§ 1822.18 How does BLM decide in which order to accept documents that are simultaneously filed?

BLM makes this decision by a drawing open to public view.

Subpart 1823—Payments and Refunds

§ 1823.10 How may I make my payments to BLM?

(a) Unless specific regulations provide otherwise, you may pay by:
(1) United States currency; or
(2) Checks, money orders, or bank drafts made payable to the Bureau of Land Management; or
(3) Visa or Master Card credit charge, except as specified by pertinent regulation(s).
(b) You are responsible for BLM's costs of collecting payment if insufficient funds back your form of payment and cause BLM to institute collection procedures.

1823.11 What is the authority for BLM issuing a refund of a payment?

BLM can issue you a refund under the authority of Section 304(c) of the Federal Land Policy and Management Act, 43 U.S.C. 1734.

§ 1823.12 When and how may I obtain a refund?

(a) In making a payment to BLM, if the funds or fees you submitted to BLM exceed the amount required or if the regulations in this part provide that fees submitted to BLM must be returned in certain situations, you may be entitled to a full or partial refund.

(b) If you believe you are due a refund, you may request it from the BLM office where you previously submitted your payment. You should state the reasons why you believe you are entitled to a refund and include a copy of the appropriate receipt, canceled check, or other relevant documents.

§ 1823.13 Is additional documentation needed when a third party requests a refund?

Yes. When refund requests are made by heirs, executors, administrators, assignees, or mortgagees, BLM may require additional documentation to establish entitlement to a refund. If you are an heir, executor, administrator, assignee or mortgagee, you should contact the BLM office where you will file your refund application for information regarding appropriate documentation.

Subpart 1824—Publication and Posting of Notices

§ 1824.10 What is publication?

Publication means publishing a notice announcing an occurrence or a proposed action in the **Federal Register**, a local newspaper of established character and general circulation in the vicinity of the land affected or other appropriate periodical. BLM's purpose in publishing or causing the publication of such information is to advise you and other interested parties that some action will occur and that the public is invited either to participate or to comment.

§ 1824.11 What does it mean to post a notice?

Posting a notice is similar to publishing a notice except that the notice is displayed at the appropriate BLM office, local courthouse or similar prominent local government building or on a prominent fixture such as a building, tree or post located on the particular public lands involved.

§ 1824.12 Why must I post a notice?

The posting of a notice informs those persons who may be interested in the lands or resources described, who have

valid information to provide, or who may wish to oppose the proposal.

§ 1824.13 If I must post a notice on the land, what are the requirements?

The posted notice must be visible throughout the time period for posting specified in the regulations governing the relevant program. BLM or its regulations may require additional posting, such as in a post office or city hall. For any additional posting requirements, you should see applicable Federal and State law, the regulations of the particular BLM resource program and any additional BLM requirements associated with your application.

§ 1824.14 How does BLM choose a newspaper in which to publish a notice?

BLM bases its choice of newspapers on their reputation and frequency and level of circulation in the vicinity of the public lands involved.

§ 1824.15 How many times must BLM publish a notice?

The number of times that BLM will publish or cause to be published a notice depends on the publication requirements for the particular action involved. You should see the applicable law and the regulations governing specific BLM resource programs for information on the requirements for publication for a particular action.

§ 1824.16 Who pays for publication?

The cost of publication is the responsibility of the claimant or applicant.

§ 1824.17 Does the claimant or applicant pay for an error by the printer of the paper in which the notice appears?

No, the claimant or applicant is not responsible for costs involved in correcting an error by the printer.

Subpart 1825—Relinquishments

§ 1825.10 If I relinquish my interest (such as a claim or lease) in public lands, am I relieved of all further responsibility associated with that interest?

No. You are still responsible for fulfilling regulatory, statutory, lease, permit and other contractual obligations such as performance of reclamation and payment of rentals accruing before the time of relinquishment. You should see the regulations relating to the specific BLM resource program involved for more detailed information.

§ 1825.11 When are relinquishments effective?

Generally, BLM considers a relinquishment to be effective when it is received, along with any required fee, in the BLM office having jurisdiction of the lands being relinquished. However, the specific program regulations govern effectiveness of relinquishments.

§ 1825.12 When does relinquished land become available again for other application or appropriation?

Relinquished land does not again become available until BLM notes the filed relinquishment of an interest on the land records maintained by the BLM office having jurisdiction over the lands involved. If you have any questions regarding the availability of a particular tract of land, you should contact the BLM office having jurisdiction over the lands or records.

[FR Doc. 97–26006 Filed 9–30–97; 8:45 am]
BILLING CODE 4310–84–P

Notices

Federal Register
Vol. 62, No. 190
Wednesday, October 1, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency (FSA), USDA.

ACTION: Proposed collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agency's intention to request an extension for a currently approved information collection in support of the program for Guaranteed Loans—General.

DATES: Comments on this notice must be received by December 1, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Steven Ford, Senior Loan Officer, Farm Credit Programs, Farm Service Agency, 1400 Independence Ave., SW, Stop 0522, Washington, DC 20250, (202) 720–3889.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1980, Subpart A, Guaranteed Loans—General.

OMB Number: 0575–0024.

Expiration Date of Approval: January 31, 1998.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0575–0024, as identified above, is needed to enable FSA to effectively administer the guaranteed loan program under the CONACT.

The Agency requires some of the information it collects to be reported in a standard manner. Although lending institutions generally require and collect information similar to that requested by FSA, there is a wide diversity in reporting practices. The Agency requires some information to be reported on standard forms in order to facilitate an effective and efficient decision-making process.

Respondents generally consist of farm operators applying for loans and lenders. Compliance with local, state, and Federal laws is required; and evidence of compliance with these laws may be required. Evidence of compliance with zoning ordinances, environmental standards, equal opportunity standards, historic preservation requirements, etc., may be required when warranted.

The information collection required by this rule will be used by the Agency to approve or determine the need for loans and subordination in accordance with this rule. The Agency considers the information collected to be essential to prudent loan making decisions. Failure to make sound loans would jeopardize the Government's loan portfolio, result in large losses to both the borrower and the Government, and weaken the overall agricultural economy.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 1.16 hours per response.

Respondents: State or Federally chartered banks, Farm Credit System Institutions, and other lending institutions as well as farm operators and business owners. Also, individuals or households and businesses or other for profit organizations.

Estimated Number of Respondents: 3750 (3000 lenders; 750 loan applicants).

Estimated Number of Responses per Respondent: 26.85.

Estimated Total Annual Burden on Respondents: 117,066.

Copies of this information collection can be obtained from the Barbara Williams, Regulations and Paperwork Management Branch, at (202) 720-9734.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0743, 1400 Independence Ave, SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 24, 1997.

Bruce R. Weber,

Administrator, Farm Service Agency.

Dated: September 25, 1997.

Jan Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 97–26030 Filed 9–30–97; 8:45 am]
BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Little Rock (AR) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of Arkansas Grain Inspection Service (Arkansas) will end October 31, 1997, according to the Act. GIPSA has determined that Arkansas will not be redesignated. GIPSA is asking persons interested in providing official services in the Little Rock area to submit an application for designation.

DATE: Applications must be postmarked or sent by telecopier (FAX) on or before October 30, 1997.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604 (Room 1647-S), 1400 Independence Avenue, S.W., Washington, DC 20250–3604. Applications may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Arkansas, main office located in Little Rock, Arkansas, to provide official inspection services under the Act on November 1, 1994.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Arkansas ends on October 31, 1997, according to the Act.

GIPSA, in the April 14, 1997, **Federal Register** (62 FR 18084), asked persons interested in providing official services in the Little Rock area to submit an application for designation. Arkansas was the only applicant. Since Arkansas was the only applicant, GIPSA did not ask for comments.

GIPSA has evaluated all available information regarding the designation criteria prescribed in section 7(f)(1)(A) of the Act and according to the provisions of Section 7(f), determined that the designation Arkansas will not be renewed. GIPSA is again asking persons interested in providing official services in the Little Rock area, as described in the April 14, 1997, **Federal Register**, to submit an application for designation.

Interested persons are hereby given the opportunity to apply for designation to provide official services in the geographic area specified in the April 14, 1997, **Federal Register**. Effective November 1, 1997, until an official agency can be selected, requests for official services should be directed to GIPSA's Stuttgart, Arkansas, Field Office at 501–673–2508. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 19, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–25761 Filed 9–30–97; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designations for the Los Angeles (CA) and Ohio Valley (IN) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Los Angeles Grain Inspection Service, Inc. (Los Angeles), and Ohio Valley Grain Inspection, Inc. (Ohio Valley), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: November 1, 1997.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604 (Room 1647-S), 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 14, 1997, **Federal Register** (62 FR 18084), GIPSA asked persons interested in providing official services in the geographic areas assigned to Los Angeles and Ohio Valley to submit an application for designation. Applications were due by May 30, 1997. Los Angeles and Ohio Valley, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

Since Los Angeles and Ohio Valley were the only applicants for the respective areas, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Los Angeles and Ohio Valley are able to provide official services in the geographic areas for which they applied. Effective November 1, 1997, and ending October 31, 2000, Los Angeles and Ohio Valley are designated to provide official services in the geographic areas specified in the April 14, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Los Angeles at 213–721–9216 and Ohio Valley at 812–858–5444.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 17, 1997

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–25762 Filed 9–30–97; 8:45 am]

BILLING CODE 3410–EN–F

BUREAU OF THE CENSUS

Census 2000 Dress Rehearsal Large Household Follow-up

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 1, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Maureen Lynch, Bureau of the Census, DMD Room 2301 Building 2, Washington, DC 20233–0001, telephone (301) 457–4092.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau has made the development of user-friendly forms a key strategy to reduce respondent burden. The five-person questionnaire with a continuation roster to list up to seven additional individuals is shorter than a comparable seven-person detailed version. For this reason, the decision to adopt a five person detail/twelve person roster mail-out questionnaire is expected to lessen the public perception that responding to the census is an arduous task. The objective of the Census 2000 Dress Rehearsal Large Household Follow-up is to acquire detailed characteristic data for households with more than five members. The Census Bureau will accomplish this by performing follow-up activities for larger households which list additional household members on the census original questionnaire roster.

II. Method of Collection

The methodology selected for the Census 2000 Dress Rehearsal Large Household Follow-up is to mail a customized questionnaire package to those specific households which listed six or more individuals on the original questionnaire. The customized mailing package will consist of the following items.

1. An outgoing envelope addressed to either the respondent name reported on the original returned questionnaire or the Person 1 name.

2. A letter listing the names of all persons on the original questionnaire for whom detailed characteristics were provided and the names of all persons listed on the roster. The letter will request the respondent provide detailed characteristics for the additional individuals listed on the roster.

3. A continuation questionnaire designed for Person 6 through Person 12.

4. A Business Reply Mail return envelope for the respondent to return the continuation questionnaire.

Only one follow-up mailing will be conducted for each identified large household. No personal visit or telephone follow-up is planned.

III. Data

OMB Number: Not Available.

Form Numbers: DX–1(HF), DX–1(HF)(S), DX–2(HF), DX–2(HF)(S); Letters: DX–19A(L), DX–19B(L), DX–19C(L), DX–19D(L).

Type of Review: Regular Submission.

Affected Public: Households.

Estimated Number of Respondents: 23,500 households (approx.).

Estimated Time Per Response: Short Form Follow-up: 6 minutes Long Form Follow-up: 25 minutes.

Estimated Total Annual Burden Hours: Short Form Follow-up: 1,951 hours; Long Form Follow-up: 1,678 hours; Total: 3,629 hours.

Estimated Total Annual Cost: No monetary cost to respondent.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 26, 1997.

Wilson D. Haigler, Jr.,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–26011 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce (the Department), in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period April 1, 1997 through June 30, 1997. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Maria MacKay, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period April 1, 1997 through June 30, 1997.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702 (g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: September 22, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] subsidy	Net[2] subsidy
Austria	European Union Restitution Payments	$0.22	$0.22
Belgium	EU Restitution Payments	0.00	0.00
Canada	Export Assistance on Certain Types of Cheese	0.25	0.25
Denmark	EU Restitution Payments	0.18	0.18
Finland	EU Restitution Payments	0.33	0.33
France	EU Restitution Payments	0.20	0.20
Germany	EU Restitution Payments	0.22	0.22
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.11	0.11
Italy	EU Restitution Payments	0.20	0.20
Luxembourg	EU Restitution Payments	0.00	0.00
Netherlands	EU Restitution Payments	0.11	0.11
Norway	Indirect (Milk) Subsidy	0.39	0.39
	Consumer Subsidy	0.18	0.18
	Total	0.57	0.57
Portugal	EU Restitution Payments	0.12	0.12
Spain	EU Restitution Payments	0.15	0.15
Switzerland	Deficiency Payments	0.32	0.32
U.K.	EU Restitution Payments	0.06	0.06

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 97-25944 Filed 9-30-97; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-811]

Certain Stainless Steel Wire Rods From France: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results for the third review of certain stainless steel wire rods from France. This review covers the period January 1, 1996 through December 31, 1996.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Bob Bolling or Steve Jacques at 202-482-1386 or 482-3434; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Postponement of Preliminary Results

The Department has determined that it is not practicable to issue its preliminary results within the original time limit. (See Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRussa, Assistant Secretary for Import Administration, September 17, 1997). The Department is extending the time limit for completion of the preliminary results until January 2, 1998 in accordance with Section 751(a)(3)(A) of the Act.

The deadline for the final results of these reviews will continue to be 90 days after publication of the preliminary results.

Dated: September 23, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 97-25945 Filed 9-30-97; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-850]

Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4194 or (202) 482-1766, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce regulations are to the regulations at 19 CFR Part 353 (April 1997).

Final Determination

We determine that collated roofing nails ("CR nails") from the People's Republic of China ("PRC") are being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination (Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Collated Roofing Nails from the People's Republic of China), 62 FR 25899 (May 12, 1997), the following events have occurred:

In May, 1996, we attempted to verify the responses to the antidumping questionnaire of respondents Shenzhen Top United Steel Co., Ltd. ("Top United"), Suzhou Junhua Metal Products Co., Ltd. ("Junhua"), and Qingdao Zongxun Nail Products Co., Ltd. ("Zongxun"). On May 12, 1997, respondent Shanghai Minmetals Pu Dong Corporation ("Pu Dong") informed the Department that it could not permit verification of its questionnaire response. The Paslode Division of Illinois Tool Works Inc. ("Petitioner") and respondents submitted case briefs on July 29, 1997, and rebuttal briefs on August 5, 1997.

Scope of Investigation

The product covered by this investigation is CR nails made of steel, having a length of $1^{3}/_{16}$ inch to $1^{13}/_{16}$ inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CR nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 7317.00.55.06. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of this investigation ("POI") comprises each exporter's two most recent fiscal quarters prior to the filing of the petition. In this case, the POI is April 1, 1996, through September 30, 1996.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country ("NME") in all past antidumping investigations (see, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Neither respondents nor petitioner have challenged such treatment. Therefore, in accordance with section 771(18)(C) of the Act, we will continue to treat the PRC as an NME in this investigation.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base normal value ("NV") on the NME producers' factors of production, valued, to the extent possible, in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed in the NV section of this notice, below.

Separate Rates

Top United and Zongxun have each requested a separate company-specific antidumping duty deposit rate.[1] With respect to Junhua, Pu Dong and Wuxi, please see the "facts available" section below. Top United is a joint venture between a PRC company "owned by all the people," a company in Hong Kong, and a company in the British Virgin Islands. Zongxun is a joint venture between a PRC collective-owned enterprise, and a Taiwan company.

Zongxun's business license notes that this PRC company is a foreign trade joint venture which owns the production and export facilities used to manufacture and export the subject merchandise it sells to the United States.

In other cases involving the PRC, joint ventures between "collective"-owned enterprises and foreign investors have not been precluded from consideration of a separate rate (see, e.g., Final Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 54472 (Oct. 23, 1995) ("Drawer Slides"). Furthermore, as stated in Silicon Carbide, ownership of a company by all the people does not require the application of a single, PRC-wide rate. Therefore, for purposes of our final determination, both Top United and Zongxun are eligible for a separate rate.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) and amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. *De Jure* Control

The respondents have placed on the record a number of documents to demonstrate absence of *de jure* control, including laws, regulations, and provisions enacted by the State Council of the central government of the PRC. They have also submitted documents which establish that CR nails are not included on the list of products that may be subject to central government export constraints. In addition, respondents submitted the "Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures' (April 13, 1988). The articles of this law authorize joint venture companies to make their own operational and management decisions. Further, Zongxun submitted the "Regulations Governing Rural Collective Owned Enterprises of the PRC" (July 1, 1990). The articles of this law authorize collective-owned enterprises to make their own operational and management decisions.

In prior cases, the Department has analyzed the very laws which the respondents have submitted in this investigation and found that they establish an absence of *de jure* control. (See Drawer Slides.) We have no new information in this proceeding which would cause us to reconsider this determination.

However, as in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (See, e.g., Silicon Carbide.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether Top United and Zongxun are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to

[1] The Department's starting point in NME proceedings is a rebuttable presumption that all companies are government controlled and therefore subject to a single, countrywide antidumping duty deposit rate.

negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see, e.g., Silicon Carbide).

During verification, our examination of correspondence and sales documentation revealed no evidence that either Top United's or Zongxun's export prices are set, or subject to approval, by any governmental authority. That Top United and Zongxun have the authority to negotiate and sign contracts and other agreements independent of any government authority was evident from our examination of correspondence and written agreements and contracts. Finally, we have determined that Top United and Zongxun have autonomy from the central government in making decisions regarding the appointment of management. We also noted that Top United and Zongxun retained proceeds from their export sales and made independent decisions regarding disposition of profits and financing of losses (based on our examination of financial records and purchase invoices).

Consequently, we determine that these exporters have met the criteria for the application of separate rates.

Facts Available

A. Non-Responding Exporters

Because some companies did not respond to our questionnaire, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC (except the two fully participating exporters) based on our presumption that the export activities of the companies that failed to respond are controlled by the PRC government. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* 61 FR 19026 (Apr. 30, 1996) (*"Bicycles"*).

This PRC-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. The exporters that decided not to respond in any form to the Department's questionnaire have failed to act to the best of their ability in this investigation. Further, absent a response, we must presume government control of these and all other PRC companies for which we cannot make a separate rates determination. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. As adverse facts available, we are assigning the higher of the petition margin or the margin calculated for any participating respondent in this investigation. Because the margins in the petition (as recalculated by the Department at initiation) were higher than any of the calculated margins for a respondent, we used the highest margin stated in the *Notice of Initiation*, 118.41%, as total adverse facts available for the PRC-wide rate.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (hereinafter, the "SAA"), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870.

In the petition, the petitioner based its allegation of export price on price quotations from two manufacturer/exporters of CR nails in the PRC. These price quotations were adjusted for movement expenses using customs data and IM–145 Import Statistics. *See Notice of Initiation*, 61 FR at 67307–08. As we stated in *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey*, 61 FR 30309 (June 14, 1996), we consider price quotations as information from independent sources. The export price calculations were based upon independent sources and Import Statistics, both sources which we consider to require no further corroboration by the Department. Therefore, we determined at initiation, and continue to find, that the calculations set forth in the petition have probative value.

The petitioner based its allegation of NV on the factors of production. *See Notice of Initiation*, 61 FR at 67308. To calculate the factors of production, the petitioner used manufacturing costs based on its own production experience, its 1995 audited financial statements, and publicly available industry data. *Id.* The factors of production amount for the most significant raw material input (*i.e.*, steel wire) in the petition is consistent with the factors of production amount reported by the respondents on the record of this investigation. As such, we determine that the NV calculations have probative value. (*See* memorandum to the file dated May 5, 1997.)

Based on our pre-initiation analysis and reexamination of the price information supporting the petition, we determine that the highest margin stated in the *Notice of Initiation* is corroborated within the meaning of section 776(c) of the Act.

B. Wuxi

As stated in our preliminary determination, Wuxi failed to file its questionnaire responses with the Department in the proper manner and to serve its responses on the other interested parties in this investigation. The Department afforded Wuxi numerous opportunities to remedy these deficiencies. In addition, Wuxi's submissions did not provide adequate information for determining that Wuxi is sufficiently independent from government control to be entitled to a separate rate. As such, we determine that Wuxi is not entitled to a separate rate. We, therefore, have included Wuxi in the "PRC-wide" rate.

C. Pu Dong

As noted above, Pu Dong refused verification of its questionnaire response. Because of Pu Dong's failure to allow the Department to carry out its verification procedures, the Department was unable to verify whether Pu Dong is sufficiently independent from government control to be entitled to a separate rate. Further, none of the other data in Pu Dong's questionnaire response can be used because Pu Dong refused verification. We, therefore, have included Pu Dong in the "PRC-wide" rate. Because we are including Pu Dong in the PRC-wide rate, we will not address any of the other issues concerning Pu Dong.

D. Junhua

We find that Junhua did not provide a complete reporting of all of its "affiliated parties," as requested in the antidumping questionnaire (*see Questionnaire*, p. A–4). Specifically, the existence of several PRC subsidiaries of Junhua's Hong Kong parent only came to light at verification. The Department was not able to evaluate the extent of government control with respect to Junhua's affiliates, nor could the Department confirm that these affiliates were not involved in the production or sale of subject merchandise. Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* SAA at 870. Junhua's failure to provide complete and accurate information in a timely manner demonstrates that Junhua has failed to cooperate to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available for Junhua, an adverse inference is warranted. As adverse facts available, we determine that Junhua is not entitled to a separate rate, and will be subject to the PRC-wide rate. Because we are including Junhua in the PRC-wide rate, we will not address any of the other issues concerning Junhua.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Top United and Zongxun to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to weighted-average NVs.

Export Price/Constructed Export Price

Top United

We used CEP in accordance with section 772(b) of the Act, because the sales to unaffiliated purchasers were made after importation. We calculated CEP based on the same methodology used in the preliminary determination, with the following exceptions: we corrected Top United's response in light of errors discovered during preparations for verification with respect to gross unit prices, payment dates, discounts, and movement expenses; we adjusted Top United's handling and brokerage charges, which were based on pre-POI data, to reflect POI levels; we adjusted the margin calculations, where necessary, to reflect weighted-average prices for U.S. sales of identical merchandise.

Zongxun

We used EP in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated customers before importation end because CEP methodology was not indicated by the facts of record. We calculated EP based on the same methodology used in the preliminary determination, with the following exception: we adjusted Zongxun's handling and brokerage charges, which were based on pre-POI data, to reflect POI levels.

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Sri Lanka, Egypt, and Indonesia are countries comparable to the PRC in terms of overall economic development (*see* Memorandum dated March 24, 1997). According to the available information on the record, we have determined that Indonesia is a significant producer of merchandise that is comparable to CR nails. Accordingly, we have calculated NV using Indonesia import prices—except, as noted below, in the "Factors of Production" section of this notice, in certain instances where an input was sourced from a market economy—for the PRC producer's factors of production. We have obtained and relied upon publicly available information ("PAI") wherever possible.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced CR nails for the exporters which sold CR nails to the United States during the POI. As in the preliminary determination, we calculated NV based on factors of production reported by the respondents.

To calculate NV, the verified per-unit factor quantities were first multiplied by Indonesia values; the resulting products were then summed. We then added amounts for overhead, general expenses (including interest) ("SG&A"), profit, and packing expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

Top United

We calculated NV based on the same methodology used in the preliminary determination, with the following exceptions: we corrected Top United's response in light of errors discovered during preparations for verification with respect to unreported raw materials, transportation distances, and certain incorrectly reported raw material amounts; we also corrected for errors discovered by the Department during verification with respect to the reported values of sodium hydrosulfate, diesel fuel, and labor allocation; we subtracted the value of Top United's steel scrap from the calculated NVs for Top United's sales of CR nails; for transportation distances used for the calculation of freight expenses on raw materials, we added to CIF surrogate values from Indonesia a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory; and we used more contemporaneous data for the Indonesia surrogate values for welding wire and rubber bands.

Zongxun

We calculated NV based on the same methodology used in the preliminary determination, with the following exceptions: we corrected Zongxun's response in light of errors discovered during preparations for verification with respect to the values for steel scrap and cardboard carton; we subtracted the value of Zongxun's steel scrap from the calculated NVs for Zongxun's sales of CR nails; for transportation distances used for the calculation of freight expenses on raw materials, we added to CIF surrogate values from Indonesia a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory; and we used more contemporaneous data for the Indonesia surrogate values for welding wire and rubber bands.

Critical Circumstances

The petition contained a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i)

There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine that there is a history of dumping of the subject merchandise, the Department normally considers evidence of an existing antidumping duty order on CR nails in the United States or elsewhere to be sufficient. *See, e.g., Preliminary Determinations of Critical Circumstances: Brake Drums and Rotors from the People's Republic of China*, 61 FR 55269 (Oct. 25, 1996); *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Rotors from the People's Republic of China*, 62 FR 9160 (Feb. 28, 1997) (*"Brake Drums and Rotors"*). Currently, no countries have outstanding antidumping duty orders on CR nails from the PRC. The petitioner alleged a history of dumping based upon an antidumping order on steel wire nails from the People's Republic of China, the scope of which covered CR nails. *See Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order; Certain Steel Wire Nails from the People's Republic of China*, 52 FR 33463 (Sept. 3, 1987). However, because the issue has no effect on our determination of critical circumstances, we are not addressing it for this final determination.

In this investigation, there is no dumping margin for either Top United or Zongxun. Therefore, they will be excluded from any antidumping duty order, and thus it is unnecessary to determine whether critical circumstances exist with respect to these two companies.

Regarding firms covered by the "PRC-wide" rate, we have used the "facts available" as the basis for determining whether critical circumstances exist. In determining whether an importer knew or should have known that the exporter was selling subject merchandise at less than fair value and thereby causing material injury, the Department normally considers margins over 25% for EP sales and 15% for CEP sales to impute knowledge of dumping and of resultant material injury. *Brake Drums and Rotors*, 62 FR at 9164–65. The "facts available" margin for these exporters exceeds the threshold for imputing knowledge of dumping to the importers of the merchandise. In addition, because we do not have verified, company-specific data on shipments of CR nails following the filing of the petition, we must adversely assume, as the "facts available," a massive increase in imports from these non-responding exporters. We, therefore, determine that critical circumstances exist for all non-responding exporters.

Verification

As provided in section 782(i) of the Act, we attempted to verify the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, and original source documents provided by respondents.

Interested Party Comments

Because the Department decided to base its final determination for Junhua and Pu Dong entirely on facts available, comments pertaining to other issues have not been addressed for Junhua and Pu Dong.

Comment 1: Offset to NV for Steel Scrap By-Product

Top United and Zongxun assert that the Department should subtract the value of their steel scrap from the calculated NV for CR nails. They state that during verification, the Department verified that the steel scrap was generated during the production of CR nails, and further verified the volume of the steel scrap that respondents sold to third parties during the period of this investigation. They refer to other proceedings involving PRC companies, during one of which the Department stated that "it is Department practice to subtract the sales revenue of by-products such as steel scrap from the production costs of the subject merchandise." *Brake Drums and Rotors*. They also refer to *Sebacic Acid From the PRC*, 59 FR 28053, 28056 (May 31, 1994), in which the Department stated that "this treatment of by-products is consistent with generally accepted accounting principles."

Petitioner does not object to an adjustment to NV for steel scrap as long as (i) Top United and Zongxun's claims relate to steel scrap which is directly tied to the production of the subject merchandise, (ii) the scrap is sold directly by the factory, and (iii) the Department verified the claim.

DOC Position

We agree with Top United and Zongxun. We verified that the scrap produced during the manufacture of CR nails is sold by the factory. The proper adjustment is a reduction in the cost of manufacture, which is consistent with the Department's practice in other NME investigations (*see, e.g., Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440, March 30, 1995). We have accordingly subtracted the value of Top United and Zongxun's steel scrap from the calculated NVs for their CR nails, using as surrogate information *Biro Pusat Statistik's* "Foreign Trade Statistical Bulletin" to value reported steel scrap amounts.

Comment 2: Calculation of Surrogate Freight Costs in Valuing Materials

Top United and Zongxun claim that the Department double-counted the surrogate freight costs for certain PRC-sourced materials in its preliminary calculations. They contend that when using CIF prices as surrogate values, the Department should presume that the factory would purchase specific materials from the closest source—be it the port or the domestic supplier's factory—and that the Department should value freight accordingly.

Top United and Zongxun cite *Sigma Corp.* v. *United States*, No. 95–1509, 96–1036, 95–1510, 96–1037, 1997 U.S. App. LEXIS 16506 (Fed. Cir. July 7, 1997), in which the United States Court of Appeals for the Federal Circuit ("CAFC") held that the calculated freight costs for PRC-made materials may not exceed the calculated freight costs of shipping the material from respondents' importing seaports in the PRC to their factories. Top United and Zongxun believe that this decision clearly prohibits the Department from adding surrogate freight costs exceeding the freight costs from the manufacturer's importing seaport to its factory.

Petitioner contends that Top United and Zongxun have not indicated why, or to what extent, any inland freight expense should be adjusted in line with *Sigma*. Petitioner indicates that although the principle of *Sigma* is clear, Top United and Zongxun's claim in the instant case is not clear. The major factor input is steel, for which the Department used market economy prices. Therefore, petitioner believes that the Department's calculations do not include any expense for the inland freight within the PRC for the imported steel and, thus, do not warrant any adjustments.

DOC Position

We agree with Top United and Zongxun. The CAFC's decision in *Sigma* requires that we revise our calculation of source-to-factory surrogate freight for those material inputs that are based in CIF import values in the surrogate country. Accordingly, we have added to CIF surrogate values from Indonesia a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory.

Comment 3: Respondents' Corrections Presented at Verification

Top United and Zongxun contend that the Department's final dumping calculation should incorporate corrections of errors discovered in their questionnaire responses. They cite the Department's *Memoranda on Verification Agenda*, which state that respondents may submit corrections at the start of verification. Top United and Zongxun further state that these corrections to their questionnaire responses were timely submitted and verified, and that the Department should therefore include these corrections in the calculation of respondents' dumping margins in the final determination.

Petitioner contends that the Department should not use Top United and Zongxun's corrections, because most of the errors contained in their questionnaire responses were not minor. Petitioner argues that based on the number of errors reported by Top United and Zongxun at the start of verification, the companies did not act to the best of their ability in providing accurate information. Petitioner asserts that the Department should therefore apply adverse facts available in the areas where respondents were not cooperative.

DOC Position

We agree with Top United and Zongxun and have accepted the corrections for computing the final margin calculations of the companies. The revisions corrected data already on the record and did not introduce new information not previously reported. Accordingly, we determine that resorting to facts available is unwarranted in this particular case. The Department's use of facts available is subject to section 782(d) of the Act. Under section 782(d), the Department may disregard all or part of a respondent's questionnaire response when the response is not satisfactory or it is not submitted in a timely manner. The Department has determined that neither of these conditions apply. The Department was able to verify the responses, thus rendering them satisfactory, and the types of revisions submitted by respondents met the deadline for such changes. Under section 782(e), the Department shall not decline to consider information that is (1) timely, (2) verifiable, (3) sufficiently complete that it serves as a reliable basis for a determination, (4) demonstrated to be provided based on the best of the respondent's ability, and (5) can be used without undue difficulties. In general, Top United and Zongxun have met these conditions.

Accordingly, we find no basis to reject Top United's and Zongxun's responses, and thus, no basis to rely on the facts otherwise available for our final determination.

Comment 4: Averaging U.S. Sales of Identical Merchandise in Calculating Dumping Margins

Top United and Zongxun request that the Department ensure that U.S. sales of identical merchandise, *i.e.*, sales having the same Matching Control Number, are averaged in calculating respondents' dumping margins in the final determination. They assert that the average-to-average comparison is the Department's established practice in calculating dumping margins in investigations, citing section 777A(d)(1)(A)(i) of the Act.

Petitioner opposes this request, stating that Top United and Zongxun do not cite any example where they disagree with the Department's preliminary calculations. Petitioner believes that the Department should have the flexibility to use a different comparison basis, to the extent that the facts indicate a different method of comparison.

DOC Position

We agree with Top United and Zongxun. The margin calculations have been adjusted, where necessary, to reflect weighted-average prices for U.S. sales of identical merchandise.

Comment 5: The Use of India, Not Indonesia, as the Surrogate Country

Petitioner asserts that the Department should use India as the surrogate country for the final determination. Petitioner cites to section 773(c)(4) of the Act, which requires the surrogate country to be a market economy country that (1) is at a level of economic development comparable to that of the NME, and (2) is a significant producer of comparable merchandise. While petitioner agrees that both India and Indonesia are economically comparable to the PRC, petitioner argues that the combined production of the Indian producers, as established by an affidavit in the petition, exceeds the amount of U.S. imports from Indonesia. Petitioner argues that although the Department selected Indonesia because the U.S. import statistics reflect minimal imports of "collated nails" from Indonesia, but none from India, the statute and regulations do not support giving greater weight to import statistics over a petitioner's information. Petitioner claims that since there is no information on the record that either country manufactures CR nails, the Department should "* * * give Petitioner's information preferred weight, since it is the foundation upon which the petition is based, and was used by the Department as adverse facts available for non-cooperating parties."

Top United and Zongxun argue that the Department correctly used the Indonesia data to value their material inputs, factory overhead, SG&A, and profit, in accordance with evidence presented before the Department. They contend the petition does not include any supporting data, such as production or sales data, with respect to the India nail industry which shows that India is a significant producer of CR nails. They refer to the comments on the surrogate values, dated April 9, 1997, which include the U.S. import statistics for 1996, and demonstrate a substantial volume of collated nails exported from Indonesia, whereas India exported no collated nails to the United States during the same period. They assert that an absence of exports to the United States raises a question as to whether India ever produced CR nails, based on the fact the United States is the largest consumer of collated nails in the world. Moreover, Top United and Zongxun cite to an affidavit provided in their April 7, 1997, submission from Tachikawa & Co., stating that P.T. Intan Swarkartiaka, an Indonesian producer, produces CR nails and exports them to the United States. Finally, they argue that the Indonesia data, which are concurrent with the POI, are more contemporaneous than the India data, which do not cover the POI; and that the Indonesia data are nail industry specific, while India data are on a metal-industry-wide basis.

DOC Position

We agree with Top United and Zongxun. The PAI showed that Indonesia produced collated nails during the POI, whereas there is no PAI showing that India produced any collated nails. The Indonesia data are

more contemporaneous and specific to CR nails than the India data, which are on a metal-industry-wide basis (*see Memorandum to the File*, dated September 24, 1997).

Comment 6: SG&A, Factory Overhead, and Profit Used in Calculating Plating Costs

Petitioner asserts that in calculating NV for Zongxun, the Department improperly used only factor inputs for plating, and did not include any amount for SG&A, factory overhead, or profit for the subcontractor. Petitioner argues that any subcontractor would include those three items in its price. Petitioner cites *Certain Helical Spring Lock Washers From China*, 58 FR 48833 (September 20, 1993), in which the Department verified and used the subcontractor's factors of production in calculating NV, which included materials costs, plus total direct labor, overhead expenses, general expenses, and profit. Petitioner contends that the Department should add those three elements for plating in the final determination, based on either plating expenses from other investigations, or data for the Indonesia nail industry.

DOC Position

We disagree with petitioner. In our preliminary determination, the overhead, SG&A, and profit rates were applied to the aggregate of the plating and nail factors of production. The amounts for SG&A, factory overhead, and profit for plating are therefore already included in the calculations. Thus, no recalculations for plating costs are necessary.

Comment 7: Import Prices Used to Calculate Steel Values

Petitioner alleges that the Department's calculation of steel input values based on prices from market economy countries artificially lowers the factory's costs because it utilizes the lower price for the input. Petitioner argues that the Department's "* * * established policy of evaluating inputs in NME cases based on market prices paid by the manufacturer for inputs purchased from a market-economy source * * *", as stated in *Tapered Roller Bearings and Parts thereof, Finished and Unfinished, From China*, 62 FR 6189 (February 11, 1997), questions commercial reality. Petitioner asserts that the Department should not use one import price to value 100% of the steel inputs where a factory in the PRC imports less than 100% of its production requirement for the POI. Instead, the Department should adopt a standard which involves assigning a value to the input actually used. Petitioner challenges the Department's rationale in the use of market price inputs, and argues that the Department's policy is wrong as a matter of law.

Top United and Zongxun refute petitioner's claim, stating that petitioner's arguments are contrary to the Department's established practice, court decisions, the proposed and final regulations, and the Act. They cite *Lasko Metal Products* v. *United States*, 43 F. 3d 1442, 1443 (Fed. Cir. 1994), stating that the CAFC upheld the Department's established practice of using actual imported prices to value material inputs in NME cases. They cite section 351.408(c)(1) from the Department's regulations which states that "where a portion of the factor is purchased from a market economy source * * * the Secretary normally will value the factor using the price paid to the market economy supplier." They also cite to 19 U.S.C. 1677b(c)(1), asserting that the import price is the best available information in a market economy to value the NME producer's factors of production. They also cite to *Chrome Plated Lug Nuts from the PRC*, 56 FR 46153 (September 10, 1991), in which the Department stated that import prices are superior to the surrogate country's price because "accuracy, fairness, and predictability are enhanced." They believe that the Department legitimately valued their entire wire rod input using imported prices, and should continue to do so in the final determination without adjusting the reported import prices.

DOC Position

We agree with Top United and Zongxun. When steel was purchased from a market economy, we used the prices paid to market economy suppliers to value this input, even though the producer did not purchase 100 percent of the steel from a market economy. We believe that it is normally appropriate to use those prices in lieu of values of a surrogate, market-economy producer, because the actual prices are market-driven and reflect the producer's actual experience. In most cases, there is nothing to be gained in terms of accuracy, fairness, or predictability in using surrogate values when market-determined values exist for the input used. Indeed, where we determine that a NME producer's input prices are market determined, accuracy, fairness, and predictability are enhanced by using those prices (see Chrome Plated Lug Nuts from the PRC, 56 FR 46153 (September 10, 1991)).

Comment 8: Values for Other Factor Inputs

Labor

Petitioner asserts that the Department's one figure to value both skilled and unskilled labor is unreasonably low, in comparison with the labor rates in India and those actually paid in the PRC. Petitioner also claims that this value lacks adjustments for benefits such as medical care and housing, which are generally provided in the PRC at no cost. Petitioner proposes that the Department find separate values for skilled and unskilled workers for its final determination.

Top United and Zongxun reject petitioner's argument, stating that the Indonesia labor rates that the Department used in the preliminary determination are comparable with the India labor rates available to the Department. They assert that petitioner did not provide any information showing separate values for skilled and unskilled labor, and that such data is not available to the Department. Finally, they argue that PRC labor rates are not usable in any respect because they are NME values, which are "not accurate, reliable measures" of normal value. *See Oscillating Fans and Ceiling Fans From PRC*, 56 FR 25664, 25667 (June 5, 1991).

DOC Position

We agree with Top United and Zongxun. As in several previous PRC investigations, *e.g. Polyvinyl Alcohol from the PRC*, 60 FR 52647 (October 10, 1995), we used data from the Yearbook of Labor Statistics to value labor. This source did not identify the skill level of this labor rate. As determined in other cases, such as *Honey from the PRC* (preliminary determination), 60 FR 14725, 14729 (March 20, 1995) and *Manganese Sulfate from the PRC* (final determination), 60 FR 52155, 52159 (October 5, 1995), there is no basis to assume the skill level of this particular surrogate labor value. Thus, for purposes of the final determination, we applied a single labor value to all reported labor factors.

Water

Petitioner suggests that the Department treat water as a factor input, not as overhead. Petitioner states that water is used in the plating process as a factor input since it is used in the chemical baths, and thus becomes part of the plating materials.

Top United and Zongxun argue that the Department will double-count water if it values the water separately because the costs for water were included in overhead for Zongxun and as diesel oil for Top United, which maintains its own wells. They believe that this double-counting was correctly avoided by assuming water to be included in the surrogate value factory overhead. Based on how the water was used in the production process, respondents assert that the water is not incorporated into the finished product, and that the Department should accordingly follow its preliminary determination and not value water consumed by respondents as a separate factor in the final determination.

DOC Position

We agree with Top United and Zongxun that water should be considered to be included in factory overhead. Because it is a normal practice to assume that water is included in factory overhead, we find it reasonable to presume that water is included in the Indonesia overhead value we used. Therefore, if we were to assign a separate value to water, we would be double-counting the cost (*see Saccharin From the People's Republic of China*, 59 FR 58818 (November 15, 1994).

Brokerage and Handling

Petitioner claims that there is no indication in the record that the Department inflated the handling and brokerage charges to reflect POI pricing levels. Petitioner notes that the Department has made such an adjustment in the past and should make this adjustment in the final determination.

Top United and Zongxun assert that the Department did inflate the brokerage and handling charges to reflect POI pricing levels, and that petitioner disregarded the Department's efforts to accurately calculate the surrogate value.

DOC Position

We agree with petitioner, and have adjusted handling and brokerage charges to reflect the POI pricing levels.

Inland Transportation for Imported Steel

Petitioner claims that the record does not indicate that the Department included the cost of transporting the imported steel wire rod to the factory. Petitioner suggests that the Department include these costs in its final determination.

Top United and Zongxun counter that the Department *did* add the entire freight costs for transporting imported wire rod from their importing seaports to their production sites.

DOC Position

We agree with Top United and Zongxun. As stated in the Calculation Memorandum (May 5, 1997, p. 1), we "* * * adjusted the reported unit values based on the purchased price to reflect the terms of sale for the purchase of the material input (*e.g.*, CIF, FOB) from a market-economy supplier." Therefore, the imported steel prices have already been adjusted to reflect inland transportation costs, and require no further calculations.

Transportation Expenses Between Factory and Plating Company

Petitioner alleges that the cost of transportation between the plating company and the factory is not indicated in the record. Petitioner states that in previous cases, the Department has looked to whether the factory or the plating company used their own trucks or an independent hauler.

Top United and Zongxun argue that the Department correctly determined not to value transportation costs between their nail production sites and their plating subcontractors in the preliminary determination. They claim that doing so would double-count the transportation costs, as these costs are included in surrogate value factory overhead. They refer to the surrogate value for factory overhead, which includes expenses such as fuel, electricity, gas machinery and equipment, and other industrial services, all of which are associated with the operation of trucks. Since Zongxun demonstrated that they transported roofing nails to and from their plating factories using their own trucks, the Department properly determined that these truck expenses are included in the surrogate factory overhead value. Citing *Helical Spring Lock Washers from the PRC*, they refer to the Department's determination to include the costs for trucking in the surrogate value for factory overhead. Finally, they note that this issue does not apply to Top United, as Top United plated its CR nails in its own factory.

DOC Position

We agree with Top United and Zongxun. As in the preliminary determination, we determined that the costs associated with this type of transportation are included in the surrogate value for factory overhead. This is similar to the Department's determination in *Helical Spring Lock Washers*. Therefore, we did not calculate a separate transportation cost for trucking the CR nails to and from the plating subcontractor.

Imports From NME Countries in Indonesia Import Data

Petitioner contends that the Department should exclude data from NME countries in the Indonesia import data for welding wire. *Citing Helical Spring Lock Washers*, petitioner states that the Department has consistently excluded such data from surrogate values and should correct this aspect of the preliminary determination.

Top United and Zongxun reject this request, claiming that petitioner failed to provide information that would enable the Department to exclude imports from NME countries from the Indonesia import data. They assert that the Department should continue to use the same Indonesia surrogate value data in the final determination, as this data constitutes "the best available information" (19 U.S.C. 1677b(c)(1)) to value a NME producer's material inputs.

DOC Position

We agree with petitioner that it is the Department's normal methodology to disregard data from NME countries in calculating surrogate factor values. In this case, we have removed the total quantity and value from NME countries from the import data (see Calculation Memorandum, dated September 23, 1997).

Comment 9: Treatment of Below-Specification Products

Petitioner asserts that the Department should adjust NV for plating thickness. Petitioner claims that Top United and Zongxun's reported plating thicknesses do not meet U.S. federal or regional, building code standards. Petitioner states that since the plating thickness was not verified, the Department should assume that Top United and Zongxun were aware of these codes and would produce merchandise that complied with the codes. Petitioner alleges that there is a significant cost differential between the plating thicknesses reported by Top United and Zongxun and those required by U.S. codes, and suggests that the Department use the information in the petition as the best available information with which to recalculate NV.

Top United and Zongxun argue that the Department correctly valued all plating chemicals that they used in production of CR nails during the POI. They claim that the Department verified that respondents correctly reported the total consumption of plating chemicals, as well as the plating thickness of their CR nails, which contradicts petitioner's allegation. They further contend that it is irrelevant to this investigation

whether or not their CR nails satisfy the building code requirements alleged by petitioner, as the purpose of this investigation is to accurately value their production costs of CR nails, not to examine the quality of their CR nails. They assert that the Department should ignore the petitioner's allegation.

DOC Position

We agree with Top United and Zongxun. At each verification, we examined whether quantities and types of materials associated with the subject merchandise were reported accurately and completely. We noted no discrepancies regarding the material quantities, with the exception of minor errors which have now been corrected (see verification reports for Zongxun and Top United dated June 26, 1997, and July 23, 1997, respectively). Petitioner's claim that Top United and Zongxun were aware of U.S. building codes and would produce merchandise that complied with the codes is not germaine to this issue as there is no question of inaccurate product comparisons and we have verified that all material quantities were included in the response.

Comment 10: Steel Prices

Petitioner asserts that the Department should value Top United's steel using a surrogate value, because the Department has not confirmed that the imported steel is actually used to produce the subject merchandise. Petitioner claims that at verification Top United's own officials admitted that steel other than imported steel may have been used to produce subject merchandise. Petitioner also states that the record shows that the PRC producer may not have paid for the steel inputs.

Top United refutes petitioner's claim, stating that it indeed used imported wire rods to produce CR nails, and that the imported wire rod price was actually paid, both of which were verified by the Department. Top United declares that its officials never indicated that the company did not use imported wire rod, and that petitioner misconstrued the statement in the verification report.

DOC Position

We agree with Top United. Verification supported Top United's claim that it used imported steel wire rod in the production of CR nails. Accordingly, we have continued to base the value of wire rod on average costs for the imported grade of wire rod used.

Comment 11: The MNC Rule

Petitioner alleges that all the conditions for application of the MNC provision are satisfied by Top United. Petitioner refers to section 773(d) of the Act, which contains the MNC provision, and cites *Melamine Institutional Dinnerware Products from the People's Republic of China*, 61 FR 43337, 43340 (August 22, 1996), in which the Department stated that this provision applies to cases in which the statutory criteria are met, regardless of whether it involves a market or non-market economy.

Top United contends that the Department should reject this claim because there is no information on the record indicating that Top United's NV is lower than the Taiwan prices or constructed value of its Taiwan affiliate, Unicatch. Top United further argues that petitioner is barred from introducing new information into this investigation in its case brief, citing § 351.301(b)(1) (62 FR 27405), which states that a submission of factual information is due no later than "* * * seven days before the date on which the verification of any person is scheduled to commence * * *" Finally, Top United argues that petitioner offered no recommendation on how to apply the MNC provision to this investigation, and without any factual evidence on the record, the Department should reject the allegation.

DOC Position

We agree with Top United. On May 19, 1997, the Department published new regulations (62 FR 27296, May 19, 1997). Although this proceeding is not governed by those regulations, they are instructive where they describe current Department practice and policy. Section 351.404 of the new regulations, 62 FR at 27412, describes the Department's current policy regarding the selection of the market to be used as the basis for NV for purposes of calculating a dumping margin. As stated in the preamble to the Final Regulations 62 FR 27357 (May 19, 1997):

> There are a variety of analyses called for by section 773 that the Department typically does not engage in unless it receives a timely and adequately substantiated allegation from a party * * * the Department does not automatically request information relevant to a multinational corporation analysis under section 773(d) of the Act in the absence of an adequate allegation.

In this case, petitioner alleged for the first time in its case brief that the Department should apply the MNC rule to Top United. Most significantly, the record of this investigation does not contain information regarding the third condition of determining a company to be part of a multinational corporation, *i.e.*, the normal value of the foreign like product produced in one or more facilities outside the exporting country is higher than the normal value of the foreign like product produced in the facilities located in the exporting country. Presenting the allegation at this point in the investigation did not allow the Department sufficient time to collect and analyze the information necessary to make a determination regarding the applicability of the MNC rule. Therefore, we reject petitioner's MNC rule allegation as untimely and unsupported by the record evidence.

Zongxun

Comment 12: Adverse Facts Available for Unreported Sales

Petitioner contends that the Department should use adverse facts available in determining the dumping margin for Zongxun due to possible unreported sales discovered during verification. Specifically, petitioner contends that the presence in Zongxun's records of certain foreign currency receipts and of CR nail sales to other PRC companies may be evidence of unreported sales. Petitioner claims that when sales cannot be accounted for, particularly where a foreign currency receipt is involved, the Department should presume the sale was an unreported sale for exportation to the United States, and the Department should use adverse facts available and use the highest margin possible. Citing 19 CFR § 351.308(a), petitioner emphasizes that the Department may make a determination on the basis of the facts available when an interested party or any other person "* * * withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding, or the Secretary is unable to verify submitted information * * *" Petitioner asserts that Zongxun's refusal to cooperate with verifiers to clarify the foreign currency receipts and associated transactions warrants the use of facts available in determining the appropriate margins.

Zongxun refutes petitioner's allegation. Zongxun cites the Department's verification report, which found "no indication of export sales of subject merchandise having been improperly included in, or excluded from, Zongxun's listing of POI sales." With respect to its sales to PRC companies, Zongxun asserts that, even in the event that the Department determined these transactions were export sales, they could not be considered in this investigation because they were paid in Renminbi, a NME currency. Zongxun argues that the verification report never stated that any of its domestic sales were paid in a foreign currency. Zongxun claims that the foreign currency noted in the verification report refers to a loan that is properly recorded as "payable" in its accounting records. Zongxun argues that a sale would be recorded as a "receivable." Zongxun attests to their full cooperation during verification, and advises the Department to reject petitioner's allegation.

DOC Position

We agree with Zongxun. As stated in the verification report, nothing that we examined suggested that the foreign currency receipts were unreported sales. Therefore, we determine that these receipts do not warrant any adverse inferences for the final determination and the verified information has been used for the final determination.

Comment 13: Affiliation of Zongxun and its PRC Parent

Petitioner contends that Zongxun and its PRC parent are sufficiently related so that the Department should collapse them and treat them as a single entity for purposes of assigning a dumping margin in this investigation. Petitioner cites 19 CFR 351.401(f), and then refers to certain factors that the Department may consider when identifying the potential for manipulation of price or production, including: level of common ownership; whether managerial employees or board members of one of the affiliated producers sit on the board of directors of the other affiliated producer; and whether operations are intertwined, such as through the sharing of facilities or employees, or significant transactions between the affiliated parties. Petitioner also cites to the *Preliminary Determination of Sulfanilic Acid from the PRC* 62 FR 25917 (May 12, 1997) in which the Department found that two companies were "affiliated" parties, where substantial retooling would not be necessary to restructure manufacturing priorities and potential price and production manipulations between the two producers. Petitioner alleges that the verification report shows a commonality of interests and ownership, and that the failure of Zongxun and its parent to submit a consolidated response mandates the Department's use of facts available.

Zongxun rebuts this allegation, insisting that no conditions were met to collapse it and its parent, because it has been verified that its parent did not produce or export CR nails during the POI and thus is not a producer and cannot be collapsed with Zongxun. Zongxun states that the Department may collapse affiliated producers, but that petitioner's allegation is not supported by the record, and should therefore be rejected.

DOC Position

We agree with Zongxun, in part. During verification, the Department reviewed Zongxun's parent's 1996 financial statements. These financial statements did not indicate that any income had been derived from export sales of CR nails. If Zongxun's parent were to sell the subject merchandise under its own name, it would be subject to the PRC-wide rate.

Comment 14: Critical Circumstances

Petitioner alleges that the petition provided a reasonable basis to suspect that critical circumstances exist with respect to imports of subject merchandise. Petitioner cites section 733(e)(1)(A)(i) of the Act, which refers to a "* * * history of dumping * * *" In particular, petitioner maintains that the revoked antidumping order on steel wire nails from China, *Certain Steel Wire Nails From China*, 52 FR 33463 (September 3, 1987), provides a sufficient basis to find a history of dumping.

DOC Position

As noted above (*see* "Critical Circumstances" section of this notice), it is not necessary to reach a conclusion regarding a history of dumping in this case. Insofar as Top United and Zongxun do not have margins, critical circumstances do not exist with respect to these exporters. Critical circumstances do exist with respect to all other exporters based on other factors.

Continuation of Suspension of Liquidation

For Top United and Zongxun, we calculated a zero margin. Consistent with *Bicycles*, merchandise that is sold by these producers but manufactured by other producers will be subject to the order, if issued. Entries of such merchandise will be subject to the "PRC-wide" margin.

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise—except those exported and manufactured by Top United or Zongxun—that are entered, or withdrawn from warehouse, for consumption on or after February 12, 1997, which is the date three months prior to the date of publication of our preliminary determination in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Top United/Top United	0
Qingdao Zongxun/Qingdao Zongxun	0
PRC-wide Rate	118.41

The PRC-wide rate applies to all entries of subject merchandise except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 735(f) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation. This determination is published pursuant to section 735(d) of the Act.

Dated: September 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–26046 Filed 9–30–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-827]

Notice of Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails From Korea

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly at (202) 482–4194 or Brian Smith (202) 482–1766, Group II, Office Five, Antidumping Countervailing Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Rounds Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to the regulations, as codified at 19 CFR Part 353 (1997).

Final Determination

We determine that collated roofing nails ("CR nails") from Korea are not being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Termination of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination and Postponement of Final Determination: Collated Roofing Nails from Korea*, 62 FR 25895 (May 12, 1997)), the following events have occurred:

In June 1996, we verified questionnaire responses for Kabool Metals ("Kabool") and Senco Korea Company, Ltd., Senco Products Incorporated, and Je Il Steel Company, Ltd. (collectively "SENCO"). Paslode Division of Illinois Tool Works Inc. ("Petitioner"), respondents, and Stanley Bostich ("Stanley"), an interested party in this investigation, submitted case briefs on August 7, 1997, and rebuttal briefs on August 12, 1997. The Department held a public hearing on August 13, 1997.

Scope of Investigation

The product covered by this investigation is CR nails made of steel, having a length of $1^{3}/_{16}$ inch to $1^{15}/_{16}$ inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CR nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55.06. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Kabool and SENCO to the United States were made at LTFV, we compared the Export Price ("EP") or Constructed Export Price ("CEP") to the Normal Value ("NV"), as described in the EP, CEP, and NV sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to weighted-average NVs.

Kabool reported that it had no viable home market or third country sales during the POI. Therefore, we made no price-to-price comparisons for Kabool. See the NV section of this notice, below, for further discussion.

Level of Trade and CEP Offset

In the preliminary determination, the Department determined that no difference in level of trade ("LOT") existed between home market and U.S. sales for either Kabool or SENCO. None of the parties have contested that determination. Accordingly, the Department has not investigated further into this issue. Therefore, we determine that all of SENCO's sales are made at a single LOT and no LOT adjustment or CEP offset is warranted.

As explained below, we based the NV for Kabool entirely on constructed value ("CV"). The CV LOT is that of the sales from which we derive SG&A and profit. We derived selling, general, and administrative expenses ("SG&A") and profit from Kabool's sales of all types of nails in the home market. However, the record contains insufficient information to analyze the selling activities associated with those sales. Therefore, as facts available, we are drawing the inference that there is no distinction between the CV and U.S. LOTs. This inference is consistent with the fact that neither petitioner nor Kabool alleged a difference in LOT. Therefore we determine that a level of trade adjustment is not warranted.

Export Price and Constructed Export Price

Kabool

We used EP in accordance with section 772(a) of the Act because the subject merchandise was sold to unaffiliated customers before importation and the CEP methodology was not indicated by the facts of record. We calculated EP based on the same methodology used in the preliminary determination, with the following exceptions: adjustments to brokerage expenses; duty drawback; and other corrections were made based on verification findings. (For details, *see* September 24, 1997, final determination calculation memorandum for Kabool, hereafter "Kabool calculation memo.")

SENCO

We used EP in accordance with section 772(a) of the Act where the subject merchandise was sold to unaffiliated customers prior to importation because the CEP methodology was not indicated by the facts of record. We used CEP in accordance with section 772(b) of the Act where the subject merchandise was sold to unaffiliated customers after importation. We calculated CEP and EP based on the same methodology used in the preliminary determination, with the following exceptions: adjustments to packing expenses; rebates; early payment discounts; advertising expenses; and inland freight were made based on verification findings. For CEP we also adjusted reported indirect selling expenses and inventory carrying costs to exclude Korean incurred components and applied them to transfer prices rather than starting prices. Furthermore, we are no longer using facts available for foreign inland freight expenses.

In addition, verification revealed that SENCO's CEP sales listing included non-subject merchandise that SENCO had purchased from Taiwan and Mexico. Although SENCO did not record the country of origin for specific sales, the Department was able to determine for each model reported the percentage of total CR nail purchases accounted for by subject CR nails and to adjust SENCO's sales listing as appropriate. For example: if for model "A" Senco Products Incorporated ("SPI") purchased 57 percent of its CR nails from Korea, the Department multiplied the reported quantity by 57 percent for all sales of model "A" within SENCO's CEP sales listing. (For details, *see* September 24, 1997, final determination calculation memorandum for SENCO, hereafter "SENCO calculation memo.")

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

SENCO

SENCO reported that it had no home market sales during the POI. Therefore, in accordance with section 773(a)(1)(B)(ii), we based NV for Senco Korea on sales to its largest third country market, Canada. We calculated NV based on the same methodology used in the preliminary determination, with the following exceptions: adjustments were made to packing expenses; and domestic brokerage and handling based on verification findings. In addition, SENCO corrected omissions in the third country sales listing used for the preliminary determination. For purposes of calculating the final margin, we are no longer applying facts available for the certain U.S. sales that had no third country matches. (For details, *see* SENCO calculation memo).

Kabool

Kabool reported that it had no viable home or third country market during the POI. Therefore, in accordance with section 773(a)(4) of the Act, we based NV for Kabool on CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the costs of materials, labor, overhead, SG&A, profit and U.S. packing costs. We adjusted U.S. packing costs based on our findings at verification.

Section 773(e)(2)(A) states that SG&A and profit are to be based on the actual amounts incurred in connection with sales of a foreign like product. In the event such data is not available, section 773(e)(2)(B) of the Act sets forth three alternatives for computing profit and SG&A without establishing a hierarchy or preference among the alternative methods. The alternative methods are: (1) calculate SG&A and profit incurred by the producer based on the sales of merchandise of the same general type as the exports in question; (2) average SG&A and profit of other producers of the foreign like product for sales in the home market; or (3) any other reasonable method, capped by the amount normally realized on sales in the foreign country of the general category of products. In addition, the Statement of Administrative Action ("SAA") states that, if the Department does not have the data to determine amounts for profit under alternatives one and two, or a profit cap under alternative three, it still may apply alternative three (without the cap) on the basis of the "facts available." SAA at 841.

In this case, we based Kabool's SG&A and profit on the actual amounts incurred and realized in connection with the production and of the same general category of merchandise as described in alternative one, above (*see* Comment 1, below, for further discussion).

Price to CV Comparisons

Where we compared CV to EP for Kabool, we made circumstance of sale adjustments pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR section 353.56(a)(2). We made circumstance of sale adjustments, where appropriate, for differences in bank charges and credit expenses. We adjusted bank charges based on findings at verification. (For details, *see* Kabool calculation memorandum).

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* (61 FR 9434, March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because neither the Korean Won nor the Canadian Dollar underwent a sustained movement.

Critical Circumstances

The petition contained a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In this case, our final determination is negative. Accordingly, a critical circumstances determination is irrelevant because there is no possibility of retroactive suspension of liquidation.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: SG&A and Profit Calculations

Petitioner opposes the Department's use of Kabool's company-wide SG&A and profit, arguing that the company-wide data includes lower export prices, which decreases the profit rate and, consequently, artificially lowers dumping margin. Instead, petitioner contends that Kabool's SG&A and profit should be based only on sales of merchandise that belong to the same general category of "collated nails" and not "all nails" (*i.e.*, collated and non-collated). According to petitioner, basing SG&A and profit on both collated and non-collated nails is inappropriate because collated nails require significantly different capital investment and are sold to different markets.

Stanley agrees with petitioner, arguing that the use of Kabool's company-wide SG&A and profit artificially lowers the dumping margin. Stanley also notes that, because of the significant investment and overhead costs attributable to CR nails, the same general category of merchandise cannot be broader than collated nails for purposes of calculating profit. Further, Stanley contends that Kabool has the ability to separate the profit for collated nails from the company-wide profit rate, but simply chose not to do so. Therefore, Stanley argues that the Department should apply facts available in calculating the dumping margin for Kabool.

Kabool asserts that the Department should use the profit rate based on Kabool's sales of collated and non-collated nails, which was provided in its April 16, 1997, supplemental Section D response, as corrected and verified by the Department at verification. Kabool argues that both collated and non-collated nails are processed in the same facility using the same equipment and the same production processes. Moreover, Kabool notes that the Department previously held that the "class or kind" of merchandise in a case involving steel wire nails included all steel wire nails—without distinguishing between collated and non-collated nails. Finally, Kabool argues that petitioner's claim that the Department should use a profit rate specific to collated nails was only raised in petitioner's case brief and, thus, too late in this proceeding to request such information. Kabool also notes that although the Department's questionnaire never requested information regarding the profit on home market sales of collated and non-collated nails, Kabool submitted information on its profit for nail products in the home market. Therefore, Kabool contends that the Department should reject petitioner's and Stanley's arguments and determine that the same general category of merchandise upon which to base SG&A and profit is collated and non-collated nails.

DOC Position

We agree with Kabool. Kabool does not have a viable home market or third country market for a foreign like product. Section 773(e)(2)(B) of the Act states that if actual SG&A and profit data on home market sales of the subject merchandise are not available, the Department may use the SG&A and profit rates incurred by the producer on the sales of the same general category of merchandise as the exports in question (*see* Kabool's NV section for a discussion of the three alternative methodologies). In this instance, we verified the aggregated SG&A and profit data on Kabool's sales in the home market of both collated and non-collated nails that it submitted. We determined that collated and non-collated nails are of the same general category of merchandise. (*Cf. Certain Steel Wire Nails From Korea: Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order*, 50 FR 40045 (Oct. 1, 1985) (all steel wire nails found to constitute a single class or kind of merchandise). Accordingly, consistent with section 773(e)(2)(B), the Department has used the verified SG&A and profit rate reported by Kabool on its sales of all nails in the home market.

Comment 2: Facts Available

Petitioner contends that the Department should use adverse facts available for SENCO's and Kabool's dumping margins. Petitioner argues that the numerous verification corrections, whether disclosed by the respondents or found by Department officials, indicate that both Kabool and SENCO have failed to act to the best of their abilities. Petitioner specifies four examples of problems with SENCO's responses: (1) errors in the reporting of purchases of CR nails from Je Il Steel Company Ltd. ("JISCO"); (2) inability to explain discrepancies in reported trucking freight charges; (3) discrepancies noted by the Department when reconciling quantity and value figures to SPI's financial statements; and (4) failure to include POI sales to Canada in the third country database. Further, petitioner argues that SENCO did not provide a complete explanation of its relationship with its distributor in Canada.

SENCO states that petitioner correctly summarizes the instances in which SENCO's submissions, prior to the preliminary determination, warranted the use of facts available by the Department. However, SENCO contends that it has corrected all the deficiencies in its June 2, 1997, response to the Department's second supplemental antidumping questionnaire. Because the corrected deficiencies have been verified by the Department, SENCO claims that the Department should use the information provided by SENCO to make the final determination in this investigation.

Kabool contends that the petitioner has not indicated which corrections and errors actually merit the use of adverse facts available. Kabool claims that the corrections it has submitted do not warrant wholesale rejection of its responses. Kabool states it was cooperative in providing information throughout the investigation. Kabool further states that petitioner has not identified a single instance of a pattern or systematic misstatement of fact in Kabool's submissions. Accordingly, Kabool contends that there is no basis for the Department to reject Kabool's submissions or to rely on adverse facts available. Rather, Kabool claims that the Department's final determination in this investigation should be based on the information it has submitted.

DOC Position

We agree with both respondents. The facts on the record of this investigation demonstrate that the respondents answered the Department's questionnaire to the best of their ability. The corrections and errors found in the responses to the Department's questionnaire and at verification do not warrant the use of facts available. The Department's practice is to permit respondents to provide minor corrections to submitted information at the commencement of verification. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Taiwan*, 62 FR 1726, 1729 (January 13, 1997). Kabool and SENCO provided the Department with their corrections in a timely manner at the beginning of their respective verifications (cost verification report for Kabool dated July 28, 1997; sales verification reports for Kabool, Senco Korea, and SPI dated July 7, 1997, and July 30, 1997, July 29, 1997, respectively). In sum, the corrections submitted by Kabool and SENCO were typical of the minor corrections routinely accepted by the Department at the commencement of verification.

Accordingly, we determine that resorting to facts available is unwarranted in this particular case. We, therefore, used all verified information for both respondents in the final margin calculations.

Comment 3: Plating Thickness

Petitioner argues that the plating thicknesses of CR nails reported by respondents do *not* meet U.S. Federal or regional building codes. Moreover, petitioner claims that the actual plating thicknesses were not verified by the Department. Therefore, petitioner contends that the Department should assume that respondents were aware of the U.S. building codes and produced CR nails that complied with the codes. Petitioner urges the Department to use the information contained in the petition to calculate NV based on CR nails that meet the U.S. building codes.

Kabool argues that petitioner's statements regarding plating thickness are unsubstantiated and do not provide any basis for rejecting or even questioning Kabool's submissions. Kabool states that, because its NV was based on CV, there is no question of incorrect product comparison. Further, Kabool contends that it reported actual costs incurred in producing (and plating) the CR nails exported to the United States, thereby accounting for all of its materials and fabrication costs incurred in the process of plating CR nails. Kabool also states that the costs reported by Kabool were verified by the Department. Accordingly, there is no basis for rejecting Kabool's submissions.

SENCO argues that there is no indication in the petitioner's case brief as to where or when the issue of sub-standard plating thickness of CR nails was previously raised on the record. SENCO states that there is nothing on the record to suggest that its CR nails do not meet applicable standards. Accordingly, SENCO contends that there is no basis for rejecting SENCO's submissions.

DOC Position

We agree with Kabool that we have captured all costs incurred in producing CR nails. During the cost verification of Kabool, we examined whether all material costs (including plating costs) associated with the subject merchandise were included in the CV databases. We noted no discrepancies regarding the material costs with the exception of minor errors, which have now been corrected (*see* cost verification report for Kabool dated July 28, 1997). Thus, we have verified all of Kabool's material costs. With respect to SENCO, we noted no discrepancies regarding its reported product characteristics. Any alleged misrepresentation concerning compliance with U.S. building codes is not within the purview of the antidumping statute because such misrepresentation would have no impact on our calculations.

Comment 4: Allocation Methods

Petitioner contends that respondents' allocation methods were distortive because they were based on incorrect and unsupported expenses in the following areas:

(1) Shipping Expenses. International freight expenses were improperly based on gross weight instead of volume. Because CR nails weigh less per cubic foot than bulk nails, respondents' shipping expenses were thus systematically under-reported.

(2) Production Expenses, Factory Overhead, and Indirect Selling Expenses. The allocation method for production-related expenses, factory overhead, and indirect selling expenses should be based on weight that includes scrap. However, the post-scrap production expenses, such as packing, should be allocated based on weight of the CR nails without scrap.

(3) Duty drawback. The duty drawback expense allocation method should be based on the net weight of CR nails.

(4) Actual Weighing. The Department should rely on actual physical weighing of the CR nails, not the reported gross weight for all allocation methods based on weight.

In rebuttal, Kabool argues that petitioner's assertions, which are enunciated for the first time in petitioner's case brief, are untimely. Moreover, Kabool emphasizes that the allocation methods used are consistent with the Department's past practice and the proposed modification would produce insignificant changes. Therefore, any modification of Kabool's current allocations is without merit. Specifically, Kabool addresses the following allocations:

First, Kabool argues that petitioner's assumption that Kabool's shipments regularly include both bulk nails and CR nails is inaccurate. Kabool states that it reported actual ocean freight costs for its U.S. sales on a shipment-by-shipment basis. Moreover, Kabool contends that allocation of ocean freight costs based on weight, rather than volume, is consistent with the Department's normal practice. Moreover, an alternative allocation based on volume would not have been practical since the documents do not state the volume of each shipment. Thus, there is no basis to revise the freight allocations.

Second, Kabool states that petitioner's proposed allocations for production-related expenses, factory overhead, and indirect selling expenses are factually incorrect and contrary to the law. Kabool claims that most of these items were not allocated based on weight. For instance, Kabool's indirect selling expenses were allocated based on sales value. Kabool asserts that the only overhead allocation based on weight was the fabrication costs for polishing and coating. According to Kabool, any new allocation would result in insignificant changes.

Third, Kabool argues that it did allocate duty drawback based on the net weight of the CR nails.

Finally, Kabool states that it reported its shipping expenses, production-related expenses, factory overhead, indirect selling expenses, and duty drawback in accordance with Korea's generally accepted accounting principles ("GAAP") and its own cost accounting system. Kabool claims that the statute requires the Department to follow the methodologies used in the company's normal accounting system. Moreover, Kabool argues that to allocate expenses based on a weight that includes scrap is nonsensical as this would result in allocating a portion of the product costs to scrap and not to the finished product. Accordingly, there is no reason to allocate these expenses in the manner petitioner has proposed.

SENCO claims that petitioner failed to adequately identify in its case brief what type of shipping expenses should be subject to a different allocation methodology. SENCO also notes that its methodologies for calculating freight expenses were verified by the Department and generally accepted as appropriate. In addition, SENCO states that it reported that it received no duty drawback on the exportation of CR nails.

DOC Position

The Department normally accepts the company's recording of costs, provided that it reasonably reflects the cost of producing subject merchandise and it is in accordance with the home country's GAAP. *See* section 773(f)(1)(A); SAA at 834–35; *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses from Japan*, 61 FR 38139 (July 23, 1996). We have determined that the allocations of the expenses, challenged by petitioner, are reasonable for the reasons stated below.

(1) Shipping Expenses. We found no discrepancies with respect to the allocation methodology used by respondents. (*See* Sales Verification Reports for Kabool at 7 and Senco Korea

at 10 dated July 7, 1997, and July 30, 1997, respectively.) Respondents' cost accounting systems, which are consistent with Korean GAAP, only record the weight of their shipments to customers, not the volume. Thus, the allocation method used was the most specific method feasible. In addition, it does not cause distortions or inaccuracies in our calculations. Therefore, the Department has not changed the freight methodology for the final determination.

(2) Production Related Expenses, Factory Overhead, and Indirect Selling Expenses. Allocating expenses over the weight of the finished goods necessarily accounts for all costs related to scrap. If the Department were to allocate certain expenses over a weight which included scrap, the denominator of the calculation would be greater than the weight of the finished product and would result in understating the per-unit expense.

Further, most of Kabool's items were not allocated based on weight. Indirect selling expenses were allocated based on sales value. The only overhead allocation based on weight was the fabrication costs for polishing and coating. Therefore, any new allocation would have been insignificant. Thus, we reject petitioner's argument and will continue to allocate expenses over the total amount of finished product.

(3) Duty Drawback. As stated in the sales verification reports dated July 9, 1997, and July 30, 1997, the Department verified that Kabool allocated duty drawback on the net weight of the CR nails and that Senco Korea received no duty drawback on the exportation of CR nails.

(4) Physical Weights. At verification, the Department examined the weights of the products in order to confirm certain allocation factors. We found no discrepancies. We will use each company's verified weights in our calculations.

Respondents reported all of the aforementioned expenses in accordance with Korea's GAAP and their own cost accounting systems (*see* Section 773(f)(1) of the Act). The methodologies for calculating these expenses were verified by the Department and accepted as appropriate. Accordingly, the Department did not change the allocation methodologies for these expenses. Further, as noted above, because few factors were allocated on the basis of weight any changes in the allocations would not have a significant impact.

Comment 5: Constructed Value Calculation—Kabool

Petitioner argues that Kabool's cost methodology for CV was not appropriate because the cost of materials obtained from non-affiliated suppliers should be determined through a price comparison against independent Korean market values to ensure that prices are reasonable.

DOC Position

We disagree with petitioner. The Department verified Kabool's cost of materials. Kabool's material purchases constituted arm's-length transactions and reported costs were tested against Kabool's cost accounting systems. Because the prices that Kabool paid for its materials reflect market values, it is neither necessary nor appropriate for the Department to benchmark Kabool's material costs against other "independent" market values.

Comment 6: Collapsing Senco Korea and its Affiliate

Petitioner claims that Senco Korea and its affiliate should be collapsed for purposes of the final determination. Petitioner states that in identifying the potential for manipulation of price or production the Department may consider the following factors: (1) Level of common ownership; (2) shared management; (3) intertwined operations, shared facilities and/or employees, and significant transactions between affiliated parties. Petitioner cites *Sulfanilic Acid From China: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 25917 (May 12, 1997), in which the Department found that two companies were affiliated when substantial retooling of either company would not be necessary to restructure their collective manufacturing priorities, and that there was a potential for price manipulation between the two producers. Petitioner claims that the same principle should be applied to Senco Korea and its affiliates.

SENCO argues that petitioner fails to identify Senco Korea's alleged affiliate, but states that SENCO assumes that petitioner is referring to JISCO. SENCO states that it has readily acknowledged on the record that JISCO is affiliated with Senco Korea. However, SENCO contends that because the Department verified that JISCO had no independent sales of CR nails, Senco Korea has reported all of its sales of CR nails.

DOC Position

The Department has treated Senco Korea, JISCO, and SPI as affiliated parties throughout the entire investigation. The companies submitted a consolidated questionnaire response and verification revealed no material errors or omissions that could not be corrected. *See* section 771(33)(E) of the Act and SENCO's February 28, 1997, submission of section "A" response to the Department's antidumping questionnaire. Accordingly, the Department has treated these companies as one entity. Because we are dealing with a single producer, the type of collapsing analysis suggested by petitioner is not relevant.

Comment 7: SENCO Indirect Selling Expenses

Petitioner makes two points with respect to SENCO's reported indirect selling expenses. First, petitioner argues that certain U.S.-incurred indirect selling expenses, such as salaries and benefits for the heads of customer service and distribution services, which SENCO proposed to exclude from reported indirect selling expenses, should be deducted from CEP. However, petitioner states that "the Department should make an offsetting adjustment to SG&A."

Second, petitioner contends that SENCO inappropriately revised its reporting of Korean-incurred indirect selling expenses and inventory carrying costs by allocating these items over transfer price instead of gross price.

SENCO claims that it properly reported and allocated its indirect selling expenses. Prior to verification, SENCO revised its indirect selling expenses to excluding certain expenses related to selling activities in the United States. SENCO argues that this correction was appropriate because these expenses are incurred in Korea. SENCO also asserts that SG&A expenses should not have been included in the indirect selling expenses incurred in Korea and that the corrected amounts were reviewed at verification.

SENCO contends that basing indirect selling expenses on the transfer price, rather than the resale price originally reported, constituted an appropriate correction that was explained to the Department at verification.

DOC Position

With respect to petitioner's first argument, we agree. We have not accepted SENCO's proposal to exclude from the indirect selling expenses deducted from CEP certain selling expenses incurred at SPI because those expenses relate to economic activity in the United States. Because Senco Korea's margin calculation is based on a price-to-price comparison, there is no need to correct SG&A as that figure is not used in the calculation.

With respect to the allocation of Korea-incurred selling and inventory carrying expenses, the Department does not need to address this question because these expenses have not been determined to be associated with economic activity in the United States and thus are not being deducted from CEP or otherwise taken into account.

Comment 8: Correct Reporting of Affiliated Parties

Petitioner contends that sales made between Senco Korea and its customer in Canada do not appear to be at arm's length. Accordingly, petitioner urges the Department to use facts available in its final determination in this investigation.

Stanley claims that SENCO failed to provide complete information regarding its affiliations (or "relationships with its customers"). Stanley states that Senco Korea's distributor for CR nails in Canada is affiliated with the corporate entity that controls SPI. Because of the lack of complete information with respect to SENCO's affiliates, Stanley contends that the Department is not able to determine whether Senco Korea's reported third country sales are arm's-length transactions. Accordingly, Stanley contends, the Department is required to use facts available for making SENCO's final determination in this investigation.

SENCO argues that it has no affiliates in Canada and that it properly excluded from its sales listing CR nails sales made by its unaffiliated distributor. According to SENCO, its customer in Canada is an unaffiliated distributor and the independent relationship of many of SPI's various distributors was verified by the Department.

DOC Position

We agree with SENCO. At verification, we noted that SPI has a large number of formal business relationships with many distributors and resellers throughout the world and the majority of these relationships do not meet the Department's requirements for affiliation (*see* SPI verification report at 3, July 29, 1997). Specifically, there was no indication noted by the Department that SPI was affiliated with its customer in Canada. Accordingly, there is no basis to conclude that the third country sales listing is flawed, and use of facts available for the Department's determination is not warranted. Moreover, we note that petitioner and Stanley first raised this concern in their case briefs—far too late in this proceeding for a detailed analysis of potential affiliation between a supplier and its customer.

Comment 9: Critical Circumstances

Petitioner alleges that the petition provided a reasonable basis to suspect that critical circumstances exist with respect to imports of subject merchandise. In particular, petitioner maintains that the revoked antidumping order on steel wire nails from Korea, *Certain Steel Wire Nails From Korea*, 50 FR 40045 (Oct. 1, 1985), provides a sufficient basis to find a history of dumping (a requirement of section 733(e)(1)(i) of the Act). Accordingly, petitioner believes that there is a reasonable basis to suspect that critical circumstances exist with respect to imports of subject merchandise.

Kabool contends the Department should affirm its preliminary determination that critical circumstances do not exist in this case for Kabool. Kabool asserts that petitioner neglected to mention three facts: (1) The steel wire nails final determination cited by petitioner was published in 1980, which is more than 15 years ago; (2) the same steel wire nails antidumping order was revoked in October 1985; (3) Kabool was not investigated in that proceeding, and it was never found to be dumping steel wire nails or any other product. For the above reasons, Kabool claims that petitioner's argument should be rejected.

SENCO states that nothing has changed since the preliminary determination to alter the Department's conclusion that the first prong of section 733(e)(1) pertaining to history of dumping, or knowledge on the part of importers, has not been met. Furthermore, SENCO submits that the second prong of that provision cannot be satisfied because the change in the quantity of shipments of CR nails by Senco Korea to the United States from the post-petition period over the pre-petition period does not indicate that imports were massive. Because neither prong of section 733(e)(1) has been satisfied, SENCO argues that there is no basis to find that critical circumstances exist.

DOC Position

Because our final determination is negative, it is not necessary to address whether critical circumstances exist as there is no possibility of retroactive suspension of liquidation.

Comment 10: Unverified CEP Expenses

SENCO claims that the Department should accept its reported data for the following expenses: U.S. inland freight, U.S. customs duties, credit expenses, advertising expenses, and inventory carrying costs incurred in the United States. Although the Department was unable to verify these expenses, SENCO notes that the verification process was generally complete. SENCO contends it demonstrated a willingness to cooperate with the Department by responding to the antidumping questionnaires in a timely manner. Accordingly, the application of adverse facts available would be inappropriate.

Petitioner contends that the Department's inability to verify the CEP expenses was not minor. Petitioner argues that the treatment of these expenses directly affects the Department's calculation methodology for the final determination. Petitioner claims that the Department is required to verify all information relied upon in its final determination. Accordingly, for these unverified expenses, petitioner urges the Department to use facts available.

DOC Position

Due to limitations of time and resources, the Department is rarely able to verify every single piece of data submitted in a response. *See Monsanto Co.* v. *United States* 698 F. Supp. 275, 281 (1988) ("Verification is a spot check and is not intended to be an exhaustive examination of the respondent's business.") Verification is an opportunity for the Department to test the accounting and business systems of the respondent to a level of detail that gives the Department a reasonable indication as to the integrity of the response. *See Micron Technology, Inc.* v. *United States*, 117 F.3d 1386, 1396 (1997) (ITA performs selective verification of reported data until it is satisfied that the data supplied by the foreign respondent is accurate). For the information that was verified, the Department found no significant problems. While we would have preferred to have an opportunity to verify these expenses, based on the results of verification, we find SENCO's data to be reliable overall. Moreover, we find that the level of SENCO's cooperation with our requests for information would not warrant an adverse inference. Nor have we found any reason based on other information on the record to conclude that the information in question is erroneous. Thus, even though not specifically verified, SENCO's reported expense information is the most appropriate facts available to the Department for the calculation of SENCO's margin. Accordingly, the Department has used

SPI's CEP expenses for purposes of the final determination.

Comment 11: Treatment of Relocation Costs for CV

Kabool states that it made a substantial investment in relocating its production facilities. Kabool states that production levels were limited by technical factors and contends that production during and immediately after relocation constitutes a start-up operation under the statute. Kabool contends that the Department should reduce CV to account for this relocation, either by granting a start-up adjustment or by determining that these costs are extraordinary.

Kabool contends that the plant relocation was clearly unusual in nature and infrequent in occurrence, thus satisfying the criteria for an expense to be considered extraordinary.

Petitioner contends that Kabool's plant relocation does not require special treatment by the Department. Petitioner further states that Kabool did not supply the necessary data to effect the requested adjustment. Furthermore, Kabool did not establish (as the statute requires) that the startup period extended "beyond the POI."

DOC Position

We agree with petitioner that it is not appropriate to make an adjustment, under the startup provision of section 773(f)(1)(C)(ii) of the Act, to account for the costs incurred by Kabool during the relocation of its production facility. To qualify for an adjustment for startup operations, the producer must show that (1) it is using new production facilities or producing a new product that requires substantial additional investment, and (2) the production levels are limited by technical factors associated with the initial phase of commercial production. *See* 773(f)(1)(C)(ii). The SAA explains that "new production facilities" means substantially complete retooling of an existing plant that involves a replacement or rebuilding of nearly all production machinery. *See* SAA at 836. A product is "new," according to the SAA, if it requires "substantial additional investment," or if the producer incurs substantial additional cost because of revamping or redesigning its existing product. Id.

In this case, Kabool reported in its April 16, 1997, supplemental section D response that all of the production machinery used in Kabool's new plant was transferred from its old plant. Kabool thus did not replace or rebuild nearly all of its machinery, but merely relocated its production facility. Kabool's technology for producing CR nails has not changed and there is nothing on the record to indicate that a new product is being produced in the new facility. Because Kabool merely relocated its production facility without replacing or rebuilding nearly all of its machinery, and the record evidence does not show that the relocation involved a substantial investment in connection with the revamping or redesigning of CR nails, the first condition for the start up adjustment is not satisfied.

Because Kabool does not meet the requirements outlined in the first prong of the start-up provision, the Department is not required to address whether or not Kabool's production levels were limited by technical factors associated with the initial phase of commercial production during the relocation of its facilities. In sum, the Department has determined to reject Kabool's claim for startup adjustment because it did not demonstrate that its production facility was new, or that it would involve a production of a new product under section 773(f)(1)(C)(ii) of the Act.

As in the preliminary determination, Department did not make an adjustment for Kabool's relocation costs based on the Department's practice of adjusting CV for extraordinary costs. The Department maintains that additional expenses stemming from Kabool's relocation do not constitute, in the words of the SAA at page 832, "an unforeseen disruption in production," which is beyond the management's control." *(See also Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses, from Japan*, 61 FR 38139, 38153, July 23, 1996). Accordingly, because the relocation was not an unforseen event, the Department will include all the expenses associated with the relocation of Kabool's nail production facilities for purposes of calculating CV.

Comment 12: Indirect Selling Expenses—Kabool

Kabool claims that the revised home-market indirect selling expense calculation set forth in the sales verification report incorrectly allocates all of Kabool's home-market indirect selling expenses (which related to sales of all of its products) over the sales of CR nails sales instead of company wide sales. Accordingly, the Department should make the correction of the calculation error.

Petitioner states that the Department should include indirect selling expenses for the same general category of products (*i.e.* collated nails) as the Department should select for SG&A and profit. Petitioner argues that by including indirect selling expenses allocated for sales in the same general category, the Department will be making the most precise calculation of CV.

DOC Position

We agree with Kabool. The Department made a calculation error in the recalculation of the home-market indirect selling expense (*see* the Department's July 28, 1997, cost verification report, page 13). Accordingly, the Department has corrected the calculation as illustrated on page 15 of Kabool's August 6, 1997, case brief. For reasons outlined in our response to comment 1 we are calculating indirect selling expenses based on sales of the same general category of nails as provided by Kabool.

Termination of Suspension of Liquidation

In accordance with section 735(c)(2) of the Act, we are directing the Customs Service to terminate suspension of liquidation and release any bond or other security and refund any cash deposit.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Senco	0
Kabool	0

Because our determination is negative, the investigation will be terminated upon publication of this notice and no order will be issued.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our determination.

This determination is published pursuant to section 735(d) of the Act.

Dated: September 24, 1997.

Robert LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–26047 Filed 9–30–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–826]

Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly at (202) 482–4194, or Brian Smith at (202) 482–1766, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 353, as the codified on April 1, 1997. Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296 (May 19, 1997) ("Final Regulations"), do not govern this investigation, citations to those regulations are provided, where appropriate, as a statement of current departmental practice.

Final Determination

We determine that collated roofing nails ("CR nails") from Taiwan are being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation *(see Notice of Preliminary Determination and Postponement of Final Determination: Collated Roofing Nails from Taiwan*, 62 FR 25904 (May 12, 1997)), the following events have occurred:

In June 1996, we attempted to verify the questionnaire responses of the following respondents: Unicatch Industrial Co. Ltd. ("Unicatch"), Lei Chu Enterprises Co., Ltd ("Lei Chu"), S&J Wire Products Company, Ltd. ("S&J"), and Romp Coil Nail Industries ("Romp").

The Paslode Division of Illinois Tool Works Inc. ("Petitioner"), Unicatch, Lei Chu, and Romp submitted case briefs on July 30, 1997, and rebuttal briefs on August 5, 1997. The Department held a public hearing on August 7, 1997.

Scope of Investigation

The product covered by this investigation is CR nails made of steel, having a length of $^{13}/_{16}$ inch to $1^{13}/_{16}$ inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CR nails within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55.06. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of this investigation ("POI") for all respondents is October 1, 1995, through September 30, 1996.

Facts Available

A. K. Ticho

We did not receive a response to our questionnaire from K. Ticho, an exporter of the subject merchandise during the POI. Section 776(a)(2) of the Act requires the Department to base its determination on the facts available when interested parties withhold information specifically requested by the Department. Because K. Ticho failed to submit information that the Department specifically requested, we must base our determination for that company on the facts available. Section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. The Department has determined that by failing to respond, K. Ticho has not acted to the best of its ability to comply with our request for information and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted.

Romp

Romp reported sales and cost data based on unaudited financial statements. At verification, we were unable to reconcile Romp's financial statements to its tax return or any other independent source (*see* Romp Coil Cost Verification Report, July 18, 1997). In situations where a respondent does not have audited financial statements, the Department may use the company's tax return as an independent source to substantiate the company's questionnaire responses (*see Final Results of Antidumping Administrative Review: Fresh Cut Flowers from Mexico;* 60 FR 49569–49572 (September 26, 1995)). In this instance, because we were unable to reconcile Romp's financial statements to its tax return, we determined that the financial statements were unreliable and unusable as we were unable to confirm the quantity and value reported as well as confirm that all sales made by Romp during the POI were reported to the Department. Section 776(a)(2)(D) of the Act requires the Department to base its determination on the facts available when information, but that information submitted by a party cannot be verified as provided in section 782(i). Accordingly, we must base our determination for Romp on the facts available.

Section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate to the best of its ability. We have determined that by failing to provide us the financial statements used to prepare Romp's tax return for purposes of testing the reliability and accuracy of reported costs, expenses, and the value of sales during the POI, Romp has not acted to the best of its ability in this investigation. Further, the information in the financial statements that Romp provided to the Department's verifiers cannot serve as a reliable basis for our final determination. While the Department attempts to work within the limitations presented by the respondent's normal accounting systems, as a threshold matter, the Department must ensure that the total amount of reported sales and costs during a particular investigation are fully captured in the information submitted to the Department. This is especially so in cases involving cost of production and constructed value, in which the Department must ensure that the total amount of the reported costs account for all actual costs incurred by the respondent in producing the subject merchandise during the period under examination. Despite prior notice by the Department of the intended verification procedures, Romp never notified the Department that it was unable to provide a reliable independent source to substantiate the data contained in its unaudited financial statements. Therefore, in light of the importance of this data to the Department's determination, we have determined that in selecting from among the facts

available, an adverse inference is warranted.

Selection of Adverse Facts Available Margin

As adverse facts available, we considered the highest margin contained in the petition (as recalculated by the Department at initiation) as the most appropriate information on the record to form the basis for dumping margins for K.Ticho and Romp. Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess at 870 (1994) ("SAA"), states that "corroborate" means to determine that the information used has probative value.

To corroborate the data contained in the petition, we examined the basis for the estimated margins. The petitioner based its allegation of export price on price quotes from two manufacturer/exporters of CR nails in Taiwan and import statistics. These price quotations were adjusted for movement expenses using customs data and IM–145 Import Statistics. *See Notice of Initiation of Collated Roofing Nails from Korea, Taiwan and the People's Republic of China*, 61 FR at 67307–08. As explained in *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey*, 61 FR 30309 (June 14, 1996), we consider information from independent public sources, such as import statistics, as having probative value. Furthermore, the two price quotes in the petition are consistent with export prices reported by the respondents on the record of this investigation. Therefore, we determine that the export price calculations set forth in the petition have probative value.

The petitioner based Normal Value ("NV") on Constructed Value ("CV"). *See Notice of Initiation*. To calculate CV, the petitioner used manufacturing costs based on its own production experience, its 1995 audited financial statements, and publicly available industry data. *Id*. The CV calculations in the petition are consistent with the CVs reported by the respondents on the record of this investigation. As such, we determine that the NV calculations have probative value. (*see* Memorandum, dated May 5, 1997.)

Based on our reexamination of the price information supporting the petition, we determine that the highest margin in the petition, as recalculated by the Department corroborated within the meaning of section 776(c) of the Act.

Fair Value Comparisons

Unicatch, Lei Chu, S&J

To determine whether sales of the subject merchandise by Unicatch, Lei Chu, and S&J to the United States were made at less than fair value, we compared the Export Price ("EP") or Constructed Export Price ("CEP") to the NV, as described in the "Export Price" and "Constructed Export Price," and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to weighted-average NVs.

In making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the "Scope of Investigation" section of this notice, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Unicatch, Lei Chu, and S&J reported that they had no viable home market or third country sales during the POI. We therefore made no price-to-price comparisons. *See* the "Normal Value" section of this notice, below, for further discussion.

Level of Trade and CEP Offset

In the preliminary determination, where that we used each respondent's financial statements to derive SG&A and profit for the CV calculations, the Department determined that there was insufficient evidence on the record to justify a level of trade adjustment or CEP offset because we were unable to isolate the particular selling expenses associated with each respondent's NV. We found no evidence at verification to warrant a change from that preliminary determination. Accordingly, we have not made either a LOT adjustment or CEP offset for any of the respondents in this final determination.

Export Price and Constructed Export Price

We calculated EP and CEP, as appropriate, in accordance with section 772(a), (c) and (d) of the Act, where the CR nails were sold directly to the first unaffiliated purchaser in the United States prior to importation and where CEP was not otherwise warranted based on the facts of record. The calculation for each respondent was based on the same methodology used in the preliminary determination, with the following exceptions:

Unicatch—We made changes to the following fields based on Unicatch's pre-verification corrections and verification findings: Payment Date; Invoice Number; Quantity (Cartons); Gross Unit Price; Discounts; U.S. Inland Freight from port to warehouse and warehouse to customer; warranties; international freight, brokerage and handling (Taiwan); port charges; marine insurance; U.S. duties; Duty Drawback; Indirect Selling Expenses; Inventory Carrying Costs; Packing. In addition we deleted certain sales of non-subject merchandise and added sales found at verification. See Valuation Memorandum dated September 24, 1997.

Lei Chu—We made changes to the following fields based on Lei Chu's pre-verification corrections and verification findings: Payment Date; Sales Terms; Port Charges; Bank Charges; Marine Insurance; Invoice Number; Gross Unit Price; Sale Date; Taiwan Inland Freight from plant to port; International freight, Brokerage and Handling (Taiwan). See Valuation Memorandum dated September 24, 1997.

S&J—We made changes to the following fields based on S&J's pre-verification corrections and verification findings: Inland freight; Brokerage and Handling, International Freight. In addition, we included sales reported by S&J's affiliate New Lan Luang (*see* Comment 17). See Valuation Memorandum dated September 24, 1997.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Unicatch, Lei Chu, and S&J reported that they had no home market sales during the POI. Therefore, we have determined that none of the respondents have a viable home market. Because Unicatch, Lei Chu, and S&J also reported that they had no viable third country sales during the POI, we based NV on CV in accordance with section 773(a)(4) of the Act.

Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, Selling, General and Administrative expenses ("SG&A"), profit and U.S. packing costs as reported in the U.S. sales listings. In this case, none of the respondents had home market selling expenses or home market profit upon which to base CV in accordance with section 772(e)(2)(A).

Section 773(e)(2)(B) of the Act sets forth three alternatives for computing profit and SG&A without establishing a hierarchy or preference among the alternative methods. We did not have the necessary cost data for method one (calculating SG&A and profit incurred by the producer on the home market sales of merchandise of the same general category as the exports in question), or method two (averaging SG&A and profit of other investigated producers of the foreign like product). The third alternative method (section 773(e)(2)(B)(iii) of the Act) provides that profit and SG&A may be computed by any other reasonable method, capped by the amount of profit normally realized on sales in the home market of the same general category of products. The SAA states that, if the Department does not have the data to determine amounts for profit under alternative method one and two or a profit cap under alternative method three, it may apply alternative three (without determining the cap) on the basis of "the facts available." SAA at 841. Therefore, as the facts available under section 773(e)(2)(B)(iii) of the Act, for Unicatch and S&J, we are using each respondent's overall profit and SG&A rate associated with its total sales as recorded in its most recent financial statement. Because the figures recorded in the financial statements are company-specific and contemporaneous with the POI, we determine this data to be a reasonable surrogate for SG&A and profit of the foreign like product. With respect to Lei Chu, because its financial statement includes sales of merchandise not related to the merchandise under investigation, e.g., not within the same general category of CR nails products, we determined that using Lei Chu's financial statement is not an appropriate basis for deriving SG&A and profit. Therefore, we are using the weighted average of the profit rate and SG&A of other respondents in this investigation for Lei Chu (*see* Lei Chu Calculation Memorandum, September 24, 1997). For a further discussion of this methodology, see Comment 2 below.

Price to CV Comparisons

Because we based SG&A on respondents' financial statements, where we compared CV to EP, we did not make any circumstance of sale adjustments for direct expenses and commissions as we were unable to isolate these amounts from total SG&A.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks, *see Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan Dollar (NTD) did not undergo a sustained movement.

Critical Circumstances

The petition contained a timely allegation that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In the preliminary determination, we determined that there was no reasonable basis to believe or suspect that critical circumstances existed with respect to imports of CR nails from Taiwan by Unicatch, Lei Chu, S&J, and Romp. This preliminary determination was based on a finding that there was no evidence of a history of dumping and no basis to impute knowledge of dumping and resultant material injury. As no interested party has challenged this determination and because the calculated final dumping margins for Unicatch, Lei Chu, and S&J do not exceed the benchmark amounts for establishing imputed knowledge (e.g. 15% for CEP sales and 25% for EP sales), we do not find that critical circumstances exist for any of these companies. Regarding all other exporters, because we do not find that critical circumstances exist for any of the investigated companies with calculated dumping margins, we also determine that critical circumstances do not exist for companies covered by the "All Others" rate. Based upon adverse facts available, however, we do find that critical circumstances exist with respect to exports by K. Ticho and Romp. (*see* Comment 20).

Verification

As provided in section 782(i) of the Act, we verified or attempted to verify the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Indirect Selling Expenses

Unicatch argues that the Department erroneously deducted its indirect selling expenses incurred in Taiwan from CEP. Unicatch states that it calculated its Taiwan indirect selling expenses as a percentage of total Unicatch sales because it was unable to specify whether any of the indirect selling expenses were directly related to its U.S. sales. Unicatch asserts pursuant to section 772(d) of the Tariff Act of 1930, as amended, that the Department has an established practice in which it does not deduct indirect selling expenses incurred by a foreign producer in the exporting country in calculating CEP. See *Notice of Final Determination: Pet Film from Korea*, 62 FR 38064, 38066 (July 16, 1997). Unicatch further contends that the Department has codified this established practice in the final regulations citing, 62 FR 27296, May 19, 1997 at section 351.402(b) which states that the Department "will not make adjustments for any expense

that is related solely to the sale to an affiliated importer in the United States." As a result, Unicatch contends the Department should not deduct any such indirect selling expenses incurred in Taiwan from CEP in the final determination.

Petitioner contends the Department was correct to deduct Unicatch's indirect selling expenses in constructing CEP as all deductions met statutory requirements. First, petitioner argues the Department verified that Unicatch's sales department provides general sales support services for U.S. sales including contacts with affiliates and customers. Second, petitioner argues that indirect selling expenses are expenses which do not result from a direct relationship with the subject merchandise. Thus, petitioner argues that Unicatch's claim that these expenses are not directly related to the sale of the subject merchandise is irrelevant. Finally, petitioner claims that the Department verified that the international sales division dealt with sales to various export markets, and although there is no sales division devoted to U.S. sales, given that a majority of Unicatch's sales are to the U.S., these expenses should be deducted from CEP.

DOC Position

We agree with the respondent and have not deducted Unicatch's indirect selling expenses incurred in Taiwan from CEP because the record evidence does not support a finding that these selling expenses are related specifically to economic activities in the United States. Consistent with the SAA and § 351.402(b) of the Final Regulations (62 FR 27411), we make deductions under section 772(d) of the Act only for selling expenses that relate to economic activity in the United States, which we deem to be expenses associated with the sale to the unaffiliated U.S. purchaser and not the sale to the affiliated U.S. importer. *See, e.g., PET Film from Korea*, 62 FR 38064, 38066 (July 16, 1997); *Grey Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17168 (April 6, 1997).

Unicatch's indirect selling expenses incurred in Taiwan are comprised of salary, travel, and entertainment expenses incurred by its international and domestic sales divisions. *See* Sales Verification Report for Unicatch, July 17, 1997 ("Unicatch Sales Verification Report") at 11. We verified that Unicatch does not have a sales staff dedicated entirely to U.S. sales, but rather its salespeople deal with sales to various export markets. *Id.* Further, we verified that none of the reported indirect expenses can be tied specifically to sales to unaffiliated customers in the U.S. but rather are incurred by Unicatch to complete the sale to the affiliated purchaser. *Id.* Although Unicatch's third country sales are not viable (*i.e.*, greater than 5% of U.S. sales) for purposes of calculating NV, we verified that Unicatch did have POI sales in other export markets, which further demonstrates that its reported indirect selling expenses are not associated solely with U.S. sales to unaffiliated customers. Therefore, we disagree with petitioner's argument that because the overwhelming majority of Unicatch's export sales are to the U.S., we should deduct these expenses from CEP. *See Notice of Final Determination of Sales at Less Than Fair Value: Pasta from Italy*, 61 FR 30326, 30352 (June 14, 1996) (deducting inventory carrying costs incurred in Italy for enriched pasta because enriched pasta was sold in the United States during the POI).

Comment 2: Calculation of SG&A and Profit for All Respondents

Petitioner disagrees with the Department's decision in the preliminary determination to use each respondent's overall SG&A and profit rates contained in their financial statements because this data includes amounts obtained from sales of non-subject merchandise. Petitioner asserts that the only data pertaining to SG&A and profit specific to the product under investigation is the information provided by Lei Chu. Petitioner argues that one of the three alternative methods to determine SG&A and profit for CV is to weight-average the actual amounts realized on sales of the foreign like product by other producers of the subject merchandise. Because Lei Chu was the only company to provide the data specific to the subject merchandise, petitioner contends that Lei Chu's data is the weighted-average SG&A and profit rates for all Taiwan producers and should be used in all respondent's CV calculations.

Unicatch and Lei Chu counter that the profit rate petitioner asserts should be used in calculating CV was not verified by the Department. More importantly, the profit rate is Lei Chu's subcontractor's profit for processing wire into CR nails and does not reflect all costs of producing and selling CR nails. Both respondents contend that the Department should use the amounts derived from Unicatch and Lei Chu's financial statements because this data incorporates all appropriate costs and was verified by the Department. Moreover, respondents contend that where actual data is not available, 773(e)(2)(B)(i) of the Act authorizes the Department to use amounts generated from the "general category of products" as the subject merchandise. They cite *Shop Towels from Bangladesh* 61 FR 65025 (December 10, 1996) and *Forged Steel Crankshafts from the United Kingdom* 62 FR 16768 (April 18, 1997) as two cases in which the general category of merchandise was determined to be all products from textile mills and all types of crankshafts, respectively. In this case, Unicatch and Lei Chu assert the general category of merchandise encompasses nails and other fasteners and that both companies had sales of nails and other fasteners in the home market. Therefore, the companies contend, the Department should use the SG&A and profit from each company's financial statement because the financial statements encompass products within the same general category of merchandise.

Lei Chu argues that the Department erroneously used profit realized by its subcontractor to calculate the CV of CR nails in the preliminary determination of this investigation. Lei Chu contends the Department should use SG&A and profit verified by the Department from Lei Chu's financial statement to calculate CV for the sales of the subject merchandise because Lei Chu qualifies as the producer of CR nails. Lei Chu agrees that there were certain production processes of the subject merchandise performed by an affiliated subcontractor. However, Lei Chu states that the Department has found in past cases that the party contracting for processing services was the producer of the subject merchandise. In such instances, the Department applied SG&A and profit realized by the contracting party to calculate the CV of the subject merchandise and did not use the SG&A and profit of the subcontractor, citing *Notice of Final Determination: Chrome Plated Lug Nuts from Taiwan*, 56 FR 36130, 36131 (July 31, 1991).

According to Lei Chu, the Department verified that Lei Chu organized the production of CR nails and performed certain production processes during the POI. In addition, Lei Chu states the Department verified that it purchased steel wire rods, maintained them as inventory, retained title over the materials to produce the CR nails and retained ownership over the CR nails throughout the production process. Further, Lei Chu states that the Department verified that it never sold or purchased wire to or from the subcontractor, and there were no sales transactions between the two. Lei Chu claims the Department verified that it only paid a processing fee to the subcontractor. Finally, Lei Chu argues that the fee and the profit from the subcontractors' financial statement reflects only the costs of processing wire into CR nails. Lei Chu believes its financial statement incorporates the full costs of CR nails. As a result, Lei Chu argues that the Department should use its 1996 financial statements to calculate profit and SG&A.

Petitioner argues that Lei Chu and its subcontractor should be collapsed and the Department was correct in using the profit of Lei Chu's subcontractor to calculate CV. Petitioner contends that the subcontractor is the producer of the subject merchandise because it performs more than minor additions needed to complete the production of CR nails. Further, petitioner contends the case cited by Lei Chu, *Chrome Plated Lug Nuts*, is not applicable because the two parties involved in that case were not affiliated, and the respondent to that investigation had more production responsibilities than Lei Chu. Therefore, petitioner contends the Department properly calculated CV using the profit of Lei Chu's subcontractor.

DOC Position

Neither Lei Chu, Unicatch, nor S&J had a viable home market upon which to calculate NV; therefore, none of the respondents had home market selling expenses and profit for sales of the foreign like product upon which to base CV. As a result, in the preliminary determination, pursuant to section 773(e)(2)(B)(iii) of the Act and consistent with the SAA, we used each respondent's overall profit and SG&A associated with total sales as recorded in its most recent financial statements as facts available to derive SG&A and profit.

For Unicatch and S&J, for this final determination, we have continued to use the SG&A and profit contained in their most recent financial statements. For both companies, we verified that these amounts reflected expenses and profit associated with overall sales of other types of nails and similar steel products, such as fasteners, which we deem to be within the same general category of products as CR nails. We are satisfied that using the financial statements is a reasonable methodology for calculating each company's SG&A and profit because this data is company-specific, contemporaneous with the POI, and is the most appropriate information on the record. For the reasons discussed below, we disagree with petitioner's argument that we use the amounts contained in Lei Chu's financial statements for all respondents in lieu of using this verified company-specific data.

For Lei Chu's SG&A in the preliminary determination, we used its financial statements and its affiliated subcontractor's financial statements (*see* Calculation Memorandum dated September 24, 1997). For Lei Chu's profit, we used its subcontractor's financial statements. However, our findings at verification demonstrated that the amount recorded on the subcontractor's financial statements is not reflective of profit for the sale of the foreign like product or related merchandise but rather is a "tolling fee" for its services (*see* Lei Chu Cost Verification Report at pg 3). Further, the SG&A and profit recorded in Lei Chu's financial statements are for amounts generated on sales of merchandise completed unrelated to the subject merchandise, *e.g.*, not within the same general category of CR nails products. We also note that Lei Chu's recorded net profit is zero. Although the URAA and subsequent revisions to U.S. law eliminated the use of minimum profit, we do not believe that it eliminated the presumption of a positive profit element in the calculation of CV. Unlike sections 773(e)(2)(A) and 773(e)(2)(B) (i) or (ii), section 773(e)(2)(B)(iii) specifically excludes the use of the term "actual profit," and instead directs us to use any other reasonable method that does not exceed the amount normally realized by the industry in the same general category of products. The SAA states that there is no hierarchy between the alternatives in section 773(e)(2)(B), indicating that in some instances, it may be more appropriate for the Department to ignore "actual profit" available under the two other alternatives and opt instead for some other reasonable method to obtain a profit amount. Therefore, if a company has no home market profit or has incurred losses in the home market, the Department is not instructed to ignore the profit element, include a zero profit, or even consider the inclusion of a loss; rather, the Department is directed to find an alternative home market profit. A clear reading of the statute indicates that a positive amount for profit must be included in CV. *See Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 62 FR 37869, 37877 (July 15, 1997).

Therefore, we reject Lei Chu's argument and have not used its company-wide SG&A and profit rates in our CV calculations. Instead, as facts available, we used the weighted average of the SG&A and profit from the financial statements of the other respondents in this investigation (see Valuation Memorandum dated September 24, 1997). Because this data represents POI-wide expenses and profit associated with sales of merchandise in the same general category as CR nails products, we find this data to be the most appropriate information on the record to derive Lei Chu's SG&A and profit.

Comment 3: Unicatch's Steel Scrap

Unicatch argues that the Department should subtract its revenue on steel scrap sales from the cost of manufacture (COM) of CR nails as this information was presented to the Department in a timely manner at the commencement of verification. Further, Unicatch states that the Department was able to verify all information presented at the commencement of verification including revenue from steel scrap and its values per kilogram per CR nails. Thus, Unicatch suggests that consistent with the Department's past cases, the value of steel scrap should be subtracted from normal value, citing *Brake Drums and Rotors from the PRC.*

Petitioner contends that the disclosure by Unicatch of the revenue from steel scrap was not minor or timely. However, petitioner suggests that if the Department makes the adjustment, and given that the revenue is so small, it should make an adjustment in determining allocated expenses and profit.

DOC Position

We agree with Unicatch that it is the Department's practice to deduct from total COM revenue earned on the sale of scrap resulting from the production of the subject merchandise. *See Elemental Sulphur from Canada; Final Results of Antidumping Administrative Review*, 61 FR 8239, 8245 (March 4, 1996). Because we determined that Unicatch submitted this data in a timely manner (*see* Comment 4) and we were able to verify these amounts, we have deducted steel scrap revenue from Unicatch's total COM.

Comment 4: Unicatch's and Lei Chu's Corrections and Facts Available

Unicatch and Lei Chu argue that the Department should incorporate the corrections submitted at the commencement of their verifications in the final margin calculations because the corrections were submitted in a timely manner and verified by the Department. Both respondents contend that the Department should not use facts available for two reasons: (1) Making adverse assumptions and applying facts available are not synonymous and (2)

neither respondent has done anything in this investigation that would justify using adverse inferences. Both respondents argue that there were few instances in the corrections that the Department was unable to verify, and, further, both companies penalized themselves with errors as often as they benefitted. Both respondents state that there is no evidence on the record to suggest that either failed to cooperate by not acting to the best of its ability to comply with Department's requests for information. Lei Chu and Unicatch state that the Department should weigh the record evidence to determine what type of change, if any, would be probative of the issue under consideration. However, both recommend that if the Department chooses to use facts available, adverse inferences not be applied.

Petitioner contends that the Department should not incorporate respondents' corrections because the corrections are not minor and the number of errors reported by the respondents' raise serious doubts about whether the companies acted to the best of their ability to provide accurate information. In addition, petitioner notes that the Department discovered numerous other errors at verification. Therefore, petitioner suggests that the Department resort to "facts available" employing "adverse inferences" to portions of the respondents' calculations.

DOC Position

We agree with Unicatch and Lei Chu and have accepted the corrections for computing the final margin of the companies. The Department's practice is to permit respondents to provide minor corrections to submitted information at the commencement of verification. *See Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Taiwan*, 62 FR 1726, 1729 (Jan. 13, 1997). Unicatch and Lei Chu provided the Department with their corrections at the beginning of their respective verifications. Lei Chu's corrections included sales and production quantity, material costs, and fixed overhead. Unicatch's corrections included production quantity, plating costs, scrap, packing, selling expenses and steel wire costs. These revisions corrected data already on the record and did not introduce new issues not previously reported on the record. In sum, the corrections submitted by Unicatch and Lei Chu were typical of the minor corrections routinely accepted by the Department at the commencement of verification.

Accordingly, we determine that resorting to facts available is unwarranted in this particular case. The Department's use of facts available is subject to section 782(d) of the Act. Under section 782(d), the Department may disregard all or part of a respondent's questionnaire responses when the response is not satisfactory or it is not submitted in a timely manner. The Department has determined that neither of these conditions apply. The Department was able to verify the responses, thus rendering them satisfactory, and the types of revisions submitted by Unicatch and Lei Chu met the deadline for such corrections. Under section 782(e), the Department shall not decline to consider information that is (1) timely, (2) verifiable, (3) sufficiently complete in that it serves as a reliable basis for a determination, (4) demonstrated to be provided based on the best of the respondent's ability, and (5) can be used without undue difficulties. Lei Chu and Unicatch have met these conditions. Therefore, we find no basis to reject Lei Chu's and Unicatch's responses, and thus, no basis to rely on the facts otherwise available for our final determination.

Comment 5: Plating Thickness

Petitioner argues that the plating thicknesses reported by respondents do not meet U.S. Federal or regional building codes. Moreover, petitioner claims that the actual plating thicknesses were not verified by Department. Therefore, petitioner contends that the Department should assume that respondents were aware of the building codes and produced CR nails that did not comply with the codes. The Department should use the information contained in the petition to calculate NV based on CR nails that meet the U.S. building codes.

Unicatch and Lei Chu contend that the Department verified that all costs attributable to plating were included in the CV database. Therefore, both respondents argue that whether or not the subject merchandise complies with U.S. building codes is irrelevant because the purpose of this investigation is to accurately value respondents' production costs of CR nails, not to examine the quality of their CR nails.

DOC Position

We agree with Unicatch and Lei Chu that we have captured all costs incurred in producing CR nails. During the cost verifications of all respondents, we examined whether all material costs (including plating costs) associated with the subject merchandise were reported completely and accurately in the CV databases. We noted no discrepancies regarding the material costs with the exception of minor errors, which have now been corrected (*see* Cost Verification Reports for Lei Chu, Unicatch, and Romp dated July 18, 1997, and Cost Verification Report for S&J dated July 23, 1997). Thus, for each respondent with a calculated dumping margin we have verified all material costs. Any alleged misrepresentation concerning compliance with U.S. building codes is not within the purview of the antidumping statute because such misrepresentation would have no impact on our calculations.

Comment 6: Allocation Methodologies

Petitioner contends that respondents' allocation methodologies with respect to the following expenses were incorrect.

(i) Shipping Related Expenses

Petitioner claims that any shipping related expenses should be based on volume because the expenses are generally incurred based on volume, rather than on gross packed weight. Petitioner argues that allocating shipping expenses based on weight results in under-reported transportation costs.

Unicatch and Lei Chu counter that basing shipping related expenses on weight is acceptable when volume-based information is unavailable. In this case, weight is the only allocation factor on the record. Both respondents cite to *Industrial Belts and Components Thereof from Japan*, 58 FR 30018, 30022 (May 25, 1993) in support of this position.

DOC Position

We agree with respondents that a weight-based allocation methodology for reporting shipping expenses is acceptable. Although the Department prefers sale-specific movement expenses, the Department's practice is to accept allocation methodologies for movement expenses at the most specific level permitted by the respondent's books and records kept in the ordinary course of business. *See Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Taiwan*, 62 FR 1726, 1730 (Jan. 13, 1997). Moreover, where multiple items were included in a shipment, we instructed each respondent to report expenses using an allocation methodology on the basis incurred, *e.g.*, weight. Both Unicatch and Lei Chu reported that a weight-based allocation methodology was necessary because their shipments included non-subject merchandise. *See* Unicatch and Lei Chu's Section C response dated March 18, 1997. For S&J, the bill of lading records both weight and volume figures without distinguishing between the two. Therefore, we determine that allocating freight on weight is acceptable for our final margin calculation (*see* S&J Sales Verification Exhibit 16).

(ii) Production Related Expenses, Factory Overhead, and Indirect Selling Expenses

Petitioner argues that the allocation methodology of production, factory overhead, and indirect selling expenses should be revised to reflect the inclusion or exclusion of scrap, depending on the processing stage in which the expense was incurred. Petitioner suggests, for example, that post-scrap production stages, such as packing, should be based on the weight of the product without the scrap.

Unicatch and Lei Chu counter that allocating over finished goods, which includes scrap, only increases the per-unit costs. Furthermore, both respondents argue that petitioner's methodology will distort costs downward by not accounting for scrap.

DOC Position

We agree with respondents that allocating expenses over the weight of the finished good necessarily accounts for all costs related to scrap. If the Department were to allocate certain expenses over a weight which included scrap, the denominator of the calculation would be greater than the weight of the finished product and would result in understating the per-unit expense. Thus, we reject petitioner's argument and will continue to allocate expenses over the total amount of finished product.

(iii) Duty Drawback

Petitioner argues that the duty drawback allocation should be based on the net weight of the CR nails.

Unicatch and Lei Chu counter that they did allocate duty drawback by the net weight of the CR nails.

DOC Position

We agree with respondents that duty drawback was properly allocated based on the net weight of the CR nails. As stated in the Unicatch Sales Verification Report at. 8–9, the total duty drawback associated with shipments to TCI or Unitech (Unicatch's affiliated U.S. importers) were divided by the total net weight of the shipment to arrive at a per-unit amount for duty-drawback. This same methodology was followed for Lei Chu (*see* Lei Chu Sales Verification Report dated June 23, 1997).

(iv) Physical Weights

Petitioner contends that the Department should physically weigh the subject merchandise and base all allocations on physical weights rather than gross weights reported by the respondents.

Unicatch and Lei Chu counter that petitioner's request is untimely and unreasonable. Both respondents argue that the weight-based methodologies used are reasonable and consistent with past practice and urge the Department to reject petitioner's contention.

DOC Position

At verification the Department examined the reported product weights for Lei Chu and Unicatch and noted no discrepancies. Therefore, we have used each company's verified weights in our calculations.

Comment 7: Value Added Taxes (VAT)

Petitioner argues that the Department should not assume that all sales and expenses reported net of VAT were correct. Accordingly, petitioner believes unless the Department verified all figures, the Department must not assume that all figures are net of VAT.

Lei Chu and Unicatch contend that the sales reported were net of VAT because under Taiwan law VAT is rebated on all export sales. Because all respondents reported their sales as being export sales, both respondents argue that the Department should reject petitioner's claim.

DOC Position

In the preliminary determination, Unicatch or Lei Chu reported brokerage and handling and international freight net of VAT. At verification, we found that both respondents incur five percent VAT on these expenses (see Unicatch Sales Verification Report at 7; Lei Chu Sales Verification Report at 8). Since Lei Chu and Unicatch were unable to provide supporting documentation to show that this VAT had been rebated according to Taiwan law, we have applied a five percent VAT to brokerage and handling and international freight for all sales by these two companies (*see* Valuation Memorandum dated September 24,1997). However, we found no indication at verification that VAT was incurred on export sales for either Unicatch or Lei Chu.

Comment 8: Multinational Corporation Rule (MNC)

Petitioner argues that the MNC provision of the Act should be applied to Unicatch and Top United (a manufacturer of CR nails in the People's Republic of China). Petitioner cites to section 773(d) of the Act, alleging that the conditions outlined are fulfilled by Unicatch and Top United. Further, petitioner cites to *Melamine Institutional Dinnerware Products from the People's Republic of China* 61 FR 43337 (August 22, 1996), in which the Department determined that the MNC provision applies to cases involving non-market economies.

Unicatch counters that the allegation is untimely and unsupported by evidence on the record of this investigation. Finally, Unicatch argues that the petitioner has failed to demonstrate that two of the three conditions necessary to apply the MNC rule are present, *i.e.*, (1) the petitioner has failed to demonstrate that the PRC market is not viable; and (2) petitioner has failed to demonstrate that the normal value for Taiwan nails is higher than the normal value for PRC nails.

DOC Position

We agree with Unicatch that petitioner's MNC allegation is untimely. As stated in the preamble to the final regulations: "[t]here are a variety of analyses called for by section 773 that the Department typically does not engage in unless it receives a timely and adequately substantiated allegation from a party * * * the Department does not automatically request information relevant to a multinational corporation analysis under section 773(d) of the Act in the absence of an adequate allegation." Final Regulations, 62 FR at 27357, citing *Certain Small Business Telephones and Subassemblies Thereof from Taiwan, 54 FR 31987 (August 3, 1989)*.

In this case, petitioner alleged for the first time in its case brief that the Department should apply the MNC rule to Unicatch and Top United. Determining NV under the MNC provision is a complex analysis that necessitates collection of information and calculation of sales and cost data from companies who may or may not be subject to investigation. Presenting the allegation after the preliminary determination does not allow the Department sufficient time to collect and analyze the information necessary to make a MNC determination at an appropriate point in the proceeding. For this reason, the Department has specifically rejected the notion that absent a timely and adequate allegation, we are obligated to examine information that is quantitatively and/or qualitatively different from the information normally gathered as part of

its standard antidumping analysis because to do so would significantly impair the Department's ability to comply with its statutory deadlines. *See* Final Regulations, 62 FR at 27357. Therefore, we reject petitioner's MNC allegation as untimely.

Comment 9: Reconciliation of Unicatch Sales to Financial Statements

Petitioner argues that the Department was unable to tie: (1) the reported sales volume totals for all of Unicatch's sales directly to the financial statements, and (2) Unicatch's general ledger to its 1995 income statement. As a result, petitioner asserts that Unicatch's reported sales should not be deemed reliable as some sales may have been excluded. Accordingly, petitioner suggests that the Department apply facts available with adverse inferences because of the potential of unreported sales.

Unicatch contends that because its CEP and EP sales included the resale of CR nails by its affiliates, the Department was unable to complete a total sales reconciliation using its financial statement only. Unicatch states that reconciliation required tying relevant sales to its affiliates' financial statements. Unicatch contends that the Department verified the quantity and value of the resales at its affiliates' headquarters using each affiliate's financial statement and was able to clarify the differences from Unicatch's financial statement without any discrepancies. Therefore, Unicatch contends that facts available with adverse inferences is not warranted.

DOC Position

We disagree with petitioner's argument that use of adverse facts available is warranted in this case. Contrary to petitioner's claim, we verified Unicatch's total sales volume and value. As stated in its sales verification report, "we were unable to tie the reported sales and volume and value totals for all of Unicatch sales, or for its EP sales directly to the financial statements because the sales value reported in the financial statement included the sales values for those sales to Unicatch affiliated parties." Unicatch Sales Verification Report at pg 3. However, when we verified Unicatch's affiliates, we were able to tie the quantity and value reported to their financial statements, clarifying any differences in Unicatch's financial statement and reported sales volume (*see* Unicatch CEP Sales Verification Report (July 23, 1997)). Therefore, we have determined there is no evidence on the record to suggest Unicatch had any unreported POI sales and resort to facts available is not warranted.

Comment 10: Reliability of Unicatch's Reported Costs

Petitioner argues that the cost methodologies used by Unicatch were inappropriate because costs were not properly determined where steel was processed through affiliated parties. Petitioner argues that Unicatch's cost of materials should be measured against a "market value" enabling the Department to determine that prices of the steel are reasonable. In addition, petitioner states the Department should assure that all costs associated with the affiliated parties' costs were reported.

Unicatch contends that at the commencement of verification, it provided the Department with sufficient information, including a sales price from an unaffiliated supplier of wire rod, that enabled the Department to test whether the steel price from an affiliated supplier was reasonable. Unicatch states that it showed an example of an unaffiliated supplier's price lower than transfer prices charged by Unicatch's affiliates, even though the cost of production for those affiliates was higher. Therefore, Unicatch contends that the cost of production for steel is appropriate for its cost calculation methodologies. Further, Unicatch contends that the Department verified all reported costs associated with the affiliates' production of steel wire (*i.e.*, material, labor, overhead, SG&A and interest) and did not find any discrepancies.

DOC Position

We disagree with petitioner and have determined that there is no evidence of the record to suggest Unicatch's cost calculation methodologies were incorrect. We verified the two methodologies used by Unicatch to determine material costs for steel wire and welding wire. The first methodology was based on the transfer price from its affiliates and the second methodology was based on the cost of production for wire purchased from its affiliates (*see* Unicatch Cost Verification Report at 3–4). Although Unicatch had some purchases of steel wire from an unaffiliated supplier, we verified that this unaffiliated purchase price was lower than the reported transfer prices charged by its affiliated suppliers. (*Id.* at Ver. Exh. 1). Therefore, since the costs of production from Unicatch's affiliates were higher than the transfer prices, in accordance with section 773(f)(3), we have used the affiliates' COP data to calculate the actual material cost of the wire inputs.

Comment 11: Corrections to Unicatch's Questionnaire Responses

Petitioner argues that the corrections submitted by Unicatch at the time of verification are unacceptable because the Department was not granted time to review the information and consider the appropriate methods for verifying it. Petitioner believes that the Department should re-examine the following changes submitted at verification: (1) interest expenses; (2) SG&A; (3) packing costs; (4) existence of U.S. affiliates; (5) ocean freight; (6) warranty expense; (7) selling expense; (8) inland freight; (9) duty drawback; and (10) marine insurance.

Specifically, petitioner states that Unicatch may have underreported its interest expense because it may have been offset by loans or other money transfers. Further, petitioner claims that Unicatch's packing cost should have been reported separately according to the Department's questionnaire, and the records about Unicatch's affiliates were not accurate and thus, cannot be relied upon by the Department. Therefore, petitioner suggests that the Department reject Unicatch's submissions entirely based on adverse inferences and apply the largest expense found to all of Unicatch's sales transactions, as adverse facts available.

Unicatch contends that the corrections reported at the commencement of its verification were not numerous and should not affect the integrity of its response. Further, Unicatch states that the Department was able to verify all corrections submitted. Unicatch contends that the revisions submitted were typographical errors and other minor data entry errors to the sales databases. Unicatch contends that the Department should use the interest expenses recorded in its verified financial statement to calculate CV and, since Unicatch did not separate packing cost, the packing labor percentage would have been inflated upward without having a major effect on the margin calculation. Finally, Unicatch admits that some errors reported would warrant the use of facts available but there is no instance in which adverse inferences are warranted.

DOC Position

We agree with Unicatch and have accepted the corrections submitted at the beginning of verification and the explanation for the discrepancies. We verified all corrections submitted and noted only minor discrepancies. In addition, we reviewed the allocation methodologies used by Unicatch to compute its reported expenses (*i.e.*, interest expense, warranty expense, duty drawback) and noted no discrepancies (*see* Unicatch Sales Verification Report at 6–9; Unicatch Cost Verification Report at 2).

Section 782(e) of the Act states that the Department shall not decline to consider information that does not meet all of its requirements if: (1) The information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties. Unicatch's information meets all of these requirements. Accordingly, we have no basis to conclude that the earlier responses distorted the Department's analysis and warrant the use of adverse facts available.

Comment 12: Whether Lei Chu and its Affiliate Should Be "Collapsed"

Petitioner argues that Lei Chu and its affiliate are sufficiently intertwined and should be collapsed and treated as one. Petitioner states that Lei Chu has submitted information on the record that it is affiliated with the Taichung Production Division ("TPD") and one of its suppliers and controls the sales and production activities of its suppliers. Petitioner believes that if the Department does not collapse the two companies Lei Chu could shift all of its production and exports of the subject merchandise to TPD or TPD's supplier. Further, petitioner argues that since the two companies should have been collapsed, Lei Chu should have submitted a consolidated response to the Department's questionnaire, and their failure to do so mandates the use of facts available.

Lei Chu argues that if the Department determines that it should be collapsed with its affiliate, the Department must use Lei Chu's profit to calculate the profit of other Taiwan respondents because it reflects the consolidated performance of Lei Chu.

DOC Position

We determine that the facts in this case do not warrant resort to our collapsing practice because neither TPD nor Lei Chu's affiliated CR nails supplier are separate producers. First, TPD is merely a production division of Lei Chu, not a separate entity. Lei Chu Sect. A Supp. QR, April 14, 1997, at 1. Although Lei Chu has ceased production of CR nails at its TPD division, the evidence on the record demonstrates that Lei Chu continues to produce CR nails through a subcontractor. Pursuant to the contractual arrangement, Lei Chu purchases wire rod and drawing materials and provides these materials to its subcontractor who then produces the CR nails (*see* Lei Chu Cost Verification Report, at 3). Lei Chu pays this affiliate a processing fee and maintains title over the raw materials and completed CR nails throughout the production process. *Id.* By its own admission, Lei Chu controls the sales and production activities of this entity. Further all CR nails production by the subcontractor is the property of Lei Chu and is sold by Lei Chu. Thus, consistent with the Department's current practice with respect to tolling operations (*see* e.g., section 351.401(h) of the Final Regulations, 62 FR at 27411), the subcontractor is not considered the producer. Lei Chu is the producer of CR nails. In essence, the subcontract relationship represents a single, vertically integrated production operation rather than two separate producers in a position to potentially evade a potential antidumping duty order by shifting production from one facility to another.

Comment 13: Lei Chu Sales Below Fair Value

Petitioner argues that since Lei Chu's 1996 financial statement does not show a profit during the POI, Lei Chu sold the subject merchandise at less than fair value.

Lei Chu contends that there is nothing in the statute or the Department's past determinations that supports petitioner's view and as a result, the Department should reject, petitioner's argument.

DOC Position

We disagree with petitioner because there is nothing stated in the statute or in past determinations to suggest that a company not showing a profit is necessarily selling the subject merchandise at less than fair value.

Comment 14: Lei Chu's Packing List Weights Are Not Reliable

Petitioner argues that the Department should not rely on the packing list weights to determine the weights of the subject merchandise for Lei Chu, because they are not accurate. Therefore, petitioner suggests the Department weigh the subject merchandise and use the results to compute CV.

Lei Chu contends the packing weights reported by Lei Chu are reliable and were verified by the Department, citing, Lei Chu Cost Verification report at 8. Therefore, Lei Chu suggests that the Department reject petitioner's argument and continue to use the verified packing list weights to compute CV.

DOC Position

We disagree with petitioner and have determined there is no evidence on the record to suggest the weights reported on the packing list are unreliable. In addition, we reviewed Lei Chu's packing methodologies and did not note any discrepancies (*see* Lei Chu Cost Verification Report at 8–9). Therefore, we will use Lei Chu's reported weights to compute CV.

Comment 15: S&J Untimely Submissions

Petitioner argues that during the investigation, S&J failed to provide copies of all of its submissions to all interested parties. Further, petitioner claims S&J submitted documents incorrectly according to the Administrative Protective Order (APO) regulations. Therefore, petitioner suggests that the Department reject S&J submissions in total and employ adverse inferences and use facts available.

DOC Position

We disagree with petitioner. We have determined that there is no indication or evidence on the record to suggest that S&J did not serve all documents to interested parties in a timely manner or according to APO regulations.

Comment 16: S&J Omissions and Errors to the Questionnaire Responses

Petitioner argues that S&J made numerous omissions and errors in its questionnaire responses according to the Department's verification report. These errors included unreported sales and unaccountable bank charges. Therefore, petitioner suggests that in view of the large number of errors and omissions, the Department should reject S&J's submission in its entirety or apply facts available with adverse inferences to the unreported sales.

DOC Position

We disagree with petitioners. We verified that S&J did not include bank charges in its Section C response because it was unable to separate bank changes from the other miscellaneous charges included in the general ledger category ("Export Expense") (*see* S&J Sales Verification Report at 10). We

applied a bank charge percentage to all of S&J sales (*see* Valuation Memorandum dated September 24, 1997). Therefore, although certain discrepancies and omissions in S&J's reported sales and cost data were discovered during verification, the discrepancies and omissions do not warrant the use of adverse facts available. It is acceptable to address and correct such errors individually, as was done in this case, where appropriate. Such errors were addressed and corrected individually. (*See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review* 61 FR 18558 (April 26, 1996).)

Comment 17: Collapsing of S&J and New Lan Luang

Petitioner argues that the Department should collapse S&J and New Lan Lung because the parties effectively operate as one. Further, petitioner contends that if the Department does not collapse the two companies it would provide a loophole for future investigations.

DOC Position

In order for the Department to collapse two producers, i.e., treat them as a single entity, (1) the producers must be affiliated under section 771(33) of the Act, (2) the producers must have production facilities that are sufficiently similar so that a shift in production would not require substantial retooling, and (3) there must be a significant potential for manipulation of price or production. *See Grey Portland Cement and Clinker From Mexico: Final Results of Antidumping Administrative Review*, 62 FR 17148, 17155 (April 9, 1997); section 351.401(f) of the Final Regulations, 62 FR at 27410. When based on a review of the totality of the circumstances, the Department determines that two affiliated producers are sufficiently related so as to warrant treatment as a single enterprise, collapsing these entities prevents evasion of the antidumping duty order. *See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (Aug. 19, 1996). Applying the criteria of our collapsing inquiry as set forth above, we find (1) S&J and New Lan Luang are affiliated under § 771(33) of the Act, (2) a shift in production would not require substantial retooling, and (3) there is a significant potential for price or production manipulation due to, among other factors, evidence of intertwined business operations and common management of the production and sales decisions of both companies. Based on this an analysis of the record evidence, we have determined that it is appropriate to treat S&J and New Lan Luang as a single entity for purposes of calculating a dumping margin in this investigation.

First, we find that because S&J owns greater than 5% of New Lan Luang, these companies are affiliated under § 771(33)(E) of the Act. Second, the record evidence demonstrates that although not a current producer of CR nails (New Lan Luang ceased production of CR nails in 1994), New Lan Luang is capable of producing CR nails. *See* S&J Sect. A Supp. QR, April 8, 1997, at 12; S&J Verification Report, at 2. Based on these facts, it is reasonable to infer that a substantial retooling of New Lan Luang's production facilities would not be necessary if S&J were to shift production to New Lan Luang.

We also determine that the third criterion of our collapsing inquiry is met. In determining whether there is a significant potential for manipulation of price or production, the Department considers factors such as (1) the level of common ownership, (2) interlocking board of directors and common management, and (3) intertwined business operations as evidenced by shared sales information, involvement in production and pricing decisions, or significant transactions between the two enterprises. *See Certain Welded Carbon Steel Pipes and Tubes From India; Final Results of New Shippers Antidumping Duty Administrative Review*, 62 FR 47632, 47638 (Sept. 10, 1997) ("*Pipes and Tubes from India*"); § 351.401 (f) of the Final Regulations, 62 FR at 27410. All of these criteria need not be met in a particular case, but rather serve as a reliable basis on which the Department may judge whether the affiliated producers are sufficiently related to create the potential of price or production manipulation. *Pipes and Tubes from India*, 62 FR at 47638.

S&J's General Manager is also in charge of New Lan Luang. *See* S&J Sect. A Supp. QR, at 2; S&J Verification Report, at 2. S&J explained that its General Manager is responsible for sales and production decisions and determines the prices of S&J's CR nails. *See* S&J Sect. A QR, Feb. 26, 1997, at 5. At verification we discovered that the Chairman of New Lan Luang is also the founder, former general manager, and current advisor to S&J. *See* S&J Verification Report, at 2. This individual is also the father of the S&J's current General Manager. *Id.* Additionally, S&J officials explained that the two entities share employees and S&J has on occasion transferred sales order to New Lan Luang for completion. *Id.* The totality of the circumstances presented by these facts indicate that the two companies operate under common control of the same individual/family with respect to sales and production decisions. Although both S&J's General Manager and New Lan Luang's Chairman are only minority shareholders in both companies, we conclude that their positions of legal and operational control in their respective companies create a significant potential for price or production manipulation. We therefore have treated S&J and New Lan Luang as a single entity for purposes of calculating a dumping margin in this investigation.

To construct a consolidated sales response for S&J/New Lan Luang, we have included New Lan Luang's POI sales in our final margin calculations. S&J reported New Lan Luang's total quantity and value data for its U.S. sales during the POI; however, because we did not specifically request S&J to report additional information on New Lan Luang's POI sales, we do not have a complete sales database upon which to calculate a dumping margin. Therefore, it is necessary to resort to facts available in accordance with section 776(a)(1) of the Act for this missing information. As facts available, we have used a simple average of the amounts reported for the fields not included in the sales database (i.e. exchange rate, foreign inland freight, brokerage) (*see* Calculation Memorandum dated September 24, 1997).

Additionally, at verification, we discovered additional POI sales by New Lan Luang that S&J failed to report. (*see* S&J Sales Verification Report at 2). For those sales, we have applied adverse facts available because we deem S&J's failure to provide us with complete information that we specifically requested as a failure to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly, for these unreported sales, we used the highest margin calculated for any individual product (*see* Calculation Memorandum dated September 24, 1997).

Comment 18: S&J Unaudited Financial Statements

Petitioner argues that the absence of audited financial statements means that S&J's financial information is not reliable. Petitioner argues that the reliance on the accounting system used for the preparation of the audited financial system is a vital part of the Department's determination that the company's sales and constructed value data are credible. Therefore, the Department should rely on adverse facts available for S&J.

DOC Position

At verification we were able to reconcile S&J unaudited financial statements to its 1996 tax return (*see* S&J Cost Verification Report (July 23, 1997)). Therefore, because we were able to tie S&J's financial statements to an independent outside source, we have determined that there is no evidence on the record to indicate the information on the financial statements is unreliable. *See Mexican Flowers*, 60 FR at 49569.

Comment 19: Non-Mandatory Respondents

Petitioner suggests that the Department calculate a margin for non-mandatory respondents using the results of each of the four mandatory respondents, except those with zero dumping margins.

DOC Position

Non-mandatory respondents will be subject to the "all others" deposit rate, which we have calculated based on the weighted average of margins calculated for mandatory respondents—excluding zero and *de minimis* margins. (*see* March 13, 1997, Decision Memo)

Comment 20: Critical Circumstances

Petitioner argues that the Department should find that critical circumstances exist with respect to K. Ticho. Petitioner contends that a timely allegation of critical circumstances was made in the petition and that K. Ticho failed to respond to the Department's questionnaire. Therefore, as facts available, the Department should determine that critical circumstances exist with respect to K. Ticho.

DOC Position

We agree with petitioner. Because K. Ticho failed to respond to the Department's questionnaire, we have used the facts available as the basis for determining whether critical circumstances exist. The facts available margin (40.28%) exceeds the threshold for imputing knowledge of dumping to the importers of the merchandise. In addition, we have adversely inferred, as the facts available, a massive increase in imports from K. Ticho. We, therefore, determine that critical circumstances exist for K. Ticho, and will issue appropriate instructions to the Customs service.

We also determine that critical circumstances exist for Romp. As with K. Ticho, the final dumping margin for Romp exceeds 15%, the minimum benchmark established sales to impute importer knowledge of dumping and resultant injury. Also, because we have determined that the reported quantity and value of POI sales are unreliable, we are also adversely inferring, as facts available, a massive increase in imports from Romp.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of CR nails from Taiwan, that are entered, or withdrawn from warehouse, for consumption on or after May 12, 1997 (the date of publication of the preliminary determination in the **Federal Register**), except as noted below. With respect to entries of CR nails from Taiwan, manufactured and exported by K. Ticho or Romp in accordance with section 735(c) of the Act, we are directing Customs Service to continue suspension of liquidation on all entries that are entered, or withdrawn from warehouse, for consumption on or after February 10, 1997, which is 90 days prior to the date of publication of the preliminary determination. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below.

In accordance with section 735(a)(4) of the Act, because we have calculated zero or *de minimis* rates for Unicatch, and Lei Chu, we will instruct Customs to terminate suspension of liquidation of entries of CR nails manufactured by these companies and to liquidate such entries without regard to antidumping duties. We note that pursuant to 19 CFR 353.21, these companies will be excluded from any antidumping order resulting from an affirmative finding of material injury by the International Trade Commission. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage	Critical circumstances
Unicatch	0.00	No.
Lei Chu	0.07 (De Minimis)	No.
S&J	5.36	No.
Romp	40.28	Yes.
K. Ticho	40.28	Yes.
All Others	5.36	No.

Pursuant to section 733(d)(1)(A) and section 735(c)(5) of the Act, the Department has not included zero or de minimis weighted-average dumping margins, or margins determined entirely under section 776 of the Act, in the calculation of the "all others" rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: September 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–26045 Filed 9–30–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–828]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Blankenbaker or Rebecca Woodings, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0989 or (202) 482–0651.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as

amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 353 (1997).

Preliminary Determination

We preliminarily determine that static random access memory semiconductors ("SRAMs") from the Republic of Korea ("Korea") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Duty Investigation: Static Random access Memory Semiconductors From the Republic of Korea*, 62 FR 13596 (March 21, 1997)), the following events have occurred:

In an April 1, 1997 letter to the Department, LG Semicon Co. Ltd. ("LGS") requested exclusion from participation as a mandatory respondent in this investigation. In the request, LGS argued that it was an extremely small exporter of SRAMs and it accounted for only a small fraction of U.S. SRAM imports from Korea during the period of investigation.

On April 4, 1997, Samsung Electronics Co. Ltd. ("Samsung") requested that the Department limit its analysis in this proceeding to sales of identical merchandise. On April 16, 1997, the Department determined that it would not limit its analysis to only sales of identical merchandise. The department concluded that the reporting of a very small number of sales of similar merchandise would not impose an undue burden on either Samsung or the Department. (*See* Memorandum form Thomas Futtner to Louis Apple dated April 16, 1997.)

On April 11, 1997, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary determination. (*See* ITC Investigations No. 731–TA–761–762). The ITC found that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of SRAMs from Korea.

On April 16, 1997, we presented the Section A–E questionnaire to Hyundai Electronics Industries Co. Ltd. ("Hyundai"), LGS, and Samsung.

On April 25, 1997, Samsung respected that the Department not require the reporting of the following: (1) Sales of SRAMs that were further processed by Samsung's U.S. subsidiary prior to sale in the United States; (2) export price ("EP") sales to the United States; and (3) sales of 64K SRAMs. on April 28, 1997, Hyundai also requested to be excused from section E of the questionnaire, which required the reporting of further processed ("FP") sales. On May 8, 1997, the Department excluded the reporting of FP sales (Section E of the questionnaire) for Samsung and Hyundai, and requested that Samsung report EP sales and sales of 64K SRAMs in the United States. The Department concluded that the value of the FP sales at issue did not justify the extensive expenditure of Department resources that analyzing the sales would have required, whereas the analysis of EP and 64K sales would be both less complex and less burdensome. *See* Memorandum from Thomas Futtner to Louis Apple dated May 8, 1997.

On May 14, 1997, Hyundai, LGS, and Samsung submitted their Section A questionnaire responses. On June 16, 1997, Hyundai and Samsung submitted their Section B–D questionnaire responses.

In a June 16, 1997, letter submitted to the Department, LGS notified the Department that it was withdrawing from further participation in the investigation. In the letter, LGS stated its SRAM sales had declined substantially. LGS explained that, as a result, it had decided to cease U.S. SRAM sales and withdraw from the investigation "rather than incur the enormous burden in time and expense of further participation in the Department's investigation."

On July 7, 1997, at the request of the petitioner, we postponed the preliminary determination to September 23, 1997. *See Notice of Postponement of Preliminary Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Korea and Taiwan*, 62 FR 36260 (July 7, 1997). On July 31, 1997, the petitioner provided requested a clarification of the scope language in the notice of initiation.

Postponement of Final Determination

On September 10, 1997, Hyundai requested, pursuant to section 735(a)(2)(B) of the Act, that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 125 days after the date of publication of the affirmative preliminary determination in the **Federal Register**. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 353.20(b), inasmuch as: (1) Our preliminary determination is affirmative; (2) Hyundai accounts for a significant proportion of exports of the subject merchandise under investigation; and (3) we are not aware of the existence of any compelling reasons for denying the request, we are granting Hyundai's request and postponing the final determination. Suspension of liquidation will be extended accordingly.

Facts Available

As discussed above, LGS withdrew from the investigation and declined to answer the Department's Section B–E questionnaire. Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested; (3) significantly impedes an antidumping investigation; or (4) provides such information but the information cannot be verified, the Department is required to use facts otherwise available (subject to subsections 782(c)(1) and (e)) to make its determination. Because LGS failed to respond to the Department's questionnaire, and because subsections (c)(1) and (e) do not apply with respect to LGS, we must use facts otherwise available to calculate its dumping margin.

Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994) ("SAA"). LGS's decision not to reply to the Department's questionnaire demonstrates that LGS has failed to cooperate to the best of its ability in this investigation. Therefore, the Department has determined that, in selecting among the facts otherwise available for LGS, an adverse inference is warranted.

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department reviewed all of the data the petitioner relied upon in calculating the estimated dumping margin, and adjusted those calculations where necessary. *See* Initiation Checklist, dated March 17, 1997. The estimated dumping margin was based on a comparison of constructed value to a price quotation in the U.S. market offered by Samsung. The estimated dumping margin, as recalculated by the Department, was 55.36 percent.

For purposes of corroboration, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it has probative value. *See* Memorandum from the Team to Tom Futtner dated September 23, 1997, for a detailed explanation of corroboration of the information in the petition.

Therefore, as adverse facts available, we are assigning to LGS to margin stated in the notice of initiation, 55.36 percent. This margin is higher than the margin calculated for either respondents in this investigation.

Scope of Investigation

The products covered by this investigation are synchronous, asynchronous, and specialty SRAMs from Korea, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die, and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this investigation includes modules containing SRAMs. Such modules include single in-line processing modules ("SIPs"), single in-line memory modules ("SIMMs"), dual in-line memory modules ("DIMMs"), memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board.

The SRAMs within the scope of this investigation are classifiable under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1, 1996 through December 31, 1996.

Fair Value Comparisons

To determine whether sales of SRAMs from Korea to the United States were made at less than fair value, we compared the United Price ("USP") to the Normal Value ("NV"), as described in the "United States Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average USPs for comparison to weighted-average NVs.

In making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the "Scope of Investigation" section of this notice, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the characteristics listed in Appendix III of the Department's antidumping questionnaire.

Level of Trade and Constructed Export Price (CEP) Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practical, we determined NV based on sales in the comparison market at the same level of trade as the EP or CEP sales. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, it is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Certain Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Results of New Shipper Antidumping Duty Administrative Review*; 62 FR 23760, 23761 (May 1, 1997).

We reviewed the questionnaire responses of both respondents to establish whether there were sales at different levels of trade based on marketing stages, selling functions performed, and services offered to each customer or customer class. For both respondents, we identified one level of trade in the home market with direct sales by the foreign producers to unaffiliated domestic customers. These direct sales were made by both respondents to original equipment manufacturers ("OEMs") and to distributors. All sales, whether made to OEM customers or to distributors, were made at the same marketing stage and involved the same selling functions. For the U.S. market, all U.S. sales for Hyundai and some sales by Samsung were reported as CEP sales. We examined the marketing stage and selling functions performed by the Korean companies for U.S. CEP sales, after the adjustment required by section 772(d) of the Act, and preliminarily determine that they are at a different level of trade from the Korean companies' home market sales because the CEP represents a different marketing stage with fewer selling functions. For instance, the CEP does not include any general promotion, marketing activities, or price negotiations.

Because we compared CEP sales to home market sales at a different level of trade, we examined whether a level of trade adjustment may be appropriate. In this case, both respondents only sold at one level of trade in the home market; therefore, there is no basis upon which either respondent can demonstrate a consistent pattern of price differences between levels of trade. Further, we do not have information which would allow us to examine pricing patterns based on the respondents' sales of other products and there is no other record information on which such an analysis could be based. Because the data available do not provide an appropriate basis for making a level of trade adjustment and the level of trade in the home market is a more advanced stage of distribution than the level of trade of the CEP sales, a CEP offset is appropriate. Therefore, we have accepted both respondents' claims for a CEP offset, pursuant to section 773(a)(7)(B) of the Act.

Time Period for Cost and Price Comparisons

Section 777A(d) of the Act states that in an investigation, the Department will compare the weighted average of the NVs to the weighted average of the EPs/CEPs. Generally, the Department will compare sales and conduct the sales below cost testing using annual averages. However, where prices have moved significantly over the course of the POI, it has been the Department's practice to use shorter time periods. *See, e.g., Final Determination of Sales at Less Than Fair Value: Erasable Programmable Read Only Memories (EPROMs) from Japan;* 51 FR 39680, 39682 (October 30, 1986); *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea;* 58 FR 15467, 15476 (March 23, 1993).

We invited comments from interested parties regarding this issue. An analysis of these comments revealed that all parties agreed that the SRAMs market experienced a significant and consistent price decline during the POI. Accordingly, in recognition of the significant and consistent price declines in the SRAMs market during the POI, the Department has compared prices and conducted the sales below cost test using quarterly data. In accordance with section 773(b)(2)(D) of the Act, we conducted the recovery of cost test using annual cost data.

United States Price

Hyundai

We calculated CEP for Hyundai, in accordance with sections 772(b), (c), and (d) of the Act. We found that CEP is warranted because all U.S. sales activities associated with U.S. sales took place in the United States through a wholly-owned subsidiary of Hyundai. We calculated CEP based on the price to the first unaffiliated customer in the United States. We made deductions from the gross unit price for the following expenses: foreign inland freight, brokerage, and handling; international freight and insurance; and U.S. brokerage, handling and inland freight.

Pursuant to section 772(d) (1) and (2) of the Act, we also made deductions for commissions; credit, inventory carrying costs, and other indirect and direct selling expenses; and bank and extended test charges. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Samsung

We calculated CEP for Samsung, in accordance with sections 772 (b), (c), and (d) of the Act. We found that CEP is warranted for some U.S. sales because these sales took place in the United States through a wholly-owned subsidiary of Samsung. We calculated CEP based on the price to the first unaffiliated customer in the United States. We made deductions from the gross unit price for the following expenses: foreign inland freight, brokerage, handling, and banking charges; international freight and insurance; and U.S. inland freight, brokerage, handling, insurance, and banking charges.

Pursuant to section 772(d) (1) and (2) of the Act, we also made deductions for commissioners, credit, advertising, cooperative, and royalty expenses; inventory carrying costs and other direct and indirect selling expenses. We also deducted U.S. repacking costs. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

For the EP sales by Samsung, we made deductions from the gross unit price for the following expenses: foreign inland freight, brokerage, handling, and banking charges; international freight and insurance; and U.S. inland freight, brokerage, handling, and banking charges.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's aggregate volume of home market sales of the foreign like product to the aggregate volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Accordingly, we determined that its home market was viable for each respondent.

Based on a cost allegation presented in the petition, the Department found reasonable grounds to believe or suspect that sales by both respondents in their home market were made at prices below their respective costs of production ("COPs"). As a result, the Department initiated an investigation to determine whether either respondent made home market sales during the POI at prices below its COP, within the meaning of section 773(b) of the Act.

We calculated COP as the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act. We used the respondents' reported COP, adjusted as discussed below, to compute quarterly weighted-average COP of the POI. We compared the weighted-average COPs to home market sales of the foreign like product as required under section 773(b) of the Act in order to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared COP to the home market prices, less any applicable movement charges, discounts, and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. Where 20 percent or more of a respondent's sales of given product during the POI were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2) (B) and (C). To determine whether prices were such as to provide for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per unit cost of production at the time of the sale were above the weighted average per unit cost of production for the POI, in accordance with section 773(b)(2)(D). Where we found that a substantial quantity of sales during the POI were below cost and not at prices that provided for recovery of costs within a reasonable period of time, we disregarded the below cost sales.

Where NV was calculated using prices to unaffiliated customers, we made appropriate adjustments to those prices. First, we deducted home market inland freight and home market packing costs. Where there were differences in the merchandise to be compared, we made adjustments in accordance with section 773(a)(6)(C)(ii) of the Act to account for those differences. Where appropriate, we made circumstances-of-sale adjustments in accordance with section 773(a)(6)(C)(iii) of the Act. For purposes of CEP sales comparisons, we deducted home market indirect expenses up to allowable levels. For purposes of CEP and EP sales comparisons, we added U.S. packing costs in accordance with section 773(a)(6)(A) of the Act.

Where there was no above cost home market sale for comparison, NV was based on CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Although we generally relied, in our COP and CV calculation, on the data submitted by respondents, we made adjustments in the allocation of both research and development ("R&D") and interest expense. Adjustments common to both companies are detailed immediately, below, followed by company-specific comments.

For both companies, we allocated all semiconductor R&D over all semiconductor cost of goods sold. *See* Decision Memorandum dated September 23, 1997. We concluded that R&D related to semiconductors benefits all semiconductor products, and that allocation of R&D on a product-specific basis was not appropriate. In support of our methodology, we have placed on the record information regarding cross-fertilization of semiconductor R&D.

In our Section D cost questionnaire, we requested that respondents allocate interest expense over the total cost of goods sold. However, we subsequently determined that this allocation methodology does not appropriately recognize the expenses related to capital investment necessary for semiconductors as compared to other lines of business. Therefore, we allocated net interest expense on the basis of proportional fixed assets for both companies. The Court of International Trade has upheld the Department's methodology of allocating interest expenses on the basis of semiconductor fixed assets. *See Micron Technology, Inc.* v. *United States,* 893 F. Supp. 21, 30 (June 12, 1995).

Finally, we adjusted both respondents' depreciation expenses to reflect their historical depreciation methodologies. We based our adjustments on the fact that, in 1996, both Samsung and Hyundai chose not to record certain accelerated depreciation expenses that, according to their financial statements, they had relied upon in the previous year. In switching to alternative methods for recognizing depreciation expense, the companies did not retroactively restate the bases of their assets, but instead used the net book value of the assets as of the date of the change. Thus, the companies failed to report depreciation expense in a systematic and rational manner over the useful lives of their assets. As a result, disproportionately greater costs were attributed to products manufactured before the change than subsequent to it. *See Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea;* 58 FR 15467.15479 (March 23, 1993).

In adjusting the depreciation expenses by Samsung and Hyundai, we relied on the same accelerated depreciation methods used by the companies in 1995. The current record does not contain information with respect to what the appropriate depreciation expenses would be after taking into account the restated bases of the companies' assets. Our use of Samsung's and Hyundai's historical depreciation methods in adjusting reported depreciation expense for COP and CV is consistent with the statutory preference for use of cost allocation methods that have been historically relied upon by respondents. *See* section 773(f)(i)(A) of the Act and SAA at 834.

Hyundai

For those comparison products for which there were sales above the COP, we based NV on delivered prices to home market customers. We made deductions for inland freight, imputed credit expenses and banking charges, and home market direct and indirect selling expenses. As indirect selling expenses, we including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. In addition, where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with 773(a)(6)(C)(ii) of the Act and 19 CFR 353.57.

For price-to-CV comparisons, we made deductions, where appropriate, for credit expenses and banking charges. We also deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Samsung

For those comparisons for which there were sales above the COP, we based NV on delivered prices to home market customers. We made deductions for inland freight, imputed credit, advertising, and royalty expenses, and home market direct and indirect selling expenses. As indirect selling expenses, we including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses and commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2). In the case of letter-of-credit sales, we added in the amount of any duty-drawback.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. *See Policy Bulletin 96–1: Currency Conversions,* 61 FR 9434 (March 8, 1996).

Section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. For an explanation of this methodology, *see id.* Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Korean Won did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we will verify all information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of entries of subject merchandise from Korea, as defined in the "Scope of Investigation" section of this notice, with the exception of subject merchandise that is the product of Samsung. Suspension

will apply to products that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For these entries, the Customs Service will require a cash deposit or posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average percent margin
Samsung	[1] 1.59
Hyundai	3.38
LG Semicon [2]	[2] 55.36
All others	3.38

[1] De minimis.
[2] Facts Available Rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threatening material injury to, a U.S. industry.

Public Comment

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than December 29, 1997; and rebuttal briefs, no latter than January 5, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. The summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 7, 1998; time and room to be determined; at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by February 5, 1998.

This determination is published pursuant to sections 773(f) and 777(i) of the Act.

Dated: September 23, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–25942 Filed 9–30–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or David Genovese, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1776 or (202) 482–0498, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 353 (April 1, 1996).

Preliminary Determination

We preliminarily determine that static random access memory semiconductors (SRAMs) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation *(Notice of Initiation of Antidumping Duty Investigations: SRAMs from the Republic of Korea and Taiwan* (62 FR 13596, March 21, 1997)), the following events have occurred:

During March and April 1997, the Department obtained information from the American Institute in Taiwan identifying potential producers and/or exporters of the subject merchandise to the United States. Based on this information, in April 1997, the Department issued antidumping questionnaires to 22 companies.[1]

Also in April 1997, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (see ITC Investigation No. 731–TA–761–762).

In May 1997, the Department received responses to Section A of the questionnaire from 18 of the 22 companies. Three of the remaining companies, Advanced Microelectronics, BIT, and Texas-Instruments, did not submit responses to Section A. Therefore, we have assigned a margin to these companies based on facts available. (See the "Facts Available" section below, for further discussion.) Regarding the fourth company, Lien Hsing, we were notified by one of the respondents in this investigation that it had received the questionnaire addressed to Lien Hsing, but that it was unaware of the existence of this company. Because Lien Hsing never received the Department's questionnaire and we found no way in which to locate and serve it with the questionnaire, no adverse inference is warranted with respect to it.

Based on the information received from the 18 responding companies, in May 1997, the Department determined that it did not have the administrative resources to investigate all known producers and/or exporters of SRAMs during the period of investigation (POI). Accordingly, we decided to limit the number of mandatory respondents in this investigation to the five companies that we believed had the largest sales volumes of SRAMs to the United States during the POI, pursuant to section 777A(c) of the Act. These companies are Alliance, ISSI, TSMC, UMC, and Winbond (hereinafter "respondents"). For a more detailed discussion regarding this issue, see the memorandum to Louis Apple from the Team, dated May 21, 1997.

Respondents submitted questionnaire responses in June 1997. We issued supplemental questionnaires to these companies in July 1997, and received responses to these questionnaires in August 1997. Based on a review of these responses, we have excluded TSMC from our analysis in this investigation. For a discussion of this issue, see the memorandum to Louis Apple from the Team, dated September 23, 1997.

Pursuant to section 735(a)(2)(A) of the Act, on August 14, 1997, one of the respondents, Winbond, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postponed its final determination until no later than 135 days after the publication of this notice in the **Federal Register**. For further discussion, see the "Postponement of Final Determination and Extension of Provisional Measures" section of this notice.

In September 1997, Alliance submitted revised sales and cost databases at the Department's request.

Facts Available

Three interested parties in this investigation, Advanced Microelectronics, BIT, and Texas Instruments, failed to respond to the Department's requests for information. Specifically, these companies did not provide a response to the Department's questionnaire issued in April 1997.

Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Because Advanced Microelectronics, BIT, and Texas Instruments failed to respond to the Department's questionnaire and because subsections (c)(1) and (e) do not apply with respect to these companies, we must use facts otherwise available to calculate their dumping margins.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA). The failure of Advanced Microelectronics, BIT, and Texas Instruments to reply to the Department's questionnaires or to provide a satisfactory explanation of their conduct demonstrates that they have failed to act to the best of their ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to these companies, an adverse inference is warranted. As facts otherwise available, we are assigning to Advanced Microelectronics, BIT, and Texas Instruments the highest margin stated in the notice of initiation, 113.85 percent.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department reviewed all of the data the petitioner relied upon in calculating the estimated dumping margins, and adjusted those calculations where necessary. *See* Initiation Checklist, dated March 17, 1997. These estimated dumping margins were based on a comparison of constructed value (CV) to U.S. price, the latter of which was based on price quotations offered by two Taiwanese companies. The estimated dumping margins, as recalculated by the Department, ranged from 93.54 to 113.85 percent. For purposes of corroboration, the Department re-examined the price information provided in the petition in light of information developed during the investigation and found that it has probative value. *See* the memorandum from the Team to Louis Apple dated September 23, 1997, for a detailed explanation of corroboration of the information in the petition.

Therefore, as adverse facts available, we are assigning to Advanced Microelectronics, BIT, and Texas Instruments the highest margin stated in the notice of initiation, 113.85 percent. This margin is higher than the margin calculated for any respondent in this investigation.

Postponement of Final Determination and Extension of Provisional Measures

Two of the respondents, Winbond and Alliance, requested on September 11 and 18, 1997, respectively, that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until no later than 135 days after the publication of this notice in the **Federal Register**, pursuant to section 735(a)(2)(A) of the Act. In accordance with 19 CFR section 353.20(b), because (1) our preliminary determination is affirmative, (2) Winbond and Alliance account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly (*see Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Open-End Spun Rayon Singles Yarn From Austria*, 62 FR 14399, 14400 (March 26, 1997); *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326 (June 14, 1996)).

Scope of Investigation

The products covered by this investigation are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this investigation includes modules containing SRAMs. Such modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), dual in-line memory modules (DIMMs), memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board.

The SRAMs within the scope of this investigation are classifiable under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our

[1] These companies are as follows: (1) Advanced Microelectronics Products Inc. (Advanced Microelectronics); (2) Alliance Semiconductor Corp. (Alliance); (3) Asia Specific Technology Limited; (4) Best Integrated Technology, Inc. (BIT); (5) Chia Hsin Livestock Corp.; (6) E–CMOS Technology Corporation; (7) Etron Technology, Inc.; (8) G–Link Technology Corp.; (9) Holtek Microelectronics Inc.; (10) Hualon Microelectronics Corporation; (11) Integrated Silicon Solution (Taiwan) Inc. (ISSI); (12) Kes Rood Technology Taiwan Ltd.; (13) Lien Hsing Integrated Circuits (Lien Hsing); (14) Macronix International Co., Ltd.; (15) Mosel-Vitelic, Inc.; (16) Taiwan Memory Technology, Inc.; (17) Taiwan Semiconductor Manufacturing Corporation (TSMC); (18) Texas Instruments-Acer Inc. (Texas Instruments); (19) United Microelectronics Corporation (UMC); (20) Utron Technology, Inc.; (21) Vanguard International Semiconductor Corporation; and (22) Winbond Electronics Corporation (Winbond).

written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is January 1, 1996, through December 31, 1996.

Time Period for Cost and Price Comparisons

Section 777A(d) of the Act states that in an investigation, the Department will compare the weighted average of the normal values to the weighted average of the export prices/constructed export prices. Generally, the Department will compare sales and conduct the sales below cost test using annual averages. However, where prices have moved significantly over the course of the POI, it has been the Department's practice to use shorter time periods. *See, e.g., Final Determination of Sales at Less Than Fair Value: Erasable Programmable Read Only Memories (EPROMs) from Japan*, 51 FR 39680, 39682 (October 30, 1986), *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea*, 58 FR 15467, 15476 (March 23, 1993).

We invited comments from interested parties regarding this issue. An analysis of these comments revealed that all parties agreed that the SRAMs market experienced a significant and consistent price decline during the POI. Accordingly, in recognition of the significant and consistent price declines in the SRAMs market during the POI, the Department has compared prices and conducted the sales below cost test using quarterly data.[2]

Treatment of Foundry Sales and Elimination of TSMC as a Respondent

During the course of this investigation, we found that two of the five companies we had selected to be respondents, UMC and TSMC, acted as foundries for SRAMs design houses. As foundries, they manufactured processed SRAMs wafers according to designs provided by the design houses. Two of these design houses, Alliance and ISSI, were also selected to be respondents. The design houses arranged for the probing, testing, and assembly of the processed wafers into individual SRAMs that were subsequently sold to unaffiliated downstream purchasers.

At the time we selected respondents, we had not determined conclusively how the transaction between a design house and its foundry should be treated. *See* the memorandum from the Team to Louis Apple, dated May 15, 1997. We noted that, when the Department had had an opportunity to perform a thorough analysis of the respondents' responses to our questionnaire, the Department may conclude that the appropriate sales transaction to analyze is not the sale from the foundry to the design house, but the subsequent downstream sale of the encapsulated SRAMs to the United States.

When considering this issue for purposes of this determination, we determined that it was necessary to decide which entity, the foundry or the design house, was the manufacturer of the subject merchandise, and which entity controlled the ultimate sale of it. For guidance in making this determination, we relied on the Department's policy expressed in our proposed regulations which, while they are not our final regulations, state our policy on this issue. The proposed regulations state that: "[w]here a party owning the components of subject merchandise has a subcontractor manufacture or assemble that merchandise for a fee, the Department will consider the owner to be the manufacturer, because that party has ultimate control over how the merchandise is produced and the manner in which it is ultimately sold. The Department will not consider the subcontractor to be the manufacturer or producer regardless of the proportion of production attributable to the subcontracted operation or the location of the subcontractor or owner of the good." *See Notice of Proposed Rulemaking and Request for Public Comment: Antidumping Duties; Countervailing Duties*, 61 FR 7308, 7330 (February 26, 1996).

We also reviewed section 351.401(h) of the Department's regulations which, while not applicable to this investigation, codifies past practice and current policy. Section 351.401(h) states that the Department "will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale of, the subject merchandise or foreign like product."

In reviewing and analyzing the information submitted by respondents concerning the relationship between the design houses and their foundries, we have found the following: the design house performs all of the product research and development for the SRAMs that are to be produced. The design house produces, or arranges and pays for the production of, the design mask. At all stages of production, it retains ownership of the proprietary design and design mask. The design house then subcontracts the production of processed wafers with a foundry and provides the foundry with the design mask. Design houses tell the foundry what and how much to make. The foundry agrees to dedicate a certain amount of its production capacity to the production of the processed wafers for the design house. The foundry has no right to sell those wafers to any party other than the design house unless the design house fails to pay for the wafers. Once the design house takes possession of the processed wafers, it arranges for the subsequent steps in the production process (*i.e.*, probing, testing, and assembly), then sells the encapsulated SRAMs to downstream customers.

The design of the processed wafer is not only an important part of the finished product, it is a substantial element of production and imparts the essential features of the product. The design defines the ultimate characteristics and performance of the subject merchandise and delineates the purposes for which it can be used. The foundries manufactured processed SRAMs wafers using the proprietary designs of the design houses during the POI. As such, they did not control the production of the processed wafers in question, but rather merely translated the design of other companies into actual products.

For purposes of this investigation, we have determined that the entity that controls and owns the SRAMs design, *i.e.*, the design house, controls the production, and ultimate sale, of the subject merchandise. Consequently, we have determined to disregard the foundry sales of UMC and TSMC for purposes of this investigation. Moreover, because all of TSMC's sales during the POI were foundry sales, we have determined that it should no longer be considered a respondent in this investigation. For a more detailed analysis of this decision, *see* the memorandum from the Team to Louis Apple, dated September 23, 1997, concerning the Treatment of Foundry Sales and the Elimination of TSMC as a Respondent.

Fair Value Comparisons

To determine whether sales of SRAMs from Taiwan to the United States were made at less than fair value, we compared the United States Price (USP) to the Normal Value (NV), as described in the "United States Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we

[2] In accordance with section 773(b)(2)(D) of the Act, we conducted the recovery of cost test using annual cost data.

calculated weighted-average USPs for comparison to weighted-average NVs.

In order to determine whether or not we should base price-averaging groups on customer types, we conducted an analysis of the prices submitted by respondents. This analysis does not indicate that there was a consistent and uniform difference in prices between customer types. Accordingly, we have not based price comparisons on customer types.

In making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the "Scope of Investigation" section of this notice, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the characteristics listed in Sections B and C of the Department's antidumping questionnaire.

Regarding Alliance, because we found no home market sales at prices above the COP, we made no price-to-price comparisons. *See* the "Normal Value" section of this notice, below, for further discussion.

Regarding ISSI, because this company did not report cost or difference in merchandise information for certain products sold in the United States, there is insufficient information on the record to calculate a margin for these products. Accordingly, we based the margin for the sales in question on facts available. As facts available, we used the highest non-aberrational margin calculated for any other product.

Level of Trade and Constructed Export Price (CEP) Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade as the export price (EP) or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, it is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Certain Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 23760, 23761 (May 1, 1997).

Only one of the respondents in this investigation, UMC, claimed that its home market sales were made at different levels of trade. Specifically, UMC claimed that its sales of branded SRAMs products to original equipment manufacturers (OEMs) and distributors were made at two distinct levels of trade because it provided greater customer support to, and performed more significant marketing functions for, its OEM customers. In particular, UMC stated that it met with OEM customers to assist them in qualifying UMC's products for particular applications and to discuss how UMC's products may meet the customer's current and future needs. Regarding marketing functions, UMC stated that its salesmen make regular on-site visits to OEM customers and attend trade shows primarily targeted at OEMs. However, UMC does not attend similar shows targeted at distributors.

We examined the selling activities at each reported marketing stage and found that there was no substantive difference in the selling functions performed by UMC at either of its claimed marketing stages. Consequently, we determine that only one level of trade exists with respect to sales made by UMC to all customers. For a detailed explanation of this analysis, see the memorandum from the Team to Louis Apple, dated September 23, 1997.

Because we have found that only one level of trade existed in the home market for all respondents during the POI, we conducted an analysis to determine whether a CEP offset was warranted for each respondent. In order to determine whether NV was established at a level of trade which constituted a more advanced state of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP (*i.e.*, excluding economic activities occurring in the United States). We found that all respondents performed most of the selling functions and services related to U.S. sales at their sales offices in the United States, and therefore, these selling functions are associated with those expenses which we deduct from the CEP starting price, as specified in section 772(d) of the Act. Regarding home market sales, respondents performed largely the same selling functions for sales to unaffiliated customers as were performed in the United States. Therefore, their sales in Taiwan were at a more advanced stage of marketing and distribution (*i.e.*, more remote from the factory) than the constructed U.S. level of trade, which represents an ex-factory price after the deduction of expenses associated with U.S. selling activities. However, because the respondents sell at only one home market level of trade, the difference in the level of trade cannot be quantified. Because the difference in the level of trade cannot be quantified, but the home market is at a more advanced level of trade, we have granted a CEP offset to all respondents.

United States Price

For UMC and Winbond, we based USP on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation because CEP methodology was not otherwise indicated.

In addition, for all companies, where sales to the first unaffiliated purchaser took place after importation into the United States, we based USP on CEP, in accordance with section 772(b) of the Act.

We made company-specific adjustments as follows:

A. Alliance

We calculated CEP based on packed, FOB U.S. warehouse prices, to unaffiliated purchasers in the United States. We corrected gross unit price for clerical errors identified in Alliance's narrative response. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for international freight (including air freight and U.S. Customs merchandise processing fees), where appropriate, pursuant to section 772(c)(2)(A) of the Act.

In accordance with section 772(d) (1) and (2) of the Act, we made additional

deductions for commissions, warranty and credit expenses, indirect selling expenses, inventory carrying costs, U.S. repacking expenses and U.S. further manufacturing costs. Regarding credit expenses, Alliance reported that it had not received payment for certain sales as of the date of its latest questionnaire response. As such, we based the date of payment for those sales on the date of the preliminary determination and recalculated credit expenses accordingly.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, the CEP profit rate was calculated using the expenses incurred by Alliance on its sales of the subject merchandise in the United States and foreign like product in the home market and the profit associated with those sales.

With regard to modules which were further-manufactured in the United States, we have based USP on the net price of the modules rather than the net price of the individual SRAMs included in the modules.

B. ISSI

We calculated CEP based on packed, FOB U.S. warehouse prices, to unaffiliated purchasers in the United States. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, pre-sale warehousing expenses, foreign and U.S. inland insurance, foreign brokerage and handling, and international freight (including air freight, U.S. customs merchandise processing fees, and U.S. inland freight to ISSI's U.S. office), where appropriate, pursuant to section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we made additional deductions for commissions, credit expenses, indirect selling expenses, inventory carrying costs, and U.S. repacking expenses. We recalculated credit expenses using the interest rate paid by ISSI (Taiwan) on its borrowings denominated in U.S. dollars. In addition, where ISSI had not received payment for certain sales as of the date of its latest questionnaire response, we based the date of payment for those sales on the date of the preliminary determination and recalculated credit expenses accordingly.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, the CEP profit rate was calculated using the expenses incurred by ISSI and its affiliate on their sales of the subject merchandise in the United States and foreign like product in the home market and the profit associated with those sales.

C. UMC

We calculated EP and CEP based on packed, FOB prices, to unaffiliated purchasers in the United States. We adjusted the gross unit price for billing adjustments and freight charges. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, foreign brokerage and handling, and international freight, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

Where USP was based on CEP, we made additional deductions, in accordance with section 772(d)(1) of the Act, for commissions, warranty and credit expenses, indirect selling expenses, and inventory carrying costs. Regarding credit expenses, UMC reported that it had not received payment for certain sales as of the date of its latest questionnaire response. Consequently, we based the date of payment for those sales on the date of the preliminary determination and recalculated credit expenses accordingly.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, the CEP profit rate was calculated using the expenses incurred by UMC and its affiliates on their sales of the subject merchandise in the United States and foreign like product in the home market and the profit associated with those sales.

D. Winbond

We calculated EP and CEP based on packed, delivered and FOB prices to unaffiliated purchasers in the United States. We made deductions from the gross unit price, where appropriate, for discounts. We also made deductions for foreign inland freight, pre-sale warehousing expenses, foreign inland insurance, foreign brokerage and handling, international freight (including air freight, U.S. inland freight from the port to Winbond's U.S. warehouse, U.S. brokerage and handling fees, and customs fees), international insurance, U.S. customs merchandise processing fees, and U.S. inland freight to customer, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

Where USP was based on CEP, we made additional deductions, in accordance with section 772(d)(1) of the Act, for commissions, credit expenses, advertising expenses, warranty expenses, technical service expenses, indirect selling expenses, inventory carrying costs, and U.S. repacking expenses.

Pursuant to section 772(d)(3) of the Act, gross unit price was further reduced by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, the CEP profit rate was calculated using the expenses incurred by Winbond and its affiliates on their sales of the subject merchandise in the United States and foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent.

Because UMC and Winbond reported home market sales to an affiliated party during the POI, as defined by section 771(4)(B) of the Act, we tested these sales to ensure that the affiliated party sales were at "arm's length," in accordance with our practice. To conduct this test, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, discounts and rebates, and packing, where appropriate. Based on the results of that test, we used the sales from UMC and Winbond to their affiliated parties because they were made at "arm's length."

Based on the cost allegation contained in the petition, the Department found reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

Where possible, we used the respondents' reported COP amounts, adjusted as discussed below, to compute quarterly weighted-average COPs during the POI. In cases where there was no production within the same quarter as a given sale, we referred to the most recent quarter, prior to the sale, for which costs had been reported. In cases where there was no cost reported for either the same quarter as the sale, or a prior quarter, we used the reported costs from the closest subsequent quarter in which production occurred.

In their calculation of research and development expenses (R&D), three of the respondents, Alliance, ISSI, and Winbond, excluded from their calculation R&D incurred on certain semiconductor products. The fourth respondent, UMC, calculated R&D on a quarterly basis. For all respondents, we revised the R&D ratios to allocate the total amount of semiconductor R&D for the POI over the total cost of sales of semiconductor products sold during the POI, using an annual ratio. *See* the Concurrence memorandum from James Maeder to Louis Apple, dated September 23, 1997, for further discussion. We preliminarily determine that R&D related to semiconductors benefits all semiconductor products, and that allocation of R&D on a product-specific basis was not appropriate. In support of our methodology, we have placed on the record information regarding cross-fertilization of semiconductor R&D.

We compared the weighted-average quarterly COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined (1) whether, within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2) (B) and (C) of the Act. To determine whether prices were such as to provide for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per unit cost of production at the time of the sale were above the weighted-average per-unit cost of production for the POI, in accordance with section 773(b)(2)(D). If they were, we disregarded below cost sales in determining NV.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Where respondents made no home market sales in the ordinary course of trade (*i.e.*, all sales were found to be below cost), we based profit and SG&A expenses on the weighted average of the profit and SG&A data computed for those respondents with home market sales of the foreign like product made in the ordinary course of trade.

We deducted from CV weighted-average home market direct selling expenses incurred on sales made in the ordinary course of trade. Where a company had no sales above COP, we based home market direct selling expenses on the weighted average selling expense data computed for those respondents with home market sales of the foreign like product in the ordinary course of trade. Company-specific calculations are discussed below.

A. Alliance

We relied on the reported COP and CV amounts except as noted above. Additionally, we did not rely on amounts reported by Alliance for SG&A and profit since all of Alliance's sales were made below the cost of production.

Because all of Alliance's home market sales were sold below COP, we based NV on CV. In addition to the adjustments to CV reported above, in accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced CV by the amount of weight-averaged home market indirect selling expenses and commissions incurred by respondents with sales above the COP up to the amount of indirect expenses deducted from the CEP under 772(d)(1)(D).

B. ISSI

We relied on respondent's reported COP and CV amounts except as noted above. Additionally, we revised the reported general and administrative and R&D expense ratios to use the cost of sales figure from the audited financial statements as the denominator in these equations.

For those comparison products for which there were sales at prices above the COP, we based NV on delivered prices to home market customers. We made deductions for discounts, foreign inland freight, and insurance, where appropriate, pursuant to section 773(a)(6)(B) of the Act. We also made deductions for credit expenses and bank charges, pursuant to section 773(a)(6)(C)(iii) of the Act. Regarding credit expenses, ISSI reported that it had not received payment for certain sales as of the date of its latest questionnaire response. As such, we based the date of payment for those sales on the date of the preliminary determination and recalculated credit expenses accordingly.

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with 773(a)(6)(C)(ii) of the Act and 19 CFR 353.57. Where applicable, in accordance with 19 CFR section 353.56(b)(1), we offset any commission paid on a U.S. sale by reducing the NV by any home market commissions and indirect selling expenses remaining after the deduction for the CEP offset.

Where NV was based on CV, we deducted from CV the weighted-average home market direct selling expenses. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced normal value by the amount of commissions and indirect selling expenses incurred by ISSI in Taiwan on sales of SRAMs in Taiwan, up to the amount of commissions and indirect selling expenses incurred on U.S. sales deducted from the CEP, in accordance with section 773(a)(7)(B) of the Act.

C. UMC

We relied on respondent's COP and CV amounts except as noted above.

Additionally, we calculated 1996 bonuses to directors, supervisors, and employees and included them in the cost of manufacturing. We revised the reported general and administrative expense to exclude foreign exchange gains. We revised the reported net financing expense ratio to include net foreign exchange gains related to accounts payable.

UMC has claimed a startup adjustment for a new fabrication facility under section 773(f)(1)(C)(ii) and (iii) of the Act. We conducted an analysis of the facts and have preliminarily granted the claimed startup adjustment. The SAA specifies two conditions for the application of a startup cost adjustment:

(1) The company used new production facilities or was producing a new product that required substantial additional investment; and

(2) Production levels were limited by technical factors associated with the initial phase of commercial production.

UMC appears to have met these threshold criteria by opening and using a new production facility whose production levels were limited by technical factors associated with the initial phase of production. In accordance with the Act, we replaced the unit production costs incurred during the startup period with the unit production costs incurred at the end of the startup period. This resulted in the exclusion of some costs which were incurred during the startup period from the actual cost calculation. The difference between the actual costs incurred and the costs calculated for purposes of the startup adjustment was amortized over the useful life of the machinery, subsequent to the startup phase. We also capitalized certain pre-production costs which were incurred before the new fabrication facility began production. We amortized these pre-production costs, beginning with the first month in which production took place, over the useful life of the machinery. *See* the memorandum to Louis Apple from Chris Marsh, dated September 23, 1997, for a detailed discussion of this issue.

For those comparison products for which there were sales at prices above the COP, we based NV on delivered and FOB prices to home market customers. For home market price-to-EP comparisons, we made deductions, where appropriate, for discounts, export duties, and foreign inland freight, in accordance with section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR section 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for differences in warranty and credit expenses. We did not allow an adjustment for home market commissions because we determined that they were not at "arm's length." *See* the memorandum to Louis Apple from the Team dated September 23, 1997, for a detailed explanation.

For home market price-to-CEP comparisons, we made deductions, where appropriate, for discounts, export duties, and foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. We also made deductions for warranty and credit expenses. We deducted home market indirect selling expenses, including inventory carrying costs, and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR 353.56(b), we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. In addition, where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with 773(a)(6)(C)(ii) of the Act.

Where CV was compared to EP, we made circumstance of sale adjustments, where appropriate, for credit and warranty expenses and U.S. commissions in accordance with sections 773 (a)(6)(C)(iii) and (a)(8) of the Act. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced normal value by the amount of commissions and indirect selling expenses incurred by UMC in Taiwan on sales of SRAMs in Taiwan, up to the amount of commissions and indirect selling expenses incurred on U.S. sales deducted from the CEP.

Where CV was compared to CEP, we deducted from CV, where appropriate, credit and warranty expenses. We also deducted indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of commissions and indirect selling expenses incurred on U.S. sales, in accordance with 773(a)(7)(B) of the Act.

D. Winbond

We relied on the reported COP and CV amounts except as noted above. Additionally, we reclassified production technology royalty expenses reported in the Sections B and C of our questionnaire as a cost of manufacturing. We included 1996 bonuses to directors, supervisors, and employees in the cost of manufacturing. We revised the reported general and administrative expense to exclude foreign exchange gains and to include miscellaneous income and expense. We revised the reported net financing expense ratio to include net foreign exchange gains related to accounts payable.

For those comparison products for which there were sales at prices above the COP, we based NV on delivered prices to home market customers.

For home market price-to-EP comparisons, we made deductions, where appropriate, for discounts, import duties and development fees paid on sales to customers outside of duty free zones, and home market movement charges including pre-sale warehouse expenses, foreign inland freight, brokerage and handling charges, and inland insurance. Pursuant to section 773 (a)(6)(C)(iii) of the Act, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses (offset by the interest revenue actually received by the respondent), direct advertising expenses, warranty expenses, technical service expenses, and post-sale payments to a third-party customer.

For home market price-to-CEP comparisons, we made deductions for discounts, import duties and development fees paid on sales to customers outside of duty free zones, and home market movement charges including pre-sale warehouse expenses, foreign inland freight, brokerage and handling charges, and inland insurance, where appropriate, in accordance with section 773(a)(6)(B) of the Act. We also made deductions for credit expenses (offset by the interest revenue actually received by the respondent), direct advertising expenses, warranty expenses, technical service expenses, and post-sale payments to a third-party customer, pursuant to section 773(a)(6)(C)(iii) of the Act.

We deducted home market indirect selling expenses, including inventory carrying costs, other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR section 353.56(b), we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. In addition, where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act.

Where CV was compared to EP, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses in accordance with section 773 (a)(6)(C)(iii) of the Act.

Where CV was compared to CEP, we deducted from CV the weighted-average home market direct selling expenses. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment and reduced normal value by the amount of indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales deducted from the CEP.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see *Policy Bulletin 96–1: Currency Conversions* (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan dollar did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the U.S. price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Advanced Microelectronics	113.85
Alliance	59.06
BIT	113.85
ISSI	10.96
Texas Instruments	113.85
UMC	63.36
Winbond	94.10
All Others	41.30

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded the margins determined entirely under section 776 of the Act from the calculation of the "All Others Rate."

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than December 18, 1997, and rebuttal briefs no later than December 22, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on December 23, 1997, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(d) of the Act.

Dated: September 23, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–25943 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–701]

Brass Sheet and Strip From the Netherlands: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 12, 1997, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on brass sheet and strip from the Netherlands. This review covers sales to the United States by one manufacturer/exporter, Outokumpu Copper Strip B.V. (OBV), and its U.S. affiliate, Outokumpu Copper (USA), Inc., of the subject merchandise during the period of

review (POR), August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review, where indicated below.

FOR FURTHER INFORMATION CONTACT: Karla Whalen or Lisette Lach, Office of Antidumping/Countervailing Duty Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0408 or (202) 482–6412, respectively.

EFFECTIVE DATE: October 1, 1997.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations, as codified at 19 CFR Part 353 (1997).

Scope of This Review

Imports covered by this review include brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. This review does not cover products the chemical composition of which are defined by other C.D.A. or U.N.S. series. The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Coiled, wound-on-reels (traverse-wound), and cut-to-length products are included. The merchandise under review is currently classifiable under items numbers 7409.21.00 and 7409.29.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under review is dispositive.

Background

On August 12, 1988, the Department published in the **Federal Register** the antidumping duty order on brass sheet and strip (BSS) from the Netherlands (53 FR 30455). On August 12, 1996, the Department published the notice of "Opportunity to Request Administrative Review" for the period August 1, 1995 through July 31, 1996 on BSS from the Netherlands (61 FR 41768). In accordance with 19 CFR 353.22(a)(1), OBV requested that we conduct a review of its sales. On September 17, 1996, we published in the **Federal Register** a notice of initiation of this antidumping administrative review (61 FR 48882). This review covers entries of BSS by OBV and its U.S. affiliate Outokumpu Copper (USA), Inc. (OCUSA). On May 12, 1997, the Department published in the **Federal Register** the preliminary results of the administrative review (62 FR 25891). On May 27, 1997, respondent submitted a ministerial error allegation.

On June 11, 1997, petitioners submitted a case brief and on June 18, 1997, respondent submitted a reply brief. Neither petitioners (Hussey Copper, Ltd., The Miller Company, Olin Corporation, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL–CIO/CLC)) nor respondent requested a hearing; therefore, no hearing was held. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act.

Analysis of Comments Received

Comment 1: Reporting of Metal Prices on "Rework" Sales

Petitioners allege that for certain home market sales, OBV failed to report a metal price. Petitioners base this claim on OBV's statement in its section B response that "[r]ework sales may also involve reworking scrap purchased by OBV which is fabricated into a finished product." Therefore, petitioners conclude that as the Department has been working with an "incomplete" database for the home market sales, the Department should reject the home market database as submitted and resort to use of facts available, or at a minimum, impute the maximum metal cost to these sales.

Respondent replies that petitioners' allegation evidences a misunderstanding of "rework" sales as reported by OBV. OBV claims that it accurately reported prices for all sales, including the metal component, where applicable. First, OBV reasserts that when it purchased metal, fabricated the metal, and invoiced the customer for both metal and fabrication, the gross unit price reported to the Department included both metal and fabrication prices. Further, respondent asserts that if a transaction reported in the home market sales list does not provide a metal price, that transaction was a toll sale, whereby the customer supplied the metal, OBV processed the metal and subsequently invoiced the customer solely for fabrication. Therefore, OBV did not report a metal price for these toll sales.

Second, OBV believes that petitioners' allegation results partly from confusion regarding the nature of the types of sales coded in Field 8.5, REWRKH, of OBV's home market sales list. When OBV purchased scrap from a customer and provided fabrication services to the customer, OBV considered these non-toll sales, which it reported to the Department with both a metal and fabrication price. Respondent points out that all sales coded in Field 8.5, with an "R" or a "B," are toll sales in which the customer provided the metal to OBV for fabrication and OBV invoiced the customer only for fabrication charges. Sales designated in the sales listing by an "R" indicate transactions where the customer provides scrap metal for processing into subject merchandise. Sales designated by a "B" indicate transactions where the customer provides virgin metal for processing into subject merchandise. The metal fixation codes for each of these types of transactions evidence a tolling process. Thus, respondent reported a zero metal price for both "R" and "B" transactions, since there is no applicable metal price for these types of transactions.

Third, respondent argues that at verification the Department verified both types of transactions and verified that OBV reported a metal price for all sales where the customer was actually charged for the metal as well as for the fabrication. The Department found no discrepancies in the sales traces. Finally, respondent notes that a comparison of the average prices charged for rework and regular sales demonstrates a credible difference in pricing.

For the reasons identified above, respondent argues that there is no basis for the Department to apply facts available or to make changes to the reported sales information as the record clearly demonstrates that the sales price data reported by OBV was complete, accurate and fully verified by the Department.

Department's Position: We agree with respondent that it fully reported its sales

in accordance with the Department's instructions. Whenever there was a metal price associated with any given sale, it was reported by OBV. The Department verified several scenarios, including sales of the foreign like product in the ordinary course of trade where customers purchased the fully processed, finished product from OBV. The Department also verified that OBV made what are commonly referred to as "rework" or "tolled sales." (See OBV Sales Verification Report, dated April 16, 1997, at 32–37). OBV reported these as either an "R" or a "B" in Field 8.5, REWRKH, of its home market data base. In this situation, OBV acts purely as a subcontractor. OBV receives raw or semi-finished material (whether scrap or plate) from the unaffiliated customer, which OBV then fabricates into the finished merchandise before sending it back to the customer. OBV performs this service for a fabrication fee and never takes title either to the input product or the finished merchandise.

Comment 2: Constructed Value Profit

Petitioners claim that the Department erroneously disregarded "rework" sales from its calculation of constructed value (CV) profit. Petitioners maintain that the Department must include all sales of the foreign like product in the CV profit calculation, whether or not such sales are used as the basis of product comparisons. Petitioners argue that the "rework" sales are made in the ordinary course of trade and as such must be included in the calculation of CV profit. Petitioners also argue that the nature of the metal or scrap input does not matter in determining whether these sales are outside of the ordinary course of trade, since the final product produced by OBV is identified by identical product control numbers. They argue that it is unjustifiable to exclude such sales for any reason other than a finding that the sales are outside of the ordinary course of trade. Accordingly, petitioners claim that "rework" sales should be included in the calculation of CV profit.

OBV states that the Department properly excluded the rework sales from the calculation of constructed value profit because they are toll sales which should properly be classified as outside of the ordinary course of trade. Rework sales are sales of fabrication services, not sales of the foreign like product. OBV equates its rework sales to toll sales because the customer provides the material to be fabricated by OBV. OBV, in turn, fabricates the material into a finished product that is shipped back to the customer, and the customer is only invoiced for the fabrication service provided by OBV. Respondent reiterates that fabrication does not encompass the sale of a product, and consequently, any profit earned by OBV on toll sales should be excluded from the constructed value calculation for normal sales of brass sheet and strip. OBV further argues that it has been the Department's policy to exclude toll sales from the calculation of normal value, where the U.S. transactions did not involve toll sales. *See Brass Sheet and Strip from the Republic of Korea*, 51 FR 40833, 40834 (November 10, 1986). Thus, respondent urges the Department to continue to follow Department practice and exclude rework/toll sales from the normal value calculation and from the calculation of constructed value profit.

OBV adds, however, that should the Department deviate from its own precedents with regard to the issue of rework/toll sales, as well as its established policy in all reviews of *Brass Sheet and Strip from the Netherlands*, the Department should apply a sales-below-cost test using the data reported by OBV and verified by the Department. Respondent argues that petitioners' recommendation that the Department alter the verified prices reported in OBV's sales list for the rework sales prior to the cost test is legally and factually unsubstantiated. Alternatively, respondent suggests that the Department rely on the reported gross price and the reported cost of production (COP).

Department's Position: Previously, the Department treated tolling operations as involving the sale by the subcontractor of the subject merchandise. Under this view, in tolling situations, "only the fabrication would be subject to the order on brass sheet and strip." *Brass Sheet and Strip From Canada; Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 33610, 33612 (June 18, 1993). Accordingly, when possible, the Department compared tolled sales to tolled sales and non-tolled sales to non-tolled sales. *See, e.g., Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From Italy*, 52 FR 816 (Jan. 9, 1987); *Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from Canada*, 51 FR 44319 (Dec. 9, 1986).

Recently, however, the Department revised its practice and now considers the party contracting for the tolling, rather than the processor or subcontractor, to be the producer/exporter of the merchandise. *See Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From Taiwan*, 61 FR 14064, 14070 (March 29, 1996). The Department's new approach to tolling is reflected in the recently adopted regulations implementing the Uruguay Round Agreements Act (URAA). *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27411 (May 19, 1997) (§ 351.401(h)). These regulations do not govern the present review because the review was initiated prior to the date the regulations became effective. However, to the extent the regulations reflect the Department's practice, they do provide guidance.

In the case of tolling, the Department revised its practice prior to the date the new regulations were proposed. Although this change was not directly necessitated by the URAA, the Department considers its new approach to tolling a more reasonable interpretation of the statute's intent. This is because, as described in the preamble to the proposed regulations, the party owning the components of the subject merchandise, the general contractor who arranges for the outside processing or assembly, "has ultimate control over how the merchandise is produced and the manner in which it is ultimately sold. The Department will not consider the subcontractor to be the manufacturer or producer, regardless of the proportion of production attributable to the subcontracted operation or the location of the subcontractor or owner of the goods." *Antidumping Duties; Countervailing Duties; Proposed Rule*, 61 FR 7308, 7330 (Feb. 27, 1996) (preamble).

Thus, the Department does not view OBV's sales of its tolling services as sales of the foreign like product within the ordinary course of trade. See 19 U.S.C. § 1677b(a)(1) (1995). Therefore, we have not included OBV's reported sales of its tolling services within the home market data base for comparison purposes or otherwise. Similarly, any profit derived from these sales should not be included in the calculation of constructed value.

Comment 3: Packing Conversion Error

Petitioners note that in calculating OBV's packing costs for sales in the United States, the Department divided by the conversion factor when it should have multiplied by the conversion factor in converting pounds to kilograms. Therefore, the Department should correct this error in its final margin calculation program. OBV did not comment.

Department's Position: The Department agrees with petitioners and has corrected this error in the final program.

Comment 4: U.S. Imputed Credit Expenses

Petitioners allege that OBV incorrectly used a home market interest rate, instead of a U.S. interest rate, to determine imputed credit expenses for U.S. sales. Petitioners argue that this is inconsistent with the Department's practice, for the Department usually calculates imputed credit expenses by using a weighted-average, short-term borrowing rate that reflects the currency in which the sale was invoiced. Therefore, given that OBV's U.S. sales were invoiced in U.S. dollars, the U.S. short-term interest rate should be used to determine imputed credit expenses for OBV's U.S. sales.

Petitioners state that the Department should recalculate OBV's U.S. imputed credit expenses using the publicly available U.S. short-term borrowing rate prevailing during the POR, since OBV's actual short-term borrowing rate in the United States is not available. Petitioners suggest that the Department use 8.52 percent, which is the average U.S. prime rate for third-quarter 1995 through second-quarter 1996, as published by the International Monetary Fund (*See International Financial Statistics* at 645 (April 1997)). OBV did not comment.

Department's Position: The Department agrees with petitioners. Ordinarily, the Department calculates imputed credit expenses using a weighted-average, short-term borrowing rate which reflects the currency in which the sale was invoiced. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309, 30324 (June 14, 1996); *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29557 (June 5, 1995); and *Final Determination of Sales at Less than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 60 FR 10552 (February 27, 1995). The Department has continued to apply OBV's actual Dutch guilders denominated short-term borrowing rates as reported for all home market sales. OBV had no reported short-term borrowing rates for its sales to the United States, all of which were denominated in U.S. dollars. Therefore, consistent with our current practice, the Department has applied 8.47 percent, the average U.S. prime rate for August 1995 through July 1996, as published by the Board of Governors of the Federal Reserve System. *See Federal Reserve Bulletin* at A22 (July 1997).

Comment 5: Cost of Manufacturing

Petitioners note that the Department's cost of production verification report states that OBV discovered errors in its submitted COM while preparing for verification. Petitioners maintain that for the final determination the Department should correct the errors reported by OBV. OBV did not comment on this issue.

Department's Position: The Department agrees with petitioners and has made the required adjustment to COM in the final margin calculation program.

Comment 6: Direct Cost Center Allocation

Petitioners note that in OBV's normal accounting records, it allocates costs for its direct cost centers on the basis of kilograms processed. However, for this review, OBV allocated costs for two of its costs centers on the basis of linear meters processed. Petitioners argue that section 773(f)(1)(A) of the Act requires and the Department's practice is to rely on the respondent's books and records if they reasonably reflect the costs associated with the cost of producing the subject merchandise. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29533, 29559 (June 5, 1995). Petitioners state that the Department obtained information during verification indicating that the allocation methodology used by OBV in its questionnaire response is not consistent with the allocation methods used by OBV in the normal course of business. Therefore, petitioners conclude that the Department should adjust OBV's reported conversion costs to reflect the cost allocation methods used by OBV in the normal course of business.

Respondent states that the Department must reject petitioners' request to adjust OBV's control number specific costs submitted to the Department. According to OBV, the allocation it uses in the normal course of business assigns costs to broad product groups and fails to capture the cost of the product characteristics defined by the Department. Respondent notes that the Department's Section D questionnaire requires that the submitted costs recognize the differences in physical characteristics of the subject merchandise. Respondent maintains that it developed the linear meters processed allocation methodology in order to accurately report product-specific costs to the Department. Respondent contends that allocating costs based on OBV's normal methodology (*i.e.*, on a per kilogram processed basis), as requested by petitioners, results in control numbers being assigned the same average costs. OBV notes that products with different dimensions require vastly differing amounts of processing time, with thin products undergoing more processing than the average product, while thick products undergo less processing. Respondent states that the cost centers allocated based on linear meters processed are primarily responsible for setting the dimension of the products manufactured. Respondent explains that the allocation of these cost center expenses over linear meters processed most accurately recognizes the differences in processing time in a manner that was tied directly to the company's production and financial records.

Department's Position: We agree with OBV that its method of allocating costs based on linear meters processed is reasonable. As a general matter, section 773(f)(1)(A) of the Act provides:

> Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.

Accordingly, the Department adheres to an individual firm's recording of costs, if we are satisfied that the methodology reasonably reflects the costs of producing the subject merchandise, and is in accordance with the generally accepted accounting principles (GAAP) of the producer's home country. *See, e.g., Canned Pineapple Fruit from Thailand; Final Determination of Sales at Less Than Fair Value*, 60 FR 29553, 29559 (June 5, 1995); *Certain Stainless Steel Welded Pipe from the Republic of Korea; Final Determination of Sales at Less Than Fair Value*, 57 FR 53693, 53705 (November 12, 1992); and *Furfuryl Alcohol from South Africa: Final Determination of Sales at Less Than Fair Value*, 60 FR 22550, 22556 (May 8, 1995). Normal accounting practices provide an objective standard by which to measure costs, while allowing respondents a predictable basis on which to compute those costs. The Department will only reject or adjust a party's reported costs based upon its normal accounting practices if those practices result in an unreasonable allocation of production costs. *See, e.g., Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan*, 61 FR 38139, 38154 (May 26, 1992).

At the same time, parties may adapt their normal cost accounting system to report data to the Department on a product-specific basis, provided the reporting methodology used is reasonable. *See Canned Pineapple From Thailand*, 60 FR at 29559–60. In the instant proceeding, OBV developed its linear meters processed allocation methodology in order to report its cost of production and constructed value on a product-specific basis to the Department. At verification, the Department requested and analyzed in detail source documents relating both to OBV's normal cost accounting system and its linear meter allocation methodology as reported. *See* OBV COP/CV Verification Report, dated March 2, 1997, at 20. OBV argued and we confirmed that OBV's normal cost accounting system, which relied upon an average cost for all products, did not account for the cost differences associated with varying dimensions of brass sheet products. These cost differences resulted from processing time differences between different thicknesses and grades of brass sheet. Although we have not necessarily determined that OBV's normal cost accounting system does not reasonably reflect OBV's costs for reporting purposes, we have determined that the linear meters processed allocation methodology captures the cost differences between the varying dimensions of brass sheet products. Accordingly, we have determined that OBV's submitted methodology for allocating costs to specific products is reasonable and we have continued to rely upon this methodology for the final results.

Comment 7: Duty Absorption

Petitioners allege that the Department incorrectly stated in its duty absorption analysis that dumped sales through OBV's affiliate were 1.13 percent of total U.S. sales. Petitioners state that previous Department duty absorption findings indicate the duty absorption finding should represent the percentage volume of sales that are dumped over the total U.S. sales in the POR, rather than the percentage margin of dumping. As such, in its final results of this review, the Department should identify in its duty absorption finding only the percent of OBV's U.S. sales (by quantity) where dumping was found. Respondent did not comment on this issue in its reply brief.

Department's Position: The Department agrees with petitioners that when there are margins for particular sales, in our final duty absorption determination, we will provide the percentage (by volume) of sales that are dumped out of the total U.S. sales during the POR. During this review, however, the Department has determined that there is no dumping margin for OBV on any of its U.S. sales during the POR. Therefore, the final duty absorption finding is negative.

Comment 8: Ministerial Error Allegation Regarding Credit Adjustments

On May 27, 1997, respondent alleged that the Department made a ministerial error in the preliminary margin calculation program regarding certain credit adjustments. The Department added these reported credit adjustments in the calculation of home market discounts and rebates. In doing so, respondent claimed that the Department double-counted these credit adjustments as the home market gross unit price was reported net of these credit adjustments. Accordingly, OBV requested that this error be corrected prior to the issuance of the final results. Petitioners did not comment on this allegation.

Department's Position: Based on respondent's submissions and the Department's verification findings, we agree with OBV that the credit adjustment field should not have been included in the calculation of discounts and rebates. This error has been corrected in the Department's final margin calculation program. The Department did not issue an amended preliminary determination because doing so is not the Department's standard practice and the noted error did not significantly affect the preliminary results.

Final Results of Review

As a result of this review, we have determined that the following margin exists for the period August 1, 1995 through July 31, 1996:

Manufacturer/exporter	Percent margin
Outokumpu Copper Strip B.V. (OBV)	0.00

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of his notice of final results of review for all shipments of the subject merchandise from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for OBV will be the rate as stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash rate will be 16.99 percent, which was the "all others" rate as established in the LTFV investigation. The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR section 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22.

Dated: September 9, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–26044 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Orlando, FL

AGENCY: Minority Business Development Agency; Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is canceling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) program to operate the Orlando MBDC. The solicitation was originally published in the **Federal Register** on Tuesday, December 17, 1996, Vol. 61, No. 243, Page 66261.

(Catalog of Federal Domestic Assistance: 11.800 Minority Business Development Center.)

Dated: September 25, 1997.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 97–26032 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Application: Atlanta, GA

AGENCY: Minority Business Development Agency.

ACTION: Notice

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate its Atlanta, Georgia Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned and controlled by such individuals. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Atlanta, Georgia geographic service area. The award number of the MBDC will be 04–10–98001–01.

DATES: The closing date for applications is *October 31, 1997.* Applications must be received in the MBDA Headquarters' Executive Secretariat on or before *October 31, 1997.* A pre-application conference will be held on *October 15, 1997,* at 9:00 a.m., at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, N.W., Room 1715, Atlanta, Georgia 30308–3516.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Robert Henderson, Regional Director, at (404) 730–3300. Proper identification is required for entrance into any Federal building.

SUPPLEMENTARY INFORMATION: Under the program guidelines, the Department of Commerce will fund up to 60% of the total cost of operating an MBDC on an annual basis. The MBDC operator is required to contribute at least 40% of the total project cost (the "cost-share requirement"). Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from February 1, 1998 to February 28, 1999, is estimated at $283,156. The total Federal amount is $283,156 and is composed of $276,250 plus the Audit Fee amount of $6,906. The application must include a minimum cost share of 40%, $188,771 in non-federal (cost-sharing) contributions for a total project cost of $471,927. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof. In addition to the traditional sources of an MBDC's cost-share contribution, the 40% may be contributed by local, state and private sector organizations. It is anticipated that some organizations may apply jointly for an award to operate the center.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). The scoring system will be revised to add ten (10) bonus points to the application of community-based organizations. Each qualifying application will receive the full ten points. Community-based applicant organizations are those organizations whose headquarters and/or principal place of business within the last five years have been located within the geographic service area designated in the solicitation for the award. An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 40% of the total project cost through non-federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 26.605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Pub. L. 103–121, Sections 606 (a) and (b).

(Catalog of Federal Domestic Assistance: 11.800 Minority Business Development Center)

Dated: September 25, 1997.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 97–26034 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Chicago I, Nassau/Suffolk, Orange County, and Las Vegas

AGENCY: Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is canceling the announcements to solicit competitive applications under its Minority Business Development Center (MBDC) program to operate the Chicago I, Nassau/Suffolk, Orange County and Las Vegas MBDCs. The solicitations were originally published in the **Federal Register** on Tuesday, May 27, 1997, Vol. 62, No. 101, Pages 28673, 28674, 28675 and 28676.

(Catalog of Federal Domestic Assistance: 11.800 Minority Business Development Center)

Dated: September 25, 1997.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 97–26033 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Native American Business Consultant Applications: Nationwide

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Native American Business Consultant (NABC) Program.

The purpose of the NABC is to provide specialized consultant services to Native American Business Development Centers (NABDC) in areas beyond an NABDC's capacity and/or capability, and provide direct business development services to clients outside of the geographic service area of the NABDC and any other MBDA client service center. The recipient will provide service nationwide. The award number of the NABC will be 98–10–98001–01.

DATES: The closing date for applications is October 31, 1997. Applications must be received on or before October 31, 1997. Anticipated processing time of this award is 120 days. A pre-award conference will be held. For the exact date, time and location of the conference, call (202) 482–2366.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Office of Strategic Planning, Field Coordination Division, 14th and Constitution Avenue, NW., Room 5075, Washington, DC 20230, (202) 482–6022.

FOR FURTHER INFORMATION CONTACT: Joe Hardy at (202) 482–2366.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from February 1, 1998 to February 28, 1999, is estimated at $205,000. The total Federal amount is composed of $200,000 plus the Audit Fee amount of $5,000. The NABC will provide service nationwide.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (50 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the funding.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. If an application is selected for funding, MBDA has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of MBDA.

Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Activities—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Recipients and subrecipients are subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicants' management honesty or financial integrity.

Award Tetmination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or impart at any time before the date of completion , whenever it is determined that the award recipient has failed to comply with the conditions of the cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the NABC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511,"Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurment Debarment and Suspension"and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352,"Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying"and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipient sand should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Indirect Costs—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100% of the total proposed direct costs dollar amount in the application, whichever is less.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-Made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution in Pub.L. 103–121, Section 606 (a) and (b).

(Catalog of Federal Domestic Assistance: 11.801 Native American Program)

Dated: September 25, 1997.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 97–26035 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–21–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Native American Business Development Center Application: Cherokee

AGENCY: Minority Business Development Agency; Commerce.

ACTION: Notice

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate its Native American Business Development Center (NABDC).

The purpose of the NABDC is to provide integrated business development services to Native American entrepreneurs and other eligible clients within its designated geographic service area. The recipient will provide service in the Cherokee, North Carolina, geographic service area. The award number of the NABDC will be 04–10–98002–01.

DATES: The closing date for applications is October 31, 1997. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before October 31, 1997. A pre-application conference will be held on October 15, 1997, at 9:00 a.m., at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, N.W., Room 1715, Atlanta, Georgia 30308–3516.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., ROOM 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Robert Henderson, Regional Director, at (404) 730–3300. Proper Identification is Required for Entrance Into Any Federal Building.

SUPPLEMENTARY INFORMATION: The funding instrument for this project will be a cooperative agreement. Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from February 1, 1998 to February 28, 1999, is estimated at $197,825. The total Federal amount is $197,825 and is composed of $193,000 plus the Audit Fee amount of $4,825. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). On May 31, 1995, MBDA issued an Interim Final Notice in the **Federal Register** which announced the Agency's decision to revise application requirements for its closely related Minority Business Development Center program. This decision was made in order to leverage Federal resources together with those existing in communities, and to build local capacity to impact growth in the nation's minority business sector. In accordance with revised scoring requirements announced in that Notice, MBDA will revise the scoring system in the NABDC program to add ten (10) bonus points to the application of community-based organizations. Each qualifying application will receive the full ten points. Community-based organizations are those organizations whose headquarters and/or principal place of business within the last five years have been located within the geographic service area designated in the solicitation for the award. Where an applicant organization has been in existence for fewer than five years or five years, the individual years of experience of the applicant organization's may be applied toward the requirement of five years of

organization experience. The individual years of experience must have been acquired in the geographic service area which is the subject of the solicitation.

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted in determining if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the NABDC's performance, the availability of funds and Agency priorities. Anticipated processing time of this award is 120 days.

Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the NABDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, Section 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, Section 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

(Catalog of Federal Domestic Assistance): 11.801 Native American Program:)

Dated: September 25, 1997.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 97–26036 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Native American Business Development Center Application: Northwest

AGENCY: Minority Business Development Agency

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate its Native American Business Development Center (NABDC).

The purpose of the NABDC is to provide integrated business development services to Native American entrepreneurs and other eligible clients within its designated geographic service area. The recipient will provide service in the States of Washington, Oregon and Idaho geographic service areas. The award number of the NABDC will be 10–10–98001–01.

DATES: The closing date for applications is *November 28, 1997.* Applications must be received in the MBDA Headquarters' Executive Secretariat on or before *November 28, 1997.* A pre-application conference will be held. For the exact date, time and location of the conference, call (415) 744–3001.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th And Constitution Avenue NW., Room 5073, Washington, DC. 20230.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Melda Cabrera, Regional Director, at (415) 744–3001. Proper Identification Is Required For Entrance Into Any Federal Building.

SUPPLEMENTARY INFORMATION: The funding instrument for this project will be a cooperative agreement. Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from March 1, 1998 to March 31, 1999, is estimated at $205,000. The total Federal amount is $205,000 and is composed of $200,000 plus the Audit Fee amount of $5,000. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). On May 31, 1995, MBDA issued an Interim Final Notice in the **Federal Register** which announced the Agency's decision to revise application requirements for its closely related Minority Business Development Center program. This decision was made in order to leverage Federal resources together with those existing in communities, and to build local capacity to impact growth in the nation's minority business sector. In accordance with revised scoring requirements announced in that Notice, MBDA will revise the scoring system in the NABDC program to add ten (10) bonus points to the application of community-based organizations. Each qualifying application will receive the full ten points. Community-based organizations are those organizations whose headquarters and/or principal place of business within the last five years have been located within the geographic service area designated in the solicitation for the award. Where an applicant organization has been in existence for fewer than five years or five years, the individual years of experience of the applicant organization's may be applied toward the requirement of five years of organization experience. The individual years of experience must have been acquired in the geographic service area which is the subject of the solicitation.

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted in determining if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the NABDC's performance, the availability of funds and Agency priorities. Anticipated processing time of this award is 120 days.

Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply

with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the NABDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

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Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

(Catalog of Federal Domestic Assistance: 11.801 Native American Program)

Dated: September 25, 1997.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 97–26037 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092297A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1076).

SUMMARY: Notice is hereby given that the California Department of Fish and Game in Sacramento, CA (CDFG) has applied in due form for a permit that would authorize takes of a threatened species for scientific research.

DATES: Written comments or requests for a public hearing on the application must be received on or before October 31, 1997.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707 575–6066).

Written comments or requests for a public hearing should be submitted to the Protected Species Division in Santa Rosa, CA.

SUPPLEMENTARY INFORMATION: CDFG requests a five-year permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227), for takes of juvenile, threatened, southern Oregon/northern California coast coho salmon (*Oncorhynchus kisutch*) associated with fishery studies in drainages throughout the Evolutionarily Significant Unit. Eight CDFG workplans are defined in this application for distribution and abundance surveys. ESA-listed juvenile fish are proposed to be captured by electrofishing, anesthetized, handled (weighed, measured, sampled for tissues and/or scales, and fin-clipped), allowed to recover from the anesthetic, and released. ESA-listed juvenile fish indirect mortalities associated with the research are also requested.

Those individuals requesting a hearing on this request for a permit should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: September 24, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–25980 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Central Contractor Registration; OMB Number 0704—[To Be Determined].

Type of Request: Existing Collection In Use Without OMB Approval.

Number of Respondents: 300,000.

Responses per Respondent: 1.

Annual Responses: 300,000.

Average Burden per Response: 1 hour.

Annual Burden Hours: 300,000.

Needs and Uses: The information collection requirement provides for a single fact to industry through a single point of entry for contractors wishing to do business with the Department of Defense. This central registry will be used to provide contractor financial and business information to automated systems used by the contracting and business communities. Respondents are contractors who currently are required to submit a completed "Solicitation Mailing List Application" form (SF 129) to each buying activity with which they wish to do business. In addition, a significant percentage of this data is required in solicitation responses as certification and representation of the contractor's size and status. Each completed form is entered into a local data base and the hard copy SF 129 is manually filed. The current redundant manual process is labor intensive, resulting in a high error rate and inconsistent data. A central registration system eliminates the redundancy of the government's information, as well as the duplication of effort on the part of the contractor. Registration is available via the World Wide Web (http://www.acq.osd.mil/ec) and through DoD certified Value Added Networks (VANs). Contractors who do not have access to the WWW can contact their regional Electronic Commerce Resource Center or Procurement Technical Assistance Center for assistance.

Affected Public: Business or Other For-Profit, Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing. WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 24, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–25941 Filed 9–30–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability of Record of Decision (ROD) for the Program Definition and Risk Reduction Phase of the Airborne Laser Program (PDRR ABL)

On September 16, 1997, the Air Force signed the ROD for the Program Definition and Risk Reduction Phase of the Airborne Laser Program (PDRR ABL). The decisions included in the ROD were made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) filed with the Environmental Protection Agency on June 13, 1997.

The decision rendered by the US Air Force is that the USAF will proceed with PDRR ABL Phase test activities at the following locations:

Home Base activities, including weapon system integration, ground tests and initial aircraft flight tests, will take place at Edwards Air Force Base, California.

Diagnostic test activities for initial short-range PDRR ABL equipment tests with non-destructive low-and high-power laser operations will take place over White Sands Missile Range, New Mexico.

Expanded-area test activities for long-range PDRR ABL equipment checks with low-and high-power laser operations and firing of the high-energy laser will take place over the Western Range (Vandenberg Air Force Base and Point Mugu Naval Air Warfare Center, California). Target missiles will be destroyed during this test phase.

The implementation of the PDRR ABL Phase test activities will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment.

Any questions regarding this matter should be directed to: Major Heidi Brothers (505) 846–7675. Correspondence should be sent to: SMC/TM Airborne Laser System Program Office, 1351 Wyoming Blvd. SE Bldg. 20201, Kirtland Air Force Base, NM 87117–5557.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–25957 Filed 9–30–97; 8:45 am]

BILLING CODE 3901–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following: RTD/KO(CA)–6 for the transfer of fuel assemblies consisting of 100,000 grams of enriched uranium containing 19,900 grams of the isotope U–235 (less than 20 percent enrichment) from Canada to Republic of Korea for use as additional fueling for the HANARO research reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: September 25, 1997.

For the Department of Energy.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–26004 Filed 9–30–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Solicitation for Financial Assistance

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of solicitation for financial assistance: DE-PS07–98ID13589—Geothermal Reservoir Technology Research, Development and Demonstration.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID), under the authority of the

Geothermal Energy Research, Development and Demonstration Act of 1974 (Pub. L. 93–410), is seeking applications for research, development and demonstration (field testing) in the area of Geothermal Reservoir Technology. The research is to be directed toward the domestic use and development of new technologies for exploration, identification of fractures, location of fracture permeability, and reservoir engineering and chemistry. Proposals involving work in foreign countries will not be considered. This solicitation will remain open for two years. Federal funds available for this solicitation are expected to be from $0–$5,000,000 annually. DOE anticipates making several grant/cooperative agreement awards for projects with durations of five years or less.

FOR FURTHER INFORMATION CONTACT: Carol Bruns, Contract Specialist, Procurement Services Division; U.S. Department of Energy; Idaho Operations Office; 850 Energy Drive, MS 1221, Idaho Falls, ID 83401–1563; telephone (208) 526–1534, facsimile (208) 526–5548, e-mail brunscl@inel.gov. The Contracting Officer is Brad Bauer, (208) 526–0090.

SUPPLEMENTARY INFORMATION: The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.087, Renewable Energy Research & Development. The solicitation text is expected to be posted on the DOE–ID Procurement Services Division home page on or about October 1, 1997, and may be accessed using Universal Resource Locator address http://www.inel.gov/doeid/solicit.html. Application package forms will not be included on the home page and should be requested from the contract specialist. Requests for application packages must be in writing and shall include: company name, mailing address, point of contact, telephone number, and fax number.

Issued in Idaho Falls, Idaho, on September 24, 1997.

Dated: September 24, 1997.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 97–26003 Filed 9–30–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–363–009]

El Paso Natural Gas Company; Notice of Report of Rate Refunds

September 25, 1997.

Take notice that on September 22, 1997, El Paso Natural Gas Company (El Paso) tendered for filing its Report of Rate Refunds at Docket No. RP95–363–000, *et al.*

El Paso states that the Report of Rate Refunds reflects refunds that were distributed to eligible shippers on August 22, 1997.

El Paso states that the refunds totaled $194,003,358.09 inclusive of interest. El Paso states that it also sent invoices to 11 shippers totaling $24,511.28 for additional amounts due under the Settlement.

El Paso states that copies of the document were served upon all interstate pipeline system customers who received a refund distribution and affected state regulatory commissions in accordance with the requirements of Section 385.2010 of the Commission's Rules of Practice and Procedure. El Paso states that each customer received its pertinent detail (included in Volume No. 2) when refunds were distributed. El Paso states that it was not furnishing the complete Volume No. 2 to all customers, since it may contain information that is commercially sensitive to those customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25963 Filed 9–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket Nos. RP97–346–006 and RP93–187–014]

Federal Energy Regulatory Commission

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

September 25, 1997.

Take notice that on September 19, 1997, Equitrans, L.P. ("Equitrans") tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets:

First Revised Eighth Revised Sheet No. 5
First Revised Eighth Revised Sheet No. 6
First Revised Eighth Revised Sheet No. 7
First Revised Eighth Revised Sheet No. 8
First Revised Eighth Revised Sheet No. 10

Equitrans proposes an effective date of August 1, 1997 for these tariff sheets.

Second Sub Fifth Revised Sheet No. 7
Second Sub Fifth Revised Sheet No. 7A
Substitute First Revised Sheet No. 255
Substitute First Revised Sheet No. 256

Equitrans proposes an effective date of September 1, 1997 for these tariff sheets.

Equitrans states that these revised tariff sheets are submitted in compliance with the Commission's September 10, 1997 Order Accepting Primary Tariff Sheets Subject to Conditions and Rejecting Alternative Tariff Sheets for the purpose of: (1) filing revised tariff sheets that comply with the prior rate settlement in Docket No. RP93–187, *et al.* to be effective August 1, 1997 establishing rates for all services which reflect the elimination of gathering costs from transportation rates and establishment of separate gathering and transportation retainage levels; and (2) filing revised tariff sheets to be effective September 1, 1997 eliminating the stranded gathering surcharge from the rates charged for Equitrans open access and individually certificated storage services.

Copies of this rate filing were served on the parties to this proceeding, as well as Equitrans' jurisdictional customers and interested state commissions, and a copy of the rate filing has been posted and is available for inspection at Equitrans' corporate headquarters during regular business hours.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20046, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining appropriate action, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25964 Filed 9–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–764–000]

KN Interstate Gas Transmission Company; Notice of Request Under Blanket Authorization

September 25, 1997.

Take notice that on September 19, 1997, KN Interstate Gas Transmission Company (KNI), P.O. Box 281304, Lakewood, Colorado, 80228, filed in Docket No. CP97–764–000 a request pursuant to Sections 157.205, 157.212, and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for approval to relocate a delivery point located in the state of Nebraska, to accommodate natural gas deliveries to a town distribution system operated by K N Energy, Inc., under KNI's blanket certificate authority issued in Docket No. CP89–1043–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

KNI specifically proposes to install and operate new delivery facilities for the town of Broken Bow, Nebraska. KNI further proposes to abandon the existing delivery facilities upon completion of the new town border facilities. KNI estimates that the cost to construct the new facilities is $75,000 and that the cost to abandon the existing facilities is $2000. KNI asserts that new town border station proposed herein will have a maximum daily design capacity of 5,700 Mcf and that the instant proposal will have no adverse impact on KNI'S system operations on either a peak day or annual basis. Additionally, KNI asserts that no customer of KNE will have its service diminished as a result of the proposal set forth herein.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25960 Filed 9–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–763–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

September 25, 1997.

Take notice that on September 19, 1997, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP97–763–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon a 1-inch tap and meter station used to serve Venture Oil Company (Venture) located in Jasper County, Mississippi. Koch Gateway makes such request under its blanket certificate issued in Docket No. CP82–430 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that the tap is located entirely within Koch Gateway's existing right-of-way. Koch Gateway proposes to plug the tap and to remove all associated above ground facilities.

Koch Gateway indicates that the facilities were installed sometime in 1952, at an estimated cost of somewhere between $200–$400,[1] to provide interruptible transportation service of up to 1,000 Mcf per day. However, Koch Gateway was able to cite a Commission order, where Koch Gateway was granted authority to provide transportation service to this delivery tap in conjunction with direct sales service to Exxon Co. U.S.A., Inc.[2] Since then, Tenneco Oil Company and then Venture acquired the Exxon facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25959 Filed 9–30–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Koch Gateway states that after a diligent search of its records, it was unable to report the complete certificate history of the tap, or locate the accounting entry for the installation of the tap.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–767–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

September 25, 1997.

Take notice that on September 23, 1997, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, filed a request with the Commission in Docket No. CP97–767–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install two hot taps, metering and appurtenant facilities for delivery of natural gas to Getty Gas Gathering Company (Getty) in Marion County, Kansas authorized in blanket certificate issued in Docket No. CP83–83–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

[2] Koch Gateway Pipeline Company, 41 FERC ¶61,306 (1987) in Docket No. CP87–432–000.

Panhandle proposes to construct and operate metering and appurtenant facilities, in order to deliver up to 20 MMcf per day of natural gas to Getty to be redelivered to Getty's Texaco refinery in Butler County, Kansas. The estimated cost of constructing the proposed facilities is approximately $519,000.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25961 Filed 9–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–359–003]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

September 25, 1997.

Take notice that on September 22, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to become effective September 23, 1997.

Substitute Original Sheet No. 456A
Substitute Original Sheet No. 456B

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's order issued September 11, 1996, in Docket Nos. RP97–359–001 and RP97–359–002, which required two further modifications to pro forma tariff sheets previously filed on June 13, 1997 and required that the pro forma tariff sheets be refiled as actual tariff sheets.

Texas Eastern states that the above listed tariff sheets contain provisions which provide the two required modifications to pro forma tariff sheets previously filed on June 13, 1997 and that the pro forma tariff sheets are herewith refiled as actual tariff sheets as required by the September 11, 1997 order.

Texas Eastern states that copies of the filing were served on all firm customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25965 Filed 9–30–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

September 25, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment of License.

b. Project No.: 9985–024.

c. Date filed: May 22, 1997.

d. Applicant: Rivers Electric Company, Inc.

e. Name of Project: Mill Pond.

f. Location: On Catskill Creek, in Greene County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Robert E. King, Rivers Electric Company, Inc., 25 Cliff Street, Arlington, MA 02174, (617) 648–0432.

i. FERC Contact: Michael Spencer, (202) 219–2846.

j. Comment Date: November 10, 1997.

k. Description of Amendment: The amendment of license would consist of: (1) Increasing the elevation of the dam crest by one foot, and (2) replacing the 2-foot-high flashboards with 3-foot-high automated crest gates. The purpose of the amendment is to increase the head from 24 feet to 26 feet. The licensee states that the project currently operates below its authorized capacity and the increase in head would bring the capacity closer to the authorized 1,050 kW. The reservoir would increase from 2.5 to 3.0 acres.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Inervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene is accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–25962 Filed 9–30–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00225; FRL–5748–3]

Notice of Availability of Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Pollution Prevention Grants.

SUMMARY: EPA expects to have approximately $5 million available in fiscal year 1998 grant/cooperative agreement funds under the Pollution Prevention Incentives for States (PPIS) grant program. The grant dollars are targeted at State and Tribal programs that address the reduction or elimination of pollution across all environmental media: air, land, and water. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional Pollution Prevention Coordinator. Contact names for each Regional Office are listed under Unit VII. of this document.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of this document and the Guidance document are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/ fedrgstr/).

Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 3055 for a copy of the 1998 Guidance document.

I. Background

Approximately $50 million has been awarded to more than 100 State and Tribal organizations under EPA's multimedia pollution prevention grant program, since its inception in 1989.

In November 1990, the Pollution Prevention Act of 1990 (the Act) (Pub. L. 101–508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 6603 of the Act defines source reduction as any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pollution prevention as the use of other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources, or protection of natural resources by conservation.

Section 6605 of the Act authorizes EPA to make matching grants to States to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed State program will:

(1) Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice and to assist in the development of source reduction plans.

(2) Target assistance to businesses for which lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques.

In addition to this grant making authority, the Act authorized EPA to establish a national source reduction clearinghouse and expanded EPA's authorities to collect data to better track source reduction activities. The Act also requires EPA to report periodically to Congress on EPA progress in implementing the Act.

II. Availability of FY 98 Funds

EPA expects to have approximately $5 million in grant/cooperative agreement funds available for FY 1998 Pollution Prevention activities. The Agency has delegated grant making authority to the EPA Regional offices. Regional offices are responsible for the solicitation of interest, the screening of proposals, and the actual selection of awards. PPIS grant guidance will be provided to all applicants along with any supplementary information the Regions may wish to provide.

All applicants must address the national program criteria listed under Unit V.2. of this document. In addition, applicants may be required to meet supplemental Regional criteria. Interested applicants should contact their Regional Pollution Prevention Coordinator for more information (see Unit VII. of this document for the listing of Regional Pollution Prevention contacts).

III. Catalogue of Federal Domestic Assistance

The number assigned to the PPIS program in the Catalogue of Federal Domestic Assistance is 66.708 (formerly 66.900).

IV. Matching Requirements

Organizations receiving pollution prevention grant funds are required to match Federal funds by at least 50 percent. For example, the Federal government will provide half of the total allowable cost of the project, and the State will provide the other half. A grant request for $100,000 would support a total allowable project cost of $200,000, with the State also providing $100,000. State contributions may include dollars, in-kind goods and services, and/or third party contributions.

V. Eligibility

1. *Applicants.* In accordance with the Act, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities, and all Federally recognized Native American tribes. For convenience, the term "State" in this notice refers to all eligible applicants. Local governments, private universities, private nonprofit entities, private businesses, and individuals are not eligible. The organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. EPA strongly encourages this type of cooperative arrangement.

2. *Activities and criteria*—a. *General.* The purpose of the PPIS grant program is to support the establishment and expansion of State and Tribal multimedia pollution prevention programs. EPA specifically seeks to build State pollution prevention capabilities or to test, at the State level, innovative pollution prevention approaches and methodologies. Funds awarded under the PPIS grant program must be used to support pollution prevention programs that address the transfer and reduction of potentially harmful pollutants across all environmental media: air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts State-wide.

b. *1998 National Criteria.* There are a growing number of business assistance

organizations established within States interacting with businesses in an increasing number of areas, including environmental concerns. Consequently, as a means to provide substantive support of pollution prevention, EPA is eager to ensure that the PPIS grants will add to the success and sustainability of State environmental assistance providers and contribute to the development of a cooperative network of coordinated business assistance providers. Through the PPIS grant funds, EPA seeks to leverage the expertise of the various environmental assistance organizations to work jointly with business assistance organizations in an effort to provide seamless assistance to industry. To this end, applicants must provide documentation showing they have entered into a partnership agreement with at least one environmental and/or business assistance provider in their State.

EPA also believes it is important for the sustainability of State pollution prevention programs to complement the goals and strategies of the State Performance Partnership Agreements (PPAs), and Performance Partnership Grants (PPGs) under the National Environmental Performance Partnership System (NEPPS) or for those States not participating in the PPAs and PPGs, to show that the pollution prevention work they are undertaking complements and supports the State's environmental strategic plans. EPA encourages all applicants to develop proposals focused on priority industrial sectors, geographic areas, and/or State and Federal Reinvention activities (if applicable). Where the State environmental programs may lack a single comprehensive environmental strategy, PPIS applications must show a correlation between the proposed activity and the environmental goals, or objectives of the State environmental program. The application must demonstrate how the proposed pollution prevention activities will advance State environmental goals as stated in either PPAs, PPGs, or other State environmental strategic planning documents. Applicants submitting proposals that do not show a correlation between the environmental goals of the State and the proposed pollution prevention activity will not be considered eligible for funding.

EPA, through the PPIS grants, is also working to encourage better awareness by the state regulatory and media programs of how pollution prevention and the State pollution prevention programs are helping the regulatory programs address their ever growing and increasingly complex environmental management problems. To address this, applications must include activities the pollution prevention program will undertake to ensure communication and feedback to the regulatory programs showing how pollution prevention is helping to advance multimedia environmental protection.

Based on the above, proposals that do not address these three criteria will not be eligible for funding. In summary, in the narrative of the grant application, the following three requirements must be clearly addressed:

(1) Identify the partnering organization(s) and demonstrate or document the relationship. This can be done, for example, through a letter of agreement, a joint statement, or principles of agreement signed by both parties or multiple parties.

(2) Describe how the activities proposed in the grant will support the State's PPA, PPG under NEPPS, or where the State is not participating in the PPA - PPG process, show how the proposal complements the goals and objectives laid out in State strategic planning documents. Applications must show a correlation between the proposed activity and the environmental goals or objectives of the State environmental program if the State environmental program lacks a single comprehensive environmental strategy. Proposals must include copies of language from PPAs, PPGs, or other strategic planning documents and show directly how P2 will be used to support those goals and objectives.

(3) Describe the outreach and communication strategies that will be undertaken to ensure that the State's regulatory and environmental programs are made aware of the pollution prevention activities in their State and how those activities are addressing multimedia environmental management problems. For example, a work plan might incorporate identifiable activities which supply relevant source reduction information to the affected regulatory program.

Applicants should consult the PPIS program guidance for more detailed information on the 1998 goals and criteria.

Proposals accepted for review under this program must qualify as pollution prevention as defined by EPA.

3. *Program management.* Awards for FY 1998 funds will be managed through the EPA Regional Offices. Applicants should contact their EPA Regional Pollution Prevention Coordinator to obtain specific deadlines for submitting proposals. National funding decisions will be made by April 1998.

4. *Contacts.* Interested applicants are requested to contact the appropriate EPA Regional Pollution Prevention Coordinator listed under Unit VI. of this document to obtain specific instructions and guidance for submitting proposals.

VI. State Single Point of Contact

This program is eligible for review under Executive Order 12372. States must notify the following office in writing within 30 days of this publication whether their State's official E.O. 12372 process will review applications in this program: Policy, Information and Training Branch, Grants Administration Division (3903R), U.S. EPA, 401 M St., SW., Washington, DC 20460, Attention: Carol H. Hoffman.

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if the program is subject to the State's official E.O. 12372 review process and what material must be submitted to the SPOC for review. Please note that federally recognized tribal organizations are not required to comply with this procedure.

VII. Regional Pollution Prevention Contacts

Region 1: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Mark Mahoney, JFK Federal Bldg/SPN, Boston, MA 02203, Telephone: (617) 565–1155.

Region II: (New Jersey, New York, Puerto Rico, Virgin Islands), Janet Sapadin, (2-OPM-PPI), 290 Broadway, 25th Floor, New York, NY 10007, Telephone: (212) 637–3584.

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), Jeff Burke, (3EP10), 841 Chestnut Bldg., Philadelphia, PA 19107, Telephone: (215) 566–2761.

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Bernie Hayes, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303, Telephone: (404) 562–9430.

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Phil Kaplan, (DRP-8J), 77 West Jackson Blvd., Chicago, IL 60604, Telephone: (312) 353–4669.

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Eli Martinez, (6EN-XP), 1445 Ross Ave., 12th Floor, Suite 1200, Dallas, TX 75202, Telephone: (214) 665–2119.

Region VII: (Iowa, Kansas, Missouri, Nebraska), Marc Matthews, (ARTD/TSPP), 726 Minnesota Ave., Kansas City, KS 66101, Telephone: (913) 551–7517.

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Linda Walters, (8P2-P2), 999 18th St., Suite 500, Denver, CO 80202, Telephone: (303) 312–6385.

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, Guam) (WST-1-1), Bill Wilson, 75 Hawthorne Ave., San Francisco, CA 94105, Telephone: (415) 744–2192.

EPA Region X: (Alaska, Idaho, Oregon, Washington), Carolyn Gangmark, 1200 Sixth Ave., Seattle, WA 98101, Telephone: (206) 553–4072.

Dated: September 23, 1997.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–26014 Filed 9–30–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00502; FRL–5742–1]

Proposed Pesticide Amendment Reinvention Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is soliciting comments on a proposed revised policies and procedures concerning certain types of registration amendments. The proposal is available in a draft Pesticide Registration (PR) Notice entitled "Notifications, Non-notifications and Minor Formulation Amendments" which is available upon request. Interested parties may request a copy of the Agency's proposed policy as set forth in the ADDRESSES unit of this notice.

DATES: Written comments, identified by the docket number "OPP–00502," must be received on or before December 1, 1997.

ADDRESSES: Submit written comments identified by the docket control number OPP–00502 by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Rm. 1132 of Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PR Notice is available by contacting the person whose name appears under FOR FURTHER INFORMATION CONTACT.

Comments and data may also be submitted electronically by following the instructions under Unit V. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Kempter (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 713E, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5448, e-mail: kempter.carlton@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of this document and the PR Notice are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under "Regulations" (http://www.epa.gov/fedrgstr/).

Fax on Demand

Using a faxphone call 202–401–0527 and select item 6102 for a copy of the PR notice.

This **Federal Register** notice announces the availability of the draft PR Notice and solicits comment on the proposed policy. If, after reviewing any comments, EPA determines that changes to the Notice are warranted, the Agency will revise the draft PR Notice prior to release.

I. Purpose

The purpose of the proposed PR Notice is to reinvent the registration process by expanding the types of minor amendments which may be accomplished by notification, non-notification, or minor formula changes. The proposed PR Notice will supersede the document now in effect, PR Notice 95-2 (May 31, 1995). The goal of this notice is to increase the efficiency and timeliness of the registration amendment process so as to reduce regulatory burdens while maintaining protection to human health and the environment.

II. Applicability

The proposed PR Notice will apply to all applicants seeking minor registration amendments which meet the criteria in the notice.

III. Contents of the PR Notice

The proposed PR Notice simply expands the current PR Notice 95-2 to include more kinds of minor labeling amendments which may be accomplished by notification or non-notification. In addition, the proposed notice revises the process for submission and review of notifications to reflect the new requirements of the Food Quality Protection Act of 1996.

IV. Submission of Confidential Business Information

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

V. Public Record

A record has been established for this action under docket number "OPP–00502" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: September 22, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–26016 Filed 9–30–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66245; FRL 5743–3]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by March 30, 1998, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 35 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100–00645	Bicep Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
		2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100–00731	Bicep Lite Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
		2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000352–00370	Du Pont Lannate L Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–81–0007	Dupont Lannate SP Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
		S-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
		S-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–85–0052	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 DE–80–0009	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–78–0037	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000861–00072	Wintergreen Mint-Odor Germicide	Potassium 2-benzyl-4-chlorophenate
001057–00061	Mintol-128 Fragrant Mint Disinfectant	2-Benzyl-4-chlorophenol
		4-tert-Amylphenol
		o-Phenylphenol
001270–00085	Zep 50% Malathion Emulsifiable Concentrate	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate
003125–00339	Prylon 6 Insecticide	1-Methylethyl 2-((ethoxy((1-methylethyl)amino)phosphinothioyl)oxy)benzoate
003125–00442	Laser Flea Killer	*N*-Octyl bicycloheptene dicarboximide
		O,O-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		Cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-
003125 CA–80–0186	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–83–0064	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–84–0218	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–87–0014	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–88–0020	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–88–0021	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–81–0009	Monitor 4	*O,S*-Dimethyl phosphoramidothioate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
003125 FL–81–0012	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–81–0033	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–81–0034	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–92–0012	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–96–0013	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003635–00268	Fba-1 Mildew Fungistatic Film	2-Benzyl-4-chlorophenol
005747–00007	Concentrated Arolect Pine Odor Disinfectant	2-Benzyl-4-chlorophenol
		Pine oil
005747–00014	ARO Mint Disinfectant	2-Benzyl-4-chlorophenol
008220–00058	X-O-Trol Flea and Tick Household Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
008220–00059	X-O-Trol Flea & Tick Fogger	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
008220–00060	X-O-Trol Flea and Tick Spray for Dogs	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
008220–00062	X-O-Trol Flea & Tick Fogger	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
010370–00308	Blanco Non Selective Weed Killer Concentrate	5-Bromo-3-sec-butyl-6-methyluracil
010404–00064	Turfic Trichlorfon 6.2% Insecticide Granules	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
030942–00004	Algacide 701	Potassium *N*-methyldithiocarbamate
		Disodium cyanodithioimidocarbonate
056473–00003	Amersperse 280	Disodium ethylenebis(dithiocarbamate)
		Sodium dimethyldithiocarbamate

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000861	Uncle Sam Chemical Co., Inc., 575 W. 131st St., New York, NY 10027.
001057	C.B. Dolge Co., Rochester Midland, 333 Hollenbeck Street, Box 1515, Rochester, NY 14603.
001270	ZEP Mfg. Co., Box 2015, Atlanta, GA 30301.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
003635	Dubois Chemicals, Agent For: Dubois Chemicals, 3630 E. Kemper Rd., Sharonville, OH 45241.
005747	Arrow Chemical Products Inc., 2067 St. Anne St., Detroit, MI 48216.
008220	Carter-Wallace, Inc., Lambert Kay Division, Box 1418, Cranbury, NJ 08512.
010370	AgrEvo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
010404	Lesco Inc., 20005 Lake Rd., Rocky River, OH 44116.
030942	Scientific Boiler Water Conditioning Co., 1 Maple Ave, Linden, NJ 07036.
056473	Ashland Chemical Co., Drew Ameroid Marine Division, One Drew Plaza, Boonton, NJ 07005.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before March 30, 1998. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: September 16, 1997.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 97–26017 Filed 9–30–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–571]

Notice of Telecommunications Relay Services (TRS) Applications for State Certification Accepted

Released: September 22, 1997.

Notice is hereby given that the states listed below have applied to the Commission for State Telecommunications Relay Service (TRS) Certification. Current state certifications expire July 25, 1998. Applications for certification, covering the five year period of July 26, 1998 to July 25, 2003, must demonstrate that the state TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. § 225. These rules are codified at 47 CFR §§ 64.601–605.

Copies of applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM. Interested persons may file comments with respect to those applications on or before November 7, 1997. Comments should reference the relevant state file number of the state application that is being commented upon. One original and five copies of all comments must be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

Applicants for State Certification

File No: TRS–97–01,
Applicant: Florida Public Service Commission, State of Florida
File No: TRS–97–02,
Applicant: Hawaii Public Utilities Commission, State of Hawaii

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–25789 Filed 9–30–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget a request for OMB review and approval of the information collection system described below.

Type of Review: Revision of currently approved collection.

Title: Independent Audits and Reporting Requirements.

Form Number: None.

OMB Number: 3064–0113.

Annual Burden: Number of Respondents: 420. Number of Responses per Respondent: 3. Total Annual Responses: 1,260. Hours per Response: 32. Total Annual Burden Hours: 40,320.

Expiration Date of OMB Clearance: September 30, 1998.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before October 31, 1997 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Section 36 of the Federal Deposit Insurance Act (12 U.S.C. 1831m) ("FDI Act") imposes auditing and reporting requirements on insured depository institutions which are implemented by the FDIC's 12 CFR part 363. Pursuant to part 363, an insured depository institution which has total assets of $500 million or more: files an annual report including audited financial statements, management's statement of its responsibilities and assessment of its internal control structure and its compliance with designated safety and soundness laws and regulations, and an auditor's attestation regarding management's assessments; and, notifies the FDIC when it selects or changes its independent public accountant. The FDIC proposes to revise the collection by deleting Schedule A "Agreed Upon Procedures for Determining Compliance with Designated Laws," from Appendix A of part 363. This revision will conform the collection to the deletion of Section 36(e) of the FDI Act by Section 2301 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

Dated: September 25, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–25949 Filed 9–30–97; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1188–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1188–DR), dated September 17, 1997, and related determinations.

EFFECTIVE DATE: September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 17, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe thunderstorms and flash flooding on August 16–17, 1997, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Lawrence L. Bailey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Illinois to have been affected adversely by this declared major disaster: Cook County for Individual Assistance.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–26028 Filed 9–30–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, by October 14, 1997.

Agreement No.: 202–010689–067.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Neptune Orient Container Line, Inc.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed amendment would reduce from three days to two days, the notice period required before a member line may take independent action on cargo which will not fit in standard sized containers or on "out-of-gauge cargo." The parties have requested a shortened review period.

Dated: September 25, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–25940 Filed 9–30–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 3040
Name: AAA Forwarding Company
Address: P.O. Box 298, 1047 Moorefield Road, Suite 200, Collierville, TN 38017
Date Revoked: August 1, 1997.
Reason: Surrendered license voluntarily.

License Number: 3403
Name: Associated Shipping Agencies Ltd.
Address: 100 Brook Drive, Dover, NJ 07801
Date Revoked: August 12, 1997.
Reason: Surrendered license voluntarily.

License Number: 1780
Name: B.W.S. Trade Coordinators, Inc.
Address: 115 Essex Road, Summit, NJ 07901
Date Revoked: May 31, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 2029
Name: Cadenas International Freight Forwarding, Inc.
Address: 8046 West 18th Lane, Hialeah, FL 33014
Date Revoked: June 26, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 3341
Name: Christa Katten d/b/a World Bridge
Address: 2135 St. John Ct., Santa Rosa, CA 95403
Date Revoked: September 3, 1997.
Reason: Surrendered license voluntarily.

License Number: 3909
Name: E.R.A. Freight Forwarding Inc.
Address: 3019 N.W. 74th Avenue, 2nd Floor, Miami, FL 33122
Date Revoked: July 9, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 96
Name: Frederic Henjes Jr., Inc.
Address: P.O. Box 361, Lake Worth, FL 33460
Date Revoked: August 15, 1997.
Reason: Surrendered license voluntarily.

License Number: 1668
Name: Freight Express International, Inc.
Address: 138–01 Springfield Boulevard, Jamaica, NY 11413
Date Revoked: June 30, 1997.
Reason: Surrendered license voluntarily.

License Number: 1422
Name: Glenn Ellyn Storage Corporation
Address: 1530 Wrightwood Ct., Addison, IL 60101
Date Revoked: August 4, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 4280
Name: I.C.A.T. Logistics, Inc.
Address: 1340 Charwood Road, Suite G, Hanover, MD 21076
Date Revoked: July 10, 1997.
Reason: Surrendered license voluntarily.

License Number: 3509
Name: International Container Transport, Inc.
Address: 430 Mountain Avenue, Murray Hill, NJ 07974
Date Revoked: July 14, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 4145
Name: Intrepid Overseas Shipping Corporation
Address: 440 Benmar Drive, Suite 1030, Houston, TX 77060
Date Revoked: May 20, 1997.
Reason: Surrendered license voluntarily.

License Number: 4203
Name: JF Hillebrand USA West Coast, Inc.
Address: 621 West Spain Street, Sonoma, CA 95476
Date Revoked: July 25, 1997.
Reason: Surrendered license voluntarily.

License Number: 2041
Name: La-Rama Shipping Company, Inc.
Address: P.O. Box 1723, Savannah, GA 31402
Date Revoked: August 8, 1997.
Reason: Surrendered license voluntarily.

License Number: 152
Name: Maron Shipping Agency, Inc.
Address: 20 Vesey Street, New York, NY 10007
Date Revoked: May 17, 1997.
Reason: Surrendered license voluntarily.

License Number: 1138
Name: McCandless, Inc.
Address: One Canal Place, Suite 2100, New Orleans, LA 70130
Date Revoked: July 29, 1997.
Reason: Surrendered license voluntarily.

License Number: 113
Name: Nehls & O'Connell Inc.
Address: 151–06 132nd Avenue, Jamaica, NY 11434
Date Revoked: June 23, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 4166
Name: O'Keefe and Associates, Inc.
Address: 525 Sandy Creek Drive, Brandon, FL 33511
Date Revoked: July 30, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 2299
Name: Oscar Import & Export Corp.
Address: 7 Dey Street, New York, NY 10007
Date Revoked: May 25, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 3898
Name: Partec Forwarding Corporation
Address: 6960 N.W. 50th Street, Miami, FL 33166
Date Revoked: June 12, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 3225
Name: Pioneer General, Inc.
Address: 3401–F N.W. 72nd Avenue, Miami, FL 33122
Date Revoked: June 26, 1997.
Reason: Failed to maintain a valid surety bond.

License Number: 3689
Name: Vialoma Trading Corporation d/b/a Singen Shipping
Address: 1030 Washington Street, Hollywood, FL 33019
Date Revoked: July 25, 1997.
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 97–25939 Filed 9–30–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Monday, October 6, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1998–99 Federal Reserve Board budget objective.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 29, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26132 Filed 9–29–97; 11:17 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Monday, October 6, 1997, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 29, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26133 Filed 9–29–97; 11:15 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–126]

Formation of the Community/Tribal Subcommittee of the ATSDR Board of Scientific Counselors and Solicitation of Volunteers To Serve as Special Consultants

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces ATSDR's intent to establish the Community/Tribal Subcommittee of the Board of Scientific Counselors (BSC), ATSDR and solicits interested parties to serve as special consultants. This will be a standing Subcommittee to provide the Board with input, recommendations, and advice on ATSDR's community and tribal community involvement practices, programs, and policies from community/tribal members who live near hazardous waste sites or are otherwise affected by hazardous substances in the community environment. The Subcommittee will be established, at the request of the Assistant Administrator, ATSDR, to provide the agency, through its Board of Scientific Counselors with a formal vehicle for citizen input.

FOR FURTHER INFORMATION CONTACT: To express interest in serving as special consultants and obtain additional information, contact: Triangle Associates, Inc., 811 First Avenue, Suite 255, Seattle, WA 98104, telephone 800–216–1743 (toll free) or 206–583–0655, FAX 206–382–0669. Applications must be received by Triangle Associates by October 15, 1997.

The ATSDR contact person for this program is: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR (MS E–28), 1600 Clifton Road, NE., Atlanta, GA 30333, telephone (404) 639–0708.

SUPPLEMENTARY INFORMATION: ATSDR conducts public health-related activities at hazardous waste sites and releases, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*). ATSDR established a BSC which is chartered under the Federal Advisory Committee Act (5 U.S.C. app.). In 1994, the chair of the BSC, ATSDR, appointed three community/tribal representatives as consultants to ensure that its deliberations include the views of community and tribal members who live around Superfund and other hazardous waste sites and are representatives of groups that work at local, regional, or national locations with these affected communities. To supplement the work of these consultants, nine additional community/tribal representatives will be added as consultants to this newly formed standing Subcommittee of the BSC. Two members of the BSC will serve on this Subcommittee, one of which will be appointed as chair.

The Community/Tribal Subcommittee's objective will be to provide the BSC, ATSDR, with the views and recommendations of community/tribal representatives on ATSDR's community involvement program, practices and policies, and other relevant issues impacting communities and tribes who live near Superfund and hazardous waste sites. The Subcommittee will review ATSDR's community involvement practices, programs, and policies; provide advice, findings, and recommendations to the Board on these issues; and bring broad-based community/tribal involvement issues to the attention of the Board of Scientific Counselors.

The Subcommittee will present findings, advice, and recommendations to the full Board. The BSC will discuss and review reports of the Subcommittee and may forward recommendations to ATSDR for action. The Community/Tribal Subcommittee will periodically meet or hold conference calls.

A slate of candidates for the Community/Tribal Subcommittee will be selected by a Planning Committee consisting of a BSC member, the three above-mentioned community/tribal consultants, and two additional community representatives. The Planning Committee, assisted by an ATSDR-contracted facilitator, will perform outreach activities at communities around National Priorities List (NPL) and other hazardous wastes

sites to elicit interest by community members in serving on the Community/Tribal Subcommittee. From responses to these efforts and to this **Federal Register** notice, a pool of applicants will be obtained from which the Planning Committee will recommend a slate of candidates. The BSC will then select the nine community representatives of the Community/Tribal Subcommittee from the pool, with special consideration given to the recommended slate. Accordingly, any person who lives in a community affected by an NPL or other hazardous waste site, or is a representative of a group that works at local, regional, or national locations with these communities, who wishes to be considered for serving on this Subcommittee should write to Triangle Associates, Inc. at the address above to express their interest and obtain additional information.

Dated: September 25, 1997.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–25968 Filed 9–30–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 62 FR 46751, dated September 4, 1997) is amended to reflect the reorganization of the Epidemiology Program Office (EPO) as follows: revise the functional statement for the EPO to more accurately reflect the mission of the office; establish the Office of Program Management and Operations; revise the functional statement for the Scientific Information and Communications Program and retitle as the Office of Scientific and Health Communications; revise the functional statement for the Division of Surveillance and Epidemiology and retitle as Division of Public Health Surveillance and Informatics; revise the functional statement for the Division of Training and retitle as the Division of Applied Public Health Training; establish the Division of Prevention Research and Analytic Methods; establish the Division of International Health; abolish the Division of Field Epidemiology.

Section C–B, *Organization and Functions*, is hereby amended as follows:

Delete the functional statement for the Epidemiology Program Office (EPO) (CB) and insert the following:

(1) Plans, directs, and manages CDC-wide training and service programs, including the Epidemic Intelligence Service (EIS), the Preventive Medicine Residency (PMR), and the Public Health Program Specialist (PHPS) programs, as well as various internship and fellowship programs; (2) plans, develops, edits, publishes and disseminates the Morbidity and Mortality Weekly Report (MMWR), related publications, and various scientific and health communication documents and special reports; (3) serves as a focal point for the development of innovative methods for the collection, analysis, and communication of public health surveillance information (e.g. National Electronic Telecommunications System for Surveillance, 122 Cities Mortality Reporting System, and CDC WONDER); (4) in collaboration with other Centers, Institutes, and Offices (CIOs) and state health departments, coordinates, develops, implements, and supports various public health information systems for agency application; (5) provides consultation, technical assistance, and training on epidemiology, public health surveillance and informatics, health information systems, prevention effectiveness, scientific communications, behavioral science, statics, and development of community health practice guidelines to CDC/ATSDR, states, other agencies, other countries, and domestic and international organizations; (6) provides policy and staff support for CDC's Health Information and Surveillance Systems Board; (7) provides epidemiologic assistance and epidemic aid through the field assignment of epidemiologists; (8) provides liaison with governmental agencies, international organizations, the Council of State and Territorial Epidemiologists, and other outside groups; (9) plans conducts, and evaluates research activities in various aspects of disease and injury control for global programs; (10) promotes the development of international field epidemiologic training programs; (11) develops, promotes, and implements programs for international and domestic data policy formation for decision makers to identify information needs and to use information for improved decision making; (12) in carrying out the above functions, collaborates, as appropriate, with the CDC Office of the Director, other CDC CIOs, domestic and international agencies and organizations.

Delete the functional statement for the *Office of the Director (CB1)* and insert the following:

(1) Manages, directs, coordinates, and evaluates the activities of EPO; (2) develops goals and objectives and provides leadership, policy formation, scientific oversight, and guidance in program planning and development; (3) coordinates EPO program activities with other CDC components, other PHS agencies, other federal agencies, other international organizations, state and local health departments, community-based organizations, business, and industry; (4) consults and coordinates activities with medical, scientific and other professional organizations interested in epidemiology, public health surveillance and informatics, health information systems, behavioral science, statistics, scientific communications, community health practice guidelines, prevention effectiveness, and training activities; (5) ensures quality of scientific products of EPO staff and adherence to ethical principles and guidelines as specified in Department of Health and Human Services (DHHS) policy statements; (6) coordinates technical assistance to states, other nations and international organizations; (7) advises the Director, CDC, on policy matters concerning EPO activities.

Delete the title and functional statement for the *Scientic information and Communications Program (CB12)* and insert the following:

Office of Scientific and Health Communications (CB12). (1) Plans, coordinates, edits, and produces the MMWR series and various special reports and publications; (2) provides editorial services and support to EPO; (3) develops, implements, and evaluates innovative methods for the communication of scientific and health information by EPO and its domestic and international constituents; (4) assists EPO and its constituents in identifying and building needed expertise, state-of-the-art technology, logistical support, and other capabilities required to conduct effective scientific and health communication in domestic and international settings; (5) provides expert consultation and training to EPO, other CIOs, and outside domestic and international constituencies on development of effective messages, materials, and methods to clearly and effectively communicate risks and prevention recommendation, including written, oral, and visual communication; (6) provides leadership, coordination, and collaboration for the planning and management of EPO communications with other CDC programs and outside organizations in scientific and health communication, including serving as the primary EPO liaison with the CDC Office of Communication; (7) works closely with state and federal agencies and EPO domestic and international constituents to develop health information networks and to promote information sharing; (8) in conjunction with the CDC Office of Communication, collaborates with organization in the public and private sectors to market prevention strategies; (9) coordinates EPO's information-sharing activities, including involvement on the Internet.

Delete the functional statement for the *Office of the Director (CB12)* and insert the following:

(1) Provides leadership and overall direction for the Office of Scientific and Health Communications and for all EPO scientific and health communication application; (2) provides leadership, guidance, consultation, and training on policy, planning, management, and operations of scientific and health communications for EPO activities in domestic and international settings; (3) establishes office goals, objectives, and priorities; (4) monitors progress in implementation of projects and achievement of objectives; (5) provides technical information and support in scientific and health communication methods to the epidemiologic, surveillance, and other scientific services and applied research activities in EPO; (6) provides EPO-wide graphics support and coordinates major scientific and health communications efforts; (7) plans, coordinates, and provides support for the electronic dissemination of the MMWR series.

Delete the title and functional statement for the *MMWR Branch (CB122)* and insert the following:

Morbidity and Mortality Weekly Report Activity (CB122). (1) Develops, plans, coordinates, edits, and produces the weekly component of the MMWR series; (2) participates with other office personnel for the delivery of services and training to external organizations, both domestic and international, in the area of scientific and health communications; (3) provides EPO-wide desktop publishing support, including the support of the MMWR series.

Delete the title and functional statement for the *Public Health Publications Branch (CB123) and insert the following:*

Public Health Publications Activity (CB123): (1) Develops, plans, coordinates, edits, and produces other components of the MMWR series, including the MMWR Recommendations and Reports, CDC Surveillance Summaries, and the Annual Summary of Notifiable Diseases; (2) plans, coordinates, edits, and produces other EPO and CDC program publications; (3) provides editorial services for work to be published outside CDC; (4) reviews EPO documents for editorial clearance for all publications; (5) develops and manages an internship program in scientific and health publications management; (6) participates with other office personnel for the delivery of services and training to external organizations, both domestic and international, in scientific and health communications.

Delete in their entirety the title and functional statement for the Information Resources Management Branch (CB124) and insert the following:

Office of Program Management and Operations (CB12). (1) Provides leadership, oversight, and guidance in the management and operations of EPO's programs; (2) plans, coordinates, and provides administrative management support, advice, and guidance to EPO; (3) conducts EPO planning and evaluation activities; (4) reviews, prepares, and coordinates legislation, congressional testimony, and briefing documents; (5) coordinates the development of the EPO annual budget submission; (6) coordinates the annual EPO program briefing; (7) conducts management analyses of EPO programs and staff to ensure optimal utilization of resources and accomplishment of program objectives; (8) plans, allocates, and monitors EPO resources; (9) maintains liaison and collaborates with other CDC components and external organizations in support of EPO management and operations; (10) plans, coordinates, and provides information resource management support, advice, and guidance to EPO.

Office of the Director (CB131). (1) Directs and coordinates the activities of the office; (2) develops long-range plans, sets annual objectives, monitors progress, and evaluates results; (3) sets policies and procedures; (4) provides leadership and oversight of EPO's program management and operations; (5) plans, allocates, and monitors EPO-wide resources; (6) maintains liaison and collaborates with the Director, Office of Program Support, other CIOs, CDC staff offices, other federal agencies, state and local health agencies, and other external organizations; (7) maintains liaison, on behalf of EPO, with the CDC Foundation and other similar organizations for the coordination of mutually-beneficial collaborative activities; (8) within the policies and guidelines of DHHS and CDC, conducts EPO planning and evaluation activities including tracking program objectives and performing evaluation studies; (9) coordinates the development of the EPO annual budget submission; (10) coordinates the annual EPO program briefing, including preparation of all written and visual materials; (11) reviews, prepares, and coordinates legislation, congressional testimony, and briefing materials; develops proposed legislation; analyzes bills; and provides for other legislative-related activities; (12) plans and prepares EPO promotional and marketing materials; (13) works closely with other federal agencies involved with EPO interagency agreements; (14) coordinates EPO requirements relating to procurement, materiel management, and interagency agreements; (15) provides fiscal management and stewardship of grants, contracts, and cooperative agreements.

Information Resources Management Activity (CB132). (1) Provides technical information support to the communications, epidemiologic, surveillance, training, and prevention research activities of EPO; (2) manages the EPO Local Area Network (LAN); (3) assists users with network applications; (4) provides personal computer support for EPO users; (5) researches and performs appropriate testing and installation of new software for use in EPO; (6) coordinates and authorizes requests for the acquisition of automatic data processing, word processing, telecommunication, and LAN equipment, and the provision of information services; (7) provides interface with CDC and DHHS management systems; (8) assures that all functional groups within EPO have access to suitable and compatible equipment and services; (9) plans, coordinates, and provides EPO-wide Information Resources Management (IRM) support and services; (10) represents EPO on a variety of IRM committees, task forces, and workgroups; (11) coordinates the utilization of data information systems and technologies.

Management Services Activity (CB133). (1) Plans, coordinates, and provides administrative management support, advice, and guidance to EPO

involving the areas of fiscal management, personnel, travel, and other administrative services; (2) prepares annual budget plans and budget justifications; (3) coordinates EPO requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (4) develops and implements administrative policies, procedures, and operations, as appropriate for EPO, and prepares special reports and studies, as required, in the administrative management areas; (5) conducts management analyses of EPO programs and resources to ensure optimal utilization of resources and accomplishment of program objectives.

Delete in its entirety the title and functional statements for the *Division of Field Epidemiology (CB3).*

Delete the title and functional statement for the *Division of Surveillance and Epidemiology (CB5)* and insert the following:

Division of Public Health Surveillance and Informatics (CB5). (1) Collects, performs analyses, and disseminates public health surveillance information; (2) manages and operates the National Electronic Telecommunications System for Surveillance (NETSS), the National Notifiable Diseases Surveillance System (NNDSS), and the 122 Cities Mortality Reporting System and produces statistical tables and graphics for the MMWR and associated publications; (3) in collaboration with other CIOs and state health departments, coordinates, develops, implements, and supports various CDC-wide public health information systems, including informational and communications applications; (4) develops improved surveillance and informatics methods; (5) provides consultation, technical assistance, and training on public health surveillance and health information systems to CDC and to other agencies and domestic and international organizations; (6) coordinates activities of the CDC Surveillance Coordination Group; (7) provides policy and staff support for CDC's Health Information and Surveillance Systems Board; (8) coordinates a CDC-wide initiative aimed at building state and local capacity to perform the core public health function of assessment and use of data for policy development and assurance.

Delete the functional statement for the *Office of the Director (CB51)* and insert the following:

(1) Provides leadership and overall direction for the division; (2) provides leadership and guidance on policy, program planning, program management, and operations; (3) establishes division goals, objectives, and priorities; (4) monitors progress in implementation of projects and achievements of objectives; (5) provides management, administrative, and support services, and coordinates with appropriate EPO offices on program and administrative matters; (6) provides liaison with other CDC organizations, other governmental agencies, international organizations, the Council of State and Territorial Epidemiologists, and other constituent groups and partners; (7) plans, allocates, and monitors resources; (8) provides scientific leadership and guidance to the division to assure highest scientific quality and ethical standards; (9) plans and coordinates the activities of the CDC Surveillance Coordination Group; (10) provides guidance and supervision to EIS officers and Preventive Medicine Residents assigned to the division; (11) coordinates and serves as a focal point for a CDC-wide initiative aimed at building state and local capacity to perform the core health function of assessment and use of data for public health policy development and assurance.

Delete in their entirety the title and functional statement for the *Statistics and Epidemiology Branch (CB52)* and insert the following:

Public Health Information Systems Branch (CB53). (1) In collaboration with the Information Resources Management Office (IRMO) and other CDC organizations with subject matter expertise and responsibility, coordinates, designs, develops, implements, and supports CDC-wide public health, epidemiologic, scientific, and laboratory information systems, including database, informational, and communications applications (e.g., CDC WONDER); (2) collaborates with CDC organizations to jointly develop, test, and implement CDC-wide public health information systems; (3) participates in the development or implementation of CDC plans for public health information systems; (4) researches and develops new an innovative approaches to public health applications development and database design; (5) determines appropriate technology architecture and methodology for branch-developed systems; (6) maintains inventories and data dictionaries of CDC's public health data; (7) develops and recommends approaches for public health systems and interfaces between various information technologies for sharing data and performing cooperative applications processing; (8) in consultation with CDC organizations and the CDC Information Systems Security Officer, determines appropriate security measures for branch-developed databases and applications, in accordance with sensitivity and criticality of the data or system; (9) evaluates and recommends CDC-wide equipment and software acquisition for public health database and communications systems; (10) coordinates the provision of technical support and training in the use of CDC-wide public health information systems purchased or developed by the branch; (11) coordinates public health information resource management user groups.

Delete in their entirety the title and functional statement for the *Systems Development and Support Branch (CB58).*

Delete the functional statement for the *Systems Operation and Information Branch (CB59)* and insert the following:

(1) Operates and maintains the NETSS, the NNDSS, and the 122 Cities Mortality Reporting System; (2) provides service and support to other CDC programs and state and local health departments to enable program-specific surveillance information to be collected and disseminated through the NETSS; (3) provides support, technical assistance, consultation, and training on surveillance system development, maintenance, and operation for CDC, states, and international organizations; (4) provides leadership and direction in the development of mainframe systems for use in surveillance and epidemiology; (5) plans, coordinates, and produces tables, graphs, maps, and figures for the Annual MMWR Summary of Notifiable Diseases, U.S.; (6) produces MMWR tables from NNDSS; (7) plans, coordinates and develops training and educational materials for all surveillance systems operated by the branch; (8) provides guidance in the development, implementation, and analysis of electronic public health data to international, state, and local groups; (9) creates, disseminates, and archives historical public health data in an electronic form; (10) provides support, technical assistance, and training for new, developmental systems and software for use in surveillance and epidemiology; (11) provides support, technical assistance, consultation, and training on computerized surveillance system development, maintenance, and operation for CDC, states, and international organizations; (12) provides service and support in the expansion of the NETSS; (13) plans and coordinates state-supported activities related to the NETSS; (14) analyzes needs and designs computer systems for use by public health professionals in the effective practice of public health surveillance and epidemiology; (15) provides technical consultation for

activities of the CDC Surveillance Coordination Group.

Delete the title and functional statement for the *Division of Training (CB6)* and insert the following:

Division of Applied Public Health Training (CB6). Plans, directs, and manages a CDC-wide training and service program for the teaching and training of public health professionals in applied epidemiology and other public health sciences, preventive medicine, and public health program planning, implementation, and evaluation; (2) plans, directs, and manages CDC-wide training and service programs for the EIS, the PMR, and the PHPS Programs; (3) responds to domestic and international request for assistance and consultation; (4) maintains liaison with other governmental agencies, academic institutions and organizations, state and local health agencies, private health organizations, and professional organizations, and other outside groups; (5) assumes an active national and international leadership role in public health training.

Delete the functional statement for the *Office of the Director (CB61)* and insert the following:

(1) Provides leadership, direction, coordination, and management oversight to the activities of the division; (2) develops long-range plans, sets annual objectives, monitors progress, and evaluates results; (3) sets policies and procedures; (4) plans, allocates, and monitors resources; (5) provides administrative guidance and oversight in the areas of personnel, travel, and other administrative services, and coordinates with the EPO Office of Program Management and Operations, Human Resources Management Office, and Financial Management Office; (6) coordinates collaborative activities of the division and maintains liaison with other CIOs, other federal agencies, and other outside groups.

Delete in their entirety the title and functional statement for the *Epidemiolgy Training Activity (CB62).*

Delete the title and functional statement for the *Epidemic Intelligence Service Program (CB63)* and insert the following:

Epidemic Intelligence Service Branch (CB63). (1) Establishes overall policies, plans, and procedures, and evaluates the effectiveness of program activities; (2) develops and maintains a strategic plans for recruitment, analyzes data to more effectively target recruitment efforts, and conducts recruitment in accordance with the CDC workforce diversity goals; (3) plans, directs, and coordinates the application, interview, selection. and assignment processes for new EIS officers (4) plans, directs, coordinates, and conducts training and training activities for EIS officers in applied epidemiology and public health practice; (5) monitors the completion of program requirements by EIS officers; (6) maintains liaison with supervisors of EIS officers, and evaluates EIS assignments within CDC, state and local health agencies, and other sponsoring organizations; (7) approves request, for epidemiologic assistance (EPI–AIDs) and the expenditures of funds; (8) maintains liaison with alumni within and outside CDC to assist with recruitment and promotional activities; (9) plans, directs, and coordinates the Epidemiologic Elective Program for medical and veterinary students.

Delete in their entirety the title and functional statement for the *Preventive Medicine Residency Program (CB64)* and insert the following:

Public Health Prevention Service Branch (CB65). (1) Establishes overall policies, plans, and procedures, and evaluates the effectiveness of program activities; (2) develops and maintains a strategic plan for recruitment, analyzes data to more effectively target recruitment effort, and conducts recruitment in accordance with the CDC workforce diversity goals; (3) plans, directs, and coordinates the application, interview, selection, and assisgnment processes for new PHPS trainees; (4) plans, directs, coordinates, and conducts training and training activities for PHPS trainees in the development, implementation, and evaluation of prevention programs and interventions; (5) monitors the completion of program requirements by PHPS trainees; (6) maintains liaison with supervisors of PHPS trainees, and evaluates PHPS assignments within CDC, state and local health agencies, and other sponsoring organizations; (7) coordinates and provides staff support to a steering committee/advisory group charged with advising on policy matters concerning the program.

State Branch (CB66). (1) Provides guidance and supervision to EIS officers, PMRs, and career epidemiologists assigned to state and local health departments; (2) monitors and evaluates the quality of assignments through site visits and by maintaining liaison with supervisors and other individuals in CIOs and states; (3) monitors the completion of program requirements and evaluates the performance of state-based EIS officers; (4) serves as the focal point for assistance requests from state health departments; (5) coordinates field training activities (6) participates in recruitment, interviewing, and assignment activities of EIS officers; (7) provides on-site consultation with state and local health departments on the establishment and maintenance of epidemiology programs; (8) provides technical assistance to other components of CDC in the investigation of multi-state disease outbreaks; (9) coordinates liaison activities with state epidemiologists and other public health officials, (10) evaluates the effectiveness of branch activities.

Division of Prevention Research and Analytic Methods (CB7). (1) Provides leadership to CDC and other organizations on the allocation of resources including the integration of prevention research with policy needs, and assists in making recommendations for policy decisions based on effectiveness and cost-effectiveness; (2) promotes CDC's capacity to conduct epidemiologic, prevention effectiveness, statistical, behavioral science, and evaluative studies; (3) develops, adapts, evaluates, and implements innovative prevention effectiveness, epidemiologic, statistical, evaluative, and behavioral research methods; (4) provides consultation, technical assistance and training on analytic methods, data management and collection, including prevention effectiveness, epidemiologic and statistical methods, evaluation, and behavioral studies issues to CDC and to other agencies and domestic and international organizations; (5) develops projects in defined urban populations in which to evaluate the effectiveness of prevention activities; (6) develops CDC capacity and establishes a national scientific network in epidemiologic, behavioral, prevention effectiveness, statistical, and outcome evaluation science; (7) develops recommendations and guidelines based on effectiveness, cost-effectiveness, behavioral, outcome evaluation, and statistical research to enhance health promotion and disease and injury prevention in various settings and populations; (8) acquires, develops, applies, and evaluates statistical methods for use in public health; (9) supports CDC activities related to the Cochrane Collaboration; (10) develops recommendations (guidelines) based on effectiveness, cost-effectiveness, behavioral, outcome evaluation, and statistical research to enhance health promotion and disease and injury prevention in various settings and populations; (11) designs and conducts epidemiologic studies; (12) in carrying out the above the functions, collaborates, as appropriate, with the other CDC CIOs.

Office of the Director (CB71). (1) Manages, directs, and coordinates the activities of the division; (2) provides leadership and guidance on policy, program planning, program management, and operations; (3) establishes division goals, objectives, and priorities; (4) monitors progress in implementation of projects and achievement of objectives; (5) develops and manages internship, fellowship, and visiting scientist programs in prevention effectiveness, evaluation, behavioral science, and statistical methodologies; (6) develops, conducts, and provides support for training in prevention effectiveness, evaluation, behavioral science, epidemiologic and statistical methodologies CDC-wide, as well as at national, state, and local levels; (7) provides management, administrative and support services, and coordinates with appropriate EPO offices on program and administrative matters; (8) provides liaison with other CDC organizations, other governmental agencies, international organizations, and other outside groups; (9) plans, allocates, and monitors resources; (10) manages grants and CDC-wide prevention effectiveness and statistical analysis contracts; (11) provides support for internal scientific advisory groups; (12) provides scientific leadership and guidance to the division to assure highest scientific quality and ethical standards.

Prevention Effectiveness Branch (CB72). (1) Establishes capacity in the public health community to conduct and use prevention effectiveness studies; (2) develops, adapts, evaluates, and applies economic and decision science methods for public health applications; (3) provides economic technical assistance, consultation, direction, review, and information resources to other organizations units within EPO and throughout CDC; (4) collects and analyzes data; (5) integrates prevention research with policy needs; (6) assists in making recommendations for policy decisions on public health policy based on prevention effectiveness assessments of each prevention strategy; (7) provides coordinative support for CDC's Prevention Effectiveness Working Group.

Statistics and Epidemiology Branch (CB73). (1) Provides and maintains leadership in the acquisition, development, application, and evaluation of statistical and epidemiologic methods for use in public health; (2) provides statistical and epidemiologic consultation, training, and analytic assistance to EPO, other components of CDC, and to outside organizations; (3) conducts research in methods development and evaluation; (4) analyzes public health data; (5) coordinates and supports CDC's Statistical Advisory Group; (6) provides programming and data management consultation and support for major studies; (7) develops scientific methods to address cross-cutting issues of epidemiology, such as disabilities, race and ethnicity, special settings, and gender; (8) designs and conducts epidemiologic studies to determine risk factors and causes of selected diseases and other conditions of public health importance; (9) collaborates on international epidemiologic and statistical science projects by providing technical assistance and consultation; (10) supports the CDC-based Cochrane Collaboration; (11) provides guidance and supervision to EIS officers and PMRs assigned to the division.

Community Preventive Services Guide Section (CB732). (1) Coordinates and develops community health practice guidelines for the assessment of effectiveness of prevention strategies; (2) assists CRC programs on methods for guidelines development processes; (3) coordinates and manages CRC-wide working group on practice guidelines methodology; (4) convenes a task force for development of community health practice guidelines; (5) produces a Guide to Community Health Practice Guidelines based on available scientific evidence; (6) identifies research needs for developing science-based guidelines; (7) updates guidelines on an ongoing basis.

Evaluation and Behavioral Science Methods Section (CB733). (1) Develops a conceptual framework for conducting behavioral and evaluation studies; (2) organizes and establishes populations for research in urban areas; (3) develops within CDC outcome evaluation capacity and systematize method for evaluating health outcomes; (4) develops key combinations of evaluation and behavioral interventions in urban populations; (5) provides information for public policy for urban areas by establishing credibility of the scientific approach; (6) assists in making recommendations for policy decisions; (7) conducts public health surveillance in urban health communities; (8) provides technical assistance; (9) provides coordinative support for CDC's Behavioral and Social Sciences Work Group.

Division of International Health (CB8). (1) Develops, promotes, and conducts international training, consultation, capacity building, and other assistance in applied epidemiology, public health surveillance, and systematic use of epidemiologic and other data for health policy formulation, allocation of health resources, and direction and evaluation of public health program operations and effectiveness; (2) provides policy direction for all EPO activities associated with international health; (3) collaborates with the other CDC organizations, international agencies, foreign governments, and non-profit organizations in support of EPO's international activities.

Office of the Director (CB81). (1) Provides leadership and overall direction for the division; (2) provides leadership and guidance on policy, program planning, program management, and operations; (3) plans, allocates, and monitors resources; (4) provides leadership and management oversight in assisting national ministries of health, international agencies, and non-profit organizations in the delivery of epidemiologic services and the development of international epidemiologic networks; (5) provides liaison with other CDC organizations, other federal agencies, national ministries of health, and international organizations.

Data for Decision Making and Policy Branch (CB82). (1) Plans, directs, and coordinates data for decision making activities, both foreign and domestic; (2) assists with the development of capacity to design and conduct economic evaluation of health care interventions; (3) collaborates with national ministries of health to facilitate data use for policy formulation, resource allocation, and public health program management; (4) provides leadership and expertise in assisting national ministries of health and domestic entities in utilizing trained epidemiology generalists in developing health policy and implementing and evaluating health programs; (5) collaborates with federal agencies, national ministries of health, international agencies, and non-profit organizations to promote systematic use of data to improve public health.

Program Development Branch (CB83). (1) Plans, directs, and coordinates field epidemiology training programs; (2) provides leadership and management oversight in assisting national ministries of health in training epidemiology generalists for future ministry positions and for positions with international organizations; (3) oversees provision of consultation to national ministries of health and international organizations regarding epidemiologic practice, surveillance systems development and operation, and epidemiologic training; (4) assigns professional epidemiologist as long-term consultants to national programs in epidemiologic training and public health capacity development; (5) provides on-site epidemiologic consultation to national ministries of health and international organizations as required; (6) provides on-site technical assistance, consultation, and training to other countries and international organizations in applied communications, publications management, health information systems development and management, and health economics.

Effective Date: September 19, 1997.

David Satcher,

Director.

[FR Doc. 97–25946 Filed 9–30–97; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0390]

Guidance for the Submission of 510(k)'s for Solid State X-Ray Imaging Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Guidance for the Submission of 510(k)'s for Solid State X-ray Imaging Devices." The draft guidance is neither final nor is it in effect at this time. This draft guidance applies to a new category of medical devices, Solid State X-ray Imagers (SSXI), and is currently available for comment. This draft guidance is intended to provide guidance to the significant number of premarket (510(k)) submissions resulting from this new technology. The draft guidance addresses the type of data needed by the Center for Devices and Radiological Health (CDRH) to establish the substantial equivalence of an SSXI to a previously cleared conventional radiographic film/screen system, fluoroscopic image intensified imaging system, or SSXI.

DATES: Written comments by December 30, 1997.

ADDRESSES: Submit written requests for single copies of "Guidance for the Submission of 510(k)'s for Solid State X-ray Imaging Devices" to the Division of Small Manufacturers Assistance (HFZ–200), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on "Guidance for the Submission of 510(k)'s for Solid State X-ray Imaging Devices" to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Robert J. Doyle, Center for Devices and Radiological Health (HFZ–476), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–1212.

SUPPLEMENTARY INFORMATION: The final version of this guidance will provide instruction concerning the type of data needed by CDRH to clear a new category of medical devices, SSXI's, for marketing via section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)). This new category of medical devices is intended to replace conventional x-ray film/screen systems and image intensifier based fluoroscopic and image recording systems. As solid state imaging technology continues to progress, FDA anticipates a significant number of premarket (510(k)) submissions to be based on this new technology. By issuing the guidance, FDA hopes to receive a larger percentage of complete premarket submissions upon submittal. This will avoid the need for additional information requests which are time consuming for both FDA and manufacturers.

Under the Medical Device Amendments to the act, a device may be cleared for marketing via a 510(k) premarket notification. To do so, the device must be shown to be substantially equivalent to a legally marketed predicate device. This guidance sets forth nonclinical and clinical data necessary to establish the substantial equivalence of the new device to the identified predicate device(s).

This draft guidance document represents the agency's current thinking on the data necessary to establish the substantial equivalence of SSXI to a previously cleared device. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before December 30, 1997, submit to the contact person (address above) written comments regarding this draft guidance. Persons with access to the Internet may obtain the draft guidance via the World Wide Web (WWW) at "http://www.fda.gov/cdrh".

Dated: July 31, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–25992 Filed 9–30–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 62 FR 46751, dated September 4, 1997) is amended to reflect the organizational structure for mine safety and health research functions within the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention.

Section C–B, *Organization and Functions,* is hereby amended as follows:

After the functional statement for the *Contracts and Purchases Branch (CA582), Procurement and Grants Office (CA58), Office of Program Support (CA5),* insert the following:

Contracts Management Branch (Pittsburgh) (CA583). (1) Provides leadership, direction, procurement options and approaches in developing specifications/statements of work and contract awards; (2) Executes research and development contracts for all of NIOSH.

Revise the functional statement for the *Office of Administrative and Management Services (CC11)* to insert the following as item (4) and renumber the remaining items accordingly: (4) provides management information, advice, and guidance to CDC/OPS regarding the conduct and the evaluation of Staff Office procurement activities with respect to their effectiveness in meeting NIOSH's administrative and programmatic needs.

After the functional statement for the *Office of Administrative and Management Services (CC11),* insert the following:

Administrative Services Branch (Pittsburgh) (CC112). (1) Provides basic facilities operations, maintenance, and

support functions for the offices, laboratories, and grounds at the Pittsburgh Research laboratory; (2) provides access to library and information services for Pittsburgh laboratory personnel; (3) facilitates procurement support for the Laboratory; (4) coordinates Institute activities and overall operations with the facility management activities of the other Agencies operating at the Bruceton Research Center.

After the functional statement for the *Administrative Services Branch (Cincinnati) (CC113)*, insert the following:

Administrative Services Branch (Spokane) (CC114). (1) Provides basic facilities operations, maintenance, and support functions for the offices, laboratories, and grounds at the Spokane Research Laboratory; (2) provides access to library, information services, and computer access to the CDC network for Spokane Research Laboratory personnel; (3) provides site-wide safety and health program support, site environmental compliance activities, employee assistance programs, and employee wellness programs; (4) provides procurement and budget support for the Laboratory; (5) provides material management functions, including inventory control for accountable property, and warehouse supply for daily operations.

After the functional statement for the *Management Systems Branch (CC115)*, insert the following:

Procurement Branch (Pittsburgh) (CC116). (1) Plans, directs, and conducts the acquisition of equipment, materials, and non-personnel services in support of the NIOSH Pittsburgh operations; (2) executes contracts for repairs, and capitol improvements to NIOSH Pittsburgh facilities.

After the functional statement for the *Regional Operations Branch (CC134)*, insert the following:

Pittsburgh Research Laboratory (CC2). (1) Provides leadership for prevention of work-related illness, injury, and fatalities of miners; (2) carries out the surveillance of fatal and non-fatal traumatic injuries, occupational diseases, health and safety hazards, and the use of control technology and protective equipment for prevention of injury and disease in mining; (3) conducts research on the measurement, monitoring, and control of dust and other toxic substances to which miners may be exposed; (4) conducts laboratory and field research to evaluate and control hearing loss and occupational noise exposure in mining; (5) conducts field investigations and laboratory studies on mining injuries and the means for their prevention; (6) conducts laboratory and field investigations to better understand the causes of catastrophic events that may lead to fatalities, such as fires, explosions, and structural or ground failures; (7) develops sensors, predictive models, and engineering controls to reduce miners risk for injury or death; (8) translates research findings, new control technology concepts, and newly identified approaches to health and safety problems affecting miners into usable effective interventions; (9) utilizes the unique facilities and resources of the Laboratory as a National resource in collaboration with other NIOSH units as well as other Departments and Agencies of the government.

Surveillance, Statistics, and Research Support Activity (CC22). (1) Collects and analyzes health and safety data related to mining occupations in order to report on the overall incidence, prevalence and significance of occupational safety and health problems in mining; (2) describes trends in incidence of mining-related fatalities, morbidity, and traumatic injury; (3) conducts surveillance on the use of new technology, the use of engineering controls, and the use of protective equipment in the mining sector; (4) coordinates surveillance activities with other NIOSH surveillance initiatives; (5) provides statistical and computer support for surveillance and research activities of the Laboratory; (6) analyzes and assists in the development of research protocols for developing studies; (7) conducts mining-relevant risk analyses and assists with interpretations for development of NIOSH policy or documents.

Extramural Coordination and Information Dissemination Activity (CC23). (1) Collaborates with research staff to translate findings from laboratory research to produce compelling products that motivate the mining sector to engage in improved injury control and disease prevention activities; (2) incorporates recommended control technologies, work practices, and findings of technological feasibility into NIOSH policy documents and testimony; (3) coordinates with other health communication, health education, and information dissemination activities within the Institute to ensure that mining research information is effectively integrated in the NIOSH dissemination and intervention strategies; (4) serves as the laboratory focal point for partnerships with labor, industry and academia and other government agencies to foster mission-relevant responsive research; (5) assists in the development of mission-relevant CRADAs and patents; (6) coordinates mission-relevant technical assistance and response activities; (7) coordinates mining grants and cooperative agreements with the NIOSH Office of Extramural Coordination and Special Projects.

Dust and Toxic Substance Control Branch (CC24). (1) Develops, plans, and implements a program of research to develop or improve personal and area direct reading instruments for measuring mining contaminants including but not limited to respirable dust, silica, and other toxic substances and mixtures; (2) conducts field tests, experiments, and demonstrations of new technology for monitoring and assessing mine air quality; (3) designs, plans, and implements laboratory and field research to develop airborne hazard reduction control technologies; (4) carries out field surveys in mines to identify work organization strategies that could result in reduced dust or toxic substance exposure; (5) evaluates the performance, economics, and technical feasibility of engineering control strategies, novel approaches, and the application of new or emerging technologies for underground and surface mine dust and toxic substance control systems; (6) develops and evaluates implementation strategies for using newly developed monitors and control technology for exposure reduction or prevention.

Hearing Loss Prevention Branch (CC25). (1) Plans and conducts laboratory and field research on noise-induced hearing loss in miners; (2) conducts field dosimetric and audiometric surveys to assess the extent and severity of the problem and to identify those mining segments in greatest need of attention and to objectively track progress in meeting loss prevention goals; (3) conducts field and laboratory research to identify noise generation sources and to identify those areas most amenable to intervention activities; (4) develops, tests, and demonstrates new control technologies for noise reduction; (5) evaluates technical and economic feasibility of controls; (6) develops, evaluates, and recommends implementation strategies to promote the adoption and use of noise reduction technology.

Mining Injury Prevention Branch (CC26). (1) Conducts laboratory, field, and computer modeling research to focus on human physiological capabilities and limitations and their interactions with mining jobs, tasks, equipment, and the mine work environment; (2) assesses the health and safety relevance of mining equipment design features using scientific and engineering techniques, and analyses of reported case-studies of mining incidents that lead to traumatic injuries or fatalities; (3) designs and conducts epidemiological research studies to identify and classify risk factors that cause, or may cause, traumatic injuries to miners; (4) designs, builds, and tests proposed interventions, including demonstrations of proposed technologies using laboratory mock-ups, full-scale demonstrations at the laboratory's experimental mines, or through field evaluation in operating mines; (5) evaluates and recommends implementation strategies for injury prevention and control technologies developed by the Laboratory.

Disaster Prevention and Response Branch (CC27). (1) Conducts laboratory and field investigations of catastrophic events such as explosions and catastrophic structural or ground failures to better understand cause and effect relationships that initiate such events; (2) designs and implements appropriate intervention strategies; (3) develops, tests, and promotes the use of disaster prediction and risk evaluation systems for control or reduction of risk; (4) develops criteria and tests for explosives to determine their suitability for mine use and transportation; (5) evaluates and recommends implementation strategies for disaster prevention; (6) assists in the development and evaluation of curricula for mine rescue, firefighting, and the use of life support (self-rescuer) equipment, in conjunction with other health education, health communication, and other information and education activities of the Institute.

Following the functional statement for the *Division of Surveillance, Hazard Evaluations, and Field Studies (CC5)*, insert the following:

Spokane Research Laboratory (CC6). (1) Provides leadership for prevention of work-related illness, injury, and death in the extractive industries in the Western United States; (2) conducts surveillance and tracks trends of fatal and non-fatal traumatic injuries, occupational diseases, health and safety hazards, and the use of control technology in the extractive industries, with a focus on unique Western issues such as those associated with deep metal mines, Western coal mines, and precious metal deposits; (3) conducts field investigations, health hazard evaluations, and laboratory studies of occupational diseases, injuries, and fatalities with focus on western-area mineral-extractive industries; (4) conducts laboratory and field investigations to better understand the causes of catastrophic events that may lead to multiple injuries and fatalities, such as collapse of underground workings, massive slope failures, and the collapse of mining facilities; (5) develops, tests, and demonstrates sensors, predictive models, and engineering control technologies to reduce miners risk for injury or death; (6) develops and recommends appropriate criteria for new standards, NIOSH policy, documents, or testimony related to health and safety in the extractive industries.

Extramural Coordination and Information Dissemination Activity (CC62). (1) Coordinates with other education and information dissemination activities within the Institute to assure that coordinated and comprehensive mining research information is effectively integrated into the NIOSH dissemination and intervention strategies; (2) serves as the laboratory focal point for partnerships with labor, industry and academia involved with Western extractive industries; (3) assists in the development of mission-relevant CRADAs and patents; (4) coordinates mission-relevant technical assistance and response activities for the western United States.

Mining Surveillance and Statistics Support Activity (CC63). (1) Describes trends in incidence of mining-related fatalities, morbidity, and traumatic injury; (2) conducts surveillance on the use of new technology and the use of engineering controls; (3) coordinates the surveillance activities with other Institute-wide surveillance initiatives; (4) provides statistical support for all surveillance and research activities of the Laboratory; (5) assists in the development of research protocols; (6) communicates the results of surveillance activities to researchers to assist in the planning and prioritization of future studies.

Mining Injury and Disease Prevention Branch (CC64). (1) Designs and conducts field and laboratory research studies to identify and classify risk factors that cause, or may cause, traumatic injuries or illness to miners; (2) designs, builds, and tests proposed interventions to reduce risk of injury or disease, and conducts demonstrations of proposed control technologies; (3) assesses the health and safety implications of mining equipment design features using scientific and engineering techniques; (4) evaluates and recommends implementation strategies for injury and disease prevention and the effective utilization of control technologies developed by the laboratory.

Catastrophic Failure Detection and Prevention Branch (CC65). (1) Conducts laboratory and field investigations of catastrophic events such as collapse of underground workings, massive slope failures, collapse of mine facilities, or other events that lead to traumatic injuries or fatalities; (2) develops computer visualization models to simulate mine conditions and test alternative mining methods and approaches for risk reduction and catastrophic failure prevention; (3) develops, tests, and promotes the use of catastrophic failure prediction and risk evaluation systems; (4) evaluates and recommends implementation strategies for catastrophic failure prevention.

Dated: September 4, 1997.

David Satcher,

Director.

[FR Doc. 97–25947 Filed 9–30–97; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Revised Recovery Plan for the Chittenango Ovate Amber Snail (Novisuccinea Chittenangoensis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft revised Recovery Plan for the Chittenango ovate amber snail (Novisuccinea Chittenangoensis). The Chittenango ovate amber snail is a terrestrial species with only one known population, which is located in the Chittenango Falls State Park in Madison County, New York. It was listed as a threatened species in July 1978, and the initial recovery plan was completed in March 1983. This species was listed due to its rarity and population decline; since listing, habitat protection and captive propagation activities have been implemented, but the species' status remains exceedingly precarious. The primary threat to the Chittenango ovate amber snail is considered to be over-competition by an introduced snail, *Succiena* sp B. Additionally, potential threats persist from habitat changes and inadvertent human disturbance. The revised recovery objective for this species is to stabilize it by maintaining, to the extent possible, the extant Chittenango ovate

amber snail population in its Chittenango Falls habitat while establishing or verifying five additional discrete populations in protected habitats. The Service solicits review and comment from the public on this draft Plan revision.

DATES: Comments on the draft Recovery Plan must be received December 1, 1997, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Northeast Region Endangered Species Program, 300 Westgate Center Drive, Hadley, Massachusetts 01035, telephone 413–253–8628. Comments should be sent to this address, to the attention of Mary Parkin.

FOR FURTHER INFORMATION CONTACT: Mary Parkin (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Chittenango Ovate Amber Snail (*Novisuccinea chittenangoensis*) Revised Recovery Plan. Since its discovery in 1905, only one extant Chittenango ovate amber snail population has been verified, from a site within the Chittenango Falls State Park in New York.

This terrestrial snail requires the cool, mild-temperature, moist conditions provided by the spray and mist in its environment. Its habitat lies within a ravine at the base of a 167-foot waterfall, and the ledges it occupies comprise an early successional sere that is periodically rejuvenated to a bare substrate by floodwaters. This snail is found on green vegetation such as various mosses, liverworts, and other low herbaceous vegetation within the spray zone of the falls.

The Chittenango ovate amber snail was listed as a threatened species in July 1978 based on its rarity and a decline in its population, and the initial recovery plan for the species was completed in March 1983. Since then, full protection of the snail's habitat has been achieved and a captive propagation program is underway, but the species' status remains exceedingly precarious. The primary threat to the sole wild population of this snail is considered to be over-competition by an introduced snail, *Succinea* sp B. Additionally, potential threats persist from habitat changes and inadvertent human disturbance.

Due to the pervasive threat posed by the competitor *Succinea* sp. B, delisting of the Chittenango ovate amber snail is not deemed achievable at this time. The revised recovery objective for this species, therefore, is to stabilize, to the extent possible, the extant population at Chittenango Falls while establishing or verifying five additional, discrete Chittenango ovate amber snail colonies in protected habitats free from the competition of *Succinea* sp. B. To achieve this objective, four major actions need to be implemented: (1) continued protection of the species and its habitat and Chittenango Falls; (2) acquiring more data on the biological and environmental requirements of *N. chittenangoensis*; (3) enhancing the snail's habitat at Chittenango Falls as feasible or appropriate; and (4) as feasible, broadening the distribution of the Chittenango ovate amber snail.

The draft Recovery Plan revision is being submitted for agency review. After consideration of comments received during the review period, the revised Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 25, 1997.

Ronald E. Lambertson,

Regional Director, Region 5.

[FR Doc. 97–26094 Filed 9–30–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Comprehensive Management Plan

ACTION: Notice of intent to prepare comprehensive management plans and associated environmental documents.

SUMMARY: This notice advises the pubic that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare comprehensive management plans (CMPs) and environmental assessments for units within Illinois, Iowa, Michigan, Minnesota, Missouri, and Ohio. Readers should note that pending legislation may change the names of CMPs to comprehensive conservation plans. The CMPs will be prepared for the Illinois River Refuges and Mark Twain, DeSoto, Shiawassee, Minnesota Valley, Squaw Creek, and Ottawa National Wildlife Refuges and the Wetland Management Districts in Minnesota. The Service is furnishing this notice in compliance with Service CMP policy and the National Environmental Policy Act (NEPA) and implementing regulations:

(1) To advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information one the scope of issues to include in the environmantal document.

DATES: Inquire at the address below for due dates for comments regarding specific projects.

ADDRESSES: Address comments and requests for more information or to be put on a mailing list to: Chief, Branch of Ascertainment and Planning, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111, (612) 725–3306, *E-mail*: R3PLANNING@fws.gov

SUPPLEMENTARY INFORMATION: The Service will solicit information from the public via open houses and written comments. Special mailings, newspaper articles, and radio announcements in the areas near each unit will inform people of the time and place of open houses to be held in 1997 and 1998 related to the CMP and NEPA documentation.

It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CMP. The CMP guides management decisions and identifies goals, objectives, and strategies for achieving unit purposes. Public input into this planning process is encouraged. The CMPs will provide other agencies and the public with a clear understanding of the desired conditions of each of its units and how the Service will implement management strategies.

The Illinois River National Wildlife and Fish Refuges is a complex of four areas in the Illinois River floodplain. The names of the four areas, the year they were established, and their acreage are: Chautauqua Refuge (1936) 4,658; Meredosia Refuge (1973) 3,397; Emiquon Refuge, which is authorized for 11,312 acres, (1993) 1,120; and the Cameron/Billsbech Unit (1958) 1,709. Each of the areas consists of backwater lakes, bottomland forests, floodplain wetland, and a small amount of upland forest.

The Mark Twain National Wildlife Refuge (NWR) Complex encompasses over 350 miles of the Mississippi River bottoms between Muscatine, Iowa, and Gorham, Illinois. As part of an area of 100,000 acres cooperatively managed by the States of Iowa, Illinois, and Missouri, and the Corps of Engineers, the Service directly manages 31,500 acres. The Refuge was established in 1958 and includes the Wapello, Iowa; Annada, Missouri; and Brussels, Illinois Districts; and the Clarence Cannon NWR in Missouri. The Refuge is part of the internationally significant migratory bird corridor along the Mississippi River.

DeSoto NWR is located in southwestern Iowa, approximately 30 miles north of Omaha, Nebraska. Established in 1958, the Refuge includes 3,499 acres in Iowa and 4,324 acres in Nebraska. Located in the Missouri River Valley, the Refuge is a fall migration stop for hundreds of thousands of snow geese. In addition, the Refuge houses a salvaged 1860's steamboat and its cargo.

Shiawassee NWR consists of 9,102 acres located near Saginaw, Michigan. The Refuge was established in 1953 and has an approved plan to expand by 7,500 acres. The Refuge is part of the "Shiawassee Flats" in the Saginaw Bay watershed, historically one of the largest and most productive wetland ecosystems in Michigan.

Minnesota Valley NWR, which was established in 1976, consists of 9,429 acres within the metropolitan area of Minneapolis and St. Paul, Minnesota. The Refuge, which has an authorized acreage of 14,000, is a greenbelt providing wildlife habitat along 34 miles of the Minnesota River. The Refuge also provides environmental education and compatible outdoor recreation opportunities.

Squaw Creek NWR, which was established in 1935, includes 7,178 acres of the Missouri River floodplain. Located northwest of St. Joseph, Missouri, the Refuge is a major wintering area for bald eagles and snow geese. Wetlands and loess bluff hills with remnants of native prairie exist within the Refuge.

Ottawa NWR (5,794 acres) and its satellite units, Cedar Point National Wildlife Refuge (2,445 acres) and West Sister Island National Wildlife Refuge and Wilderness Area (77 acres), are situated along the southwestern shore of Lake Erie in Lucas and Ottawa Counties, Ohio. The major parcel of Ottawa NWR was acquired in 1961 with land acquired under the authority of the Migratory Bird Conservation Act. Cedar Point was accepted as a donation by the Secretary of Interior in 1964. West Sister Island was established as a Refuge in 1938 by Presidential Order and was designated a National Wilderness in 1975. Under a lease agreement, Ottawa NWR also manages the Navarre Marsh, which is owned by the Toledo Edison Power Company. The Refuge is authorized to expand by an additional 5,000 acres.

The five Minnesota Wetland Management Districts (WMDs) exist within the Prairie Pothole Region. In 1958, Congress amended The Duck Stamp Act to authorize acquisition of wetlands and uplands as Waterfowl Production Areas (WPAs). The WPAs became part of the National Wildlife Refuge System in 1966 through the National Wildlife Refuge Administration Act. The WMDs were created in 1962 as the acquisition of wetlands and uplands accelerated due to a loan from Congress against future Duck Stamp sales. The WMDs include approximately 172,000 acres. In addition to WPAs, WMD staff manage wetland and grassland easements that are perpetual contracts with private landowners. Current wetland easement acreage is approximately 62,000.

The Service units need CMPs because no formal, up-to-date, long-term management direction exists. Until the CMPs are completed, management will be guided by official unit purposes; Management and General Public Use of the National Wildlife Refuge System (Executive Order 12996); Federal legislation regarding management of national wildlife refuges and wilderness; and other legal, regulatory and policy guidance.

Upon implementation, the CMPs will apply to Federal lands, easements, and lands leased by the Service within the boundaries of the units. The plans will be consistent with the Service's Ecosystem Approach to Fish and Wildlife Conservation and include approaches to habitat management, wildlife population management, cultural resource identification and protection, and management of any special uses.

The environmental review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

We estimate that the first draft CMPs and associated environmental documents will be available by March 1998.

Dated: September 25, 1997.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 97–25967 Filed 9–30–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–24 1A]

OMB Approval Number 1004–0134; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 3501 *et seq.*). On March 28, 1996, the BLM published a notice in the **Federal Register** (61 FR 13868) requesting comments on the collection. The comment period ended May 28, 1996. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and

suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0134), Office of Information and Regulatory Affairs, Washington, DC., 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: 43 CFR 3160—Onshore Oil and Gas Operations, Nonform Items.

OMB Approval Number: 1004–0134.

Abstract: Federal and Indian (except Osage) oil and gas operators and operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.

Bureau Form Numbers: None.

Frequency: Nonrecurring.

Description of Respondents: Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.

Estimated Completion Time:

Requirement	Number of respondents	Completion time (hours)	Annual burden
Well-Spacing Program	150	3	450
Drilling Plans	2,875	10	28,750
Well Markers	300	0.1	30
Directional Drilling	165 (5% of wells)	1	165
Drilling Tests, Logs & Surveys	330 (10% of wells)	1	330
Plug and Abandon for Water Injection	1,200	0.5	600
Plug and Abandon for Water Source	1,200	0.5	600
Additional Gas Flaring	400	1	400
Report of Spills, Discharges or Other Events	200	1	200
Disposal of Produced Water	1,500	2	3,000
Contingency Plan	50	20	1,000
Schematic/Facility Diagrams	2,350	12.3	28,851
Approval and Reporting of Oil in Pits	520	0.5	260
Prepare Run Tickets	90,000	0.167	15,000
Records on Seals	90,000	0.08	7,500
Application for Suspension	100	1.25	800
State Director Review	100	1.25	800
Site Security	2,415	3.1	7,454

Annual Responses: 193,855.
Annual Burden Hours: 96,190.
Bureau Clearance Officer: Carole Smith (202) 452–0367.

Dated: August 25, 1997.

Carole Smith,

Bureau of Land Management Information Collection Officer.

[FR Doc. 97–25953 Filed 9–30–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–4710–02–24 1A]

Reinstatement of Expired Information Collection, OMB Number 1004–0132

AGENCY: Bureau of Land Management, Interior.

ACTION: Information collection submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act.

SUMMARY: The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3051 *et seq.*). On May 19, 1997, BLM published a notice in the **Federal Register** (62 FR 96) requesting comment on this proposed collection. The comment period ended on July 18, 1997. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0132), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Geothermal Resources Operations (43 CFR 3260). OMB approval number: 1004–0132.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for an existing rule at 43 CFR 3260. The rule sets out the standards and regulations for operating a geothermal resource production facility.

Bureau Form Number: 3260–2, 3260–3, 3260–4, 3260–5.

Frequency: 3260–2, non-recurring; 3260–3, on occasion; 3260–4, on occasion; 3260–5, monthly.

Description of Respondents: Respondents are lessees and operators of Federal geothermal leases and Indian geothermal contracts subject to BLM oversight.

Estimated Completion Time: 3260–2, 10 hours; 3260–3, one hour; 3260–4, 2–6 hours; 3260–5, one hour.

Annual Responses: 760.

Annual Burden Hours: 1700 hours.

Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: August 25, 1997.

Carole J. Smith,

Information Collection Officer.

[FR Doc. 97–25954 Filed 9–30–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1030–02–24 1A]

OMB Approval Number 1004–0058; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On March 26, 1996, BLM published a notice in the **Federal Register** (61 FR 13209) requesting comment on this proposed collection. The comment period ended on May 28, 1996. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below. OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0058), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Timber Export Reporting and Substitution Determination (Regulations at 5424.1).

OMB Approval Number: 1004–0058.

Abstract: The Bureau of Land Management is proposing to reinstate approval of an information collection for an existing rule at 43 CFR 5424.1(a) and the form which contains the information relevant to it. The rule authorizes BLM to collect information to determine if there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.3(c).

Bureau Form: 5460–17.

Frequency: Annually.

Description of Respondents: Respondents include timber purchasers or their affiliates. Estimated completion time: 2 hours per response, 1 hour for records search and form completion, and 1 hour to keep and maintain records.

Annual responses: 100.

Annual burden hours: 190 (10 respondents filing the form do not export timber during the year).

Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: August 28, 1997.

Carole Smith,

Bureau Information Collection Clearance Officer.

[FR Doc. 97–25955 Filed 9–30–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1030–24 1A]

OMB Approval Number 1004–0001; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3510 *et seq.*). On March 22, 1996, BLM published a notice in the **Federal Register** at 61 FR 11860 requesting comments on this collection. The comment period ended on May 21, 1996. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0001), Office of Information and Regulatory Affairs, Washington, D.C. 20503. Please provide a copy of your comments to the Bureau Information Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper function of BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Title: Free Use Application and Permit (43 CFR Parts 3620 and 5510).

OMB Approval Number: 1004–001.

Abstract: The BLM is proposing to reinstate the approval of an information collection for an existing form, Free Use

Application and Permit, authorized by the regulations at 43 CFR parts 3620 and 5510. The form contains information that BLM uses to determine whether or not the timber, plant or mineral material applied for qualifies for free use and whether or not disposal is consistent with land-use plans and to ensure that the appropriate BLM administrative office is issuing the permit.

Bureau Form Number: 5510–1.

Frequency: On occasion, as applied for.

Description of Respondents: Respondents are generally individuals who are procuring timber, other vegetative or mineral materials for personal or construction use.

Estiamted Completion Time: 30 minutes (0.5 hour) per response.

Annual responses: 430.

Annual Burden Hours: 215.

Bureau Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: August 28, 1997.

Carole Smith,

Bureau of Land Management Information Clearance Officer.

[FR Doc. 97–25956 Filed 9–30–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Pima-Maricopa Irrigation Project Final Programmatic Environmental Impact Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the final programmatic environmental impact statement; INT–FES 97–30, Filed September 26, 1997.

SUMMARY: The Gila River Indian Community (Community) and the Bureau of Reclamation (Reclamation) have prepared a Final Programmatic Environmental Impact Statement (PEIS) on the Pima-Maricopa Irrigation Project (Project) in compliance with the National Environmental Policy Act of 1969, as amended, and other applicable environmental laws. The purpose of the final PEIS is to assist in decision making by the Commissioner of Reclamation regarding the approval of construction-related expenditures of funds authorized for the Central Arizona Project (CAP) to implement portions of the Project within the constraints of law. Any project that involves a major Federal action, such as Federal funding, permitting or approval, must comply with NEPA.

This final PEIS describes four alternatives for rehabilitation of 66,000 acres and new development of 80,330 acres of irrigated agricultural lands. The proposed action is to rehabilitate San Carlos Indian Irrigation Project (SCIIP) facilities and build new facilities both on and off the Reservation. Ultimate project size would be 146,330 acres, which will enable the Gila River Indian Community to better utilize water supplies and provide additional economic employment opportunities. A No Federal Action alternative is also described.

The Community is the Project proponent and is responsible for the preparation of this final PEIS through a Self-Governance Agreement with Reclamation. Reclamation is responsible for disbursing CAP-related Federal funds and functions as the lead Federal agency for the Project. The Bureau of Indian Affairs (BIA) is a cooperating agency in this process because of its trust responsibility and administration of SCIIP.

ADDRESSES: Single copies of the final PEIS may be obtained on request. Requests for copies should be addressed to: Mr. Bruce D. Ellis (PXAO–1500), Bureau of Reclamation, PO Box 9980, Phoenix, AZ 85068. Copies may also be requested by telephone at (602) 395–5883.

Copies of the final PEIS are available for inspection at the address above and also at the following locations:

Office of the Commissioner, Bureau of Reclamation, Room 7612, 849 C Street, NW, Washington DC 20240

Reclamation Service Center, Bureau of Reclamation, Library, Room 167, Building 67, Denver Federal Center, Denver CO 80225

Lower Colorado Region, Bureau of Reclamation, Library, Room 105, Mead Building, 3 Miles South on Buchanan Boulevard, Boulder City NV 89005.

Libraries

Arizona Department of Library Archives and Public Records, Phoenix AZ

Phoenix Public Library, Phoenix AZ

Chandler Public Library, Chandler AZ

Florence Public Library, Florence AZ

Coolidge Public Library, Coolidge AZ

Arizona Collection, Hayden Library, Arizona State University, Tempe AZ

University of Arizona, Main Library, Tucson AZ

Ms. Rebecca Burke, Government Document Service, Arizona State University, Tempe AZ.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce D. Ellis (PXAO–1500), Bureau of Reclamation, PO Box 9980, Phoenix, AZ 85068; telephone: (602) 395–5685.

SUPPLEMENTARY INFORMATION: The recommended plan proposes construction of a common-use irrigation system to deliver water to 146,330 acres within the Gila River Indian Reservation (Reservation) and to rehabilitate SCIIP Joint Works facilities. The recommended plan, known as the Project, represents a component of the Community's Master Plan for Land and Water Use (Franzoy Corey, 1985). The Master Plan identifies the Community's major goals and preferences for improving and developing Reservation land and water resources.

The Project would support the continued role of agriculture as a primary element of the Community's traditional economy and way of life. The Project would enhance economic growth, development and self-sufficiency of the Community. The Project has the potential to significantly improve the standard of living for Community members. No significant changes have been made to the recommended plan as presented in the draft PEIS (DEIS 96–46).

The final PEIS presents the recommended plan, alternatives, and the no Federal action alternative. The document describes the existing environment and analyzes, at a programmatic level, the environmental consequences of project construction. The final PEIS also includes responses to comments received during the 60-day public review and hearing process on the draft statement.

Dated: September 26, 1997.

V. LeGrand Neilson,

Assistant Regional Director.

[FR Doc. 97–25987 Filed 9–30–97; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–384]

The Changing Structure of the Global Large Civil Aircraft Industry and Market: Implications for the Competiveness of the U.S. Industry

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: September 23, 1997.

SUMMARY: Following receipt of a request on August 18, 1997, from the House Committee on Ways and Means, the Commission instituted investigation No. 332–384, The Changing Structure of the Global Large Civil Aircraft Industry and Market: Implications for the Competitiveness of the U.S. Industry, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Mr. Peder Andersen (202–205–3388), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

As requested by the House Committee on Ways and Means in a letter dated August 13, 1997, the Commission, pursuant to section 332(g) of the Tariff Act of 1930, has instituted an investigation and will prepare a report examining key developments pertinent to the competitiveness of the U.S. large civil aircraft industry, focusing on the period 1992–96, and to the extent possible, 1997. The Commission will address changes in the structure of the global large civil aircraft industry, including the Boeing-McDonnell Douglas merger and the restructuring of Airbus Industrie. The report will also examine the emergence of Russian producers of large civil aircraft and the potential for Asian parts suppliers to form consortia to manufacture airframes. In addition, the Commission will address the implementation and status of the 1992 U.S.-EU Large Civil Aircraft Agreement, developments in the global market for aircraft, including the emergence of markets for regional jet aircraft and jumbo jets, issues involving "open skies" agreements and "free flight" systems, as well as other developments affecting the competitiveness of the U.S. industry.

The report in this investigation will be similar in scope to the report prepared by the Commission in investigation No. 332–332, Global Competitiveness of U.S. Advanced-Technology Manufacturing Industries: Large Civil Aircraft, prepared at the request of the Senate Committee on Finance and transmitted to the Committee in August 1993. The report was published in August 1993 (USITC Publication 2667) and may be accessed through the USITC Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on March 17, 1998. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., March 3, 1998. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., March 3, 1998; the deadline for filing post-hearing briefs or statements is 5:15 p.m., March 31, 1998. In the event that, as of the close of business on March 3, 1998, no witnesses are scheduled to appear at the hearing, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1816) after March 3, 1998 to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on March 31, 1998. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: September 24, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–26021 Filed 9–30–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–383]

Certain Hardware Logic Emulation Systems and Components Thereof; Notice of Commission Determination Granting Complainant's Petition to Modify the Amount of Respondents' Temporary Relief Bond

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to grant complainant's petition to modify respondents' temporary relief bond in the above-captioned investigation. Respondents' temporary relief bond for all entries made since issuance of temporary relief in this investigation remains at 43 percent of the entered value of the subject imported articles if entered value equals transaction value as defined in applicable U.S. Customs Service regulations. Respondents' temporary relief bond for all entries made since issuance of temporary relief in this investigation is increased to 180 percent of the entered value of the subject imported articles if entered value does not equal transaction value as defined in applicable U.S. Customs Service regulations.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3116.

SUPPLEMENTARY INFORMATION: This investigation and temporary relief proceedings were instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 Fed. Reg. 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation of Wilsonville, Oregon ("Mentor") and Meta Systems of Saclay, France ("Meta") (collectively "respondents"). The products at issue are hardware logic emulation systems that are used in the semiconductor manufacturing industry to test

electronic circuit designs for semiconductor devices.

After an eleven-day evidentiary hearing, the presiding administrative law judge ("ALJ") issued an initial determination granting Quickturn's motion for temporary relief and a recommended determination ("TEO RD") regarding the appropriate remedy and bonding during the pendency of the permanent relief phase of the investigation. In his TEO RD, the ALJ recommended to the Commission that respondents' temporary relief bond ("TEO bond") be determined based on the erosion in sales price that Quickturn was likely to suffer as a result of importations during the investigation. The Commission determined that the appropriate respondents' TEO bond should protect Quickturn against both sales price erosion and other losses of gross revenues that would reduce its research and development budget. Commission TEO Opinion at 19–21. The Commission imposed a bond of 43 percent of entered value on respondents' emulation systems, of which 25 percent was to compensate Quickturn for price erosion and 18 percent was to compensate for lost gross revenues that would otherwise be used for research and development. Commission TEO Opinion at 19–21.

On June 9, 1997, Quickturn petitioned the Commission pursuant to rule 210.76 for an increase in respondents' TEO bond rate from 43 percent of entered value of the subject emulation systems to 180 percent of entered value in view of the entered values that respondents have declared to the U.S. Customs Service. Quickturn argued that evidence gathered in the permanent relief phase of the investigation revealed that the TEO bond rate established in the temporary relief phase (43 percent of entered value) is inadequate to protect Quickturn from injury, as required by section 337. On June 19, 1997, respondents and the Commission investigative attorneys ("IAs") filed responses to that petition. The IAs supported the petition and respondents opposed it.

On July 22, 1997, the Commission determined to rule on Quickturn's petition to modify the TEO bond rate after receiving the ALJ's recommended determination on remedy and bonding in the permanent phase of the investigation. On August 1, 1997, the ALJ issued his recommended determination.

A Commission opinion in support of its determination will be issued shortly.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rule 210.76, 19 CFR § 210.76.

Copies of all nonconfidential documents filed in connection with this investigation are, or will be, available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: September 24, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–26022 Filed 9–30–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–67]

Wheat Gluten Industry Council

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) (the Act).

SUMMARY: Following receipt of a petition filed on September 19, 1997, on behalf of the Wheat Gluten Industry Council, the Commission instituted investigation No. TA–201–67 under section 202 of the Act to determine whether wheat gluten, provided for in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: September 19, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Participation in the Investigation and Service list

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Confidential Business Information (CBI) Under an Administrative Protective Order (APO) and CBI Service List.

Pursuant to section 206.17 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than 21 days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearings on Injury and Remedy

The Commission has scheduled separate hearings in connection with the injury and remedy phases of this investigation. The hearing on injury will be held beginning at 9:30 a.m. on December 16, 1997, at the U.S. International Trade Commission Building. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on February 10, 1998. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before December 5, 1997, and January 30, 1998, respectively. All persons desiring to appear at the hearings and make oral presentations should attend prehearing conferences to be held at 9:30 a.m. on December 9, 1997 and February 3, 1998, respectively, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs on injury is December 10, 1997; that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. § 2252(a)(6)(B), is February 3, 1998. Parties may also file posthearing briefs. The deadline for filing posthearing briefs on injury is December 23, 1997; that for filing posthearing briefs on remedy is February 18, 1998. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of injury on or before December 23, 1997, and pertinent to the consideration of remedy on or before February 18, 1998. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 202 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

Issued: September 26, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–26020 Filed 9–30–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Temporary Relocation of the Office of the Secretary

AGENCY: United States International Trade Commission.

ACTION: The Office of the Secretary will be relocating beginning Monday, October 20, 1997, for approximately 2 to 3 weeks, to room 317, 500 E Street SW., Washington, DC, 20436. Hours of operation and filing hours will remain 8:45 a.m.–5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Secretary Donna R. Koehnke (202–205–2000), Assistant Secretary Ruby J. Dionne (202–205–2799), or William R. Bishop (202–205–2000), Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Members of the media should contact Margaret O'Laughlin, Office of External Relations, at 202–205–1819. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

AVAILABILITY OF OFFICIAL FILES:

The following services will be available during the temporary relocation:

- The Electronic Document Imaging System (EDIS)
- In-house duplication services (EDIS documents and new petitions/complaints only)
- Fax-on-demand services
- Paper copies of Commission publications.

The following services will not be available during the temporary relocation:

- Paper copies of investigative files
- Microfiche files.

Issued: September 24, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–26023 Filed 9–30–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

Under 28 C.F.R. § 50.7, notice is hereby given that on September 12, 1997, a proposed Consent Decree in *United States* v. *Marine Shale Processors, Inc.*, Civ. No. CV90–1240, was lodged with the United States District Court for the Western District of Louisiana.

In this action against Marine Shale Processors, Inc., ("MSP") the United States sought to recover civil penalties and enjoin violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, 42 U.S.C. § 7413. The United States also sought relief under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9604, 9606, and 9607. MSP operated a facility in Morgan City, Louisiana that treated hazardous waste by combustion.

This settlement resolves civil claims pending against MSP, as well as the civil claims against Southern Wood Piedmont, one of MSP's customers, and Recycling Park, Inc., an intervenor. The Proposed Decree also settles the claims of the State of Louisiana, co-Plaintiff in a number of the claims.

Under the proposed Decree, a new company, GTX, Inc. will purchase the assets and liabilities of MSP if and when GTX obtains certain environmental permits. MSP will pay a total penalty in excess of $10 million. GTX will dispose of the incinerator ash produced by MSP in a RCRA Subtitle C landfill. Further, GTX will upgrade the pollution control devices and hazardous waste storage tanks at the Facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Marine Shale Processors, Inc.*, D.J. Ref. 90–11–2–204.

The consent decree may be examined at the Office of the United States Attorney, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130, at U.S. EPA Region VI, 1445 Ross Avenue Dallas, TX 75202–2733, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $30.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–25996 Filed 9–30–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Notice is hereby given that on September 2, 1997, a proposed Consent Decree in *United States* v. *Vogel Paint and Wax Co.*, C97–4078 MWB (N.D. Iowa) was lodged with the United States District Court for the Northern District of Iowa. The proposed Consent Decree resolves the United States' claims in this action against Vogel Paint and Wax Company, Incorporated ("Vogel") under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for response costs incurred and to be incurred by the United States at the Vogel Paint and Wax Company Site ("Site") in Sioux County, Iowa.

The proposed Consent Decree requires, *inter alia*, that Vogel will pay to the EPA Hazardous Substance Superfund $200,000. In addition, Vogel is required to implement and perform certain response actions at the Site as ordered by the State of Iowa. The proposed Consent Decree grants to Vogel a covenant not to sue under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and the contribution protection afforded by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in the proposed Consent Decree. The proposed Consent Decree contains reopeners which allow the United States, in certain situations, to institute additional proceedings to require Vogel to perform response actions or reimburse the United States for additional costs of response.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Vogel Paint and Wax Co.*, DOJ No. 90–11–3–855.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Iowa, 320 6th St., Sioux City, Iowa 51101; and at the Consent Decree library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree library. When requesting a copy, please enclose a check in the amount of $11.25 (25 cents per page reproduction cost) payable to the Consent Decree library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–25995 Filed 9–30–97; 8:45 am]

BILLING CODE 4410–15–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

September 26, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m., Thursday, September 25, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

CHANGES IN THE MEETING: The Commission postponed until October 3, 1997, consideration and action on the following:

1. Whether to propose revisions to Commission Procedural Rules 5, 9, 10, 45(f), 70, and 75.

TIME AND DATE: 10:00 a.m., Friday, October 3, 1997 (Previously scheduled for September 25, 1997).

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Whether to propose revisions to Commission Procedural Rules 5, 9, 10, 45(f), 70, and 75.

TIME AND DATE: 10:00 a.m., Friday, October 17, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Rock of Ages Corp.* v. *Secretary of Labor*, Docket No. YORK 94–76, etc. (Issues include whether the judge correctly determined that the operator violated four regulations relating to the use and handling of explosives and that the violations were due to the operator's unwarrantable failure; correctly assessed the penalty for the violations; and failed to be impartial in his decision and conduct of the hearing).

TIME AND DATE: 2:00 p.m. Friday, October 17, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session.

1. *Rock of Ages Corp.* v. *Secretary of Labor*, Docket No. YORK 94–76, etc. (See oral argument listing, *supra*, for issues).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 97–26209 Filed 9–29–97; 3:53 pm]

BILLING CODE 6735–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board

Sunshine Act Meeting

DATE AND TIME: October 8, 1997, 2:30 p.m., Open Session; October 9, 1997, 8:30 a.m., Open Session; October 10, 1997, 8:30 a.m., Open Session.

PLACE: University of Houston, Hilton Conference Center, 4800 Calhoun Road, Houston, TX 77204–3902.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, October 8, 1997

Open Session (2:30 p.m.–5:30 p.m.)

—Minutes, August 1997 Meeting
—Closed Session Agenda Items for November 1997 Meeting
—Chairman's Report
—Report of the Task Force on the October 1997 Meeting
—Working paper on Government Funding of Scientific Research

Thursday, October 9, 1997

Open Session (8:30 a.m.–6:15 p.m.)

Subject of Meeting: Convocation on Graduate and Postdoctoral Education: The Federal Role

I. The National Interest and Federal Role in Science & Engineering Graduate and Postdoctoral Education

—Federal/University Partnership in Research and Education for the Future

(Principles of Federal Support for Graduate and Postdoctoral Education)
—Modes of Federal Support for Graduate and Postdoctoral Education

II. Science & Engineering Graduate/ Postdoctoral Education: Needs and Issues

Friday October 10, 1997

Open Session (8:30 a.m.–11:00 a.m.)

—Discussion of NSB Report to OSTP on Graduate Education
—Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 97–26110 Filed 9–29–97; 9:46 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–607]

United States Air Force; Notice of Proposed Issuance of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a facility operating license to the United States Air Force (the applicant). The license would authorize the applicant to operate a nuclear research reactor (the facility), located at McClellan Air Force Base, Sacramento, California, at power levels not to exceed 2300 kilowatts (thermal), with pulse step reactivity insertion not to exceed $1.75. The facility is presently operating under the authority of Section 91b of the Atomic Energy Act of 1954, as amended (the Act).

In compliance with the terms and conditions of the application, as amended, and in the absence of good cause to the contrary, the Commission will issue to the applicant (without prior notice) a class 104c facility license authorizing operation of the nuclear research reactor at the power and pulse levels specified above, since the application is complete enough to permit evaluation of the safety and environmental impact of the operation of the facility in the manner and location proposed. Prior to the issuance of the license, the facility will be inspected by a representative of the Commission to determine whether it has been constructed in accordance with the application. The license will not be issued until the Commission makes the findings required by the Act and the Commission's rules and regulations and concludes that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public or to the environment. In addition, the applicant will be required to execute an indemnity agreement as required by Section 170 of the Act and by 10 CFR part 140 of the Commission's regulations.

By October 31, 1997, the licensee may file a request for a hearing with respect to issuance of the facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the application under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Col. Robert Gibson, SM–ALC/JA, 5219 Arnold Avenue, McClellan AFB, Sacramento, California 95652–1085, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a

balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for dated October 30, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 23rd day of September 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–26009 Filed 9–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–59]

Texas A&M University; Notice of Consideration of Application for Renewal of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R–23, issued to the Texas A&M University for operation of the Texas A&M University AGN–201 reactor located on the Texas A&M campus in College Station, Texas.

This renewal would extend the expiration date of Facility License No. R–23 for twenty years from date of issuance, in accordance with the licensee's timely application for renewal dated July 22, 1997.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within thirty days of publication of this notice, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20037. If a request for a hearing or petition for leave to intervene is filed within the time prescribed above, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first rehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first rehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intents to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the renewal under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC within the time prescribed above.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Susan Spinks, Office of the General Counsel, John B. Connelly Building, 301 Tarrow, Sixth Floor, College Station, Texas 77843–1230.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (I)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated July 22, 1997, which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC.

Dated at Rockville, Maryland, this 23rd day of September 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28010 Filed 9–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–22]

Westinghouse Electric Corporation; Waltz Mill Test Reactor, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order approving, under 10 CFR 50.80, the transfer of Facility License No. TR–2, now held by the Westinghouse Electric Corporation. The license authorizes possession only of the Waltz Mill Test Reactor (WTR), located in Westmoreland County, Pennsylvania. The Commission is also considering issuance of a conforming amendment under 10 CFR 50.90 which would reflect the transfer.

Environmental Assessment

Identification of the Proposed Action

The proposed action would approve the transfer of the WTR license from Westinghouse Electric Corporation to a newly formed corporation which will utilize the same name. The new corporation will consist of most of the industrial businesses of the present Westinghouse Electric Corporation including the WTR facility. The media businesses of the existing Westinghouse Electric Corporation will remain with the existing corporation, which will change its name to CBS Corporation. The proposed action would also amend the license to reflect the transfer to the new corporation.

The proposed action does not modify the WTR facility configuration or licensed activities. The Westinghouse employees responsible for the licensed WTR facility will become employees of the new corporation, and will continue to be responsible after the transfer, for all licensed activities. The new corporation will be qualified to carry out licensed activities. The WTR facility will not change as a result of the action, including Technical Specifications or procedures, and licensed activities will continue in their present form without interruption of any kind. The new corporation will be financially qualified to hold the WTR facility possession only license, and will provide the financial assurance needed to decommission the facility.

The proposed action is in accordance with the licensee's application dated August 18, 1997, for approval of transfer of the license and conforming amendment.

Need for the Proposed Action

The proposed action is needed to permit the consummation of the proposed transfer of the WTR facility license from the Westinghouse Electric Corporation to a newly formed corporation as described above.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no physical or technical changes to WTR. The technical qualifications of the proposed transferee will be identical to those of the current Westinghouse Electric Corporation. The present facility organization, the oversight organizations, and the engineering and support organizations will be transferred to the new corporation essentially intact.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased and that radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed action would not affect routine radiological facility effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action would not affect nonradiological facility effluents and would have no environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

No alternatives appear that will have different or lesser effect on the use of available resources.

Agencies and Persons Contacted

In accordance with its stated policy, on September 9, 1997, the staff consulted with the Pennsylvania State Official, James G. Yusko, of the Bureau of Radiation Protection, Pennsylvania Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 18, 1997, and related letter dated August 15, 1997, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 23rd day of September 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Project Management, Office of Nuclear Reactor Regulation .

[FR Doc. 97–26008 Filed 9–30–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Reactor Fuels, Onsite Fuel Storage, and Decommissioning

Postponement

A meeting of the ACRS Subcommittee on Reactor Fuels, Onsite Fuel Storage, and Decommissioning scheduled to be held on October 9, 1997, in Room T–2 B3, 11545 Rockville Pike, Rockville, Maryland, has been postponed due to the unavailability of documents. Notice of this meeting was published in the **Federal Register** on September 22, 1997 (62 FR 49541). Rescheduling of this meeting will be announced in a future **Federal Register** Notice. For further information contact: Dr. Medhat El-Zeftawy, the cognizant ACRS staff engineer (telephone 301–415–6889) between 7:30 a.m. and 4:15 p.m. (edt).

Dated: September 25, 1997.
Sam Duraiswamy,
Chief, Nuclear Reactors Branch.
[FR Doc. 97–26012 Filed 9–30–97; 8:45 am]
BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

OMB Approval of Agency Information Collection Activity; Procedures for PBGC Approval of Multiemployer Plan Amendments

AGENCY: Pension Benefit Guaranty Corporation.
ACTION: Notice of OMB approval.

SUMMARY: This notice announces that the Office of Management and Budget has extended its approval of a collection of information contained in the Pension Benefit Guaranty Corporation's regulation on Procedures for PBGC Approval of Plan Amendments.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: OMB has extended its approval, under OMB control number 1212–0031, of the collection of information contained in PBGC's regulation on Procedures for PBGC Approval of Plan Amendments (29 CFR part 4220). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Issued in Washington, D.C. this 26th day of September, 1997.
David M. Strauss,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 97–26050 Filed 9–30–97; 8:45 am]
BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on September 5, 1997 (62 FR 47071). Individual authorities established or revoked under Schedules A and B and established under Schedule C between August 1, 1997, and August 31, 1997, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

The following Schedule A authority was established during August 1997:

Department of Justice

Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in Foreign Countries. Initial appointments under this authority may not exceed 2 years, but may be extended for an additional period not to exceed 2 years. Effective August 29, 1997.

No Schedule A authorities were revoked during August 1997.

Schedule B

No Schedule B authorities were established or revoked during August 1997.

Schedule C

The following Schedule C authorities were established during August 1997:

Commission on Civil Rights

Executive Assistant to the Staff Director. Effective August 28, 1997.

Department of Agriculture

Confidential Assistant to the Director, Human Resources Management. Effective August 21, 1997.

Confidential Assistant to the Director, Office of Communications, Rural Development. Effective August 28, 1997.

Staff Assistant to the Assistant Secretary for Administration. Effective August 28, 1997.

Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective August 28, 1997.

Department of Defense

Special Assistant to the Assistant Secretary, International Security Policy. Effective August 6, 1997.

Department of Education

Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective August 8, 1997.

Confidential Assistant to the Secretary's Regional Representative, Region V. Effective August 14, 1997.

Department of Energy

Special Assistant to the Deputy Assistant Secretary for Building Technology, State and Community Programs. Effective August 1, 1997.

Department of Health and Human Services

Speechwriter to the Director of Speechwriting. Effective August 19, 1997.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective August 28, 1997.

Department of Housing and Urban Development

Deputy Counselor to the Counselor to the Secretary. Effective August 13, 1997.

Director, Corporate and Constituent Outreach to the Assistant Secretary for Public Affairs. Effective August 13, 1997.

Senior Advisor to the Deputy Secretary. Effective August 21, 1997.

Department of Justice

Confidential Assistant to the Deputy Attorney General. Effective August 7, 1997.

Public Affairs Specialist to the Director, Public Affairs. Effective August 7, 1997.

Department of Labor

Chief of Staff to the Assistant Secretary for Office of Congressional and Intergovernmental Affairs. Effective August 13, 1997.

Department of the Navy (DOD)

Staff Assistant to the Secretary of the Navy. Effective August 22, 1997.

Department of State

Special Assistant to the Legal Advisor. Effective August 1, 1997.

Department of Transportation

Scheduling/Advance Assistant to the Director for Scheduling and Advance. Effective August 7, 1997.

Scheduling/Advance Assistant to the Director for Scheduling and Advance. Effective August 7, 1997.

Senior Policy Advisor to the Deputy Secretary. Effective August 19, 1997.

Associate Direct or Media Relations and Special Projects to the Assistant to the Secretary and Director of Public Affairs. Effective August 19, 1997.

Department of the Treasury

Senior Advisor to the Assistant Secretary for Management and CFO. Effective August 12, 1997.

Deputy Director of Scheduling to the Director, Scheduling Affairs. Effective August 13, 1997.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective August 21, 1997.

Environmental Protection Agency

Special Assistant to the Chief of Staff. Effective August 20, 1997.

Farm Credit Administration

Special Assistant to the Member. Effective August 6, 1997.

National Aeronautics and Space Administration

Writer-Editor to the Associate Administrator for Public Affairs. Effective August 22, 1997.

Office of Management and Budget

Confidential Assistant to the Associate Director, National Security and International Affairs. Effective August 22, 1997.

Office of National Drug Control Policy

Events Manager to the Director. Effective August 14, 1997.

Securities and Exchange Commission

Confidential Assistant to the Commissioner. Effective August 28, 1997.

Small Business Administration

Deputy Associate Administrator to the Associate Administrator for Communications and Public Liaison. Effective August 14, 1997.

Senior Advisor to the Administrator. Effective August 28, 1997.

United States Information Agency

White House Liaison to the Chief of Staff, Office of the Director. Effective August 7, 1997.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 comp., P. 218.
Office of Personnel Management.
Janice R. Lachance,
Acting Director.
[FR Doc. 97–25950 Filed 9–30–97; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22832; 812–10650]

Harbor Fund and Harbor Capital Advisors, Inc.; Notice of Application

September 25, 1997.
AGENCY: Securities and Exchange Commission ("SEC").
ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from the provisions of section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants Harbor Fund (the "Trust") and Harbor Capital Advisors, Inc. (the "Adviser") request an order to permit the Adviser to enter into and materially amend contracts with the Trust's subadvisers without shareholder approval.

FILING DATES: The application was filed on May 9, 1997, and amended on August 29, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 20, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One SeaGate, Toledo, Ohio 43666.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is organized as a Delaware business trust and is registered under the Act as an open-end management investment company. The Trust is comprised of nine series ("Funds"), each of which has its own investment objectives and policies.[1] Each Fund offers only one class of shares, which are distributed to the public without a sales charge or distribution or service fees. The Adviser, a Delaware corporation, is registered under the Investment Advisers Act of 1940 (the "Advisers Act").

2. The Trust, on behalf of each Fund, has entered into separate investment advisory agreements ("Agreements") with the Adviser. Under the terms of these Agreements, the Adviser provides each Fund with investment research, advice and supervision, and furnishes continuously an investment program for each Fund consistent with the investment objectives and policies of the Fund. The Adviser also administers each Fund's business affairs, furnishes each Fund with office facilities and is responsible for clerical, recordkeeping, and bookkeeping services and for the financial and accounting records required to be maintained by each Fund (other than those maintained by the Trust's custodian and shareholder servicing agent). The Agreements specifically permit the Adviser to enter into investment subadvisory agreements ("Subadvisory Agreements") with portfolio managers ("Portfolio Managers") to whom the Adviser delegates its responsibility for providing investment advice and making investment decisions for the particular Fund.

3. Since 1987, the Adviser has selected Portfolio Managers to make investment decisions for the Funds, and has represented itself as an investment adviser whose strength, experience, and expertise lies in its ability to evaluate, select, and supervise those Portfolio Managers who can add the most value to a shareholder's investment in the Trust. Currently, all nine Funds have contracted for subadvisory services with Portfolio Managers selected by the Adviser.[2] In addition to selecting Portfolio Managers, the Adviser provides management oversight services to the Funds, which include, but are not limited to, supervising the Portfolio

[1] Applicants also request relief with respect to any series of the Trust that may be created in the future and all subsequently registered open-end investment companies that in the future are advised by the Adviser, operate in substantially the same manner as the Funds with respect to the Adviser's responsibility to select, evaluate and supervise portfolio managers, and comply with the conditions to the requested order.

[2] As of the date of the application, only one Fund has more than one Portfolio Manager.

Managers' compliance with federal regulations, including those imposed under the Act; extensive evaluation of the Portfolio Managers' investment performance; analyzing the composition of the investment portfolios of each Fund and preparing reports for the Trustees; preparing presentations to shareholders which analyze each Fund's overall investment program and performance; and intensive and continual review of its Portfolio Manager selection process. The Adviser retains the ultimate responsibility to both oversee the Portfolio Managers which it selects and to recommend to the Trust's board of trustees (the "Board of Trustees") their hiring, termination, and replacement.

4. Under the terms of the Subadvisory Agreements, the Portfolio Managers have authority to provide the respective Funds with advice concerning the investment management of that portion of the Fund's assets allocated to the Portfolio Manager by the Board of Trustees. The Portfolio Managers determine what securities will be purchased and sold. The Portfolio Managers also perform certain recordkeeping and compliance functions required by the Act and the Advisers Act.

5. For the Adviser's advisory and administrative services, each fund pays the Adviser a monthly fee at an annual rate based on the average daily net assets of that fund. For their subadvisory services to the Funds, the Adviser pays each Portfolio Manager a monthly fee at an annual rate based on the average daily net assets of the Fund. Subadvisory fees paid by the Adviser to a Portfolio Manager of a Fund with more than one Portfolio Manager depend both on the fee rate negotiated with the Adviser and on the percentage of the Fund's assets allocated to the Portfolio Manager by the Adviser.

6. Applicants request an exemption from section 15(a) of the Act and rule 18f-2 under the Act to permit the Adviser, subject to the approval of the Trust's Board of Trustees, to enter into and materially amend Subadvisory Agreements with Portfolio Managers without obtaining shareholder approval. The Adviser will obtain shareholder approval of a Subadvisory Agreement with a Portfolio Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Adviser, other than by reason of serving as Portfolio Manager to one or more of the Funds.

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f-2 provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) to permit the Adviser, subject to the approval of the Trust's Board of Trustees, to enter into and materially amend Subadvisory Agreements with Portfolio Managers without obtaining shareholder approval.

3. Applicants assert tha, from the perspective of the investor, the role of the Portfolio Managers with respect to the Trust is substantially equivalent to the role of the individual portfolio managers employed by an adviser to an investment company. In both cases, the portfolio managers are concerned principally with selection of portfolio investments in accordance with the fund's investment objectives and policies and have no significant supervisory, management or administrative responsibilities with respect to the fund. Applicants also assert that investors look to the Adviser when they have questions or concerns about the Trust's management or about their Fund's investment performance. Applicants state that investors expect the Adviser and the Board of Trustees to select the Portfolio Managers for the Fund and, for multiple manager Funds, rely upon the Adviser's expertise in selecting specific Portfolio Managers for segments of the Fund's assets in accordance with a Portfolio Manager's experience and expertise.

4. Applicants contend that the requested relief will allow each Fund to operate more efficiently. Without the delay inherent in calling and holding shareholder meetings and without the associated costs, the Funds will be able to act more quickly and with less expense to replace Portfolio Managers when the Adviser and the Board of Trustees feel that change would benefit a Fund.

5. Applicants believe that the requested relief is consistent with the protection of investors in light of the management structure of the Trust, as well as the Adviser's significant experience and expertise in selecting Portfolio Managers and the shareholder's expectation that the Adviser will utilize that expertise and select the most able Portfolio Managers.

6. Applicants also believe that shareholders of the Funds will be provided with adequate information about the Portfolio Managers. The Trust's prospectus and statement of additional information will contain all required information regarding each Portfolio Manager. The Trust will furnish to shareholders, within 90 days of the date that a Portfolio Manager is appointed, relevant information that would have been provided in a proxy statement.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of its outstanding voting securities, as defined in the Act, or, in the case of a new Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition number 2 below, by the sole initial shareholder(s) before offering shares of that Fund to the public.

2. The Trust will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to this application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility to oversee Portfolio Managers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Trust's Board of Trustees will be persons each of whom is not an "interested person" of the Trust as defined in section 2(a)(19) of the Act ("Independent Trustees"), and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Portfolio Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Adviser or the Funds, other than by reason of serving as Portfolio Manager to one or more of the Funds ("Affiliated Portfolio Manager"), without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Portfolio Manager change is proposed for a Fund with an Affiliated Portfolio Manager, the Trust's Trustees, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Portfolio Manager derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Portfolio Manager, shareholders will be furnished relevant information about a new Portfolio Manager that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Portfolio Manager. The Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a Portfolio Manager, an informal information statement meeting the requirements of Regulation 14C and Schedule 14C of the Securities Exchange Act of 1934 ("Exchange Act"). The information statement will also meet the relevant requirements of Schedule 14A of the Exchange Act.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's portfolio, and subject to review and approval by the Trustees, will: (i) Set the Fund's overall investment strategies; (ii) select Portfolio Managers; (iii) when appropriate, recommend to the Fund's Board of Trustees the allocation and reallocation of a Fund's assets among multiple Portfolio Managers; (iv) monitor and evaluate the performance of Portfolio Managers; and (v) ensure that the Portfolio Managers comply with the Board's investment objectives, policies, and restrictions.

8. No Trustee or officer of the Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that Trustee, director or officer) any interest in a Portfolio Manager except for (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1 percent of the outstanding securities of any class or debt or equity of a publicly-traded company that is either a Portfolio Manager or an entity that controls, is controlled by or is under common control with a Portfolio Manager.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25990 Filed 9–30–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39129; File No. SR–NYSE–97–16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to NYSE Rule 79A

September 25, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange rule 79A to conform with requirements for display of customer limit orders as contained in Rule 11Ac1–4 under the Exchange Act. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

NYSE Rule 79A

Miscellaneous Requirements on Stock and Bond Market Procedures

.10 Request to make better bid or offer. When any [member] *Floor broker* does not bid or offer at the limit of an order which is better than the currently quoted price in the security and is requested by his principal to bid or offer at such limit, he shall do so.

.15 With respect to limit orders received by specialists, each specialist shall publish immediately (i.e., as soon as practicable, which under normal market conditions means no later than 30 seconds from time of receipt) a bid or offer that reflects:

(i) the price and full size of each customer limit order that is at a price that would improve the specialist's bid or offer in such security; and

(ii) the full size of each limit order that

(A) is priced equal to the specialist's bid or offer for such security;

(B) is priced equal to the national best bid or offer; and

(C) represents more than a de minimis change (i.e., more than 10 percent) in relation to the size associated with the Exchange's bid or offer.

The requirements with respect to specialists' display of limit orders shall not apply to any customer limit order that is:

(1) executed upon receipt of the order;

(2) placed by a customer who expressly requests, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed;

(3) an odd-lot order;

(4) delivered immediately upon receipt to an exchange or association-sponsored system or an electronic communications network that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–1 (c)(5)(ii) under the Securities Exchange Act with respect to that order;

(5) delivered immediately upon receipt to another exchange member or over-the-counter market maker that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–4 under the Securities Exchange Act with respect to that order;

(6) an "all or none" order;

(7) a limit order to buy at a price significantly above the current offer or a limit order to sell at a price significantly below the current bid that is handled in compliance with Exchange procedures regarding such orders, ("too marketable limit orders"); or

(8) an order that is handled in compliance with Exchange procedures regarding block crosses at significant premiums or discounts from the last sale.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has recently adopted requirements (the "Order Execution Rules") for specialists to display immediately the price and full size of customer limit orders that would improve the bid or offer in a security.[3] The term "immediately" means as soon as practicable, which under normal market conditions requires display no later than 30 seconds after receiving such orders. The proposed amendments to NYSE Rule 79A would make the rule consistent with the order execution requirements of Rule 11Ac1–4 under the Exchange Act, as well as incorporate certain Commission interpretations of the Rule.[4]

Rule 79A.10 would be amended to apply only to Floor brokers rather than to all members. This would require brokers to represent an order at its limit when requested to do so by the customer, while continuing to allow brokers to use brokerage judgment in representing an order for a customer. A new section would be added to Rule 79A which would apply only to specialists. Rule 79A.15 would provide that, upon receipt of a customer limit order, a specialist must "immediately" (*i.e.*, as soon as practicable, which under normal market conditions means within 30 seconds from time to receipt) publish a bid or offer that reflects:

(i) The price and full size of the order, if it is at a price that would improve the bid or offer in the subject security;[5] and

(ii) The full size of the order, if it is priced at the same price as the current bid or offer in the subject security, and the current bid or offer is equal to the national best bid or offer. The specialist would not, however, be required to add size to the prevailing bid or offer if the size of the customer's limit order represents a *de minimis* increase (*i.e.*, 10% or less) over the size of the prevailing bid or offer.

Requirements for specialists to display customer limit orders would *not* apply to the following:[6]

(i) An order that is executed upon receipt;

(ii) An order placed by a customer who has requested (either on an order-by-order basis or respectively) that the order not be displayed;

(iii) An odd-lot order;

(iv) An order that is immediately delivered to an exchange or association-sponsored system, or electronic communications network ("ECN") that complies with the ECN display alternative of the Quote Rule (Rule 11Ac1–1(c)(5)(ii));

(v) An order that is immediately delivered to another exchange member or OTC market maker that complies with the Limit Order Display Rule (Rule 11Ac1–4);

(vi) an "all or none" order;

(vii) a "too-marketable" limit order[7]; or,

(viii) an order that is handled in compliance with Exchange procedures regarding block crosses at significant premiums or discounts from the last sale.[8]

2. Statutory Basis

The basis under the Exchange Act for the proposed rule change is the requirement under Section 6(b)(5) of the Exchange Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that this rule change will accomplish these ends by facilitating increased transparency in the market, thus providing the public with better information on which to base investment decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in 450 Fifth Street, N.W., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–NYSE–97–16 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act and the rules and regulations thereunder applicable to an exchange and with Section 11A of the Exchange Act. The proposal will make the NYSE's limit order display rule consistent with the Commission's Limit Order Display Rule ("Display Rule"),[9] thereby furthering the investor protection and market transparency objectives of the Order handling Rules.[10] In adopting the Order Handling Rules, the Commission increased investor protection by ensuring that customer limit orders were immediately displayed in the markets and by providing investors information about and access to superior prices that specialists and market makers displayed in ECNs. Although the Order handling Rules supersede existing NYSE rules, the proposed rule change will help provide consistency among Commission and NYSE rules.[11] Consequently, the proposed changes submitted by the NYSE will help remove impediments to the operation of a free and open market and a national market system; enhance the protection of investors and the public interest, and produce fair and informative quotations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to ensure consistency between NYSE rules and the Order Handling Rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NYSE–97–16) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25991 Filed 9–30–97; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[4] *See* letter from Richard Lindsey, Director, Division of Market Regulation, SEC to James E. Buck, Senior Vice President and Secretary, NYSE, dated January 17, 1997. The letter provided no-action relief for a specialist that does not display a limit order while complying with Exchange procedures for "too marketable" limit orders or for block crosses at significant premiums or discounts from the last sale.

[5] In an August 28, 1997, letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Kathy England, Assistant Director, Market Regulation, the Exchange stated that Rule 79A.10 refers to "the limit of an order which is *better than* the currently quoted price" since the procedures for representing an order whose limit is *equal to* the currently quoted price are covered by Exchange Rules 70 and 123A.42. These rules provide that when a bid or offer is clearly established, no bid or offer at an inferior price shall be made, and require a broker to use due diligence to execute a limit order at its limit price, or at a better price, *if available under Exchange procedures.* (Emphasis in original.)

[6] The Exchange is not including the exception for block orders contained in Rule 11Ac1–4(c)(4).

[7] A "too-marketable" limit order is an order to buy at a price much higher than the offer, or an order to sell at a price much lower than the bid. When such an order is received, the specialist may execute the order at the market or may seek price confirmation. (*See* memorandum from Market Surveillance Division, NYSE, to Specialists dated April 15, 1996.)

[8] Issued as NYSE Information Memo 94–32 (August 9, 1994). *See* Securities Exchange Act Release No. 34303 (July 1, 1994) and File No. SR–NYSE–93–48.

[9] 17 CFR 240.11Ac1–4.

[10] The Display Rule, which requires the display of customer limit orders priced better than a market maker or specialist's quote, and adopted amendments to the Quote Rule to enhance the quality of published quotations for securities, and competition and pricing efficiency in U.S. securities markets. These rules (collectively, "Order Handling Rules") were designed to address growing concerns about the handling of customer orders for securities. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Adopting Release"). *See also* Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) (order revising the effective date of the Order Execution Rules to January 13, 1997); and 38139 (January 8, 1997) (order revising the effective date of the Order Execution Rules until January 20, 1997).

[11] The NYSE proposal requires that specialists publish certain bids or offers "immediately (*i.e.*, as soon as practicable, which under normal market conditions means no later than 30 seconds from time of receipt)." The Commission notes that some industry participants have developed automated systems to ensure that customer limit orders are displayed no later than 30 seconds from receipt. Users of such systems, however, should use caution when relying on these systems for compliance. While "default" systems that ensure display no later than 30 seconds after receipt in situations where a market maker or specialist cannot otherwise attend to an order are not inappropriate, market makers or specialists that routinely allow such a system to display customer limit orders at the 30th second after receipt would *not* be deemed to be in compliance with the Display Rule. The Display Rule requires *immediate* display. *See* Letter from Richard Lindsey, Director, Division of Market Regulation, SEC to James F. Duffy, Executive Vice President and General Counsel, American Stock Exchange, dated April 1, 1997.

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6⅜ percent for the October–December quarter of FY 98.

Pursuant to 13 CFR 120.932, the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 120.801) shall be the greater of 6% over the New York prime rate of the limitation established by the constitution or laws of a given State. The initial rate for a fixed rate loan shall be the legal rate for the term of the loan.

LeAnn Oliver,

Acting Associate Administrator for Financial Assistance.

[FR Doc. 97–26027 Filed 9–30–97; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Austin Express, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 97–9–25, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find Austin Express, Inc., fit, willing, and able to provide commuter air service under 49 U.S.C. 41738.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 8, 1997.

FOR FURTHER INFORMATION CONTACT: Carol Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: September 23, 1997.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–25906 Filed 9–30–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 97–7–32 established the currently effective two-month SFFL applicable through September 30, 1997.

In establishing the SFFL for the two-month period beginning October 1, 1997, we have projected non-fuel costs based on the year ended June 30, 1997 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 97–9–32 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.3355

Latin America—1.3927

Pacific—1.4779

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation:

Dated September 25, 1997.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–25979 Filed 9–30–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 96–113; Notice 2]

Ford Motor Company; Denial of Application for Decision of Inconsequential Noncompliance

This notice denies the application by Ford Motor Company (Ford) for exemption from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 for a noncompliance with the requirements of 49 CFR 571.118 Federal Motor Vehicle Safety Standard No. 118 "Power-Operated Window, Partition, and Roof Panel Systems." Ford applied for the exemption on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on October 28, 1996, and an opportunity afforded for comment (61 FR 55686).

Paragraph S4(e) of Standard No. 118 requires that "power operated windows may be closed only" during the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of either of its front doors.

From September 18, 1995, through July 31, 1996, Ford manufactured approximately 57,400 Mercury Villager and 46,500 Nissan Quest vehicles that do not comply with Paragraph S4(e) because their power-operated windows can be closed after the ignition key is turned to the "off" position and the right front (passenger) door is opened.

Ford supported its application for inconsequential noncompliance with the following arguments:

In the affected Villager and Quest vehicles, it is likely that as long as the driver's door has not been opened, an adult (the driver) would remain present in the vehicle to supervise any children because a driver would exit the vehicle through the driver's door under all but the most extraordinary circumstances. As previously noted, the power window operation is canceled when the driver door is opened—the door through which the operator would be expected to exit the vehicle—thus eliminating any potential risk associated with operation of the power windows by unsupervised children remaining in the vehicle. In addition, the design of the front door power window control switches located on the door arm rests is such that closing these windows requires the switch to be pulled up and held. Further the switches are recessed in a cavity below the switch assembly surface. The intent of these design features is to minimize the chance of unintentional activation of power window closing that could, with other switch design configurations, result from a child leaning or resting a foot on the switch. An additional feature that minimizes the potential risk of injury to unsupervised children in the affected vehicles is that no power window switch controls are located in the rear seat positions, and the control switches for the third row seat optional power quarter windows are located in an overhead console in the front passenger compartment, relatively out of sight. In addition to the items cited above to mitigate the risk of injury, the Villager and Quest owner guides warn against leaving children unattended in the vehicle, specifically warn of the potential danger of children playing with the vehicle's power windows, and identify the fact that the accessory delay feature allows the power windows to be operated for a fifteen minute period after the ignition is turned off or until the driver door is opened.

Neither Ford nor Nissan is aware of any field or owner reports or allegations of injuries related to this condition. We [Ford] believe the likelihood of unsupervised children left in one of the affected vehicles being exposed to injury during the fifteen minute period after the ignition key has been turned off and a driver has exited the vehicle through other than the driver's door is very remote, and therefore the noncompliance presents no reasonably anticipated risk to motor vehicle safety. We [Ford] request that the agency find this condition to be inconsequential to motor vehicle safety, and accordingly that Ford and Nissan be exempted from the notice and remedy requirements of the Code. The agency recently granted a petition from Volkswagen of America, Inc., as documented in **Federal Register**, Volume 60, page 48197, (September 18, 1995), for vehicles with power windows operating in a manner similar to the affected Villagers and Quests.

No comments were received in response to the public notice.

Ford is correct that the Volkswagen noncompliance is similar. The power windows in the noncompliant Volkswagen GTIs and Jetta IIIs could be operated when the ignition key was in the "off" position and the passenger side front door has been opened. And as in the Mercury and Nissan vehicles, if the operator exits by the driver's door, the system is disabled. In granting Volkswagen's application, the agency concluded that it was "not likely that an operator would exit by means of the passenger door since that would entail passing over the cumbersome console between the two seats. Thus, the purpose of the requirement in this situation is still highly likely to be met." (61 FR at 48198).

The agency examined the front seating area in the noncompliant Mercury and Nissan vehicles and found no console or other impediment such as a transmission tunnel that would hinder a driver from exiting on the passenger side. Indeed, a prudent driver might well choose to exit by the front passenger door when parked on a busy city street. Thus, the configuration of the vehicles that the agency exempted from notification and remedy is clearly distinguishable from that of the Mercury/Nissan vehicles for which exemption is sought. Further, there is a greater floor pan to ceiling height resulting in the seating in the Quests and Villagers being more upright, making it easier for the driver to move across the front seats and out the passenger side.

The purpose of requiring inoperative power windows is to reduce the possibility of unsupervised children operating them. The agency is sensitive to the fact that a greater number of children are likely to be at risk from Ford's noncompliance. Although children can be carried in the approximately 20,000 GTIs and Jetta IIIs that were excused from notification and remedy, these passenger cars are not advertised and promoted for family use in the same manner that minivans are marketed, including the approximately 103,900 noncomplying Villagers and Quests.

For the reasons expressed above, it is hereby found that the applicant has not met its burden of persuasion that the noncompliance herein described is inconsequential to motor vehicle safety, and the application is denied.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on September 24, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–25971 Filed 9–30–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail, Inc. and Consolidated Rail Corporation

AGENCY: Surface Transportation Board.

ACTION: Notice of final scope of environmental impact statement (EIS).

SUMMARY: On June 23, 1997, CSX Corporation and CSX Transportation, Inc. (CSX), Norfolk Southern Corporation, and Norfolk Southern Railway Company (NS), and Conrail Inc. and Consolidated Rail Corporation (Conrail) filed an application (primary application) with the Surface Transportation Board (Board) under 49 U.S.C. 11323–25. NS, CSX, and Conrail are jointly seeking authority for NS and CSX to acquire control of Conrail and for the subsequent division of some of Conrail's assets and for the joint operation of other Conrail assets. The proposed transaction involves more than 44,000 miles of rail lines and related facilities covering a large portion of the eastern United States. To evaluate and consider the potential environmental impacts that might result from the proposed transaction, the Board's Section of Environmental Analysis (SEA) is preparing an environmental impact statement (EIS). The Board has determined that an EIS is warranted due to the nature and scope of environmental issues that may arise. SEA published the draft scope of the EIS in the **Federal Register** on July 7, 1997, a 30-day public comment period on the draft scope ended August 6, 1997, and the final scope of the EIS is included as part of this notice. Changes made to the draft scope are detailed in the Response to Comments section of this notice.

DATES: SEA expects to distribute the Draft EIS for public review and comment in November 1997.

ADDRESSES: Office of the Secretary, Case Control Unit, STB Finance Docket No. 33388, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

In the lower left-hand corner of the envelope, include: Attention: Elaine K. Kaiser, Chief, Section of Environmental Analysis, Environmental Filing.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Dalton, SEA Project Manager, Conrail Control Transaction, (202) 565–1530; or Ms. Dana White, SEA Environmental Specialist, at (202) 565–1552. (TDD for the hearing impaired: (202) 565–1695).

SUPPLEMENTARY INFORMATION:

Background

The proposed transaction, also referred to as the proposed action, would result in the individual assignment of certain existing Conrail facilities and operations to either CSX or NS through operating agreements or other mechanisms, and the sharing and operation of other existing Conrail facilities and operations for the benefit of both CSX and NS. This would result in an expanded CSX rail system, an expanded NS rail system, and certain areas of joint ownership and operation. According to CSX, NS, and Conrail (collectively, Applicants), CSX and NS would continue to compete with each other in providing rail freight services and would expand their competition to areas in which Conrail is currently the only major rail carrier. Each of the two railroads would utilize its existing lines, would operate certain Conrail lines independently of the other, and would jointly operate certain Conrail lines.

Applicants anticipate that the proposed transaction would provide benefits that include: reduced energy usage, enhanced safety, reduced highway congestion, reduced system-wide air pollutant emissions, expanded competition, and a more efficient rail transportation system. The proposed transaction includes changes in railroad operations such as increases and decreases in train traffic, changes in activity at rail yards and intermodal facilities, rail line abandonments and rail line connection construction projects. The proposed transaction is detailed in the primary application, and is discussed in specific terms in the operating plans and the environmental report (ER) that are part of the application. The ER describes the physical and operational changes that would be associated with the proposed transaction and discusses the potential environmental impacts of those changes. Applicants also filed corrected and supplemental information in the Errata and Supplemental ER on August 28, 1997.

Applicants served the ER, the Errata and the Supplemental ER on appropriate Federal, state, and local agencies. Applicants also served these documents on affected cities with populations of more than 50,000, as well as on counties and regional planning organizations that could be affected.

Environmental Review Process and Alternatives

The National Environmental Policy Act (NEPA) process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before the Board may make a decision on a proposed action. During scoping, the first phase of the NEPA process, the Board's environmental staff, SEA, published a draft scope in July 1997, soliciting information and comments on the scope of environmental issues to be addressed in the EIS for the proposed transaction. Under the NEPA process, SEA will evaluate the potential environmental impacts of operational and physical changes that are related to the proposed transaction. Existing rail operations are the baseline against which the potential environmental impacts of the proposed transaction will be evaluated. SEA will not propose mitigation of environmental impacts relating to existing rail operations and existing railroad facilities.[1]

In making its decision in this proceeding, the Board will consider public comments and SEA's environmental analysis contained in the EIS, including any proposed environmental mitigation. The alternatives SEA will consider in the EIS are: (1) Approval of the transaction as proposed; (2) disapproval of the proposed transaction in whole (No-Action alternative); and, (3) approval of the proposed transaction with conditions, including environmental mitigation conditions.[2]

Other parties may file inconsistent or responsive applications requesting modifications to the proposed transaction, such as requests for trackage rights or the acquisition of particular rail lines. The EIS will address potential environmental impacts and rail system changes proposed in the inconsistent and responsive applications.

Relationship With Other Agencies

The authority of the Board is broad and extends to all matters affecting change in rail operations resulting directly from the proposed transaction. Conditions may be imposed to mitigate adverse environmental impacts that are the result of the proposed transaction, or any alternative considered and approved by the Board. In determining appropriate conditions for the transaction, the Board will exercise its authority with due regard for the jurisdiction and expertise of other Federal agencies (e.g., the Federal Railroad Administration, the Environmental Protection Agency, the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service).

[1] In merger and control cases, the Board's practice consistently has been to mitigate only those environmental impacts that result from the transaction. The Board, like its predecessor, the Interstate Commerce Commission, has not imposed mitigation to remedy preexisting conditions such as those that might make the quality of life in a particular community better, but are not a direct result of the merger (i.e., congestion associated with the existing rail line traffic, or the traffic of other railroads).

[2] The Board has broad authority to impose conditions in railroad control transactions under 49 U.S.C. 11324 (c). However, the Board's power to impose conditions is not limitless; the record must support the imposition of the condition at issue. Moreover, there must be a sufficient relationship between the condition imposed and the transaction before the agency, and the condition imposed must be reasonable.

Related Activities

NS and CSX requested, and the Board allowed, the proposed construction of seven small rail line connections (Seven Connections) totaling approximately four miles to be filed and reviewed separately from the primary application. This separate environmental review process will address only the potential environmental impacts of the physical construction of these Seven Connections and Applicants' proposed operations over these individual lines. The operational implications of the transaction as a whole, including proposed operations over these Seven Connections, if authorized, will be examined in the context of the EIS that is being prepared for the proposed transaction.[3]

Public Participation

SEA encourages broad participation in the EIS process during scoping and review of the Draft EIS. Interested agencies and persons were invited to participate in the scoping phase by reviewing the draft scope of the EIS. Due to the broad geographic scope of the proposed transaction, SEA did not conduct public scoping meetings. However, in addition to publication of the draft scope of the EIS in the **Federal Register** on July 7, 1997, SEA implemented an extensive public outreach program to notify the public that SEA was soliciting comments on the draft scope of the EIS and to encourage public participation in the environmental review process.

SEA distributed information about the proposed transaction and SEA's intent to prepare an EIS through the following outreach activities:

- On July 3, 1997, a scoping package that included the draft scope of the EIS was distributed to approximately 1,900 Federal, state and local elected and agency officials. In this package, the Board also announced its intent to prepare an EIS and requested comments on the draft scope.
- On July 7, 1997, SEA published a notice in the **Federal Register** to announce the Board's intent to prepare an EIS, to publish the draft scope of the EIS, and to request comments on the proposed scope.
- In July 1997, a press release detailing this same information was distributed to the media in the 24 affected states, and a legal notice was placed in the newspapers with the highest circulation for each of the potentially affected counties.
- During July and August 1997, SEA also prepared and widely distributed a Fact Sheet describing the proposed transaction to 7,000 elected officials, agencies and organizations for cities and counties potentially affected by the proposed transaction.
- To further assist SEA in receiving input from the public, SEA established a toll-free environmental hotline (1–888–869–1997), established a website (www.conrailmerger.com), and initiated media monitoring services that involved a weekly review of newspaper articles.

The SEA study team established a comprehensive database to record and maintain all comments received in writing and via telephone and the website. Written comments on the draft scope of the EIS were due to the Board within the 30-day comment period, which ended on August 6, 1997. All comments have been placed in the Public Record for this proceeding. In preparing the final scope of the EIS, SEA has considered all the environmental comments.

Response to Comments: SEA received more than 170 comments concerning the draft scope of the EIS. Twenty-one comments were received from Federal agencies, including the U.S. Departments of Agriculture, Commerce, Housing and Urban Development, Interior, and Transportation; the U.S. Army Corps of Engineers; the U.S. Coast Guard; and the Environmental Protection Agency. Forty-eight comments were received from state agencies in AL, DE, FL, GA, IL, IN, KY, LA, MD, MA, MI, MS, MO, NC, NJ, NY, OH, PA, RI, SC, TN, VT, VA, and WV. Seventy-eight comments were received from local, county, and regional agencies from the states of AL, DE, DC, FL, GA, IL, IN, KY, LA, MD, MA, MI, NC, NJ, NY, OH, PA, TN, and VA. Nine comments were received from citizens in DE, GA, and OH. Five businesses—including Interstate Commodities, Inc., Johnson Environmental Consulting Group, Inc., Newark (DE) Center for Creative Learning, Newark (DE) Day Nursery, and Port Richmond Community Council, Inc., provided comment, as did a rail carrier, National Railroad Passenger Corporation (Amtrak). Seven comments were received from other interested parties, including the League of Women Voters of New Castle County, DE; the American Public Transit Association; The Waterfront Historic Area League, New Bedford, MA; Indianapolis Power & Light Company, IN; Downtown Newark, DE; University of Delaware, DE; and Rutgers, The State University of New Jersey School of Law. The comments covered a broad range of topics, including air quality, water resources, noise, at-grade highway safety, rail accidents, emergency vehicle response times, hazardous materials transportation and spills, environmental justice, and current and future commuter rail service.

SEA reviewed and considered all comments received in its preparation of the final scope of the EIS. The final scope reflects changes made because of comments on the draft scope of the EIS. Other changes in the final scope of the EIS were made for clarification.

Specifically, the Safety Section of the final scope of the EIS provides that grade crossing safety generally will be considered for at-grade highway crossings with average daily traffic levels of 5,000 or more vehicles. In applying this threshold for the review of at-grade crossings in past environmental documents, SEA found it to be a conservative baseline.

SEA received several comments concerning hazardous waste. In response, section 1(D)(7) of the final scope of the EIS was added to indicate that the Draft EIS will assess the locations and types of hazardous waste sites and spills on the rights-of-way of proposed construction projects and rail line abandonments. SEA notes, however, that other Federal and state agencies have primary jurisdiction for investigation, clean-up, and remediation of hazardous waste sites.

SEA received approximately 20 comments related to potential impacts on commuter rail service. In response, Section 2 of the final scope has been expanded to include an analysis of potential passenger diversions, and reasonably foreseeable commuter rail inception or expansion plans (i.e., where capital improvements are planned, approved, and funded). Section 2 also addresses comments requesting that SEA discuss the potential impacts of increased train traffic on movable (draw) bridges over navigable channels.

Section 4, Energy, has been clarified in the final scope to address estimated system-wide changes in energy efficiency (fuel use), including the impact of truck-to-rail diversions. Section 4(C) addresses the overall estimated changes in energy efficiency resulting from rail-to-truck diversions subject to the Board's regulatory thresholds in 49 CFR.1105.7(e)(4)(iv).

Section 5, Air Quality, has been expanded to include the calculation of net increases of emissions from the proposed transaction for counties where increases in locomotive emissions are projected to be 100 tons or more per year. Section 6, Noise, has been modified to reflect the actual data that are available to analyze noise impacts. Estimates of receptors will be developed where noise levels are predicted to rise to 65 decibels L_{dn} or greater as a result of rail traffic increases related to the proposed transaction.

Section 9, Environmental Justice, has been expanded in the final scope to include a report on the demographics in the vicinity of rail line segments with projected rail traffic increases of eight (8) trains or more per day. The portion of Section 3 of the final scope of the EIS, involving Socioeconomic Issues, includes a consideration of socioeconomic impacts to the extent that they result directly from changes to the physical environment due to the proposed transaction. That approach is consistent with the U.S. Supreme Court decision in *Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 460 U.S. 766 (1982). Those most directly and immediately affected by the proposed transaction, the employees of the consolidating carriers, will be covered by the labor protection afforded by the Board in considering the merits of the proposed transaction. Therefore, these impacts need not be addressed in the EIS. Section 3 also has been expanded to specifically state that the EIS will address the potential environmental impacts of proposed rail line construction and abandonment activities on Native American reservations and sacred sites.

Several comments on the draft scope of the EIS suggested there be an analysis of the cumulative impacts of certain environmental effects related to the proposed transaction. The final scope of the EIS indicates the Draft EIS will undertake cumulative effects analyses related to the proposed transaction where such effects could have regional or system-wide impacts. The effects to be analyzed will include air quality and energy. Cumulative effects also may be analyzed for other projects or activities related to the proposed transaction where information is provided in a timely fashion to the Board describing those projects, their interrelationship to the proposed transaction, and the type and severity of the potential environmental impacts, and SEA determines that there is the likelihood of significant environmental impacts.

Parties of Record

The Board received 228 notices of designation as a Party of Record (POR). As stated in Board Decision No. 6 in this case,[4] copies of Board decisions, orders, and notices will be served only on persons designated as PORs, members of Congress, and governors on the Board's official service list. All other interested persons who wish to receive copies of Board decisions, orders, and notices served in this proceeding are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc., at (202) 289–4357.

For Additional Information

Contact Mr. Michael Dalton, SEA Project Manager, Conrail Control Transaction, (202) 565–1530; or Ms. Dana White, SEA Environmental Specialist, at (202) 565–1552 (TDD for the hearing impaired: (202) 565–1695). Summary information about the proposed transaction and the final scope of the EIS can be found at the following Internet web site: *http://www.conrailmerger.com.* Requests for summary environmental information on the proposed transaction and the EIS process can be made through SEA's toll-free Environmental Hotline at (888) 869–1997.

Environmental Review Schedule

The Board has adopted a 350-day procedural schedule for this proceeding,[5] and has determined that preparation of an EIS is warranted in this case. The 350-day schedule will permit SEA to prepare an EIS that fully considers the potential environmental consequences of this proposed action. Below is a discussion of how SEA plans to conduct the environmental review process in this case.

On June 23, 1997, Applicants filed an ER containing the information specified in the Board's environmental rules at 49 CFR 1105.7(e), as part of the primary application. The ER was served concurrently on the agencies listed in the Board's environmental rules at 49 CFR 1105.7(b), and other appropriate entities. The ER describes the physical and operational changes in the rail systems and facilities anticipated as a result of the proposed transaction. In the ER, Applicants also discuss the potential environmental impacts that would be associated with the anticipated changes. The Applicants have provided, and continue to provide, SEA with supplemental information to the ER. Also, as previously discussed, on August 28, 1997, the Applicants filed an Errata and Supplemental ER.

Based on the Council on Environmental Quality's (CEQ) regulations, the Board's environmental rules at 49 CFR 1105, the ER, the draft scope, the comments received on the draft scope, and all other information available to date, SEA has prepared this final scope of the EIS. This final scope of the EIS will be distributed to all PORs, interested parties, and appropriate agencies.

Based on SEA's independent environmental analysis, review of all information available to date, and consultations with appropriate agencies, SEA will prepare a Draft EIS. The Draft EIS will address relevant environmental concerns, as described in the final scope of the EIS, and will recommend appropriate environmental mitigation. In addition, the Draft EIS will include environmental impacts associated with any inconsistent or responsive applications or settlement agreements.[6] SEA intends to serve the Draft EIS in November 1997. SEA will serve the Draft EIS on all PORs to this proceeding, all interested parties, appropriate Federal, state, and local government agencies, and any other parties specifically requesting a copy of the Draft EIS. In addition, the Environmental Protection Agency will publish a notice of the availability of the Draft EIS in the **Federal Register**. There will be a 45-day comment period on the Draft EIS, as required by CEQ regulations at 40 CFR 1506.10(c).

After considering comments on the Draft EIS, SEA will issue a Final EIS. The Final EIS will address comments on the Draft EIS and will include SEA's final recommendations, including appropriate environmental mitigation. Environmental comments not received in accordance with the 45-day comment period for the Draft EIS will not be incorporated into the Final EIS. The Final EIS and SEA's final environmental

[3] Board Decision No. 9 in this proceeding, issued June 12, 1997, granted Applicants' petition for waiver related to the Seven Connections and explained what the environmental review process for those projects would be. Specifically, SEA intends to prepare a separate Environmental Assessment for each of these small construction projects. However, if SEA determines that any one of the construction proposals could potentially cause, or contribute to, significant environmental impacts, then the project will be incorporated into the EIS for the overall proposed transaction, and will not be separately considered. Also, no rail operations can begin over these Seven Connections until completion of the EIS process, and issuance of a further decision.

[4] Board Decision No. 6 was issued May 30, 1997, and published at 62 FR 29387–29391.

[5] See Decision No. 6. This schedule is based on the filing date (F) of the primary application, which was June 23, 1997.

[6] Under the procedural schedule previously established for this proceeding in Decision No. 6, inconsistent and responsive applicants must provide a description of the proposed inconsistent or responsive application by August 22, 1997. Inconsistent and responsive applicants must file Responsive Environmental Reports or verified statements indicating that there are no potentially significant environmental impacts by October 1, 1997. They must file inconsistent and responsive applications by October 21, 1997. SEA anticipates that the issues addressed in the final scope of the EIS will be similar to issues that may be raised in any subsequent filing of inconsistent or responsive applications.

recommendations serve as the basis for the Board's disposition of environmental issues.

SEA plans to serve the Final EIS in late March or early April 1998, prior to the Board's voting conference, which currently is scheduled for April 14, 1998. At the voting conference, the Board will announce whether it will grant or deny the application, or grant it with appropriate conditions, including environmental mitigation conditions. The Board intends to serve a written decision in this case by June 8, 1998. In that decision, the Board will address both environmental and transportation issues and impose any conditions deemed appropriate.

Parties who wish to file an administrative appeal of the Board's written decision (including any environmental conditions that the Board might impose) may do so within 20 days from the service date of the Board's written decision, as provided in the Board's rules. Any interested party will have approximately two months to consider the Final EIS prior to commencement of the aforementioned period for filing administrative appeals. The schedule will provide adequate time to pursue administrative review of the Board's June 1998 decision after it is issued. Any administrative appeals will be addressed in a subsequent decision. This process is consistent with CEQ rules (40 CFR 1506.10(b)).

Projected Schedule[7]

- Preliminary Environmental Report[8] submitted to SEA. (F–30).[9]—May 16, 1997.
- Primary Application and Environmental Report filed.—(F). June 23, 1997.
- Notice of Intent to Prepare an Environmental Impact Statement and Environmental Impact Statement Scoping Notice issued. (**Federal Register** Notice).—July 7, 1997.
- Comments on the Draft Scope of the Environmental Impact Statement due (end of 30-day comment period).—August 6, 1997.
- Descriptions of Inconsistent and Responsive Applications filed. (F + 60).—August 22, 1997.
- Preliminary Draft Environmental Assessments for the Seven Separate Construction Projects referenced in Decision No. 9.—September 5, 1997.
- Final Scope of the Environmental Impact Statement issued.—September 1997.
- Responsive Environmental Reports and Verified Environmental Statements due. (F + 100).—October 1, 1997.
- Inconsistent and Responsive Applications due. (F + 120).—October 21, 1997.
- Draft Environmental Impact Statement served.—November 1997.
- Draft Environmental Impact Statement comments due (end of 45-day comment period).—January 1998.
- Final Environmental Impact Statement served.—Late March or Early April 1998.
- Oral Argument.—April 9, 1998.
- Voting Conference.—April 14, 1998.
- Final Decision served.—June 8, 1998.
- Administrative Appeals filing deadline.—June 29, 1998.

Final Scope of the EIS

Proposed Action and Definition of Alternatives

The proposed action is Applicants' proposed acquisition and control, jointly or individually, of Conrail's rail lines and facilities, as explained in the primary application's operating plan and ER. The proposed transaction includes changes in railroad operations such as increases and decreases in train traffic on rail lines, changes in activity at rail yards and intermodal facilities, and rail line abandonment and construction projects.

Reasonable or feasible alternatives that will be evaluated in the EIS are: (1) Approval of the proposed transaction; (2) the No-Action alternative; and (3) approval of the proposed transaction with conditions, including environmental mitigation conditions. Proposed modifications to the proposed transaction as requested by other parties in their inconsistent or responsive applications also will be addressed in the EIS.

Environmental Impact Analysis

Analysis in the EIS will address proposed activities and their potential environmental impacts, as appropriate. The scope of the analysis will include the following types of activities:

1. Anticipated changes in level of operations on rail lines (e.g., an increase in average trains per day) for those rail line segments that meet or exceed the Board's thresholds for environmental review in 49 CFR 1105.7. In circumstances where the Board's environmental rules do not provide a threshold, the EIS generally will use increases of eight trains per day or more as the threshold for addressing environmental impacts.
2. Proposed rail line abandonments.
3. Proposed changes in activity at rail yards and intermodal facilities to the extent such changes may exceed the Board's thresholds for environmental analysis in 49 CFR 1105.7.
4. Proposed requests for trackage rights or rail line acquisitions that meet or exceed the Board's thresholds that may be included in inconsistent and responsive applications.
5. Proposed physical construction of rail line segments other than the Seven Connections discussed above and in Decision No. 9.[10] Subsequent references to construction projects in this scoping document do not include these Seven Connections. Alternatives to construction may include feasible alternate alignments that may be environmentally preferable.

Environmental Impact Categories

The EIS will address potential impacts on the environment that will include the areas of safety, transportation systems, land use, energy, air quality, noise, biological resources, water resources, socioeconomic effects related to physical changes in the environment, environmental justice, and cultural and historic resources, as described below.

1. Safety

The EIS will:

A. Consider at-grade rail crossing accident probability and safety factors. This will generally include grade crossings with average daily traffic levels of 5,000 or more trips.[11] Accident probability analysis will address the potential for rail and vehicle accidents.

B. Consider increased probability of train accidents and derailments due to increased traffic on a system-wide basis.

C. Address potential effects of increased freight traffic on commuter and intercity passenger service operations.

D. Discuss the potential environmental impacts of the proposed transaction on public health and safety with respect to the transportation of hazardous materials, including:

(1) Changes in the types of hazardous materials and quantities transported or re-routed;

(2) Nature of the hazardous materials being transported;

(3) Applicants' safety practices and protocols;

(4) Applicants' relevant safety data on derailments, accidents and hazardous materials spills;

(5) Contingency plans to address accidental spills;

(6) Probability of increased spills given railroad safety statistics and applicable Federal Railroad Administration requirements; and

(7) Location and types of hazardous substances at hazardous waste sites or hazardous materials spills on the right-of-way of any proposed connection or rail line abandonment site.

E. Address local truck traffic increases attributable to increased intermodal activities.

F. Address safety issues associated with the integration of differing rail operating systems and procedures.

2. Transportation Systems

The EIS will:

A. Describe system-wide effects of the proposed operational changes, constructions, and rail line abandonments, and evaluate potential impacts on commuter rail service and intercity passenger (Amtrak) service. Estimates will be made of the number of passengers who may be diverted from commuter rail to other modes of transportation due to constraints resulting from the proposed transaction that limit the number of passenger trains.

B. Evaluate those commuter rail line segments that would experience increased freight traffic as a result of the proposed transaction for the capability of the rail line segments to accommodate the reasonably foreseeable addition of commuter trains.

C. Discuss potential effects on proposed passenger rail service where such future rail operation inception or expansion is reasonably foreseeable (i.e., where capital improvements are planned, approved, and funded).

D. Discuss potential diversions of freight traffic from trucks to rail and from rail to trucks, as appropriate.

E. Address vehicular delays at rail crossings and intermodal facilities due to increases in rail-related operations as a result of the proposed transaction. Estimates of typical delays at grade crossings will be made for crossings that have vehicle traffic levels of 5,000 ADT or more and that exceed train traffic increases of three trains per day for non-attainment areas or eight trains per day for attainment areas.

F. Discuss potential effects of increased train traffic on railroad bridges that cross navigation channels to the extent that such bridges allow only one mode of transportation to pass at a time.

3. Land Use and Socioeconomics

The EIS will:

A. Describe whether the proposed rail line construction and abandonment activities are consistent with existing land use plans.

B. Describe environmental impacts associated with the proposed construction of new rail lines or expansion of facilities as to acres of prime farmland potentially removed from production.

C. Discuss consistency of proposed rail line construction and abandonment activities with applicable coastal zone requirements.

D. Address potential environmental impacts of proposed rail line construction and abandonment activities on Native American reservations and sacred sites.

E. Address socioeconomic issues shown to be related to changes in the physical environment as a result of the proposed transaction.

4. Energy

The EIS will:

A. Describe the potential environmental impact of the proposed transaction on transportation of energy resources and recyclable commodities to the extent that such information is available.

B. Discuss estimated changes in energy efficiency from truck-to-rail diversions.

C. Discuss the effect on energy efficiency (fuel use) from rail-to-truck diversions based on estimates of diversions which are subject to the Board's thresholds in 49 CFR 1105.7(e)(4)(iv).

5. Air Quality

The EIS will:

A. Evaluate air emissions increases where the proposed post-acquisition activity would exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(i), in an air quality attainment or maintenance area as designated under the Clean Air Act as it existed on the date the primary application was filed.[12] Thresholds are as follows:

(1) A 100 percent increase in rail traffic (measured in gross-ton miles annually) or an increase of eight trains a day on any segment of rail line affected by the proposal; or

(2) An increase in rail yard activity of at least 100 percent or more; or

(3) An increase in truck traffic at an intermodal facility of more than 10 percent of the average daily traffic or 50 vehicles a day.

B. Evaluate air emissions increases where the proposed post-acquisition activity would exceed the Board's environmental thresholds for a non-attainment area as designated under the Clean Air Act as of the date the application was filed. Thresholds for non-attainment areas are as follows:

(1) An increase in rail traffic of at least 50 percent (measured in gross-ton miles annually) or an increase of three trains a day or more; or

(2) An increase in rail yard activity of at least 20 percent; or

(3) An increase in truck traffic at intermodal facilities of more than 10 percent of the average daily traffic or 50 vehicles a day.

C. Discuss the net increase in emissions from increased railroad operations associated with the proposed transaction. Net emissions changes will be calculated for counties with projected transaction-related emissions increases of:

(1) 100 tons per year or more of any pollutant in attainment areas;

(2) 50 tons per year or more of nitrogen oxides or volatile organic compounds in serious[13] ozone non-attainment areas; or

(3) 25 tons per year or more of nitrogen oxides or volatile organic compounds in severe[14] ozone non-attainment areas.

D. Evaluate potential air quality benefits of system-wide emission reductions that would result from projected truck-to-rail diversions. Net increases, less any estimated reductions due to truck-to-rail diversions, will be compared to the entire emission inventory for affected non-attainment areas. This evaluation will be based on emission inventory data provided by the appropriate state agency.

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[7] Actual dates for environmental documents may vary slightly.

[8] The Preliminary Environmental Report contained preliminary, descriptive information on the proposed transaction.

[9] "F" is the filing date of the primary application. The Board established the time periods related to the filing date in the procedural schedule set out in Decision No. 6 in this proceeding.

[10] As noted in Decision No. 9, in reviewing the Seven Connections separately, the Board will consider the regulatory and environmental aspects of these proposed constructions and Applicants' proposed operations over these lines together in the context of whether to authorize each individual physical construction project. The operational implications of the proposed transaction as a whole, including operations over the four or so miles embraced in the Seven Connections, will be examined in the context of the EIS for the overall proposed transaction.

[11] Previous SEA environmental analyses have used the 5,000 average daily traffic level threshold.

[12] Air quality attainment areas are areas that comply with national ambient air quality standards for particulate matter, sulfur dioxide, nitrogen oxides, ozone, carbon monoxide, and lead. Non-attainment areas are areas that do not comply with one or more ambient air quality standards. Maintenance areas are areas that were non-attainment in the past but have air quality that complies with standards at present. All of these areas are designated by EPA.

[13–14] Ozone non-attainment areas are further classified as Marginal, Moderate, Serious, Severe, or Extreme Areas. These classifications are based on the level, in parts per million (ppm), of ozone measured for each area. Serious Areas are defined as containing 0.160 to 0.180 ppm, and Severe Areas are defined as containing 0.180 to 0.280 ppm.

E. Discuss the following information regarding the anticipated transportation of ozone depleting materials (such as nitrogen oxide and freon):

(1) Materials and quantity;

(2) Applicants' safety practices;

(3) Applicants' safety record (to the extent available) on derailments, accidents, and spills;

(4) Contingency plans to address accidental spills; and

(5) Likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

F. Discuss potential air emissions increases from vehicle delays at rail crossings where the rail crossing is projected to experience an increase in rail traffic over the thresholds described above in Section 5(A) for attainment and maintenance areas, and in Section 5(B) for non-attainment areas, and which have an average daily vehicle traffic level above 5,000. Such increases will be factored into the net emissions estimates for the affected area.

6. Noise

The EIS will:

A. Describe potential noise impacts of the proposed transaction for those areas that exceed the Board's environmental thresholds identified in Section 5A of the Air Quality discussion.

B. Identify whether the proposed transaction-related increases in rail traffic will cause an increase to a noise level of 65 decibels L_{DN} or greater. If so, an estimate of the number of sensitive receptors (e.g., schools and residences) within such areas will be made.

C. Identify transaction-related activities that have the potential to result in an increase in noise level of 3 decibels L_{DN} or more.

7. Biological Resources

The EIS will:

A. Discuss the potential environmental impacts of proposed rail line construction and abandonment projects on federal endangered or threatened species or designated critical habitats.

B. Discuss the effects of proposed rail line construction and abandonment projects on wildlife sanctuaries or refuges, and national or state parks or forests.

8. Water Resources

The EIS will:

A. Discuss whether potential impacts from proposed rail line construction and abandonment projects may be inconsistent with applicable federal or state water quality standards.

B. Discuss whether permits may be required under Sections 404 or 402 of the Clean Water Act (33 U.S.C. 1344) for any proposed rail line construction and abandonment projects, and whether any such projects have the potential to encroach upon any designated wetlands or 100-year floodplains.

9. Environmental Justice

The EIS will:

A. Report on the demographics in the immediate vicinity of any area where major activity such as an abandonment or construction is proposed.

B. Report on the demographics in the vicinity of rail lines with projected rail traffic increases above eight trains per day.

C. Evaluate whether such activities potentially have a disproportionately high and adverse health effect or environmental impact on any minority or low-income group.

10. Cultural and Historic Resources

The EIS will address potential impacts from proposed rail line construction and abandonment projects on cultural and historic resources that are on, or immediately adjacent to, a railroad right-of-way.

11. Cumulative Effects

The EIS will:

A. Address cumulative effects of environmental impacts that have regional or system-wide ramifications. This analysis will be done for environmental impacts that warrant such analysis given the context and scope of the proposed transaction. The environmental effects to be analyzed include air quality and energy.

B. Evaluate cumulative effects, as appropriate, for other projects or activities that relate to the proposed transaction, where information is provided to the Board that describes (1) those other projects or activities, (2) their interrelationship with the proposed transaction, (3) the type and severity of the potential environmental impacts; and SEA determines that there is the likelihood of significant environmental impacts. This information must be provided to the Board within sufficient time to allow for review and analysis within the schedule for the preparation of the EIS.

C. Discuss the potential environmental impacts of construction or facility modification activities within railroad-owned property affected by the proposed merger, and additional environmental impacts related to the proposed transaction but not subject to Board approval, in order to identify cumulative impacts.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26039 Filed 9–30–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 19, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0007.
Form Number: SF 1199A.
Type of Review: Extension.
Title: Direct Deposit Sign-Up Form.
Description: The Direct Deposit Sign-Up Form is used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. This information is used to route the Direct Deposit payment to the correct account at the correct financial institution. It identifies persons who have executed the form.
Respondents: Individuals or households, Business or other for-profit, Federal Government.
Estimated Number of Respondents/Recordkeepers: 2,197,960.
Estimated Burden Hours Per Response/Recordkeeper: 10 minutes.
Frequency of Response: Other (one-time).
Estimated Total Reporting/Recordkeeping Burden: 373,653 hours.
Clearance Officer: Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–26024 Filed 9–30–97; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

September 22, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0155.
Form Number: IRS Form 3468.
Type of Review: Revision.
Title: Investment Credit.
Description: Taxpayers are allowed a credit against their income tax for certain expenses they incur for their trades or businesses. Form 3468 is used to compute this investment tax credit. The information collected is used by the IRS to verify that the credit has been correctly computed.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.
Estimated Number of Respondents/Recordkeepers: 360,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hr., 58 min.
Learning about the law or the form—2 hr., 59 min.
Preparing and sending the form to the IRS—3 hr., 18 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 6,566,400 hours.
OMB Number: 1545–1034.
Form Number: IRS Form 8582–CR.
Type of Review: Extension.
Title: Passive Activity Credit Limitations.
Description: Under section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income, are not allowed. Form 8582–CR is used to figure the passive activities credit allowed and the amount of credit to be reported on the tax return.
Respondents: Individuals or households, Business of other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 900,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 5 min.
Learning about the law or the form—4 hr., 22 min.
Preparing the form—3 hr., 25 min.
Copying, assembling, and sending the form to the IRS—2 hr., 18 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden:
OMB Number: 1545–1276.
Regulation Project Number: FI–88–86 Final.
Type of Review: Extension.
Title: Real Estate Mortgage Investment Conduits (TD 8458).
Description: Section 860E(e) imposes an excise tax on this transfer of a residual interest in a REMIC to a disqualified party. The tax must be paid by the transferor of a pass-thru entity of which the disqualified party is an interest holder.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,600.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 525 hours.
OMB Number: 1545–1546.
Revenue Procedure Number: Revenue Procedure 97–33.
Type of Review: Extension.
Title: Electronic Federal Tax Payment System (EFTPS).
Description: Some taxpayers are required by regulations issued under § 6302(h) of the Internal Revenue Code to make Federal Tax Deposits (FTDs) using the Electronic Federal Tax Payment System (EFTPS). Other taxpayers may choose to voluntarily participate in EFTPS. EFTPS requires that a taxpayer complete an enrollment form to provide the information the IRS needs to properly credit the taxpayer's account. Revenue Procedure 97–33 provides procedures and information that will help taxpayers to electronically make FTDs and tax payments through EFTPS.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 1,380,000.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion, Weekly, Monthly, Quarterly, Semi-annually, Annually, Biennially.
Estimated Total Recordkeeping Burden: 690,000 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–26025 Filed 9–30–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 23, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Offices/Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0003.
Form Number: IRS Form 8852.
Type of Review: Extension.
Title: Currency Transaction Report by Casinos-Nevada.
Description: Nevada casinos file Form 8852 for currency transactions in excess of $10,000 a day pursuant to Title 31. Form 8852 is used by criminal investigators and regulatory enforcement authorities, during the course of investigations involving financial crimes. Form 8852 was created because some of the transactions reportable on Form 8362 are deemed prohibited by Nevada Regulation 6A.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 74.
Estimated Burden Hours Per Respondent/Recordkeeper:
Respondents—19 minutes
Recordkeepers—5 minutes
Frequency of Response: Other (as required).
Estimated Total Reporting/Recordkeeping Burden: 28,000 hours.
Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–26026 Filed 9–30–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5434 and 5434–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5434, Application for Enrollment, and Form 5434–A, Application for Renewal of Enrollment.

DATES: Written comments should be received on or before December 1, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 5434, Application for Enrollment, and Form 5434–A, Application for Renewal of Enrollment.

OMB Number: 1545–0951.

Form Number: Forms 5434 and 5434–A.

Abstract: Form 5434 is used to apply for enrollment to perform actuarial services under the Employee Retirement Income Security Act of 1974 (ERISA). Form 5434–A is used to renew enrollment every three years to perform actuarial services under ERISA. The information is used by the Joint Board for the Enrollment of Actuaries to determine the eligibility of the applicant to perform actuarial services.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 6,000.

Estimated Time Per Respondent: 38 minutes.

Estimated Total Annual Burden Hours: 3,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 24, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–26019 Filed 9–30–97; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Filippino Lippi and His Circle" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York, from approximately October 28, 1997 through January 11, 1998, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: September 24, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–25958 Filed 9–30–97; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Carol Epstein, Attorney Advisor, at 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, DC 20547–0001.

Corrections

Federal Register

Vol. 62, No. 190

Wednesday, October 1, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 71-97]

Foreign-Trade Zone 149 -- Freeport, Texas; Application for Foreign-Trade Subzone Status; Amoco Chemical Company (Petrochemical Complex); Brazoria County, Texas

Correction

In notice document 97–25106 beginning on page, 49469 in the issue of Monday, September 22, 1997, make the following corrections:

1. On page 49469, in the third column, in the third full paragraph, in the sixth line down "[60 days from date of publication]" should read "November 21, 1997."

2. On the same page, in the same column, in the same paragraph, in the 10th line "[75 days from date of publication]" should read " December 8, 1997."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-97-1430-01; AZA 25991]

Arizona: Notice of Realty Action; Bureau Motion Recreation and Public Purposes Classification; La Paz County, Arizona

Correction

In notice document 97–24794 beginning on page 49024, in the issue of Thursday, September 18, 1997, make the following correction:

On page 49025, in the first column, in "Sec. 23", at the end of the third line, insert a comma.

BILLING CODE 1505-01-D

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federal register

Wednesday
October 1, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Chapter I

Code of Federal Regulations; Authority Citations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 97N–0365]

Code of Federal Regulations; Authority Citations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the authority citations for Title 21, Chapter I of the Code of Federal Regulations to conform with procedures of the Administrative Committee of the Federal Register. This action is intended to simplify FDA's authority citations. It does not represent a change in agency policy and does not increase any burdens on the public.

DATES: Effective October 1, 1997. Submit written comments by December 30, 1997.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: The Office of the Federal Register, in accordance with the procedures of the Administrative Committee of the Federal Register (1 CFR 21.52), has recommended that each citation of authority for Chapter I of Title 21 of the Code of Federal Regulations include only references to the United States Code. Therefore, FDA is revising the authority citations for 21 CFR parts 1 through 1270 to conform with these procedures. This action is intended to simplify FDA's authority citations.

FDA has determined that this final rule does not change the statutory authority applicable to the regulations issued by FDA. Because the changes that the agency is making are not substantive and are merely ministerial changes to the Code of Federal Regulations, the Commissioner of Food and Drugs finds that there is good cause not to engage in notice and public comment procedures or to delay the effective date of these amendments. FDA is merely conforming to the recommendation of the Office of the Federal Register under 1 CFR 21.51 and 21.52.

Although this rule is effective immediately, the agency is providing until December 30, 1997, to determine whether the regulation should be subsequently modified or revoked in accordance with 21 CFR 10.40(e)(1). Interested persons may submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.30(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 343, 352, 355, 360b, 362, 371; 42 U.S.C. 216.

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

2. The authority citation for 21 CFR part 2 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 357, 360b, 361, 371, 372, 374; 15 U.S.C. 402, 409.

PART 3—PRODUCT JURISDICTION

3. The authority citation for 21 CFR part 3 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 360gg–360ss, 371(a), 379e, 381, 394; 42 U.S.C. 216, 262.

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

4. The authority citation for 21 CFR part 5 is revised to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

PART 7—ENFORCEMENT POLICY

5. The authority citation for 21 CFR part 7 is revised to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 241, 262, 263b–263n, 264.

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

6. The authority citation for 21 CFR part 10 is revised to read as follows:

Authority: 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 263b, 264; 15 U.S.C. 1451–1461; 5 U.S.C. 551–558, 701–721; 28 U.S.C. 2112.

PART 11—ELECTRONIC RECORDS; ELECTRONIC SIGNATURES

7. The authority citation for 21 CFR part 11 is revised to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262.

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

8. The authority citation for 21 CFR part 12 is revised to read as follows:

Authority: 21 U.S.C. 41–50, 141–149, 321–393, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 263b–263n, 264; 15 U.S.C. 1451–1461; 5 U.S.C. 551–558, 701–721; 28 U.S.C. 2112.

PART 13—PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY

9. The authority citation for 21 CFR part 13 is revised to read as follows:

Authority: 21 U.S.C. 41–50, 141–149, 321–393, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 263b–263n, 264; 15 U.S.C. 1451–1461; 5 U.S.C. 551–558, 701–721; 28 U.S.C. 2112.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

10. The authority citation for 21 CFR part 14 is revised to read as follows:

Authority: 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 263b, 264; 15 U.S.C. 1451–1461; 5 U.S.C. App. 2; 28 U.S.C. 2112.

PART 15—PUBLIC HEARING BEFORE THE COMMISSIONER

11. The authority citation for 21 CFR part 15 is revised to read as follows:

Authority: 21 U.S.C. 41–50, 141–149, 321–393, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 263b–263n, 264; 15 U.S.C. 1451–1461; 5 U.S.C. 553; 28 U.S.C. 2112.

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

12. The authority citation for 21 CFR part 16 is revised to read as follows:

Authority: 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 42 U.S.C. 201, 262, 264; 15 U.S.C. 1451–1461; 28 U.S.C. 2112.

PART 17—CIVIL MONEY PENALTIES HEARINGS

13. The authority citation for 21 CFR part 17 is revised to read as follows:

Authority: 21 U.S.C. 331, 333, 337, 351, 352, 355, 360, 360c, 360f, 360i, 360j, 371; 42 U.S.C. 262, 263b, 300aa–28; 5 U.S.C. 554, 555, 556, 557.

PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

14. The authority citation for 21 CFR part 19 is revised to read as follows:

Authority: 21 U.S.C. 371.

PART 20—PUBLIC INFORMATION

15. The authority citation for 21 CFR part 20 is revised to read as follows:

Authority: 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300–5, 300aa–1; 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2562.

PART 21—PROTECTION OF PRIVACY

16. The authority citation for 21 CFR part 21 is revised to read as follows:

Authority: 21 U.S.C. 371; 5 U.S.C. 552, 552a.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

17. The authority citation for 21 CFR part 25 is revised to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

PART 50—PROTECTION OF HUMAN SUBJECTS

18. The authority citation for 21 CFR part 50 is revised to read as follows:

Authority: 21 U.S.C. 321, 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

PART 56—INSTITUTIONAL REVIEW BOARDS

19. The authority citation for 21 CFR part 56 is revised to read as follows:

Authority: 21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 241, 262, 263b–263n.

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

20. The authority citation for 21 CFR part 58 is revised to read as follows:

Authority: 21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360b–360f, 360h–360j, 371, 379e, 381; 42 U.S.C. 216, 262, 263b–263n.

PART 60—PATENT TERM RESTORATION

21. The authority citation for 21 CFR part 60 is revised to read as follows:

Authority: 21 U.S.C. 348, 355, 357, 360e, 360j, 371, 379e; 35 U.S.C. 156; 42 U.S.C. 262.

PART 70—COLOR ADDITIVES

22. The authority citation for 21 CFR part 70 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 360b, 361, 371, 379e.

PART 71—COLOR ADDITIVE PETITIONS

23. The authority citation for 21 CFR part 71 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 351, 355, 356, 357, 360, 360b–360f, 360h–360j, 361, 371, 379e, 381; 42 U.S.C. 216, 262.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

24. The authority citation for 21 CFR part 73 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

25. The authority citation for 21 CFR part 74 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

PART 80—COLOR ADDITIVE CERTIFICATION

26. The authority citation for 21 CFR part 80 is revised to read as follows:

Authority: 21 U.S.C. 371, 379e.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

27. The authority citation for 21 CFR part 81 is revised to read as follows:

Authority: 21 U.S.C. 371, 379e, 379e note.

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

28. The authority citation for 21 CFR part 82 is revised to read as follows:

Authority: 21 U.S.C. 371, 379e, 379e note.

PART 100—GENERAL

29. The authority citation for 21 CFR part 100 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 337, 342, 343, 348, 371.

PART 101—FOOD LABELING

30. The authority citation for 21 CFR part 101 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371).

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

31. The authority citation for 21 CFR part 102 is revised to read as follows:

Authority: 21 U.S.C. 321, 343, 371.

PART 105—FOODS FOR SPECIAL DIETARY USE

32. The authority citation for 21 CFR part 105 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 350, 371, 379e.

PART 106—INFANT FORMULA QUALITY CONTROL PROCEDURES

33. The authority citation for 21 CFR part 106 is revised to read as follows:

Authority: 21 U.S.C. 321, 350a, 371.

PART 107—INFANT FORMULA

34. The authority citation for 21 CFR part 107 is revised to read as follows:

Authority: 21 U.S.C. 321, 343, 350a, 371.

PART 108—EMERGENCY PERMIT CONTROL

35. The authority citation for 21 CFR part 108 is revised to read as follows:

Authority: 21 U.S.C. 342, 344, 371.

PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL

36. The authority citation for 21 CFR part 109 is revised to read as follows:

Authority: 21 U.S.C. 321, 336, 342, 346, 346a, 348, 371.

PART 110—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING HUMAN FOOD

37. The authority citation for 21 CFR part 110 is revised to read as follows:

Authority: 21 U.S.C. 342, 371, 374; 42 U.S.C. 264.

PART 111—CURRENT GOOD MANUFACTURING PRACTICE FOR DIETARY SUPPLEMENTS

38. The authority citation for 21 CFR part 111 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 371.

PART 113—THERMALLY PROCESSED LOW-ACID FOODS PACKAGED IN HERMETICALLY SEALED CONTAINERS

39. The authority citation for 21 CFR part 113 is revised to read as follows:

Authority: 21 U.S.C. 342, 371, 374; 42 U.S.C. 264.

PART 114—ACIDIFIED FOODS

40. The authority citation for 21 CFR part 114 is revised to read as follows:

Authority: 21 U.S.C. 342, 371, 374; 42 U.S.C. 264.

PART 123—FISH AND FISHERY PRODUCTS

41. The authority citation for 21 CFR part 123 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 346, 348, 371, 374, 379e, 381, 393; 42 U.S.C. 241, 242l, 264.

PART 129—PROCESSING AND BOTTLING OF BOTTLED DRINKING WATER

42. The authority citation for 21 CFR part 129 is revised to read as follows:

Authority: 21 U.S.C. 342, 348, 371, 374; 42 U.S.C. 264.

PART 130—FOOD STANDARDS: GENERAL

43. The authority citation for 21 CFR part 130 is revised to read as follows:

Authority: 21 U.S.C. 321, 336, 341, 343, 371.

PART 131—MILK AND CREAM

44. The authority citation for 21 CFR part 131 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

45. The authority citation for 21 CFR part 133 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 135—FROZEN DESSERTS

46. The authority citation for 21 CFR part 135 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 136—BAKERY PRODUCTS

47. The authority citation for 21 CFR part 136 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

48. The authority citation for 21 CFR part 137 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 139—MACARONI AND NOODLE PRODUCTS

49. The authority citation for 21 CFR part 139 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 145—CANNED FRUITS

50. The authority citation for 21 CFR part 145 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 146—CANNED FRUIT JUICES

51. The authority citation for 21 CFR part 146 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS

52. The authority citation for 21 CFR part 150 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 152—FRUIT PIES

53. The authority citation for 21 CFR part 152 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 155—CANNED VEGETABLES

54. The authority citation for 21 CFR part 155 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 156—VEGETABLE JUICES

55. The authority citation for 21 CFR part 156 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371.

PART 158—FROZEN VEGETABLES

56. The authority citation for 21 CFR part 158 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371.

PART 160—EGGS AND EGG PRODUCTS

57. The authority citation for 21 CFR part 160 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 161—FISH AND SHELLFISH

58. The authority citation for 21 CFR part 161 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 163—CACAO PRODUCTS

59. The authority citation for 21 CFR part 163 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 341, 343, 348, 371, 379e.

PART 164—TREE NUT AND PEANUT PRODUCTS

60. The authority citation for 21 CFR part 164 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 165—BEVERAGES

61. The authority citation for 21 CFR part 165 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

PART 166—MARGARINE

62. The authority citation for 21 CFR part 166 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 347, 348, 371, 379e.

PART 168—SWEETENERS AND TABLE SIRUPS

63. The authority citation for 21 CFR part 168 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 169—FOOD DRESSINGS AND FLAVORINGS

64. The authority citation for 21 CFR part 169 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

PART 170—FOOD ADDITIVES

65. The authority citation for 21 CFR part 170 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 346a, 348, 371.

PART 171—FOOD ADDITIVE PETITIONS

66. The authority citation for 21 CFR part 171 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

67. The authority citation for 21 CFR part 172 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

68. The authority citation for 21 CFR part 173 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

PART 174—INDIRECT FOOD ADDITIVES: GENERAL

69. The authority citation for 21 CFR part 174 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

70. The authority citation for 21 CFR part 175 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

71. The authority citation for 21 CFR part 176 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

72. The authority citation for 21 CFR part 177 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

73. The authority citation for 21 CFR part 178 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

74. The authority citation for 21 CFR part 179 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 373, 374.

PART 180—FOOD ADDITIVES PERMITTED IN FOOD OR IN CONTACT WITH FOOD ON AN INTERIM BASIS PENDING ADDITIONAL STUDY

75. The authority citation for 21 CFR part 180 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 371; 42 U.S.C. 241.

PART 181—PRIOR-SANCTIONED FOOD INGREDIENTS

76. The authority citation for 21 CFR part 181 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

77. The authority citation for 21 CFR part 182 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

78. The authority citation for 21 CFR part 184 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

79. The authority citation for 21 CFR part 186 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

80. The authority citation for 21 CFR part 189 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

PART 200—GENERAL

81. The authority citation for 21 CFR part 200 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360e, 371, 374, 375.

PART 201—LABELING

82. The authority citation for 21 CFR part 201 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

PART 202—PRESCRIPTION DRUG ADVERTISING

83. The authority citation for 21 CFR part 202 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 357, 360b, 371.

PART 205—GUIDELINES FOR STATE LICENSING OF WHOLESALE PRESCRIPTION DRUG DISTRIBUTORS

84. The authority citation for 21 CFR part 205 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 371, 374.

PART 206—IMPRINTING OF SOLID ORAL DOSAGE FROM DRUG PRODUCTS FOR HUMAN USE

85. The authority citation for 21 CFR part 206 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 357, 371; 42 U.S.C. 262.

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

86. The authority citation for 21 CFR part 207 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 356, 357, 360, 360b, 371, 374; 42 U.S.C. 262.

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; GENERAL

87. The authority citation for 21 CFR part 210 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374.

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

88. The authority citation for 21 CFR part 211 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374.

PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

89. The authority citation for 21 CFR part 225 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 374.

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

90. The authority citation for 21 CFR part 226 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 374.

PART 250—SPECIAL REQUIREMENTS FOR SPECIFIC HUMAN DRUGS

91. The authority citation for 21 CFR part 250 is revised to read as follows:

Authority: 21 U.S.C. 321, 336, 342, 352, 353, 355, 361(a), 362(a) and (c), 371, 375(b).

PART 290—CONTROLLED DRUGS

92. The authority citation for 21 CFR part 290 is revised to read as follows:

Authority: 21 U.S.C. 352, 353, 355, 371.

PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

93. The authority citation for 21 CFR part 291 is revised to read as follows:

Authority: 21 U.S.C. 355, 371, 823; 42 U.S.C. 241(d), 257a, 290ee–3, 300y–11.

PART 299—DRUGS; OFFICIAL NAMES AND ESTABLISHED NAMES

94. The authority citation for 21 CFR part 299 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 358, 360b, 371.

PART 300—GENERAL

95. The authority citation for 21 CFR part 300 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 357, 360b, 361, 371.

PART 310—NEW DRUGS

96. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

97. The authority citation for 21 CFR part 312 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371; 42 U.S.C. 262.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

98. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e.

PART 316—ORPHAN DRUGS

99. The authority citation for 21 CFR part 316 is revised to read as follows:

Authority: 21 U.S.C. 360aa, 360bb, 360cc, 360dd, 371.

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

100. The authority citation for 21 CFR part 320 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 357, 371.

PART 329—HABIT–FORMING DRUGS

101. The authority citation for 21 CFR part 329 is revised to read as follows:

Authority: 21 U.S.C. 352, 353, 355, 371.

PART 330—OVER–THE–COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

102. The authority citation for 21 CFR part 330 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 331—ANTACID PRODUCTS FOR OVER–THE–COUNTER (OTC) HUMAN USE

103. The authority citation for 21 CFR part 331 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 332—ANTIFLATULENT PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

104. The authority citation for 21 CFR part 332 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

105. The authority citation for 21 CFR part 333 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371, unless otherwise noted.

PART 336—ANTIEMETIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

106. The authority citation for 21 CFR part 336 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 338—NIGHTTIME SLEEP–AID DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

107. The authority citation for 21 CFR part 338 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 340—STIMULANT DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

108. The authority citation for 21 CFR part 340 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

109. The authority citation for 21 CFR part 341 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 344—TOPICAL OTIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

110. The authority citation for 21 CFR part 344 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 346—ANORECTAL DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

111. The authority citation for 21 CFR part 346 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

112. The authority citation for 21 CFR part 347 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 348—EXTERNAL ANALGESIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

113. The authority citation for 21 CFR part 348 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

114. The authority citation for 21 CFR part 349 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 355—ANTICARIES DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

115. The authority citation for 21 CFR part 355 is revised to read as follows;

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

116. The authority citation for 21 CFR part 357 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

117. The authority citation for 21 CFR part 358 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

PART 361—PRESCRIPTION DRUGS FOR HUMAN USE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED: DRUGS USED IN RESEARCH

118. The authority citation for 21 CFR part 361 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 371; 42 U.S.C. 262.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER–THE–COUNTER SALE

119. The authority citation for 21 CFR part 369 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371.

PART 429—DRUGS COMPOSED WHOLLY OR PARTLY OF INSULIN

120. The authority citation for 21 CFR part 429 is revised to read as follows:

Authority: 21 U.S.C. 352, 356, 371.

PART 430—ANTIBIOTIC DRUGS; GENERAL

121. The authority citation for 21 CFR part 430 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 357, 371; 42 U.S.C. 216, 241, 262.

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

122. The authority citation for 21 CFR part 431 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 355, 357, 379e; 42 U.S.C. 216, 241, 262; 5 U.S.C. 552.

PART 432—PACKAGING AND LABELING OF ANTIBIOTIC DRUGS

123. The authority citation for 21 CFR part 432 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 353, 357, 371, 381.

PART 433—EXEMPTIONS FROM ANTIBIOTIC CERTIFICATION AND LABELING REQUIREMENTS

124. The authority citation for 21 CFR part 433 is revised to read as follows:

Authority: 21 U.S.C. 352, 355, 357.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC–CONTAINING DRUGS

125. The authority citation for 21 CFR part 436 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

126. The authority citation for 21 CFR part 440 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 441—PENEM ANTIBIOTIC DRUGS

127. The authority citation for 21 CFR part 441 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 442—CEPHA ANTIBIOTIC DRUGS

128. The authority citation for 21 CFR part 442 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 443—CARBACEPHEM ANTIBIOTIC DRUGS

129. The authority citation for 21 CFR part 443 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

130. The authority citation for 21 CFR part 444 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

131. The authority citation for 21 CFR part 446 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 448—PEPTIDE ANTIBIOTIC DRUGS

132. The authority citation for 21 CFR part 448 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

133. The authority citation for 21 CFR part 449 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

134. The authority citation for 21 CFR part 450 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 452—MACROLIDE ANTIBIOTIC DRUGS

135. The authority citation for 21 CFR part 452 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

136. The authority citation for 21 CFR part 453 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 455—CERTAIN OTHER ANTIBIOTICS DRUGS

137. The authority citation for 21 CFR part 455 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 460—ANTIBIOTICS DRUGS INTENDED FOR USE IN LABORATORY DIAGNOSIS OF DISEASE

138. The authority citation for 21 CFR part 460 is revised to read as follows:

Authority: 21 U.S.C. 357.

PART 500—GENERAL

139. The authority citation for 21 CFR part 500 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371.

PART 501—ANIMAL FOOD LABELING

140. The authority citation for 21 CFR part 501 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

PART 502—COMMON OR USUAL NAMES FOR NONSTANDARDIZED ANIMAL FOODS

141. The authority citation for 21 CFR part 502 is revised to read as follows:

Authority: 21 U.S.C. 321, 343, 371.

PART 509—UNAVOIDABLE CONTAMINANTS IN ANIMAL FOOD AND FOOD-PACKAGING MATERIAL

142. The authority citation for 21 CFR part 509 is revised to read as follows:

Authority: 21 U.S.C. 336, 342, 346, 346a, 348, 371.

PART 510—NEW ANIMAL DRUGS

143. The authority citation for 21 CFR part 510 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

PART 511—NEW ANIMAL DRUGS FOR INVESTIGATIONAL USE

144. The authority citation for 21 CFR part 511 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 360b, 371.

PART 514—NEW ANIMAL DRUG APPLICATIONS

145. The authority citation for 21 CFR part 514 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

146. The authority citation for 21 CFR part 520 is revised to read as follows:

Authority: 21 U.S.C. 360b.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

147. The authority citation for 21 CFR part 522 is revised to read as follows:

Authority: 21 U.S.C. 360b.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

148. The authority citation for 21 CFR part 524 is revised to read as follows:

Authority: 21 U.S.C. 360b.

PART 526—INTRAMAMMARY DOSAGE FORMS

149. The authority citation for 21 CFR part 526 is revised to read as follows:

Authority: 21 U.S.C. 360b.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

150. The authority citation for 21 CFR part 529 is revised to read as follows:

Authority: 21 U.S.C. 360b.

PART 530—EXTRALABEL DRUG USE IN ANIMALS

151. The authority citation for 21 CFR part 530 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b, 371, 379e.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

152. The authority citation for 21 CFR part 556 is revised to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

153. The authority citation for 21 CFR part 558 is revised to read as follows:

Authority: 21 U.S.C. 360b, 371.

PART 564—DEFINITIONS AND STANDARDS FOR ANIMAL FOOD

154. The authority citation for 21 CFR part 564 is revised to read as follows:

Authority: 21 U.S.C. 341, 343, 371.

PART 570—FOOD ADDITIVES

155. The authority citation for 21 CFR part 570 is revised to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 346a, 348, 371.

PART 571—FOOD ADDITIVE PETITIONS

156. The authority citation for 21 CFR part 571 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371; 42 U.S.C. 241.

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

157. The authority citation for 21 CFR part 573 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

PART 579—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF ANIMAL FEED AND PET FOOD

158. The authority citation for 21 CFR part 579 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 371.

PART 582—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

159. The authority citation for 21 CFR part 582 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

PART 584—FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE IN FEED AND DRINKING WATER OF ANIMALS

160. The authority citation for 21 CFR part 584 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

161. The authority citation for 21 CFR part 589 is revised to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 371.

PART 600—BIOLOGICAL PRODUCTS: GENERAL

162. The authority citation for 21 CFR part 600 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

PART 601—LICENSING

163. The authority citation for 21 CFR part 601 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263; 15 U.S.C. 1451–1561.

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

164. The authority citation for 21 CFR part 606 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

PART 607—ESTABLISHMENT REGISTRATION AND PRODUCT LISTING FOR MANUFACTURERS OF HUMAN BLOOD AND BLOOD PRODUCTS

165. The authority citation for 21 CFR part 607 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 371, 374; 42 U.S.C. 216, 262.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

166. The authority citation for 21 CFR part 610 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

167. The authority citation for 21 CFR part 640 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

168. The authority citation for 21 CFR part 660 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

169. The authority citation for 21 CFR part 680 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

PART 700—GENERAL

170. The authority citation for 21 CFR part 700 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374.

PART 701—COSMETIC LABELING

171. The authority citation for 21 CFR part 701 is revised to read as follows:

Authority: 21 U.S.C. 321, 352, 361, 362, 363, 371, 374; 15 U.S.C. 1454, 1455.

PART 710—VOLUNTARY REGISTRATION OF COSMETIC PRODUCT ESTABLISHMENTS

172. The authority citation for 21 CFR part 710 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT AND COSMETIC RAW MATERIAL COMPOSITION STATEMENTS

173. The authority citation for 21 CFR part 720 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

PART 730—VOLUNTARY FILING OF COSMETIC PRODUCT EXPERIENCES

174. The authority citation for 21 CFR part 730 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

PART 740—COSMETIC PRODUCT WARNING STATEMENTS

175. The authority citation for 21 CFR part 740 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374.

PART 800—GENERAL

176. The authority citation for 21 CFR part 800 is revised to read as follows:

Authority: 21 U.S.C. 321, 334, 351, 352, 355, 356, 357, 360e, 360i, 360k, 361, 362, 371.

PART 801—LABELING

177. The authority citation for 21 CFR part 801 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374.

PART 803—MEDICAL DEVICE REPORTING

178. The authority citation for 21 CFR part 803 is revised to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

PART 804—MEDICAL DEVICE DISTRIBUTOR REPORTING

179. The authority citation for 21 CFR part 804 is revised to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

PART 805—CARDIAC PACEMAKER REGISTRY

180. The authority citation for 21 CFR part 805 is revised to read as follows:

Authority: 42 U.S.C. 1395y(h), 1395y note.

PART 806—MEDICAL DEVICE CORRECTIONS AND REMOVALS

181. The authority citation for 21 CFR part 806 is revised to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

182. The authority citation for 21 CFR part 807 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

183. The authority citation for 21 CFR part 808 is revised to read as follows:

Authority: 21 U.S.C. 360j, 360k, 371.

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

184. The authority citation for 21 CFR part 809 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 357, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381.

PART 810—MEDICAL DEVICE RECALL AUTHORITY

185. The authority citation for 21 CFR part 810 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 332, 333, 334, 351, 352, 360h, 371, 374, 375.

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

186. The authority citation for 21 CFR part 812 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

187. The authority citation for 21 CFR part 814 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

PART 820—QUALITY SYSTEM REGULATION

188. The authority citation for 21 CFR part 820 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, 383.

PART 821—MEDICAL DEVICE TRACKING REQUIREMENTS

189. The authority citation for 21 CFR part 821 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, 374.

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

190. The authority citation for 21 CFR part 860 is revised to read as follows:

Authority: 21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374.

PART 861—PROCEDURES FOR PERFORMANCE STANDARDS DEVELOPMENT

191. The authority citation for 21 CFR part 861 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360c, 360d, 360gg–360ss, 371, 374; 42 U.S.C. 262, 264.

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

192. The authority citation for 21 CFR part 862 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

193. The authority citation for 21 CFR part 864 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

194. The authority citation for 21 CFR part 866 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 868—ANESTHESIOLOGY DEVICES

195. The authority citation for 21 CFR part 868 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 870—CARDIOVASCULAR DEVICES

196. The authority citation for 21 CFR part 870 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 872—DENTAL DEVICES

197. The authority citation for 21 CFR part 872 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 874—EAR, NOSE, AND THROAT DEVICES

198. The authority citation for 21 CFR part 874 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

199. The authority citation for 21 CFR part 876 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

200. The authority citation for 21 CFR part 878 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

201. The authority citation for 21 CFR part 880 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 882—NEUROLOGICAL DEVICES

202. The authority citation for 21 CFR part 882 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

203. The authority citation for 21 CFR part 884 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 886—OPHTHALMIC DEVICES

204. The authority citation for 21 CFR part 886 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 888—ORTHOPEDIC DEVICES

205. The authority citation for 21 CFR part 888 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 890—PHYSICAL MEDICINE DEVICES

206. The authority citation for 21 CFR part 890 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 892—RADIOLOGY DEVICES

207. The authority citation for 21 CFR part 892 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

PART 895—BANNED DEVICES

208. The authority citation for 21 CFR part 895 is revised to read as follows:

Authority: 21 U.S.C. 352, 360f, 360h, 360i, 371.

PART 897—CIGARETTES AND SMOKELESS TOBACCO

209. The authority citation for 21 CFR part 897 is revised to read as follows:

Authority: 21 U.S.C. 352, 360, 360h, 360i, 360j, 371, 374, 393.

PART 898—PERFORMANCE STANDARD FOR ELECTRODE LEAD WIRES AND PATIENT CABLES

210. The authority citation for 21 CFR part 898 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360c, 360d, 360gg–360ss, 371, 374; 42 U.S.C. 262, 264.

PART 900—MAMMOGRAPHY

211. The authority citation for 21 CFR part 900 is revised to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

PART 1000—GENERAL

212. The authority citation for 21 CFR part 1000 is revised to read as follows:

Authority: 21 U.S.C. 360hh–360ss.

PART 1002—RECORDS AND REPORTS

213. The authority citation for 21 CFR part 1002 is revised to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 360hh–360ss, 371, 374.

PART 1003—NOTIFICATION OF DEFECTS OR FAILURE TO COMPLY

214. The authority citation for 21 CFR part 1003 is revised to read as follows:

Authority: 42 U.S.C. 263b–263n.

PART 1004—REPURCHASE, REPAIRS, OR REPLACEMENT OF ELECTRONIC PRODUCTS

215. The authority citation for 21 CFR part 1004 is revised to read as follows:

Authority: 42 U.S.C. 263b–263n.

PART 1005—IMPORTATION OF ELECTRONIC PRODUCTS

216. The authority citation for 21 CFR part 1005 is revised to read as follows:

Authority: 42 U.S.C. 263d, 263h.

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

217. The authority citation for 21 CFR part 1010 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 371, 381; 42 U.S.C. 263b–263n.

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

218. The authority citation for 21 CFR part 1020 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360e–360j, 360gg–360ss, 371, 381.

PART 1030—PERFORMANCE STANDARDS FOR MICROWAVE AND RADIO FREQUENCY EMITTING PRODUCTS

219. The authority citation for 21 CFR part 1030 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 371, 381; 42 U.S.C. 263b–263n.

PART 1040—PERFORMANCE STANDARDS FOR LIGHT–EMITTING PRODUCTS

220. The authority citation for 21 CFR part 1040 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 371, 381; 42 U.S.C. 263b–263n.

PART 1050—PERFORMANCE STANDARDS FOR SONIC, INFRASONIC, AND ULTRASONIC RADIATION–EMITTING PRODUCTS

221. The authority citation for 21 CFR part 1050 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 371, 381; 42 U.S.C. 263b–263n.

PART 1210—REGULATIONS UNDER THE FEDERAL IMPORT MILK ACT

222. The authority citation for 21 CFR part 1210 is revised to read as follows:

Authority: 21 U.S.C. 141–149.

PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

223. The authority citation for 21 CFR part 1220 is revised to read as follows:

Authority: 21 U.S.C. 41–50; 19 U.S.C. 1311.

PART 1230—REGULATIONS UNDER THE FEDERAL CAUSTIC POISON ACT

224. The authority citation for 21 CFR part 1230 is revised to read as follows:

Authority: 15 U.S.C. 1261–1276.

PART 1240—CONTROL OF COMMUNICABLE DISEASES

225. The authority citation for 21 CFR part 1240 is revised to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

PART 1250—INTERSTATE CONVEYANCE SANITATION

226. The authority citation for 21 CFR part 1250 is revised to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

PART 1270—HUMAN TISSUE INTENDED FOR TRANSPLANTATION

227. The authority citation for 21 CFR part 1270 is revised to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

Dated: September 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–25668 Filed 9–25–97; 8:45 am]

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federal register

Wednesday
October 1, 1997

Part III

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51867; FRL–5742–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from July 20, 1997 to July 25, 1997.

ADDRESSES: Written comments, identified by the docket control number "[OPPTS–51867]" and the specific PMN number, if appropriate, should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION" of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

The official record for this notice, as well as the public version, has been established under docket control number "[OPPTS–51867]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC. The official record is located at the address in "ADDRESSES".

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "[OPPTS–51867]". Electronic comments on this notice may be filed online at many Federal Depository Libraries.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 30 Premanufacture Notices Received From: 07/20/97 to 07/25/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0883	07/17/97	10/14/97	Essex Specialty Products, Inc.	(G) Polymer used in sealent manufacture	(S) Poly(oxy(methyl-1,2-ethanediyl)), alpha-hydro-omega-hydroxy-ether with 2,2-bis(hydroxymethyl)-1,3-propanediol cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-
P–97–0884	07/17/97	10/14/97	Aluminium Company of America Inc.	(S) Flame retardant in polymers	(S) (μ)-(Ethanedioato(2) O,O,O,O′, 11 tetrehydroxy dialuminium
P–97–0885	07/18/97	10.15/97	CBI	(S) Momomer used polymerization	(G) Methacrylate acid ester
P–97–0886	07/17/97	10/14/97	Croada, Inc	(S) Fabric softener concentrate	(S) 1-Propanminum, 2-hydroxy-*N*-*N* bis(2-hydroxyethyl)-*N*-diester with-C_{12-15}-fatty acids me sulfated (salt)
P–97–0887	07/21/97	10/18/97	Dow Corning Corporation	(G) Synthesis industrial lubricant for contained use	(G) Dipentaerythritol, mixed ester with fatty acids, C_{5-9} straight and branched
P–97–0888	07/21/97	10/18/97	CBI	(G) Antistat for latex	(G) Phosphorylated alcohol potassium salt
P–97–0889	07/21/97	10/18/97	Dow Corning Corporation	(S) Silicone latex coating	(G) Crosslinking polydimethyl silicone
P–97–0890	07/22/97	10/20/97	CBI	(S) Cobinder in paper coating	(G) Acrylate copolymer with acrylonitrile
P–97–0891	07/22/97	10/20/97	CBI	(G) Moisture curing polyurethane adhesive	(G) Isocyanate terminated urethane polymer
P–97–0892	07/22/97	10/20/97	CBI	(S) Fabric coating; fabric finish; adhesive	(G) Polyurethane dispersion based on a polyether, polyester and 5-isocyanato-1-(isocyantomethyl)-1,3,3-trimethylcycohexane
P–97–0893	07/21/97	10/19/97	Ciba-Geigy Corporation, Textile Products Division	(S) Paper dye	(S) 1*H*-imidazolium, 2,2′-[[6-dimethylamino)-1,3,5-triazine-2,4-diyl]bis(imino-4,1-phenyleneimino-4,1-phenyleneazo)bis[1,3-dimethyl-dichloride
P–97–0894	07/22/97	10/20/97	CBI	(G) Open, non-dispersive use	(G) Benzene sulphonic acid, 4[[1-[2(*r*) phenyl)amino carbonyl] 2-oxy prpyl]azo]-nitro
P–97–0895	07/23/97	10/21/97	CBI	(G) Make liminiscent materials	(S) Aluminium europium borate oxicide
P–97–0896	07/23/97	10/21/97	CBI	(S) Contact and laminating adhesive	(G) Polyurethane dispersion
P–97–0897	07/23/97	10/21/97	CBI	(G) Coating of metal substrates	(G) Hydroxy functional aromatic acid polyester
P–97–0898	07/23/97	10/21/97	CBI	(G) Coating of metal substrates	(G) Methacrylate ester polymer
P–97–0899	07/23/97	10/21/97	CBI	(G) Coating of metal substrates	(G) Methacrylate ester polymer
P–97–0900	07/24/97	10/22/97	3M Company	(G) Resin	(G) Copolymer of aromatic diester and alkyl polyols
P–97–0905	07/21/97	10/19/97	CBI	(G) Intermediate for coatings	(G) Polyurethane resin
P–97–0906	07/21/97	10/19/97	CBI	(G) Intermediate for coatings	(G) Polyurethane resin
P–97–0907	07/21/97	10/19/97	CBI	(G) Intermediate for coatings	(G) Polyurethane resin
P–97–0908	07/21/97	10/19/97	CBI	(G) Intermediate for coatings	(G) Polyurethane resin
P–97–0909	07/21/97	10/19/97	CBI	(G) Intermediate for coatings	(G) Polyurethane resin
P–97–0913	07/24/97	10/22/97	DowElanco	(G) Process intermediate	(G) Substituted triazolo pyrimidine
P–97–0914	07/24/97	10/22/97	DowElanco	(G) Process intermediate	(G) Substituted triazolo pyrimidine
P–97–0915	07/24/97	10/22/97	CBI	(G) Open, non-dispesive use	(G) Acetoacetate oligomer
P–97–0916	07/25/97	10/23/97	Ciba-Geigy Corporation, Polymers Division	(S) Cure agent for epoxy floor coating; cure agent for epoxy tank lining; cure agent for maintenance coatings	(G) 4,4′–(1-methylethylidene) bisphenol, polymer with (chloromethyl) oxirane and a diamine
P–97–0917	07/25/97	10/23/97	CBI	(G) Release coating	(G) Perfluoroalkylfunctional silicone silsesquioxane copolymer
P–97–0920	07/25/97	10/23/97	CBI	(G) Component of a formulated adhesive	(G) Isocyanate terminated polyester polyurethane
P–97–0921	07/25/97	10/23/97	CBI	(G) Destructive use as a chemical reactant	(G) Alkanediol alkanedioic acid polyester

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II. 10 Notices of Commencement/Import Date 07/20/97 to 07/25/97

Case No.	Received Date	Commencement/ Import Date	Chemical
P–91–1464	07/24/97	06/26/97	(G) Substituted diacrylate
P–95–1380	07/24/97	07/12/97	(G) Aliphatic polyimine
P–96–0657	07/21/97	07/11/97	(S) 2-Propenoic acid, 2-methyl, methy ester, polymer with aziridine, butyl 2-propenoate, ethenylbenzene and 2-propenoic acid, graft
P–96–0728	07/25/97	05/14/97	(S) Polymer of: 1,2-ethanediol; ethanol,2,2'-oxybis; 2-butenedioic acid; 1-butanol, 2,2-bis[(2-propenyloxy)menthy]-
P–96–1492	07/21/97	06/26/97	(G) Alkyl substituted alkenyl acid derivative, polymer with substituted alkyl sulfonic acid salt
P–97–0119	07/25/97	07/08/97	(S) *D*-glucopyranose, oligomeric, 6-(hydrogen 2,3-dihydroxy butanedioate),[*r*-(*r,r*)]-, 1-(coco alkyl)ethers, sodium salts
P–97–0368	07/22/97	06/25/97	(G) Ethylene oxide, polymer with propylene oxide, mixed alkyl phenols, formaldehyde and alkenoic acids
P–97–0377	07/22/97	06/13/97	(G) Alkyl benzene sulfonic acid
P–97–0379	07/22/97	06/17/97	(G) Alkyl benzene sulfonic acid, calcium salt
P–97–0405	07/21/97	06/22/97	(G) Epoxy acrylate polymer, amine salt

List of Subjects

Environmental protection, Premanufacture notices.

Dated: September 23, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–25892 Filed 9–30–97; 8:45 am]

BILLING CODE 6560–50–F

federal register

Wednesday
October 1, 1997

Part IV

Environmental Protection Agency

Certain Chemicals; Premanufacture; Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51868; FRL–5743–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from July 26, 1997 to July 31, 1997.

ADDRESSES: Written comments, identified by the docket control number "[OPPTS–51868]" and the specific PMN number, if appropriate, should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION" of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

The official record for this notice, as well as the public version, has been established under docket control number "[OPPTS–51868]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC. The official record is located at the address in "ADDRESSES".

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "[OPPTS–51868]". Electronic comments on this notice may be filed online at many Federal Depository Libraries.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; (II) TME application, and (III) Notices of Commencement to manufacture/import.

I. 25 Premanufacture Notices Received From: 07/26/97 to 07/31/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0901	07/29/97	10/27/97	CBI	(G) Polymer additive	(G) Brominated aromatic phthalate ester
P–97–0902	07/29/97	10/27/97	CBI	(G) Polymer additive	(G) Brominated aromatic phthalate ester
P–97–0903	07/29/97	10/27/97	CBI	(G) Polymer additive	(G) Brominated aromatic phthalate ester
P–97–0904	07/29/97	10/27/97	CBI	(G) Polymer additive	(G) Brominated aromatic phthalate ester
P–97–0909	07/28/97	10/26/97	CBI	(G) Protective coatings for steel components	(G) Generic mdi/alkanolamine polymer
P–97–0910	07/28/97	10/26/97	CBI	(G) Protective coatings for steel components	(G) Generic mdi/alkanolamine polymer
P–97–0911	07/28/97	10/26/97	CBI	(G) Ink component	(G) Cyclozliphatic olefin distillate stream polymerized with unsaturated fatty acids
P–97–0912	07/28/97	10/26/97	CBI	(G) Ink component	(G) Cyclozliphatic olefin distillate stream polymers with unsaturated fatty acids, phenolic-modified rosin
P–97–0916	07/25/97	10/23/97	Ciba-Geigy Corporation, Polymers Division	(S) Cure agent for epoxy floor coating; cure agent for epoxy tank lining; cure agent for maintenance coatings	(G) 4,4'-(1-methylethylidene)bisphenol, polymer with (chloromethyl)oxirane and a diamine
P–97–0917	07/25/97	10/23/97	CBI	(G) Release coating	(G) Perfluoroalkylfunctional silicone silsesquioxane copolymer
P–97–0918	07/28/97	10/26/97	CBI	(S) Raw material for paint and coating	(G) Reaction product of 1,6-hexanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 1,4-cyclohexanedimethanol, 1,3-isobenzofurandione, hexahydro-1,3-isobenzofurnadione
P–97–0919	07/28/97	10/26/97	CBI	(S) Lubricating oil additive	(G) Polyisobutylene succinimide molybdenum inhibitor
P–97–0920	07/25/97	10/23/97	CBI	(G) Component of a formulated adhesive	(G) Isocyanate terminated polyester polyurethane
P–97–0921	07/25/97	10/23/97	CBI	(G) Destructive use as a chemical reactant	(G) Alkanediol alkanedioic acid polyester
P–97–0922	07/28/97	10/26/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic graft copolymer
P–97–0923	07/28/97	10/26/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic graft copolymer
P–97–0924	07/28/97	10/26/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic graft copolymer
P–97–0925	07/28/97	10/26/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic graft copolymer
P–97–0926	07/28/97	10/26/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic graft copolymer
P–97–0927	07/28/97	10/26/97	CBI	(S) Coatings	(G) Polyurethane/ acrylic graft copolymer
P–97–0928	07/29/97	10/27/97	CBI	(G) Fluorescent tracer dye	(G) Napthalimide diesters
P–97–0929	07/29/97	10/27/97	CBI	(G) Highly dispersive use	(G) Disubstituted acetonitrile
P–97–0931	07/31/97	10/29/97	Ranbar Electrical Materials, Inc.	(S) Insulating coating for electrical apparatus	(G) Ether-ester polymer
P–97–0932	07/31/97	10/29/97	Ranbar Electrical Materials, Inc.	(S) Insulating coating for electrical apparatus	(G) Ether-ester polymer
P–97–0934	07/31/97	10/29/97	CBI	(S) Organic synthesis intermediate	(G) 3-Cyano-4-[3-substituted-phenylazo]-1-phenyl-5-pyrazolone

II. 1 Test Marketing Exemption Application Received From: 07/26/97 to 07/31/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–97–0010	07/29/97	09/12/97	Reichhold Chemicals Inc	(S) See test marking plan attached	(G) Polyurethane adhesive

III. 11 Notices of Commencement Received From: 07/26/97 to 07/31/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–91–0097	07/30/97	07/14/97	(G) Castor oil modified alkyd resin
P–91–0098	07/30/97	07/14/97	(G) Vegitable oil modified alkyd resin
P–96–0728	07/25/97	05/14/97	(S) Polymer of: 1,2-ethanediol; ethanol,2,2'-oxybis; 2-butenedioic acid; 1-butanol, 2,2-bis[(2-propenyloxy)menthy)-
P–96–0904	07/29/97	07/14/97	(S) Silane, chlorobis(1-methylethyl)

III. 11 Notices of Commencement Received From: 07/26/97 to 07/31/97—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–0076	07/29/97	06/27/97	(G) Reaction product of formaldehyde and ethyl acetoacetate
P–97–0119	07/25/97	07/08/97	(S) *D*-glucopyranose, oligomeric, 6-(hydrogen 2,3-dihydroxy butanedicate), [r-(r*,r*)]-, 1-(coco alkyl)ethers, sodium salts
P–97–0222	07/29/97	07/15/97	(S) Formamide, *N*-ethenyl-, homopolymer, hydrolyzed, hydrochloride
P–97–0289	07/29/97	07/02/97	(G) Diester diacid of aromatid dianhydride
P–97–0294	07/28/97	07/01/97	(S) Propanoic acid, 2-hydroxy-iron (2+) salt (2:1)
P–97–0400	07/28/97	06/30/97	(G) Polycyclic acrylic copolymer
P–97–0549	07/28/97	07/22/97	(G) Cresylic novolak resin

List of Subjects

Environmental protection, Premanufacture notices.

Dated: September 23, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–25927 Filed 9–30–97; 8:45 am]

BILLING CODE 6560–50–F

federal register

Wednesday
October 1, 1997

Part V

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51869; FRL–5743–2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from August 1, 1997 to August 8, 1997.

ADDRESSES: Written comments, identified by the docket control number "[OPPTS–51869]" and the specific PMN number, if appropriate, should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION" of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

The official record for this notice, as well as the public version, has been established under docket control number "[OPPTS–51869]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC. The official record is located at the address in "ADDRESSES".

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "[OPPTS–51869]". Electronic comments on this notice may be filed online at many Federal Depository Libraries.

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In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532; TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 37 Premanufacture Notices Received From: 08/1/97 to 08/8/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0930	08/01/97	10/30/97	CBI	(S) Industrial products: belts, timing belts wheels, small rollers	(G) PPDI polyester prepolymer
P–97–0933	08/01/97	10/30/97	CBI	(G) Coating binder component	(G) Carbonate-amine adduct
P–97–0935	08/04/97	11/02/97	Reichhold Chemicals Inc	(G) Polyurethane ho melt reactive adhesive	(G) Polyurethane adhesive
P–97–0936	08/01/97	10/30/97	3M Company	(G) Polymer additive	(G) Fluorochemical polymer
P–97–0937	08/01/97	10/30/97	CBI	(G) Adhesive component	(G) Polymer of methylenebis[isocyanatobenzene] and mixed polyether polyols
P–97–0938	08/01/97	10/30/97	CBI	(G) Adhesive component	(G) Polymer of methylenebis[isocyanatobenzene], disubstituted alkane and mixed polyether polyols
P–97–0939	08/05/97	11/03/97	CBI	(G) A metal estractant	(G) Dithiophosphoramide
P–97–0940	08/05/97	11/03/97	CBI	(G) A metal estractant	(G) Dithiophosphoramide
P–97–0941	08/04/97	11/02/97	CBI	(G) Moisture curing polyurethane adhesive	(G) Isocyanate terminated urethane polymer
P–97–0942	08/06/97	11/04/97	CBI	(G) Viscosity control agent (thickerner)	(G) Polycarbamate resin
P–97–0943	08/05/97	11/03/97	CBI	(G) Destructive and dispersive use	(G) Mixed trialkylamines
P–97–0944	08/05/97	11/03/97	CBI	(G) Destructive and dispersive use	(G) Mixed trialkylamines
P–97–0945	08/05/97	11/03/97	CBI	(G) Destructive and dispersive use	(G) Mixed trialkylamines
P–97–0946	08/05/97	11/03/97	CBI	(G) Destructive and dispersive use	(G) Mixed trialkylamines
P–97–0947	08/05/97	11/03/97	CBI	(G) Destructive and dispersive use	(G) Mixed trialkylamines
P–97–0948	08/05/97	11/03/97	CBI	(G) Destructive and dispersive use	(G) Mixed trialkylamines
P–97–0949	08/01/97	10/30/97	CBI	(G) Crosslinker for a coating with open use	(G) Polyurethane
P–97–0950	08/01/97	10/30/97	CBI	(G) Crosslinker for a coating with open use	(G) Polyurethane
P–97–0951	08/01/97	10/30/97	CBI	(G) Crosslinker for a coating with open use	(G) Polyurethane
P–97–0952	08/01/97	10/30/97	CBI	(G) Crosslinker for a coating with open use	(G) Polyurethane
P–97–0953	08/01/97	10/30/97	CBI	(G) Crosslinker for a coating with open use	(G) Polyurethane
P–97–0954	08/01/97	10/30/97	CBI	(G) Crosslinker for a coating with open use	(G) Polyurethane
P–97–0955	08/06/97	11/04/97	CBI	(G) Open, non-dispersive (urethane resin)	(G) Crosslinking stoving urethane resin
P–97–0956	08/04/97	11/02/97	EM Industries, Inc.	(G) Pearlescent pigment for decorative finishes	(G) Mixed metal oside
P–97–0957	08/06/97	11/04/97	CBI	(G) Raw material for can coatings	(G) Non-etherified phenolic resin
P–97–0958	08/05/97	11/03/97	Owens Corning Science & Technology Center	(S) Molding resin	(S) 2,5-furandione, polymer with 1,2-ethanediol, 2-methyl-1,3-propanediol, 2,2'-oxybis(ethanol) and 3a, 4,7,7a-tetrahydro-4,7-methano-1h-indene*
P–97–0959	08/04/97	11/02/97	Dover Chemical Corporation	(S) Extreme pressure lubricant add	(S) Amdiosulfurous acid, compound, with 2-aminoethanol (1:1)
P–97–0961	08/07/97	11/05/97	Reichhold Chemicals Inc	(G) Polyurethane hot melt reactive adhesive	(G) Polyurethane adhesive
P–97–0962	08/08/97	11/06/97	Reichhold Chemicals Inc	(G) Polyurethane hot melt reactive adhesive	(G) Polyurethane adhesive
P–97–0963	08/08/97	11/06/97	CBI	(G) Processing aid	(G) Mixed metal salts of substituted polyalkylene polyether and carbomonocyclic carbocylic acids
P–97–0965	08/08/97	11/06/97	Dianal America Inc	(G) Binder resin	(G) Saturated co-polyester resin
P–97–0966	08/06/97	11/04/97	CBI	(S) UV or e-beam curing resin for coatings onto wood, paper, plastics and printing inks	(G) Polyester acrylate
P–97–0967	08/06/97	11/04/97	CBI	(S) UV or e-beam curing resin for coatings onto wood, paper, plastics and printing inks	(G) Polyester acrylate
P–97–0973	08/08/97	11/06/97	CBI	(G) Polishes	(G) Alkyl functional silicone
P–97–0974	08/08/97	11/06/97	CBI	(G) Polishes	(G) Alkyl functional silicone
P–97–0975	08/08/97	11/06/97	CBI	(G) Polishes	(G) Alkyl functional silicone

I. 37 Premanufacture Notices Received From: 08/1/97 to 08/8/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0976	08/08/97	11/06/97	CBI	(G) Polishes	(G) Alkyl functional silicone

II. 13 Notices of Commencement Received From: 08/01/97 to 08/08/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–96–0943	08/08/97	07/23/97	(G) Caprolactone polyurethane
P–96–1000	08/08/97	07/24/97	(G) Caprolactone polyurethane
P–96–1125	08/08/97	08/04/97	(G) Fluorochemical acrylate copolymer
P–96–1262	08/05/97	07/02/97	(G) Substituted polyoxyethyleneamine sulfonate
P–96–1324	08/04/97	07/24/97	(G) Polyester amide
P–96–1429	08/04/97	07/03/97	(G) Alcohol alkoxylate
P–97–0264	08/01/97	07/21/97	(S) Silane, (3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10- heptadecafluorodecyl) trimethoxy-
P–97–0302	08/01/97	06/26/97	(S) Hexadecanoic acid, ethenyl ester
P–97–0312	08/04/97	07/17/97	(G) 1,5-naphthalenedisulfonic acid, 2-[(amino-hydroxy-sulfo-naphthalenyl)azo]-, reaction products with 2-[(-amino-hydroxy-sulfo-naphthalenyl)azo]-1,4-benzenedisulfonic acid, 1,2-propanediamine and 2,4,6-triazine, sodium salts
P–97–0425	08/05/97	07/08/97	(G) Substituted styrene acrylate imine polymer
P–97–0525	08/04/97	07/17/97	(G) 2-anthracenesulfonic acid, 1-amino-9,10-dihydro-4-[[3-[[(2-hydroxyethyl)amino]sulfonyl]-4,5-dimethylphenyl]amino]-9, 10-dioxo-, compound with substituted amine] (1:1)
P–97–0526	08/04/97	07/17/97	(G) 2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9, 10-dioxo-4-[[3-substituted phenyl]amino]-
P–97–0530	08/04/97	07/17/97	(G) 2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9, 10-dioxo-4-[[3-substituted phenyl]amino]-,compd. with substituted amine] (1:1)

List of Subjects

Environmental protection, Premanufacture notices.

Dated: September 23, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–25928 Filed 9–30–97; 8:45 am]

BILLING CODE 6560–50–F

federal register

Wednesday
October 1, 1997

Part VI

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Adjustments to Cost Limits for Skilled Nursing Facility Inpatient Routine Service Costs; Notice

Medicare Program; Schedules of Limits and Prospectively Determined Payment Rates for Skilled Nursing Facility Inpatient Routine Service Costs; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–895–FNC]

RIN 0938–AL15

Medicare Program; Schedules of Limits and Prospectively Determined Payment Rates for Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice with comment period.

SUMMARY: This final notice with comment period sets forth an updated schedule of limits on skilled nursing facility (SNF) routine service costs for which payment may be made under the Medicare program and sets forth an updated schedule of payment rates for low Medicare volume SNFs that elect to receive prospectively determined payment rates for routine service costs. Section 1888(a) of the Social Security Act (the Act) requires that the Secretary update the per diem cost limits for SNF routine service costs for cost reporting periods beginning on or after October 1, 1995, and every 2 years thereafter. In addition, section 1888(d)(4) of the Act requires the Secretary to establish and publish prospectively determined payment rates at least 90 days prior to the beginning of the Federal fiscal year (FY) to which such rates are to be applied.

DATES: *Effective date:* The schedule of cost limits and the schedule of prospectively determined payment rates are effective for cost reporting periods beginning on or after October 1, 1997.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on December 1, 1997.

ADDRESSES: Mail written comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–895–NC, P.O. Box 7517, Baltimore, MD 21244–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following E-mail address: BPD–895–NC@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the E-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–895–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

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FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (410) 786–4597.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority for Establishing Cost Limits and Prospectively Determined Payment Rates

1. Cost Limits

Sections 1861(v)(1)(A) and 1888 of the Act authorize the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under Medicare. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Section 1888(a) of the Act directs the Secretary to set limits on per diem inpatient routine service costs for hospital-based and freestanding SNFs by urban or rural area. Implementing regulations appear at 42 CFR 413.30.

2. Prospectively Determined Payment Rates

Most SNFs are paid on a reasonable cost basis up to the routine service per diem cost limits described in the previous paragraph. However, under section 1888(d) of the Act, for cost reporting periods beginning on or after October 1, 1986, a SNF with fewer than 1,500 Medicare covered days in a given cost reporting period may choose to receive payment based on a prospectively determined payment rate in the subsequent cost reporting period. Implementing regulations appear at 42 CFR Part 413, Subpart I.

The rates for the low Medicare volume SNFs are established on a per diem basis and include payment for the cost of furnishing general inpatient routine services and capital-related costs associated with routine services. We are required to publish annual revisions to the rates at least 90 days before the beginning of the Federal FY to which the revised rates apply. In addition, under § 413.312(a)(1)(i), we are required to base the revised rates on the same cost data used to develop the cost limits that are in effect for that Federal FY.

B. Previously Published Schedules of and Updates to Cost Limits and Rates

1. Effective for FY 1993

We published a final notice with comment period on October 7, 1992 (57 FR 46177) announcing a schedule of limits for freestanding and hospital-based SNFs effective for cost reporting periods beginning in FY 1993. In December 1992, we published section 2828 of the Medicare Provider Reimbursement Manual (HCFA Pub. 15–1), Transmittal Number 370, establishing rates effective for cost reporting periods beginning in FY 1993. The same cost report, wage, and inflation data were used to develop these cost limits and rates. The cost reports used to develop the FY 1993 cost limits and rates covered cost reporting periods ending on or after June 30, 1989, through May 31, 1990, for freestanding SNFs and on or after October 31, 1988, through September 30, 1989, for hospital-based SNFs. The 1988 hospital wage data and Metropolitan Statistical Area (MSA) designations, based on pre-1990 census data as described in the April 1, 1991, notice (56 FR 13319), were used to develop the wage index that was applicable to the FY 1993 cost limits and rates. It has been our longstanding policy not to make changes in the cost report data or recognize changes in the wage and MSA data until we publish a **Federal Register** notice announcing an update to the SNF cost limits.

2. Effective for FY 1994 and FY 1995

Sections 13503(a)(1) and 13503(b) of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Public Law 103–66) required that there be no changes in the FY 1993 SNF routine cost limits and rates (including adjustments for changes in the wage index or applicable MSAs) established under section 1888 of the Act for cost reporting periods beginning during Federal FY 1994 and FY 1995. This 2-year freeze on the cost limits and rates resulted in a savings to the Medicare program. These provisions of OBRA '93 were implemented, for cost limits, in a final notice with comment period on January 6, 1994 (59 FR 762) and, for rates, in section 2828 L of the Provider Reimbursement Manual (Transmittal 374, December 1993).

3. Effective for FY 1996

Section 13503(a)(2) of OBRA '93 amended section 1888(a) of the Act and required that an update to the cost limits be provided for cost reporting periods beginning on or after October 1, 1995 (FY 1996), and every 2 years thereafter. However, during the FY 1996 legislative period, reconciliation legislation contained a provision to preserve the savings from the 2-year freeze by inflating the FY 1993 cost limits and rates to cost reporting periods beginning in FY 1996, except that inflation for FY 1994 and FY 1995 would not have been recognized. We did not believe that it would be appropriate to issue the required update to the cost limits and rates for cost reporting periods beginning in FY 1996 until the prospect of this provision becoming law was known. We determined in April 1996 (7 months into FY 1996) that the FY 1996 legislative period would not produce a law that included this provision.

On May 3, 1996, we expedited the issuance of the required update to the FY 1996 cost limits and rates through a memorandum to all Associate Regional Administrators (ARAs) for Medicare. We instructed the ARAs to notify the intermediaries to implement this update. (This memorandum also included corrections to erroneous projected rates of inflation used to develop the FY 1990 and FY 1993 cost limits.) This memorandum contained the monthly inflation factors that were needed to extend the FY 1993 cost limits and rates to cost reporting periods beginning in FY 1996.

Our policy regarding the methodology used to provide the required update to the limits and rates for FY 1996 conformed with the update methodology described below Table IV of the October 7, 1992 notice, which extends the cost reporting periods affected by the FY 1993 limits by computing monthly inflation factors beyond those shown in Table IV. Intermediaries were using this methodology to compute limits and rates between October 1, 1995, and the issuance of the aforementioned memorandum. We explained that this update methodology would be used until a new schedule of limits or other provision is issued.

4. Effective for FY 1997

Section 1888(a) of the Act did not require us to provide an update to the cost limits for FY 1997. Therefore, we trended the FY 1996 cost limits and rates to cost reporting periods beginning in FY 1997 using the latest available rates of inflation.

On August 22, 1996, we issued a memorandum to all ARAs for Medicare to notify the intermediaries of the cost limits and monthly inflation factors for cost reporting periods beginning in FY 1997.

On September 3, 1996, we published a final notice with comment period (61 FR 46466) announcing the schedule of rates effective for cost reporting periods beginning in FY 1997. That notice represented the first schedule of rates published in the **Federal Register** after the regulations implementing section 1888(d) were issued on July 21, 1995 (60 FR 37590).

C. Cost Limits and Rates Effective for FY 1998

This notice with comment period announces the schedule of cost limits and rates effective for cost reporting periods beginning in FY 1998, as required under section 1888(a) of the Act. To meet the update requirement under section 1888(a), we trended the FY 1997 cost limits and rates to cost reporting periods beginning in FY 1998 using the latest rates of inflation.

There is, however, increasing concern that post-1990 census data have not been used in determining MSA designations and wage index values since our last **Federal Register** notice was published on October 7, 1992. We believe that the numerous changes to the MSA designations since we published the FY 1993 cost limits and rates should be recognized in determining the appropriate wage index values used in this notice. This notice presents the opportunity to implement these changes to the wage data and to the MSA designations and conforms with our longstanding policy to make such changes only in a **Federal Register** notice.

This is the first time we have published a combined schedule of cost limits and rates. Combining the cost limits and rates in one notice is more economical in that they both utilize the same cost report data, wage index values, and rates of inflation. In addition, under section 1888(d) of the Act, an individual provider's prospectively determined rate may not exceed its applicable cost limit (see Section III.D. of this notice). This notice, containing cost limits and rates for cost reporting periods beginning in FY 1998, allows a provider to more conveniently determine its individual rate than in previous years.

II. Update of the SNF Schedule of Limits and the Schedule of Prospectively Determined Rates

Under the authority cited in section I. of this notice, this final notice with comment period sets forth for cost reporting periods beginning in FY 1998: (1) an updated schedule of limits on SNF routine service costs for which payment may be made under the Medicare program; and (2) an updated schedule of prospectively determined payment rates for low Medicare volume SNFs that have elected to receive prospective payments for routine service costs.

The cost limits set forth in Table I and the rates set forth in Tables II and III of this notice are based on the FY 1997 cost limits and rates, respectively, trended to cost reporting periods beginning in FY 1998, using the most recent projections of the rates of inflation or increase in the costs included in the SNF market basket.

We are continuing to use the HCFA hospital wage data to account for area wage differences. This is necessary because industry-specific data needed to calculate a wage index for SNFs are not available. Under section 106 of the Social Security Act Amendments of 1994 (Public Law 103–432), the Secretary was required to begin collecting data no later than October 31, 1995, on employee compensation and paid hours of employment in SNFs for the purpose of constructing a SNF wage index adjustment to the routine service cost limits. Until this data collection effort is completed and the data are analyzed, we believe that hospital wage data provide the best measure of comparable wages that would also be paid by SNFs, since hospitals and SNFs generally compete in the same labor

market for employees. We believe that the use of the hospital wage data results in an appropriate adjustment to the labor-portion of the costs based on an appropriate wage index as required under section 1888(a) of the Act.

For the schedule of cost limits and rates effective with this notice, we are using wage index values that are based on hospital wage data from cost reporting periods beginning in FY 1993—the most recent hospital wage data in effect before the effective date of this notice and the most recent MSA designations. Accordingly, with the exception of those wage index values that may be affected by recent corrections to the 1993 wage data, the wage index values used in this notice are based on the same wage data as are used to compute the wage index values for the hospital prospective payment system for discharges occurring on or after October 1, 1996. (A detailed description of the methodology used to compute the hospital prospective payment wage index is set forth in the final rule published in the **Federal Register** on August 30, 1996 (61 FR 45166).) While these wage index values are based on the MSA designations in effect prior to the effective date of this notice, they do not, however, reflect changes in geographic classification for certain rural hospitals required under section 1886(d)(8)(B) of the Act or geographic reclassifications based on decisions of the Medicare Geographic Classification Review Board or the Secretary under section 1886(d)(10) of the Act. Section 1886 of the Act applies to hospitals only. Accordingly, as in the past, it would not be appropriate to recognize changes in the geographic classification of hospitals for purposes of computing the SNF cost limits even though an SNF may be part of a medical complex that includes a reclassified hospital.

III. Provisions of the SNF Schedule of Cost Limits and Prospectively Determined Payment Rates

The schedule of cost limits set forth below applies to all SNFs, including those low Medicare volume SNFs that are eligible to receive the optional prospectively determined payment rate for routine services. Under § 413.314(d), the operational portion of an SNF's prospectively determined payment rate, excluding capital-related costs, cannot exceed its actual routine service cost limit (without regard to exceptions, exemptions, or retroactive adjustments) in effect at the time of the election to be paid a prospectively determined payment rate. The eligibility requirements for receiving prospectively determined payment rates are specified in subpart I of part 413.

These schedules of cost limits and rates provide for the following:

A. Separate Groupings for Labor-Related and Nonlabor-Related Components of Per Diem Routine Service Costs

We are retaining the same groupings for the labor-related and nonlabor-related components of per diem routine service costs as follows:

1. As described in the October 7, 1992 notice for the FY 1993 cost limits, separate group means were computed for the labor-related and nonlabor-related components for hospital-based and freestanding SNFs in accordance with the MSA or non-MSA designation in effect with that notice. Each group mean was then multiplied by 112 percent.

2. As described in the September 3, 1996 notice for the FY 1997 rates, separate group means were computed for labor-related, nonlabor-related, and capital-related components in accordance with the SNF's census region and MSA or non-MSA designation in effect with that notice. Each group mean was then multiplied by 105 percent.

B. Adjustment of SNF Labor-Related Data by the Wage Index

We are using a wage index based on 1993 hospital wage data and post-1990 MSA designations, as discussed in section II of this notice, to adjust the labor-related portion of the cost limits and rates contained in this notice for area wage differences.

C. Use of SNF Market Basket

We are trending the FY 1997 cost limits and rates to FY 1998 using projected cost increases by applying the SNF market basket index. This market basket index is used to adjust the SNF cost data to reflect cost increases occurring between the cost reporting periods represented in the data collection and the midpoints of the cost reporting periods to which the cost limits and rates apply.

The market basket index is comprised of the most commonly used categories of SNF routine service expenses. The categories are based primarily on those used by the National Center for Health Statistics in its National Nursing Home Surveys.

The categories of expenses are weighted according to the estimated proportion of SNF routine service costs attributable to each category. A detailed description of the market basket index is described in the October 7, 1992 notice for cost limits and the September 3, 1996 notice for the rates.

In developing the market basket index, we obtained historical and projected (estimated) rates of change in the price of goods and services in each category. For cost limit purposes only, estimated rates of change may be revised, retroactively, based on actual (final) rates of change. As described in all previous schedules of cost limits, if the final rate of change in the market basket index for a calendar year differs from the estimated rate of change by at least 0.3 percentage points, we will adjust the limits. Elsewhere in this issue of the **Federal Register**, we are proposing in a separate notice to eliminate this provision to adjust the limits.

D. Application of the Adjusted Hospital Wage Index to the Labor-Related Costs

In developing the FY 1997 cost limits and rates, we applied the wage index to five categories of labor-related costs: wages, employee benefits, health service costs, business service costs, and miscellaneous costs. We continue to use this methodology in computing the FY 1998 cost limits and rates.

For purposes of applying the wage index, employee benefits include such items as FICA tax, health insurance, life insurance, facility contributions to employee retirement funds, and all other compensation that the SNF records in the "employee health and welfare" cost center on its Medicare cost report. Health service costs include the costs of physician services that are purchased under arrangement from outside sources. Business service costs include costs of banking, contract laundry, telephone, and other services that SNFs purchase at retail from outside suppliers. Miscellaneous costs include various types of routine operating costs not allocated to any other category of the market basket.

E. Per Diem Add-On to the Cost Limits and Prospective Rates Effective for Cost Reporting Periods Beginning in FY 1998

In the October 7, 1992 notice and the September 3, 1996 notice, we described a per diem add-on to the limits and rates, respectively. This per diem add-on was developed to take into account the costs associated with the additional requirements placed on SNFs by the nursing home reform provisions in section 1819 of the Act, including conducting nurse aide training and competency evaluation programs, and to recognize the additional costs due to the universal precaution requirements of the Occupational Safety and Health Administration (OSHA).

The per diem add-on effective for FY 1997 will be trended to cost reporting periods beginning in FY 1998, using the latest market basket index. For cost limit purposes, the per diem add-on is $2.27 for cost reporting periods beginning on or after October 1, 1997. For rate purposes, the per diem add-on is $2.13 for cost reporting periods beginning on or after October 1, 1997.

When HCFA updates the SNF cost limits and prospective rates using a later data base that includes the costs of complying with these additional requirements, a per diem add-on will no longer be needed because those updated limits and rates would include these costs.

The following applies to the schedule of cost limits only:

F. Setting of Freestanding SNF Limits

The FY 1997 cost limits for freestanding SNFs were set at 112 percent of the average labor-related and average nonlabor-related costs of each group, as described in the October 7, 1992 notice. This methodology is prescribed by section 1888(a) of the Act. We continue to use this methodology to set the freestanding SNF cost limits contained in this notice.

G. Setting of Hospital-Based SNF Limits

The FY 1997 cost limits for hospital-based SNFs were set at the freestanding SNF limit plus 50 percent of the difference between the freestanding SNF limit and 112 percent of the mean per diem routine service costs of hospital-based SNFs. This methodology for setting hospital-based SNF cost limits was described in the October 7, 1992 notice and the January 6, 1994 notice. This methodology is prescribed by sections 1888(a) and (b) of the Act. We continue to use this methodology to set the hospital-based SNF cost limits contained in this notice.

H. Cost-of-Living Adjustments to the Limits for Alaska, Hawaii, Puerto Rico, and the Virgin Islands

To avoid disadvantaging SNFs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, we will continue to provide a cost-of-living adjustment to the limits for these areas. This is an adjustment of the nonlabor-related component of the limit that applies to these areas, based on the amount of the most recently determined cost-of-living differentials developed by the Office of Personnel Management. Since we adjust the labor-related component by the applicable wage index as discussed in section III.D. of this notice, this cost-of-living adjustment will apply only to the nonlabor-related component.

I. Exception to Cost Limits

A SNF may request an exception to the cost limits under the provisions of § 413.30(f). The SNF must make the request to the appropriate Medicare fiscal intermediary in accordance with section 2530 of the Provider Reimbursement Manual (HCFA Pub. 15–1). An adjustment may be granted if the costs in excess of the limit are reasonable, attributable to the circumstances specified in § 413.30(f)(1) through (f)(8), separately identified by the SNF, and verified by the intermediary.

J. Use of Classification System for the Limits

The classification system we use is based on whether a SNF is located within a MSA or in a New England County Metropolitan Area (NECMA) based on standards published in the **Federal Register** on March 30, 1990 (55 FR 12154), using Bureau of the Census data or Bureau of Census estimates made after 1990. The latest standards for developing MSAs are the ones contained in the March 30, 1990 **Federal Register**.

The following applies to the schedule of rates only:

K. Use of Classification System for the Rates

We will retain the classification system based on grouping SNFs by census regions and by urban or rural area designation within the region. As required by sections 1883(d)(3) and 1886(d)(2)(D) of the Act, the term "region" means one of the 9 census divisions, comprising the 50 States and the District of Columbus, established by the Bureau of Census for Statistical and reporting purposes. The term "urban rate" means an area within a MSA (as defined by the Office of Management and Budget (OMB), with exceptions for certain NECMAs, as described in a notice published in the **Federal Register** on April 1, 1991 (56 FR 13319)). The term "rural area" means an area outside such an area (MSA).

IV. Methodology for Determining Per Diem Routine Service Cost Limits and Low Volume Prospective Payment Rates

A. Development of Base Cost Limits and Rates

As discussed in section I of this notice, we trended the FY 1997 cost limits and rates using the latest market basket index, as discussed in section III.C. of this notice. The annual percentage increases in the market basket over the previous year that we used for this projection in this notice are:

1993	3.7
1994	3.4
1995	2.9
1996	[1] 2.7
1997	[1] 3.2
1998	[1] 3.4
1999	[1] 3.6

[1] Forecasted increase.

B. Calculation of SNF Limit

1. Components of Limit

For each freestanding group, the freestanding limits for FY 1998 are shown in Table I of this notice. We used the computation below to determine the hospital-based cost limits shown in Table I.

COST LIMIT DATA—HOSPITAL-BASED SNFS FOR COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1997

112 percent of hospital-based mean cost	Urban (MSA)	Rural (non-MSA)
Labor	$166.13	$143.18
Nonlabor	34.97	23.58
Total	201.10	166.76

CALCULATION OF 50 PERCENT OF DIFFERENCE BETWEEN 112 PERCENT OF HOSPITAL-BASED MEAN COST AND FREESTANDING LIMIT

	Labor	Nonlabor
Urban (MSA)		
112 Percent of Hospital-Based Mean Cost	$166.13	$34.97
Freestanding Limit (Table I)	−91.23	−19.59
Difference	74.90	15.38
50 Percent of Difference	37.45	7.69
Plus Freestanding Limit	+91.23	+19.59
Hospital-Based Limit (MSA)	128.68	27.28
Rural (Non-MSA)		
112 Percent of Hospital-Based Mean Cost	$143.18	$23.58
Freestanding Limit (Table I)	−92.64	−15.64
Difference	50.54	7.94
50 Percent of Difference	25.27	3.97
Plus Freestanding Limit	+92.64	+15.64
Hospital-Based Limit (Non-MSA)	117.91	19.61

2. Adjustment of Labor-Related Component by Wage Index

To arrive at a labor-adjusted limit for each SNF, we multiply the labor-related component of the limit for the SNF's group by the wage index developed from wage levels for hospital workers in the area in which the SNF is located (see Tables IV and V of this notice). The adjusted limit that applies to a SNF is the sum of the nonlabor-related component, plus the adjusted labor-related component, plus the OBRA/OSHA per diem add-on discussed in section III.E. of this notice.

Example—Calculation of Adjusted Limit for a Freestanding SNF Located in Dallas, Texas:

Labor-Related Component	$ 91.23	(Table I).
Wage Index	×0.9729	(Table IV).
Adjusted Labor Component	88.76	
Nonlabor-Related Component	+19.59	(Table I).
OBRA/OSHA Per Diem Add-On	+2.27	(Sec. III.E.).
Adjusted Limit	110.62	

3. Adjustment for Cost Reporting Period

If a facility has a cost reporting period beginning in a month after October 1, 1997, the intermediary increases the limit that otherwise would apply to the SNF by the factor from Table VI of this notice that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded monthly increase derived from the projected annual increase in the market basket index and is used to account for inflation in costs that occur after the date on which the limits are effective.

Example: The following is a computation of a revised limit for the previously cited SNF that has a cost reporting period that begins January 1, 1998. The base adjusted limit for the SNF is $110.62. The revised limit applicable to its cost reporting period $111.56, is computed as follows:

Individual SNF Adjusted Base Limit	$110.62
Adjustment Factor from Table V	×1.00846
Revised Limit	111.56

If a facility uses a cost reporting period that is not 12 months in duration, a special adjustment factor will be calculated. This is necessary because projections are computed to the midpoint of a cost reporting period and the adjustment factors in Table VI of this notice are based on an assumed 12-month reporting period. For cost reporting periods of other than 12 months, the calculation is done for the midpoint of the specific cost reporting period. The SNF's intermediary will obtain this adjustment factor from HCFA Central Office.

C. Calculation of the Routine Operating Portion of the Rates.

1. Adjustment of Labor-Related Component by Wage Index

a. *Urban SNFs.* To arrive at a labor adjusted component for the rates, we multiply the labor-related component of the rate for the SNF's region (Table II of this notice) by the wage index developed from wage levels for hospital workers in the area in which the SNF is located (Table IV of this notice).

b. *Rural SNFs.* To arrive at a labor adjusted component for the rates, we multiply the labor-related rate for the SNF's region (Table III of this notice) by the wage index developed from wage levels for hospital workers in the state in which the SNF is located (Table V of this notice).

2. Non-Labor-Related and OBRA/OSHA Per Diem Add-on

The adjusted routine operating portion of the rate that applies to a SNF is the sum of the nonlabor-related component, plus the labor adjusted component, plus the OBRA/OSHA per diem add-on discussed in section III.E. of this notice.

3. Adjustment for Cost Reporting Period

If a facility has a cost reporting period beginning in a month after October 1, 1997, the intermediary increases the adjusted routine operating portion of the rate that otherwise apply to the SNF by the factor from Table VI of this notice that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded monthly increase derived from the annual increase in the market basket index and is used to account for inflation in costs that occur after the date on which the prospective payment rates are effective.

If a facility uses a cost reporting period that is not 12 months in duration, a special adjustment factor is calculated. This is necessary because market basket increases are computed to the midpoint of a cost reporting period and the adjustment factors in Table VI of this notice are based on an assumed 12-month cost reporting period. For cost reporting periods of other than 12 months, the calculation is done for the midpoint of the specific cost reporting period. The SNF's intermediary obtains this adjustment factor from the HCFA Central Office.

D. Comparison of Provider's Prospective Payment Rate With Provider's Cost Limit

Below is an example of the calculation of the prospectively determined payment rate for a provider, including a comparison of the adjusted routine operating portion of the rate with the applicable routine operating cost limit applicable to the specific provider. The capital-related component of the rate is added to the lower of the SNF's specific cost limit or its adjusted routine operating portion of the rate to arrive at the provider's actual prospectively determined payment rate.

Example: In this case, the adjusted cost limit is less than the adjusted rate for a freestanding SNF located in Providence, Rhode Island (MSA Region 1), with a cost reporting period beginning January 1, 1998. Therefore, the prospectively determined payment rate for this SNF is the adjusted limit plus the capital-related component of the rate ($134.93).

	Labor-related component	Non-labor related component	Capital-related component
Limit (Table I)	$91.23	$19.59	
Rate (Table II)	120.13	22.91	$10.00

CALCULATION OF PROSPECTIVE PAYMENT RATE

	Limit	Rate	Rate source
Labor-Related Component	$91.23	$120.13	(Chart above).
Wage Index	×1.1092	×1.1092	(Table IV).
Adjusted Labor Component	101.19	133.25	
Non-Labor Component	19.59	22.91	(Chart above).
OBRA/OSHA Add-on	+2.27	+2.13	(Sec III.E.).
Adjusted Limit/Rate	123.05	$158.29	
Cost Reporting Year Adjustment Factor	×1.00846	×1.00846	(Table VI).
Revised Limit/Rate	124.09	159.63	
Capital-Related Component	+10.00		(Chart above).
Prospectively Determined Payment Rate	134.09		

V. Schedule of Limits

Under the authority of sections 1861(v)(1)(A) and 1888 of the Act, the following group per diem limits will apply to the adjusted SNF inpatient routine service costs paid for under Medicare for cost reporting periods beginning on or after October 1, 1997. Medicare fiscal intermediaries will compute the adjusted limits for SNFs using the methodology set forth in this notice and will notify each SNF of its applicable limit. These limits, as adjusted by the applicable wage indexes, cost reporting year adjustments, and adjusted by the OBRA/OSHA per diem add-on, will remain in effect for cost reporting periods beginning on or after October 1, 1997, until a new schedule of cost limits or other provision is issued.

TABLE I.—SNF GROUP LIMITS

[Cost Reporting Periods Beginning On or After 10/1/97]

Location	Labor-related component	Non-labor* related component
Freestanding:		
MSA Limit	$91.23	$19.59
Non-MSA Limit	92.64	15.64
Hospital-Based:		
MSA Limit	128.68	27.28
Non-MSA Limit	117.91	19.61

*The nonlabor portion of the limits for SNFs located in the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands will be increased by the following cost-of-living adjustments:

Area	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE II.—PROSPECTIVE RATES—MSA LOCATIONS EFFECTIVE OCTOBER 1, 1997

Region [1]	Labor-related	Nonlabor-related	Capital-related
1. New England (CT, ME, MA, NH, RI, VT)	$120.13	$22.91	$10.00
2. Middle Atlantic (PA, NJ, NY)	115.86	20.94	9.79
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	103.86	16.70	9.61
4. East North Central (IL, IN, MI, OH, WI)	98.70	16.40	9.18
5. East South Central (AL, KY, MS, TN)	99.28	14.61	7.32
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	105.87	17.59	10.23
7. West South Central (AR, LA, OK, TX)	92.64	14.47	10.06
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	110.22	18.83	13.04
9. Pacific (AK, CA, HI, OR, WA)	100.30	20.56	8.40

[1] There are 17 MSAs that have counties in two or more regions. For each of these MSAs, the region in which a majority of the SNFs are located determines the regional rate that is paid as shown below. This is the same methodology as that used to implement the requirements of section 1886(d)(2)(D) of the Act as they apply to the hospital prospective payment system.

The MSAs are as follows:

MSA	Region
Chattanooga, TN–GA	5
Cincinnati, OH–KY–IN	4
Columbus, GA–AL	3
Davenport-Rock Island-Moline, IA–IL	4
Duluth-Superior, MN–WI	8
Evansville-Henderson, IN–KY	4
Huntington-Ashland, WV–KY–OH	3
Johnson City-Kingsport-Bristol, TN–VA	5
La Crosse, WI–MN	4
Louisville, KY–IN	5
Memphis, TN–AR–MS	5
Minneapolis-St. Paul, MN–WI	8
Parkersburg-Marietta, WV–OH	3
St. Louis, MO–IL	6
Steubenville-Weirton, OH–WV	4
Wheeling, WV–OH	3
Wilmington-Newark, DE–NJ–MD	3

TABLE III.—PROSPECTIVE RATES—NON-MSA LOCATIONS EFFECTIVE OCTOBER 1, 1997

Region	Labor-related	Nonlabor-related	Capital-related
1. New England (CT, ME, MA, NH, RI, VT)	$129.68	$21.62	$10.58
2. Middle Atlantic (PA, NJ, NY)	121.14	17.40	7.94
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	114.52	15.56	9.19
4. East North Central (IL, IN, MI, OH, WI)	108.02	15.08	8.28
5. East South Central (AL, KY, MS, TN)	108.81	13.70	8.77
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	111.41	14.83	6.66
7. West South Central (AR, LA, OK, TX)	105.74	13.44	9.22
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	110.40	16.18	8.36
9. Pacific (AK, CA, HI, OR, WA)	123.54	20.74	10.16

TABLE IV.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.8048
Taylor, TX	
0060 Aguadilla, PR	0.4237
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9853
Portage, OH	
Summit, OH	
0120 Albany, GA	0.8597
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8624
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9344
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8119
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9992
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9510
Blair, PA	
0320 Amarillo, TX	0.8730
Potter, TX	
Randall, TX	
0380 AK Anchorage, AK	1.3224
Anchorage,	
0440 Ann Arbor, MI	1.1662
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8023
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8890
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4397
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9334
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9408
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0033
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1077
Atlantic City, NJ	
Cape May, NJ	
0600 Augusta-Aiken, GA–SC	0.8836
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9254
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX Williamson, TX	
0680 Bakersfield, CA	1.0189
Kern, CA	
0720 Baltimore, MD	0.9798
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9391
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3651
Barnstable, MA	
0760 Baton Rouge, LA	0.8433
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8576
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1317
Whatcom, WA	
0870 Benton Harbor, MI	0.8506
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1785
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9086
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8554
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8822
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9036
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7923
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8652
Monroe, IN	
1040 Bloomington-Normal, IL	0.8990
McLean, IL	
1080 Boise City, ID	0.9383
Ada, ID	
Canyon, ID	
1123 Boston-Worcester Lawrence-Lowell-	1.1613
Brockton,MA–NH	
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9522
Boulder, CO	
1145 Brazoria, TX	0.9201
Brazoria, TX	
1150 Bremerton, WA	1.0901
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8542
Cameron, TX	
1260 Bryan-College Station, TX	0.8851
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9107
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0068
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4573
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8648
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.8821
Natrona, WY	
1360 Cedar Rapids, IA	0.8458
Linn, IA	
1400 Champaign-Urbana, IL	0.9391
Champaign, IL	
1440 Charleston-North Charleston, SC	0.8963
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9526
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9620
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	

TABLE IV.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	0.9155
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.8847
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.7678
Laramie, WY	
1600 Chicago, IL	1.0760
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0417
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9570
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.7716
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9686
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9341
El Paso, CO	
1740 Columbia, MO	0.8899
Boone, MO	
1760 Columbia, SC	0.9160
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL Russell, AL	0.7779
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9681
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8881
Nueces, TX	
San Patricio, TX	
1900 Cumberland, MD–WV	0.8671
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9729
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8497
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Rock Island-Moline, IA–IL	0.8388
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9559
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.8871
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8384
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.7848
Macon, IL	
2080 Denver, CO	1.0166
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8815
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0724
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7740
Dale, AL	
Houston, AL	
2190 Dover, DE	0.8997
Kent, DE	
2200 Dubuque, IA	0.8112
Dubuque, IA	
2240 Duluth-Superior, MN–WI	0.9416
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0589
Dutchess, NY	
2290 Eau Claire, WI	0.8678
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9464
El Paso, TX	
2330 Elkhart-Goshen, IN	0.8801
Elkhart, IN	
2335 Elmira, NY	0.8417
Chemung, NY	
2340 Enid, OK	0.7862
Garfield, OK	
2360 Erie, PA	0.9159
Erie, PA	
2400 Eugene-Springfield, OR	1.1271
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8983
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.9045
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.9007
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7220
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	0.9019
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1248
Genesee, MI	
2650 Florence, AL	0.7938
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8594
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0562
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0548
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9032
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0169
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.7864
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9192
Okaloosa, FL	
2760 Fort Wayne, IN	0.8800
Adams, IN	
Allen, IN	
DeKalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	1.0153
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.1183
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8881

TABLE IV.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Etowah, AL	
2900 Gainesville, FL	0.9434
Alachua, FL	
2920 Galveston-Texas City, TX	1.0997
Galveston, TX	
2960 Gary, IN	0.9641
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8562
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8393
Wayne, NC	
2985 Grand Forks, ND–MN	0.9011
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.8336
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	1.0119
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8681
Cascade, MT	
3060 Greeley, CO	0.9690
Weld, CO	
3080 Green Bay, WI	0.9038
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9332
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9078
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.8927
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9175
Washington, MD	
3200 Hamilton-Middletown, OH	0.9490
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	1.0158
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.2367
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7252
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8626
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1461
Honolulu, HI	
3350 Houma, LA	0.7853
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	1.0000
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9174
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8206
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9903
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9361
Johnson, IA	
3520 Jackson, MI	0.9045
Jackson, MI	
3560 Jackson, MS	0.7884
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8288
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.9086
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.7055
Onslow, NC	
3610 Jamestown, NY	0.7670
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.8645
Rock, WI	
3640 Jersey City, NJ	1.1382
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8884
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8398
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7220
Craighead, AR	
3710 Joplin, MO	0.7638
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0542
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9115
Kankakee, IL	
3760 Kansas City, KS–MO	0.9478
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9145
Kenosha, WI	
3810 Killeen-Temple, TX	1.0392
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8502
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8590
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.8618
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8163
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8781
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.8034
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8774
Polk, FL	
4000 Lancaster, PA	0.9583
Lancaster, PA	
4040 Lansing-East Lansing, MI	1.0010
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.7073
Webb, TX	
4100 Las Cruces, NM	0.8497
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.0870
Mohave, AZ	
Clark, NV	

TABLE IV.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Nye, NV	
4150 Lawrence, KS	0.8597
Douglas, KS	
4200 Lawton, OK	0.8365
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9410
Androscoggin, ME	
4280 Lexington, KY	0.8293
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.8732
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9161
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8597
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8645
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2343
Los Angeles, CA	
4520 Louisville, KY–IN	0.9447
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8510
Lubbock, TX	
4640 Lynchburg, VA	0.8052
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8824
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0021
Dane, WI	
4800 Mansfield, OH	0.8524
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4215
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8485
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0068
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9068
Brevard, Fl	
4920 Memphis, TN–AR–MS	0.8166
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	1.0660
Merced, CA	
5000 Miami, FL	0.9938
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.0883
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9645
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN–WI	1.0777
Anoka, MN	
Carver, MN	
Chicago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5160 Mobile, AL	0.7981
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0600
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0833
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8211
Ouachita, LA	
5240 Montgomery, AL	0.7876
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9714
Delaware, IN	
5330 Myrtle Beach, SC	0.7790
Horry, SC	
5345 Naples, FL	1.0199
Collier, FL	
5360 Nashville, TN	0.9081
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3547
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Danbury-Waterbury,CT	1.2704
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2262
New London, CT	
5560 New Orleans, LA	0.9294
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4154
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1762
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.0803
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8348
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.4991
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9105
Marion, FL	
5800 Odessa-Midland, TX	0.8482
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8371
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0689
Thurston, WA	

TABLE IV.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
5920 Omaha, NE–IA	0.9480
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1966
Orange, CA	
5960 Orlando, FL	0.9470
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.7575
Daviess, KY	
6015 Panama City, FL	0.8061
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.7877
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8202
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8905
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.1237
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9810
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7886
Jefferson, AR	
6280 Pittsburgh, PA	0.9701
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0552
Berkshire, MA	
6340 Pocatello, ID	0.8784
Bannock ID	
6360 Ponce, PR	0.4685
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9619
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.1235
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.1092
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	1.0116
Utah, UT	
6560 Pueblo, CO	0.8284
Pueblo, CO	
6580 Punta Gorda, FL	0.8999
Charlotte, FL	
6600 Racine, WI	0.8835
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9728
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8455
Pennington, SD	
6680 Reading, PA	0.9445
Berks, PA	
6690 Redding, CA	1.1605
Shasta, CA	
6720 Reno, NV	1.1018
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	0.9970
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9194
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1379
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8702
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.0428
Olmsted, MN	
6840 Rochester, NY	0.9649
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.8994
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.8955
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.2351
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9612
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9457
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.8551
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO–IL	0.9022
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	0.9728
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.3803
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9677
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7577
Tom Green, TX	
7240 San Antonio, TX	0.8390
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.2134
San Diego, CA	
7360 San Francisco, CA	1.4260
Marin, CA	
San Francisco, CA	
7400 San Jose, CA	1.4519
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4506
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	

TABLE IV.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1561
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.1242
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3520
Santa Cruz, CA	
7490 Santa Fe, NM	1.0823
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2526
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9789
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9649
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8752
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1384
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8885
Mercer, PA	
7620 Sheboygan, WI	0.7764
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8614
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9359
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8313
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8620
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9934
St. Joseph, IN	
7840 Spokane, WA	1.0524
Spokane, WA	
7880 Springfield, IL	0.8671
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.7823
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0586
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9538
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8266
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.1330
San Joaquin, CA	
8140 Sumter, SC	0.7699
Sumter, SC	
8160 Syracuse, NY	0.9395
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.0860
Pierce, WA	
8240 Tallahassee, FL	0.8313
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9250
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8591
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8503
Miller, AR	
Bowie, TX	
8400 Toledo, OH	1.0361
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	1.0086
Shawnee, KS	
8480 Trenton, NJ	1.0549
Mercer, NJ	
8520 Tucson, AZ	0.9068
Pima, AZ	
8560 Tulsa, OK	0.8095
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.7784
Tuscaloosa, AL	
8640 Tyler, TX	0.9996
Smith, TX	
8680 Utica-Rome, NY	0.8413
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3947
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1454
Ventura, CA	
8750 Victoria, TX	0.8393
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	0.9993
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	1.0151
Tulare, CA	
8800 Waco, TX	0.7772
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.0823
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8705
Black Hawk, IA	
8940 Wausau, WI	1.0323
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	1.0202
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7563
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9369
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8041
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8467
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1315
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9046
New Hanover, NC	
Brunswick, NC	

TABLE IV.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
9260 Yakima, WA	1.0026
Yakima, WA	
9270 Yolo, CA	1.1444
Yolo, CA	
9280 York, PA	0.9104
York, PA	
9320 Youngstown-Warren, OH	0.9742
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0414
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9497
Yuma, AZ	

TABLE V.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7122
Alaska	1.2444
Arizona	0.7928
Arkansas	0.6954
California	1.0002
Colorado	0.8092
Connecticut	1.2759
Delaware	0.9447
Florida	0.8668
Georgia	0.7653
Hawaii	1.0245
Idaho	0.8277
Illinois	0.7553
Indiana	0.8124
Iowa	0.7373
Kansas	0.7107
Kentucky	0.7753
Louisiana	0.7232
Maine	0.8317
Maryland	0.8427
Massachusetts	1.0070
Michigan	0.8830
Minnesota	0.8144
Mississippi	0.6793
Missouri	0.7261
Montana	0.8128
Nebraska	0.7214
Nevada	0.8775
New Hampshire	0.9745
New Jersey[1]	
New Mexico	0.8000
New York	0.8558
North Carolina	0.7950
North Dakota	0.7358
Ohio	0.8332
Oklahoma	0.6942
Oregon	0.9664
Pennsylvania	0.8453
Puerto Rico	0.4026
Rhode Island[1]	
South Carolina	0.7668
South Dakota	0.7063
Tennessee	0.7341
Texas	0.7462
Utah	0.8848

TABLE V.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Vermont	0.8921
Virginia	0.7713
Virgin Islands	0.5660
Washington	0.9933
West Virginia	0.7904
Wisconsin	0.8430
Wyoming	0.8177

[1] All counties within the State are classified urban.

TABLE VI.—COST REPORTING YEAR ADJUSTMENT FACTORS[1]

[Effective October 1, 1997]

If a SNF cost reporting period begins:	The adjustment factor is:
Nov. 1, 1997	1.00285
Dec. 1, 1997	1.00560
Jan. 1, 1998	1.00846
Feb. 1, 1998	1.01149
Mar. 1, 1998	1.01424
Apr. 1, 1998	1.01729
May 1, 1998	1.02025
June 1, 1998	1.02332
July 1, 1998	1.02630
Aug. 1, 1998	1.02939
Sept. 1, 1998	1.03249

[1] Based on compounded projected market basket inflation rates of 3.4 percent for 1998 and 3.6 percent for 1999.

VI. Impact Statement

For notices such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all SNFs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

This final notice with comment period sets forth an updated schedule of limits on SNF routine service costs for which payment may be made under the Medicare program and sets forth an updated schedule of payment rates for low Medicare volume skilled nursing facilities that elect to receive prospectively determined payment rates for routine service costs. Section 1888(a) of the Act requires that the Secretary update the per diem cost limits for SNF routine service costs for cost reporting periods beginning on or after October 1, 1995, and every 2 years thereafter. In addition, section 1888(d)(4) of the Act requires the Secretary to establish and publish prospectively determined payment rates at least 90 days prior to the beginning of the Federal fiscal year to which such rates are to be applied.

This final notice with comment period is the first time we are publishing a combined schedule of cost limits and rates. Combining the cost limits and rates in one notice is more economical in that they both utilize the same cost report data, wage index values, and rates of inflation. In addition, under section 1888(d) of the Act, an individual provider's prospectively determined rate may not exceed its applicable cost limit (see Section III.D. of this notice). This final notice with comment period, by containing both cost limits and rates for cost reporting periods beginning FY 1998, allows a provider to more conveniently determine its individual rate than in previous years.

As required under section 1888(a) and 1888(d) of the Act respectively, this final notice with comment period sets forth a revised schedule of SNF per diem cost limits and prospectively determined payment rates for freestanding and hospital-based SNFs for cost reporting periods beginning in FY 1998. As explained in this notice, we have retained the same basic methodology used to compute the limits and rates effective for cost reporting periods beginning in FY 1997, but we are revising the schedule of limits and rates to reflect more recent wage data, MSA designations, and inflation data.

The estimated effects of this notice are that (1) the updated cost limits will result in a loss of savings to the Medicare program of $20 million in FY 1998, and (2) the updated rates will have a negligible effect. These estimates are the effect of the updating the cost limits and rates to reflect more recent wage data, MSA designations, and inflation data compared to just updating the previous (FY 1997) cost limits or rates only for inflation.

The table below shows the effect of updating the cost limits contained in this notice in comparison with updating the cost limits effective for FY 1997 by inflation (the market basket). Specifically, column (A) of the table shows the estimated total number of SNFs to which the cost limits effective for FY 1998 will apply. Column (B) shows the number of SNFs that would exceed the cost limits effective for FY 1997 updated only for inflation. Column (C) shows the number of SNFs that would exceed the cost limits contained in this notice. Implementing the cost limits contained in this notice, as

compared with maintaining the FY 1997 cost limits updated for inflation, will result in a small decrease in the number of SNFs with costs in excess of the limits.

	Total SNFs to which limits effective for FY 1998 will apply (column A)	Number of SNFs over FY 1997 limits updated for inflation (column B)	Number of SNFs over FY 1998 limits contained in this notice (column C)
Freestanding SNFs:			
Urban (MSA)	4873	2353	2331
Rural (non-MSA)	1638	900	878
Hospital-Based SNFs:			
Urban (MSA)	367	301	283
Rural (non-MSA)	348	224	217

We are unable to identify the effects of these provisions on individual SNFs, but we expect that decreases in the number of SNFs exceeding the limits generally would result in increases in payments to those SNFs whose costs would previously have exceeded the limits but now fall under the limits. The effects of the increase in the limits on the total revenues of individual SNFs will depend on the SNF's ability to operate within the cost limits and on the proportion of its revenues that come from the Medicare program.

For purposes of the RFA, it is our practice not to consider an economic impact to be significant unless the annual total costs or revenues of a substantial number of entities will be increased or decreased by at least 3 percent. Because Medicare payments generally do not account for a high proportion of SNF revenue, we believe that the updated SNF limits and rates will not result in a substantial number of SNFs experiencing significant increases in their total revenues. Therefore, we have determined, and we certify, that a regulatory flexibility analysis under the RFA is not required.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We have not prepared a rural impact statement since we have determined that this final notice with comment period will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

VII. Waiver of Proposed Notice

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. However, we may waive these procedures if we find good cause that prior notice and comment is impractical, unnecessary, or contrary to the public interest.

As discussed in section II. of this notice, we have used the same methodology to develop this schedule of limits that was used in setting the limits published for public comment on October 7, 1992. As discussed above, section 13503(a)(2) of OBRA' 93 delayed the update to the schedule of limits until October 1, 1995 and then every 2 years. We have also used the same methodology to develop this schedule of rates that was used in setting the rates published for public comment on September 3, 1996. Section 13503(b) of OBRA' 93 delayed the update to the schedule of prospectively determined payment rates until October 1, 1995. Thus, in conformance with the clear direction provided in sections 1861(v)(1) and 1888 of the Act and regulations at §§ 413.30 and 413.320, this notice announces the update to the schedule of limits for SNF routine service costs and the update to the schedule of prospectively determined payment rates for SNF inpatient cost, for cost reporting periods beginning on or after October 1, 1997. Because the statute directs that this schedule of limits and this schedule of rates are effective for cost reporting periods beginning October 1, 1997, and given that we are making no changes in the methodology used to develop these limits, we believe it is unnecessary to publish a proposed notice. Therefore, we find good cause to waive publication of a proposed notice. However, we are providing a 60-day period for public comment, as indicated at the beginning of this notice.

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice, and, if we proceed with a subsequent document, we will respond to the comments in that document.

Authority: (Secs. 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy); section 13503 of Pub. L. 103–66 (42 U.S.C. 1395x(v)(1)(B) and 1395yy (note)) and 42 CFR 413.1, 413.24, 413.300 through 413.321).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 25, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

Dated: September 25, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–25983 Filed 9–30–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–896–PN]

RIN 0938–AL14

Medicare Program; Adjustments to Cost Limits for Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice proposes to eliminate an adjustment that we make to the Medicare cost limits for skilled nursing facility (SNF) routine services if the final rate of change in the market basket index for a calendar year that we use to set the limits differs from the estimated rate of change in the index by at least 0.3 percentage points. Elsewhere in this issue of the **Federal Register** is a separate final notice with comment period that explains the methodology we use to develop the cost limits and sets forth the cost limits applicable to cost reporting periods occurring on or after October 1, 1997.

COMMENT PERIOD: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on December 1, 1997.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–896–PN, P.O. Box 7517, Baltimore, MD 21244–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following E-mail address: BPD–896–PN@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the E-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–896–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (410) 786–4597.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1861(v)(1)(A) and 1888 of the Act authorize the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under Medicare. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Section 1888(a) of the Act directs the Secretary to set limits on per diem inpatient routine service costs for hospital-based and freestanding SNFs by urban or rural area. Implementing regulations appear at 42 CFR 413.30.

Elsewhere is this issue of the **Federal Register**, we are issuing a final notice with comment period that announces, for cost reporting periods beginning in FY 1998 (1) an updated schedule of limits on SNF routine service costs for which payment may be made under the Medicare program; and (2) an updated schedule of prospectively determined payment rates for low Medicare volume SNFs that have elected to receive prospective payments for routine service costs, as required under section 1888(a) of the Act. The cost limits have been updated to reflect changes to the wage data, the Metropolitan Statistical Area (MSA) designations, and inflation data since the limits were last issued.

The cost limits set forth in the separate notice are based on the FY 1997 cost limits, trended to cost reporting periods beginning in FY 1998, using the most recent projections of the rates of inflation or increase in the costs included in the SNF market basket index. The market basket index is used to adjust the SNF cost data to reflect cost increases occurring between the cost reporting periods represented in the data collection and the midpoints of the cost reporting periods to which the cost limits and rates apply. The market basket index is comprised of the most commonly used categories of SNF routine service expenses. The categories are based primarily on those used by the National Center for Health Statistics in its National Nursing Home Surveys.

The categories of expenses are weighted according to the estimated proportion of SNF routine service costs attributable to each category. A detailed description of the market basket index is described in the October 7, 1992 **Federal Register** notice for cost limits (57 FR 46177).

II. Provisions of the Proposed Notice

In developing the market basket index, we obtain historical and projected (estimated) rates of change in the price of goods and services in each category. For cost limit purposes only, estimated rates of change may be revised, retroactively, based on actual (final) rates of change.

As described in all previous schedules of cost limits, if the final rate of change in the market basket index for a calendar year differs from the estimated rate of change by at least 0.3 percentage points, we adjust the limits. We are proposing to eliminate this provision to adjust the limits based on the following justification:

In the past, our determination to make this adjustment was made 6 months after the end of last calendar year where an estimate of change was used. Since 1984, we have made several adjustments to the cost limits because our estimates differed from the actual rates of change by at least 0.3 percentage points. In some cases, the retroactive adjustment was made to cost reports that had been settled for Medicare reimbursement purposes for more than 2 years. We believe that the original intent behind setting cost limits was to help providers determine their cost limits prior to the beginning of the affected cost reporting period. In addition, for the most part, these adjustments have not been significant in relation to the financial insecurity placed on providers and the administrative burden placed on the Medicare fiscal intermediaries to

implement the adjustments. We believe that this retroactive adjustment has not served a useful purpose based on past experience. Accordingly, we believe it is administratively feasible to propose the elimination of this provision. If, based on our analysis of public comments we receive, we finalize the elimination of the adjustment, the effect of that elimination will be made on a prospective basis.

III. Impact Statement

For proposed notices such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all SNFs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

We have determined, and we certify, that a regulatory flexibility analysis under the RFA is not required. As stated earlier in this notice, we believe it is administratively feasible to propose elimination of the adjustment provision to the cost limits. For the most part, these adjustments have not been significant in relation to the financial insecurity placed on providers and the administrative burden placed on the Medicare fiscal intermediaries to implement the adjustments. In addition, based on past experience, the retroactive adjustments have not served a useful purpose.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We have not prepared a rural impact statement since we have determined that this proposed notice would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice, and, if we proceed with a subsequent document, we will respond to the comments in that document.

Authority: (Secs. 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy); section 13503 of Pub. L. 103–66 (42 U.S.C. 1395x(v)(1)(B) and 1395yy (note)) and 42 CFR 413.1, 413.24, 413.300 through 413.321).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 25, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

Dated: September 25, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–25986 Filed 9–30–97; 8:45 am]

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Wednesday
October 1, 1997

Part VII

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.

Hazardous Materials Regulations; Editorial Corrections and Clarifications; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 175, 176, 177, 178, 179, and 180

[Docket No. RSPA–97–2910 (HM–189N)]

RIN 2137–AD09

Hazardous Materials Regulations; Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor regulatory changes, and in response to requests for clarification, improves the clarity of certain provisions to the Hazardous Materials Regulations (HMR). The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the HMR. The amendments contained in this rule are minor editorial changes and do not impose new requirements.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

RSPA annually reviews the Hazardous Materials Regulations (HMR) to identify errors which may confuse readers. Inaccuracies corrected in this final rule include typographical errors, incorrect references to other rules and regulations in the CFR, inconsistent use of terminology, and misstatements of certain regulatory requirements. In response to inquiries RSPA received concerning the clarity of particular requirements specified in the HMR, certain other changes are made to reduce uncertainties.

Because these amendments do not impose new requirements, notice and public procedure are unnecessary. In addition, making these amendments effective without the customary 30-day delay following publication will allow the changes to appear in the next revision of 49 CFR.

The following is a section-by-section summary of the amendments made under this final rule. It does not discuss editorial corrections (e.g., typographical, capitalization and punctuation errors), changes to legal citations and certain other minor adjustments to enhance the clarity of the HMR.

Section-by-Section Review

Part 107

Section 107.105

Paragraph (a) is revised to add in clarification that the exemption must be written in English.

Section 107.117

Paragraph (d)(5) is revised to correct the name of the office within the United States Coast Guard designated to receive applications for emergency exemptions.

Appendix A to Subpart D

Appendix A to Subpart D of Part 107—Guidelines For Civil Penalties is revised to correct section or cite references that were incorrectly published under Docket HM–207F published on January 21, 1997.

Part 171

Section 171.6

In § 171.6, in paragraphs (a) and (b), the references to the "Paperwork Reduction Act of 1980" are removed and replaced with the "Paperwork Reduction Act of 1995" to incorporate the 1995 amendments to the Paperwork Reduction Act. In paragraph (b)(2), the table is revised to incorporate numerous changes to the information collections. The changes are due to rulemaking actions and information collection activities under the Paperwork Reduction Act of 1995.

Section 171.7

In the paragraph (a)(3) table of material incorporated by reference, the address for the American Society for Testing and Materials is updated. In paragraph (b), reference to the standard "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials [51 FR 5968 February 18, 1986] Effective March 20, 1986, HMT–166T" which was incorporated by reference in § 177.825 is removed. Section 177.825 was removed under a previous rulemaking, HM–222A.

Sections 171.8, 171.12 and 171.15

Editorial revisions are made to remove obsolete section references.

Part 172

Section 172.101

The Hazardous Materials Table (the Table) is amended as follows:

For the entry "Accumulators, pressurized, pneumatic or hydraulic (*containing non-flammable gas*)", the label code "2.1" is removed and a label code "2.2" is added to correct a typographical error.

For the entry "Hydrogen chloride anhydrous," column (7) is corrected by removing Special Provision "B43" and adding Special Provision "3".

For the entry "Jet perforating guns charged oil well, with detonator, 1.1D, NA0124" column (7), is corrected by removing the reference to "D55" and replacing it with "55".

For the entry "Mercury (*contained in manufactured articles*)", in column (5) packing group "I" is removed and packing group "III" is added to correct a typographical error.

For the entries "Propellant, liquid, 1.3C, UN0495", "Propellant, liquid, 1.1C, UN0497", "Propellant, solid, 1.1C, UN0498" and "Propellant, solid, 1.3C, UN0499" packing group "II" is added in column (5).

A new entry "Radioactive material, excepted package-empty package *or* empty packaging" is added in appropriate alphabetical order. This entry was deleted in error under a previous rulemaking.

Appendix A to § 172.101

Paragraph 4 corrects two column references.

Section 172.203

In paragraph (k)(3), RSPA is correcting the proper shipping name "Hydrogen gases mixtures compressed, n.o.s." to read "Hydrocarbon gases mixtures compressed, n.o.s." due to a printing error. Under Docket HM–215B (62 FR 24720) published on May 6, 1997, the entry was added to the list of generic proper shipping names which require a technical name.

Section 172. 204

A grammatical error is corrected in paragraph (b)(1).

Part 173

Section 173.6

Paragraph (c)(3) is revised to provide the correct section reference.

Section 173.9

Paragraph (e) is revised to provide the correct section reference.

Section 173.32

In § 173.32, in paragraph (e)(2)(i), a provision on pressure testing certain portable tanks is added. This sentence was inadvertently omitted under another rulelmaking action.

Section 173.56

This section is revised by replacing the references to the Bureau of Explosives (BOE) of the Association of American Railroads (AAR) and the Bureau of Mines (BOM) of the U.S. Department of the Interior with the words "a person approved by the Associate Administrator for Hazardous Materials Safety (AAHMS)." Currently, this section specifies BOE of the AAR and BOM of the U.S. Department of the Interior to examine and make recommendations on the classification of explosives. The AAR no longer performs this service, and the BOM is no longer an agency within the Department of the Interior. The National Institute of Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services and the Explosives Bureau, a private company, are currently authorized to examine and make recommendations on the classification of explosives.

Section 173.62

In paragraph (b), the revised Explosives Table printed in HM–215B [62 FR 24722 May 6, 1997] inadvertently omitted NA0331 with its associated Packing Instructions 116 or 117.

Section 173.125

In paragraph (a), the wording "on the basis of test results following test methods given in appendix E of this part and by applying the appropriate criteria given in this section." is revised to read "on the basis of test results following test methods given in the UN Manual of Tests and Criteria and by applying the appropriate criteria given in this section."

Section 173.166

Paragraphs (b)(1) and (b)(3)(i) are revised by deleting the references to BOE and BOM (see preamble discussion under § 173.56).

Section 173.202

In paragraph (b), the authorized packaging "Aluminum box: 4A" is corrected to read "Aluminum box: 4B".

Section 173.221

In the heading and first sentence, the word "Polystyrene" is revised to read "Polymeric" for consistency with a change to the Hazardous Material Table issued on December 29, 1994 under HM–215A.

Section 173.225

In paragraph (e)(4) the melt index for low density polyethylene saddles is corrected.

Section 173.242

In paragraph (b)(1), reference to "§ 178.346–10 or § 178.347–10" is corrected to read "§ 178.346–3 or § 178.347–4".

Section 173.243

In paragraph (b)(1), reference to "§ 178.346–10 or § 178.347–10" is corrected to read "§ 178.346–3 or § 178.347–4".

Section 173.247

In paragraph (g)(1)(iii), reference to "§ 179–200–18" is corrected to read § 179.15".

Section 173.320

Paragraph (a)(3) is updated to provide the correct section references.

Section 173.422

Paragraph (b)(2) is updated to provide the correct section references.

Part 175

Section 175.700

In paragraph (b), in the first sentence, the reference "§ 175.45" is corrected to read "§ 171.15".

Part 176

Section 176.340

In paragraph (c) the wording "Commandant USCG (G–MTH)" is updated to read "Commandant USCG (G–MSO)".

Part 177

Section 177.810

The last sentence, in § 177.810, which makes reference to § 177.825 is removed. Section 177.825 was removed from the Hazardous Materials Regulations under HM–222A.

Section 177.840

Paragraph (e) is revised to remove the reference to the Bureau of Mines (BOM) and to reflect that the National Institute of Occupational Safety and Health (NIOSH) Pittsburgh Research Center, U.S. Department of Health and Human Services is authorized to approve gas masks for chlorine cargo tanks.

Part 178

Section 178.36

In paragraph (a)(2)(iii), the wording "I=moment of inertia—0.04909 (D^4–d^4) inches fourth" is corrected to read "I=moment of inertia—0.04909 (D^4–d^4) inches fourth".

Section 178.44

In paragraph (b), in Table 1.—Authorized Materials, for specification 3HT seamless steel cylinders for aircraft use, RSPA is correcting a printing error for the entry "Molybdenum," by revising the specification "0.18/0.25" to read "0.15/.025."

Section 178.50

Paragraph (i) is corrected the read "Cylinders must withstand a hydrostatic test as follows:".

Section 178.68

In paragraph (f)(1)(ii), a paragraph reference is updated to read "One-half of the minimum tensile strength of the material as required in paragraph (j) of this section."

Section 178.270–14

Paragraph (b)(13) is revised to read "Metallurgical design temperature range, in °C or °F."

Section 178.338–19

A grammatical error is corrected in paragraph (b).

Section 178.503

Paragraph (a)(1) is corrected by removing the reference to "paragraph (d)" and replacing it with "paragraph (e)(1)".

Part 179

Section 179.15

a. In paragraph (b), the wording "Settings for pressure relief devices" is corrected to read "*Settings for reclosing pressure relief devices*".

b. In paragraph (e), the wording "reclosing" is corrected to read "nonreclosing".

c. Paragraph (f) is revised to clarify that a nonreclosing pressure relief device incorporating a rupture disc must be designed to rupture at a pressure equal to the greater of 100 percent of the tank test pressure, or 33 percent of the tank burst pressure.

Section 179.100–19

Paragraph (a) is updated to reflect the correct section reference.

Section 179.200–23

Paragraph (a) is updated to reflect the correct section reference.

Section 179.220–24

The reference "§ 179.221–1" is corrected to read "§ 179.15".

Section 179.221–1

The table is revised by removing "footnote 1" in its entirety.

Part 180

Section 180.509

On September 21, 1995, RSPA published a final rule in docket HM–

175A (60 FR 40048). The final rule required, in § 180.509 testing requirements for valves and fittings, paragraph (j)(1), and interior heater systems, paragraph (j)(2). To clarify the requirements for "leak testing," RSPA published a correctional docket on June 26, 1996 (61 FR 33250). In the June 26 correctional docket, RSPA amended paragraph (j)(1), and in the amendment inadvertently removed paragraph (j)(2), with respect to testing interior heater systems. This final rule corrects that error by reinstating paragraph (j)(2).

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. This rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism") and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

D. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

E. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

2. In § 107.105, the introductory text of paragraph (a) is revised to read as follows:

§ 107.105 Application for exemption.

(a) *General.* Each application for an exemption or modification of an exemption must be written in English and must—

* * * * *

§ 107.117 [Amended]

3. In § 107.117, in paragraph (d)(5), the wording "Chief, Hazardous Materials Standards Branch, Operating and Environmental Standards Division," is removed and the wording "Chief, Hazardous Materials Standards Division, Office of Operating and Environmental Standards," is added in its place.

Appendix A to Subpart D of Part 107—[Amended]

3a. In Appendix A to subpart D of part 107, in Part II of the appendix, as revised at 62 FR 2972, under the headings "Part 173—Requirements" and "Part 178—Requirements" for each entry indicated in the left column of the table below, remove the Section or cite reference in the middle column and add the Section or cite reference in the right column:

Column 1 entry	Remove column 2 section or cite	Add column 2 section or cite
Part 173—Requirements		
Cylinder Retesters (§§ 173.23, 173.34, and 173.302):		
Failure to maintain legible markings on a cylinder	173.34(e)	173.34(c).
Failure to conduct a complete visual external and internal examination	173.34(e)(1)	173.34(e)(3).
Failure to have a retester's identification number (RIN)	173.34(e)(1)(i)	173.34(e)(2)(i).
Failure to have current authority due to failure to renew a retester's identification number.	173.34(e)(1)(i)	173.34(e)(2)(i).
Failure to have a retester's identification number and marking another RIN on a cylinder.	173.34(e)(1)(i)	173.34(e)(2)(i).
Performing hydrostatic retesting without demonstrating the accuracy of the testing equipment.	173.34(e)(3)	173.34(e)(4).
Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion.	173.34(e)(3)	173.34(e)(4).
Failure to perform a second retest, after equipment failure, at a pressure of 10% more or 100 psi more, whichever is less (includes exceeding 90% of test pressure prior to conducting a retest).	173.34(e)(3)	173.34(e)(4).
Failure to condemn a cylinder with permanent expansion of 10% or greater (5% for certain exemption cylinders); failure to condemn cylinders with evidence of internal or external corrosion, denting, bulging, or rough usage.	173.34(e)(4)	173.34(e)(6).
Failure to keep complete and accurate records of cylinder reinspection and retest.		
Incomplete or inaccurate records	173.34(e)(5)	173.34(e)(8).
Improper marking of the RIN or retest date on a cylinder	173.34(e)(5)	173.34(e)(7).
Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp	173.34(e)(13)(iv)	173.34(e)(15)
Offeror Requirements (Class 7—Radioactive Materials):		
Offering a Type B packaging without holding a valid NRC approval certificate	173.416(b),173.471(d)	173.471(a).
Offering low specific activity (LSA) radioactive materials consigned as exclusive use without providing instructions for maintenance of exclusive use shipment controls.	173.425(b)(9) & (c)(7)	173.427(a)(6).
Part 178—Requirements		
Manufacturing Requirements—Cylinders:		
Failure to mark the date of manufacture or lot number on a DOT–39 cylinder	178.65–14	178.65

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

4. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 171.6, the paragraph (b)(2) table is revised to read as follows:

§ 171.6 Control numbers under the Paperwork Reduction Act.

* * * * *

(b) * * *

(2) Table.

Current OMB control No.	Title	Title 49 CFR part or section where identified and described
2137–0014	Cargo Tank Specification Requirements	§§ 107.503, 107.504, 178.320, 178.337, 178.338, 178.345, 178.346, 178.347, 178.348, 180.409, 180.417.
2137–0018	Inspection and Testing of Portable Tank and IBC's.	§§ 173.24, 173.32, 173.32a, 173.32b, 173.32 (b)(e), 173.32c, 178.3, 178.270, 178.271, 178.272, 178.245, 178.255, 178.245–1 (a), 178.255–1, 178.245–6, 178.702, 178.801, 178.810, 180.352, 178.813, 178.703.
2137–0022	Recordkeeping and information Collection for Cylinders.	§§ 173.34, 173.302(e), 173.303(d).
2137–0034	Hazardous Materials Shipping Papers	Part 172, §§ 173.7(a)(1), 173.22(a)(1), 173.56 (b)(1), (d)(1), (e)(2), 173.150(f)(3)(i), 174.24, 174.26(b) 174.114, 175.30, 175.35, 175.703, 176.9, 176.24, 176.27, 176.30, 176.31, 176.36, 176.89, 178.90, 176.95, 177.817.

Current OMB control No.	Title	Title 49 CFR part or section where identified and described
2137–0039	Hazardous Materials Incident Report	§§ 171.15, 171.16.
2137–0051	Rulemaking and Exemption Petitions	Part 107, Subpart B, §§ 106. 31, 106.33, 107.3, 107.5, 107.7, 107.103, 107.105, 107.107, 107.109, 107.113, 107.117, 107.121, 107.123, 107.125, 107.201, 107.202, 107.203, 107.205, 107.209, 107.211, 107.215, 107.217, 107.219, 107.221, 107.223.
2137–0510	RAM Transportation Requirements	§§ 173.22(c), (d), 173.411, 173.415(a), 173.416(b), 173.417(a)(5), (b)(3), (4), 173.457(b), 173.471 (a), (d), (f), 173.472, 173.473 (a), (d), 173.476 (a), (b), (e), 173.477, 173.478(a).
2137–0542	Cryogenic Liquids Requirements	§§ 173.33(d)(1)(ii), 177.816, 177.840.
2137–0557	Approvals for Hazardous Materials	§§ 107.401, 107.402, 107.403, 107.404, 107.405, 172.101(l)(2), 172.102(c)(B69), 173.2a(c)(4), 173.4(a)(11), 173.7(a)(1), 173.21(f)(3)(h)(2)(i), 173.24(e)(3)(iii), 173.51(a), (b), 173.56(a)(2), (b)(1), (2), (4), (c), (f), (g), (i), (j)(3), 173.124(a)(1)(iii)(B), (a)(2)(iii)(D), 173.128(d), 173.159(f), 173.166, 173.171(a), (c), 173.185(d)(9), (ii), (iii), I, 173.214, 173.224(d) 173.225(b)(4), (c), 173.245(a)(b), 173.300a, 173.300b, 173.305(c)(1), 173.315(i)(12), 173.334(d), 173.340(a), (b), (c)(4), 178.340(c), 177.806(a)(1), 178.36–3, 178.37–3, 178.38–3, 178.39–3, 178.42–3, 178.44–3, 178.45–3, 178.46–3, 178.50–3, 178.51–3, 178.53–3, 178.55–3, 178.56–3, 178.57–3, 178.58–3, 178.59–3, 178.60–3, 178.61–3(a), 178.65–3, 178.68–3, 178.270–3(f), 178.270–13(d), 178.601(e)(g)(7), (h), (k), 178.603(b), 178.604(b)2), 178.605(b), 178.606(b), (c), 178.608(b)(5), 178.801(e)(2), (h), (i), 178.813(c).
2137–0559	Rail Carriers and Tank Car Tank Requirements.	§§ 173.10(b)(1), 173.31(a)(2), 173.247(a), 173.31(b)(6)(ii) 174.9, 174.20(b), 174.50, 174.61, 172.102: *SP.* B–45, B–46, B–55, B–61, B–69, B–77, B–78, B–81, 174.63(d), §§ 174.81, Table Note b, 174.104(c), (e), (f), 174.114, 174.204(a)(1), 179.3, 179.5 179.7(b)(2), (5)(d), 179.22, 180.505, 180.509, 180.515, 180.517(a)(b), 180.519(d).
2137–0572	Testing Requirements for Packaging	§§ 178.2(c), 178.601(1).
2137–0575	Bulk Packaging Marking Requirements	§§ 172.302, 172.332, 172.336.
2137–0582	Container Certification Statement	§§ 176.172, 176.27(c).
2137–0586	Hazardous Materials Public Sector Training and Planning Grants.	Part 110
2137–0595	Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.	§§ 178.337–11(a)(1)(i).

§ 171.6 [Amended]

6. In § 171.6, in paragraphs (a) and (b) introductory text, the wording "Paperwork Reduction Act of 1980" is removed and "Paperwork Reduction Act of 1995" is added each place it appears.

§ 171.7 [Amended]

7. In § 171.7, the following changes are made:

a. In paragraph (a)(3) table, under American Society for Testing and Materials, the wording "1916 Race Street, Philadelphia, PA 19103" is removed and "100 Barr Harbor Drive, West Conshohocken, PA 19428" is added in its place.

b. In the paragraph (b) table, under *Department of Transportation (USDOT),* in the first column, the entry "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials [51 FR 5968 February 18, 1986] Effective March 20, 1986, HMT–166T." is removed and in the second column, the entry "177.825" is removed.

§ 171.8 [Amended]

8. In § 171.8, the definition "State routing agency" is removed.

§ 171.12 [Amended]

9. In § 171.12, in paragraph (d)(1), the wording "172.507, 173.22(c), and 177.825" is removed and "172.507 and 173.22(c)" is added in its place.

§ 171.15 [Amended]

10. In § 171.15, in paragraph (a)(2), the reference "175.45," is removed.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

11. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

11a. In § 172.101, the Hazardous Material Table is amended by adding the following entry, in appropriate alphabetical order, as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging authorizations (§173.***) Exceptions	(8) Packaging authorizations (§173.***) Non-bulk	(8) Packaging authorizations (§173.***) Bulk	(9) Quantity limitations Passenger aircraft/rail	(9) Quantity limitations Cargo air-craft only	(10) Vessel stowage Location	(10) Vessel stowage Other
		(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Radioactive material, excepted package-empty package or empty packaging.	7	UN2910		EMPTY		428	428	428			A	

§ 172.101 [Amended]

12. In addition, in § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the entry "Accumulators, pressurized, pneumatic *or* hydraulic (*containing non-flammable gas*).", in column (6), "2.1" is removed and "2.2" is added in its place.

b. For the entry "Hydrogen chloride, anhydrous", in column (7), "B43", is removed and "3" is added.

c. For the entry "Jet perforating guns, charged oil well, with detonator, 1.1D, NA0124", in column (7), "D55" is removed and "55" is added in its place.

d. For the entry "Mercury *contained in manufactured articles*", in column (5), "I" is removed and "III" is added in its place.

e. For each of the following entries, in column (5), "II" is added: "Propellant, liquid, 1.3C, UN0495", "Propellant, liquid, 1.1C, UN0497", "Propellant, solid, 1.1C, UN0498", "Propellant, solid, 1.3C, UN0499".

12a. In Appendix A to § 172.101, paragraph 4 is revised to read as follows:

Appendix A—to § 172.101—List of Hazardous Substances and Reportable Quantities

* * * * *

4. Column 1 of TABLE 1, entitled *"Hazardous substance"*, contains the names of those elements and compounds that are hazardous substances. Following the listing of elements and compounds is a listing of waste streams. These waste streams appear on the list in numerical sequence and are referenced by the appropriate "D", "F", or "K" numbers. Column 2 of TABLE 1, entitled *"Reportable quantity (RQ)"*, contains the reportable quantity (RQ), in pounds and kilograms, for each hazardous substance listed in Column 1 of TABLE 1.

* * * * *

§ 172.203 [Amended]

13. In § 172.203, in paragraph (k)(3), as amended at 62 FR 24719 on May 6, 1997 the entry "Hydrogen gases mixtures, compressed, n.o.s." is removed and the entry "Hydrocarbon gases mixtures, compressed, n.o.s." is added in alphabetical order.

§ 172.204 [Amended]

14. In § 172.204, in paragraph (b)(1) introductory text, the wording "for a hazardous materials offered for" is removed and the wording "for a hazardous material offered for" is added in its place.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

15. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.45 and 1.53.

§ 173.6 [Amended]

16. In § 173.6, as added at 62 FR 1216, in paragraph (c)(3), the reference "§ 178.65–14" is revised to read "178.65(i)".

§ 173.9 [Amended]

17. In § 173.9, as currently in effect, in paragraph (e), the reference "§ 176.76(i)" is revised to read "§ 176.76(h)".

§ 173.32 [Amended]

18. In § 173.32, in paragraph (e)(2)(i), a sentence is added immediately following the second sentence ending with the wording "entire tank" to read: "Any other tank must be tested by a minimum pressure (air or hydrostatic) of at least 2 pounds per square inch gage or at least one and one-half times the design pressure (maximum allowable working pressure, or re-rated pressure) of the tank, whichever is greater.".

§ 173.56 [Amended]

19. In § 173.56, the following changes are made:

a. In paragraph (b)(1), in the first sentence, the wording "the Bureau of Explosives (BOE) or the Bureau of Mines, U.S. Department of Interior (BOM)" is removed and "a person approved by the Associate Administrator for Hazardous Materials Safety" is added in its place.

b. In paragraph (f), the wording "the Bureau of Explosives or the Bureau of Mines" is removed and "a person approved by the Associate Administrator for Hazardous Materials Safety" is added in its place.

c. Also in paragraph (f), the wording "examination by the BOE, the BOM, or other government agency" is removed and "examination by a person approved by the Associate Administrator for Hazardous Materials Safety" is added in its place.

§ 173.62 [Amended]

20. In § 173.62, in the paragraph (b) Explosives Table, as revised at 62 FR 24720, immediately following the entry NA0323, a new entry "NA0331" is entered in the first column and "116 or 117" is added as the corresponding entry in the second column.

§ 173.125 [Amended]

21. In § 173.125, the second sentence of paragraph (a) is amended by removing, the wording "on the basis of test results following test methods given in appendix E of this part and by applying the appropriate criteria given in this section" and "on the basis of test results following test methods given in the UN Manual of Tests and Criteria and by applying the appropriate criteria given in this section" is added in its place.

§ 173.166 [Amended]

22. In § 173.166, the following changes are made:

a. In paragraph (b)(1), the wording "the Bureau of Explosives (BOE) or the Bureau of Mines (BOM)" is removed and "a person approved by the Associate Administrator for Hazardous Materials Safety" is added in its place.

b. In paragraph (b)(3)(i), the wording "BOE or BOM" is removed.

§ 173.202 [Amended]

23. In § 173.202, in paragraph (b), the authorized packaging "Aluminum box: 4A" is revised to read "Aluminum box: 4B".

§ 173.221 [Amended]

24. In § 173.221, in the heading and in the first sentence, the word "Polystyrene" is revised to read "Polymeric" each place it appears.

§ 173.225 [Amended]

25. In § 173.225, in paragraph (e)(4) in the first sentence, the wording "between 0.2 and 10.0 g/min" is removed and the wording "at least 0.2 grams per 10 minutes" is added in its place.

§ 173.242 [Amended]

26. In § 173.242, in paragraph (b)(1), in the first sentence, the wording "§ 178.346–10 or § 178.347–10" is revised to read "§ 178.346–3 or § 178.347–4".

§ 173.243 [Amended]

27. In § 173.243, in paragraph (b)(1), in the first sentence, the wording "§ 178.346–10 or § 178.347–10" is revised to read "§ 178.346–3 or § 178.347–4".

§ 173.247 [Amended]

28. In § 173.247, in paragraph (g)(1)(iii)(C), the reference "§ 179.200–18" is revised to read "§ 179.15".

29. In § 173.320, paragraph (a)(3) is revised to read as follows:

§ 173.320 Cryogenic liquids; exceptions.

(a) * * *

(3) Subparts A and B of part 173, and §§ 174.1, 177.800, 177.804, and 177.823 of this subchapter.

* * * * *

§ 173.422 [Amended]

30. In § 173.422, in paragraph (b)(2), the reference "175.45," is removed.

PART 175—CARRIAGE BY AIRCRAFT

31. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 175.700 [Amended]

32. In § 175.700, in paragraph (b), in the first sentence, the reference "§ 175.45" is revised to read "§ 171.15".

PART 176—CARRIAGE BY VESSEL

33. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 176.340 [Amended]

34. In § 176.340, in paragraph (c), the wording "Commandant, USCG (G–MTH)" is removed and the wording "Commandant, USCG (G–MSO)" is added in its place.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

35. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 177.810 [Amended]

36. In § 177.810, the last sentence, "For Class 7 (radioactive) materials, see § 177.825 of this part." is removed.

§ 177.840 [Amended]

37. In § 177.840, in paragraph (e), the wording "the U.S. Bureau of Mines" is removed and "The National Institute of Occupational Safety and Health (NIOSH) Pittsburgh Research Center, U.S. Department of Health and Human Services" is added in its place.

PART 178—SPECIFICATIONS FOR PACKAGINGS

38. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.36 [Amended]

39. In § 178.36, in paragraph (a)(2)(iii), the wording, "I=moment of inertia—0.04909 (D^4–d^4) inches fourth" is revised to read "I=moment of inertia—0.04909 (D^4–d^4) inches fourth".

§ 178.44 [Amended]

40. In § 178.44, in paragraph (b), in Table 1.—Authorized Materials, in the second column for the entry "Molybdenum," the specification "0.18/0.25" is removed and "0.15/.025" is added in its place.

§ 178. 50 [Amended]

41. In § 178.50, in paragraph (i) introductory text, the wording "Each cylinder must" is removed and the wording "Cylinders must" is added in its place.

42. In § 178.68, paragraph (f)(1)(ii) is revised to read as follows:

§ 178.68 Specification 4E welded aluminum cylinders.

* * * * *

(f) * * *

(1) * * *

(ii) One-half of the minimum tensile strength of the material as required in paragraph (j) of this section.

* * * * *

43. In § 178.270–14, paragraph (b)(13) is revised to read as follows:

§ 178.270–14 Marking of tanks.

* * * * *

(b)* * *

(13) Metallurgical design temperature range, in °C or °F.

* * * * *

§ 178.338–19 [Amended]

44. In § 178.338–19, in paragraph (b), in the last sentence, the wording "of the section" is removed and "of this section" is added in its place.

§ 178.503 [Amended]

45. In § 178.503, in paragraph (a)(1), the wording "paragraph (d)" is removed and "paragraph (e)(1)" is added in its place.

PART 179—SPECIFICATIONS FOR TANK CARS

46. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 179.15 [Amended]

47. In § 179.15, the following changes are made:

a. In paragraph (b), the heading is revised to read as set forth below.

b. In the introductory text of paragraph (e), in the second sentence, the word "reclosing" is revised to read "nonreclosing".

c. Paragraph (f)(1) is revised to read as follows:

§ 179.15 Pressure relief devices.

* * * * *

(b) *Settings for reclosing pressure relief devices.** * *

* * * * *

(f) * * *

(1) Until October 1, 1998, a nonreclosing pressure relief device must incorporate a rupture disc designed to burst at a pressure equal to 100% of the tank test pressure, or 33% of the tank burst pressure. After that date, a nonreclosing pressure relief device must incorporate a rupture disc designed to burst at a pressure equal to the greater of 100% of the tank pressure, or 33% of the tank burst pressure.

* * * * *

§ 179.100–19 [Amended]

48. In § 179.100–19, in paragraph (a), the reference "§ 179.101" is revised to read "§ 179.15".

§ 179.200–23 [Amended]

49. In § 179.200–23, in paragraph (a), the reference "§ 179.201–1" is revised to read "§ 179.15".

§ 179.220–24 [Amended]

50. In § 179.220–24, the reference "§ 179.221–1" is revised to read "§ 179.15".

§ 179.221–1 [Amended]

51. In the § 179.221–1 table, the first column heading "DOT specification [1]" is revised to read "DOT specification" and immediately following the table, footnote 1 is removed.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

52. The authority citation for part 180 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

53. In § 180.509, the text of paragraph (j) is designated as paragraph (j)(1) and paragraph (j)(2) is added to read as follows:

§ 180.509 Requirements for inspection and test of specification tank cars.

* * * * *

(j) *Leakage pressure test.* (1) * * *

(2) Interior heater systems must be tested hydrostatically at 13.87 Bar (200 psi) and must show no signs of leakage.

* * * * *

Issued in Washington, DC, on September 24, 1997, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97–25821 Filed 9–30–97; 8:45 am]

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Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Anchorage, Alaska, Terminal Area; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 29029; Notice No. 97–14]

RIN 2120–AG45

Anchorage, Alaska, Terminal Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the regulations regarding the Anchorage, Alaska, Terminal Area by revising the description of the Anchorage, Alaska, Terminal Area and the communication requirements for operating in the area; adding a new segment with communication requirements east of Anchorage International Airport; changing several altitude requirements; modifying the vertical limits of certain segments; updating the communications requirements for operations in several segments due to the decommissioning of certain air traffic control facilities; and making minor editorial changes. The FAA is proposing this action to enhance safety and simplify aircraft operating procedures in the Anchorage, Alaska, Terminal Area.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. [29029], 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@FAA.DOT.gov. Comments delivered must be marked Docket No. [29029]. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916G, weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comment to Docket No. [29029]." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM. Persons interested in being place on a mailing list for future FAA NPRM's should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register's** webpage at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Background

On December 17, 1991, the FAA published, in the **Federal Register**, the Airspace Reclassification Final Rule (56 FR 65638). The purpose of this rule was to change various airspace designations. Among other changes, airport traffic areas were changed to encompass "Classes" of airspace and to include Class A, B, C, D, E, and G airspace areas. While these changes were designed to apply to all similarly designated airspace areas, subpart D of part 93 was not amended to reclassify the Anchorage, Alaska, Terminal Area.

Additionally, the Bryant Airport Traffic Control Tower (ATCT) and the Anchorage Flight Service Station (FSS) were decommissioned. However, no corresponding changes were initiated to amend part 93, subpart D to reflect the closure of the facilities.

In this action, the FAA proposes to replace the term "Airport Traffic Area" with the new term of "Terminal Area." Also, this action would delete references in part 93 to the Bryant ATCT and the Anchorage FSS, and establish a new Seward Highway segment and communication requirements for aircraft operating in this new Seward Highway segment. These changes would update part 93 to reflect airspace designations as they exist today in the vicinity of Anchorage, Alaska. In addition, several changes would be made to the following part 93 sections.

Analysis of the Proposed Changes

Part 93, subpart D prescribes rules governing the operation of aircraft in the vicinity of those airports in the Anchorage, Alaska, Terminal Area (28 FR 6715, June 29, 1963).

Currently, there are aeronautical charts that graphically depict the Anchorage, Alaska, Terminal Area. These aeronautical charts are updated frequently without the requirement of any rulemaking action. Consolidated updates of chart changes are available every 56 days in the Alaska Supplement of the flight information publication. The purpose of this supplement, among others, is to provide major changes in aeronautical information that have occurred since the last publication date of each Sectional Aeronautical Chart, World Aeronautical Chart, or Terminal Area Chart. Further, current information can be gained by consulting appropriate Notices to Airmen, and other Flight Information Publications. Conversely, appendix A to part 93—Anchorage Airport Traffic Area: Traffic Patterns, requires rulemaking action to change, thus delaying essential aeronautical information required for the safety of flight. Therefore, the FAA is proposing to remove appendix A of part 93—Anchorage Airport Traffic Area: Traffic Patterns.

Section 93.51—Applicability

The FAA is proposing to replace the term "Airport Traffic Area" with the new term "Terminal Area." This proposed change would incorporate changes implemented by the Airspace Reclassification Final Rule.

Section 93.53—Description of Area

The FAA is proposing to change the description and boundaries of the Anchorage, Alaska, Airport Traffic Area (hereafter referred to as Terminal Area). Currently, § 93.53 describes the Anchorage, Alaska, Terminal Area both in terms of its geographical boundaries and vertical dimensions. The FAA proposes to limit the description of the Anchorage, Alaska, Terminal Area, in this section, to geographical boundaries and delete reference to any vertical dimension. Additionally, the FAA is proposing to change to replace the term "Airport Traffic Area" with the new term "Terminal Area."

Section 93.55—Subdivision of Area

The FAA proposes to modify the description of the Anchorage, Alaska, Terminal Area segment areas described in § 93.55. Currently, the segment areas of the Anchorage Terminal Area are described by reference to geographical boundaries. The vertical dimensions of the segment areas, as defined in the current § 93.53 provided a uniform altitude of up to 3,000 feet mean sea level (MSL). This action proposes to describe the segment areas geographically and vertically to conform with other proposed operational changes within each segment. This action also proposes to add the geographical boundaries and vertical dimension of the proposed Seward Highway segment by designating a new paragraph (f). Additionally, the FAA is proposing to delete any references to term "airport traffic area."

Section 93.57—General Rules: All Segments

This section describes general rules for operations conducted in all segments of the Anchorage, Alaska, Terminal Area. The FAA proposes to add the new Seward Highway segment in § 93.57(a) and § 93.57(e). The FAA is also proposing to add the Bryant segment operational requirements to the exception listed in § 93.57(d) and § 93.57(e). Additionally, the FAA is proposing to delete any references to the term "airport traffic area."

Section 93.61—General Rules: Lake Hood Segment

The FAA proposes to raise the minimum operating altitude provided in § 93.61 for noise mitigation purposes. This section currently states: each person operating an airplane within the segment (except that part described in paragraph (a) of this section) shall operate it at an altitude of at least 600 feet MSL until maneuvering for a safe landing requires further descent. The FAA is proposing to raise the minimum operating altitude from 600 to 1,000 feet MSL.

Section 93.63—General Rules: Merrill Segment

The FAA proposes to amend § 93.63(d), which currently requires anyone operating an aircraft in the Merrill segment of the Anchorage Terminal Area to maintain two-way radio communication with the Anchorage Flight Service Station (FSS). The Anchorage FSS was decommissioned in June of 1993; but § 93.63(d) was not amended to reflect this closure. This action proposes to require pilots operating in the described area to contact the Anchorage ATCT when the Merrill ATCT is not operating. This change would update § 93.63(d) by reflecting current operating practices.

Section 93.65—General Rules: Elmendorf Segment

The FAA proposes to amend § 93.65 as follows: (1) amend the required minimum operating altitude; and (2) add a new paragraph (f).

The FAA is proposing to raise the minimum operating altitude provided in § 93.65(b). This section currently requires each person operating an airplane at a speed of 105 knots or less within the Elmendorf segment shall operate it at an altitude of at least 700 feet MSL until maneuvering for a safe landing requires further descent. The FAA proposes to amend § 93.65(b) by raising the minimum operating altitude, for other than turbine-powered airplanes, from 700 to 800 feet MSL. This change would enhance safety by requiring airplanes to operate at a higher altitude and accommodate tree growth in the area.

In addition, the FAA proposes to add a new paragraph (f) to § 93.65. Section 93.65(f) would permit pilots operating to and from Sixmile Lake, within a defined portion of the Elmendorf segment and in accordance with visual flight rules (VFR), to operate without establishing two-way radio communication with air traffic control (ATC).

Section 93.67—General Rules: Bryant Segment

The FAA proposes to amend the rules for operating in the Bryant segment of the Anchorage, Alaska, Terminal Area prescribed under § 93.67. The Bryant ATCT was decommissioned on September 30, 1995, but the regulations were never amended to reflect that change. This action proposes to change the language in § 93.67(b) to state: (1) Aircraft operating to or from the Bryant Airport shall conform to the flow of traffic shown on the appropriate aeronautical charts; and (2) when operating within the Bryant segment, pilots should self-announce on Bryant Airport Common Traffic Advisory Frequency (CTAF). This change will also enhance air traffic efficiency in the area.

Section 93.68

The FAA is proposing to add a new section, § 93.68, to part 93. This new section will prescribe rules for operating in the proposed Seward Highway segment of the Anchorage, Alaska, Terminal Area. This segment and corresponding operating rules are being proposed to efficiently manage air traffic due to an increase in aircraft operations in the area.

The Proposal

This action proposes to amend the regulations regarding the Anchorage, Alaska, Terminal Area by revising the description of the Anchorage, Alaska, Terminal Area and the communication requirements for operating in the area; adding a new segment with communication requirements east of Anchorage International Airport; changing several altitude requirements; modifying the vertical limits of certain segments; updating the communications requirements for operations in several segments due to the decommissioning of certain air traffic control facilities; and removing appendix A of part 93. The FAA is proposing this action to enhance safety and simplify aircraft operating procedures in the Anchorage, Alaska, Terminal Area.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs

agencies to assess the effect of regulatory changes on small entities changes on international trade. In conducting these analyses, the FAA has determined that this NPRM: (1) Would generate benefits that justify its minimal costs and is not "a significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble and the full Regulatory Evaluation is in the docket.

Background

The FAA is proposing to amend part 93 of the Federal Aviation Regulations (14 CFR part 93) by modifying the description of the Anchorage, Alaska Terminal Area; revising communication equipment requirements for operators within the airspace area; adding a new segment with communication requirements east of Anchorage International Airport; altering several existing altitude requirements; modifying vertical limits of certain segments; and making editorial changes to ensure consistency between previous modifications. Section 93.55(f) proposes the addition of the new Seward Highway segment. Section 93.61(b) proposes to raise the minimum operation altitude in the Lake Hood Segment to 1,000 feet MSL from 600 feet MSL, for the purpose of noise abatement. Section 93.65(c) proposes to raise the minimum operation altitude, for other than turbine powered aircraft, in the Merrill Segment from at least 700 feet MSL to 800 feet MSL, due to the growth of trees in the area. It is believed these increases in altitude requirements would not have a significant cost impact. However, the FAA is soliciting public comments on the effects of these proposed increases in altitude.

Benefits

For many years, the predominant direction for aircraft departures was to the west. However, in recent years, transport category aircraft have been departing eastbound from Anchorage International Airport with increasing frequency. These eastbound departures increase the number of aircraft operations and operational complexity in the airspace east of Anchorage International Airport. In order to reduce the potential risk of a midair collision in that airspace, the FAA is proposing to establish the Seward Highway segment east of the Anchorage International Airport. This proposed change would require general aviation (GA) aircraft operating in that airspace segment to establish and maintain radio contact with ATC. This proposed change would assist in the management of aircraft operations and would impose minimal, if any, additional costs on aircraft operating in the area.

In addition, this NPRM would generate benefits in terms of clarity of existing regulations. The FAA contends that the establishment of the proposed rule would simplify aircraft operating procedures in the Anchorage, Alaska, Terminal Area.

Costs

Cost Impact on Aircraft Operators

This determination is based on data contained in the most recent General Aviation and Avionics Survey Report. The report indicates an estimated 92 percent of all Alaskan GA aircraft operators are already equipped with two-way radios. The FAA has also determined that operators without two-way radios would not have to circumnavigate the airspace area, but would instead fly above the 4,100 feet MSL ceiling of the Seward Highway segment without significantly deviating from their regular flight paths. Proposed changes to §§ 93.57(d), 93.61(b), and 93.65(c) are descriptive of altitude changes that would impose negligible or no additional cost on operators. Therefore, the FAA has determined that this proposed amendment would impose minimal, if any, cost on aircraft operators.

Cost Impact on the FAA

Currently, Part 93, Subpart D, makes reference to Anchorage FSS and Bryant ATCT. However, the FAA decommissioned the Anchorage FSS in June of 1993. Further, on September 30, 1995, the FAA decommissioned the Bryant ATCT and established the Bryant Airport Common Traffic Advisory Frequency (CTAF). These proposed changes correct these references and do not impose any cost on the agency. The agency has also determined that it could handle the current and projected aviation activity in the Seward Highway segment without needing any additional staff or equipment at Anchorage International Airport ATC Facility. Therefore, the FAA has determined there would be no additional cost as a result of the proposed editorial and description modifications to 14 CFR part 93.

In view of the minimal cost of compliance, enhanced clarity of FAA regulations covering the Anchorage, AK, Terminal Area, the FAA has determined that this NPRM would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA.

The small entities that may potentially incur minimal, if any, cost with the implementation of this proposed rule are operators of aircraft who do not meet Class D airspace navigational equipment standards (primarily part 135 aircraft without two-way radios). The small entities potentially impacted by the NPRM would not incur any cost for additional navigational equipment or complying with more rigorous operating procedures because they routinely fly into airspace where such equipment requirements are already in place. Also, those operators that do not have two-way radios can easily fly above the airspace where two-way radios are required. Therefore, the FAA has initially determined that this NPRM would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The NPRM would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States. This assessment is based on the fact that the proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the ACT), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more adjusted annually for inflation in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Section 204(a) of the ACT, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments, in the aggregate, (of $100 million adjusted annually for inflation) in any one year. Section 203 of the ACT, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This NPRM does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform ACT of 1995 do not apply.

Federalism Implications

The regulation proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41695, October 30, 1987), it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

There are no requirements for information collection associated with this proposed rule that would require approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Practices to the maximum extent practicable. For this notice, the FAA has determined that this proposal, if adopted, would not present any differences.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this proposed regulation is not a "significant regulatory action" under Executive Order 12866. In addition, the FAA certifies that this proposed regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An Initial Regulatory Flexibility Determination and International Impact Assessment have been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (air), and Reporting and recordkeeping requirements.

The Proposed Amendment

The Federal Aviation Administration proposes to amend Title 14 of the Code of Federal Regulations, part 93, subpart D, Anchorage, Alaska, Terminal Area as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

2. Section 93.51 is revised to read as follows:

§ 93.51 Applicability.

This subpart prescribes special air traffic rules and traffic patterns for aircraft operating in the Anchorage, Alaska, Terminal Area.

3. Section 93.53 is revised to read as follows:

§ 93.53 Description of area.

The Anchorage, Alaska, Terminal Area is designated as that airspace extending upward from the surface to the upper limit of each of the segments described in § 93.55. It is bounded by a line beginning at Point MacKenzie, extending westerly along the bank of Knik Arm to a point intersecting the 350° bearing from the Anchorage International ATCT; thence north to intercept the 5.2-mile arc centered on the geographical center of Anchorage, Alaska ATCT; thence counterclockwise along that arc to its intersection with the new Seward Highway; thence northerly along the new Seward Highway to its intersection with O'Malley Road; thence east along O'Malley Road to its intersection with Lake Otis Parkway; thence northerly along Lake Otis Parkway to its intersection with Abbott Road; thence east along Abbott Road to its intersection with Abbott Loop Road; thence north to its intersect with Tudor Road; thence easterly along Tudor Road to its intersection with Muldoon Road; thence northerly along Muldoon Road to the intersection of the Glenn Highway; thence north and east along the Glenn Highway to meridian long. 149°43'08" W.; thence north along meridian long. 149°43'08" W. to lat. 61°17'28" N.; thence to lat. 61°15'58" N., long. 149°44'08" W.; thence to lat. 61°19'36" N., long. 149°46'44" W.; thence north along meridian long. 149°46'44" W. to intercept the 4.7-mile radius arc centered on the Elmendorf Air Force Base (AFB), Alaska; thence counterclockwise along the 4.7-mile radius arc to its intersection with the west bank of Knik Arm; thence southerly along the west bank of Knik Arm to the point of beginning.

4. Section 93.55 is revised to read as follows:

§ 93.55 Subdivision of Terminal Area.

The Anchorage, Alaska, Terminal Area is subdivided as follows:

(a) *International segment.* That area from the surface to and including 4,100 feet MSL, within a 5.2-mile radius of the Anchorage International ATCT; excluding that airspace east of the 350° bearing from the Anchorage ATCT and north of the 090° bearing from the Anchorage ATCT and east of a line bearing 180° and 360° from the intersection of the new Seward Highway and International Airport Road and the airspace extending upward from the surface to but not including 600 feet MSL, south of lat. 61°08'28" N.

(b) *Merrill segment.* That area from the surface to and including 2,500 feet MSL, within a line beginning at Point Noname; thence direct to the mouth of Ship Creek; thence direct to the intersection of the Glenn Highway and Muldoon Road; thence south along Muldoon Road to Tudor Road; thence west along Tudor Road to the new Seward Highway; thence direct to West Anchorage High School; thence direct to Point MacKenzie; thence via the north

bank of Knik Arm to the point of beginning.

(c) *Lake Hood segment.* That area from the surface to and including 2,500 feet MSL, within a line beginning at Point MacKenzie; thence direct to West Anchorage High School; thence direct to the intersection of Tudor Road and the new Seward Highway; thence south along the new Seward Highway to the 090° bearing from the Anchorage International ATCT; thence west direct to the Anchorage International ATCT; thence north along the 350° bearing from the Anchorage International ATCT to the north bank of Knik Arm; thence via the north bank of Knik Arm to the point of beginning.

(d) *Elmendorf segment.* That area from the surface to and including 3,000 feet MSL, within a line beginning at Point Noname; thence via the north bank of Knik Arm to the intersection of the 4.7-mile radius of Elmendorf AFB; thence clockwise along the 4.7-mile radius of Elmendorf AFB to long. 149°46′44″ W.; thence south along long. 149°46′44″ W. to lat. 61°19′36″ N.; thence to lat. 61°15′58″ N., long. 149°44′08″ W.; thence to lat. 61°17′28″ N., long. 149°43′08″ W.; thence south along long. 149°43′08″ W. to the Glenn Highway; thence south and west along the Glenn Highway to Muldoon Road; thence direct to the mouth of Ship Creek; thence direct to the point of beginning.

(e) *Bryant segment.* That area from the surface to and including 2,000 feet MSL, within a line beginning at lat. 61°17′13″ N., long. 149°37′35″ W.; thence west along lat. 61°17′13″ N., to long. 149°43′08″ W. line; thence south along long. 149°43′08″ W., to the Glenn Highway; thence north and east along the Glenn Highway to Ski Bowl Road; thence southeast along the Ski Bowl Road to a point one-half mile south of the Glenn Highway; thence north and east one-half mile south of and parallel to the Glenn Highway to its intersection with a line one-half mile east of and parallel to the Bryant Airport Runway 16/34 extended centerline; thence northeast along a line one-half mile east of and parallel to Bryant Airport Runway 16/34 extended centerline to the point of beginning.

(f) *Seward Highway segment.* That area from the surface to and including, 4,100 feet MSL, within a line beginning at the intersection new Seward Highway and O'Malley Road, lat. 61°07′23″ N., long. 149°51′23″ W.; thence east along O'Malley Road to its intersection with Lake Otis Park Way, lat. 61°07′23″ N., long. 149°50′03″ W.; thence northerly along Lake Otis Park Way to its intersection with Abbott Road, lat. 61°08′14″ N., long. 149°50′03″ W.; thence east along Abbott Road to its intersection with Abbott Loop Road, lat. 61°08′14″ N., long. 149°48′16″ W.; thence due north to intersect with Tudor Road, lat. 61°20′51″ N., long. 149°48′16″ W.; thence west along Tudor Road to its intersection with the new Seward Highway, lat. 61°10′51″ N., long. 149°51′38″ W.; thence to the point of beginning.

5. Section 93.57 is revised to read as follows:

§ 93.57 General rules: All segments.

(a) Each person operating an aircraft to, from, or on an airport within the Anchorage, Alaska Terminal Area shall operate that aircraft according to the rules set forth in this section and §§ 93.59, 93.61, 93.63, 93.65, 93.67, or 93.68 as applicable, unless otherwise authorized or required by ATC.

(b) Each person operating an airplane within the Anchorage, Alaska Terminal Area shall conform to the flow of traffic depicted on the appropriate aeronautical charts.

(c) Each person operating a helicopter shall operate it in a manner avoiding the flow of airplanes.

(d) Except as provided in § 93.65(d) and (e), and § 93.67(b), each person operating an aircraft in the Anchorage, Alaska Terminal Area shall operate that aircraft only within the designated segment containing the arrival or departure airport.

(e) Except as provided in §§ 93.63(d) and 93.67(b), each person operating an aircraft in the Anchorage, Alaska Terminal Area shall maintain two-way radio communications with the ATCT serving the segment containing the arrival or departure airport.

6. Section 93.59 is revised to read as follows:

§ 93.59 General rules: International segment.

(a) No person may operate an aircraft at an altitude between 1,200 feet MSL and 2,000 feet MSL in that portion of this segment lying north of the midchannel of Knik Arm.

(b) Each person operating an airplane at a speed of more than 105 knots within this segment (except that part described in paragraph (a) of this section) shall operate that airplane at an altitude of at least 1,600 feet MSL until maneuvering for a safe landing requires further descent.

(c) Each person operating an airplane at a speed of 105 knots or less within this segment (except that part described in paragraph (a) of this section) shall operate that airplane at an altitude of at least 900 feet MSL until maneuvering for a safe landing requires further descent.

7. Section 93.61 is revised to read as follows:

§ 93.61 General rules: Lake Hood segment.

(a) No person may operate an aircraft at an altitude between 1,200 feet MSL and 2,000 feet MSL in that portion of this segment lying north of the midchannel of Knik Arm.

(b) Each person operating an airplane within this segment (except that part described in paragraph (a) of this section) shall operate that airplane at an altitude of at least 1,000 feet MSL until maneuvering for a safe landing requires further descent.

8. Section 93.63 is revised to read as follows:

§ 93.63 General rules: Merrill segment.

(a) No person may operate an aircraft at an altitude between 600 feet MSL and 2,000 feet MSL in that portion of this segment lying north of the midchannel of Knik Arm.

(b) Each person operating an airplane at a speed of more than 105 knots within this segment (except for that part described in paragraph (a) of this section) shall operate that airplane at an altitude of at least 1,200 feet MSL until maneuvering for a safe landing requires further descent.

(c) Each person operating an airplane at a speed of 105 knots or less within this segment (except for that part described in paragraph (a) of this section) shall operate that airplane at an altitude of at least 900 feet MSL until maneuvering for a safe landing requires further descent.

(d) Whenever the Merrill ATCT is not operating, each person operating an aircraft on the airport or in the traffic pattern; in that portion of the Merrill segment north of midchannel of Knik Arm; or in the Seward Highway segment shall contact Anchorage approach control.

9. Section 93.65 is revised to read as follows:

§ 93.65 General rules: Elmendorf segment.

(a) Each person operating a turbine-powered aircraft within this segment shall operate it at an altitude of at least 1,700 feet MSL until maneuvering for a safe landing requires further descent.

(b) Each person operating an airplane (other than turbine-powered aircraft) at a speed of more than 105 knots within this segment shall operate that airplane at an altitude of at least 1,200 feet MSL until maneuvering for a safe landing requires further descent.

(c) Each person operating an airplane (other than turbine-powered aircraft) at a speed of 105 knots or less within the segment shall operate that airplane at an altitude of at least 800 feet MSL until maneuvering for a safe landing requires further descent.

(d) A person landing or departing from Elmendorf AFB, may operate that aircraft at an altitude between 1,500 feet MSL and 1,700 feet MSL within that portion of the International and Lake Hood segments lying north of the midchannel of Knik Arm.

(e) A person landing or departing from Elmendorf AFB, may operate that aircraft at an altitude between 900 feet MSL and 1,700 feet MSL within that portion of the Merrill segment lying north of the midchannel of Knik Arm.

(f) A person operating in VFR conditions, at and below 600 feet MSL, north of a line beginning at the intersection of Farrell Road and the long. 149°43″08′W.; thence west along Farrell Road to the east end of Sixmile Lake; thence west along a line bearing on the middle of Lake Lorraine to the northwest bank of Knik Arm; is not required to establish two-way radio communications with ATC.

10. Section 93.67 is revised to read as follows:

§ 93.67 General rules: Bryant segment.

(a) Each person operating an airplane to or from the Bryant Airport shall conform to the flow of traffic shown on the appropriate aeronautical charts, and while in the traffic pattern, shall operate at an altitude of at least 1,000 feet MSL until maneuvering for a safe landing requires further descent.

(b) Each person operating an aircraft within the Bryant segment should self-announce intentions on the Bryant Airport CTAF.

11. Section 93.68 is added to read as follows:

§ 93.68 General rules: Seward Highway segment.

(a) Each person operating an airplane in the Seward Highway segment shall operate at an altitude of at least 1,000 feet MSL unless maneuvering for a safe landing requires further descent.

(b) Each person operating an aircraft that will transition to the Lake Hood or Merrill segment shall contact the appropriate ATCT prior to entering the Seward Highway segment. During hours that the Merrill ATCT is not operating, pilots shall contact Anchorage approach control for transition through the Seward Highway segment to or from the Merrill segment. All other pilots operating in or through the Seward Highway segment shall contact Anchorage approach control.

Appendix A—[Removed]

12. Appendix A, of part 93 is removed.

Issued in Washington, DC on September 24, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–25828 Filed 9–30–97; 8:45 am]

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October 1, 1997

Part IX

Department of Commerce

International Trade Administration

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod From Canada; Steel Wire Rod From Germany; Steel Wire Rod From Trinidad and Tobago; Steel Wire Rod From Venezuela; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–826]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lisette Lach (202/482–6412); Cindy Sonmez (202/482–0961); or Dorothy Woster (202/482–3362) for Stelco, Inc. and Sidbec-Dosco (Ispat), Inc.; Alexander Braier (202/482–3818); Abdelali Elouaradia (202/482–2243); or Sharon Harris (202/482–0190) for Ivaco, Inc. Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296, May 19, 1997), do not govern this investigation, citations to those regulations are provided, where appropriate, as a statement of current departmental practice.

Preliminary Determination

We preliminarily determine that steel wire rod ("SWR") from Canada is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 18, 1997 (*see Notice of Initiation of Antidumping Duty Investigations: Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela*, 62 FR 13854 (March 24, 1997), ("*Notice of Initiation*"), the following events have occurred:

On April 14, 1997, the United States International Trade Commission ("ITC") notified the Department of Commerce ("the Department") of its affirmative preliminary injury determination in this case.

On April 21, 1997, the Department issued the antidumping duty questionnaire to counsel for the following producers/exporters of SWR: Stelco, Inc. ("Stelco"); Sidbec-Dosco (Ispat) Inc. ("SDI"); and Ivaco, Inc. ("Ivaco") (collectively "respondents"). The questionnaire is divided into four sections: Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively. Section D requests information on the cost of production ("COP") of the foreign like product and the constructed value ("CV") of the subject merchandise. Section E requests information on further manufactured merchandise.

During April and May 1997, the Department received interested party comments regarding modifications to the product characteristic reporting requirements. On May 22, 1997, the Department issued revised product characteristic reporting instructions.

Respondents submitted their questionnaire responses in May and June 1997. The Department issued supplemental requests for information in June, July, August, and September 1997, and received the supplemental responses to these requests in July, August and September 1997. Petitioners in this investigation (Connecticut Steel Group, Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel & Wire Co.) filed comments on respondents' questionnaire responses in June, July, August, and September 1997.

On July 3, 1997, petitioners made a timely request that the Department postpone the preliminary determination in this investigation and the companion investigations of SWR from Canada, Trinidad and Tobago, and Venezuela to September 24, 1997. We did so on July 14, 1997, in accordance with section 733(c)(1) of the Act (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela*, 62 FR 38257 (July 17, 1997)).

On July 18, 1997, the Department granted requests received from all three respondents to exclude certain categories of "outlier" sales that represented an insignificant portion of each company's home market and U.S. sales (*see* Memoranda from Roland L. MacDonald to Joseph A. Spetrini, dated July 18, 1997).

Postponement of Final Determination and Extension of Provisional Measures

On September 15, 1997, Ivaco requested that, pursuant to section 735(a)(2)(A) of the Act, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination, until not later than 135 days after the date of publication of the affirmative preliminary in the **Federal Register**. In accordance with section 735 (a)(2)(A) of the Act and 19 CFR 353.2(b), inasmuch as our preliminary determination is affirmative, Ivaco accounts for a significant proportion of exports of the subject merchandise, and we have not identified any compelling reasons for denying this request, we are granting Ivaco's request and postponing the final determination. Suspension of liquidation will be extended accordingly. *See Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326 (June 14, 1996).

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States ("HTSUS") definitions for (a) stainless steel, (b) tool steel, (c) high nickel steel, (d) ball bearing steel, (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium, or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

North American Wire Products Corporation ("NAW"), an importer of the subject merchandise from Germany, has requested that the Department exclude SWR used to manufacture pipe wrapping wire from the scope of the antidumping and countervailing duty investigations. Petitioners have not agreed to this scope exclusion. For purposes of the preliminary determination, we have not excluded SWR for manufacturing pipe wrapping wire from the scope.

On June 2, 1997, Ivaco requested that the Department exclude from its antidumping analysis U.S. and home market sales of processed rod (subject merchandise) produced from non-Canadian sourced "green" rod which falls within the physical description of merchandise subject to the proceeding. We examined the nature of the processing, which consisted of heat treating and cleaning/coating, to determine whether the green rod was substantially transformed so as to qualify as Canadian-origin merchandise within the scope of this investigation. Under the Department's "substantial transformation" practice, the nature of the processing must result in an article different in character and use to render the merchandise a product of the country in which it was processed. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India*, 60 FR 10545, 10546 (Feb. 27, 1995); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina (Appendix 1)*, 58 FR 37062, 37066 (July 9, 1993).

Ivaco's response indicates that Sivaco performed two processing steps on its purchases of green SWR during the POI: cleaning/coating and heat treatment. The cleaning/coating step first removes scale from the SWR, while the coating aids in subsequent wire drawing and cold drawing. The heat treatment modifies the SWR microstructure in order to produce desired mechanical and metallurgical properties.

Neither of these two steps significantly change the physical or chemical properties of the product, nor do they change the intended uses. Further, the dimensional characteristics are similarly unchanged. The types of processing Sivaco performed does not move the product out of the scope or create a product of a new class or kind. Instead, this processing would at most change the classification of a given rod within individual model match characteristics. In sum, the nature of these processing steps do not substantially transform the subject merchandise. We note that our finding is consistent with the Customs' practice of treating such processing as less than substantial transformation. Therefore, we find that processed rod produced from non-Canadian green SWR is outside the scope of this investigation. Thus, these sales have been excluded from our analysis.

Period of Investigation

The period of investigation ("POI") is January 1, 1996 through December 31, 1996.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the *Scope of Investigation* section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire and the May 22, 1997, reporting instructions.

For Stelco, the Department noted that, in the product characteristic field deoxidation practice, silicon-killed titanium grain refined steel had been classified under the category "other" rather than "silicon-killed." However, the category "silicon-killed" was intended to include all silicon-killed steels other than silicon-killed vanadium or niobium grain refined steels. Silicon-killed titanium grain refined steel is not included among these specific exceptions; hence, the Department has reclassified all silicon-killed titanium grain refined transactions as "silicon-killed" under deoxidation practice.

On April 4, 1997, as the Department was in the process of preparing its antidumping duty questionnaire, the Department requested comments on the product characteristics to be included in the questionnaire. On April 18, 1997, Ivaco requested the Department to establish a separate class or kind of subject merchandise for cold heading quality ("CHQ") wire rod. On April 21, 1997, the Department issued the antidumping duty questionnaire, which specified the physical characteristics to be used in matching sales of subject merchandise. In response to comments made by interested parties regarding the appropriate product characteristics, on May 13, 1997, the Department requested comments from all interested parties regarding modification to the product characteristic reporting requirements. On May 22, 1997, the Department issued the revised product characteristic reporting instructions, which included the deoxidation variable. We preliminarily find that the respondents' diversified analysis does not provide a sufficient basis for finding a separate class or kind of merchandise for CHQ. However, we have accounted for product differences in the revised product characteristics.

Consistent with our practice, we compared prime merchandise sold in the United States to prime merchandise sold in the home market, and secondary merchandise to secondary merchandise. *See e.g., Final Results of Antidumping Duty Administrative Review: Cold-rolled Carbon Steel Flat Products from the Netherlands, 61 FR 48465 (September 13, 1996).*

Fair Value Comparisons

To determine whether sales of SWR by the Canadian respondents to the United States were made at less than fair value, we compared the Export Price ("EP") or Constructed Export Price ("CEP") to the Normal Value ("NV"), as described in the "Export Price/ Constructed Export Price" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs and CEPs to weighted-average NVs.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of

the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Certain Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 23760, 23761 (May 1, 1997).

Stelco

In this investigation, we calculated NV based on the same LOT. Stelco did not claim a LOT adjustment. To examine whether such an adjustment was necessary, we requested and examined Stelco's distribution system, including classes of customers, selling functions, and selling expenses. Stelco's home market sales are made through two channels of distribution: (1) Direct sales from Stelco to unaffiliated customers, and (2) direct sales by Stelwire, Stelco's wholly-owned processor, to unaffiliated customers. Sales at both channels are made to the same category of customer, (*e.g.*, original equipment manufacturers (OEMs)). We next reviewed where sales are made in the chain of distribution. Sales by Stelco are made directly from the factory, whereas sales by Stelwire are not—Stelwire first purchases rod from Stelco, then resells the rod to unaffiliated customers. Sales by a reseller represent an additional stage in the marketing process, since the reseller is an intermediary between the factory and the customer. Thus, sales by the two entities appear to be made at different stages in the chain of distribution. However, we found no evidence that the entities perform different selling activities (*e.g.*, inventory services, technical services, credit extension, and warranty services), or incur different selling expenses at these different marketing stages. We therefore conclude that Stelco's home market sales were made at one LOT.

Stelco reported EP sales in the U.S. market. We conducted an identical analysis as described above and found that all sales were made at the same stage in the chain of distribution, *i.e.*, direct to unaffiliated customers, with no distinction in selling functions provided, or selling expenses incurred, among U.S. sales. On this basis we conclude that Stelco's sales in the U.S. are made at one LOT. Finally, we found no differences among the LOTs in the U.S. and home market. Stelco provided the same or similar services with respect to U.S. transactions and home market transactions. Overall, based on this analysis, we conclude that there is no difference among the LOT in the U.S. and home markets. As we are able to calculate NV based on the same LOT as a U.S. sale, no LOT adjustment is warranted.

SDI

In this investigation, we calculated NV based on the same LOT. SDI did not claim a LOT adjustment. To examine whether such an adjustment was necessary, we requested and examined information on SDI's distribution system, including classes of customers, selling functions, and selling expenses. We noted that SDI had only one channel of distribution (wire drawers and parts manufacturers) in the home market and two channels of distribution in the U.S. market: EP sales (wire drawers and parts manufacturers) and CEP sales (further manufactured products). We also noted that SDI had two classes of customers (*i.e.*, wire drawers and parts manufacturers) in the home market and U.S. market. Furthermore, SDI's selling functions were the same for both classes of customers in the home market and U.S. markets (for CEP sales, we examined these functions after deducting U.S. selling expenses and associated profit). Finally, we also noted that SDI performed all selling functions or services during the POI, regardless of channel of distribution, and the related expenses were reported to the Department as indirect selling expenses. These functions and services include (1) negotiating terms/developing/maintaining customer base, (2) preparing merchandise for shipment, (3) maintaining records, (4) collecting bills, (5) providing technical assistance and services (provided to a greater degree to wire drawers rather than parts manufacturers in both the United States and Canada), and (6) after-sale service, and they are the same for the home market and U.S. market (including EP and CEP sales). Therefore, it appears that all sales made by SDI in both the home and U.S. markets were made at one LOT. As such, no LOT adjustment is warranted for SDI.

Ivaco

We also examined the stages in the marketing process and selling functions along the chain of distribution between Ivaco and its customers. Based on this examination, we preliminarily determine that Ivaco sold merchandise at two LOTs in the home market during the POI. One level of trade is for sales made by Ivaco's wire rod manufacturing facility, Ivaco Rolling Mills ("IRM"); the second level of trade is for sales made by Ivaco's wire rod processing and drawing facilities, Sivaco Ontario and Sivaco Quebec. From our analysis of the marketing process for these sales, we determined that sales by Sivaco Ontario and Sivaco Quebec are at a more remote marketing stage than that for sales by IRM. *See* Memorandum from Alexander Braier to Roland MacDonald, dated September 24, 1997, which is on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. We also found significant distinctions between the selling activities and associated expenses between these sales at each marketing stage. Based on these differences, we concluded that two LOTs exist in the home market, an IRM LOT and a Sivaco LOT.

Ivaco reported both EP and CEP sales in the U.S. market, claiming that the same two LOTs exist in the U.S. as in the home market. We examined the chains of distribution in the U.S., which were the same as those reported for the home market. We also examined the selling functions with respect to these sales (for CEP sales, we examined these functions after deducting U.S. selling expenses and associated profit). Based on this analysis, we concluded that there are two LOTs in the U.S. market and that these LOTs are the same as those found in the home market. Because the LOTs in the United States are identical to those in the home market, the preceding analysis with respect to the home market LOTs applies equally to the U.S. market. Therefore, the preceding analysis applies to the U.S. market in total. *See* Memorandum from Alexander Braier to Roland L. MacDonald, dated September 24, 1997.

To the extent possible, we have compared U.S. and home market sales at the same LOT without making a LOT adjustment. When we were unable to find sales of the foreign like product in the home market at the same LOT as the U.S. sale, we examined whether a LOT adjustment was appropriate. The Department makes this adjustment when it is demonstrated that a difference in LOT effects price comparability. To make this determination, we compared the weighted-average of Ivaco's NV prices of sales made in the ordinary course of trade at the two LOTs for models sold at both levels. Because the weighted-average prices were higher at one of the LOTs for a preponderance of the models and higher for a preponderance (by quantity) of total sales on the quantities of each model sold, we considered this to demonstrate a pattern of consistent price differences. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2106 (January 15, 1997). Thus, we made an adjustment to NV for the differences in LOT when appropriate. To calculate the LOT adjustment, we applied the percentage differential between the weighted-average home market starting price at one LOT and the weighted-average home market starting price at the next LOT. Because we were able to quantify the LOT adjustment, in accordance with section 773(a)(7)(B) of the Act, no CEP offset is applicable to relevant NV-CEP comparisons. For a detailed discussion of Ivaco's LOT analysis, *see* Memorandum from Alexander Braier to Roland MacDonald, dated September 24, 1997.

Export Price/Constructed Export Price

For Stelco, SDI, and Ivaco, we used the Department's EP methodology, in accordance with section 772(a) of the Act, where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation because CEP methodology was not otherwise warranted based on the facts on the record. For SDI and Ivaco, we used the Department's CEP methodology, in accordance with sections 772(b) of the Act, where the subject merchandise was sold to unaffiliated purchasers after importation into the United States.

We made company-specific adjustments as follows:

1. Stelco

In accordance with section 772(c) of the Act, we calculated EP based on packed, delivered prices to the first unaffiliated customer in the United States. We made deductions from the starting price (gross unit price), where appropriate, for rebates, pre-sale warehousing, Canadian inland freight from plant to distribution warehouse, inland freight from plant/warehouse to point of delivery in the United States, U.S. brokerage and handling, and U.S. customs duties.

2. SDI

We calculated EP based on packed, delivered prices to the first unaffiliated customer in the United States. We made deductions from the starting price (gross unit price), where appropriate, for rebates, Canadian inland freight from warehouse to port of exit, U.S. inland freight from warehouse to unaffiliated customers, U.S. inland freight from port to warehouse, U.S. brokerage and handling, and U.S. customs duties.

We calculated CEP based on packed, delivered prices to the first unaffiliated customer in the United States. We made the same deductions from the starting price as described above. In accordance with sections 772(d)(1) and (2) of the Act, we also made deductions, where appropriate, for direct selling expenses, including credit and warranty expenses, indirect selling expenses, including Canadian and U.S. inventory carrying costs, further manufacturing costs, and CEP profit, in accordance with section 772(d)(3) of the Act.

3. Ivaco

We calculated EP based on packed, delivered prices to the first unaffiliated customer in the United States. In some instances, customers took delivery of the merchandise at the factory. We made additions to the starting price (gross unit price), where appropriate, for freight revenue (reimbursement for freight charges paid by Ivaco) and debit-note price adjustments (adjustments made by Ivaco for billing errors), and deductions, where appropriate, for discounts, rebates, inland freight from IRM to Sivaco Ontario or Sivaco Quebec, inland from IRM to Sivaco New York, inland freight from IRM to unaffiliated U.S. customers, inland freight from IRM to unaffiliated U.S. processors, inland freight from Sivaco Ontario to unaffiliated customers, inland freight from Sivaco Ontario, Sivaco Quebec, or Sivaco New York to their unaffiliated U.S. customers, U.S. customs duties, U.S. brokerage and handling, and credit price adjustments.

We calculated CEP based on packed, delivered prices to the first unaffiliated customer in the United States. In some instances, customers took delivery of the merchandise at the factory. We made the same adjustments to the starting price as described above. In accordance with sections 772(d)(1) and (2) of the Act, we also made deductions, where appropriate, for direct and indirect selling expenses, commissions, further manufacturing costs, and CEP profit, in accordance with 773(d)(3) of the Act.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent. Therefore, we have based NV on home market sales.

We based NV on the price at which the foreign like product was first sold for consumption in Canada, in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act. To the extent practicable, we based NV on sales at the same level of trade as the EP or CEP sales. If NV was calculated at a different level of trade, when appropriate, we made an adjustment in accordance with section 773(a)(7) of the Act. This adjustment is discussed further in the Level of Trade section above.

Because Stelco, SDI, and Ivaco reported home market sales to affiliated parties during the POI, we tested these sales to ensure that the affiliated party sales were at "arm's length." To conduct this test, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses (credit and warranty expenses), rebates, and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated party, we determined that the sale made to the affiliated party was at arm's length. Based on the results of this test, we

excluded from the calculation of each respondent's NV all sales made to an affiliated party that failed the "arm's length" test.

Cost of Production Analysis

Pursuant to an allegation made by petitioners, we initiated a cost of production investigation in our notice of initiation. See Notice of Initiation, 62 FR 13854 (March 24, 1997). Before making any fair value comparisons, we conducted the COP analysis described below.

a. Calculation of COP

We calculated the COP based on the sum of the respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market general expenses and packing costs in accordance with section 773(b)(3) of the Act. We adjusted the company's reported COP as follows:

1. Stelco: We adjusted Stelco's reported COP to allocate ingot teeming costs only to the products manufactured from billets produced at the facility for which these costs were incurred. We recalculated Stelco's general and administrative amounts to exclude offsets to research and development and capital tax expenses. *See* Memorandum to Chris Marsh from Beverly Lyons, dated September 17, 1997.

2. Ivaco: We recalculated Ivaco's general and administrative amounts based on the expenses incurred by IRM, Sivaco Ontario, and Sivaco Quebec. We adjusted the cost of billets to account for Atlantic Steel's selling, general and administrative costs. We recalculated further manufacturing general and administrative amounts to reflect Sivaco New York's expenses rather than IRM's expenses. *See* Memorandum to Chris Marsh from Art Stein, dated September 18, 1997.

b. Test of Home Market Prices

We used each respondent's submitted POI weighted-average COPs, as adjusted (see above). We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, packing, and direct and indirect selling expenses.

c. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

d. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, G&A, U.S. packing costs, direct and indirect selling expenses, interest expenses, and profit. As noted above, we adjusted Stelco's COP for ingot teeming costs and recalculated general and administrative expense amounts. We also adjusted Ivaco's cost of billets, and general and administrative expense amounts.

In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual monthly weighted-average home market direct and indirect selling expenses.

e. Adjustments to Prices

1. Stelco: We calculated NV based on packed, delivered prices to unaffiliated customers and prices to affiliated customers where the sales were made at arm's length. We made deductions from the starting price (gross unit price), where appropriate, for rebates, inland freight from plant to distribution warehouse, inland freight from plant/warehouse to customers, pre-sale warehouse expense, and packing, in accordance with section 773(a)(6) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, by deducting home market direct selling expenses (*i.e.*, warranty, credit and technical service expenses) and adding U.S. direct selling expenses (*i.e.*, warranty, credit and technical service expenses).

Because Stelco paid commissions on U.S. sales, in calculating NV for the respondents, we deducted the lesser of either (1) the weighted-average amount of commission paid on a U.S. sale for a particular product, or (2) the weighted-average amount of indirect selling expenses paid on the home market sales for a particular product. *See* 351.410(e), 62 FR 27414 (May 19, 1997).

For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

2. SDI: We calculated NV based on packed, delivered prices to unaffiliated customers and prices to affiliated customers where sales were made at arm's length. We made deductions from the starting price (gross unit price), where appropriate, for rebates, inland freight from plant/warehouse to customer, packing, and warranty and credit expenses, in accordance with section 773(a)(6) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, by deducting home market direct selling expenses (*i.e.*, warranty and credit expenses) and adding U.S. direct selling expenses (*i.e.*, warranty and credit expenses). For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

3. Ivaco: We calculated NV based on packed, delivered prices to unaffiliated customers and prices to affiliated customers where sales were made at arm's length. We made deductions from the starting price (gross unit price), where appropriate, for discounts, rebates, post-sale price adjustments, foreign inland freight, warranty expense, and the direct portion of technical service expenses, in accordance with section 773(a)(6) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for warranty and credit expenses. If NV was calculated at a different level of trade than EP, we made an adjustment in accordance with section 773(a)(7) of the Act, as discussed in the Level of Trade section above.

If NV was calculated at a different level of trade than CEP, we made an adjustment in accordance with section 773(a)(7) of the Act, as discussed in the Level of Trade section above.

Because Ivaco paid commissions on U.S. sales, in calculating NV for the respondent, we deducted the lesser of either (1) the weighted-average amount of commission paid on a U.S. sale for a particular product, or (2) the weighted-average amount of indirect selling expenses paid on the home market sales for a particular product. *See* 351.410(e), 62 FR 27414 (May 19, 1997). For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773(A) of the Act based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Stelco, Inc.	2.43
Sidbec-Dosco (Ispat), Inc.	11.76
Ivaco, Inc.	7.49
All Others Rate	7.79

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether these imports are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than December 16, 1997, and rebuttal briefs, no later than December 30, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 6, 1998, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We will make our final determination not later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: September 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–26040 Filed 9–30–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–822]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0192 or (202) 482–5288, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296; May 19, 1997), do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Preliminary Determination

We preliminarily determine that steel wire rod ("SWR") from Germany is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 18, 1997 (*see Notice of Initiation of Antidumping Duty Investigations: Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela*, 62 FR 13854 (March 24, 1997), "*Notice of Initiation*"), the following events have occurred:

On April 14, 1997, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination in this case.

On April 21, 1997, the Department issued the antidumping duty questionnaire to the following producers/exporters of SWR to the United States: Brandenburg Elektrostahlwerk GmbH ("Brandenburg"); Ispat Hamburger Stahlwerke GmbH ("IHSW"); Saarstahl AG ("Saarstahl"); and Thyssen Stahl AG ("Thyssen") (collectively "respondents"). The questionnaire is divided into four sections: Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively. Section D requests information on the cost of production ("COP") of the foreign like product and the constructed value ("CV") of the subject merchandise.

During April and May 1997, the Department received interested party comments regarding modifications to the product characteristic reporting requirements. On May 22, 1997, the Department issued revised product characteristic reporting instructions.

IHSW submitted its questionnaire responses in May and June 1997. The Department issued supplemental requests for information in June, July, and September 1997, and received the supplemental responses to these requests in July, August, and September 1997. The petitioners in this investigation (Connecticut Steel Group, Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel & Wire Co.) filed comments on IHSW's questionnaire responses in June, July, August, and September 1997.

On June 11, 1997, Saarstahl informed the Department that it did not have the necessary resources to respond to the Department's questionnaire. In addition, without explanation, neither Brandenburg nor Thyssen responded to the questionnaire (*see* the "Facts Available" section below, for further discussion).

On July 3, 1997, petitioners made a timely request that the Department postpone the preliminary determination in this investigation and the companion investigations of SWR from Canada, Trinidad and Tobago, and Venezuela to September 24, 1997. We did so on July 14, 1997, in accordance with section 733(c)(1) of the Act (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela*, 62 FR 38257 (July 17, 1997)).

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2)(A) of the Act and section 353.20(b)(1) of the Department's interim regulations, on September 9, 1997, IHSW requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination. While IHSW is only one of four German producer/exporters identified in the petition, we determine that it accounts "for a significant proportion of exports of the merchandise which is the subject of the investigation," and therefore, that it is eligible to request such an extension. First, IHSW is the only German respondent participating in this investigation; its exports thus account for all of the German SWR production analyzed by the Department for this preliminary determination. Second, the problem anticipated by the "significant proportion" requirement—that a single producer representing a relatively small proportion of the production of the subject merchandise could delay a final determination against the wishes of the other producers—is not present in this proceeding. The three other German respondents (Brandenburg, Saarstahl and Thyssen) in this investigation did not object to the extension request submitted by IHSW. Finally, the Department has identified no compelling reason to deny IHSW's request for extension. For these reasons, we are postponing the final determination until no later than the 135th day following publication of this preliminary determination notice. Suspension of liquidation will be extended accordingly (*see Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Open-End Spun Rayon Singles Yarn From Austria*, 62 FR 14399, 14400 (March 26, 1997); *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326 (June 14, 1996)).

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth, containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

North American Wire Products Corporation (NAW), an importer of the subject merchandise from Germany, has requested that the Department exclude steel wire rod used to manufacture pipe wrapping wire from the scope of the antidumping and the companion countervailing duty investigations. Petitioners have not agreed to this scope exclusion. For purposes of the preliminary determination, we have not excluded steel wire rod for manufacturing pipe wrapping wire from the scope. However, we will address this issue further in our final determination.

Period of Investigation

The period of investigation ("POI") is January 1 through December 31, 1996.

Fair Value Comparisons

To determine whether sales of SWR by IHSW to the United States were made at less than fair value, we would normally compare the export price or constructed export price to the normal value. Although IHSW responded to the Department's questionnaires, as discussed in the "Facts Available" section of this notice below, there are significant deficiencies that have rendered their response unreliable and therefore unusable for the calculation of LTFV margins in this preliminary determination. Therefore, in accordance with section 776 of the Act, our results are based on facts otherwise available.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination (subject to subsections 782 (d) and (e)). As detailed below, the Department has determined that all four respondents have failed to cooperate to the best of their ability in this investigation as defined under 776(a)(2) and that the use of facts otherwise available is applicable.

Brandenburg, Saarstahl, and Thyssen have clearly failed to cooperate to the best of their ability in this investigation, as they have not responded to the Department's antidumping questionnaire. Accordingly, the Department is required to base the antidumping rate for these companies on the facts otherwise available.

The use of facts otherwise available is also applicable to IHSW because they "fail[ed] to provide [requested] information by the deadlines for submission of the information or in the form and manner requested." As discussed in the "Case History" section above, and as required by section 782(d), the Department informed IHSW of the deficiencies in its responses through the issuance of several extensive supplemental questionnaires covering all sections of the original questionnaire. However, despite the detailed requests for supplemental information issued by the Department and the extension of time granted to IHSW to file its responses, IHSW's questionnaire responses remained seriously deficient.

The significant deficiencies in the information submitted by IHSW include: (1) A significant number of missing sales in the home market sales database, rendering the database unreliable and unusable for making price-to-price comparisons and calculating a profit amount for CV; (2) the failure to notify the Department that major inputs were purchased from affiliated suppliers and, once this fact was discovered, the failure to demonstrate that inputs purchased from affiliated suppliers were arm's-length transactions. Without information as to whether transfer prices between IHSW and its affiliates were set at arm's length or the affiliated suppliers' cost information, we cannot determine if the major inputs were properly valued in calculating the reported COPs and CVs. Furthermore, without information concerning the quantities of inputs purchased from affiliated suppliers, the Department cannot make adjustments to IHSW's COP and CV databases. Since the COP and CV data cannot be relied upon, the Department cannot conduct a COP analysis, calculate the difference-in-merchandise adjustments (difmers), or calculate an accurate profit for purposes of calculating CV; (3) IHSW has not provided product specific costs and has failed to explain how its cost groups were derived, raising further concerns about the reliability of the COP and CV data; and (4) there are errors and inconsistencies in IHSW's creation of product control numbers. If product control numbers are not properly assigned based on product matching criteria, the Department cannot accurately determine which products in the home market should be matched to U.S. sales for purposes of making price-to-price comparisons. (For a more detailed discussion of the deficiencies in the information IHSW has provided, see the September 24, 1997, Memorandum to Richard W. Moreland.)

IHSW's questionnaire responses constituted deficient submissions within the meaning of section 782(d). Under these circumstances, section 776(a) directs the Department to use facts available subject to section 782(e). Section 782(e) provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination, but does not meet all the applicable requirements established by the Department, if—

(1) The information is submitted by the deadline established for its submission,

(2) the information can be verified,

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and

(5) the information can be used without undue difficulties.

Thus, if any one of these criteria is not met, the Department may decline to consider the information at issue in making its determination. IHSW's information has satisfied the first two criteria. Regarding criterion (3), as detailed above, IHSW's home market sales data and cost of production information is so deficient as to render it unreliable. As to criterion (4), IHSW has not demonstrated that it acted to the best of its ability in providing the requested information because IHSW failed to respond in a satisfactory manner to the Department's requests for information. Despite repeated requests that IHSW correct the deficiencies in its submissions, as detailed above, significant inconsistencies remain in IHSW's data. Finally, as to criterion (5), the information is so deficient that the Department cannot conduct a proper LTFV analysis.

As indicated above, the analysis of IHSW's responses to date, in the context of sections 782 (d) and (e), demonstrates that IHSW has failed to provide its home market sales and COP information in the form and manner requested. The information provided by IHSW is unreliable and inadequate for the purpose of calculating a preliminary LTFV margin. Section 776(a) thus requires the Department to use facts otherwise available in making its preliminary determination with respect to IHSW.

Section 776(b) provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information (*see* also the Statement of Administrative Action ("SAA"), accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870). As discussed above, Brandenburg, IHSW, Saarstahl, and Thyssen have failed to act to the best of their ability to comply with requests for information and, therefore, adverse inferences are warranted with respect to all four companies.

Consistent with Department practice in cases where respondents refuse to participate or provide seriously deficient information that precludes the Department from conducting its LTFV analysis, as facts otherwise available, we are basing their margins on information in the petition. Section 776(c) provides that when the Department relies on secondary information (*e.g.*, the petition) as the facts otherwise available, it must, to the extent

practicable, corroborate that information from independent sources that are reasonably at its disposal. The Department reviewed the adequacy and accuracy of the secondary information in the petition from which the margins were calculated during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose, (*e.g.*, import statistics, independent trade data, U.S. Bureau of Labor Statistics, International Energy Agency). (*See Notice of Initiation* and September 24, 1997, Memorandum to Richard W. Moreland).

For purposes of the preliminary determination, the Department reexamined the price information provided in the petition in light of information obtained during the investigation, and found that it continues to be of probative value (*see* the September 24, 1997, Memorandum to Richard W. Moreland).

A. Brandenburg, Saarstahl, and Thyssen

Consistent with Department practice, as facts otherwise available, the Department is assigning to Brandenburg, Saarstahl, and Thyssen, the companies that did not respond to the Department's requests for information, the highest margin from the petition (as adjusted by the Department), 153.10 percent (*see* the March 18, 1997, "Import Administration AD Investigation Initiation Checklist" and the *Notice of Initiation* for a discussion of the margin calculations in the petition and the Department's recalculations).

B. IHSW

Since IHSW made some effort to comply with the Department's requests for information, consistent with Department practice, we are assigning IHSW a facts available margin based on a simple average of the margins in the petition (as adjusted by the Department), 72.51 percent.

C. The All-Others Rate

All foreign manufacturers/exporters in this investigation are being assigned dumping margins on the basis of facts otherwise available. Section 735(c)(5) of the Act provides that where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776, the Department "* * * may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." This provision contemplates that we weight average the facts-available margins to establish the all-others rate. Where the data is not available to weight average the facts available rates, the SAA, at 873, provides that we may use other reasonable methods.

Inasmuch as we do not have the data necessary to weight average the respondents' facts available margins, we are basing the All-Others rate on a simple average of the margins in the petition (as adjusted by the Department), 72.51 percent.

Verification

We will issue another supplemental questionnaire to IHSW in an effort to obtain complete and accurate responses. If the requested information is received in a timely manner, we will attempt to conduct verification of the company's information as provided in section 782(i) of the Act. If IHSW's reported information can be verified, we will use such information in making the final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Brandenburg Elektrostahlwerk GmbH	153.10
Ispat Hamburger Stahlwerke GmbH	72.51
Saarstahl AG	153.10
Thyssen Stahl AG	153.10
All-Others	72.51

The all-others rate applies to all entries of subject merchandise except for the entries of merchandise produced by the exporters/manufacturers listed above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than January 5, 1998, and rebuttal briefs, no later than January 12, 1998. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 14, 1998, at 8:30 a.m. in room 1414 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination not later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(d) of the Act.

Dated: September 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–26041 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–802]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod From Trinidad and Tobago

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Abdelali Elouaradia or Alexander Braier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2243 or (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296, May 19, 1997), do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Preliminary Determination

We preliminarily determine that steel wire rod ("SWR") from Trinidad & Tobago is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 18, 1997 (*See Initiation of Antidumping Duty Investigations: Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela*, 62 FR 13854 (March 24, 1997) ("*Initiation*"), the following events have occurred:

On April 14, 1997, the United States International Trade Commission ("ITC") notified the Department of Commerce ("the Department") of its affirmative preliminary injury determination in this case.

On April 21, 1997, the Department issued the antidumping duty questionnaire to counsel for the following producer/exporter of steel wire rod to the United States: Caribbean Ispat, ltd. (CIL). The questionnaire is divided into four sections: Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively. Section D requests information on the cost of production ("COP") of the foreign like product and the constructed value ("CV") of the subject merchandise.

During April and May 1997, the Department received interested party comments regarding modifications to the product characteristic reporting requirements. On May 22, 1997, the Department issued revised product characteristic reporting instructions.

CIL submitted its questionnaire responses in May and June 1997. The Department issued supplemental requests for information in June, July, August and September 1997 and received the supplemental responses to these requests in June, July, August and September 1997. Petitioners in this investigation (Connecticut Steel Group, Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel & Wire Co.) filed comments on CIL's questionnaire responses in June, July, August, and September 1997.

On July 3, 1997, petitioners made a timely request for a postponement of the preliminary determination in this investigation and the companion investigations of steel wire rod from Canada, Germany, and Venezuela to September 24, 1997. On July 14, 1997, the Department postponed the preliminary determinations in these investigations until September 24, 1997, in accordance with section 733(c)(1) of the Act (*See Notice of Postponement of Preliminary Antidumping Duty Determinations: Canada, Germany, Trinidad and Tobago, and Venezuela*, 62 FR 38257 (July 17, 1997).

Postponement of Final Determination

On September 22, 1997, CIL, the only respondent participating in this investigation, requested that, pursuant to section 735(a)(2)(A) of the Act, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination, until not later than 135 days after the date of publication of the affirmative preliminary in the **Federal Register**. In accordance with section 735 (a)(2)(A) of the Act and 19 CFR 353.2(b), inasmuch as our preliminary determination is affirmative, CIL accounts for a significant proportion of exports of the subject merchandise, and we have not identified any compelling reasons for denying this request, we are granting CIL's request and postponing the final determination. Suspension of liquidation will be extended accordingly. *See Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326 (June 14, 1996).

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings

7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

North American Wire Products Corporation (NAW), an importer of the subject merchandise from Germany, has requested that the Department exclude steel wire rod used to manufacture pipe wrapping wire from the scope of the antidumping and countervailing duty investigations. Petitioners have not agreed to this scope exclusion. For purposes of the preliminary determination, we have not excluded steel wire rod for manufacturing pipe wrapping wire from the scope.

Period of Investigation

The period of investigation ("POI") is January 1, 1996 through December 31, 1996.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the *Scope of Investigation* section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping duty questionnaire and the May 22, 1997, reporting instructions.

Consistent with our practice, we compared prime merchandise sold in the United States to prime merchandise sold in the home market, and secondary merchandise to secondary merchandise. *See, e.g., Ceratin Cold-rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 48465 (September 13, 1996).

Fair Value Comparisons

To determine whether sales of steel wire rod sold by CIL to the United States were made at less than fair value, we compared the Export Price ("EP") to the normal value ("NV"), as described in the "EP" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i), we calculated weighted-average EPs for comparisons to weighted-average NVs.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually the sale from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than the EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. *See Certain Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 23760, 23761 (May 1, 1997).

Respondent claimed one LOT in the NV market and one LOT in the U.S. market. CIL did not claim an LOT adjustment. To examine whether such an adjustment was necessary, we examined CIL's distribution system, including selling functions, classes of customers, and selling expenses. We noted that CIL's selling expenses for the POI were the same for all customers. We found that the selling functions, which included sales administration, billing, maintaining inventory, and in some cases arranging freight services, are sufficiently similar in the U.S. and the home market to consider them as one level of trade. Based on the findings noted above, we conclude that for these preliminary results, CIL's U.S. and home market sales were made at the same LOT.

Export Price

We based price in the United States on EP, in accordance with subsections 772 (a) and (c) of the Act because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts on the record.

We calculated EP based on packed prices to the first unaffiliated customer in the United States. We made adjustments, where appropriate, for international ocean freight, marine insurance, U.S. brokerage and handling, U.S. Customs duties and user fee, U.S. inland freight from port to unaffiliated customer, U.S. inland insurance and survey fee in both the United States and Trinidad in accordance with section 772(c)(2) of the Act.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, if the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since CIL's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales.

Cost of Production Analysis

Pursuant to an allegation made by petitioners, we initiated a cost of production investigation in our notice of initiation. *See Notice of Initiation*, 62 FR 13854 (March 24, 1997). Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market general expenses and packing costs in accordance with section 773(b)(3) of the Act. We have recalculated CIL's general and administrative amounts to include only net foreign exchange losses related to accounts payable . *See* Memorandum to Chris Marsh From Taija Slaughter, September 12, 1997.

B. Test of Home Market Prices

We used the respondent's submitted POI weighted-average COPs, as adjusted (see above). We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act and, therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, interest expenses and profit. As noted above, we recalculated CIL's general and administrative amounts. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We calculated NV based on prices to unaffiliated home market customers. We made deductions for discounts, rebates, and inland freight. In addition, we made circumstance-of-sale adjustments or deductions for credit and warranty, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Currency Conversions

In accordance with section 773(A) of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of steel wire rod from Trinidad and Tobago, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Normally, we would instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as indicated in the chart below. However, the product under investigation is also subject to a concurrent countervailing duty investigation. Article VI.5 of the General Agreement on Tariffs and Trade (GATT) provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(c)(1)(C) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributed to export subsidies, there is no reason to require a cash deposit or bond for that amount.

The Department has determined in *Preliminary Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago*, 62 FR 41927 (August 4, 1997), that the product under investigation benefitted from an export subsidy. To obtain the most accurate estimate of the antidumping duty, and to fulfill our international obligations arising under the GATT, we are subtracting, for deposit purposes, the cash deposit rate attributable to the export subsidies found in the countervailing duty investigation. For Caribbean Ispat, Ltd., the attributable rate is 3.45 percent. We are also subtracting from the "All Others" rate the cash deposit rate attributable to the export subsidy included in the countervailing duty investigation for the All Others rate, 3.45 percent. Pursuant to Article of 17.4 of the WTO Agreement on Subsidies and Countervailing Measures, in the absence of an affirmative final determination the Department will terminate the suspension of liquidation in the companion countervailing duty investigation of steel wire rod from Trinidad and Tobago, effective December 2, 1997, which is 120 days after the date of publication of that preliminary determination. Accordingly, on December 2, 1997, if the ITC has not yet made an affirmative injury determination in the countervailing duty investigation, the antidumping deposit rate will revert to the full amount calculated in this preliminary determination. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage	Bonding percentage
Caribbean Ispat Limited	13.00	9.55
All Others	13.00	9.55

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than December 22, 1997, and rebuttal briefs, no later than January 5, 1998. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 9, 1998, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should

confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(d) of the Act.

Dated: September 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–26042 Filed 9–30–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–813]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Daniel Manzoni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–1121, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 353 (April, 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27296, May 19, 1997), do not govern this investigation, citations to those regulations are provided, where appropriate, to explain current Departmental practice.

Preliminary Determination

We preliminarily determine that steel wire rod ("SWR") from Venezuela is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 18, 1997 (*see Notice of Initiation of Antidumping Duty Investigations: Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela*, 62 FR 13854, (March 24, 1997), ("*Notice of Initiation*"), the following events have occurred:

On April 14, 1997, the United States International Trade Commission ("ITC") notified the Department of Commerce ("the Department") of its affirmative preliminary injury determination in this case.

On April 21, 1997, the Department issued the antidumping duty questionnaire to CVG Siderurgica Del Orinoco C.A. ("Sidor"), the sole exporter of the subject merchandise from Venezuela. The questionnaire is divided into four sections: Section A requests general information concerning Sidor's company corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C request home market sales listings and U.S. sales listings, respectively. Section D requests information on the cost of production ("COP") of the foreign like product and the constructed value ("CV") of the subject merchandise.

During April and May 1997, the Department received interested party comments regarding modifications to the product characteristic reporting requirements. On May 22, 1997, the Department issued revised product characteristic reporting instructions.

Sidor submitted its questionnaire responses in May and June, 1997. The Department issued supplemental requests for information in June, July, and August, 1997, and received the supplemental responses to these requests in July, August, and September, 1997. Petitioners in this investigation (Connecticut Steel Group, Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel & Wire Co.) filed comments on Sidor's questionnaire responses in May, June, July, August, and September, 1997.

On July 3, 1997, petitioners made a timely request that the Department postpone the preliminary determination in this investigation and the companion investigations of SWR from Canada, Trinidad and Tobago, and Germany to September 24, 1997. We did so on July 14, 1997, in accordance with section 733(c)(1) of the Act (*see Notice of Postponement of Preliminary Determinations: Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela* (62 FR 38257, July 17, 1997)).

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2)(A) of the Act and section 353.20(b)(1) of the Department's interim regulations, on September 10, 1997, Sidor requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the publication of this notice in the **Federal Register**. In accordance with section 735(a)(2)(A) of the Act, because our preliminary determination is affirmative, the respondent accounting for all of the exports of the subject merchandise has requested postponement, and no compelling reasons for denial exist, we are postponing the final determination. Suspension of liquidation will be extended accordingly (*see Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determinations: Open-End Spun Rayon Singles Yarn From Austria*, 62 FR 14399, 14400 (March 26, 1997); *see also Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326 (June 14, 1996)).

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of this investigation:

Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as "Tire Cord Wire Rod."

Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as "Valve Spring Quality Wire Rod."

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

North American Wire Products Corporation (NAW), an importer of the subject merchandise from Germany, has requested that the Department exclude steel wire rod used to manufacture pipe wrapping wire from the scope of the antidumping and countervailing duty investigations. Petitioners have not agreed to this scope exclusion. For purposes of the preliminary determination, we have not excluded steel wire rod for manufacturing pipe wrapping wire from the scope. However, we will consider this issue further in our final determination.

Period of Investigation

The period of investigation ("POI") is January 1, 1996, through December 31, 1996.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Sidor, covered by the description in the *Scope of Investigation* section, above, and sold in the home market during the POI, to be foreign-like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign-like product on the basis of the characteristics listed in the antidumping duty questionnaire and the May 22, 1997, reporting instructions. Consistent with our practice (*see, e.g., Final Results of Antidumping Duty Administrative Review: Cold-rolled Carbon Steel Flat Products from the Netherlands*, 61 FR 48465, (September 13, 1996)), we compared prime merchandise sold in the United States to prime merchandise sold in the home market, and secondary merchandise to secondary merchandise.

Fair Value Comparisons

To determine whether sales of steel wire rod by Sidor to the United States were made at less than fair value, we compared the Export Price ("EP") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i), we calculated weighted-average EPs for comparison to weighted-average NVs.

Venezuela experienced significant inflation during the POI, as measured by the consumer price index published by the Central Bank of Venezuela. Accordingly, to avoid the distortions caused by the effects of inflation on prices, we calculated EPs and NVs on a monthly average basis, rather than on a POI average basis.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or constructed export price ("CEP"). The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP (or CEP), we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. *See Certain Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 23760, 23761 (May 1, 1997).

Sidor did not claim a LOT adjustment. To evaluate whether such an adjustment was necessary, we examined Sidor's distribution system, including selling functions, classes of customers, and selling expenses. Sidor sold to only one class of customer in each market. We found that selling functions, which included sales administration, billing, warranties, and in some cases arranging freight services, are sufficiently similar in the U.S. and the home market to consider them as constituting the same level of trade in the two markets. Accordingly, all comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) is not warranted.

Export Price

We based our starting price on EP, in accordance with subsections 772(a) and (c) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts on the record.

We calculated EP based on packed, FOB factory prices to the first unaffiliated customer in the United States. We made no deductions from the gross unit price.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared Sidor's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since Sidor's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for Sidor. Therefore, we have based NV on home market sales provided they were not disregarded pursuant to the cost test under section 773(b) of the Act.

Cost of Production Analysis

Pursuant to an allegation made by the petitioners, we initiated a cost of production investigation in our *Notice of Initiation* (62 FR 13854 March 24, 1997). Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market general expenses and packing costs in accordance with section 773(b)(3) of the Act. We recalculated Sidor's interest expense, as discussed in the September 16, 1997, Memorandum to Chris Marsh, Director, Office of Accounting, from Paul McEnrue. As noted above, we determined that the Venezuelan economy experienced significant inflation during the POI. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that Sidor submit monthly COP figures based on the current production costs incurred during each month of the POI. We indexed Sidor's monthly COP amounts, adjusted as discussed above, in order to compute an annual weighted-average COP for the POI.

B. Test of Home Market Prices

We used Sidor's submitted POI weighted-average COPs, as adjusted (see above). We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the inflation-adjusted COP to the home market prices, less any applicable movement charges, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of Sidor's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Where we determined that such sales were also not made at prices which would permit recovery of all costs within a reasonable period of time and, in accordance with section 773(b)(2)(D) of the Act, we disregarded the below-cost sales. Where all comparison sales of a specific product were at prices below the COP, we disregarded all such sales of that product, and calculated NV based on CV.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A, U.S. packing costs, interest expenses and profit. As noted above, we recalculated Sidor's interest expenses. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses (as indexed for inflation).

Comparison of the U.S. Price to NV

We compared U.S. prices to home market prices or to CV, as appropriate. We made adjustments for inland freight, interest revenue, and late payment fees. In addition, we made circumstance-of-sale adjustments for credit, warranties, and bank fees, where appropriate. We re-allocated home market and U.S. warranty expenses on a value basis rather than the quantity basis Sidor reported. Where we compared CV to EPs, we deducted from CV the home market direct selling expenses and added the weighted-average U.S. direct selling expenses.

We also made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Currency Conversions

The Department's normal source for exchange rates—the Federal Reserve Bank—does not provide certified exchange rates for Venezuela. Therefore, we converted Venezuelan bolivares into U.S. dollars as follows: For the period from January 1, 1996, through April 21, 1996, we used the official exchange rate from the Central Bank of Venezuela because the Dow Jones Business Information Services rates (an alternate source often relied upon by the Department) reflected the implicit (parallel) exchange rate in Venezuela for Brady bonds (i.e., foreign currency—denominated government bonds trading on the secondary market). After April 21, 1996, Venezuela had a unified, market exchange rate that applied to all trade transactions. Therefore, for the period after April 21, 1996, we used the Dow Jones rates.

Verification

As provided in section 782(i) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
CVG Siderurgica Del Orinoco C.A. ("Sidor")	51.21
All Others	51.21

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than January 5, 1998, and rebuttal briefs, no later than January 12, 1998. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 14, at 2:00 p.m. in Room 1412 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: September 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–26043 Filed 9–30–97; 8:45 am]

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The President

Notice of September 30, 1997—
Continuation of Iran Emergency

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Presidential Documents

Title 3—

The President

Notice of September 30, 1997

Continuation of Iran Emergency

On November 14, 1979, by Executive Order 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the **Federal Register**. The most recent notice appeared in the **Federal Register** on October 31, 1996. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1997. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
September 30, 1997.

[FR Doc. 97–26267
Filed 9–30–97; 11:30 am]
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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Safety-related structures, systems, and components; definition; comments due by 10-8-97; published 9-8-97

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Civil penalty assessment for misuse of Department of the Treasury Names, Symbols, etc.; comments due by 10-6-97; published 8-6-97

CFR ISSUANCES 1997
January—July 1997 Editions and Projected October, 1997 Editions

This list sets out the CFR issuances for the January–July 1997 editions and projects the publication plans for the **October, 1997** quarter. A projected schedule that will include the **January, 1998** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1996–1997 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1997:

Title	
CFR Index	1–199
	200–End
1–2 (Revised as of Feb. 1, 1997)	
3 (Compilation)	10 Parts:
	0–50
4	51–199
	200–499
5 Parts:	500–End
1–699	
700–1199	11
1200–End	
	12 Parts:
6 [Reserved]	1–199
	200–219
7 Parts:	220–299
0–26	300–499
27–52	500–599
53–209	600–End
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700–899	14 Parts:
900–999	1–59
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1200–1499	140–199
1500–1899	200–1199
1900–1939	1200–End
1940–1949	
1950–1999	15 Parts:
2000–End	0–299
	300–799
8	800–End
	16 Parts:
9 Parts:	0–999
	1000–End

Titles revised as of April 1, 1997:

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240–End	
	19 Parts:
1–140	500–699
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400–499	26 Parts:
500–End	1 (§§ 1.0–1–1.60)
	1 (§§ 1.61–1.169)
21 Parts:	1 (§§ 1.170–1.300)
1–99	1 (§§ 1.301–1.400)
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1300–End	1 (§ 1.1401–End)
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200–219	1–199
220–499	200–End

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43–End	36 Parts:
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29 Parts:	200–299
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TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1997

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
October 1	October 16	October 31	November 17	December 1	December 30
October 2	October 17	November 3	November 17	December 1	December 31
October 3	October 20	November 3	November 17	December 2	January 2
October 6	October 21	November 5	November 20	December 5	January 5
October 7	October 22	November 6	November 21	December 8	January 5
October 8	October 23	November 7	November 24	December 8	January 6
October 9	October 24	November 10	November 24	December 8	January 7
October 10	October 27	November 10	November 24	December 9	January 8
October 14	October 29	November 13	November 28	December 15	January 12
October 15	October 30	November 14	December 1	December 15	January 13
October 16	October 31	November 17	December 1	December 15	January 14
October 17	November 3	November 17	December 1	December 16	January 15
October 20	November 4	November 19	December 4	December 19	January 20
October 21	November 5	November 20	December 5	December 22	January 20
October 22	November 6	November 21	December 8	December 22	January 20
October 23	November 7	November 24	December 8	December 22	January 21
October 24	November 10	November 24	December 8	December 23	January 22
October 27	November 12	November 26	December 11	December 26	January 26
October 28	November 12	November 28	December 12	December 29	January 26
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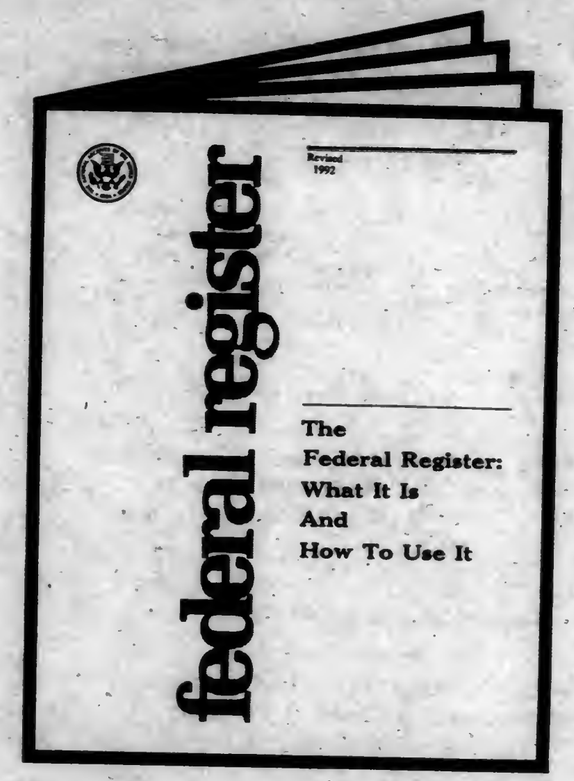
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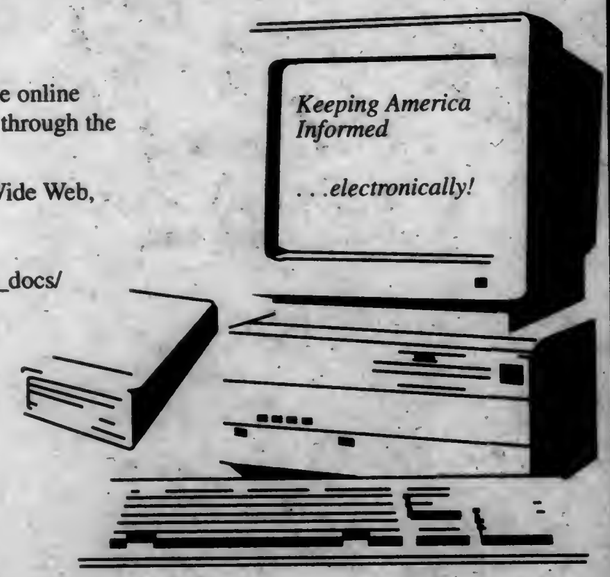
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Federal Register
Vol. 62, No. 191
Thursday, October 2, 1997

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Part 602

RIN 3052–AB77

Releasing Information; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 602 on August 1, 1997 (62 FR 41253). The final rule amends the regulations governing the release of information. The objective of the final rule is to conform applicable FCA regulations to the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104–231, and to clarify the address of the FCA official who receives FOIA requests for records. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 2, 1997.

EFFECTIVE DATE: The regulation amending 12 CFR part 602 published on August 1, 1997 (62 FR 41253) is effective October 2, 1997.

FOR FURTHER INFORMATION CONTACT:
John Hays, Policy Analyst, Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;
or
Jane Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: September 29, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–26162 Filed 10–1–97; 8:45 am]
BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–30–AD; Amendment 39–10140; AD 97–20–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Helicopter Systems Model MD–900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Helicopter Systems (MDHS) Model MD–900 helicopters, that requires removing certain serial-numbered main rotor swashplate bearings (bearings) and replacing them with airworthy bearings. This amendment is prompted by reports that inspections of several helicopters revealed that the outer bearing race had been rotating relative to the swashplate assembly, which was evidenced by wear marks in the rotating swashplate. The actions specified by this AD are intended to prevent possible heat accumulation and resulting damage to the bearing caused by the bearing races rotating relative to the bearing seat, which could result in degraded helicopter response to pilot control input and possible loss of control of the helicopter.

EFFECTIVE DATE: November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Greg DiLibero, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5231, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to MDHS Model MD–900 helicopters was published in the **Federal Register** on January 29, 1997 (62 FR 4217). That action proposed to require, before further flight, inspecting the bearing, part number (P/N) 900C3010100–101, to determine if a bearing having serial number (S/N) 059150–E0019, S/N 059150–E0020, S/N 059150–E0021, S/N 059150–E0022, S/N 059150–E0023, S/N 059150–E0024, S/N 059150–E0025, S/N 059150–E0026, S/N 059150–E0027, S/N 059150–E0028, S/N 059150–E0029, or S/N 059150–E0030 is installed; and, if installed, removing and replacing that bearing with an airworthy bearing.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with two changes. The FAA has determined that special flight permits may be issued to operate the helicopter to a location where the requirements of this AD can be accomplished. This is now stated in paragraph (i) of the AD. Also, the FAA has determined that this AD should only apply to the Model MD–900 helicopters, not the Model MD–900 "series" helicopters. Therefore, the word "series" is removed from the applicability paragraph of this AD. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 20 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per helicopter to determine the bearing's S/N, 12 work hours per helicopter to remove and replace a bearing, and that the average labor rate is $60 per work hour. Replacement bearings would cost $8,765 per helicopter, however, replacement bearings are covered by a manufacturer's warranty. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,400, assuming five helicopters will require removal and replacement of the bearing.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

97–20–12 McDonnell Douglas Helicopter Systems: Amendment 39–10149. Docket No. 96–SW–30–AD.

Applicability: Model MD–900 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (h) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

To prevent possible heat accumulation and resulting damage to the main rotor swashplate bearing (bearing) caused by the bearing races rotating relative to the bearing seat, which could result in degraded helicopter response to pilot control input and possible loss of control of the helicopter, accomplish the following:

(a) Disconnect the lower end of the main rotor pitch links. Disconnecting the drive link may make the inspection easier.

(b) Cut the safety wire and remove the inner and outer labyrinth seals, part number (P/N) 900C2010194–101 and P/N 900C201190–101, respectively, and the inner and outer bearing retaining rings.

(c) Inspect the bearing, part number (P/N) 900C3010100–101, to determine if it has one of the following serial numbers (S/N): S/N 059150–E0019, S/N 059150–E0020, S/N 059150–E0021, S/N 059150–E0022, S/N 059150–E0023, S/N 059150–E0024, S/N 059150–E0025, S/N 059150–E0026, S/N 059150–E0027, S/N 059150–E0028, S/N 059150–E0029, or S/N 059150–E0030.

Note 2: S/N's similar to those above were produced without the character "E" in the number. This AD is only concerned with those that contain the character "E".

(d) Enter into the helicopter Log Book the bearing S/N.

(e) If a bearing having one of the S/N's stated in paragraph (c) of this AD is installed on the helicopter, remove the bearing and replace it with an airworthy bearing prior to further flight.

(f) Prior to the installation of a swashplate assembly, inspect the bearing in accordance with the requirements of this AD.

(g) Report the results of all inspections required by this AD within 72 hours to the Manager, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(j) This amendment becomes effective on November 6, 1997.

Issued in Fort Worth, Texas, on September 24, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–25970 Filed 10–1–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–94–AD; Amendment 39–10150; AD 97–20–14]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. This AD requires incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that would require pilot training before flight into known or forecast icing conditions after a certain date. This AD results from the Federal Aviation Administration's analysis that the current training level of the pilots-in-command (PIC) of the MU–2B series airplanes makes it difficult for pilots to recognize adverse operating conditions and operate safely while flying in icing conditions. Similar training to that required in this AD for pilots of other high performance airplanes has shown a lower accident rate over time after the training than before. The actions specified by this AD are intended to decrease the chance of icing-related incidents or accidents of the MU–2B series airplanes due to pilot error.

DATES: Effective October 17, 1997.

Comments for inclusion in the Rules Docket must be received on or before November 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–94–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Information related to this AD may be examined at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to This AD

Service history of the Mitsubishi MU–2B series airplanes prompted the FAA to examine the design of these airplanes and analyze the ability of the pilots of these airplanes to fly and operate in icing conditions. The FAA recently conducted a special certification review (SCR) for the Mitsubishi MU–2B series airplanes. This examination shows that several accidents have occurred, and that future accidents/incidents may be prevented by modifications to the airplane design (to be addressed in another AD action) and by additional training to enhance the pilot's ability to manage the airplane in adverse operating conditions.

The FAA believes that pilots are not properly interpreting or recognizing the performance degradation and visual ice buildup cues of the airframe that can occur during flight into icing conditions on the Mitsubishi MU–2B series airplanes. Additional pilot training will enhance the pilot's ability to recognize adverse operating conditions and properly manage the MU–2B series airplane.

The FAA's analysis of the performance capabilities of the Mitsubishi MU–2B airplane operating in icing conditions shows that this training is needed for the pilot-in-command. Correct operation of the Mitsubishi MU–2B series airplanes in adverse operating conditions (primarily icing conditions), including full knowledge of the capabilities of the airplane, is necessary in order to prevent any future incidents or accidents.

Information Developed To Help Prevent the Above Condition

Mitsubishi, working with the FAA, has developed a video tape that provides in-depth information on certain aspects of the operation of the Mitsubishi MU–2B series airplanes. This video tape, Mitsubishi Training Video No. YET–97336, is part of an eight-hour training program that includes a focus on the following aspects of the MU–2B series airplanes operational characteristics during flight in icing conditions:

—General conditions that all airplanes encounter while flying in icing or freezing precipitation conditions;

—Information on the operation of all equipment and aspects associated with operation of these airplanes in icing conditions, including, but not limited to, autopilot operation; auto-ignition relight; propeller performance; stall characteristics; and recommended modes of operation; and

—A summary of the accident reports of the Mitsubishi MU–2B airplanes operated in icing conditions; the cues to look for and methods to exit icing conditions when these cues are recognized; and the lessons learned from these accidents to use for future operation of the aircraft.

Service history from other manufacturers initiating similar training (though on a voluntary basis) reveals a lower incident and accident rate for the airplanes after the training was conducted.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant training program developed by Mitsubishi, the FAA has determined the following:

—Pilots experienced in flying twin-engine propeller airplanes may not be completely familiar with the operational characteristics of the Mitsubishi MU–2B series airplanes in adverse operating conditions;

—That the above-described training will provide pilots the knowledge required to safely operate Mitsubishi MU–2B series airplanes in adverse operating conditions;

—That all pilots-in-command (PIC) of Mitsubishi MU–2B series airplanes should have the above-described training no later than November 15, 1997, and thereafter every 2 years, in order to have the authority to continue to fly into known or forecast icing conditions; and

—AD action should be taken to decrease the chance of icing-related incidents or accidents of the affected airplanes due to pilot error.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Mitsubishi MU–2B series airplanes if the PIC is not proficient in the operating conditions of these airplanes, the FAA is issuing an AD. This AD requires incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that would require pilot training before further flight into known or forecast icing conditions after a certain date. This AFM limitation would consist of the following:

On or after November 15, 1997, no person may serve as pilot-in-command (PIC) of a Mitsubishi MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Biennial Icing Awareness Training (IAT), Mitsubishi Training Video No. YET–97336. This eight-hour training became available September 22, 1997, and is provided by Mitsubishi Heavy Industries at no cost, as part of the Mitsubishi Systems Review (MSR) program. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Mitsubishi at (972) 980–5001. Training is also available at the Flight Safety International (Houston) and Reese Howell Enterprises training facilities. Mitsubishi will provide pilot log book endorsements upon the completion of this training. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement.

Reasons for AD Action Instead of Other Methods

Requiring the AFM Limitation for training the PIC of the aspects of the operation of the Mitsubishi MU–2B series airplanes is critical to safe operation of these airplanes during the upcoming icing seasons. The FAA determined that the only method of mandating this type of training before the next icing season is through an AD. Using the AD approach for this type of training is considered an interim method of addressing this subject, until the FAA determines the best method to use to mandate this type of training.

Determination of the Compliance Time of This AD

The unsafe condition described in this AD is not a direct result of airplane design or the number of hours the airplane is operated, but is attributed to the expertise and knowledge of the PIC. For this reason, the FAA has determined that a compliance time based upon calendar time (24 hours after the effective date of the AD) should be utilized instead of a certain number of hours time-in-service (TIS).

Determination of the Effective Date of the AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and

opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–94–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–20–14 Mitsubishi Heavy Industries, Ltd.: Amendment 39–10150; Docket No. 97–CE–94–AD.

Applicability: Models MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–26A, MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–36A, MU–2B–40, and MU–2B–60 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 24 hours after the effective date of this AD, unless already accomplished.

To decrease the chance of icing-related incidents or accidents of the affected airplanes due to pilot error, accomplish the following:

(a) Incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM):

"On or after November 15, 1997, no person may serve as pilot-in-command (PIC) of a Mitsubishi MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Biennial Icing Awareness Training (IAT), Mitsubishi Training Video No. YET–97336. This eight-hour training became available September 22, 1997, and is provided by Mitsubishi Heavy Industries at no cost, as part of the Mitsubishi Systems Review (MSR) program. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Mitsubishi at (972) 980–5001. Training is also available at the Flight Safety International (Houston) and Reese Howell Enterprises training facilities. Mitsubishi will provide pilot log book endorsements upon the completion of this training. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement."

(b) Inserting a copy of this AD into the Limitations Section of the AFM accomplishes the intent of this AD.

(c) Incorporating the AFM insert, as required by this AD, may be performed by the owner/operator of the affected airplane provided he/she holds at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). Accomplishment of this action must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) This amendment (39–10150) becomes effective on October 17, 1997.

Issued in Kansas City, Missouri, on September 26, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–26107 Filed 10–1–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29022; Amdt. No. 1823]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchases

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standards for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 19, 1997.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49 (b) (2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME

or TACON; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective October 9, 1997*

Frankfort, MI, City-County, VOR OR GPS–A, Amdt 3

** * * Effective November 6, 1997*

Auburn, AL, Auburn-Opelika Robert G. Pitts, GPS RWY 26, Orig
Foley, AL, Foley Muni, GPS RWY 36, Orig
Carlisle, AR, Carlisle Muni, VOR/DME RWY 9, Amdt 2
Carlisle, AR, Carlisle Muni, GPS RWY 9, Amdt 1
Fayetteville/Springdale/Rogers, AR, Northwest Arkansas Regional, GPS RWY 16, Orig
Fayetteville/Springdale/Rogers, AR, Northwest Arkansas Regional, GPS RWY 34, Orig
Forrest City, AR, Forrest City Muni, NDB RWY 35, Amdt 4
Forrest City, AR, Forrest City Muni, GPS RWY 35, Orig
Helena/West Helena, AR, Thompson-Robbins, GPS RWY 17, Orig
Helena/West Helena, AR, Thompson-Robbins, GPS RWY 35, Admit 1
Little Rock, AR, Adams Field, ILS RWY 4R, Amdt 1
Little Rock, AR, Adams Field, ILS RWY 22L, Amdt 2
Pine Bluff, AR, Grider Field, VOR/DME RWY 35, Amdt 11
Stuttgart, AR, Stuttgart Muni, VOR/DME OR GPS–A, Amdt 1
Stuttgart, AR, Stuttgart Muni, NDB RWY 18, Amdt 10
San Diego/El Cajon, CA, Gillespie Field, GPS RWY 17, Orig
Alamsa, CO, San Luis Valley Regional/ Bergman Field, ILS RWY 2, Orig
Alamosa, CO, San Luis Valley Regional/ Bergman Field, GPS RWY 2, Amdt 2
Orlando, FL, Executive, GPS RWY 7, Orig
Orlando, FL, Executive. GPS RWY 25, Orig
Orlando, FL, Orlando Sanford, GPS RWY 27R, Orig
Tallahassee, FL, Tallahassee Regional, GPS RWY 9, Orig
Tallahssee, FL, Tallahassee Regional, GPS RWY 27, Orig
Brunswick, GA, Malcolm McKinnon, GPS RWY 4, Orig
Brunswick, GA, Malcolm McKinnon, GPS RWY 22, Orig
Brunswick, GA, Malcolm McKinnon, RNAV OR GPS RWY 22, Amdt 5, CANCELLED
Terre Haute, IN, Hulman Regional, VOR/ DME RWY 5, Amdt 17
Covington/Cincinnati, OH/KY, Cincinnati/ Northern Kentucky Intl, NDB or GPS RWY 9, Amdt 14
Covington/Cincinnati, OH/KY, Cincinnati/ Northern Kentucky Intl, ILS RWY 9, Amdt 16
Covington/Cincinnati, OH/KY, Cincinnati/ Northern Kentucy Intl, ILS RWY 18L, Amdt 4
Covington/Cincinnati, OH/KY, Cincinnati/ Northern Kentucky Intl, ILS RWY 18R, Amdt 19
Covington/Cincinnati, OH/KY, Cincinnati/ Northern Kentucky Intl, ILS RWY 36L, Amdt 38
Covington/Cincinnati, OH/KY, Cincinnati/ Northern Kentucky Intl, ILS RWY 36R, Amdt 5
Fitchburg, MA, Fitchburg Muni, NDB–A, Amdt 2
Fitchburg, MA, Fitchburg Muni, NDB RWY 20, Amdt 3
Tewksbury, MA, Tew-Mac, VOR OR GPS RWY 21, Amdt 7, CANCELLED
Tewksbury, MA, Tew Mac, NDB OR GPS–A, Amdt 4A, CANCELLED
Westfield, MA, Barnes Muni, ILS RWY 20, Amdt 4
Westfield, MA, Barnes Muni, VOR OR TACAN OR GPS RWY 2, Amdt 3
Westfield, MA, Barnes Muni, NDB RWY 20, Amdt 14
Westfield, MA, Barnes Muni, VOR OR GPS RWY 20, Amdt 19
Clarksdale, MS, Fletcher Field, NDB OR GPS–A, Amdt 1
Clarksdale, MS, Fletcher Field, NDB OR GPS RWY 36, Amdt 8
Greenwood, MS, Greenwood-LeFlore, VOR OR GPS RWY 5, Amdt 10
Greenwood, MS, Greenwood-LeFlore, ILS RWY 18, Amdt 5
Indianola, MS, Indianola Muni, VOR/DME OR GPS–B, Amdt 4
Marks, MS, Selfs, NDB OR GPS RWY 2, Amdt 4
Marks, MS, Selfs, NDB OR GPS–A, Amdt 2
Reno, NV, Reno/Stead, GPS–B, Orig
Claremont, NH, Claremont Muni, NDB–A, Amdt 1
West Milford, NJ, Greenwood Lake, VOR OR GPS–A, Amdt 3, CANCELLED
West Milford, NJ, Greenwood Lake, VOR RWY 6, Orig
Elmira, NY, Elmira/Corning Regional, NDB RWY 24, Amdt 14
Elmira, NY, Elmira/Corning Regional, ILS RWY 6, Amdt 3
Elmira, NY, Elmira/Corning Regional, ILS RWY 24, Amdt 17
Elmira, NY, Elmira/Corning Regional, GPS RWY 24, Orig
Devils Lake, ND, VOR OR GPS RWY 13, Amdt 8, CANCELLED
Devils Lake, ND, VOR OR GPS RWY 31, Amdt 5, CANCELLED
Devils Lake, ND, VOR RWY 13, Orig
Devils Lake, ND, VOR RWY 31, Orig
Batavia, OH, Clermont County, VOR OR GPS–B, Amdt 6
Philipsburg, PA, Mid-State, NDB RWY 15, Amdt 6
State College, PA, University Park, ILS RWY 24, Amdt 7
Wellsboro, PA, Grand Canyon State, VOR OR GPS–A, Amdt 5
Wellsboro, PA, Grand Canyon State, GPS RWY 28, Orig
Burlington, VT, Burlington Intl, LORAN RNAV–A, Orig, CANCELLED
Burlington, VT, Burlington Intl, LORAN RNAV RWY 15, Orig, CANCELLED
Rutland, VT, Rutland State, GPS RWY 19, Amdt 2

Note: The following procedure published effective 6 Nov 97 in Federal Register Vol. 62, No. 163, dated Aug 22, 1997, Docket 28992, Amdt 1813, Pg 44545 is hereby rescinded:

Wisconsin Rapids, WI, Alexander Field South Wood County, GPS RWY 20, Orig

** * * Effective January 1, 1998*

Texarkana, AR, Texarkana Regional-Webb Field, VOR OR GPS RWY 13, Amdt 15
Texarkana, AR, Texarkana Regional-Webb Field, LOC BC RWY 4, Amdt 12
Texarkana, AR, Texarkana Regional-Webb Field, NDB RWY 22, Amdt 12
Texarkana, AR, Texarkana Regional-Webb Field, ILS RWY 22, Amdt 15
Texarkana, AR, Texarkana Regional-Webb Field, GPS RWY 4, Orig
Texarkana, AR, Texarkana Regional-Webb Field, GPS RWY 22, Orig
Texarkana, AR, Texarkana Regional-Webb Field, GPS RWY 31, Orig
Flagstaff, AZ, Flagstaff Pulliam, GPS RWY 3, Orig
Gastonia, NC, Gastonia Muni, NDB RWY 3, Amdt 8
Gastonia, NC, Gastonia Muni, GPS RWY 3, Orig
Gastonia, NC, Gastonia Muni, RNAV OR GPS RWY 3, Amdt 3, CANCELLED
Reidsville, NC, Rockingham County NC Shiloh, SDF RWY 31, Amdt 3, CANCELLED
Reidsville, NC, Rockingham County NC Shiloh, GPS RWY 31, Orig
Reidsville, NC, Rockingham County NC Shiloh, VOR/DME RNAV RWY 31, Amdt 4, CANCELLED
Southern Pines, NC, Moore County, GPS RWY 23, Orig
Southern Pines, NC, Moore County, RNAV RWY 23, Amdt, CANCELLED
Kutztown, PA, Kutztown, GPS RWY 17, Orig
Luray, VA, Luray Caverns, VOR/DME–B, Amdt 2
Luray, VA, Luray Caverns, NDB OR GPS–A, Amdt 5
Luray, VA, Luray Caverns, GPS RWY 22, Amdt 1

Effective Upon Publication

Eugene, OR, VOR/DME OR TACAN OR GPS RWY 34, Amdt 3

[FR Doc. 97–26118 Filed 10–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29023; Amdt. No. 1824]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 19, 1997.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs;

§ 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
09/03/97	CA	Half Moon Bay	Half Moon Bay	7/5874	GPS Rwy 30 Orig...
09/04/97	AR	Little Rock	Adams Field	7/5881	Radar-1, Amdt 15...
09/04/97	OK	El Reno	El Reno Muni Air Park	7/5888	NDB Rwy 35, Amdt 3...
09/04/97	TX	Fort Worth	Fort Worth Alliance	7/5889	ILS Rwy 16L, Amdt 3...
09/05/97	MD	Cumberland	Greater Cumberland Regional	7/5903	LOC-A, Amdt 3A...
09/05/97	OH	Wilmington	Airborne Airpark	7/5902	ILS Rwy 22R Amdt 4A...
09/05/97	OK	Guthrie	Guthrie Muni	7/5897	NDB or GPS Rwy 16, Amdt 4...
09/05/97	WI	Manitowish Waters	Manitowish Waters	7/5899	GPS Rwy 32 Orig...
09/10/97	MA	Worcester	Worcester Regional	7/5972	ILS Rwy 11 Amdt 21...
09/10/97	MA	Worcester	Worcester Regional	7/5973	NDB or GPS Rwy 11 Amdt 20...
09/10/97	ME	Greenville	Greenville Seaplane Base	7/5970	NDB or GPS-A Amdt 4...
09/10/97	NY	Penn Yan	Penn Yan	7/5960	GPS Rwy 1 Orig...
09/10/97	NY	Penn Yan	Penn Yan	7/5961	GPS Rwy 19 Orig...
09/11/97	AK	Deadhorse	Deadhorse	7/6012	NDB or GPS-A, Amdt 2...
09/11/97	AK	Deadhorse	Deadhorse	7/6013	VOR Rwy 4, Amdt 3...
09/11/97	AK	Deadhorse	Deadhorse	7/6015	VOR Rwy 22, Amdt 5...
09/11/97	CA	Los Angeles	Los Angeles Intl	7/6002	ILS Rwy 25R Amdt 11...
09/11/97	CA	Los Angeles	Los Angeles Intl	7/6003	ILS Rwy 25L Amdt 7...
09/11/97	CA	Los Angeles	Los Angeles Intl	7/6045	ILS Rwy 25L/CAT II, Amdt 7...
09/11/97	CA	Los Angeles	Los Angeles Intl	7/6046	ILS Rwy 25L/CAT III/Amdt 7...
09/11/97	CA	Ramona	Ramona	7/6040	VOR/DME or GPS-A Amdt 1...
09/11/97	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	7/6019	ILS PRM Rwy 29L (Simultaneous Close Parallel), Orig...
09/11/97	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	7/6024	ILS PRM Rwy 29R (Simultaneous Close Parallel), Orig...
09/11/97	PA	Coatesville	Chester County G.O. Carlson	7/6044	ILS Rwy 29 Amdt 6...
09/11/97	TX	Conroe	Conroe/Montgomery County	7/6037	ILS Rwy 14, Amdt 1...
09/12/97	AR	El Dorado	South Arkansas Regional at Goodwin Field.	7/6059	VOR Rwy 22, Amdt 13B...
09/12/97	AR	El Dorado	South Arkansas Regional at Goodwin Field.	7/6060	GPS Rwy 22, Orig...
09/15/97	OR	Eugene	Mahlon Sweet Field	7/6116	NDB or GPS Rwy 16, Amdt 29...
09/16/97	NM	Grants	Grants-Milan Muni	7/6123	GPS Rwy 31, Orig...

[FR Doc. 97-26119 Filed 10-1-97; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29024; Amdt. No. 1825]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20 of the Federal Aviation Regulations (FAR).

The applicable FAA Forms are identified as FAA Form 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 19, 1997.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113-40114, 40120, 44502, 44514, 44701, 44719, 44721-44722.

§§ 97.23, 97.27, 97.33 and 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's effective at 0901 UTC on the dates specified:

* * * *Effective Nov 6, 1997*

Bay Minette, AL, Bay Minette Muni, VOR or GPS RWY 8, Amdt 6 CANCELLED
Bay Minette, AL, Bay Minette Muni, VOR RWY 8, Amdt 6
Birmingham, AL, Birmingham Intl, NDB or GPS RWY 23, Amdt 16 CANCELLED
Birmingham, AL, Birmingham Intl, NDB RWY 23, Amdt 16
Talladega, AL, Talladega Muni, VOR/DME or GPS RWY 3, Amdt 4 CANCELLED
Talladega, AL, Talladega Muni, VOR/DME RWY 3, Amdt 4
Silver Bay, MN, Silver Bay Muni, NDB or GPS RWY 25, Orig CANCELLED
Silver Bay, MN, Silver Bay Muni, NDB RWY 25, Orig
Billings, MT, Billings Logan Intl, VOR/DME RNAV or GPS RWY 28R, Amdt 2 CANCELLED
Billings, MT, Billings Logan Intl, VOR/DME RNAV RWY 28R, Amdt 2
Billings, MT, Billings Logan Intl, NDB or GPS RWY 10L, Amdt 19 CANCELLED
Billings, MT, Billings Logan Intl, NDB RWY 10L, Amdt 19
Clinton, NC, Sampson County, NDB or GPS RWY 6, Amdt 5 CANCELLED
Clinton, NC, Sampson County, NDB RWY 6, Amdt 5
Conway, SC, Conway-Horrt County, NDB or GPS RWY 4, Amdt 1 CANCELLED
Conway, SC, Conway-Horrt County, NDB RWY 4, Amdt 1

[FR Doc. 97-26122 Filed 10-1-97; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners; Disclosure of Parole Commission Regional Office File

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: U.S. Parole Commission is amending its regulations on disclosure of Parole Commission files to provide for expedited processing of requests and a multi-track system to comply with the "Electronic Freedom of Information Act Amendments of 1996."

DATES: Effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: On July 28, 1997, the Parole Commission published proposed rule changes in the **Federal Register** to implement a new law known as the "Electronic Freedom of Information Act Amendments of 1996" (E-FOIA). 62 FR 40316. These proposed rule changes provided for a multi-track system whereby requests for tape recordings, or for two documents or less, would be processed ahead of requests seeking numerous documents from the parole file. Further, the proposed rule provided for expedited processing of Freedom of Information Act (FOIA) requests if the requester demonstrates "compelling need" as defined in the regulation. Specifically, the Commission proposed adopting two categories in which compelling need could be demonstrated.

The Parole Commission received public comment from one organization, the Reporters Committee for the Freedom of the Press. The Reporters Committee recommended two changes to the Commission's proposed regulations. First, they urged that the Commission adopt a third category where compelling need could be demonstrated. That category was for cases involving "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." This third category was included in the Department of Justice's proposed regulations. Second, the Reporters Committee noted that the Parole Commission failed to include in its regulations provisions for improving the electronic availability of records. The Reporters Committee noted that it did not find in the Justice Department's proposals any indication that Justice Department rules would apply to the Commission, and similarly the Commission's proposals did not indicate that implementation of other sections of the E–FOIA would be covered by the Justice Department regulations.

In response to the Reporters Committee request that the Commission adopt the language contained in the Department's proposed regulations for expedited treatment when government integrity is questioned, the Commission finds that this is unnecessary. The Department of Justice may wish to adopt such a specific category because of its prosecutorial functions in cases involving "possible questions about the government's integrity", but the Parole Commission considers that a media request that is driven by concern over "possible questions" of government integrity would already be covered by the second category which includes expedited processing for requesters demonstrating "urgency to inform the public concerning actual or alleged federal government activity."

In response to the Reporters Committee's request that the Commission include the electronic availability of records in its regulations, the Commission is adding a sentence so that it is clear to the public and to requesters that the Department of Justice's regulations apply to all FOIA-processing issues not covered by the Commission's own regulations and procedures. Although the Parole Commission is not promulgating its own regulation in regard to the public reading room, the Commission maintains a public reading room and records available in the public reading room will be available electronically to FOIA requesters.

Also, the Department of Justice has revised its fee schedule in regard to FOIA requests and the Parole Commission is revising its regulations to comply with the fee revisions.

Finally, the Parole Commission has removed references to "Regional Office" since the Commission no longer operates regional offices.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant rule within the meaning of Executive Order 12866, and the proposed rule has, accordingly, not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by States, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Proposed Amendment

Accordingly, the U.S. Parole Commission adopts the following amendment to 28 CFR part 2.

PART 2—PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.56 is amended by removing the words "regional office" from the title of the section; and by amending paragraph (a) by removing "prisoner's regional office file" and replacing with "subject's Parole Commission file".

3. Section 2.56 is further amended by adding a new paragraph (b)(1); by adding and reserving paragraph (b)(2); by amending paragraph (f) to replace "$8.00" with "$14.00"; by adding a new sentence to the end of paragraph (g); and by adding a new paragraph (i). These amendments read as follows:

§ 2.56 Disclosure of Parole Commission file.

* * * * *

(b) Scope of disclosure. * * *

(1) Requests that are only for a copy of the tape recording of a hearing will be processed ahead of requests seeking multiple documents from the Parole Commission file (priority processing). A requester may limit the scope of the request to a tape recording only (or to a tape recording and/or up to two documents) and thereby qualify for priority processing. For example, a request for the tape recording and the examiner's summary of a hearing qualifies for priority processing.

(2) [Reserved]

* * * * *

(g) Relation to other provisions. * * * Provisions of the Freedom of Information Act not specifically addressed by these regulations (including the reading room) are covered by 28 CFR, part 16, subpart A.

* * * * *

(i) Expedited processing of Requests. (1) The Commission will provide expedited processing of a request when a requester has demonstrated a compelling need as defined in this section and has presented a statement certified by such person to be true and correct to the best of such person's knowledge and belief. A requester may demonstrate "compelling need" by establishing one of the following:

(i) That failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged federal government activity.

(2) A determination as to whether to provide expedited processing shall be made within ten days after the date of the request. However, the fact of lawful imprisonment in a correctional facility or revocation of parole shall not be deemed to pose an imminent threat to the life or physical safety of an individual. The Commission shall process as soon as practicable any request for records to which it has granted expedited processing. An administrative appeal of a denial of expedited processing may be made to the Chairman of the Commission within thirty days from the date of notice denying expedited processing.

Dated: September 24, 1997.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 97–26057 Filed 10–1–97; 8:45 am]

BILLING CODE 4410–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 96–6A]

"Best Edition" of Published Copyrighted Works for the Collections of the Library of Congress

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: This rule amends the Library of Congress's Best Edition Statement concerning motion pictures deposited under Title 17, section 407, mandatory deposit, and section 408, registration deposit. The Statement sets out the criteria to be applied in determining the best edition for each of several types of motion picture materials which are listed in descending order of format preference in an Appendix to Copyright Office Regulations. The amendment removes the previously listed "most widely distributed gauge" as a selection factor of the "best edition" and adds new video formats to the prioritized list of deposit material preferences based on current industry practices with respect to motion picture media and formats.

EFFECTIVE DATE: November 3, 1997.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On November 15, 1996, the Copyright Office published in the **Federal Register**, a notice of proposed rulemaking on the revision of the best edition selection criteria for published motion pictures. (61 FR 54897). The Best Edition Statement criteria are published in 37 CFR 202.19, 202.20 and Appendix B to Part 202—"Best Edition of Published Copyrighted Works for the Collections of the Library of Congress." The criteria for "Motion Pictures" are set forth in 37 CFR 202, APP. B III.

Two comments to the proposed amendment were received. Both commenters expressed concern that, because of the proposed changes in the ranking preferences in the video formats, the Copyright Office would no longer accept ¾" videocassette copies for registration of published television productions but would request the higher quality Betacam or D–2 formats instead. The Office will generally continue its policy of accepting ¾" videocasettes for registration of television programs and series. Where, however, certain television programs are published in copies of a higher quality format, the Library of Congress reserves the right to request the better archival format for its collections. However, the Library will continue to be flexible in its requests and in working through the Copyright Office in granting special relief under 37 CFR 202.19 and 202.20 from the deposit requirements when compliance with the requirements would be unduly burdensome on the applicant.

The amended regulation eliminates the "gauge in which most widely distributed" as a criterion for the deposit format for either motion picture or video formats. The major objective in eliminating this criterion as a ranking preference for film prints is to discourage the deposit of ½" videocassettes where a better published format exists. As stated in the Notice of Proposed Rulemaking, the ½" gauge does not represent an acceptable archival quality medium for the Library's purposes.

The amended regulation changes the second category in the Best Edition Statement under III Motion Pictures from videotape to video format in order to reflect more accurately that the preferential list contains a format other than videotapes. The regulation also adds a second high quality format, "Betacam SP," to the prioritized list.

List of Subjects in 37 CFR Part 202

Claims, Copyright.

Final Regulations

In consideration of the foregoing, the Copyright Office amends part 202 of 37 CFR in the manner set forth below:

Appendix B to Part 202—"Best Edition" of Published Copyrighted Works for the Collections of the Library of Congress

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

2. In part 202, App. B, "III. Motion Pictures" is revised to read as follows:

* * * * *

III. Motion Pictures

Film medium is considered a better quality than any other medium. The formats under "film" and "video formats" are listed in descending order of preference:

A. Film
1. Preprint material with special arrangement.
2. 35mm positive prints.
3. 16mm positive prints.

B. Video Formats
1. One-inch open reel tape
2. Betacam SP
3. D–2
4. Betacam
5. Videodisc
6. Three-quarter inch cassette
7. One-half inch VHS cassette

* * * * *

Dated: September 25, 1997.

Nanette Petruzzelli,

Acting General Counsel.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–26061 Filed 10–1–97; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–8–1–7346; FRL–5899–4]

Approval and Promulgation of State Implementation Plans (SIP); Louisiana; Control of Volatile Organic Compound (VOC) Emissions; Reasonable Available Control Technology (RACT) Catch-Ups; Major Source Definition Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the EPA's approval action of Louisiana's RACT Catch-up SIP

revision, published on July 25, 1996. Several minor regulation citations and the date of the Governor's SIP submission letter were erroneously cited in the final approval. The EPA is correcting these citations in this action.

EFFECTIVE DATE: October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Eaton R. Weiler, (214) 665–2174

SUPPLEMENTARY INFORMATION:

I. Background

On July 25, 1996, EPA published a final approval of Louisiana's RACT Catch-up SIP revision (61 FR 38590). Several errors in the Incorporation by Reference (IBR) language were discovered subsequent to publication. The revisions to LAC 33:III.2103 included IBR to revise paragraphs G., G.1, and G.4. The correct citation should have been to revise paragraphs G., I, and I.4. The *Waste Gas Disposal* regulation was cited as Section 2216. The correct cite for *Waste Gas Disposal* is Section 2115. In addition, Section 2215's introductory paragraph, paragraphs H. and H.5 were unnecessarily adopted. The April 14, 1993, SIP submission further amended Section 2115 and alleviated the need to adopt revisions to 2115 from the December 21, 1992, submission. Finally, the second of the two SIP submissions from Louisiana was submitted to EPA from the Governor of Louisiana by letter dated April 14, 1993. The date of this letter was erroneously stated as April 13, 1993.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 19, 1997.

Jerry Clifford,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation of part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by revising paragraphs (c)(64) introductory text and (c)(64)(i) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(64) Revisions to the Louisiana SIP addressing VOC RACT catch-up requirements were submitted by the Governor of Louisiana by letters dated December 21, 1992, and April 14, 1993.

(i) Incorporation by reference.

(A) Revisions to LAC, Title 33, Environmental Quality, Part III. Air; Chapter 21. Control of Emissions of Organic Compounds, Subchapter A. General; section 2103. Storage of Volatile Organic Compounds, paragraphs G., I., I.4.; section 2109. Oil/Water Separation, paragraph B.4.; Subchapter B. Organic Solvents; section 2123. Organic Solvents, paragraph D.6.; Subchapter C. Vapor Degreasers; section 2125. Vapor Degreasers, paragraph D.; Subchapter F. Gasoline Handling; section 2131. Filling of Gasoline Storage Vessels, paragraphs D., D.1., D.3., G.; section 2135. Bulk Gasoline Terminals, paragraph A.; Subchapter H. Graphic Arts; section 2143. Graphic Arts (Printing) by Rotogravure and Flexographic Processes, paragraph B, as adopted by LDEQ on October 20, 1992.

(B) Revisions to LAC, Title 33, Environmental Quality, Part III. Air; Chapter 21. Control of Emissions of Organic Compounds, Subchapter A. General; section 2115. Waste Gas Disposal, introductory paragraph, paragraphs H., H:1., H.1.a through H.1.d, H.2, H.2.a, H.2.b, H.3, L., as adopted by LDEQ on March 20, 1993.

* * * * *

[FR Doc. 97–26181 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[NV029–0003A; FRL–5900–1]

Clean Air Act Reclassification; Nevada-Clark County Nonattainment Area; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document EPA is making a final finding that the Clark County, Nevada carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standard (NAAQS) under the Clean Air Act (CAA) after having received a one year extension from the mandated attainment date of December 31, 1995 for moderate nonattainment areas to December 31, 1996. This finding is based on EPA's review of monitored air quality data for compliance with the CO NAAQS. As a result of this finding, the Clark County, Nevada nonattainment area is reclassified as a serious CO nonattainment area by operation of law. The intended effect of the reclassification is to allow the State 18 months from the effective date of this action to submit a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practical but no later than December 31, 2000, the CAA attainment date for serious areas.

EFFECTIVE DATE: This action is effective on November 3, 1997.

FOR FURTHER INFORMATION CONTACT: Larry Biland, AIR–2, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1227.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classifications

The Clean Air Act Amendments of 1990 (CAA) were enacted on November 15, 1990. Under section 107(d)(1)(C) of the CAA, each carbon monoxide (CO)

area designated nonattainment prior to enactment of the 1990 Amendments, such as the Clark County area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the Act, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Clark County area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56694 (November 6, 1991).

States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit State implementation plans (SIPs) designed to attain the CO national ambient air quality standard (NAAQS) as expeditiously as practicable but no later than December 31, 1995.[1]

B. Attainment Date Extensions

If a state does not have the two consecutive years of clean data necessary to show attainment of the NAAQS, it may apply, under section 186(a)(4) of the CAA, for a one year attainment date extension. EPA may, in its discretion, grant such an extension if: (1) The state has complied with the requirements and commitments pertaining to the applicable implementation plan for the area; and (2) the area has measured no more than one exceedance of the CO NAAQS at any monitoring site in the nonattainment area in the year preceding the extension year. Under section 186(a)(4), EPA may grant up to two such extensions if these conditions have been met. EPA has granted Clark County one extension to December 31, 1996. (61 FR 575407, Wednesday, Nov. 6, 1996).

C. Effect of Reclassification

CO nonattainment areas reclassified as serious are required to submit, within 18 months of the area's reclassification, SIP revisions providing for attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. In addition, the State must submit a SIP revision that includes: (1) A forecast of vehicle miles traveled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Finally, upon the effective date of this reclassification, contingency measures in the moderate area plan for the Clark County, Nevada nonattainment area must be implemented.

D. Proposed Finding of Failure to Attain

On June 26, 1997 EPA proposed to find that the Clark County, Nevada carbon monoxide (CO) nonattainment area had failed to attain the CO NAAQS by the applicable attainment date. 62 FR 34419. This proposed finding was based on CO monitoring data collected at the East Charleston monitoring site during the years 1995 and 1996. These data demonstrate violations of the CO NAAQS in 1996. For the specific data considered by EPA in making this proposed finding, see 62 FR 34419.

E. Reclassification to a Serious Nonattainment Area

EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, of determining, within six months of the applicable attainment date, whether the Clark County area has attained the CO NAAQS. Under section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, it is reclassified as serious by operation of law. Pursuant to section 186(b)(2)(B) of the Act, EPA must publish a document in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified as serious by operation of law.

EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data.[2] Section 179(c)(1) of the Act states that the attainment determination must be based upon an area's "air quality as of the attainment date." Consequently, where an area has received an extension, EPA will determine whether an area's air quality has met the CO NAAQS by the required date, or in the case of Clark County by the extended date of December 31, 1996, based upon the most recent two years of air quality data.

EPA determines a CO nonattainment area's air quality status in accordance with 40 CFR 50.8 and EPA policy.[3] EPA has promulgated two NAAQS for CO: an 8-hour average concentration and a 1-hour average concentration. Because there were no violations of the 1-hour standard in the Clark County area, this document addresses only the air quality status of the Clark County area with respect to the 8-hour standard. The 8-hour CO NAAQS requires that not more than one non-overlapping 8-hour average in any consecutive two-year period per monitoring site can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and they are not considered exceedances). The second exceedance of the 8-hour CO NAAQS at a given monitoring site within the same two-year period constitutes a violation of the CO NAAQS.

II. Response to Comments on Proposed Finding

During the public comment period on EPA's proposed finding, EPA received no comments.

III. Today's Action

EPA is today taking final action to find that the Clark County CO nonattainment area did not attain the CO NAAQS by December 31, 1996, the CAA attainment date for moderate CO nonattainment areas. As a result of this finding, the Clark County CO nonattainment area is reclassified by operation of law as a serious CO nonattainment area as of the effective date of this document. This finding is based upon air quality data showing exceedances of the CO NAAQS during 1995 and 1996, resulting in two violations in 1996.

IV. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the

[1] The moderate area SIP requirements are set forth in section 187(a) of the Act and differ depending on whether the area's design value is below or above 12.7 ppm. The Clark County area has a design value below 12.7 ppm. 40 CFR 81.303.

[2] See generally memorandum from Sally L. Shaver, Director, Air Quality Strategies and Standards Division, EPA, to Regional Air Office Directors, entitled "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas," October 23, 1995 (Shaver memorandum).

[3] See memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations", June 18, 1990. See also Shaver memorandum.

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities".

The Agency has determined that the finding of failure to attain finalized today would result in none of the effects identified in section 3(f). Under section 186(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As discussed in section III of this document, findings of failure to attain and reclassification of nonattainment areas under section 186(b)(2) of the CAA do not in-and-of-themselves create any new requirements. Therefore, I certify that today's action does not have a significant impact on small entities.

VI. Unfunded Mandates Act

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local or tribal governments in the aggregate. EPA believes, as discussed above, that the finding of failure to attain and reclassification of the Clark County nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

VII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 18, 1997.

Harry Seraydarian,

Acting Regional Administrator.

[FR Doc. 97–26187 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[F–97–FLXF–FFFFF; FRL–5900–7]

RIN 2050–AE24

Revisions to Criteria for Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On July 29, 1997, the U.S. Environmental Protection Agency (EPA) published a direct final rule (62 FR 40708) which established regulations to implement the Land Disposal Program Flexibility Act of 1996 (LDPFA). These regulations provide additional flexibility to Approved States for any municipal solid waste landfill (MSWLF) that receives 20 tons or less of municipal solid waste per day. The additional flexibility applies to alternative frequencies of daily cover, frequencies of methane monitoring, and infiltration layers for final cover. As stated in the preamble to the direct final rule, provisions contained in the Revised Criteria for Municipal Solid Waste Landfills (56 FR 51104; October 9, 1991 and 61 FR 60327; November 27, 1996) provide the additional flexibility for demonstrating financial assurance contemplated by Congress in the LDPFA. The additional flexibility will allow the owners and operators of small MSWLFs the opportunity to reduce their costs of MSWLF operation while still protecting human health and the environment. The EPA has not received an adverse comment objecting to this rule as written. Therefore, this rule will go into effect as scheduled.

DATES: The effective date of the direct final rule published at 62 FR 40708 remains October 27, 1997.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Mr. Allen J. Geswein, U. S. Environmental Protection Agency, Office of Solid Waste (5306W), 401 M Street, SW, Washington, D.C. 20460, 703 308–7261, [geswein.allen@epamail.epa.gov].

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 97–25879 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50625B; FRL–5744–6]

RIN 2070–AB27

Revocation of Significant New Use Rules for Certain Acrylate Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking significant new use rules (SNURs) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 95 substances based on new toxicity data. Based on the new data the Agency no longer finds that activities not described in the TSCA section 5(e) consent order may result in significant changes in human exposure.

DATES: This rule is effective November 3, 1997.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** referenced for each substance, OPPTS–50581A, October 31, 1990 (55 FR 46001); OPPTS–50582, August 15, 1990 (55 FR 33303); OPPTS–50583, August 9, 1990 (55 FR 32414); OPPTS–50585, September 28, 1990 (55 FR 39899); OPPTS–50587A, June 5, 1991 (56 FR 25988); OPPTS–50591, April 25, 1991 (56 FR 19238); OPPTS–50592, August 13, 1991 (56 FR 40212); OPPTS–50601, September 23, 1992 (57 FR 44070); OPPTS–50603, July 20, 1992 (57 FR 31969); OPPTS–50608, June 8, 1993 (58 FR 32236); OPPTS–50612, October 4, 1993 (58 FR 51681); OPPTS–50613, October 4, 1993 (58 FR 51706); OPPTS–50615, May 27, 1994 (59 FR 27483); and OPPTS–50620, March 1, 1995 (60 FR 11042) (FRL–4868–4); EPA issued a SNUR establishing significant new uses for certain acrylate substances. Because of additional data EPA has received for this chemical class, EPA is revoking these SNURs.

I. Background

The Agency proposed the revocation of these SNURs in the **Federal Register** of June 2, 1997 (62 FR 29688) (FRL–5595–1). The background and reasons for the revocation of the SNURs including a description of the test data results are set forth in the preamble to the proposed revocation. The comment period closed on August 14, 1997. In addition, one of the SNURs that does not pertain to an acrylate substance (40 CFR 721.7780) was inadvertently included in the proposed revocation. As the test data which is the basis for these revocations does not apply to the substance which is described in 40 CFR 721.7780 the substance will not be included in the final revocation, and EPA will take no further action until new information is received for that substance.

The Agency received four comments concerning the proposed revocation. Three comments supported revocation of the SNURs and urged final revocation as quickly as possible.

One commenter objected to revoking any SNURs for substances containing Bisphenol A; this was based on the demonstrated estrogenic properties of Bisphenol A and its potential effects at low exposure levels. EPA shares the commenter's concerns for estrogenic effects of Bisphenol A and structurally similar chemicals. The potential estrogenic effects of Bisphenol A and structurally similar chemicals is one of the toxicity concerns EPA considers when reviewing new chemicals under section 5(a) of TSCA. EPA recently required a premanufacture notice submitter to submit an estrogen screening study for their PMN substance under section 5(e)(1)(A)(ii)(II) of TSCA. The screening study demonstrated no estrogenic activity.

EPA will continue to require testing where appropriate, for substances that may demonstrate estrogenic effects, under section 5(e) of TSCA. Given the current lack of data and the uncertainty in selecting the appropriate tests to screen for estrogenic effects, the EPA at this time cannot draw any general conclusions about the potential estrogenic effects of substances of significantly higher molecular weight than Bisphenol A.

The substances cited by the commenter are all polymeric materials that utilize Bisphenol A as one of the starting materials. However, EPA's new chemical review and regulatory findings under section 5(a) of TSCA focus on the new chemical substance itself, rather than its starting components. In addition, the types of exposures cited by the commenter, leaching of Bisphenol A from food packaging or dental sealants, are not regulated by TSCA but come instead under the jurisdiction of the Federal Food, Drug, and Cosmetic Act.

Based on the acrylate test data cited in the proposal and the comments received, EPA is still unable to conclude that the activities defined as "significant new uses" in these SNURS may result in significant changes in human exposure. Therefore, EPA is revoking these rules.

II. Rationale for Revocation of the Rule

During review of the PMNs submitted for the chemical substances that are the subject of this revocation, EPA concluded that regulation was warranted based on the available information that indicated activities not described in the section 5(e) consent order might result in significant changes in human exposure. Based on these findings, SNURs were promulgated.

EPA will revoke the section 5(e) consent orders that are the bases for these SNURs because EPA has determined that it can no longer support a finding that activities not described in the section 5(e) consent order may result in significant changes in human exposure. The revocation of SNUR provisions for these substances designated herein is consistent with this finding.

In light of the above, EPA is revoking the SNUR provisions for these chemical substances. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process these substances. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket number OPPTS–50625B (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). Since this final rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears on June 2, 1997 (62 FR 29684) (FRL–5597–1), and was provided to the Chief Counsel for

Advocacy of the Small Business Administration.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

Dated: September 24, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.325, 721.370, 721.390, 721.400, 721.415, 721.460, 721.470, 721.490, 721.1175, 721.1575, 721.2050, 721.2170, 721.2650, 721.2750, 721.2930, 721.3028, 721.3120, 721.3640, 721.3870, 721.4020, 721.4220, 721.4400, 721.4780, 721.4790, 721.4800, 721.5705, 721.5910, 721.6500, 721.6580, 721.6640, 721.6700, 721.6720, 721.6740, 721.6760, 721.6780, 721.6840, 721.6880, 721.6940, 721.6960, 721.7040, 721.7080, 721.7100, 721.7140, 721.7180, 721.7240, 721.7300, 721.7320, 721.7340, 721.7370, 721.7400, 721.7420, 721.7460, 721.7540, 721.7560, 721.7580, 721.7660, 721.7680, 721.7740, 721.7760, 721.8075, 721.8265, 721.8275, 721.8290, 721.8300, 721.8325, 721.8335, 721.8375, 721.8400, 721.8425, 721.8475, 721.8525, 721.8550, 721.8575, 721.8600, 721.8650, 721.9240, 721.9320, 721.9360, 721.9420, 721.9510, 721.9525, 721.9870, 721.9940, and 721.9975 [Removed]

2. By removing §§ 721.325, 721.370, 721.390, 721.400, 721.415, 721.460, 721.470, 721.490, 721.1175, 721.1575, 721.2050, 721.2170, 721.2650, 721.2750, 721.2930, 721.3028, 721.3120, 721.3640, 721.3870, 721.4020, 721.4220, 721.4400, 721.4780, 721.4790, 721.4800, 721.5705, 721.5910, 721.6500, 721.6580, 721.6640, 721.6700, 721.6720, 721.6740, 721.6760, 721.6780, 721.6840, 721.6880, 721.6940, 721.6960, 721.7040, 721.7080, 721.7100, 721.7140, 721.7180, 721.7240, 721.7300, 721.7320, 721.7340, 721.7370, 721.7400, 721.7420, 721.7460, 721.7540, 721.7560, 721.7580, 721.7660, 721.7680, 721.7740, 721.7760, 721.8075, 721.8265, 721.8275, 721.8290, 721.8300, 721.8325, 721.8335, 721.8375, 721.8400, 721.8425, 721.8475, 721.8525, 721.8550, 721.8575, 721.8600, 721.8650, 721.9240, 721.9320, 721.9360, 721.9420, 721.9510, 721.9525, 721.9870, 721.9940, and 721.9975.

[FR Doc. 97–26189 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 082697C]

Atlantic Tuna Fisheries; Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Catch limit adjustment; inseason transfer.

SUMMARY: NMFS adjusts the October-December subquota for the General category Atlantic bluefin tuna (ABT) fishery by transferring 13 mt from the Reserve, 3 mt from the Incidental Longline North quota, and 54 mt from the Incidental Longline South quota, for a revised General category subquota of 141 mt for October-December. In addition, NMFS adjusts the General category effort control schedule for October. These actions are being taken to extend scientific data collection on several size classes of ABT while preventing overharvest of the adjusted subquotas for the affected fishing categories, and to ensure maximum utilization of the quota while maintaining a fair distribution of fishing opportunities. The daily catch limit for large medium and giant ABT for vessels fishing under the General category quota is reduced to zero for one day only, Wednesday October 1, effectively delaying the start of the General category October fishery, at one fish per day, until October 2, 1997.

DATES: Effective October 1, 1997, 00:01 a.m. until 11:59 p.m. EST for bag limit adjustment; effective October 1, 1997, until December 31, 1997, or until the effective date of the closure, which will be published in the **Federal Register**, for the inseason transfer.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301-713-2347, or Pat Scida, 508-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 et seq.) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Under the implementing regulations at 50 CFR 285.22(f), the Assistant Administrator for Fisheries, NOAA (AA), has the authority to make adjustments to quotas involving transfers between categories after considering certain factors. The AA is authorized to make adjustments to quotas involving transfers between categories if, during a single year quota period, it is determined, based on landing statistics, present year catch rates, effort, and other available information, that any category, is not likely to take its entire quota as previously allocated for that year.

Given that determination, the AA may transfer inseason any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock, (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made, (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season, and (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

General Category Quota Adjustment

Implementing regulations for the Atlantic tuna fisheries at §. 285.22 provide for a quota of 633 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the General category quota during calendar year 1997. The General category ABT quota is further subdivided into time period subquotas to provide for broad temporal and geographic distribution of scientific data collection and fishing opportunities. Approximately 71 metric tons remain available for the October-December General category fishery, including a 10 mt set aside for the traditional fall New York Bight fishery. After considering the previously cited factors for making transfers between categories, the AA has determined that 13 mt of the Inseason Reserve of 33 mt should be transferred to the General category. In addition, the AA has determined that 3 mt of the remaining Incidental Longline North quota of approximately 9 mt, and 54 mt of the remaining Incidental Longline South quota of approximately 59 mt should be transferred to the General category. Thus, the October-December General category quota is set at 141 mt, including 10 mt reserved for the New York Bight fishery.

Once the General category quota for October - December time period has been attained, the fishery will be closed. The announcement of the closure will be filed with the Office of the Federal Register, stating the effective date of closure, and further communicated through the Highly Migratory Species (HMS) Fax Network, the HMS Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the HMS Information Line to check the status of the fishery before leaving for a fishing trip. The phone numbers for the HMS Information Line are (301) 713-1279 and (508) 281-9305. Information regarding the Atlantic tuna fisheries is also available through Nextlink Interactive, Inc., at (888) USA-TUNA.

General Category Reopening

Implementing regulations for the Atlantic tuna fisheries at § 285.24 provide the AA with authority to adjust the catch limit for the General category to effect restricted fishing days. Such effort controls allow maximum utilization of the quota while maintaining a fair distribution of fishing opportunities. In the final rule that dealt with General category effort controls filed earlier this year (62 FR 38939, July 21, 1997), NMFS established restricted-fishing days reflecting days mutually agreed upon by associations representing General category fishermen and dealers. These days included Wednesdays from Mid-July through September to correspond to market closure days in Japan, the primary market for ABT. In order to ensure maximum utilization of the quota while maintaining a fair distribution of fishing opportunities, the daily catch limit of large medium and giant ABT for the General category is reduced to zero for one day only, Wednesday October 1, effectively delaying the start of the General category October fishery, at one fish per day, until October 2, 1997.

Classification

This action is taken under 50 CFR 285.22 and 50 CFR 285.24 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 et seq.

Dated: September 26, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26103 Filed 9–29–97; 12:39 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 082697A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from trawl catcher/processors to trawl catcher vessels in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 1997 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 29, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Administrator, Alaska Region, NMFS, has determined that trawl catcher/processors will not be able to harvest 2,000 metric tons (mt) of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(B).

Therefore, in accordance with § 679.20(a)(7)(ii)(A), NMFS is apportioning the projected unused amount, 2,000 mt, of Pacific cod from trawl catcher/processors to trawl catcher vessels in the BSAI.

Classification

All closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only disrupt the FMP's objective of providing a portion of the Pacific cod TAC for trawl catcher vessels in the BSAI. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is taken under 50 CFR 679.20, and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 26, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26149 Filed 9–29–97; 11:44 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 191
Thursday, October 2, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket No. RM97–8–000]

Information and Requests

September 25, 1997.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations governing information and requests to reflect the requirements and specifications of the Electronic Freedom of Information Act Amendments of 1996. The Commission also proposes to correct minor editorial inconsistencies in its regulations.

DATES: Written comments must be received by the Commission by November 3, 1997.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Charles A. Beamon, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0780.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

CIPS is also available on the Internet. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: http://www.ferc.fed.us and select the Bulletin Board System. Read instructions on the next page, select FedWorld Dialup/Telnet. A screen will appear presenting you with several options, select option 1. There will be a welcome message from FedWorld and a log on prompt. Enter your user ID and password (if you already have an account). To establish an account, type the word NEW and answer the questions which follow. Upon establishing an account, the FedWorld Main Menu will appear. From the Main Menu, type /go ferc.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

I. Introduction

This proposed rule amends 18 CFR part 388 to implement the provisions of the Electronic Freedom of Information Act Amendments of 1996 (the Act).[1] The Act amended the Freedom of Information Act (FOIA)[2] by imposing a number of new requirements governing the public availability of information, including electronic information. The proposed rule also clarifies minor discrepancies in part 388.

II. Background

The underlying goal of the Act is to encourage the electronic distribution of information.[3] The Act expands FOIA's definition of a record to include information maintained in electronic format; requires agencies to accommodate requesters' reasonable format preferences; and to conduct reasonable agency searches for electronic records. It also provides for the electronic availability of all "public reading room" materials created as of November 1, 1996.[4]

In addition, the Act requires an agency to place in its public reading room certain documents that are subject to repeated requests. Agencies must maintain a public index of such documents.[5] The Act grants agencies 20 working days to process FOIA requests instead of the current 10 days, allows extensions beyond the former 10-day deadline in limited circumstances, and expressly gives requesters the opportunity to avoid extensions by limiting the scope of their requests.[6]

Moreover, the Act allows multitrack processing of FOIA requests. Multitrack processing creates a fast track for requests capable of resolution with a limited amount of time and effort, and slower tracks for requests that demand a more intensive effort.[7] In addition to optional multitrack processing, the Act mandates expedited treatment for requesters who (1) demonstrate an imminent threat to life or safety, or (2) are engaged in disseminating information; and demonstrate an urgency to inform the public concerning Federal Government activity.[8]

The Act requires agencies to promulgate regulations to implement expedited processing. This proposed rule responds to the Act's mandate regarding expedited processing, and other changes wrought by the Act. It also makes several minor grammatical and technical changes for the sake of clarity.

[1] Pub. L. No. 104–231, 110 Stat. 3048 (1996).
[2] 5 U.S.C. 552.
[3] H.R. Rep. No. 104–795, at 11 (1996).
[4] Pub. L. No. 104–231, Secs. 3, 4 and 5, 110 Stat. 3048, 3049–50, 5 U.S.C. 552 (a)(2), (a)(3)(B), (a)(3)(C) and (f)(2), as amended.
[5] Pub. L. No. 104–231, Sec. 4, 110 Stat. 3048, 3049, 5 U.S.C. 552(a)(2)(D) and (5), as amended.
[6] Pub. L. No. 104–231, Secs. 7 and 8, 110 Stat. 3048, 3050–52, 5 U.S.C. 552(a)(6)(A)(1) and (6)(B), as amended, effective October 2, 1997.
[7] Pub. L. No. 104–231, Sec. 7, 110 Stat. 3048, 3050–51, 5 U.S.C. 552(a)(6)(D), as amended, effective October 2, 1997.
[8] *See* Pub. L. No. 104–231, Sec. 8, 110 Stat. 3048, 3051–52, 5 U.S.C. 552(a)(6)(E), as amended, effective October 2, 1997; and H.R. Rep., *supra* note 3, at 26.

III. Discussion

Part 388—Information and Requests

Authority

The proposed rule revises the Authority for Part 388 to reflect that the FOIA, 5 U.S.C. 552, should be cited "as amended."

Sections 388.101–388.105

No changes.

Section 388.106

This section is revised to expand the categories of information that are available in the Commission's Public Reference Room, and to inform the public of the electronic availability of information created after November 1, 1996 (proposed para. (a)(2), and (b)). In addition to making electronic records available, information will, of course, continue to remain available through "in person" visits or written requests.

The new categories of information to be available are copies of records released under FOIA that are likely to be requested again, an index of such records, and reference materials and guides to further enhance the public's access to Commission information. The proposed definition of the term "Commission correspondence" is amended to include information in electronic format, consistent with Commission practice (proposed para. (c)(1)).

The section is also revised to explicitly include statements of policy and interpretations which have been adopted by the Commission and are not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public (proposed paras. (b)(19) and (b)(20)). These information categories were required to be made available under FOIA even before the 1996 amendments.

Section 388.107

The proposed language corrects a typographical error. The term "natural defense" in paragraph (a)(1) is changed to "national defense."

Section 388.108

The proposed revisions to this section implement multitrack processing, as allowed by the Act, and expedited processing, as required by the Act. Multitrack processing establishes a fast track for requests requiring a limited amount of time and effort, and slower tracks for requests requiring a more intensive effort. The Commission proposes to adopt a three part multitracking system that should increase efficiency (proposed para. (b)(1)). Under the proposed approach, the Director, Office of External Affairs, will place a newly received request into one of three tracks for processing: track one—records that are readily identifiable and were previously cleared for release (including those capable of multiple requests and placed in the Public Reference Room); track two—records that are readily identifiable, or are not voluminous, and require limited review; and track three—complex and/or voluminous records requiring a significant search and/or review.

Although the Commission has sometimes employed multitracking in the past, its regular use should be advantageous to the public and the Commission as simple requests are sometimes backlogged because of earlier-filed complex requests. The proposed rule specifies that each track will be processed on a first in, first out basis. Requesters are permitted to modify their requests to obtain processing on a faster track.

Pursuant to the Act, the proposed rule changes the time for processing requests from 10 to 20 working days (proposed para. (c)(1));[9] and clarifies the Commission's obligation to specify the information that is denied under a request, including the volume of withheld materials and the extent and location of redactions in partially released materials (proposed para. (c)(3)).

The proposed rule makes expedited processing available where the requester demonstrates a compelling need: (1) Due to an imminent threat to an individual's life or physical safety, or (2) in the case of requesters who are primarily engaged in disseminating information, where the requester demonstrates an urgency to inform the public concerning Federal Government activity (proposed para. (d)(1)). The proposed rule emphasizes that a request for expedited processing must be supported with credible documentation and a statement certified to be true and correct (proposed para. (d)(2)). The proposed rule states that only the compelling circumstances indicated will qualify a requester for expedited processing. A denial of expedited processing will be subject to appeal. Accordingly, the appeal procedure for denial of records is amended to include denial of expedited treatment (proposed para. (e)).

For purposes of this proposed rule, a "requester primarily engaged in the dissemination of information" does not include an individual or organization engaged only incidentally in the dissemination of information.[10] The requester's main business must be the dissemination of information.[11] Thus, a bona fide member of the news media would likely qualify. An organization that periodically distributes information to its members would not likely qualify.

In addition to meeting the dissemination requirement, the requester must credibly demonstrate that expedited processing is needed to avoid a likely, significant adverse consequence to a recognized interest.[12] The public's right to know, standing alone, is not sufficient to satisfy this standard.[13]

Under the proposed rule, the Director, Office of External Affairs, will rule on a request for expedited processing within 10 calendar days from the date the request is received (proposed para. (d)(3)). A denial of expedited processing will be explained, and the requester will be provided notice of administrative appeal rights.

Other proposed revisions to the section include a formal codification of the Commission's practice of not processing a request until after fee issues have been resolved, unless the requester has provided a written statement agreeing to pay some or all applicable fees pending the resolution of fee issues (proposed para. (a)(5)). The purpose of this rule is to avoid an expenditure of Commission resources to process a request before the requester has agreed to pay all applicable processing fees. The proposed rule also makes minor revisions in terminology in the interest of clarity.

Section 388.109

Paragraph (b)(2)(iii), as currently drafted, charges some non-commercial requesters for review time. The proposed revision to this section deletes charges for review time from non-commercial requesters, consistent with 5 U.S.C. § 552(a)(4), the applicable Office of Management and Budget's (OMB) Guidelines and Fee Schedule for FOIA, and actual Commission practice. Similarly, proposed revisions to paragraph (b)(2)(iv) remove ordinary postage fees, consistent with OMB guidelines and Commission practice. Requesters remain responsible for special delivery fees such as express mail provided in accordance with their specifications.

Paragraph (b)(2)(vii), as currently drafted, authorizes the Commission to

[9] This time limit does not apply to requests for expedited processing, which are explained below.
[10] H.R. Rep., *supra* note 3, at 26.
[11] *Id.*
[12] *Id.*
[13] *Id.*

aggregate multiple requests on related topics that are subdivided to avoid an assessment of fees. As allowed by the Act, proposed paragraph (b)(2)(vii) expands the instances where the Commission may aggregate one or more requests for joint processing. The proposed language allows aggregation anytime the Commission reasonably believes that such multiple requests constitute a single request, and notes that aggregated requests may qualify for an extension of time under § 388.110(b). The proposed revisions further clarify that the Commission has no obligation to process a request under § 388.108 where there is no assurance or agreement of payment.

Section 388.110

Pursuant to the Act, the proposed rule makes the administrative appeal rights in paragraph (a)(1) applicable to a denial of expedited processing. Proposed paragraph (a)(2) provides that such appeals will be considered as expeditiously as possible within the 20 working day period specified for appeals, and that a requester denied expedited processing in an appeal will be notified of judicial review provisions.

Proposed paragraph (b)(2) allows an extension of time not to exceed 10 working days beyond the standard deadlines for processing initial requests and appeals, as permitted by the Act. As also provided by the Act, the proposed rule specifies that an extension in excess of 10 working days may be available but only where the requester is given the opportunity to limit the scope of the request to allow processing within 20 working days, or to arrange an alternative time frame.

Proposed paragraph (b)(3) specifies that requests aggregated under § 388.109(b)(2)(vii) qualify for an extension of time when they satisfy the unusual circumstances specified in this section.

Section 388.111

No changes.

Section 388.112

The proposed language merely reflects a correction of typographical errors. Paragraph (c)(1)'s references to paragraphs (b)(2) and (b)(3) are corrected to (b)(1)(ii) and (b)(1)(iii), respectively.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) [14] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The proposed changes improve the public's access to information, and impose additional obligations on the Commission to ensure the availability of such information. By comparison, the public's obligations would not significantly increase.

V. Environmental Statement

Issuance of this proposed rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[15] This proposed rule falls within the regulatory exemption which specifies that information gathering, analysis, and dissemination are not major federal actions that have a significant effect on the human environment.[16] Thus, neither an environmental impact statement nor an environmental assessment is required.

VI. Information Collection Statement

OMB regulations require that OMB approve certain information collection requirements imposed by agency rule.[17] This proposed rule contains no information reporting requirements, and is not subject to OMB approval.

VII. Written Comment Procedure

The Commission invites interested persons to submit written comments or other information concerning this proposed rulemaking. All comments in response to this notice should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should refer to Docket No. RM97–8–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before November 3, 1997.

Lists of Subjects in 18 CFR Part 388

Freedom of Information; Public Reference Materials.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 388, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 388—INFORMATION AND REQUESTS

1. The authority citation for Part 388 is revised to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

2. In § 388.106, paragraph (a) is redesignated as (a)(1); paragraph (a)(2) is added; paragraph (b) introductory text is revised; paragraph (b)(19) is redesignated as (b)(23); new paragraphs (b)(19) through (b)(22) are added; and paragraph (c)(1) is revised to read as follows:

§ 388.106 Requests for Commission records available in the Public Reference Room.

(a)(1) * * *

(2) Documents created on or after November 1, 1996, or earlier in some instances, also are electronically available on the Commission's World Wide Web site, www.ferc.fed.us; the Commission Issuance Posting System (CIPS) (an electronic bulletin board); or the Records Information Management Systems (RIMS). These may be accessed in person using a personal computer in the Public Reference Room, or by using a personal computer with a modem at a remote location.

(b) The public records of the Commission that are available for inspection and copying upon request in the Public Reference Room, or are otherwise available under paragraph (a)(2) of this section, include:

* * * * *

(19) Statements of policy and interpretations which have been adopted by the Commission and are not published in the **Federal Register**;

(20) Administrative staff manuals and instructions to staff that affect a member of the public;

(21)(i) Copies of all records released under § 388.108, which, because of their nature and subject, the Director of the Office of External Affairs has determined are likely to be requested again, and

(ii) An index of the records so designated;

(22) Reference materials and guides for requesting Commission records as required by 5 U.S.C. 552(g), as amended; and

(23) Commission correspondence relating to the foregoing.

(c) * * *

(1) Commission correspondence includes written communications and enclosures, in hard copy or electronic format, received from others outside the staff and intended for the Commission or sent to others outside the staff and signed by the Chairman, a Commissioner, the Secretary, the Executive Director, or other authorized official, except those which are personal.

* * * * *

§ 388.107 [Amended]

3. In § 388.107(a)(1), remove the word "natural" and add, in its place, the word "national."

4. In § 388.108, paragraphs (a)(1) introductory text, (a)(1)(iii) and (a)(2) through (a)(4) are revised; new paragraph (a)(5) is added; paragraphs (b) and (c) are redesignated as (c) and (e) respectively and revised, and new paragraphs (b) and (d) are added, to read as follows:

§ 388.108 Requests for Commission records not available through the Public Reference Room (FOIA requests).

(a)(1) Except as provided in paragraph (a)(2), of this section, a person may request access to Commission records, including records maintained in electronic format, that are not available through the Public Reference Room, by using the following procedures:

* * * * *

(iii) The request must identify the fee category of the request, consistent with the provisions of § 388.109(b)(1) and (2).

(2) A request that fails to provide the identification required in paragraph (a)(1)(iii) of this section will not be processed until the Director, Office of External Affairs, can ascertain the requester's fee category.

(3) A request for records received by the Commission not addressed and marked as indicated in paragraph (a)(1)(i) of this section will be so addressed and marked by Commission personnel as soon as it is properly identified, and forwarded immediately to the Director, Office of External Affairs.

(4) Requests made pursuant to this section will be considered to be received upon actual receipt by the Director, Office of External Affairs, unless otherwise indicated in paragraph (a)(5) of this section.

(5) Except for the purpose of making a determination regarding expedited processing under paragraph (d)(3) of this section, no request will be deemed received while there is an unresolved fee waiver issue under § 388.109(b)(6), unless the requester has provided a written statement agreeing to pay some or all fees pending the outcome of the waiver question.

(b)(1) *Multitrack processing.* Upon receipt of a request, the Director, Office of External Affairs, will place the request in one of three tracks for processing:

(i) Track One—records that are readily identifiable and were previously cleared for release (including those subject to multiple requests and placed in the Public Reference Room);

(ii) Track Two—records that are readily identifiable, and require limited review; and

(iii) Track Three—complex and/or voluminous records requiring a significant search and/or review.

(2) Each track specified in paragraph (b)(1) of this section will be processed on a first in, first out basis, where practicable. A requester may modify a request to obtain processing on a faster track.

(c) (1) *Timing of response.* Except as provided in paragraphs (c)(4) and (d)(3) of this section, within 20 working days after receipt of the request for agency records, the Director, Office of External Affairs, will comply with the request or deny the request in whole or in part, and will notify the requester of the determination, of the reasons for a decision to withhold any part of a requested document, and of the right of the requester to appeal any adverse determination in writing to the General Counsel or General Counsel's designee.

(2) The Director, Office of External Affairs, will attempt to provide records in the form or format requested, where feasible, but will not provide more than one copy of any record to a requester.

(3) Any determination by the Director, Office of External Affairs, to withhold information will, where feasible, indicate the approximate volume of information withheld, and will indicate, for partially-released materials, where redactions have been made, unless to do so would harm an interest protected by a FOIA exemption.

(4) The time limit for the initial determination required by paragraph (c)(1) of this section may be extended as set forth in § 388.110(b).

(d)(1) *Expedited processing.* A requester may seek expedited processing on the basis of a compelling need. Expedited processing will be granted if the requester demonstrates that:

(i) Failure to obtain the records on an expedited basis can reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or

(ii) In the case of a requester primarily engaged in the dissemination of information, there is an urgency to inform the public concerning Federal Government activity.

(2) A request for expedited processing under this section must be supported with detailed credible documentation, including a statement certified to be true and correct to the requester's best knowledge and belief.

(3) The Director, Office of External Affairs, will decide within 10 calendar days of receipt of the request whether it is eligible for expedited processing. The Director will notify the requester of the reasons for denial of expedited processing and of the right of the requester to appeal to the General Counsel or General Counsel's designee.

(e) The procedure for appeal of denial of a request for Commission records, or denial of a request for expedited processing, is set forth in § 388.110.

5. In § 388.109, the first sentence of paragraph (b)(2)(iii), and paragraphs(b)(2)(iv), (b)(2)(vii), and (b)(5)(ii) are revised; paragraph (b)(5)(iii) is removed; paragraph (b)(6) is redesignated as paragraph (c) and revised, and paragraphs (b)(7) and (b)(8)(i) and (ii) are redesignated as (d) and (e)(1) and (2) respectively, to read as follows:

§ 388.109 Fees for records requests.

* * * * *

(b) * * *

(2) * * *

(iii) For a request not described in paragraphs (b)(2)(i) or (ii) of this section the Commission will charge the employee's hourly pay rate plus 16 percent for benefits for document search time and 15 cents per page for duplication. * * *

(iv) The Director, Office of External Affairs, will normally provide documents by regular mail, with postage prepaid by the Commission. However, the requester may authorize special delivery, such as express mail, at the requester's own expense.

* * * * *

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Commission reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, or otherwise reasonably believes that two or more requests constitute a single request, the Commission may aggregate any such requests and charge the requester accordingly. The Commission will not aggregate multiple requests on unrelated subjects from a requester. Aggregated requests may qualify for an extension of time under § 388.110(b).

* * * * *

[14] 5 U.S.C. 601–602.

[15] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. Regs. (Preambles 1986–90) ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR part 380).

[16] 18 CFR 380.4(a)(5).

[17] 5 CFR part 1320.

(5) * * *

(ii) A requester has previously failed to pay a fee charged in a timely fashion. The Commission will require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Commission will begin to process a new request or a pending request from that requester. When the Commission requires advance payment or an agreement to pay under this paragraph, or under § 388.108(a)(5), the administrative time limits prescribed in this part will begin only after the Commission has received the required payments, or agreements.

(c) *Fee reduction or waiver.* (1) Any fee described in this section may be reduced or waived if the requester demonstrates that disclosure of the information sought is:

(i) In the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Not primarily in the commercial interest of the requester.

(2) The Commission will consider the following criteria to determine the public interest standard:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information will contribute to public understanding; and

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or facilities.

(3) The Commission will consider the following criteria to determine the commercial interest of the requester:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) This request for fee reduction or waiver must accompany the initial request for records and will be decided under the same procedures used for record requests.

* * * * *

6. In section 388.110 the section heading, the first sentence of paragraph (a)(1), paragraph (a)(2), and paragraph (b) are revised to read as follows:

§ 388.110 Procedure for appeal of denial of requests for Commission records not publicly available or not available through the Public Reference Room, denial of requests for fee waiver or reduction, and denial of requests for expedited processing.

(a) (1) A person whose request for records, request for fee waiver or reduction, or request for expedited processing is denied in whole or part may appeal that determination to the General Counsel or General Counsel's designee within 45 days of the determination. * * *

(2) The General Counsel or the General Counsel's designee will make a determination with respect to any appeal within 20 working days after the receipt of such appeal. An appeal of the denial of expedited processing will be considered as expeditiously as possible within the 20 working day period. If, on appeal, the denial of the request for records, fee reduction, or expedited processing is upheld in whole or in part, the General Counsel or the General Counsel's designee will notify the person making the appeal of the provisions for judicial review of that determination.

(b)(1) *Extension of time.* In unusual circumstances, the time limits prescribed for making the initial determination pursuant to § 388.108 and for deciding an appeal pursuant to this section may be extended by up to 10 working days, by the Secretary, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

(2) The extension permitted by paragraph (b)(1) of this section may be made longer than 10 working days when the Commission notifies the requester within the initial response time that the request cannot be processed in the specified time, and the requester is provided an opportunity to limit the scope of the request to allow processing within 20 working days; or to arrange with the Commission an alternative time frame.

(3) Two or more requests aggregated into a single request under § 388.109(b)(2)(vii) may qualify for an extension of time if the requests, as aggregated, otherwise satisfy the unusual circumstances specified in this section.

(4) *Unusual circumstances* means:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the requests;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

7. In § 388.112, paragraph(c)(1)(i)'s reference to "paragraph (b)(2)" is revised to read "paragraph (b)(1)(ii)," and paragraph (c)(1)(ii)'s reference to "paragraph (b)(3)" is revised to read "paragraph (b)(1)(iii)."

[FR Doc. 97–26065 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC39

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a provision of the December 10, 1996, Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) Regarding Outer Continental Shelf (OCS) Pipelines. Under this MOU, the two departments jointly regulate OCS pipelines. As specified in the MOU, MMS regulations would pertain to all OCS oil or gas pipelines located upstream of the points at which operating responsibility for the pipelines transfer from a producing operator to a transporting operator.

DATES: MMS will consider all comments we receive by December 1, 1997. We will begin reviewing comments then and may not fully consider comments we receive after December 1, 1997.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4020; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Carl W. Anderson, Operations Analysis Branch, at (703) 787–1608; e-mail Carl_Anderson@mms.gov.

SUPPLEMENTARY INFORMATION:

Background

MMS, through delegations from the Secretary of the Interior, has authority to promulgate and enforce regulations for the promotion of safe operations, protection of the environment, and conservation of the natural resources of the OCS, as that area is defined in the OCS Lands Act (43 U.S.C. 1331 *et seq.*). The scope of this authority includes the pipeline transportation of mineral production and the approval and granting of rights-of-way for the construction of pipelines and associated facilities on the OCS. MMS also administers the following laws as they relate to OCS pipelines: (1) the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) for oil and gas production measurement, and (2) the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA) and implemented under Executive Order 12777. (Under a February 3, 1994, MOU to implement OPA, DOI, DOT, and the U.S. Environmental Protection Agency divided their respective responsibilities for oil spill prevention and response according to the definition of "coast line" contained in the Submerged Lands Act, 43 U.S.C. 1301(c) (59 FR 9494–9495).) Nothing in this proposed regulation will affect MMS' authority under either FOGRMA or OPA.

Under an MOU between DOI and DOT dated May 6, 1976, MMS regulated oil and gas pipelines located upstream of the outlet flange of each facility where hydrocarbons were first produced or where produced hydrocarbons were first separated, dehydrated or otherwise processed, whichever facility was farther upstream. The Departments agreed to change this regulatory boundary with the signing of the December 10, 1996, MOU. The 1996 MOU was the result of negotiations that began in the summer of 1993 and included a high degree of participation from the regulated industry. MMS and DOT's Research and Special Programs Administration (RSPA) solicited public comments on a draft MOU through a joint MMS and DOT **Federal Register** Notice of May 24, 1995 (60 FR 27546–27549). The Notice announced a public meeting at the MMS Gulf of Mexico OCS regional office in New Orleans, Louisiana, on August 1, 1995, to discuss the proposal. Over 70 people attended the meeting which generated over 100 pages of transcribed comments from natural gas and petroleum trade organizations, natural gas and oil exploration and production companies, transmission companies, offshore construction companies, and industry consultants. A transcript of this meeting is available through the agency representative listed in the **FOR FURTHER INFORMATION** section of this notice. Twenty-three individuals and organizations submitted written comments on the **Federal Register** notice.

In May 1996, MMS and RSPA met with a joint industry workgroup representing OCS oil and natural gas producers and transmission pipeline operators led by the American Petroleum Institute. (The Interstate Natural Gas Association of America also participated on the workgroup.) The industry workgroup proposed that the agencies rely upon individual operators of production and transportation facilities to identify the boundaries of their respective facilities, since producers and transporters can best make such decisions based on the operating characteristics peculiar to each facility. The two agencies agreed with the industry proposal. Under the proposal, MMS would have primary regulatory responsibility for producer-operated facilities and pipelines on the OCS, while RSPA would have primary regulatory responsibility for transporter-operated pipelines and associated pumping or compressor facilities. Producing operators are companies which are engaged in the extraction and processing of hydrocarbons on the OCS. Transporting operators are companies which are engaged in the transportation of those hydrocarbons.

The Purpose of This Proposed Rule

The purpose of this proposed rule is to require OCS producing and transporting operators to designate the specific points on their pipelines where operating responsibility transfers from a producing operator to an adjoining transporting operator. The rule would amend 30 CFR Part 250, Subpart J—Pipelines and Pipeline Rights-of-Way, section 250.150, "General Requirements," § 250.151, "Definitions," and § 250.157, "Applications." Operators would have until 60 days after the date the rule becomes final to identify the specific points at which operating responsibility transfers. In most cases, the specific transfer points would be easily identifiable either because of specific valves or flanges where the adjoining operations connect, or because of differences in paint colors that adjoining operators use to protect and maintain pipeline coatings or surfaces. For those instances in which the transfer points would not be identifiable by a durable marking, each operator would have until 180 days after the final rule becomes effective to mark the transfer points. (The 180-day period would give operators time to mark the transfer points during customary maintenance routines.) The operator would be required to durably mark each transfer point directly on the pipeline (usually at a valve or flange). If it were not practicable to durably mark a transfer point, and the transfer point were located above water, then the operator would be required to depict the transfer point on a schematic located on the facility. Some transfer points could be located subsea. In such cases, the operators also would be required to identify the transfer points on schematics which would be provided to MMS upon request.

For those instances in which adjoining operators could not agree on a transfer point, MMS and RSPA's Office of Pipeline Safety (OPS) would make a joint determination of the boundary.

MMS and OPS could, through their enforcement agencies and in consultation with the affected parties, agree to exceptions to the general boundary description (operations transfer point) on a facility-by-facility or area-by-area basis. Operators also could petition, by letter, MMS and OPS for exceptions to the general boundary description.

For existing lease term pipelines, the current designated operator of the associated lease(s) would have the operating responsibility for the pipeline(s). For right-of-way pipelines, MMS would assume that the current right-of-way grant holder had the operating responsibility, unless the right-of-way grant holder informed MMS otherwise within 60 days after the effective date of this rule. (There are up to 160 designated operators of leases and 70 operators of transportation pipelines on the OCS.)

Applications for new right-of-way pipelines would be required to include an identification of the operator and a boundary demarcation point on the flow schematic submitted in accordance with 30 CFR 250.157(a)(2).

A pipeline segment originally operated under DOT regulations but later transferred under MMS regulatory responsibility as a result of this proposed rulemaking could continue to be operated under DOT requirements, unless the MMS Regional Supervisor determined, based on an MMS safety assessment, that a pipeline segment or component is unsafe. The Regional Supervisor would then notify the operator that MMS regulations apply to that segment or component.

Under 30 CFR 250.3, the MMS Supervisor for Field Operations may approve alternative techniques, procedures, equipment, or activities an operator proposed if such techniques, procedures, equipment, or activities afford a degree of protection, safety, or performance equal to or better than that intended to be achieved by MMS regulations.

Various laws enacted since 1976 have contributed to ambiguity concerning MMS' and OPS' respective responsibilities concerning the approximately 20,000 miles of active OCS oil and gas pipelines and production facilities that were regulated under the May 6, 1976, MOU. The most notable legislative changes included the 1978 OCS Lands Act Amendments; the Hazardous Liquid Pipeline Safety Act of 1979; the OPA of 1990; and the Pipeline Safety Act amendments of 1990, 1992, 1995, and 1996.

The December 1996 MOU would redefine MMS–OPS regulatory boundary from the OCS facility where hydrocarbons are *first* produced, separated, dehydrated, or otherwise processed to the point at which operating responsibility for the pipeline transfers from a producing operator to a transporting operator. The MOU would place, to the greatest extent practicable, producer-operated pipelines under DOI regulation and transporter-operated pipelines under DOT regulation.

In its 1994 report "*Improving the Safety of Marine Pipelines*," the National Academy of Sciences Marine Board recommended: "To make better use of inspection resources and help integrate enforcement of MMS and OPS marine pipeline safety regulations, the committee recommends that enforcement of OPS regulations offshore be performed by MMS, through an interagency agreement or redefinition of the memorandum of understanding that defines the jurisdictional division between OPS and MMS * * *." In response to this recommendation, the 1996 MOU provides for DOI to act as an agent for the DOT in identifying and reporting potential violations of DOT regulations at platforms on the OCS. As an agent, DOI may inspect all DOT-regulated pipeline facilities on production platforms during DOI inspections. DOI may also perform coordinated DOI/DOT inspections of pipeline facilities on DOT-regulated platforms. The inspections may include reviewing any operating or maintenance records or reports that are located at the inspected OCS platform facility.

Executive Order (E.O.) 12866

This is not a significant rule under E.O. 12866 and does not require review by the Office of Management and Budget (OMB). An analysis of the proposed rule indicates that the direct costs to industry for the entire proposed rule total approximately $360,000 for the first year, and that in succeeding years, the cost of the rule to industry would not likely exceed $255,000.

Regulatory Flexibility Act

DOI has determined that this rule will not have a significant economic effect on a substantial number of small entities. While this rule would affect a substantial number of "small entities," the economic effects of the rule would not be significant. There are many companies on the OCS that are "small businesses" as defined by the Small Business Administration. However, the technology necessary for conducting offshore oil and gas exploration and development activities is very complex and costly, and most entities that engage in offshore activities have considerable financial resources disproportionate to their numbers of employees and well beyond what would normally be considered "small business."

DOI's analysis of the economic impacts indicates that direct costs to industry for the entire proposed rule total approximately $360,000 for the first year, and in succeeding years, the cost of the rule to industry would not likely exceed $255,000 annually. These annual costs would not persist for long, because all pipelines converted to MMS regulation eventually would come into compliance with MMS safety valve requirements. There are up to 160 designated operators of leases and 70 operators of transportation pipelines on the OCS (both large and small operators), and the economic impacts on the oil and gas production and transportation companies directly affected would be minor. Not all operators affected would be small businesses, but much of their modification costs may be paid to offshore service contractors who may be classified as small businesses. Operators having to install new automatic shutdown valves as a result of transferring under MMS regulations would sustain the greatest economic impact from this rule. It is impractical, however, to determine in advance which operators would be affected, because the operators themselves will determine the transfer points between producers and transporters.

To the extent that this rule might eventually cause some of the relatively larger OCS operators to make modifications to their pipelines, it may have a minor beneficial effect of increasing demand for the services and equipment of smaller service companies and manufacturers. This rule would not impose any new restrictions on small pipeline service companies or manufacturers, nor will it cause their business practices to change.

Paperwork Reduction Act

This proposed rule contains a collection of information which we have submitted to the OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden imposed by this proposed rule. Submit your comments to the Office of Information and Regulatory Affairs, OMB; Attention: Desk Officer for the Department of the Interior (OMB control number 1010–XXXX); Washington, DC 20503. Send a copy of your comments to the Rules Processing Team; Mail Stop 4020; 381 Elden Street; Herndon, Virginia 20170–4817. You may obtain a copy of the supporting statement for the collection of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within 30 days of publication of this notice. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

The title of this collection of information is "Implementation of Memorandum of Understanding Between the Departments of the Interior and Transportation."

The collection of information in the proposed rule consists of (1) reviewing existing pipeline maps, conferring and agreeing with operators of adjoining transportation pipeline segments concerning the locations of specific transfer points, and either marking directly on each pipeline or depicting on a schematic the specific point on each pipeline where operating responsibility transfers from the producing operator to a transporting operator; (2) identifying the operator of right-of-way pipelines if different from the grant holder; and (3) allowing for petitions for exceptions to general operations transfer points. As stated above under the "Intent of the Proposed Rule" section, specific transfer points will be easily identifiable in most cases, either because of specific valves or flanges where the adjoining operations connect, or because of differences in paint that adjoining operators use to protect and maintain pipeline coatings or surfaces.

The requirement to respond is mandatory. MMS uses the information to determine the demarcation where pipelines are subject to MMS design, construction, operation, and maintenance requirements, as distinguished from similar OPS requirements.

The regulated community consists of up to 160 Federal OCS oil and gas lease designated operators and 70 transportation pipeline operators. There are approximately 3,000 points where operating responsibility for pipelines transfers from a producer to a transporter. MMS assumes that about 2,400 (representing 80 percent) of these transfer points are already marked. Therefore, this rulemaking would require a one-time identification and marking of about 600 points where operating responsibility for pipelines transfers from a producer to a transporter. For the 2,400 transfer points that are clearly marked, there would be no information burden. The 600 unmarked transfer points, on the other hand, would require widely-varying times for marking depending on whether a painted line or a schematic was used to mark the transfer point.

The public reporting burden for this proposed information collection requirement is estimated to average 5 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the required marking. The average annualized burden over a 3-year period would be 1,051 hours.

MMS will summarize written responses to this notice and address them in the final rule. All comments will become a matter of public record.

1. MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or record keepers resulting from the collection of information. MMS needs your comments on this item. Your response should split the cost estimate into two components: (a) Total capital and startup cost, and (b) annual operation, maintenance, and purchase of services. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

Takings Implication Assessment

DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Unfunded Mandates Reform Act of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments, nor would it impose significant regulatory costs on the private sector. Anticipated costs to the private sector will be far below the $100 million threshold for any year that was established by the Unfunded Mandates Reform Act.

E.O. 12988

DOI has certified to OMB that this proposed regulation meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

National Environmental Policy Act

Under 516 DM 6, Appendix 10.4, "issuance and/or modification of regulations" is considered a categorically excluded action causing no significant effects on the environment and, therefore, does not require preparation of an environmental assessment or impact statement. DOI completed a Categorical Exclusion Review for this action on April 22, 1997, and concluded: "The proposed rulemaking does not represent an exception to the established criteria for categorical exclusion."

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: September 22, 1997.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.150, paragraph (c) is revised to read as follows:

§ 250.150 General requirements.

* * * * *

(c)(1) Department of the Interior (DOI) pipelines, as defined in § 250.151 of this subpart, must meet the requirements for design, construction, operation, maintenance, and abandonment contained in §§ 250.150 through 250.158 of this subpart.

(2) A pipeline right-of-way grant holder must identify in writing to the Regional Supervisor the operator of any pipeline located on its right-of-way if the operator is different from the right-of-way grant holder.

(3) A producing operator must identify on all existing pipelines located on its lease or right-of-way the specific points at which operating responsibility transfers to a transporting operator.

(i) If the transfer points are not identifiable by a durable marking, each producing operator must mark all above-water transfer points by (insert date 180 days after the final rule is published). The operators of new pipelines also must durably mark all above-water transfer points directly on each pipeline.

(ii) If it is not practical to durably mark a transfer point, and the transfer point is located above water, then the operator must depict the transfer point on a schematic located on the facility.

(iii) If a transfer point is located subsea, then the operator also must identify the transfer point on a schematic. The operator must provide the schematic to MMS upon request.

(iv) If a producing and an adjoining transporting operator cannot agree on a transfer point by the date specified in paragraph (c)(3)(i) of this section, the MMS Regional Supervisor and the Department of Transportation (DOT) Office of Pipeline Safety (OPS) Regional Director may jointly determine the transfer point.

(4) Operators may petition, by letter, the MMS Regional Supervisor for exceptions to the general operations transfer point description on a facility-by-facility or an area-by-area basis. The Regional Supervisor, in consultation with the OPS Regional Director and affected parties, may grant such exceptions.

(5) Pipeline segments designed and constructed under DOT regulations before (*INSERT THE EFFECTIVE DATE OF THE FINAL RULE*), may continue to operate under DOT design and construction requirements until significant modifications or repairs are made to those segments. After (*INSERT THE EFFECTIVE DATE OF THE FINAL RULE*), MMS operational and maintenance requirements will apply to those segments.

* * * * *

3. In § 250.151, a definition for the term "DOI pipelines" is added in alphabetical order as follows:

§ 250.151 Definitions.

* * * * *

DOI pipelines are those pipelines extending upstream from each point on the OCS at which operating responsibility transfers from a producing operator to a transporting operator.

* * * * *

4. Section 250.157 is amended by revising the title, revising paragraph (a) introductory text, and adding a new sentence at the end of paragraph (a)(2) to read as follows:

§ 250.157 What to include in applications.

(a) Applications to install a lease term pipeline or for a pipeline right-of-way grant must be submitted in quadruplicate to the Regional Supervisor. Right-of-way grant applications must include an identification of the operator of the pipeline. Each application must include the following:

* * * * *

(2) * * * The schematic must indicate the point on the OCS at which operating responsibility transfers from a producing operator to a transporting operator.

* * * * *

[FR Doc. 97–26073 Filed 10–1–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

RIN 1510–AA56

Management of Federal Agency Disbursements: Hearing

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Change of date of public hearing.

SUMMARY: This document changes the date of the New York City public hearing on proposed regulations relating to the government's use of electronic funds transfer to make all Federal payments, with the exception of tax refunds, after January 1, 1999.

DATES: The public hearing in New York City is being held on Monday, October 20, 1997 beginning at 10:00 a.m. Requests to testify at the hearing and outlines of testimony must be received by Friday, October 10, 1997.

ADDRESSES: The public hearing in New York City will be held at the U.S. Alexander Hamilton Customs House, 1 Bowling Green, New York, New York.

FOR FURTHER INFORMATION CONTACT: Regarding the hearing, contact Martha Thomas-Mitchell at (202) 874–6757 or at Internet address martha.thomas-mitchell@fms.sprint.com. For general information on the proposed regulation, contact Robyn Schulhof at (202) 874–6754 or Diana Shevlin at (202) 874–7032.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking appearing in the **Federal Register** on September 16, 1997 (62 FR 48714) announced that a public hearing would be held in New York City on October 27, 1997 at the U.S. Alexander Hamilton Customs House, 1 Bowling Green, New York, New York, and that requests to speak at the hearing were to be received 14 days prior. The date of the hearing has changed as well as the due date for requests to testify at the hearing. The location of the hearing remains the same as originally published.

Dated: September 29, 1997.

Michael T. Smokovich,

Deputy Commissioner.

[FR Doc. 97–26197 Filed 9–30–97; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zones, Chesapeake Bay, Point Lookout to Cedar Point, Maryland; Correction

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Proposed rule; correction and extension of comment period.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** on September 8, 1997, which concerns the Navy's request to amend the danger zone regulations. In the preamble the size of a restricted area is incorrectly expressed in feet. It should be expressed in yards. In addition, the comment period for this proposed rule which is scheduled to end on October 8,.1997, is extended until 31, 1997, to coincide with the comment period of a similar public notice issued by the Army Corps of Engineers Baltimore District.

DATES: Comments should be submitted by October 31, 1997.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Elinsky at (410) 962–4503 or Mr. Ralph Eppard at (202) 761–1783.

Correction

In the proposed rule published in the **Federal Register** on September 8, 1997 (62 FR 47166–47167, make the following corrections in the Summary section. On page 47166, in the center column, in the third sentence correct "600 feet" to read "600 yards", and in the following sentence correct "1,000 feet" to read "1,000 yards".

In the **SUPPLEMENTARY INFORMATION** section, correct the third sentence to read "The Navy also proposed to enlarge the existing restricting area at the Hannibal Target from a water area with a radius of 600 yards to a radius of 1,000 yards, and entry into the area is prohibited at all times."

Dated; September 25, 1997.

Ralph T. Eppard,

Liaison Officer to the Federal Register, U.S. Army Corps of Engineers.

[FR Doc. 97–26154 Filed 10–1–97; 8:45 am]

BILLING CODE 3710–92–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 96–6 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for comments.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment certain settlement proposals for the adjustment of the royalty rates for the noncommercial educational broadcasting compulsory license.

DATES: Comments and notices of intent to participate are due by November 3, 1997.

ADDRESSES: If sent by mail, an original and five copies of comments, and Notices of Intent to Participate, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand delivered, an original and five copies of comments, and Notices of Intent to Participate, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telfax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five year intervals. The last adjustment of the terms and rates for the section 118 license occurred in 1992, making 1997 a window year for the adjustment of these terms and rates.

On October 18, 1996, the Library published a notice in the **Federal Register** requesting comments from interested parties as to the need for a CARP proceeding to adjust the section 118 terms and rates. 61 FR 54459 (Oct. 18, 1996). After a protracted negotiation period, certain parties identified the need for a CARP proceeding, and the Library has announced the precontroversy discovery period and the initiation of the CARP. Order in Docket No. 96–6 CARP NCBRA (July 30, 1997).

Most of the rates and terms adopted for the section 118 license are for the use of works of copyright owners represented by one or more of the performing rights societies or organizations. Although not all copyright owners belong to such organizations, their works are nonetheless subject to usage under the section 118 license. It is, therefore, necessary to adopt royalty terms and rates for those "unaffiliated" copyright owners whose identity is not known, and whose interests are not currently represented in this proceeding.

Adjusting the Terms and Rates for Unaffiliated Copyright Owners

Section 251.63 of 37 CFR prescribes the procedure for adopting terms and rates for unaffiliated copyright owners under section 118. Because the identity of such copyright owners is not known, copyright users are unable to negotiate with them to reach private agreements; and their interests would not be represented if the matter were submitted to a CARP. Section 251.63 of the rules, therefore, allows copyright users to submit their proposals for adjustment of the terms and rates for the section 118 license to the Librarian of Congress. The Librarian then submits the proposals to a public notice and comment proceeding, whereby unaffiliated copyright owners who would be affected by the proposals are given the opportunity to challenge them. The unaffiliated copyright owners must submit their challenges by a date certain and must be willing to participate in the CARP proceeding adjusting the section 118 terms and rates. If no challenges are received, or if challenges are received by unaffiliated copyright owners who will not participate in a CARP proceeding, then the Librarian will adopt the proposals of the copyright users.

Accordingly, unaffiliated copyright owners must submit their written challenges to the Librarian of Congress no later than close of business on November 3, 1997. The content of the written challenge should describe the unaffiliated copyright owner's interest in this proceeding, which proposal described below that the owner finds objectionable, and the reasons for the challenge.

In addition, unaffiliated copyright owners submitting written challenges must also submit accompanying notices of intent to participate. Failure to submit a notice of intent to participate will preclude an unaffiliated copyright owner from participating in this proceeding and consideration of his or her written challenge. Those unaffiliated copyright owners who do submit notices of intent to participate will be contacted by the Librarian as to when their written direct cases are due. It is the intention of the Librarian to include such owners in the CARP proceeding that shall commence on December 31, 1997.

Proposals for Adjustment of Terms and Rates

Three parties, representing certain copyright users of works in connection with noncommercial broadcasting, filed proposals for adjustment of terms and rates.

1. National Religious Broadcasters Music Licensing Committee

The National Religious Broadcasters Music Licensing Committee ("NRBMLC") proposes a rate for the public performance of copyrighted published nondramatic musical compositions not in the repertory of the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or SESAC by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and not affiliated with National Public Radio. The royalty rate for such performances from 1993–1997 is $1 per performance, and is established in 37 CFR 253.6(c)(4). NRBMLC proposes that the rate remain the same for the period 1998–2002.

In addition, NRBMLC proposes a rate for the recording of nondramatic performances and displays of musical works on and for the radio and television programs of public broadcasting entities, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities.

The rates for such uses, other than in a National Public Radio produced radio program, for the 1993–1997 period are:

Feature composition.....$.70
Feature (concert) (per half hour).....$1.45
Background composition.....$.35

These rates are codified at 37 CFR 253.7(b)(4). NRBMLC proposes that the rates for the 1998–2002 period remain the same.

2. Public Broadcasting Service and National Public Radio

The Public Broadcasting Service (PBS) and National Public Radio (NPR) submitted a joint proposal to adjust the terms and rates for copyrighted works of unaffiliated copyright owners used by them for the 1998–2002 period. For adjustment of rates, PBS and NPR propose a one-time upward adjustment to the relevant rates in the amount of 6.2 percent. This one-time adjustment equals the average of the increases that would result from annual 2 percent increases over a five-year period.

With respect to terms, PBS and NPR propose that the current terms for the use of unaffiliated copyright owners' works by PBS and NPR remain unchanged, except to clarify that the proposed rates would not apply to works the rights to which are licensed by ASCAP, BMI, SESAC, The Harry Fox Agency, or the National Music Publishers Association. Unaffiliated copyright owners should consult 37 CFR part 253 for a description of the current terms.

The proposed changes in rates of PBS and NPR are as follows:

(a) Section 253.4 of the rules establishes the rates for performance of nondramatic musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d). PBS and NPR propose that the changes in these rates for the 1998–2002 period be as follows:

(i) For the performance of such a work in a feature presentation of PBS, $211.53, up from the current rate of $199.18;

(ii) For the performance of such a work as background or theme music in a PBS program, $53.59, up from the current rate of $50.46;

(iii) For the performance of such work in a feature presentation of a station of PBS, $18.08, up from the current rate of $17.02;

(iv) For the performance of such a work as background or theme music in a program of a station of PBS, $3.81, up from the current rate of $3.59;

(v) For the performance of such a work in a feature presentation of NPR, $21.44, up from the current rate of $20.19;

(vi) For the performance of such a work as background or theme music in an NPR program, $5.20, up from the current rate of $4.90;

(vii) For the performance of such a work in a feature presentation of a station of NPR, $1.52, up from the current rate of $1.43; and

(viii) For the performance of such a work as background or theme music in a program of a station of NPR, $.54, up from the current rate of $.51.

(b) Section 253.7 of the rules establishes the rates for the recording of nondramatic performances and displays of musical works on and for the radio and television programs of public broadcasting entities, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. PBS and NPR propose that the changes in these rates be as follows:

(i) For the use of a musical work in a PBS-distributed program, , the royalty fees for the 1998–2002 period would be calculated by multiplying the following per composition rates by the number of different compositions in that PBS-distributed program:

Feature—$106.04, up from the current rate of $99.85
Concert feature (per minute)—$1.84, up from the current rate of $29.98
Background—$53.59, up from the current rate of $50.46

Theme

Single program or first series program—$53.59, up from the current rate of $50.46
Other series program—$21.75, up from the current rate of $20.48

(ii) For such uses other than in a PBS-distributed television program, the royalty fee for the 1998–2002 period would be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

Feature—$8.76, up from the current rate of $8.25
Concert feature (per minute)—$2.30, up from the current rate of $2.17
Background—$3.81, up from the current rate of $3.59

Theme

Single program or first series program—$3.81, up from the current rate of $3.59
Other series program—$1.52, up from the current rate of $1.43

(iii) For uses in a musical work in a NPR program, the royalty fee for the 1998–2002 period would be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR:

Feature—$11.48, up from the current rate of $10.81
Concert feature (per half hour)—$16.85, up from the current rate of $15.87
Background—$5.75, up from the current rate of $5.41

Theme

Single program or first series program—$5.75, up from the current rate of $5.41
Other series program—$2.29, up from the current rate of $2.16

(iv) For such uses other than in a NPR-produced radio program:

Feature—$.74, up from the current rate of $.70
Feature (concert) (per half hour)—$1.54, up from the current rate of $1.45
Background—$.37, up from the current rate of $.35

(c) Section 253.8 of the rules establishes rates and terms for the use of pictorial, graphic, and sculptural works by public broadcasting entities. The rates and terms include the making of reproductions described in 17 U.S.C. 118(d)(3). PBS and NPR propose that the change in rates for the 1998–2002 period be as follows:

(i) For such uses in a PBS-distributed program:

Featured display—$64.78, up from the current rate of $61.00
Background and montage display—$31.59, up from the current rate of $29.75
Program identification or thematic use.—$127.71, up from the current rate of $120.25
Display of an art reproduction—$41.95, up from the current rate of $39.50

(ii) For such uses in other than PBS-distributed programs:

Featured display—$41.95, up from the current rate of $39.50
Background and montage display—$21.51, up from the current rate of $20.25
Program identification or thematic use—$85.76, up from the current rate of $80.75
Display of an art reproduction—$21.51, up from the current rate of $20.25

Rate Adjustment for Section 253.7(b)(4)

Review of the rate proposals of NRBMLC and PBS and NPR reveals that there is a conflict between their proposed rates for the recording of nondramatic performances and displays of musical works on and for the radio and television programs of public broadcasting entities, other than in a National Public Radio produced program, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. 37 CFR 253.7(b)(4). NRBMLC proposes that the rates remain the same as the current rates, while PBS and NPR propose an increase of 6.2 percent. To resolve this conflict, the Librarian is announcing that he will adopt the proposal of PBS and NPR, described above, unless NRBMLC or some other party challenges the proposal, in which case the matter will be resolved by the CARP in this proceeding.

Marilyn J. Kretsinger,
Assistant General Counsel.

[FR Doc. 97–26062 Filed 10–1–97; 8:45 am]
BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–5901–5]

Guidelines Establishing Test Procedures for the Analysis of Oil and Grease and Total Petroleum Hydrocarbons; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment.

SUMMARY: On January 23, 1996 (61 FR 1730), EPA proposed to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under section 304(h) of the Clean Water Act to replace existing gravimetric test procedures for the determination of the conventional pollutant "oil and grease" (40 CFR 401.16) with EPA Method 1664, as part of EPA's effort to reduce dependency on the use of chlorofluorocarbons (CFCs). EPA also proposed to allow use of Method 1664 for determination of total petroleum hydrocarbons (TPH). The comment period on the proposal ended on March 25, 1996. On May 24, 1996 (61 FR 26149), EPA reopened the comment period until July 23, 1996. EPA received analytical data during both comment periods and following the close of the reopened comment period, and desires to consider these data in its rulemaking. EPA therefore is making available for public review and comment these additional analytical data which the Agency is considering in establishing the final regulation approving use of Method 1664.

DATES: Written comments on this notice must be submitted on or before November 3, 1997. All comments must be postmarked or delivered by hand by November 3, 1997.

ADDRESSES: Send written comments on this notice to "Method 1664—Notice of Data Availability," Comment Clerk, Water Docket MC–4101, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Commenters are requested to submit one copy of any references cited in their comments and an original and two copies of their written comments and enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

A copy of the data received by the Agency during and pursuant to the comment period for the proposed rule is available for review at EPA's Water Docket, 401 M Street, S.W., Washington, D.C. 20460. For access to the Docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. Eastern Standard Time (EST) for an appointment.

The complete text of this **Federal Register** notice and Method 1664 may be viewed or downloaded on the Internet at http://www.epa.gov/OST.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Honaker, Engineering and Analysis Division (4303), USEPA Office of Science and Technology, 401 M Street, S.W., Washington, D.C., 20460, or call (202) 260–2272.

SUPPLEMENTARY INFORMATION: On January 23, 1996 (61 FR 1730), EPA proposed to replace currently approved gravimetric test procedures with EPA Method 1664: N-Hexane Extractable Material (HEM) and Silica Gel Treated N-Hexane Extractable Material (SGT–HEM) by Extraction and Gravimetry (Oil and Grease and Total Petroleum Hydrocarbons) for determination of "oil and grease". Oil and grease is a conventional pollutant as defined in section 304(a) of the Clean Water Act (CWA) and at 40 CFR 401.16. Method 1664 also was proposed for determination of total petroleum hydrocarbons (TPH), a non-conventional pollutant regulated in many National Pollution Discharge Elimination System permits. The proposed rule is necessary to meet compliance monitoring requirements of CWA and the chlorofluorocarbon phaseout requirements of the Clean Air Act Amendments. Method 1664 was proposed under the authority of Sections 301, 304(h), and 501(a) of CWA and the authority of sections 604, 606, and 613 of the 1990 Clean Air Act Amendments. In the proposed rule, the Agency requested comments, analysis, and additional information on the replacement of Freon-113 with n-hexane, the utility of Method 1664 for monitoring, the quality control (QC) acceptance criteria in Method 1664, the method detection limit (MDL) and minimum level (ML), the performance-based option criteria, and the six-month implementation scenario. In response to this request, the Agency received comments that provided additional analytical data pertaining to Method 1664.

The comment period on the proposal ended on March 25, 1996. On May 24, 1996 (61 FR 26149), EPA reopened the comment period until July 23, 1996. EPA received analytical data during both comment periods and following the close of the reopened comment period. The Agency desires to consider these additional data in formulating the final rule for the use of Method 1664.

This notice makes available for public review and comment all additional analytical data received by the Agency since the publication of the proposed rule. The additional data consist of results from preparation blank analyses, solid-phase extraction analyses, comparison of n-hexane-based extraction and freon-based extraction, and MDL and ML data.

EPA is soliciting comment on the additional analytical data only. Further comments on the proposal (61 FR 1730) will not be accepted. These additional data neither represent any modification of the proposed rule, nor indicate a change in the Agency's interpretation of existing requirements. The data represent additional information which the Agency is considering in establishing the final regulation approving the use of Method 1664.

Dated: September 22, 1997.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 97–26178 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS-62128C; FRL–5749–1]

RIN 2070–AC64

Lead; Requirements for Lead-Based Paint Activities in Public Buildings, Commercial Buildings and Steel Structures; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the comment period on an August 22, 1997 document which announced a public meeting and requested written comments on the development of training and certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in public buildings (except child-occupied facilities), commercial buildings, and steel structures.

DATES: Written comments should be submitted to EPA by November 3, 1997.

ADDRESSES: Comments must bear the docket control number "OPPT–62128B." All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: For more specific or technical information contact: Ellie Clark, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–3402, Fax: 202–260–0770, e-mail: clark.ellie@epamail.epa.gov.

For general information or to obtain copies of the August 22, 1997 document contact: National Lead Information Clearinghouse (NLIC), 1025 Connecticut Avenue, NW., Suite 1200, Washington, DC 20036-5405 or toll free at 1–800–424–5323. Fax: 202–659–1192, e-mail: leadctr@nsc.org, Internet site: http://www.nsc.org/ehc/lead.htm.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 22, 1997 (62 FR 44621) (FRL–5740–7), EPA announced a public meeting scheduled for September 3, 1997, in Washington, DC to take public comments and suggestions from a cross-section of stakeholders on the development of training and certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in public buildings (except child-occupied facilities), commercial buildings, and steel structures. The notice stated that EPA specifically wanted additional public comment on the following subjects: (1) Coverage of lead-based paint activities, in particular clarification of the term "deleading"; (2) the interface between OSHA's lead standards and EPA's TSCA section 402 regulations; (3) distinguishing among various building and structure types; and (4) sources of information for EPA's regulations. EPA discussed each issue in detail and requested comments and additional information on specific items. In the document, EPA provided a 30–day comment period following the public meeting. In response to requests by interested parties, EPA is extending the comment period by 30 days. Comments must now be received by November 3, 1997.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number "OPPTS–62128B" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–62128B." Electronic comments on this action may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and notification requirements.

Dated: September 26, 1997.

Vanessa Vu,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–26188 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45 and 97–160, DA 97–2050]

Federal State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs

Released September 24, 1997.

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; notice of meetings.

SUMMARY: Each Wednesday, the Common Carrier Bureau holds meetings with the proponents of the Hatfield Model and the Benchmark Cost Proxy Model to solicit the model proponents' individual views on the models' current features, the relative merits of the two models, and any changes that the proponents make in the two models. These meetings are open to the public. There will be no meeting on Wednesday, October 1, 1997. Instead, a meeting will be held on Tuesday, September 30, 1997. The hour and place will remain unchanged (1:00 pm to 4:00 pm in the conference room of the Universal Service Branch, 2100 M Street, N.W., Eighth Floor). Subsequent meetings will be held each Wednesday until further notice.

DATES: The next meeting will be held on September 30, 1997, 1:00 to 4:00 p.m. Subsequent meetings will be held each Wednesday until further notice.

ADDRESSES: The meetings will be held at the Universal Service Branch, Federal Communications Commission, 2100 M St., NW., Eighth Floor Conference Room, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Astrid Carlson, Universal Service Branch, Accounting & Audits Division, Common Carrier Bureau (202) 418–7369.

SUPPLEMENTARY INFORMATION:

October 1, 1997 Meeting on Forward–Looking Cost Mechanism For Universal Service Support For Non–Rural Carriers Rescheduled to September 30, 1997

In the Universal Service Order released May 8, 1997, the Commission, acting on the recommendation of the Federal-State Joint Board, concluded that universal service support for non-rural carriers should be determined by subtracting a benchmark revenue amount from the forward-looking economic cost of providing the supported services.[1] The Commission concluded that it should continue to review two cost models, the Hatfield Model and the Benchmark Cost Proxy Model (BCPM).[2] The Commission further concluded that it would select the platform design features[3] of a forward-looking economic cost mechanism by December 31, 1997, and select a complete mechanism, including input values, by August 1998.[4] In a *Further Notice of Proposed Rulemaking* (*FNPRM*) in this proceeding, the Commission stated that it would consider a hybrid mechanism, combining the best features of both models, and might also "study alternative algorithms and approaches that could be submitted by parties other than model sponsors or that could be generated internally by Commission staff."[5]

As part of the process of considering mechanisms for computing the forward-looking economic cost of providing the supported services in rural, insular, and high cost areas, the Common Carrier Bureau and the staff of the Federal-State Joint Board on Universal Service hold meetings each Wednesday with the proponents of the Hatfield Model and the Benchmark Cost Proxy Model (BCPM) to solicit the model proponents' individual views on the models' current features, the relative mertis of the two models, and any changes that the proponents may make in the two models.

These meetings are open to the public. There will be no meeting on Wednesday, October 1, 1997. Instead, a meeting will be held on Tuesday, September 30, 1997. The hour and the place will remain unchanged (1 pm to 4 pm in the conference room of the Universal Service Branch, 2100 M Street, NW, Eighth Floor). Subsequent meetings will be held each Wednesday until further notice.

For further information about these workshops, contact Chuck Keller, (202) 418–7380, ckeller@fcc.gov.

Federal Communications Commission.

Timothy A. Peterson,

Deputy Chief, Division.

[FR Doc. 97–25791 Filed 9–30–97; 10:36 am]

BILLING CODE 6712–01–P

[1] Federal-State Joint Board on Universal Service, CC Docket No. 96–45, *Report and Order*, FCC 97–157, (released May 8, 1997) 62 FR 32862 (June 17, 1997) (*Order*) at paras. 199–201.

[2] The proponents of the Hatfield Model are AT&T and MCI. The proponents of BCPM are US West, Sprint, and BellSouth. *See Order* at Appendix J for a description of the Hatfield Model and BCPM.

[3] In the context of a forward-looking economic cost mechanism, the "platform" refers to the fixed algorithms and assumptions built into a cost model, as contrasted with user-specified "inputs" into a cost model. *See* Federal-State Joint Board on Universal Service, Forward Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket Nos. 96–45 and 97–160, Further Notice of Proposed Rulemaking, FCC 97–256 (released July 18, 1997) 62 FR 42457 (August 7, 1997) (*FNPRM*) at paras. 17–18.

[4] *Order* at para. 245.

[5] *FNPRM* at para. 35.

DEPARTMENT OF DEFENSE

48 CFR Parts 203 and 252

[DFARS Case 97–D020]

Defense Federal Acquisition Regulation Supplement; Employment Prohibition on Persons Convicted of Fraud or Other DoD Contract-Related Felonies

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to expand the list of positions in which contractors may not allow persons convicted of fraud or other DoD contract-related felonies to serve, and to provide that the term of such a prohibition on service may exceed 5 years.

DATES: *Comment date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before December 1, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Michael Pelkey, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Inernet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 97–D020 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D020 in the subject line.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS 203.570–2 and the clause at 252.203–7001 to expand the list of positions in which a person convicted of a felony arising out of a contract with DoD may not serve, and to permit agencies to prohibit such service for periods greater than 5 years, in accordance with 10 U.S.C. 2408.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule pertains only to the employment of persons convicted of a felony arising out of a DoD contract. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D020 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require the

approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 203 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 203 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 203 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 203.570 is revised to read as follows:

203.570 Prohibition on persons convicted of fraud or other DoD contract-related felonies.

3. Section 203.570–2 is revised to read as follows:

203.570–2 Policy.

(a) Contractors or subcontractors shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with DoD, to serve—

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On its board of directors;

(3) As a consultant, agent, or representative; or

(4) In any capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(b) The period covered by the prohibition in paragraph (a) of this subsection is not less than 5 years from the date of conviction unless waived in the interest of national security by the agency head or designee. Prohibition periods greater than 5 years may be imposed upon a written determination by the agency head or designee. A copy of each such determination shall be provided to the Bureau of Justice Assistance, U.S. Department of Justice, 633 Indiana Avenue, NW., Room 470, Washington, DC 20531.

4. Section 203.570–5 is revised to read as follows:

203.570–5 Contract clause.

Use the clause at 252.203–7001, Special Prohibition on Persons Convicted of Fraud or Other DoD Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.203–7001 is amended by revising the section heading, the clause title and date, paragraphs (b) and (c), the introductory text of paragraph (d), and paragraph (h) to read as follows:

252.203–7001 Special Prohibition On Persons Convicted of Fraud or Other DoD Contract-Related Felonies.

* * * * *

Special Prohibition on Persons Convicted of Fraud or Other DOD Contract-Related Felonies (XXX 19XX)

* * * * *

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with DoD is prohibited from serving—

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative to any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly—

* * * * *

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616–3507.

(End of clause)

[FR Doc. 97–26115 Filed 10–1–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–97–2879; Notice 1]

Remotely Controlled Valves on Natural Gas Pipeline Facilities

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration (RSPA) invites representatives of industry, state and local government, and the public to an open meeting on the use of remotely controlled valves (RCVs) on natural gas pipeline facilities. Congress mandated the use of RCVs on interstate natural gas pipeline facilities if it is determined as a result of a survey and assessment that the use of RCVs is technically and economically feasible and would reduce risks associated with a rupture of a natural gas pipeline facility. The purpose of this meeting is to gather information and discuss issues relevant to the survey and assessment.

DATES: The public meeting will be held on October 30, 1997, beginning at 9:00 a.m. Persons who want to participate in the public meeting should call (202) 366–4046 or e-mail their name, affiliation, and phone number to jenny.donohue@rspa.dot.gov before close of business October 17, 1997. The public meeting is open to all interested parties, but RSPA may limit participation because of space considerations and the need to obtain a wide range of views.

ADDRESSES: The meeting will be held in Houston, Texas at the Adam's Mark Hotel, 2900 Briarpark Drive at Westheimer. The hotel's telephone number is (713) 978–7400.

WRITTEN COMMENTS: Anyone may submit written comments. Persons who are unable to attend the public meeting may submit written comments on or before the deadline of November 28, 1997. Interested persons should submit as part of their written comments all material that is relevant to a statement of fact or argument. Late filed comments will be considered so far as practicable.

Send written comments to the Docket Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW, Washington, DC 20590–0001. Comments should identify the docket number (RSPA–97–2879). Commenters should submit an original and one copy. Commenters wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the Docket Facility, located on the Plaza level of the Nassif Building in Room 401. The Docket Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Ulrich, telephone: (202) 366–4556, FAX: (202) 366–4566, e-mail: lloyd.ulrich@rspa.dot.gov regarding the subject matter of this notice or the Dockets Unit, (202) 366–5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION: The Accountable Pipeline Safety and Partnership Act of 1996 (codified at 49 U.S.C. 60102 (j)) required that, "Not later than June 1, 1998, the Secretary [of Transportation] shall survey and assess the effectiveness of remotely controlled valves to shut off the flow of natural gas in the event of a rupture of an interstate natural gas pipeline facility and shall make a determination about whether the use of remotely controlled valves is technically feasible and economically feasibility and would reduce risks associated with a rupture of an interstate natural gas pipeline facility."

"Not later than one year after the survey and assessment are complete, if the Secretary has determined that the use of remotely controlled valves is technically and economically feasible and would reduce risks associated with a rupture of an interstate natural gas pipeline facility, the Secretary shall prescribe standards under which an operator of an interstate natural gas pipeline facility must use a remotely controlled valve. These standards shall include, but not be limited to, requirements for high-density population areas."

RSPA is aware of the consequences when a natural gas pipeline that has experienced a rupture is not isolated quickly by closing valves on either side of the ruptured section. A high pressure gas transmission pipeline failure occurred in Edison, New Jersey on March 23, 1994. The failure of the 36-inch pipeline resulted in the escaping gas igniting and creating a fireball 500 feet high. There was one death and approximately 50 injuries. Radiant heat from the fireball ignited the roofs of buildings located more than 100 yards from the failure, destroyed 128 apartments and resulted in the evacuation of 1,500 people. The casualties were limited because the few minutes between the time of the failure and the explosion allowed residents to vacate the area. The gas company using a manually operated valve took 2½ hours to isolate the ruptured section of pipeline, which contributed to the severity of the damages.

The experience in New Jersey resulted in the adoption of a set of new rules by the New Jersey Board of Public Utilities (BPU) covering the installation, operation, and maintenance of intrastate natural gas pipelines in the state of New Jersey. These rules became effective March 17, 1997.

One of the new BPU rules requires each operator to submit a Sectionalizing Valve Assessment and Emergency Closing Plan for sectionalizing valves in class 3 and class 4 locations [1]. All valves in class 3 and class 4 locations are to be evaluated and prioritized as to the need for installation or retrofitting of a RCV or automatically controlled valve (ACV). Each plan is to include training of appropriate personnel on emergency plans and procedures. An emergency closing drill that simulates shutting down a selected section of the pipeline is required once each year. Reports of the closing drills are to be submitted to the BPU. RSPA is unaware of similar requirements in other states.

RSPA is also aware of a comprehensive report sponsored by the Gas Research Institute (GRI) on ACVs and RCVs [2]. The report addresses the evolution of ACVs in the natural gas industry. The report specifically addresses the risk of false closures, line section blowdown duration, and typical valve spacings. The report stresses the unreliability of ACVs because the pipeline failure detection systems used to trigger the closure of ACVs often mistake normal operating transient conditions as a pipeline failure. The report concludes that the installation of ACVs or RCVs will not prevent gas ignition because ignition usually occurs within ten minutes of a rupture, long before a line section could be blown down, even if it was isolated immediately after the rupture. However, early closure can reduce the duration of burn down and radiant heating of the area.

Consistent with the President's Regulatory Reinvention Initiative (E.O. 12866), RSPA wants to explore this congressional requirement with the maximum stakeholder involvement. Toward this end, RSPA is seeking early participation in the survey and assessment process by holding this public meeting at which participants, including RSPA staff, may exchange views on relevant issues concerning remotely controlled valves (RCVs). This public meeting is in partial satisfaction of the "survey and assess" portion of the Congressional requirement. RSPA hopes the public meeting will enable government and industry to reach a better understanding of the problems and potential solutions before proposed rules are considered.

RSPA will use the data accumulated as a result of this public meeting along with any state experience disclosed during the public meeting, and the GRI report on ACVs and RCVs to determine the technical and economic feasibility of using RCVs on natural gas pipeline facilities.

Participants at the public meeting are encouraged to focus their remarks on the following issues, but may address other issues as time permits and in supplementary written comments:

A. What is the potential value of early detection and isolation of a section of pipeline after a failure in terms of enhanced safety and reduced property damage?

B. What are the technical and economic *advantages* of installing RCVs?

C. What are the technical and economic *disadvantages* of installing RCVs?

D. What states in addition to New Jersey have adopted regulations concerning RCVs on intrastate natural gas pipeline facilities?

E. If RCVs were required in only high risk areas, what would constitute high risk areas and what would be criteria for prioritizing from highest to lowest risk?

F. Document cases where RCVs have malfunctioned causing them to close unexpectedly or to not close when commanded by the dispatcher.

G. Document cases where RCVs operated after an accident to reduce the consequences of the accident.

H. Provide documentation to support or refute the impression that when the escaping gas from a failed gas pipeline ignites, it normally occurs shortly after the accident, usually less than 10 minutes after the accident.

[1] A "Class 3 location" is defined in 49 CFR 192.5 as any class location unit (an area that extends 220 yards on either side of the centerline of any continuous 1-mile length of pipeline) that has 46 or more buildings intended for human occupancy, or any area where the pipeline lies within 100 yards of either a building of small well-defined area that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period.

A "Class 4 location" is defined in 49 CFR 192.5 as any class location unit where buildings with four or more stories above ground are prevalent.

[2] Southwest Research Institute, "Final Report, Remote and Automatic Main Line Valve Technology Assessment," July 1995, Sponsored by the Gas Research Institute (GRI–95/0101).

Issued in Washington, D.C., on October 24, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–28123 Filed 10–1–97; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 62, No. 191

Thursday, October 2, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 26, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- **Farm Service Agency**

Title: 7 CFR 783, Tree Assistance Program.

OMB Control Number: 0560-New.

Summary of Collection: Owners of orchard trees or grapevines provide information concerning losses due to disaster.

Need and use of the Information: The information is used to determine eligibility and calculation of losses.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 249.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–26093 Filed 10–1–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

California Spotted Owl Advisory Committee

AGENCY: Office of the Secretary, USDA.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Secretary of Agriculture is renewing the charter for the California Spotted Owl Federal Advisory Committee which is reviewing a preliminary revised Draft Environmental Impact Statement for Managing California Spotted Owl Habitat in the Sierra Nevada National Forests of California. The Advisory Committee's final report is due to the Secretary of Agriculture no later than December 31, 1997.

DATES: The charter for the California Spotted Owl Federal Advisory committee is being renewed to extend the life of the Committee until December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Jonathan Stephens, Ecosystem Management Coordination Staff, Forest Service, telephone: (202) 205–0948.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.); notice is hereby given that the Secretary of Agriculture intends to renew the charter for the California Spotted Owl Federal Advisory Committee. The renewal is necessary for the Committee to complete its report and recommendations to the Secretary of Agriculture. The Committee was established in November 1996 (61 FR 59400). The purpose of the Advisory Committee is to review and evaluate the preliminary revised Draft Environmental Impact Statement (DEIS) and make recommendations on how the DEIS integrates the information recently published in the Sierra Nevada Ecosystem Project Report (SNEP) with the forest planning alternatives. The Committee will also examine the planning models, assumptions, analytical processes, and statistical treatment of information used to develop and support management actions in the preliminary revised DEIS. In addition, the Committee will review other scientific information brought to the Committee's attention that may pertain to the management of National Forest System lands in the Sierra Nevada ecosystem. The Committee will make recommendations to the Secretary on additional analysis and how the Forest Service should proceed regarding the release of a revised DEIS for public comment.

The Secretary has determined that the work of the Advisory Committee is necessary and in the public interest and relevant to the duties of the Department of Agriculture.

Dated: September 22, 1997.

Pearlie S. Reed,

Acting Assistant Secretary for Administration.

[FR Doc. 97–26164 Filed 10–1–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Homochitto Purchase Unit; Correction

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Forest Service published a notice of the establishment of the Homochitto Purchase Unit in the **Federal Register** on Tuesday, July 1, 1997. The establishment designation document, published as part of the notice, contained an error in the

description of the unit. The map accompanying the establishment notice clearly shows that the lands included in the purchase unit lie in Township 6 North, rather than Township 5, as stated in the July 1 notice. This notice corrects the township reference in the July 1 notice.

ADDRESSES: The map which depicts the land within the purchase unit and indicates the correct township number is available for public inspection in the Office of the Director, Lands Staff, 201 14th Street, S.W., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Jack Craven, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–60690, telephone (202) 205–1248.

Correction

In the **Federal Register** issue of July 1, 1997 (62 FR 35471), on page 35471, in the third column, in the second paragraph, correct the land description to read as follows:

Lands lying in Township 6 North, Range 4 East, Franklin County, Washington, Meridian, Mississippi.

Dated: September 26, 1997.

Janice H. McDougle,

Associate Deputy Chief, National Forest System.

[FR Doc. 97–26165 Filed 10–1–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of October 1997, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period
Antidumping Duty Proceeding	
Italy: Pressure Sensitive Tape, A–475–059	10/1/96–9/30/97
Japan:	
Steel Wire Rope, A–588–045	10/1/96–9/30/97
Tapered Roller Bearings, Over 4 Inches, A–588–604	10/1/96–9/30/97
Tapered Roller Bearings, Under 4 Inches, A–588–054	10/1/96–9/30/97
Malaysia: Extruded Rubber Thread, A–557–805	10/1/96–9/30/97
The People's Republic of China:	
Barium Chloride, A–570–007	10/1/96–9/30/97
Lock Washers, A–570–822	10/1/96–9/30/97
Shop Towels, A–570–003	10/1/96–9/30/97
Yugoslavia: Industrial Nitrocellulose, A–479–801	10/1/96–9/30/97
Countervailing Duty Proceedings	
Brazil: Tillage Tools, C–351–406	1/1/96–12/31/96
India: Iron-Metal Castings, C–533–063	1/1/96–12/31/96
Iran: In-Shell Pistachios, C–507–601	1/1/96–12/31/96
Sweden: Carbon Steel Products, C–401–401	1/1/96–12/31/96
Suspension Agreements	
Kazakhstan: Uranium, A–834–802	10/1/96–9/30/97
Kyrgyzstan: Uranium, A–835–802	10/1/96–9/30/97
Russia: Uranium, A–821–802	10/1/96–9/30/97
Uzbekistan: Uranium, A–844–802	10/1/96–9/30/97

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a view (Interim Regulations, 60 FR 25130, 25137 (May 11, 1995)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/

Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of October 1997. If the Department does not receive, by the last day of October 1997, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 26, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–26195 Filed 10–1–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 13, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. The review covers shipments of this merchandise to the United States during the period of review (POR) May 1, 1993, through April 30, 1994.

Based on our analysis of the comments received, and the correction of certain ministerial errors, we have changed the preliminary results. The final results are listed below in the section "Final Results of Review."

EFFECTIVE DATE: October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0650 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

This review covers two manufacturers/exporters to the United States of the subject merchandise, the Borusan Group (Borusan) and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (Yucelboru). On May 13, 1997, the Department published in the **Federal Register** the *Preliminary Results of Administrative Review of the Antidumping Duty Order on Certain Welded Carbon Steel Pipe and Tube from Turkey* (62 FR 26286) (*Preliminary Results*). We received case and rebuttal briefs from the petitioners [1] and Borusan on June 19, 1997, and June 26, 1997, respectively. Yucelboru did not submit a case or rebuttal brief. On August 1, 1997, we requested comments from Borusan and the petitioners regarding how we intended to calculate importer-specific *ad valorem* assessment rates for Borusan. Since Yucelboru's margin in the preliminary results was *de minimis*, we did not request comments from Yucelboru. On August 5, 1997, we received comments on the assessment rate from the petitioners.

The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of certain welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. These products, commonly referred to in the industry as standard pipe and tube, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–120, A–53 or A–135.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Comparison of United States Price and Foreign Market Value

For both companies involved in this review, we calculated transaction-specific U.S. prices (USP) and compared them to foreign market values (FMV) based on either weighted-average home market prices or constructed values (CV). For price-to-price comparisons, we compared identical merchandise, where possible. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made comparisons of similar merchandise based on the characteristics listed in the Department's antidumping questionnaire.

Where sales were made in the home market on a different weight basis from the U.S. market (*e.g.*, theoretical versus actual weight), we converted all quantities to the same weight basis, using the conversion factors supplied by the company, before making our fair value comparisons.

We have determined that Turkey experienced a high rate of inflation throughout the POR, as measured by the wholesale price index (WPI) published in *International Financial Statistics*. (*See* Comment 1 below). Therefore, in accordance with our practice, and in order to avoid the distortions caused by the effects of this level of inflation on prices, we did not apply the Department's 90/60 day rule if we were unable to match sales within the same month. Rather, we resorted to CV as the basis of FMV. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9738 (March 4, 1997) (*Rebar from Turkey*).

In accordance with 19 CFR 353.58, we made comparisons at the same level of trade, where possible (*see* Sales Comment 8 below). For Borusan, we determined that there was one U.S. level of trade (*i.e.*, distributor) and three home market levels of trade: wholesaler/distributor, retailer, and end-user. Yucelboru had no level of trade distinctions in either market.

[1] The petitioners are Allied Tube & Conduit and Wheatland Tube Company.

United States Price

We based USP on purchase price in accordance with section 772(b) of the Act, because the subject merchandise was sold directly to the first unrelated purchaser in the United States prior to importation and the exporter's sales price methodology was not indicated by the facts of record. We calculated purchase price based on the same methodology used in the *Preliminary Results*, with the following exceptions:

Borusan

1. We corrected the gross unit price and quantity reported for one sales transaction (*see* Comment 9 below);
2. We added countervailing duties imposed on the subject merchandise to offset export subsidies, pursuant to section 772(c)(1)(C) of the Act (*see* Comment 11 below); and
3. We converted certain direct selling and movement expenses from Turkish lira to U.S. dollars using exchange rates based on the date of shipment (*see* Comment 15 below).

Yucelboru

1. We converted certain movement expenses from Turkish lira to U.S. dollars using exchange rates based on the date of shipment.

Foreign Market Value

Where FMV was based on home market price, we used the same methodology to calculate FMV as that described in the *Preliminary Results*, with the following exceptions:

Borusan

1. We deducted home market direct selling expenses and added U.S. direct selling expenses as a COS adjustment to FMV (*see* Comment 14 below); and
2. We indexed home market packing expenses before deducting them from FMV and indexed U.S. packing expenses before adding them to FMV (*see* Comment 13 below).

Yucelboru

1. We deducted home market direct selling expenses and added U.S. direct selling expenses as a COS adjustment to FMV; and
2. We indexed home market packing expenses before deducting them from FMV and indexed U.S. packing expenses before adding them to FMV.

Where FMV was based on CV, we used the same methodology for Borusan as that described in the *Preliminary Results*, with the following exceptions:

1. We adjusted the calculated interest expenses to avoid double counting imputed credit and inventory carrying expenses (*see* Comment 5 below);
2. We indexed all material costs (*see* Comment 3 below); and
3. We deducted home market direct selling expenses and added U.S. direct selling expenses as a COS adjustment to FMV (*see* Comment 14 below).

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether Borusan or Yucelboru made home market sales during the POR at prices below its cost of production (COP) within the meaning of section 773(b) of the Act (*see also* Comment 2 below). We disregarded individual below-cost sales of models for which greater than 10 percent and no more than 90 percent of sales were sold at less than COP over an extended period of time. We disregarded all sales of models with greater than 90 percent of sales at less than COP over an extended period of time.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from the petitioners and Borusan, but did not receive any comments from Yucelboru.

Comment 1: Inflation. Borusan argues that Turkey did not experience hyperinflation until the last four POR months (January through April, 1994). Accordingly, Borusan argues that the Department should limit the application of its hyperinflationary methodology to sales made during these months. Citing *Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Peru*, 52 FR 7000, 7002 (March 6, 1987) (*Flowers from Peru*), Borusan states that the Department that previously limited its hyperinflationary methodology in this manner where a country experiences high inflation for a only a few months during the POR. As support for its position, Borusan claims that Turkey's inflation rate for 1993 was 56 percent, which is below the Department's established threshold of 60–65 percent (citing, *inter alia*, Import Administration Policy Bulletin Number 94.5, "Differences in Merchandise Calculation in Hyperinflationary Economies" (March 25, 1994) at 1, n.1).

The petitioners respond that the Department appropriately applied its hyperinflationary methodology to the entire POR. Citing *Final Results of Administrative Review: Certain Fresh Cut Flowers from Colombia*, 61 FR 42833, 42845 (August 19, 1996) (*Flowers from Colombia*), the petitioners note that, contrary to Borusan's claim that the hyperinflationary threshold is 60 percent, the Department recently stated that economies are considered hyperinflationary where annual inflation is greater than 50 percent. The petitioners assert, therefore, that the 56 percent inflation rate for 1993 cited by Borusan is hyperinflationary.

The petitioners further add that Borusan provided no justification for why the Department should differentiate between certain months within the review period and state that no justification exists because, in this case, the POR inflation rate exceeds 125 percent. Regarding the precedent cited by Borusan for such a differentiation, the petitioners note that *Flowers from Peru* was an investigation and content that, consequently, the Department's practice of using aggregate comparison market prices and costs in investigations (as opposed to monthly prices in reviews) makes investigations more appropriate proceeding for using a hyperinflationary methodology for only part of the period.

DOC Position: We agree with the petitioners. Although Import Administration Policy Bulletin Number 94.5 states that "an economy is deemed to be hyperinflationary if its monthly or annual inflation rates are greater than 5 percent and 60 percent, respectively," in recent cases we have considered inflation rates lower than 60 percent to warrant application of our high-inflation methodology to avoid the distortions that may be caused by such inflation. *See Flowers from Colombia*, at 42845 and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309, 30314 (June 14, 1996) (*Pasta from Turkey*). Thus, even if we were to split the POR into 1993 and 1994 segments as requested by Borusan, we would find high inflation to exist for the entire period, since the inflation rate was greater than 50 percent during both 1993 and 1994.

We further note with respect to Borusan's proposal to break the POR into discrete periods that, although not dispositive of this issue, we routinely examine the entire review period when determining whether high inflation exists. Borusan has provided no compelling rationale to depart from this methodology other than citing inflation rates for the two periods. *See Pasta from Turkey*, at 30314, and *Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 69067, 69068 (December 31, 1996) (the *1994–95 Review*). With respect to the one case cited by Borusan where the Department treated one portion of the period as inflationary and the other portion as non-inflationary, wholesale price index data compiled by the International Monetary Fund (IMF) indicate that the inflation rate for the period designated as non-inflationary in that case exceeded 50 percent. As such, the finding in *Flowers from Peru*, which was made over ten years ago, conflicts with our current practice.

Comment 2: Initiation of Cost Investigation. Borusan argues that the Department improperly initiated a sales-below-cost investigation because: (1) The petitioners' cost allegation was not submitted until 14 months after the deadline set forth in 19 CFR 353.31(c)(ii); and (2) the allegation contained serious methodological flaws. With respect to the issue of timeliness, Borusan contends that, even though the issuance of the questionnaire and the submission of the response both occurred after the regulatory deadline for filing COP allegations (120 days after initiation of the review), the petitioners should not be excused for filing the COP allegation an additional six months after the submission of the sales questionnaire response (citing *Notice of Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts From the United Kingdom*, 60 FR 52150, 52153 (October 5, 1995) (*Crankshafts from the U.K.*)). Borusan adds that the allegation was insufficient because it: (1) Deducted credit expenses from the HM prices while including them in the costs, and (2) excluded downstream HM sales by related resellers from the analysis. Borusan contends that because the sales-below-cost investigation was improperly initiated, the Department should ignore the results of the cost test (citing *Koyo Seiko, Ltd.* v. *United States*, 806 F. Supp. 1008 (1992)).

The petitioners maintain that because the Department did not issue its questionnaire in this review until 254 days after publication of the notice of initiation, the 120-day time limit does not apply, and the Department was free to establish any reasonable date as the deadline for the sales-below-cost allegation. The petitioners state, however, that the Department did not establish a new deadline for filing a COP allegation. The petitioners add that the computerized version of Borusan's initial sales questionnaire response (filed in May 1995) was unreadable, as acknowledged by Borusan, and state that Borusan did not submit a readable computer tape until September 1995. Finally, the petitioners contend that the COP allegation itself is accurate because: (1) Non-investment interest expenses are in fact not included in the COPs, and (2) the exclusion of reseller sales is in accord with Borusan's claims during the POR that the Department should not consider such sales in its dumping analysis.

DOC Position: We agree with the petitioners. Regarding the timeliness of the sales-below-cost allegation, section 353.31(c)(1)(ii) of our regulations authorizes the Secretary to determine a new time limit beyond the general 120-day limit for alleging sales below cost if, in the Secretary's view, a relevant response is untimely or incomplete. In this respect, we find that a number of factors warrant our acceptance of the petitioners' allegation. The Department delayed issuance of the sales questionnaire until February 24, 1995, and the computerized version of Borusan's initial questionnaire response submitted on May 25, 1995, was unreadable. Therefore, the petitioners did not initially have the requisite data with which to make the allegation until a readable computerized version of Borusan's questionnaire response was submitted on September 29, 1995. Once the petitioners received the necessary data, they filed their allegation on January 11, 1996, which was within a reasonable time after receiving readable computer data under the circumstances of this case. During the period September 29, 1995, to January 11, 1996, there were closures at the Department due to the Federal budget crisis and a blizzard (*i.e.*, November 15 through 21, 1995, and December 16, 1995, through January 11, 1996). These extenuating circumstances were clearly beyond the petitioners' control. In addition, the petitioners requested an extension for filing their allegation. This is unlike the facts in *Crankshafts from the U.K.*, where the petitioners failed to make an allegation of sales-below-cost until filing their case brief, even though they had access to the data that would have enabled them to file a timely allegation. *Id.*, at 52153.

Regarding the merits of the allegation, section 773(b) of the Act requires that the Department make a sales below cost determination whenever it has reasonable grounds to believe or suspect that sales in the home market have been made at prices below the cost of production. As stated in our December 4, 1996, "Petitioners' Allegation of Sales Below the Cost of Production Memorandum" (*COP Allegation Memorandum*), we found that the data submitted by the petitioners, which was based on information contained in Borusan's questionnaire responses, provided reasonable grounds to believe or suspect that Borusan had made below-cost sales.

Borusan's claims notwithstanding, we determined that the methodology used by petitioners gave us reason to suspect that sales were made below cost. Because petitioners excluded non-investment interest expenses from the SG&A component of COP, thereby understating Borusan's actual costs, they made a corresponding adjustment to price by subtracting credit expenses. Based on this analysis there was a considerable number of sales made below cost. Furthermore, for a significant number of these sales the price/cost differential was such that, even if credit expenses were added back into the price calculation, we had reason to believe that these would have been below-cost sales.

Second, we did not include sales made by Borusan's related resellers in our analysis of the cost allegation because neither we nor the petitioners could determine from Borusan's response the additional costs incurred by the related resellers. Therefore, we did not find it appropriate to include these sales in our analysis of whether to initiate a below-cost investigation. *See COP Allegation Memorandum.* Moreover, the sales we did examine were "representative of the broader range of foreign models which may be used to determine FMV for the various U.S. models" and our analysis of the below-cost allegation regarding these sales indicated that there was a sufficient basis to initiate a below-cost investigation. *See* Import Administration Policy Bulletin No. 94/1, "Cost of Production—Standards for Initiation of Inquiry" (March 25, 1994).

Comment 3: Exclusion of Material Costs from WPI Adjustment to COP. The petitioners allege that the Department erroneously excluded some, but not all, raw materials from the indexing of the cost of manufacturing (COM). Specifically, the petitioners claim that the Department failed to subtract varnish and coupling costs from the total monthly COM figures before indexing. The petitioners contend that the Department should index the rest of the COM, calculate a weighted average, then deflate the average and add direct materials costs, including the varnish and coupling costs, to calculate the monthly COM.

Borusan concurs with the petitioners that the Department should subtract varnish and coupling costs before indexing and calculating the COM.

DOC Position: We disagree with both parties. In cases involving high inflation, it is our general practice to index all costs, whether they are reported on a replacement cost or historical cost basis. In the *Preliminary Results*, the coil, zinc, varnish and coupling costs all should have been

indexed in order to derive indexed weighted-average COMs that include raw materials costs. In high-inflation cases, it is normally the Department's practice to request that respondents report their material costs on a monthly replacement cost basis (*i.e.*, the costs to the producer to replace the materials in the month consumer). *See Final Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil*, 61 FR 59407, 59408 (November 22, 1996). This data reflects the increases in materials costs from month to month due to inflation.

However, in accordance with our practice, we still need to index all monthly replacement costs forward to the end of the POR in order to calculate a POR weighted-average COM, which applies to both inflationary and non-inflationary cases. We then deflate this POR average COM to derive a cost for each month that is based on a POR weighted average. This monthly cost is then compared to sales in that month. It we did not index costs in this manner, our calculations could be affected by monthly changes, other than inflation, that affect these costs (*i.e.*, price fluctuations due to material shortages).

Comment 4: Use of Production Quantity. The petitioners maintain that the Department should use monthly production quantities contained in Borusan's post-verification data submission rather than sales quantities to weight-average the indexed COP.

Borusan claims that the Department did in fact use production quantities to weight average the COP in the preliminary results and therefore no correction is required.

DOC Position: We agree with Borusan. In the *Preliminary Results*, we used the production quantities contained in Borusan's March 31, 1997, data submission to weight-average COP (*see* lines 22436, 22437, 22561 and 22562 of Department's SAS margin program used in the *Preliminary Results*). The preliminary results calculation memorandum erroneously stated that we used the sales quantity to weight-average the indexed conversion costs. *See Analysis for Borusan Group (Calculation Memorandum)*(May 8, 1997). We have continued to use the production quantities to weight-average the COP in the final results.

Comment 5: Interest Expense—Inclusion of Foreign Exchange Gains and Losses. Borusan claims that the Department should exclude foreign exchange losses from the interest expense calculation used in the COP/CV calculations. Maintaining that these losses are primarily losses on foreign currency loans due to the high inflation experienced in Turkey and the devaluation of the Turkish Lira, Borusan contends that the losses should be treated as an inflation adjustment and not as a cost of production.

The petitioners maintain that Borusan should not be allowed to exclude foreign exchange losses from its costs on the basis that a significant portion of the foreign exchange losses resulted from inflation. The petitioners contend that the Department already adjusts for the inflation effects of each cost element by using its hyperinflationary methodology to calculate infation-adjusted costs. They further contend that the Department's practice, as set forth in *Rebar from Turkey*, is to include these losses in the COP/CV financial expenses even where the economy is considered hyperinflationary. The petitioners also note that the Department's verification report indicates that the interest expenses obtained were to be adjusted using wholesale price indices for the preliminary results but that no adjustment was made.

In addition, the petitioners argue that the Department should disallow Borusan's reported foreign exchange gains as an offset to interest expense because, contrary to the Department's policy for allowing this offset, the foreign exchange gains resulted primarily from export sales and not from the importation of raw materials.

DOC Position: We agree with the petitioners that we should include Borusan's foreign exchanges losses and exclude Borusan's reported foreign exchange gains in calculating the COP/CV. With respect to foreign exchange losses, we have included this expense in our COP/CV interest expense calculation. The cost verification report notes that Borusan's foreign exchange losses are incurred on dollar-denominated debt. Further, as noted by Borusan, these losses are reflected in its income statement. The Department has clearly established that translation losses on dollar-denominated loans, as reflected in a company's income statement, are appropriately included in the cost of production because they reflect an actual increase in the amount of local currency that will have to be paid to settle these loans. *See Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuodor*, 60 FR 7019, 7039 (February 6, 1995)(*Roses from Ecuador*). We not that although hyperinflation was largely responsible for the depreciation of the Turkish Lira, the inflation factor has been accounted for by indexing the interest expense for inflation using WPIs. *See Calculation Memorandum.*

With respect to foreign exchange gains, we have not included such gains in the interest expense calculation, consistent with our findings in other segments of this proceeding. *See* the *1994–95 Review* at 69072. The record evidence demonstrates that the foreign exchange gains at issue result from export sales transactions. *See* Exhibit 13 of the cost verification report. Our practice is to include foreign exchange gains as an offset to finance expenses if they are related to the cost of acquiring debt for purposes of financing production operations, and to exclude this item if it relates to sales. *See Rebar from Turkey*, at 9741, and *Pasta From Turkey*, at 30324. In this case, we find that foreign exchange gains are related to sales, not production; therefore, they should not be used as an offset for calculating home market interest expenses.

Comment 6: Imputed Credit Expense in Constructed Value/Offset to Trade Receivables and Finished Goods Inventory Portion of Interest Expense. Borusan alleges that the Department failed to adjust the CV interest expense factor to offset the imputed credit expense with that portion of actual finance expenses related to the financing of trade receivables. Borusan maintains that the Department's past practice, as set forth in *Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fitting from Taiwan* 58 FR 28556, 28560 (May 14, 1993) (*Fittings from Taiwan*), is to include imputed credit costs in CV and offset the actual finance expenses by an amount attributed to financing trade receivables in order to avoid double counting of finance expenses. Therefore, Borusan contends that the Department should adjust the interest rate factor used for CV.

The petitioners respond that it is not clear that the Department included imputed credit expenses in the CV in the preliminary results; therefore, the Department must first ensure that it has included imputed credit costs (and inventory carrying costs) in CV before making any offset for trade receivables financing.

DOC Position: In the *Preliminary Results*, we correctly included imputed credit expenses and inventory carrying expenses in the CV. The inclusion of these imputed expenses in the CV is in accordance with our established practice prior to the amendments made to the Act by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. *See. e.g., Final Determination of Sales at Less Than Value: Certain All-Terrain Vehicles from Japan*, 54 FR 4864, 4867 (January 31, 1989). However, we failed to adjust the interest expense in order to avoid double counting that portion of the interest expense that corresponds with the imputed credit expense or with the imputed inventory carrying expenses, (*i.e.*, financing of trade receivables and financing of finished goods inventory). For these final results, we offset the reported interest expense by an amount attributable to financing trade receivables and finished goods inventory. *See Fittings from Taiwan* at 28560. We calculated the offset as a percentage of trade receivables and finished goods inventory to total assets, using the balance reported in the audited financial statements. We then used this ratio to reduce the interest rate used to calculate finance expenses in our CV calculation.

Comment 7: Depreciation. The petitioners allege that Borusan incorrectly calculated its depreciation because it did not index its monthly depreciation expenses forward to equivalent terms. Rather, the petitioners allege that Borusan calculated this expense by adding the monthly amounts in its accounting records and then dividing the total by 12. Instead of calculating a simple average, the petitioners contend that Borusan should have inflated each monthly depreciation figure to December 1993 so they would be expressed in equivalent terms. The inflated figures should have then been summed and the result divided by 12 to obtain an inflation-adjusted monthly average that is then deflated to derive depreciation costs for each month. The petitioners further maintain that Borusan incorrectly deflated the simple monthly average calculated for depreciation, as noted in the Cost Verification report, and assert that the Department should deflate the monthly average depreciation using the calculation formula shown in verification exhibit M1.

Borusan responds that the Department should not recalculate the average monthly depreciation figure by expressing it in December 1993 terms because, as noted in Borusan's financial statements, the depreciation amount is already stated in December 1993 terms. Borusan contends that the petitioners' recommended approach would result in a double indexing of this cost. Also, Borusan states that the manner in which it converted this December 1993 depreciation amount to monthly POR amounts is correct. With respect to the second point, Borusan notes that the data used by the Department in the preliminary results, based on Borusan's March 31, 1997, post-verification submission, already incorporated the required correction to Borusan's depreciation adjustment in the manner prescribed in the verification report.

DOC Position: We agree with Borusan. At our request, Borusan submitted revised COP and CV databases on March 31, 1997, in which the depreciation adjustment was recalculated in accordance with our instructions. The revised data were used in the preliminary results. *See Calculation Memorandum*, at 4. Furthermore, Borusan's depreciation expenses were stated in December 1993 terms in accordance with Turkish law. Note 2 of Borusan's audited financial statements for 1992 and 1993 states that "Turkish commercial practice and tax legislation require that financial statements be prepared in accordance with the historical cost convention with the sole exception of the optional revaluation of fixed assets on the basis of indices published on an annual basis by the Ministry of Finance." Note 3(f) of the financial statements indicates that property, plant and equipment were revalued on December 31, 1993 using the Ministry of Finance's officially published index of 58.4 percent. See Exhibit 4 of Borusan's questionnaire response dated May 8, 1995. Specifically, each month's depreciation expense was originally reported in December 1993 cost terms, and was then deflated to each month. *See* page 25 and Exhibit M–1 of the cost verification report. Therefore, consistent with our established practice, we have not adjusted further Borusan's depreciation expense because the reported depreciation expense had already been adjusted for inflation when the assets were revalued based on the Ministry's index. *See Rebar From Turkey at* 9748.

Comment 8: Level of Trade. Borusan contends that the Department's decision in the *Preliminary Results* to collapse certain levels of trade (LOTs) was in error. Borusan claims that it sells to five separate LOTs in the home market: (1) direct mill sales to trading companies (LOT 1); (2) direct mill sales to industrial end-users (LOT 2); (3) downstream sales to local wholesalers (LOT 3); (4) downstream sales to retailers (LOT 4); and (5) downstream sales to industrial end-users (LOT 5). Borusan argues that the Department's decision to collapse LOT 1 with LOT 3, and to collapse LOT 2 with LOT 5, is based on a fundamental misunderstanding of Borusan's reported LOTs and cannot be justified by the evidence contained on the administrative record in the review.

Borusan contends that it met its burden of justifying its claimed LOTs through the information submitted in its questionnaire response. Moreover, Borusan maintains that the Department provided insufficient explanation in the preliminary results for collapsing these LOTs. Alternatively, if the Department rejects this argument, Borusan requests that the Department use the same LOTs as it did in the *1994–95 Review*.

The petitioners contend that Borusan did not adequately differentiate or document the asserted five levels of trade, despite a specific request by the Department in a supplemental questionnaire for such differentiation and documentation.

DOC Position: We agree with the petitioners. As in the *Preliminary Results*, we treated Borusan's reported LOTs 1 and 3 as one LOT, and we treated reported LOTs 2 and 5 as one LOT.

In determining the number of LOTs under the pre-Uruguay Round Tariff Act, we examine the function of the respondent's customers and determine where in the distribution chain the customers fall (*i.e.*, wholesaler, retailer, end-user). *See* Import Administration Policy Bulletin No. 92/1, "Matching at Levels of Trade," (July 29, 1992), at 2; and *Final Results of Antidumping Duty Administrative Reviews: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 61 FR 13815, 13825 (March 28, 1996). It is the respondent's responsibility to distinguish its claimed LOTs in this manner.

Applying this standard to the instant proceeding, the information provided by Borusan does not indicate that LOTs 1 and 3 are distinct, nor does it adequately distinguish LOTs 2 and 5. LOT 1 involves direct sales by Borusan to trading companies. LOT 3 involves related party resales to wholesalers. Evidence contained in Borusan's February 26, 1996, submission indicates that there is significant overlap in the functions performed and the place in the chain of distribution for the customers (trading companies and wholesalers) involved in claimed LOTs 1 and 3. For instance, certain trading companies sell directly to retailers; these trading companies have the same function in the chain of distribution as wholesalers, *i.e.*, both function as resellers of the subject merchandise to retailers. Thus, the fact that claimed LOT 1 involves direct sales while claimed LOT 3 involves resales does not establish that separate LOTs in fact exist for these sales, absent evidence that the customers involved in these two groups of sales occupy different places in the chain of distribution. Because the information provided by Borusan does

not indicate such differences in the chain of distribution, we determined that LOTs 1 and 3 are appropriately considered as one level for this review.

Our decision to collapse reported LOTs 2 and 5 is based on the same principle. Claimed LOT 2 involves direct sales to end users, while claimed LOT 5 involves related party resales to end users. As with claimed LOTs 1 and 3, our examination of the record evidence indicates that there is a significant overlap in the function of the customers in the chain of distribution for these claimed levels (end users in both cases). We therefore have collapsed LOT 2 with LOT 5. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18794 (April 20, 1994).

Finally, as to Borusan's argument that we use the same LOTs used in the *1994–95 Review*, the criteria upon which we examined Borusan's LOT argument in *1994–95 Review* cannot be applied to this review because those criteria apply to cases administered under the URAA. *See also* Statement of Administrative Action (SAA) accompanying the URAA at 829–831.

Comment 9: Gross Unit Price Correction. The petitioners contend that the Department should correct the gross unit price reported for the first sales transaction examined at verification (*i.e.*, SVE M.1) based on its findings.

Borusan maintains that the Department found at verification that the gross unit price reported for the sales transaction was correct.

DOC Position: We agree with the petitioners. The gross unit price reported for the sales transaction at issue is incorrect because that price is based on an incorrect weight amount noted in the sales invoice. Although Borusan reported the weight listed in the invoice, that weight was incorrectly calculated based on formulas used to convert feet to metric tons. Therefore, we have corrected this error in the sales database.

Comment 10: Verification Corrections. The petitioners state that the Department should ensure that the errors noted in Borusan's March 31, 1997, submission have been corrected in the final data used in this proceeding.

Borusan states that the Department used sales and cost databases that incorporated data corrections contained in its March 31, 1997, submission. Therefore, Borusan contends that there is no need for the Department to make any additional changes to Borusan's sales and cost information in the final results.

DOC Position: We agree with the petitioners and have ensured that the sales and costs databases that we are using for the final results incorporate all corrections from verification. In the course of examining whether the corrections noted in the March 31, 1997, submission were in fact included in the sales and cost databases, we found that certain corrections noted in verification exhibit A1, regarding customer-specific quantity rebates granted on 1993 sales, were not included in the home market database. We have corrected this for the final results.

Comment 11: Countervailing Duty Adjustment. Borusan maintains that the Department erred in not making an upward adjustment to U.S. price for countervailing duties as required by section 772(d)(1)(D) of the Act.

The petitioners did not comment on this issue.

DOC Position: We agree with Borusan. Since the countervailing duties in question concern export subsidies, we have added to the U.S. price an amount for said duties (*i.e.*, the actual amount paid in CVD). This amount was determined by multiplying the 7.26 *ad valorem* rate by the C&F value net of ocean freight expenses and CVD. *See* Exhibit O1 of the cost verification report.

Comment 12: Imputed Interest on VAT Payments. Borusan argues that the Department failed to allow a circumstance of sale (COS) adjustment for financing expenses incurred on making VAT payments in the home market. Borusan maintains that it must finance its payment of VAT taxes, and that this expense represents a carrying expense incurred by Borusan until it receives payment for the invoiced amount (inclusive of VAT) for sales made to its home market customers. Borusan contends that there is no discernible difference between adjusting for credit expenses accrued in connection with sales and financing costs incurred on VAT payments. Therefore, Borusan states that section 353.56 of the Department's regulations authorizes the Department to make an adjustment to account for the carrying costs incurred in financing VAT payments.

The petitioners respond that the claimed adjustment does not constitute a COS adjustment as defined in section 353.56 of the Department's regulations. The petitioners cite to the *1994–95 Review* where the Department disallowed a COS adjustment for the same VAT drawback claimed by Borusan in the present case.

DOC Position: We agree with the petitioners, and, consistent with our treatment of this item in other segments of this proceeding, have disallowed a COS adjustment for imputed interest resulting from delayed refunds of VAT paid on inputs. *See* the *1994–95 Review*, at 69076. Allowing Borusan such an adjustment would involve imputing an expense incurred not between Borusan and its customers, but between Borusan, its supplier, and the government. "[W]hile such a[n expense] may affect the notion of true economic cost to [the respondent], it tells us nothing about the difference in prices that result from the different circumstances of sale." *See Federal-Mogul Corp.* v. *United States*, 839 F. Supp. 881, 885 (November 30, 1993).

Further, to the extent that Borusan incurs such an expense, it is incurred regardless of whether Borusan actually makes such a sale. In other words, there is no direct relationship between the imputed expense and the sales being examined. Accordingly, there is no basis for making a COS adjustment.

Comment 13: Indexation of Packing Expenses. Borusan contends that the Department should have indexed the packing expenses in connection with home market and U.S. sales because the Department found that Turkey experienced hyperinflation during the POR.

The petitioners argue that the Department should not index packing expenses because the packing costs contain a large component of raw materials which are already reported on a replacement cost basis.

DOC Position: We agree with Borusan and have indexed Borusan's packing expenses in both markets. Because the timing of packing materials purchases in a hyperinflationary economy may result in an over- or under-statement of net prices, our practice is to index all packing costs in the manner done for COM. *See Pasta From Turkey*, at 30323, and the *1994–95 Review*, at 69071.

Moreover, as noted above in Comment 3, in accordance with our practice, all costs, including materials, are indexed in hyperinflationary economy cases. Therefore, we do not accept the petitioners' argument that packing costs should not be indexed because some of the packing expenses are reported on a replacement cost basis.

Comment 14: Direct Selling Expenses. Borusan argues that the Department incorrectly deducted direct selling expenses from U.S. price and added these expenses to FMV, thus double counting the expenses. Borusan cites to section 773(a)(4) of the Act in support of its argument.

The petitioners did not comment on this issue.

DOC Position: We agree with Borusan and have corrected this error in the final results. To make the COS adjustment, we have deducted home market direct selling expenses from FMV and then added U.S. direct selling expenses to FMV.

Comment 15: Conversion of Certain Direct Selling and Movement Expenses. Borusan contends that the Department incorrectly converted certain direct selling and movement expenses from Turkish Lira to U.S. dollars by using exchange rates based on dates of sale rather than on dates of shipment.

The petitioners did not comment on this issue.

DOC Position: We agree with Borusan. In accordance with our practice, we have corrected the error by using exchange rates based on the date of shipment to convert expenses from Turkish lira to U.S. dollars. *See Final Determination of Sales at Less Than Fair Value: Silicon Metal From Brazil*, 56 FR 26977, 26980 (June 12, 1991) (Comment 3).

Comment 16: Assessment Rate. On August 1, 1997, we informed Borusan and the petitioners that we intended to calculate importer-specific *ad valorem* assessment rates on entered value. Since our antidumping questionnaire did not request Borusan to submit entered values in its questionnaire response, we informed the parties that we would calculate entered values by subtracting international freight charges from the gross unit prices reported in the U.S. sales database.

The petitioners contend that to calculate the entered values the Department should also subtract from the gross unit prices the discount that Borusan grants its customers.

Borusan did not comment on this issue.

DOC Position: We agree with the petitioners. We have removed all discounts from gross unit prices to calculate entered values.

Final Results of Review

As a result of our review, we determine that the following margins exist for the period May 1, 1993, through April 30, 1994:

Manufacturer/ exporter	Review period	Margin (percent)
Borusan	5/1/93–4/30/94	4.01
Yucelboru	5/1/93–4/30/94	0.00

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs.

For Yucelboru, a cash deposit rate of zero will be effective for all its shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a) of the Act.

For Borusan, the cash deposit rate will continue to be 2.57 percent, the rate effective since May 16, 1997, which was published in the *Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 62 FR 27013 (May 16, 1997).

For merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; if the exporter is not a firm covered in this or a prior review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise; and if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 14.74 percent, the "all others" rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22.

Dated: September 25, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–26196 Filed 10–1–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–401–056]

Viscose Rayon Staple Fiber From Sweden; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 6, 1997, the Department of Commerce ("the Department") published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden for the period January 1, 1995 through December 31, 1995 (62 FR 31079). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Russell Morris, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Svenska Rayon AB (Svenska). This review also covers the period January 1, 1995 through December 31, 1995, and ten programs.

We published the preliminary results on June 6, 1997 (62 FR 31079). We invited interested parties to comment on the preliminary results. We received no comments from any of the parties.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

Imports covered by this review are shipments from Sweden of regular viscose rayon staple fiber from Sweden of regular viscose rayon staple fiber and high-wet modulus (modal) viscose rayon staple fiber. Such merchandise is classifiable under item number 5504.10.00 of the Harmonized Tariff Schedule (HTS). The HTS item is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

Based upon the responses to our questionnaire, we determine the following:

I. Programs Found Not To Confer Subsidies

A. *Investment Grants from the Working Life Fund*
B. *Recruitment Incentive Program*
C. *Trainee Temporary Replacement*
D. *Recruitment Subsidy Program*

In the preliminary results, we found that these programs did not confer countervailable subsidies on the subject merchandise. We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results. We will examine the Recruitment Subsidy Program in any future administrative reviews of this order because we did not make a specificity determination in this review since, even if the program were found to be specific, the subsidy rate would be so small that it would not change the overall subsidy rate of Svenska.

II. Programs Found To Be Not Used

In the preliminary results, we found that Svenska did not apply for or receive benefits under the following programs:

A. *Manpower Reduction Grants*
B. *Grants for Temporary Employment for Public Works*
C. *Regional Development Grant*
D. *Transportation Grants*
E. *Location-of-Industry Loans*

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

III. Programs Found To Be Terminated

In the preliminary results, we found the following program to be terminated and that no residual benefits were being provided:

Elderly Employment Compensation Program

We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Final Results of Review

For the reasons discussed in the preliminary determination, we determine that no countervailable subsidies were conferred on Svenska for the period January 1, 1995 through December 31, 1995. We will instruct the U.S. Customs Service ("Customs") to liquidate without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1995, and on or before December 31, 1995. The Department will also instruct Customs to collect a cash deposit of estimated countervailing duties of zero percent *ad valorem*, as provided for by section 751(a) of the Act, on all shipments of this merchandise from Svenska, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR § 355.22(a) (1997). Pursuant to 19 CFR § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR § 353.22(e), the antidumping regulation on automatic assessment, which is virtually identical to 19 CFR § 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is conducted. In addition, for the period January 1, 1995 through December 31, 1995, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: September 25, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–26194 Filed 10–1–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 89–3A018."

Outdoor Power Equipment Institute, Inc.'s ("OPEI") original Certificate was issued on March 19, 1990 (55 FR 11041, March 26, 1990) and previously amended on April 20, 1990 (55 FR 21766, May 29, 1990); and July 12, 1990 (55 FR 29398, July 19, 1990). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Outdoor Power Equipment Institute, Inc. ("OPEI"), 341 South Patrick Street, Alexandria, Virginia 22314.

Contact: Laurence J. Lasoff, Counsel, Telephone: (202) 342–8530.

Application No.: 89–3A018.

Date Deemed Submitted: September 16, 1997.

Proposed Amendment: OPEI seeks to amend its Certificate to:

1. Add the following company as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): Excel Industries, Inc., Hesston, Kansas; and

2. Delete as "Members" the following companies: Engineering Products Company, Inc., Waukesha, Wisconsin; E-Z Rake, Inc., Lebanon, Indiana; Fails Products Inc., Geona, Illinois; Merry Tiller, Inc., Birmingham, Alabama; NOMA Outdoor Product, Inc., Jackson, Tennessee; Roto-Hoe Company, Newbury, Ohio; Sarlo Power Mowers, Inc., Fort Myers, Florida; Snapper Power Equipment, McDonough, Georgia; and Trailmate, Inc., Sarasota, Florida.

Dated: September 26, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–26066 Filed 10–1–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070197A]

Small Takes of Marine Mammals Incidental to Specified Activities; Oil and Gas Exploration Drilling Activities in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals by harassment incidental to conducting oil exploration drilling activities in Camden Bay, Beaufort Sea in waters off Alaska has been issued to ARCO Alaska, Inc. (ARCO).

DATES: This authorization is effective from September 25, 1997, through September 1, 1998.

ADDRESSES: The application and monitoring plan, authorization, and environmental assessment (EA) are available by writing to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA for activities in Arctic waters, including requirements for peer-review of a monitoring program and a plan of cooperation between the applicant and affected subsistence users. For additional information on the procedures followed for this

authorization, please refer to that document.

Summary of Request

On May 30, 1997, NMFS received an application from ARCO requesting a 1-year authorization for the possible harassment of small numbers of several species of marine mammals incidental to moving a Concrete Island Drilling System (CIDS) from Prudhoe Bay to Camden Bay, Alaska and drilling an oil exploration well at that location during the winter, 1997/98. Essentially, the project has several stages as summarized below: (a) Deballast the bottom-founded Global Marine Drilling Co. "Glomar Beaufort Sea #1" CIDS and move it to the well site in Camden Bay on or about August 15, 1997; (b) Transport drilling supplies, materials and other equipment to the CIDS. Transport fuel from Canada to the site; (c) Warm shutdown mode until such time as ice in Camden Bay is fully formed (estimated to be around November 1, 1997). Crew change via helicopter during this and succeeding times; (d) Drilling operations after ice formation on or around November 1, 1997 (drilling and well testing operations may occur from that date through mid-May 1998); (e) Cold shutdown mode from completion of drilling and well testing operations until around July 1, 1998; and (f) Towing CIDS from Camden Bay by tug boats to Prudhoe Bay or another location.

A more detailed description of the work planned is contained in the application and is available upon request (see **ADDRESSES**). Moving the CIDS from Prudhoe Bay began on August 16, 1997. The barging of fuel, equipment and supplies will be completed on or before August 31, 1997.

Comments and Responses

A notice of receipt of the application and proposed authorization was published on July 15, 1997 (62 FR 37881), and a 30-day public comment period was provided on the application and proposed authorization. During the comment period, comments received were from the Marine Mammal Commission (MMC), the Alaska Eskimo Whaling Commission (AEWC) and North Slope Borough (NSB), ARCO, Greenpeace Alaska (Greenpeace) and the Trustees for Alaska (Trustees). ARCO's comments which addressed contents in the EA are not discussed further in this document. Information on the activity and authorization request that are not subject to reviewer comments can be found in the proposed authorization notice and is not repeated here. Issues outside either the scope of the IHA process or on the impacts on marine mammals and/or subsistence needs for marine mammals are not addressed in this document.

Negligible impact concerns

Comment 1: Trustees believe that NMFS fails to adequately discuss scientific information which found significant effects from disturbance on whales and other marine mammals. They believe NMFS provided little information in the notice and EA not found in ARCO's application.

Response: The MMPA requires NMFS to use the best scientific information available when determining whether an activity will have a negligible impact on marine mammals (see the definition of negligible impact above or in 50 CFR 216.103). Extensive monitoring of impacts of oil exploration activities on marine mammals and analyses of the results from those studies have been conducted over the past two decades. This information has also been summarized elsewhere (*e.g.*, Richardson *et al.* (1995b) on noise impacts). The EA also summarizes this information and incorporates other documentation by reference. Because the best scientific information to date available to NMFS indicates that oil and gas exploration activities in the Beaufort Sea are not having more than a negligible impact on marine mammals, and because Trustees and other commenters have not provided scientific information to the contrary, an incidental harassment authorization appears warranted.

NMFS does not contradict commenters' position that bowhead whales and other marine mammals may be harassed by noise from aircraft, tugboats and oil drilling operations. However, the MMPA allows a take by harassment if certain findings are made and certain conditions are met. NMFS believes the level of incidental harassment by the ARCO activity will not adversely affect the species or stocks of marine mammals through effects on annual rates of recruitment or survival. Therefore, the taking is considered negligible.

Marine mammal concerns

Comment 2: Greenpeace and Trustees both note that NMFS has failed to fully consider the impacts to the bowhead whale population. They believe NMFS should assess impacts from the first arrivals in the western Beaufort Sea and not just on impacts after August 31.

Response: NMFS agrees and has modified the EA to address this concern. However, NMFS notes that the bowhead whale numbers referenced by Trustees as passing the Camden Bay site are overstated. Moore and Clark (1991) estimated in 1981 through 1983, up to 500 (range 0–500) bowheads may be offshore the Barter Island region; however, no whales were sighted west of that region prior to September 1 during those years. Most sighted bowheads were still in Canadian waters. While NMFS notes that in general, bowhead whales migrate westward through the Alaskan Beaufort Sea from late August to late October, only a portion of the population has been estimated as migrating during this time period. Other bowheads are either undetectable to observers (*i.e.*, under the ice), migrated prior to surveys commencing, or did not migrate to the Canadian Beaufort Sea. As a result of ARCO's agreement with the AEWC to complete moving activities and barge traffic prior to September 1, NMFS believes the majority of the bowhead population will not hear noise emanating from the CIDS because of their presence in the Canadian Beaufort Sea.

Most westward migrating bowheads sighted are in water ranging from 20 to 50 m (65–165 ft) deep (Ljungblad *et al.* 1984). Scientific evidence indicates that bowhead whale distribution appears to be strongly influenced by ice (but see information provided by Traditional Knowledge discussed below). In heavy ice years, bowheads tend to migrate in deeper water (> 60 m (> 197 ft)), while in light ice years, a larger proportion sighted are found in shallow water (<40 m (< 131 ft)) (NMFS 1996). A few may occur close to shore. Therefore, there is some potential that bowhead whales may be incidentally harassed while the CIDS is being towed westward and the supply activities prior to August 31. However, these numbers are considered to be small and the impact negligible. Additional information on this issue can be found in the EA.

Comment 3: Trustees note that NMFS does not provide a specific date for start-up of drilling, nor when the spring bowhead whale migration period begins (when the CIDS should not be moved), nor does it prohibit drilling operations from the CIDS during this period, if drilling takes longer than expected.

Response: NMFS notes that it is unaware whether ice-up needs to be complete prior to the CIDS commencing drilling. Therefore, recognizing that bowhead whales may be migrating westward through the offshore and nearshore Camden Bay area through late October, and drilling during this period of time could result in additional harassment takes that have not been considered in the negligible take analysis, NMFS has conditioned the IHA so that drilling activities prior to November 1, 1997, are not covered by the IHA and any incidental harassment of bowheads resulting from an early start-up is a violation of the IHA and the MMPA.

During the springtime eastward migration bowheads are presumed to first arrive offshore Camden Bay in late April to early May. This migration is also presumed to occur through the end of June. Because the leads through the ice at this time are usually well offshore (and the reason there is not a springtime subsistence hunt at Nuiqsuk and Kaktovik), no incidental harassment takings are presumed to occur from drilling activities. However, in order to ensure bowhead migration is not impeded by anthropogenic noise, a condition of the IHA prohibits any oil and gas exploration activity in the spring leads, including drilling or vessel noise. If on-site drilling activities are projected to continue into the time bowheads enter offshore Camden Bay, prior to modifying the IHA, NMFS will require submission and implementation of a revised monitoring program to ensure that bowheads will not be seriously affected by drilling activities while moving through the spring leads. In accordance with NMFS regulations, any modification of an IHA that does not involve emergency action to protect marine mammals is subject to a 30-day public comment period. For that reason, a request for an amendment to the IHA, and the accompanying monitoring plan will need to be provided to NMFS no later than March 1, 1998.

If the CIDS remains under the control of, or under contract to ARCO after completion of the drilling operation, the IHA authorizes the harassment of bowheads and other marine mammals incidental to moving the CIDS to another site after the last bowhead migration pulse has completed its eastward migration. If necessary, NMFS will make a determination that the migration is complete and will notify interested parties.

Comment 4: Greenpeace states that the impacts of industrial noise associated with exploratory drilling activities during the bowhead migration have not been adequately evaluated by NMFS.

Response: Other than towing the CIDS and tug/barge traffic, no other activities related to the CIDS operation is anticipated to have an impact on bowhead whales. Impacts on bowheads from vessel noise was discussed in the EA.

Comment 5: Trustees note that NMFS fails to make clear that the drill site is located in significant ringed seal habitat and that seals undergoing stresses such as reproduction (taking place during drilling activities) may be more vulnerable to the effects of contaminants or disturbance. Trustees also notes that NMFS fails to discuss impacts from seismic activities and vehicle traffic.

Response: The biology, abundance and distribution of ringed seals and other pinnipeds were addressed in the EA. The EA notes that some reduction in density of ringed seals within an area of approximately 2.3 nmi (3.7 km) of the CIDS could be expected. However, considering winter-time ringed seal densities of between 2–6 ringed seals/nm^2, few ringed seals should be affected by the CIDS, whose noise disturbance zone is limited to less than 1 nm. Because drilling operations will begin on or around November 1, 1997, well prior to ringed seals establishing birth lairs, and continue through mid-May 1998, ringed seal pupping, (which starts in early April), is unlikely to take place in the vicinity of the CIDS. Therefore, NMFS expects few ringed seals would be affected and that impact will result, at worst, in some displacement. Considering the extensive habitat available to ringed seals and the size of the Alaskan ringed seal population, displacement would not result in more than a negligible impact on the species.

Incidental harassment for either seismic activities or vehicle traffic over ice has not been requested by ARCO, is not being authorized, and is not anticipated by the applicant, except for the latter in emergency situations, such as an oil spill. NMFS notes however, that the incidental taking by this type of activity is the subject of a separate rulemaking action (see 62 FR 42737, August 8, 1997).

Environmental concerns

Comment 6: Trustees believe that the impacts to the Alaska National Wildlife Refuge (ANWR) have been ignored by NMFS. One of their concerns is that, to avoid impacts to marine mammals, helicopters would be required to fly over land. However, this would increase the magnitude and extent of impacts to the wilderness.

Response: NMFS believes no more than a negligible impact will accrue to marine habitats of importance to marine mammals in the waters offshore of ANWR from the wintertime CIDS operation. Once the CIDS is in place and supplied prior to September 1, noise from the CIDS will be limited to generators operating in the warm shutdown mode, and possibly some noise from helicopters supplying the CIDS prior to beginning drilling. Oil drilling noises will not occur until ice-up is complete. Other than small numbers of seals and polar bears (for which the U.S. Fish and Wildlife Service has issued a small take authorization), marine mammals will be unaffected (but see comment 7 below regarding potential for oil spills and comment 8 regarding drilling muds). Impacts relating to issuance of an IHA were addressed in NMFS' EA, other impacts were addressed in the final Environmental Impact Statement (FEIS) for the Beaufort Sea Lease Sale 144 (BSLS 144) and an EA prepared by the Minerals Management Service (MMS) for ARCO's activities.

ARCO will be required to comply with appropriate MMS and ANWR regulations regarding aircraft overflights. Also to mitigate noise levels for marine mammals, NMFS has conditioned the IHA to require aircraft to remain at an altitude of 1,000 ft (305 m) until within 0.5 nm (926 m) of the CIDS, whenever the weather ceiling allows such heights.

Comment 7: Both Greenpeace and Trustees expressed deep concern over the possibility of an oil spill in the vicinity of ANWR. There was concern that in the event of a crude oil blowout, harm to the marine mammals which reside on the barrier islands and in other habitats along the ANWR shoreline would be devastating.

Trustees noted that the relief well plan calls for ice roads and support activities with ANWR. This is unacceptable.

Response: When making a negligible impact determination, NMFS finds that a negligible impact determination may be appropriate if the probability of occurrence is low, but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, NMFS evaluates the risks involved and the potential impacts on marine mammal populations and habitat.

NMFS recognizes that there is still considerable disagreement as to the effects of an oil spill on bowhead whales and other marine mammals in the Alaskan Beaufort Sea. MMS used Oil Spill Risk Analysis modelling to estimate the impacts of a worst-case spill on bowhead whales and concluded that this event would result in the mortality of a few individuals with expected recovery to the species' overall population level in 1 to 3 years. However, some data on the anatomy and migratory behavior of bowhead whales suggest that impacts from a large oil spill could pose a grave threat to this species, especially if substantial

amounts of oil got into the lead system during the spring migration (Albert 1981, Shotts *et al.* 1990). NMFS notes however, that to date no blowouts have occurred during drilling 81 exploratory wells in Alaskan waters as of 1994 (MMS 1996). As analyzed in more detail in MMS' EA and based upon information provided in that document and the FEIS for BSLS 144, NMFS has determined that the potential for a significant oil spill from a single exploration activity site (as contrasted to an oil production site on which oil spill probabilistic analyses are based), and the potential therefore for significant impacts on marine mammals inhabiting the offshore and nearshore waters of Camden Bay, is negligible.

NMFS notes that ARCO's Oil Spill Contingency Plan has been modified to eliminate all references to relief well planning involving construction on, or movement through, ANWR, including its lagoons.

Comment 6: Both Greenpeace and Trustees believe NMFS fails to give meaningful consideration to impacts associated with chronic discharges of contaminants (drilling muds, cuttings, biocides, oil) associated with exploratory drilling operations. Greenpeace believes routine and accidental discharges are substantial.

Response: The discharge of anthropogenic materials from oil platforms, (such as drilling muds, discharged materials and produced water) is regulated by the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System. A permit for oil exploration activities has been issued by EPA for this activity. While drilling muds are relatively non-toxic and the metals associated with drilling muds are virtually unavailable for bioaccumulation by marine organisms (Neff 1987), other anthropogenic materials could potentially harm bowhead whales by reducing or contaminating their food resources if found in sufficient quantities. The feeding strategy of bowhead whales could lead to ingestion of oil from oil-contaminated food, if the prey organisms accumulate petroleum hydrocarbons in their tissue. The effect of pollutants including heavy metals on the planktonic organisms (copepods, euphasiids) on which these whales feed is relatively unknown, but may result in either direct mortality or sublethal effects that inhibit growth, longevity and reproduction. If planktonic crustaceans have the ability to detoxify hydrocarbons, these hydrocarbons are less likely to persist and biomagnify in the bowhead whale. The National Research Council (1985) concluded that the risks to most outer continental shelf (OCS) benthic communities from exploratory drilling discharges are small and result primarily from physical benthic effects. In addition, the relatively small area of these discharges further limits their impact in the Beaufort Sea marine environment.

NMFS has modified its EA to address this concern.

Subsistence concerns

Comment 9: The AEWC has concerns that any major noise-producing activities, including those by ARCO, that occur in the vicinity of a village's subsistence hunt or in the "upstream" migration path of the bowhead whales have the potential to interfere with the bowhead subsistence hunt. As a result, the AEWC has requested that all Fall open-water industrial activities with the potential to interfere with the Fall bowhead whale subsistence hunt cease as of August 31, 1997. If the CIDS is not on location at the specified and represented time by ARCO, then the AEWC insists that an approved open water Conflict and Avoidance Agreement (CAA) must be in place prior to the IHA being issued. If the CAA is signed before NMFS issues an IHA, then the AEWC agrees with NMFS that the potential impacts should be sufficiently mitigated to warrant issuance of an IHA with no further mitigation requirements. If the CAA is not signed, the AEWC recommends additional specified mitigation measures. Greenpeace states that no operations should continue east of Cross Island after the end of August.

Response: NMFS has been informed that a CAA between the AEWC and ARCO has been concluded. As part of that agreement, ARCO has agreed to cease all activities in the vicinity of the CIDS, including barge transport of supplies after August 31, 1997. Once the bowhead whale hunt has concluded, activities can continue as scheduled and discussed in the application and proposed authorization.

Comment 10: Greenpeace asserts that the proposed action will have a significant impact on the bowhead whale and Inupiat communities that depend on the bowhead whale for subsistence. Because the impacts of the industrial noise associated with the exploratory drilling activities during the bowhead migration have not been adequately evaluated by NMFS, NMFS must deny ARCO's IHA application.

Response: Impacts to bowhead whales from oil exploration activities were addressed above, in the EA, and in the notice of proposed authorization. NMFS has used the best scientific information available, along with Traditional Knowledge, to assess impacts of vessel, aircraft, and overwinter drilling activities on marine mammals. NMFS believes that a signed CAA supports NMFS determination that there will not be an unavoidable adverse impact on the availability of a species or stock for taking for subsistence needs.

Traditional knowledge concerns

Comment 11: Trustees believe NMFS has ignored valid and relevant scientific information-known through Traditional Knowledge of Native Alaskans-which contradict conclusions that oil industry operations will have a negligible impact. Greenpeace notes that the whaling captains have presented compelling evidence that bowheads are displaced from their migratory route and feeding areas by seismic and drilling operations. Greenpeace also believes that NMFS has dismissed the subtle behavioral effects on bowhead whales (*e.g.* spookiness) that whaling captains discuss.

Response: Traditional Knowledge provides information that industrial noise is detectable to bowhead whales at greater underwater distances than empirical scientific information has shown, and that bowheads will deflect from industrial noise, such as seismic airgun noise (up to 30–35 nmi from the airgun array), at great distances. Traditional Knowledge has been added as appropriate to the EA as requested by the AEWC on July 17, 1997.

NMFS does not dismiss information on behavioral effects from industrial noise on bowheads. These issues are discussed whenever relevant (see for example, NMFS 1996 [1]). Because ARCO's application noted that activities potentially affecting bowhead whales would not take place during the time when the major portion of the stock migrates through the Beaufort Sea, and therefore, no adverse effects on subsistence takings would occur, lengthy discussion on behavioral effects was unnecessary.

Monitoring

Comment 12: Greenpeace finds that ARCO's 1997 proposed monitoring plan is not scientifically rigorous enough to determine impacts to Arctic pinnipeds and cetacean species. Greenpeace contends that ARCO's quasi-scientific experimental design of the monitoring program is aimed at trying to prove that exploratory and other disturbing

[1] NMFS. 1996. Environmental Assessment: Request by BP Exploration (Alaska) Inc. for an Incidental Harassment Authorization to Allow the Incidental Take of Marine Mammals in the Beaufort Sea During the 1996 Northstar Seismic Exploration Program.

activities will have a negligible impact on the marine mammal populations.

Response: Section 101(a)(5)(D)(ii)(III) of the MMPA mandates a monitoring program to assess impacts to marine mammals by the activity. NMFS has stated previously that a monitoring program should be appropriate to determine the distribution and behavioral responses of potentially affected species of marine mammals before, during, and after exposure to the activities. NMFS believes that timing of each phase of ARCO's activity has mitigated affects on marine mammals to the lowest extent practicable. While additional monitoring can certainly be required under the IHA, NMFS must weigh the information value of such monitoring with costs for conducting the monitoring. If costs outweigh benefits, then NMFS believes the monitoring may not be practical, unless extenuating circumstances exist, such as ongoing subsistence harvests, or critically endangered species are present. An example of unnecessary monitoring includes repeating transmission loss tests for a CIDS during oil drilling activities, even though bowhead whales will not be in the vicinity of the CIDS when it is active.

Comment 13: Greenpeace believes NMFS must require a comprehensive monitoring plan that is fully subjected to independent peer design and review.

Response: Section 101(a)(5)(D)(ii)(III) requires an IHA to prescribe, where applicable, the requirements for independent peer-review of monitoring plans for activities where the proposed activity may affect the availability of a species or stock for taking for subsistence purposes. A signed CAA between the AEWC and the activity participants provides NMFS with documentation that the proposed activity will not have an unavoidable adverse impact on the availability of a species or stock for taking for subsistence needs. ARCO's proposed activity was discussed at the Peer-Review Workshop in Seattle on July 17, 1997, with the AEWC. In addition, the monitoring plan has been reviewed by scientists of NMFS and the MMC. The Scientific Director of the MMC, an independent reviewer, was of the opinion that the monitoring plan is adequate to verify that only small numbers of marine mammals are taken, that the taking is by harassment only, and that the impacts on the affected species and stocks are negligible. A similar assessment has been made by NMFS scientists who have reviewed the monitoring plan.

If at any time NMFS believes that the incidental harassment process would benefit from peer-review, it will promptly conduct this review. For example, if ARCO's oil drilling activities continue into the spring or summer, NMFS will require ARCO to provide a revised monitoring plan. That plan will be independently peer-reviewed to ensure that impacts to bowhead whales are adequately assessed.

Comment 14: Greenpeace states that NMFS must require ARCO to employ a full array of bottom-mounted hydrophones and deploy sonobuoys to accurately measure bowhead and other marine mammal vocalizations and ambient noise. The monitoring plan must be designed to substantiate the "zone of influence," however distant.

Response: NMFS disagrees. Under the IHA, during drilling activity phase the harassment of bowhead whales is not authorized. As noted in the application, no drilling will occur prior to complete ice-up, at which time bowhead whales will be in the Bering Sea, and drilling will cease prior to springtime bowhead migration. If, as mentioned in comment 3, drilling activities were to extend into late spring, 1998, and bowheads enter the Camden Bay area, NMFS would require ARCO to request an amendment to its IHA. Included in that request would be a modified monitoring plan.

Substantiating the zone of influence during wintertime for bowheads is viewed by NMFS as unnecessary in light of the above statement. Substantiating a zone of influence for seals would require disruptive research on seals in lairs which, while likely valuable research, is unnecessarily intrusive on the animals when implemented as a monitoring tool. Because of the potential for an increase in Arctic wintertime drilling and seismic work over the next few years, NMFS encourages MMS to fund additional studies on ringed seal behavior and effects from industrial development.

Authorization concerns

Comment 15: Greenpeace and Trustees were concerned about the adequacy of time for NMFS to give adequate recognition to public comments.

Response: As noted by this document, NMFS believes that it has given proper review of all public comments.

Comment 16: ARCO believes that the operational restrictions set out in the IHA are not necessary because no takes of marine mammals are anticipated. For example, ARCO notes that September 1 is only a target date for completing the CIDS supply.

Response: NMFS presumes that the operational restrictions refer to the mitigation measures proposed in the earlier notice. NMFS notes however, that activities that proceed prior to, or after, the dates ARCO has suggested for each phase of the project, may potentially harass marine mammals, especially activities that may affect bowhead migration in the spring leads. The potential for the incidental harassment of marine mammals having a more than negligible impact on marine mammals during these alternative times has simply not been evaluated at this time. As a result, incidental takings outside the periods specified cannot be authorized. NMFS notes however, that once the NSB has secured its whaleboats for the season, and notifies ARCO of this fact, ARCO may continue resupply of the CIDS via barges.

Cumulative impact concerns

Comment 17: Trustees and Greenpeace believe NMFS ignores the cumulative impacts from oil exploration and development in the Arctic. Trustees provide a statement from one whaling captain that bowheads no longer enter Camden Bay due to industrial activity.

Response: NMFS has not ignored the cumulative impact from oil and gas exploration on marine mammals or their habitat. Due to distances between oil and gas exploration activities, NMFS does not expect a cumulative impact in 1997. NMFS has identified two oil and gas exploration activities in the Central and Eastern U.S. Beaufort Sea this year, a seismic survey by BP Exploration (Alaska) and the proposed activity. Other than the potential for the CIDS being towed within proximity to the seismic survey during mid-August, and the resulting noise if the seismic array is operating at the time, no cumulative impacts are anticipated. In 1990, NMFS determined that in any one year between 1990 and 1995 in the Beaufort and Chukchi Seas, there may be between 2 and 5 drilling units operating in Federal waters and two drilling units in state waters. In addition up to 17,000 seismic trackline miles in the Beaufort and Chukchi Seas would be conducted over the five years. On July 16, 1990 (55 FR 29207), NMFS determined that this level of industrial activity would not result in more than a negligible impact on marine mammals. No new information has been provided since that time to require a reassessment of cumulative impacts.

Traditional Knowledge indicates that oil exploration deflects whales further offshore, making them less accessible to whalers. While agreeing with this observation, NMFS notes that because no major oil and gas exploration activities have taken place in Camden

Bay since 1993, if bowhead whales are not following historic migratory routes (according to Traditional Knowledge), then one or more factors must be influencing their migration. These include: Ice conditions, food distribution and/or abundance, or conditioning by bowhead whales to the previous noise events. NMFS notes that a similar migratory modification has been made by California gray whales in their southward migration along the California coast in order to avoid recreational and commercial vessel traffic south of Pt. Conception.

National Environmental Policy Act (NEPA) concerns

Comment 18: Trustees noted that the site-specific impacts of drilling a well in the proposed Warthog area on marine mammals were not addressed in BSLS 144 FEIS, nor in ARCO's exploration plan or oil spill contingency plan. Trustees believe that NMFS' IHA documentation fails to acknowledge the potential effects addressed in ARCO's Oil Spill Contingency Plan.

Response: MMS released an EA that discusses ARCO's planned scope of work in Camden Bay, alternatives to those activities, and the impacts to the human environment from the proposed action and alternatives.

Impacts of potential oil spills resulting from exploration activities on BSLS 144 were addressed in that Lease Sale's FEIS and in MMS' 1997 EA. To the extent that those impacts affect marine mammals and their habitat, appropriate parts have been incorporated by reference in NMFS' EA. Incorporation by reference is provided by Council on Environmental Quality regulations (40 CFR 1502.21).

Comment 19: Greenpeace and Trustees believe that the proposed action will have a "significant effect on the human environment" and therefore NMFS needs to prepare an environmental impact statement (EIS) on the action. Greenpeace notes that ARCO proposes to introduce major sources of industrial noise and pollution to a pristine and ecologically significant area off the ANWR. Because the operations associated with, and subsequent exploratory drilling will affect species and habitats that the ANWR is designed to protect, NMFS must prepare a full EIS.

Response: NMFS disagrees. Commenters have not provided scientific information that the impact would be more than negligible (*i. e.*, significant). Since NMFS must analyze a request for an IHA to determine whether the proposed activity has no more than a negligible impact on a species or stock of marine mammals and does not have an unmitigable adverse impact on subsistence users, it believes that the issuance of a small take authorization only requires the preparation of an EA and not an EIS. In this case, the agency found through preparing an EA that the proposed action will not significantly affect the quality of the human environment thus making a finding of no significant impact. If the EA results in this finding, no additional documents are required by NEPA (NOAA Directives Manual 02–10).

Comment 20: Greenpeace notes the alleged inadequacies of the draft EIS on BSLS 144, especially as it relates to marine mammals and habitat-use patterns. Greenpeace references a review of BSLS 144 by the MMC.

Response: NMFS notes that the MMC comments were submitted in response to a draft EIS prepared by MMS for BSLS 144. Appropriate modifications and a response to MMC comments were provided in the FEIS. In addition, NMFS reviewed BSLS 144 under section 7 of the Endangered Species Act (ESA), and concluded formal consultation on November 16, 1995. The finding of that consultation was that, based on the Arctic Regional Biological Opinion, oil exploration activities under BSLS 144 is not likely to jeopardize the continued existence of listed species under its jurisdiction.

NMFS also notes that ringed seal and other marine mammal biology, distribution and abundance, and impacts were provided in its EA on the proposed action.

Other concerns

Comment 21: Greenpeace and Trustees believe that issuance of an IHA will violate the Coastal Zone Management Act (CZMA; 16 U.S.C. 1451–1464). The CZMA provides that a Federal agency may not issue a license or permit to conduct an activity that affects a state's coastal zone before a state concurs with the license applicant's certification that the activity will be consistent with the provisions of the state's plan.

Response: ARCO submitted the necessary information to the State of Alaska in order to evaluate the consistency of ARCO's activities with Alaska's coastal zone management plan (ACZMP). The State has worked with ARCO to address the State's coastal management concerns regarding ARCO's proposed activities in the Beaufort Sea. In managing Alaska's coastal zone, and in its evaluation of ARCO's proposed activities, the State must balance the competing objectives and purposes of the ACZMP. It is NMFS' understanding that the State has expressed no outstanding concerns regarding the consistency of ARCO's proposed activities with the enforceable policies of the ACZMP. An authorization to drill will not be provided to ARCO by MMS until ARCO has received the State's consistency determination.

Comment 22: Trustees contend that an Alaska Native Interest Land Claims Act (ANILCA) section 810 study is required. They believe that because the IHA is a required aspect of the decision regarding use of OCS lands for drilling, and the proposed oil industry activities could also harm the availability and use of ANWR lands for subsistence and cause a restriction of subsistence uses, and ANILCA study is necessary.

Response: The U.S. Supreme Court ruled in March 1987 that, by ANILCA's plain language, section 810 applies only to Federal lands within the State of Alaska's boundaries. ANILCA defines "public lands" to mean federal lands situated "in Alaska," a phrase which has a precise geographic/political meaning that can be delineated with exactitude to include coastal waters to a point three miles from the coastline, where the OCS commences. Therefore, an ANILCA section 810 analysis/report is not required for ARCO's Warthog project.

Comment 23: Greenpeace and Trustees both believe ARCO, in deballasting the CIDS and moving the drilling unit to Camden Bay prior to receiving an authorization under the MMPA is in violation of the MMPA because marine mammals will be significantly affected by the action. In addition, NMFS, by not enforcing the MMPA and prohibiting the movement, has also violated the MMPA and the Administrative Procedure Act.

Response: NMFS disagrees. NMFS believes that such an instruction is not authorized by the MMPA, since under the MMPA NMFS authorizes only the taking of marine mammals incidental to that activity, not the activity itself. However, initiating an action that might result in a taking of a marine mammal without an authorization under the MMPA places that activity in jeopardy of violating the MMPA moratorium on taking marine mammals.

This issue was the subject of a District Court action by Greenpeace. On August 21, 1997, a U.S. District Court Judge for the District of Columbia disallowed Greenpeace's request to the Court for a Temporary Restraining Order to require NMFS to stop ARCO's moving the CIDS to Camden Bay.

Consultation

Under section 7 of the ESA, NMFS has completed consultations on the issuance of this authorization.

NEPA

In conjunction with the notice of proposed authorization, NMFS released a draft EA that addresses the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. Comments received on the draft EA, while leading to an improved EA, did not provide sufficient information that implementation of either the proposed action or the alternatives to that action would have a significant effect on the human environment. Therefore, as a result of the findings made in the EA, NMFS has concluded that implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. As a result of that finding, an EIS will not be prepared. A copy of the EA is available upon request (see **ADDRESSES**).

Conclusions

NMFS has determined that the short-term impact of exploration drilling and related activities in the Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of pinnipeds, and possibly some individual bowhead or beluga whales. While behavioral modifications may be made by these species of marine mammals to avoid the resultant noise from tugs either towing the CIDS or transporting supplies, or due to drilling activities, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the activity area, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated and takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned above. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Because bowhead whales are in the Canadian Beaufort Sea until late August/early September, moving the CIDS during August will not impact subsistence hunting of bowhead whales. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs was the subject of consultation between ARCO and subsistence users. As a result of discussions between the two parties, a Conflict and Avoidance Agreement has been concluded. This Agreement consists of three main components: (1) Communications, (2) conflict avoidance, and (3) dispute resolution.

Since NMFS is assured that the taking will not result in more than the incidental harassment (as defined by the MMPA) of small numbers of certain species of marine mammals, would have only a negligible impact on these stocks, will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued.

Authorization

Accordingly, NMFS has issued an IHA to ARCO Alaska for the above described oil exploration drilling activities in Camden Bay, Beaufort Sea, AK, provided the mitigation, monitoring and reporting requirements described in the authorization are undertaken.

Dated: September 25, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–26060 Filed 10–1–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the consolidation, automation, and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Alamosa, CO Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Pueblo and Grand Junction Weather Forecast Offices (WFOs);

(2) Alpena, MI WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future North Central Lower Michigan WFO;

(3) Houghton Lake, MI WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future North Central Lower Michigan and Grand Rapids WFOs;

(4) Kalispell, MT WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Missoula WFO;

(5) Lander, WY WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Riverton WFO;

(6) Norfolk, NE WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Omaha and North Platte WFOs;

(7) Sault Ste. Marie, MI WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future North Central Lower Michigan and Marquette WFOs;

(8) Scottsbluff, NE WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Cheyenne and North Platte WFOs;

(9) Sheridan, WY WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Billings and Riverton WFOs; and

(10) St. Cloud, MN WSO which will be automated at FAA Weather Observation Service Level D and have its services consolidated into the future Minneapolis and Aberdeen WFOs.

In accordance with Pub. L. 102–567, the public will have 60 days in which to comment on these proposed consolidation, automation, and closure certifications.

DATES: Comments are requested by December 1, 1997.

ADDRESSES: Requests for copies of the proposed consolidation, automation and closure packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. L.

102–567, the Secretary of Commerce must certify that these consolidation, automation, and closure certifications will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation, automation, and closure certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification(s), the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable);

(7) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist, where required, documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an in-place supplementary data program at the responsible WFO(s);

(8) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(9) An Air Safety Appraisal for offices which are located on an airport; and

(10) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. L. 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. At the June 25, and September 24, 1997 MTC meetings the Committee stated that its endorsement of certifications is "subject to the following qualifications:

(1) The number of trained staff in each modernized field office meets staffing requirements as established by the modernization criteria and documented in the National Implementation Plan and the Human Resources Plan (WBS 1100). Delays in training or failure to fill required positions will increase the risk of degradation of service;

(2) The availability of operational systems in each modernized field office meets requirements as established by the modernization criteria and documented in the System Commissioning and Support Function Demonstration Plans; and

(3) The operational and administrative infrastructures and technical development needed to support the modernized field offices be maintained as required by the modernization plan." It is expected that these qualifications can be met for the above proposed certifications. If these qualifications can not be met prior to the December MTC meeting, these proposed certifications may or may not be presented to the Committee. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committees prior to consolidating, automating, and closing these offices.

Dated: September 26, 1997.

Robert S. Winokur,

Acting Assistant Administrator for Weather Services.

[FR Doc. 97–26127 Filed 10–1–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the automation and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Abilene, TX Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level C and with services being provided by the future San Angelo, Dallas/Fort Worth, Lubbock, and Midland/Odessa Weather Forecast Offices (WFOs);

(2) Concordia, KS WSO which will be automated at FAA Weather Observation Service Level D and with Services being provided by the future Topeka, Wichita, and Hastings WFOs;

(3) Ely, NV WSO which will be automated at FAA Weather Observation Service Level D and with services being provided by the future Elko WFO;

(4) Havre, MT WSO which will be automated at FAA Weather Observation Service Level D and with services being provided by the future Great Falls WFO;

(5) International Falls, MN WSO which will be automated at FAA Weather Observation Level D and with services by the future Duluth and Eastern North Dakota WFOs;

(6) Santa Maria, CA WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Los Angeles and San Francisco Bay Area WFOs;

(7) Tupelo, MS WSO which will be automated at FAA Weather Observation Service Level D and with services being provided by the future Memphis and Jackson WFOs;

(8) Valentine, NE WSO which will be automated at FAA Weather Observation Service Level D and with services being provided by the future North Platte WFO;

(9) Victoria, TX WSO which will be automated at FAA Weather Observation Service Level D and with services being provided by the future Corpus Christi, Austin/San Antonio, and Houston/Galveston WFOs;

(10) Wichita Falls, TX WSO which will be automated at FAA Weather Observation Service Level D and with services being provided by the future Oklahoma City and Dallas/Fort Worth WFOs; and

(11) Winnemucca, NV WSO which will be automated at FAA Weather Observation Service Level D and with services being provided by the future Elko WFO.

In accordance with Public Law 102–567, the public will have 60-day in which to comment on these proposed automation and closure certifications.

DATES: Comments are requested by December 1, 1997.

ADDRESSES: Requests for copies of the proposes automation and closure packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. L. 102–567, the Secretary of Commerce must certify that these automations and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed automation and closure certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; services of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist, where required, documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS users confirmation of services complaints; and an in-place supplementary data program at the responsible WFO(s);

(7) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(8) An Air Safety Appraisal for offices which are located on an airport; and

(9) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. L. 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of pubic comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. At the June 25, 1997 and the September 24, 1997 MTC meetings the Committee stated that its endorsement of certifications is "subject to the following qualification:

(1) The number of trained staff in each modernized field office meets staffing requirements as established by the modernization criteria and documented in the National Implementation Plan and the Human Resources Plan (WBS 1100). Delays in training or failure to fill required positions will increase the risk of degradation of service;

(2) The availability of operational systems in each modernized field office meets requirements as established by the modernization criteria and documented in the System Commissioning and Support Function Demonstration Plans; and

(3) The operational and administrative infrastructures and technical development needed to support the modernized field offices be maintained as required by the modernization plan." It is expected that these qualifications can be met for the above proposed certifications. If these qualifications can not be met prior to the December MTC meeting, these proposed certifications may or may not be presented to the Committee. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committees prior to automating and closing these offices.

Dated: September 26, 1997.

Robert S. Winokur,

Acting Assistant Administrator for Weather Services.

[FR Doc. 97–26128 Filed 10–1–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing a proposed certification for the automation of the Williston, ND, Weather Service Office which will be automated at FAA Weather Observation Service Level D and with services being provided by the future Bismarck Weather Forecast Office (WFO).

In accordance with Pub. L. 102–567, the public will have 60 days in which to comment on this proposed automation certification.

DATES: Comments are requested by December 1, 1997.

ADDRESSES: Requests for copies of the proposed automation package should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. L. 102–567, the Secretary of Commerce must certify that this automation will not result in any degradation of service to the affected area of responsibility and must publish the proposed automation certification in the **Federal Register**. The documentation supporting the proposed certification includes the following:

(1) a draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) a comparison of services provided in the service area and the services to be provided after such action;

(4) a description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) an identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; successful resolution of ASOS user confirmation of services complaints; and an in-place supplementary data program at the responsible WFO; and

(7) a letter appointing the liaison officer.

This proposed certification does not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Public Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification package because it is too voluminous to publish. Copies of the certification package and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. At the June 25, and September 24, 1997 MTC meetings the Committee stated that its endorsement of certifications is "subject to the following qualifications:

(1) The number of trained staff in each modernized field office meets staffing requirements as established by the modernization criteria and documented in the National Implementation Plan and the Human Resources Plan (WBS 1100). Delays in training or failure to fill required positions will increase the risk of degradation of service;

(2) The availability of operational systems in each modernized field office meets requirements as established by the modernization criteria and documented in the System Commissioning and Support Function Demonstration Plans; and

(3) The operational and administrative infrastructures and technical development needed to support the modernized field offices be maintained as required by the modernization plan." It is expected that these qualifications can be met for this proposed certification. If the qualifications can not be met prior to the December MTC meeting, this proposed certification may or may not be presented to the Committee.

If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committees prior to automating this office.

Dated: September 26, 1997.

Robert S. Winokur,

Acting Assistant Administrator for Weather Services.

[FR Doc. 97–26129 Filed 10–1–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092497A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Denial of public display permit (PHF870–1391)

SUMMARY: Notice is hereby given that the National Marine Fisheries Service has denied issuance of a permit to M & M Amusement Park to import marine mammals for public display purposes.

ADDRESSES: Documents submitted in connection with the above application are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, NMFS, NOAA, 9731 Executive Center Drive North, St. Petersburg, FL 33702 (813/570–5301).

FOR FURTHER INFORMATION CONTACT: Ann Hochman, 301/713–2289.

SUPPLEMENTARY INFORMATION: On Friday, July 25, 1997, notice was published in the **Federal Register** (62 FR 40050) that an application had been filed by M & M Amusement Park, Calle Gilberto Rolin L16, Caguas, PR 00725. A public display permit was requested to import two bottlenose dolphins (*Delphinapterus leucas*) and three South American sea lions (*Otaria flavescens*) from Venezuela where they are currently on tour with Waterland - Mundo Marino of Valle, Colombia, into Puerto Rico for public display at several sites including San Juan, Ponce and Mayaguez. The requested permit has been denied subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the conditions set forth therein. Most importantly, the applicant was not registered under nor held a license issued under 7 U.S.C. 2131, *et seq.*

Dated: September 26, 1997

Ann D. Terbush,

Chief, Perinits and Documentation, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–26059 Filed 10–1–97; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (CNCS), has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Roger L. Hurley, (202) 606–5000, Extension 144.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C., 20503. (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Americorps NCCC Service Project Application.

OMB Number: 3045–0010.

Frequency: Annually.

Affected Public: Various non-profit organizations/project sponsors.

Number of Respondents: 800.

Estimated Time Per Respondent: 3 hrs.

Total Burden Hours: 2400 hrs.

Total Annualized capital/startup costs: N/A.

Total Annual Cost (operating/maintaining systems or purchasing services): $33,600.

Description: The Corporation for National and Community Service proposes to renew the AmeriCorps NCCC Service Project Application in a revised form, which incorporate lessons learned since the program inception. The Form is the means by which various organizations can request NCCC Members to assist in community service projects, and by which the NCCC evaluates such proposals for approval and selection.

Dated: September 29, 1997.

Andrew P. Chambers,

AmeriCorps NCCC National Director.

[FR Doc. 97–26112 Filed 10–1–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 3, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 26, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Management

Type of Review: Extension.

Title: Customer Satisfaction Surveys and Focus Groups.

Frequency: On Occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-Profit institutions; State, Local or Tribal Government, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 100,000.

Burden Hours: 50,600.

Abstract: Customer satisfaction surveys and focus group discussions will be conducted by the Principal Offices of the Department of Education to measure customer satisfaction and establish and improve customer service standards as required by Executive Order 12862.

[FR Doc. 97–26096 Filed 10–1–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–549]

Proposed Information Collection and Request for Comments

September 26, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before December 1, 1997.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Information Services Division, ED–12.4, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–549 "Gas Pipeline Rates: Natural Gas Policy Act, Title III Transactions and Natural Gas Act Blanket Certificates Transactions" (OMB No. 1902–0086) is used by the Commission to implement the statutory provisions of the Sections 311 and 312 of the Natural Gas Policy Act (NGPA) (15 U.S.C. 3371–3372), and Section 7 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). Under Part 284 of the Commission's regulations non-interstate pipelines that perform transportation service under NGPA Section 311 (intrastate pipelines) or blanket certificates issued under section 7 of the NGA (Hinshaw pipelines) are required to file an annual report containing specific details of each transaction initiated during the reporting year. Interstate pipelines performing unbundled sales service under a blanket certificate granted under Part 284 of the regulations are required to file an annual report detailing specific information for each transaction initiated during the reporting year. The Commission uses the information collected in these reports to monitor the jurisdictional transportation activities of interstate pipelines and the unbundled sales activities of interstate pipelines.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
90	1.0	8.83	795

The estimated total cost to respondents is $41,902, (795 hours divided by 2,087 hours per year per employee times $110,000 per year per average employee=$41,902). The cost per respondent is $466.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g. permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26071 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3765–000]

Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, the Potomac Edison Company, and West Penn Power Company (Allegheny Power); Notice of Filing

September 26, 1997.

Take notice that on September 4, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, the Potomac Edison Company, and West Penn Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 10, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26080 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3455–000]

Central Illinois Light Company; Notice of Filing

September 26, 1997.

Take notice that on August 11, 1997, Central Illinois Light Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 6, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26079 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4381–000]

Eastern Energy Marketing, Inc.; Notice of Filing

September 26, 1997.

Take notice that on August 27, 1997, Eastern Energy Marketing, Inc. (EEM) tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than October 27, 1997.

EEM intends to engage in electric power and energy transactions as a marketer and broker. In transactions where EEM sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. EEM it not in the business of generating, transmitting, or distributing electric power.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 8, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26081 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–760–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

September 26, 1997.

Take notice that on September 18, 1997, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP97–760–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point in Reeves County, Texas, to permit the interruptible transportation and delivery of natural gas to Orla Petco, Inc. (Orla)—an independent oil producer. El Paso makes such request under its blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso states that Orla currently operates an enhanced oil recovery project in Reeves County, Texas. It is stated that to extract the oil from the field, Orla is injecting CO_2 into the reservoir to increase the reservoir's operating pressure and enhance the production of crude oil. El Paso avers that in order to increase the pressure of the proposed gases (CO_2 and hydrocarbon mix) being re-injected into the reservoir, Orla has acquired a gas compressor that requires pipeline quality supplies of natural gas as fuel.

In support of Orla's continued enhanced oil recovery operations, Orla has requested that El Paso provide transportation service pursuant to a Transportation Service Agreement dated August 21, 1997 for Orla. El Paso states that, by the letter agreement the parties agreed that El Paso would install a new delivery point on El Paso's 6⅝ inch Line from Jal-El Paso Line to Continental Oil Company's Ramsey Plant in Reeves County, Texas. El Paso therefore, states that it is seeking authorization to construct and operate the Orla Petco, Inc. Delivery Point in order to accommodate a request for service by Orla.

El Paso proposed to deliver up to 54,750 Mcf annually or an average of 150 Mcf per day to the Orla Petco, Inc. Delivery Point, stating that the requested volumes will be within Orla's existing entitlements. The estimated construction cost of the proposed facility is $35,000—and Orla has agreed to reimburse El Paso's cost.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26077 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–006]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 26, 1997.

Take notice that on September 23, 1997, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective October 23, 1997:

Fourth Revised Sheet No. 102
First Revised Sheet No. 113A
Fifth Revised Sheet No. 214
First Revised Sheet No. 312
Third Revised Sheet No. 349
Fourth Revised Sheet No. 350

El Paso states that the above tariff sheets are being filed to remove the rate cap from El Paso's limited negotiated rate option for Rate Schedule FT–1 service pursuant to El Paso's Settlement filed at Docket No. RP95–363–000, et al., and the Commission's Policy Statement at Docket Nos. RM95–6–000, et al. Further, the filing makes negotiated rates available to interruptible transportation service under Rate Schedule IT–1 pursuant to the Policy Statement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26084 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–113–000]

Gasdel Pipeline Systems, Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 26, 1997.

Take notice that on September 22, 1997, Gasdel Pipeline Systems, Inc. (Gasdel) tendered for filing Sixth Revised Sheet No. 5 to its FERC Gas Tariff, First Revised Volume No. 1A. The proposed effective date of this tariff sheet is October 1, 1997.

Gasdel states that pursuant to Article 30 of the General Terms and Conditions of its FERC Gas Tariff, and FERC Annual Charges Billing under 18 CFR Part 382, dated August 1, 1997, Gasdel is filing to reflect a FERC Annual Charge Adjustment of $.0022 for the fiscal year beginning October 1, 1997.

Gasdel states that copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26088 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–750–000]

Mobil Natural Gas Pipeline Company; Notice of Application

September 26, 1997.

Take notice that on September 11, 1997, Mobil Natural Gas Pipeline Company (MNGPC), filed in Docket No. CP97–750–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorizations necessary to acquire and convert to natural gas service a 2.5 mile portion of a mothballed 6.5 mile pipeline previously used for fuel oil delivery; to own, operate, and maintain the Gibson Point Pipeline System and certain appurtenant facilities thereto; to construct check metering facilities at the Paulsboro, New Jersey refinery owned by Mobil Oil Corporation (Mobil Oil); to construct a "T" with a flange at an interconnection with Texas Eastern Transmission Corporation (Texas Eastern); to own certain facilities interconnecting with the existing Texas Eastern pipeline system; and to provide transportation service from the Texas Eastern interconnect to the Paulsboro, New Jersey refinery, all as set forth in the application which is on file with the Commission and open to public inspection.

MNGPC states that it proposes to acquire and convert to gas service approximately 2.5 miles of the fuel oil pipeline extending from Delaware County, Pennsylvania, where an interconnection is to be established with the existing 16-inch Line 1–A–1 of Texas Eastern, to the existing terminus at the Paulsboro Refinery. In addition, MNGPC proposes to construct check metering facilities at the Paulsboro Refinery and a "T" at the Texas Eastern interconnect. At the Texas Eastern interconnect, Texas Eastern will construct and operate a tap, a meter station, connecting pipe, and electronic gas measurement equipment. The sole function of the converted pipeline will be to provide transportation service to the Paulsboro Refinery owned by Mobil Oil, pursuant to a 15-year transportation agreement for 27 MMcf/day. It is stated that approval of this application will allow Mobil Oil to: (i) Obrain the lowest-cost fuel supply at its Paulsboro refinery; (ii) eliminate use of an existing electric compressor, thereby reducing emissions and noise levels at the refinery; and (iii) replace, with natural gas, refinery products that are currently being used to fuel a cogeneration facility.

It is asserted that the pipeline would be converted and the metering facilities, the "T" with a flange, and the interconnecting facilities would be constructed in the fall of 1997 for an in-service date of December 17, 1997. The costs of Texas Eastern's construction of the interconnecting facilities are estimated to be approximately $1,135,000. The costs of constructing the metering facilities and the "T" with a flange are estimated to be approximately $200,000.

MNGPC states that the proposed conversion of the fuel oil pipeline to natural gas and the proposed construction and operation of the interconnecting facilities and facilities appurtenant to the Gibson Point Pipeline will have no significant environmental effects. Construction related to the pipeline will be minimal and will occur either on the well-buffered property of the Paulsboro Refinery itself or in areas that already are industrial in nature. No new right-of-way is required for the converted pipeline because MNGPC will use existing pipeline facilities located in an existing right-of-way.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 14, 1997 file with Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein or if the Commission on its own review of the matter finds that a grant of the application is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion, believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for MNGPC to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26076 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No RP97–533–000]

Pacific Gas Transmission Company; Notice of Proposed Change FERC Gas Tariff

September 26, 1997.

Take notice that on September 22, 1997, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Nineteenth Revised Sheet No. 4. PGT requested the above-referenced tariff sheet become effective November 1, 1997.

PGT asserts that the purpose of this filing is to modify the rate for service on PGT's Medford, Oregon Extension under Rate Schedule FTS–1 (E–2) (WWP) in accordance with the negotiated rate formula for that service as specified in PGT's FERC Gas Tariff.

PGT further states that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26086 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–150–008]

Richfield Gas Storage System; Notice of Compliance Filing

September 26, 1997.

Take notice that on September 23, 1997, Richfield Gas Storage System (Richfield) tendered for filing as part of its FERC Gas Tariff, Substitute Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

Richfield asserts that the purpose of this filing is to comply with the Commission's Order No. 587–C, Standards for Business Practices of Interstate Natural Gas Pipelines issued on March 4, 1997 in Docket No. RM96–1–004.

Richfield states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26083 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–336–003]

Trailblazer Pipeline Company; Notice of Compliance Filing

September 26, 1997.

Take notice that on September 24, 1997, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective June 1, 1997 and November 1, 1997.

Trailblazer states that the purpose of the filing is to comply with Ordering Paragraph (A) of the Commission's order issued September 15, 1997 in Docket Nos. RP97–336–001 and 002 (September 15th Order), which required Trailblazer to delete from its Tariff the sentence, "If the rate will sometimes be less than but will never exceed the applicable maximum rate, such rate will be considered a discounted rate rather than a Negotiated Rate." Trailblazer states that in the present filing it has reflected this change to be effective June 1, 1997, as well as conforming changes to be effective November 1, 1997, to sheets approved by OPR letter order issued July 31, 1997 in Docket No. RP97–54–006 (July 31st Letter Order).

Trailblazer requests waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective as indicated in the present filing consistent with the September 15th Order and the July 31st Letter Order.

Trailblazer states that copies of the filing have been mailed to its transportation customers, interested state regulatory agencies, and all parties set out on the official service lists in Docket No. RP97–336.

Any person desiring to protest said filing should file a motion with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26085 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–534–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 26, 1997.

Take notice that on September 23, 1997, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing to be effective November 1, 1997.

Viking states that the purpose of this filing is to establish a new Rate Schedule FT–C, which will be applicable to the expansion capacity approved by the Commission on May 6, 1997 in "Order Issuing Certificate," Docket No. CP97–93–000, 79 FERC ¶61,136 (1997). Rate Schedule FT–C is identical in all respects to Viking's existing FT–A rate schedule, except that it applies only to firm shippers using the expansion capacity. Viking is also filing to implement the initial incremental demand rate of $8.65 Dth/month approved by the Commission in the May 6, 1997 certificate order.

As provided in the Commission's order, this initial rate for FT–C service will be subject to a retroactive "true-up" filing after a final accounting for the project has been completed. Viking states that it is also making miscellaneous tariff modifications so that its tariff properly reflects the existence of Viking's new Rate Schedule FT–C.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26087 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–766–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

September 26, 1997.

Take notice that on September 22, 1997, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP97–766–000 a request pursuant to Sections 157.205, 157.212, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to upgrade the United Cities Gas Company Olathe Naval Base meter setting and appurtenant facilities located in Johnson County, Kansas under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that the total projected volume of delivery through the new facilities is estimated to be 407,400 Dth annually with a peak day volume of 2,500 Dth. The total project cost is estimated to be $162,282 which will be offset by the execution of a new incremental one year firm transportation agreement. WNG states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26078 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2680–039]

Consumers Energy Company; Notice of Availability of Draft Environmental Assessment

September 26, 1997.

A draft environmental assessment (DEA) is available for public review. The DEA was prepared for a plan to construct angler access facilities at what is known as the Port Sheldon site. The plan was required by ordering paragraph (C) of the Order Approving Settlement Agreement Regarding Fishery Issues, issued by the Commission on January 23, 1996. The Port Sheldon site is located adjacent to Lake Michigan and Pigeon Lake, near the Town of West Olive, Michigan.

The DEA finds that the licensee's plan is not a major federal action significantly affecting the quality of the human environment. The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, NE., Washington, DC 20426. Copies can also be obtained by contacting the project manager listed below.

Please submit any comments within 40 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to: Ms. Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (2680–039) on any comments filed. For further information, you may contact the project manager, Patti-Pakkala, at (202) 219–0025.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26082 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

September 26, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 184.

c. *Date filed:* September 18, 1997.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* El Dorado.

f. *Location:* On the South Fork American River, in El Dorado, Alpine, and Amador Counties, California, partially within Eldorado National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Terry Morforld, Manager, Hydro Generation, Mail Code N11C, P.O. Box 770000, San Francisco, CA 94177, (415) 973–5311.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Comment Date:* November 5, 1997.

k. *Description of Project:* The proposed Riverton Water Supply System (RWSS) would consist of a river intake and pump station on the South Fork of the American River near Riverton and a 30-inch-diameter, 2000-foot-long, buried pipeline extending from the pump station to an existing undamaged portion of the El Dorado canal.

Pacific Gas and Electric Company (PG&E) proposes to construct and operate the RWSS project in order to restore water delivery to the El Dorado Irrigation District (EID). Severe flood damage to the El Dorado Project in late 1996 and early 1997 interrupted that delivery. The proposed facilities would discharge about 40 cubic feet per second of water into the canal, from which water would be delivered to EID as it had been before the flood damage. PG&E's proposal includes a contingency plan to install a temporary intake and above-ground pipeline to provide an emergency water supply, if necessitated by drought conditions prior to completion of the permanent facilities.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does no file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26089 Filed 10–1–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5901–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Voluntary Customer Service Satisfaction Surveys

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Voluntary Customer Service Satisfaction Surveys, OMB Control Number 2090–0019, expiring 10/31/97. The ICR describes the nature of the information collection, and its expected burden and cost. Sample data collection instruments are appended with paper copies.

DATES: Comments must be submitted on or before November 3, 1997. They may

be sent via e-mail to bonner.patricia@epamail.epa.gov.

ADDRESSES: USEPA, Office of Policy, Planning and Evaluation, OSPED/IO Mail Code 2161, 401 M Street SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1711.02. The ICR may be accessed electronically via Internet [http://www/epa.gov/oppe on the World Wide Web], requested via fax at 202–260–4968, or by calling 202–260–0599.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Service Satisfaction Surveys, OMB Control No. 2090–0019, EPA ICR Number 1711.02, expiring 10/31/97. This is a request seeking renewal of a generic clearance for customer satisfaction surveys directed under Executive Order 12862 "Setting Customer Service Standards" (9/11/93).

Abstract: Within the Environmental Protection Agency, voluntary customer surveys are used to learn how customers perceive EPA's services, and whether the Agency is achieving its customer service standards. Surveys involve individuals who have used EPA services directly or could have obtained such services (e.g. people notified about [X] who did not respond). Information obtained from surveys has been and will be used to evaluate and improve service delivery. Surveys provide managers with information to help them take actions that will lead to improved service delivery and streamlined procedures. During the next three years, EPA nationwide plans up to 994 surveys. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on 4/30/97 (62 FR 23446); no comments were received.

Burden Statement: Response time ranges from seconds to full day focus group sessions; the average annual public reporting and record keeping burden for this collection of information is 11 minutes per response. The Agency plans to use: minimal question/comment cards with narrow scope; longer comment sheets to evaluate training/conferences/workshops/events and publications; telephone interviews; in-person interviews; short and long written (mail) surveys; focus groups; and Internet feedback screens. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Labor costs were estimated using the Bureau of Labor Statistics April 18, 1997, release of weekly earnings of wage and salary workers, using the median earnings reported ($504/week).

Respondents/Affected Entities: Any person or entity that uses EPA services.

Estimated Number of Respondents: 83,469—FY 1998; 82,144—FY 1999; and 85,294—FY 2000.

Frequency of Response: Generally, 1 time. However, one survey will go to the same 75 individuals twice a year, each year, and individuals may select to reply more than one and many times to Internet screens.

Estimated Total Annual Hour Burden: 18,405—FY 1998; 14,014—FY 1999; and 14,824—FY 2000.

Estimated Total Annualized Cost Burden: FY 1998—$231,903; FY 1999—$176,576; FY 2000—$186,783.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1711.02 and OMB Control No.2090–0019 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: September 26, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–26176 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5901–9]

Asbestos NESHAP State Notification Procedures Change

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to regulated community.

SUMMARY: The Environmental Protection Agency, Region I Office, Boston, MA, has notified in writing the EPA—New England states of Maine, New Hampshire, Massachusetts, and Connecticut that effective October 1, 1997, all owners or operators of a demolition or renovation activity subject to the asbestos NESHAP and who provide written notification to the states 10-working days in advance of commencing with the renovation or demolition activity, will not have to provide similar notification to the EPA Administrator as required pursuant to 40 CFR 61.145(b). Important exceptions to the Federal and state notification procedures change are discussed below. In brief, such exceptions require regulated entities to continue to submit asbestos NESHAP notifications to the EPA for all demolitions involving asbestos below each respective State's regulatory threshold amount, including all demolitions believed to involve no asbestos.

Background

The asbestos National Emissions Standard for Hazardous Air Pollutants (asbestos NESHAP) was promulgated pursuant to section 112 of the 1990 Clean Air Act as Amended and is codified at 40 CFR, part 61, subpart M. Among other things, the asbestos NESHAP [40 CFR 61.145(b)] requires all owners or operators of a demolition or renovation (demo/reno) activity that is subject to the asbestos NESHAP, to notify the Administrator in writing, at least 10-working days before asbestos stripping or removal work or any other activity begins, such as site preparation that would breakup, dislodge or similarly disturb asbestos material. Since the states of Maine, New Hampshire, Massachusetts and Connecticut were fully-delegated EPA asbestos NESHAP states, pursuant to section 112(d) of the Clean Air Act prior to the 1990 amendments, EPA made a determination that enabling legislation and promulgated regulations these states had in place governing demo/reno activities at the time of delegation were adequate for the purposes of effectively implementing the and enforcing the asbestos NESHAP. Included in this was the requirement that these same owners or operators of a demolition or renovation activity, notify in writing the designated state agency in advance of commencing with the demo/reno activity. EPA views this as a duplication of effort. EPA also believes that the costs, in terms of time and resources, of providing duel notification to both the state and federal government represent an unnecessary burden for the regulated community. Therefore, effective October 1, 1997, and with the exception referenced below, EPA will no longer require the regulated community in Maine, New Hampshire, Massachusetts, or Connecticut, to provide written Notification of Demolition and Renovation to EPA, pursuant to 40 CFR 61.145(b), as long as such notices are delivered to the designated state agency. EPA will view notification to the state agency as having satisfied the Federal notification requirement and conversely, will consider non-notifiers to the state agency as being in violation of the Federal notification requirement as well.

This notice is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, since no additional reporting, recordkeeping, or notification requirements are being imposed as a result of this action.

Exception

Exceptions to this transfer of notification receipt procedures will apply to regulated facilities, as defined by the asbestos NESHAP at 40 CFR 61.141, where a demolition is to occur but where asbestos is believed to be present below State regulatory threshold amounts, including those demolitions believed to involve zero asbestos. In addition, this notification procedures change applies only to applicable demo/reno activities being conducted the states of Maine, New Hampshire, Massachusetts, and Connecticut. EPA will continue to require full compliance with the notification requirements outlined in 40 CFR 61.145(b) for any demo/reno operation, subject to the asbestos NESHAP, being conducted in the states of Vermont and Rhode Island.

FOR FURTHER INFORMATION CONTACT: Wayne R. Toland; U.S. EPA Region I; Office of Environmental Stewardship; Air, Pesticides, and Toxics Enforcement Office (SEA); J.F.K. Federal Building; Boston, MA, 02203. Telephone: (617) 565–3260.

Dated: September 25, 1997.

John P. DeVillars,

Regional Administrator EPA, Region I.

[FR Doc. 97–26175 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5902–1]

Request for Applications for Essential Use Exemptions to the Production and Import Phaseout of Ozone Depleting Substances Under the Montreal Protocol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Through this notice, the Environmental Protection Agency (EPA) is requesting applications for consideration at the Tenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol) to be held in September 1998, for exemptions to the production and import phaseout in 1999 and subsequent years for ozone-depleting substances (including halons 1211 and 1301, CFC–11, CFC–12, CFC–113, CFC–114, CFC–115, CFC–13, CFC–111, CFC–112, CFC–211, CFC–212, CFC–213, CFC–214, CFC–215, CFC–216, CFC–217, carbon tetrachloride, and methyl chloroform).

DATES: Applications for essential use exemptions must be submitted to EPA no later than November 17, 1997 in order for the United States (U.S.) government to complete its review and to submit nominations to the United Nations Environment Programme (UNEP) and the Protocol Parties in a timely manner.

ADDRESSES: Send five copies of application materials to: Chris O'Donnell, Stratospheric Protection Division (6205J), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Send one copy of application materials to: Air Docket A–93–39, 401 M Street, S.W. (6102), Room M1500, Washington, D.C. 20460.

Confidentiality: Applications should not contain confidential or proprietary information.

FOR FURTHER INFORMATION CONTACT: Chris O'Donnell at the above address or at (202) 233–9079 telephone, (202) 233–9665 fax, or odonnell.chris@epamail.epa.gov. General information may be obtained from the Stratospheric Ozone Hotline at 1–800–296–1996.

SUPPLEMENTARY INFORMATION:

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I. Background—The Essential Use Nomination Process
II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 1999 and Subsequent Years

I. Background—The Essential Use Nomination Process

As described in previous **Federal Register** (FR) notices (58 FR 29410, May 20, 1993; 59 FR 52544, October 18, 1994; 60 FR 54349, October 23, 1995; and 61 FR 51110, September 30, 1996), the Parties to the Protocol agreed during the Fourth Meeting in Copenhagen on November 23–25, 1992, to accelerate the phaseout schedules for Class I ozone-depleting substances. Specifically, the Parties agreed to phase out the production of halons by January 1, 1994, and the production of other Class I substances, except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing "essential use" exemptions from the phaseout of production and importation of controlled substances. Language regarding essential uses was added to the Protocol provisions in Article 2 governing the control measures. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

At the Eighth Meeting of the Parties in 1996, the Parties modified the timetable for nomination of essential uses. Pursuant to Decision VIII/9, Parties may nominate a controlled substance for an exemption from the production phaseout by January 31 of each year. The United Nations Environment Programme (UNEP) committees then review the nominations at their spring meetings and forward their recommendations for decision at the Meeting of the Parties later that year. The Parties may choose to grant the exemption for one or more of the nominated years, but each approved or pending application may be reconsidered and modified by the Parties at their annual meetings. Since the Parties in 1998 will be considering nominations for the year 1999 and beyond, today's notice solicits requests for those years. Further detail on the essential use process is provided later in this section.

Decision IV/25 states that "* * * a use of a controlled substance should qualify as "essential" only if: (i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health". In addition, the Parties agreed "that production and consumption, if any, of a controlled

substance, for essential uses should be permitted only if: (i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances * * *."

Section 614 (b) of the Clean Air Act Amendments of 1990 (the Act) provides: "In the case of conflict between any provision of this title [Title VI of the Act] and any provision of the Protocol, the more stringent provision shall govern." Thus, to the extent that an accelerated phaseout schedule has been adopted under the Protocol, EPA can legally provide exemptions for uses authorized by the Protocol but not otherwise specified in the Act as long as any additional production does not exceed the production reduction schedule contained in section 604(a).

The first step in the process to qualify a use as essential under the Protocol is for the user to ascertain whether the use of the controlled substance meets the Decision IV/25 criteria. The user should then notify EPA of the candidate use and provide information for U.S. government agencies and the Protocol Parties to evaluate that use according to the criteria under Decision IV/25. The UNEP Technology and Economic Assessment Panel (TEAP) has issued a handbook entitled "Handbook on Essential Use Nominations," available from EPA, to guide applicants. Applicants should follow the guidelines in the handbook when preparing their exemption requests. Past applicants should note that the current TEAP handbook has been substantially revised to reflect Decision VIII/10 of the Parties.

Upon receipt of the exemption request, EPA reviews the application and works with other interested federal agencies to determine whether it meets the essential use criteria and as a result, warrants being nominated for an exemption. Applicants should be aware that recent essential use exemptions granted to the U.S. for 1997 were limited to chlorofluoro-carbons (CFCs) for metered dose inhalers (MDIs) to treat asthma and chronic obstructive pulmonary disease.

In the case of multiple exemption requests for a single use, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review is to determine that the aggregate request for a particular out-year adequately reflects the market penetration potential and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not incorporate such assumptions, the U.S. government may adjust the aggregate request to better reflect true market needs.

Nominations submitted to the Ozone Secretariat by the U.S. and other Parties are then forwarded to the UNEP TEAP and its Technical Options Committees (TOCs), which review the submissions and make recommendations to the Parties for exemptions. Those recommendations are then considered by the Parties at their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential and issue the necessary exemptions from the production phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties consistent with the Act.

The timing of the reviews is such that in any given year the Parties review nominations for exemption from the production phaseout intended for the following year and any subsequent years. This means that, if nominated, applications submitted in response to today's notice for CFC production in 1999 and beyond will be considered by the Parties in 1998 for final action at the Meeting of the Parties in September of that year.

II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 1999 and Subsequent Years

Through this notice, EPA requests applications for essential use exemptions for all Class I substances for 1999 and subsequent years. All requests for exemptions submitted to EPA must present the information relevant to the application as prescribed in the TEAP Handbook mentioned in the previous section. As noted earlier, the TEAP handbook has been substantially revised to incorporate Decision VIII/10 adopted by the Parties at their Eighth Meeting, in November 1996. Decision VIII/10 will require applicants to expand on information provided in previous nominations as well as provide new information. Since the U.S. government does not forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including the information specified in the supplemental research and development form (page 43) and the accounting framework matrix (page 41). Parties have been asked to request this information from companies, and these forms will assist the EPA in preparing a complete and comprehensive nomination. In brief, the TEAP Handbook states that applicants must present information on:

- Role of use in society
- Alternatives to use, including education programs on alternatives
- Steps to minimize use, including development of CFC-free alternatives
- Steps to minimize emissions
- Amount of substance available through recycling and stockpiling
- Quantity of controlled substances requested by year.

EPA anticipates that the 1998 review by the Parties of MDI essential use requests will focus extensively on research efforts underway to develop alternatives to CFC MDIs, on education programs to inform patients and providers of the phaseout and the transition to alternatives, and on steps taken to minimize CFC use and emissions including efforts to recapture or reprocess the controlled substance. Accordingly, applicants are strongly advised to present detailed information on these points, including the scope and cost of such efforts and the medical and patient organizations involved in the work. Applicants can strengthen their exemption requests by submitting a complete set of education materials and including copies of printed, electronic or audio-visual tools. Applicants are given notice that exemption requests without adequate information on research and education will not be considered complete.

Applicants should submit their exemption requests to EPA as noted in the **ADDRESSES** section at the beginning of today's notice.

Dated: September 25, 1997.

Richard D. Wilson,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 97–26183 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5902–6]

Availability of FY 96 Grant Performance Report for Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation report.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA recently performed an end-of-year evaluation of one state air pollution control program (Georgia Environmental Protection Division). This audit was conducted to assess the agency's performance under the grant made to them by EPA pursuant to section 105 of the Clean Air Act. EPA Region 4, has prepared a report for the state of Georgia identified above and is now available for public inspection.

ADDRESSES: The report may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW, Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Linda Thomas, (404) 562–9064, at the above Region 4 address.

Dated: September 24, 1997.

Michael V. Peyton,

Acting Regional Administrator.

[FR Doc. 97–26184 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5901–6]

National Drinking Water Advisory Council; Notice of Open Meetings

Under section 10(a)(2) of Pub. L. 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on October 15, 1997 from 10 a.m. until 6 p.m. and October 16, 1997, from 9 a.m. until 5 p.m., at the Ramada Plaza Hotel Pentagon, 4641 Kenmore Avenue, Alexandria, Virginia 22304. The purpose of this meeting will be to provide the Council with the recommendations from the Operator Certification Working Group Report and to discuss with the Council the effectiveness and continued use of its working groups. Other issues to be covered at the meeting will include: A status on the activities of the Microbial Disinfectants/Disinfection By-products Federal Advisory Committee, SDWA implementation issues, accountability and performance measures.

This meeting is open to the public. The Council encourages the hearing of outside statements and will allocate one hour on October 15, 1997, for this purpose. Oral statements will be limited to ten minutes and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285 or by E-Mail at shaw.charlene@epamail.epa.gov by October 14, 1997.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. EPA, Office of Ground Water and Drinking Water (4601), 401 M Street SW, Washington, D.C. 20460. The telephone number is Area Code (202) 260–2285 or E-Mail shaw.charlene@epamail.epa.gov.

Dated: September 26, 1997.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–26179 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5900–6]

Announcement of Stakeholders Meeting on the National Primary Drinking Water Regulation for Radon-222

AGENCY: Environmental Protection Agency.

ACTION: Notice of stakeholders meeting.

SUMMARY: The Environmental Protection Agency (EPA) will be holding a one-day public meeting on Thursday, October 30, 1997, in Boston, MA. The purpose of this meeting is to present information on EPA's plans for activities to develop a proposed National Primary Drinking Water Regulation (NPDWR) for radon-222, and solicit public input on major technical and implementation issues, and on preferred approaches for continued public involvement. This upcoming meeting is the third of a series of stakeholders meetings on the NPDWR for radon. The first meeting was held on June 26, 1997 in Washington, DC and the second meeting on September 2, 1997 in San Francisco, CA. These meetings were initiated as part of the Drinking Water Program Redirection efforts to help refocus EPA's drinking water priorities and to support strong, flexible partnerships among EPA, States, Tribes, local governments, and the public. At the upcoming meeting, EPA is seeking input from State and Tribal drinking water and radon programs, the regulated community (public water systems), public health and safety organizations, environmental and public interest groups, and other stakeholders on a number of issues related to developing the NPDWR for radon. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholder meeting on the NPDWR for radon will be held on Thursday, October 30, 1997 from 9:00 a.m. to 5:00 p.m EST. Check-in will begin at 8:30 a.m.

ADDRESSES: To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791. Those registered for the meeting by October 17, 1997 will receive an agenda, logistics sheet, and background materials prior to the meeting. The agenda and background materials will be similar to the previous stakeholders meetings on radon held in Washington, DC and San Francisco, CA. Members of the public who cannot participate may submit comments in writing by November 14, 1997 to Sylvia Malm, at the U.S. Environmental Protection Agency, 401 M St., SW (4607), Washington, DC, 20460. The meeting will be held in Boston, MA. The address of the meeting site will be included with the background materials or available from the Hotline.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to developing the NPDWR for radon and other EPA activities under the Safe Drinking Water Act, contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on radon in indoor air, contact the National Safety Council's National Radon Hotline at 1–800–SOS–RADON.

SUPPLEMENTARY INFORMATION:

A. Background

On July 18, 1991 (56 FR 33050), EPA proposed a Maximum Contaminant Level Goal (MCLG) and National Primary Drinking Water Regulation (NPDWR) for radon and other radionuclides in public water supplies. EPA proposed to regulate radon at 300 pCi/L. Commenters on the 1991 proposed NPDWR for radon raised several concerns, including cost of implementation, especially for small

systems, and the larger risk to public health from radon in indoor air from soil under buildings.

On August 6, 1996, amendments to the Safe Drinking Water Act (SDWA) were enacted, which establish a new charter for the nation's public water systems, States, and EPA in protecting the safety of drinking water. The amendments [section 1412(b)(13)] direct EPA to develop an MCLG and NPDWR for radon. EPA is required to (1) withdraw the 1991 proposed MCLG and NPDWR for radon-222 (the proposed rule for radon was withdrawn on August 6, 1997; 62 FR 42221); (2) arrange for the National Academy of Sciences (NAS) to conduct an independent risk assessment for radon in drinking water and an independent assessment of risk reduction benefits from various mitigation measures to reduce radon in indoor air; (3) publish a radon health risk reduction and cost analysis for possible radon Maximum Contaminant Levels (MCLs) for public comment by February 1999; (4) propose an MCLG and NPDWR for radon by August 1999; and (5) publish a final MCLG and NPDWR for radon by August 2000.

If the MCL is "more stringent than necessary to reduce the contribution to radon in indoor air from drinking water to a concentration that is equivalent to the national average concentration of radon in outdoor air," EPA is also required to promulgate an alternative MCL and publish guidelines for state multimedia mitigation programs to mitigate radon levels in indoor air. The alternative MCL would "result in a contribution of radon from drinking water to radon levels in indoor air equivalent to the national average concentration of radon in outdoor air." States may develop and submit to EPA for approval a multimedia mitigation program to mitigate radon levels in indoor air. EPA shall approve State multimedia mitigation programs if they are expected to achieve equivalent or greater health risk reduction benefits than compliance with the MCL. If EPA approves a State multimedia mitigation program, public water supply systems within the State may comply with the alternative MCL. If EPA does not approve a State program, or the State does not propose a program, public water supply systems may propose multimedia mitigation programs to EPA, under the same procedures outlined for States.

B. Request for Stakeholder Involvement

EPA intends for the proposed NPDWR for radon to incorporate the best available science, treatment technologies, occurrence data, cost/benefit analyses, and stakeholder input on technical and implementation issues. EPA has evaluated comments on the 1991 proposed NPDWR for radon and will be considering those comments in developing the regulation.

The meeting will cover a broad range of issues including: (1) radon in drinking water MCL development (treatment technologies, occurrence, analytical methods); (2) multimedia mitigation program; and (3) stakeholder involvement processes. Background materials on radon in drinking water issues will be sent to all registered participants in advance of the meeting. Issues for discussion and stakeholder input will be based on the materials provided and include (but may not be limited to) the following:

(1) Any new information or data;

(2) Issues and concerns related to rule development;

(3) Issues and concerns related to implementing a multimedia mitigation program from the perspective of your state, water systems, public health and safety organizations, environmental and public interest groups, and the public; and

(4) Recommendations on the most beneficial points in the process for stakeholder input and preferred approaches for stakeholder input.

EPA has announced this public meeting to hear the views of stakeholders on EPA's plans for activities to develop a NPDWR for radon. The public is invited to provide comments on the issues listed above and other issues related to the radon in drinking water regulation during the October 30, 1997 meeting or in writing by November 14, 1997.

Dated: September 23, 1997.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–25878 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5901–8]

Board of Scientific Counselors (BOSC) Subcommittee; Review of the National Center for Environmental Research and Quality Assurance

AGENCY: Environmental protection Agency (EPA).

ACTION: Notice of meeting of the Board of Scientific Counselors (BOSC) Subcommittee to Review the National Center for Environmental Research and Quality Assurance (NCERQA).

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C., App. 2), notice is hereby given that the Environmental Protection Agency (EPA), Office of Research and Development (ORD), Board of Scientific Counselors (BOSC) Subcommittee will meet to review the National Center for Environmental Research and Quality Assurance on Monday, October 20 and Tuesday, October 21, 1997. The meeting will be held at the Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Room 7216, Washington, DC 20004 and will begin at 8 a.m. and recess at approximately 5 p.m. on Monday, October 20, 1997. On Tuesday, October 21, 1997, a Subcommittee writing session will begin at 8 a.m. and adjourn at 1 p.m. Following the writing session, a warp-up discussion summarizing the preliminary findings and conclusions of the Subcommittee will be held from 1 p.m.–3 p.m. on Tuesday. The BOSC Subcommittee Review meeting will adjourn at 3 p.m. All times are Eastern time. The meeting is open to the public. Any member of the public wishing to make comments at the meeting should contact Shirley R. Hamilton, Designated Federal Official, Office of Research and Development (8701R), 401 M Street, S.W., Washington, DC 20460; by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to three minutes. Anyone desiring a draft BOSC meeting agenda may fax their request to Shirley R. Hamilton at (202) 565–2444.

DATES: The meeting will be held October 20–21, 1997.

ADDRESSES: The meeting will be held in the EPA Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Room 7216, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Official, Office of Research and Development (8701R), 401 M Street, S.W., Washington, DC 20460; by telephone at (202) 564–6853.

Dated: September 19, 1997.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 97–26180 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5902–4]

Fuel Economy Retrofit Devices; Announcement of Fuel Economy Retrofit Device Evaluation for Vehicle Exhaust Emission Control Device (VEECD) (Now Known as EVEC™)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of fuel economy retrofit device evaluation.

SUMMARY: This document announces the completion of EPA evaluation of Vehicle Exhaust Emission Control Device (VEECD) under provision of Section 32918 of Title 49 U.S.C. This notice also announces EPA's findings, conclusions, and the availability of the report.

FOR FURTHER INFORMATION CONTACT: Henry Johnson, Vehicle Programs and Compliance Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, Telephone: (313) 741–7893.

SUPPLEMENTARY INFORMATION:

I. Background

Section 32918 of Title 49 U.S.C. requires that:

(b)(1) "Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a), or upon her own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d), any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit devices are accurate."

(c) "The EPA Administrator shall publish in the **Federal Register** a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to—

(1) The effect of any retrofit device on fuel economy:

(2) The effect of any such device on emissions of air pollutants: and

(3) Any other information which the Administrator determines to be relevant in evaluating such device."

EPA published final regulations establishing procedures for conducting evaluations of fuel economy retrofit devices on March 23, 1979 (44 FR 17968). These regulations were later amended May 1, 1984 (49 FR 18486) to explicitly include fuel additives within the definition of a retrofit device and to improve administration. They were also amended May 3, 1984 (49 FR 18837) to clarify that the manufacturer of the device must pay the cost of any EPA testing.

II. Origin of Request for Evaluation, Device Descriptions, and Report Identification

On January 17, 1997, EPA received an application from Hawtal Whiting Environmental Ltd. requesting evaluation of the VEECD as a hydrocarbon (HC) and carbon monoxide (CO) emission reduction device. The VEECD is an air bleed retrofit device which is fitted to the vacuum brake line and acts to optimize the air/fuel mixture during idle and deceleration. The device is intended to be fitted to vehicles produced without any or with earlier technology emission control systems. It is not compatible with newer complex engine management systems or closed loop three-way catalyst systems. It is claimed to significantly reduce HC and CO without substantially increasing CO_2 or NO_X emissions. In addition, incidental city fuel economy enhancement was claimed. The report, "Emissions and Fuel Economy Effects of Vehicle Emission Control Device" (Report Number EPA–VPCD–32918–RD–97–1), contains the test data, analysis, conclusions and consists of 52 pages including Appendices.

III. Availability of Evaluation Report

Copies of this report may be obtained from the National Technical Information Service by using the above report number. Address requests to: National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Telephone (703) 487–4650.

Dated: September 25, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–26182 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5902–9]

Proposed Administrative Settlements Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Brockton Gas Works I Superfund Site, Brockton MA; Brockton Gas Works II Superfund Site, Brockton, MA; and Taunton Gas/Rogers Ave. Superfund Site, Taunton, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed cost recovery agreements and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into three separate cost recovery settlement agreements to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* This document is being published to inform the public of the proposed settlements and of the opportunity to comment. The settlements are intended to resolve liability under CERCLA of the Bay State Gas Company for costs incurred by EPA in initiating and overseeing removal actions at the following three Superfund Sites: Brockton Gas Works I in Brockton, Massachusetts; Brockton Gas Works II in Brockton, Massachusetts; and Taunton Gas/Rogers Ave. in Taunton, Massachusetts.

DATES: Comments must be provided on or before November 3, 1997.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts 02203, and should refer to: The Agreement for Payment of Response Costs Re: (a) Brockton Gas Works I Superfund Site, Brockton, Massachusetts, U.S. EPA Docket No. CERCLA–I–97–1076; (b) Brockton Gas Works II Superfund Site, Brockton, Massachusetts, U.S. EPA Docket No. CERCLA–I–97–1077; or (c) Taunton Gas/Rogers Ave. Superfund Site, Taunton, Massachusetts, U.S. EPA Docket No. CERCLA–I–97–1078.

FOR FURTHER INFORMATION CONTACT: Tina Hennessy, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode HBR, Boston, Massachusetts 02203, (617) 573–5701.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, notice is hereby given of three proposed cost recovery settlement agreements under section 122(h)(1) of CERCLA concerning the following three Superfund Sites: (a) Brockton Gas Works I in Brockton, Massachusetts; (b) Brockton Gas Works II in Brockton, Massachusetts, and (c) Taunton Gas/Rogers Ave. in Taunton, Massachusetts. EPA Region I approved the settlements, subject to review by the public pursuant to this document. The Bay State Gas Company of Westborough, Massachusetts, has executed signature pages for each settlement, committing the company to participate in the settlements. Under each of the proposed settlements, the Bay State Gas Company will pay money to the EPA Hazardous Substance Superfund to reimburse EPA for response costs that EPA incurred while initiating and overseeing removal actions at the three Sites. Bay State Gas Company will pay $230,710 to reimburse EPA for response costs at the Brockton Gas Works I Site, $169,582 to reimburse EPA for response costs at the Brockton Gas Works II Site, and $154,708 to reimburse EPA for response costs at the Rogers Ave. Site. EPA believes the settlements are fair and in the public interest.

EPA is entering into these agreements under the authority of CERCLA section 122(h)(1) which provides EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. EPA has not sought U.S. Department of Justice approval of these settlements because the response costs do not exceed $500,000 for any one Site. EPA will receive written comments relating to these settlements for thirty (30) days from the date of publication of this document.

A copy of the proposed administrative settlement may be obtained in person or by mail from Catherine S. Smith, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode SES, Boston, Massachusetts 02203, (617) 565–4873.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts (U.S. EPA Docket Numbers CERCLA–I–97–1076, CERCLA–I–97–1077, or CERCLA–I–97–1078.

Dated: September 25, 1997.

Harley F. Laing,

Director, Office of Site Remediation and Restoration.

[FR Doc. 97–26192 Filed 10–1–97; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

Notice of Meeting; Postponement

AGENCY: Council on Environmental Quality.

ACTION: Notice of meeting; postponement.

SUMMARY: The Council on Environmental Quality (CEQ) is postponing a public meeting it had previously scheduled for October 3, 1997, to discuss development of a memorandum of understanding (MOU) on coordinating environmental response actions with natural resource restoration under the Comprehensive Environmental Response, Compensation, and Liability Act and other laws. 62 FR 48657 (Sept. 16, 1997). In response to numerous requests, CEQ is rescheduling the meeting for December 2, 1997. The meeting will be an opportunity for members of the public to offer suggestions on the scope and content of the MOU and discuss their suggestions with the members of the federal interagency task force developing the MOU. If you are interested in making an oral presentation at the meeting, you must submit a written request and summary of your comments by October 29, 1997, so that CEQ can prepare an appropriate agenda and structure the presentations. If you have suggestions but do not wish to make an oral presentation, you may simply provide written comments, so long as CEQ receives them by October 29, 1997.

MEETING TIME AND PLACE: The meeting will be held on December 2, 1997, from 10:00 to 4:00 in the Truman Room of the White House Conference Center, 726 Jackson Place, Washington, D.C.

WRITTEN COMMENTS: Send written comments in duplicate to Mary Morton, CEQ, Room 360, Old Executive Office Building, Washington, D.C. 20502.

FOR FURTHER INFORMATION CONTACT: Mary Morton at (202) 395–5750.

Bradley M. Campbell,

Associate Director.

[FR Doc. 97–26239 Filed 10–1–97; 8:45 am]

BILLING CODE 3125–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–571]

Notice of Telecommunications Relay Services (TRS) Applications for State Certification Accepted

September 26, 1997.

Notice is hereby given that the states listed below have applied to the Commission for State Telecommunications Relay Service (TRS) Certification. Current state certifications expire July 25, 1998. Applications for certification, covering the five year period of July 26, 1998 to July 25, 2003, must demonstrate that the state TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. § 225. These rules are codified at 47 CFR §§ 64.601–605.

Copies of applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM. Interested persons may file comments with respect to those applications on or before November 14, 1997. Comments should reference the relevant state file number of the state application that is being commented upon. One original and five copies of all comments must be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

Applicants for State Certification

File No. TRS–97–03, Applicant: Alabama Public Service Commission, State of Alabama

File No. TRS–97–04, Applicant: Michigan Public Service Commission, State of Michigan

File No. TRS–97–05, Applicant: Oregon Public Utility Commission, State of Oregon

File No. TRS–97–06, Applicant: Georgia Public Service Commission, State of Georgia

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, or Andy Firth, (202) 418–2224 (TTY), afirth@fcc.gov, at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–26052 Filed 10–1–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2228]

Petitions for Reconsideration and Clarification of Action in Docketed Proceedings

September 25, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's docketed proceeding listed in this public notice and pursuant to 47 CFR Section 1.106. The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed on or before October 9, 1997, and replies to oppositions on or before October 20, 1997. The Commission is hereby waiving the filing deadlines established in accordance with 47 CFR Section 1.106 (g) and (h). However, all other requirements established in 47 CFR Section 1.106 are applicable. In addition, this proceeding will continue to be a non-restricted proceeding in which *ex parte* presentations are permitted, provided they are disclosed in conformance with Commission *ex parte* rules. See Sections 1.1202 and 1.1206(a) of the Commission's rules (47 CFR 1.1202, 1.1206(a)).

Subject: Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan (CC Docket No. 97–137).

Number of Petitions Filed: 3.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 97–26054 Filed 10–1–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2229]

Petitions for Reconsideration of Action in Rulemaking Proceedings

September 25, 1997.

Petitions for reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed October 17, 1997. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 2, 15, and 97 of the Commission's Rules To Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications (ET Docket No. 94–124, RM–8308).

International Harmonization or Frequency Bands Above 40 GHz.

Petition of Sky Station International, Inc. For Amendment of the Commission's Rules To Establish Requirements for a Global Stratospheric Telecommunications Service in the 47.2–47.5 GHz and 47.9–48.2 GHz Frequency Bands (RM–8784).

Number of Petitions Filed: 1.

Subject: The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of Rules to Incorporate the Forfeiture Guidelines (CI Docket 95–6).

Number of Petitions Filed: 2.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch

[FR Doc. 97–26055 Filed 10–1–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 16, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Arrendale Undiversified Family Limited Partnership, Baldwin, Georgia; its general partners, Thomas A. Arrendale, III, Gainsville, Georgia; Cynthia Bussey, Altanta, Georgia; and Thomas A. Arrendale, Jr., Clarkesville, Georgia; Thomas A. Arrendale, III, and Cynthia Bussey, in their individual capacities; to acquire voting shares of Habersham Bancorp, Cornelia, Georgia, and thereby indirectly acquire Habersham Bank, Clarkesville, Georgia.

2. J. Alton Wingate, Cornelia, Georgia; to retain 31.17 percent of the voting shares of Community Bankshares, Inc., Cornelia, Georgia, and thereby indirectly retain Community Bank & Trust-Jackson, Commerce, Georgia; Community Bank & Trust-Troup, LaGrange, Georgia, and Community Bank & Trust-Alabama, Union Springs, Alabama.

Board of Governors of the Federal Reserve System, September 26, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26091 Filed 10–1–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 17, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Richard Paul Pederson, II, Page, North Dakota; to acquire additional voting shares of Page Bank Holding Company, Page, North Dakota, and thereby indirectly acquire Page State Bank, Page, North Dakota.

Board of Governors of the Federal Reserve System, Sptember 29, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26174 Filed 10–1–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. FBOP Corporation, Oak Park, Illinois; to acquire 100 percent of the voting shares of California Bank, N.A. (in organization), Beverly Hills, California.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorp, Inc., Quincy, Illinois, Quincy, Illinois; to merge with Golden Bancshares, Inc., Golden, Illinois, and thereby indirectly acquire Golden State Bank, Golden, Illinois, and Brown County State Bank, Mount Sterling, Illinois.

2. Mid America Banking Corporation, Columbia, Missouri; to become a bank holding company by acquiring a minimum of 98.58 percent of the voting shares of Pulaski Bancshares, Inc., Dixon, Missouri, and thereby indirectly acquire State Bank of Dixon, Dixon, Missouri.

In connection with this application, Mid America Mortgage Services, Inc., Columbia, Missouri; Mid America Mortgage Services of St. Louis, Inc., St. Louis, Missouri; and Mid America Mortgage Services of Springfield, Inc., Springfield, Missouri; also have applied to become bank holding companies by acquiring an aggregate ownership of 19 percent of the voting shares of Mid America Banking Corporation, Columbia, Missouri, and thereby indirectly acquire Pulaski Bancshares, Inc., Dixon, Missouri, and State Bank of Dixon, Dixon, Missouri.

C. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Security Bank Holding Company ESOP and Security Bank Holding Company, both of Coos Bay, Oregon; to acquire 100 percent of the voting shares of Pacific State Bank, Reedsport, Oregon. Comments regarding this application must be received by October 20, 1997.

Board of Governors of the Federal Reserve System, September 26, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26090 Filed 10–1–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10:00 a.m. (EDT), October 14, 1997.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the September 8, 1997, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit reports:

(a) "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Account Maintenance Subsystem and Participant Support Process at the United States Department of Agriculture, National Finance Center"

(b) "Pension and Welfare Benefits Administration Review of Access Controls and Security Over the TSP Computerized Resources at the United States Department of Agriculture, National Finance Center"

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: September 30, 1997.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 97–26286 Filed 9–30–97; 11:59 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Chronic Fatigue Syndrome Coordinating Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Chronic Fatigue Syndrome Coordinating Committee (CFSCC).

Time and Date: 10 a.m.–5 p.m., October 22, 1997.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: The Committee is charged with providing advice to the Secretary, the Assistant Secretary for Health, and the Commissioner, Social Security Administration (SSA) to assure interagency coordination and communication regarding chronic fatigue syndrome (CFS) research and other related issues; facilitating increased Department of Health and Human Services (HHS) and agency awareness of CFS research and educational needs; developing complementary research programs that minimize overlap; identifying opportunities for collaborative and/or coordinated efforts in research and education; and developing informed responses to constituency groups regarding HHS and SSA efforts and progress.

Matters To Be Discussed: Agenda items will include updates from HHS agencies; a distance learning teleconference; a discussion of recently published articles regarding CFS; and information from the CFSCC workgroup.

Agenda items are subject to change as priorities dictate.

Public comments will be received at the meeting for approximately 60 minutes. Public statements presented at this meeting should not be repetitive of previously submitted oral or written statements. Persons wishing to make oral comments should notify the Executive Secretary, Lisa Blake-DiSpigna, by fax (404/639–4138) or by telephone (404/639–3227) no later than close of business on October 15, 1997. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. These comments will become a part of the official record of the meeting. Due to the time available, public comments will be limited to five minutes per person. Copies of any written comments should be provided at the meeting; please provide at least 100 copies.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card will need to provide a photo ID and must know the subject and room number of the meeting in order to be admitted into the building. Visitors must use the Independence Avenue entrance.

Contact Person for More Information: René Ross, Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE, M/S A30, Atlanta, Georgia 30333, telephone 404/639–3574.

Dated: September 25, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–26106 Filed 10–1–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.–4 p.m., October 30, 1997.

Place: The Washington Court, Montpelier Room, 525 New Jersey Avenue, NW, Washington, DC 20001–1527.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The BSC, NIOSH is charged with providing advice to the Director, NIOSH on NIOSH research programs.

Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

Matters To Be Discussed: Agenda items include a report from the Director of NIOSH; a report on the NIOSH response to a review of the Health Hazard Evaluation program; an update on implementation of the National Occupational Research Agenda; reports on the status of the NIOSH/NCI Diesel Study, on special focuses in extramural programs, and on GPRA strategic and performance planning; and discussion of future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dr. Bryan D. Hardin, Executive Secretary, BSC, NIOSH, Room 715–H, Hubert H. Humphrey Building, 200 Constitution Avenue SW, Washington, DC, 20201. Telephone 202/205–8556, Fax 202/260–4464, e-mail bdh1@cdc.gov.

Dated: September 26, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–26105 Filed 10–1–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Altered System of Records

AGENCY: Office of Child Support Enforcement, ACF, DHHS.

ACTION: Final notice.

SUMMARY: The Office of Child Support Enforcement (OCSE) is publishing a notice to amend one of its Systems of Records, "The Federal Parent Locator System and Federal Tax Offset System (FPLS), DHHS/OCSE No. 09–90–0074. We are also amending the routine uses for this system.

DATES: The amendments made by this notice are effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Director, Division of Program Operations Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, S.W., 4th Floor East, Washington, DC 20447, (202) 401–9271.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Child Support Enforcement (OCSE) is amending one of its Systems of Records, "The Federal Parent Locator System and Federal Tax Offset System (FPLS)", DHHS/OCSE No. 09–90–0074.

Information on this system was published for public comment at 62 FR 45659, August 28, 1997. The OCSE received no comments on the **Federal Register** publication. OCSE usually receives written responses from a number of sources. The responses are generally supportive. To the extent feasible, OCSE takes all public comments into account when preparing the final notice.

OCSE is also giving notice that OCSE is changing the name of this system to the "Federal Parent Locator and Federal Tax Refund/Administrative Offset System" (FPLS). Furthermore, the uses of the FPLS are being expanded pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and pursuant to Pub. L. 104–134, the Debt Collection Improvement Act of 1996 (DCIA) and Executive Order 13019, dated September 28, 1996.

The system is divided into two subsystems: Parent Locator Service and Tax Refund/Administrative Offset (TROP/ADOP). The Parent Locator portion of the system is being expanded consistent with section 316 of the PRWORA, which authorizes the establishment of a National Directory of New Hires (NDNH) effective no later than October 1, 1997. The NDNH will be comprised of three components. First, the NDNH will maintain employment data on newly-hired employees (new hire reporting) submitted by the State Directories of New Hires (SDNH) pursuant to section 453A(g)(2)(A) of the Social Security Act (the Act) and by Federal agencies pursuant to section 453A(B)(1)(c) of the Act. Second, the NDNH will maintain quarterly wage information on individual employees, submitted by States under the authority of sections 453A(g)(2)(B) and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code (IRC) of 1986, as well as quarterly wage information on Federal employees pursuant to section 453(n) of the Act. Third, the NDNH will maintain unemployment compensation claims data submitted by States under the authority of sections 453A(g)(2)(B)

and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code of 1986. Federal agencies and States will transmit new hire and quarterly wage and data electronically to the NDNH and States will transmit claim information electronically as well.

The TROP/ADOP portion of the system is expanding the current use of Federal tax refund intercepts to assist families in collecting past-due child support, intercept certain other Federal payments owed by child support obligors, and divert the payment to obligees/States for the payment of past-due child support. Specifically, the TROP/ADOP will: (1) combine the Federal Tax Refund Offset program with the Administrative Program operated by Department of Treasury's Financial Management Service (FMS); (2) periodically match cases from the TROP/ADOP system with the NDNH; (3) conduct crossmatches with the State Department for denial of passports; (4) conduct crossmatches for asset identification with the Department of Treasury (Project 1099) against States' obligor file(s); (5) disclose information to additional sources; and (6) allow access to new authorized users.

The Social Security Act, as amended by PRWORA and the DCIA require an expansion of the uses of the FPLS. The Parent Locator portion of the FPLS will now be used to obtain and transmit information to any authorized person, for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, investigating parental kidnapping cases, or making or enforcing child custody or visitation orders. Additonally, PRWORA replaced the AFDC programs with TANF programs, and routine uses are being updated to reflect that change.

The Federal TROP/ADOP portion of the system will be used for the purposes of: collecting past-due child support from Federal tax refunds and from certain Federal payments otherwise owed to child support obligors; identifying assets of obligors; and enforcing child support orders by assisting the State Department in preventing delinquent obligors from travelling outside the country by the denial, restriction and/or revocation of passports.

Section 370 of PRWORA established a new section 452(k) of the Act which requires that after October 1, 1997, the Secretary of HHS shall transmit to the Secretary of the Department of State, certifications from State child support enforcement (CSE) agencies of individuals who owe arrearages of child support exceeding $5000 and that the Department of State may revoke, restrict or deny passports to such individuals.

Project 1099 provides State CSE agencies access to all earned and unearned income information reported to the Department of Treasury by employers and financial institutions. This information is used to locate noncustodial parents and to verify income and employment, which is essential to establishing and enforcing child support obligations.

Sections 452 and 453 of the Social Security Act require the Secretary of HHS to establish and conduct the Federal Parent Locator Service, a computerized national location network which provides address and social security number (SSN) information to State and local child support enforcement agencies (CSEAs) for purposes of locating parents to establish or enforce a child support order and to assist authorized persons in resolving parental kidnapping and child custody cases.

Pursuant to section 124(a) of the Family Support Act of 1988 (Pub. L. 100–485), the FPLS obtained access to wage and unemployment compensation claims information maintained for or by the Department of Labor (DOL) or the State Employment Security Agencies (SESAs). In January 1990, the FPLS began conducting periodic crossmatches in which the names and SSNs of child support obligors are run against SESA wage and unemployment files. OCSE is currently limited to 250,000 cases per State per bi-weekly crossmatch. The information generated from crossmatches between quarterly wage, claims and child support data, both at the State level and in the more limited FPLS context, has proven extremely beneficial for the location of child support obligors and their wages. The inclusion of quarterly wage and unemployment compensations claims data in the NDNH allows for a substantially higher volume of interstate crossmatching than is currently possible.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires the Secretary to develop an expanded Federal Parent Locator Service to improve the States' ability to locate and collect child support. The OCSE, within ACF, is charged with the task of developing, implementing, and maintaining the FPLS. The Secretary will house the expanded FPLS in the Social Security Administration's National Computer Center. The Secretary and SSA believe that locating the expanded FPLS there will provide the most efficient and cost-effective mechanism for developing the expanded FPLS, as well as ensuring state-of-the-art standards for system security and confidentiality of the expanded FPLS data.

The expanded FPLS will include the NDNH (operational no later than October 1, 1997), The Federal Case Registry (FCR) (operational no later than October 1, 1998), and the capability to continue matching against existing FPLS data sources, including but not limited to, the Internal Revenue Service, Social Security Administration, Department of Defense/Office of Personnel Management, Department of Veterans Affairs, and the Federal Bureau of Investigation. The expanded FPLS will perform crossmatches between the NDNH, the FCR, and specified additional external databases. With these new expanded FPLS resources, the interstate matching of child support obligors and employment, earnings, and benefits data will flow more efficiently and quickly between States.

In addition to performing automatic matching, the system accepts and processes automated or manual information requests from State and local CSE agencies as well as the FBI, the National Center for Missing and Exploited Children, the State Department, and the Attorney General. The following information is available from Federal agencies (including the Postal Service) and the SESAs:

(1) The Social Security Administration (SSA) provides three types of information on the noncustodial or custodial parent per locate request. SSA can also provide social security number information (including identification, verification, nonverification or correction) pertaining to the noncustodial or custodial parent. When SSA is the specified agency queried, SSA provides the name and address of employers, address where the benefits check is being delivered, and date of death, as well as SSN and address information;

(2) The SESAs provide two types of information. If the noncustodial parent is employed, the SESAs provide the name and address of the most recent employer and the amount of the wages earned in the previous quarter. If the noncustodial or custodial parent is unemployed, the SESAs provide the home address where the unemployment check is or was most recently mailed;

(3) The Department of Treasury (Treasury) provides several types of information. If the noncustodial or custodial parent has filed a tax return in the last three years, Treasury provides the address reported on the most recent return. Treasury also provides the SSNs of parents listed on the tax return.

Additionally, the Project 1099 provides information to State CSE agencies to access all earned and unearned income information reported to the Treasury by employers and financial institutions. The FPLS conducts matches on data from IRS forms 1098 and 1099;

(4) The Department of Defense (DoD) provides information on noncustodial or custodial parents who are in the Army, Navy, Air Force, and Marine Corps. DoD provides the military unit address, pay grade, and date of separation from the service. FPLS conducts matches with Office of Personnel Management (OPM) through DoD. OPM provides the name and address of the payroll office for non-military and non-postal noncustodial or custodial parents who work for the Federal government, or receive retirement benefits;

(5) The Postal Service provides information on noncustodial or custodial parents who are employed by the U.S. Postal Service; and

(6) The Department of Veterans Affairs (VA) provides information on those individuals who are receiving VA benefits. The VA indicates if the noncustodial or custodial parent is receiving compensation, pension, or educational benefits, the amount of the benefit, and where the check is being delivered.

Furthermore, pursuant to the DCIA, and pursuant to Executive Order 13019, the Department of Treasury's FMS is charged with the responsibility of increasing the collection of non-tax debts owed to the Federal Government and/or States, and collecting past-due child support through administrative offsets. The OCSE will match its records against Federal payment certification records and Federal financial assistance records maintained by FMS. The purpose is to facilitate the collection of delinquent child support obligations from persons who may be entitled or eligible to receive certain Federal payments or Federal assistance. State CSE agencies submit names of delinquent child support debts to the OCSE for submission to FMS.

These cases are sent on-line, dial-up access via personal computer, tape and cartridge via mail, file transfer, or electronic data transmission. OCSE serves as a conduit between State CSE agencies and the FMS by processing weekly updates of collection data and distributing the information back to the appropriate State CSE agency. The information will be disclosed by OCSE to State CSE agencies for use in the collection of child support debts, through locate, wage withholding, or other enforcement actions.

The system of records is used for the collection of past-due child support via administrative offset, (offset of certain funds payable to an individual by the Federal Government.) (Not all Federal funds will be subject to administrative offset; see 62 FR 36205, dated July 7, 1997.) The FMS serves as the lead agency in this debt collection initiative. The FMS has a Debt Collection Operations System to maintain records of individuals and entities that are indebted and will match these records against the payment certification records of Federal departments and agencies.

In addition, the system of records is used to determine which delinquent obligors are appropriate for referral to the U.S. State Department for revocation/restriction/denial of a U.S. Passport. OCSE extracts cases with arrearages of $5,000 or greater from the certified case file. These cases are electronically submitted to SSA with name and SSN. SSA returns the file with date of birth, SSN, name, place of birth, and sex. These cases are then forwarded to the State Department via tape with date of birth, place of birth, sex, SSN, and name. These files are matched against individuals who make application for passport. Passports may be denied to those obligors owing $5,000 or greater. The State Department's system is called the Consular and Support System (CLASS) (State 26, Passport Records, published at 60 FR 148, August 2, 1995).

If there is a match, the Passport Office will notify the applicant to contact the State CSE agency that submitted his/her name. If, as a result of payment, the applicant's child support arrearage falls below the $5,000 threshold, the CSE office will issue a Notice of Withdrawal of Passport Denial requesting that the Passport Office issue a passport to the noncustodial parent if otherwise qualified.

The FPLS system of records will be comprised of records that contain the name of noncustodial or custodial parent or child, Social Security number (when available), date of birth, place of birth, sex code, State case identification number, local identification number (State use only), State or locality originating request, date of origination, type of case (TANF, non-TANF full-service, non-TANF locate only, parental kidnapping), home address, mailing address, type of employment, work location, annual salary, pay rate, quarterly wages, medical coverage, benefit amounts, type of military service (Army, Navy, Marines, Air Force, not in service), retired military (yes or no), Federal employee (yes or no), recent employer's address, known alias (last name only), offset amount, date requests sent to Federal agencies or departments (SSA, Treasury, DoD/OPM, VA, USPS, FBI, and SESAs), dates of Federal agencies' or departments' responses, date of death, record identifier, employee date of hire, employee State of hire, Federal EIN, State EIN, employer name, employer address, employer foreign address, employer optional address, and employer optional foreign address; employee SSN, employee name, employee wage amount, reporting period, claimant SSN, claimant name, claimant address, SSA/VA benefit amount, reporting period, State code, local code, case number, arrearage amount, collection amount, adjustment amount, return indicator, transfer State, street address, city and State, zip code, zip code 4, total debt, number of adjustments, number of collections, net amount, adjustment year, tax period for offset, type of offset, State code, submitting State FIPS, locate code, case ID number, case type, and court/administrative order indicator.

Safeguarding: All requests from the State IV–D Agency must certify that: (1) They are being made to locate noncustodial or custodial parents for the purpose of establishing paternity or securing child support, or in cases involving parental kidnapping or child custody determinations and for no other purpose; (2) the State IV–D agency has in effect protective measures to safeguard the personal information being transferred and received from the FPLS; and (3) the State IV–D Agency will use or disclose this information for the purposes prescribed in 45 CFR 302.70.

The records in the FPLS will be maintained in a secure manner compatible with their content and use. All Federal and State personnel and contractors will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act regulations at 45 CFR part 5b. The System Manager will control access to the data. Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are: (1) Any State or Federal government department or agency charged with the responsibility of locating custodial or noncustodial parents; (2) State agencies under agreements covered by title IV–D of the Social Security Act for the purposes of locating noncustodial and custodial parents in connection with establishing or enforcing child support obligations; (3) State agencies under agreements covered by section 463 of the Act for the purpose of locating

custodial parents or children in connection with activities by State courts and Federal attorneys and agents charged with making or enforcing child custody and visitation determinations or conducting investigations, enforcement proceedings or prosecutions concerning the unlawful taking or restraint of children; and (4) agents and attorneys of the United States involved in activities in States which do not have agreements under Section 463 of the Act for the purpose of locating custodial parents in connection with activities by State courts and Federal attorneys and agents charged with making or enforcing child custody and visitation determinations or conducting investigations, enforcement proceedings or prosecutions concerning unlawful taking or restraint of children.

All microfilm and paper files are accessible only by authorized personnel who have a need for the information in the performance of their official duties. Safeguards for automated records have been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook.

Storage: Records are maintained on disk and magnetic tape, and hard copy.

Retrievability: System records can be accessed by either a State assigned case identification number or Social Security Number.

Data stored in computers will be accessed through the use of "passwords" known only to authorized users. Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel.

Information will not be disclosed to any person if the disclosure would contravene the national or security interest of the United States or the confidentiality of census data.

Information will not be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent.

Information received or transmitted pursuant to this section shall be subject to the safeguard provisions contained in section 454(26) of the Act.

Retention and Disposal; Quarterly wage data supplied to the FPLS will be retained for eight calendar quarters and then destroyed. New hire information supplied to the FPLS will be kept in an active file for two years. New hire information will then be stored for an additional three years before being destroyed.

Tax refund and administrative offset information will be maintained for six years in an active master file for purposes of collection and adjustment. After this time, records of cases for which there was no collection will be destroyed. Records of cases with a collection will be stored on-line in an inactive master file.

Records pertaining to passport denial will be updated and/or deleted as obligors meet satisfactory restitution or other State approved arrangements.

Records of information provided by the FPLS to authorized users will be maintained only long enough to communicate the information to the appropriate State or Federal agent. Thereafter, the information provided will be destroyed. However, records pertaining to the disclosures, which include information provided by States, Federal agencies contacted, and an indication of the type(s) of information returned, will be stored on a history tape and in hard copy for five years and then destroyed.

System Manager(s) and Address: Director, Program Operations Division, Ofice of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447.

Record Access Procedures: Same as notification procedures. Requesters should also specify the record contents being sought.

Contesting Record Procedures: Contact the official at the address specified under system manage above, and identify record and specify the information to be contested.

Record Source Categories: Information is obtained from departments, agencies, or instrumentalities of the United States or any State.

Systems Exempted From Certain Provisions of the Privacy Act: None.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Users:

The current routine uses for this system of records are:

(1) Request the most recent home and employment addresses and SSN of the noncustodial parents from any State or Federal government department, agency or instrumentality which might have such information in its records; (2) Provide the most recent home and employment addresses and SSN to State CSE agencies (including the FBI and the Center for Missing and Exploited Children) for the purpose of locating noncustodial parents in connection with establishing or enforcing child support obligations; (3) Provide the most recent home and employment addresses and SSN to State CSE agencies under agreements covered by section 463 of the Social Security Act (42 U.S.C. 663) for the purpose of locating noncustodial parents or children in connection with activities by State courts and Federal attorneys and agents charged with making or enforcing child custody determinations or conducting investigations, enforcement proceedings or prosecutions concerning the unlawful taking or restraint of children; (4) Provide the most recent home and employment addresses and SSN to agents and attorneys of the United States, involved in activities in States which do not have agreements under section 463 of the Act for purposes of locating noncustodial parents or children in connection with Federal investigations, enforcement proceedings or prosecutions involving the unlawful taking or restraint of children; and (5) provide to the State Department the name and SSN of noncustodial parents in international child support cases, and in cases inolving The Hague Convention on the Civil Aspects of International Child Abduction.

The PRWORA amends Federal law and authorizes new uses and disclosures for the expanded FPLS. The new routine uses proposed for this system are compatible with the stated purposes of the system and include the following:

(1) Pursuant to section 453(j) (2)&(3) of the Social Security Act, State agencies may access data in the NDNH for the purpose of administering the Child Support Enforcement Program and the Temporary Assistance for Needy Families (TANF) program; (2) Pursuant to section 453(j)(4) of the Act, the Commissioner of Social Security may access information in the NDNH for the purpose of verifying reported SSNs and other purposes; (3) Pursuant to section 453(l)(3) of the Act, the Secretary of the Treasury may access information in the NDNH for purposes of administering advance payment of the earned income tax credit and verifying a claim with respect to employment in a tax return; (4) Pursuant to section 453(j)(5) of the Act, the Secretary of Health and Human Services may provide researchers with access to the new hire data for research efforts that would contribute to the TANF and CSE programs.

Information disclosed may not contain personal identifiers; (5) Under section 6103(el)(6) of the Internal Revenue Code of 1986, records may be disclosed to any agent of an agency that is under contract with the State CSE agency to assist in locating individuals for the purposes of establishing, modifying, and enforcing child support obligations; (6) Under section 453(j) of the Act, records in the NDNH may be disclosed to State CSE agencies in order to locate individuals for the purpose of establishing paternity and for establishment, modification, or enforcement of a support order; (7) Pursuant to section 453(a) of the Act, records may be disclosed to State CSE agencies for the purpose of locating individuals for the purpose of enforcing child custody and visitation orders; (8) Pursuant to section 453(j) of the Act, new hire information may also be disclosed to the State agency administering the Medicaid, Unemployment Compensation, Food Stamp, SSI, and territorial cash assistance programs for income eligibility verification, and to State agencies administering unemployment and workers' compensation programs to assist determinations of the allowability of claims; (9) OCSE will disclose information to the Treasury Department for the offset of certain Federal payments in order to collect past due child support obligations. The Federal payments included in the Administrative Offset System are: Federal salary, wage and retirement payments; vendor payments; expense reimbursement payments; and travel payments; and (10) Pursuant to section 452(k) of the Act, information from the FPLS may be disclosed to the Secretary of State to revoke, restrict, or deny a passport to any person certified by State CSE agencies as owing a child support arrearage greater than $5,000.

Dated: September 26, 1997.

Anne F. Donovan,

Acting Deputy Director.

09–90–0074

SYSTEM NAME:

Federal Parent Locator and Federal Tax Refund/Administrative Offset System (FPLS), HHS, OCSE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Child Support Enforcement, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447; Social Security Administration, 6200 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained to locate individuals for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing chid custody or visitation orders: (1) Information on, or facilitating the discovery of, or the location of any individual: (A) Who are under an obligation to pay child support or provide child custody or visitation rights; (B) against whom such an obligation is sought; and (C) to whom such an obligation is owed including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer; and (2) information on the individual's wages (or other income) from, and benefits of, employment (including rights to enrollment in group health care coverage); and (3) information on certain Federal disbursements payable to a delinquent obligor which may be offset for the purpose of collecting past-due child support.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will comprise records that contain the name of noncustodial or custodial parent or child, Social Security number (when available), date of birth, place of birth, sex code, State case identification number, local identification number (State use only), State or locality originating request, date of origination, type of case (TANF, non-TANF full-service, non-TANF locate only, parental kidnapping), home address, mailing address, type of employment, work location, annual salary, pay rate, quarterly wages, medical coverage, benefit amounts, type of military service (Army, Navy, Marines, Air Force, not in service), retired military (yes or no), Federal employee (yes or no), recent employer's address, known alias (last name only), offset amount, date requests sent to Federal agencies or departments (SSA, IRS, DoD/OPM, VA, USPS, FBI, and SESAs), dates of Federal agencies' or departments' responses, date of death, record identifier, employee date of hire, employee State of hire, Federal EIN, State EIN, employer name, employer address, employer foreign address, employer optional address, and employer optional foreign address; employee SSN, employee name, employee wage amount, reporting period, claimant SSN, claimant name, claimant address, SSA/VA benefit amount, reporting period, State code, local code, case number, arrearage amount, collection amount, adjustment amount, return indicator, transfer State, street address, city and State, zip code, zip code 4, total debt, number of adjustments, number of collections, net amount, adjustment year, tax period for offset, type of offset, State code, submitting State FIPS, locate code, case ID number, case type, and court/administrative order indicator.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 452 and 453 of the Social Security Act required the Secretary of HHS to establishment and conduct the Federal Parent Locator Service, a computerized national location network whch provides address and SSN information to State and local Child Support Enforcement Agencies (CSE).

Section 124(a) of the Family Support Act of 1988 authorized the Secretary of HHS to obtain access to wage and unemployment compensation claims information maintained for or by the Department of Labor (DOL) or the State Employment Security Agencies (SESAs).

The FPLS is being expanded pursuant to: Social Security Act amendments promulgated as section 316 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); the Debt Collection Improvement Act of 1996 (DCIA); and Executive Order 13019. These provisions give the Secretary of Health and Human Services the authority to expand the Federal Parent Locator Service to improve the States' ability to locate and collect child support.

PURPOSE(S):

The purpose of the system is to expand the Federal Parent Locator Service (FPLS) to improve States' ability to locate parents and collect child support. A large database, the National Directory of New Hires, will be established. Through this database, the interstate matching of child support obligors and employment, earnings, and benefit data will flow more efficiently and quickly between States. The National Directory of New Hires (NDNH) will contain the following:

(1) New hire information on employees commencing employment in either the public or private sector;

(2) Quarterly wage data on private and public sector employees; and

(3) Information on unemployment compensation benefits. Federal agencies are also required to submit both new hire and quarterly wage information. Names and social security numbers submitted for both new hire and quarterly wage information will be verified by the Social Security Administration to ensure that the social security number provided is correct.

In October of 1998, a second database will be established, the Federal Case

Register (FCR), which will be derived from State level case registry information and will contain abstracts on all participants involved in child support enforcement cases. The NDNH and the FCR will be matched against each other on an on-going basis to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES

The current routine uses in this system of records are maintained to: (1) Request the most recent home and employment addresses and SSN of the noncustodial or custodial parents from any State or Federal government department, agency or instrumentality which might have such information in its records; (2) Provide the most recent home and employment addresses and SSN to State CSE agencies for the purpose of locating noncustodial parents in connection with establishing or enforcing child support obligations; (3) Provide the most recent home and employment addresses and SSN to State CSE agencies under agreements covered by Section 463 of the Social Security Act (42 U.S.C. 663) for the purpose of locating noncustodial parents or children in connection with activities by State courts and Federal attorneys and agents charged with making or enforcing child custody determinations or conducting investigations, enforcement proceedings or prosecutions concerning the unlawful taking or restraint of children; and (4) Provide the most recent home and employment addresses and SSN to agents and attorneys of the United States, involved in activities in States which do not have agreements under section 463 of the Act for purposes of locating noncustodial parents or children in connection with Federal investigations, enforcement proceedings or prosecutions involving the unlawful taking or restraint of children; and (5) provide to the State Department the name and SSN of noncustodial parents in international child support cases, and in cases inolving he Hague Convention on the Civil Aspects of International child Abduction.

The PRWORA amends Federal law and authorizes new uses and disclosures for the expanded FPLS. The new routine uses for this system are compatible with the stated purposes of the system and include the following: (1) State agencies may access data in the NDNH for the purpose of administering the Child Support Enforcement Program and the Temporary Assistance for Needy Families (TANF) program; (2) The Commissioner of Social Security may access information in the NDNH for the purpose of verifying reported SSNs and other purposes; (3) The Secretary of the Treasury may access information in the NDNH for purposes of administering advance payment of the earned income tax credit and verifying a claim with respect to employment in a tax return; (4) The Secretary of Health and Human Services may provide researchers with access to the new hire data for research efforts that would contribute to the TANF and CSE programs. Information disclosed may not contain personal identifiers; (5) Records may be disclosed to any agent of an agency that is under contract with the State CSE agency to assist in locating individuals for the purposes of establishing paternity and for establishing, modifying, and enforcing child support obligations; (6) Records in the NDNH may be disclosed to State CSE agencies in order to locate individuals for the purpose of establishing paternity and for establishment, modification, or enforcement of a support order; (7) Records may be disclosed to State CSE agencies for the purpose of locating individuals for the purpose of enforcing child custody and visitation orders; (8) New hire information may be disclosed to the State agency administering the Medicaid, Unemployment Compensation, Food Stamp, SSI, and territorial cash assistance programs for income eligibility verification, and to State agencies administering unemployment and workers' compensation programs to assist determinations of the allowability of claims; (9) OCSE will disclose information to the Treasury Department for the offset of certain Federal payments in order to collect past due child support obligations. The Federal payments included in the Administrative Offset System are: Federal salary, wage and retirement payments; vendor payments; expense reimbursement payments; and travel payments; and (10) Pursuant to section 452(k) of the Act, information from the FPLS may be disclosed to the Secretary of State to revoke, restrict, or deny a passport to any person certified by State CSE agencies as owing a child support arrearage greater than $5,000.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

FPLS records are maintained on disc and computer tape, and hard copy.

RETRIEVABILITY:

System records can be accessed by either a State assigned case identification number or Social Security Number.

SAFEGUARDS:

1. *Authorized Users:* All requests from the State IV–D Agency must certify that: (1) They are being made to locate non-custodial and custodial parents for the purpose of establishing paternity or securing child support, or in cases involving parental kidnapping or child custody and visitation determinations and for no other purpose; (2) the State IV–D agency has in effect protective measures to safeguard the personal information being transferred and received from the Federal Parent Locator Service; and (3) the State IV–D Agency will use or disclose this information for the purposes prescribed in 45 CFR 302.70.

2. *Physical Safeguards:* For computerized records electronically transmitted between Central Office and field office locations (including organizations administering HHS programs under contractual agreements), safeguards include a lock/unlock password system. All input documents will be inventoried and accounted for. All inputs and outputs will be stored in a locked receptacle in a locked room. All outputs will be labeled "For Official Use Only" and treated accordingly.

3. *Procedural and Technical Safeguards:* All Federal and State personnel and contractors, are required to take a nondisclosure oath. A password is required to access the terminal. All microfilm and paper files are accessible only by authorized personnel who have a need for the information in the performance of their official duties.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," and the Department's Automated Information System Security Program Handbook.

RETENTION AND DISPOSAL:

Quarterly wage data supplied to the FPLS will be retained for eight calendar quarters and then destroyed. New hire information supplied to the FPLS will be kept in an active file for two years. New hire information will then be stored for an additional three years before being destroyed.

Tax refund and administrative offset information will be maintained for six years in an active master file for purposes of collection and adjustment. After this time, records of cases for which there was no collection will be destroyed. Records of cases with a collection will be stored on-line in an inactive master file.

Records pertaining to passport denial will be updated and/or deleted as obligors meet satisfactory restitution or other State approved arrangements.

Records of information provided by the FPLS to authorized users will be maintained only long enough to communicate the information to the appropriate State or Federal agent. Thereafter, the information provided will be destroyed. However, records pertaining to the disclosures, which include information provided by States, Federal agencies contacted, and an indication of the type(s) of information returned, will be stored on a history tape and in hard copy for five years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Program Operations Office of Child Support Enforcement Administration for Children and Families 370 L'Enfant Promenade, SW., 4th Floor East Washington, DC 20447.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager listed above. The requester must provide his or her full name and address. Additional information, such as your Social Security Number, date of birth or mother's maiden name, may be requested by the system manager in order to distinguish between individuals having the same or similar names.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records. Requesters should also reasonably specify the record contents they are seeking.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under system manager above, and reasonably identify the record and specify the information to be contested and corrective action sought with supporting justification to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from departments, agencies, or instrumentalities of the United States or any State.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–26049 Filed 10–1–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on October 24, 1997, 9:30 a.m. to 6 p.m.

Location: Gaithersburg Marriott Washingtonian Center, Salons C and D, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: John E. Stuhlmuller, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243, ext. 157, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee is being asked to provide input to the agency regarding the design of clinical trials to support premarket approval applications for devices intended to treat atrial septal defects, patent foramen ovale, and patent ductus arteriosus. Of particular concern are the following issues: What are the appropriate controls to be used in such trials? What are the appropriate safety and efficacy measures? When should assessments of these measures be made?

Procedure: On October 24, 1997, from 12:30 p.m. to 6 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 14, 1997. Oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 14, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 24, 1997, from 9:30 a.m. to 12:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). FDA staff will present trade secret and/or confidential information regarding pending and future circulatory system device submissions.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 25, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–26113 Filed 10–1–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–382]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) qf the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated

burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* ESRD Beneficiary Selection and Supporting Regulations Contained in 42 CFR 414.330; *Form No.:* HCFA–382 (OMB# 0938–0372); *Use:* ESRD facilities have each new home dialysis patient select one of two methods to handle Medicare reimbursement. The intermediaries pay for the beneficiaries selecting Method I and the carriers pay for the beneficiaries selecting Method II. This system was developed to avoid duplicate billing by both intermediaries and carriers. *Frequency:* Other (One time only); *Affected Public:* Individuals or Households, Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 3,100; *Total Annual Responses:* 3,100; *Total Annual Hours:* 259.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 24, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–26158 Filed 10–1–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the United States in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 24, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220: A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Genes for Niemann-Pick Type C Disease

DA Tagle, ED Carstea, JA Morris, PG Pentchev, WJ Pavan, MA Rosenfeld, SK Loftus (NINDS/NHGRI)
Serial No. 60/051,682 filed 03 Jul 97
Licensing Contact: Leopold J. Luberecki, Jr., 301/496–7735 ext. 223

Niemann-Pick disease is a class of inherited lipid storage diseases. Niemann-Pick Type C disease is an autosomal recessive neurovisceral lipid storage disorder which leads to systemic and neurological abnormalities including ataxia, seizures, and loss of speech. Patients with the disease typically die as children. The biochemical hallmark of Niemann-Pick Type C cells is the abnormal accumulation of unesterified cholesterol in lysosomes, which results in the delayed homeostatic regulation of both uptake and esterification of low density lipoprotein (LDL) cholesterol. Niemann-Pick Type C is characterized by phenotypic variability. The disease appears at random in families that have no history of the disorder, making diagnosis problematic. This invention provides the human gene for Niemann-Pick Type C disease and the nucleic acid sequences corresponding to the human gene for Niemann-Pick Type C disease. Also provided is the mouse homolog of the human gene. The invention could lead to improved diagnosis and the design of therapies for the disease and improved means of detection of carriers of the gene. In addition, this invention may contribute to the understanding and development of treatments for atherosclerosis, a more common disorder associated with cholesterol buildup that involves the accumulation of fatty tissue inside arteries that blocks blood flow, leading to heart disease and stroke. The invention may also lead to additional discoveries concerning how cholesterol is processed in the body.

AIB–1, A Steroid Receptor Co-Activator Amplified in Breast and Ovarian Cancer

PS Meltzer, JM Trent (NHGRI)
OTT Reference No. E–018–97/0 filed 17 Jun 97
Licensing Contact: Ken Hemby, 301/496–7735 ext. 265

Breast cancer is the number one cancer in U.S. women, with over 185,000 cases in 1996 and an estimated 44,560 deaths in the past year. Breast cancer arises from estrogen-responsive breast epithelial cells. Estrogen activity is though to promote the development of breast cancer, and many breast cancers are initially dependent on estrogen at the time of diagnosis. Anti-estrogen compositions have therefore been used to threat breast cancer.

AIB–1 (Amplified in Breast Cancer–1) is a novel gene that is pivotal to a crucial metabolic pathway linked to the growth and progression of human breast cancer. In many cancers, especially breast cancer, tumor cells have amplified copies of genes that can give the cancer a growth advantage. AIB–1, located on the long arm of chromosome 20, is one such amplified gene. High-level AIB–1 amplification and overexpression have been observed in several estrogen receptor (ER) positive breast and ovarian cancer cell lines, as well as in uncultured breast cancer specimens. AIB–1 has also been found to be expressed in prostate epithelial cells.

AIB–1 is the most recently identified member of a gene family known as SRC–1 (steroid receptor coactivator), all of which interact with genes for steroid hormone receptors, ultimately enhancing tumor cell growth.

This invention provides the gene for AIB–1, a novel steroid receptor co-activator which is overexpressed in breast cancer cells. It also encompasses diagnostic assays for steroid hormone-responsive cancers and screening assays to identify compounds which inhibit interactions of the co-activator with steroid hormone receptors and other proteins in this pathway.

Methods and Compositions for Inhibiting Inflammation and Angiogenesis

K Kelly (NCI)
Serial No. 60/027,871 filed 25 Oct 96

Licensing Contact: J. Peter Kim, 301/496–7056 ext. 264

The invention provides compositions and methods directed to isolated α subunits of the 7TM protein CD97. CD97 is a heterodimer existing in three isoforms, namely three forms of α subunit and one invariant β subunit. The invention provides compositions and methods for detecting a subunit of CD97, a T-cell protein which is unregulated in activated T-cells and is involved in the onset and maintenance of inflammation and angiogenesis. The invention provides an isolated protein comprising a soluble CD97 α subunit, and an isolated nucleic acid encoding a soluble Cd97 α subunit protein. The invention also provides methods for identifying compounds which inhibit soluble CD97 α subunit expression. The invention may be used to inhibit angiogenesis associated with chronic inflammation in a mammal by administering a therapeutically effective amount of a CD97 antagonist. Another application includes determining the degree of inflammation at a site in a mammal with an antibody composition specifically reactive to a soluble CD97 α subunit. Further, it should be noted that these compositions and methods further have in vitro utility in the construction of proteins and subsequences thereof for the construction of antibodies, and nucleic acids and subsequences thereof for use as probes.

Peptides With Laminin Activity

Y Yamada, JO Graf, Y Iwamoto, F Robey, HK Kleinman, M Sasaki, GR Martin (NIDR)
U.S. Patent 5,092,885 issued 03 Mar 92
Licensing Contact: Jaconda Wagner, 301/496–7735, ext. 284

Peptides with laminin activity, including YIGSR, are claimed. These peptides block angiogenesis, alter the formation of capillary structures by endothelial cells, prevent the formation of excess blood vessels in tissue and inhibit in vivo tumor cell colonization of tissues. These peptides can be used, among other things, to inhibit metastasis.

This research has been described in B.J. Cancer 73:589, 1996; Cancer Res 54:5005, 1994; Semin Cancer Biol 1993 Aug; 4(4):259–65; Cancer Res 1993 Aug 1;53(15):3459–61; Cell 1987 Mar 27;48(6):989–9.

Laminin A Peptides

Y Yamada, HK Kleiman, M Sasaki, GR Martin (NIDR)
U.S. Patent 5,211,657 issued 18 May 93
Licensing Contact: Jaconda Wagner, 301/496–7735, ext. 284

This invention relates to peptides and derivatives thereof having laminin-like activity, as well as a pharmaceutical composition of the peptide. The peptides claimed include Serine-Isoleucine-Lysine-Valine-Alanine-Valine (SIKVAV). Methods for promoting increased adhesion and migration of epithelial cells is also disclosed. The peptides have wide usage in research, nerve regeneration and cancer treatment. For example, this invention may be useful as an adhesion and regeneration agent for nerve guides and as an adhesion agent for vascular prothesis.

This research had been described in Bioorganic Medinal Chem Lett 5:711, 1995; J Neurosci Res 1995 Oct 15;42(3):314–22; Cancer Res 1995 Jun 1;55(11):2476–80; FEBS Lett 1995 May 29;365(2–3):227–3; J Cell Physiol 1994 Jul;160(1):185–93; Cell Immunol 1994 Jan; 153(1):94–104.

Dated: September 25, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–26171 Filed 10–1–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Efficacy Studies of Chemopreventive Agents in animal Models and Evaluation of Chemopreventive Agents by in Vivo Screening Assays.
Date: October 20–21, 1997.
Time: 8:30 a.m. to 5:00 p.m.
Place: Double Tree Hotel—Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Courtney M. Kerwin, Ph.D., M.P.H., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 630I, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7421.
Purpose/Agenda To review and evaluate proposals submitted in response to master agreement announcements.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(8), Title 5, U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 26, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26167 Filed 10–1–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Duration of Labor and Cesarean Delivery in Association With Epidural Analgesia in Nullipara (Teleconference).
Date: September 30, 1997.
Time: 11:00 a.m. (ET)—adjournment.
Place: 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20852.
Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1696.
Purpose/Agenda: To provide concept review of proposed contract solicitations.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(9)(B), Title 5 U.S.C. The discussions could reveal the specific details of future requests for contract proposals (RFPs), the disclosure of which would significantly frustrate implementation of the agency's proposed contract activities by giving unfair competitive advantage to private firms or individuals.

This notice is published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research Mothers and Children], National Institutes of Health)

Dated: September 25, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26099 Filed 10–1–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute on Aging Review Group Sociology of Aging Review Committee.
Date of Meeting: October 16, 1997.
Time of Meeting: 1:30 p.m. to adjournment.
Place of Meeting: Radisson Barcelo Hotel, 2121 P Street, N.W., Washington, D.C. 20037.
Purpose/Agenda: To review and evaluate grant applications.
Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel NIA Small Grant Review—Psychology and Sociology.
Date of Meeting: October 17, 1997.
Time of Meeting: 8:00 a.m. to adjournment.
Place of Meeting: Radisson Barcelo Hotel, 2121 P Street, N.W., Washington, D.C. 20037.
Purpose/Agenda: To review small grant applications in psychology and sociology.
Contact Person: Dr. Paul Lenz, Scientific Review Administrators, Gateway Building, Room 2C212, National Institute of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel NIA Small Grant Review—Economics.
Date of Meeting: October 17, 1997.
Time of Meeting: 9:00 a.m. to adjournment.
Place of Meeting: Radisson Barcelo Hotel, 2121 P Street, N.W., Washington, D.C. 20037.
Purpose/Agenda: To review small grant applications in economics and demography.
Contact Person: Dr. Mary Ann Guadagno, Scientific Review Administrator, Gateway Building, Room 2C212, National Institute of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel Economics in Aging II Small Grant Applications (Teleconference).
Date of Meeting: October 20, 1997.
Time of Meeting: 1:00 p.m. to adjournment.
Place of Meeting: Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland 20892.
Purpose/Agenda: To review two small grant (R03) applications in the economics and demography of aging.
Contact Person: Dr. Paul Lenz, Scientific Review Administrators, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of SEP: National Institute on Aging Special Emphasis Panel Prevention of Alzheimer's Dementia and Cognitive Decline.
Date of Meeting: November 11, 1997.
Time of Meeting: 1:30 p.m. to adjournment.
Place of Meeting: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Purpose/Agenda: To review one grant application.
Contact Person: Dr. Maria Mannarino, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: September 25, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26101 Filed 10–1–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences meeting:

Committee Name: Minority Program Review Committee MARC, Minority Access to Reach Careers Sub-Committee.
Date: October 13–15, 1997.
Time: 8:30 a.m.–8:00 p.m.
Place: Holiday Inn Downtown-Superdome, 330 Loyola Avenue (at Gravier Street), New Orleans, LA 70112.
Contact Person: Richard L. Martinez, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19G, Bethesda, MD 20892–6200, 301–594–2849.
Purpose: To review institutional research training grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions of these could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: September 26, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26166 Filed 10–1–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).
Date: October 23, 1997.
Time: 3:30 p.m.
Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, Maryland 20892.
Contact Person: Dr. Paul Sheehy/Mr. Phillip Wiethorn, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, Maryland 20892, (301) 496–9223.
Purpose/Agenda: To review and evaluate RFP Contract Proposal(s).

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: September 26, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26168 Filed 10–1–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Chemistry and Related Sciences.
Date: October 22, 1997.
Time: 1:00 p.m.
Place: Hotel Sofitel, Washington, DC.
Contact Person: Dr. Chhandra Ganguly, Scientific Review Administrator, 6701 Rockledge Drive, Room 5156, Bethesda, Maryland 20892, (301) 435–1739.

Name of SEP: Chemistry and Related Sciences.
Date: November 7, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5156, Telephone Conference.
Contact Person: Dr. Chhandra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5156, Bethesda, Maryland 20892, (301) 435–1739.

Name of SEP: Multidisciplinary Sciences.
Date: November 7, 1997.
Time: 8:30 a.m.
Place: Hyatt Regency, Bethesda, MD.
Contact Person: Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 4198, Bethesda, Maryland 20892, (301) 435–1218.

Name of SEP: Biological and Physiological Sciences.
Date: November 16–17, 1997.
Time: 7:00 p.m.
Place: Georgetown Holiday Inn, Washington, DC.
Contact Person: Dr. Syed Quardri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 25, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26100 Filed 10–1–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting that is being held to review grant applications:

BIOBEHAVIORAL AND SOCIAL SCIENCES INITIAL REVIEW GROUP

Study section/contact person	October 1997 meeting	Time	Location
Community Prevention & Control, Dr. Robert Weller, 301–435–1261.	Oct. 16–17	8:00 a.m	Governor's House Hotel, Washington, DC.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 25, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26102 Filed 10–1–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health; Notice of Listing of Members of the National Institutes of Health's Senior Executive Service Performance Review Board (PRB)

The National Institutes of Health (NIH) announces the persons who will serve on the National Institutes of Health's Senior Executive Service Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314 (c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register.**

The following persons will serve on the NIH Performance Review Board, which oversees the evaluation of performance appraisals of NIH Senior Executive Service (SES) members:

Ruth L. Kirschstein, M.D., Chairperson
Wendy Baldwin, Ph.D.
Henning Birkedal-Hansen, D.D.S., Ph.D.
Noami Churchill, Esq.
William T. Fitzsimmons
Michael M. Gottesman, M.D.
Richard J. Hodes, M.D.
Anthony L. Itteilag
Marvin Kalt, Ph.D.
Stephen I. Katz, M.D., Ph.D,
Thomas J. Kindt, Ph.D.
Sheila E. Merritt
W. Sue Shafer, Ph.D.

For further information about the NIH Performance Review Board, contact the Office of Human Resource Management, Division of Senior Systems, National Institutes of Health, Building 31/B3C12, Bethesda, Maryland 20892, telephone (301) 496–1443 (not a toll-free number).

Dated: September 24, 1997

Ruth L. Kirchstein,

Deputy Director, NIH.

[FR Doc. 97–26170 Filed 10–1–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Substances for Listing in or Delisting from the 9th Report on Carcinogens.

Pursuant to Pub. L. 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Report on Carcinogens Subcommittee to be held on October 30 & 31, 1997, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. both days and is open to the public. The agenda are the peer review of substances nominated for listing in or delisting from the 9th Report on Carcinogens (formerly the Biennial Report on Carcinogens), and provision of an opportunity for public input.

Background

Over the past three years, there was an extensive public and Federal interagency review of the process for the preparation of the Report on Carcinogens (RC) to broaden input to its preparation, broaden the scope of scientific review, and provide review of the criteria used for inclusion in or removal of substances from the Report. As a result, the criteria were revised and approved in September 1996 by the Secretary, Department of Health and Human Services. The major change in the RC which occurred as a result of the criteria revision was to include consideration of all relevant information, including mechanistic data, in the decision to list substances in or delist substances from future volumes. To broaden the scope of scientific review, a new standing subcommittee of the NTP Board of Scientific Counselors was established. A November 1996 meeting of the Report on Carcinogens (RC) Subcommittee was the first where public review of nominations took place, and using the revised criteria. Thus, the current review process for review of petitions considered by the NTP for listing in or delisting from the Report begins with initial scientific review by the NIEHS/NTP Report on Carcinogens Review Committee (RG1). The RG1 makes a formal recommendation for those petitions determined to contain sufficient information for listing or delisting in the Report. The second scientific review is done by the NTP Executive Committee's Working Group for the Report on Carcinogens (RG2). RG2 is comprised of representatives of the Federal health research and regulatory agencies on the NTP Executive Committee. Following external scientific peer review by the RC Subcommittee in public session and solicitation of public comments through announcements in the **Federal Register** and other media, the independent recommendations of the three review groups and all public comments are presented to the NTP Executive Committee for review and comment. The Director, NTP, receives the four independent recommendations and makes the final decision to submit the Report to the Secretary for review and approval.

Agenda

Tentatively scheduled to be peer reviewed on October 30 & 31, are 14 agents, substances, mixtures or exposure circumstances listed alphabetically, along with supporting information in the attached table. The table lists the nominations in the tentative order of their presentation and review, and gives their primary uses or exposures and the category for which they were originally nominated. Background summary documents on each of the substances will be provided to reviewers around October 1, and will be available to the public at that time as well. Background documents include (1) a summary of the background data and information used to evaluate the nomination, and (2) the recommendation for: listing as "known to be a human carcinogen" or as "reasonably anticipated to be a human carcinogen"; the upgrading of a current listing; or the removal from the Report. Copies of draft background documents can be obtained, as available, from: the Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone 919/541–3971; FAX 919/541–0295; email hart@niehs.nih.gov.

Public Input Encouraged

The entire meeting is open to the public and time will be provided for public comment on each of the substances being reviewed. In order to facilitate planning for the meeting, persons wanting to make a formal presentation regarding a particular nominated substance must notify the Executive Secretary by telephone, by FAX, by mail, or by email no later than October 23, 1997, and provide a written copy in advance of the meeting. Written statements should supplement and may expand on the oral presentation, or may be submitted in lieu of an oral presentation, and should be received by October 27 so copies can be made for distribution to Subcommittee members and staff and made available for the public. *Oral presentation should be limited to no more than five minutes. Should the requests for time exceed the likely available time, the time may have to be limited to three minutes and presenters will be contacted.*

The program would welcome receiving carcinogenesis information from completed, ongoing, or planned studies by others, as well as current production data, human exposure information, and use patterns for any of the substances listed in this announcement. Please contact Dr. C.W. Jameson, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–4096; FAX 919/541–2242).

The Executive Secretary, Dr. Larry G. Hart, at the address given above, will furnish agenda and a roster of Subcommittee members prior to the meeting. Summary minutes subsequent to the meeting will be available upon request.

Dated: September 23, 1997.

Samuel H. Wilson,

Deputy Director, National Toxicology Program.

SUMMARY DATA FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS' REPORT ON CARCINOGENS SUBCOMMITTEE OCTOBER 30, AND 31, 1997

Substance or exposure circumstance/CAS No.	Primary uses or exposures	Nominated for[1]	Tenative review order
Dyes metabolized to benzidine (Benzidine dyes as a class).	Benzidine-based dyes are used primarily for dyeing textiles, paper and leather products. More than 250 benzidine-based dyes have been reported by the Society of Dyers and Colorists.	Listing as Known to be a Human Carcinogen in the 9th Report.	14
1,3-Butadiene/106–99–0	Used primarily as a chemical intermediate and polymer component in the manufacture of synthetic rubber.	Upgrading current listing to Known to be a Human Carcinogen in the 9th Report.	4
Cadmium and cadmium compounds/7440–43–9.	Used in batteries, coating and plating, plastic and synthetic products and in alloys.	Upgrading current listing to Known to be a Human Carcinogen in the 9th Report.	2
Chloroprene/126–99–8	Used as a monomer for neoprene elastomers, industrial rubber products, and as a component of adhesives in food packaging.	Listing as Reasonably Anticipated to be a Human Carcinogen in the 9th Report.	3
Phenolphthalein/77–09–8	Used as a laboratory reagent and acid-base indicator and as a cathartic drug in over-the-counter laxative preparations.	Listing as Reasonably Anticipated to be a Human Carcinogen in the 9th Report.	10
Saccharin/281–44–9	Used primarily as a nonnutritive sweetening agent	Removal from the Report on Charcinogens.	11
Smokeless tobacco	Oral use of smokeless tobacco products	Listing as Known to be a Human Carcinogen in the 9th Report.	7
Strong inorganic acid mists containing sulfuric acid.	Used in the manufacture of fertilizers, rayon, and other fibers, pigments and colors, explosives, plastics, coal-tar products such as dyes and drugs, storage batteries, synthetic detergents, natural and synthetic rubber, pulp and paper, cellophone and catalysts. It is also used in petroleum refining, pickling iron, steel and other metals and in ore concentration.	Listing as Known to be a Human Carcinogen in the 9th Report.	8
Tamoxifen/10540–29–1	Used as an anti-estrogen drug and in the palliative treatment of breast cancer.	Listing as Known to be a Human Carcinogen in the 9th Report.	9
2,3,7,8-Tetrachorodibenzo-P-Dioxin (TCDD)/1746–01–6.	Not used commercially, used only as a research chemical. Potential exposure from municipal incinerators, dump sites and contaminated soil.	Upgrading current listing to Known to be a Human Carcinogen in the 9th Report.	12
Tetrafluoroethylene/116–14–3	Used in the production of polytetrafluoroethylene (Teflon) and other polymers. Has also been used as a propellant for food product aerosols.	Listing as Reasonably Anticipated to be a Human Carcinogen in the 9th Report.	1
Tobacco smoking	Inhalation of tobacco smoke	Listing as Known to be a Human Carcinogen in the 9th Report.	6
Tricholoroethylene/79–01–6	Used as an industrial solvent for vapor degreasing and cold cleaning of fabricated metal parts. Has also been used as a carrier solvent for the active ingredients of insecticides and fungicides, as a solvent for waxes, fats, resins, and oils, as an anesthetic for medical and dental use, and as an extractant for spice oleoresins and for caffeine from coffee.	Listing as Reasonably Anticipated to be a Human Carcinogen in the 9th Report.	13
UV radiation	Solar and artificial sources of ultraviolent radiation	Listing as Known to be a Human Carcinogen in the 9th Report.	5

[1] Nomination does not necessarily reflect the final recommendaiton of the two NTP Scientific Review Committees for the Report on Carcinogens.

[FR Doc. 97–26169 Filed 10–1–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–834504

Applicant: Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to import one captive-born Black-footed cat (*Felis nigripes nigripes*) from the Frankfurt Zoo, Frankfurt, Germany, for the purpose of enhancement of the species through captive propagation.

PRT–831854

Applicant: Thure Cerling, University of Utah, Salt Lake City, UT

The applicant requests a permit to import molar fragments from Black rhinoceros (*Diceros bicornis*) collected in the wild in Kenya, from skeletal remains found in the National Parks of Kenya, or from existing material archived in the National Museums of Kenya, for scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management

Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 26, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–26097 Filed 10–1–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Applicant: Dr. Arthur V. Brown, University of Arkansas, Fayetteville, PRT–834518.

The applicant requests authorization to take (harass) the Ozark cavefish, *Amblyopsis rosae*, and the gray bat, *Myotis grisescens*, in Cave Springs Cave, Cave Springs, Arkansas, while conducting surveys for the Ozark cavefish, for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by November 3, 1997.

Documents and other information submitted with this application are available for review, subject to the requirements of the *Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: September 25, 1997.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 97–26124 Filed 10–1–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Permits Issued From September 1996 Through August 1997

Notice is hereby given that the U.S. Fish and Wildlife Service, Southeast Region, has issued the following permits in regard to applications received pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the detriment of the endangered or threatened species, and that it will be consistent with the purposes and policy set forth in the Endangered Species Act.

TABLE 1.—SUBPERMIT AUTHORIZATIONS ISSUED BY REGION 4 UNDER REGIONAL DIRECTOR'S PERMIT, PRT–697819, SEPTEMBER 1996 THROUGH AUGUST 1997

Permittee	Permit No.	Action[1]	Issuance date
Jacqueline Britcher	SA 95–04	A	08–Oct–96.
Kathleen Franzreb	SA 95–11	A	30–Oct–96.
Kathleen Franzreb	SA 95–11	A	11–Apr–97.
Jim Tisdale	SA 95–20	A	29–Oct–96.
Robert Bowker	SA 95–22	A	26–Feb–97.
Bob Johnson	SA 95–26	A	13–Mar–97.
M. Skippy Reeves	SA 96–06	A	28–Oct–96.
Dick Biggins	SA 96–18	N	06–Dec–96.
Dick Biggins	SA 96–18	A	08–May–97.
Peter Swiderek	SA 96–23	A	29–Oct–96.
Mark Dutton	SA 96–27	R, A	01–Oct–96.
Elizabeth LeMaster	SA 96–30	N	28–Oct–96.
Elizabeth LeMaster	SA 96–30	A	11–Apr–97.
Elizabeth LeMaster	SA 96–30	A	30–Apr–97.
Paul Hartfield	SA 96–31	N	11–Oct–96.
K. Jack Killgore	SA 96–32	N	22–Nov–96.
Scott C. Gunn	SA 96–33	N	26–Feb–97.
Robert Joslin	SA 96–40	A	06–Feb–97.
Dwight LeBlanc	SA 97–01	R	05–Nov–96.
Richard M. Pace	SA 97–02	R	05–Nov–96.
Paul L. Davidson	SA 97–03	R	05–Nov–96.
Terry Rabot	SA 97–04	R	05–Nov–96.
Kenneth Moore	SA 97–05	R	30–Oct–96.
Joseph Wunderle	SA 97–06	R, A	17–Dec–96.
Jacqueline Britcher	SA 97–07	R	16–Dec–96.
Lonnette Edwards	SA 97–08	R, A	29–Jan–97.
Daniel Wyrick	SA 97–09	N	16–Jan–97.
Patrick B. Walsh	SA 97–10	N	23–Jan–97.
Daniel Pagan Rosa	SA 97–11	R	18–Jun–97.
Jim Tisdale	SA 97–12	R	26–Feb–97.

TABLE 1.—SUBPERMIT AUTHORIZATIONS ISSUED BY REGION 4 UNDER REGIONAL DIRECTOR'S PERMIT, PRT–697819, SEPTEMBER 1996 THROUGH AUGUST 1997—Continued

Permittee	Permit No.	Action[1]	Issuance date
Melvin L. Warren	SA 97–13	N	11–Mar–97.
Thomas C. Emmel	SA 97–15	R, A	06–May–97.
Robert Montgomery	SA 97–16	N	10–Mar–97.
Ruth R. McDonald	SA 97–17	N	10–Apr–97.
Francisco Vilella	SA 97–18	N	08–Apr–97.
Joseph Reinman	SA 97–19	R	21–Apr–97.
Michael Stroeh	SA 97–20	R	10–Apr–97.
Carol Johnston	SA 97–21	N	24–Mar–97.
Richard Neves	SA 97–22	N	14–Mar–97.
Patrick Rakes	SA 97–23	R, A	12–May–97.
Lee Barcley	SA 97–24	N	12–May–97.
Bob Johnson	SA 97–25	R, A	09–Jul–97.
Don Anderson	SA 97–26	N	06–Jul–97.
James Layzer	SA 97–27	N	09–Jul–97.
David R. Smith	SA 97–29	N	01–Jul–97.
Joan L. Morrison	SA 97–30	N	21–Jul–97.
Elise Irwin	SA 97–31	N	15–Aug–97.
K. Jack Killgore	SA 97–33	R	26–Aug–97.

1—A, amend existing permit.
N, issue new permit.
R, renew existing permit.

TABLE 2.—INDIVIDUAL PERMITS ISSUED BY REGION 4, SEPTEMBER 1996 THROUGH AUGUST 1997

Permittee	Permit No.	Action[1]	Issuance date
Steve Conners	763740	R	01–Aug–97.
Douglas Shelton	791799	A	09–Oct–96.
Barry A.Vittor	791801	R	20–Feb–97.
Mulligan's Snakery	792837	A	09–Oct–96.
Mulligan's Snakery	792837	A	08–May–97.
T. Bently Wigley	797352	R	17–Jan–97.
Wendell Neal	797420	R	20–Feb–97.
Nicholas Holler	800196	R	14–Jan–97.
Nicholas Holler	800196	A	10–Feb–97.
Robert H.Mount	801591	R	13–Dec–96.
Peter Vickery	801597	R, A	18–Mar–97.
L. Jay Levine	802461	R, A	18–Mar–97.
Wayne A. Rosso	805609	R	04–Nov–96.
Richard D. Brown	807671	R	17–Mar–97.
Stuart McGregor	810270	N	12–Dec–96.
Dean Letta	814175	A	02–Jul–97.
Vernon Compton	815492	N	16–Sep–96.
Jeffry Hohman	816862	N	21–Nov–96.
Jeffry Hohman	816862	A	17–Mar–97.
Dennis Giardina	816863	A	31–Jul–97.
Benny Herring	816864	N	02–Oct–96.
Claude D. Baker	818717	N	12–Dec–96.
Susanne Shipper	818721	N	04–Nov–96.
Ken Gordon	818775	N	28–Feb–97.
Sam W. Rosso	818777	N	17–Apr–97.
Dennis M. Sargent	819525	A	16–Oct–96.
Charles V. Rabolli	819901	N	26–Nov–96.
White Crane Trading	819903	N	03–Feb–97.
Alejandro Lima	820585	N	23–Dec–96.
Leslie Colley	820586	N	17–Dec–96.
Little Rock Zoological Garden	820589	N	10–Oct–96.
Gary D. Schnell	820707	A	18–Dec–96.
Elizabeth McCartney	821996	N	23–Dec–96.
Kenneth Faint	821999	N	26–Nov–96.
Kenneth Faint	821999	A	05–Jun–97.
Timothy Brophy	822001	N	21–Nov–96.
Joe McGlincy	822525	N	16–Jan–97.
Brock Durham	822658	N	17–Dec–96.
Bruce R. Bodson	822887	N	24–Jan–97.
Darrell Ragan	823479	N	20–Feb–97.
Reed Bowman	824723	N	19–Mar–97.
Oscar J. Pung	824727	N	17–Mar–97.

TABLE 2.—INDIVIDUAL PERMITS ISSUED BY REGION 4, SEPTEMBER 1996 THROUGH AUGUST 1997—Continued

Permittee	Permit No.	Action [1]	Issuance date
D. Patrick Ferral	824729	N	17–Mar–97.
Roy S. DeLotelle	825431	N	20–May–97.
Roy S. DeLotelle	825431	A	27–Aug–97.
Jonathan Milberg	826913	N	27–Mar–97.
Kevin W. Markham	826915	N	20–Jun–97.
Kathleen McKeown	827365	N	21–May–97.
Kathleen McKeown	827365	A	27–Aug–97.
James Kaehn	827371	N	21–Apr–97.
Robert J. Bruce	828143	N	21–Apr–97.
Gregory Crenko	828147	N	21–Apr–97.
Gregory Crenko	828147	A	23–Jun–97.
Wendell Neal	828153	N	17–Jun–97.
Gordon Bailey	828931	N	08–Jul–97.
Grant L. Kemmerer	829991	N	23–Jun–97.
Rob Carmichael	829992	N	23–Jun–97.
Kenneth Abramowitz	831195	N	02–Jul–97.
Graham T. Hall	831710	N	23–Jul–97.
Gregg Shalan	832542	N	31–Jul–97.
Steve Hollaway	832544	N	31–Jul–97.
Rich Chomiczewski	832868	N	07–Aug–97.
Robert James Bruce	833250	N	18–Aug–97.
Michael Hinds	833251	N	18–Aug–97.

1—A, amend existing permit.
N, issue new permit.
R, renew existing permit.

Additional information on these permit actions may be requested by contacting the U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679-7313; Facsimile: 404/679–7081.

Dated: September 25, 1997.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 97–26126 Filed 10–1–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Application Submitted by South Carolina Department of Natural Resources for a Statewide Incidental Take Permit Associated With Implementation of a "Safe Harbor" Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The South Carolina Department of Natural Resources (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed ITP would authorize the incidental take of a federally endangered species, the red-cockaded woodpecker, Picoides borealis (RCW). The permit would authorize incidental take only on land that is enrolled in the proposed "safe harbor" program. (See the SUPPLEMENTARY INFORMATION section below.)

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly effecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. An excerpt of the FONSI appears in the **SUPPLEMENTARY INFORMATION** section of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

Although an EA has been prepared for this permit application, the Service is considering a Categorical Exclusion on the action (see **SUPPLEMENTARY INFORMATION**). The Service is soliciting public comments and review on the applicability of a Categorical Exclusion to this application and HCP.

The Service specifically requests comment on the appropriateness of the "No Surprises" assurances should the Service determine that an ITP will be granted based upon the submitted HCP. Although not explicitly stated in the Service's EA or HCP, the Service has, since August 1994, announced its intention to honor a "No Surprises" policy for applicants seeking ITPs. Copies of the Service's "No Surprises" policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**).

DATES: Written comments on the permit application, EA/FONSI, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before November 3, 1997.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the following Field Offices: Field Supervisor, U.S. Fish and Wildlife Service, Post Office Box 12559, Charleston, South Carolina 29422–2559 (telephone 803/727–4707); Red-cockaded Woodpecker Recovery Coordinator, U.S. Fish and Wildlife Service, College of Forest and Recreational Resources, 261 Lehotsky Hall, Box 341003, Clemson, South Carolina 29634–1003 (telephone 864/656–2432). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit number PRT–834071 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110; or Ms. Lori Duncan, Fish and Wildlife Biologist, Charleston Field Office, (see **ADDRESSES** above), telephone: 803/727–4707 ext. 21.

SUPPLEMENTARY INFORMATION: The RCW is a territorial, nonmigratory cooperative breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among the North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The species evolved in a mature fire-maintained ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, and residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurs in 13 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest known populations occur on federally owned lands such as military installations and national forests.

In South Carolina, there are an estimated 1,000 active RCW clusters as of 1992; 53 percent are on Federal lands, 7 percent are on State lands, and 40 percent are on private lands.

There has not been a complete inventory of RCWs in South Carolina so it is difficult to precisely assess the species' overall status in the State. However, the known populations on public lands are regularly monitored and generally considered stable. While several new active RCW clusters have been discovered on private lands over the past few years, many previously documented RCW clusters have been lost. It is expected that the RCW population on private lands in South Carolina will continue to decline, especially those from small tracts isolated from other RCW populations.

The Service and several other agencies/organizations are working cooperatively to develop an overall conservation strategy for the RCW population and the ecosystem upon which it depends. One component of this strategy is the proposed HCP that will implement the "safe harbor" program. The Service recognizes that landowners presently have no legal or economic incentive to undertake proactive management actions, such as hardwood midstory removal, prescribed burning, or protecting future cavity trees, that will benefit and help recover the RCW. Indeed, landowners actually have a disincentive to undertake these actions because of land use limitations that could result if their management activities attract RCWs. However, some of South Carolina's private landowners may be willing to take or permit actions that would benefit the RCW on their property if the possibility of future land use limitations could be reduced or eliminated.

Thus, the Service is proposing the "safe harbor" program, which is designed to encourage voluntary RCW habitat restoration or enhancement activities by relieving a landowner who enters into a cooperative agreement with the Service from any additional responsibility under the Act beyond that which exists at the time he or she enters into the agreement; i.e., to provide a "safe harbor." The cooperative agreement will identify any existing RCW clusters and will describe the actions that the landowner commits to take (e.g., hardwood midstory removal, cavity provisioning, etc.) or allows to be taken to improve RCW habitat on the property, and the time period within which those actions are to be taken and maintained. Participating landowners who enter into cooperative agreements with the Service will be included within the scope of the ITP by Certificates of Inclusion administered by the South Carolina Department of Natural Resources. A participating landowner must maintain the baseline habitat requirements on his/her property (i.e., any existing RCW groups and associated habitat), but will be allowed to incidentally take RCWs at some point in the future on other habitat on the property if RCWs are attracted to the site by the proactive management measures undertaken by the landowner. No incidental taking of any existing RCW group is permitted under this program except under the special circumstances that are described in the HCP. Further details about this program are found in the HCP.

The EA considers the environmental consequences of three alternatives, including the preferred alternative—to implement the "Safe Harbor" program. The likely effects of the no-action alternative are the continued decline of the RCW on private land and the continued lack of management of many of the natural pine stands that remain in the State. The third alternative involves offering interested landowners financial, rather than regulatory, incentives to undertake the desired land management activities for RCWs. This alternative is not being pursued because the Service is presently unable to fund such a program. The proposed action alternative is the issuance of an incidental take permit and implementation of the "Safe Harbor" program.

On Thursday, January 16, 1997, the Service published a notice in the **Federal Register** announcing the Final Revised Procedures for implementation of NEPA (NEPA Revisions), (62 FR 2375–2382). The NEPA Revisions update the Service's procedures, originally published in 1984, based on changing trends, laws, and consideration of public comments. Most importantly, the NEPA Revisions reflect new initiatives and Congressional mandates for the Service, particularly involving new authorities for land acquisition activities, expansion of grant programs and other private land activities, and increased Endangered Species Act permit and recovery activities. The revisions promote cooperating agency arrangements with other Federal agencies; early coordination techniques for streamlining the NEPA process with other Federal agencies, Tribes, the States, and the private sector; and integrating the NEPA process with other environmental laws and executive orders. Section 1.4 of the NEPA Revisions identify actions that may qualify for Categorical Exclusion. Categorical exclusions are classes of

actions which do not individually or cumulatively have a significant effect on the human environment. Categorical exclusions are not the equivalent of statutory exemptions. If exceptions to categorical exclusions apply, under 516 DM 2, Appendix 2 of the Departmental Manual, the departmental categorical exclusions cannot be used. Among the types of actions available for a Categorical Exclusion is for a "low effect" HCP/incidental take permit application. A "low effect" HCP is defined as an application that, individually or cumulatively, has a minor or negligible effect on the species covered in the HCP [Section 1.4(C)(2)].

The Service may consider the Applicant's project and HCP such a Categorical Exclusion. The Service is soliciting for public comments on this determination. Based upon public comments, the Service may make a final determination that this action is categorically excluded.

The Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly effecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.

2. The proposed take is incidental to an otherwise lawful activity.

3. The Applicant has minimized impacts on the project site to the extent practicable.

4. Other than impacts to the threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: September 25, 1997.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 97–26125 Filed 10–1–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On July 24, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 142, Page 39854, that an application had been filed with the Fish and Wildlife Service by Maurice Sterner, Spring Grove, PA for a permit (PRT–832102) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Baffin Bay population, Northwest Territories, Canada for personal use.

Notice is hereby given that on September 17, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: September 26, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–26098 Filed 10–1–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: Fort Belknap Irrigation Project, Montana

ACTION: Notice of proposed irrigation operation and maintenance (O&M) rate adjustment.

SUMMARY: The Bureau of Indian Affairs proposes to change the assessment rates for operating and maintaining the Fort Belknap Irrigation Project for 1998, 1999, 2000, 2001, 2002 and subsequent years. The following table illustrates the impact of the rate adjustment.

FORT BELKNAP IRRIGATION PROJECT; IRRIGATION RATE PER ASSESSABLE ACRE

[N/A—Not Applicable]

Year	Present 1997	Proposed 1998	Proposed 1999	Proposed 2000	Proposed 2001	Proposed 2002
Non-Indian	$12.50	N/A	N/A	N/A	N/A	N/A
Indian	6.25	N/A	N/A	N/A	N/A	N/A
Rate (all)	N/A	$12.50	$13.00	$13.50	$14.00	$14.50

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Billings Area Office, 316 North 26th Street, Billings, Montana 59101–1362, telephone (406) 247–7998.

DATES: Interested parties may submit comments on the proposed rate adjustment. Comments must be submitted on or before November 3, 1997.

ADDRESSES: All comments concerning the proposed rate change must be in writing and addressed to: Director, Office of Trust Responsibilities, Attn: Irrigation and Power, MS#4513–MIB, Code 210, 1849 "C" Street, NW, Washington, D.C. 20240, Telephone (202) 208–5480.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary-Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with § 171.1(e) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the fixing and announcing the rates for annual operation and maintenance assessments and related information of the Fort Belknap Irrigation Project for Calendar Year 1998 and subsequent years.

The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his management/control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(d) Capitalization expenses;

(e) Acquisition expenses; and

(f) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

Payments

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water will be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures. Beginning 30 days after the due date interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt; a penalty charge of 6 percent per year will be charged on delinquent debts more than 90-days old and will accrue from the date the debt became delinquent. No water will be delivered to any farm unit until all irrigation charges have been paid. After 180-days a delinquent debt will be forwarded to the United States Treasury for further action in accordance with Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

Dated: September 24, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–26161 Filed 10–1–97; 8:45 am]

BILLING CODE 4310–02–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–033–1430–01; IDI–9659]

Termination of Recreation and Public Purpose Act Classification; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a Recreation and Public Purpose Act Classification on 160 acres so the lands can be clear listed to the State of Idaho pursuant to Sections 2275 and 2276, Revised Statutes, as amended (43 U.S.C. 851 and 852).

EFFECTIVE DATE: October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Catherine D. Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3863.

SUPPLEMENTARY INFORMATION: On June 21, 1974, 160 acres were classified as suitable for Recreation and Public Purposes. The classification is hereby terminated and the segregation for the following described lands is hereby terminated:

T. 45 N., R. 2 W., B.M.
Section 2: SE¼SW¼ (formerly Lot 13), SW¼SE¼.
Section 14: NE¼NE¼, NE¼SW¼.

The area described above aggregates 160 acres in Benewah County.

At 9:00 a.m. on October 2, 1997, the Recreation and Public Purposes Classification will be terminated. However these lands will remain closed to location and entry under the public land laws and the mining laws, as they are currently segregated from appropriation by virtue of a valid In Lieu Selection application by the State of Idaho.

Dated: September 22, 1997.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 97–26156 Filed 10–1–97; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–5420–00–E027; MTM 86650]

Application for Recordable Disclaimer of Interest; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States of America, pursuant to the provisions of Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745 (1994)), proposes to disclaim all interest in the following described land to Ruth O'Connell, the owner of record:

A tract of land located in the SW¼, sec. 36, T. 12 N., R. 6 W., Principal Meridian, Montana, more particularly described as follows:

Beginning at the southwesterly corner of Brewery Lode, M.S. 1355 also known as Corner No. 4; thence N 13°48'26" W, 522.92 feet along the westerly boundary of said M.S. No. 1355; thence N 74°51'58" E, 278.46 feet along the southerly boundaries of Blocks 4 and 5 of the Brewery Lode addition to Marysville; thence along a 335.00-foot radius curve to the left having an arc length of 198.33 feet, along the southerly boundaries of Blocks 3 and 4 of the Brewery Lode addition to Marysville; thence S 13°09'41" E, 249.76 feet along the easterly boundary of M.S. No. 1355 to Corner No. 1 of M.S. No. 1355; thence S 39°42'56" W, 258.00 feet along the southerly boundary of M.S. No. 1355 to NE corner of Tract F of the Brewery Lode addition to Marysville; thence S 76°16'34" W, 107.65 feet along the northerly boundary of Tract F of the Brewery Lode addition to Marysville; thence S 13°47'26" E, 79.64 feet along the westerly boundary of Tract F of the Brewery Lode addition to Marysville; thence S 39°42'56" W, 181.60 feet along the southerly boundary of M.S. No. 1355 to the point of beginning.

The land described contains 3.77 acres in Lewis and Clark County.

DATES: Comments or objections should be received by December 31, 1997.

ADDRESSES: Comments or objections should be sent the State Director, Montana State Office, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

SUPPLEMENTARY INFORMATION: The above-described land is a portion of the

Brewery Lode mining claim which was patented on August 24, 1889. The Bureau of Land Management (BLM) has determined that the United States has no claim to or interest in the land described and issuance of the proposed recordable disclaimer of interest would remove a cloud on the title to the land. If no objections are received, the disclaimer will be issued.

Dated: September 19, 1997.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 97–26157 Filed 10–1–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–6350–00; GP9–029]

Notice of Realty Action

ACTION: Notice of realty action, direct sale, Jackson County, Oregon—OR 53422.

SUMMARY: The following land is suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, and at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice.

Willamette Meridian, Oregon

T. 39 S., R. 2 E., Section 1, NW¼NE¼;
Section 17, SE¼NE¼, NE¼SE¼
Containing 120.50 acres.

The above described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomical to manage as part of the public lands and is not suitable for management by another federal agency. No significant resource values will be affected by this disposal. The sale is consistent with the Medford District's Resource Management Plan for the land involved and the public interest will be served by the sale.

Purchasers must be United States citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered to James C. Miller, III using the direct sale procedure authorized under 43 CFR 2711.3–3. Direct sale is appropriate since the lands are isolated and lack legal access. Mr. Miller is one of three adjoining landowners, however, the others have stated they have no interest in acquisition of the lands. It has been determined that the subject parcels contain no known mineral values. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of said mineral interest. The land will not be offered for sale until at least 60 days after publication of this in the **Federal Register**.

A quit claim deed when issued, will contain the following reservation to the United States:

A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the act of August 30, 1890 (43 U.S.C. 945).

FOR FURTHER INFORMATION CONTACT: Jan Miller, Realty Specialist, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, (541) 770–2221.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Medford District Office, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: September 22, 1997.

David A. Jones,

District Manager.

[FR Doc. 97–26075 Filed 10–1–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–018–1220–00/G010–G7–0254]

Amendment to a Notice of Availability of a Draft Coordinated Resource Management Plan (CRMP) and Environmental Impact Statement (EIS); Taos Resource Area, New Mexico and San Luis Resource Area, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice.

SUMMARY: The Bureau of Land Management (BLM) Albuquerque District, Taos Resource Area and Cañon City District, San Luis Resource Area have completed a Draft CRMP/EIS, and a Taos Resources Management Plan Amendment. This notice amends the Notice of Availability published in the **Federal Register** on Friday, June 27, 1997 (Vol. 62, No. 124, 34771–72), and an amended Notice of Availability published on Tuesday, July 29, 1997 (Vol. 62, No. 145, 40540), and extends the public comment period through December 20, 1997, to accommodate public requests.

DATES: Written comments must be postmarked no later than December 20, 1997, and should be addressed to the CRMP Team Leader at the address below.

FOR FURTHER INFORMATION CONTACT: CRMP Team Leader, Taos Resource Area, 226 Cruz Alta Road, Taos, NM 87571; phone (505) 758–8851.

Dated: September 26, 1997.

Sue E. Richardson,

Acting District Manager.

[FR Doc. 97–26108 Filed 10–01–97; 8:45 am]

BILLING CODE 4310–AG–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–372 (Enforcement Proceeding)]

Notice of Commission Determination Concerning Remedy, the Public Interest, and Bonding

In the Matter of: Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("the Commission") determined to impose a civil penalty of $ 1,550,000 on respondents San Huan New Materials High Tech, Inc., Ningbo Konit Industries, Inc., and Tridus International, Inc. for violation of a previously-issued consent order. The Commission also determined to revoke the aforementioned consent order effective upon approval of the President of a newly-issued permanent limited exclusion order and a newly-issued permanent cease and desist order to Tridus International, Inc.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3116.

SUPPLEMENTARY INFORMATION: The patent-based section 337 investigation that preceded this enforcement proceeding was instituted on March 9, 1995, based on a complaint filed by Crucible Materials Corporation ("Crucible"), alleging infringement of claims 1–3 of Crucible's U.S. Letters Patent 4,588,439 ("the 439 patent"). On October 11, 1995, the investigation was terminated as to respondents San Huan New Materials High Tech, Inc. ("San Huan"), Ningbo Konit Industries, Inc. ("Ningbo"), and Tridus International, Inc. ("Tridus") (collectively "respondents") based on the Commission's grant of respondents unilateral motion for issuance of a consent order wherein those respondents agreed not to sell for importation, import, or sell after importation magnets "which infringe any of claims 1–3 of the 439 Patent." On May 16, 1996, the Commission instituted a formal enforcement proceeding based on an enforcement complaint filed by Crucible alleging that respondents had violated that consent order by importing or selling magnets that infringed the claims in issue of the 439 patent. On December 24, 1996, following an evidentiary hearing, the presiding administrative law judge ("ALJ") issued a recommended determination ("RD") finding that respondents had violated the consent order on 33 different days and recommending that the Commission impose a civil penalty of $1,625,000 on respondents. The Commission adopted the bulk of the RD's findings on violation on April 8, 1997, and issued an opinion explaining that determination on April 15, 1997, finding that respondents had violated the consent order on 31 days between October 11, 1995, and October 10, 1996.

The Commission invited the parties to submit briefs on the appropriate remedy, public interest, and the amount of bond to be imposed during any Presidential review period required, and directed Crucible and the Commission investigative attorney ("IA") to submit proposed remedial orders.

Having considered the RD, the exceptions thereto, and proposed alternative findings of fact and conclusions of law, as well as the entire record in this proceeding, the Commission determined to impose a civil penalty of $ 1,550,000 on respondents San Huan, Ningbo, and Tridus. The Commission also has determined to revoke the consent order effective upon approval by the President of a permanent limited exclusion order directed to foreign respondents San Huan and Ningbo and a permanent cease and desist order directed to domestic respondent Tridus. The Commission determined that the statutory public interest factors enumerated in 19 U.S.C. § 1337(d) and (f) do not preclude issuance of the aforementioned remedial orders. Since revocation of the consent order is contingent on Presidential approval of the alternative remedial measures, respondents were not required to post a bond for importations or sales of infringing products during the Presidential review period. The Commission also denied Crucible's request for attorneys' fees and its request that the Commission reconsider its determination regarding the effect of the U.S. Court of Appeals for the Federal Circuit's decision in Maxwell v. J. Baker, Inc. 86 F.3d 1098, 29 U.S.P.Q.2d 1001 (Fed. Cir.), reh'g denied, suggestion of reh'g in banc declined (1996), cert. denied, 117 S. Ct. 1244 (1997), on the Commission's doctrine of equivalents infringement analysis. Finally, the Commission denied respondents' request to have Crucible file periodic reports concerning its status as a domestic industry.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR § 210.75).

Issued: September 26, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–26163 Filed 10–01–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of the Assistant Attorney General for Civil Rights

Certification of the Maine Human Rights Act Under the Americans With Disabilities Act

AGENCY: Department of Justice.

ACTION: Notice of preliminary determination of equivalency and certification hearings.

SUMMARY: The Department of Justice (Department) has determined that the State of Maine Human Rights Act, 5 MRSA § 4553 *et seq.*, as implemented by the Maine Accessibility Regulations (together, the Maine law), meets or exceeds the new construction and alterations requirements of title III of the Americans with Disabilities Act of 1990 (ADA). The Department proposes to issue a final certification, pursuant to 42 U.S.C. § 12188(b)(1)(A)(ii) and 28 CFR § 36.601 *et seq.*, which would constitute rebuttable evidence, in any enforcement proceeding, that a building constructed or altered in accordance with the Maine law meets or exceeds the requirements of the ADA. The Department will hold informal hearings on the proposed certification in Washington, D.C. and Augusta, Maine.

DATES: To be assured of consideration, comments must be in writing and must be received on or before December 1, 1997. The hearing in Augusta, Maine is scheduled for Friday, October 17, 1997 at 10:00 AM, Eastern Time. The hearing in Washington, D.C. is scheduled for Tuesday, December 2, 1997 at 2:00 PM, Eastern Time.

ADDRESSES: Comments on the preliminary determination of equivalency and on the proposal to issue final certification of equivalency of the Maine law should be sent to: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035–6738.

The hearings will be held at:

Augusta, Maine: Room 113, State Office Building, Augusta, Maine.

Washington, D.C.: Disability Rights Section, 1425 New York Avenue, N.W., Suite 4039, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035–6738. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TDD). Copies of the Maine law and supporting materials may be inspected by appointment at 1425 New York Avenue, N.W., Suite 4039, Washington, D.C. by calling Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C. § 12188(b)(1)(A)(ii); 28 CFR § 36.601 *et seq.* Final certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the new construction and alterations requirements of title III of the ADA.

By letter dated July 21, 1995, the Maine Human Rights Commission requested that the Department of Justice (Department) certify that the Maine Human Rights Act, 5 MRSA § 4553 *et seq.*, as implemented by the Maine Accessibility Regulations (together, the Maine law), meets or exceeds the new construction and alterations requirements of title III of the ADA.

The Department has analyzed the Maine law and has preliminarily determined that it meets or exceeds the new construction and alterations requirements of title III of the ADA. By letter dated September 23, 1997, the Department notified the Maine Human Rights Commission of its preliminary determination of equivalency.

Effect of Certification

The certification determination will be limited to the version of the Maine law that has been submitted to the department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

Certification will not apply to buildings constructed by or for State or local government entities, which are subject to title II of the ADA. Nor does certification apply to accessibility requirements that are addressed by the Maine law that are not addressed by the ADA Standards for Accessible Design.

Finally, certification does not apply to variances or waivers granted under the Maine law. Therefore, if a builder receives a variance, waiver, modification, or other exemption from the requirements of the Maine law for any element of construction or alternations, the certification determination will not constitute evidence of ADA compliance with respect to that element.

Procedure

The department will hold informal hearings in Washington, D.C. and Augusta, Maine to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of equivalency of the Maine law. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

The hearing sites will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

Dated: September 22, 1997.

Isabelle Katz Pinzler,

Acting Assistant Attorney General for Civil Rights.

[FR Doc. 97–25993 Filed 10–1–97; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Office of the Assistant Attorney General for Civil Rights

Certification of the Maine Human Rights Act Under the Americans With Disabilities Act

AGENCY: Office of the Assistant Attorney General for Civil Rights, Department of Justice.

ACTION: Notice of hearings.

SUMMARY: The Department of Justice will hold informal hearings on the proposed certification that the Maine Human Rights Act, 5 MRSA § 4553 *et seq.*, as implemented by the Maine Accessibility Regulations, meets or exceeds the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA) in Washington, D.C. and Augusta, Maine.

DATES: The hearing in Augusta, Maine is scheduled for Friday, October 17, 1997 at 10:00 AM, Eastern Time. The hearing in Washington, D.C. is scheduled for Tuesday, December 2, 1997, at 2:00 PM, Eastern Time.

ADDRESSES: The hearings will be held at:

Augusta, Maine: Room 113, State Office Building, Augusta, Maine.

Washington, D.C.: Disability Rights Section, 1425 New York Avenue, N.W., Suite 4039, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035–6738. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, the Department of Justice (Department) is publishing a notice in the **Federal Register** announcing that it had preliminarily determined that the State of Maine Human Rights Act, 5 MRSA § 4533 *et seq.*, as implemented by the Maine Accessibility Regulations (together, the Maine law), meets or exceeds the new construction and alterations requirements of title III of the ADA. The Department also noted that it intended to issue final certification of the Maine law and requested written comments on the preliminary determination and the proposed final certification. Finally, the Department noted that it intended to hold informal hearings in Washington, D.C. and Augusta, Maine.

The purpose of the informal hearings is to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of equivalency of the Maine law. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

The meeting sites will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

Dated: September 22, 1997.

Isabelle Katz Pinzler,

Acting Assistant Attorney General for Civil Rights.

[FR Doc. 97–25994 Filed 10–1–97; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10159, et al.]

Proposed Exemptions; State Street Bank and Trust

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

State Street Bank and Trust Company Located in Boston, Massachusetts

[Application No. D–10159]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1) (A) through (D) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code,[1] shall not apply to the lending of securities to State Street Bank and Trust Company (State Street), acting through its Financial Markets Group (FMG) (formerly the Money Market Division of the Capital Markets Area) or acting through any other division or U.S. affiliate of State Street that is a successor to the activities of FMG; and shall not apply to the lending of securities to any U.S. registered broker-dealers affiliated with State Street (the Affiliated Broker Dealers)[2] by employee benefit plans (the Client Plans or the Client Plan), including commingled investment funds holding plan assets for which State Street, through its Master Trust Services Division (the Trust Division) acts as directed trustee or custodian, and for which State Street, through its Global Securities Lending Division or any other similar division of State Street or U.S. affiliate of State Street or of its parent (collectively, GSL) acts as securities lending agent (or sub-agent); and shall not apply to the receipt of compensation by GSL in connection with the proposed transactions, provided that the following conditions are met:

a. Neither State Street, the SSB Group, GSL, nor any other division or affiliate of State Street has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received) or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to such assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan;

b. Before a Client Plan participates in a securities lending program and before any loan of securities to the SSB Group is effected, the fiduciary of such plan who is independent of State Street, GSL, the SSB Group, and any other division or affiliate of State Street must have:

(1) Authorized and approved the securities lending authorization agreement with GSL (the Agency Agreement), where GSL is acting as the direct securities lending agent; or

(2) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where GSL is lending securities under a sub-agency arrangement with the primary lending agent[3]; and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and the borrower, the SSB Group, the specific terms of which are negotiated and entered into by GSL;

c. A Client Plan may terminate the Agency Agreement or the Primary Lending Agreement at any time, without penalty to such plan, on five (5) business days notice;

d. The Client Plan will receive from the SSB Group (either by physical delivery or by book entry in a securities depository, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the SSB Group, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than State Street or an affiliate thereof, or any combination thereof, or other collateral permitted under PTCE 81–6 (as amended from time to time or, alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans);

e. The market value of the collateral must, as of the close of business on the

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] FMG, any division or U.S. affiliate of State Street that becomes a successor to the activities of FMG, and the Affiliated Broker Dealers are collectively referred to, herein, as the SSB Group.

[3] The Department, herein, is not providing relief for securities lending transactions engaged in by primary lending agents, other the GSL, beyond that provided, pursuant to Prohibited Transaction Class Exemption 81–6 (PTCE 81–6) and Prohibited Transaction Class Exemption 82–63 (PTCE 82–63). PTCE 81–6 was granted 46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987. The Notice of Proposed Exemption for application numbers D–5598 and D–5776 was published at 46 FR 10570, February 3, 1981. PTCE 82–63 was granted 47 FR 14804, April 6, 1982. The Notice of Proposed Class Exemption was published at 46 FR 7518, January 23, 1981, as amended at 46 FR 10570, February 3, 1981.

preceding business day, initially equal at least 102 percent (102%) of the market value of the loaned securities. If the market value of the collateral falls below 100 percent (100%) (or such greater percentage agreed to by the parties) of the loaned securities, GSL will require the SSB Group to deliver additional collateral by the close of business on the following day such that the market value of the collateral will again equal at least 102 percent (102%). The Loan Agreement will give the Client Plans a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. GSL will monitor the level of the collateral daily;

f. All GSL's procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of PTCE 81–6 and PTCE 82–63;

g. State Street will agree to indemnify and hold harmless each lending Client Plan (including the sponsor and fiduciaries of such Client Plan) against any and all damages, losses, liabilities, costs, and expenses (including attorneys' fees) which the Client Plan may incur or suffer directly arising out of the lending of the securities of such Client Plan to the SSB Group;

h. The Client Plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of any loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

i. Prior to any Client Plan's approval of the lending of its securities to the SSB Group, a copy of this Notice of Proposed Exemption and a copy of the final exemption, if granted, will be provided to the Client Plan;

j. Only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the SSB Group;

k. The terms of each loan of securities by the Client Plans to the SSB Group will be at least as favorable to such plans as those of a comparable arm's-length transaction between unrelated parties;

l. Each Client Plan will receive monthly reports on the transactions, including but not limited to the information described in paragraph 26 below, so that an independent fiduciary of such plan may monitor the securities lending transactions with the SSB Group;

m. Before entering into the Loan Agreement and before a Client Plan lends any securities to the SSB Group, an independent fiduciary of such Client Plan will receive sufficient information, concerning the financial condition of State Street, including but not limited to audited and unaudited financial statements of State Street's parent corporation; and

n. The SSB Group will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in State Street's financial condition, since the date of the most recently furnished financial statements.

Summary of Facts and Representations

1. State Street is a wholly-owned subsidiary of State Street Boston Corporation, a bank holding company organized in 1970 under the laws of the Commonwealth of Massachusetts. As a Massachusetts trust company and a member bank of the Federal Reserve System, State Street is a "bank," as defined in both section 202(a)(2) of the Investment Advisers Act of 1940 and section 581 of the Code. As of December 31, 1994, State Street's total assets were $21.7 billion, of which $16 billion (or 74%) were investment securities and money market assets and $3.2 billion (or 15%) were loans.

2. State Street, through its Trust Division, provides custodial services, trustee, and related fiduciary services to its customers. In this regard, the Trust Division has more than $1.6 trillion of assets under custody and, as custodian, services $664 billion of pension and other assets for U.S. pension plans, government plans, and other tax exempt investors in North American. In addition, with $675 billion of mutual fund assets under custody, it is represented that the Trust Division services 36 percent (36%) of registered funds. It is represented that at year-end 1994, the Trust Division also had $210 billion of bonds under trusteeship and $160 billion of assets under management.

3. State Street, acting through GSL, also provides securities lending services to many of State Street's institutional clients. GSL, on behalf of State Street's securities lending clients, negotiates the terms of loans with borrowers, pursuant to a client-approved form of loan agreement the terms of which may be modified from time to time with the approval of the client, and otherwise acts as a liaison between the lender and the borrower to facilitate the lending transaction. As securities lending agent, GSL also has responsibility for monitoring receipt of all required collateral and for marking such collateral to market daily, so that adequate levels of collateral are maintained. To the extent agreed upon with the client, GSL is also responsible for investing the cash collateral after securities have been loaned and collateral received. GSL also monitors and evaluates on a continuing basis the performance and creditworthiness of the borrowers of securities.

GSL also may be retained from time to time by primary securities lending agents to provide securities lending services in a sub-agency capacity with respect to portfolio securities of the clients of such primary lending agents. As securities lending sub-agent, GSL's role in the lending transaction (*i.e.*, negotiating the terms of loans with borrowers, pursuant to a client-approved form of loan agreement the terms of which may be modified from time to time with the approval of the client, monitoring receipt of collateral, marking to market required collateral, and investing cash collateral) parallels the role under lending transactions in which GSL acts as primary lending agent on behalf of its clients.

The borrowers with whom GSL usually transacts as agent for the lender are typically broker-dealers who use borrowed securities to satisfy their trading requirements or to "re-lend" securities to other broker-dealers, and others who need a particular security for various periods of time. All such borrowing by broker-dealers is required to conform to the Federal Reserve Board's Regulation T. Borrowing purposes which are permitted, pursuant to Regulation T, include the delivery of securities in the case of short sales, the failure of a broker to receive securities it is required to deliver, or other similar situations.

4. State Street itself, however, acting through the SSB Group, is also a borrower of securities, and indeed acts in this capacity, after full disclosure and consent, with respect to many of GSL's institutional clients, such as public pension plans which are not covered by the Act. The SSB Group, as borrower, uses borrowed securities to meet its obligations to deliver securities in connection with its short sales, trade fails, or other similar situations, and to engage in repurchase transactions with third parties.[4] Acting as principal, the SSB

Group actively engages in the borrowing and lending of securities, with a daily outstanding loan volume averaging $2 billion.

5. It is represented that GSL currently does not lend to the SSB Group the securities of any of State Street's trust or custody clients covered by the Act, although as noted above, after full disclosure and consent, GSL does lend U.S. government securities to the SSB Group for certain of its clients who are *not* covered by the Act. It is represented that the SSB Group and GSL have each developed an accounting system and safeguards to service the needs of its respective client base. It is represented that whenever trades are effected between GSL, acting as securities lending agent, and the SSB Group, as borrower, such trades are accomplished in the same manner as between completely independent third parties. In this regard, such trades take place pursuant to an established protocol, primarily over the telephone and through computer trading screens used by all participants in the industry.

6. State Street proposes to offer to Client Plans, for which the Trust Division of State Street serves as directed trustee or custodian, and GSL serves as securities lending agent (or sub-agent), the opportunity to lend securities to the SSB Group.[5] In addition, State Street proposes that GSL and the SSB Group receive compensation in connection with such securities lending transactions. It is represented that State Street is a party in interest and a fiduciary with respect to the Client Plans, pursuant to section 3(14)(A) of the Act, and a service provider to such plans, pursuant to section 3(14)(B) of the Act. Because the Trust Division, GSL, and the SSB Group are all part of the same legal entity, State Street, the lending of securities to the SSB Group by Client Plans for which the Trust Division serves as directed trustee or custodian and for which GSL serves as securities lending agent (or sub-agent) could be deemed to be a prohibited transaction under section 406(a)(1) (A) through (D) of the Act for which exemptive relief would be necessary. In addition, because State Street, through GSL, would be acting as securities lending agent (or sub-agent) and, through the SSB Group, would be the borrower of securities from the Client Plans, the proposed transactions could be deemed to be prohibited under section 406 (b)(1) and (b)(2) of the Act, as well.

7. With respect to various prohibited transactions which arise in certain situations involving securities lending, there are two relevant class exemptions, PTCE 81–6 and PTCE 82–63. PTCE 81–6 provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest. In this regard, condition number one of PTCE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction. PTCE 82–63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. In this regard, PTCE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services, only if the loan of securities itself is not prohibited under section 406(a) of the Act (*i.e.* a loan of securities to a non-party in interest).

Under the proposed arrangement, because GSL would have discretion to lend securities of the Client Plans to the SSB Group, and because both GSL and the SSB Group are divisions of State Street, the lending of securities to the SSB Group by the Client Plans for which GSL serves as securities lending agent (or sub-agent) may be outside the scope of relief provided by PTCE 81–6 and by PTCE 82–63. Accordingly, State Street has requested the Department to grant relief from section 406(a)(1) (A) through (D), (b)(1), and (b)(2) of the Act and the corresponding provisions of the Code which would permit the SSB Group to borrow securities from those Client Plans for which State Street, through its Trust Division will be acting as directed trustee or custodian, and through GSL will be acting as securities lending agent (or sub-agent).

In addition, State Street has requested relief from section 406(a)(1) (A) through (D), (b)(1), and (b)(2) and the corresponding provisions of the Code which would permit GSL and the SSB Group to receive compensation from a Client Plan in connection with the proposed securities lending transactions. In this regard, it is represented that the SSB Group will be compensated as any other independent borrower of Client Plan securities would be (*e.g.*, by receiving an agreed rebate payment). In no event, will rates paid to the SSB Group be less favorable to the Client Plan than a loan of such securities made at the same time and under the same circumstances to an unaffiliated borrower.

8. If the requested exemption is granted, GSL represents that it intends to employ the same procedures currently used in the case of securities loans to unrelated third party borrowers and which GSL has already incorporated into similar arrangements with institutional clients not covered by the Act. Specifically, it is represented that State Street will adopt and implement procedural safeguards that all trades affected will take place at the same "arms" length" prices that would have been negotiated with similarly-situated third party borrowers. In this regard, it is represented that the SSB Group, as borrower, will receive a rebate fee comparable to the fee received by independent borrowers, and GSL, as lender's agent for Client Plans, will receive a fee specified in the agreement with such plans for securities lending services. In this regard, it is represented that such securities lending services will include monitoring the collateral and acting appropriately to protect the interest of the lender in the event of default by the borrower. It is further represented that with respect to each Client Plan to which the proposed exemption would apply, neither State Street, the SSB Group, GSL, nor any other division or affiliate of State Street has or exercises discretionary authority or control with respect to the investment of the assets of the plan involved in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3–21(c) with respect to those assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan. Accordingly, it is represented that GSL will not be in a position to influence the portfolio holdings of its Client Plans in a manner that might increase or decrease the securities available for lending to the SSB Group (or any other borrower). In addition, State Street represents that the proposed lending program incorporates the relevant conditions contained in class exemptions PTCE 81–6 and PTCE 82–63.

9. Several safeguards, described more fully below, are incorporated into this exemption in order to ensure the protection of the assets of the Client Plans involved in the proposed transactions. In this regard, where GSL

[4] It is represented that Regulation T of the Federal Reserve Board does not apply to the borrowing of securities by the SSB Group, because the SSB Group is part of a bank.

[5] For the sake of simplicity, future references to GSL's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to Client Plans should be deemed to refer to plans for which GSL is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of the reference.

is the direct securities lending agent, a fiduciary of a Client Plan who is independent of State Street, GSL, the SSB Group, and any other division or affiliate of State Street will sign the Agency Agreement before such Client Plan participates in a securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of the Loan Agreement to be entered into on behalf of the Client Plan with borrowers, specify the securities which are available to be loaned, and prescribe that a borrower (including the SSB Group) is required to deliver collateral having a value in excess of the value of the loaned securities (*i.e.* not less than 102% or, in some cases, a higher agreed-upon percentage). In addition, the Agency Agreement will provide that the securities will be marked-to-market daily and provide a list of permissible borrowers, including the SSB Group.

The Agency Agreement will also set forth the basis and the method for GSL's compensation from a Client Plan for the performance of securities lending services. As set forth more fully below, the basis for GSL's compensation will be its fixed percentage share of the return, if any, on cash collateral or the applicable interest due on a non-cash collateral loan. The actual rate of return that will be divided between the Client Plan and GSL in such pre-agreed percentage will vary each day (and indeed during the day from time to time) according to the investment performance from each loan of securities. It is represented that GSL's share with respect to each Client Plan will be negotiated with such Client Plan and thereafter set forth in the Agency Agreement on the date such agreement is executed.

10. The Agency Agreement will contain provisions to the effect that if the SSB Group is designated by a Client Plan as an approved borrower, (i) such Client Plan will acknowledge that the SSB Group, GSL, and the Trust Division are, or may be deemed to be, the same legal entity, and (ii) GSL will represent to such Client Plan that each and every loan made to the SSB Group on behalf of such plan will be at market rates and will in no event be less favorable to such Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

11. When GSL is lending securities under a sub-agency arrangement, the primary lending agent will enter into a Primary Lending Agreement with a fiduciary of a Client Plan, before such plan participates in the securities lending program. It is represented that it is the responsibility of the primary lending agent to obtain the approval of the fiduciary of the Client Plan to such Primary Lending Agreement. It is represented that the primary lending agent will be independent of GSL and the SSB Group. As State Street will not be a party to the Primary Lending Agreement, it is represented that the sub-agency arrangement between GSL and the primary lending agent will obligate the primary lending agent to provide assurance that the primary lending agent was independent of the fiduciary of the Client Plan.

The Primary Lending Agreement will contain substantive provisions akin to those in the Agency Agreement relating to the description of the operation of the lending program, use of an approved form of Loan Agreement, specification of securities which are available to be loaned, prescription that a borrower is required to deliver collateral having a specified value in excess of the value of the loaned securities, and a list of approved borrowers (including the SSB Group). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, including GSL, to facilitate its performance of securities lending agency functions. Where GSL is appointed to act as such a sub-agent, GSL would require that the primary lending agent represent to GSL that the primary lending agent has received prior approval of or has the authority to make the decision to hire GSL.

The Primary Lending Agreement will also set forth the basis and the method for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with GSL under which the primary lending agent will retain and authorize GSL, as sub-agent, to lend the securities of the primary lending agent's Client Plans, in a manner consistent with the terms and conditions as specified in the Primary Lending Agreement. It is represented that the Primary Lending Agreement and the Sub-Agency Agreement will not necessarily have identical terms, because the procedures that State Street uses in operating its lending program will be spelled out in its form agreement, and these may not be identical to how the primary lending agent operates its own program. For example, State Street may require that its Sub-Agency Agreement contain certain specific provisions which the primary lending agent may not have requested from the Client Plan. One such requirement is that collateral initially equal 102 percent (102%) of the value of the loaned securities, whereas the primary lending agent may have been authorized to make loans of securities at less than 102 percent (102%) collateral. State Street may also require recordkeeping in addition to that specified in the Primary Lending Agreement and may require different notice provisions.

GSL represents that the Sub-Agency Agreement will contain provisions which are in substance comparable to those described in paragraphs 9 and 10 above, which would appear in an Agency Agreement in situations where GSL is the primary lending agent. In this regard, GSL will make representations in the Sub-Agency Agreement, as described in paragraph 10 above, with respect to arm's-length dealing with the SSB Group. The Sub-Agency Agreement will also set forth the basis and method for GSL's compensation to be paid by the primary lending agent.

12. In all cases, GSL will maintain records sufficient to assure compliance with its representation that all loans to the SSB Group are effectively at arm's-length terms. Such records will be provided to the appropriate independent fiduciary of a Client Plan in the manner and format agreed to with such fiduciary and without charge to such Client Plan. A Client Plan may terminate the Agency Agreement at any time, without penalty to such plan, on five (5) business days notice. It is further represented that the Primary Lending Agreement may be subject to a similar termination provision, if the primary lending agent is relying on PTCE 81–6.

13. GSL, on behalf of the Client Plans, will enter into a Loan Agreement with the SSB Group that is in substantially similar form to the one used from time to time, with all other borrowers. It is represented that the Loan Agreement cannot be identical to that used with an unrelated party, in part because, special disclosures must be made to Client Plans, regarding the relationship between GSL, the SSB Group, and the Trust Division, as operations divisions of State Street. However, it is represented that the economic terms and procedures required by the Loan Agreement will be identical to those negotiated with unrelated borrowers.

Although GSL will negotiate with the SSB Group the terms of any specific loan, the general terms of the Loan Agreement, pursuant to which any loan is effected will be approved by a fiduciary of the Client Plan who is independent of State Street. The Loan Agreement will specify, among other things, the right of the Client Plan, acting through GSL, to terminate a loan at any time and such plan's rights in the event of any default by the SSB Group. The Loan Agreement will explain the basis for compensation to the Client Plan for lending securities to the SSB Group under each category of collateral. The Loan Agreement also will contain a requirement that the SSB Group must pay all transfer fees and transfer taxes related to the loans of securities.

14. Before entering into the Loan Agreement, State Street will furnish its most recent available audited and unaudited financial statements of its parent, State Street Boston Corporation, to GSL, and in turn such statements will be made available to each Client Plan before such plan is asked to approve the terms of the Loan Agreement. The Loan Agreement will contain a requirement that the SSB Group must provide to the Client Plan prompt notice at the time of a loan by such plan of any material adverse changes in State Street's financial condition, since the date of the most recently furnished financial statements. If any such changes have taken place, GSL will not make any further loans to the SSB Group, unless an independent fiduciary of such Client Plan has approved the loan in view of the changed financial condition.

15. As noted in paragraph 9 and 10, the agreement by GSL to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and GSL will, prior to the commencement of any lending activity, agree to the fee arrangement, as described in paragraph 9 above, under which GSL will be compensated for its services as lending agent. Such agreed upon fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of such Client Plan who is independent of the SSB Group and GSL.

Similarly, with respect to such arrangements under which GSL is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of the fee, as the primary lending agent determines in its sole discretion, to any sub-agent, including GSL, which is to provide securities lending services to the Client Plans.[6] A Client Plan will be provided with any reasonably available information which is necessary for the independent fiduciary of such plan to make a determination whether to enter into or continue to participate under the Agency Agreement (or the Primary Lending Agreement) and any other reasonably available information which such fiduciary may reasonably request.

16. Each time a Client Plan loans securities to the SSB Group, pursuant to the Loan Agreement, GSL will reflect in its records the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable. When a loan is collateralized with cash, the cash will be invested for the benefit of and at the risk of the Client Plan, and resulting earnings (net of a rebate rate to the borrower *and* the fee to the lending agent) comprise the compensation to such plan with respect to the loan. Where the collateral consists of obligations other than cash, the borrower will pay a fee (loan premium) directly to the Client Plan. The terms of each loan will be at least as favorable to the Client Plan as those of a comparable arm's-length transaction between unrelated parties.

17. The Client Plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of any loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions. The Loan Agreement will provide that the Client Plan may terminate any loan at any time. Upon a termination, the SSB Group will be contractually obligated to return the loaned securities to the Client Plan within five (5) business days of notification (or such longer period of time permitted pursuant to PTCE 81–6, as amended or superseded). If the SSB Group fails to return the securities within the designated time, the Client Plan will have the right under the Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of such plan associated with the sale and/or purchase.

18. GSL will establish each day separate written schedules of lending fees and rebate rates to assure uniformity of treatment among borrowing brokers and to limit the discretion that GSL would have in negotiating securities loans to the SSB Group. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the Client Plans. It is represented that in no case will loans be made to the SSB Group at rates or lending fees less advantageous to the Client Plans than those on the schedule. The daily schedule of rebate rates will be based on the current value of the clients' reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than the SSB Group. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than the SSB Group, and will generally track the rebate rates with respect to the same security or class of security.

19. GSL will adopt maximum daily rebate rates for cash collateral payable to the SSB Group on behalf of a lending Client Plan. Separate maximum daily rebate rates will be established with respect to loans of designated classes of securities such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities, and international equities. With respect to each designated class of securities, the maximum rebate rate will be the lower of: (i) The one month LIBOR rate, minus a stated percentage of such LIBOR rate and, (ii) the client's actual reinvestment rate for the relevant cash collateral, minus a stated percentage of such reinvestment rate, as pre-approved by the independent fiduciary of the Client Plan. Thus, when cash is used as collateral, the daily rebate rate will always be lower than the rate of return to the Client Plans from authorized investments for cash collateral by such stated percentage as shall be pre-approved by the independent fiduciary. GSL will submit the formula for determining the maximum daily rebate rates to an independent fiduciary of the Client Plan for approval before lending any securities to the SSB Group on behalf of such plan.

20. GSL will also adopt minimum daily lending fees for non-cash collateral payable by the SSB Group to

[6] The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTCE 82–63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund participates in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement, as set forth in paragraph (f) of PTCE 82–63, must be satisfied.

GSL on behalf of the Plan. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities, such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities, and international equities. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the principal value of the loaned securities. GSL will submit such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to the SSB Group on behalf of such plan.

21. For collateral other than cash, the lending fees charged the previous day will be reviewed by GSL for competitiveness. Based on the demand of the marketplace, this daily fee tends to remain constant and, with respect to domestic securities and international debt securities, is currently at least one twentieth of one percent of the principal value of the loaned securities. With respect to international equity securities, the daily fee is currently one fifth of one percent of the principal value of the loaned securities. Because 50 percent (50%) or more of securities loans by Client Plans will be to unrelated brokers or dealers,[7] the competitiveness of GSL's fee schedule will be continuously tested in the marketplace. Accordingly, loans to the SSB Group should result in a competitive rate of income to the lending Client Plan.

The method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by the SSB Group and the maximum rebate payable to the SSB Group will be specified in an exhibit attached to the Agency Agreement to be executed between the independent fiduciary of the Client Plan and GSL in cases where GSL is the direct securities lending agent.

22. Should GSL recognize prior to the end of a business day that, with respect to new and/or existing loans, it must change the rebate rate or lending fee formula in the best interest of Client Plans, it may do so (i) with respect to borrowers other than the SSB Group, at the end of such business day, and (ii) with respect to the SSB Group, upon GSL's receipt of a written approval of the Client Plan's independent fiduciary.[8]

[7] It is represented that this 50 percent (50%) requirement applies regardless of the type of collateral used to secure the loan.

[8] GSL represents that it will not initiate any modification in such rates or fees which would be detrimental to the Client Plans.

GSL may propose a change in the lending fee or rebate rate determination, as applicable, with respect to an outstanding loan by delivering written notice of the effective date and the new determination pursuant to which a lending fee or rebate rate, as the case may be, may be determined at least five (5) business days before the date of the proposed change. In the event that the Client Plans does not consent to such change by not providing GSL with acknowledgment of its consent in writing by such means that will ensure receipt by GSL prior to 10:00 A.M. New York time, on the effective date of the change, then GSL will not make such change. The applicant represents that allowing GSL to request a modification to the lending fee or the rebate rate formula with respect to an existing loan to the SSB Group when market conditions change will be beneficial to the Client Plans. According to the applicants, in the absence of the ability to make such modification, the SSB Group may be forced by market conditions to terminate the loan and seek better terms elsewhere. Such termination may then force the Client Plan to seek new borrowers for its securities who, in light of the changed market conditions, are likely to negotiate for the lending fee or rebate rate which the SSB Group would have received or paid had GSL had the written authority from the independent fiduciary of the Client Plan to decrease the lending fee or increase the rebate rate.

23. While GSL will normally lend securities to requesting borrowers, including, for these purposes, the SSB Group, on a "first come, first served" basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized that in some cases it may not be possible to adhere to a "first come, first served" allocation. This can occur, for instance, where (a) the credit limit established for such borrower by GSL and/or the Client Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular Client Plan whose securities are sought to be borrowed; or (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different GSL representatives at or about the same time with respect to the same security. In situations (a) and (b), loans would normally be effected with the "second in line." In situation (c), securities would be allocated equitably among all eligible borrowers.

24. Under the Loan Agreement, State Street will agree to indemnify and hold harmless each lending Client Plan (including the sponsor and fiduciaries of such Client Plan) against any and all damages, losses, liabilities, costs, and expenses (including attorneys' fees) which the Client Plan may incur or suffer directly arising out of the lending of the securities of such Client Plan to the SSB Group. Accordingly, State Street will assure the Client Plan that the rate of return on each loan will at a minimum equal the transactional cost to the plan of lending securities to the SSB Group. The applicants contend that, as a result of this indemnity, the rate of return earned by Client Plans from lending to the SSB Group will, in total, exceed the return from lending securities to other brokers.

25. The Client Plan will receive collateral from the SSB Group by physical delivery, book entry in a securities depository, wire transfer, or similar means by the close of business on or before the day the loaned securities are delivered to the SSB Group. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities or irrevocable bank letters of credit (issued by a person other than State Street or its affiliates) or any combination thereof, or such other types of collateral which might be permitted by the Department under PTCE 81–6, as amended or superseded, relating to securities lending activities. The market value of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent (102%) of the market value of the loaned securities. The Loan Agreement will give the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. GSL will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (100%) (or such greater percentage agreed to by the parties) of that of the loaned securities, GSL will require the SSB Group to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent (102%).

26. Each Client Plan participating in the lending program will be sent a monthly transaction report which will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan.

In order to provide the means for monitoring lending activity, rates on loans to the SSB Group compared with loans to other brokers, and the level of collateral on the loans, it is represented that the monthly report will show, on a daily basis, the market value of all outstanding security loans to the SSB Group and to other borrowers as compared to the total collateral held for both categories of loans. Further, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to the SSB Group compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

27. With respect to the proposed transactions, GSL will make and retain for six (6) months tape recordings evidencing all securities loan transactions with the SSB Group. Also, if requested by the lending customer, GSL shall provide daily confirmations of securities lending transactions; and GSL shall provide to lending customers monthly account reports, or if requested by the customer, weekly, or daily reports, setting forth for each transaction made or outstanding during the relevant reporting period the loaned securities, the related collateral, rebates and loan premiums, and such other information in such format as shall be agreed to by the parties.

28. Only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the SSB Group. This restriction is intended to assure that any lending to the SSB Group will be monitored by an independent fiduciary of above average experience and sophistication in matters of this kind.

29. State Street represents that the proposed transactions are in the interest of the Client Plans in that the lending of securities is an attractive investment opportunity. In this regard, a Client Plan which participates in securities lending is able to earn a fee for lending the securities to the borrower while continuing to receive the economic benefits of receiving dividends, interest payments, and other distributions made with respect to the loaned securities.

It is represented that failure to grant the requested exemption will limit the number of companies to whom the Client Plans can lend securities by excluding the SSB Group, an active securities borrower that currently borrows securities in lending transactions or in connection with reverse repurchase agreements worth in excess of $5 billion daily.

30. It is represented that the proposed exemption is administratively feasible, in that it will not require any ongoing involvement by the Department. In this regard, it is represented that compliance with the requirements of the exemption can be readily monitored by the independent fiduciaries of the Client Plans, as well as by State Street's own internal audit and compliance personnel. Further, it is represented that State Street will bear the cost of filing the application for exemption and the costs associated with the transfers of the loaned securities.

31. In summary, the applicants represent that the described transactions will satisfy the statutory criteria of section 408(a) of the Act because:

(a) Neither State Street, the SSB Group, GSL, nor any other division or affiliate of State Street will have or exercise discretionary authority or control with respect to the investment of plan assets involved in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received), or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan;

(b) Before a Client Plan participates in a securities lending program and before any loan of securities is effected, the fiduciary of such plan who is independent of State Street, GSL, the SSB Group, and any other division or affiliate of State Street will authorize and approve the Agency Agreement or the Primary Lending Agreement, as appropriate, and will approve the general terms of the Loan Agreement between the Client Plan and the SSB Group;

(c) a Client Plan may terminate the Agency Agreement at any time, without penalty to such plan, on five (5) business days notice;

(d) the Client Plans will receive from the SSB Group a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on various forms of collateral on each loan to the SSB Group which initially will be worth at least 102 percent (102%) of the market value of the loaned securities, and which will be monitored daily by GSL to insure that the market value of the collateral never falls below 100 percent (100%) of the market value of the loaned securities (or such greater percentage agreed to by the parties);

(e) all the procedures under the proposed transactions will, at a minimum, conform to the applicable provisions of PTCE 81–6 and PTCE 82–63;

(f) State Street will indemnify and hold harmless each lending Client Plan (including the sponsor and fiduciaries of such Client Plan) against any and all damages, losses, liabilities, costs, and expenses (including attorneys' fees) which the Client Plan may incur or suffer directly arising out of the lending of the securities of such Client Plan to the SSB Group;

(g) the lending arrangements will permit the Client Plans to lend to the SSB Group, a major borrower of securities, and will enable such plans to diversify the list of eligible borrowers and earn additional income from the loaned securities on a secured basis, while continuing to receive any dividends, interest payments and other distributions due on those securities;

(h) prior to any Client Plan's approval of the lending of its securities to the SSB Group, a copy of this Notice of Proposed Exemption and a copy of the final exemption, if granted, will be provided to the Client Plan;

(i) only Client Plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the SSB Group;

(j) the terms of each loan of securities between the Client Plans and the SSB Group will be at least as favorable to such plans as those of a comparable arm's-length transaction between unrelated parties;

(k) the Client Plans will receive monthly reports, so that an independent fiduciary of such plans may monitor the securities lending transactions with the SSB Group;

(l) Before entering into the Loan Agreement and before a Client Plan lends any securities to the SSB Group, an independent fiduciary of such Client Plan will receive sufficient information, concerning the financial condition of State Street, including but not limited to audited and unaudited financial statements of State Street's parent corporation; and

(m) The SSB Group will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in State Street's financial condition, since the date of the most recently furnished financial statements.

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the proposed exemption are the investment committee(s) or trustee(s) of any Client Plan(s) which are interested in lending securities to the SSB Group. It is represented that the applicant will furnish at its cost these various classes of interested persons with a copy of the Notice of Proposed Exemption (the Notice), plus a copy of the supplemental statement (Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2) within fifteen (15) calendar days of publication of the Notice in the **Federal Register**. Notification will be provided to all the investment committee(s) or trustee(s) of any Client Plan(s) which are interested in lending securities to the SSB Group either by hand delivery or by mailing first class of a copy of the Notice, plus a copy of the Supplemental Statement. It is represented that the applicant will at its cost provide a copy of such Notice and a copy of the final exemption, if granted, to Client Plans after the final exemption has been issued and prior to any Client Plan's approval of the lending of securities to the SSB Group.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Franklin & Davis, P.C. Profit Sharing Plan (the Plan) Located in Troy, Michigan

[Application No. D–10450]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to two proposed loans (the Loans) totaling $229,000 to Franklin & Davis, P.C. (F&D), the Plan's sponsor and a disqualified person with respect to the Plan, by the individual account (the Account) of Bruce W. Franklin (Mr. Franklin), provided the following conditions are satisfied: (a) The terms of the Loans are at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party; (b) the Loans do not exceed 25% of the assets of the Account; (c) the first Loan (Loan 1) is secured by a second mortgage on certain real property (the Property) which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of Loan 1 plus the balance of the first mortgage which it secures; (d) the second Loan (Loan 2) is secured by certain securities (the Securities) which have a fair market value not less than 200% of Loan[2]; and (e) the fair market value of the collateral remains at least equal to the percentages described in conditions (c) and (d), above, throughout the duration of the Loans.[9]

Summary of Facts and Representations

1. F&D is a corporation located in Troy, Michigan, which is engaged in the practice of law. The Plan is a defined contribution plan with one participant, Mr. Franklin, who is also the Plan's trustee. As of March 31, 1997, Mr. Franklin's Account balance was approximately $916,000.

2. F&D wishes to borrow $229,000 from the Account, which represents 25% of the current fair market value of the Account. The money will be loaned to F&D in two separate Loans. The Loans will each be amortized over a 10 year period, with equal monthly payments of principal and interest over the 10 year term. The interest rate for each Loan will be 9.5% per annum. The total monthly payments for the Loans will be $2,963.20 per month. Ms. Linda Walden, Vice President of First Citizens Bank (the Bank) of Newnan, Georgia, has represented in a letter dated June 26, 1997 that the Bank would lend money to F&D at the same terms as those of the Loans.

3. Loan 1 will be secured by the Property, which consists of Mr. and Mrs. Franklin's residence, which is located at 3631 Brookside, Bloomfield Township, Michigan. The Property has been appraised by Mr. James Valiquett, an independent appraiser in Farmington, Michigan, to have a fair market value of $720,000 as of October 8, 1996. The Property has a first mortgage in the amount of $335,136. Loan 1 would be secured by a second mortgage on the Property in the amount of $144,864. Thus, the appraised fair market value of the Property would represent 150% of the total outstanding principal amount of debt secured by the Property. The applicant represents that the mortgage to the Plan will be duly recorded.

4. Loan 2, which will be in the principal amount of $84,136, will be secured by the Securities. The Securities are publicly traded stock owned by Mr. and Mrs. Franklin, and consist of 257,084 shares of Royal Silver Mines, Inc. which is traded on the NASDAQ stock exchange. The Securities are currently valued at $192,813, which represents approximately 230% of the principal amount of Loan 2. The applicant represents that the Plan's security interest in the Securities will be duly recorded.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 4975(c)(2) of the Code for the following reasons: (a) The Loans represent not more than 25% of the assets of the Account; (b) the terms of the Loans will be at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party, as demonstrated by the letter from the Bank; (c) Loan 1 will be secured by a second mortgage on the Property, which has been determined by a qualified, independent appraiser to have a fair market value of not less than 150% of the total principal amount of the loans that it will secure; (d) Loan 2 will be secured by the Securities, which are publicly traded securities with a current fair market value of approximately 230% of Loan 2; and (e) Mr. Franklin is the only participant in the Plan to be affected by the transactions, and he desires that the transactions be consummated.

NOTICE TO INTERESTED PERSONS: Since Mr. Franklin is the only Plan participant to be affected by the proposed transactions, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Sperry Rail, Inc. Retirement Plan (the Plan) Located in Danbury, Connecticut

[Application No. D–10452]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan (the Loan) by the Plan of $965,000 to Sperry Rail, Inc. (Sperry), the Plan sponsor and a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) The Loan does not exceed 25% of the assets of the Plan; (b) the Loan is at terms not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party; (c) the Loan is secured by personal property (the Property) that has been appraised by an independent appraiser as having a fair market value not less than 200% of the principal amount of the Loan; (d) an independent fiduciary has reviewed the proposed Loan on behalf of the Plan and has determined that the Loan is in the best interest of the Plan and its participants and beneficiaries; and (e) the Plan's independent fiduciary will monitor the Loan throughout its duration to ensure that it remains in the best interest of the Plan and continues to meet the conditions of the exemption proposed herein.

Summary of Facts and Representations

1. Sperry, the Plan sponsor, is in the railroad track inspection business and maintains its executive offices in Danbury, Connecticut. Sperry is a member of a controlled group of corporations. The other members of the controlled group are Sperry's parent corporation, Longview Holdings, Inc. (LHI), and Longview Inspection, Inc., another subsidiary of LHI. The Plan is a defined benefit plan that has approximately 192 participants and assets of $4,062,320 as of July 1, 1997.

2. Sperry has requested the exemption proposed herein to permit it to borrow $965,000 from the Plan. The Loan is to be repaid over a period of 15 years. The interest rate for the Loan is to be 1.5% plus the yield on 30 year Treasury Bonds on the outstanding balance, which is currently approximately 6.90% (which, when added to the 1.5% yields approximately 8.40%). For the first three years of the Loan, Sperry will make equal monthly payments of principal and interest in the amount of $5,361.11. The interest rate (and monthly payment amount) will be adjusted every 3 years to an amount equal to 1.5% above the then-current yield on 30 year U.S. Treasury Bonds. The applicant represents that when the interest rate is reset, it shall never be less than the interest rate applicable at the start of the Loan. Mr. J. Scott Bognar, Vice President of Putnam Trust (the Bank), a subsidiary of Bank of New York, has reviewed the proposed terms of the Loan and has determined that they constitute fair market value terms and are commercially reasonable.

3. The Loan will be secured by the Property, which consists of a Sperry Induction Detector Car bearing registration number: SRS 148, and Sperry spare parts inventory, together with all accessions, accessories, attachments, parts, equipment and repairs which may be affixed to or used in connection with the Property. The applicant represents that the Plan will have a first priority interest in the Property, and Sperry will execute such financing statements as are necessary to perfect the Plan's interest in the Property. The Property has been appraised by R.L. Banks & Associates, Inc. (Banks), Transportation Economists and Engineers, an independent expert with offices in Washington, D.C. Banks has determined that as of December 27, 1996, the fair market value of Car Number 148 was $803,720, and the value of the Sperry spare parts inventory was $1,500,000. Thus, Banks has appraised the Property to have a total fair market value of $2,303,720 as of December 27, 1996. This would represent approximately 2.4 times the principal amount of the Loan.

4. Mr. Paul Mishkin, a certified public accountant has been retained by the Plan to be its independent fiduciary with respect to the proposed Loan. Mr. Mishkin represents that he has more than 25 years' experience in both private industry and public accounting working with large publicly-held corporations as well as significant private companies. He has spent a substantial portion of that time analyzing corporate structures and evaluating financial alternatives. Mr. Mishkin represents that he has no financial interest in Sperry or its related entities, nor does he provide any services to Sperry or its affiliates. Mr. Mishkin has reviewed the terms of the proposed Loan and has determined that they are equal or more favorable to the Plan than those obtainable from an unrelated borrower. Mr. Mishkin represents that the Loan is appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries and protective of their rights.

5. Mr. Mishkin represents that he will monitor and enforce compliance with the terms of the Loan. He will monitor monthly payments made by Sperry. In the event payments are not made on a timely basis, he will explore all avenues of recovery, including the right to sell the Property. Additionally, Mr. Mishkin will periodically inspect the condition of the Property, including obtaining current appraisals at Sperry's expense, to insure that the collateral maintains a value of 200% of the outstanding Loan amount at all times. If the collateral value falls below 200%, Mr. Mishkin has the authority to require Sperry to add additional collateral to restore the Plan's secured interest to 200%. Alternatively, Mr. Mishkin has the authority to accelerate repayments of principal consistent with any collateral shortfall.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The Loan represents not more than 25% of the assets of the Plan; (b) the Loan is at terms not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party, as demonstrated by the representation from the Bank; (c) the Loan is secured by the Property, which has been appraised by an independent appraiser as having a fair market value approximately 240% of the principal amount of the Loan; (d) Mr. Mishkin, the Plan's independent fiduciary, has reviewed the proposed Loan on behalf of the Plan and has determined that the Loan is in the best interest of the Plan and its participants and beneficiaries; and (e) the Plan's independent fiduciary will monitor the Loan throughout its duration to ensure that it remains in the best interest of the Plan and continues to meet the conditions of the exemption proposed herein.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Crown American Properties L.P. Retirement Savings Plan (the Plan) Located in Johnstown, Pa.

[Application No. D–10454]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2), and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase, holding or sale by participant-

[9] Since Mr. Franklin is the sole owner of F&D and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

directed accounts in the Plan of shares of Crown American Realty Trust (the Crown REIT), an affiliate of Crown American Properties L.P. (Crown American), the Plan's sponsor and, as such, a party in interest with respect to the Plan, provided that the following conditions are met:

(A) Any purchase or sale of the Crown REIT shares by a participant account (an Account) is made solely in accordance with the directions of the participant whose account is making the purchase or sale;

(B) Immediately following any purchase of the Crown REIT shares by an Account, the percentage of the total value of the Account invested in the Crown REIT shares does not exceed 25 percent, as measured based on the value of the assets held by such Account as of the close of the prior business day;

(C) Compliance with the terms and conditions of this proposed exemption, including the 25 percent limit described in Paragraph (B) above, is monitored by PNC Bank, National Association, as the Plan's trustee, which is independent of the Crown REIT and Crown American or any affiliate thereof;

(D) With respect to any decisions made by a Plan participant for a purchase or sale of Crown REIT shares by an Account, neither Crown American, PNC, nor any of their affiliates has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, other than as required for PNC to monitor and enforce compliance with the 25 percent limit described in Paragraph (C) above, or renders any investment advice (within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets;

(E) All purchases and sales of the Crown REIT shares by the Plan are executed:

(1) for cash;

(2) on the national exchange on which the Crown REIT shares are primarily traded (the Primary Exchange); and

(3) at the prevailing market price for the Crown REIT shares on the Primary Exchange at the time of the transaction;

(F) Notwithstanding the provisions contained in (E) above, purchases and sales of the Crown REIT shares may occur between the Accounts within the Plan in order to avoid brokerage commissions and other transaction costs, provided that the price received by each Account is equal to the closing price for the Crown REIT shares on the NYSE on the date of the transaction;

(G) Crown American maintains for a period of six years the records necessary to enable the persons described below in paragraph (H) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Crown American, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Crown American or an affiliate shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (H) below; and

(H)(1) Except as provided below in paragraph (H)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (G) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (H)(1) (ii) and (iii) shall be authorized to examine trade secrets of Crown American, or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by Crown American. The Plan is a profit sharing plan that allows for elective deferral contributions by Plan participants in accordance with section 401(k) of the Code. Elective deferrals may not exceed 15 percent of a participant's compensation. In addition, Crown American may make matching contributions and employer contributions.

As of June 30, 1997, the Plan had approximately $5.6 million in assets and covered 449 participants and beneficiaries.

The trustee of the Plan is PNC, a banking corporation with its principal place of business in Pittsburgh, Pennsylvania. PNC is independent of Crown American and its affiliates.

Plan participants are responsible for determining how their contributions and account balances are to be allocated among the investment options available under the Plan. The eleven current investment options are an investment contract fund, two fixed income funds, two balanced funds, an S&P 500 Index Fund, two growth funds, a small-capitalization equity fund, and two international funds.

2. Crown American is a Delaware limited partnership through which the Crown REIT conducts its business operations. Crown American currently has about 400 employees who are engaged in executive, asset and property management, leasing, development, construction, financial, legal and administrative operations relating to the shopping center businesses owned by the Crown REIT.

The sole general partner of Crown American is the Crown REIT, which also owned a 74.47 percent interest in Crown American as of August 31, 1996. The other 25.53 percent interests are limited partnership interests owned by Crown Investment Trust, a Delaware business trust, and Crown American Investment Company, a Delaware corporation, each owned by the persons who developed the Crown REIT. The Crown REIT, as sole general partner, controls the management of Crown American, although Crown Investment Trust and Crown American Investment Company have approval rights over certain decisions.

3. The Crown REIT is a Maryland real estate investment trust that owns interests in a number of enclosed shopping mall properties. The Crown REIT conducts its business activities through two partnerships, one of which is Crown American.

The Crown REIT was created in 1993. The Crown REIT has one class of equity interests, entitled "Common Shares of Beneficial Interest" (i.e. the Shares). There were 27,667,636 Shares outstanding as of April 15, 1997. The Shares are traded on the New York Stock Exchange (NYSE), which is currently considered the Primary Exchange for purposes of the proposed exemption (see Condition (E)(2) and (E)(3) above).

The average trading volume for the Shares is currently approximately 300,000 Shares per week. The applicant states that the average daily trading volume during 1996 was 96,100 Shares, and the annual trading volume during that year was 18,696,300 Shares, or approximately $148.6 million at the current stock price of $8 per share, as of July 1997. The applicant states further that during the period from July 1996 until June 1997, the price per share of the Shares fluctuated from a low of $7.25 to a high of $8.75.[10]

[10] The applicant states that based on current Plan assets of $5.6 million, the maximum amount that could be transferred into the Shares as an investment option for the Plan would be $1.4 million (25 percent of $5.6 million). This amount would represent approximately .8 percent of the annual trading volume. The maximum annual projected new funds that could be invested in the Shares, based on 25 percent of annual Plan contributions, could not exceed $260,000 at current contribution rates, which would be just under .2 percent of the annual trading volume. Thus, the applicant does not anticipate that trading by the Plan in the Shares will exceed one (1) percent of annual trading volume during the first year, or .2 percent of annual trading volume during subsequent years. Since not all participants will be investing up to 25 percent of their Accounts in the Shares, and because trading will be spread out over time with transactions being netted between Accounts when possible, the applicant states that the actual percentages are likely to be much lower. Therefore, the projected impact of the Plan's trading on overall trading activity and the market value of the Shares is expected to be negligible.

4. Crown American, as the named fiduciary of the Plan, has determined that it would be prudent and in the interests of the Plan's participants and beneficiaries to make the Shares available as an investment option under the Plan, to supplement the eleven current investment options. Crown American states that the Shares are the equivalent of "employer securities'[11] with respect to the Plan (see discussion in Paragraph 5 below). Therefore, Crown American believes that having the Shares available as an investment option would allow the Plan participants to share in the growth of their employer's business. Crown American represents that since the Shares are currently traded daily on the NYSE, they should be considered a liquid investment that can be easily valued on a daily basis.

If the proposed exemption is granted, Plan participants will decide, as an additional investment option under the Plan, whether to invest any of their account balances (i.e. Accounts) in the Shares. Participants will be allowed to: (a) allocate a specified percentage of their elective deferral contributions to an investment in the Shares, and/or (b) transfer amounts from their investments in other Plan investment options to the Shares. The Plan will require that a Plan participant could not invest more than 25 percent of the assets in the Account in the Shares, measured at the time of any proposed investment in Shares using the Account values as of the previous business day.

Compliance with the 25 percent limitation will be monitored by PNC, the Plan's trustee, as an independent plan fiduciary. If more than 25 percent of an Account is already invested in Shares, or if a directed investment would cause the Account to exceed the 25 percent limit, PNC will not permit any additional investment by that Account in the Shares.

Purchases and sales of Shares by the Plan, which would result solely from participant contributions or investment transfer decisions, will be executed on the NYSE at the prevailing market price (subject to applicable brokerage commissions) at the time of such transactions. However, to avoid brokerage commissions and other transaction costs, purchases and sales will be made between the Accounts to the extent possible (i.e. "netted" transactions). Any such "netted" transactions will be valued at the closing market price for the Shares on the NYSE on the date of the transaction and would be executed in a non-discretionary, mechanical manner.[12] All purchases and sales of the Shares by the Plan will be for cash.

PNC will not be providing brokerage services to the Plan. PNC will place all trades of the Shares for execution through an independent broker-dealer.

Crown American states that it would not render any investment advice, within the meaning of section 3(21)(A)(ii) of the Act, to any participant regarding the investment of that participant's Account in the Shares.

5. Crown American is the employer of the employees covered by the Plan. Crown American represents that because the Crown REIT owns a 75.6 percent interest in Crown American, the Crown REIT would be considered an "affiliate" of Crown American within the meaning of the Act.[13]

Crown American states that the Shares are "securities" within the meaning of section 2(1) of the Securities Act of 1933, and as such are "securities" for purposes of Title I of the Act (see section 3(20) of the Act defining the term "security"). Crown American states further that the Shares, as securities issued by the Crown REIT, would be securities issued by an affiliate of an employer of employees covered by the Plan, and thus "employer securities" with respect to the Plan under section 407(d)(1) of the Act (as noted previously in Footnote 1). However, under section 407(a)(1)(A), a Plan may acquire and hold only those employer securities that are "qualifying employer securities". In order to be a "qualifying employer security" (QES), section 407(d)(5) requires that an employer security must be either stock, a marketable obligation, or an interest in certain types of publicly-traded partnerships (as defined in section 7704(b) of the Code).

The applicant states that the Shares are not marketable obligations (as defined under section 407(e) of the Act) or interests in a "publicly-traded partnership," as defined under the Code,[14] which would allow such Shares to meet the definition of QES under section 407(d)(5)(C) of the Act.[15] In addition, the applicant represents that it is not clear whether the Shares would be considered "stock" within the meaning of section 407(d)(5) of the Act because, under Maryland law, a "share" of a real estate investment trust is defined as a transferable unit of beneficial interest in a real estate investment trust, without any reference to the term "stock".[16] The applicant notes that the term "stock" is used under Maryland law solely in

[11] Section 407(d)(1) of the Act states that an "employer security" is a security issued by an employer of employees covered by the plan, or by an affiliate of such employer.

[12] The applicant states that purchases and sales between the Accounts would be considered intra-Plan transactions that would not create separate prohibited transactions under section 406 of the Act. In this regard, the Department is providing no opinion in this proposed exemption as to whether cross-trades of employer securities between participant accounts within a plan would violate any provisions of Part 4 of Title I of the Act. However, the Department notes that section 406(b)(2) of the Act prohibits a plan fiduciary from acting, in his individual or in any other capacity, in any transaction on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan *or the interests of its participants and beneficiaries*. (emphasis added)

[13] Section 407(d)(7) of the Act states that a person other than a corporation is treated as an "affiliate" of another person to the extent provided by regulation. The applicant states that the Department has taken the position that in the absence of regulations, a 50 percent ownership test, which is the threshold for determining affiliation of corporations, should be used for determining whether a corporation would be an "affiliate" of a partnership or joint venture under section 407(d)(7). See DOL info. Ltr. To Gary Quintiere, WSB File No. DL0398 at 2 (Feb. 25, 1994); see also ERISA Adv. Op. 80–55A (where a joint venture owning 65 percent of the interests in a corporation was considered an affiliate of the corporation). Therefore, the applicant states that the same 50 percent threshold should apply for purposes of determining affiliation among non-corporate entities. In this regard, the Department is providing no opinion herein as to whether such non-corporate entities would be considered "affiliates" of one another.

[14] The applicant notes that a real estate investment trust such as the Crown REIT, takes the form of a corporation, trust or association, each of which is distinguished in the Code from a partnership (see section 856(a) of the Code).

[15] The applicant also notes that to meet the requirements of section 407(d)(5)(C) of the Act, a partnership must be an "existing partnership" as defined in section 10211(c)(2)(A) of the Revenue Act of 1987. This provision requires that the partnership have existed or have applied for existence as a publicly-traded partnership as of December 17, 1987. Because the Crown REIT was not established until 1993, it cannot meet this definition.

[16] See Md. Corp. & Assoc. Sec. 8–101(c).

connection with describing interests in a corporation, whereas a real estate investment trust takes the form of an unincorporated trust.

The applicant states that if the Shares are not considered to be QES, the Plan cannot rely on the statutory exemption under section 408(e) of the Act to obtain relief for the prohibitions of section 406 and 407 relating to transactions involving employer securities that are QES.[17] Therefore, the applicant requests an exemption under section 408(a) of the Act to enable the Accounts in the Plan to acquire, hold, or dispose of the Shares, subject to the conditions discussed herein.

6. PNC will be retained as an independent fiduciary for the Plan for purposes of the proposed exemption. PNC represents that it is independent of Crown American and its affiliates, including the Crown REIT. PNC does have business relationships with Crown American and the Crown REIT, including certain banking services and commercial loans. However, PNC states that to the extent it has provided services to Crown American or an affiliate in the past, its annual gross income for such services was less than one-tenth of one (1) percent of its total annual gross income. In addition, PNC has made, and may continue to make, certain construction or permanent loans to the Crown REIT along with other banks in connection with properties owned by the Crown REIT. PNC states that such loans represent a de minimis percentage of PNC's outstanding loan portfolio. PNC does not expect that any such loans will affect its independence for purposes of its duties and responsibilities as an independent fiduciary for the Plan in connection with the proposed transactions involving the Shares.[18] Moreover, as discussed further in Paragraph 9, PNC is not providing any recommendations or other investment advice as a fiduciary to the Plan participants regarding whether to invest in the Shares.

7. PNC represents that it is an experienced fiduciary which currently serves as trustee of a number of participant-directed employee pension plans subject to the Act, including plans that invest in employer securities. In addition, PNC represents that it has had experience with transactions involving publicly-traded shares of a real estate investment trust.

PNC has submitted a statement, dated April 15, 1997, whereby it acknowledges that it will be acting as a fiduciary to the Plan under the Act for purposes of the proposed transactions involving the Shares, and that it understands its duties, liabilities and responsibilities under the Act.

8. The applicant has submitted a letter agreement between Crown American and PNC (the I/F Agreement), which describes the duties of PNC as the Plan's independent fiduciary in connection with the proposed transactions. The I/F Agreement states that it shall be PNC's responsibility to monitor compliance by the Accounts with all of the conditions of this proposed exemption.

PNC will purchase and sell the Shares, as the Plan's trustee, in accordance with participant instructions. PNC will execute all transactions on the NYSE at the prevailing market price for the Shares, except to the extent such transactions can be accomplished through transfers between Accounts using the NYSE closing price to value the Shares. PNC will value the Shares for the Accounts on a daily basis using the NYSE prices.

PNC will ensure that following any purchase of Shares by an Account, the percentage of the total value of the Account invested in Shares does not exceed 25 percent, as measured based on the value of the assets held by the Account as of the close of the prior business day. In this regard, PNC's recordkeeping system will monitor whether an initial investment allocation or contribution allocation would cause the Account to exceed the 25 percent limit, and will not permit the allocation if that would be the result. Any other participant-initiated transaction involving the Shares, such as a reallocation among Plan investments or reallocation of future contributions, will be requested using a paper form. The completed form will be reviewed initially by Crown and then by the responsible Client Service Officer at PNC to ensure that the 25 percent limit will not be exceeded as a result of the particular transaction. The Client Service Officer at PNC will approve the transaction as complying with this requirement before it is processed by PNC, as the Plan's trustee. However, the 25 percent limitation under the proposed exemption will not be violated if an Account's investment in Shares exceeds 25 percent of the value of the Account solely by reason of an increase in value of the Shares or a decrease in value of the other assets in the Account after such Shares are acquired by the Account.

9. PNC represents that it would be appropriate for Crown to add the Shares as an investment option for participants of the Plan for the following reasons:

(a) Participants will be able to decide whether or not to invest their Account balances in the Shares, and how much of their Account balances to invest in or transfer from such Shares. They are familiar with the issuer because they work for Crown, and they will receive quarterly financial statements and annual reports of the issuer just as any other shareholder;

(b) The Shares will be one of a series of diverse and varied investment options available to Plan participants, and as a real estate equity investment will help complement the other options as part of an overall, well-diversified portfolio;

(c) The Shares are traded on the NYSE, so that (i) participants will be able to follow any changes in the price of the Shares each business day in newspapers of general circulation, and (ii) the Plan will have a readily available avenue for purchasing or selling the Shares as determined by participant investment decisions; and

(d) A participant's investment in the Shares could not exceed 25 percent of his or her total Account balance at time of purchase, preventing the Account from becoming unduly concentrated in the Shares.

However, PNC states further that its statements regarding the Shares do not constitute a recommendation or investment advice as to whether any Plan participant should invest in the Shares as an investment option under the Plan. Thus, PNC's role as the Plan's independent fiduciary under the proposed exemption is limited to enforcing the terms and conditions stated herein and does not extend to the underlying investment decisions made by Plan participants as to whether the Shares are an appropriate investment for particular Accounts.

The applicant states that a communication statement will be sent by Crown and PNC to each Plan participant regarding the addition of the Shares as an investment option for the Plan and describing how this investment option will operate. The communication statement will describe, among other things, the information that Plan participants will receive about their Share investments on an ongoing basis and the relationships that exist between PNC and Crown or its affiliates.

10. In summary, the applicant represents that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because: (a) Plan participants will be able to invest in "equity" interests of the Crown REIT (i.e. the Shares), which will allow them to share in the growth of their employer's business; (b) no Plan participant will be able to invest more than 25 percent of his or her Account in the Shares, so that an Account's assets will not be unduly concentrated in Shares; (c) compliance with the terms and conditions of the proposed exemption, including the 25 percent limitation, will be monitored by an independent Plan fiduciary (i.e. PNC); (d) the Shares will be acquired and sold for cash by the Accounts; (e) the acquisition and disposition of the Shares will occur on the NYSE, except to the extent that such transactions can be "netted" between the Accounts to avoid brokerage commissions and other transaction costs; (f) all transactions involving the Shares will be either (i) executed on the open market at the then-current NYSE prices, or (ii) "netted" between the Accounts using the NYSE closing price for the Shares on the date of the transaction, as determined by PNC, as the Plan's independent fiduciary; (g) Plan participants will decide whether or not to invest their Account balances in the Shares, and how much of their Account balances to invest in or transfer from such Shares (subject to the 25 percent limit required herein), and will receive quarterly financial statements and annual reports of the issuer just as any other shareholder; and (h) PNC, as the Plan's independent fiduciary, has determined that it would be appropriate for Crown to add the Shares as an investment option for the Plan's participants to complement other investment options as part of an overall, well-diversified portfolio, but is not providing any recommendations or investment advice to Plan participants in connection with their proposed investments in the Shares.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of September, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–26072 Filed 10–1–97; 8:45 am]

BILLING CODE 4510–29–U

[17] The Department is providing no opinion herein as to whether the proposed transactions could meet the conditions necessary for relief under section 408(e) of the Act and the regulations thereunder.

[18] The Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interests of the plan and its participants and beneficiaries.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–142]

National Environmental Policy Act; X–33 Program: Vehicle Design and Flight Demonstration

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the final environmental impact statement (FEIS) for the X–33 Advanced Technology Demonstrator Vehicle program.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA has prepared and issued an FEIS for continuation of Phase II of the X–33 Program, which involves the development and demonstration of the X–33 test vehicle. The FEIS addresses environmental issues associated with the testing of the X–33 technology demonstrator spaceplane, and preparation of the flight operations (launch) and landing sites. The purpose of the proposed test program is to demonstrate the feasibility of technology which could result in commercially viable Reusable Launch Vehicles (RLVs).

The reasonable alternative launch sites are located within Edwards Air Force Base (AFB) near Lancaster, California. Reasonable alternative landing sites evaluated for segments of the flight test activities are located at Silurian Lake, near Baker, California; China Lake Naval Air Weapon Station, near Ridgecrest, California; Dugway Proving Ground, near Tooele, Utah; Grant County Airport, Moses Lake, Washington; and Malmstrom AFB, Great Falls, Montana. NASA's preferred launch site is the Haystack Butte site at Edwards AFB. The preferred landing sites are at Silurian Lake, Dugway Proving Ground, and Malmstrom AFB.

NASA is the lead agency in the preparation of the environmental impact statement. The U.S. Department of Defense; the U.S. Department of the Interior, Bureau of Land Management; and the U.S. Department of Transportation, Federal Aviation Administration are acting as cooperating agencies.

DATE: NASA will take no final action on the proposed Phase II of the X–33 Program before November 3, 1997 or 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the X–33 FEIS, whichever is later.

ADDRESSES: The FEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW, Washington, DC 20546.

(b) NASA, Marshall Space Flight Center, Library, Building 4200, Huntsville, AL 35812.

(c) NASA, Dryden Flight Research Center, Library, Building 4800, Room 2149, Edwards AFB, CA 93523.

(d) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(e) NASA, Spaceport USA, Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler beforehand at 407–867–2468 so that arrangements can be made.

(f) Kern County Library, Boron Branch, 27070 Highway 5, Boron, CA 93516.

(g) Kern County Library, Ridgecrest Branch, 131 East Las Flores Street, Ridgecrest, CA 93555.

(h) Los Angeles County Library, Lancaster Branch, 1150 West Avenue J, Lancaster, CA 93524.

(i) Palmdale City Library, 700 East Palmdale Boulevard, Palmdale, CA 93550.

(j) San Bernadino County Library, Barstow Branch, 304 East Buena Vista, Barstow, CA 92311.

(k) Great Falls Public Library, 301 2nd Avenue North, Great Falls, MT 59401.

(l) Moses Lake Library, 418 East 5th Street, Moses Lake, WA 98837.

(m) Dugway Proving Ground Library, 5124 Kisstler Avenue, Dugway, UT 84022.

(n) Tooele Library, 47 East Vine Street, Tooele, UT 84074.

(o) Salt Lake City Library, 209 East 500 South, Business/Science Department, Salt Lake City, UT 84111.

In addition, the FEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(p) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–4190).

(q) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(r) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(s) NASA, Langley Research Center, Hampton, VA 23665 (757–864–2497).

(t) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2222).

(u) NASA, Stennis Space Center, MS 39529 (601–688–2164).

Limited copies of the FEIS are available, on a first request basis, by contacting Dr. Rebecca McCaleb at the address, telephone number, or electronic mail address provided below.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca C. McCaleb, NASA, Marshall Space Flight Center, AE01/Building 4201, Marshall Space Flight Center, AL 35812; telephone 205–544–4367; electronic mail (X33EIS@msfc.nasa.gov).

SUPPLEMENTARY INFORMATION: The X–33 test vehicle is planned as an approximately one-half scale reusable spaceplane. The vehicle would launch vertically and land horizontally. The X–33 vehicle would consist of a lifting body airframe with two cryogenic liquid propellant tanks (liquid hydrogen (LH2) and liquid oxygen (LOX)) placed within the aeroshell, and would use two linear aerospike main engines. Water would be the primary product of the LOX/LH2 combustion. The entire spaceplane (with all fuel tanks and engines) would launch and land as a single unit.

During the landing sequence, the spaceplane would be unpowered. Flight tests would involve speeds of up to Mach 15 and altitudes up to approximately 75,800 meters (250,000 feet). None of the X–33 test flights would achieve Earth orbit. Ground operations and servicing (*e.g.*, checkout, refueling, etc.) would be conducted with "aircraft like" procedures and systems. After each test flight, the X–33 would be ferried back to the flight operations site by a Boeing 747 aircraft in a manner similar to that used for the transport of Space Shuttle orbiters. The test program is currently baselined for a combined total of 15 flights.

Reasonable alternatives considered for this proposed action include:

- Flight operations (launch) sites:

(a) Edwards Air Force Base, California, Space Port 2000 site, and

(b) Edwards Air Force Base, California, Haystack Butte site;

- Short-range landing sites:

(a) Armitage Airfield, China Lake Naval Air Weapons Station, California, and

(b) Silurian Lake, a dry lake bed, north of Baker, California;

- Mid-range landing sites:

(a) Michael Army Air Field, Dugway Proving Ground, Utah;

- Long-range landing sites (may serve as an alternative mid-range landing site):

(a) Malmstrom Air Force Base, Great Falls Montana, and,

(b) Grant County Airport, Moses Lake, Washington; and,—"No action." The "no action" alternative (*i.e.*, absence of the X–33 Program) would mean that the RLV Program, as planned could not proceed.

NASA's preferred launch site is the Haystack Butte site at Edwards AFB. The preferred landing sites are at Silurian Lake (short-range), Dugway Proving Ground (mid-range), and Malmstrom AFB (long-range). Based on the preferred set of landing sites, NASA analyzed three potentially reasonable flight test options:

(a) A baseline plan involving all three landing sites,

(b) A plan involving only Silurian Lake and Malmstrom AFB, and

(c) An option only involving Dugway Proving Ground and Malmstron AFB.

Comments on the draft environmental impact statement were solicited from Federal, State and local agencies, organizations, and the general public through: (a) notices published in the **Federal Register**—NASA notice on July 3, 1997 (62 FR 36081), and U.S. Environmental Protection Agency notice on July 3, 1997 (62 FR 36062; (b) notices in newspapers of general circulation in areas potentially subject to environmental impacts and (c) a series of public participation meetings. Comments received have been addressed in the FEIS.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 97–26130 Filed 10–1–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COUNTERINTELLIGENCE CENTER

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: National Counterintelligence Center (NACIC).

ACTION: Establishment of Privacy Act system of records including statement of routine uses and detailed description of system.

SUMMARY: On February 27, 1997, the National Counterintelligence Center (NACIC) published for public comment a notice for the establishment of a new Privacy Act system of records. It was provided in that notice that the system of records would become effective without further notice 40 days after publication unless modified by a subsequent notice in order to incorporate comments received from the public.

Although no comments were received from members of the public, reviews internally and by representatives of the Department of Justice approved the "routine uses" as published but otherwise suggested several clarifications to the descriptions set forth in the sections entitled "Categories of records in the system" and "Exemptions claimed for the system." Inasmuch as the Privacy Act requires only that the portion of the system description which describes the "routine uses" of a system be published for comment, the NACIC Privacy Act declaration, is set forth in its entirety below.

DATES: This system of records notice is effective October 2, 1997.

FOR FURTHER INFORMATION WRITE: Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, NACIC hereby establishes a new system of records to be maintained at the NACIC headquarters. The purpose of this notice is to announce the creation and character of the system of records subject to the Privacy Act which is maintained by NACIC.

For the convenience of the public, the above referenced clarifications to the previously published notice include:

(a) Several modifications to the listed categories of records have been deemed appropriate for record system NACIC–1; they include:

(1) The categories numbered 1–5 and 7 in the notice are deleted in that these categories of records are neither indexed nor retrievable by name or other personal identifier and thus do not meet the basic definition of a Privacy Act system of records;

(2) The category entitled "Publications, Training Materials and Regional Seminar Records" and numbered 8 in the notice is clarified to include not only "lists of speakers" but also speaker qualifications and courses in which they have participated to the extent such data exists; it is also clarified in that the materials previously covered by the term "case studies" are now separately listed as a "Counterintelligence Damage Assessments and Incident Files";

(3) The category entitled "Personnel files" and numbered 9 in the notice is modified to include NACIC personnel who are independent contractors;

(4) A new category entitled "Counterintelligence Damage Assessments and Incident Files" is added and includes copies of the finished assessments of the damage to U.S. intelligence sources and methods resulting from significant and particular espionage cases as well as summaries of significant counterintelligence incidents including the circumstances and characteristics of the target, the circumstance of the event, and the particular threat presented;

(5) A new category entitled "Computer and Physical Security Files" is added and includes data such as the names, passwords, accesses and special accesses to both physical locations and computer systems, relevant audit trails for such accesses, and particular clearances and certifications of clearances; the individuals covered include all personnel assigned to NACIC as well as other individuals holding national security clearances and having authorized access to NACIC facilities and/or computer systems.

(b) Several corrections to the section of the notice entitled "Exemptions claimed for the system" have been determined necessary as a result of an editing error prior to submission of the notice to the **Federal Register** they include:

(1) The specific reference to Privacy Act exemption (k)(1) was inadvertently omitted from the discussion of the exemption for classified national security information and is now included;

(2) The listings of Privacy Act exemptions (k) (2)–(6) as authorized by the Act were also inadvertently omitted and are now included although their invocation, given the mission of NACIC, will be rare;

(3) And, the reference to Privacy Act exemption (j)(1) is clarified so that it applies only to that information in the joint custody of the Central Intelligence Agency (CIA) and NACIC where the Director of Central Intelligence (DCI) has determined that such information should be exempt from certain specified provisions of the Privacy Act pursuant to the National Security Act of 1947 and the CIA Act of 1949;

(c) An addition to the sections of the notice entitled "Record access procedures" and "Contesting record procedures" has also been determined to be appropriate in order specifically to inform members of the public of their right to and procedures to effect an administrative appeal in the event of a denial of their request.

Accordingly, the notice regulating the management of an public access to the Privacy Act record system maintained by NACIC are set forth in their entirety below.

Statement of General Routine Uses

The following routine uses apply to, and are incorporated by reference into each system of records maintained by NACIC. It should be noted that, before the individual record system notices begin, the blanket routine uses of the records are published below only once in the interest of simplicity, economy and to avoid redundancy.

1. *Routine Use-Law Enforcement:* In the event that a system of records maintained by NACIC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records maybe referred, as a routine use, to the appropriate agency whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

2. *Routine Use-Disclosure When Requesting Information:* A record from a system of records maintained by this component may be disclosed as a routine use to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contact, or the issuance of a license, grant or other benefit.

3. *Routine Use-Disclosure of Requested Information:* A record from a system of records maintained by this component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Routine Use-Congressional:* Inquiries from a system of records maintained by this component maybe made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

5. *Routine Use-Disclosures Required by International Agreements:* A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

6. *Routine Use-disclosure to the Department of Justice for Litigation:* A record from a system of records maintained by this component may be disclosed as routine use to any component of the Department of Justice

for the purpose of representing any officer, employee or member of this component in pending or potential litigation to which the record is pertinent.

7. *Routine Use-Disclosure of Information to the Information Security Oversight Office (ISOO):* A record from a system of records maintained by this component may be disclosed as a routine use to the Information Security Oversight Office (ISOO) or any other executive branch entity authorized to conduct inspections or develop security classification policy for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

8. *Routine Use-Disclosure of Information to the National Archives and Records Administration (NARA):* A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. *Routine Use-Disclosure to the Merit Systems Protection Board:* A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation including administrative proceedings, appeals special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. *Routine Use-Counterintelligence Purposes:* A record from a system of records maintained by this component may be disclosed as a routine use outside the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or executive Order or for the purpose of enforcing laws which protect the national security of the United States.

NACIC–1

SYSTEM NAME:

National Counterintelligence Center System of Records (NACIC–1)

SECURITY CLASSIFICATION:

The classification of individual records in the system range from UNCLASSIFIED to TOP SECRET Codeword.

SYSTEM LOCATION:

National Counterintelligence Center, 3W01 NHB, Washington, DC 20505

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals who are of foreign intelligence or foreign counterintelligence interest and relate in any manner to foreign intelligence threats to U.S. national and economic security;

2. Applicants for, and current and former personnel of NACIC who are federal employees;

3. Individuals associated with NACIC administrative operations or services including independent contractors, industrial contractor employees, or individuals otherwise associated with such operations and services;

4. And, any other individuals authorized access to NACIC information and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Counterintelligence Damage Assessments and Incident Files:* Maintained by the NACIC Threat Assessment Office (TAO); records include copies of the finished assessments of the damage to U.S. intelligence sources and methods resulting from significant and particular espionage cases as well as summaries of significant counterintelligence incidents including the circumstances and characteristics of the target, the circumstances of the event, and the particular threat presented;

2. *Compromised Names Database:* Maintained by the NACIC Threat Assessment Office (TAO); the database is utilized to notify U.S. intelligence community personnel whose names were potentially compromised as a result of espionage or other foreign intelligence collection activity; the database contains the names of persons potentially compromised, date of the memo sent to the person or their employer informing them, and documentary reference(s) to the compromised information;

3. *Computer and Physical Security Files:* Maintained by the NACIC Executive Secretariat Office (ESO); records include the names, passwords, accesses, and special accesses to both physical locations and computer systems, relevant audit trails for such accesses, and particular clearances and certifications of clearances;

4. *Publication, Training and Seminar Files:* Maintained by NACIC's Program Integration Office (PIO) Community Training Branch; records include letters of acceptance, enrollment forms, thank you letters, lists of attendees, lists of speakers, notes, case studies, syllabi, training packets, magazine or newspaper articles, and other records used either for course development purposes or to facilitate the presentation of seminars;

5. *Personnel Files:*

a. Specific types of personnel records are maintained by the NACIC Front Office (FO); these records are maintained in individual official personnel folders and include, inter alia, papers documenting personnel actions, performance appraisals, correspondence, travel documents, contracts, justifications, memorandums, and administrative material;

b. A second type of personnel records is maintained by the NACIC Executive Secretariat Office (ESO); these records are Memorandums of Agreement between the detailee's parent organization and NACIC;

c. The third type of personnel records is maintained by the NACIC Program Integration Office/Community Training Branch (PIO/CTB); these records include the training documents;

6. *Freedom of Information Act (FOIA)/Privacy Act (PA) Requests and Legal Files:* Files created in response to public requests for information and/or amendment of records under the FOIA/PA, consisting of the original request, a copy of the reply thereto, and all related supporting files which may include the official file copy of requested record or copy thereof; also, all similar records created in response to administrative appeals and litigations predicated on such initial requests;

7. *Special Search Files:* Files created in response to official United States or foreign government requests for information which may include requests from executive, congressional, judicial, or diplomatic sectors consisting of the original tasking or request, a copy of the reply thereto, and all related supporting files which may include the official file copy of the requested record or copy thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 506(a) of the Federal Records Act of 1950, codified at 44 U.S.C. 3101, and Title 36, Code of Federal Regulations, Chapter XII, which require Federal agencies to insure that adequate and proper records are made and preserved to document the organization, functions, polices, decisions, procedures and transactions and to protect the legal and financial rights of the Federal Government.

PURPOSE(S):

NACIC was established by Presidential directive for the purpose of coordinating national level counterintelligence activities of the United States. The purposes for the maintenance of these records include: Coordinating national strategic CI planning efforts, providing strategic guidance and assessing the effectiveness of CI operations, facilitating the development of and implementing training for the CI community, producing national-level foreign intelligence threat assessments, and coordinating assessments of damage to U.S. interests resulting from espionage cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in computerized form and hard copy form; computerized form may be stored in memory, on disk storage, on computer tape, and/or on a computer printed listing.

RETRIEVABILITY:

Names and related information are retrievable by automated or hand search based on extant indices and automated capabilities utilized in the normal course of business. Under applicable law and regulations, NACIC may not permit any organization, public or private, outside the NACIC to have direct access to NACIC files; accordingly, all searchers of NACIC databases and paper files will be performed on site, within NACIC space, by NACIC personnel.

SAFEGUARDS:

Records and databases are maintained in a restricted area within NACIC and are accessed only by NACIC personnel. All employees are checked to ensure that they hold currently valid security clearances, are cautioned about divulging classified or other privileged information contained in NACIC files, and are advised that failure to abide by these provisions may constitute a violation of federal criminal law and/or give rise to civil liability. Employees who resign or retire are also cautioned about divulging information acquired in their jobs. Registered mail is used to transmit routine hard copy records while highly classified records are hand carried by individuals holding appropriate security clearances. Highly classified or sensitive privacy information, which is electronically transmitted between NACIC and other offices, is transmitted in encrypted form to prevent interception.

RETENTION AND DISPOSAL:

Records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the NACIC have elapsed.

SYSTEM MANAGER(S) AND ADDRESS:

Information and privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505.

NOTIFICATION PROCEDURE:

See record access procedures, infra.

RECORD ACCESS PROCEDURES;

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Act Request." Your request should include your full name, complete address, date of birth, place of birth, notarized signature (or declaration under penalty of perjury), and other identifying data you may wish to furnish to assist in making a proper search of NACIC records. A request for access to records must describe the records sought in sufficient detail to enable NACIC personnel to locate the system of records containing the record with a reasonable amount of effort. Whenever possible, a request for access should describe the nature of the record sought, and the data of the record or the period in which the record was compiled. The requester must also provide a return address for transmitting the information. Requests for access must be addressed to the System Manager as noted above.

CONTESTING RECORD PROCREDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the System Manager as noted above. Such requests should delineate the information believed to be incorrect and should include the information requested to be substituted or added to the record.

RECORD SOURCE CATEGORIES:

Record source categories include subject individuals pursuant to notice, official records and information disseminated to NACIC by other federal government entities, and official records and information provided to NACIC by other entities including foreign, state and local governments as well as individuals and business entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Notice is hereby given that NACIC intends to exempt from certain provisions of the Privacy Act the following information pursuant to the following specified authority:

(a) Records or portions of records in the physical possession of NACIC which were originated by other federal agencies or which contain information originated by such agencies shall be deemed to be in the joint legal custody of and mutually maintained by both agencies. Accordingly, NACIC shall apply any applicable exemptive provisions when so informed by those agencies;

(b) Records or portions of records in the physical custody of NACIC which would reveal intelligence sources and methods in contravention of the National Security Act of 1947 are, pursuant to the exemptions previously authorized by the Director of Central Intelligence under the authority of section (j)(1), exempt from disclosure of accounting (section (c)(3)), disclosure (section (d)), notification of collection authority (section (e)(3) (A–D)), and notification of existence of records (sections (e)(4)(G) and (f)(1)); in such instances where confirmation of the existence of a record may itself jeopardize intelligence sources and methods, the Coordinator must neither confirm nor deny the existence of the record and shall advise the requester that there is no record which is available pursuant to the Privacy Act;

(c) Records or portions of records in the physical custody of NACIC which are currently and properly classified pursuant to Executive Order 12958 (or predecessor or subsequent Order) are, under the authority of section (k)(1), exempt from disclosure of accounting (section (c)(3)), disclosure (section (d)), and notification of existence of records (sections (e)(4)(G) and (f)(1));

(d) Records or portions of records in the physical custody of NACIC which are investigatory in nature and compiled for law enforcement purposes, other than material within the scope of section (j)(2) of the Act, are, under the authority of section (k)(2), exempt from disclosure (section (d)); provided however, that if an individual is denied any right, privilege, or benefit to which he/she is otherwise eligible, as a result of the maintenance of such material, then such material shall be provided to that individual except to the extent that the disclosure would reveal the identity of a source who furnished the information to the United States

Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(e) Records or portions of records in the physical custody of NACIC which are maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. section 3056 are, under the authority of section (k)(3), exempt from disclosure (section (d));

(f) Records or portions of records in the physical custody of NACIC which are required by statute to be maintained and used solely as statistical records are, under the authority of section (k)(4), exempt from disclosure (section (d));

(g) Records or portions of records in the physical custody of NACIC which are investigatory in nature and compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information are, under the authority of section (k)(5), exempt from disclosure (section (d)); provided that and only to the extent that disclosure would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(h) And, records or portions of records in the physical custody of NACIC which are testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service are, under the authority of section (k)(6), exempt from disclosure (section (d)); provided that and only to the extent that disclosure would compromise the objectivity or fairness of the testing or examination process.

Michael Waguespack,

Director, National Counterintelligence Center.

[FR Doc. 97–25952 Filed 10–1–97; 8:45 am]

BILLING CODE 6310–02–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 29, 1997, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on September 25, 1997 to the following applicants:

Art DeVries—Permit No. 98–007
Ian Whillans—Permit No. 98–008
Theodore Day—Permit No. 98–009
Bill J. Baker—Permit No. 98–011
Donald B. Siniff—Permit Nos. 98–012 and 98–013

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 97–26063 Filed 10–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by October 27, 1997. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to the Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1033.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is follows:

1. *Applicant:* Brenda Hall and George Denton, Institute of Quaternary Studies, University of Maine, Orono, Maine 04469–5790. Permit Application No. 98–014

Activity for Which Permit is Requested

Enter Site of Special Scientific Interest

The applicants are carrying out a large mapping project to determine the former extent of a grounded ice sheet in the Ross Sea during the last glacial maximum (LGM). Much of the work has been concentrated on the Dry Valley regions where lobes of the grounded Ross Sea Ice Sheet flowed inland into the mouths of the valleys. Barwick Valley (SSSI #3) was last mapped in the 1960's. According to that work, inland ice advanced down Barwick Valley simultaneously with ice advance into Lower Victoria Valley from the Ross Sea. The Lower Victoria Valley deposits indicate the presence of a lake, not an ice tongue. Based on descriptions of Barwick Valley deposits from previous mapping and observations during last season's reconnaissance, the applicants believe a lake may have also extended into this area. The applicants have identified lacustrine sediments in Barwick Valley. A radiocarbon date of a fossil algae sample yielded an age of about 12,500 ^{14}C yr. B.P. for a high lake, similar to the age of a high lake in Victoria Valley. The lacustrine deposits may reflect the presence of lake that was part of a much larger lake that filled Victoria Valley. The applicants plan to make detailed measurements of the elevation of the lacustrine deposits in Barwick Valley, as well as collect tiny samples of fossil algae and carbonates for radiocarbon dating.

Work in the Barwick Valley will primarily involve mapping. Samples will be collected from key high-elevation lacustrine deposits to obtain fossil algae and carbonates in order to construct a radiocarbon chronology for lake level variation. The samples will be collected from 10 cm × 10 cm areas and all surface material will be replaced.

The applicants plan to backpack into Barwick Valley by foot from the Victoria Valley and will camp there for a 2–3 day period.

Location: McMurdo Station, Ross Island, Antarctica.

Dates: October 20, 1976–February 15, 1998.

2. *Applicant:* Frederick W. Taylor, Sr., Institute for Geophysics, The University of Texas at Austin, 4412 Spicewood Springs Road, #600, Austin, TX 78759–8500. Permit Application: 98–015

Activity for Which Permit is Requested

Enter Specially Protected Area

The applicant requests to enter the Byers Peninsula, Specially Protected Area (SPA #3), in order to install a Global Positioning System (GPS) to obtain data by passive electronic recording. The Global Positioning System (GPS) will be used to measure horizontal tectonic motion of the Snow Island-Livingston Island—King George Island block relative to the Antarctic Peninsula and relative to sites in South America. The floor of the Bransfield Strait is spreading causing an increase in the distance between this block and the Antarctic Peninsula at an unknown rate. There are other active tectonic boundaries between the Shetland Islands and South America across which rates of motion are also not known. The rates of ongoing motion of the Snow Island to the King George block and the role it plays in the interactions of small tectonic plates lying between South America and Antarctica are essential to understanding regional tectonic relationships.

The applicant plans to camp at the site for a 3–4 day period over the next several years. All items will be removed from the site, except for a GPS marker, the six anchor bolts and the witness post. By returning to each site two or more times over the next several years, the applicant can remeasure distances between sites, determine how much the distances have changed, and calculate rates and directions of motion for small and large tectonic plates in the region.

Location: Byers Peninsula, Livingston Island, Antarctic Peninsula.

Dates: December 1, 1997–December 31, 2000.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 97–26064 Filed 10–01–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L., 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Biological Sciences (BIO) (1110).

Date and Time: October 20, 1997, 8:45 a.m.–5:00 p.m.; October 21, 1997; 8:45 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Tel No.: (703) 306–1400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Long-Term Planning.

Dated: September 29, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26144 Filed 10–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Processes; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biomolecular Process—(5138) (Panel B).

Date and Time: Wednesday, Thursday, and Friday, October 22–24, 1997 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Susan Porter Ridley, Assistant Program Manager for Biochemistry of Gene Expression, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1441).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Biochemistry of Gene Expression Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 29, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR. Doc. 97–26136 Filed 10–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biomolecular Structure and Function—(1134) (Panel B).

Date and Time: Monday, Tuesday, and Wednesday, October 20, 21, and 22, 1997 8:30 a.m. to 6:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Kamal Shukla & Dagmar Ringe, Program Directors for Molecular Biophysics, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1444).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biophysics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 29, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26134 Filed 10–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cell Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cell Biology (1136)—(Panel A).

Date and Time: October 22–24, 1997, 8:30 a.m. to 5:00 p.m.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Barbara Zain and Dr. Richard D. Rodewald, Program Directors, for the Cell Biology Program, National Science Foundation, Room 655 South, Arlington, VA 22230. Telephone: 703/306–1442.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Signal Transduction & Regulation Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 29, 1997.

Rebecca M. Winkler,

Committee Management Officer.

[FR Doc. 97–26135 Filed 10–1–97 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Developmental Mechanisms; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Developmental Mechanisms (#1141).

Date: October 22–24, 1997.

Place: NSF, Room 390, 4201 Wilson Blvd., Arlington, Va.

Type of Meeting: Part-Open.

Contact Persons: Dr. Judith Plesset and Dr. James Mahaffey, Program Directors, Developmental Mechanisms, Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1417.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: October 23, 1997; 2:00 p.m. to 2:30 p.m.—to discuss goals and assessment procedures.

Closed Session: October 22, 9:00 a.m.–5:00 p.m.; October 23, 8:30 a.m. to 2:00 p.m. and 2:30 p.m. to 5:00 p.m., and October 24, 8:30 a.m. to 12:00 noon. The panel will be reviewing and evaluating Developmental Mechanism proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 29, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26140 Filed 10–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: October 21 and 22, 1997, 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA., Room 370.

Type of Meeting: Closed.

Contact Person: Lawrene Scadden & Mary Kohlerman, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1636.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Programs for Persons with Disabilities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 29, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26138 Filed 10–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Neuroscience (1158).

Date and Time: November 20 & 21, 1997; 9:00 a.m. to 6:00 p.m.

Place: Room 340, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Persons: Dr. Christopher Platt, Program Director, Dr. Daniel Hartline, Program Director; Division of Integrative Biology and Neuroscience; room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1423.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: November 21, 1997; 3:00 p.m. to 4:00 p.m., To discuss research trends and opportunities in Neuronal and Glial Mechanisms.

Closed Session: November 20, 1997; 9:00 a.m. to 6:00 p.m.; November 21, 1997, 9:00 a.m. to 3:00 p.m.; 4:00 p.m. to 6:00 p.m. To review and evaluate Neuronal and Glial Mechanisms proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 29, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26141 Filed 10–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Date and Time: November 20 & 21, 1997; 9:00 a.m. to 6:00 p.m.

Place: Hotel Monteleone, 214 Royal Street, New Orleans, LA.

Type of Meeting: Part-Open.

Contact Persons: Dr. Kathie Olsen, Program Director, Neuroendocrinology; Division of Integrative Biology and Neuroscience; room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1423.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: October 24, 1997; 11:00 a.m. to 12:00 p.m., To discuss research trends and opportunities in Neuroendocrinology. Closed Session: October 23, 1997; 9:00 a.m. to 6:00 p.m.; October 24, 1997; 9:00 a.m. to 11:00 a.m.; 12:00 p.m. to 6:00 p.m. To review and evaluate Neuroendocrinology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 29, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26139 Filed 10–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Physiology and Ethology (#1160).

Date and Time: October 20, 21 and 22, 1997.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia.

Type of Meeting: Part-Open.

Contact Person: Dr. Machi F. Dilworth, Program Director, Integrative Plant Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, 22230. Telephone: (703) 306–1422.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open Session: October 22, 11:00 am to 12:00 pm. Discussion with Dr. Mary E. Clutter, Assistant Director for Biological Sciences on research trends and opportunities in Integrative Plant Biology.

Closed Session: October 20–21, 8:30 am to 5:00 pm and October 22, 8:30 am to 11:00 am and 12 noon to 5:00 pm. To review and evaluate Integrative Plant Biology proposals as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 29, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26142 Filed 10–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Social, Behavioral, and Economic Sciences (1766).

Date and Time: October 20, 1997; 9:00 a.m. to 5:00 p.m.

Place: Room 390, 4201 Wilson Blvd., Arlington, Va.

Type of Meeting: Open.

Contact Person: Ann Lanier, Senior Analyst, Division of Sciences Resources Studies; Research and Development Statistics Program; 4201 Wilson Blvd., Suite 965; Arlington, VA 22230; Telephone: (703) 306–1772, ext. 6937; Fax: (703) 306–0508; Internet: alanier@nsf.gov.

Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To review and comment on issues affecting the Survey of Scientific and Engineering Research Facilities at Colleges and Universities.

Agenda: The morning will be used by the advisory panel to comment on broad date-related policy issues affecting the survey. The afternoon will be used to discuss specific data issues relevant to data users and policy people.

Dated: September 29, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26143 Filed 10–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Social Behavioral, and Economic Sciences, Committee of Visitors (1171).

Date and Time: October 23–24, 1997, 9:00 a.m.–5:00 p.m.

Place: Rm. 970 & 920, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Drs. Frank P. Scioli, Jr., and Rick Wilson, Program Directors for Political Science, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1761.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Political Science Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: September 29, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26137 Filed 10–1–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an exemption from the requirements of 10 CFR part 50, Appendix G, to Carolina Power & Light Company (CP&L or licensee) for the Brunswick Steam Electric Plant, Units 1 and 2 (BSEP1&2), located in Brunswick County, North Carolina.

Environmental Assessment

Identification of the Proposed Action

In accordance with 10 CFR 50.60, "Acceptance criteria for fracture prevention measures for lightwater nuclear power reactors for normal operation," BSEP1&2 must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in Appendix G to 10 CFR part 50. Proposed alternatives to those requirements may be used when an exemption is granted by the Commission.

10 CFR part 50, Appendix G, "Fracture Toughness Requirements," specifies fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. Pressure-temperature (P–T) limits and minimum temperature requirements for reactor pressure

vessels (RPVs) are set forth in 10 CFR 50, Appendix G, which incorporates, by reference, P-T limits specified in Appendix G of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI. 10 CFR 50, Appendix G, Section IV.A.2.b, requires that the P–T limits identified in 10 CFR 50, Appendix G, as "ASME Appendix G limits" must be at least as conservative as limits obtained by following the methods of analysis and the margins of safety of the ASME Code, Section XI, Appendix G. 10 CFR 50, Appendix G, Section I, states that "If no edition or addenda are specified, the ASME Code edition and addenda and any limitations and modifications thereof, which are specified in 10 CFR 50.55a, are applicable." With respect to P–T limits, 10 CFR 50, Appendix G, does not specify the edition or addenda of the ASME Code; therefore, the editions and addenda of the ASME Code, Section XI, referred to in 10 CFR 50, Appendix G, are those specified in 10 CFR 50.55a, which include addenda through the 1988 Addenda and editions through the 1989 Edition.

The proposed exemption would allow CP&L to use the 1992 Edition of the ASME Code, Section XI, Appendix A, as an alternative to the 1989 Edition of the ASME Code, Section XI, Appendix G, for determination of BSEP1&2 RPV P–T requirements. The licensee provided information in its application for exemption that demonstrates the equivalency of the proposed alternative method for determining RPV P–T limits to that specified in the 1989 Edition of the ASME Code, Section XI, Appendix G.

The licensee's exemption request and the bases therefore are contained in a CP&L letter dated August 15, 1997. The exemption request is associated with a CP&L application for license amendments for BSEP1&2 dated January 7, 1997, as supplemented on July 25, 1997, and September 15, 1997. That application, which was noticed in the **Federal Register** on March 12, 1997 (62 FR 11485), will—

(1) Correct an error involving a transposition of P–T curves between BSEP1&2.

(2) Replace the current BSEP1&2 RPV hydrostatic test P–T curves for 8, 10, and 12 effective full power years (EFPY) with new 14 and 16 EFPY curves.

The Need for the Proposed Action

CP&L has proposed an alternative to the requirements of 10 CFR 50, Appendix G. In accordance with 10 CFR 50.60(b), an exemption must be granted by the Commission before the proposed alternative may be used by the licensee. The alternative, and thus the exemption, is needed because CP&L identified typographical errors in equations contained in both the 1989 and 1992 Editions of the ASME Code, Section XI, Appendix G. The alternative of using the 1992 Edition of the ASME Code, Section XI, Appendix A in the determination of P–T limits avoids the problem presented by the typographical errors and achieves a level of safety commensurate to that provided by use of the 1989 Edition of the ASME Code, Section XI, Appendix G. Furthermore, the alternative provides a more efficient means for the licensee to determine the P–T limits for the BSEP1&2 RPVs.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption. The exemption would authorize use of an alternative means for determining RPV P–T limits that is equivalent to that provided by 10 CFR 50, Appendix G and provides a commensurate level of safety.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area, as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there is no significant environmental impact associated with this action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the BSEP dated January 1974.

Agencies and Persons Consulted

In accordance with its stated policy, on September 24, 1997, the staff consulted with the North Carolina State official, Mr. J. James, of the North Carolina Department of Environment, Commerce and Natural Resources, Division of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 15, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 30th day of September, 1997.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–26272 Filed 10–1–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Review of Dose Modeling Methods for Demonstration of Compliance With the Radiological Criteria for License Termination: Public Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The NRC will hold a public workshop in Rockville, Maryland, to provide the NRC staff and the public with an overview of dose modeling methods that may be useful in demonstrating compliance with dose-based radiological criteria for license termination. The objectives of the workshop are to provide information on Federally-sponsored dose models appropriate for decommissioning assessments, and to discuss selection criteria for evaluating and accepting dose models used to demonstrate compliance with the final rule on "Radiological Criteria for License Termination" (62 FR 39058). This information may be useful in developing regulatory guidance for decommissioning. All interested licensees and members of the public are invited to attend this workshop.

DATES: The workshop will be held on November 13–14, 1997, from 1 p.m. on Thursday, November 13 thru 5:00 p.m., and on November 14 from 9:00 a.m. until about 5 p.m.

Interested parties who are unable to attend the workshop are encouraged to provide written comments on the topic of dose model selection criteria by November 10, 1997.

ADDRESSES: The public workshop will be held in the NRC auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Information on the workshop program can be viewed, and comments may be posted, electronically, on the NRC Technical Conference Forum Website under the topic "Final Rule for License Termination" at http://techconf.llnl.gov/cgi-bin/topics. Comments submitted electronically can also be viewed at that website. The information is also available at the NRC's Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343.

Comments may also be mailed to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION: For information or questions on meeting arrangements, contact Jayne McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6219, fax 301–415–5385, E-mail: JMM2@NRC.GOV. For technical information or questions, contact Chris Daily, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6026; fax: 301–415–5385; E-mail: CXD@NRC.GOV.

SUPPLEMENTARY INFORMATION: This workshop is one of a series of interactions with the Agreement States, licensees, and the public to gather suggestions and ideas for developing a regulatory guide on "Demonstrating Compliance With the Radiological Criteria for License Termination." The NRC staff are considering a range of dose models that may be appropriate for use in site-specific dose assessments for specific pathways. The workshop will begin with a brief introduction by the NRC staff on the need to use dose models for evaluating compliance with decommissioning guidelines, and the need to develop guidance for evaluating and selecting dose models. The workshop will include formal presentations by invited speakers from the DOE national laboratories, and other Federal Agencies that will address a set of questions developed by the NRC staff focusing on the capability, experience, and appropriateness of each dose model presented. The workshop will conclude with a panel discussion on questions to be considered in selecting dose models related to demonstrating compliance with the radiological criteria for license termination. A summary of the workshop proceedings in the form of a NUREG/CP is planned to be available in the Spring of 1998.

Visitor parking around the NRC building is limited; however, the workshop site is located adjacent to the White Flint Station on the Metro Red Line. Seating for the public will be on a first-come, first-served basis.

A transcript of this workshop will be available for inspection, and copying for a fee at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555, on or about December 1, 1997. A copy of the NUREG/CP will also be available in the NRC's Public Document Room later in the Spring of 1998.

Dated at Rockville, Maryland this 25th day of September, 1997.

For the Nuclear Regulatory Commission.

Cheryl A. Trottier,

Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 97–26159 Filed 10–1–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 6, 1997.

A closed meeting will be held on Tuesday, October 7, 1997, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 7, 1997, at 2:30 p.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: September 30, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–26358 Filed 9–30–97; 4:00 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39137; File No. SR–OPRA–97–4]

Options Price Reporting Authority; Notice of Filing of Amendment to OPRA Plan Revising OPRA's Dial-Up Market Data Service Rider to its Vendor Agreement to Accommodate the Vendor's Provision of Dial-Up Service to Customers of OPRA Subscribers

September 26, 1997.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Exchange Act"), notice is hereby given that on September 11, 1997, the Options Price Reporting Authority ("OPRA")[1]

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

Continued

submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The amendment revises the Dial-Up Market Data Service Rider ("Rider") to OPRA's vendor agreement to accommodate a third party vendor's provision of dial-up service to customers of an OPRA subscriber. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to add provisions to OPRA's Dial-Up Market Service Data Service Rider to the vendor agreement to accommodate the situation in which an OPRA vendor provides a dial-up service to the customers of an OPRA subscriber, rather than to its own customers. According to OPRA, several vendors and broker-dealer subscribers have recently expressed interest in such an arrangement. As this arrangement is not currently contemplated under the Rider, the proposal would amend the Rider to address the one significant difference between the traditional situation of a firm providing a dial-up service to its own customers and the recent proposals for firms to arrange for third-party vendors to provide a dial-up service for the firm's customers. In the former case, there is a direct contractual relationship between the vendor, a party to the Rider, and the vendor's customers. In the latter case, however, the vendor's subscriber, rather than the vendor, has a contractual relationship with the customer.

In its current form, the Rider imposes certain obligations on vendors who provide a dial-up service. These obligations require that contracts between vendors and their customers contain specific provisions, for the benefit of OPRA, relating to proprietary rights to OPRA data, non-retransmission of data, the absence of any guarantee of the data and a disclaimer of liability. The proposed amendment to the Rider would mandate that vendors require comparable provisions to be included in contracts between subscribers and their customers who receive a dial-up service from a third-party vendor. In a situation where the vendor, and not the subscriber, actually provides the dial-up service to the subscriber's customers, only the vendor will be a party to a Rider. Accordingly, the proposed amendment would make it a condition to a vendor's providing a dial-up service to the customers of a subscriber that the subscriber must agree, in writing, with the vendor to include the requisite provisions in its written agreements with its customers.[2]

Other than as described above, OPRA proposes no change in the way in which dial-up services may be offered to investors. OPRA represents that no new or additional OPRA fees will result from this proposed amendment and the amendment will not make any new parties subject to OPRA's existing fees.

II. Implementation of the Plan Amendment

The proposed amendment will be reflected in a revised form of Rider that will be phased in to take the place of the existing Rider, subject to Commission approval.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All Submissions should refer to file number SR–OPRA–97–4 and should be submitted by October 23, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary,

[FR Doc. 97–26146 Filed 10–1–97; 8:45 am]

BILLING CODE 8010–01–M

[1] The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE") the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("Phlx").

[2] The proposal would require vendors to obtain a written agreement from each OPRA subscriber whose customers will be provided the dial-up service from the vendor that the subscriber will: (1) Obtain from each of its customers to whom the vendor furnishes the service an agreement that the customer will: (a) To receive OPRA data only for such person's use, (b) to not retransmit the data to anyone else, and (c) to acknowledge that OPRA data is the property of the respective exchange or market in which a reported transaction occurred or a reported quotation was entered; (2) provide to the vendor a current list of customers entitled to receive the service from the vendor and to certify that each named customer has entered into the required agreement; (3) maintain the same customer records required to be maintained by the vendor with respect to customers; and (4) acknowledge the absence of any guarantee and the disclaimer of liability on the part of OPRA, OPRA's processor and each participating exchange.

[3] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39131; File No. SR–OPRA–97–3]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Revising Professional Subscriber Fees and Eliminating the Requirement That Enterprise Rate-Based Fees Must Be Paid by Electronic Funds Transfer

September 25, 1997.

Pursuant to Rule 11Aa3–2 under the Securities and Exchange Act of 1934 ("Exchange Act"), notice is hereby given that on September 9, 1997, the Options Price Reporting Authority ("OPRA")[1] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The amendment revises the device-based fees paid by professional subscribers for OPRA's Basic Service, effective January 1, 1998. In addition, the amendment eliminates a requirement that persons electing to pay the enterprise rate-based subscriber fee must arrange for payment by electronic funds transfer. OPRA has designated this proposal as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3–2(3)(i) under the Exchange Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the new York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("Phlx").

I. Description and Purpose of the Amendment

The purpose of the amendment is to revise the fees payable to OPRA by professional subscribers for access to OPRA's Basic Service, which consists of market data and related information pertaining to equity and index options ("OPRA Data").[2] Professional subscribers are those persons who subscribe to OPRA Data and do not qualify for the reduced fees charged to nonprofessional subscribers. The Basic Service professional subscriber fee was last amended in April 1997,[3] which, in turn, followed an earlier Plan amendment that initially proposed a program of fee revisions to be implemented in stages over a four-year period.[4] Subsequently, OPRA amended that filing to propose only the first stage of the fee revision program, with the understanding that the implementation of the remaining stages would be the subject of separate filings.[5] This amendment proposes the third stage of the fee revision program. Like the first two stages, this amendment is intended to increase OPRA revenues derived from device-based subscriber fees by less than 5% in order to permit a greater share of the costs of collecting, consolidating, processing and transmitting options market information to be covered by professional subscriber fees. This amendment also continues the process of simplifying the structure of the professional subscriber fee by reducing the number of member rate pricing tiers from four to three for purposes of the volume discount in the per-device fee.

Similar to the past two years' fee revisions, the proposed changes in the level of OPRA's device-based professional subscriber fee will reduce or leave the fees paid by the smallest subscribers and increase the fees paid by larger subscribers.[6] Subscriber fees charged to members will continue to be discounted by 2% for members who preauthorize payment by electronic funds transfer through an automated clearinghouse system. OPRA estimates that the overall effect of these fee revisions will be to increase revenues derived from device-based professional subscriber fees by slightly less than 5%.

OPRA proposes the fee revisions as a result of the continued implementation of systems and equipment upgrades and additions to increase the capacity and enhance the reliability and security of the OPRA system. The costs of collection, processing, consolidating and disseminating options last sale and bid/ask information have continued to increase, and further increases are anticipated. The modest increases in device-based fees provided for in the proposed amendment are intended to permit some increase in device-based revenues to cover these greater expenses.

OPRA also proposes to amend Section 2 of the Enterprise Rate Amendment to its Professional Subscriber Agreement to eliminate the requirement that the enterprise rate-based fee must be paid by electronic funds transfer. Although this requirement was originally included to simplify the billing and collection of OPRA's enterprise rate subscriber fee and thereby lower OPRA's costs of administration, OPRA's experience over the past year has suggested that a number of firms are not yet organized in a manner that facilitates electronic funds transfers. Accordingly, OPRA believes that this requirement prevented certain firms from taking advantage of the enterprise rate agreement when they might otherwise have elected to do so. To eliminate this impediment to a broader acceptance of the enterprise rate arrangement, OPRA has decided to eliminate the electronic fund transfer requirement. Instead, to encourage timely payment of the enterprise rate fees, OPRA proposes to impose interest charges on amounts not paid by the end of the month following the month in which the fees are invoiced. Interest charges will be calculated as the lesser of the prime rate plus three percent or the maximum lawful rate of interest.

Although this amendment was filed for immediate effectiveness pursuant to Rule 11Aa3–2(c)(3)(i), the revised subscriber fees will be put into effect as of January 1, 1998 to provide subscribers advance notice of the changed fees. The elimination of the electronic funds transfer requirement for payment of the enterprise rate subscriber fee will be effective immediately.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3), the amendment is effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–97–3 and should be submitted by October 21, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26148 Filed 10–1–97; 8:45 am]

BILLING CODE 8010–01–P

[2] Information pertaining to foreign currency options (FCOs) is provided through OPRA's FCO Service, which fees are not affected by this filing.

[3] *See* Securities Exchange Act Release No. 38467 (April 2, 1997), 62 FR 17852 (April 10, 1997).

[4] *See* Securities Exchange Act Release No. 36364 (October 12, 1995), 60 FR 54093 (October 19, 1995).

[5] *See* Securities Exchange Act Release No. 36817 (February 7, 1996), 61 FR 5827 (February 14, 1996).

[6] The proposed tiers are as follows: (1) for 1–9 devices, members pay $15.00 per device and non-members pay $24.00 per device; (2) for 10–29 devices, members pay $15.00 per device and non-members pay $20.00 per device; (3) for 30–99 devices, members pay $12.00 per device and non-members pay $20 per device; (4) for 100–749 devices, members pay $12.00 per device and non-members pay $14.50 per device; and (5) for 750+ devices, members pay $9.40 per device and non-members pay $14.50 per device.

[7] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39111; File No. SR–PCX–97–33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Permanent Approval of its Lead Market Maker System

September 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt its Lead Market Maker ("LMM") Pilot Program on a permanent basis. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 17, 1990, the Commission approved, on a pilot basis, an Exchange proposal to establish a Lead Market Maker system. The Commission initially approved the LMM pilot program to continue for eighteen months to July 31, 1991.[3] Thereafter, the Commission granted a number of extensions to the program.[4] The program is currently set to expire on September 30, 1997. In order to make the LMM program permanent, PCX proposes to amend commentary .01 of Exchange rule 6.82, deleting the expiration date for the Lead Market Maker system.

The program was originally created in order to enhance the ability of the Exchange to compete in a multiple trading environment. It was designed primarily for new option issues and option issues with comparatively low volume. Under the existing pilot program, Members appointed as LMMs assume responsibilities and acquire rights in their appointed options classes beyond the obligations and rights of Market Makers who trade in the same options issue. In addition to the regular obligations of a Market Maker, an LMM must assume additional obligations designed to strengthen the market making in his or her designated options issue. Pursuant to Rule 6.82, the LMM is responsible for, among other things: ensuring the accurate dissemination of market quotations; determining the algorithm for the PCX's Auto-Quote System is designated option classes; assuring that each market quotation is honored consistent with certain minimum obligations; participating in the automatic execution system; being present at the designated trading post throughout each trading day; and actively promoting the Exchange as a marketplace. LMMs also receive a guaranteed 50% participation in transactions occurring on their disseminated bids and offers in their appointed issues.

The LMM pilot program is governed by PCX Rules 6.82 and 8.83.[5] On October 3, 1996, the Commission approved an Exchange proposal to modify Rule 6.82 by adding several new substantive provisions and by restructuring the rule and clarifying some of its existing provisions.[6] The Exchange notes that is has not experienced any problems or received any formal complaints due to the rule changes that were approved.

The Exchange notes that as of July 28, 1997, 309 or (55.3%) of the 559 standard equity options traded on the Options Floor, and all 3 of the indexes on which options are traded at the PCX, have been assigned to LLMs. As of June 30, 1997, those 312 issues accounted for 31.15% of the total options volume traded on the floor.

The Exchange believes, based on the pilot's performance, that the LMM system is viable and effective and that permanent approval of the LMM program is warranted based on the importance of maintaining the quality, efficiency and competitiveness of the Exchange's markets.

Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[7] in general, and Section 6(b)(5),[8] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has closely reviewed the Lead Market Maker System and has concluded that it is appropriate to approve the system on a permanent basis. The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[9] in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with Section 11A(a)(1)(C)(i) of the Act[10] in that the LMM pilot program contributes to the Exchange's maintenance of a fair and orderly market and assures economic and efficient execution of securities transactions. The Commission notes that since 1990, when PCX began operating the LMM pilot program, PCX has made a number of refinements to the program over this period and has submitted numerous reports to the SEC covering the operation of the program. During this period, the use of the LMM program has grown significantly, yet there have been only several minor complaints and rule infractions reported.[11]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth after the date of publication of notice of filing thereof in the Federal Register in order to permit the uninterrupted continuation of the LMM program. As set forth in its most recent report to the Commission, the PCX has represented that it has not received significant complaints regarding the operation of the pilot program nor have problems arisen in connection with operation of the pilot program. Moreover, the current pilot program was subject to a full comment period last year[12] and no comments were received. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act[13] to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the Submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–33 and should be submitted by October 23, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PCX–97–33) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26147 Filed 10–1–97; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462 (January 24, 1990) (approving SR–PSE–89–27 and Amendment No. 1 thereto) ("Pilot Approval Order").

[4] *See* Exchange Act Release Nos. 31063 (August 21, 1992), 57 FR 39255 (August 28, 1992); 31635 (December 22, 1992), 57 FR 62414 (December 30, 1992); 33854 (April 1, 1994), 59 FR 16873 (April 8, 1994); 34710 (September 23, 1994), 59 FR 50306 (October 3, 1994); 36293 (September 28, 1995), 60 FR 52243 (October 5, 1995); and 37767 (September 30, 1996), 61 FR 52483 (October 7, 1996). *See also* File No. SR–PSE–93–16 (requesting permanent approval of the pilot program) and Amend. Nos. 1–3 thereto (requesting pilot program extensions while the request for permanent approval was pending). On April 20, 1994, the Exchange withdrew File No. SR–PSE–93–16 pursuant to Commission's request. *See* Letter from David P. Semak, Vice President, Regulation, PSE, to Sharon M. Lawson, Assistant Director, Division of Market Regulation, Commission, dated April 20, 1994.

[5] *Cf.* Rules 8.80 and 8.81 of the Chicago Board Options Exchange.

[6] *See* Exchange Act Release No. 37760 (October 3, 1996), 61 FR 53247 (October 10, 1996) (Order approving File No. SR–PSE–96–03).

[7] 15 U.S.C. § 78f(b).

[8] 15 U.S.C. § 78f(b)(5).

[9] 15 U.S.C. § 78f(b)(5).

[10] 15 U.S.C. § 78k–1(a)(1)(C)(i).

[11] Reports were required to be submitted by the Exchange prior to each extension of the pilot program. In addition, the Exchange submitted a report prior to its request for permanent approval of the Lead Market Maker program. The Commission hereby incorporates by reference the findings and conclusions contained in the original approval order and subsequent extension orders for the Lead Market Maker program. Securities Exchange Act Release Nos. 27631 (January 17, 1990), 55 FR 2462; 29475 (July 23, 1991), 56 FR 38183; 31063 (August 21, 1992), 57 FR 39255; 92–36 (December 22, 1992), 57 FR 62414; 33854 (April 1, 1994), 59 FR 16873; 34710 (September 23, 1994), 59 FR 50306; 36293 (September 28, 1995), 60 FR 52242; 37767 (September 30, 1996), 61 FR 52483.

[12] Securities Exchange Act Release No. 37767 (September 30, 1996), 61 FR 52483.

[13] 15 U.S.C. § 78f(b)(5), 15 U.S.C. § 78s(b)(2).

[14] 15 U.S.C. § 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 18, 1997 [62 FR, 38605–38606].

DATES: Comments must be submitted on or before November 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Weaver, Information Collection Clearance Officer, Maritime Administration, MAR–318, Room 7301, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5755 or fax 202–366–3889. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title: Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen Owned Documented Vessels.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2133–0006.

Affected Public: Respondents are vessel owners who have applied for foreign transfer of U.S.-flag vessels.

Abstract: MARAD is required to approve the sale, transfer, charter, lease, or mortgage of U.S. documented vessels to non-citizens, or the transfer of such vessels to foreign registry and flag, or the transfer of foreign flag vessels by their owners as required by various contractual requirements. These provisions are implemented by 46 CFR part 221.

Need: This information collection requires a vessel owner to submit an application for a prospective foreign transfer of a U.S.-flag vessel. This information will assist in the determination of whether the vessel proposed for transfer will initially require retention under the U.S.-flag statutory regulation. In such instances, the application is reviewed and cleared for approval by specialists within MARAD, Department of Commerce, and Department of Defense.

Estimated Annual Burden Hours: 440 hours.

Annual Responses: 220.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 26, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation

[FR Doc. 97–26155 Filed 10–1–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Fort Smith Regional Airport, Fort Smith, AR

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Fort Smith Airport Commission under the provisions of Title 49 U.S.C., Chapter 475 and CFR part 150. These findings are made in recognition of the description and nonfederal responsibilities in Senate Report No. 96–52 (1980). On March 13, 1997, the FAA determined that the noise exposure maps submitted by the Fort Smith Airport Commission, under Part 150, were in compliance with the applicable requirements. On September 9, 1997, the Administrator approved the noise compatibility program. Nine of the thirteen recommendations of the program were approved.

EFFECTIVE DATES: The effective date of the FAA's approval of the Fort Smith Regional Airport noise compatibility program is September 9, 1997.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Tim Tandy, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, 76137, (817) 222–5635. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Fort Smith Regional Airport, effective September 9, 1997.

Under Title 49 USC, Section 47504 (hereinafter referred to as "Title 49") an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. Title 49 requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and Title 49 and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5 Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute on FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measure may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants mut be submitted to the FAA Arkansas/ Louisiana Airports Development Office in Fort Worth, Texas.

Fort Smith Airport Commission submitted to the FAA on August 9, 1996, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 15, 1994 through February 14, 1997. The Fort Smith Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 12, 1997. Notice of this determination was published in the **Federal Register** on March 28, 1997.

The Fort Smith Regional Airport FAR part 150 Study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Title 49. The FAA began its review of the program on March 13, 1997 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained thirteen proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of Title 49 and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 9, 1997.

Outright approval was granted for nine of the specific program elements.

The following four program elements were disapproved pending submittal of additional information. Element 1 recommended that high performance aircraft, including military jet fighter and trainers, be restricted to straight-out takeoffs from Runways 07 and 25 until reaching 3,000 feet mean sea level, or approximately 3 nautical miles from the runway end. Element 2 recommended that pilots of commercial and business jets be requested to fly noise abatement procedures published in FAA Advisory Circular 91–53A or procedures published by the National Business Aircraft Association. Element 3 recommended the development of procedures whereby military aircraft capable of performing afterburner takeoffs would disengage the afterburner mode at selected points after takeoff, such as the airport boundary. Element 8 recommended the purchase of three properties within the 75 DNL contour.

The following nine elements were approved. Element 4 recommended the continuation of performing military jet engine run-ups inside hush house facilities. Element 5 recommended obtaining aviation easements from homeowners within the 65 DNL and higher contours. Element 6 recommended that the City of Fort Smith take the lead in adopting noise disclosure regulations to ensure potential buyers are aware of an existing noise issue associated with properties for sale. The approval noted that this element is contingent upon the cooperation of surrounding jurisdictions with the City of Fort Smith. Element 7 recommended that voluntary amendments be made to the Uniform Building Code, which makes provisions for noise attenuation. The approval noted that the effectiveness of this element is contingent upon the cooperation of surrounding jurisdiction with the City of Fort Smith. Element 9 recommended the establishment of noise overlay districts for the City of Fort Smith in the airport vicinity. Element 10 recommended placing responsibility for managing day to day noise issues with the Airport Commission and staff. Element 11 recommended continuation of the Advisory Committee public involvement program. Element 12 recommend the establishment of a periodic noise monitoring program. Element 13 recommended periodic review of the Part 150 Study NEMs and NCP by the Airport Commission to determine whether an update of the program is required.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 9, 1997. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Fort Smith Airport Commission.

Issued in Fort Worth, Texas, September 22, 1997.

Noami L. Saunders,

Manager, Airports Division

[FR Doc. 97–26116 Filed 10–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–48]

Petitions for Exemption; Summary of Petitions Received; Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Purusant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), disposition of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 23, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 28991, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part II of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 26, 1997.

Joseph A. Conte,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28991.

Petitioner: Joe Brigham, Inc.

Sections of the FAR Affected: 14 CFR 133.33 (d) and (e) and 133.45(d).

Description of Relief Sought: To permit JBI to operate its Bell Model UH–1B, a restricted category helicopter, in external-load operations in congested areas subject to an approved congested area plan.

[FR Doc. 97–26092 Filed 10–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at McAllen-Miller International Airport, McAllen, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at McAllen-Miller International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 3, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Forth Worth, TX 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Derald Lary, Director of McAllen-Miller International Airport, at the following address: Mr. Derald Lary, Director of Aviation, McAllen-Miller International Airport, 2600 Main Street, Suite 100, McAllen, TX 78503–3142.

Air carriers and foreign air carriers may submit copies of the written

comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, TX 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at McAllen-Miller International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 16, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 10, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1998.

Proposed charge expiration date: July 1, 2000.

Total estimated PFC revenue: $1,853,711.00.

PFC application number: 97–01–C–00–MFE.

Brief description of proposed projects:

Projects to impose and use PFC's

East and West Terminal Apron, Airfield Guidance Signs and Vault Upgrade, Widen Taxiway A, Runway 13–31 Safety Improvements, Master Plan Update, Terminal Drive Relocation, GA Apron Overlay, Cargo Apron Overlay and Association Taxiway Development, and PFC Administration Fees.

Proposed class or classes of air carriers to be exempted from collecting PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Boulevard, Fort Worth, TX 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at McAllen-Miller International Airport.

Issued in Fort Worth, Texas on September 16, 1997.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 97–26117 Filed 10–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cape Girardeau County, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed improvements to the transportation system in Cape Girardeau County, Missouri.

FOR FURTHER INFORMATION CONTACT: Donald Neumann, Programs Engineer, FHWA Division Office, P.O. Box 1787, Jefferson City, MO 65102, Telephone: (573) 636–7104 or Scott Meyer, District Engineer, Missouri Department of Transportation, P.O. Box 160, Sikeston, MO 63801, Telephone: (573) 472–5333.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an environmental impact statement (EIS) for a proposed project to improve the transportation system in the vicinity of Missouri Route 25 in Cape Girardeau County, Missouri.

Improvements to the corridor are considered necessary to provide for a safe and efficient transportation network. Alternatives under consideration include (1) taking no action; (2) using alternative travel modes; (3) upgrading and improving the existing roadways; and (4) constructing a four-lane roadway on new or partially-new location. Design variations of grade and alignment will be incorporated into and studied with the various build alternatives. The proposed action will likely include transportation improvements from the intersection of Missouri Routes 25 and 77 northeast of Delta, Missouri to the new Route 74 interchange with Interstate 55 in Cape Girardeau, Missouri.

The scoping process will involve all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held to engaged the regional community in the decision making process, and to obtain public comment. Public meetings are tentatively scheduled for fall, 1997 and spring 1998. In addition, a public hearing will be held to present the findings of the draft EIS (DEIS). The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 22, 1997.

Donald L. Neumann, P.E.,

Programs Engineer, Jefferson City.

[FR Doc. 97–26074 Filed 10–1–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–227 (Sub-No. 11X)]

Wheeling & Lake Erie Railway Company—Abandonment Exemption—in Harrison and Jefferson Counties, OH

Wheeling & Lake Erie Railway Company (W&LE) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 11.4-mile line of railroad on the Georgetown Branch, from milepost 0.0 in Adena to milepost 0.5 at AC&NA Junction and from milepost 0.0 at AC&NA Junction to milepost 10.9 at the former Georgetown Coal Preparation Plant, in Harrison and Jefferson Counties, OH.[1] The line traverses United States Postal Service Zip Codes 43901, 43989, 43981 and 43907.

W&LE has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 1, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 14, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 22, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Thomas J. Litwiler, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

W&LE has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 7, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), W&LE shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by W&LE's filing of a notice of consummation by October 2, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: September 25, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26173 Filed 10–1–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The 0.5-mile segment of the Georgetown Branch between Adena and AC&NA was formerly the north end of W&LE's Saginaw Branch, which, according to W&LE, was abandoned south of AC&NA Junction in 1993. *See The Wheeling & Lake Erie Railway Company—Abandonment Exemption—In Jefferson, Harrison and Belmont Counties, OH*, ICC Docket No. AB–227 (Sub-No. 3X) (ICC served Apr. 5, 1993).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, and information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before December 1, 1997.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219; Attention: Paperwork Docket No. 1557–0081 (FAX number (202) 874–5274; Internet address: REGS.comments@occ.treas.gov). Comments will be available for inspection and photocopying at that address.

Board: Written comments should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number: (202) 898–3838; Internet address: comments@fdic.gov).

Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed revisions to the collections of information may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Gates, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board: Mary M. McLaughlin, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to revise the following currently approved collections of information:

Title: Consolidated Reports of Condition and Income.

Form Number: FFIEC 031, 032, 033,034.[1]

For OCC

OMB Number: 1557–0081.
Frequency of Response: Quarterly.
Affected Public: National Banks.
Estimated Number of Respondents: 2,700 national banks.
Estimated Time per Response: 40.34 burden hours.
Estimated Total Annual Burden: 435,672 burden hours.

For Board

OMB Number: 7100–0036.
Frequency of Response: Quarterly.
Affected Public: State Member Banks.
Estimated Number of Respondents: 1,002 state member banks.
Estimated Time per Response: 46.46 burden hours.
Estimated Total Annual Burden: 186,215 burden hours.

For FDIC

OMB Number: 3064–0052.
Frequency of Response: Quarterly.
Affected Public: Insured State Nonmember Commercial and Savings Banks.
Estimated Number of Respondents: 6,374 insured state nonmember commercial and savings banks.
Estimated Time per Response: 30.27 burden hours.
Estimated Total Annual Burden: 771,859 burden hours.

The estimated time per response is an average which varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size distribution of banks, types of activities in which they are engaged, and number of banks with foreign offices). The time per response for a bank is estimated to range from 15 to 400 hours, depending on individual circumstances.

General Description of Report

This information collection is mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). Except for select sensitive items, this information collection is not given confidential treatment. Small businesses (i.e., small banks) are affected.

Abstract

Consolidated Reports of Condition and Income are filed quarterly with the agencies for their use in monitoring the condition and performance of reporting banks and the industry as a whole. The reports are also used to calculate banks' deposit insurance and Financing Corporation assessments and for monetary policy and other public policy purposes.

Current Actions

The reporting frequency for the "Preferred deposits" item would be changed from quarterly to annually and the level of detail in the trading assets and liabilities schedule generally applicable only to larger banks would be reduced. Existing items for "high-risk mortgage securities" and "structured notes" would be replaced by items for "mortgage-backed securities backed by closed-end first lien 1–4 family residential mortgages" and "other securities" whose price volatility in response to specified interest rate changes exceeds a specified threshold level. New items would be added for reporting on transactions with affiliates, low level recourse transactions, and (on the FFIEC 031 and 032 report forms only) capital requirements for market risk. The reporting requirements relating to allowances and provisions for credit losses would be clarified. For banks with foreign offices, holdings of available-for-sale securities in the domestic office assets and liabilities schedule would begin to be reported on a cost basis rather than at fair value. The categorization of securitized consumer loans for the purchase of light trucks and vans for personal use in two Memorandum items collected annually from larger banks also would be revised.

Type of Review: Revision.

The proposed revisions to the Consolidated Reports of Condition and Income (Call Report) that are discussed below have been approved for publication by the FFIEC. Unless otherwise indicated, the agencies would implement these proposed Call Report changes as of the March 31, 1998, report date and the revisions would apply to all four sets of report forms (FFIEC 031, 032, 033, and 034). Nonetheless, as is customary for Call Report changes, banks are advised that, for the March 31, 1998, report date, reasonable estimates may be provided for any new or revised item for which the requested information is not readily available. The specific wording of the captions for the new or revised Call Report items discussed below should be regarded as preliminary.

Reductions in Frequency and Detail

Based on their review of the current content of the Call Report, the agencies are proposing to reduce the reporting frequency for one item applicable to all banks and to reduce the level of detail in one schedule applicable to larger banks, as follows:

(1) Schedule RC–E—Deposit Liabilities

Memorandum item 1.e., "Preferred deposits," would be collected annually as of December 31 rather than quarterly as at present. In general, preferred deposits are deposits of states and political subdivisions in the U.S. which are secured or collateralized as required under state law. This Memorandum item was added to the Call Report in 1993 in response to a newly enacted statutory requirement directing the FDIC to ensure that it "receives on a regular basis" from each FDIC-insured depository institution information on the amount of preferred deposits (12 U.S.C. 1817(a)(9)).

The agencies understand that bankers have identified the "Preferred deposits" item as one of the Call Report items they have found to be particularly burdensome. Moreover, the statute does not specifically mandate quarterly reporting for this item. Thus, the FDIC has determined that collecting information on preferred deposits on an annual, rather than quarterly, basis would be consistent with the statutory requirement and would be adequate for purposes of meeting the FDIC's obligations under the Federal Deposit Insurance Act.

(2) Schedule RC–D—Trading Assets and Liabilities

This schedule is completed by banks with $1 billion or more in total assets or with $2 billion or more in notional amount of off-balance sheet derivative contracts. The agencies are proposing to eliminate item 6, "Certificates of deposit (in domestic offices)," item 7, "Commercial paper (in domestic offices)", and item 8, "Bankers acceptances (in domestic offices)." Commercial paper held for trading would begin to be reported as part of a bank's trading account securities, normally in Schedule RC–D, item 5, "Other debt securities (in domestic offices)," consistent with the change in balance sheet classification of commercial paper not held for trading and the elimination of the loan schedule Memorandum item for commercial paper, both of which took effect as of March 31, 1997. As for certificates of deposit and bankers acceptances held for trading, the reporting of these two types of instruments in separate Schedule RC–D items is no longer considered sufficiently useful to warrant retaining items 6 and 8. Instead, these instruments would be included in a bank's "Other trading assets (in domestic offices)," which are reported in Scheduled RC–D, item 9.

Investment Securities With High Price Volatility

In December 1991, the FFIEC approved and the agencies adopted a Supervisory Policy Statement on Securities Activities which became effective on February 10, 1992 (57 FR 4029, February 3, 1992). Under this policy statement, prior to purchase and at subsequent testing dates, banks must test mortgage derivative products to determine whether they are "high-risk" or "nonhigh-risk." These tests measure the expected weighted average life, average life sensitivity, and price sensitivity of mortgage derivative securities for specified changes in interest rates. During 1994, the agencies issued supervisory guidance concerning bank investments in "structured notes" which, in general, are debt securities (other than mortgage-backed securities) whose cash flow characteristics (coupon rate, redemption amount, or stated maturity) depend upon one or more indices and/or that have embedded forwards or options. Beginning in 1995, banks began to report the amortized cost and the fair value of their investment portfolio holdings of high-risk mortgage securities (Schedule RC–B, Memorandum items 8.a and 8.b) and structured notes (Schedule RC–B, Memorandum items 9.a and 9.b).

With regard to structured notes, supervisory attention has primarily focused on ensuring that institutions understand and evaluate the market risks associated with these instruments. Instruments that have high market value or fair value sensitivity to changes in interest rates or other appropriate market risk factors, such as foreign exchange rates, have been the primary targets of such attention. However, some of the structured notes currently reported in Schedule RC–B, Memorandum item 9, may not have high market risk profiles and, in some cases, may have lower market risk volatility profiles than generic U.S. Treasury and U.S. Government agency securities. As a consequence, the agencies are considering revising the information collected on these instruments for supervisory purposes to reflect information based on significant price volatility under specific interest rate or major factor scenarios, e.g., an estimated change in value of 20 percent or more due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points. When the agencies develop the specific tests for significant price volatility, existing Memorandum items 9.a and 9.b on Schedule RC–B would be replaced with revised items requesting the amortized cost and fair value of securities (other than mortgage-backed securities backed by closed-end first lien 1–4 family residential mortgages) whose price volatility exceeds the specified threshold level under the specified interest rate or major factor scenario.

This consistency, Schedule RC–B, Memorandum items 8.a and 8.b, which currently collect information on "high-risk" mortgage securities would be similarly replaced with items requesting the amortized cost and fair value of mortgage-backed securities backed by closed-end first lien 1–4 family residential mortgages whose price volatility exceeds a specified threshold level under a specified interest rate or major factor scenario. These mortgage-backed securities would be either the same as or a subset of the mortgage-backed securities currently reported in Schedule RC–B, Memorandum items 8.a and 8.b.

If the agencies' specific tests for significant price volatility have not been developed in time to implement this proposed reporting change as of the March 31, 1998, report date, this Call Report revision would take effect at a report date later in 1998 (or thereafter) after the volatility tests have been devised.

Transactions Between Banks and Their Affiliates

Section 23A of the Federal Reserve Act is designed to safeguard the resources of banks against misuse for the benefit of organizations under common control with the bank by regulating certain "covered transactions" (loans or extensions of credit and other transactions that expose the bank to risk) with an affiliate. Section 23A restricts the amount of such on terms that are at least as favorable to the bank as transactions with unaffiliated companies. As the activities of nonbank subsidiaries of bank holding companies have expanded, and as regulatory restrictions have been reduced, more reliance has been placed on Sections 23A and 23B to insulate institutions from the risks posed by transactions with their affiliates.

Section 23A permits a bank to engage in covered transactions with affiliates so long as the covered transactions do not in the aggregate exceed: (1) 10 percent of the bank's capital stock and surplus with respect to a single affiliate and (2) 20 percent of capital and surplus with respect to all affiliates. Covered transactions are specifically described in Section 23A and include (a) loans and extensions of credit to an affiliate, (b) the purchase of securities issued by an affiliate, (c) the purchase of nonexempted assets from an affiliate, (d) the acceptance of securities issued by an affiliate as collateral for any loan to an unaffiliated company, and (e) the issuance of guarantee, acceptance, or letter of credit on behalf of an affiliate. In addition to the quantitative limits on a bank's exposure to an affiliate, Section 23A also imposes collateral requirements when a bank is lending to the affiliate or is issuing a guarantee, acceptance, or letter of credit for the account of the affiliate. These exposures

[1] The FFIEC 031 report form is filed by banks with domestic and foreign offices. The FFIEC 032 report form is filed by banks with domestic offices only and total assets of $300 million or more. The FFIEC 033 report form is filed by banks with domestic offices only and total assets of $100 million or more but less than $300 million. The FFIEC 034 report form is filed by banks with domestic offices only and total assets of less than $100 million.

are the most direct method by which a bank can expose itself to an affiliate, and the collateral requirements are designed to diminish any risk related to these exposures.

In order to monitor compliance with the aggregate limits in Section 23A and to identify institution-specific and industry-wide levels of changes in covered transaction which a bank can expose itself to an affiliate, and the collateral requirements are designed to diminish any risk related to these exposures.

In order to monitor compliance with the aggregate limits in Section 23A and to identify institution-specific and industry-wide levels of and changes in covered transaction activity and its effects on bank risk exposures, the agencies are proposing to add four new items to Schedule RC–M—Memoranda. For covered transactions subject to Section 23A's collateral requirements, bank would report (a) the outstanding amount of such transactions as of the Call Report date and (b) the maximum amount of such transactions during the calendar quarter ending with the report date. For covered transactions not subject to the collateral requirements, banks would likewise report (a) the outstanding amount of such transactions as of the Call Report date and (b) maximum amount of such transactions during the calendar quarter ending with the report date. Transactions that are exempt from quantitative limits under the statute, e.g., extensions of credit fully secured by U.S. Government securities and transactions with affiliate (sister) banks, would be excluded from being reported in the proposed items.

The agencies specifically request comment on the burden associated with reporting date on covered transactions. Comment is also requested on potential ways to reduce burden with respect to these items, in particular the proposed reporting of the maximum amount of such transactions during the calendar quarter ending with the report date. For example, maximum amounts could be required to be reported only under certain conditions, e.g., if they are significantly higher than the end of period amount or if they approach the quantitative limits.

Reporting of Low Level Recourse Transactions for Risk-Based Capital Purposes

The agencies' risk-based capital standards provide that the amount of risk-based capital that must be maintained for assets transferred with recourse should not exceed the maximum amount of recourse for which a bank is contractually liable under the recourse agreement. This rule applies to transactions in which a bank contractually limits its risk of loss or recourse exposure to less than the full effective minimum risk-based capital requirement for the assets transferred—generally, four percent for qualifying first lien residential mortgages and eight percent for most other assets. The low level recourse rule also may apply to sales and securitizations of assets in which contractual cash flows (e.g., interest-only strips receivable and so-called spread accounts), retained subordinated interests, or other assets (e.g., collateral invested amounts or cash collateral accounts) act as credit enhancements. If this rule does apply to a credit enhancement of this type, the maximum contractual dollar amount of the bank's exposure as of a Call Report date is generally limited to the amount carried as an asset on the balance sheet (Schedule RC) in accordance with generally accepted accounting principles.

Current Call Report instructions require a bank to report its low level recourse transactions in Schedule RC–R—Regulatory Capital using the so-called "gross-up" method.

In general, this method requires the bank to multiply the maximum amount of its recourse exposure by the reciprocal of the full effective minimum risk-based capital requirement for the assets transferred and to report the resulting dollar amount as an off-balance sheet credit equivalent amount in the risk weight category appropriate to the assets transferred.[2]

However, the greater the volume of a bank's low level recourse transactions and the higher the bank's risk-based capital ratio in relation to the minimum requirement, the more the bank's calculated risk-based capital ratios become distorted as a result of applying the gross-up method. In these situations, another method of handling the bank's low level recourse transactions—the so-called "direct reduction" method—results in a more accurate measure of the bank's risk-based capital ratios. Under the direct reduction method, a bank generally would reduce its Tier 1 capital by the maximum amount of its recourse exposure (and would exclude this amount from its assets if the exposure were in the form of an on-balance sheet asset). Nevertheless, the Call Report instructions do not currently permit banks to use the direct reduction method when completing Schedule RC–R because the schedule's existing format does not provide a means for banks to disclose the amount by which assets and Tier 1 capital have been reduced through the application of the direct reduction method. Without knowing this amount, the agencies cannot readily verify the reported capital amounts and risk-weighted asset amounts for banks that would use the direct reduction method when reporting their low level recourse exposures.

Some bankers with low level recourse transactions have expressed a strong preference for using the direct reduction method rather than the gross-up method. The agencies also note that savings associations report the dollar amount of their low level recourse exposures in the Thrift Financial Reports they file with the Office of Thrift Supervision in a manner consistent with the direct reduction method. Accordingly, the agencies are proposing to add a new subitem under Schedule RC–R, item 3, "Amounts used in calculating regulatory capital ratios," for the "Maximum contractual dollar amount of recourse exposure in low level recourse transactions." Banks preferring to apply the direct reduction method to these exposures when they complete Schedule RC–R would need to complete this new item and would include any on-balance sheet asset amounts that represent low level recourse exposures in item 8 of Schedule RC–R. Banks preferring to report their low level recourse exposures under the gross-up method would retain the option to use this method.

Capital Requirements for Market Risk

In 1996, the agencies amended their risk-based capital standards to require banks with substantial trading activity to hold capital based on their market risk exposure. The new rule applies to banks with either (1) total trading assets and trading liabilities of at least $1 billion or (2) total trading assets and trading liabilities in excess of 10 percent of total assets, unless exempted by their supervisory agency. The banks that will be subject to this new rule must comply with the market risk capital requirements by January 1, 1998. The market risk rule supplements the risk-based capital ratio calculations that focus principally on credit risk and adjusts both the risk-based capital ratio denominator and numerator. These adjustments involve "market risk equivalent assets" for the denominator and "Tier 3 capital" for the numerator.

[2] For example, if the bank's maximum contractual exposure is $10 million and the transferred assets would be in the 100 percent risk weight category, the bank would report a credit equivalent amount of $125 million [$10 million x (1/.08)] in the Schedule RC–R item for credit equivalent amounts of off-balance sheet items assigned to the 100 percent risk category (item 7.b).

To enable the agencies and other users of the Call Report to calculate the risk-based capital ratios of those banks subject to the market risk rule, the agencies are proposing to add two new subitems to Schedule RC–R, item 3, "Amounts used in calculating regulatory capital ratios," on the FFIEC 031 and 032 report forms only. In these new subitems, banks would report their "Market risk equivalent assets" and their "Tier 3 capital." In addition, the instructions for items 4 through 7 of Schedule RC–R, which are the items in which banks report their assets and the credit equivalent amounts of their off-balance sheet items by risk weight category, and item 8, "On-balance sheet asset values excluded from and deducted in the calculation of the risk-based capital ratio," would be revised. As revised, the instructions would tell banks to exclude from items 4 through 7 the amounts of all "covered positions" (except foreign exchange positions outside the trading account and over-the-counter derivative positions) and to report the amounts of those "covered positions" that are on the balance sheet in item 8. The term "covered positions" means all positions in a bank's trading account, and all foreign exchange and commodity positions, whether or not in the trading account.

Allowance for Credit Losses

The American Institute of Certified Public Accountants' *Audit and Accounting Guide for Banks and Savings Institutions*, issued as of April 1, 1996, requires the allocation on the balance sheet of the allowance for credit losses between on-balance sheet financial instruments and off-balance sheet credit exposures. Previously, these allowance components often were reported in the aggregate in the allowance for loan and lease losses (ALLL).

Banks have been advised to allocate the allowance for credit losses on Schedule RC-Balance Sheet consistent with their allocation methodology for other financial reporting purposes. For example, portions of the allowance related to off-balance sheet credit exposures that are reported as liabilities are to be included in Schedule RC, item 20, "Other liabilities," and in item 4 of Schedule RC–G. Banks also have been advised to aggregate these components of the allowance for credit losses when completing Schedule RI–B, part II—Changes in Allowance for Loan and Lease Losses. institutions have been encouraged to disclose the amounts of these components in Schedule RI–E, item 9, "Other explanations."

The agencies are proposing to retain this method of reporting the allowance for credit losses. In so doing, Schedule RI–B, part II, would be retitled Changes in Allowance for Credit Losses, and item 4.a of Schedule RI—Income Statement would be recaptioned "Provision for credit losses." However, Schedule RI–B, part I—Charge-offs Recoveries on Loans and Leases would not be changed, i.e., banks would continue to disclose their loan and lease charge-offs and recoveries only.

Under the reporting standards in effect prior to the effective date of the revised audit and accounting guide, banks had included all the portion of he allowance related to off-balance sheet credit exposures in Tier 2 capital for risk-based capital purpose, subject to specified limits. This regulatory capital treatment remains in effect under the new reporting standards set forth in the revised audit and accounting guide.

Reporting by Banks With Foreign Offices of Investment Securities Holdings in the Domestics Office Assets and Liabilities Schedule

On the FFIEC 031 version of the Call Report forms, banks with foreign offices report a breakdown of the investment securities they hold in domestic offices by type of security in Schedule RC–H—Selected Balance Sheet Items for Domestic Offices. These investment securities holdings are reported in Schedule RC–H on the same basis as they are reported on these banks' consolidated balance sheet (Schedule RC), i.e., held-to-maturity securities are reported at amortized cost while available-for-sale securities are reported at fair value. In the (consolidated) securities schedule (Schedule RC–B), held-to-maturity and available-for-sale securities are each separately reported at amortized cost and at fair value. This reporting treatment was implementing in 1994 when Financial Accounting Standards Board Statement No. 115, "Accounting for Certain Investments in Debt and Equity Securities," took effect.

Based on a review of the manner in which the domestic office securities data reported in items 10 through 17 of Schedule RC–H are analyzed and compared to other measures of domestic securities which are held by nonbank sectors and reported on a cost basis, the agencies are proposing to require banks with foreign offices to report all investment securities held in domestic offices on a cost basis in these eight Schedule RC–H items. This would mean that available-for-sale debt securities would be reflected in Schedule RC–H, items 10 through 17, at amortized cost rather than at fair value while equity securities would be included in this schedule at historical cost. This cost basis data should be available to banks with foreign offices because the amortized/historical cost of their entire investment securities portfolio is currently reported in the (consolidated) securities schedule (Schedule RC–B).

This proposed change would not affect the reporting of a bank's held-to-maturity or available-for-sale securities on the Call Report balance sheet (Schedule RC) or on the securities schedule (Schedule RC–B), nor would it alter the reporting of total assets in domestic offices in Schedule RC–H, item 8.

Reporting of Securitized Consumer Loans for Vehicle Purchases

On the FFIEC 031 and 032 versions of the Call Report forms, banks with foreign offices or with $300 million or more in assets report annually as of September 30 the amount of their securitized consumer installment loans to purchase private passenger automobiles and the amount of all other securitized consumer installment loans (excluding credit cards and related plans) in Schedule RC–L, Memorandum items 5.a and 5.c, respectively. The instructions for these items currently direct banks to report securitized consumer loans for the purchase of pickup trucks and vans in the "all other" category, not in the "private passenger automobiles" category.

Based on a review of the manner in which these data are used for analyzing consumer credit markets, the agencies believe that securitized consumer loans for the purchase of pickup trucks, other light trucks, and vans for personal use would be more appropriately classified in the "private passenger automobiles" category. The instructions for Memorandum item 5.a would be revised so that banks would begin to include securitized consumer loans to purchase vans and light trucks (such as pickup trucks) for personal use in this item rather than in Memorandum item 5.c. In addition, the agencies would strike the word "installment" from the captions and instructions throughout Memorandum item 5.

Request for Comment

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information

collection request. Comments are invited on: (a) Whether the proposed revisions to the following collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility; (b) the accuracy of the agencies' estimate of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments are also requested on the expected effects on information currently reported in the Call Report resulting from this implementation of those portions of Financial Accounting Standards Board Statement No. 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," that have had their effective date delayed until after December 31, 1997. The agencies are evaluating the need for additional data in this area. These portions of Statement No. 125 address collateral and secured borrowings, repurchase agreements, dollar-rolls, securities lending, and similar transactions.

Banks should note that the FDIC is considering amendments to its regulations on the deposit insurance assessment base (12 CFR part 327) which may require certain changes to the Call Report. Should the FDIC adopt amendments that necessitate changes to the Call Report in 1998, those changes will be separately published for public comment as required under the Paperwork Reduction Act of 1995.

Dated: September 26, 1997.

Karen Solomon,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, September 18, 1997.

William W. Wiles,

Secretary of the Board.

Dated at Washington, D.C., this 17th day of September, 1997.

Federal Deposit Insurance Corporation.

Steven Hanft,

Assistant Executive Secretary.

[FR Doc. 97–26131 Filed 10–1–97; 8:45 am]

BILLING CODE 4810–33–M(½), 6210–01–M(½), 6714–01–M(½)

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as amended; System of Records

AGENCY: Internal Revenue Service, Treasury

ACTION: Notice of alteration of Privacy Act system of records

SUMMARY: The Treasury Department, Internal Revenue Service, gives notice of a proposed alteration to the system of records entitled, "General Personnel and Payroll Records -Treasury/IRS 36.003," which is subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a. The system notice was last published in its entirety in the **Federal Register**, Vol. 60, page 56804, on November 9, 1995.

DATES: Comments must be received no later than November 3, 1997. The alteration to the system of records will be effective November 16, 1997, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison & Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be made available for public inspection and copying in the Internal Revenue Service Freedom of Information Reading Room, 1111 Constitution Avenue, NW, Room 1621, Washington, DC 20224, telephone number (202) 622–5164, (not a toll free call).

FOR FURTHER INFORMATION CONTACT: James O'Malley, Acting National Director, Personnel Division, Internal Revenue Service, (202) 874–6135.

SUPPLEMENTARY INFORMATION: The purpose of the alteration is to add two routine uses to the current routine uses as a result of Executive Order 12897 dated February 3, 1994, and the likelihood that the Service will be requested to respond to increasing numbers of support garnishment interrogatories.

Currently, routine use number (7) is used to disclose information on records, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to any appropriate agency, whether Federal, state, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto or upon request of the agency when the agency is investigating the possible violation of their rules or regulations.

The Internal Revenue Service (IRS) believes that the current routine use number (7) allows the IRS to disclose the information requested in the interrogatories, although the interrogatories are not specifically addressed. However, a new routine use (21) is being added to clarify that information from this system of records may be disclosed in response to garnishment interrogatories. A second routine use (22) is also being added as a result of the issuance of Executive Order 12897 entitled "Garnishment of Federal Employees' Pay," which will permit non-Federal entities (i.e., commercial creditors) to request garnishment of any employee's pay for just debts owing to these companies which have been reduced to a judgement.

The alteration to the existing Privacy Act notice also incorporates the Executive Order under the data element "Authority for Maintenance of the System" to bring this system into compliance with the requirements of the Privacy Act. The specific changes to the record system being altered are set forth below.

Under "Authority for Maintenance of the System:" delete the period after Executive Order 10561 and add "and Executive Order 12897."

Under "Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:," add two routine uses by inserting the following text after routine use numbered twenty (20): "(21) Respond to state and local authorities for support garnishment interrogatories; and (22) Provide information to private creditors for the purpose of garnishment of wages of an employee if a debt has been reduced to a judgement."

The specific changes to the system notice are published below.

Dated: September 24, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

Treasury/IRS 36.003

SYSTEM NAME:

General Personnel and Payroll Records—Treasury/IRS

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Description of change: Remove "and Executive Order 10561." and add "Executive Order 10561 and Executive Order 12897."

* * * * *

Description of changes: Replace the period at the end of routine use number (20) with a semi-colon(;) and add the following text:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * *

"(21) Respond to state and local authorities for support garnishment interrogatories; and

(22) Provide information to private creditors for the purpose of garnishment of wages of an employee if a debt has been reduced to a judgement."

* * * * *

[FR Doc. 97–26160 Filed 10–1–97; 8:45am]

BILLING CODE 4810–30–F

UNITED STATES INFORMATION AGENCY

College and University Affiliations Program (CUAP)

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501 (c) may apply to develop a partnership with (a) foreign institution(s) of higher education in specified fields and themes within the humanities and social sciences.

Awards will be made to support democratic institution-building and/or civic education.

A second Request for Proposals in this issue of the **Federal Register** solicits proposals in support of free trade and market economies, and/or the environment and sustainable development.

Grants are subject to the availability of funds for Fiscal year 1998.

Proposed projects must be eligible in terms of country(ies)/localities and themes as described in the section entitled "Eligibility" below.

Participating institutions exchange faculty and administrators for a combination of teaching, lecturing, faculty and curriculum development, collaborative research, and outreach, for periods ranging from one week (for planning visits) to an academic year. The FY 98 program will also support the establishment and maintenance of Internet and/or e-mail communication facilities as well as interactive distance learning programs at foreign partner institutions. Applicants may propose other project activities not listed above that are in keeping with the goals and activities of the College and University Affiliations Program.

The program awards up to $120,000 for a three-year period to defray the cost of travel and per diem with an allowance for educational materials and some aspects of project administration. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the *Fulbright-Hays Act.*

Projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. The POGI, a document describing College and University Affiliation Project Objectives, Goals, and Implementation, is included in the Solicitation Package.

Announcement Title and Number: All communications with USIA concerning this announcement should refer to the College and University Affiliations Program and reference number E/ASU–98–02.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday January 16, 1998. Faxed documents will not be accepted, nor will documents postmarked on Jan. 16, 1998, but received on a later date. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate program dates: Grants should begin on or about September 1, 1998.

Duration: September 1, 1998–August 31, 2001.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; College and University Affiliations Program (CUAP), (E/ASU), Room 349, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, phone: (202) 619–5289, fax: (202) 401–1433. Send a message via Internet to: affiliat@usia.gov to request a Solicitation Package. The Solicitation Package includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax On Demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System," which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify "College and University Affiliations Program Officer" on all inquiries and correspondence. Prospective applicants should read the complete **Federal Register** announcement before addressing inquiries to the College and University Affiliations Program staff or submitting their proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application, including the documents specified under Tabs A through I in the "Project Objectives, Goals, and Impoementaiton" (POGI) section of the Solicitation Package, should be sent to: U.S. Information Agency, Ref: E/ASU–98–02, Office of Grants Management, E/XE, Room 326, 301 4th St., S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to U.S. Information Service (USIS) posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grant review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal, in their program contents, to the full extent deemed feasible.

Eligibility

U.S. Partner and Participant Eligibility

In the U.S., participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from consortia of U.S. colleges and universities are eligible. Secondary U.S. partners may include relevant non-governmental organizations, non-profit service or professional organizations. The lead U.S. institution in the consortium is responsible for submitting the application and each application from a consortium must document the lead school's stated authority to represent the consortium. Participants representing the U.S. institution who are traveling under USIA grant funds must be faculty, graduate teaching assistants, or staff from the participating institution(s) and must be U.S. citizens. Please note that graduate teaching assistants are eligible for USIA-funded participation only if working as part of a team directed by a faculty member.

Foreign Partner and Participant Eligibility

Overseas, participation is open to recognized, degree-granting institutions of post-secondary education, which may include internationally recognized and established independent research institutes. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be faculty, graduate teaching assistants, or staff who are citizens, nationals, or permanent residents of the country of the foreign partner and be qualified to hold a valid passport and U.S. J–1 visa. Please note that graduate teaching assistants are eligible for USIA-funded participation only if working as part of a team directed by a faculty member.

Ineligibility

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) The length of the proposed project is less than three years;

(4) It is not submitted by the U.S. partner;

(5) One of the partner institutions is ineligible;

(6) The foreign geographic location is ineligible;

(7) It involves a request to fund exchanges between the United States and more than one country, with the exception of trilateral North Africa, Near East, and South Asia (NEA) projects. Please see the section on eligible countries/localities for complete details;

(8) The theme or academic discipline is not listed as eligible in the RFP, herein;

(9) The amount requested of USIA exceeds $120,000 for the three-year project.

Eligible Theme, Academic Disciplines, and Countries/localities

This Request for Proposals is limited to support for democratic institution building and/or civic education.

Please note the following explanatory details:

A. Eligible Academic Disciplines and Countries/Localities

Eligible academic disciplines and countries and localities are listed under each sub-theme. Only those countries or localities and partnership configurations identified under each sub-theme qualify. Specifics should be examined carefully before proposal preparation.

B. Inclusion of Area Studies

Area Studies are included as academic disciplines to engender a broader cultural understanding and context in which to pursue a linkage project within the stated theme. Area Studies may be incorporated into a given project but only in conjunction with one or more of the other academic disciplines listed under the theme. Area Studies includes U.S. and partner country history, literature, and social sciences.

C. Bilateral Projects—Except for NEA Trilateral Linkages

In most instances, the program invites proposals for bilateral projects only, involving the U.S. and one foreign country (as specified) only. The only exceptions are Near East, North Africa, and South Asia (NEA) trilateral linkages.

Eligible Theme

Support of democratic institution-building and/or civic education.

Projects are solicited which promote democratic institution-building to encourage accountable governments and the rule of law, to strengthen political and economic stability and to protect both political rights and free market economies.

Within this context, affiliation projects should help build democratic institutions, promote the development of civil societies and civic education, and increase expertise in the rule of law and the administration of justice through faculty and curriculum development, teaching and lecturing, and outreach. It is anticipated that exchange participants involved in cross-cultural democracy-building partnerships will generate ideas and projects which will contribute to modernization and development in the higher education community, public policy arena, NGOs, government, and the media.

USIA has a particular interest in reviewing proposals whose goal is to nurture the culture of democracy by focusing on the role of civic education in a democratic society.

A linkage project incorporating a focus on participation in civil society (in which citizens—in addition to working with the government—organize to resolve national problems rather than leaving them to the government to resolve), and on civic education (to prepare them for competent and responsible participation in local, state, and national civic and political life) might include such topics as: the philosophy of democratic institutions; the philosophy and goals of public and private education; the role of citizen behavior and social responsibility in a democracy; the role of volunteerism, public interest groups, and major players such as public and private schools, government, religious institutions, public libraries, private organizations, and parents. A civic education linkage might also address political practices such as the balance of individual rights and group rights; reconciliation and compromise within the democratic process; the philosophy and practice of majority rule and minority rights.

Projects promoting civil society and civic education may combine one or more of the academic disciplines listed below in order to pursue an affiliation whose activities are those of the overall College and University Affiliations Program—namely teaching, lecturing, faculty development, curriculum development (e.g., for teacher training), collaborative research, and community outreach.

Eligible Academic Disciplines

(1) For Law Projects

Law (may include Constitutional, Comparative, Administrative, Regulatory, and Civil Law, Conflict Resolution, and Intellectual Property Rights)
Political Science/Government/Public Policy/Public Administration
Area Studies (in combination with one or more of the academic fields listed here)

(2) For Media Projects

Journalism (Broadcast, Print, Electronic)
Communications Law
Area Studies (in combination with one or more of the academic fields listed here)

(3) For Projects in Civic Education

Secondary-Level Curriculum Development and Teacher Training
Sociology
Government
History
Social Studies Education
Area Studies (in combination with one or more of the academic fields listed here)

Eligible Countries/Localities

Africa: Ethiopia, Ghana, Senegal, South Africa, Tanzania, and Uganda;

American Republics: Brazil, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic (All projects for the preceding countries are limited to Civic Education and Law); Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, and Uruguay.

Priority will be given to proposals that focus on civic education, ethics in government, grassroots democracy and citizen participation, women and leadership, the administration of justice, judicial reform, and alternative dispute resolution.

East Asia and Pacific: China, Hong Kong, Indonesia, South Korea (all projects for the preceding countries are limited to Civic Education and Law); Taiwan (Media projects only); Vietnam (Civic Education only);

East Europe, Central Europe, and the New Independent States: Armenia (Civic Education and Media projects only), Bosnia (Media projects only), Estonia, Georgia, Latvia, Moldova (Law only), and Slovakia;

North Africa, Near East, and South Asia: The following are eligible for bilateral or trilateral affiliations: Bahrain, Bangladesh, Gaza, Israel, Jordan, Kuwait, Morocco, Nepal, Oman, Pakistan, Qatar, Sri Lanka, Tunisia, United Arab Emirates, West Bank, Yemen;

Lebanon: USIA welcomes proposals for bilateral linkages in Lebanon which include the use of distance education and/or Internet to facilitate two-way communication since, at this writing, only one-way travel (from Lebanon to the United States) is currently advisable.

Notice

The terms and conditions published in this RFP are binding and may not be modified by an USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: September 27, 1997.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–26151 Filed 10–1–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

College and University Affiliations Program (CUAP)

ACTION: Notice—requests for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a partnership with (s) foreign institution(s) of higher education in specified fields and themes within the humanities, social sciences, business, and environmental studies.

Subject to the availability of funding, awards will be made to support free trade and market economies, and/or the environment and sustainable development.

A second Request for Proposals in this issue of the **Federal Register** solicits proposals in support of democratic institution-building and/or civic education.

Grants are subject to the availability of funds for Fiscal Year 1998.

Proposed projects must be eligible in terms of country(ies)/localities and themes as described in the section entitled "Eligibility" below.

Participating institutions exchange faculty and administrators for a combination of teaching, lecturing, faculty and curriculum development, collaborative research, and outreach, for periods ranging from one week (for planning visits) to an academic year. The FY 98 program will also support the establishment and maintenance of Internet and/or e-mail communication facilities as well as interactive distance learning programs at foreign partner institutions. Applicants may propose other project activities not listed above that are in keeping with the goals and activities of the College and University Affiliations Program.

The program awards up to $120,000 for a three-year period to defray the cost of travel and per diem with an allowance for educational materials and some aspects of project administration. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Overall grant-making authority for this program is contained in the Mutual Education and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests,

developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the *Fulbright-Hays Act.*

Projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. The POGI, a document describing College and University Affiliation Project Objectives, Goals, and Implementation, is included in the Solicitation Package.

Announcement Title and Number: All communications with USIA concerning this announcement should refer to the College and University Affiliations Program and reference number E/ASU–98–03.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday January, 16, 1998. Faxed documents will not be accepted, nor will documents postmarked on January 16, 1998, but received on a later date. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate program dates: Grants should begin on or about September 1, 1998.

Duration: September 1, 1998–August 31, 2001.

FOR FURTHER INFORMATION, CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; College and University Affiliations Program (CUAP), (E/ASU), Room 349, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, phone: (202) 619–5289, fax: (202) 401–1433. Send a message via Internet to: affiliat@usia.gov to request a Solicitation Package. The Solicitation Package includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System," which is accessed by calling 202/402–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify "College and University Affiliations Program Officer" on all inquiries and correspondence. Prospective applicants should read the complete **Federal Register** announcement before addressing inquiries to the College and University Affiliations Program staff or submitting their proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application, including the documents specified under Tabs A through I in the "Project Objectives, Goals, and Implementation" (POGI) section of the Solicitation Package, should be sent to: U.S. Information Agency, Ref: E/ASU–98–03, Office of Grants Management, E/XE, Room 326, 301 4th St., SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" and budget sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to U.S. Information Service (USIS) posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grant review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal; in their program contents, to the full extent deemed feasible.

Eligibility

U.S. Partner and Participant Eligibility

In the U.S., participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from consortia of U.S. colleges and universities are eligible. Secondary U.S. partners may include relevant non-governmental organizations, non-profit service or professional organizations. The lead U.S. institution in the consortium is responsible for submitting the application and each application from a consortium must document the lead school's stated authority to represent the consortium. Participants representing the U.S. institution who are traveling under USIA grant funds must be faculty, graduate teaching assistants, or staff from the participating institution(s) and must be U.S. citizens. Please note that graduate teaching assistants are eligible for USIA-funded participation only if working as part of a team directed by a faculty member.

Foreign Partner and Participant Eligibility

Overseas, participation is open to recognized, degree-granting institutions of post-secondary education, which may include internationally recognized and established independent research institutes. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be faculty, graduate teaching assistants, or staff who are citizens nationals, or permanent residents of the country of the foreign partner and be qualified to hold a valid passport and U.S. J–1 visa. Please note that graduate teaching assistants are eligible for USIA-funded participation only if working as part of a team directed by a faculty member.

Ineligibility

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the solicitation Package;

(2) It is not received by the deadline;

(3) The length of the proposed project is less than three years;

(4) It is not submitted by the U.S. partner;

(5) One of the partner institutions is ineligible;

(6) The foreign geographic location is ineligible;

(7) It involves a request to fund exchanges between the United States and more than one country, with the exception of trilateral Asian Pacific Economic Cooperation (APEC) and trilateral North Africa, Near East, and South Asia (NEA) projects. Please see the section on eligible countries/localities for complete details;

(8) The theme or academic discipline is not listed as eligible in the RFP, herein;

(9) The amount requested of USIA exceeds $120,000 for the three-year project.

Eligible Theme, Academic Disciplines, and Countries/Localities

This request for proposals is limited to support for free trade and market economies and/or environment and sustainable development.

Please note the following explanatory details:

A. Eligible Academic Disciplines and Countries/Localities

Eligible academic disciplines and countries and localities are listed under each theme. Only those countries or localities and partnership configurations identified under each theme qualify. Specifics should be examined carefully before proposal preparation.

B. Inclusion of Area Studies

Area Studies are included as academic disciplines to engender a broader cultural understanding and context in which to pursue a linkage project within the stated theme. Area Studies may be incorporated into a given project but only in conjunction with one or more of the other academic disciplines listed under the theme. Area Studies includes U.S. and partner country history, literature, and social sciences.

C. Bilateral Projects—Except for NEA and APEC Trilateral Linkages

In most instances, the program invites proposals for bilateral projects only, involving the U.S. and one foreign country (as specified) only. The only exceptions are North Africa, Near East, and South Asia (NEA) and Asia Pacific Economic Cooperation member nation trilateral linkages.

Eligible Theme

Support of free trade and market economies and/or the environment and sustainable development.

Under this theme, projects are solicited which promote higher education's role in economic development and the development of market economies, trade, investment overseas, through faculty and curriculum development, teaching and lecturing, and outreach. Projects which also focus on the environment should address the public policy aspects of sustainable development.

Affiliation projects in trade and economics are expected to establish or expand mutually beneficial academic programs in business and economics, and to promote international investment by strengthening institutional links to the private sector. Where possible, such affiliations should contribute to the formulation of more open and responsible trade policy. Where appropriate and relevant, plans and anticipated outcomes of these affiliation projects should reflect responsible stewardship of the environment. Business/economics/trade projects with the potential for having an adverse impact on the environment will have a low priority.

Environment/sustainable development projects should address environmental issues having an impact on U.S. and global interests. Such affiliation projects should help establish or expand environmental policy studies programs through faculty and curriculum development, teaching and lecturing, and outreach. For the designated countries listed below, projects are encouraged which link the study of free trade and market economies with the environment and sustainable development.

Whenever feasible, participants involved in either trade/economics policy projects or international environmental policy studies projects should make their training and personnel resources, as well as results of their collaborative research, available to government, NGOs, and business.

Eligible Academic Disciplines

Economics (Comparative and International)
Business/Business Administration/Business Management
International Marketing/International Trade
Commercial Law (including Comparative Law, International Treaties, Intellectual Property Rights)
Environmental Law and Regulation
Environmental Policy and Resource Management
Environmental Sciences/Natural Resource Sciences
Area Studies (in combination with one or more of the academic fields above)

Eligible Countries/Localities

Africa: Burkina Faso, Ghana, Namibia, Senegal, South Africa, Tanzania, Uganda, and Zambia;

American Republics: Brazil, Chile, Colombia, Mexico, Peru, Paraguay, Uruguay. Priority will be given to proposals that focus on economic development and free trade;

East Asia and Pacific: The following Asia Pacific Economic Cooperation (APEC) member economies are eligible within a trilateral, NOT bilateral, affiliation between the U.S. and two APEC member economies: Australia, Canada (see the section on "Western Europe" below), China, Chile, Hong Kong, Indonesia, Japan, South Korea, Malaysia, Mexico, New Zealand, Philippines, Singapore, Taiwan, and Thailand;

In addition, Malaysia, Thailand, and Vietnam; are eligible for bilateral projects only in the Environment and Sustainable Development category;

East Europe, Central Europe, and the Commonwealth of Independent States: Moldova (projects focusing on Free Trade and Market Economies only);

North Africa, Near East, and South Asia (NEA): The following are eligible for a bilateral or trilateral affiliation: Bahrain, Bangladesh, Gaza, Jordan, Kuwait, Morocco, Nepal, Oman, Pakistan, Qatar, Saudi Arabia, SRI Lanka, Syria (Environment and Sustainable Development only), Tunisia, United Arab Emirates, West Bank, Yemen;

Lebanon: USIA welcomes proposals for bilateral linkages in Lebanon which include the use of distance education and Internet to facilitate two-way communication since, at this writing, only one-way travel (from Lebanon to the United States) is advisable.

Western Europe: Canada, eligible only in an APEC trilateral partnership. Proposals involving Canada and East Asian APEC nations are encouraged in recognition of the array of trade interests and environment/sustainable development issues that Canada and the United States share with Asian nations.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the

availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: September 19, 1977.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–26152 Filed 10–1–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

International Visitor Program

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of International Visitors (E/V) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces a competition for an assistance award. Public and Private nonprofit organizations *not* currently receiving Office of International Visitors assistance awards and meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop programming for projects of one to twenty-five International Visitors nominated by U.S. Embassies abroad.

The intent of this announcement is to attract new organizations to the International Visitor (IV) programming process. USIA is seeking new organizations to provide diversity and an infusion of program experience to the IV program. The winning applicant will function as a national programming agency and will work closely with USIA staff members who will guide and mentor the applicant through procedural, budgetary or programmatic issues as they arise in a variety of International Visitor projects. This experience is expected to build the selected organization's capacity to compete for a continuing grant in IV project administration.

USIA is seeking a qualified applicant to develop over the course of fiscal year 1998 (October 1, 1997–September 30, 1998) the following series of projects: 25 Individual Visitor projects, 6 Single Country Projects (SCPs), 2 Regional Projects (RPs) and 1 Multi-Regional Project (MRP).

The objective of the International Visitor Program is to increase mutual understanding through communication and collaboration with professional counterparts in the U.S. Participants are current or potential foreign leaders in government, politics, media, education, science, labor relations, and other key fields. They are selected by American embassies abroad and approved by USIA in Washington, DC. Since the program's earliest inception in 1941, more than 120,000 distinguished visitors have participated in the program, and over 155 program alumni have subsequently become heads of state or government in their home countries.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. the Purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number

All communications with USIA concerning this RFP should refer to the announcement's title and reference number *E/V–98–01.*

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling (202) 401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals.

Bidders Conference

USIA will host a Bidder's Conference for this assistance award on November 5, 1997 at a USIA location in Washington, DC. Substantive questions about this RFP will be addressed at the conference. Interested applicants are asked to submit questions by mail, fax, or e-mail to the E/VC address given above. Questions must be received by COB Friday, October 31, 1997. Details of the Bidders Conference will be sent to responding applicants at a later date.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and *10* copies of the application should be sent to: U.S. Information Agency, Ref.: *E/V–98–01*, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the proposal on a 3.5" diskette, formatted for WordPerfect.

Deadline for Proposals

All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on *Monday, December 1, 1997.* Faxed or e-mailed documents will not be accepted at any time.

Documents postmarked by the due date but received at a later date will not be accepted.

Grants should begin *by mid-January 1998.*

To Request a Solicitation Package, Contact

The Office of International Visitors, Community relations Division, E/VC, Room 266, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, Tel: (202) 619–5234, 1–800–827–0804; Fax: (202) 619–4655, E-Mail address: rfp@usia.gov (available October 14, 1997).

Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for diversity" section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview: Programs must maintain a non-partisan character. Programs and awards must conform to all Agency requirements and guidelines.

Guidelines: USIA seeks proposals from non-profit organizations for development and implementation of professional projects for approximately 100 USIA-sponsored International Visitors to the U.S. Once the award is made, separate proposals will be required for each group project [MRP, RP, and SCP], as well as less-formal proposals for Individual Visitor projects. Each project will be focussed on a substantive theme. Further information giving examples of some of these program themes is included below and in the Solicitation Package.

Goals and objectives for all projects will be shared with the winning applicant organization following the announcement of the assistance award. Most projects will be 21 to 30 days in length. Most projects will begin in Washington, DC, with an orientation and overview of the issues and a central examination of Federal policies regarding these issues. Well-paced project itineraries include programs in four or five communities. Group and individual project itineraries will ideally include urban and rural small communities in diverse geographical and cultural regions of the U.S., as appropriate to the project theme. Projects should provide opportunities for participants to experience the diversity of American society and culture. Depending on the size and theme of the project, the participants in Multi-Regional or Regional group projects can be divided into smaller sub-groups for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group once it is reunited. Project may provide opportunities for the visitors to share a meal or similar experience (home hospitality) in the home of Americans of diverse occupational, age, gender and ethnic groups. Some individual and group projects might include an opportunity for an overnight stay (home stay) in an American home. The visitors should be provided opportunities to address student, civic and professional groups in relaxed and informal settings. For some projects, "shadowing" experiences with American professional colleagues may be proposed. Visitors should have appropriate opportunities for site visits and hands-on experiences that are relevant to project themes. Projects should also allow time for participants to reflect on their experiences, and in group projects, share observations with project colleagues. Visitors should have opportunities to visit cultural and tourist sites. Arrangements for community visits must be made through affiliates of the National Council for International Visitors [NCIV]. [The NCIV is a national network of private citizen organizations located in more than one hundred U.S. communities, which arrange local programs for international visitors.] In cities where there is no such council, the applicant organization will arrange for coordination of local programs.

The applicant should demonstrate the potential to develop projects, as described above, on a variety of program themes. The applicant is expected to have e-mail capability to consult with USIA program officers, and access to internet resources. USIA will provide close coordination and guidance throughout the duration of the award.

For informational purposes only, the following outlines are examples of project themes for multi-regional and regional projects. Do *not* prepare proposals to administer these sample project themes as part of your submission package.

1. *Multi-Regional Project* (World-wide participants; English-speaking):

Globalization of Business and Markets. Project design would examine the impact of "globalization" in business, markets, and communities. The project will examine costs and benefits of the interconnected global market, and its effect on international and domestic policies.

2. *Regional Projects* (from one continent or region; may include interpretation):

Grassroots Democracy [American Republics]

Project design would provide participants with a greater understanding of the U.S. political system and American social culture in a democratic society. It would demonstrate how grassroots organizations interact and communicate with federal, state and local governments and explore the role and influence of grassroots organizations on public policy decision-making at the local and national levels.

Civic Education: Fostering Informed and Responsible Citizen Participation in a Democracy [Africa]

Project would demonstrate how a public that is well-educated about its civic rights and responsibilities, and which plays an active role in public life, is the best guarantor of its own self-government. Participants would encounter some of the key organizations involved in educating U.S. citizens and in mobilizing effective citizen participation in various aspects of the social and political process.

Visa Requirements

Particpants in individuals or group projects will travel on J–1 visas arranged by USIA. Projects must comply with J–1 visa regulations. Please refer to program specific guidelines in the Solicitation Package for further details.

Tax Requirements

Administration of the projects must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Applicant organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Budget

Applicant organizations are required to submit a comprehensive line-item administrative budget in accordance with the instructions in the Solicitation Package. A summary budget as well as a detailed budget showing all administrative costs is required. Proposed staffing and costs associated with staffing must be appropriate to the requirements outline in the RFP and the remaining portion of the Solicitation Package. The selected applicant will enter into close consultation on budgetary matters with the responsible USIA program officer throughout the implementation of projects, each one of which will have separate budgets. Combined administrative and indirect costs proposed should be reasonable. Cost sharing is encouraged.

The Agency is seeking proposals from organizations that are not currently receiving administrative E/V project grants. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Since this RFP is for an award greater than $60,000 all applicants must have four years of experience as stated. It is therefore incumbent on organizations to demonstrate: a capacity for programming visitors from all geographical regions of the world; proven fiscal management integrity; and an ability to have close consultation with USIA staff throughout project administration.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the E/V program officer, as well as one or more of USIA's geographic area offices. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of program design:* Proposals should exhibit originality, substance, precision, and be responsive to requirements stated in the RFP and the 1998 Solicitation Package.

2. *Program planning:* A detailed and relevant work plan should demonstrate substantive intent and logistical capacity. Agenda and plan should adhere to the program overview and guidelines.

3. *Ability to achieve program objectives:* Proosals should clearly demonstrate how the institution will meet the goals of the International Visitor Program.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of resources, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for any past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the potential of new applicants for effective program administration. All applicants must demonstrate: a minimum of four years in existence, with proven project management ability and demonstrated fiscal soundness and accountability; a potential for programming visitors from all geographic regions of the world; a Washington, DC presence or ability to have consultations with USIA staff on a regular basis (including face-to-face) throughout the development of each group or Individual project.

7. *Cost-effectiveness:* The administrative and indirect cost components of the proposal, including salaries, should be kept as low as possible.

8. *Cost-sharing:* Consideration will be given to proposed cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: September 27, 1997.

John P. Loiello,

Associate Director for Bureau of Educational and Cultural Affairs.

[FR Doc. 97–26153 Filed 10–1–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Program Title NIS Training Program: Russia, Ukraine, Belarus and Moldova

ACTION: Request for proposals.

SUMMARY: The Russia/Eurasia Division of the Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop training programs. Grants are subject to the availability of funds.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hayes Act and the Freedom Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/PN–98–5.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, December 12, 1997. Faxed documents will not be accepted at any time. Documents postmarked by December 12, 1997, but received at a later date, will *not* be accepted.

FOR FURTHER INFORMATION, CONTACT: The Russia/Eurasia Division, Office of Citizen Exchanges (E–PN), Room 224, U.S. Information Agency, 301 4th Street, SW., Washington DC 20547, attn: Cassandra Barber, tel: (202) 619–5327 and fax: (202) 619–4350, or Internet address: cbarber@usia.gov, to request a Solicitation Package which includes: proposal and budget guidelines and all application forms.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Packager via Fax on Demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling (202) 401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Cassandra Barber on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/PN–5–98, Office of Grant Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in counties whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

USIA is interested in proposals that encourage the growth of democratic institutions in Russia, Ukraine, Belarus, and Moldova. Exchanges and training programs supported by Office of Citizen Exchange's institutional grants should operate at two levels: they should enhance institutional relationships; and they should offer practical information to individuals to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: an existing partner relationship between an American organization and an in-country institution in Russia, Ukraine, Belarus, or Moldova; a proven track record of conducting program activity; cost-sharing from American or in-country sources, including donations of air fares, hotel and/or housing costs; experienced staff with language facility; and a clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant. USIA wants to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources.

Unless otherwise specified below, project activity may include: internships; study tours; short-term training; consultations; and extended, intensive workshops taking place in the United States or in Russia, Ukraine, Belarus, or Moldova. Proposals should reflect the authors' understanding of the political, economic, and social environment in which the program activity will take place.

We encourage applicants to design programs for *non-English speakers.* Programs can take place in the United States or in the four countries. With the exception of the Women's Leadership Training Project described below, we want single country programs, not programs that mix NIS participants together. USIA is interested in proposals whose designs take into account the need for ongoing sharing of information and training. Examples include: "train the trainers" models; support for training centers in Russia, Ukraine, Belarus or Moldova; plans to create professional networks or professional associations to share information; and/or establishing ongoing internet communication

USIA will give priority to proposals that respond to the following specific topics for Russia, Ukraine, Belarus and Moldova.

For Russia, Ukraine, Belarus and Moldova

Women's Leadership Training

Women must take their place in the political arena if democracy is to take root in these countries. USIA is interested in proposals that offer leadership training skills to women active in their own communities in Russia, Ukraine, Belarus or Moldova. In Russia, the majority of program activity should not take place in Moscow, but rather focus on helping women in Russian regions. The focus of the training programs should be on how to identify priorities, organize and form coalitions, and to influence decision makers about issues and problems affecting the well-being of people in local communities. Proposals are not limited to a one-country focus, but may also address how to build networks among women's organizations in these four countries. Prospective grantee institutions should identify the NIS local organizations and individuals with whom they are proposing to collaborate and describe in detail previous cooperative programming and contacts. Program activity may take place either in the NIS or in the United States. This activity is intended to follow up on issues addressed in the Vital Voices Conference held in Vienna from July 9–11. For more information on the conference, please see the Vital Voices Homepage at http://www.usia.gov/vitalvoices/ for more information.

For Russia

US-Based Internships for Russian Journalists and Media Managers

USIA is interested in proposals for journalistic training and management for Russia regional media organizations (Moscow and St. Petersburg are excluded), and we particularly welcome proposals for Samara and surrounding regions and Khabarovsk. Journalistic training in basic skills and concepts could include; effective writing, investigative reporting, objectivity, the clear labeling of editorials and opinion pieces, intellectual property issues and ethics. Media management training (both print and electronic) should focus on management of media as a business; management techniques, desk top publishing, advertising, marketing, distribution, personnel, public relations, and the financial benefits and pitfalls of

journalistic advocacy. Radio internships would be especially welcome. USIS Moscow will coordinate selection of journalist with the grantee organization. Preference will be given to long-term internships for English speakers. The US program should be a practical, hands-on experience in an American media organization, not an academic course of study.

Distance Learning in the Field of Business Management

USIA is interested in proposals that establish or expand distance learning programs in business and management at Russian universities or institutes outside of Moscow. The beneficiaries of such a program would be both students and professionals already working for enterprises. Specific programs could include the delivery of management and business content through e-mail, video or text-based internet. Travel to the United States by Russian providers and trips to Russia by American course organizers are essential. Proposals should address in detail: technical requirements for delivery of business/management content through distance learning mechanisms; training requirements for instructors and faculty on how to use the media, i.e., train the trainers; how appropriate print materials might be integrated with a distance learning approach, and; language of instruction issues. Proposals should show Russian institutional commitment (written letters of support) and tangible Russian cost-shares in the form of space, security, salaries, and support for visiting Americans such as local housing and transportation. Interested American organizations should plan trips to Russia of at least 2 weeks duration to get programs underway and to monitor progress. Short-term visits of a few days duration are discouraged. Grantee institutions are expected to consult closely with USIS Moscow on the development of this program. USIA is interested in a maximum utilization of low end technologies so that the project model might be replicated in other regions.

Because of the complexity of this program, USIA will consider funding proposals in the $150,000–$200,000 range. See Project Funding section below for additional guidance on funding levels.

For Moldova

Creation of an Independent Broadcaster's Association

USIA is interested in proposals that strengthen independent journalism in Moldova, specifically by assisting in the establishment of an independent broadcasters' association. An audio-visual council to govern broadcast media has recently been established, and the industry has recognized the need to establish an association to interact with the newly-formed industry regulator. In addition, the association could work to provide continued professional training and even attract advertising money to the industry. This project would help the association develop a statute and regulations, train a Moldovan staff to run the organization and create ties between Moldovan broadcasters and American broadcasters' associations.

USIA envisions most of the project activity taking place in Moldova. Project organizers would assist in helping set up the association and educating Moldova broadcasts on what an association actually does. In-country training of several months in duration by American experts could be followed by a month-long visit to the US by 3–4 Moldovans (who have demonstrated the potential to lead the effort) for further training and contact with American professional counterparts. A follow-up visit six months later by American trainers to ensure the effort has taken hold would be a natural third phase of the program.

Selection of Participants

Proposals should describe clearly the type of persons who will participate in the program as well as the process by which participants will be selected. We recommend that programs with internships in the US include letters of commitment from host institutions, even if tentative. In the selection of foreign participants, USIA and USIS posts abroad retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are usually asked by USIA to suggest names of potential participants. Priority will be given to foreign participants who have not previously traveled to the United States.

Visa Regulations

Foreign participants on programs sponsored by the Office of Citizen Exchanges are granted J–1 Exchange Visitor visas by the American Embassy in the sending country.

Project Funding

Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other sources of financial and in-kind support. Proposals with substantial private sector support from foundations, corporations, and other institutions will be considered highly competitive.

Although no set funding limit exists, proposals for less than $80,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While a comprehensive line item budget based on the model in the Solicitation Package must be submitted, separate component budgets are optional.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at http://www.policyworks.gov/.

3. Interpreters: If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Administrative Costs. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package. While this announcement does not proscribe a rigid ratio of administrative to program costs, in general, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from USIA. Proposals should show cost-sharing, both contributions from the applicant and from other sources.

Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be considered ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (granted or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered.

1. Program Planning and Ability to Achieve Objectives

Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in each of the countries. They should be reasonable and attainable. A detailed work plan should explain step by step how objectives will be achieved, including a timetable for completion of major tasks. The substance of seminars, presentations, consulting, internships, and itineraries should be spelled out in detail. Responsibilities of in-country partners should be clearly described.

2. Institutional Capability

Proposed personnel and institutional resources should be adequate and appropriate to achieve the project's goals. The narrative should demonstrate proven ability to handle logistics. Proposal should reflect the institution's expertise in the subject area and knowledge of the conditions pertaining to it in Russia or Moldova.

3. Cost Effectiveness

Overhead and administrative costs for the proposal, including salaries, honoraria, and subcontracts for services, should be kept low. While this announcement does not proscribe a rigid ratio of administrative to program costs, in general, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from USIA. Proposals should show cost-sharing, both contributions from the applicant and from other sources.

4. Support of Diversity

Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program.

5. Project Evaluation

USIA is results-oriented. Proposals must include a plan and methodology to evaluate the activity's success, both as the activities unfold and at the and of the program. USIA recommends that the proposal include a draft survey questionnaire and/or plan for use of another measurement technique (such as a focus group) to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Organizations will be expected to cooperate with USIA in evaluating their programs under the principles of the Government Performance and Results Act of 1993, which requires federal agencies to measure and report on the results of their programs and activities.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: September 25, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–25989 Filed 10–1–97; 8:45 am]
BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

USIA–Bosnia Undergraduate Development Program; Request for Proposals

SUMMARY: Subject to the availability of funds, the Office of Academic Programs, Academic Exchanges Division, European Branch, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Colleges and universities (including community colleges and/or four year institutions) meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to host between two and five Bosnian students in a one year, non-degree undergraduate program for the academic year 1998–1999.

The USIA–Bosnia Undergraduate Development Program is designed to allow Bosnian students an opportunity to obtain knowledge, insight and cultural enrichment through their academic studies at American colleges and universities. The USIA strongly encourages institutions to guide students to courses in American studies, or other courses which emphasize

democracy, market economy, and civic society per the intent of the SEED funding. The USIA is holding an open solicitation for all universities and colleges giving preference to those that have demonstrated experience in hosting Bosnian students, partnerships with Bosnian higher education institutions, or expertise and interest in the region. Increase in program expenses together with reduced overall government funding for exchange programs make cost-sharing arrangements with host institutions a critical part of the USIA-Bosnia Undergraduate Development Program. Preference will be given to institutions that can provide cost-sharing toward tuition, fees, room and board expenses and/or other direct participant expenses. Cost-sharing may also be in the form of direct administrative and program costs.

The proposed funding will support one academic year of study in the fields of agriculture, business administration, civic education, criminal justice, economics, education, environmental resource management, journalism/mass communications, political science, and public administration. Similarly, the grant will support international round-trip travel of students, the housing of the students on campus or with host families, a four to twelve week internship in the students' field of specialization, culturally enriching activities, including but not limited to community outreach and service projects, and additional activities such as an orientation program.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

The grant and funding for this program has been allocated by the Support for the East European Democracy (SEED) initiative. The SEED initiative is special funding targeted to advance the democratic and economic transition of Central and Eastern Europe. The funding authority for the USIA-Bosnian Undergraduate Development Program is provided through the Support for East European Democracy Act of 1989.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AEE–98–02.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Thursday, December 4, 1997. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. Grants should begin April 1, 1998.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, European Branch, E/AEE Room 246 U.S. Information Agency, 301 Th Street, S.W., Washington, D.C. 20547, (202) 205–0525, fax (202) 206–7985, E.Mail: treed@usia.gov to request a Solicitation Package containing more detailed information. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION PACKAGE VIA FAX ON DEMAND: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Senior Program Manager Mr. Ted Kniker, and Program Associate Ms. Jaime Lofstrand on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEE–98–02, Office of Grants Management, E/XE, Room 326, 301 Th Street, S.W., Washington, D.C. 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The Bosnia Undergraduate Development Program is a one year educational exchange that aims at bringing Bosnian students to study at American universities or colleges in specified disciplines pertaining to democracy, market economies, and civil society per the SEED funding initiative.

Guidelines

Programs must comply with J–1 visa regulations and the host institutions are responsible for ensuring the 10–15 students' return to Bosnia. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

Proposed Budget

Institutions desiring to host students from Bosnia must submit a comprehensive line item budget based on the specific guidelines listed in the Solicitation Package. "Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000."

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Strength of Academic Program:* Proposals should exhibit academic rigor and a demonstrated capacity to meet the participants needs.

2. *Cost Effectiveness:* Plans should indicate a high level of cost-sharing and a competitive level of cost per individual student for the USIA.

3. *Ability to Provide Support Services:* Proposals should clearly demonstrate how the institution will meet the advisement and support needs of the international students.

4. *Ability to Provide Support for Securing Internships:* Proposed programs should demonstrate that they can strengthen and reinforce what has been learned in the classroom by aiding students in obtaining internships for the summer session.

5. *Ability to Provide Cultural Enrichment and Community Outreach Opportunities:* Proposals should demonstrate a commitment to planning, implementing, and supporting the Bosnian students in participating in cultural and community outreach programs.

6. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs or a potential to meet this standard. This includes responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Ability for Institutions to Develop or Enhance Linkages with Bosnian Institutions:* Proposals should provide a plan for developing or enhancing a relationship with Bosnian institutions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Options for Renewals

Subject to the availability of funding for FY 1999 and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals of renewals of awards.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: September 25, 1997.

Robert Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–25988 Filed 10–1–97; 8:45 am]
BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 62, No. 191
Thursday, October 2, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Chugachuk Island, AK in the Possession of the University of Alaska Museum, Fairbanks, AK

Correction

In notice document 97–25730 appearing on page 50964, in the issue of Monday, September 29, 1997, make the following correction:

On page 50964, in the second column, in the 12th line from the bottom, "November 28," should read "October 29,".

BILLING CODE 1505-01-D

federal register

Thursday
October 2, 1997

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 187

Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. 28860; Amendment No.–187–9]

RIN 2120–AG17

Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule.

SUMMARY: This document changes the date aircraft operators are liable for overflight fees for air traffic and related services received during Canada-to-Canada overflights from October 1, 1997, to March 1, 1998. This change is necessary to avoid temporary disruptions of air traffic patterns along the US/Canadian border and to preserve current operational control relationships with Canadian air traffic authorities and the resulting efficiencies.

EFFECTIVE DATE: October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey Wharff, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7035.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1997, the FAA published an Interim Final Rule entitled "Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace" (62 FR 13496). In the interim final rule, the effective date for fees charged to aircraft operators for air traffic control and related services during Canada-to-Canada overflights was deferred from May 19, 1997, until October 1, 1997. The rationale for the deferral, as outlined in the interim final rule, was that a significant number of aircraft flying between points in Canada through U.S.-controlled airspace would have an economic incentive to divert into Canadian-controlled airspace and avoid the U.S. fees if there were no corresponding Canadian enroute fees. NAV CANADA, a Canadian non-share capital corporation that owns, manages, and operates Canada's civil air navigation system, had originally planned to introduce its enroute charging system on November 1, 1997; this date has recently been revised to March 1, 1998. This change has caused the FAA to reconsider its policy on deferral of Canada-to-Canada flights.

Canada currently has an overflight charge for aircraft that transit Canadian-controlled airspace. With the exception of flights of aircraft that weigh more than 200 tons and that land or take off in Alaska, U.S. domestic aircraft operations have been temporarily exempted from this Canadian charge. NAV CANADA has stated that this exemption will terminate once the U.S. initiates charges on Canada-to-Canada overflights through U.S.-controlled airspace.

Deferment of Canada-to-Canada Overflight Fees

Currently, it is more cost effective for many Canada-to-Canada flights to transit U.S.-controlled airspace because it is either the shortest flight route or it offers the most favorable flight conditions.

In the interim final rule, the FAA stated that if it initiated overflight charges on Canada-to-Canada flights in the absence of a Canadian enroute fee, it is likely that a significant number of these flights would divert to use only Canadian-controlled airspace because it would constitute the least expensive route in which to operate. The FAA remains concerned that diversion will occur if there is only an FAA fee without a Canadian enroute fee for the period October 1, 1997, to March 1, 1998. NAV CANADA has continued to express concern that FAA implementation of a Canada-to-Canada overflight fee prior to the implementation of the Canadian enroute charge would temporarily increase the workload at Canadian control centers and could adversely affect existing bilateral agreements regarding U.S. air traffic control of certain Canadian airspace. Deferral of fee imposition will minimize temporary disruption of traffic that is likely to occur in the absence of a Canadian enroute fee.

Maintenance of the current U.S.-Canadian agreement concerning this airspace is important for the optimized routing for a significant number of both U.S. and Canadian aircraft operations. Deferring fee imposition will allow time for further U.S.-Canadian consultation, and for similar consultation, if appropriate, with other air traffic organizations as well as the International Civil Aviation Organization.

Justification

The Administrative Procedure Act, 5 U.S.C. 553 *et seq.*, requires that prior to the issuance of a final rule, an agency give notice to the public and seek comment on a proposed rule.

The March 20, 1997, interim final rule (62 FR 13498) was issued without public notice pursuant to specific Congressional authority, 49 U.S.C. 45301(b)(2). At that time, comments were sought in that interim final rule including the issue of Canada-to-Canada overflight deferral. Comments on this issue as well as all others received will be addressed in the final rule.

This document is being issued without notice or request for comments. As this action is relieving in nature and extends previously stated FAA policy, no additional notice or comment is required by applicable statutes or executive orders. Also , in view of the imminent expiration date of the deferral for these overflights, notice and comment procedures would be impracticable for this amendment.

Conclusion

There are no costs associated with this change in the interim final rule. Accordingly, the FAA has determined that this amendment (1) is not a significant regulatory action under Executive Order 12866; (2) is not a significant regulatory action under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Because the economic impact of this amendment is minimal, a full regulatory evaluation has not been prepared.

List of Subjects in 14 CFR Part 187

Administrative practice and procedure and Air transportation.

The Amendment

The Federal Aviation Administration amends 14 CFR part 187 as follows:

PART 187—FEES

1. The authority citation for part 187 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40104–40105, 40109, 40113–40114, 44702, 45301–45303.

2. Appendix B is amended by revising paragraph (c) to read as follows:

Appendix B to Part 187—Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace

* * * * *

(c) *Deferral of Overflight Charges.* This appendix does not apply to aircraft that take off and land in Canada without intermediate stops outside of Canada that operate through U.S.-controlled airspace until March 1, 1998.

* * * * *

Issued in Washington, DC on September 26, 1997.

Jane F. Garvey,

Administrator.

[FR Doc. 97–26095 Filed 9–26–97; 4:53 pm]

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federal register

Thursday
October 2, 1997

Part III

Department of Justice

28 CFR Part 58

Procedures for Suspension and Removal of Panel Trustees and Standing Trustees; Final Rule

DEPARTMENT OF JUSTICE

28 CFR Part 58

RIN 1105–AA54

Procedures for Suspension and Removal of Panel Trustees and Standing Trustees

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The United States Trustee Program ("Program"), a component of the Department of Justice, is formalizing procedures to govern the suspension and termination of future case assignments to panel and standing trustees. The final rule enables a trustee to obtain a determination by the Director of the Executive Office for United States Trustees whether a decision by a United States Trustee to suspend or terminate future case assignments is supported by the record and is an appropriate exercise of the United States Trustee's discretion. This rule specifies the method by which United States Trustees shall announce suspension and termination decisions. It also formalizes the procedure by which a trustee obtains review by the Director, the manner in which that review will be conducted, and the standard the Director will employ in reaching a determination.

The Director's decision will constitute final agency action by the Department of Justice. If the agency's final action is adverse, this rule enables a trustee to obtain judicial review of it pursuant to the Administrative Procedure Act. 5 U.S.C. 552, *et seq.*

EFFECTIVE DATE: This rule is effective November 3, 1997.

ADDRESSES: Office of the General Counsel, Executive Office for United States Trustees, 901 E Street, NW., Room 740, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT:

Martha L. Davis, General Counsel, or P. Matthew Sutko, Attorney, (202) 307–1399. This is not a toll free number.

SUPPLEMENTARY INFORMATION: This final rule provides a method and a review process for suspending and terminating future case assignments to panel and standing trustees. A proposed rule on this subject was published in the **Federal Register** on May 23, 1997 (62 FR 28391) (the "proposed rule"). A summary of background information, public comment, and agency response follows.

I. Background and Rulemaking History

A. The United States Trustee Program

Congress enacted the United States Trustee Program on a pilot basis in the Bankruptcy Reform Act of 1978, Pub. L. No. 95–598, 92 Stat. 2549 (1978), as a component of the Department of Justice and charged it with the responsibility of supervising the administration of bankruptcy cases and trustees. The success of the pilot program led Congress to expand the Program nationwide in 1986 as a permanent component within the Department of Justice. Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99–554, 100 Stat. 3088 (1986).

The Program consists of the Executive Office for United States Trustees, which is headed by the Director, and 21 United States Trustees. The Director is a Justice Department official who acts under authority delegated by the Attorney General. United States Trustees are Justice Department officials appointed by, and who serve at the pleasure of, the Attorney General. 28 U.S.C. 581(a) and (c). United States Trustees supervise the administration of bankruptcy cases and case trustees within specified geographic regions. 28 U.S.C. 561.

Congress created the Program to remedy two longstanding weaknesses that had impaired the efficient and fair administration of bankruptcy cases. The prior system's first weakness was its requirement that bankruptcy courts engage in both judicial and administrative functions in bankruptcy cases. Under the prior system, bankruptcy courts litigated disputes among parties, including trustees. At the same time, bankruptcy courts were responsible for appointing trustees to cases and awarding their compensation.

For nearly a century it was widely acknowledged that a separation of administrative and judicial functions was necessary to ensure the integrity of the system, to preserve its effective and fair administration, and to protect the innocent debtors and creditors for whose benefit the system exists. *See, e.g.*, William J. Donovan, *House Committee on the Judiciary, Administration of Bankrupt Estates*, 71st Cong. 3d Sess. (Comm. Print 1931) (recommending—based upon an examination of 4,000 witnesses and interviews with 19 federal judges, 102 bankruptcy referees and 200 current or former trustees—that Congress rectify the inadequate and corrupt administration of bankruptcy cases by creating a Federal Bankruptcy Commissioner); Solicitor General Thomas Thacher, *Report to the President on the Bankruptcy Act and its Administration in the Courts of the United States, Dated December 5, 1931, reprinted in* S. Doc. No. 65, 72nd Cong. 1st Sess. (1932) (recommending legislation that would remedy cronyism and the lack of administrative oversight in bankruptcy cases by authorizing career civil servant bankruptcy administrators to oversee the administration of bankruptcy cases); *Report of the Commission of the Bankruptcy Laws of the United States*, H.R. Doc. No. 137, 93d Cong. 1st Sess. (1973) (recommending legislation to improve bankruptcy administration and reduce cronyism by transferring administrative functions to an administrative body staffed by civil servants).

The prior system's commingling of trustee supervision and the adjudication of disputes between trustees and third parties in bankruptcy courts resulted in a widespread perception that an unduly close relationship existed between bankruptcy judges and trustees, and this fostered cornyism and insider influence and abuse. *See* H.R. Rep. No. 595, 95th Cong. 2d Sess. 92 (1977). The House of Representative's Report on the proposed Bankruptcy Code concluded that "[a]s administrator of bankruptcy cases, and the individual responsible for the supervision of the trustee or debtor in possession, it is an easy matter for a bankruptcy judge to feel personally responsible for the success or failure of a case * * * The institutional bias thus generated magnifies the likelihood of unfair decisions in the bankruptcy court * * *." H.R. Rep. No. 595, 95th Cong., at 91, 1st Sess. (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963.

The Bankruptcy Code fixed this problem by transferring administrative functions, including the appointment and supervision of trustees, to the United States Trustee Program within the Department of Justice. The Program now appoints and supervises trustees, and, if appropriate, suspends or terminates future case assignments to them.

The second reason Congress created the Program was the recognition that the wide-ranging administrative aspects of the system should be committed to one accountable agency. Congress charged the Program and the Department with the task of supervising the administrative aspects of the system in order to protect debtors and creditors by providing a more accountable and consistent focus, and by supplanting the disparate procedures emanating from separate judicial districts. As one court has noted, in creating the United States Trustee Program, "Congress specified

that the U.S. Trustees were to be independent of direct court supervision, as 'executives of the bankruptcy network.'" *United States Trustee* v. *Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (quoting in part H.R. Rep. No. 595, 95th Cong. 88–89).

B. The Program's Supervision of Trustees

Among the most important administrative functions assumed by the Program are the appointment and supervision of trustees who administer cases under chapters 7, 12, and 13 of the Bankruptcy Code. 28 U.S.C. 509, 510 and 586. The United States Trustee Program has enacted standards that set minimum qualifications for appointment. 28 CFR 58.3 and 58.4.

Trustees are fiduciaries with wide-ranging responsibilities to effectuate the goals of the particular chapter under which a bankruptcy case is filed. Because they are fiduciaries, trustees are held to very high standards of honesty and loyalty. *See generally Woods* v. *City National Bank & Trust Co.*, 312 U.S. 262, 278 (1941); *Mosser* v. *Darrow*, 341 U.S. 267 (1951). *See also Meinhard* v. *Salmon*, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928) (Cardozo, C.J.).

Trustees are held to high standards not only because of their fiduciary duties to debtors and creditors but because they take charge of debtors' property and they hold large amounts of other people's money. In 1996, chapters 7, 12, and 13 trustees held combined receipts of well over three and a half billion dollars:

1996 RECEIPTS HELD BY TRUSTEES BY CHAPTER

Chapter 7 trustees	Chapter 12 trustees	Chapter 13 trustees
$1,479,531,213	$52,372,261	$2,147,407,093

Trustees exist not for their own benefit but to collect, protect, account for, and distribute these revenues to creditors in accordance with the payment provisions set forth in the Bankruptcy Code. Trustees often oversee many cases; some chapter 13 trustees, for example, administer many thousands of cases. Given the large amounts of money they control and the many duties they perform, dishonest trustees and trustees who do not manage their estates properly diminish the integrity of the bankruptcy system and jeopardize the assets of the honest debtors and creditors whose property they hold. For this reason, it is crucial that trustees be monitored; if necessary, those who cannot fulfill their duties must stop receiving new cases.

C. Assignment of Cases to Trustees

Chapters 7, 12, and 13 trustees receive cases through a two step process. The first step entails appointment of a trustee to the pool of individuals eligible to receive future cases. The second step involves assigning specific cases to individuals from those pools.

The first step in receiving chapter 7 cases is to be selected as a member of the panel of chapter 7 trustees for a specific geographic area. 28 U.S.C. 586(a)(1). A panel is the group of persons within a specific geographic region who are eligible to receive cases.

A United States Trustee selects the persons who serve on the chapter 7 panels in each region. When a person becomes a panel member, the person is eligible for appointment as an interim trustee in chapter 7 cases. 11 U.S.C. 701(a)(1).

Chapters 12 and 13 standing trustees are appointed by United States Trustees, with the approval of the Attorney General, to act as trustees within a specific geographic area. In some districts only one chapter 12 or 13 standing trustee is appointed to receive future cases. Other districts have multiple standing trustees. Once appointed to be a standing trustee for a specific district by a United States Trustee, that trustee will then receive specific cases within that judicial district.

Chapter 7 trustees are appointed to a chapter 7 panel for a renewable one year term. Chapters 12 and 13 standing trustees currently serve no fixed term; they generally remain eligible to receive future cases until that eligibility is terminated. The appointment documents signed by every trustee, whether a chapter 7 panel trustee, or a chapter 12 or a chapter 13 standing trustee, specifically provides that the trustee's appointment may be terminated at any time.

Chapter 7 panel trustees, and a chapters 12 and 13 standing trustees, effectively function as economic monopolists, must like public utilities. Debtors cannot select who will act as their trustee. They must accept the trustee who is appointed for them. With one exception, chapters 7, 12, and 13 trustees do not have to compete in the marketplace for cases as they arise. This single exception applies to chapter 7 cases where creditors may elect a chapter 7 trustee to replace the interim chapter 7 trustee initially appointed by the United State Trustee. 11 U.S.C. 701. Such elections are exceedingly rare: the Administrative Office of U.S. Courts reports that 3,944,893 chapter 7 cases were filed from January 1, 1991 through December 31, 1996 while Program reports show only 251 elections in chapter 7 cases between January 1, 1991 and February 3, 1997.

Rather than requiring trustees to compete for the assignment of specific cases based upon competence or price, Congress created the Program to appoint trustees and to regulate and assure their competence. United States Trustees act to protect debtors and creditors through careful and thorough trustee selection and supervision. Under existing law, trustees have no right or entitlement to receive future cases. 28 U.S.C. 586. *See Joelson* v. *United States*, 86 F.3d 1413 (6th Cir. 1996) (holding that trustees have no statutory or constitutionally protected interest in their positions as trustees); *Richman* v. *Straley*, 48 F.3d 1139, 1143 (10th Cir. 1995) (trustees have no constitutional right to continue acting as trustees); *Shaltry* v. *United States*, 182 B.R. 836, 842 (D. Ariz.) (same), *aff'd*, 1995 WL 866882 (9th Cir. 1995). This enables United States Trustees to stop assigning cases to current trustees if there are others who could do a better job protecting debtors and creditors or who could represent their interests as a lower cost. It also enables United States Trustees to stop assigning cases to trustees whose performance is weak or who engage in improper conduct.

The Program has carefully developed its structure and procedures for supervising trustees. Ensuring that trustees are competent is a time consuming process. It requires United States Trustees to observe all facets of a trustee's operation, often over a long period of time. It requires United States Trustees to have audits or similar reviews performed to analyze trustees' operations. Often, United States Trustees take months or even years to evaluate all information, to alert a trustee to problems, to attempt to assist a trustee in rectifying those problems, and to determine whether a trustee has

performed, or will be able to perform, his or her functions effectively.

The Program's structure enables it to carry out these functions more effectively than isolated bankruptcy courts were able to carry them our under the old system. Bankruptcy courts lacked the resources and the institutional structure to perform those tasks. For this reason, Congress charged United States Trustees with the administrative responsibilities of appointing and supervising panel and standing trustees. Although current law gives trustees no right or expectation to future cases, neither does it give any third party, no matter how better qualified or more cost effective than the trustee, any statutory or constitutional right to demand that future cases be assigned to that individual.

D. Suspension and Termination of Trustees

It is the Program's responsibility to protect debtors and creditors by ensuring that trustees are the appropriate individuals to continue receiving future cases. The Program is also responsible for ensuring that the system is operating smoothly and that cases are being administered efficiently. To fulfill these responsibilities, the Program closely monitors trustees' performance by regularly reviewing their administration of cases. Indeed, Program employees work with trustees almost on a daily basis.

As part of their supervisory responsibilities, United States Trustees must ensure that the Program does not devote inordinate amounts of its resources to supervising a limited number of chronically under-performing trustees. The Bankruptcy Code places many responsibilities upon the Program beyond simply supervising trustees. Trustees who are deficient in basic case administration, or who have to be coaxed, reminded, or prodded into fulfilling their responsibilities, force the Program to divert its limited resources from its other statutory tasks. Although problem trustees may tax the patience of the other participants in the bankruptcy system only occasionally, and those participants may not be fully aware of the shortcomings in those trustees' performance, deficient trustees need constant supervision, which drains the Program's limited resources. Consequently, the efficient administration of the bankruptcy system requires that United States Trustees cease assigning cases to them.

When appropriate, including when a trustee engages in improper conduct or fails to perform adequately, the Program will stop assigning future cases to trustees. Sometimes, a suspension is an appropriate regulatory tool that is used to give a trustee an opportunity to improve performance; in other circumstances termination is appropriate. The Program also may stop assigning future cases to trustees when the caseload in a judicial district declines, resulting in too many trustees for too little work. The Program also may stop assigning future cases when it determines that more competent, better qualified candidates may be available.

E. Effect of Suspension or Termination on Current Caseload

A decision to terminate or suspend a trustee's appointment to future cases has no legal impact upon a trustee's ability to continue administering cases that were previously assigned to the trustee. Current law allows trustees to continue administering cases to which they have been appointed unless the court issues an order removing the trustee in one or more specific cases pending under title 11 of the U.S. Code. 11 U.S.C. 324. Thus, suspensions and terminations are prospective only, and do not affect existing cases that have been assigned to panel and standing trustees.

F. Procedures for Determining Suspensions and Terminations

The Program has always had informal procedures through which an affected trustee could ask the Director of the Executive Office for United States Trustees to review a termination or suspension. The final rule formalizes these procedures. The final rule benefits the Program by allowing it to ensure that its final decision not to assign cases in the future will be based upon a deliberate consideration of all relevant factors at the highest level within the Program. It also has the effect of benefiting trustees by ensuring that a United States Trustee does not suspend or terminate trustees inappropriately or without support in the record.

Panel and standing trustees asked the Program to adopt more formal procedures regarding such decisions. In response to those requests, the Program began in July of 1996 to devise comprehensive written procedures. Prior to issuing its proposed rule, the Program solicited comments from trustees and others regarding what form those procedures should take The result of this lengthy process culminated in the publication of a proposed rule in the **Federal Register** for notice and comment. See 62 FR 28391 (May 23, 1997).

II. Purpose of the Final Rule

Through this rulemaking, the Program is devising a procedure by which it will reach a final determination whether a trustee should receive cases in the future. This rule does not affect a United States Trustee's decision to continue assigning future cases to existing panel and standing trustees. The rule applies when a United States Trustee concludes cases should not be assigned to a trustee. In such a case, the United States Trustee must notify the trustee why the decision has been reached. If a United States Trustee stops assigning cases to a trustee and the trustee chooses not to dispute the propriety of that decision, the decision becomes final and is not subject to review. If the trustee disputes the action, the final rule provides a process for review.

The rule sets forth fourteen non-exclusive examples of conduct or circumstances which may constitute reasons why a United States Trustee might reach such a decision. Those reasons fall into three general categories. The first relates to dishonesty or lack of competence. The second relates to circumstances in which the trustee's performance may meet minimal levels of competence but other more qualified persons may be available to better serve debtors and creditors. The third involves external factors that can reduce the demand for trustees in a specific geographic area, such as when the area's volume of cases declines.

The Program relied upon a number of sources in devising these categories, the foremost of which is its considerable experience in supervising trustees. The Program also considered procedures adopted by the Judicial Branch for supervising trustees in North Carolina and Alabama. Under section 302(d)(3)(I)(i) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Bankruptcy Administrators, who are Judicial Branch officials, supervise trustees in those two states until 2002, at which time those supervisory responsibilities shall transfer to the Program. In reaching their decisions, Bankruptcy Administrators may consider 16 factors that are, in large measure, identical to many of the factors set forth in the final rule.

The Administrative Office procedure differs from this rule in at least one significant respect. The judicial procedure allows the trustee to seek reconsideration only from the Bankruptcy Administrator who made the initial decision, but it does not provide for any further review. In contrast, this rule provides that review of a United States Trustee's decision shall be conducted by the Director and a trustee may obtain judicial review of the Director's final decision under the Administrative Procedure Act.

If a trustee disagrees with a United States Trustee's decision not to assign cases to the trustee in the future, the trustee must notify the Director within 20 days of the trustee's decision to seek review of the United States Trustee's conclusions. If review under the rule is triggered, the rule entities the trustee and the United States Trustee to explain to the Director their position on the propriety of a cessation of future case assignments. Both may provide the Director with any material they believe supports their conclusion.

Under the rule, the Director will review those submissions to determine whether a decision not to assign cases in the future is an appropriate exercise of a United States Trustee's discretion and whether that decision is supported by the record before the Director. Neither party bears the burden of proof in such a proceeding. After reviewing the material, the Director will reach a decision, which shall constitute final agency action. The agency's administrative record will consist of the materials provided by the trustee and the United States Trustee and the Director's decision.

Before this rule became effective, such a decision would have been final and unreviewable because 28 U.S.C. 586 commits such termination decisions to the Program's discretion and does not create a standard that a court can use to review the reasonableness of the Program's administrative decision. *Joelson* v. *United States*, 86 F.3d 1413 (6th Cir. 1996).

This rule creates a standard that courts can review pursuant to the Administrative Procedure Act by providing that the Director shall determine whether a challenged decision not to assign future cases constitutes an appropriate exercise of the United States Trustee's discretion and is supported by the record. *See, e.g., Clifford* v. *Pena*, 77 F.3d 1414, 1417 (D.C. Cir. 1996) (providing that an agency can facilitate judicial review by creating a standard in a rule); *Block* v. *Securities and Exchange Commission*, 50 F.3d 1078, 1084–85 (D.C. Cir. 1995) (same).

In preparing this rule, the Program has been mindful that trustees hold billions of dollars of other people's money, yet the interests they represent have little or no say in their hiring or their firing. The Program also has been mindful of Congress' charge that the Program, as the primary regulator of trustees, ensure that future cases be assigned only to trustees who are honest and capable. The Program also has been mindful of the need to balance the number of cases and the number of trustees. Finally, the Program has concluded that the best interests of the bankruptcy system are fostered by an open process which encourages competent, qualified individuals to apply to serve as trustees. As the United States courts of appeals have recognized, case assignment is not a government entitlement program created so the first person appointed to act as a trustee will always get future cases. Instead, trustees are service providers to debtors and creditors, selected by the Program for the benefit of those debtors and creditors.

This rule allows the Program to ensure that appropriate decisions are made about whether to stop assigning cases to a trustee. It gives affected trustees meaningful input in that process and allows for judicial review of the Program's final decision. This comprehensive process will maximize rational decision-making by the Program, promote a fair and efficient system of case administration, and protect the intended beneficiaries of the bankruptcy process, the debtors and creditors for whom the bankruptcy laws were created.

III. Summary of Major Changes in Final Rule

The final rule makes a number of changes based upon the comments submitted to the Program. Three changes are major.

First, subsection (c) of the final rule provides that suspensions and terminations will not become effective, and trustees will continue to receive cases, until a trustee's time to seek administrative review from the Director has expired or, if such review is sought, until the Director issues a final written decision; the proposed rule had suggested making suspensions and terminations effective upon the date specified in the notice of suspension or termination, which could have been a date earlier than the completion of the review process. In order to protect innocent debtors and creditors, however, the final rule provides that upon issuing a notice of suspension or termination a United States Trustee may issue an interim directive immediately suspending case assignments during the review process if the United States Trustee determines that a trustee is placing estate assets at risk, has lost his eligibility status, or has engaged in fraudulent, illegal or other gross misconduct. The final rule enables a trustee to obtain a stay of an interim directive from the Director.

Second, the rule allows a trustee to ask that specific documents in the United States Trustee's possession be included in the record. This will enable trustees to rely upon documents they believe are relevant but which are under the United States Trustee's control.

Third, the final rule cuts the time necessary to complete the review process roughly in half. If must now be completed no more than 45 days from the date on which a trustee requests administrative review. This has been accomplished by (a) reducing the time for, and the scope of, the United States Trustee's response to the trustee's request for review, (b) deleting the trustee's reply brief, and (c) making optional the use of a reviewing official, who was to have been a Program employee who had 30 days in every case to prepare and submit a report to the Director before the Director could issue a final decision on a trustee's request for review. In order to permit resolution of more complex disputes, the 45 day deadline may be extended by the Director, but only if all parties, including the trustee, agree.

In addition, the commentary to the final rule clarifies that the Director, or his designee, may conduct a face to face meeting with the trustee and the United States Trustee if the Director determines that there is a genuine dispute over facts material to the Director's determination. The level of formality and complexity of a meeting in a particular case will turn upon the nature of the factual dispute presented.

IV. Discussion of Public Comments

A. Overview

The Program received 12 comments on the proposed rule. Three comments were written by lobbyists or associations that represent the interests of trustees. Eight trustees submitted comments. One member of Congress wrote to express "strong support for th[e] proposed rule."

Although one comment was submitted late, the late submission reflects ideas raised in timely comments. The Program has considered each comment carefully and appreciates the time taken to provide them. The Program's responses to the comments are discussed below.

B. Specific Comments

1. Some comments questioned the power of United States Trustees to suspend or terminate the assignment of future cases to trustees. Section 586(a)(1) of title 28 allows the Program to "establish, maintain, and supervise a

panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7", and section 586(b) allows it to "appoint one or individuals to serve as standing trustee" in cases filed under chapter 12 and chapter 13 of the Bankruptcy Code. Section 586 commits appointment decisions to the discretion of the Program and section 701(a)(2) of the Administrative Procedure Act shields these termination decisions from judicial review under the APA. *Joelson* v. *United States*, 86 F.3d 1413, 1415–18 (6th Cir. 1996) (termination of a chapter 7 trustee's eligibility to receive cases is not subject to judicial review under the APA). *See also Richman* v. *Straley*, 48 F.3d 1139, 1143 (10th Cir. 1995) (removal of chapter 12 and 13 trustees from eligibility to receive future cases is committed to the discretion of the United States Trustee and is not subject to review under the Due Process clause). As one court has declared, "§ 586 'fairly exudes deference to the [United States Trustee], and appears to [the court] to foreclose the application of any meaningful judicial standard of review.'" *Shaltry* v. *United States*, 182 B.R. 836, 842 (D. Ariz.) (quoting in part *Webster* v. *Doe* 486 U.S. 592, 600 (1988)), *aff'd*, 1995 WL 866862 (9th Cir, 1995). *Cf. North Dakota ex rel. Bd of Univ. and School Lands* v. *Yeutter*, 914 F.2d 1031, 1035 (8th Cir. 1990), *cert. denied*, 500 U.S. 952 (1991) (statute authorizing an agency to waive eligibility requirement for participation in a soil conservation program committed to agency discretion); *Scalise* v. *Thornburgh*, 891 F.2d 640, 648–49 (7th Cir. 1989), *cert. denied*, 494 U.S. 1083(1990) (statute authorizing Attorney General "to make regulations for the proper implementation of * * * treaties" not subject to review); *First Family Mortgage Corp. of Florida* v. *Earnest*, 851 F.2d 843, 845 (6th Cir. 1988) (statute authorizing VA Administrator to make refunds at his option provided no standards for review); *Schneider* v. *Richardson*, 441 F.2d 1320, 1321 & n.2 (6th Cir.), *cert. denied*, 404 U.S. 872 (1971) (statute authorizing an agency to prescribe maximum fees by regulation committed to agency discretion).

In *Carlucci* v. *Doe*, 488 U.S. 93, 99 (1988), the Supreme Court held that a statute granting a public official the power to appoint an individual also confers the power to terminate that individual unless the statute expressly provides otherwise. The Court held that "as a matter of statutory interpretation [] absent a 'specific provision to the contrary, the power of removal from office is incident to the power of appointment.'" *Carlucci* v. *Doe*, 488 U.S. at 99 (Secretary of Defense had power to terminate employee under provision of National Security Agency Act of 1959 that mentioned only appointment) (quoting in part *Keim* v. *United States*, 177 U.S. 290, 293 (1900)). *Accord Joelson* v. *United States*, 86 F.3d at 1422 (holding that the Program's power to appoint chapter 7 trustees to rotating panels gives it the power to remove them from panels); *Richman* v. *United States*, 48 F.3d at 1144 (relying upon *Carlucci* to hold that the power to appoint chapter 12 and 13 standing trustees includes the power to stop appointing them to future cases). Given the power to appoint trustees to future cases exists under section 586, that power carriers with it the power to cease assigning future cases to trustees because no provision in title 28 expressly precludes such action.

2. A number of comments suggested that the rule violates trustees' due process rights. This is incorrect. Trustees have no right to be appointed to future cases. Neither section 586 nor any provision of the Bankruptcy Code creates a government entitlement program that guarantees trustees any right to future cases.

The United States courts of appeals have consistently reached this conclusion. *See Joelson* v. *United States*, 86 F.3d at 1415–18 (no right or expectation to future cases); *Richman* v. *Straley*, 48 F.3d at 1143 (removal of chapter 12 and 13 trustees from eligibility to receive future cases is committed to the discretion of the United States Trustee and is not subject to review under the Due Process clause); *Shaltry* v. *United States*, 182 B.R. at 842 (D. Ariz.) (same), *aff'd*, 1995 WL 866862 (9th Cir. 1995).

3. A number of comments suggested that the proposed rule created a review process that took too long to complete. The Program recognizes that prompt final agency action benefits creditors, debtors, and trustees. Therefore, the final rule has been significantly streamlined to mandate that review shall be completed within 45 days of receipt by the Director of a trustee's request for review. The rule achieves this reduction by (a) reducing the time for, and the scope of, the United States Trustee's response to the trustee's request for review, (b) deleting the trustee's reply, and (c) making optional the use of a reviewing official, who was to have been a Program employee who had 30 days in every case to prepare and submit a report to the Director before the Director could issue a final decision on a trustee's request for review.

Under the final rule, a United States Trustee must provide an affected trustee with a statement of the reasons for a suspension or termination and supporting materials in a notice of suspension or termination that is to be sent to the trustee by overnight courier. The trustee then has 20 days to file a request for review. That request for review describes why the trustee disagrees with the United States Trustee's decision, and is accompanied by the documents and materials the trustee wishes the Director to consider.

Under the proposed rule, the United States Trustee then had 20 calendar days to respond to the trustee's position and the United States Trustee was free to provide the Director with all material the United States Trustee wished the Director to consider. Because the United States Trustee could submit material that might address matters not initially raised in the notice of suspension or termination, or in the trustee's request for review, the trustee was given 10 days to provide a response.

The final rule reduces the United States Trustee's time to respond to a trustee's request for review to 15 days. Under the final rule, the United States Trustee may now respond only to matters raised in the trustee's request for review. Unlike the proposed rule, the final rule makes clear that the United States Trustee cannot raise new matters, the 10 day reply period for the trustee has been deleted as unnecessary. These changes reduce the time to reach a final decision by at least 15 days.

At least 20 additional days have been saved by giving the Director the option whether to use a reviewing official in a particular case. Under the proposed rule, the reviewing official was to have been a Program employee who would have acted as the Director's point of contact with the trustee and the United States Trustee and who would have prepared a report that the Director would use in deciding the request for review. The reviewing official had 30 days to prepare the report under the proposed rule. In addition, a number of days would have been expended in selecting a reviewing official and having the reviewing official transmit the trustee's materials to the United States Trustee. The Director then had an additional 20 days to reach a final decision.

The final rule gives the Director the option of using a reviewing official on a case by case basis. This allows the Director to reach his final decision more promptly without having to wait for a report from a reviewing official in every case.

Because he will no longer have a report before beginning his determination in every case, the Director's time to reach a final decision has been increased from 20 to 30 days. This produces a net savings of 20 days over the proposed rule because the reviewing official and the Director had a combination period of 50 days to conduct a review, and the final rule gives the Director only 30.

In addition, the final rule eliminates the delay that arose under the proposed rule while a reviewing official was selected and the delay that resulted from the reviewing official having to transmit materials. These changes respond to comments expressing concerns about those time delays.

The final rule also shortens the review process by deleting the ability of a reviewing official to grant extensions. Under the proposed rule, the reviewing official had discretion to extend the United States Trustee's or the trustee's time for response to a date certain. Comments expressed concern this provision could significantly lengthen the review process. The Program revised the final rule to respond to those concerns. The final rule provides that the Director will issue a final decision no later than 45 days from receipt of a trustee's request for review. The rule does, however, allow the trustee and the United States Trustee to jointly agree that the time for final agency action should be extended. Time might be extended, for example, to enable the Director to conduct a face to face meeting.

4. Comments suggested the proposed rule did not require notice before adverse action is taken and did not provide adequate interim relief during the review process. The final rule addresses these concerns. Subsection (c) of the final rule provides that suspensions and terminations will not become effective, and trustees will continue to receive cases, until a trustee's time to seek administrative review from the Director has expired or, if such review is sought, until the Director issues a final written decision; the proposed rule had suggested making suspensions and terminations effective upon the date specified in the notice of suspension or termination, which could have been a date earlier than the completion of the review process. In order to protect the integrity of the system and thereby the debtors and creditors it serves, the final rule provides that a United States Trustee may issue an interim directive suspending case assignments during the review process if the United States Trustee determines that a trustee is placing estate assets at risk, ineligible to serve as a trustee, or has engaged in fraudulent, illegal or other gross misconduct. A trustee may seek a stay of an interim directive from the Director upon filing a timely request for review.

5. One comment questioned whether a trustee must institute the review process to obtain a stay of a suspension or termination. Under the final rule, a termination or suspension will not take effect until the time to seek review has expired. If a trustee does not seek review, the suspension or termination decision will become final and unappealable and not subject to further agency action or judicial review. It a trustee does seek review, a suspension or termination will not take effect until the Director issues a final decision. Upon issuing a notice of suspension or termination, a United States Trustee may issue an interim directive ceasing the assignment of cases to the trustee during the review process if the United States Trustee specifically finds that one of the criteria in section (d) (1) through (4) of the rule are met. The trustee may seek a stay of an interim directive but needs to submit a timely request for administrative review to do so. The final rule authorizes the Director to stay an interim directive.

6. One comment suggested that the rule does not provide for the creation of an official record for judicial review. This is incorrect. The United States Trustee's notice of termination, the trustee's request for review, the United States Trustee's response, the Director's final determination, and the documents and materials provided by the participants with those submissions constitute the agency record for purposes of subsequent judicial review.

7. Comments suggested the rule places an improper burden of proof upon the trustee. This is incorrect. Although the trustee must affirmatively seek review, the rule requires the Director to determine whether a decision not to assign cases in the future is an appropriate exercise of a United States Trustee's discretion and whether that decision is supported by the record before the Director. Neither party bears the burden of proof in convincing the Director whether the applicable standard is met. To the extent a burden fell upon any party, it would fall upon the United States Trustee whose decision must constitute an appropriate exercise of discretion and must be supported to the record.

8. Comments suggested the rule suffers from the absence of review by a neutral party, an on the record hearing, mandatory discovery, or the requirements of sworn testimony. The Program does not view this as a weakness. Indeed, such procedures would significantly lengthen the time it would take to determine a request for review. The final rule allows the parties to provide whatever material they think is appropriate.

Section (h) of the rule authorizes the Director to request additional information, which could include a face to face meeting. This allows the Director, or his designee, to conduct a face to face meeting with the trustee and the United States Trustee if the Director determines that there is a genuine dispute over facts material to the Director's determination. The level of formality and complexity of a meeting in a particular case will turn upon the nature of the factual dispute presented. In some cases a meeting could involve a trustee appearing with a representative, submitting documentary evidence, presenting witnesses, and confronting any witnesses the agency presents. *See generally* 28 CFR 67.313 (authorizing a similar meeting in the debarment context but only if the government first determines a dispute of material fact exists). In the Program's experience, the facts underlying termination or suspension decisions are rarely in dispute. Instead, most requests for review involve a disagreement whether the facts support such action. In those cases, as in the debarment context, a meeting likely would not take place. The Program thus believes that final rule strikes an appropriate balance between the need for an effective and an efficient review process.

The final rule enables the Program to reach a final decision whether to suspend or terminate the assignment of future cases promptly so a trustee can test that decision, if appropriate, in subsequent judicial review under the Administration Procedure Act. This process makes possible ultimate review by a United Stats district court, a United States court of appeals, and potentially by the United States Supreme Court. Each is a neutral party.

The final rule merely creates a mechanism by which the agency can determine the appropriateness of its decision before that decision can be tested through subsequent judicial review if the trustee wishes to obtain judicial review under the APA. The final rule gives a trustee significant input into that final decision, but it is entirely appropriate for the Director, as the head of the Program, to render a final decision.

Other regulators use precisely this process. Agency commissions, boards, and heads routinely act as the ultimate decision-maker on what action an

agency should take. Agencies do not delegate the agency's decision making to a third party outside the agency. While various agencies use differing procedures to gather the data for, or make recommendations to, the ultimate decision-maker, in every relevant instance, the agency decides for itself what is the appropriate decision to make.

The proposed rule called for the creation of a reviewing official who was to have been a Program employee who would have reviewed the materials provided by the participants and recommend whether the Director should affirm, modify, or reverse the United States Trustee's suspension or termination. A number of comments criticized the reviewing official position for lack of independence because it was to have been staffed by a Program employee. These criticisms failed to recognize the significance of the fact that the reviewing official reports directly to the Director, not to the United States Trustee who made the initial determination. The Director is the head of the Program and acts under independent authority delegated by the Attorney General. The Director is not directed or supervised by a United States Trustee. Consequently, the Director has the ability to decide whether a United States Trustee's suspension or termination decision is one that the agency should implement. In making that determination, the Director bears a heavy responsibility. He must independently decide whether the United States Trustee's decision is appropriate and is supported by the record.

In response to these comments, the final rule has been revised to allow, rather than to require, the Director to select a reviewing official who was neither involved in the United States Trustee's decision nor employed by the Program in the United States Trustee's region. In addition, nothing in the final rule prohibits the Director from calling upon his staff to assist him in reaching his determination. This does not represent a change from the proposed rule.

The final rule creates strong institutional incentives for the Director to reach an independent determination because his decision shall be subject to judicial review. The final rule enables the Director to reach his decision after considering all materials the participants which to submit. As discussed above, the final rule makes it optional for the Director to employ a reviewing official in a particular case. This was done in order to respond to requests that the final rule reduce the time it takes for the Director to reach a final decision on a request for review. Under the final rule, however, the director retains the same power he had under the proposed rule to independently determine whether a United States Trustee's decision constitutes an appropriate exercise of discretion and is supported by the record. Making optional the reviewing official, who simply advised the Director under the proposed rule, does not diminish the Director's responsibility to exercise independent judgment in making this final determination, nor does it dilute the trustee's ability to obtain independent review by the Director.

The procedure set forth in the rule meets accepted notions of federal administrative law. The Director's review under the final rule constitutes "an informal adjudication." *Zotos International, Inc.* v. *Young*, 830 F.2d 350, 353 (D.C. Cir. 1987). "[Although] [t]he Administrative Procedure Act does not use the term 'informal adjudication[,]' [courts use it as] a residual category [to describe] 'all agency actions that are not rule making and that [are not expressly required by statute to] be conducted through 'on the record' hearings.'" *United States* v. *Article of Device * * * Diapulse*, 768 F.2d 826, 829 n.4 (7th Cir. 1985), (quoting in part, *Izzaak Walton League of America* v. *Marsh*, 655 F.2d 346, 361 n.37 (D.C. Cir. 1981)).

"[N]o procedures are specified" in the APA for conducting informal adjudications. *Zotos*, 830 F.2d at 353. The Supreme Court held in *PBGC* v. *LTV Corp.*, 496 U.S. 633 (1990) that an agency need not conduct an informal adjudication as a formal, on the record, hearing with full discovery or sworn witnesses.

To the contrary, section 554 of the Administrative Procedure Act requires an on the record adjudication only in a case where an adjudication is required by statute to be determined on the record. Neither section 586 of title 28 nor any other provision of the United States Code requires the United States Trustee to reach a decision whether to suspend or terminate future case assignments in an on the record evidentiary hearing. Thus, the Program may conduct this decision-making process in the manner it determines is the best way to enable it to reach final agency action. This rule implements the procedures the Program determines to be most appropriate. Similarly, the Bankruptcy Administrator program does not allow for review by a neutral party, evidentiary hearings, sworn testimony, or discovery.

The Program has modified the final rule in one major way to assist trustees in presenting relevant material to the Director for consideration. The final rule allows a trustee to ask that specific documents in the United States Trustee's possession be included in the record. This will enable trustees to rely upon documents they believe to be relevant but which are under the United States Trustee's control.

9. Comments suggested that the Program should adopt the procedures used for debarments for participation in government contracting or government entitlements. These suggestions fail to appreciate the differences between debarment and a cessation of assignment of future cases to trustees, which are fundamental. First, debarment involves government contracting and government entitlements. Trustees have no contract with the government. Receiving future cases is not a government entitlement program.

Moreover, courts have indicated that a debarment, which has severe government-wide consequences, may implicate a constitutionally protected interest. *See, e.g., ATL, Inc.* v. *United States*, 736 F.2d 677, 683 (Fed. Cir. 1984); *Transco Security, Inc.* v. *Freeman*, 639 F.2d 318, 321 (6th Cir. 1981); *Old Dominion Dairy* v. *Secretary of Defense*, 631 F.2d 953, 966 (D.C. Cir.), *cert. denied*, 454 U.S. 820 (1981). In contrast, a trustee has no constitutional interest in being assigned future cases. *Joelson* v. *United States*, 86 F.3d at 1415–18; *Richman* v. *Straley*, 48 F.3d at 1143; *Shaltry* v. *United States*, 182 B.R. at 842 (D. Ariz.) (same), *aff'd*, 1995 WL 866862 (9th Cir. 1995).

A debarment is far more significant than mere case cessation because it can have dramatic, government-wide, consequences. As a matter of federal law, someone who has been debarred in a government contracting proceeding cannot bid on any government contract from any agency. The Department of Justice's debarment procedures for debarment from nonprocurement programs, 28 CFR part 67, which one comment specifically cited, provides that "[a] person who is debarred or suspended [under the rule] shall be excluded from Federal financial and nonfinancial assistance under Federal programs and activities." 28 CFR 67.100. Indeed, "debarment or suspension of a participant in a program by one agency shall have government wide effect." *Id.* In many instances a debarment has even greater significance because some states refuse to contract with persons who have been debarred by an agency of the federal government.

A cessation of future case assignments to a trustee has no such effects. Unlike a debarment, it does not prevent a trustee from applying for or participating in any other program administered by the Department of Justice or any other part of the United States government. As discussed previously, it does not even affect their ability to administer existing cases.

Indeed, the entire purpose of debarment is fundamentally different from termination of case assignments. Debarments protect the federal government from those who have committed serious wrongdoing. *See* 28 CFR 67.115(b) (Department of Justice's debarment procedures). In contrast, suspensions and terminations of future case assignments foster an efficient system of case administration and ensure that debtors and creditors, the intended beneficiaries of the bankruptcy system, receive the best service from trustees that is possible.

Thus, we doubt the comments seriously intended to suggest that the Department of Justice should adopt a rule that would debar trustees from all government contracting and entitlement programs if they are terminated from future case assignment. Nor do we believe trustees want to be subject to government contracting rules in seeking future case assignments. Certainly, this final rule has no such effect. Consequently, the Program declines to implement more costly and time consuming debarment-type procedures in this rule.

Notwithstanding the fundamental differences that exist between the effect of a debarment and a cessation of future case assignments, the final rule adopts procedures that embody many of the concepts that underlie the Department's debarment procedures. Both allow the Department, as opposed to a third party, to reach a final decision. Both favor quick, informal dispute resolution instead of overly formalized, litigation-type procedures. See 28 CFR 67.310 ("Department of Justice shall process debarment actions as informally as practicable"). Neither authorize discovery. Both enable the Department to conduct face to face proceedings if disputed issues of material fact exist.

10. One comment suggested that a cessation of future cases places a stigma of incompetence or wrongdoing on trustees. It certainly places no stigma in any constitutional sense. Nor does the Program cease case assignments in order to stigmatize trustees. There are many reasons why a trustee may stop receiving cases in the future. The decline in volume of cases may demand it, or the existence of candidates who can better represent debtors or creditors may result in a cessation of cases. None of these instances involve the imposition of a sanction or a finding of wrongdoing in any criminal sense.

In addition, many trustees are engaged in other professions or occupations in addition to administering bankruptcy cases so cessation of case assignments does not prevent them from engaging in their other jobs. No one seriously suggests that a businessperson in the private sector is impermissibly stigmatized simply because a client stops using their product or services. Nor can any businessperson sue to force a client to use their services forever. The same is true for trustees.

11. One comment, submitted by a trustee, seemed to suggest that the reviewing official that was suggested by the proposed rule should not review suspensions and terminations because the official was not located within the region where the trustee worked and would ignore local customs and policies. The final rule has made the position of reviewing official optional in order to shorten the time necessary for the Program to decide a trustee's request for review. If a trustee who files a request for review believes local customs and policies are relevant, that trustee would be free to raise those matters, and such contentions would be considered by the Director in reaching a final determination.

12. One comment suggested that the proposed rule allowed no input by experts. This is not correct. A trustee seeking review is free to provide whatever materials he or she wishes the Director to consider in reaching a determination.

13. One comment suggested the rule is ineffective without meaningful judicial review before the bankruptcy court. This is not true. The final rule creates final agency action that is subject to judicial review under the Administrative Procedure Act. There are serious constitutional questions about a system that would allow bankruptcy judges, who are not Article III judges, to review an agency's decision to cease the assignment of future bankruptcy cases to trustees. The Program also recognizes that United States district courts have far more familiarity with review of final agency actions than do bankruptcy courts. We further note that the Judicial Branch's own system by which Bankruptcy Administrators suspend and terminate trustees does not provide for any court review, bankruptcy or otherwise, of a Bankruptcy Administrator's decision.

Moreover, engrafting bankruptcy court review onto the post-termination judicial review process would do nothing more than delay final judicial determination of trustee suspension and termination decisions. This is so because a bankruptcy court decision could be appealed to a district court, which would review the agency's action and record using a *de novo* standard of review, and thence review could be had in the courts of appeals under the same standard. In sum, the Program sees no advantage to be gained and many disadvantages that would result from bankruptcy court involvement.

14. One comment asked whether the rule applies to all adverse actions or just formal suspensions and terminations. The rule applies to any decision by a United States Trustee to actually stop assigning cases to a trustee. It does not apply to other regulatory actions such as providing the trustee with an unfavorable review, a letter of warning or reprimand, or other actions that fall short of ceasing the assignment of cases.

15. One comment suggested that the United States Trustee Program should use a progressive system of discipline. The Program does this. This suggestion falls outside the intended scope of this rule, however, because this rule applies only to decisions to suspend or terminate the assignment of future cases to trustees. It does not apply to disciplinary actions that fall short of case cessation.

16. One comment suggested the rule compromises trustee independence. The rule neither enlarges nor reduces permissible trustee independence. Instead, it establishes a procedure by which a trustee can obtain a final determination by the Program whether a United States Trustee's decision to cease the assignment of future cases is an appropriate exercise of the United States Trustee's discretion and is supported by the record. If anything, the final rule will give trustees greater independence because it gives them a formal procedure for obtaining a final agency determination and allows them thereafter to obtain judicial review under the Administrative Procedures Act, two thing they lacked prior to the implementation of the rule.

17. One comment suggested the rule violated 11 U.S.C. 324. This is incorrect. Section 324 established a judicial procedure for removing a trustee from one or more specific cases that have been previously assigned to a trustee. Section 324 is not relevant to this rule because the rule only pertains to future case assignments and does not stop a trustee from continuing to administer present cases.

18. One comment suggested the rule suffers form a lack of objective standards or criteria. The Program does not believe this to be the case. Section (a) of the final rule sets forth a non-exhaustive list of 14 criteria that a United States Trustee may employ in deciding whether to suspend or terminate the assignment of future cases to trustees. The final rule has revised the language of section (i) slightly due to the elimination of the mandatory use of a reviewing official. The language in the final rule makes clear that the standard the Director will employ in deciding a request for review is "whether the Untied States Trustee's decision is supported by the record and the action is an appropriate exercise of the United States Trustee's discretion." The quoted language creates a standard which would enable a court to review the Program's final action under the Administrative Procedure Act.

19. One comment suggested the rule should apply a reasonable man standard. The comment did not suggest specific language. The Program believes that section (i) sets forth an appropriate standard.

20. Various comment questioned the breadth and reasonableness of the factors set forth in section (a) (2), (4), (5), (6), (7), (11), (12), (13), and (14). These comments are not well taken for the reasons that follow.

Before addressing the specific comments, it is appropriate to note that the rule does not require termination or suspension for a single or isolated violation of any one of these factors. Section (a)(6) provides, for example, that a trustee "display proper temperament in dealing with judges, clerks, attorneys, creditors, debtors, the United States Trustee and the general public." Trustees are service providers and are important participants in the federal bankruptcy system. They often are the only person a debtor sees as a representative of that system. It is important they interact appropriately with the other participants in the bankruptcy system. This provision does not mean, however, the at a United states Trustee would appropriately exercise discretion by terminating a trustee for a single isolated instance of mere discourtesy. That will depend on the circumstances and the record. In some cases, one egregious act might warrant a suspension or termination. For example, a single instance of using racial slurs against a debtor might, given the specific facts and circumstances, justify a suspension or a termination. So too might a single instance of assault. On the other hand, multiple instances of discourtesy also might justify suspension or termination. The factors set forth in section (a) simply constitute a non-exhaustive list of reasons that might form a basis for suspension or termination. In many cases the reasons for the United States Trustee's decision may involve a combination of factors. In every request for review, the Director will decide whether the suspension or termination constituted an appropriate exercise of the United States Trustee's discretion and is supported by the record.

Section (a)(2) addresses trustees who fail to "perform duties in a timely and consistently satisfactory manner." Some comments questioned the appropriateness of this factor. First, depending upon the conduct at issue, it is wholly appropriate to suspend or terminate a trustee who cannot perform his or her trustee duties in a timely and consistently satisfactory manner. To decide otherwise would be to place the interests of debtors and creditors at serious risk. Moreover, one of the qualifications to be appointed to act as a trustee is the physical and mental capacity to "perform a trustee's duties." 28 CFR 58.3(b)(2).

Section (a)(4) addresses trustees who fail to cooperate and to comply with instructions and policies of the Code, the Bankruptcy Rules, and local rules of court. Contrary to comments received, this is an appropriate factor to consider in deciding whether to suspend or terminate a trustee. Trustees are required to manage debtors' estates in accordance with applicable standards. Failure to comply with applicable law, rules, and regulations can have disastrous consequences for debtors and creditors. Depending upon the conduct at issue, it is wholly appropriate to suspend or terminate a trustee who does not comply with applicable standards.

Section (a)(5) recognizes the need to suspend or terminate trustees who engage in substandard performance of general duties and case management in comparison to other members of the chapter 7 panel or other standing trustees. Although some commentors expressed concern about using this as a basis for suspensions or terminations, the Program believes this is an important provision. It was created to reflect that a United States Trustee may consider, in making termination or suspension decisions, statistical or other evidence that a trustee is not performing at the same level of competence and efficiency as other trustees.

Section (a)(6) addresses the termination or suspension of trustees who fail to display proper temperament. Some comments expressed concern with the application of this factor. The bases for this factor has been described above. Trustees have daily contact with debtors, creditors, court personnel, courts, Program employees, and the public at large. A trustee cannot effectively represent the interests of debtors and creditors if the trustee fails to display proper temperament. This is such an important factor that it is one of the qualifications that a trustee must possess to be appointed to act as a trustee. *See* 58 CFR 58.3(b)(3) (a trustee must "[b]e courteous and accessible to all parties. * * *"). *See also* 58 CFR 58.3(b)(4) (trustee must "[b]e free of prejudices against any individual, entity, or group of individuals or entities which would interfere with unbiased performance of a trustee's duties.").

Section (a)(7) is directed at trustees who fail to supervise the work of their employees. Some comments contended that inadequate supervision should not form a basis for suspension or termination or that the provision's scope was unclear. The Program rejects these suggestions. Many trustees routinely employ persons or hire professionals to assist them in the performance of their trustee duties. However, if they delegate responsibilities to professionals and employees and do not monitor those individuals or take proper precautions, this can amount to an abdication of their responsibilities. It is important to hold trustees accountable for failing to supervise those they choose to employ. In order to respond to other comments received, the Program has revised this provision slightly in the final rule to make clear that a suspension or termination may issue, in an appropriate circumstance, if a trustee fails to monitor the work of professionals or others employed by the trustee.

One comment questioned whether section (a)(11) should condone a suspension or termination that occurs because an allegation of misconduct is pending before a court or state licensing agency when such allegation calls the trustee's competence, financial responsibility or trustworthiness into question. The Program believes credible allegations that a trustee lacked honesty, competence, financial responsibility or trustworthiness could form a basis for suspension or termination in appropriate circumstances. *See generally* 28 CFR 58.3(b)(6) (which establishes certain educational or licensing requirements for chapter 7 trustees). While it is difficult to act on the basis of mere allegations, neither can the gravity of charges made against a trustee be ignored. The rule recognizes that in some instances, a United States Trustee may conclude that a temporary suspension of cases is warranted pending the final outcome of a proceeding. Whether the decision is made to terminate the assignment of cases will depend upon the circumstances and a fair consideration of all relevant factors. At the very least, the United States Trustees' statutory responsibilities to the bankruptcy system and their roles as officers of the court and as Department of Justice officials make it entirely appropriate for them to consider such allegations before entrusting future bankruptcy estates to a particular trustee's care.

It was suggested that section (a)(12) should be deleted and trustees should not be suspended or terminated if they are unable to take assigned case. The Program agrees that an isolated conflict of interest that results in an inability to take an assigned case should not result in case cessation. Therefore, this section has been modified in the final rule to provide that a "routine inability to accept assigned cases" is a factor that may result in suspension or termination. If a trustee has so many other interests that he or she cannot or will not accept cases as regularly assigned it could be appropriate to suspend the trustee while those other matters or interests are resolved. If conflicts or an inability to takecases arise so frequently that a trustee cannot function effectively as a trustee, termination could be appropriate. Chapter 7 trustees function as part of a panel of chapter 7 trustees. If one trustee on the panel does not accept a fair share of case assignments, that may place an undue or unfair strain on other chapter 7 trustees. Most chapter 12 and chapter 13 standing trustees are the only standing trustee of their type in a specific geographic region, or one of only a very few. A standing trustee who does not regularly accept assignment places an undue burden on the bankruptcy system. It should be stressed, however, that the enumeration of this particular factor is not a limitation upon a United States Trustee's ability to consider other conflict questions, including those that involve an appearance of a conflict of interest.

Section (13) allows suspension or termination of case assignment if there is a change in composition of the chapter 7 panel pursuant to a system established by the United States Trustee under 28 CFR 58.1. It was questioned whether this should form the basis for case cessation. This provision merely makes clear that a United States Trustee may create a system to periodically reconstitute the whole panel, to retire a certain percentage of the panel at fixed intervals, or the like, and thereby to invite new membership.

It was suggested that section (a)(14)'s factor allowing case cessation for efficient case administration or a decline in the number of cases should be deleted from the final rule. The Program has modified this factor slightly to clarity that both efficient administration and a decline in caseload may constitute bases for case cessation. It is important to maintain an appropriate balance of expertise and number of trustees for the caseload. Otherwise, good trustees might not apply or might resign their positions. The type and number of bankruptcy filings fluctuate significantly over time and from one location to another. The Program needs the ability to respond to those fluctuations by adjusting the number of trustees accordingly.

21. It was suggested that this rule is a significant regulatory action that requires more formal review under Executive Order 12866; that the rule does not comply with the Regulatory Flexibility Act; and that the rule does not comply with the Paperwork Reduction Act. These assertions are incorrect.

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. Executive Order 12866 defines "significant regulatory action" as a rulemaking that is likely to have (1) an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

This rule formalizes the procedures by which trustees may obtain administrative review by the Director of suspension and termination decisions. This process will be available to all of the 1,500 or so existing trustees but only those trustees whose appointment to future cases are suspended or terminated will have any reason to invoke these procedures. We believe the number of trustees so affected to represent no more than approximately 5% of the 1,500 existing trustees (approximately 75). Further, the core group (that is all 1,500 bankruptcy trustees) do not comprise a sector of the economy as that phrase is used in Executive Order 12866.

The rule complies with the Regulatory Flexibility Act. The Director has reviewed this rule and by approving it certifies that it will not have a "significant economic impact upon a substantial number of small entities" as that phrase is used in the Regulatory Flexibility Act (5 U.S.C. 605(b)). Individuals serving as trustees are frequently attorneys, accountants, or other financial professionals. Some of these individuals may be associated with law or accounting firms of varying size while others may be independent. Some of these individuals may derive all or a substantial amount of their income from serving as trustees while others may derive a smaller portion of their income from such service. Even assuming that all 1,500 trustees are small entities, the number of trustees affected by suspensions and terminations is far smaller—likely less than 5%, or 75 in any year. This is not a significant number when considered against the number of existing trustees nor when considered against the number of attorneys, accountants, and other financial professionals in this country. Further, the Director has no information regarding which trustees derive a substantial amount of their income from administering bankruptcy cases and consequently whether the suspension or termination of case assignments would have a significant economic impact on them. A number of trustees engage in other full-time professions and engage in bankruptcy work part-time. Because of the variation in other activities that trustees might engage in professionally, the number of entities which might experience a significant economic impact from the suspension or termination of case assignments could be less than 75.

Additionally, it should be emphasized that this rule is intended to provide a review process for trustees whose future case assignments are suspended or terminated because of improper conduct or failure to perform adequately, although the Program also may stop assigning future cases to trustees for other reasons such as when more qualified candidates are identified or when the caseload in a judicial district declines, resulting in too many trustees for too little work. As discussed in the supplementary information, those trustees have no legal right to be appointed in future cases.

Finally, this rule also complies with the Paperwork Reduction Act. It contains no new information collection or record keeping requirements under

the Paperwork Reduction Act (44 U.S.C. 3501, et seq.). The rule will not require affected trustees to complete new forms or to retain records as that phrase is used in the Paperwork Reduction Act.

22. It was suggested that it is unfair to require trustees to bear their own costs when seeking administrative review. That provision of the rule is consistent with applicable law. It also is fair. It would be fundamentally unfair to permit a trustee to tax the estates of the debtors he or she oversees so the trustee can fund his or her attempt to secure other, unrelated, cases in the future. In seeking review, a trustee is pressing his economic self advantage. It is appropriate for the trustee to pay his own costs in pursuing those self interests.

Certifications

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Director, Executive Office for United States Trustees, ("Director") has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and by approving it certifies that it will not have a significant impact on a substantial number of small entities. The only parties affected are the less than 2,000 individuals who serve as panel and standing trustees. The effect it will have on them is to formalize a procedure that enables them to obtain review by the Director of a notice by a United States Trustee to suspend or terminate the assignment of future cases to the trustee.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 58

Bankruptcy, Trusts and trustees.

For the reasons set forth in the preamble, the Department of Justice proposes to amend 28 CFR part 58 as follows:

PART 58—REGULATIONS RELATING TO THE BANKRUPTCY REFORM ACTS OF 1978 AND 1994

1. The authority citation for Part 58 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 586.

2. New section 58.6 is added to read as follows:

§ 58.6 Procedures for suspension and removal of panel trustees and standing trustees.

(a) A United States Trustee shall notify a panel trustee or a standing trustee in writing of any decision to suspend or terminate the assignment of cases to the trustee including, where applicable, any decision not to renew the trustee's term appointment. The notice shall state the reason(s) for the decision and should refer to, or be accompanied by copies of, pertinent materials upon which the United States Trustee has relied and any prior communications in which the United States Trustee has advised the trustee of the potential action. The notice shall be sent to the office of the trustee by overnight courier, for delivery the next business day. The reasons may include, but are in no way limited to:

(1) Failure to safeguard or to account for estate funds and assets;

(2) Failure to perform duties in a timely and consistently satisfactory manner;

(3) Failure to comply with the provisions of the Code, the Bankruptcy Rules, and local rules of court;

(4) Failure to cooperate and to comply with orders, instructions and policies of the court, the bankruptcy clerk or the United States Trustee;

(5) Substandard performance of general duties and case management in comparison to other members of the chapter 7 panel or other standing trustees;

(6) Failure to display proper temperament in dealing with judges, clerks, attorneys, creditors, debtors, the United States Trustee and the general public;

(7) Failure to adequately monitor the work of professionals or others employed by the trustee to assist in the administration of cases;

(8) Failure to file timely, accurate reports, including interim reports, final reports, and final accounts;

(9) Failure to meet the eligibility requirements of 11 U.S.C. 321 or the qualifications set forth in 28 CFR 58.3 and 58.4 and in 11 U.S.C. 322;

(10) Failure to attend in person or appropriately conduct the 11 U.S.C. 341(a) meeting of creditors;

(11) Action by or pending before a court or state licensing agency which calls the trustee's competence, financial responsibility or trustworthiness into question;

(12) Routine inability to accept assigned cases due to conflicts of interest or to the trustee's unwillingness or incapacity to serve;

(13) Change in the composition of the chapter 7 panel pursuant to a system established by the United States Trustee under 28 CFR 58.1;

(14) A determination by the United States Trustee that the interests of efficient case administration or a decline in the number of cases warrant a reduction in the number of panel trustees or standing trustees.

(b) The notice shall advise the trustee that the decision is final and unreviewable unless the trustee requests in writing a review by the Director, Executive Office for United States Trustees, no later than 20 calendar days from the date of issuance of the United States Trustee's notice ("request for review"). In order to be timely, a request for review must be received by the Office of the Director no later than 20 calendar days from the date of the United States Trustee's notice to the trustee.

(c) A decision by a United States Trustee to suspend or terminate the assignment of cases to a trustee shall take effect upon the expiration of a trustee's time to seek review from the Director or, if the trustee timely seeks such review, upon the issuance of a final written decision by the Director.

(d) Notwithstanding paragraph (c) of this section, a United States Trustee's decision to suspend or terminate the assignment of cases to a trustee may include, or may later by supplemented by an interim directive, by which the United States trustee may immediately discontinue assigning cases to a trustee during the review period. A United States Trustee may issue such an interim directive if the United States Trustee specifically finds that:

(1) A continued assignment of cases to the trustee places the safety of estate assets at risk;

(2) The trustee appears to be ineligible to serve under applicable law, rule, or regulation;

(3) The trustee has engaged in conduct that appears to be dishonest, deceitful, fraudulent, or criminal in nature; or

(4) The trustee appears to have engaged in other gross misconduct that is unbefitting his or her position as trustee or violates the trustee's duties.

(e) If the United States Trustee issues an interim directive, the trustee may seek a stay of the interim directive from the Director if the trustee has timely filed a request for review under paragraph (b) of this section.

(f) The trustee's written request for review shall fully describe why the trustee disagrees with the United States Trustee's decision, and shall be accompanied by all documents and materials that the trustee wants the Director to consider in reviewing the decision. The trustee shall send a copy of the request for review, and the accompanying documents and materials, to the United States Trustee by overnight courier, for delivery the next business day. The trustee may request that specific documents in the possession of the United States Trustee be transmitted to the Director for inclusion in the record.

(g) The United States Trustee shall have 15 calendar days from the date of the trustee's request for review to submit to the Director a written response regarding the matters raised in the trustee's request for review. The United States Trustee shall provide a copy of this response to the trustee. Both copes shall be sent by overnight courier, for delivery the next business day.

(h) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(i) Unless the trustee and the United States Trustee agree to a longer period of time, the Director shall issue a written decision no later than 30 calendar days from the receipt of the United States Trustee's response to the trustee's request for review. That decision shall determine whether the United States Trustee's decision is supported by the record and the action is an appropriate exercise of the United States Trustee's discretion, and shall adopt, modify or reject the United States Trustee's decision to suspend or terminate the assignment of future cases to the trustee. The Director's decision shall constitute final agency action.

(j) In reaching a determination, the Director may specify a person to act as a reviewing official. The reviewing official shall not be a person who was involved in the United States Trustee's decision or a Program employee who is located within the region of the United States Trustee who made the decision. The reviewing official's duties shall be specified by the Director on a case by case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, or such other duties as the Director shall prescribe in a particular case.

(k) This rule does not authorize a trustee to seek review of any decision to increase the size of the chapter 7 panel or to appoint additional standing trustees in the district or region.

(l) A trustee who files a request for review shall bear his or her own costs and expenses, including counsel fees.

Dated: September 29, 1997.

Joseph Patchan,

Director, Executive Office for United States Trustees.

[FR Doc. 97–26172 Filed 10–1–97; 8:45 am]

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Part IV

The President

Executive Order 13062—Continuance of Certain Federal Advisory Committees and Amendments to Executive Orders 13038 and 13054

Executive Order 13063—Level V of the Executive Schedule: Removal of the Executive Director, Pension Benefit Guaranty Corporation, Department of Labor

Federal Register
Vol. 62, No. 191
Thursday, October 2, 1997

Presidential Documents

Title 3—

The President

Executive Order 13062 of September 29, 1997

Continuance of Certain Federal Advisory Committees and Amendments to Executive Orders 13038 and 13054

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 1999.

(a) Committee for the Preservation of the White House; Executive Order 11145, as amended (Department of the Interior).

(b) Federal Advisory Council on Occupational Safety and Health; Executive Order 12196, as amended (Department of Labor).

(c) National Partnership Council; Executive Order 12871, as amended (Office of Personnel Management).

(d) President's Advisory Commission on Education Excellence for Hispanic Americans; Executive Order 12900 (Department of Education).

(e) President's Board of Advisors on Historically Black Colleges and Universities; Executive Order 12876 (Department of Education).

(f) President's Commission on White House Fellowships; Executive Order 11183, as amended (Office of Personnel Management).

(g) President's Committee of Advisors on Science and Technology; Executive Order 12882 (Office of Science and Technology Policy).

(h) President's Committee on the Arts and the Humanities; Executive Order 12367, as amended (National Endowment for the Arts).

(i) President's Committee on the International Labor Organization; Executive Order 12216 (Department of Labor).

(j) President's Committee on the National Medal of Science; Executive Order 11287, as amended (National Science Foundation).

(k) President's Committee on Mental Retardation; Executive Order 12994 (Department of Health and Human Services).

(l) President's Council on Physical Fitness and Sports; Executive Order 12345, as amended (Department of Health and Human Services).

(m) President's Export Council; Executive Order 12131, as amended (Department of Commerce).

(n) President's National Security Telecommunications Advisory Committee; Executive Order 12382, as amended (Department of Defense).

(o) Trade and Environment Policy Advisory Committee; Executive Order 12905 (Office of the United States Trade Representative).

Sec. 2. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in section 1 of this order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 3. The following Executive orders which established committees that have terminated and whose work is completed, are revoked:

(a) Executive Order 12891, establishing the Advisory Committee on Human Radiation Experiments;

(b) Executive Order 12964, as amended by Executive Orders 12987 and 13032, establishing the Commission on United States-Pacific Trade and Investment Policy;

(c) Executive Order 12946, establishing the President's Advisory Board on Arms Proliferation Policy;

(d) Executive Order 12864, as amended by Executive Orders 12890, 12921, and 12970, establishing the United States Advisory Council on the National Information Infrastructure; and

(e) Executive Order 13015, establishing the White House Commission on Aviation Safety and Security.

Sec. 4. Executive Order 12974 is superseded.

Sec. 5. In Executive Order 13038, the second sentence of section 1 is amended by deleting "15" and inserting "22" in lieu thereof.

Sec. 6. Executive Order 13054 is amended by revising section 1 to read as follows: "A United States citizen who is a family member of a Federal civilian employee who has separated from Federal service to accept employment with the American Institute in Taiwan pursuant to section 11 of Public Law 96–8 (22 U.S.C. 3310(a)) may be appointed noncompetitively in a manner similar to noncompetitive appointments under Executive Order 12721 and implementing regulations of the Office of Personnel Management to a competitive service position in the executive branch, provided such family member meets the qualifications and other requirements established by the Director of the Office of Personnel Management, including an appropriate period of satisfactory overseas employment with the American Institute in Taiwan."

Sec. 7. This order shall be effective September 30, 1997.

William J. Clinton

THE WHITE HOUSE,
September 29, 1997.

[FR Doc. 97–26364
Filed 10–1–97; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13063 of September 30, 1997

Level V of the Executive Schedule: Removal of the Executive Director, Pension Benefit Guaranty Corporation, Department of Labor

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5317 of title 5, United States Code, and in order to remove a position from Level V of the Executive Schedule, it is hereby ordered that section 1–102 of Executive Order 12154, as amended, is further amended by removing the following subsection from section 1–102: "(b) Executive Director, Pension Benefit Guaranty Corporation, Department of Labor"; and relettering subsections (c) through (f) as subsections (b) through (e), respectively.

William J. Clinton

THE WHITE HOUSE,
September 30, 1997.

[FR Doc. 97–26365
Filed 10–1–97; 8:45 am]
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To designate the reservoir created by Trinity Dam in the Central Valley project, California, as "Trinity Lake". (Sept. 30, 1997; 111 Stat. 1141)

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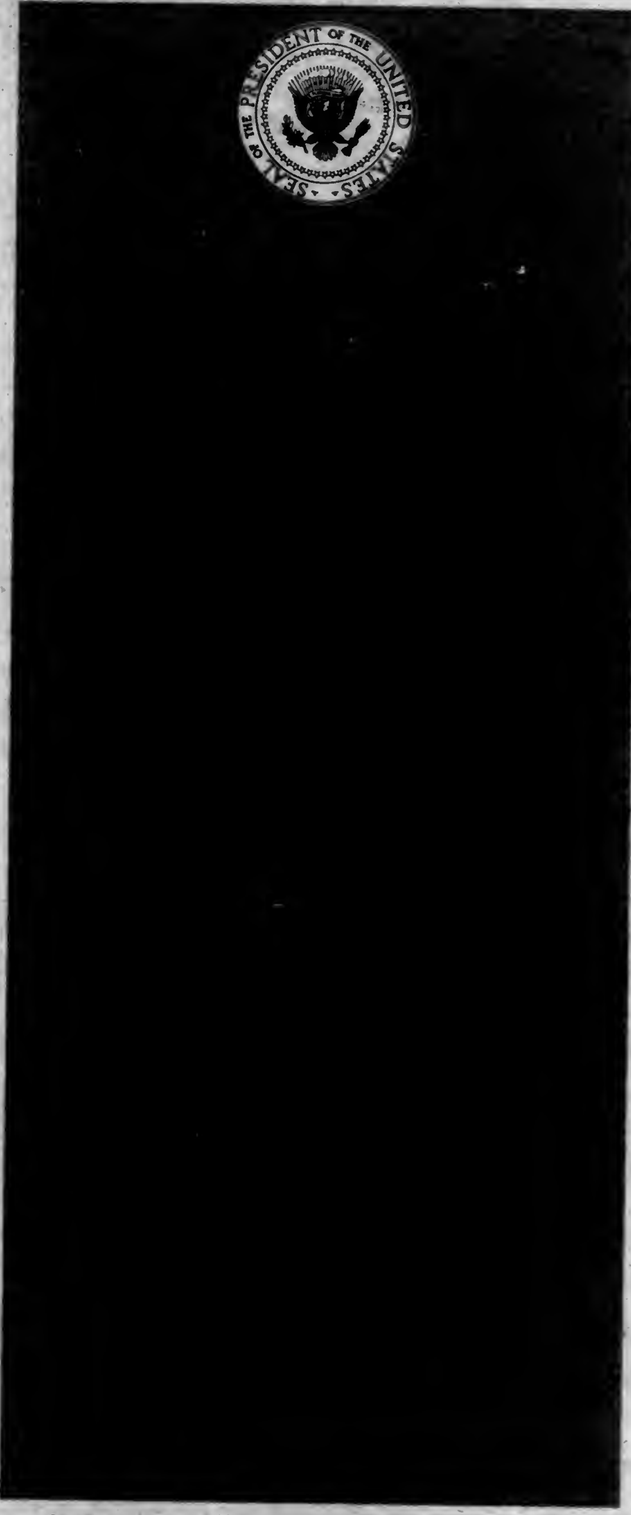
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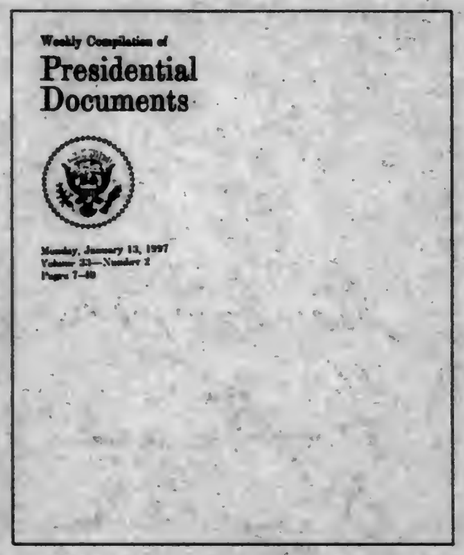
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Federal Register
Vol. 62, No. 192
Friday, October 3, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI04

Prevailing Rate Systems; Abolishment of the Orlando, Florida, Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule to remove the requirement that a full-scale wage survey be conducted in the Orlando, Florida, Federal Wage System appropriated fund wage area in September 1997.

DATES: This interim rule is effective on September 30, 1997. Comments must be received on or before November 3, 1997.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–0824.

FOR FURTHER INFORMATION CONTACT: Mark A. Allen, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management is issuing the first of two interim rules to abolish the Orlando, Florida, appropriated fund wage area. The Orlando wage area is currently composed of Orange, Osceola, Seminole, and Volusia Counties in Florida. Because of the pending closure of the Orlando Naval Training Station, the Department of Defense, the lead agency for the Orlando wage area, is unable to conduct the wage survey that is scheduled to begin in the Orlando wage area in September 1997. This interim rule removes the requirement that a full-scale wage survey be conducted in the Orlando wage area in September 1997. The appropriate disposition of the four counties of the Orlando wage area is currently under consideration by the Federal Prevailing Rate Advisory Committee. Once the Committee has completed its discussions, an additional interim rule will be published to move those four counties to another wage area.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days so that advance preparations otherwise required for the 1997 Orlando wage area survey may be canceled.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B of Part 532—[Amended]

2. Appendix A to subpart B is amended by removing the entry for Orlando in the listing for the State of Florida.

[FR Doc. 97–26217 Filed 10–2–97; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

7 CFR Part 0

Employee Responsibilities and Conduct

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is repealing its internal standards of conduct regulations as part of the National Performance Review (NPR) program to eliminate unnecessary regulations.

EFFECTIVE DATE: These regulations are effective October 3, 1997.

FOR FURTHER INFORMATION CONTACT: David L. Spradlin, Program Manager for Employee Relations, Office of Human Resources Management, U.S. Department of Agriculture, Room 18–W—Stop 9601, 1400 Independence Avenue, SW., Washington, D.C. 20250–9601, telephone (202) 720–3327.

SUPPLEMENTARY INFORMATION:

I. Background

Removal of 7 CFR Part 0 promotes the goal of the NPR to reduce the number of Federal regulations. Also, the Department employee responsibilities and conduct regulations largely have been superseded by the Office of Government Ethics (OGE) executive branch financial disclosure regulations at 5 CFR Part 2634, "Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture," and by the executive branch-wide standards at 5 CFR Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch." Therefore, the Department is repealing all of existing 7 CFR Part 0.

II. Matters of Regulatory Procedure

Administrative Procedure Act

The Department has found that good cause exists under 5 U.S.C. 553 for waiving, as unnecessary and contrary to public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this final rule. This rulemaking is related to Department personnel.

Congressional Review

The Department has found that this rulemaking is not a rule as defined in 5 U.S.C. 804 and does not require review by Congress. This rulemaking is related to Department personnel.

Executive Order 12866

Since this rule relates to Personnel, it is exempt from the provision of Executive Order 12866.

Regulatory Flexibility Act

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Department employees.

Paperwork Reduction Act

The Department has determined that the Paperwork Reduction Act (44 U.S.C. Chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

Dated: September 24, 1997.

Dan Glickman,

Secretary of Agriculture.

For the reasons set forth in the preamble, the Department is amending Title 7, Subtitle A, of the Code of Federal Regulations as follows:

TITLE 7—[AMENDED]

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 0—[REMOVED]

Part 0 of 7 CFR Subtitle A is removed.

[FR Doc. 97–26216 Filed 10–2–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1422

RIN 0560–AF04

Standards for Approval of Cold Storage Warehouses for Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule removes obsolete regulations pertaining to approval of cold storage warehouses for peanuts under the peanut price support program. The Commodity Credit Corporation (CCC) no longer uses cold storage warehouses for peanuts owned by CCC or held by CCC as security for price support loans.

EFFECTIVE DATE: October 3, 1997.

FOR FURTHER INFORMATION CONTACT: David Kincannon, Farm Service Agency, United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514; or telephone (202) 720–7914.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of final or proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1422 set forth in this final rule do not contain information collections that require clearance by the OMB under the provisions of 44 U.S.C. 35.

Background

This final rule removes 7 CFR part 1422 pertaining to the peanut price support program. CCC no longer stores peanut stocks it owns or controls in cold storage warehouses. Therefore, the regulations are obsolete. If cold storage becomes needed, such storage can be controlled by contract. Because this action involves the removal of obsolete regulations and does not affect the interests of any member of the public, this rule is being made effective immediately. Delaying the rule for comment is unnecessary and would be contrary to the public interest.

List of Subjects in 7 CFR Part 1422

Peanuts, Price support and purchase programs, Warehouses.

Accordingly, under the authority of 7 U.S.C. 2202 and 7 CFR 2.65(a)(14), 7 CFR Part 1422 is removed.

Signed at Washington, DC, on September 26, 1997.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–26301 Filed 10–2–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Executive Office for Immigration Review

8 CFR Part 240

[EOIR No. 118I; AG Order No. 2118–97]

RIN: 1125–AA19

Suspension of Deportation and Cancellation of Removal

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR) and Immigration and Naturalization Service (Service) by establishing a procedure for processing suspension of deportation and cancellation of removal and adjustment of status cases. This rule is a partial and transitional measure to implement provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) relating to suspension of deportation and cancellation of removal. This transitional policy will be reevaluated after the Department determines how best to implement sections (304(a)(3) and 309(c)(7) of IIRIRA.

DATES: *Effective date:* This interim rule is effective October 1, 1997.

Comment date: Written comments must be submitted on or before December 1, 1997.

ADDRESSES: Please submit written comments, in triplicate, to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Executive Office for Immigration Review—Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 527–0470. For matters relating to the Immigration and Naturalization Service—Marguerite N. Przybylski, Associate General Counsel, Immigration and Naturalization Service, 425 I Street NW, Washington, D.C. 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: This interim rule with request for comments amends 8 CFR part 240 by creating new § 240.21.

Background

On September 30, 1996 Congress enacted IIRIRA. Under section 304(a)(3) of IIRIRA, the Attorney General may not cancel the removal and adjust the status under section 240A(b) of the Immigration and Nationality Act (Act), nor suspend the deportation and adjust the status under section 244(a) of the Act (as in effect before April 1, 1997) of a total of more than 4,000 aliens in any fiscal year. Section 309(c)(7) of IIRIRA provides that this numerical limitation applies regardless of when an alien has applied for the relief. The limitation is effective beginning with fiscal year 1997.

Because no implementing regulations were in place upon IIRIRA's enactment on September 30, 1996, suspension cases granted in the first five months of fiscal year 1997 were granted without condition and the statutory cap was nearly reached by mid-February. On February 13, 1997, EOIR issued directives to the immigration judges and the Board of Immigration Appeals (Board) to reserve grants of suspension until further notice. These directives provided a temporary mechanism to ensure that EOIR did not exceed the statutory cap in the remainder of fiscal year 1997 while the Department determined how to implement the cap. Over 3,000 decisions have been reserved since the issuance of these directives. In order to prevent this backlog of cases from continuing to increase, it is necessary to provide a procedure that will allow for the entry of a substantive determination regarding the merits of these cases, while allowing the Department an opportunity to further investigate methods to implement the cap. Therefore, immediate direction is required for the processing of these cases in light of sections 304(a)(3) and 309(c)(7) of IIRIRA.

This regulation provides the necessary procedures for the processing of suspension of deportation and cancellation of removal cases while it is determined how the numerical limitation will be implemented. The rule provides that applications for suspension or cancellation that meet the statutory requirements and warrant a favorable exercise of discretion will be conditionally granted. This rule is a transitional measure in that conditional grants of suspension of deportation and cancellation of removal will be revisited after the Department determines how best to implement sections 304(a)(3) and 309(c)(7) of IIRIRA. This rule provides a partial solution to the statutory cap in that it will provide a mechanism to eliminate the backlog of reserved cases. The Department intends to implement the statutory cap in a separate regulation within approximately six months.

The Interim Rule

This interim rule provides that neither the immigration judges nor the Board shall make an unconditional grant of any application for suspension of deportation pursuant to section 244(a) of the Act (as it existed prior to April 1, 1997) or cancellation of removal and adjustment of status pursuant to section 240A(b) of the Act. If the immigration judge or the Board finds that an alien is statutorily eligible for suspension of deportation or cancellation of removal and adjustment of status and that the case warrants a favorable exercise of discretion, the immigration judge or the Board shall enter a conditional grant of suspension or cancellation. The Board shall enter a conditional grant of suspension or cancellation even if the immigration judge granted that application without condition. A conditional grant of suspension or cancellation may be appealed to the Board pursuant to the rules and time frames specified in 8 CFR part 3.

The conditional grant of suspension of deportation or cancellation of removal and adjustment of status shall specify which paragraph of section 244(a) of the Act (as in effect before April 1, 1997) or section 240A(b) of the Act applies, and shall include an alternate order of deportation, removal or voluntary departure. Thus the alien is conditionally granted suspension or cancellation and that conditional grant will be revised after the Department determines how best to implement sections 304(a)(3) and 309(c)(7) of IIRIRA.

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the exception for rules of agency organization, procedure or practice in 5 U.S.C. 553(b)(3)(A) and upon the "good cause" exception found at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Immediate implementation is necessary because EOIR has directed that suspension of deportation grants be reserved until further notice and over 3,000 decisions have been so reserved over the last few months. These cases must be resolved on the merits while the Department determines how to implement the statutory cap on suspension and cancellation. The Department has provided a public comment period on this interim rule of 60 days.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certified that this rule will not have a significant economic impact on a substantial number of small entities because it affects individual aliens, not small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-

based companies in domestic and export markets.

Executive Order 12866

The Attorney General has determined that this rule is a significant regulatory action under Executive Order 12866, and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and States, or on the distribution or power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 140

Administrative practice and procedure, Aliens, Immigration.

Accordingly, part 240 of chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

1. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; 8 CFR part 2.

2. Section 240.21 is added to read as follows:

§ 240.21 Suspension of deportation and adjustment under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment under section 240A(b) of the Act for certain nonpermanent residents.

(a) Applications for suspension of deportation under section 244(a) of the Act (as in effect before April 1, 1997) or cancellation of removal and adjustment of status under section 240A(b) of the Act that meet the statutory requirements and warrant a favorable exercise of discretion may be granted only on a conditional basis. The order conditionally granting relief shall state which paragraph of section 244(a) of the Act (as in effect before April 1, 1997) or section 240A(b) of the Act applies. No application for suspension or cancellation shall receive a favorable exercise of discretion where the applicant has been granted asylum or adjustment of status while the suspension or cancellation application is pending. A decision to deny as a matter of discretion an application for suspension or cancellation on this basis shall be reconsidered where an appeal of a decision granting asylum or adjustment is sustained by the Board of Immigration Appeals.

(b) An alternate order of voluntary departure, deportation, or removal must be entered when there is a conditional grant of suspension or cancellation. The alternate order shall take effect if the condition is not ultimately removed.

(c) An order conditionally granting an application for suspension or cancellation is appealable to the Board pursuant to the procedures set forth in this chapter, and the time for appeal by the Service of the conditional grant or for appeal by the alien of the finding of deportability or of any denial of other relief by the immigration judge shall run from the date of such order.

(d) If, on appeal, the Board determines that an application for suspension of deportation or cancellation of removal meets the statutory requirements and warrants a favorable exercise of discretion, such application shall be granted on a conditional basis, even if an immigration judge granted the application without condition.

Dated: October 1, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–26385 Filed 10–1–97; 11:36 am]

BILLING CODE 4410–10–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–22835; File No. S7–24–96]

RIN 3235–AG72

Rule Amendments Relating to Multiple Class and Series Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the rule under the Investment Company Act of 1940 that permits open-end management investment companies ("funds") to issue multiple classes of shares representing interests in the same portfolio. The amendments expand and clarify the methods by which a multiple class fund may allocate among its classes income, gains and losses, and expenses not allocated to a particular class, and clarify the shareholder voting provisions of the rule. The Commission also is adopting a technical amendment that clarifies the application to series funds of the rule under the Investment Company Act that governs the use of fund assets to pay for the distribution of fund shares.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas M. J. Kerwin, Senior Counsel, Office of Regulatory Policy, at (202) 942–0690, or, regarding accounting issues, John S. Capone, Assistant Chief Accountant, Office of the Chief Accountant, at (202) 942–0590, in the Division of Investment Management, Mail Stop 10–2, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Requests for formal interpretive advice should be directed to the Office of Chief Counsel at (202) 942–0659, Division of Investment Management, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rules 18f–3 [17 CFR 270.18f–3] and 12b–1 [17 CFR 270.12b–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act").

Executive Summary

The Commission is adopting amendments to rule 18f–3 under the Investment Company Act, the rule that permits a fund to issue multiple classes of shares representing interests in the same investment portfolio. The amendments expand the specified methods a multiple class fund may use to allocate among its classes income, gains and losses (including unrealized appreciation or depreciation), and expenses not allocated to a particular class. The amendments also permit a fund to use any other allocation method that the fund's board of directors determines is fair to the shareholders of each class. In addition, the amendments clarify the shareholder voting rights provision of the rule.

The Commission also is adopting a technical amendment to rule 12b–1 under the Investment Company Act, the rule that governs the use of fund assets to pay for the distribution of fund shares in accordance with a "rule 12b–1 plan." The amendment codifies existing interpretations of how various provisions of the rule apply to a "series" fund (*i.e.*, a fund that offers investors an opportunity to invest in one or more portfolios, each of which has a specific investment objective).

I. Discussion

A. Rule 18f–3

Rule 18f–3 under the Investment Company Act establishes a framework for a fund's issuance of multiple classes of shares representing interests in the same portfolio. A fund generally establishes a multiple class arrangement to offer investors a choice of methods for paying distribution costs or to allow the fund to use alternative distribution channels more efficiently. Rule 18f–3 addresses issues that may create conflicts among multiple classes, including how a fund must allocate to each class its share of income, gains and losses, and expenses that are not allocated to a particular class ("fundwide expenses").[1]

Rule 18f–3(c) permits a fund generally to allocate income, gains and losses; and fundwide expenses based on the ratio of class net assets to fund net assets ("relative net assets").[2] The rule also permits a fund that declares dividends daily (a "daily dividend fund"), such as a money market fund, to select either of two alternative allocation methods.[3] A daily dividend fund that maintains the same net asset value ("NAV") per share in each class may allocate income, gains and losses, and fundwide expenses to each share without regard to class.[4] A daily dividend fund that maintains the same NAV per share in each class may also make these allocations to each class based on relative net assets after subtracting the value of subscriptions for non-settled shares (*i.e.*, shares for which payment in federal funds has not been received) (the "settled shares method").[5]

In September 1996 the Commission proposed amendments to rule 18f–3 to give daily dividend funds greater flexibility in using the settled shares method, to permit funds to use a new allocation method (the "simultaneous equations method"), and to clarify certain other aspects of the rule.[6] The Commission received letters from two commenters in response to the proposal, both generally favoring the proposed amendments.[7] The Commission is adopting the proposed amendments with certain revisions, as described below.

1. Expanded Allocation Methods

a. Settled Shares Method. Some daily dividend funds use the settled shares method in reliance upon exemptive orders that predate the adoption of rule 18f–3.[8] These funds have been unable to rely on rule 18f–3 because they do not maintain the same NAV per share in each class, a condition for use of the settled shares method under the rule. Because the settled shares method produces appropriate allocations even if NAV per share differs among classes, the Commission proposed to amend rule 18f–3 to permit a daily dividend fund to use the settled shares method without maintaining the same NAV per share in each class. Commenters supported the amendment, which the Commission is adopting as proposed.[9]

The Commission is also amending rule 18f–3 to clarify that a daily dividend fund may simultaneously use the settled shares method to allocate income and fundwide expenses and use the relative net assets method to allocate gains and losses.[10] This combination of methods is consistent with fund policies that commonly permit the participation of non-settled shares in any increase or decrease in NAV that results from appreciation or depreciation of portfolio securities, while excluding non-settled shares from participation in daily dividends.[11]

b. Simultaneous Equations Method. The Commission is adopting, as proposed, an amendment to rule 18f–3 to permit any fund to allocate income, gains and losses, and fundwide expenses based on an additional method, the "simultaneous equations method."[12] Under this method, allocations are based on simultaneous equations designed to produce an annualized rate of return of each class that generally differs from that of the other classes only by the expense differentials among the classes.[13] A fund

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[1] In this release, "gains and losses" include both realized gains and losses and unrealized appreciation and depreciation. "Fundwide expenses" may include expenses that are attributable to more than one class but fewer than all classes, such as the costs of adding new classes to an existing multiple class structure. See Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds; Class Voting on Distribution Plans, Investment Company Act Release No. 20915 at nn.26–27 and accompanying text (Feb. 23, 1995) [60 FR 11876 (Mar. 2, 1995)] [hereinafter 1995 Release].

[2] Rule 18f–3(c)(1) [17 CFR 270.18f–3(c)(1)]; see amended rule 18f–3(c)(1)(i) [17 CFR 270.18f–3(c)(1)(i)].

[3] Rule 18f–3(c)(2) [17 CFR 270.18f–3(c)(2)]; see amended rule 18f–3(c)(2)(i) [17 CFR 270.18f–3(c)(2)(i)] (defining a daily dividend fund as "any company that has a policy of declaring distributions of net investment income daily, including any money market fund that determines net asset value using the amortized cost method permitted by section 270.2a–7 [rule 2a–7]").

[4] Rule 18f–3(c)(2)(i) [17 CFR 270.18f–3(c)(2)(i)]; see amended rule 18f–3(c)(1)(iv) [17 CFR 270.18f–3(c)(1)(iv)]. Use of this method in those circumstances is equivalent to allocation based on relative net assets. The rule also requires funds using this method to obtain the agreement of their service providers that, to the extent necessary to assure that all classes maintain the same NAV per share, providers will waive or reimburse class expenses. Rule 18f–3(c)(2)(i). The amended rule clarifies that amounts waived or reimbursed by service providers under these agreements may not be carried forward or recouped later. Amended rule 18f–3(c)(1)(iv).

[5] Rule 18f–3(c)(2)(ii) [17 CFR 270.18f–3(c)(2)(ii)]; see amended rule 18f–3(c)(1)(iii), (c)(2)(iii) [17 CFR 270.18f–3(c)(1)(iii), (c)(2)(iii)]. The settled shares method is consistent with the policy of many daily dividend funds to withhold dividends from non-settled shares. Payment of dividends on non-settled shares would dilute dividends paid on settled shares, since fund income is attributable only to settled shares. See Rule Amendments Relating to Multiple Class and Series Investment Companies, Investment Company Act Release No. 22203 at n.7 [Sept. 9, 1996] [61 FR 49022 (Sept. 17, 1996)] [hereinafter Proposing Release] (investor's payment in federal funds may not be collected until three days after share purchase; at time of purchase fund may buy portfolio securities to be paid for in three days, but fund does not earn interest on securities until it makes payment; buying other portfolio securities that settle daily against federal funds is not feasible until investor's payment has been collected).

[6] See Proposing Release, *supra* note .

[7] See Letter from Subcommittee on Investment Companies and Investment Advisers, Committee on Federal Regulation of Securities, Section of Business Law, American Bar Association ("ABA"), to Jonathan G. Katz, Secretary, SEC (Nov. 19, 1996) (hereinafter "ABA Letter"); Letter from Gregory M. Smith, Director-Operations, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, SEC (Nov. 18, 1996) (hereinafter "ICI Letter").

[8] Such orders may require compliance with conditions, such as disclosure of differences among multiple classes, that do not apply to multiple class funds that rely on rule 18f–3 and related requirements of Form N–1A [17 CFR 239.15A, 274.11A].

[9] See amended rule 18f–3(c)(1)(iii).

[10] Amended rule 18f–3(c)(1)(iii). The staff of the Commission previously approved use of this combination of methods. See Letter from the Division of Investment Management to Investment Company Chief Financial Officers at 5 (Nov. 2, 1995).

[11] *See* ICI Letter, *supra* note 7, at 2 (daily dividend funds generally process purchase orders when received, before the collection of payment in federal funds, to enable the purchaser of non-settled shares to participate in changes in NAV per share from appreciation or depreciation of portfolio securities during collection period; most funds nevertheless pay dividends only on settled shares). Combining these methods may be essential if a fund maintains the same NAV per share for all classes, since allocating gains and losses (which affect NAV) based only on settled shares could cause a divergence in NAV among classes. See Proposing Release, *supra* note , at n.11 (use of settled shares method requires reduction of net assets of fund and each class by unpaid subscriptions; percentage reduction of each class's net assets would vary for each class because of differing amounts of non-settled shares; resulting different allocations of gains and losses to each class would affect NAV differently).

[12] Amended rule 18f–3(c)(1)(ii), (c)(2)(iv) [17 CFR 270.18f–3(c)(1)(ii), (c)(2)(iv)].

[13] Amended rule 18f–3(c)(2)(iv). For example, if fundwide expenses amounted to .75% of net assets for each class on average, and Class A were assessed a class expense ratio of .30% of net assets annually

Continued

using this method would allocate each day's income, gains and losses, and fundwide expenses to each class, and simultaneously reallocate cumulative undistributed income and undistributed or unrealized capital items among the classes.[14] Commenters agreed that the results derived from this method are consistent with the purpose of the rule's allocation provisions.

The amended rule does not specify particular equations to be used in implementing this method.[15] Appropriate equations may vary depending on the number of classes offered and other factors such as whether expense differentials among classes are fixed or variable. Commenters also confirmed the Commission's understanding that equations may be further refined as funds gain more experience in using this method.[16]

c. Other Allocation Methods. The Commission is also amending rule 18f–3 to permit a fund to use any appropriate allocation method not specified in the rule if the fund's directors, including a majority of directors who are not interested persons of the fund, determine that the method is fair to each class of shareholders.[17] The amendment also would require directors to determine that under the new method, the annualized rate of return of each class will generally differ from that of the other classes only by the expense differentials among the classes.[18] This amendment will provide funds with flexibility and avoid the possible need for further administrative relief to permit new allocation methods that may be developed. The Commission believes it is appropriate to require a specific board determination concerning the fairness of an alternative allocation method to assure that the selection of such a method is fair to each class.[19] In making this determination, the fund board may reasonably rely on the opinions of experts such as accounting firms.[20] A fund would be expected to apply on a consistent basis any allocation method selected under this or any other provision of the rule.[21]

2. Voting Rights

Rule 18f–3 contains certain conditions that are applicable to arrangements involving a class of shares with one type of distribution charge (the "purchase class") that automatically convert into another class (the "target class") after a specified period of time.[22] The rule requires a fund having such an arrangement to obtain the approval of the shareholders of the purchase class whenever the fund materially increases expenses for the target class.[23] The amended rule, as proposed, clarifies that this provision applies only if the expense increase is submitted for a separate vote of target class shareholders.[24]

B. Rule 12b–1

The Commission also is adopting as proposed a technical amendment to rule 12b–1 that clarifies the rule's application to separate series or portfolios of a fund.[25] Rule 12b–1 permits the use of fund assets to finance the distribution of fund shares pursuant to a written plan that describes the distribution financing arrangement and contains certain conditions.[26] Among other conditions, the rule 12b–1 plan must allow fund shareholders to vote on certain matters including approval, amendment, or termination of the plan.[27] Rule 12b–1 provides that a plan may cover more than one class of shares if the plan's provisions are severable for each class and if votes by shareholders and other required actions are taken separately for each class.[28] The amendment codifies prior interpretations that a rule 12b–1 plan also may cover more than one series or portfolio under the same conditions applicable when a plan covers more than one class.[29]

II. Cost/Benefit Analysis and Effects On Competition, Efficiency, And Capital Formation

In the proposing release, the Commission provided a Cost-Benefit Analysis on the amendments and requested comments. No comments were received on the analysis. The Commission is sensitive to the costs and benefits imposed by its rules. The amendments to rule 18f–3 provide greater flexibility to multiple class funds in allocating to each class its proportionate share of income, gains and losses, and fundwide expenses. The amended rule gives every fund a selection of one or more new specified methods without limiting the use of previously authorized methods. The amended rule also authorizes the use of an unspecified method selected by the fund subject to appropriate safeguards. A fund's selection of any method permitted by the amendments should not substantially increase the fund's costs in making allocations. The amended rule also reduces costs by allowing more funds to rely on the rule instead of obtaining and complying with exemptive orders, and by eliminating unnecessary requirements to solicit votes of purchase class shareholders. The amendment to rule 12b–1 does not impose a burden because it codifies an existing interpretation of the rule.

Section 2(c) of the Investment Company Act provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[30] The Commission has considered the amendments to rule 18f–3 and rule 12b–1 in light of these standards. The Commission believes the amendments to rule 18f–3 are consistent with the public interest and may promote efficiency and competition because they broaden the scope and flexibility of an exemptive rule, may reduce costs and other burdens for funds, and may thereby encourage more funds to offer multiple classes of shares. The Commission believes that the amendments will have no adverse effect on capital formation. The amendment to rule 12b–1, as a codification of an existing interpretation of the rule, will not have significant effects on efficiency, competition, or capital formation.

III. Summary of Final Regulatory Flexibility Analysis

The Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in Investment Company Act Release No. 22203. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604. The FRFA indicates that the amendments to rule 18f–3 enable multiple class funds, including small entities, to rely on the rule instead of exemptive orders and to benefit from more flexible compliance requirements by expanding specified allocation methods and permitting the use of an unspecified method if directors determine that it is fair. In addition, the FRFA states that the amendments clarify compliance requirements by eliminating unnecessary voting provisions consistent with the Commission's original intent. The FRFA explains that the amendment to rule 12b–1 codifies existing interpretations treating multiple series of a series fund like multiple classes of a portfolio.

The FRFA notes that in response to comments from the public, the Commission modified the amendments to permit the selection of unspecified methods. The FRFA also discusses the amendments' effect on small entities that are registered open-end management investment companies. For purposes of the amendments, small entities are those having net assets of $50 million or less as of the end of their most recent fiscal year. The Commission estimates that there are 500 small entities out of 3000 active open-end management investment companies, and that 43 of those 500 offer multiple classes of shares. The FRFA states that the rules do not impose any new reporting, recordkeeping, or other compliance requirements.

The FRFA also discusses the Commission's efforts to minimize significant economic impact on small entities, noting that the amendments' effect is generally positive for all affected funds including small entities. The FRFA notes that the Commission considered several alternatives that might minimize any effect on small entities, including (a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rules or any part of the rules for small entities. The FRFA states that the amendments generally increase flexibility, simplify or clarify existing compliance requirements, and introduce performance standards by permitting the use of an unspecified allocation method determined to be fair. In light of these considerations, the FRFA states that it would be inconsistent with the purposes of the Act to exempt small entities from the amendments or to specify different requirements for small entities. Different compliance or reporting requirements for small entities are not necessary because the rules do not establish any new reporting, recordkeeping, or compliance requirements. The Commission has determined that it is not feasible to further clarify, consolidate, or simplify the rules for small entities consistently with the protection of investors.

Cost-benefit information in the "Cost/Benefit Analysis" section of this Release is reflected in the Analysis. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Thomas M. J. Kerwin, Mail Stop 10–2, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

IV. Statutory Authority

The Commission is amending rule 12b–1 pursuant to the authority set forth in sections 12(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–12(b), –37(a)], and is amending rule 18f–3 under sections 6(c), 18(i), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), –18(i), –37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text Of Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.12b–1 is amended by revising paragraph (g) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(g) If a plan covers more than one series or class of shares, the provisions of the plan must be severable for each series or class, and whenever this section provides for any action to be taken with respect to a plan, that action must be taken separately for each series or class affected by the matter. Nothing in this paragraph (g) shall affect the rights of any purchase class under § 270.18f–3(e)(2)(iii).

3. Section 270.18f–3 is amended by revising paragraphs (c) and (e)(2)(iii) to read as follows:

§ 270.18f–3 Multiple class companies.

* * * * *

(c) (1) Income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses shall be allocated based on one of the following methods (which method shall be applied on a consistent basis):

(i) To each class based on the net assets of that class in relation to the net assets of the company ("relative net assets");

(ii) To each class based on the Simultaneous Equations Method;

(iii) To each class based on the Settled Shares Method, *provided that* the

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and Class B were assessed .60% for class expenses, use of the simultaneous equations method during a full year that produced gross returns of 10.75% should result in an annualized rate of return of approximately 9.70% for Class A and 9.20% for Class B.

[14] The equations should allocate the day's income, realized gains (or losses), unrealized appreciation (or depreciation), and fundwide expenses and reallocate each class's undistributed net investment income, undistributed realized gains (or losses), and unrealized appreciation (or depreciation).

[15] An example of equations for a fund having two classes of shares appeared in an appendix to the Proposing Release, and is attached to this release as Appendix A.

[16] See ICI Letter, *supra* note 7, at 2 (recommending that Commission not specify particular equations). Any equations selected generally should be applied on a consistent basis. See *infra* note 21 and accompanying text.

[17] Amended rule 18f–3(c)(1)(v) [17 CFR 270.18f–3(c)(1)(v)]; see section 2(a)(19) of the Investment Company Act [15 U.S.C. 80a–2(a)(19)] (defining "interested person" of a fund).

[18] See *supra* note 13 and accompanying text.

[19] The allocation methods specified in the rule provide standards for determining whether a new allocation method is fair to shareholders.

[20] The amended rule should not impose significant additional burdens on fund boards, which remain free to permit only the use of one of the allocation methods specified in the rule.

[21] Amended rule 18f–3(c)(1) [17 CFR 270.18f–3(c)(1)]; see also 1995 Release, *supra* note 1, at text accompanying nn. 24–25. Because the selected allocation method should be consistently applied from period to period, changes in the method are expected to be rare. See also rule 18f–3(d) [17 CFR 270.18f–3(d)] (before any material amendment of a plan governing a multiple class arrangement, the fund's directors must determine that the plan as proposed to be amended, including the expense allocation, is in the best interests of each class individually and the fund as a whole).

[22] The purchase class typically pays an asset-based distribution fee and a contingent deferred sales charge. The conversion feature is intended to permit long-term shareholders to receive the benefit of a lower distribution fee (or no fee) charged to the target class. See Proposing Release, *supra* note 5, at n.16 and accompanying text.

[23] In the alternative, the fund could establish a new target class for purchase class shareholders on the same terms that applied to the target class before the increase.

[24] Amended rule 18f–3(e)(2)(iii) [17 CFR 270.18f–3(e)(2)(iii)]. An increase that implicates this provision would include, for example, a proposal to increase distribution fees materially for the target class under a rule 12b–1 plan or certain shareholder services plans.

[25] Amended rule 12b–1(g) [17 CFR 270.12b–1(g)].

[26] Rule 12b–1(b) [17 CFR 270.12b–1(b)].

[27] See rule 12b–1(b)(1), (b)(3)(iii) to (iv)(A), (b)(4), (g) [17 CFR 270.12b–1(b)(1), (b)(3)(iii) to (iv)(A), (b)(4), (g)].

[28] Rule 12b–1(g).

[29] Amended rule 12b–1(g); see Distribution of Shares by Registered Open-End Management Investment Company, Investment Company Act Release No. 22201 at n.7 and accompanying text (Sept. 9, 1996) [61 FR 49010 (Sept. 17, 1996)] (rule 12b–1 has been interpreted to treat each series of a fund as a separate fund; a series or class not publicly offered should be treated in same way as a fund not publicly offered). The amended rule also deletes current rule 12b–1(g)'s description of certain voting rights of purchase class shareholders under rule 18f–3, which is a matter addressed by rule 18f–3 itself. The amended rule substitutes a reference to amended rule 18f–3(e)(2)(iii). Amended rule 12b–1(g).

[30] 15 U.S.C. 80a–2(c).

company is a Daily Dividend Fund (such a company may allocate income and Fundwide Expenses based on the Settled Shares Method and realized gains and losses and unrealized appreciation and depreciation based on relative net assets);

(iv) To each share without regard to class, *provided that* the company is a Daily Dividend Fund that maintains the same net asset value per share in each class; that the company has received undertakings from its adviser, underwriter, or any other provider of services to the company, agreeing to waive or reimburse the company for payments to such service provider by one or more classes, as allocated under paragraph (a)(1) of this section, to the extent necessary to assure that all classes of the company maintain the same net asset value per share; and that payments waived or reimbursed under such an undertaking may not be carried forward or recouped at a future date; or

(v) To each class based on any other appropriate method, *provided that* a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, determine that the method is fair to the shareholders of each class and that the annualized rate of return of each class will generally differ from that of the other classes only by the expense differentials among the classes.

(2) For purposes of this section:

(i) *Daily Dividend Fund* means any company that has a policy of declaring distributions of net investment income daily, including any money market fund that determines net asset value using the amortized cost method permitted by § 270.2a–7;

(ii) *Fundwide Expenses* means expenses of the company not allocated to a particular class under paragraph (a)(1) of this section;

(iii) The *Settled Shares Method* means allocating to each class based on relative net assets, excluding the value of subscriptions receivable; and

(iv) The *Simultaneous Equations Method* means the simultaneous allocation to each class of each day's income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses and reallocation to each class of undistributed net investment income, undistributed realized gains or losses, and unrealized appreciation or depreciation, based on the operating results of the company, changes in ownership interests of each class, and expense differentials between the classes, so that the annualized rate of return of each class generally differs from that of the other classes only by the expense differentials among the classes.

* * * * *

(e) * * *

(2) * * *

(iii) If the shareholders of the target class approve any increase in expenses allocated to the target class under paragraphs (a)(1)(i) and (a)(1)(ii) of this section, and the purchase class shareholders do not approve the increase, the company will establish a new target class for the purchase class on the same terms as applied to the target class before that increase.

* * * * *

Dated: September 26, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the preamble will not appear in the Code of Federal Regulations.

Appendix A—Simultaneous Equations Method

The equations set forth below are examples of a set of simultaneous equations that could be used as an allocation method in a multiple class fund with two classes at the end of day t. The inception date of class B shares is assumed to be on or after the inception date of class A shares.

Equation 1: $A_t + B_t = G_t + C_t$

Equation 2: $A_t/S_{at} - B_t/S_{bt} = dx(NAV_0)$

where:

A_t: the total net assets to be allocated to class A at the end of day t

B_t: the total net assets to be allocated to class B at the end of day t

G_t: the cumulative undistributed net change in assets from operations for the fund at the end of day t

C_t: the cumulative capital for the fund at the end of day t

S_{at}: the number of shares in class A at the end of day t

S_{bt}: the number of shares in class B at the end of day t

d: the time adjustment factor, calculated as the number of days since the inception of class B or the ex-dividend date of the last income distribution, whichever is more recent, divided by 365

x: the differential in expense ratios between the two classes

NAV_0: the NAV per share for class A and class B on day 0, where day 0 is either the day class B commences trading or the ex-dividend date of the last income distribution, whichever is more recent.

[FR Doc. 97–26145 Filed 10–2–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 10, 11, 12, 18, 24, 103, 112, 122, 127, 133, 141, 143, 148, 151, 152, 159, 171, 177 and 191

[T.D. 97–82]

Technical Amendments to the Customs Regulations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document makes various minor technical changes and corrections to the Customs Regulations, in accordance with the Customs policy of periodically reviewing its regulations to ensure that they are current.

EFFECTIVE DATE: October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Regulations Branch, Office of Regulations and Rulings (202–927–2268).

SUPPLEMENTARY INFORMATION:

Background

The technical amendments set forth in this document involve Parts 4, 10, 11, 12, 18, 24, 103, 112, 122, 127, 133, 141, 143, 148, 151, 152, 159, 171, 177 and 191 of the Customs Regulations (19 CFR Parts 4, 10, 11, 12, 18, 24, 103, 112, 122, 127, 133, 141, 143, 148, 151, 152, 159, 171, 177 and 191) and are summarized below.

Discussion of Changes

Part 4

1. In the table set forth under § 4.20(c), in the column headed "Light money", the second figure (".05") is corrected to read ".50".

2. At the end of § 4.80(a)(3), the reference to "46 CFR subpart 67.03" is corrected to read "46 CFR 67.3".

Part 10

1. In the third sentence of § 10.1(i), the reference to "§ 142.11(b)" is corrected to read "§ 141.11(b)".

2. In the last sentence of § 10.7(d), the reference to "§ 10.6(c)" is corrected to reflect that present § 10.6 (which corresponds in substance to former § 10.6(c)) is not subdivided.

3. In the second sentence of § 10.11(b), the reference to "item 807.00" is replaced by the appropriate Harmonized Tariff Schedule of the United States (HTSUS) reference which appears correctly in the first sentence.

4. In § 10.41b, the number "12" appearing in the first sentence of the introductory text of paragraph (b) and the number "16" appearing in the text of paragraph (b)(7) are removed, because these numbers have no relevance in these texts. Also in § 10.41b, the reference in the introductory text of paragraph (d)(1) to "paragraph (c)(2)" is corrected to read "paragraph (d)(2)".

5. In § 10.46, the words "upon compliance with §§ 10.43–10.45, or" are removed, because §§ 10.44 and 10.45 do not exist and § 10.43 is not relevant in this context.

6. In the second sentence of § 10.63, the cross-reference to § 23.4 is removed, because no such section exists.

7. In § 10.67(c), the words "and the merchandise was identified, registered, and exported in accordance with the regulations set forth in § 10.8 (e), (g), (h), and (i) governing the exportation of articles sent abroad for repairs" are removed. This change is necessary because § 10.8 was revised (among other things, to do away with the pre-exportation registration procedure) and, as so revised, no longer contains paragraphs (e), (g), (h), and (i)—see T.D. 94–47, published in the **Federal Register** on May 17, 1994 (59 FR 25563).

8. In § 10.75, the word "That" at the beginning of the last sentence is corrected to read "The", for purely grammatical reasons.

9. In § 10.90(a), the reference to "subheading 8524.90.20" is corrected to read "subheading 8524.99.20".

10. In the first sentence of § 10.100, the reference to "§ 141.83(c)(8)" is corrected to read "141.83(d)(8)".

11. In the first sentence of § 10.151, the reference "§ 101.1(o)" is changed to read "§ 101.1" and the word "or" is inserted after "declaration". The first change is necessary because the definition paragraphs in § 101.1 no longer have letter designations, and the second change is for purely grammatical reasons.

12. In the first and fifth sentences of § 10.180(a), the references to HTSUS subheadings "0201.20.20, 0201.30.20, 0202.20.20, 0202.30.20" are changed to reflect the current HTSUS subheading numbers that pertain to the products at issue.

Part 11

In the first sentence of § 11.9(b), the words "manufacturer or purchaser of" are corrected to read "manufacturer or purchaser or", to properly reflect the intent and context of the immediately following words in the regulatory text ("a duly registered trade name", which under the regulation may be used in place of the actual name of the manufacturer or purchaser).

Part 12

1. In the first sentence of § 12.29(d), the reference to "Chapter 4, Additional U.S. Note 2" is corrected to read "Chapter 4, Additional U.S. Note 26".

2. In § 12.33(e), "Department of Health, Education, and Welfare" is corrected to read "Department of Health and Human Services".

Part 18

In the first sentence of § 18.6(d), the reference to "§ 114.22(c)(3)" is corrected to read "§ 114.22(d)".

Part 24

Section 612(a) of the Uruguay Round Agreements Act (the URAA, Public Law 103–465, 108 Stat. 4809) amended the merchandise processing fee provisions of the Customs user fee statute (codified at 19 U.S.C. 58c), *inter alia*, by (1) increasing the basic ad valorem rate for formal entries and releases to "0.21" percent, (2) increasing to "$6" the fee for each informal entry or release that is manual and not prepared by Customs personnel, (3) increasing to "$9" the fee for each informal entry or release (whether automated or manual) that is prepared by Customs personnel, and (4) increasing the formal entry or release maximum and minimum fees to "$485" and "$25" respectively. Accordingly, § 24.23(b)(1)(i) (A) and (B) and (b)(2)(i) (B) and (C) are modified to reflect the current statutory fee provisions which Customs has been following since January 1, 1995, when the changes made by section 612(a) of the URAA took effect.

Part 103

In § 103.11(b)(2)(xii), the reference to "§ 114.22(a) and (b)" is changed to read "§ 114.22(a)", because paragraph (b) is in reserved status and thus contains no regulatory text.

Part 112

In § 112.26, the reference to "§ 113.26" is corrected to read "§ 113.27".

Part 122

In § 122.152, the last sentence is removed because the "subpart P" referred to therein is reserved and thus contains no regulatory text.

Part 127

In the second sentence of § 127.33, the reference to "Subchapter XV" is corrected to read "Subchapter IV".

Part 133

1. At the end of § 133.21(d), the reference within the parentheses to "§ 133.24" is corrected to read "§ 133.23a".

2. In § 133.23(b)(3), the reference within parentheses to "§ 133.24" is corrected to read "§ 133.23a".

Part 141

1. In the authority citations for Part 141, the specific authority citation for subpart B is removed, because the statutory provision referenced therein was repealed in 1983 by section 201(c) of Public Law 97–446.

2. At the end of § 141.1(f), the reference within the parentheses to "part 20" is corrected to read "part 27".

3. In § 141.4, in the introductory text of paragraph (c), the reference to "General Note 13(e)" is corrected to read "General Note 16(e)".

4. In the first sentence of § 141.11(b), the reference to "subpart B of this chapter" is corrected to read "subpart B of part 142 of this chapter".

5. In § 141.61, in paragraph (e)(1), the parenthetical reference at the end of the second sentence to "§ 101.1(k)" is corrected to read "§ 101.1 of this chapter", because the definition paragraphs in § 101.1 no longer have letter designations. Also in § 141.61, in paragraph (e)(3), the reference to "General Statistical Note 1(b)(V)" is corrected to read "General Statistical Note 1(b)(ii)".

6. At the end of § 141.69(a), the reference to "§ 141.68(f)" is corrected to read "§ 141.68(g)".

7. In § 141.83, paragraph (d)(1) is removed, because it relates to the special Customs invoice which, along with the text of paragraph (a), has been eliminated.

8. In § 141.89(a), in the product listings for machine tools, the reference in item (4) to subheading "8457.10.0010 through 8457.10.0050" is corrected to read "8457.10.00".

9. In § 141.112(f), the reference to "§ 158.10" is corrected to read "158.44".

Part 143

In § 143.1(b), the reference to "§ 101.1(l)" is corrected to read "§ 101.1", because the definition paragraphs in § 101.1 no longer have letter designations.

Part 148

In § 148.41, the reference to subheading "9804.00.20" is corrected to read "9804.00.40".

Part 151

In § 151.4, paragraph (b)(2) (which refers to sampling of benzenoid chemicals) is removed, because there are no longer any special sampling procedures applicable to benzenoid

chemicals. Subpart D of part 152 of the Customs Regulations (which included the § 152.35 referred to in this paragraph (b)(2)) was removed by T.D. 87–89 (52 FR 24444) which made a number of changes to the Customs Regulations to reflect the replacement of the old value law by the new value law under the Trade Agreements Act of 1979.

Part 152

1. In the authority citations for part 152, the specific authority citation for subpart D is removed and the specific authority citation for §§ 152.13 and 152.24 is corrected to refer only to § 152.13, because subpart D and § 152.24 are in reserved status and thus contain no regulatory text.

2. In § 152.102, the reference in paragraph (j)(2) to "§ 152.103(j)(2)(iv)" is corrected to read "§ 152.103(j)(2)(ii)". Also in § 152.102, the reference in paragraph (k) to "§ 151.105(c)(3)" is corrected to read "§ 152.105(c)(3)".

Part 159

1. In the first sentence of § 159.33, the reference to "31 U.S.C. 372(e)" is corrected to read "31 U.S.C. 5151(b)".

2. In the first sentence of § 159.35, the reference to "31 U.S.C. 372(c)(2)" is corrected to read "31 U.S.C. 5151(e)".

3. At the beginning of the first sentence of § 159.43, the word "Additional" is removed because it does not appear in the title of the referenced U.S. Note.

Part 171

In appendix C to part 171, the reference to "19 CFR 141.133" at the end of paragraph E.2. of section II is corrected to read "19 CFR 141.33".

Part 177

In § 177.2(b)(2)(iii), the reference in the first sentence to "subparts C and D of part 152" is corrected to read "subpart C of part 152", because subpart D of part 152 is reserved and thus contains no regulatory text.

Part 191

1. At the end of § 191.91, the reference within the parentheses to "§ 191.4(a)(10)" is corrected to read "§ 191.4(a)(12)".

2. At the end of § 191.131(a), the reference within the parentheses to "§ 191.4(a)(11)" is corrected to read "§ 191.4(a)(13)".

3. In § 191.161, the words "fourth provision" are corrected to read "fourth proviso" and at the end the reference within the parentheses to "§ 191.4(a)(12)" is corrected to read "§ 191.4(a)(14)".

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because the amendments only involve technical corrections to conform the affected texts to existing law or other regulatory provisions, notice and public procedure in this case are inapplicable and unnecessary pursuant to 5 U.S.C. 553(b)(B), and, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the aforesaid requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Furthermore, these amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information: The principal author of this document was Francis W. Foote, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Arrival, Bonds, Cargo vessels, Coastal zone, Coastwise trade, Common carriers, Customs duties and inspection, Declarations, Entry, Exports, Fees, Fishing vessels, Foreign commerce and trade statistics, Freight, Harbors, Imports, Inspection, Landing, Maritime carriers, Merchandise, Passenger Vessels, Repairs, Reporting and recordkeeping requirements, Seamen, Shipping, Vessels, Yachts.

19 CFR Part 10

Aircraft, Alterations, American goods, Animals, Art, Assembly, Automotive products, Bonds, Customs duties and inspection, Exports, Imports, International traffic, Packaging and containers, Preference programs, Repairs, Reporting and recordkeeping requirements, Shipments, Trade agreements, Value content, Vessels, Vehicles.

19 CFR Part 11

Customs duties and inspection, Furs, Labeling, Liquor, Marking, Packaging and containers, Precious metals, Prohibited merchandise, Reporting and recordkeeping requirements, Textiles and textile products, Tobacco products, Wool.

19 CFR Part 12

Agriculture and agricultural products, Animals, Bonds, Chemicals, Cultural property, Customs duties and inspection, Dairy products, Entry of merchandise, Imports, Labeling, Licensing, Marking, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Seizure and forfeiture, Trade agreements, Vehicles, Vessels.

19 CFR Part 18

Bonds, Bonded transportation, Common carriers, Customs duties and inspection, Exports, Foreign trade statistics, Imports, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Transportation, Vehicles, Vessels.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Foreign trade statistics, Reporting and recordkeeping requirements, Taxes, Trade agreements, User fees, Wages.

19 CFR Part 103

Administrative practice and procedure, Confidential business information, Courts, Freedom of Information, Imports, Law enforcement, Privacy, Reporting and recordkeeping requirements.

19 CFR Part 112

Administrative practice and procedure, Bonds, Common carriers, Customs duties and inspection, Exports, Freight forwarders, Imports, Licensing, Motor carriers, Reporting and recordkeeping requirements.

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Cuba, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Penalties, Reporting and recordkeeping requirements, Security measures.

19 CFR Part 127

Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

19 CFR Part 133

Copyrights, Customs duties and inspection, Fees assessment, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise (counterfeit goods), Seizures and forfeitures, Trademarks, Trade names, Unfair competition.

19 CFR Part 141

Bonds, Customs duties and inspection, Entry of merchandise, Foreign trade statistics, Invoices, Packaging, Powers of attorney, Release of merchandise, Reporting and recordkeeping requirements, Trademarks, Trade names.

19 CFR Part 143

Automated Broker Interface (ABI), Computer technology, Customs duties and inspection, Electronic entry filing, Entry of merchandise, Invoice requirements, Reporting and recordkeeping requirements.

19 CFR Part 148

Airmen, Aliens, Baggage, Crewmembers, Customs duties and inspection, Declarations, Foreign officials, Government employees, International organizations, Privileges and Immunities, Reporting and recordkeeping requirements, Seamen, Taxes.

19 CFR Part 151

Customs duties and inspection, Examination, Fees assessment, Imports, Laboratories, Licensing, Penalties, Reporting and recordkeeping requirements, Sampling and testing.

19 CFR Part 152

Appraisement, Classification, Customs duties and inspection, Valuation.

19 CFR Part 159

Antidumping, Computer technology, Countervailing duties, Customs duties and inspection, Discriminating duties, Entry procedures, Imports, Liquidation of entries for merchandise, Suspension of liquidation pending disposition of American manufacturer's cause of action, Value content.

19 CFR Part 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Seizures and forfeitures.

19 CFR Part 177

Administrative practice and procedure, Courts, Customs duties and inspection, Government procurement, Judicial proceedings, Reporting and recordkeeping requirements, Rulings.

19 CFR Part 191

Bonds, Canada, Commerce, Customs duties and inspection, Drawback, Exports, Mexico, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 4, 10, 11, 12, 18, 24, 103, 112, 122, 127, 133, 141, 143, 148, 151, 152, 159, 171, 177 and 191, Customs Regulations (19 CFR parts 4, 10, 11, 12, 18, 24, 103, 112, 122, 127, 133, 141, 143, 148, 151, 152, 159, 171, 177 and 191), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.20 also issued under 46 U.S.C. 2107(b), 8103, 14306, 14502, 14511, 14512, 14513, 14701, 14702, 46 U.S.C. App. 121, 128;

* * * * *

Section 4.80 also issued under 46 U.S.C. 12106, 46 U.S.C. App. 251, 289, 319, 802, 808, 883, 883–1;

* * * * *

§ 4.20 [Amended]

2. In § 4.20, in the table under paragraph (c), in the column headed "Light money", the figure ".05" is revised to read ".50".

§ 4.80 [Amended]

3. In § 4.80, at the end of the second sentence of paragraph (a)(3), the reference "46 CFR subpart 67.03" is revised to read "46 CFR 67.3".

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 and the specific authority citation for § 10.41b are revised, and the specific authority citation for § 10.63 continues to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Section 10.41b also issued under 19 U.S.C. 1202 (Chapter 98, Subchapter III, U.S. Note 3, HTSUS);

* * * * *

Sections 10.61, 10.62, 10.63, 10.64, 10.64a also issued under 19 U.S.C. 1309;

* * * * *

§ 10.1 [Amended]

2. In § 10.1, in the third sentence of paragraph (i), the reference "§ 142.11(b)" is revised to read "§ 141.11(b)".

§ 10.7 [Amended]

3. In § 10.7, in the second sentence of paragraph (d), the reference "§ 10.6(c)" is revised to read "§ 10.6".

§ 10.11 [Amended]

4. In § 10.11, the second sentence of paragraph (b) is amended by removing the reference "item 807.00" and adding, in its place, the reference "subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)".

§ 10.41b [Amended]

5. In § 10.41b:

a. In the introductory text of paragraph (b), in the first sentence, the number "12" is removed;

b. In paragraph (b)(7), the number "16" is removed; and

c. In the introductory text of paragraph (d)(1), the reference "paragraph (c)(2)" is revised to read "paragraph (d)(2)".

§ 10.46 [Amended]

6. In § 10.46, the words "upon compliance with §§ 10.43–10.45, or" are removed.

§ 10.63 [Amended]

7. In § 10.63, the second sentence is amended by removing the reference "§§ 4.39 and 23.4" and adding, in its place, the reference "§ 4.39".

§ 10.67 [Amended]

8. In § 10.67, in paragraph (c), the words "and the merchandise was identified, registered, and exported in accordance with the regulations set forth in § 10.8(e), (g), (h), and (i) governing the exportation of articles sent abroad for repairs" are removed.

§ 10.75 [Amended]

9. In § 10.75, at the beginning of the second sentence, the word "That" is revised to read "The".

§ 10.90 [Amended]

10. In § 10.90, in paragraph (a), the reference "subheading 8524.90.20" is revised to read "subheading 8524.99.20".

§ 10.100 [Amended]

11. In § 10.100, in the first sentence, the reference "141.83(c)(8)" is revised to read "141.83(d)(8)".

§ 10.151 [Amended]

12. In § 10.151, in the first sentence, the reference "§ 101.1(o)" is revised to read "§ 101.1" and the word "or" is added after "declaration".

§ 10.180 [Amended]

13. In § 10.180, in the first and fifth sentences of paragraph (a), the reference "subheadings 0201.20.20, 0201.30.20, 0202.20.20, 0202.30.20" is revised to read "subheadings 0201.20.10, 0201.30.02, 0202.20.02, 0202.20.10".

PART 11—PACKING AND STAMPING; MARKING

1. The authority citation for part 11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Notes 20 and 21, Harmonized Tariff Schedule of the United States), 1624.

§ 11.9 [Amended]

2. In § 11.9, the first sentence of paragraph (b) is amended by removing the words "manufacturer or producer of" and adding, in their place, the words "manufacturer or producer or".

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

§ 12.29 [Amended]

2. In § 12.29, in the first sentence of paragraph (d), the reference "Chapter 4, Additional U.S. Note 2" is revised to read "Chapter 4, Additional U.S. Note 26".

§ 12.33 [Amended]

3. In § 12.33, paragraph (e) is amended by removing the words "Department of Health, Education, and Welfare" and adding, in their place, the words "Department of Health and Human Services".

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The authority citation for part 18 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1624.

* * * * *

§ 18.6 [Amended]

2. In § 18.6, in the first sentence of paragraph (d), the reference "§ 114.22(c)(3)" is revised to read "§ 114.22(d)".

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1450, 1624; 31 U.S.C. 9701.

* * * * *

§ 24.23 [Amended]

2. In § 24.23:

a. In paragraph (b)(1)(i)(A), in the first sentence, the figure "0.19 percent" is revised to read "0.21 percent";

b. In paragraph (b)(1)(i)(B), the figure "$400" is revised to read "$485" and the figure "$21" is revised to read "$25";

c. In paragraph (b)(2)(i)(B), the figure "$5" is revised to read "$6"; and

d. In paragraph (b)(2)(i)(C), the figure "$8" is revised to read "$9".

PART 103—AVAILABILITY OF INFORMATION

1. The authority citation for part 103 continues to read in part as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

§ 103.11 [Amended]

2. In § 103.11, in paragraph (b)(2)(xii), the reference "§ 114.22 (a) and (b)" is revised to read "§ 114.22(a)".

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. The authority citation for part 112 continues to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

§ 112.26 [Amended]

2. In § 112.26, the reference "§ 113.26" is revised to read "§ 113.27".

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

§ 122.152 [Amended]

2. In § 122.152, the last sentence is removed.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

1. The authority citation for part 127 continues to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 7553.

§ 127.33 [Amended]

2. In § 127.33, in the second sentence, the reference "Subchapter XV" is revised to read "Subchapter IV".

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The authority citation for part 133 continues to read in part as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

Section 133.21 also issued under 15 U.S.C. 1124, 19 U.S.C. 1526;

* * * * *

§ 133.21 [Amended]

2. In § 133.21, at the end of paragraph (d), the reference "§ 133.24" within the parentheses is revised to read "§ 133.23a".

§ 133.23 [Amended]

3. In § 133.23, in paragraph (b)(3), the reference "§ 133.24" within the parentheses is revised to read "§ 133.23a".

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Subpart F also issued under 19 U.S.C. 1481;

* * * * *

Section 141.1 also issued under 11 U.S.C. 507(a)(7)(F), 31 U.S.C. 191, 192;

* * * * *

Section 141.4 also issued under 19 U.S.C. 1202 (General Note 13; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Note 4; Chapter 99, Subchapter V, U.S. Note 9, Harmonized Tariff Schedule of the United States (HTSUS)), 1498;

* * * * *

Section 141.69 also issued under 19 U.S.C. 1315;

* * * * *

Section 141.112 also issued under 19 U.S.C. 1564;

* * * * *

2. The specific authority citation for subpart B is removed.

§ 141.41 [Amended]

3. In § 141.1, at the end of paragraph (f), the reference "part 20" within the parentheses is revised to read "part 27".

§ 141.4 [Amended]

4. In § 141.4, in the introductory text of paragraph (c), the reference "General Note 13(e)" is revised to read "General Note 16(e)".

§ 141.11 [Amended]

5. In § 141.11, in the first sentence of paragraph (b), the reference "subpart B of this chapter" is revised to read "subpart B of part 142 of this chapter".

§ 141.61 [Amended]

6. In § 141.61:

a. In paragraph (a)(1), at the end of the second sentence, the reference "§ 101.1(k)" within the parentheses is revised to read "§ 101.1 of this chapter"; and

b. In paragraph (e)(3), the reference "General Statistical Note 1(b)(V)" is revised to read "General Statistical Note 1(b)(ii)".

§ 141.69 [Amended]

7. In § 141.69, at the end of paragraph (a), the reference "§ 141.68(f)" is revised to read "§ 141.68(g)".

§ 141.83 [Amended]

8. In § 141.83, paragraph (d)(1) is removed and reserved.

§ 141.89 [Amended]

9. In § 141.89, under paragraph (a), in the product listings for machine tools, the reference in item (4) to "Subheading 8457.10.0010 through 8457.10.0050" is revised to read "Subheading 8457.10.00".

§ 141.112 [Amended]

10. In § 141.112, in paragraph (f), the reference "158.10" is revised to read "158.44".

PART 143—SPECIAL ENTRY PROCEDURES

1. The authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

§ 143.1 [Amended]

2. In § 143.1, in paragraph (b), the reference "§ 101.1(l)" is revised to read "§ 101.1".

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The authority citation for part 148 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States).

* * * * *

§ 148.41 [Amended]

2. In § 148.41, the reference "subheading 9804.00.20" is revised to read "subheading 9804.00.40".

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for part 151 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 20 and 21, Harmonized Tariff Schedule of the United States (HTSUS)), 1624. Subpart A also issued under 19 U.S.C. 1499.

* * * * *

§ 151.4 [Amended]

2. In § 151.4, paragraph (b)(2) is removed and reserved.

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. The authority citation for part 152 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624.

* * * * *

2. The specific authority citation for Subpart D is removed.

3. The specific authority citation for §§ 152.13 and 152.24 is amended by removing the words "Sections 152.13 and 152.24" and adding, in their place, the words "Section 152.13".

§ 152.102 [Amended]

4. In § 152.102:

a. In paragraph (j)(2), the reference "§ 152.103(j)(2)(iv)" is revised to read "§ 152.103(j)(2)(ii)"; and

b. In paragraph (k), the reference "§ 151.105(c)(3)" is revised to read "§ 152.105(c)(3)".

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for part 159 is revised to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624. Subpart C also issued under 31 U.S.C. 5151.

§ 159.33 [Amended]

2. In § 159.33, in the first sentence, the reference "31 U.S.C. 372(a)" is revised to read "31 U.S.C. 5151(b)".

§ 159.35 [Amended]

3. In § 159.35, in the first sentence, the reference "31 U.S.C. 372(c)(2)" is revised to read "31 U.S.C. 5151(e)".

§ 159.43 [Amended]

4. In § 159.43, at the beginning of the first sentence, the word "Additional" is removed.

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The authority citation for part 171 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624.

* * * * *

Appendix C to Part 171 [Amended]

2. In Appendix C to Part 171, in section II, at the end of paragraph E.2., the reference "19 CFR 141.133" is revised to read "19 CFR 141.33".

PART 177—ADMINISTRATIVE RULINGS

1. The general authority citation for part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

§ 177.2 [Amended]

2. In § 177.2, the first sentence of paragraph (b)(2)(iii) is amended by removing the words "subparts C and D of part 152" and adding, in their place, the words "subpart C of part 152".

PART 191—DRAWBACK

1. The authority citation for part 191 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

Sections 191.131(a), 191.133, 191.137, 191.139 also issued under 19 U.S.C. 1557;

* * * * *

§ 191.91 [Amended]

2. In § 191.91, the reference "§ 191.4(a)(10)" at the end within the parentheses is revised to read "§ 191.4(a)(12)".

§ 191.131 [Amended]

3. In § 191.131, at the end of paragraph (a), the reference "§ 191.4(a)(11)" within the parentheses is revised to read "§ 191.4(a)(13)".

§ 191.161 [Amended]

4. In § 191.161:

a. The words "fourth provision" are removed and the words "fourth proviso" are added in their place; and

b. The reference "§ 191.4(a)(12)" at the end within the parentheses is revised to read "§ 191.4(a)(14)".

George J. Weise,

Commissioner of Customs.

Approved: August 20, 1997.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–26220 Filed 10–2–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 12

[T.D. 97–81]

RIN 1515–AC24

Import Restrictions Imposed on Archaeological Artifacts From Guatemala

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of import restrictions on pre-Columbian culturally significant

archaeological artifacts of Maya material from the Peten Lowlands, and related pre-Columbian material from the Highlands and the Southern Coast of Guatemala. These restrictions are being imposed pursuant to an agreement between the United States and Guatemala that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document also contains the Designated List of Archaeological Material that describes the articles to which the restrictions apply. These import restrictions imposed pursuant to the bilateral agreement between the United States and Guatemala continue the import restrictions that were imposed on an emergency basis in 1991. Accordingly, this document amends the Customs Regulations by removing Guatemala from the listing of countries for which emergency actions imposed the import restrictions and adding Guatemala to the list of countries for which an agreement has been entered into for imposing import restrictions.

EFFECTIVE DATE: October 3, 1997.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Donnette Rimmer, Intellectual Property Rights Branch (202) 482–6960; (Operational Aspects) Joan E. Sebanaler, Trade Operations (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub.L. 97–446, 19 U.S.C. 2601 *et seq.*) ("the Act"). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. The U.S. is, to date, the only major art importing country to implement the 1970 Convention.

During the past several years, import restrictions have been imposed on an emergency basis on archaeological and ethnological artifacts of a number of signatory nations as a result of requests for protection received from those nations as well as pursuant to bilateral agreements between the United States and other countries.

Guatemala has been one of the countries whose archaeological material has been afforded emergency protection. In T.D. 91–34, § 12.104g(b), Customs Regulations, (19 CFR 12.104g(b)) was amended to reflect that archaeological material from the Peten Archaeological Region of Guatemala received import protection under the emergency protection provisions of the Act.

Import restrictions are now being imposed on archaeological artifacts of Maya material from the Peten Lowlands, and related pre-Columbian material from the Highlands and the Southern Coast of Guatemala as the result of a bilateral agreement entered into between the United States and Guatemala. This agreement was entered into on September 29, 1997, pursuant to the provisions of 19 U.S.C. 2602. Protection of the archaeological material of Maya material from the Peten lowlands, and related pre-Columbian material from the Highlands and the Southern Coast of Guatemala previously reflected in § 12.104g(b) will be continued through the bilateral agreement without interruption. Accordingly, § 12.104g(a) of the Customs Regulations is being amended to indicate that restrictions have been imposed pursuant to the agreement between the United States and Guatemala and the emergency import restrictions on certain archaeological material from Guatemala is being removed from § 12.104g(b) as those restrictions are now encompassed in § 12.104g(a).

Material and Sites Encompassed in Import Restrictions

In reaching the decision to recommend that negotiations for an agreement with Guatemala should be undertaken to continue the imposition of import restrictions on certain archaeological material from the Peten Lowlands, and related pre-Columbian material from the Highlands and the Southern Coast of Guatemala, the Deputy Director of the United States Information Agency made a determination that the cultural patrimony of Guatemala continues to be in jeopardy from pillage of irreplaceable materials representing Guatemala heritage and that the pillage is endemic and substantially documented with respect to Maya material from sites in the Peten Lowlands of Guatemala, and related pre-Columbian material from the Highlands and the Southern Coast of Guatemala. The Deputy Director listed the following archaeological material as those that are in need of protection:

Material: Archaeological material from sites in the Peten Lowlands of Guatemala, and related pre-Columbian material from the Highlands and the Southern Coast of Guatemala. This archaeological material includes, but is not limited to: ceramic vessels and forms; jade or green stone, possibly with traces of red pigment; shell; and bone.

These import restrictions are in addition to similar restrictions imposed by the 1972 Pre-Columbian Monumental or Architectural Sculpture or Murals Statute (19 U.S.C 2091–2095), which has denied entry into the United States of segments of pre-Columbian monuments and stelae since May 2, 1973.

Designated List

The bilateral agreement between Guatemala and the United States covers the material set forth in a Designated List of Archaeological Material from sites in the Peten Lowlands of Guatemala, and related pre-Columbian material from the Highlands and the Southern Coast of Guatemala, which is set forth below. Importation of articles on this list is restricted unless the articles are accompanied by documentation certifying that the material left Guatemala legally and not in violation of the export laws of Guatemala.

Archaeological Material From Sites in the Peten Lowlands of Guatemala, and Related Pre-Columbian Material From the Highlands and the Southern Coast of Guatemala

The following categories of material are restricted from importation into the U.S. unless accompanied by a verifiable export certificate issued by the Government of Guatemala—archaeological material from sites in the Peten Lowlands of Guatemala, and related pre-Columbian material from the Highlands and the Southern Coast of Guatemala, that includes, but is not limited to, the categories listed below. As this region is further excavated, other types of material may be found and added to an amended list. The following list is representative only. Any dimensions are approximate.

CHRONOLOGICAL TABLE

Stage	Substage	Dates
Preclassic Stage	Early Preclassic	2000/1500 B.C.–600 B.C.
	Preclassic	600 B.C.–400 B.C.
	Late Preclassic	400 B.C.–250 A.D.
Classic Stage	Early Classic	250 A.D.–550 A.D
	Late Classic	550 A.D.–900 A.D.
Postclassic Stage	Early Postclassic	900 A.D.–1250 A.D.
	Late Postclassic	1250 A.D.–1524 A.D.

Designated List Of Materials

I. Ceramic/Terracotta/Fired Clay—A wide variety of decorative techniques are used on all shapes: fluting, gouged or incised lines and designs, modeled carving, and painted polychrome or bichrome designs of human or animal figures, mythological scenes or geometric motifs. Small pieces of clay modeled into knobs, curls, faces, etc., are often applied to the vessels. Bowls and dishes may have lids or tripod feet.

A. Common Vessels.
1. Vases—(10–25 cm ht).
2. Bowls—(8–15 cm ht).
3. Dishes and plates—(27–62 cm diam).
4. Jars—(12.5–50 cm ht).

B. Special Forms.
1. Drums—polychrome painted and plain (35–75 cm ht).
2. Figurines—human and animal form (6–15 cm ht).
3. Whistles—human and animal form (5–10 cm ht).
4. Rattles—human and animal form (5–7 cm ht).
5. Miniature vessels—(5–10 cm ht).
6. Stamps and seals—engraved geometric design, various sizes and shapes.
7. Effigy vessels—in human or animal form (16–30 cm ht).
8. Incense burners—elaborate painted, applied and modeled decoration in form of human figures (25–50 cm ht).

II. Stone (jade, obsidian, flint, alabaster/calcite, limestone, slate, and other).

A. Figurines—human and animal (7–25 cm ht).
B. Masks—incised decoration and inlaid with shell, human and animal faces (20–25 cm length).
C. Jewelry—various shapes and sizes.
1. Pendants.
2. Earplugs.
3. Necklaces.

D. Stelae, Ritual Objects, Architectural Elements—Carved in low relief with scenes of war, ritual or political events, portraits of rulers or nobles, often inscribed with glyphic texts. Sometimes covered with stucco and painted. The size of stelae and architectural elements such as lintels, posts, steps, decorative building blocks range from .5 meters to 2.5 meters in height. Hachas (thin, carved human or animal heads in the shape of an axe), yokes, and other carved ritual objects are under 1 meter in length or height, but vary in size.

E. Tools and Weapons.
1. Arrowheads (3–7 cm length).
2. Axes, adzes, celts (3–16 cm length).
3. Blades (4–15 cm length).
4. Chisels (20–30 cm length).
5. Spearpoints (3–10 cm length).
6. Eccentric shapes (10–15 cm length).
7. Grindingstones (30–50 cm length).

F. Vessels and Containers.
1. Bowls (10–25 cm ht).
2. Plates/Dishes (15–40 cm diam).
3. Vases (6–23 cm ht).

III. Metal (gold, silver, or other)—Cast or beaten into the desired form, decorated with engraving, inlay, punctured design or attachments. Often in human or stylized animal forms.

A. Jewelry—various shapes and sizes.
1. Necklaces.
2. Bracelets.
3. Disks.
4. Earrings or earplugs.
5. Pendants.

B. Figurines—(5–10 cm ht).
C. Masks—(15—25 cm length).

IV. Shell—Decorated with cinnabar and incised lines, sometimes with jade applied.

A. Figurines—human and animal (2–5 cm ht).
B. Jewelry—various shapes and sizes.
1. Necklaces.
2. Bracelets.
3. Disks.
4. Earrings or earplugs.
5. Pendants.

C. Natural Forms—often with incised designs, various shapes and sizes.

V. Animal Bone—Carved or incised with geometric and animal designs and glyphs.

A. Tools—various sizes.
1. Needles.
2. Scrapers.

B. Jewelry—various shapes and sizes.
1. Pendants.
2. Beads.
3. Earplugs.

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document imposing import restrictions on the above-listed Guatemalan cultural property is being made in response to a bilateral agreement entered into in furtherance of the foreign affairs interests of the United States, pursuant to section 553(a)(1) of the Administrative Procedure Act, (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in E.O. 12866.

Drafting Information: The principal author of this document was Keith B. Rudich, Esq., Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—[AMENDED]

1. The general authority and specific authority citation for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104 [Amended]

2. In § 12.104g, paragraph (a) the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended by adding Guatemala in appropriate alphabetical order as follows:

State	Cultural property	T.D. No.
Guatemala	Archaeological Material From Sites In The Peten Lowlands Of Guatemala, And Related Pre-Columbian Material From The Highlands And The Southern Coast of Guatemala.	T.D. 97—81

3. In § 12.104(g), paragraph (b), the list of emergency actions imposing import restrictions on described articles of cultural property of State parties is amended by removing the entry for "Guatemala" in its entirety.

Approved: September 29, 1997.

Samuel H. Banks,
Acting Commissioner of Customs.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 97–26219 Filed 10–2–97; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 97–45]

RIN 1515–AA57

Update of Ports Subject to the Harbor Maintenance Fee; Corrections

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations; corrections.

SUMMARY: This document corrects an omission that was made in the interim regulations document published in the **Federal Register** on June 4, 1997, which updated the list of ports that process commercial vessels that transport cargo that are subject to the Water Resources Development Act of 1986.

DATES: This correction is effective October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia Barbare, Office of Finance, (202) 927–0034.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1997, Customs published in the **Federal Register** (62 FR 30448) interim regulations (T.D. 97–45) which amended § 24.24 of the Customs Regulations (19 CFR 24.24) to update the list of ports that process commercial vessels that transport cargo that are subject to the Water Resources Development Act of 1986. A correction document to these interim regulations was published in the **Federal Register** (62 FR 45156) on August 26, 1997. Since then, it has come to Customs' attention that the June 4 document contains another error. The interim rule document failed to list under the Galveston Bay Ports the ports of Galveston and Texas City and their port codes: 5310 and 5306, respectively. Accordingly, this document corrects that omission.

Corrections to Publication

The document (FR Doc. 97–14409) published in the **Federal Register** (62 FR 30448) on June 4, 1997, is corrected as follows:

1. On page 30453, under the heading for "Texas", in the fourth line, the listing "Galveston Bay Ports* " should read as follows:

Port code, port name and state	Port descriptions and notations
Texas	
Galveston Bay Ports*	Includes Port Bolivar and all points on Galveston Bay in Galveston County. Movements between points within this area are intraport.
5310—Galveston	
5306—Texas City	

Dated: September 29, 1997.

Harold M. Singer,
Chief, Regulations Branch.
[FR Doc. 97–26218 Filed 10–2–97; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA No. 161F]

Schedules of Controlled Substances: Excluded Veterinary Anabolic Steroid Implant Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The interim rule (62 FR 29289, May 30, 1997) which identified eight veterinary anabolic steroid implant products as being excluded from the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) is adopted without change.

DATES: *Effective Date:* October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, 202–307–7183.

SUPPLEMENTARY INFORMATION: The Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), published in the **Federal Register**, an interim rule which identified eight products as being excluded veterinary anabolic steroid implant products (62 FR 29289, May 30, 1997). Comments were requested, none were received.

Therefore, pursuant to the authority delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100 and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration Office of Diversion Control, pursuant to 28 CFR 0.104, appendix to subpart R, section 7(g), the Deputy Assistant Administrator of the Office of Diversion Control hereby adopts as a final rule, without change, the interim rule amending the products which are described in 21 CFR 1308.26 which was published at 62 FR 29289 on May 30, 1997.

The veterinary anabolic steroid implant products which are described in 21 CFR 1308.26 are excluded from application of the CSA in relation to their production, distribution, and use in animals only. If any person distributes, dispenses or otherwise diverts these products to use in humans, he/she shall be deemed to have distributed a Schedule III controlled substance and may be prosecuted for CSA violations. The veterinary anabolic steroid implants products which are excluded from application of the CSA are as follows:

EXCLUDED VETERINARY ANABOLIC STEROID IMPLANT PRODUCTS

Trade name	Company	NDC or DIN No.	Delivery system	Ingredients	Quantity
Component E–H	Vetlife, Inc., Norcross, GA	021641–002	20 implant belt, 8 pellets/implant.	Testosterone propionate	200 mg/implant (25 mg/pellet)
				Estradiol benzoate	20 mg/implant (2.5 mg/pellet)
Component E–H	Elanco, Scarborough, ON	01968327	20 implant belt, 8 pellets/implant.	Testosterone propionate	200 mg/implant (25 mg/pellet)
				Estradiol benzoate	20 mg/implant (2.5 mg/pellet)
Component TE–S	VetLife, Inc., Norcross, GA.	021641–004	20 implant belt, 6 pellets/implant.	Trenbolone acetate	120 mg/implant (20 mg/pellet)
				Estradiol	24 mg/implant (4 mg/pellet)
Component T–H	VetLife, Inc., Norcross, GA.	021641–006	20 implant belt, 10 pellets/implant.	Trenbolone acetate	200 mg/implant (20 mg/pellet)
Component T–S	VetLife, Inc., Norcross, GA.	021641–005	20 implant belt, 7 pellets/implant.	Trenbolone acetate	140 mg/implant (20 mg/pellet)
F–TO	Animal Health, Upjohn International, Kalamazoo, MI.	00093351	20 implant cartridge belt, 8 pellets/implant.	Testosterone propionate	200 mg/implant (25 mg/pellet)
				Oestradiol benzoate	20 mg/implant (2.5 mg/pellet)
Finaplix-H	Hoechst Roussel Vet, Somerville, NJ.	12799–807–10	10 implant cartridge, 10 pellets/implant.	Trenbolone acetate	200 mg/implant (20 mg/pellet)
Finaplix-S	Hoechst Roussel Vet, Somerville, NJ.	12799–807–07	10 implant cartridge, 7 pellets/implant.	Trenbolone acetate	140 mg/implant (20 mg/pellet)
Heifer-oid	Anchor Division, Boehringer Ingelheim, St. Joseph, MO.		Single & 20 implant cartridge belts, 8 pellets/implant.	Testosterone propionate	200 mg/implant (25 mg/pellet)
				Estradiol benzoate	20 mg/implant (2.5 mg/pellet)
Heifer-oid	Bio-Ceutic Division, Boehringer Ingelheim, St. Joseph, MO.		20 implant cartridge belt, 8 pellets/implant.	Testosterone propionate	200 mg/implant (25 mg/pellet)
				Estradiol benzoate	20 mg/implant (2.5 mg/pellet)
Heifer-oid	Ivy Laboratories, Inc., Overland Park, KS.		Single & 20 implant cartridge belts, 8 pellets/implant.	Testosterone propionate	200 mg/implant (25 mg/pellet)
				Estradiol benzoate	20 mg/implant (2.5 mg/pellet)
Implus-H	The Upjohn Co., Kalamazoo, MI.	0009–0434–01	20 implant cartridge belt, 8 pellets/implant.	Testosterone propionate	200 mg/implant (25 mg/pellet)
				Estradiol benzoate	20 mg/implant (2.5 mg/pellet)
Implus-H	Upjohn Co., Animal Health Div., Orangeville, ON.	06–0434–01 01968327	20 implant cartridge belt, 8 pellets/implant.	Testosterone propionate	200 mg/implant (25 mg/pellet)
				Estradiol benzoate	20 mg/implant (2.5 mg/pellet)
Revalor-G	Hoechst Roussel Vet, Somerville, NJ.	12799–811	10 implant cartridge 2 pellets/implant.	Trenbolone acetate	40 mg/implant (20 mg/pellet)
				Estradiol	4 mg/implant (2 mg/pellet)

EXCLUDED VETERINARY ANABOLIC STEROID IMPLANT PRODUCTS—Continued

Trade name	Company	NDC or DIN No.	Delivery system	Ingredients	Quantity
Revalor-H	Hoechst Roussel Vet, Somerville, NJ.	12799–810	10 implant cartridge, 7 pellets/implant.	Trenbolone acetate Estradiol	140 mg/implant (20 mg/pellet) 14 mg/implant (2 mg/pellet)
Revalor-S	Hoechst Roussel Vet, Somerville, NJ.	12799–809	10 implant cartridge, 6 pellets/implant.	Trenbolone acetate Estradiol	120 mg/implant (20 mg/pellet) 24 mg/implant 4 mg/pellet)
Synovex H	Fort Dodge Labs, Fort Dodge, IA.	0856–3901	10 implant clip, 8 pellets/ implant.	Testosterone propionate Estradiol benzoate	200 mg/implant (25 mg/pellet) 20 mg/implant (2.5 mg/pellet)
Synovex H	Syntex Laboratories, Palo Alto, CA.		10 implant clip, 8 pellets/ implant.	Testosterone propionate Estradiol benzoate	200 mg/implant (25 mg/pellet) 20 mg/implant (2.5 mg/pellet)
Synovex Plus	Fort Dodge Labs, Fort Dodge, IA.	0856–3904	10 implant clip, 8 pellets/ implant.	Trenbolone acetate Estradiol	200 mg/implant (25 mg/pellet) 28 mg/implant (3.5 mg/pellet)

In accordance with the provisions of 21 U.S.C. 811(a) of the CSA, this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, section 3(d)(1).

The Deputy Assistant Administrator, Office of Diversion Control, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small-business entities. The inclusion of a product in 21 CFR 1308.26 relieves persons who handle the product in the course of legitimate business from the requirements imposed by the CSA.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to complete with foreign-based companies in domestic and export markets.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: September 8, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–25973 Filed 10–2–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA No. 160F]

Schedules of Controlled Substances: Exempt Anabolic Steroid Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The interim rule (62 FR 29288, May 30, 1997) which identified ten anabolic steroid products as being exempt from certain regulatory provisions of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) is adopted without change.

DATES: *Effective Date:* October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, 202–307–7183.

SUPPLEMENTARY INFORMATION: The Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), published in the **Federal Register**, an interim rule which identified ten products as being exempt anabolic steroid products (62 FR 29288, May 30, 1997). Comments were requested, none were received.

Therefore, pursuant to the authority delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100 and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration Office of Diversion Control, pursuant to 28 CFR 0.104, appendix to subpart R, section 7(g)9, the Deputy Assistant Administrator of the Office of Diversion Control, hereby adopts as a final rule, without change, the interim rule amending 21 CFR 1308.34 which was published at 62 FR 29288 on May 30, 1997.

The anabolic steroid containing compounds, mixtures, or preparations which are described in 21 CFR 1308.34 are as follows:

EXEMPT ANABOLIC STEROID PRODUCTS

Trade name	Company	NDC No.	Form	Ingredients	Quantity
Andro-Estro 90–4	Rugby Laboratories, Rockville Centre, NY.	0536–1605	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
Androgyn L.A.	Forest Pharmaceuticals, St. Louis, MO.	0456–1005	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
depANDROGYN	Forest Pharmaceuticals, St. Louis, MO.	0456–1020	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
DEPO-T.E.	Quality Research Pharm., Carmel, IN.	52765–257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
depTESTROGEN	Martica Pharmaceuticals, Phoenix, AZ.	51698–257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Duomone	Wintec Pharmaceutical, Pacific, MO.	52047–360	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
DUO-SPAN II	Primedics Laboratories, Gardena, CA.	0684–0102	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
DURATESTRIN	W.E. Hauck, Alpharetta, GA	43797–016	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Estratest	Solvay Pharmaceuticals, Marietta, GA.	0032–1026	TB	Esterified estrogens Methyltestosterone	1.25 mg 2.5 mg
Estratest HS	Solvay Pharmaceuticals, Marietta, GA.	0032–1023	TB	Esterified estrogens Methyltestosterone	0.625 mg 1.25 mg
Menogen	Sage Pharmaceuticals, Shreveport, LA.	59243–570	TB	Esterified estrogens Methyltestosterone	1.25 mg 2.5 mg
Menogen HS	Sage Pharmaceuticals, Shreveport, LA.	59243–560	TB	Esterified estrogens Mrethyltestosterone	0.625 mg 1.25 mg
PAN ESTRA TEST	Pan American Labs., Covington, LA.	0525–0175	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Premarin with Methyltestosterone.	Ayerst Labs. Inc., New York, NY.	0046–0879	TB	Conjugated estrogens Methyltestosterone	1.25 mg 10.0 mg
Premarin with Methyltestosterone.	Ayerst Labs. Inc., New York, NY.	0046–0878	TB	Conjugated estrogens Methyltestosterone	0.625 mg 5.0 mg
Synovex H in-process bulk pellets.	Syntex Animal Health, Palo Alto, CA.		Drum	Testosterone propionate Estradiol benzoate	25 mg/ 2.5 mg/pellet
Synovex H in-process granulation.	Syntex Animal Health, Palo Alto, CA.		Drum	Testosterone propionate Estradiol benzoate	10 parts 1 part
Synovex Plus in-process granulation.	Fort Dodge Animal Health, Fort Dodge, IA.		Drum	Trenbolone acetate Estradiol benzoate	25 parts 3.5 parts
Synovex Plus in-process bulk pellets.	Fort Dodge Animal Health, Fort Dodge, IA.		Drum	Trenbolone acetate Estradiol benzoate	25 mg/ 3.50 mg/pellet
Testagen	Clint Pharmaceuticals, Nashville, TN.	55553–257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
TEST-ESTRO Cypionates	Rugby Laboratories, Rockville Centre, NY.	0536–9470	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testoderm 4 mg/d	Alza Corp., Palo Alto, CA	17314–4608	Patch	Testosterone	10 mg
Testoderm 6 mg/d	Alza Corp., Palo Alto, CA	17314–4609	Patch	Testosterone	15 mg
Testoderm with Adhesive 6 mg/d.	Alza Corp., Palo Alto, CA	17314–2836	Patch	Testosterone	15 mg
Testoderm in-process film	Alza Corp., Palo Alto, CA		Sheet	Testosterone	0.25 mg/cm^2
Testoderm with Adhesive in-process film.	Alza Corp., Palo Alto, CA		Sheet	Testosterone	0.25 mg/cm^2
Testosterone Cypionate/Estradiol Cypionate Injection.	Best Generics, No. Miami Beach, FL.	54274–530	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Goldline Labs, Ft. Lauderdale, FL.	0182–3069	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Cyp 50 Estradiol Cyp 2.	I.D.E.-Interstate, Amityville, NY.	0814–7737	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Schein Pharmaceuticals, Port Washington, NY.	0364–6611	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	Steris labs, Inc., Phoenix, AZ	0402–0257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Cypionate/Estradiol Cypionate Injection.	The Upjohn Co., kalamazoo, MI.	0009–0253	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Goldline Labs, Ft. Lauderdale, FL.	0182–3073	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Schein Pharmaceuticals, Port Washington, NY.	0364–6618	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
Testosterone Enanthate/Estradiol Valerate Injection.	Steris Labs. Inc., Phoenix, AZ	0402–0360	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml
Tilapia Sex Reversal Feed (Investigational).	Rangen, Inc., Buhl, ID		Plastic Bags.	Methyltestosterone	60 mg/kg fish feed
Tilapia Sex Reversal Feed (Investigational.	Zeigler Brothers, Inc., Gardners, PA.		Plastic Bags.	Methyltestosterone	60 mg/kg fish feed

In accordance with the provisions of 21 U.S.C. 811(a) of the CSA, this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive order (E.O.) 12866, section 3(d)(1).

The Deputy Assistant Administrator, Office of Diversion Control, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small-business entities. The inclusion of a product in 21 CFR 1308.34 relieves persons who handle the product in the course of legitimate business from the registration, records, reports, prescription, physical security, import and export requirements associated with Schedule III controlled substances under the CSA. Specifically, the products are exempted from application of sections 302 through 309 and 1002 through 1004 of the CSA (21 U.S.C. 822–829 and 952–954) and §§ 1301.11, 1301.13, and 1301.71 through 1301.76 of Title 21 Code of Federal Regulations.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: September 8, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–25972 Filed 10–2–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–97–023]

Safety Zone Regulations; Interstate 5 Bridge Repair Project, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Interstate 5 bridge repair project on the Columbia River in Vancouver, Washington. This project will run from Tuesday, September 16, 1997, from 5 a.m. (PDT) through Wednesday, October 8, 1997, at 1 p.m. (PDT). The Coast Guard, through this action, intends to protect persons, facilities, and vessels from safety hazards associated with heavy equipment and falling debris in the vicinity of the repair project. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on September 16, 1997, at 5 a.m. (PDT) and terminates on October 8, 1997, at 1 p.m. (PDT).

FOR FURTHER INFORMATION CONTACT: Lt. T.G. Allan, c/o Captain of the Port, Portland, 6767 N. Basin Ave., Portland, Oregon 97217–3992, (503) 240–9327.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days from the date of publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the area of the bridge repair. Due to the complex planning and coordination involved, the event sponsor, the Oregon Department of Transportation, was unable to provide the Coast Guard with notice of the final details until 30 days prior to the date of the event. Therefore, sufficient time was not available to publish a proposed rule in advance of the event or to provide a delayed effective date. Following normal rulemaking procedures in this case would be impracticable.

Drafting Information: The drafters of this regulation are LT T.G. Allan, Project Manager for the Captain of the Port, and LT K.A. Boodell, Project Counsel, Thirteenth Coast Guard District Legal Office.

Background and Purpose

The event requiring this regulation is the Oregon Department of Transportation's Interstate 5 bridge repair project. The repair project is scheduled to begin on September 16, 1997, at 5 a.m. (PDT) with work to continue twenty-four hours a day until the project is complete on or about October 8, 1997. This event may result in a large number of vessels congregating near the bridge and construction barges. To promote the safety of both spectators and workers, a safety zone is being established on the waters of the Columbia River around the repair project, and entry into this safety zone is prohibited unless authorized by the Captain of the Port. This action is necessary due to hazards associated with heavy equipment and possible debris falling into the Columbia River in the vicinity of the repair project. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 CFR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the safety zone will restrict less than a quarter of a square mile of the waterway. The entities most likely to be affected by this action are commercial ship, and tug and barge operators on the Columbia River. These entities are aware of the Interstate bridge repair project and the safety zone, and they can schedule their transits accordingly. If safe to do so, the representative of the

Captain of the Port assigned to enforce this safety zone may authorize commercial vessels to pass through the safety zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation above, the Coast Guard expects the impact of this final rule to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this final rule and has concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T13020 is added to read as follows:

§ 165.T13020 Safety Zone: Columbia River, Vancouver, WA.

(a) *Location:* The following area is a safety zone: All waters of the Columbia River in the vicinity of Vancouver, Washington, extending approximately 500 feet on both sides of the I–5 bridge from the Washington shore to the alternate barge channel. More specifically, this area is all waters of the Columbia River bounded by a line commencing at the Washington shore position 45°37.307′N latitude, 122°40.573′W longitude; thence to position 45°37.268′N latitude, 122°40.599′W longitude; thence to position 45°37.166′N latitude, 122°40.544′W longitude; thence to position 45°37.131′N latitude, 122°40.415′W longitude; thence to position 45°37.202′N latitude, 122°40.316′W longitude; thence to the Washington shore at position 45°37.240′N latitude, 122°40.293′W longitude; thence returning along the Washington shoreline to the point of origin.

(b) *Definitions:* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Portland, to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at Coast Guard Group, Portland, Oregon.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling or by the person acting under the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signalled shall stop and comply with the orders of the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) *Effective Dates:* This section is effective on September 16, 1997, at 5 a.m. (PDT) and terminates on October 8, 1997, at 1 p.m. (PDT), unless sooner terminated by the Captain of the Port.

Dated: September 4, 1997.

M.J. Hall,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 97–26336 Filed 10–2–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[[COTP] Tampa 97–046]

RIN 2115–AE84

Regulated Navigation Area; Egmont Channel, Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule removes the regulated navigation area on the Egmont Channel. The Channel has been dredged and the restriction of one way vessel movement for vessels with drafts in excess of 36 feet are no-longer required.

DATES: This rule is effective on November 3, 1997.

ADDRESSES: Documents referred to in this preamble are available for inspection and copying at U.S. Coast Guard Marine Safety Office Tampa, 155 Columbia Drive, Tampa, FL 33606 between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Murk, Project Manager, Coast Guard Marine Safety Office Tampa, at (813) 228–2189.

SUPPLEMENTARY INFORMATION:

Background and Purpose

This final rule cancels the Regulated Navigation Area on the Egmont Channel. Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation. This Regulated Navigation Area was created because of shoaling in the channel that posed possible impediments for vessels with drafts in excess of 36 feet when meeting or passing in the channel. The channel has been dredged, and no-longer poses a danger for vessels with drafts in excess of 36 feet. Consequently, the regulated navigation area is no-longer required.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review

by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule reduces the regulatory burdens on shipping in the area by canceling a regulated navigated area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated are not dominant in their fields and (2) governmental jurisdiction with populations of less than 50,000. For the reasons stated above the Coast Guard finds that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reductions Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principals and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action, and has determined pursuant to section 2.B.2.e. (34)(g) of Commandant Instruction M16475.1B, that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying.

Lists of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation, (water), Reports and record keeping requirements, Security Measures, Waterways.

Regulations

For the reasons stated above, the Coast Guard amends Part 165 of title 33, Code of Federal regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–4, and 160.5; 49 CFR 1.46.

§ 165.709 [Removed]

2. Remove section 165.709.

Dated: September 23, 1997.

R.C. Olsen, Jr.,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 97–26335 Filed 10–2–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego, CA; 97–004]

RIN 2115–AA97

Safety Zone: San Diego Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a moving safety zone encompassing all navigable waters within 75 yards on all sides of the dredge FLORIDA while the FLORIDA is in the waters of San Diego Bay, California. This regulation is needed to restrict vessel traffic in the regulated area so as to prevent collisions, grounding or other navigational mishaps during the San Diego Channel project. Entry into, transit through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port San Diego, CA, or a designated representative thereof.

DATES: This interim rule is effective from 6 a.m. PDT on September 9, 1997 until 11:59 p.m. PDT on December 15, 1997. Comments on this interim rule must be received on or before November 3, 1997.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 2716 N. Harbor Dr., San Diego, CA 92101. Comments received will be available for inspection and copying within the Port Safety Division at Marine Safety Office San Diego. Normal office hours are 7 a.m. to 4 p.m., PDT, Monday through Friday, except federal holldays.

The Marine Safety Office maintains the public docket for this rulemaking. Comments, and any documents referenced in this preamble, will become part of this docket and will be available for inspection and copying at the Marine Safety Office between 7 a.m. PDT and 4 p.m. PDT, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike Arguelles, Chief, Port Safety and Security Division, Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA 92101; (619) 683–6484.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this regulation is published as an interim rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the regulation is both reasonable and workable. Accordingly, the Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should send them to the office listed under **ADDRESSES** in this preamble. Those providing comments should identify the docket number (COPT San Diego, CA; 97–004) for the regulation, and the specific section of this document to which each comment applies. Also include your name, address, and the reason(s) for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing. Persons wishing acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. Based upon the comments received, the scope of the regulation may be changed.

The Coast Guard plans no public meetings. Persons may request a public meeting by writing to Marine Safety Office San Diego at the address listed under **ADDRESSES** in this preamble. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures could not be done in a timely fashion because the full parameters of the safety zone necessary to accommodate the dredging for the San Diego Channel project were not known until a date fewer than 30 days prior to the project start date. For these reasons, the Coast Guard finds good cause, under 5 U.S.C. 553(b)(B) and (d)(3), that notice, and public procedure on the notice, before the effective date of this rule are unnecessary and that this rule should be made effective in less than 30 days after publication.

Background and Purpose

Dredging for the San Diego Channel project officially begins on September 9, 1997. This safety zone is necessary for safeguarding recreational and commercial vessels from the dangers of the dredging activities in the project area and to prevent interference with vessels and barges engaged in these operations.

Discussion of Interim Rule

This rule creates a safety zone pursuant to the Ports & Waterways Safety Act, 33 U.S.C. 1221 *et seq.* All persons and vessels are prohibited from entering into, transmitting through or anchoring within the safety zone unless authorized by the Captain of the San Diego, CA, or a designated representative thereof.

Regulatory Evaluation

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary. Only minor delays to mariners are foreseen as vessel traffic can be easily diverted around the area of the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), the Coast Guard considers the economic impact on small entities of each rule for which a general notice of proposed rulemaking is required. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, the Coast Guard has reviewed it for potential economic impact on small entities and determined that the rule is not expected to have a significant economic impact on any entity regardless of its size.

Therefore, the Coast Guard believes that this rule will not have a significant economic impact on any small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This interim rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Federalism

The Coast Guard has analyzed this interim rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This regulation is expected to have no significant effect on the environment.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends subpart F of 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.T11–040 is added to read as follows:

§ 165.T11–040 Safety Zone: San Diego Bay, CA

(a) Location. A safety zone shall exist around the dredge Florida, 75 yards on all sides when the dredge Florida is within the navigable waters of San Diego Bay, CA.

(b) Effective Date. This regulation will be in effect from 6:00 a.m. PDT on September 9, 1997 until 11:59 p.m., PDT December 15, 1997, unless canceled earlier by the Captain of the Port.

(c) Regulations. In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port San Diego, CA, or a designated representative thereof.

Dated: September 9, 1997.

J.A. Watson, IV,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 97–26334 Filed 10–2–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–97–104]

RIN 2115–AA97

Security Zone Regulations: New London Harbor, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is disestablishing two of four existing security zones in the Thames River, New London, Connecticut. Security Zone A and Security Zone D are being disestablished as these zones were used to safeguard moored Navy vessels which no longer moor at the facilities in these areas. The two remaining security zones, Security Zone B and Security Zone C shall remain in effect and will be renamed Security Zones A and B respectively.

DATES: This final rule is effective October 3, 1997.

ADDRESSES: Documents relating to this final rule are available for inspection

and copying at U.S. Coast Guard Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T. J. Walker, Chief of Port Operations, Coast Guard Marine Safety Office, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

This rule is being published as a final rule and is being made effective on the date of publication. Pursuant to 5 U.S.C. 553, good cause exists for promulgating this rule without a notice of proposed rulemaking (NPRM) and for making this rule effective less than 30 days after publication in the **Federal Register**. The facilities located in the areas protected under the disestablished security zones are no longer used by the Navy to moor vessels and therefore the security zones are of no further use. No purpose is served by restricting the boating public's access to the facilities and surrounding waters for a longer period of time due to delays associated with the normal rulemaking process. No adverse effects upon local commerce and/or public conveyances is expected under the proposed regulation changes. For these reasons, the Coast Guard finds good cause, under 5 U.S.C. 553, that notice, and public procedure on the notice, before the effective date of this rule are unnecessary and that this rule should be made effective in less than 30 days after publication.

Background and Purpose

Pursuant to consultations with the US Navy and the State of Connecticut, this final rule will remove two existing security zones on the Thames River, New London, Connecticut. Security Zone A, (33 CFR 165.140(a)(1)) restricted access to the waters surrounding the New London State Pier. Security Zone D, (33 CFR 165.140(a)(4)), restricted access to the waters surrounding the former Naval Underwater Warfare Center. These zones were used to safeguard Navy vessels moored at these facilities. The facilities mentioned above are no longer used by the Navy. The Navy stopped using the State Pier in 1992 and decommissioned the Naval Underwater Warfare Center in 1996. Therefore, these security zones are no longer necessary.

Security Zone B, (33 CFR 165.140(a)(2)), restricting access to the waters surrounding General Dynamics' Electric Boat facility and Security Zone C, (33 CFR 165.140(a)(3)) restricting access to the waters surrounding the Naval Submarine Base shall remain in effect.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. For the reasons stated in the Regulatory History, the Coast Guard expects the economic impact of this regulation to be minimal

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this rule will have a significant impact upon a substantial number of small entities. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. For the reasons addressed under the Regulatory History above, the Coast Guard finds that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, as revised by 59 FR 38654, July 29, 1994, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (waters), Reporting and Recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.50.

§ 165.140 [Amended]

2. Section 165.140 is amended as follows:

a. Remove paragraph (a)(1).

b. Remove paragraph (a)(4).

c. Redesignate paragraphs (a)(2) and (a)(3) as (a)(1) and (a)(2).

d. In the new paragraph (a)(1), and remove the words "Security Zone B" and add, in their place, the words "Security Zone A".

e. In the new paragraph (a)(2), remove the words "Security Zone C" and add, in their place, the words "Security Zone B".

f. In paragraph (b) remove the words "SECURITY ZONES A or B" and replace them with the words "SECURITY ZONE A", and remove the words "SECURITY ZONE B" and replace them with "SECURITY ZONE A".

Dated: September 16, 1997.

P.K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 97–26337 Filed 10–2–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AI21

Disinterments From National Cemeteries

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing a final rule to amend regulations concerning disinterments from national cemeteries. Current regulations permit disinterment of persons buried in a national cemetery with the consent of immediate family members. Previously, the definition of immediate family members included a surviving spouse only if unmarried. The regulation change defines immediate family members for purposes of disinterments to include a surviving spouse whether or not the spouse had remarried. This is necessary since the emotional ties of the surviving spouse are sufficient to justify his or her consent as a condition of disinterment. This document also makes nonsubstantive changes for purposes of clarification.

DATES: This rule is effective November 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Greenberg, Program Analyst, or Mrs. Sonja McCombs, Program Analyst, Communications Division (402B1), National Cemetery System, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: 202–273–5179 or 202–273–5183 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: A document was published in the **Federal Register** on June 20, 1996 (61 FR 31479), which proposed to change the definition of immediate family members for purposes of disinterments to include a surviving spouse whether or not the spouse had remarried. The document also proposed to make certain nonsubstantive changes. No comments were received. Accordingly, based on the rationale set forth in the proposal and in this document, the proposed changes are adopted as a final rule without change.

Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule concerning disinterments from national cemeteries (38 CFR 1.621) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and have been assigned OMB Control Number 2900–0365.

This collection of information included in 38 CFR 1.621 concerns an application for authority to disinter remains that must be submitted on VA Form 40–4970. The provisions of § 1.621 are amended to reflect that the written and notarized consent of a remarried surviving spouse is a prerequisite for a disinterment from a national cemetery.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Flexibility Act

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This certification can be made because the amendment does not affect any small entities. Only individual VA beneficiaries could be directly affected.

The final rule is not subject to OMB review pursuant to E.O. 12291.

(Catalog of Federal Domestic Assistance Number for programs affected by this regulation are 64.201 and 64.202)

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Claims, Privacy, Security.

Approved: July 28, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 1.621, paragraph (c) is amended by removing the second sentence; paragraph (d) and the designation "[Reserved]" are removed; paragraph (e) is redesignated as paragraph (d); and paragraphs (a) and (b)(2) are revised to read as follows:

§ 1.621 Disinterments from national cemeteries.

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery Area Office Director or Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), give their written consent, or when a court order or State instrumentality of competent jurisdiction directs the disinterment. For purposes of this section, "immediate family members" are defined as surviving spouse, whether or not he or she is remarried; all adult children of the decedent; the appointed guardian(s) of minor children; and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent's parents will be considered "immediate family members."

(b) * * *.

(2) Notarized statement(s) by all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), that they consent to the proposed disinterment.

* * * * *

[FR Doc. 97–26254 Filed 10–2–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI45

Survivors and Dependents Education: Extension of Eligibility Period

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). It restores provisions that govern the extension of the period eligible spouses and surviving spouses have to use Survivors' and Dependents' Educational Assistance (DEA).

EFFECTIVE DATE: October 3, 1997.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on January 9, 1997 (62 FR 1303), VA proposed to amend the "Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35" regulations which are set forth in 38 CFR 21.3001 *et seq.* It was proposed to add to the regulations a definition and a rule concerning qualifying for an extension of time for a spouse or surviving spouse to use Survivor's and Dependents' Educational Assistance. Such an extension is permitted when she or he could not

complete a program of education within the normal ten-year period for doing so due to a physical or mental disability that is not the result of willful misconduct. This definition and rule were removed in error from the Code of Federal Regulations when § 21.1043 was removed.

Interested persons were given 60 days to submit comments. One comment from an individual was received.

That individual suggested that, in addition to making the proposed changes, VA should restore § 21.1043 to the Code of Federal Regulations. He argued that by doing so a Vietnam Era veteran who had been unable to complete his or her training within the ten-year period allowed under the Vietnam Era GI Bill due to a physical or mental disability would be able to resume training under the Vietnam Era GI Bill.

After careful consideration VA has determined that there is no legal basis for restoring § 21.1043 to the Code of Federal Regulations in order to provide benefits under the Vietnam Era GI Bill. The statutory provisions governing the Vietnam Era GI Bill are found in 38 U.S.C. chapter 34. Section 3462(e) states, "No educational assistance shall be afforded any eligible veterans under this chapter or chapter 36 of this title after December 31, 1989." Thus, if a Vietnam Era veteran who was unable to pursue a program of education under the Vietnam Era GI Bill due to a physical or mental disability, recovered from the disability to the point where he or she would be able to pursue that program in 1997, VA would be prohibited by 38 U.S.C. 3462(e) from paying educational assistance to that veteran.

Accordingly, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule.

Paperwork Reduction Act of 1995

Information collection and recordkeeping requirements associated with this final rule (38 CFR 21.3047) have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0573. The regulation requires that a spouse or surviving spouse who wants an extension of the applicable time limit to use educational assistance provided under DEA must apply for it. Since VA would consider any communication from such an individual seeking this extension to be an application, there are no corresponding form numbers.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 64.117)

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 28, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 21 (subparts C and F) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

2. In § 21.3021, paragraph (l) is redesignated as paragraph (m); and new paragraph (l) is added, to read as follows:

§ 21.3021 Definitions.

* * * * *

(l) *Disabling effects of chronic alcoholism.* (1) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by an eligible spouse or surviving spouse as a proximate and immediate result of activity undertaken by the eligible spouse or surviving spouse while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3512(b))

* * * * *

3. In § 21.3046, paragraph (e) is removed.

4. Section 21.3047 is added, to read as follows:

§ 21.3047 Extended period of eligibility due to physical or mental disability.

(a) *General.* (1) An eligible spouse or surviving spouse shall be granted an extension of the applicable period of eligibility as otherwise determined by § 21.3046 provided the eligible spouse or surviving spouse:

(i) Applies for the extension within the appropriate time limit;

(ii) Was prevented from initiating or completing the chosen program of education within the otherwise applicable period of eligibility because of a physical or mental disability that did not result from the willful misconduct of the eligible spouse or surviving spouse;

(iii) Provides VA with any requested evidence tending to show that the requirement of paragraph (a)(1)(ii) of this section has been met; and

(iv) Is otherwise eligible for payment of educational assistance for the training pursuant to 38 U.S.C. chapter 35.

(2) In determining whether the eligible spouse or surviving spouse was prevented from initiating or completing the chosen program of education because of a physical or mental disability, VA will consider the following:

(i) It must be clearly established by medical evidence that such a program of education was medically infeasible.

(ii) An eligible spouse or surviving spouse who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the eligible spouse or surviving spouse was prevented from enrolling or reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(iii) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct and will consider those disabling effects as physical or mental disabilities.

(b) *Commencing date.* The eligible spouse or surviving spouse shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.3046(c); and

(2) Must be on or before the ninetieth day following the date on which the eligible spouse's or surviving spouse's application for an extension was approved by VA, if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course not organized on a term, quarter, or semester basis; or

(3) Must be on or before the first ordinary term, quarter, or semester following the ninetieth day after the eligible spouse's or surviving spouse's application for an extension was approved by VA if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course organized on a term, quarter, or semester basis.

(Authority: 38 U.S.C. 3512(b))

(c) *Length of extended periods of eligibility.* An eligible spouse's or surviving spouse's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the eligible spouse or surviving spouse is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter, or semester following the day the eligible spouse's or surviving spouse's training became medically feasible;

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by § 21.3046(c); or

(iii) The date the eligible spouse or surviving spouse resumed training.

(2) If the eligible spouse or surviving spouse is training in a course not organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the eligible spouse's or surviving spouse's training became medically feasible; or

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by § 21.3046.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0573)

(Authority: 38 U.S.C. 3512(b))

Subpart F—Education Loans

5. The authority citation for subpart F continues to read as follows:

Authority: 38 U.S.C. 501, 3537, 3698, 3699, unless otherwise noted.

6. In § 21.4501, paragraph (b)(1) is amended by removing "(d)" and adding, in its place, "(d), or § 21.3047"; paragraph (b)(2)(iv) is amended by removing "(d)" and adding, in its place, "(d), or § 21.3047"; paragraph (b)(2)(v)(A) is amended by removing "(d)" and adding, in its place, "(d), or § 21.3047"; paragraph (b)(2)(v)(B) is amended by removing "(d)" and adding, in its place, "(d), or § 21.3047", paragraph (c)(1) is amended by removing "(d)" and adding, in its place "(d), or § 21.3047"; and paragraph (c)(3) is amended by removing "(d)" and adding, in its place, "(d), or § 21.3047".

[FR Doc. 97–26253 Filed 10–2–97; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa (FEMA Docket No. 7220).	Unincorporated Areas.	May 14, 1997, May 21, 1997, *The Arizona Republic.*	The Honorable Don Stapley, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson Street, Phoenix, Arizona 85003.	April 24, 1997	040037
Arizona: Pima (FEMA Docket No. 7216).	Unincorporated Areas.	April 9, 1997, April 16, 1997, *The Arizona Daily Star.*	The Honorable Paul Marsh, Chairman, Pima County Board of Supervisors, 130 West Congress Street, Tucson, Arizona 85701.	March 19, 1997 ..	040073
Arizona: Pima (FEMA Docket No. 7216).	City of Tucson	April 9, 1997, April 16, 1997, *The Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726–7210.	March 17, 1997 ..	040076
Arizona: Pima (FEMA Docket No. 7216).	City of Tucson	April 9, 1997, April 16, 1997, *The Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726–7210.	March 19, 1997 ..	040076
Arizona: Pima (FEMA Docket No. 7220).	City of Tucson	June 4, 1997, June 11, 1997, *The Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	May 9, 1997	040076
California: San Diego (FEMA Docket No. 7220).	City of Chula Vista.	May 2, 1997, May 9, 1997, *San Diego Daily Transcript.*	The Honorable Shirley Horton, Mayor, City of Chula Vista 276 Fourth Avenue, Chula Vista, California 91910.	April 9, 1997	065021
California: Orange (FEMA Docket No. 7220).	City of Irvine	May 1, 1997, May 8, 1997, *Irvine World News.*	The Honorable Christina Shea, Mayor, City of Irvine, P.O. Box 19575, Irvine, California 92623.	April 8, 1997	060222
California: Alameda (FEMA Docket No. 7220).	City of Livermore	June 3, 1997, June 10, 1997, *Tri-Valley Herald.*	The Honorable Cathie Brown, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550–4899.	May 15, 1997	060008
California: Los Angeles (FEMA Docket No. 7216).	Unincorporated Areas.	April 9, 1997, April 16, 1997, *Daily Commerce.*	The Honorable Zev Yaroslavsky, Chairperson, Los Angeles County Board of Supervisors, 500 West Temple Street, Suite 821, Los Angeles, California 90012.	March 19, 1997 ..	065043
California: San Diego (FEMA Docket No. 7220).	City of National City.	May 2, 1997, May 9, 1997, *San Diego Daily Transcript.*	The Honorable George Waters, Mayor, City of National City, 1243 National City Boulevard, National City, California 91950.	April 9, 1997	060293
California: Orange (FEMA Docket No. 7216).	City of Placentia	April 3, 1997, April 10, 1997, *Placentia News-Times.*	The Honorable Norman Z. Eckenrode, Mayor, City of Placentia, 401 East Chapman Avenue, Placentia, California 92670.	February 27, 1997.	060229

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: San Diego (FEMA Docket No. 7220).	Unincorporated Areas.	May 2, 1997, May 9, 1997, *San Diego Daily Transcript.*	The Honorable Bill Horn, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, California 92101.	April 9, 1997	060284
Colorado: Boulder (FEMA Docket No. 7216).	City of Boulder ...	April 23, 1997, April 30, 1997, *Boulder Daily Camera.*	The Honorable Leslie Durgin, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	April 3, 1997	080024
Colorado: Adams (FEMA Docket No. 7216).	City of Thornton	April 17, 1997, April 24, 1997, *Northglenn-Thornton Sentinel.*	The Honorable Margaret Carpenter, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, Colorado 80229.	March 13, 1997 ..	080007
Hawaii: Honolulu (FEMA Docket No. 7216).	City and County	April 23, 1997, April 30, 1997, *Honolulu Star-Bulletin.*	The Honorable Jeremy Harris, Mayor, City and County of Honolulu, 650 South King Street, Honolulu, Hawaii 96183.	April 15, 1997	150001
Kansas: Harvey (FEMA Docket No. 7220).	City of Halstead	May 1, 1997, May 8, 1997, *The Harvey County Independent.*	The Honorable Kenneth B. Kierl, Mayor, City of Halstead, P.O. Box 312, Halstead, Kansas 67056–0312.	April 4, 1997	200131
Kansas: Harvey (FEMA Docket No. 7220).	Unincorporated Areas.	May 1, 1997, May 8, 1997, *The Harvey County Independent.*	The Honorable Craig R. Simons, Harvey County Administrator, Administration Department, P.O. Box 687, Newton, Kansas 67114–0687.	April 4, 1997	200585
Kansas: Pratt (FEMA Docket No. 7220).	City of Pratt	May 22, 1997, May 29, 1997, *The Pratt Tribune.*	The Honorable Glenna Borho, Mayor, City of Pratt, P.O. Box 807, Pratt, Kansas 67124.	May 5, 1997	200278
Kansas: Sedgwick (FEMA Docket No. 7216).	City of Wichita	April 23, 1997, April 30, 1997, *The Wichita Eagle.*	The Honorable Bob Knight, Mayor, City of Wichita, City Hall, 455 North Main Street, Wichita, Kansas 67202.	April 7, 1997	200328
Nebraska: Merrick (FEMA Docket No. 7216).	City of Central City.	April 17, 1997, April 24, 1997, *Central City Republican Nonpareil.*	The Honorable Calvin C. Lepp, Mayor, City of Central City, P.O. Box 418, Central City, Nebraska 68826.	March 14, 1997 ..	310148
Nevada: Douglas (FEMA Docket No. 7220).	Unincorporated Areas.	May 14, 1997, May 21, 1997, *The Record Courier Tahoe Daily Tribune.*	The Honorable Jacques Etchegoyhen, Chairman, Douglas County Board of County Commissioners, Minden Inn, P.O. Box 218, Minden, Nevada 89423.	April 29, 1997	320008
New Mexico: Bernalillo (FEMA Docket No. 7216).	Unincorporated Areas.	April 23, 1997 April 30, 1997, *Albuquerque Journal.*	The Honorable Albert Valdez, Chairman, Bernalillo County Board of Commissioners, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	April 4, 1997	350001
Oklahoma: Oklahoma (FEMA Docket No. 7216).	City of Edmond ..	April 22, 1997, April 29, 1997, *Edmond Evening Sun.*	The Honorable Bob Rudkin, Mayor, City of Edmond, 100 East First, Edmond, Oklahoma 73083–2970.	March 27, 1997 ..	400252
Oklahoma: Cleveland (FEMA Docket No. 7220).	City of Norman ...	June 6, 1997, June 13, 1997 *Norman Transcript.*	The Honorable Bill Nations, Mayor, City of Norman, P.O. Box 370, Norman Oklahoma 73070.	May 15, 1997	400046
South Dakota: Lawrence (FEMA Docket No. 7220).	City of Spearfish	May 16, 1997, May 23, 1997, *Blackhill Pioneer.*	The Honorable Johnny Niehaus, Mayor, City of Spearfish, 625 Fifth Street, Spearfish, South Dakota 57783.	April 24, 1997	460046
Texas: Bexar (FEMA Docket No. 7220).	Unincorporated Areas.	June 10, 1997, June 17, 1997, *San Antonio Express News.*	The Honorable Cyndi T. Krier, Bexar County Judge, 100 Dolorosa, Suite 101, San Antonio, Texas 78205.	May 23, 1997	480035
Texas: Dallas (FEMA Docket No. 7220).	Unincorporated Areas.	June 12, 1997, June 19, 1997, *The Dallas Morning News.*	The Honorable Lee F. Jackson, Dallas County Judge, 411 Elm Street, Dallas, Texas 75202.	May 21, 1997	480165

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Tarrant (FEMA Docket No. 7220).	City of Forth Worth.	May 8, 1997, May 15, 1997 *Fort Worth Star-Telegram.*	The Honorable Kenneth Barr, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	August 13, 1997	480596
Texas: Dallas (FEMA Docket No. 7220).	City of Garland ...	June 12, 1997, June 19, 1997 *The Garland News.*	The Honorable James Ratliff, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002.	May 21, 1997	485471
Texas: Tarrant (FEMA Docket No. 7220).	City of Haltom City.	May 8, 1997, May 15, 1997, *Fort Worth Star-Telegram.*	The Honorable Gary Larson, Mayor, City of Haltom City, P.O. Box 14246, Haltom City, Texas 76117–0246.	August 13, 1997	480599
Texas: Harris (FEMA Docket No. 7220).	City of Houston ..	June 6, 1997, June 13, 1997, *Houston Chronicle.*	The Honorable Bob Lanier, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251–1562.	May 14, 1997	480296
Texas: Midland (FEMA Docket No. 7216).	City of Midland ...	April 22, 1997, April 29, 1997, *Midland Reporter-Telegram.*	The Honorable Robert E. Burns, Mayor, City of Midland, P.O. Box 1152, Midland, Texas 79702–1152.	March 26, 1997 ..	480477
Texas: Montgomery (FEMA Docket No. 7216).	Unincorporated Areas.	April 23, 1997, April 30, 1997, *Conroe Courier.*	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, Texas 77301.	March 28, 1997 ..	480483
Texas: Montgomery (FEMA Docket No. 7216).	Unincorporated Areas.	April 23, 1997, April 30, 1997, *Houston Chronicle.*	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, Texas 77301.	April 3, 1997	480483
Texas: Tarrant (FEMA Docket No. 7216).	City of North Richland Hills.	April 8, 1997, April 15, 1997, *Fort Worth Star-Telegram.*	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	March 7, 1997	480607
Texas: Collin (FEMA Docket No. 7220).	City of Plano	May 23, 1997, May 30, 1997 *Plano Star Courier.*	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	April 29, 1997	480140
Texas: Dallas (FEMA Docket No. 7220).	City of Rowlett	June 12, 1997, June 19, 1997, *The Rowlett Lakeshore Times.*	The Honorable Buddy Wall, Mayor, City of Rowlett, P.O. Box 99, Rowlett, Texas 75030–0099.	May 21, 1997	480185
Texas: Dallas (FEMA Docket No. 7220).	City of Sachse	June 18, 1997, June 25, 1997, *The Wylie News.*	The Honorable Larry Holden, Mayor, City of Sachse, 5560 Highway 78, Sachse, Texas 75048.	May 21, 1997	480186
Texas: Bexar (FEMA Docket No. 7220).	City of San Antonio.	May 23, 1997, May 30, 1997, *San Antonio Express-News.*	The Honorable William E. Thornton, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	April 28, 1997	480045
Texas: Denton (FEMA Docket No. 7220).	City of The Colony.	June 4, 1997, June 11, 1997, *Lewisville Leader.*	The Honorable William Manning, Mayor, City of The Colony, 5151 North Colony Boulevard, The Colony, Texas 75056.	May 12, 1997	481581

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: September 25, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–26282 Filed 10–2–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7228]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Avondale	August 12, 1997, August 19, 1997, *The Arizona Republic.*	The Honorable Thomas S. Morales, Jr., Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	August 5, 1997 ...	040038
Arizona: Maricopa	Town of Cave Creek.	August 12, 1997, August 19, 1997, *The Arizona Republic.*	The Honorable Tom Aukerton, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, Arizona 85331.	August 5, 1997 ...	040129
Arizona: Maricopa	City of El Mirage	August 12, 1997, August 19, 1997, *The Arizona Republic.*	The Honorable Maggie Reese, Mayor, City of El Mirage, P.O. Box 26, El Mirage, Arizona 85335.	August 5, 1997 ...	040041
Arizona: Maricopa	City of Glendale	August 12, 1997, August 19, 1997, *The Arizona Republic.*	The Honorable Elaine Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.	August 5, 1997 ...	040045
Arizona: Maricopa	City of Goodyear	August 12, 1997, August 19, 1997, *The Arizona Republic.*	The Honorable William Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338.	August 5, 1997 ...	040046
Arizona: Maricopa	Unincorporated Area.	August 12, 1997, August 19, 1997, *The Arizona Republic.*	The Honorable Don Stapley, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson Street, Phoenix, Arizona 85003.	August 5, 1997 ...	040037

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Peoria	August 12, 1997, August 19, 1997, *The Arizona Republic.*	The Honorable John Keegan, Mayor, City of Peoria, 8401 West Monroe, Peoria, Arizona 85345.	August 5, 1997	040050
Arizona: Maricopa	City of Phoenix	August 12, 1997, August 19, 1997, *The Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003.	August 5, 1997	040051
Arizona: Maricopa	City of Phoenix	August 22, 1997, August 29, 1997, *The Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003.	August 7, 1997	040051
Arizona: Maricopa	City of Surprise	August 12, 1997, August 19, 1997, *The Arizona Republic.*	The Honorable Joan Shafer, Mayor, City of Surprise, 12425 West Bell Road, Suite D–100, Surprise, Arizona 85374.	August 5, 1997	040053
Arizona: Pima	City of Tucson	July 22, 1997, July 29, 1997, *Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	June 23, 1997	040076
Arizona: Pima	City of Tucson	August 21, 1997, August 28, 1997, *The Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	August 1, 1997	040076
Arizona: Maricopa	Town of Youngstown.	August 12, 1997, August 19, 1997, *The Arizona Republic.*	The Honorable William Kosanovich, Mayor, Town of Youngstown.	August 5, 1997	040057
California: Alameda	City of Livermore	August 20, 1997, August 27, 1997 *The Independent.*	The Honorable Cathie Brown, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550.	August 4, 1997	060008
California: San Diego	City of Poway	August 7, 1997, August 14, 1997, *Poway News Chieftain.*	The Honorable Don Higginson, Mayor, City of Poway, 13325 Civic Center Drive, Poway, California 92074–0789.	November 13, 1997.	060702
California: Riverside	Unincorporated Areas.	August 14, 1997, August 21, 1997, *Press-Enterprise.*	The Honorable Kay Ceniceros, Chairperson, Riverside County Board of Supervisors, P.O. Box 1359, Riverside, California 92502–1359.	July 18, 1997	060245
California: Sacramento	Unincorporated Areas.	August 20, 1997, August 27, 1997, *The Sacramento-Bee.*	The Honorable Don Nottoli, Chairman, Board of Supervisors, Sacramento County, 700 H Street, Room 2450, Sacramento, California 95814.	August 14, 1997	060262
California: San Bernardino.	Unincorporated Areas.	August 20, 1997, August 27, 1997 *The Sun.*	The Honorable Jon D. Mikels, Chair, San Bernardino County Board of Supervisors, 385 North Arrowhead Avenue, San Bernardino, California 92415–0110.	August 8, 1997	060270
Guam	Territory of Guam	August 26, 1997, September 2, 1997, *Pacific Daily News.*	The Honorable Carl T.C. Gutierrez, Governor, Territory of Guam, Agana, Guam 96910.	August 8, 1997	660001
Idaho: Bingham	City of Blackfoot	July 24, 1997, July 31, 1997, *The Morning News.*	The Honorable R. Scott Reese, Mayor, City of Blackfoot, 157 North Broadway, Blackfoot, Idaho 83221.	October 30, 1997	160019
Idaho: Bingham	Unincorporated Areas.	July 24, 1997, July 31, 1997, *The Morning News.*	The Honorable Dale Arave, Chairman, Bingham County Commissioners, P.O. Box 1028, Blackfoot, Idaho 83221.	October 30, 1997	160018
Kansas: Sedgwick	Unincorporated Areas.	July 22, 1997, July 29, 1997, *The Wichita Eagle.*	The Honorable Thomas G. Winters, Chairman, Board of Commissioners, Sedgwick County, 525 North Main Street, Suite 320, Wichita, Kansas 67203.	June 26, 1997	200321
Kansas: Sedgwick	City of Wichita	July 22, 1997, July 29, 1997, *The Wichita Eagle.*	The Honorable Bob Knight, Mayor, City of Wichita, 455 North Main Street, Wichita, Kansas 67202.	June 26, 1997	200328
New Mexico: Bernalillo	City of Albuquerque.	July 24, 1997, July 31, 1997, *Albuquerque Journal.*	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103–1293.	July 1, 1997	350002

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New Mexico: Bernalillo	City of Albuquerque.	August 5, 1997, August 12, 1997, *Albuquerque Journal.*	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103–1293.	July 16, 1997	350002
New Mexico: Bernalillo	City of Albuquerque.	August 20, 1997, August 27, 1997, *Albuquerque Journal.*	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293 Albuquerque, New Mexico 87103–1293.	August 1, 1997	350002
North Dakota: Burleigh	City of Bismarck	August 15, 1997, August 22, 1997, *Bismarck Tribune.*	The Honorable Bill Sorenson, Mayor, City of Bismarck, P.O. Box 5503, Bismarck, North Dakota 58502–5503.	November 21, 1997.	380149
Oklahoma: Tulsa	City of Glenpool	August 22, 1997, August 29, 1997, *Tulsa World.*	The Honorable Curtis Killian, Mayor, City of Glenpool, P.O. Box 70, Glenpool, Oklahoma 74033.	August 6, 1997	400208
Oklahoma: Oklahoma	City of Oklahoma City.	August 22, 1997, August 29, 1997, *The Daily Oklahoman.*	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102.	August 1, 1997	405378
Texas: Collin	City of Allen	August 13, 1997, August 20, 1997, *The Allen American.*	The Honorable Kevin Lilly, Mayor, City of Allen, One Butler Circle, Allen, Texas 75013.	July 23, 1997	480131
Texas: Tarrant	City of Benbrook	July 22, 1997, July 29, 1997, *Fort Worth Star-Telegram.*	The Honorable Jerry Dunn, Mayor, City of Benbrook, P.O. Box 26569, Benbrook, Texas 76126.	July 1, 1997	480586
Texas: Dallas, Denton, and Collin.	City of Carrollton	July 18, 1997, July 25, 1997, *Metrocrest News.*	The Honorable Milburn Gravley, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	July 2, 1997	480167
Texas: Tarrant	City of Fort Worth	July 22, 1997, July 29, 1997, *Fort Worth Star-Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	July 1, 1997	480596
Texas: Tarrant	City of Haltom City.	August 5, 1997, August 12, 1997, *Fort Worth Star-Telegram.*	The Honorable Gary Larson, Mayor, City of Haltom City, P.O. Box 14246, Haltom City, Texas 76117–0246.	July 8, 1997	480599
Texas: Cameron	Town of South Padre Island.	July 24, 1997, July 31, 1997, *Brownsville Herald.*	The Honorable Edmund Cyganiewicz, Mayor, Town of South Padre Island, 4501 Padre Boulevard, South Padre Island, Texas 78597.	June 20, 1997	480115
Texas: Bexar	City of Universal City.	July 23, 1997, July 30, 1997, *San Antonio Express-News.*	The Honorable Wesley D. Becken, Mayor, City of Universal City, P.O. Box 3008, Universal City, Texas 78148.	June 23, 1997	480049

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: September 25, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–26284 Filed 10–2–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base

flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD).
ARIZONA	
Santa Cruz County (Unincorporated Areas) (FEMA Docket No. 7218)	
Alamo Wash:	
Just upstream of Interstate 19	*3,590
Approximately 6,500 feet upstream of Interstate 19	*3,669
Maps are available for inspection at the Santa Cruz County Flood Control District and Flood Plain Administration, 2150 North Congress Drive, Nogales, Arizona.	
ARKANSAS	
Cave City (City), Sharp and Independence Counties (FEMA Docket No. 7218)	
Lick Fork:	
Just downstream of a low water crossing located at the eastern corporate limit	+595
Just upstream of Johnson Street	+630
Just upstream of U.S. Highway 167	+650
Curia Creek:	
Just upstream of East Center Street	+610
Approximately 830 feet upstream of Matlock Road	+682
South Big Creek Tributary:	
Just downstream of the dam at Levee Street	+659
Just upstream of the dam at Levee Street	+674
Maps are available for inspection at the Mayor's Office, 107 Spring Street, Cave City, Arkansas.	
Faulkner County (and Incorporated Areas) (FEMA Docket No. 7218)	
East Fork Cadron Creek:	
At U.S. Highway 25	*294
Approximately 150 feet upstream of U.S. Highway 65	*294
Maps are available for inspection at the Faulkner County Tax Assessor's Office, 806 Locust Street, Conway, Arkansas.	
Washington County (and Incorporated Areas) (FEMA Docket No. 7218)	
Clear Creek:	
Approximately 800 feet downstream of State Highway 265	*1,244
At Hylton Road	*1,302
Clear Creek Tributary:	
At confluence with Clear Creek	*1,251
Just upstream of State Highway 265	*1,310
Clear Creek Tributary 1:	
At confluence with Clear Creek	*1,262
Approximately 6,000 feet upstream from Ivey Lane	*1,327
Clear Creek Tributary 2:	
Just upstream of Butterfield Coach Road	*1,292
Approximately 200 feet upstream of Hylton Road	*1,321
Maps are available for inspection at the Washington County Courthouse, 2 North College Avenue, Fayetteville, Arkansas.	
Maps are available for inspection at the City of Fayetteville City Hall, 113 West Mountain Street, Fayetteville, Arkansas.	
Maps are available for inspection at the City of Springdale City Hall, 201 North Spring Street, Springdale, Arkansas.	
CALIFORNIA	
Sacramento County (Unincorporated Areas) (FEMA Docket No. 7192)	
Cosumnes River:	
At confluence with North Fork Mokelumne River	*19
At the Union Pacific Railroad	*19
Approximately 3,500 feet upstream of the Union Pacific Railroad	*19
Approximately 7,000 feet upstream of the Union Pacific Railroad	*20
Cosumnes River Overflow North of Lambert Road:	
Approximately 250 feet upstream of the Union Pacific Railroad	*17
Approximately 1,000 feet upstream of Core Road	*18
At Eschinger Road	*18
At Fitzgerald Road	*19
At Lambert Road	*19
North Fork Mokelumne River:	
Approximately 5,300 feet upstream of divergence from the South Fork Mokelumne River	*15
Approximately 6,900 feet upstream of divergence from the South Fork Mokelumne River	*16
Approximately 10,600 feet upstream of divergence from the South Fork Mokelumne River	*17
Approximately 14,300 feet upstream of divergence from the South Fork Mokelumne River	*18
Approximately 1,300 feet downstream of confluence with the Cosumnes River	*19
North Fork Mokelumne River Overflow Channel:	
At confluence with Snodgrass Slough	*15
Approximately 5,000 feet upstream of confluence with Snodgrass Slough	*16
Approximately 7,500 feet upstream of confluence with Snodgrass Slough	*17
Approximately 10,000 feet upstream of confluence with Snodgrass Slough	*18
At confluence with the North Fork Mokelumne River	*19
Snodgrass Slough:	
At confluence with Delta Cross Channel	*15
Approximately 4,400 feet upstream of confluence with Delta Cross Channel	*15
Approximately 800 feet upstream of the Southern Pacific Railroad	*16
Maps are available for inspection at the Sacramento County Department of Public Works, Water Resources Division, 827 Seventh Street, Room 301, Sacramento, California.	
Sacramento County (Unincorporated Areas) (FEMA Docket No. 7218)	
Morrison Creek:	
Just downstream of Interstate Highway 5	*16
Just downstream of Meadowview Road	*16
Laguna Creek:	
At confluence with Morrison Creek	*16
Approximately 3,300 feet upstream of the Union Pacific Railroad	*16
Maps are available for inspection at the Sacramento County Department of Public Works, Water Resources Division, 827 Seventh Street, Room 301, Sacramento, California.	
IOWA	
Bettendorf (City), Scott County (FEMA Docket No. 7218)	
Spencer Creek:	
Approximately 1,300 feet upstream of Wellsferry Road (at downstream corporate limits)	*658
Just upstream of Interstate Highway 80	*675
Approximately 120 feet downstream of Devil's Glen Road	*693
Approximately 3,000 feet upstream of Devil's Glen Road	*702
Maps are available for inspection at the City of Bettendorf Department of Public Works, 4403 Devil's Glen Road, Bettendorf, Iowa.	
Davenport (City), Scott County (FEMA Docket No. 7218)	
Spencer Creek:	
Approximately 4,300 feet downstream of Utica Ridge Road	*702
Approximately 1,000 feet upstream of Utica Ridge Road	*717
Cardinal Creek:	
Approximately 400 feet downstream of Chicago Milwaukee-St. Paul & Pacific Railroad	*664
Approximately 1,400 feet upstream of Wisconsin Avenue	*675
Approximately 400 feet upstream of 46th Street	*686
Maps are available for inspection at the City of Davenport Department of Public Works, 226 West Fourth Street, Davenport, Iowa.	
Scott County (Unincorporated Areas) (FEMA Docket No. 7218)	
Spencer Creek:	
Approximately 320 feet upstream of East Valley Drive	*575
Just downstream of Wellsferry Road	*592
Approximately 150 feet upstream of Forest Grove Drive	*648
Approximately 250 feet downstream of Wellsferry Road, second crossing going upstream	*653
At 210th Street	*722
Maps are available for inspection at the Scott County Department of Planning and Development, 518 West Fourth Street, Davenport, Iowa.	
KANSAS	
Jefferson County (Unincorporated Areas) (FEMA Docket No. 7218)	
Kansas River:	
At Douglas-Jefferson County line	*838
At confluence of Stone House Creek, near Town of Williamstown	*840
At Douglas-Shawnee County line	*862
Maps are available for inspection at the Jefferson County Planning and Zoning Office, 300 West Jefferson, Oskaloosa, Kansas.	
Leavenworth County (Unincorporated Areas) (FEMA Docket No. 7218)	
Kansas River:	
At the corner of Douglas, Johnson, and Leavenworth Counties, near the City of Linwood	*798
At confluence of Mud Creek	*812
Maps are available for inspection at the Leavenworth County Department of Planning, County Courthouse, Fourth and Walnut Streets, Leavenworth, Kansas.	
Pottawatomie County (Unincorporated Areas) (FEMA Docket No. 7218)	
Kansas River:	
Approximately 3,600 feet east of confluence of Sand Creek	*990
Approximately 5,000 feet upstream of confluence of the Big Blue River	*1,012
Maps are available for inspection at the Pottawatomie County Courthouse, 106 Main Street, Westmoreland, Kansas.	
Reno County (and Incorporated Areas) (FEMA Docket No. 7218)	
Arkansas River:	
At extension of Bone Springs Road to Arkansas River	*1,639
At 108th Avenue bridge over Peace Creek	*1,644
Maps are available for inspection at the Reno County Public Works Department, County Courthouse, 206 West First Street, Hutchinson, Kansas.	
St. George (City), Pottawatomie County (FEMA Docket No. 7218)	
Kansas River:	
In the southeast corner of the City	*993
At confluence of Blackjack Creek	*994
Maps are available for inspection at the City of St. George City Hall, 214 First Street, St. George, Kansas.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD).
MISSOURI	
Park Hills (City), St. Francois County (FEMA Docket No. 7218)	
Flat River:	
Approximately 3,000 feet upstream of Main Street	*741
Approximately 4,800 feet upstream of Main Street	*751
Maps are available for inspection at the City of Park Hills City Hall, 10 Municipal Drive, Park Hills, Missouri.	
MONTANA	
Wibaux County (and Incorporated Areas) (FEMA Docket No. 7218)	
Beaver Creek:	
Approximately 4,200 feet downstream of Interstate Highway 94	*2,628
Approximately 4,400 feet upstream of the southernmost corporate limits	*2,662
Maps are available for inspection at the Town of Wibaux Town Hall, 112 South Wibaux Street, Wibaux, Montana.	
Maps are available for inspection at the Office of the County Clerk and Recorder, Wibaux County Courthouse, 200 South Wibaux Street, Wibaux, Montana.	
NEVADA	
Eureka County (Unincorporated Areas) (FEMA Docket No. 7218)	
Eureka Canyon:	
Approximately 650 feet downstream of Reno Avenue	*6,399
Approximately 250 feet upstream of intersection of U.S. Highway 50 (also County Route 2) and New York Canyon Road	**6,609
Maps are available for inspection at the Eureka County Department of Public Works, County Courthouse Annex, 701 South Main Street, Eureka, Nevada.	
OREGON	
Bandon (City), Coos County (FEMA Docket No. 7218)	
Pacific Ocean:	
Just downstream of the south jetty, near the mouth of the Coquille River	*19
At the intersection of Madison Avenue and Fourth Street	*13
Approximately 100 feet north of the northern limit of Newport Avenue	#2
800 feet north of Coquille Point	*29
Approximately 800 feet south of Coquille Point, at the mouth of Tupper Creek	*40
At the mouth of Johnson Creek	*29
Maps are available for inspection at the City of Bandon Planning Department, 555 Highway 101, Bandon, Oregon.	
Curry County (Unincorporated Areas) (FEMA Docket No. 7218)	
Pacific Ocean:	
Approximately 1,900 feet north of the north end of Sandy Drive	*11
Approximately 600 feet south and 400 feet west of the south end of Sandy Drive	*13
Maps are available for inspection at the Curry County Planning Department, 145 East Moore Street, Gold Beach, Oregon.	
Glendale (City), Douglas County (FEMA Docket No. 7218)	
Cow Creek:	
Approximately 4,400 feet downstream of the Southern Pacific Railway	*1,386
Approximately 600 feet downstream of Reuben Road	*1,395
Maps are available for inspection at the City of Glendale City Hall, 124 Third Street, Glendale, Oregon.	
Riddle (City), Douglas County (FEMA Docket No. 7218)	
Cow Creek:	
Approximately 3,200 feet downstream of Main Street	*667
Approximately 440 feet upstream of Main Street	*673
Maps are available for inspection at the City of Riddle City Hall, 647 First Avenue, Riddle, Oregon.	
SOUTH DAKOTA	
Montrose (City), McCook County (FEMA Docket No. 7218)	
East Fork Vermillion River:	
At downstream corporate limits (approximately 1,600 feet upstream of State Highway 38)	*1,471
Just upstream of Clark Street	*1,474
At upstream corporate limits (approximately 1,600 feet upstream of Clark Street)	*1,477
Maps are available for inspection at the City of Montrose City Hall, 100 West Main Street, Montrose, South Dakota.	
TEXAS	
Hays County (and Incorporated Areas) (FEMA Docket No. 7181)	
San Marcos River:	
At border of Hays and Guadalupe Counties	*551
At confluence of Sink Creek	*577
Plum Creek:	
At border of Township of Uhland and Caldwell County	*538
8,500 feet upstream of Interstate Highway 35 bridge	*732
Stream Plum-1:	
At confluence with Plum Creek	*631
Just above Sledge Street bridge	*729
Brushy Creek:	
Just above State Highway 21	*542
1,150 feet upstream of Satterwhite Road bridge	*654
Stream Brushy-1:	
At confluence with Brushy Creek	*556
650 feet upstream of County Road 131 bridge	*643
Stream Brushy-1A:	
At confluence with Stream Brushy-1	*596
Behind dam located 1,200 feet from County Road 157 bridge	*631
Cottonwood Creek:	
At Old Bastrop Highway bridge	*592
200 feet upstream of Center Point Road	*669
Stream CC-1:	
At confluence with Cottonwood Creek	*601
Just west of Interstate Highway 35	*642
Stream CC-2:	
At confluence with Cottonwood Creek	*639
1,870 feet upstream of Hunter Road bridge	*711
Stream CC-2D:	
At confluence with Cottonwood Creek	*634
Just upstream of Interstate Highway 35	*656
Stream CC-IH35:	
At confluence with Stream CC-1	*643
At divergence from Cottonwood Creek	*656
Blanco River:	
At confluence with San Marcos River	*571
3,300 feet upstream of confluence of Wanslow Creek	*1,021
Bypass Creek:	
2,500 feet downstream of Missouri, Kansas, Texas Railroad bridge	*563
1,050 feet upstream of Harris Hill Road bridge	*603
Stream BPC-1:	
At confluence with Stream BPC-2	*573
At divergence from Blanco River	*593
Stream BPC-2:	
At confluence with Bypass Creek	*573

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD).
At divergence from Blanco River	*599
Loneman Creek:	
At confluence with Blanco River	*760
Just above Deer Lake Road bridge	*913
200 feet downstream of County Road 317	*1,042
Smith Creek:	
At confluence with Loneman Creek	*872
Above earthen dam 4,700 feet upstream from Deer Lake Road bridge	*1,015
Cypress Creek:	
At confluence with Blanco River	*839
1,250 feet above confluence of Stream CC-3	*1,001
Stream Cypress-1:	
At confluence with Cypress Creek	*967
3,900 feet upstream of Valley Spring Road	*1,033
Wilson Creek:	
At confluence with the Blanco River	*843
100 feet downstream of dirt road that intersects FM 2325	*1,005
Willow Springs Creek:	
At confluence with the San Marcos River	*571
2,400 feet upstream of McCarty Lane	*715
Stream WSC-RR:	
At confluence with Purgatory Creek Diversion No. 2	*582
At diversion from Willow Springs Creek	*592
Stream WSC-1:	
At confluence with Willow Springs Creek	*672
600 feet upstream of McCarty Lane	*707
Purgatory Creek:	
At confluence with the San Marcos River	*571
Approximately 20,000 feet upstream of SCS Dam No. 4	*910
Stream PC-1:	
At confluence with Purgatory Creek	*653
6,300 feet upstream of McCarty Lane bridge	*792
Sink Creek:	
At confluence with the San Marcos River	*577
At County Road 213 crossing	*801
Onion Creek:	
At border of Travis and Hays Counties	*644
Approximately 2.5 miles upstream of County Road 190 bridge	*1,141
Bear Creek:	
At border of Hays and Travis Counties	*805
At dam located 2,000 feet upstream of Wildwood Hills Lane	*986
Little Bear Creek:	
At border of Hays and Travis Counties	*672
2,500 feet upstream of Arbor Trail bridge	*815
Stream LB-1:	
At confluence with Little Bear Creek	*741
2,500 feet upstream of Chaparral Road	*790
Stream Bear-1:	
At confluence with Bear Creek	*848
At border of Hays and Travis Counties	*922
Stream Bear-1A:	
At confluence with Stream Bear-1	*851
2,000 feet upstream of Todd Road bridge	*1,037
Stream Bear-2:	
At confluence with Bear Creek	*848
4,650 feet upstream of confluence with Bear Creek	*921
Barton Creek:	
At border of Hays and Travis Counties	*942
At County Road 169	1,333
Long Branch:	
At border of Hays and Travis Counties	*1,035
Above dam located 3,000 feet upstream of Carriage House Lane	*1,160
Stream BC-1:	
At confluence with Barton Creek	*1,085
3,300 feet upstream of confluence of Stream BC-1A	*1,124
Stream BC-1A:	
At confluence with Stream BC-1	*948
1,870 feet upstream of confluence with Stream BC-1	*1,151
Roy Branch:	
At confluence with Barton Creek	*957
2,100 feet upstream of Oakwood Lane bridge	*1,103
Cottonwood Branch:	
At confluence with Ray Branch	*991
1,000 feet upstream of Hidden Hills Drive bridge	*1,096
Little Barton Creek:	
At confluence with Barton Creek	*989
2,500 feet upstream of Spring Lake Drive bridge	*1,245
Stream BC-2:	
At confluence with Barton Creek	*1,096
750 feet upstream of County Road 169	*1,227
Stream BC-2A:	
At confluence with Stream BC-2	*1,153
Approximately 5,500 feet upstream of confluence with Stream BC-2	*1,236
School House Hollow:	
At confluence with Barton Creek	*1,119
Above dam located 2,000 feet upstream of County Road 169 bridge	*1,192
Stream SH-1:	
At confluence with School House Hollow	*1,185
Approximately 4,000 feet upstream of confluence with School House Hollow	*1,261
Purgatory Creek Diversion No. 1:	
At confluence with Purgatory Creek	*583
At divergence from Purgatory Creek	*602
Purgatory Creek Diversion No. 2:	
At confluence with Willow Springs Creek	*581
At divergence from Purgatory Creek	*585
Maps are available for inspection at the Hays County Environmental Health Department, 1251 Civic Center Loop, San Marcos, Texas.	
Maps are available for inspection at the City of Kyle Department of Public Works, City Hall, 101 South Burleson, Kyle, Texas.	
Maps are available for inspection at the City of San Marcos Engineering Department, City Hall, 630 East Hopkins Street, San Marcos, Texas.	
Maps are available for inspection at the City of Woodcreek, 17 Wildwood, Wimberley, Texas.	
Maps are available for inspection at the City of Buda City Hall, 121 North Main Street, Buda, Texas.	
Maps are available for inspection at the City of Hays, c/o Mayor of Hays, 12633 Red Bud Trail, Buda, Texas.	
Maps are available for inspection at the City of Niederwald, Go Forth Water Supply, 13841 Camino Real, Niederwald, Texas.	
Maps are available for inspection at the Township of Uhland, 17 Cotton Gin Road, Uhland, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: September 25, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97-26281 Filed 10-02-97; 8:45 am]

BILLING CODE 6718-04-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[GC Docket No. 97-143; FCC 97-332]

Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order amends the Commission's rules regarding implementation of the Electronic Freedom of Information Act Amendments of 1996 to comply with the changes mandated by the Electronic Freedom of Information Act Amendments of 1996. This action will make it easier for the public to request access under the FOIA to the Commission's records.

EFFECTIVE DATE: October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Laurence H. Schecker, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

Adopted: September 18, 1997.
Released: September 23, 1997.

1. In this Order, we amend part 0 of our rules to implement the amendments to the Freedom of Information Act ("FOIA") enacted in the Electronic Freedom of Information Act Amendments of 1996 ("EFOIA").[1]

Discussion

2. We instituted this proceeding to conform our rules to EFOIA's requirements governing electronic records and to implement the EFOIA directive that we provide for the expedited processing of FOIA requests.[2] Only two comments were received, neither of which addressed the substance of our proposals.[3] For the reasons stated in the Notice of Proposed Rulemaking (NPRM), we adopt, as proposed, the following amendments to our Rules: amendments to § 0.461(a), to reflect the EFOIA requirement that agencies honor requests that records be provided in specific formats; amendments to § 0.461(g), to permit 20 working days to respond to initial FOIA requests and to provide requesters with the opportunity to both limit the scope of their requests or negotiate a time frame for processing requests; and amendments to sections §§ 0.441, 0.443, 0.453, 0.455, and 0.460, to provide the public with better guidance concerning the availability of Commission records. We also adopt, with a minor modification described below, the proposed new paragraph (h) to § 0.461, which provides for the expedited processing of certain FOIA requests. The specific language of the amendments to part 0 is set forth below.

3. The Edgewood Students sought clarification of the method for filing FOIA requests. As they noted, FOIA requests can currently be filed by United States mail, hand delivery, or by electronic mail at <foia@fcc.gov>. FOIA requests may also be filed by facsimile. The NPRM proposed no changes in filing procedures. However, based on the Edgewood Students's comments, we believe § 0.461 should be amended to reflect the option of filing FOIA requests through electronic mail or by facsimile. We will therefore amend § 0.461 of our Rules to indicate that FOIA requests can be filed electronically. Similarly, we will modify our proposed rule for expedited processing of FOIA requests, § 0.461(h), to reflect the possibility of filing such requests through electronic mail. However, we do not at this time envision the filing of FOIA requests or applications for review through the electronic comment filing system (ECFS) currently being developed.[4] Once that system is fully operational, we may reassess its applicability to the FOIA process.

4. The Edgewood Students's comments also addressed the availability of information on our Internet site. A wide variety of FCC information is already available on the Internet site, and more is added regularly. When the new electronic document filing system is in place, even more records will be available through the Internet. The Edgewood Students ask that the Commission's RIPS system[5] be made accessible through our Internet site. However, the RIPS system will be replaced by the ECFS system under development, which will be Internet-accessible.[6]

5. Finally, we note that we did not, as the Reporters Committee's comments feared, adopt any procedures that burden requests for expedited FOIA processing. Our rules simply track the language of the EFOIA and are designed to process such requests speedily.

Procedural Matters

6. In the NPRM, we certified that the proposed rules "[would] not, if promulgated, have a significant economic impact on a substantial number of small entities."[7] No comments were received concerning this certification. The rules adopted in this Order implement the amendments to the FOIA enacted through the EFOIA. There is no reason to believe that the revised rules will impose any costs on FOIA requesters beyond those costs incurred under our former rules. Accordingly, we certify, pursuant to section 605(b) of the Regulatory Flexibility Act, that the rules adopted herein will not have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this certification to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the **Federal Register**.

Ordering Clauses

7. Accordingly, *it is ordered* that pursuant to sections 4(i), 303(r), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 154(j), and the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104–231, 110 Stat. 3048 (1996), part 0 of the Commission's Rules is amended as set forth below.

8. *It is further ordered* that the rules adopted herein will become effective October 3, 1997. The rules merely codify provisions of the EFOIA designed to benefit FOIA requesters or otherwise incorporate procedural rules that benefit requesters. We therefore find, for good cause, that the rules should be made effective upon publication.[8]

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 0 of title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

[1] Pub. L. 104–231, 110 Stat. 3048 (1996), *codified at scattered subsections* of 5 U.S.C. 552.

[2] *Amendment of Part 0 of the Commission's Rules to Implement the Electronic Freedom of Information Act Amendments of 1996*, Notice of Proposed Rulemaking, GC Docket No. 97–143, FCC 97–198 (released June 19, 1997) (NPRM), published at 62 FR 34188 (June 25, 1997).

[3] Reporters Committee for Freedom of the Press (Reporters Committee) and the Regulatory Affairs Committee of the Student Council of Edgewood Senior High School, Ashtabula, Ohio (Edgewood Students).

[4] *Electronic Filing of Documents in Rulemaking Proceedings*, Notice of Proposed Rulemaking, GC Docket No. 97–113, FCC 97–113 (released April 7, 1997) (Electronic Filing of Documents).

[5] The Record Image Processing System (RIPS) provides access to comments filed with the Commission in notice and comment rulemaking proceedings, as well as a variety of filings in other kinds of docketed proceedings (*e.g.*, tariff investigations, formal hearings before Administrative Law Judges, and applications by Bell Operating Companies to provide out-of-region long distance service). See *Electronic Filing of Documents*, at ¶ 8.

[6] The Edgewood Students's other suggestions for placement of information on the Internet have been forwarded to the Office of Public Affairs for consideration.

[7] NPRM ¶ 12, *citing*, 5 U.S.C. § 605(b).

[8] *See* 5 U.S.C. § 553(d)(3).

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.441 is revised to read as follows:

§ 0.441 General.

Any person desiring to obtain information may do so by writing or coming in person to any of the Commission's offices. A broader range of information and more comprehensive Information facilities are available at the Commission's main office in Washington, D.C., however, and inquiries of a general nature should ordinarily be submitted to that office. A wide range of information is also available from the Commission's World Wide Web site located at <http://www.fcc.gov>.

3. Section 0.443 is revised to read as follows:

§ 0.443 General information office.

The Public Service Division of the Office of Public Affairs is located at 1919 M Street, N.W., Washington, D.C. Here, the public may obtain copies of the "Federal Communications Commission Information Seekers Guide," which is a handbook for obtaining information from the FCC. This office also maintains current and back issues of public notices of Commission actions, formal documents adopted by the Commission, and copies of fact sheets that answer general questions about the Commission. Many such recent items may also be obtained from the Commission's World Wide Web site located at <http://www.fcc.gov>. Commission documents listed in § 0.416 are published in the FCC Record, and many such documents or summaries thereof are also published in the **Federal Register**.

4. Section 0.453 introductory text is revised to read as follows:

§ 0.453 Public reference rooms.

The Commission maintains the following public reference rooms at its offices in Washington, DC, Gettysburg, Pennsylvania, and Columbia, Maryland. Much of the information available from the public reference rooms may also be retrieved from the Commission's World Wide Web site at <http://www.fcc.gov>:

* * * * *

5. Section 0.455 introductory text is revised to read as follows:

§ 0.455 Other locations at which records may be inspected.

Except as provided in §§ 0.453, 0.457 and 0.459, records are routinely available for inspection in the offices of the Bureau or Office which exercises responsibility over the matters to which those records pertain (see § 0.5), or will be made available for inspection at those offices upon request. Many of these records may be retrieved from the Commission's site on the World Wide Web, located at <http://www.fcc.gov>. Upon inquiry to the appropriate Bureau or Office, persons desiring to inspect such records will be directed to the specific location at which the particular records may be inspected. A list of Bureaus and Offices and examples of the records available at each is set out below:

* * * * *

6. Section 0.460(a) is revised to read as follows:

§ 0.460 Requests for inspection of records which are routinely available for public inspection.

(a) Sections 0.453 and 0.455 list those Commission records which are routinely available for public inspection and the places at which those records may be inspected. Subject to the limitations set out in this section and to the provisions of § 0.466 and paragraph (l) of this section, a person who wants to inspect such records need only appear at the specified location and ask to see the records. Many such records also are available through the Commission's site on the World Wide Web, located at <http://www.fcc.gov>. Commission documents listed in § 0.416 are published in the FCC Record, and many such documents or summaries thereof are also published in the **Federal Register**.

* * * * *

7. Section 0.461 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2), revising paragraphs (d)(1) and (d)(3), paragraph (g) introductory text, paragraph (g)(3) and the concluding text of paragraph (g), redesignating paragraphs (h) and (i) as paragraphs (i) and (j) and revising them, adding new paragraph (h), and revising paragraph (k) introductory text and paragraph (k)(3) to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(a) (1) * * *

(2) The person requesting records under this section may specify the form or format of the records to be produced.

* * * * *

(d) (1) Requests shall be delivered or mailed to the Managing Director, sent by electronic mail to <foia@fcc.gov>, or sent by facsimile. (For purposes of this section, the custodian of the records is the Chief of the appropriate Bureau or Office.)

* * * * *

(3) An original and two copies of the request shall be submitted. If the request is submitted by electronic mail, only one copy need be submitted. If the request is for materials not open to routine public inspection under § 0.457(d) or § 0.459, one copy of the request will be mailed by the custodian of the records to the person who originally submitted the materials to the Commission.

* * * * *

(g) The custodian of the records will make every effort to act on the request within 20 working days after it is received by the FOIA Control Office. If it is not possible to locate the records and to determine whether they should be made available for inspection within 20 working days, the custodian may, in any of the following circumstances, extend the time for action by up to 10 working days:

* * * * *

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request, or among two or more components of the Commission having substantial subject matter interest therein.

The custodian of the records will notify the requester in writing of any extension of time exercised pursuant to paragraph (g) of this section. If it is not possible to locate the records and make the determination within the extended period, the person or persons who made the request will be provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request, and asked to consent to an extension or further extension. If the requester agrees to an extension, the custodian of the records will confirm the agreement in a letter specifying the length of the agreed-upon extension. If he or she does not agree to an extension, the request will be denied, on the grounds that the custodian has not been able to locate the records and/or to make the determination within the period for a ruling mandated by the Freedom of Information Act, 5 U.S.C. 552. In that event, the custodian will continue to search for and/or assess the records and will advise the person who made the request of further developments; but that person may file an application for review by the Commission. When action is taken by

the custodian of the records, written notice of the action will be given.

(h) (1) Requesters who seek expedited processing of FOIA requests shall submit such requests, along with their FOIA requests, to the Managing Director, as described in § 0.461(d). If the request is enclosed in an envelope, the envelope shall be marked "Request for Expedited Proceeding—FOIA Request." An original and two copies of the request for expedition shall be submitted, but only one copy is necessary if submitted by electronic mail. When the request is received by the Managing Director, it, and the accompanying FOIA request, will be assigned to the FOIA Control Office, where it will be date-stamped and assigned to the custodian of records.

(2) Expedited processing shall be granted to a requester demonstrating a compelling need that is certified by the requester to be true and correct to the best of his or her knowledge and belief.

(3) For purposes of this section, *compelling need* means—

(i) That failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(4) (i) Notice of the determination as to whether to grant expedited processing shall be provided to the requester by the custodian of records within 10 calendar days after receipt of the request by the FOIA Control Office. Once the determination has been made to grant expedited processing, the custodian shall process the FOIA request as soon as practicable.

(ii) If a request for expedited processing is denied, the person seeking expedited processing may file an application for review within five working days after the date of the written denial. The application for review and the envelope containing it (if any) shall be captioned "Review of FOIA Expedited Proceeding Request." The application for review shall be delivered or mailed to the General Counsel. (For general procedures relating to applications for review, *see* § 1.115 of this chapter.) The Commission shall act expeditiously on the application for review, and shall notify the custodian of records of the disposition of such an application for review.

(i) If a request for inspection of records submitted to the Commission in confidence under § 0.457(d) or § 0.459 is granted, an application for review of the action may be filed only by the person who submitted the records to the Commission. The application for review and the envelope containing it (if any) shall be captioned "Review of Freedom of Information Action." The application for review shall be filed within 10 working days after the date of the written ruling, shall be delivered or mailed to the General Counsel, and shall be served on the person who filed the request for inspection of records. The first day to be counted in computing the time period for filing the application for review is the day after the date of the written ruling. If an application for review is not filed within this period, the records will be produced for inspection. The person who filed the request for inspection of records may respond to the application for review within 10 working days after it is filed.

(j) Except as provided in paragraph (i) of this section, an application for review of an initial action on a request for inspection may be filed only by the person who made the request. The application shall be filed within 30 days after the date of the written ruling by the custodian of records, and shall be captioned, "Review of Freedom of Information Action." The envelope (if any) shall also be so captioned. The application shall be delivered or mailed to the General Counsel and shall be served on the person (if any) who originally submitted the materials to the Commission. That person may file a response within 10 working days after the application for review is filed. If the records are made available on review, the person who submitted them to the Commission (if any) will be afforded 10 working days after the date of the written ruling to seek a judicial stay. *See* paragraph (i) of this section. The first day to be counted in computing the time period for filing the application for review or seeking a judicial stay is the day after the date of the written ruling. (For general procedures relating to applications for review, see § 1.115 of this chapter.)

(k) The Commission will make every effort to act on an application for review of an action on a request for inspection of records within 20 working days after it is filed. See, however, paragraph (i) of this section. If it is not possible to locate the records and to determine whether they should be made available for inspection within 20 working days, the General Counsel may, in the following circumstances and to the extent time has not been extended under paragraphs (g) (1)(i), (ii), or (iii) of this section, extend the time for action up to 10 working days. (The total period of extensions taken under this paragraph and under paragraph (g) of this section without the consent of the person who submitted the request shall not exceed 10 working days.):

* * * * *

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Commission having substantial subject matter interest therein.

* * * * *

[FR Doc. 97–26205 Filed 10–2–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–135; RM–9087]

Radio Broadcasting Services; Spring Valley, MN and Osage, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 282C3 for Channel 282A at Spring Valley, Minnesota, and modifies the license for Station KVGO(FM) to specify operation on Channel 282C3 in response to a petition filed by KVGO, Inc. *See* 62 FR 29090, May 29, 1997. The coordinates for Channel 282C3 are 43–38–23 and 82–38–30. To accommodate the proposal for Spring Valley, we shall substitute Channel 254A for Channel 279A at Osage, Iowa, and modify the license for Station KCZY accordingly. The coordinates for Channel 254A are 43–19–20 and 92–51–22. With this action this proceeding is terminated.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–135, adopted September 17, 1997, and released September 26, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 282A and adding Channel 282C3 at Spring Valley.

3. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 279A and adding Channel 254A at Osage.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–26251 Filed 10–2–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–152; RM–9102]

Radio Broadcasting Services; Naylor, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Naylor, Missouri, as that community's first local FM broadcast service in response to a petition filed by B.B.C., Inc. *See* 62 FR 38053, July 16, 1997. The coordinates for Channel 260A at Naylor are 36–34–12 and 90–35–30. With this action, this proceeding is terminated.

DATES: Effective November 10, 1997. The window period for filing applications for Channel 260A at Naylor, Missouri, will open on November 10, 1997, and close on December 11, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–152, adopted September 17, 1997, and released September 26, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Naylor, Channel 260A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–26249 Filed 10–2–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–9; RM–8929, RM–9067]

Radio Broadcasting Services; New Boston, TX and Idabel, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dixie Broadcasting Company, allots Channel 286A to New Boston, Texas. *See* 62 FR 3851, January 27, 1997. In response to a counterproposal filed by Idabel Community Broadcasters (RM–9067), the Commission also allots Channel 275A to Idabel, Oklahoma. Channel 286A and Channel 275A can be allotted to New Boston and Idabel, respectively, in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 286A at New Boston, Texas, are 33–27–41 NL and 94–31–00 WL. The coordinates for Channel 275A at Idabel, Oklahoma, are 33–53–48 NL and 94–49–42 WL. With this action, this proceeding is terminated.

DATES: Effective November 10, 1997. The window period for filing applications for Channel 286A at New Boston, Texas, and Channel 275A at Idabel, Oklahoma, will open on November 10, 1997, and close on December 11, 1997.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–9, adopted September 17, 1997, and released September 26, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 286A at New Boston.

3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 275A at Idabel.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–26248 Filed 10–2–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–147; RM–9099]

Radio Broadcasting Services; Sardis, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Delta Radio, Inc., allots

Channel 271A to Sardis, Mississippi, as the community's first local aural transmission service. *See* 62 FR 36756, July 9, 1997. Channel 271A can be allotted in compliance with the Commission's distance separation requirements with a site restriction of 7.0 kilometers (4.4 miles) southeast. The coordinates for Channel 271A at Sardis are 34–24–09 NL and 89–51–23 WL. With this action, this proceeding is terminated.

DATES: Effective November 10, 1997. The window period for filing applications for Channel 271A at Sardis, Mississippi, will open on November 10, 1997, and close on December 11, 1997.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–147, adopted September 17, 1997, and released September 26, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Sardis, Channel 271A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–26247 Filed 10–2–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF ENERGY

48 CFR Parts 952 and 970

Acquisition Regulation, Classification, Security and Counterintelligence

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to revise its classification contract clause, revise its access authorization (security clearance) procedures for contractor personnel, and add new counterintelligence provisions. Specific material being revised or added is summarized in the "Section-by-Section Analysis" appearing later in this document.

EFFECTIVE DATE: This rule will be effective December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Office of Procurement and Assistance Policy (HR–51), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585–0705, (202) 586–8247.

SUPPLEMENTARY INFORMATION:

I. Background
II. Disposition of Comments
III. Section-by-Section Analysis
IV. Procedural Requirements
A. Review Under Executive Order 12612
B. Review Under Executive Order 12866
C. Review Under Executive Order 12988
D. Review Under the National Environmental Policy Act
E. Review Under the Paperwork Reduction Act
F. Review Under the Regulatory Flexibility Act
G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
H. Review Under the Unfunded Mandates Reform Act of 1995

I. Background

This final rule results from a notice of proposed Rulemaking published in the **Federal Register** on November 20, 1996, 61 FR 59072. This rule will accomplish three objectives.

First, it will revise the classification contract clause to provide that only Federal Government employees may serve as "original classifiers" and that both Federal Government employees and contractor employees may serve as "derivative classifiers." The clause is also changed to recognize that a balance is required between the Department's mission to protect the national security and prevent nuclear proliferation and its commitment to maximize the amount of information available to the public. As revised, the clause requires that information, documents or material originated or generated in classified or potentially classified subject areas be reviewed for classification by the appropriate officials using proper classification guidance provided by the Department. The clause also requires that documents containing information which is no longer classified by current classification guidance be systematically reviewed for declassification by a Derivative Declassifier. Only when both classification and declassification reviews are performed can the Department achieve its goal of protecting the national security while providing the public with access to as much Government information as possible. Definitions of certain terms are added. These changes are at item 2 of the final rule, subsection 952.204–70, the clause itself, and item 5 of the final rule, subsection 970.0404–4, paragraph (a)(1), a reference to the clause and its revised title.

Second, it will provide a definition of "counterintelligence" consistent with E.O. 12333, a policy statement regarding DOE's counterintelligence program, and a new contract clause on counterintelligence applicable to certain DOE management and operating contractors and other contractors managing DOE-owned facilities. These changes appear at item 3 of the final rule, subsection 970.0404–1, a definition, item 4 of the final rule, subsection 970.0404–2, paragraph (e), a policy statement, item 5, subsection 970.0404–4, paragraph (a)(2), an instruction for use of the clause, and item 7, subsection 970.5204–1, paragraph (b), the text of the clause.

Third, it will revise the DEAR to be consistent with the recommendations of the General Accounting Office Report on Nuclear Security, RCED–93–183, as implemented by DOE Order 472.1B entitled "Personnel Security Activities." The GAO report stressed contractor responsibility for certifying preemployment checks conducted on prospective employees. Where DOE access authorization is required, the contractor must perform normal and prudent preemployment checks and the applicant's job qualifications and suitability must be established before a request is made to the Department for a security clearance. This revision is applicable to DOE management and operating contractors and other contractors managing DOE-owned facilities. Such contractors may, at their discretion, include this procedure in their subcontracts where subcontractor employees are required to hold a DOE access authorization in order to perform on-site duties, such as protective force operations. This change appears at item 6 of the final rule, section 970.2201, paragraph (b)(1)(ii).

II. Disposition of Comments

Comments were received from 2 reviewers.

The first reviewer registered general support for the amendment. The reviewer supported the Department's efforts to maximize information available to the public while ensuring the proper protection of sensitive national security and atomic energy information. The addition of the declassification reviews to DOE's security program was supported by this reviewer.

The second reviewer offered four comments.

First Comment. The reviewer notes that the rulemaking emphasizes the importance of a contractor's declassification activities. The reviewer suggests that the declassification activities of the contractor be formally recognized in the contract and states the opinion that such declassification activities may be substantially under funded until such action is taken.

First Response. Including the Classification/Declassification clause in a contract constitutes formal recognition of these activities. Contracts do not specify the individual tasks involved in the work to such a specific level of work as classifying or declassifying a document. DOE policy emphasizes the importance of conducting declassification reviews. This policy has led, during each of the past three years, to the declassification of greater numbers of documents than have been classified. This suggests that our policy emphasis has been effective.

Second Comment. The reviewer notes a statement in the "Review Under the Regulatory Flexibility Act" (item IV.F. of the preamble of the notice) which says that the security and counterintelligence requirements apply only to management and operating contractors and do not flow down to subcontractors. The reviewer asks for clarification regarding whether the requirements apply to subcontractors.

Second Response. The statement has been revised to more specifically define what is meant by "security requirements." The security requirements being revised, in this context, are those of 970.2201 which discuss completion of preemployment background checks in relation to access authorizations. This specific section (i.e. 970.2201(b)(1)(ii)) applies to DOE management and operating contractors and other contractors operating DOE facilities which require access authorizations. Section 970.2201 is a guiding principle, not a contract clause. It does not flow down to subcontracts. Management and operating contractors and other contractors operating DOE facilities may, at their discretion, include this guiding principle in their solicitations and subcontracts wherein subcontractor employees are required to hold a DOE access authorization in order to perform on-site duties, such as protective force operations. Possible applicability to subcontractors, in specific circumstances, was added based on our analysis of the comment. The Classification/Declassification clause does flow down to subcontracts if they require access to classified information. The counterintelligence requirements do not flowdown to subcontracts. Section IV.F. of the preamble has been revised to avoid any misunderstanding.

Third Comment. The reviewer notes section IV.E. "Review Under the Paperwork Reduction Act," of the preamble of the notice. The reviewer suggests that the declassification activity under the revised Classification/Declassification clause of the notice represents a tremendous record keeping and information burden.

Third Response. The rulemaking makes no change in the amount of records or information. It is intended to move more records and information from the classified category to the declassified category.

Fourth Comment. The reviewer expressed concern that the clause would require most classification decisions to be made by Federal classifiers even in situations where a major contractor operated security program was involved. The reviewer suggested that the lack of definition of the terms "document," "equipment," and "information" made the intent of the clause unclear.

Fourth Response. We agree with the comment and have added definitions of terms and revised the text of the clause for clarity.

III. Section-by-Section Analysis

1. The authority citations for Parts 952 and 970 are restated.

2. The classification clause at 952.204–70 is renamed classification/declassification. It is revised to emphasize declassification, add definitions, and differentiate the duties of original versus derivative classifiers.

3. A definition of counterintelligence is added to subsection 970.0404–1.

4. A new paragraph is added to 970.0404–2 to describe DOE policy on counterintelligence.

5. New instructions are added to 970.0404–4 to detail the security clause requirements for management and operating contractors and other contractors managing DOE-owned facilities which require access authorizations.

6. Section 970.2201 is amended to describe the procedures for confirming to DOE the conduct and outcome of preemployment checks performed by management and operating contractors and other contractors managing DOE-owned facilities, when such contractors request that the DOE process an applicant for access authorization. Such contractors may, at their discretion, include this procedure in subcontracts wherein subcontractor employees are required to possess DOE access authorization in order to perform on-site duties, such as protective force operations.

7. Section 970.5204–1 is amended to add a new clause entitled counterintelligence.

IV. Procedural Requirements

A. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal Government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rulemaking will not have a substantial direct effect on the institutional interests or traditional functions of states.

B. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

C. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write

regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

D. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A), DOE has determined that this rulemaking is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

E. Review Under the Paperwork Reduction Act

This rulemaking imposes no new information collection or record keeping requirements. Accordingly, they require no OMB clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

F. Review Under the Regulatory Flexibility Act

This rulemaking was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, 5 U.S.C. 601, *et seq.*, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This rulemaking revises established classification and security requirements and adds counterintelligence requirements. The changes to the security requirements being made by this final rule (i.e,, 970.2201 dealing with completion of preemployment background checks prior to requests for access authorizations) are applicable to management and operating contractors and other contractors managing DOE-owned facilities. Such contractors may, at their discretion, include this procedure in subcontracts wherein subcontractor employees will require DOE access authorization in order to perform on-site duties, such as protective force operations. The prime contractors operating DOE facilities are large businesses, large universities, or large not for profit entities. This part of the rulemaking could affect small entities only if they become subcontractors performing on-site services that require DOE access authorizations such as protective force operations. Even under such circumstances, there will not be a significant economic impact on a substantial number of small entities as the rulemaking does not require any unusual effort on the part of the small entity. The procedure merely provides that, before requesting that DOE undertake a review for employee access authorization, the employer complete normal preemployment background checks, i.e. police and credit checks, which are normal to the employment of personnel in sensitive type positions such as protective force operations. Moreover, the cost of the background checks are reimbursable.

The new counterintelligence requirements are only applicable to management and operating contractors and other contractors managing DOE facilities. As noted above, such contractors are large businesses or universities, therefore, this rulemaking will have no significant impact on a substantial number of small entities. The change to the classification/declassification clause (i.e. 952.204–70) applies to all contracts and subcontracts but has no significant economic impact. The associated costs are estimated to be relatively small, and in any event, the contracts are likely to be of the cost reimbursement type.

Based on the foregoing review, DOE certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1966

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking imposes no Federal mandates and does not have an impact of $100 million or more.

List of Subjects in 48 CFR Parts 952 and 970

Government Procurement.

Issued in Washington, D.C., on September 29, 1997.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 952 continues to read:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c); 42 U.S.C. 13524.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.204–70 [Amended]

2. Subsection 952.204–70 is amended by revising the section heading and revising the clause to read:

952.204–70 Classification/Declassification.

* * * * *

Classification/Declassification (Sep 1997)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders).

The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

The authority citation for Part 970 continues to read:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

3. Subsection 970.0404–1 is amended by adding in alphabetic order "counterintelligence" as a new definition to read as follows:

970.0404–1 Definitions.

* * * * *

Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communication security programs.

* * * * *

4. Subsection 970.0404–2 is amended by adding paragraph (e) to read as follows:

970.0404–2 General.

* * * * *

(e) Executive Order 12333, United States Intelligence Activities, provides for the organization and control of United States foreign intelligence and counterintelligence activities. In accordance with this Executive Order, DOE has established a counterintelligence program which is described in DOE Order 5670.3 (as amended). All DOE elements, including management and operating contractors and other contractors managing DOE-owned facilities which require access authorizations, should undertake the necessary precautions to ensure that DOE and covered contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

5. Subsection 970.0404–4 is amended by revising paragraph (a)(1) and by adding a new paragraph (a)(2) to read as follows:

970.0404–4 Contract clauses.

(a) * * *

(1) *Security and Classification/Declassification, 970.5204–1(a).* These clauses are required in all contracts which involve access to classified information, nuclear material, or access authorizations.

(2) *Counterintelligence, 970.5204–1(b).* This clause is required in all management and operating contracts and other contracts for the management of DOE-owned facilities which include the security and classification/declassification clauses.

* * * * *

6. Section 970.2201 is amended by revising paragraph (b)(1)(ii) to read as follows:

970.2201 Basic labor policies.

* * * * *

(b) * * *

(1) * * *

(ii) The job qualifications and suitability of prospective employees should be established by the contractor prior to employment by careful personnel investigations. Such personnel investigations should include, as appropriate: a credit check; verification of high school degree/diploma or degree/diploma granted by an institution of higher learning within the last 5 years; contacts with listed personal references; contacts with listed employers for the past 3 years (excluding employment of less than 60 days duration, part-time employments, and craft/union employments); and local law enforcement checks when such checks are not prohibited by State or local law, statute, or regulation, and when the individual had resided in the jurisdiction where the contractor is located. When a DOE access authorization (security clearance) will be required, the aforementioned preemployment checks must be conducted and the applicant's job qualifications and suitability must be established before a request is made to the DOE to process the applicant for access authorization. Evidence must be furnished to the DOE with the applicant's security forms that specifies: the date each check was conducted, the entity contacted that provided information concerning the applicant, a synopsis of the information provided as a result of each contact, and a statement that all information available has been reviewed and favorably adjudicated in accordance with the contractor's personnel policies. When an applicant is being hired specifically for a position which requires a DOE access authorization, the applicant shall not be placed in that position prior to the access authorization being granted by the DOE unless an exception has been obtained from the Head of the Contracting Activity or designee. If an applicant is placed in that position prior to access authorization being granted by the DOE, the applicant may not be afforded access to classified matter or special nuclear materials (in categories requiring access authorization) until the DOE notifies the employer that access authorization has been granted. Management and operating contractors and other contractors operating DOE facilities may, at their discretion, include this language in solicitations and subcontracts (appropriately modified to identify the parties) wherein subcontract employees will be required to hold DOE access

authorization in order to perform on-site duties, such as protective force operations.

* * * * *

7. Section 970.5204–1 is revised to read as follows:

Subpart 970.52—Contract Clauses for Management and Operating Contracts.

970.5204–1 Security.

(a) As prescribed in 970.0404–4(a)(1), insert the Security clause found at 952.204–2 and the Classification/ Declassification clause found at 952.204–70.

(b) As prescribed in 970.0404–4(a)(2), insert the following Counterintelligence clause in contracts containing the security and classification/ declassification clauses:

Counterintelligence (Sep 1997)

(a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

[FR Doc. 97–26280 Filed 10–2–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 1 and 10

[OST Docket No. 1; Amdt. 1–290]

Organization and Delegation of Powers and Duties to the Chief Information Officer; Miscellaneous Changes, Office of the Secretary

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The rule delegates certain functions to the Office of the Chief Information Officer.

EFFECTIVE DATE: October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Crystal M. Bush, Program Analyst, Office of the Chief Information Officer, S–80, Room 7107–T, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–9713, or Ms. Gwyneth Radloff, Attorney Advisor, Assistant General Counsel for Regulation and Enforcement, C–50, Room 10424, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–9305.

SUPPLEMENTARY INFORMATION: On April 23, 1997, the Secretary of Transportation established the Office of the Chief Information Officer. These amendments to 49 CFR Parts 1 and 10 delegates the Secretary's authority related to specific statutes to the Office of the Chief Information Officer.

List of Subjects

49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 10

Privacy.

In accordance with the above, DOT amends 49 CFR, as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Public Law 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.22(a) is revised to read as follows:

§ 1.22 Structure.

(a) *Secretary and Deputy Secretary.* The Secretary and Deputy Secretary are assisted by the following, all of which report directly to the Secretary: The Associate Deputy Secretary and Director, Office of Intermodalism; the Executive Secretariat; the Board of Contract Appeals; the Departmental Office of Civil Rights; the Office of Small and Disadvantaged Business Utilization; the Office of Intelligence and Security; the Office of Public Affairs; and the Office of the Chief Information Officer. The Assistant Secretaries, the General Counsel, and the Inspector General also report directly to the Secretary.

* * * * *

3. Section 1.23 is amended by adding a new paragraph (q) as follows:

§ 1.23 Spheres of primary responsibility.

* * * * *

(q) *Office of the Chief Information Officer.* Serves as principal advisor to the Secretary on matters involving information resources and information systems management.

4. Subpart C—Delegations is amended by adding a new § 1.72 as follows:

§ 1.72 Delegations to the Office of the Chief Information Officer.

(a) Carry out all functions and responsibilities assigned to the Secretary with respect to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506);

(b) Carry out all functions and responsibilities assigned to the Secretary with respect to the Clinger-Cohen Act of 1996 (40 U.S.C. 1422 to 1424, 1427);

(c) Carry out all functions and responsibilities assigned to the Secretary with respect to the Computer Security Act of 1987 (40 U.S.C. 759, 759 notes);

(d) Approve waivers to Federal Information Processing Standards (FIPS) under Section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441); and

(e) Carry out all the functions and responsibilities assigned to the Secretary with respect to Executive Order 13011, Federal Information Technology, Section 2, paragraphs (a), (b), (d), (e), and (f).

PART 10—[AMENDED]

5. The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

6. Section 10.13 is amended by revising paragraphs (a) and (b) to read as follows:

§ 10.13 Privacy Act Officer.

(a) To assist with implementation, evaluation, and administration issues, the Chief Information Officer appoints a principal coordinating official with the title Privacy Act Officer, and one Privacy Act Coordinator from his/her staff.

(b) Inquiries concerning Privacy Act matters, or requests for assistance, may be addressed to the Privacy Act Officer (S–80), Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590.

* * * * *

Dated: July 30, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–26198 Filed 10–2–97; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970129015–7220–05; I.D. 010397A]

RIN 0648–AI84

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Pacific Offshore Cetacean Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to require new training, equipment, and gear modifications for operators and vessels in the California/Oregon drift gillnet fishery for thresher shark and swordfish to reduce the level of mortality and serious injury of several marine mammal stocks that occur incidental to fishing operations.

DATES: Effective October 30, 1997.

ADDRESSES: Copies of the final Pacific Offshore Cetacean Take Reduction Plan and final Environmental Assessment (EA) prepared for the final rule may be obtained by writing to Irma Lagomarsino, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; or Victoria Cornish, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226.

FOR FURTHER INFORMATION CONTACT: Irma Lagomarsino, NMFS, 562–980–4016; or Victoria Cornish, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION: The California/Oregon drift gillnet (CA/OR DGN) fishery which targets thresher shark and swordfish, is classified as a Category I fishery under section 118 of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*). A Category I fishery is a fishery that has frequent incidental mortality and serious injury of marine mammals. The majority of the fishing effort in the CA/OR DGN fishery occurs within 200 miles (320 km) offshore of California and Oregon. Under California state law, from May 1 through August 14, drift gillnets may not be used to take swordfish or thresher shark in ocean waters within 75 nautical miles of the California mainland coastline (California Fish and Game Code, § 8576). Swordfish may be taken within 75 nautical miles of the California mainland from August 15 to January 31; additional area restrictions also apply within this area. From February through April, drift gillnets may not be used.

The CA/OR DGN fishery has a historical incidental bycatch of several strategic marine mammal stocks including: Several beaked whale species, short-finned pilot whales, pygmy sperm whales, sperm whales, and humpback whales (Barlow *et al.*, 1995). A strategic stock is a stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) that is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) that is listed as a threatened or endangered species under the ESA.

Section 118 of the MMPA requires NMFS to develop and implement a take reduction plan to assist in the recovery or to prevent the depletion of each strategic stock that interacts with a Category I or II fishery. The immediate goal of a take reduction plan is to reduce, within 6 months of its implementation, the level of mortality and serious injury of strategic stocks incidentally taken in the course of commercial fishing operations to less than the PBR levels established for such stocks. Since the CA/OR DGN fishery is a Category I fishery that interacts with several strategic stocks, NMFS established the Pacific Offshore Cetacean Take Reduction Team (PCTRT) on February 12, 1996 (61 FR 5385), to prepare a draft take reduction plan. The PCTRT includes representatives of NMFS, the California Department of Fish and Game (CDFG), the Pacific States Marine Fisheries Commission, environmental organizations, academic and scientific organizations, and participants in the CA/OR DGN fishery. In selecting these team members, NMFS sought an equitable balance among representatives of resource user and non-user interests.

The PCTRT was tasked with developing a consensus plan for reducing the level of mortality and serious injury of strategic marine mammal stocks incidental to the CA/OR DGN fishery. The PCTRT met five times between February and June 1996 and submitted a consensus draft plan to NMFS on August 15, 1996 (draft PCTRP, 1996). The draft PCTRP included: (1) A review of the current information on the status of the affected strategic marine mammal stocks; (2) a description of the CA/OR DGN fishery; (3) an analysis of data from NMFS' CA/OR DGN fishery observer program from 1990–1995; (4) primary strategies to reduce takes of strategic marine mammal stocks; (5) contingency measures that would reduce fishing effort; and (6) other recommendations regarding voluntary measures to reduce takes, measures to enhance the effectiveness of the observer program, research on oceanographic/environmental variables, and other potential strategies considered and rejected by the team. The PCTRT recommended that three of the four primary strategies of the draft PCTRP (1996) be administered on a mandatory basis (strategies #1, #2, and #4) and that one be administered on a voluntary basis (strategy #3). NMFS reconvened the PCTRT in May 1997 and it provided NMFS with additional comments and recommendations on the proposed PCTRP and proposed rule to implement the plan (see PCTRT Recommendations from the 1997 Meeting section).

Because the implementation of the PCTRP would result in the regulation of the state-managed CA/OR DGN fishery, NMFS contacted both CDFG and the Oregon Department of Fish and Wildlife (ODFW) on how best to proceed with the Plan's implementation. CDFG and ODFW both deferred to the Federal government to issue regulations under the authority of the MMPA to implement the PCTRP. On February 14, 1997, NMFS proposed regulations under the MMPA (62 FR 6931) to implement three of the primary strategies recommended by the PCTRT (draft PCTRP, 1996). These strategies include the establishment of a minimum depth-of-fishing requirement (strategy #1), use of acoustic deterrent devices (pingers) (strategy #2), and mandatory skipper workshops (strategy #4). NMFS also proposed to implement primary strategy #3 on a voluntary basis, under which NMFS would encourage CDFG not to reissue lapsed permits, encourage ODFW to continue issuing not more than 10 permits per year and explore the development of a permit buyback program for both CDFG and ODFW permit holders. In the proposed rule, NMFS described how it intended to implement the other sections of the draft PCTRP.

In addition to publication in the **Federal Register**, NMFS issued a press release announcing the availability of the proposed rule and summarizing the

major issues contained in the proposed rule. Information in the press release was published in several California newspapers and broadcast on at least one radio station. Voluntary Skipper Education Workshops were held in several locations throughout California in June 1997, providing an additional opportunity to inform participants in the fishery about the proposed rule and PCTRP.

The final rule will govern fishing by all U.S. drift gillnet vessels operating in waters seaward of the coast of California or Oregon, including adjacent high seas waters. This final rule applies to U.S. drift gillnet vessels originating from ports outside California or Oregon (e.g., Alaska). NMFS has determined that implementation of this final rule is expected to reduce, within 6 months of its implementation, mortalities and serious injuries of all strategic stocks that are taken by the CA/OR drift gillnet fishery to below the PBR level for each stock.

Responses to Comments

NMFS received six written comments during the comment period for the proposed rule. Comments were received from fishers, environmental groups, the Pacific States Marine Fisheries Commission, and members of the general public. Key issues and concerns are summarized and responded to as follows:

Comments on the Depth of Fishing Requirement (Strategy #1)

In the proposed rule, NMFS proposed to establish a minimum depth-of-fishing requirement that would prohibit the use of extenders that are less than 36 ft (10.9 m). Extender lines (buoy lines) attach buoys (floats) to a drift gillnet's floatline and determine the depth in the water column at which the net is fished. Two commenters agreed with the establishment of a minimum 36 ft (10.9 m) depth-of-fishing requirement as a method to reduce incidental marine mammal mortality and serious injury. Two commenters felt that there must be a mechanism to enforce the extender provision. One commenter believed that since fishing at depths that are greater than 36 ft (10.9 m) results in a lower catch of target fish, vessel operators will fish shallower in the water when observers are not on the vessel. Consequently, future observer data may not be representative of the actual marine mammal take in the entire fishery.

Response: On those boats that are carrying marine mammal observers (e.g., expected to be approximately 20 percent of the fishing effort), information will collected by observers on whether there is compliance with the minimum depth-of-fishing requirement. However, NMFS agrees that this may not be sufficient to ensure compliance. Therefore, NMFS enforcement agents will conduct random checks and NMFS will work with state agents to monitor compliance. In addition, since the cost of a drift gillnet is approximately $10,000 and interactions with marine mammals often results in net damage or net loss, vessel operators will be motivated to make changes in their fishing gear or techniques to avoid marine mammal entanglement, and subsequently, net damage or loss. Furthermore, analysis of the best available data indicates that swordfish and thresher shark are equally likely to be caught at depths that are greater than 36 ft (10.9 m), even though drift gillnet fishers sometimes fish at shallower depths (NMFS unpublished data). Combined with other strategies, NMFS believes the minimum depth-of-fishing requirement will significantly contribute to reductions in cetacean bycatch, including strategic stocks in the CA/OR DGN fishery.

Comments on the Pinger Experiment and Requirement (Strategy #2)

Comment 1: One commenter agreed with NMFS that the preliminary results from the 1996/1997 CA/OR DGN fishery pinger experiment supports the use of pingers.

Response: NMFS agrees.

Comment 2: One commenter was concerned about the biological impact of pingers on cetaceans and recommended that they should not be used until scientific evidence shows that pingers are not harmful to any strategic stock.

Response: NMFS prepared an Environmental Assessment (EA) on the use of acoustic pingers to reduce marine mammal bycatch in commercial fisheries (NMFS, 1997a). NMFS concluded that the sound intensity levels of pingers will not cause physical injury or temporary threshold shifts in marine mammals. Furthermore, due to the limited sound range of pingers and the limited level of fishing effort in the CA/OR DGN fishery, ensonifying major portions of the ocean will not occur. Thus, the negative impact of pingers used by the CA/OR DGN fishery on marine mammals is likely to be negligible. Nevertheless, monitoring programs will evaluate changes in distribution to evaluate whether cetaceans are avoiding important habitat. NMFS will continue to evaluate the status of strategic marine mammal stocks that interact with the CA/OR DGN fishery on an annual basis. NMFS made similar determinations regarding the impact of pingers on marine mammals in the EA prepared for this final rule (NMFS, 1997b).

Comment 3: One commenter believed that pinger noise during the experiment may constitute "harassment" under the MMPA and ESA.

Response: Although scientific results clearly indicate that pingers significantly reduced harbor porpoise bycatch in the New England sink gillnet fishery (Reeves *et al.*, 1996) and cetacean bycatch in the CA/OR DGN fishery (see section on 1997 PCTRT Recommendations), scientists do not know why they worked (NMFS, 1997a). Several mechanisms are possible. For example, pingers may operate as acoustic alarms alerting animals to the presence of fishing gear on the assumption they will avoid the gear if made aware of its presence. Alternatively, the sounds emitted by pingers may repel marine mammals away from the gear. Another possibility is that the pingers disperse the prey upon which marine mammals forage and thus, affect marine mammal behavior indirectly.

The state of knowledge about marine mammal hearing abilities and behavior in response to various types of sound is limited (Reeves *et al.*, 1996). However, pingers were not originally designed to harass marine mammals. Pingers produce relatively weak sound pulses of 132 dB re 1 Pa at 1 m which attenuate to ambient noise levels at a distance of only 300 m (984.3 ft) from the source (NMFS, 1997a). In contrast, "acoustic harassment devices" were specifically designed to emit much louder acoustical pulses (e.g., 187–218 dB re 1 Pa at 1 m) strong enough to keep pinnipeds away from nets and aquaculture facilities (Richardson *et al.*, 1995; NMFS, 1997a).

It is questionable if the operation of pingers would constitute an "act of pursuit, torment or annoyance" under the definition of "harassment" in section 3 of the MMPA. Furthermore, pingers have no potential to injure a marine mammal. Regardless, even if the operation of pingers does constitute "harassment" under the MMPA, section 101(a)(4) of the MMPA allows the use of certain measures by the owners of fishing gear to deter marine mammals so long as such measures do not result in the death or serious injury of a marine mammal. NMFS recommends the use of pingers in the CA/OR DGN fishery as a specific measure that may be used to nonlethally deter marine mammals. Likewise, such takes are allowed under section 118 of the MMPA.

With respect to the ESA, there is no statutory definition for "harassment" and NMFS has not issued a regulatory definition for this term. In interpreting this term, NMFS examined a variety of factors, including the extent to which the activity disrupts normal behavioral patterns and whether it is likely to produce harm or injury. NMFS has concluded that there is no evidence available at this time that would suggest the use of pingers to deter marine mammals from interacting with fishing gear would constitute harassment under the ESA.

NMFS will continue to investigate the possible mechanisms of why pingers reduce cetacean entanglement in the CA/OR DGN fishery. If NMFS determines that the effect of sound emitted from pingers does constitute "harassment", it will take appropriate action, which may include action to modify the requirements for pinger use, to alter the specifications for pingers or to ensure any necessary authorizations are in place.

Comment 4: Two commenters cautioned that pingers may not be effective at reducing cetacean bycatch in the CA/OR DGN fishery due to the variety of cetaceans that are entangled.

Response: NMFS and the fishery conducted an experiment during the 1996/1997 fishing season in the CA/OR DGN fishery to test the efficacy of pingers at reducing cetacean entanglement. Results from this study indicate that the use of pingers is effective at significantly reducing cetacean bycatch in the fishery (see 1997 PCTRT Recommendations section). NMFS will continue to evaluate the long-term effectiveness of pingers at reducing strategic stock bycatch in the CA/OR DGN fishery.

Comment 5: One commenter stated that the proposed rule failed to explain clearly how NMFS would certify that pingers were NMFS approved or enforce the pinger specifications (e.g., intensity, frequency, etc.).

Response: NMFS agrees that the issue of pinger certification needs to be clarified. In the proposed rule, NMFS stipulated that only "NMFS-approved pingers" could be used in the fishery and that if requested, NMFS may authorize the use of non-NMFS-approved pingers for limited experimental purposes. This final rule stipulates specifications for pingers that are required to be used in the CA/OR DGN fishery under section 229.31(c)(1). Since all pingers used in the fishery must meet these specifications, all references to NMFS-approved pingers have been removed from the final rule. NMFS is not requiring manufacturers to have their pingers certified by an independent company that their pingers meet the pinger specifications of the final rule; independent companies are not necessarily more credible at testing the sound characteristics of pingers than the manufacturer. However, manufacturers of pingers will need to provide documentation that their pingers meet the specifications of the final rule. NMFS will monitor, periodically, whether the pingers used by the fishery meet the specifications under section 229.31(c)(1) to ensure compliance with this requirement. In the future, if experimental findings support the use of a pinger with different specifications, NMFS would establish new specifications by rulemaking, and also provide actual notice to drift gillnet vessel operators.

Comment 6: One commenter suggested that in the final rule NMFS publish: (1) The parameters of the drift gillnet pinger experiment; (2) the basis for the pinger spacing requirements and; (3) a requirement that all vessels carry four spare pingers. Furthermore, they recommended that NMFS conduct additional research to determine whether the spacing requirements for pingers are adequate.

Response: The experimental design for the 1996/1997 pinger experiment in the CA/OR DGN fishery was based primarily on the recommendations from the participants of an acoustic workshop (Reeves *et al.*, 1996). Based on these suggestions, the PCTRT drafted the pinger experimental protocol, circulated it for peer review, and made the appropriate changes to ensure that a scientifically credible experiment would be conducted. The details of the experimental protocol can be found in the draft PCTRP (1996) and is not repeated here.

The participants in the acoustic workshop (Reeves *et al.*, 1996), and the PCTRT, recommended that pingers be placed every 300 ft (91.44 m) on the leadline and floatline for experimental purposes in the CA/OR DGN fishery. This interval was suggested because it had been effective at reducing harbor porpoise bycatch in the New Hampshire sink gillnet fishery. In addition, drift gillnets are often set with the floatline above the ocean thermocline and with the leadline below it, especially sets targeting swordfish. Since thermoclines act as barriers to sound transmission, they also recommended that the pingers placed on both lines be staggered such that the horizontal distance between a pinger on the floatline and a pinger on the leadline is 150 ft (45.72 m). For a typical 6000 ft (1828.80 m) net, 21 pingers on the floatline and 20 pingers on the leadline would be needed (41 total pingers). The final rule requires this pinger configuration on the net. NMFS will continue to evaluate the long-term efficacy of pingers at reducing cetacean bycatch in the fishery and whether the spacing intervals require modification.

NMFS does not agree that CA/OR DGN fishery vessel owners should be required to maintain four pingers as spares, because the requirement that all pingers remain functioning and operational at all times during deployment provides adequate direction to vessel owners.

Comment 7: One commenter questioned the significance of the preliminary results from the 1996/1997 pinger experiment in the CA/OR DGN fishery because they believed the experiment was conducted only in August and may not be representative of the entire fishing season.

Response: NMFS would like to clarify that the 1996/1997 pinger experiment was conducted from September 1996–January 1997. Thus, the results from the experiment are based on the months in which the majority of fishing effort occurs.

Comment 8: One commenter was concerned with the possibility that marine mammals may become habituated to the sound of pingers.

Response: At this time, it is not possible to determine whether cetaceans will become habituated to the sounds emitted by pingers. However, since the CA/OR DGN fishery operates offshore, over a broad geographic area, and the sound range of pingers is limited, habituation would be less likely in this fishery compared to nearshore fisheries (NMFS 1997a). To the extent that pingers are thought to operate as an alarm mechanism, increased exposure to pingers may increase their effectiveness in reducing interactions depending on the learning behavior of cetaceans. NMFS will continue to monitor the status of cetaceans that interact with this fishery.

Comments on the Voluntary Program To Reduce the Number of Gillnet Permits (Strategy #3)

Comment 1: Several commenters agreed that the CDFG should be encouraged to deny reissuance of lapsed permits and that ODFW should be encouraged not to issue more than the current level of unlimited landings permits (strategy #3, part I). One commenter believed that this strategy was not likely to result in decreases in marine mammal mortality. One commenter supported the draft PCTRP's voluntary permit "buy-back program" to

reduce the number of drift gillnet permits (strategy #3, part II) as a method of reducing marine mammal mortality.

Response: The PCTRT recognized that the California drift gillnet fishery is not restricted from an expansion in fishing effort because a portion of CDFG drift gillnet permittees make only the minimum landings to keep valid permits. If these permit holders began fishing well beyond these minimum requirements, marine mammal entanglements likely would increase. To limit this potential expansion of fishing effort, the PCTRT recommended two approaches that would reduce the number of drift gillnet permits under strategy #3. First, information provided to the PCTRT indicated that currently CDFG does not reissue lapsed drift gillnet permits. For these reasons, the PCTRT recommended that CDFG be encouraged to continue not to reissue drift gillnet permits that have lapsed and that ODFW be encouraged to continue to issue not more than 10 unlimited landing permits. Second, the PCTRT recommended that the development of a permit buy-back program be explored. A buy-back program would focus on those fishers that hold drift gillnet permits from the State of California and who only fulfill the minimum requirements to maintain their permits.

Implementation of the recommendations to CDFG would affect only those permit holders who allow their CDFG drift gillnet permits to lapse. Implementation of the buyback program would only affect drift gillnet permit holders who were interested in being financially compensated for allowing their permits to lapse. Strategy #3 would not affect those drift gillnet fishers that annually maintain valid CDFG drift gillnet permits or who did not want to voluntarily participate in the buy-back program. This strategy is not a measure to put a "cap on total fishing effort" in the CA/OR DGN fishery (i.e., establish a maximum threshold on the number of sets each year). Implementation of strategy #3 is not likely to significantly decrease the current level of incidental marine mammal mortality by the fishery in the short-term, but is designed to limit the potential expansion of fishing effort and associated marine mammal mortality in the long-term.

As recommended by the Team, NMFS contacted both CDFG and ODFW regarding implementation of Strategy #3 of the Plan. Specifically, NMFS encouraged CDFG to continue its current practice of not reissuing lapsed drift gillnet permits and inquired whether CDFG was interested in participating in a permit buy-back program. CDFG agreed to continue implementing its current practice of not reissuing lapsed drift gillnet permits.

At this time, CDFG is unable to participate in any permit buy-back program. Although NMFS does not have funding to implement a permit buy-back program, section 118(j) of the MMPA allows NMFS to accept, solicit, receive, hold, administer and use gifts, devises and bequests to carry out the provisions of section 118, which includes the implementation of take reduction plans. NMFS will continue to explore the development of a buy-back program.

NMFS also contacted ODFW and encouraged the agency to continue to issue no more than 10 unlimited-landings drift gillnet landings permits. ODFW stated that it did not plan on asking the Oregon Fish and Wildlife Commission to increase the maximum number of landings permits. ODFW also stated that all vessels holding Oregon gillnet permits in 1997 are vessels that currently participate in the California DGN fishery.

Comment 2: One commenter agreed with the implementation of the buy-back program, although they recommended it should be coupled with other economic incentive programs (e.g., raising state landing taxes).

Response: The PCTRT considered increasing fees in the fishery. However, the PCTRT rejected this method as a primary strategy at this time, because it would require a change in California law, would be a financial hardship to some fishers, and may not necessarily reduce current fishing effort.

Comments on the Skipper Education Workshops (Strategy #4)

Comment: Several commenters agreed that mandatory education during Skipper Education Workshops would help facilitate the implementation of the PCTRP. One commenter suggested that NMFS issue documentation to vessel operators that attend workshops to verify their participation and require that this documentation be onboard their vessel when they are participating in the CA/OR DGN fishery.

Response: Documentation of workshop attendance does not need to be kept on vessels because NMFS will maintain a database of all skippers who participate in the workshops to verify workshop attendance by individual vessel operators. This database will be used for enforcement of the Skipper Education Workshop provision.

Comments on Contingency Measures Involving a Reduction in Fishing Effort

Comment: One commenter was concerned that the language used in the proposed rule describing the PCTRT's recommendations regarding "contingency measures involving a reduction in fishing effort" was not consistent with the draft PCTRP submitted by the team.

Response: NMFS agrees that inappropriate language regarding "contingency measures" was used in the proposed rule. The draft PCTRP included an evaluation of several measures to reduce fishing effort in the CA/OR DGN fishery as a potential method of reducing the incidental taking of strategic marine mammal stocks (section IV; draft PCTRP, 1996). Although none of the primary strategies included measures to reduce fishing effort, the team agreed to the following:

> If at the time the Take Reduction Team reconvenes, the TRP objectives have not been met, the TRT will evaluate and recommend methods to reduce fishing effort in the upcoming fishing season, unless there are other applicable measures which could reasonably be expected to reduce take levels to below PBR in the upcoming fishing season.

The PCTRT also recommended that NMFS reconvene the team every year prior to June 15 to monitor the implementation of the final PCTRP, until such time that NMFS determines that the objectives of the MMPA have been met.

NMFS reconvened the PCTRT May 29–30, 1997 (PCTRT, 1997), and intends to continue to reconvene the PCTRT on an annual basis (prior to June 15) until the long-term take reduction goals of the MMPA have been reached by the CA/OR DGN fishery. NMFS did not intend to propose any changes to the PCTRT's original recommendations regarding contingency measures in the proposed rule. NMFS concurs with the PCTRT's original recommendation that the objectives of these meetings are to review the best available information on the status of strategic stocks, the latest PBR and take estimates for marine mammals incidentally taken in the fishery, and the efficacy of measures implemented to reduce the incidental taking of these stocks. Furthermore, NMFS agrees that if at the time the team reconvenes, after the final plan has been adopted by NMFS, the goals of the MMPA have not been met, the TRT will evaluate and recommend methods to reduce fishing effort in the upcoming fishing season, unless there are other applicable measures which could reasonably be expected to reduce take levels to below PBR in the upcoming fishing season.

General Comments on the Proposed Rule

Comment 1: One commenter suggested that a reduction of marine mammal mortality of 50 percent could be achieved if the length of the net was reduced by 50 percent.

Response: NMFS agrees that reducing the size of the net could potentially decrease the number of marine mammals captured per set. However, it would also decrease the number of target species captured per set. Since this would encourage inefficient fishing, some fishers may compensate for the reduced catch rate by increasing the number of sets over the season. Thus, overall incidental marine mammal take may not change. Furthermore, although the TRT discussed several measures that would decrease fishing effort, including reducing net size, it did not recommend their implementation at this time.

Comment 2: One commenter recommended that a program be created to rescue whales caught in drift gillnets.

Response: Although similar programs have been developed on the east coast to disentangle large whales caught in fishing gear, only a small portion of the cetaceans caught in the CA/OR DGN fishery are alive when the net is pulled from the water. In addition, the fishery operates primarily offshore in locations where rescues would be infeasible.

Comment 3: One commenter cautioned that the implementation of the PCTRP is not likely to achieve the Zero Mortality Rate Goal (ZMRG) in 5 years.

Response: Section 118(f)(2) of the MMPA establishes ZMRG as a long-term goal of take reduction plans, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans. NMFS has concluded that the primary strategies recommended by the PCTRT represent substantial progress toward achieving the ZMRG. Nonetheless, NMFS also recognizes that these strategies, by themselves, may not be sufficient to guarantee this goal will be achieved. For this reason, NMFS will reconvene the team at least once a year to monitor the implementation of the final TRP, and, if necessary, recommend measures for the fishery to achieve its ZMRG within the time period specified in the MMPA.

Comment 4: One commenter suggested that the proposed rule contradicted the draft PCTRP recommendation to encourage vessel owners to convert their nets to a mesh size of 20 inches during the Skipper Education Workshops, but not to convert their mesh to a twine size of #27.

Response: The PCTRT evaluated the relationship between mesh size and cetacean bycatch. Their analysis found that mesh size was not significantly related to entanglement of cetaceans although there was a trend towards greater mesh sizes entangling more cetaceans. The biological reasons for this trend are unknown. Nevertheless, the PCTRT recommended that all vessels in the CA/OR DGN fishery voluntarily convert to 20-inch (50.8 cm) net mesh size when replacing old nets or large panels of existing net and that information be collected to further evaluate the efficacy of using 20-inch (50.8 cm) mesh as a method for reducing cetacean bycatch (draft PCTRP, 1996). NMFS will encourage vessel operators to voluntarily convert to 20-inch mesh (50.8 cm) during its Skipper Education Workshops. If in the future more of the fleet uses this mesh size, the relationship between mesh size and cetacean bycatch may be better understood.

No significant correlations were found between specific twine sizes and higher cetacean entanglement (draft PCTRP, 1996). The PCTRT did not recommend that NMFS encourage vessel owners to convert their nets to a different twine size. However, NMFS will continue to evaluate the relationship of twine size and cetacean bycatch in order to evaluate twine size as a potential strategy to reduce cetacean bycatch.

Comment 5: One commenter recommended that NMFS undertake the necessary research to determine whether adjusting the percentage of slack in the net may reduce cetacean bycatch.

Response: The PCTRT evaluated the relationship between the percentage of slack in the net and cetacean bycatch. Because the PCTRT found only a borderline significance for the slack percentages of 30–40 and 45–60, the PCTRT did not recommend requiring specific net slacks as a primary strategy in the draft PCTRP. NMFS agrees with this recommendation and therefore, has not included it as a requirement in the final rule. However, NMFS will refine the collection of data on net slack in order to evaluate the utility of percent of net slack as a strategy to reduce cetacean bycatch.

Comment 6: One commenter stated that if the incidental take of marine mammals is reduced to zero, there would be no need to reduce fleet expansion.

Response: Theoretically, if marine mammal mortality and serious injury incidental to operations of the CA/OR DGN fishery is reduced to zero, there would be no need to limit the expansion of effort in the fishery unless that expansion precluded the fishery from achieving its take reduction goals under the MMPA. Nevertheless, the likelihood that marine mammal bycatch will be reduced to absolute zero is low. Thus, since fishing effort and marine mammal bycatch are significantly correlated, substantial increases in fishing effort would likely require additional take reduction strategies in order for the fishery to meet its take reduction goals under the MMPA.

Comment 7: One commenter recommended increasing the closed season and/or banning the use of drift gillnets in California.

Response: The PCTRT explored several measures to reduce fishing effort in the fishery, and associated marine mammal entanglement. However, at this time, the PCTRT and NMFS expect that the short-term goals of the MMPA can be met without reducing fishing effort, increasing the closed season, or banning the use of drift gillnets off California.

Comment 8: One commenter noted that there is a discrepancy between numbers used to refer to each primary strategy (e.g., strategy #1, #2, etc.) in the proposed rule and the draft PCTRP (1996).

Response: NMFS agrees and has changed the final rule's references to the plan strategies to be consistent with each strategy of the plan.

Comment 9: One commenter concluded that the draft PCTRP was inadequate to reduce marine mammal mortality in the CA/OR DGN fishery and urged NMFS to modify the plan to meet the requirements of the MMPA.

Response: NMFS disagrees. The PCTRT and NMFS expects the implementation of the PCTRP will achieve the short-term goals of the MMPA. NMFS will continue to review and evaluate the effectiveness of measures implemented under the plan to reduce cetacean entanglement. Furthermore, the Pacific Scientific Review Group recommended that "* * * extreme management measures that may severely restrict or impact California driftnet fishing activities be postponed until analyses of data from pinger experiments and from current ship surveys for cetacean abundance are completed * * *" (PSRG, 1997). Moreover, in addition to the four primary strategies recommended by the PCTRT, they also identified an additional 13 strategies that might reduce bycatch of strategic marine mammal stocks (draft PCTRP, 1996). These strategies were either rejected by the PCTRT or held in reserve for future

consideration. If the goals of section 118(f) of the MMPA have not been met once the final PCTRP has been implemented, these strategies may be reconsidered by the PCTRT and NMFS. NMFS will reconvene the team annually to monitor the implementation of the final plan and provide NMFS with recommendations as to whether additional measures are necessary to achieve the short-term and long-term goals of the MMPA.

1997 PCTRT Recommendations

On May 29–30, 1997, NMFS reconvened the PCTRT to review the final results from the 1996/1997 CA/OR DGN pinger experiment and evaluate the need for effort reduction and potential implementation mechanisms as recommended by the Team in the draft PCTRP (draft PCTRP, 1996). The Team also reviewed at the meeting the status of the implementation of the final Plan and final Rule to implement the Plan, Skipper Education Workshops, and the drift gillnet observer program. On July 18, 1997, the Team submitted to NMFS the following recommendations regarding the proposed plan and rule (PCTRT, 1997).

Depth of Fishing Requirement (Strategy #1)

In August 1996, the PCTRT recommended that NMFS establish a fleetwide 6-fathom minimum extender line (buoy line) requirement. At the May 1997 PCTRT meeting, the team concurred with NMFS's proposed rule requiring the use of extenders that are equal to or greater than 6 fathoms for all vessels in the CA/OR DGN fishery. This final rule prohibits the use of extenders that are less than 6 fathoms (36 ft; 10.9 m).

Pinger Experiment and Requirement (Strategy #2)

In August 1996, the PCTRT recommended that NMFS and the CA/OR DGN fishery initiate a pinger experiment during the 1996–1997 fishing season to evaluate the effectiveness of pingers at reducing incidental cetacean and strategic stock bycatch (Strategy #2; draft PCTRP, 1996). Moreover, the PCTRT recommended that if results from this experiment indicate that there is a downward trend in overall cetacean bycatch, NMFS should establish a mandatory fleetwide pinger requirement for all CA/OR DGN fishery vessels prior to the next fishing season (1997–1998) and continue to monitor the effectiveness of pingers at reducing bycatch.

Between September 1996 and January 1997, NMFS and the fishery implemented a single-blind experiment through NMFS' Drift Gillnet Observer Program as recommended by the PCTRT (draft PCTRP, 1996). This experiment used pingers with the same sound characteristics as the pingers used in the New England sink gillnet fishery experiment (e.g., broadband signal centered on 10 kHz with a source level of 132 dB re 1 Pa at 1 m) (PCTRP, 1996; NMFS, 1997a). Because preliminary results from this experiment indicated that the observed cetacean entanglement rate was almost four times greater for non-pinger sets than for those sets that used pingers, NMFS proposed that pingers be mandatory in its proposed rule to implement the PCTRP. However, NMFS stipulated that if final results from the experiment indicated that pingers were ineffective at reducing cetacean bycatch, the use of pingers would not be included in the final rule. NMFS also proposed to reconvene the PCTRT prior to publishing a final rule requiring the mandatory use of pingers in the CA/OR DGN fishery to solicit its input on whether pingers should be mandatory.

Preliminary final results from the pinger experiment indicate that cetacean entanglement and pinger use is statistically dependent (Chi-square test, p=0.006)(NMFS, unpublished data). Out of 420 observed sets during the pinger experiment, 25 sets were observed with cetacean entanglement; 4 of these sets had pingers and 21 did not have pingers. The odds of entanglement decrease from 0.099/set without pingers to 0.022/set with pingers or a decrease of over 75 percent.

Based on the dramatic results from the 1996/1997 pinger experiment, the Team recommended by consensus during its May 1997 meeting that the use of pingers be mandatory for all vessels in the CA/OR DGN fishery beginning in the 1997/1998 fishing season. Nevertheless, the team expressed concern about whether a sufficient supply of NMFS-approved pingers would be available at the start of the swordfish fishing season (August 15). At this time, NMFS is aware of only one manufacturer that produces a pinger consistent with the specifications in the final rule. This manufacturer is currently producing these pingers and they should be available by the effective date of this rule. In addition, information on the distribution of fishing effort in the CA/OR DGN fishery over the last few years indicates that the peak of fishing effort occurs after September 30 each year (CDFG unpublished data). Because cetacean entanglement is significantly correlated with fishing effort, the highest levels of incidental entanglement also occurs after September 30 (PCTRP, 1996). However, NMFS recognizes that vessel operators require sufficient notice to purchase pingers in advance of the date that pingers are required to be deployed. For these reasons, the pinger requirements described under section 229.31(c) will be effective for the 1997/1998 fishing season on October 30, 1997. During subsequent seasons (e.g., 1998/1999), pinger requirements will be mandatory during the entire fishing season.

Although the Team concurred with the pinger specifications and configurations in the proposed rule, they suggested that the final rule include a mechanism to allow for limited experimentation with alternative pinger specifications and configurations in the fishery. The Team recommended that any pinger experiment undergo peer review and the experiment should not detract from the NMFS's CA/OR DGN fishery observer program or the fishery's requirements to meet bycatch reduction goals of the MMPA. The Team also suggested that new manufactures of pingers have their pinger "certified" by an independent company that they meet NMFS' pinger specifications.

Under this final rule, pingers must be used on all vessels, during every set, and during the entire fishing season. A pinger is an acoustic deterrent device which, when immersed in water, broadcasts a sound frequency range of approximately 10 kHz at 132 dB re 1 micropascal at 1 m with a pulse duration of 300 milliseconds and a pulse rate of 4 seconds. This rule also allows for limited experimentation in the fishery to test the effectiveness of pingers with alternative specifications and alternative pinger configurations on the net. Experimental protocols will undergo peer review to ensure scientific credibility. If better information on the hearing sensitivity of cetaceans incidentally taken in the CA/OR DGN fishery or if experimental results indicate that different pinger specifications/configurations would be more effective at reducing cetacean bycatch, NMFS may require that different pingers be used in the fishery. At that time, NMFS would publish proposed pinger specifications and/or pinger configurations and provide opportunity for public comment. For the reasons described previously (see Responses to Comments section), the final rule does not require new manufactures of pingers to be "certified" by an independent company that their pingers meet the NMFS specifications under section 229.31(c)(1).

In order to better enforce the pinger requirement, the PCTRT recommended that NMFS require any driftnet vessel with swordfish or shark onboard to have pingers. Although NMFS agrees that drift gillnet vessels that are at sea should be required to have pingers onboard, it believes that pingers should be on the drift gillnet vessel at all times, even when no shark or swordfish are on the boat. Regardless of whether drift gillnet sets catch swordfish or shark, these sets may still incidentally entangle cetaceans. For these reasons, the final rule stipulates that anytime a CA/OR DGN fishery vessel is at sea with a multifilament drift gillnet onboard, the vessel must carry a sufficient number of pingers to meet the configuration requirements set forth under section 229.31(c)(3).

Voluntary Program To Reduce the Number of Gillnet Permits (Strategy #3)

In August 1996, the PCTRT recommended two approaches for limiting the potential expansion of fishing effort by permit holders in California and Oregon (Strategy #3, draft PCTRP 1996). At its May 1997 meeting, the Team continued to support its original recommendation under Strategy #3, but recommended that the language in the preamble be more consistent with the draft Plan. For example, in the preamble to the proposed rule NMFS states that it would encourage ODFW to continue issuing the same number of permits as were issued in 1996. However, the draft plan states that ODFW should be encouraged to issue a "maximum of 10 permits each year." NMFS agrees and further clarifies that it was the intent of this recommendation that ODFW issue no more than 10 permits each year. Furthermore, the preamble states that nearly a third of the drift gillnet permittees annually satisfy only the minimum CDFG requirements to keep their permits valid. The Team wanted NMFS to clarify that the draft Plan states that almost a third of CDFG permittees are relatively inactive, fishing on an extremely limited basis and only, apparently, to maintain their CDFG drift gillnet permit. NMFS concurs.

Skipper Education Workshops (Strategy #4)

In August 1996, the PCTRT recommended that NMFS conduct mandatory skipper workshops on the components of the PCTRP, together with expert skipper panels, to further generate and consider potential additional take reduction strategies (draft PCTRP, 1996). At its May 1997 meeting, the team concurred with the proposed rule's requirement that all vessel operators be required to attend a skipper workshop before initiating fishing each fishing season. However, to facilitate maximum compliance with the requirement during 1997, they recommended the language in the final rule indicate that for the 1997/1998 fishing season, skippers must have attended a workshop after the date of the last workshop to be offered this season (e.g., September 1997) before they continue fishing in 1997/1998. The language on subsequent year workshop requirements should remain as stated in the proposed rule. The Team included additional recommendations on the content of the workshops and recommended that NMFS not issue "certificates of attendance" to skippers that attend workshops, rather enforcement of the requirement should be conducted with workshop rosters.

As recommended by the Team, NMFS conducted five skipper education workshops during June 3–10, 1997, in the following California locations: La Jolla, Long Beach, Morro Bay, Monterey, and Santa Rosa. Eighty-five fishers attended these voluntary workshops at no cost to the fishers. At the workshops, a presentation on the development and status of the PCTRP was provided. A demonstration on pingers was presented at the meeting along with a question/answer period. During the second part of the workshop, current fishing strategies employed by fishers to avoid marine mammal entanglement were discussed. This information will be provided to the Team at its next meeting as background for preparing additional take reduction strategies, if necessary. Workshop participants were also provided with a comprehensive guide to the identification of marine mammals to provide fishers with more information on the biology and behavior of marine mammals to assist their efforts in reducing bycatch. These guides will also improve the accuracy of species identification indicated on the mortality/serious injury reports fishers must submit to NMFS under its Marine Mammal Authorization Program (MMAP). NMFS expects to hold two additional workshops in September 1997 in Long Beach, CA, and Portland, OR. Vessel operators who attended June 1997 Skipper Education Workshops will not be required to attend an additional workshop before the 1997/1998 fishing season.

After notification by NMFS, this final rule requires all CA/OR DGN vessel operators to have attended one Skipper Education Workshop after all workshops have been convened by NMFS in September 1997. CA/OR DGN vessel operators are required to attend Skipper Education Workshops at annual intervals thereafter, unless that requirement is waived by NMFS. NMFS will provide sufficient advance notice to vessel operators by mail prior to convening workshops.

Contingency Measures Involving a Reduction in Fishing Effort

The PCTRT strongly encouraged NMFS to modify the language in the preamble to make it consistent with the language in the draft Plan. NMFS agrees (see Responses to Comments section).

Other Team Recommendations

Mesh Size

Although no significant statistical correlation with cetacean entanglement was found, the PCTRT continues to support its recommendation that vessel owners should be encouraged to convert to 20 inch (50.8 cm) mesh when replacing old nets or panels, since the results indicate a trend in reduction of marine mammal bycatch. The PCTRT will continue to examine observer data to better understand the relationship between mesh size, inter-related net characteristics (e.g., twine size), and cetacean entanglement. NMFS agrees and recommended that fishers convert to 20 inch (50.8 cm) mesh when replacing nets or panels during NMFS" June 1997 Skipper Education Workshops and will suggest the conversion during future workshops.

Observer Program

In August 1996, the PCTRT recommended several measures to enhance the effectiveness of NMFS" observer program, including: (1) Achieving 20 percent observer coverage; (2) ensuring that the observer program is targeting all possible DGN vessels, including vessels that cannot carry an observer; and (3) ensuring that the observer program data collection be expanded to include several additional data variables (i.e., net and environmental characteristics) (draft PCTRP, 1996). At its May 1997 meeting, the PCTRT continued to express concerns regarding the level of observer coverage and strongly recommended that NMFS achieve 20 percent observer coverage. The PCTRT emphasized that the observer program should re-evaluate its determinations of whether a vessel is "unobservable" and should make an effort to observe the smaller boats that cannot accommodate an observer (via independent observation platforms).

NMFS should cross-reference CDFG permittee lists with MMAP information to ensure that all fishers who participate in the fishery are included in the program. The PCTRT also recommended that NMFS develop a reporting mechanism on observer data forms for expediting the enforcement of the requirements of the final rule because failure to comply with take reduction strategies could jeopardize the effort to reduce cetacean entanglement. All elements in the draft Plan regarding observer reporting forms should be included in the observer reporting forms for the next fishing season (1997/1998) and beyond (e.g., surface water temperature and cloud cover). The Team recommended that observers periodically check to determine if pingers are functioning.

Since NMFS received the draft PCTRP (1996) in August 1996, it has implemented several of the suggestions from the PCTRT regarding the observer program. For example, the Southwest Region, NMFS, has reevaluated its previous determinations as to whether vessels are unobservable and has reviewed the CDFG permittee list. The Southwest Region has also incorporated the PCTRT's recommended changes to the observer data forms and observers will check whether pingers on observed sets are functioning. Furthermore, the goal of the CA/OR DGN fishery observer program is to observe 20 percent of the annual fishing effort and the program will continue to strive to achieve this coverage within the constraints of available funding. At this time, NMFS does not have the funding to operate an independent observer platform.

1998 Team Meeting

The Team recommended that NMFS reconvene the Team in March 1998, preferably after the meeting of the Pacific Scientific Review Group. This would allow the PCTRT sufficient opportunity to review key information on the status of strategic stocks and integrate this information into its ongoing evaluation of the efficacy of Plan strategies. NMFS agrees and intends to reconvene the PCTRT in March 1998 to monitor the implementation of the final PCTRP.

Other Comments

NMFS received information after the close of the proposed rule's comment period, during the Skipper Education Workshops in June 1997, that suggested that a small portion of the CA/OR DGN fleet (e.g., approximately 10 vessels) uses fishing strategies or gear that may not require pingers to be placed on both the floatlines and leadlines. Specifically, this sector of the fleet: (1) Targets only thresher shark; (2) fishes in shallow water near the coast (e.g., 3–40 miles (4.83–64.36 km) from shore); (3) uses a smaller net (e.g., 600 fathoms (3600 ft or 1097 m) long, 45–80 meshes deep); (4) does not fish on a thermocline; (5) uses smaller boats (e.g., 30–40 ft (9.12–12.19 m) long); and (6) makes short trips (1–2 days). As a result, the commenter believes that they should be reclassified as a different fishery or only be required to place pingers on the floatline.

Under section 118 of the MMPA, NMFS is required to reexamine, and after notice and opportunity for public comment, the classification of commercial fisheries on at least an annual basis. On May 27, 1997, NMFS published a proposed List of Fisheries for 1998 (62 FR 28657) and expects the final List of Fisheries to be published within a few months. NMFS will reexamine the categorization and definition of the CA/OR DGN fishery in 1998 when it annually reexamines its classification of fisheries. Furthermore, NMFS will request that the PCTRT at its next meeting evaluate whether certain vessels targeting only thresher shark should be classified as another fishery and/or have different requirements under the PCTRP (March 1998). At this time, NMFS is not modifying its final rule to establish separate requirements for vessels targeting thresher shark.

NMFS' Changes to the Draft Plan, 1997 PCTRT Recommendations, and Changes to the Proposed Rule to Implement the Plan.

NMFS adopts the draft plan as submitted by the PCTRT (PCTRP, 1996) and recommendations from the 1997 PCTRT meeting (PCTRT, 1997), except for the following minor changes. NMFS has determined that implementation of the take reduction plan, as modified, and implementation of this final rule is expected to reduce, within 6 months of its implementation, mortalities and serious injuries of all strategic stocks that are taken by the CA/OR drift gillnet fishery to below the PBR level for each stock.

The PCTRT recommended that if the results from a pinger experiment indicate pingers are effective at reducing cetacean bycatch, then the use of pingers should be mandatory. In contrast, before final results from the 1996/1997 pinger experiment in the CA/OR DGN fishery were available, NMFS proposed the mandatory use of pingers in the proposed rule to implement the PCTRP. This final rule requires the use of pingers in the fishery.

The PCTRT recommended during its 1997 meeting that NMFS require any driftnet vessel with swordfish or shark on board to have pingers. Under the proposed rule and this final rule, pingers are required to be on the vessel at all times when the vessel is at sea, even when no shark or swordfish are on the boat.

The team recommended that pingers be required in the fishery by August 15, 1997. The proposed rule did not specify a certain date that pingers would be required. The final rule requires the use of pingers by vessels in the CA/OR DGN fishery to be effective for the 1997/1998 fishing season 30 days after filing of this final rule for public inspection at the Office of the Federal Register. During subsequent seasons (e.g., 1998/1999), pinger requirements will be mandatory during the entire fishing season.

The draft PCTRP (1996) and proposed rule stipulated that pingers must be attached on both the floatline and leadline and spaced no more than 300 ft (91.44 m) apart, in order to insure that the pingers were broadcasting sound over the entire area of the net. During the pinger experiment, pingers were attached to the floatlines and leadlines with approximately 1 and 6 ft (0.30 and 1.82 m) lanyards, respectively. Results from this experiment indicate that attaching pingers directly to buoy lines (i.e., extenders) may be a more efficient attachment method because it would facilitate pinger attachment. Pingers attached in this manner would not require individual attachment and removal to and from the floatline during each set, because this would automatically occur during routine extender attachment/removal. For example, if extenders were attached to the net at 100 ft (30.48 m) intervals, one pinger could be attached to every third extender and the 300 ft (91.44 m) spacing requirement would be maintained. For these reasons, the final rule authorizes the placement of pingers on extenders as long as the 300 ft (91.44 m) spacing requirement is maintained near the floatline and pingers are no more than 3 ft above the floatline. In addition, this final rule authorizes pingers to be attached to the leadline with lanyards that are up to 6 ft (1.83 m) in length.

Deployment of pingers during the 1996/1997 pinger experiment demonstrated that pinger performance is dependent on following manufacturer's operating instructions and minimizing exposure of battery packs to saltwater. For example, during the first few weeks of the pinger experiment, silicon grease was not applied to O-rings prior to pinger placement which resulted in a limited number of pingers leaking and becoming nonfunctional. Also, because the pingers used in the experiment were not designed with on/off switches, the experimental protocol included the removal of battery packs after each set to preserve battery life. This procedure greatly increased the probability that the pinger battery packs would be exposed to saltwater and malfunction. However, NMFS found that battery life is much longer than originally estimated and does not foresee the need to remove the batteries after every set. Reducing battery exposure to saltwater will substantially decrease pinger malfunction. For these reasons, NMFS recommends that if drift gillnet fishers use pingers that do not have on/off switches, fishers follow manufacturer's deployment instructions closely and minimizing the frequency of battery pack removal (i.e., just keep them pinging for the entire trip) to reduce its potential exposure to seawater and possible pinger malfunction.

The PCTRT recommended during its 1997 meeting that NMFS require any manufacturer of pingers to provide independent certification that a new prototype meets the specifications under § 229.31(c)(1). The PCTRT made this recommendation because it thought the definition of the term "NMFS-approved pinger" was unclear in the proposed rule. Although the proposed rule described the sound specifications for pingers, NMFS agrees that the term "NMFS-approved" was unclear. Nevertheless, NMFS does not agree that manufacturers should be required to have an "independent company" certify that new prototype pingers meet the pinger specifications under § 229.31(c)(1); most manufacturers have the equipment and expertise to test pinger sound characteristics. Of course, manufactures of new pinger prototypes will need to provide documentation that their pingers meet the specifications of the final rule. For these reasons, any reference to the term "NMFS-approved" has been removed from the final rule; in addition, the final rule does not require that manufacturers of new prototype pingers have an "independent company" certify that their pingers meet the specification under § 229.31(c)(1).

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. No comments were received during the public comment period regarding this certification. As a result, no final regulatory flexibility analysis has been prepared.

The Assistant Administrator for Fisheries, NOAA (AA) has determined, based on an EA prepared under the National Environmental Policy Act, that implementation of these regulations would not have a significant impact on the human environment. As a result of this determination, an environmental impact statement is not required. A copy of the EA prepared for this rule is available upon request (see **ADDRESSES**).

This rule has been determined to not be significant for purposes of E.O. 12866.

References

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PCTRT. 1997. 1997 Recommendations Report: Pacific Offshore Cetacean Take Reduction Team. July 1997. 5 p.

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Reeves, R.R., R.J. Hofman, G.K. Silber, D. Wilkinson. 1996. Acoustic Deterrence of Harmful Marine Mammal-Fishery Interactions: Proceedings of a Workshop held in Seattle, Washington, 20–22 March 1996. NOAA Technical Memorandum, NMFS–OPR–10. 70 p.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: September 16, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229, subpart C continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In subpart C, § 229.31 is added to read as follows:

§ 229.31 Pacific Offshore Cetacean Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Pacific Offshore Cetacean Take Reduction Plan. Paragraphs (b) through (d) of this section apply to all U.S. drift gillnet fishing vessels operating in waters seaward of the coast of California or Oregon, including adjacent high seas waters. For purposes of this section, the fishing season is defined as beginning May 1 and ending on January 31 of the following year.

(b) *Extenders.* Extenders (buoy lines) of at least 6 fathoms (36 ft; 10.9 m) must be used on all sets.

(c) *Pingers.* (1) For the purposes of this paragraph (c), a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (± 2 kHz) sound at 132 dB (± 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (+ 15 milliseconds), and repeating every 4 seconds (+ .2 seconds); and remains operational to a water depth of at least 100 fathoms (600 ft or 182.88 m).

(2) Pingers must be used on all vessels, during every set beginning October 30, 1997. While at sea, drift gillnet vessels with multifilament gillnets onboard must carry enough pingers to meet the configuration requirements set forth under paragraph (c)(3) of this section.

(3) Pingers must be attached on or near the floatline and on or near the leadline and spaced no more than 300 ft (90.9 m) apart. Pingers attached on extenders, or attached to the floatline with lanyards, must be within 3 ft (0.91 m) of the floatline. Pingers attached with lanyards to the leadline must be within 6 ft (1.82 m) of the leadline. Pingers on or near the floatline and on or near the leadline must be staggered, such that the horizontal distance between a pinger on or near the floatline and a pinger on the leadline is no more than 150 ft (45.5 m). Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

(4) The pingers must be operational and functioning at all times during deployment.

(5) If requested, NMFS may authorize the use of pingers with specifications or pinger configurations differing from those set forth in paragraphs (c)(1) and (c)(3) of this section for limited, experimental purposes within a single fishing season.

(d) *Skipper education workshops.* After notification from NMFS, vessel operators must attend a skipper education workshop before commencing fishing each fishing season. For the 1997/1998 fishing season, all vessel operators must have attended one skipper education workshop by October 30, 1997. NMFS may waive the requirement to attend these workshops by notice to all vessel operators.

[FR Doc. 97-26330 Filed 9-30-97; 4:50 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 961227373-6373-01; I.D. 092597A]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Changes

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces further adjustments to the Pacific Coast groundfish limited entry fisheries for the *Sebastes* complex and its components canary and yellowtail rockfish, the Dover sole-thornyhead-trawl sablefish (DTS) complex and its components Dover sole and trawl-caught sablefish, and announces the final 1997 cumulative trip limit period for trawl vessels in the "B" platoon. NMFS also announces an increase to the monthly cumulative limit for the open access nontrawl sablefish fishery north of 36° N. lat. (A similar change for the limited entry nontrawl sablefish fishery north of 36° N. lat. is included in a separate **Federal Register** action that announces the duration and limit of the limited entry sablefish mop-up fishery.) These restrictions are intended to keep landings as close as possible to the 1997 harvest guidelines and allocations for these species, and to provide management flexibility during the final months of the year.

DATES: Effective at 0001 hours local time (l.t.) October 1, 1997; except for the trip limit for trawl vessels operating in the B platoon, which will become effective at 0001 hours l.t. October 16, 1997. These changes remain in effect, unless modified, superseded or rescinded, until the effective date of the 1998 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through October 20, 1997.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140 or Rodney McInnis at 562-980-4040.

SUPPLEMENTARY INFORMATION: The following changes to current management measures are based on the best available information, and were recommended by the Pacific Fishery Management Council (Council), in consultation with the states of Washington, Oregon, and California, at its September 9-12, 1997, meeting in Portland, OR.

The Sebastes Complex. The *Sebastes* complex consists of all rockfish managed by the FMP except Pacific ocean perch (POP), widow rockfish, shortbelly rockfish, and thornyheads. The limited entry fishery for the *Sebastes* complex currently is managed under a 2-month cumulative trip limit of 30,000 lb (13,608 kg) north of Cape Mendocino (40°30' N. lat.) and 150,000 lb (68,039 kg) south of Cape Mendocino. Within these 2-month cumulative limits for the *Sebastes* complex, no more than 6,000 lb (2,722 kg) may be yellowtail rockfish north of Cape Mendocino, no more than 10,000 lb (4,534 kg) may be bocaccio south of Cape Mendocino, and no more than 14,000 lb (6,350 kg) may be canary rockfish coastwide.

The best available information at the September 1997 Council meeting indicated that both yellowtail rockfish and canary rockfish would be 18-19 percent below their respective harvest guidelines at the end of the year. Therefore, the Council recommended increasing the trip limits for these species, and converting those limits from 2-month to 1-month limits on October 1, 1997, so that the industry could receive immediate benefit from the higher limits. The new 1-month cumulative trip limits for the *Sebastes* complex are: 20,000 lb (9,072 kg) north of Cape Mendocino and 75,000 lb (33,975 kg) south of Cape Mendocino. Within these 1-month cumulative limits for the *Sebastes* complex, no more than 5,000 lb (2,268 kg) may be yellowtail rockfish north of Cape Mendocino, no more than 5,000 lb (2,268 kg) may be bocaccio south of Cape Mendocino, and no more than 10,000 lb (4,534 kg) may be canary rockfish coastwide.

As these changes are implemented in the middle of a 2-month cumulative trip limit period (September-October 1997), both the 2-month cumulative trip limits and the 60 percent monthly limits for the *Sebastes* complex and its components become obsolete after October 1. POP and widow rockfish are the only two species that remain under 2-month cumulative limits. (The DTS complex was converted to monthly limits on September 1, 1997 (62 FR 36228, July 7, 1997).)

Dover Sole, Thornyheads, and Trawl-Caught Sablefish (the DTS Complex). The limited entry fishery for the DTS complex and its components currently is managed under a 1-month cumulative trip limit of 28,500 lb (12,927 kg) north of Cape Mendocino and 50,000 lb (22,680 kg) south of Cape Mendocino. Within these 1-month cumulative limits, no more than 15,000 lb (6,804 kg) may be Dover sole north of Cape Mendocino, no more than 8,000 lb (2,722 kg) may be sablefish coastwide, and no more than 7,500 lb (3,402 kg) may be thornyheads coastwide. No more than 1,500 lb (680 kg) of the thornyheads may be shortspine thornyheads.

The best available information at the September 1997 Council meeting indicated that the harvest guidelines for Dover sole would be reached before the end of the year, and exceeded by 19 percent in the Columbia area and 7 percent coastwide if the rate of landings is not slowed. Landings of trawl-caught sablefish also were projected to exceed the limited entry trawl allocation by 9 percent by the end of the year.

Landings of both species of thornyheads are projected to be lower than their respective harvest guidelines. The two thornyhead species are often caught together. Landings of longspine thornyheads are projected to be 28 percent below its harvest guideline by the end of the year; but, trip limits for this species could not be increased without increasing the catch of shortspine thornyheads, which are expected to be 7 percent below its 1,380-mt harvest guideline but well above the 1,000-mt acceptable biological catch for this species. Because the harvest guideline for shortspine thornyheads is close to its overfishing level, the Council did not recommend increasing the trip limits for either species of thornyheads.

Earlier in the year, the Council and NMFS notified the industry that the DTS fishery could be closed for several months in 1997. Some members of the industry prefer higher initial trip limits with closures, and others prefer reduced limits and a longer fishery. Closing the DTS fishery in November and December was considered by the Council at its September meeting. After hearing considerable testimony opposing such closures, the Council recommended drastically reduced trip limits to be effective on October 1, but acknowledged the fishery still could close in December, after the Council considers new landings projections at its November 1997 meeting. The new trip limits, which take effect October 1, are intended to curtail most target fishing on sablefish coastwide and on Dover sole in the Columbia area. However, they also may result in discards if the industry targets on these species or is unable to avoid them while fishing for Dover sole south of Cape Mendocino or for thornyheads coastwide. The Council also recommended that a 30,000-lb (13,608-kg) monthly cumulative limit be established for Dover sole south of Cape Mendocino. Previously, Dover sole could comprise as much as 36,500 lb (16,556 kg) of the DTS limit south of Cape Mendocino, the amount left over after subtracting the amounts of sablefish and thornyheads that were taken. The overall limits for the DTS complex, which are the sum of the limits of its components, are changed to reflect the changes to Dover sole and sablefish. These changes are intended to keep landings of the DTS complex and its components within the 1997 harvest guidelines and allocations without increasing discards.

The new limits for the DTS complex are 11,000 lb (4,990 kg) north of Cape Mendocino, and 39,500 lb (17,917 kg) south of Cape Mendocino. Within these limits, no more than 1,500 lb (680 kg) may be Dover sole north of Cape Mendocino and 30,000 lb (13,608 kg) south of Cape Mendocino; no more than 2,000 lb (907 kg) coastwide may be trawl-caught sablefish; and no more than 7,500 lb (3,402 kg) coastwide may be thornyheads. No more than 1,500 lb (680 kg) of the thornyheads may be shortspine thornyheads.

"B" Platoon. NMFS also announces the last cumulative trip limit period in 1997 for the "B" platoon, those limited entry trawl vessels with a letter authorizing them to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet. For vessels in the "B" platoon: the final 2-month cumulative trip limits for POP and widow rockfish apply to the 6-week period from November 16, 1997 through December 31, 1997 and there is no 60% monthly limit for this period; and the equivalent of two 1-month cumulative trip limits for the *Sebastes* complex and its components, and for the DTS complex and its components, may be landed during the 6-week period from November 16, 1997 through December 31, 1997.

Open Access Sablefish. Both the open access and limited entry sablefish fisheries north of 36°00' N. lat. are currently subject to a 300-lb (136 kg) daily trip limit, not to exceed 600 lb (272 kg) cumulative per month. At its September 1997 meeting, the Council was advised that landings in the open access sablefish fishery north of 36°00' N. lat. were lower than expected and could be increased. However, finding a method for doing so without attracting effort from the limited entry daily trip limit fishery was problematic. To avoid effort shifts, the Council recommended increasing the monthly cumulative limit for the open access fishery to 1,500 lb (680 kg) on October 1, during the limited entry mop-up fishery. For the same reason, the Council also recommended increasing the cumulative monthly limit on the daily trip limit portion of the limited entry fishery to 1,500 lb (680 kg) after the end of the mop-up season on October 15, 1997. (This change for the limited entry fishery is being announced in a separate **Federal Register** action, at the same time that the dates and trip limit for the limited entry mop-up fishery are announced.) These changes are intended to keep sablefish landings from the open access and limited entry daily trip limit fisheries within the levels intended to be taken by these two fisheries for the entire year.

NMFS Action

For the reasons stated above, NMFS concurs with the Council's recommendations and makes the following changes to the 1997 annual management measures (62 FR 700, January 6, 1997 as modified).

1. Paragraph A.(1)(c)(iii)(C) of section IV. is revised to read as follows:

A. *General Definitions and Provisions*

* * * * *

(1) * * *

(c) * * *

(iii) * * *

(C) Special provisions will be made for "B" platoon vessels later in the year so that the amount of fish made available in 1997 to both "A" and "B" vessels is the same. (For example, a vessel in the "B" platoon will have the same cumulative trip limit for the final period as a vessel in the "A" platoon, but the final period may be 2 weeks shorter so that both fishing periods end on the same date.) For trawl vessels in the "B" platoon, the 6-week period from November 16-December 31, 1997 replaces the last 2 months of the year. Therefore, one 2-month cumulative trip limit (POP, widow rockfish), and two 1-month cumulative trip limits (the *Sebastes* complex and its components, the DTS complex and its components) will apply to that 6-week period. Both 1-month cumulative trip limits for a species (or species complex) may be combined and landed at any time during the 6-week period.

* * * * *

2. Effective October 1, 1997 (October 16, 1997 for the "B" platoon), for yellowtail rockfish, canary rockfish, and the *Sebastes* complex, paragraphs C.(2)(a) and C.(3) of section IV. are revised, to read as follows:

C. *Sebastes Complex (including Bocaccio, Yellowtail, and Canary Rockfish)*

* * * * *

(2) *Limited entry fishery.* (a) *Cumulative trip limits.* (i) *North of Cape Mendocino.* The cumulative trip limit for the *Sebastes* complex taken and retained north of Cape Mendocino is 20,000 lb (9,072 kg) per vessel per 1-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 5,000 lb (2,268 kg) may be yellowtail rockfish taken and retained north of Cape Mendocino, and no more than 10,000 lb (4,534 kg) may be canary rockfish.

(ii) *South of Cape Mendocino.* The cumulative trip limit for the *Sebastes* complex taken and retained south of Cape Mendocino is 75,000 lb (33,975 kg) per vessel per 1-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 5,000 lb (2,268 kg) may be bocaccio taken and retained south of Cape Mendocino, and no more than 10,000 lb (4,534 kg) may be canary rockfish.

(iii) *Clarification.* The cumulative monthly trip limits for the *Sebastes* complex and its components are the maximum amount that may be taken and retained, possessed, or landed coastwide in a calendar month. A vessel is not entitled to double the cumulative trip limit if it operates both north and south of Cape Mendocino in a calendar

month. [xx same as added for DTS sept1]

* * * * *

(3) *Open access fishery.* See paragraph IV.I.

* * * * *

3. Effective October 1, 1997 (October 16, 1997 for the "B" platoon), for the DTS complex, paragraph E.(2)(b) (i) and (ii) and E. (3) of section IV. are revised, to read as follows:

E. *Sablefish and the DTS Complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish)*

* * * * *

(2) *Limited entry fishery.* * * *

(b) *Limited entry trip and size limits for the DTS complex.*

(i) *North of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 11,000 lb (4,990 kg) per vessel per 1-month period. Within this cumulative trip limit, no more than 2,000 lb (907 kg) may be sablefish, no more than 1,500 lb (680 kg) may be Dover sole, and no more than 7,500 lb (3,402 kg) may be thornyheads. No more than 1,500 lb (680 kg) of the thornyheads may be shortspine thornyheads.

(ii) *South of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 39,500 lb (17,917 kg) per vessel per 1-month period. Within this cumulative trip limit, no more than 2,000 lb (907 kg) may be sablefish, no more than 30,000 lb (13,608 kg) may be Dover sole, and no more than 7,500 lb (3,402 kg) may be thornyheads. No more than 1,500 lb (680 kg) of the thornyheads may be shortspine thornyheads.

* * * * *

(3) *Open access fishery.* See paragraph IV.I.

* * * * *

4. Effective October 1, 1997 for sablefish in the open access fishery, paragraph I.(2)(a) of section IV. is revised, to read as follows:

I. *Trip Limits in the Open Access Fishery* * * *

* * * * *

(2) *Sablefish.* (a) *North of 36°00' N. lat.* The cumulative trip limit for sablefish taken and retained north of 36°00' N. lat. is 1,500 lb (680 kg) per month. The daily trip limit for sablefish taken and retained north of 36°00' N. lat., which counts toward the cumulative limit, is 300 lb (136 kg). The 1,500–lb (680–kg) cumulative monthly limit does not apply to exempted trawl gear (used to fish for shrimp, prawn, sea cucumber, and California halibut) in the open access fishery.

* * * * *

Classification

These actions are authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan, which governs the groundfish fishery off Washington, Oregon, and California. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see ADDRESSES) during business hours. Because of the need for immediate action to slow the rate of harvest of the species discussed above, and because the public had an opportunity to comment on the action at the September 1997 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 30, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26331 Filed 9–30–97; 4:50 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 192
Friday, October 3, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

RIN 3150–AF76

License Applications for Certain Items Containing Byproduct Material; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; Correction.

SUMMARY: This document corrects a proposed rule appearing in the **Federal Register** on September 19, 1997 (62 FR 49173). The action is necessary to correct a publication date and cite.

FOR FURTHER INFORMATION CONTACT: Mary Thomas, Office of Nuclear Regulatory Research, on 301–415–6230.

SUPPLEMENTARY INFORMATION: On page 49173, in the second column, last paragraph, October 29, 1993 (58 FR 52670)" should read "October 18, 1993 (58 FR 53670)."

Dated at Rockville, Maryland, this 29th day of September, 1997.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 97–26270 Filed 10–2–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 545

[97–100]

RIN 1550–AB00

Electronic Operations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to streamline and update regulations relating to electronic operations. The proposal would amend OTS electronic-related regulations to address advances in technology, and to permit prudent innovation for the use of emerging technology by Federal savings associations. This NPR is issued pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.

DATES: Comments must be received on or before December 2, 1997.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; Attention Docket No. 97–100. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755 or by e-mail public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Valerie J. Lithotomos, Counsel (Banking and Finance), (202) 906–6439; Karen A. Osterloh, Assistant Chief Counsel, (202) 906–6639; Paul D. Glenn, Special Counsel, Chief Counsel's Office, (202) 906–6203; Paul J. Robin, Program Analyst, Compliance Policy, (202) 906–6648; or Paul R. Reymann, Policy Analyst, Supervision Policy, (202) 906–5645, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On April 2, 1997, OTS published an advance notice of proposed rulemaking (ANPR) seeking comment on all aspects of banking affected by electronic operations.[1] OTS solicited comments on whether its existing regulations are sufficiently flexible to permit Federal savings associations to engage in appropriate electronic banking activities, consistent with safety and soundness and applicable statutes and regulations. OTS expressed concern that its current regulations do not adequately address product innovation made possible by advances in technology, and may impede prudent innovation by Federal savings associations.

OTS identified three existing regulations affecting a Federal thrift's ability to engage in electronic activities. Two of these regulations describe the type of facilities through which Federal thrifts may deliver banking services. 12 CFR 545.141 (Remote Service Units) (RSUs) and 12 CFR 545.142 (Home Banking Services). The third regulation, at 12 CFR 545.138, provides the general authority to engage in data processing activities and sell certain excess data processing capacity. OTS sought comment on how to update these regulations, first adopted in the early 1980s, to reflect current activities and use of technologies. OTS also sought comment on certain technological issues that its existing regulations do not address. These included issues related to stored-value cards, the application of the Community Reinvestment Act (CRA) to electronic banking, banking on the Internet, and other new products and delivery systems.

OTS received 19 comments from nine Federal savings associations, four trade associations, two technology firms, two individuals or groups of individuals, one Federal government agency, and a representative of two major credit card companies. The comments are discussed in further detail in the description of the proposed rule.

Commenters suggested two broad principles to guide OTS in drafting regulations on emerging electronic services:

- The public and insured depository institutions will be best served if statutory and regulatory restrictions are kept to a minimum. Commenters feared that the premature imposition of restrictive operational standards would impede the development of improved financial services.
- Savings associations should be permitted to compete effectively with other regulated financial institutions and unregulated firms offering financial and related services.

[1] 62 FR 15626 (April 2, 1997) (Notice of Proposed Rulemaking on Deposits and Advance Notice of Proposed Rulemaking on Electronic Banking.) A final rule on deposits will be published separately.

II. General Description of Proposed Rule

Consistent with the principles identified, OTS is proposing to issue a broad enabling regulation clarifying that Federal savings associations may engage in any activity through electronic means that it may conduct through more traditional delivery mechanisms. This approach will enhance the ability of Federal savings associations to serve as financial intermediaries. In addition, this approach will permit Federal savings associations to fully utilize the by-products or capacities generated in providing financial services through electronic means. The approach will also permit Federal thrifts to creatively provide access to financial services (subject, of course, to adequate security measures). This proposal is consistent with the principles established in the Administration's recent electronic commerce policy statement.[2]

The proposed rule would eliminate existing regulations that address electronic operations at § 545.138 (Data-processing Services), § 545.141 (Remote Services Units), and § 545.132 (Home Banking Services), and would add a new subpart B to part 545 to address electronic operations. New subpart B uses plain language drafting techniques consistent with National Performance Review instructions and new guidance in the **Federal Register** *Document Drafting Handbook* (January 1997 edition). The primary goal of plain language drafting is to facilitate the understanding of regulations. Plain language drafting emphasizes the use of informative headings (often written as a question), non-technical language (including the use of "you") and sentences in the active voice. The words "I" in a question and "you" in an answer, in the proposal, refer to a Federal savings association. OTS intends to use plain language drafting in other future regulatory projects to the extent possible.

The provisions of the new subpart are discussed below in the section-by-section analysis.

[2] *See* "A Framework for Global Electronic Commerce" (July 1, 1997). These principles are: (1) The private sector should lead; (2) Governments should avoid undue restrictions on electronic commerce; (3) Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment for commerce; (4) Governments should recognize the unique qualities of the Internet; and (5) Electronic commerce over the Internet should be facilitated on a global basis.

III. Section-by-Section Analysis

What Does This Subpart Do? (Proposed § 545.140)

Under the proposed rule, all current regulations addressing electronic operations will be consolidated in part 545, subpart B. This subpart describes how a Federal savings association may provide products and services through electronic means and facilities. *See* proposed § 545.140.

How May I Use Electronic Means and Facilities? (Proposed § 545.141)

As noted above, two existing OTS regulations describe the type of facilities through which Federal thrifts may deliver banking services electronically. Section 545.141 addresses RSUs (including automated teller machines (ATMs)). Section 545.142 addresses home banking services. Currently, Federal thrifts' authority to provide banking services through these authorities is restricted. For example, an RSU may not be used to open a savings account or a demand account, or to establish a loan account. See 12 CFR 545.141(b). Moreover, it is unclear whether § 545.142 would permit the opening of new accounts or the processing of credit applications as home banking services.

Commenters urged OTS to clarify and expand the activities permitted under these authorities to include a broad range of products and services, including opening deposit accounts and establishing loan accounts. Commenters argued that removing activity restrictions would serve the public interest by allowing thrifts to more effectively compete in financial services, and by enhancing the availability of financial services to the public. Commenters argued that removing the existing activity restrictions would be consistent with 12 U.S.C. 1464(b)(1)(F) (which authorizes Federal savings associations to establish RSUs) and congressional intent expressed in Section 2205 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (which eliminates the requirement that banks file branch applications for ATMs).

Consistent with OTS' goal of minimizing regulatory restrictions on electronic operations, proposed § 545.141 specifically permits Federal savings associations to use electronic means or facilities to perform any authorized function or provide any authorized product or service. Under the new subpart, electronic means or facilities include, but are not limited to automated teller machines, automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices.[3] This authority now includes the opening of savings or demand accounts and the establishment of loan accounts—functions previously excluded from the definition of remote service unit—because the performance of these functions through electronic means may enhance the operating flexibility of Federal thrifts.

As part of this proposal, OTS is also revising its branch office regulation to clarify that electronic facilities do not constitute a branch office.[4]

When May I Sell the Electronic Capacities and By-Products That I Have Acquired or Developed (Proposed § 545.142)

Under current § 545.138, a savings association may engage in limited data processing and data transmission services, sell by-products incident to those services, and sell excess capacity. This authority, however, is subject to significant constraints. For example, under the current regulation, the authorized processing of data generally encompasses a recordkeeping function, and does not include making risk-based decisions through electronic means. Moreover, the current OTS regulation limits the ability of a Federal savings association to sell or market data processing and transmission services, software, and excess capacity.

Several commenters suggested that OTS should adopt a more flexible data processing regulation. They urged OTS to permit the fullest development and use of data processing technology. Commenters argued that savings associations should not be restricted, relative to other financial institutions, in providing new electronic services to customers. Accordingly, many commenters suggested that OTS should provide data processing authority for thrifts that is as expansive as that for national banks. Several recommended that OTS use the interpretations and regulations recently issued by the Office of the Comptroller of the Currency (OCC) as a model for its regulation.[5] Commenters argued that consistent regulations will facilitate joint ventures between banks and thrifts and will further the goal of ensuring uniformity of regulation under section 303 of the Community Development and Regulatory Improvement Act. Only one commenter, a data processing and software company, argued that OTS should not encourage thrifts to expand their data processing operations or software sales activities.

Proposed § 545.142 is more permissive than the current data processing services rule in that it provides that a Federal savings association may market and sell electronic capacities and by-products to third parties. The only condition imposed is that the thrift must have acquired or developed these capacities and by-products in good faith as part of providing financial services. This is substantially identical to the condition imposed on national banks by the OCC.

How May I Participate With Others in the Use of Electronic Means and Facilities? (Proposed § 545.143)

Proposed § 545.143 would permit a savings association to participate with others to perform, provide or deliver activities, functions, products or services described in proposed §§ 545.141 and 545.142. A Federal savings association may participate with an entity that is not subject to examination by a Federal agency regulating financial institutions only if that entity has agreed, in writing, to permit OTS to examine its electronic means or facilities, to pay for any related OTS examination fees, and to make all relevant records in its possession, written or electronic, available to OTS for examination.

The provisions governing examination are not new requirements. Current § 545.138(f) provides that if a Federal savings association participates with others to establish or maintain a data processing office and the participating entity is not subject to examination by a Federal agency regulating financial institutions, the entity must agree, in writing, with OTS that it will permit and pay for the examination. Current § 545.141(f) also contains a similar requirement where a Federal savings association shares an RSU with another entity.

If the participation by a Federal savings association is through a service corporation, OTS' service corporation rules apply. See 12 CFR 559.4 (1997).

What Security Precautions Must I Take? (Proposed § 545.144)

In the ANPR, OTS asked whether it should mandate a specific level of encryption with regard to certain electronic activities including the Internet, or whether it should merely permit general safety and soundness principles to govern electronic operations.

Several commenters argued that security issues are manageable and should be regulated only as a part of the safety and soundness evaluation of each institution. Other commenters recommended specific security procedures such as restricting the use of reusable passwords as a means of authentication where the password would cross a network, or specifying a particular type (or types) of encryption for Internet transactions. One commenter suggested that all institutions should have written policies and procedures to address firewall and data security issues, and should regularly test to assure that violations are not occurring.

While OTS is extremely concerned that Federal savings associations establish appropriate security measures when they engage in electronic operations, the proposed rule does not codify static security requirements. Electronic security standards are undergoing constant revision and change.[6] OTS believes that it is impracticable to prescribe the security measures for the indefinite future that every thrift must implement when methods of electronic commerce and their attendant security measures are continually evolving.

Instead, proposed § 545.144 provides that a Federal savings association should adopt standards and policies that are designed to ensure secure operations. In addition, a Federal thrift must implement security measures adequate to prevent unauthorized access to its records and its customers' records, and to prevent financial fraud through the use of electronic means or facilities.[7] OTS expects Federal savings associations to establish security measures that are consistent with current industry standards, and to continually monitor and regularly update these security procedures to keep pace with changes to industry standards. For example, the association should maintain records documenting attempts to gain unauthorized access to its data base.

In addition, a Federal savings association must comply with the current security devices requirements of Part 568 if it provides an automated teller machine, an automated loan machine, or other similar electronic devices. These security requirements are based on current §§ 545.138(d) and 545.141(e).

IV. Emerging Technologies

The ANPR asked for commenter input on how other regulations, such as those implementing the CRA, might be affected as technology modifies how and where depository institutions provide services. OTS asked several specific questions relating to the application of the CRA to electronic banking activities.

Several commenters predicted that the current CRA requirements will become increasingly problematic as institutions offer more loans over the Internet. These commenters urged OTS to consult with the other banking agencies and develop interagency CRA guidelines to address the emerging technologies.[8] Other commenters urged the banking agencies to defer the issuance of any new CRA guidance until regulators and financial institutions gain more experience with electronic banking services and the existing CRA regulations.

To avoid unnecessary compliance costs on the industry, OTS intends to permit the new electronic technologies to develop within the existing framework of law and regulation. This framework includes consumer protection laws, such as the CRA regulations, the Electronic Funds

[3] OTS will shortly provide guidance concerning consultation procedures to be followed when a Federal savings association permits customers to execute transactions by accessing the thrift's data base using the customer's equipment or other equipment that is not provided by the thrift.

[4] In the ANPR, OTS specifically asked for comment on whether automated loan machines (ALMs) should be considered an RSU, a branch office, or some other type of facility. ALMs may permit customers to apply for and immediately receive loans via an automated terminal. Commenters urged OTS to treat ALMs like RSUs, rather than branches. These commenters argued that this treatment would provide savings associations with the same flexible product delivery options as competing financial institutions. See OCC Interpretive Letter #772 (March 6, 1997) (RSUs, ATMs, and ALMs are not branches for the purposes of 12 U.S.C. 36). Under the proposed revisions to the OTS regulation, ALMs would be electronic facilities subject to Subpart B, and would not be branches.

[5] *See* 12 CFR 7.1019 (1997). Under this OCC interpretation, "(a) national bank may, in order to optimize the use of the bank's resources, market and sell to third parties electronic capacities acquired or developed by the bank in good faith for banking purposes."

[6] For example, bit lengths used by the industry to authenticate the identity of users has increased over the past few years from 40 to 56 bits. Certain providers now use bit lengths in excess of 100 bits.

[7] In certain cases, OTS has required (and may require in the future on a case-by-case basis) specific security precautions. For example, OTS has required applicants to provide assurances of adequate security over the Internet, including adequate encryption and independent testing. See OTS Order No. 95–88, Security First Network Bank (May 8, 1995). In approving that application, OTS required, among other things, the institution to perform independent tests of the functionality and security of its operations before and after initial implementation.

[8] These commenters suggested various alternative means for satisfying CRA requirements. For example, commenters suggested that the banking agencies should give CRA credit for loans made via electronic means to low- or moderate-income borrowers who reside outside the institution's service area.

Transfer Act (Regulation E), safety and soundness regulations, and other applicable statutes and regulations. If additional consumer protection or other regulatory responses are necessary to respond to emerging technologies, OTS will take necessary steps in the future. To the extent that the regulatory response will require interagency action, OTS will coordinate its response with those of the other Federal banking agencies.

In the ANPR, OTS specifically requested comment on the appropriate regulatory response to various emerging technologies including stored-value cards. The term "stored-value card" covers a wide range of products. In general, these cards store information and monetary value electronically on a magnetic strip or computer chip, and can be used to purchase goods and services. There are significant differences in how various systems store monetary balances and transaction information, and how they authorize transactions. OTS regulations are currently silent on stored-value technology.[9]

The ANPR also raised several questions regarding Internet banking services. For example, OTS asked whether it should impose any restrictions or requirements on banking over the Internet or whether it should rely on general safety and soundness principles to govern a safe system of operation. The current OTS regulations are also silent on Internet operations.[10]

Except for encryption and security issues that are discussed above, commenters generally feared that premature regulation in this area would stifle development, impose unnecessary compliance costs that could deter investment by thrifts, and require extensive updating to keep abreast of market changes. Commenters generally concluded that it was neither necessary nor appropriate to establish new restrictions or requirements on these operations until fundamental issues involving these technologies are resolved.

[9] However, OTS has concluded that a Federal savings association may market and sell one type of stored-value under the incidental powers doctrine. See OTS Opinion Chief Counsel (August 21, 1996) (prepaid telephone cards).

[10] OTS, however, approved the nation's first Internet bank in 1995. More recently, OTS issued an opinion that concluded that a Federal savings association, through a service corporation or an operating subsidiary, may offer its customers banking services via an Internet connection to the savings association's home banking system, and afford access to the Internet for non-banking purposes to customers and others living in the savings association's service area. See Letter Opinion Deputy Chief Counsel (April 14, 1997).

The increasing emergence of new technologies underscores the importance of granting thrifts broad latitude to provide new services through electronic means and facilities as these means and facilities evolve. Rather than extensive regulation in these areas, OTS has chosen to permit thrifts to perform any authorized function or to provide any authorized product or service through electronic means or facilities including stored-value cards, the Internet or other emerging electronic technologies. As OTS gains additional experience with electronic technology, it may issue more specific guidance regulating particular elements of electronic operations. Until that time, a Federal savings association's exercise of this authority remains subject to existing safety and soundness requirements, consumer protection requirements, commercial law, and other applicable requirements.

V. Request for Comments

OTS invites comment on all aspects of the NPR. Commenters noted that several trade associations have organized committees and task forces to address electronic operations. OTS welcomes comment from these committees.

VI. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

VII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposed rule will not have a significant impact on a substantial number of small entities. The proposal lowers regulatory burdens on all savings associations, including small savings associations.

VIII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule reduces regulatory burden. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 545, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 545—OPERATIONS

The authority citation for part 545 continue to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Existing §§ 545.1 through 545.135 are designated as subpart A and the subpart heading is added to read as follows:

Subpart A—Operations

* * * * *

3. Section 545.92 is amended by revising paragraph (a) to read as follows:

§ 545.92 Branch offices.

(a) *General.* A branch office of a Federal savings association is any office other than its home office, agency office, administrative office, data processing office, or electronic facility under subpart B of this part.

* * * * *

§§ 545.138 through 545.142 [Removed]

4. Sections 545.138 through 545.142 are removed.

5. A new subpart B is added to part 545 to read as follows:

Subpart B—Electronic Operations

§ 545.140 What does this subpart do?
§ 545.141 How may I use electronic means and facilities?
§ 545.142 When may I sell electronic capacities and by-products that I have acquired or developed?
§ 545.143 How may I participate with others in the use of electronic means and facilities?
§ 545.144 What security precautions must I take?

§ 545.140 What does this subpart do?

This subpart describes how a Federal savings association ("you") may provide products and services through electronic means and facilities.

§ 545.141 How may I use electronic means and facilities?

You may use electronic means or facilities to perform any authorized function, or provide any authorized product or service. Electronic means or facilities include, but are not limited to automated teller machines, automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices.

§ 545.142 When may I sell electronic capacities and by-products that I have acquired or developed?

You may market and sell electronic capacities and by-products to third-parties if you acquired or developed these capacities and by-products in good faith as part of providing financial services.

§ 545.143 How may I participate with others in the use of electronic means and facilities?

You may participate with others to perform, provide, or deliver through electronic means and facilities any activity, function, product, or service described under §§ 545.141 and 545.142. If the participating entity is not subject to examination by a Federal agency regulating financial institutions, you may participate with that entity only if it has agreed in writing with the OTS that it will:

(a) Permit the examination of its electronic means or facilities, as the OTS deems necessary;

(b) Pay for any related OTS examination fees; and

(c) Make all relevant records in its possession, written or electronic, available to the OTS for examination.

§ 545.144 What security precautions must I take?

If you use electronic means and facilities under this subpart, you should adopt standards and policies that are designed to ensure secure operations. You must implement security measures adequate to prevent:

(a) Unauthorized access to your records and your customers' records; and

(b) Financial fraud through the use of electronic means or facilities. If you provide an automated teller machine, an automated loan machine, or other similar electronic devices, you must comply with the security devices requirements of part 568 of this chapter.

Dated: September 26, 1997.

By the Office of Thrift Supervision.
Nicolas P. Retsinas,
Director.

[FR Doc. 97–26104 Filed 10–2–97; 8:45 am]
BILLING CODE 6720–01–P

DEPARTMENT OF DEFENSE

Defense Special Weapons Agency

32 CFR Part 318

[DSWA Instruction 5400.11B]

Defense Special Weapons Agency Privacy Program

AGENCY: Defense Special Weapons Agency, DOD.
ACTION: Proposed rule.

SUMMARY: The Defense Special Weapons Agency (DSWA) is proposing to add two sections to its procedural rule for the DSWA Privacy Program. The two sections are entitled Disclosure of record to persons other than the individual to whom it pertains and Fees. The addition of these two sections helps an individual to better understand the DSWA Privacy Program.

DATES: Comments must be received on or before December 2, 1997.
ADDRESSES: Send comments regarding this proposed rule to the General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.
FOR FURTHER INFORMATION CONTACT: Mrs. Sandy Barker at (703) 325–7681.
SUPPLEMENTARY INFORMATION:
Executive Order 12866. It has been determined that this Privacy Act proposed rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).
Regulatory Flexibility Act. It has been determined that this Privacy Act proposed rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that the Privacy Act proposed rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Defense Special Weapons Agency (DSWA) is proposing to add two sections to its procedural rule for the DSWA Privacy Program. The two sections are entitled Disclosure of record to persons other than the individual to whom it pertains and Fees. The addition of these two sections helps an individual to better understand the DSWA Privacy Program.

List of Subjects in 32 CFR Part 318

Privacy.

Accordingly, the Defense Special Weapons Agency amends 32 CFR part 318 as follows:

PART 318–DEFENSE SPECIAL WEAPONS AGENCY PRIVACY PROGRAM-[AMENDED]

1. The authoritiy citation for 32 CFR part 318 continues to read as follows:

AUTHORITY: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 318.9 [Redesignated as § 318.11]

2. Section 318.9 is redesignated as 318.11.

3. Sections 318.9 and 318.10 are added to read as follows:

§ 318.9 Disclosure of record to persons other than the individual to whom it pertains.

(a) *General.* No record contained in a system of records maintained by DSWA shall be disclosed by any means to any person or agency within or outside the Department of Defense without the request or consent of the subject of the record, except as described in 32 CFR part 310.41, Appendix C to part 310, and/or a Defense Special Weapons Agency system of records notice.

(b) *Accounting of disclosures.* Except for disclosures made to members of the DoD in connection with their official duties, and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in DSWA system of records.

(1) Accounting entries will normally be kept on a DSWA form, which will be maintained in the record file jacket, or in a document that is part of the record.

(2) Accounting entries will record the date, nature and purpose of each disclosure, and the name and address of

the person or agency to whom the disclosure is made.

(3) Accounting records will be maintained for at least 5 years after the last disclosure, of for the life of the record, whichever is longer.

(4) Subjects of DSWA records will be given access to associated accounting records upon request, except for those disclosures made to law enforcement activites when the law enforcement activity has requested that the disclosure not be made, and/or as exempted under section 318.11 of this part.

§ 318.10 Fees

Individuals may request copies for retention of any documents to which they are granted access in DSWA records pertaining to them. Requesters will not be charged for the first copy of any records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such charges will be computed in accordance with DoD 5400.11–R.

Dated: September 29, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–26202 Filed 10–2–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1090–AA63

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the comment period an additional 60 days on the Department of the Interior's Office of Hearings and Appeals' proposal to amend its rules to provide that, except as otherwise provided by law or other regulation, a decision will be stayed, if it is appealed, until there is a dispositive decision on the appeal.

DATES: Comments are due to the agency on or before December 2, 1997.

ADDRESSES: Send written comments to Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, VA 22203. Comments received will be available for inspection during regular business hours (9 a.m. to 5 p.m.) in the Office of the Director, Office of Hearings and Appeals, 11th Floor, 4015 Wilson Blvd., Arlington, VA. Persons wishing to inspect comments are requested to call in advance at 703–235–3810 to make an appointment.

FOR FURTHER INFORMATION CONTACT: James L. Byrnes, Chief Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: 703–235–3750.

SUPPLEMENTARY INFORMATION: On August 19, 1997, the Department of the Interior proposed to amend the regulation contained at 43 CFR 4.21 (August 28, 1997, 62 FR 45606.) Comments to this proposed rule were to be received on or before September 29, 1997.

In a letter dated September 4, 1997, from the National Mining Association (NMA) to the Director of the Office of Hearings and Appeals (OHA), U.S. Department of the Interior, the NMA requested a 60-day extension of the comment period for this proposed amendment because the existing comment period did not allow adequate opportunity for comment, and it needed more time to present the views of its member companies. Also, in a letter dated September 12, 1997, from the Rocky Mountain Oil and Gas Association (RMOGA) to the Director, OHA, that organization requested a 60-day extension of the comment period. The RMOGA stated that the current 30-day comment period would not allow the industry adequate time to carefully analyze the proposed rule to determine the potential effects, if any, on oil and gas activities on public lands.

The OHA has determined that an extension of time to obtain the comments on the proposed rule from NMA and RMOGA is warranted and therefore, the requested extension is granted. This notice announces that 60-day extension of the comment period.

Dated: September 24, 1997.

Brooks B. Yeager,

Acting Assistant Secretary—Policy, Management and Budget.

[FR Doc. 97–26200 Filed 10–2–97; 8:45 am]

BILLING CODE 4310–RK–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7230]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
Arizona	Yavapai County (Unincorporated Areas).	Wet Beaver Creek	Approximately 8,800 feet downstream of Montezuma Avenue.	*3,360	*3,360
			Approximately 5,000 feet downstream of Montezuma Avenue.	*3,391	*3,392
			Approximately 2,350 feet downstream of Montezuma Avenue.	*3,414	*3,414
		Russell Wash	At confluence with Wet Beaver Creek	*3,387	*3,388
			Just downstream of Lake Shore Drive	*3,414	*3,412
			Approximately 1,600 feet upstream of Montezuma Avenue.	*3,464	*3,466
Maps are available for inspection at the Yavapai County Flood Control District, 255 East Gurley Street, Prescott, Arizona.					
Send comments to The Honorable Gheral Brownlow, Chairperson, Yavapai County Board of Supervisors, 1015 Fair Street, Room 310, Prescott, Arizona 86301.					
California	Sierra County and Incorporated Areas.	Smithneck Creek	Approximately 2,200 feet downstream of Main Street.	None	*4,928
			Approximately 100 feet upstream of Bear Valley Road.	None	*5,317
Maps are available for inspection at the Sierra County Department of Planning, Sierra County Courthouse Annex, Downieville, California.					
Send comments to The Honorable Richard Luchessi, Chairperson, Sierra County Board of Supervisors, P.O. Box D, Downieville, California 95936.					
Send comments to The Honorable Milton Gottardi, Mayor, City of Loyalton, P.O. Box 128, Loyalton, California 96118.					
Territory of Guam		Pacific Ocean	Along the shoreline, approximately 1,900 feet southeast of the intersection of Chagamin Lago Avenue and Pale Duenas Street.	*25	*26
			Along the shoreline, approximately 4,500 feet west of the intersection of Cruz Avenue and Parcinas Street.	None	*10
Maps are available for inspection at the Public Works Department, 542 North Marine Drive, Building A, Tammuing, Guam.					
Send comments to The Honorable Carl T.C. Gutierrez, Governor, Territory of Guam, R.J. Bordallo Complex, Agana, Guam 96910.					
Montana	Billings (City) Yellowstone County.	Alkali Creek	At the City of Billings downstream-most corporate limits, approximately 1,100 feet downstream of Main Street.	*3,130	*3,129
			Approximately 4,000 feet upstream of Blonco Court.	None	*3,244

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Billings Building Department, 510 North 29th, Billings, Montana. Send comments to The Honorable Charles F. Tooley, Mayor, City of Billings, P.O. Box 1178, Billings, Montana 59103.					
Nevada	Nye County (Unincorporated Areas).	Slime Wash	Approximately 2,890 feet downstream of Depot Road.	None	*5,887
			Approximately 960 feet upstream of U.S. Highway 6.	None	*6,147
Maps are available for inspection at the Nye County Planning Department, 1114 Globemallow Lane, Tonopah, Nevada. Send comments to The Honorable Richard Carver, Chairperson, Nye County Board of Commissioners, P.O. Box 153, Tonopah, Nevada 89049.					
Oregon	Deschutes County and Incorporated Areas.	Deschutes River (At Sunriver).	Approximately 4 miles downstream of General Patch Bridge.	*4,161	*4,161
			At General Patch Bridge	None	*4,164
			Approximately 1.7 miles upstream of General Patch Bridge.	None	*4,166
Maps are available for inspection at the Deschutes County Community Development Department, 1130 Northwest Harriman, Bend, Oregon. Send comments to The Honorable Nancy Pope Schlangen, Chairperson, Deschutes County Board of Commissioners, 1130 Northwest Harriman, Bend, Oregon 97701.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: September 25, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–26283 Filed 10–2–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–205, RM–9161]

Radio Broadcasting Services; Perry, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Frank Vela proposing the allotment of Channel 228A to Perry, Florida, as that community's second local FM broadcast service. There is a site restriction .8 kilometers (.5 miles) east of the community at coordinates 30–07–00 and 83–34–26.

DATES: Comments must be filed on or before November 17, 1997, and reply comments on or before December 2, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Frank Vela, 8740 W. Varricchio Lane, Crystal River, Florida 34428.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–205, adopted September 17, 1997, and released September 26, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Moss Media Bureau.

[FR Doc. 97–26250 Filed 10–2–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–184; MM Docket No. 92–260; DA 97–2073]

Telecommunications Services Inside Wiring; Cable Home Wiring

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: The Commission extended the deadline from October 2, 1997 to October 6, 1997 for filing reply comments in response to the Further Notice of Proposed Rulemaking in CS Docket No. 95–184 and MM Docket No. 92–260, FCC 97–304 (62 FR 46453 September 3, 1997) ("Further NPRM").

DATES: Reply comments must be submitted on or before October 6, 1997.

ADDRESSES: Reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. Reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau (202) 418–7200.

SUPPLEMENTARY INFORMATION: The full text of the document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Order

1. On August 28, 1997, the Commission released a Further Notice of Proposed Rulemaking ("Further Notice") in CS Docket No. 95–184 and MM Docket No. 92–260. The Further Notice sought comment on, among other things, a proposal regarding the disposition of cable inside wiring in multiple dwelling unit buildings.

2. The Further Notice requested that interested parties file comments by September 25, 1997 and reply comments by October 2, 1997. In establishing a reply comment deadline of October 2, 1997, the Commission inadvertently required that reply comments be filed during a religious holiday. We will extend the deadline for filing reply comments in response to the Further Notice to October 6, 1997.

3. Accordingly, IT IS ORDERED that the deadline for filing reply comments in connection with the Further Notice is extended from October 2, 1997 to October 6, 1997. This action is taken pursuant to section 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 0.5(c), 0.101 and 0.321 of the Commission's rules, 47 CFR 0.5(c), 0.101 and 0.321.

List of Subjects in 47 CFR Part 76

Cable Television.

Federal Communications Commission.

Meredith J. Jones,

Chief, Cable Services Bureau.

[FR Doc. 97–26416 Filed 10–2–97; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 62, No. 192
Friday, October 3, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the Section 502 Rural Housing Demonstration Program.

DATES: Comments on this notice must be received by December 2, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Loan Specialist, Single Family Housing Processing Division, RHS, U. S. Department of Agriculture, STOP 0783, 1400 Independence Avenue, S.W., Washington, DC 20250, Telephone (202) 720–1487.

SUPPLEMENTARY INFORMATION:

Title: Section 502 Rural Housing Demonstration Program.

OMB Number: 0575–0114.

Expiration Date of Approval: January 31, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: Under Section 506(b), RHS may provide loans for innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase the availability of affordable rural housing for low-income families, through innovative designs and systems.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 80 hours to complete the questionnaire including additional material, specifications and blueprints.

Respondents: Business or other for-profit institutions.

Estimated Number of Respondents: 15.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12,000 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, at (202) 690–1065.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Avenue, S.W., Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 26, 1997.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 97–26215 Filed 10–2–97; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 3, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Knives, Miscellaneous Kitchen
7340–00–197–1271
7340–00–197–1274
7340–00–205–3335
7340–00–223–7771
7340–00–488–7950
7340–00–680–2758
NPA: Suburban Adult Services, Inc., Sardinia, New York

Bag, Contamination
8105–01–352–1390
8105–01–352–1391
NPA: Portland Habilitation Center, Inc., Portland, Oregon

Services

Carpet Replacement, National Gallery of Art, 6th & Constitution Avenue, NW, Washington, DC
NPA: National Association of Concerned Veterans, Washington, DC

Janitorial/Custodial

U.S. Army Reserve Center, Moffett Field, California
NPA: VTF Services, Palo Alto, California

Operation of Postal Service Center, Luke Air Force Base, Arizona
NPA: Arizona Industries for the Blind, Phoenix, Arizona

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action does not appear to have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Cover, Mattress
7210–00–241–9718
7210–00–067–7969

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–26327 Filed 10–2–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: November 3, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 14, June 27, July 25, August 1 and 15, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 6946, 34686, 40049, 41339 and 43698) of proposed additions to and deletion from the Procurement List:

Additions

The Following Comments Pertain to Laundry/Dry Cleaning Service, Quantico, VA

Comments were received from the current contractor in response to a Committee request for sales data. The contractor indicated that addition of this service to the Procurement List would have a severe impact on the subsidiary which is performing the service but would not result in the economic collapse of the parent company. The contractor also claimed that the addition would have a severe impact on two subcontractors involved in performing the service, and would require the contractor to terminate several employees.

The Committee looks at impact on the entire corporate structure of a contractor when it makes its assessment of the impact a Procurement List addition will have, not just the subsidiary that performs the service. In this case, that impact is far below the level which the Committee considers to be severe adverse impact.

The contractor indicated that its activities in the contract are limited to pickup and delivery of laundry and dry cleaning and performing adminstrative functions, while the actual laundering and dry cleaning operations are provided, respectively, by two subcontractors. The contractor provided data for the two subcontractors to indicate that impact of the addition on them would be severe.

The nonprofit agency will be performing all the functions of the current contractor and its laundry subcontractor. It will be subcontracting the dry cleaning to the current dry cleaning subcontractor initially, and that contractor will continue to have the opportunity to bid on subcontracts for dry cleaning, so the addition will not have a severe adverse impact on that subcontractor. The percentage of sales which the current laundry subcontractor will lose because of the Procurement List addition does not rise to the level which the Committee normally considers to be severe adverse impact.

The unemployment rate for people with severe disabilities exceeds 65 percent, which is far above the rate for most other people in this country. Consequently, the Committee believes that any loss of employment by the current contractor's employees is outweighed by the jobs which will be created for people with severe disabilities. In addition, given the scope of the project, the Committee does not believe that the number of employees mentioned by the current contractor will be displaced as a direct result of the Committee's action.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies

(Requirements for Fairchild Air Force Base, Washington)

Services

Grounds Maintenance, Base Hospital, Buildings 5520, 5521 & 5522, Edwards Air Force Base, California

Janitorial/Custodial

VA Outpatient Clinic, Las Vegas, Nevada

Janitorial/Custodial

Federal Building, 209 Broadway, New York, New York

Laundry/Dry Cleaning

U.S. Marine Corps Base, Quantico, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the service.
3. The action will result in authorizing small entities to furnish the service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

The following service is hereby deleted from the Procurement List: Document Destruction, Internal Revenue Service, Cincinnati Service Center, 200 West Fourth Street, Covington, Kentucky.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–26328 Filed 10–2–97; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, October 10, 1997, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of September 5, 1997 and September 22, 1997
III. Announcements
IV. Staff Director's Report
V. Advisory Committee Reports
Utah: "Employment Discrimination in Utah"
Wisconsin: "The Hmong in Green Bay: Refugees in a New Land"
VI. Commissioner Higginbotham's Proposal Concerning Issuance of Reports
VII. Asian American Complaint and Petition
VIII. Management Information System
IX. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97–26436 Filed 10–1–97; 1:01 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

The 1998 Study of Privacy Attitudes (SPA)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 2, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) should be directed to Randall Neugebauer, Bureau of the Census, Room 3587–3 (Room SFC–2 1001 after October 10, 1997), Washington, DC 20233, (301) 457–3952.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is interested in privacy issues for several reasons. Most notable is the steady decline in response rates to the Census Bureau's mailed questionnaire in recent decennial censuses, which may reflect the growing apathy toward and mistrust of the Federal government. With the recent growth and popularity of the Internet and world wide web, the issues of access to individual data and lack of data security have come to the forefront, adding to the notion that individual privacy is eroding away. A clear understanding of the public's beliefs regarding the Census Bureau and its practices may help decennial census planners offset the trend in declining responses rates, address new methods to acquire data, improve our ability to communicate privacy and confidentiality messages, and improve our ability to predict and effectively respond to negative publicity. The purpose of the 1998 Study of Privacy Attitudes (SPA) is to assess the public's attitudes at two mutually exclusive levels—one being national in scope and the other, two Census 2000 Dress Rehearsal (C2DR) sites.

The national study of privacy attitudes is a repeat of a survey conducted in 1995 by the Joint Program in Statistical Methods (JPSM) of the University of Maryland and the 1996 Study of Public Attitudes Toward Administrative Records Use (SPARU). The goals for conducting a national study of privacy attitudes in 1998 are:

—Determine the public's opinion of the Federal government and the Census Bureau in general, the Census Bureau's privacy and confidentiality policies, and the extent to which the Census Bureau adheres to its own privacy guidelines.
—Assess change in the public's attitudes on privacy-related issues using results from the 1995 JPSM, 1996 SPARU, and the 1998 SPA.
—Determine the public's opinion of the Census Bureau's expanded use of administrative records and possible interest in collecting SSNs in the future and the notion of an "administrative records census." [As an alternative methodology for 2010, an administrative records census design will be experimented with during Census 2000.]
—Determine the public's opinion of the Census Bureau adopting and communicating fair information use principlos.

The C2DR component of the 1998 SPA will compare privacy beliefs in areas prior to and after being "sensitized" to the census. The C2DR component will target a sample of households in the Sacramento, California and Columbia, South Carolina C2DR sites. Comparing results between the pre- and post-measurement samples will help determine if becoming sensitized to a census (through the paid advertizing campaign and other promotion and outreach programs) has a significant effect on privacy attitudes. The objectives of the C2DR component are noted above, but also includes:

—Based on a pre- and post-measurement of sampled households in the dress rehearsal sites, assess variability in the public's attitudes on privacy-related issues.

Understanding how the public defines privacy and how the public understands the Census Bureau's confidentiality language and practices is important information as privacy-related principles and policy are developed. Two broad observations stem from comparing the 1995 JPSM and 1996 SPARU: first, there was little change in attitudes towards data sharing and secondly, in 1996 there was less trust in government, greater concerns about privacy, and a greater feeling of helplessness in politically effecting change. The surveys of the 1998 SPA will add significant results to what we have already learned.

II. Method of Collection

A contractor will conduct the national survey with telephone interviewing using an automated survey instrument and a list-assisted random digit dialing (RDD) sampling design. The RDD methodology will incorporate a number of peripheral survey techniques that have shown to raise response rates. Given concerns of the Office of Management and Budget (OMB) with the trend of declining response rates with and bias in general of RDD surveys, the Census Bureau assessed (by contract) the effectiveness of response rate remedies, the appropriateness of applying RDD methodology in collecting privacy attitudinal data, and the nature and extent of bias from under coverage and nonresponse. By applying results and recommendations from the research to the 1998 SPA, the Census Bureau will collect good data with a maximal response rate and minimal bias that maintains comparability with the 1995 JPSM and 1996 SPARU. The pre- and post-surveys of the C2DR component will be administered by telephone to a random sample of households from the Census Bureau's master address file and will entail some degree of personal visit interviews as well.

III. Data

OMB Number: Not available.
Form Numbers: The automated survey instrument will not have a form number.
Type of Review: Emergency submission.
Affected Public: Individuals or households.
Estimated Number of Respondents: 3,000.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 750.
Estimated Total Annual Cost: The only cost to the respondents in participating is that of their time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 United States Code, Section 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 29, 1997.

Wilson D. Haigler, Jr.,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–26208 Filed 10–2–97; 8:45am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 921]

Grant of Authority for Subzone Status; Coastal Mobile Refining Company; (Oil Refinery) Mobile County, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Mobile, Alabama, grantee of Foreign-Trade Zone 82, for authority to establish special-purpose subzone status at the oil refinery complex of Coastal Mobile Refining Company, located in Mobile County, Alabama, was filed by the Board on February 12, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 8–97, 62 FR 8422, 2/25/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 82F) at the oil refinery complex of Coastal Mobile Refining Company, located in Mobile County, Alabama, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000 and # 2709.00.2000 which are used in the production of asphalt and certain intermediate fuel products (examiners report, Appendix C);

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 25th day of September 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–26314 Filed 10–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 922]

Expansion of Foreign-Trade Zone 121 Albany, NY, Area and Approval for Manufacturing Authority (Eyeglass Frames)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Capital District Regional Planning Commission, grantee of Foreign-Trade Zone 121, Albany, New York, area, for authority to expand FTZ 121 to include an additional site in the Albany, New York, area, and for authority on behalf of Liberty Optical Manufacturing Company to manufacture eyeglass frames under FTZ procedures within FTZ 121, was filed by the Board on September 3, 1996 (FTZ Docket 68–96, 61 FR 48665, 9/16/96);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 121 and for authority to manufacture eyeglass frames under FTZ procedures is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to a condition limiting the manufacturing authority to an initial five-year period, subject to extension upon review.

Signed at Washington, DC, this 25th day of September 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–26315 Filed 10–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 920]

Grant of Authority for Subzone Status; Phillips Petroleum Company (Oil Refinery) Brazoria County, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Freeport, grantee of Foreign-Trade Zone 149, for authority to establish special-purpose subzone status at the oil refinery complex of Phillips Petroleum Company, located in Brazoria County, Texas, was filed by the Board on January 2, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 1–97, 62 FR 2646, 1/17/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 149C) at the oil refinery complex of Phillips Petroleum Company, located in Brazoria County, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050 and #2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—products for export; and,
—products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 25th day of September 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–26313 Filed 10–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 923]

Expansion of Foreign-Trade Zone 80 San Antonio, Texas, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the City of San Antonio, Texas, grantee of Foreign-Trade Zone No. 80, for authority to expand its general-purpose zone in the San Antonio, Texas, area, within the San Antonio Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on December 2, 1996 (Docket 82–96, 61 FR 66652, 12/18/96);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 25th day of September 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–26318 Filed 10–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S.-Turkey Business Development Council; Membership

ACTION: Notice of membership opportunity.

SUMMARY: As part of its Big Emerging Market Strategy for Turkey, the U.S. Department of Commerce is establishing a Business Development Council (BDC) in cooperation with the Turkish Government. This notice updates the **Federal Register** notice published November 22, 1996, (61 FR 60261) previously announcing membership opportunities in the U.S.-Turkey BDC.

The U.S. Department of Commerce seeks nominations of outstanding individuals to serve on the U.S. section of the BDC as representatives of their particular industry sector. The purpose of the BDC will be to provide a forum through which U.S. and Turkish private sector representatives can engage in constructive exchanges of information on commercial matters, and in which governments can exchange information, solve problems, and more effectively work together on a number of issues of mutual concern including the following:

—Identifying commercial opportunities, impediments and issues of concern to the U.S. and Turkish business communities;
—Addressing obstacles to trade and investment;
—Improving the dissemination of information on U.S.-Turkey market opportunities;
—Developing sectoral or project-oriented approaches to expand business opportunities;
—Implementing trade/business development and promotion programs, including trade missions, exhibits, seminars, and other events; and
—Identifying further steps to facilitate and encourage the development of commercial expansion and cooperation between the two countries.

The inaugural meeting of the BDC is expected to take place in early 1998 in Ankara, Turkey with government and private sector members from both countries in attendance.

Obligations

It is anticipated that U.S. private sector members will be appointed for a two year term and will serve at the discretion of the U.S. Secretary of Commerce and as representatives of the U.S. business community. They are expected to participate fully in defining the agenda for the Council and in implementing its work program. They are fully responsible for travel, living and personal expenses associated with their participation on the Council, and may be responsible for a pro rata share of administrative and communications costs of the Council.

Criteria

The Council will be composed of two sections, a U.S. section and a Turkish section. The U.S. Section will be chaired by the Under Secretary for International Trade of the Department of Commerce, or designee, and will include approximately 20 members from the U.S. private sector.

In order to be eligible for membership in the U.S. section, potential candidates must be:

—U.S. citizens or permanent U.S. residents;
—CEOs or other senior management level employees of a U.S. company or organization involved in export with and/or investment in Turkey; and
—Not a registered foreign agent under the Foreign Agent Registration Act of 1938, as amended (FARA).

In reviewing eligible candidates, the Department of Commerce will consider such selection factors as:

—Depth of experience in the Turkish market;
—Export/investment experience;
—Industry or service sector represented;
—Company size or, if an organization, size and number of member companies;
—Contribution to diversity based on company size, location, demographics, and traditional underrepresentation in business; and
—Stated commitment to actively participate in BDC activities and meetings.

To be considered for membership, please provide the following: name and title of individual proposed for consideration; name and address of the company or organization sponsoring each individual; company's or organization's product or service line; size of the company or, if an organization, the size and number of member companies; export experience/foreign investment experience; a brief statement (not more than 2 pages) of why each candidate should be considered for membership on the Council; the particular segment of the business community each candidate would represent; and a personal resume.

DEADLINE: In order to receive full consideration, requests must be received no later than November 3, 1997.

ADDRESSES: Please send your requests for consideration to Ms. Maria Dorsett, Turkey Desk Officer, Office of European Union and Regional Affairs, by fax on 202/482–2897 or by mail at Room 3036, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Dorsett of the Office of European Union and Regional Affairs, Room 3036, U.S. Department of Commerce, Washington, D.C. 20230; telephone: 202/482–6008.

Authority: Act of February 14, 1903, c. 552, as amended, 15 U.S.C. 1501 et seq., 32 Stat. 825; Reorganization Plan No. 3 of 1979, 19 U.S.C. 2171 Note, 93 Stat. 1381.

Dated: September 30, 1997.

Franklin J. Vargo,

Acting Assistant Secretary for Market Access and Compliance.

[FR Doc. 97–26317 Filed 10–2–97; 8:45 am]

BILLING CODE 3510–DA–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Visa Requirements for Textile and Clothing Products in the Second Stage of Integration into the World Trade Organization

September 29, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); the Uruguay Round Agreements Act.

The Uruguay Round Agreement on Textiles and Clothing provides for the integration of textile and clothing into GATT 1994. The second stage of the integration will commence on January 1, 1998 (see 60 FR 21075, published on May 1, 1995).

The Committee for the Implementation of Textile Agreements has determined that it is necessary to maintain coverage of the currently applicable visa systems for the products to be integrated in the second stage of the integration. Therefore, an export visa issued by the government of the country of origin will continue to be required for products integrated on and after January 1, 1998, before entry is permitted into the United States.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–26244 Filed 10–2–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Certification on Conversion of Military Positions to Civilian Positions

AGENCY: Department of Defense, Under Secretary of Defense for Personnel and Readiness.

ACTION: Notice.

SUMMARY: This notice is being published in accordance with the National Defense Authorization Act for FY 1997. This Act requires that the Department of Defense provide notification upon its certification to Congress that 3,000 military positions were converted to civilian positions during FY 1996. The Certification was submitted to the Congress on September 22, 1997. Further details concerning the conversion may be obtained by contacting the Office of the Director, Requirements, Department of Defense.

FOR FURTHER INFORMATION CONTACT: Mr. John Davey, 703–614–5133.

Dated: September 29, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–26201 Filed 10–2–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Submarine of the Future

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Submarine of the Future will meet in closed session on October 10, at TRW, One Federal Systems Park, Fairfax, Virginia; on October 27–28, at Science Applications International Corporation, 8301 Greensboro Drive, McLean, Virginia; and on November 24, 1997, at Knolls Atomic Power Laboratory, Schenectady, New York. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, these meetings are scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will assess the nation's need for attack submarines in the 21st century.

In accordance with Section 10(d) of the Federal advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: September 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–26341 Filed 10–2–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Fall 1997 Conference Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming semiannual conference of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Fall 1997 DACOWITS Conference is to assist the Secretary of Defense on matters relating to women in the Services. Conference sessions will be held daily and will be open to the public, unless otherwise noted below.

DATES: October 29-November 2, 1997.

ADDRESSES: Hyatt Regency Tampa, Two Tampa City Center, Tampa FL 33602; telephone: (813) 225–1234.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Kay Troutt, USAF, or CDR Deborah R. Goodwin, USN, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the OSD Reception and Dinner and Conference Field Trip.

(2) The Opening Session, General Session, all subcommittee sessions and the Voting Session will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 17, 1997.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral presentations by members of the public will be permitted only on Sunday, November 2, 1997, before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office with one (1) copy of the presentation by October 17, 1997 and bring 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one (1) copy of the statement by the close of the conference on Sunday, November 2, 1997.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Military Director, DACOWITS and Military Women Matters, for consideration.

(10) Members of the public will not be permitted to enter oral discussions conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) After the official participants have asked questions and/or made comments to the scheduled speakers, members of the public will be permitted to ask questions if recognized by the Chair and if time allows.

(12) Non-social agenda events that are not open to the public are for administrative matters unrelated to substantive advice provided to the Department of Defense and do not involve DACOWITS deliberations or decision-making issues before the Committee. Conference sessions will be conducted according to the following agenda:

Wednesday, October 29, 1997

Conference Registration
Field Trip (DACOWITS Members and Senior Military Representatives Only)
Subcommittee Rules and Procedures Meeting (DACOWITS Members Only)
Military Representatives Meeting (Senior Military Representatives Only)
Executive Committee Rules and Procedures Meeting (DACOWITS Members Only)
OSD Social (Paid Registered Conference Participants Only)

Thursday, October 30, 1997

Opening Session and General Session (Open to Public)
Luncheon (Paid Registered Conference Participants Only)
Subcommittee Session (Open to Public)

Friday, October 31, 1997

Subcommittee Session (Open to Public)
Luncheon (Paid Registered Conference Participants Only)
Executive Committee Rules and Procedures Meeting (DACOWITS Members Only)
OSD Reception and Dinner (Invited Guests Only)

Saturday, November 1, 1997

Subcommittee Sessions (Open to Public)
Tri-committee Review (Open to Public)
Executive Committee Rules and Procedures Meeting (DACOWITS Members Only)
Strategic Planning Meeting (DACOWITS Members Only)

Sunday, November 2, 1997

Final Review (Open to Public)
Voting Session (Open to Public)

Dated: September 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–26340 Filed 10–2–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DOD.

ACTION: Notice to Amend a System of Records

SUMMARY: The Office of the Secretary of Defense proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendments are needed to update the current notice.

DATES: The amendment will be effective on November 3, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: September 29, 1997.

L. M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 07

SYSTEM NAME:

Defense Medical Information System (DMIS) *(January 30, 1996, 61 FR 3006).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Replace Primary location with 'Primary location: Directorate of Information Management, Building 1422, Fort Detrick, MD 21702–5000 with region-specific information being kept at each Office of the Assistant Secretary of Defense (Health Affairs) designated regional medical location. A complete listing of all regional addresses may be obtained from the system manager.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Uniformed services medical beneficiaries enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) who receive medical care at one or more of DoD's medical treatment facilities (MTFs), or one or more of the Uniformed Services Treatment Facilities (USTFs), or who have care provided under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE programs.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Electronic files contain patient ID, date of birth, gender, sponsor status (active duty or retired), relationship to sponsor,

pay grade of sponsor, state or country, zip code, health care dates and services, provider, service status, health status, billed amount, allowed amount, amount paid by beneficiary, amount applied to deductible, and amount paid by government.'

* * * * *

SAFEGUARDS:

Delete first paragraph and replace with 'Automated records are maintained in controlled areas accessible only to authorized personnel. Entry to these areas is restricted to personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of a cipher lock. Back-up data maintained at each location is stored in a locked room.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending. Records will not be destroyed until disposition has been established.'

* * * * *

DHA 07

SYSTEM NAME:

Defense Medical Information System (DMIS).

SYSTEM LOCATION:

Primary location: Directorate of Information Management, Building 1422, Fort Detrick, MD 21702–5000 with Region-specific information being kept at each Office of the Assistant Secretary of Defense (Health Affairs) designated regional medical location. A complete listing of all regional addresses may be obtained from the system manager.

Secondary location: Service Medical Treatment Facility Medical Centers and Hospitals, and Uniformed Services Treatment Facilities. For a complete listing of all facility addresses write to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Uniformed services medical beneficiaries enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) who receive medical care at one or more of DoD's medical treatment facilities (MTFs), or one or more of the Uniformed Services Treatment Facilities (USTFs), or who have care provided under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Electronic files contain patient ID, date of birth, gender, sponsor status (active duty or retired), relationship to sponsor, pay grade of sponsor, state or country, zip code, health care dates and services, provider, service status, health status, billed amount, allowed amount, amount paid by beneficiary, amount applied to deductible, and amount paid by government.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C., Chapter 55; and E.O. 9397 (SSN).

PURPOSE(S):

DMIS collects data from multiple DoD electronic medical systems and processes and integrates the data in a manner that permits health management policy analysts to study, evaluate, and recommend changes to DoD health care programs. Analysis of beneficiary utilization of military medical and other program resources is possible using DMIS. Statistical and trend analysis permits changes in response to health care demand and treatment patterns. The system permits the projection of future Medical Health Services System (MHSS) beneficiary population, utilization requirements, and program costs to enable health care management concepts and programs to be responsive and up to date.

The detailed patient level data at the foundation of DMIS permits analysis of virtually any aspect of the military health care system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Health Care Finance Administration for conducting demographic and financial analytical studies.

To the Congressional Budget Office for projecting costs and workloads associated with DoD Medical benefits.

To the Department of Veterans Affairs (DVA) for coordinating cost sharing activities between the DoD and DVA.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on optical and magnetic media.

RETRIEVABILITY:

Records may be retrieved by individual's Social Security Number, sponsor's Social Security Number, Beneficiary ID (sponsor's ID, patient's name, patient's DOB, and family member prefix or DEERS dependent suffix).

SAFEGUARDS:

Automated records are maintained in controlled areas accessible only to authorized personnel. Entry to these areas is restricted to personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of a cipher lock. Back-up data maintained at each location is stored in a locked room.

Access to DMIS records is restricted to individuals who require the data in the performance of official duties. Access is controlled through use of passwords.

RETENTION AND DISPOSAL:

Disposition pending. Records will not be destroyed until disposition has been established.

SYSTEM MANAGER(S) AND ADDRESS:

Corporate Executive Information System Program Office, Six Skyline Place, Suite 595, 5109 Leesburg Pike, Falls Church, VA 22041–3201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Corporate Executive Information System Program Office, Six Skyline Place, Suite 595, 5109 Leesburg Pike, Falls Church, VA 22041–3201.

Requests should contain the full names of the beneficiary and sponsor, sponsor Social Security Number, sponsor service, beneficiary date of birth, beneficiary sex, treatment facility(ies), and fiscal year(s) of interest.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written requests to Corporate Executive Information System Program Office, Six Skyline Place, Suite 595, 5109 Leesburg Pike, Falls Church, VA 22041–3201.

Requests should contain the full names of the beneficiary and sponsor, sponsor Social Security Number, sponsor service, beneficiary date of birth, beneficiary sex, treatment facility(ies) that have provided care, and fiscal year(s) of interest.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual data records that are assembled to form the DMIS data base are submitted by the Military Departments, the Defense Enrollment Eligibility Reporting System, the Office of the Civilian Health and Medical Program for the Uniformed Services, the Uniformed Service Treatment Facility Managed Care System, and the Health Care Finance Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–26204 Filed 10–2–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to Alter a System of Records

SUMMARY: The Department of the Army proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration adds a new category of individuals covered and a routine use to an existing Army system of records identified as A0040-57a DASG, Armed Forces Repository of Specimen Samples for the Identification of Remains.

DATES: This action will be effective without further notice on November 3, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Army Total Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The complete inventory of Department of the Army record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 23, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: September 29, 1997.

L.M. BynumM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–57a DASG

SYSTEM NAME:

DoD DNA Registry *(June 14, 1995, 60 FR 31287).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Armed Forces Repository of Specimen Samples for the Identification of Remains.'

SYSTEM LOCATION:

Delete both paragraphs and replace with 'Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, 16050 Industrial Drive, Gaithersburg, MD 20877–1414.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add 'and contractor' after 'DoD Civilian'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 131; 10 U.S.C. 3013, Secretary of Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; E.O. 9397 (SSN); Deputy Secretary of Defense memorandum dated December 16, 1991; and Assistant Secretary of Defense (Health Affairs) memoranda dated January 5, 1993, March 9, 1994, April 2, 1996, and October 11, 1996.'

PURPOSE(S):

Add to entry 'The data collected and stored will not be analyzed until needed for the identification of human remains.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph as follows 'To proper authority, as compelled by other applicable law, in a case in which all of the following conditions are present:

(1) The responsible DoD official has received a proper judicial order or judicial authorization;

(2) The specimen sample is needed for the investigation or prosecution of a crime punishable by one year or more of confinement;

(3) No reasonable alternative means for obtaining a specimen for DNA profile analysis is available; and

(4) The use is approved by the Assistant Secretary of Defense for Heath Affairs.'

* * * * *

A0040–57a DASG

SYSTEM NAME:

Armed Forces Repository of Specimen Samples for the Identification of Remains.

SYSTEM LOCATION:

Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, 16050 Industrial Drive, Gaithersburg, MD 20877–1414.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military personnel (active and reserve).

Civilian family members of Department of Defense military personnel (active and reserve) who voluntarily provide specimens for DNA typing for purpose of identifying the human remains of family members.

DoD civilian and contractor personnel deploying with the armed forces.

Other individuals may also be included in this system when the Armed Forces Institute of Pathology (AFIP) is requested by Federal, state, local and foreign authorities to identify human remains.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specimen collections from which a DNA typing can be obtained (oral swabs, blood and blood stains, bone, and tissue), and the DNA typing results. Accession number, specimen locator information, collection date, place of collection, individual's name, Social Security Number, right index fingerprint, signature, branch of service, sex, race and ethnic origin, address, place and date of birth, and relevant kindred information, past and present.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 131; 10 U.S.C. 3013, Secretary of Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; E.O. 9397 (SSN); Deputy Secretary of Defense memorandum dated December 16, 1991;

and Assistant Secretary of Defense (Health Affairs) memoranda dated January 5, 1993, March 9, 1994, April 2, 1996, and October 11, 1996.

PURPOSE(S):

Information in this system of records will be used for the identification of human remains. The data collected and stored will not be analyzed until needed for the identification of human remains.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, local and foreign authorities when the Armed Forces Institute of Pathology (AFIP) is requested to identify human remains.

To a proper authority, as compelled by other applicable law, in a case in which all of the following conditions are present:

(1) The responsible DoD official has received a proper judicial order or judicial authorization;

(2) The specimen sample is needed for the investigation or prosecution of a crime punishable by one year or more of confinement;

(3) No reasonable alternative means for obtaining a specimen for DNA profile analysis is available; and

(4) The use is approved by the Assistant Secretary of Defense for Heath Affairs.

The Army's 'Blanket Routine Uses' *do not* apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually and electronically.

RETRIEVABILITY:

By individual's surname, sponsor's Social Security Number, date of birth, and specimen reference or AFIP accession number.

SAFEGUARDS:

Access to the Armed Forces Institute of Pathology is controlled. Computerized records are maintained in controlled areas accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. All personnel whose duties require access to, or processing and maintenance of personnel information are trained in the proper safeguarding and use of the information. Any DNA typing information obtained will be handled as confidential medical information.

RETENTION AND DISPOSAL:

Records are maintained 50 years(pending final approval of this reduced retention period by the National Archives and Records Administration), and then destroyed by shredding or incineration.

Statistical data used for research and educational projects are destroyed after end of project.

Military personnel, their civilian family members, or others may request early destruction of their individual remains identification specimen samples following the conclusion of the donor's complete military service or other applicable relationship to DoD. For this purpose, complete military service is not limited to active duty service; it includes all service as a member of the Selected Reserves, Individual Ready Reserve, Standby Reserve or Retired Reserve.

In the case of DoD civilians and contractor personnel, early destruction is allowed when the donor is no longer deployed by DoD in a geographic area which requires the maintenance of such samples. Upon receipt of such requests, the samples will be destroyed within 180 days, and notification of the destruction sent to the donor.

Requests for early destruction may be sent to the Repository Administrator, Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, Washington, DC 20306–6000.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Administrator, Repository and Research Services, ATTN: Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20306–6000.

Requesting individual must submit full name, Social Security Number and date of birth of military member and branch of military service, if applicable, or accession/reference number assigned by the Armed Forces Institute of Pathology, if known. For requests made in person, identification such as military ID card or valid driver's license is required.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves or deceased family members contained in this system should address written inquiries to the Administrator, Repository and Research Services, ATTN: Armed Forces Repository of Specimen Samples for the Identification of Remains, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Washington, DC 20306–6000.

Requesting individual must submit full name, Social Security Number and date of birth of military member and branch of military service, if applicable, or accession/reference number assigned by the Armed Forces Institute of Pathology, if known.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, family member, diagnostic test, other available administrative or medical records obtained from civilian or military sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–26203 Filed 10–02–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

DEPARTMENT OF THE DEFENSE

Department of the Army

Corps of Engineers

Draft Environmental Impact Report/Environmental Impact Statement (DEIR/DEIS) for the Hamilton City Pumping Plant Fish Screen Improvement Project, Central Valley, CA

AGENCIES: Bureau of Reclamation, Department of the Interior and the Army Corps of Engineers, Department of Defense.

ACTION: Notice of availability.

SUMMARY: The Bureau of Reclamation (Reclamation), the Army Corps of Engineers (Corps), the Glenn-Colusa Irrigation District (GCID), and the California Department of Fish and Game (CDFG) propose to construct the Hamilton City Pumping Plant Fish Improvement Screen Project. The project is in response to concerns over impacts to salmon and other fish species from water diversion operations at the Hamilton City Pumping Plant. Two public workshops to present material on the alternatives and to answer questions and a public hearing to receive comments from interested organizations and individuals on the environmental impacts of the project will be held.

DATES: Public comments on the DEIR/DEIS should be submitted on or before November 17, 1997. The public workshops will be held at the following locations:

- November 4, 1997, 1:00 p.m., Granzella's Inn, 391 6th Street, Williams, California
- November 4, 1997, 7:00 p.m., Hamilton High School, Highway 32 and Canal Street, Hamilton City, California

ADDRESSES: Requests for copies of the DEIR/DEIS and comments on the DEIR/DEIS should be submitted to the Fish Screen Improvement Project, Draft EIR/EIS Comments, 455 Capitol Mall, Suite 600, Sacramento, California 95814, Attention: Rick Lind; telephone (916) 325–4050.

Copies of the DEIR/DEIS are also available for public inspection and review at the following locations:

1. Bureau of Reclamation, Room E–1704, 2800 Cottage Way, Sacramento, CA 95825–1898; (916) 979–5100.
2. Bureau of Reclamation, Northern California Area Office, Attention: NCAO–320, 16349 Shasta Dam Blvd, Shasta Lake, CA 96019–8400; (916) 275–1554.
3. Surface Water Resources, Inc., 455 Capitol Mall, Suite 600, Sacramento, CA 95814; (916) 325–4050.
4. Bureau of Reclamation, Willows Construction Office, Attention: W–200, 1140 West Wood Street, Willows, CA 95988–0988; (916) 934–7066.
5. Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240–0001.
6. Library, Bureau of Reclamation, 6th Avenue and Kipling, Room 167, Building 67, Denver Federal Center, Denver, CO 80225–0007.
7. University of California-Berkeley, Water Resources Center Archives, 410 O'Brien Hall, Berkeley, CA 94720–1718.
8. California State University-Chico, Government Publications Center, Meriam Library, Chico, CA 95929–0295.
9. Butte County Library, Publications, 1820 Mitchell Ave, Oroville, CA 95966–5333.
10. Shasta County Public Library, Redding Main Branch, 1855 Shasta Street, Redding, CA 96001–0418.
11. U.S. Army Corps of Engineers, 1325 J Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Ms. Lauren Carly, Reclamation, (916) 934–7066; Mr. Matt Davis, Corps, (916) 557–6708; Ms. Sandra Dunn, GCID, (916) 446–7979; or Mr. Nick Villa, CDFG, (916) 358–2943.

SUPPLEMENTARY INFORMATION: Reclamation, the Corps, GCID and CDFG have prepared the DEIR/DEIS to analyzes the no-action alternative as well as three action alternatives. The action alternatives would minimize loss of all fish species in the vicinity of the pumping plant diversion while maximizing GCID's capability to divert the full quantity of water it is entitled to divert to meet its water supply delivery obligations. The agency preferred alternative would include an extension of the existing fish screen, internal fish bypasses, improvements to the intake and bypass channel, and a gradient facility.

Dated: September 26, 1997.

Kirk C. Rodgers,

Deputy Regional Director.

Dated: September 25, 1997.

Brandon C. Muncy,

Major, Deputy District Engineer—Civil Works.

[FR Doc. 97–26295 Filed 10–2–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearings for a Draft Clean Air Act Conformity Determination and Draft Environmental Impact Statement for Realignment of F/A–18 Aircraft and Operational Functions From Naval Air Station Cecil Field, Florida to Other East Coast Installations

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and the Clean Air Act, General Conformity Rule (40 CFR Part 93), the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) and Draft Clean Air Act Conformity Determination to evaluate the realignment of F/A–18 aircraft and operational functions from Naval Air Station (NAS) Cecil Field, Florida to other Navy and Marine Corps air stations on the east coast of the United States. In accordance with these laws and regulations, this notice announces the dates and locations of public hearings.

The realignment of F/A–18 aircraft and associated functions from NAS Cecil Field is mandated by the Defense Base Closure and Realignment Act (Pub. L. 101–510, title XXIX) in accordance with the Congressionally approved recommendation of the 1995 Defense Base Closure and Realignment Commission. The DEIS considers five alternatives for realignment of 11 F/A–18 fleet squadrons (132 aircraft) and the fleet replacement squadron (FRS) (48 aircraft).

East coast installations that meet operational criteria and are considered as possible receiving sites for F/A–18 aircraft includes NAS Oceana, Virginia; Marine Corps Air Station (MCAS) Beaufort, South Carolina; and MCAS Cherry Point, North Carolina. The preferred alternative is to single-site the F/A–18 aircraft at NAS Oceana, which has the largest capacity to accommodate the aircraft. Other alternatives that separate the F/A–18 aircraft between two of the bases are considered. The level of new construction required at each base to accommodate the aircraft is related to the number of aircraft to be transferred under each alternative. Each alternative is assessed in the DEIS with regard to its effects on the natural and built environments.

The DEIS has been distributed to various Federal, state, and local agencies, as well as other interested individuals and organizations. In addition, copies of the DEIS have been distributed to the following libraries for public review: Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia; Great Neck Library, 1251 Bayne Drive, Virginia Beach, Virginia; Chesapeake Central Library, 298 Cedar Road, Chesapeake, Virginia; Craven County Library, 300 Miller Boulevard, Havelock, North Carolina; Beaufort County Library, 311 Scott Street, Beaufort, South Carolina; Dare County Library, 700 North U.S. 64/264, Manteo, North Carolina; Pamlico County Library, 603 Main Street, Bayboro, North Carolina; Ida Hilton Library, 1105 North Way, Darien, Georgia. A limited number of single copies of the DEIS and Draft CAA Conformity Determination are available upon request by contacting Mr. Dan Cecchini at (757) 322–4891.

ADDRESSES: Public hearings will be held during the month of October for those individuals who would like to provide oral comments on the DEIS or the Draft CAA Conformity Determination. An open information session will precede the scheduled public hearing at each of the locations listed below and will allow individuals to review the data presented in the DEIS. Navy representatives will be available during the information session to answer questions and/or clarify information related to the DEIS. The open information session is scheduled from 3:30 p.m. to 7:00 p.m., followed by the public hearing from 7:30 p.m. to 10:00 p.m. Public hearings have been scheduled at the following times and locations: Monday, October 20, 1997, Technical College of the Low Country, Building 12, Main Auditorium, 921 Ribaut Road, Beaufort, South Carolina; Tuesday, October 21, 1997, Havelock Middle School, 102 High School Drive, Havelock, North Carolina; Wednesday, October 22, 1997, Pamlico County Courthouse, 202 Main Street, Bayboro, North Carolina; Thursday, October 23, 1997, North Carolina Aquarium on Roanoke Island, Airport Road, Manteo, North Carolina; Monday, October 27, 1997, Virginia Beach Pavilion Convention Center Auditorium, 1000 19th Street, Virginia Beach, Virginia; Tuesday, October 28, 1997, Butts Road Intermediate School, 1571 Mt. Pleasant Road, Chesapeake, Virginia.

Federal, state and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the DEIS and Draft CAA Conformity Determination and will be responded to in the Final Environmental Impact Statement (FEIS). Equal weight will be given to both oral and written statements.

In the interest of available time and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker will be asked to limit comments to three (3) minutes. If a longer statement is to be presented, it should be summarized at the public hearing and submitted in writing either at the hearing or mailed or faxed to Mr. Dan Cecchini at: Commander, Atlantic Division, Naval Facilities Engineering Command, Attn: Mr. J. Dan Cecchini (Code 2032DC), 1510 Gilbert Street, Norfolk, Virginia 23511; Fax: (757) 322–4894. All written comments postmarked by November 18, 1997, will become a part of the official public record and will be responded to in the FEIS.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this notice may be obtained by contacting Mr. Cecchini or one of the following individuals: Mr. Fred Pierson, Community Planning Liaison Officer, NAS Oceana, (757) 433–3158; LtCol Blackiston, Community Planning Liaison Officer, MCAS Cherry Point, (919) 466–4196; LtCol Keverline, Community Planning Liaison Officer, MCAS Beaufort, (803) 522–7390, or Capt Mason, Public Affairs Officer, MCAS Beaufort, (803) 522–7201.

Dated: September 29, 1997.

Darse E. Crandall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–26211 Filed 10–2–97; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics, (ACES)

AGENCY: Department of Education.

ACTION: Notice of partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the Advisory Council on Education Statistics (ACES). Notice of these meetings are required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: October 9–10, 1997.

TIMES: October 9, 1997—Full Council, 8:30 a.m.–11:30 a.m., (open); 11:30 to 1:15 p.m., (closed); Management Committee, 1:30 p.m.–5:00 p.m., (open); Statistics Committee, 1:30 p.m.–5:00 p.m. (open), Strategy/Policy 1:30 p.m.–5:00 p.m. (open). October 10, 1997—Full Council 12 noon to 3:00 p.m. (open); Statistics Committee, 8:30 a.m.–12:00 noon (open); Strategy/Policy Committee, 8:30 a.m. to 12 noon (closed); and Management Committee, 8:30 a.m. to 12:00 noon (open).

LOCATION: The Phoenix Park Hotel, 520 North Capitol Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Barbara Marenus, National Center for Education Statistics, 555 New Jersey Ave. NW., Room 400j, Washington, DC 20208–5530. Telephone (202) 219–1828.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under Section 406(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. In addition, ACES is required to advise the Commissioner of NCES and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Education Progress (NAEP). The meetings of the Council are open to the public.

The proposed agenda for the full Council includes the following:

- A status report from the NCES Commissioner on major Center initiatives;
- New member swearing -in;
- The presentation of Committee reports;
- A discussion on the development of an NCES periodical;
- A discussion of strategic issues in technology facing NCES; and
- A status report on the NAEP redesign and the development of a new request for proposal (RFP) for NAEP.

Since the full Council's discussion on the implementation of the NAEP redesign includes reporting on plans for an upcoming procurement, this session must be closed to the public. The premature release of this information would result in the disclosure of information that would be likely to significantly frustrate implementation of the agency's proposed action. Such matters are protected by exemption (9)(B) of Section 552b (c) of title 5 U.S.C.

Individual meetings of the three ACES subcommittees will focus on specific topics:

- The agenda for the Management Committee includes discussion on the results from the 1996 Customer Service Survey and plans for the 1997 survey, plans for the development of partnerships with external organizations, and a discussion of "capacity building" activities for NCES.
- The agenda for the Statistics Committee focuses on the development of a research agenda on the NAEP achievement level setting process.
- The agenda for the Strategy/Policy Committee includes discussion of NCES procurement initiatives for 1999 and beyond, a new NCES database for budgeting and planning, and a discussion of design options for the redesign of the Schools and Staffing Survey. Because the discussion will include information on planned procurements, this session must be closed to the public. The public disclosure of this information would be likely to significantly frustrate the implementation of planned agency action if conducted in open session. Such matters are protected by exemption (9)(B) of Section 552b (c) of Title 5 U.S.C.

A summary of the activities and related matters, which are informative to the public and consistent with the policy of Title 5 U.S.C. 552b, will be available to the public within 14 days after the meetings. Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, NW, room 400J, Washington, DC 20208–7575.

Ricky Takai,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–26199 Filed 10–2–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Restricted Eligibility in Support of Advanced Coal Research at U.S. Colleges and Universities

AGENCY: Federal Energy Technology Center (FETC), Pittsburgh, Department of Energy (DOE).

ACTION: Issuance of financial assistance solicitation.

SUMMARY: The FETC announces that pursuant to 10 CFR 600.8(a)(2), and in support of advanced coal research to U.S. colleges and universities, it intends to conduct a competitive Program Solicitation and award financial assistance grants to qualified recipients. Proposals will be subjected to a comparative merit review by a Peer Review/DOE technical panel, and awards will be made to a limited number of proposers on the basis of the scientific merit of the proposals, application of relevant program policy factors, and the availability of funds.

DATES: The Program Solicitation is expected to be ready for release by October 15, 1997. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation and must be received by the Department of Energy by November 26, 1997. Upon receipt of the solicitation document, check for any changes (i.e. closing date of solicitation) and/or amendments, if any, prior to proposal submission.

FOR FURTHER INFORMATION CONTACT: Ms. Debra A. Duncan, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 10940 (MS 921–143), Pittsburgh, PA 15236–0940; (Telephone: 412–892–5700; Facsimile: 412–892–6216; E-Mail: duncan@fetc.doe.gov).

ADDRESSES: The solicitation will be posted on the internet at FETC's Home Page (http://www.fetc.doe.gov/business/solicit/solicit.html). The solicitation will also be available, upon request, in Wordperfect 5.1 format on 35" double-sided/high-density disk. Requests can be made via letter, facsimile, or by E-mail. Telephone requests will not be accepted for any format version of the solicitation.

SUPPLEMENTARY INFORMATION: Through Program Solicitation DE-PS26–98FT98200.000, the DOE is interested in applications from U.S. colleges and universities (and university-affiliated research centers submitting applications through their respective universities). Applications will be selected to complement and enhance research being conducted in related Fossil Energy (FE) programs. Applications may be submitted individually (i.e., by only one college/university) or jointly (i.e., by "teams" made up of: (1) three or more colleges/universities, or (2) two or more colleges/universities and at least one industrial partner. Collaboration, in the form of joint proposals, is *encouraged* but not required.

Eligibility

Applications under this solicitation may be accepted in two subprogram areas: (1) University Coal Research (UCR) Core Program, and (2) University Coal Research Innovative Concepts Program. Applications must address coal research in one of the solicitation key focus areas in the Core Program or as outlined in the Innovative Concepts Program.

Background

A concept called "Vision 21" is being developed as part of the Coal and Power Systems Strategic Plan which will provide DOE's Fossil Energy organization with a clear focus and mission and will be central to the course of fossil energy research. Vision 21 is, in essence, the idea of a modular co-production facility that is designed for facile capture of CO_2. The concept does not define a single, optimum configuration but rather allows for a series of plant configurations, based on common modules, capable of co-producing power, fuels, chemicals, and other high value products with avoidance or sequestration of CO_2 and with low emissions of SO_2, NO_X, and particulates. It is envisioned that their modular construction will permit the plants to be tailored to fit a geographic location and specific market area by selection of the appropriate combination of modules. The modules will be scaled to operate together and may be available in several size ranges. In summary, the distinguishing features of the definitive Vision 21 fleet would be (1) the capability of producing low cost electricity at efficiencies over 60%; (2) near-zero pollutants, i.e., one-tenth of New Source Performance Standards for criteria pollutants; (3) no net CO_2 emissions; (4) fuel flexibility (coal plus other opportunity fuels); (5) co-production of higher value commodities; and (6) modular design that permits customizing a plant to a given market area.

For purposes of this solicitation, the feedstock may be coal or any carbonaceous material in combination with coal. Gas or biomass could be combined with the coal to reduce or offset fossil carbon emissions in stages of development where CO_2 was not completely sequestered. Petroleum coke could be used near refineries and municipal waste could also be a fraction of any feed. These Vision 21 plants would answer the needs of a deregulated power industry in that they would provide the ability to supply distributed power while producing high value products. The flexibility to shift product distribution with market forces would make the fledgling plants more robust in a competitive market. The capability to readily capture a concentrated CO_2 stream will be an added benefit should a "carbon tax" be levied and would allow market forces to determine whether carbon is sequestered or taxed-on-release. The Power/Fuels/ Chemicals industry will produce environmentally responsible power, fuels, and chemicals that will be the basis for a secure energy future. The high efficiency of the new power systems will allow more efficient use of indigenous resources and further reduce CO_2 emissions. Developments in breakthrough technologies, such as the high temperature hydrogen separation membrane and advanced oxygen production, will be spinoffs that will be beneficial to many industries. The work in three-phase slurry reactors is universally applicable to chemical and petroleum industries, and development of advanced Diesel fuels will increase gas mileage by 50% or more while reducing particulates and CO_2

emissions. Advanced research into areas of proposed regulation and into newly regulated materials, such as $PM_{2.5}$ and mercury, will provide the knowledge base necessary for judicious application of the law. A module will be included in the Vision 21 slate when it has been physically demonstrated at full-scale. Data from these demonstrations will permit ready simulation of any permutation of modules in a "virtual demonstration" of a plant configuration. At some point, it will be possible to provide the market and feedstock information for a geographic area and receive a prioritized list of plant configurations based on demonstrated modules. This virtual demonstration will provide significant economies when siting, designing, and constructing Vision 21 plants. Research should be continuous in all areas of fuels, chemicals, and carbon materials production and power generation to include environmental mitigation technologies and facile CO_2 capture. As developments in some technologies are slowed by barriers, those technologies may be moved back into a more advanced research mode. No area should be completely abandoned. The advantage of the Vision concept is that, for example, if one gasifier technology is slowed, another will be developed in parallel. If a technology is not able to be economically developed, it will not stop the progress of Vision 21, but will only change configuration options. The UCR program is moving in the direction of Vision 21 and will be providing the longer range research needs asociated with Vision 21 in addition to continuing to support our present program areas. As you may infer, Vision 21 is not exclusive of our present work, but is rather a concept that provides a longer term focus and direction to our research programs.

UCR Core Program

The DOE is interested in innovative and fundamental research pertinent to coal conversion and utilization limited to six (6) focus areas under the UCR Core Program. The focus areas are listed in descending order of programmatic priority. The DOE intends to fund at least one proposal in each focus area; however, high quality proposals in a higher ranked focus area may be given more consideration during the selection process. The areas sought in the focus areas are not intended to be all-encompassing, and it is specifically emphasized that other subjects for coal research that fall within their scope will receive the same evaluation and consideration for support as the examples cited.

UCR Core Program Focus Areas

Mercury Detection and Control

Concern over mercury emissions from power plant stack gas has increased since the 1990 Amendments to the Clean Air Act, where mercury was included in the list of 189 hazardous air pollutants. Mercury is present in most coals at trace levels and, during gasification or combustion processes, is partitioned between the ash, particulate (fly ash), and gas phases. Any mercury in the ash or particulate is readily measured and controlled, but the behavior of vapor phase mercury is problematic. Significant quantities of mercury leave the gasification or combustion zone in the vapor phase as elemental mercury, mercuric chloride, or some other volatile mercury compound, and no known single technique can effectively remove all forms of mercury. The initial distribution between the elemental and oxidized mercury varies with the plant, coal, and conditions. As the entrained vapor travels down the thermal and chemical gradients of subsequent gas processing, be it for gasification or combustion, the valence states and forms of the mercury change, yet again, as the various mercury species react with oxidizing gases, such as chlorine, added gas treatment reagents, and compounds sorbed on them. In addition, fly ash, unburned carbon, and other particulate components of the gas stream may interact or catalyze reactions of the mercury compounds.

It has become apparent that the system is significantly more complex than previously imagined and that to measure and control mercury in these gas streams, a basic understanding of the chemistry of mercury under the range of thermal and chemical conditions found in gasification and combustion processes is necessary.

Grant applications are sought for fundamental investigations into the measurement and the removal of mercury and mercury compounds in coal fired power plant flue gases and coal gasifier internal process streams. In particular, the proposals should focus on one or both of the following aspects: (1) Defining and understanding the mechanisms involved with mercury transformation during combustion and gasification, focusing on the identification of the rate-controlling steps (i.e., transport, equilibria, and kinetics), and (2) Defining and understanding the mechanisms involved with mercury transformations during post combustion/gasification conditions (i.e., gas and particle phase interactions) resulting in the absorption of mercury and conversion of one form of mercury to another. This would include defining and understanding the physical and chemical interactions of flue gas constituents (vapor and particle) on the absorption of mercury while injecting novel sorbents.

Novelty of approach, coupled with the likelihood of providing useful measurements and fundamental data must be demonstrated in the successful application. Proposals based on incremental additions to the current data base are not encouraged.

Novel Catalysts for Advanced Diesel Fuels

With the renewed interest in synthetic diesel fuels derived from Fischer-Tropsch (F–T) reaction of Syngas and the concomitant research into oxygenated diesel fuels, such as ethers and acetals, there is a need for new catalysts that are more selective, operate under milder conditions, and economically produce stable, high-cetane-number diesel fuels and additives. These would be produced either in a stand alone facility or, more likely, as part of a coal-fed Vision 21 co-production plant. The drive to produce diesel specification fuels is the result of increased sales of light trucks, vans, and sport/utility vehicles that now account for over 50% of the market. These vehicles, much less fuel efficient than modern sedans, will probably be forced to use diesel engines to meet Corporate Average Fuel Economy requirements. The engines will behave operationally and environmentally like modern spark ignition engines and use fuels that are compatible with the present distribution infrastructure to ease the conversion to the new fuels.

Grant applications are sought for investigations into the area of new catalysts for selective, economic, and environmentally acceptable oxygenated and high-cetane-number diesel fuels. The fuels produced must be compression ignitable and may not include methanol. The work should lead to novel catalysts to produce such fuels or a better basic understanding of catalytic production of diesel fuels.

Advanced Air Separation Technologies

An Integrated Gasification Combined Cycle (IGCC) system is a likely modular component of a Vision 21 co-production plant. In an IGCC system, coal and other carbonaceous feedstocks are partially combusted at elevated temperatures and pressures to produce synthesis gas, a mixture of carbon monoxide and hydrogen. The synthesis gas must be cleaned of sulfur compounds and particulates before use. IGCC technology is ideally suited for the coproduction of electricity and high quality transportation fuel or a host of high-value chemicals to meet specific market needs. For the production of electricity, the gasifier can use either air or pure oxygen for the partial combustion reactions. However, for coproduction of power and fuels/chemicals, oxygen is required to reduce the quantity of inert materials in downstream process units. The coproduction option offers the potential for early introduction of IGCC technologies in the United States through integration with existing manufacturing facilities and will lead directly to Vision 21 plants. Through the continued development of improved technologies, DOE hopes to further reduce the capital cost of IGCC facilities to below $1,000 per kilowatt, achieve high overall plant efficiencies, produce environmentally superior transportation fuels that are cost competitive with those produced from petroleum, and to reduce carbon dioxide emissions.

Grant applications are sought to develop advanced air separation techniques that have potential for substantial reductions in capital and operating costs compared with commercial cryogenic air separation technologies and result in improved overall process efficiencies for Vision 21 modules such as IGCC with co-production of fuels and chemicals.

The proposed technologies can either focus on the production of pure oxygen or enriched air (e.g., 65–85% oxygen in nitrogen). Such technologies are not further defined but could include advanced molecular sieve membranes, advanced absorption technologies or oxygen transport membranes. The proposed concept need not be a standalone technology and those that require integration into specific processes to achieve the desired cost and efficiency improvements are acceptable.

Direct Coal Liquefaction

Direct coal liquefaction includes technologies for converting coal or mixtures of coal with petroleum resids, waste materials (plastics, rubber), or biomass (wood, paper) to liquid products suitable for further refining for ultimate use as transportation fuels. Application of these technologies has been delayed by the need to reduce costs of both the initial conversion processes and the downstream processes for the upgrading of the liquid products. Better knowledge of chemical reactions pertinent to the conversion of coal and the prevention of the formation of refractory products would benefit the design of process strategies and to reduce cost of direct liquefaction. Knowledge that would enable the more efficient use of hydrogen would improve the overall thermal efficiency and reduce the net emissions of CO_2 from the conversion process. A key requirement for improving the science underlying the technology of the initial conversion of coal, or its co-processing mixtures, is a better understanding of the complex chemistry of the conversion steps. These steps involve combinations of thermal cracking and hydrogenation, usually with a dispersed or supported catalyst. Another problem lie in the hydrotreatment of the liquids produced by the initial steps. This downstream catalytic upgrading involves extensive hydrogenation in order ultimately to produce a fuel that will meet performance and environmental standards. Reduction of the cost and hydrogen consumption in these upgrading steps requires raising the performance of catalytic hydrotreating processes. Such improvements would be made easier if better knowledge of the target molecules for hydrodesulfurization and hydrodenitrogenation were available.

Grant applications are being sought to understand these mechanisms better, or to develop ways to overcome these barriers to advancing this technology.

CO_2 Capture and Sequestration

Future advanced power generation systems, such as Vision 21, will be designed to eliminate any CO_2 emissions from the plant. The high energy penalties and high costs associated with removing CO_2 from the flue gas of a fossil fuel-fired power plant represent major impediments to future use of CO_2 sequestration. Novel methods for capture and sequestration of CO_2 that sharply reduce these energy penalties and costs must be investigated. Promising approaches could include the development of new scrubbing solvents or sorbents, or the development of advanced sequestration techniques that are compatible with the Vision 21 concept. Since, in the sequestration schemes for CO_2, transport could be a major economic and practical concern, proposed ideas may also be related to the ease of transporting CO_2 to a storage site. Proposed methods of CO_2 disposal could include but not be limited to new ideas on using oil and gas reservoirs, the deep oceans, deep confined aquifers, and mineral carbonates.

Grant applications are sought to investigate areas of novel methods of CO2 capture and sequestration that are technically, economically, and ecologically feasible. The proposed work should be consistent with the Vision 21 concept, novel in nature, and may include, but must not be limited to a review of prior research related to this focus area.

Advanced Diagnostics and Modeling Techniques for Three-Phase Slurry Reactors (Bubble Columns)

The Fischer-Tropsch (F–T) synthesis reaction represents an important route to convert coal-derived synthesis gas to hydrocarbon fuels and will be a module for the Vision 21 plants. Slurry phase Fischer-Tropsch processing is considered a potentially more economic scheme to convert synthesis gas into liquid fuels, largely due to its relatively simple reactor design, improved thermal efficiency, and ability to process CO-rich synthesis gas. The application of the three-phase slurry reactor system to coal liquefaction and the chemical process industry has recently received considerable attention. A reliable model will be invaluable for the design, scale-up, and efficient operation of the three-phase slurry reactors. To develop such a model, the hydrodynamic parameters and the complex chemistry of the F–T reaction must be fully understood. "Hydrodynamics" includes the rate of mass transfer between the gas and the liquid, gas bubble size, gas, liquid, and solids holdup, and gas, liquid, and solids axial and radical distributions, velocity distribution and flow regimes. Measurement of these parameters must be made under reaction conditions, such as high temperature and pressure, and with the presence of a reaction liquid medium and high gas and solids holdup. It is expected that advanced diagnostic techniques will be required to conduct the measurements under the reaction conditions.

The completed model must be able to predict the holdup of all phases (gas, liquid, and solids), temperature and pressure profiles, and concentration profiles for individual reactants and products.

Grant applications are sought for investigations of the advanced diagnostic techniques for the measurement of hydrodynamic parameters under Fischer-Tropsch reaction conditions. Novelty and innovation coupled with the likely prospect of providing new insight on these long standing problems must be demonstrated in the successful application. Proposals based on extensions of traditional methods or past results are discouraged.

Grant applications are sought for investigations of the development of models for the three-phase slurry reactor. The model must incorporate the

hydrodynamic parameters and reaction kinetics. Novelty and innovation coupled with the likely prospect of providing new insight on these long standing problems must be demonstrated in the successful application.

UCR Innovative Concepts Program

As the twenty-first century approaches, the challenges facing coal and the electric utility industry continue to grow. Environmental issues such as pollutant control, both criteria and trace, waste minimization, and the co-firing of coal with biomass, waste, or alternative fuels will remain important. The need for increased efficiency, improved reliability, and lower costs will be felt as an aging utility industry faces deregulation. Advanced power systems, such as a Vision 21 plant, and environmental systems will come into play as older plants are retired and utilities explore new ways to meet the growing demand for electricity.

The DOE is interested in innovative research in the coal conversion and utilization areas that will be required if coal is to continue to play a dominant role in the generation of electric power. Technical topics like the ones that follow, will need to be answered but are not intended to be all-encompassing. It is specifically emphasized that other subjects for coal research will receive the same evaluation and consideration for support as the examples cited.

UCR Innovative Concepts Program Technical Topic(s)

Fine Particulate Matter

Fine particulate matter is defined as material with an aerodynamic-equivalent diameter of 2.5 microns or less and is generally represented as $PM_{2.5}$ It represents a broad class of substances dispersed through the atmosphere and originates from a variety of sources. These particles, which have been associated with adverse human health effects, are generally divided into two classes, Primary and Secondary. Primary particles are emitted directly as such, as fly ash, soot, dust, or sea salt. Secondary particles are formed in the atmosphere mainly from gas phase precursors such as SO_2, NO_X, and VOC to produce particles such as sulfuric acid, ammonium nitrate, and ammonium bisulfate. Recently, the Environmental Protection Agency promulgated a new $PM_{2.5}$ National Ambient Air Quality Standards. These standards will affect the operation of much of our industrial base, including fossil fueled power and industrial plants. In light of the regulations, it will be important to capture and identify particles as to composition and probable sources and would greatly affect the industries controlled and the levels of controls required.

Grant applications are sought for proposals to investigate innovative methods for the quantitative capture and chemical analysis of air borne $PM_{2.5}$ particles with the goal of source apportionment.

Additionally, grant applications are sought for methods that allow on-line measurement or control at sources such as fossil fueled power and industrial plants.

Materials—Development of Innovative Protective Surface Oxide Coatings

Protection from corrosion and environmental effects arising from damaging reactions with gases and condensed products is required to exploit the potential of advanced high-temperature materials designed to improve energy efficiency fully and reduce deleterious environmental impact (e.g., to achieve the performance goals of the Vision 21 powerplants). The resistance to such reactions is best afforded by the formation of stable surface oxides that are slow growing, compact, and adherent to the substrate or by the deposition of coatings that contain or develop oxides with similar characteristics. However, the ability of brittle ceramic films and coatings to protect the material on which they are formed or deposited has long been problematical, particularly for applications involving numerous or severe high temperature thermal cycles or very aggressive environments. This lack of mechanical reliability severely limits the performance or durability of alloys and ceramics in many high-temperature utility and powerplant applications and places severe restrictions on deployment of such materials. The beneficial effects of certain alloying additions on the growth and adherence of protective oxide scales on metallic substrates are well known, but satisfactory broad understandings of the mechanisms by which scale properties and coating integrity (i.e., corrosion resistance) are improved by compositional, microstructural, and processing modifications are lacking.

Grant applications are sought for expanding the scientific and technological approaches to improving stable surface oxides for corrosion protection in high-temperature oxidizing environments. The needs are associated with developing innovative oxide coatings and characterizing oxide-metal interfaces and stress effects on scale growth as part of DOE's efforts to establish a sound technical basis for the formulation of specific compositions and synthesis routes for producing materials with tough, adherent, stable, slow growing oxide scales or coatings that exhibit the improved elevated temperature environmental resistance crucial to the success of many of FE's advanced systems.

In-Situ Removal of Contaminants From High-Temperature Fuel Cells

The product gas from advanced coal gasification systems contains numerous contaminants that are unacceptable for the present designs of high-temperature molten carbonate and solid oxide fuel cells (MCFCs and SOFCs, respectively). In a Vision 21 Plant, as in all coal gasification and combustion processes, there is a tradeoff between gas cleanup and downstream process durability. The desired long-term operation (40,000 hours) of current MCFCs and SOFCs can be significantly reduced by even trace amounts of these contaminants. These contaminants include particulates (e.g., coal fines and ash), sulfur compounds (e.g., H_2S and COS), halides (e.g., HCl and HF), nitrogen compounds (e.g., NH_3 and HCN), and trace metal species (e.g., As, Pb, Hg, Cd, Sn). The effects of these contaminants include plugging of gas passages, corrosion of fuel cell components, and voltage losses due to various mechanisms, including physical absorption, chemisorption, or chemical reaction with fuel cell materials. Tolerance limits can be below 1 ppm, and the effects vary in severity but all are detrimental to fuel cell performance. It is unlikely that the next generation of gas cleanup and gas separation processes in the Vision 21 scenario will provide gas purity sufficient for long-term operation of MCFCs and SOFCs manufactured with current materials and fabrication techniques. If coal-based systems, such as Vision 21, are to take advantage of the high efficiency and other benefits of high-temperature fuel cells, methods for in-situ removal of contaminants will greatly increase the resiliency of these devices and would be applicable to any level of electrode materials technology.

Grant applications are sought for proposals to investigate innovative methods for cost-effective, in-situ removal of deposits, including ash, carbon, and trace metals, from MCFC and SOFC surfaces. The proposed work may include, but must not be limited to a review of prior research related to this focus area.

Prevention of Catalyst Carryover in Three Phase Reactors

There is renewed interest in F–T derived diesel fuels, produced in a stand alone facility or as part of a coal-fed Vision 21 co-production plant. To maximize the percentage of diesel fuel obtained, the catalyst would be designed to allow diesel range products to be the second largest portion of the product, while maximizing the production of wax. The wax would be further hydrocracked to diesel fuel in a separate step. Assuming that a three-phase slurry reactor would be chosen for the F–T process, there exists the problem of separating the wax from the molten catalyst-wax slurry as its level rises. The wax, of carbon number 20 to 70, is both the product and the slurry medium.

Grant applications are sought to develop operations, processes, or reactor configurations that maintain the necessary catalyst inventory in the reactor.

Advanced Power Generation Cycles

One of the most effective ways to reduce CO_2 and other emissions from coal-fired powerplants and to achieve the targets for the Vision 21 plant is to significantly increase the efficiency of power plants. New cycles are intended for combined cycle applications, that could increase the efficiency of powerplants to well over 45%.

Grant applications are being solicited for investigation and study of new cycles for power generation. Specific areas of study may include high temperature (~1,000F), high pressure (~2,400 psi) ammonia/water vapor/liquid thermodynamic properties at various volume ratios, validation of efficiency projects, alternative approaches to complex combined cycle evaluations for better matching of conventional and advanced technology processes, economics, and identification of barriers (corrosion and new materials investigations, heat transfer coefficients in two liquid mixtures for application in falling film heat exchangers), to commercialization. Any novel topping and bottoming cycles may be offered.

Liquids From Coal

The many advantages of using and handling liquid fuels and chemical feedstocks has driven research to produce these materials from low-cost, abundant coal. During most of this century, many processes have been developed and a few of these were commercialized at some point. With the advent of Vision 21 and the co-production concept, opportunities may now exist for identification and development of novel liquefaction processes that would fit the modular design criterion and permit ready sequestration of CO_2.

Grant applications are being solicited for investigation and study of new methods to produce value-added liquids from coal consistent with the Vision 21 concept.

Awards

DOE anticipates awarding financial assistance grants for each project selected. Approximately $2.7 million will be available for the Program Solicitation. An estimated $2.2 million is budgeted for the UCR Core Program and should provide funding for approximately one to three (1–3) financial assistance awards in each of the six focused areas of research. The maximum DOE funding for individual colleges/universities applications in the UCR Core Program varies according to the length of the proposed performance period as follows:

Performance period	Maximum funding
0–12 months	$80,000
13–24 months	140,000
25–60 months	200,000

The maximum DOE funding for UCR Core Program joint applications is $400,000 requiring a performance period of 36 months.

Approximately $0.5 million is budgeted for the UCR Innovative Concepts Program and should provide support for approximately ten (10) financial assistance awards. The maximum DOE funding for UCR Innovative Concepts Program awards is $50,000 with 12-month performance periods.

Issued in Pittsburgh, Pennsylvania on September 25, 1997.

Richard D. Rogus,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 97–26276 Filed 10–02–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. FE C&E 97–02—Certification Notice—155]

Denver City Energy Associates, L.P.; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filing.

SUMMARY: On September 23, 1997, Denver City Energy Associates, L.P. submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 3F–056, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: Denver City Energy Associates, L.P.

Operator: Denver City Energy Associates, L.P.

Location: Amarillo, Texas.

Plant Configuration: combined-cycle.

Capacity: 489 megawatts.

Fuel: Natural gas.

Purchasing Entities: Golden Spread Electric Generating Cooperative, Inc. (GSE).

In-Service Date: Simple-cycle mode—Winter of 1998–99 Combined-cycle mode—Summer of 1999.

Issued in Washington, D.C., September 29, 1997.

Anthony J. Como,

Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–26279 Filed 10–2–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. LEHR–SF–597]

Certification of the Radiological Condition of Four Buildings at the Laboratory for Energy-Related Health Research, Davis, California

AGENCY: U.S. Department of Energy, Office of Environmental Restoration.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed radiological surveys and taken remedial action to decontaminate and decommission four buildings located at the Laboratory for Energy-Related Health Research (LEHR) facility in Davis, California. This property previously was found to contain radioactive materials from activities carried out for the Atomic Energy Commission and the Energy Research and Development Administration (AEC/ERDA), predecessor agencies to DOE. Although DOE owns the majority of the buildings and equipment at the LEHR site (including these four buildings), the University of California owns the land.

FOR FURTHER INFORMATION CONTACT: Don Williams, Program Manager, Office of Northwestern Area Programs, Office of Environmental Restoration (EM–44), U.S. Department of Energy, Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION: DOE has implemented environmental restoration projects at LEHR as part of DOE's Environmental Restoration Program. One objective of the program is to identify and clean up or otherwise control facilities where residual radioactive contamination remains from activities carried out under contract to AEC or ERDA during the early years of the Nation's atomic energy program.

LEHR is comprised of a number of buildings and structures located within a 15-acre parcel of land leased from the University of California, Davis. The facility was operated by the University of California between 1956 and 1988 to conduct animal research to determine the effects of radionuclides, primarily strontium-90 and radium-228, on tissue, organs, and bone. Several buildings and land areas became radiologically contaminated as a result of facility operations and site activities. A LEHR area that has been designated for cleanup under the DOE Environmental Restoration Program includes the two Animal Hospital Laboratories, the Specimen Storage building, and the Cobalt-60 building. These buildings have been decontaminated and have been independently verified to meet established cleanup criteria and standards; they are, therefore, now available for release without radiological restrictions as established in DOE Order 5400.5.

The Animal Hospital Laboratories are single story, wood-framed buildings with stucco exteriors. Animal Hospital No. 1 housed built-in cage rooms and contained nine laboratories for conducting animal research using strontium-90. Animal Hospital No. 2 was used for surgery, radiography, and radium-226 studies. Plumbing and ventilation systems associated with the animal cages were contaminated as a result of the studies. The Specimen Storage building is a single story structure constructed with concrete blocks. This building was used to store radioactive and non-radioactive research samples. The Cobalt-60 building is a single story, poured concrete, composite roof structure. This building housed a cobalt-60 irradiation source and was equipped with a control room and animal exposure room. The 390-curie cobalt-60 source was removed in January 1993 and made available for reuse at another facility. Following the removal of the cobalt-60 source, the exposure room was used to store lead bricks, a radiological glovebox, bagged electrical motors, and miscellaneous radioactive sources.

To allow the release of these buildings for use without radiological restrictions, all radioactive material and contamination was removed from the buildings. In general, passive decontamination techniques, such as high-efficiency particulate air vacuuming, damp cloth wiping, and hand washing/scrubbing, were applied first. When the contaminants were more tightly bound to the surface material, such as fiberglass and epoxy coated cages, more aggressive decontamination methods were applied. These methods included surface removal by chipping and grinding. When decontamination of cages was no longer cost-effective, the remaining contaminated material was removed, volume reduced, and shipped offsite for disposal as low-level radiological waste.

After the decontamination project was completed, a comprehensive final survey of the building interiors was performed to demonstrate compliance with standards for release without radiological restrictions. The Environmental Survey and Site Assessment Program of the Oak Ridge Institute for Science and Education performed independent verification of the decontamination project in 1996. Post-decontamination surveys have demonstrated that the four buildings are in compliance with DOE decontamination criteria and standards for release without radiological restrictions. DOE intends to comply with applicable Federal, State, and local requirements which relate to property transfer.

Final DOE costs for the decontamination of the four buildings were $4,000,000, including the final survey and waste disposal.

All personnel working on the decontamination and decommissioning project were monitored for both external and internal dose exposure. Over the five year duration of the project, two workers received a total of 10 mrem each, which is well below applicable radiological standards establishing a dose limit of 100 mrem/yr. to the general public under DOE Order 5400.5 or 5 rem/yr. for workers under 10 CFR Part 835.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the U.S. DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. Copies of the certification docket will also be available at the following locations: DOE Public Document Room, U.S. DOE, Oakland Operations Office, the Federal Building, 1301 Clay Street, Oakland, California; University of California-Davis Shields Library, Reference Desk, Davis, California; and Davis Public Library, Reference Desk, 315 East 14th Street, Davis, California.

DOE has issued the following statement of certification:

Statement of Certification: Laboratory for Energy-Related Health Research, Animal Hospital No. 1, Animal Hospital No. 2, Specimen Storage Building, and the Cobalt-60 Building

The U.S. Department of Energy, Oakland Operations Office, Environmental Restoration Division, has reviewed and analyzed the radiological data obtained following decontamination and decommissioning of Animal Hospital No. 1, Animal Hospital No. 2, Specimen Storage building, and the Cobalt-60 building at the Laboratory for Energy-Related Health Research. Based on analysis of all data collected and the results of independent verification, DOE certifies that the following properties are in compliance with DOE radiological decontamination criteria and standards as established in DOE Order 5400.5. This certification of compliance provides assurance that future use of the properties will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants. Accordingly, the properties specified below are released from DOE's Environmental Restoration Program.

Property owned by the University of California:

Animal Hospital No. 1 (H–219), Animal Hospital No. 2 (H–218), Specimen Storage building (H–216), and the Cobalt-60 building (H–290) located at the Laboratory for Energy-Related Health Research at Davis, Solano County, California in the southeast quarter of Section 21, Township 8 North, Range 2 East, Mount Diablo Base and Meridian.

Issued in Washington, D.C. on September 22, 1997.

James J. Fiore,

Acting Deputy Assistant Secretary for Environmental Restoration.

Statement of Certification: Laboratory for Energy-Related Health Research, Animal Hospital No. 1, Animal Hospital No. 2, Specimen Storage Building, and the Cobalt-60 Building

The U.S. Department of Energy, Oakland Operations Office, Environmental Restoration Division, has reviewed and analyzed the radiological data obtained following decontamination and decommissioning of Animal Hospital No. 1, Animal Hospital No. 2, Specimen Storage Building, and the Cobalt-60 Building at the Laboratory for Energy-Related Health Research. Based on analysis of all data collected and the results of independent verification, DOE certifies that the following property is in compliance with DOE radiological decontamination criteria and standards as established in DOE Order 5400.5. This certification of compliance provides assurance that future use of the property will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants.

Property owned by the University of California:

Animal Hospital No. 1 (H–219), Animal Hospital No. 2 (H–218), Specimen Storage Building (H–216), and the Cobalt-60 Building (H–290) located at the Laboratory for Energy-Related Health Research at Davis, Solano County, California, in the southeast quarter of Section 21, Township 8 North, Range 2 East, Mount Diablo Base and Meridian.

Dated: July 22, 1997.

Roger Liddle,

Director, Environmental Restoration Division, Oakland Operations Office, U.S. Department of Energy.

[FR Doc. 97–26278 Filed 10–2–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–765–000]

ANR Pipeline Company; Notice of Application

September 29, 1997.

Take notice than on September 22, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97–765–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate mainline looping and measurement facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that the proposed 11.4 miles of 30-inch mainline looping, located upstream of ANR's existing Kewaskum, Wisconsin, compressor station, and new meter station, located on ANR's existing Racine lateral pipeline, are designed to increase transmission capacity by 116 MMcf per day and thereby enable ANR to provide additional firm transportation service to subscribing shippers in the Wisconsin market area of ANR's system.

ANR states that it held an open season wherein a number of shippers expressed an interest in receiving firm transportation service on ANR, from various existing and proposed pipeline interconnection points located within the vicinity of the newly emerging Chicago gas hub, to delivery points located within the State of Wisconsin. ANR states that those shippers have received approval of their requests for service and some have entered into precedent agreements with ANR for new services that will utilize all of the new capacity proposed herein.

ANR states that it will provide the service under Part 284 of the Commission's regulations and charge the subscribing shippers rates that do not exceed the currently effective Mainline Area rates for firm services under its existing Second Revised Volume No. 1 of its FERC Gas Tariff.

ANR estimates the construction cost of the proposed facilities to be $23.6 million, which will be financed from internally generated funds.

ANR requests a Preliminary Determination on non-environmental issues by January 1, 1998, with final approval by June 15, 1998, so that the proposed facilities can be placed in service by the 1998/1999 heating season.

ANR requests that the Commission issue a predetermination that rolled-in rates are appropriate for the proposed facilities, maintaining that rate impact on existing customers will be no greater than 0.5 percent. ANR further maintains that installation of looping on its mainline trunk facilities will enhance stability and security of firm service, in addition to providing increased outage protection, for all shippers utilizing that portion of ANR's system.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before October 20, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, and intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process.

Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenors status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26227 Filed 10–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–535–000]

MIGC, Inc., Notice of Proposed Changes in FERC Gas Tariff

September 29, 1997.

Take notice that on September 24, 1997, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 37, with an effective date of November 1, 1997.

MIGC states that the filing is being filed pursuant to Subpart C of Part 154 of the Federal Energy Regulatory Commission's Regulations Under the Natural Gas Act and Order No. 636–C issued February 27, 1997 at Docket Nos. RM91–11–006 and RM87–34–072 (Order No. 636–C)

MIGC states that this tariff sheet revises the Right-of-First Refusal provision to provide for a five year maximum term for bid evaluations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois Cashell,

Secretary.

[FR Doc. 97–26226 Filed 10–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–526–001]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 29, 1997.

Take notice that on September 24, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Third Revised Sheet No. 9, with a proposed effective date of October 12, 1997.

MRT states that the purpose of this filing is to adjust and reduce the Account No. 191 amounts MRT requested authority to direct bill its former Rate Schedule CD–1 and SGS–1 customers as a result of additional prior period adjustments to MRT's Account No. 191 balance to remove that percentage of costs attributable to MRT's non-jurisdictional direct industrial sales during the relevant period.

MRT states that copies of its filing have been mailed to all of its customers, including all former Rate Schedule CD–1 and STS–1 customers, and the State Commissions of Arkansas, Illinois, and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26225 Filed 10–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4494–000]

PacifiCorp; Notice of Filing

September 29, 1997.

Take notice that PacifiCorp on September 4, 1997, tendered for filing a Notice of Termination of Service Agreement No. 6 to PacifiCorp's FERC Electric Tariff, Original Volume No. 5.

Copies of this filing were supplied to the City of Anaheim, the Washington, Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 10, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26228 Filed 10–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–60–006

Tennessee Gas Pipeline Company; Notice of Compliance Filing

September 29, 1997.

Take notice that on September 25, 1997, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sub Original Sheet No. 665 and Sub Original Sheet No. 675, with an effective date of June 1, 1997.

Tennessee states that the tariff sheets are being filed in compliance with the Commission's September 15, 1997 Order on Order No. 587 Compliance Filing in the above-referenced docket (September 15 Order). Tennessee Gas Pipeline Company, 80 FERC 61,311 (1997). Tennessee states that these tariff sheets set forth revisions to Tennessee's pro forma Electronic Data Interchange (EDI) Trading Partner Agreement (TPA) as directed by the September 15 Order. In accordance with the September 15 Order, Tennessee requests that these tariff sheets be deemed effective June 1, 1997.

Tennessee further states that copies of the filing have been mailed to all intervening parties in the above-referenced dockets.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26229 Filed 10–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–57–000, et al.]

Hermiston Generating Company, L.P., et al.; Electric Rate and Corporate Regulation Filings

September 26, 1997.

Take notice that the following filings have been made with the Commission:

1. Hermiston Generating Company, L.P.

[Docket No. EC97–57–000]

Take notice that Hermiston Generating Company, L.P. ("Hermiston") on September 19, 1997, tendered for filing a request that the Commission approve a disposition of facilities under Section 203 of the Federal Power Act in connection with a proposed sale of the indirect interest held in Hermiston by Bechtel Enterprises, Inc. to a subsidiary of PG&E Corporation.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. USGen Power Services, Inc.

[Docket No. EC97–58–000]

Take notice that USGen Power Services, L.P., ("USGenPS") on September 19, 1997, tendered for filing a Petition that the Commission approve a disposition of facilities and grant any other authorization the Commission may deem to be required under Section 203 of the Federal Power Act in connection with a proposed redemption of the partnership interest in USGenPS of the Cottonwood Power Corporation by USGenPS.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Qst Energy Trading Inc. v. Central Illinois Public Service Company and Union Electric Company

[Docket No. EL97–43–000]

Take notice that on September 18, 1997, pursuant to Section 306 of the Federal Power Act, 16 U.S.C. 825e, and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 CFR 385.206, QST Energy Trading, Inc. ("QST") tendered for filing a Supplemental Verified Complaint against Central Illinois Public Service Company ("CIPS") and Union Electric Company ("UE"). In the original Complaint filed on June 25, 1997, QST alleged that CIPS and UE, which is operating CIPS' transmission system, refused to provide QST with monthly firm transmission service to deliver firm energy and capacity which was being sold by CIPS, despite Available Transmission Capability shown on the MAIN OASIS; violated Section 37 of the Commission's Rules related to posting and providing transmission information; and failed to provide timely notice of transmission availability.

The Supplemental Complaint concerns a series of additional acts by CIPS/UE: CIPS' refusal to provide QST with data pursuant to Section 37.6(b)(ii) due to the pendency of a Complaint; CIPS' and UE's continued late notification of the availability of transmission service; continuing violation by CIPS/UE of posting requirements under Section 37.6; CIPS/UE's faulty calculation of ATC; and CIPS/UE's anti-competitive refusal to make CIPS' transmission system available for use by a marketer like QST.

QST argues that these actions require an immediate response by the Commission of ordering an audit of CIPS/UE's actions this summer in relation to its compliance with Section 37.6 and its denials of service to QST.

QST has asked that CIPS and UE be ordered to comply with Section 37.6 immediately; be required to join a regional ISO; the Commission find that no demand charges are due to be paid by QST on days when CIPS/UE denied or failed to provide timely transmission service; determine whether damages or penalties are due to be paid by CIPS/UE, and such other relief as the Commission deems appropriate.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall be due on or before October 10, 1997.

4. Oklahoma Municipal Power Authority v. Public Service Company of Oklahoma and Central and South West Services, Inc.

[Docket No. EL97–59–000]

Take notice that on September 18, 1997, Oklahoma Municipal Power Authority tendered for filing a complaint against the Public Service Company of Oklahoma and Central and South West Services, Inc.

Comment date: October 27, 1997, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall be due on or before October 27. 1997.

5. Delmarva Power & Light Company

[Docket No. EL97–60–000]

Take notice that on September 18, 1997, Delmarva Power & Light Company

filed a Petition for Limited Waiver of a provision of § 35.32 of the Commission's Regulations.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER97–3966–000]

Take notice that on September 9, 1997, Florida Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. NRG Power Marketing Inc.

[Docket No. ER97–4281–000]

Take notice that on August 20, 1997, NRG Power Marketing Inc. (NRG Power) filed pursuant to 205 of the Federal Power Act, Part 35 of the Commission's Regulations, and the Commission's Rules of Practice and Procedure, an application requesting the Commission to: (1) Accept for filing NRG Power's Rate Schedule FERC No. 1, (2) grant NRG Power blanket authority to make market-based sales of energy and capacity under Rate Schedule FERC No. 1, and (3) grant NRG Power such waivers and blanket authorizations as have been granted by the Commission in the past to other power marketers, including, but not limited to, waiver of cost of service filing requirements of Subparts B and C of Part 35, waiver of accounting and reporting requirements, interlocking director filing requirements, and blanket approval of future issuances of securities or assumptions of obligations or liabilities. NRG Power has requested waiver of the 60-day notice requirement to allow NRG Power's Rate Schedule FERC No. 1 to become effective on September 1, 1997.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Electric Lite, Inc.

[Docket No. ER97–4427–000]

Take notice that on September 2, 1997, Electric Lite, Inc. ("Electric Lite") petitioned the Commission for acceptance of Electric Lite Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Electric Lite intends to engage in wholesale electric power and energy purchases and sales as a marketer. Electric Lite is not in the business of generating or transmitting electric power.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. DPL Energy, Inc.

[Docket No. ER97–4499–000]

Take notice that on September 3, 1997, DPL Energy, Inc., tendered for filing to amend DPL Energy, Inc.'s market based sales tariff.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Montaup Electric Company

[Docket No. ER97–4500–000]

Take notice that on September 2, 1997, Montaup Electric Company ("Montaup") filed a form of service agreement for firm point-to-point transmission service with itself from May 1, 1997 through July 13, 1997. The filing responds to the Commission's July 31, 1997 order in Allegheny Power Systems, Inc., et al., 80 FERC ¶ 61,143. Montaup requests waiver of the Commission's notice requirement to permit an effective date of May 1, 1997.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Boston Edison Company

[Docket No. ER97–4502–000]

Take notice that on September 4, 1997, Boston Edison Company ("Boston Edison"), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Northeast Energy Services, Inc. (NORESCO). Boston Edison requests that the Service Agreement become effective as of August 1, 1997.

Edison states that it has served a copy of this filing on NORESCO and the Massachusetts Department of Public Utilities.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Kentucky Utilities Company

[Docket No. ER97–4503–000]

Take notice that on September 4, 1997, Kentucky Utilities Company (KU), tendered for filing service agreements for Non-Firm Transmission Service between KU and NP Energy Inc., Wisconsin Electric Power Company and Coral Power L.L.C. KU also notified the Commission that its Transmission and Power Service Agreements with Coastal Electric Services Company are now with Engage Energy US, L.P.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power Corporation

[Docket No. ER97–4504–000]

Take notice that on September 4, 1997, Florida Power Corporation tendered for filing a service agreement providing for short-term service to LG&E Power Marketing, pursuant to Florida Power's Market-Based Wholesale Power Sales Tariff ("MR–1") FERC Electric Tariff, Original Volume No. 8. Florida Power requests that the Commission waive its notice of filing requirements and allow the Service Agreement to become effective on September 5, 1997.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER97–4505–000]

Take notice that on September 4, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing executed Service Agreements between Virginia Electric and Power Company and (1) Tractebel Energy Marketing, Inc.; and (2) Entergy Power Marketing Corp under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to (1) Tractebel Energy Marketing, Inc.; and (2) Entergy Power Marketing Corp under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Gas and Electric Company

[Docket No. ER97–4506–000]

Take notice that on September 4, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing an agreement by and between PG&E and Sierra Pacific Power Company (Sierra) entitled, "Service Agreement for Non-Firm Point-to-Point Transmission Service" (Service Agreement).

PG&E proposes that the Service Agreement become effective on August 5, 1997. PG&E is requesting any necessary waivers.

Copies of this filing have been served upon the California Public Utilities Commission and Sierra.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Orange and Rockland Utilities, Inc.

[Docket No. ER97–4507–000]

Take notice that on September 4, 1997, Orange and Rockland Utilities, Inc. ("O&R"), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement under which O&R will provide capacity and/or energy to Entergy Power Marketing Corp. ("Entergy").

O&R requests waiver of the notice requirement so that the service agreement with Entergy becomes effective as of September 15, 1997.

O&R has served copies of the filing on The New York State Public Service Commission and Entergy.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–4508–000]

Take notice that on September 5, 1997, Consolidated Edison Company of New York, Inc. ("Con Edison"), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Minnesota Power & Light Company ("MPL").

Con Edison states that a copy of this filing has been served by mail upon MPL.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–4509–000]

Take notice that on September 5, 1997, Consolidated Edison Company of New York, Inc. ("Con Edison"), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company ("PSE&G").

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Company

[Docket No. ER97–4510–000]

Take notice that on September 5, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with NP Energy, Inc., Constellation Power Source, Inc., CMS Marketing, Services and Trading, Con Agra Energy Services, Inc. and Williams Energy Services Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. PECO Energy Company

[Docket No. ER97–4511–000]

Take notice that on September 5, 1997, PECO Energy Company ("PECO") filed a Service Agreement dated August 10, 1997 with City of Springfield, Illinois, City Water, Light and Power ("CWL&P") under PECO's FERC Electric Tariff Original Volume No. 1 ("Tariff"). The Service Agreement adds CWL&P as a customer under the Tariff.

PECO requests an effective date of August 10, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to CWL&P and to the Pennsylvania Public Utility Commission.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Florida Power Corporation

[Docket No. ER97–4512–000]

Take notice that on September 5, 1997, Florida Power Corporation ("FPC"), tendered for filing a contract for the provision of interchange service between itself and The Energy Authority, Inc. ("Energy Authority"). The contract provides for service under Schedule C, Economy Interchange Service, and OS, Opportunity Sales. FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on September 6, 1997.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Cinergy Services, Inc.

[Docket No. ER97–4513–000]

Take notice that on September 5, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and the City of Wyandotte Department of Municipal Service (Wyandotte).

Cinergy and Wyandotte are requesting an effective date of August 11, 1997.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Great Bay Power Corporation

[Docket No. ER97–4515–000]

Take notice that on September 5, 1997, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between New Energy Ventures, Inc. and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective August 22, 1997.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Kansas City Power & Light Company

[Docket No. ER97–4516–000]

Take notice that on September 8, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated August 7, 1997, between KCPL and Tenaska Power Services Co. KCPL proposes an effective date of August 15, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Illinois Power Company

[Docket No. ER97–4518–000]

Take notice that on September 8, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Williams Energy Services Company will take transmission service pursuant to its open access transmission

tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 8, 1997.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Illinois Power Company

[Docket No. ER97–4519–000]

Take notice that on September 8, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which DuPont Power Marketing Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 25, 1997.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Illinois Power Company

[Docket No. ER97–4520–000]

Take notice that on September 8, 1997, Illinois Power Company ("Illinois Power"), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Ohio Edison Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 26, 1997.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Public Service Electric and Gas Company

[Docket No. ER97–4521–000]

Take notice that on September 8, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Western Power Services, Inc. ("WPSI") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 11, 1997.

Copies of the filing have been served upon WPSI and the New Jersey Board of Public Utilities.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Public Service Electric and Gas Company

[Docket No. ER97–4522–000]

Take notice that on September 8, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to ProMark Energy, Inc. ("ProMark") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 11, 1997.

Copies of the filing have been served upon ProMark and the New Jersey Board of Public Utilities.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Public Service Electric and Gas Company

[Docket No. ER97–4523–000]

Take notice that on September 8, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Cleveland Electric Illuminating Company ("CEI") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 11, 1997.

Copies of the filing have been served upon CEI and the New Jersey Board of Public Utilities.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Public Service Electric and Gas Company

[Docket No. ER97–4524–000]

Take notice that on September 8, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to The Toledo Edison Company ("TEC") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 11, 1997.

Copies of the filing have been served upon TEC and the New Jersey Board of Public Utilities.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Public Service Electric and Gas Company

[Docket No. ER97–4525–000]

Take notice that on September 8, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Atlantic Electric Company ("AE") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 11, 1997.

Copies of the filing have been served upon AE and the New Jersey Board of Public Utilities.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Public Service Company of Colorado

[Docket No. ER97–4547–000]

Take notice that on September 8, 1997, Public Service Company of Colorado ("PSColorado") submitted a Rate Schedule for Sale, Assignment, or Transfer of Transmission Rights ("Rate Schedule"). The Rate Schedule will allow PSColorado to resell transmission rights in accordance with Order Nos. 888 and 888–A.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26222 Filed 10–2–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–84–000, et al.]

Williams Generation Company-Hazelton, et al.; Electric Rate and Corporate Regulation Filings

September 25, 1997.

Take notice that the following filings have been made with the Commission:

1. Williams Generation Company—Hazelton

[Docket No. EG97–84–000]

On September 16, 1997, Williams Generation Company—Hazelton (WGCH), One Williams Center, Suite 4100, Tulsa, Oklahoma 74172 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

WGCH is a wholly owned subsidiary of Williams Production Company and initially will own a combustion turbine generating plant with a capacity of approximately 75 MW located in Hazelton, Pennsylvania.

Comment date: October 10, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Western Resources, Inc.

[Docket No. ER97–4486–000]

Take notice that on September 3, 1997, Western Resources, Inc., tendered for filing a firm transmission agreement between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective August 29, 1997.

Copies of the filing were served upon Western Resources Generation Services and the Kansas Corporation Commission.

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company

[Docket No. ER97–4487–000]

Take notice that on September 3, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Market Response Energy, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1997.

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc.

[Docket No. ER97–4488–000]

Take notice that on September 3, 1997, Orange and Rockland Utilities, Inc.(Orange and Rockland), filed a Service Agreement between Orange and Rockland and Midcon Power Services Corp., (Customer). This Service Agreement specifies that Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of September 11, 1997, for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER97–4489–000]

Take notice that on September 3, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated August 1, 1997 between Cinergy, CG&E, PSI and Market Responsive Energy, Inc. (MREI).

The Interchange Agreement provides for the following service between Cinergy and MREI:

1. Exhibit A—Power Sales by MREI
2. Exhibit B—Power Sales by Cinergy

Cinergy and MREI have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Market Responsive Energy, Inc., the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER97–4490–000]

Take notice that on September 3, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated July 1, 1997 between Cinergy, CG&E, PSI and Delhi Energy Services, Inc. (DESI).

The Interchange Agreement provides for the following service between Cinergy and DESI:

1. Exhibit A—Power Sales by DESI
2. Exhibit B—Power Sales by Cinergy

Cinergy and DESI have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Delhi Energy Services, Inc., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Public Service Company

[Docket No. ER97–4491–000]

Take notice that on September 3, 1997, Central Illinois Public Service Company (CIPS) submitted an executed non-firm point-to-point service agreement, dated August 26, 1997, establishing AYP Energy, Inc., as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of August 26, 1997, for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on AYP Energy, Inc., and the Illinois Commerce Commission.

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. PG&E Power Services Company

[Docket No. ER97–4492–000]

Take notice that on September 2, 1997, PG&E Power Services Company (PG&E) filed a Notice of Succession with the Federal Energy Regulatory Commission indicating that the name of Valero Power Services Company, an indirect wholly-owned subsidiary of PG&E Corporation, has been changed to PG&E Power Services Company effective September 1, 1997. In accordance with 35.16 and 131.51 of the Commission's Regulations, 18 CFR 35.16, 131.51, PG&E adopted and

ratified all applicable rate schedules filed with the FERC by Valero Power Services Company.

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER97–4493–000]

Take notice that on September 4, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which Market Responsive Energy, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 26, 1997.

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER97–4495–000]

Take notice that on September 4, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Termination of firm transmission service under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to Sierra Pacific Power Company, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Corporation

[Docket No. ER97–4496–000]

Take notice that on September 4, 1997, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Market Rate Service Agreement between Duke and Municipal Electric Authority of Georgia, dated as of January 25, 1997 (the MRSA). The parties commenced transactions under the MRSA on August 7, 1997. Duke requests that the MRSA be made effective as of August 7, 1997.

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. American Electric Power Corporation

[Docket No. ER97–4497–000]

Take notice that on September 4, 1997, the American Electric Power Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the service agreements to be made effective for service billed on and after September 5, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER97–4498–000]

Take notice that on September 2, 1997, Virginia Electric and Power Company tendered for filing a form of service agreement providing for its use of its transmission system in connection with bundled requirements service to its wholesale customers.

Comment date: October 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26221 Filed 10–2–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Outreach Meeting

September 29, 1997.

The Office of Hydropower Licensing will hold a public Outreach Meeting in Sacramento, California, on Thursday, October 23, 1997. The Outreach Meeting is scheduled to start at 9:00 am and finish at 5:00 pm.

The purpose of the outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties with the Commission's hydropower licensing program. The topics for the Outreach Meeting are pre-licensing, licensing, and post-licensing procedures for hydroelectric projects in California whose licenses expire between calender years 2000 and 2010.

Staff from the Commission's Office of Hydropower Licensing will preside over the meetings.

The location of the Outreach Meeting is: U.S. Fish & Wildlife Service, Sacramento Field Office, Conference Room A&B, 3310 El Camino Ave, Sacramento, CA 95821, (916) 979–2117.

The U.S. Fish & Wildlife Service office is located approximately 8 miles northeast of downtown Sacramento; off—U.S. Business—80 at El Camino Ave.

If you plan to attend, notify John Blair, Western Outreach Coordinator, fax: 202–219–2152; telephone: 202–219–2845).

Lois D. Cashell,

Secretary.

[FR Doc. 97–26223 Filed 10–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Outreach Meeting

September 29, 1997.

The Office of Hydropower Licensing will hold a public Outreach Meeting in Bakersfield, California, on Tuesday, October 21, 1997. The Outreach Meeting is scheduled to start at 9:00 am and finish at 5:00 pm.

The purpose of the outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties with the Commission's hydropower licensing program. The topics for the Outreach Meeting are pre-licensing, licensing, and post-licensing procedures for hydroelectric projects in California whose licenses expire between calender years 2000 and 2010.

Staff from the Commission's Office of Hydropower Licensing will preside over the meetings.

The location of the Outreach Meeting is: Double Tree Hotel, Kern River Room, 3100 Camino Del Rio Court, Bakersfield, CA 93308; (805) 323–7111.

The Double Tree Hotel is located approximately one mile northwest of downtown Bakersfield at the junction of Highway—99 at Highway—58 (Rosedale Hwy.)

If you plan to attend, notify John Blair, Western Outreach Coordinator, fax: 202–219–2152; telephone: 202–219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26224 Filed 10–2–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00221; FRL–5739–2]

Asbestos-Containing Materials in School Rule and Model Accreditation Plan (MAP) Rule; Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection described below. The ICR is a continuing ICR entitled "Asbestos-Containing Materials in School Rule and Model Accreditation Plan (MAP) Rule," EPA ICR No. 1365.05, OMB No. 2070–0091, which relates to reporting requirements at 40 CFR part 763, Subpart E. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

DATES: Written comments must be submitted on or before December 2, 1997.

ADDRESSES: Submit three copies of all written comments to: TSCA Document Receipts (7407), Rm. NE–G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–7099. All comments should be identified by administrative record number 185. This ICR is available for public review at, and copies may be requested from, the docket address and phone number listed above.

Comments and data may also be submitted electronically by following instructions under Unit III. of this document. No TSCA confidential business information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404, TDD: 202–554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of the ICR are available from the EPA home page at the Environmental Sub-Set entry for this document under "Regulations" (http://www.epa.gov/fedrgstr/).

Fax on Demand

Using a faxphone call 202–401–0527 and select item 4055 for a copy of the ICR.

I. Background

Entities potentially affected by this action are local education agencies (LEAs) and states with reporting and/or recordkeeping responsibilities under the Asbestos-Containing Materials in Schools Rule, and training providers and states with reporting and/or recordkeeping responsibilities under the Model Accreditation Plan Rule. For the collection of information addressed in this notice, EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

II. Information Collections

EPA is seeking comments on the following Information Collection Request.

Title: Asbestos-Containing Materials in School Rule and Model Accreditation Plan (MAP) Rule, EPA ICR No. 1365.05, OMB No. 2070–0091. Expires March 31, 1998.

Abstract: The Asbestos Hazard Emergency Response Act (AHERA) requires LEAs to conduct inspections, develop management plans, and design or conduct response actions with respect to the presence of asbestos-containing materials in school buildings. AHERA also requires states to develop model accreditation plans for persons who perform asbestos inspections, develop management control plans, and design or conduct response actions. This information collection addresses the burden associated with recordkeeping requirements imposed on LEAs by the asbestos in schools rule, and reporting and recordkeeping requirements imposed on states and training providers related to the model accreditation plan rule. Responses to the collection of information are mandatory (see 40 CFR part 763, Subpart E).

Burden Statement: The burden to respondents for complying with this ICR is estimated to total 2,367,293 hours per year with an annual cost of $57,149,211. These totals are based on an average burden ranging between 6 and 140 hours per response, depending upon the category of respondent, for an estimated 107,551 respondents making one or more responses annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

III. Public Record

A record has been established for this action under docket number "OPPTS–00221" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

List of Subjects

Environmental protection and Information collection requests.

Dated: September 24, 1997.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–26324 Filed 10–2–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5903–1]

Review and Evaluation of EPA Standards Regarding Children's Health Protection from Environmental Risks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: As part of its ongoing commitment to protect children from environmental health risks, EPA will select five existing human health and environmental protection standards for review and evaluation to determine if they sufficiently protect children's health. EPA is seeking recommendations and comment concerning standards it should select for review, including detailed explanations and reference to any studies that support that recommendations. EPA does not intend to review recently promulgated standards as part of this effort. The standards EPA ultimately will select for review and evaluation will be those that could potentially have a major impact on children's health as a result of reevaluation and vision. These standards would generally be those where children's health was not considered in the original development of the standard; or, where children's health was considered but new data suggest the standard does not adequately protect children; and where, if changes were made in the standard, children's health protection would be strengthened.

DATES: Comments must be in writing and received by December 2, 1997.

ADDRESSES: Written comments should be submitted to Paula R. Goode, Office of Children's Health Protection, USEPA (MS 1102), 401 M Street, SW, Washington, DC 20460, goode.paula@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Paula R. Goode, (202) 260–7778.

SUPPLEMENTARY INFORMATION: Children in America today inhabit a world that is very different from that of two generations past. The traditional infectious diseases have largely been eradicated. Infant mortality is greatly reduced. The expected life span of a baby born now in the United States is more than two decades longer than that of a child born at the beginning of the twentieth century. However, children today face hazards in the environment that were neither known nor suspected only a few decades ago. At least 75,000 new synthetic chemical compounds have been developed and introduced into commerce; fewer than half of these compounds have been tested for their potential toxicity to humans, and fewer still have been assessed for their specific toxicity to children.

Children's exposures to lead, pesticides, PCBs, and toxic air pollutants are widespread. Compared to adults, children are particularly vulnerable and at increased risk from many environmental threats in four ways (1) Children's organ systems are still developing—including rapid changes in growth and development immature body organs and tissues, and weaker immune systems—which makes them more susceptible to environmental hazards; (2) pound-for-pound, children breathe more air, drink more water and eat more food than adults; (3) children's exposures to toxins are further enhanced by their play close to the ground and their normal hand-to-mouth activity; and (4) children have more future years of life than adults and are more susceptible to chronic, multi-stage diseases such as cancer or neurodegenerative disease that may be triggered by early exposures. Environmental health hazards that threaten children range from air pollution that triggers asthma attacks and lead-based paint in older housing, to treatment-resistant microbes in drinking water and persistent industrial chemicals that may cause cancer to induce reproductive or developmental changes.

EPA Administrator Carol Browner set forth a National Agenda to Protect Children's Health From Environmental Threats in EPA's publication, Environmental Health Treats to Children, September, 1996, to ensure that children receive the protection they need and deserve, and help fulfill our nation's obligation to protect future generations. This agenda includes a commitment to "ensure that all standards EPA sets are protective of the potentially heightened risks faced by children, and that the most significant existing standards be reevaluated."

As stated in the Summary section of this notice, EPA will select and then review and evaluate five human health and environmental protection standards that establish discrete regulatory levels. The standards most suitable for this effort are those that if revised as a result of the review and evaluation, would strengthen and increase children's environmental health protection. The term "standard" for purposes of this notice means national standards established by EPA that identify discrete regulatory levels related to human health and environmental protection. Examples of such standards include pesticide tolerances that establish allowable levels of pesticide residues in food under the Federal Food, Drug, and Cosmetic Act, Maximum Contaminant Levels that establish allowable levels of contaminants in drinking water under the Safe Drinking Water Act; and, health-based regulations that establish acceptable levels for air pollutants under the Clean Air Act. EPA will consider comments and recommendations on such standards in all the environmental media (air, water, soil, etc.). The term "standard" as used in this Notice does not include standards establishing analytical methods, technology-based standards, or site specific actions (such as facility permits under the National Pollution Discharge Elimination System, or Records of Decision for cleanup of Superfund sites).

In selecting the five standards for review and reevaluation EPA will consider a variety of factors including any new information since the standards were originally promulgated, as follows:

- New scientific information or new data regarding adverse health effects on children;
- New understanding of routes of exposure to children;
- Whether the regulated substance/pollutant is persistent and bioaccumulative;
- New methodologies of evaluating human health risks;
- New epidemiology studies;
- New toxicity studies; and
- New environmental monitoring studies.

As part of this effort, EPA will convene a balanced, broad-based external Advisory Committee, chartered under the Federal Advisory Committee Act, Public Law 92–463, to give advice to the Administrator on various issues of children's environmental health protection. Notice of the establishment of this Children's Health Protection Advisory Committee (CHPAC) was published on September 9, 1997 (62 FR 47494). CHPAC will consider recommendations received by EPA as a result of this notice and other information. Comments and other information received as a result on this notice will be placed in a docket that will be established for CHPAC. EPA will ask the Committee to recommend five standards that EPA should reevaluate with respect to children's health protection. CHPAC meetings will be announced in the **Federal Register** and open to the public. The Administrator will consider the Committee's recommendations and the recommendations and comments received in response to this Notice. EPA intends to announce the five selected standards in a **Federal Register** notice in early Summer of 1998.

This EPA effort will help fulfill President Clinton's Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, signed on April 21, 1997. This Order, in part, directs each Federal agency to set as a high priority the identification and assessment of environmental health risks and safety risks that may disproportionately affect children; and ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

Dated: September 26, 1997.

E. Ramona Trovato,

Director, Office of Children's Health Protection.

[FR Doc. 97–26320 Filed 10–2–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5902–8]

Consent Decree: Phoenix Federal Implementation Plan for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with Section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed consent decree in litigation instituted against the Environmental Protection Agency ("EPA") regarding implementation of the contingency measure provisions of the Carbon Monoxide (CO) Federal Implementation Plan (FIP) for Phoenix, Arizona.

EPA originally promulgated CO FIP contingency measures for Phoenix in 1991 pursuant to a court order in *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990). 56 FR 5458 (Feb. 11, 1991). In 1996 EPA approved CO contingency measures submitted by the State of Arizona, and withdrew the previously promulgated FIP contingency measures for Phoenix. 61 FR 51599 (Oct. 3, 1996). This action was challenged by the Arizona Center for Law in the Pubic Interest (ACLPI), and was recently overturned by the Ninth Circuit Court of Appeals. *DiSimone* v. *Browner*, 1997 U.S. App. LEXIS 19796 (July 31, 1997).

Subsequently, ACLPI filed an action in District Court to compel implementation of the FIP contingency provisions. *DiSimone* v. *Browner*, No. CIV 97–1987 PHXRGS, D. Ariz. In order to resolve this matter without protracted litigation, ACLPI and EPA have reached agreement on a proposed consent decree which has been signed by the parties and lodged with the court on Sept. 25, 1997. The consent decree provides that, unless EPA previously approves a state submitted attainment demonstration for CO for Phoenix, EPA will sign an initial notice of proposed rulemaking pursuant to the FIP contingency provisions by no later than Nov. 26, 1998, and will complete the remainder of the requirements of the FIP contingency provisions according to the timeframes specified in those procedures.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree. EPA or the Department of Justice may withhold or withdraw consent to the proposed consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the proposed consent decree are available from Sara Schneeberg, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 260–5145. Written comments should be sent to Sara Schneeberg at the above address and must be submitted on or before November 3, 1997.

Dated: September 26, 1997.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 97–26318 Filed 10–2–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5484–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed September 22, 1997 Through September 26, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970372, DRAFT EIS, FRC, MT, Missouri-Madison Hydroelectric (FERC No. 2188) Project, Issuing a New licence (Relicense) for Nine Dams and Associated Facilities, MT, Due: December 2, 1997, Contact: John McEachern (202) 219–3056.

EIS No. 970373, FINAL EIS, AFS, UT, Western Uinta Basin Oil and Gas Leasing, Implementation, Federal Oil and Gas Estate on Land Administrated by the Uinta and Ashley National Forests in the western portion of the Uinta Basin, Wasatch and Duchesne Counties, UT, Due: November 3, 1997, Contact: Laura Jo West (801) 781–5167.

EIS No. 970374, DRAFT EIS, COE, CA, San Francisco Bay to Stockton Phase III (John F. Baldwin) Navigation Channel Project, Construction and Operation, For Deliver of Petroleum to Refineries, Storage Terminals and

Other Facilities, COE Section 10 and 404 Permits, U.S. Coast Guard Permit, Contra Costa County, CA, Due: November 17, 1997, Contact: Craig Vassel (415) 977–8546.

EIS No. 970375, FINAL EIS, IBR, AZ, Programmatic EIS—Pima-Maricopa Irrigation Project, Construction and Operation, Maricopa and Pinal Counties, AZ, Due: November 3, 1997, Contact: Bruce D. Ellis (602) 395–5685.

EIS No. 970376, FINAL EIS, NAS, CA, WA, UT, X–33 Advanced Technology Demonstrator Vehicle Program, Final Design, Construction and Testing, Implementation, Approvals and Permits Issuance, CA, UT and WA, Due: November 3, 1997, Contact: Kenneth M. Kumor (202) 358–1112.

EIS No. 970377, FINAL EIS, AFS, MT, Lewis and Clark National Forest Plan, Implementation, Oil and Gas Leasing Analysis, Upper Missouri River Basin, several counties, MT, Due: November 3, 1997, Contact: Robin Strathy (406) 791–7726.

Dated: September 30, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–26329 Filed 10–2–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5484–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 1, 1997 Through September 5, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

DRAFT EISs

ERP No. D–AFS–J61098–MT Rating EC2, Lost Trail Ski Area Expansion Project, Implementation, New Master Development Plan, Bitterroot National Forest, Sula Ranger District, Ravalli County, MT.

Summary: EPA expressed environmental concerns about potential increased wastewater pollutant loadings to area ground water, and lack of analysis and disclosure of potential indirect effects of induced development. Additional information is needed to fully assess and mitigate all potential environmental impacts of the management actions.

ERP No. D–MMS–L02026–AK Rating LO, Beaufort Sea Planning Area Outer Continental Shelf Oil and Gas Lease Sale 170 (1997) Lease Offering, Offshore Marine, Beaufort Sea Coastal Plain, North Slope Borough of Alaska.

Summary: EPA does not foresee having any environmental objections to the proposed project.

Final EISs

ERP No. F–BLM–J60018–UT Price Coalbed Methane Gas Resources Project, Construction, Federal and Non-Federal Lands, Permit-to-Drill Application, Right-of-Way Grants and COE Section 404 Permits, Carbon and Emery Counties, UT.

Summary: The Final EIS addresses most of EPA's air quality concerns on the proposed project and EPA still recommend a cumulative effects analysis in the Price area.

ERP No. F–BLM–J60019–WY Cave Gulch-Bullfrog-Waltman Natural Gas Development Project, Implementation, Platte River Resource Area, Natrona County, WY.

Summary: While the Final EIS addresses most concerns expressed in our comment letter on the draft EIS. EPA still maintains environmental concerns about the protectiveness of the proposed plans for ground water and surface water.

ERP No. F–DOE–L36109–00 Watershed Management Program Standards and Guidelines, Implementation, ID, NV, MT, OR, WA and WY.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–UAF–G11031–TX Programmatic EIS—Kelly Air Force Base (AFB), Disposal and Reuse, Implementation, San Antonio County, TX.

Summary: EPA has reviewed the lead agency's responses to EPA comments offered on the draft statement. EPA finds the FEIS has reasonably addressed our concerns and therefore we have no further comments.

ERP No. F–UAF–K11080–CA Programmatic EIS—McClellan Air Force Base (AFB) Disposal and Reuse Including Rezoning of the Main Base, Implementation, Federal Permits, Licenses or Entitlements, Sacramento County, CA.

Summary: EPA was generally satisfied with the additional information provided, but continues to express concerns about groundwater overdraft.

ERP No. F–UMC–K11067–00 Yuma Training Range Complex Management, Operation and Development, Marine Corps Air Station Yuma, Goldwater Range, Yuma and La Paz Cos., AZ and Chocolate Mountain Range, Imperial and Riverside Counties, CA.

Summary: EPA commented that the Final EIS addresses the concerns that were expressed in the Draft EIS.

ERP No. F–UMC–K24018–CA Sewage Effluent Compliance Project, Implementation, Lower Santa Margarita Basin, Marine Corps Base Camp Pendleton, San Diego County, CA.

Summary: EPA commented that while additional alternatives were not developed or advanced in the Final EIS, the additional information regarding Clean Water Act Section 404 requirements that EPA requested was provided.

ERP No. F–USA–K11073–AZ Western Army National Guard Aviation Training Site Expansion Project, Designation of an Expanded Tactical Flight Training Area (TFTA), Development or Use of a Helicopter Gunnery Range and Construction and Operation of various Facilities on the Silver Bell Army Heliport (SBAH), Maricopa, Pima and Pinal Counties, AZ.

Summary: EPA commented regarding analysis of water, noise, biological resources and NEPA issues that the Army has addressed our concerns.

ERP No. FR–USA–G11029–AR Disposal of Chemical Agents and Munitions Stored at Pine Bluff Arsenal, Site-Specific Impacts Associated with On-Site Disposal, Construction and Operation and Approval of Permits, Jefferson County, AR.

Summary: EPA had no objection to the selection of the preferred alternative described in the Revised Final EIS.

Other: ERP No. LD–AFS–J65268–CO Rating EO2, North Fork of the South Platte and the South Platte Rivers, Wild and Scenic River Study, To Determine their Suitability for Inclusion into the National Wild and Scenic Rivers System, Pike and San Isabel National Forests, Comache and Cimarron National Grasslands, Douglas, Jefferson, Park and Teller Counties, CO.

Summary: EPA expressed environmental objections with the first agency preferred alternative (local community protection) because the DLEIS did not include how this would be accomplished or what the impacts would be. EPA expressed environmental concerns with the second agency preferred alternative (congressional

recommendation) because it did not recommend equal protection to the Outstandingly Remarkable Values of several river segments within the study area and did not fully consider the broader implications of designation on other, nearby wilderness and roadless areas.

Dated: September 30, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–26350 Filed 10–2–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00226; FRL–5749–6]

Forum on State and Tribal Toxics Action (FOSTTA) Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Three projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public at the time and place listed below in this notice. The Lead Project will not be meeting this session. The public is encouraged to attend the proceedings as observers. However, in the interest of time and efficiency, the meeting is structured to provide maximum opportunity for state, tribal, and EPA invited participants to discuss items on the predetermined agenda. At the discretion of the chair of the project, an effort will be made to accommodate participation by observers attending the proceedings.

DATES: The three projects will meet October 20, 1997, from 8 a.m. to 5 p.m., with a plenary session on Cutting Edge Initiatives in Pollution Prevention from 8 a.m. to 9:30 a.m., and on October 21, 1997, from 8 a.m. to noon.

ADDRESSES: The meetings will be held at The Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Darlene Harrod, Designated Federal Official (DFO), Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–6904, e-mail: harrod.darlene@epamail.epa.gov. Any observer wishing to speak should advise the DFO at the telephone number or e-mail address listed above no later than 4 p.m. on October 16, 1997.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states/tribes and between the states/tribes and EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and Office of Enforcement and Compliance Assurance (OECA). FOSTTA currently consists of the Coordinating Committee and four issue-specific projects. The projects are the: (1) Toxics Release Inventory Project; Pollution Prevention Project; (3) Chemical Management Project; and (4) Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: September 27, 1997.

Susan B. Hazen,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–26323 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5902–5]

Proposed Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended, 42 U.S.C. 9622(h)(1)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative settlement and opportunity for comment.

SUMMARY: The EPA is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to recover all past response costs incurred by EPA at the Spruce Street Site in Anchorage, Alaska.

DATES: Comments must be provided on or before November 3, 1997.

ADDRESSES: Comments should be addressed to Docket Clerk, U.S. Environmental Protection Agency, Region 10, ORC–158, 1200 Sixth Avenue, Seattle, Washington, 98101, and should refer to the Spruce Street Site, Anchorage, Alaska, U.S. EPA Docket No. 10–96–0090–CERCLA.

FOR FURTHER INFORMATION CONTACT: Edward J. Kowalski, U.S. Environmental Protection Agency, Office of Regional Counsel, ORC–158, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–6695; Gina Belt, U.S. Department of Justice, Environmental & Natural Resources Division, 801 B Street, #504, Anchorage, Alaska, 99501–3657, (907) 271–3456.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement, Agreement for Payment of Response Costs (Agreement), concerning the Spruce Street Site (Site) located in Anchorage, Alaska. Pursuant to section 104 of CERCLA, 42 U.S.C. 9604, EPA undertook response actions at the Site, which was an inactive salvage yard of about two acres. The Agreement resolves EPA's claims regarding liability under section 107(a) of CERCLA, 42 U.S.C. 9607(a), for response costs incurred by EPA in connection with the Site. Subject to review by the public pursuant to this Notice, the Agreement has been approved by the United States Department of Justice. The following are the parties who have executed the proposed Agreement: the Municipality of Anchorage, The State of Alaska, the Defense Logistics Agency, the Federal Aviation Administration; the United States Air Force, and the United States Army. EPA is entering into this Agreement under the authority of section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1).

EPA initiated a time critical removal action at the Site in October 1991 to stabilize the wastes located on-site. Hazardous wastes on-site included paints, electrical equipment containing PCBs, soils contaminated with heavy metals, soils contaminated with PCBs, chemicals, acids, and caustics. Due to inclement weather, removal activities by EPA were suspended and resumed in June 1992, when EPA sorted on-site debris and prepared hazardous materials for removal. In January 1993, hazardous materials including paints, electrical equipment containing PCBs, some contaminated soils and oils were transported off-site. Two nearby residences were supplied with bottled water because of elevated levels of arsenic in their wells. These two residences have since been hooked up to the city water supply. To restrict access to the Site, the Alaska Department of Environmental Conservation erected a fence around the Site and posted hazardous substance warning signs. In performing these response actions, EPA and the State of Alaska incurred response costs at the Site. The Agreement requires, *inter alia*, that the Municipality of Anchorage

reimburse EPA's response costs in the amount of $302,276.63 plus interest from October 6, 1994, through December 31, 1996. The federal agencies are required under the Agreement to reimburse EPA's response costs in the amount of $2,022,928.23 plus interest from October 6, 1994, through December 31, 1996. Under the Agreement, EPA will be reimbursed for all of its past response costs at the Site. The Agreement provides to the Municipality of Anchorage and the federal agencies the contribution protection afforded by sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4). The Agreement contains a reopener section that permits the United States, in certain situations, to institute additional proceedings to require that these defendants perform further response actions or to reimburse the United States for additional costs of response.

EPA will receive written comments relating to this proposed Agreement for a period of thirty (30) days from the date of this publication.

The proposed Agreement may be obtained in person or by mail from EPA's Region 10 Office of Regional Counsel, ORC–158, 1200 Sixth Avenue, Seattle, Washington, 98101; the U. S. Department of Justice, Environmental & Natural Resources Division, 801 B Street, #504, Anchorage, Alaska, 99501–3657. The Administrative Record for the Spruce Street Site may be examined at EPA's Region 10, Hazardous Waste Division Records Center, 1200 Sixth Avenue, Washington, 98101, and at the Alaska Resources Library, U.S. Bureau of Land Management, 222 West Seventh, #36, Anchorage, Alaska.

Philip Millam,

Acting Regional Administrator.

[FR Doc. 97–26319 Filed 10–2–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44643; FRL–5747–3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on Tertiary Amyl Methyl Ether (TAME) (CAS No. 994–05–8). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for tertiary amyl methyl ether were submitted by The American Petroleum Institute pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and were received by EPA on September 3, 1997. The submission includes four final reports entitled (1) "Tertiary Amyl Methyl Ether (TAME): Pilot Study (95063) for Metabolism, Distribution, and Pharmacokinetics in Male F-344 Rats After a Single Nose-Only Inhalation Exposure," (2) "Blood Pharmacokinetics of Tertiary Amy Methyl Ether in Male and Female F-344 Rats and CD-1 Mice After Nose-Only Inhalation Exposure," (3) "Tertiary Amyl Methyl Ether (TAME): Metabolism and Distribution in Male and Female F-344 Rats and CD-1 Mice After Single or Repeated Inhalation or Gavage Exposures," and (4) "A 13-Week Inhalation Toxicity/Neurotoxicity Study of Tert-Amyl Methyl Ether (TAME) in the Rat and Mouse via Whole-Body Exposures with a 4-Week Recovery Period." This chemical is widely seen as a possible additive in gasoline. EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44643). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e-mail: oppt.ncic@epamail.epa.gov.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: September 24, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–26325 Filed 10–2–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

September 26, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning; whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility, the accuracy of the Commission's burden estimate, ways to enhance the quality, utility, and clarity of the information collected and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 2, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

OMB Approval No.: 3060–0110.

Title: Application for Renewal of License for AM, FM, TV Translator or LPTV Station (FCC Form 303–S).

Form No.: FCC 303–S.

Type of Review: Revision.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 5,492.

Estimated Hours Per Response: 2.67–11.25 hours (0.67–1.25 hours respondent; 0–10 hours for an attorney).

Frequency of Response: Upon license expiration.

Cost to Respondents: $3,054,891.

Estimated Total Annual Burden: 9,190 hours.

Needs and Uses: FCC Form 303–S is used in applying for renewal of license for a commercial or noncommercial AM, FM to TV broadcast station and FM translator, TV translator, or Low Power TV broadcast stations. It can also be used in seeking the joint renewal of licenses for an FM of TV translator station and its co-owned primary FM, TV, or LPTV station.

This collection also includes the third party disclosure requirement of § 73.3580. This section requires local public notice of the filing of the renewal application. For AM, FM, TV stations, these announcements are made on-the-air. For FM/TV Translators and AM/FM/TV stations that are silent, the local public notice is accomplished through publication in a newspaper of general circulation in the community or area being served.

On September 1, 1997, the Commission's revised children's television programming reporting requirements adopted on 8/8/96 in MM Docket No. 93–48 (Policies and Rules Concerning Children's Television Programming) became effective. Each commercial television licensee is required to describe in its renewal application its efforts to provide children's educational and informational programming, including the newly defined core programming (§ 73.671(c)). The Commission has developed a supplement to the FCC Form 303–S to capture the required information. Until such time as the form has been revised, commercial television broadcast licensees, whose license renewal applications are filed after September 1, 1997, must file this supplement with the FCC 303–S. This supplement will take approximately 4 hours 15 minutes to complete.

In 1996, the Commission adopted new guidelines and procedures for evaluating environmental effects of radio frequency emissions. All applications filed on or after October 15, 1997, must demonstrate compliance with the new requirements. The Commission eliminated the use of the health and safety guidelines issued by the American National Standards Institute regarding RF emissions. The Commission adopted the new RF exposure requirements set forth in 47 CFR 1.1307(b). There is no change in burden associated with this change.

The data is used by FCC staff to assure that the necessary reports connected with the renewal application have been filed and that licensee continues to meet basic statutory requirements to remain a licensee of a broadcast station. The local public notice informs the public that the station has filed for license renewal.

OMB Approval No.: 3060–0348.

Title: Section 76.79 Records available for public inspection.

Form No.: None.

Type of Review: Extension.

Respondents: Business or other for-profit.

Number of Respondents: 2,150.

Estimated Hours Per Response: 2 hours.

Frequency of Response: Recordkeeping requirement.

Cost to Respondents: None.

Estimated Total Annual Burden: 4,300 hours.

Needs and Uses: Section 76.79 requires that every cable employment unit and multichannel video program distributor (MVPD) maintain, for public inspection, a file containing copies of all annual employment reports and related documents. The data is used by the general public to assess a cable unit's/MVPD's EEO program.

OMB Approval No.: 3060–0349.

Title: Section 76.73/76.75 - Cable TV EEO Policy and Programs.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or other for-profit.

Number of Respondents: 5,600.

Estimated Hours Per Response: 2,125 cable employment units/MVPD with 6 or more employees will have an average burden of 52 hours/year; 3,475 cable employment units/MVPD with fewer than 6 employees will have an average burden of 8 hours/year.

Frequency of Response: Recordkeeping requirement.

Cost to Respondents: None.

Estimated Total Annual Burden: 138,300 hours.

Needs and Uses: Section 76.73 provides that equal opportunity in employment shall be afforded by all cable entities and multichannel video program distributors (MVPD) to all qualified persons and no person shall be discriminated against in employment by such entities because of race, color, religion, national origin, age or sex.

Sections 76.73/76.75 require that each cable employment unit/MVPD shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a cable entity's policy and practice.

The data is used by cable entities/MVPD in the preparation of the Cable Television/MVPD Annual Employment Report (FCC Form 395-A/395–M). The data is also used by FCC staff, in field investigations involving equal employment opportunity. If this program was not maintained there could be no assurance that efforts are being made to afford equal opportunity in employment.

OMB Approval No.: 3060–0635.

Title: Amateur Vanity Call Sign Request.

Form No.: FCC 610V.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals.

Number of Respondents: 80,000.

Estimated Hours Per Response: .33 (20 minutes).

Frequency of Response: On occasion.

Cost to Respondents: N/A.

Estimated Total Annual Burden: 26,400.

Needs and Uses: FCC Rules require that applicants file FCC Form 610V to apply for a vanity (special) call sign, in lieu of a systematically issued call sign. This for is required by Section 9(g) of the Communications Act.

Commission personnel use the data to determine eligibility for radio station authorization and to issue a radio station/operator license. Data is also used by Compliance personnel in conjunction with Field Engineers for enforcement and interference resolution purposes.

This form is being revised to eliminate the need for attaching a photocopy of the applicant's current operator/primary station license document and to add spaces for applicant to provide Taxpayer Identification Number and an Internet or E-mail address.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–26246 Filed 10–2–97; 8:45 am]
BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 97–2074]

Renewal of North American Numbering Council Charter Through October 4, 1999; GSA Approval

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On September 25, 1997, the Commission released a public notice announcing the General Services Administration (GSA) approval for the renewal of the North American Numbering Council (NANC) charter through October 4, 1999. The intended effect of this action is to make the public aware of the NANC's amended charter and its renewal.

FOR FURTHER INFORMATION CONTACT: Marian Gordon, Designated Federal Official at (202) 418–2320 or via the Internet at mgordon@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20054. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: The North American Numbering Council (Council) charter has been renewed, through October 4, 1999, by the General Services Administration (GSA) to allow it to continue advising the Federal Communications Commission on evolving and competitively significant numbering issues facing the telecommunications industry. The Council's original charter was filed with Congress on October 5, 1995, and is scheduled to expire on October 4, 1997. See Attachments A and B for the NANC amended charter and current membership list.

Since its first meeting held on October 1, 1996, the Council has provided the Commission with critically important recommendations regarding numbering administration. On May 1, 1997, the Council issued recommendations regarding the implementation of telephone number portability. Specifically, the Council issued recommendations in the following areas: (1) What party or parties should be selected as Local Number Portability Administrators (LNPAs); (2) whether one or multiple LNPA(s) should be selected; (3) how the LNPA(s) should be selected; (4) specific duties of the LNPA(s); (5) geographic coverage of the regional databases; (6) technical standards, including interoperability standards, network interfaces standards, and technical specifications for regional databases; (7) the sharing of numbering information between the North American Numbering Plan Administrator and the LNPA(s); and (8) the future role of the Council with respect to local number portability issues. On May 15, 1997, the Council issued recommendations regarding neutral entities to serve as North American Numbering Plan Administrator (NANPA) and NANPA Billing and Collection Agent, and recommended a mechanism for recovering the costs of numbering administration in the United States.

The continuation of the Council and its future recommendations to the Commission will facilitate establishment of a new foundation for numbering administration in North America that will ensure that numbering resources are provided to all telecommunications service providers on an equitable basis consistent with the requirements of the Telecommunications Act of 1996.

Federal Communications Commission.
Geraldine A. Matise,
Chief, Network Services Division, Common Carrier Bureau.

Attachment A

Amended Charter for the North American Numbering Council

A. The Committee's Official Designation

The official designation of the advisory committee will be the "North American Numbering Council" (NANC or Council).

B. The Committee's Objectives and Scope of Its Activity

The purpose of the Council is to advise the Federal Communications Commission and to make recommendations, reached through industry consensus, that foster efficient and impartial number administration. The Council will continue to develop recommendations on numbering policy issues, initially resolve disputes, provide oversight guidance to the North American Numbering Plan (NANP) Administrator and the Local Number Portability Administrator(s) (LNPAs) to ensure fair and equitable access to numbering resources, and facilitate number conservation including identification of technical solutions to numbering exhaust. The Council will further provide recommendations to the Commission on toll free database administration.

In carrying out its responsibilities, the Council shall assure that NANP administration supports the following policy objectives: (1) That the NANP facilitates entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications service providers; (2) that the NANP does not unduly favor or disfavor any particular industry segment or group of consumers; (3) that the NANP does not unduly favor one technology over another; (4) that the NANP gives consumers easy access to the public switched telephone network; and (5) that the NANP ensures that the interests of all NANP member countries are addressed fairly and efficiently, fostering continued integration of the NANP across NANP member countries.

C. Period of Time Necessary for the Committee to Carry Out Its Purposes

The Commission will seek advice from the Council regarding whether the NANC, after two years, should again renew this charter to continue as a Federal Advisory Committee.

D. Agency or Official to Whom the Committee Reports

The Council will report to the Chief, Common Carrier Bureau, Federal Communications Commission.

E. Agency Responsible for Providing Necessary Support

The Federal Communications Commission will provide the necessary staff support for the Council. The Federal Communications Commission will provide facilities needed to conduct the meetings, if the Commission has meeting facilities available. Otherwise, private sector members will provide facilities. Private sector members of the Council will serve without any government compensation, and will not be entitled to travel expenses or per diem subsistence allowances.

F. Description of the Duties for Which the Committee is Responsible

The duties of the Council are to gather and discuss information necessary to develop recommendations to the FCC related to the attainment of the objectives listed under (B). The Council will also advise the Commission on the following, which are not exclusive to its portfolio of duties: a plan to transfer responsibility for administering central office codes to the NANP Administrator; a plan to promote conservation of numbering resources, including examination of ways to ensure efficient use of number resources, and a recommendation for the management of toll free database administration. The Council will also prepare for the Commission periodic and final reports to aid the Commission in its oversight responsibilities.

G. Estimated Annual Operating Costs in Dollars and Staff Years

Estimated staff years that will be expended by the Council are 3 for the Federal Communications Commission staff and 5 for private sector and other governmental representatives. The estimated annual cost to the FCC of operating the Committee is $200,000. The FCC will not pay for private sector staff.

H. Estimated Number and Frequency of Committee Meetings

We expect that there will be approximately 12 Council meetings per year.

I. Charter's Termination Date

This charter will terminate on October 4, 1999, prior to which the Commission may seek its renewal.

J. Date Original Charter Filed

October 5, 1995.

Attachment B

North American Numbering Council (NANC) Federal Advisory Committee

Designated Federal Official: Marian Gordon, Special Counsel, Network Services Division, Common Carrier Bureau, 2000 M Street, NW, Suite 235, Washington, DC 20554

Voting Members

Chairman, North American Numbering Council
Alan Hasselwander, Frontier, 4140 Clover Street, Honeoye Falls, NY 14472–9323
Association for Local Telecommunications Services (ALTS)
Heather Burnett Gold, President, 1200 19th Street, NW, Suite 560, Washington, DC 20036
American Petroleum Institute
Ross Stapleton-Gray, Ph.D., Manager, Technology Policy and Planning, 1220 L Street, NW, Washington, DC 20005
American Mobile Satellite Corporation (AMSC)
Lon Levin, Vice President & Regulatory Counsel, 10802 Parkridge Boulevard, Reston, VA 20191
AT&T Corporation
Ellwood R. Kerkeslager, Vice President, Technology Infrastructure, 295 North Maple Avenue, Basking Ridge, NJ 07920
AT&T Canada
David H. Whyte, Director, Industry Liaison, 200 Wellington Street, West, Toronto, Ontario M5V 3G2, Canada
Bell Atlantic
Daniel Hochvert, Executive Director, 1166 Avenue of Americas, Room 11003, New York, NY 10036
Cable & Wireless, Inc.
George Vinall, Vice President, Regulatory & Legislative Affairs, 8219 Leesburg Pike, Vienna, VA 22182
Cincinnati Bell Telephone Company
Dennis P. Hinkel, Vice President, Network Architecture Planning, 201 East 4th Street, Cincinnati, OH 45202
Cellular Telecommunications Industry Association (CTIA)
Dr. Brian Fontes, Senior Vice President, Policy & Administration, 1250 Connecticut Avenue, NW, Washington, DC 20036
Competitive Telecommunications Associations (CompTel)
Genevieve Morelli, Executive Vice President & General Counsel, 1900 M Street, NW, Suite 800, Washington, DC 20036
GTE Telephone Operations
Bernard J. Harris, Director, Industry Standards, 700 Hidden Ridge, Irving, TX 75015
MCI Telecommunciations Corporation
Peter P. Guggina, Director, Technical Standards Management, 2400 North Glenville Drive, Richardson, TX 75082
Mobility Canada
Gerry P. Thompson, Director, Technology Planning, 2920 Matheson Boulevard, East 7th Floor, Mississauga, Ontario L4W5J4, Canada
National Association of Regulatory Utility Commissioners (NARUC)
Honorable Commissioner, Julia Johnson, Florida Public Utility Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399
National Association of Regulatory Utility Commissioners (NARUC)
Honorable Commissioner, Vincent Majkowski, Colorado Public Utilities Commission, 1580 Logan Street, OL–2, Denver, CO 80203
National Cable Television Association (NCTA)
Paul Jones, Senior Vice President, Regulatory & Public Policy, Time Warner Communications, 300 First Stamford Place, Stamford, CT 06902
Nextel Communications, Inc.
Lawrence R. Krevor, Director, Government Affairs, 800 Connecticut Avenue, NW, Suite 1001, Washington, DC 20006
NORTEL, Northern Telecom Inc.
Ray Strassburger, Director, Government Relations & Telecommunciations Policy, 801 Pennsylvania Avenue, NW, Suite 700, Washington, DC 20004
Omnipoint Corporation
Anna D. Miller, Manager, Regulatory Affairs, 1365 Garden of the Gods Road, Colorado Springs, CO 80907
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Greg Rise, Director, Engineering, East Otter Tail Telephone Company, 160 Second Avenue, SW, Perhnam, MN 56573
Personal Communications Industry Association (PCIA)
Mark J. Golden, Senior Vice President, Industry Affairs, 500 Montgomery Street, Suite 700, Alexandria, VA 22314
SBC Communications, Inc.
Joe Walkoviak, Senior Vice President, One Bell Center, Suite 40–C–1, St. Louis, MO 63101
Sprint Corporation
Loren V. Sprouse, Vice President, Network Support, 2330 Shawnee Mission Parkway; Westwood, KS 66205
Sprint SpectrumPCS
Michael K. Robinson, Vice President, Network Planning & Operations, 4900 Main Street, Kansas City, MO 64112
Stentor Resource Centre, Inc.
Jacques R. Sarrazin, General Manager, Local Network Interconnection, Elgin Street, Room 450, Ottawa, Ontario K1G 3J4, Canada
Teleport Communications Group, Inc. (TCG)
Kenneth A. Shulman, Vice President, Network Planning & Operations, 429 Ridge Road, Dayton, NJ 08810
Telecommunications Industry Association (TIA)
Dan Bart, Vice President, Standards and Technology, 2500 Wilson Boulevard, Suite 300, Arlington, VA 22201
United States Telephone Association (USTA)
Paul Hart, Vice President, Technical Disciplines, 1401 H Street, NW, Suite 600, Washington, DC 20005–2164

Special Members (Non-Voting)

Alliance for Telecommunications Industry Solutions (ATIS)
Susan M. Miller, Vice President &

General Counsel, 1200 G Street, NW, Suite 500, Washington, DC 20005

North American Numbering Plan Administrator
c/o Bellcore, Ronald R. Conners, Director, 6 Corporate Place, Room 1F275, Piscataway, NJ 08854–4157

U.S. Department of State
Ambassador Vonya McCann, EB/CIP Room 4826, 2101 C Street, NW, Room 4826, Washington, DC 20520

U.S. Department of Commerce
National Telecommunications & Information Administration, Larry Irving, Assistant Secretary, Communications & Information, 14th & Pennsylvania Avenue, NW, Rm 4898, Washington, DC 20230

[FR Doc. 97–28252 Filed 10–2–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection to be submitted to OMB to review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of currently approved collection.

Title: Application For Consent To Reduce or Retire Capital.

Form Number: None.

OMB Number: 3064–0079.

Annual Burden:

Number of applications: 120.
Hours to prepare an application: 1.
Total annual burden hours: 120.

Expiration Date of OMB Clearance: October 31, 1997.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–4080, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before November 3, 1997, to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: This collection requires insured state nonmember banks that propose to change their capital structure to submit an application containing information about the proposed change in order to obtain FDIC's consent to reduce or retire capital. The FDIC evaluates the information contained in the letter application in relation to statutory considerations and makes a decision to grant or to withhold consent.

Dated: September 30, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–26238 Filed 10–2–97; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice and request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively referred to as the agencies), under the auspices of the Federal Financial Institutions Examination Council (FFIEC), request comment on a Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities (1997 Statement) to provide guidance on sound practices for managing the risks of investment activities. The agencies also are seeking comment on their intent to rescind the Supervisory Policy Statement on Securities Activities published on February 3, 1992 (1992 Statement). Many elements of that prior statement are retained in the 1997 Statement, while other elements have been revised or eliminated. Changes in generally accepted accounting principles, various developments in both securities and derivatives markets, and revisions to the regulators' approach to risk management have contributed to the need to reassess the 1992 Statement. In particular, the agencies are proposing to eliminate the specific constraints on investing in "high risk" mortgage derivative products that were stated in the 1992 Statement. The agencies believe that it is a sound practice for institutions to understand the risks related to their investment holdings. Accordingly, the 1997 Statement substitutes broader guidance than the specific pass/fail requirements contained in the 1992 Statement. Other than for the supervisory guidance contained in the 1992 Statement, the 1997 Statement does not supersede any other requirements of the respective agencies' statutory rules, regulations, policies, or supervisory guidance.

DATES: Comments must be received by November 17, 1997.

ADDRESSES: Comments should be sent to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue, NW, Suite 200, Washington, D.C. 20037 or by facsimile transmission to (202) 634–6556.

FOR FURTHER INFORMATION CONTACT: *FRB:* James Embersit, Manager, Financial Analysis, (202) 452–5249, Division of Banking Supervision and Regulation; Gregory Baer, Managing Senior Counsel, (202) 452–3236, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: William A. Stark, Assistant Director, (202) 898–6972, Miguel D. Browne, Manager, (202) 898–6789, John J. Feid, Chief, Risk Management, (202) 898–8649, Division of Supervision; Michael B. Phillips, Counsel, (202) 898–3581, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

OCC: Kurt Wilhelm, National Bank Examiner, (202) 874–5670, J. Ray Diggs, National Bank Examiner, (202) 874–5670, Treasury and Market Risk; Mark J. Tenhundfeld, Assistant Director, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Robert A. Kazdin, Senior Project Manager, (202) 906–5759, Anthony G. Cornyn, Director, (202) 906–5727, Risk Management; Christine Harrington, Counsel (Banking and Finance), (202) 906–7957, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

NCUA: Daniel Gordon, Senior Investment Officer, (703) 518–6360, Office of Investment Services; Lisa Henderson, Attorney, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: In 1992, the agencies implemented the FFIEC's Supervisory Policy Statement on Securities Activities. The 1992 Statement addressed: (1) Selection of securities dealers, (2) portfolio policy and strategies (including unsuitable investment practices), and (3) residential mortgage derivative products (MDPs).

The final section of the 1992 Statement directed institutions to subject MDPs to supervisory tests to determine the degree of risk and the investment portfolio eligibility of these instruments. At that time, the agencies believed that many institutions had demonstrated an insufficient understanding of the risks associated with investments in MDPs. This occurred, in part, because most MDPs were issued or backed by collateral guaranteed by government sponsored enterprises. Therefore, most MDPs were not subject to legal investment limits. The agencies were concerned that the absence of significant credit risk on most MDPs had allowed institutions to overlook the significant interest rate risk present in certain structures of these instruments. In an effort to enhance the investment decision making process at financial institutions, and to emphasize the interest rate risk of highly price sensitive instruments, the agencies implemented supervisory tests designed to identify those MDPs with price and average life risks greater than a newly issued residential mortgage pass-through security.

These supervisory tests provided a discipline that helped institutions to better understand the risks of MDPs prior to purchase. The 1992 Statement generally provided that institutions should not hold a high risk MDP in their investment portfolios.[1] A high risk MDP was defined as a mortgage derivative security that failed any of three supervisory tests. The three tests included: an average life test, an average life sensitivity test, and a price sensitivity test.[2]

These supervisory tests, commonly referred to as the "high risk tests," successfully protected institutions from significant losses in MDPs. By requiring a pre-purchase price sensitivity analysis that helped institutions to better understand the interest rate risk of MDPs, the high risk tests effectively precluded institutions from investing in many types of MDPs that resulted in large losses for other investors. However, the high risk tests may have created unintended distortions of the investment decision making process. Many institutions eliminated all MDPs from their investment choices, regardless of the risk versus return merits of such instruments. These reactions were due, in part, to concerns about regulatory burden, such as higher than normal examiner review of MDPs. By focusing only on MDPs, the test and its accompanying burden indirectly provided incentives for institutions to acquire other types of securities with complex cash flows, often with price sensitivities similar to high risk MDPs. The emergence of the structured note market is just one example. The test may have also created the impression that supervisors were more concerned with the type of instrument involved (i.e., residential mortgage products), rather than the risk characteristics of the instrument, since only MDPs were subject to the high risk test. The specification of tests applied to individual securities may have also inhibited some institutions from applying more comprehensive analytical techniques at the portfolio and institutional level.

As a result, the agencies no longer believe that the pass/fail criteria of the high risk tests as applied to specific instruments are useful for the supervision of well-managed institutions. The agencies believe that an effective risk management program, through which an institution identifies, measures, monitors, and controls the risks of investment activities, provides a better framework. Consequently, the agencies are proposing to rescind the 1992 Policy Statement and eliminate the high risk tests as binding constraints on MDP purchases.

Effective risk management addresses risks across all types of instruments on an investment portfolio basis and ideally, across the entire institution. The complexity of many financial products, both on and off the balance sheet, has increased the need for a more comprehensive approach to the risk management of investment activities. To advance such an initiative, the agencies are seeking industry comment on the practices identified in the proposed policy statement.

The proposal to rescind the high risk tests as a constraint on an institution's investment activities does not signal that MDPs with high levels of price risk are either appropriate or inappropriate investments for an institution. Whether a security, MDP or otherwise, is an appropriate investment depends upon a variety of factors, including the institution's capital level, the security's impact on the aggregate risk of the portfolio, and management's ability to measure and manage risk. The agencies continue to believe that the stress testing of MDP investments, as well as other investments, has significant value for risk management purposes. Institutions should employ valuation methodologies that take into account all of the risk elements necessary to price these investments. The proposed policy statement indicates that the agencies believe, as a matter of sound practice, institutions should know the value and price sensitivity of their investments prior to purchase and on an ongoing basis.

The proposed text of the 1997 Statement follows.

Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities

I. Purpose

This policy statement (Statement) provides guidance to financial institutions (institutions) on sound practices for managing the risks of investment securities and end-user derivatives activities. The FFIEC agencies—the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration—believe that effective management of the risks associated with securities and derivative instruments represents an essential component of safe and sound practices. This guidance describes the practices that a prudent manager normally would follow and is not intended to be a checklist. Management should establish practices and maintain documentation appropriate to the institution's individual circumstances, consistent with this Statement.

[1] The only exceptions granted were for those high risk securities that either reduced interest rate risk or were placed in a trading account. Federal credit unions were not permitted these exceptions.

[2] Average Life: Weighted average life of no more than 10 years; Average Life Sensitivity: (a) Weighted average life extends by not more than 4 years (300 basis point parallel shift in rates), (b) weighted average life shortens by no more than 6 years (300 basis point parallel shift in rates); Price Sensitivity: price does not change by more than 17 percent (increase or decrease) for a 300 basis point parallel shift in rates.

II. Scope

This guidance applies to all securities in held-to-maturity and available-for-sale accounts es defined in the Statement of Financial Accounting Standards No. 115 (FAS 115), certificates of deposit held for investment purposes, and end-user derivative contracts not held in trading accounts. This guidance covers all securities used for investment purposes, including: money market instruments, fixed-rate and floating-rate notes and bonds, structured notes, mortgage pass-through and other asset-backed securities, and mortgage-derivative products. Similarly, this guidance covers all end-user derivative instruments used for nontrading purposes, such as swaps, futures, and options.[3] This Statement applies to all federally-insured commercial banks, savings banks, savings associations, and federally chartered credit unions.

As a matter of sound practice, institutions should have programs to manage the market, credit, liquidity, legal, operational and other risks of investment securities and end-user derivatives activities (investment activities). While risk management programs will differ among institutions, there are certain elements that are fundamental to all sound risk management programs. These elements include board and senior management oversight and a comprehensive risk management process that effectively identifies, measures, monitors, and controls risk. This Statement describes sound principles and practices for managing and controlling the risks associated with investment activities.

Institutions should fully understand and effectively manage the risks inherent in their investment activities. Failure to understand and adequately manage the risks in these areas constitutes an unsafe and unsound practice.

III. Board and Senior Management Oversight

Board of director and senior management oversight is an integral part of an effective risk management program. The board of directors is responsible for approving major policies for conducting investment activities, including the establishment of risk limits. The board should ensure that management has the requisite skills to manage the risks associated with such activities. To properly discharge its oversight responsibilities, the board should review portfolio activity and risk levels, and require management to demonstrate compliance with approved risk limits. Boards should have an adequate understanding of investment activities. Boards that do not, should obtain professional advice to enhance its understanding of investment activity oversight, so as to enable it to meet its responsibilities under this Statement.

Senior management is responsible for the daily management of an institution's investments. Management should establish and enforce policies and procedures for conducting investment activities on both a long-range (strategic) and day-to-day (operational) basis. Senior management should have an understanding of the nature and level of various risks involved in the institution's investments and how such risks fit within the institution's overall business strategies. Management should ensure that the risk management process is commensurate with the size, scope, and complexity of the institution's holdings. Management should also ensure that the responsibilities for managing investment activities are properly segregated to maintain operational integrity. Institutions with significant investment activities should ensure that back-office, settlement, and transaction reconciliation responsibilities are conducted and managed by personnel who are independent of those initiating risk taking positions.

IV. Risk Management Process

An effective risk management process for investment activities includes: (1) Policies, procedures, and limits; (2) the identification, measurement, and reporting of risk exposures; and (3) a system of internal controls.

Policies, Procedures, and Limits

Investment policies, procedures, and limits provide the structure to effectively manage investment activities. Policies should be consistent with the organization's broader business strategies, capital adequacy, technical expertise, and risk tolerance. Policies should identify relevant investment objectives, constraints, and guidelines for the acquisition and ongoing management of securities and derivative instruments. Potential investment objectives include: generating earnings, providing liquidity, hedging risk exposures, taking risk positions, modifying and managing risk profiles, managing tax liabilities, and meeting pledging requirements, if applicable. Policies should also identify the risk characteristics of permissible investments and should delineate clear lines of responsibility and authority for investment activities.

An institution's policies should ensure an understanding of the risks and cashflow characteristics of its investments. This is particularly important for products that have unusual, leveraged, or highly variable cashflows. An institution should not acquire a material position in an instrument until senior management and all relevant personnel understand and can manage the risks associated with the product.

An institution's investment activities should be fully integrated into any institution-wide risk limits. In so doing, some institutions rely only on the institution-wide limits, while others may apply limits at the investment portfolio, sub-portfolio, or individual instrument level.

The board and senior management should review, at least annually, the appropriateness of its investment strategies, policies, procedures, and limits.

Risk Identification, Measurement and Reporting

Institutions should ensure that they identify and measure the risks associated with individual transactions prior to acquisition and periodically after purchase. Depending upon the complexity and sophistication of the risk measurement systems, this can be done at the institutional, portfolio, or individual instrument level. Prudent management of investment activities entails examination of the risk profile of a particular investment in light of its impact on the risk profile of the institution. To the extent practicable, institutions should measure exposures to each type of risk and these measurements should be aggregated and integrated with similar exposures arising from other business activities to obtain the institution's overall risk profile.

In measuring risks, institutions should conduct their own in-house pre-acquisition analyses, or to the extent possible, make use of specific third party analyses that are independent of the seller or counterparty. Irrespective of any responsibility, legal or otherwise, assumed by a dealer, counterparty, or financial advisor regarding a transaction, the acquiring institution is ultimately responsible for the appropriate personnel understanding and managing the risks of the transaction into which it enters.

Reports to the board of directors and senior management should summarize the risks related to the institution's investment activities and should address compliance with the investment policy's objectives, constraints, and legal requirements, including any exceptions to established policies, procedures, and limits. Reports to management should generally reflect more detail than reports to the board of the institution. Reporting should be frequent enough to provide timely and adequate information to judge the changing nature of the institution's risk profile and to evaluate compliance with stated policy objectives and constraints.

Internal Controls

An institution's internal control structure is critical to the safe and sound functioning of the organization generally and the management of investment activities in particular. A system of internal controls promotes efficient operations, reliable financial and regulatory reporting, and compliance with relevant laws, regulations, and institutional policies. An effective system of internal controls includes enforcing official lines of authority, maintaining appropriate separation of duties, and conducting independent reviews of investment activities.

For institutions with significant investment activities, internal and external audits are integral to the implementation of a risk management process to control risks in investment activities. An institution should conduct periodic independent reviews of its risk management program to ensure its integrity, accuracy, and reasonableness. Items that should be reviewed include:

(1) Compliance with and the appropriateness of investment policies, procedures, and limits;

(2) The appropriateness of the institution's risk measurement system given the nature, scope, and complexity of its activities;

(3) The timeliness, integrity, and usefulness of reports to the board of directors and senior management.

The review should note exceptions to policies, procedures, and limits and suggest corrective actions. The findings of such reviews should be reported to the board and corrective actions taken on a timely basis.

The accounting systems and procedures used for public and regulatory reporting purposes are critically important to the evaluation of an organization's risk profile and the assessment of its financial condition and capital adequacy. Accordingly, an institution's policies should provide clear guidelines regarding the reporting treatment for all securities and derivatives holdings. This treatment should be consistent with the organization's business objectives, generally accepted accounting principles (GAAP), and regulatory reporting standards.

V. The Risks of Investment Activities

The following discussion identifies particular sound practices for managing the specific risks involved in investment activities. In addition to these sound practices, institutions should follow any specific guidance or requirements from their primary supervisor related to these activities.

Market Risk

Market risk is the risk to an institution's financial condition resulting from adverse changes in the value of its holdings arising from movements in interest rates, foreign exchange rates, equity prices, or commodity prices. An institution's exposure to market risk can be measured by assessing the effect of changing rates and prices on either the earnings or economic value of an individual instrument, a portfolio, or the entire institution. For most institutions, the most significant market risk of investment activities is interest rate risk.

Investment activities may represent a significant component of an institution's overall interest rate risk profile. It is a sound practice for institutions to manage interest rate risk on an institution-wide basis. This sound practice includes monitoring the price sensitivity of the institution's investment portfolio (changes in the investment portfolio's value over different interest rate/yield curve scenarios). Consistent with agency guidance, institutions should specify institution-wide interest rate risk limits that appropriately account for these activities and the strength of the institution's capital position. These limits are generally established for economic value or earnings exposures. Institutions may find it useful to establish price sensitivity limits on their investment portfolio or on individual securities. These sub-institution limits, if established, should also be consistent with agency guidance.

It is a sound practice for an institution's management to fully understand the market risks associated with investment securities and derivative instruments prior to acquisition and on an ongoing basis. Accordingly, institutions should have appropriate policies to ensure such understanding. In particular, institutions should have policies that specify the types of market risk analyses that should be conducted for various types or classes of instruments, including that conducted prior to their acquisition (pre-purchase analysis) and on an ongoing basis. Policies should also specify any required documentation needed to verify the analysis.

It is expected that the substance and form of such analyses will vary with the type of instrument. Not all investment instruments may need to be subjected to a pre-purchase analysis. Relatively simple or standardized instruments, the risks of which are well known to the institution, would likely require no or significantly less analysis than would more volatile, complex instruments.[4]

For relatively more complex instruments, less familiar instruments, and potentially volatile instruments, institutions should fully address pre-purchase analyses in their policies. Price sensitivity analysis is an effective way to perform the pre-purchase analysis of individual instruments. For example, a pre-purchase analysis should show the impact of an immediate parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. Where appropriate, such analysis should encompass a wider range of scenarios, including non-parallel changes in the yield curve. A comprehensive analysis may also take into account other relevant factors, such as changes in interest rate volatility and changes in credit spreads.

When the incremental effect of an investment position is likely to have a significant effect on the risk profile of the institution, it is a sound practice to analyze the effect of such a position on the overall financial condition of the institution.

Accurately measuring an institution's market risk requires timely information about the current carrying and market values of its investments. Accordingly, institutions should have market risk measurement systems commensurate with the size and nature of these investments. Institutions with significant holdings of highly complex instruments should ensure that they have the means to value their positions. Institutions employing internal models should have adequate procedures to validate the models and to periodically review all elements of the modeling process, including its assumptions and risk measurement techniques. Managements relying on third parties for market risk measurement systems and analyses should ensure that they

[3] Federal credit unions are not permitted to purchase asset-backed securities and may participate in derivative programs only if authorized by the NCUA.

[4] Federal credit unions must comply with the investment monitoring requirements of 12 CFR § 703.90. See 62 FR 32989 (June 18, 1997).

fully understand the assumptions and techniques used.

Institutions should provide reports to their boards on the market risk exposures of their investments on a regular basis. To do so, the institution may report the market risk exposure of the whole institution. Otherwise, these reports should contain evaluations that assess trends in aggregate market risk exposure and the performance of portfolios in terms of established objectives and risk constraints. They also should identify compliance with board approved limits and identify any exceptions to established standards. Institutions should have mechanisms to detect and adequately address exceptions to limits and guidelines. Management reports on market risk should appropriately address potential exposures to yield curve changes and other factors pertinent to the institution's holdings.

Credit Risk

Broadly defined, credit risk is the risk that an issuer or counterparty will fail to perform on an obligation to the institution. For many financial institutions, credit risk in the investment portfolio may be low relative to other areas, such as lending. However, this risk, as with any other risk, should be effectively identified, measured, monitored, and controlled.

An institution should not acquire investments or enter into derivative contracts without assessing the creditworthiness of the issuer or counterparty. The credit risk arising from these positions should be incorporated into the overall credit risk profile of the institution as comprehensively as practicable. Institutions are legally required to meet certain quality standards (i.e., investment grade) for security purchases. Many institutions maintain and update ratings reports from one of the major rating services. For non-rated securities, institutions should establish guidelines to ensure that the securities meet legal requirements and that the institution fully understands the risk involved. Institutions should establish limits on individual counterparty exposures. Policies should also provide credit risk and concentration limits. Such limits may define concentrations relating to a single or related issuer or counterparty, a geographical area, or obligations with similar characteristics.

In managing credit risk, institutions should consider settlement and pre-settlement credit risk. These risks are the possibility that a counterparty will fail to honor its obligation at or before the time of settlement. The selection of dealers, investment bankers, and brokers is particularly important in effectively managing these risks. An institution's policies should identify criteria for selecting these organizations and should list all approved firms. The approval process should include a review of each firm's financial statements and an evaluation of its ability to honor its commitments. An inquiry into the general reputation of the dealer is also appropriate. This includes review of information from state or federal securities regulators and industry self-regulatory organizations such as the National Association of Securities Dealers concerning any formal enforcement actions against the dealer, its affiliates, or associated personnel.

The board of directors, or a committee thereof, should set limits on the amounts and types of transactions authorized for each securities firm with whom the institution deals. At least annually, the board of directors should review and reconfirm the list of authorized dealers, investment bankers, and brokers.

Sound credit risk management requires that credit limits be developed by personnel who are as independent as practicable of the acquisition function. In authorizing issuer and counterparty credit lines, these personnel should use standards that are consistent with those used for other activities conducted within the institution and with the organization's over-all policies and consolidated exposures.

Liquidity Risk

Liquidity risk is the risk that an institution cannot easily sell, unwind, or offset a particular position at a fair price because of inadequate market depth. In specifying permissible instruments for accomplishing established objectives, institutions should ensure that they take into account the liquidity of the market for those instruments and the effect that such characteristics have on achieving their objectives. The liquidity of certain types of instruments may make them inappropriate for certain objectives. Institutions should ensure that they consider the effects that market risk can have on the liquidity of different types of instruments under various scenarios. Accordingly, institutions should articulate clearly the liquidity characteristics of instruments to be used in accomplishing institutional objectives.

Complex and illiquid instruments can often involve greater risk than actively traded, more liquid securities. Oftentimes, this higher potential risk arising from illiquidity is not captured by standardized financial modeling techniques. Such risk is particularly acute for instruments that are highly leveraged or that are designed to benefit from specific, narrowly defined market shifts. If market prices or rates do not move as expected, the demand for such instruments can evaporate, decreasing the market value of the instrument below the modeled value.

Operational (Transaction) Risk

Operational (transaction) risk is the risk that deficiencies in information systems or internal controls will result in unexpected loss. Sources of operating risk include inadequate procedures, human error, system failure, or fraud. Inaccurately assessing or controlling operating risks is one of the more likely sources of problems facing institutions involved in investment activities.

Effective internal controls are the first line of defense in controlling the operating risks involved in an institution's investment activities. Of particular importance are internal controls that ensure the separation of duties and supervision of persons executing transactions from those responsible for processing contracts, confirming transactions, controlling various clearing accounts, preparing or posting the accounting entries, approving the accounting methodology or entries, and performing revaluations.

Consistent with the operational support of other activities within the financial institution, securities operations should be as independent as practicable from business units. Adequate resources should be devoted, such that systems and capacity are commensurate with the size and complexity of the institution's investment activities. Effective risk management should also include, at least, the following:

- Valuation. Procedures should ensure independent portfolio pricing. For thinly traded or illiquid securities, completely independent pricing may be difficult. In such cases, operational units may need to use portfolio manager prices. For unique instruments where the pricing is being provided by a single source (e.g., the dealer providing the instrument), the institution should review and understand the assumptions used to price the instrument.
- Personnel. The increasingly complex nature of securities available in the marketplace makes it important that operational personnel have strong technical skills. This will enable them to better understand the complex financial structures of some investment instruments.
- Documentation. Institutions should clearly define documentation requirements for securities transactions, saving and safeguarding important documents, as well as maintaining possession and control of instruments purchased.

An institution's policies should also provide guidelines for conflicts of interest for employees who are directly involved in purchasing and selling securities for the institution from securities dealers. These guidelines should ensure that all directors, officers, and employees act in the best interest of the institution. The board may wish to adopt policies prohibiting these employees from engaging in personal securities transactions with these same securities firms without specific prior board approval. The board may also wish to adopt a policy applicable to directors, officers, and employees restricting or prohibiting the receipt of gifts, gratuities, or travel expenses from approved securities dealer firms and their representatives.

Legal Risk

Legal risk is the risk that contracts are not legally enforceable or documented correctly. Institutions should adequately evaluate the enforceability of its agreements before individual transactions are consummated. Institutions should also ensure that the counterparty has authority to enter into the transaction and that the terms of the agreement are legally enforceable. Institutions should further ascertain that netting agreements are adequately documented, executed properly, and are enforceable in all relevant jurisdictions. Institutions should have knowledge of relevant tax laws and interpretations governing the use of these instruments.

Dated: September 29, 1997.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 97–26207 Filed 10–2–97; 8:45 am]

BILLING CODE 6210–01–P, 6720–01–P, 6714–01–P, 4810–01–P, 7535–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Canisteo Valley Corporation, Canisteo, New York; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Canisteo, New York.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Great Southern Capital Corporation Employee Stock Ownership Trust, Meridian, Mississippi; to acquire at least 50 percent of the voting shares of Great Southern Capital Corporation, Meridian, Mississippi, and thereby indirectly acquire Great Southern National Bank, Meridian, Mississippi.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Citizens Bancshares, Inc., Dyersburg, Tennessee; to acquire 100 percent of the voting shares of Bank of Troy, Troy, Tennessee.

Board of Governors of the Federal Reserve System, September 30, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26338 Filed 10–2–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 811]

National Institute for Occupational Safety and Health; Research and Demonstration Grants; Occupational Safety and Health

Introduction

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) is soliciting grant applications for research and demonstration projects related to occupational safety and health (see the section **Availability of Funds**).

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301 (42 U.S.C. 241); the Occupational Safety and Health Act of 1970, Sections 20(a) and 22 (29 U.S.C. 669(a) and 671); and the Federal Mine Safety and Health Act of 1977, Section 501 (30 U.S.C. 951). The applicable program regulations are in 42 CFR part 52.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds and in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include domestic and foreign non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments and small, minority and/or woman-owned businesses. Exceptions: Foreign organizations, as well as domestic institutions with a foreign component, are ineligible to apply for the Special

Emphasis Research Career Award (SERCA) Grant and Small Grant programs (additional guidance provided under these mechanisms).

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Availability of Funds

For fiscal year (FY) 1998, the budget is projected to be $13,500,000. Of that amount, $9,100,000 is committed to support 47 non-competing continuing awards. Therefore, $4,400,000 is available for new and competing renewal awards. The overall budget includes funds for Small Business Innovation Research (SBIR) grants and for health and safety research related to the construction industry. Target amounts (continuing and new awards) for certain grant mechanisms are as follows: 10 R03 grants (about $375,000), 10 K01 grants (about $540,000), and 5 R29 grants (about $500,000).

Grant applications should be focused on the research priorities described in the section **Funding Priorities** that include new research priorities developed in a process which resulted in defining a National Occupational Research Agenda.

Background

In today's society, Americans are working more hours than ever before. The workplace environment profoundly affects health. Each of us, simply by going to work each day, may face hazards that threaten our health and safety. Risking one's life or health should never be considered merely part of the job.

In 1970, Congress passed the Occupational Safety and Health Act to ensure Americans the right to "safe and healthful working conditions," yet workplace hazards continue to inflict a tremendous toll in both human and economic costs.

Employers reported 6.3 million work injuries in 1994 and 515,000 cases of occupational illness. An average of 16 American workers die each day from injuries on the job. Moreover, even the most conservative estimates find that about 137 additional workers die each day from workplace diseases.

Additionally, in 1994 occupational injuries and deaths cost $120.7 billion in wages and lost productivity, administrative expenses, health care and other costs. This does not include the cost of occupational disease.

Occupational injury and disease create needless human suffering, a tremendous burden upon health care resources, and an enormous drain on U.S. productivity. Yet, to date, this mainstream public health problem has escaped mainstream public attention.

The philosophy of NIOSH is articulated in the Institute's vision statement: Delivering on the Nation's Promise: Safety and Health at Work for All People * * * Through Research and Prevention. To identify and reduce hazardous working conditions, the Institute carries out disease, injury, and hazard surveillance and conducts a wide range of field and laboratory research. Additionally, NIOSH sponsors extramural research in priority areas to complement and expand its efforts. These are listed in the section **Funding Priorities.**

Purpose

The purpose of this grant program is to develop knowledge that can be used in preventing occupational diseases and injuries. Thus, NIOSH will support the following types of applied research projects: Causal research to identify and investigate the relationships between hazardous working conditions and associated occupational diseases and injuries; methods research to develop more sensitive means of evaluating hazards at work sites, as well as methods for measuring early markers of adverse health effects and injuries; control research to develop new protective equipment, engineering control technology, and work practices to reduce the risks of occupational hazards; and demonstrations to evaluate the technical feasibility or application of a new or improved occupational safety and health procedure, method, technique, or system.

Mechanisms of Support

Applications responding to this announcement will be reviewed by staff for their responsiveness to the following program requirements. Grants are funded for 12-month budget periods in project periods up to five years for research project grants and demonstration project grants; three years for SERCA grants; and two years for small grants. Continuation awards within the project period are made on the basis of satisfactory progress and on the availability of funds. The types of grants NIOSH supports are as follow:

1. Research Project Grants (R01)

A research project grant application should be designed to establish, discover, develop, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with problems. These studies may generate information that is readily available to solve problems or contribute to a better understanding of the causes of work-related diseases and injuries.

2. Demonstration Project Grants (R18)

A demonstration project grant application should address, either on a pilot or full-scale basis, the technical or economic feasibility of implementing a new/improved innovative procedure, method, technique, or system for preventing occupational safety or health problems. The project should be conducted in an actual workplace where a baseline measure of the problem will be defined, the new/improved approach will be implemented, a follow-up measure of the problem will be documented, and an evaluation of the benefits will be conducted.

3. First Independent Research Support and Transition (FIRST) Grants (R29)

The FIRST grant is to provide a sufficient period of research support for newly independent investigators to initiate their own research and demonstrate the merit of their own research ideas. These grants are intended to underwrite the first independent investigative efforts of an individual; to provide a reasonable opportunity to demonstrate creativity, productivity, and further promise; and to help in the transition to traditional types of research project grants. The award is not intended for individuals in mid-career who may be in transition to another undertaking. It is for a distinct research endeavor and may not be used merely to supplement or broaden an ongoing project.

Candidates must (1) be genuinely independent of a mentor, yet at the same time be at the beginning stages of their research careers, (2) have no more than 5 years of research experience since completing post-doctoral research training or its equivalent, (3) not be in training status at the time of the award, (4) have never been the principal investigator (PI) on any Public Health Service grant except a Small Grant (R03) or a Special Emphasis Research Career Award Grants (K01), and (5) the applicant organizations must be domestic. For non-U.S. citizens who will be principal investigators, the grantee institution must indicate in the application that the individual's visa will allow the person to remain in the country a sufficient length of time to complete the project. Also, a U.S. citizen must be identified who is a permanent staff member of the grantee institution and who, if the FIRST grant recipient is unable to stay in the U.S., will be responsible for seeing the project through to completion.

The PI must request 5 years of support; otherwise, the application will be reviewed as a traditional research project (R01). There must be a commitment of no less than 50 percent effort to the proposed project. The total direct cost for the 5-year period may not exceed $350,000. The direct cost award in any budget period may not exceed $100,000. FIRST awards are not renewable; however, a PI may submit an R01 application to continue and extend the research supported by a FIRST award. Replacement of the PI on a FIRST award will not be approved.

The application must include the following documentation: (1) A letter or memorandum is needed from a suitable department head or dean which addresses the eligibility of the proposed PI to lead a research project independently at the applicant organization (i.e., Is the proposed PI otherwise qualified to be the PI on a traditional project grant?). When the application is from the institution where the proposed PI received post-doctoral research training, it must be made absolutely clear that the FIRST award would be to support a research endeavor independent of that conducted in the former training environment. Details of the intended commitment of the institution to the project for the 5-year period should be provided. (2) At least three letters of reference must be submitted. FIRST applicants are to request the letters well in advance of the application submission, advising the referees to return the reference letters to the applicant in sealed envelopes as soon as possible. To protect the utility and confidentiality of reference letters, applicants are not to open the envelopes. The sealed envelopes must be attached to the front of the original application. Reference letters should reflect the investigator's research originality and potential for independent investigation. A list of individuals providing letters must be included as Section 10 of the Research Plan. Names, titles, and institutional affiliation are needed for each person.

4. Special Emphasis Research Career Award (SERCA) Grants (K01)

The SERCA grant is intended to provide opportunities for individuals to acquire experience and skills while under the direction of at least one mentor, and in so doing, create a pool of highly qualified investigators who can make future contributions to research in the area of occupational safety and health. SERCA grants are not intended for individuals without research experience, or for productive, independent investigators with a significant number of publications and of senior academic rank. Moreover, the award is not intended to substitute one source of salary support for another for an individual who is already conducting full-time research; nor is it intended to be a mechanism for providing institutional support.

Candidates must: (1) Hold a doctoral degree; (2) have research experience at or above the doctoral level; (3) not be above the rank of associate professor; and (4) be employed at a domestic institution. For non-U.S. citizens who will be principal investigators, the grantee institution must indicate in the application that the individual's visa will allow the person to remain in the country a sufficient length of time to complete the project. Also, a U.S. citizen must be identified who is a permanent staff member of the grantee institution and who, if the SERCA grant recipient is unable to stay in the U.S., will be responsible for seeing the project through to completion.

This non-renewable award provides support for a three-year period for individuals engaged in full-time research and related activities. Awards will not exceed $50,000 per year in direct costs for salary support (plus fringe benefits), technical assistance, equipment, supplies, consultant costs, domestic travel, publications, and other costs. The indirect cost rate applied is limited to 8 percent of the direct costs, excluding tuition and related fees and equipment expenses, or to the actual indirect cost rate, whichever results in the lesser amount.

A minimum of 60 percent time must be committed to the proposed research project, although full-time is desirable. Other work in the area of occupational safety and health will enhance the candidate's qualifications but is not a substitute for this requirement. Related activities may include research career development activities as well as involvement in patient care to the extent that it will strengthen research skills. Fundamental/basic research will not be supported unless the project will make an original contribution for applied technical knowledge in the identification, evaluation, or control of occupational safety and health hazards (e.g., development of a diagnostic technique for early detection of an occupational disease). Research project proposals must be of the applicants' own design and of such scope that independent investigative capability will be evident within three years. At the completion of this three-year award, it is intended that awardees should be better able to compete for individual research project grants awarded by NIOSH.

SERCA grant applications should be identified as such on the application form. Section 2 of the application (the Research Plan) should include a statement regarding the applicant's career plans and how the proposed research will contribute to a career in occupational safety and health research. This section should also include a letter of recommendation from the proposed advisor(s).

5. Small Grants (R03)

The small grant program is intended to stimulate proposals from individuals who are considering a research career in occupational safety and health; as such, the minimum time commitment is 10%. It is expected that a recipient would subsequently compete for other grant mechanisms which are described above in items 1 to 4. The award is not intended to supplement ongoing or other proposed research; nor is it intended to be a mechanism for providing institutional support. Please note that fundamental/basic research is generally not supported.

Small grant candidates are predoctoral students, post-doctoral researchers (within 3 years following completion of doctoral degree or completion of residency or public health training), or junior faculty members (no higher than assistant professor). If university policy requires that a more senior person be listed as principal investigator, it should be clear in the application which person is the small grant investigator. For non-U.S. citizens who will be principal investigators, the grantee institution must indicate in the application that the individual's visa will allow the person to remain in the country a sufficient length of time to complete the project. Also, a U.S. citizen must be identified who is a permanent staff member of the grantee institution and who, if the small grant recipient is unable to stay in the U.S., will be responsible for seeing the project through to completion. Except for applicants who are assistant professors, there must be one or more named mentors to assist with the project.

A biographical sketch is required for the small grant investigator, as well as for the supervisor and other key consultants, as appropriate.

This non-renewable award provides support for project periods of up to two years to carry out exploratory or pilot studies, to develop or test new techniques or methods, or to analyze

data previously collected. Awards will not exceed $25,000 per year in direct costs for salary support (plus fringe benefits), technical assistance, equipment, supplies, consultant costs, domestic travel, publications, and other costs. The indirect costs will be based upon the negotiated indirect cost rate of the applicant organization. An individual may not receive more than two small grant awards, and then, only if the awards are at different stages of development (e.g., doctoral student, post-doctoral researcher, or junior faculty member).

Funding Priorities

The NIOSH program priorities, listed below, are applicable to all of the above types of grants listed under the section **Mechanisms of Support**. These priority areas were developed by NIOSH and its partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade—not only for NIOSH but also for the entire occupational safety and health community. Approximately 500 organizations and individuals outside NIOSH provided input into the development of the National Occupational Research Agenda (NORA). This attempt to guide and coordinate research nationally is responsive to a broadly perceived need to address systematically those topics that are most pressing and most likely to yield gains to the worker and the nation. Fiscal constraints on occupational safety and health research are increasing, making even more compelling the need for a coordinated and focused research agenda. NIOSH intends to support projects that facilitate progress in understanding and preventing adverse effects among workers. The conditions or examples listed under each category are selected examples, not comprehensive definitions of the category. Investigators may also apply in other areas related to occupational safety and health, but the rationale for the significance of the research to the field of occupational safety and health must be presented in the grant application.

Potential applicants with questions concerning the acceptability of their proposed work are strongly encouraged to seek programmatic technical assistance from the contact listed in this announcement under the section **Where to Obtain Additional Information**.

The Agenda identifies 21 research priorities. These priorities reflect a remarkable degree of concurrence among a large number of stakeholders. The NORA priority research areas are grouped into three categories: Disease and Injury, Work Environment and Workforce, and Research Tools and Approaches. The NORA document is available through the NIOSH Home Page; http://www.cdc.gov/niosh/nora.html.

NORA Priority Research Areas

Disease and Injury
- Allergic and Irritant Dermatitis
- Asthma and Chronic Obstructive Pulmonary Disease
- Fertility and Pregnancy Abnormalities
- Hearing Loss
- Infectious Diseases
- Low Back Disorders
- Musculoskeletal Disorders of the Upper Extremities
- Traumatic Injuries

Work Environment and Workforce
- Emerging Technologies
- Indoor Environment
- Mixed Exposures
- Organization of Work
- Special Populations at Risk

Research Tools and Approaches
- Cancer Research Methods
- Control Technology and Personal Protective Equipment
- Exposure Assessment Methods
- Health Services Research
- Intervention Effectiveness Research
- Risk Assessment Methods
- Social and Economic Consequences of Workplace Illness and Injury
- Surveillance Research Methods

Applications Submission and Deadlines and Review Dates

The research grant application Form PHS–398 (OMB Number 0925–0001) is to be used in applying for these grants. These forms are available at most institutional offices of sponsored research; from the Extramural Outreach and Information Resources Office, Office of Extramural Research, 6701 Rockledge Drive, MS–C7910, Bethesda, MD 20892–7910, telephone (301) 435–0714; fax (301) 480–8443; Internet girg@drgpo.drg.nih.gov; and from the contacts listed under the section **Where to Obtain Additional Information**.

The original and five copies of the PHS–398 must be submitted to Division of Research Grants, National Institutes of Health, Suite 1040, 6701 Rockledge Drive, MS–C7710, Bethesda, MD 20892–7710, on or before the specified receipt dates provided below. A mailing label is provided in the Form PHS–398 application package.

The timetable for receiving applications and awarding grants is given below. This is a continuous announcement, consequently, these receipt dates will be on-going until further notice.

Receipt date[1]	Initial review	Secondary review	Earliest possible start date
Research and Demonstration Project Grants			
February 1	June/July	September	December 1.
June 1	Oct/Nov	January	April 1.
October 1	Feb/Mar	May	August 1.
SERCA and Small Grants			
March 1	June/July	August	November 1.
July 1	Oct/Nov	December	March 1.
November 1	Feb/Mar	April	July 1.

[1] Deadlines for competing continuation applications or revised applications are 1 month later.

Applications must be received by the above receipt dates. To prevent problems caused by carrier delays, retain a legible proof-of-mailing receipt from the carrier, dated no later than one week prior to the receipt date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day. The receipt date will be waived only in extenuating circumstances. To request such a waiver, include an explanatory letter with the signed, completed application. No request for a waiver will be considered prior to receipt of the application.

Evaluation Criteria

Applications will be reviewed for scientific merit by the chartered CDC/NIOSH Occupational Safety and Health Study Section (SOH), in accordance with standard peer review procedures. Following initial review for scientific merit, the applications will receive a secondary review for programmatic importance. Notification of the scientific review recommendations will be sent to the applicants after the initial review. Awards will be made based on results of the initial and secondary reviews, as well as availability of funds.

1. The initial (peer) review criteria are:

- Scientific, technical, or medical significance and originality of proposed research.
- Availability, adequacy, and competence of personnel, facilities, and other resources needed to carry out the project.
- Feasibility of the project and likelihood of its producing meaningful results.
- Appropriateness of the proposed project period and budget request.
- Adequacy of the applicant's resources available for the project.

Demonstration grant applications will be reviewed additionally on the basis of the following criteria:

- Degree to which the project will document baseline measures and evaluate the benefits of an intervention approach.
- Degree to which the project can be expected to yield or demonstrate results that will be useful and desirable on a national or regional basis.
- Documentation of cooperation from industry, unions, or other participants in the project.

SERCA grant applications will be reviewed additionally on the basis of the following criteria:

- The review process will consider the applicant's scientific achievements, the applicant's research career plan in occupational safety and health, and the degree to which the applicant's institution offers a superior research environment (supportive nature, including letter(s) of reference from advisor(s) which should accompany the application).

Small grant applications will be reviewed taking the following into consideration:

- Applicants for small grants do not have extensive experience with the grants process, so there is leniency in assigning priority scores.

2. The secondary (programmatic) review criteria are:

- Relevance to occupational safety and health by contributing to achievement of research objectives specified in Sections 20(a) and 22 of the Occupational Safety and Health Act of 1970 and Section 501 of the Federal Mine Safety and Health Act of 1977.
- Magnitude of the problem in terms of numbers of workers affected.
- Severity of the disease or injury in the worker population.
- Potential contribution to applied technical knowledge in the identification, evaluation, or control of occupational safety and health hazards.
- Program balance.
- Policy and budgetary considerations.

Questions regarding the above criteria should be addressed to the Programmatic Technical Information Contact listed under **Where to Obtain Additional Information.**

Technical Reporting Requirements

Progress reports are required annually as part of the continuation application (75 days prior to the start of the next budget period). The annual progress reports must contain information on accomplishments during the previous budget period and plans for each remaining year of the project. Financial status reports (FSR) are required no later than 90 days after the end of the budget period. The final performance and financial status reports are required 90 days after the end of the project period. The final performance report should include, at a minimum, a statement of original objectives, a summary of research methodology, a summary of positive and negative findings, and a list of publications resulting from the project.

Research papers, project reports, or theses are acceptable items to include in the final report. The final report should stand alone rather than citing the original application. Three copies of reprints of publications prepared under the grant should accompany the report.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Women and Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) to ensure that women and racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaska Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting review for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and scoring. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions. An applicant organization proposing to use vertebrate animals in CDC-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to announcement #811. You will receive a complete program description, information on application procedures, and application. Business management information may be obtained from Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS–E13, Atlanta, GA 30305, telephone (404) 842–6535; fax: (404) 842–6513; Internet: jcw6@cdc.gov.

Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS–D30, Atlanta, GA 30333, telephone: (404) 639–3343; fax: (404) 639–4616; Internet: rmf2@cdc.gov.

Please refer to announcement number 811 when requesting information and submitting an application.

This and other CDC Announcements can be found on the CDC home page (http://www.cdc.gov) under the Funding section.

CDC will not send application kits by facsimile or express mail (even at the request of the applicant).

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: September 29, 1997.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–26275 Filed 10–2–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Centers for Disease Control and Prevention (CDC) Announces the Following Workshop

Name: Workshop on Enhancing Community Participation to Restore Public Trust and Improve Science in Health Research.

Times and Dates: 8:30 a.m.–5:30 p.m., October 16, 1997. 8 a.m.–4:45 p.m., October 17, 1997.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: The primary purpose of this workshop is to provide guidance to public health researchers on the inclusion of communities in the planning, conduct, and application of research.

History has demonstrated, when medical and public health science is planned and conducted in the absence of considering the social context of its work, people have been harmed. As a result, society has responded with laws and regulations to protect human subjects who participate in research. Lacking in this discussion has been the issue of planning and conducting research that involves and impacts communities. This workshop will provide a unique opportunity to open dialogue between government, communities, and researchers. This dialogue should result in a proposed framework through which CDC promotes public health, advances democratic principles, establishes an ethical basis for community-based research, enhances scientific credibility, and provides mechanisms for building public trust while advancing the science of public health.

Matters To Be Discussed: Agenda items include: identifying strategies for partnering with communities in research and overcoming distrust; legacy from the Tuskegee Study of Untreated Syphilis; review of human subjects protection; role of the community in protecting human subjects; assets that communities bring to research; and assets that researchers bring to communities.

After the above comments and discussions, the workshop will be divided into five breakout sessions which will include: (I) Strategies, Issues, and Barriers; (II) Research Design Scenarios; (III) Critique of Strategies Elicited in Breakout Session II; (IV) Community Concerns and Issues; and (V) Final Recommendations.

Contact Persons for More Information: Michael J. Sage, Deputy Chief, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, NE (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044; or Kate M. MacQueen, Ph.D., Division of HIV/AIDS Prevention, National Center for HIV, STD and TB Prevention, CDC, 1600 Clifton Road, NE (E–45), Atlanta, Georgia 30333, telephone 404/639–6146, FAX 404/639–6129.

Dated: September 29, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–26243 Filed 10–2–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0401]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by November 3, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance:

Export of Medical Devices—Foreign Letters of Approval—21 U.S.C. 381(e)(2) (OMB Control No. 0910–0264—Reinstatement)

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export.

Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. FDA uses the written authorization from the foreign country to determine whether the foreign country has any objection to the importation of the device.

The respondents to this collection of information are companies that seek to export medical devices.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
20	1	20	0.5	10

There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on the experience of FDA's medical device program personnel. In fiscal year 1995, FDA received approximately 800 requests from U.S. firms to export medical devices under section 801(e)(2) of the act. However, the enactment of the Food and Drug Export Reform and Enhancement Act of 1996 has greatly reduced the number of export permit requests made under section 801(e)(2) to an estimated 20 per year.

Dated: September 26, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–26257 Filed 10–2–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0406]

Sveriges Stärkelseproducenter; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sveriges Stärkelseproducenter has filed a petition proposing that the food additive regulations be amended to provide for the safe use of industrial starch modified by treatment with up to 21 percent 2,3-epoxypropyl trimethylammonium chloride, as a component of food-contact articles.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4558) has been filed by Sveriges Stärkelseproducenter, c/o Kirschman Associates, P.O. Box 88, Emmaus, PA 18049. The petition proposes to amend the food additive regulations in § 178.3520 *Industrial starch-modified* (21 CFR 178.3520) to provide for the safe use of industrial starch modified by treatment with up to 21 percent 2,3-epoxypropyl trimethylammonium chloride, as a component of food-contact articles.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 15, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–26256 Filed 10–2–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–212]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Survey of Primary Caregivers for the District of Columbia's Managed Care Demonstration for Disabled and Special Needs Children and Supporting Statute Section 1115(a) of the Social Security Act; *Form No.:* HCFA–R–212; *Use:* This survey will collect information from primary caregivers of Disabled and Special Needs Children about household composition, access to care, health status, functional status, home care, family care giving burden, satisfaction, and out-of-pocket expenditures on disabled and special needs children living in the District of Columbia who are enrolled in the Supplemental Security Income (SSI) program. This instrument is designed to support a series of analytic studies, which will eventually provide HCFA, Assistant Secretary of Planning and

Evaluation (ASPE), and States with information to consider when developing managed care systems for disabled and special needs children. *Frequency:* Semi-Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 1,789; *Total Annual Responses:* 3,578; *Total Annual Hours:* 2,900.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 23, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–26306 Filed 10–2–97; 8:45 am]

BILLING CODE 4210–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–485]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Home Health Services Under Hospital Insurance, Manual Instructions and Supporting Regulations in 42 CFR 409.40–.50, 410.36, 410.170, 411.4–.15, 421.100, 424.22, 484.18 and 489.21; *Form No.:* HCFA–485 (OMB# 0938–0357); *Use:* The "Home Health Services Under Hospital Insurance" is a certification and plan of care used by the Regional Home Health Intermediaries (RHHIs) to ensure reimbursement is made to Home Health agencies only for services that are covered and medically necessary under Part A and Part B. The attending physician must sign the HCFA–485 (OMB 0938–0357) authorizing the home services for a period not to exceed 62 days.; *Frequency:* Other (initial claim and every second claim thereafter); *Affected Public:* Business or other for-profit; *Number of Respondents:* 9,044; *Total Annual Responses:* 10,080,000; *Total Annual Hours:* 2,520,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 26, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–26303 Filed 10–2–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Health Professions and Nurse Education Special Emphasis Panel (SEP) Meetings:

Name of SEP: Podiatric Medicine Peer Review Group.
Date and Time: November 3, 1997, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: November 3, 1997, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: National Research Service Awards Peer Review Group.
Date and Time: November 5–7, 1997, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: November 5, 1997, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Graduate Training in Family Medicine Peer Review Group.
Date and Time: November 17–21, 1997, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: November 17, 1997, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Faculty Development Peer Review Group.
Date and Time: December 1–4, 1997, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: December 1, 1997, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Nursing Education Opportunities Peer Review Group.
Date and Time: January 21–23, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: January 21, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Predoctoral Training in Family Medicine Peer Review Group.
Date and Time: January 26–29, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: January 26, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Advanced General Dentistry Peer Review Group.
Date and Time: February 9–12, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: February 9, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Preventive Medicine Peer Review Group.
Date and Time: February 17–19, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Open on: February 17, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Physician Assistants Peer Review Group.
Date and Time: February 23–26, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: February 23, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Geriatric Education Centers Review Group.
Date and Time: March 2–5, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: March 2, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Nurse Practitioner/Nurse Midwifery Review Group.
Date and Time: March 9–12, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: March 9, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Basic AHEC Review Group
Date and Time: March 16–18, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: March 16, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Model AHEC Review Group.
Date and Time: March 16–18, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue Silver Spring, Maryland 20910.
Open on: March 16, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Nursing Special Projects Review Group.
Date and Time: March 23–26, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: March 23, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Advanced Nurse Education/ Nurse Anesthetist Review Group.
Date and Time: March 30–April 1, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue Silver Spring, Maryland 20910.
Open on: March 30, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Allied Health Project Grants Review Group
Date and Time: April 20–24, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: April 20, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Health Career Opportunity/ Minority Faculty Fellowship Review Group.
Date and Time: April 20–24, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue Silver Spring, Maryland 20910.
Open on: April 20, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Health Career Opportunity Review Group.
Date and Time: April 27–30, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: April 27, 1998, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Name of SEP: Departments of Family Medicine Peer Review Group.
Date and Time: May 18–21, 1998, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: May 18, 1997, 8:00 a.m. to 10:00 a.m. Closed for Remainder of Meeting.

Purpose: The Health Professions and Nurse Education Special Emphasis Panel shall advise the Director of the Bureau of Health Professions on the technical merit of grants to improve the training, distribution, utilization, and quality of personnel required to staff the Nation's health care delivery system.

Agenda: The open portion of each meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meetings will be closed after 10:00 a.m. on the first day of each meeting until adjournment for the review of grant applications. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Acting Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Pub.L. 92–463.

Anyone wishing to obtain a roster of members or other relevant information should write or contact Mrs. Sherry Whipple, Program Analyst, Peer Review Branch, Parklawn Building, Room 8C–23, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5926.

Agenda items are subject to change as priorities dictate.

Dated: September 29, 1997.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination, HRSA.

[FR Doc. 97–26288 Filed 10–2–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance

testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840, (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP) 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology, Laboratory 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672, (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic, Laboratories),

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927/ 800–728–4064, (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400, (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986/908–526–2400, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/ 800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808 (x4512)

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361/801–268–2431

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/ 800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272

Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063, (formerly: Drug Labs of Texas)

Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106, (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376, (formerly: Damon Clinical Laboratories, Damon/ MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733, (formerly: Med-Chek Laboratories, Inc., Med-Chek/ Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311, (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 1355 Mittel Blvd. Wood Dale, IL 60191, 630–595–3888, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Scientific Testing Laboratories, Inc. 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788/254–771–8379

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800/800–999–LABS

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236, (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006, (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484/610–631–4600, (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379, (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital Toxicology Laboratory, P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373/800–966–2211, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–996–7300, (formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratory for the conduct of forensic urine drug testing required by Department of Transportation regulations: MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (formerly: NOVAMANN (Ontario) Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–26356 Filed 10–2–97; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–31]

Office of Lead Hazard Control; Notice of Proposed Information Collection: Comment Request

AGENCY: Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 2, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Ms. Ruth Wright, Reports Liaison Officer, Office of Lead Hazard Control (L), Department of Housing and Urban Development, 451–7th Street, SW, Room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dr. Warren Friedman at (202) 755–1785, extension 159 (this is not a toll-free number), Office of Lead Hazard Control, HUD, for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: National Survey of Lead Hazards in Housing.

OMB Control Number, if applicable: To be requested.

Description of the need for the information and proposed use: HUD needs the information in preparation for regulatory impact analyses of forthcoming regulatory and program proposals, in order to minimize regulatory burdens and increase programmatic efficiency. The survey will be a scientific descriptive study of lead levels in dust, soil, and paint in the Nation's housing, collecting information about lead and related data regarding occupants and their residential environment.

Agency form numbers, if applicable: None.

Members of affected public: Residents of 1000 randomly selected housing units.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

	Number of respondents	Frequency of responses	Hours per response	Burden hours
Survey response	1,000	7	3	3,000
Total Estimated Burden Hours: 3,000.				

Status of the proposed information collection: New request.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 25, 1997.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 97–26296 Filed 10–2–97; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–30]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 2, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Harold R. Holzman, Social Science Analyst, Office of Policy Development and Research—telephone (202) 708–3700 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Crime Survey in Chicago Public Housing and the Surrounding Neighborhood.

Description of the need for the information and proposed use: Crime is a serious problem in much of Chicago's high-rise public housing and the surrounding areas. The Department of Housing and Urban Development has contracted with Abt Associates Inc. to conduct an analysis of the crime-related impact of an ongoing revitalization and redesign effort in the Chicago Housing Authority's (CHA) Henry Horner Homes and the neighborhood surrounding Horner Homes. Crime prevention is among the principle objectives of the revitalization and redesign effort.

This revitalization presents the opportunity for researchers to gauge the effects of the architectural redesign on crime and perceptions of crime in public housing and the surrounding neighborhood. The proposed survey will collect information on residents' perceptions of the quality of life in their neighborhood, perceptions of crime and disorder in their neighborhood and actual experience with criminal victimization. In addition to contributing to the assessment of the impact of the revitalization effort, this project will provide an opportunity to replicate and refine HUD's Policy Development and Research (PD&R) Office's approach to victimization survey methodology in Federally-assisted housing. Furthermore, the value of the proposed survey is enhanced by the fact that since 1994, Abt Associates Inc. has conducted a series of HUD-sponsored resident satisfaction surveys in Horner Homes. These surveys will provide valuable baseline data for comparison with the results of the proposed survey.

Members of affected public: The survey will involve a random sample of approximately 250 households in the Horner Homes and of 250 households in the community that immediately surrounds Horner Homes. One individual, aged 18 years or older, will be interviewed in each household.

Estimate Burden: The survey will involve 500 respondents, half of whom will be public housing residents and half of whom will be residents of the surrounding neighborhood. Information will be collected by a one-time personal interview that will take an average of approximately 20 minutes to complete. A total of 167 hours of respondents' time (20 minutes times 500 respondents divided by 60 minutes) will be consumed by the survey process.

Status of the proposed information collection: New.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 25, 1997.

Paul A. Leonard,

Deputy Assistant Secretary for the Office of Policy Development.

[FR Doc. 97–26297 Filed 10–2–97; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–29]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The purposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: November 3, 1997.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Bduget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other avaialbe documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of th eneed for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequenctly information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatemet, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 26, 1997.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Moving to Opportunity Demonstration Baseline Survey and Tracking Forms.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applicants	2,110		1		.75		1,583
Public Housing Agencies	14		1		205		2,868

Total Estimated Burden Hours: 4,451

Status: Extension, with changes.

Contact: John Goering, HUD, (202) 708–3700 x131; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: September 26, 1997.

[FR Doc. 97–26298 Filed 10–2–97; 8:45 am]

BILLING CODE 4210–01–M

Office: Policy Development and Research.

OMB Approval Number: 2528–0161.

Description of the Need for the Information and its Proposed Use: The Moving to Opportunity (MTO) Demonstration is authorized by Congress in the Housing and Community Development Act of 1992. MTO makes use of Section 8 Rental Assistance, in combination with intensive housing search and counseling services, to learn whether moving from low-poverty neighborhoods to a high-poverty community significantly improves the social and economic prospects of poor families. The demonstration has two sets of research goals. First, the demonstration will compare the costs and services of the MTO program with the routine implementation of the Section 8 tenant-based rental assistance program. Second, the demonstration will assess the housing, educational, and employment outcomes of families assisted through the program. HUD will report to Congress biennially on the effectiveness of the demonstration.

Form Number: None.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and State, Local, or Tribal Government.

Frequency of Submission: On occasion.

Reporting Burden:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–287]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department if soliciting public comments on the subject proposal.

DATES: Comments due date: November 3, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and

Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 26, 1997.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Housing Finance Agency Risk Sharing Program.

Office: Housing.

OMB Approval Number: 2502–0500.

Description of the Need for the Information and Its Proposed Use: Section 542(c) of the Housing and Community Development Act of 1992 directs HUD to insure mortgages underwritten and serviced by Housing Finance Agencies (HFAs). The HFAs will reimburse HUD a certain percentage of any loss under an insured loan depending upon the level of risk the HFA contracts to assume. The required information collection requirements are divided into two categories: Category A requirements relate to information required of the HFAs themselves; and Category B requirements relate to specific projects or mortgagors. The information collected is needed on the projects to insure the mortgages meet statutory requirements and monitor the projects' stability.

Form Number: None.

Respondents: Business or other for-profit and not-for-profit institutions.

Frequency of Submission: Annually and recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Category A	33		2		4.0		264
Category B	83		1		46.5		3,860
Monitoring Reports	330		1		10.5		3,465

Total Estimated Burden Hours: 7,589.

Status: Reinstatement, with changes.

Contact: Flossie Ellison, HUD, (202) 708–0743 x2472; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: September 26, 1997.

[FR Doc. 97–26299 Filed 10–2–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–27]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: November 3, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 26, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Recertification of Family Income and Composition, Section 235(b) and Statistical Report for Sections 235 (b), (j) and (i).

Office: Housing.

OMB Approval Number: 2502–0082.

Description of the Need for the Information and its Proposed Use: Recertification forms are submitted by homeowners to mortgages. Mortgagees will use the forms to determine continued eligibility for assistance and determine the amount of assistance a homeowner is to receive. The forms are also used by mortgagees to report statistical and general program data to HUD.

Form Number: HUD–93101 and 93101–A.

Respondents: Individuals or Households and Business or Other For-Profit.

Frequency of Submission: On Occasion, Monthly, and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–93101	150,000		1.25		1		187,500
HUD–93101–A	962		12		.17		1,962

Total Estimated Burden Hours: 189,462.

Status: Reinstatement, without changes.

Contact: Joseph McCloskey, HUD, (202 708–1719 x2296; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: September 26, 1997.

[FR Doc. 97–26300 Filed 10–2–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–23]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing-and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLELMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance ACt (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brain Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Mr. Jeff Holste, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 428–6318; ENERGY: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; GSA: Mr. Brian K. Polly, Assistant Commissioner,

General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; INTERIOR: Ms. Lola D. Knight, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll–free numbers).

DatedL September 25, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Suitable/Available Properties

Buildings (by State)

Colorado

Bldg. T–847
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219730209
Status: Unutilized
Comment: 10,286 sq. ft., 2-story, possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–1007
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219730210
Status: Unutilized
Comment: 3818 sq. ft., needs repair, possible asbestos/lead paint, most recent use—health clinic, off-site use only

Bldg. T–1342
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219730211
Status: Unutilized
Comment: 13,364 sq. ft., possible asbestos/lead paint, most recent use—instruction bldg.

Bldg. T–1641
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219730212
Status: Unutilized
Comment: 3663 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. T–6005
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219730213
Status: Unutilized
Comment: 19,015 sq. ft., possible asbestos/lead paint, most recent use—warehouse

Bldg. T–6028
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219730214
Status: Unutilized
Comment: 10,193 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. T–6049
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219730215
Status: Unutilized
Comment: 19,344 sq. ft., possible asbestos/lead paint, most recent use—youth center use only

Bldg. P–6225A
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219730216
Status: Unutilized
Comment: 1040 sq. ft., possible asbestos/lead paint, most recent use—garage, off-site use only

Bldg. S–6274
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219730217
Status: Unutilized
Comment: 4751 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Georgia

Bldg. T–930
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219730218
Status: Unutilized
Comment: 34098 sq. ft., poor condition, most recent use—laundry, off-site use only

Bldg. T–931
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219730219
Status: Unutilized
Comment: 2232 sq. ft., poor condition, most recent use—gas gen. plant, off-site use only

Bldg. T–949
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219730220
Status: Unutilized
Comment: 240 sq. ft., poor condition, most recent use—plant bldg., off-site use only

Hawaii

Bldg. T–450
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219730221
Status: Unutilized
Comment: 672 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only

Bldg. T–451
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219730222
Status: Unutilized
Comment: 1348 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only

Bldg. T–452
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219730223
Status: Unutilized
Comment: 672 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only

Bldg. T–453
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219730224
Status: Unutilized
Comment: 1348 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only

Bldg. T–454
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219730225
Status: Unutilized
Comment: 672 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only

Bldg. T–455
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219730226
Status: Unutilized
Comment: 1348 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only

Bldg. T–456
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219730227
Status: Unutilized
Comment: 672 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only

Bldg. T–457
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219730228
Status: Unutilized
Comment: 1348 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only

Bldg. T–458
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219730229
Status: Unutilized
Comment: 672 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only

Bldg. T–459
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219730230
Status: Unutilized
Comment: 1348 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only

Bldg. T–460
Fort Shafter

Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219730231
Status: Unutilized
Comment: 1348 sq. ft., presence of asbestos/lead paint, most recent use—guest house, off-site use only

Illinois

Bldg. 603030018
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419730002
Status: Excess
Comment: 1640 sq. ft., reinforced concrete, needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 006
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419730003
Status: Excess
Comment: 19,000 sq. ft., metal quonset, needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 026
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419730004
Status: Excess
Comment: 2300 sq. ft., cement block walls, needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 028
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419730005
Status: Excess
Comment: 2800 sq. ft., concrete block, needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 809
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419730006
Status: Excess
Comment: 5425 sq. ft., metal quonset, needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 826
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419730007
Status: Excess
Comment: 800 sq. ft., metal, needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 829
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419730008
Status: Excess
Comment: 3035 sq. ft., metal, needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 829A
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419730009
Status: Excess
Comment: 195 sq. ft., metal, needs repair, presence of asbestos/lead paint, off-site use only

Kansas

Bldg. P–138
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219730232
Status: Unutilized
Comment: 5087 sq. ft., 2-story, possible asbestos/lead paint, most recent use—battalion hdqtrs., off-site use only

Bldg. P–139
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219730233
Status: Unutilized
Comment: 1798 sq. ft., possible asbestos/lead paint, most recent use—brigade hdqtrs., off-site use only

Bldg. S–402
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219730234
Status: Unutilized
Comment: 2792 sq. ft., possible asbestos/lead paint, most recent use—hospital clinic, off-site use only

Bldg. S–404
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219730235
Status: Unutilized
Comment: 4795 sq. ft., possible asbestos/lead paint, most recent use—hospital clinic, off-site use only

Louisiana

Bldg. 7401
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730236
Status: Unutilized
Comment: 1688 sq. ft., most recent use—classroom, off-site use only

Bldg. 7402
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730237
Status: Unutilized
Comment: 1675 sq. ft., most recent use—admin/supply, off-site use only

Bldg. 7403
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730238
Status: Unutilized
Comment: 2093 sq. ft., most recent use—admin/supply, off-site use only

Bldg. 7404
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730239
Status: Unutilized
Comment: 2093 sq. ft., most recent use—admin/supply, off-site use only

Bldg. 7405
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730240
Status: Unutilized
Comment: 1922 sq. ft., most recent use—recreation, off-site use only

Bldg. 7406
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730241
Status: Unutilized
Comment: 1675 sq. ft., most recent use—storage, off-site use only

Bldg. 7407
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730242
Status: Unutilized
Comment: 2093 sq. ft., most recent use—admin/supply, off-site use only

Bldg. 7408
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730243
Status: Unutilized
Comment: 2093 sq. ft., most recent use—admin/supply, off-site use only

Bldg. 7412
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730244
Status: Unutilized
Comment: 1029 sq. ft., most recent use—admin., off-site use only

Bldg. 7419
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730245
Status: Unutilized
Comment: 2777 sq. ft., most recent use—classroom, off-site use only

Bldg. 7423
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730246
Status: Unutilized
Comment: 4073 sq. ft., most recent use—barracks, off-site use only

Bldg. 7424
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730247
Status: Unutilized
Comment: 4073 sq. ft., most recent use—barracks, off-site use only

Bldg. 7425
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730248
Status: Unutilized
Comment: 4073 sq. ft., most recent use—barracks, off-site use only

Bldg. 7437
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730249
Status: Unutilized
Comment: 4073 sq. ft., most recent use—barracks, off-site use only

Bldg. 7438
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730250
Status: Unutilized
Comment: 4073 sq. ft., most recent use—barracks, off-site use only

Bldg. 7453
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730251
Status: Unutilized
Comment: 1029 sq. ft., most recent use—admin., off-site use only

Bldg. 7454
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730252
Status: Unutilized
Comment: 1922 sq. ft., most recent use—dining facility, off-site use only

Bldg. 7455
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730253
Status: Unutilized
Comment: 2093 sq. ft., off-site use only

Bldg. 7456
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730254
Status: Unutilized
Comment: 2543 sq. ft., off-site use only

Bldg. 7457
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219730255
Status: Unutilized
Comment: 2356 sq. ft., most recent use—dining, off-site use only

Maryland

Bldg. 370
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219730256
Status: Unutilized
Comment: 19,583 sq. ft., most recent use—NCO club, possible asbestos/lead paint

Bldg. 2424
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219730257
Status: Unutilized
Comment: 2284 sq. ft., most recent use—admin., possible asbestos/lead paint

Bldg. 0716A
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730258
Status: Unutilized
Comment: 66 sq. ft., concrete, most recent use—ordnance facility, off-site use only

Bldg. 0716C
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730259
Status: Unutilized
Comment: 49 sq. ft., most recent use—pump station, off-site use only

Bldg. 00780
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730260
Status: Unutilized
Comment: 360 sq. ft., most recent use—storage, off-site use only

Bldg. 0795A
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730261
Status: Unutilized
Comment: 210 sq. ft., presence of asbestos/lead paint, most recent use—storage shed, off-site use only

Bldg. 00895
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730262
Status: Unutilized
Comment: 64 sq. ft., most recent use—storage, off-site use only

Bldgs. 01082–01086
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730263
Status: Unutilized
Comment: 65 sq. ft. each, most recent use—ammunition storage, off-site use only

Bldg. 01133
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730264
Status: Unutilized
Comment: 294 sq. ft. concrete, most recent use—storage, off-site use only

Bldg. 01154
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730265
Status: Unutilized
Comment: concrete, possible lead paint, most recent use—ammunition storage, off-site use only

Bldg. E3225
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730266
Status: Unutilized
Comment: 64 sq. ft., most recent use—guard shack, off-site use only

Bldg. E3349
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730267
Status: Unutilized
Comment: 103 sq. ft., possible lead paint, fuels, oils, most recent use—flammable matl storehouse, off-site use only

Bldg. E3371
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730268
Status: Unutilized
Comment: 256 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. E3488
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730269
Status: Unutilized
Comment: 24 sq. ft., most recent use—guard shack, off-site use only

Bldg. E3513
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730270
Status: Unutilized
Comment: 117 sq. ft., most recent use—storehouse, off-site use only

Bldg. E4015
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730271
Status: Unutilized
Comment: 185 sq. ft., presence of asbestos/lead paint, fuel, oil, most recent use—fuel bldg., off-site use only

Bldgs. E5250, E5251
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730272
Status: Unutilized
Comment: 27/120 sq. ft., possible asbestos/lead paint, most recent use—shed/pump station, off-site use only

Bldg. E5432
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219730273
Status: Unutilized
Comment: 33 sq. ft., presence of lead paint, most recent use—flammable matl storehouse, off-site use only

Bldgs. E7224, E7226
Aberdeen Proving Ground Co: Hardford MD 21005–5001
Landholding Agency: Army
Property Number: 219730274
Status: Unutilized
Comment: 216/163 sq. ft., possible lead paint, most recent use—storehouse, off-site use only

Missouri

Bldg. 1226
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730275
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1271
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730276
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1280
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730277
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 1281
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730278
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 1282
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730279
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1283
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730280
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1284
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730281
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1285
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730282
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1286
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730283
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1287
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730284
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1288
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730285
Status: Unutilized
Comment: 2360 sq. ft., presence of asbestos/lead paint, most recent use—dining facility, off-site use only

Bldg. 1289
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730286
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

New Mexico

5 Family Housing Units
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730293
Status: Excess
Comment: 1126 gross sq. ft., each needs major repairs, presence of asbestos, off-site use only

25 Family Housing Units
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730294
Status: Unutilized
Comment: 1264 gross sq. ft., each needs major repairs, presence of asbestos, off-site use only

15 Family Housing Units
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730295
Status: Unutilized
Comment: 1207 gross sq. ft. each, needs major repairs, presence of asbestos, off-site use only

19 Family Housing Units
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730296
Status: Unutilized
Comment: 1426 gross sq. ft. each, needs major repairs, presence of asbestos, off-site use only

2 Family Housing Units
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730297
Status: Unutilized
Comment: 2080 gross sq. ft. each, needs major repairs, presence of asbestos, off-site use only

5 Family Housing Units
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730298
Status: Unutilized
Comment: 2220 gross sq. ft. each, needs major repairs, presence of asbestos, off-site use only

Bldg. 364
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730300
Status: Unutilized
Comment: 1992 sq. ft., presence of asbestos, poor condition, most recent use—office, off-site use only

Bldg. 419
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730301
Status: Unutilized
Comment: 4849 sq. ft., presence of asbestos, most recent use—storehouse, off-site use only

Bldg. 421
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730302
Status: Unutilized
Comment: 6418 sq. ft., presence of asbestos, most recent use—storehouse, off-site use only

Bldg. 1332
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730305
Status: Unutilized
Comment: 3672 sq. ft., presence of asbestos, poor condition, most recent use—bathhouse, off-site use only

Bldg. 1334
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730306
Status: Unutilized
Comment: 83 sq. ft., presence of asbestos, poor condition, most recent use—clorinator bldg., off-site use only

New York

Bldg. 720
U.S. Military Academy
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 219730308
Status: Unutilized
Comment: 28,625 sq. ft., multipurpose bldg., poor condition

Oklahoma
Bldg. T–205
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730343
Status: Unutilized
Comment: 95 sq. ft., possible asbestos/lead paint, most recent use—waiting shelter, off-site use only
Bldg. T–208
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730344
Status: Unutilized
Comment: 20,525 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only
Bldg. T–210
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730345
Status: Unutilized
Comment: 19,049 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only
Bldg. T–214
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730346
Status: Unutilized
Comment: 6332 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only
Bldgs. T–215, T–216
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730347
Status: Unutilized
Comment: 6300 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–217
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730348
Status: Unutilized
Comment: 6394 sq. ft., possible asbestos/lead paint, most recent use—training center, off-site use only
Bldgs. T–219, T–220
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730349
Status: Unutilized
Comment: 152 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730350
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only
Bldgs. T–837, T–839
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730351
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. P–902
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730352
Status: Unutilized
Comment: 101 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. P–934
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730353
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. P–936
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730354
Status: Unutilized
Comment: 342 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. S–958
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730355
Status: Unutilized
Comment: 1602 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1177
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730356
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only
Bldgs. T–1468, T–1469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730357
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1470
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730358
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1508
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730359
Status: Unutilized
Comment: 3176 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1940
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730360
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–1944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730361
Status: Unutilized
Comment: 449 sq. ft., possible asbestos/lead paint, off-site use only
Bldgs. T–1954, T–2022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730362
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2180
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730363
Status: Unutilized
Comment: possible asbestos/lead paint, most recent use—vehicle maint. facility, off-site use only
Bldg. T–2184
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730364
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2185
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730365
Status: Unutilized
Comment: 151 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only
Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730366
Status: Unutilized
Comment: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only
Bldg. T–2187
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730367
Status: Unutilized

Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2209
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730368
Status: Unutilized
Comment: 1257 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–2240, T–2241
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730369
Status: Unutilized
Comment: approx. 9500 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–2262, T–2263
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730370
Status: Unutilized
Comment: approx. 3100 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Bldgs. T–2271, T–2272
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730371
Status: Unutilized
Comment: 232 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldgs. T–2291 thru T–2296
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730372
Status: Unutilized
Comment: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only
5 Bldgs.
Fort Sill
T–2300, T–2301, T–2303, T–2306, T–2307
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730373
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2406
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730374
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
4 Bldgs.
Fort Sill
#T–2427, T–2431, T–2433, T–2449
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730375
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
3 Bldgs.
Fort Sill
#T–2430, T–2432, T–2435
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730376
Status: Unutilized
Comment: approx. 8900 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. T–2434
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730377
Status: Unutilized
Comment: 8997 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only
Bldg. T–2606
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730378
Status: Unutilized
Comment: 3850 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2746
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730379
Status: Unutilized
Comment: 4105 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only
Bldgs. T–2800, T–2809, T–2810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730380
Status: Unutilized
Comment: approx. 19,000 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–2922
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730381
Status: Unutilized
Comment: 3842 sq. ft., possible asbestos/lead paint, most recent use—chapel, off-site use only
Bldgs. T–2963, T–2964, T–2965
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730382
Status: Unutilized
Comment: approx. 3000 sq. ft., possible asebestos/lead paint, most recent use—maint. shop, off-site use only
Bldgs. T–3001, T–3006
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730383
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–3025
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730384
Status: Unutilized
Comment: 5259 sq. ft., possible asbestos/lead paint, most recent use—museum, off-site use only
Bldg. T–3314
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730385
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldgs. T–3318, T–3324, T–3327
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730386
Status: Unutilized
Comment: 8832–9048 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–3323
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730387
Status: Unutilized
Comment: 8832 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only
Bldg. T–3328
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730388
Status: Unutilized
Comment: 9030 sq. ft., possible asbestos/lead paint, most recent use—refuse, off-site use only
Bldgs. T–4021, T–4022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730389
Status: Unutilized
Comment: 442–869 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–4065
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730390
Status: Unutilized
Comment: 3145 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Bldg. T–4067
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730391
Status: Unutilized
Comment: 1032 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–4281
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730392
Status: Unutilized
Comment: 9405 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–4401, T–4402
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730393
Status: Unutilized
Comment: 2260 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

5 Bldgs.
Fort Sill
#T–4403 thru T–4406, T–4408
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730394
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. T–4407
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730395
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining facility, off-site use only

4 Bldgs.
Fort Sill
#T–4410, T–4414, T–4415, T–4418
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730396
Status: Unutilized
Comment: 1311 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

5 Bldgs.
Fort Sill
#T–4411 thru T–4413, T–4416 thru T–4417
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730397
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only

Bldg. T–4421
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730398
Status: Unutilized
Comment: 3070 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only

10 Bldgs.
Fort Sill
#T–4422 thru T–4427, T–4431 thru T–4434
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730399
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

6 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4436, T–4440, T–4444, T–4445, T–4448, T–4449,
Landholding Agency: Army
Property Number: 219730400
Status: Unutilized
Comment: 1311–2263 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

5 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4441, T–4442, T–4443, T–4446, T–4447
Landholding Agency: Army
Property Number: 219730401
Status: Unutilized
Comment: 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only

3 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4451, T–4460, T–4481
Landholding Agency: Army
Property Number: 219730402
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only

12 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4454, T–4455, T–4457, T–4462, T–4464, T–4465, T–4466, T–4482, T–4483, T–4484, T–4485, T–4486
Landholding Agency: Army
Property Number: 219730403
Status: Unutilized
Comment: 2263 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldgs. T–4461, T–4479
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730404
Status: Unutilized
Comment: 2265 sq. ft., possible asbestos/lead paint, most recent use—dayroom, off-site use only

5 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4469, T–4470, T–4475, T–4478, T–4480
Landholding Agency: Army
Property Number: 219730405
Status: Unutilized
Comment: 1311–2265 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

4 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–4471, T–4472, T–4473, T–4477
Landholding Agency: Army
Property Number: 219730406
Status: Unutilized
Comment: approx. 1244 sq. ft., possible asbestos/lead paint, most recent use—showers, off-site use only

Bldg. T–4707
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730407
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—waiting shelter, off-site use only

Bldg. T–5005
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730408
Status: Unutilized
Comment: 3206 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730409
Status: Unutilized
Comment: 783 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–5044, T–5045
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730410
Status: Unutilized
Comment: 1798/1806 sq. ft., possible asbestos/lead paint, most recent use—classrooms, off-site use only

4 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: #T–5046, T–5047, T–5048, T–5049
Landholding Agency: Army
Property Number: 219730411
Status: Unutilized
Comment: various sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5094
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730412
Status: Unutilized
Comment: 3204 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. T–5095
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730413
Status: Unutilized
Comment: 3223 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730414
Status: Unutilized

Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldg. T–5595
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730415
Status: Unutilized
Comment: 695 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5639
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730416
Status: Unutilized
Comment: 10,720 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. T–7290, T–7291
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730417
Status: Unutilized
Comment: 224/840 sq. ft., possible asbestos/lead paint, most recent use—kennel, off-site use only

Bldgs. T–7701, T–7703
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730418
Status: Unutilized
Comment: 1706/1650 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–7775
Fort Still
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730419
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

Pennsylvania

Bldg. P–968
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 219730309
Status: Unutilized
Comment: 127 sq. ft., 1-story, concrete/brick, off-site use only

Bldg. 76
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 779730075
Status: Excess
Comment: 3475 sq. ft., cinder block/metal, most recent use—child care, needs repair, off-site use only

South Carolina

Bldg. 3499
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219730310
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.

Bldg. E4831
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219730311
Status: Unutilized
Comment: 272 sq. ft., needs repair, most recent use—storage

Bldg. 5418
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219730312
Status: Unutilized
Comment: 3900 sq. ft., needs repair, most recent use—admin.

Bldg. G7357
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219730313
Status: Unutilized
Comment: 49 sq. ft., most recent use—range bldg.

Bldg. H7471
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219730314
Status: Unutilized
Comment: 144 sq. ft., most recent use—range bldg.

Texas

Bldg. T–330
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730315
Status: Unutilized
Comment: 59,149 sq. ft., presence of asbestos/lead paint, historical category, most recent use—laundry, off-site use only

Bldgs. P–605A & P–606A
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730316
Status: Unutilized
Comment: 2418 sq. ft., poor condition, presence of asbestos/lead paint, historical category, most recent use—indoor firing range, off-site use only

Bldg. S–1150
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730317
Status: Unutilized
Comment: 8629 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldg., off-site use only

Bldgs. S–1440–S–1446, S–1452
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730318
Status: Unutilized
Comment: 4200 sq. ft., presence of lead, most recent use—instruction bldgs., off-site use only

4 Bldgs.
Fort Sam Houston
#S–1447, S–1449, S–1450, S–1451
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730319
Status: Unutilized
Comment: 4200 sq. ft., presence of asbestos/lead paint, most recent use—instruction bldgs., off-site use only

Bldg. P–3500
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730320
Status: Unutilized
Comment: 13,921 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—support of firing range, off-site use only

Bldg. T–3551
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730321
Status: Unutilized
Comment: 992 sq. ft., presence of asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. T–3552
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730322
Status: Unutilized
Comment: 992 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage shed, off-site use only

Bldg. T–3553
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730323
Status: Unutilized
Comment: 992 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage shed, off-site use only

Bldg. T–3554
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730324
Status: Unutilized
Comment: 18803 sq. ft., poor condition, presence of lead paint, most recent use—stable, off-site use only

Bldg. T–3556
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730325
Status: Unutilized
Comment: 1300 sq. ft., poor condition, presence of lead paint, most recent use—stable, off-site use only

Bldg. T–3557
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730326
Status: Unutilized
Comment: 992 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—stable, off-site use only

Bldg. P–4115
Fort Sam Houston

San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730327
Status: Unutilized
Comment: 529 sq. ft., presence of asbestos/lead paint historic bldg., most recent use—admin., off-site use only

Bldg. 4205
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730328
Status: Unutilized
Comment: 24,573 sq. ft., presence of asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. T–5112
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730329
Status: Unutilized
Comment: 3663 sq. ft., presence of asbestos/lead paint, historical category, most recent use—post exchange, off-site use only

Bldg. T–5113
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730330
Status: Unutilized
Comment: 2550 sq. ft., presence of asbestos/lead paint, historical bldg., most recent use—medical clinic, off-site use only

Bldg. T–5122
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730331
Status: Unutilized
Comment: 3602 sq. ft., presence of asbestos/lead paint, historical category, most recent use—instruction bldg., off-site use only

Bldg. T–5903
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730332
Status: Unutilized
Comment: 5200 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only

Bldg. T–5907
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730333
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, historical category, most recent use—admin., off-site use only

Bldg. P–6271
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730334
Status: Unutilized
Comment: 291 sq. ft., presence of asbestos/lead paint, most recent use—pump station, off-site use only

Bldg. T–6284
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730335
Status: Unutilized
Comment: 120 sq. ft., presence of lead paint, most recent use—pump station, off-site use only

Bldg. T–5906
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219730420
Status: Unutilized
Comment: 570 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Virginia

Bldg. 409
Fort Myer
Fort Myer Co: Arlington VA 22211–1199
Landholding Agency: Army
Property Number: 219730336
Status: Unutilized
Comment: 2930 sq. ft., most recent use—storage, off-site use only

Bldg. T–59
Fort Monroe
Fort Monroe VA 23651–
Landholding Agency: Army
Property Number: 219730337
Status: Unutilized
Comment: 3282 sq. ft., wood, off-site use only

Wisconsin

Bldg. 1555
Fort McCoy
Fort McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219730338
Status: Unutilized
Comment: 4466 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldg. 1557
Fort McCoy
Fort McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219730339
Status: Unutilized
Comment: 192 sq. ft., most recent use—power plant bldg., off-site use only

Bldg. 1770
Fort McCoy
Fort McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219730340
Status: Unutilized
Comment: 4000 sq. ft.metal quonset, most recent use—storage, off-site use only

Bldg. 7164
Fort McCoy
Fort McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219730341
Status: Unutilized
Comment: 616 sq. ft., needs rehab, most recent use—storage, off-site use only

Suitable/Unavailable Properties

Buildings (by State)

Missouri

Bldg. 5702
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730287
Status: Unutilized
Comment: 1700 sq. ft., off-site use only

Bldg. 5703
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730288
Status: Unutilized
Comment: 288 sq. ft., off-site use only

Bldg. 5704
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730289
Status: Unutilized
Comment: 136 sq. ft., off-site use only

Bldg. 5705
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730290
Status: Unutilized
Comment: 1000 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 5706
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730291
Status: Unutilized
Comment: 1000 sq. ft., presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 5707
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219730292
Status: Unutilized
Comment: 1600 sq. ft., most recent use—bleachers, off-site use only

New Mexico

Bldg. 146
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730299
Status: Unutilized
Comment: 20,160 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. 436
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730303
Status: Unutilized
Comment: 4725 sq. ft., poor condition, most recent use—decontamination shelter, off-site use only

Bldg. 1310
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730304
Status: Unutilized
Comment: 4427 sq. ft., presence of asbestos, poor condition, most recent use—boy scout facility, off-site use only

Bldg. 1769
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219730307
Status: Unutilized
Comment: 768 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Land (by State)

Arizona

Pima Road Pump Station
Scottsdale Co: Maricopa AZ 85260–
Landholding Agency: Interior
Property Number: 619730002
Status: Excess
Comment: 11.80 acres with city's water distribution facilities, irregular shaped parcel

Idaho

7.74 acre parcel
4 mi SE of Rupert, Lot 13
Rupert Co: Minidoka ID 83350–
Landholding Agency: Interior
Property Number: 619730001
Status: Excess
Comment: encumbered w/private improvements in trepass

Unsuitable Properties

Buildings (by State)

California

Bldg. 391A
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 779730070
Status: Unutilized
Reason: Secured Area Extensive deterioration

Oklahoma

Bldg. T–1473
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219730342
Status: Unutilized
Reason: Other
Comment: gas chamber

Pennsylvania

Bldg. 11
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 779730071
Status: Excess
Reason: Extensive deterioration

Bldg. 30
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 779730072
Status: Excess
Reason: Extensive deterioration

Bldg. 31
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 779730073
Status: Excess
Reason: Extensive deterioration

Bldg. 39
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 779730074
Status: Excess
Reason: Extensive deterioration

Washington

Everett Federal Building
3002 Colby Avenue
Everett Co: Snohomish WA 98201–
Landholding Agency: GSA
Property Number: 549730026
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–G–WA–1140

[FR Doc. 97–25966 Filed 10–2–97; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1540–01]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for an extension of approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. On April 16, 1997, BLM published a notice in the **Federal Register** (62 FR 18645) requesting comments on this collection. The comment period closed on May 15, 1997. BLM received no comments from the public in response to that notice.

OMB is required to respond to this request within 60 days but may respond within 30 days. For maximum consideration, your comments and suggestions should be made within 30 days directly to: the Office of Management and Budget, Interior Desk Officer (1004–0157), Office of Information and Regulatory Affairs, Washington, D.C. 20503. Please provide a copy of your comments to: Bureau of Land Management Clearance Officer (WO–630), Department of the Interior, 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of BLM, including whether or not the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Title: Cost Reimbursement for Right-of-Way Grants Under the Federal Land Policy and Management Act.

OMB Approval Number: 1004–0157.

Abstract: Right-of-way applicants supply information to aid BLM in determining if they are entitled to a set-off against reimbursement of costs to the Government and the reasonable level of any such set-off, pursuant to 43 CFR 2808.3–2.

Description of Respondents: Applicants who believe that they are eligible for reimbursement reductions for public benefit or service aspects of the proposed right-of-way project.

Estimaed Completion Time: 3 hours per application.

Annual Responses: 14.

Annual Burden Hours: 42.

Bureau Clearance Officer: Carole Smith, (202) 452–0367.

Dated: September 18, 1997.

Carole J. Smith,

Bureau of Land Management Clearance Officer.

[FR Doc. 97–26212 Filed 10–2–97; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1060–00]

Temporary Closure of Public Lands in the Southeastern Portion of Carbon County, MT and the Northern Portion of Big Horn County, WY

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Billings Resource Area, Interior.

ACTION: Temporary, rotating closure of designated areas of the Pryor Mountain Wild Horse Range to public access.

SUMMARY: Notice is served that designated areas of the Pryor Mountain Wild Horse Range will be closed to public access on a temporary and rotating basis during the wild horse gather operation scheduled to begin on or about October 20, 1997. It is

anticipated that the gather operation will take approximately two weeks depending on the weather. Upon initiation, gather efforts will focus first on Sykes Ridge, then the Bighorn Canyon National Recreation Area "Dryhead" area, and finally Burnt Timber Ridge. As such, it will be necessary to individually close, including road access, either Burnt Timber Ridge or Sykes Ridge for a 3–4 day period during helicopter operation. Only one area will be affected at a time. Gather efforts within the "Dryhead" area will be coordinated through the National Park Service. This area will not be closed, but some traffic control may be in effect during actual days of helicopter operation. The public land affected by this rotating closure is located at:

SYKES RIDGE

Principal Meridian, Montana

T. 8 S., R. 28 E.,
Sec. 4: M&B
Sec. 5: M&B
Sec. 8: All
Sec. 9: M&B
Sec. 15: M&B
Sec. 16: All
Sec. 17: All
Sec. 20: All
Sec. 21: W2E2, W2
Sec. 28: W2
Sec. 29: All
Sec. 32: All
Sec. 33: W2, W2SE
T. 9 S., R. 28 E.,
Sec. 4: NWNE, S2NE, W2, SE
Sec. 5: All
Sec. 8: All
Sec. 9: All
Sec. 10: W2SW
Sec. 15: NWNW, S2NW, SW
Sec. 16: All
Sec. 17: All
Sec. 20: All
Sec. 21: All
Sec. 22: W2
Sec. 27: W2
Sec. 28: All
Sec. 29: All
Sec. 32: All
Sec. 33: All
Sec. 34: All

6th Principal Meridian, Wyoming

T. 58 N., R. 95 W.,
Sec. 17: M&B
Sec. 18: All
Sec. 19: All
Sec. 26: M&B
Sec. 27: M&B
Sec. 28: M&B
Sec. 33: M&B
Sec. 34: M&B

BURNT TIMBER RIDGE

Principal Meridian, Montana

T. 8 S., R. 27 E.,
Sec. 12: M&B
Sec. 13: M&B
Sec. 24: M&B
Sec. 25: M&B
Sec. 26: M&B
Sec. 35: M&B
Sec. 36: M&B
T. 9 S., R. 27 E.,
Sec. 1: All
Sec. 2: M&B
Sec. 11: M&B
Sec. 12: All
Sec. 13: All
Sec. 14: M&B
Sec. 23: M&B
Sec. 24: All
Sec. 25: M&B
Sec. 36: M&B
T. 8 S., R. 28 E.,
Sec. 6: E2E2
Sec. 7: M&B
Sec. 18: All
Sec. 19: All
Sec. 30: All
Sec. 31: All
T. 9 S., R. 28 E.,
Sec. 6: All
Sec. 7: All
Sec. 18: All
Sec. 19: All
Sec. 30: All
Sec. 31: All

6th Principal Meridian, Wyoming

T. 58 N., R. 95 W.,
Sec. 18: M&B
Sec. 19: M&B
Sec. 29: M&B

This closure is necessary to ensure the safety and welfare of all participants and observers for this gather, and to protect the wild horses as a natural resource on public lands. Efforts will be made to avoid time periods, such as weekends, of heavier anticipated public use of the range. The helicopter contractor is available to work on weekends, however, and this may be necessary due to temporary weather shut-downs or other unforeseen circumstances.

DATES: Rotating closures will be in effect from on or about October 20, 1997 through the conclusion of the gather operation, anticipated to conclude November 1, 1997 depending on weather conditions.

FOR FURTHER INFORMATION CONTACT: Burton D. Williams, Area Manager, BLM, Billings Resource Area Office, 810 E. Main, Billings, Montana 59105 or call (406) 238–1540.

SUPPLEMENTARY INFORMATION: Authority for this action is outlined in Title 43 Code of Federal Regulations, Subparts 8364 (43 CFR 8364.1). Any person who fails to comply with this closure is subject to arrest and a fine up to $1000 or imprisonment not to exceed 12 months, or both. This closure applies to all persons except persons authorized by the Bureau of Land Management and involved in the gather process.

For the first time, helicopters will be used as the primary tool to gather horses into the Britton Springs Corral Facility at the south end of the Pryor Mountain Wild Horse Range. In order to use the helicopter in a safe and effective manner, it is necessary to close the affected area while the helicopter operation is underway. The wild horses are separated into social groups that occupy three fairly distinct geographic areas of the range including Sykes Ridge, Burnt Timber Ridge and the Bighorn Canyon National Recreation Area "Dryhead" area. Gather efforts will be selective and will focus on one subpopulation of horses at a time. It is estimated that use of a helicopter will facilitate the timeliness, such that an average of 3–4 days will be necessary to gather horses from each geographic area.

Dated: September 24, 1997.

Timothy M. Murphy,

District Manager.

[FR Doc. 97–26308 Filed 10–2–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–930–07–1320–00]

Notice of Public Hearing and Call for Public Comment

AGENCY: Bureau of Land Management, Utah; Interior.

ACTION: Notice of public hearing and call for public comment on fair market value and maximum economic recovery; coal lease application UTU–71307.

SUMMARY: The Bureau of Land Management (BLM) announces a public hearing on the Environmental Assessment (EA) for a proposed coal lease sale and requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale. The lands included in coal lease application UTU–71307 are located in Emery County, Utah, approximately 15 miles northwest of Huntington, Utah on public land located in the Manti-LaSal National Forest and are described as follows:

T. 16 S., R. 6 E., SLM
Section 1: SE¼;
Section 10: E½E½SE¼;
Section 11: All;
Section 12: All;
Section 13: All;
Section 14: All;
Section 15: E½E½;
Section 22: Lots 1, 2, 4–7, E½NE¼;
SW¼NE¼, N½SE¼;
Section 23: N½, N½S½;
Section 24: N½;
T. 16 S., R. 7 E., SLM
Section 6: Lots 5–8, S½SE¼;
Section 7: All;
Section 8: NW¼NW¼;
Section 18: Lots 1–2, NE¼.

Containing 5,563 acres more or less.

The Tract has two potentially minable coal seams including, the Hiawatha and the Blind Canyon. The minable portions of the seams in this area are from 6 to 12 feet in thickness. This tract contains an estimated 60–65 million tons of recoverable high-volatile bituminous coal. The range of coal quality in the seams on an as received basis is as follows: 12,800–13,300 Btu/lb., 4–5.25 percent moisture, 4.7–8.8 percent ash, 42–44 percent volatile matter, 45–46 percent fixed carbon, and 0.6–0.65 percent sulfur. The public is invited to the hearing to make public or written comments on the Environmental Analysis concerning the proposal to lease the Mill Fork Tract, and also to submit comments on the fair market value (FMV) and the maximum economic recovery (MER) of the tract.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR 4322 and 4325, a public hearing shall be held on the proposed sale to allow public comment on and discussion of the potential effects of mining and proposed lease. Not less than 30 days prior to the publication of the notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Utah State Office during regular business hours (8:00 a.m. to 4:00 p.m.) Monday through Friday. Comments on fair market value and maximum economic recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to, the following information:

1. The quality and quantity of the coal resource.

2. The mining method or methods which would achieve maximum economic recovery of the coal, including specifications of seams to be mined and the most desirable timing and rate of production.

3. The quantity of coal.

4. If this tract is likely to be mined as part of an existing mine and therefore be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value.

5. If this tract should be evaluated as part of a potential larger mining unit and evaluated as a portion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit).

6. The configuration of any larger mining unit of which the tract may be a part.

7. Restrictions to mining which may affect coal recovery.

8. The price that the mined coal would bring when sold.

9. Costs, including mining and reclamation, of producing the coal and the time of production.

10. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given.

11. Depreciation and other tax accounting factors.

12. The value of any surface estate where held privately.

13. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area.

14. Any comparable sales data of similar coal lands.

Coal quantities and the FMV of the coal developed by BLM may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

DATES: The public hearing will be held in the conference room at the Museum of the San Rafael (64 North 100 East) Castle Dale, Utah, at 7:00 p.m., on November 4, 1997. Written comments on fair market value and maximum economic recovery must be received at the Bureau of Land Management, Utah State Office, by November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Max Nielson, 801–539–4038, Bureau of Land Management, Utah State Office, Division of Natural Resources, P.O. Box 45155, Salt Lake City, Utah, 84145–0155. Copies of the Mill Fork EA may be obtained by contacting Janette Kaiser, Forest Supervisor at the Manti-LaSal National Forest, 599 West Price River Dr. in Price, Utah (801–637–2817).

Dated: September 29, 1997.

Douglas M. Koza,

DSD, Natural Resources, Utah.

[FR Doc. 97–26241 Filed 10–2–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Oil and Gas Leasing Analysis; Helena & Deerlodge National Forests, MT Counties: Lewis and Clark, Powell, Jefferson, Broadwater, and Meagher. State: Montana

AGENCIES: Forest Service, USDA & Bureau of Land Management, USDI.

ACTION: Notice; extension of public review period for the draft supplement to the Final Environmental Impact Statement (FEIS) for the Helena National Forest and Elkhorn Portion of the Deerlodge National Forest Oil and Gas Leasing Analysis.

SUMMARY: The period of public review for the draft supplement to the FEIS for the Helena National Forest and Elkhorn Portion of the Deerlodge National Forest Oil and Gas Leasing Analysis has been extended to October 29, 1997. The USDA Forest Service and USDI Bureau of Land Management as joint lead agencies agree to extend the public review an additional 30 days from September 29, 1997 to October 29, 1997.

DATES: This action is effective October 3, 1997.

ADDRESSES: Thomas J. Clifford, Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, Mt. 59601; and Larry E. Hamilton, State Director, USDA—Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, MT 59107–6800.

FOR FURTHER INFORMATION CONTACT: Tom Andersen, Helena National Forest, 2880 Skyway Drive, Helena, Mt. 59601; phone (406) 449–5201, ext 277.

Dated: September 26, 1997.

Dwight Chambers,

Acting Forest Supervisor, Helena National Forest.

Dated: September 29, 1997.

Janet Singer,

Acting State Director, Montana State Office.

[FR Doc. 97–26242 Filed 10–2–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–07–1820–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C.), notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet on Thursday, November 13, 1997, at the Anasazi Heritage Center near Dolores, Colorado.

DATES: The meeting will be held on Thursday, November 13, 1997.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov

SUPPLEMENTARY INFORMATION: The November 13, 1997, meeting will begin at 9:00 a.m. at the Anasazi Heritage Center, 27501 Highway 184, three miles west of Dolores, Colorado. The agenda will include a summary of the fee pilot program at the Heritage Center, status reports on sage grouse planning efforts in Dry Creek Basin and the abandoned mine land reclamation effort in the upper Animas River drainage, and discussion on recreation guidelines. Time will be provided for public comments.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo_sw_rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: September 26, 1997.

Mark W. Stiles,

District Manager.

[FR Doc. 97–26307 Filed 10–2–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1220–00]

Restrictions on Public Land; San Juan, Rio Arriba and Sandoval Counties, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of use restrictions.

SUMMARY: In order to reduce the impacts to various resources caused by the high number of open roads and the use of off-highway vehicles in the Farmington District, use restrictions are announced by the Farmington District. Effective immediately, vehicle travel is limited to designated roads and trails within the 13 Off-Highway Vehicle (OHV) management units designated in the Farmington Proposed Resource Management Plan Amendment/Environmental Assessment Off-Highway Vehicle Use, as specified in the Decision Record which was approved in July of 1995. The 13 management units include a total of almost 500,000 acres of public land.

FOR FURTHER INFORMATION CONTACT: John Hansen, BLM Farmington District Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401; 505–599–6325.

SUPPLEMENTARY INFORMATION: The Resource Management Plan Amendment (RMPA) was completed and approved with extensive public involvement. The purpose of the amendment was to protect resource values such as wildlife habitat, soil, cultural sites and threatened and endangered species. The management units are listed below,

1. Tank Mountain/Pump Canyon
2. Middle Mesa
3. Rosa Mesa
4. Sims Mesa
5. Laguna Seca
6. Largo/Carrizo
7. Gallo Canyon
8. North Huerfano
9. Pinon Mesa
10. Kiffen Canyon
11. Manzanares Mesa
12. Blanco Mesa
13. Rincon Largo

A map showing the specific location of the management units is available for viewing at the Farmington District Office located in Farmington, New Mexico at 1235 La Plata Highway.

Off Highway Vehicle management plans will be written for each of the management units as funding and personnel allow. Closures will be enforced as signing is completed. The management plan for the Rosa Mesa area was completed in June of 1996.

Authority for these closures is found in 43 CFR part 8364. Any person who fails to comply with a closure issued under 43 CFR part 8364 may be subject to the penalties provided in 43 CFR 8360.0–7: violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Lee Otteni,

District Manager.

[FR Doc. 97–26240 Filed 10–2–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

TITLE: Office of Indian Royalty Assistant Customer Satisfaction Survey Postcard.

COMMENTS: This collection of information has been submitted to the Office of Management and Budget (OMB) for approval. In compliance with the Paperwork Reduction Act of 1995, Section 3506(c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the public's burden for responding to this collection? Can we enhance the quality, utility, and clarify of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

Comments should be made directly to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Comments should also be directed to the agency. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the E-mail address is David_Guzy@mms.gov. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Copies of the proposed information collection and related explanatory material may be obtained by contacting Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, E-mail Dennis_Jones@mms.gov.

DATES: Written comments should be received on or before November 3, 1997.

SUMMARY: The Minerals Management Service's Office of Indian Royalty Assistance (OIRA) is soliciting comments from Indian mineral owners to determine the effectiveness of its services. OIRA will use this information to develop and implement new procedures to improve and streamline its services.

Individual Indian mineral owners are requested to respond, using a customer comment postcard, to three questions by checking "Yes" or "No" boxes and to a fourth question with a written response. The four questions are: 1. Did we answer your questions? 2. Did we respond timely? 3. Did we treat you courteously? 4. How can we improve our service? We estimate that it takes about 2 minutes to respond to these questions and that approximately 60 respondents will respond annually.

Description of Respondents: Individual Indian mineral owners.

Frequency of Response: Upon request after receiving assistance from the Office of Indian Royalty Assistance.

Estimated Reporting and Recordkeeping Burden: 2 minutes.

Annual Responses: 60 responses.

Annual Burden Hours: 2 hours.

Bureau Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: September 22, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 97–26237 Filed 10–2–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to OMB—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Land and Water Conservation Fund State Assistance and Urban Park and Recreation Recovery Programs.

ACTION: Notice of submission to OMB and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on eight information collection requests (ICR) for the Land and Water Conservation Fund (LWCF) and Urban Park and Recreation Recovery (UPARR) grant programs as described below. Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology.

1. LWCF Description and Notification (DNF, NPS 10–903, OMB 1024–0031). The DNF is necessary to provide data input into the NPS automated project information system which provides timely data on projects funded over the life of the LWCF program. *Respondents:* 56 State governments, DC and territories. *Estimated Annual Reporting Burden:* 13 hours. *Estimated Average Burden Hours Per Response:* 0.25 hours. *Estimated Frequency of Response:* 50 nationwide.

2. LWCF Program Performance Report (OMB 1024–0032). As required by OMB Circular A–102, grantees must submit performance reports which describe the status of the work required under the project scope. *Respondents:* 56 State governments, DC and territories. *Estimated Annual Reporting Burden:* 690 hours. *Estimated Average Burden Hours Per Response:* 1.0 hours. *Estimated Frequency of Response:* 690 nationwide.

3. LWCF Project Agreement and Amendment Form (NPS 10–902 and 10–902a, respectively, OMB 1024–0033). The Project Agreement and Amendment forms set forth the obligations assumed by the State through its acceptance of Federal assistance under the LWCF Act and any special terms and conditions. *Respondents:* 56 State governments, DC and territories. *Estimated Annual Reporting Burden:* 70 hours. *Estimated Average Burden Hours Per Response:* 1.0 hours. *Estimated Frequency of Response:* 70 nationwide.

4. LWCF On-Site Inspection Report (OMB 1024–0034). The On-Site Inspection Reports are used to insure compliance by grantees with applicable Federal laws and program guidelines, and to insure the continued viability of the funded site. *Respondents:* 56 State governments, DC and territories. *Estimated Annual Reporting Burden:* 3,000 hours. *Estimated Average Burden Hours Per Response:* 0.5 hours. *Estimated Frequency of Response:* 6,000 nationwide.

5. LWCF Conversion of Use Provisions (OMB 1024–0047). To convert assisted sites to other than public outdoor recreation, LWCF project sponsors must provide relevant information necessary to comply with section 6(f)(3) of the LWCF Act of 1965. *Respondents:* 56 State governments, DC and territories. *Estimated Annual Reporting Burden:* 1,750 hours. *Estimated Average Burden Hours Per Response:* 35 hours. *Estimated Frequency of Response:* 50 nationwide.

6. UPARR Project Performance Report (OMB 1024–0028). As required by OMB Circular A–102, grant recipients must submit performance reports which describe the status of the work required under the project scope. *Respondents:* Urban cities and counties. *Estimated Annual Reporting Burden:* 250 hours. *Estimated Average Burden Hours Per Response:* 1.5 hours. *Estimated Frequency of Response:* 165 nationwide.

7. UPARR Conversion of Use Provisions (OMB 1024–0048). To convert assisted sites to other than public outdoor recreation, UPARR project sponsors must provide relevant information necessary to comply with section 1010 of the UPARR Act of 1978. *Respondents:* Urban cities and counties. *Estimated Annual Reporting Burden:* 75 hours. *Estimated Average Burden Hours Per Response:* 25 hours. *Estimated Frequency of Response:* 3 nationwide.

8. UPARR Project Agreement and Amendment Form (NPS 10–912 and 10–915, respectively, OMB 1024–0089). The Project Agreement and Amendment forms set forth the obligations assumed by grant recipients through their acceptance of Federal assistance under the UPARR Act and any special terms and conditions. *Respondents:* Urban cities and counties. *Estimated Annual Reporting Burden:* 20 hours. *Estimated Average Burden Hours Per Response:* 1.0 hours. *Estimated Frequency of Response:* 20 nationwide.

There were no public comments received as a result of publishing on July 25, 1997 in the **Federal Register** a 60-day notice of intention to request clearance for this ICR.

DATES: Public comments on these eight proposed ICRs will be accepted on or before November 3, 1997.

ADDRESSES: Send comments to: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20503; and also to: Mr. Kenneth R. Compton, Acting Program Manager, Recreation Grants, National Park Service

(2225), P.O. Box 37127, Washington, DC 20013–7127.

Diane M. Cooke,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 97–26266 Filed 10–2–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Director's Order Concerning Relationships Between the National Park Service and Cooperating Associations

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: The National Park Service (NPS) is converting and updating its current system of internal instructions to a three-level system consisting of: (1) NPS Management Policies; (2) Director's Orders; and (3) Reference Manuals/Handbooks and other helpful information. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, this information is being made available for public comment. Director's Order #32 establishes operational policies and procedural guidance concerning relationships between the NPS and Cooperating Associations. Cooperating Associations are private, nonprofit organizations that provide educational services in many areas of the National Park System.

DATES: Written comments will be accepted until November 3, 1997.

ADDRESSES: Send comments to Glenn Clark, Servicewide Cooperating Association Coordinator, Room 7312, National Park Service, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Glenn Clark at 202–565–1058.

SUPPLEMENTARY INFORMATION:

Director's Order, #32: Cooperating Associations

1. Purpose and objective

Cooperating Associations (Associations) are private nonprofit corporations established under state law. They support the educational, scientific, historical, and interpretive activities of the National Park Service (Service) in a variety of ways, under the provisions of formal agreements with the Service. For many years, Associations have been among the Service's most effective supporters. This Director's Order is intended to help ensure the success of the relationship between the Service and Associations by specifying operational policies and procedural requirements governing relationships between the Service and Associations. In combination with Reference Manual #32, it supersedes and replaces the Cooperating Associations Guideline (NPS–32) and instructional memoranda that have been issued in years past.

This "Level 2" Director's Order is not intended to document all the NPS's policies, procedures, practices and requirements applicable to relationships with Associations. For a comprehensive compilation of those materials, employees must refer to the "Level 3" Cooperating Association Reference Manual issued by the Associate Director, Park Operations and Education. The "Level 1" NPS Management Policies remain applicable and serve as the basic foundation for the Level 2 and Level 3 documents.

2. Authorities

16 U.S.C. Sec 1–3, 6, 17j–2(e).

3. Policies/Instructions/Requirements

3.1 The Associate Director, Park Operations and Education is delegated the responsibility to issue a reference manual outlining specific procedures that support policy, mandatory requirements and operational procedures.

3.2 Authority to designate associations. Where an Association serves one or more park areas within a region, authority to designate an Association is delegated to the regional director and may not be redelegated to superintendents. When an Association serves park areas in more than one region, designation authority resides with the Director, National Park Service.

3.3 Tax exempt status. Associations must obtain and maintain recognition by the Internal Revenue Service of tax exemption under Section 501(c)(3) of the Internal Revenue Code to operate in areas of the National Park System.

3.4 Service employee's role.

3.4.1 Ethical conduct. In dealing with Associations, all Service staff must comply with 5 CFR Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch."

3.4.2 Relation to boards. 3.4.2a Service employees may not serve on Association boards, even in an ex-officio capacity, and may not participate in Association Decisions concerning the relationship of the Association to the Service, or represent the Association in business transactions or operations. However, as authorized by Public Law 79–633, Service employees may assist Association operations.

3.4.2b Service representatives may attend Association meetings in an advisory, non-voting capacity, but may not participate in executive sessions of an Association board unless invited.

3.5 The Associate Director, Park Operations and Education will develop a standard, non-negotiable Cooperating Association Agreement. This agreement will incorporate the policy and procedural requirements set forth in this Director's Order, the provisions listed below, and any additional requirements imposed by higher authorities or by the Associate Director, Park Operations and Education, where specifically authorized by this Director's Order. Service related activities performed by Associations not addressed in the Agreement must be addressed in supplemental agreements.

3.5.1 Association responsibilities. 3.5.1a Association boards of directors will notify the Service of board meetings and will invite appropriate Service representatives to board meetings and to appropriate committee meetings.

3.5.1b Association employees are not authorized to undertake any government function or activity on behalf of the Service beyond routine visitor information services or other activities authorized by the Cooperating Association Agreement, supplements to the agreement, or agreements for voluntary services.

3.5.1c If Association employees perform functions normally carried out by Service employees other than under 3.5.1b, they must do so as Service volunteers (VIPs).

3.5.1d Associations may not use the "Agreement for Voluntary Services" to circumvent any requirements for insurance coverage included in the Cooperating Association Agreement or in this Order.

3.5.1e Association employees may not engage in activities that would lead the public to reasonably conclude that they are government employees. Association employees who engage in public contact must wear some readily identifiable indication of Association affiliation, but Association employees may not wear Service or other government uniforms.

3.5.2 Sales activities.

3.5.2.1 General Requirements.

3.5.2.1a Sales must support the purposes of Associations as stated in their articles of incorporation.

3.5.2.1b Associations must display a sign that identifies the sales outlet as a nonprofit activity of the officially approved Association for the site.

3.5.3 Sales item approval.

3.5.3a Items sold in park areas, through mail order catalogs, and at off-site sales outlets (excluding those sales outlets operated by an Association in partnership with other government entities) must be approved in advance by the superintendent for price, quality, interpretive value, and accuracy.

3.5.3b The sales of visitor convenience items must be conducted under the authority of the Concessions Policy Act and must be managed in the same manner as concession permits/contracts issued to concessioners. However, Associations must relinquish any preferential right to the renewal of those permits.

3.5.3c Associations may not sell material that violates conservation principles of the Service.

The sale of original prehistoric or historic artifacts or paleontological specimens is prohibited. Replicas of such artifacts and specimens must be clearly labeled as such.

3.5.3d Craft items represented as being Indian-made shall be sold in accordance with the Indian Arts and Crafts Act of 1990 (Pub. L. 101-644 [104 Stat. 4662], November 29, 1990).

3.5.3e Paid advertising in sales items (i.e., journals with advertising) must be incidental to the interpretive value or message of an item. Advertising or vendor information may not imply endorsement by the Service.

3.5.4 Off-site sales operations.

3.5.4.a Associations must obtain Service approval before commencing business operations in off-site sales outlets that do not serve other government entities.

3.5.4b An Association must consult with the Service when considering operating an off-site sales outlet for another government entity.

3.5.4c The superintendent will periodically review the off-site sales activities of Associations to ensure that Service interests are protected.

3.5.5 Interpretive activities.

3.5.5a Interpretive activities conducted by Associations in parks must be approved in advance by the Service.

3.5.5b The Association and the superintendent of the affected park area will establish standard operating procedures for conducting interpretive programs and activities.

3.5.5c All interpretive programs conducted by Associations on behalf of the Service will be audited by the Service for content, accuracy, and effective delivery.

3.5.5d The Service will assist the Association in providing training to Association staff appropriate to their interpretive activities.

3.5.5e Any fees charged must first be approved by the park superintendent.

3.5.5f Collections of fees for fee interpretation must meet Service standards for accountability and security of funds.

3.5.6 Facilities and equipment.

3.5.6a The Service will provide Associations with suitable sales areas and other facilities to conduct business. The Service reserves the right to relocate or withdraw any such facilities (upon reasonable notice) in order to meet the needs of the Service.

3.5.6b The Service will reserve the right to conduct inspections of provided facilities whenever it deems necessary.

3.5.6c The Service will provide Associations with routine maintenance and repair services and utilities such as water, electricity, heat, and air conditioning at each assigned facility, to the extent these services and utilities are required for the operation of the building for governmental purposes. Other maintenance and repair services and utilities will be provided by the Association or provided to the Association by the Service on a reimbursable basis.

3.5.6d The Service and Association will negotiate a maintenance and operations plan for those facilities governed by a supplemental agreement.

3.5.6e All Association plans for construction, redesign, or renovation of in-park facilities must be approved in advance by the Service, and must be implemented in accordance with the Service's normal design and construction procedures.

3.5.6f If buildings are constructed on Service property by Associations, the buildings must be the property of the Service.

3.5.6g When the Service designs and constructs new facilities that will house Association activities, the Association will be included in the planning and design and will be given the opportunity to review and comment on preliminary and final design plans.

3.6.6h With prior approval from the superintendent, Associations are permitted incidental use of government-owned or leased vehicles, provided that the use is solely for work authorized under the Cooperating Association Agreement or associated supplemental agreements.

3.5.7 Postage.

Associations may not use government postage.

3.5.8 Administrative requirements.

3.5.8a Audit.

A financial statement audit is required for Associations with annual gross revenue of $1,000,000 or more; a financial statement review is required for Associations with gross revenue of $250,000 to $1,000,000. For additional information refer to RM–32.

3.5.8b Annual Report.

Each Association must submit an annual financial report consisting of the NPS Form 10–40, IRS Form 990 (or 990EZ and 990T, if appropriate), a copy of the year's audited or reviewed financial statement, and a brief narrative of the year's activities and accomplishments.

3.5.8c Insurance.

Each Association must carry adequate liability insurance with a minimum of $100,000.00 protection unless more is prescribed by the Service. In addition, The United States of America will be named as an additional insured on all such policies.

3.6 Future cooperating association agreements

The following provisions are effective immediately, and will be incorporated into the standard Cooperating Association Agreement when it is revised in 1999:

3.61 Donations to associations.

3.6.1a Donations will be governed by Director's Order #21—Donations and Fundraising.

3.6.1b Associations will accept donations only for the purposes described in their articles of incorporation.

3.6.1c When an Association accepts a donation on behalf of the Service, the Association is accountable to the donor for the use of the funds.

3.6.2 Donations from associations.

3.6.2a The level of aid to the Service appropriate to each Association must be determined jointly by the Association and the NPS based upon the nature and extent of the Association's activities and the needs of the Service.

3.6.2b Regional Directors are delegated the authority and responsibility to approve donations in the following categories before they are accepted:

1. Major research projects
2. Land acquisitions
3. Interpretive/educational facilities
4. Historic preservation/restoration projects

3.6.2c Service managers will not accept donations from Associations to fund any government personnel salaries.

3.6.2d When the Service accepts a donation from an Association, timely completion of the funded project and fund accountability are required, and a report made to the Association upon request.

3.6.3 Fundraising by cooperating associations.

3.6.3a Fundraising by Associations will be governed by Director's Order #21—Donations and Fundraising.

Bob Huggins,

Acting Program Manager, Interpretation and Education Division.

[FR Doc. 97–26265 Filed 10–2–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Coconino National Forest, United States Forest Service, Flagstaff, AZ

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the control of the Coconino National Forest, United States Forest Service, Flagstaff, AZ.

A detailed assessment of the human remains was made by U.S. Forest Service, Arizona State Museum, Arizona State University, Museum of Northern Arizona, Northern Arizona University, Peabody Museum of Archaeology and Ethnology (Harvard University), the Southwest Museum, and University of Illinois Urbana-Champaign professional staff in consultation with representatives of the Havasupai Tribe, the Hopi Tribe, the Hualapai Tribe, the Pueblo of Zuni, and the Yavapai-Prescott Indian Tribe.

In 1916, human remains representing one individual were removed without permit from Chavez Pass Ruin, Coconino National Forest by Mrs. Blanche Dougan, who donated the remains to the Southwest Museum. No known individual was identified. No associated funerary objects are present.

Prior to 1934, human remains representing four individuals were removed from Chavez Pass Ruin by George Woodbury and Gila Pueblo staff and donated in 1934 to the Peabody Museum of Archaeology and Ethnology, Harvard University. Gila Pueblo was an archeological research facility located in Globe, AZ. No known individuals were identified. No associated funerary objects are present.

In 1967, human remains representing a minimum of two individuals were recovered from a portion of Chavez Pass Ruin during legally authorized collections by Dr. John Wilson of the Museum of Northern Arizona following the disturbance of this portion by pothunters. No known indivjduals were identified. No associated funerary objects are present.

In 1976, human remains representing two individuals were recovered from the surface of Chavez Pass Ruin by Northern Arizona University staff following vandalism. No known individuals were identified. No associated funerary objects are present.

Between 1977 and 1981, human remains representing a minimum of 1,930 individuals were recovered from Chavez Pass Ruin during legally authorized excavations by Dr. Fred Plog of Arizona State University. No known individuals were identified. The 810 associated funerary objects include pottery bowls, jars and sherds; shell beads and ornaments; manos and metates; stone tools; projectile points; fiber matting and basketry; seeds; charcoal; and animal bones.

Chavez Pass Ruin has been identified as two large northern Sinagua masonry pueblos occupied between 1250-1400 A.D. based on ceramic seriation and radiocarbon dating.

Between 1940 and 1960, human remains representing three individuals were recovered from the Pollock site (NA 4317) during legally authorized excavations conducted by Dr. John C. McGregor of the University of Illinois Urbana-Champaign. No known individuals were identified. No associated funerary objects are present.

The Pollock site has been identified as a large northern Sinagua masonry pueblo occupied between 1200-1325 A.D. based on material culture, architecture, and site organization.

During 1953-1955, human remains representing seven individuals were removed from the Pollock site (NA 4317) during legally authorized excavations conducted by Dr. John McGregor of the University of Illinois and presently curated at the Museum of Northern Arizona. No known individuals were identified. The 317 associated funerary objects include pottery bowls and jars, shell bracelets, turquoise mosaics, copper bells, shell beads and pendants, yucca fiber, and grinding stones.

This portion of the Pollock site has been identified as a northern Sinagua masonry pueblo occupied between 1325-1400 A.D. based on material culture, architecture, and site organization.

In 1940, human remains representing seven individuals were recovered from Kinikinick Ruin (NA 1629) during legally authorized excavations conducted by Milton Wetherill of the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

Between 1940 and 1960, human remains representing two individuals were recovered from Kinikinick Ruin (NA 1629) during legally authorized excavations conducted by Dr. John C. McGregor of the University of Illinois Urbana-Champaign. No known individuals were identified. The ten associated funerary objects include shell beads.

Kinikinick Ruin has been identified as two northern Sinagua masonry pueblos occupied between 1250-1350 A.D. based on material culture, architecture, and site organization.

Continuities of ethnographic materials, technology, architecture, and published oral traditions indicate the affiliation of Chavez Pass Ruin, Kinikinick Ruin, and the Pollock site with both the Hopi Tribe and Pueblo of Zuni. Oral traditions presented by representatives of the Hopi Tribe and Pueblo of Zuni further support this affiliation with the northern Sinagua sites of Chavez Pass Ruin, Kinikinick Ruin, and the Pollock site.

In 1927, human remains representing one individual were purchased by Gila Pueblo and transferred to the Arizona State Museum in 1950. Collection information indicates this individual was removed site AR-03-04-02-1892 without a permit by an unknown person. No known individual was identified. The one associated funerary object is a Sosi pitcher in which the cremated human remains had been placed.

Site AR-03-04-02-1892 has been identified as a small Sinagua-period pueblo occupied between 1006-1300 A.D. based on material culture and site organization.

In 1927, human remains representing eight individuals were removed from Turkey Hills Pueblo during legally authorized excavations by the Arizona State Museum. No known individuals were identified. The two associated funerary objects include pottery bowl and jars.

Turkey Hills Pueblo has been identified as a large two-story pueblo with a large open court containing small structures. The site appears to have been occupied during the Sinagua elden-Turkey Hill phase, between 1100-1225 A.D. based on material culture, site organization, and architecture.

In 1980 and 1985, human remains representing six individuals were recovered from the Townsend Divide Site by University of Arizona staff during legally authorized mitigation work on U.S. Highway 89. No known individuals were identified. The 25 associated funerary objects include potter jar and bowls, projectile points, stone tools, and shell jewelry.

The Townsend Divide Site has been identified as a Sinagua pithouse village occupied between 1000-1225 A.D. based on material culture, architecture, and site organization.

In 1922, human remains representing one individual were donated to the Southwest Museum by Mr. Elliot B. Loomis. These remains were apparently removed from a cliff dwelling in Sycamore Canyon without a permit by Mr. Loomis. No known individual was identified. No associated funerary objects are present.

This cliff dwelling in Sycamore Canyon has been identified as a Southern Sinagua site occupied between 1100-1400 A.D. based on material culture, architecture, and site organization.

During the 1950s, human remains representing nine individuals were removed from NA 4265 (Page site) during legally authorized excavations by the Museum of Northern Arizona. No known individuals were identified. The 21 associated funerary objects include pottery bowls and jars, manos, and shell ornaments.

During the 1950s, human remains representing a minimum of 37 individuals were removed from NA 4266 (Piper site) during legally authorized excavations by the Museum of Northern Arizona. No known individuals were identified. The 58 associated funerary object include pottery jars, bowls, and pitchers; projectile points; stone beads; and shell jewelry.

During the 1950s, human remains representing one individual were removed from site NA 5700 during legally authorized excavations by the Museum of Northern Arizona. No known individual was identified. No associated funerary objects are present.

During the 1950s, human remains representing one individual were removed from site NA 5899 during legally authorized excavations by the Museum of Northern Arizona. No known individual was identified. No associated funerary objects are present.

During the 1950s, human remains representing one individual were removed from site NA 5971 during legally authorized excavations by the Museum of Northern Arizona. No known individual was identified. No associated funerary objects are present.

During the 1950s, human remains representing two individuals were removed from site 6589 during legally authorized excavations by the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

Site NA 4265 (Page Site), site NA 4266 (Piper Site), site NA 5700, site NA5899, site NA 5971, and site NA 6589 consist of pithouses, small masonry pueblos, and an alcove site occupied between 500–1300 A.D. by people of the Northern Sinagua culture based on material culture, architecture, and site organization.

During the 1960s, human remains representing one individual were removed from site NA 7432 (Rincon Pueblo) during legally authorized excavations by the Museum of Northern Arizona. No known individual was identified. The four associated funerary objects include pottery bowls.

During the 1960s, human remains representing one individual were removed from site NA 8499 (Weimer Ruin) during legally authorized excavations by the Museum of Northern Arizona. No known individual was identified. No associated funerary objects are present.

During the 1960s, human remains representing a minimum of two individuals were removed from site NA 8507 (Red Bead Pueblo) during legally authorized excavations by the Museum of Northern Arizona. No known individuals were identified. The twelve associated funerary objects include pottery jars and bowls, and projectile points.

During the 1960s, human remains representing two individuals were removed from site NA 8722 (Cinder Hill Village) during legally authorized excavations by the Museum of Northern Arizona. No known individuals were identified. The two associated funerary objects are a shell bracelet and pottery canteen.

During the 1960s, human remains representing four individuals were removed from site NA 8735 (Cinder Hill Annex) during legally authorized excavations by the Museum of Northern Arizona. No known individuals were identified. The two associated funerary objects are pottery bowls.

During the 1960s, human remains representing a minimum of six individuals were recovered from site NA 8529 during legally authorized excavations by the Museum of Northern Arizona. No known individuals were identified. The 25 associated funerary objects include pottery bowls, jars, pitcher and ladle; stone tools, and bone tools.

During the 1960s, human remains representing one individual were recovered from site NA 8723 during legally authorized excavations by the Museum of Northern Arizona. No known individual was identified. The two associated funerary objects are pottery bowls.

During the 1960s, human remains representing one individual were removed from site NA 8781 during legally authorized excavations by the Museum of Northern Arizona. No known individual was identified. No associated funerary objects are present.

During the 1960s, human remains representing one individual were removed from site NA 8787 during legally authorized excavations by the Museum of Northern Arizona. No known individual was identified. The two associated funerary objects are projectile points.

During the 1960s, human remains representing one individual were removed from site NA 9091 during legally authorized excavations by the Museum of Northern Arizona. No known individual was identified. No associated funerary objects are present.

During the 1960s, human remains representing five individuals were removed from site NA 9099 during legally authorized excavations by the Museum of Northern Arizona. No known individuals were identified. The two associated funerary objects are turquoise pendants.

Sites NA 7432, NA 8499, NA 8507, NA 8722, NA 8735, NA 8529, NA 8723, NA 8781, NA 8787, NA 9091, and NA 9099 have been identified as a group of pueblo and pithouse sites occupied between 1066-1250 A.D. based on material culture and site organization.

in 1932, human remains representing one individual were recovered from the Calkins Ranch site (NA 2385) during legally authorized excavations by the Museum of Northern Arizona. No known individual was identified. No associated funerary objects are present.

In 1957, human remains representing five individuals were recovered from the Calkins Ranch site (NA 2385) during legally authorized excavations conducted by Dr. David A. Breternitz of the Museum of Northern Arizona. No known individuals were identified. The eight associated funerary objects include pottery bowls and jars, and shell ornaments.

The Calkins Ranch site (NA 2385) has been identified as a pithouse village occupied between 900-1100 A.D. based on material culture and site organization.

Between 1966 and 1968, human remains representing three individuals were recovered from Elden Pueblo (NA 142) during legally authorized

excavations conducted by Northern Arizona University, and curated by the Museum of Northern Arizona. No known individuals were identified. The one associated funerary object is a turquoise bead earring.

Since 1978, human remains representing fourteen individuals have been recovered from Elden Pueblo (NA 142) during legally authorized excavation and stabilization projects by the Coconino National Forest in partnership with the Museum of Northern Arizona and other institutions. No known individuals were identified. The 124 associated funerary objects include pottery mugs, effigies, bowls, jars, and sherds.

Elden Pueblo has been identified as northern Sinagua pueblo, pithouses, and outlier pueblos occupied between 1100-1275 A.D. based on material culture, radiocarbon dating, architecture, and site organization.

In 1974 and 1975, human remains representing a minimum of 145 individuals were recovered from the Koharsho site (NA 10937) during legally authorized excavations by Dr. William J. Beeson of Sacramento State College. No known individuals were identified. The 1,575 associated funerary objects include stone beads, pottery bowls, shell beads, and a shell pendant.

The Koharsho site (NA 10937) has been identified as a northern Sinagua masonry pueblo occupied between 1120-1250 A.D. based on material culture, architecture, and site organization.

Between 1984 and the summer of 1990, human remains representing 54 individuals were recovered from Lizard Man Village (NA 17957) during legally authorized excavations by Dr. John Whittaker and Dr. Kathryn Kamp of Grinnell College. No known individuals were identified. The 26 associated funerary objects include pottery miniatures and sherds; projectile points; shell bracelet and beads; stone and bone tools.

Lizard Man Village has been identified as a northern Sinagua pithouse and surface rooms occupation dating to 1066-1325 A.D. based on material culture, architecture, and site organization.

Between 1984 and the summer of 1990, human remains representing two individuals were recovered from Fortress Hill Pueblo (NA 6612) during legally authorized excavations by Dr. John Whittaker and Dr. Kathryn Kamp of Grinnell College. No known individuals were identified. No associated funerary objects are present.

Fortress Hill Pueblo has been identified as a northern Sinagua masonry pueblo occupied between 1066-1325 A.D. based on material culture, architecture, and site organization.

During 1968-1970, human remains representing eleven individuals were recovered from site NA 10101 during legally authorized excavations by Dr. J. Richard Ambler of Northern Arizona University. No known individuals were identified. The two associated funerary objects are a shell bracelet and a corn cob.

Site NA 10101 has been identified as a northern Sinagua masonry pueblo occupied between 1100-1225 A.D. based on material culture, architecture, and site organization.

In 1957, human remains representing two individuals were recovered from site NA 1125 during legally authorized excavations by Dr. David A Breternitz of the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

Site NA 1125 has been identified as a northern Sinagua pithouse village occupied between 900-1066 A.D. based on material culture and site organization.

In 1974, human remains representing two individuals were removed from site NA 11553 during legally authorized excavations by Queens College, City University, New York, NY and are curated by the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

Site NA 11553 has been identified as a northern Sinagua masonry pueblo occupied between 900-1066 A.D. based on material culture, architecture, and site organization.

In 1974, human remains representing a minimum of four individuals were recovered from site NA 13259 by the Museum of Northern Arizona during legally authorized collections following the discovery of pothunting in areas of the site. No known individuals were identified. No associated funerary objects are present.

Site NA 13259 has been identified as a group of northern Sinagua pithouses based on material culture and site organization.

In 1958, human remains representing two individuals were recovered from site NA 19055 during legally authorized excavations conducted jointly by the Museum of Northern Arizona and Northern Arizona University as a field school supervised by Dr. David Wilcox. No known individuals were identified. No associated funerary objects are present.

Site NA 19055 has been identified as a northern Sinagua group of pithouses occupied between 1066–1150 A.D. based on material culture and site organization.

During the early 1970s, human remains representing a minimum of nineteen individuals were recovered from site NA 10772 during legally authorized data recovery excavations by the Museum of Northern Arizona. No known individuals were identified. The six associated funerary objects present include pottery bowls, metates, and olivella beads.

During the early 1970s, human remains representing one individual were recovered from site NA 10775 during legally authorized data recovery excavations by the Museum of Northern Arizona. No known individual was identified. The one associated funerary object is a pottery bowl.

During the early 1970s, human remains representing 81 individuals were recovered from site NA 10792 during legally authorized data recovery excavations by the Museum of Northern Arizona. No known individuals were identified. The seven associated funerary objects present include pottery jar and bowls, and stone tools.

During the early 1970s, human remains representing 27 individuals were recovered from site 10794 during legally authorized data recovery excavations by the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

During the early 1970s, human remains representing a minimum of 151 individuals were recovered from site NA 10803 during legally authorized data recovery excavations by the Museum of Northern Arizona. No known individuals were identified. The 94 associated funerary objects are a pottery bowls, jars, ladles and pitchers; stone beads and tools; shell beads and ornaments; and projectile points.

During the early 1970s, human remains representing a minimum of 196 individuals were recovered from site NA 10806 during legally authorized data recovery excavations by the Museum of Northern Arizona. No known individuals were identified. The 75 associated funerary objects are a pottery canteen, bowls, jars, and pitchers; stone beads and tools; shell beads and ornaments; and projectile points.

Sites NA 10772; NA 10775, NA 10792, NA 10794, NA 10803, and NA 10906 consist of a group of northern Sinagua pithouse villages and small masonry pueblo occupied between 900-1250 A.D. based on material culture and site organization.

In 1985, human remains representing three individuals were recovered from Old Caves (NA 72) during legally authorized salvage excavations conducted by U.S. Forest Service personnel. No known individuals were identified. No associated funerary objects were present.

The Old Caves site has been identified as a northern Sinagua masonry pueblo and ball court occupied between 1250-1325 A.D. based on material culture, architecture, and site organization.

In 1939, human remains representing a minimum of sixteen individuals were removed from Ridge Ruin (NA 1785) during legally authorized excavations by Dr. John McGregor of the Museum of Northern Arizona. No known individuals were identified. The 1,595 associated funerary objects include pottery bowls, jars and pitchers; wood carvings; stone and bone tools; projectile points; turquoise beads, jewelry and figurines; shell beads and jewelry; burial mats; woven baskets; and macaw remains.

In 1939, human remains representing a minimum of fifteen individuals were recovered from sites NA 3673 and NA 3676 during legally authorized excavations by Dr. John McGregor of the Museum of Northern Arizona. No known individuals were identified. The 118 associated funerary objects include a pottery bowl and sherds, and stone beads.

Ridge Ruin and associated sites NA 3673 and NA 3676 have been identified as a northern Sinagua pueblo and pithouse villages occupied between 1066-1200 A.D. based on material culture, architecture, and site organization.

During the 1940s, human remains representing one individual were donated to the Museum of Northern Arizona by an anonymous individual following recovery without a permit from the Honaki site (NA 1255). No known individual was identified. The one associated funerary object is burial cloth wrappings.

During the 1940s, human remains representing two individuals were donated to the Museum of Northern Arizona by an anonymous individual following recovery without a permit from Sugar Loaf Ruin (NA 1269). No known individuals were identified. No associated funerary objects are present.

In 1965, human remains representing one individual were donated to the Museum of Northern Arizona by Paul Dyck following recovery without a permit from the Dyck Site (NA 9471). No known individual was identified. The 70 associated funerary objects include burial wrappings, cordage, and shell bracelets.

During the 1940s, human remains representing one individual were turned over to Coconino National Forest by an anonymous individual following recovery without a permit from site NA 19804. No known individual was identified. No associated funerary objects are present.

In 1958, human remains representing one individual from McGuireville Cave (NA 4007C) were turned over to the Coconino National Forest by Montezuma Castle National Monument. No known individual was identified. No associated funerary objects are present.

In 1949, human remains representing one individual were recovered from Panorama Ruin (NA 5111) during legally authorized excavations conducted by the Museum of Northern Arizona. No known individual was identified. No associated funerary objects are present.

Between the 1950s and the early 1970s, human remains representing two individuals were recovered from the Hackberry site (NA 3604) and the Stoneman Lake site (NA 11254) during legally authorized excavations by the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

In 1987, human remains representing one individual were recovered from Moon Ranch Pueblo (NA 21979) during legally authorized salvage excavations conducted by the Coconino National Forest. No known individual was identified. No associated funerary objects were present.

Prior to November 16, 1990, human remains representing one individual were recovered from site NA 23401 during legally authorized salvage excavations conducted by the Coconino National Forest. No known individual was identified. No associated funerary objects were present.

The Honanki site, Sugar Loaf Ruin, Dyck site, NA 19804, McGuireville Cave, Panorama Ruin, Hackberry site, Stoneman Lake site, Moon Ranch Pueblo, and NA 23401 have been identified as southern Sinagua pithouses, masonry pueblos, and a cliff dwelling occupied between 700–1400 A.D. based on material culture, architecture, and site organization.

In 1979, human remains representing one individual were recovered from Sunset Pueblo (NA 1638) during legally authorized excavations conducted by J.W. Hohman of the Coconino National Forest. No known individual was identified. The four associated funerary objects include pottery sherds.

Sunset Pueblo has been identified as a northern Sinagua masonry pueblo occupied between 1100-1200 A.D. based on material culture and site organization.

In 1928 and 1929, human remains representing eight individuals were recovered from Turkey Hills Pueblo (NA 660) during legally authorized excavations conducted by Dr. Byron Cummings of Arizona State University. No known individuals were identified. The two associated funerary objects include a pottery jar and bowl (curated at Arizona State Museum).

In 1985, human remains representing five individuals were recovered from the surface of Turkey Hills Pueblo (NA 660) during legally authorized surface collections conducted by Dr. David Wilcox of the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

Turkey Hills Pueblo has been identified as a northern Sinagua pueblo and pithouses occupied between 1250-1325 A.D. based on material culture, architecture, and site organization.

Between 1935-1939, human remains representing a minimum of 76 individuals were removed from sites within the Winona Village complex (NA 2131, NA 2133, NA 2134, NA 3644) during legally authorized excavations conducted by Dr. John C. McGregor of the Museum of Northern Arizona. The approximately 44 associated funerary objects include pottery pitcher, jars, and bowls; and shell and stone beads.

The Winona Village complex has been identified as a group of northern Sinagua pithouse villages occupied between 1066-1150 A.D. based on material culture, architecture, and site organization.

In 1981, human remains representing one individual were recovered from site AR 03-04-02-1675 during legally authorized excavations by the Coconino National Forest. No known individual was identified. No associated funerary objects are present.

Site AR 03-04-02-1675 has been identified as a northern Sinagua masonry pueblo occupied between 1150-1250 A.D. based on material culture, architecture, and site organization.

Between 1938 and 1940, human remains representing two individuals were excavated from Padre Knoll Pueblo (NA 789) during legally authorized excavations conducted by the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

Between 1938 and 1940, human remains representing a minimum of five

individuals were excavated from Turkey Tank Pithouse (NA 2098) during legally authorized excavations conducted by the Museum of Northern Arizona. No known individuals were identified. The six associated funerary objects include pottery bowls and jars.

Between 1938 and 1940, human remains representing fourteen individuals were excavated from Turkey Tank Caves (NA 117) during legally authorized excavations conducted by the Museum of Northern Arizona. No known individuals were identified. The 32 associated funerary objects include pottery jars and bowls; and turquoise and shell beads and ornaments.

Between 1938 and 1940, human remains representing one individual were recovered from Deadman's Wash (NA 2077) during legally authorized excavations conducted by the Museum of Northern Arizona. No known individual was identified. No associated funerary objects are present.

Between 1938 and 1940, human remains representing two individuals were excavated from Jack Smith Alcove House (NA 1295) during legally authorized excavations conducted by the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

Between 1938 and 1940, human remains representing one individual were excavated from site NA 2801 during legally authorized excavations conducted by the Museum of Northern Arizona. No known individual was identified. The four associated funerary objects include pottery bowl, pitcher, and sherds.

Between 1938 and 1940, human remains representing two individuals were excavated from site NA 3996 during legally authorized excavations conducted by the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

Between 1938 and 1940, human remains representing one individual were excavated from site NA 860 during legally authorized excavations conducted by the Museum of Northern Arizona. No known individual was identified. The two associated funerary objects consist of a pottery bowl and a stone tool.

Padre Knoll Pueblo, Turkey Tank Pithouse, Turkey Tank Caves, Deadman's Wash, Jack Smith Alcove House, site NA 2801, site NA 3996, and site NA 860 have been identified as a group of northern Sinagua pueblo, pithouse, and cave habitations occupied between 900-1400 A.D. based on material culture, architecture, and site organization.

During the 1930s, human remains representing three individuals were excavated from Clear Creek Ruin (NA 2806) during legally authorized excavations conducted by the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

In 1970-1971, human remains representing six individuals were excavated from Exhausted Cave (NA 10769) during legally authorized excavations conducted by Bruce R. Gudgens of Northern Arizona University. No known individuals were identified. No associated funerary objects are present.

Clear Creek Ruin and Exhausted Cave have been identified as a group of southern Sinagua cliff and cave dwellings occupied between 1100-1400 A.D. based on material culture and site organization.

In 1931 and 1951, human remains representing six individuals were excavated from the Juniper Terrace site (NA 1814) during legally authorized excavations conducted by the Museum of Northern Arizona. No known individuals were identified. The 102 associated funerary objects include pottery bowls and jars, stone pipe and beads, and faunal material.

The Juniper Terrace site has been identified as a group of northern Sinagua and Cohonino masonry roomblocks occupied between 1150-1250 A.D. based on material culture, architecture, and site organization.

During 1962-1964, human remains representing eleven individuals were excavated from Two Kivas Pueblo (NA 700) during legally authorized excavations conducted by Dr. John C. McGregor of the University of Illinois Urbana-Champaign. No known individuals were identified. The twelve associated funerary objects include pottery jar and bowls, shell beads, paint palette, and turquoise ornaments.

Two Kivas Ruin has been identified as a group of northern Sinagua pueblos occupied between 1150-1325 A.D. based on material culture, architecture, and site organization.

In 1974, human remains representing six individuals were recovered from site NA 12559 during legally authorized excavations conducted by the Museum of Northern Arizona. No known individuals were identified. The two associated funerary objects are a pottery sherd and a shell bracelet.

Site NA 12559 has been identified as a northern Sinagua trash mound utilized between 1066-1100 A.D. based on material culture and site organization.

In 1970, human remains representing one individual were removed from Boynton Canyon without a permit by an anonymous individual and were donated to the Museum of Northern Arizona. No known individual was identified. The thirteen associated funerary objects include baskets, a pottery bowl, woven goods, and gourds.

The Boynton Canyon site is a southern Sinagua cave dwelling site occupied between 1100-1300 A.D. based on material culture and site organization.

In 1938 and 1939, human remains representing five individuals were recovered from sites NA 3679 and NA 3680 during legally authorized excavations conducted by the Museum of Northern Arizona. No known individuals were identified. The eight associated funerary objects include pottery jar and bowls, a shell ring and bracelet, and a projectile point.

Sites NA 3679 and NA 3680 have been identified as two northern Sinagua pithouse villages occupied between 1066-1150 A.D. based on material culture and site organization.

During the 1930s and 1970s, human remains representing six individuals were recovered from site NA 5182 during legally authorized excavations conducted by the Museum of Northern Arizona. No known individuals were identified. No associated funerary objects are present.

Site NA 5182 has been identified as a northern Sinagua pithouse village occupied between 1066-1100 A.D. based on material culture and site organization.

During the 1930s, human remains representing one individual were recovered from site NA 914 during legally authorized excavations conducted by the Museum of Northern Arizona. No known individual was identified. No associated funerary objects are present.

Site NA 914 has been identified as three northern Sinagua rooms associated with a cave utilized between 900-1300 A.D. based on material culture and site organization.

In 1934, human remains representing one individual from site Verde 5:41 were donated to the Peabody Museum of Archaeology and Ethnology, Harvard University by Gila Pueblo, an archeological research facility in Globe, AZ. These human remains had been recovered at an earlier unknown date during legally authorized collections by Gila Pueblo. No known individual was identified. No associated funerary objects are present.

Site Verde 5:41 has been identified as a large southern Sinagua masonry pueblo occupied between 1300-1400 A.D. based on material culture, architecture, and site organization.

In 1934, human remains representing three individuals from the Lookout Ruin site (16:16) were donated to the Peabody Museum of Archaeology and Ethnology, Harvard University by Gila Pueblo, an archeological research facility in Globe, AZ. These human remains had been recovered at an earlier unknown date during legally authorized collections by Gila Pueblo. No known individual was identified. No associated funerary objects are present.

The Lookout Ruin site (16:16) has been identified as a northern Sinagua masonry pueblo occupied between 1150-1300 A.D. based on material culture, architecture, and site organization.

In 1934, human remains representing one individual from the Canyon Padre site were donated to the Peabody Museum of Archaeology and Ethnology, Harvard University by Gila Pueblo, an archeological research facility in Globe, AZ. These human remains had been recovered at an earlier unknown date during legally authorized collections by Gila Pueblo. No known individual was identified. No associated funerary objects are present.

The Canyon Padre site has been identified as a small northern Sinagua habitation occupied between 1150-1250 A.D. based on material culture.

In 1983, human remains representing one individual were confiscated from pothunters at site AR 03-04-02-2512 by U.S. Forest Service law enforcement personnel. No known individual was identified. The 99 associated funerary objects include pottery sherds.

Site AR 03-04-02-2512 has been identified as a small northern Sinagua masonry pueblo and associated trash mound utilized between 1150-1250 A.D. based on material culture and site organization.

Between 1958 and 1960, human remains representing seven individuals were recovered from the Pershing site (NA 7207) during legally authorized excavations conducted by Dr. John C. McGregor of the University of Illinois Urbana-Champaign. No known individuals were identified. The three associated funerary objects include chipped stone.

The Pershing site has been identified as a large northern Sinagua village occupied between 900 1066 A.D. based on material culture, architecture, and site organization.

Continuities of ethnographic materials, technology, architecture, and published oral traditions indicate the affiliation of the northern and southern Sinagua sites with the Hopi Tribe. Oral traditions presented by representatives of the Hopi Tribe further support the affiliation with northern and southern Sinagua sites in this area of north-central Arizona.

Based on the above mentioned information, officials of the U.S. Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 2,992 individuals of Native American ancestry. Officials of the U.S. Forest Service have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 5,331 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Forest Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe; and the Native American human remains and associated funerary objects from Chavez Pass Ruin, Kinikinick Ruin, and the Pollock site with the Hopi Tribe and the Pueblo of Zuni. .

This notice has been sent to officials of the Havasupai Tribe, the Hopi Tribe, the Hualapai Tribe, the Pueblo of Zuni, and the Yavapai-Prescott Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Ave. SW, Albuquerque, NM 87102; telephone: (505) 842-3238, fax: (505) 842-3800, before November 3, 1997. Repatriation of the human remains and associated funerary objects to the culturally affiliated tribes may begin after that date if no additional claimants come forward.

Dated: September 29, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–26245 Filed 10–2–97 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 26, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S. C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Alternative Mines Rescue Capability for Small and Remote Mines and Mines with Special Mining Conditions.

OMB Number: 1219–0078 (reinstatement with change).

Frequency: On occasion.

Affected Public: Business or other for-profit.
Number of Respondents: 3,138.
Estimated Time Per Respondent: .53 hour.
Total Burden Hours: 29,267.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing service): 0.
Description: If an underground mine is small and remote or is operating under special mining conditions, the operator may apply for permission to provide alternative mine rescue capability. The intent of the regulation is to establish the best possible rescue response available under the circumstances.

Agency: Occupational Safety and Health Administration.
Title: Bloodborne Pathogens, 29 CFR 1910.1030 and 1915,1030 (29 CFR part 1910 ad 1915).
OMB Number: 1218–0180 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 511,805.
Estimated Time Per Respondent: .46 hour.
Total Burden Hours: 5,162,397.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): $17,262,900.
Description: The purpose of the Bloodborne Pathogens Standard and its information collection requirements are to provide protection to employees from adverse health effects associated with occupational exposure to bloodborne pathogens. The Standard requires that employers establish and maintain an exposure control plan, develop a housekeeping schedule, provide employees with Hepatitis B vaccinations, post exposure evaluation and medical follow-up, provide employees with information and training, and maintain medical and training records for prescribed periods. HIV and HBV Research Labs must also adopt or develop, and annually review a biosafety manual.

Agency: Occupational Safety and Health Administration.
Title: Lead in Construction.
OMB Number: 1218–0189 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 147,073.
Estimated Time Per Respondent: 0.286 hour.
Total Burden Hours: 1,814,671.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): $87,087,005.
Description: The purpose of the Lead in Construction Standard and its information collection requirements are to reduce occupational lead exposure in the construction industry. Lead exposure can result in both acute and chronic effects and can be fatal in severe cases of lead intoxication. Some of the health effects associated with lead exposure include brain disorders which can lead to seizures, coma, and death; anemia; neurological problems; high blood pressure, kidney problems, reproductive problems; and decreased red blood cell production. The Standard requires that employers establish and maintain a training and compliance program, and exposure monitoring and medical surveillance records. These records are used by employers, physicians, employers, and OSHA to determine the effectiveness of the employers' compliance efforts.

Agency: Occupational Safety and Health Administration.
Title: Occupational Noise Exposure (29 CFR 1910.95).
OMB Number: 1218–0048 (extension).
Frequency: On occasion.
Affected Public: Business or other for profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 379,512.
Estimated Time Per Respondent: 0.58 hour.
Total Burden Hours: 5,166,401.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): $53,891,845.
Description: The purpose of the Occupational Noise Exposure Standard and its information collection requirements are to provide protection for employees from adverse health effects associated with occupational exposure to noise. The standard requires employers to establish and maintain accurate records of employee exposures to noise and audiometric testing performed in compliance with the standard. These records are used by the physician, employer, employee and the Government to determine whether occupation-related hearing loss has occurred, to prevent further deterioration of hearing, and to determine the effectiveness of an employer's hearing conservation program.

Agency: Occupational Safety and Health Administration.
Title: Asbestos in Construction (29 CFR 1926.1101).
OMB Number: 1218–0134 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 286,821.
Estimated Time Per Respondent: Ranges from 5 minutes to maintain records to 17.3 hours to train qualified persons.
Total Burden Hours: 5,817,388.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): $42,774,491.
Description: The purpose of this standard and its information collection is designed to provide protection for employees from the adverse health effect associated with occupational exposure to asbestos. The standard requires employers to monitor employee exposure to asbestos, and to monitor employee health and to provide employees with information about their exposures and the health effects of injuries.

Agency: Occupational Safety and Health Administration.
Title: Asbestos in Shipyards (29 CFR 1915.1001).
OMB Number: 1218–0195 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 89.
Estimated Time Per Respondent: Ranges from 5 minutes to maintain records to 40 hours to train qualified persons.
Total Burden Hours: 1, 093.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): $34,861.
Description: The purpose of this standard and its information collection is designed to provide protection for employees from the adverse health effects associated with occupational exposure to asbestos. The standard requires employers to monitor employee exposure to asbestos, to monitor employee health and to provide employees with information about their exposures and the health effects of injuries.

Agency: Occupational Safety and Health Administration.
Title: Safety Testing and Certification (29 CFR 1910.7).
OMB Number: 1218–0147 (extension).
Frequency: On occasion.

Affected Public: Business or other for-profit; State, Local or Tribal Government.
Number of Respondents: 47.
Estimated Time Per Respondent: 53 hours.
Total Burden Hours: 1,160.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: A number of OSHA's standards require certain equipment to be "tested" (or approved) by a "national recognized testing laboratory" (NRTL). An organization seeking to perform this testing (or approval) must be "recognized" by OSHA and must apply to the OSHA NRTL Recognition Program for recognition. Recognition is granted after OSHA determines that the organization meets certain criteria.

Agency: Occupational Safety and Health Administration.
Title: Mechanical Power Presses (29 CFR 1910.217(e)(1)(I) and 29 CFR 1910.217(e)(1)(ii))—Inspection Certifications.
OMB Number: 1218–0new (formerly 1218–0210) (extension).
Frequency: Weekly.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 191,750.
Estimated Time Per Respondent: 30 minutes.
Total Burden Hours: 1,372,945.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The information collection requirements of this standard are necessary to assure compliance with the requirements for mechanical power presses. The inspection is intended to assure that the mechanical power processes are in safe operating condition, and that the safety devices are working properly. The failure of these safety devices could cause serious injury or death to an employee.

Agency: Occupational Safety and Health Administration.
Title: Restraining Devices for Servicing Large Vehicle MultiPiece and Single Piece Rim Wheels (29 CFR 1910.177(d)(3)(iv))—Manufacturer's Certification of Structural or Welding Repairs.
OMB Number: 1218–0new (formerly 1218–0210) (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 80.
Estimated Time Per Respondent: 0.08 hour.
Total Burden Hours: 6.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: Pursuant to its statutory authority, OSHA promulgated the standard for the servicing of multi-piece and single piece rim wheels used on large vehicles such as trucks, trailers and buses. The standard requires that when a damaged restraining device needs structural repair such as component replacement or rewelding, the repairs must be certified by either the manufacturer or a registered professional engineer as meeting the strength requirements of paragraph 1910.177(d)(3)(I).

Agency: Occupational Safety and Health Administration.
Title: Portable Fire Extinguishers (29 CFR 1910.157(f)(16)—Hydrostatic Test Certification Record.
OMB Number: 1218–0new (formerly 1218–0210) (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 1,275,500.
Estimated Time Per Respondent: 15 minutes.
Total Burden hours: 318,750.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The requirement for the hydrostatic testing of portable fire extinguishers shells according to an established schedule found at 29 CFR 1910.157, Table L–1. OSHA further requires the employer to provide evidence of the test including the date of the test, the identification of the person making the test and the unique identification number of the unit tested. The employer must provide this information to OSHA upon request.

Agency: Occupational Safety and Health Administration.
Title: Shipyard Certification Records (29 CFR 1915.113(b)(1) and 29 CFR 1915.172(d)—Test Certifications.
OMB Number: 1218–0new (formerly 1218–0210) (extension).
Frequency: Quarterly, Yearly.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 900.
Estimated Time Per Respondent: 0.17 hour.
Total Burden Hours: 1,846.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The standard for shackles and hooks (29 CFR 1915.113) requires that all hooks for which no applicable manufacturer's recommendations are available shall be tested to twice their intended safe work load before they are initially put into use and that the employer shall maintain a certification record. The standard for portable air receivers (29 CFR 1915.172) requires that portable, unfired pressure vessels, not built into the code requirements of 1915.172(a) shall be examined quarterly by a competent person and that they be subjected yearly to a hydrostatic pressure test of one and one-half times the working pressure of the vessels. A certification record of these examinations and tests shall be maintained.

Agency: Occupational Safety and Health Administration.
Title: Slings (29 CFR 1910.184)—Certification Records.
OMB Number: 1218–0new (formerly 1218–0210) (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 975,000.
Estimated Time Per Respondent: 0.58 hours.
Total Burden Hours: 26,775.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services): 0.
Description: The standard requires that an employer make and retain a record of the most recent month in which early alloy steel chain sling was thoroughly inspected, that all new alloy steel chain slings be proof tested with certification records, that all new wire rope slings that have welded end attachments be proof tested by the manufacturer and a certificate of the proof test retained by the employer, and that metal mesh slings that are repaired be proof tested and either marked, tagged or a certification record prepared and maintained.

Agency: Occupational Safety and Health Administration.
Title: Overhead and Gantry Cranes (29 CFR 1910.179(j)(2)(iii); (j)(2)(iv), (m)(1), and (m)(2))—Inspection Certifications.
OMB Number: 1218–0new (formerly 1218–0210) (extension).
Frequency: Monthly.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 35,000.

Estimated Time Per Respondent: 0.30 hour.

Total Burden Hours: 367,528.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The inspection certifications required in 29 CFR 1910.179(j)(2)(iii), (j)(2)(iv), (m)(1), and (m)(2) are necessary to assure compliance with the requirements for overhead and gantry cranes. They are intended to assure that these cranes have periodic and recorded maintenance checks.

Agency: Occupational Safety and Health Administration.

Title: Crawler, Locomotive and Truck Cranes (29 CFR 1910.180(d)(6), (g)(1) and (g)(2)(ii))—Inspection Certifications.

OMB Number: 1218–0new (formerly 1218–0210) (extension).

Frequency: Monthly.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government..

Number of Respondents: 20,000.

Estimated Time Per Respondent: 1½ hours.

Total Burden Hours: 174.015.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The major purpose of these information collection requirements is to provide information which can be used to properly maintain crawler locomotive and truck cranes and to ensure safe operating conditions for employees. Specifically, it is required for the employer to establish certification records which indicate that the cranes have been inspected in accordance with the requirements in the standard.

Agency: Occupational Safety and Health Administration.

Title: Derricks (29 CFR 1910.181(g)(1)) and (g)(3))—Inspection Certifications.

OMB Number: 1218–0new (formerly 1218–0210) (extension).

Frequency: Monthly.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 10,000.

Estimated Time Per Respondent: 0.58 hour.

Total Burden Hours: 28,508.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: It is required for the employer to establish a certification record that the equipment has been inspected in accordance with the requirements specified in the standard in order to maintain the derricks in a safe, reliable condition. The collection of information will be used to determine if employers are in compliance with the standard.

Agency: Occupational Safety and Health Administration.

Title: Testing of Materials Used in Roll-Over Protective Structures (ROPS) Certification (29 CFR 1926.1001(e)(3) and 29 CFR 1926.1002(d)(6)).

OMB Number: 1218–0new (formerly 1218–0210) (withdrawal).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 0.

Estimated Time Per Respondent: 0.

Total Burden Hours: 0.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: In the construction standard for scrapers, loaders, dozers, graders, and tractors OSHA requires that the material used in roll-over protective structures (ROPS) have a one-time test. The tests are intended to minimize the possibility of operator injury resulting from accidents during normal operation or ROPS. Upon reconsideration, the Agency no longer believes that the term "certification" as used in the provision implies a paperwork burden since there is no explicit requirement for information collection regarding that testing.

Agency: Occupational Safety and Health Administration.

Title: Crawler, Truck, and Locomotive Cranes Inspection Certification (29 CFR 1926.550(b)(2)).

OMB Number: 1218–0new (formerly 1218–0210) (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 947,000.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 1,420,500.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The construction standard on crawler, truck, and locomotive cranes requires employers to conduct tests, inspections, and maintenance checks and retain records for the cranes of this type that their employees use. The certification records, which attest to the safety of the cranes, are necessary to ensure compliance with the standards.

Agency: Occupational Safety and Health Administration.

Title: Proof Testing of Welded End Wire Rope Attachments (29 CFR 1926.251).

OMB Number: 1218–0new (formerly 1218–0210) (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 947,000.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 1,515.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing servies): 0.

Description: The construction standard on rigging equipment for material handling requires employers to retain a certificate of the proof test performed on welded end wire rope attachments. The certification, prepared by the manufacturer or other equivalent entity, attests to the safety of the attachments after welding by testing them at twice their rated capacity.

Agency: Occupational Safety and Health Administration.

Title: Trucks Used Underground to Transport Explosives (29 CFR 1926.903(e))—Inspection Certifications.

OMB Number: 1218–0new (formerly 1218–0210) (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Estimated Time Per Respondent: 10 minutes every week.

Total Burden Hours: 9.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The construction standard on underground transportation of explosives requires certification of a weekly maintenance inspection of trucks used for this purpose. The inspection certification, which attests to the safety of the truck's electrical system, is necessary to ensure compliance with the standard.

Agency: Occupation Safety and Health Administration.

Title: Construction Records for Blasting Operations (29 CFR 1926.900(k)(3)(I).

OMB Number: 1218–0new (formerly 1218–0210) (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 3,000.

Estimated Time Per Respondent: 8 hours, once per 160 work sites.

Total Burden Hours: 1,280.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $240.000.

Description: The construction standard on blasting operations requires employers to post warning signs or use other alternative means to prevent premature detonation of electric blasting caps and explosives attached to them by mobile radio transmitters. A written description of the alternative means (measures) to be taken must be prepared.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–26302 Filed 10–2–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decision are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maine
- ME970006 (Feb. 14, 1997)
- ME970007 (Feb. 14, 1997)
- ME970008 (Feb. 14, 1997)
- ME970010 (Feb. 14, 1997)
- ME970024 (Feb. 14, 1997)

New York
- NY970002 (Feb. 14, 1997)
- NY970007 (Feb. 14, 1997)
- NY970013 (Feb. 14, 1997)
- NY970021 (Feb. 14, 1997)
- NY970022 (Feb. 14, 1997)
- NY970026 (Feb. 14, 1997)
- ME970060 (Feb. 14, 1997)

Volume II

District of Columbia
- DC970001 (Feb. 14, 1997)

Maryland
- MD970048 (Feb. 14, 1997)

Pennsylvania
- PA970005 (Feb. 14, 1997)
- PA970006 (Feb. 14, 1997)
- PA970010 (Feb. 14, 1997)
- PA970014 (Feb. 14, 1997)
- PA970024 (Feb. 14, 1997)
- PA970025 (Feb. 14, 1997)
- PA970026 (Feb. 14, 1997)
- PA970030 (Feb. 14, 1997)
- PA970031 (Feb. 14, 1997)
- PA970052 (Feb. 14, 1997)

Virginia
- VA970104 (Feb. 14, 1997)

Volume III

None

Volume IV

Indiana
- IN970002 (Feb. 14, 1997)
- IN970003 (Feb. 14, 1997)
- IN970004 (Feb. 14, 1997)
- IN970059 (Feb. 14, 1997)
- IN970060 (Feb. 14, 1997)

Michigan
- MI970062 (Feb. 14, 1997)
- MI970063 (Feb. 14, 1997)
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MI970080 (Feb. 14, 1997)

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Volume VII

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CA970083 (Feb. 14, 1997)
Nevada
NV970001 (Feb. 14, 1997)
NV970005 (Feb. 14, 1997)
NV970006 (Feb. 14, 1997)
NV970007 (Feb. 14, 1997)
NV970008 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 26th day of September 1997.

Margaret Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–26002 Filed 10–2–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. McElroy Coal Company

[Docket No. M–97–101–C]

McElroy Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.312(c) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. The petitioner requests a modification of the mandatory safety standard to permit the testing of the automatic fan signal device without stopping the fan. The petitioner proposes to test the automatic fan signal device at least every 31 days by manually operating a valve near the fan pressure recording chart reducing the pressure on the water gauge to cause the activation of the fan signal. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Mark P. Shingara Coal

[Docket No. M–97–102–C]

Mark P. Shingara Coal, R.D. #3, Box 79E, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 4 Vein Slope (I.D. No. 36–08527) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Mark P. Shingara Coal

[Docket No. M–97–103–C]

Mark P. Shingara Coal, R.D. #3, Box 79E, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 4 Vein Slope (I.D. No. 36–08527) located in Northumberland County, Pennsylvania. The petitioner proposes to visually examine each seal for physical damage from the slope gunboat during the preshift examination after an air quality reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Mark P. Shingara Coal

[Docket No. M–97–104–C]

Mark P. Shingara Coal, R.D. #3, Box 79E, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its No. 4 Vein Slope (I.D. No. 36–08527) located in Northumberland County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Mark P. Shingara Coal

[Docket No. M–97–105–C]

Mark P. Shingara Coal, R.D. #3, Box 79E, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1100 (quantity and location of firefighting equipment) to its No. 4 Vein Slope (I.D. No. 36–08527) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Mark P. Shingara Coal

[Docket No. M–97–106–C]

Mark P. Shingara Coal, R.D. #3, Box 79E, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (mine map) to its No. 4 Vein Slope (I.D. No. 36–08527) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnel. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Mark P. Shingara Coal

[Docket No. M–97–107–C]

Mark P. Shingara Coal, R.D. #3, Box 79E, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 4 Vein Slope (I.D. No. 36–08527) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Mark P. Shingara Coal

[Docket No. M–97–108–C]

Mark P. Shingara Coal, R.D. #3, Box 79E, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 4 Vein Slope (I.D. No. 36–08527) located in Northumberland County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Oxbow Carbon & Minerals, Inc.

[Docket No. M–97–109–C]

Oxbow Carbon Minerals, Inc., P.O. Box 535, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.804(a) to its Sanborn Creek Mine (I.D. No. 05–04452) located in Gunnison County, Colorado. The petitioner requests a modification of the standard to allow the use of Anaconda Type SHD+GC, Pirelli Type SHD-Center-GC, Tiger Brand Type SHD–CGC, and other brands of identical construction flame-resistant cables on the high-voltage longwall system(s). The petitioner states that these cables would utilize a flexible No. 16 A.W.G. ground check conductor for the ground continuity check circuit. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Oxbow Carbon & Minerals, Inc.

[Docket No. M–97–110–C]

Oxbow Carbon & Minerals, Inc., P.O. Box 535, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Sanborn Creek Mine (I.D. No. 05–04452) located in Gunnison County, Colorado. The petitioner proposes to use 2,400 volt cables to power longwall equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Freeman United Coal Mining Company

[Docket No. M–97–111–C]

Freeman United Coal Mining Company, 1999 Wabash Avenue, Suite 200B, Springfield, Illinois 62704–5364 has filed a petition to modify the application of 30 CFR 75.332(a) to its Crown III Mine (I.D. No. 11–02632) located in Montgomery County, Illinois. The petitioner requests a modification of the standard to allow one continuous miner on a super section to cleanup while the other continuous miner is loading coal. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard by allowing expeditious and effective snow removal from the road in conjunction with a low 25 mile per hour speed limit.

12. USMX of Alaska

[Docket No. M–97–05–M]

USMX of Alaska, 200 Center Court, Anchorage, Alaska 99518 has filed a petition to modify the application of 30 CFR 56.9300(a) (berms or guardrails) to its Illinois Creek Mine (I.D. No. 50–01637) located in Yukon-Koyukuk County, Alaska. The petitioner requests a modification of the standard to eliminate the use of berms along the drop-off side of the road. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard by allowing expeditious and effective snow removal from the road in conjunction with a low 25 mile per hour speed limit.

Request for Comments

Persons interested in these petitions may furnish written comments. These

comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 3, 1997. Copies of these petitions are available for inspection at that address.

Dated: September 25, 1997.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 97–26214 Filed 10–2–97; 8:45 am]

BILLING CODE 4510–43–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. White Oak Mining & Construction Co., Inc.

[Docket No. M–97–95–C]

White Oak Mining & Construction Co., Inc., Scofield Route, P.O. Box 60, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its White Oak No. 1 Mine (I.D. No. 42–01279) located in Carbon County, Utah. The petitioner proposes to establish an evaluation point at crosscut 13 and one just outby crosscut No. 15 in the No. 5 entry of the 3rd East Mains. The petitioner alleges that application of the standard would result in a diminution of safety to the miners assigned to rehabilitate and travel the return entry.

2. Peabody Coal Company

[Docket No. M–97–96–C]

Peabody Coal Company, 800 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Camp No. 1 Mine (I.D. No. 15–02709) located in Union County, Kentucky. Due to hazardous conditions in the air course entries, traveling certain areas of the air course would be unsafe. The petitioner proposes to establish evaluation points inby and outby the seals of the 2nd Panel West of the 1st Submain North of the mine; and to have a certified person examine these evaluation points for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method will guarantee the same measure of protection afforded the miners by the mandatory standard and will result in no diminution of safety to the miners.

3. CONSOL of Kentucky, Inc.

[Docket No. M–97–97–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75–1101–8 (water sprinkler systems; arrangement of sprinklers) to its Big Springs No. 16 Mine (I.D. No. 15–17957) located in Knott County, Kentucky. The petitioner proposes to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, located to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt, with actuation temperatures between 200 and 230 degrees Fahrenheit and with water pressure equal to or greater than 10 psi; to have the sprinklers located not more than 10 feet apart, so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit. The petitioner asserts that the proposed alternative method will guarantee the same measure of protection afforded the miners by the mandatory standard and will result in no diminution of safety to the miners.

4. Eastern Associated Coal Corporation

[Docket No. M–97–98–C]

Eastern Associated Coal Corporation, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Harris No. 1 Mine (I.D. No. 46–01271) located in Boone County, West Virginia. The petitioner proposes to use high-voltage cables (2400 volt) inby the last open crosscut at the longwall working sections. The petitioner asserts that the proposed alternative method will guarantee the same measure of protection afforded the miners by the mandatory standard and will result in no diminution of safety to the miners.

5. Lodestar Energy, Inc.

[Docket No. M–97–99–C]

Lodestar Energy, Inc., P.O. Box 448, Clay, Kentucky 42404 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment) to its Baker Mine (I.D. No. 15–14492) located in Webster County, Kentucky. The petitioner proposes to use a spring-loaded device with specific fastening characteristics instead of a padlock to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. The petitioner asserts that the proposed alternative method will guarantee the same measure of protection afforded the miners by the mandatory standard and will result in no diminution of safety to the miners.

6. Eastern Associated Coal Corporation

[Docket No. M–97–100–C]

Eastern Associated Coal Corporation, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Federal No. 2 Mine (I.D. No. 46–01456) located in Monongalia County, West Virginia. The petitioner requests that the Proposed Decision and Order (PDO) for its previously granted petition be amended, docket number M–92–01–C. The petitioner requests that paragraph 28 of the PDO be amended to provide at least one escapeway on the tailgate side of the longwall face. The petitioner asserts that the requested amendment would not result a diminution of safety to the miners.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 3, 1997. Copies of these petitions are available for inspection at that address.

Dated: September 25, 1997.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 97–26213 Filed 10–2–97; 8:45 am]

BILLING CODE 4510–43–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97–53; Exemption Application No. D–10261, et al.]

Grant of Individual Exemptions; McCroskey, Feldman, Cochrane & Brock, P.C.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

McCroskey, Feldman, Cochrane & Brock, P.C. Profit Sharing Plan and Trust (the Plan), Located in Muskegon, Michigan

[Prohibited Transaction Exemption 97–53; Exemption Application No. D–10261]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of certain improved real property located at 1440 and 1442 Peck Street in Muskegon, Michigan (the Muskegon Property) to the McCroskey Development Partnership (the Partnership), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the Sale are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash in which the Plan incurs no expenses;

(C) The Plan receives a purchase price for the Muskegon Property which is no less than the greater of (1) the fair market value of the Muskegon Property established at the time of the sale by an independent qualified appraiser, or (2) $350,000;

(D) Within sixty days of the publication in the **Federal Register** of this notice granting the exemption, McCroskey, Feldman, Cochran & Brock, P.C. (the Employer) files Form 5330 with the Internal Revenue Service and pays the applicable excise taxes which are due with respect to the continuation of a lease of the Muskegon Property by the Plan to the Employer after September 27, 1989; and

(E) Within sixty days of the publication in the **Federal Register** of this notice granting the exemption, the Employer's payment of rent to the Plan for the Muskegon Property from September 27, 1989 through the date of the Partnership's purchase of the Property from the Plan is reviewed by an independent fiduciary to determine whether such rent was at all times no less than the fair market rental value of the Muskegon Property, and, to the extent such rent is determined to have been less than the fair market rental value, the Employer pays the Plan the amount of such deficiency together with interest thereon at a rate determined by the independent fiduciary to be appropriate to compensate the Plan for lost income on such deficiency amount.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on August 1, 1997 at 62 FR 41431.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Alloy Die Casting Co. Employees' Profit Sharing Plan and Trust (the Plan), Located in Anaheim, California

[Prohibited Transaction 97–54; Exemption Application No. D–10439]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan to the Alloy Die Casting Co./W.E. Holmes, Inc. (Alloy), the Plan sponsor and a party in interest with respect to the Plan, of units (the Units) in the Krupp Insured Plus-II Limited Partnership, provided: (a) The sale is a one-time transaction for cash; (b) no commissions or other expenses are paid by the Plan in connection with the sale; (c) the Plan will receive $1.15 above the highest bid price for the Units at the most recent sealed bid auction for the Units which has occurred prior to the time of the sale; and (d) Alloy will purchase the Units from the Plan within 10 calendar days following the granting of this exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notices of proposed exemption published on June 23, 1997 at 62 FR 33924 and on August 8, 1997 at 62 FR 42837.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bloom Consulting Corporation Profit Sharing Plan (the Plan), Located in Tiburon, California

[Prohibited Transaction Exemption 97–55; Exemption Application No. D–10440]

Exemption

The application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not

apply to the proposed purchase by the Plan of shares of common stock of Valley Forge Corporation (the Stock) from the Martin Bloom Family Trust, a disqualified person with respect the Plan provided that the following conditions are satisfied: (1) The purchase of the Stock will be a one-time transaction for cash; (2) the Plan will purchase the Stock at a price no greater than the fair market value of the Stock as reported on the American Stock Exchange (AMEX) on the date of the purchase; (3) the Plan will not pay any expenses in connection with the proposed transaction; and (4) the purchase of the Stock shall represent no more than 25% of the fair market value of the Plan's assets.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption, published on August 8, 1997 at 62 FR 47064.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department, telephone (202) 219–8971. (This is not a toll free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 30th day of September, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–26289 Filed 10–2–97; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–143)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assinged to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Patent Counsel, Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001; telephone (757) 864–9260.

NASA Case No. LAR–15547–1: An Improved Substrate Material for Holographic Emulsions Utilizing Fluorinated Polyimide Film.

NASA Case No. LAR–14997–3: Optical Flameout Detector (FWC of—2).

NASA Case No. LAR–15539–1: Advanced Layered Composite Polylaminate Electro-Active Actuator.

NASA Case No. LAR–15411–2–CU: Process and Apparatus for Applying Powder Particles to a Filamentary Material (FWC of—1).

NASA Case No. LAR–15062–2: Multi-Channel Electronically Scanned Cryogenic Pressure Sensor (FWC of—1).

NASA Case No. LAR–15289–2: 3-Dimensional Object Tracking System and Method Employing Plural Sensors/Processors for Performing Parallel Processing (FWC of—1).

Dated: September 26, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–26292 Filed 10–2–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–144]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Air Traffic Management Research and Development Executive Steering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Air Traffic Management Research and Development Executive Steering Committee meeting.

DATES: October 21, 22, and 23, 1997, 8:00 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 262, Room 100, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Schlickenmaier, National Aeronautics and Space Administration, Headquarters, Washington, DC 20546, 202/358–4638.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The meeting will focus on NASA's Advanced Air Transportation Technology (AATT) element of the aviation capacity research program. Agenda topics for the meeting are as follows:

—AATT Program Introduction
—Overview of AATT Level II Plan
—Summary at AATT Sub-element Level III Plans
—Review of the AATT Level 1, Milestone 1, Program Plan Assessment

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: September 26, 1997.

Leslie M. Nolan

Advisory Committee Management Officer.

[FR Doc. 97–26293 Filed 10–2–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–145)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee.

DATES: Tuesday, October 21, 1997, 8:30 a.m. to 5:00., p.m., Wednesday, October 22, 1997, 8:30 a.m. to 5:00 p.m., and Thursday, October 23, 1997, 8:30 a.m. to 12:00 Noon.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW, MIC Room 7H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: George L. Withbroe, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Sun-Earth Connection Program Overview: Budget, Ongoing Program, Future Activities.
—Senior Review of Mission Operations and Data Analysis Program
—Research and Analysis Program
—Strategic Planning
—Discussion and writing Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 26, 1997.

Leslie, M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–26294 Filed 10–2–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that propose the destruction of records not previously authorized for disposal, or reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before November 17, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, 8601 Adelphi Road College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301)713–7110.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Housing and Urban Development (N1–207–97–2). Records of the Office of Lead Hazard Control (substantive program records are designated for permanent retention).

2. Department of Housing and Urban Development (N1–196–97–2). Routine administrative records, 1937–1964, of the Public Affairs Branch, Public Housing Administration.

3. Department of the Interior, Minerals Management Service (N1–473–97–1). Administrative records pertaining to foreign and domestic training, cooperative agreements, and technical assistance.

4. Department of Labor, Pension and Welfare Benefits Administration (N1–317–97–2). Reduction in retention period for summary plan descriptions.

5. Department of Treasury, Internal Revenue Service (N1–58–97–11). Calendars and administrative correspondence of the Associate Commissioner for Tax Systems Modernization.

6. Panama Canal Commission (N1–185–97–20). Routine canal operations and services records.

Dated: September 26, 1997.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 97–26210 Filed 10–2–97; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirements to be submitted:

1. *The title of the information collection:* 10 CFR Part 25—Access Authorization for Licensee Personnel.

2. *Current OMB approval number:* 3150–0046.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* NRC regulated facilities and other organizations requiring access to NRC classified information.

5. *The number of annual respondents:* 20.

6. *The number of hours needed annually to complete the requirement or request:* 257 hours (197 hours Reporting and 60 hours Recordkeeping) or 3.8 hours/response.

7. *Abstract:* NRC regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided NRC classified information and material.

Submit by December 2, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance packages are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 29th day of September 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 97–26268 Filed 10–2–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–8902]

Atlantic Richfield Company; Notice of Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of placing the Bluewater uranium mill and tailings disposal site near Grants, New Mexico, in the custody and long-term care of the U.S. Department of Energy under the general licensing provisions of 10 CFR part 40.28; and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has accepted the Long-Term Surveillance Plan (LTSP) submitted by U.S. Department of Energy (DOE), by letter dated July 31, 1997, for the Bluewater uranium mill and tailings disposal site. The LTSP was developed by DOE as the long-term custodian of the Bluewater site. By accepting the LTSP, the Bluewater site will be regulated by NRC under the general licensing provisions of 10 CFR 40.28, and the Atlantic Richfield Company's Source Material License SUA–1470 for the Bluewater site has been terminated. These actions complete all requirements for closure of the Bluewater site under Title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. An NRC staff environmental assessment is not required for this action, since it is categorically excluded under 10 CFR 51.22(c)(11).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hooks, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–7777.

NOTICE OF OPPORTUNITY FOR HEARING: The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2" (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Atlantic Richfield Company, Bluewater Mill, P.O. Box 638, Grants, New Mexico 87020; and

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR part 2, subpart L.

Dated at Rockville, Maryland, this 25th day of September, 1997.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–26271 Filed 10–2–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Updated Environmental Standard Review Plan: Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) has prepared an update to the Environmental Standard Review Plan for the review of environmental reports for nuclear power plants (ESRP) for review and comment. A draft of the updated ESRP, NUREG–1555, incorporates changes in the regulation of the nuclear power industry, and changes in the treatment of environmental protection and siting issues that have occurred since the ESRP was initially issued in 1978 as NUREG–0555. Organizational changes have been made to the structure of ESRP sections to conform to the structure of the companion safety Standard Review Plan for the review of safety analysis reports for nuclear power plants (SRP), NUREG–0800. Most notably, significant changes have been made to incorporate the changes in environmental protection and resource statutes, other Federal regulations, Presidential executive orders, hearing decisions and case law, and NRC regulations related to new plant and site licensing, and license renewal. NUREG–1555 will supersede NUREG–0555.

DATES: The comment period expires January 30, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES AND SUBMISSION OF COMMENTS: Mail comments to: Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically in WordPerfect or ASCII format via the Internet to the NRC at esrp@nrc.gov. Written comments and comments received electronically will be available for inspection at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barry Zalcman, Office of Nuclear Reactor Regulation, Mail Stop O–10H5, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3467.

SUPPLEMENTARY INFORMATION: The proposed text in NUREG–1555, "Environmental Standard Review Plan," reflects the combined effort of NRC staff and NRC contractors. NRC staff review and evaluation, including resolution of public comments, and consideration by the Advisory Committee on Reactor Safeguards will be needed before a final version of NUREG–1555 can be published.

Due to the significance of the changes in NRC regulations related to new plant and site licensing, NRC regulations related to license renewal and environmental protection, other Federal regulations, environmental protection and resource statutes, Presidential executive orders, hearing decisions and case law, and due to the goal of restructuring the ESRP to conform to the structure of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants—LWR Edition," NUREG–1555 will supersede the earlier ESRP (NUREG–0555). For every section, the ESRP now identifies the specific acceptance criteria, which may have been the driver that forms the basis for the change to ESRP sections. For these reasons, the NRC judged that supporting documentation, including a redline/strikeout copy, that traces back to the original ESRP need not be provided. The updated ESRP also contains several new sections to address issues that emerged since 1978, for example, severe accident mitigation design alternatives and environmental justice.

The updated ESRP is not a generic communication that proposes new NRC staff positions or seeks additional licensee commitments. It does not impose new or revised requirements but simply compiles and documents NRC and other Federal requirements, and NRC staff positions. The ESRP does not explicitly incorporate State, regional or Native American tribal agency requirements that may also need to be addressed by applicants or licensees.

Work activities related to updating the ESRP were performed substantially in conformance with the guidance in NUREG–1447, "Standard Review Plan Update and Development Program—Implementing Procedures Document," dated May 1992. NUREG–1447 documents the results of developing the major work assumptions and work processes for completing the standard review plan revision process. Information management protocols and process modifications were made to account for the unique drivers that resulted from changes outside of the Atomic Energy Act and NRC regulations arena including, but not limited to, the National Environmental Policy Act, the Endangered Species Act, the Presidential executive order on environmental justice, guidance from the Council on Environmental Quality, and the regulations of the Environmental Protection Agency on non-radiological issues. The entire work effort and responsibility for updating the ESRP resides in the NRC Generic Issues and Environmental Projects Branch, which coordinates with the appropriate technical review branches and essential technical specialists on particular issues.

The purpose of this notice is to solicit specific public comment on whether the updated ESRP accurately and fully reflects established NRC staff positions and existing requirements that include statutes, regulations, executive orders, and NRC decisions. Consideration should be given to the thoroughness and utility in use of the guidance provided to implement NRC rules promulgated since the original ESRP was published in 1978 with particular emphasis given to those related to siting and environmental protection and to those new licensing frameworks related to early site permits, combined licenses, and license renewal. The SRP is made available to the public as part of NRC's policy to inform the nuclear industry and general public of regulatory procedures and policies. Environmental standard review plans are not substitutes for regulatory guides or NRC regulations. Compliance with ESRPs is not required. Published environmental standard review plans will be revised periodically, as appropriate, to accommodate comments and to reflect new information and experience.

The NRC encourages comment from all interested parties; however, public review is not intended to reopen a dialogue on the merits of the requirements themselves but should be focused on the purposes stated above.

Comments should reference the page number and section (either ESRP section or Introduction or appendices).

The updated ESRP in printed paper, 3.5-inch disks and compact disk (CD) versions, and comments submitted are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

A limited number of copies of the updated draft ESRP in printed paper and CD versions (in WordPerfect 6.1 format) are available free, to the extent of supply, upon written request to the Office of Information Resources Management, Distribution Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 11th day of September, 1997.

For the Nuclear Regulatory Commission.

David B. Matthews,

Acting Chief, Generic Issues and Environmental Projects Branch, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–26269 Filed 10–2–97; 8:45 am]

BILLING CODE 7590–01–P

Nuclear Regulatory Commission

[Docket No. 72–10]

Northern States Power Company Issuance of Director's Decision Under 10 CFR 2.206 (DD–97–24)

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a Director's Decision concerning a Petition dated August 26, 1996, filed by Carol A. Overland, on behalf of the Florence Township, Minnesota, Board of Supervisors (Petitioner), under Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206).

The Director of the Office of Nuclear Material Safety and Safeguards has determined that the Petition should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–97–24), the complete text of which follows this notice. The Decision and documents cited in the Decision are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC.

A copy of this Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, this Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 26th day of September 1997.

For The Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

Director's Decision Under 10 CFR 2.206

I. Introduction

On August 26, 1996, Florence Township, Minnesota (Petitioner) filed a petition requesting that the Nuclear Regulatory Commission (NRC) institute a proceeding pursuant to 10 CFR 2.202 with regard to the application by Northern States Power Company (NSP), claiming, that NSP violated the Commission's regulations by failing to provide Lake City, Minnesota, with an opportunity to comment on a proposed emergency plan for an independent spent fuel storage installation (ISFSI) before submission to the NRC. The Petitioner requested that NRC: (1) Determine that NSP violated the requirements of 10 CFR 72.32(a)(14) by refusing to allow Lake City, Minnesota, 60 days to comment on NSP's emergency plan before submitting it to NRC; (2) reject NSP's application as incomplete and inadequate and return it to the corporation; (3) require that NSP specifically name the local governments referred to in section 5.6 of the emergency plan which are expected to respond in case of an accident; (4) require that NSP allow 60 days to the named local governments to review and comment upon NSP's emergency plan prior to NSP's resubmission of the application; (5) impose a penalty in the amount of one million dollars and require NSP to compensate the Petitioner in the amount of $7,500.00 for time expended by its Board and attorney in attempting to obtain the emergency plan before its submission to the NRC; and (6) provide hearings on this petition at which the Petitioner and members of the public may participate.

The Petitioner asserts as the basis for this request the regulatory requirement found at § 72.32(a)(14) of Chapter 10 of the Code of Federal Regulations [10 CFR 72.32(a)(14)]:

> The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the initial submittal of the licensee's emergency plan before submitting it to NRC. Subsequent plan changes need not have the offsite comment period unless the plan changes affect the offsite response organizations. The licensee shall provide any comments received within 60 days to NRC with the emergency plan.

The petition has been referred to me for a decision. For the reasons given below, I have concluded that the Petitioner's requests should be denied.

II. Background

NSP has an onsite ISFSI at Prairie Island Nuclear Generating Plant (PINGP), which has a capacity to store 1920 spent fuel assembles in 46 Transnuclear TN–40 casks. In 1994, the Minnesota legislature enacted statutes authorizing NSP to store spent nuclear fuel at the ISFSI. 1994 Minn. Laws ch 641, arts. 1, 6 (codified at Minn. Stat §§ 116C.77-.80(1996)). The legislation authorized the immediate use of five casks and allowed the use of four additional casks upon a determination that NSP had: (1) Filed a license application with NRC for a separate dry cask storage facility in Goodhue County; (2) continued a good faith effort to implement the alternate site; and (3) arranged for the use of additional megawatts of wind power. The law also provided that NSP could not construct at the second site without first obtaining a Certificate of Site Compatibility from the Minnesota Environmental Quality Board (MEQB). The MEQB was authorized to certify that the alternative Goodhue County site was comparable to the independent spent fuel storage facility site located on Prairie Island.

NSP applied for a certificate from the MEQB in July 1995. It identified two possible sites for the Goodhue County spent fuel storage facility, both in Florence Township, south of the City of Red Wing.[1] On October 2, 1996, after receiving the report of a citizen Advisory Task Force, the MEQB determined that because of the additional risks it believed to be inherent in transporting spent nuclear fuel to a second site in Goodhue County away from PINGP, no other site in Goodhue County would be comparable to the Prairie Island facility and denied a certificate.

NSP's application to NRC included an emergency plan for the Goodhue County facility, which contained comments from the Minnesota Departments of Public Safety and Public Health, as well as the Goodhue County, Minnesota, Office of Emergency Management which coordinates emergency services within the county. NRC completed its acceptance review and docketed the NSP application on September 9, 1996. A "Notice of Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for Hearing" was published in the **Federal Register** on September 17, 1996. The Petitioner and several others sought a hearing as provided by 10 CFR 2.105. An Atomic Safety and Licensing Board (ASLB) was established on October 9, 1996. Among the issues raised in the petitions to intervene by the Petitioner and by Lake City, Minnesota, were issues associated with emergency planning, substantially similar to the issues raised by the Petitioner in the petition requesting that the NRC institute a proceeding pursuant to 10 CFR 2.202. Consequently, the staff deferred the response to the Petition until completion of the ASLB hearing process.

Because of the physical proximity of its Reservation to PINGP, the Prairie Island Indian Community had been particularly interested in seeing the offsite ISFSI built. Since the MEQB decision effectively ended the possibility of that facility being developed, the Indian Community initiated litigation in the Minnesota State Courts in December 1996, seeking to overturn the MEQB decision. When the litigation began, NSP requested and was granted a suspension of both NRC staff's review of the Goodhue County application and the ASLB proceeding, just prior to the pre-hearing conference which was scheduled for December 1996. State litigation ended in July 1997, when the Minnesota Supreme Count declined to hear an appeal of the Minnesota Court of Appeals ruling which affirmed the MEQB decision. Subsequently, in a letter dated July 22, 1997, NSP withdrew the Goodhue County application. NRC acknowledged the withdrawal in a letter dated August 4, 1997. The ASLB issued a Memorandum and Order terminating its proceeding on July 30, 1997. However, a motion for reconsideration is currently under review by the Board.[2]

III. Discussion

Section 72.32(a)(14) provides that the offsite response organizations expected by the licensee to respond to an on-site emergency should be provided an opportunity to comment on an ISFSI emergency plan.[3] As required by 10 CFR 72.32(a)(14), NSP contacted the offsite response organizations it expected to respond to an on-site emergency at the proposed Goodhue County facility. NSP requested comments from the Minnesota Departments of Public Safety and Public Health and the Goodhue County, Minnesota, Office of Emergency Management. All three responded to NSP's request. Their comments were provided to NRC with the emergency plan.

The Petitioner claims that because the Lake City, Minnesota, Fire Department contracts with Florence Township to provide fire protection, it is one of the offsite response organizations that NSP would contact in case of an on-site emergency at the Goodhue County ISFSI. Lake City is not located in Goodhue County, however, and therefore is not expected by the applicant to respond to an on-site emergency.

The emergency plan appropriate for an ISFSI is an on-site emergency plan. The staff has determined that there are no credible accidents at an ISFSI which have significance for offsite emergency preparedness.[4] There is no specific requirement that any particular political jurisdiction be contacted to comment on an ISFSI emergency plan. Rather, the applicant is required to determine which services it will require from offsite providers and to seek comments from those organizations. NSP did not indicate in the emergency plan that Lake City, Minnesota, was expected to respond to an on-site emergency. Further, no evidence has been provided that NSP, at the time of the submittal of the license application, had plans to seek emergency planning assistance from Lake City, Minnesota. Thus, there is no violation of 10 CFR 72.32(a)(14) to warrant any enforcement action.

The Petitioner raised several additional requests regarding NRC's review of NSP's Goodhue County application. These are matters which the NRC considers during the license review, not as part of a Petition filed under 10 CFR 2.206. Further, in light of the fact that NSP has now withdrawn the application, they are moot.

Conclusion

I have concluded that NSP did not violate NRC regulations by failing to provide Lake City, Minnesota, with an opportunity to respond to the proposed emergency plan. As provided by 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review.

Dated at Rockville, Maryland, this 26th day of September, 1997.

For The Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–26273 Filed 10–2–97; 8:45 am]

BILLING CODE 7590–01–P

[1] One of these was the site chosen by NSP for inclusion in its application to NRC. It is described as being situated south of Frontenac Station, north of Wells Creek, and between Territorial Road and the CP Rail railroad tracks.

[2] On July 30, 1997, the Petitioner filed a response to NSP's July 24, 1997, Motion for Withdrawal of Application and Termination of Proceeding. In the response, the Petitioner requested that the ASLB dismiss the NSP application with prejudice, or alternatively, deny NSP's application, or impose a condition of withdrawal that the application for the Florence Township site shall not be resubmitted. The ASLB considered this Petitioner's June 30, 1997, submittal to be a motion for reconsideration. On August 29, 1997, the staff responded that Florence Township's motion for reconsideration should be denied on the basis that the proceeding had not sufficiently progressed such that dismissal with prejudice is appropriate, and on the basis that Florence Township has not demonstrated legal harm warranting the relief it requests.

[3] The regulatory requirements for comments on the emergency plans for ISFSIs, like the requirements for the emergency plans, are separate and quite different from those for nuclear reactors. The requirements for emergency plans for ISFSIs are for on-site emergencies only. Because offsite health effects have not been identified for accidents at ISFSIs, there is no requirement for neighboring jurisdictions to be involved in emergency response. There is, for instance, no requirement for evacuation planning and hence no need for the kinds of more elaborate plans associated with nuclear reactors.

[4] See NUREG–1140, "A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees."

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39143; File No. SR–Amex–97–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Listing and Trading of DIAMONDS℠ Trust Units

September 29, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 11, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade under Amex Rules 1000 *et seq.* DIAMONDS℠, units of beneficial interest in the DIAMONDS Trust. In addition, the Exchange proposes to adopt Amex Rule 1005, "Dow Jones Indexes," relating to license and warranty issues. The text of the proposed rule change is available at the

Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 11, 1992,[1] the Commission approved Amex Rules 1000 *et seq.* to accommodate trading on the Exchange of Portfolio Depositary Receipts ("PDRs℠"), securities which represent interests in a unit investment trust ("Trust") operating on an open-end basis and that hold a portfolio of securities. The Trust sponsor ("Sponsor") for each series of PDRs is PDR Services Corporation, a wholly-owned subsidiary of Amex.[2] Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities portfolio, that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. The first Trust to be formed in connection with the issuance of PDRs was based on the Standard & Poor's 500 Index ("S&P 500 Index"), known as Standard & Poor's Depositary Receipts® ("SPDRs"), which have been trading on the Exchange since January 29, 1993.[3] In 1995, the Commission approved Amex's listing and trading of PDRs based on the Standard & Poor's MidCap 400 Index™ ("MidCap SPDRs").[4]

The Exchange now proposes to list and trade under Rules 1000 *et seq.* DIAMONDS℠, units of beneficial interest in the DIAMONDS Trust.[5] The Sponsor will enter into a trust agreement with the Trustee, State Street Bank and Trust Company, in accordance with Section 26 of the Investment Company Act of 1940 ("1940 Act"). A distributor will act as underwriter of DIAMONDS on an agency basis. All orders to create DIAMONDS in Creation Unit size aggregations must be placed with the distributor, and it will be the responsibility of the distributor to transmit such orders to the Trustee. The distributor is a registered broker-dealer, and a member of the National Association of Securities Dealers, Inc.

The Dow Jones Industrial Average:[6] The Dow Jones Industrial Average is the oldest continuous barometer of the U.S. stock market, and the most widely quoted indicator of U.S. stock market activity. The 30 stocks now comprising the DJIA are all leaders in their respective industries, and their stocks are widely held by individuals and institutional investors.

The DJIA is a price-weighted stock index; that is, the component stocks are accorded relative importance based on their prices. The DJIA is called an "average" because originally it was calculated by adding up the component stock prices and then dividing by the number of stocks. The method remains the same today, but the divisor (the number that is divided into the total of the stock prices) has been increased to eight significant digits to minimize distortions due to rounding.

The DJIA divisor is adjusted due to corporate actions that change the price of any of its component shares. The most frequent reason for such an adjustment is a stock split. For example, suppose a company in the DJIA issues one new share for each share outstanding. After this two-for-one "split," each share of stock is worth half what it was immediately before, other things being equal. But without an adjustment in the divisor, this split would produce a distortion in the DJIA. An adjustment must be made to compensate so that the "average" will remain unchanged. At Dow Jones, this adjustment is handled by changing the divisor.[7] The formula used to calculate divisor adjustments is:

New Divisor = Current Divisor × Adjusted Sum of Prices/Unadjusted Sum of Prices

Changes in the composition of the DJIA are made entirely by the editors of The Wall Street Journal without consultation with the companies, the respective stock exchange, or any official agency. Additions or deletions of components may be made to achieve better representation of the broad market and of American industry.

The DIAMONDS Trust: To be eligible to place orders to create DIAMONDS as described below, an entity or person must either be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Upon acceptance of an order to create DIAMONDS, the distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of DIAMONDS to the account of the entity placing the order. DIAMONDS will be registered in book entry only, which records will be kept by DTC.

Payment with respect to creation orders placed through the distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is substantially similar in composition to the component shares of the underlying index or portfolio; (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to certain specified adjustments; [8] and (3) a cash payment or adjustment calculated by the Trustee to enable the securities portfolio portion to equal the net asset value of the Trust (the "Balancing Amount"). The Balancing Amount and the Dividend Equivalent Payment are referred to as the "Cash Component" in the case of a creation. The securities and cash accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit."

The mandatory termination date of the Trust will be the first to occur of (i) January 30, 2122 or (ii) the date 20 years after the death of the last survivor of eleven persons named in the trust agreement between the Trust Sponsor and the Trustee.

Issuance: Upon receipt of a Portfolio Deposit in payment for a creation order placed through the distributor as described above, the Trustee will issue a specified number of DIAMONDS, which aggregate number is referred to as a "Creation Unit." The Exchange anticipates that, with respect to DIAMONDS, a Creation Unit will be made up of 50,000 DIAMONDS. Individual DIAMONDS can then be traded in the secondary market like other equity securities.[9] It is expected that Portfolio Deposits will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. The DIAMONDS Trust has been structured to provide for the initial issuance of DIAMONDS at a per unit price which would approximate 1/100th of the value of the DJIA. As of August 7, 1997 it is estimated that the value of such an individual DIAMONDS Unit would be approximately $81.88.

It is expected that the Trustee or Sponsor will make available (a) on a daily basis a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (b) on a minute-by-minute basis throughout the day, a number representing the value (on a per DIAMONDS Unit basis) of the securities portion of a Portfolio Deposit in effect on such day, plus accumulated dividends less expenses through the previous day's close, and (c) on a daily basis, the accumulated dividends, less expenses, per outstanding DIAMONDS Unit.

Transactions in DIAMONDS may be effected on the Exchange until 4:15 p.m. New York time each business day. The minimum fractional change for DIAMONDS shall be 1/64 of $1.00.

Redemption: DIAMONDS in Creation Unit size aggregations generally will be redeemable in kind by tendering them to the Trustee. While holders may sell DIAMONDS in the secondary market at any time, they must accumulate at least 50,000 (or multiples thereof) to redeem through the Trust. DIAMONDS will remain outstanding until redeemed or until the termination of the Trust. Creation Units generally will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in composition to the securities portion of a Portfolio Deposit in effect on the date request is made for redemption, together with a "Cash Redemption Payment" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder generally will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

Distributions: The DIAMONDS Trust will pay monthly dividends. The first ex-dividend date for DIAMONDS will be the third Friday of the third full month following the commencement date of the Trust unless such date is not a Business Day, in which case the ex-dividend date will be the immediately preceding Business Day (the "ex-dividend date"). Holders of DIAMONDS as reflected on the records of the DTC and the DTC Participants on the second business day following the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the monthly dividend period which ends on the business day preceding such ex-dividend date net of fees and expenses accrued daily for such period. The payment of dividends will be made on the first business day coincident with or following the Monday preceding the third Friday in the calendar month following the ex-dividend date (the "Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each monthly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee. The DIAMONDS Trust intends to make the DTC Dividend Reinvestment Service available for use by DIAMONDS holders through DTC Participant brokers for reinvestment of their cash proceeds. An interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through such broker.

Criteria for Initial and Continued Listing: Because of the open-end nature of the Trust upon which a series of PDRs is based, the Exchange believes it is necessary to maintain appropriate flexibility in connection with listing a specific Trust. In connection with initial listing, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading. For DIAMONDS, it is anticipated that a minimum of 150,000 DIAMONDS (*i.e.*, three Creation Units of 50,000 DIAMONDS each), will be required to be outstanding when trading begins.

The DIAMONDS Trust will be subject to the initial and continued listing criteria of Rule 1002(b). Rule 1002(b) provides that, following twelve months from the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) If the index on which the Trust is based is no longer calculated; or

(c) If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set further in the Trust prospectus. For example, the Sponsor, following notice to PDRs holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a

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[1] See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) ("SPDRs Order").

[2] "PDRs" is a service mark of PDR Services Corp.

[3] See SPDRs Order, *supra* note 1.

[4] See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995). "Standard & Poor's 500," "Standard & Poor's MidCap 400 Index," "Standard & Poor's Depositary Receipts®," "SPDRs®," "Standard & Poor's MidCap 400 Depositary Receipts" and "MidCap SPDRs" are trademarks of The McGraw-Hill Companies, Inc. and are being used by the Exchange and the Sponsor under license among Standard & Poor's, a division of The McGraw-Hill Companies, Inc., the Exchange and the Sponsor. "SPDRs" and "MidCap SPDRs" are not sponsored, endorsed, sold, or promoted by S&P, and S&P makes no representation regarding the advisability of investing in SPDRs or MidCap SPDRs.

[5] "Dow Jones Industrial Average℠," "DJIA℠," "Dow Jones℠" and "DIAMONDS" are each trademarks and service marks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by the Exchange and the Sponsor. DIAMONDS are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such product.

[6] The description of the DJIA included herein is based on materials prepared by Dow Jones.

[7] Currently, the divisor is recalculated after the close of business on the day prior to the occurrence of the split.

[8] See "Distributions" infra.

[9] The DIAMONDS Trust, Series I, has filed with the Commission an application seeking, among other things, an order: (1) Permitting secondary market transactions in DIAMONDS at negotiated prices, rather than at a current public offering price described in the prospectus as required by Section 22(d) of the 1940 Act and Rule 22c–1; and (2) permitting the sale of DIAMONDS to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by Section 4(3) of the Securities Act of 1933 but may be required according to Section 24(d) of the 1940 Act for redeemable securities issued by a Unit Investment Trust. These exemptions, if granted, will permit individual DIAMONDS to be traded in secondary market transactions similar to a closed-end investment company.

specified amount.[10] The DIAMONDS Trust may also terminate if the license agreement with Dow Jones terminates.

Trading Halts: Prior to commencement of trading in DIAMONDS, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set further in Rule 918C(b) in exercising its discretion to halt or suspend trading. These factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value[11]; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[12]

Terms and Characteristics: Under Amex Rule 1000, Commentary .01, Amex members and member organizations are required to provide to all purchasers of DIAMONDS a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to such purchaser. The Exchange also requires that such description be included with any sales material on DIAMONDS that is provided to customers or the public. In addition, the Exchange requires that members and member organizations provide customers the prospectus for DIAMONDS upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase DIAMONDS for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the terms as are directly applicable to members and member organizations.

Prior to commencement of trading of DIAMONDS, the Exchange will distribute to Exchange members and member organizations an Information Circular calling attention to characteristics of the DIAMONDS Trust and to applicable Exchange rules.

Adoption of Rule 1005: The Exchange proposes to adopt Rule 1005 ("Dow Jones Indexes") stating that Dow Jones has licensed the Exchange to use certain Dow Jones indexes for purposes of the listing and trading of particular series of Portfolio Depositary Receipts on the Exchange, and stating, among other things, that Dow Jones and the Exchange make no warranty, express or implied, as to results to be obtained by any person or entity from the use of the Indexes or any data included therein.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[13] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The Exchange believes that Portfolio Depositary Receipts, generally, and DIAMONDS specifically, have the potential to benefit the markets by providing an alternate trading instrument, such as those encouraged by the Division of Market Regulation in its report, "The October 1987 Market Break," that may help temper market volatility and reduce stress on individual index component stocks during unusual market conditions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-97-29 and should be submitted by October 24, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26285 Filed 10–2–97; 8:45 am]

BILLING CODE 8010–01–M

[10] With respect to the DIAMONDS Trust, the Sponsor has the discretionary right to terminate the Trust if the value of Trust Securities (as defined in the Trust registration statement) falls below $150,000,000 at any time after six months following, and prior to three years following, inception of the Trust. Following such time, the Sponsor has the discretionary right to terminate if Trust Securities fall below $350,000,000 in value, adjusted annually for inflation.

[11] Amex Rule 918C(b)(3).

[12] Amex Rule 918C(b)(4).

[13] 15 U.S.C. 78f(b)(5).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of: (a) Final action regarding amendments to sentencing guidelines and policy statements effective November 1, 1997; and (b) an amendment to correct a clerical error in USSG § 2K2.1(a)(3), as amended by amendment 522 (November 1, 1995).

SUMMARY: The Sentencing Commission hereby gives notice of: (a) Several amendments to policy statements and commentary made pursuant to its authority under 28 U.S.C. 994(a); (b) conforming and technical amendments to several amendments submitted to Congress on May 1, 1997; and (c) an amendment to correct a clerical error that omitted the word "felony" from the phrase "prior felony" in USSG § 2K2.1(a)(3), as amended by amendment 522 (November 1, 1995).

DATES: The effective date of these amendments is November 1, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

Authority: 28 U.S.C. 994 (a), (o), (x).

Richard P. Conaboy,

Chairman.

1. Amendment: The Commentary to new guideline § 2A6.2 (see 62 F.R. 26615 (1997)) captioned "Application Notes" is amended in Note 1 by inserting at the beginning the following:

> For purposes of this guideline—
> 'Bodily injury' and 'dangerous weapon' are defined in the Commentary to § 1B1.1 (Application Instructions).

Reason for Amendment: This amendment incorporates into § 2A6.2 the definitions of "bodily injury" and "dangerous weapon" found in § 1B1.1 (Application Instructions). The definition of bodily injury found in the guidelines differs from the definition of bodily injury in 18 U.S.C. 2266 that is applicable to interstate stalking and interstate domestic violence offenses. The definition of "bodily injury" in 18 U.S.C. 2266 explicitly include sexual abuse, but the guideline definition of "bodily injury" does not. However, the Commission is fully aware that criminal sexual abuse often is part of a domestic violence offense under 18 U.S.C. 2261 and 2262 and may be part of a stalking offense under 18 U.S.C. 2261A. It is the view of the Commission that the new guideline provides an adequate mechanism for taking into account the occurrence of criminal sexual abuse in any of these offenses. This is because the guideline definition of "serious bodily injury" in § 1B1.1 deems serious bodily injury—a more serious gradient of bodily injury—to have occurred if the offense involved conduct constituting criminal sexual abuse under 18 U.S.C. 2241 or 2242 or any similar offense under state law. Under the new guideline, any offense that involved criminal sexual abuse almost certainly will be subject to the cross reference to another offense guideline and to the rule deeming such conduct to be serious bodily injury (for purposes of applying a serious bodily injury enhancement in that other guideline to the offense). Therefore, in all likelihood, the sentence will be enhanced for the occurrence of criminal sexual abuse because the case will be cross referenced to another guideline that enhances for serious bodily injury.

2. Amendment: The Commentary to § 2B4.1 captioned "Statutory Provisions" is amended by deleting "§§ 11907(a), (b)" and inserting in lieu thereof "§ 11902".

The Commentary to § 2N3.1 captioned "Statutory Provisions" is amended by deleting "15 U.S.C. §§ 1983–1988, 1990c" and inserting in lieu thereof "49 U.S.C. §§ 32703-32705, 32709(b).".

The Commentary to § 2Q1.2 captioned "Statutory Provisions" is amended by deleting "§ 1809(b)" and inserting in lieu thereof "§ 60123(d)".

Reason for Amendment: This amendment makes technical corrections to § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), § 2N3.1(Odometer Laws and Regulations), § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification; Unlawfully Transporting Hazardous Materials in Commerce), to reflect changes made to statutory references when Congress codified Title 49 (Transportation), United States Code. Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1356; Pub. L. 104–88, Title I, § 102(a), December 29, 1995, 109 Stat. 850.

3. Amendment: The Commentary to § 2D1.11 captioned "Application Notes" is amended in Note 4(a) in the fourth sentence by deleting "14" and inserting in lieu thereof "16".

Reason for Amendment: This amendment corrects a clerical error.

4. Amendment: The Commentary to § 2K1.5 captioned "Background" is amended by deleting:

> Except under the circumstances specified in 49 U.S.C. 46505(c), the offense covered by this section is a misdemeanor for which the maximum term of imprisonment authorized by statute is one year;

by deleting "An" and inserting in lieu thereof "This guideline provides an"; and by deleting "is provided" immediately after "enhancement".

Reason for Amendment: This amendment strikes background commentary in guideline § 2K1.5 that is no longer correct because of a recent change in statutory penalties. Specifically, the Antiterrorism Act of 1996 increased the statutory maximum penalty for violations of 49 U.S.C. 46505(b) from not more than one year to not more than 10 years. This increase changes the classification of an offense under subsection (b) from a class A misdemeanor to a class D felony.

5. Amendment: The Commentary to § 4B1.1 captioned "Application Notes" is amended in Note 2 by deleting "not" after "offense," in the first sentence; by deleting "(b)(1)(B), (b)(1)(C), and (b)(1)(D)" and inserting in lieu thereof "(B), (C), and (D)"; by deleting "where" and inserting in lieu thereof "in a case in which"; by inserting "for that defendant" after "Maximum"; by deleting "twenty years and not thirty years" and inserting in lieu thereof "thirty years and not twenty years"; by deleting "authorizes" and inserting in lieu thereof "has"; and by deleting "maximum term of imprisonment" and inserting in lieu thereof "offense statutory maximum".

The Commentary to § 4B1.1 captioned "Background" is amended by deleting:

> The legislative history of this provision suggests that the phrase 'maximum term authorized' should be construed as the maximum term authorized by statute. See S. Rep. No. 225, 98th Cong., 1st Sess. 175 (1983); 128 Cong. Rec. 26, 511–12 (1982) (text of 'Career Criminals' amendment by Senator Kennedy); *id.* at 26,515 (brief summary of amendment); *id.* at 26,517–18 (statement of Senator Kennedy).

Reason for Amendment: This amendment responds to United States v. LaBonte, 117 S.Ct. 1673. In LaBonte, the Supreme Court held that the way in which the Commission defined "maximum term authorized", for purposes of fulfilling the requirement under 28 U.S.C. 994(h) to specify sentences for certain categories of career offenders at or near the maximum term authorized for those offenders, is inconsistent with section 994(h)'s plain and unambiguous language and is therefore invalid. The Commission defined "maximum term authorized" to mean the maximum term authorized for the offense of conviction not including any sentencing enhancement provisions that apply because of the defendant's prior criminal record. The Supreme Court held that under section 994's plain and unambiguous language, "maximum term authorized" must be read to include all applicable statutory sentencing enhancements. The proposed amendment makes a straightforward change to the commentary to § 4B1.1, the career offender guideline, to reflect the LaBonte decision. Specifically, the definition of "maximum term authorized" is proposed to be changed to reflect that the "maximum term authorized" includes all sentencing enhancements that apply because of the defendant's prior criminal record.

6. Amendment: The Commentary to § 2K1.3 captioned "Application Notes" is amended in Note 2 by deleting "Note 3" and inserting in lieu thereof "Note 1".

The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 5 by deleting "Note 3" and inserting in lieu thereof "Note 1".

The Commentary to § 7B1.1 captioned "Application Notes" is amended in Note 2 by deleting "§ 4B1.2(1)" and inserting in lieu thereof "§ 4B1.2(a)"; and by deleting "Notes 1 and 2" and inserting in lieu thereof "Note 1".

The Commentary to § 7B1.1 captioned "Application Notes" is amended in Note 3 by deleting "§ 4B1.2(2)" and inserting in lieu thereof "§ 4B1.2(b)".

Reason for Amendment: This amendment conforms §§ 2K1.3, 2K2.1 and 7B1.1 to § 4B1.2, as amended November 1, 1997 (see 62 FR 26615 (1997)).

7. Amendment: The replacement guideline for § 5B1.3 (see 62 FR 26615 (1997)) is amended in subsection (a)(2) by inserting the following additional paragraph:

Note: Section 3563(a)(2) of Title 18, United States Code, provides that, absent unusual circumstances, a defendant convicted of a felony shall abide by at least one of the conditions set forth in 18 U.S.C. 3563(b)(2), (b)(3), and (b)(13). Before the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, those conditions were a fine ((b)(2)), an order of restitution ((b)(3)), and community service ((b)(13)). Whether or not the change was intended, the Act deleted the fine condition and renumbered the restitution and community service conditions in 18 U.S.C. 3563(b), but failed to make a corresponding change in the referenced paragraphs under 18 U.S.C. 3563(a)(2). Accordingly, the conditions now referenced are restitution ((b)(2)), notice to victims pursuant to 18 U.S.C. 3555((b)(3)), and an order that the defendant reside, or refrain from residing, in a specified place or area ((b)(13)).

Reason for Amendment: This amendment conforms §§ 2X5.1, 5H1.3, and 5H1.4 to the replacement guideline for § 5B1.3 and the deletion of § 5B1.4 (see 62 FR 26615 (1997)). The amendment also adds a note to §§ 5B1.3 and 8D1.3 explaining an ambiguity created by the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. 104–132, 110 Stat. 1227.

8. *Amendment:* Section 5K2.0 is amended in the third paragraph by deleting "immigration violations" and inserting in lieu thereof "other guidelines"; and by deleting "for an immigration violation" and inserting in lieu thereof "under one of these other guidelines".

Reason for Amendment: This amendment conforms § 5K2.0 to § 2L1.1 (see 62 FR 26615 (1997)).

9. *Amendment:* The Commentary to § 6A1.3 is amended in the first paragraph by deleting "will no longer exist" and inserting in lieu thereof "no longer exists"; by deleting "will usually have" and inserting in lieu thereof "usually has";

and by deleting:

Although lengthy sentencing hearings should seldom be necessary, disputes about sentencing factors must be resolved with care. When a reasonable dispute exists about any factor important to the sentencing determination, the court must ensure that the parties have an adequate opportunity to present relevant information. Written statements of counsel or affidavits of witnesses may be adequate under many circumstances. An evidentiary hearing may sometimes be the only reliable way to resolve disputed issues. See *United States* v. *Fatico*, 603 F.2d 1053, 1057 n.9 (2d Cir. 1979) cert. denied, 444 U.S. 1073 (1980). The sentencing court must determine the appropriate procedure in light of the nature of the dispute, its relevance to the sentencing determination, and applicable case law.

and inserting in lieu thereof:

In determining the relevant facts, sentencing judges are not restricted to information that would be admissible at trial. See 18 U.S.C. 3661; see also *United States* v. *Watts*, 117 U.S. 633, 635 (1997) (holding that lower evidentiary standard at sentencing permits sentencing court's consideration of acquitted conduct); *Witte* v. *United States*, 515 U.S. 389, 399–401 (1995) (noting that sentencing courts have traditionally considered wide range of information without the procedural protections of a criminal trial, including information concerning criminal conduct that may be the subject of a subsequent prosecution); *Nichols* v. *United States*, 511 U.S. 738, 747–48 (1994) (noting that district courts have traditionally considered defendant's prior criminal conduct even when the conduct did not result in a conviction). Any information may be considered, so long as it has sufficient indicia of reliability to support its probable accuracy. Watts, 117 U.S. at 637; Nichols, 511 U.S. at 748; *United States* v. *Zuleta-Alvarez*, 922 F.2d 33 (1st Cir. 1990), cert. denied, 500 U.S. 927 (1991); *United States* v. *Beaulieu*, 893 F.2d 1177 (10th Cir.), cert. denied, 497 U.S. 1038 (1990). Reliable hearsay evidence may be considered. *United States* v. *Petty*, 982 F.2d 1365 (9th Cir. 1993), cert. denied, 510 U.S. 1040 (1994); *United States* v. *Sciarrino*, 884 F.2d 95 (3d Cir.), cert. denied, 493 U.S. 997 (1989). Out-of-court declarations by an unidentified informant may be considered where there is good cause for the non-disclosure of the informant's identity and there is sufficient corroboration by other means. *United States* v. *Rogers*, 1 F.3d 341 (5th Cir. 1993); see also *United States* v. *Young*, 981 F.2d 180 (5th Cir.), cert. denied, 508 U.S. 980 (1993); *United States* v. *Fatico*, 579 F.2d 707, 713 (2d Cir. 1978), cert. denied, 444 U.S. 1073 (1980). Unreliable allegations shall not be considered. *United States* v. *Ortiz*, 993 F.2d 204 (10th Cir. 1993).

Reason for Amendment: This amendment updates the case law references in the commentary to § 6A1.3 to include references to sentencing guideline cases.

10. *Amendment:* Appendix A (Statutory Index) is amended by inserting, in the appropriate place by title and section:

18 U.S.C. 514 2F1.1";
18 U.S.C. 611 2H2.1";
18 U.S.C. 669 2B1.1";
18 U.S.C. 758 2A2.4";
18 U.S.C. 1030(a)(7) 2B3.2";
18 U.S.C. 1035 2F1.1";
18 U.S.C. 1347 2F1.1";
18 U.S.C. 1518 2J1.2";
18 U.S.C. 1831 2B1.1";
18 U.S.C. 1832 2B1.1";
18 U.S.C. 2261A 2A6.2";
21 U.S.C. 841(b)(7) 2D1.1";
21 U.S.C. 960(d)(7) 2D1.11";
47 U.S.C. 223(a)(1)(C) 2A6.1";
47 U.S.C. 223(a)(1)(D) 2A6.1";
47 U.S.C. 223(a)(1)(E) 2A6.1";
49 U.S.C. 5124 2Q1.2";
49 U.S.C. 32703 2N3.1";
49 U.S.C. 32704 2N3.1";
49 U.S.C. 32705 2N3.1";
49 U.S.C. 32709(b) 2N3.1";
49 U.S.C. 60123(d) 2B1.3";
49 U.S.C. 80116 2F1.1";
49 U.S.C. 80501 2B1.3";
in the line referenced to "15 U.S.C. 1281" by inserting "(for offenses committed prior to July 5, 1994)" immediately after "2B1.3";
in the line referenced to "15 U.S.C. 1983" by inserting "(for offenses committed prior to July 5, 1994)" immediately after "2N3.1";
in the line referenced to "15 U.S.C. 1984" by inserting "(for offenses committed prior to July 5, 1994)" immediately after "2N3.1";
in the line referenced to "15 U.S.C. 1985" by inserting "(for offenses committed prior to July 5, 1994)" immediately after "2N3.1";
in the line referenced to "15 U.S.C. 1986" by inserting "(for offenses committed prior to July 5, 1994)" immediately after "2N3.1";
in the line referenced to "15 U.S.C. 1987" by inserting "(for offenses committed prior to July 5, 1994)" immediately after "2N3.1";
in the line referenced to "15 U.S.C. 1988" by inserting "(for offenses committed prior to July 5, 1994)" immediately after "2N3.1";
in the line referenced to "15 U.S.C. 1990c" by inserting "(for offenses committed prior to July 5, 1994)" immediately after "2N3.1";
by deleting "18 U.S.C. 1008 2F1.1, 2S1.3";
in the line referenced to "18 U.S.C. 1030(a)(2)" by deleting "2F1.1" and inserting in lieu thereof "2B1.1";
in the line referenced to "18 U.S.C. 1030(a)(3)" by deleting "2F1.1" and inserting in lieu thereof "2B2.3";
in the line referenced to "18 U.S.C. 1030(a)(5)" by deleting "2F1.1" and inserting in lieu thereof "2B1.3";
by deleting:
"18 U.S.C. 2258(a), (b) 2G2.1, 2G2.2", and inserting in lieu thereof:
"18 U.S.C. 2260 2G2.1, 2G2.2";
in the line referenced to "18 U.S.C. 2261" by deleting "2A1.1, 2A1.2, 2A2.1, 2A2.2, 2A2.3, 2A3.1, 2A3.4, 2A4.1, 2B3.1, 2B3.2, 2K1.4" and inserting in lieu thereof "2A6.2";
in the line referenced to "18 U.S.C. 2262" by deleting "2A1.1, 2A1.2, 2A2.1, 2A2.2, 2A2.3, 2A3.1, 2A3.4, 2A4.1, 2B3.1, 2B3.2, 2K1.4" and inserting in lieu thereof "2A6.2";
in the line referenced to "21 U.S.C. 959" by inserting ", 2D1.11" immediately after "2D1.1".
in the line referenced to "49 U.S.C. 121" by inserting "(for offenses committed prior to July 5, 1994)" immediately after "2F1.1";
in the line referenced to "49 U.S.C. 1809(b)" by inserting "(for offenses committed prior to July 5, 1994)" immediately after "2Q1.2";
in the line referenced to "49 U.S.C. App. § 1687(g)" by inserting "(for offenses committed prior to July 5, 1994)" immediately after "2B1.3"; and
by deleting "49 U.S.C. 14904 2B4.1".

The Commentary to § 2G2.1 captioned "Statutory Provisions" is amended by deleting "2258(a), (b)" and inserting in lieu thereof "2260".

The Commentary to § 2G2.2 captioned "Statutory Provisions" is amended by deleting "2258(a), (b)" and inserting in lieu thereof "2260".

Section 2K2.1(a)(3) is amended by inserting "felony" before "prior".

Reason for Amendment: This amendment makes Appendix A (Statutory Index) more comprehensive. This amendment adds references for additional offenses, including offenses created by recently enacted legislation. In addition, this amendment revises Appendix A to conform to the revision of existing statutes and to reflect the codification of Title 49, United States Code. This amendment also corrects clerical errors in §§ 2G2.1 and 2G2.2.

Finally, this amendment corrects a clerical error in § 2K2.1(a)(3), as amended by amendment 522, effective November 1, 1995. During the execution of that amendment, which equalized offense levels for semiautomatic assault weapon possession with machinegun possession, the word "felony" was inadvertently omitted from the phrase "prior conviction" in subsection (a)(3).

[FR Doc. 97–26312 Filed 10–2–97; 8:45 am]
BILLING CODE 2210–40–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Ruling, SSR 97–3]

Disability Insurance Benefits; Reduction Due to Receipt of State Workers' Compensation; Validity of an Amended Stipulation on a Prior Workers' Compensation Settlement Award; Minnesota

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Acting Commissioner of Social Security gives notice of Social Security Ruling, SSR 97–3. This Ruling, based on an SSA Regional Chief Counsel opinion, concerns whether the Social Security Administration should give effect to an amended stipulation on a prior lump-sum workers' compensation settlement and whether workers' compensation offset was properly computed on the basis of the amended stipulation. Although this case

involves a Minnesota workers' compensation stipulation, this Ruling addresses an issue that is becoming a problem nationwide, i.e., the practice of obtaining an addendum to a workers' compensation settlement merely to state that the workers' compensation settlement was based on a low weekly rate using life expectancy, thus attempting to avoid the offset provisions of section 224 of the Social Security Act. This Ruling clearly illustrates the Social Security Administration's policy of not being bound by the terms of a second, or amended, stipulation that would circumvent the workers' compensation offset provisions of section 224 of the Social Security Act.

EFFECTIVE DATE: October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.005 Special Benefits for Disabled Coal Miners)

Dated: September 22, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

Section 224(a)–(b) of the Social Security Act (42 U.S.C. 424a (a)–(b)) Disability Insurance Benefits—Reduction Due to Receipt of State Workers' Compensation—Validity of an Amended Stipulation on a Prior Workers' Compensation Settlement Award—Minnesota

20 CFR 404.408

Under section 224 of the Social Security Act (the Act), title II disability insurance benefits may be offset if the disabled worker receives workers' compensation (WC) benefits. The issue here is whether WC offset was properly computed on the basis of an amended stipulation to a prior WC settlement award.

The disabled worker became entitled to Social Security disability insurance benefits in September 1993. Periodic WC payments were paid to the disabled worker January 31, 1993 through July 11, 1994. The disabled worker subsequently received a lump-sum payment on August 19, 1994. The lump sum was prorated at the weekly rate at which the disabled worker had been receiving benefits before the lump-sum settlement. The lump-sum proration ended December 1997.

After offset was imposed, and nearly 2 years after the date of the original lump-sum settlement agreement, the disabled worker obtained an amended lump-sum award in which an attempt was made to subject the lump-sum award to proration over the disabled worker's life expectancy to remove the offset.

Based on section 224 of the Act, case law, and Social Security Administration (SSA) policy, SSA is not necessarily bound by the terms of a second, or amended, stipulation. Instead, SSA will evaluate both the original and amended stipulations and will disregard any language which has the effect of altering the terms in the original lump-sum settlement where, as here, the terms in the amended document are illusory or conflict with the terms of the first stipulation concerning the actual intent of the parties, and would have the effect of circumventing the WC offset provisions of section 224 of the Act.

A question was raised concerning whether SSA should give effect to a Minnesota amended stipulation on a prior lump-sum WC settlement award which originally resulted in offset of the disabled worker's claim. For the reasons stated below, effect need not be given to an amended stipulation to a WC award if it was amended solely to circumvent the WC offset provisions of section 224 of the Act.

Background

The disabled worker became entitled to Social Security disability insurance benefits in September 1993. He received WC periodic payments of $458.99 weekly from January 31, 1993 through January 30, 1994, and $477.35 weekly from January 31, 1994 through July 11, 1994. The disabled worker subsequently received a lump-sum payment of $85,000 less $10,000 withheld for attorney fees based on a stipulation dated August 19, 1994. This lump sum was prorated at the weekly rate of $477.35, the rate at which the disabled worker had been receiving benefits just before the lump-sum award. The lump-sum proration ended December 8, 1997, with a remainder of $31.70 for December 1997.

After offset was imposed, and nearly 2 years after the date of the original lump-sum settlement agreement, the disabled worker obtained an amended lump-sum award in which an attempt was made to prorate the lump-sum award over the disabled worker's life expectancy, which would result in a weekly benefit of $64.97 and thereby trigger removal of the offset.

Discussion

Section 224 of the Act, 42 U.S.C. 424a, places a ceiling on an individual's combined Social Security disability insurance benefits and State WC benefits. The statute provides that where an individual is receiving both Social Security disability insurance benefits and State WC benefits on account of a disability, his or her Social Security benefits "shall be reduced" by the amount necessary to ensure that the sum of the State and Federal benefits does not exceed 80 percent of the individual's average pre-disability earnings. 42 U.S.C. 424a(a); see also 20 CFR 404.408. As the Supreme Court has explained, "by limiting total state and federal benefits to 80% of the employee's average earnings prior to the disability, [section 224 of the Act) reduce[s] the duplication inherent in the programs and at the same time allow[s] a supplement to workmen's compensation where the state payments [are] inadequate." *Richardson* v. *Belcher*, 404 U.S. 78, 83 (1971).[1]

The Act refers only to "periodic benefits" arising under a State worker's compensation program based upon the claimant's "total or partial disability (whether or not permanent)." 42 U.S.C. 424a(a)(2). By its own terms, the statute encompasses virtually every conceivable form of WC benefits. The Act also requires that lump-sum settlements, if they substitute for periodic benefits, be offset, at a rate that will "approximate as nearly as practicable" the rate at which the award would have been paid on a monthly

[1] SSR 72–37c (C.E. 1971–1975, p. 466).

basis and explicitly delegates to the Commissioner the authority to determine the appropriate method of prorating such a lump-sum benefit. 42 U.S.C. 424a(b). As a result, receipt of WC compensation benefits, whether or not in a lump sum, may subject Social Security benefits to reduction.

The issue of whether SSA correctly reduced or offset Social Security benefits due to the settlement of a WC claim is governed by Federal, not State, law. The Eighth Circuit, which is controlling for Minnesota cases, has expressly concluded that the resolution of these issues is entirely a "federal question" to be answered by "the federal statute and its underlying policy, notwithstanding conflicting state law." *Munsinger* v. *Schweiker*, 709 F.2d 1212, 1217 (8th Cir. 1983);[2] see also *Campbell* v. *Shalala*, 14 F.3d 424, 427 (8th Cir. 1994) (holding that Federal, not State, law governs whether WC payments could be offset against Social Security disability insurance benefits);[3] *Krysztoforski* v. *Secretary of Health and Human Services*, 55 F.3d 857, 859 (3rd Cir. 1994) (noting that section 224 of the Act does not refer to or defer to State law for the determination of whether a person's periodic benefits are subject to offset, the Third Circuit held that Federal law governs in determining whether a WC award should be offset against disability benefits).

In *Munsinger*, the Eighth Circuit held that the terms of the lump-sum settlement represented periodic payments which, without an offset, would result in duplicate benefits and that "to deny [the Commissioner] an offset of the settlement would frustrate congressional intent." This same reasoning applies to amendments or addenda to lump-sum settlements—that is, the terms of both the original stipulations and the amendments to stipulations for settlements should be evaluated in light of the Federal statute and its underlying policy to avoid duplication in benefits. If the original language of the settlement establishes receipt of benefits, establishes the classification of benefits, triggers an offset, and/or establishes an appropriate offset rate, SSA is not bound by any language in a subsequent amendment or addendum which conflicts with, or alters, those terms. If the amended terms have no factual basis or were made solely to circumvent the offset provisions of section 224 of the Act, the use by SSA of such amended terms would frustrate congressional intent to avoid duplicate benefits and will be disregarded.

This is the approach followed in *Fox* v. *Chater*, No. 4–95–235 (D. Minn. Feb. 20, 1996), in which the District Court agreed that SSA was not bound by the terms of an amended stipulation. In *Fox*, after plaintiff received partial disability, temporary partial disability and permanent partial WC benefits, he entered into a stipulation for settlement which was approved by a WC judge, and he was awarded a lump-sum settlement as full and final settlement of any claims for WC benefits. The parties disputed, and left unresolved, whether plaintiff was permanently and totally disabled. In the meantime, the plaintiff applied for, and was awarded, Social Security disability insurance benefits. SSA subsequently determined that the lump-sum payment was subject to offset and reduced the plaintiff's disability benefits. After offset was imposed, the parties entered into a second stipulation which added a provision indicating that the parties agreed that the plaintiff had been permanently and totally disabled as a result of his personal injuries and that the WC benefits he received prior to the stipulation were subject to Minnesota's Social Security offset provisions and that the lump-sum payment agreed upon included a 5 percent reduction in the benefits payable for the Social Security offset. The plaintiff argued that the two stipulations established that the payments made before the stipulation were subject to SSA offset and that the subsequent lump-sum settlement was, therefore, subject to the reverse offset provisions of the Minnesota WC statute.[4]

In *Fox*, the District Court rejected the plaintiff's arguments and affirmed the administrative law judge's (ALJ) determination not to apply reverse offset on the basis of the "illusory" terms of the amended stipulation. The Court concluded that Mr. Fox's belated claim that the Social Security offset had been considered in the first stipulation was illusory. Noting that the parties did not recognize an offset in the first stipulation and never provided for additional WC benefits if the Social Security disability insurance benefit claim were denied, the Court found that, despite his belated claim in his second stipulation, the plaintiff failed to make a sufficient showing that he had made a settlement which accounted for future Social Security benefits. The Court also rejected plaintiff's argument that both stipulations showed that the parties intended the lump-sum payment to be a permanent total disability benefit because, despite the language in the second stipulation that both parties agreed that Mr. Fox was permanently and totally disabled, the first stipulation was "very clear that the parties do not agree that Fox was permanently and totally disabled." Thus, the Court found that the ALJ was not bound to accept the illusory terms of the second stipulation.

Although unpublished, the holding of *Fox* is directly applicable to this case. Like Mr. Fox, the disabled worker's belated claim that the original award was to be prorated over his life expectancy appears illusory.[5] The original award did not state that the lump-sum settlement was subject to proration over the disabled worker's life expectancy. A lump sum of $85,000, less attorney's fees, was awarded pursuant to the 1994 lump-sum stipulated settlement. Although the original stipulation did not specify the rate at which the lump sum would be prorated, it noted that a prior weekly rate had been paid. The original stipulation contained no other reference to the proration rate of the lump-sum award, much less any reference to the life expectancy of the disabled worker. The lump sum was prorated, then, at the prior weekly rate of $477.35.[6]

Two years later, in 1996, after offset was imposed, the disabled worker obtained an amended stipulation which

[2] SSR 85–6c (C.E. 1981–1985, p. 692).

[3] In addition, it is the disabled worker's burden to prove that a lump-sum payment paid by a WC carrier is not subject to offset against the claimant's Social Security disability insurance benefits. *Campbell*, 14 F.3d at 427–28.

[4] Under Minnesota law, after permanent total disability benefits of $25,000 have been paid, WC will reduce permanent total disability benefits in order to reflect the disability insurance benefits that an individual is receiving from SSA. Minn. Stat. Ann. § 176.101, Subd. 4; *McClish* v. *Pan-O-Gold Baking Co.*, 336 N.W.2d 536 (Minn. 1983). Acknowledging this "reverse offset," SSA stops its own offset. POMS DI 52001.226.

[5] This Ruling does not address the related issue of the validity of stipulated lump-sum settlements where the original settlement contains a term purporting to prorate a lump sum over the life expectancy of the worker. This Ruling only addresses later-added amendments, addenda, etc. whose terms conflict with or change the original terms and where the purpose of these amendments is to circumvent the offset provisions of the Act.

[6] As noted above, Federal law requires that lump-sum awards be offset at a rate that will "approximate as nearly as practicable" the rate at which the award would have been paid on a monthly basis. 42 U.S.C. 424a(b); 20 CFR 404.408(g). The Commissioner has issued guidelines for calculating the rate at which lump-sum awards should be prorated based on an established weekly rate. *See* POMS DI 52001.555C.4. The guidelines provide a 3-step priority for establishing weekly rates: first, the rate specified in the award; second, if no rate is specified in the award, the periodic rate paid prior to the lump sum; and third, if no rate was established in the award and there was no preceding periodic benefit, the State's WC maximum weekly rate in effect at the time of the WC injury. POMS DI 52001.555C.4.a–DI 52001.555C.4.c.

expressly confirmed the 1994 Stipulation for Settlement. Nevertheless, the amendment purports to "clarify" the terms of the settlement by attempting to characterize the lump-sum award as prorated over the disabled worker's life expectancy. The amended stipulation, however, did not change the dollar amounts of the award, did not involve any appeal of the award sought or change in the actual amount of WC benefits, and did not affect in any way the rights, liabilities or obligations of the parties with respect to the actual WC award. Its terms modify the original document which did not specify that the lump sum should be prorated over the disabled worker's life expectancy. It contained no supporting factual information that the original stipulation had, in fact, been based on life expectancy.

Conclusion

Based on section 224 of the Act, case law, and SSA policy, SSA is not necessarily bound by the terms of a second, or amended, stipulation in determining whether and by what rate a disabled worker's Social Security disability insurance benefits should be offset on account of a WC lump-sum payment. SSA will evaluate both the original and amended stipulations and disregard any language which has the effect of altering the terms in the original lump-sum settlement where the terms in the amended document are illusory or conflict with the terms of the first stipulation concerning the actual intent of the parties, and where, as here, the terms in the amended document would have the effect of circumventing the WC offset provisions of section 224 of the Act. To give effect to such illusory terms would frustrate Congress' intent to avoid duplicate benefits.

[FR Doc. 97–26258 Filed 10–2–97; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2614]

Imposition of Chemical and Biological Weapons Proliferation Sanctions on Foreign Entities and Persons

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that two entities have engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authorities of which were most recently continued by Executive Order 12924 of August 19, 1994).

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202–647–1142).

SUPPLEMENTARY INFORMATION: Pursuant to Section 81(a) of the Arms Export Control Act (22 U.S.C. 2798(a)), Section 11C(a) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(a)), Executive Order 12851 of June 11, 1993, and State Department Delegation Authority No. 145 of February 4, 1980, as amended, the United States Government determined that the following foreign entities have engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in Section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and Section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410(c)):

1. Hans-Joachim Rose (German citizen)

2. Rose Import-Export GMBH (German company)

Accordingly, the following sanctions are being imposed:

(A) Procurement Sanction. The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned entities; and

(B) Import Sanction. The importation into the United States of products produced by the sanctioned entities shall be prohibited.

Sanctions on each entity described above may apply to firms or other entities with which that entity is associated. Questions as to whether a particular transaction is affected by the sanctions should be referred to the contact listed above. The sanctions shall commence on September 25, 1997. They will remain in place for at least one year and until further notice.

These measures shall be implemented by the responsible agencies as provided in the Executive Order 12851 of June 11, 1993.

Dated: September 26, 1997.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 97–26305 Filed 10–2–97; 8:45 am]
BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2608]

Bureau of Oceans and International Environmental and Scientific Affairs; Notice of a Public Meeting Regarding Government Activities on International Harmonization of Chemical Classification and Labeling Systems

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs (OES), Department of State.

SUMMARY: This public meeting will provide an update on current activities related to international harmonization since the previous public meeting, conducted July 30, 1997. (See Department of State Public Notice 2570, on page 38337 of the **Federal Register** of July 17, 1997.) The meeting will also offer interested organizations and individuals the opportunity to provide information and views for consideration in the development of U.S. government policy positions. For more complete information on the harmonization process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

The meeting will take place from 10 am until noon on October 17 in Room S4215 ABC, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. Attendees should use the entrance at C and Third Streets NW. To facilitate entry, please have a picture ID available and/or a U.S. government building pass if applicable.

FOR FURTHER INFORMATION CONTACT: For further information or to submit written comments or information, please contact Mary Frances Lowe, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street NW, Washington D.C. 20420. Phone (202) 647–9266, fax (202) 647–5947.

SUPPLEMENTARY INFORMATION: The Department of State is announcing a public meeting of the interagency committee concerned with the international harmonization of chemical hazard classification and labeling systems. The purpose of the meeting is to provide interested groups and individuals with an update on activities since the July 30 public meeting, a preview of key upcoming international meetings, and an opportunity to submit additional information and comments for consideration in developing U.S. government positions. Representatives of the following agencies participate in the interagency group: the Department of State, the Environmental Protection Agency, the Department of Transportation, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Food and Drug Administration, the Department of Commerce, the Department of Agriculture, the Office of the U.S. Trade Representative, and the National Institute of Environmental Health Sciences.

The Agenda of the public meeting will include:

1. Introduction
2. Reports on recent international meetings
   —Meeting of the Organization for Economic Cooperation and Development (OECD) Advisory Group on Harmonization, October 1–3, 1997, in Paris, France. The agenda for this meeting includes review and discussion of OECD health and environmental hazard classification proposals.
3. Preparation for upcoming meetings
   —Meeting of the Coordinating Group for the Harmonization of Chemical Classification Systems (CG/HCCS), November 24–26, 1997, in Toronto, Canada. The agenda for this meeting includes further consideration of the clarification of the scope of the GHS and of the appropriate institutional arrangements for updating and maintaining the system. Papers for the meeting are expected to become available in early October and will be placed in the public docket, described below.
4. Public Comments
5. Concluding Remarks

Participants in the meeting may submit written comments as well as speak on topics relating to harmonization of chemical classification and labeling systems. All written comments will be placed in the public docket (OSHA docket H–022H). The docket is open from 10 am until 4 pm, Monday through Friday, and is located at the Department of Labor, Room 2625, 200 Constitution Avenue NW, Washington, D.C. (Telephone: 202–219–7894; Fax: 202–219–5046). The public may also consult the docket to review previous **Federal Register** notices, comments received to date, a working "thought starter" document of the CG/HCCS on the scope of the harmonization effort, U.S. government and stakeholder comments on the "though starter" scope clarification, Questions and Answers about the GHS, and a response to comments on the April 3 **Federal Register** notice.

Dated: September 22, 1997.

Michael Metelits,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 97–26236 Filed 10–2–97; 8:45 am]
BILLING CODE 4710–09–M

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final grant guideline.

SUMMARY: This guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1998 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: October 3, 1997.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, by phone ((703) 684–6100), fax ((703) 684–7618), or e-mail (SJI@clark.net). The guideline, forms, and other information about SJI and its grants are available on the Institute's web site at http://www.clark.net/pub/sji/.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

Status of FY 1998 Appropriations

The Senate has approved an FY 1998 appropriation for SJI of $13.55 million. The House Appropriations Committee has approved a $3 million appropriation. A House-Senate conference will determine the Institute's final appropriation later this fall. The scope of the grant program in this Guideline and the funding targets noted for specific programs may be adjusted depending on the final funding figure.

Types of Grants Available and Funding Schedules

The SJI grant program is designed to be responsive to the most important needs of the State courts. To meet the full range of the courts' diverse needs, the Institute offers five different categories of grants. The types of grants available in FY 1998 and the funding cycles for each program are provided below:

Project Grants

These grants are awarded to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. Except for "Single Jurisdiction" project grants awarded under section II.C. (see below), project grants are intended to support innovative projects of national significance. As provided in section V. of the Guideline, project grants may ordinarily not exceed $200,000 a year; however, grants in excess of $150,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

Applicants must ordinarily submit a concept paper (see section VI.) and an application (see section VII.) in order to obtain a project grant. As indicated in Section VI.C., the Board may make an "accelerated" grant of less than $40,000 on the basis of the concept paper alone when (1) the need for the project is clear and (2) an application would likely provide little additional information about the operation of the project.

The FY 1998 mailing deadline for most project grant concept papers is November 24, 1997. Papers must be postmarked or bear other evidence of submission by that date. The Board of Directors will meet in late February 1998 to invite formal applications based on the most promising concept papers. Applications will be due in May and awards will be approved by the Board in July.

Special funding cycles are established for concept papers that follow up on the Symposium on the Future of the Juvenile Courts (see section II.B.2.h.), the National Conference on Full Faith and Credit (see section II.B.2.i.), and the National Sentencing Symposium (see section II.B.2.k.); and papers that implement the national agenda on assuring prompt and affordable justice (see section II.B.2.e.). Those concept papers must be mailed by March 12, 1998.

Single Jurisdiction Project Grants

Section II.C. of the Guideline allocates funds for two types of "Single Jurisdiction" grants.

Section II.C.1. reserves up to $300,000 for Projects Addressing a Critical Need of a Single State or Local Jurisdiction. To receive a grant under this program, an applicant must demonstrate that (1) the proposed project is essential to meeting a critical need of the jurisdiction and (2) the need cannot be met solely with State and local resources within the foreseeable future.

Applicants are encouraged to submit proposals to replicate approaches or programs that have been evaluated as effective under an SJI grant. Examples of projects that could be replicated are listed in Appendix IV. See "Issues Raised for Comment" below, about continuation of the Replication grant program.

Section II.C.2. reserves up to $400,000 for Technical Assistance Grants. Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems.

Letters of application for a Technical Assistance grant may be submitted at any time. Applicants submitting letters between October 1, 1997 and January 16, 1998 will be notified of the Board's decision by March 27, 1998; those submitting letters between January 17, 1998 and March 13, 1998 will be notified by May 29, 1998; and those submitting letters between March 14, 1998 and June 12, 1998 will be notified by August 28, 1998. Subject to the availability of appropriations in FY 1998, applicants submitting letters between June 13 and September 30, 1998 will be notified of the Board's decision by December 18, 1998.

Curriculum Adaptation Grants

A grant of up to $20,000 may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. The Guideline allocates up to $100,000 for these grants in FY 1998. See section II.B.2.b.ii.

Letters requesting Curriculum Adaptation grants may be submitted at any time during the fiscal year. However, in order to permit the Institute sufficient time to evaluate these proposals, letters must be submitted no later than 90 days before the projected date of the training program. See section II.B.2.b.ii.(c). See also "Issues Raised for Comment" below, about the continuation of the Curriculum Adaptation grant program.

Scholarships

The Guideline allocates up to $200,000 of FY 1998 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs. See section II.B.2.b.iii.

The Guideline establishes four deadlines for scholarship requests: October 1, 1997 for training programs beginning between January 1 and March 31, 1998; January 7, 1998 for programs beginning between April 1 and June 30, 1998; April 1, 1998 for programs beginning between July 1 and September 30, 1998; and July 1, 1998 for programs beginning between October 1 and December 31, 1998.

Renewal Grants

There are two types of renewal grants available from SJI: Continuation grants (see sections III.G., V.C. and D., and IX.A.) and On-going Support grants (see sections III.H., V.C. and D., and IX.B.). Continuation grants are intended to enhance the specific program or service begun during the initial grant period. On-going Support grants may be awarded for up to a three-year period to support national-scope projects that provide the State courts with critically needed services, programs, or products.

The Guideline establishes a target for renewal grants of approximately 25% of the total amount projected to be available for grants in FY 1998. See section IX. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide either continuation funding or on-going support.

An applicant for a continuation or on-going support grant must submit a letter notifying the Institute of its intent to seek such funding, no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its renewal grant application. See section IX.

Special Interest Categories

The Guideline includes 12 Special Interest categories, i.e., those topics that the Board has identified as being of particular importance to the State courts this year. The selection of these categories was based on the Board and staff's experience and observations over the past year; the recommendations received from judges, court managers, lawyers, members of the public, and other groups interested in the administration of justice; and the issues identified in recent years' concept papers and applications.

Section II.B.2. of the Guideline includes the following Special Interest categories:

Improving Public Confidence in the Courts;
Education and Training for Judges and Other Key Court Personnel (this category includes Curriculum Adaptation grants, Scholarships for Judges and Key Court Personnel, and National Conferences);
Dispute Resolution and the Courts;
Application of Technology;
Court Management, Financing, and Planning;
Resolution of Current Evidentiary Issues;
Substance Abuse and the Courts;
Children and Families in Court;
Improving the Courts' Response to Domestic Violence;
Improving Sentencing Practices;
Improving Court Security; and
The Relationship Between State and Federal Courts.

Conferences

The Institute is soliciting proposals to conduct two major national conferences: a National Symposium on the Future of Judicial Education, and a National Conference on Unrepresented Litigants in Court. See section II.B.2.b.iv.

Issues Raised for Comment

In the Proposed Guideline published for public comment on August 20 (62 FR 44307), SJI requested comment on three issues: consultant rates, and the continuation of the Curriculum Adaptation and Replication grant programs.

Consultant Rates

The Proposed Guideline sought comment on the Institute's general approach to examining and approving the compensation paid to consultants working under SJI grants, as well as on three specific sets of questions:

(1) Should SJI lower the maximum consultant rate that can be paid from grant funds to below $900 a day? If so, what is the highest rate that should be permitted? Are there certain criteria that would justify the top rate, wherever it is set?

(2) Should practicing lawyers, as well as other legal and court officials, be expected to provide their services to SJI-supported grants without compensation? What circumstances might justify an exception to this expectation?

(3) Are there other approaches that might better balance SJI's need to exercise financial restraint with its interest in encouraging the highest quality experts to work on Institute-supported projects?

SJI received two comments on this issue, from the National Council of Juvenile and Family Court Judges and the National Center for State Courts. Both comments recommended retaining the $900 daily rate as the maximum ceiling. The Council also observed that "lawyers practicing in the private sector could and perhaps should offer some of their time to the public sector on a *pro bono* basis." The Institute will retain its present approach to approving consultant rates but, absent extraordinary circumstances, will not approve the payment of SJI funds to a practicing attorney who is participating in a judicial education or court improvement project.

Curriculum Adaptation Grants

In the Proposed Guideline, SJI noted that the number of Curriculum Adaptation (CA) requests submitted in recent years has dropped sharply, from 17 in FY 1995 to 4 in FY 1997. As a result, the amount allocated for CA grants in the Proposed Guideline was reduced from $175,000 in FY 1997 to $100,000 in FY 1998. The Board noted its special interest in receiving comments from State judicial educators about whether the program should be discontinued or whether it might be modified in some way to increase its usefulness.

The Institute received comments from a number of individual State judicial educators as well as the National Association of State Judicial Educators and the National Center for State Courts, all of whom requested that the program be continued. The Final Guideline continues the program, at the $100,000 level.

Replication Grants

Last fiscal year, SJI added the Replication grant program to the Guideline. The program permits State and local courts to request up to $30,000 to adapt programs, procedures, or strategies that have been evaluated as successes under prior SJI grants. No court, however, requested a Replication grant in FY 1997. The Proposed Guideline continued the program, but dropped the $30,000 limitation, which some observers believe may have been too low to accomplish the goals of the program. The Board invited comment, particularly from State and local courts, about whether the program should be discontinued, modified in the way proposed, or modified in some other way to attract more applications.

A number of commenters suggested that not many people knew about the program. The National Center for State Courts endorsed the recommendation that the $30,000 limit be removed. The Final Guideline continues the program as proposed.

No changes other than technical corrections have been made in the Final Guideline.

Recommendations to Grant Writers

Over the past 11 years, Institute staff have reviewed approximately 3,300 concept papers and 1,600 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the Guideline, respectively.

1. What Is the Subject or Problem You Wish To Address

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. What Do You Want To Do

Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold three training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. How Will You Do It

Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks, and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. How Will You Know It Works

Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should present the criteria that will be used to evaluate the project's effectiveness; identify program elements which will require further modification; and describe how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. How Will Others Find Out About It

Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. What Are the Specific Costs Involved

The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of "Other" or "Miscellaneous" items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. What, if any, Match Is Being Offered?

Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required by the

State Justice Institute Act to contribute a match (cash, non-cash, or both) of at least 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project.

The match requirement works as follows: If, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. It does not include income generated from tuition fees or the sale of project products. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. Which of the Two Budget Forms Should Be Used

Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the application requests $100,000 or more. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. How Much Detail Should Be Included in the Budget Narrative?

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, applicants should include the following information:

Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.

Estimates for supplies and expenses supported by a complete description of the supplies to be used, the nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What Travel Regulations Apply to the Budget Estimates

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project.

The budget narrative also should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed and explained separately. It is preferable for the budget to be based on the actual costs of traveling to and from the project or meeting sites. If the points of origin or destination are not known at the time the budget is prepared, an average airfare may be used to estimate the travel costs. For example, if it is anticipated that a project advisory committee will include members from around the country, a reasonable airfare from a central point to the meeting site, or the average of airfares from each coast to the meeting site may be used. Applicants should arrange travel so as to be able to take advantage of advance-purchase price discounts whenever possible.

11. May Grant Funds Be Used To Purchase Equipment?

Generally, grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. The budget narrative must list the equipment to be purchased and explain why the equipment is necessary to the success of the project. Written prior approval is required when the amount of computer hardware to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3000.

12. To What Extent May Indirect Costs Be Included in the Budget Estimates

It is the policy of the Institute that all costs should be budget directly; however, if an applicant has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with Section XI.H.4. of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an audit should budget all project costs directly.) If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval. An indirect cost rate worksheet on computer diskette is available from the Institute upon request.

13. What Meeting Costs May Be Covered With Grant Funds

SJI grant funds may cover the reasonable cost of meeting rooms, necessary audio-visual equipment, meeting supplies, and working meals. However, they cannot be used to reimburse the cost of coffee or other types of refreshment breaks, or for alcoholic beverages.

14. Does the Budget Truly Reflect All Costs Required To Complete the Project

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Recommendations to Grantees

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the Guideline. On the basis of monitoring more than 1,300 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. After the Grant Has Been Awarded, When Are the First Quarterly Reports Due

Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—i.e. no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first Quarterly Progress Report describing project activities between December 1 and December 31 will be due on January 30. A Financial Status Report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, Quarterly Progress Reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, etc. The Quarterly Project Report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a Quarterly Progress Report and attachments should be submitted to the Institute.

Additional Quarterly Progress Report or Financial Status Report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. Do Reporting Requirements Differ for Renewal Grants

Recipients of a continuation or on-going support grant are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation grant and each yearly grant under an on-going support award should be considered as a separate phase of the project. The reports should be numbered on a grant rather than project basis. Thus, the first quarterly report filed under a continuation grant or a yearly increment of an on-going support award should be designated as number one, the second as number two, and so on, through the final progress and financial status reports due within 90 days after the end of the grant period.

3. What Information About Project Activities should be Communicated to SJI

In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Program Manager prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting, or payment requests, should be addressed to the Grants Financial Manager listed in the award letter.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

4. Why Is It Important to Address the Special Conditions That Are Attached to the Award Document

In some instances, a list of special conditions is attached to the award document. Special conditions may be imposed to establish a schedule for reporting certain key information, to assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and to provide reminders of some, but not all of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Manager any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections X., XI., and XII. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance Division staff are always available to answer questions and provide assistance regarding these provisions.

5. What is a Grant Adjustment

A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents, add small amounts to a grant award, or deobligate funds from the grant.

6. What Schedule should be Followed in Submitting Requests for Reimbursements or Advance Payments

Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

7. Do Procedures for Submitting Requests for Reimbursement or Advance Payment Differ for Renewal Grants

The basic procedures are the same for any grant. A continuation grant or the yearly grant under an on-going support award should be considered as a separate phase of the project. Payment requests should be numbered on a grant rather than a project basis. The first request for funds from a continuation grant or a yearly increment under an on-going support award should be designated as number one, the second as

number two, and so on through the final payment request for that grant.

8. If Things Change During the Grant Period, Can Funds Be Reallocated From One Budget Category to Another

The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to renewal grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period.

9. What is the 90-Day Close-out Period

Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

During the 90 days following the end of the award period, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

10. Are Funds Granted by SJI "Federal" Funds

The State Justice Institute Act provides that, except for purposes unrelated to this question, "the Institute shall not be considered a department, agency, or instrumentality of the Federal Government." 42 U.S.C. § 10704(c)(1). Because SJI receives appropriations from Congress, some grantee auditors have reported SJI grants funds as "Other Federal Assistance." This classification is acceptable to SJI but is not required.

11. If SJI Is Not a Federal Agency, Do OMB Circulars Apply With Respect to Audits

Except to the extent that they are inconsistent with the express provisions of the SJI Grant Guideline, Office of Management and Budget (OMB) Circulars A–110, A–21, A–87, A–88, A–102, A–122, and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to "conduct, or require each recipient to provide for, an annual fiscal audit" (see 42 U.S.C. 10711(c)(1)), the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (See Section XI.J.)

SJI will accept audits conducted in accordance with the Single Audit Act of 1984 as amended and OMB Circular A–133, in satisfaction of the annual fiscal audit requirement. Grantees that are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guideline requirements.

In sum, educational, governmental and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 as amended and OMB Circular A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (See Guideline Section XI.J.) A copy of the above-noted circular may be obtained by calling OMB at (202) 395–7250.

12. Does SJI Have a CFDA Number?

Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards.

Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 1996 grantee "X" received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the minimum A–133 threshold would not be met. The same distinction would preclude an auditor from considering the additional SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees who are required to satisfy either the Single Audit Act, OMB Circulars A–128, or A–133 and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in Section XI.J. of the Grant Guideline.

The following Grant Guideline is adopted by the State Justice Institute for FY 1998:

State Justice Institute Grant Guideline

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I. Background

The Institute was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an 11-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1998, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated 12 program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The Institute is authorized to fund projects addressing one or more of the following program areas listed in the State Justice Institute Act, the Battered Women's Testimony Act, the Judicial Training and Research for Child Custody Litigation Act, and the International Parental Kidnapping Crime Act.

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relates to and affects the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts, and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards, and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, and the development, testing, and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances, and alternative techniques and mechanisms for resolving disputes between citizens;

14. Collection and analysis of information regarding the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, as well as sources of and methods to obtain funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants;

15. Development of training materials to assist battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use expert testimony on the experiences of

battered women in appropriate cases, and individuals with expertise in the experiences of battered women to develop skills appropriate to providing such testimony;

16. Research regarding State judicial decisions relating to child custody litigation involving domestic violence;

17. Development of training curricula to assist State courts to develop an understanding of, and appropriate responses to child custody litigation involving domestic violence;

18. Dissemination of information and training materials and provision of technical assistance regarding the issues listed in paragraphs 14–17 above;

19. Development of national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction;

20. Other programs, consistent with the purposes of the State Justice Institute Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems such as where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1998, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance by developing products, services, and techniques that may be used in other States; and

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. Improving Public Confidence in the Courts: This category includes demonstration, evaluation, research, and education projects designed to improve the responsiveness of courts to public concerns regarding the fairness, accessibility, timeliness, and comprehensibility of the court process, and test innovative methods for increasing the public's confidence in the State courts.

The Institute is particularly interested in supporting innovative projects that examine, develop, and test methods that trial or appellate courts may use to:

- Improve service to individual litigants and trial participants, including innovative methods for handling cases involving unrepresented litigants fairly and effectively; (See also section II.B.2.b.iv.(b) regarding a National Conference on Unrepresented Litigants in the Courts.)
- Test methods for more clearly and effectively communicating information to litigants and the public about judicial decisions, the trial and appellate court process, and court operations;
- Eliminate race, ethnic, and gender bias in the courts;
- Address court-community problems resulting from the influx of legal and illegal immigrants, including projects to inform judges about the effects of recent Federal and State legislation regarding immigrants; design and assess procedures for use in custody, visitation, and other domestic relations cases when key family members or property are outside the United States; and develop protocols to facilitate service of process, the enforcement of orders of judgment, and the disposition of criminal and juvenile cases when a non-U.S. citizen or corporation is involved;
- Demonstrate and evaluate approaches courts can use to implement the concept of restorative justice, including methods for involving the community in the sentencing process, such as community impact statements, community oversight of compliance with community service and probation conditions, or other innovative court-community links focused on the sentencing process;
- Test the impact of methods for improving juror comprehension in criminal and civil cases, such as use of specially qualified juries in complex cases, delivery of instructions throughout the trial, testimony by court-appointed neutral experts, and access to technology in the jury room to permit review of computerized exhibits of evidence presented in the case;
- Determine the incidence and causes of jury nullification and identify appropriate measures that judges can take to induce jurors to follow the law;
- Assess the impact of live television coverage of trials on court proceedings, public understanding, and fairness to litigants, and develop materials to assist jurors in dealing with the media during or following a trial.

Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases

Previous SJI-supported projects that address these issues include:

Enhancing Court-Community Relationships: A National Town Hall Meeting Videoconference and projects to implement the action plans developed at the conference; educational materials for court employees on serving the public; surveys and focus groups to identify concerns about the courts and assess how courts are serving the needs of the public; a demonstration of the use of community volunteers to monitor adult probationers and to monitor guardianships; evaluation of community-based court programs in New York City; and guidelines for court-annexed day-care systems;

Serving Unrepresented Litigants: Preparing guidebooks for court-based programs to assist pro se litigants and to respond to individuals and groups unwilling to comply with legal and administrative procedures; developing local and Statewide self-service centers, touchscreen computer kiosks, videotapes, and written materials to assist unrepresented litigants; assessing effective and efficient methods for providing legal representation to indigent parties in criminal and family cases; and examining the methods courts in rural communities can use to assure access and fairness for immigrants;

Eliminating Race and Ethnic Bias in the Courts: Presenting a National Conference on Eliminating Race and Ethnic Bias in the Courts and supporting projects to implement the action plans developed at the conference; examining the applicability of various dispute resolution procedures to different cultural groups; and developing educational programs and materials for judges and court staff on diversity and related issues;

Facilitating the Use of Qualified Court Interpreters: Preparing a manual and other materials for managing and coordinating court interpretation services; developing basic and graduate level curricula and other materials for training and assisting court interpreters; and assessing the feasibility and effectiveness of interpreting in court via the telephone;

Improving Jury Service and Jury System Management: Developing a manual for implementing innovations in jury selection, use, and management; preparing a guide for making juries accessible to persons with disabilities; documenting methods for reducing juror stress; and assessing the effect of allowing jurors to discuss the evidence prior to the deliberations on the verdict.

b. Education and Training for Judges and Other Key Court Personnel: The Institute is interested in supporting an array of projects that will continue to strengthen and broaden the availability of court education programs at the State, regional, and national levels. This category is divided into four subsections: (i) Innovative Educational Programs; (ii) Curriculum Adaptation Projects; (iii) Scholarships; and (iv) National Conferences.

i. *Innovative Educational Programs.* This category includes support for the development and testing of educational programs for judges or court personnel that address key substantive and administrative issues of concern to the nation's courts, or help local courts or State court systems develop or enhance their capacity to deliver quality continuing education. Programs may be designed for presentation at the local, State, regional, or national level. Ordinarily, court education programs should be based on some form of assessment of the needs of the target audience; include clearly stated learning objectives that delineate the new knowledge or skills that participants will acquire; incorporate adult education principles and multiple teaching/learning methods; and result in the development of a curriculum as defined in section III.J.

(a) The Institute is particularly interested in the development of education programs that:

- Include innovative self-directed learning packages for use by judges and court personnel, and distance-learning approaches to assist those who do not have ready access to classroom-centered programs. These packages and approaches should include the appropriate use of various media and technologies such as Internet-based programming, interactive CD-ROM or floppy disk-based programs, videos, or other audio and visual media, supported by written materials or manuals. They also should include a meaningful program evaluation and a self-evaluation process that assesses pre- and post-program knowledge and skills; (See also section II.B.2.b.iv.(a) inviting proposals for a National Symposium on the Future of Court Education.)
- Familiarize faculty with the effective use of instructional technology including methods for effectively presenting information through distance learning approaches including the Internet, videos, and satellite teleconferences;
- Assist local courts, State court systems, and court systems in a geographic region to develop or enhance a comprehensive program of continuing education, training, and career development for judges and court personnel as an integral part of court operations;
- Test the effectiveness of including experiential instructional approaches in court education programs such as field studies and use of community resources; and
- Encourage intergovernmental teambuilding, collaboration, and planning among the judicial, executive, and legislative branches of government, or courts within a metropolitan area or multi-State region; (See also section II.B.2.e.ii., inviting proposals to support teambuilding among courts, criminal justice agencies and service providers.)

(b) The Institute also is interested in supporting the development and testing of curricula on issues of critical importance to the courts, including those listed in the other Special Interest categories described in this Chapter.

ii. *Curriculum Adaptation Projects.* (a) Description of the Program. The Board is reserving up to $100,000 to provide support for projects that adapt and implement model curricula previously developed with SJI support. An illustrative list of the curricula that may be appropriate for the adaptation is contained in Appendix III.

The goal of the Curriculum Adaptation program is to provide State and local courts with sufficient support to modify a model curriculum, course module, or national or regional conference program developed with SJI funds to meet a State's or local jurisdiction's educational needs. Generally, it is anticipated that the adapted curriculum would become part of the grantee's ongoing educational offerings, and that local instructors would receive the training needed to enable them to make future presentations of the curriculum.

Only State or local courts may apply for Curriculum Adaptation funding. Grants to support adaptation of educational programs previously developed with SJI funds are limited to no more than $20,000 each. As with other awards to State or local courts, cash or in-kind match must be provided in an amount equal to at least 50% of the grant amount requested.

(b) Review Criteria. Curriculum Adaptation grants will be awarded on the basis of criteria including: the goals and objectives of the proposed project; the need for outside funding to support the program; the appropriateness of the educational approach in achieving the project's educational objectives; the likelihood of effective implementation and integration into the State's or local jurisdiction's ongoing educational programming; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. In making curriculum adaptation awards, the Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

(c) Application Procedures. In lieu of concept papers and formal applications, applicants should submit a detailed letter and three photocopies. Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information to assure that each of the review criteria listed above is addressed:

- Project Description. What is the title of the model curriculum to be adapted and who developed it? What are the project's goals and learning objectives? Why is this education program needed at the present time? What program components would be implemented, and what types of modifications, if any,

are anticipated in length, format, and content? Who will be responsible for adapting the model curriculum? Who will the participants be, how many will there be, how will they be recruited, and from where will they come (e.g., from across the State, from a single local jurisdiction, from a multi-State region)?

• Need for Funding. Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the program in the future using State or local funds, once it has been successfully adapted and tested?

• Likelihood of Implementation. What is the proposed timeline for modifying and presenting the program? Who would serve as faculty and how were they selected? What measures will be taken to facilitate subsequent presentations of the adapted program? (Ordinarily, an independent evaluation of a curriculum adaptation project is not necessary; however, the results of any evaluation should be included in the final report.)

• Expressions of Interest By Judges and/or Court Personnel. Does the proposed program have the support of the court system leadership, and of judges, court managers, and judicial education personnel who are expected to attend? (This may be demonstrated by attaching letters of support.)

• Budget and Matching State Contribution. Applicants should attach a copy of budget Form E (see Appendix V) and a budget narrative (see Section VII.B.) that describes the basis for the computation of all project-related costs and the source of the match offered.

• Chief Justice's Concurrence. Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee. (See Form B, Appendix VI.)

Letters of application may be submitted at any time. However, applicants should allow at least 90 days between the date of submission and the date of the proposed program to allow sufficient time for needed planning.

The Board of Directors has delegated its authority to approve Curriculum Adaptation grants to its Judicial Education Committee. The Committee anticipates acting upon applications within 45 days after receipt. Grant funds will be available only after Committee approval, and negotiation of the final terms of the grant.

(d) Grantee Responsibilities. A recipient of a Curriculum Adaptation grant must:

(1) Comply with the same quarterly reporting requirements as other Institute grantees (see Section X.L.);

(2) Include in each grant product a prominent acknowledgment that support was received from the Institute, along with the "SJI" logo and a disclaimer paragraph (See section X.Q.); and

(3) Submit two copies of the manuals, handbooks, or conference packets developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the program in the future.

iii. Scholarships for Judges and Court Personnel. The Institute is reserving up to $200,000 to support a scholarship program for State court judges and court managers.

(a) Program Description/Scholarship Amounts. The purposes of the Institute scholarship program are to: enhance the knowledge, skills, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. The annual or midyear meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

A scholarship may cover the cost of tuition and transportation up to a maximum total of $1,500 per scholarship. (Transportation expenses include round-trip coach airfare or train fare. Recipients who drive to the site of the program may receive $.31/mile up to the amount of the advanced purchase round-trip airfare between their home and the program site.) Funds to pay tuition and transportation expenses in excess of $1,500, and other costs of attending the program such as lodging, meals, materials, and local transportation (including rental cars) at the site of the education program, must be obtained from other sources or be borne by the scholarship recipient.

Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

Scholarship recipients are also encouraged to check with their tax advisor to determine whether the scholarship constitutes taxable income under Federal and State law.

(b) Eligibility Requirements. Because of the limited amount of funds available, scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

(c) Application Procedures. Judges and court managers interested in receiving a scholarship must submit the Institute's Judicial Education Scholarship Application Form (Form S1, see Appendix V). An applicant may apply for a scholarship for only one educational program during any one application cycle. Applications must be submitted by:

October 1, 1997, for programs beginning between January 1 and March 31, 1998; January 7, 1998, for programs beginning between April 1 and June 30, 1998; April 1, 1998, for programs beginning between July 1 and September 30, 1998; and July 1, 1998, for programs beginning between October 1 and December 31, 1998; and Subject to the availability of appropriations, October 1, 1998, for programs beginning between January 1 and March 31, 1999.

No exceptions or extensions will be granted. Applicants are encouraged not to wait for the decision on the scholarship to register for the educational program they wish to attend.

(d) Concurrence Requirement. All scholarship applicants must obtain the written concurrence of the Chief Justice of their State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (Form S2, see Appendix V). Court managers, other than elected clerks of court, also must submit a letter of support from their supervisor. The Concurrence form may accompany the application or be sent separately. However, the original signed Concurrence form must be received by the Institute within two weeks after the appropriate application mailing deadline (i.e. by October 15, 1997, or January 21, April 15, July 15, or October 15, 1998). No application will be reviewed if a signed Concurrence form has not been received by the required date.

(e) Review Procedures/Selection Criteria. The Board of Directors has delegated the authority to approve or deny scholarships to its Judicial Education Committee. The Institute intends to notify each applicant whose scholarship has been approved within 60 days after the relevant application deadline. The Committee will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

The factors that the Institute will consider in selecting scholarship recipients are:

• The applicant's need for education in the particular course subject and how the applicant would apply the information/skills gained;

• The direct benefits to the applicant's court or the State's court system that would be derived from the applicant's participation in the specific educational program, including a description of the current legal, procedural, administrative, or other problems affecting the State's courts that are related to topics to be addressed at the educational;

• The absence of educational programs in the applicant's State addressing the particular topic;

• How the applicant will disseminate the knowledge gained (e.g., by developing/teaching a course or providing in-service training for judges or court personnel at the State or local level);

• The length of time that the applicant intends to serve as a judge or court manager, assuming reelection or reappointment, where applicable;

• The likelihood that the applicant would be able to attend the program without a scholarship;

• The unavailability of State or local funds to cover the costs of attending the program;

• The quality of the educational program to be attended as demonstrated by the sponsoring organization's experience in judicial education, evaluations by participants or other professionals in the field, or prior SJI support for this or other programs sponsored by the organization;

• Geographic balance;

• The balance of scholarships among types of applicants and courts;

• The balance of scholarships among educational programs; and

• The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

(f) Non-transferability. A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the recipient submits a letter requesting to attend a different course. The letter must explain the reasons for the change; the need for the information or skills to be provided by the new course; how the information or skills will be used to benefit the individual, his or her court, and/or the courts of the State; and how the knowledge or skills gained will be disseminated. Requests to use a scholarship for a different course must be approved by the Judicial Education Committee of the Institute's Board of Directors. Ordinarily, decisions on such requests will be made within 30 days after the receipt of the request letter.

(g) Responsibilities of Scholarship Recipients. In order to receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program). Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of their State.

A State or a local jurisdiction may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., a requirement to serve as faculty on the subject at a State- or locally- sponsored judicial education program.

iv. National Conferences. This category includes support for national conferences on topics of major concern to State court judges and personnel across the nation. Applicants are encouraged to consider the use of videoconference and other technologies to increase participation and limit travel expenses in planning and presenting conferences. In planning a conference, applicants should provide for a written, video, or computer-based product that would widely disseminate information, findings, and any recommendations resulting from the conference.

The Institute is particularly interested in supporting:

(a) A National Symposium on the Future of Court Education to provide guidance to the courts, judicial education providers, the Institute, and other grantmaking organizations. The Symposium should provide a forum for discussing:

• The best methods for using technologically-based educational approaches, and the most effective ways of integrating those approaches into effective court education programs;

• The design and implementation of programs that address all adult learning styles;

• The incorporation of educational programs and opportunities as an integral part of on-going court operations;

• The appropriate and effective use of experiential learning approaches;

• The most practical and informative methods for evaluating learning and its impact on the knowledge and skills of individual learners, the effect on the operations of their courts, and the impact on the quality of the services provided to those who use the courts; and

• How judicial education may change over the next 10 to 20 years, strategic plans for realizing those changes, and recommendations for how SJI, other grantmakers, and adult education providers can assist in implementing those changes.

(b) A National Conference on Unrepresented Litigants in Court involving judges, court managers, policymakers, bar leaders, scholars and the public, to:

• Develop a clearer understanding of the proportion and nature of litigants who choose to represent themselves in courts;

• Obtain information about the nature and effectiveness of innovative programs, procedures, programs, and materials developed by jurisdictions throughout the country;

• Identify problem areas that remain; and

• Prepare action plans and recommendations on how to address those problems at the local, State, and national levels.

c. Dispute Resolution and the Courts: This category includes research, evaluation, and demonstration projects to evaluate or enhance the effectiveness of court-connected dispute resolution programs. The Institute is interested in projects that facilitate comparison among research studies by using similar measures and definitions; address the nature and operation of ADR programs within the context of the court system as a whole; and compare dispute resolution processes to attorney settlement as well as trial. Specific topics of interest include:

• Determining the appropriate timing for referrals to dispute resolution services to enhance settlements and reduce time to disposition;

• Assessing the effect of different referral methods including any differences in outcome between voluntary and mandatory referrals;

• Comparing the appropriateness and effectiveness of facilitative and evaluative mediation in various types of cases;

• Testing innovative approaches that provide rural courts and other under-served areas with adequate court-connected dispute resolution services;

• Evaluating innovative court-connected dispute resolution programs for resolving specific types of cases such as guardianship petitions, probate proceedings, land-use disputes, and complex and multi-party litigation;

• Testing of methods that courts can use to assure the quality of court-connected dispute resolution programs; and

• Developing guidelines on what actions by non-lawyer mediators may constitute the unauthorized practice of law.

Applicants should be aware that the Institute will not provide operational support for on-going ADR programs or start-up costs of non-innovative ADR programs. Courts also should be advised that it is preferable for the applicant to use its funds to support the operational costs of an innovative program and request Institute funds to support related technical assistance, training, and evaluation elements of the program.

In previous funding cycles, the Institute has supported projects to evaluate the use of mediation in civil, domestic relations, juvenile, medical malpractice, appellate, and minor criminal cases, as well as in resolving grievances of court employees. SJI grants also have supported assessments of the impact of private judging on State courts; multi-door courthouse programs; arbitration of civil cases; screening and intake procedures for mediation; the relationship of mediator training and qualifications to case outcome and party satisfaction; early referrals to mediation in divorce proceedings; and trial and appellate level civil settlement programs.

In addition, SJI has supported two national conferences on court-connected dispute resolution; a national ADR resource center and a national database of court-connected dispute resolution programs; training programs for judges and mediators; the testing of Statewide and trial court-based ADR monitoring/evaluation systems and implementation manuals; the promulgation and implementation of principles and policies regarding the qualifications, selection, and training of court-connected neutrals; development of standards for court-annexed mediation programs; and an examination of the applicability of various dispute resolution procedures to different cultural groups.

d. Application of Technology: This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training component to assure that staff is appropriately educated about the purpose and use of the new technology. In this context, "untested" refers to novel applications of technology developed for the private sector and other fields that have not previously been applied to the courts.

The Institute is particularly interested in supporting efforts to:

• Evaluate the use of the Internet for case and document filing, and develop model rules governing electronic filing and notice;

• Establish standards for judicial electronic data interchange (EDI), and test local, Statewide, and/or interstate demonstrations of the courts' use of EDI;

• Demonstrate and evaluate the use of videoconferencing technology to present testimony by witnesses in remote locations, and appellate arguments (but see the limitations specified below); and

• Assess the impact of the use of multimedia CD–ROM-based briefs on the courts, parties, counsel, and the trial or appellate process.

Ordinarily, the Institute will not provide support for the purchase of equipment or software in order to implement a technology that is commonly used by courts, such as videoconferencing between courts and jails, optical imaging for recordkeeping, and automated management information systems. (See also section XI.H.2.b. regarding other limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support projects that: demonstrate and evaluate the availability of electronic forms and information on the Internet to assist pro se litigants; access to case data via the Internet; electronic filing and document transfer; an electronic document management system; a court management information display system; the integration of bar-coding technology with an existing automated case management system; an on-bench automated system for generating and processing court orders; an automated judicial education management system; a document management system for small courts using imaging technology; a computerized citizen intake and referral service; an "analytic judicial desktop system" to assist judges in making sentencing decisions; and the use of automated teller machines for paying jurors.

Grants have also supported national court technology conferences; a court technology laboratory to provide judges and court managers an opportunity to test automated court-related hardware and software; a technical information service to respond to specific inquiries concerning court-related technologies; development of recommendations for electronic transfer of court documents, model rules on the use of computer-generated demonstrative evidence and electronic documentary evidence, and guidelines on privacy and public access to electronic court information and on court access to the information superhighway; implementation and evaluation of a Statewide automated integrated case docketing and record-keeping system; and computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow.

e. Court Planning, Management, Financing: The Institute is interested in supporting projects that explore emerging issues that will affect the State courts as they enter the 21st Century, as well as projects that develop and test innovative approaches for managing the courts, securing and managing the resources required to fully meet the responsibilities of the judicial branch, and institutionalizing long-range planning processes. In particular the Institute is interested in:

i. Demonstration, evaluation, education, research, and technical assistance projects to:

• Develop, implement, and assess innovative case management techniques for specialized calendars including but not limited to drug courts, domestic violence courts, juvenile courts, and family courts;

• Facilitate communication, information sharing, and coordination between the juvenile and criminal courts;

• Assess the effects of innovative management approaches designed to assure quality services to court users;

• Strengthen the leadership skills of presiding judges and court managers;

• Develop and test methods for facilitating and implementing change and for encouraging excellence in court operations;

• Demonstrate and assess the effective use of staff teams in court operations;

• Institutionalize long-range planning approaches in individual States and local jurisdictions, including development of an ongoing internal capacity to conduct environmental scanning, trends analysis, and benchmarking; and

• Develop and test mechanisms for linking assessments of effectiveness such as the Trial Court Performance Standards to fiscal planning and budgeting, including service efforts and accomplishments approaches (SEA), performance audits, and performance budgeting; and

• Test innovative programs and procedures for providing clear and open communications between the judicial and legislative branches of government.

ii. Education, technical assistance, and other projects to facilitate the establishment, maintenance, and institutionalization of effective partnerships among courts, criminal justice agencies, treatment providers, and other organizations (e.g., shelters for victims of domestic violence) that promote effective responses to particular types of cases or classes of offenders. These partnerships can take many forms such as drug courts, family violence coordinating councils, sex offender management teams, and intermediate sanctions working groups. Although many jurisdictions have already undertaken one or more such team efforts, the promise of these collaborations has too often been squandered as a result of the difficulties the participating courts and agencies face in reconciling their distinct and, in some cases, adversarial responsibilities with the idea of working together toward a common goal.

The Institute anticipates joining together with several Federal grant agencies to support one or more teambuilding projects that will help each agency achieve its respective statutory mission. These activities could include:

• Preparing and presenting educational programs to foster development of effective teams;

• Delivering on-site technical assistance to develop a team or enhance an existing partnership;

• Providing information on teambuilding through a national resource center; and

• Preparing manuals, guides, and other written and visual products to assist the development and operation of effective teams.

Applicants should address how they would enter into collaborative relationships with other organizations to provide the diverse services and the full range of necessary expertise to interested jurisdictions in a timely fashion.

iii. Demonstration, evaluation, education, technical assistance, and research projects to implement the National Agenda on Assuring Prompt and Affordable Justice being developed under grant no. SJI–97–004, due to be completed this fall. The key elements of the agenda will be published in the winter issue of SJI News. Concept papers addressing this topic must be mailed by March 12, 1998.

iv. The preparation of "think pieces" exploring possible changes in the court process or judicial administration and their implications for judges, court managers, policymakers, and the public. Grants supporting such projects are limited to no more than $10,000. The resulting essay should be directed to the court community and be of publishable quality.

Possible topics include, but are not limited to: what the new "community courts" can learn from the old justice of the peace courts; the ramifications of "virtual trials" (i.e. proceedings in which one or more trial participants including the parties, counsel, witnesses, the judge, and the jury may not be physically in the courtroom); the implications of the use of technology-enhanced courtroom presentations, especially when there is an imbalance of resources among the parties; the appropriateness of modifying methods of selecting, qualifying, and using juries; and the uses of technology to better prepare and inform jurors.

In previous funding cycles, the Institute has supported national and Statewide "future and the courts" conferences and training; curricula, guidebooks, a video on visioning, and a long-range planning guide for trial courts; and technical assistance to courts conducting futures and long-range planning.

SJI has also supported executive management programs for teams of judges and court administrators; a test of the feasibility of implementing the Trial Court Performance Standards in four States; Appellate Court Performance Standards and Measures; a TQM guidebook and training materials for trial courts; revision of the Standards on Judicial Administration; projects identifying the causes of delay in trial and appellate courts; the preparation of a national agenda for reducing litigation cost and delay; the testing of various types of weighted caseload systems; a National Interbranch Conference on Funding the State Courts; and National Symposia on Court Management.

f. Resolution of Current Evidentiary Issues: This category includes educational programs, the development of model rules and jury instructions, and other projects to assist judges in deciding questions regarding:

• The admissibility and effectiveness of new forms of demonstrative evidence, including computer simulations;

• The admissibility and weight to be given to complex scientific or technical evidence under the standards set forth in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*;

• The admissibility of genetic evidence generally, and the findings of the 1996 National Academy of Sciences report evaluating forensic DNA evidence, in particular; and

• The appropriateness of awards of punitive damages.

In previous funding cycles, the Institute has supported the analysis of issues related to the use of expert testimony in criminal cases involving domestic violence; a computer-assisted training program on evidentiary problems for juvenile and family court judges; training on medical/legal and scientific evidence issues and regional seminars on evidentiary questions; a videotape and other materials on scientific evidence; a workshop on the use of DNA evidence in criminal proceedings; and benchbooks on evidentiary issues pertaining to psychiatric evidence and testimony, and to testimony by child witnesses.

g. Substance Abuse: This category includes education, technical assistance, research, and evaluation projects to assist courts in handling a large volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases fairly and expeditiously

The Institute is particularly interested in projects to:

• Assess the effect of managed health-care plans on the availability and cost of drug treatment services for court-enforced treatment programs, and assist courts in shaping managed care plans to enhance the availability of necessary services at a reasonable cost;

• Prepare and test measures, forms, and other tools to facilitate self-evaluation of court-enforced substance abuse treatment programs; and

• Develop and deliver educational programs or technical assistance to help courts in designing, managing, or evaluating drug court programs for

adults or juveniles. (This does not include providing support for planning, establishing, operating, or enhancing a local drug court. Applicants interested in obtaining such operational support should contact the Drug Court Program Office, Office of Justice Programs, U.S. Department of Justice.)

The Institute has supported the presentation of the 1995 National Symposium on the Implementation and Operation of Court-Enforced Drug Treatment Programs as well as the 1991 National Conference on Substance Abuse and the Courts, and efforts to implement the State and local plans developed at these Conferences.

It has also supported projects to evaluate court-enforced treatment programs, special court-ordered programs for women offenders, and other court-based alcohol and drug assessment programs; test the applicability of drug courts in non-urban sites; involve community groups and families in drug court programs; assess the impact of legislation and court decisions dealing with drug-affected infants; develop strategies for coping with increasing caseload pressures, and benchbooks and other educational materials on child abuse and neglect cases involving parental substance abuse and appropriate sentences for pregnant substance abusers; test the use of a dual diagnostic treatment model for domestic violence cases in which substance abuse was a factor; and present local and regional educational programs for judges and other court personnel on substance abuse and its treatment. In addition, SJI has supported an information system that permits courts, criminal justice agencies, and drug treatment providers to share information electronically.

h. Children and Families in Court: This category includes education, demonstration, evaluation, technical assistance, and research projects to identify and inform judges of innovative, effective approaches for handling cases involving children and families. The Institute is particularly interested in projects that:

i. Assist courts in addressing the special needs of children in cases involving family violence including the development and testing of innovative protocols, procedures, educational programs, and other measures for improving the capacity of courts to:

- Coordinate and adjudicate child custody and family violence cases involving the same family;
- Determine and address the service needs of children exposed to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders; and
- Adjudicate and monitor child abuse and neglect litigation and reconcile the need to protect the child with the requirement to make reasonable efforts to maintain or reunite the family.

ii. Enhance the fairness and effectiveness of proceedings regarding a juvenile accused of committing a delinquent or criminal offense, including projects that:

- Prepare and test curricula and materials for judges on how to manage cases involving gang members fairly, safely, and effectively, including the use of appropriate procedures for determining pre-adjudication release, protecting witnesses, and developing effective dispositions;
- Develop and test effective approaches for the detention, adjudication, and disposition of juveniles under age 13 who are accused of involvement in a violent offense; and
- Develop and test effective policies, procedures, and educational materials for judges regarding cases in which a juvenile is tried as an adult.

iii. Improve the fairness and effectiveness of proceedings to determine custody, visitation, and support issues, including projects that develop and test guidelines, curricula, and other materials to assist trial judges in:

- Determining the best interest of a child;
- Enforcing visitation orders fairly and effectively; and
- Establishing and enforcing custody, and support orders in cases in which a child's parents were never married to each other.

iv. Improve the effectiveness and operating efficiency of juvenile and family courts, including projects to:

- Develop and test innovative techniques for improving communication, sharing information, and coordinating juvenile and criminal courts and divisions; and
- Implement the action agenda developed at the National Symposium on Reviewing the Past and Looking Toward the Future of the Juvenile Court held in Reno, Nevada on September 28—October 1, 1997. The key elements in the agenda will be published in the winter issue of SJI News. Concept papers addressing this topic must be mailed by March 12, 1998.

In previous funding cycles, the Institute supported national and State conferences on courts, children, and the family; a review of juvenile courts in light of the upcoming 100th anniversary of the founding of the first juvenile court; validation of a risk assessment tool for juvenile offenders; a symposium on the resolution of interstate child welfare issues; and educational materials on the questioning of child witnesses, making reasonable efforts to preserve families, adjudicating allegations of child sexual abuse when custody is in dispute, child victimization, handling child abuse and neglect cases when parental substance abuse is involved, and on children as the silent victims of spousal abuse.

Other Institute grants have supported the development of computer-based training on the Uniform Interstate Family Support Act, and the examination of supervised visitation programs, effective court responses when domestic violence and custody disputes coincide, and foster care review procedures.

In addition, the Institute has supported projects to enhance coordination of cases involving the same family that are being heard in different courts; assist States considering establishment of a family court; develop national and State-based training materials for guardians ad litem; examine the authority of the juvenile court to enforce treatment orders and the role of juvenile court judges; test the use of differentiated case management in juvenile court; and develop innovative approaches for coordinating services for children and youth.

i. Improving the Courts' Response to Domestic Violence: This category includes innovative education, demonstration, technical assistance, evaluation, and research projects to improve the fair and effective processing, consideration, and disposition of cases concerning domestic violence and gender-related violent crimes, including projects on:

- The effective use and enforcement of intra-and inter-State protective orders including implementation of the court-related findings and recommendations resulting from the National Conference on Full Faith and Credit: A Passport to Safety to be held in Albuquerque, NM in October, 1997. The key findings and recommendations from the conference will be published in the winter issue of SJI News. Concept papers proposing projects that follow up on the conference must be mailed by March 12, 1998;
- The effective use of information contained in protection order files stored in court electronic databases consistent with the protection of the privacy and safety of victims of violence;
- The effectiveness of specialized calendars or divisions for considering domestic violence cases and related matters, including their impact on victims, offenders, and court operations;
- Determining when it may be appropriate to refer a case involving family violence for mediation and what procedures and safeguards should be employed;
- Effective ways to coordinate the response to domestic violence and gender-related crimes of violence among courts, criminal justice agencies, and social services programs, and to assure that courts are fully accessible to victims of domestic violence and other gender-related violent crimes;
- Special precautions that should be taken and information that should be provided when participants referred by the court to a parent education program may include parents from violent homes; and
- Effective sentencing approaches in cases involving domestic violence and other gender-related crimes.

Institute funds may not be used to provide operational support to programs offering direct services or compensation to victims of crimes. (Applicants interested in obtaining such operational support should contact the Office for Victims of Crime (OVC), Office of Justice Programs, U.S. Department of Justice, or the agency in their State that awards OVC funds to State and local victim assistance and compensation programs.)

In previous funding cycles, the Institute supported national and State conferences on family violence and the courts as well as projects to implement the action plans developed at these conferences; symposia and guides on the implementation of the full faith and credit requirements included in the Violence Against Women Act; curricula for judges on a range of topics regarding the handling of family violence, rape, and sexual assault cases; and preparation of descriptions of innovative court practices in family violence cases, including programs for battered mothers and their children, and procedures for coordinating multiple cases involving a single family.

The Institute also has funded evaluations of the effectiveness of specialized domestic violence calendars, court-ordered treatment for family violence offenders, the use of alternatives to adjudication in child abuse cases, and procedures to improve the effectiveness of civil protection orders for family violence victims; development of recommendations on how to improve access to rural courts for victims of family violence, and to collect and report dispositional and other data concerning family violence cases; research and judicial education on the use of mediation in domestic relations cases involving allegations of violence, the relevancy of culture in adjudicating and disposing of family violence cases, and effective sentencing of sex offenders; videotapes and other educational programs for the parties in divorce actions and their children; analyses of the issues related to the use of expert testimony in criminal cases involving domestic violence; and development of electronic links among courts, criminal justice agencies, and service providers to share information and assist victims of violence.

j. Improving Sentencing Practices. This category includes education, demonstration, technical assistance, evaluation, and research projects to address and implement the findings and recommendations reached at the National Symposium on Sentencing: The Judicial Response to Crime, to be held in San Diego, CA on November 1–4, 1997. The key findings and recommendations will be published in the winter issue of SJI News. Concept papers submitted under this category must be mailed by March 12, 1998.

k. Improving Court Security. This category includes demonstration, evaluation, technical assistance, education, and research projects to enhance the security of courthouses and the people who use and work in them. The Institute is particularly interested in supporting innovative projects to:

- Develop policies, protocols, and procedures designed to prevent harassment, threats, and incidents endangering the lives and property of judges, court employees, jurors, litigants, witnesses, and other members of the public in court facilities;
- Evaluate innovative applications of technology to prevent courthouse incidents that endanger the lives and property of judges, court personnel, and courtroom participants; and
- Develop and test model training programs that will assist judges and court personnel in protecting their safety and that of jurors, litigants, witnesses, and other members of the public in court facilities, and in managing cases involving individuals or organizations unwilling to cooperate with legal or administrative procedures.

In previous funding cycles, the Institute has supported a demonstration project to organize sharing of court security staff between counties; a court security clearinghouse; and an educational program and benchbook on the common law court movement.

l. The Relationship Between State and Federal Courts: This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts. The Institute is particularly interested in innovative projects that:

i. Develop and test curricula and disseminate information regarding effective methods being used at the trial court, State, and Circuit levels to coordinate cases and administrative activities; and

ii. Develop and test new approaches to:

- Implement the habeas corpus provisions of the Anti-Terrorism Act of 1998;
- Handle capital habeas corpus cases fairly and efficiently;
- Coordinate and process mass tort cases fairly and efficiently at the trial and appellate levels;
- Coordinate the adjudication of related State and Federal criminal cases;
- Coordinate related State and Federal cases that may be brought under the Violence Against Women Act;
- Exchange information and coordinate calendars among State and Federal courts; and
- Share facilities, jury pools, alternative dispute resolution programs, information regarding persons on pretrial release or probation, and court services.

In previous funding cycles, the Institute has supported national and regional conferences on State-Federal judicial relationships, a national conference on mass tort litigation, and the Chief Justices' Special Committee on Mass Tort Litigation.

In addition, the Institute has supported projects testing the use common electronic filing process for the State and Federal courts in New Mexico, and other methods of State and Federal trial and appellate court cooperation; developing judicial impact statement procedures for national legislation affecting State courts; establishing procedures for facilitating certification of questions of law; assessing the impact on the State courts of diversity cases and cases brought under section 1983, the procedures used in Federal habeas corpus review of State court criminal cases, and the factors that motivate litigants to select Federal or State courts; and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation.

The Institute has also supported a clearinghouse of information on State constitutional law decisions; educational programs for State judges on coordination of Federal bankruptcy

cases with State litigation; and the assignment of specialized law clerks to trial courts hearing capital cases in order to improve the fairness and efficiency of death penalty litigation at the trial level.

C. Single Jurisdiction Projects

The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. The Institute has established two categories of Single Jurisdiction Projects:

1. Projects Addressing a Critical Need of a Single State or Local Jurisdiction

a. Description of the Program. The Board will set aside up to $300,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas.

Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in section X.B.1.

In particular, the Institute is interested in awarding replication grants to support the implementation of programs, procedures, or strategies that have been developed, demonstrated, or evaluated by SJI-supported projects. (A list of examples of such projects is contained in Appendix IV.) Ordinarily, the Institute will not provide support solely for the purchase of equipment or software.

b. Application Procedures. Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI. ("Concept Paper Submission Requirements for New Projects") and VII. ("Application Requirements"), respectively, and must demonstrate that:

i. The proposed project is essential to meeting a critical need of the jurisdiction; and

ii. The need cannot be met solely with State and local resources within the foreseeable future.

2. Technical Assistance Grants

a. Description of the Program. The Board will set aside up to $400,000 to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. The Committee will reserve sufficient funds each quarter to assure the availability of technical assistance grants throughout the year. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes.

Technical Assistance grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants; travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating; or both. Technical assistance grant funds ordinarily may not be used to support production of a videotape. Normally, the technical assistance must be completed within 12 months after the start-date of the grant.

b. Eligibility for Technical Assistance Grants. Only a State or local court may apply for a Technical Assistance grant. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount.

c. Review Criteria. Technical Assistance grants will be awarded on the basis of criteria including: Whether the assistance would address a critical need of the court; the soundness of the technical assistance approach to the problem; the qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s); commitment on the part of the court to act on the consultant's recommendations; and the reasonableness of the proposed budget. The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

d. Application Procedures. In lieu of formal applications, applicants for Technical Assistance grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project and addressing the issues listed below. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

i. Need for Funding. What is the critical need facing the court? How will the proposed technical assistance help the court meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

ii. Project Description. What tasks would the consultant be expected to perform and how would they be accomplished? Which organization or individual would be hired to provide the assistance and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdiction's normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time period and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

iii. Likelihood of Implementation. What steps have been/will be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the changes recommended by the consultant and approved by the court, how will they be involved in the review of the recommendations and development of the implementation plan?

iv. Budget and Matching State Contribution. A completed Form E, "Preliminary Budget" (see Appendix V) and budget narrative must be included with the applicant's letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (e.g., number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that grant funds cannot be paid to a consultant at a rate in excess of $900 per day.

Ordinarily, attorneys in private practice are expected to provide consulting services to court improvement or education projects on a pro bono basis.

In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

Recipients of technical assistance grants do not have to submit an audit, but must maintain appropriate documentation to support expenditures. (See section X.M.)

v. Support for the Project from the State Supreme Court or its Designated Agency or Council. Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix VI) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between June 14 and September 30, 1997 will be notified of the Board's decision by December 5, 1997; those submitting letters between October 1, 1997 and January 16, 1998 will be notified by March 27, 1998; notification of the Board's decisions concerning letters mailed between January 17 and March 13, 1998, will be made by May 29, 1998; notice of decisions regarding letters submitted between March 14 and June 12, 1998 will be made by August 28, 1998. Subject to the availability of sufficient appropriations for fiscal year 1999, applicants submitting letters between June 13 and September 30, 1998, will be notified by December 18, 1998.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant, would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than two weeks prior to the Board meeting at which the technical assistance requests will be considered (i.e., by October 31, 1997, and February 12, April 17, July 10, 1998, and October 30, 1998).

vi. Grantee Responsibilities. Technical Assistance grant recipients are subject to the same quarterly reporting requirements as other Institute grantees. At the conclusion of the grant period, a Technical Assistance grant recipient must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute two copies of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. Institute

The State Justice Institute.

B. State Supreme Court

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, State Supreme Court shall mean that court which also has administrative responsibility for the State's judicial system. State Supreme Court also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

C. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court or its designee.

E. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

F. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include project-related income such as tuition or revenue from the sale of grant products, or the time of participants attending an education program. Amounts contributed as cash or in-kind match may not be recovered through the sale of grant products during or following the grant period.

G. Continuation Grant

A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period.

H. On-Going Support Grant

A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing critical need.

I. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique.

J. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: The learning

objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and other instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program including possible faculty or the preferred qualifications or experience of those selected as faculty.

K. Products

Tangible materials resulting from funded projects including, but not limited to: Curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; computer software; and CD–ROM disks.

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been authorized by Congress to award grants, cooperative agreements, and contracts to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705 (b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a national education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

The Institute may also make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

In addition, the Institute may enter into inter-agency agreements with other public or private funders to support projects consistent with the purpose of the State Justice Institute Act.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2. of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in Appendix I.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

The Institute has established the following types of grants:

1. Project grants (See sections II.B., and C.1., VI., and VII.).
2. Continuation grants (See sections III.H. and IX.A).
3. On-going Support grants (See sections III.I. and IX.B.).
4. Technical Assistance grants (See section II.C.2).
5. Curriculum Adaptation grants (See section II.B.2.b.ii.).
6. Scholarships (See section II.B.2.b.iii).

C. Maximum Size of Awards

1. Except as specified below, applications for new project grants and applications for continuation grants may request funding in amounts up to $200,000, although new and continuation awards in excess of $150,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000 over three years, although awards in excess of $450,000 are likely to be rare. At the discretion of the Board, the funds for on-going support grants may be awarded either entirely from the Institute's appropriations for the fiscal year of the award or from the Institute's appropriations for successive fiscal years beginning with the fiscal year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the fiscal year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the Quarterly Progress Reports required to be filed and grant monitoring; (2) the availability of appropriations for that fiscal year; and (3) the Board of Directors' determination that the project continues to fall within the Institute's priorities.

3. Applications for technical assistance grants may request funding in amounts up to $30,000.

4. Applications for curriculum adaptation grants may request funding in amounts up to $20,000.

5. Applications for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 15 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

3. Grant periods for technical assistance grants and curriculum adaptation grants ordinarily will not exceed 12 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the topics of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. The concept paper requirement and the submission deadlines for concept papers and applications may be waived by the Executive Director for good cause (e.g., the proposed project could provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

A. Format and Content

All concept papers must include a cover sheet, a program narrative, and a preliminary budget.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization, or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper;

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.A.) that the proposed project addresses most directly; and

e. The estimated length of the proposed project.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper, should add application waiver requested to the information on the cover page.

2. The Program Narrative

The program narrative of a concept paper should be no longer than necessary, but may exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch and type size must be at least 12 point and 12 cpi. The narrative should describe:

a. Why is this project needed and how will it benefit State courts? If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services, or other resources, and the benefits that would be realized by the proposed site(s).

If the project is not site-specific, applicants should discuss the problems that the proposed project will address, why existing materials, programs, procedures, services, or other resources do not adequately resolve those problems, and the benefits that would be realized from the project by State courts generally.

b. What will be done if a grant is awarded? Applicants should include a summary description of the project to be conducted and the approach to be taken, including the anticipated length of the grant period. Applicants requesting a waiver of the application requirement for a grant of less than $40,000 should explain the proposed methods for conducting the project as fully as space allows, and include a detailed task schedule as an attachment to the concept paper.

c. How will the effects and quality of the project be determined? Applicants should include a summary description of how the project will be evaluated, including the evaluation criteria.

d. How will others find out about the project and be able to use the results? Applicants should describe the products that will result, the degree to which they will be applicable to courts across the nation, and to whom the products and results of the project will be disseminated in addition to the SJI-designated libraries (e.g., State chief justices, specified groups of trial judges, State court administrators, specified groups of trial court administrators, State judicial educators, or other audiences).

3. The Budget

a. Preliminary Budget. A preliminary budget must be attached to the narrative that includes the information specified on Form E included in Appendix VI of this Guideline. Applicants should be aware that prior written Institute approval is required for any consultant rate in excess of $300 per day, and that Institute funds may not be used to pay a consultant in excess of $900 per day. (See section XI.H.2.c)

b. Concept Papers Requesting Accelerated Award of a Grant of Less than $40,000. Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under section VI.C., must attach to Form E (see Appendix VI) a budget narrative that explains the basis for each of the items listed, and indicates whether the costs would be paid from grant funds, through a matching contribution, or from other sources.

4. Letters of Cooperation or Support

The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project. Letters of support also may be sent under separate cover. However, in order to ensure that there is sufficient time to bring them to the Board's attention, support letters sent under separate cover must be received no later than January 6, 1998.

5. Page Limits

a. The Institute will not accept concept papers with program narratives exceeding the limits set in sections VI.A.2. The page limit does not include the cover page, budget form, the budget narrative if required under section VI.A.3.b., the task schedule if required under section VI.A.2.b., and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

b. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the eight-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

6. Sample Concept Papers

Sample concept papers from previous funding cycles are available from the Institute upon request.

B. Selection Criteria

1. All concept papers will be evaluated on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project;

d. The reasonableness of the proposed budget;

e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

"Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

2. In determining which concept papers will be approved for award or selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's anticipated match; whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or another type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(b), as amended and section IV above); the extent to which the proposed project would also benefit the Federal courts or help the State

courts enforce Federal constitutional and legislative requirements, and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for its review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000, when the need for and benefits of the project are clear, and the methodology and budget require little additional explanation. Applicants considering whether to request consideration for an accelerated award should make certain that the proposed budget is sufficient to accomplish the project objectives in a quality manner. Because the Institute's experience has been that projects to conduct empirical research or a program evaluation ordinarily require a more thorough explanation of the methodology to be used than can be provided within the space limitations of a concept paper, the Board is unlikely to waive the application requirement for such projects.

D. Submission Requirements

Except as noted below, an original and three copies of all concept papers submitted for consideration in Fiscal Year 1998 must be sent by first class or overnight mail or by courier no later than November 24, 1997.

Concept papers proposing projects on the following topics must be sent by first class or overnight mail or by courier no later than March 12, 1998:

- The National Agenda on Assuring Prompt and Affordable Justice (section II.B.2.e.iii.);
- The action agenda developed at the National Symposium on Reviewing the Past and Looking Toward the Future of the Juvenile Court (section II.B.2.h.iv.);
- The findings and recommendations resulting from the National Conference on Full Faith and Credit: A Passport to Safety (section II.B.2.i.); and
- The findings and recommendations resulting from the National Symposium on Sentencing: The Judicial Response to Crime (section II.B.2.j.)

A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked Concept Paper and should be sent to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

The Institute will send written notice to all persons submitting concept papers, informing them of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

VII. Application Requirements for New Projects

An application for Institute funding support must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. These required application forms are described below will be sent to applicants when an application is invited. Applicants may photocopy the forms to make completion easier.

A. Forms

1. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding support requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (Form B)

An application from a State or local court must include a copy of Form B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (Form C or C1)

Applicants may submit the proposed project budget either in the tabular format of Form C or in the spreadsheet format of Form C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested, as well as for the total length of the project.

In addition to Form C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VII.D.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

5. Disclosure of Lobbying Activities

This form requires applicants other than units of State or local government to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section X.D.)

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative for an application should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. Program Areas To Be Covered

The applicant should list the Special Interest Category or Categories that are addressed by the proposed project (see section II.B.). If the proposed project does not fall within one of the Institute's Special Interest Categories, the applicant should list the Statutory Program Area or Areas that are addressed by the proposed project. (See section II.A.)

3. Need for the Project

If the project is to be conducted in a specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing materials, programs, procedures, services, or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. Tasks, Methods and Evaluation

a. Tasks and Methods. The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

i. For research and evaluation projects, the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

ii. For education and training projects, the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who will attend them; the materials to be provided and how they will be developed; and the cost to participants.

iii. For demonstration projects, the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; and how the program or procedures will be implemented and monitored.

iv. For technical assistance projects, the applicant should explain the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

b. Evaluation. Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide on-going or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

i. Research. An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

ii. Education and Training. The most valuable approaches to evaluating educational or training programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent

observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

iii. Demonstration. The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., How well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., Was the program implemented as designed? Did it provide the services intended to the targeted population?); the impact of the program (e.g., What effect did the program have on the court? What benefits resulted from the program?); and the replicability of the program or components of the program.

iv. Technical Assistance. For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

v. Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

5. Project Management

The applicant should present a detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

6. Products

The application should contain a description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they will be submitted to the Institute.

a. Dissemination Plan. The application must explain how and to whom the products will be disseminated; describe how they will benefit the State courts, including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large (i.e., whether products will be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). (See section X.V.) Ordinarily, applicants should schedule all product preparation and distribution activities within the project period. Applicants also must submit a diskette containing a one page abstract summarizing the products resulting from a project in Word, WordPerfect, or ASCII. The abstract should include the grant number and the name of a contact person together with that individual's address, telephone number, and e-mail address (if applicable).

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix II.) To facilitate their use, all videotaped products should be distributed in VHS format.

Twenty copies of all project products must be submitted to the Institute. A master copy of each videotape, in addition to 20 copies of each videotape product, must also be provided to the Institute.

b. Types of Products. The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they will make their data available for secondary analysis after the grant period. (See section X.W.)

The curricula and other products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

c. Institute Review. Applicants must provide for submitting a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD-ROM format, applicants must provide for incremental Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute.

d. Acknowledgment, Disclaimer, and Logo. Applicants must also provide for including in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

8. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for the financial management and financial reporting for the proposed project.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

10. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. In order to ensure that there is sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received no more than 30 days after the deadline for mailing the application.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to pay for coffee breaks during seminars or meetings, or to purchase alcoholic beverages.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant will perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e.g., number of days × the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section XI.H.2.c. Honorarium payments must be justified in the same manner as other consultant payments. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant at a rate in excess of $900 per day.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

5. Equipment

Grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.H.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities), the applicant should specify that these costs are not included within their approved indirect cost rate. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services, or materials actually contributed will be documented sufficiently clearly to permit them to be included in an audit of the grant. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match.

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.F., VIII.B., X.B. and XI.D.1.)

E. Submission Requirements

1. Every applicant must submit one set of the application forms with an original signature on Form A and on Form B, if the application is from a State or local court, or on the Disclosure of Lobbying Form if the applicant is not a unit of State or local government. Applicants may send four photocopies of the Program Narrative, Budget Forms (Form C or C–1), Budget Narrative and any appendices; a diskette with this material in Microsoft Word or ASCII format; or transmit the material to the Institute via E-mail. Applicants may not send a portion of the application material in written form (other than the application forms themselves) and a portion in electronic form, or a portion on diskette and a portion via E-mail.

All invited applications based on concept papers submitted by November 24, 1997, must be mailed, sent by courier, or E-Mailed no later than May 8, 1998. All invited applications based on concept papers addressing the topics with a special submission deadline of March 12, 1998, must be mailed, sent by courier, or E-mailed no later than June 18, 1998.

A postmark or courier receipt will constitute evidence of the submission date. Please mark Application on all application package envelopes and send to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

The Institute's E-Mail address is: SJI@clark.net

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted. See section VII.C.11. for receipt deadlines for letters of support.

2. Applicants submitting more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The demonstration of need for the project;

c. The appropriateness of the proposed evaluation design;

d. The applicant's management plan and organizational capabilities;

e. The qualifications of the project's staff;

f. The products and benefits resulting from the project including the extent to which the project will have long-term benefits for State courts across the nation;

g. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

h. The reasonableness of the proposed budget;

i. The demonstration of cooperation and support of other agencies that may be affected by the project; and

j. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.

2. In determining which applicants to fund, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(6) (as amended) and Section IV above); the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a proposal based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding as described below—"continuation grants" and "on-going support grants." The award of an initial grant to support a project does not constitute a commitment by the Institute to renew funding. The Board of Directors anticipates allocating no more than 25% of available FY 1998 grant funds for renewal grants.

A. Continuation Grants

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

2. Application Procedures—Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, a disclosure of lobbying form (from applicants other than units of State or local government), and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should include:

a. Project Objectives. The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. Need for Continuation. The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the original goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

c. Report of Current Project Activities. The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

d. Evaluation Findings. The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if they are available, and how they will be addressed during the proposed continuation. If the findings are not yet available, applicants should provide the date by which they will be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. Tasks, Methods, Staff and Grantee Capability. The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products will be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

f. Task Schedule. The applicant should present a detailed task schedule and timeline for the next project period.

g. Other Sources of Support. The applicant should indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. In addition, the applicant should estimate the amount of grant funds that will remain unobligated at the end of the current grant period.

5. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-Going Support Grants

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing critical need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2. and V.D.2. The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing critical need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the 3-year project period. In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also section IX.B.3.h.)

2. Letters of Intent

In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. Description of Need for and Benefits of the Project. The applicant should provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. Demonstration of Court Support. The applicant should demonstrate support for the continuation of the project from the courts community.

c. Report on Current Project Activities. The applicant should discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why.

d. Evaluation Findings. The applicant should attach a copy of the final evaluation report regarding the effectiveness, impact, and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period. Ordinarily, the Board will not consider an application for on-going support until the Institute has received the evaluator's report.

e. Objectives, Tasks, Methods, Staff and Grantee Capability. The applicant should describe fully any changes in the objectives; tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity. The grantee also should describe the steps it will take to obtain support from other sources for the continued operation of the project.

f. Task Schedule. The applicant should present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. Other Sources of Support. The applicant should describe what efforts it has taken to secure support for the project from other sources and discuss why other sources of support are inadequate, inappropriate, or unavailable.

4. Budget and Budget Narrative

The applicant should provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D., and estimate the amount of grant funds that will remain unobligated at the end of the current grant period. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for the full project as well as for each year, or portion of a year, for which grant support is requested. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an on-going support grant in the absence of well-documented, unanticipated factors that clearly justify the requested increase.

5. References to Previously Submitted Material

An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4). Appendix I to this Guideline lists the person to contact in each State regarding the administration of Institute grants to State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants that provide a cash match to the Institute's award. (For a further definition of match, see section III.F.)

The requirement to provide match may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State and approval by the Board of Directors. 42 U.S.C. 10705(d).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see sections VIII.B. above and XI.D.).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant,

advocated a position before Congress on the specific subject matter of the application.

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

H. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

I. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

J. Human Research Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

K. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

L. Reporting Requirements

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b.iii., shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this Guideline. A final project progress report and financial status report shall be submitted within 90 days after the end of the grant period in accordance with section XI.K.2. of this Guideline.

M. Audit

Recipients, other than those noted below, must provide for an annual fiscal audit which shall include an opinion on whether the financial statements of the grantee present fairly its financial position and financial operations are in accordance with generally accepted accounting principles. (See section XI.J. of the Guideline for the requirements of such audits.) Recipients of a scholarship, curriculum adaptation, or technical assistance grant are not required to submit an audit, but must maintain appropriate documentation to support all expenditures.

N. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

O. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

P. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

Q. Acknowledgment and Disclaimer

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

Recipients also shall display the following disclaimer on all grant products:

This [document, film, videotape, etc.] was developed under [grant/cooperative agreement, number SJI-(insert number)] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

R. Institute Approval of Grant Products

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. These drafts shall be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes agreed upon by the grantee and the Institute. Grantees shall provide for timely reviews by the Institute of videotape or CD-ROM products at the treatment, script, rough cut, and final stages of development or their equivalents, prior to initiating the next stage of product development.

S. Distribution of Grant Products

In addition to the distribution specified in the grant application, grantees shall send:

1. Twenty copies of each final product developed with grant funds to the Institute, unless the product was developed under either a curriculum adaptation or a technical assistance grant, in which case submission of 2 copies is required.

2. A mastercopy of each videotape produced with grant funds to the Institute.

3. A one-page abstract to the Institute summarizing the products produced during the project for posting on the Internet together with a diskette containing the abstract in Word, WordPerfect, or ASCII. The abstract should include the grant number, a contact name, address, telephone numbers, and e-mail address (if applicable).

4. One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix II. Labels for these libraries are available from the Institute upon request.) Recipients of curriculum adaptation and technical assistance grants are not required to submit final products to State libraries.

T. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

U. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

V. Charges for Grant-Related Products/Recovery of Costs

When Institute funds fully cover the cost of developing, producing, and disseminating a product, (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

Applicants should disclose their intent to sell grant-related products in both the concept paper and the application. Grantees must obtain the written, prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25.00, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.F. and XI.F. for requirements regarding project-related income realized during the project period.

W. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

X. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position

must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors, and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained from OMB by calling 202–395–7250.)

a. Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions.

b. Office of Management and Budget (OMB) Circular A–87, Cost Principles for State and Local Governments.

c. Office of Management and Budget (OMB) Circular A–88 (revised), Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. Office of Management and Budget (OMB) Circular A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. Office of Management and Budget (OMB) Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. Office of Management and Budget (OMB) Circular A–128, Audits of State and Local Governments.

g. Office of Management and Budget (OMB) Circular A–122, Cost Principles for Non-profit Organizations.

h. Office of Management and Budget (OMB) Circular A–133, Audits of Institutions of Higher Education and Other Non-profit Institutions.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. These responsibilities include:

a. Reviewing Financial Operations. The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. Recording Financial Activities. The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court or evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. Budgeting and Budget Review. The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. Accounting for Non-Institute Contributions. The State Supreme Court or its designee will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of the Guideline are applied to such funds.

e. Audit Requirement. The State Supreme Court or its designee is required to ensure that subgrantees have met the necessary audit requirements set forth by the Institute (see sections X.M. and XI.J).

f. Reporting Irregularities. The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated during the award period, except that, with the prior written permission of the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Metch

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute. (See section XI.G.2.) The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

When grant funds fully cover the cost of producing and disseminating a limited number of copies of a product, the grantee may, with the written prior approval of the Institute, sell additional copies reproduced at its expense only at a price intended to recover actual reproduction and distribution costs that were not covered by Institute grant funds or grantee matching contributions to the project. When grant funds only partially cover the costs of developing, producing and disseminating a product, the grantee may, with the written prior approval of the Institute, recover costs for developing, reproducing, and disseminating the material to the extent that those costs were not covered by Institute grant funds or grantee matching contributions. If the grantee recovers its costs in this manner, then amounts expended by the grantee to develop, produce, and disseminate the material may not be considered match.

If the sale of products occurs during the project period, the costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in

the concept paper and application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section X.V.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. Request for Advance or Reimbursement of Funds. Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. Continuation and On-Going Support Awards. For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should treat each grant as a new project and number their requests accordingly (i.e. on a grant rather than a project basis). For example, the first request for payment from a continuation grant or each year of an on-going support would be number 1, the second number 2, etc. (See Recommendations to Grantees in the Introduction for further guidance.)

c. Termination of Advance and Reimbursement Funding. When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected.

d. Principle of Minimum Cash on Hand. Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

a. General Requirements. In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Three copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.iii., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

b. Additional Requirements for Renewal Grants. Grantees receiving a continuation or on-going support grant should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant or each year of an on-going support award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance With Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension or termination of grant payments.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in OMB Circulars A–87, Cost Principles for State and Local Governments; A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and A–122, Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period. Copies of these circulars may be obtained from OMB by calling (202) 395–7250.

2. Costs Requiring Prior Approval

a. Pre-agreement Costs. The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. Equipment. Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. Consultants. The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant at a rate in excess of $900 per day. Ordinarily, attorneys in private practice are expected to provide consulting services to court improvement or education projects on a pro bono basis.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. Approved Plan Available. i. The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

ii. Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

iii. Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiated agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. Establishment of Indirect Cost Rates. In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular. Copies of OMB Circulars may be obtained directly from OMB by calling (202) 395–7250.

c. No Approved Plan. If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute adopts the standards set forth in Attachment O of OMB Circular A–102. Institutions of higher education, hospitals; other non-profit organizations will be governed by the standards set forth in Attachment O of OMB Circular A–110.

2. Property Management Standards

The property management standards as prescribed in Attachment N of OMB Circulars A–102 and A–110 shall be applicable to all grantees and subgrantees of Institute funds except as provided in section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

J. Audit Requirements

1. Implementation

Each recipient of a grant from the Institute other than a scholarship, curriculum adaptation, or technical assistance grant (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 as amended and OMB Circular A–133 will satisfy the requirement for an annual fiscal audit. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (See section XI.K.3), the following documents must be submitted to the Institute by the grantee other than a recipient of a scholarship under section II.B.2.b.iii. These reporting requirements apply at the conclusion of any non-scholarship grant, even when the project will receive renewal funding through a continuation or on-going support grant.

a. Financial Status Report. The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. Final Progress Report. This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved

application or an approved adjustment thereto have been met and, if any of the objectives have not been met, explain the reasons therefor; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

3. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the Grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed five percent of the approved original budget or the most recently approved revised budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

For continuation and on-going support grants, funds from the original award may be used during the renewal grant period and funds awarded by a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.X.).

8. A change in or temporary absence of the person responsible for the financial management and financial reporting for the grant.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see section XII.H.).

11. A transfer of the grant to another recipient.

12. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

13. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify their SJI Program Manager, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI Program Manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

David A. Brock, Co-Chairman, Chief Justice, Supreme Court of New Hampshire, Concord, NH
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David I. Tevelin, Executive Director (ex officio)

David I. Tevelin,

Executive Director.

Appendix I—List of Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Frank Gregory, Administrative Director, Administrative Office of the Courts, 300 Dexter Avenue, Montgomery, AL 36130, (205) 834–7990
Ms. Stephanie J. Cole, Administrative Director, Alaska Court System, 303 K Street, Anchorage, AK 99501, (907) 264–0547
Mr. David K. Byers, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, AZ 85007–3330, (602) 542–9301
Mr. James D. Gingerich, Director, Administrative Office of the Courts, 625 Marshall, Little Rock, AR 72201, (501) 682–9400
Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, CA 94107, (415) 396–9115
Mr. Steven V. Berson, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, CO 80203–2416, (303) 861–1111, ext. 585
Honorable Aaron Ment, Chief Court Administrator, Supreme Court of Connecticut, 231 Capitol Avenue, Drawer N, Station A, Hartford, CT 06106, (860) 566–4461
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, (302) 577–2480
Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700
Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, FL 32399–1900, (904) 922–5081
Mr. Robert L. Doss, Jr., Director, Administrative Office of the Georgia Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 500, Atlanta, GA 30334–5900, (404) 656–5171
Administrative Director, Superior Court of Guam, Judiciary Building, 120 West O'Brien Drive, Agana, Guam 96910, 011 (671) 475–3544
Mr. Michael F. Broderick, Administrative Director of the Courts, 417 S. King Street, Room 206, Honolulu, HI 96813, (808) 539–4900
Ms. Patricia Tobias, Administrative Director of the Courts, Idaho Supreme Court, 451 West State Street, Boise, ID 83720–0101, (208) 334–2246
Honorable Joseph A. Schillaci, Administrative Director of the Courts, 222 N. LaSalle Street, 13th Floor, Chicago, IL 60601, (312) 793–8191
Ms. Lilia G. Judson, Acting Executive Director, Supreme Court of Indiana, 115 W. Washington, Suite 1080, Indianapolis, IN 46204–3417, (317) 232–2542
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, IA 50319, (515) 281–5241
Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, KS 66612, (913) 296–4873
Mr. Paul F. Isaacs, Administrative Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, KY 40601–9230, (502) 573–2350
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, LA 70112, (504) 568–5747
Mr. James T. Glessner, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, ME 04112–4820, (207) 822–0792
Mr. George B. Riggin, Jr., State Court Administrator, Administrative Office of the Courts, Courts of Appeal Bldg., 361 Rowe Boulevard, Annapolis, MD 21401, (410) 974–2141
Honorable John J. Irwin, Jr., Chief Justice for Administration and Management, The Trial Court, Administrative Office of the Trial Court, Two Center Plaza, Suite 540, Boston, MA 02108, (617) 742–8575
Mr. John D. Ferry, Jr., State Court Administrator, Michigan Supreme Court, 309 N. Washington Square, P.O. Box 30048, Lansing, MI 48909, (517) 373–0130
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, MN 55155, (617) 296–2474
Mr. Richard Patt, Acting Director, Administrative Office of the Courts, Supreme Court of Mississippi, P.O. Box 117, Jackson, MS 39205, (601) 354–7408
Mr. Ron Larkin, State Court Administrator, Supreme Court of Missouri, P.O. Box 104480, Jefferson City, MO 65110, (314) 751–3585
Mr. Patrick A. Chenovick, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, MT 59620–3001, (406) 444–2621
Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, NE 68509, (404) 471–3730
Ms. Georgia J. Rohrs, Acting State Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, NV 89710, (702) 687–5076
Mr. Donald Goodnow, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, NH 03301, (603) 271–2521
Mr. James J. Ciancia, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, NJ 08625, (609) 984–0275,
Honorable Jonathan Lippman, Chief Administrative Judge, Office of Court Administration, 270 Broadway, New York, NY 10007, (212) 417–2007
Mr. John M. Greacen, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Santa Fe, NM 87503, (505) 827–4800
Mr. Dallas A. Cameron, Jr., Administrative Director, Administrative Office of the Courts, P.O. Box 2448, Raleigh, NC 27602, (919) 733–7107
Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, ND 58505, (701) 328–4216
Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, OH 43266–0419, (614) 466–2653
Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521–2450
Ms. Kingsley Click, State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, OR 97310, (503) 986–5900
Ms. Nancy M. Sobolevitch, Court Administrator, Supreme Court of Pennsylvania 1515 Market Street, Suite 1414, Philadelphia, PA 19102, (215) 560–6337
Dr. Robert C. Harrall, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, RI 02903, (401) 277–3263
Mr. George A. Markert, Director, South Carolina Court Administration, P.O. Box 50447, Columbia, SC 29250, (803) 734–1800
Mr. Michael L. Buenger, State Court Administrator, Unified Judicial System, 500 East Capitol Avenue, Pierre, SD 57501, (605) 773–3474

Mr. Charles E. Ferrell, Administrative Director of the Courts, Nashville City Center, Suite 600, 511 Union Street, Nashville, TN 37243–0607, (615) 741–2687
Mr. Jerry L. Benedict, Administrative Director, Office of Court Administration of the Texas Judicial System, 205 West 14th Street, Suite 600, Austin, TX 78701, (512) 463–1825
Mr. Daniel Becker, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, UT 84102, (801) 578–3800
Mr. Lee Suskin, Court Administrator, Supreme Court of Vermont, 109 State Street, Montpelier, VT 05602, (802) 828–3278
Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, P.O. Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248
Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, 3rd Floor, Richmond, VA 23219, (804) 786–6455
Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, P.O. Box 41174, Olympia, WA 98504, (360) 357–2121
Mr. Ted J. Philyaw, Administrative Director of the Courts, E–400, State Capitol Bldg., 1900 Kanawha Blvd., East Charleston, WV 25305, (304) 558–0145
Mr. J. Denis Moran, Director of State Courts, P.O. Box 1688, Madison, WI 53701–1688, (608) 266–6828
Mr. Allen C. Johnson, Court Administrator, Supreme Court of Wyoming, Supreme Court Building, Cheyenne, WY 82002, (307) 777–7480

Appendix II—SJI Libraries Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. William C. Younger, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, AL 36130, (205) 242–4347

Alaska

Anchorage Law Library

Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, AL 99501, (907) 264–0583

Arizona

State Law Library

Ms. Arlene Bansal, Collection Development, Research Division, Arizona Dept. of Library, Archives and Public Records, State Law Library, 1501 W. Washington, Phoenix, AZ 85007, (602) 542–4035

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, AR 72201–1078, (501) 376–6655

California

Administrative Office of the Courts

Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, CA 94107, (415) 396–9100

Colorado

Supreme Court Library

Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, CO 80203, (303) 837–3720

Connecticut

State Library

Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, CT 06106, (860) 566–4301

Deloware

Administrative Office of the Courts

Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, DE 19801, (302) 571–2480

District of Columbia

Executive Office, District of Columbia Courts

Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001 (202) 879–1700

Florida

Administrative Office of the Courts

Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, FL 32399–1900, (904) 488–8621

Georgia

Administrative Office of the Courts

Mr. Robert Doss, Jr., Administrative Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington St., S.W., Suite 550, Atlanta, GA 30334–5900, (404) 656–5171

Hawaii

Supreme Court Library

Ms. Ann Koto, State Law Librarian, The Supreme Court Law Library, Judiciary Building, P.O. Box 2560, Honolulu, HI 96804, (808) 548–4605

Idaho

AOC Judicial Education Library/State Law Library

Ms. Laura Pershing, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State St., Boise, ID 83720, (208) 334–3316

Illinois

Supreme Court Library

Ms. Brenda Larison, Supreme Court Library, Supreme Court Building, Springfield, IL 62701–1791, (217) 782–2424

Indiana

Supreme Court Library

Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, IN 46204, (317) 232–2557

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty, Executive Director, Judicial, Education & Planning, Administrative Office of the Courts, State Capital Building, Des Moines, IA 50319, (515) 281–8279

Kansas

Supreme Court Library

Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, KS 66614, (913) 296–3257

Kentucky

State Law Library

Ms. Sallie Howard, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, KY 40601, (502) 564–4848

Louisiana

State Law Library

Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, LA 70112, (504) 568–5705

Maine

State Law and Legislative Reference Library

Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, ME 04333, (207) 289–1600

Maryland

State Law Library

Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, MD 21401, (301) 974–3395

Massachusetts

Middlesex Law Library

Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, MA 02141, (617) 494–4148

Michigan

Michigan Judicial Institute

Mr. Leonard Kowalski, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, MI 48909, (517) 334–7804

Minnesota

State Law Library (Minnesota Judicial Center)

Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, MN 55155, (612) 297–2084

Mississippi

Mississippi Judicial College

Leslie Johnson, Director, University of Mississippi, P.O. Box 8850, University, MS 38677, (601) 982–6590

Montana

State Law Library

Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, 215 North Sanders, Helena, MT 59620, (406) 444–3660

Nebraska

Administrative Office of the Courts

Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, Administrative Office of the Courts, P.O. Box 98910, Lincoln, NE 68509–8910, (402) 471–3730

Nevada

National Judicial College

Honorable V. Robert Payant, President, National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89550, (702) 784–6747

New Jersey

New Jersey State Library

Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, NJ 08625, (609) 292–6230

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, NM 87504, (505) 827–4850

New York

Supreme Court Library

Susan M. Wood, Esq., Principal Law Librarian, New York State Supreme, Court Law Library, Onondaga County Court House, Syracuse, NY 13202, (315) 435–2063

North Carolina

Supreme Court Library

Ms. Louise Stafford, Librarian, North Carolina Supreme, Court Library, P.O. Box 28006, 2 East Morgan Street, Raleigh, NC 27601, (919) 733–3425

North Dakota

Supreme Court Library

Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, ND 58505–0530, (701) 224–2229

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands

Honorable Marty W.K. Taylor, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950, (670) 234–5275

Ohio

Supreme Court Library

Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, OH 43266–0419, (614) 466–2044

Oklahoma

Administrative Office of the Courts

Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521–2450

Oregon

Administrative Office of the Courts

Ms. Kingsley Click, State Court Administrator, Supreme Court of Oregon, Supreme Court Building, 1163 State Street, Salem, OR 97310, (503) 378–6046

Pennsylvania

State Library of Pennsylvania

Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G46 Forum Building, Harrisburg, PA 17105, (717) 787–4440

Puerto Rico

Office of Court Administration

Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, PR 00919

Rhode Island

Roger Williams Law School Library

Mr. Kendall Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, RI, (401) 254–4546

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Bruce S. Johnson, Law Librarian, Associate Professor of Law, Coleman Karesh Law Library, U. S. C. Law Center, University of South Carolina, Columbia, SC 29208, (803) 777–5944

Tennessee

Tennessee State Law Library

Ms. Donna C. Wair, Librarian, Tennessee State Law Library, Supreme Court Building, 401 Seventh Avenue N, Nashville, TN 37243–0609, (615) 741–2016

Texas

State Law Library

Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, TX 78711, (512) 463–1722

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804

Utah

Utah State Judicial Administration Library

Ms. Debbie Christiansen, Utah State Judicial, Administration Library, 230 South 500 East, Suite 300, Salt Lake City, UT 84102, (801) 533–6371

Vermont

Supreme Court of Vermont

Mr. Lee Suskin, Court Administrator, Supreme Court of Vermont, 109 State Street, c/o Pavilion Office Building, Montpelier, VT 05609, (802) 828–3278

Virginia

Administrative Office of the Courts

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, VA 23219, (804) 786–6455

Washington

Washington State Law Library

Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, P.O. Box 40751, Olympia, WA 98504–0751, (206) 357–2146

West Virginia

Administrative Office of the Courts
Mr. Richard H. Rosswurm, Chief Deputy, West Virginia Supreme Court of Appeals, State Capitol, 1900 Kanawha, Charleston, WV 25305, (304) 348–0145

Wisconsin

State Law Library, Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, WI 53707, (608) 266–1424

Wyoming

Wyoming State Law Library

Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, WY 82002, (307) 777–7509

National

American Judicature Society

Ms. Clara Wells, Assistant for Information and Library Services, 25 East Washington Street, Suite 1600, Chicago, IL 60602, (312) 558–6900

National Center for State Courts

Ms. Peggy Rogers, Acquisitions/Serials Librarian, 300 Newport Avenue, Williamsburg, VA 23187–8798, (804) 253–2000

Jeritt

Ms. Jennae Rozeboom, Project Director, Judicial Education Reference, Information and Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, MI 48824, (517) 353–8603

Appendix III—Illustrative List of Model Curricula

The following list includes examples of curricula that have been developed with support from SJI, that might be—or in some cases have been—successfully adapted for State-based education programs for judges and other court personnel. *Please refer to Section II.B.2.b.ii for information on submitting a letter application for a Curriculum Adaptation Grant.* A list of all SJI-supported education projects is available from the Institute, and on the SJI website —www.clark.net/pub/sji/. Please also check

with the JERITT project (517/353–8603) and with your State SJI-designated library (see Appendix II) for information on other curricula that may be appropriate for your State's needs.

Alternative Dispute Resolution

Judicial Settlement Manual" from "Judicial Settlement: Development of a New Course Module, Film, and Instructional Manual" (National Judicial College: SJI–89–089)
Improving the Quality of Dispute Resolution" (Ohio State University College of Law: SJI–93–277)
"Comprehensive ADR Curriculum for Judges" (American Bar Association: SJI–95–002)
"Domestic Violence and Custody Mediation" (American Bar Association: SJI–96–038)

Court Coordination

"Adjudication of Farm Credit Issues" (Rural Justice Center: SJI–87–059)
Bankruptcy Issues for State Trial Court Judges" (American Bankruptcy Institute: SJI–91–027)
"Intermediate Sanctions Handbook: Experiences and Tools for Policymakers" (Center for Effective Public Policy: IAA–88–NIC–001)
"Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships" (U.S. Court of Appeals for the 9th Circuit: SJI–92–087)

Court Management

"Managing Trials Effectively: A Program for State Trial Judges" (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026)
"Caseflow Management Principles and Practices" (Institute for Court Management/ National Center for State Courts: SJI–87–056)
"Judicial Education Curriculum: Teaching Guides on Court Security, and Jury Management and Impanelment" (Institute for Court Management/National Center for State Courts: SJI–88–053)
"A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts" (National Center for State Courts: SJI–90–052)
"Managerial Budgeting in the Courts"; "Performance Appraisal in the Courts"; "Managing Change in the Courts"; "Court Automation Design," "Case Management for Trial Judges"; "Trial Court Performance Standards" (Institute for Court Management/National Center for State Courts: SJI–91–043)
"Implementing the Court-Related Needs of Older Persons and Persons with Disabilities" (National Judicial College: SJI–91–054)
"Strengthening Rural Courts of Limited Jurisdiction" and "Team Training for Judges and Clerks" (Rural Justice Center: SJI–90–014, SJI–91–082)
"Interbranch Relations Workshop" (Ohio Judicial Conference: SJI–92–079)
"Integrating Trial Management and Caseflow Management" (Justice Management Institute: SJI–93–214)
"Leading Organizational Change" (California Administrative Office of the Courts: SJI–94–068)
"Managing the Complex Case"; "Privacy Issues in Computerized Record Keeping" (National Judicial College: SJI–94–142)
"Employment Responsibilities of State Court Judges" (National Judicial College: SJI–95–025)
"Dealing with the Common Law Courts: A Model Curruculum for Judges and Court Staff" (Institute for Court Management/ National Center for State Courts: SJI–96–159)

Courts and Communities

"A National Program for Reporting on the Courts and the Law" (American Judicature Society: SJI–88–014)
"Victim Rights and the Judiciary: A Training and Implementation Project" (National "Organization for Victim Assistance: SJI–89–083)
"National Guardianship Monitoring Project: Trainer and Trainee's Manual" (American Association of Retired Persons: SJI–91–013)
"Access to Justice: The Impartial Jury and the Justice System" and "When Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide" (National Judicial College: SJI–91–054)
"You Are the Court System: A Focus on Customer Service" (Alaska Court System: SJI–94–048)
"Serving the Public: A Curriculum for Court Employees" (American Judicature Society: SJI–96–040)

Diversity, Values, and Attitudes

"Troubled Families, Troubled Judges" (Brandeis University: SJI–89–071)
"The Crucial Nature of Attitudes and Values in Judicial Education" (National Council of Juvenile and Family Court Judges: SJI–90–058)
"Enhancing Diversity in the Court and Community" (Institute for Court Management/National Center for State Courts: SJI–91–043)
"Cultural Diversity Awareness in Nebraska Courts" from "Native American Alternatives to Incarceration Project" (Nebraska Urban Indian Health Coalition: SJI–93–028)
"A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel" and "The Ethics Fieldbook: Tool For Trainers" (American Judicature Society: SJI–93–068)
"Court Interpreter Training Course for Spanish Interpreters' (International Institute of Buffalo: SJI–93–075)
"Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel" (Brandeis University: SJI–94–019)
"Race Fairness and Cultural Awareness Faculty Development Workshop" (National Judicial College: SJI–93–063)
"Indian Welfare Act"; "Defendants, Victims, and Witnesses with Mental Retardation" (National Judicial College: SJI–94–142)
"Multi-Cultural Training for Judges and Court Personnel" (St. Petersburg Junior College: SJI–95–006)
"Ethical Standards for Judicial Settlement: Developing a Judicial Education Module" (American Judicature Society: SJI–95–062)

Family Violence and Gender-Related Violence Crime

"National Judicial Response to Domestic Violence: Civil and Criminal Curricula" (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).
"Domestic Violence: A Curriculum for Rural Courts" from "A Project to Improve Access to Rural Courts for Victims of Domestic Violence" (Rural Justice Center: SJI–88–081)
"Judicial Training Materials on Spousal Support"; "Family Violence: Effective Judicial Intervention"; "Judicial Training Materials on Child Custody and Visitation" from "Enhancing Gender Fairness in the State Courts" (Women Judges' Fund for Justice: SJI–89–062)
"Judicial Response to Stranger and Nonstranger Rape and Sexual Assault" (National Judicial Education Program to Promote Equality for Women and Men: SJI–92–003)
"Domestic Violence & Children: Resolving Custody and Visitation Disputes" (Family Violence Prevention Fund: SJI–93–255)
"Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute" (National Judicial Education Program: SJI 95–019)
"Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff" (American Bar Association: SJI–93–274)

Health and Science

"Medicine, Ethics, and the Law: Preconception to Birth" (Women Judges Fund for Justice: SJI–89–062, SJI–91–019)
"Judicial Educator's Workshop Curriculum Guide: Implementing Medical Legal Training" from Medical Legal Issues in Juvenile and Family Courts (National Council for Juvenile and Family Court Judges: SJI–91–091)
"Environmental Law Resource Handbook" (University of New Mexico Institute for Public Law: SJI–92–162)

Judicial Education for Appellate Court Judges

"Career Writing Program for Appellate Judges" (American Academy of Judicial Education: SJI–88–086-P92–1)
"Civil and Criminal Procedural Innovations for Appellate Courts" (National Center for State Courts: SJI–94–002)

Judicial Education Program and Faculty Development

"The Leadership Institute in Judicial Education" and "The Advanced Leadership Institute in Judicial Education" (University of Memphis: SJI–91–021)
"Faculty Development Instructional Program" from "Curriculum Review" (National Judicial College: SJI–91–039)

Orientation and Mentoring of Judges and Court Personnel

"Manual for Judicial Writing Workshop for Trial Judges" (University of Georgia/ Colorado Judicial Department: SJI–87–018/019)
"Legal Institute for Special and Limited Jurisdiction Judges" (National Judicial College: SJI–89–043, SJI–91–040)
"Pre-Bench Training for New Judges" (American Judicature Society: SJI–90–026)
A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts" (Arizona Supreme Court: SJI–90–078)
"Court Organization and Structure" (Institute for Court Management/National Center for State Courts: SJI–91–043)
"Judicial Review of Administrative Agency Decisions" (National Judicial College: SJI–91–080)
"New Employee Orientation Facilitators Guide" from "The Minnesota Comprehensive Curriculum Design and Training Program for Court Personnel" (Minnesota Supreme Court: SJI–92–155)
"Magistrates Correspondence Course" (Alaska Court System: SJI–92–156)
"Computer-Assisted Instruction for Court Employes" (Utah Administrative Office of the Courts: SJI–94–012)
"Bench Trial Skills and Demeanor: An Interactive Manual" (National Judicial College: SJI 94–058)
"Ethical Issues in the Election of Judges' (National Judicial College: SJI–94–142)

Juveniles and Families in Court

"Innovative Juvenile and Family Court Training" (Youth Law Center: SJI–87–060, SJI–89–039)
"Fundamental Skills Training Curriculum for Juvenile Probation Officers" (National Council of Juvenile and Family Court Judges: SJI–90–017)
"Child Support Across State Lines: The Uniform Interstate Family Support Act" from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum." (ABA Center on Children and the Law: SJI 94–321)

Strategic and Futures Planning

"Minding the Courts into the Twentieth Century" (Michigan Judicial Institute: SJI–89–029)
"An Approach to Long-Range Strategic Planning in the Courts" (Center for Public Policy Studies: SJI–91–045)

Substance Abuse

"Effective Treatment for Drug-Involved Offenders: A Review & Synthesis for Judges and Court Personnel" (Education Development Center, Inc.: SJI–90–051)
"Good Times, Bad Times: Drugs, Youth, and the Judiciary" (Professional Development and Training Center, Inc.: SJI–91–095)
"Gaining Momentum: A Model Curriculum for Drug Courts" (Florida Office of the State Courts Administrator: SJI–94–291)
"Judicial Response to Substance Abuse: Children, Adolescents, and Families" (National Council of Juvenile and Family Court Judges: SJI–95–030)

Appendix IV-Illustrative List of Replicable Projects

The following list includes examples of projects undertaken with support from SJI/that might be—or in some cases have been—successfully adapted and replicated in other in other jurisdictions. *Please see Section II.C.1. for information on submitting a concept paper requesting a grant to replicate one of these or another SJI-supported project.* A list of all SJI-supported projects is available from the Institute and on the Institute's website —www.clark.net/pub/sji.

Alternative Dispute Resolution

Computerized Citizen Intake and Referral Service

Grantee: District of Columbia Courts
Contact: Charles Bethell, 500 Indiana Avenue, N.W., Washington, DC 20001, (202) 879–1479
Grant No: SJI–93–211

Application of Technology

File Transfer Technology Application in Use of Court Information

Grantee: South Carolina Bar
Contact: Yvonne Visser, 950 Taylor Street, P.O. Box 608, Columbia, SC 29202–0608, (803) 799–6653
Grant Nos: SJI–91–088; SJI–91–088–P93–1; SJI–91–088–P94–1

Managing Documents with Imaging Technology

Grantee: Alaska Judicial Council
Contact: William T. Cotton, 1029 W. Third Avenue, Suite 201, Anchorage, AK 99501–1917, (907) 279–2526
Grant No: SJI–92–083

Automated Teller Machines for Juror Payment

Grantee: District of Columbia Courts
Contact: Philip Braxton 500, Indiana Avenue, N.W., Washington, DC 20001, (202) 879–1700,
Grant No: SJI–92–139

Children and Families in Court

A Day in Court: A Child's Perspective

Grantee: Massachusetts Trial Court
Contact: Hon. John Irwin, 2 Center Plaza, Boston, MA 02108, (617) 742–8575,
Grant No: SJI–91–079

Parent Education and Custody Effectiveness (PEACE) Program

Grantee: Hofstra University
Contact: Andrew Shephard, 1000 Fulton Avenue, Hampstead, NY 11550–1090, (516) 463–5890
Grant No: SJI–93–265

Court Management and Planning

Measurement of Trial Court Performance

Grantee: Washington Administrative Office for the Courts
Contact: Yvonne Pettus, 1206 S. Quince Street, Olympia, WA 98504
Grant No: SJI–91–017; SJI–91–017–P92–1

Measurement of Trial Court Performance

Grantee: New Jersey Administrative Office of the Courts
Contact: Theodore J. Fetter, CN–037, RJH Justice Complex, Trenton, NJ 08625
Grant No: SJI–91–023; SJI–91–023–P93–1

Measurement of Trial Court Performance

Grantee: Ohio Supreme Court,
Contact: Stephan W. Stover, State Office Tower, 30 East Broad Street, Columbus, OH 43266–0419
Grant No: SJI–91–024; SJI–91–024–P93–1

Measurement of Trial Court Performance

Grantee: Supreme Court of Virginia
Contact: Beatrice Monahan, 100 North Ninth Street Third Floor, Richmond, VA 23219, (804) 786–8455
Grant No: SJI–91–042; SJI–91–042–P93–1

Probate Caseflow Management Project

Grantee: Ohio Supreme Court/Trumball County Probate Court
Contact: Susan Lightbody, 160 High Street, N.W., Warren, OH 44481, (216) 675–2566
Grant No: SJI–92–081; SJI–92–081–P94–1; SJI–92–081–P95–1

Implementing Quality Methods in Court Operations

Grantee: Oregon Supreme Court
Contact: Scott Crampton, Supreme Court Building, Salem, OR 97310, (503) 378–5845
Grant No: SJI–92–170

Implementing Strategic Planning in the Trial Courts

Grantee: Center for Public Policy Studies
Contact: David Price, 999 18th Street, Suite 900, Denver, CO 80202, (303) 863–0900
Grant No: SJI–94–021

Courts and Communities

AARP Volunteers: A Resource for Strengthening Guardianship Services

Grantee: American Association of Retired Persons
Contact: Wayne Moore, 601 E Street, N.W., Washington, DC 20049, (202) 434–2165
Grant Nos: SJI–88–033 /SJI–91–013

Estsblishing a Consumer Research and Service Development Process Within the Judicial System

Grantee: Supreme Court of Virginia
Contact: Beatrice Monahan, Administrative Offices, Third Floor, 100 North Ninth Street, Richmond, VA 23219, (804) 786–6455
Grant No: SJI–89–068

Housing Court Video Project

Grantee: Association of the Bar of the City of New York
Contact: Marilyn Kneeland, 42 West 44th Street, New York, NY 10036–6690, (212) 382–6620
Grant No: SJI–90–041

Tele-Court: A Michigan Judicial System Public Information Program

Grantee: Michigan Supreme Court
Contact: Judy Bartell, State Court Administrative Office, 611 West Ottawa Street, P.O. Box 30048, Lansing, MI 48909, (517) 373–0130
Grant No: SJI–91–015

Arizona Pro Per Information System (QuickCourt)

Grantee: Arizona Supreme Court
Contact: Jeannie Lynch, Administrative Office of the Court, 1501 West Washington

Street, Suite 411, Phoenix, AZ 85007–3330, (602) 542–9554
Grant No: SJI–91–084

Automated Public Information System

Grantee: California Administrative Office of the Courts
Contact: Mark Greenia, Sacramento Superior and Municipal Court, 303 Second Street, South Tower, San Francisco, CA 94107, (916) 440–7590
Grant No: SJI–91–093

Using Judges and Court Personnel To Facilitate Access to Courts by Limited English Speakers

Grantee: Washington Office of the Administrator for the Courts
Contact: Joanne Moore, 1206 South Quince Street, P.O. Box 41170, Olympia, WA 98504–1170, (206) 753–3365
Grant No: SJI–92–147

Pro se Forms and Instructions Packets

Grantee: Michigan Supreme Court
Contact: Pamela Creighton, 611 W. Ottawa Street, Lansing, MI 48909
Grant No: SJI–94–003

Understanding the Judicial Process: A Curriculum and Community Service Program

Grantee: Drake University
Contact: Timothy Buzzell, Opperman Hall, Des Moines, IA 50311, (515) 271–3205
Grant No: SJI–94–022

Court Self-Service Center

Grantee: Maricopa County Superior Court
Contact: Bob James, 201 W. Jefferson, 4th Floor, Phoenix, AZ 85003, (602) 506–6314
Grant No: SJI–94–324

Sentencing

Court Probation Enhancement Through Community Involvement

Grantee: Volunteers in Prevention, Probation and Prisons, Inc.
Contact: Gerald Dash, 163 Madison, Suite 120, Detroit, MI 48226, (313) 964–1110
Grant No: SJI–91–073

Facilitating the Appropriate Use of Intermediate Sanctions

Grantee: Center for Effective Public Policy
Contact: Peggy McGarry, 8403 Colesville Road, Suite 720, (301) 589–9383
Grant No: SJI–95–078

Substance Abuse

Alabama Alcohol and Drug Abuse Court Referral Officer Program

Grantee: Alabama Administrative Office of the Courts
Contact: Angelo Trimble, 817 South Court Street, Montgomery, AL 36130–0101, (334) 834–7990
Grant Nos: SJI–88–030/SJI–89–080/SJI–90–005

Substance Abuse Assessment and Intervention to Reduce Driving Under the Influence of Alcohol Recidivism

Grantee: California Administrative Office of the Courts c/o El Cajon Municipal Court
Contact: Fred Lear, 250 E. Main Street, El Cajon, CA 92020, (619) 441–4336
Grant No: SJI–88–029/SJI–90–008

Court Referral Officer Program

Grantee: New Hampshire Supreme Court
Contact: Jim Kelley, Supreme Court Building, Concord, NH 03301, (603) 271–2521
Grant No: SJI–92–142

Appendix V

(Form S1)

State Justice Institute

Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

Applicant Information

1. Applicant Name:

(Last) (First) (M)

2. Position:

3. Name of Court:

4. Address:

Street/P.O. Box

City State Zip Code

5. Telephone No.

8. Congressional District:

Program Information

7. Course Name:

8. Course Dates:

9. Course Provider:

10. Location Offered:

Estimated Expenses: (Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition: $

Transportation: $
(Airfare,trainfare, or if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Amount Requested: $

State Justice Institute

1650 King Street, Suite 600 Alexandria, VA 22314

Additional Information: Please attach a current resume or professional summary, and answer the following questions. (You may attach additional pages if necessary.)

1. How will taking this course benefit you, your court, and the State's courts generally?

2. Is there any education or training currently available through your State on this topic?

3. How will you apply what you have learned? Please include any plans you may have to develop/teach a course on this topic in your jurisdiction/State, provide in-service training, or otherwise disseminate what you have learned to colleagues.

4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager?

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

Statement of Applicant's Commitment

If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

Signature

Date

Please return this form and Form S–2 to: State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314.

(Form S2)

State Justice Institute

Scholarship Application

Concurrence

I,
Name of Chief Justice (or Chief Justice's Designee)
have reviewed the application for a scholarship to attend the program entitled

prepared by
Name of Applicant
and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

Signature

Name

Title

Date

Appendix VI—Line-Item Budget Form

For Concept Papers, Curriculum Adaptation and Technical Assistance Grant Requests.

Category	SJI funds	Cash match	In-kind match
Personnel	$	$	$
Fringe Benefits	$	$	$

Category	SJI funds	Cash match	In-kind match
Consultant/Contractual	$	$	$
Travel	$	$	$
Equipment	$	$	$
Supplies	$	$	$
Telephone	$	$	$
Postage	$	$	$
Printing/Photocopying	$	$	$
Audit	$	$	$
Other	$	$	$
Indirect Costs (%)	$	$	$
Total	$	$	$

Project Total: $

Financial assistance has been or will be sought for this project from the following other sources:

* Concept papers requesting an acccelerated award, Curriculum Adaptation grant requests, and Technical Assistance grant requests should be accompanied by a budget narrative explaining the basis for each line-item listed in the proposed budget.

Appendix VII

State Justice Institute

Certificate of State Approval

The
Name of State Supreme Court or Designated Agency or Council
has reviewed the application entitled
prepared by
Name of Applicant
approves its submission to the State Justice Institute, and
[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.
[ ] designates

Name of Trial or Appellate Court or Agency
as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

Signature

Name

Title

Date

[FR Doc. 97–26111 Filed 10–2–97; 8:45 am]
BILLING CODE 6820–SC–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending September 26, 1997

Under the provisions of 49 U.S.C. 412 and 414. The following Agreements were filed with the Department of Transportation. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2924.
Date Filed: September 23, 1997.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Mail Vote 891, Fares from Swaziland, Intended effective date: October 13, 1997.

Docket Number: OST–97–2926.
Date Filed: September 23, 1997.
Parties: Members of the International Air Transport Association.
Subject: PTC1 0052 dated August 29, 1997, TC1 Caribbean Resolutions r1–15, PTC1 0054 dated August 29, 1997, TC1 Within South America Resolutions r16–29, Tables—PTC1 Fares 0019 dated August 29, 1997, Tables—PTC1 Fares 0020 dated August 29, 1997, (Minutes, contained in PTC1 0056 dated September 12, 1997, are filed separately this date with the U.S.-related portion of this agreement.), Intended effective date: January 1, 1998.

Docket Number: OST–96–2927.
Date Filed: September 23, 1997.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SASC 0022 dated September 5, 1997, Europe-South Asian Subcontinent Resos r1–18, Minutes—PTC23 EUR–SASC 0023 dated September 9, 1997, Tables—PTC23 EUR–SASC Fares 0008 dated September 19, 1997, Correction—PTC23 EUR–SASC 0024 dated September 16, 1997, Intended effective date: January 1, 1998.

Docket Number: OST–97–2929.
Date Filed: September 23, 1997.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0087 dated September 16, 1997 r1–7, PTC2 EUR 0088 dated September 16, 1997 r8, PTC2 EUR 0089 dated September 16, 1997 r9–16, PTC2 EUR 0090 dated September 16, 1997 r17–20, PTC2 EUR 0091 dated September 16, 1997 r21–25, PTC2 EUR 0092 dated September 16, 1997 r26–29, PTC2 EUR 0093 dated September 16, 1997 r30–33, PTC2 EUR 0094 dated September 16, 1997 r34–36, PTC2 EUR 0095 dated September 16, 1997 r37, PTC2 EUR 0096 dated September 16, 1997 r38–39, Within Europe Resos, Minutes—PTC2 EUR 0097 dated September 19, 1997, Minutes—PTC2–EUR 0098 dated September 19, 1997, Intended effective date: as early as October 15, 1997.

Docket Number: OST–97–2930.

Date Filed: September 23, 1997.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0053 dated August 29, 1997, TC1 Longhaul Resolutions r1–51, PTC1 0051 dated August 29, 1997, TC1 Areawide Resolutions r52–56, Minutes—PTC1 0056 dated September 12, 1997, Tables—PTC1 Fares 0021 dated September 12, 1997, Correction—PTC1 0055 dated September 9, 1997, Correction—PTC1 0057 dated September 16, 1997, Intended effective date: January 1, 1998.

Docket Number: OST–97–2928.

Date Filed: September 23, 1997.

Parties: Members of the International Air Transport Association.

Subject: PTC3 Telex Mail Vote 890, Korea-Japan fares r1–10, Intended effective date: October 1, 1997.

Docket Number: OST–97–2938.

Date Filed: September 25, 1997.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Reso 033f—Hungary, Local Currency Rate Changes—Cargo, Intended effective date: November 1, 1997.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–26332 Filed 10–2–97; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 26, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–258.
Date Filed: September 24, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 26, 1995.
Description: Application of Lynden Air Cargo LLC requests that its certificate of public convenience and necessity be reissued eliminating the Loken Aviation trade name.

Docket Number: OST–97–2936.
Date Filed: September 25, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 23, 1997.
Description: Application of WINAIR, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to authorize WINAIR to engage in foreign charter air transportation of persons, property and mail.

Docket Number: OST–97–2937.
Date Filed: September 25, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 23, 1997.
Description: Application of WINAIR, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, for a certificate of public convenience and necessity to authorize WINAIR to engage in interstate charter air transportation of persons, property and mail.

Docket Number: OST–97–2941.
Date Filed: September 25, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 23, 1997.
Description: Application of Planet Airways, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in Foreign Charter Air Transportation, of persons, property and mail.

Docket Number: OST–97–2940.
Date Filed: September 25, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 23, 1997.
Description: Application of Planet Airways, Inc., pursuant to 49 U.S.C. 41102, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in interstate charter air transportation of persons, property and mail.

Paulette V. Twine,
Documentary Services.

[FR Doc. 97–26333 Filed 10–2–97; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Extension of Comment Period and Additional Public Hearings

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of extension of comment period and additional public hearings.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4332(2)(C), the FAA is preparing an Environmental Impact Statement (EIS) for terminal Doppler weather radar to serve John F. Kennedy International and LaGuardia Airports. The Draft EIS document was distributed in August 1997. Written requests for the Draft EIS and written comments on the Draft EIS should be submitted as follows: Federal Aviation Administration, Office of the Chief Counsel, Attention: Docket (AGC–200) Docket No. 28365, 800 independence Avenue, SW, Washington, DC 20591. The comment period has been extended; comments on the Draft EIS will be accepted until November 21, 1997. Additional public hearings will be held Wednesday, November 5, 1997, and Thursday, November 6, 1997.

DATES: The comment period is extended until November 21, 1997. Two additional public meetings will be held; one on November 5, 1997, PS 114—The Belle Harbor School, Belle Harbor, NY; and one on November 6, 1997, PS 236—The Mill Basin School, Brooklyn, NY. For both meetings there will be exhibits and sign-in at 6:30 p.m.; a brief presentation followed by public comments on the Draft EIS will begin at 7:00 p.m.

ADDRESSES: Written comments may be submitted as follows: Federal Aviation Administration, Office of the Chief Counsel, Attention: Docket (AGC–200) Docket No. 28365, 800 independence Avenue, Washington, DC 20591. The meeting locations are:

1. November 5, 1997, PS 114—The Belle Harbor School, 400 Beach 135th, Belle Harbor, NY 11694.
2. November 6, 1997, PS 236—The Mill Basin School, 6302 Avenue U, Brooklyn, NY 11234.

FOR FURTHER INFORMATION CONTACT: Jerome D. Schwartz, Federal Aviation Administration, Environmental Specialist, Wind Shear Products Team, AND–420, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9841.

Issued in Washington, DC on September 30, 1997.

James Link,
Deputy Leader, Integrated Product Team for Surveillance, AND–400.

[FR Doc. 97–26326 Filed 10–2–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplement to the Environmental Impact Statement: Gibson, Daviess, Greene, Monroe, Pike, Warrick Counties

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplement to the Draft Environmental Impact Statement for the proposed Southwest Indiana Highway Corridor will be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas N. Head, Program Operations Engineer, Federal Highway Administration, 575 N. Pennsylvania Street, Room 254, Indianapolis, Indiana 46204, Telephone: (317) 226–7487, Fax: 226–7341.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation will prepare a Supplement to the Draft Environmental Impact Statement for the Southwest Indian Highway Corridor which will connect Bloomington to Evansville. The Draft Environmental Impact Statement was accepted by Federal Highway Administration on March 27, 1996, and circulated for comments.

Alternatives under consideration include those already discussed in the Draft Environmental Impact Statement and those to be covered in the proposed Supplement.

The Supplement will evaluate additional highway and non-highway economic development alternatives. The Supplement will also discuss environmental impacts associated with secondary impacts of economic development resulting form the proposed action, and will include a revised discussion of purpose and need.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this Supplement to the Draft Environmental Impact Statement should directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to the program)

Douglas N. Head,
Program Operations Engineer, Indianapolis, Indiana.

[FR Doc. 97–26309 Filed 10–2–97; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32760 (Sub-No. 24)]

The Burlington Northern and Santa Fe Railway Company; Trackage Rights Exemption; Union Pacific Railroad Company and Southern Pacific Transportation Company

The Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP) have agreed to grant overhead trackage rights and certain local access rights to The Burlington Northern and Santa Fe Railway Company as follows: (a) Over a rail line owned by SP extending from milepost 212.7 near Tower 105 at San Antonio, TX; and (b) over a rail line owned by UP extending from milepost 235.9 near Craig Junction, TX, to milepost 259.8 near SP Junction (Tower 112) via Fratt, TX, a total distance of approximately 25.6 miles, for the purpose of serving CPSB's (City Public Service Board of San Antonio) facilities at Elmendorf, TX. The transaction was expected to be consummated on September 24, 1997.[1]

These trackage rights are related to conditions imposed as part of the UP/SP merger in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company,* Finance Docket No. 32760 (Decision No. 44) (STB served Aug. 12, 1996); (Decision No. 52) (STB served Sept. 10, 1996); and (Decision No. 61) (STB served Nov. 20, 1996).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32760 (Sub-No. 24), must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001 and served on: Erika Z. Jones, Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Washington, DC 20006 and Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P. O. Box 7566, Washington, DC 20044–7566.

Decided: September 26, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 97–26310 Filed 10–2–97; 8:45 am]
BILLING CODE 4915–00–P

[1] Under 49 CFR 1180.4(g)(1), a trackage rights exemption is effective 7 days after the notice is filed. Although applicant indicated that the proposed transaction would be consummated on September 22, 1997, the notice was not filed until September 17, 1997, and thus the proposed transaction could not be consummated before the September 24, 1997 effective date.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33456]

East Penn Railways, Inc.; Lease and Operation Exemption; Southeastern Pennsylvania Transportation Authority

East Penn Railways, Inc. (East Penn), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate a total of approximately 14.9 miles of rail line owned by Southeastern Pennsylvania Transportation Authority, known as the Bethlehem Branch, which includes the portion of the Quakertown Line extending from MP 30.5+/− at Telford, Montgomery County, PA, and MP 45.4+/− at Quakertown, Bucks County, PA, and the right to interchange with Consolidated Rail Corporation south of MP 30.5+/−. The transaction was expected to be consummated on or after September 15, 1997.[1]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33456, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001 and served on: John K. Fiorilla, Watson, Stevens, Fiorilla & Rutter, 390 George Street, P. O. Box 1185, New Brunswick, NJ 08903.

Decided: September 26, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 97–26311 Filed 10–2–97; 8:45 am]
BILLING CODE 4915–00–P

[1] Under 49 CFR 1150.41(b), the exemption is effective 7 days after the notice is filed. Although applicant indicated that the proposed transaction would be consummated on September 8, 1997, the notice was not filed until September 8, 1997, and thus the proposed transaction could not be consummated before the September 15, 1997 effective date of the exemption. Counsel for East Penn has acknowledged that September 15 was the earliest that the transaction could be consummated.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Bond-Drawback of Tax on Tobacco Products, Cigarette Papers, or Tubes.

DATES: Written comments should be received on or before December 2, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8161.

SUPPLEMENTARY INFORMATION:

Title: Bond-Drawback of Tax on Tobacco Products, Cigarette Papers, or Tubes.

OMB Number: 1512–0118.

Form Number: ATF F 2148 (5200.17).

Abstract: ATF F 2148 (5200.17) is necessary to secure payment for tobacco articles on which a drawback (refund on tariff or other tax) has been claimed and paid. The bond will secure payment in the event that a claim was not lawfully refunded. The bond describes the particular conditions under which the surety company and drawback claimant adhere to a description of what the bond covers. The recordkeeping requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 26, 1997.

John W. Magaw,

Director.

[FR Doc. 97–26259 Filed 10–2–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Marks on Equipment and Structures, Marks and Labels on Containers of Beer.

DATES: Written comments should be received on or before December 2, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Charles Bacon, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8518.

SUPPLEMENTARY INFORMATION:

Title: Marks on Equipment and Structures, Marks and Labels on Containers of Beer.

OMB Number: 1512–0478.

Recordkeeping Requirement ID Number: ATF REC 5130/3, Marks on Equipment and Structures and ATF REC 5130/4, Marks and Labels on Containers of Beer.

Abstract: Marks, signs and calibrations are necessary on equipment and structures for identifying major equipment for accurate determination of tank contents, and segregation of taxpaid and nontaxpaid beer. Marks and labels on containers of beer are necessary to inform consumers of container contents, and to identify the brewer and place of production. This information collection requires the marking of tanks, containers and signs identifying rooms. Therefore, there is no recordkeeping requirement associated with this collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,400.

Estimated Time Per Respondent: 0.

Estimated Total Annual Burden Hours: 1 hour.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 26, 1997.

John W. Magaw,

Director.

[FR Doc. 97–26260 Filed 10–2–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for License, Collector of Curios and Relics.

DATES: Written comments should be received on or before December 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nicholas Colucci, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8475.

SUPPLEMENTARY INFORMATION:

Title: Application for License, Collector of Curios and Relics.

OMB Number: 1512–0518.

Form Number: ATF F 7CR (5310.16).

Abstract: ATF F 7CR (5310.16) is used by the public when applying for a Federal firearms license to collect curios and relics in interstate and foreign commerce. The information requested on the form establishes eligibility for the license.

Current Actions: Revisions have been made to the form in accordance with new laws and regulations. A new question F. has been added to item 8. A newly created DEFINITIONS section has been added to the back of the form. Definition 1. defines "Restraining Order" and Definition 2. defines "Intimate Partner." These revisions are necessitated by the Violent Crime Control and Law Enforcement Act of 1994, which amended the Gun Control Act of 1968 to add a new subsection, 18 U.S.C. Section 922(g)(8). Also, a new question E. has been added to item 9. Definition 3. defines "Misdemeanor Crime of Domestic Violence." These revisions are necessitated by the Omnibus Consolidated Appropriations Act of 1997, which amended the Gun Control Act of 1968 to add a new subsection, 18 U.S.C. Section 922(g)(9). The last revision is the addition of item 10. APPLICANT CERTIFICATION. Item 10. requires the applicant to certify to certain conditions in order to qualify for a Collector of Curios and Relics license.

Type of Review: Extension with changes.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 26, 1997.

John W. Magaw,

Director.

[FR Doc. 97–26261 Filed 10–2–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Maintained By Brewers.

DATES: Written comments should be received on or before December 2, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Charles Bacon, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8518.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Maintained By Brewers.

OMB Number: 1512–0333.

Recordkeeping Requirement ID Number: ATF REC 5130/1.

Abstract: ATF audits brewers' records to verify production of beer and cereal beverage and to verify the quantity of beer removed subject to tax and removed without payment of tax. The recordkeeping requirement associated with this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is only being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,400.

Estimated Time Per Respondent: 0.

Estimated Total Annual Burden Hours: 1 hour.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 26, 1997.

John W. Magaw,

Director.

[FR Doc. 97–26262 Filed 10–2–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notice of Release/Return of Tobacco Products, Cigarette Papers and Tubes.

DATES: Written comments should be received on or before December 2, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Notice of Release/Return of Tobacco Products, Cigarette Papers and Tubes.

OMB Number: 1512–0116.

Form Number: ATF F 2145 (5200.11).

Abstract: ATF F 2145 (5200.11) documents the removal of tobacco products and cigarette papers and tubes without payment of tax from the custody of U.S. Customs to bonded tobacco products factories and manufacturers of cigarette papers and tubes. The form identifies the establisment that is responsible for the tax on tobacco article products released from Customs custody, products returned and the authorizing Government official. The recordkeeping requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 153.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 306.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 26, 1997.

John W. Magaw,

Director.

[FR Doc. 97–26263 Filed 10–2–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Request for Disposition of Offense.

DATES: Written comments should be received on or before December 2, 1997 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dottie Morales, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8051.

SUPPLEMENTARY INFORMATION:

Title: Request for Disposition of Offense.

OMB Number: 1512–0390.

Form Number: ATF F 5020.29.

Abstract: The information provided on this form determines whether an applicant is oligible to receive a Federal license or permit. If an applicant applies for a license or permit and has an arrest record charged with a violation of Federal or State law and there is no record present of the disposition of the case(s), the form is sent to the Clerk of the Court or Custodian of Records to ascertain the disposition of the case. Records are kept indefinitely for this information collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 3000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 26, 1997.

John W. Magaw,

Director.

[FR Doc. 97–26264 Filed 10–2–97; 8:45 am]

BILLING CODE 4810–31–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Lorenzo Lotto: Rediscovered Master of the Renaissance" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art from on or about November 2, 1997, through on or about March 2, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: September 29, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–26291 Filed 10–2—97; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg, Assistant General Counsel, at 202/619–6084. The address is U.S. Information Agency, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

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federal register

Friday
October 3, 1997

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedure for Kitchen Ranges, Cooktops, Ovens, and Microwave Ovens; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–230]

RIN 1904–AA–52

Energy Conservation Program for Consumer Products: Test Procedure for Kitchen Ranges, Cooktops, Ovens, and Microwave Ovens

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or the Department) is amending its test procedure for kitchen ranges, cooktops, ovens, and microwave ovens. Generally, this rulemaking incorporates portions of the International Electrotechnical Commission Standard 705 and Amendment 2 thereto, and updates the annual useful cooking energy for kitchen ranges, cooktops, ovens, and microwave ovens.

EFFECTIVE DATES: This rule is effective November 3, 1997. The incorporation by reference of portions of International Electrotechnical Commission Standard 705 (referred to as IEC 705) and Amendment 2 thereto (referred to as Amendment 2) as referenced below is approved by the Director of the Federal Register as of November 3, 1997.

ADDRESSES: The Department of Energy (DOE or the Department) is incorporating by reference the following industry consensus test standard upon publication of this final rule.

1. IEC 705, "Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes," Section 4, Methods of Measurement, Paragraph 13 "Electrical Power Input Measurement," and Paragraph 14 "Efficiency" (1988).

2. IEC 705, Amendment 2, "Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes," Section 4, Methods of Measurement, Paragraph 12 "Microwave Power Output Measurement" (1993).

Documents incorporated by reference may be viewed at the Department of Energy Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the International Electrotechnical Commission publications can be obtained from the American National Standards Institute, 11 West 42nd Street, New York, New York 10036, (212) 642–4936.

FOR FURTHER INFORMATION CONTACT: Terry Logee, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0121, (202) 586–1689, FAX (202) 586–4617, terry.logee@ee.doe.gov.

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0103, (202) 586–7432, francine.pinto@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction
A. Background
II. Discussion
A. Cooking Appliances Generally
B. Cooktops, Ranges, and Ovens
C. Microwave Ovens
III. Determination Concerning the Impact of the Amended Test Procedure on Standards
IV. Procedural Requirements
A. Review Under the National Environmental Policy Act of 1969
B. Review Under Executive Order 12866, "Regulatory Planning and Review"
C. Review Under the Regulatory Flexibility Act of 1980
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E. Federalism Review
F. Review Under Section 32 of the Federal Energy Administration Act of 1974
G. Review Under the Paperwork Reduction Act of 1980
H. Review Under Executive Order 12988, "Civil Justice Reform"
I. Review Under the Unfunded Mandates Reform Act of 1995
J. Congressional Notification

I. Introduction

A. Background

Part B of Title III of the Energy Policy and Conservation Act, as amended (EPCA or the Act), establishes the Energy Conservation Program for Consumer Products Other Than Automobiles (Program).[1] The products currently subject to this Program (often called hereafter "covered products") include kitchen ranges, cooktops, ovens, and microwave ovens, which are the subject of today's notice.

Under the Act, the Program consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (formerly the National Bureau of Standards), is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323 of EPCA, 42 U.S.C. 6293. The purpose of test procedures is to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use. The test procedure must not be unduly burdensome to conduct. Section 323 (b)(3) of EPCA, 42 U.S.C. 6293 (b)(3).

DOE is required to determine to what extent, if any, an amended test procedure would alter the measured energy efficiency, measured energy use, or measured water use of any covered product as determined under the existing test procedure. Section 323(e)(1) of EPCA, 42 U.S.C. 6293(e)(1).

One hundred and eighty days after a test procedure for a product is prescribed or established, no manufacturer, distributor, retailer, or private labeler may make representations with respect to energy use, efficiency, or the cost of energy consumed by products covered by this rule, except as reflected in tests conducted according to the new or amended DOE test procedure and such representations fairly disclose the results of such tests. Section 323(c)(2) of EPCA, 42 U.S.C. 6293(c)(2). Thus, beginning on April 1, 1998, representations with respect to the products covered by this rule must be consistent with this amended test procedure.

On May 10, 1978, the Department published the current test procedure for conventional ranges, cooking tops, ovens, and microwave/conventional ranges, 43 FR 20120. These procedures are codified at 10 CFR Part 430, Subpart B, Appendix I. On March 23, 1995, (60 FR 15330), DOE published a proposed rule to amend the current test procedure.

On July 23, 1997, DOE made available to the public copies of a version of this final rule issued on July 17, 1997. That version was not published in the **Federal Register**. Today, DOE publishes this final rule as a substitute for the version issued on July 17, 1997. Today's final rule contains clarifying, non-substantive changes from the version distributed in July.

[1] Part B of Title III of EPCA, as amended, is referred to in this final rule as "EPCA" or the "Act." Part B of Title III has been redesignated as Part A for purposes of codification. It is codified at 42 U.S.C.

II. Discussion

A. Cooking Appliances Generally

1. Combined Component Efficiency

DOE proposed to sum the efficiencies of components to calculate the efficiency of combined components (range, microwave/oven or microwave/range). Two commenters stated that the calculation of energy efficiency for all combined components was incorrect in the proposed test procedure. (AHAM, No. 3 at 3; No. 33 Attachment 2 at 2; July 12, 1995 transcript at 46; Whirlpool, No. 28 at 2.)[2]

DOE has corrected the proposed section 4.3, "Combined Components," by removing the requirement to add efficiencies for combined components. The Final Rule provides no method for calculating the efficiencies for combined components because appropriate usage factors could not be determined.

2. Surface Temperature Probe Tolerance

DOE proposed that the tolerance for the surface temperature probe, Section 2.9.3.5, "Temperature Indicator System for Measuring Surface Temperatures," should be changed to ±0.45°F. Several commenters, stated that the surface temperature probe tolerance of ±0.45°F for surface temperature measurement is overly strict and that the tolerance should be ±1°F as stated in the existing test procedure. (Weizeorick, No.3 at 2; July 12, 1995 Transcript at 45; Whirlpool, No. 28 at 2; and AHAM, No. 33 Attachment 2 at 2.) DOE agrees with these comments and will continue to use a tolerance of ±1°F for the surface temperature probe.

3. Comments Regarding Energy Conservation Standards for Cooking Products

Several commenters included statements on issues concerning standards for cooking products in their written comments. (Whirlpool, No. 28 at 2–3; Weizeorick, No. 3 at 6; Donovan et al., No. 47 at 1–2; AHAM, No. 33 at 2, Attachment 3A and Attachment 3C at 6 and 10; Sharp Electronics, No. 40 at 13.) However, this rulemaking is strictly limited to promulgating test procedures for cooktops, ranges, ovens and microwave ovens. Therefore, these comments are outside the scope of this proceeding and will be addressed in the rulemaking entitled; "Final Rule Regarding Energy Conservation Standards for Kitchen Ranges, Ovens, and Microwave Ovens," Docket No. EE-RM–93–201.

[2] Written comments will be referenced by their assigned number.

B. Cooktops, Ranges and Ovens

1. Annual Useful Cooking Energy

In the proposed rule, DOE proposed to modify the annual useful cooking energy from the existing test procedure for each product class to reflect the change in cooking trends in the United States as follows: electric ovens from 47.09 kWh/yr (169.5 MJ/yr) to 35.5 kWh/yr (105.5 MJ/yr), gas ovens from 160.7 kBtu/yr (169,547 kJ/yr) to 124.2 kBtu/yr (131,038 kJ/yr), electric cooktops from 277.7 kWh/yr (1000 MJ/yr) to 209.4 kWh/yr (752.4 MJ/yr), gas cooktops from 947.5 kBtu/yr (999,600 kJ/yr) to 732.5 kBtu/yr (772,800 kJ/yr).

Several commenters contended that the proposed rule overstated the annual energy use of cooktops, ovens, and ranges. (AHAM, July 12, 1995 transcript at 38, 42–44, 47–48; Weizeorick, No. 3 at 1–3, 5; American Gas Association, No. 25 at 4–5; Whirlpool No. 28 at 1–2; Battelle, No. 46 at 2–6.) AHAM and Whirlpool commented that the annual energy consumption of electric cooktops should be lowered from 209.4 kWh/yr to 157.0 kWh/yr based on a Northern Illinois Gas Study. (AHAM, No. 33 at 2 and Whirlpool, No. 28 at 1.)

In response to these comments, the Lawrence Berkeley National Laboratory (LBNL) analyzed an extensive collection of studies including those identified by commenters to obtain today's revised values of annual useful cooking energy. The studies analyzed include: Gas Research Institute Report: "Topical Report, Metered Ranges, Cooktops, and Ovens in the Northern Illinois Gas Residential Load Study Data Base," GRI–93/0204, July 1993; "Electric Oven and Cooktop Data Analysis," prepared for the Association of Home Appliance Manufacturers by Arthur D. Little, Reference 47066, July 15, 1994; Electric Power Research Institute (CU–6952), "Residential Energy Usage Comparison Project: An Overview," October 1990; Lawrence Berkeley National Laboratory (LBL–33717), "Baseline Data for the Residential Sector and Development of a Residential Forecasting Database," May 1994; Electric Power Research Institute (CU–7392), "Residential Energy Usage Comparison: Findings," August 1991; and Electric Power Research Institute (CU–6487), "Residential End-Use Energy Consumption: A Survey of Conditional Demand and Estimates," October 1989. Copies of these studies are available for inspection in DOE's Freedom of Information Reading Room.

Based on the data from the above-referenced studies, DOE calculated a weighted average of the annual useful cooking energy for all cooking products. For estimates of annual useful cooking energy for conventional electric cooktops and ovens, and also for gas cooktops and ovens, only the latest metered data were included. Data used in the analysis shows the trend in cooking usage has been downward and shows indications that there are regional differences and year-to-year fluctuations in cooking usage. No regional effects were included in this analysis.

Accordingly, DOE has lowered the annual useful cooking energy of each product class in this final rule to make it representative of current United States cooking patterns. These quantities are being lowered to 29.3 kWh/yr for electric ovens, 88.8 kBtu/yr for gas ovens, 173.1 kWh/yr for electric cooktops and 527.6 kBtu/yr for gas cooktops.

2. Elimination of Continuous Flow Calorimeter

In the proposed rule, the Department eliminated the requirement to use a standard continuous flow calorimeter for gas cooking products because of the limited availability of this instrument. This change was favorably received by all commenters. (Weizeorick, No. 3 at 2 and Whirlpool, No. 28 at 2.)

In the final test procedure, DOE allows the manufacturer to choose the instrument to be substituted for the standard continuous flow calorimeter. Additionally, DOE requires in section 2.9.4, "Heating Value," that the heating value of natural or propane gas shall be measured with an instrument and associated indicator readout device of a maximum error no greater than ±.5 percent of the measured value and a resolution of ±.2 percent or less of the full scale reading of the indicator instrument.

3. Convection Mode Testing

In the proposed test procedure, DOE added sections 3.2.1, "Conventional oven test energy consumption" and subsection 3.3.5 of section 3.3, "Recorded Values," to include convection mode testing. AHAM, Weizeorick and Whirlpool supported these changes in the final test procedures. (Weizeorick, No. 3 at 4; Whirlpool, No. 33 Attachment 2 at 3; July 12, 1995 transcript at 47; Whirlpool, No. 28 at p.2). In the final test procedure, DOE adopted the changes as originally proposed.

4. Electric Clock

DOE proposed that during testing, the electrical clock which uses energy continuously be disconnected, except for microwave ovens. Weizeorick states that it is impossible to disconnect an

electric clock for ranges that have circuits which control the oven and cooktop unit temperatures in conjunction with a clock. (Weizeorick, No. 3 at 4, AHAM, No. 33 Attachment 2 at 2; July 12, 1995 transcript at 46–47.)

DOE agrees that several ranges employ circuits which control the oven and cooktop unit temperatures in conjunction with a clock that cannot be disconnected. Therefore, several sections of the final test procedure have been modified to address this issue. Section 3.2.1.4, "Clock Power." is modified to state that the power rating or the measurement of a continuously operating clock that is an integral part of the timing or temperature control circuit which cannot be disconnected during the test may be multiplied by the applicable test period to obtain test energy consumption in watt-hours (kJ). This procedure is used to calculate annual clock energy consumption for electric clocks that cannot be disconnected. Language has also been added to the following sections to subtract the energy consumed by the clock during testing when the clock cannot be disconnected: Section 2.1, "Installation"; section 3.2.1, "Conventional oven test energy consumption"; section 3.2.1.1, "Conventional oven average test energy consumption"; section 3.2.1.2, "Energy consumption of self-cleaning operation'; section 3.2.1.4, "Clock power"; and section 3.2.2, "Conventional surface unit test energy consumption."

5. Number of Self-Cleaning Oven Cycles Per Year

In the existing and proposed test procedure, section 4.1.2.3.1, "Annual primary energy consumption" and section 4.1.2.3.2, "Annual secondary energy consumption for self-cleaning operation of gas ovens," DOE uses 11 self-cleaning cycles per year for electric ovens and 7 for gas ovens.

Two commenters stated that DOE's number of self-cleaning cycles of 11 and 7 for gas and electric ovens respectively were too high and it should be 4 for both electric and gas ovens as reflected in internal marketing data. (Weizeorick, No. 3 at 2–3; AHAM, No. 33, Attachment 2 at 2, July 12, 1995 transcript at 45–46; Whirlpool, No. 28 at 2.) In response to several comments, DOE has reduced the number of self-cleaning oven cycles per year for gas and electric ovens. DOE agrees with the figures used by the Gas Research Institute in a 1994 Gas Research Institute Topical Report (GRI–94/0195) and has changed the number of self-cleaning cycles per year to 4 for gas and electric ovens.

6. Change of Symbol Representing Number of Hours Per Year—H_K

In the existing and proposed test procedure, DOE uses the symbol "H_K" to represent the number of hours in a year. Weizeorick commented that the symbol "H_K" in section 4.1.2.4, "Annual clock energy consumption" should be changed to "A" because the symbol "H" is traditionally used to represent heating values. (Weizeorick, No. 3 at 4.) DOE agrees and is substituting the character "A" for "H_K" in sections 4.1.2.4, "Annual clock energy consumption" and 4.2.2.2, "Annual energy consumption of any continuously burning gas pilots."

7. Editorial Error in Section 3.1.1, "Conventional Oven"

DOE has corrected an editorial error in section 3.1.1, paragraph 2. The following language has been changed: "If the oven * * *, (180.6 °C) air temperature" to "If the oven * * *, (180.6 °C) higher than the room ambient air temperature."

C. Microwave Ovens

1. Annual Useful Cooking Energy

In its Proposed Rule, DOE proposed to modify the annual useful cooking energy from the existing test procedure for microwave ovens to reflect the change in cooking trends in the United States. Use of microwave ovens was proposed to be increased from 34.2 kWh/yr (123 MJ/yr) to 77.3 kWh/yr (278.3 MJ/yr).

Several commenters contended that the proposal overstated the annual energy consumption of microwave ovens. (AHAM, No. 33 Attachment 2 at 3; Whirlpool, No. 28 at 2–3). Joy Weis Daniel, representing both AHAM and Sharp Electronics Company, stated that DOE should use 100 kWh/yr for annual energy consumption of microwave ovens based on an average of several metered studies. Their recommendation was based on metered studies which included: the Sierra Pacific EIP Study 1988, Southern California Edison 1990, Southern California Edison 1991, Utility Estimates Study 1991, and three studies reported in baseline data 1994. (Daniel, No. 4 at 6; AHAM, No. 33, Attachment 3B; Sharp, No. 40 at 7–9 and Exhibit C.)

In response to these comments, LBNL analyzed the microwave oven studies including those identified by commenters. The studies analyzed include: American Electric Power (AEP)/Residential Energy Consumption Survey (RECS), AEP Report "Utility Estimates of Household Appliance Electricity Consumption," March 16, 1992, reported in RECS "Household Energy Consumption and Expenditures 1990," DOE/EIA–0321(90), February 1993; Southern California Edison, "Residential Appliance End-Use Survey" for 1990 and 1991; and the 1988 Sierra Pacific EIP Study included in the Electric Power Research Institute (CU–6487), "Residential End-Use Energy Consumption: A Survey of Conditional Demand and Estimates," October 1989. Copies of these studies are available for inspection in DOE's Freedom of Information Reading Room.

Based on the data from the above-referenced studies, DOE calculated a weighted average of the annual useful cooking energy for microwave ovens. For the estimate of annual useful cooking energy, both conditional demand analyses (CDA) and metered study data were included due to the limited data available. Since the metered studies are only from California, the Department believes it is necessary to include the CDA studies to get broader national representation including New York, Florida, Maryland and Texas. This analysis shows that annual useful cooking energy for microwave ovens is 79.8 kWh/yr. Today's final test procedure reflects this revised value.

2. Microwave Clock Energy

In the proposed rule, DOE included the clock energy in the calculation of annual energy consumption for microwave ovens. It accomplished this by incorporating paragraph 12 of IEC 705 Amendment 2–1993, "Microwave Power Output Measurement." No comments were received. The final rule remains unchanged from the proposed rule.

3. Amend the DOE Test Procedure To Reference Portions of IEC 705 and Amendment 2

In the proposed rule, a definition of IEC 705 was added in section 1.5 and several sections of the test procedure were amended to reference portions of IEC 705 or Amendment 2 as follows: (1) Section 2.1.3, "Microwave Ovens"; (2) section 2.5, "Ambient Room Air Temperature"; (3) new section 2.8, "Microwave Oven Test Load"; (4) section 2.9.3.1, "Room Temperature Indicating System"; (5) section 2.9.3.4, "Test Load Temperature"; (6) section 2.9.5, "Scale"; (7) new section 3.1.3.1, "Microwave Oven Test Energy or Power Output"; (8) section 3.2.3, "Microwave Oven Test Energy Consumption and Power Input"; (9) section 4.4.2, "Microwave Oven Test Power Output"; and (10) section 4.4.4, "Microwave Oven Cooking Efficiency." The final rule reflects these changes. No comments were received on these proposed changes.

4. Editorial Error in Section 4.4.1

In the proposed test procedure, the equation in section 4.4.1, "Microwave oven test energy", yields an answer that is incorrect by a factor of 1000. DOE corrected this problem in the final test procedure by changing the conversion factor "H_E" from "H_E=(3.412 Btu/Wh) 3.6 kJ/Wh to "H_E=(3,412 Btu/kWh) 3,600 kJ/kWh."

5. Usage of Watt Meter and Watt-Hour Meter

DOE proposed the continued use of a watt-hour meter during microwave oven operation to measure energy consumption, also known as energy input, while performing the test procedure. DOE stated that the watt-hour meter is more accurate than a watt meter. The watt-hour meter measures all transient energy,[3] whereas the watt meter does not.

Several commenters disagreed with DOE's decision to use a watt-hour meter to determine the energy consumption of microwave ovens. AHAM took the position that a watt meter is sufficient to measure energy consumption. It contended that the power measured by the watt meter multiplied by the duration of the test, which is measured by the stop watch or timer, will yield an accurate measurement of energy consumption. (AHAM, No. 33, Attachment 3A and Attachment 3C; July 12, 1995 transcript at 62.) Sharp Electronics Corporation argued that DOE's claim that the watt-hour meter is more accurate is not supported by data. (Sharp, No. 40 at 5; July 12, 1995 transcript at 60.)

None of the commenters provided any data to demonstrate that the energy consumption calculation based on measurements from a watt meter and timer are comparable in accuracy to those derived directly from a watt-hour meter. Since a watt meter, as is used in IEC 705 to measure power, measures instantaneous power, an accurate energy calculation based on watts measured by a watt meter can only be made by summing instantaneous power measurements over small time increments, thus capturing the energy transients and mimicking a watt-hour meter. While it is possible to calculate energy consumption from measurements of power and time, the IEC test procedure itself does not contain a requirement to determine energy consumption nor does it provide a procedure for making that calculation. The Department believes the more appropriate, more accurate, and less burdensome way to measure energy consumption is by using a watt-hour meter rather than measuring power using a watt meter and a calculation procedure to determine energy consumption. Moreover, the watt-hour meter is typically used to measure electricity use in homes and commercial buildings.

[3] Transient energy is the energy consumed to warm up the magnetron and any fluctuations during microwave use.

6. Application of the "Agreement on Technical Barriers to Trade" Requiring Incorporation of IEC Standard 705

Sharp Electronics Corporation contends that DOE is legally obligated to incorporate IEC 705 and Amendment 2. Sharp relies upon Article 2.4 in the "Agreement on Technical Barriers to Trade," (Agreement) a part of the "World Trade Organization Agreement," to make its argument. Article 2.4 provides that where technical regulations are required and relevant international standards exist or their completion is imminent, member nations shall use such standards as a basis for their technical regulations, with certain exceptions. Sharp claims that IEC 705 constitutes an international technical standard applicable to measuring energy efficiency of microwave ovens. (Sharp, No. 40 at 4–6 and Exhibit B.)

Article 2.4 does not apply to the promulgation of a test procedure. The definition of "technical regulation" within the Agreement refers to mandatory product standards. Because a test procedure does not establish product standards, but rather provides the basis for evaluating whether a product meets a standard, a test procedure is not a technical regulation within the definition set forth in the Agreement. Therefore, this test procedure is not subject to the application of Article 2.4.

That DOE's rule incorporates the relevant parts of IEC 705 and Amendment 2 and uses that international test procedure as a basis for its test procedure makes it consistent with Article 5.4 of the "Agreement on Technical Barriers to Trade," the controlling provision on test procedures. Article 5.4 provides that members use the "relevant parts" of guides or recommendations issued by international standardizing bodies "as a basis for their conformity assessment procedures" (defined by the agreement to include test procedures).

The U.S. World Trade Organization (WTO), Technical Barriers to Trade (TBT) enquiry point (National Institute of Standards and Technology) notified the WTO Secretariat of DOE's proposed rule pursuant to Article 2.9.2 of the TBT agreement entitled, "Notify Members Through the Secretariat of the Products to be Covered by the Proposed Technical Regulation." No comments were received by the U.S. TBT enquiry point.

7. Using IEC 705 Updates To Automatically Amend DOE's Final Test Procedure

DOE proposed to incorporate paragraphs 13 and 14 of the 1988 version of IEC 705 and paragraph 12 of IEC 705, Amendment 2, 1993. Whirlpool commented that DOE should automatically accept changes to the IEC standard as they occur. Whirlpool stated that "DOE references to the IEC 705 should be referred to as 'the latest reference'" in order to avoid time consuming notice and comment rulemaking each time "minor" changes to the IEC test procedure occur. (Whirlpool, No. 28 at 3.) DOE does not accept Whirlpool's suggestion because adopting the language "latest reference" is overly broad and would sweep into the test procedure major as well as "minor" changes to the IEC test procedure. Therefore, in this final rule, DOE references the specific version and amendment of the IEC 705 as stated above.

8. Incorporation by Reference of Portions of IEC 705 and Amendment 2

DOE proposed to incorporate by reference paragraphs 13 and 14 of IEC 705 and paragraph 12 of Amendment 2. Two commenters supported DOE's proposal to incorporate by reference portions of IEC 705 and Amendment 2. (AHAM, No. 33 at 2; Whirlpool, No. 28 at 2.) Several commenters, however, took the position that DOE should incorporate IEC 705 in its entirety. (AHAM, No. 33, Attachment 3A and Attachment 3C; Sharp, No. 40 at 3.) DOE did not incorporate IEC 705 in its entirety because it contains other test methods such as heating, cooking and defrosting performance that are not relevant to energy consumption for microwave ovens.

In today's final test procedure , DOE is adopting those portions of IEC 705 and Amendment 2 that are pertinent to its test procedure for microwave ovens. This incorporation by reference is found at Section 430.22, "Reference Sources."

The Department is also amending section 430.22, Reference Sources, by adding paragraph (b)(5), ASHRAE standards. These standards were previously incorporated by reference in a final rule on Furnace Test procedures

published May 12, 1997 (62 FR 26140). In a Final Rule published May 29, 1997 (62 FR 29222), section 430.22 was amended and the furnace standards previously incorporated by reference were removed. Therefore, this rulemaking is correcting section 430.22 to include the standards previously removed.

III. Determination Concerning the Impact of the Amended Test Procedure on Standards

Section 323(e)(1) of EPCA requires that the Department determine to what extent an amended test procedure would alter the measured energy efficiency or measured energy use of kitchen ranges, ovens, cooktops or microwave ovens as compared with the existing test procedure. The Department has determined that the changes in annual useful cooking energy will decrease calculated annual energy use for electric ovens and cooktops by about 62 percent and for gas ovens and cooktops by about 55 percent. The change in annual useful cooking energy for microwave ovens will result in a 233 percent increase in their calculated annual energy use. Because there are currently no energy efficiency or energy consumption standards, no modification to standards is required under Section 323(e)(2) of EPCA.

IV. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department will finalize amendments to test procedures that may be used to implement future energy conservation standards for kitchen ranges, cooktops, ovens, and microwave ovens. The Department has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* The rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in the Department's NEPA regulations at Appendix A to Subpart D, 10 CFR part 1021. This final rule will not affect the quality or distribution of energy usage and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental impact statement or an environmental assessment is required.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's final rule is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule, for which a general notice of proposed rulemaking is required, that would have a significant economic effect on small entities unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. In the notice of proposed rulemaking, DOE determined that the test procedures would not have a significant economic impact, but rather would provide common testing methods. Therefore, DOE certified that the proposed rule would not if promulgated have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis was not warranted. DOE did not receive any comments on the certification.

D. "Takings" Assessment Review

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation, if adopted, would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

E. Federalism Review

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are substantial direct effects, then the Executive Order requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The final rule published today would not regulate the States. Accordingly, DOE has determined that preparation of a Federalism assessment is unnecessary.

F. Review Under Section 32 of the Federal Energy Administration Authorization Act of 1974

The test procedure amended today incorporates the International Electrotechnical Commission Publication 705, "Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes," Paragraph 13 "Electrical Power Input Measurement," and Paragraph 14 "Efficiency," and Amendment 2–1993, Section 4, Paragraph 12 "Microwave Power Output Measurement," to determine the output power and efficiency for microwave ovens.

Pursuant to Section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE is required to comply with Section 32 of the Federal Energy Administration Act of 1974, 15 U.S.C. 788. The Department of Energy is required by Section 32 to notify the public regarding the proposed use of commercial standards in a rulemaking and allow interested persons to make known their views regarding the appropriateness of the use of any particular commercial standard in a notice of proposed rulemaking.

DOE included an invitation for public comment in the notice of proposed rulemaking. Commenters supported the inclusion of IEC 705 and Amendment 2–1993 in the test procedure and no adverse comments were received (see Section II.C.8).

In addition, section 32(c) precludes the Department from incorporating any commercial standard into a rule unless it has consulted with the Attorney General and the Chairman of the Federal Trade Commission (FTC) as to the impact of such standard on competition, and neither individual recommends against its incorporation or use. Pursuant to section 32(c), the Department advised these individuals of its intention to incorporate portions of the above-referenced standards into this final rule. Neither recommended against such incorporation.

G. Review Under the Paperwork Reduction Act of 1980

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

H. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and reducing burdens; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

I. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1531 *et seq.*, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in one year.

The Department has determined that this final rule does not include any requirements that would result in the expenditure of money by State, local, and tribal governments. It also would not result in costs to the private sector of $100 million or more in any one year. Therefore, the requirements of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

J. Congressional Notification

Consistent with Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801–808, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a "major rule" under that Act. 5 U.S.C. 801, 804.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on September 22, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, of the Code of Federal Regulations is amended as follows:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.22 is amended by revising paragraph (a)(1) and adding paragraph (b)(4) and (b)(5) as follows:

§ 430.22 Reference Sources.

(a) *Materials incorporated by reference.*—(1) *General.* The following standards which are not otherwise set forth in Part 430 are incorporated by reference and made a part of Part 430. The standards listed in this section have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The specified versions of the standards are incorporated, and any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until those test procedures are amended by DOE.

(2) * * *

(b)(1) * * *

(2) * * *

(3) * * *

(4) International Electrotechnical Commission. Copies of the International Electrotechnical Commission Publications can be obtained from the American National Standards Institute, 11 West 42nd Street, New York, New York 10036, (212) 642–4936.

1. IEC 705, "Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes," Section 4, Methods of Measurement, Paragraph 13 "Electrical Power Input Measurement," and Paragraph 14 "Efficiency" (1988).

2. IEC 705, Amendment 2, "Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes," Section 4, Methods of Measurement, Paragraph 12 "Microwave Power Output Measurement" (1993).

(5) American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., Publication Sales, 1791 Tullie Circle, NE, Atlanta, GA 30329, (1–800–5–ASHRAE).

1. American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 103–1993, "Methods of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers," (with Errata of October 24, 1996) except for sections 3.0, 7.2.2.5, 8.6.1.1, 9.1.2.2, 9.5.1.1, 9.5.1.2.1, 9.5.1.2.2, 9.5.2.1, 9.7.1, 10.0, 11.2.12, 11.3.12, 11.4.12, 11.5.12 and appendices B and C.

2. American National Standards Institute Standard Z21.56–1994, "Gas-Fired Pool Heaters," section 2.9.

* * * * *

§ 430.23 [Amended]

3. Section 430.23, Test procedures for measures of energy consumption, is amended as follows:

A. In § 430.23(i)(1)(iii) (second sentence) "4.3.1, 4.2.2, 4.1.2.5, or 4.1.2.6, 4.4.3, and 4.5.1.3" is revised to read "4.3, 4.2.2, 4.1.2, and 4.4.3."

B. In § 430.23(i)(2) (first sentence) "4.2.1.3, 4.1.3 and 4.4.2" is revised to read "4.2.1, 4.1.3, and 4.4.4."

C. § 430.23 (i)(3) is removed and reserved.

D. In § 430.23(i)(4) (first sentence) "4.3.3, 4.2.3, 4.1.4, 4.4.4 and 4.5.3" is revised to read "4.3, 4.2.3, 4.1.4, 4.4.5."

E. In §§ 430.23 (i)(8) and 430.23 (i)(9) remove the phrase "and (i)(3)."

* * * * *

4. Appendix I to Subpart B of Part 430 is revised to read as follows:

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

1. Definitions

1.1 *Built-in* means the product is supported by surrounding cabinetry, walls, or other similar structures.

1.2 *Drop-in* means the product is supported by horizontal surface cabinetry.

1.3 *Forced convection* means a mode of conventional oven operation in

which a fan is used to circulate the heated air within the oven compartment during cooking.

1.4 *Freestanding* means the product is not supported by surrounding cabinetry, walls, or other similar structures.

1.5 *IEC 705* refers to the test standard published by the International Electrotechnical Commission, entitled "Method for Measuring the Performance of Microwave Ovens for Household and Similar Purposes," Publication 705–1988 and Amendment 2—1993. (See 10 CFR 430.22)

1.6 *Normal nonoperating temperature* means the temperature of all areas of an appliance to be tested are within 5°F (2.8°C) of the temperature that the identical areas of the same basic model of the appliance would attain if it remained in the test room for 24 hours while not operating with all oven doors closed and with any gas pilot lights on and adjusted in accordance with manufacturer's instructions.

1.7 *Primary energy consumption* means either the electrical energy consumption of a conventional electric oven or the gas energy consumption of a conventional gas oven.

1.8 *Secondary energy consumption* means any electrical energy consumption, other than clock energy consumption, of a conventional gas oven.

1.9 *Standard cubic foot (L) of gas* means that quantity of gas that occupies 1 cubic foot (L) when saturated with water vapor at a temperature of 60°F (15.6°C) and a pressure of 30 inches of mercury (101.6 kPa) (density of mercury equals 13.595 grams per cubic centimeter).

1.10 *Thermocouple* means a device consisting of two dissimilar metals which are joined together and, with their associated wires, are used to measure temperature by means of electromotive force.

1.11 *Symbol Usage.* The following identity relationships are provided to help clarify the symbology used throughout this procedure.

A—Number of Hours in a Year
B—Number of Hours Pilot Light Contributes to Cooking
C—Specific Heat
E—Energy Consumed
Eff—Cooking Efficiency
H—Heating Value of Gas
K—Conversion for Watt-hours to Kilowatt hours
K_e—3.412 Btu/Wh, Conversion for Watt-hours to Btu's
M—Mass
n—Number of Units
O—Annual Useful Cooking Energy Output
P—Power
Q—Gas Flow Rate
R—Energy Factor, Ratio of useful Cooking Energy Output to Total Energy Input
S—Number of Self Cleaning Operations per Year
T—Temperature
t—Time
V—Volume of Gas Consumed
W—Weight of Test Block

2. Test Conditions

2.1 *Installation.* A free standing kitchen range shall be installed with the back directly against, or as near as possible to, a vertical wall which extends at least 1 foot above and on either side of the appliance. There shall be no side walls. A drop-in, built-in or wall-mounted appliance shall be installed in an enclosure in accordance with the manufacturer's instructions. These appliances are to be completely assembled with all handles, knobs, guards and the like mounted in place. Any electric resistance heaters, gas burners, baking racks, and baffles shall be in place in accordance with the manufacturer's instructions; however, broiler pans are to be removed from the oven's baking compartment. Disconnect any electrical clock which uses energy continuously, except for those that are an integral part of the timing or temperature controlling circuit of the oven, cooktop, or microwave oven. Do not disconnect or modify the circuit to any other electrical devices or features.

2.1.1 *Conventional electric ranges, ovens, and cooking tops.* These products shall be connected to an electrical supply circuit with voltage as specified in Section 2.2.1 with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in Section 2.9.1.1.

2.1.2 *Conventional gas ranges, ovens, and cooking tops.* These products shall be connected to a gas supply line with a gas meter installed between the supply line and the appliance being tested, according to manufacturer's specifications. The gas meter shall be as described in Section 2.9.2. Conventional gas ranges, ovens and cooking tops with electrical ignition devices or other electrical components shall be connected to an electrical supply circuit of nameplate voltage with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in Section 2.9.1.1.

2.1.3 *Microwave ovens.* Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in Section 2.2.1. A watt-hour meter and watt meter shall be installed in the circuit and shall be as described in Section 2.9.1.1 and 2.9.1.2. If trial runs are needed to set the "on" time for the test, the test measurements are to be separated according to Section 4, Paragraph 12.6 of IEC 705 Amendment 2. (See 10 CFR 430.22)

2.2 *Energy supply.*

2.2.1 *Electrical supply.* Maintain the electrical supply to the conventional range, conventional cooking top, and conventional oven being tested at 240/120 volts except that basic models rated only at 208/120 volts shall be tested at that rating. Maintain the voltage within 2 percent of the above specified voltages. For the microwave oven testing, however, maintain the electrical supply to a microwave oven at 120 volts ±1 volt and at 60 hertz.

2.2.2 *Gas supply.*

2.2.2.1 *Gas burner adjustments.* Conventional gas ranges, ovens, and cooking tops shall be tested with all of the gas burners adjusted in accordance with the installation or operation instructions provided by the manufacturer. In every case, the burner must be adjusted with sufficient air flow to prevent a yellow flame or a flame with yellow tips.

2.2.2.2 *Natural gas.* For testing convertible cooking appliances or appliances which are designed to operate using only natural gas, maintain the natural gas pressure immediately ahead of all controls of the unit under test at 7 to 10 inches of water column (1743.6 to 2490.8 Pa). The regulator outlet pressure shall equal the manufacturer's recommendation. The natural gas supplied should have a heating value of approximately 1,025 Btu's per standard cubic foot (38.2 kJ/L). The actual gross heating value, H_a, in Btu's per standard cubic foot (kJ/L), for the natural gas to be used in the test shall be obtained either from measurements made by the manufacturer conducting the test using equipment that meets the requirements described in Section 2.9.4 or by the use of bottled natural gas whose gross heating value is certified to be at least as accurate a value that meets the requirements in Section 2.9.4.

2.2.2.3 *Propane.* For testing convertible cooking appliances with propane or for testing appliances which are designed to operate using only LP-gas, maintain the propane pressure immediately ahead of all controls of the unit under test at 11 to 13 inches of water column (2740 to 3238 Pa). The regulator outlet pressure shall equal the manufacturer's recommendation. The propane supplied should have a heating value of approximately 2,500 Btu's per standard cubic foot (93.2 kJ/L). The actual gross heating value, H_p, in Btu's per standard cubic foot (kJ/L), for the propane to be used in the test shall be obtained either from measurements made by the manufacturer conducting the test using equipment that meets the requirements described in Section 2.9.4 or by the use of bottled propane whose gross heating value is certified to be at least as accurate a value that meets the requirements described in Section 2.9.4.

2.2.4 *Test gas.* A basic model of a convertible cooking appliance shall be tested with natural gas, but may also be tested with propane. Any basic model of a conventional range, conventional cooking top, or conventional oven which is designed to operate using only natural gas as the energy source must be tested with natural gas. Any basic model of a conventional range, conventional cooking top, or conventional oven which is designed to operate using only LP gas as the gas energy source must be tested with propane gas.

2.3 *Air circulation.* Maintain air circulation in the room sufficient to secure a reasonably uniform temperature distribution, but do not cause a direct draft on the unit under test.

2.4 *Setting the conventional oven thermostat.*

2.4.1 *Conventional electric oven.* Install a thermocouple approximately in the center of the usable baking space. Provide a temperature indicator system for measuring the oven's temperature with an accuracy as indicated in Section 2.9.3.2. If the oven thermostat does not cycle on and off, adjust or determine the conventional electric oven thermostat setting to provide an average internal temperature which is 325°±5°F (180.6°±2.8°C) higher than the room ambient air temperature. If the oven thermostat operates by cycling on and off, adjust or determine the conventional electric oven thermostat setting to provide an average internal temperature which is 325°±5°F (180.6°±2.8°C) higher than the room ambient air temperature. This shall be done by measuring the maximum and minimum temperatures in any three consecutive cut-off/cut-on actions of the electric resistance heaters, excluding the initial cut-off/cut-on action, by the thermostat after the temperature rise of 325°±5°F (180.6°±2.8°C) has been attained by the conventional electric oven. Remove the thermocouple after the thermostat has been set.

2.4.2 *Conventional gas oven.* Install five parallel-connected weighted thermocouples, one located at the center of the conventional gas oven's usable baking space and the other four equally spaced between the center and the corners of the conventional gas oven on the diagonals of a horizontal plane through the center of the conventional gas oven. Each weighted thermocouple shall be constructed of a copper disc that is 1-inch (25.4 mm) in diameter and ⅛-inch (3.2 mm) thick. The two thermocouple wires shall be located in two holes in the disc spaced ½-inch (12.7 mm) apart, with each hole being located ¼-inch (6.4 mm) from the center of the disc. Both thermocouple wires shall be silver-soldered to the copper disc. Provide a temperature indicator system for measuring the oven's temperature with an accuracy as indicated in Section 2.9.3.2. If the oven thermostat does not cycle on or off, adjust or determine the conventional gas oven thermostat setting to provide an average internal temperature which is 325°±5°F (180.6°±2.8°C) higher than the room ambient air temperature. If the oven thermostat operates by cycling on and off, adjust or determine the conventional gas oven thermostat setting to provide an average internal temperature which is 325°±5°F (180.6°±2.8°C) higher than the room ambient air temperature. This shall be done by measuring the maximum and minimum temperatures in any three consecutive cut-off/cut-on actions of the gas burners, excluding the initial cut-off/cut-on action, by the thermostat after the temperature rise of 325°±5°F (180.6°±2.8°C) has been attained by the conventional gas oven. Remove the thermocouples after the thermostat has been set.

2.5 *Ambient room air temperature.* During the test, maintain an ambient room air temperature, T_R, of 77°±9°F (25°±5°C) for conventional ovens and cooking tops, or as indicated in Section 4, Paragraph 12.4 of IEC 705 Amendment 2 for microwave ovens, as measured at least 5 feet (1.5 m) and not more than 8 feet (2.4 m) from the nearest surface of the unit under test and approximately 3 feet (0.9 m) above the floor. The temperature shall be measured with a thermometer or temperature indicating system with an accuracy as specified in Section 2.9.3.1.

2.6 *Normal nonoperating temperature.* All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in Section 1.6, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in Sections 2.9.3.1, 2.9.3.2, 2.9.3.3, 2.9.3.4, and 2.9.3.5, as applicable.

2.7 *Test blocks for conventional oven and cooking top.* The test blocks shall be made of aluminum alloy No. 6061, with a specific heat of 0.23 Btu/lb- °F (0.96 kJ/[kg• °C]) and with any temper that will give a czoefficient of thermal conductivity of 1073.3 to 1189.1 Btu-in/h-ft²- °F (154.8 to 171.5 W/[m• °C]). Each block shall have a hole at its top. The hole shall be 0.08 inch (2.03 mm) in diameter and 0.80 inch (20.3 mm) deep. The manufacturer conducting the test may provide other means which will ensure that the thermocouple junction is installed at this same position and depth.

The bottom of each block shall be flat to within 0.002 inch (0.051 mm) TIR (total indicator reading). Determine the actual weight of each test block with a scale with an accuracy as indicated in Section 2.9.5.

2.7.1 *Conventional oven test block.* The test block for the conventional oven, W_1, shall be 6.25±0.05 inches (158.8±1.3 mm) in diameter, approximately 2.8 inches (71 mm) high and shall weigh 8.5±0.1 lbs (3.86±0.05 kg). The block shall be finished with an anodic black coating which has a minimum thickness of 0.001 inch (0.025 mm) or with a finish having the equivalent absorptivity.

2.7.2 *Small test block for conventional cooking top.* The small test block, W_2, shall be 6.25±0.05 inches (158.8±1.3 mm) in diameter, approximately 2.8 inches (71 mm) high and shall weigh 8.5±0.1 lbs (3.86±0.05 kg).

2.7.3 *Large test block for conventional cooking top.* The large test block for the conventional cooking top, W_3, shall be 9±0.05 inches (228.6±1.3 mm) in diameter, approximately 3.0 inches (76 mm) high and shall weigh 19±0.1 lbs (8.62±0.05 kg).

2.7.4 *Thermocouple installation.* Install the thermocouple such that the thermocouple junction (where the thermocouple contacts the test block) is at the bottom of the hole provided in the test block and that the thermocouple junction makes good thermal contact with the aluminum block. If the test blocks are to be water cooled between tests the thermocouple hole should be sealed, or other steps taken, to insure that the thermocouple hole is completely dry at the start of the next test. Provide a temperature indicator system for measuring the test block temperature with an accuracy as indicated in Section 2.9.3.3.

2.7.5 *Initial test block temperature.* Maintain the initial temperature of the test blocks, T_1, within ±4°F (±2.2°C) of the ambient room air temperature as specified in Section 2.5. If the test block has been cooled (or heated) to bring it to room temperature, allow the block to stabilize for at least 2 minutes after removal from the cooling (or heating)

source, before measuring its initial temperature.

2.8 *Microwave oven test load.*

2.8.1 *Test container.* The test container shall be as specified in Section 4, Paragraph 12.2 of IEC 705 Amendment 2.

2.8.2 *Test water load.* The test water load shall be as specified in Section 4, Paragraph 12.1 of IEC 705 Amendment 2.

2.8.2.1 *Test water load and test container temperature.* Before the start of the test, the oven and the test container shall be at ambient temperature as specified in Section 4, Paragraph 12.4 of IEC 705 Amendment 2. The test water load shall be contained in a chiller (not the test container) and maintained at 18° ± 1.8°F (10° ± 1°C) below the ambient room temperature.

2.9 *Instrumentation.* Perform all test measurements using the following instruments, as appropriate:

2.9.1 *Electrical Measurements.*

2.9.1.1 *Watt-hour meter.* The watt-hour meter for measuring the electrical energy consumption of conventional ovens and cooking tops shall have a resolution of 1 watt-hour (3.6 kJ) or less and a maximum error no greater than 1.5 percent of the measured value for any demand greater than 100 watts. The watt-hour meter for measuring the energy consumption of microwave ovens shall have a resolution of 0.1 watt-hour (0.36 kJ) or less and a maximum error no greater than 1.5 percent of the measured value.

2.9.1.2 *Watt meter.* The watt meter used to measure the conventional oven, conventional range, range clock power or the power input of the microwave oven shall have a resolution of 0.2 watt (0.2 J/s) or less and a maximum error no greater than 5 percent of the measured value.

2.9.2 *Gas Measurements.*

2.9.2.1 *Positive displacement meters.* The gas meter to be used for measuring the gas consumed by the gas burners of the oven or cooking top shall have a resolution of 0.01 cubic foot (0.28 L) or less and a maximum error no greater than 1 percent of the measured value for any demand greater than 2.2 cubic feet per hour (62.3 L/h). If a positive displacement gas meter is used for measuring the gas consumed by the pilot lights, it shall have a resolution of at least 0.01 cubic foot (0.28 L) or less and have a maximum error no greater than 2 percent of the measured value.

2.9.2.2 *Flow meter.* If a gas flow meter is used for measuring the gas consumed by the pilot lights, it shall be calibrated to have a maximum error no greater than 1.5 percent of the measured value and a resolution of 1 percent or less of the measured value.

2.9.3 *Temperature measurement equipment.*

2.9.3.1 *Room temperature indicating system.* The room temperature indicating system shall be as specified in Section 4, Paragraph 12.3 of IEC 705 Amendment 2 for microwave ovens and Section 2.9.3.5 for ranges, ovens and cooktops.

2.9.3.2 *Temperature indicator system for measuring conventional oven temperature.* The equipment for measuring the conventional oven temperature shall have an error no greater than ±4°F (±2.2°C) over the range of 65° to 500°F (18°C to 260°C).

2.9.3.3 *Temperature indicator system for measuring test block temperature.* The system shall have an error no greater than ±2°F (±1.1°C) when measuring specific temperatures over the range of 65° to 330°F (18.3°C to 165.6°C). It shall also have an error no greater than ±2°F (±1.1°C) when measuring any temperature difference up to 240°F (133.3 °C) within the above range.

2.9.3.4 *Test load temperatures.* The thermometer or other temperature measuring instrument used to measure the test water load temperature shall be as specified in Section 4, Paragraph 12.3 of IEC 705 Amendment 2. Use only one thermometer or other temperature measuring device throughout the entire test procedure.

2.9.3.5 *Temperature indicator system for measuring surface temperatures.* The temperature of any surface of an appliance shall be measured by means of a thermocouple in firm contact with the surface. The temperature indicating system shall have an error no greater than ±1°F (±0.6°C) over the range 65° to 90°F (18°C to 32°C).

2.9.4 *Heating Value.* The heating value of the natural gas or propane shall be measured with an instrument and associated readout device that has a maximum error no greater than ±0.5% of the measured value and a resolution of ±0.2% or less of the full scale reading of the indicator instrument. The heating value of natural gas or propane must be corrected for local temperature and pressure conditions.

2.9.5 *Scale.* The scale used for weighing the test blocks shall have a maximum error no greater than 1 ounce (28.4 g). The scale used for weighing the microwave oven test water load shall be as specified in Section 4, paragraph 12.3 of IEC 705 Amendment 2.

3. Test Methods and Measurements

3.1 *Test methods.*

3.1.1 *Conventional oven.* Perform a test by establishing the testing conditions set forth in Section 2, "TEST CONDITIONS," of this Appendix, and adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top, if so equipped. Before beginning the test, the conventional oven shall be at its normal nonoperating temperature as defined in Section 1.6 and described in Section 2.6. Set the conventional oven test block W_1 approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. The oven shall remain on for at least one complete thermostat "cut-off/cut-on" of the electrical resistance heaters or gas burners after the test block temperature has increased 234°F (130°C) above its initial temperature.

3.1.1.1 *Self-cleaning operation of a conventional oven.* Establish the test conditions set forth in Section 2, "TEST CONDITIONS," of this Appendix. Adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal nonoperating temperature as defined in Section 1.6 and described in Section 2.6. Then set the conventional oven's self-cleaning process in accordance with the manufacturer's instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

3.1.1.2 *Continuously burning pilot lights of a conventional gas oven.* Establish the test conditions set forth in Section 2, "TEST CONDITIONS," of this Appendix. Adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top. If a positive displacement gas meter is used the, test duration shall be sufficient to measure a gas consumption which is at least 200 times the resolution of the gas meter.

3.1.2 *Conventional cooking top.* Establish the test conditions set forth in Section 2, "TEST CONDITIONS," of this Appendix. Adjust any pilot lights of a conventional gas cooking top in accordance with the manufacturer's instructions and turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal nonoperating temperature as defined in Section 1.6 and described in Section 2.6. Set the test block in the center of the surface unit under test. The small test block, W_2, shall be used on electric surface units of 7 inches (178 mm) or less in diameter. The large test block, W_3, shall be used on electric surface units over 7 inches (177.8 mm) in diameter and on all gas surface units. Turn on the surface unit under test and set its energy input rate to the maximum setting. When the test block reaches 144 °F (80 °C) above its initial test block temperature, immediately reduce the energy input rate to 25±5 percent of the maximum energy input rate. After 15±0.1 minutes at the reduced energy setting, turn off the surface unit under test.

3.1.2.1 *Continuously burning pilot lights of a conventional gas cooking top.* Establish the test conditions set forth in Section 2, "TEST CONDITIONS," of this Appendix. Adjust any pilot lights of a conventional gas cooking top in accordance with the manufacturer's instructions and turn off the gas flow to the conventional oven(s). If a positive displacement gas meter is used, the test duration shall be sufficient to measure a gas consumption which is at least 200 times the resolution of the gas meter.

3.1.3 *Microwave oven.*

3.1.3.1 *Microwave oven test energy or power output.* Establish the testing conditions set forth in Section 2, "TEST CONDITIONS," of this Appendix. Follow the test procedure as specified in Section 4, Paragraph 12.4 of IEC 705 Amendment 2.

3.2 *Test measurements.*

3.2.1 *Conventional oven test energy consumption.* If the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed, E_O, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the oven thermostat operates by cycling on and off, make the following series of measurements: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last "ON" period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next "ON" period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that "ON" period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following "ON" period. Energy measurements for E_O, E_A, E_B, E_C and E_D, should be expressed in watt-hours (kJ) for conventional electric ovens and volume measurements for V_A, V_B, V_C and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven, measure in watt-hours (kJ) any electrical energy, E_{IO}, consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O. The energy consumed by a continuously operating clock that is an integral part of the timing or temperature control circuit and cannot be disconnected during the test may be subtracted from the oven test energy to obtain the test energy consumption, E_O or E_{IO}.

3.2.1.1 *Conventional oven average test energy consumption.* If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat does not cycle on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat operates by cycling on and off, make the following series of measurements with and without the forced convection mode: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last "ON" period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next "ON" period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that "ON" period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following "ON" period. Energy measurements for E_O, E_A, E_B, E_C and E_D should be expressed in watt-hours (kJ) for conventional electric ovens and volume measurements for V_A, V_B, V_C and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven that can be operated with or without forced convection, measure in watt-hours (kJ) any electrical energy consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O using the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$. The energy consumed by a continuously operating clock that is an integral part of the timing or temperature control circuit and cannot be disconnected during the test may be subtracted from the oven test energy to obtain the test energy consumption, $(E_O)_1$ and $(E_O)_2$ or $(E_{IO})_1$ and $(E_{IO})_2$.

3.2.1.2 *Energy consumption of self-cleaning operation.* Measure the energy consumption, E_S, in watt-hours (kJ) of electricity or the volume of gas consumption, V_S, in standard cubic feet (L) during the self-cleaning test set forth in Section 3.1.1.1. For a gas oven, also measure in watt-hours (kJ) any electrical energy, E_{IS}, consumed by ignition devices or other electrical components required during the self-cleaning test. The energy consumed by a continuously operating clock that is an integral part of the timing or temperature control circuit and cannot be disconnected during the test may be subtracted from the self-cleaning test energy to obtain the energy consumption, E_S or E_{IS}

3.2.1.3 *Gas consumption of continuously burning pilot lights.* Measure the gas consumption of the pilot lights, V_{OP}, in standard cubic feet (L) of gas and the test duration, t_{OP}, in hours for the test set forth in Section 3.1.1.2. If a gas flow rate meter is used, measure the flow rate, Q_{OP}, in standard cubic feet per hour (L/h).

3.2.1.4 *Clock power.* If the conventional oven or conventional range includes an electric clock which is on continuously, and the power rating in watts (J/s) of this feature is not known, measure the clock power, P_{CL}, in watts (J/s.) The power rating or measurement of continuously operating clocks, that are an integral part of the timing or temperature control circuits and cannot be disconnected during testing, shall be multiplied by the applicable test period to calculate the clock energy consumption, in watt-hours (kJ), during a test. The energy consumed by the clock during the test may then be subtracted from the test energy to obtain the specified test energy consumption value.

3.2.2 *Conventional surface unit test energy consumption.* For the surface unit under test, measure the energy consumption, E_{CT}, in watt-hours (kJ) of electricity or the volume of gas consumption, V_{CT}, in standard cubic feet (L) of gas and the test block temperature, T_{CT}, at the end of the 15 minute (reduced input setting) test interval for the test specified in Section 3.1.2 and the total time, t_{CT}, in hours, that the unit is under test. Measure any

electrical energy, E_{IC}, consumed by an ignition device of a gas heating element in watt-hours (kJ). The energy consumed by a continuously operating clock that is an integral part of the timing or temperature control circuit and cannot be disconnected during the test may be subtracted from the cooktop test energy to obtain the test energy consumption, E_{CT} or E_{IC}.

3.2.2.1 *Gas consumption of continuously burning pilot lights.* If the conventional gas cooking top under test has one or more continuously burning pilot lights, measure the gas consumed during the test by the pilot lights, V_{CP}, in standard cubic feet (L) of gas, and the test duration, t_{CP}, in hours as specified in Section 3.1.2.1. If a gas flow rate meter is used, measure the flow rate, Q_{CP}, in standard cubic feet per hour (L/h).

3.2.3 *Microwave oven test energy consumption and power input.* Measurements are to be made as specified in Section 4, Paragraphs 12.4 and 13 of IEC 705 and Amendment 2. Measure the electrical input energy, E_M, in watt-hours (kJ) consumed by the microwave oven during the test. Repeat the tests three times unless the power output value resulting from the second measurement is within 1.5% of the value obtained from the first measurement as stated in Section 4, Paragraphs 12.6 of IEC 705 Amendment 2. (See 10 CFR 430.22.)

3.3 *Recorded values.*

3.3.1 Record the test room temperature, T_R, at the start and end of each range, oven or cooktop test, as determined in Section 2.5.

3.3.2 Record measured test block weights W_1, W_2, and W_3 in pounds (kg).

3.3.3 Record the initial temperature, T_I, of the test block under test.

3.3.4 For a conventional oven with a thermostat which operates by cycling on and off, record the conventional oven test measurements T_A, E_A, T_B, E_B, T_C, E_C, T_D, and E_D for conventional electric ovens or T_A, V_A, T_B, V_B, T_C, V_C, T_D, and V_D for conventional gas ovens. If the thermostat controls the oven temperature without cycling on and off, record E_O. For a gas oven which also uses electrical energy for the ignition or operation of the oven, also record E_{IO}.

3.3.5 For a conventional oven that can be operated with or without forced convection and the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$. If the conventional oven operates with or without forced convection and the thermostat controls the oven temperature by cycling on and off, record the conventional oven test measurements T_A, E_A, T_B, E_B, T_C, E_C, T_D, and E_D for conventional electric ovens or T_A, V_A, T_B, V_B, T_C, V_C, T_D, and V_D for conventional gas ovens. For a gas oven that can be operated with or without forced convection, measure any electrical energy consumed by an ignition device or other electrical components used during the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$.

3.3.6 Record the measured energy consumption, E_S, or gas consumption, V_S, and for a gas oven, any electrical energy, E_{IS}, for the test of the self-cleaning operation of a conventional oven.

3.3.7 Record the gas flow rate, Q_{OP}; or the gas consumption, V_{OP}, and the elapsed time, t_{OP}, that any continuously burning pilot lights of a conventional oven are under test.

3.3.8 Record the clock power measurement or rating, P_{CL}, in watts (J/s), except for microwave oven tests.

3.3.9 For the surface unit under test, record the electric energy consumption, E_{CT}, or the gas volume consumption, V_{CT}, the final test block temperature, T_{CT}, the total test time, t_{CT}. For a gas cooking top which uses electrical energy for ignition of the burners, also record E_{IC}.

3.3.10 Record the gas flow rate, Q_{CP}; or the gas consumption, V_{CP}, and the elapsed time, t_{CP}, that any continuously burning pilot lights of a conventional gas cooking top are under test.

3.3.11 Record the heating value, H_n, as determined in Section 2.2.2.2 for the natural gas supply.

3.3.12 Record the heating value, H_p, as determined in Section 2.2.2.3 for the propane supply.

3.3.13 Record the electrical input energy and power input, E_M and P_M, for the microwave oven test; the initial and final temperature, T_1 and T_2, of the test water load; the mass of the test container before filling with the test water load and the mass of the test water load, M_C and M_W respectively; and the measured room temperature, T_O, as determined in Section 3.2.3.

4. Calculation of Derived Results From Test Measurements

4.1 *Conventional oven.*

4.1.1 *Test energy consumption.* For a conventional oven with a thermostat which operates by cycling on and off, calculate the test energy consumption, E_O, expressed in watt-hours (kJ) for electric ovens and in Btu's (kJ) for gas ovens, and defined as:

$$E_O = E_{AB} + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}}\right) \times (E_{CD} - E_{AB})\right]$$

for electric ovens, and,

$$E_O = (V_{AB} \times H) + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}}\right) \times (V_{CD} - V_{AB}) \times H\right]$$

For gas ovens

Where:

H = either H_n or H_p, the heating value of the gas used in the test as specified in Section 2.2.2.2 and Section 2.2.2.3, expressed in Btu's per standard cubic foot (kJ/L).

T_O = 234°F (130°C) plus the initial test block temperature.

and,

$$E_{AB} = \frac{(E_A + E_B)}{2}, \quad E_{CD} = \frac{(E_C + E_D)}{2}$$

$$V_{AB} = \frac{(V_A + V_B)}{2}, \quad V_{CD} = \frac{(V_C + V_D)}{2}$$

$$T_{AB} = \frac{(T_A + T_B)}{2}, \quad T_{CD} = \frac{(T_C + T_D)}{2}$$

Where:

T_A = block temperature in °F (°C) at the end of the last "ON" period of the conventional oven before the test block reaches T_O.

T_B = block temperature in °F (°C) at the beginning of the "ON" period following the measurement of T_A.

T_C = block temperature in °F (°C) at the end of the "ON" period which starts with T_B.

T_D = block temperature in °F (°C) at the beginning of the "ON" period which follows the measurement of T_C.

E_A = electric energy consumed in Wh (kJ) at the end of the last "ON" period before the test block reaches T_O.

E_B = electric energy consumed in Wh (kJ) at the beginning of the "ON" period following the measurement of T_A.

E_C = electric energy consumed in Wh (kJ) at the end of the "ON" period which starts with T_B.

E_D = electric energy consumed in Wh (kJ) at the beginning of the "ON" period which follows the measurement of T_C.

V_A = volume of gas consumed in standard cubic feet (L) at the end of the last "ON" period before the test block reaches T_O.

V_B = volume of gas consumed in standard cubic feet (L) at the beginning of the "ON" period following the measurement of T_A.

V_C = volume of gas consumed in standard cubic feet (L) at the end of the "ON" period which starts with T_B.

V_D = volume of gas consumed in standard cubic feet (L) at the beginning of the "ON" period which follows the measurement of T_C.

The energy consumed by a continuously operating clock that cannot be disconnected during the test may be subtracted from the oven test energy to obtain the oven test energy consumption, E_O.

4.1.1.1 *Average test energy consumption.* If the conventional oven can be operated with or without forced convection, determine the average test energy consumption, E_O and E_{IO}, in watt-hours (kJ) for electric ovens and Btu's (kJ) for gas ovens using the following equations:

$$E_O = \frac{(E_O)_1 + (E_O)_2}{2}$$

$$E_{IO} = \frac{(E_{IO})_1 + (E_{IO})_2}{2}$$

Where:

$(E_O)_1$=test energy consumption using the forced convection mode in watt-hours (kJ) for electric ovens and in Btu's (kJ) for gas ovens as measured in Section 3.2.1.1.

$(E_O)_2$=test energy consumption without using the forced convection mode in watt-hours (kJ) for electric ovens and in Btu's (kJ) for gas ovens as measured in Section 3.2.1.1.

$(E_{IO})_1$=electrical energy consumption in watt-hours (kJ) of a gas oven in forced convection mode as measured in Section 3.2.1.1.

$(E_{IO})_2$=electrical energy consumption in watt-hours (kJ) of a gas oven without using the forced convection mode as measured in Section 3.2.1.1.

The energy consumed by a continuously operating clock that cannot be disconnected during the test may be subtracted from the oven test energy to obtain the average test energy consumption E_O and E_{IO}.

4.1.2 *Conventional oven annual energy consumption.*

4.1.2.1. *Annual cooking energy consumption.*

4.1.2.1.1. *Annual primary energy consumption.* Calculate the annual primary energy consumption for cooking, E_{CO}, expressed in kilowatt-hours (kJ) per year for electric ovens and in Btu's (kJ) per year for gas ovens, and defined as:

$$E_{CO} = \frac{E_O \times K_e \times O_O}{W_1 \times C_p \times T_S} \text{ for electric ovens,}$$

Where:

E_O=test energy consumption as measured in Section 3.2.1 or as calculated in Section 4.1.1 or Section 4.1.1.1.

K_e=3.412 Btu/Wh (3.6 kJ/Wh,) conversion factor of watt-hours to Btu's.

O_O=29.3 kWh (105,480 kJ) per year, annual useful cooking energy output of conventional electric oven.

W_1=measured weight of test block in pounds (kg).

C_p=0.23 Btu/lb-°F (0.96 kJ/kg-°C), specific heat of test block.

T_S=234°F (130°C), temperature rise of test block.

$$E_{CO} = \frac{E_O \times O_O}{W_1 \times C_p \times T_S} \text{ for gas ovens,}$$

Where:

E_O=test energy consumption as measured in Section 3.2.1. or as calculated in Section 4.1.1 or Section 4.1.1.1.

O_O=88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output of conventional gas oven.

W_1, C_p and T_S are the same as defined above.

4.1.2.1.2 *Annual secondary energy consumption for cooking of gas ovens.* Calculate the annual secondary energy consumption for cooking, E_{SO}, expressed in kilowatt-hours (kJ) per year and defined as:

$$E_{SO} = \frac{E_{IO} \times K_e \times O_O}{W_1 \times C_p \times T_S},$$

Where:

E_{IO}=electrical test energy consumption as measured in Section 3.2.1 or as calculated in Section 4.1.1.1.

O_O=29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

K_e, W_1, C_p, and T_S are as defined in Section 4.1.2.1.1.

4.1.2.2 *Annual energy consumption of any continuously burning pilot lights.* Calculate the annual energy consumption of any continuously burning pilot lights, E_{PO}, expressed in Btu's (kJ) per year and defined as:

$$E_{PO} = Q_{OP} \times H \times (A - B),$$

or,

$$E_{PO} = \frac{V_{OP}}{t_{OP}} \times H \times (A - B)$$

Where:

Q_{OP}=pilot gas flow rate in standard cubic feet per hour (L/h), as measured in Section 3.2.1.3.

V_{OP}=standard cubic feet (L) of gas consumed by any continuously burning pilot lights, as measured in Section 3.2.1.3.

t_{OP}=elapsed test time in hours for any continuously burning pilot lights tested, as measured in Section 3.2.1.3.

H=H_n or H_p, the heating value of the gas used in the test as specified in

Section 2.2.2.2 and Section 2.2.2.3 in Btu's per standard cubic foot (kJ/L).

A=8,760, number of hours in a year.

B=300, number of hours per year any continuously burning pilot lights contribute to the heating of an oven for cooking food.

4.1.2.3 *Annual conventional oven self-cleaning energy.*

4.1.2.3.1 *Annual primary energy consumption.* Calculate the annual primary energy consumption for conventional oven self-cleaning operations, E_{SC}, expressed in kilowatt-hours (kJ) per year for electric ovens and in Btu's (kJ) for gas ovens, and defined as:

$E_{SC}=E_S \times S_e \times K$, for electric ovens,

Where:

E_S=energy consumption in watt-hours, as measured in Section 3.2.1.2.

S_e=4, average number of times a self-cleaning operation of a conventional electric oven is used per year.

K=0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

or

$E_{SC}=V_S \times H \times S_g$, for gas ovens,

Where:

V_S=gas consumption in standard cubic feet (L), as measured in Section 3.2.1.2.

H=H_n or H_p, the heating value of the gas used in the test as specified in Section 2.2.2.2 and Section 2.2.2.3 in Btu's per standard cubic foot (kJ/L).

S_g=4, average number of times a self-cleaning operation of a conventional gas oven is used per year.

The energy consumed by a continuously operating clock that cannot be disconnected during the self-cleaning test procedure may be subtracted from the test energy to obtain the test energy consumption, E_{SC}.

4.1.2.3.2 *Annual secondary energy consumption for self-cleaning operation of gas ovens.* Calculate the annual secondary energy consumption for self-cleaning operations of a gas oven, E_{SS}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{SS}=E_{IS} \times S_g \times K$,

Where:

E_{IS}=electrical energy consumed during the self-cleaning operation of a conventional gas oven, as measured in Section 3.2.1.2.

S_g=4, average number of times a self-cleaning operation of a conventional gas oven is used per year.

K=0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.1.2.4 *Annual clock energy consumption.* Calculate the annual energy consumption of any constantly operating electric clock, E_{CL}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{CL} = P_{CL} \times A \times K$,

Where:

P_{CL}=power rating of clock which is on continuously, in watts, as measured in Section 3.2.1.4.

A=8,760, number of hours in a year.

K=0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.1.2.5 *Total annual energy consumption of a single conventional oven.*

4.1.2.5.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption of a conventional electric oven, E_{AO}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AO}=E_{CO}+E_{SC}+E_{CL}$,

Where:

E_{CO}=annual primary cooking energy consumption as determined in Section 4.1.2.1.1.

E_{SC}=annual primary self-cleaning energy consumption as determined in Section 4.1.2.3.1.

E_{CL}=annual clock energy consumption as determined in Section 4.1.2.4.

4.1.2.5.2 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption of a conventional gas oven, E_{AOG}, expressed in Btu's (kJ) per year and defined as:

$E_{AOG}=E_{CO}+E_{SC}+E_{PO}$,

Where:

E_{CO}=annual primary cooking energy consumption as determined in Section 4.1.2.1.1.

E_{PO}=annual pilot light energy consumption as determined in Section 4.1.2.2.

E_{SC}=annual primary self-cleaning energy consumption as determined in Section 4.1.2.3.1.

If the conventional gas oven uses electrical energy, calculate the total annual electrical energy consumption, E_{AOE}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AOE}=E_{SO}+E_{SS}+E_{CL}$,

Where:

E_{SO}=annual secondary cooking energy consumption as determined in Section 4.1.2.1.2.

E_{SS}=annual secondary self-cleaning energy consumption as determined in Section 4.1.2.3.2.

E_{CL}=annual clock energy consumption as determined in Section 4.1.2.4.

4.1.2.6. *Total annual energy consumption of multiple conventional ovens.* If the cooking appliance includes more than one conventional oven, calculate the total annual energy consumption of the conventional ovens using the following equations:

4.1.2.6.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption, ETO, in kilowatt-hours (kJ) per year and defined as:

$E_{TO} = E_{ACO} + E_{ASC} + E_{CL}$,

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}(E_{CO})_i,$$

is the average annual primary energy consumption for cooking,

and where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in Section 4.1.2.1.1.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}(E_{SC})_i,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to Section 4.1.2.3.1.

E_{CL} = clock energy consumption as determined according to Section 4.1.2.4.

4.1.2.6.2 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption, E_{TOG}, in Btu's (kJ) per year and defined as:

$E_{TOG} = E_{ACO} + E_{ASC} + E_{TPO}$,

Where:

E_{ACO} = average annual primary energy consumption for cooking in Btu's (kJ) per year and is calculated as:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}(E_{CO})_i,$$

Where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in Section 4.1.2.1.1.

and,

E_{ASC} = average annual self-cleaning energy consumption in Btu's (kJ) per year and is calculated as:

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}(E_{SC})_i,$$

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to Section 4.1.2.3.1.

$$E_{TPO} = \sum_{i=1}^{n}(E_{PO})_i,$$

total energy consumption of any pilot lights,

Where:

E_{PO} = annual energy consumption of any continuously burning pilot lights determined according to Section 4.1.2.2.

n = number of pilot lights in the basic model.

If the oven also uses electrical energy, calculate the total annual electrical energy consumption, E_{TOE}, in kilowatt-hours (kJ) per year and defined as:

$E_{TOE} = E_{ASO} + E_{AAS} + E_{CL}$,

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}(E_{SO})_i,$$

is the average annual secondary energy consumption for cooking,

Where:

n=number of conventional ovens in the basic model.

E_{SO}=annual secondary energy consumption for cooking of gas ovens as determined in Section 4.1.2.1.2.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}(E_{SS})_i,$$

is the average annual secondary self-cleaning energy consumption,

Where:

n=number of self-cleaning ovens in the basic model.

E_{SS}=annual secondary self-cleaning energy consumption of gas ovens as determined in Section 4.1.2.3.2.

E_{CL}=annual clock energy consumption as determined in Section 4.1.2.4.

4.1.3 *Conventional oven cooking efficiency.*

4.1.3.1 *Single conventional oven.* Calculate the conventional oven cooking efficiency, Eff_{AO}, using the following equations:

For electric ovens:

$$Eff_{AO} = \frac{W_1 \times C_p \times T_S}{E_O \times K_e},$$

and,

For gas ovens:

$$Eff_{AO} = \frac{W_1 \times C_p \times T_S}{E_O + (E_{IO} \times K_e)},$$

Where:

W_1=measured weight of test block in pounds (kg).

C_p=0.23 Btu/lb-°F (0.96 kJ/kg• °C), specific heat of test block.

T_S=234°F (130°C), temperature rise of test block.

E_O=test energy consumption as measured in Section 3.2.1 or calculated in Section 4.1.1 or Section 4.1.1.1.

K_e=3.412 Btu/Wh (3.6 kJ/Wh), conversion factor for watt-hours to Btu's.

E_{IO}=electrical test energy consumption according to Section 3.2.1 or as calculated in Section 4.1.1.1.

4.1.3.2 *Multiple conventional ovens.* If the cooking appliance includes more than one conventional oven, calculate the cooking efficiency for all of the conventional ovens in the appliance, Eff_{TO}, using the following equation:

$$Eff_{TO} = \frac{n}{\sum_{i=1}^{n}\left(\frac{1}{Eff_{AO}}\right)_i},$$

Where:

n=number of conventional ovens in the cooking appliance.

Eff_{AO}=cooking efficiency of each oven determined according to Section 4.1.3.1.

4.1.4 *Conventional oven energy factor.* Calculate the energy factor, or the ratio of useful cooking energy output to the total energy input, R_O, using the following equations:

$$R_O = \frac{O_O}{E_{AO}},$$

For electric ovens,

Where:

O_O=29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

E_{AO}=total annual energy consumption for electric ovens as determined in Section 4.1.2.5.1.

For gas ovens:

$$R_O = \frac{O_O}{E_{AOG} + (E_{AOE} \times K_e)},$$

Where:

O_O=88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

E_{AOG}=total annual gas energy consumption for conventional gas ovens as determined in Section 4.1.2.5.2.

E_{AOE}=total annual electrical energy consumption for conventional gas ovens as determined in Section 4.1.2.5.2.

K_e=3,412 Btu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to Btu's.

4.2 *Conventional cooking top*

4.2.1 *Conventional cooking top cooking efficiency*

4.2.1.1 *Electric surface unit cooking efficiency.* Calculate the cooking efficiency, Eff_{SU}, of the electric surface unit under test, defined as:

$$Eff_{SU} = W \times C_p \times \left(\frac{T_{SU}}{K_e \times E_{CT}}\right),$$

Where:

W=measured weight of test block, W_2 or W_3, expressed in pounds (kg).

C_p=0.23 Btu/lb-°F (0.96 kJ/kg• °C), specific heat of test block.

T_{SU}=temperature rise of the test block: final test block temperature, T_{CT}, as determined in Section 3.2.2, minus the initial test block temperature, T_I, expressed in °F (°C) as determined in Section 2.7.5.

K_e=3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btu's.

E_{CT}=measured energy consumption, as determined according to Section 3.2.2, expressed in watt-hours (kJ).

The energy consumed by a continuously operating clock that cannot be disconnected during the cooktop test may be subtracted from the energy consumption, E_{CT}, as determined in Section 3.2.2.

4.2.1.2 *Gas surface unit cooking efficiency.* Calculate the cooking efficiency, Eff_{SU}, of the gas surface unit under test, defined as:

$$Eff_{SU} = \frac{W_3 \times C_P \times T_{SU}}{E},$$

Where:

W_3=measured weight of test block as measured in Section 3.3.2, expressed in pounds (kg).

C_p and T_{SU} are the same as defined in Section 4.2.1.1.

and,

$E=[V_{CT} - V_{CF} \times H] + (E_{IC} \times K_e)$,

Where:

V_{CT}=total gas consumption in standard cubic feet (L) for the gas surface unit test as measured in Section 3.2.2.

E_{IC}=electrical energy consumed in watt-hours (kJ) by an ignition device of a gas surface unit as measured in Section 3.2.2.

K_e=3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btu's.
H=either H_a or H_p, the heating value of the gas used in the test as specified in Section 2.2.2.2 and Section 2.2.2.3, expressed in Btu's per standard cubic foot (kJ/L) of gas.
$V_{CP}=Q_{CP}\times t_{CT}$, pilot consumption, in standard cubic feet (L), during unit test,
Where:
t_{CT}=the elapsed test time as defined in Section 3.2.2.
and

$$Q_{CP}=\frac{V_{CP}}{t_{CP}},$$

(pilot flow in standard cubic feet per hour)
Where:
V_{CP}=any pilot lights gas consumption defined in Section 3.2.2.1.
t_{CP}=elapsed time of the cooking top pilot lights test as defined in Section 3.2.2.1.

4.2.1.3 *Conventional cooking top cooking efficiency.* Calculate the conventional cooking top cooking efficiency, Eff_{CT}, using the following equation:

$$Eff_{CT}=\frac{1}{n}\sum_{i=1}^{n}\left(Eff_{SU}\right)_i,$$

Where:
n=number of surface units in the cooking top.
Eff_{SU}=the efficiency of each of the surface units, as determined according to Section 4.2.1.1 or Section 4.2.1.2.

4.2.2 *Conventional cooking top annual energy consumption.*

4.2.2.1 *Conventional electric cooking top energy consumption.* Calculate the annual energy consumption of an electric cooking top, E_{CA}, in kilowatt-hours (kJ) per year, defined as:

$$E_{CA}=\frac{O_{CT}}{Eff_{CT}},$$

Where:
O_{CT}=173.1 kWh (623,160 kJ) per year, annual useful cooking energy output.
Eff_{CT}=conventional cooking top cooking efficiency as defined in Section 4.2.1.3.

4.2.2.2 *Conventional gas cooking top*

4.2.2.2.1 *Annual cooking energy consumption.* Calculate the annual energy consumption for cooking, E_{CC}, in Btu's (kJ) per year for a gas cooking top, defined as:

$$E_{CC}=\frac{O_{CT}}{Eff_{CT}},$$

Where:
O_{CT}=527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output.
Eff_{CT}=the gas cooking top efficiency as defined in Section 4.2.1.3.

4.2.2.2.2 *Annual energy consumption of any continuously burning gas pilots.* Calculate the annual energy consumption of any continuously burning gas pilot lights of the cooking top, E_{PC}, in Btu's (kJ) per year, defined as:

$E_{PC}=Q_{CP}\times A\times H$,
Where:
Q_{CP}=pilot light gas flow rate as measured in Section 3.2.2.1.
A=8,760 hours, the total number of hours in a year.
H=either H_a or H_p, the heating value of the gas used in the test as specified in Section 2.2.2.2. and Section 2.2.2.3, expressed in Btu's per standard cubic foot (kJ/L) of gas.

4.2.2.2.3 *Total annual energy consumption of a conventional gas cooking top.* Calculate the total annual energy consumption of a conventional gas cooking top, E_{CA}, in Btu's (kJ) per year, defined as:

$E_{CA}=E_{CC}+E_{PC}$,
Where:
E_{CC}=energy consumption for cooking as determined in Section 4.2.2.2.1.
E_{PC}=annual energy consumption of the pilot lights as determined in Section 4.2.2.2.2.

4.2.3 *Conventional cooking top energy factor.* Calculate the energy factor or ratio of useful cooking energy output for cooking to the total energy input, R_{CT}, as follows:

For an electric cooking top, the energy factor is the same as the cooking efficiency as determined according to Section 4.2.1.3.

For gas cooking tops,

$$R_{CT}=\frac{O_{CT}}{E_{CA}},$$

Where:
O_{CT}=527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.
E_{CA}=total annual energy consumption of cooking top determined according to Section 4.2.2.2.3.

4.3 *Combined components.* The annual energy consumption of a kitchen range, e.g. a cooktop and oven combined, shall be the sum of the annual energy consumption of each of its components. The annual energy consumption for other combinations of ovens, cooktops and microwaves will also be treated as the sum of the annual energy consumption of each of its components. The energy factor of a combined component is the sum of the annual useful cooking energy output of each component divided by the sum of the total annual energy consumption of each component.

4.4 *Microwave oven.*

4.4.1 *Microwave oven test energy output.* Calculate the microwave oven test energy output, E_T, in watt-hour's (kJ). The calculation is repeated two or three times as required in section 3.2.3. The average of the E_T's is used for a calculation in section 4.4.3. For calculations specified in units of energy [watt-hours (kJ)], use the equation below:

$$E_T=\frac{C_pM_W\left(T_2-T_1\right)+C_CM_C\left(T_2-T_0\right)}{K_e}$$

Where:
M_W=the measured mass of the test water load, in pounds (g).
M_C=the measured mass of the test container before filling with test water load, in pounds (g).
T_1=the initial test water load temperature, in °F (°C).
T_2=the final test water load temperature, in °F (°C).
T_0=the measured ambient room temperature, in °F (°C).
C_C=0.210 Btu/lb−°F (0.88 kJ/kg·°C), specific heat of test container.
C_p=1.0 Btu/lb−°F (4.187 kJ/kg·°C), specific heat of water.
K_e=3,412 Btu/kWh (3,600 kJ/kWh) conversion factor of kilowatt-hours to Btu's.

4.4.2 *Microwave oven test power output.* Calculate the microwave oven test power output, P_T, in watts (J/s) as specified in Section four, paragraph 12.5 of IEC 705 Amendment 2 See Section 430.22. The calculation is repeated for each test as required in section 3.2.3. The average of the two or three P_T's is used for calculations in section 4.4.4. (See 10 CFR 430.22)

4.4.3 *Microwave oven annual energy consumption.* Calculate the microwave oven annual energy consumption, E_{mo}, in KWh's per year, defined as:

$$E_{MO}=\frac{E_M\times O_M}{E_T}$$

Where:
E_M=the energy consumption as defined in Section 3.2.3.
O_M=79.8 kWh (287,280 kJ) per year, the microwave oven annual useful cooking energy output.

E_T=the test energy as calculated in Section 4.4.1.

4.4.4 *Microwave oven cooking efficiency.* Calculate the microwave oven cooking efficiency, Eff_{MO}, as specified in Section four, paragraph 14 of IEC 705.

4.4.5 *Microwave oven energy factor.* Calculate the energy factor or the ratio of the useful cooking energy output to total energy input on a yearly basis, R_{MO}, defined as:

$$R_{MO}=\frac{O_M}{E_{MO}},$$

Where:
O_M=79.8 kWh (287,280 kJ) per year, annual useful cooking energy output.
E_{MO}=annual total energy consumption as determined in Section 4.4.3.

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Environmental Protection Agency

40 CFR Part 170
Pesticide Worker Protection Standard; Administrative Exception for Cut-Rose Hand Harvesting; Administrative Decision; Proposed Rule

Exception Decisions to Early Entry Prohibition, Worker Protection Standard; Technical Amendment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[OPP–250121; FRL–5599–2]

RIN 2070–AC95

Pesticide Worker Protection Standard; Administrative Exception for Cut-Rose Hand Harvesting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Administrative Exception Decision.

SUMMARY: With this document, EPA is announcing it has granted a limited administrative exception to the 1992 Worker Protection Standard (WPS) restrictions on early entry into pesticide-treated areas allowing workers to hand harvest roses during restricted entry intervals. Under § 170.112 (e) of the WPS, EPA may establish exceptions to the provision prohibiting early entry to perform routine hand-labor tasks. EPA is granting the exception because if these harvests are delayed, significant economic loss will occur; and, if the terms of this exception are followed, the contact with pesticide-treated surfaces will be minimal. The exception allows workers to enter for three hours per 24-hour period during a restricted entry interval. Thus, EPA granted this exception because it believes the benefits of this exception outweigh any resulting risks. The exception took effect on December 16, 1996, and expires on October 4, 1999.

EFFECTIVE DATE: This document is effective October 3, 1997.

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SUPPLEMENTARY INFORMATION: This Notice is issued under the authority of section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136w(a). Under FIFRA, EPA is authorized to mitigate unreasonable adverse effects that may result from exposure to pesticides, taking into account the risks of pesticide exposure to human health and the environment and the benefits of pesticide use to society and the economy. Elsewhere in this issue of the **Federal Register**, EPA is amending § 170.112 of the WPS to include reference to this administrative exception and its effective date.

I. Background

A. Worker Protection Standard

Introduced in 1974, the Worker Protection Standard (WPS) is intended to reduce the risk of pesticide poisonings and injuries among agricultural workers who are exposed to pesticide residues, and to reduce the risk of pesticide poisonings and injuries among pesticide handlers who may face more hazardous levels of exposure. Updated in 1992, the WPS scope now includes workers performing hand-labor operations in fields treated with pesticides, workers in or on farms, forests, nurseries and greenhouses, and pesticide handlers who mix, load, apply, or otherwise handle pesticides. The WPS contains requirements for pesticide safety training, notification of pesticide application, use of personal protective equipment (PPE), restricted entry intervals (REI) following pesticide application, decontamination supplies, and emergency medical assistance.

B. WPS Early Entry Restrictions

The 1992 WPS includes provisions under § 170.112 prohibiting agricultural workers from entering a pesticide-treated area to perform routine hand-labor tasks during an REI. Hand labor is defined by the WPS as any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with treated surfaces (such as plants or soil) that may contain pesticide residues. The REI is the time after the end of a pesticide application when entry into the treated area is restricted as specified on the pesticide product label.

C. WPS Exceptions to Early Entry Restrictions

Currently, the WPS only permits worker entry during the REI for the following purposes: (a) Entry resulting in no contact with treated surfaces; (b) entry allowing short-term tasks (less than 1 hour) to be performed with PPE and other protections; and (c) entry to perform tasks associated with agricultural emergencies. Under the "no contact" and "short-term task" exceptions, workers performing early-entry work are not permitted to engage in hand labor.

Under § 170.112(e) of the WPS, EPA may establish additional exceptions to the provision prohibiting early entry to perform routine hand-labor tasks. EPA grants or denies a request for an exception based on a risk-benefit analysis as required by FIFRA. On June 10, 1994 (59 FR 30265) (FRL–4779–8), EPA granted an exception that allowed, under specified conditions, early entry into pesticide-treated areas in greenhouses to harvest cut roses. This exception expired on June 10, 1996. On May 3, 1995 (60 FR 21955, FRL–4950–4) (60 FR 21960, FRL–4950–5), two additional exceptions were granted that allow early entry to perform irrigation and limited contact tasks under specified conditions.

D. Summary of Roses Inc.'s Petition

Roses Inc., a rose grower association, approached the Agency in the spring of 1996 and expressed a need for continuing the WPS cut-rose exception. According to Roses Inc., an early-entry exception to allow the harvest of cut roses twice a day is necessary for cut-rose growers to avoid the loss of significant portions of their crop.

Roses Inc. explained that commercial quality standards demand that roses be cosmetically perfect and at a bloom stage where the bud is just beginning to open. To meet such standards, Roses Inc. noted that pesticides must be used to control insects and disease, and harvesting must occur at least twice daily to capture flowers at the appropriate bloom stage. Roses Inc. asserted that cut roses that do not meet these standards have no economic value. Roses Inc. also asserted that the required twice daily harvest is not possible on days when pesticides with an REI greater than 4 hours have been applied, since the WPS early-entry restrictions eliminate the possibility of a second harvest and may, depending on the REI, eliminate both harvests for the second day.

After consulting with the rose industry and gathering information to complete the exception request, EPA determined that the request met the requirements of § 170.112(e)(1) and published a notice in the **Federal Register** on October 30, 1996 (61 FR 56100) (FRL–5571–8). The notice acknowledged receipt of Roses Inc.'s request, described terms proposed by the cut-rose industry, and provided a 30-day comment period. After considering the information obtained through public dialogue and written comments, EPA granted a limited administrative exception. In December 1996, EPA sent a letter to cut-rose growers outlining the terms of this new exception. This action documents the contents of the December letter.

E. Roses Inc.'s Proposed Terms

Roses Inc.'s request for an exception asked for continuance of the terms of the 1994 exception and an increase of the early entry exposure period from 3 to 8 hours in a 24-hour period just prior to major floral holidays. Specifically, Roses Inc. proposed the following terms:

1. For all products registered for use on roses, early entry to harvest roses by hand is allowed, under the following conditions:

a. The time in the treated area during an REI does not exceed 3 hours in any 24-hour period, (except as provided in (b)).

b. For 2 weeks before major floral holidays, the time in the treated area must not exceed 8 hours in any 24-hour period.

c. No entry is allowed for the first 4 hours and until after inhalation/ventilation criteria on the label has been reached.

d. The early entry personal protective equipment (PPE) specified on the product label must be used by workers.

e. The agricultural employer must properly maintain PPE.

f. The agricultural employer must take steps to prevent heat stress.

g. The worker must read the label or be informed of labeling requirements related to safe use.

h. Pesticide application specific information must be provided.

i. A pesticide safety poster must be displayed.

j. Decontamination supplies must be provided.

k. Workers must be WPS-trained.

l. Workers must be notified orally and information posted regarding the exception.

2. Exception has no expiration or, at minimum, expires in 5 years.

These proposed terms and conditions were the same as those imposed with the 1994 exception with the addition of a longer early-entry time prior to major floral holidays and an extended effective period. According to Roses Inc., there are five major floral holidays resulting in peak production periods. The holidays are Valentine's Day (February), Easter (April), Mother's Day (May), Sweetest Day (October) and Christmas (December).

After discussions with the Agency, Roses Inc. proposed a refinement of the terms of their request. In addition to the terms above, Roses Inc. proposed the following:

1. For products with a 12-hour REI on the label, allow early entry to harvest roses under the following conditions:

a. The time in the treated area for each worker may not exceed 4 hours in any 12-hour REI period;

b. Conditions (b) through (l) above.

2. For products with an REI of 24 hours or more, allow early entry to harvest roses under the following conditions:

a. Must meet all the early-entry conditions for the 12-hour REI pesticide products listed above.

b. During the first 12 hours of the REI period, early-entry workers would be required to wear additional PPE consisting of a canvas or similar arm sleeve protectors, and a waterproof apron that protects the upper torso and reaches to approximately knee level.

II. Summary of Comments Received and Major Issues

EPA received more than 50 comments on the proposed cut-rose exception. Comments were received from approximately 38 individual cut-rose growers, 9 agricultural associations, 3 government agencies, 3 academicians and 2 farmworker advocacy groups. More than 20 statements were also received from employees of cut-rose growers. Some of these statements were included with certain growers' submittals. A summary of the major issues and EPA's response is provided below.

A. Economic Need for the Exception

The cut-rose market depends on the production of high-quality, unblemished roses to achieve consumer acceptance and thus compete with foreign producers. Since roses are an aesthetic commodity, imperfections such as pest damage are not tolerated. Market demands establish the high quality standards that rose growers must meet. The wholesale flower market demands a cosmetically perfect rose that is free of insects, pest damage and blemishes. Perfection for cut-roses requires the buds to have the same size, shape, and degree of maturity.

To meet the market's standards, cut-rose growers stated they need to control pests and diseases as a vital element in providing a consistent quality product to their customers. According to survey data collected by Roses Inc., growers treat roses with pesticides an average of 6.4 times per month. Comments from growers on the frequency of pesticide applications supports Roses Inc.'s estimate.

Growers and Roses Inc. also commented that the timing of harvest is also critical in providing the market with roses at the same degree of maturity. According to growers and Roses Inc., there is a short window of opportunity to harvest the flower once it reaches this peak stage. The rose industry also asserts the need to harvest frequently is due to the physiology of the rose flower. Roses cut too soon do not open or fully blossom whereas roses cut late are too full and have a shorter shelf-life. Depending on the season and variety, the window for harvesting a high quality rose once it reaches its peak is about 2 to 6 hours, according to public comments from Roses Inc. and cut-rose growers.

The essential constraint imposed by the WPS on cut-rose production is the REI. This is due to the need to harvest roses at least twice per day under current practice to achieve maximum yield, quality and price. REI's for most of the available pesticides range from 12 to 48 hours. Therefore, the REI may interfere with the ability to harvest when pesticide treatment is also needed, resulting in a negative impact on the industry.

The methods available to cut-rose growers for producing roses and controlling pests are essentially the same as when the original exception was granted. Currently, spraying is performed in the late morning when several pests are most active and when moisture produced by spray equipment will dry rapidly. Late morning spraying would usually prevent afternoon harvest(s) due to the length of most REIs. Hypothetically, spraying could be performed after the last harvest of the day, with reentry into the greenhouse after the 12-hour REI of most pesticides expired the following morning. However, growers and scientists do not agree on this issue. Most of the growers and several scientists expressed concern that late day spraying would prolong leaf wetness due to slower drying late in the day. Higher levels of moisture are believed to increase disease and phytotoxicity. Several growers said that the prevalence of diseases increased when late day spraying was performed. Other growers and scientists believed that late day spraying could be acceptable. Late day spraying would not eliminate the need for an exception covering 24- and 48-hour REI pesticides.

Many growers noted that they are presently using integrated pest management (IPM). Growers mentioned using heating, cooling, ventilating, lighting, nutrition, greenhouse structures alteration and methods of pruning, cutting, and handling of their crops. Even with their screened greenhouses and computer environmental controls, growers contend that they still need pesticides. Growers also stated that chemical rotation is used to control pests and reduce the rate of pest and disease resistance to chemicals. When pest and disease resistance to chemicals increases, the need to treat also increases.

The original WPS exception (59 FR 30265) notes that "EPA is granting a two-year exception to provide rose growers time to adjust pesticide spray schedules, find early-entry alternatives, and develop technology." A condition of approval of the original exception to the cut-rose industry was the expectation that progress would be made toward obviating the need for another exception. Several organizations representing farm workers commented that the lack of adequate effort toward eliminating the need for the exception argues against renewing the exception. Some individual growers have commented that they have attempted to reduce the need for the exception by testing biological controls, such as predatory mites, and changing cultural methods. Several growers and Roses Inc. commented that newer, shorter REI pesticides are not sufficiently effective. Farm worker advocacy organizations wrote that the cut-rose industry did not use the 2 years of the 1992 WPS cut-rose exception to develop safer practices.

Growers commented that they use heating and venting or horizontal air flow or, less commonly, high-intensity lighting, to reduce humidity and free moisture to control disease. Some growers have installed screens over vents to reduce infestation from insects such as thrips and aphids. Roses Inc., asserted that as a small industry under severe foreign competition, it has not had the resources to pursue alternatives to the exception as aggressively as desired. Roses Inc. expressed disappointment that few newer and safer chemicals with short REIs and more biological control methods have not been developed as rapidly as hoped.

According to Roses Inc., the cut-rose industry uses approximately 28 essential chemicals to control many pests. Powdery mildew, botrytis, and downy mildew are the three most significant diseases. Thrips, aphids, white flies, and two-spotted spider mites are the most important insect and mite pests. Roses Inc. and growers commented numerous times that all currently available pesticides are essential to produce domestically-grown cut-roses. Annual spray schedules were supplied by several growers and these document the use of a variety of pesticides.

In many cases several different chemicals, often with different REIs, are available to control each pest. Growers and a consultant for Roses Inc. argued that this variety of pesticides is necessary for several reasons, especially for pest resistance management. These commenters noted that pest resistance has already become a problem with several pesticides now available, including pyrethroids, abamectin and iprodione. Additional reasons given for requiring different chemicals were: price, relative efficacy, low phytotoxicity, efficacy against multiple pests, mode of application, and speed of achieving control.

While several reasons were provided regarding chemical usefulness, insufficient information comparing the merits of chemicals used to control the same pests was presented, especially when the chemicals had differing REIs. This deficiency should be remedied if another renewal is requested. However, despite presenting less than the desired amount of comparative information regarding pesticides, the Agency believes that there is still a need for the exception no matter which individual pesticides may be used. Regardless of the justification of the necessity of any particular pesticide, clearly the cut-rose industry cannot currently rely only on 4-hour REI pesticides, changes in cultural practices or drastic reductions of the number of pesticide applications. Therefore, even if several individual pesticides were determined unessential, growers would still be faced with applying mostly longer REI pesticides at frequencies similar to the present.

Roses Inc. and several growers raised concerns about the impact of foreign imports on the U.S. cut-rose market and industry. Imported cut-roses reached 66% of the U.S. market, with the largest percent being shipped from Columbia and Ecuador. U.S. growers are concerned about the regulatory limitations they operate under relative to their foreign competitors. Foreign producers have access to stronger and more effective pesticides that are no longer registered in the United States. Imported roses enter the United States free of pesticide-related restrictions. U.S. growers indicated that these factors give foreign producers a comparative advantage over them.

U.S. rose growers stated that they must achieve high quality standards for lower prices to compete with foreign imports in the U.S. rose market. Prices for cut roses have decreased by 3% to 6% between 1992 and 1995. The average annual wholesale prices for hybrid-tea roses in different geographic regions range between 17 and 68 cents per stem, with the U.S. average at 33 cents per stem. Prices peak 1 to 2 weeks prior to major floral holidays, like Valentines Day, and may reach over $1:00 per stem.

Growers stated that to survive economically, they need to harvest two and sometimes three times a day. A few growers noted occasional exceptions only harvesting once on Sundays or holidays, like Christmas and New Years. According to rose growers who cut twice a day, the first cut yields 40% to 70% of the daily harvest, with the second cut yielding the remaining 30% to 60%. For those cutting three times a day, the first cut yields 40 to 70%, the second cut 10 to 30%, and the last cut up to 45% of the daily harvest. These percentages seem to vary considerably by geographic region and season. The amount of flowers that mature in the afternoon increases as temperatures and light intensity increases.

Growers indicated without an exception that they lose a minimum of the afternoon harvest(s) when they need to treat with a pesticide(s). If a grower applies a pesticide that has a 12-hour REI after the morning harvest, they will miss a minimum of the afternoon harvest(s). Growers would lose 1 to 2 full days of harvest with an application of a pesticide that has a 24- or 48-hour REI, respectively.

Based on the information collected and provided by growers, losses of 7% to 14% may occur if EPA did not grant the exception. Roses Inc. and many growers estimated losses between 7% to 14% of the annual harvest. Others estimated losses to be 10% to 30% a year. Losses in revenue could range between $8 and $16 million annually, assuming losses of 7% to 14%. Growers with a higher frequency of pesticide applications and/or applications of pesticides with 24- or 48-hour REIs will have greater loss estimates.

Secondary markets for roses do exist; however, the prices are significantly lower than those for prime roses. Street vendors selling cut-roses may be considered the secondary market. According to growers, prices for the secondary market range between 8 and 14 cents per stem and up to 30 cents in one area. These prices are 50% to 75% lower than the prime market price and lower than some growers production costs per stem.

A grower's decision to sell roses to the secondary market will depend on their variable production costs. If the unit price is lower than the costs to produce the cut rose, it is not economical for the grower to sell to the secondary markets. This may vary by grower depending on the time of year. For example, a grower may sell flowers to the secondary markets during the summer because their fuel expenditures may be low thus reducing their overall production costs.

Based on the production costs and budget data available, some rose growers will not be able to sustain additional losses even with the exception to the WPS REI requirements. Budget information was obtained from a few growers and a March 1995 report by the U.S. International Trade Commission (ITC) Report. The ITC collected detailed budget data for 1991 through 1993 and part of 1994. According to the ITC data, almost half of the growers incurred net losses in 1991 and 1992 and two-thirds of the growers incurred net losses in 1993. It is difficult to determine from this data if the same growers incurred losses year after year.

The cost and budget data received from growers showed similar results. Some growers showed profits and others showed net losses. Growers with net losses explained that, over the last year or two, they had implemented changes in cultural practices or made significant capital expenditures, like screens for vents and light systems for the greenhouses. It is difficult to fully interpret the budget data without a broader sample and access to more details.

A large number of rose growers could potentially be effected without the exception to the WPS. The U.S. cut-rose industry is comprised of 175 growers and up to 200 growers when all small growers are included. California growers constitute about 46% of the number of growers and produce at least 65% of the U.S. total production. About two-thirds of all U.S. growers would be considered small. The impact of losses incurred will depend on the efficiency within a greenhouse operation, the pest pressure in each greenhouse, and the ability to adjust spray schedules and the timing of harvest. Growers with few resources, including small growers are likely to be effected the most. Smaller growers may have more limited resources for capital improvements to help reduce pest pressure or install lights as quickly as larger operations. Most likely, larger operations have invested in upgrading their greenhouses with more efficient equipment and facilities. On the other hand, small growers may have more flexibility than really large operations to adjust harvest and spray schedules.

B. Risk To Workers

Commenters noted that the large number and high volume of chemicals used, as well as the high frequency of applications that is typical in rose production indicate potential for high worker exposure and high worker risk. These comments stated that many of the chemicals listed in the Roses Inc., exception request are acutely toxic, or have been shown to cause a variety of delayed effects in laboratory animals, including cancer, reproductive and developmental effects, neurotoxicity, and endocrine disruption.

Commenters also expressed a belief that rose harvesters are better protected than other agricultural workers. They cited several characteristics of the rose greenhouse to indicate a relative degree of safety. Such characteristics include a stable, skilled work force that tends to be well-trained and receptive to safety training. Also cited is the tendency for rose harvesters to be paid either on an hourly or salary basis rather than a piece rate. This, it is argued, indicates a probability that workers will adhere to safe work practices making use of protective equipment and other safety measures which might be foregone if such measures could slow their work, thus reducing their pay. Some comments also noted that in the greenhouse environment, workers generally have easy access to water for drinking and decontamination, and that in the relatively confined space of a greenhouse, workers are easier to monitor for compliance with safety rules.

Others observed that certain characteristics of the greenhouse environment suggests an increased level of worker risk. Both growers and worker advocates cite the problem of heat and humidity in greenhouses which increases risk of heat-related illness and discourages workers from wearing protective clothing and equipment because it may be uncomfortable. EPA shares the concerns about the risk of heat stress in greenhouses. EPA also notes that, while greenhouse environments tend to be warm and humid, the environment is controllable.

Numerous comments from rose growers indicated excellent safety records for their employees, and many said neither they nor their employees had ever experienced pesticide related injuries or illnesses. Comments from a county agricultural commissioner in California cited a draft report by the Worker Health and Safety Branch of the California Department of Pesticide Regulation. The draft report summarizes cases reported to the California Pesticide Illness Surveillance Program, and covers poisoning incident data for greenhouses and outdoor nursery operations for the years 1990 through 1994. According to this draft report, only three cases of pesticide-related illness, rated as possibly or probably related to pesticide exposure, were indicated as specific to rose growing operations; none of these incidents involved hospitalization, and one involved the worker missing 5 days of work. (EPA notes that some incidents appearing on the draft report cite only "ornamentals" or do not indicate the crop involved.) These commenters further state that while in other parts of the country many pesticide incidents go unreported, in California, for several reasons, it is rare for incidents to go unreported. The reasons given include California's extensive regulatory program, the general level of public awareness about pesticide use, and requirements placed on the medical care industry to report all suspected pesticide-related cases. This commenter asserts that acute pesticide poisonings, at least in California, are less likely to be overlooked than in the past. EPA believes that incident reporting is higher in California that in other parts of the country, but does not believe that it is rare for cases to go unreported.

Worker advocates argued that, while the reported number of pesticide-related incidents may be small, many incidents still go unreported. Even the California Incident Reporting System, these commenters argue, documents only a small fraction of the actual incidents that occur because: (1) Many farmworkers cannot afford to take a day off work to seek medical treatment, so they continue working despite symptoms of acute poisoning; (2) many farmworkers lack the financial means to secure medical care, or lack transportation to get to a medical provider; and (3) often farmworkers and medical providers do not recognize or report symptoms of pesticide exposure. Several commenters also expressed concern over delayed effects that are difficult to link to pesticides because the exposure does not result in immediate symptoms, and therefore does not get reported. Such effects may include cancer, reproductive and developmental effects, neurotoxicity, and endocrine system disruption. The Association of Farmworker Opportunity Programs states that incidents are under reported since the symptoms of pesticide poisoning often mimic the symptoms of colds and flu.

Commenters expressed disbelief that repeated or prolonged pesticide exposures could lead to such delayed effects. Some noted that family members and friends who have worked in the rose industry for a number of years continue to enjoy good health. Others criticized the Agency's concern for effects resulting from repeated low-dose exposures as "conjectural and speculative theorizing," and suggested that the Agency should assume the burden of proof that such effects are real before placing entry restrictions on the industry.

One grower mentioned that none of his retirees filed claims for effects

suffered from long-term use. Another grower wrote that in 50 years of operation they have never had a case of poisoning or a case of someone getting sick from applying pesticides. One grower mentioned that his employees were more likely to have an increased exposure to toxic chemicals while they were pursuing their hobbies than while harvesting roses.

EPA agrees that the likelihood of pesticide-related incidents going unreported in California is much lower than in other states where systems for reporting incidents are not in place, and where the regulatory framework providing for workers' health and safety may not be as developed. Nevertheless, EPA believes it is difficult to conclude, based on incident data, that reentry protections such as REIs are less important to the health and safety of rose harvesters than to other farmworkers. While the number of rose workers reported to have experienced pesticide-related illness or injury in California appears to be small, it may not be an accurate gauge for rose workers nationally, and does not account for size of the rose work force relative to the size of the general agricultural work force. Employers' Reports of Occupational Injuries, compiled by the California Department of Industrial Relations (1981 - 1990) indicate that workers in horticultural specialty crops, which include roses, had a slightly higher rate of pesticide poisoning (0.53 poisonings per 1,000 workers per year) than that for all agricultural workers (0.46 poisonings per 1,000 workers per year).

Regarding delayed effects, EPA acknowledges that several rose production chemicals identified by Roses Inc., have been shown in laboratory animals to cause the variety of effects cited by worker advocates in their comments. However, EPA does not have sufficient data to determine whether the potential level of exposure to rose harvesters corresponds to levels of concern identified in the toxicological studies that demonstrated these effects. More importantly, EPA has generic concern for workers working in areas shortly after pesticide applications have been completed when pesticide residue levels are at their highest and the potential for worker exposure is greatest. Such concern is heightened when many different chemicals are used and cultural practices dictate frequent or prolonged reentry, as is the case with rose harvesting. Finally, EPA agrees that such delayed effects would rarely, if ever, be captured in pesticide incident reports.

Worker risk can be decreased by reducing exposure during periods when pesticide residues are at the highest levels, by limiting the time workers are exposed, and by limiting the workers' direct contact with treated surfaces. EPA believes that the early-entry requirements set out in this exception acceptably reduces worker contact with pesticide-treated surfaces. Worker contact will be limited by not allowing entry for the first 4 hours following application and until inhalation and ventilation criteria on the label has been met; by limiting the duration of the contact to 3 hours and by requiring PPE to protect workers from treated surfaces.

C. Personal Protective Equipment (PPE)

Some growers wrote that safety has always been important to them. One cut-rose grower wrote that they have not had serious problems with pesticide exposure in the history of their organization because of their stringent training program and serious attitude toward worker protection. An employee wrote that each worker has and uses their own safety equipment including full protective gear. One harvester stated that the PPE used during the REI was both comfortable and protective.

One grower mentioned that, except for the respirators, the PPE equipment does not appear to unduly stress the staff. Another grower explained that his employees were agreeable to the use of special gloves, sleeves and aprons; however, they were opposed to the use of full protective suits, respirators, boots, gloves and face shields. One cut-rose grower wrote that he tried to have workers use coveralls, but everyone complained about the heat. Another grower mentioned that the employees complain about the PPE being uncomfortable in the heat of the summer; however, he writes that he allows plenty of water breaks.

A grower mentioned that his employees preferred leather gloves rather than rubber gloves because of comfort and perspiration in chemical resistant gloves. In a public dialogue with rose harvesters, one harvester mentioned that his hands were raw after using chemical resistant gloves.

Several growers and harvesters mentioned that they had complete laundry and shower facilities. One grower with laundry and shower facilities stated he assigns an individual to launder the PPE.

EPA believes that PPE, along with other provisions of this exception, will reduce worker exposure to pesticide residues and thus will reduce the risk.

D. Time Allowed in the Treated Area

Several growers' comments supported the Roses Inc. request that the time allowed in treated areas be expanded from 3 hours per worker per day to 4 or 8 hours per worker per day. Other growers commented that by rotating staff and using pesticides with 12-hour REIs or less, less than 3 hours per worker per day was sufficient to maintain normal harvest levels.

EPA notes that the shorter the workers' time in the treated area, the less potential exposure the worker will experience. By limiting early-entry rose harvesters to 3 hours per worker per day, EPA believes potential harvester exposure and resulting potential risk will be considerably less than would be expected if workers' time in treated areas is expanded to 4 or 8 hours.

E. Expiration Date

Roses Inc. requested the Agency to grant an exception for 5 years or indefinitely. Some commenters stated that the exception should be longer than 2 years because it would not be enough time to establish new methods that could be successfully implemented. One grower stated that the exception should be granted for 5 years.

Several growers suggested granting the exception permanently until compelling data shows that the issue needs to be revisited. One grower mentioned the exception should be granted for an unlimited amount of time and remove the use of the exception from any grower that has a series of problems or multiple violations.

EPA expects the cut-rose industry to work towards eliminating the need for this exception. Therefore, this exception will expire on October 4, 1999. Although the technology may not exist in 2 years to completely eliminate the need for a cut-rose exception, the Agency will want to review the advances made in greenhouse technology and cultural cut-rose practices. In addition, EPA will take into account the conclusions from the NIOSH's study on PPE effectiveness and any relevant toxicological data that may be available at that time. If another exception request is received, EPA will need to make considerations based on all additional information that may be available at that time.

III. EPA's Exception Decision

In the WPS, EPA prohibited, in general, early entry for hand labor, such as harvesting because EPA concluded that entry during a restricted-entry interval to perform routine hand-labor tasks is rarely necessary, that PPE for workers is not always practical because workers may remove it or use it incorrectly, and that the PPE itself may generate heat stress. In this case, EPA believes that the risks for rose harvesters will be mitigated by the limited time harvesters are allowed in the treated area, the use of PPE and the short period of time that it will be worn, accessible decontamination facilities, and provision of label-specific information to harvesters and basic pesticide safety information.

However, to provide greater certainty about the potential risk to early-entry rose harvesters, EPA has provided funding to the National Institute of Occupational Safety and Health (NIOSH) to conduct and evaluate the effectiveness of PPE at mitigating residue exposure. EPA believes it is essential to examine the effectiveness of PPE to mitigate worker exposure and intends to consider the results of NIOSH research, as well as any additional data generated in responding to future exception requests. Therefore, if the rose industry believes that there may be a continuing need for an exception for rose harvesting, EPA strongly encourages that they pursue data demonstrating the effectiveness of risk reduction measures, such as PPE, in addition to the EPA-funded NIOSH research.

While the rose industry has begun to explore alternatives to early entry, such as adjusting spray schedules, trying engineering controls, and other safe alternatives, EPA believes a more systematic approach is necessary to progress toward eliminating the need for an exception. EPA also believes that certain alternate practices have promise for eventually reducing or eliminating the need for early entry for rose harvesting in greenhouses. Therefore, EPA strongly recommends that the cut-rose industry pursue data development and research on such alternatives, and pilot test those alternatives which appear to be most promising.

A. EPA's Risk Assessment

Post-application worker exposure is a function of time, activity, and pesticide residue levels. Risk increases with longer periods of exposure, high levels of contact with treated surfaces and when contact occurs while pesticide residue levels are at their highest. Worker risk can be reduced by limiting exposure during periods when pesticide residues are at the highest levels, by limiting the time workers are exposed, and by limiting the workers' direct contact with treated surfaces.

During peak production periods when rose bushes have been cultivated for maximum production, rose harvesters can have considerable contact with foliage during harvesting activities. Since cut-rose harvesting typically occurs twice per day, 6 or 7 days per week, rose harvesters are likely to have repeated exposure to the pesticide residues present in greenhouses. The high frequency of pesticide applications to roses, combined with the relatively slow expected breakdown of pesticides applied in greenhouses, indicate that pesticide residues will be present during rose harvesting activities. If harvesting takes place while foliage is still wet, or when residues have not dried due to irrigation, dew, high humidity or condensation, transfer of pesticide residues from foliage to the rose harvesters will be higher, resulting in an increase in risk. This exception requires that harvesting not take place until 4 hours after application and after all inhalation and ventilation criteria on the label has been met. This combined with the cut-rose growers need to reduce dew, high humidity, and condensation in the greenhouses for optimum roses should decrease harvesting taking place while foliage is wet.

Toxicological endpoints for repeated pesticide exposures tend to be lower than for single and short-term exposures. Several chemicals used on roses have been shown to produce adverse effects in laboratory animals. EPA does not have sufficient data to determine whether the potential level of exposure to rose harvesters corresponds to the levels of concern identified in the toxicological studies that demonstrated these effects. Given that exposure to pesticides used in cut-rose cultivation has the potential to cause adverse effects, a way to reduce that risk is to reduce the exposure. A worker's exposure can be decreased with shorter periods of exposure, less contact with treated surfaces and with reduced pesticide residue levels.

EPA has designed this exception to reduce the risk associated with increased exposure during early entry while balancing the benefits of giving cut-rose growers flexibility to perform necessary harvesting tasks. EPA is maintaining the 3–hour maximum time allowed in the treated area within a 24-hour period rather than allow unlimited entry during the period prior to major floral holidays as Roses, Inc. requested. The Agency concludes that this is sufficient time to harvest and combined with the other protections required under this exception, EPA believes the benefits of a limited 3–hour entry period outweigh the risks of exposure in that period.

EPA believes that risk for rose harvesters will be mitigated by limiting time harvesters are allowed in the treated area, the use of PPE, the availability of decontamination supplies, and the provision of label-specific information to harvesters and basic pesticide safety information.

EPA believes that the early-entry requirements set out in this exception acceptably reduces worker contact with pesticide-treated surfaces. Worker contact will be limited by not allowing entry for the first 4 hours following application and until inhalation and ventilation criteria on the label has been met; by limiting the duration of the contact to 3 hours and by requiring PPE to protect workers from treated surfaces.

The following additional factors or terms contributed to EPA's decision: (1) Early entry PPE could be cor fortably worn for 3 hours; (2) use of unattached absorbent glove liners make it much more likely that harvesters will wear the required chemical resistant gloves or liners underneath the optional leather gloves; (3) there is approximately only 200 greenhouse cut-rose growers, facilitating communication and compliance monitoring activity between the rose industry and EPA; (4) the scale of greenhouse operations and limited number of harvesters per greenhouse should allow employers to more easily ensure that workers wear the PPE; (5) cut-rose growers using this exception will be required to report any incidents which harvesters believe are the result of pesticide exposure occurring during early-entry harvesting under the conditions of this exception; (6) running water, and in some cases showers, for decontamination and heat-stress alleviation are more accessible in greenhouse operations than in field settings; and (7) the exception will be in effect for less than 3 years before reevaluation. EPA therefore believes that early entry with PPE is feasible and provides adequate reduction of risks to rose harvesters.

B. Economic Analysis

Through written comments and public dialogue, the cut-rose industry has made a case that entry during the REI to harvest cut roses is necessary, and that prohibiting such entry could have a substantial adverse economic impact on growers of these commodities. Based on written statements received from the rose industry, on information gained during public meetings and greenhouse tours, as well as on EPA's knowledge of rose production, EPA finds that the benefits of early entry are substantial. The rose industry has provided sufficient

information demonstrating that routine entry during an REI to harvest roses twice daily is still necessary and that prohibiting such entry could have a substantial economic impact on cut-rose growers.

Depending on the product applied, the associated REI, and the time of year, growers could lose 25-50% of their daily revenues on the days pesticides are applied. EPA believes that the cut-rose industry cannot absorb this loss without significant repercussions. Additionally, since the exception is subject to conditions designed to mitigate risk to early-entry workers, EPA believes that early entry under the terms of this exception will not pose unreasonable risks to rose harvesters.

IV. Terms of the Exception

Use of this exception is conditioned on the following requirements:

A. Completed Conditions and Certification Statement

Agricultural employers must read and send a completed Conditions and Certification Statement to the EPA before using this exception (Forms may be obtained by writing, calling, faxing or e-mailing Sara Ager at the address and telephone number listed in FOR FURTHER INFORMATION CONTACT.).

B. Compliance with Requirements

Agricultural employers must fully comply with the early-entry requirements of this exception:

1. No entry for first 4 hours after application and until after any inhalation and ventilation criteria specified on the label has been reached (§ 170.112(c)(3)).

2. Workers may enter a treated area during an REI to perform only hand harvesting of greenhouse grown roses (exception to § 170.112(c)(1)).

3. A worker's time in the treated area during an REI for hand harvesting shall not exceed 3 hours within any 24-hour period (exception to § 170.112(c)(2)).

4. Workers must read the label or be informed in a language the worker understands of labeling requirements related to safe use.

5. The agricultural employer shall notify workers before entering a treated area, either orally or in writing, in a language the workers understand, that the establishment is using this exception to allow workers to enter treated areas before the REI expires, to hand harvest roses.

6. Agricultural employers must provide, properly maintain, and ensure workers wear the early entry PPE listed on the label in accordance with § 170.112(c)(4)-(c)(9). When chemical resistant gloves are required on the label, workers have the option of wearing the leather gloves over the required chemical resistant gloves. In accordance with § 170.112(c)(4)(vii), once leather gloves have been worn for early-entry use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

In addition, unattached, absorbent glove liners may be worn underneath the chemical resistant gloves or liners, provided the unattached, absorbent liners are completely covered by the chemical resistant liner or glove (exception to § 170.112(c)(4)(vii)). Absorbent liners must be disposed of after each day of use in early-entry harvesting.

7. All other applicable provisions of the Worker Protection Standard (40 CFR part 170) also remain in effect.

C. Reporting Incidents

Agricultural employers using this exception are required to report any incidents that harvesters believe are the result of pesticide exposure occurring during early entry harvesting under this exception. The agricultural employer shall notify EPA (address provided under FOR FURTHER INFORMATION CONTACT) within 5 consecutive days of any incident believed to be the result of exposure to pesticides or pesticide residues that occurred during early-entry harvesting performed under the conditions of this exception.

In addition, there may be no findings of unacceptable levels of risk by EPA, resulting from NIOSH's investigations, from other risk studies, or from incident reporting and investigation. If the Agency receives information that shows the health risks posed by early entry to areas treated with pesticides registered for use on cut-roses are unacceptable, it reserves the right to not allow specific chemicals to be used in conjunction with this exception. EPA reserves the right to withdraw or revise the scope and conditions of this exception at any time, in accordance with § 170.112(e)(6).

V. Reevaluation of the Cut-rose Exception

This exception will expire on October 4, 1999. In the interim, EPA is expecting the cut-rose industry to actively pursue alternate cultural methods that will eliminate the need for this exception. EPA also expects that with the research, Roses Inc. and other industry trade groups will sponsor outreach education with cut-rose producers explaining the exception, the need for strict compliance with its terms and explain the risk concerns presented by pesticide use and worker entry during REIs.

The cut-rose industry was not able to make adequate progress over the 2 years that the original exception was in place to eliminate the need for renewal. The effort of individual growers to attempt to use alternatives to long REI chemicals has not been sufficient to obviate the need for a new exception. Some alternative measures that appear promising initially may have serious shortcomings when examined more closely. For example, spraying after the last harvest was generally claimed to be unacceptable for a number of reasons, including several given above. However, little documentation was presented concerning these shortcomings, and there was no evidence given regarding their impact. Some of these shortcomings, while generally accepted, remain hypothetical or anecdotal.

In addition, not all growers had the same experience when using alternatives. Several growers commented that they used late day spraying successfully, at least since the original exception expired in June 1996. It is also possible that hypothetical expectations of failure may not be borne out by experience or experiment. For example, while several scientists and growers were concerned that insects that are more active early in the day would not be effectively controlled by late spraying, two growers commented that they sprayed late for thrips.

It is important to demonstrate not only the existence of some noted shortcomings, but also to measure their impact. It is possible that where these problems exist, their magnitude and/or frequency of occurrence is sufficiently small to be acceptable to growers. Perhaps more importantly, where real and significant problems are found, it may be possible to ameliorate their effects. The specific conditions in which problems of applying alternatives arise may be identified, giving growers more confidence in using them at other times.

On several issues regarding alternate practices and the need for all currently available chemicals, many growers and the consultant for Roses Inc., commented that due to variations in growing conditions and pests among different growers, even in the same region, generalizations could not be made about the adequacy of alternate practices. By extension, attempts to implement these alternate practices in the entire industry would seriously harm some growers. While there is undoubtedly some validity in arguments about variability, such general arguments are, by nature, practically unverifiable. Therefore, better documentation of the impacts of using alternate practices will be necessary in the future.

In light of the cut-rose industry's claimed lack of adequate resources to conduct necessary studies of alternatives and because of the inability to answer some basic background questions necessary for the thorough evaluation of the need for an exception, the Agency will work with the cut-rose industry and scientists knowledgeable about cut-rose production over the next 2 years to gather necessary information and perform research in areas that may move the industry from the need for further exceptions. Therefore, in the next 2 years, the industry, should show continuing progress in documenting and demonstrating, but not limited to, the following:

1. Adequate justification for including all current pesticides, in the exception especially 24– and 48–hour REI pesticides.

a. There is more than one chemical of a given class or mode of action, that controls the same pest or spectrum of pests, the industry should justify the need for maintaining all such chemicals in the exception, i.e. describe the advantages and disadvantages of each chemical.

b. Advantages of specific chemicals, such as price or efficacy differences, should be quantified. Part A should be completed within the first year of the exception so that part B may be presented to the Agency by August 1998.

2. Due to the large number of pests and chemicals required by the industry, the Agency does not believe that registration of new, safer chemicals or biological control agents in the next 2 years will be sufficient to replace many of the longer REI chemicals currently used. Therefore, efforts to eliminate the need for another exception should focus on practices that allow avoidance of the REI of existing chemicals, including:

a. Systematic research of spraying at times that minimize the need for an exception, in particular spraying after the last daily harvest. Such research should include measurement of the impact of late day spraying on pest damage and phytotoxicity. Attempts should be made to ameliorate problems encountered with implementation of altered spray schedules.

b. Exploration of techniques that allow early harvesting of roses, which may eliminate or reduce the need for harvesting several times per day.

Roses Inc. and several growers requested a longer term for the current exception. Several growers also commented that 2 years is an unrealistically short time period to research and implement new methods of pest control or production. It is therefore critical that clear and measurable objectives and goals are established early and that these goals and objectives, and progress in meeting them, are regularly reported to the Agency. The cut-rose industry should work closely with the Agency and researchers to accomplish these goals. Success or difficulty in accomplishing such benchmarks may then be used should another exception be desired.

EPA is interested in working with the rose industry to identify specific research efforts, identify competitive grant funds that may be available to support such research, discuss protocols and time frames for initiating and completing studies, and incorporating practices at the individual grower establishment. However, establishing research goals, objectives, time lines, and measurements is fundamentally the responsibility of the cut-rose industry. Sara Ager in the Certification and Occupational Safety Branch will continue to be the lead Agency contact for the rose industry. The Agency is willing to meet with the rose industry to discuss implementation of the exception, review any findings from the NIOSH risk investigations, and review the industry's progress in reducing the need for early entry and this exception.

VI. Public Docket

A record has been established for this administrative decision under docket number "OPP–250121." A public version of this record, including printed, paper versions of electronic comments, that does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Crystal Mall #2, Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA. Electronic comments can be sent directly to EPA at opp-docket@epamail.epa.gov.

VII. Regulatory Assessment Requirements

This document is an adjudication of eligibility for an exception to certain requirements of the Worker Protection Standard, 40 CFR part 170. As such it is not a regulation or rule and therefore is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866 entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Regulatory Flexibility Act, 5 U.S.C. section 601, *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). It does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). It also does not require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

The information collection requirements associated with this exception have been approved by OMB pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* under OMB control number 2070–00148 (EPA ICR No. 1759). An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final action or rule, are listed in 40 CFR part 9 and appear on any related collection instrument.

The total public burden related to the information collection activities in this exception are estimated to be 600 burden hours, with the average burden for each cut rose grower estimated to be 3 burden hours. For analysis purposes, "burden" includes the total time, effort, or financial resource expended by persons to generate, maintain, retain, or disclose or provide information to or for the Agency. As defined by the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments on the accuracy of the burden estimates, and any suggested

methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M St., SW., Washington, DC 20460, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the OMB control number in any correspondence.

List of Subjects in Part 170

Environmental protection, Administrative practice and procedure, Labeling, Occupational safety and health, Pesticides and pests.

Dated: September 29, 1997.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–26321 Filed 10–2–97; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[OPP–250122; FRL–5599–3]

RIN 2070-AC95

Exception Decisions to Early Entry Prohibition, Worker Protection Standard; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is modifying its worker protection regulation to provide notice of an additional administrative exception to the general prohibition on early entry into pesticide-treated areas contained in the Worker Protection Standard (WPS) issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The exception allows, under specific conditions, early entry for workers to hand harvest greenhouse grown cut-roses. To ensure that the regulated community is aware of this and future administrative exceptions to the early-entry prohibition, EPA is amending the WPS to add a new paragraph to § 170.112(e)(7) which informs the regulated community where to locate **Federal Register** notices that set forth the terms and conditions of the administrative exceptions.

EFFECTIVE DATE: This document is effective Ocotber 3, 1997.

FOR FURTHER INFORMATION CONTACT: Sara Ager, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Rm. 1121, Crystal Mall #2, Arlington, VA, (703) 305–7666, e-mail: ager.sara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued the WPS on August 21, 1992 (57 FR 38102) (40 CFR part 170). The WPS includes a prohibition (§ 170.112) against routine early entry into pesticide-treated areas during restricted-entry interval (referred to as "early entry"). Section 170.112(e) of the WPS provides a process for EPA to consider and grant administrative exceptions to this prohibition on early entry. Elsewhere in this issue of the **Federal Register**, EPA is granting the fourth such administrative exception. The exception allows, under specific conditions, early entry for workers to hand harvest greenhouse grown cut-roses. The exception allows, under specific conditions, early entry for workers to hand harvest greenhouse grown cut-roses. The addition to paragraph (e)(7) is a technical amendment. It does not make any substantive changes in the WPS or § 170.112. EPA provided notice and opportunity for comment on the proposed administrative exception (61 FR 56100, October 30, 1996) (FRL–5571–8).

II. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

III. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is a technical correction to the CFR and is not a major rule as defined by 5 U.S.C. 804(2).

List of Subject in 40 CFR Part 170

Environmental protection, Administrative practice and procedure, Labeling, Occupational safety and health, Pesticides and pests.

Dated: September 29, 1997.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 170 is amended as follows:

PART 170—[AMENDED]

1. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 136w.

2. Section 170.112 is amended by adding paragraph (e)(7)(iv) to read as follows:

§ 170.112 Entry restrictions.

(e) * * *

(7) * * *

(iv) Exception for hand labor to harvest greenhouse-grown roses under specified conditions published in the **Federal Register** of Ocotber 3, 1997, effective December 18, 1996 to October 4, 1999.

[FR Doc. 97–26322 Filed 10–2–97; 8:45 am]

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To authorize appropriations for carrying out the Earthquake Hazards Reduction Act of 1977 for fiscal years 1998 and 1999, and for other purposes. (Oct. 1, 1997; 111 Stat. 1159)

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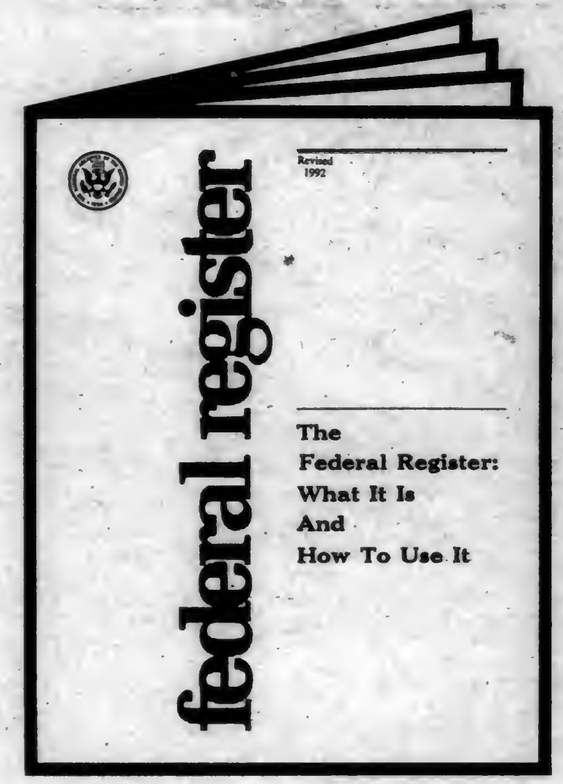
To provide permanent authority for the administration of au pair programs. (Oct. 1, 1997; 111 Stat. 1165)

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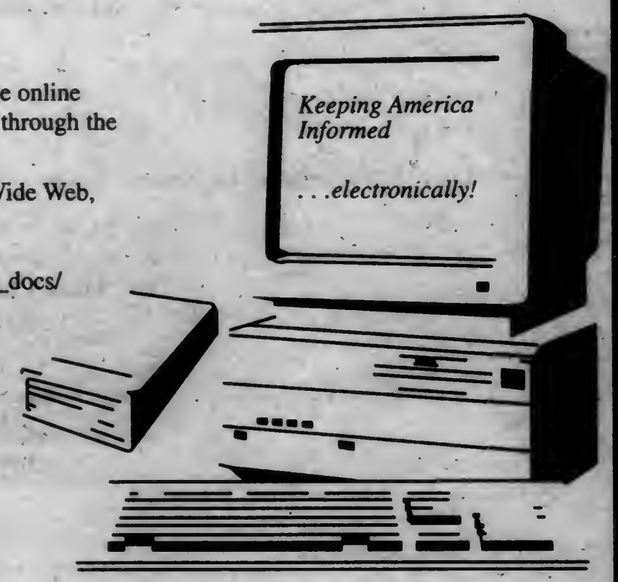
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Vol. 62, No. 193
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Title 3—

The President

Proclamation 7029 of October 1, 1997

National Breast Cancer Awareness Month, 1997

By the President of the United States of America

A Proclamation

Every year we dedicate the month of October to focus on breast cancer and to reaffirm our national commitment to eradicate it. But for thousands of American women and their families and friends, breast cancer is a devastating reality that casts a shadow over their lives every day. In this decade alone, nearly half a million women will die of breast cancer, and more than 1.5 million new cases of the disease will be diagnosed.

Our greatest weapon in the crusade against breast cancer is knowledge; knowledge of its causes and knowledge about prevention and treatment. My Administration has established a National Action Plan on Breast Cancer to unite organizations across the country in a collaborative effort to find out more about the disease and how best to respond to it.

The Department of Health and Human Services is taking the lead in this national effort, through education and research at the National Cancer Institute and the Agency for Health Care Policy and Research; through nationwide screening and detection programs at the Centers for Disease Control and Prevention; through certification of mammography facilities by the Food and Drug Administration; through prevention services and treatment by health benefit programs such as Medicare and Medicaid; and through increased access to clinical treatment trials for cancer patients who are beneficiaries in Department of Defense and Department of Veterans Affairs programs. The Department of Defense has also initiated a breast cancer research program to reduce the incidence of breast cancer, increase survival rates, and improve the quality of life for women diagnosed with the disease.

We can be proud of the progress we have made. One of the most promising recent research achievements is our increased understanding of the role of genetics in the cancer process. We have learned that cancer is a disease of altered genes and altered gene function, and research into the relationship between breast cancer and genes is helping us to better understand the basis of the disease. However, we must ensure that progress in genetic information is used only to advance and to improve the Nation's health—not as a basis for discrimination. That is why this year I have urged the Congress to pass a law that prevents health insurance plans from discriminating against individuals on the basis of genetic information.

High-quality mammography has also proved to be a powerfully effective tool in the effort to detect breast cancer in its earliest, most treatable stage. The National Cancer Institute, the American Cancer Society, and many other professional organizations agree that women in their forties benefit from mammography screening, and earlier this year I was pleased to sign legislation that will help Medicare beneficiaries with cost-sharing for annual screening mammograms. The First Lady has also launched an annual campaign to encourage older women to use the Medicare mammography screening benefits.

We have real cause for celebration during National Breast Cancer Awareness Month this year: recent data show that the breast cancer rate for American women is declining. Heartened by this knowledge, let us reaffirm our commitment to the crusade against breast cancer. Let us ensure that all women know about the dangers of breast cancer, are informed about the lifesaving potential of early detection, receive recommended screening services, and have access to health care services and information. Let us continue to move research forward to improve treatments and find a cure for this disease. Working together, we can look forward to the day when our mothers, wives, daughters, sisters, and friends can live long, healthy lives, free from the specter of breast cancer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1997 as National Breast Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, volunteers, and all the people of the United States to reflect on the progress we have made in advancing our knowledge about breast cancer and to publicly reaffirm our national commitment to controlling and curing this disease.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-26557
Filed 10-3-97; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7030 of October 1, 1997

National Domestic Violence Awareness Month, 1997

By the President of the United States of America

A Proclamation

In observing the month of October as National Domestic Violence Awareness Month, the American people reaffirm our commitment to prevent and eliminate violence against women. Domestic violence is not simply a private family matter—it is a matter affecting the entire community.

Too many of America's homes have become places where women, children, and seniors suffer physical abuse and emotional trauma. Domestic violence is a leading cause of injury to women in our country, and it occurs among all racial, ethnic, religious, and economic groups. It is a particularly devastating form of abuse because it wears a familiar face: the face of a spouse, parent, or partner. This violence too often extends beyond the home and into the workplace.

My Administration is committed to ending this violence and to protecting women in all aspects of their lives, whether in the home, in the community, or in the workplace. In 1994, I fought for passage of the Violence Against Women Act, which combined tough new penalties for offenders with funding for much-needed shelters, counseling services, public education, and research to help the victims of violence. The Federal penalties and prevention efforts included in this legislation have improved our ability to deter crimes of domestic violence.

Early in my Administration, as outlined in the landmark Crime Bill, I established the Office of Violence Against Women in the Department of Justice to lead our comprehensive national effort to combine tough Federal laws with assistance to States and localities to fight domestic violence and other crimes against women. In February 1996, the Department of Health and Human Services launched the 24-hour-a-day, toll-free National Domestic Violence Hotline, 1–800–797–SAFE, so that those in trouble can find out how to get emergency help, find shelter, or report abuse. To date, the hotline has received more than 118,000 calls from all 50 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. We also initiated an Advisory Council on Violence Against Women to bring together experts in the field, including representatives from law enforcement, business, health and human services, and advocates, to focus national attention on successful, multifaceted solutions to combating violence and sexual assault.

We cannot simply rest on past efforts. My Administration is continuing its work to prevent domestic violence and to care for survivors in their communities and workplaces. We are committed to strengthening the health care system's ability to screen, treat, prevent, and eliminate family violence by supporting training of health care providers and projects to assist those in the substance abuse field to address domestic violence. We are working to improve collaboration between human services providers, advocates, and the criminal justice community to enhance responses to domestic violence. The Department of Health and Human Services is sponsoring projects and programs to coordinate community responses to domestic violence, to focus on youth and children who witness violence, and to link child protection services with community providers who work with abused women and their children.

Finally, as a further enhancement of my 1995 directive to all Federal departments and agencies to conduct employee awareness campaigns on domestic violence, the Office of Personnel Management is producing a guide to help agency representatives develop programs to prevent and respond to all types of workplace violence against Federal employees, including domestic violence. This guide, drafted by experts in the areas of mental health, investigations, law enforcement, threat assessment, and employee relations, will serve as a useful tool in providing step-by-step information to identify, prevent, and respond to violence so that we can protect those in the Federal work force.

I encourage the private sector to expand its role in preventing and eliminating domestic violence. We must also strengthen coordinated efforts between the public and private sectors to combat domestic violence in the home, the community, and the workplace. These efforts must ensure that no survivor of domestic violence lives in isolation and that the families of victims also have our support. No child should have to live in an abusive home. No woman should live in fear in her home, on the streets, or on the job. Only through a national commitment to this effort can we stop domestic violence and ensure that its survivors are safe.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1997 as National Domestic Violence Awareness Month. I call upon government officials, law enforcement agencies, health professionals, educators, community leaders, and the American people to join together to end the domestic violence that threatens so many of our people.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-26558
Filed 10-3-97; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Presidential Determination No. 97-34 of September 22, 1997

Transfer of $4 Million in FY 1997 Economic Support Funds to the Peacekeeping Operations Account To Support the African Crisis Response Initiative

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 610(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine that it is necessary for the purposes of the Act that $4 million of funds made available under Chapter 4 of Part II of the Act for fiscal year 1997 be transferred to, and consolidated with, funds made available under Chapter 6 of Part II of the Act.

I hereby authorize the use in fiscal year 1997 of the aforesaid $4 million in funds made available under Chapter 4 of Part II of the Act to provide peacekeeping assistance to support countries participating in the African Crisis Response Initiative.

You are hereby authorized and directed to report this determination immediately to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 22, 1997.

[FR Doc. 97-26568
Filed 10-3-97; 8:45 am]
Billing code 4710-10-M

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Rules and Regulations

Federal Register
Vol. 62, No. 193
Monday, October 6, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV96–905–2]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Procedures to Limit the Volume of Small Florida Red Seedless Grapefruit; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting Amendments.

SUMMARY: This document contains two corrections to final regulations (FV–96–905–2), which was published in the **Federal Register** on Tuesday, December 31, 1996, (61 FR 69011). The final regulations established procedures for limiting the volume of small red seedless grapefruit entering the fresh market during the first 11 weeks of each season.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, telephone: 202–720–2491.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections established procedures for limiting the volume of small red seedless grapefruit entering the fresh market during the first 11 weeks of each season. When used in the regulation of red seedless grapefruit, the regulation period is defined as the 11 weeks beginning the third Monday in September and ending the first Sunday in December of each season. The final rule's intent was to effectuate the regulation period for an 11 week period during seasons of regulation. However, in some years, the time specified in the definition of regulation period extends beyond 11 weeks. For instance, in the 1997–98 season, the third Monday in September is September 15. The first Sunday in December falls on December 7. This time period is 12 weeks. To extend the regulation period beyond the 11 week period is contrary to what the rule intended. The final rule overlooked the possibility of this situation occurring. Therefore, this action modifies the language to correctly define the regulation period as the rule intended. The regulation will state that the regulation period will begin on the third Monday in September and continue for 11 weeks. In addition, the final rule established that the percentage on which to base the amount of small red seedless grapefruit that could be shipped during a particular week or weeks during the regulatory period could not be less than 25 percent of the calculated shipment base. This procedure was designed not to eliminate shipments of small red seedless grapefruit but to keep them from saturating the market. The final rule stated that such set percentage could vary from week to week, but could not be less than 25 percent.

Although the final rule set forth these procedures in the supplementary information, the regulatory text of the rule did not specify this information. This correction adds that information to the regulatory text to clarify the intention of the final rule.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

Accordingly, 7 CFR part 905 is corrected by making the following correcting amendments:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 905.153 [Corrected]

2. § 905.153, is amended by revising the last sentence in paragraph (a) and adding a sentence at the end of paragraph (b) to read as follows:

§ 905.153 Procedure for determining handlers' permitted quantities of red seedless grapefruit when a portion of sizes 48 and 56 of such variety is restricted.

(a) * * * The term regulation period means the 11 week period beginning the third Monday in September of the current season.

(b) * * * Such set percentage may vary from week to week but shall not be less than 25 percent in any week.

* * * * *

Dated: September 30, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–26362 Filed 10–3–97; 8:45 am]
BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 97–62]

RIN 3069–AA60

Restrictions on Advances to Non-Qualified Thrift Lenders

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations on advances to members that are not qualified thrift lenders. The amendments revise an interim rule and implement the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), which broadened the types of assets that may be used to satisfy the qualified thrift lender (QTL) requirement. The final rule includes a safe harbor for "loans to small businesses" (*i.e.*, commercial loans of $1,000,000 or less or farm loans of $500,000 or less) and allows persons other than the chief executive officer (CEO) to certify the accuracy of certain QTL information. The final rule also changes the dates by which the Federal Home Loan Banks (Banks) must determine the QTL status of their members, which conforms the annual QTL determination to the date on which commercial loan data become available.

EFFECTIVE DATE: The final rule will become effective October 3, 1997, except for the amendments to 12 CFR

935.13(a)(3)(i), which take effect on December 30, 1997.

FOR FURTHER INFORMATION CONTACT: Gregory V. Goggans, Senior Financial Analyst, Financial Analysis and Reporting Division, Office of Policy, 202/408–2878, or Neil R. Crowley, Associate General Counsel, Office of General Counsel, 202/408–2990, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

On February 27, 1997, the Finance Board published, and requested public comments on, an interim rule that amended the regulations relating to the QTL status of non-savings association members. 62 FR 8868 (Feb. 27, 1997). The interim rule required the Banks to use financial information from the call reports of such members when determining their QTL status, but also allowed the use of other information if certified by the member's CEO. The interim rule reflected changes made to the QTL test by EGRPRA, as well as by an interim rule adopted by the Office of Thrift Supervision (OTS), which administers the QTL statute. The Finance Board indicated that it would monitor the OTS rulemaking proceeding and expected to incorporate any material changes made by OTS into the advances regulation. OTS later adopted a final rule that broadened the definition of the term "loans to small businesses" as used in the QTL provisions. 62 FR 15819 (April 3, 1997). The Finance Board is now incorporating the substance of the OTS definition of "loans to small businesses" and is shifting forward by six months the period within which the Banks must determine the QTL status of their non-savings association members. The final rule also allows the CEO to delegate to the chief financial officer, chief operating officer, or controller of such members the authority to certify the accuracy of any QTL financial data that do not appear in the member's call report.

In 1987, Congress established the QTL test, which required savings associations to maintain 60 percent of their assets in instruments related to domestic residential real estate or manufactured housing. Competitive Equality Banking Act of 1987, Pub. L. 100–86, sec. 104(c), 101 Stat. 571–573 (August 10, 1987). The QTL test now requires savings associations to maintain 65 percent or more of their assets in what are characterized as "qualified thrift investments." 12 U.S.C. 1467a(m). The QTL test does not apply directly to commercial banks or credit unions, but, in 1989, when Congress authorized commercial banks and credit unions to become members of the Federal Home Loan Bank System (System), it also limited their access to advances if they do not comply with the QTL test. Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, sec. 704(a), 103 Stat. 415 (August 9, 1989), *codified at* 12 U.S.C. 1424(a). Specifically, FIRREA required such members that do not meet the QTL test to purchase greater amounts of Bank stock to support their advances, and mandated that they could obtain advances only for housing finance purposes. FIRREA also gave QTL members a priority over non-QTL members on access to advances, and imposed a 30 percent System-wide limit on the aggregate amount of advances that could be outstanding to non-QTL members. 12 U.S.C. 1430(e).

The Banks are required to determine the QTL status of each non-savings association member at least annually, between January 1 and April 15, based on financial information as of December 31 of the prior calendar year. To do so, they must calculate the "actual thrift investment percentage" (ATIP) for each such member, which is obtained by dividing the institution's "qualified thrift investments" by its "portfolio assets." 12 CFR 935.13(a)(3). In EGRPRA, Pub. L. 104–208, 110 Stat. 3009 (Sept. 30, 1996), Congress amended the QTL test by broadening the universe of assets that are considered to be "qualified thrift investments." Pursuant to those amendments, loans for educational purposes, loans to small businesses, and loans made through credit cards or credit card accounts, as well as an increased amount of consumer loans, now may be included when determining the amount of an institution's "qualified thrift investments." Congress directed OTS to define the term "small business" for purposes of the amended QTL test, which OTS has done. 61 FR 60179 (Nov. 27, 1996) (interim rule); 62 FR 15819 (Apr. 3, 1997) (final rule), *codified at* 12 CFR 560.3.

As part of its interim rule, OTS defined "small business loans" narrowly, limiting the term to any loan made to a small business concern or entity as defined by the Small Business Act, 15 U.S.C. 632(a), and the implementing regulations of the Small Business Administration (SBA). The practical effect of relying solely on the SBA regulations was to exclude from the QTL calculation any business loans for which the lender did not possess the documentation required to demonstrate that the loan in fact would satisfy the rather detailed requirements of the SBA regulations. Because of the complexity of those SBA provisions, and in response to public comments, the OTS final rule revised the definition to add a "safe harbor" provision for "small business loans" and "loans to small businesses." Under the "safe harbor" provision of the OTS final rule, a commercial loan also is deemed to be a loan to small business for QTL purposes if the loan meets the criteria for "loans to small businesses and small farms" set out in the instructions for the OTS Thrift Financial Report. 62 FR 15819, 15825 (Apr. 3, 1997), *codified at* 12 CFR 560.3. Under those criteria, a "loan to small business" includes any business loan (or any series of loans to the same borrower) in the original amount of $1,000,000 or less, or any farm loan (or series of loans to the same borrower) in the original amount of $500,000 or less.

The Finance Board issued its interim rule based on the provisions of EGRPRA, as implemented by the OTS interim rule. Thus, the Finance Board's interim rule directed the Banks to use the financial information from their members' December 31 call reports as the primary source for QTL determinations. 12 CFR 935.13(a)(3). The interim rule recognized that certain items, such as business loans that meet the SBA definition, are not separately identified on the call report. Accordingly, the interim rule also included a certification procedure under which a member could include in its QTL calculation items that do not appear on the call report, provided the accuracy of the information was certified by the CEO of the member. The Finance Board acknowledged the practical difficulties associated with using the SBA definition of small business loan and solicited comments on all aspects of the interim rule.

II. Comments

The Finance Board received twelve comments on the interim rule. All of the commenters who addressed the issue of certification endorsed the concept as a practical method of providing information necessary for the QTL calculation that does not appear in the call report. Most of those also suggested that officers other than the CEO be allowed to execute the certification. One commenter suggested that the involvement of the CEO was necessary to ensure the accuracy of the information and should not be delegated to any other officer. Of those addressing the issue of loans to small businesses, all commenters favored the use of a proxy (such as the call report data on

commercial loans to small businesses) in addition to, or in lieu of, the SBA definition of small business loans.

III. Description of the Final Rule

One commenter questioned whether the interim rule was intended to allow the Banks to rely on certifications from their members as an alternative, rather than as a supplement, to the information obtained from the call report. The intention of the Finance Board is that the members' call reports, as that term is defined, are to be the principal source of the financial information used to calculate the QTL status of the members. The Finance Board recognizes that certain items that are included as "qualified thrift investments" or "portfolio assets" under the QTL test are not separately identified on the call report. It is with respect to those items that the Banks may accept a certification from the member.

The Finance Board also recognizes that some Banks may, as a matter of practice, first obtain uncertified information from their members regarding their QTL assets and subsequently confirm the accuracy of that information against the members' call report. The final rule would not affect that practice, provided that the Bank uses the available call report data when making the final QTL calculation. Any information that is not derived from the call report may be used in the QTL calculation only if a member provides the appropriate certification. The intent in creating the certification provision is to provide a means by which non-savings association members may include within the QTL calculation any eligible assets that are not available from the call report, at the option of the member; such certifications are not mandated.

The Finance Board believes that the commenters' contention that the CEO need not be the only officer authorized to certify the accuracy of a member's non-call report financial data presents a legitimate issue. Accordingly, the final rule allows the CEO to delegate his or her authority to sign the certification to the chief financial officer, chief operating officer, or controller of a non-savings association member. As noted in the interim rule, in requiring a certification the Finance Board has attempted to strike a balance between its need to ensure that the Banks base their QTL calculations on accurate financial information and the desire of the Banks to manage their affairs with their members.

The Finance Board does not believe that it would be prudent to allow more junior officers to execute the QTL certifications because the Banks, and the Finance Board, have no independent means of verifying that information. The Finance Board does not examine the members of the Banks; such examinations are conducted by the principal federal or state regulators. With respect to the non-savings association members, the principal regulators do not examine their subjects for compliance with the QTL test. Without an independent examination of QTL status, the Finance Board needs some other means of ensuring that the information used by the Banks is accurate. By requiring the formality of a written certification from a senior officer, the Finance Board believes that the Banks will have sufficient assurance that the matter has received careful consideration by the member. Allowing the CEO to delegate signature authority to additional senior officers should address the commenters' concerns that CEO not be burdened with this task, while maintaining accountability at the CEO level. As a point of clarification, the certification provision does not require, as some commenters apparently believe, that the senior officers must personally determine the amount and composition of QTL assets that do not appear separately on the call report. The certification provisions require only that the CEO or, if the CEO delegates that authority, one of the senior officers specified by the rule, sign and date the certification. As with other corporate matters, it is assumed that senior management will assign to the appropriate employees the task of compiling the information.

As was noted in the interim rule, the use of the SBA definition of small business loans for QTL purposes was problematic because it would exclude from the QTL calculation of "qualified thrift investments" any small business loans that did not meet the detailed requirements for SBA loans. Under the SBA regulations, a "small business" is an entity the gross receipts of which (or the number of its employees) fall below certain thresholds specified by SBA, which may vary depending on the type of business in which the entity is engaged. Unless a member had made a loan in connection with a SBA program, it would be unlikely to have obtained such information for its loan files. OTS addressed this issue in its final rule by including a "safe harbor" provision, which defines "small business loans" and "loans to small businesses" to include any other business loan in the original amount of $1,000,000 or less and any farm loan in the original amount of $500,000 or less.

The Finance Board endorses the concept of a safe harbor for loans to small businesses and small farms and is adopting the same approach for its advances regulation. The Finance Board, however, is defining the term "loans to small businesses" expressly, rather than by incorporating by reference the OTS regulations. The OTS regulation defines "loans to small business" by reference to the term "loans to small businesses and small farms," which, in turn, is located within the definitions portion of the instructions for the OTS "Thrift Financial Report." Because the non-savings association members of the Banks do not submit the Thrift Financial Report, and may not be familiar with its instructions, the Finance Board believes that a bare cross-reference to the OTS regulation or to the Thrift Financial Report instructions would not provide the specificity that the Banks and their non-savings association members require. Accordingly, the final rule provides that for QTL purposes the term "loans to small businesses" shall include any business or commercial loans (including a series of loans to the same borrower) in an original amount of $1,000,000 or less, and any farm loans (including a series of loans to the same borrower) of $500,000 or less, as well as any loan to an entity that satisfies the SBA definition of a "small business."

One reason why OTS adopted, and why the commenters suggested that the Finance Board adopt, the $1,000,000 and $500,000 thresholds for loans to small businesses and small farms is that the information is readily available from existing sources. The federal banking agencies require the depository institutions that they supervise to submit periodic information about the composition of their loan portfolios as part of their quarterly call reports. The call report that is to be filed as of June 30 includes a schedule for loans to small businesses and small farms, on which the institutions must report the number and amount currently outstanding as of June 30 of business loans with original amounts of $1,000,000 or less and farm loans of $500,000 or less. Using that information to determine the amount of the "loans to small businesses" for purposes of the QTL calculation, as OTS has done, also is consistent with the provisions of the Finance Board's interim rule that require the Banks to use the call report as the principal source of financial information for the QTL test. Moreover, the use of existing call report data would not entail any additional

recordkeeping by the Banks or their non-savings association members.

The one complicating factor associated with using the commercial loan schedule to the call reports as the source for information on loans to small businesses is that the depository institutions submit the detailed data on their commercial loan portfolios only with their June 30 call report. That arrangement conflicts with the existing time period within which the Banks conduct their annual QTL determinations, which must be done between January 1 and April 15 and must be based on information as of December 31 of the prior calendar year. Because the category of loans to small businesses is apt to be a significant portion of the "qualified thrift investments" of the non-savings association members, most of which are commercial banks, the Finance Board believes that it would be a better practice for the annual QTL determination to be performed soon after that information on loans to small businesses becomes available. Accordingly, the final rule shifts the QTL calculation period forward by six months. The Finance Board informally solicited the views of the Banks on the use of the June 30 call reports, and all but two of the Banks favored using that source. Because the Banks may obtain the call report data from commercial providers, some of which may not become available in final form until early October, the Finance Board has extended the end of the period to October 31, which should give all Banks ample time to conduct their QTL calculations.

The Finance Board considered retaining the current January-to-April QTL period and allowing the Banks to use the December 31 data for all items but for loans to small businesses, for which the source would be the prior June 30 call report. Using financial data derived from reports that are six months apart, however, could lead to inaccurate QTL calculations and would prevent the Finance Board, and the Banks, from having an accurate QTL determination as of a particular date. The Finance Board believes that it is important for all of the Banks to conduct their required annual QTL determinations as of the same date so that there be some uniformity within the System and the Finance Board will have accurate System-wide QTL data should the 30 percent cap on the aggregate amount of advances to non-QTL members become an issue.

The use of the June 30 call report data should enable a substantially greater number of non-savings association members to increase their ATIP and come into compliance with the QTL requirement. Because the final rule would ease compliance with the QTL test, the Finance Board has decided to make the portion of the rule allowing the use of the June 30 call report data effective on publication in the **Federal Register**. In that way the Banks will be able immediately to recalculate the QTL status of its non-savings association members based on the June 30, 1997 commercial loan data. Under the existing Finance Board regulations regarding the annual QTL determination, which would remain in effect until year-end, the Banks may calculate the QTL status of any non-savings association member at any time other than the mandatory January-to-April annual calculation period, provided that when doing so they use the data from the most recent call report. 12 CFR 935.13(a)(3)(i).

Because the Banks have completed the required 1997 annual QTL determinations earlier this year, the Finance Board has decided not to impose the mandatory July-to-October annual QTL calculation on the Banks for 1997. Accordingly, that provision of the final rule will not take effect until December 30, 1997, which means that the annual mandatory QTL calculation for 1998 will occur between July and October 1998, and will be based on call report data as of June 30, 1998. The combination of the different effective dates is intended to allow the Banks the flexibility to determine when to apply the revised QTL provisions to their members. Thus, the Banks may take advantage of the new safe harbor provision for loans to small business immediately, should they choose to do so, but the final rule does not mandate that they do so again for this year. If a Bank has determined earlier this year that a non-savings association member met the QTL test, it need not recalculate that member's QTL status until the 1998 annual calculation.

As noted above, the Banks have the option of recalculating the QTL status of their non-savings association at any time, should they choose to do so. That provision is in the current rule and is retained in this final rule, with one revision. When making QTL calculations at any time other than the required annual calculation, the Banks still must use the most recent call report available for the member, except for information that is not included in any call report and is certified by a senior officer. For purposes of determining a member's outstanding commercial loans of $1,000,000 or less or its farm loans of $500,000 or less, the "most recent call report" will always be the prior June 30 call report. Thus, it is permissible for a Bank that is making a QTL determination at some time other than during the annual QTL determination, to use data from two separate call reports. That would be the case whether the QTL determination is being done for an existing member, such as in response to a change in the composition of the member's assets, or for a new member, for which the QTL test is being done for the first time. For example, if a commercial bank were to become a member of the System in December, the Bank could use the financial information from the September 30 call report for all items except for commercial loans of $1 million or less and farm loans of $500,000 or less. The information about those commercial and farm loans would be obtained from the June 30 call report. Any additional information that is required for the QTL test, but that is not on either of the call reports, could be submitted by certification, but only if the member were to choose to do so.

IV. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, do not apply. The final rule implements statutory changes to the QTL test and conforms the Finance Board regulations to EGRPRA. Moreover, the final rule would not impose any additional regulatory requirements on small entities of the type contemplated by the RFA, and reduces the regulatory burdens on all non-savings association members.

V. Paperwork Reduction Act

As part of the interim final rulemaking, the Finance Board published a request for comments concerning the collection of information contained in § 935.13 of the interim final rule. *See* 62 FR 8870 (Feb. 27, 1997). The Finance Board did not receive any comments. The Finance Board submitted an analysis of the information collection to the Office of Management and Budget (OMB) for review in accordance with section 2507 of the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3507. OMB assigned a control number, 3069–0057, and approved the information collection without conditions with an expiration date of April 30, 2000. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. *See id.* 3512(a). Although the final rule does not substantively or materially modify the approved information collection, it reduces the reporting and recordkeeping burden imposed on many respondents by permitting use of "loans to small businesses," as reported on June 30 call reports, as a proxy for small business loans as defined by the SBA. The title, description of need and use, and a description of the information collection requirements in the final rule are discussed in parts I through III of the **SUPPLEMENTARY INFORMATION.**

The following table discloses the estimated annual reporting and recordkeeping burden approved by OMB:

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents—4272
b. Total annual responses—4272
Percentage of these responses collected electronically—0%
c. Total annual hours requested—3930
d. Current OMB inventory—0
e. Difference—3930

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs—0
b. Total annual costs (O&M)—0
c. Total annualized cost requested—$126,660
d. Current OMB inventory—0
e. Difference—$126,660

Any comments concerning the information collection should be submitted to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006, and the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Federal Housing Finance Board, Washington, D.C. 20503.

VI. Other Procedural Requirements

The Finance Board has determined that the notice and comment procedure ordinarily required by the Administrative Procedure Act (APA) is not required in this instance. The APA authorizes agencies to waive the notice and comment procedures when the agency "for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). The Finance Board made such a determination with respect to the interim rule, finding that a delay would deny the Banks the opportunity to incorporate the newly expanded QTL provisions into the required annual QTL determinations of their members. The final rule does not differ substantially from the interim rule, except by conforming the definition of loans to small businesses to the OTS rule and by otherwise incorporating revisions suggested by the public commenters.

The Finance Board also has determined that the 30-day delay of the effectiveness provisions of the APA may be waived in these circumstances. Section 553(d) of the APA permits waiver of the 30-day delayed effective date requirement, among other things, where a substantive rule relieves a restriction, or otherwise for good cause found by the agency. The Finance Board finds that there is good cause for making the final rule, with the exception of the amendments to 12 CFR 935.13(a)(3)(i), effective on October 3, 1997 because it will allow the Banks to take advantage of the June 30 call report data as soon as it becomes available, thereby relieving a regulatory burden on members that will come into compliance with the QTL test as a result of these amendments. The amendments to 12 CFR 935.13(a)(3)(i) will take effect on December 30, 1997.

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks.

Accordingly, the Federal Housing Finance Board hereby amends title 12, chapter IX, part 935 of the Code of Federal Regulations, to read as follows:

PART 935—ADVANCES

1. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

2. Section 935.13 is amended by revising paragraph (a)(3) and by adding an OMB parenthetical sentence following the section to read as follows:

§ 935.13 Restrictions on advances to members that are not qualified thrift lenders.

(a) *Restrictions on advances to non-QTL members.* * * *

* * * * * * *

(3)(i) A Bank shall calculate each non-savings association member's ATIP at least annually, between July 1 and October 31, based upon financial data as of June 30 of that calendar year. The Bank may, in its discretion, calculate a member's ATIP more frequently than annually.

(ii) In determining a non-savings association member's annual ATIP, a Bank shall use the financial information from the member's June 30 call report as the primary source of information. A Bank making ATIP determinations other than as part of the annual QTL determination (whether for existing members or new members) shall use the member's most recent call report, except that in determining the amount of a member's loans to small businesses a Bank may use the information for such loans on the member's most recent June 30 call report. If any information necessary for determining the member's ATIP is not separately identified on a member's call report, the Bank may rely on a written certification provided by the member that attests to the dollar amount and composition of those other assets that meet the definitions of "qualified thrift investments" or "portfolio assets" as of the date of the call report. Notwithstanding the preceding two sentences, a Bank may, at its option, accept from a non-savings association member preliminary information as to the dollar amount and composition of assets that meet the definitions of "qualified thrift investments" or "portfolio assets," provided that the Bank thereafter verifies against the most recent call report the accuracy of any items that also are available from the call report. In any case in which a Bank relies on a certification from a non-savings association member as to its level of "qualified thrift investments" or "portfolio assets," the certification must recite that the information is accurate as of the date specified, must be in writing and be signed and dated by the chief executive officer of the member. The chief executive officer may delegate authority to sign and date the certification to the chief financial officer, chief operating officer, or controller of the member.

(iii) For purposes of this section, the term "call report" shall include:

(A) With respect to a commercial bank, the annual or quarterly "Report of Condition and Income" submitted to its appropriate Federal banking agency;

(B) With respect to a credit union, the quarterly or semi-annual call report submitted to the National Credit Union Administration; and

(C) With respect to an insurance company, its National Association of Insurance Commissioners annual regulatory filing.

(iv) For purposes of this section, the amount of a member's "loans to small businesses" shall include any commercial or business loan (or series of loans to the same borrower) in the original amount of $1 million or less, any farm loan (or series of loans to the same borrower) in the original amount of $500,000 or less, and any loan to a "small business" as that term is defined by section 3(a) of the Small Business Act, 15 U.S.C. 632(a), and implemented by the Small Business Administration at

13 CFR part 121, or any successor provisions.

* * * * *

(The Office of Management and Budget approved the information collection requirements contained in this section and assigned control number 3069–0057 with an expiration date of April 30, 2000)

Dated: September 10, 1997.

By the Board of Directors of the Federal Housing Finance Board

Bruce A. Morrison,

Chairperson.

[FR Doc. 97–26290 Filed 10–3–97; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 210 and 218

RIN 1010–AC38

Designation of Payor Recordkeeping

AGENCY: Minerals Management Service, Interior.

ACTION: Interim final rulemaking; notice of extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on an Interim final rulemaking and information collection, which was published in the **Federal Register** on August 5, 1997, (82 FR 42062). In response to requests for additional time, MMS will extend the comment period from October 6, 1997, to November 6, 1997.

DATES: Comments must be submitted on or before November 6, 1997.

ADDRESSES: Comments should be sent to: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier delivery to Building 85, Denver Federal Center, Denver, Colorado 80225; or e-Mail David_Guzy.mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, telephone (303) 231–3432, Fax (303) 231–3385, e-Mail David_Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: MMS received requests to extend the comment period in order to provide commenters with adequate time to provide detailed comments to MMS. After this comment period closes, MMS will submit an information collection request to the Office of Management and Budget (OMB) to extend the authority to use the information collection in this Interim Final Rule, titled Designation of Royalty Payment Responsibility (OMB Control Number 1010–0107, expiration date January 31, 1998). We will publish a **Federal Register** notice and respond to any comments received and we will again invite comment on our request to OMB to extend this information collection.

Dated: September 29, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 97–26355 Filed 10–3–97; 8:45 am]

BILLING CODE 4310–MR–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5901–7]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires Reasonably Available Control Technology (RACT) at stationary sources of nitrogen oxides (NO_X). The intended effect of this action is to approve regulatory provisions and source specific orders which require major stationary sources of NO_X to reduce their emissions statewide in accordance with requirements of the Clean Air Act.

DATES: This action is effective December 5, 1997, unless adverse or critical comments are received by November 5, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment, at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; as well as the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, Environmental Engineer, Air Quality Planning Unit (CAQ), U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203–2211; (617) 565–2773; Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) requires that States develop Reasonably Available Control Technology (RACT) regulations for all major stationary sources of nitrogen oxides (NO_X) in areas which have been classified as "moderate," "serious," "severe," and "extreme" ozone nonattainment areas, and in all areas of the Ozone Transport Region (OTR). EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979). This requirement is established by sections 182(b)(2), 182(f), and 184(b) of the CAA.

Major sources in moderate areas are subject to section 182(b)(2), which requires States to adopt RACT for all major sources of VOC. This requirement also applies to all major sources in areas with higher classifications. Additionally, section 182(f) of the CAA states that "The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen." For serious nonattainment areas, a major source is defined by section 182(c) as a source that has the potential to emit 50 tons per year. For severe nonattainment areas, a major source is defined by section 182(d) as a source that has the potential to emit 25 tons per year. The entire State of Connecticut is classified as nonattainment for ozone, with the Connecticut portion of the New York-New Jersey-Long Island CMSA being classified as severe, and with the rest of the State being classified as serious.

These CAA NO_X requirements are further described by EPA in a notice entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620). The November 25, 1992 notice, also known as the "NO_X Supplement," should be referred to for more detailed information on NO_X requirements. Additional EPA guidance memoranda, such as those included in the "NO_X Policy Document for the Clean Air Act of 1990," (EPA–452/R–96–005, March 1996), should also be referred to for more information on NO_X requirements. Similarly, the "Economic Incentive Program Rules," or EIP, (67 FR 16690, April 7, 1997) should be referred to for information on EPA's policy concerning the use of emissions trading by sources subject to NO_X RACT.

On May 20, 1997, the Connecticut Department of Environmental Protection (DEP) submitted revisions to its SIP. The revisions included a revised section 22a–174–22 of the Regulations of Connecticut State Agencies, "Control of Nitrogen Oxides Emissions." The Connecticut NO_X RACT regulation contains a combination of NO_X emission limitations, performance standards, and compliance options, including provisions for sources to meet emission limitations through emissions trading. Subsequently, Connecticut submitted a number of case-specific SIP revisions related to the emissions trading provisions of section 22a–174–22. These regulations and case-specific SIP revisions were submitted in response to the CAA requirements that Connecticut require RACT for all major sources of NO_X.

II. State Submittal

Connecticut's regulation 22a–174–22, "Control of Nitrogen Oxides Emissions," was first incorporated into the SIP on May 31, 1972 (37 FR 23085). On February 1, 1994, Connecticut sent a revised draft of the rule to EPA. The regulations were filed with the Secretary of State on May 20, 1994, and became effective on that date. Connecticut submitted the revised section 22a–174–22 as a formal SIP submittal to EPA on May 24, 1994. After reviewing the regulation for completeness, EPA sent Connecticut a June 23, 1994 letter stating that Connecticut's rule had been found to be administratively and technically complete. Subsequently, on September 19, 1996, Connecticut proposed another revision to section 22a–174–22. Connecticut held a public hearing on that revision on October 30, 1996 and EPA submitted written comments to the public record on October 23, 1996. The revised section 22a–174–22 was adopted by Connecticut on January 23, 1997. On May 20, 1997, Connecticut submitted the regulations to EPA as a request for a revision to the SIP. On May 28, 1997, EPA sent a letter to Connecticut deeming the package administratively and technically complete.

In addition to the submittal of section 22a–174–22, since May 1995, Connecticut has submitted 23 case-specific SIP revisions for sources involved in the trading of NO_X credits as allowed under subsection 22a–174–22(j). Of the 23 case-specific packages, four involve the generation of NO_X credits and 19 involve the use of NO_X credits in order to meet NO_X emission reduction requirements of section 22a–174–22.

III. Description of Submittal

The following description concerns the changes being approved in this action. For a more detailed discussion of Connecticut's submittal and EPA's proposed action, the reader should refer to the Technical Support Document (TSD) and attachments which were developed as part of this action. Copies of the TSD and attachments are found at the previously mentioned addresses.

A. Section 22a–174–22

Connecticut's regulation, section 22a–174–22, "Control of Nitrogen Oxides Emissions," is divided into thirteen sections. Subsection (a) defines terms used in the rule. Subsections (b) and (c) cover applicability and exemptions. Applicability is determined unit-by-unit, based on unit type. An emissions unit is subject to the rule if it exceeds a minimum capacity rating and is located at a major source. Additionally, any fuel-burning equipment, whether located at a major stationary source or not, which has daily potential emissions of NO_X in excess of certain thresholds during the ozone season, is also subject to the rule. The regulations exempt sources where actual emissions have not exceeded the major source threshold since 1990 and emergency electricity generating engines. Subsection (c) states that this subsection does not apply to mobile sources.

Subsections (d) and (e) establish the emission limits to apply before and after May 31, 1995. Subsection (d) established the emission limits for sources prior to May 31, 1995. Subsection (d) also lists compliance options available to sources after May 31, 1995. These options are compliance with emission limitations, fuel switching, a 40% emission reduction, source reconstruction, schedule modification, or emission reduction trading. Requirements for each method of compliance are detailed in subsections (f) through (j). Subsection (d) also provides for one year compliance date extensions subject to the approval of the Commissioner and EPA.[1] Subsection (e) establishes the post-May, 1995 emission limits with specific limits for: turbines; cyclone furnaces; fast-response double-furnace Naval boilers; fluidized-bed combustors; "other boilers;" reciprocating engines; waste combustors; fuel burning equipment firing fuels other than gas, oil, or coal; glass melting furnace; and other sources providing direct heat. Subsection (e) also contains an emission limit for all other sources not having a specifically defined emission limitation.

Subsection (f) establishes the requirements for multi-fuel sources which co-fire, fuel switch, or completely convert to a different fuel. Sources simultaneously firing more than one fuel are subject to the Btu-weighted average of the applicable emission limits. Sources capable of firing more than one fuel are subject to applicable emission limits for each fuel at the time it is fired, however, if gas or distillate oil is fired exclusively May through September, the source is subject to a limit of 0.20 lb/mmBtu in May through September and a limit of 0.29 lb/mmBtu October through April. If a source converts to a new fuel, the source is subject to 0.29 lb/mmBtu if the primary fuel was previously coal, or 0.225 lb/mmBtu if the primary fuel was previously residual oil.

Subsection (g) establishes the requirements for sources making a 40% emission reduction to comply. The 40% reduction is calculated as the more stringent of a) 60% of the source's emission rate at maximum capacity during 1990 or b) 60% of the applicable pre-May 1995 emission limit established in subsection (d). Subsection (h) establishes the compliance requirements for sources reconstructing or replacing a unit. Pursuant to a permit, these sources must complete reconstruction by May 31, 1999. Prior to May, 1999, the source's emissions are limited to the more stringent of the pre-May 1995 emission limit the source would be subject to under subsection (d) or the emission limit in the source's current permit. In the interim period between May 31, 1995 and May 31, 1999, the source must deposit money into an escrow account equivalent to $1000 times the pounds/day needed to comply with RACT. This money is only returned to the source after the reconstruction is completed. If reconstruction has not been completed by the date required in the permit, the

[1] See EPA's July 5, 1994 policy memorandum entitled, "Phase-in of Controls Beyond May 1995," from John Seitz, Director of the Office of Air Quality Planning and Standards to the regional EPA Air Program Directors.

source may use the escrow money to acquire emission credits.

Subsection (i) establishes the requirements for sources complying through schedule modification. Schedule modification by permit is allowed only if the source can demonstrate to the Commissioner that it is not economically or technically feasible to comply with the emission limitations, fuel switching, or a 40% emission reduction. Subsection (i) applies only to oil-fired turbines or fast-response double-furnace Naval boilers that generate power to create simulated high-altitude atmospheres for the testing of aircraft engines or testing of fuel-burning equipment undergoing research and development.

Subsection (j) establishes the requirements for sources complying with subsection (e) emission limitations through emissions trading. Under subsection (d)(4), compliance through emission reduction trading is allowed only through revisions to the SIP. Therefore, each use of emissions trading for compliance with subsection (e) limits will be reviewed and processed as a separate regulatory action.

Subsection (k) covers requirements for emission testing and monitoring. Units at major sources having stacks which emitted 100 tons per year or more at anytime since 1990 are required to install CEMS. Sources with CEMS are required to demonstrate compliance on a block 24-hour basis, including emissions from start-up, shut-down, and equipment malfunctions. All other sources are required to demonstrate compliance through three 1-hour stack tests. Initial compliance demonstrations were required by May 31, 1995. Sources without CEMS are required to conduct emission tests once every 5 years. Sources may apply for a one-year extension to comply with subsection (k) requirements.

Subsection (l) covers recordkeeping and reporting requirements concerning operating hours, fuel usage, NO_X emissions, equipment maintenance, CEMS records, and emissions testing information. Sources must retain these records for five years. Sources with CEMS are required to submit quarterly excess emissions reports and all sources are required to submit annual emission reports.

Subsection (m) covers compliance plans. Sources were required to submit certified compliance plans to the Commissioner by September 1, 1994.

B. Case-Specific Emission Trading Orders

In addition to the submittal of section 22a–174–22, Connecticut subsequently submitted 23 case-specific SIP revisions for sources involved in the trading of NO_X credits as part of the emission reduction trading option of subsection 22a–174–22(j). These SIP revisions consist of SIP narratives, which describe how Connecticut's actions comply with the State program requirements of the EIP (see 40 CFR Part 51.493), and the trading orders issued by the State, which define the enforceable requirements applicable to the sources involved in trading. Of the 23 case-specific packages, 4 involve the generation of NO_X credits and 19 involve the use of NO_X credits in order to meet the NO_X emission reduction requirements of section 22a–174–22. EPA's analysis in the attachments to the TSD addresses Connecticut's compliance with EPA regulations and guidance concerning the EIP.

The first credit creation submittal involves United Illuminating Company's Station #3 in New Haven. Consent Order no. 8092 was adopted by the State on May 18, 1995, submitted to EPA on May 18, 1995, and deemed complete by EPA on September 12, 1995. The second credit generation consent order, issued to Connecticut Light and Power, Order no. 1494, involves reductions at the Devon, Montville, and Norwalk stations. Order 1494 was adopted on October 15, 1996, submitted to EPA on March 20, 1997, and deemed complete on April 7, 1997. Additionally, Order no. 8116 for the Connecticut Resource Recovery Authority, issued by the State and submitted to EPA on April 22, 1997, and deemed complete by EPA on May 28, 1997, allows for the generation of credit at the Hartford facility. Order No. 8123 allows for the creation of credit at Algonquin Gas Transmission Company's Cromwell facility. Similarly, Order no. 8123 was adopted on April 18, 1997 and submitted to EPA as a SIP revision on April 22, 1997. The package was deemed complete on May 28, 1997.

The remaining case-specific actions involve the use of NO_X credits as described in the following consent orders: (1) Order no. 8093 for Pfizer, Inc., in Groton, adopted on July 19, 1995, submitted to EPA on January 17, 1996 and deemed complete on July 3, 1996; (2) Order no. 8095 for American Ref-Fuel Company of Southeastern Connecticut in Preston, adopted on June 2, 1995, submitted on August 21, 1995 and deemed complete on September 12, 1995; (3) Order no. 8096 for Food Ingredients Company in New Milford, adopted on August 25, 1995, submitted on June 24, 1996 and deemed complete on July 3, 1996; (4) Order no. 8100 for Bridgeport RESCO Company in Bridgeport, adopted on November 2, 1995, submitted on January 30, 1996 and deemed complete on July 3, 1996; (5) Order no. 8105 for Electric Boat Division of General Dynamics in Groton, adopted on October 31, 1995, submitted on January 30, 1996 and deemed complete on July 3, 1996; (6) Order no. 8106 for Connecticut Light and Power Company in Middletown, adopted on October 10, 1995, submitted on January 30, 1996 and deemed complete on July 3, 1996; (7) Order no. 8107 for Northeast Nuclear Energy Company in Waterford, adopted on October 13, 1995, submitted on January 30, 1996 and deemed complete on July 3, 1996; (8) Order no. 8103 for United Illuminating Company's Station #4 in New Haven, adopted on February 14, 1996, submitted on June 17, 1996 and deemed complete on July 3, 1996; (9) Order no. 8102 for United Illuminating's auxiliary boiler in New Haven, adopted on December 15, 1995, submitted on June 20, 1996 and deemed complete on July 3, 1996; (10) Order no. 8118 for South Norwalk Electric Works, South Norwalk, adopted on March 19, 1996, submitted on July 9, 1996 and deemed complete on November 25, 1996; (11) Order no. 8119 for City of Norwich, Department of Public Utilities, adopted on March 4, 1996, submitted on July 11, 1996 and deemed complete on November 25, 1996, (12) Order no. 8115 for the University of Connecticut in Storrs, adopted on November 19, 1996, submitted on February 18, 1997, and deemed complete on April 7, 1997; (13) Order no. 1494 for Connecticut Light and Power's Branford, Cos Cob, Devon, Franklin Drive, Montville, Middletown, South Meadow, Torrington, Tunnel Road, and Norwalk Harbor stations, adopted on October 15, 1996, submitted on March 20, 1997, and deemed complete on April 7, 1997; (14) Order no. 8101 for the State of Connecticut Department of Mental Health and Addiction Services, adopted on July 16, 1996, submitted on March 24, 1997, and deemed complete on April 7, 1997; (15) Order no. 8130 for the State of Connecticut Department of Public Works, adopted on October 16, 1996, submitted on March 24, 1997, and deemed complete on April 7, 1997; (16) Order no. 8132 for Bridgeport Hospital, adopted on September 10, 1996, submitted on March 24, 1997, and deemed complete on April 7, 1997; (17) Order no. 8135 for Bridgeport Hydraulic Company, adopted on December 24, 1996, submitted on March 24, 1997, and deemed complete on April 7, 1997; (18) Order no. 8141 for the Town of Wallingford Department of Public Utilities, adopted on December 27, 1997, submitted on March 24, 1997, and deemed complete on April 7, 1997; (19) Order no. 8113 for Simkins Industries, adopted on November 19, 1996, submitted to EPA on May 19, 1997, and deemed complete on May 28, 1997; and, (20) Order no. 8110 for Yale University, adopted on July 29, 1996, submitted on April 19, 1997, and deemed complete on May 28, 1997.

Additionally, on November 16, 1996, Connecticut submitted supplementary documentation to EPA in support of the emissions trading related consent orders. This documentation included an audit of the NO_X credit creation and credit use in Connecticut as well as a discussion of how the Connecticut program meets the State program requirements of the EIP. These documents have been included in the Technical Support Document (TSD) as Appendix A.

The November 16, 1996 documentation demonstrates that the use of credits for compliance with section 22a–174–22, including the use of one-time or carry over credits during time periods other than when they were generated (i.e., the intertemporal use of credits), is consistent with the requirements of the Connecticut SIP, RFP and ROP plans, and area-wide RACT requirements. The documentation includes an audit of the NO_X RACT trades in Connecticut from June 1995 to December 1995 and shows that there was no increase in NO_X emissions, or "spiking," due to the use of credits for compliance during that time. In fact, Connecticut's audit clearly shows that quantity of credits created during the ozone season of 1995 were greater than the quantity used.

Connecticut's analysis also discusses a number of their NO_X RACT program characteristics which inherently buffer the intertemporal use of credits. First, some of the credit is generated from units which are using additional controls to permanently keep emissions at levels well below their limits. Since some or all of this credit is not used during the season/year that it is generated, it provides a buffer against spiking during that time. Second, most sources operate below the required emission rate limitations, creating a compliance margin of emission reductions which are not assumed in the SIP. This aggregate compliance margin could be quantified relatively easily, particularly for sources with continuous emission monitoring systems. This margin is estimated to be several hundred tons per year. Although concerns have been expressed to EPA about allowing this type of margin to be treated as an individual facility's credit, the aggregate can be viewed as buffering intertemporal credit use statewide regardless of whether a facility's margin would ever be approved as tradeable credit. Furthermore, Connecticut has dealt with the question of the creditability of the compliance margin on a trade-by-trade basis by requiring that a minimum of 10% of credit be retired upon creation and that credit users meet an emission limit which is at least 5% lower than the RACT limits of subsection (e).

Also, the Connecticut documentation discusses a number of other program elements which, although not quantified at this time, could be considered as acting as a trading buffer and helping to ensure that RACT and RFP are maintained. For instance, Connecticut's rule does not provide for alternative RACT limits (i.e., relaxations of the limits set in subsection (e) of the regulation) or compliance date extensions (other than the one year extensions for innovative technologies under subsection (d)(3)). During the first two years of NO_X RACT implementation, Connecticut has followed the policy that since other compliance options are provided for by the regulation, relaxations are not allowed in this program. Admirably, Connecticut has held to this policy and the effectiveness of the regulation to reduce emissions has been greater than if such variances had been allowed under the rule. If Connecticut does, however, ever decide to allow for NO_X RACT variances while simultaneously relying on the increased rule effectiveness for intertemporal credit buffering purposes, EPA will have the ability to evaluate the credit balance situation at that time since such actions must be reviewed and approved by EPA as changes to the SIP.

Given Connecticut's documentation, EPA believes that Connecticut has shown that the quantity of NO_X reductions being achieved by section 22a–174–22 is at least as great as would have been achieved without the trading option. Furthermore, given the inherent buffering characteristics of the program, the RFP and SIP attainment requirements also should continue to be met. Based upon the documentation presented, EPA believes that the emissions trading aspect of the NO_X RACT program meets all applicable EPA guidances.

IV. Issues

Subsections (h) and (i) of the regulation do not explicitly require facilities undergoing reconstruction or utilizing schedule modifications to have RACT orders issued to them and subsequently, to have those orders approved by EPA. However, on June 18, 1996, Carmine DiBattista, Chief, Bureau of Air Management, Connecticut DEP, sent a letter to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. EPA Region I, clarifying that either federally enforceable permits or case-specific SIP revisions will be submitted for the three sources subject to the reconstruction and schedule modification provisions. Furthermore, the letter contained documentation that neither combustion modifications nor add-on controls are technically or economically feasible for the three facilities affected by the schedule modification section of the regulation because these units are operated intermittently or at irregular loads. Given this additional documentation, subsections (h) and (i) are approvable.

V. Final Action

EPA review of the NO_X RACT SIP related submittals, including NO_X RACT regulation 22a–174–22 and the 23 source-specific NO_X emissions trading orders described above, indicates that Connecticut has sufficiently defined the NO_X RACT requirements for the State. Therefore, EPA is approving section 22a–174–22, as submitted on May 20, 1997, as well as the 23 source-specific Connecticut orders, into the SIP at this time.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision unless adverse or critical comments are filed. This action will be effective December 5, 1997 unless adverse or critical comments are received by November 5, 1997.

If EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 5, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for

revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1997.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2). EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 22, 1997.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(72) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(72) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on: May 18, 1995; August 21, 1995; January 17, 1996; January 30, 1996; January 30, 1996; January 30, 1996; June 17, 1996; June 20, 1996; June 24, 1996; July 9, 1996; July 11, 1996; February 18, 1997; March 20, 1997; March 24, 1997; March 24, 1997; March 24, 1997; March 24, 1997; March 24, 1997; March 24, 1997; April 22, 1997; April 22, 1997; May 19, 1997; May 19, 1997; and May 20, 1997.

(i) Incorporation by reference.

(A) Twenty-four letters from the Connecticut Department of Environmental Protection dated: May 18, 1995; August 21, 1995; January 17, 1996; June 24, 1996; January 30, 1996; January 30, 1996; January 30, 1996; January 30, 1996; June 20, 1996; June 17, 1996; July 11, 1996; July 9, 1996; March 24, 1997; May 19, 1997; March 24, 1997; March 20, 1997; March 24, 1997; February 18, 1997; May 19, 1997; March 24, 1997; March 24, 1997; May 20, 1997; April 22, 1997; and April 22, 1997; submitting revisions to the Connecticut State Implementation Plan.

(B) Connecticut Trading Agreement and Order no. 8092 issued to United Illuminating Company's Station #3 in New Haven, effective on May 18, 1995.

(C) Connecticut Trading Agreement and No. 8095 issued to American Ref-Fuel Company of Southeastern Connecticut in Preston, effective on June 2, 1995.

(D) Connecticut Trading Agreement and Order no. 8093 issued to Pfizer, Inc., in Groton, effective on July 19, 1995.

(E) Connecticut Trading Agreement and Order no. 8096 issued to Food Ingredients Company in New Milford, effective on August 25, 1995.

(F) Connecticut Trading Agreement and Order no. 8106 issued to Connecticut Light and Power Company in Middletown, effective on October 10, 1995.

(G) Connecticut Trading Agreement and Order no. 8107 issued to Northeast Nuclear Energy Company in Waterford, effective on October 13, 1995.

(H) Connecticut Trading Agreement and Order no. 8105 issued to Electric Boat Division of General Dynamics in Groton, effective on October 31, 1995.

(I) Connecticut Trading Agreement and Order no. 8100 issued to Bridgeport RESCO Company in Bridgeport, effective on November 2, 1995.

(J) Connecticut Trading Agreement and Order no. 8102 issued to United Illuminating's auxiliary boiler in New Haven, effective on December 15, 1995.

(K) Connecticut Trading Agreement and Order no. 8103 issued to United Illuminating Company's Station #4 in New Haven, effective on February 14, 1996.

(L) Connecticut Trading Agreement and Order no. 8119 issued to the City of Norwich, Department of Public Utilities, effective on March 4, 1996.

(M) Connecticut Trading Agreement and Order no. 8118 issued to South Norwalk Electric Works, South Norwalk, effective on March 19, 1996.

(N) Connecticut Trading Agreement and Order no. 8101 issued to the State of Connecticut Department of Mental Health and Addiction Services, effective on July 16, 1996.

(O) Connecticut Trading Agreement and Order no. 8110 issued to Yale University, effective on July 29, 1996.

(P) Connecticut Trading Agreement and Order no. 8132 issued to Bridgeport Hospital, effective on September 10, 1996.

(Q) Connecticut Trading Agreement and Order no. 1494 issued to Connecticut Light and Power, involving Branford, Cos Cob, Devon, Franklin Drive, Montville, Middletown, South Meadow, Torrington, Tunnel Road, and Norwalk Harbor Stations, effective on October 15, 1996.

(R) Connecticut Trading Agreement and Order no. 8130 issued to the State of Connecticut Department of Public Works, effective on October 18, 1996.

(S) Connecticut Trading Agreement and Order no. 8115 issued to the University of Connecticut in Storrs, effective on November 19, 1996.

(T) Connecticut Trading Agreement and Order no. 8113 issued to Simkins Industries, effective on November 19, 1996.

(U) Connecticut Trading Agreement and Order no. 8135 issued to Bridgeport Hydraulic Company, effective on December 24, 1996.

(V) Connecticut Trading Agreement and Order no. 8141 issued to the Town of Wallingford Department of Public Utilities, effective on December 27, 1996.

(W) Regulations 22a–174–22 "Control of Nitrogen Oxides Emissions," adopted on January 23, 1997, which establishes reasonably available control technology requirements for major stationary sources of nitrogen oxides.

(X) Connecticut Trading Agreement and Order no. 8123 issued to the Algonquin Gas Transmission Company, effective on April 18, 1997.

(Y) Connecticut Trading Agreement and Order no. 8116 issued to the Connecticut Resource Recovery Authority, effective on April 22, 1997.

(ii) Additional materials.

(A) Letter, dated June 18, 1996, from Carmine DiBattista, Chief of the Bureau of Air Management for the Connecticut DEP, to Susan Studlien, Deputy Director of the Office of Ecosystem Protection at U.S. EPA, Region I.

(B) SIP narrative materials, dated May 1995, submitted with Connecticut Trading Agreement and Order no. 8092 for United Illuminating Company's Station #3 in New Haven.

(C) SIP narrative materials, dated August 3, 1995, submitted with Connecticut Trading Agreement and Order no. 8095 for American Ref-Fuel Company of Southeastern Connecticut in Preston.

(D) SIP narrative materials, dated December 1995, submitted with Connecticut Trading Agreement and Order no. 8093 issued to Pfizer, Inc., in Groton.

(E) SIP narrative materials, dated November 1995, submitted with Connecticut Trading Agreement and Order no. 8096 issued to Food Ingredients Company in New Milford.

(F) SIP narrative materials, dated November 1995, submitted with Connecticut Trading Agreement and Order no. 8106 issued to Connecticut Light and Power Company in Middletown.

(G) SIP narrative materials, dated November 1995, submitted with Connecticut Trading Agreement and Order no. 8107 issued to Northeast Nuclear Energy Company in Waterford.

(H) SIP narrative materials, dated October 6, 1995, submitted with Connecticut Trading Agreement and Order no. 8105 issued to Electric Boat Division of General Dynamics in Groton.

(I) SIP narrative materials, dated September 29, 1995, submitted with Connecticut Trading Agreement and Order no. 8100 issued to Bridgeport RESCO Company in Bridgeport.

(J) SIP narrative materials, dated December 1995, submitted with Connecticut Trading Agreement and Order no. 8102 issued to United Illuminating's auxiliary boiler in New Haven.

(K) SIP narrative materials, dated March 1996, submitted with Connecticut Trading Agreement and Order no. 8103 issued to United Illuminating Company's Station #4 in New Haven.

(L) SIP narrative materials, dated May 31, 1995, submitted with Connecticut Trading Agreement and Order no. 8119 issued to the City of Norwich, Department of Public Utilities.

(M) SIP narrative materials, dated May 31, 1995, submitted with Connecticut Trading Agreement and Order no. 8118 issued to South Norwalk Electric Works, South Norwalk.

(N) SIP narrative materials, dated March 1997, submitted with Connecticut Trading Agreement and Order no. 8101 issued to the State of Connecticut Department of Mental Health and Addiction Services.

(O) SIP narrative materials, dated May 1997, submitted with Connecticut Trading Agreement and Order no. 8110 issued to Yale University.

(P) SIP narrative materials, dated March 1997, submitted with Connecticut Trading Agreement and Order no. 8132 issued to Bridgeport Hospital.

(Q) SIP narrative materials, dated March 1997, submitted with Connecticut Trading Agreement and Order no. 1494 issued to Connecticut Light and Power, involving Branford, Cos Cob, Devon, Franklin Drive, Montville, Middletown, South Meadow, Torrington, Tunnel Road, and Norwalk Harbor Stations.

(R) SIP narrative materials, dated March 1997, submitted with Connecticut Trading Agreement and Order no. 8130 issued to the State of Connecticut Department of Public Works.

(S) SIP narrative materials, dated February 1996, submitted with Connecticut Trading Agreement and Order no. 8115 issued to the University of Connecticut in Storrs.

(T) SIP narrative materials, dated May 1997, submitted with Connecticut Trading Agreement and Order no. 8113 issued to Simkins Industries.

(U) SIP narrative materials, dated March 1997, submitted with Connecticut Trading Agreement and

Order no. 8135 issued to Bridgeport Hydraulic Company.

(V) SIP narrative materials, dated March 1997, submitted with Connecticut Trading Agreement and Order no. 8141 issued to the Town of Wallingford Department of Public Utilities.

(W) SIP narrative materials, dated April 1997, submitted with Connecticut Trading Agreement and Order no. 8123 issued to the Algonquin Gas Transmission Company.

(X) SIP narrative materials, dated April 1997, submitted with Connecticut Trading Agreement and Order no. 8116 issued to the Connecticut Resource Recovery Authority.

3. Section 52.385 is added to read as follows:

§ 52.385 EPA-approved Connecticut regulations.

The following table identifies the State regulations which have been submitted to and approved by EPA as revisions to the Connecticut State Implementation Plan. This table is for informational purposes only and does not have any independent regulatory effect. To determine regulatory requirements for a specific situation, consult the plan identified in § 52.370. To the extent that this table conflicts with § 52.370, § 52.370 governs.

TABLE 52.384—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
19–508	Connecticut Air Implementation Plan.	3/3/72	5/31/72	37 FR 10842	(c) 1&2	State of CT Air Implementation Plan.
		8/10/72	5/14/73	38 FR 12696	(c) 3	Correction to submission dates for supplemental information.
		4/9/74	6/2/75	40 FR 23746	(c) 5	Identification of Air Quality Maintenance Areas.
		8/10/76	11/29/77	42 FR 60753	(c) 7	Adds carbon monoxide/oxidant control strategy and regulations.
		6/30/77	9/29/78	43 FR 44840	(c) 8	Describes air quality surveillance program.
22a–171	Small Business Assistance.	1/12/93	5/19/94	59 FR 26123	(c) 65	Established small business compliance and technical assistance program.
22a–174–1	Definitions	4/01/72	5/31/72	37 FR 23085	(b).	
		5/31/72	12/23/80	45 FR 84769		Adds definitions for PSD and NSR program. EPA took no action because CT did not submit regulations.
		12/13/84	7/18/85	50 FR 29229	(c) 34	Revision to the definition of VOC adding 7 non-reactive compounds to exempt list.
		12/27/88	2/23/93	58 FR 10957	(c) 56	Changes definitions of "actual emissions" and "potential emissions" throughout regulations.
22a–174–2	Registration requirements for existing stationary sources of air pollutants.	4/04/72	5/31/72	37 FR 23085	(b).	
		8/31/79	12/23/80	45 FR 84769	(c) 11	In tandem with changes to Regulation 3, sources existing prior to 1972 must register.
22a–174–3	Permits for construction and operation of stationary sources.	4/04/72	5/31/72	37 FR 23085	(b)	Conditional approval of NSR program.
		8/30/79	12/23/80	45 FR 84769	(c)11	EPA conditionally approved changes to meet federal New Source Review (NSR) requirements. CT did not submit Prevention of Significant Determination program.

TABLE 52.384—EPA-APPROVED REGULATIONS—Continued

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
		8/31/79	1/07/82	47 FR 762	(c) 20	Final approval of NSR Rules removing conditions of 12/23/80.
		10/10/80	1/07/82	47 FR 762	(c) 20	Allows conditional exemption of resource recovery facilities from offset transactions.
		10/10/80	1/07/82	47 FR 762	(c) 20	Replaces the word "actual" with word "allowable".
		12/27/88	2/23/93	58 FR 10957	(c) 56	Changes to NSR and PSD requirements.
22a–174–4	Source monitoring, record keeping, reporting and authorization of inspection of air pollution sources.	4/04/72	5/31/72	37 FR 23085	(b).	
		10/31/77	12/23/80	45 FR 84769	(c) 11	Clarifies record keeping and reporting requirements and rescinds smoke monitoring requirements for small sources.
		12/15/80	8/24/82	47 FR 36822	(c) 20	Rescinded requirements for smoke monitors on sources less than 250 mmBtu.
		12/27/88	2/23/93	58 FR 10957	(c) 56	Changes to opacity continuous emission monitoring (CEM) requirements.
22a–174–5	Methods for sampling, emission testing, and reporting.	4/04/72	5/31/72	37 FR 23085	(b).	
		10/05/77	12/23/80	45 FR 84769	(c) 11	Tied State testing method requirement to federal requirements, clarified requirements for stack testing, and eliminated record keeping and reporting requirements.
		12/19/80	8/28/81	46 FR 43418	(c) 16	Revisions to source monitoring and stack testing requirements for SO2.
22a–174–6	Air Pollution Emergency Episode Procedures.	4/04/72	5/31/72	37 FR 23085	(b).	
		8/31/79	12/23/80	45 FR 84769	(c) 11	Allows DEP to separately limit mobile and stationary sources depending upon the cause of the episode.
22a–174–7	Malfunction of Control Equipment; Reporting.	4/04/72	5/31/72	37 FR 23085	(b).	
22a–174–8	Compliance Plans and Schedules.	4/04/72	5/31/72	37 FR 23085	(b).	
22a–174–9	Prohibition of air pollution.	4/04/72	5/31/72	37 FR 23085	(b).	
		8/31/79	12/23/80	45 FR 84769	(c) 11	Non-substantive numbering change.

TABLE 52.384—EPA-APPROVED REGULATIONS—Continued

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
		8/31/79	8/12/83	48 FR 36579	(c) 11.	Full authority delegated for NSPS and NESHAPS.
			12/6/91	56 FR 63875		Delegation of new subparts.
22a–174–10	Public Availability of Information.	4/04/72	5/31/72	37 FR 23085	(b).	
22a–174–11	Prohibition against concealment of circumvention.	4/04/72	5/31/72	37 FR 23085	(b).	
22a–174–12	Violations and enforcement.	4/4/72	5/31/72	37 FR 23085	(b).	
22a–174–13	Variances	4/4/72	5/31/72	37 FR 23085	(b).	
		8/31/79	12/23/80	45 FR 84769	(c) 11	Non-substantive numbering change.
22a–174–14	Compliance with regulation no defense to nuisance claim.	4/04/72	5/31/72	37 FR 10842	(b).	
22a–174–15	Severability	4/4/72	5/31/72	37 FR 10842	(b).	
22a–174–16	Responsibility to comply with applicable regulations.	4/4/72	5/31/72	37 FR 10842	(b).	
22a–174–17	Control of open burning.	4/04/72	5/31/72	37 FR 10842	(b).	
22a–174–18	Control of particulate emissions.	4/4/72	5/31/72	37 FR 10842	(b).	
		11/30/73	4/16/74	39 FR 13651	52.375	Allowed Hartford Electric Light & Connecticut Light & Power Supplies to use nonconforming fuel from 12/3/73 to 1/1/74.
		7/11/81	9/23/82	47 FR 41958	(c) 22	Defines TSP RACT for fuel burning equipment and process sources including cupolas, foundries, and hot mix asphalt plants.
22a–174–19	Control of sulfur compound emissions.	4/4/72	5/31/72	37 FR 23085	(b).	
		11/30/73	4/16/74	39 FR 13651	52.375	Allowed Hartford Electric Light and Connecticut Power and Light to use nonconforming fuel.
		4/3/79	7/30/79	44 FR 44498	(c) 10	Allowed Northeast Utilities to purchase, store, and burn nonconforming fuel.
		9/8/80	4/27/81	46 FR 23412	(c) 12	Variance for Federal Paperboard, Inc.
		12/19/80 & 3/11/81	8/28/81	46 FR 43418	(c) 14	Amends sulfur control strategy.
		3/11/81 & 7/15/81	8/28/81	46 FR 43418	(c) 15	Amends New Source Ambient Impact Analysis Guideline.
		3/17/81	10/23/81	46 FR 51914	(c) 17	Variance for Uniroyal, Inc.
		11/2/81	11/18/81	46 FR 56612	(c) 18	Approval State Energy Trade program.
		11/14/75	11/18/81	46 FR 56612	52.380 (e)(1)	EPA disapproval revision which allows exemption for home heating with coal, historic demonstrations, and other small sources.

TABLE 52.384—EPA-APPROVED REGULATIONS—Continued

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
		11/12/81	12/22/81	46 FR 62062	(c) 19	Variances for United Technologies Corp., Pratt & Whitney Aircraft Division facilities in New Haven and Middletown.
		7/7/81	11/12/82	47 FR 51129	(c) 24	Variance for Sikorsky Aircraft—approved under the State Energy Trade Program.
		5/27/82	2/8/83	48 FR 5723	(c) 26	Variance for Dow Chemical—approved under the State Energy Trade Program.
		12/15/82	5/4/83	48 FR 20051	(c) 27	Variance for Lydall, Inc.—approved under the State Energy trade (SET) Program.
		11/1/82	6/28/83	48 FR 29689	(c) 28	Simkins Industries—approved under the State Energy Trade Program.
		3/28/83	12/20/83	48 FR 56218	(c) 30	Variance for Loomis Institute—approved under the State Energy Trade Program.
		2/19/93	1/18/94	59 FR 2531	(c) 63	Changes requirements at Hamilton Standard Division of UTC.
22a–174–20	Control of organic compound emissions.	4/4/72	5/31/72	37 FR 23085	(b).	
		8/31/79	12/23/80	45 FR 84769	(c) 11	Requirements for certain Group I CTG source categories. Conditionally approved cutback asphalt and solvent metal cleaning categories.
		10/10/80	1/17/82	47 FR 762	(c) 20	Requirements for cutback asphalt (Group I—CTG).
		10/10/80	2/17/82	47 FR 6827	(c) 25	Requirements for Group II CTGs exclusive of controlling gasoline tank truck leaks, petroleum liquid storage external floating roof tanks, manufacture of vegetable oil, pneumatic rubber tire categories. Other VOC rules.
		10/10/80	6/7/82	47 FR 24452	(c) 23	Alternative emission reduction provisions.
		12/10/82	2/1/84	49 FR 3989	(c) 29	Requirements for small open top degreasers (Group I—CTG).
		9/24/83	2/1/84	49 FR 3989	(c) 29	Exempts colds cleaners at auto repair facilities.
		9/24/83	3/21/84	49 FR 10542	(c) 32	Adds degreasing requirements for conveyorized and cold cleaning operations.
		8/31/79	3/21/84	49 FR 10542	(c) 32	Requirements for solvent metal cleaning (Group I CTG).

TABLE 52.384—EPA-APPROVED REGULATIONS—Continued

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
		9/24/83	3/21/84	49 FR 10542	(c) 32	Exempts storage vessels from submerged fill. Delays effective date of Stage I vapor recovery by 1 year. Requires RACT for all major sources of VOC not covered under a CTG document.
		9/24/83	10/19/84	49 FR 41026	(c) 33	Adds major non-ctg sources covered by 20(ee) to applicability, compliance, alternative emission reduction and seasonal operation after burner provisions.
		12/13/84	7/18/85	50 FR 29229	(c) 34	Revision to cutback asphalt regulation. Requires facilities with external floating roofs to install secondary seats. Changes to gasoline tank truck regulation.
		4/23/86	11/20/86	51 FR 41963	(c) 36	VOC RACT for Connecticut Charcoal Company.
		4/28/86	2/19/87	52 FR 5104	(c) 37	VOC RACT for King Industries.
		8/8/87	12/17/87	52 FR 47925	(c) 39	VOC RACT for Belding Corticelli Thread Company.
		5/28/86	2/17/88	51 FR 4621	(c) 41	Effective date clarification for Connecticut Charcoal.
		9/24/87	4/11/88	53 FR 11847	(c) 42	VOC RACT for Raymark Industries, Inc.
		2/2/87	5/19/88	53 FR 17934	(c) 38	Clarifies applicability of VOC compliance methods for surface coating sources.
		3/17/87	5/19/88	53 FR 17934	(c) 38	Adds regulations for SOCMI fugitive leaks and polystyrene resins.
		8/21/87	7/12/88	53 FR 26256	(c) 44	VOC RACT for Spongex International Ltd.
		12/26/86	8/1/88	53 FR 28884	(c) 43	VOC RACT for American Cyanamid Company.
		10/27/88	3/8/89	54 FR 9781	(c) 48	VOC RACT for Dow Chemical, U.S.A.
		6/7/88	3/24/89	54 FR 12193	(c) 46	VOC RACT for New Departure Hyatt.
		12/14/88	4/10/89	54 FR 14226	(c) 49	VOC RACT for Stanadyne.
		3/22/89	5/30/89	54 FR 22891	(c) 51	VOC RACT for Pratt & Whitney Division of UTC.
		12/30/88	6/2/89	54 FR 23650	(c) 50	Changes limit on volatility of gasoline.
		10/19/87	11/28/89	54 FR 48885	(c) 47	VOC RACT for Frismar, Inc.
		10/18/88	11/39/89	54 FR 49284	(c) 52	VOC RACT for Pfizer, Inc.
		9/5/89	12/22/89	54 FR 52798	(c) 53	VOC RACT for Uniroyal Chemical Co.
		11/29/89	3/12/90	55 FR 9121	(c) 54	VOC RACT for Hamilton Standard Division of United Technologies Corp.

TABLE 52.384—EPA-APPROVED REGULATIONS—Continued

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
		11/2/88	3/14/90	55 FR 9442	(c) 55	VOC RACT for Heminway & Bartlett Manufacturing Company.
		10/31/89	10/18/91	56 FR 52205	(c) 58	Changes applicability to facilities with >=15 pounds VOC per day.
		10/31/89	10/18/91	56 FR 52205	(c) 58	Various changes to Section 20 approved.
		9/1/93	11/19/93	58 FR 61041		Withdrawal of NPR for Sikorsky Aircraft Division of UTC, Bridgeport.
22a–174–21	Control of carbon monoxide emissions.	4/4/72	5/31/72	37 FR 23085	(b).	
		9/21/82	3/21/84	49 FR 10542	(c) 32	CO attainment plan.
22a–174–22	Control of nitrogen oxide emissions.	4/472	5/31/72	37 FR 23085	(b).	
		8/31/79	12/23/80	49 FR 84769	(c) 11	Exemption of fast response double furnace naval burners and cyclone furnaces (not addressed by EPA).
		5/18/95	10/6/97		(c) 72	Case-specific trading order for United Illuminating's Station #3, in New Haven.
		6/2/95	10/6/97		(c) 72	Case-specific trading order for American Ref-Fuel of Southeastern Connecticut in Preston.
		7/19/95	10/6/97		(c) 72	Case-specific trading order for Pfizer, Inc. in Groton.
		8/25/95	10/6/97		(c) 72	Case-specific trading order for Food Ingredients Specialties, Inc. in New Milford.
		10/10/95	10/6/97		(c) 72	Case-specific trading order for Connecticut Light and Power in Middletown.
		10/13/95	10/6/97		(c) 72	Case-specific trading order for Northeast Nuclear Energy Co. in Waterford.
		10/31/95	10/6/97		(c) 72	Case-specific trading order for Electric Boat Division of General Dynamics in Groton.
		11/2/95	10/6/97		(c) 72	Case-specific trading order for Bridgeport RESCO Co. in Bridgeport.
		12/15/95	10/6/97		(c) 72	Case-specific trading order for United Illuminating's auxiliary boiler, in New Haven.
		2/14/96	10/6/97		(c) 72	Case-specific trading order for United Illuminating's Station #4, in New Haven.
		3/4/96	10/6/97		(c) 72	Case-specific trading order for Norwich Department of Public utilities.
		3/19/96	10/6/97		(c) 72	Case-specific trading order for South Norwalk Electric Works.

TABLE 52.384—EPA-APPROVED REGULATIONS—Continued

Connecticut State citation	Title/subject	Dates: Date adopted by State	Dates: Date approved by EPA	Federal Register citation	Section 52.370	Comments/description
		7/16/96	10/6/97		(c) 72	Case-specific trading order for the Connecticut Dept. of Mental Health and Addiction Services.
		7/29/96	10/6/97		(c) 72	Case-specific trading order for Yale University.
		9/10/96	10/6/97		(c) 72	Case-specific trading order for Bridgeport Hospital.
		10/15/96	10/6/97		(c) 72	Case-specific trading order for Connecticut Light & Power's Branford, Cos Cob, Devon, Franklin Drive, Montville, Middletown, South Meadow, Torrington, Tunnel Road, and Norwalf Harbor stations.
		10/18/96	10/6/97		(c) 72	Case-specific trading order for the Connecticut Department of Public Works.
		11/19/96	10/6/97		(c) 72	Case-specific trading order for University of Connecticut in Storrs.
		11/19/96	10/6/97		(c) 72	Case-specific trading order for Simkins Industries.
		12/24/96	10/6/97		(c) 72	Case-specific trading order for Bridgeport Hydraulic Company.
		12/27/96	10/6/97		(c) 72	Case-specific trading order for the Town of Wallingford Dept. of Public Utilities.
		1/23/97	10/6/97		(c) 72	Establishes NO_x RACT regulations and source-specific requirements.
		4/18/97	10/6/97		(c) 72	Case-Specific trading order for Algonquin Gas Transmission Company.
		4/22/97	10/6/97		(c) 72	Case-specific trading order for the Connecticut Resource Recovery Authority.
22a–174–23	Control of Odors	4/4/72	5/31/72	37 FR 23085	(b).	
	Rescinded from Federal SIP.	8/31/79	12/23/80	45 FR 84769	(c) 11	EPA has no authority to control odors.
22a–174–24	Connecticut primary and secondary standards.	4/4/72	5/31/72	37 FR 23085	(b).	
		7/11/81	11/18/81	46 FR 56612	(c) 18	Eliminated State 24-hour and annual standard for SO2.
		10/8/80	2/17/82	47 FR 6827	(c) 25	Adopted ambient air quality standards for lead and revised the ozone standard.
		10/8/80	8/24/82	47 FR 36822	(c) 20	EPA took "no action" on definition of the term "acceptable method" because did not ensure consistency with EPA monitoring regulations.

TABLE 52.384—EPA-APPROVED REGULATIONS—Continued

Connecticut State citation	Title/subject	Dates: Date adopted by State	Dates: Date approved by EPA	Federal Register citation	Section 52.370	Comments/description
		10/8/80	11/2/82	47 FR 49646	(c) 20	Correction to subparagraph designation.
		10/8/80	12/13/85	50 FR 50906	(c) 35	Approved definition of acceptable method.
		2/25/91	3/24/92	57 FR 10139	(c) 61	Requires use of low sulfur fuels at Connecticut Light & Power in Montville.
		2/14/92	11/20/92	57 FR 54703	(c) 59	Requires use of low sulfur fuels at Stones CT Paperboard Corp.
		2/5/92	11/20/92	57 FR 54703	(c) 59	Requires use of low sulfur fuel at Hartford Hospital.
22a–174–25	Effective date	4/4/72	5/31/72	37 FR 23085	(b).	
22a–174–27	Emission Standards for Motor Vehicles.	9/24/82	3/21/84	49 FR 10542	(c) 32	Exhaust "emission standards" for periodic motor vehicle inspection and maintenance.
14–164C	Periodic Motor Vehicle Emissions Inspection and Maintenance.	7/27/82	3/21/84	49 FR 10542	(c) 32	Department of Motor Vehicle Regulations establishing specifications for Connecticut I&M program.
22a–174–30	Gasoline Vapor Recovery.	1/12/93	12/17/93	58 FR 65930	(c) 62	Requires Stage II vapor recovery from gasoline dispensers.
			1/18/94	59 FR 2649	(c) 62	Correction to 12/17/93 notice.
22a–174–100	Permits for construction of indirect sources Rescinded from federal SIP.	1/9/74	2/25/74	39 FR 7280	(c) 4	Requires review of air impacts of indirect sources.
		8/20/74	2/13/76	41 FR 6765	(c) 6	Added indirect source review (ISR) regulations.
		6/30/77	1/26/79	44 FR 5427	(c) 9.	
		NA	12/23/79	45 FR 84769	(c) 11	SIP shown to attain standards as expeditiously as practicable without ISR regulation.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No.VA–076–5028; FRL–5904–2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: Determination of Attainment of Ozone Standard and Applicability of Certain Requirements in the Richmond Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Richmond moderate ozone nonattainment area has attained the 1-hour .12 parts per million (ppm) National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon the latest four years of ambient air monitoring data for the years 1993–96 that demonstrate that the 1-hour ozone NAAQS is being attained in this area. EPA has also determined that the Richmond area has continued to attain the 1-hour standard to date. On the basis of this determination, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements of part D of Title I of the Clean Air Act (CAA), are not applicable to the Richmond area so long as this area continues to attain the ozone NAAQS, or until the area is redesignated to attainment.

EFFECTIVE DATE: This final rule is effective on November 5, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566–2092. Questions may also be sent via e-mail, to the following address: Gaffney.Kristeen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On June 13, 1997, EPA published its determination that the Richmond ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone, and that Richmond has continued to attain the standard to date. On the basis of this determination, EPA further determined that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements of part D of Title I of the CAA are not applicable to this area as long as this area continues to attain the ozone NAAQS. See 62 FR 32204.

EPA made these determinations through direct final rulemaking without prior proposal because the Agency viewed the action as noncontroversial and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30-day public comment period. The final rule stated that if adverse comments were received during the comment period, the final rulemaking action would be withdrawn by publishing a notice announcing withdrawal of the final action in the **Federal Register**. At the same time, EPA published a proposed rule for the same action in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** [62 FR 32258, June 13, 1997].

In a separate action, also on June 13, 1997, EPA proposed approval of the redesignation request and maintenance plan submitted by the Commonwealth of Virginia for the Richmond area and provided a 30-day public comment period. [62 FR 32258] On July 14, 1997, EPA received a letter from the New York State Department of Environmental Conservation (NYSDEC) submitting adverse comments that referenced both the determination of attainment rulemaking and the proposed approval of the redesignation request and maintenance plan rulemaking. The adverse comments all appear to pertain to the proposed approval of the redesignation request, and several comments were clearly identifiable as addressed solely to the proposal to approve the redesignation request. It was thus at best ambiguous as to whether any comments pertained to the rulemaking on the determination of attainment. However, to ensure that this comment letter was given proper consideration as it relates to EPA's determination of attainment and the resulting inapplicability of the RFP, attainment demonstration and section 172(c)(9) contingency measure requirements for the Richmond area, EPA removed the June 13, 1997 final rulemaking action in order to address the comments. [See 62 FR 43471, August 14, 1997.]

In today's action, the EPA is responding to the comments in NYSDEC's letter only as they may relate to the determination of attainment and the inapplicability of certain RFP and attainment demonstration requirements, along with certain other related requirements of part D of Title I of the CAA. EPA will respond to the comments received from NYSDEC related to the redesignation request and maintenance plan in a separate rulemaking on EPA's final action in the context of the requirements for redesignation to attainment under the CAA.

On July 18, 1997, EPA promulgated a new NAAQS for ozone replacing the 1-hour .12 ppm standard with an 8-hour 0.08 ppm standard [62 FR 38856]. EPA is in the process of developing guidance and proposed rules to implement the new ozone standard based on a Presidential Directive signed on July 16, 1997 and also published in the **Federal Register** on July 18, 1997. Today's action is a determination of attainment for the Richmond area of the 1-hour .12 ppm ozone standard and a determination of inapplicability of certain CAA requirements related to that standard only. Today's decision does not in any way make a determination regarding Richmond's attainment status for the newly promulgated 8-hour .08 ppm ozone standard. Decisions regarding the attainment status of areas for the new 8-hour .08 ppm ozone NAAQS will be conducted through a separate rulemaking to be published at a later date at the time EPA designates all areas as attainment or nonattainment under the new 8-hour NAAQS.

EPA's decision that certain CAA requirements related to the 1-hour .12 ppm ozone standard are inapplicable is based on an EPA policy memo of May 10, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Division Directors entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard." See the discussion and rationale contained in EPA's prior determination of attainment rulemakings for: Grand Rapids, MI [61 FR 31831, 31832–31834, June 21, 1996], Cleveland/Akron/Lorain, OH [61 FR 20458, May 7, 1996] and Salt Lake City/Davis County, UT [60 FR 36723, July 18, 1995]. See also the decision of the U.S. Court of Appeals for the 10th Circuit upholding the statutory interpretation contained in the May 10, 1995 Seitz memo. *Sierra Club* v. *EPA* 99f.3d 1551 (10th Cir. 1996).

Response to Public Comments

Comment #1

NYSDEC disagrees with EPA's statement in the proposed rulemaking for approval of the redesignation request and maintenance plan that the Richmond area has met all relevant requirements of the CAA that were due as of July 26, 1996, the date Virginia submitted its redesignation request. NYSDEC states that the Commonwealth of Virginia missed the "November 15, 1995" statutory deadline for implementing the nitrogen oxides (NO_X) reasonably available control technology (RACT) requirements of the CAA and continues to be delinquent.[1] It was noted that the Commonwealth of Virginia responded to EPA's July 8, 1994 finding of failure to submit a NO_X RACT state implementation plan (SIP) for the Richmond area with a petition for an exemption from the NO_X RACT requirement submitted on December 18, 1995. NYSDEC states that this December 18, 1995 petition was well after the mandated date of November 15, 1993 for submittal of a NO_X RACT SIP and after the mandatory implementation date. NYSDEC concludes that "[t]herefore, not implementing NO_X RACT in the Richmond area was not an option." NYSDEC objects to the proposed approval of the redesignation request on the grounds that the area failed to implement RACT on major sources of NO_X.

Response #1

Upon careful consideration of this comment, EPA concludes that this comment is relevant only to the proposed approval of the redesignation to attainment and not EPA's July 13, 1997 decision that the RFP, attainment demonstration and section 172(c)(9) contingency measure requirements of the CAA are inapplicable to Richmond. Section 107 of the CAA requires that the Commonwealth meet all applicable part D requirements prior to redesignation. However, there is no linkage of the section 182(f) NO_X RACT requirement with the determination of attainment and resulting inapplicability of certain part D requirements for RFP, the attainment demonstration and other requirements of CAA sections 172(c)(2), 172(c)(9), and 182(b)(1). Eligibility for this

[1] Section 182(b) of the Act specifies that RACT is to be implemented not later than May 15, 1995. The discrepancy in dates does not substantively affect the commenters argument.

determination is based solely on monitored air quality. Furthermore, on July 21, 1997, EPA published final approval of an exemption from the NO_X RACT requirement for the Richmond area contingent upon air quality monitoring that demonstrates continued attainment of the ozone NAAQS [62 FR 38922].

As discussed in the June 13, 1997 direct final rulemaking, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures where an area is monitoring attainment of the ozone standard. See 57 FR 13498, 57 FR 13564 (April 16, 1992). As discussed in the direct final rulemaking and in previous rulemakings in other areas cited above, EPA has concluded that it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner. This conclusion was upheld by the U.S. Court of Appeals for the 10th Circuit, *Sierra Club* v. *EPA* 99f.3d 1551 (10th Cir. 1996). According to the May 10, 1995 policy memo, three consecutive years of complete, quality assured ambient air quality monitoring data is the sole determinant of whether the Richmond area has attained the standard and is therefore eligible for a determination that certain part D requirements do not apply, for as long as the Richmond area continues to attain the standard, or until the area is no longer designated nonattainment.

Comment #2

NYSDEC also contests EPA's statement in the redesignation request and maintenance plan proposed rulemaking that the Commonwealth of Virginia has a fully approved SIP for the Richmond area under section 110(a)(2). NYSDEC states that any NO_X exemption petition would also be invalid because section 110(a)(2)(D) prohibits granting an exemption from NO_X RACT pursuant to section 182(f) of the CAA where there is evidence that the exemption would interfere with attainment of a NAAQS in another state. Therefore, NSYDEC claims the redesignation request does not meet this prerequisite for redesignation of section 107 of the CAA that the Commonwealth have a fully approved SIP under section 110(a)(2).

Response #2

Upon careful consideration of this comment, EPA concludes that this comment is relevant only to the proposed approval of the redesignation to attainment and not EPA's July 13, 1997 decision that the RFP, attainment demonstration and section 172(c)(9) contingency measure requirements of the CAA are inapplicable to Richmond. The commenter objected to the proposed approval of the redesignation request on the grounds that the area failed to implement RACT on major sources of NO_X. The commenter did not object to the determination that the area has attained the standard or that certain requirements of the CAA are no longer applicable for so long as the area continues to attain the standard, or until the area is no longer designated nonattainment.

While section 107 of the CAA requires the Commonwealth to have a fully approved SIP under section 110(a)(2) prior to redesignation to attainment, the determination of the inapplicability of certain part D requirements is based solely on air quality data. There is no requirement to have a fully approved SIP under section 110(a)(2) to be eligible for a determination that the area is attaining the standard and that, therefore, certain part D requirements of the CAA for RFP, attainment demonstration and other requirements of sections 172(c)(2), 172(c)(9) and 182(b)(1) are inapplicable.

On July 21, 1997, EPA published final approval of an exemption from the NO_X RACT requirement for the Richmond area contingent upon air quality monitoring that demonstrates continued attainment of the ozone NAAQS [62 FR 38922]. In the July 21, 1997 final rulemaking action on the NO_X exemption, EPA responded to adverse comments received that section 110(a)(2)(D) prohibits granting exemptions pursuant to section 182(f) where there is evidence that granting of the exemption would interfere with attainment of the ozone NAAQS in downwind areas. See 62 FR 38926. Furthermore, as EPA responded in the final rulemaking, the action to provide a NO_X RACT waiver under section 182(f) for any area would not shield that state from the obligation, in response to a SIP call under section 110 by EPA, to obtain NO_X emission reductions, if evidence such as photochemical grid modeling shows that NO_X emissions contribute significantly to downwind nonattainment or maintenance in another state.

Comment #3: NSYDEC states that it is not a relevant factor that Richmond is now attaining the ozone NAAQS because the Richmond area has avoided implementing the NO_X RACT requirements of the Act.

Response #3: As stated above, air quality data is directly relevant to this action. As set forth in the May 10, 1995 Seitz memo and subsequent rulemakings, EPA is authorized to conduct individual rulemakings concerning areas that have three consecutive years of clean air quality monitoring data demonstrating attainment of the ozone standard to make binding determinations that the areas have attained the standard and thus need not make the required SIP submissions for RFP, the attainment demonstration and the section 172(c)(9) contingency measure requirements for so long as the area remains in attainment, or until the area is redesignated to attainment. The fact that the Richmond area has not implemented the NO_X RACT requirements of the CAA is not relevant to EPA's determination of inapplicability of these other CAA requirements.

Other specific requirements of section 110 and the rationale for EPA's proposed action are explained in the June 13, 1997 direct final rulemaking and other rulemakings referenced in today's action, and will not be restated here.

Final Action

EPA has determined that the Richmond ozone nonattainment area has attained the 1-hour .12 ppm ozone standard and continues to attain that standard at this time. As a consequence of this determination, the requirements of sections 182(b)(1) and 172(c)(2) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are no longer applicable to the area so long as the area does not violate the 1-hour .12 ppm ozone standard, or until the area is redesignated to attainment.

EPA emphasizes that this determination is contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. In the event the area is still designated nonattainment and a violation of the ozone NAAQS is monitored in the Richmond nonattainment area (consistent with the requirements contained in 40 CFR part 58), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation

plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

I. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

II. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this action does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected.

III. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action does not create any new requirements, but suspends the indicated requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

IV. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1997. Filing a petition for reconsideration by the Administrator of this final rule regarding a determination of attainment of ozone standard and a determination regarding the applicability of certain CAA requirements in the Richmond area does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: September 27, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart VV of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2428 is added to read as follows:

§ 52.2428 Control Strategy: Carbon monoxide and ozone.

Determination—EPA has determined that, as of November 5, 1997, the Richmond ozone nonattainment area, which consists of the counties of Chesterfield, Hanover, Henrico, and part of Charles City County, and of the cities of Richmond, Colonial Heights and Hopewell, has attained the 1-hour .12 ppm ozone standard based on three years of air quality data for 1993, 1994 and 1995. EPA has further determined that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the Richmond area for so long as the area does not monitor any violations of the 1-hour .12 ppm ozone standard, or until the area is no longer designated nonattainment. If a violation of the ozone NAAQS is monitored in the Richmond ozone nonattainment area while the area is designated nonattainment, these determinations shall no longer apply.

[FR Doc. 97–26444 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5902–7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Partial Deletion of Releases from the Saegertown Industrial Area Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of releases on certain properties at the Saegertown Industrial Area Superfund Site (Site) in Saegertown, Pennsylvania from the National Priorities List (NPL). Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), EPA promulgated the National Oil and Hazardous Substances Contingency Plan (NCP) at 40 CFR part 300. The NPL is published at appendix B of 40 CFR part 300. EPA and the Commonwealth of Pennsylvania have determined that all appropriate Fund-financed and responsible party-financed responses under CERCLA have been implemented on the former GATX property at the Site, and that no further cleanup is appropriate for the former GATX property, the former SCI property or the SMC property at the Site. Moreover, EPA and the Commonwealth of Pennsylvania have determined that the remedial action conducted on the former GATX property to date remains protective of public health, welfare, and the environment.

EFFECTIVE DATE: October 6, 1997.

ADDRESSES: Comprehensive information about this Site is available through the public docket, which is available for viewing at the Site information repositories at the following locations: Hazardous Waste Technical Information Center, 9th Floor, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 566–5364. Saegertown Area Library, 320 Broad Street, Saegertown, PA 16433, (814) 763–5203.

FOR FURTHER INFORMATION CONTACT: Steven J. Donohue, Remedial Project Manager, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107. 215–566–3215.

SUPPLEMENTARY INFORMATION: The site to be partially deleted from the NPL is: Saegertown Industrial Area Site, Saegertown, Pennsylvania.

Based primarily on the information collected during the Remedial Investigation and Feasibility Study (RI/FS), EPA issued a Record of Decision (ROD) for the Saegertown Industrial Area Site on January 29, 1993. The ROD called for remedial action on two areas of the industrial park: the property formerly owned by the General American Transportation Corporation (GATX) and property owned and operated by the Lord Corporation (Lord). The RI/FS conducted for the Site indicated that the releases from the Spectrum Control, Inc. (SCI) property and the Saegertown Manufacturing Company (SMC) property posed no significant threat to public health or the environment. The ROD, therefore, selected no action for the SMC and SCI properties at the Site. On September 17, 1993 SCI sold its property at the Site to SMC.

GATX has implemented all appropriate response actions required under CERCLA on its former property at the Site. In July 1997, EPA approved the remedial action certification report documenting the completion of the cleanup of the former GATX property in accordance with the ROD. With the exception of the continued monitoring of the ground water, no further action is required at the former GATX property. The former GATX property is available for unrestricted use and unlimited access. Due to the continued ground water monitoring on the former GATX property, EPA will include this portion of the Site in the next Five-Year Review of the Site.

Because the selected remedy for the ground water below the Lord property at the Site has not yet been fully implemented and completed, this portion of the Site is not yet protective of human health and the environment, and is not being proposed for deletion.

A Notice of Intent for Partial Deletion for this Site was published on August 22, 1997 in the **Federal Register** (62 FR 44619–44621). The closing date for comments on the Notice of Intent for Partial Deletion was September 22, 1997. EPA did not receive any written comments during the comment period.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the National Priorities List containing those sites. Remedial Actions at sites on the NPL may be funded by the Hazardous Substance Response Trust Fund (Fund). Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Superfund, Water supply.

Dated: September 26, 1997.

W. Michael McCabe,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

For the reason set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 of appendix B to part 300 is amended by revising the entry for "Saegertown Industrial Area", Saegertown, Pennsylvania to read as follows:

APPENDIX B TO PART 300—NATIONAL PRIORITIES LIST

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes(a)
•	•	•	•
PA	Saegertown Industrial Area	Saegertown.	P
•	•	•	•

(a) A=Based on issuance of a health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be ≤ 28.50).

P=Sites with partial deletion(s).

[FR Doc. 97–26186 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 412

[BPD–878–CN]

RIN 0938–AH55

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates; Corrections

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period; correction notice.

SUMMARY: In the August 29, 1997, issue of the **Federal Register** (62 FR 45966), we published a final rule with comment period revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes resulting from the Balanced Budget Act of 1997, Pub. L. 105–33 and changes arising from our continuing experience with the system. This document corrects technical errors made in that document.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Edwards, (410) 786–4531.

SUPPLEMENTARY INFORMATION: The August 29, 1997, final rule with comment period contained technical errors relating to codified regulations text. Therefore, we are making the following corrections:

1. On page 46030, first column, in the amendatory language of item number 17, first line, the phrase "In § 412.108 paragraph (a)(1)" is corrected to read "In § 412.108 the introductory text of paragraph (a)(1)".

2. On page 46037, second column, 26th line, the entry "§ 410.32(b)(1)" is corrected to read "§ 410.32(e)(1)".

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance; and No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: September 30, 1997.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resource Management.

[FR Doc. 97–26348 Filed 10–3–97; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 418

[BPD–820–CN]

RIN 0938–AG93

Medicare Program; Hospice Wage Index; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: This document corrects the final rule published August 8, 1997 (62 FR 42859), that established a methodology to update the wage index used to adjust Medicare payment rates for hospice care included in the new wage index, to be effective October 1, 1997. This notice corrects the wage index entry for Cherokee, GA.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Carol Blackford, (410) 786–5909.

SUPPLEMENTARY INFORMATION: We are making the following correction to the final rule published in the **Federal Register** on August 8, 1997 (62 FR 42859):

On page 42864, in the first column "Urban area (constituent counties or county equivalent)", under Table A, the wage index entry for Cherokee, GA, "0.9841", is corrected to read "0.9822".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 30, 1997.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 97–26468 Filed 10–3–97; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090, 2110, and 2130

[WO–130–1820–00–24 1A]

RIN 1004–AC98

Gifts; Acquisition of Lands or Interest in Lands by Purchase or Condemnation

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: BLM is removing the regulations that explain the procedures for donating land to the Department of the Interior, and those that describe the Department's authority to acquire land by purchase or condemnation under the King Range National Conservation Area Act. These regulations are either statements of policy, internal procedures, or restatements of statutory provisions. BLM believes that these regulations can be removed without any substantive impact on the public.

EFFECTIVE DATE: November 5, 1997.

ADDRESS: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Erica Petacchi, telephone: 202–452–5084; or David Beaver, telephone: 202–452–7788.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule as Adopted
III. Responses to Comments
IV. Procedural Matters

I. Background

The final rule published today is a stage of a rulemaking process that will conclude in the removal of the regulations in 43 CFR parts 2110 and 2130. This rule finalizes a proposed rule that was published on September 11, 1996, in the **Federal Register** at 61 FR 47853. The rule provided for a comment period of 30 days, and BLM received no comments from the public.

This final rule is part of BLM's efforts to streamline its regulations in the Code of Federal Regulations (CFR). BLM is removing unnecessary or obsolete regulations, and making the remainder of its regulations more understandable and relevant. The regulations this rule removes are repetitive of statutory language, obsolete, or merely informational. These regulations belong not in the CFR, but in other publications such as manuals or brochures.

II. Final Rule as Adopted

The final rule will remove the regulations in 43 CFR parts 2110 and 2130, with the exception of section 2111.4—Status of Lands, which will be relocated in subpart 2091.

Subpart 2110—Gifts; General

Most of subpart 2110 merely restates statutory provisions found in various sections of the U.S. Code, including two repealed sections. Section 2110.0–3(a) repeats language from the Taylor Grazing Act at 43 U.S.C. 315g. Section 2110.0–3(b) repeats language from the Public Land Administration Act at 43 U.S.C. 1364. Section 2110.0–3(c) repeats language from the King Range Conservation Area Act at 16 U.S.C. 460y. Section 2110.0–3(d) repeats language from the Wild and Scenic Rivers Act at 16 U.S.C. 1277(f).

The only section in subpart 2110 that does not merely repeat statutory language is § 2110.0–1, which states the policy concerning the Secretary of the Interior's discretion to accept gifts of land. Since the non-binding terms of this section do not materially affect the public at large, we are removing this provision to enhance flexible decision-making.

Subpart 2111—Procedures

We will retain § 2111.4 in 43 CFR subpart 2091, but we are removing the remainder of subpart 2111. Most of the text in subpart 2111 already exists in the BLM Manual/Handbook (H–2101–1), and any aspect not already found in the Manual/Handbook can be incorporated in that publication.

Part 2130—Acquisition of Lands or Interests in Lands by Purchase or Condemnation

The provisions of 43 CFR part 2130 are unnecessary because they either merely restate statutory language of the King Range Conservation Area Act at 16 U.S.C. 460y, or contain policy directives which should be relocated to the BLM Manual/Handbook.

Subpart 2130—Acquisition of Lands or Interests in Lands by Purchase or Condemnation: General

Subpart 2130 consists entirely of restatements of the King Range Conservation Area Act, 16 U.S.C. 460y, concerning the authority of the Secretary to purchase and condemn lands.

Subpart 2137—Condemnation of Lands or Interests in Lands

Subpart 2137 contains two policy statements that should be relocated to the BLM Manual/Handbook: § 2137.0–7 concerns BLM's policy of appraising acquired property, an internal procedure derived from 16 U.S.C. 460y–4(4); and § 2137.0–9 concerns the BLM policy of resorting to eminent domain as a last option.

With the exception of 43 CFR 2111.4, which this rule will relocate to subpart 2091, no portion of either part 2110 or part 2130 contains any necessary substance to guide the public in any meaningful way. The language being removed serves only to guide BLM decisions, or serves no purpose at all. Removing and relocating these sections as described above will streamline the CFR and enhance BLM's efficiency without affecting the public.

III. Responses to Comments

BLM received no comments from the public, and is therefore adopting the proposed rule without changes.

IV. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously. BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**).

Paperwork Reduction Act

This rule contains no information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

Based on the analysis contained in this preamble, BLM concludes the rule will not impact the public or small entities because the substance of the regulations only provides guidance to BLM regarding procedures for accepting gifts of land, and acquiring land by purchase or condemnation under the King Range National Conservation Area Act. Because the regulations to be removed do not provide any guidance or mandates to the public, BLM anticipates that the final rule will have no significant impact on the public at large. Therefore, BLM has determined under the RFA that this final rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Removal of 43 CFR parts 2110 and 2130 and the relocation of § 2111.4 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the final rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this rule is Erica Petacchi, Bureau of Land Management, 1849 C Street, NW., Room 401LS, Washington, DC 20240; Telephone: 202–452–5084 (Commercial or FTS).

List of Subjects

43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indians—lands, Public lands, Public lands—classification, Public lands—

mineral resources, Public lands—withdrawal, Seashores.

43 CFR Part 2110

Government property, Public lands.

43 CFR Part 2130

Public lands.

Dated: September 25, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated above, and under the authority of 43 U.S.C. 1740, BLM is amending Chapter II of Subtitle B, title 43 of the Code of Federal Regulations as follows:

PART 2090—[AMENDED]

1. Revise the authority for part 2090 to read as follows:

Authority: 16 U.S.C. 3124; 30 U.S.C. 189; 43 U.S.C. 322, 641, 1201, 1624, 1740.

2. Section 2111.4 of Part 2110 is redesignated as § 2091.8 in Subpart 2091 and is revised to read as follows:

§ 2091.8 Status of gift lands.

Upon acceptance by the United States, through the Secretary of the Interior, of a deed of conveyance as a gift, the lands or interests so conveyed will become property of the United States but will not become subject to applicable land and mineral laws of this title unless and until an order to that effect is issued by BLM.

PART 2110—[REMOVED]

3. Remove part 2110 in its entirety.

PART 2130—[REMOVED]

4. Remove part 2130 in its entirety.

[FR Doc. 97–26457 Filed 10–3–97; 8:45 am]
BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–61, FCC 97–305]

Automatic Vehicle Monitoring Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Memorandum Opinion and Order*, the Commission addresses the remaining issues raised by petitioners for reconsideration of its *Report and Order* in PR Docket No. 93–61, 60 FR 15248 (March 23, 1995), which established rules governing the licensing of the Location and Monitoring Service (LMS) in the 902–928 MHz band. The Commission resolved other issues raised by petitioners in an *Order on Reconsideration* in this docket. 61 FR 18981 (April 30, 1996). This item clarifies interconnection limitations for multilateration LMS, as well as other issues raised on reconsideration, such as operational parameters for non-multilateration systems, treatment of other users of the 902–928 MHz band, the structure of the spectrum allocation plan, the geographic service area for licensing multilateration LMS, and the licensing of wideband forward links. The intended effect of this action is to minimize potential interference within and among users of the 902–928 MHz band.

EFFECTIVE DATE: December 5, 1997.

FOR FURTHER INFORMATION CONTACT: David Furth or Linda Chang at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Memorandum Opinion and Order* in PR Docket No. 93–61, adopted August 28, 1997, and released September 16, 1997, is available for public inspection and copying during normal business hours in the FCC Dockets Branch, Room 239, 1919 M Street N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (telephone number: (202) 857–3800).

Synopsis of Memorandum Opinion and Order

Introduction and Background

1. LMS refers to advanced radio technologies designed to support the nation's transportation infrastructure and to facilitate the growth of Intelligent Transportation Systems. In the *LMS Report and Order*, the Commission created a new subpart M in part 90 of the Commission's Rules for Transportation Infrastructure Radio Services (TIRS). LMS, which encompasses the 20-year-old Automatic Vehicle Monitoring Service as well as developing transportation-related services, was deemed to be the first service included within the TIRS category. Parties have requested that the Commission redesignate TIRS as ITSRS, or "Intelligent Transportation Systems Radio Service." These parties contend that the term "Intelligent Transportation System" has become widely accepted by other government agencies and in the private sector, and would be more descriptive of the types of services contemplated for subpart M of part 90. The Commission is persuaded that it would be appropriate to refer to LMS and like services as Intelligent Transportation Systems Radio Services, and the Commission changes its rules accordingly.

2. In the *LMS Report and Order*, the Commission defined two types of LMS systems—multilateration and non-multilateration. Multilateration LMS systems are designed to locate vehicles or other objects by measuring the difference of time of arrival, or difference in phase, of signals transmitted from a unit to a number of fixed points, or from a number of fixed points to the unit to be located. Such systems generally use spread-spectrum technology to locate vehicles throughout a wide geographic area. The Commission defined non-multilateration systems as LMS systems that employ any technology other than multilateration technology. The Commission noted that unlike a multilateration system, which determines the location of a vehicle or object over a wide area, a typical non-multilateration system uses narrowband technology whereby an electronic device placed in a vehicle transfers information to and/or from that vehicle when the vehicle passes near one of the system's stations.

3. LMS operates in the 902–928 MHz frequency band. The band is allocated for primary use by Federal Government radiolocation systems. Next in order of priority are Industrial, Scientific and Medical (ISM) devices. Federal Government fixed and mobile and LMS systems are secondary to both of these uses. The remaining uses of the 902–928 MHz band include licensed amateur radio operations and unlicensed part 15 equipment, both of which are secondary to all other uses of the band. Part 15 low power devices include, but are not limited to, those used for automatic meter reading, inventory control, package tracking and shipping control, alarm services, local area networks, internet access and cordless telephones. The amateur radio service is used by technically inclined private citizens to engage in self-training, information exchange and radio experimentation. In the *LMS Report and Order*, the Commission recognized the important contribution to the public provided by part 15 technologies and amateur radio operators and sought to develop a band plan that would maximize the ability of these services to coexist with LMS systems.

4. The Commission adopted the *LMS Report and Order* with an eye toward minimizing potential interference within and among the various users of the 902–928 MHz band. The Commission's band plan accordingly permits secondary operations across the entire band by users of unlicensed part 15 devices and amateur licensees. At the same time, the band plan separates non-multilateration from multilateration LMS systems in all but one subband so as to avert interference. The *LMS Report and Order* also established limitations on LMS systems' interconnection with the public switched network and set forth a number of technical requirements intended to ensure successful coexistence of all the services authorized to operate in the band.

5. This *Memorandum Opinion and Order* for the most part affirms decisions made by the Commission in the *LMS Report and Order* as an appropriate balancing of the interests of the different uses authorized in the band. Where appropriate, the Commission clarifies particular aspects of those decisions. First, the Commission reviews petitioners' objections to its interconnection restrictions and clarifies that the regulatory classification of LMS operators will be determined on a case-by-case basis. Next, the Commission addresses petitioners' concerns regarding the definition and scope of the non-multilateration LMS service. The Commission then discusses issues raised by petitioners regarding the "safe harbor" within which part 15 devices and amateur operators will be deemed not to cause interference to multilateration LMS providers. The Commission next addresses petitioners' suggested changes to the band plan adopted in the *LMS Report and Order*, as well as its decision to license multilateration LMS systems on a major trading area (MTA) basis. The Commission further considers the propriety of allowing multilateration wideband forward links to operate in the 902–928 MHz band.

A. Eligibility and Permissible Uses

6. In the *LMS Report and Order*, the Commission recognized that multilateration systems may have some need for interconnection with the public switched telephone network (PSTN). At the same time, however, the Commission recognized that unlimited interconnection by multilateration operators would be incompatible with the unique technical environment created by different types of services sharing the 902–928 MHz band. The Commission was concerned that such activity would not only increase the potential for harmful interference to other users of the band, but also detract from the location and monitoring purposes of the LMS allocation. Accordingly, the Commission adopted operational restrictions on multilateration LMS operators to minimize interference to all users of the spectrum. These restrictions include limitations on messaging services and interconnection with the PSTN, and a prohibition against message and data transmissions to fixed units and units for which location and monitoring is not being provided.

7. Of the restrictions listed above, the most discussed by petitioners were the Commission's limitations on interconnection. Specifically, the Commission in the *LMS Report and Order* permitted "store and forward" interconnection where either (1) transmissions from a vehicle or object being monitored are stored by the multilateration LMS provider for later transmission over the PSTN, or (2) transmissions received by the multilateration LMS provider from the PSTN are stored for later transmission to the vehicle or object being monitored. The rules adopted in the *LMS Report and Order* do not permit "real-time" interconnection between vehicles and the PSTN except for emergency communications related to a vehicle or a passenger in a vehicle.

8. In the *Memorandum Opinion and Order*, the Commission notes that only one petitioner supported unrestricted interconnection while the majority of parties addressing the issue support at least some restriction on LMS interconnection. One commenter suggests a minimum time delay of transmission to prevent two way person-to-person conversation. Some petitioners who were against permitting any multilateration LMS interconnection to the PSTN argue that the restrictions adopted by the Commission present substantial enforcement problems. They argue that by limiting transmission of messages to emergency communications related to the location and monitoring functions of the system, the Commission will place multilateration LMS operators in the position of having to become substantially involved with the content of their customers' communications. Nonetheless, some parties, even those that generally oppose interconnection, recognize that some interconnected service is needed in the event of an emergency.

9. After revisiting this issue and considering petitioners' concerns, the Commission continues to believe that its decision regarding limitations on multilateration LMS interconnection reflects a necessary balancing of the interests of LMS providers and other users of the 902–928 MHz band. Relaxing restrictions on interconnection could increase the potential for interference in the band by allowing for additional message traffic. The Commission believes that requiring messages to be sent on a store-and-forward basis will reduce message traffic in the band by making it difficult to conduct a real-time conversation using LMS spectrum. However, the Commission concludes that real-time interconnection is necessary and appropriate in emergency situations. The Commission therefore rejects the arguments of commenters asking that the Commission forbid real-time interconnection in emergency situations. The Commission believes that to do otherwise could impede the development of LMS, to the detriment of Intelligent Transportation Systems and, more importantly, would raise significant public safety concerns.

10. The Commission clarifies that "store and forward" communications as described in the *LMS Report and Order* refers to a storage of voice or data messages for subsequent delivery to the recipient. The Commission declines to adopt a specific minimum delay, as requested by some petitioners. As a guideline, however, the Commission adopts a "safe harbor" approach whereby a particular message will be considered an acceptable store-and-forward message pursuant to its rules if the LMS service provider incorporates at least a thirty-second delay between the time a message is stored and the time that message is forwarded. This is not to say that a delay of less than 30 seconds will be unacceptable in all cases, but use of a 30-second delay will ensure that the communication will be deemed to fit within the definition of a store and forward message with respect to LMS. While the Commission considered using a one-minute delay, the Commission believes that a thirty-second delay is sufficient to ensure that two-way conversation is impractical and will thereby discourage use of multilateration LMS for general messaging. The Commission also clarifies that emergency communications, for which real-time interconnection may be utilized, is equivalent to a 911 or 311 call. Such communication must have a direct relation to the immediate safety of life or for communications to render assistance to a motorist. If no immediate action is necessary, it is not an emergency. All other communications should use "store and forward" technology.

11. The Commission recognizes petitioners" concerns that limiting interconnection based on the character

of the message would be difficult to enforce and therefore raises the possibility of abuse. The Commission believes, however, that setting forth specific examples of what is or is not an emergency would serve no useful purpose and that such a rule could be unduly restrictive. The Commission does not intend to monitor the content of messages but expects that multilateration operators will be able to demonstrate compliance with the interconnection limitations if requested. Compliance may be accomplished by equipment that will permit voice calls in real time only to 311, 911, and an automobile road service provider. Compliance might also be accomplished by multilateration LMS operators monitoring transmissions over their facilities and providing information regarding their transmissions to the Commission if requested. The Commission believes that this type of monitoring will not violate section 705 of the Communications Act because it fits within the exception for providing information regarding a transmission "on demand of other lawful authority." The Commission also notes that it will, on a case-by-case basis, consider requests for confidential treatment of such information. Moreover, the interconnection limitations are not tantamount to a restriction on free speech but, rather, the interconnection limitations are necessary to define the parameters of multilateration LMS service pursuant to the Commission's authority under the Communications Act to prescribe the type of service to be offered by a particular class of radio stations. 47 U.S.C. § 303(b).

12. The interconnection issues raised by petitioners lead to the question of whether multilateration LMS is a Commercial Mobile Radio Service (CMRS). Pursuant to section 332(d) of the Communications Act, a service is classified as CMRS if it is (1) provided for profit, (2) interconnected with the PSTN, and (3) available to the public or effectively available to a substantial portion of the public. In the *CMRS Second Report and Order*, GN Docket No. 93–252, 59 FR 1285 (January 10, 1994), the Commission classified LMS as a Private Mobile Radio Service (PMRS). The Commission indicated, however, that should LMS systems offer interconnected service in the future, they would be subject to reclassification as a presumptively Commercial Mobile Radio Service (CMRS). At this juncture, it is unclear to what extent multilateration LMS providers will offer any interconnected service, notwithstanding their ability to offer some limited interconnection capabilities as discussed above. To accommodate the specific service offerings anticipated by each multilateration LMS provider, the Commission will use a case-by-case approach in determining whether a particular service offering is CMRS or PMRS.

B. Other Issues Raised on Reconsideration

Definition and licensing of nonmultilateration systems antenna height and power limitations. 13. In the *LMS Report and Order*, the Commission limited the peak effective radiated power (ERP) of non-multilateration systems to 30 watts over the licensee's authorized bandwidth. The Commission also limited the antenna height above ground of these systems to 15 meters. The *LMS Report and Order* concluded that the power and antenna height restrictions will allow non-multilateration systems to share spectrum more easily with other non-multilateration systems and with part 15 users. It also concluded that the power and antenna height limitations will permit greater frequency reuse. The Commission continues to believe that the definition and technical specifications of non-multilateration LMS systems adopted in the *LMS Report and Order* reflect a reasoned balancing of the interests of the various users of the 902–928 MHz band, and no new information has been introduced into the record of this proceeding to persuade us otherwise. The restrictions advocated by some of the commenters would unduly limit non-multilateration operations, jeopardizing future technological developments that could be crucial to the advancement of Intelligent Transportation Systems. On the other hand, the higher limitations suggested by other commenters could increase the potential for interference within the band. The Commission believes that its requirements are most conducive to continued sharing of this band, and thus the Commission declines to modify the power and antenna height restrictions the Commission adopted in the *LMS Report and Order*. The Commission believes that the antenna height and transmitting power limits in the current rule accommodate most of the common non-multilateration applications that would be appropriate for operation in this shared spectrum. However, in the event that unique practical considerations of a particular installation necessitate a higher antenna mounting height, the Commission would consider waiving the rule on a case-by-case basis to allow the higher antenna height (but not higher power), provided that other comparable technical trade-offs, such as reduced power or confined antenna radiation patterns, are employed to limit the interference potential.

Licensing issues. 14. In the LMS Report and Order, the Commission decided to license non-multilateration LMS systems on a shared basis because these systems generally cover relatively short distances, and because of its belief that licensing based on a fixed mileage separation would limit re-use of spectrum and thereby limit the potential uses of non-multilateration systems. The Commission declined to adopt a blanket licensing scheme for non-multilateration systems whereby, for example, a licensee would be permitted to locate transmitter sites anywhere within a given geographic area. The Commission instead decided to require non-multilateration systems to acquire licenses for each site, concluding that a blanket licensing approach would make it difficult for the Commission and the public to ascertain the exact location of LMS transmitters.

15. However, the Commission is persuaded by suggestions from commenters that it would be administratively expedient to establish a mechanism by which public agencies and other entities can file joint applications for non-multilateration systems for purposes of deploying a single, region-wide system with multiple sites and multiple readers at individual sites. While the Commission anticipates that this mechanism will be used primarily by municipalities and government agencies, the Commission also believes that other entities seeking to establish multiple-site systems should also be able to use a streamlined application procedure. The Commission will thus permit applicants to file a single application for a non-multilateration license covering multiple sites within a given U.S. Department of Commerce Bureau of Economic Analysis Economic Area (EA). Such an application may also be filed jointly by multiple users of a single system. In order to avoid uncertainty for other users of the band, the application must identify all planned sites and, after receiving the license, the licensee must notify the Commission if sites are deleted or if new sites are added before those sites become operational. The Commission will revise its rules accordingly. The Commission declines, however, to revise its rules to specify that the transmissions of non-multilateration systems are limited to a confined area. The Commission believes that this could unnecessarily limit such

systems' flexibility to configure their facilities for particular uses.

Accommodation of secondary users in the 902–928 MHz band. 16. To accommodate the concerns of part 15 interests regarding their secondary status vis-a-vis LMS, the *LMS Report and Order* adopted a "safe harbor" within which part 15 devices may operate without fear of being deemed to cause interference to LMS operators. Specifically, a part 15 device will, by definition, not be considered to be causing interference to a multilateration LMS system if it is otherwise operating in accordance with the provisions of part 15 and meets at least one of the following conditions:

(a) it is a part 15 field disturbance sensor operating in compliance with § 15.245 of the rules and it is not operating in the 904–909.750 or 919.750–928.000 MHz sub-bands; or

(b) it does not employ an outdoor antenna; or,

(c) if it does employ an outdoor antenna, then if

(1) the directional gain of the antenna does not exceed 6 dBi, or if the directional gain of the antenna exceeds 6 dBi, it reduces its transmitter output power below 1 watt by the proportional amount that the directional gain of the antenna exceeds 6 dBi; and,

(2) either

(A) the antenna is 5 meters or less in height above ground; or,

(B) the antenna is more than 5 meters in height above ground but less than or equal to 15 meters in height above ground and either:

(i) adjusts its transmitter output power below 1 watt by 20 log (h/5) dB, where h is the height above ground of the antenna in meters; or,

(ii) is providing the final link for communications of entities eligible under subparts B or C of part 90 of the rules.

17. In its *Order on Reconsideration* in this proceeding, the Commission denied requests by petitioners that the part 15 safe harbor instead be treated as a rebuttable presumption, *i.e.*, that LMS licensees be permitted to file complaints of interference regarding part 15 devices operating within the safe harbor if the LMS licensees believe those part 15 devices are causing harmful interference. The Commission concluded that the safe harbor approach represented an appropriate balancing of the interests of the various parties sharing the 902–928 MHz band. In this *Memorandum Opinion and Order*, the Commission addresses petitioners' other contentions regarding the safe harbor. Specifically, petitioners also challenged the technical parameters of the safe harbor and argued that the Commission acted in violation of the Administrative Procedure Act (APA), 5 U.S.C. § 551, *et seq.* In addition, some petitioners ask that the safe harbor apply to non-multilateration LMS operators as well as multilateration operators.

Parameters of safe harbor. 18. The Commission believes that the safe harbor rule, which was adopted after careful study of the extensive record in this proceeding, appropriately balances the interests of the various parties operating in the 902–928 MHz band so as to limit the potential for harmful interference. In the *LMS Report and Order*, the Commission affirmed that unlicensed part 15 devices in the band, as in any other band, may not cause harmful interference to and must accept interference from all other operations in the band. It also reiterated that unlicensed part 15 operations have no vested or recognizable right to continued use of any given frequency. Nonetheless, the Commission recognized the concerns of part 15 and amateur interests with respect to their secondary status. Accordingly, in order to alleviate such concerns and to provide all operators in the band with a greater degree of certainty in configuring their systems, thereby promoting competitive use of the band, the Commission adopted the safe harbor definition of non-interference.

19. The safe harbor rule is intended to identify part 15 and amateur operations that will, in all cases, be deemed not to cause harmful interference to LMS operators. The Commission emphasized in the *LMS Report and Order* that part 15 and amateur operations are not restricted from operating beyond the parameters of the safe harbor. Rather, the safe harbor specifications provide a threshold beyond which part 15 and amateur operators will not be insulated from LMS operators' claims of harmful interference. The Commission therefore does not believe it necessary to add exemptions to the safe harbor as urged by some petitioners.

20. Moreover, the technical specifications of the rule were clearly explained in the *LMS Report and Order*. In general, amateur operators or part 15 devices using outdoor antennas that are between five and 15 meters above the ground must reduce their output power concomitant with the height of their antennas in order to fit within the safe harbor. The Commission observed that an antenna less than five meters in height driven by a transmitter with one watt or less of output power (the general power limitation for part 15 devices) will only affect LMS operations that are geographically close. A higher antenna, however, has the potential to affect a larger number of LMS operations. The Commission concluded that the power adjustment assures that between 5 and 15 meters, an outdoor antenna has the equivalent effect on multilateration LMS operations of an antenna five meters high using no more than 1 watt transmitter output power. The Commission continues to believe that these specifications appropriately balance the interests of all the parties in minimizing interference.

21. The Commission does not believe, as one commenter suggests, that the term "final link" in § 90.361(c)(2)(ii)(B) of the Commission's rules requires much clarification. The term "final link" is that link in a communications system which terminates with the part 15 device used by or within the control of the subpart B or C eligible entity. The term does not apply to other links in the system used to support such communications, *e.g.*, intermediate links or links used by non-subpart B or C entities. Therefore, the Commission declines to redefine or expand the list of operations included under "final link."

22. The Commission is persuaded by petitioners, however, that the Commission should expand § 90.361(c)(2)(ii)(B) of the Commission's Rules to include schools, libraries and rural health care providers within the safe harbor, permitting them to employ full power with antennas up to 15 meters. It is apparent from the record that many such institutions, particularly schools, may wish to use part 15 devices that operate in this band, as well as similar devices that operate in the 5 GHz National Information Infrastructure (NII) band, to connect to the Internet and other on-line resources. The Commission believes that inexpensive access to the national information infrastructure by its nation's educational institutions is of sufficiently significant benefit to the public to warrant special protection for this limited class of part 15 devices. Further, the universal service provisions of section 254 of the Communications Act, as amended by the Telecommunications Act of 1996, single out schools, libraries and public or nonprofit health care providers serving residents of rural areas as deserving of special attention so as to enable them to satisfy their communications needs. 47 U.S.C. § 254. Accordingly, the Commission will include within the safe harbor elementary and secondary schools, libraries and health care providers for rural areas as defined by section 254.

23. Further, the Commission recognizes that unlike part 15 devices,

the vast majority of which could operate within the safe harbor, amateur radio operations typically would not fit within the safe harbor provisions. Nevertheless, to the extent that amateur operators wish to employ the 902–928 MHz band and to operate within the safe harbor provisions, they should have the same protection as part 15 devices. Further, the Commission reiterates that failure to fit within the safe harbor provisions does not prevent operations; such operations may continue exactly as before, but are not protected from LMS operators' claims of interference.

24. In addition, the Commission has been asked to clarify whether video links are included in the category of "unprotected" part 15 devices for purposes of determining eligibility for the safe harbor. They are not. The *LMS Report and Order* specifically provided that long-range video links will not be permitted to take advantage of the safe harbor. The Commission stated that "because multilateration entities concur that most part 15 interference to multilateration LMS systems is likely to be from field disturbance sensors and long range video links, the Commission will not make any presumption of interference-free operations for these devices when they operate in the exclusive-use bands." *LMS Report and Order* at 4717.

Extend safe harbor to non-multilateration. 25. The Commission has also been asked to extend the safe harbor definition to non-multilateration systems. The safe harbor was intended as a way to reduce interference conflicts between multilateration LMS operators and part 15 devices and amateur operators in the 902–928 MHz band. Specifically, it was designed to provide parameters within which a part 15 device or amateur operator could operate without being subject to a claim that it was interfering with the signal of a multilateration LMS operator. Because non-multilateration systems generally employ narrowband technology and operate at lower power levels, it is less likely that part 15 devices and amateur operators will interfere with them, as compared with multilateration LMS systems, which use wider bandwidth emissions and operate at higher power levels. Because the range of non-multilateration devices is relatively small, there is less chance of part 15 and amateur radio devices being located within their area of operation. Moreover, the record does not reveal actual or potential interference between non-multilateration and part 15 devices. To the contrary, there appears to be substantial evidence that there is little likelihood of interference. For these reasons, the Commission does not believe that it is either necessary or appropriate to extend the definition of the safe harbor so as to insulate part 15 and amateur operators from claims of interference by non-multilateration systems.

Administrative Procedure Act. 26. Some petitioners contend that the Commission's adoption of a safe harbor was a violation of the Administrative Procedure Act (APA), because it was not proposed in the *Notice* in this proceeding and was therefore adopted without the required notice and opportunity for public comment. The Commission does not agree that the safe harbor setting forth conditions that will not be considered harmful interference from amateurs and part 15 devices violated the APA. The APA requires an agency to provide the public with "either the terms or the substance of a proposed rule or a description of the subject and issues involved." 5 U.S.C. § 553(B)(3). The APA, however, "does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule." *California Citizens Band Association* v. *United States*, 375 F.2d 43, 48 (9th Cir.1967). Rather, the notice is sufficient if the final rule is a "logical outgrowth" of the underlying proposal. *United Steelworkers* v. *Marshall*, 647 F.2d 1189, 1221 (D.C. Cir.1980). The Commission believes that the safe harbor was a logical outgrowth of the *Notice of Proposed Rule Making* in this proceeding, PR Docket No. 93–61, 58 FR 21276 (April 20, 1993), which sought comment on ways to accommodate the various users of the 902–928 MHz band and identified specifically the problems surrounding coexistence of part 15 and licensed users of the band. Moreover, the suggestion of a part 15 safe harbor was discussed in publicly-filed *ex parte* submissions.

Spectrum Allocation Plan. 27. The *LMS Report and Order* allocated the entire 902–928 MHz frequency band for LMS systems, generally separating multilateration and non-multilateration operations, as follows:

A: 902.000–904.000 Non-Multilateration
B: 904.000–909.750 Multilateration
C: 909.750–919.750 Non-Multilateration
D: 919.750–921.750 Multilateration and Non-Multilateration
E: 921.750–927.250 Multilateration
F: 927.250–927.500 Narrow band associated with sub-band E
G: 927.500–927.750 Narrow band associated with sub-band D
H: 927.750–928.000 Narrow band associated with sub-band B

Thus, the Commission concluded that bands B and E will be assigned to multilateration systems. Bands A and C will be assigned to non-multilateration systems. Band D will be subject to both multilateration and non-multilateration use. Licensees of bands B, D and E will be assigned narrow bands H, G and F, respectively. Operators requiring additional spectrum will be permitted to aggregate bands to obtain up to eight MHz in a given region through the aggregation of bands D and G and bands E and F. The Commission concluded that licensees may not otherwise be authorized to operate on more than one of the multilateration bands in a given geographic area.

28. As the Commission stated in the *LMS Report and Order*, the Commission believes that both multilateration and non-multilateration LMS systems will play an important role in achieving a nationwide intelligent highway infrastructure. The Commission accordingly devised a band plan that, for the most part, creates separate allocations for the two types of LMS systems and takes into consideration the interference concerns of non-LMS users of the 902–928 MHz band. Upon review of parties' responses to its *Notice of Proposed Rule Making* in this proceeding, however, the Commission decided to allocate the 2 MHz of subband D to be shared by multilateration and non-multilateration users so as to provide non-multilateration users with the possibility of obtaining additional contiguous spectrum.

29. The Commission does not agree with comments that its band plan was illogical or that sharing between multilateration and non-multilateration operators is not feasible. Because the Commission agrees that it is preferable that multilateration and non-multilateration facilities do not operate in the same spectrum, the Commission adopted a band plan that, for the most part, allocated separate blocks of spectrum for multilateration and non-multilateration systems. Its modification to the proposed band plan represented an effort to respond to the concern that some non-multilateration systems might need additional spectrum, without taking any spectrum away from multilateration users. The Commission concluded that it would be appropriate to permit those few multilateration users the opportunity to obtain additional spectrum by permitting them to share the 2 MHz of subband D.

30. In addition, the Commission declines to adopt the proposal that it allocate an additional 2 MHz of contiguous spectrum for non-multilateration providers. The Commission believes that the band plan adopted in the *LMS Report and Order* appropriately balances the needs and interests of multilateration and non-multilateration operators, as well as part 15 and amateur users of the band. For this reason, the Commission also declines to adopt exclusive subbands for parties willing to time share, or for part 15 users. Doing so would upset the equilibrium among users of the band. Such an allocation would also ignore the secondary status of part 15 providers in that it would afford unlicensed devices co-primary status vis-a-vis licensed operators.

Geographic areas for exclusive licenses. 31. Rand McNally organizes the 50 states and the District of Columbia into 47 Major Trading Areas (MTAs) and 487 Basic Trading Areas (BTAs). In the *LMS Report and Order*, the Commission concluded that MTAs and fits additional MTA-like service areas provide a more suitable regulatory construct for multilateration licensing than the smaller BTAs. The Commission determined that use of MTAs, as defined in the Rand McNally Commercial Atlas and Marketing Guide, will give systems greater capacity to accommodate large number of prospective users which, in turn, will promote competition and encourage advancement of new technologies. The rules adopted in the *LMS Report and Order* provide for one exclusive multilateration system license in each MTA in each of the sub-bands identified for exclusive assignments (B and H, D and G, E and F).

32. After a thorough review of the record in this proceeding and upon further reflection regarding this issue, the Commission concludes that the relevant geographic areas for multilateration LMS licenses should be based on U.S. Department of Commerce Bureau of Economic Analysis Economic Areas (EAs). There are 172 EAs covering the continental United States.

33. Because EAs have not been established for the five U.S. possessions (Guam, Northern Mariana Islands, Puerto Rico, U.S. Virgin Islands, American Samoa), the Commission will create additional licensing regions for systems operating in these territories as well as for the Gulf of Mexico. Specifically, the Commission will designate the following additional licensing regions: (1) Guam and the Northern Mariana Islands (to be licensed as a single area); (2) Puerto Rico and the U.S. Virgin Islands (to be licensed as a single area); and (3) American Samoa. In addition, Alaska will be licensed as a single area. The Commission believes that EAs are large enough to give systems sufficient capacity to accommodate large numbers of prospective users, which will promote competition, encourage new technologies and result in superior service to the public. At the same time, EAs are small enough to alleviate any BTA/MTA warehousing concerns noted in the comments. Further, use of smaller geographic units could result in a more diverse group of prospective licensees because EA-based licenses may be more affordable for small and medium-sized businesses than would MTA-based licenses. The Commission concludes that such an outcome not only is desirable but furthers the public interest and one of the goals enunciated in section 309(j) of the Communications Act. 47 U.S.C. 309(j). Moreover, EAs are better suited than MTAs to a service aimed at improving the nation's transportation infrastructure because EAs are based on urban, suburban and rural traffic patterns. Further, use of EAs solves the copyright problem raised by Rand McNally, because EAs are published by the U.S. Department of Commerce.

Multilateration system operations—wideband forward links

34. In the *LMS Report and Order* the Commission allowed LMS multilateration systems to use wideband forward links. A forward link refers to the signal path from the LMS system's fixed base site to its mobile units. The Commission noted that unlike a narrowband forward link, a wideband forward link can operate over a multilateration system's entire authorized sub-band. This concerned part 15 interests, who, the Commission pointed out, opposed authorization of wideband forward links because they believed that wideband forward links are likely to cause interference to part 15 devices. The Commission emphasized that grant of multilateration licenses will be conditioned on the applicant's ability to demonstrate through field testing that its system does not cause unacceptable levels of interference to part 15 devices. It also limited the maximum power of wideband forward links to 30 watts ERP.

35. The Commission believes that elimination of wideband forward links would preclude certain LMS technology options from being developed, to the detriment of consumers. At the same time, the Commission continues to believe that the power limitation of 30 watts ERP is necessary and appropriate to minimize interference to other operators sharing the 902–928 MHz band. As the Commission noted in the *LMS Report and Order*, limiting base and mobile stations' power levels will lessen the potential for interference between co-channel multilateration systems and will reduce the likelihood of interference to other operations in the 902–928 MHz band. Further, pre-authorization testing will be a condition on the license of multilateration LMS operators seeking to employ wideband forward links. The Commission does not agree with with comments that adoption of a duty cycle limitation would allow increased power for wideband forward links without increasing the interference potential. With wideband forward link technology, each vehicular unit to be located must be able to receive transmissions from at least four different forward link transmitters. These transmitters operate sequentially, passing a "token" packet. Consequently, although a duty cycle limitation could be applied to each individual forward link transmitter, considered collectively, there would almost always be at least one transmitter transmitting in an area at any given time. Taking into consideration the greater range of a base transmitter, as compared to a mobile transmitter, and the amount of spectrum occupied by the wideband forward link, the Commission believes allowing higher power for wideband forward links would unacceptably increase band congestion.

36. Also, the Commission declines to permit grandfathered systems to deploy additional transmitters on the basis of a 30-mile radius. The rationale for this is essentially to allow comparable coverage for its particular technology as compared to technologies using narrowband forward links. The Commission has found that, in the 902–928 MHz band, it is necessary to have a common set of technical limits in order to facilitate co-occupancy among the various band users. Each different technology operating within these limits, however, will likely have advantages and disadvantages as compared to the others, including the matter of coverage. The Commission does not have sufficient experience with operating LMS systems to craft a rule that would be appropriate for all potential LMS technologies. To the extent that grandfathered systems seek to add fill-in sites that do not increase their coverage footprint, the Commission believes such requests should be handled on a case-by-case basis.

37. The comments have raised the issue of whether LMS technology may be used to track individuals as well as vehicles. The rules adopted in the *LMS Report and Order* permit a

multilateration LMS system to provide non-vehicular location services as long as the system's primary operations involve the provision of vehicle location services. 47 CFR 90.353(a)(7). The Commission does not share the concern that LMS will become a paging service. The rule clearly provides that such non-vehicular location functions may not be an LMS operation's primary function. To afford multilateration LMS operators maximum flexibility in designing their systems, the Commission also declines to adopt a specific cap on non-vehicular location services. Non-multilateration LMS operators, on the other hand, are specifically prohibited from offering non-vehicular location services. The Commission adopted this restriction because the spectrum occupied by non-multilateration LMS operators has a heavier concentration of amateur radio operators, part 15 devices and federal government radiolocation operations than do other portions of the band. The Commission continues to believe that this approach minimizes the potential for interference and the Commission therefore declines to revise its rules.

Petitions for reconsideration of Order on Reconsideration. 38. On May 30, 1996, three parties filed petitions for reconsideration of the *Order on Reconsideration*, which, as noted above, had resolved certain issues regarding grandfathering of existing LMS systems that had been raised on reconsideration of the *LMS Report and Order*. Those petitioners, Amtech Corporation, Pinpoint Communication Networks, Inc., and Teletrac License, Inc., seek reconsideration of different aspects of the *Order on Reconsideration*. For the reasons detailed below, each of these petitions is denied, except that the Commission will make a technical correction to the rules requested by Amtech.

39. *Amtech Petition.* Amtech, a non-multilateration LMS provider, asserts that the Commission should revise the emission mask specifications of section 90.209 as applied to transmitters with less than two watts output power. Specifically, Amtech proposes that the attenuation for out-of-band emissions produced by non-multilateration transmitters of two watts or less be specified as 43+10 Log(P) rather than 55+10 Log(P). Amtech contends that it has employed this limit for a number of years and that it is the same limit applied in other contexts for systems that can have greater height and power than non-multilateration systems. Amtech argues that use of the stricter 55+10 Log(P) standard imposes significant costs and is not necessary due to the limited interference potential of non-multilateration systems. The Commission is not persuaded that Amtech has presented sufficient evidence to support its contention that the standard adopted in the *LMS Report and Order* is overly restrictive. The Commission continues to believe that that standard is the most appropriate given the disparate users of the 902–928 MHz band.

40. Amtech also urges the Commission to revise the relevant emission mask rule (formerly section 90.209, now section 90.210) to conform with the rule as originally adopted in the *LMS Report and Order*, wherein the attenuation applied at the edge of the licensee's LMS subband rather than at the edge of the "authorized bandwidth." The Commission did not intend in the *Order on Reconsideration* to revise the emission mask for non-multilateration LMS licensees and the Commission will make appropriate changes to section 90.210 to make that clear.

41. *Pinpoint Petition.* Pinpoint, a multilateration LMS licensee, takes issue with the statement in the *Order on Reconsideration* that

> [T]he Commission seeks to ensure not only that part 15 operators refrain from causing harmful interference to LMS systems, but also that LMS systems are not operated in such a manner as to degrade, obstruct or interrupt part 15 devices to such an extent that part 15 operations will be negatively affected.

Pinpoint contends that this language is inconsistent with part 15 devices' secondary status in the LMS band and that it constitutes a "new standard" with respect to LMS operators' obligations vis-a-vis part 15 devices. Pinpoint argues that this "new standard" conflicts with the statement in the *LMS Report and Order* that unlicensed part 15 devices "may not cause harmful interference to and must accept interference from all other operations in the band."

42. The language in the *Order on Reconsideration* cited by Pinpoint does not mean that part 15 devices are entitled to protection from interference. They are not. Rather, the Commission was explaining its decision to place a testing condition on multilateration LMS licenses. The purpose of the testing condition is to insure that multilateration LMS licensees, when designing and constructing their systems, take into consideration a goal of minimizing interference to existing deployments or systems of part 15 devices in their area, and to verify through cooperative testing that this goal has been served.

43. *Teletrac Petition.* Teletrac seeks reconsideration of the restriction in § 90.363(a) of the Commission's Rules, originally adopted in the *LMS Report and Order* and affirmed in the *Order on Reconsideration*, that limits site relocation for grandfathered LMS licensees to within two kilometers of their authorized site. Teletrac submits that removing this restriction would be in the public interest because it would permit grandfathered multilateration LMS operators to improve the efficiency of their systems. The Commission is not persuaded that Teletrac has raised any new arguments to justify its further reconsideration of this rule. The Commission notes that it has granted Teletrac waivers of this rule with respect to three specific sites.

44. Teletrac also urges the Commission to clarify that the part 15 safe harbor only applies to part 15 operations authorized pursuant to the part 15 rules in effect at the time the safe harbor rule was adopted. Teletrac submits that the presumption of non-interference in the safe harbor rule assumes that the part 15 rules as they existed when the safe harbor rule was adopted will remain in place. Teletrac notes that the Commission has proposed changes to the rules. Since the time Teletrac raised this point, the Commission has adopted changes to the part 15 rules. The Commission does not believe that the modified rules conflict with the safe harbor. Amendment of parts 2 and 15 of the Commission's Rules Regarding Spread Spectrum Transmitters, *Report and Order*, ET Docket 96–8, 62 FR 26239 (May 13, 1997). To the extent Teletrac continues to have concerns that the new rules are incompatible with the safe harbor, it should detail those concerns with the Commission.

II. Procedural Matters

Ex Parte Rules—Non-Restricted Proceeding

45. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206.

Final Regulatory Flexibility Analysis

46. The Final Regulatory Flexibility Analysis for this *Memorandum Opinion and Order*, as required by section 604 of the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 604, is as follows:

Need For and Purpose of the Action

47. The revised rules adopted in this *Memorandum Opinion and Order* will enhance use of the 902–928 MHz band for the Location and Monitoring Service. The revised rules will create a more stable environment for LMS licensees and will provide much needed flexibility for operators of such systems. The two changes made to the LMS rules in this item (1) change the basis for wide-area licensing of LMS systems to EAs rather than MTAs, and (2) add schools, libraries and rural health care providers to the list of entities exempt from the antenna height and operating power requirements of the part 15 safe harbor.

48. *Issues raised in response to the IRFA:* No comments were submitted in response to the IRFA.

49. *Description and number of small entities involved:* The Commission has not adopted a definition of small business specific to LMS systems, which are defined in § 90.7 of the Commission's Rules. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing fewer than 1,500 persons. We anticipate that most LMS licensees will fit the definition of small business provided by the SBA. No auctions have been held for the LMS service.

The Commission expects to award three licenses in each of 176 EAs or EA-like areas, for a total of 528 licenses.

50. *Reporting, recordkeeping and other compliance requirements:* The rules adopted in this do not impose any additional reporting, recordkeeping, or other compliance requirements.

51. *Steps taken to minimize burdens on small entities:* This *Memorandum Opinion and Order* concludes that the relevant geographic areas for multilateration LMS licenses should be based on U.S. Department of Commerce Bureau of Economic Analysis Economic Areas (EAs) rather than Major Trading Areas (MTAs). The record indicates that existing and planned multilateration systems better approximate an EA than the geographically larger MTA. Use of smaller geographic units could ultimately result in a more diverse group of prospective bidders by creating more opportunities for small businesses. The *Memorandum Opinion and Order* also modifies the "part 15 safe harbor" by expanding the list of entities exempt from applicable height and power restrictions, to include health care providers in rural areas, schools and libraries. In many instances, the rooftop antennas of these entities would not fit within the parameters of the safe harbor. The record of this proceeding indicates that such institutions use part 15 technology as a low-cost means to connect to the Internet and other valuable on-line resources; this rule change would facilitate their ability to do so without raising concerns about interference to LMS providers in the same area.

52. *Significant alternatives considered and rejected:* The *Memorandum Opinion and Order* considers the remaining issues raised in petitions for reconsideration of the *Report and Order* in PR Docket No. 93–61 that established licensing and operational rules for the Location and Monitoring Services (LMS). An *Order on Reconsideration* adopted in March 1996 resolved a limited set of issues relating to rights and obligations of existing multilateration LMS licensees. This *Memorandum Opinion and Order* resolves the remaining issues raised by petitioners. The *Memorandum and Order* concludes that restrictions on the ability of multilateration LMS licensees to offer interconnected service should be maintained to minimize interference between LMS and part 15 and amateur operations. The *Memorandum Opinion and Order* also denies requests that antenna height and power limitations for non-multilateration operators be either relaxed or further restricted, and denies a request that we adopt a blanket authorization procedure for extensive non-multilateration LMS systems licensed to local government or public safety eligibles.

53. In addition, the *Memorandum Opinion and Order* denies requests to modify the "safe harbor" provisions for part 15 devices and amateur operators, and denies requests to extend the definition of the safe harbor to apply to claims of interference by non-multilateration systems. The *Memorandum Opinion and Order* does, however, adopt a rule provision specifically including schools, libraries and rural health care providers within the safe harbor regardless of their antenna height and operating power. The item also denies requests to change the band plan for LMS, but does conclude that multilateration LMS systems will be licensed on an EA basis rather than an MTA basis. Finally, the *Memorandum Opinion and Order* denies requests that wideband forward links be prohibited.

54. *Report to Congress:* The Commission shall send a copy of this Final Regulatory Flexibility Analysis with this *Memorandum Opinion and Order* in a report to Congress pursuant to section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A).

55. *Paperwork Reduction.* This matter has been analyzed with respect to the Paperwork Reduction Act of 1995 and was found to impose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

III. Ordering Clauses

56. It is ordered that, pursuant to the authority of Sections 4(i), 302, 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302, 303(r), and 332(a), the rule changes specified in this *Memorandum Opinion and Order* are adopted.

57. *It is further ordered* that the rule changes set forth in this *Memorandum Opinion & Order* will become effective December 5, 1997.

58. It is further ordered that the petitions for reconsideration filed by the parties listed in the original text of the *Memorandum Opinion & Order* are granted to the extent discussed herein, and are otherwise denied.

59. It is further ordered that the petitions for reconsideration of the *Order on Reconsideration* filed by Pinpoint Communication Networks, Inc. and Teletrac License, Inc., are denied.

60. It is further ordered that the petition for reconsideration of the *Order on Reconsideration* filed by Amtech Corporation is granted to the extent specified herein and is otherwise denied.

List of Subjects in 47 CFR Part 90

Common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

2. The heading for subpart M of part 90 is revised to read "Intelligent Transportation Systems Radio Service."

3. Section 90.7 is amended by revising the definition for "EA-based or EA license" to read as follows:

§ 90.7 Definitions.

* * * * *

EA-based or EA license. A license authorizing the right to use a specified block of SMR or LMS spectrum within one of the 175 Economic Areas (EAs) as defined by the Department of Commerce Bureau of Economic Analysis. The EA Listings and the EA Map are available for public inspection at the Wireless Telecommunications Bureau's public reference room, Room 5608, 2025 M Street, NW, Washington, DC 20554 and Office of Operations—Gettysburg, 1270 Fairfield Road, Gettysburg, PA 17325.

* * * * *

4. Section 90.155 is amended by revising paragraph (d) to read as follows:

§ 90.155 Time in which station must be placed in operation.

* * * * *

(d) Multilateration LMS systems authorized in accordance with Section 90.353 must be constructed and placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission. EA-licensed multilateration LMS systems will be considered constructed and placed in operation if such systems construct a sufficient number of base stations that utilize multilateration technology (see paragraph (e) of this section) to provide multilateration location service to at least ⅓ of the counties in the EA.

* * * * *

5. Section 90.210 is amended by revising paragraph (k)(3) and adding paragraph (k)(6) to read as follows:

§ 90.210 Emission masks.

* * * * *

(k) * * *

(3) *Other transmitters.* For all other transmitters authorized under Subpart M, the peak power of any emission shall be attenuated below the power of the highest emission contained within the licensee's LMS sub-band in accordance with the following schedule:

(i) On any frequency within the authorized bandwidth: Zero dB;

(ii) On any frequency outside the licensee's LMS sub-band edges: 55+10log(P) dB where (P) is the highest emission (watts) of the transmitter inside the licensee's LMS sub-band.

* * * * *

(6) The LMS sub-band edges for non-multilateration systems for which emissions must be attenuated are 902.00, 904.00, 909.5 and 921.75 MHz.

§ 90.350 [Amended]

6. Section 90.350 is amended by replacing the two occurrences of the phrase "Transportation Infrastructure Radio Service" with "Intelligent Transportation Systems Radio Service."

7. Section 90.353 is amended by revising paragraphs (d), (e) and (f) and by adding paragraph (i) to read as follows:

§ 90.353 LMS operations in the 902–928 MHz band.

* * * * *

(d) Multilateration LMS systems will be authorized on a primary basis within the bands 904–909.75 MHz and 921.75–927.25 MHz. Additionally, multilateration and non-multilateration systems will share the 919.75–921.75 MHz band on a co-equal basis. Licensing will be on the basis of Economic Areas (EAs) for multilateration systems, with one exclusive EA license being issued for each of these three sub-bands. Except as provided in paragraph (f) of this section, multilateration EA licensees may be authorized to operate on only one of the three multilateration bands within a given EA. Additionally, EA multilateration LMS licenses will be conditioned upon the licensee's ability to demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to 47 CFR part 15 devices.

(e) Multilateration EA-licensed systems and grandfathered AVM systems (see § 90.363) are authorized on a shared basis and must cooperate in the selection and use of frequencies in accordance with Section 90.173(b).

(f) Multilateration EA licensees may be authorized to operate on both the 919.75–921.75 MHz and 921.75–927.25 MHz bands within a given EA (see § 90.209(b)(10)).

* * * * *

(i) Non-multilateration LMS licenses will be issued on a site-by-site basis, except that municipalities or other governmental operatives may file jointly for a non-multilateration license covering a given U.S. Department of Commerce Bureau of Economic Analysis Economic Area (EA). Such an application must identify all planned sites. After receiving the license, the non-multilateration EA licensee must notify the Commission if sites are deleted or if new sites are added, before those sites may be put into operation.

8. Section 90.359 is revised to read as follows:

§ 90.359 Field strength limits for EA-licensed LMS systems.

EA-licensed multilateration systems shall limit the field strength of signals transmitted from their base stations to 47 dBuV/m at their EA boundary.

9. Section 90.361 is amended by revising the introductory text and paragraph (c)(2)(ii)(B) to read as follows:

§ 90.361 Interference from part 15 and Amateur operations.

Operations authorized under Parts 15 and 97 of this chapter may not cause harmful interference to LMS systems in the 902–928 MHz band. These operations will not be considered to be causing harmful interference to a multilateration LMS system operating in one of the three EA sub-bands (see § 90.357(a)) if they are non-video links operating in accordance with the provisions of Parts 15 or 97 of this chapter and at least one of the following conditions are met:

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) Is providing the final link for communications of entities eligible under subpart B or C of this Part, or is providing the final link for communications of health care providers that serve rural areas, elementary schools, secondary schools or libraries.

[FR Doc. 97–26415 Filed 10–3–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. 97–038; Notice 02]

RIN 2127–AG71

Final Listing of High-Theft Lines for 1998 Model Year; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the final listing of high-theft lines for the 1998 Model Year (MY), that was published on July 31, 1997 (62 FR 40949) by incorporating information that manufacturers brought to the agency's attention subsequent to the final listing. In the amended list in this document, one Honda line, the Civic, is removed from Appendix A; errors in the name of two Nissan lines, the Sentra /200SX and the Infiniti I30 are corrected; and an error in the vehicle class of one Subaru line, the Forester, is corrected.

EFFECTIVE DATE: The amendment made by this final rule is effective October 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Motor Vehicle Theft Group, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: NHTSA is correcting errors in the final list of high-theft vehicle lines for Model Year (MY) 1998, that appeared in the **Federal Register** on July 31, 1997 (62 FR 40949). This correction document incorporates updated information brought to NHTSA's attention subsequent to the publication of the final list for MY 1998. The following are corrections to Appendix A of 49 CFR Part 541, the Theft Prevention Standard:

Comments were received from American Honda Motor Co., Inc., requesting that the "Honda Civic" line, which was erroneously listed in Appendix A, be deleted from the listing because it was also listed in Appendix B. The Honda Civic, a line subject to the requirements of this standard but whose theft rate fell below the 1990/91 median, will be deleted from Appendix A but will remain listed in Appendix B. (See 59 FR 64164.)

Comments were also received from Nissan requesting that two vehicle lines be deleted from the Appendix A listing because they are no longer being produced. Those lines are the "300ZX" and the "Infiniti M30". The agency understands Nissan's reasons for requesting deletion of the "300ZX" and the "Infiniti M30" from the list of vehicles subject to the parts-marking requirements of the Theft Prevention Standard. However, NHTSA cannot delete the "300ZX" from the list because it has been covered by the Theft Prevention Standard since MY 1988, and the "Infiniti M30" has been covered since the MY 1990. Pursuant to 49 U.S.C. § 33104(d), a vehicle line on the list of lines subject to parts marking cannot be removed from that list unless the manufacturer has obtained an exemption from the parts-marking requirement based on the installation of a qualified antitheft device as standard equipment on the entire line.

Nissan also informed the agency that two of its lines were incorrectly identified. The Nissan line, erroneously listed in Appendix A as "Sentra [1]", has been identified respectively "Sentra/200SX [1]" and "Infiniti I" erroneously listed in Appendix A–I has been identified respectively "Infiniti I30".

Comments were also received from Subaru of America, Inc. informing the agency that the vehicle class for one of its lines was incorrectly identified. The Subaru line, erroneously listed as "Forester (MPV) [2]", has been identified respectively "Forester [2]", as a passenger car.

Since the corrections made by this document only inform the public of previous agency actions, and do not impose any additional obligations on any party, NHTSA finds for good cause that the revisions made by this notice should be effective as soon as it is published in the **Federal Register**.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

PART 541—[AMENDED]

1. The authority citation for Part 541 continues to read as follows:

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

Appendix A—[Amended]

2. Appendix A is amended as follows:

a. In the entry for "Honda", the "Civic" is removed.

b. In the entry for "Nissan", "Sentra [1]" is revised to read "Sentra/200SX [1]".

c. In the entry for "Subaru", "Forester (MPV) [2]" is revised to read "Forester [2]".

Appendix A–I—[Amended]

3. Appendix A–I is amended as follows:

a. In the entry for "Nissan", "Infiniti I" is revised to read "Infiniti I30".

Issued: September 29, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–26392 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970730185–7206–02; I.D. 093097A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Commercial Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has projected that the annual commercial quota for red snapper will be reached on October 6, 1997. This closure is necessary to protect the red snapper resource.

EFFECTIVE DATE: Closure is effective noon, local time, October 6, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (m lb) (2.11 million kg (m kg)) for the current fishing year, January 1 through December 31, 1997. The 1997 commercial quota was split between two seasons, the first beginning on February 1 with a quota of 3.06 m lb (1.39 m kg) and the second beginning with an initial period of September 2 to September 15 and thereafter from the first to the 15th of each month until the annual commercial quota is reached. Openings and closings in the fall 1997 season are at noon on the date indicated.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by publishing notification to that effect in the **Federal Register**. Based on current statistics, NMFS has projected

that the annual commercial quota of 4.65 m lb (2.34 m kg) for red snapper will be reached on October 6, 1997. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper is closed effective noon, local time, October 6, 1997, through December 31, 1997. The operator of a vessel with a valid reef fish permit having red snapper on board must land and sell such red snapper prior to noon, local time, October 6, 1997.

During the closure, the bag limit applies to all harvest of red snapper in or from the EEZ in the Gulf of Mexico. The daily bag limit for red snapper is five per person. From noon, local time, October 6, 1997, through December 31, 1997, the sale or purchase of red snapper taken from the EEZ is prohibited. This prohibition does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, October 6, 1997, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 30, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26383 Filed 10–3–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7052–02; I.D. 092997A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific cod in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–587–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(6)(iii), the allowance for the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area was established by the Final 1997 Harvest Specifications of Groundfish for the GOA and subsequent reserve apportionment (62 FR 8179, February 24, 1997; 62 FR 19062, April 18, 1997) as 39,321 metric tons (mt).

The Administrator, Alaska Region, NMFS, has established a directed fishing allowance of 38,321 mt, and set aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. The fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA was closed to directed fishing under § 679.20(d)(1)(iii) on March 11, 1997 (62 FR 11770, March 13, 1997), in order to reserve amounts anticipated to be needed for incidental catch in other fisheries.

NMFS has determined that as of September 20, 1997, 930 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA effective 1200 hrs, A.l.t., October 1, 1997.

Classification

All closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Further delay would only disrupt the FMP's objective of providing a portion of the Pacific cod TAC for processing by the inshore component in the Central Regulatory Area of the GOA. Without this action, the Pacific cod allocation for vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA would be underharvested. The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 30, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26429 Filed 10–1–97; 1:36 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 193
Monday, October 6, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966 and 7 CFR Part 980

[Docket No. FV97–966–1 PR]

Tomatoes Grown in Florida and Imported Tomatoes; Proposed Rule To Change Minimum Size and Size Designation Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would increase the minimum diameter size requirement for Florida and imported tomatoes. For Florida tomatoes alone, the rule would change the size designations from Medium, Large, and Extra Large to numeric size designations of 6 × 7, 6 × 6, and 5 × 6. The rule also would slightly increase the diameter size ranges for the designated sizes. The marketing order regulates the handling of tomatoes grown in Florida, and is administered locally by the Florida Tomato Committee (Committee). This proposed rule would help the Florida tomato industry meet domestic market and industry demands, provide handlers more marketing flexibility, and increase returns to producers, as well as provide consumers with slightly larger, more mature tomatoes. Application of the size requirement increase to imported tomatoes is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by October 16, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 301 Third Street, N.W., Suite 206, Winter Haven, Florida 33881; telephone: (941) 299–4770, Fax: (941) 299–5169; and George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456,Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in certain designated counties in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 8e of the Act specifies that whenever certain specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Under the order, tomatoes produced in the production area and shipped to fresh market channels outside the regulated area are required to meet grade, size, inspection, and container requirements. These requirements are specified in § 966.323 of the handling regulations issued under the order. These requirements apply during the period October 10 through June 15 each year. The regulated area is the entire State of Florida, except the panhandle. The production area is part of the regulated area. Specialty packed red ripe tomatoes, yellow meated tomatoes, and single and double layer place packed tomatoes are exempt from container net weight requirements.

Under § 966.323, all tomatoes, except for pear shaped, paste, cherry, hydroponic, and greenhouse tomatoes, must be inspected as specified in the United States Standards for Grades of Fresh Tomatoes (7 CFR part 51.1855 through 51.1877; standards). Such tomatoes also must be at least 28/32 inches in diameter, and sized with proper equipment in one or more of the following ranges of diameters.

Size Designation	Inches minimum diameter	Inches maximum diameter
Medium	2 8/32	2 17/32
Large	2 16/32	2 25/32
Extra Large	2 24/32	

These size designations and diameter ranges are the same as specified in § 51.1859 of the standards. All tomatoes in the Medium size designation are required to grade at least a U.S. No. 2, while tomatoes in the larger size designations are only required to grade at least a U.S. No. 3. Section 966.52 of the order provides authority for the establishment and modification of regulations applicable to the handling of particular sizes and size designations of tomatoes.

This rule would increase the minimum diameter size requirement for Florida tomatoes from 2$^{8}/_{32}$ inches to 2$^{9}/_{32}$ inches and would make conforming changes to container marking requirements and the regulation for special packed tomatoes. This rule would also rename the size designations from Medium, Large, and Extra Large to numeric size designations of 6 X 7, 6 X 6, and 5 X 6 (respectively), and increase the diameter size ranges for the designated sizes. These size ranges are different from those specified in § 51.1859 of the standards. On September 5, 1997, the Committee met and unanimously recommended these changes. At the same meeting, the Committee recommended by a vote of 10 to 2 to eliminate shipments of U.S. No. 3 grade tomatoes from the regulated area. That proposal will be addressed in a separate rulemaking action.

Based on an analysis of markets and demands of buyers, the Committee believes that the increase in minimum size would improve the marketing of Florida tomatoes. By increasing the minimum size, the tomatoes would be slightly larger and, thus, more mature when packed. This follows recent industry trends to ship larger and more mature tomatoes. New commercial tomato varieties also have resulted in larger sized tomatoes being shipped in response to a strong consumer demand. Because of this demand, production of larger tomatoes has been a popular method of improving returns among producers as it also increases total yields.

The Committee also recommended the increase in minimum size requirements to improve the uniformity and appearance of tomato packs. The slightly smaller tomatoes in the Medium packs increase the size variability of the pack and are more likely to be immature and have less taste. The current minimum size of 2$^{8}/_{32}$ inches allows these tomatoes to be combined with more mature tomatoes, which lowers the overall quality and price of the pack. This has resulted in complaints from buyers throughout the market.

In the mid-1980's, Dr. Jeffrey K. Brecht, at the University of Florida, did a study of smaller tomatoes. According to his findings, fully mature green tomatoes begin coloring within a few days of harvesting and ripen at 68 degrees Fahrenheit. Since they are not easily identified by a surface indicator (color) of full maturity in green fruit, pickers are forced to rely on size rather than maturity when harvesting tomatoes. The result of this is that tomatoes of 2$^{8}/_{32}$ of an inch may require two weeks or more to begin ripening. Attainment of the full ripe stage requires on average a week to 10 days additional time. Hence, the full ripening process could take as long as four weeks. Tomatoes that take this long to ripen after harvest have been shown to have poor taste. Hence, increasing the minimum size to 2$^{9}/_{32}$ inches for Medium tomatoes is expected to help reduce this problem. Also, consumers are demanding a slightly larger tomato and smaller tomatoes with a less uniform pack have poor consumer acceptance especially in chain stores.

The increase in the minimum size from 2$^{8}/_{32}$ inches to 2$^{9}/_{32}$ inches is not expected to significantly affect the total number of shipments. During the 1996–1997 season, of the 47,879,084 containers of 25,000 pound equivalent shipments, approximately 15 percent or about 7,023,239 shipments of 25,000 pound equivalents from Florida were of the Medium size designation. The Medium size covers a range of 2$^{8}/_{32}$ to 2$^{17}/_{32}$ inches or about $^{9}/_{32}$ of an inch. The $^{1}/_{32}$ increase in size requirements is only expected to reduce total shipments by approximately 1.5 percent.

The Committee also recommended the following new designations and tomato diameter size ranges:

Size designation	Inches minimum diameter	Inches maximum diameter
6 × 7 (Currently Medium)	2$^{9}/_{32}$	2$^{19}/_{32}$
6 × 6 (Currently Large)	2$^{17}/_{32}$	2$^{27}/_{32}$
5 × 6 (Currently Extra Large)	2$^{25}/_{32}$	

The current size designations have been in place since 1991, and were designed to provide a uniform basis for marketing tomatoes. However, the numeric designations have continued to be used by marketers and retailers of tomatoes and are an important factor in negotiating price and other terms of trade. Committee members stated that numeric designations are used in negotiating price and other terms of trade and is the terminology used primarily in marketing tomatoes. Florida tomato handlers found that this difference in terminology hindered their negotiations with buyers, and adversely affected handler and producer returns. The handlers believe that buyers tend to discount Florida tomatoes because the buyers do not have confidence that the Medium, Large, and Extra Large designations correctly correspond with the industry recognized size designations of 6 × 7, 6 × 6, and 5 × 6. Thus, the change in size designations would put the Florida tomato industry on the same terminology basis as the marketers of tomatoes from other growing areas. This also would reduce the chances of market confusion and possible problems with market pricing.

This rule would also increase the minimum and maximum diameter ranges of the three size designations. The net increase for the maximum diameters for the Medium (6 × 7) and Large (6 × 6) size designations would be $^{1}/_{32}$ inch. This would result in a $^{2}/_{32}$'s overlap in the maximum diameters in these size designations to the next larger size. According to the Committee, this would provide a more even distribution of tomato shipments throughout the three size designations, which would enable handlers to make better decisions on which size of tomatoes to pack. For instance, tomatoes that measure at the top end of the Medium size can either be packed with Medium size tomatoes or as a smaller tomato with Large tomatoes. The same increased flexibility would exist for Large tomatoes packed with Extra Large (5 × 6) tomatoes. Such decisions could depend on specific buyer or market demands, on general crop size, and on condition of the tomatoes and prices on each day of packing.

According to the Committee, problems have evolved in sizing some of the newer varieties that are slightly more oblong. To better accommodate sizing of the new varieties, the Committee recommended the changes to the diameter size ranges for the three size designations.

Due to strong consumer demand, during the 1996–1997 season approximately 80 percent of the tomatoes sold were in the Extra Large (5 × 6) size designation. This rule would increase the minimum diameter of the Extra Large (5 × 6) designation to 2$^{25}/_{32}$ inches from 2$^{24}/_{32}$ inches with no maximum. Increasing the minimum diameter size of this designation by $^{1}/_{32}$ inch for Extra Large (5 × 6) packs, would reduce the number of smaller sized tomatoes for that size designation. Hence, this is expected to decrease size variability and improve uniformity of this premium pack. Thus, improvements in this size category are expected to further enhance consumer demand resulting in increased returns to producers.

Also, a study conducted by Dr. John J. VanSickle at the University of Florida, estimates that size increases could result in an increase in the overall price of Florida tomatoes. The study indicates that if increasing the size limits shifted 1 percent of the Extra Large (5 × 6) tomatoes into the smaller size categories then prices for Extra Large (5 × 6) tomatoes would increase. The price of Extra Large (5 × 6) tomatoes could increase by .25 percent, the price of Large (6 × 6) tomatoes by .15 percent, and the price of Medium (6 × 7) tomatoes by .07 percent. The increase in price would occur because of the redistribution of larger sized tomatoes into the smaller size designations which responds to consumer demand for a more consistent pack and slightly larger tomatoes.

This rule would also make conforming changes to § 966.323 paragraphs (a)(2)(iii) concerning container marking requirements and (d)(3) for special packed tomatoes. This would increase the currently applied minimum size of 2$^{8}/_{32}$ to 2$^{9}/_{32}$ inches in diameter.

Thus, these changes are expected to increase returns to producers by improving size consistency, quality, and maturity, and, thus, encourage repeat purchases from consumers. The new size designations would allow handlers to respond better to market preferences which is expected to benefit producers and handlers of Florida tomatoes.

Section 8e of the Act requires that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. The current import regulations are specified in 7 CFR 980.212. Similar to the order, regulations apply during the period October 10 through June 15 when the Florida handling requirements are in effect. Because this proposal would increase the minimum size for domestic tomato shipments, this increase would be applicable to imported tomatoes.

Florida tomatoes must be packed in accordance with three specified size designations, and tomatoes falling into different size designations may not be commingled in a single container. These pack restrictions do not apply to imported tomatoes. Because pack requirements do not apply, different sizes of imported tomatoes may be commingled in the same container.

However, the handling requirements also specify that tomatoes that are designated as Medium (6 X 7) must meet a U.S. No. 2 grade, while the larger sizes are required to meet a U.S. No. 3 grade. The more stringent grade requirements are applied to the Medium (6 X 7) size designation because of quality problems with smaller tomatoes.

Similarly, current import requirements specify that all lots with a minimum diameter of 2 $^{17}/_{32}$ inches and larger shall meet at least a U.S. No. 3 grade. All other tomatoes shall meet at least a U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2 $^{17}/_{32}$ inches in diameter is required to grade at least U.S. No. 2. This proposed rule would change these requirements to reflect the changes to the handling requirements by requiring that all lots with a minimum diameter of 2 $^{19}/_{32}$ inches and larger meet at least a U.S. No. 3 grade. All other tomatoes would need to meet at least a U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2 $^{19}/_{32}$ inches in diameter would have to grade at least U.S. No. 2.

These changes are expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with better quality, higher maturity, and slightly larger tomatoes. The Department has contacted a few tomato importers concerning imports. The importers indicated that they are importing larger sizes of tomatoes. Thus, the Department believes that the proposed increase will not limit the quantity of imported tomatoes or place an undue burden on exporters, or importers of tomatoes. The expected increase in customer satisfaction should benefit all tomato importers regardless of size.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products.

There are approximately 65 handlers of Florida tomatoes who are subject to regulation under the order and approximately 75 tomato producers in the regulated area. In addition, at least 170 importers of tomatoes are subject to import regulations and would be affected by this proposed rule. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Committee data indicates that approximately 20 percent of the Florida handlers handle 80 percent of the total volume. Based on this information, the shipment information for the 1996–97 season, and the 1996–97 season average price of $7.97 per 25,000 pound equivalent carton, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes may be classified as small entities. The Department also believes that most importers may be classified as small entities.

Under § 966.52 of the Florida tomato marketing order, the Committee has authority to increase the minimum size requirement and change the size designations for Florida tomatoes grown in the defined production area and handled under the order. This proposed rule, unanimously recommended by the Committee at its September 5, 1997, meeting, would increase the minimum size, change size designations and corresponding diameter size ranges. As provided under the Agricultural Marketing Agreement Act of 1937, the proposed increases in the minimum diameter size requirements would apply to imported tomatoes.

Based on analysis of markets and demands of buyers, the Committee recommended increasing the minimum size from 2$^{8}/_{32}$ inches to 2$^{9}/_{32}$ inches in diameter and the corresponding minimum sizes for the other two size designations. The Committee believes these size increases will improve the marketing of Florida tomatoes. By increasing the minimum sizes, the tomatoes would be slightly larger and, thus, more mature when packed. This follows recent industry trends to ship larger and more mature tomatoes. Current trends in cultural practices and new commercial tomato varieties also have resulted in larger sized tomatoes being shipped in response to consumer demand for such tomatoes. Because of

this demand, production of larger tomatoes has been a popular method of improving returns among producers as it also increases total yields and total pounds. While yields increase with larger fruit, the labor costs associated with picking these tomatoes remains fairly constant because producers pick relatively the same number of fruit.

The change in the minimum size was recommended because demand for larger tomatoes has increased over the last five years. This in part is due to the fact that size continues to be a major influence on price. According to Dr. John J. VanSickle of the University of Florida, the percent of Extra Large (5 X 6) tomatoes shipped has increased steadily since 1992–1993 from 43.2 percent to 50 percent in 1996–1997 for mature green tomatoes. Mature green tomatoes are green but are developed enough to continue to fully ripen. Meanwhile, the percent marketed in the Extra Large (5 X 6) size for vine ripe tomatoes has increased from 66.6 percent to 79.2 percent. Vine ripe tomatoes have at least started to break into color from green to tannish-yellow, pink, or red.

The increase in the minimum size from 2$^{8}/_{32}$ inches to 2$^{9}/_{32}$ inches is not expected to significantly affect the total number of Florida shipments. During the 1996–1997 season, of the 47,879,084 shipments of 25,000 pound equivalents, approximately 15 percent or about 7,023,239 shipments of 25,000 pound equivalents from Florida were in the minimum size designation of Medium. The Medium size currently covers a range of 2$^{8}/_{32}$ to 2$^{17}/_{32}$ inches or about 9/32 of an inch. Because Florida tomatoes are sizing larger than in the past, the proposed increase in size requirements is expected to have a minimal impact on total shipments. As mentioned earlier, the expected decrease is only about 1.5 percent.

Also, this rule would change the size designations from Medium, Large, and Extra Large to numeric size designations of 6 X 7, 6 X 6, and 5 X 6. The rule also would slightly increase the diameter size ranges for the designated sizes.

The Committee stated that, absent a change in the regulations, the erosion of market confidence and producer income could occur. Furthermore, the majority of Committee members stated that voluntary measures had not been effective.

Direct costs associated with this rule would be the purchase of new sizing belts. Sizing belts convey and size fruit during the packing process. Sizing belts, depending on the amount of use, can last a season or may need to be replaced two to three times a season. Estimated prices associated with these purchases could range from $450.00 for a small handler to $19,000 for very large handlers. While there are short-term costs associated with the new sizing designations, the benefits are expected to outweigh the costs.

A study conducted by Dr. John J. VanSickle at the University of Florida, estimates that size increases would result in an increase in the overall price for Florida tomatoes, and better returns to producers. The study indicates that increasing the size limits would shift some of the Extra Large (5 × 6) tomatoes into the smaller size categories. As a result, a 1 percent decline in the volume of Extra Large (5 × 6) tomatoes would increase in price by .25 percent, the price of Large (6 × 6) tomatoes by .15 percent, and the price of Medium (6 × 7) tomatoes by .07 percent. The increase in price would occur because of the redistribution of larger sized tomatoes into the smaller size designations which responds to consumer demand for a more consistent pack with slightly larger tomatoes. The costs to the industry associated with the minimum size and size designation changes would include purchases of new equipment and adjustments to operate under the new requirements. These costs are expected to be minimal relative to the benefits expected.

Returning to the previously used numeric size designations should not have a negative impact on any packer regardless of size. This is a return to common size designations (6 × 7, 6 × 6, and 5 × 6) used throughout the industry, and would help Florida handlers respond to market and consumer demand. The more standard size designations should benefit both small and large businesses in the industry.

This proposed rule may impose some additional costs on handlers, and producers. However, the costs are expected to be minimal, and would be offset by the benefits of the proposal. This proposal is expected to similarly impact importers of tomatoes as far as the slight increase in minimum size is concerned. The Committee believes that this proposed modification would benefit consumers, producers, handlers, and importers. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

The Committee discussed alternatives to this recommendation, including leaving the regulations as currently issued. All Committee members agreed that some change to the size designations was necessary to improve pack appearance and compete in the present market. The amount of change became a concern, with a portion of the Committee favoring a larger size increase and another portion favoring small incremental moves over a period of time. The Committee recommended a compromise to allow individual packing houses leeway to implement the amount of change through a $^{3}/_{32}$ overlap in sizes.

Mexico is the largest exporter of tomatoes to the United States. Over the last 10 years, Mexican exports to the United States averaged 32,527 containers of 25,000 pound equivalents per season (October 5–July 5) and comprised about 99 percent of all imported tomatoes to the United States during that time. Total imports during that period averaged 32,752 containers of 25,000 pound equivalents (October 5–July 5). Some of the imports from Mexico may have been transhipped to Canada. Domestic shipments or consumption for the past 10 years averaged 108,577 containers of 25,000 pound equivalents (October 5–July 5). Florida shipments averaged 52,977 containers of 25 pound equivalents or approximately 48 percent of the total shipments or domestic consumption for the same period. This information is from AMS Market News Branch data that most closely approximates the Florida shipping season.

These changes are expected to benefit the marketers of both Florida and imported tomatoes by providing consumers with better quality, higher maturity, and slightly larger tomatoes. The Department has contacted a few tomato importers concerning imports. The importers indicated that they are importing larger sizes of tomatoes. Thus, the Department believes that the proposed increase will not limit the quantity of imported tomatoes or place an undue burden on exporters, or importers of tomatoes. The expected increase in customer satisfaction should benefit all tomato importers regardless of size.

This action would not impose any additional reporting or record keeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues.

Like all Committee meetings, the September 5, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 10-day comment period is provided to allow interested persons to respond to this proposal. Ten days is deemed appropriate because this rule, if adopted, needs to be in place as soon as possible since handlers will begin shipping tomatoes in October. In addition, because of the nature of this rule, handlers need time to adjust their equipment and purchase new equipment to accommodate the new size ranges and designations. Florida tomato handlers are aware of this issue, which has been widely discussed at various industry and association meetings and was unanimously recommended by the Committee. All comments received in a timely manner will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 966 and 7 CFR Part 980

Marketing agreements, Reporting and record keeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR parts 966 and 980 are proposed to be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising paragraphs (a)(1), (a)(2)(i) and the table immediately following it, (a)(2)(iii), and (d)(3) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(a) *Grade, size, container, and inspection requirements.*

(1) *Grade.* Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, U.S. No. 2, or U.S. No. 3, of the U.S. Standards for Grades of Fresh Tomatoes, except that all shipments of 6 × 7 size tomatoes must grade U.S. No. 2 or better. When not more than 15 percent of the tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than 1 percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

(2) *Size.* (i) All tomatoes packed by a registered handler shall be at least 2$^{8}/_{32}$ inches in diameter and shall be sized with proper equipment in one or more of the following ranges of diameters. Tomatoes shipped outside the regulated area shall also be sized with proper equipment in one or more of the following ranges of diameters. Measurements of diameters shall be in accordance with the methods prescribed in § 51.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

Size Designation	Inches Minimum diameter	Inches Maximum diameter
6 × 7	2$^{8}/_{32}$	2$^{19}/_{32}$
6 × 6	2$^{17}/_{32}$	2$^{27}/_{32}$
5 × 6	2$^{25}/_{32}$	

* * * * *

(iii) Only 6 × 7, 6 × 6, 5 × 6, may be used to indicate the above listed size designations or containers of tomatoes.

* * * * *

(d) * * *

(3) *For special packed tomatoes.* Tomatoes which met the inspection requirements of paragraph (a)(4) of this section which are resorted, regraded, and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from:

(i) The tomato grade classifications of paragraph (a)(1) of this section;

(ii) The size classifications of paragraph (a)(2) of this section, except that the tomatoes shall be at least 2$^{8}/_{32}$ inches in diameter; and

(iii) The container weight requirements of paragraph (a)(3) of this section.

* * * * *

§ 980.212 [Amended]

3. Section 980.212 is amended by revising paragraph (b)(1) to read as follows:

* * * * *

(b) * * *

(1) From October 10 through June 15 of each season, tomatoes offered for importation shall be at least 2$^{8}/_{32}$ inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter. All lots with a minimum diameter of 2$^{19}/_{32}$ inches and larger shall be at least U.S. No. 3 grade. All other tomatoes shall be at least U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2$^{19}/_{32}$ inches in diameter shall grade at least U.S. No. 2.

* * * * *

Dated: October 2, 1997.

Robert C. Kenney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–26510 Filed 10–3–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–120–AD]

RIN 2120–AA64

Airworthiness Directives; De Havilland Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes. This proposal would require repetitive inspections of certain refuel/defuel tube assemblies in the engine nacelles for fuel leakage, and corrective action, if necessary. It would also require eventual modification of all tube assemblies, which would terminate the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fuel leaks and consequent increased risk of engine fires.

DATES: Comments must be received by November 5, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7504; fax (516) 256–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–120–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–100, –200, and –300 series airplanes. TCA advises that it received reports of fuel leaks from the shroud drain line located adjacent to the refuel/defuel adapter in the engine nacelles. Investigation has revealed that some of the welds between the outer shroud and the inner tube of the refuel/defuel assemblies may be of poor quality. Relative motion between the shroud and the tube can result in cracking of both the tube and the shroud. This condition, if not corrected, could result in fuel leaks and consequent increased risk of engine fires.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10, 1996, which describes procedures for repetitive inspections of the refuel/defuel tube assemblies in the engine nacelles for fuel leakage, and replacement of tube assemblies that leak with improved tube assemblies.

The alert service bulletin also describes procedures for eventual modification of all tube assemblies to prevent potential future leakage, which would eliminate the need for the repetitive inspections. Part 2 of the Accomplishment Instructions of the alert service bulletin describes replacement of the tube assembly located in the most critical area of the engine nacelle. Part 3 of the Accomplishment Instructions of the alert service bulletin describes replacement of the remaining tube assemblies. Accomplishment of the actions specified in the alert service bulletin are intended to adequately address the identified unsafe condition.

TCA classified this alert service bulletin as mandatory and issued Canadian airworthiness directive CF–96–14, dated August 20, 1996, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

The FAA estimates that 95 de Havilland Model DHC–8–100, –200, and –300 series airplanes of U.S. registry would be affected by this proposed AD.

The proposed inspection would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $34,200, or $360 per airplane, per inspection cycle.

The proposed modification (specified in Part 2 of the Accomplishment Instructions in the referenced alert service bulletin), would take approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $500. Based on these figures, the cost impact of this modification as proposed by this AD on U.S. operators is estimated to be $133,000, or $1,400 per airplane.

The proposed modification (specified in Part 3 of the Accomplishment Instructions in the referenced service bulletin), would take approximately 36 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,600 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $357,200, or $3,760 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 97–NM–120–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes; as listed in Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leaks and consequent increased risk of engine fires, accomplish the following:

(a) Within 30 days after the effective date of this AD, inspect the five refuel/defuel tube assemblies in the engine nacelles to detect fuel leaks, in accordance with Part 1 of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A', dated September 10, 1996. If any fuel leak is found, prior to further flight, replace the refuel/defuel tube assembly with an improved assembly, in accordance with the alert service bulletin. Thereafter, repeat the inspection at intervals not to exceed 6 months.

(b) Within 12 months after the effective date of this AD, modify the refuel/defuel tube assembly located under the exhaust fingernail on the engine nacelle, as specified in Part 2 of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10, 1996, in accordance with the procedures specified in the alert service bulletin.

(c) Within 24 months after the effective date of this AD, modify the remaining refuel/defuel tube assemblies, as specified in Part 3 of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10, 1996, in accordance with the procedures specified in the alert service bulletin.

(d) Accomplishment of the modifications required by paragraphs (b) and (c) of this AD constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(e) As of the effective date of this AD, no person shall install a refuel/defuel tube assembly having part number 82820107–007, 82821015–003, 82820108–005, 82820245–001, 82820246–001, 82820247–001, or 82821014–001, on any airplane.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(g) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–96–14, dated August 20, 1996.

Issued in Renton, Washington, on September 30, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–26376 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–106–AD]

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 series airplanes. This proposal would require repetitive inspections to detect corrosion and/or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the main landing gear (MLG), and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct corrosion and/or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the MLG, which could result in failure of the MLG to extend or retract.

DATES: Comments must be received by November 5, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–106–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–60 series airplanes. The CAA advises that it has received reports of corrosion and/or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the main landing gear (MLG). The corrosion and/or wear was attributed to migration of the retaining pin of the forward pintle pin of the MLG due to loss of the retaining pin's circlip. Such corrosion or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the MLG, if not detected and corrected in a timely manner, could result in failure of the MLG to extend or retract.

Explanation of Relevant Service Information

Short Brothers has issued Service Bulletin SD360–53–42, dated September 1996, which describes procedures for repetitive inspections to detect corrosion and/or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the MLG, and repair, if necessary. For airplanes on which certain depths of corrosion or wear is detected, the service bulletin describes procedures for a visual inspection to detect any discrepancy of the pintle pin and sleeve. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–09–96 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require repetitive inspections to detect and correct corrosion and/or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the MLG, and repair of any corrosion and/or wear. Those actions are required to be accomplished in accordance with the service bulletin described previously.

Differences Between the Proposal and the related CAA AD

Operators should note that for certain depths of corrosion and/or wear detected that require an inspection of the pintle pin and sleeve, this AD requires the repair of any discrepancy of the pintle pin or sleeve to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 88 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $68,640, or $780 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket 97-NM–106-AD.

Applicability: All Model SD3–60 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) to extend or retract due to corrosion and/or wear of the left and right stub wings in the area of the forward pintle pin of the MLG, accomplish the following:

(a) Within 90 days after the effective date of this AD, conduct an inspection for corrosion of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the MLG, and measure the retaining pin holes of the pintle pin for wear; in accordance with Part A. of the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–42, dated September 1996.

(1) If any corrosion, wear, or measurement of the holes for the retaining pin of the pintle pin is found that is within the limits specified in Part A. of the Accomplishment Instructions of the service bulletin, prior to further flight, repair the discrepancy in accordance with the service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 6 months.

(2) If any corrosion, wear, or measurement of the holes for the retaining pin of the pintle pin is found that is beyond the limits specified in Part A. of the Accomplishment Instructions of the service bulletin, prior to further flight, perform the actions required by paragraph (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Remove the corrosion and install bushings on the upper and lower shear webs in the retaining pin holes for the pintle pin in accordance with Part B. (left MLG) and/or Part C. (right MLG), as applicable, of the Accomplishment Instructions of the service bulletin.

(ii) Perform a visual inspection of the pintle pin and the sleeve for any discrepancy, in accordance with Part B. and/or Part C., as applicable, of the Accomplishment Instructions of the service bulletin.

(A) If no discrepancy is detected, the pintle pin and the sleeve of the pintle pin may be returned to service.

(B) If any discrepancy of the pintle pin and sleeve is detected, prior to further flight, repair the pintle pin and sleeve in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) Removal of corrosion and installation of bushings in accordance with Part B. and/or Part C., as applicable, of the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–42, dated September 1996, constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 005–09–96.

Issued in Renton, Wash., on September 30, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–26377 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–45–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. The proposed action would require inspecting the aileron tie-rod jam nuts for looseness, tightening any loose jam nuts, and installing a locking sleeve on both ends of the aileron tie-rod in the chain-drive of the aileron system. The proposed AD results from an incident where the aileron tie-rod jam nuts on the chain-drive of the aileron system became loose. This caused a differential of aileron control between the pilot's control wheel and the co-pilot's control wheel. The actions specified by the proposed AD are intended to prevent such aileron control differential caused by the aileron tie-rod jam nuts becoming loose, which could result in loss of aileron control and consequent loss of control of the airplane.

DATES: Comments must be received on or before November 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE–45-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-45-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-CE-45-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on Pilatus Models PC-12 and PC-12/45 airplanes. The FOCA of Switzerland reports an incident where the aileron tie-rod jam nuts on the chain-drive of the aileron system became loose. This caused a differential of aileron control between the pilot's control wheel and the co-pilot's control wheel. This condition, if not corrected in a timely manner, could result in loss of aileron control and consequent loss of control of the airplane.

Applicable Service Information

Pilatus has issued Service Bulletin No. 27-001, dated March 25, 1997, which includes procedures for the following on Pilatus Models PC-12 and PC-12/45 airplanes:

—inspecting the aileron tie-rod jam nuts for looseness and tightening any loose jam nuts; and

—installing a locking sleeve on both ends of the aileron tie-rod in the chain-drive of the aileron system.

The FOCA of Switzerland classified this service bulletin as mandatory and issued Swiss FOCA AD HB 97-174, dated April 30, 1997, in order to assure the continued airworthiness of these airplanes in Switzerland.

Evaluation of All Applicable Information

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Models PC-12 and PC-12/45 airplanes of the same type design that are registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the aileron tie-rod jam nuts for looseness, tightening any loose jam nuts, and installing a locking sleeve on both ends of the aileron tie-rod in the chain-drive of the aileron system. Accomplishment of the proposed actions would be in accordance with Pilatus Service Bulletin No. 27-001, dated March 25, 1997.

Cost Impact

The FAA estimates that 40 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owner/operator of the affected airplanes. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $12,000 or $300 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 97-CE-45-AD.

Applicability: Models PC-12 and PC-12/45 airplanes, serial numbers 101 through 169, certificated in any category.

Note 1: The modification required by this AD is incorporated at manufacture on Models PC-12 and PC-12/45 airplanes, beginning with serial number 170. Airplanes with this modification are not affected by this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent a differential of aileron control between the pilot's control wheel and the co-pilot's control wheel caused by the aileron tie-rod jam nuts becoming loose, which could result in loss of aileron control and consequent loss of control of the airplane, accomplish the following:

(a) Inspect the aileron tie-rod jam nuts for looseness in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 27-001, dated March 25, 1997. Prior to further flight, tighten any loose jam nuts in accordance with this service bulletin.

(b) Install a locking sleeve on both ends of the aileron tie-rod in the chain-drive of the aileron system in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 27-001, dated March 25, 1997.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Pilatus Aircraft Ltd., CH-6370 Stans, Switzerland; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD addresses the actions specified in Swiss AD FOCA AD HB 97-174, dated April 30, 1997.

Issued in Kansas City, Missouri, on September 30, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-26411 Filed 10-3-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 161, and 501

[Docket No. 92P-0441]

Food Labeling; Net Quantity of Contents; Compliance; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until December 1, 1997, the comment period on a proposed rule that was published in the **Federal Register** of March 4, 1997 (62 FR 9826). The document proposed to revise the agency's human and animal food labeling regulations that pertain to declarations of net quantity of contents on food packages. This action is being taking to allow interested persons additional time to submit comments to FDA on a survey sponsored by the Federal Trade Commission on the accuracy of net content labeling of milk and other products.

DATES: Written comments by December 1, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5099.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 4, 1997 (62 FR 9826), FDA published a proposed rule to revise its human and animal food labeling regulations that pertain to declarations of net quantity of contents on food packages. That proposal set out procedures for determining whether net quantity of contents declarations accurately reflect the amount of product in food packages. Interested persons were given until June 2, 1997, to comment on the proposed rule. In the **Federal Register** of May 30, 1997 (62 FR 29313), the agency extended the comment period for an additional 90 days. The comment period closed on September 2, 1997.

FDA has received two requests for a second 90-day extension of the comment period on its proposed rule on net quantity of contents on food packages. The requests were from trade associations that represent major segments of both the food and feed industries. Both requests stated that industry representatives would need this extension in light of the national 20-State survey regarding the accuracy of net content labeling of milk and, to a lesser extent, of other dairy products (such as yogurt and cottage cheese) and of juice. The survey was conducted because of State and local reports of short-filling in packages of milk served in schools or sold in retail stores. The survey was made available on July 17, 1997. The requests for extension of the comment period stated that the industry representatives needed additional time to review and analyze this study before they could complete their comments.

FDA informally granted an extension of 28 days until September 30, 1997, under the provisions in 21 CFR 10.40(b)(3)(ii). The agency has now decided, however, that extending the comment period until December 1, 1997, as requested, will allow interested persons to fully review and analyze the data from the national survey. This extension will ensure that there is full consideration of all data and issues relating to the agency's net quantity of contents proposal.

Interested persons may, on or before December 1, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 30, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97-26450 Filed 10-3-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

46 CFR Parts 25, 27, and 32

[CGD 97-064]

RIN 2115-AF-53

Towing Vessel Safety

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to improve towing vessel and tank-barge safety measures by requiring the installation of equipment to suppress fires on towing vessels and to enhance existing standards for anchoring or retrieving a drifting tank barge. This proposal was developed in cooperation with the Towing Vessel Safety Advisory Committee (TSAC). The Coast Guard is addressing the human element through muster lists, training, drills, and performance-based requirements, as well as recommended practices. Regulations are required by the Coast Guard Authorization Act of 1996. This action is expected to reduce the number of oil spills causing damage to marine life and the environment from single hull, non-self-propelled tank vessels.

DATES: Comments must reach the Coast Guard on or before January 5, 1998. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before December 5, 1997.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 97–064), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477. You must also mail comments on the collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Morgan J. Hurley, P.E., Project Manager (Fire Protection) (202) 267–0172 or E-mail <mhurley@comdt.uscg.mil>; or LTJG Patrick J. DeShon, Project Manager (Emergency Control Systems) (202) 267–0864 or E-mail <pdeshon@comdt.uscg.mil>.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting written data, views, or arguments. You should include your name and address, identify this rulemaking (CGD 97–064) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want us to acknowledge receiving your comments, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard is also soliciting comments on the question and answer format used in part 27. This format is intended to make regulations more readable. We are interested in your feedback on its effectiveness and your suggestions for possible improvements. The Coast Guard will consider all comments received during the comment period and may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. You may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. Your request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On January 19, 1996, the tugboat SCANDIA, towing the oil barge, NORTH CAPE, caught fire five miles off the coast of Rhode Island. The crew could not control the fire, and without power they were unable to prevent the barge carrying 4 million gallons of oil from grounding and spilling its contents into the coastal waters. The North Cape Spill led Congress to amend 46 U.S.C. 3719, in § 901 of the 1996 Coast Guard Authorization Act (Pub. L. 104–324) (the Authorization Act) to direct the Secretary of Transportation to prescribe regulations necessary to reduce oil spills from single-hull non-self-propelled tank vessels. Additionally, Congress in § 902 of the Authorization Act amended 46 U.S.C. 4102 to direct the Coast Guard to require the use of a fire suppression system or other fire suppression measures on vessels that tow non-self-propelled tank vessels. Section 902 of the Authorization Act also provides that the Coast Guard, after consultation with TSAC, may require fire suppression measures on all towing vessels, not just those towing non-self-propelled tank vessels.

Statutory Mandate

Section 901 of the Authorization Act mandates that single hull, non-self-propelled tank vessels operating in the open ocean or coastal waters, or the vessels towing them, employ at least one of three safety options. Under reasonably foreseeable sea conditions, without additional assistance, either the barge or the vessel towing it must:

(1) have on board a crew member and an operable anchor that together can stop the tank barge; or

(2) have an emergency system that will allow the tank barge to be retrieved by the towing vessel if the tow line ruptures.

(3) If neither of these two measures are viable, then the tank barge or vessel towing it must have on board another measure or combination of measures comparable to measures (1) and (2) of this paragraph that the Coast Guard (as authorized by the Secretary of Transportation) determines will provide protection against grounding.

Section 902 of the Authorization Act gave the Coast Guard the authority to require "the installation, maintenance, and use of a fire suppression system or other measures * * * on board towing vessels." However, for vessels which tow non-self-propelled tank vessels, the Authorization Act mandated that the Coast Guard require a fire suppression system or other measures by October 1, 1997. The Authorization Act also required that the Coast Guard develop these rules in consultation with the Towing Safety Advisory Committee (TSAC). The requirements that the Coast Guard is proposing in this rulemaking are based on recommendations by TSAC.

Regulatory Approach

Human Element

Many of the requirements of this rule go beyond design and equipment. It is important to acknowledge the roles and responsibilities of the people operating the equipment installed on these vessels. The training and performance of the crew members may be the critical element in avoiding the actions that contribute to a casualty. Our Prevention Through People program depends on owners, operators, and other people in positions of responsibility to take an active role in developing and enforcing these safety measures.

Establishing the Lower Limit of Acceptable Safety Practice

For many requirements in this rule, vessels already carry most or all of the equipment and have adequate operational procedures. Many companies maintain and inspect their equipment with regularity and provide training beyond that required by these rules. However, the safety level of the industry can be jeopardized by a single poor operator. The necessity still exists for identifying minimum standards that define the lower limit of acceptable practice.

Open Ocean and Coastal Waters

Section 901 of the Authorization Act specified that these rules apply to vessels operating in the open ocean or coastal waters. The Coast Guard determined this language to be equivalent to the high seas and territorial sea as defined in 33 CFR part 2. Under this approach the inner boundary of coastal waters is the territorial sea baseline. This line represents the separation between internal and external waters and defines the coastal area more strictly than the boundary line previously applied to offshore barges in 33 CFR part 155. Internal waters inherently offer semi-sheltered conditions or opportunity for quick haven and therefore have been excluded from the applicability. Vessels in external waters are subject to more severe weather and ocean effects that create an environment more likely to contribute to an incident resulting in separation of the barge from the towing vessel.

Double Hull Tank Barges

The proposed requirements do not apply solely to single-hulled vessels, as specified by the Authorization Act. The existing requirements in 33 CFR section 155.230 already require emergency towing capability for both single and double hull vessels and we did not wish to detract from the existing requirements of OPA 90. Double hull tank barges that currently satisfy 33 CFR section 155.230 also meet the requirements of the new 33 CFR section 155.230 proposed in this rulemaking.

Grandfathering Provisions for Anchor Systems

The Coast Guard will continue to allow the grandfathering established for tankships and manned seagoing barges constructed prior to June 15, 1987, by 46 CFR section 32.15–15. However, manned barges equipped with an anchor to comply with 33 CFR section 155.230(b)(1) will be excluded from any of the grandfathering provisions in 46 CFR section 32.15–15. The effectiveness of the emergency control system using anchors is highly dependent upon the design standard and equipment arrangement. The Coast Guard will only accept anchoring standards established by the American Bureau of Shipping or another recognized classification society. This will not require manned seagoing barges currently accepted under the grandfathering provisions to change their arrangements, if they choose to install a retrieval system as their emergency control system.

Application of Fire Protection Rules to All Towing Vessels

The Coast Guard is proposing that these rules apply to all towing vessels, not just towing vessels which tow non-self-propelled tank vessels. There were 188 reported fires on towing vessels from 1992–1996; almost all of which occurred in the engine room. Each of these fires was a potential obstruction to maritime commerce and each resulted in property damage. Many of these fires resulted in a total constructive loss of the vessel, and several required the use of outside resources to bring under control. Also, TSAC recommended application to all towing vessels so that operators could maintain flexibility over the cargoes that they may tow.

The Towing Safety Advisory Committee recommended that these rules only be applied to vessels which are 12 meters in length or *longer*. However, application only to vessels which are greater than 12 meters in length would not meet the intent of the mandate in the Authorization Act, which did not make any differentiation based on vessel length. The Authorization Act mandated the installation of fire suppression measures on vessels which tow non-self-propelled tank vessels, and vessels which are less than 12 meters in length could be engaged in towing tank barges. Also, the Coast Guard is concerned an engine room fire which results in loss of propulsion and navigation capability, could occur on any towing vessel, regardless of length.

Requirement for a Suppression System

The Coast Guard is proposing to require a combination of fire protection measures. This system would include the capability to detect small incipient fires, quickly communicate the presence of these small fires to the crew, and suppress these fires before they jeopardize navigation capability. Also, the Coast Guard recognizes that proper preparation and response by vessel crew is more important than requiring the installation of additional equipment on the vessel. Therefore, the Coast Guard is proposing crew training, both ashore and afloat, and muster lists to identify and practice crew fire fighting roles before a fire emergency.

Although requiring a suppression system on new and existing vessels meets the mandate in the Authorization Act, the Coast Guard does not solely require the installation of a suppression system. Gaseous suppression systems may not be effective on all existing vessels. A gaseous suppression system requires a relatively air tight enclosure to maintain an extinguishing concentration. Many existing towing vessels are constructed with engine rooms that would not be sufficiently air tight. Furthermore, installation of a total flooding suppression system may not meet the intent of the mandate in the Authorization Act—to prevent casualties involving barges which are the result of a loss of propulsion of the towing vessel. Although a machinery space fire would result in loss of propulsion, discharge of a total flooding suppression system would also result in loss of propulsion.

The Towing Safety Advisory Committee conducted a survey of the towing vessel fleet in conjunction with developing their recommendations to the Coast Guard. This survey revealed that the provisions which would be required by this rulemaking are presently installed on most towing vessels.

Discussion of Proposed Rule

Emergency Control Systems

33 CFR Part 155

The proposed rules in 33 CFR part 155 require an emergency control system to ensure an adequate response to prevent a grounding. The Coast Guard will require only one of three response measures for tank vessels as mandated by the Authorization Act. The following methodologies define what the Coast Guard will accept as an emergency control system:

Manned with an operable anchor. To consider anchoring as a response option it is first necessary to define the design and operational capabilities of an "operable" anchor. This was done using minimum performance standards for in-service operation by the crew. The crew member is a vital component in the anchoring system. Training, maintenance, and inspection provisions support the operational availability of the anchoring system. Performance requirements will be added in 46 CFR section 32.15–15 and 33 CFR section 155.230.

The Coast Guard believes that additional requirements are needed in an anchoring system intended for use as an emergency response measure because an emergency often presents higher stress conditions than routine service anchoring. One crew member must be able to deploy the anchor within a reasonable response time and must confer with the master in determining the appropriate length of chain to be used.

The objective of an emergency anchoring operation is for a drifting barge to self-anchor in water deep enough that its stern (presumably the closest point to shore) will not ground. This requires that only enough chain be let out for the anchor to properly imbed itself (typically 5 to 7 times the water depth), but no longer length. The Coast Guard recognizes that not every point along the barge's route will necessarily be far enough from shore to prevent grounding. However, we believe that most routes are far enough from shore for this to be a viable strategy. Crew members should be trained to deploy the anchor, and a means for measuring the proper chain pay-out should be employed (such as marking the chain). The length of chain constraint ensures that excessive chain will not be let out and allow a grounding as the barge swings toward shore. We solicit your comments on whether or not the Coast Guard should provide more specific guidance or requirements concerning emergency anchoring training and operations.

The constraint on reasonable response time was added to ensure that control of the barge is established during the period of intentional separation described under the *Safety Analysis* section of this preamble. It is important that the barge is under control before the developing emergency renders the towing vessel unable to provide control. We are considering basing this performance criteria on casualty development times. We solicit comments on what would be a reasonable response time.

The Coast Guard chose not to include the recommendation of TSAC for an operable anchor to be considered as a viable safety option for an unmanned barge. Along with the American Waterways Operators, the Coast Guard has determined that falls overboard represent the highest cause of fatalities in the towing industry. Requiring an anchor on an unmanned barge encourages attempted placement of mariners onto the barge in an emergency situation. This represents an unacceptable risk.

The requirements presented only represent a minimum standard for safe operation of the anchoring system. Companies should assess whether more stringent individual requirements are necessary to maintain safe practices under their operational conditions.

Emergency retrieval system. For the second option, retrieval systems, we recognize that the conditions in your operating area will determine the most effective system for retrieval and that various acceptable systems exist. The Coast Guard proposes minimum performance characteristics to ensure a reasonable margin of safety.

The training requirements ensure that one person onboard the towing vessel is familiar with operation of the retrieval system and has hands-on experience. All licensed personnel and crew members should understand operation of the system but, because of crew rotation and operational constraints, it is not practicable to require that all personnel have hands-on experience.

The term "master" is used in this NPRM to be consistent with its proposed use in Licensing and Manning for Officers of Towing Vessels (CGD 94–055) published June 19, 1996 in the **Federal Register** (61 FR 31332).

Retrieval drills should not be conducted with barges containing any cargo which would pose an environmental threat in the event of a mishap.

Safety response measures. Option three allows us to recognize future developments in safety response measures that may provide a comparable level of safety.

Permissively manned barges. Permissively manned barges must be able to meet all operation and performance requirements of 33 CFR part 155 and 46 CFR part 32, unless specifically instructed otherwise by the cognizant Officer in Charge of Marine Inspection (OCMI). Since permissively manned barges operate under provisional authority of the OCMI, these requirements should apply on a case by case basis.

Dual certificated barges. Certain tank barges may be certificated or load lined for both manned and unmanned voyages. As such, they may already be equipped with an anchoring system. However, owners/operators may not rely on the anchor system whenever the barge sails on an unmanned voyage (because it would require a tug-to-barge personnel transfer to operate the system). For such voyages, the towing vessel and barge will have to be equipped with the emergency retrieval system.

Fire Suppression

46 CFR Part 25

The Coast Guard proposes to revise table 25.30–10(c) in 46 CFR section 25.30–10(c) to add a listing for B–V semi-portable extinguishers. The capacities proposed for the new B–V entry are consistent with the values used in other subchapters and currently available approved equipment. This modification is necessary because of the proposed requirement in part 27 for B–V extinguishers on vessels 24 meters or *longer* in length.

46 CFR Part 27

Except as otherwise noted, each of the proposed requirements in this part was recommended by TSAC.

If you are an owner of a commercial towing vessel, your vessel would be required to comply with requirements under a newly added part 27. However, your vessel must meet these requirements in addition to those found in other parts of Subchapter C for towing vessels.

The proposed requirements of this part minimize the possibility of a fire affecting the propulsion and navigation capability of your towing vessel. As a result of reducing the possibility of such fires, we expect a decrease in barge casualties.

We expect this reduction in fires that cause propulsion loss to be achieved by: (1) detecting fires while they are small and by providing means to immediately alert the crew; (2) providing means to extinguish or control small fires in a manner that avoids permanently disabling operation of the propulsion machinery; and (3) conducting training to ensure that personnel are prepared to engage in fire fighting operations. Additionally, if your towing vessel is new, we expect the proposed requirements to decrease the possibility of fuel system fires starting in the engine room.

Most of the provisions proposed in part 27 address fire fighting equipment and measures. However, we recognize fire prevention is more important than fire fighting and suppression. Proper housekeeping and maintenance on your vessel, especially in the engine room, can help prevent many fires from starting. You can find guidance on this issue in the "Responsible Carrier Program" from the American Waterway's Operators under its partnership with the Coast Guard.

The Coast Guard has decided to apply this proposed rule to two separate categories of towing vessels. One category is for existing vessels and another category is for new vessels. We intend for this two-tier approach to achieve the goals mandated by Congress, while giving consideration to the practicality, appropriateness, or cost effectiveness of installing certain equipment on existing or small vessels (i.e. those *less* than 24 meters (79 feet)). The 24 meter (79 feet) breakpoint was proposed by TSAC and corresponds to a breakpoint used to differentiate between "small" and "large" vessels in the commercial fishing industry vessel regulations contained in part 28.

Section 27.100. The proposed applicability of this part is similar to that used in 33 CFR part 164 concerning navigation safety equipment for towing vessels, except these rules apply to all towing vessels, regardless of length. Exceptions are similar to those found in 33 CFR part 164, including vessels that are used solely within a limited geographic area, are used only for assistance towing or pollution response, or are exempted by the OCMI.

Vessels which solely operate within a limited geographic area were exempted from the requirements of these rules. The intent of the Authorization Act could be interpreted as applying to vessels which only operate in a limited geographic area. However, the Coast Guard believes that the risk of a vessel which only operates in a limited geographic area losing control of a barge is low enough that it is not necessary to require fire suppression measures. These vessels would be close enough to shore or pier facilities that they could reasonably be expected to control barges long enough in the event of a fire on the towing vessel to avoid grounding the barge. Also, many of these limited geographic areas such as fleeting or industrial facilities have multiple towing vessels operating in a small area; in the event of a fire on a towing vessel, another vessel could quickly render assistance.

Five definitions are proposed in § 27.101.

We propose to apply the definition of towing vessel, as used in the navigation safety equipment rules in 33 CFR part 164, for this part.

Definitions for new and existing vessels are proposed to differentiate between application of the proposed rules to vessels the construction of which was contracted for *before* the applicability date of these rules and vessels contracted for *after* the applicability date of these rules. These definitions were derived from the definitions used for small passenger vessels in 46 CFR subchapter T. Contracting date was used instead of build date to ensure that vessel builders and designers are allowed the opportunity to familiarize themselves with the requirements of these rules prior to beginning construction.

For the purposes of this proposed rule, the Coast Guard provided a definition for the personal pronouns *you* and *we*. *You* is defined as the owner of a towing vessel. *We* is defined as the United States Coast Guard.

Sections 27.205 and 27.305. We are proposing that you must ensure a general alarm system is installed on your new vessel or on your existing vessel within two years of the effective date of these rules. This requirement would apply to all towing vessels, regardless of length. A general alarm provides a means of quickly alerting all persons on board of a fire so they can take appropriate suppression actions. An option for audible or visual alarms is proposed for existing vessels to allow for the continued use of existing systems, although visual alarms are required in high ambient noise areas, even if audible alarms were already installed. However, both audible and visual alarms are proposed for new vessels to ensure that the alarm would be sensed if a person can't hear audible alarms (e.g., is wearing headphones outside the machinery space) or can't see visual alarms (e.g., is sleeping, looking elsewhere.)

The proposed requirements were derived from the TSAC recommendations and the requirements in the commercial fishing industry regulations contained in 46 CFR section 28.240.

Sections 27.210 and 27.310. We are proposing that you ensure a fire detection system is installed in the engine room on new vessels; and within two years of the effective date of these regulations on existing vessels. The fire detection system provides a means of detecting a fire in the early stages. TSAC did not recommend standards for the fire detection system. The proposed requirements are based on those contained in 46 CFR section 76.27, although they have been modified to allow for heat or smoke detection and to account for differences between passenger vessels and towing vessels. TSAC recommended continuous manning be permitted as an alternative to the requirement for heat or smoke detectors. However, we have determined that reliance on human beings to detect a fire is not as effective as an automated system, people could be on rounds, asleep, or otherwise occupied and not notice the smoke or fire.

Sections 27.215 and 27.315. We are proposing that you ensure a communication system is installed on your new vessel or within two years of the effective date of these regulations on your existing vessel. The communications system enables communication between the engine room and the wheel house. On your existing towing vessel, the communication system can be either fixed or portable; however, if your towing vessel is new, the communications system must be a permanent installation. Some small vessels may only have an unattended engine compartment and no occupied spaces other than the wheel house, and would not be required to comply with this section. TSAC did not recommend standards for the communications system, so the proposed requirements were derived from 46 CFR section 113.30.

Sections 27.220, 27.221, 27.320 and 27.321. We are proposing that you ensure fire pump and fire main systems are installed on your vessel. Fire pump and fire main systems are proposed to augment the capability to suppress small fires in the engine room before they jeopardize propulsion capability. Differing requirements are proposed for existing and new towing vessels, as well as vessels 24 meters (79 feet) or *longer* in length and those that are *less* than 24 meters (79 feet) in length. This differentiation recognizes the space limitations and the difficulty installing equipment on smaller existing vessels.

For new and existing vessels 24 meters (79 feet) or *longer* in length, a fixed fire pump and fire main system are proposed. You must ensure the fire pump and fire main system are capable of delivering two streams of water at a flow of 300 liters per minute (80 gpm) and 344 kPa (50 psi) pressure. If your vessel is new, the fire pump must be independent of the bilge and ballast system. This difference accounts for the difficulty of installing a new pump on existing vessels.

Although TSAC recommended requiring a fixed fire pump and fire main system on new vessels and within two years on existing vessels of this length, they did not recommend a performance standard for the system. Therefore, the proposed performance is based on the requirements contained in 46 CFR section 28.315 for commercial fishing industry vessels of similar size.

If your *new* vessel is *less* than 24 meters (79 feet) in length, a fixed or portable fire pump is required. If your *existing* vessel is *less* than 24 meters (79 feet) in length, you must ensure a fixed or portable fire pump is installed within two years. Since the recommendation from TSAC did not contain performance requirements, the proposed performance requirements are based on those contained in 46 CFR section 181.300 pertaining to small passenger vessels of a similar length.

Sections 27.225, 27.325, and 27.326. We are proposing that you ensure that additional portable or semi-portable fire extinguishers are installed on your new vessel, or on your existing vessel within two years after the effective date of these regulations. Differing requirements are

proposed for vessels 24 meters (79 feet) or *longer* in length and those that are *less* than 24 meters (79 feet) in length. We intend for these extinguishers to suppress a fire in the engine room prior to the fire jeopardizing propulsion or navigation capability.

For vessels 24 meters (79 feet) or *longer* in length, a B–V semi-portable fire extinguisher is proposed. For vessels *less* than 24 meters (79 feet) in length, a B–III semi-portable extinguisher is proposed.

An option for a fixed extinguishing system is proposed as an alternative on existing vessels. If you previously installed a fixed system that meets the requirements of 46 CFR section 76.15, you will not be required to install additional equipment. This option is also available on new vessels *less* than 24 meters (79 feet) in length. However, a fixed extinguishing system is proposed as a requirement for new vessels 24 meters (79 feet) or *longer* in length.

Sections 27.230 and 27.340(f). We propose requiring the installation of a remote engine shutdown or fuel shutoff for existing vessels within two years of the effective date of these regulations. We propose requiring the installation of a remote fuel shutoff for new vessels. A fuel shutoff or an engine shutdown is proposed for controlling a fire within the engine room to prevent permanent loss of propulsion capability. A fuel shutoff is the preferred installation because the flow of fuel into the engine room is stopped in the event of a fire. However, an engine shutoff is also acceptable for existing vessels in recognition of fuel piping arrangements that make installing a fuel shutoff valve impractical.

Section 27.340. We are proposing fuel system standards for new vessels. These requirements are not applicable to existing vessels because of the possible difficulty in applying these standards to existing installations.

An analysis we conducted on towing vessel casualties occurring between 1992 and 1995 indicated that approximately 40 percent of all towing vessel fires involve a fuel system failure. By applying minimum standards to the fuel systems on towing vessels, the number of fires should decrease. The proposed rules are based on the requirements contained in 46 CFR section 28.335 for commercial fishing industry vessels.

Portable fuel systems would be prohibited, except where used for portable bilge pumps or outboard engines. This prohibition would not apply to fuel tanks which are permanently attached to portable equipment, such as portable fire pumps. Portable fuel tanks are proposed to be prohibited to eliminate potential fuel spills resulting from tanks being knocked over, fuel lines severed or worn, etc. Where used, portable fuel tanks would be required to meet the requirements of American Boat and Yacht Council (ABYC) H–25, "Portable Fuel Systems and Portable Containers for Flammable Liquids."

Fuel restrictions are proposed to lower the fire and explosion hazard in machinery spaces by limiting fuels used to those which have a high flash point. Since Bunker C is often heated to lower its viscosity and make it easier to pump, installations would be required to meet subchapter F. Other fuels, for example compressed natural gas, could be used where accepted by Commandant (G–MSE).

Vent pipe requirements are proposed to prevent overpressurization during filling.

Fuel piping is proposed to be required to be at least 0.9 millimeters (0.035 inches) in thickness, seamless, and constructed of steel, annealed copper, copper-nickel, or nickel-copper. Aluminum piping, with its relatively low melting point, would be permitted outside of machinery spaces. Also, flexible piping would be permitted in short lengths to provide flexibility in fuel lines, for example where a fuel line connects to an engine. These requirements are proposed to ensure piping is relatively robust.

Instead of the fuel piping requirements of this section, vessels which are less than 24 meters in length would be permitted to meet either ABYC H–33, "Diesel Fuel Systems", chapter 5 of National Fire Protection Association (NFPA) 302, "Pleasure and Commercial Motor Craft" or 33 CFR Subchapter S, "Boating Safety", since the requirements of these standards are appropriate for smaller vessels.

Section 27.230 and 27.345. We are proposing that you ensure a fire axe is on board your new vessel, or is on board your existing vessel within 90 days after the effective date of this regulation. The fire axe should speed up entry into enclosed spaces for fire fighting efforts.

Section 27.240 and 27.350. We are proposing that you ensure a muster list is developed within 90 days of the effective date of this regulation. The requirement for a muster list addresses the human element in marine casualties by identifying crew responsibilities and fire fighting procedures before a fire emergency. By identifying responsibilities and procedures before a fire emergency, the crew should be more efficient and timely in initiating fire fighting efforts. This increased efficiency should increase the likelihood that a small fire can be suppressed before propulsion and navigation capabilities are jeopardized.

You must ensure that the fire and emergency signal and the fire fighting responsibilities of all personnel are included on the muster list.

The requirement for a muster list was recommended by TSAC; however, the recommendation did not contain specific criteria for the muster list. The proposed criteria for the muster list are derived from those found in the commercial fishing industry vessel regulations in 46 CFR section 28.270.

Section 27.245 and 27.355. We are proposing that you ensure instruction, drills, and safety orientations are conducted in accordance with these sections. The towing vessel master or person-in-charge, or other qualified person may actually conduct the training mentioned above. These requirements should improve fire fighting capabilities of the vessel crew by ensuring they are prepared for fire emergencies. Increased efficiency will improve the chances of suppressing small fires before propulsion and navigation capabilities are endangered.

We are proposing that you ensure all drills and instruction are conducted at least once a month. In addition to ensuring that fire fighting evolutions are regularly practiced and equipment is regularly used, the proposed requirements will ensure training covers the contents of the muster list.

The proposed instruction requirement could be met in conjunction with drills or by other means, such as viewing videotapes. If the instruction is given during the course of a drill, it could cover one of the drilled topics in depth, such as fighting fires involving propulsion machinery, use of fire extinguishers, use of the fire main, etc. Also, the instruction could be given in conjunction with other company functions such as picnics, dinners, etc.

The recommendations of TSAC refer to the Navigation and Vessel Inspection Circular 6–91, containing international guidelines. However, towing vessels more closely resemble fishing industry vessels than vessels which travel internationally. Therefore, the proposed requirements are based on the requirements for commercial fishing industry vessels contained in 46 CFR section 28.270.

Enforcement of the requirements proposed in Part 27. Towing vessels are typically uninspected. No new inspection program is proposed for these vessels. Compliance with these rules will be the responsibility of vessel owners, and would only be spotchecked by the Coast Guard during vessel boardings.

Support for Emergency Control Systems

TSAC Recommendations

As required by the Authorization Act, we developed our regulations in consultation with TSAC. They agreed that the most appropriate way to address the problem of barges and tugs separating during transit is to consider methods that prevent the separation from occurring, and should separation occur, actions that might be taken to prevent the barge from drifting ashore. They noted that the key link between the tug and the barge is the tow line. To prevent the units from separating, tow wire maintenance and voyage planning analysis must be factored into every voyage. We have already given guidance for tow wire maintenance in the Navigation and Vessel Inspection Circular (NVIC) 5–92, entitled Guidelines for Wire Rope Towing Hawsers. TSAC recommended that we provide guidance in the area of voyage planning through the development of another NVIC. For details of their recommendation, see the *voyage planning* section of this preamble. The suggested NVIC will be developed in conjunction with this rulemaking.

TSAC also recommended that regulatory measures require two of three response measures for unmanned barges:

(1) An operable anchor system on the barge that should:

(a) Be of appropriate size for the barge;

(b) Be deployed at least once per quarter;

(c) Have a functioning means for releasing the anchor that does not endanger operating personnel; and

(d) Be inspected prior to getting underway. This inspection should ensure that all devices required to release and drop the anchor are operational;

(2) Each tug should carry a backup towline/hawser onboard, sized for the bollard pull of the towing vessel, that can be readily deployed with the barge's emergency towline; and

(3) Each tug should carry a backup towline/hawser onboard, sized for the bollard pull of the towing vessel, that can be readily deployed with the hook retrieval device.

As explained previously in this preamble, the Coast Guard proposes to require only one of three response measures for tank vessels as mandated by the Authorization Act.

TSAC also provided their recommendations to the Regional Risk Assessment Team (RRAT), in New England, that formed to provide safety recommendations following the grounding and oil spill of the tank barge NORTH CAPE on January 19, 1996, off Moonstone Beach on the Rhode Island coast.

Regional Risk Assessment Team

The Regional Risk Assessment Team, composed of representatives from the public and private sectors, developed recommendations for the First Coast Guard District. They provided these recommendations to the Assistant Commandant for Marine Safety and Environmental Protection on June 19, 1997, with the intent that the recommendations be used when drafting these rules. The Coast Guard considered both the statutory mandate and the recommendations from TSAC and the RRAT in developing these rules.

Certain elements of the RRAT recommendation were excluded from the rule. One such recommendation included both an anchor and a retrieval system on a tank barge. The Authorization Act provided that one method or another may be used and the Coast Guard decided that requiring both an anchor and a retrieval system would impose unwarranted costs on the industry. Other sections of RRAT either are or have been addressed in other rulemakings or exceeded the scope of the rulemaking. The RRAT report is available in the docket for this rulemaking.

Voyage Planning Analysis

We request comments on principles of voyage planning for development of a NVIC. As stated in the recommendation of TSAC, voyage planning is an essential element of prevention and has the potential to interrupt the accident chain at its earliest links.

TSAC recommended that voyage planning analysis should include the following:

(1) Companies should have documented policies and procedures in place to address decision making criteria related to risk and route analysis of voyages. Company management should ensure that the following items have been considered:

(a) Current and long range (72 hour where available) weather forecasts;

(b) "Stay at sea vs. Come in to harbor" policy decisions under adverse weather and sea conditions (this should include consideration of crew experience and training); and

(c) Equipment size, suitability, special equipment needs, and manning under given weather conditions.

(2) Companies should establish a culture evidenced by formally conveyed, documented policies and procedures stressing that safe transit of people and equipment is paramount and takes precedence over meeting schedules and financial considerations. Management should ensure these policies permeate operations via personnel training and management support.

The RRAT specified the minimum contents of a voyage plan to include:

(1) type and volume of cargo transported;

(2) navigation charts for the intended route, applicable extracts from publications including Coast Pilot, Coast Guard Light List, and Coast Guard Local Notice to Mariners for the area;

(3) applicable current and forecasted weather conditions for the duration of the voyage including visibility, wind, and sea state;

(4) extracts from tide and tidal current tables;

(5) forward and aft drafts for the tank barge;

(6) under-keel and air clearances for the port and/or berthing area;

(7) pre-departure checklists to ensure that the vessel is ready for the voyage;

(8) intended speed and estimated time of arrival at the anticipated waypoints;

(9) communication contacts at Vessel Traffic Service, bridges, facilities and VHF requirements specified to the port; and

(10) master's standing orders for closest points of approach, special conditions, and critical maneuvers.

Safety Analysis

Risk is a function of the consequence of an event and the likelihood of that event's occurrence. Safety measures aimed at reducing high risk events can be grouped as either prevention or response. Preventive measures interrupt the accident chain early in the sequence of events, usually when the likelihood of an undesired consequence is low. Response measures reduce undesired consequences when the likelihood of an incident becomes high or once the incident has occurred. Risk analysis tools help determine the appropriate measures that should be used in given scenarios.

In each scenario, the failure mode is a barge running aground. The undesired consequences are potentially serious injury to personnel, environmental damage from spilled cargo, and economic costs resulting from damage to vessels and equipment.

Three possible incident scenarios were considered. They were developed assuming a fully loaded barge, since this

is the highest consequence condition. These scenarios occur under reasonably foreseeable sea conditions. The first two scenarios occur late in the accident chain when the likelihood of an incident is high. This limits the analysis to response measures.

The first scenario involves a barge intentionally separated under developing emergency conditions. The intentional separation may allow the towing vessel to slow and take the way from the barge before releasing control. Under these conditions, a crew member on board the barge can deploy a conventional anchor to keep the barge from drifting into shore and grounding.

The second scenario results when a towing vessel loses control of a barge because of a ruptured tow line or tow wire. The loss of control is unintentional and immediate and will result in run-away conditions for the barge. A towing vessel with a retrieval system able to regain control of the barge is the safest response measure for these conditions. A conventional anchor is not capable of stopping a barge with appreciable momentum. Deployment will probably result in damage to the vessel and increase the likelihood of injury to the crew or damage to the environment. However, the presence of a crew member on the barge may facilitate the use of other means to regain control of the barge.

The last scenario involves a disabled towing vessel that has lost control of an unmanned barge. These conditions are similar to those experienced in the NORTH CAPE incident. In this case, only outside assistance can mitigate the consequences. Preventive measures taken by the towing vessel to avoid this scenario are the only reasonable alternative. The fire prevention measures in this rule address one of the most likely events which will disable a towing vessel underway. Vessel owners are cautioned that fires are not the only failure mode which can disable the vessel. Vessels towing unmanned barges should take all reasonable precautions to avoid finding themselves in such circumstances.

Incorporation by Reference

Material that would be incorporated by reference is noted as follows: ABYC H–25 in § 27.340(b); and, ABYC H–33 and Chapter 5 of NFPA 302 in § 27.340(g). The material is available for inspection where indicated under **ADDRESSES**. Copies of the material are available from: ABYC, 3069 Solomon's Island Road, Edgewater, Maryland 21037; and, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269.

Before publishing a binding rule, the Coast Guard will submit this material to the Director of the **Federal Register** for approval of the incorporation by reference.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the Evaluation follows:

Summary of Benefits

The principal benefits of this proposed rule are reduced environmental damage and human casualties and environmental damage caused by tank barge groundings resulting from a loss of propulsion or tow line rupturings between a towing vessel and a tank barge. The quantifiable benefits will accrue in the following areas: avoided vessel and property damage, avoided injuries, avoided deaths and missing persons, and avoided pollution. We realize the measures of the proposed rule will not prevent all pollution, injuries, and damage. Reality dictates that human error and environmental conditions will result in future casualties, regardless of the new regulations. Further, much of the required equipment is reactive, not preventative, in nature and will not eliminate fires or breakaways altogether. Therefore, an effectiveness range of avoided costs (benefits) was determined for both fire protection and emergency control systems.

Using Coast Guard Marine Safety Management System database information from the last 5 years, casualty information was reviewed for the 172 cases indicating that fires broke out on towing vessels. The casualty information was also reviewed for the 22 cases indicating a towing wire rupture, which led to a break away tank barge. The estimated benefit for each measure was calculated by reviewing the casualty report and assessing if the casualty could have been prevented through the proposed equipment. The actual amounts of oil spilled, the number of deaths and injuries, and the actual dollar amount of damage done to the vessel, pier, or other structures were tabulated.

The assessment indicated that over the 17 year period of the analysis (1997 dollars), the fire suppression requirements will result in benefits in an effectiveness range of $45.4 million to $68.2 million in avoided vessel and property damage; an effectiveness range of $5.3 million to $7.9 million in avoided injuries; an effectiveness range of $2.6 million to $4.0 million in avoided deaths and missing persons; and an effectiveness range of 811,736 to 1.2 million gallons of unspilled oil. During the period of time preceding the phaseout of single hull tank vessels (4115 (a) of OPA 90), the emergency control system requirements will result in benefits in a range of $190,301 to $285,452 in avoided vessel and property damage (1997 dollars); and a range of 11,529 to 17,293 gallons of unspilled oil.

There are other societal benefits. For example, it is impossible to statistically quantify or assess a dollar value for the preservation of the environment's integrity. Although these benefits are significant, we cannot quantify them from the available data.

If the new equipment is effective on the low end of the range, the total benefits are $53.6 million for avoided vessel and property damage, injuries, deaths, and missing persons and 823,146 gallons (20,582 barrels) of unspilled oil; if the equipment is effective on the high end of the range, the total benefits are $80.4 million for avoided vessel and property damage, injuries, deaths, and missing persons and 1.3 million gallons (30,872 barrels) of unspilled oil.

Summary of Costs

The present value of the one-time costs to the towing and barge industries of installing the required fire suppression and anchoring equipment is just over $19 million. This estimate is based on Coast Guard research, as well as a TSAC questionnaire that identified the proportion of vessels without the necessary equipment installed.

On average, if you own a towing vessel *less* than 24 meters (79 feet) in length, you will incur a cost of $2,300 to install the equipment. If you own a vessel 24 meters (79 feet) or longer in length, you will incur an installation cost of $3,500. These anticipated costs recognize that most of the proposed requirements of this rulemaking are presently installed on most towing vessels. For vessels which do not have any of the equipment proposed by this rulemaking, the costs for a towing vessel which is *less* than 24 meters in length would be approximately $11,000, and the cost for a vessel which is 24 meters (79 feet) or *longer* in length would be approximately $21,000.

These costs assume that the vessel crew conducts a ½ hour annual inspection of the detection system, engine shutdown, and fire pump/fire main system. These costs assume no maintenance will be required in conjunction with these annual inspections, which would be expected if quality equipment is used and properly installed, which the estimated installation costs reflect. No recurring costs were calculated for the general alarm, communications system, fire axe, station bill, or fire drills and training.

No costs are anticipated for these requirements expected since theyse are either expected to be equipment typically used on a regular basis, items that normally do not expected to need maintenance, or, in the case of fire drills and training, be activities conducted during the course of normal activities operations. Also, these costs assume that a professional servicing firm is contracted annually to inspect, test, and maintain the fire extinguishers or fire extinguishing system, whichever is installed.

If your vessel is one of the few not currently meeting one of the anchoring or retrieval requirements, you will incur installation costs estimated at $5,000. In the following years, there will be a reoccurring annual maintenance, inspection, and repair costs of $55.00 per vessel (1997 dollars).

The total costs of this program are the combination of the industry and governmental costs. The total present cost of this program (1997 dollars) is $26.0 million ($19.4 million initial industry cost + $5.5 million reoccurring industry costs + $1.1 million government costs). Spread out over the 17 years of this rule analysis, the annual costs are $1.5 million in 1997 dollars.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. Under sections 202 and 205 of the UMRA, the Coast Guard generally must prepare a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate," is a new or additional enforceable duty, imposed on any State, local or tribal government, or the private sector. If any Federal mandate causes those entities, to spend, in the aggregate, $100 million or more in any one year the UMRA analysis is required.

This action does not impose Federal mandates on any State, local or tribal governments. This action does impose Federal mandates on the private sector. However, the requirements in this proposed action will not result in annual expenditures of $100 million or more. Therefore, sections 202 and 205 of the UMRA do not apply.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

An Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket for inspection or copying where indicated under **ADDRESSES**.

We are also proposing a two year phase in for most of the requirements. This will allow small entities to explore the market, plan and schedule installations during normal downtime periods, and would provide some flexibility and accommodation for those affected by the rulemaking.

Use of the proposed equipment is presently virtually a voluntary industry standard, and vessels without the equipment are the exception, not the norm. The costs of this proposal would consist of those incurred by the marginal operators to achieve compliance. If you have to purchase and install the equipment, the costs are low in comparison to the value of your towing vessel and the costs associated with damage caused by an accident and a resultant spill.

We certify that this proposed rulemaking will not result in a significant economic impact on a substantial number of small entities. There are exemptions for: certain yard and fleeting craft, pollution response towing vessels, and rescue and assistance towing vessels from this rulemaking. Furthermore, a large number of vessels are already in compliance, and we provided phase-in periods for several provisions.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 847), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Morgan J. Hurley, P.E., (Fire Protection) (202) 267–0172 or E-mail <mhurley@comdt.uscg.mil≤; LTJG Pat DeShon, (Emergency Control Systems) (202) 267–0864 or E-mail <pdeshon@comdt.uscg.mil>.

Collection of Information

The proposed rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As defined in 5 CFR section 1320.3(c), "collection of information" includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Towing Vessel Safety.

Summary of the Collection of Information: This proposal contains collection-of-information requirements in the following sections: 46 CFR sections 27.240 and 27.350.

OMB Control No.: 2115–0628.

Administration: U.S. Coast Guard.

Title: Navigation Safety Equipment for Towing Vessels.

Need for Information: Preparation of muster lists (station bills) are intended to provide both an effective plan for assigning vessel personnel stations and duties to perform in the event of an emergency and a quick visual reference which a crew member can view to find out where to go in emergency situations. To prepare and post these documents, an amendment to existing OMB Control No. 2115–0628 is required.

Burden of Response: It is estimated that masters or persons in charge of towing vessels will expend the following personnel hours to prepare and post muster lists:

- Review NVIC 7–82 (sample format of vessel station bill): ¼ hour
- Prepare a muster list and post it on the vessel: 2 hours

Number of Respondents: Masters or persons in charge of affected towing vessels operating in U.S. navigable waters.

Estimated Total Annual Burden: We estimate that the following annual hours are required to complete the recordkeeping required by this proposal:

- Towing vessels—3,300 hours to develop and post muster lists (we estimate only 20% of vessels affected do not presently have completed muster lists posted).
- Coast Guard—62 hours for check that muster lists are completed and posted on vessels as required (we estimate 10% of affected vessels checked annually).

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

The Coast Guard solicits public comment on the proposed collection of information to (1) Evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information would have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to comply, as by providing additional guidance in the preparation of muster lists or suggesting suitable alternatives.

Persons submitting comments on the collection of information should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES** by the date under **DATES**.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. Before the requirements for this collection of information become effective, the Coast Guard will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is the possibility that this rulemaking will result in federal regulations that preempt portions of state law on towing vessels and tank barges. For instance, on June 30, 1997, the State of Rhode Island enacted a State law entitled the "Oil Spill Pollution Prevention and Control Act." That Act promulgated the recommendations of the RRAT. The recommendations of the RRAT and the provisions of the Rhode Island State law cover areas that are addressed by the applicable provisions in the Coast Guard Authorization Act of 1996 or the measures in this proposed rule. Consequently, when these rules are published as final and go into effect, they may preempt certain provisions of the Rhode Island State law, or other State laws, that differ from or exceed Coast Guard regulations. A complete preemption analysis will be conducted in conjunction with publication of the Final Rule, which may reflect changes from this proposal because of comment by the public.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under paragraph 2.B.2.e.(34) (c) and (d) of Commandant Instruction M16475.lB, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 27

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 155, and 46 CFR parts 25 and 32, and to add 46 CFR part 27, as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 and the note following it are revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Sections 155.110–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 36, 150, 151, and 153.

2. Revise § 155.230 to read as follows:

§ 155.230 Emergency control systems for tank barges.

(a) *Application.* This section applies to tank barges and vessels towing them on the territorial sea, high seas [these waters are defined in part 2 of this chapter], or in Great Lakes service.

(b) *Safety program.* The vessels described in paragraph (a) of this section must use at least one of the three following response measures:

(1) *Measure 1.* Barges may be manned and equipped with an operable anchor system as required by 46 CFR 32.15–15. Because the anchoring system is also to be used as the emergency control system, the owner of the vessel towing a manned barge must ensure that—

(i) *Operation and performance.* The anchor is ready to be deployed by one person within a reasonable response time and that the operator of the anchoring system confers with the vessel master regarding appropriate length of chain to be used.

(ii) *Maintenance and inspections.* Anchors, chains, and hawsers must be inspected at the time of class survey or inspection for certification. Scope of the inspection must include the *operation and performance* criteria described in paragraph (b)(1)(i) of this section.

(iii) *Training.* All barge crew members must be thoroughly familiar with the operation of the anchor.

(2) *Measure 2.* Vessels described in paragraph (a) may use an emergency retrieval system that includes—

(i) *Design.* An emergency tow wire or tow line with the same towing characteristics as the primary tow wire or tow line. The emergency tow wire or tow line must be available on either the barge or the vessel towing it. In addition, equipment to regain control of the barge and continue towing (using the emergency tow wire or tow line) without having to place personnel on the barge must be available on the towing vessel.

(ii) *Operation and performance.* A stowage arrangement that ensures the emergency tow wire or tow line is ready for immediate use in an emergency, and all retrieval equipment is readily available throughout the voyage.

(iii) *Maintenance and inspection.* The emergency towing and retrieval system must be inspected annually or at the time of class survey or inspection for certification. The inspection must test the availability of the retrieval system and verify maintenance of the emergency tow wire or tow line.

(iv) *Training.* Towing vessel masters shall conduct a retrieval drill annually. Drills must include actual operation of retrieval systems but should be conducted so as to minimize risk to personnel and the environment.

(3) *Measure 3.* Vessels described in paragraph (a) that do not meet the requirements of paragraphs (b)(1) or (b)(2) must use another measure, system, or combination of measures, approved by the Commandant (G-MSE), that provides protection against grounding of the tank vessel comparable to that provided by the systems and measures described in paragraphs (b)(1) or (b)(2).

46 CFR PART 25—REQUIREMENTS

3. The authority citation for part 25 is revised to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4102, 4302; 49 CFR 1.46.

4. In § 25.30–10, revise paragraph (c) and Table 25.30–10(c) to read as follows:

§ 25.30–10 Hand portable fire extinguishers and semiportable fire extinguishing systems.

* * * * *

(c) The number designations for size start with "I" for the smallest to "V" for the largest. Sizes I and II are considered hand portable fire extinguishers and sizes III and V are considered semi-portable fire extinguishing systems, which must be fitted with suitable hose and nozzle or other practical means so that all portions of the space concerned may be covered. Examples of the size graduations for some of the typical hand portable fire extinguishers and semi-portable fire extinguishing systems are set forth in this table.

TABLE 25.30–10(C)

Classification	Foam, liters (gallons)	Carbon dioxide, kilograms (pounds)	Dry chemical, kilograms (pounds)
B–I	6.5 (1¾)	2 (4)	1 (2)
B–II	9.5 (2½)	7 (15)	4.5 (10)
B–III	45 (12)	16 (35)	9 (20)
B–V	150 (40)	45 (100)	23 (50)

5. Add part 27, consisting of §§ 27.100 through 27.355, to read as follows:

PART 27—TOWING VESSELS

Subpart A—General Provisions for Fire Protection on Towing Vessels

Sec.

27.100 What towing vessels are affected by this part?
27.101 Definitions.

Subpart B—If the Construction of a Towing Vessel Was Contracted Before [Date 90 Days After the Effective Date of the Final Rule], What Are the Required Fire Suppression Measures?

27.200 What are the requirements for an existing towing vessel?
27.205 What are the general alarm system requirements for an existing towing vessel?
27.210 What are the fire detection requirements for an existing towing vessel?
27.215 What are the internal communication requirements for an existing towing vessel?
27.220 If an existing towing vessel is 24 meters (79 feet) or *longer* in length, what are the fire pump, fire main, and fire hose requirements?
27.221 If an existing towing vessel is *less* than 24 meters (79 feet) in length, what are the fire pump and fire hose requirements?
27.225 What type of portable fire extinguishers are required on an existing towing vessel, in addition to the requirements of 46 CFR subpart 25.30?
27.230 What are the remote engine shutdown or fuel shutoff requirements for an existing towing vessel?
27.235 Is a fire axe required on an existing towing vessel?
27.240 What are the muster list requirements on an existing towing vessel?
27.245 What are the requirements for the instruction, drills, and safety orientations conducted on an existing towing vessel?

Subpart C—If the Construction of a Towing Vessel Was Contracted After [Date 90 days from After the Effective Date of the Final Rule], What are the Required Fire Suppression Measures?

27.300 What are the requirements for a new towing vessel?
27.305 What are the general alarm system requirements for a new towing vessel?
27.310 What are the fire detection requirements for a new towing vessel?
27.315 What are the internal communication requirements a new towing vessel?
27.320 If a new towing vessel is 24 meters (79 feet) or *longer* in length, what are the fire pump, fire main, and fire hose requirements?
27.321 If a new towing vessel is *less* than 24 meters (79 feet) in length, what are the fire pump and fire hose requirements?
27.325 If a new towing vessel is 24 meters or *longer* in length, what type of fire extinguishing equipment is required, in eddition to the requirements of 46 CFR subpart 25.30?
27.326 If a new towing vessel is *less* than 24 meters in length, what type of fire extinguishing equipment is required, in addition to the requirements of 46 CFR subpart 25.30?
27.340 What are the fuel system requirements for a new towing vessel?
27.345 Is a fire axe required on a new towing vessel?
27.350 What are the muster list requirements on a new towing vessel?
27.355 What are the requirements for the instruction, drills, and safety orientations conducted on e new towing vessel?

Authority: (46 U.S.C. 3306, 4102) Pub. L. 104–324, 110 Stat. 3901; 49 CFR 1.46.

Subpart A—General Provisions for Fire Protection on Towing Vessels

§ 27.100 What towing vessels are affected by this part?

(a) You must comply with this part if your towing vessel operates on the navigable waters of the United States, unless your towing vessel is described in paragraph (b) of this section.

(b) This part does not apply to you if your towing vessel is—

(1) Used solely within a limited geographic area, such as a fleeting-area for barges or a commercial facility, and used solely for restricted service, such as making up or breaking up larger tows;

(2) Used solely for assistance towing as defined by 46 CFR 10.103;

(3) Used solely for pollution response; or,

(4) Exempted by the Captain of the Port (COTP). If you think your towing

vessel should be exempt from these requirements for a specified route, you should submit a written request to the appropriate COTP. The COTP will provide you with a written response granting or denying your exemption. The COTP will consider the extent of unsafe conditions that would result if your towing vessel lost propulsion as a result of an engine room fire.

§ 27.101 Definitions.

As used in this part—

Existing vessel means a towing vessel that is not a new towing vessel.

New vessel means a towing vessel the initial construction of which was contracted for on or after [date 90 days from after the effective date of the final rule.]

Towing vessel means a commercial vessel engaged in, or intending to engage in, pulling, pushing, or hauling alongside, or any combination of pulling, pushing, or hauling alongside.

We means the United States Coast Guard.

You means the owner of a towing vessel, unless otherwise specified.

Subpart B—If the construction of a towing vessel was contracted before [date 90 days after from the effective date of the final rule], what are the required fire suppression measures?

§ 27.200 What are the requirements for an existing towing vessel?

You must ensure your towing vessel described in § 27.100(a) complies with §§ 27.205 through 27.245.

§ 27.205 What are the general alarm system requirements for an existing towing vessel?

(a) By [date 2 years after the effective date of the final rule], you must ensure your towing vessel is fitted with an audible or visual general alarm system that—

(1) Has a contact-maker at the operating station that can notify persons on board in the event of an emergency.

(2) Is capable of notifying persons in any accommodation or work space.

(3) In a work space where background noise makes a general alarm system hard to hear, has a flashing red light that is identified with a sign that reads:

(i) Attention.

(ii) General Alarm—When Alarm Sounds or This Light Flashes Go to Your Station.

(4) Is tested at least once each week.

(b) You may use a public address system or other means of alerting all persons on your towing vessel instead of a general alarm system, provided the equipment is capable of notifying persons in any accommodation or work space or the engine room, is tested at least once each week, and can be activated from the pilot house.

§ 27.210 What are the fire detection requirements for an existing towing vessel?

By [date 2 years after the effective date of the final rule], a fire detection system must be installed on your existing towing vessel to protect the engine room. You must ensure that—

(a) The detectors are located on the overhead in the engine room and that they are suitably protected, if they can be physically damaged.

(b) All points on the engine room overhead are within 3 meters (10 feet) of a detector.

(c) The system is arranged and installed so a fire in the engine room automatically alarms visibly and audibly in the pilot house.

(d) Detectors, detecting cabinets, and alarms are approved under 46 CFR 161.002.

(e) Heat detectors are rated between 57 and 74 degrees Celsius (135 and 165 degrees Fahrenheit). In spaces where a high ambient temperature may be expected, detectors must be rated between 74 and 107 degrees Celsius (165 and 225 degrees Fahrenheit).

(f) The fire detection system is used for no other purpose.

§ 27.215 What are the internal communication requirements for an existing towing vessel?

By [date 2 years after the effective date of the final rule], you must ensure your existing towing vessel is fitted with a communication system between the engine room and wheel house that—

(a) Is comprised of either fixed or portable equipment, such as a sound-powered telephone or other reliable voice communication method, that is independent of the electrical system on your towing vessel; and

(b) Provides two-way voice communication and calling between the pilot house and either—

(1) The engine room, or

(2) A location immediately adjacent to an exit from the engine room.

§ 27.220 If an existing towing vessel is 24 meters (79 feet) or longer in length, what are the fire pump, fire main, and fire hose requirements?

By date 2 years after the effective date of the final rule], you must ensure a self priming, power driven, fixed fire pump and fire main are installed on your existing towing vessel as follows:

(a) The fire pump must be capable of—

(1) Delivering water simultaneously from the two highest hydrants, or from both branches of the fitting if the highest hydrant has a Siamese fitting, at a pitot tube pressure of at least 344 kPa (50 psi) and a flow rate of at least 300 liters per minute (80 gpm).

(2) Being energized from the operating station and from the pump.

(b) The fire main must have a sufficient number of fire hydrants to reach any part of the machinery space using a single length of fire hose.

(c) A fire hose on your towing vessel must be—

(1) Connected to each fire hydrant at all times the vessel is operating.

(2) Lined commercial fire hose at least 40mm (1½ inches) in diameter, 15 meters (50 feet) in length and fitted with a nozzle made of corrosion-resistant material capable of providing a solid stream and a spray pattern.

§ 27.221 If an existing towing vessel is less than 24 meters (79 feet) in length, what are the fire pump and fire hose requirements?

By [date 2 years after the effective date of the final rule], you must ensure a fire pump and hose are installed on your existing towing vessel as follows:

(a) Your towing vessel must have a self-priming, power-driven, fixed or portable fire pump that has—

(1) A minimum capacity of 189 liters (50 gallons) per minute at a pitot tube pressure of not less than 414 kPa (60 psi), as measured at the pump discharge,

(2) A hydrant with a sufficient amount of hose attached, or if using a portable pump, a sufficient amount of hose immediately available to attach to the pump, so that a stream of water from the fire pump and hose will reach any part of the vessel, and

(3) An attached hose must be at least 16 millimeters (⅝ inch) nominal diameter, of good commercial grade and fitted with a nozzle of corrosion-resistant material capable of providing a solid stream and a spray pattern.

(b) You must stow the fire pump and hose outside of the machinery space.

§ 27.225 What type of portable fire extinguishers are required on an existing towing vessel, in addition to the requirements of 46 CFR subpart 25.30.30?

By [date 2 years after the effective date of the final rule], you must have portable fire extinguishers on your existing towing vessel as follows:

(a) If your vessel is 24 meters (79 feet) or longer in length, you need an approved B–V semi-portable fire extinguisher.

(b) If your vessel is less than 24 meters (79 feet) in length, you need an approved B-III portable fire extinguisher.

(c) You may use a fixed fire extinguishing system that satisfies 46 CFR subpart 76.15 instead of the extinguishers required by this section.

§ 27.230 What are the remote engine shutdown or fuel shutoff requirements for an existing towing vessel?

By [date 2 years after the effective date of the final rule], you must have a remote main engine shutdown or fuel shutoff valve installed on your vessel that is located outside of the machinery space.

§ 27.235 Is a fire axe required on a an existing towing vessel?

By [date 90 days after the effective date of the final rule], you must ensure a fire axe is on board your towing vessel.

§ 27.240 What are the muster list requirements on an existing towing vessel?

By [date 90 days after the effective date of the final rule], your existing towing vessel must have a muster list satisfying § 27.350.

§ 27.245 What are the requirements for the instruction, drills, and safety orientations conducted on an existing towing vessel?

You must ensure on-board drills and instruction comply with § 27.355.

Subpart C-If the Construction of a A Towing Vessel Was Contracted After [90 days from after the effective date of the final rule], What Are the Required Fire Suppression Measures?

§ 27.300 What are the requirements for a new towing vessel?

If this subpart applies to your towing vessel as described in § 27.100(a), then you must ensure your new towing vessel complies with §§ 27.300 through 27.355.

§ 27.305 What are the general alarm system requirements for a new towing vessel?

(a) You must ensure your new towing vessel is fitted with an audible and visual general alarm system that—

(1) Has a contact-maker at the operating station that can notify persons on board in the event of an emergency.

(2) Is capable of notifying persons in any accommodation or work space.

(3) Is tested before operation of the vessel and at least once each week thereafter.

(b) The system's general alarm bells must be—

(1) Fitted in accommodation spaces, work spaces, and the engine room, and

(2) Identified with a flashing red light and a sign with red lettering at least 13 millimeters (½ inch high) as follows:

(i) Attention.

(ii) General Alarm—When Alarm Sounds or This Light Flashes Go to Your Station.

(c) You may use a public address system or other means of alerting all persons on your towing vessel instead of a general alarm system, provided the equipment is capable of notifying persons in any accommodation or work space or the engine room, is tested at least once each week, and can be activated from the pilot house.

§ 27.310 What are the fire detection requirements for a new towing vessel?

A fire detection system must be installed on your new towing vessel to protect the engine room. You must ensure that—

(a) The detectors are located on the overhead in the engine room and that they are suitably protected if they can be physically damaged.

(b) All points on the engine room overhead are within 3 meters (10 feet) of a detector.

(c) The system is arranged and installed so a fire in the engine room is automatically alarmed visibly and audibly in the pilot house.

(d) Detectors, detecting cabinets, and alarms are approved under 46 CFR 161.002.

(e) Heat detectors are rated between 57 and 74 degrees Celsius (135 and 165 degrees Fahrenheit) except in spaces where a high ambient temperature may be expected, where detectors must be rated between 74 and 107 degrees Celsius (165 and 225 degrees Fahrenheit).

(f) The fire detection system is used for no other purpose.

§ 27.315 What are the internal communication requirements for a new towing vessel?

You must ensure your new towing vessel is fitted with a communication system between the engine room and wheel house that—

(a) Is permanently installed and uses a means of communication and calling such as a sound-powered telephone or other reliable voice communication method that is independent of the electrical system on your towing vessel; and

(b) Provides two-way voice communication and calling between the pilot house and either—

(1) The engine room, or

(2) A location immediately adjacent to an exit from the engine room.

§ 27.320 If a new towing vessel is 24 meters (79 feet) or longer in length, what are the fire pump, fire main, and fire hose requirements?

You must ensure a self priming, power driven, fixed fire pump and fire main are installed on your towing vessel as follows:

(a) The fire pump must be capable of—

(1) Delivering water simultaneously from the two highest hydrants, or from both branches of the fitting if the highest hydrant has a Siamese fitting, at a pitot tube pressure of at least 344 kPa (50 psi) and a flow rate of at least 300 liters per minute (80 gpm).

(2) Being energized from the operating station and from the pump.

(b) The fire main must have a sufficient number of fire hydrants to reach any part of the machinery space using a single length of fire hose.

(c) Each fire hose on your towing vessel must be—

(1) Connected to each fire hydrant at all times the vessel is operating.

(2) Lined commercial fire hose at least 40mm (1½ inches) in diameter, 15 meters (50 feet) in length and fitted with a nozzle made of corrosion-resistant material capable of providing a solid stream and a spray pattern.

(d) The fire pump and fire main must be independent of the bilge and ballast system.

§ 27.321 If a new towing vessel is less than 24 meters (79 feet) in length, what are the fire pump and fire hose requirements?

(a) Your new towing vessel must have a self-priming, power-driven, fixed or portable fire pump that has—

(1) A minimum capacity of 189 liters (50 gallon) per minute at a pitot tube pressure of not less than 414 kPa (60 psi) as measured at the pump discharge,

(2) A hydrant with sufficient amount of hose attached, or if using a portable pump, a sufficient amount of hose immediately available to attach to the pump, so that a stream of water from the fire pump and hose will reach any part of the vessel, and

(3) An attached hose of at least 16 millimeters (⅝ inch) nominal diameter, of good commercial grade, and fitted with a nozzle of corrosion-resistant material capable of providing a solid stream and a spray pattern.

(b) The fire pump and hose are stowed outside of the machinery space.

§ 27.325 If a new towing vessel is 24 meters or longer in length, what type of fire extinguishing equipment is required in addition to the requirements of 46 CFR subpart 25.30?

You must ensure the following additional fire extinguishing equipment is on board the vessel:

(a) An approved B–V semi portable fire extinguisher, or

(b) A fixed fire extinguishing system that satisfies 46 CFR 76.15.

§ 27.326 If a new towing vessel is less than 24 meters in length, what type of fire extinguishing equipment is required in addition to the requirements of 46 CFR subpart 25.30?

You must ensure an additional one of the following is on the new towing vessel:

(a) An approved B–III portable fire extinguisher, or

(b) A fixed extinguishing system that satisfies 46 CFR 76.15.

§ 27.340 What are the fuel system requirements for a new towing vessel?

(a) Except for the components of an outboard engine or portable bilge pump or fire pumps, you must ensure that each fuel system installed on board the vessel meets the requirements of this section.

(b) *Portable fuel systems.* Portable fuel systems, including portable tanks and related fuel lines and accessories, are prohibited on the vessel, except where used for outboard engines, or are permanently attached to portable equipment such as portable bilge or fire pumps. The design, construction, and stowage of portable tanks and related fuel lines and accessories must meet the requirements of ABYC H–25.

(c) *Fuel restrictions.* Except for outboard engines, or where otherwise accepted by the Commandant (G-MSE), you may not use fuel other than bunker C or diesel. An installation using bunker C must comply with the requirements of subchapter F of this chapter.

(d) *Vent pipes for integral fuel tanks.* Each integral fuel tank must meet the requirements of this paragraph as follows:

(1) Each fuel tank must be fitted with a vent pipe connected to the highest point of the tank terminating in a 3.14 radian (180 degree) bend on a weather deck and fitted with a 30 × 30 mesh flame screen.

(2) Except when provision is made to fill a tank under pressure, the net cross-sectional area of the vent pipe for a fuel tank must not be less than 312.3 square millimeters (0.484 square inches).

(3) When provision is made to fill a tank under pressure, the net cross-sectional area of the vent pipe must not be less than that of the fill pipe.

(e) *Fuel piping.* Except as permitted in paragraphs (e)(1) and (e)(2) of this section, each fuel line must be seamless and made of steel, annealed copper, nickel-copper, or copper-nickel. Each fuel line must have a wall thickness of not less than 0.9 millimeters (0.035 inch) except that:

(1) Aluminum piping is acceptable on an aluminum hull vessel provided it is installed outside the machinery space and is at least Schedule 80 in thickness; and

(2) Nonmetallic flexible hose is acceptable but must—

(i) Not be used in lengths of more than 0.82 meters (30 inches);

(ii) Be visible and easily accessible;

(iii) Must not penetrate a watertight bulkhead;

(iv) Be fabricated with an inner tube and a cover of synthetic rubber or other suitable material reinforced with wire braid.

(v) Be fitted with suitable, corrosion-resistant, compression fittings; and

(vi) Be installed with two clamps at each end of the hose, if designed for use with clamps. Clamps must not rely on spring tension and must be installed beyond the bead or flare or over the serrations of the mating spud, pipe, or hose fitting.

(f) A fuel line subject to internal head pressure from fuel in the tank must be fitted with a positive shutoff valve, located at the tank that is operable from a safe location outside the space in which the valve is located.

(g) New towing vessels less than 24 meters (79 feet) in length may comply with one of the following standards instead of the requirements of paragraphs (e) and (f) of this section.

(1) ABYC H–33.

(2) Chapter 5 of NFPA 302.

(3) 33 CFR Chapter I, subchapter S (Boating Safety).

§ 27.345 Is a fire axe required on a new towing vessel?

You must ensure a fire axe is on your new towing vessel.

§ 27.350 What are the muster list requirements on a new towing vessel?

You must ensure the new towing vessel has a muster list posted in conspicuous location accessible to the crew that, at a minimum, fulfills the requirements of this section. The muster list must identify at least the following information:

(a) The fire and emergency signal;

(b) Fire fighting responsibilities for each crew member such as—

(1) Mustering of personnel.

(2) Manning of fire parties.

(3) Special duties required for the operation of fire fighting equipment.

(4) Guidelines for fighting a fire, such as—

(i) Use portable fire extinguishers only for small fires.

(ii) Deenergize the electrical systems supplying the affected space, if possible.

(iii) Use water for fires involving ordinary combustible materials. Do not use water on electrical fires.

(iv) If unable to control an engine room fire using portable extinguishers, evacuate the space and activate the fixed extinguishing system, if installed.

(v) Maneuver the vessel to minimize the effect of wind on the fire.

(vi) Immediately notify the Coast Guard and other vessels in the vicinity.

§ 27.355 What are the requirements for instruction, drills, and safety orientations conducted on a new towing vessel?

(a) *Drills and instruction.* You must ensure that drills are conducted and instruction is given to each person on board at least once each month. Instruction may be provided in conjunction with drills or at other times and places, provided the instruction ensures that persons are familiar with their duties and their responses to at least the following contingencies:

(1) Fighting a fire in the engine room and other locations on board the vessel;

(2) Activating the general alarm;

(3) Reporting inoperative alarm systems and fire detection systems; and

(4) Putting on a fireman's outfit and a self-contained breathing apparatus, if the vessel is so equipped.

(b) *Participation in drills.* Drills must be conducted on board the towing vessel, as if there were an actual emergency. These drills must include:

(1) Participation by all persons on board,

(2) Breaking out and using emergency equipment,

(3) Testing of all alarm and detection systems, and

(4) Individuals putting on protective clothing, if the vessel is so equipped.

(c) *Training.* The instruction and drills conducted on your towing vessel, as required by this section, must be performed by an individual trained in the proper procedures for conducting the activity. Anyone licensed for operation of inspected vessels of 100 gross tons or more meets this requirement.

(d) You may substitute the requirement for instruction in paragraph (a) of this section by the viewing of videotapes concerning at least the contingencies listed in paragraph (a), followed by a discussion led by someone familiar with these contingencies. This instruction can may be conducted on or off the vessel. However, this does not satisfy the requirement for drills in paragraph (b) of this section or for the safety orientation in paragraph (e) of this section.

(e) *Safety orientation.* The master or person in charge of a vessel must ensure that a safety orientation is given to each person on board who has not received the instruction and has not participated in the drills required by paragraph (a) before the vessel may be operated.

(f) The safety orientation must explain the muster list required by § 27.350 and cover the specific evolutions listed in paragraph (a).

Note to § 27.355: The person conducting the drills and instruction need not be the master, person in charge of the vessel, or a member of the crew.

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIRMENTS

6. The authority citation for part 32 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, 3719; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

7. In § 32.15–15, revise paragraphs (a) and (d); and add new paragraphs (e) and (f) to read as follows:

§ 32.15–15 Anchors, Chains, and Hawsers–TB/ALL.

(a) *Application.* The provisions of this section, with the exception of paragraphs (d) and (e), apply to every tankship and manned seagoing barge constructed on or after June 15, 1987. Tankships and manned seagoing barges constructed prior to June 15, 1987 must meet the requirements of paragraphs (d) and (f) of this section. Manned barges equipped with anchors to comply with 33 CFR 155.230(b)(1) must meet the requirements of paragraphs (e) and (f) of this section.

* * * * *

(d) *Tankships and barges constructed prior to June 15, 1987.* For tankships and manned seagoing barges constructed prior to June 15, 1987, with the exception of manned barges equipped with anchors to comply with 33 CFR 155.230(b)(1), the installations previously accepted or approved will be considered satisfactory for the same service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. If the service of the tank vessel is changed, the suitability of the equipment will be evaluated by the Officer in Charge, Marine Inspection.

(e) *Manned barges equipped with anchors to comply with 33 CFR 155.230(b)(1).* Manned barges equipped with anchors to comply with 33 CFR 155.230(b)(1) must be fitted with operable anchor systems that include anchors, chains, and hawsers in general agreement with the standards established by the American Bureau of Shipping. The current standards of other recognized classification societies may also be accepted upon approval by the Commandant.

(f) *Operation and performance.* Anchors, exposed portions of chain, and hawsers must be visually inspected prior to getting underway and stowed so that the anchor is ready for immediate use in an emergency. The vessel must have a functioning means for releasing the anchor that does not endanger operating personnel.

Dated: September 30, 1997.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–26304 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–5901–4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires reasonably available control technology for major stationary sources of nitrogen oxides. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before November 5, 1997.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp at (617) 565–2773, or E-mail at Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 22, 1997.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 97–26435 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[TX–89–1–7359, FRL–5904–9]

Clean Air Act Reclassification, Texas; Dallas/Fort Worth Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is extending the public comment period from October 2, 1997, to December 1, 1997, on the proposed rule to reclassify the Dallas/Fort Worth ozone nonattainment area from moderate to serious. The extension to the public comment period is being granted by EPA in response to the area's Congressional delegation request to permit the area's constituents to have adequate time to assess the proposal and submit comments before a final decision is published. For additional information please refer to the proposed redesignation notice published in the **Federal Register** on September 2, 1997 (62 FR 46238).

DATES: Comments on the proposed redesignation must be received in writing by December 1, 1997.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Regional Office listed below. Copies of the State ozone air quality monitoring data and EPA policy concerning attainment findings are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the following locations:

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt Sonderman, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202, telephone (214) 665–7205.

Dated: September 29, 1997.

Myron O. Knudson,

Acting Regional Administrator.

[FR Doc. 97–26440 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5899–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Delete Monsanto Superfund Site from the National Priorities List (NPL): Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA), Region 4 announces its intent to delete the Monsanto Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). EPA and the State of Georgia (State) have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the state have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment and that the remaining groundwater monitoring and treatment are adequately being addressed by the State under the Resource Conservation and Recovery Act (RCRA).

DATES: Comments concerning the proposed deletion of this Site will be accepted until November 5, 1997.

ADDRESSES: Comments may be mailed to: John A. McKeown, Remedial Project Manager, South Site Management Branch, Waste Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303.

Comprehensive information on this Site is available through the EPA Region 4 public docket, which is located at EPA's Region 4 office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region 4 Docket Office.

The address for the Regional Docket Office is: Ms. Debbie Jourdan, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Telephone No.: (404) 562–8862.

Background information from the regional public docket is also available for viewing at the Site information repository located at the following address: Augusta Richmond County Public Library, 902 Green Street, Augusta, Georgia 30901, Telephone No.: (706) 821–2600.

FOR FURTHER INFORMATION CONTACT: John A. McKeown, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8913.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA announces its intent to delete the Monsanto Superfund Site, in Richmond County, Georgia from the National Priorities List (NPL) which constitutes Appendix B on the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this proposed deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action. EPA will accept comments concerning this Site for thirty (30) calendar days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for the deletion of sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e). releases may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment and, therefore, taking or remedial measures is not appropriate; or

(iv) The site is a regulated treatment, storage, or disposal facility (TSD) regulated under the authority of the Resource Conservation and Recovery Act (RCRA).

Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision to delete. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this Site:

(1) EPA has recommended deletion and has prepared the relevant documents.

(2) The State has concurred with the deletion decision.

(3) A local notice has been published in local newspapers and has been distributed to appropriate federal, state, and local officials, and other interested parties.

(4) EPA has made all relevant documents available in the Regional Office and local site information repository.

Deletion of a site from the NPL does not itself, create, alter, or revoke any individual rights or obligations. The NPL is designated primarily for information purposes and to assist EPA management. As mentioned in Section II of this document, 40 CFR 300.425 (e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

Any comments received during the notice and comment period will be evaluated before the final decision to delete. EPA will prepare a Responsiveness Summary, if necessary, which will address any comments received during the public comment period.

A deletion occurs after the EPA Region 4 Regional Administrator places a document in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region 4.

IV. Basis for Intended Site Deletion

The Monsanto Superfund site is located approximately three miles southeast of Augusta, Georgia. The site is bordered on the north by Marvin Griffin Road, on the east by the Norfolk and Southern railroad, on the south by Butler Creek and on the west by other industrial properties. Phinizy Swamp is located approximately 4,570 feet northeast of the site. The Monsanto plant covers approximately 75 acres. Within the plant's boundary, there are two landfills covering 0.2 acres that were used to dispose of phosphoric acid sludge. The landfills are located along the eastern boundary of the Monsanto plant property. The site is located in an industrial park which is zoned for heavy industrial use. Within a three mile radius of the site, land is zoned commercial, residential and industrial. The nearest residential area is one-half mile northwest of the site. Surface elevations across the site range from 140 to 146 feet above Mean Sea Level (MSL).

The Monsanto-Augusta Plant has been in operation since 1962. From 1966 to 1974, two landfills (0.1 acre each), approximately six feet deep, were used to dispose of solid waste and sludges which contain arsenic trisulfide. Arsenic trisulfide is a waste resulting from the preparation of food grade phosphoric acid. Plant officials estimate approximately 1500 pounds of arsenic were placed in these landfills. In 1971, Landfill #1 was covered with soil, crowned with gravel and seeded with grass. In 1977, Landfill #2 was closed by Monsanto in the same manner as Landfill #1.

The site was first identified by the Georgia Environmental Protection Division (EPD) in August 1975. In June 1979, Monsanto, under the supervision of the EPD, began monitoring the quality of the groundwater south of the site. In February 1980, at the request of EPD, Monsanto installed additional monitoring wells and collected twenty-three soil samples on the site. The groundwater monitoring program revealed arsenic levels in the surficial aquifer exceeding the Maximum Contaminant Level (MCL) for arsenic of .05 mg/l.

During November 1983, Monsanto, under the supervision of EPD, excavated the waste from both of the landfills. The material excavated from the landfills was transported to a RCRA permitted landfill in Emelle, Alabama. After the contents of the landfills were removed, soil samples were collected from the bottom of the excavated area and tested for Extraction Procedure (EP) toxicity for arsenic and other metals. EP toxicity is a test used to identify wastes that are likely to leach hazardous concentrations of toxic substances and to determine if a contaminant is a characteristic hazardous waste. The soil from the bottom of the excavated area did not exceed the EP toxicity standard for arsenic of 5.0 ppm.

In September of 1984, the Monsanto site was added to the National Priorities List (NPL). In September of 1986, Georgia EPD requested EPA to initiate a delisting process. This request was based on RCRA permitting at the site and the site's status as a Treatment, Storage and Disposal (TSD) facility. Later, in 1989, a RCRA permit for the facility was approved by the Georgia EPD.

On January 18, 1989, EPA issued a special notice letter to Monsanto to give Monsanto the opportunity to conduct, with EPA oversight, the Remedial Investigation (RI) and Feasibility Study (FS). Monsanto entered into an Administrative Order on Consent for performance of the RI/FS, with an effective date of April 27, 1989.

Fieldwork for the RI was initiated by Monsanto in October 1989 and completed in January 1990. The final RI report was accepted by EPA on August 20, 1990. The FS report was submitted to EPA by Monsanto on September 16, 1990.

On December 7, 1990, the Regional Administrator signed a Record of Decision (ROD) selecting the following remedy:

- Continued quarterly monitoring of the surficial aquifer groundwater to evaluate compliance with groundwater protection achievement levels (GPALs) and drinking water standard or MCL of 50 µg/l through natural attenuation. If monitoring results indicated noncompliance with these standards, a contingency remedy of pumping the contaminated ground water and discharging to the Publicly Owned Treatment Works (POTW) would be initiated.

The performance standard for arsenic in groundwater is the reduction to the MCL of 50 µg/l through natural attenuation and meeting of interim GPALs resulting in attainment of the MCL. This remedy and the contingency remedy addressed environmental concerns presented by the contaminated groundwater and eliminated the principal threats posed by this media. The contingency remedy was initiated in May of 1992 upon non-attainment of the performance standards for natural attenuation. Sampling results, verified by EPA, determined that arsenic was present at levels above ROD specified performance standards in several shallow water monitoring wells.

The contingency remedy was formally initiated on December 30, 1992, upon EPA's approval of the Remedial Design. Construction was accomplished by the Monsanto Corporation under the provisions of a consent decree. Monsanto's contractor, Dames and Moore, began work in February of 1993. EPA and the Georgia Environmental Protection Division conducted a final inspection on April 16, 1993 and on May 5, 1993, the Region IV Waste Management Division Director approved the Preliminary Closeout Report which documents construction completion.

Two extraction wells and piping for discharge into the POTW were constructed as part of the Remedial Design. Due to the relatively low levels of arsenic contamination, the arsenic concentration was less than the POTW's pretreatment standard of 1 mg/l. Groundwater extraction and discharge, was initiated on a quarterly basis and will continue until the arsenic performance standard of 50 µg/l is met for a period of 6 months or 2 monitoring periods.

Since the Remedial Action was initiated in 1993, significant reduction in the arsenic concentration levels in the groundwater has been achieved. Quarterly sampling reports, along with monthly progress reports and appropriate technical memorandums documenting any modification have been submitted by Monsanto to EPA as specified in the 1991 Record of Decision. The same information is submitted to the Georgia EPD in compliance with Monsanto's Hazardous Waste Facility Permit HW–074(S) under the authority of the Resource Conservation and Recovery Act (RCRA).

The **Federal Register** published on March 20, 1995 at 60 FR 14641, announced a notice of policy statement entitled "The National Priorities List for Uncontrolled Hazardous Waste Sties; Deletion Policy for Resource Conservation and Recovery Act Facilities". According to the notice, a National Priorities List site may be eligible for deletion based upon deferral to RCRA corrective action authorities if a site satisfies the following four criteria:

1. If evaluated under EPA's current RCRA/NPL deferral policy, the site would be eligible for deferral from listing on the NPL.
2. The CERCLA site is currently being addressed by RCRA corrective action authorities under an existing enforceable order or permit containing corrective action provisions.
3. Response under RCRA is progressing adequately.
4. Deletion would not disrupt an ongoing CERCLA response action.

The first criterion requires that the site meet requirements of eligibility for RCRA/NPL deferral. The RCRA/NPL deferral policy as cited in the March 20, 1995 **Federal Register** provides that RCRA facilities subject to RCRA Subtitle C corrective action requirements may be deferred from listing on the NPL. Monsanto's Hazardous Waste Facility Permit HW–074(S) contains HSWA provisions for the investigation and corrective action of releases from solid waste management units and provides conditions for corrective action of contaminated groundwater. Thus, the facility is and will be subject to Subpart C corrective action requirements until cleanup of contamination is complete.

The second criterion requires that the site be addressed by RCRA corrective action authorities under an existing permit or order. Hazardous Waste Facility Permit HW–074(S) was issued to the Monsanto Company by the Georgia EPD's Hazardous Waste Management Branch in August of 1989 and subsequently modified in September of 1991 to incorporate the corrective action of contaminated groundwater resulting from the disposal of the Arsenic trisulfide sludge in the two onsite landfills. Requirements stated within the corrective action permit are consistent with the remedy stated in the 1991 CERCLA Record of Decision.

The third criterion evaluates whether response under RCRA is progressing adequately. This criterion is met with a letter dated 27 May 1997 from Mr. Jim Ussery, Program Manager of the Georgia EPD's Hazardous Waste Management Branch to Mr. Mario Villamarzo of EPA. The contents of the letter indicate that corrective action has been effective in remediating contamination and that Monsanto has been very cooperative and pro-active in meeting the requirements of their corrective action permit.

The fourth criterion evaluates whether deletion of a site from the NPL would disrupt an on-going CERCLA response. The groundwater cleanup that is occurring under CERCLA is essentially the same as the RCRA Corrective Action Program, therefore, delisting would not disrupt any ongoing CERCLA response action.

In summary, the Monsanto Superfund site easily meets all the criteria for deletion from the NPL based on RCRA deferral. This site is being addressed adequately under the Hazardous Waste Facility Permit enforced by the Georgia EPD. All parties involved approve of this action (see attached Documentation Record) which will have no adverse affects to any ongoing groundwater extraction or monitoring scheduled to take place at the Monsanto Superfund site. Since all waste has been removed from the site, a five year review will not be required in the future.

EPA, with concurrence of the Georgia Environmental Protection Division, has determined that all appropriate response under the Comprehensive Environmental Response Compensation and Liability Act have been completed, and that no further action by responsible parties is necessary. Therefore, EPA proposes to delete the Site from the NPL and requests public comments on the proposed deletion.

Dated: September 15, 1997.

Phyllis P. Harris,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 4.

[FR Doc. 97–26193 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5898–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Prewitt Abandoned Refinery Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency ("EPA") Region 6 announces its intent to delete the surface portion of the Prewitt Abandoned Refinery Superfund Site ("Site") from the National Priorities List ("NPL") and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. (60 FR 55466, November 1, 1995).

This proposal for partial deletion pertains to the surface portion, which includes all surface soils and former separator area and does not pertain to the subsurface portion (ground water and subsurface soils) of the Site. The subsurface portions of the Site will remain on the NPL, and response activities will continue at that portion. The Responsible Parties have implemented all appropriate response actions required for the surface portion of the Site. EPA bases its proposal to delete this portion of the Site on the determination by EPA, the State of New Mexico, through the New Mexico Environment Department ("NMED") and the Navajo Nation through the Navajo Nation Superfund Office ("NSO"), that all appropriate actions under CERCLA have been implemented to protect human health, welfare and the environment for the surface portion of the Site.

DATES: The EPA will accept comments concerning its proposal for partial deletion until November 5, 1997.

ADDRESSES: Comments may be mailed to: Ms. Olivia Balandran, Community Relations Coordinator, U.S. EPA, Region 6 (6SF–PO), 1445 Ross Avenue, Dallas, Texas 75202–2733, 1–800–533–3508 or (214) 665–6484.

Information Repositories: Comprehensive information on the Prewitt Abandoned Refinery Site as well as information specific to this proposed partial deletion is available for review at EPA's Region 6 office in Dallas, Texas. The Administrative Records for Prewitt Abandoned Refinery Site and the Deletion Docket for this partial deletion are maintained at the following Prewitt Abandoned Refinery Site document/information repositories:

U.S. EPA, Region 6, Library, 12th Floor (6MD–II), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424 or 665–6427, Hours of Operation: M–F 8:00 a.m. to 4:30 p.m.

Prewitt Fire House, PO Box 472, Prewitt, New Mexico 87045, (505) 876–4068.

New Mexico Environment Department, 1190 St. Francis Dr., Santa Fe, New Mexico 87502, (505) 827–2908, Hours of Operation: M–F 8:30 a.m.–5:00 p.m.

Navajo Nation Superfund Office, 43 Crest Road, St. Michaels, AZ 86511, (520) 871–6859, Hours of Operation: M–F 8:00 a.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Monica Smith, Project Manager, U.S. EPA, Region 6 (6SF–PB), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6780.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The USEPA Region 6 announces its intent to delete a portion of the Prewitt Abandoned Refinery Superfund Site ("Site") located in, Prewitt, McKinley County, New Mexico from the NPL, which constitutes Appendix B of the NCP, 40 CFR Part 300, and requests comments on this proposal. This proposal for partial deletion pertains to the surface portion of the Site, which consists of all surface soils and the former separator area. The Site is bounded on the south by Interstate Highway 40. Tracks owned and operated by the Burlington Northern, Santa Fe Railway run through the northern part of the Site. Old U.S. Highway 66 runs through the middle of the Site.

The El Paso Natural Gas Company ("EPNG") and Atlantic Richfield Company ("ARCO") are the Responsible Parties for this Site. The Responsible Parties have implemented all appropriate response actions required for the surface portion of the Site. Based on the completion of the response actions for the surface portion of the Site, on January 23, 1997, EPA notified the Responsible Parties that the Remedial Action for the surface soils had been completed. EPA proposes to delete the surface portion of the Site because all appropriate CERCLA response activities have been completed for that portion of the Site. However, response activities for the subsurface portion of the Site are not yet complete; thus, the subsurface portion of the Site will remain on the NPL and is not the subject of this partial deletion.

The NPL is a list maintained by EPA of sites that EPA has determined have the highest priority releases of hazardous substances, pollutants, or contaminants under the criteria established by CERCLA and the National Contingency Plan (NCP). Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund ("Fund"). Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if conditions at the site warrant such action.

EPA will accept comments concerning its intent for partial deletion for thirty (30) days after publication of this notice in the **Federal Register**, the Gallup Independent, the Albuquerque Journal, and the Navajo Times.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed action at the area deleted if future site conditions warrant such action. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede Agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

The following procedures were used for the proposed deletion of the surface portion of the Site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Mexico through NMED concurred by letter dated November 12, 1996, with this partial deletion.

(3) The Navajo Nation through the NSO concurred by letter dated March 4, 1997, with this partial deletion.

(4) Concurrent with this national Notice of Intent for Partial Deletion, a notice has been published in the Gallup Independent, the Albuquerque Journal, and Navajo Times which are major local newspapers of general circulation and a notice has been distributed to appropriate Federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and in the newspaper.

(5) EPA has made all relevant documents available at the information repositories listed above in this notice.

This **Federal Register** notice, and a concurrent notice in the newspaper, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete the surface portions of the Site from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the information repositories.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed above. Members of the public are encouraged to contact Ms. Smith at EPA Region 6 to obtain a copy of the Responsiveness Summary. If, after review of all public

comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the surface portion of the Site does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the surface portion of the Site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied:

Background

The Prewitt Abandoned Refinery Site once contained an abandoned crude oil refinery. The Site occupies approximately 70 acres located near the town of Prewitt, New Mexico. The area in which the Site is located is rural, with a cluster of four homes about one thousand feet east of the Site. Contamination at the Site originated from the refinery operations which began in 1938 and ended in July 1957. The contaminants of concern with regard to the Site surface include, lead, asbestos, benzo(a)pyrene, benzo(a)anthracene, benzene, toluene, xylene, and ethylbenzene. The main processing units at the refinery were a distillation plant, a thermal cracker, and a reformer. Auxiliary facilities at the refinery included crude storage tanks, intermediate storage tanks, final product storage tanks, product caustic washing facilities, boilers, power generation station, heaters, cooling towers, receiving and loadout facilities; lead additive stations; maintenance facilities, laboratory facilities, and an office.

Crude oil was delivered to storage tanks at the Site. From the crude oil storage tanks the raw material was pumped to the distillation tower where various fractions were recovered from various levels of the tower, based upon boiling point .

Wastes spilled or disposed of at the Site include leaded tank bottoms which have been listed as a hazardous waste by EPA in 40 CFR Part 261, pursuant to its authority under Section 3001 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6921, as hazardous waste number K052, leaded tank bottoms from the petroleum refining industry. Other such RCRA listed hazardous wastes, spilled or disposed of at the Site, include slop tank contents (KO49), primary separator sludges (FO37), and secondary separator sludges (FO38). These wastes exhibit the characteristic of toxicity (T). Material spilled or disposed of onto surface soil at the Site includes high concentrations of lead (RCRA hazardous waste number D008) and asbestos. The leaded tank bottoms, the slop, the primary separator sludges, and the secondary separator floats have been disposed of or spilled onto the surface and have contaminated the surface soils at the Site. The leaded tank bottoms, the slop tank contents, the primary separator sludges, and the secondary separator floats have also contaminated the ground water beneath the Site by leaching benzene, toluene, ethylbenzene, and xylene ("BTEX") and lead into the subsurface area as pockets of non-aqueous phase liquids ("NAPL") which in turn have leached BTEX into the ground water as dissolved phase BTEX. Chlorinated hydrocarbons, including 1,2-dichloroethane, contained in solvents disposed of at the Site have leached into groundwater and appear in concentrations above Maximum Contaminant Levels ("MCL") established under the Safe Drinking Water Act, 42 U.S.C. 300f-300j-26.

Wastes, including leaded tank bottoms, the slop tank contents, the primary separator sludges, and the secondary separator floats, were generally disposed at, or near, the point of generation at the Site, and not in designated waste management units. Thus, waste materials known to have been spilled, dumped and spread at the Site including leaded tank bottoms, the slop tank contents, the primary separator sludges, and the secondary separator floats, have become intermingled with each other and with the spills of petroleum products, also known to have occurred.

Wastewaters at Prewitt were routinely discharged into unlined, earthen ditches throughout the refinery area. In addition to accidental spills, these ditches are known to have carried off-specification petroleum products, hydrocarbon-laden wastewaters such as those generated from the cleaning of the distillation unit, cooling tower overflow, tank bottoms, and spent caustic materials from the cleaning of gasoline. The separator, into which many of these ditches flowed, was a compartmentalized concrete tank, providing reduced flow conditions which allowed the organics to float to the surface of the material in the tank. These organics were pumped off the water surface and returned to the process system. The water and heavier primary separator sludges (RCRA listed hazardous waste FO37) were drawn from the bottom of the separator and discharged into an arroyo leading to the north edge of the Site and into an area of the Site known as the North Pit. Separator floats that passed through or over the separator and onto Site soils are listed as RCRA hazardous waste number FO38.

An area located on the west side of the Site, known as the West Pits area was originally used as an emergency relief system. During the early years of operation, when a situation in the processing plant arose that required a process unit to be quickly shut down, the contents of the unit were directed through underground pipes to these bermed areas in the West Pits for containment. Analysis of aerial photographs taken of the plant in 1958 indicates drainage, from spills or disposal in the storage and process areas, leading to the West Pits. This material, spilled or disposed of at the Site, included leaded tank bottoms, the slop tank contents, the primary separator sludges, and the secondary separator floats. Shallow ground water underlying the Site has been contaminated with leachates from materials spilled or disposed of at the Site, including leaded tank bottoms, slop tank contents, primary separator sludges, and secondary separator floats. BTEX from material spilled or disposed of at the Site, including leaded tank bottoms, slop tank contents, primary separator sludges, and the secondary separator floats has been transported into the ground water. NAPL, including this transported BTEX, has accumulated on the ground water surface.

On June 24, 1988, EPA proposed to add the Prewitt Abandoned Refinery Site to the NPL of Superfund sites (53 FR 23988, 23998). The final listing was published in the **Federal Register** on August 30, 1990, (55 FR 33502, 33508).

Surface Response Actions

The Responsible Parties undertook a Remedial Investigation ("RI") and Feasibility Study ("FS") for the Site, pursuant to CERCLA and the NCP, and pursuant to an Administrative Order on Consent (CERCLA Docket No. VI–06–22–89). The RI was conducted in two defined Phases during 1990 and 1991 to determine the nature and extent of the problem presented by the release of contamination at the Site. Phase I was the initial sampling and analysis phase. The purpose of the Phase II activities was to resolve outstanding issues and fill data gaps remaining at the conclusion of Phase I. During the RI, contamination was detected in the surface soils and the shallow ground water. Utilizing the findings of the RI, the FS was initiated to develop and assess various remediation measures for the areas of contamination at the Site.

Using the data gathered during the RI, the Responsible Parties conducted a risk assessment to characterize the existing and potential threats to human health and the environment that could have been posed by the contamination at the Site under various possible exposure scenarios including future residential use of the property.

As part of the RI, a baseline risk assessment was conducted for the Site. This assessment indicated that, if not addressed, contamination existing in the surface soils and ground water at the Site would pose unacceptable health risks to persons living on the former Site, if the Site was redeveloped for residential purposes. Contaminants in on-site waste ponds posed an additional lifetime cancer risk of approximately 1.4×10^{-3}. Contaminants outside the fence, but inside the Site, posed an additional cancer risk of approximately 3.6×10^{-3}. The target additional cancer risk range for Superfund actions is 1×10^{-4} to 1×10^{-6}. The overall risk at the Site was driven by "hotspots." These "hotspots" contained contaminant concentrations above health-based action levels. These areas were the areas which were targeted for remediation. The vertical tank and former office areas contained lead hotspots, with concentrations of lead in soil as high as 129,000 parts per million (ppm). This concentration exceeded both residential and industrial cleanup standards. Lead concentrations ranged from 3 to 129,000 ppm in soil samples throughout the Site. Most lead concentrations diminished to background concentrations at soil depths below 2 feet.

The baseline risk assessment also indicated that the additional cancer risks associated with exposure to surface soils at the Site are caused primarily by Polynuclear Aromatic Hydrocarbons ("PAH") at or near the ground surface, particularly:

- Benzo(a)pyrene
- Benzo(a)anthracene
- Benzo(b)fluoranthene
- Benzo(k)fluoranthene

The projected additional lifetime cancer risk, assuming future residential land use, posed by the PAHs in the soil in the area outside the fence, inclusive of the North Pit area and tarry areas along the railroad track, was estimated to be 6×10^{-3}.

Asbestos in soil had been observed at and near the ground surface in the central portion of the Site. An extensive asbestos abatement program was performed by the Responsible Parties in 1990. The abatement was conducted for purposes of protecting workers during RI field activities. Approximately 800 cubic yards of asbestos-containing soils were removed from the Site and buried in an off-site landfill permitted for the disposal of asbestos. Upon completion of the 1990 asbestos abatement, limited amounts of asbestos-contaminated materials remained in the Process and Compressor areas of the Site.

In the risk assessment, an evaluation of the risks associated with inhalation exposure to contaminated wind-borne particulates at the Site, again assuming that the Site was developed for residential use, was also performed. The resulting additional carcinogenic risk was calculated at less than 10^{-7}, below the target additional risk range set in the NCP.

Overall, contaminants of potential concern found at the Site and identified by the Risk Assessment represent constituents common to materials handled at petroleum refineries. The contaminants were used in the risk evaluation based upon their toxdcity, the frequency of detection, and the concentrations found at the Site. The contaminants that contribute most significantly to human health risks at the Site are: (1) for ground water: BTEX, lead and 1, 2 dichloroethane; and (2) for soils: lead, PAHs, and asbestos. Other contaminants detected at the Site above background concentrations included chromium, beryllium, antimony, mercury, nickel, and cadmium. Each of these constituents were included in risk calculations, but it was determined that these other constituents do not contribute significantly to carcinogenic or noncarcinogenic health risks at the concentration levels detected at the Site.

On September 30, 1992, based on the results of these studies, EPA issued a Record of Decision ("ROD") for the entire Site presenting EPA's decision to remediate the surface by: (1) excavation and off-site disposal of lead contaminated soils; (2) excavation and off-site disposal of asbestos-containing materials and soils; (3) excavation and landfarming of hydrocarbon-contaminated soils and sludges; and (4) excavation and off-site disposal of the separator and its contents. The ROD also required that the subsurface be remediated through soil vapor extraction and ground water extraction and reinjection.

All of the response actions at the entire Site were conducted by the Responsible Parties with oversight by the EPA, NMED and the NSO.

Community Involvement

The requirements of CERCLA Sections 113(k)(2)(B) (i) through (v) and 117, 42 U.S.C. §§ 9613(k)(2)(B) (i) through (v) and 9617, were met during the remedy selection process, as illustrated in the following discussion.

A series of community interviews near the Site was conducted prior to, and upon, listing of the Site on the NPL. Fact sheets summarizing the progress of the RI/FS at the Site were mailed out in September 1990 and July 1991. These fact sheets were mailed out to all individuals on the Site mailing list, which has been continually updated as Site activities progress.

The RI and FS Reports and the Proposed Plan for the Prewitt Abandoned Refinery Site were released to the public on July 18, 1992. These documents were made available to the public in the Administrative Record and the information repositories which are maintained at the Prewitt Fire House, Prewitt, New Mexico, at the New Mexico Environment Department, Santa Fe, New Mexico, the Navajo Superfund Office in Window Rock, Arizona, and at the EPA Region 6 Library in Dallas, Texas. A summary of the Proposed Plan and the notice of availability of these documents and the Administrative Record was published in the Gallup Independent and Navajo Times newspapers on July 16, 1992. EPA held a public comment period regarding the Proposed Plan, the RI and FS Reports, as well as the Administrative Record, from July 18, 1992, through August 17, 1992. Due to a delay in delivering the Administrative Record Files to the Repositories, and due to a request for an extension of the public comment period the public comment period was extended to September 18, 1992. A notice of the extension of the public comment period was published in the Gallup Independent on July 30, 1992, and was announced at the July 29, 1992, public meeting.

An informal Open House was held on April 14, 1992, at the Prewitt Fire House in Prewitt, New Mexico. At the Open House, EPA informed the public that the investigations regarding the Site were completed and that a Proposed Plan would be issued in the future. Additionally, a public meeting was held by EPA on July 29, 1992, at the Prewitt Fire House. At the request of the Navajo Nation's Baca Chapter, a second Public Meeting in English and Navajo was held by EPA on September 3, 1992, at the Baca Chapter House. Representatives from EPA participated in this meeting and answered questions about problems at the Site and the remedial alternatives under consideration. A response to the comments received during this public comment period, including those expressed verbally at the public meetings, was included in the

Responsiveness Summary, which was included as part of the ROD.

On September 30, 1992, EPA issued a ROD for the Site, on which the State gave its concurrence. The ROD embodies EPA's decision on the remedial action for the entire Site. The ROD presents the selected remedial action for the Site, chosen in accordance with CERCLA, as amended by Superfund Amendments and Reauthorization Act (SARA), and, to the extent practicable, the NCP, 40 CFR part 300. The ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

Current Status

Based on the Responsible Parties' successful completion of: (1) excavation and disposal of the lead-contaminated soils and the asbestos-contaminated materials and soils; (2) the disposal of the separator and its contents; and (3) the expedited landfarming of the hydrocarbon-contaminated soils and sludges, EPA has determined that no further CERCLA actions are necessary to address the surface of the Site for the protection of human health and the environment. On August 22, 1996, EPA issued a Superfund Preliminary Site Closeout Report documenting that construction of the remedy for the Prewitt Refinery Site was completed in accordance with OSWER Directive 9320.2–09. Confirmation sampling indicates that the remedial action goals and objectives set forth in the ROD have been met for the surface portion of the Site.

While EPA does not believe that any future response actions for the surface portion of the Site will be needed, if future conditions warrant such action, the surface areas which EPA proposes to delete from the NPL remain eligible for future Fund-financed response actions. Furthermore, this partial deletion does not alter the status of the subsurface portion of the Site which is not proposed for deletion and remains on the NPL.

EPA, with concurrence from the State of New Mexico and the Navajo Nation, has determined that all appropriate CERCLA response actions have been completed for the surface portion of the Site, and that protection of human health and the environment has been achieved in the surface areas of the Site. Therefore, EPA makes this proposal to delete only the surface portion of the Prewitt Abandoned Refinery Superfund Site from the NPL.

Dated: July 7, 1997.

Lynda F. Carroll,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 6.

Appendix A—Docket Information

Deletion Docket—Notice of Intent for Partial Deletion of the Prewitt Abandoned Refinery Superfund Site, Prewitt, New Mexico, surface portion, from the Superfund National Priorities List

- Prewitt Abandoned Refinery Superfund Site Administrative Record Index: September 30, 1992.
- Unilateral Administrative Order Docket Number 6–17–93 for the performance of the Remedial Design and Remedial Action at the Prewitt Abandoned Refinery Superfund Site: May 14, 1994.
- Remedial Design and Specifications for the surface remediation component: January 1995.
- Remedial Design for the landfarm: October 1995.
- Remedial Action Work Plan: January 1996.
- Construction Completion Report: July 1996.
- Remedial Action Completion Report for the surface remediation component: March 1996
- Superfund Preliminary Closeout Report: August 22, 1996.
- Remedial Action Completion Report for the landfarm: February 1997
- Concurrence letter dated November 12, 1996, from the State of New Mexico through the New Mexico Environment Department agreeing with EPA's proposal to delete the surface portion of the Site from the National Priorities List.
- Concurrence letter dated March 4, 1997, from the Navajo Nation through the Navajo Nation Superfund Office agreeing with EPA's proposal to delete the surface portion of the Site from the National Priorities List.
- Notice of Intent for Partial Deletion of the surface portion of the Prewitt Abandoned Refinery Superfund Site, surface portion only, from the National Priorities List.

Appendix B—Site Coordinates

1. 35°26′ 55.30″ North Latitude—108°01′ 56.99″ West Longitude
2. 35°26′ 45.62″ North Latitude—108°02′ 02.50″ West Longitude
3. 35°25′ 33.05″ North Latitude—107°57′ 58.08″ West Longitude
4. 35°25′ 07.99″ North Latitude—107°58′ 15.40″ West Longitude
5. 35°26′ 49.34″ North Latitude—108°02′ 49.01″ West Longitude
6. 35°26′ 29.31″ North Latitude—108°03′ 05.30″ West Longitude
7. 35°25′ 24.04″ North Latitude—108°02′ 56.81″ West Longitude
8. 35°24′ 47.46″ North Latitude—108°02′ 09.29″ West Longitude
9. 35°23′ 49.20″ North Latitude—107°59′ 33.66″ West Longitude
10. 35°25′ 10.10″ North Latitude—107°58′ 49.16″ West Longitude

[FR Doc. 97–26185 Filed 10–3–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–61, FCC 97–305]

Automatic Vehicle Monitoring Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the *Further Notice of Proposed Rule Making* (*"FNPRM"*), the Commission proposes rules and procedures governing competitive bidding for multilateration Location and Monitoring Service ("LMS") frequencies.

DATES: Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 5, 1997, and reply comments on or before November 20, 1997.

ADDRESSES: To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If parties want each Commissioner to receive a personal copy of comments, an original plus nine copies must be filed. Comments and reply comments must be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David Furth or Linda Chang at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's *Further Notice of Proposed Rule Making* in FCC 97–305, PR Docket No. 93–61, adopted August 28, 1997, and released September 16, 1997. The complete text of this FNPRM is available for public inspection and copying during normal business hours in the FCC Dockets Branch, Room 239, 1919 M Street N.W., Washington, D.C. 20036. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (telephone number: (202) 857–3800). Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

Synopsis of Further Notice of Proposed Rule Making

I. Competitive Bidding for Multilateration LMS Licensees

1. In the *LMS Report and Order*, PR Docket No. 93–61, 60 FR 15248 (March 23, 1995), the Commission decided to use competitive bidding to select from mutually exclusive applications for multilateration LMS licenses. The Commission reached this decision based on its conclusion that the statutory criteria for auctioning licenses, which are set forth in section 309(j) of the Communications Act, 47 U.S.C. 309(j), are satisfied. More specifically, the Commission found (1) that its decision to offer multilateration LMS licenses on an exclusive basis makes it likely that mutually exclusive applications for such licenses will be filed; (2) that multilateration LMS licenses will be used principally to offer for-profit, subscriber-based services; and, (3) that the use of competitive bidding for these licenses will promote the public interest objectives set forth in section 309(j)(3).

2. Under the spectrum plan the Commission adopted in the *LMS Report and Order*, and reaffirms in the *Memorandum Opinion & Order*, PR Docket No. 93–61, FCC 97–305 three blocks of spectrum are allocated to multilateration LMS systems: (1) 904.000–909.750 MHz and 927.750–928.000 MHz; (2) 919.750–921.750 MHz and 927.500–927.750 MHz; and, (3) 921.750–927.250 MHz and 927.250–927.500 MHz. One license will be awarded for each of these spectrum blocks in each of 176 EAs and EA-like areas. Thus, there are a total of 528 multilateration LMS licenses to be auctioned.

3. The Commission anticipates conducting the auction for multilateration LMS frequencies in conformity with the general competitive bidding rules proposed to be included in part 1, subpart Q of the Commission's Rules, and substantially consistent with the auctions that have been employed in other wireless services. Amendment of part 1 of the Commission's Rules—Competitive Bidding, Order, *Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 97–82, 62 FR 13540 (March 21, 1997). The Commission proposes to adopt for the LMS auction the simultaneous multiple round competitive bidding design used in the PCS auctions. Multiple round bidding should provide more information to bidders than single round bidding during the auction about the values of the licenses. The Commission seeks comment on this proposal. The Commission also tentatively concludes that the LMS auction will follow the general competitive bidding procedures of part 1, subpart Q. The Commission seeks comment on this tentative conclusion.

4. *Small Businesses.* The Commission's auction rules for other services generally include special provisions—such as bidding credits and installment payments—designed to fulfill its statutory mandate to ensure that small businesses have the opportunity to participate in the provision of spectrum-based services. In the *Second Memorandum Opinion and Order* in the competitive bidding docket, the Commission indicated that it would establish definitions for "small business" on a service-by-service basis. *Second Memorandum Opinion and Order*, PP Docket No. 93–253, 59 FR 44272 (August 26, 1994). The Commission therefore seeks comment regarding the establishment of a small business definition for multilateration LMS. Commenters should discuss the level of capital commitment that is likely to be required to purchase a multilateration LMS license at auction and create a viable business. The Commission also seeks comment on what small business provisions should be offered to multilateration LMS small business entities. Its goal, should the Commission adopt a special provision(s) for one or more categories of small businesses, will be to remove entry barriers so as to ensure the participation of small businesses in the auction and in the provision of service. If the Commission adopts special provisions for small businesses, the Commission proposes that its unjust enrichment rules apply as set forth in part 1, subpart Q. 47 CFR 1.2111.

5. In other services the Commission also adopted attribution rules for purposes of determining small business status. The Commission tentatively concluded that for LMS the Commission should attribute the gross revenues of all controlling principals in the small business applicant as well as its affiliates. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether small business provisions are sufficient to promote participation by businesses owned by minorities, women, or rural telephone companies. To the extent that commenters propose additional provisions to ensure participation by minority-owned or women-owned businesses, the Commission asks them to address how such provisions should be crafted to meet the relevant standards of judicial review.

6. *Partitioning and Disaggregation.* The Commission proposes to allow multilateration LMS licensees to partition their geographic license area and disaggregate portions of their spectrum. The Commission anticipates that this will, among other things, help to remove entry barriers for small businesses. The Commission seeks comment on this proposal.

7. If the Commission determines that special provisions for small business are appropriate for LMS auctions, the Commission tentatively concludes that a qualified small business that applies to partition or disaggregate its license to a non-small business entity should be required to repay any benefits it received from special small business provisions. The Commission seeks comment on the type of unjust enrichment requirements that should be placed as a condition for approval of an application to partition or disaggregate a license owned by a qualified small business licensee to a non-small business entity. This could include, for example, repayment of any bidding credit that the Commission may adopt for small businesses, and would be applied on a proportional basis. Similarly, if a small business licensee partitions or disaggregates to another qualified small business that would not qualify for the same level of bidding credit, the transferring licensee should be required to repay a portion of the benefit it received. The Commission seeks comment on these tentative conclusions. Alternatively, the Commission seek comment on whether the Commission should restrict the partitioning or disaggregation of such licenses when the partitionee or disaggregatee is not within the definition of an entity eligible for such special provisions, or whether, at some point (*e.g.*, a term of years), such restriction on partitioning and disaggregation be removed and the unjust enrichment provisions would apply. The Commission also seeks comment on how such unjust enrichment amounts should be calculated, especially in light of the difficulty of devising a methodology or formula that will differentiate the relative market value of the opportunities to provide service to various partitioned areas or to use the amount of spectrum disaggregated.

II. Procedural Matters and Ordering Clauses

8. *Ex Parte* Rules—Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine

Agenda period, provided they are disclosed as provided in Commission Rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206.

9. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, 3 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis of the expected impact on small entities of the policies and rules proposed and adopted in the Further Notice section of the *Memorandum Opinion and Order* and *Further Notice of Proposed Rulemaking.* Written public comments are requested on the IRFA and must be filed by the deadlines for comments on the *Memorandum Opinion and Order* and *Further Notice of Proposed Rulemaking.*

10. *Reason for Action:* This *FNPRM* was initiated to secure comment on proposals for revising rules for the auction of multilateration Location and Monitoring Service frequencies. Such changes to the rules for multilateration LMS would promote efficient licensing and enhance the service's competitive potential in the Commercial Mobile Radio Service marketplace. The adopted and proposed rules are based on the competitive bidding authority of section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j), which authorized the Commission to use auctions to select among mutually exclusive initial applications in certain services, including multilateration LMS.

11. *Objectives of this Action:* The Omnibus Budget Reconciliation Act of 1993 (Budget Act), Public Law 103–66, Title VI, § 6002, and the subsequent Commission actions to implement it are intended to establish a system of competitive bidding for choosing among certain applications for initial licenses, and to carry out statutory mandates that certain designated entities, including small businesses, are afforded an opportunity to participate in the competitive bidding process and in the provision of multilateration LMS services.

12. *Legal Basis:* The proposed action is authorized under the Budget Act and in sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

13. *Reporting, Recordkeeping, and Other Compliance Requirements:* The Commission does not anticipate any additional reporting or recordkeeping requirements resulting from this *FNPRM.*

14. *Federal Rules Which Overlap, Duplicate or Conflict With These Rules:* None.

15. *Description, Potential Impact, and Number of Small Entities Involved:* The *FNPRM* would establish certain multilateration LMS spectrum blocks for bidding by smaller entities as well as larger entities, and would grant special provisions to certain eligible entities bidding within those blocks. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, would be affected by the proposed rules in the *FNPRM.* In particular, the Commission seeks estimates of how many such entities will be considered small businesses.

16. *Geographic Partitioning and Spectrum Disaggregation.* The partitioning and disaggregation rule changes proposed in this proceeding will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding multilateration LMS licenses who choose to partition and/or disaggregate and small businesses who may acquire licenses through partitioning and/or disaggregation.

17. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, would be affected by the proposed rules in the *FNPRM.* In particular, the Commission seeks estimates of how many such entities will be considered small businesses. As explained in the Final Regulatory Flexibility Analysis for the *Memorandum Opinion and Order*, the Commission is utilizing the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing less than 1,500 persons.[1] The Commission seeks comment on whether this definition is appropriate for multilateration LMS licensees in this context. Additionally, the Commission requests each commenter to identify whether it is a small business under this definition. If a commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

18. The number of small entities that will be affected is unknown. New entrants could obtain multilateration LMS licenses through the competitive bidding procedure, and take the opportunity to partition and/or disaggregate a license or obtain an additional license through partitioning or disaggregation. Additionally, entities that are neither incumbent licensees nor geographic area licensees could enter the market by obtaining a multilateration LMS license through partitioning or disaggregation. The Commission cannot estimate how many licensees or potential licensees could take the opportunity to partition and/or disaggregate a license or obtain a license through partitioning and/or disaggregation, because it has not yet determined the size or number of multilateration LMS licenses that will be granted in the future. Given the fact that nearly all wireless communications companies have fewer than 1,000 employees, and that no reliable estimate of the number of future multilateration LMS licensees can be made, the Commission assumes for purposes of the IRFA that all of the licenses will be awarded to small businesses. It is possible that a significant number of the potential licensees who could take the opportunity to partition and/or disaggregate a license or who could obtain a license through partitioning and/or disaggregation will be small businesses.

19. *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives:* With respect to partitioning and disaggregation, the Commission tentatively concludes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions in the auction rules and applies to partition or disaggregate a portion of the geographic license area to another entity that would not qualify for such benefits. The alternative to applying the unjust enrichment provisions would be to allow an entity who had benefitted from the special bidding provisions for small businesses to become unjustly enriched by partitioning or disaggregating a portion of their license area to parties that do not qualify for such benefits.

20. The *FNPRM* proposes certain provisions for smaller entities designed to ensure that such entities have the opportunity to participate in the competitive bidding process and in the provision of multilateration LMS services. Any significant alternatives presented in the comments will be considered.

21. *IRFA Comments.* The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in the *Memorandum and Order/Further Notice of Proposed Rulemaking.*

22. *Paperwork Reduction.* The *FNPRM* has been analyzed with respect to the Paperwork Reduction Act of 1995 and was found to impose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

23. *Authority.* This action is taken pursuant to sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 156(c)(1), 303(r), and 309(j).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–26414 Filed 10–3–97; 8:45 am]

BILLING CODE 6712–01–P

[1] 13 CFR 121.201, Standard Industrial Classification Code 4812.

DEPARTMENT OF AGRICULTURE

48 CFR Parts 426 and 452

[AGAR Case 96–01]

RIN 0599–AA00

Office of Procurement and Property Management; Agriculture Acquisition Regulation; Preference for Selected Biobased Products

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document invites written comments on a proposed amendment to the Department of Agriculture's Acquisition Regulation (AGAR). We are proposing to amend the AGAR to establish policy and procedures for set-asides and preferences for products developed with assistance provided by the Alternative Agricultural Research and Commercialization Corporation (AARC).

DATES: Submit comments on or before December 5, 1997.

ADDRESSES: Submit written comments to U.S. Department of Agriculture, Office of Procurement and Property Management, Procurement Policy Division, STOP 9303, 1400 Independence Avenue SW, Washington, DC 20250–9303. See **SUPPLEMENTARY INFORMATION** section for electronic access addresses for comments.

FOR FURTHER INFORMATION CONTACT: J. R. Holcombe, Jr., (202) 720–8484.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order Nos. 12866 and 12988.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
III. Public Comments
IV. Electronic Access Addresses

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. This proposed rule would amend the AGAR to establish acquisition preferences for selected biobased products; i.e., nonfood, nonfeed products made from agricultural and forestry materials and animal by-products (AGAR Case 96–01).

The Alternative Agricultural Research and Commercialization Corporation (AARC), a wholly-owned government corporation of the Department of Agriculture (USDA), provides financial assistance to private companies and other parties to commercialize biobased products. Section 1665 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5909), added by section 729 of the Federal Agricultural Improvement and Reform Act of 1996, authorizes Federal executive agencies to establish set asides and preferences for biobased products that have been commercialized with assistance provided by AARC. Pursuant to the authority provided by Section 1665, USDA proposes to add subpart 426.70 to the AGAR to establish policies and procedures for AARC preferences and set-asides.

The following changes to the AGAR are proposed:

(a) AGAR part 426 is proposed to be added, with a subpart 426.70, Preference for Selected Biobased Products. This proposed subpart establishes policy and procedures for preferences and set-asides for products developed with AARC assistance.

(b) Provisions 452.226–70, Preferred Products, 452.226–71, Set-aside for Mandatory Products, and 452.226–72, Price Preference for Award, are proposed to be added to AGAR part 452.

II. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

A work plan was prepared for this proposed regulation and submitted to the Office of Management and Budget pursuant to Executive Order No. 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order No. 12866. Therefore, the proposed rule has not been reviewed by the Office of Management and Budget. This rule has been reviewed in accordance with Executive Order No. 12988, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601–611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. USDA certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. However, comments from small entities concerning parts affected by the proposed rule will be considered. Such comments must be submitted separately and cite 5 U.S.C. 609 (AGAR Case 96–01) in correspondence.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., or OMB's implementing regulation at 5 CFR Part 1320.

III. Public Comments

Interested persons are invited to participate in this rule making by submitting views and comments with respect to the proposed AGAR revision set out in this notice. All written comments will be carefully assessed and fully considered prior to publication of the final rule.

IV. Electronic Access Addresses

You may submit comments by sending electronic mail (E-mail) to RHOLCOMBE@USDA.GOV, or via fax at (202) 720–8972.

List of Subjects in 48 CFR Parts 426 and 452

Agriculture, Government procurement.

For the reasons set out in this preamble, the Department proposes to amend Chapter 4 of Title 48 of the Code of Federal Regulations as follows:

Add Part 426 to subchapter D to read as follows:

PART 426—OTHER SOCIOECONOMIC PROGRAMS

Subpart 426.70—Preference for Selected Biobased Products

Sec.

426.7000 Scope of subpart.
426.7001 Applicability.
426.7002 Authority.
426.7003 Policy.
426.7004 Definitions.
426.7005 Preference list.
426.7006 Use of a set-aside or a price preference.
426.7007 Use of a technical evaluation preference.
426.7008 Identification of preferred products.
426.7009 Contract provisions.

Authority: 5 U.S.C. 301; 7 U.S.C. 5909; 40 U.S.C. 486(c)

Subpart 426.70—Preference for Selected Biobased Products

426.7000 Scope of subpart.

This subpart supplements the FAR to implement the set-asides and preferences described in section 1665 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 5909).

426.7001 Applicability.

This subpart applies to USDA and all of its components, including corporations.

426.7002 Authority.

Section 1665 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 5909) authorizes USDA to establish set-asides and other preferences for products that have been assisted by the Alternative Agricultural Research and Commercialization Corporation (AARC).

426.7003 Policy.

(a) AARC provides financial assistance to private companies and other parties to commercialize nonfood, nonfeed products made from agricultural and forestry materials and animal by-products (biobased products). Biobased products by their nature are environmentally friendly, and, in many instances, use agricultural material that otherwise would be wasted. It is the policy of USDA to acquire AARC products to the maximum extent practicable. This policy applies to all acquisitions of products regardless of dollar value.

(b) USDA shall satisfy its requirements for products the same or essentially the same as AARC products by applying the preferences or set-asides described by this subpart.

426.7004 Definitions.

As used in this subpart—

AARC products are products developed with assistance provided by AARC as authorized by 7 U.S.C. 5905.

Acquisitions involving the use of products means an acquisition in which a Government contractor uses products in contract performance.

Acquisitions of products means an acquisition of one or more products for the use of the Government.

Price preference means an amount, expressed as a percentage, to be used in the evaluation of offers in an acquisition of products.

Set-aside means a requirement that vendors responding to a solicitation offer AARC products.

Solicitation includes actions taken under parts 12, 13, 14, 15, and 36 of the Federal Acquisition Regulation.

Technical evaluation preference means the use of an award factor or subfactor in which the Government expresses its preference for AARC products.

426.7005 Preference list.

(a) The Office of Procurement and Policy Management (OPPM) and AARC jointly shall establish and maintain a Preference List for AARC products.

(b) The Preference List shall contain the list of preferred products, source information for these products, the type(s) of preference to be applied, the beginning and ending dates for the use of preferences, and other terms established to define the preference given to a product.

(c) The Preference List will be publicized within USDA by means of AGAR Advisories (see 401.371). Copies of the Preference List may be obtained from OPPM. The Preference List will also be posted on the World Wide Web at the USDA Procurement Home Page.

426.7006 Use of a set-aside or a price preference.

Acquisitions for products the same or essentially the same as those products appearing on the Preference List shall either be set-aside exclusively or shall include a price preference for those products shown on the Preference List. The actual price preference to be used shall be determined by the requiring office but may not exceed the percentage shown on the Preference List.

426.7007 Use of a technical evaluation preference.

Acquisitions involving the use of products the same or essentially the same as those products appearing on the Preference List shall include a technical evaluation preference, if authorized in the Preference List. The technical evaluation preference may be determined by the contracting officer specifically for each acquisition.

426.7008 Identification of preferred products.

(a) Products subject to a set-aside or technical preference shall be separately listed in the schedule, specification, or performance work statement.

(b) Products subject to a price preference shall be separately listed in the schedule.

426.7009 Contract provisions.

(a) Each solicitation containing a price or technical preference under this subpart shall contain the provision 452.226–70, Preferred Products.

(b) Each solicitation for products subject to a set-aside shall include the provision 452.226–71, Set-Aside For Mandatory Products.

(c) Each solicitation for products subject to a price preference shall include the provision 452.226–72, Price Preference for Award.

(d) Solicitations for products may contain both the provision in 452.226–71 and the provision found in 452.226–72.

(e) The provisions prescribed in this section are not required for acquisitions accomplished using the purchase card as a stand alone tool.

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for Part 452 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

2. Add sections 452.226–70, 452.226–71, and 452.226–72 to read as follows:

452.226–70 Preferred Products.

As prescribed in 426.7009(a), include the following provision:

PREFERRED PRODUCTS (XXXX 1997)

Specific products required by this solicitation and resulting contract, are subject to a price or a technical preference. A list of these products, the specific preference, and the manufacturer or producer is included below.

Contract Line Item (or other location in this solicitation):*

Product:*

Manufacturer/Producer:*

Preference:*

Q

(End of provision)

**For each line item to which a preference applies. Contracting officer shall insert appropriate information.*

452.226–71 Set-aside for Mandatory Products.

As prescribed in 426.7009(b), include the following provision.

SET-ASIDE FOR MANDATORY PRODUCTS (XXXX 1997)

Specific products are set-aside as mandatory products. These are separately listed in the schedule, specifications, or performance work statement. Specific terms governing the set-aside, and source information for the products are shown below.

Contract Line Item (or other location in this solicitation):*

Product:*

Manufacturer/Producer:*

Set-Aside Terms:*

(End of provision)

* For each line item to which a set-aside applies, Contracting officer shall insert appropriate information.

452.226–72 Price Preference for Award.

As prescribed in 426.7009(c), include the following provision:

Price Preference for Award (XXXX 1997)

Certain products listed in the schedule of this solicitation are subject to a price preference. A list of these products, the amount of the preference, and source information is included in provision 452.226–70, Preferred Products. For purposes of evaluation of offers only, the offered prices for these products will be reduced by the price preference listed in the solicitation.

(End of provision)

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 97–26287 Filed 10–3–97; 8:45 am]

BILLING CODE 3410–XE–P

Notices

Federal Register

Vol. 62, No. 193

Monday, October 6, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Tri-Valley Watershed, Wasatch and Summit Counties, Utah

AGENCY: Natural Resources Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tri-Valley Watershed, Wasatch and Summit Counties, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip J. Nelson, State Conservationist, Natural Resources Conservation Service, PO Box 11350, Salt Lake City, Utah 84147; Phone (801) 524–5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Phillip J. Nelson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are water conservation for fish habitat improvement and water quality improvement. The planned works of improvement include:

- 3,700 acres of improved irrigation systems
- 21 animal waste systems
- 19,350 feet streambank protection
- 2,400 acres of improved grazing
- 1,300 acres of range seeding

The Notice of Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Phillip J. Nelson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: September 25, 1997.

Marilyn A. O'Dell,

Assistant State Conservationist.

[FR Doc. 97–26371 Filed 10–3–97; 8:45 am]

BILLING CODE 3410–16–M

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension

AGENCY: Barry Goldwater Scholarship and Excellence in Education Foundation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Goldwater Scholarship Foundation is planning to submit, for extension, the following Information Collection Request (ICR) to the Office of Management and Budget (OMB): Goldwater Scholarship Payment Request Form, OMB No. 3019–0001. Before submitting the ICR to OMB for review and approval for extension, The Goldwater Foundation is soliciting comments on the proposed ICR as described below.

DATES: Comments must be submitted on or before December 5, 1997.

ADDRESSES: Mail comments to Gerald J. Smith, President, Barry Goldwater Scholarship and Excellence in Education Foundation, 6225 Brandon Avenue, Suite 315, Springfield, VA 22150–2519.

FOR FURTHER INFORMATION CONTACT: Gerald J. Smith, (703) 756–6012; FAX: (703) 756–6015; E-mail: goldh2o@erols.com.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities affected by this action include approximately 400 Goldwater Scholars and their respective Academic and Financial Aid Officers.

Title: Goldwater Foundation payment Request Form.

Abstract: Pub. L. 99–166 authorizes the Goldwater Foundation to conduct an annual nationwide undergraduate scholarship competition for students pursuing careers in mathematics, the natural sciences and engineering. This Information Collection Form is used by the Foundation to verify a Goldwater Scholarship recipient's academic standing and to authorize the disbursement of funds to the Scholar each term.

The Foundation uses this form to ensure that only authorized expenses are requested and to avoid the duplication of other scholarship funding which is prohibited. Less frequent collection of this information would not allow the Foundation to verify a Scholar's academic and financial status as required each term. Further, less frequent collection would case the Foundation to expend funds sooner than would be fiscally responsible, since all funds are interest bearing until expended.

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. (c)(2)(A) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, the Goldwater Foundation is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, The Goldwater Foundation invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the Foundation's functions, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Data Collected Include: Current School and Home addresses; Current cost of tuition, fees, books, room and board and additional expenses; list of other scholarships and verification signatures of the Scholar, academic and financial aid officers.

Burden Statement: The estimated public reporting burden for this collection of information is 45 minutes per respondent semiannually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining and reviewing the collection of information.

Respondents: Goldwater Scholarship recipients.

Estimated Number of Respondents: 400.

Responses: 2 per school year.

Total Burden Hours: 600 per year.

Recordkeepers: 2.

Total Burden Hours: 133.

Dated: September 26, 1997.

Gerald J. Smith,

President.

[FR Doc. 97–26382 Filed 10–3–97; 8:45 am]

BILLING CODE 6820–AK–M

CIVIL RIGHTS COMMISSION

Membership of the USCCR Performance Review Board

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of Membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights' Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY 1997 rating year.

FOR FURTHER INFORMATION CONTACT: Ms. M. Catherine Gates, Director of Human Resources, U.S. Commission on Civil Rights, 624 9th Street, N.W., Washington, D.C. 20425, (202) 376–8364.

Members

Gloria Gutierrez, Actg. Deputy Associate Commissioner for Administration and Quality Services, Patent and Trademark Office, Department of Commerce.

Mary Jennings, General Counsel, Merit System Protection Board.

Robert Kugelman, Director of Administration, Department of Commerce.

Stephanie Moore,

Acting Solicitor.

[FR Doc. 97–26370 Filed 10–3–97; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 924]

Grant of Authority for Subzone Status, Conair Corp., (Warehousing/ Distribution and Service/Repair Facility) East Windsor, New Jersey

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from Mercer County, New Jersey, grantee of Foreign-Trade Zone 200, for authority to establish special-purpose subzone status at the warehousing/distribution and service/repair facility of Conair Corporation, in East Windsor, New Jersey, was filed by the Board on April 11, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 29–97, 62 FR 19545, 4–22–97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 200A) at the Conair Corporation facility in East Windsor, New Jersey, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 25th day of September 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–26456 Filed 10–3–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–821]

Notice of Postponement of Time Limit for Countervailing Duty Investigation: Certain Stainless Steel Wire Rod From Italy

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

EFFECTIVE DATE: October 6, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Lockard or Kelly Parkhill, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–1168 or 482–4126, respectively.

Postponement

On August 19, 1997, the Department of Commerce ("the Department") initiated the countervailing duty investigation of stainless steel wire rod from Italy. *See Notice of Initiation of Countervailing Duty Investigation: Certain Stainless Steel Wire Rod ("SSWR") from Italy*, 62 FR 45229 (Aug.

26, 1997). Respondents have indicated that they will be cooperating in the investigation. In addition, we are investigating a large number of potentially complex alleged countervailable subsidy practices. Accordingly, as detailed in our September 23, 1997, Memorandum to Robert S. LaRussa, Assistant Secretary for Import Administration, (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce) we deem this investigation to be extraordinarily complicated, and determine that additional time is necessary to make the preliminary determination. Therefore, pursuant to section 703(c)(1) of the Tariff Act of 1930, as amended ("the Act"), we are postponing the preliminary determination in this investigation to no later than December 29, 1997.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: September 30, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–26455 Filed 10–3–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092997B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Billfish Advisory Panel (AP).

DATES: The meeting will begin at 1:00 p.m. on October 21, 1997 and will end by 3:00 p.m. on October 22, 1997.

ADDRESSES: The meeting will be held at the at the Radisson Hobby Airport, 9100 Gulf Freeway, Houston, TX 77017; telephone: 713–943–7979.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Billfish AP will review a draft scoping document on issues and options for the management of Atlantic billfish. The scoping document was prepared by the Highly Migratory Species Management Division of NMFS, Office of Sustainable Fisheries, which is responsible for the management of billfishes, swordfish, marlin, tuna, and sharks. The purpose of the scoping document is to inform the public of NMFS' intent to gather information and to provide a mechanism by which the public can consider and comment on issues and alternatives relative to the management of Atlantic highly migratory species. Accordingly, the views of the commercial fishing, recreational fishing, conservation and scientific communities, and the general public are being sought by NMFS through publication of the draft scoping document.

The AP will also review a petition submitted to NMFS by the Coastal Conservation Association to declare Atlantic white and blue marlin stocks overfished. If these stocks are declared to be overfished, NMFS will be required to develop and implement a rebuilding plan.

The recommendations of the Billfish AP will be presented to the Council at their November 10–13, 1997 meeting in Longboat Key, FL, at which time the Council may decide whether to provide comment to NMFS on the above issues.

Although other issues not contained in this agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal AP action during this meeting. AP action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 14, 1997.

Dated: September 30, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26430 Filed 10–3–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

September 30, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover, carryforward and re-crediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58041, published on November 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 6, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels within Fabric Group	
620	6,913,733 square meters.
Other specific limits	
336/636	517,984 dozen.
338/339	1,257,901 dozen.
341/641	1,629,316 dozen.
347/348	614,482 dozen.
363	929,574 numbers.
438–W [2]	14,696 dozen.
638/639	542,208 dozen.
645/646	295,797 dozen.
647/648	1,745,460 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.10.2080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–26386 Filed 10–3–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

September 30, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 7, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68245, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 7, 1997, you are directed to adjust the limits the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
219	8,777,010 square meters.
226/313	129,268,745 square meters.
237	255,025 dozen.
239	1,775,208 kilograms.
314	6,383,279 square meters.
315	86,034,954 square meters.
317/617	34,302,672 square meters.
331/631	2,536,349 dozen pairs.
334/634	284,192 dozen.
335/635	428,193 dozen.
336/636	464,505 dozen.
338	5,119,291 dozen.
339	1,442,713 dozen.
340/640	683,012 dozen of which not more than 217,058 dozen shall be in Category 340–D/640–D [2].
347/348	913,866 dozen.
351/651	309,670 dozen.
352/652	774,175 dozen.
359–C/659–C [3]	1,059,295 kilograms.
360	5,486,009 numbers.
361	6,379,080 numbers.
363	45,607,795 numbers.
369–F/369–P [4]	2,502,092 kilograms.
369–R [5]	10,838,458 kilograms.
369–S [6]	736,925 kilograms.
625/626/627/628/629	42,954,671 square meters of which not more than 35,486,420 square meters shall be in Category 625; not more than 35,486,420 square meters shall be in Category 626; not more than 35,486,420 square meters shall be in Category 627; not more than 7,342,018 square meters shall be in Category 628; and not more than 35,486,420 square meters shall be in Category 629.
638/639	236,337 dozen.
647/648	724,144 dozen.
666–P [7]	782,926 kilograms.
666–S [8]	4,502,880 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–R: only HTS number 6307.10.2020.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[8] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–26387 Filed 10–3–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Performance of Certain Functions by National Futures Association with Respect to Commodity Pool Operators and Commodity Trading Advisors

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is authorizing the National Futures Association (NFA) to conduct reviews of disclosure documents required to be filed with the Commission by commodity pool operators (CPOs) and commodity trading advisors (CTAs) pursuant to Rules 4.26(d) and 4.36(d), respectively. In addition, the Commission is authorizing NFA to process the following: (1) Notices of eligibility for exclusion for certain otherwise regulated persons from the definition of CPO, pursuant to Rule 4.5; (2) notices of claim for exemption from certain Part 4 requirements with respect to commodity pools (pools) and CTAs whose participants or clients are qualified eligible participants (QEPs) or qualified eligible clients (QECs), respectively, pursuant to Rule 4.7; (3) claims of exemption from certain Part 4 requirements for CPOs with respect to pools that principally trade securities, pursuant to Rule 4.12(b); (4) statements of exemption from registration as a CPO, pursuant to Rule 4.13; (5) notices of exemption from registration as a CTA for certain persons registered as an investment adviser, pursuant to Rule 4.14(a)(8); and (6) notices of claim for exemption from provisions of Part 4 for certain registered CPOs operating offshore pools, pursuant to Advisory 18–96. Further, the Commission is authorizing NFA to maintain and serve as the official custodian of certain Commission records.

EFFECTIVE DATE: November 1, 1997.

FOR FURTHER INFORMATION CONTACT: Until the effective date of November 1, 1997, comments regarding this Notice and Order may be directed to Paul H. Bjarnason, Jr., Deputy Director, or Kevin P. Walek, Senior Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Telephone: (202) 418–5430.

United States of America

Before the Commodity Futures Trading Commission Order Authorizing the Performance of Certain Functions With Respect to Commodity Pool Operators and Commodity Trading Advisors

I. Authority and Background

Section 8a(10) of the Commodity Exchange Act[1] (Act) provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act[2] and subject to the provisions of the Act applicable to registrations granted by the Commission. Section 17(o)(1) of the Act[3] provides that the Commission may require NFA to perform Commission registration functions in accordance with the Act and NFA rules. NFA has confirmed its willingness to perform certain functions now performed by the Commission and has provided the Commission with a detailed proposal setting forth standards and procedures to be followed and reports to be generated in administering the functions discussed below.[4]

Upon consideration, the Commission has determined to authorize NFA, effective November 1, 1997, to perform the following functions: (1) to conduct reviews of disclosure documents required to be filed with the Commission by CPOs and CTAs pursuant to Rules 4.26(d)[5] and 4.36(d), respectively; (2) to process[6] notices of eligibility for exclusion for certain otherwise regulated persons from the definition of CPO, pursuant to Rule 4.5; (3) to process notices of claim for exemption from certain Part 4 requirements with respect to commodity pools and CTAs whose participants or clients are QEPs or QECs, respectively, pursuant to Rule 4.7; (4) to process claims of exemption from certain Part 4 requirements for CPOs with respect to pools that principally trade securities, pursuant to Rule 4.12(b); (5) to process statements of exemption from registration as a CPO, pursuant to Rule 4.13; (6) to process notices of exemption from registration as a CTA for certain persons registered as an investment adviser, pursuant to Rule 4.14(a)(8); (7) to process notices of claim for exemption from provisions of Part 4 for certain registered CPOs operating offshore pools, pursuant to Advisory 18–96;[7] and (8) to maintain and to serve as the official custodian of records for the filings, notices and claims required by the rules listed above. As discussed below, each of these functions involves disclosure requirements or exemptions from disclosure, reporting, recordkeeping and registration requirements for CPOs and CTAs.

A. CPO and CTA Compliance with Rule 4.26(d) and 4.36(d)

Rule 4.26(d)(1) requires that a CPO file a disclosure document[8] with the Commission for each pool that it operates or intends to operate not less

[1] 7 U.S.C. 12a(10)(1994).

[2] 7 U.S.C. 21(j)(1994).

[3] 7 U.S.C. 21(o)(1)(1994).

[4] Letter from Robert K. Wilmouth, President of NFA, to Brooksley Born, Chairperson of the Commission, dated June 20, 1997.

[5] Commission rules referred to herein can be found at 17 CFR Ch. I (1997).

[6] As used in this Notice and Order, the term "process" generally refers to the review of the filing, notice or claim for compliance with applicable requirements and, as appropriate, provision of notice of any deficiency in the filing, notice or claim.

[7] Advisory No. 18–96, (1994–1996 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶26,659 (April 11, 1996).

[8] Pursuant to Rule 4.21(a), a CPO may not solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or intends to operate unless, on or before the date it engages in that activity, the COP delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool containing the information set forth in Rule 4.24.

than 21 calendar days prior to the date the CPO first intends to deliver the document to a prospective participant in the pool.[9] Similarly, Rule 4.36(d)(1) requires that a CTA file a disclosure document[10] with the Commission for each trading program that it offers or intends to offer not less than 21 calendar days prior to the date the CTA first intends to deliver the document to a prospective client in the trading program. Further, pursuant to Rules 4.26(d)(2) and 4.36(d)(2), CPOs and CTAs, respectively, must file with the Commission all subsequent amendments to their disclosure documents within 21 calendar days of the date upon which the CPO or CTA first knows or has reason to know of the defect requiring the amendment. In addition, CPOs and CTAs may not use their disclosure documents for more than nine months from the effective dates of such documents, in accordance with Rules 4.26(a)(2) and 4.36(b), respectively. The Commission's Division of Trading and Markets reviews disclosure documents filed by CPOs and CTAs, issues comment letters noting any compliance issues, and works with registrants to resolve these issues.[11]

NFA Compliance Rule 2–13 requires that NFA members file with NFA a copy of any document required to be filed with the Commission pursuant to Part 4 of the regulations. NFA staff review CPO and CTA disclosure documents during the course of on-site audits as well as through a desk review program, as part of its audit priority system. In light of NFA's experience in receiving and reviewing disclosure documents of CPOs and CTAs, the Commission believes that it is appropriate for NFA to undertake the performance of this function. Accordingly, by this Order, NFA is authorized to review all disclosure documents filed by CTAs and all disclosure documents filed by CPOs for privately offered commodity pools[12] and to provide notice of deficiencies. Such review of CTA and CPO disclosure documents will include those documents filed pursuant to the instant filing procedure set forth in Commission Advisory 95–44.[13]

B. Notices of Eligibility for Exclusion From the Definition of CPO

Rule 4.5 provides an exclusion from the definition of commodity pool operator for certain persons who would otherwise be considered commodity pool operators. This exclusion is available for certain otherwise regulated persons, as set forth in Rule 4.5 (a)(1) through (a)(4) in connection with the operation of a qualified entity as described in Rule 4.5(b).[14] Eligible persons claiming exclusion pursuant to Rule 4.5 must file with the Commission and NFA a notice of eligibility containing the information specified in Rule 4.5(c). By this Order, NFA is authorized to process notices of eligibility for exclusion from the definition of the term commodity pool operator pursuant to Rule 4.5.

C. Claims for Exemption From Certain Part 4 Requirements With Respect to Commodity Pools and CTAs Whose Participants or Clients Are QEPs or QECs

Rule 4.7 provides an exemption from certain Part 4 requirements with respect to the operators of commodity pools whose participants are limited to QEPs and with respect to commodity trading advisors whose clients are QECs, as those terms are defined by the Rule. Any registered commodity pool operator meeting the requirements of Rule 4.7(a)(2) may claim relief from certain disclosure, reporting, and recordkeeping requirements by filing with the Commission and NFA a notice of claim for exemption pursuant to Rule 4.7(a)(3). Any registered commodity trading advisor meeting the requirements of Rule 4.7(b)(2) may claim relief from disclosure and recordkeeping requirements with respect to the accounts or qualified eligible clients who have given due consent to their account being an exempt account under Rule 4.7 by filing with the Commission and NFA a notice of claim for exemption pursuant to paragraph 4.7(b)(3). By this Order, NFA is authorized to process notices of claim for exemption filed by qualifying CPOs and CTAs pursuant to Rule 4.7.

D. Exemption From Certain Part 4 Requirements for CPOs With Respect to Pools That Principally Trade Securities

Rule 4.12(b) provides an exemption from certain disclosure and reporting requirements for registered CPOs of pools which principally trade securities and meet the criteria set forth in Rule 4.12(b)(1). Eligible CPOs must file a claim of exemption with the Commission and NFA pursuant to Rule 4.12(b)(3). By this Order, NFA is authorized to process claims for exemption filed by qualifying CPOs pursuant to Rule 4.12(b).

E. Exemption From Registration as a CPO

Rule 4.13 provides for an exemption from registration as a CPO for persons operating pools which meet the criteria set forth in either Rule 4.13(a)(1) or Rule 4.13(a)(2). Eligible persons must file with the Commission and NFA copies of the statement provided to pool participants setting forth the information specified in Rule 4.13(b)(1). By this Order, NFA is authorized to process statements of exemption from CPO registration filed by qualifying persons pursuant to Rule 4.13.

F. Exemption From Registration as a CTA for Certain Persons Registered as Investment Advisers

Rule 4.14(a)(8) provides exemption from registration as a CTA for registered investment advisers whose commodity advice is directed to Rule 4.5 entities and who meet the other criteria set forth in Rule 4.14(a)(8) (i)–(ii). Persons claiming exemption from CTA registration pursuant to Rule 4.14(a)(8) must file with the Commission and NFA a notice of exemption in accordance with Rule 4.14(a)(8) (iii) and (v). By this Order, NFA is authorized to process notices of exemption from CTA registration filed by qualifying persons pursuant to Rule 4.14(a)(8).

G. Claims for Exemption From Provisions of Part 4 for Certain Registered CPOs Operating Offshore Pools

Commission Advisory 18–96 makes generally available to certain registered CPOs relief from disclosure, reporting and certain recordkeeping requirements in connection with the operation of offshore commodity pools. Registered CPOs who operate offshore commodity pools may claim such relief by filing a notice of a claim for exemption with the

[9] Rule 4.8 provides an exemption from the 21-day prefiling requirement of Rule 4.26(d)(1) to CPOs with respect to pools offered or sold solely to "accredited investors" in an offering exempt from registration under the Securities Act of 1933, as well as to CPOs of 4.12(b) pools in an exempt offering under the Securities Act of 1933.

[10] Pursuant to Rule 4.31(e), a CTA may not solicit or enter into an agreement with a prospective client to direct or to guide the client's commodity interest account or trading unless, at or before the time it engages in the solicitation or enters into the agreement (whichever is earlier), the CTA delivers or causes to be delivered to the prospective client a disclosure document for the trading program containing the information set forth in the Rule 4.34.

[11] 45 FR 51600, 51603 (August 4, 1980); 46 FR 26004, 26010 (May 8, 1981).

[12] Pursuant to Rule 4.24(d)(3)(i), privately offered commodity pools are those offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*).

[13] CFTC Interpretative Letter No. 95–44, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,385 (April 20, 1995).

[14] Rule 4.5 also excludes certain trading vehicles from the commodity pool definition, and thus, their operators are not required to file any notice or make any specified representations to claim exclusion from the commodity pool operator definition.

Commission and NFA that sets forth the representations specified in the Advisory. By this Order, NFA is authorized to process notices of claims for exemption filed by qualifying CPOs pursuant to Advisory 18–96.

H. Recordkeeping Requirements

By prior orders, the Commission has authorized NFA to maintain various other Commission registration records and has certified NFA as the official custodian of such records for this agency.[15] The Commission has now determined, in accordance with its authority under Section 8a(10) of the Act, to authorize NFA to maintain and to serve as the official custodian of records for the filings, notices and claims required by Rules 4.26(d), 4.36(d), 4.5, 4.7, 4.12(b), 4.13 and 4.14(a)(8) and Commission Advisory 18–96. This determination is based upon NFA's representations regarding the implementation of rules and procedures for maintaining and safeguarding all such records, in connection with NFA's assumption of responsibility for the above-mentioned activities.

In maintaining the Commission's records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing or future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are acceptable to the Commission and as are necessary: to ensure the security and integrity of the records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission orders or rules and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records.

II. Conclusion and Order

The Commission has determined, in accordance with the provisions of Sections 8a(10) and 17(o)(1) of the Act and NFA's letter dated August 27, 1997, to authorize NFA to perform the following functions:

(1) To conduct reviews of disclosure documents required to be filed with the Commission by CPOs and CTAs pursuant to Rules 4.26(d) and 4.36(d), respectively;

(2) To process notices of eligibility for exclusion for certain otherwise regulated persons from the definition of CPO, pursuant to Rule 4.5;

(3) to process notices of claim for exemption from certain Part 4 requirements with respect to commodity pools and CTAs whose participants or clients are QEPs or QECs, respectively, pursuant to Rule 4.7;

(4) To process claims of exemption from certain Part 4 requirements for CPOs with respect to pools that principally trade securities, pursuant to Rule 4.12(b);

(5) To process statements of exemption from registration as a CPO, pursuant to Rule 4.13;

(6) To process notices of exemption from registration as a CTA for certain persons registered as an investment adviser, pursuant to Rule 4.14(a)(8);

(7) To process notices of claim for exemption from provisions of Part 4 for certain registered CPOs operating offshore pools, pursuant to Advisory 18-96; and

(8) To maintain and to serve as the official custodian of records for the filings, notices and claims required by the rules listed above.

NFA shall perform these functions in accordance with the standards established by the Act and the regulations and orders promulgated thereunder, particularly Part 4 of the regulations and Commission orders issued thereunder, and shall provide the Commission with such summaries and periodic reports as the Commission may determine are necessary for effective oversight of this program.

These determinations are based upon the Congressional intent expressed in Sections 8a(10) and 17(o) of the Act that the Commission have the authority to delegate to NFA any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner and upon NFA's representations concerning the standards and procedures to be followed and the reports to be generated in administering these functions.

This Order does not, however, authorize NFA to render "no-action" positions, exemptions or interpretations with respect to applicable disclosure, reporting, recordkeeping and registration requirements.

Nothing in this Order or in Sections 8a(10) or 17(o) of the Act shall affect the Commission's authority to review NFA's performance of the Commission functions listed in paragraphs 1–8 above.

NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matters that have been delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of any previous orders issued by the Commission under Part 4.

Issued in Washington, D.C., on September 30, 1997 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 97–26389 Filed 10–3–97; 8:45 am]

BILLING CODE 6351–01–P

[15] 49 FR 39593 (October 9, 1984); 50 FR 34885 (August 28, 1985); 51 FR 25929 (July 17, 1986); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 58 FR 19657 (April 15, 1993).

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 1998 Mental Health Rate Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of updated mental health per diem rates.

SUMMARY: This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers for FY 1998 under the TRICARE Mental Health Per Diem Payment System; and the updated per diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for fiscal year 1998.

EFFECTIVE DATE: The rates contained in this notice are effective for services occurring on or after October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Program Development Branch, TRICARE Support Office, telephone (303) 361–1342.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 6, 1988, (53 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993, (58 FR 35–400) set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. The final rule published in the **Federal Register** March 7, 1995, (60 FR 12419) set forth retaining all per diems in effect at the end of fiscal year 1995 with no additional updates for fiscal years 1996 and 1997. Medicare has recommended a rate of increase of 0 percent for federal fiscal year 1998 for hospitals and units excluded from the prospective payment system. TRICARE will adopt this update factor for FY 1998 as the final update factor.

Hospital and units with hospital-specific rates (hospitals and units with high TRICARE volume) and regional specific rates for psychiatric hospitals and units with low TRICARE volume will have their TRICARE rates remain at FY 1995 levels. Partial hospitalization rates for full day and half day programs will also remain at FY 1995 levels. The cap amount for high volume hospitals and units will stay at the FY 1995 level. The beneficiary cost-share of low volume hospitals and units will also stay at the FY 1995 level. The wage portion of the regional rate subject to the area wage adjustment will be 71.1 percent for FY 1998.

Dated: October 1, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–26461 Filed 10–3–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

List of Institutions of Higher Education Ineligible for Federal Funds

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense that the institution prevents military recruiter access to the campus or students or maintains a policy against ROTC. It also implements the requirements set forth in the Omnibus Consolidated Appropriations Act of 1997 and 32 CFR Part 216. The institutions of higher education so identified are:

Washington College of Law of American University, Washington, DC

William Mitchell College of Law, St. Paul, Minnesota

Recently, the following institution of higher education reported modifications to school policies sufficient to merit removal from the list of ineligible schools.

Willamette University College of Law, Salem, Oregon

The Omnibus Consolidated Appropriations Act of 1997 provides that schools prohibited by state laws or court rulings from providing the requisite degree of access for ROTC or military recruiting would not be denied funding prior to one year following the effective date of that aw (i.e., not until March 29, 1998). However, that provision applies only to funds from agencies other than the Department of Defense, which is bound by provisions of the National Defense Authorization Acts for Fiscal Years 1995 and 1996. Therefore, the Secretary of Defense has determined that the following institutions of higher education prevent recruiter access to campuses, students, or student information and are ineligible for DoD contracts and grants.

Asnuntuck Community-Technical College, Enfield, Connecticut

Capital Community-Technical College, Hartford, Connecticut

Central Connecticut State University, New Britain, Connecticut

Charter Oak State College, Newington, Connecticut

Connecticut Community-Technical College, Winsted, Connecticut

Eastern Connecticut State University, Willimantic, Connecticut

Gateway Community-Technical College, North Haven, Connecticut

Housatonic Community-Technical College, Bridgeport, Connecticut

Manchester Community-Technical College, Manchester, Connecticut

Middlesex Community-Technical College, Middletown, Connecticut

Naugatuck Community-Technical College, Waterbury, Connecticut

Norwalk Community-Technical College, Norwalk, Connecticut

Quinebaug Valley Community-Technical College, Danielson, Connecticut

Southern Connecticut State University, New Haven, Connecticut

Three Rivers Community-Technical College, Norwich, Connecticut

Tunxis Community-Technical College, Farmington, Connecticut

Western Connecticut State University, Danbury, Connecticut

ADDRESSES: Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: William J. Carr, (703) 697–8444.

SUPPLEMENTARY INFORMATION: On April 8, 1997 (62 FR 16694), the Department of Defense published 32 CFR part 216 as an interim rule. This rule and the Omnibus Consolidated Appropriations Act of 1997, requires the Department of Defense semi-annually to publish a list of the institutions of higher education ineligible for Federal funds. 32 CFR part 216 and the Secretary of Defense under 108 Stat. 2663, 10 U.S.C. 983, and 110 Stat. 3009 and/or this part identifies institutions of higher education that have a policy or practice that either prohibits, or in effect prevents, the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, access to directory information on students or that has an anti-ROTC policy. On August 28, 1997 (62 FR 45631), the Department of Defense published a list of the institutions of higher education ineligible for Federal Funding; this listing updates and supersedes that listing.

Dated: September 30, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 97–26344 Filed 10–3–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Satellite Reconnaissance

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Satellite Reconnaissance will meet in closed session on September 29–30, 1997 at Headquarters NRO, Chantilly, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the

operational, technical, industrial, and financial aspects of the following and recommend a course of action for the Department: the National Reconnaissance Office's (NRO) is creating a Future Imager Architecture as a basis for acquiring the next generation of imaging satellite systems and their associated ground control and processing; and in parallel, DARPA is advocating the development and demonstration of a Surveillance and Targeting Light Satellite (Starlite) System with attributes that may not be included in NRO's architecture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concern matters listed in 5 U.S.C. § 552b(c) (1) (1994), and that accordingly this meeting will be closed to the public.

Dated: September 30, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 97–26342 Filed 10–3–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Satellite Reconnaissance

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Open Systems will meet in closed session on October 9, 1997 at Strategic analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefing, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the benefits of, criteria for, and obstacles to the application of an open systems approach to weapon systems, and to make recommendations on revisions to DoD policy, practice, or investment strategies that are required to obtain maximum benefit from adopting open systems. The Task Force should examine application to new defense programs, to those that have already made substantial investments in a design, and to those that are already fielded, across the spectrum of weapon systems, not just those heavily dependent on advanced computers and electronics.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concern matters listed in 5 U.S.C. 552b(c) (1) (1994), and that accordingly this meeting will be closed to the public.

Dated: September 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 97–26343 Filed 10–3–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee

AGENCY: U.S. Army War College.

ACTION: Notice of Meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: October 20 and 21, 1997.

Place: Deputy Chief of Staff for Operations Conference Room, Pentagon, Washington, DC.

Time: 1:00 p.m.–5:00 p.m. (October 20, 1997); 8:30 a.m.–12:00 p.m. (October 21, 1997).

Proposed Agenda: Meet with U.S. Army War College Commandant, Deputy Chief of Staff for Operations, Army Chief of Staff, and Secretary of the Army; receive information briefings, conduct discussions concerning federal degree granting authority, and provide guidance concerning accreditation and areas for improvement.

FOR FURTHER INFORMATION CONTACT: Colonel Terry J. Young, Box 418, U.S. Army War College, Carlisle Barracks, PA 17013 or phone (717) 245–3907.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee after receiving advance approval for participation. To request advance approval or obtain further information, contact Colonel Terry J. Young at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–26396 Filed 10–3–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Training and Doctrine Command (TRADOC)

ACTION: Notice of Meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Distance Learning/Training Technology Subcommittee of the Army Education Advisory Committee.

Date: 12–14 November 1997.

Place: Virginia Air and Space Center, 600 Settlers Landing Road, Hampton, Virginia 23669–4033.

Time: 1300–1700 on 12 November 1997; 0800–1700 on 13 November 1997; and 0830–1130 on 14 November 1997.

Proposed Agenda: Review and discussion of the status of Army Distance Learning.

Purpose of the Meeting: The members will advise the Assistant Deputy Chief of Staff (ADCST), HQ Training and Doctrine Command (TRADOC), on matters pertaining to education and training technologies to be used for Army Distance Learning.

FOR FURTHER INFORMATION CONTACT: All communications regarding this advisory committee should be addressed to Dr. Mimi Stout, at Commander, Headquarters TRADOC, Attn: ATTG–CF (Dr. Mimi Stout), Fort Monroe, VA 23651–5000; telephone number (757) 728–5531.

SUPPLEMENTARY INFORMATION: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend any of the 12–14 November 1997 sessions.

Any members of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations of oral statements at the meeting.

Robert E. Seger,

Senior Executive Service Assistant Deputy Chief of Staff for Training.

[FR Doc. 97–26397 Filed 10–3–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of Composite Material Properties Data for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Army Research Laboratory, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to United States patents 5,635,434, issued June 3, 1997, entitled "Ceramic ferroelectric composite material-BSTO-magnesium based compound", and 5,635,433, issued June 3, 1997, entitled "Ceramic ferroelectric composite material-BSTO-ZnO". Licenses shall comply with 35 U.S.C. 209 and 37 CFR part 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 434, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–26374 Filed 10–3–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Topical Prophylaxis Against Schistosomal Infections

AGENCY: Army Medical Research and Material Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 4,659,738 entitled "Topical Prophylaxis Against Schistosomal Infections" and issued on April 21, 1987. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702-5012.

FOR FURTHER INFORMATION CONTACT: Mr. Jay P. Winchester, Attorney-Advisor, (301) 619-2065 or telefax (301) 619-5034.

SUPPLEMENTARY INFORMATION: The invention encompassed by this patent is an improved method for the prevention of schistosomal infections, and the subsequent manifestations of the diseases known as schistosomiasis, bilharzia, or "swimmers itch", by preventing the larval forms of the parasites, known as cercariae, from penetrating the skin of the vertebrate host. The topical application of a 2-hydroxy-benzoic anilide provides prophylactic protection against dermal penetration by the infective larvae of the parasitic worms.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–26395 Filed 10–3–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; Comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response × proposed frequency of response per year × estimated number of likely respondents.)

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jay Casselberry, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Casselberry may be telephoned at (202) 426–1116, FAX (202) 426–1081, or e-mail at Jay.Casselberry@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collections submitted to OMB for review were:

1. EIA–800–804, 807, 810–814, 816, 817, 819M, and 820, "Petroleum Supply Reporting System".

2. Energy Information Administration; 1905–0165; Extension with no changes; Mandatory.

3. EIA's Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude oil, petroleum products, and natural gas liquids. The data are published by EIA and are used by public and private analysts. Respondents are operators of petroleum refineries, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers, barges, and oil importers.

4. Business or other for-profit; Federal government; State government.

5. 55,605 hours (1.138 hours per response × 18.68 responses per year × 2616 respondents).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., September 29, 1997.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 97–26439 Filed 10–3–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3788–000]

Anker Power Services, Inc.; Notice of Issuance of Order

October 1, 1997.

Anker Power Services, Inc. (Anker) submitted for filing a rate schedule under which Anker will engage in wholesale electric power and energy transactions as a marketer. Anker also requested waiver of various Commission regulations. In particular, Anker requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Anker.

On September 19, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Anker, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within the period, Anker is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Anker's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 20, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26407 Filed 10–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–772–000]

Atlanta Gas Light Company; Notice of Application

September 30, 1997.

Take notice that on September 25, 1997, Atlanta Gas Light Company (Atlanta) 303 Peachtree Street, N.E.., Atlanta, Georgia 30308, filed in Docket No. CP97–772–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Section 284.224 of the Commission's Regulations, for a limited-jurisdiction blanket certificate of public convenience and necessity authorizing Atlanta to transport natural gas from time to time, all as more fully set forth in the application on file with the Commission and open to public inspection.

Atlanta states that it has recently been approached by parties seeking service this winter and prompt issuance of a blanket certificate will facilitate Atlanta's ability to meet market demand on a timely basis.[1] Atlanta requests waiver of Section 284.224(c)(7), stating that it is not proposing to establish rates at this time. Atlanta indicates that after issuance of the blanket certificate, it will petition the Commission for rate approval for individual transactions in accordance with Section 284.123(b)(2).

Any person desiring to be heard or to make any protest with reference to said application should on or before October 10, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Atlanta to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26368 Filed 10–3–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Atlanta was found to be a Hinshaw pipeline exempt from the Commission's jurisdiction under Section 1(c) by Commission order issued December 21, 1955, in Docket No. G–9585. (14 FPC 1156)

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–769–000]

Colorado Interstate Gas Company; Notice of Application

September 30, 1997.

Take notice that on September 24, 1997, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, pursuant to Section 7(c) of the Natural Gas Act, as amended, filed in Docket No. CP97–769–000 an application for a certificate of public convenience and necessity authorizing the construction and operation of facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that it proposes to construct the Campo Lateral from an interconnect with CIG's 10-inch diameter Picketwire Lateral in Las Animas County, Colorado to an interconnect with CIG's Campo Regulator Station in Baca County, Colorado. The proposal consists of approximately 115 miles of 16-inch diameter pipeline and will increase CIG's capacity out of the Raton Basin Area in Colorado and New Mexico. The capacity of the proposed lateral is approximately 110,000 Mcf per day, with an estimated cost of approximately $20.6 million.

CIG states that it has existing and incremental firm transportation commitments increased to 73 percent of the capacity of the proposed lateral in August, 2000. CIG has further requested an advance determination that these facilities be given rolled-in rate treatment.

CIG also requests appropriate Commission authority required to increase the Picketwire lateral maximum allowable operating pressure to 1308 psig.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 21, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirement of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by the other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–26366 Filed 10–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–776–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

September 30, 1997.

Take notice that on September 26, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP97–776–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon eleven delivery taps in Hancock, Harrison and Jackson Counties, Mississippi, under Koch Gateway's blanket certificate issued in Docket No. CP82–430, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway requests authorization to abandon eleven (11) farm taps on its Index 276 transmission pipeline in Hancock, Harrison and Jackson Counties Mississippi. Koch Gateway states that it is taking steps to implement the order issued on June 21, 1994 in FERC Docket No. CP94–76–000 to abandon by sale to Koch Pipeline, Inc., a subsidiary of Koch Industries, Inc., its Index 276 transmission pipeline. In its application for abandonment Koch Gateway indicated that is would make prior notice filings to abandon existing delivery taps on the Index 276 and that this instant filing is one of those filings.

Koch Gateway proposes to plug each tap and remove all valves and above-ground appurtenances at the various locations. Koch Gateway states that these farm taps were originally certificated in FPC Docket No. G–232, and that the taps are inactive and no services will be affected by the proposed abandonment. Koch Gateway states that Entex, Inc. (Entex), the local distribution company through which these farm tap services were previously provided, has removed its metering facilities at each farm tap location, and that Entex has agreed to the proposed abandonment.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–26367 Filed 10–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4108–000]

Turner Energy, L.L.C.; Notice of Issuance of Order

October 1, 1997.

Turner Energy, L.L.C (Turner Energy) submitted for filing a rate schedule under which Turner Energy will engage in wholesale electric power and energy transactions as a marketer. Turner Energy also requested waiver of various Commission regulations. In particular, Turner Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Turner Energy.

On September 22, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Turner Energy should file a motion to intervene or protest with the Federal Energy Regulation Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Turner Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Turner Energy's issuance of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 22, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26408 Filed 10–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4526–000, et al.]

New Century Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 29, 1997.

Take notice that the following filings have been made with the Commission:

1. New Century Services, Inc.

[Docket No. ER97–4526–000]

Take notice that on September 8, 1997, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between Public Service Company of Colorado and Western Resources.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Company

[Docket No. ER97–4527–000]

Take notice that on September 8, 1997, New Century Services, Inc., on behalf of Southwestern Public Service Company ("Southwestern") submitted an executed umbrella service agreement between Southwestern and e Prime, Inc. under Southwestern's Rate Schedule for the Sale, Assignment, or Transfer of Transmission Rights.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER97–4528–000]

Take notice that on September 8, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between LG&E and Florida Power Corporation under LG&E's Open Access Transmission Tariff.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Union Electric Company

[Docket No. ER97–4529–000]

Take notice that on September 8, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between UE and Southern Company Services, Inc., Southern Energy Trading and Marketing, Inc. and Tennessee Valley Authority. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER97–4530–000]

Take notice that on September 8, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Purchase and Sales Agreement between LG&E and The Energy Authority under LG&E's Rate Schedule GSS.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. New Century Services, Inc.

[Docket No. ER97–4531–000]

Take notice that on September 8, 1997, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between Public Service Company of Colorado and Citizens Power Sales.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. New Century Services, Inc.

[Docket No. ER97–4532–000]

Take notice that on September 8, 1997, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively "Companies") tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Constellation Power Source, Inc.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Dayton Power and Light Company

[Docket No. ER97–4533–000]

Take notice that on September 4, 1997, Dayton Power and Light Company (DP&L), tendered for filing changes to DP&L's Market Based Sales Tariff.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Minnesota Power & Light Company

[Docket No. ER97–4534–000]

Take notice that on September 8, 1997, Minnesota Power & Light Company (MP), tendered for filing signed Service Agreements with Marquette (MI) Board of Light & Power and Willmar Municipal Utilities Commission under MP's cost-based Wholesale Coordination Sales Tariff WCS–1 to satisfy its filing requirements under this tariff.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Minnesota Power & Light Company

[Docket No. ER97–4535–000]

Take notice that on September 8, 1997, Minnesota Power & Light Company tendered for filing a signed Service Agreement with Commonwealth Edison Company, Marquette Board of Light & Power, and Willmar Municipal Utilities Commission, under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice..

11. Wisconsin Electric Power Company

[Docket No. ER97–4536–000]

Take notice that on September 8, 1997, Wisconsin Electric Power Company ("Wisconsin Electric"), tendered for filing a Short Term Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement between itself and ("Virginia Power"). The Transmission Service Agreement allows Virginia Power to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on Virginia Power, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. American Electric Power

[Docket No. ER97–4537–000]

Take notice that on September 8, 1997, American Electric Power, tendered for filing a Notice of Cancellation of Rate Schedule FERC No. Supplement No. 1 to FPC No. 1 of Central Operating Company and Supplement No. 1 to FPC No. 19 of Appalachian Electric Power Company and Supplement No. 1 to FPC No. 19 of the Ohio Power Company as originally authorized by the Federal Power Commission in the *Matters of Central Operating Company, Appalachian Electric Company and The Ohio Power Company*, Order Allowing Supplemental Rate Schedules To Take Effect, dated October 31, 1950, and issued November 1, 1950, are to be canceled.

American Electric requests that this cancellation become effective January 1, 1998.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER97–4538–000]

Take notice that on September 8, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between LG&E and Public Service Electric and Gas Company under LG&E's Open Access Transmission Tariff.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER97–4539–000]

Take notice that on September 8, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between LG&E and The Power Company of America under LG&E's Open Access Transmission Tariff.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Electric and Gas Company

[Docket No. ER97–4540–000]

Take notice that on September 8, 1997, Public Service Electric and Gas Company ("PSE&G") of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Valero Power Services Company ("Valero") pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of August 9, 1997.

Copies of the filing have been served upon Valero and the New Jersey Board of Public Utilities.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26409 Filed 10–3–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5905–6]

Notice Of Public Meeting On Drinking Water Analytical Methods

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a three-day Protozoan Method Development Workshop on October 20–22, 1997, for the purpose of information exchange on research projects, currently underway, related to developing an improved analytical method for *Cryptosporidium* and *Giardia* to address detection,

enumeration and characterization of these protozoan in drinking water. This workshop will also address what performance criteria may be appropriate for an analytical method for the final Enhanced Surface Water Treatment Rule (ESWTR), to be promulgated in May 2002. Topics to be presented by experts may include methods that enhance the sensitivity and reliability of the ICR Protozoan Method, provide improved recovery efficiencies, determine speciation of *Cryptosporidium* and *Giardia* using molecular biological methods, and ascertain viability and infectivity of *Cryptosporidium* and *Giardia*.

EPA is inviting all interested members of the public to attend the meeting, which will be held at Quality Hotel in Arlington, Virginia (Arlington Boulevard and North Courthouse Road). For further information regarding agenda or other aspects of the meeting, members of the public are requested to contact Crystal Rodgers of EPA's Office of Ground Water and Drinking Water at (202) 260–0676 or by e-mail at rodgers.crystal@epamail.epa.gov.

Dated: September 30, 1997.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–26441 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5905–4]

National Advisory Committee to the U.S. Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, North America Free Trade Implementation Act, Pub. L. 103–182 and is directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation". The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from among environmental groups, business and industry, public policy organizations and educational institutions.

DATES: The Committee will meet on October 30, 1997 from 8:30 a.m. to 5:00 p.m. and October 31, 1997 from 8:00 a.m. to 4:30 p.m.

ADDRESSES: The Ramada Plaza Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Ross, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–9752.

Dated: September 25, 1997.

Deborah Ross,

Acting Designated Federal Officer, National Advisory Committee.

[FR Doc. 97–26437 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5905–5]

Governmental Advisory Committee to the U.S. Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the Governmental Advisory Committee (GAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 18 of the North American Agreement on Environmental Cooperation, North America Free Trade Implementation Act, Public Law 103–182 and is directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation". The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of a group of 10 representatives drawn from state, local and tribal governments.

DATES: The Committee will meet on October 30,1997 from 8:30 a.m. to 5:00 p.m. and October 31,1997 from 8:00 a.m. to 4:30 p.m.

ADDRESSES: The Ramada Plaza Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Dated: September 25, 1997.

Robert Hardaker,

Designated Federal Officer, Governmental Advisory Committee.

[FR Doc. 97–26438 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5903–2]

Performance Based Measurement System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) plans to implement a Performance Based Measurement System (PBMS) for environmental monitoring in all of its media programs to the extent feasible. The Agency defines PBMS as a set of processes wherein the data quality needs, mandates or limitations of a program or project are specified, and serve as criteria for selecting appropriate methods to meet those needs in a cost-effective manner. Where PBMS is implemented, the regulated community would be able to select any appropriate analytical test method for use in complying with EPA's regulations. It is EPA's intent that implementation of PBMS have the overall effect of improving data quality and encouraging advancement of analytical technologies.

The Agency anticipates proposing amendments to certain of its regulations, as needed, to incorporate PBMS into its regulatory programs.

DATES: Comments should be sent to the address listed below by November 5, 1997.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–97–PBMA–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–97–PBMA–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accessing paper and/or electronic copies of the document, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For specific information regarding this notice, contact Carol Finch, Executive Director, Environmental Monitoring Management Council (8101R), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460 (202) 564–6638.

SUPPLEMENTARY INFORMATION:

Historically, some EPA programs have specified required analytical methods to be used by the regulated community in the analysis of environmental samples for regulatory compliance purposes. EPA has published its methods in regulations and in a number of compendia, such as: Manual of Methods for Chemical Analysis of Water and Wastes, and Methods for the Determination of Organic Compounds in Drinking Water.

The requirement to use specific analytical methods for compliance purposes is one of several means for assuring a minimum level of consistency and reliability in environmental monitoring.

In certain instances, in order to provide regulated parties with the flexibility to use alternative methods, EPA programs have established administrative processes by which the public could submit a proposed method for Agency review and approval. For example, in EPA's water programs, alternative test procedures program are described at 40 CFR 136.4, 136.5, and 141.27. In most cases, EPA's regulations require that alternative methods be approved by the Agency before they are used in regulatory compliance applications.

In general, the approval processes have proven to be lengthy and often it takes several years to receive approval for a proposed method or method modification. This approach of specifying required methods and approving new methods has been identified as a major barrier to the use of innovative monitoring technology. In order to address these concerns, EPA's Environmental Monitoring Management Council (EMMC) established a Work Group of scientists representing EPA's Headquarters and Regional offices to consider the advisability of establishing a performance-based approach to specifying analytical testing requirements. Based on the recommendations of the work group, the Agency has decided to incorporate the PBMS approach into its programs, to the extent feasible.

The Agency intends that PBMS provide the regulated community with flexibility in conducting required environmental monitoring, expedite the use of new and innovative techniques, and result in less costly approaches to conducting required monitoring and measurements. Under PBMS, the Agency would normally continue to allow use of its current required methods as well.

The Agency has defined PBMS as a set of processes wherein the data quality needs, mandates or limitations of a program or project are specified, and serve as criteria for selecting appropriate methods to meet those needs in a cost-effective manner. Under PBMS, the Agency would identify relevant performance characteristics of analytical methods and would specify quantitative performance criteria for each of those characteristics without prescribing specific procedures, techniques or instrumentation. Individual EPA programs may need to adopt a phased approach to specifying performance criteria and performance criteria may be linked to specific instruments, techniques, or methods in the initial phase. However, EPA's ultimate goal is to specify performance criteria that are not linked to methods, techniques, or instruments.

Performance criteria may be established for characteristics such as method precision and accuracy, for example. These performance criteria would be designated based on the question(s) or decision(s) to be addressed by the subject measurement, the level of uncertainty that is acceptable, the ease with which method performance can be verified, and other factors. The criteria may be published in regulations or in technical guidance documents, depending on the individual program.

In a program where PBMS is implemented, the regulated community would be required to demonstrate that the measurement method to be used meets the specified performance criteria by documenting both initial and continuing method performance according to a required protocol. Regulated parties would also be required to maintain records documenting initial and continuing demonstrations of method performance. They would also be required to maintain written certification that they have used appropriate quality assurance and quality control procedures. PBMS would apply to most physical, chemical, and biological measurements conducted either in laboratories or in the field. PBMS would not apply to method-defined parameters, that is, parameters for which the method defines the property (e.g., Toxicity Characteristic Leaching Procedure under the Resource Conservation and Recovery Act, five-day Biochemical Oxygen Demand under the Clean Water Act, and airborne and stationary source particulate matter under the Clean Air Act) or for situations where it would be impractical or cost prohibitive to define the property except by using a reference method (e.g., where a stable reference standard cannot be prepared). Additionally, PBMS may not be applied to analytical services obtained under

contract by EPA which are subject to specific methods and Statements of Work, such as the Superfund Contract Laboratory Program (CLP).

EPA intends to implement PBMS on a program-specific basis. Each of EPA's programs is presently developing a plan for implementation. Each implementation plan will address the specifics of how PBMS will work in specific regulatory programs. The plans will address, for example, the scope of PBMS application within the program (i.e., which measurements will be subject to PBMS), any record keeping or documentation requirements, and the specific steps that will be taken by EPA to implement PBMS within the program. The Agency's goal is for each Office to prepare a plan for implementing PBMS by September of 1997 and move to implementation of PBMS by September 1998.[1] Any required extensions of the 1998 implementation goal will be considered on a case-by-case basis based on implementation steps outlined in each program's plan.

Once implementation plans are finalized, the Agency may publish additional notices to inform the public of specific implementation actions to be taken and the proposed schedule for those actions. In addition, as individual programs take steps to amend existing regulations for the purpose of implementing PBMS, notices of proposed rulemakings will be published. Throughout this process, EPA intends to provide ample opportunity for the public to comment on specific aspects of PBMS implementation. For example, the Agency plans to engage in a dialogue, both inside and outside EPA, to get input from various stakeholders on how to best implement PBMS. We will seek input from all affected parties regarding PBMS implementation in all of EPA's programs. Today's notice is a general announcement of our intent to implement PBMS in EPA programs. EPA will consider any comments provided in response to this notice. The following is a list of issues that commenters may wish to address:

1. The potential environmental benefits or consequences that may be achieved through implementation of PBMS.

2. The potential implications for improvements in environmental monitoring technology through implementation of PBMS.

3. The potential costs or cost savings (to the regulated community, laboratories, or others) that may result from PBMS implementation.

4. The potential impacts of PBMS on small entities.

5. The potential effect of PBMS on compliance monitoring and enforcement of regulatory and statutory requirements. For example:

—potential challenges to state enforcement programs that will result from implementation of PBMS.
—The level of expertise necessary for EPA and state inspectors to successfully determine the adequacy of a PBMS method.
—The resource and training implications of PBMS, especially for state environmental programs.
—The impact (if any) of PBMS on industry's ability to determine compliance with Federal and/or state regulations and applicable permit conditions.

6. The potential effect of PBMS on the public's ability to understand and monitor facilities within their communities.

7. The advantages and disadvantages of using method performance criteria and documentation requirements for establishing that methods achieve required performance levels.

8. The adequacy of the draft checklists for identifying and describing documentation requirements.

9. The need for EPA and state regulatory agencies to receive written notice where PBMS methods will be used by regulated parties.

10. The feasibility of applying PBMS to the various environmental measurements required by individual EPA programs.

To assist in program-specific implementation, the Agency has developed a draft set of generic checklists and companion instructions to describe the recommended documentation for an initial and continuing demonstration of method performance. Individual programs would use these generic checklists, with program-specific requirements, as appropriate, to delineate the records that would be required for compliance with PBMS. The checklists are one of a number of technical tools EPA would use to implement PBMS and communicate the requirements and guidelines associated with PBMS to the public. Copies of the draft generic checklists are available on EPA's Internet home page (http://www.epa.gov/pbms) or from the Docket.

Today's notice is not a final agency action and creates no rights enforceable by any party in litigation with the United States.

Dated: September 30, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–26443 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–50–P

[1] In several cases, EPA programs have already taken steps to begin implementation of PBMS. See: Update 3 of SW–846 Methods (62 FR 32452) and the Methods Approval Streamlining Proposal (62 FR 14975) for examples in EPA's hazardous waste and water programs, respectively.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5905–1]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the City of Baldwin City, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the City of Baldwin City, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessmeht.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Revocation or Suspension of Permits, CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public notice.

On May 9, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint: In the Matter of The City of Baldwin City, CWA Docket No. VII–97–W–0015.

The Complaint proposes to assess a penalty of Two Thousand Six Hundred and Thirty-five dollars ($2,635) dollars against The City of Baldwin City for the failure to comply with the applicable recordkeeping, monitoring, vector attraction reduction and pathogen density requirements of section 405 of the Clean Water Act, 33 U.S. C. 1345 and the regulations promulgated pursuant to thereto and set forth at 40 CFR Part 503.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the City of Baldwin City is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: August 14, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 97–26431 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL—50905–2]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the City of LaHarpe, KS

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the City of LaHarpe, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public notice.

On May 9, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint: In the Matter of The City of LaHarpe, CWA Docket No. VII–97–W–0011.

The Complaint proposes to assess a penalty of Two Thousand Five Hundred and Ten dollars ($2,510) dollars against The City of LaHarpe for the failure to comply with the applicable recordkeeping, monitoring, vector attraction reduction and pathogen density requirements of section 405 of the Clean Water Act, 33 U.S.C. 1345 and the regulations promulgated pursuant thereto and set forth at 40 CFR part 503.

FOR FURTHER INFORMATION CONTACT: Parsons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by The City of LaHarpe is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: August 14, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 97–26432 Filed 10–3–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 30, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 5, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station.

Form No.: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,996.

Estimated Hour Per Response: 37—159 hours (average) per response.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $23,118,660.

Estimated Total Annual Burden: 8,071 hours.

Needs and Uses: On 4/3/97, the Commission adopted a Fifth Report and Order in MM Docket No. 87–268. This Order adopted several rules with the following objectives: (1) to promote the success of free, universally available, local broadcast television in a digital world, thereby preserving free, widely accessible programming that serves the public interest; and (2) to attract consumers swiftly to digital broadcast service, thus allowing the NTSC spectrum to be recovered and turned to use for other beneficial purposes more rapidly.

Section 336 of the Telecommunications Act of 1996 requires that the Commission limit the initial eligibility for digital television (DTV) licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct a television broadcast station. The Commission has issued a license to all eligible licensees and permittees in the form of an Appendix to the Fifth Report and Order in MM Docket No. 87–268. By issuing these DTV licenses with the Fifth Report and Order, the Commission has frozen initial eligibility and allowed the completion of the Table of Allotments. The license that we issued is a general instrument of authorization for licensees/permittees to receive and hold a second 6 MHz channel for the purpose of concerting to DTV. It is not an authorization to begin construction or operation.

To receive authorization for commencement of DTV operation, commercial broadcast licensees must file FCC 301 for a construction permit. This application may be filed anytime after receiving the initial DTV license but must be filed before the mid-point in a particular applicant's required construction period. The Commission has developed a new Section V–D for DTV engineering which will be added to the FCC 301. The Commission will consider these applications as minor changes in facilities. Applicants will not have to supply full legal or financial qualification information.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–26419 Filed 10–3–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

September 30, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0512.

Expiration Date: 09/30/2000.

Title: ARMIS Annual SummaryReport (Formerly titled, "ARMIS Quarterly Report").

Form No.: FCC Report 43–01.

Respondents: Business or other for-profit.

Estimated Annual Burden: 150 respondents; 220 hours per response (avg.); 33,000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rate of return to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. The ARMIS Annual Summary Report (FCC Report 43–01), formerly the ARMIS quarterly Report, contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues. FCC Report 43–01 facilitates the annual collection of the results of accounting, rate base and cost allocation requirements prescribed in parts 32, 36, 64, 65, and 69. The information contained in the ARMIS Annual Summary Report provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data that are needed to administer its rules. It facilitates the timely and efficient analyses of revenue requirements, rates of return and price caps, and provides an improved basis for auditing and other oversight functions. It also enhances the Commission's ability to quantify the effects of policy proposals. Section 220 of the Communications Act of 1934, as amended, 47 U.S.C. 220, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. Section 219(b) of the Communications Act of 1934, as amended, 47 U.S.C. 219(b), authorizes the Commission by general or special orders to require any carriers subject to this Act to file annual reports concerning any matters with respect to which the Commission is authorized or required by law to act. Section 43.21 of the Commission's rules details that requirement. Obligation to respond: mandatory.

OMB Control No.: 3060–0793.

Expiration Date: 03/31/98.

Title: Procedures for States Regarding Lifeline Consents, Adoption of Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers.

Form No.: N/A.

Respondents: Business or other for profit; State, Local or Tribal Government.

Estimated Annual Burden: 890 respondents; 1.25 hours per response (avg.); 1120 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annually.

Description: On May 8, 1997 the Commission released Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96–45, FCC 97–157 (Order). In that Order, the Commission adopted rules providing funding for discounts to eligible schools and libraries. The Commission also adopted rules mandating that state commissions designate common carriers as eligible telecommunications carriers for service areas selected by state commissions in accordance with section 214(e). States and carriers are subject to the following requirements in order to receive universal service support. Section 54.403(a) of the Federal Communications Commission's rules requires states to approve an additional reduction in the amount paid by any low-income consumer in order to receive additional federal Lifeline support. 47 CFR 54.403(a). We request states to send a one-page letter authorizing the reduction of intrastate rates. (No. of respondents: 50; annual burden per respondent: .5 hours; total annual burden: 25 hours). Section 54.505(e)(1) of the rules requires states to adopt discounts at least equal to the discounts established for interstate services. 47 CFR 54.505(e)(1). Each state must adopt an intrastate discount matrix with entries at least equal to those of the interstate discount matrix and send a notification letter indicating that it has done so. (No. of respondents: 50; annual burden per respondent: 2 hours; total annual burden: 100 hours). Section 54.201(b) requires states to designate common carriers as eligible telecommunications carriers for service areas designated by the state commission. 47 CFR 54.201(b). We request that states submit a list of carriers designated as eligible telecommunications carriers and the service areas such non-rural carriers are required to serve. (No. of respondents: 50; annual burden per respondent: 1 hour; total annual hour burden: 50 hours). Section 153(37) of the Communications Act of 1934, as amended, requires any local exchange carrier that seeks to be classified as a rural telephone company to certify to its status as a rural telephone company. 47 U.S.C. 153(37). Any local exchange carrier that seeks to be classified as a rural telephone company must file a letter with the Commission by April 30 of each year notifying the Commission that the LEC certifies itself to be a rural telephone company and explaining how the carrier meets at least one of the four criteria. (No. of respondents: 840; annual burden per respondent: 1 hour; total annual hour burden: 840 hours). If a LEC's status changes so that it becomes ineligible for certification as a rural carrier, that carrier must inform the Commission and the Universal Service Administrator within one month of the change in status. (No. of respondents: 210; annual burden per respondent: .5 hours; total annual hour burden: 105 hours). All of the requirements are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to verify that particular carriers and other respondents are eligible to receive universal service support. Obligation to respond: mandatory.

OMB Control No.: 3060–0756.

Expiration Date: 03/31/98.

Title: Procedural Requirements and Policies for Commission Processing of InterLATA Services Under Section 271 of the Communications Act.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 75 respondents; 250 hours per response (avg.); 18,820 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In a Public Notice released 9/19/97, the Commission revises various procedural requirements and policies relating to the Commission's processing of Bell Operating Company (BOC) applications to provide in-region, interLATA services pursuant to section 271 of the Communications Act of 1934, as amended, 47 U.S.C. 271 (Act). These procedures were originally established in a Public Notice released December 6, 1996 (FCC 96–469). Section 271 provides for applications on a state-by-state basis. a. Submission of Applications by the BOCs: BOCs must file applications which provide information on which the applicant intends to rely in order to satisfy the requirements of section 271. The applications will contain two parts, which include: (1) A stand-alone document entitled Brief in Support of Application by (Bell company name) for Provision of In-region, InterLATA Services in (State name) and (2) any supporting documentation. The Brief in Support will contain a concise summary of substantive arguments presented in the Brief, a statement identifying all of the agreements that the applicant has entered into pursuant to negotiations and/or arbitration under section 252, a statement identifying how the applicant meets the requirements of section 271(c)(1), a statement summarizing the status and findings of the relevant State proceedings (if any) examining the applicant's compliance with section 271, a statement describing the efforts the applicant has made to meet with likely objectors to narrow the issues in dispute, and all factual and legal arguments that the three requirements of section 271(d)(3) have been met. The application must also contain the name, address and phone number of the person who will address inquiries relating to access to any confidential information submitted by the applicant, and must contain an affidavit by an officer or duly authorized employee that "all information supplied in the application is true and accurate to the best of its information and belief." The supporting documentation will contain, at a minimum, the complete public record of the relevant State proceedings (if any) examining the applicant's compliance with section 271, records of interconnection agreements, affidavits, etc. The supporting documentation shall be provided in appendices, separated by tabs and divided into volumes as appropriate. Each volume shall contain a table of contents that lists the subject of each tabbed section of that volume. The application shall include a list of all affidavits and the location of and subjects covered by each of those affidavits. The requirements of section 271(c)(2) will be met with this supporting documentation. All factual assertions, as well as expert testimony, must be supported by an affidavit or verified statement. All substantive arguments must be made in a legal brief (i.e., Brief in Support, comments, reply, ex parte comments) and not in affidavits or other supporting documentation. (No. of respondents: 7; annual hour burden per respondent: 125 hours; total annual burden: 6125 hours). b. Submission of Written Consultations by the State Regulatory Commissions: State regulatory commissions will file written consultations relating to the applications not later than approximately 20 days after the issuance of an Initial Public Notice establishing specific due dates for various filings. (No. of respondents: 49; annual hour burden per respondent: 120 hours; total annual burden: 5880 hours). c. Submission of Written Consultations by the U. S. Department of Justice: The Department of Justice will file written consultations relating to the applications not later than approximately 35 days after the issuance of the Initial Public Notice. (No. of respondents: 1; annual hour burden per respondent: 100 hours; total annual burden: 4900 hours). d. Submission of Written Comments by Interested Third Parties: Interested third parties may file comments on the applications not later than approximately 20 days after the issuance of the Initial Public Notice. All substantive arguments must be made in a legal brief (i.e., Brief in Support, comments, reply, ex parte comments) and not in affidavits or other supporting documentation. All parties submitting confidential information must identify a contact person who will address inquiries relating to access to that confidential information. Each volume of supporting documentation submitted by a party shall contain a table of

contents that lists the subject of each tabbed section of that volume. The party shall include a list of all affidavits and the location of and subjects covered by each of those affidavits. Parties shall not incorporate by reference, in their comment or replies, entire documents or significant portion of documents that were filed in other proceedings, such as comments filed in a previous section 271 proceeding. (No. of respondents: 75; annual hour burden per respondent: 25 hours; total annual burden: 1875 hours). e. Replies: All participants in the proceeding may file a reply to any comment made by any other participant. Such replies will be due approximately 45 days after the Initial Public Notice is issued. (No. of respondents: 10; annual hour burden per respondent: 2 hours; total annual burden: 20 hours). f. Motions: A dispositive motion filed with the Commission in a section 271 proceeding will be treated as an early-filed pleading and will not be subject to a separate pleading cycle, unless the Commission or Bureau determines otherwise. Non-dispositive motions will be subject to the default pleading cycle in section 1.45 or our rules, unless the Commission determines otherwise in a public notice. (No. of respondents: 10; annual hour burden per respondent: 2 hours; total annual burden: 20 hours). All of the requirements would be used to ensure that BOCs have complied with their obligations under the Communications Act of 1934, as amended before being authorized to provide in-region, interLATA services pursuant to section 271. Obligation to comply: mandatory.

OMB Control No.: 3060–0579.

Expiration Date: 09/30/2000.

Title: Expanded Interconnection with Local Telephone Company Facilities For Interstate Switched Transport Services

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 16 respondents; 124.7 hours per response (avg.); 1996 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $10,000.

Frequency of Response: On occasion.

Description: In the Second Report and Order and Third Further Notice of Proposed Rulemaking in the Expanded Interconnection proceeding, CC Docket No. 91–141 (Order), the Commission took another step toward enhancing competition in the access marketplace by requiring Tier 1 local exchange carriers (LECs), except NECA pool members, to provide expanded interconnection for interstate switched transport services. In the Order, the Commission required Tier 1 LECs, except for NECA pool members, to provide expanded opportunities for third-party interconnection with their interstate switched transport facilities. The Commission concluded that expanded interconnection will likely increase competition, producing significant benefits for consumers that will outweigh any potential drawbacks. In the Order, the Commission concluded that the LECs should be required to provide certain cost support to justify the rate levels for the tariff charges to be paid by interconnectors for expanded interconnection. The Commission required the price cap LECs to provide cost support for the connection charges using the same methodology employed to support new services under the price cap rules. The Commission required the LECs to develop and justify consistent methodologies for deriving the direct cost of providing similar types of offerings, including expanded interconnection services covered by the connection charge elements. The Commission also required the LECs to justify any deviations from uniform overhead loadings that they propose for pricing connection charges, although it did not specify a particular methodology in advance. Under this approach, if a LEC proposes to price connection charges to reflect fully distributed overhead loadings, the Commission will compare such loadings to the overhead loadings used for other services and require justification for any differences. Rate of return LECs must support their rates under traditional cost support requirements. The Commission believes that this cost information is necessary to ensure the proper pricing of expanded interconnection offerings since they will be used by the LECs' competitors. The LECs may use approved, commonly used public utility ratemaking methodologies to develop the required cost support, including sampling and averaging of certain costs, and thereby minimize the burden of this requirement. Absent these requirements, the Commission is concerned that the LECs would have a strong incentive to price these services in a manner that would undermine the growth of competition in interstate access. Unless the interconnectors can purchase expanded interconnection offerings at rates that are just, reasonable, and nondiscriminatory, mandating expanded interconnection will not lead to effective competition and the anticipated benefits. Tariff filings to implement the density pricing plans and volume and term discounts generally will be accompanied by the support required under existing price cap rules. This information is necessary to ensure that rates for special access services subject to density zone pricing are just, reasonable, and nondiscriminatory, and comply with the Commission's rules. The tariffs and cost support information accompanying them will be used by the FCC staff to ensure that the tariff rates to be paid for expanded interconnection and switched transport services are just, reasonable, and nondiscriminatory, as sections 201 and 202 of the Communications Act require. Without this information, the FCC would be unable to determine whether the rates for these services are just, reasonable, nondiscriminatory, and otherwise in accordance with the law. Tariffs will also be used by parties using expanded interconnection and switched transport offerings to ascertain the charges and other terms and conditions applicable to those offerings. Your obligation to respond: mandatory.

OMB Control No.: 3060–0774.

Expiration Date: 09/30/2000.

Title: Federal-State Joint Board on Universal Service—CC Docket No. 96–45, 47 CFR 36.611–36.612, and 47 CFR part 54.

Form No.: N/A.

Respondents: Business or other for-profit entities; individuals or households; not-for-profit institutions; state, local or tribal government.

Estimated Annual Burden: 5,565,451 respondents; 3.1 hours per response (avg.); 1,784,220 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annually, one-time requirements.

Description: Congress directed the Commission to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in section 254 of the Telecommunications Act of 1996 and such other principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Act. In the Report and Order issued in CC Docket No. 96–45, the Commission adopts rules that are designed to implement the universal service provisions of section 254. Specifically, the Order addresses: (1) Universal service principles; (2) services eligible for support; (3) affordability; (4) carriers eligible for universal service support; (5) support mechanisms for rural, insular, and high cost areas; (6) support for low-income consumers; (7) support for schools, libraries, and health care providers; (8) interstate subscriber line charge and common line cost recovery; and (9) administration of support mechanisms. The reporting and recordkeeping requirements contained in CC Docket No. 96–45 are designed to implement section 254 follow. The reporting and recordkeeping are necessary to ensure the integrity of the program. All the collections are necessary to implement the congressional mandate for universal service. The reporting and recordkeeping requirements are necessary to verify that the carriers and other respondents are eligible to receive universal service support. Obligation to comply: mandatory.

Rule section/title (47 CFR)	Hours per response	Total annual burden
a. 36.611(a) and 36.612—Submission and Updating information to NECA	20	26,800
b. 54.101(c)—Demonstration of exceptional circumstances for toll-limitation grace period	50	100
c. 54.201(b)–(c)—Submission of eligibility criteria	1	3,400
d. 54.201(d)(2)—Advertisement of services and charges	50	65,000
e. 54.205(a)—Advance notice of relinquishment of universal service	.5	50
f. 54.207(c)(1)—Submission of proposal for redefining a rural service area	125	6,250
g. 54.307(b)—Reporting of expenses and number of lines served	2.5 (avg.)	4,100
h. 54.401(b)(1)–(2)—Submission of disconnection waiver request	2	100
i. 54.401(d)—Lifeline certification to the Administrator	1	1,300
j. 54.407(c)—Lifeline recordkeeping	80	104,000
k. 54.409(a)–(b)—Consumer qualification for Lifeline	5 min	440,000
l. 54.409(b)—Consumer notification of Lifeline discontinuance	5 min	44,000
m. 54.418(b)—Link Up recordkeeping	80	104,000
n. 54.501(d)(4) and 54.516—Schools and Libraries recordkeeping	41 (avg.)	372,000
o. 54.504(b)–(c), 54.507(d) and 54.509(a)—Description of services requested and certification	2	100,000
p. 54.601(b)(4) and 54.609(b)—Calculating support for health care providers	100	340,000
q. 54.601(b)(3) and 54.619—Shared facility recordkeeping	21 (avg.)	160,000
r. 54.607(b)(1)–(2)—Submission of proposed rural rate	3	150
s. 54.603(b)(1), 54.615(c)–(d) and 54.623(d)—Description of services requested and certification	1	12,000
t. 54.619(d)—Submission of rural health care report	40	40
u. 54.701(f)(1) and (f)(2)—Submission of annual report and CAM	40	40
v. 54.701(g)—Submission of quarterly report	10	40
w. 54.707—Submission of state commission designation	.25	850

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–26418 Filed 10–3–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice and request for comment.

SUMMARY: The Consumer Compliance Task Force of the Federal Financial Institutions Examination Council (FFIEC) is supplementing, amending, and republishing its Interagency Questions and Answers Regarding Community Reinvestment. The Interagency Questions and Answers have been prepared by staff of the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the "agencies") to answer most frequently asked questions about community reinvestment. The Interagency Questions and Answers contain informal staff guidance for agency personnel, financial institutions, and the public. Staff of the agencies seek comment on the proposed questions and answers concerning how to determine whether particular activities have a "primary purpose" of community development. In addition, staff also invite public comment on the new and revised questions and answers, particularly the guidance regarding home mortgage loans to middle- and upper-income individuals in low- or moderate-income areas.

DATES: Effective date of amended Interagency Questions and Answers on Community Reinvestment: October 6, 1997. The agencies request that comments on the proposed questions and answers be submitted on or before December 5, 1997.

ADDRESSES: Questions and comments may be sent to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue NW., Suite 200, Washington, DC 20037, or by facsimile transmission to (202) 634–6556.

FOR FURTHER INFORMATION CONTACT:

OCC: Malloy Harris, National Bank Examiner, Community and Consumer Policy Division, (202) 874–4446; or Margaret Hesse, Senior Attorney, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Glenn E. Loney, Associate Director, Division of Consumer and Community Affairs, (202) 452–3585; or Robert deV. Frierson, Assistant General Counsel, Legal Division, (202) 452–3711, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Bobbie Jean Norris, National Coordinator, Community Affairs and Community Reinvestment, Division of Compliance and Consumer Affairs, (202) 942–3090; or Ann Hume Loikow, Counsel, Legal Division, (202) 898–3796, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Theresa A. Stark, Project Manager, Compliance Policy, (202) 906–7054; or Richard R. Riese, Project Manager, Compliance Policy, (202) 906–

6134, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

In 1995, the agencies revised their Community Reinvestment Act (CRA) regulations by issuing a joint final rule, which was published on May 4, 1995 (60 FR 22156). *See* 12 CFR parts 25, 228, 345 and 563e, implementing 12 U.S.C. 2901 *et seq*. The agencies published two notices of proposed rulemaking prior to publishing the joint final rule. *See* 58 FR 67466 (Dec. 21, 1993); 59 FR 51232 (Oct. 7, 1994). The agencies published related clarifying documents on December 20, 1995 (60 FR 66048) and May 10, 1996 (61 FR 21362).

On October 21, 1996, the Consumer Compliance Task Force of the FFIEC published "Interagency Questions and Answers Regarding Community Reinvestment" (hereinafter, Interagency Questions and Answers) to provide informal staff guidance for use by agency personnel, financial institutions, and the public. *See* 61 FR 54647. In the supplementary information published with the Interagency Questions and Answers, the agencies' staff requested comments and indicated that they intended to update the Interagency Questions and Answers on a periodic basis. 61 FR at 54648. This document supplements, revises, and republishes that guidance based, in part, on questions and comments received from examiners, financial institutions, and other interested parties. The agencies consider the Interagency Questions and Answers to be their primary vehicle for disseminating guidance interpreting their CRA regulations.

This document includes new questions and answers that: (1) Clarify that not all activities that finance businesses meeting certain size eligibility standards necessarily promote economic development under the CRA regulations; (2) make a technical correction to one of the questions and answers published in the original Interagency Questions and Answers; (3) explain how the Agencies' examiners evaluate home mortgage loans to middle- and upper-income borrowers in low- and moderate-income areas under the CRA regulations' lending test; (4) explain how a financial institution should geocode a small business or small farm loan where the borrower provides only a post office box or rural route and box number; and (5) caution that the Agencies' quarterly publication of a list of financial institutions that will be examined for CRA compliance is subject to change. Finally, this document especially seeks comment on the proposed questions and answers concerning how to determine whether particular activities have a "primary purpose" of community development, and also invites public comment on the new and revised questions and answers.

A discussion of the revised and new questions and answers follows. Questions and answers are grouped by the provision of the CRA regulations that they discuss and are presented in the same order as the regulatory provisions. The Interagency Questions and Answers employ an abbreviated method to cite to the regulations. Because the regulations of the four agencies are substantively identical, corresponding sections of the different regulations usually bear the same suffix. Therefore, the Interagency Questions and Answers typically cite only to the suffix. For example, the small bank performance standards for national banks appear at 12 CFR 25.26; for Federal Reserve member banks supervised by the Board, they appear at 12 CFR 228.26; for nonmember banks, at 12 CFR 345.26; and for thrifts, at 12 CFR 563e.26. Accordingly, the citation in this document would be to § ——.26. In the few instances in which the suffix in one of the regulations is different, the specific citation for that regulation is provided.

Do All Activities That Finance Businesses Meeting Certain Size Eligibility Standards Promote Economic Development?

The CRA Regulations define the term "community development" to include "activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less." 12 CFR 25.12(h)(3), 228.12(h)(3), 345.12(h)(3) and 563e.12(g)(3).

The October 1996 Interagency Questions and Answers included a question and answer concerning whether all activities that finance these businesses or farms promote economic development. That question and answer (Q&A), Q&A1 addressing §§ __.12(h)(3) and 563e.12(g)(3), is being revised in response to further questions and public comments. The revised question and answer clarifies that to be considered as "community development" under §§ __.12(h)(3) and 563e.12(g)(3), a loan, investment or service, whether made directly or through an intermediary, must meet both a size test and a purpose test. An activity meets the size requirement if it finances entities that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. To meet the purpose test, the activity must promote economic development. An activity is considered to promote economic development if it supports permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or supports permanent job creation, retention, and/or improvement in low- or moderate-income geographies targeted for redevelopment by Federal, state, local or tribal governments. The agencies will presume that any loan or investment in or to a SBDC or SBIC promotes economic development. Funding provided in connection with other SBA programs may also promote economic development; however, examiners will make that determination based on business types, funding purposes, and other relevant information.

Where Do Institutions Find Income Level Data

In the October 1996 Interagency Questions and Answers, Q&A1 addressing §§ __.12(n) and 563e.12(m) contained an incorrect address for the FFIEC's internet home page. That question and answer has been revised to include the correct address: 'http://www.ffiec.gov/'.

Home Mortgage Loans to Middle- and Upper-Income Borrowers in Low- and Moderate-Income Areas

Several community development organizations have notified the agencies of their belief that the CRA regulations do not sufficiently recognize the efforts of financial institutions that make home mortgage loans to middle- or upper-income borrowers in low- or moderate-income areas. These community organizations have suggested to agency staff that lower-income geographies should be developed into mixed-income geographies, inhabited with residents of all income categories.

For example, one community organization described problems that its community encountered in redeveloping an inner city area by providing single family housing affordable to low- and moderate-income borrowers and other necessary services. Although affordable housing was provided, the community had difficulty attracting retail services. A commercial developer considered building a shopping center near a new, affordable housing development, but determined that the center would not be profitable because of the lower level of disposable income of many of the low- and moderate-income homeowners. Consequently, the community organization representative stressed how important it is for future development that distressed areas being revitalized attract residents of all income levels.

The Agencies previously considered the appropriate weight that should be accorded lending in low- and moderate-income areas to higher-income borrowers. During the CRA reform rulemaking process, however, the agencies received public comment opposed to a proposal that would have evaluated an institution's lending primarily based on its lending activities in low- and moderate-income geographies. *See, e.g.*, 58 FR 67,466, 67,480 (December 21, 1993). Those commenters opposed the proposal, stating that it would inappropriately have given institutions a greater incentive to make loans to high-income borrowers located in low-income geographies than to make loans to low-income borrowers located in high-income geographies. In response to these comments, the final interagency CRA regulations de-emphasized the location of the loans under the lending test by also evaluating lending based on borrower characteristics, i.e., income.

Because of the numerous inquiries the agencies have received since the final rules were issued, agency staff are adding new guidance addressing § __.22(b)(2) & (3), answering how home mortgage loans to borrowers of all incomes, but especially to middle- and upper-income borrowers, located in low- or moderate-income areas will be evaluated under the CRA regulations' lending test.

The new question and answer explains that examiners consider all home mortgage loans under the performance criteria of the lending test. This means that examiners first evaluate the institution's lending activity based on the number and amount of home mortgage loans in the institution's assessment area(s). Examiners next evaluate the geographic distribution of all of the institution's home mortgage loans based on the loan location, including (1) the portion of the institution's lending in the institution's assessment area(s); (2) the dispersion of lending in the institution's assessment area(s); and (3) the number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the institution's assessment area(s). Finally, examiners evaluate these loans based on borrower characteristics, i.e., the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals.

The regulation, however, allows examiners flexibility in judging the appropriate consideration of loans to middle- or upper-income individuals in low- or moderate-income areas. The new question and answer explains that all of the lending test criteria must be considered in light of an institution's performance context. The performance context will determine the importance of the borrower distribution criterion, particularly as it relates to the geographic distribution of the loans. If the performance context information indicates, for example, that the loans are for homes located in an area for which the local, state, tribal, or Federal Government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal Enterprise Community or Empowerment Zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, the examiner has the flexibility to consider these loans as favorably as loans to low- or moderate-income borrowers in the low- or moderate-income geography. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution. Thus, the performance context may significantly influence how these loans affect an institution's performance.

Geocoding Addresses Consisting of Post Office Boxes or Rural Routes and Box Numbers

Staff from the agencies previously provided guidance about how to geocode (i.e., assign a census tract or block numbering area for) small business or small farm loans for which the borrower provides an address consisting of either a post office box number or a rural route and box number. *See* Interagency Staff CRA Interpretive Letter, published as OCC Interpretive Letter No. 729, (1995–1996 Transfer Binder) Fed. Banking L. Rep. (CCH), ¶ 81–046 (June 14, 1996). In this letter, staff indicated that, if an institution could not obtain from its small business or small farm borrower a street address in addition to a rural route and box number or post office box number, the institution could collect and report the location of the loan based on the town, state, and zip code provided by the borrower. The location of the borrower's post office would serve as a proxy for the location of the small business or farm.

Staff have reconsidered this guidance and are now providing a question and answer based on § __.42(a)(3) addressing this issue. The revised guidance states that, for purposes of 1997 data collection and reporting, financial institutions may rely on the guidance provided in the interpretive letter if a small business or small farm borrower provides only a rural route and box number or a post office box number as its address. Thus, for 1997, institutions may collect and report the location of small business or small farm loans for which the institution has been unable to ascertain a street address, using the location (i.e., the census tract or block numbering area) of the borrower's post office box as a proxy.

Because financial institutions typically know where their small business or small farm borrowers, or the collateral securing their loans, are located, staff have provided new instructions for 1998 data collection and reporting purposes. Beginning in 1998, financial institutions should request the street address of small business and small farm borrowers, even if the borrower initially provides only a post office box number or rural route and box number. If no street address exists, institutions should not use the post office box as a proxy, but instead geocode the census tract or block numbering area as "NA."

Is Publication of the List of Institutions to be Examined in the Upcoming Quarter Determinative of Whether an Institution Will, in Fact, be Examined in the Upcoming Quarter

Agency staff have added a new question and answer addressing § __.45 relating to the publication of the institutions to be examined in the upcoming quarter. The question and answer clarifies that whether or not an institution is included on the published list will not always indicate that the institution will or will not be examined in the upcoming quarter. Although the agencies will attempt to ensure that the published lists are as accurate as possible, the agencies sometimes may need to alter their examination plans.

Because of the potential for such adjustments, staff urge all interested members of the public to file comments regarding the CRA performance of an institution whether or not the institution has been scheduled for a CRA examination.

Request for Comment and Proposed Questions and Answers on Community Development Explaining the "Primary Purpose" for Community Development Activities

The definitions of "community development loan," "community development service," and "qualified investment" all require a "primary purpose of community development." *See* 12 CFR 25.12(i)(1), (j)(1), and (s); 228.12(i)(1), (j)(1), and (s); 345.12(i)(1), (j)(1), and (s); and 563e.12(h)(1), (i)(1), and (r). The agencies have received a number of inquiries about whether certain activities have the necessary "primary purpose" of community development to qualify as a community development loan, qualified investment or community development service. Some inquiries come from persons interested in creating new community development vehicles. These inquiries typically ask what minimum characteristics should be designed into a targeted loan, investment or service to possess the necessary primary purpose. In answering these questions, the agencies have generally stated that a "primary purpose" of community development exists when the loan, investment or service is divisible and measurable in terms of dollars, housing units built, or countable individuals benefited, and when an identifiable majority of the dollars expended, units built or individuals benefited is clearly attributable to one of the community development purposes enumerated in the regulation.

However, this answer does not address other inquiries concerning activities that are subject to certain legal or market restraints, such that they do not reach this threshold, yet often display laudable community development purposes and result in real, long-term community development benefits. In addition, many of the projects occur within a performance context that buttresses a conclusion that the activity was "designed for the express purpose" of achieving a qualifying community development purpose, even though less than half the dollars involved in the entire project have been concentrated on that purpose. Federal tax-incentive affordable housing projects, where less than half the units or half the dollars go into the portion of the project that represents affordable housing for low- or moderate-income persons, fall into this category.

A number of other inquiries are characterized by a range of facts and contexts. Given this variety, the agencies recognize that many types of endeavors have been devised to address an array of community development pursuits. In addition, the agencies have observed that within the broad range of qualifying activities, distinctions can and should be made among those activities. Accordingly, in publishing proposed guidance on "primary purpose," the agencies are also providing additional commentary that emphasizes the quantitative and qualitative distinctions that should be made when applying the performance criteria of the pertinent regulatory tests to evaluate eligible community development loans, qualified investments or community development services.

Proposed Q&A7 addressing §§ __.12(i) and 563e.12(h) is based on the preamble to the final rule as set forth at 60 FR 22,156, 22,159 (May 4, 1995), which states that activities not designed for the express purpose of community development (as defined in the regulation) are not eligible for consideration as community development loans or services or qualified investments. The preamble further states that the provision of indirect or short-term benefits to low- or moderate-income persons does not make an activity community development. In addition to incorporating this preamble language into the Interagency Questions and Answers, the answer identifies the kind of information that would be reviewed to determine whether an activity was designed for the express purpose of community development. The answer adopts a simplified threshold rule and an alternative approach for finding sufficient bases to conclude that an activity possesses the requisite primary purpose.

Agency staff are also proposing additional questions and answers that provide relevant guidance on the evaluation of activities whose primary purpose is community development, as well as the reporting of community development loans. This additional guidance emphasizes that once a loan or investment is found to possess a primary purpose of community development, the evaluation of that community development loan or qualified investment under the relevant performance criteria would allow for differentiation among those activities based not only on the differing dollar amounts attributable to the underlying community development purpose, but also on the loan's innovation or complexity under § __.22(b)(4) or the investment's innovation, complexity, responsiveness or non-routine characteristics under § __.23(e). In addition, proposed Q&A3 addressing § __.42(b)(2) discusses whether a loan may be reported as a community development loan if its primary purpose is to finance an affordable housing project for low- or moderate-income individuals, but only 40% of the units in question will actually be occupied by individuals or families with low- or moderate-incomes.

Staff request public comment particularly addressing whether the proposed primary purpose standard over-inclusively qualifies activities as having a community development purpose, and, if so, is this adequately balanced by the regulatory requirements that allow marginal activities to be weighted less heavily than those activities that provide a greater benefit related to the community development purpose or demonstrate other performance criteria, such as innovation, complexity, or responsiveness. Staff also invite comment about whether the proposed guidance may result in excluding, as not having a primary purpose of community development, deserving endeavors.

Sections __.12(i) & 563e.12(h)

Proposed Q7

What is meant by the term "primary purpose" as that term is used to define what constitutes a community development loan, a qualified investment or a community development service?

Proposed A7

A loan, investment or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses and farms that meet the requirements set forth in §§ __.12(h) or 563e.12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose if (1) the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved. The fact that an activity provides indirect or short-term benefits to low-or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities under either approach should be prepared to demonstrate the activities' qualifications.

Section __.22(b)(4)

Proposed Q1

When evaluating an institution's record of community development lending, may an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?

Proposed A1

Yes. When evaluating the institution's record of community development lending under § __.22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two $10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40% of its units for low-income residents and the other project allocates 65% of its units for low-income residents. An institution would report both loans as $10 million community development loans under the § __.42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, the 65% project would receive greater positive consideration under the lending test than the 40% project. The 65% project provides more affordable housing for more people per dollar expended.

Under § __.22(b)(4), the amount of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the activity, not simply to the dollar amount expended on a particular transaction. By applying all performance criteria, a community development loan of a lower dollar amount could receive more favorable consideration under the lending test than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

Section __.23(e)

Proposed Q1

When applying the performance criteria of § __.23(e), may an examiner distinguish among qualified investments based on how much of the investment actually supports the underlying community development purpose?

Proposed A1

Yes. Although § __.23(e)(1) speaks in terms of the dollar amount of qualified investments, the criterion permits an examiner to weight certain investments differently or to make other appropriate distinctions when evaluating an institution's record of making qualified investments. For instance, a targeted mortgage-backed security that qualifies as an affordable housing issue that has only 60% of its face value supported by loans to low-or moderate-income borrowers generally would not be weighted as heavily under § __.23(e)(1) as a targeted mortgage-backed security with 100% of its face value supported by affordable housing loans to low-and moderate-income borrowers. The examiner should describe any differential weighting (or other adjustment), and its basis in the Public Evaluation. However, no matter how a qualified investment is handled for purposes of § __.23(e)(1), it will also be evaluated with respect to the performance criteria set forth in § __.23(e) (2), (3) and (4) . By applying all criteria, a qualified investment of a lower dollar amount could receive more favorable consideration under the Investment Test than a qualified investment with a higher dollar amount, but with fewer qualitative enhancements.

Section __.42(b)(2)

Proposed Q3

When the primary purpose of a loan is to finance an affordable housing project for low-or moderate-income individuals, but only 40% of the units in question will actually be occupied by individuals or families with low-or moderate-incomes, should the entire loan amount be reported as a community development loan?

Proposed A3

Yes. As long as the primary purpose of the loan is a community development purpose, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending.

General Comments

In addition to the specific request for comments on the proposed "primary purpose" questions and answers, staff invite public comment on the new and revised questions and answers, particularly the guidance regarding home mortgage loans to middle-and upper-income individuals in low-or moderate-income areas. Staff also invite public comment on a continuing basis on any issues raised by the CRA and these Interagency Questions and Answers. Staff of the agencies intend to continue to update the Interagency Questions and Answers periodically. If, after reading the Interagency Questions and Answers, financial institutions, examiners, community groups, or other interested parties have unanswered questions or comments about the agencies' community reinvestment regulations, they should submit them to the agencies. Staff will consider including questions received from the public in future guidance.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The SBREFA requires an agency, for each rule for which it prepares a final regulatory flexibility analysis, to publish one or more compliance guides to help small entities understand how to comply with the rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the agencies certified that their proposed CRA rule would not have a significant economic impact on a substantial number of small entities and invited public comments on that determination. *See* 58 FR 67478 (Dec. 21, 1993); 59 FR 51250 (Oct. 7, 1994). In response to public comment, the agencies voluntarily prepared a final regulatory flexibility analysis for the joint final rule, although the analysis was not required because it supported

the agencies' earlier certification regarding the proposed rule. Because a regulatory flexibility analysis was not required, section 212 of the SBREFA does not apply to the final CRA rule. However, in their continuing efforts to provide clear, understandable regulations and to comply with the spirit of the SBREFA, the agencies have compiled the Interagency Questions and Answers. The Interagency Questions and Answers serve the same purpose as the compliance guide described in the SBREFA by providing guidance on a variety of issues of particular concern to small banks and thrifts. The text of the Interagency Questions and Answers follows:

Text of the Interagency Questions and Answers

Interagency Questions and Answers Regarding Community Reinvestment

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§§__.12(f) & 563e.12(e) Branch
§§__.12(h) & 563e.12(g) Community development
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APPENDIX B to Part__CRA Notice

The body of the Interagency Questions and Answers Regarding Community Reinvestment follows:

Section __ .11—Authority, purposes, and scope

Section __ .11(c) Scope

Section 25.11(c)(3), 228.11(c)(3) & 345.11(c)(3) Certain Special Purpose Banks

Q1. *Is the list of special purpose banks exclusive?*

A1. No, there may be other examples of special purpose banks. These banks engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose banks typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose bank merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

Q2. *To be a special purpose bank, must a bank limit its activities in its charter?*

A2. No. A special purpose bank may, but is not required to, limit the scope of its activities in its charter, articles of association or other corporate organizational documents. A bank that does not have legal limitations on its activities; but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. A bank that believes it is exempt from CRA as a special purpose bank should seek confirmation of this status from its supervisory agency.

Section __ .12—Definitions

Section __ .12(a) Affiliate

Q1. *Does the definition of "affiliate" include subsidiaries of an institution?*

A1. Yes, "affiliate" includes any company that controls, is controlled by, or is under common control with another company. An institution's subsidiary is controlled by the institution and is, therefore, an affiliate.

Sections __ .12(f) & 563e.12(e) Branch

Q1. *Do the definitions of "branch," "automated teller machine (ATM)," and "remote service facility (RSF)" include mobile branches, ATMs, and RSFs?*

A1. Yes. Staffed mobile offices that are authorized as branches are considered "branches" and mobile ATMs and RSFs are considered "ATMs" and "RSFs."

Q2. *Are loan production offices (LPOs) branches for purposes of the CRA?*

A2. LPOs and other offices are not "branches" unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory agency.

Sections __.12(h) & 563e.12(g) Community Development

Q1. *Are community development activities limited to those that promote economic development?*

A1. No. Although the definition of "community development" includes activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, or social services targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that revitalize or stabilize low- or moderate-income areas.

Q2. *Must a community development activity occur inside a low- or moderate-income area in order for an institution to receive CRA consideration for the activity?*

A2. No. Community development includes activities outside of low- and moderate-income areas that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these low- or moderate-income areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

Q3. *Does the regulation provide flexibility in considering performance in high-cost areas?*

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their "primary" purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development.

Sections __.12(h)(3) & 563e.12(g)(3) Activities That Promote Economic Development by Financing Businesses or Farms That Meet Certain Size Eligibility Standards

Q1. *"Community development" includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet these size eligibility standards considered to be community development?*

A1. No. To be considered as "community development" under §§ ——.12(h)(3) and 563e.12(g)(3), a loan, investment or service, whether made directly or through an intermediary, must meet both a size test and a purpose test. An activity meets the size requirement if it finances entities that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. To meet the purpose test, the activity must promote economic development. An activity is considered to promote economic development if it supports permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or supports permanent job creation, retention, and/or improvement in low- or moderate-income geographies targeted for redevelopment by Federal, state, local or tribal governments. The agencies will presume that any loan or investment in or to a SBDC or SBIC promotes economic development.

Sections __.12(i) & 563e.12(h) Community Development Loan

Q1. *What are examples of community development loans?*

A1. Examples of community development loans include, but are not limited to, loans to:

- Borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons;
- Not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;
- Borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;
- Financial intermediaries including Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development.
- Local, state, and tribal governments for community development activities; and

• Borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located.

Q2. *If a retail institution that is not required to report under the Home Mortgage Disclosure Act (HMDA) makes affordable home mortgage loans that would be HMDA-reportable home mortgage loans if it were a reporting institution, or if a small institution that is not required to collect and report loan data under CRA makes small business and small farm loans and consumer loans that would be collected and/or reported if the institution were a large institution, may the institution have these loans considered as community development loans?*

A2. No. Although small institutions are not required to report or collect information on small business and small farm loans and consumer loans, and some institutions are not required to report information about their home mortgage loans under HMDA, if these institutions are retail institutions, the agencies will consider in their CRA evaluations the institutions' originations and purchases of loans that would have been collected or reported as small business, small farm, consumer or home mortgage loans, had the institution been a collecting and reporting institution under the CRA or the HMDA. Therefore, these loans will not be considered as community development loans. Multifamily dwelling loans, however, may be considered as community development loans as well as home mortgage loans. *See also* Q&A2 addressing § __.42(b)(2).

Q3. *Do secured credit cards or other credit card programs targeted to low- or moderate-income individuals qualify as community development loans?*

A3. No. Credit cards issued to low- or moderate-income individuals for household, family, or other personal expenditures, whether as part of a program targeted to such individuals or otherwise, do not qualify as community development loans because they do not have as their primary purpose any of the activities included in the definition of "community development."

Q4. *The regulation indicates that community development includes "activities that revitalize or stabilize low- or moderate-income geographies." Do all loans in a low- to moderate-income geography have a stabilizing effect?*

A4. No. Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a distressed area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents. On the other hand, a loan for an anchor business in a distressed area (or a nearby area), that employs or serves residents of the area, and thus stabilizes the area, may be considered to have a community development purpose. For example, in an underserved, distressed area, a loan for a pharmacy that employs, and provides supplies to, residents of the area promotes community development.

Q5. *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A5. No. The regulations, for example, recognize that community development organizations and programs are frequently efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multi-state basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area. Furthermore, the regulations permit a wholesale or limited purpose institution to consider community development loans, community development services, and qualified investments wherever they are located, as long as the institution has otherwise adequately addressed the credit needs within its assessment area(s).

Q6. *What is meant by a "regional area" in the requirement that a community development loan must benefit the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A6. A "regional area" may be as small as a city or county or as large as a multistate area. For example, the "mid-Atlantic states" may comprise a regional area. When examiners evaluate community development loans that benefit a regional area that includes the institution's assessment area, however, the examiners will consider the size of the regional area and the actual or potential benefit to the institution's assessment area(s). In most cases, the larger the regional area, the more diffuse the benefit will be to the institution's assessment area(s). Examiners may view loans with more direct benefits to an institution's assessment area(s) as more responsive to the credit needs of the area(s) than loans for which the actual benefit to the assessment area(s) is uncertain or for which the benefit is diffused throughout a larger area that includes the assessment area(s).

Sections __.12(j) & 563e.12(i) Community Development Service

Q1. *In addition to meeting the definition of "community development" in the regulation, community development services must also be related to the provision of financial services. What is meant by "provision of financial services"?*

A1. Providing financial services means providing services of the type generally provided by the financial services industry. Providing financial services often involves informing community members about how to get or use credit or otherwise providing credit services or information to the community. For example, service on the board of directors of an organization that promotes credit availability or finances affordable housing is related to the provision of financial services. Providing technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms is also providing financial services. By contrast, activities that do not take advantage of the employees' financial expertise, such as neighborhood cleanups, do not involve the provision of financial services.

Q2. *Are personal charitable activities provided by an institution's employees or directors outside the ordinary course of their employment considered community development services?*

A2. No. Services must be provided as a representative of the institution. For example, if a financial institution's director, on her own time and not as a representative of the institution, volunteers one evening a week at a local community development corporation's financial counseling program, the institution may not consider this activity a community development service.

Q3. *What are examples of community development services?*

A3. Examples of community development services include, but are not limited to, the following:

• Providing technical assistance on financial matters to nonprofit, tribal or government organizations serving low- and moderate-income housing or economic revitalization and development needs;

• Providing technical assistance on financial matters to small businesses or community development organizations;

• Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;

• Providing credit counseling, home buyers and home maintenance counseling, financial planning or other financial services education to promote community development and affordable housing;

• Establishing school savings programs for low- or moderate-income individuals;

• Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low- or moderate-income individuals; and

• Providing other financial services with the primary purpose of community development, such as low-cost bank accounts or free government check cashing that increases access to financial services for low- or moderate-income individuals.

Examples of technical assistance activities that might be provided to community development organizations include:

• Serving on a loan review committee;

• Developing loan application and underwriting standards;

• Developing loan processing systems;

• Developing secondary market vehicles or programs;

• Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;

• Furnishing financial services training for staff and management;

• Contributing accounting/bookkeeping services; and

• Assisting in fund raising, including soliciting or arranging investments.

Sections __.12(k) & 563e.12(j) Consumer Loan

Q1. *Are home equity loans considered "consumer loans"?*

A1. Home equity loans made for purposes other than home purchase, home improvement or refinancing home purchase or home improvement loans are consumer loans if they are extended to one or more individuals for household, family, or other personal expenditures.

Q2. *May a home equity line of credit be considered a "consumer loan" even if part of the line is for home improvement purposes?*

A2. If the predominant purpose of the line is home improvement, the line may only be reported under HMDA and may not be considered a consumer loan. However, the full amount of the line may be considered a "consumer loan" if its predominant purpose is for household, family, or other personal expenditures, and to a lesser extent home improvement, and the full amount of the line has not been reported under HMDA. This is the case even though there may be "double counting" because part of the line may also have been reported under HMDA.

Q3. *How should an institution collect or report information on loans the proceeds of which will be used for multiple purposes?*

A3. If an institution makes a single loan or provides a line of credit to a customer to be used for both consumer and small business purposes, consistent with the Call Report and TFR instructions, the institution should determine the major (predominant) component of the loan or the credit line and collect or report the entire loan or credit line in accordance with the regulation's specifications for that loan type.

Sections __.12(m) & 563e.12(l) Home Mortgage Loan

Q1. *Does the term "home mortgage loan" include loans other than "home purchase loans"?*

A1. Yes. "Home mortgage loan" includes a "home improvement loan" as well as a "home purchase loan," as both terms are defined in the HMDA regulation, Regulation C, 12 CFR part 203. This definition also includes multifamily (five-or-more families) dwelling loans, loans for the purchase of manufactured homes, and refinancings of home improvement and home purchase loans.

Q2. *Some financial institutions broker home mortgage loans. They typically take the borrower's application and perform other settlement activities; however, they do not make the credit decision. The broker institutions may also initially fund these mortgage loans, then immediately assign them to another lender. Because the broker institution does not make the credit decision, under Regulation C (HMDA), they do not record the loans on their HMDA–LARs, even if they fund the loans. May an institution receive any consideration under CRA for its home mortgage loan brokerage activities?*

A2. Yes. A financial institution that funds home mortgage loans but immediately assigns the loans to the lender that made the credit decisions may present information about these loans to examiners for consideration under the lending test as "other loan data." Under Regulation C, the broker institution does not record the loans on its HMDA–LAR because it does not make the credit decisions, even if it funds the loans. An institution electing to have these home mortgage loans considered must maintain information about all of the home mortgage loans that it has funded in this way. Examiners will consider this other loan data using the same criteria by which home mortgage loans originated or purchased by an institution are evaluated.

Institutions that do not provide funding but merely take applications and provide settlement services for another lender that makes the credit decisions will receive consideration for this service as a retail banking service. Examiners will consider an institution's mortgage brokerage services when evaluating the range of services provided to low-, moderate-, middle- and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. Alternatively, an institution's mortgage brokerage service may be considered a community development service if the primary purpose of the service is community development. An institution wishing to have its mortgage brokerage service considered as a community development service must provide sufficient information to substantiate that its primary purpose is community development and to establish the extent of the services provided.

Sections __.12(n) & 563e.12(m) Income Level

Q1. *Where do institutions find income level data for geographies and individuals?*

A1. The income levels for geographies, i.e., census tracts and block numbering areas, are derived from

Census Bureau information and are updated every ten years. Institutions may contact their regional Census Bureau office or the Census Bureau's Income Statistics Office at (301) 763–8576 to obtain income levels for geographies. *See* Appendix A of these Interagency Questions and Answers for a list of the regional Census Bureau offices. The income levels for individuals are derived from information calculated by the Department of Housing and Urban Development (HUD) and updated annually. Institutions may contact HUD at (800) 245–2691 to request a copy of "FY [year number, e.g., 1996] Median Family Incomes for States and their Metropolitan and Nonmetropolitan Portions."

Alternatively, institutions may obtain a list of the 1990 Census Bureau-calculated and the annually updated HUD median family incomes for metropolitan statistical areas (MSAs) and statewide nonmetropolitan areas by calling the Federal Financial Institution Examination Council's (FFIEC's) HMDA Help Line at (202) 452–2016. A free copy will be faxed to the caller through the "fax-back" system. Institutions may also call this number to have "faxed-back" an order form, from which they may order a list providing the median family income level, as a percentage of the appropriate MSA or nonmetropolitan median family income, of every census tract and block numbering area (BNA). This list costs $50. Institutions may also obtain the list of MSA and statewide nonmetropolitan area median family incomes or an order form through the FFIEC's home page on the Internet at "http://www.ffiec.gov/".

Sections__.12(o) & 563e.12(n) Limited Purpose Institution

Q1. *What constitutes a "narrow product line" in the definition of "limited purpose institution"?*

A1. An institution offers a narrow product line by limiting its lending activities to a product line other than a traditional retail product line required to be evaluated under the lending test (i.e., home mortgage, small business, and small farm loans). Thus, an institution engaged only in making credit card or motor vehicle loans offers a narrow product line, while an institution limiting its lending activities to home mortgages is not offering a narrow product line.

Q2. *What factors will the agencies consider to determine whether an institution that, if limited purpose, makes loans outside a narrow product line, or, if wholesale, engages in retail lending, will lose its limited purpose or wholesale designation because of too much other lending?*

A2. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental and done on an accommodation basis. Similarly, limited purpose institutions continue to meet the narrow product line requirement if they provide other types of loans on an infrequent basis. In reviewing other lending activities by these institutions, the agencies will consider the following factors:

- Is the other lending provided as an incident to the institution's wholesale lending?
- Are the loans provided as an accommodation to the institution's wholesale customers?
- Are the loans made only infrequently to the limited purpose institution's customers?
- Does only an insignificant portion of the institution's total assets and income result from the other lending?
- How significant a role does the institution play in providing that type(s) of loan(s) in the institution's assessment area(s)?
- Does the institution hold itself out as offering that type(s) of loan(s)?
- Does the lending test or the community development test present a more accurate picture of the institution's CRA performance?

Q3. *Do "niche institutions" qualify as limited purpose (or wholesale) institutions?*

A3. Generally, no. Institutions that are in the business of lending to the public, but specialize in certain types of retail loans (for example, home mortgage or small business loans) to certain types of borrowers (for example, to high-end income level customers or to corporations or partnerships of licensed professional practitioners) ("niche institutions") generally would not qualify as limited purpose (or wholesale) institutions.

Sections__.12(s) & 563e.12(r) Qualified Investment

Q1. *Does the CRA regulation provide authority for institutions to make investments?*

A1. No. The CRA regulation does not provide authority for institutions to make investments that are not otherwise allowed by Federal law.

Q2. *Are mortgage-backed securities or municipal bonds "qualified investments"?*

A2. As a general rule, mortgage-backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations. Nonetheless, mortgage-backed securities or municipal bonds designed primarily to finance community development generally are qualified investments. Municipal bonds or other securities with a primary purpose of community development need not be housing-related. For example, a bond to fund a community facility or park or to provide sewage services as part of a plan to redevelop a low-income neighborhood is a qualified investment. Housing-related bonds or securities must primarily address affordable housing (including multifamily rental housing) needs in order to qualify.

Q3. *Are Federal Home Loan Bank stocks and membership reserves with the Federal Reserve Banks "qualified investments"?*

A3. No. Federal Home Loan Bank stock and membership reserves with the Federal Reserve Banks do not have a sufficient connection to community development to be qualified investments.

Q4. *What are examples of qualified investments?*

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits or shares in or to:

- Financial intermediaries (including Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation;
- Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including, for example, Small Business Investment Companies (SBICs) and specialized SBICs, that promote economic development by financing small businesses;
- Facilities that promote community development in low- and moderate-income areas for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial services education; and
- Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs that enable people to work.

Q5. *Will an institution receive consideration for charitable contributions as "qualified investments"?*

A5. Yes, provided they have as their primary purpose community development as defined in the regulations. A charitable contribution, whether in cash or an in-kind contribution of property, is included in the term "grant." A qualified investment is not disqualified because an institution receives favorable treatment for it (for example, as a tax deduction or credit) under the Internal Revenue Code.

Q6. *An institution makes or participates in a community development loan. The institution provided the loan at below-market interest rates or "bought down" the interest rate to the borrower. Is the lost income resulting from the lower interest rate or buy-down a qualified investment?*

A6. No. The agencies will, however, consider the innovativeness and complexity of the community development loan within the bounds of safe and sound banking practices.

Q7. *Will the agencies consider as a qualified investment the wages or other compensation of an employee or director who provides assistance to a community development organization on behalf of the institution?*

A7. No. However, the agencies will consider donated labor of employees or directors of a financial institution in the service test if the activity is a community development service.

Section__.12(t) Small institution

Q1. *How are the "total bank and thrift assets" of a holding company determined?*

A1. "Total banking and thrift assets" of a holding company are determined by combining the total assets of all banks and/or thrifts that are majority-owned by the holding company. An institution is majority-owned if the holding company directly or indirectly owns more than 50 percent of its outstanding voting stock.

Q2. *How are Federal and State branch assets of a foreign bank calculated for purposes of the CRA?*

A2. A Federal or State branch of a foreign bank is considered a small institution if the Federal or State branch has less than $250 million in assets and the total assets of the foreign bank's or its holding company's U.S. bank and thrift subsidiaries that are subject to the CRA are less than $1 billion. This calculation includes not only FDIC-insured bank and thrift subsidiaries, but also the assets of any FDIC-insured branch of the foreign bank and the assets of any uninsured Federal or State branch (other than a limited branch or a Federal agency) of the foreign bank that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. § 3103(a)(8)).

Section__.12(u) Small business loan

Q1. *Are loans to nonprofit organizations considered small business loans or are they considered community development loans?*

A1. To be considered a small business loan, a loan must meet the definition of "loan to small business" in the instructions in the "Consolidated Reports of Conditions and Income" (Call Report) and "Thrift Financial Reports" (TFR). In general, a loan to a nonprofit organization, for business or farm purposes, where the loan is secured by nonfarm nonresidential property and the original amount of the loan is $1 million or less, if a business loan, or $500,000 or less, if a farm loan, would be reported in the Call Report and TFR as a small business or small farm loan. If a loan to a nonprofit organization is reportable as a small business or small farm loan, it cannot also be considered as a community development loan, except by a wholesale or limited purpose institution. Loans to nonprofit organizations that are not small business or small farm loans for Call Report and TFR purposes may be considered as community development loans if they meet the regulatory definition.

Q2. *Are loans secured by commercial real estate considered small business loans?*

A2. Yes, depending on their principal amount. Small business loans include loans secured by "nonfarm nonresidential properties," as defined in the Call Report and TFR, in amounts less than $1 million.

Q3. *Are loans secured by nonfarm residential real estate to finance small businesses "small business loans"?*

A3. No. Loans secured by nonfarm residential real estate that are used to finance small businesses are not included as "small business" loans for Call Report and TFR purposes. The agencies recognize that many small businesses are financed by loans secured by residential real estate. If these loans promote community development, as defined in the regulation, they may be considered as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as "Other Secured Lines/Loans for Purposes of Small Business."

Q4. *Are credit cards issued to small businesses considered "small business loans"?*

A4. Credit cards issued to a small business or to individuals to be used, with the institution's knowledge, as business accounts are small business loans if they meet the definitional requirements in the Call Report or TFR instructions.

Section__.12(w) Wholesale Institution

Q1. *What factors will the agencies consider in determining whether an institution is in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers?*

A1. The agencies will consider whether:

- The institution holds itself out to the retail public as providing such loans; and
- The institution's revenues from extending such loans are significant when compared to its overall operations.

A wholesale institution may make some retail loans without losing its wholesale designation as described above in Q&A2 addressing §§ __.12(o) and 563e.12(n).

Section__.21—Performance tests, Standards, and Ratings, in General

Section__.21(a) Performance Tests and Standards

Q1. *Are all community development activities weighted equally by examiners?*

A1. No. Examiners will consider the responsiveness to credit and community development needs, as well as the innovativeness and complexity of an institution's community development lending, qualified investments, and community development services. These criteria include consideration of the degree to which they serve as a

catalyst for other community development activities. The criteria are designed to add a qualitative element to the evaluation of an institution's performance.

Section__.21(b) Performance Context

Q1. *Is the performance context essentially the same as the former regulation's needs assessment?*

A1. No. The performance context is a broad range of economic, demographic, and institution-and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated. The agencies will provide examiners with much of this information prior to the examination. The performance context is not a formal or written assessment of community credit needs.

Section__.21(b)(2) Information Maintained by the Institution or Obtained From Community Contacts

Q1. *Will examiners consider performance context information provided by institutions?*

A1. Yes. An institution may provide examiners with any information it deems relevant, including information on the lending, investment, and service opportunities in its assessment area(s). This information may include data on the business opportunities addressed by lenders not subject to the CRA. Institutions are not required, however, to prepare a needs assessment. If an institution provides information to examiners, the agencies will not expect information other than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low-and moderate-income persons and geographies in its assessment area(s). The agencies will not evaluate an institution's efforts to ascertain community credit needs or rate an institution on the quality of any information it provides.

Q2. *Will examiners conduct community contact interviews as part of the examination process?*

A2. Yes. Examiners will consider information obtained from interviews with local community, civic, and government leaders. These interviews provide examiners with knowledge regarding the local community, its economic base, and community development initiatives. To ensure that information from local leaders is considered—particularly in areas where the number of potential contacts may be limited—examiners may use information obtained through an interview with a single community contact for examinations of more than one institution in a given market. In addition, the agencies will consider information obtained from interviews conducted by other agency staff and by the other agencies. In order to augment contacts previously used by the agencies and foster a wider array of contacts, the agencies will share community contact information.

Section__.21(b)(4) Institutional Capacity and Constraints

Q1. *Will examiners consider factors outside of an institution's control that prevent it from engaging in certain activities?*

A1. Yes. Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record.

§__.21(b)(5) Institution's Past Performance and the Performance of Similarly Situated Lenders

Q1. *Can an institution's assigned rating be adversely affected by poor past performance?*

A1. Yes. The agencies will consider an institution's past performance in its overall evaluation. For example, an institution's past performance may support a rating of "substantial noncompliance" if the institution has not improved performance rated as "needs to improve."

Q2. *How will examiners consider the performance of similarly situated lenders?*

A2. The performance context section of the regulation permits the performance of similarly situated lenders to be considered, for example, as one of a number of considerations in evaluating the geographic distribution of an institution's loans to low-, moderate-, middle-, and upper-income geographies. This analysis, as well as other analyses, may be used, for example, where groups of contiguous geographies within an institution's assessment area(s) exhibit abnormally low penetration. In this regard, the performance of similarly situated lenders may be analyzed if such an analysis would provide accurate insight into the institution's lack of performance in those areas. The regulation does not require the use of a specific type of analysis under these circumstances. Moreover, no ratio developed from any type of analysis is linked to any lending test rating.

§__.22—Lending Test

§__.22(a) Scope of test

§__.22(a)(1) Types of Loans Considered

Q1. *If a large retail institution is not required to collect and report home mortgage data under the HMDA, will the agencies still evaluate the institution's home mortgage lending performance?*

A1. Yes. The agencies will sample the institution's home mortgage loan files in order to assess its performance under the lending test criteria.

Q2. *When will examiners consider consumer loans as part of an institution's CRA evaluation?*

A2. Consumer loans will be evaluated if the institution so elects; and an institution that elects not to have its consumer loans evaluated will not be viewed less favorably by examiners than one that does. However, if consumer loans constitute a substantial majority of the institution's business, the agencies will evaluate them even if the institution does not so elect. The agencies interpret "substantial majority" to be so significant a portion of the institution's lending activity by number or dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.

§__.22(a)(2) Other Loan Data

Q1. *How are lending commitments (such as letters of credit) evaluated under the regulation?*

A1. The agencies consider lending commitments (such as letters of credit) only at the option of the institution. Commitments must be legally binding between an institution and a borrower in order to be considered. Information about lending commitments will be used by examiners to enhance their understanding of an institution's performance.

Q2. *Will examiners review application data as part of the lending test?*

A2. Application activity is not a performance criterion of the lending test. However, examiners may consider this information in the performance context analysis because this information may give examiners insight on, for example, the demand for loans.

Q3. *May a financial institution receive consideration under CRA for modification, extension, and consolidation agreements (MECAs), in which it obtains loans from other institutions without actually purchasing or refinancing the loans, as those terms have been interpreted under CRA?*

A3. Yes. In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. An institution may present information about its MECA activities to examiners for consideration under the lending test as "other loan data."

Section __.22(b) Performance Criteria

Q1. *How will examiners apply the performance criteria in the lending test?*

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this Guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an institution's overall record of lending performance.

Section __.22(b)(1) Lending Activity

Q1. *How will the agencies apply the lending activity criterion to discourage an institution from originating loans that are viewed favorably under CRA in the institution itself and referring other loans, which are not viewed as favorably, for origination by an affiliate?*

A1. Examiners will review closely institutions with (1) a small number and amount of home mortgage loans with an unusually good distribution among low- and moderate-income areas and low- and moderate-income borrowers and (2) a policy of referring most, but not all, of their home mortgage loans to affiliated institutions. If an institution is making loans mostly to low-and moderate-income individuals and areas and referring the rest of the loan applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating. In evaluating an institution's lending, examiners will consider legitimate business reasons for the allocation of the lending activity.

Section __.22(b)(2) & (3) Geographic Distribution and Borrower Characteristics

Q1. *How do the geographic distribution of loans and the distribution of lending by borrower characteristics interact in the lending test?*

A1. Examiners generally will consider both the distribution of an institution's loans among geographies of different income levels and among borrowers of different income levels and businesses of different sizes. The importance of the borrower distribution criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, distribution among borrowers with different income levels may be more important in areas without identifiable geographies of different income categories. On the other hand, geographic distribution may be more important in areas with the full range of geographies of different income categories.

Q2. *Must an institution lend to all portions of its assessment area?*

A2. The term "assessment area" describes the geographic area within which the agencies assess how well an institution has met the specific performance tests and standards in the rule. The agencies do not expect that simply because a census tract or block numbering area is within an institution's assessment area(s) the institution must lend to that census tract or block numbering area. Rather the agencies will be concerned with conspicuous gaps in loan distribution that are not explained by the performance context. Similarly, if an institution delineated the entire county in which it is located as its assessment area, but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies. The capacity and constraints of an institution, its business decisions about how it can best help to meet the needs of its assessment area(s), including those of low- and moderate-income neighborhoods, and other aspects of the performance context, are all relevant to explain why the institution is serving or not serving portions of its assessment area(s).

Q3. *Will examiners take into account loans made by affiliates when evaluating the proportion of an institution's lending in its assessment area(s)?*

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

Q4. *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?*

A4. Favorable consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small institutions being evaluated under the small institution performance standards. Loans to low-and moderate-income persons and small businesses and farms outside of an institution's assessment area(s), however, will not compensate for poor lending performance within the institution's assessment area(s).

Q5. *Under the lending test, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?*

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, i.e., by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes located in an area for which the local, state, tribal, or Federal government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the

middle-or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

Section__.22(c) Affiliate Lending

Section__.22(c)(1) In General

Q1. *If an institution elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?*

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer loans (motor vehicle loans, credit card loans, home equity loans, other secured loans, and other unsecured loans).

Section__.22(c)(2) Constraints on Affiliate Lending

Section__.22(c)(2)(i) No Affiliate may Claim a Loan Origination or Loan Purchase if Another Institution Claims the Same Loan Origination or Purchase

Q1. *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes.

Section__.22(c)(2)(ii) If an Institution Elects To Have its Supervisory Agency Consider Loans Within a Particular Lending Category Made by one or More of the Institution's Affiliates in a Particular Assessment Area, the Institution Shall Elect to Have the Agency Consider all Loans Within That Lending Category in That Particular Assessment Area Made by all of the Institution's Affiliates

Q1. *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits "cherry-picking" affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has one or more affiliates, such as a mortgage bank that makes loans in the institution's assessment area. If the institution elects to include the mortgage bank's home mortgage loans, it must include all of mortgage bank's home mortgage loans made in its assessment area. The institution cannot elect to include only those low- and moderate-income home mortgage loans made by the mortgage bank affiliate and not home mortgage loans to middle- and upper-income individuals or areas.

Q2. *How is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?*

A2. Strict application of this constraint against "cherry-picking" to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

Section__.22(d) Lending by a Consortium or a Third Party

Q1. *Will equity and equity-type investments in a third party receive positive consideration under the lending test?*

A1. If an institution has made an equity or equity-type investment in a third party, loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a community development corporation ("CDC") that primarily lends in low- and moderate-income areas or to low-and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC.

Q&A1 addressing § __.23(b) provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests.

Q2. *How will examiners evaluate loans made by consortia or third parties under the lending test?*

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will only be considered if they qualify as community development loans and will only be considered under the community development criterion of the lending test. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under all the lending test criteria appropriate to them depending on the type of loan.

Q3. *In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR § __.22(d), may the third party also receive consideration for these loans?*

A3. Yes, as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR § __.22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata share of the same community development loans under 12 CFR § __.22(d).

Section__.23—Investment Test

Section__.23(b) Exclusion

Q1. *Even though the regulations state that an activity that is considered under the lending or service tests cannot also be considered under the investment test, may parts of an activity be considered under one test and other parts be considered under another test?*

A1. Yes, in some instances the nature of an activity may make it eligible for consideration under more than one of the performance tests. For example, certain investments and related support provided by a large retail institution to a CDC may be evaluated under the lending, investment, and service tests. Under the service test, the institution may receive consideration for any community development services that it provides to the CDC, such as service by an executive of the institution on the CDC's board of directors. If the institution makes an investment in the CDC that the CDC uses to make community development loans, the institution may receive consideration under the lending test for its pro-rata share of community development loans made by the CDC. Alternatively, the institution's investment may be considered under the investment test, assuming it is a qualified investment. In addition, an institution may elect to have a part of its investment considered under the lending test and the remaining part considered under the investment test. If the investing institution opts to have a portion of its investment evaluated under the lending test by claiming a share of the CDC's community development loans, the amount of investment considered under the investment test will be offset by that portion. Thus, the institution would only receive consideration under the investment test for the amount of its investment multiplied by the percentage of the CDC's assets that meet the definition of a qualified investment.

Section__.24—Service test

Section__.24(d) Performance Criteria—Retail Banking Services

Q1. *How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?*

A1. Convenient access to full service branches within a community is an important factor in determining the availability of credit and non-credit services. Therefore, the service test performance standards place primary emphasis on full service branches while still considering alternative systems, such as automated teller machines ("ATMs"). The principal focus is on an institution's current distribution of branches; therefore, an institution is not required to expand its branch network or operate unprofitable branches. Under the service test, alternative systems for delivering retail banking services, such as ATMs, are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals.

Section__.24(d)(3) Availability and Effectiveness of Alternative Systems for Delivering Retail Banking Services

Q1. *How will examiners evaluate alternative systems for delivering retail banking services?*

A1. The regulation recognizes the multitude of ways in which an institution can provide services, for example, ATMs, banking by telephone or computer, and bank-by-mail programs. Delivery systems other than branches will be considered positively under the regulation to the extent that they are effective alternatives to branches in providing needed services to low-and moderate-income areas and individuals. The list of systems in the regulation is not intended to be inclusive.

Q2. *Are debit cards considered under the service test as an alternative delivery system?*

A2. By themselves, no. However, if debit cards are a part of a larger combination of products, such as a comprehensive electronic banking service, that allows an institution to deliver needed services to low- and moderate-income areas and individuals in its community, the overall delivery system that includes the debit card feature would be considered an alternative delivery system.

Section__.25 Community Development Test for Wholesale or Limited Purpose Institutions

Section__.25(d) Indirect Activities

Q1. *How are investments in third party community development organizations considered under the community development test?*

A1. Similar to the lending test for retail institutions, investments in third party community development organizations may be considered as qualified investments or as community development loans or both (provided there is no double counting), at the institution's option, as described above in the discussion regarding §§ __.22(d) and __.23(b).

Section __.25(f) Community Development Performance Rating

Q1. *Must a wholesale or limited purpose institution engage in all three categories of community development activities (lending, investment and service) to perform well under the community development test?*

A1. No, a wholesale or limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

Section __.26—Small Institution Performance Standards

Section __.26(a) Performance Criteria

Q1. *May examiners consider, under one or more of the performance criteria of the small institution performance standards, lending-related activities, such as community development loans and lending-related qualified investments, when evaluating a small institution?*

A1. Yes. Examiners can consider "lending-related activities," including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution performance test. Although lending-related activities are specifically mentioned in the regulation in connection with only the first three criteria (i.e., loan-to-deposit ratio, percentage of loans in the institution's assessment area, and lending to borrowers of different incomes and businesses of different sizes), examiners can also consider these activities when they evaluate the fourth criteria—geographic distribution of the institution's loans.

Q2. *What is meant by "as appropriate" when referring to the fact that lending-related activities will be considered, "as appropriate," under the*

various small institution performance criteria?

A2. "As appropriate" means that lending-related activities will be considered when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating. Examiners will also consider other lending-related activities at an institution's request.

Q3. *When evaluating a small institution's lending performance, will examiners consider, at the institution's request, community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested?*

A3. Yes. However, a small institution that elects to have examiners consider community development loans originated or purchased by a consortium or third party must maintain sufficient information on its share of the community development loans so that the examiners may evaluate these loans under the small institution performance criteria.

Q4. *Under the small institution performance standards, will examiners consider both loan originations and purchases?*

A4. Yes, consistent with the other assessment methods in the regulation, examiners will consider both loans originated and purchased by the institution. Likewise, examiners may consider any other loan data the small institution chooses to provide, including data on loans outstanding, commitments and letters of credit.

Q5. *Under the small institution performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?*

A5. The small institution performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investments for the purposes of determining whether the small institution receives a satisfactory CRA rating.

Section __.26(a)(1) Loan-to-Deposit Ratio

Q1. *How is the loan-to-deposit ratio calculated?*

A1. A small institution's loan-to-deposit ratio is calculated in the same manner that the Uniform Bank Performance Report/Uniform Thrift Performance Report (UBPR/UTPR) determines the ratio. It is calculated by dividing the institution's net loans and leases by its total deposits. The ratio is found in the Liquidity and Investment Portfolio section of the UBPR and UTPR. Examiners will use this ratio to calculate an average since the last examination by adding the quarterly loan-to-deposit ratios and dividing the total by the number of quarters.

Q2. *How is the "reasonableness" of a loan-to-deposit ratio evaluated?*

A2. No specific ratio is reasonable in every circumstance, and each small institution's ratio is evaluated in light of information from the performance context, including the institution's capacity to lend, demographic and economic factors present in the assessment area, and the lending opportunities available in the assessment area(s). If a small institution's loan-to-deposit ratio appears unreasonable after considering this information, lending performance may still be satisfactory under this criterion taking into consideration the number and the dollar volume of loans sold to the secondary market or the number and amount and innovativeness or complexity of community development loans and lending-related qualified investments.

Q3. *If an institution makes a large number of loans off-shore, will examiners segregate the domestic loan-to-deposit ratio from the foreign loan-to-deposit ratio?*

A3. No. Examiners will look at the institution's net loan-to-deposit ratio for the whole institution, without any adjustments.

Section __.26(a)(2) Percentage of Lending Within Assessment Area(s)

Q1. *Must a small institution have a majority of its lending in its assessment area(s) to receive a satisfactory performance rating?*

A1. No. The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s) is but one of the performance criteria upon which small institutions are evaluated. If the percentage of loans and other lending related activities in an institution's assessment area(s) is less than a majority, then the institution does not meet the standards for satisfactory performance only under this criterion. The effect on the overall performance rating of the institution, however, is considered in light of the performance context, including information regarding economic conditions, loan demand, the institution's size, financial condition and business strategies, and branching network and other aspects of the institution's lending record.

Section __.26(a) (3) & (4) Distribution of Lending Within Assessment Area(s) by Borrower Income and Geographic Location

Q1. *How will a small institution's performance be assessed under these lending distribution criteria?*

A1. Distribution of loans, like other small institution performance criteria, is considered in light of the performance context. For example, a small institution is not required to lend evenly throughout its assessment area(s) or in any particular geography. However, in order to meet the standards for satisfactory performance under this criterion, conspicuous gaps in a small institution's loan distribution must be adequately explained by performance context factors such as lending opportunities in the institution's assessment area(s), the institution's product offerings and business strategy, and institutional capacity and constraints. In addition, it may be impracticable to review the geographic distribution of the lending of an institution with few demographically distinct geographies within an assessment area. If sufficient information on the income levels of individual borrowers or the revenues or sizes of business borrowers is not available, examiners may use proxies such as loan size for estimating borrower characteristics, where appropriate.

Section __.26(b) Performance Rating

Q1. *How can a small institution achieve an "outstanding" performance rating?*

A1. A small institution that meets each of the standards for a "satisfactory" rating and exceeds some or all of those standards may warrant an "outstanding" performance rating. In assessing performance at the "outstanding" level, the agencies consider the extent to which the institution exceeds each of the performance standards and, at the institution's option, its performance in making qualified investments and providing services that enhance credit availability in its assessment area(s). In some cases, a small institution may qualify for an "outstanding" performance rating solely on the basis of its lending activities, but only if its performance materially exceeds the standards for a "satisfactory" rating, particularly with respect to the penetration of borrowers at all income levels and the dispersion of loans throughout the geographies in its assessment area(s) that display income variation. An institution with a high loan-to-deposit ratio and a high percentage of loans in its assessment area(s), but with only a reasonable penetration of borrowers at all income levels or a reasonable dispersion of loans throughout geographies of differing income levels in its assessment area(s), generally will not be rated "outstanding" based only on its lending performance. However, the institution's performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s) may augment the institution's satisfactory rating to the extent that it may be rated "outstanding."

Q2. *Will a small institution's qualified investments, community development loans, and community development services be considered if they do not directly benefit its assessment area(s)?*

A2. Yes. These activities are eligible for consideration if they benefit a broader statewide or regional area that includes a small institution's assessment area(s), as discussed more fully in Q&A6 addressing §§ __.12(i) and 563e.12(h).

Section __.27—Strategic plan

Section __.27(c) Plans in General

Q1. *To what extent will the agencies provide guidance to an institution during the development of its strategic plan?*

A1. An institution will have an opportunity to consult with and provide information to the agencies on a proposed strategic plan. Through this process, an institution is provided guidance on procedures and on the information necessary to ensure a complete submission. For example, the agencies will provide guidance on whether the level of detail as set out in the proposed plan would be sufficient to permit agency evaluation of the plan. However, the agencies' guidance during plan development and, particularly, prior to the public comment period, will not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.

Q2. *How will a joint strategic plan be reviewed if the affiliates have different primary Federal supervisors?*

A2. The agencies will coordinate review of and action on the joint plan. Each agency will evaluate the measurable goals for those affiliates for which it is the primary regulator.

Section __.27(f) Plan Content

Section __.27(f)(1) Measurable Goals

Q1. *How should "measurable goals" be specified in a strategic plan?*

A1. Measurable goals (e.g., number of loans, dollar amount, geographic location of activity, and benefit to low- and moderate-income areas or individuals) must be stated with sufficient specificity to permit the public and the agencies to quantify what performance will be expected. However, institutions are provided flexibility in specifying goals. For example, an institution may provide ranges of lending amounts in different categories of loans. Measurable goals may also be linked to funding requirements of certain public programs or indexed to other external factors as long as these mechanisms provide a quantifiable standard.

Section __.27(g) Plan Approval

Section __.27(g)(2) Public Participation

Q1. *How will the public receive notice of a proposed strategic plan?*

A1. An institution submitting a strategic plan for approval by the agencies is required to solicit public comment on the plan for a period of thirty (30) days after publishing notice of the plan at least once in a newspaper of general circulation. The notice should be sufficiently prominent to attract public attention and should make clear that public comment is desired. An institution may, in addition, provide notice to the public in any other manner it chooses.

Section __.28—Assigned Ratings

Section __.26(a) Ratings in General

Q1. *How are institutions with domestic branches in more than one state assigned a rating?*

A1. The evaluation of an institution that maintains domestic branches in more than one state ("multistate institution") will include a written evaluation and rating of its CRA record of performance as a whole and in each state in which it has a domestic branch. The written evaluation will contain a separate presentation on a multistate institution's performance for each metropolitan statistical area and the nonmetropolitan area within each state, if it maintains one or more domestic branch offices in these areas. This separate presentation will contain conclusions, supported by facts and data, on performance under the performance tests and standards in the regulation. The evaluation of a multistate institution that maintains a domestic branch in two or more states in a multistate metropolitan area will include a written evaluation (containing the same information described above) and rating of its CRA record of performance in the multistate metropolitan area. In such cases, the statewide evaluation and rating will be adjusted to reflect performance in the portion of the state not within the multistate metropolitan statistical area.

Q2. *How are institutions that operate within only a single state assigned a rating?*

A2. An institution that operates within only a single state ("single-state institution") will be assigned a rating of its CRA record based on its performance within that state. In assigning this rating, the agencies will separately present a single-state institution's performance for each metropolitan area in which the institution maintains one or more domestic branch offices. This separate presentation will contain conclusions, supported by facts and data, on the single-state institution's performance under the performance tests and standards in the regulation.

Q3. *How do the agencies weight performance under the lending, investment and service test for large retail institutions?*

A3. A rating of "outstanding," "high satisfactory," "low satisfactory," "needs to improve," or "substantial noncompliance," based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT, AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT, AND SERVICE TESTS—Continued

	Lending	Service	Investment
Substantial Noncompliance	0	0	0

COMPOSITE RATING POINT REQUIREMENTS

[Add points from three tests]

Rating	Total points
Outstanding	20 or over.
Satisfactory	11 through 19.
Needs to Improve	5 through 10.
Substantial Non-compliance.	0 through 4.

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of "satisfactory" unless it receives at least "low satisfactory" on the lending test. Therefore, the total points are capped at three times the lending test score.

Section __.29—Effect of CRA Performance on Applications

Section __.29(a) CRA Performance

Q1. *What weight is given to an institution's CRA performance examination in reviewing an application?*

A1. In cases in which CRA performance is a relevant factor, information from a CRA performance examination of the institution is a particularly important consideration in the applications process because it represents a detailed evaluation of the institution's CRA performance by its Federal supervisory agency. In this light, an examination is an important, and often controlling factor in the consideration of an institution's record. In some cases, however, the examination may not be recent or a specific issue raised in the application process, such as progress in addressing weaknesses noted by examiners, progress in implementing commitments previously made to the reviewing agency, or a supported allegation from a commenter, is relevant to CRA performance under the regulation and was not addressed in the examination. In these circumstances, the applicant should present sufficient information to supplement its record of performance and to respond to the substantive issues raised in the application proceeding.

Q2. *What consideration is given to an institution's commitments for future action in reviewing an application by those agencies that consider such commitments?*

A2. Commitments for future action are not viewed as part of the CRA record of performance. In general, institutions cannot use commitments made in the applications process to overcome a seriously deficient record of CRA performance. However, commitments for improvements in an institution's performance may be appropriate to address specific weaknesses in an otherwise satisfactory record or to address CRA performance when a financially troubled institution is being acquired.

Section __.29(b) Interested Parties

Q1. *What consideration is given to comments from interested parties in reviewing an application?*

A1. Materials relating to CRA performance received during the applications process can provide valuable information. Written comments, which may express either support for or opposition to the application, are made a part of the record in accordance with the agencies' procedures, and are carefully considered in making the agencies' decision. Comments should be supported by facts about the applicant's performance and should be as specific as possible in explaining the basis for supporting or opposing the application. These comments must be submitted within the time limits provided under the agencies' procedures.

Q2. *Is an institution required to enter into agreements with private parties?*

A2. No. Although communications between an institution and members of its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. These agreements are not monitored or enforced by the agencies.

Section __.41—Assessment Area Delineation

Section __——.41(a) In General

Q1. *How do the agencies evaluate "assessment areas" under the revised CRA regulations compared to how they evaluated "local communities" that institutions delineated under the original CRA regulations?*

A1. The revised rule focuses on the distribution and level of an institution's lending, investments, and services rather than on how and why an institution delineated its "local community" or assessment area(s) in a particular manner. Therefore, the agencies will not evaluate an institution's delineation of its assessment area(s) as a separate performance criterion as they did under the original regulation. Rather, the agencies will only review whether the assessment area delineated by the institution complies with the limitations set forth in the regulations at § __.41(e).

Q2. *If an institution elects to have the agencies consider affiliate lending, will this decision affect the institution's assessment area(s)?*

A2. If an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies in which the affiliate lends do not affect the institution's delineation of assessment area(s).

Q3. *Can a financial institution identify a specific ethnic group rather than a geographic area as its assessment area?*

A3. No, assessment areas must be based on geography.

Section __.41(c) Geographic Area(s) for Institutions Other Than Wholesale or Limited Purpose Institutions

Section __.41(c)(1) Generally Consist of one or More MSAs or one or More Contiguous Political Subdivisions

Q1. *Besides cities, towns, and counties, what other units of local government are political subdivisions for CRA purposes?*

A1. Townships and Indian reservations are political subdivisions for CRA purposes. Institutions should be aware that the boundaries of townships and Indian reservations may not be consistent with the boundaries of the census tracts or block numbering areas ("geographies") in the area. In these cases, institutions must ensure that their assessment area(s) consists only of whole geographies by adding any portions of the geographies that lie outside the political subdivision to the delineated assessment area(s).

Q2. *Are wards, school districts, voting districts, and water districts political subdivisions for CRA purposes?*

A2. No. However, an institution that determines that it predominantly serves an area that is smaller than a city, town or other political subdivision may delineate as its assessment area the larger political subdivision and then, in accordance with § __.41(d), adjust the boundaries of the assessment area to include only the portion of the political subdivision that it reasonably can be expected to serve. The smaller area that the institution delineates must consist of entire geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low-or moderate-income geographies.

Section __.41(d) Adjustments to Geographic Area(s)

Q1. *When may an institution adjust the boundaries of an assessment area to include only a portion of a political subdivision?*

A1. Institutions must include whole geographies (i.e., census tracts or block numbering areas) in their assessment areas and generally should include entire political subdivisions. Because census tracts and block numbering areas are the common geographic areas used consistently nationwide for data collection, the agencies require that assessment areas be made up of whole geographies. If including an entire political subdivision would create an area that is larger than the area the institution can reasonably be expected to serve, an institution may, but is not required to, adjust the boundaries of its assessment area to include only portions of the political subdivision. For example, this adjustment is appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). When adjusting the boundaries of their assessment areas, institutions must not arbitrarily exclude low- or moderate-income geographies or set boundaries that reflect illegal discrimination.

Section __.41(e) Limitations on Delineation of an Assessment Area

Section __.41(e)(3) May not Arbitrarily Exclude Low- or Moderate-Income Geographies

Q1. *How will examiners determine whether an institution has arbitrarily excluded low- or moderate-income geographies?*

A1. Examiners will make this determination on a case-by-case basis after considering the facts relevant to the institution's assessment area delineation. Information that examiners will consider may include:

- Income levels in the institution's assessment area(s) and surrounding geographies;
- Locations of branches and deposit-taking ATMs;
- Loan distribution in the institution's assessment area(s) and surrounding geographies;
- The institution's size;
- The institution's financial condition; and
- The business strategy, corporate structure and product offerings of the institution.

Section __.41(e)(4) May not Extend Substantially Beyond a CMSA Boundary or Beyond a State Boundary Unless Located in a Multistate MSA

Q1. *What are the maximum limits on the size of an assessment area?*

A1. An institution shall not delineate an assessment area extending substantially across the boundaries of a consolidated metropolitan statistical area (CMSA) or the boundaries of an MSA, if the MSA is not located in a CMSA. Similarly, an assessment area may not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. An institution may not delineate a whole state as its assessment area unless the entire state is contained within a CMSA. These limitations apply to wholesale and limited purpose institutions as well as other institutions.

An institution shall delineate separate assessment areas for the areas inside and outside a CMSA (or MSA if the MSA is not located in a CMSA) if the area served by the institution's branches outside the CMSA (or MSA) extends substantially beyond the CMSA (or MSA) boundary. Similarly, the institution shall delineate separate assessment areas for the areas inside and outside of a state if the institution's branches extend substantially beyond the boundary of one state (unless the assessment area is located in a multistate MSA). In addition, the institution should also delineate separate assessment areas if it has branches in areas within the same state that are widely separate and not at all contiguous. For example, an institution that has its main office in New York City and a branch in Buffalo, New York, and each office serves only the immediate areas around it, should delineate two separate assessment areas.

Q2. *Can an institution delineate one assessment area that consists of an MSA and two large counties that abut the MSA but are not adjacent to each other?*

A2. As a general rule, an institution's assessment area should not extend substantially beyond the boundary of an MSA if the MSA is not located in a CMSA. Therefore, the MSA would be a separate assessment area, and because the two abutting counties are not adjacent to each other and, in this example, extend substantially beyond the boundary of the MSA, the institution would delineate each county as a separate assessment area (so, in this example, there would be three assessment areas). However, if the MSA and the two counties were in the same CMSA, then the institution could delineate only one assessment area including them all.

Section __.42—Data Collection, Reporting, and Disclosure

Q1. *When must an institution collect and report data under the CRA regulations?*

A1. All institutions except small institutions are subject to data collection and reporting requirements. A small institution is a bank or thrift that, as of December 31 of *either* of the prior two calendar years, had total assets of less than $250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than $1 billion.

For example:

Date	Institution's asset size (millions)	Data collection required for following calendar year?
12/31/94	$240	No.
12/31/95	$260	No.
12/31/96	$230	No.
12/31/97	$280	No.
12/31/98	$260	Yes, beginning 1/01/99.

All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year by March 1 of the subsequent year. In the example, above, the institution would report the data collected for calendar year 1999 by March 1, 2000.

The Board of Governors of the Federal Reserve System is handling the processing of the reports for all of the primary regulators. The reports should be submitted in a prescribed electronic format on a timely basis. The mailing address for submitting these reports is: Attention: CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Avenue, N.W., 5th Floor, Washington, DC 20006.

Q2. *Should an institution develop its own program for data collection, or will the regulators require a certain format?*

A2. An institution may use the free software that is provided by the FFIEC to reporting institutions for data collection and reporting or develop its own program. Those institutions that develop their own programs must follow the precise format for the new

CRA data collection and reporting rules. This format may be obtained by contacting the CRA Assistance Line at (202) 872–7584.

Q3. *How should an institution report data on lines of credit?*

A3. Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations. Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line is the amount that is considered originated. In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported.

Q4. *Should renewals of lines of credit be reported?*

A4. No. Similar to loan renewals, renewals of lines of credit are not considered loan originations and should not be reported.

Q5. *When should merging institutions collect data?*

A5. Three scenarios of data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities are described below.

• Two institutions are exempt from CRA collection and reporting requirements because of asset size. The institutions merge. No data collection is required for the year in which the merger takes place, regardless of the resulting asset size. Data collection would begin after two consecutive years in which the combined institution had year-end assets of at least $250 million or was part of a holding company that had year-end banking and thrift assets of at least $1 billion.

• Institution A, an institution required to collect and report the data, and Institution B, an exempt institution, merge. Institution A is the surviving institution. For the year of the merger, data collection is required for Institution A's transactions. Data collection is optional for the transactions of the previously exempt institution. For the following year, all transactions of the surviving institution must be collected and reported.

• Two institutions that each are required to collect and report the data merge. Data collection is required for the entire year of the merger and for subsequent years so long as the surviving institution is not exempt. The surviving institution may file either a consolidated submission or separate submissions for the year of the merger but must file a consolidated report for subsequent years.

Q6. *Can small institutions get a copy of the data collection software even though they are not required to collect or report data?*

A6. Yes. Any institution that is interested in receiving a copy of the software may send a written request to: Attn.: CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Ave, N.W., 5th Floor, Washington, DC 20006.

They may also call the CRA Assistance Line at (202) 872–7584 or send Internet e-mail to CRAHELP@FRB.GOV.

Q7. *If a small institution is designated a wholesale or limited purpose institution, must it collect data that it would not otherwise be required to collect because it is a small institution?*

A7. No. However, small institutions must be prepared to identify those loans, investments and services to be evaluated under the community development test.

Section__.42(a) Loan Information Required to be Collected and Maintained

Q1. *Must institutions collect and report data on all commercial loans under $1 million at origination?*

A1. No. Institutions that are not exempt from data collection and reporting are required to collect and report only those commercial loans that they capture in the Call Report, Schedule RC–C, Part II, and in the TFR, Schedule SB. Small business loans are defined as those whose original amounts are $1 million or less *and* that were reported as either "Loans secured by nonfarm or nonresidential real estate" or "Commercial and Industrial loans" in Part I of the Call Report or TFR.

Q2. *For loans defined as small business loans, what information should be collected and maintained?*

A2. Institutions that are not exempt from data collection and reporting are required to collect and maintain in a standardized, machine readable format information on each small business loan originated or purchased for each calendar year:

• A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

• The loan amount at origination;

• The loan location; and

• An indicator whether the loan was to a business with gross annual revenues of $1 million or less.

The location of the loan must be maintained by census tract or block numbering area. In addition, supplemental information contained in the file specifications includes a date associated with the origination or purchase and whether a loan was originated or purchased by an affiliate. The same requirements apply to small farm loans.

Q3. *Will farm loans need to be segregated from business loans?*

A3. Yes.

Q4. *Should institutions collect and report data on all agricultural loans under $500,000 at origination?*

A4. Institutions are to report those farm loans that they capture in the Call Report, Schedule RC–C, Part II and Schedule SB of the TFR. Small farm loans are defined as those whose original amounts are $500,000 or less *and* were reported as either "Loans to finance agricultural production and other loans to farmers" or "Loans secured by farmland" in Part I of the Call Report and TFR.

Q5. *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

A5. An institution collects and reports information about refinancings but does not collect and report information about renewals. A *refinancing* typically involves the satisfaction of an existing obligation that is replaced by a new obligation undertaken by the same borrower. When an institution refinances a loan, it is considered a new origination and loan data should be collected and reported if otherwise required. Consistent with HMDA, however, if under the original loan agreement, the institution is unconditionally obligated to refinance the loan, or is obligated to refinance the loan subject to conditions within the borrower's control, the institution would not report these events as originations.

For purposes of the CRA data collection and reporting requirements, an extension of the maturity of an existing loan is a *renewal*, and is not considered a loan origination. Therefore, institutions should not collect and report data on loan renewals.

Q6. *Does a loan to the "fishing industry" come under the definition of a small farm loan?*

A6. Yes. Instructions for Part I of the Call Report and Schedule SB of the TFR include loans "made for the purpose of financing fisheries and forestries, including loans to commercial fishermen" as a component of the definition for "Loans to finance agricultural production and other loans to farmers." Part II of Schedule RC–C of the Call Report and Schedule SB of the TFR, which serve as the basis of the definition for small business and small farm loans in the revised regulation, capture both "Loans to finance agricultural production and other loans to farmers" and "Loans secured by farmland."

Q7. *How should an institution report a home equity line of credit, part of which is for home improvement purposes, but the predominant part of which is for small business purposes?*

A7. The institution has the option of reporting the portion of the home equity line that is for home improvement purposes under HMDA. That portion of the loan would then be considered when examiners evaluate home mortgage lending. If the line meets the regulatory definition of a "community development loan," the institution should collect and report information on the entire line as a community development loan. If the line does not qualify as a community development loan, the institution has the option of collecting and maintaining (but not reporting) the entire line of credit as "Other Secured Lines/Loans for Purposes of Small Business."

Q8. *When collecting small business and small farm data for CRA purposes, may an institution collect and report information about loans to small businesses and small farms located outside the United States?*

A8. At an institution's option, it may collect data about small business and small farm loans located outside the United States; however, it cannot report this data because the CRA data collection software will not accept data concerning loan locations outside the United States.

Q9. *Is an institution that has no small farm or small business loans required to report under CRA?*

A9. Each institution subject to data reporting requirements must, at a minimum, submit a transmittal sheet, definition of its assessment area(s), and a record of its community development loans. If the institution does not have community development loans to report, the record should be sent with "0" in the community development loan composite data fields. An institution that has not purchased or originated any small business or small farm loans during the reporting period would not submit the composite loan records for small business or small farm loans.

Q10. *How should an institution collect and report the location of a loan made to a small business or farm if the borrower provides an address that consists of a post office box number or a rural route and box number?*

A10. Prudent banking practices dictate that an institution know the location of its customers or loan collateral. Therefore, institutions typically will know the actual location of their borrowers or loan collateral beyond an address consisting only of a post office box.

Many borrowers have street addresses in addition to post office box numbers or rural route and box numbers. Institutions should ask their borrowers to provide the street address of the main business facility or farm or the location where the loan proceeds otherwise will be applied. Once the institution receives this information from the borrower, it should assign a census tract or block numbering area to that location (geocode) and report that information as required under the regulation.

There may be cases in which a borrower cannot provide a street address because of the rural nature of the community. If a borrower can provide only a rural route and box number, or in those rare instances in which a borrower reports a post office box and the institution cannot determine the location of the business, the following guidance will apply, depending on the date the loan is originated or purchased:

• For loans originated or purchased in 1997, if an institution cannot determine the borrower's street address, the institution should geocode the location of the loan using the town, state, and zip code of the location of the post office as a proxy for the location of the borrower. In cases where the assigned location of the zip code for the rural route and box number or post office box encompasses more than one census tract or block numbering area, the institution should be able to provide a specific rationale for the census tract or block numbering area selected for geocoding purposes.

• For loans originated or purchased in 1998 or later, if the institution cannot determine the borrower's street address, the institution should report the borrower's state, county, MSA, if applicable, and "NA," for "not available," in lieu of a census tract or block numbering area code.

Section __.42(a)(2) Loan Amount at Origination

Q1. *When an institution purchases a small business or small farm loan, which amount should the institution collect and report—the original amount of the loan or the amount at purchase?*

A1. When collecting and reporting information on purchased small business and small farm loans, an institution collects and reports the amount of the loan at origination, not at the time of purchase. This is consistent with the Call Report's and TFR's use of the "original amount of the loan" to determine whether a loan should be reported as a "loan to a small business" or a "loan to a small farm" and in which loan size category a loan should be reported. When assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under CRA, however, examiners will evaluate an institution's activity based on the amounts at purchase.

Q2. *How should an institution collect data about multiple loan originations to the same business?*

A2. If an institution makes multiple originations to the same business, the loans should be collected and reported as separate originations rather than combined and reported as they are on the Call Report or TFR, which reflect loans outstanding, rather than originations. However, if institutions make multiple originations to the same business solely to inflate artificially the number or volume of loans evaluated for CRA lending performance, the agencies may combine these loans for purposes of evaluation under the CRA.

Q3. *How should an institution collect data pertaining to credit cards issued to small businesses?*

A3. If an institution agrees to issue credit cards to a business' employees, all of the credit card lines opened on a particular date for that single business should be reported as one small business loan origination rather than reporting each individual credit card line, assuming the criteria in the "small business loan" definition in the regulation are met. The credit card program's "amount at origination" is the sum of all of the employee/business credit cards" credit limits opened on a particular date. If subsequently issued credit cards increase the small business credit line, the added amount is reported as a new origination.

Section__.42(a)(3) The Loan Location

Q1. *Which location should an institution record if a small business loan's proceeds are used in a variety of locations?*

A1. The institution should record the loan location by either the location of the business headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower.

Section__.42(a)(4) Indicator of Gross Annual Revenue

Q1. *When indicating whether a small business borrower had gross annual*

revenues of $1 million or less, upon what revenues should an institution rely?

A1. Generally, an institution should rely on the revenues that it considered in making its credit decision. For example, in the case of affiliated businesses, such as a parent corporation and its subsidiary, if the institution considered the revenues of the entity's parent or a subsidiary corporation of the parent as well, then the institution would aggregate the revenues of both corporations to determine whether the revenues are $1 million or less. Alternatively, if the institution considered the revenues of only the entity to which the loan is actually extended, the institution should rely solely upon whether gross annual revenues are above or below $1 million for that entity. However, if the institution considered and relied on revenues or income of a cosigner or guarantor that is not an affiliate of the borrower, the institution should not adjust the borrower's revenues for reporting purposes.

Q2. *If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?*

A2. No. In those instances, the institution should enter the code indicating "revenues not known" on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting this data.

Q3. *What gross revenue should an institution use in determining the gross annual revenue of a start-up business?*

A3. The institution should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross revenue.

Section__.42(b) Loan Information Required To Be Reported

Section__.42(b)(1) Small Business and Small Farm Loan Data

Q1. *For small business and small farm loan information that is collected and maintained, what data should be reported?*

A1. Each institution that is not exempt from data collection and reporting is required to report in machine-readable form annually by March 1 the following information, aggregated for each census tract or block numbering area in which the institution originated or purchased at least one small business or small farm loan during the prior year:

- The number and amount of loans originated or purchased with original amounts of $100,000 or less;
- The number and amount of loans originated or purchased with original amounts of more than $100,000 but less than or equal to $250,000;
- The number and amount of loans originated or purchased with original amounts of more than $250,000 but not more than $1 million; and
- To the extent that information is available, the number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

Section __.42(b)(2) Community Development Loan Data

Q1. *What information about community development loans must institutions report?*

A1. Institutions subject to data reporting requirements must report the aggregate number and amount of community development loans originated and purchased during the prior calendar year.

Q2. *If a loan meets the definition of a home mortgage, small business, or small farm loan AND qualifies as a community development loan, where should it be reported? Can FHA, VA and SBA loans be reported as community development loans?*

A2. Except for multifamily affordable housing loans, which may be reported by retail institutions both under HMDA as home mortgage loans and as community development loans, in order to avoid double counting, retail institutions must report loans that meet the definitions of home mortgage, small business, or small farm loans only in those respective categories even if they also meet the definition of community development loans. As a practical matter, this is not a disadvantage for retail institutions because any affordable housing mortgage, small business, small farm or consumer loan that would otherwise meet the definition of a community development loan will be considered elsewhere in the lending test. Any of these types of loans that occur outside the institution's assessment area can receive favorable consideration under the borrower characteristic criteria of the lending test. *See* Q&A4 under § __.22(b) (2) & (3).

Limited purpose and wholesale institutions also must report loans that meet the definitions of home mortgage, small business, or small farm loans in those respective categories; however, they must also report any loans from those categories that meet the regulatory definition of "community development loans" as community development loans. There is no double counting because wholesale and limited purpose institutions are not subject to the lending test and, therefore, are not evaluated on their level and distribution of home mortgage, small business, small farm and consumer loans.

Section __.42(b)(3) Home Mortgage Loans

Q1. *Must institutions that are not required to collect home mortgage loan data by the HMDA collect home mortgage loan data for purposes of the CRA?*

A1. No. If an institution is not required to collect home mortgage loan data by the HMDA, the institution need not collect home mortgage loan data under the CRA. Examiners will sample these loans to evaluate the institution's home mortgage lending. If an institution wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain data on these loans.

Section __.42(c) Optional data collection and maintenance

Section __.42(c)(1) Consumer loans

Q1. *What are the data requirements regarding consumer loans?*

A1. There are no data reporting requirements for consumer loans. Institutions may, however, opt to collect and maintain data on consumer loans. If an institution chooses to collect information on consumer loans, it may collect data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If an institution collects data for loans in a certain category, it must collect data for all loans originated or purchased within that category. The institution must maintain these data separately for each category for which it chooses to collect data. The data collected and maintained should include for each loan:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination or purchase;
- The loan location; and
- The gross annual income of the borrower that the institution considered in making its credit decision.

Section __.42(c)(1)(iv) Income of borrower

Q1. *If an institution does not consider income when making an underwriting decision in connection with a consumer loan, must it collect income information?*

A1. No. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance.

Q2. *May an institution list "0" in the income field on consumer loans made to employees when collecting data for CRA purposes as the institution would be permitted to do under HMDA?*

A2. Yes.

Section __.42(c)(2) Other Loan Data

Q1. *Schedule RC–C, Part II of the Call Report and schedule SB of the TFR do not allow financial institutions to report loans for commercial and industrial purposes that are secured by residential real estate. Loans extended to small businesses with gross annual revenues of $1 million or less may, however, be secured by residential real estate. Is there a way to collect this information on the software to supplement an institution's small business lending data at the time of examination?*

A1. Yes. If these loans promote community development, as defined in the regulation, the institution should collect and report information about these loans as community development loans. Otherwise, *at an institution's option,* it may collect and maintain data concerning loans, purchases, and lines of credit extended to small businesses and secured by residential real estate for consideration in the CRA evaluation of its small business lending. To facilitate this optional data collection, the software distributed free-of-charge by the FFIEC provides that an institution may collect this information to supplement its small business lending data by choosing loan type, "Other Secured Lines/Loans for Purposes of Small Business," in the individual loan data. (The title of the loan type, "Other Secured Lines of Credit for Purposes of Small Business," which was found in the instructions accompanying the 1996 data collection software, is being changed to "Other Secured Lines/Loans for Purposes of Small Business" in order to accurately reflect that lines of credit *and* loans may be reported under this loan type.) This information should be maintained at the institution but should *not* be submitted for central reporting purposes.

Q2. *Must an institution collect data on loan commitments and letters of credit?*

A2. No. Institutions are not required to collect data on loan commitments and letters of credit. Institutions may, however, provide for examiner consideration information on letters of credit and commitments.

Q3. *Are commercial and consumer leases considered loans for purposes of CRA data collection?*

A3. Commercial and consumer leases are not considered small business or small farm loans or consumer loans for purposes of the data collection requirements in 12 CFR § __.42(a) & (c)(1). However, if an institution wishes to collect and maintain data about leases, the institution may provide this data to examiners as "other loan data" under 12 CFR § __.42(c)(2) for consideration under the lending test.

Section __.42(d) Data on Affiliate Lending

Q1. *If an institution elects to have an affiliate's home mortgage lending considered in its CRA evaluation, what data must the institution make available to examiners?*

A1. If the affiliate is a HMDA reporter, the institution must identify those loans reported by its affiliate under 12 CFR part 203 (Regulation C, implementing HMDA). At its option, the institution may either provide examiners with the affiliate's entire HMDA Disclosure Statement or just those portions covering the loans in its assessment area(s) that it is electing to consider. If the affiliate is not required by HMDA to report home mortgage loans, the institution must provide sufficient data concerning the affiliate's home mortgage loans for the examiners to apply the performance tests.

Section __.43—Content and Availability of Public File

Section __.43(a) Information Available to the Public

Section __.43(a)(1) Public Comments

Q1. *What happens to comments received by the agencies?*

A1. Comments received by a Federal financial supervisory agency will be on file at the agency for use by examiners. Those comments are also available to the public unless they are exempt from disclosure under the Freedom of Information Act.

Q2. *Is an institution required to respond to public comments?*

A2. No. All institutions should review comments and complaints carefully to determine whether any response or other action is warranted. A small institution subject to the small institution performance standards is specifically evaluated on its record of taking action, if warranted, in response to written complaints about its performance in helping to meet the credit needs in its assessment area(s) (§ __.26(a)(5)). For all institutions, responding to comments may help to foster a dialogue with members of the community or to present relevant information to an institution's Federal financial supervisory agency. If an institution responds in writing to a letter in the public file, the response must also be placed in that file, unless the response reflects adversely on any person or placing it in the public file violates a law.

Q3. *May an institution include a response to its CRA Performance Evaluation in its public file?*

A3. Yes. However, the format and content of the evaluation, as transmitted by the supervisory agency, may not be altered or abridged in any manner. In addition, an institution that received a less than satisfactory rating during it most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The institution must update the description on a quarterly basis.

Section __.43(b) Additional Information Available to the Public

Section __.43(b)(1) Institutions Other Than Small Institutions

Q1. *Must an institution that elects to have affiliate lending considered include data on this lending in its public file?*

A1. Yes. The lending data to be contained in an institution's public file covers the lending of the institution's affiliates, as well as of the institution itself, considered in the assessment of the institution's CRA performance. An institution that has elected to have mortgage loans of an affiliate considered must include either the affiliate's HMDA Disclosure Statements for the two prior years or the parts of the Disclosure Statements that relate to the institution's assessment area(s), at the institution's option.

Section__.43(c) Location of Public Information

Q1. *What is an institution's "main office"?*

A1. An institution's main office is the main, home, or principal office as designated in its charter.

Section__.44—Public Notice by Institutions

Q1. *Are there any placement or size requirements for an institution's public notice?*

A1. The notice must be placed in the institution's public lobby, but the size and placement may vary. The notice should be placed in a location and be of a sufficient size that customers can easily see and read it.

Section__.45—Publication of Planned Examination Schedule

Q1. *Where will the agencies publish the planned examination schedule for the upcoming calendar quarter?*

A1. The agencies may use the **Federal Register**, a press release, the Internet, or other existing agency publications for disseminating the list of the institutions scheduled to for CRA examinations during the upcoming calendar quarter. Interested parties should contact the appropriate Federal financial supervisory agency for information on how the agency is publishing the planned examination schedule.

Q2. *Is inclusion on the list of institutions that are scheduled to undergo CRA examinations in the next calendar quarter determinative of whether an institution will be examined in that quarter?*

A2. No. The agencies attempt to determine as accurately as possible which institutions will be examined during the upcoming calendar quarter. However, whether an institution's name appears on the published list does not conclusively determine whether the institution will be examined during that quarter. The agencies may need to defer a planned examination or conduct an unforeseen examination because of scheduling difficulties or other circumstances.

Appendix B to Part__CRA Notice

Q1. *What agency information should be added to the CRA notice form?*

A1. The following information should be added to the form:

OCC-supervised institutions only: The address of the deputy comptroller of the district in which the institution is located should be inserted in the appropriate blank. These addresses can be found at 12 CFR § 4.5(a).

OCC-, FDIC-, and Board-supervised institutions: "Officer in Charge of Supervision" is the title of the responsible official at the appropriate Federal Reserve Bank.

Appendix A

Regional Offices of the Bureau of the Census

To obtain median family income levels of census tracts, MSAs, block numbering areas and statewide nonmetropolitan areas, contact the appropriate regional office of the Bureau of the Census as indicated below. The list shows the states covered by each regional office.

Atlanta, (404) 730–3833

Alabama, Florida, Georgia

Boston, (617) 424–0510

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Charlotte, (704) 344–6144

District of Columbia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia

Chicago, (708) 562–1740

Illinois, Indiana, Wisconsin

Dallas, (214) 640–4470 or (800) 835–9752

Louisiana, Mississippi, Texas

Denver, (303) 969–7750

Arizona, Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wyoming

Detroit, (313) 259–1875

Michigan, Ohio, West Virginia

Kansas City, (913) 551–6711

Arkansas, Iowa, Kansas, Minnesota, Missouri, Oklahoma

Los Angeles, (818) 904–6339

California

New York, (212) 264–4730

New York, Puerto Rico

Philadelphia, (215) 597–8313 or (215) 597–8312

Delaware, Maryland, New Jersey, Pennsylvania

Seattle, (206) 728–5314

Alaska, Hawaii, Idaho, Montana, Nevada, Oregon, Washington

Dated: September 29, 1997.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

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BILLING CODE 4810–33–P; 6714–01–P; 6210–01–P 6720–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 224–201033

Title: Broward County/Maritime Entertainment Terminal Agreement

Parties:

Broward County, Florida (Port Everglades)

Maritime Entertainment, Ltd., Inc.

Synopsis: The proposed Agreement authorizes Broward County to provide berthing and related terminal facilities, and passenger wharfage at a reduced rate, to Maritime Entertainment in exchange for its agreement to provide daily passenger cruise service from Port Everglades.

Dated: September 30, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–26360 Filed 10–3–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 21, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Stuart A. Cashin, Jr., Duluth, Georgia; to retain voting shares of Embry Bankshares, Inc., Duluth, Georgia, and thereby indirectly retain share of Embry National Bank, Lawrenceville, Georgia.

Board of Governors of the Federal Reserve System, October 1, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26447 Filed 10–3–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Midland Bancshares, Inc., Kincaid, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Midland Community Bank, Kincaid, Illinois.

B. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Greater Bay Bancorp, Palo Alto, California; to acquire 100 percent of the voting shares of Peninsula Bank of Commerce, Millbrae, California.

2. Heritage Financial Corporation, Olympia, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Savings Bank, Olympia, Washington. Applicant is converting from mutual to stock form.

Board of Governors of the Federal Reserve System, October 1, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26448 Filed 10–3–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Boston Private Bancorp, Inc., Boston, Massachusetts; to acquire Westfield Capital Management Company, Inc., Boston, Massachusetts, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 1, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26446 Filed 10–3–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 090197 AND 091297

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Ferrous Processing and Trading Company, TBS Industrial Recycling, Inc., TBS Assets	97–3127	09/02/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 090197 AND 091297—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Questor Partners Fund, L.P., Zell/Chilmark Fund, L.P., Schwinn Cycling & Fitness Inc	97-3207	09/02/97
TPG Partners II, L.P., Zilog, Inc., Zilog, Inc	97-3233	09/02/97
BankAmerica Corporation, First Data Corporation, First Data Merchant Services Corporation	97-3243	09/02/97
Lee M. Bass, United States Filter Corporation, United States Filter Corporation	97-3272	09/02/97
Ceramicas Industriales, S.A., Metropolitan Life Insurance Company, Briggs Holdings, Inc.; Briggs Plumbing Products, Inc	97-3278	09/02/97
Timothy C. Collins, Merrill L. Nash, Symons Corporation	97-1934	09/03/97
Principal Mutual Life Insurance Company, PacifiCare Health Systems, Inc., FHP of Illinois, Inc	97-3160	09/03/97
American Disposal Services, Inc., Fred B. Barbara, Fred B. Barbara Trucking Co., Inc. (and) Shred-All	97-3183	09/03/97
Apollo Investment Fund III, L.P., HFS Incorporated, Property Resources Group, Inc	97-3196	09/03/97
Resurrection Health Care Corporation, Sisters of St. Francis Health Services, Inc., Alverno-Evanston Corporation	97-3215	09/03/97
SUPERVALU INC. Charles E. Benidt, Town & Country Super Markets, Inc	97-3235	09/03/97
SUPERVALU INC., Miller Enterprises, Inc., Miller Enterprises, Inc	97-3262	09/03/97
Harcourt General, Inc., Pearson, plc, Churchill Livingston Inc	97-3269	09/03/97
Masashi Yamada (Mr.), Mr. Robert L. Veloz, J.C. Carter Company, Inc	97-3278	09/03/97
MicroAge, Inc., Paul W. Rajewski, Access MicroSystems, Inc	97-3280	09/04/97
Lincoln National Corporation, CIGNA Corporation, CIGNA Associates, Inc.; CIGNA Financial Advisors, Inc	97-3195	09/05/97
Tele-Communications, Inc., Washington Post Company (The), Pro Am Sports System, Inc	97-3268	09/05/97
Robert Lee Kaaren, M.D., HNC Software, Inc., HNC Software, Inc	97-3290	09/05/97
The Surface Mount Technology Centre Inc., Ogden Corporation, Atlantic Design Company, Inc	97-3294	09/05/97
Michael E. Munayyer, HNC Software, Inc., HNC Software, Inc	97-3298	09/05/97
Ford Motor Company, Household International, Inc., Household Finance Corp. III, Household Finance Corp. II	97-3264	09/08/97
Mail-Well, Inc., Maurice J. Towery, National Color Graphics, Inc	97-3266	09/08/97
GS Capital Partners II, L.P., Estate of John A. Svenningsen, Amscan Holdings, Inc	97-3274	09/08/97
IXC Communications Inc., PSINet Inc., PSINet Inc	97-3279	09/08/97
CIS Technology Inc., Dennis Hayes, Hayes Microcomputer Products, Inc	97-3281	09/08/97
Carl H. Lindner, New Energy Company of Indiana, New Energy Company of Indiana	97-3291	09/08/97
Apollo Group, Inc., National Endowment for Financial Education, National Endowment for Financial Education	97-3305	09/08/97
Protective Life Corporation, Allstate Corporation (The), Lincoln Benefit Life Company	97-3320	09/08/97
Ogden Corporation, Pacific Enterprises, Pacific Energy	97-3323	09/08/97
Nalco Chemical Company, Larry Schramm, Chemical Technologies, Inc. and Cramer-Schramm, Inc	97-3331	09/08/97
Nalco Chemical Company, James R. Cramer, Chemical Technologies, Inc. and Cramer-Schramm, Inc	97-3332	09/08/97
Joe Balous, Edward Narens, Kenco Plastics, Inc.; Narens Design & Engineering, Inc	97-3333	09/08/97
Richard Nash, Edward Narens, Kenco Plastics, Inc.; Narens Design & Engineering, Inc	97-3334	09/08/97
Conseco, Inc., NAL Financial Group, Inc., NAL Financial Group, Inc	97-3337	09/08/97
URS Corporation, Woodward-Clyde Group, Inc., Woodward-Clyde Group, Inc	97-3344	09/08/97
Sybron International Corporation, Chase Instruments Corp., Chase Instruments Corp	97-3345	09/08/97
Green Equity Investors II, L.P., Watkins-Johnson Company, W-J TSMD, Inc	97-3348	09/08/97
Credit Suisse Group (a Swiss company), Elektrowatt AG, Elektrowatt AG	97-3355	09/08/97
Concentra Managed Care, Inc., Vencor, Inc., Vencor, Inc	97-3374	09/08/97
United States Filter Corporation, William A. Davis, Pacific Water Works Supply Company, Inc	97-3386	09/08/97
Paxar Corporation, International Imaging Material, Inc., International Imaging Material, Inc	97-3391	09/08/97
Vestar Capital Partners III, L.P., B. Joseph Rokus and Tari Rokus, Reld Plastics Holdings, Inc	97-3398	09/08/97
AmeriKing, Inc., Robert D. Green, B&J Restaurants, Inc	97-3317	09/09/97
Bruckmann, Rosser, Sherrill & Co., L.P., Delchamps, Inc., Delchamps, Inc	97-2804	09/11/97
Motorola, Inc., Pro-Log Corporation, Pro-Log Corporation	97-3167	09/11/97
California Physicians' Service, UniHealth, CareAmerica Health Plans, Inc.; CareAmerica Life	97-3214	09/11/97
Zurich Insurance Company, Lawrence K. Dodge, American Sterling Insurance Agency, Inc	97-3314	09/11/97
Omnicom Group, Inc., Eagle River Interactive, Inc., Graphic Media, Inc	97-3325	09/11/97
Sun Microsystems, Inc., Gemplus SCA (a French company), Integrity Arts, Inc	97-3341	09/11/97
IBP, Inc., James T. Hudson, Hudson Midwest Foods, Inc	97-3351	09/11/97
R. Emmett Boyle, Specialty Blanks, Inc., Specialty Blanks, Inc	97-3369	09/11/97
Florida Rock Industries, Inc., James A. Comyns, CAC Aggregates, Inc. and GKK Corporation	97-3211	09/12/97
France Telecom, WorldCom, Inc., IDB WorldCom, Inc.; IDB Media Group, Inc	97-3326	09/12/97
Walt Disney Company (The), Silver Screen Partners III, L.P., Disney-Silver Screen III Joint Venture	97-3350	09/12/97
Estate of Charles A. Sammons, Guaranty Reassurance Corporation, Guaranty Reassurance Corporation	97-3371	09/12/97
Republic Industries, Inc., Thomas A. & Roberts J. Coward, JHTC, Inc	97-3379	09/12/97
Advocat Inc., A. Steve Pierce and Mary Lou Pierce (Husband and Wife), Pierce Management Group First Partnership, et al	97-3384	09/12/97
Atchison Casting Corporation, Inverness Casting Group, Inc., Inverness Casting Group, Inc	97-3390	09/12/97
WPL Holdings, Inc., Interstate Power Company, Interstate Power Company	97-3403	09/12/97
WPL Holdings, Inc., IES Industries, Inc., IES Industries, Inc	97-3404	09/12/97
The Hitchcock Alliance, Weeks Hospital Association, Weeks Hospital Association	97-3406	09/12/97
Holland Chemical International, B.V., Coastal Chemical Co., Inc., Coastal Chemical Co., Inc	97-3407	09/12/97
Counsel Corporation, Transworld HealthCare, Inc, Health Management Inc. Assets	97-3408	09/12/97
Finlay Enterprises, Inc., Zale Corporation, Zale Delaware, Inc	97-3409	09/12/97
Grupo Industrial Durango, S.A. de C.V. (a Mexican company), Amcor Limited (an Australian company), Amcor Paper US, Inc	97-3433	09/12/97
Recovery Equity Investors II, L.P., David M. Roberts, bankruptcy trustee, Doran Texiles, Inc	97-3455	09/12/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580 (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–26388 Filed 10–3–97; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Appointments to the Medicare Payment Advisory Commission

AGENCY: General Accounting Office.

ACTION: Notice of appointments.

SUMMARY: The Balanced Budget Act of 1997 establishes the Medicare Payment Advisory Commission, with members to be appointed by the Comptroller General. This notice announces the appointment and terms of the initial members, and the designation of the chairman and vice chairman, of the Commission.

DATES: Appointments effective October 1, 1997.

ADDRESSES: The General Accounting Office is at 441 G St. NW., Washington, DC, 20548. The Office of the Chairman of the Medicare Payment Advisory Commission will be at 2120 L St. NW., Washington, DC, 20037–1527.

FOR FURTHER INFORMATION CONTACT: General Accounting Office: Walter S. Ochinko, 202–512–7157. Medicare Payment Advisory Commission: Lauren LeRoy, 202–653–7220, or Don Young, 202–401–8986.

SUPPLEMENTARY INFORMATION: Section 1805 of the Social Security Act, as added by section 4022 of the Balanced Budget Act of 1997 (Pub. L. 105–33, 111 Stat. 251, 350) provided for creation of the Medicare Payment Advisory Commission, comprising 15 members appointed by the Comptroller General. The Comptroller General is to designate one member as chairman and one member as vice chairman. Members serve 3-year terms, except that the Comptroller General is to establish staggered terms for the members first appointed.

The appointments, to be effective October 1, 1997, are: Gail R. Wilensky, Chair; Joseph P. Newhouse, Vice Chair; P. William Curreri, M.D.; Anne B. Jackson; Spencer Johnson; Peter Kemper; Judith R. Lave; Donald T. Lewers, M.D.; Hugh W. Long, William A. MacBain; Woodrow A. Myers, Jr., M.D.; Janet G. Newport; Alice F. Rosenblatt; John W. Rowe, M.D.; and Gerald M. Shea.

The following members will serve 1-year terms, to expire September 30, 1998: P. William Curreri, Anne B. Jackson, Spencer Johnson, Donald T. Lewers, M.D., and Janet G. Newport. The following members will serve 2-year terms, to expire September 30, 1999: Peter Kemper, Judith R. Lave, Hugh W. Long, William A. MacBain, and Gerald M. Shea. The following members will serve 3-year terms, to expire September 30, 2000: Gail R Wilensky, Joseph P. Newhouse, Woodrow A. Myers, Jr., M.D., Alice F. Rosenblatt, and John W. Rowe, M.D. Subsequent appointments will be for 3 years.

James F. Hinchman,

Acting Comptroller General of the United States.

[FR Doc. 97–26449 Filed 10–3–97; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Responsibilities of Awardees and Applicant Institutions for Reporting Possible Misconduct in Science (42 CFR Part 50 and PHS 6349)—0937–0198—Revision—As required by Section 493 of the Public Health Service Act, the Secretary by regulation shall require that applicant and awardee institutions receiving PHS funds must investigate and report instances of alleged or apparent misconduct in science. *Respondents:* State or local governments; Businesses or other for-profit; Non-profit institutions—Reporting Burden Information—*Number of Respondents:* 3607; *Number of Annual Responses:* 3,700; *Average Burden per Response:* 29.85 minutes; *Total Reporting Burden:* 1,841 hours—*Disclosure Burden Information—Number of Respondents:* 3,607; *Number of Annual Responses:* 3,667; *Average Burden per Response:* 30 minutes; *Total Diselosure Burden:* 1,834 hours—Recordkeeping Burden Information—*Number of Respondents:* 40; *Number of Annual Responses:* 140; *Average Burden per Response:* 7.03 hours; *Total Recordkeeping Burden:* 984 hours—*Total Burden*—4,659 hours. *OMB Desk Officer:* Allison Eydt

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: September 25, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–26347 Filed 10–2–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's. (AHCPR) intention to request the Office of Management and Budget (OMB) to allow a proposed information collection of the "Medical Expenditure Panel Survey—Insurance Component (MEPS–IC) for 1998 and 1999." In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), AHCPR invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by December 5, 1997.

ADDRESSES: Written comments should be submitted to: Ruth A. Celtnieks, Reports Clearance Officer, AHCPR, 2101 East Jefferson Street, Suite 500, Rockville, MD 20852–4908

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–1406, ext. 1497.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Medical Expenditure Panel Survey—Insurance Component (MEPS–IC) for 1998 and 1999."

The AHCPR plans to continue collection of the MEPS–IC. This survey collects information from employers (including public and private sectors) and other health insurance providers. The survey was first conducted in 1997.

The MEPS–IC is the integration of two previous surveys which collected similar information from two different samples. The two surveys were:

1. The 1994 National Employer Health Insurance Survey (NEHIS) sponsored by AHCPR, the National Center for Health Statistics (NCHS) and the Health Care Financing Administration (HCFA). The NEHIS had a sample drawn from (1) a list of private sector establishments, the Dunn Market Identifiers, provided by Dunn and Bradstreet, a major supplier of business information, (2) a list of all government entities, Federal, State and local, provided by the Census Bureau, and (3) a list of self-employed individuals provided by the NCHS; and

2. The 1987 Health Insurance Plans Survey (HIPS) sponsored by AHCPR's predecessor, the National Center for Health Statistics Research. The HIPS sample of employers and other health insurance providers generated from the 1987 National Medical Expenditure Survey, a household survey similar to the MEPS–HC.

As a result, the sample for the MEPS–IC is made up of two components:

1. A list sample of employers selected from three sample frames, private sector, government entities and self-employed individuals, available from the Bureau of the Census; and

2. A sample of employers and other health insurance providers identified by respondents to the MEPS-Household Component (MEPS–HC). The MEPS–HC is an annual household survey designed to collect medical expenditures and ancillary information for individuals.

Data will be produced in two forms: (1) files containing employer information from the list sample of selected employers; and (2) files containing calendar years 1997 and 1998 insurance data collected in 1998 and 1999 from employers and linked to information from the household respondents of the 1997 and 1998 MEPS–HC surveys.

The data are intended to be used for purposes such as:

- Generating national and State estimates of employer health care offerings;
- Producing aggregate data on national and State estimates of spending on employer-sponsored health insurance for analyzing results of national and State health care policy and providing information to guide future policy;
- Supply data to model the demand for health insurance; and
- Providing a valuable source of information concerning household responses regarding choices of health plans and costs and benefits of these plans, when pooled with data from the MEPS–HC.

These data provide the basis for researchers to address significant questions for employers and policymakers alike.

Method of Collection

The data will be collected using a combination of modes. AHCPR intends to first contact the employers by telephone. This contact will provide information on the availability of health insurance from the employer and essential persons to contact. Based upon this information, AHCPR will send a mail questionnaire to employers and others identified by employers. In order to assure high response rates, AHCPR will follow-up with a second mailing at an acceptable time interval, followed by a telephone call to collect data from those who have not responded by mail.

Data collected from each employer will include a description of the business (e.g., size, industry) and descriptions of health insurance plans available, plan enrollments, total plan costs and costs to employees.

For employers that can be matched to the MEPS–HC respondents, data will also be collected indicating the actual plan selected by the MEPS–HC respondent and the plan costs.

As part of the process, for larger employers wit high burdens, such as State employers and large firms, AHCPR will, if needed, perform personal visits and do customized collection, such as, acceptance of data in computerized formats. Annual burden estimates follow:

Initial Number of Respondents: 40,000.

Number of Surveys per Respondent: 1.

Average Burden per Respondent: .5 hour.

Estimated Annual Burden Total: 20,000 hours.

Request for Comments

Comments are invited on: (a) the necessity of the proposed collection; (b) the accuracy of the Agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: September 29, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–26352 Filed 10–3–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Adminstration for Children and Families

Submission for OMB Review; Comment Request

Title: Early Head Start Evaluation Father Study.

OMB No.: New Request.

Description: The Head Start Reauthorization Act of 1994 established a special initiative creating funding for services for families with infants and toddlers. In response the Administration on Children, Youth and Families (ACYF) designed the Early Head Start (EHS) program. In September 1995, ACYF awarded grants to 68 local programs to serve families with infants and toddlers. ACYF awarded grants to an additional 75 local programs in September 1996.

EHS programs are designed to produce outcomes in four domains: (1) child development, (2) family development, (3) staff development, and (4) community development. The Reauthorization required that this new initiative be evaluated. To study the effect of the initiative, ACYF awarded a contract through a competitive procurement to Mathematics Policy Research, Inc. (MPR) with a subcontract to Columbia University's Center for Young Children and Families. The evaluation will be carried out from October 1, 1995 through September 30, 2000. Data collection activities that are the subject of this **Federal Register** notice are intended for the second phase of the EHS evaluation.

The sample for the assessments will be approximately 1,360 fathers from the 3,400 EHS sample families, whose mothers and infants/toddlers are participating in the study (see OMB #0970-0143) in 17 EHS study sites. Each family will be randomly assigned to a treatment group or a control group. The assessments will be conducted through personal interviewing, structured observations and videotaping. All data collection instruments have been designed to minimize the burden on respondents by minimizing interviewing and assessment time. Participation in the study is voluntary and confidential.

The information will be used by government managers, Congress and others to better understand the roles of fathers and father-figures with their children and in the EHS program.

Respondents: Fathers or father-figures of children whose families are in the EHS national evaluation sample (both program and control group families).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	average burden hours per response	Total burden hours
24-Month Father Interview	635	1	10	635
Father-Child Videotaping Protocol	168	1	0.3	50
Estimated Total Annual Burden				685

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having it full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Desk Officer for the Administration for Children Families.

Dated: September 29, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–26349 Filed 10–3–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

Notice is hereby given that I delegate to the Assistant Secretary for Children and Families, with authority to redelegate, the following authorities vested in the Secretary under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104–193, as amended now and hereafter.

(a) Authorities Delegated:

(1) Authority to administer the provisions of Title I, Block Grants for Temporary Assistance for Needy Families (TANF) under Sections 101–103, 106–110, 112, 115 and 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 1305 note, 42 U.S.C. 601 *et seq.*, and as amended now and hereafter. In addition, in exercising authority under Section 103, "Section 413, Research, Evaluations, and National Studies," of the Social Security Act, the Administration for Children and Families is expected to consult with the Assistant Secretary for Planning and Evaluation.

(2) Authority to administer the provisions of the Child Care and Development Block Grant Amendments of 1996, 42 U.S.C. 9801 note, under Sections 601–615 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 1305 note, 42 U.S.C. 601 *et seq.*, and as amended now and hereafter.

(b) Effect on existing delegations. None.

These delegations shall be exercised under the Department's existing delegation of authority and policy on regulations. These delegations of authority are effective upon date of signature. In addition, I hereby, affirm and ratify any actions taken by the Assistant Secretary for Children and Families or any other Administration for Children and Families official which, in effect, involved the exercise of these authorities prior to the effective date of these delegations.

Dated: September 16, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–26346 Filed 10–3–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0397]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on recordkeeping requirements for manufacturers, importers, distributors, and retailers of impact-resistant lenses, including eyeglasses and sunglasses.

DATES: Submit written comments on the collection of information by December 5, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration,

12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Use of Impact-Resistant Lenses in Eyeglasses and Sunglasses—21 CFR 801.410(e) and (f)—(OMB Control Number 0910–0182)—Reinstatement

FDA has the statutory authority under sections 501, 502, and 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351, 352, and 371(a)) to regulate medical devices. Section 801.410 (21 CFR 801.410) requires that lenses be rendered impact-resistant and capable of withstanding the impact test referred to as the "referee test" in the regulation. Under § 801.410(c)(1), eyeglasses and sunglasses must be fitted with impact-resistant lenses except in cases where an optometrist or physician finds that such lenses will not fulfill a patient's visual requirements.

Under § 801.410(e) and (f), manufacturers and distributors of impact-resistant lenses, both eyeglasses and sunglasses, are required to maintain certain records. Under § 801.410(e) manufacturers, distributors, retailers, and importers are required to maintain records such as invoice(s), shipping documents, and records of sale or distribution of all impact-resistant lenses, including finished prescription eyeglasses and sunglasses, which shall be kept and maintained for a period of 3 years. However, the names and addresses of individuals purchasing nonprescription eyeglasses and sunglasses at the retail level need not be kept and maintained by the retailer. Under § 801.410(f) any persons conducting "referee" (lens impact) tests in accordance with § 801.410(d) shall maintain the results thereof and a description of the test method and of the test apparatus for a period of 3 years.

These records are valuable to FDA when investigating complaints (i.e., eye injury complaints). If records were not maintained, FDA investigations would be made more difficult to conduct and ultimately the public would not have the necessary protection from substandard eyeglasses. The regulation is designed to protect the eyeglass wearer from potential eye injury resulting from shattering of ordinary eyeglass lenses. Examination of data available on the frequency of eye injuries resulting from the shattering of ordinary crown glass lenses indicates that the use of such lenses constitutes an avoidable hazard to the eye of the wearer. Between 50 and 60 percent of the American public wear prescription eye wear.

Firms subject to this regulation are not required to submit the written records to FDA. FDA normally reviews and may copy records during an inspection of the manufacturer. The manufacturers are required to have the records available to FDA on an "as needed" basis.

Respondents to this collection of information are manufacturers, importers, distributors, and retailers of impact-resistant sunglasses and eyeglasses.

The burden of maintaining sale and/or distribution records, as required by § 801.410(e), is estimated at 0 hours since firms are routinely retaining the records beyond the 3-year period for reasons of routine business practice. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the recordkeeping needed to comply is usual and customary because it would occur in the normal course of activities.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
801.410(f)	30	590,000	17,700,000	492	14,760

There are no capital costs or operating and maintenance costs associated with this collection.

There are approximately 30 manufacturers of eyeglasses in the U.S. Optical Manufacturers Association (OMA), which represents 98 percent of the domestic industry involved in lens manufacturing, and the association has stated to FDA that the regulation does not impose a burden on their members. This position is based on the fact that the recordkeeping and testing requirements of the regulation represent minimum requirements for a conscientious manufacturer.

Section 801.410(c)(1) states:

To protect the public more adequately from potential eye injury, eyeglasses and sunglasses must be fitted with impact-resistant lenses, except in those cases where the physician or optometrist finds that such lenses will not fulfill the visual requirements of the particular patient, directs in writing the use of other lenses, and gives written notification thereof to the patient.

Optometrists in the Center of Devices and Radiological Health's Office of Device Evaluation, FDA, have estimated that it should take a physician or optometrist approximately 2 minutes to write up a prescription and notification for nonimpact-resistant lenses. Because most prescription orders are now filled by impact-resistant plastic lenses, and only one or two orders for nonimpact-resistant lenses are estimated to be completed annually, this de minimus burden is not included in the chart.

Dated: September 29, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–26451 Filed 10–3–97 ; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0384]

Knickerbocker Biologicals, Inc.; Opportunity for Hearing on a Proposal to Revoke U.S. License No. 458–001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on a proposal to revoke the establishment license (U.S. License No. 458–001) and product licenses issued to Knickerbocker Biologicals, Inc., for the manufacture of Whole Blood, Red Blood Cells, Plasma, and Source Leukocytes. The proposed revocation is based on the inability of authorized FDA employees to conduct an inspection of this facility, which is no longer in operation.

DATES: The firm may submit written requests for a hearing to the Dockets Management Branch by November 5, 1997, and any data and information justifying a hearing by December 5, 1997. Other interested persons may submit written comments on the proposed revocation by December 5, 1997.

ADDRESSES: Submit written requests for a hearing, any data and information justifying a hearing, and any written comments on the proposed revocation to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is initiating proceedings to revoke the establishment license (U.S. License No. 458–001) and product licenses issued to Knickerbocker Biologicals, Inc., doing business as Knickerbocker Blood Bank, 272 Willis Ave., Bronx, NY 10454, for the manufacture of Whole Blood, Red Blood Cells, Plasma, and Source Leukocytes. Proceedings to revoke the licenses are being initiated because an attempted inspection of the facility by FDA revealed that the firm was no longer in operation.

In a certified, return-receipt letter dated November 14, 1996, FDA notified the Responsible Head of the firm that its attempt to conduct an inspection at Knickerbocker Biologicals, Inc., at 272 Willis Ave., Bronx, NY 10454, was unsuccessful because the facility was apparently no longer in operation, and requested that the firm notify FDA in writing of the firm's status. This letter was returned to the agency marked "undeliverable; address unknown."

On December 3, 1996, FDA visited three other known addresses of Knickerbocker Biologicals, Inc., New York, NY, and attempted to conduct an inspection. These attempts were also unsuccessful. Upon consultation, the U.S. Postal Service reported no information regarding a forwarding address or change of address for any of the last known locations.

In a certified, return-receipt letter sent to Knickerbocker Biologicals, Inc., dated January 24, 1997, and returned as undeliverable, FDA indicated that the attempts to conduct an inspection at the facility were unsuccessful. The letter also advised the Responsible Head that, under 21 CFR 601.5(b)(1) and (b)(2), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection or the manufacturing of products or of a product has been discontinued to an extent that a meaningful inspection cannot be made, proceedings for license revocation may be instituted. In the same letter, FDA indicated that a meaningful inspection could not be made at the establishment and issued the firm notice of FDA's intent to revoke U.S. License No. 458–001 and announced its intent to offer an opportunity for a hearing.

Because FDA has made reasonable efforts to notify the firm of the proposed revocation and no response was received from the firm, FDA is proceeding under 21 CFR 12.21(b) and publishing this notice of opportunity for a hearing on a proposal to revoke the licenses of the above establishment.

FDA has placed copies of the documents relevant to the proposed revocation on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. These documents include the following: (1) FDA letters to the Responsible Head dated November 14, 1996, and January 24, 1997; and (2) memorandum regarding the investigation and inspection dated December 9, 1996. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Knickerbocker Biologicals, Inc., may submit a written request for a hearing to the Dockets Management Branch by November 5, 1997, and any data and information justifying a hearing must be submitted by December 5, 1997. Other interested persons may submit comments on the proposed license revocation to the Dockets Management Branch by December 5, 1997. The failure of the licensee to file a timely written request for a hearing constitutes an election by the licensee not to avail itself of the opportunity for a hearing concerning the proposed license revocation.

FDA's procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for a hearing, grant or denial of a hearing, and submission of data to justify a hearing on proposed revocation of a license are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must set forth a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses submitted in support of the request for a hearing that there is no genuine and substantial issue of fact for resolution at a hearing, or if a request for a hearing is not made within the required time with the required format or required analyses, the Commissioner of Food and Drugs will deny the hearing request, making findings and conclusions that justify the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 351 of the Public Health Service Act (42 U.S.C. 262) and sections 201, 501, 502,

505, and 701 of the Federal Food, Drug, and Cosmetic Acts (21 U.S.C. 321, 351, 352, 355, and 371), and under the authority delegated to Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: September 17, 1997.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 97–26454 Filed 10–3–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97C–0415]

Zauder Bros., Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Zauder Bros., Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of zinc sulfide as a color additive in externally applied cosmetics.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 7C0251) has been filed by Zauder Bros., Inc., c/o Schiff & Co., 1129 Bloomfield Ave., West Caldwell, NJ 07006. The petition proposes to amend the color additive regulations to provide for the safe use of zinc sulfide as a color additive in externally applied cosmetics.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 11, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–26354 Filed 10–3–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0040]

Chemie Research and Manufacturing Co., Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition filed by Chemie Research and Manufacturing Co., Inc., proposing that the food additive regulations be amended to provide for the safe use of a glycerin extract of dried grapefruit seeds and pulp as an antimicrobial agent in the processing of fresh or frozen poultry, fish, and shellfish.

FOR FURTHER INFORMATION CONTACT: Valerie M. Davis, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3181.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 16, 1995 (60 FR 14286), FDA announced that a food additive petition (FAP 2A4336) had been filed by Chemie Research and Manufacturing Co., Inc., 160 Concord Dr., P.O. Box 181279, Casselberry, FL 32718–1279. The petition proposed that the food additive regulations be amended to provide for the safe use of a glycerin extract of dried grapefruit seeds and pulp as an antimicrobial agent in the processing of fresh or frozen poultry, fish, and shellfish.

By letter dated May 10, 1995, the agency notified the petitioner that consideration of the petitioned use for the glycerin extract of dried grapefruit seed and pulp would require the submission and evaluation of specific additional data. By letter of June 1, 1995, the petitioner provided a partial response to the agency's request for information and stated an intent to provide a complete response within 180 days. However, no further information was submitted within the 180-day time period.

By letter of July 24, 1996, FDA again requested that the necessary data be submitted within 30 days and stated that a failure to respond would be considered to be an agreement by the petitioner to withdraw the petition. Because FDA has received no response from the petitioner, and the required information has not been submitted, the petition is now withdrawn without prejudice to a future filing (21 CFR 171.7(b)). Future consideration of the use of a glycerin extract of dried grapefruit seeds and pulp as an antimicrobial agent in the processing of fresh or frozen poultry, fish, and shellfish will require submission of a new food additive petition.

Dated: September 22, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–26413 Filed 10–3–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0412]

Mitsui Petrochemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsui Petrochemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene/propylene copolymers that contain up to 20 mole-percent of polymer units derived from propylene, with the remainder of the polymer consisting of ethylene, and having a minimum viscosity-average molecular weight of 95,000 and a minimum Mooney viscosity of 13 at up to 30 percent of other regulated polymer blends.

DATES: Written comments on the petitioner's environmental assessment by November 5, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4549) has been filed by Mitsui Petrochemical Industries, Ltd., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of ethylene/propylene copolymers that contain up to 20 mole-percent of polymer units derived from propylene, with the remainder of the polymer consisting of ethylene, and having a minimum viscosity-average molecular weight of 95,000 and a minimum Mooney viscosity of 13 at up to 30 percent of other regulated polymer blends.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before November 5, 1997 submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 17, 1997.

Alan M. Rulis

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–26452 Filed 10–3–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0414]

Stilbene Whitening Agent Task Force; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Stilbene Whitening Agent Task Force has filed a petition proposing that the food additive regulations be amended to provide for the safe use of benzenesulfonic acid,2'2'-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl-amino]-6-[(4-sulfophenyl]amino]-1,3,5-triazin-2-yl]amino]-,tetrasodium salt as an optical brightener in paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4554) has been filed by Stilbene Whitening Agent Task Force, c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of benzenesulfonic acid,2'2'-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxyethyl)-amino]-6-[(4-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-, tetrasodium salt as an optical brightener in paper and paperboard intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 17, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–26453 Filed 10–3–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96P–0181]

Determination that Chlorhexidine Gluconate Topical Tincture 0.5% Was Withdrawn From Sale for Reasons of Safety

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that chlorhexidine gluconate topical tincture 0.5% (Hibitane®) was withdrawn from sale for reasons of safety. The agency will not accept abbreviated new drug applications (ANDA's) for chlorhexidine gluconate topical tincture 0.5%.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress passed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the listed drug, which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was

withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)).

FDA regulations provide that any person may petition the agency for a determination as to whether a listed drug has been voluntarily withdrawn from sale for reasons of safety effectiveness (§ 314.161(b) (21 CFR 314.161(b))). Richard A. Hamer submitted a citizen petition dated May 24, 1996, under 21 CFR 10.25(a), 10.30, and 314.122(a), requesting that the agency determine whether chlorhexidine gluconate topical tincture 0.5% (Hibitane®) was withdrawn from sale for reasons of safety or effectiveness. Zeneca Pharmaceuticals (formerly Steuart Pharmaceuticals and ICI Americas) obtained approval of NDA 18–049 for chlorhexidine gluconate topical tincture 0.5% on December 18, 1978, as a patient preoperative skin preparation. The product was withdrawn from sale by the sponsor in early 1984. Because the sponsor discontinued marketing of the product, the agency currently lists chlorhexidine gluconate topical tincture 0.5% in the Orange Book's "Discontinued Drug Product List."

FDA has reviewed its records and, under §§ 314.161 and 314.162(a)(2), has determined that chlorhexidine gluconate topical tincture 0.5% was withdrawn from sale for reasons of safety. Specifically, the product was withdrawn because of the significant number of reports received concerning chemical and thermal burns associated with the use of the product. Therefore, chlorhexidine gluconate topical tincture 0.5% will be removed from the list of drug products with effective approvals published in FDA's publication, "Approved Drug Products with Therapeutic Equivalence Evaluations." FDA will not accept ANDA's that refer to this drug product.

Dated: September 26, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–26353 Filed 10–3–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0410]

Guidance for Industry on SUPAC–MR, Modified Release Solid Oral Dosage Forms; Scale-Up and Postapproval Changes for Chemistry, Manufacturing, and Controls; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "SUPAC–MR: Modified Release Solid Oral Dosage Forms; Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Dissolution Testing and In Vivo Bioequivalence Documentation." The purpose of this guidance document is to provide insight and recommendations to pharmaceutical sponsors of new drug applications (NDA's), abbreviated new drug applications (ANDA's), and abbreviated antibiotic applications (AADA's) who intend to change the components or composition, the manufacturing (process or equipment), the scale-up/scale-down of manufacture, and/or the site of manufacture of a modified release solid oral formulation during the postapproval period. This guidance document represents the agency's current thinking on scale-up and postapproval changes (SUPAC) for modified release solid oral dosage forms regulated by the Center for Drug Evaluation and Research (CDER).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of "SUPAC–MR: Modified Release Solid Oral Dosage Forms; Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Dissolution Testing and In Vivo Bioequivalence Documentation" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mehul U. Mehta, Center for Drug Evaluation and Research (HFD–860), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–0501.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "SUPAC–MR: Modified Release Solid Oral Dosage Forms; Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Dissolution Testing and In Vivo Bioequivalence Documentation." The purpose of this guidance document is to provide insight and recommendations to pharmaceutical sponsors of NDA's, ANDA's, and AADA's who intend to change: (1) The components or composition; (2) the manufacturing (process or equipment); (3) the scale-up/scale-down of manufacture; and/or (4) the site of manufacture of a modified release solid oral formulation during the postapproval period. The guidance document defines the following: (1) Levels of change; (2) recommended chemistry, manufacturing, and controls (CMC) tests to support each level of change; (3) recommended in vitro dissolution release tests and/or in vivo bioequivalence tests to support each level of change; and (4) documentation to support the change.

For postapproval changes for modified release dosage forms that affect components and composition, manufacturing process or equipment changes, scale-up, and site change, this guidance supersedes the recommendations in section 4.G of the *Office of Generic Drugs Policy and Procedure Guide 22–90* (FDA, September 11, 1990). For all other dosage forms and changes, this guidance does not affect the recommendations in *Guide 22–90*.

This guidance document represents the agency's current thinking on SUPAC for modified release solid oral dosage forms regulated by CDER. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance document to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

An electronic version of this guidance is also available on the Internet at http://www.fda.gov/cder/guidance/index.htm.

Dated: September 29, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Estimation Methodology for Children With a Serious Emotional Disturbance (SED)

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Solicitation of comments.

SUMMARY: This notice describes the proposed methodology for identifying and estimating the number of children with a serious emotional disturbance (SED) within each State. This notice is being served as part of the requirement of Public Law 102–321, the ADAMHA Reorganization Act of 1992.

COMMENT PERIOD: The Administrator is requesting written comments which must be received on or before December 5, 1997.

ADDRESSES: Comments should be sent to Judith Katz-Leavy, M.Ed., Senior Policy Analyst, Office of Policy, Planning, and Administration, Center for Mental Health Services, Parklawn Building Room 15–87, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–1563 fax.

FOR FURTHER INFORMATION CONTACT: A detailed paper outlining the estimation methodology described here is available from: Judith Katz-Leavy M.Ed., Senior Policy Analyst, Office of Policy, Planning, and Administration, Center for Mental Health Services, Parklawn Building Room 15–87, 5600 Fishers Lane, Rockville, MD 20857. (301)443–1563 fax.

Background

Public Law 102–321, the ADAMHA Reorganization Act of 1992, amended the Public Health Service Act and created the Substance Abuse and Mental Health Services Administration (SAMHSA). The Center for Mental Health Services (CMHS) was established within SAMHSA to coordinate Federal efforts in the prevention; treatment; and promotion of mental health. Title II of Public Law 102–321 establishes a Block Grant for Community Mental Health Services (Block Grant) administered by CMHS, which permits the allocation of funds to States for the provision of community mental health services to children with a serious emotional disturbance and adults with a serious mental illness. Public Law 102–321 stipulates that States estimate the incidence (number of new cases) and prevalence (total number of cases in a year) in their applications for Block Grant funds, see 42 U.S.C. 300 (2). The statute also requires the Secretary to establish definitions for adults with a serious mental illness and children with a serious emotional disturbance. In addition, the Secretary is required to develop standardized methods for the states to use in providing the estimates required as part of their block grant applications. See 42 U.S.C. 300 (2). As part of the process of implementing this new block grant, definitions of the terms "children with a serious emotional disturbance" and "adults with a serious mental illness" were announced on May 20, 1993, in **Federal Register** Volume 58, No 96, p. 29422. Subsequently, a group of technical experts was convened by CMHS to develop an estimation methodology to "operationalize the key concepts" in the definition of children with a serious emotional disturbance. A similar group has prepared an estimation methodology for adults with a serious mental illness.

Serious Emotional Disturbance (SED)

The CMHS definition is that "children with serious emotional disturbance" are persons:

—From birth up to age 18;
—Who currently or at any time during the past year;
—Have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within DSM–III–R
—That resulted in functional impairment which substantially interferes with or limits the child's role or functioning in family, school, or community activities (p.29425).

The definition goes on to indicate that, "these disorders include any mental disorder (including those of biological etiology) listed in DSM–III–R or their ICD–9–CM equivalent (and subsequent revisions) with the exception of DSM–III–R 'V' codes, substance use, and developmental disorders, which are excluded, unless they co-occur with another diagnosable serious emotional disturbance" (p. 29425).

Further, the definition indicates that, "Functional impairment is defined as difficulties that substantially interfere with or limit a child or adolescent from achieving or maintaining one or more developmentally-appropriate social, behavioral, cognitive, communicative, or adaptive skills. Functional impairments of episodic, recurrent, and continuous duration are included unless they are temporary and expected responses to stressful events in their environment. Children who would have met functional impairment criteria during the referenced year without the benefit of treatment or other support services are included in this definition" (p. 29425).

The first decision that was made was to focus on community epidemiological studies done in the United States that used either the DSM–III–R, or its predecessor, the DSM–III, and that provided information on the prevalence of mental disorders using a structured interview procedure. The group decided that given the relatively small number of community epidemiological studies that had been conducted in the United States, it would be a mistake to exclude those few studies that had used the DSM–III, given its considerable similarity to the DSM–III–R.

The most frequently used structured interview procedure was the Diagnostic Interview Schedule for Children (DISC), originally developed by A. Costello and his colleagues (A. Costello, Edelbrock, Dulcan, Kalas, & Klaric, 1984), which includes both child and parent versions. Other interview procedures include the Diagnostic Interview for Children and Adolescents (DICA, Herjanic & Reich, 1982), the Child and Adolescent Psychiatric Assessment (CAPA, Angold & E. Costello, 1995), and the Composite International Diagnostic Interview (CIDI, Kessler et al, 1994).

The group elected to consider that a child met the criteria of a diagnosable disorder either if a diagnosis was obtained from his/her own report on the structured interview, or from the parent's report on the structured interview, or from the combination of the youth's report and the parent's report, even if neither one met the criteria separately. While there are other approaches to combining data from two or more sources that were considered and have been used (Cohen, Velez, & Kohn, 1987; Reich & Earls, 1987), the group chose to use this "either/or" approach because it was believed that

discrepant responses can be a source of valuable information.

The greater challenge for the group was operationalizing the concept of "functional impairment which substantially interferes with or limits the child's role or functioning in family, school, or community activities" (**Federal Register**, 1993, p. 29425). Part of the difficulty was in identifying appropriate measures, and understanding the inter-relationship between the different measures, but the greatest difficulty was in determining the appropriate threshold or cut-off point on a scale for concluding that there was functional impairment that was "substantially" interfering with functioning.

After much discussion, it was decided that in the absence of any "gold standard" that could be used as a basis for establishing such a cut-off point, and in the absence of any social validation process that has established a consensus on what the threshold should be, data would be presented for cut-off points at two levels of functional impairment. This has the benefit of providing additional information to planners and policy-makers to use, and to stimulate further discussion and research to try to better establish an appropriate threshold. The higher prevalence rate to be reported, which uses the more inclusive or less conservative cut-off point, still meets the definition of "seriously emotionally disturbed." The less inclusive and more conservative estimate can be used for more targeted efforts to plan on behalf of a more limited number of children whose level of functional impairment is especially severe.

A variety of measures of impairment were used in the community studies, and their psychometric properties were reviewed for the group by Hodges (1994). The most frequently used measure is a global measure, the Children's Global Assessment Scale (Bird, Canino, Rubio-Stipec, & Ribera, 1987; Shaffer, Gould, Brasic, Ambrosini, Fisher, Bird, & Ahwalia, 1983), on which a youngster receives a rating ranging from 0 to 100 with lower scores indicating greater impairment. Scores are given in ten point intervals, and for each score there is a narrative description of the meaning of the score.

The group considered several potential cut-off points on the CGAS, and decided to use a score of 60 or lower as the cut-off point for the less conservative definition of serious emotional disturbance. The narrative description for 60 is:

"Variable functioning with sporadic difficulties or symptoms in several but not all social areas. Disturbance would be apparent to those who encounter the child in a dysfunctional setting or time but not to those who see the child in settings where functioning is appropriate."

This decision was made partly on the basis of the work by Bird and his colleagues that indicates that, "Empirical work has demonstrated that the optimal cut-off score on the CGAS that demonstrates definite impairment is a score lower than 61" (Bird, Shaffer, Fisher, Gould, Staghezza, Chen, & Hoven, 1993, p. 103).

The score of 50 will be used as the more stringent cut-off point to denote the more severe impairment. The narrative description for 50 is: "Moderate degree of interference in functioning in most social areas or severe impairment of functioning in one area, such as might result from, for example, suicidal preoccupations and ruminations, school refusal and other forms of anxiety, obsessive rituals, major conversion symptoms, frequent anxiety attacks, frequent episodes of aggressive or other anti-social behavior with some preservation of meaningful social relationships".

Data Sources

There are no national epidemiological studies of mental disorders for children and/or adolescents that have been conducted in the United States. This deficit makes it difficult to derive prevalence rates that are generalizable to the entire United States. In the absence of national studies, the group chose to examine the results from eight smaller, and more localized studies including, Kashani, et.al (1987), Costello, et. al (1988) (1994), Bird, et. al (1988), Kessler, et. al (1994), Jensen, et. al (1995), MECA (Lahey, et. al, 1996, Shaffer, et. al, 1996), and Costello, et. al (1995). (see Table 1 for a summary of these studies).

The group of technical experts determined that it is not possible to develop estimates of incidence using currently available data. However, it is important to note that incidence is always a subset of prevalence. In the future, incidence and prevalence data will be collected.

TABLE ONE.—SUMMARY OF STUDIES

Study	Measure and DSM system	SystemSample size and age	Measure of impairment
Kashani et al 1987	DICA/DSMIII	N=150, 14–16 yr. olds	Rating of 3 or 4 by Clinicians on 4 Point Scale of Need for Tx and Impairment.
Costello et al 1988	DISC 1.3 DSMIII	Screened=789, Interviewed=278, 7–11 yr. olds.	CGAS 60 or less.
1994 (follow-up)	DISC 2.3 DSMIIIR	Screened=789, Interviewed=263, 12–18 yr. olds.	CGAS 60 or less.
Bird et al 1988	DISC 1.3*/DSMIII	n=777 first stage n=386 second stage 4–16 yr. olds	CGAS 60 or less.
Kessler et al 1994	CIDI/DSMIII–R (adult diagnoses).	n=600 (about) 15–17 yr. olds (Part of study of 15–54 yr. olds).	Aggregation of 5 Measure.
Jensen et al 1995	DISC2.1/DSMIIIR	n=295 6–17 yr. old	•In tx or in need of tx. •Internal Impairment (1 or more). •Internal Impairment (2 Domains or more).
MECA (Lahey et al, 1996 Shaffer et al, 1996).	DISC2.1/DSMIII–R	n=1265 9–17 yr. olds	•CGAS 60 or Less. •CGAS 50 or less. •Internal Impairment, (3 or more), (5 or more).

TABLE ONE.—SUMMARY OF STUDIES—Continued

Study	Measure and DSM system	SystemSample size and age	Measure of impairment
Costello et al 1995	CAPA/DSMIII–R	2 stages n=4500 9, 11, and 13 yr. olds	•Internal Impairment, (1 or more), (2 or more), (3 or more). •CGAS (60 or less) CAFAS (20 or higher).

Estimation Procedures

Based on the CMHS definition of serious emotional disturbance, and the existing data bases which provide prevalence rates that can be applied to this definition, it is estimated that the prevalence rate of serious emotional disturbance in children 9–17 years of age is in the range of 9–13 percent. Presently, the data are inadequate to estimate prevalence rates for children under the age of nine. It is also concluded that if a more stringent definition of impairment is desired than was used for the estimated range of 9–13 percent, then the range is from 5–9 percent. The difference between the two estimates is that the measured level of functional impairment is greater in the second estimate and has been characterized in Figure 1 as "extreme functional impairment." Children at both levels of impairment are considered to have a "serious emotional disturbance" however; the group of children falling into the range of 5–9 pecent constitutes a subset of the 9–13 percent.

It should be noted that the estimated prevalence range for 9–17 year olds is higher than the range recommended by Kessler et al. (1995) for serious mental illness in adults (5.7 percent). The higher estimate for 9–17 years olds is consistent with the fact that using the National Comorbidity Study (NCS) data base, which served as the main data base for the estimation of prevalence in adults, Kessler found that the 12 month prevalence for 15–17 year olds was 8.7 percent. The twelve month prevalance for 18–54 year olds was 6.5 percent. To further understand this difference, however, it is important to recognize that within the 18–54 year range there are differences associated with age. For example, in Kessler's first article, it was reported that "disorders are consistently most prevalent in the youngest cohort (age range 15–24 years) and generally decline monotonically with age" (Kessler et al., 1994, p. 13). This was also the case with serious mental illness, as reported by Kessler et al. (1995). This finding of highest prevalence rates in youngest adults with rates decreasing with increasing age was not only obtained in the NCS but also in the Epidemiological Catchment Area study, completed in the early 1980s (Regier et al., 1988). Also, the longitudinal research by Cohen et al. (1993), and the findings by Reinherz et al. (1993) on 17–19 year olds point to especially high prevalence rates for older adolescents.

Within the 9–17 year age range, the data are adequate to permit determination of gender and socio-economic differences but are not adequate to permit determination of race differences. The comparative analyses by Costello & Messer (1995) are particularly useful for looking at gender and socio-economic differences. Both for global and specific measures of impairment, they find the prevalence rates of serious emotional disturbance in the samples already mentioned to be about twice as high in low socio-economic groups as in high socio-economic groups. This finding is consistent for every one of the seven data bases included in the analysis by Costello & Messer (1995). Jensen et al. (1995) fail to find different prevalence rates by socio-economic status in their study. However, as they point out the socio-economic range in their sample was limited by the fact that all of the youngsters were military dependents.

The following steps were taken to adjust for the difference in state socio-economic circumstances. The 1995 estimates of children and adolescents with serious emotional disturbance by state are provided in Table 3.

Step 1

States were sorted by poverty rates (1995), in ascending order. Using this sort order, States were initially classified into three groups of equal proportions, i.e., the first 17 states were put into Group A; the next 17 States into Group B; the remaining 17 States, into Group C. However, in reviewing the results, we noted that observations 17 and 18 differed by .01 percent. Observation number 18 was included in group A. For this reason, Group A has 18 cases, Group B has 16 cases, and Group C has 17 cases. Group A is the group that has a relatively low percentage of children in poverty. Group B is the mid point, and Group C is the group with the highest percentage of children in poverty.

Step 2

At a level of functioning of 50 (LOF=50), the number of children and adolescents with SED is calculated to be between 5–7 percent of the number of youth 9–17 years for Group A. For Group B, the estimate is between 6–8 percent of the number of youth 9–17 years. The estimated SED population for Group C is calculated to be between 7–9 percent of the number of youth 9–17 years.

Step 3

At a level of functioning of 60 (LOF=60), the number of children and adolescents with SED is calculated to be between 9–11 percent of the number of youth 9–17 years for Group A. For Group B, the estimate is between 10–12 percent of the number of youth 9–17 years. The estimated SED population for Group C is calculated to be between 11–13 percent of the number of youth 9–17 years.

TABLE 2.—1995 ESTIMATES OF CHILDREN AND ADOLESCENTS WITH SERIOUS EMOTIONAL DISTURBANCE; STATE ESTIMATES ALGORITHMS.

States	Estimated population			
	LOF*=50		LOF*=60	
	Lower limit (percent)	Upper limit (percent)	Lower limit (percent)	Upper limit (percent)
Group A, Lowest percent in poverty	5	7	9	11
Group B, Medium percent in poverty	6	8	10	12
Group C, Highest percent in poverty	7	9	11	13

*LOF=Level of functioning from the Children's Global Assessment Scale.

TABLE 3.—1995 ESTIMATES OF CHILDREN AND ADOLESCENTS WITH SERIOUS EMOTIONAL DISTURBANCE BY STATE

	State	Number of youth 9–17	Percent in poverty	LOF*=50		LOF*=60	
				Lower limit	Upper limit	Lower limit	Upper limit
	Total	33,706,204		2,118,269	2,792,391	3,466,516	4,140,636
1	New Hampshire	147,695	4.07	7,385	10,339	13,293	16,246
2	Alaska	90,955	8.96	4,548	6,367	8,186	10,005
3	New Jersey	932,671	9.60	46,634	65,287	83,940	10,259
4	Utah	349,086	9.76	17,454	24,436	31,418	3,839
5	Minnesota	643,892	11.30	32,195	45,072	57,950	70,828
6	Colorado	491,930	11.34	24,597	34,435	44,274	54,112
7	Nebraska	231,037	11.62	11,552	16,173	20,793	25,414
8	Missouri	709,439	11.74	35,472	49,661	63,850	78,038
9	Kansas	354,722	12.55	17,736	24,831	31,925	39,019
10	Wisconsin	706,004	12.56	35,300	49,420	63,540	77,660
11	Hawaii	143,901	13.97	7,195	10,073	12,951	15,829
12	North Dakota	91,443	14.13	4,572	6,401	8,230	10,059
13	Virginia	790,359	14.38	39,518	55,325	71,132	86,939
14	Nevada	186,695	14.41	9,335	13,069	16,803	20,536
15	Indiana	758,633	15.24	37,932	53,104	68,277	83,450
16	Rhode Island	115,176	15.36	5,759	8,062	10,366	12,669
17	Delaware	85,396	15.56	4,270	5,978	7,686	9,394
18	Maine	160,434	15.57	8,022	11,230	14,439	17,648
19	Vermont	76,500	15.79	4,590	6,120	7,650	9,180
20	Maryland	608,209	15.80	36,493	48,657	60,821	72,985
21	Wyoming	75,106	16.21	4,506	6,008	7,511	9,013
22	Georgia	942,181	16.30	56,530	75,373	94,216	113,059
23	Massachusetts	680,101	17.12	40,806	54,408	68,010	81,612
24	Iowa	385,583	17.39	23,135	30,847	38,558	46,270
25	Washington	714,567	17.81	42,874	57,165	71,457	85,748
26	Connecticut	378,473	18.03	22,708	30,278	37,847	45,417
27	Pennsylvania	1,462,731	18.07	87,764	117,018	146,273	175,528
28	Oregon	411,543	18.22	24,693	32,923	41,154	49,385
29	Michigan	1,275,452	18.36	76,527	102,036	127,545	153,054
30	Ohio	1,451,220	19.33	87,073	116,098	145,122	174,146
31	Idaho	163,829	20.57	11,030	14,706	18,383	22,059
32	South Dakota	108,855	20.74	6,531	8,708	10,886	13,063
33	North Carolina	879,091	21.06	52,745	70,327	87,909	105,491
34	Kentucky	504,373	21.25	30,262	40,350	50,437	60,525
35	Illinois	1,517,182	22.14	106,203	136,546	166,890	197,234
36	Tennessee	658,573	22.23	46,100	59,272	72,443	85,614
37	Montana	126,834	22.39	8,878	11,415	13,952	16,488
38	Arkansas	337,718	22.44	23,640	30,395	37,149	43,903
39	Texas	2,623,654	24.53	183,656	236,129	288,602	341,075
40	California	3,968,950	24.97	277,827	357,206	436,585	515,964
41	Oklahoma	457,496	24.98	32,025	41,175	50,325	59,474
42	Arizona	542,019	25.31	37,941	48,782	59,622	70,462
43	Florida	1,623,697	25.50	113,659	146,133	178,607	211,081
44	New York	2,141,435	25.51	149,900	192,729	235,558	278,387
45	West Virginia	231,390	26.93	16,197	20,825	25,453	30,081
46	Alabama	547,671	27.50	38,337	49,290	60,244	71,197
47	Louisiana	639,158	29.69	44,741	57,524	70,307	83,091
48	South Carolina	470,875	32.11	32,961	42,379	51,796	61,214
49	Washington, DC	48,365	35.33	3,386	4,353	5,320	6,287
50	New Mexico	251,231	36.59	17,586	22,611	27,635	32,660
51	Mississippi	392,694	37.03	27,489	35,342	43,196	51,050

Analyses show very similar prevalence rates for girls and boys in the seven sites. The absence of gender differences is also apparent in the findings of Jensen et al. (1995). Kessler (1995), however, reports a higher prevalence rate in females than males using the adult diagnostic categories, and an older adolescent sample (15–17 year olds). There is no indication that overall prevalence rate of serious emotional disturbance differs by gender within the 9–17 year age range although there clearly are gender differences in prevalence of particular diagnoses, such as conduct disorder and depression, and there are suggestions that the rates may diverge in later years of adolescence.

Overall, there is support for the use of socio-economic status as a correction factor in developing a methodology for the estimation of the prevalence of serious emotional disturbance. There is no empercial basis at this point for using other correction factors.

Conclusions

Of the 33 million children and adolescents between the ages of 9–17 in the United States, 9–13 percent or 3.5-4 million of these youngsters have a serious emotional disturbance at a score of 60 or lower on the Children's Global Assessment Scale. A more stringent definition of impairment, representing a score of 50 or lower on the Children's Global Assessment Scale shows a range of 5–9 percent or 2.1–2.8 million youngsters with a serious emotional disturbance (see Figure 1). Currently there are not sufficient studies to determine the prevalence rate in very young children ages birth—8. Therefore the estimated number of children with serious emotional disturbance presented here is a low estmate since it only included data for 9–17 year olds.

Limitations

There are several limitations for these estimates. First, it must be recognized that these estimated ranges are based on the findings from many modest-sized studies which varied not only in population but often in instruments that were used (particularly for measurement of impairment), methods that were used to collect the data, and even the diagnostic system that was used.

Second, there are only two studies that include youngsters under the age of nine, and these studies are not adequate to provide a base for any estimate of the prevalence of serious emotional disturbance for children under the age of nine. The estimate presented here is intended for children between nine and 17 years of age.

Third, the data are also inadequate to determine prevalence estimates for children of different racial and ethnic backgrounds. Several of the studies included youngsters of color in their sample and two studies were done exclusively on Hispanic youngsters in Puerto Rico (Bird et al., 1988, & one of the MECA sites). However, the sample sizes are too small and not sufficiently representative of African-American, Hispanic, Asian American, or native American populations to permit estimates to be made.

Fourth, with the absence of any large national studies, it is not possible to determine whether rates differ in urban versus rural areas, or different regions of the country.

Scope of Application

Inclusion in or exclusion from the definition is not intended to confer or deny eligibility for any service or benefit at the Federal, State, or local levels. Only a portion of children with a serious emotional disturbance seek treatment in any given year. Due to the episodic nature of serious emotional disturbance, some children and adolescents may not require mental health service at any particular time. Additionally, the definition is not intended to restrict the flexibility or responsibility of the State or local government to tailor publicly funded service systems to meet local needs and priorities. However, all individuals whose services are funded through Federal Community Mental Health Services Block Grant funds must fall within the criteria set forth in these definitions. Any ancillary use of these definitions for purposes other than those identified in the legislation is outside the purview and control of CMHS.

It is anticipated that additional work will be done in future years to refine and update the estimation methodology. CMHS will keep States apprised as this work develops.

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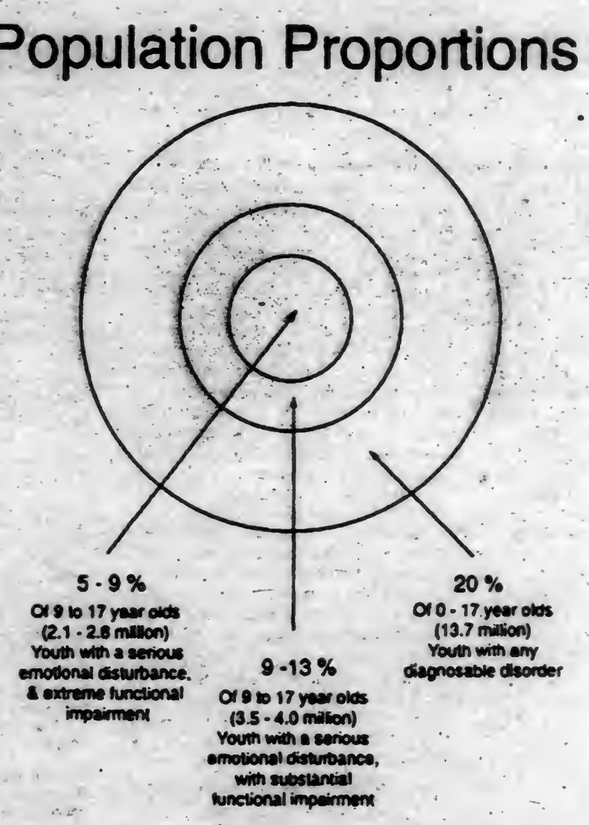
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BILLING CODE 4160-20-U

Figure 1



BILLING CODE 4160-20-C

Dated: September 22, 1997.

Richard Kopanda,

Executive Officer SAMHSA.

[FR Doc. 97–26372 Filed 10–3–97; 8:45 am]

BILLING CODE 4160-20-U

DEPARTMENT OF THE INTERIOR

Privacy Act of 1974—Notice of Establishment of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new system of records to be maintained by the Interior Service Center. The system, entitled "Computerized ID Security System—Interior, OS–01," will include information pertaining to Departmental employees and other individuals who have had access to the Main and South Interior Buildings. The information contained in this system will be used for the purpose of operating and maintaining a computerized security access-card system. The system will enhance the security of the Main and South Interior Buildings, while enabling the Department to assure the safety of building occupants in the event of an emergency. Individuals entering or leaving the Main or South Interior Buildings will be required to scan a computerized identification (ID) card, equipped with a magnetic device, through a card reading device. The device will identify the card holder based on personal information encoded on the card, and will either authorize entry or deny access to the building in question.

The potential impact on the privacy of individuals covered by the system will be minimal. Data pertaining to the date and time of entry and exit of an Interior employee will not be disclosed to supervisors, managers, or any other persons (other than the individual to whom the information applies) to verify time and attendance records for personnel-related purposes because 5 U.S.C. 6106 prohibits Federal Executive agencies (other than the Bureau of

Engraving and Printing) from using a "recording clock" within the District of Columbia, unless used as part of a flexible schedule program under 5 U.S.C. 6120 et seq. Unless retained for specific ongoing security or safety investigations, records related to date and times of exit and entry of all individuals covered by the system will be retained for a period of no longer than 2 years.

The notice is published in its entirety below.

As required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), the Office of Management and Budget, the Seante Committee on Governmental Affairs, and the House Committee on Government Operations have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Written comments on this proposal can be addressed to the Office of the Secretary Privacy Act Officer, Interior Service Center, 1849 "C" Street NW, Mail Stop 1414 MIB, Washington, DC 20240, telephone (202) 208–6045, e-mail Sue_Ellen_Sloca@ios.doi.gov. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: September 30, 1997.

Tim Vigotsky,

Director, Interior Service Center.

INTERIOR/OS–01

SYSTEM NAME:

Computerized ID Security System—Interior, OS–01.

SYSTEM LOCATION:

(1) Data covered by this system is maintained in the following location: U.S. Department of the Interior, Office of the Secretary, Interior Service Center, Facilities Management and Services, Physical Security Office, Room 1229 Main Interior Building, 1849 C Street NW., Washington, DC 20240.

(2) Security access to data covered by this system is available at all locations within the vicinity of the Main Interior Building and the South Interior Building complex where staffed guard stations are established.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have had access to the Main and South Interior Buildings. These include, but are not limited to, the following groups: Current agency employees, former agency employees, agency contractors, persons authorized to perform or to use services provided in the Main and South Interior Buildings (e.g., Department of the Interior Federal Credit Union, Interior Recreation Association Fitness Center, etc.) volunteers, and visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on current agency employees, former agency employees, and agency contractors include the following data fields: Name, Social Security number, date of birth, signature, image (photograph), hair color, eye color, height, weight, organization/office of assignment, telephone number of emergency contact (optional/voluntary data field), date of entry, time of entry, time of exit, security access category, number of ID security cards issued, ID security card issue date, ID security care expiration date, and ID security card serial number.

Records maintained on all other individuals covered by the system include the following data fields: Name, Social Security number (or one of the following: Drivers License number, "Green Card" number, Visa number, or other ID number), U.S. citizenship (yes or no/logical data field), date of entry, time of entry, time of exit, purpose for entry, agency point of contact, security access category, number of ID security cards issued, ID security card issue date, ID security card expiration data, and ID security card serial number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5. U.S.C. 301; Presidential Memorandum on Upgrading Security at Federal Facilities, June 28, 1995.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To ensure the safety and security of the Main and South Interior Buildings and their occupants.

(2) To verify that all persons entering the buildings are authorized to enter them.

(3) To track and control ID security cards issued to persons entering the buildings.

Disclosures outside the Department of the Interior may be made:

(1) To security service companies that provide monitoring and maintenance support for the system.

(2) To the Federal Protective Service, and appropriate Federal, State, and local law enforcement agencies to investigate emergency response situations or to investigate and prosecute the violation of law, statute, rule, regulation, order or license.

(3) To the U.S. Department of Justice or to a court or adjudicative body with jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(4) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

(5) To representatives of the General Services Administration or the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2903 and 2904.

Note: Disclosures within the Department of the Interior of data pertaining to date and time of entry and exit of an agency employee may not be made to supervisors, managers, or any other persons (other than the individual to whom the information applies) to verify employee time and attendance record for personnel actions because 5 U.S.C. 6106 prohibits Federal Executive agencies (other than the Bureau of Engraving and Printing) from using a recording clock within the District of Columbia, unless used as part of a flexible schedule program under 5 U.S.C. 6120 et seq.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in computerized form on a non-removable hard disk. Record backups are stored on removable diskettes and/or tapes.

RETRIEVABILITY:

Records are retrievable by name, social Security number, other ID number, image (photograph), organization/office of assignment, agency point of contact, security access, category, date of entry, time of entry, time of exit, ID security card issue date, ID security card expiration date, and ID security card serial number.

SAFEGUARDS:

The computer on which records are stored is located in an office that is secured by an alarm system and off-master key access. The computer itself is key-locked and access to the system is password-protected. Access granted to individuals at guard stations is password-protected; each person granted access to the system at guard stations must be individually authorized to use the system. A Privacy Act Warning Notice appears on the monitor screen when records containing information on individuals are first displayed. Backup diskettes/tapes are stored in a locked and controlled room in a secure, off-site location.

RETENTION AND DISPOSAL:

Records relating to persons covered by the system are retained in accordance with General Records Schedule 18, Item No. 17. Unless retained for specific, ongoing security investigations:

(1) Records relating to individuals other than employees are destroyed two years after ID security card expiration date.

(2) Records relating to date and time of entry and exit of employees are destroyed two years after date of entry and exit.

(3) All other records relating to employees are destroyed two years after ID security card expiration date.

SYSTEM MANAGER(S) AND ADDRESS:

Buildings Manager, U.S. Department of the Interior, Interior Service Center, Facilities Management and Services, Buildings Manager's Office, m.s. 1221, 1849 C Street NW., Washington, DC 20240.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the Buildings Manager. The request must be in writing and signed by the requester. (See 43 CFR 2.60.)

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the Buildings Manager. The request must be in writing and signed by the requester. (See 43 CFR 2.63.)

CONTESTING RECORDS PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the Buildings Manager. The request must be in writing and signed by the requester. (See 43 CFR 2.71.)

RECORD SOURCE CATEGORIES:

Individuals covered by the system, supervisors, and designated approving officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–26345 Filed 10–3–97; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for Issuance of an Incidental Take Permit to the California Department of Forestry and Fire Protection

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce; and California Department of Forestry and Fire Protection.

ACTION: Notice of Intent.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (collectively "the Services"), and the California Department of Forestry and Fire Protection intend to prepare an Environmental Impact Statement/ Environmental Impact Report for: (1) approval of a Habitat Conservation Plan, and issuance of an incidental take permit, pursuant to section 10(a) of the Endangered Species Act of 1973, as amended; and (2) approval of the Jackson Demonstration State Forest's Sustained Yield Plan by the California Department of Forestry and Fire Protection, including consideration of conservation measures or plans addressing State-listed species. The Habitat Conservation Plan will cover forest management and recreation activities on the Jackson Demonstration State Forest in Mendocino County, California. The California Department of Forestry and Fire Protection (Applicant) intends to request an incidental take permit for the northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus marmoratus*), American peregrine falcon (Falco peregrinus anatum), and coho salmon (*Oncorhynchus kisutch*). It is anticipated that the Applicant may also seek coverage for approximately 20 unlisted species of concern (fish, wildlife, and plants) under specific provisions of the permit, should these species be listed in the future.

Public Involvement: This notice is being furnished pursuant to the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act. Pursuant to regulations at 40 CFR (sections 1501.7 and 1508.22), the Services are seeking suggestions and information from other agencies and the public on the scope of issues and alternatives to be considered in preparation of the Environmental Impact Statement. To satisfy both Federal and State environmental policy act requirements, the above Federal and California agencies are conducting a joint scoping process for the preparation of environmental documents.

DATES: In order to expedite the planning process, the above agencies request all scoping comments on this notice be received by October 31, 1997. A public scoping meeting for interested persons to comment on the scope of the Environmental Impact Statement has been scheduled for Wednesday, October 8, 1997, from 7 p.m. to 10 p.m., at the Cotton Auditorium Fort Bragg Middle School, 500 North Harold Street, Fort Bragg, California.

ADDRESSES: Comments regarding the scope of the Environmental Impact Statement should be addressed to Mr. Bruce Halstead, Project Leader, Coastal California Fish and Wildlife Office, 1125 16th Street, Room 209, Arcata, California 95521–5582; telephone (707) 822–7201. Written comments may also be sent by facsimile to (707) 822–8411. Comments received will be available for public inspection by appointment during normal business hours (Monday through Friday; 8:00 a.m. to 5:00 p.m.) at the above office. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

FOR FURTHER INFORMATION: Contact Ms. Amedee Brickey, at the above address.

SUPPLEMENTARY INFORMATION: The Applicant manages the Jackson Demonstration State Forest, a 50,195-acre area in Mendocino County, California. The Jackson Demonstration State Forest is managed for a variety of benefits including "demonstration" forestry projects, watershed, fisheries, and wildlife in cooperation with University of California at Berkeley, Humboldt State University, the California Department of Fish and Game, the U.S. Forest Service's Pacific Southwest Experiment Station, and others. Estimated annual timber volume growth on the forest is 46 million board feet with a total volume for the property of 2.3 billion board feet, 4 times greater than when the forest was acquired by the Applicant fifty years ago. The annual volume harvested is about 28 million board feet or about 1.2 percent of the total inventory. The Jackson Demonstration State Forest also provides recreation in the form of camping, biking, horse riding and

hiking, and protects a number of prehistoric and archaeological sites.

The Environmental Impact Statement will evaluate various forest and recreation management alternatives for the planning area, including a current project alternative, a baseline forest management alternative, and at least two enhanced conservation alternatives.

The current project alternative would include continuing forest management of the Jackson Demonstration State Forest to meet or exceed current Forest Practice Rules. As a demonstration forest, the current forest management practices on the Jackson Demonstration State Forest go beyond the current California Forest Practice Rules in terms of biological resource protection. This alternative defines the moderate timber productivity management situation and the moderate wildlife protection management situation.

The baseline forest management alternative would include current Forest Practice Rules only. This alternative defines the maximum timber productivity management situation and the minimum wildlife protection management situation.

The first enhanced conservation alternative would take a multi-species approach, and include measures for maintaining or enhancing habitat for listed species covered under the permit as well as some unlisted species. This alternative is expected to include a well developed monitoring and adaptive management program that is sufficient to minimize significant adverse impacts on the habitat of sensitive species. The timber program under this alternative, while falling short of competitive economic efficiency, would be expected to provide a sustainable and economically viable timber harvest program. The timber program would substantially exceed the requirements of the State Forest Practice Rules. This alternative would define a moderate to conservative timber production management situation and a moderate wildlife conservation management situation.

The second enhanced conservation alternative would describe an increased level of habitat conservation for listed and unlisted species, relative to the first enhanced conservation alternative, to reduce the risk of significant adverse impacts. This alternative would set the most restrictive forest management practices in recognition of scientific uncertainty regarding potential impacts of timber management activities on sensitive species and their habitats. While expected to provide increased protection for covered species, this alternative would limit the ability of the Jackson Demonstration State Forest to function as a demonstration and timber production forest. This enhanced conservation alternative would define a timber management situation that is reduced to a low or custodial management level and an enhanced wildlife conservation management situation.

Once completed, it is expected that the Applicant will submit the Habitat Conservation Plan as part of the incidental take permit application process, as required under the provisions of section 10(a)(2)(A) of the Endangered Species Act. It is anticipated that the permit application for incidental take will include the northern spotted owl, marbled murrelet, American peregrine falcon, and coho salmon. The permit application is also expected to include an agreement covering conservation of certain unlisted species. The Services will evaluate the incidental take permit application and associated Habitat Conservation Plan in accordance with section 10(a) of the Endangered Species Act, and its implementing regulations.

Environmental review of the permit application, including the Habitat Conservation Plan, will be conducted in accordance with the requirements of the National Environmental Policy Act and its implementing regulations. A No Action/No Project alternative will be considered consistent with the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

The Applicant will also be preparing a Sustained Yield Plan pursuant to the provisions under Article 6.75 of the California Forest Practice Rules, including consideration of conservation measures or plans addressing state-listed species under the California Endangered Species Act. It is expected that a section 2090 or 2081 agreement will be issued by the California Department of Fish and Game under the California Fish and Game code for selected state-listed species that potentially occur on the Jackson Demonstration State Forest.

Dated: September 29, 1997.

Don Weathers,

Acting, Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–26398 Filed 10–3–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–62051]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following land in Elko County, Nevada has been examined and identified as suitable for disposal by direct sale, including the mineral estate of no more than nominal value, under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than fair market value:

Mount Diablo Meridian, Nevada

T. 34 N., R. 55 E., section 8, E½NE¼SW¼, NE¼NW¼SE¼, S½NW¼NW¼SE¼, S½NW¼SE¼.

Comprising 55.00 acres, more or less.

The above described land is being offered as a direct sale to Elko General Hospital, a political subdivision of Elko County. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: The land has been identified as suitable for disposal by the Elko Resource Management Plan. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency.

The land is prospectively valuable for oil and gas, and geothermal resources, but not for other minerals. Therefore, the mineral estate, excluding oil and gas, and geothermal resources, will be conveyed simultaneously with the sale of the surface estate. Acceptance of the sale offer will constitute an application to purchase the mineral estate having no known value. A non-refundable fee of $50.00 will be required with the purchase money. Failure to submit the purchase money and the non-refundable filing fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the **Federal Register** of a Notice of Termination of Segregation, or 270 days from date of this publication, which ever occurs first.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

2. Oil and gas and geothermal resources. A more detailed description of this reservation, which will be included in the patent document, is available for review at the Elko Field Office.

The patent, when issued, will be subject to those rights granted to Elko County, its successors, or assigns, as a holder of a right-of-way grant for an access road. For a period of 45 days from the date of publication in the **Federal Register**, interested parties my submit comments to the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada 89801. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: September 25, 1997.

David Stout,

Acting District Manager.

[FR Doc. 97–26369 Filed 10–3–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Alaska Outer Continental Shelf (OCS) Region Offshore Advisory Committee; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Alaska OCS Region Offshore Advisory Committee of the Minerals Management Service will meet on November 6th and continue on November 7th (if necessary), 1997.

The agenda will cover the following principal subjects:

—the alternatives and mitigating measures for Proposed OCS oil and gas lease Sale 170, Beaufort Sea.

The meeting is open to the public. Upon request, interested parties may make oral presentations or submit written materials to the Alaska OCS Region Offshore Advisory Committee. Such requests should be made no later than October 29, 1997. Requests to make oral statements should be accompanied by a summary of the statement to be made. All oral presentations and written statements submitted before the conclusion of the meeting will be made part of the meeting record and will be made available to the Committee for its discussions. For more information, call Michele Hope at (907) 271–6424.

Transcripts of the Alaska OCS Region Offshore Advisory Committee meeting will be available for public inspection and copying at the Minerals Management Service in Anchorage, Alaska.

DATES: Thursday, November 6, 1997, 9:00 am to 5:00 pm and will continue on Friday, November 7, 1997, 9:00 am to 12 noon, if necessary.

ADDRESSES: The meeting will be held at the University Plaza Building, 949 East 36th Ave., Minerals Management Service, 3rd Floor Conference Room, Anchorage, Alaska 99508. Requests for oral presentations to be made on November 6th can be made to the same address or by phone, Attention: Michele Hope at (907) 271–6424.

FOR FURTHER INFORMATION CONTACT: Michele Hope at the address and phone number listed above.

Authority: Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: September 30, 1997.

Robert J. Brock,

Acting Regional Director, Aloska OCS Region, Minerals Management Service.

[FR Doc. 97–26390 Filed 10–3–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of an existing collection; OMB emergency approval request; Standard Form 95, Claim for Damage, Injury, or Death.

The Department of Justice, Civil Division, Torts Branch, has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13 (a)(1)(i) and (a)(2)(i) of the Paperwork Reduction Act of 1995. The Civil Division has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. This information collection is needed prior to the expiration of established time periods. OMB approval has been requested by October 31, 1997. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, *Attention:* Mr. Patrick Boyd, 202–395–5871, Department of Justice Desk Officer, Washington, D.C. 20530.

Comments regarding the emergency submission of this information collection may be forwarded by facsimile to Mr. Boyd at 202–395–7285.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the Civil Division, Torts Branch, requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until December 5, 1997. During the 60-day regular review ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Jeffrey Axelrad, 202–616–4400, Director, Torts Branch, Civil Division, U.S. Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044. Your comments should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Claim for Damage, Injury, or Death.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form SF95. Civil Division, Torts Branch, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Businesses. This information is needed to present a claim against the United States Government under the Federal Tort Claims Act, 28 U.S.C. § 2675(a).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300,000 respondents at 6 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,800,000 annual burden hours.

If additional information is required during the first 60 days of this same regular review period, contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, D.C. 20530.

Dated: September 29, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–26361 Filed 10–3–97; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed Consent Decree in *United States* v. *Blue Ridge Electric Membership Corp. et al.*, (Civil Action No. 5:97–CV–138–V) was lodged on September 16, 1997 with the United States District Court for the Western District of North Carolina.

Pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9607 and 9613(g)(2), the United States sought the recovery of response costs incurred as a result of a removal action conducted at the Oak Hill Superfund Site located near Lenoir, Caldwell County, North Carolina. Pursuant to the terms of the Consent Decree, Blue Ridge Electric Membership Corp. and Duke Energy Corporation have agreed to pay the United States $1,881,638.34, plus accrued interest, in reimbursement of the United States' past response costs. The Consent Decree includes a covenant not to sue by the United States for past response costs under Section 107 of CERCLA and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *U.S.* v. *Blue Ridge Electric Membership Corp. et al.*, DOJ #90–11–3–1738. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Consent Decree may be examined at the office of the United States Attorney, Suite 1700 of the Carillon Building, 227 W. Trade Street, Charlotte, NC 28202; the Region 4 office of the Environmental Protection Agency, 61 Forsyth Street, S.W., Atlanta, GA 30303; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check for the reproduction costs. If you want a copy of the Consent Decree (plus attachments), then the amount of the check should be $6.00 (24 pages at 25 cents per page). The check should be made payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–26421 Filed 10–3–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR § 50.7, and 42 U.S.C. § 9622(d), notice is hereby given that on September 19, 1997, a proposed consent decree in *United States* v. *Ray O. Parker & Son, et al.*, Civil Action No. 2:97–CV–313, was lodged with the United States District Court for the District of Vermont. This proposed consent decree resolves the United States claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against 15 defendants relating to response costs that have been or will be incurred at or from a Site known as the Parker Landfill Superfund Site ("Site") located in the Town of Lyndon, Vermont and to the performance of a portion of the remedial action at the Site.

The consent decree has two components. The first aspect of the settlement requires six defendants to perform a portion of the remedial action at the Site, comprised of the construction of the cap at the Site. In addition, nine parties have entered into a *de minimis* settlement pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g). Under the terms of the *de minimis* settlement, the nine defendants will pay $1,134,000 for past and future response costs at the Site, plus a premium payment, which amount will be paid to the six parties performing work at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Parker & Son, et al.*, D.J. Ref. 90–11–2–1120.

The proposed consent decree may be examined at the Office of the United States Attorney, 11 Elmwood Ave., Burlington, Vt. 05401, at the Region I office of the Environmental Protection Agency, JFK Federal Building, Boston, Ma., 02203–2211, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $40.75 payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 97–26428 Filed 10–3–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, and 42 U.S.C. § 9622(d), notice is hereby given that on September 8, 1997, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA") lodged with the United States District Court for the Western District of Washington a civil complaint against defendants Seattle Disposal Company, John Bancero, Josie Razore, and their respective marital communities ("the SDC defendants"), Washington Waste Hauling and Recycling, Inc. ("Washington Waste Hauling"), Monsanto Company, the Board of Regents of the University of Washington, Lockheed Martin Corporation, the Port of Seattle, Sears, Roebuck & Company, R.W. Rhine, Inc., the City of Mercer Island, Washington, the Seattle School District, and Quemetco, Inc., in the civil action styled *United States* v. *Seattle Disposal Company, et al.*, Civil Action No. C97–1462–Z. The complaint states claims for relief against the defendants under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Secs. 9606 & 9607, for an order requiring the implementation of the permanent environmental remedy selected by EPA for the Site, and for the recovery of costs incurred in response to releases of hazardous substances at the Tulalip Landfill Superfund Site in Marysville, Washington ("the Site"). The complaint also states claims for relief against the Tulalip Tribes under Section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, for civil penalties and injunctive relief for discharges of pollutants from the landfill in violation of Section 301 of the Act, 33 U.S.C. Sec. 1311. The Tulalip Tribes of Washington and the Tulalip Section 17 Corporation (together "the Tulalip Tribes") are listed as a defendants-in-intervention in the complaint and intend to file a motion to intervene in this action prior to the entry of the consent decrees.

On September 8 the United States also lodged three consent decrees in this action resolving all of the claims for relief stated against the defendants in the complaint. The first consent decree resolves the United States' claims against defendant Washington Waste Hauling and defendants-in-intervention the Tulalip Tribes. This consent decree requires defendant Washington Waste Hauling to implement the remedy selected by EPA for the Site and conduct operation and maintenance of the remedy for up to five years. The consent decree also requires the Tulalip Tribes to take over operation and maintenance of the remedy after Washington Waste Hauling fulfills its operation and maintenance obligations. The consent decree also requires the Tulalip Tribes to pay $1,000,000 toward operation and maintenance costs at the Site.

To second consent decree resolves the United States' claims against the SDC defendants. This consent decree requires the SDC defendants to pay $9.5 million towards the cost of implementing EPA's selected remedy for the Site and reimbursement of costs incurred by EPA in response to releases of hazardous substances at the Site.

The third consent decree resolves the United States' claims against the remaining defendants, and the potential counterclaims against the United States Navy and the Bureau of Indian Affairs of the United States Department of Interior ("BIA") with respect to the Site. The consent decree requires the remaining defendants and the settling federal agencies to pay $4,645,457.00 toward the cost of implementing EPA's selected remedy for the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Seattle Disposal Company, et al.*, DOJ Ref. #90–11–3–1412.

The proposed consent decrees may be examined at the office of the United States Attorney, 1010 Fifth Avenue, Seattle, WA 98104; the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting copies please refer to the referenced case, specify which decree or decrees you would like to receive, and enclose a check payable to the Consent Decree Library (25 cents per page reproduction costs): the decree with Seattle Disposal Company, Mr. Razore and Mr. Banchero, $10.50 without attachments, or $71.25 with attachments; the decree with Washington Waste Hauling, $41.50 without attachments, or $215.25 with attachments; the decree with the remaining defendants (referred to as "Generator Defendants"), $17.75 without attachments, or $176.00 with attachments.

Joel Gross,

Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 97–26422 Filed 10–3–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on June 24, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to the membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have joined CableLabs: First Nations Cable Inc., Ontario, CANADA; Loudoun

Telecommunications Ltd., Sterling, VA; and Pioneer Cable, Inc., Monument, CO.

No other changes have been made in either the membership or planned activity of CableLabs. Membership remains open and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 Fed. Reg. 34593). The last notification with respect to membership changes was filed with the Department on March 28, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 14, 1997 (62 Fed. Reg. 26569).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–26427 Filed 10–3–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Enterprise Computer Telephony Forum

Notice is hereby given that, on February 14, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Enterprise Computer Telephony Forum ("ECTF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lernout & Hauspie, Wemmel, BELGIUM; Com2001 Technologies, San Diego, CA; Linkon Corporation, Fairfield, CT; Rheterox, Los Gatos, CA; Tandem Computers, Cupertino, CA; and Texas Instruments, Dallas, TX, have become Principal Members. AT&T Wireless, Kirland, WA; CallWare Technologies, Salt Lake City, UT; Elektro-Automatikk AS, Sola, NORWAY; Heurikon Corporation, Kanagawa, JAPAN; Loughborough Sound Images PLC, Loughborough, ENGLAND; Madge Networks Ltd., Madison, WI; Micrologica Computersysteme, Bargteheide, GERMANY; Netaccess, Salem, NH; Nokia Telecommunications, Helsinki, FINLAND; Paradyne, Largo, FL; Pika Technologies, Ontario, CANADA; Prior Data Science, Ontario, CANADA; Sonetech, Inc., Sterling, WA; Syntellect, Phoeniz, AZ; T-Netix, Inc., Piscataway, NJ; Voice Control Systems, Cambridge, MA; and Voice Technologies Group, Buffalo, NY, have become Auditing Members. NationsBank, Charlotte, NC; and UCA&L, Buffalo, NY, have become User Members.

Apple Computers; Networks Unlimited; Bellcore; Hewlett-Packard Company; MCI; and Novell Corporation are no longer Principal Members.

Brite Voice Systems; Lernout & Hauspie; Texas Instruments; Berkeley Speech Technologies; Computer & Communications Research; Comverse Technologies, Inc.; CTI Market Solutions; DeTeWe Kommunikations Systeme; Gammalink Corporation; Garex AS; Harris; Itec Telecom; NationsBank; Pagemart; Samsung; Shared Resource Exchange; Silicon Automation Exchange, Inc.; Sprint Products Group, Inc.; SDX; Technology Marketing Partners; Telecom Italia; Teleprocessing Systems, Inc.; Telinet; Telprint; Trio Information Systems; UCA&L; Wildfire Communications, Inc.; and Winbond Electronics Corporation are no longer Auditing Members.

Digital Systems International (an Auditing Member) has changed its name to Mosaix.

No other changes have been made in the membership, nature or objectives of ECTF. Membership remains open, and ECTF intends to file additional written notifications disclosing all changes in membership.

On February 20, 1996, ECTF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 1996 (61 Fed. Reg. 22074).

The last notification was filed with the Department on January 3, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 19, 1997 (62 Fed. Reg. 33440).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–26426 Filed 10–3–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IOPS.ORG Project

Notice is hereby given that, on July 2, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation For National Research Initiatives ("CNRI") has filed written notifications on behalf of a Joint Venture between CNRI and participants known as the IOPS.ORG ("IOPS") Project simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are CNRI, Reston, VA; ANS CO+RE Systems, Inc., Elmsford, NY; AT&T Corporation, Basking Ridge, NJ; BBN Corporation, Cambridge, MA; EarthLink Network, Inc., Pasadena, CA; GTE Intelligent Network Services Incorporated, Irving, TX; MCI Telecommunications, Washington, DC; NETCOM On-Line Communications Services, Inc., San Jose, CA; PSINet, Inc., Herndon, VA; Sprint Communications Company, L.P., Kansas City, MO; and UUNET Technologies, Inc., Fairfax, VA.

The nature of the Project will be to promote, in the public interest, industry cooperation on the joint engineering efforts to help ensure an operational global Internet, by addressing issues that require coordination and information-sharing across and among Internet service providers, and to support engineering analysis, system simulation and testing, and interaction with other groups and organizations as appropriate for the accomplishment of its goal of improving the reliability and robustness of the Internet.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–26424 Filed 10–3–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 the Open Group, L.L.C.

Notice is hereby given that, on July 16, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), The Open Group, L.L.C. ("TOG") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the partie and (2) the nature and objective of the venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the Associate members of TOG, which, by virtue of such status are not entitled to vote or appoint representatives, are as follows: T. Rowe Price Investment Technologies Inc., Baltimore, MD; NCD Corporation, Beaverton, OR: ETH Zuerich, Zurich, Switzerland; Oak Ridge National Laboratory, Oak Ridge, TN; Post UND, Telekom, Austria; EC-Leasing, Moscow, Russia; Digital Equipment Corporation Japan, Tokyo, Japan; Research Environment for Global, Kawasaki, Japan; IBM Korea, Inc., Seoul, Korea; Shiman Associates Inc., Brookline, MA; Naval Underwater Warfare Center Newport, RI; Attachmate Canada, Inc., Burnaby, Canada; and Nippon Telegraph and Telephone Corp., Minato-ku, Japan.

No other changes have been made in either the membership or planned activity of the group research project. Membership in TOG will remain open and TOG will file additional written notifications disclosing all changes in membership.

On April 21, 1997 The Open Group filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on June 13, 1997 (62 FR 32371).

Constance K. Robinson,

Director of Operations, Antitrust Division

[FR Doc. 97–26425 Filed 10–3–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum E&P Research Cooperative

Notice is hereby given that, on August 22, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.*, ("the Act"), Petroleum E&P Research Cooperative ("Cooperative") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Elf Exploration Production of Pau, FRANCE has become a new member of the Cooperative

No other changes have been made in either the membership or planned activities of the Cooperative. Membership in this venture remains open, and the Cooperative intends to file additional written notification disclosing all changes in membership.

On January 16, 1997, Petroleum E&P Research Cooperative filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act of February 13, 1997 (62 FR 6801).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–26423 Filed 10–3–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 97–18]

Voluntary Protection Program

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice, proposed information collection request; submitted for public comment and recommendations.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instrument are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the approval for the paperwork requirements for participation in the Voluntary Protection Programs (VPP).

DATES: Written comments must be submitted on or before December 5, 1997.

Comments should:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including their validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR–97–18. U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Oliver, Directorate of Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7266. Copies of the referenced information collection requests are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Ms. Oliver at (202) 219–7266 or B. Bielaski at (202) 219–7177. For electronic copies of the information collection request on Voluntary Protection Programs, contact

the Labor News Bulletin Board (202) 219–4784; or OSHA's Web Page on Internet at http://www.osha.gov/ and click on *Standards*.

SUPPLEMENTARY INFORMATION:

Background

The Occupational Safety and Health Administration (OSHA) will be requesting approval from the Office of Management and Budget (OMB) for certain information collection requirements contained in the Voluntary Protection Programs requirements. This notice initiates the process for OSHA to request an OMB approval.

As part of OMB's and OSHA's continuing paperwork reduction effort, OSHA seeks to reduce that paperwork burden hours in the Voluntary Protection Program based on input from parties interested in the regulatory scope of that regulation. The purpose of this notice is to solicit public comment on OSHA's paperwork burden estimates from those interested parties and to seek public response to several questions related to the development of OSHA's estimates. Interested parties are requested to review OSHA's estimates, which are based on information from historical program data, to comment on their accuracy or appropriateness in today's workplace situation. OSHA bases its existing estimates upon information from participants of the Voluntary Protection Programs and is interested in learning whether they are outdated.

Current Action

This notice requests a PRA approval from OMB for the paperwork required for participation in the Voluntary Protection Programs. In order to determine if an applicant worksite meets VPP requirements, i.e., has a safety and health program that provides effective worker safety and health protection, OSHA must receive an application that describes the program in detail.

Applications: 18,000 hours per year.
Type of Review: New Approval.
Agency: Occupational Safety and Health Administration, U.S. Department of Labor.
Title: Voluntary Protection Programs.
OMB Number: No number assigned.
Agency Number: Docket No. ICR–97–18.
Frequency: On Occasion.
Affected Public: Business.
Number of Respondents: 90–100 per year.
Estimated Time Per Respondent: 200 hours.
Total Burden Hours: 18,000.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed this 22nd day of August, 1997.

Paula O. White,

Director, Directorate of Federal-State Operations.

[FR Doc. 97–26391 Filed 10–3–97; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Grant Awards to Applicants for Funds To Provide Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 1998

AGENCY: Legal Services Corporation.

ACTION: Announcement of 1998 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, beginning January 1, 1998.

DATES: All comments and recommendations must be received on or before the close of business on November 5, 1997.

ADDRESS: Legal Services Corporation—Competitive Grants, Legal Services Corporation, 750 First Street, N.E., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Carolyn Naidu, Grants Analyst, Office of Program Operations, (202) 336–8907.

SUPPLEMENTARY INFORMATION: Pursuant to the Corporation's announcement of funding availability on April 24, 1997 (62 FR 20038) and Grant Renewal applications due at September 15, 1997, the LSC will award funds to one or more of the following organizations to provide civil legal services in the indicated service areas.

Service area	Applicant name
AL–1	Legal Services Corporation of Alabama, Inc.
AL–2	Legal Services of North-Central Alabama, Inc.
AL–3	Legal Services of Metro Birmingham, Inc.
MAL	Legal Services Corporation of Alabama, Inc.
AK–1	Alaska Legal Services Corporation.
NAK–1	Alaska Legal Services Corporation.
AZ–1	Pinal & Gila Counties Legal Aid Society.
AZ–2	DNA-People's Legal Services, Inc.
AZ–3	Community Legal Services, Inc.
AZ–4	Southern Arizona Legal Aid, Inc.
NAZ–1	Pinal & Gila Counties Legal Aid Society.
NAZ–2	Community Legal Services, Inc.
NAZ–3	Papago Legal Services, Inc.
NAZ–4	Southern Arizona Legal Aid, Inc.
NAZ–5	DNA-People's Legal Services, Inc.
MAZ	Community Legal Services, Inc.
AR–1	Ozark Legal Services.
AR–2	Legal Services of Northeast Arkansas, Inc.
AR–3	Western Arkansas Legal Services, Inc.
AR–4	East Arkansas Legal Services.
AR–5	Center For Arkansas Legal Services.
MAR	Center For Arkansas Legal Services.
CA–1	California Indian Legal Services, Inc.
CA–2	Greater Bakersfield Legal Assistance, Inc.
CA–3	Central California Legal Services.
CA–4	Legal Aid Foundation of Long Beach.
CA–5	Legal Aid Foundation of Los Angeles.
CA–6	Legal Aid Society of Alameda County.

Service area	Applicant name
CA–7	Channel Counties Legal Services Association.
CA–8	San Fernando Valley Neighborhood Legal Services, Inc.
CA–9	Legal Services Program for Pasadena and San Gabriel-Pomona Valley.
CA–10	Legal Aid Society of San Mateo County.
CA–11	Contra Costa Legal Services Foundation.
CA–12	Inland Counties Legal Services Inc.
CA–13	Legal Services of Northern California Inc.
CA–14	Legal Aid Society of San Diego, Inc.
CA–15	California Rural Legal Assistance, Inc.
CA–16	San Francisco Neighborhood Legal Assistance Foundation.
CA–17	Legal Aid of Marin.
CA–18	Community Legal Services, Inc.
CA–19	Legal Aid Society of Orange County, Inc.
CA–21	Central California Legal Services.
CA–23	Redwood Legal Assistance.
CA–25	Legal Aid for the Central Coast.
NCA–1	California Indian Legal Services, Inc.
MCA	California Rural Legal Assistance, Inc.
CO–2	Colorado Rural Legal Services, Inc.
CO–3	Legal Aid Society of Metropolitan Denver, Inc.
CO–5	Pikes Peak/Arkansas River Legal Aid.
NCO–1	Colorado Rural Legal Services, Inc.
MCO	Colorado Rural Legal Services, Inc.
CT–1	Statewide Legal Services of Connecticut, Inc.
NCT–1	(Publication of FY98 Competition is underway).
MCT	Statewide Legal Services of Connecticut, Inc.
DE–1	Legal Services Corporation of Delaware, Inc.
MDE	Legal Aid Bureau, Inc.
DC–1	Neighborhood Legal Services Program of the District of Columbia.
FL–1	Central Florida Legal Services, Inc.
FL–2	Legal Aid Service of Broward County, Inc.
FL–3	Florida Rural Legal Services, Inc.
FL–4	Jacksonville Area Legal Aid, Inc.
FL–5	Legal Services of Greater Miami, Inc.
FL–6	Legal Services of North Florida, Inc.
FL–7	Greater Orlando Area Legal Services, Inc.
FL–8	Bay Area Legal Services, Inc.
FL–9	Withlacoochee Area Legal Services, Inc.
FL–10	Three Rivers Legal Services, Inc.
FL–11	Northwest Florida Legal Services, Inc.
FL–12	Gulfcoast Legal Services, Inc.
MFL	Florida Rural Legal Services, Inc.
GA–1	Atlanta Legal Aid Society, Inc.
GA–2	Georgia Legal Services Program.
MGA	Georgia Legal Services Program.
GU–1	Guam Legal Services Corporation.
HI–1	Legal Aid Society of Hawaii.
NHI–1	Native Hawaiian Legal Corporation.
MHI	Legal Aid Society of Hawaii.
ID–1	Idaho Legal Aid Services, Inc.
NID–1	Idaho Legal Aid Services, Inc.
MID	Idaho Legal Aid Services, Inc.
IL–1	Cook County Legal Assistance Foundation, Inc.
IL–2	Legal Assistance Foundation of Chicago.
IL–3	Land of Lincoln Legal Assistance Foundation, Inc.
IL–4	Prairie State Legal Services, Inc.
IL–5	West Central Illinois Legal Assistance.
MIL	Legal Assistance Foundation of Chicago.
IN–1	Legal Services of Maumee Valley, Inc.
IN–2	Legal Services of Northwest Indiana, Inc.
IN–3	Legal Services Organization of Indiana, Inc.
IN–4	Legal Services Program of Northern Indiana, Inc.
MIN	Legal Services Organization of Indiana, Inc.
IA–1	Legal Services Corporation of Iowa.
IA–2	Legal Aid Society of Polk County.
MIA	Legal Services Corporation of Iowa.
KS–1	Kansas Legal Services, Inc.
MKS	Kansas Legal Services, Inc.
KY–1	Northern Kentucky Legal Aid Society, Inc.
KY–2	Legal Aid Society, Inc.
KY–3	Central Kentucky Legal Services, Inc.
KY–4	Northeast Kentucky Legal Services, Inc.
KY–5	Appalachian Research and Defense Fund of Kentucky.
KY–6	Cumberland Trace Legal Services, Inc.

Service area	Applicant name
KY–7	Western Kentucky Legal Services, Inc.
MKY	Appalachian Research and Defense Fund of Kentucky.
LA–1	Capital Area Legal Services Corporation.
LA–2	Southwest Louisiana Legal Services Society, Inc.
LA–3	North Louisiana Legal Assistance Corporation.
LA–4	New Orleans Legal Assistance Corporation.
LA–5	Northwest Louisiana Legal Services, Inc.
LA–6	Acadiana Legal Service Corporation.
LA–7	Kisatchie Legal Services Corporation.
LA–8	Southeast Louisiana Legal Services Corporation.
MLA	Acadiana Legal Service Corporation.
ME–1	Pine Tree Legal Assistance, Inc.
NME–1	Pine Tree Legal Assistance, Inc.
MME	Pine Tree Legal Assistance, Inc.
MD–1	Legal Aid Bureau, Inc.
MMD	Legal Aid Bureau, Inc.
MA–1	Volunteer Lawyers Project of the Boston Bar Association, Inc.
MA–2	South Middlesex Legal Services, Inc.
MA–3	Legal Services for Cape Cod and Islands, Inc.
MA–4	Merrimack Valley Legal Services, Inc.
MA–5	New Center for Legal Advocacy.
MA–10	Massachusetts Justice Project, Inc.
MMA	Massachusetts Justice Project, Inc.
MI–1	Legal Services of Southeastern Michigan, Inc.
MI–2	Legal Services Organization of Southcentral Michigan.
MI–3	Wayne County Neighborhood Legal Services, Inc.
MI–4	Legal Services of Eastern Michigan.
MI–5	Legal Aid of Central Michigan.
MI–6	Lakeshore Legal Services, Inc.
MI–7	Oakland Livingston Legal Aid.
MI–8	Berrien County Legal Services Bureau, Inc.
MI–9	Legal Services of Northern Michigan, Inc.
MI–10	Legal Aid of Western Michigan.
MI–11	Legal Aid Bureau of Southwestern Michigan, Inc.
NMI–1	Michigan Indian Legal Services, Inc.
MMI	Legal Services of Southeastern Michigan, Inc.
MP–1	Micronesian Legal Services Corporation.
MN–1	Legal Aid Service of Northeastern Minnesota.
MN–2	Judicare of Anoka County, Inc.
MN–3	Central Minnesota Legal Services, Inc.
MN–4	Legal Services of Northwest Minnesota.
MN–5	Southern Minnesota Regional Legal Services, Inc.
NMN–1	Anishinabe Legal Services, Inc.
MMN	Southern Minnesota Regional Legal Services, Inc.
MS–1	Central Mississippi Legal Services.
MS–2	North Mississippi Rural Legal Services, Inc.
MS–3	South Mississippi Legal Services Corporation.
MS–4	East Mississippi Legal Services Corporation.
MS–5	Southeast Mississippi Legal Services Corporation.
MS–6	Southwest Mississippi Legal Services Corporation.
NMS–1	East Mississippi Legal Services Corporation.
MMS	Central Mississippi Legal Services.
MO–1	Southeast Missouri Legal Services, Inc.
MO–2	Meramec Area Legal Aid Corporation.
MO–3	Legal Aid of Western Missouri.
MO–4	Legal Services of Eastern Missouri, Inc.
MO–5	Mid-Missouri Legal Services Corporation.
MO–6	Legal Aid of Southwest Missouri.
MMO	Legal Aid of Western Missouri.
MT–1	Montana Legal Services Association.
NMT–1	Montana Legal Services Association.
MMT	Montana Legal Services Association.
NE–1	Legal Services of Southeast Nebraska.
NE–2	Legal Aid Society, Inc.
NE–3	Western Nebraska Legal Services, Inc.
NNE–1	Legal Aid Society, Inc.
MNE	Western Nebraska Legal Services, Inc.
NV–1	Nevada Legal Services, Inc.
NNV–1	Nevada Legal Services, Inc.
MNV	Nevada Legal Services, Inc.
NH–1	New Hampshire Legal Services, Inc.
MNH	Pine Tree Legal Assistance, Inc.
NJ–1	Cape-Atlantic Legal Services, Inc.
NJ–2	Warren County Legal Services, Inc.

Service area	Applicant name
NJ–3	Camden Regional Legal Services, Inc.
NJ–4	Union County Legal Services Corporation.
NJ–5	Hunterdon County Legal Service Corporation.
NJ–6	Bergen County Legal Services.
NJ–7	Hudson County Legal Services Corporation.
NJ–8	Essex-Newark Legal Services Project, Inc.
NJ–9	Middlesex County Legal Services Corporation.
NJ–10	Passaic County Legal Aid Society.
NJ–11	Somerset-Sussex Legal Services Corporation.
NJ–12	Ocean-Monmouth Legal Services, Inc.
NJ–13	Legal Aid Society of Mercer County.
NJ–14	Legal Aid Society of Morris County.
MNJ	Camden Regional Legal Services, Inc.
NM–1	DNA-People's Legal Services, Inc.
NM–2	Legal Aid Society of Albuquerque, Inc.
NM–3	Southern New Mexico Legal Services, Inc.
NM–4	Northern New Mexico Legal Services, Inc.
MNM	Southern New Mexico Legal Services, Inc.
NNM–1	Southern New Mexico Legal Services, Inc.
NNM–2	DNA-People's Legal Services, Inc.
NNM–3	Indian Pueblo Legal Services, Inc.
NY–1	Legal Aid Society of Northeastern New York, Inc.
NY–3	Legal Aid for Broome and Chenango, Inc.
NY–4	Neighborhood Legal Services, Inc.
NY–5	Chautauqua County Legal Services, Inc.
NY–6	Chemung County Neighborhood Legal Services, Inc.
NY–7	Nassau/Suffolk Law Services Committee, Inc.
NY–8	Legal Aid Society of Rockland County, Inc.
NY–9	Legal Services for New York City.
NY–10	Niagara County Legal Aid Society, Inc.
NY–13	Legal Services of Central New York, Inc.
NY–14	Legal Aid Society of Mid-New York, Inc.
NY–15	Westchester/Putnam Legal Services.
NY–16	North Country Legal Services, Inc.
NY–17	Southern Tier Legal Services.
NY–18	Monroe County Legal Assistance Corporation.
MNY	Legal Aid Society of Mid-New York, Inc.
NC–1	Legal Services of North Carolina, Inc.
NC–2	Legal Services of Southern Piedmont, Inc.
NC–3	North Central Legal Assistance Program, Inc.
NC–4	Legal Aid Society of Northwest North Carolina, Inc.
NNC–1	Legal Services of North Carolina, Inc.
MNC	Legal Services of North Carolina, Inc.
ND–1	Legal Assistance of North Dakota, Inc.
ND–2	North Dakota Legal Services, Inc.
NND–1	Legal Assistance of North Dakota, Inc.
NND–2	North Dakota Legal Services, Inc.
MND	Southern Minnesota Regional Legal Services, Inc.
OH–1	Western Reserve Legal Services.
OH–2	Stark County Legal Aid Society.
OH–3	Legal Aid Society of Cincinnati.
OH–4	The Legal Aid Society of Cleveland.
OH–5	The Legal Aid Society of Columbus.
OH–6	Ohio State Legal Services.
OH–7	Legal Aid Society of Dayton, Inc.
OH–8	Legal Aid Society of Lorain County, Inc.
OH–9	Butler-Warren Legal Assistance Association.
OH–10	Allen County-Blackhoof Area Legal Services Association.
OH–11	Ohio State Legal Services.
OH–12	Advocates for Basic Legal Equality, Inc.
OH–13	The Toledo Legal Aid Society.
OH–14	Wooster-Wayne Legal Aid Society, Inc.
OH–15	Northeast Ohio Legal Services.
OH–16	Rural Legal Aid Society of West Central Ohio.
MOH	Advocates for Basic Legal Equality, Inc.
OK–1	Legal Aid of Western Oklahoma, Inc.
OK–2	Legal Services of Eastern Oklahoma, Inc.
NOK–1	Oklahoma Indian Legal Services, Inc.
MOK	Legal Aid of Western Oklahoma, Inc.
OR–1	Oregon Legal Services Corporation.
OR–2	Lane County Legal Aid Service, Inc.
OR–3	Multnomah County Legal Aid Service, Inc.
OR–4	Marion-Polk Legal Aid Service, Inc.
NOR–1	Oregon Legal Services Corporation.

Service area	Applicant name
	Native American Program dba Northwest Center for Indian Law.
MOR	Oregon Legal Services Corporation.
PA–1	Philadelphia Legal Assistance Center.
PA–2	Legal Services, Inc.
PA–3	Delaware County Legal Assistance Association, Inc.
PA–4	Bucks County Legal Aid Society.
PA–5	Laurel Legal Services, Inc.
PA–6	Southern Alleghenys Legal Aid, Inc.
PA–7	Central Pennsylvania Legal Services.
PA–8	Neighborhood Legal Services Association.
PA–9	Northern Pennsylvania Legal Services, Inc.
PA–10	Keystone Legal Services, Inc.
PA–11	Southwestern Pennsylvania Legal Aid Society, Inc.
PA–12	Legal Aid of Chester County, Inc.
PA–13	Legal Services of Northeastern Pennsylvania, Inc.
PA–14	Susquehanna Legal Services.
PA–15	Northwestern Legal Services.
PA–16	Southern Alleghenys Legal Aid, Inc.
PA–17	Lehigh Valley Legal Services, Inc.
PA–18	Montgomery County Legal Aid Service.
PA–19	Central Pennsylvania Legal Services.
MPA	Philadelphia Legal Assistance Center.
PR–1	Puerto Rico Legal Services, Inc.
PR–2	Community Law Office, Inc.
MPR	Puerto Rico Legal Services, Inc.
RI–1	Rhode Island Legal Services, Inc.
MRI	Rhode Island Legal Services, Inc.
SC–1	Neighborhood Legal Assistance Program, Inc.
SC–2	Palmetto Legal Services.
SC–3	Carolina Regional Legal Services Corporation.
SC–4	Legal Services Agency of Western Carolina, Inc.
SC–5	Piedmont Legal Services, Inc.
SC–6	Piedmont Legal Services, Inc.
MSC	Neighborhood Legal Assistance Program, Inc.
SD–1	Black Hills Legal Services, Inc.
SD–2	East River Legal Services Corporation.
SD–3	Dakota Plains Legal Services, Inc.
NSD–1	Dakota Plains Legal Services, Inc.
MSD	Black Hills Legal Services, Inc.
TN–1	Southeast Tennessee Legal Services, Inc.
TN–2	Legal Services of Upper East Tennessee, Inc.
TN–3	Knoxville Legal Aid Society, Inc.
TN–4	Memphis Area Legal Services, Inc.
TN–5	Legal Aid Society of Middle Tennessee.
TN–6	Rural Legal Services of Tennessee, Inc.
TN–7	West Tennessee Legal Services.
TN–8	Legal Services of South Central Tennessee, Inc.
MTN	Legal Services of Upper East Tennessee, Inc.
TX–1	Legal Aid of Central Texas.
TX–2	Coastal Bend Legal Services.
TX–3	Legal Services of North Texas.
TX–4	El Paso Legal Assistance Society.
TX–5	West Texas Legal Services, Inc.
TX–6	Gulf Coast Legal Foundation.
TX–7	Coastal Bend Legal Services.
TX–8	Bexar County Legal Aid Association, Inc.
TX–9	Heart of Texas Legal Services Corporation.
TX–10	Texas Rural Legal Aid, Inc.
TX–11	East Texas Legal Services, Inc.
NTX–1	Texas Rural Legal Aid, Inc.
MTX	Texas Rural Legal Aid, Inc.
UT–1	Utah Legal Services, Inc.
NUT–1	Utah Legal Services, Inc.
MUT	Utah Legal Services, Inc.
VT–1	Legal Services Law Line of Vermont, Inc.
MVT	Legal Services Law Line of Vermont, Inc.
VI–1	Legal Services of the Virgin Islands.
VA–1	Legal Services of Northern Virginia, Inc.
VA–2	Piedmont Legal Services, Inc.
VA–3	Rappahannock Legal Services, Inc.
VA–4	Southwest Virginia Legal Aid Society, Inc.
VA–5	Peninsula Legal Aid Center, Inc.
VA–6	Central Virginia Legal Aid Society, Inc.
VA–7	Legal Aid Society of New River Valley, Inc.

Service area	Applicant name
VA–8	Legal Aid Society of Roanoke Valley.
VA–9	Tidewater Legal Aid Society.
VA–10	Virginia Legal Aid Society, Inc.
VA–11	Southside Virginia Legal Services, Inc.
VA–12	Blue Ridge Legal Services, Inc.
VA–13	Client Centered Legal Services of Southwest Virginia, Inc.
MVA	Peninsula Legal Aid Center, Inc.
WA–1	Northwest Justice Project.
NWA–1	Northwest Justice Project.
MWA	Northwest Justice Project.
WV–1	Appalachian Research and Defense Fund, Inc.
WV–2	Legal Aid Society of Charleston.
WV–3	West Virginia Legal Services Plan, Inc.
MWV	West Virginia Legal Services Plan, Inc.
WI–1	Legal Action of Wisconsin, Inc.
WI–2	Wisconsin Judicare, Inc.
WI–3	Legal Services of Northeastern Wisconsin, Inc.
WI–4	Western Wisconsin Legal Services, Inc.
NWI–1	Wisconsin Judicare, Inc.
MWI	Legal Action of Wisconsin, Inc.
WY–4	Wind River Legal Services, Inc.
NWY–1	Wind River Legal Services, Inc.
MWY	Wind River Legal Services, Inc.

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area indicated is served by one of the organizations listed above, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 1998.

Dated: October 1, 1997.

John A. Tull,

Director, Office of Program Operations.

[FR Doc. 97–26445 Filed 10–3–97; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003 and 50–247]

Consolidated Edison Company of New York, Inc. (Indian Point Nuclear Generating Unit Nos. 1 and 2); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80, by issuance of an Order, the transfer of control of Facility Operating License Nos. DPR–5 and DPR–26, for the Indian Point Nuclear Generating Units No. 1 (IP1) and No. 2 (IP2), located in Westchester County, New York, to the extent such transfer would be affected by the proposed corporate reorganization of Consolidated Edison Company of New York, Inc. (Con Ed, the licensee), holder of the licenses.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the transfer of control of the licenses, to the extent affected by the reorganization of Con Ed by establishment of a holding company. Con Ed would become a wholly-owned subsidiary of the holding company and would continue to be the licensee for IP1 and IP2. The proposed action is in accordance with Con Ed's application dated December 24, 1996.

The Need for the Proposed Action

The proposed action is needed to the extent the proposed reorganization of Con Ed will effect a transfer of control of the licenses. Con Ed has submitted that the proposed restructuring will enable it to better prepare to implement changes resulting from electric industry restructuring, and will enhance the insulation of Con Ed's nuclear utility business from business risks associated with non-nuclear enterprises.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that there will be no physical or operational changes to IP1 and IP2. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate or maintain the facility, as Con Ed will continue to be responsible for the operation of IP2 and the maintenance and possession of IP1, which is permanently shut down.

The Commission has evaluated the environmental impact of the proposed action and had determined that the probability or consequences of accidents would not be increased by the proposed action, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed action would not affect routine radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission concluded that there are not significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed

action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Indian Point Nuclear Generating Unit No. 2, dated November 1976.

Agencies and Persons Contacted

In accordance with its stated policy, on July 23, 1997, the staff consulted with the New York State Official, Heidi Volk, of the New York State Research and Development Authority regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 24, 1996, which is available for public inspection at the Commission Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 24th day of September 1997.

For the Nuclear Regulatory Commission.

Jefferey F. Harold,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–26406 Filed 10–3–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8622]

Pathfinder Mines Corporation; Notice of Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of application from Pathfinder Mines Corporation to change three site-reclamation milestones in Condition 50 of Source Material License SUA–442 for the Shirley Basin, Wyoming Uranium Mill site.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated September 11, 1997, an application from Pathfinder Mines Corporation (PMC) to amend License Condition (LC) 50 of its Source Material License No. SUA–442 for the Shirley Basin, Wyoming uranium mill site. The license amendment application proposes to modify LC 50 to change the completion date for three site-reclamation milestones. The new dates proposed by PMC would extend completion of placement of the interim cover over tailings pile by two years, completion of placement of the final radon barrier by three years, and completion of placement of the erosion protection cover by three years.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

SUPPLEMENTARY INFORMATION: The portion of LC 50 with the proposed changes would read as follows:

A. (2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion-December 31, 1999.

A. (3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m²/s above background-December 31, 2002.

B. (1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR Part 40-December 31, 2003.

PMC's application to amend LC 50 of Source Material License SUA-442, which describes the proposed changes to the license condition and the reasons for the request is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L. "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), and person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike. Rockville MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Pathfinder Mines Corporation, 935 Pendell Boulevard, P.O. Box 730, Mills, Wyoming 82644, Attention: Tom Hardgrove; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated: at Rockville, Maryland, this 26th day of September 1997.

Joseph J. Holonich,

Chief Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–26401 Filed 10–3–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

Public Service Electric & Gas Company (Atlantic City Electric Company, Hope Creek Generating Station); Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to Public Service Electric & Gas Company for operation of the Hope Creek (HC) Generating Station located at the licensee's site in Salem County, New Jersey.

The proposed amendment would change Technical Specification 3/4.11.1, "Liquid Effluents—Concentration." The proposed change adds a requirement to perform weekly sampling and monthly and quarterly composite analyses of the station service water system (SSWS) when the reactor auxiliaries cooling system (RACS) is contaminated.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The fact that the RACS operating pressure can be greater than the SSWS fluid pressures at s[n] RACS heat exchanger does not increase the probability of an accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. Upon receipt of a LOCA [loss-of-coolant accident] signal, the RACS heat exchangers are automatically isolated from the balance of the SSWS and the RACS supply and return header containment isolation valves automatically close. The change only affects the consequences of a malfunction of passive components, such as seals and heat exchanger tubing, cooled by the RACS system. Since the plant systems associated with these proposed changes will still be capable of: (1) Meeting all applicable design basis requirements; and (2) retain the capability to mitigate the consequences of accidents described in the HC UFSAR, the proposed changes were determined to be justified. While the consequences of contaminated leakage from the RACS to SSWS are increased slightly, these changes will not involve a significant increase in the consequences of an accident previously evaluated.

The resulting estimated total effective dose equivalent in UNRESTRICTED AREAS is well within the limits of 10 CFR 20.1301(a)(1) and Hope Creek LCO [limiting condition for operation] 3.11.1.2.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Plant response to contaminated leakage from the RACS to SSWS is the same as the response to leakage from the safety auxiliaries cooling system (SACS) to SSWS which is already evaluated. Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The estimated total effective dose equivalent in UNRESTRICTED AREAS resulting from this proposed change is less than 1 millirem and so is well within the limits of 10 CFR 20.1301(a)(1) and LCO 3.11.1.2.

Effluent concentration levels will remain within the limits of LCO 3.11.1.1. Therefore the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 5, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a

notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 29, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 30th day of September 1997.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Project Directorate I–2 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation

[FR Doc. 97–26402 Filed 10–3–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

Public Service Electric & Gas Company (Atlantic City Electric Company, Hope Creek Generating Station); Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to Public Service Electric & Gas Company for operation of the Hope Creek Generating Station located at the licensee's site in Salem County, New Jersey.

This proposed amendment would add a surveillance requirement in Section 3/4.5.1 to perform a monthly valve position verification for each of the four residual heat removal (RHR) cross-tie valves.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed surveillance requirement to perform a monthly valve position verification for each of the four cross-tie valves is an additional requirement that provides an added barrier for ensuring that proper cross-tie valve positions are maintained. The change therefore makes the Technical Specifications more restrictive. The proposed change does not affect the performance of the RHR system, the performance of any other system required to mitigate the consequences of an accident, or any accident initiating mechanisms.

The proposed Technical Specification change therefore does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed surveillance requirement to perform a monthly valve position verification for each of the four cross-tie valves is an additional requirement that provides an added barrier for ensuring that proper cross-tie valve positions are maintained. The change therefore makes the Technical Specifications more restrictive. The proposed change does not affect the RHR design function, does not prevent the RHR system from providing adequate cooling, and does not adversely affect the design basis function or operation of any other plant system. In addition, the change does not result in any event previously deemed incredible being made credible.

The proposed Technical Specification change therefore does not create the possibility of a new or different accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed surveillance requirement to perform a monthly valve position verification for each of the four cross-tie valves is an additional requirement that provides an added barrier for ensuring that proper cross-tie valve positions are maintained. The change therefore makes the Technical Specifications more restrictive. The acceptance criteria for postulated design basis accidents affected by the RHR System define the acceptable margin of safety. This proposal does not result in exceeding the design limits of the RHR System or components affected by the RHR System.

The proposed Technical Specification change therefore does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 5, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such

a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 24, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 30th day of September 1997.

For the Nuclear Regulatory Commission original signed by

Leonard N. Olshan,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–26403 Filed 10–3–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority, Watts Bar Nuclear Plant; Exemption

I

On February 7, 1996, the Nuclear Regulatory Commission issued Facility Operating License No. NPF–90 to Tennessee Valley Authority (TVA or the Licensee) for the Watts Bar Nuclear Plant. The license stipulated, among other things, that the facility is subject to all rules, regulations, and orders of the Commission.

II

In its letter dated June 20, 1997, the licensee requested an exemption from the Commission's regulations. Section 50.60 of Title 10 of the Code of Federal Regulations, "Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation," states that all lightwater nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. It also states that the American Society of Mechanical Engineers Boiler and Pressure Code (ASME Code) edition and addenda specified in 10 CFR 50.55a are applicable. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low-temperature overpressure transients that would produce pressure excursions exceeding the 10 CFR Part 50, Appendix G, P/T limits while the reactor is operating at low temperatures, the licensee installed a low-temperature overpressure protection (LTOP) system. The system includes pressure-relieving devices called power-operated relief valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the 10 CFR Part 50, Appendix G, P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a solid water condition, the operating pressure must be maintained below the PORV setpoint. Applying the LTOP instrument uncertainties required by the staff's approved methodology results in an LTOP setpoint that establishes an operating window that is too narrow to permit reasonable system makeup and pressure control.

To prevent these difficulties, the licensee has requested to use the ASME Code Case N–514, "Low Temperature Overpressure Protection," which designates the allowable pressure as 110 percent of that specified by 10 CFR Part 50, Appendix G. This would provide an increased band to permit system makeup and pressure control. ASME Code Case N–514 is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. The content of this ASME Code Case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI and has been incorporated into the latest draft of Regulatory Guide 1.147 (Draft Regulatory Guide DG–1050, Revision 12 of Regulatory Guide 1.147, Inservice Inspection Code Case Applicability ASME Section XI, dated May 1997). However, 10 CFR 50.55a, "Codes and Standards," only authorizes addenda through the 1988 Addenda.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security and (2) when special circumstances are present. According to 10 CFR 50.12(a)(2)(ii), special circumstances are present whenever application of the regulation in question is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of 10 CFR Part 50, Appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of Appendix G requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of two on the principal membrane (pressure) stresses; (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of six (6) times its depth; and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Watts Bar reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME Code Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stress, the proposed criteria will provide adequate margins of safety on the reactor vessel during LTOP transients, and thus will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the PORV would be reduced, thereby improving plant safety.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), in that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby grants an exemption from 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent. This exemption permits using the safety margins recommended in the AMSE Code Case N–514, in lieu of the safety margins required by 10 CFR Part 50, Appendix G. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the exemption will have no significant impact on the quality of the human environment (62 FR 50630).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of September 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–26405 Filed 10–3–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Termination of the Technical Specifications Plus Electronic Bulletin Board System (BBS)

Notice is hereby given that effective October 15, 1997, the Nuclear Regulatory Commission (NRC) will terminate the operation of the Tech Specs Plus BBS that provided a source of electronic copies of the NRCs Standard Technical Specifications. Information on the NRC's Standard Technical Specifications can be obtained from the NRC's web site at url: http://www.nrc.gov/NRR/sts/sts.htm.

Dated at Rockville, Maryland, this 30th day of September 1997.

For the Nuclear Regulatory Commission.

William D. Beckner,

Chief, Technical Specifications Branch, Associate Director for Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 97–26404 Filed 10–3–97; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Wednesday, October 8, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Wednesday, October 8

3:30 pm Affirmation Session (Public Meeting)

A: Changes to paragraph (h) of 10 CFR Part 50.55a, "Codes and Standards"

B: Sequoyah Fuels Corp. & General Atomic: Docket No. 40–8027–EA; LBP–95–18 and LBP–96–24, Memoranda and Orders (Approving Settlement) (Tentative)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill, (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–26509 Filed 10–2–97; 11:42 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1070 (which should be mentioned in all correspondence concerning this draft guide), is titled "Sampling Plans Used for Dedicating Simple Metallic Commercial Grade Items for Use in Nuclear Power Plants." The guide is intended for Division 1, "Power Reactors." This draft guide is being developed to describe methods acceptable to the NRC staff for complying with the NRC's regulations with regard to quality assurance requirements when using a sampling plan for dedicating simple metallic commercial grade items for unrestricted use in nuclear power plants.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on Draft Regulatory Guide DG–1070. Comments may be accompanied by additional relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by December 1, 1997.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Printing, Graphics and Distribution Branch; or by fax at (301) 415–5272. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of September 1997.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 97–26400 Filed 10–3–97; 8:45 am]

BILLING CODE 7590–01–U

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22837; 812–10802]

Salomon Brothers Inc; Notice of Application

September 30, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an Order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1), under section 6(c) of the Act for an exemption from section 14(a), and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Salomon Brothers Inc. ("Salomon") requests an order with respect to DECS Trusts and future trusts that are substantially similar and for which Salomon will serve as a principal underwriter (collectively, the "Trusts") that would (i) permit other registered investment companies to own a greater percentage of the total outstanding voting stock (the "Securities") of any Trust than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the Trusts to purchase U.S. government securities from Salomon at the time of a Trust's initial issuance of securities.

FILING DATES: The application was filed on September 26, 1997. By letter dated September 30, 1997, applicant's counsel stated that an amendment, the substance of which is incorporated in this notice, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Salomon with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 20, 1997, and should be accompanied by proof of service on Salomon, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Salomon, Seven World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. Salomon will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the "Contracts") with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the "Shares") of one specified issuer,[1] and (ii) in some cases, purchase certain U.S. Treasury securities ("Treasuries"), which may include interest-only or principal-only securities maturing at or prior to the

[1] No Trust will hold Contracts relating to the Shares of more than one issuer.

Trust's termination. The Trusts will purchase the Contracts from counterparties that are not affiliated with either the relevant Trust or Salomon. The investment objective of each Trust will be to provide to each holder of Securities ("Holder") (i) current cash distributions from the proceeds of any Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (*e.g.*, one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[2] At the termination of each Trust, each Holder will receive the number of Shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holder's *pro rata* interest in the Shares or amount received by the Trust under the Contracts.[3]

4. Securities used by the Trusts will be listed on a national securities exchange or traded on the National Association of Securities Dealers Automated Quotation System. Thus, the Securities will be "national market system" securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. Salomon currently intends, but will not be obligated, to make a market in the Securities of each Trust.

[2] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive a yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit on the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[3] The contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

5. Each Trust will be internally managed by three trustees and will not have any separate investment adviser. The trustees will have no power to vary the investments held by each Trust. A bank qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and as paying agent, registrar, and transfer agent with respect to the Securities of each Trust. The bank will have no other affiliation with, and will not be engaged in any other transaction with, and Trust. The day-to-day administration of each Trust will be carried out by Salomon or the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries unless a default occurs under a Contract and the Contract is accelerated. The Trusts will hold the Contracts until maturity, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, or the occurrence of any other default provided for in the Contract, the obligations of the counterparty under the Contract will be accelerated and the available proceeds of the Contract will be distrubited to the Security Holders.

7. The trustees of each Trust will be selected initially by Salomon, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security held on all matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of a "majority of the Trust's outstanding Securities"[4] or any greater number required by the Trust's constituent documents. Unless Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares of the Trust are settled, at which time the Shares will be promptly distributed to Holders. The Holders, therefore, will not be entitled to any rights with respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by Salomon, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be Salomon).

[4] A "majority of the Trust's outstanding Securities" means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the outstanding Securities.

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits any registered investment company from owning more than 3% of the total outstanding voting stock of any other investment company. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, the exemption is consistent with the public interest and protection of investors.

3. Salomon believes, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, that it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. Salomon states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities. Conversely, Salomon asserts that it may not be economically rational for these investors, or their advisers, to take the time to review an investment opportunity if the amount that the investor would ultimately be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, Salomon argues that these

investors should be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C). Salomon requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from these limitations.

4. Salomon states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. Salomon also states that section 12(d)(1) was intended to address the layering of costs to investors.

5. Salomon believes that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, Salomon argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents for the Trusts that will required any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. Salomon also believes that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. Salomon believes that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by Salomon or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. Salomon asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by Salomon, the counterparties, or other third parties. Thus, a Holder will not pay duplicative charges to purchase Securities of any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

7. Salomon believes that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, Salomon asserts that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher yield than the ordinary dividend yield on the Shares at the time of the issuance of the Securities.

8. Salomon believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a unit investment trust investing in eligible trust securities shall be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. Salomon argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. Salomon believes that the make-up of each Trust's assets, therefore, will be "locked-in" for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. Salomon states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, and resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, Salomon states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. Salomon also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Salomon requests that the SEC issue an order under section 6(c) exempting the Trusts from the requirements of section 14(a). Salomon believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

C. Section 17(a)

1. Sections 17(a) (1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from Salomon.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. Salomon requests an exemption from sections 17(a) (1) and (2) to permit the Trusts to purchase Treasuries from Salomon.

3. Salomon states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment company to purchase securities of poor quality from the affiliated person or to overpay for securities. Salomon argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. Salomon argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. Salomon states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. Salomon also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. Salomon argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. Salomon believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Condition

Salomon agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to such procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from Salomon, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information or materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trusts and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by Salomon will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction is at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26399 Filed 10–3–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39139; File No. SR–NASD–97–59]

Self-Regulatory Organizations; Order Granting Temporary Approval on an Accelerated Basis of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Short Sale Rule

September 26, 1997.

On August 14, 1997, the national Association of Securities Dealers, Inc. ("NASD") or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder to amend Rule IM–3350 to provide that a "legal" short sale must be effected at a price equal to or greater than the offer price when the inside spread is less than 1/16th. Notice of the proposed rule change, together with the substance of the proposal, was published in the **Federal Register**.[3] No comments on the proposed rule change have been received, to date. This order grants temporary approval on an accelerated basis to the proposed rule change through January 15, 1998. At the expiration of rule, the Commission will consider permanent approval of the proposed rule change in unison with the Commission's consideration of the permanent approval of the NASD's short sale rule.[4]

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

[3] Securities Exchange Act Release No. 38975 (August 26, 1997), 62 FR 46535 (September 3, 1997) [File No. SR–NASD–97–59].

[4] *See also* companion release Securities Exchange Act Release No. 39140. The short sale rule was originally adopted in June of 1994 for Nasdaq National Market securities on a pilot basis with a termination date of March 5, 1996. Securities Exchange Act Release No.34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) [File No. SR–NASD–92–12]. The pilot was subsequently extended through

Continued

I. Background

The NASD's short sale rule prohibits member firms from effecting short sales[5] at or below the current inside bid as disseminated by Nasdaq whenever that bid is lower than the previous inside bid.[6] The rule currently provides that a short sale is a "legal" short sale in a "down" bid situation if it is effected at a price at least 1/16th above the inside bid ("Minimum Increment Rule"). The Minimum Increment Rule was implemented to ensure that short sales were not effected at prices so close to the inside bid during down markets that the short sales were inconsistent with the underlying purposes of the short sale rule (*i.e.* to prohibit market destabilizing and abusive short sales in declining markets).

Now that all Nasdaq stocks can potentially trade with a 1/16th spread or less, due to, among other things, the new SEC Order Handling Rules, and in light of the movement toward smaller minimum quotation variations generally, consideration was given to modifying the Minimum Increment Rule for stocks with an inside spread less than 1/16th. Accordingly, the NASD is proposing an amendment to the Minimum Increment Rule to provide that a "legal" short sale must be effected at a price equal to or greater than the offer price when the inside spread is less than 1/16th. There would be no change to the current definition for stocks with a spread of 1/16th or greater. For example, if the inside market for ABCD is 10¼–10⅜, a legal short sale in a down market would have to be effected at a price equal to or greater than 10⅜ (*i.e.*, 1/16th above the current inside bid). However, if the inside market is 5 1/32–5 3/32, a legal short sale in a down market could be effected at a price equal to the inside offer of 5 3/32.

In addition, to help ensure that market participants do not adjust their quotations to circumvent the short sale rule, the NASD is proposing an amendment to the Minimum Increment Rule to provide that a market maker or customer could not bring about or cause the inside spread for a stock to narrow in a declining market (*e.g.*, lowering its offer to create an inside spread less than 1/16th) for the purpose of facilitating the execution of a short sale at a price less than 1/16th above the inside bid.

Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that temporary approval on an accelerated basis of the NASD's proposed rule change through January 15, 1998, is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act.[7] Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Given the Commission's temporary approval of the short sale rule, the Commission believes that the proposed rule change is a reasonable approach to preserve the short sale rule's underlying purpose and effect when the inside spread is less than 1/16th.

The Commission also finds good cause for approving on a temporary basis the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that it is appropriate to accelerate temporary approval of the proposed rule change through January 15, 1998, because accelerated approval will allow NASD members, without delay, to effect "legal" short sales consistent with the underlying purpose and effect of the NASD's short sale rule in situations where the inside spread is less than 1/16th, while the NASD and the Commission consider the effect of the short sale rule.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–97–59 be, and hereby is, approved on a temporary basis through January 15, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26357 Filed 10–3–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39140; File No. SR–NASD–97–65]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Extending the Pilot Program of the NASD's Short Sale Rule

September 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on September 4, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Rule 3350 to extend the pilot program of the NASD's short sale rule from October 1, 1997 until January 15, 1998. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

October 1, 1997. Securities Exchange Act Release No. 37917 (November 1, 1996), 61 FR 57934 (November 8, 1996) [File No. SR–NASD–96–41]; *See also* Securities Exchange Act Release No. 36171 (August 30, 1995), 60 FR 46651 (September 7, 1995) [File No. SR–NASD–95–35]; Securities Exchange Act Release No. 37492 (July 29, 1996), 61 FR 40963 (August 5, 1996) (File No. SR–NASD–96–30); Securities Exchange Act Release No. 37917 (November 1, 1996), 61 FR 57934 (November 8, 1996) (File No. SR–NASD–96–41). On August 8, 1997, the NASD submitted a proposed rule change (SR–NASD–97–38) to the Commission to implement the short sale rule on a permanent basis.

[5] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale, members must adhere to the definition of a "short sale" contained in Securities Exchange Act Rule 3b–3, 17 CFR 240.3b–3, which rule is incorporated into Nasdaq's short sale rule as NASD Rule 3350(k)(1).

[6] Nasdaq calculates the inside bid or best bid from all market makers in the security (including bids on behalf of exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an "up bid" or a "down bid." Specifically, an "up bid" is denoted by a green "up" arrow and a "down bid" is denoted by a red "down" arrow. Accordingly, absent an exemption from the rule, a member cannot effect a short sale at or below the inside bid for a security in its proprietary account or a customer's account if there is a red arrow next to the security's symbol on the screen.

[7] 15 U.S.C. § 78o(b)(6) (1994).

[9] 17 CFR 200.30–3(a)(12) (1997).

[1] 15 U.S.C. § 78s(b)(1)(1994).

[2] 17 CFR 240.19b–4 (1997).

NASD Rule 3350

(1) This section shall be in effect until *January 15, 1998* (October 1, 1997).

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II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

1. Background and Description of the NASD's Short Sale Rule

On June 29, 1994, the SEC approved the rule applicable to short sales[3] in Nasdaq National Market ("NNM") securities on an eighteen-month pilot basis through March 5, 1996.[4] The termination date for the pilot program for the Rule was subsequently extended until October 1, 1997.[5]

The Rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by Nasdaq whenever that bid is lower than the previous inside bid.[6] The Rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time). To ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the Rule is invoked, the Rule provides an exemption to "qualified" Nasdaq market makers (*i.e.*, those market makers that meet the Primary Market Maker ("PMM") standards). Even if a market maker is able to avail itself of the qualified market maker exemption, it can only utilize the exemption from the Rule for transactions that are made in connection with bona fide market making activity. If a market maker does not satisfy the requirements to be a qualified market maker, it can remain a market maker in the Nasdaq system, although it can not take advantage of the exemption from the Rule.

Since the Rule has been in effect, there have been three methods used to determine whether a market maker is eligible for the market maker exemption. Specifically, from September 4, 1994 through February 1, 1996, Nasdaq market makers who maintained a quotation in a particular NNM security for 20 consecutive business days without interruption were exempt from the Rule for short sales in that security, provided the short sales were made in connection with bona fide market making activity (the "20-day" test). From February 1, 1996 until February 14, 1997, the "20-day" test was replaced with a four-part quantitative test known as the Nasdaq PMM Standards.[7] On February 14, 1997, the PMM standards were waived for all NNM securities due to the effects of the SEC's Order Handling Rules and corresponding NASD rule change and system modifications on the operation of the four quantitative standards.[8] For example, among other effects, the requirement that market makers display customer limit orders adversely affected the ability of market makers to satisfy the "102% Average Spread Standard." Nasdaq is presently in the process of formatting revised PMM standards that focus principally on whether a market maker is a "net" provider of liquidity.

Furthermore, in an effort to not constrain the legitimate hedging needs of options market makers, the Rule contains a limited exception for standardized options market makers. The Rule also contains an exemption for warrant market makers similar to the one available for options market makers. The Rule also incorporates seven exemptions contained in Rule 10a–1 under the Act ("Rule 10a–1") that are relevant to trading on Nasdaq.[9]

2. Proposal To Extend the Short Sale Rule

When the Commission approved the Rule on a temporary basis, it made specific findings that the Rule was consistent with Sections 11A, 15A(b)(6), 15A(b)(9), and 15A(b)(11) of the Act. Specifically, the Commission stated that, "recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of NNM securities in consistent with the Act." [10] In addition, the Commission stated that it "believes that the NASD's short sale bid-test, including the market

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[3] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale members must adhere to the definition of a "short sale" contained in Rule 3b–3 of the Act, which rule is incorporated into Nasdaq's Rule by NASD Rule 3350(k)(1).

[4] Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) [File No. SR–NASD–92–12] ("Short Sale Rule Approval Order").

[5] The Rule was extended on several occasions. Securities Exchange Act Release No. 36532 (November 30, 1995), 60 FR 62519 (December 6, 1995) [File No. SR–NASD–95–58]; *See also* Securities Exchange Act Release No. 36171 (August 30, 1995), 60 FR 46651 (September 7, 1995) [File No. SR–NASD–95–35]. The most recent extension of the pilot program through October 1, 1997, was approved by the SEC to afford the NASD a better opportunity to examine the effectiveness of the Rule and the impact of the market maker exemption from the Rule. Securities Exchange Act Release No. 37917 (November 1, 1996), 61 FR 57934 (November 8, 1996) [File No. SR–NASD–96–41]. In this connection, in order to enhance its ability to examine the impact of the market maker exemption, the NASD received SEC approval of its proposal to require market makers to mark their ACT reports to denote when they have relied on the market maker exemption. Securities Exchange Act Release No. 38240 (February 5, 1997), 62 FR 6290 (February 11, 1997) [File No. SR–NASD–96–52].

[6] Nasdaq calculates the inside bid or best bid from all market makers in the security (including bids on behalf of exchanges trading Nasdaq securities on an unlisted trading privileges basis) and disseminates symbols to denote whether the current inside bid is an "up bid" or a "down bid." Specifically, an "up bid" is denoted by a green "up" arrow and a "down bid" is denoted by a red "down" arrow. To effect a "legal" short sale on a down bid, the short sale must be executed at a price at least a 1/16th of a point above the current inside bid. Conversely, if the security's symbol has a green up arrow next to it, members can effect short sales in the security without any restrictions.

[7] Under the PMM Standards, a market maker was required to satisfy at least two of the following four criteria each month to be eligible for an exemption from the Rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its "proportionate" volume in the stock. If a PMM did not satisfy the threshold standards after a particular review period, the market maker lost its designation as a PMM (*i.e.*, the "P" next to its market maker identification was removed). Market makers could requalify for designation as a PMM by satisfying the threshold standards in the next review period.

[8] Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997) [File No. SR–NASD–97–07].

[9] *See* NASD Rule 3350(c) (2)–(8). The Rule also provides that a member not currently registered as a Nasdaq market maker in a security that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Rule notwithstanding that such member may not have a net long position in such security, if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities. In addition, the NASD has recognized that SEC staff interpretations to Rule 10a–1 dealing with the liquidation of index arbitrage positions and an "international equalizing exemption" are equally applicable to the NASD's Rule.

[10] Short Sale Rule Approval Order, *supra* note 4, at 34891.

maker exemption, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure."[11] However, in light of the Commission's concerns with adverse comments made about the Rule and the Commission's own concerns with the structure and impact of the Rule,[12] the Commission determined to approve the Rule on a temporary basis to afford the NASD and the SEC an opportunity to study the effects of the Rule and its exemptions.[13] To address these concerns, in July 1996 and in August 1997, the NASD's Economic Research Department prepared two separate studies on the economic impact of the Rule, which concluded, among other things, that the Rule had no adverse impact on the market.[14] Accordingly, on August 8, 1997, the NASD submitted a proposed rule change that requested permanent approval of the Rule.

The NASD notes that while the short sale pilot is set to expire on October 1, 1997, Nasdaq currently is working diligently to develop effective PMM standards, which the NASD plans to file shortly with the Commission. The NASD notes that any PMM standards it might propose are integrally related to the Rule, that is, changes to PMM standards may have an impact on the Rule because it will define the parameters under which market makers qualify for PMM status and thus may execute "legal" short sales. Therefore, the NASD believes that any PPM standards that the NASD may propose may have an impact on whether the Commission ultimately grants the NASD's request for permanent approval of the Rule. Accordingly, in light of these factors and expiration of the Rule on October 1, 1997, the NASD is proposing to extend the Rule's pilot until January 15, 1998. The NASD believes this extension will afford the NASD time to formulate and submit to the Commission revised PMM standards and will allow the Commission to review on a contemporaneous basis these two integrally related proposed rule changes (*i.e.*, the short sale and PMM rules).

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the NASD believes that extending the pilot period for the Rule will ensure continuity in regulation while the Commission considers the proposed PMM standards and permanent approval of the Rule.

The NASD also believes the proposed rule change is consistent with Section 15A(b)(6) of the Act because the Rule is premised on the same anti-manipulation and investor protection concerns that underlie the SEC's own short sale rule, Rule 10a–1 under the Act ("Rule 10a–1"). In particular, as with Rule 10a–1, the NASD believes its Rule promotes just and equitable principles of trade by permitting long sellers access to market prices at any time, while constraining the execution of potentially abusive and manipulative short sales at or below the bid in a declining market. In addition, as with Rule 10a–1, Nasdaq believes its Rule removes impediments to a free and open market for long sellers and helps to assure liquidity at bid prices that might otherwise be usurped by short sellers. Lastly, because the immediate beneficiaries of the Rule are shareholders of NNM companies, Nasdaq believes its Rule is designed to protect investors and the public interest. At the same time, given that the Rule does not constrain short sales in a raising market or prohibit the execution of short sales in a declining market above bid prices, Nasdaq believes the Rule does not diminish the important pricing efficiency and liquidity benefits that legitimate short selling activity provides.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that its proposal to extend the effectiveness of the Rule until January 15, 1998, be approved on an accelerated basis prior to October 1, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NASD's proposed rule change seeking to extend the pilot of the Rule through January 15, 1998, is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act which requires that the NASD rules be designed, among other things, to facilitate securities transaction and to protect investors and the public interest. The Commission believes that the proposed rule change is consistent with the Act because extension of the pilot will allow the Commission and the NASD to consider the potential problems associated with short selling, the changing expectations of Nasdaq market participants and the potential for competitive disparity between the exchange markets and the OTC market. This extension also will afford NASD time to formulate and submit to the Commission revised PMM standards and will allow the Commission to review on a contemporaneous basis these two integrally related rules (*i.e.*, the short sale and PMM rules).

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that it is appropriate to approve on an accelerated basis the extension through January 15, 1998, of the pilot program of the Rule to ensure the continuous operation of the Rule and to allow the NASD and the Commission time to review the operation of the Rule, which is set to expire on October 1, 1997.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the NASD's principal offices. All submissions should refer to File No. SR–NASD–97–65 and should be submitted by October 27, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–97–65 be, and hereby is, approved through January 15, 1998.[15]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26359 Filed 10–3–97; 8:45 am]

BILLING CODE 8010–01–M

[11] *Id.* at 34892.

[12] When the NASD's Rule was first considered by the Commission, the SEC received 397 comment letters on the proposal, with 275 comments opposed to the Rule and 122 comments in favor of the Rule. Those commenters opposed to the Rule argued that: (1) The NASD had failed to provide sufficient evidence of the need for the Rule or demonstrate the appropriateness of the Rule based on a "bid" test instead of "tick" test; (2) the PMM standards will have negative affects on both market makers and the Nasdaq market; and (3) the Rule is inconsistent with the requirements of the Act.

[13] In particular, before considering any NASD proposal to extend, modify, permanently implement or terminate the Rule, the Commission requested that the NASD examine: (1) The effects of the Rule on the amount of short selling; (2) the length of time that the Rule is in effect (*i.e.*, the duration of down bid situations); (3) the amount of non-market maker short selling permitted under the Rule; (4) the extent of short selling by market makers exempt from the Rule; (5) whether there have been any incidents of perceived "abusive short selling"; (6) the effects of the Rule on spreads and volatility; (7) whether the behavior of bid prices has been significantly altered by the Rule; and (8) the effect of permitting short selling based on a minimum increment of 1/16th.

[14] In July 1996, the NASD's Economic Analysis Department completed a study on the economic impact of the Rule, which concluded that the Rule has had no adverse impact on the market. The Economic Impact of the Nasdaq Short Sale Rule, NASD Economic Research Department (July 23, 1996) ("July 1996 Short Sale Study"). In the same month, NASD submitted a proposal to adopt the Rule on a permanent basis. Securities Exchange Act Release No. 37942 (July 29, 1996), 61 FR 40693 (SR–NASD–96–30). Because the NASD believed additional quantitative analysis was necessary to evaluate the effects of the Rule, the NASD withdrew this rule filing. In August 1997, the NASD's Economic Analysis Department completed a second study on the economic impact of the Rule, which further concluded that the Rule has had no adverse impact on the market. The Nasdaq Stock Market Short Sale Rule: Analysis of Market Quality Effects and The Market Maker Exemption, NASD Economic Research Department (August 7, 1997) ("August 1997 Short Sale Study").

[15] *See also* companion release Securities Exchange Act Release No. 39139.

[16] 17 CFR 200.30–3(a)(12) (1997).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. Disability Report—0960–0141. The information collected on Form SSA–3368–BK is needed for the determination of disability by the State Disability Determination Services. This version of the form will be used in those SSA offices and State DDS offices that are piloting SSA's Reengineered Disability System. The information will be used to develop medical evidence and to assess the alleged disability. The respondents are applicants for disability benefits.

Number of Respondents: 36,500.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated annual Burden: 18,250 hours.

2. Pain Report—Child—0960–0540. The information collected on form SSA–3371–BK by the Social Security Administration is used to make a determination of disability for a child under the title XVI program. This information is essential to the adjudication of a claim. The respondents are applicants for title XVI child disability benefits.

Number of Respondents: 250,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 62,500 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the Agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: September 30, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–26410 Filed 10–3–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, *et seq.*) this notice announces that the Information Collection Requests (ICRs) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and it's expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 24, 1997 [61 FR, 34101–34102].

DATES: Comments on this notice must be received on or before December 5, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 202/366–9721. Telephone: (202) 366–3784.

SUPPLEMENTARY INFORMATION:

Office of the Secretary, Office of Aviation Analysis

Title: Procedures and Evidence Rules for Air Carrier Authority Applications.

OMB Control Number: 2105–0023.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

Abstract: In order to determine the fitness of persons seeking authority to engage in air transportation, the Department collects information from them about their ownership,

citizenship, managerial competence, operating proposal, financial condition, and compliance history. The specific information to be filed by respondents is set forth in 14 CFR Parts 201 and 204.

Estimated Annual Burden Hours: 4,900.

Title: Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers, 14 CFR Part 215.

OMB Control Number: 2106–0043.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Persons seeking to use or change the name or trade name in which they hold themselves out to the public as an air carrier or foreign air carrier.

Abstract: In accordance with the procedures set forth in 14 CFR Part 215, before a holder of certificated, foreign, or commuter air carrier authority may hold itself out to the public in any particular name or trade name, it must register that name or trade name with the Department, and notify all other certificated, foreign, and commuter air carriers that have registered the same or similar name(s) of the intended name registration.

Estimated Annual Burden Hours: 87.4.

These information collection submissions are available for inspection at the Air Carrier Fitness Division (X–56), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR Part 215 can be obtained from Ms. Carol Woods at the address and telephone number shown above.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 26, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–26381 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Task Force on Assistance to Families in Aviation Disasters Open Meeting

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice of meeting.

SUMMARY: The Task Force on Assistance to Families in Aviation Disasters will hold a meeting to discuss assistance to families of passengers involved in aviation accidents. The meeting is open to the public.

DATES: The meeting will be held on Wednesday, October 8, 1997, from 9:00 a.m. to 6:00 p.m. and on Thursday, October 9, 1997, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meetings will take place Room 2230 of Department of Transportation (DOT) Headquarters, 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven R. Okun, Task Force Executive Director, telephone 202–366–4702, or Marc C. Owen, Task Force Staff Director, mailing address, 400 7th Street SW., Room 5424, Washington, DC 20590, telecopier 202–366–7147, and telephone 202–366–6823.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix), DOT gives notice of a meeting of the Task Force on Assistance to Families in Aviation Disasters (Task Force). The Task Force was established by the Aviation Disaster Family Assistance Act of 1996 to develop recommendations on ways to improve the treatment of families of passengers involved in aviation accidents. The meeting is open to the public both days. In particular, topics for discussion on both days include a review of draft recommendations to be included in the Task Force's final report to Congress.

Issued in Washington, D.C., on September 29, 1997.

Steven R. Okun,

Task Force Executive Director, Department of Transportation.

[FR Doc. 97–26393 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–065]

National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard seeks applications for grants and cooperative agreements from national nongovernmental, nonprofit, public service organizations. These grants and cooperative agreements would be used to fund projects on various subjects promoting boating safety on the national level. This notice provides information about the grant and cooperative agreement application process and some of the subjects that the Coast Guard would like to see studied.

DATES: Application packages may be obtained on or after October 1, 1997. Proposals for the fiscal year 1998 grant cycle must be received before 4:30 p.m. eastern time December 31, 1997.

ADDRESSES: Application packages may be obtained by calling the Coast Guard Infoline 800–368–5647. Submit proposals to: Commandant (G–OPB–1g), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3100, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Alley, Office of Boating Safety, U.S. Coast Guard (G–OPB–1g/room 3100), 2100 Second Street, SW, Washington, DC 20593–0001; 202–267–0954. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 800–368–5647, or read it on the Office of Boating Safety Web Site at URL address www.uscgboating.org/.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, section 9504, establishes the Boat Safety Account of the Aquatic Resources Trust Fund. From this trust fund, the majority of funds are allocated to the States, and up to 5% of these funds may be distributed by the Coast Guard for grants and cooperative agreements to national, nonprofit, public service organizations for national boating safety activities. It is anticipated that $2,750,000 will be available for fiscal year 1998. Twenty-two awards totaling $2,250,000 were made in fiscal year 1997 ranging from $9,000 to $426,409. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Director of Operations Policy, U.S. Coast Guard. Applicants must be national, nongovernmental, nonprofit, public service organizations and must establish that their activities are, in fact, national in scope. An application package may be obtained by writing or calling the point of contact listed in **ADDRESSES** on or after October 1, 1997. The application package contains all necessary forms, an explanation of how the grant program is administered, and a checklist for submitting a grant application. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

Some areas of continuing and particular interest for grant funding include the following:

1. Develop and Conduct a National Annual Safe Boating Campaign. The Coast Guard seeks a grantee to develop and conduct the 1999 year-round National Annual Safe Boating Campaign that targets specific boater marker segments and recreational boating safety topics. This year-round campaign must support the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents and associated health care costs, as well as support the nationwide grassroots activity of the many volunteer groups who coordinate local media events, education programs, and public awareness activities. Products must include, but are not limited to: situation analysis, post campaign component evaluation processes, measures of effectiveness, marketing strategy, distribution plan, and final report. All print, audio and video material must be designed to emphasize multiple year-round boating safety and accident prevention messages. Highlights of the calendar year 1999 national campaign will be special select materials and activities to support National Safe Boating Week and other selected national boating safety events. The major focus of the campaign will be to affect the behavior of all boaters to increase wearing of Personal Flotation Devices (PFDs) (with special emphasis on use by children) and the dangers of boating while under the influence (BUI) of alcohol or drugs. An established portion of allocated grant funds must support a National Boating Accident Reporting Awareness Program that is designed to reach all boaters with a message on the importance of reporting all boating accidents. It must also include a component devoted to propeller injury prevention awareness with a special emphasis on rental operations involving propeller driven craft. Efforts will also be coordinated, year-round, with other national transportation safety activities and special media events, in particular those which focus on the prevention of operating a boat under the influence of alcohol or drugs. *Point of Contact:* Ms. Jo Calkin, 202–267–0994.

2. Evaluation of the National Safe Boating Campaign. The Coast Guard seeks a grantee to conduct an objective and systematic evaluation of the National Safe Boating Campaign. This evaluation is to determine the effectiveness of the campaign in modifying on the water behavior, and thus meeting the objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents and associated health care costs. (Grantees or partners of grantees of previous National Safe Boating Campaigns will not be considered.) *Point of Contact:* Ms. Jo Calkin, 202–267–0994.

3. Develop and Conduct a National Recreational Boating Safety Outreach and Awareness Conference. The Coast Guard seeks a grantee to plan, implement, and conduct a National Recreational Boating Safety Outreach and Awareness Conference. This conference must support the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents, and lower associated health care costs. The conference should be scheduled to be conducted during the spring of 1999 and be held concurrent or consecutively with additional major national recreational and/or boating safety and aquatic symposiums. The design of the conference should enhance the awareness and development of paid and volunteer professionals; national, state, and local boating safety program organization leaders; waterway managers and industry specialists. It should provide a unifying link between local/regional programs and those on the national level. The conference should be a collaborative effort of national organizations interested in the betterment of boating and aquatic safety and should include, but not be limited to, plenary sessions, hands-on workshops, and the distribution of a post conference report (publication) describing the activities of the conference. Products should include, but are not limited to, evaluation processes, measures of effectiveness, marketing strategy, and final report. *Point of Contact:* Ms. Jo Calkin, 202–267–0994.

4. National Boating Survey. The Coast Guard seeks a grantee to conduct a comprehensive national boating survey. This survey would update information collected in surveys conducted in 1973, 1976 and 1989. The purpose of these surveys was to obtain statistical estimates of recreational boats, boating households, boaters, boating exposures, practices, and activities. The best way to assess a boater's risk on the water, as well as the effectiveness of boating safety program activities in minimizing that risk, is to qualify exposure factors * * * who is boating, in what types of boats, where, how often, how long, doing what activities, etc., and relate those factors to accident data. The nationwide boating survey is to be of sufficient sample size to provide various exposure data by State. *Point of Contact:* Mr. Bruce Schmidt, 202–267–0955.

5. Information Resources Management: Recreational Boating Safety (RBS) Exposure Data Capture Project. The Coast Guard seeks a grantee to complete a comprehensive RBS Exposure Data Capture Project to identify organizations who routinely collect recreational boating exposure data measured in passenger hours. The grantee will use the results from a fiscal year 1995 grant project which identified exposure data elements and their sources. The objectives of the project are twofold. The first objective is to create a national database of all sources who routinely collect recreational boating exposure data on a continuous basis. The database will contain all exposure data elements and their attributes to include: participant demographics, the locality, type and duration of boating activity, the frequency and methodology of data collection, data storage formats, and information that provides access to the data. The second objective is to determine the feasibility of collating and using data from the identified sources to develop valid national estimates of recreational boating exposure. *Point of Contact:* Mr. Bruce Schmidt, 202–267–0955.

6. National Definition of Drowning. The Coast Guard seeks a grantee to conduct literature and reference research and develop a position paper (with resource references) on a National Definition of drowning. This research is to include canvassing leading Federal and medical authorities. The result will be a recommendation for a nationally recognized medical definition. *Point of Contact:* CW02 Tim Duff, 202–267–1263.

7. Safety Considerations for Individuals with Special Needs. The

Coast Guard seeks grantees to conduct a National study on boating safety concerns and specific interventions for Special Needs Groups. Applicants would provide recommendations to improve the aquatic safety/boating safety for those segments of the population that are mentally and/or physically impaired. *Point of Contact:* CWO2 Tim Duff, 202–267–1263.

8. State/Federal/Boating Organizations Cooperative Partnering Efforts. The Coast Guard seeks grantees to provide programs to encourage greater participation and uniformity in boating safety efforts. Applicants would provide a forum to encourage greater uniformity of boating laws and regulations, reciprocity among jurisdictions, and closer cooperation and assistance in developing, administering, and enforcing Federal and state laws and regulations pertaining to boating safety. *Point of Contact:* Ms. Sandy Brown, 202–267–6010.

9. Develop and Conduct Technical Seminars on Boating Safety Standards and Compliance. The Coast Guard seeks a grantee to develop, provide instructional materials for, and conduct training courses nationwide for compliance with recreational boating Federal safety standards. *Point of Contact:* Mr. Gary Larimer, 202–267–0986.

10. Investigate Deficiencies of Recreational Boat Flotation Foam. The Coast Guard seeks a grantee to study deficiencies in flotation foams used for recreational boats. In particular, grantee should explore new foam spraying agents and techniques in light of recent Environmental Protection Agency (EPA) regulations governing chlorofluorocarbons (CFCs). *Point of Contact:* Mr. Gary Larimer, 202–267–0986.

11. Develop and Conduct Boating Accident Seminars. The Coast Guard seeks a grantee to develop, provide instructional material, and conduct training courses nationwide for boating accident investigators, including three courses at the Coast Guard Reserve Training Center in Yorktown, Virginia. *Point of Contact:* Mr. Gary Larimer, 202–267–0986.

12. National Estimate of Personal Flotation Devices (PFDs) Wear Rate. The Coast Guard seeks a grantee to develop a statistically valid, empirically developed national estimate of wear rates of PFDs by recreational boaters. This will provide the Coast Guard with a baseline against which to measure the effectiveness of its public relations and boating education efforts, and will assist in PFD wearability improvement efforts. *Point of Contact:* LCDR Rick Sparacino, 202–267–0976.

13. Conduct a Research Study on Personal Flotation Device (PFD) Conspicuity. The Coast Guard seeks a grantee to identify and investigate past and current research into factors that contribute to the conspicuity of objects in the water with the goal of increasing the conspicuity of personal flotation devices when the wearer is in the water. *Point of Contact:* Mr. Rick Gipe, 202–267–0985.

14. Voluntary Standards Development Support. The Coast Guard seeks a grantee to carry out a program to encourage active public participation in the development of technically sound voluntary boating safety standards. *Point of Contact:* Mr. Peter Eikenberry, 202–267–6984.

15. Improvement of Navigation Light Visibility and Glare Minization. The Coast Guard seeks a grantee to investigate the safety aspects of navigation light lens size for lights constructed in accordance with the Navigation Rule specifications. Grantee shall determine the minimum lens size necessary to effect a safe level of navigation light discernment when viewed, especially at close range, against a background of lights and inclement weather. *Point of Contact;* Mr. Randolph J. Doubt, 202–267–6810.

16. Recreational Boating Electronic Accident Reporting System. The Coast Guard seeks a grantee to develop an electronic means of submitting recreational boating accident report data from the public. *Point of Contact:* Mr. Phil Cappel, 202–267–0988.

17. Human Factors and Risk Management in Recreational Boating Applications. The Coast Guard seeks a grantee to identify and characterize the human factors and risk involved with the recreational boating experience, including operator controlled factors, boat characteristics, safety equipment, operating environment, and operator safety awareness. Grantee shall identify resources/interventions to eliminate/mitigate risk factors. Grantee shall specifically identify the risk involved with recreational boat characteristics of speed, accelerations (both lateral and vertical), and stability, and develop/validate risk matrices identifying appropriate interventions to reduce/eliminate risk. *Point of Contact:* Mr. Phil Cappel, 202–267–0988.

18. Off-Throttle Steering of Jet-pump Propelled Craft. The Coast Guard seeks a grantee to identify available and emerging technology/methodology in the area of off-throttle steering of jet-pump propelled craft and conduct testing on those items/methods that are determined to be the most effective. *Point of Contact:* Mr. Gary Larimer, 202–267–0986.

19. Development and Validation of Personal Flotation Device (PFD) Computer Simulation Model. The Coast Guard seeks a grantee to work with the Coast Guard Research and Development Program in the further development of an articulated total body mannequin and the use of the mannequin to validate a computer simulation model for rough water testing of PFDs. *Point of Contact:* Mr. Rick Gipe, 202–267–0985.

The above list includes items of specific interest to the Coast Guard, however, potential applicants should not be constrained by the list. Any initiative which can help to reduce deaths, injuries or damage among recreational boaters is welcomed. One area you should focus on is PARTNERSHIP. Explore other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. A more detailed discussion of specific projects of interest to the Coast Guard may be obtained by contacting the Coast Guard Infoline at 800–368–5647 and requesting a copy of a specific proposal. Proposals addressing other boating safety concerns are encouraged. The Boating Safety Financial Assistance Program is listed in section 20.005 of the Federal Domestic Assistance Catalog.

Dated: October 1, 1997.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 97–26420 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Aircraft Certification Procedures Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignments for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of two new harmonization tasks assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Brian A. Yanez, Aircraft Certification Service (AIR–110), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, phone (202) 267–9588.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with its Aircraft Certification Procedures Issues. These issues involve the regulatory standards and procedures for aircraft certification found in 14 CFR parts 21, 39, and 183 and Special Federal Aviation Regulation No. 36.

The Tasks

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization tasks:

Task 1. Review the public comments received on Notice of Proposed Rulemaking (NPRM) 97–7, which proposes to amend the procedural Federal Aviation Regulations for the certification of changes to type certificated products, and develop recommendations regarding the disposition of those comments. The review and recommendations must take into account the public comments received by the Joint Aviation Authorities (JAA) regarding JAA Notice of Proposed Amendment (NPA) 21.7. Prepare a recommended final rule for NPRM 97–7 that the JAA could adopt as its rule and that is harmonized with the FAA's rule. Forward the final recommendations to the FAA.

Task 2. Develop a training syllabus for a common training course between the FAA and JAA and assist the FAA and JAA training personnel with the training program material.

The FAA expects ARAC to complete these tasks by March 2, 1998.

The FAA has asked that ARAC prepare the necessary documents, including economic analysis, to justify and carry out its recommendations.

ARAC Acceptance of Tasks

ARAC has accepted the tasks and has chosen to assign them to the existing International Certification Procedures Working Group. The working group serves as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The International Certification Procedures Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider Aircraft Certification Procedures Issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. For each task, draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. Provide a status report at each meeting of ARAC held to consider Aircraft Certification Procedures Issues

Participation in the Working Group

The International Certification Procedures Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the International Certification Procedures Working Group will not be open to the public, except to the extent that individuals with an interest and expertise have been selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on September 29, 1997.

Brian A. Yanez,

Assistant Executive Director for Aircraft Certification Procedures Issues Aviation Rulemaking Advisory Committee.

[FR Doc. 97–26380 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc. Joint Special Committee 182; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–182 meeting to be held October 22–24, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Reports: a. Previous Joint Meeting; b. Working Group 48 Meeting; (3) SC–182 Work Program and Schedule: a. Is the need for an ACR MOPS real? b. Are equipment manufacturers committed to the concept? c. Development of a schedule to complete the MOPS not later than December 1998, if interest prevails. (4) Comments to MOPS Draft 1.0 (Web Site: http://forums.americas.digital.com/avf/RTCA.SC182/dispatch.cgi): Document Forums; Minimum Operational Performance Standards Draft Version of MOPS; MOPS 1.0 (Reformatted); (5) Discussion papers: a. Operation Goals and Applications (Web Site: Same as Above); Discussion forums; Certification/ Qualification Issues #3 Operational Goals and Applications; b. ARINC 653 APEX Partition Testing (Web Site: Same as Above); Discussion Forums; Architecture/System Services #7 Apex Partition Testing; (6) Status Report: a. Architecture/ System Services Working Group; b. Capacity and Performance Working Group; (7) Working Group Sessions; (8) working Group Reports; (9) Other Business; (10) Date and Place of Next Meeting.

Attendance is open to the interest public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC,

20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 26, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–26378 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc. Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee (SC)–147 meeting to be held November 4–5, starting at 9:00 a.m. The meeting will be held at the MITRE Corporation, Wilson Building, Room 1B02, 7798 Old Springhouse Road, McLean, VA.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Minutes of the Previous Meeting; (3) FAA Program Office Report; (4) Requirements Working Group Report; (5) Verification and Validation Presentations; (6) Review and Consideration of Proposed Changes to TCAS II MOPS, v. 7.0 (DO–185A); (7) Special Committee (SC)–186 Report: SC–186 Revised Terms of Reference; (8) FAA Program Office Report on the Use of ADS–B in TCAS; (9) Discussion of Future Work Plan for SC–147; (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 26, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–26379 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 96–073; No. 2]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collections of information.

SUMMARY: This document describes three collections of information for which NHTSA intends to seek OMB approval. Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval to collect information from the public, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. Each of the collections for which this document requests comment has been previously approved.

DATES: Comments must be received on or before December 5, 1997.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to NHTSA's new Docket Management Facility, located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation, Room PL–01, 400 Seventh Street, SW., Washington, DC 20590–0001. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. The DOT Docket is open to the public from 10 am to 5 pm, Mondays through Fridays.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Ed Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, SW, Room 6123, Washington, DC 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collections of information:

Names and Addresses of First Purchasers of Motor Vehicles, 49 U.S.C. 30117(b)

Type of request—Reinstatement of clearance.

OMB Clearance Number—2127–0044.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years after date of expiration of existing clearance.

Summary of the Collection of Information—By statute (49 U.S.C. 30117 (b) Maintaining Purchaser Records and Procedures), motor vehicle manufacturers are required to collect and retain the names and addresses of first purchasers of new motor vehicles, so that the manufacturer can directly notify those persons in the event the vehicle is recalled.

Description of the Need for the Information and Proposed Use of the Information—If there is a safety-related recall of the motor vehicle, the vehicle manufacturer needs to identify the first purchaser of the motor vehicle. Thus, the vehicle manufacturers will use the names and addresses to inform the first purchaser of the recall, and to explain what actions the purchaser should take.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information)—The respondents are vehicle dealers which collect the information, and vehicle manufacturers which store the information. Since this practice of recording and storing the names and addresses of first purchasers was followed by vehicle manufacturers for their commercial purposes before the requirement was enacted, NHTSA does not believe that any added costs result from this requirement.

There are approximately 14.25 million new vehicles sold each year. There are approximately 19,000 dealers. The agency estimates that each dealer takes approximately three minutes to record the name and address of the first purchaser of the motor vehicle. The dealer collects the information once. The dealer forwards the information to the vehicle manufacturer, which retains the information.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—NHTSA estimates that the total time spent recording names and addresses of purchasers of 14.25 million new vehicles per year would be no more than 712,500 hours. Assuming a value of $10 per hour, this time can be valued at $7,125,000. Dealers without computer access to the vehicle manufacturers generally return their sales cards once a month. With 19,000 dealers making twelve mailings each year, and paying $2.00 postage for each mailing, the annual postage costs would equal $456,000.

NHTSA estimates that each vehicle manufacturer spends 238 hours each year appropriately handling the information received from the dealers. Again, assuming a value of $10 per hour, this results in handling costs of $2,380. Total costs per annum could then be estimated as $7,958,380. NHTSA acknowledges that this estimate is imprecise, but knows of no way to develop a more precise cost estimate without conducting a separate information collection just to answer this question.

Summary:

REPORTING	$7,500,000
MAILING	456,000
RECORDKEEPING	2,380
TOTAL Annual Cost	7,958,380

49 CFR Part 556—Petitions for Inconsequentiality

Type of Request—Reinstatement of clearance.

OMB Control Number—2127–0045.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years after date of expiration of existing clearance.

Summary of the Collection of Information—This collection of information allows NHTSA to receive petitions from manufacturers to excuse inconsequential defects or noncompliances with the Federal Motor Vehicle Safety Standards. The procedures for petitioning are established at 49 CFR part 556, *Petitions for Inconsequentiality.* This regulation establishes the procedures for manufacturers to submit such petitions to the agency, the contents of such petitions, and the criteria the agency will use in evaluating those petitions.

Description of the Need for the Information and Proposed Use of the Information—In a petition, the vehicle manufacturer provides information in order to obtain relief from NHTSA. Without NHTSA's determination that a defect or noncompliance is inconsequential, a manufacturer of motor vehicles or motor vehicle equipment is required to notify all distributors, dealers, and purchasers of every defect or noncompliance that is determined to exist in its products, and to remedy that defect or noncompliance. Part 556 sets forth the form and content of petitions for relieving manufacturers from the statutory notice and remedy requirements for those defects or noncompliances the manufacturer believes are inconsequential as they relate to safety.

There are two possible consequences if this collection of information were not conducted. First, it is possible that the agency would not receive the information it needs to make a determination that a defect or noncompliance is inconsequential. In this case, manufacturers would be statutorily required to follow the notice and remedy provisions for every defect or noncompliance.

Second, it is possible that the agency would have to conduct a full public hearing whenever a manufacturer claimed a defect or noncompliance was inconsequential. Whether the claim of inconsequentiality were ultimately determined to be spurious or meritorious, a full hearing would impose a burden on both the agency and the petitioning manufacturer.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—NHTSA estimates that approximately 15 petitions are filed per year. Petitions are filed entirely at the discretion of the manufacturer.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—Annual costs to the petitioners can be estimated as follows: about 15 petitions for inconsequential noncompliance are filed each year. Based on the length of the petitions (usually 3–4 typewritten pages) and the amount of documentation included, NHTSA estimates that it would take a petitioner about 2 hours to prepare one of these petitions. Multiplying this two hour burden by the 15 petitions filed annually yields an estimated annual burden of 30 hours for the petitioners under Part 556.

If we assume a value of $20 per hour, the annual cost of preparing these petitions is about $60. Adding in the postage cost of $4.80 (15 petitions, at a cost of 32 cents to mail each one), we estimate that it costs petitioners about $605 annually to prepare and submit these inconsequentiality petitions.

There are no recordkeeping costs to the manufacturers.

49 CFR Part 566—Manufacturers' Identification

Type of Request—Reinstatement of clearance.

OMB Control Number—2127–0043.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years from date of approval.

Summary of the Collection of Information—This collection of information requires every manufacturer of motor vehicles and/or replacement equipment to file with NHTSA on a one-time basis, the company name, address, and description of the motor vehicle type or of covered equipment manufactured.

Description of the Need for the Information and Proposed Use of the Information—NHTSA needs this information because under 49 U.S.C. 30118, manufacturers must determine if any motor vehicle or item of replacement equipment contains a defect related to motor vehicle safety or fails to comply with an applicable Federal Motor Vehicle Safety Standard. Following such a determination, the manufacturer is required to notify the Secretary of Transportation, owners, purchasers and dealers of motor vehicles or replacement equipment, of the defect or noncompliance and to remedy the defect or noncompliance without charge to the owner.

If the information was not reported, the agency would not be able to locate the manufacturer promptly if a defect or noncompliance in a motor vehicle or equipment was found.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—NHTSA estimates that the number of respondents per year is 100.

Each respondent provides the information once. NHTSA estimates it takes 15 minutes to prepare the information. The estimated total burden on all respondents for this standard is 25 hours per year.

Based on an assumed clerical cost of $20.00 per hour, it costs each manufacturer $5.00 to prepare the information. Some of the vehicle and equipment manufacturers are outside of the United States, and postage (on the average from a foreign country) is approximately $1.00 per letter. Thus, each response costs the manufacturer a total of $6.00. (NHTSA knows the total is overstated; the majority of vehicle and equipment manufacturers are in the United States, and postage would be 32 cents.) Since NHTSA estimates the number of respondents per year is 100, the total cost on all respondents per year is approximately $600.00.

Since they are not required to keep copies of the information provided to NHTSA, there are no recordkeeping costs to the manufacturers.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued: September 30, 1997.

John Womack,

Acting Chief Counsel.

[FR Doc. 97–26375 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Part 291 Domestic Cargo Transportation

AGENCY: Bureau of Transportation Statistics, (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need and usefulness of DOT requiring air carriers holding section 418 certificates, that do not submit Form 41 reports, to file Form 291–A "Statement of Operations and Statistics Summary for Section 418 Operations" pursuant to 14 CFR 291.42. Form 291–A is used to monitor air-cargo activity carried on strictly all-cargo flights.

DATES: Written comments should be submitted by December 5, 1997.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

COMMENTS: Comments should identify the OMB #2138–0023 and submit a duplicate copy to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0023. The postcard will be date/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0023

Title: Domestic Cargo Transportation Part 291.

Form No.: 291–A.

Type of Review: Extension of a currently approved requirement.

Respondents: Certificated domestic all-cargo carriers.

Number of Respondents: 3 domestic all-cargo carriers.

Total Annual Burden: 12 hours.

Needs and Uses: Form 291–A financial data are reviewed in connection with an air carrier's operations when concerns arise as to a carrier's financial condition as evidenced by reported losses and delinquency in payments to creditors. Data comparisons are made between current and past periods in order to assess the current financial positions. Financial trend lines are extended into the future to evaluate the continued viability of the carrier.

When an all-cargo carrier wishes to extend its operation to passenger service, the carrier's prior Form 291–A filings are examined as a source document to help determine the carrier's financial condition.

FAA's Safety Indicators Division is developing an integrated approach to exposure data (Form 291–A is a part of this data) in the aviation industry to support the Safety Indicators Program. FAA's National Safety Data Center is currently using Form 291–A in compiling annual year end flight hours, miles flown, and departures. Also, these activity data are used by the National Transportation Safety Board in determining the airline industry's annual safety indexes.

Commercial all-cargo activity data are used by the FAA in estimating the excise tax paid by shippers and held by the all-cargo air carriers. Although a precise tax figure cannot be computed from the Form 291–A reports (because some cargo movements are exempted from the excise tax), an estimation is possible for revenue budgeting purposes.

Timothy E. Carmody,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 97–26394 Filed 10–3–97; 8:45 am]

BILLING CODE 4910–FE–P

Corrections

Federal Register

Vol. 62, No. 193

Monday, October 6, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA-106-FOR]

Virginia Regulatory Program

Correction

In rule document 97–24682 beginning on page 48758, in the issue of Wednesday, September 17, 1997, make the following correction:

On page 48761, in the first column, in the sixth line from the bottom, "consistent" should read "inconsistent".

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206–AF32, 3206–AG79, 3206–AG68

Federal Employees' Group Life Insurance Program: Merger of Life Insurance Regulations; Living Benefits; Assignment of Life Insurance

Correction

In rule document 97–24585 beginning on page 48731, in the issue of Wednesday, September 17, 1997, make the following corrections:

1. On page 48731, in the second column, in the fourth complete paragraph, in the eighth line, an "a" should be inserted in front of "terminally".

§ 870.101 [Corrected]

2. On page 48732, in the third column, in § 870.101, in the sixth line, "inherent" should read "inherit".

§ 870.204 [Corrected]

3. On page 48734, in the first column, in § 870.204(a)(2)(iii), in the third line, a beginning parenthesis should be inserted before "107 Stat.".

§ 870.402 [Corrected]

4. On page 48736, in the second column:

a. In § 870.402(f)(1), in the fourth line, "the" should read "The".

b. In § 870.402(h), in the fifth line, "this" should read "the".

§ 870.403 [Corrected]

5. On page 48736, in the third column, in § 870.403(b), in the third line, an "a" should be inserted before "partial".

§ 870.504 [Corrected]

6. On page 48738, in the first column:

a. In § 870.504(a)(1), in the second line, "waiver" should read "waive".

b. In § 870.504(a)(3), in the nineth line, "within" should be before "31".

§ 870.506 [Corrected]

7. On page 48738, in the third column, in § 870.506(a), the first and second lines of the designated section (a) should be an italicized.

8. On page 48739, in the first column, in § 870.506(b), the first and second lines of the designated section (b) should be an italicized.

§ 870.704 [Corrected]

9. On page 48742, in the second column, in § 870.704(d), in the fifth line, "individuals's" should read "individual's".

§ 870.705 [Corrected]

10. On page 48742, in the second column, in § 870.705(a)(2), in the second line from the bottom, "reemployed" should read "reemployment".

§ 870.802 [Corrected]

11. On page 48743, in the third column, in § 870.802(c), in the last line, "the" should read "this".

§ 870.1005 [Corrected]

12. On page 48745, in the third column, in § 870.1005(c), in the fifth line, "or" should read "of".

§ 870.1103 [Corrected]

13. On page 48746, in the second column, in § 870.1103(d)(1)(ii), in the second line, "chased" should read "cashed".

BILLING CODE 1505–01–D

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federal register

Monday
October 6, 1997

Part II

Nuclear Regulatory Commission

10 CFR Chapter 1
Information Collection Requirements: Statutory and Technical Amendments; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter 1

RIN 3150–AF69

Information Collection Requirements: Statutory and Technical Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations that implement the Paperwork Reduction Act to make changes required by statute and to make technical correcting amendments.

EFFECTIVE DATE: This final rule is October 6, 1997.

FOR FURTHER INFORMATION CONTACT: Pamela Urban, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone (301) 415–1619.

SUPPLEMENTARY INFORMATION:

Background

The Paperwork Reduction Act of 1980 was replaced in its entirety by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13, 109 Stat. 163 (codified at 44 U.S.C. 3501 et seq.). As a result of the enactment of the 1995 Act, all references to the Paperwork Reduction Act of 1980 in the NRC's regulations (which are contained in various parts throughout 10 CFR Chapter 1) are outdated. In addition, certain other conforming changes described below need to be made.

Specifically, any NRC regulation that requires a "collection of information" contains a statement that the information collection requirements in that part have been submitted to, and approved by, the Office of Management and Budget (OMB), "as required by the Paperwork Reduction Act of 1980". Further, any NRC regulation that does not require a collection of information contains a statement that the particular part is "not subject to the Paperwork Reduction Act of 1980". The NRC is substituting the term: "Paperwork Reduction Act" in its regulations for the term "Paperwork Reduction Act of 1980".

The Paperwork Reduction Act of 1995 contains a provision that requires the inclusion of a "public protection notification" statement in all collections of information. Because of the statutory change, the NRC is adding a statement to paragraph (a) in all sections of 10 CFR (Parts 0–199) entitled: "Information collection requirements: OMB approval," as follows: "The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

The NRC is making technical amendments to paragraphs (b) and (c) of various sections in 10 CFR (Parts 0–199) entitled: "Information collection requirements: OMB approval." These amendments are being made in—

(1) Paragraph (b) to correct the citations that refer to the specific sections which contain information collection requirements; and

(2) Paragraph (c) to correct references to control numbers or form numbers for additional information collection approvals.

Publication in Final

The NRC has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553. The portion of this rulemaking that reflects agency organization, procedure, and practice is exempt under section 553(b)(A) of the APA. For the portion of this rulemaking that makes amendments required by statute and technical amendments and corrections, there is good cause for finding that notice and public procedure is unnecessary and contrary to the public interest, pursuant to section 553(b)(B) of the APA.

Effective Date

The NRC has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication since this rule is technical and nonsubstantive; merely reflects agency organization, practice, and procedure; and makes amendments required by statute and technical amendments. Therefore, these amendments shall be effective upon publication. *See* 5 U.S.C. 553(d)(3).

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.).

List of Subjects in 10 CFR Parts 4, 9, 11, 19, 20, 21, 25, 26, 30, 31, 32, 33, 34, 35, 36, 39, 40, 50, 51, 52, 54, 55, 60, 61, 62, 70, 71, 72, 73, 74, 75, 76, 81, 95, 100, 110, 140, 150, 170 and 171

Reporting and recordkeeping requirements.

For the reasons set out above and under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2201), as amended; the Energy Reorganization Act of 1974 (42 U.S.C. 5841), as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendment to 10 CFR Chapter 1.

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED COMMISSION PROGRAMS

1. Section 4.8 is revised to read as follows:

§ 4.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0053.

(b) The approved information collection requirements contained in this part appear in §§ 4.32, 4.34, 4.125, 4.127, 4.231, 4.232, 4.322, and 4.324.

PART 9—PUBLIC RECORDS

2. Section 9.8 is revised to read as follows:

§ 9.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0043.

(b) The approved information collection requirements contained in this part appear in §§ 9.23, 9.29, 9.40, 9.41, 9.53, 9.54, 9.55, 9.65, 9.66, and 9.67.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

3. Section 11.8 is revised to read as follows:

§ 11.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0062.

(b) The approved information collection requirements contained in this part appear in §§ 11.9, 11.11, 11.13, 11.15, and 11.16.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

4. Section 19.8 is revised to read as follows:

§ 19.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in the part under control number 3150–0044.

(b) The approved information collection requirements contained in this part appear in §§ 19.13 and 19.16.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

5. In § 20.1009, the introductory text of paragraph (c) is republished, paragraphs (a) and (b) are revised, paragraph (c)(3) is added and reserved, and paragraphs (c) (4) and (5) are added to read as follows: § 20.1009 Reporting, recording, and application requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0014.

(b) The approved information collection requirements contained in this part appear in §§ 20.1003, 20.1101, 20.1202, 20.1203, 20.1204, 20.1206, 20.1208, 20.1301, 20.1302, 20.1403, 20.1404, 20.1406, 20.1501, 20.1601, 20.1703, 20.1901, 20.1902, 20.1904, 20.1905, 20.1906, 20.2002, 20.2004, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 22.2205, 20.2206, 20.2301, and appendices F and G to 10 CFR Part 20.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

* * * * *

(4) In § 20.2006 and appendix G to 10 CFR part 20, NRC Forms 541 and 541A are approved under control number 3150–0166.

(5) In § 20.2006 and appendix G to 10 CFR part 20, NRC Forms 542 and 542A are approved under control number 3150–0165.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

6. Section 21.8 is revised to read as follows:

§ 21.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0035.

(b) The approved information collection requirements contained in this part appear in §§ 21.7, 21.21, and 21.51.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

7. In § 25.8, the introductory text of paragraph (c) is republished and paragraphs (a) and (c)(2) are revised to read as follows:

§ 25.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0046.

* * * * *

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and control numbers under which they are approved are as follows:

* * * * *

(2) In §§ 25.17(c), 25.21(c), 25.27(b), 25.29, and 25.31, SF–86 is approved under control number 3206–0007.

* * * * *

PART 26—FITNESS FOR DUTY PROGRAMS

8. In § 26.8, paragraph (c) is removed and paragraph (a) is revised to read as follows:

§ 26.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0146.

* * * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

9. In § 30.8, paragraphs (a) and (b) are revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0017.

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.18, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.41, 30.50, 30.51, 30.55, and appendices A and C to this part.

* * * * *

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

10. Section 31.4 is revised to read as follows:

§ 31.4 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0016.

(b) The approved information collection requirements contained in this part appear in §§ 31.5, 31.6, 31.8, and 31.11.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 31.11, NRC Form 483 is approved under control number 3150–0038.

(2) [Reserved]

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

(11) In § 32.8, paragraphs (a) and (b) are revised to read as follows:

§ 32.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0001.

(b) The approved information collection requirements contained in this part appear in §§ 32.11, 32.12, 32.14, 32.15, 32.16, 32.17, 32.18, 32.19, 32.20, 32.22, 32.23, 32.25, 32.26, 32.27, 32.29, 32.51, 32.51a, 32.52, 32.53, 32.54, 32.55, 32.56, 32.57, 32.58, 32.61, 32.62, 32.71, 32.72, 32.74, and 32.210.

* * * * *

PART 33—SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL

12. In § 33.8, the introductory text of paragraph (c) is republished and paragraphs (a) and (c)(1) are revised to read as follows:

§ 33.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0015.

* * * * *

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 33.12, NRC Form 313 is approved under control number 3150–0120.

* * * * *

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

13. Section 34.8 is revised to read as follows:

§ 34.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0007.

(b) The approved information collection requirements contained in this part appear in §§ 34.13, 34.20, 34.25, 34.27, 34.29, 34.31, 34.33, 34.35, 34.41, 34.42, 34.43, 34.45, 34.47, 34.49, 34.53, 34.61, 34.63, 34.65, 34.67, 34.69, 34.71, 34.73, 34.75, 34.79, 34.81, 34.83, 34.85, 34.87, 34.89, 34.101 and appendix A.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 34.11, NRC Form 313 is approved under control number 3150–0120.

(2) [Reserved]

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

14. In § 35.8, paragraphs (a), (b), and (c) are revised to read as follows:

§ 35.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0010.

(b) The approved information collection requirements contained in this part appear in §§ 35.6, 35.12, 35.13, 35.14, 35.20, 35.21, 35.22, 35.23, 35.29, 35.31, 35.50, 35.51, 35.52, 35.53, 35.59, 35.60, 35.61, 35.70, 35.75, 35.80, 35.92, 35.204, 35.205, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.610, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, 35.647, 35.980, 35.981.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved as follows:

(1) In § 35.12, NRC Form 313 is approved under control number 3150–0120.

(2) [Reserved]

* * * * *

PART 36—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

15. In § 36.8, paragraphs (a) and (b) are revised to read as follows:

§ 36.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0158.

(b) The approved information collection requirements contained in this part appear in §§ 36.11, 36.13, 36.17, 36.19, 36.21, 36.53, 36.69, 36.81, and 36.83.

* * * * *

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

16. Section is revised to read as follows:

§ 36.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0130.

(b) The approved information collection requirements contained in this part appear in §§ 39.11, 39.13, 39.15, 39.17, 39.31, 39.33, 39.35, 39.37, 39.39, 39.43, 39.49, 39.51, 39.61, 39.63, 39.65, 39.67, 39.73, 39.75, 39.77, and 39.91.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 39.11, NRC Form 313 is approved under control 3150–0120.

(2) [Reserved]

PART 40—DOMESTICE LICENSING OF SOURCE MATERIAL

17. In § 40.8, the introductory text of paragraph (c) is republished and paragraphs (a), (b), and (c)(3) and (4) are revised to read as follows:

§ 40.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0020.

(b) The approved information collection requirements contained in this part appear in §§ 40.9, 40.23, 40.25, 40.26, 40.27, 40.31, 40.35, 40.36, 40.41, 40.42, 40.43, 40.44, 40.51, 40.60, 40.61, 40.64, 40.65, 40.66, 40.67, and appendix A to this part.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

* * * * *

(3) In § 40.42, NRC Form 314 is approved under control number 3150–0028.

(4) In § 40.64, DOE/NRC Form 741 is approved under control number 3150–0003.

18. In § 40.43, paragraph (a) is revised to read as follows:

§ 40.43 Renewal of licenses.

(a) Application for renewal of a specific license must be filed on NRC Form 313 and in accordance with § 40.31.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

19. In § 50.8, paragraph (c) is republished and paragraphs (a) and (c)(1) are revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0011.

* * * * *

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirement and the control numbers under which they are approved are as follows:

(1) In § 50.73, NRC Form 366 is approved under control number 3150–0104.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

20. In § 51.17, paragraph (a) is revised to read as follows:

§ 51.17 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0021.

* * * * *

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

21. Section 52.8 is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0151.

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.35, 52.45, 52.47, 52.57, 52.63, 52.75, 52.77, 52.78, 52.79, 52.91, 52.99, 52.103, and appendices A and B.

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

22. In § 54.9, paragraph (a) is revised to read as follows:

§ 54.9 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0155.

PART 55—OPERATORS' LICENSES

23. Section 55.8 is revised to read as follows:

§ 55.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the Information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0018.

(b) The approved information collection requirements contained in this part appear in §§ 55.31, 55.45, 55.53, and 55.59.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In §§ 55.23, 55.25, 55.27, 55.31, NRC Form 396 is approved under control number 3150–0024.

(2) In §§ 55.31, 55.35, 55.47, and 55.57, NRC Form 398 is approved under control number 3150–0090.

(3) in § 55.45, NRC Form 474 is approved under control number 3150–0138.

(4) In §§ 55.41, 55.43, 55.45, and 55.59, clearance is approved under control number 3150–0101.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

24. Section 60.8 is revised to read as follows:

§ 60.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0127.

* * * * *

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

25. In § 61.8, paragraph (a) is revised to read as follows:

§ 61.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0135.

* * * * *

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

26. In § 62.8, paragraph (a) is revised to read as follows:

§ 62.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0143.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

27. In § 70.8, the introductory text of paragraph (c) is republished and paragraphs (a), (b), and (c) (2), (3), (4), and (5) are revised to read as follows:

§ 70.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0009.

(b) The approved information collection requirements contained in this part appear in §§ 70.9, 70.14, 70.19, 70.20a, 70.20b, 70.21, 70.22, 70.24, 70.25, 70.32, 70.33, 70.34, 70.38, 70.39, 70.42, 70.50, 70.51, 70.52, 70.53, 70.57, 70.58 and 70.59.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

* * * * *

(2) In § 70.38, NRC Form 314 is approved under control number 3150–0028.

(3) In § 70.53, DOE/NRC Form 742 is approved under control number 3150–0004.

(4) In § 70.53, DOE/NRC Form 742C is approved under control number 3150–0058.

(5) In § 70.54, DOE/NRC Form 741 is approved under control number 3150–0003.

* * * * *

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

28. In § 71.6, paragraph (a) is revised to read as follows:

§ 71.8 Information collection requirements: OMB approval

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0008.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH–LEVEL RADIOACTIVE WASTE

29. Section 72.9 is revised to read as follows:

§ 72.9 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0132.

(b) The approved information collection requirements contained in this part appear in §§ 72.7, 72.11, 72.16, 72.19, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70 through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176. 72.180 through 72.186, 72.192, 72.206, 72.212, 72.216, 72.218, 72.230, 72.232, 72.234, 72.236, and 72.240.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

30. Section 73.8 is revised to read as follows:

§ 73.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0002.

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.56, 73.57, 73.60, 73.67, 73.70, 73.71, 73.72, 73.73, 73.74, and appendices B, C, and G.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

31. In § 74.8, paragraphs (a) and (b) are revised to read as follows:

§ 74.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0123.

(b) The approved information collection requirements contained in this part appear in §§ 74.11, 74.13, 74.15, 74.17, 74.31, 74.33, 74.51, 74.57, and 74.59.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL-IMPLEMENTATION OF US/IAEA AGREEMENT

32. In § 75.9, the introductory text of paragraph (c) is republished and paragraphs (a), (b), (c)(2), (3), (4), and (5) are revised to read as follows:

§ 75.9 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements

contained in this part under control number 3150–0055.

(b) The approved information collection requirements contained in this part appear in §§ 75.3, 75.7, 75.11, 75.12, 75.14, 75.21, 75.22, 75.23, 75.24, 75.31, 75.32, 75.33, 75.34, 75.35, 75.36, 75.43, 75.44, and 75.45.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

* * * * *

(2) In §§ 75.31, 75.32, 75.33, and 75.35, DOE/NRC Form 742 is approved under control number 3150–0004.

(3) In §§ 75.33 and 75.34, DOE/NRC Form 741 is approved under control number 3150–0003.

(4) In §§ 75.34 and 75.35, DOE/NRC Form 740M is approved under control number 3150–0057.

(5) In § 75.35, DOE/NRC Form 742C is approved under control number 3150–0058.

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

33. Section 76.8 is revised to read as follows:

§ 76.8 Information collection requirements: OMB approval not required.

The information collection requirements contained in this part of limited applicability apply to a wholly-owned instrumentality of the United States and affect fewer than ten respondents. Therefore, Office of Management and Budget clearance is not required pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, et seq.).

PART 81—STANDARD SPECIFICATIONS FOR THE GRANTING OF PATENT LICENSES

34. In § 81.8, paragraph (a) is revised to read as follows:

§ 81.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part of the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0121.

* * * * *

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

35. Section 95.8 is revised to read as follows:

§ 95.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0047.

(b) The approved information collection requirements contained in this part appear in §§ 95.11, 95.15, 95.18, 95.21, 95.25, 95.33, 95.36, 95.37, 95.41, 95.45, 95.47, 95.53, and 95.57.

PART 100—REACTOR SITE CRITERIA

35. In § 100.8, paragraph (a) is revised to read as follows:

§ 100.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part of the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0093.

* * * * *

PART 100—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

37. Section 110.7 is revised to read as follows:

§ 110.7 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control numbers 3150–0036.

(b) The approved information collection requirements contained in this part appear in §§ 110.7a, 110.26, 110.27, 110.31, 110.32, 110.50, 110.51, 110.52, and 110.53.

(c) In §§ 110.19, 110.20, 110.21, 110.22, 110.23, 110.31, and 110.32, NRC Form 7 is approved under control number 3150–0027.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

38. Section 140.9a is revised to read as follows:

§ 140.9a Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0039.

(b) The approved information collection requirements contained in this part appear in §§ 140.6, 140.7, 140.13, 140.13a, 140.13b, 140.15, 140.17, 140.20, and 140.21.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

39. In § 150.8, paragraphs (a) and (c) are revised to read as follows:

§ 150.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0032.

* * * * *

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In §§ 150.16 and 150.17, DOE/NRC Form 741 is approved under control number 3150–0003.

(2) In § 150.20, NRC Form 241 is approved under control number 3150–0013.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

40. Section 170.8 is revised to read as follows:

§ 170.8 Information collection requirements: OMB approval

This part contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY NRC

41. Section 171.8 is revised to read as follows:

§ 171.8 Information collection requirements: OMB approval

This part contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Dated at Rockville, Maryland this 12th day of September, 1997.

For the Nuclear Regulatory Commission.

Anthony J. Galante,

Chief Information Officer.

[FR Doc. 97–26274 Filed 10–3–97; 8:45 am]

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Part III

Environmental Protection Agency

Announcement of the Draft Drinking Water Contaminant Candidate List; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5904–7]

Announcement of the Draft Drinking Water Contaminant Candidate List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, requires the Environmental Protection Agency (EPA) to publish a list of contaminants which, at the time of publication, are not subject to any proposed or promulgated national primary drinking water regulation (NPDWR), that are known or anticipated to occur in public water systems and which may require regulations under the SDWA (section 1412(b)(1)). The SDWA, as amended, specifies EPA must publish the first list of contaminants (Drinking Water Contaminant Candidate List, or CCL) not later than 18 months after the date of enactment, i.e., by February 1998, and every five years thereafter. The SDWA, as amended, also specifies that the CCL must be published after consultation with the scientific community, and after notice and opportunity for public comment. Today's notice announces the draft CCL, provides background on how it was developed, and seeks comment on various aspects of developing the final CCL. The CCL will be the source of priority contaminants for drinking water research, monitoring, guidance development, and for selection of candidates for drinking water regulation. The draft CCL includes 58 chemical and 13 microbiological contaminants.

DATES: Submit comments on or before December 5, 1997.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–97–11, Water Docket (MC4101), USEPA, 401 M. St., SW, Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references). Comments must be received or postmarked by midnight December 5, 1997.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–97–11. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The full record for this notice has been established under docket number W–97–11, and includes supporting documentation as well as printed, paper versions of electronic comments. The full record is available for inspection from 9 to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, Room M2616, Headquarters, USEPA, 401 M. Street, SW, Washington, DC. For access to docket materials, please call 202/260–3027 to schedule an appointment. Additionally, a few critical pieces of the record have been made available at each Regional Office.

FOR FURTHER INFORMATION CONTACT: For general information, please contact the EPA Safe Drinking Water Hotline. The toll-free number is 800–426–4791. For specific information on the CCL and the contaminant identification process, please contact Ms. Evelyn Washington, at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Mailcode 4607, Washington, DC 20460, phone: 202–260–3029, fax: 202–260–3762, email: washington.evelyn@epamail.epa.gov.

EPA Regional Offices

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Abbreviations Used in this Notice

ACWA-Association of California Water Agencies
ATSDR—Agency of Toxic Substances and Disease Registry
AWWARF—American Water Works Association Research Foundation
CASRN—Chemical Abstract Services Registry Number
CCL—Contaminant Candidate List
CDC-Center for Disease Control and Prevention
CERCLA—Comprehensive Environmental Response, Comprehensive and Liability Act
CIM—Contaminant Identification Method
D/DBP—Disinfectants and Disinfection Byproducts
DWEL-Drinking Water Equivalent Level
DWPL—Drinking Water Priority List
EDSTAC—Endocrine Disruptor Screening and Testing Advisory Committee
EPA—Environmental Protection Agency
ESWTR—Enhanced Surface Water Treatment Rule
FIFRA—Federal Insecticide, Fungicide, and Rodenticide Act
FQPA—Food Quality Protection Act
GW—Ground Water
HA—Health Advisory
HSDB—Hazardous Substances Data Base
IARC—International Agency for Research on Cancer.
ICR—Information Collection Request
IESWTR—Interim Enhanced Surface Water Treatment Rule
IRIS—Integrated Risk Information System
LTESWTR—Long-term Enhanced Surface Water Treatment Rule
MCL—Maximum Contaminant Level
MCLG—Maximum Contaminant Level Goal
NAS—National Academy of Sciences
NCOD—National Contaminant Occurrence Database
NDWAC—National Drinking Water Advisory Council
NIPDWR—National Interim Primary Drinking Water Regulations
NPDWR—National Primary Drinking Water Regulations
NPL—National Priority List
NRC—National Research Council
OGWDW—EPA's Office of Ground Water and Drinking Water
OPP—EPA's Office of Pesticide Programs
OPPTS—EPA's Office of Pollution Prevention and Toxic Substances
PWS—Public Water Systems
RDA—Recommended Daily Allowance
RfD—Reference Dose
RQ—Reportable Quantity
SAB—EPA's Science Advisory Board
SDWA—Safe Drinking Water Act
STORET—Storage and Retrieval Database
SWTR—Surface Water Treatment Rule
TRI—Toxic Release Inventory
WHO—World Health Organization

I. Background

The Safe Drinking Water Act (SDWA), as amended in 1996, requires the Environmental Protection Agency (EPA) to publish a list of contaminants that are known or anticipated to occur in public water systems, and which may require regulations under the SDWA (section 1412(b)(1)). The SDWA, as amended, specifies that EPA must publish this first list of contaminants (Drinking Water Contaminant Candidate List, or CCL) not later than 18 months after the date of enactment (i.e., by February 1998), and publish a CCL every five years thereafter. The SDWA also requires that the list of contaminants include those which, at the time of publication, are not subject to any proposed or promulgated national primary drinking water regulation (NPDWR). The list must be published after consultation with the scientific community, including the Science Advisory Board, after notice and opportunity for public comment, and after consideration of the occurrence database established under section 1445(g). The *unregulated* contaminants considered for the list must include, but not be limited to, substances referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and substances registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Prior to the 1996 Amendments, the SDWA required the EPA to publish a drinking water priority list (DWPL) of contaminants every three years which were known or anticipated to occur in drinking water and which may have required regulation under the SDWA. In response to these previous amendments, EPA published two DWPLs which served as candidates for regulation. The first DWPL was published on January 22, 1988 (53 FR 1892), and the second was published on January 14, 1991 (56 FR 1470).

The 1996 Amendments to the SDWA were developed and enacted during the time of the Presidential initiative intended to substantially improve the existing regulatory system to move the Nation toward a new and better environmental management system for the 21st century. During the two-year period prior to the 1996 Amendments, EPA developed a National Drinking Water Program Redirection Strategy (EPA, 1996a) to (1) establish priorities for setting safety standards based on health risks and sound science; (2) support strong, flexible partnerships among EPA, States, local governments and other stakeholders to protect public health; and (3) promote effective community-based source water protection. The Redirection Strategy provides an overall framework for the development of the CCL, as well as for other drinking water program activities.

The Agency believes the draft CCL presented in today's notice is the result of a commendable effort of screening a larger set of contaminants to the subset of those of most concern. The draft CCL is a first step toward improving risk assessment, strengthening science and data, and achieving better decision-making and future priority setting. Today's notice announces the draft CCL, provides background on how it was developed, summarizes detailed material available in the docket and used to develop the list, seeks comment on the methods used to develop the draft CCL, and seeks comment on developing the final CCL. The draft CCL is designed to be responsive to each of the requirements noted above of the SDWA, as amended, and is consistent with the goals of the redirection strategy.

Today's notice is being published pursuant to the requirement in section 1412(b)(1) that the CCL be subjected to prior notice and opportunity for public comment. The contaminants included are not subject to any proposed or promulgated national primary drinking water regulation,[1] are known or anticipated to occur in public water systems, and may require regulations under the SDWA. During the development of the draft CCL, the Agency consulted with stakeholders, including the National Drinking Water Advisory Council's Working Group on Occurrence & Contaminant Selection, which includes microbiologists, toxicologists, public health scientists, and engineers, and with other members of the scientific community including the Science Advisory Board (SAB). The Agency plans for a more in-depth consultation with the SAB during the

[1] With the exception of nickel, aldicarb and its degradates, and sulfate, which are considered special cases. Refer to later sections of this notice for rationale for inclusion.

fall of 1997. The occurrence database, which is to be established under section 1445(g) by August 1999, was not considered since it is currently under development; however, occurrence data from other sources was considered.

The final CCL, after publication in February 1998, will be the source of priority contaminants for the Agency's drinking water program. Priorities for drinking water research, occurrence monitoring, guidance development, including the development of health advisories, will be drawn from the CCL. The CCL will also serve as the list of contaminants from which the Agency will make determinations of whether or not to regulate specific contaminants. This first CCL is largely based on knowledge acquired over the last few years and other readily available information, but an enhanced, more robust approach to data collection and evaluation will be developed for future CCLs.

II. Draft Drinking Water Contaminant Candidate List

The following table includes the contaminants, microbiological and chemical, presented as the draft Drinking Water Contaminant Candidate List. The contaminants were identified as described by Section III of today's notice. The contaminants in the table are identified by name and Chemical Abstracts Service Registry Number (CASRN). The draft CCL includes 56 chemical contaminants/contaminant groups and 13 microbiological contaminants.

TABLE 1.—DRAFT DRINKING WATER CONTAMINANT CANDIDATE LIST

Chemical contaminants	CASRN
1,1,2,2-tetra-chloroethane	79–34–5
1,2,4-trimethylbenzene	95–63–6
1,1-dichloro-ethane	75–34–3
1,1-dichloro-propene	563–58–6
1,2-diphenylhydrazine	122–66–7
1,3-dichloropropane	142–28–9
1,3-Dichloropropene (telone or 1,3-D)	542–75–6
2,4,6-trichlorophenol	88–06–2
2,2-dichloro-propane	594–20–7
2,4-dichlorophenol	120–83–2
2,4-dinitrophenol	51–28–5
2,4-dinitrotoluene	121–14–2
2,6-dinitrotoluene	606–20–2
2,6-di-tert-butyl-p-benzoquinone (DTBB)	719–22–2
2-methyl-Phenol (o-cresol)	95–48–7
Acetochlor	34256–82–1
Acetone	67–64–1
Alachlor ESA (a degradation product of alachlor)	
Aldicarbs*	
Aldrin	309–00–2
Aluminum	7429–90–5
Atrazine-desethyl, a degradation product of triazines	6190–65–4
Boron	7440–42–8
Bromobenzene	108–86–1
Cyanazine	21725–46–2
p-Cymene (p-isopropyltoluene)	99–87–6
DCPA mono-acid degradate	887–54–7
DCPA di-acid degradate	2136–79–0
DDE	72–55–9
Diazinon	333–41–5
Dieldrin	60–57–1
Dimethoate	60–51–5
Disulfoton	298–04–4
Diuron	330–54–1
EPTC (s-ethyl-dipropylthiocarbamate)	759–94–4
Fonofos	944–22–9
Hexachloro-butadiene	87–68–3
Isopropylbenzene (cumene)	98–82–8
Linuron	330–55–2
Manganese	7439–96–5
Methyl bromide	74–83–9
Methyl-t-butyl ether (MTBE)	1634–04–4
Metolachlor	51218–45–2
Metribuzin	21087–64–9
Molinate	2212–67–1
Naphthalene	91–20–3
Nickel*	
Nitrobenzene	98–95–3
Organotins	
Prometon	1610–18–0
RDX	121–82–4
Rhodamine WT	
Sodium	7440–23–5
Sulfate*	
Terbacil	5902–51–2
Terbufos	13071–79–9
Vanadium	7440–62–2
Zinc	7440–66–6
Microbiological Contaminants:	
Acanthamoeba (guidance expected for contact lens wearers)	
Adenoviruses	
Aeromonas hydrophila	
Caliciviruses	
Coxsackieviruses	
Cyclospora cayetanensis	
Echoviruses	
Helicobacter pylori	
Hepatitis A virus	
Legionella (in ground water)	
Microsporidia (Enterocytozoon & Septata)	
Mycobacterium avium intracellulare (MAC)	
Toxoplasma gondii	

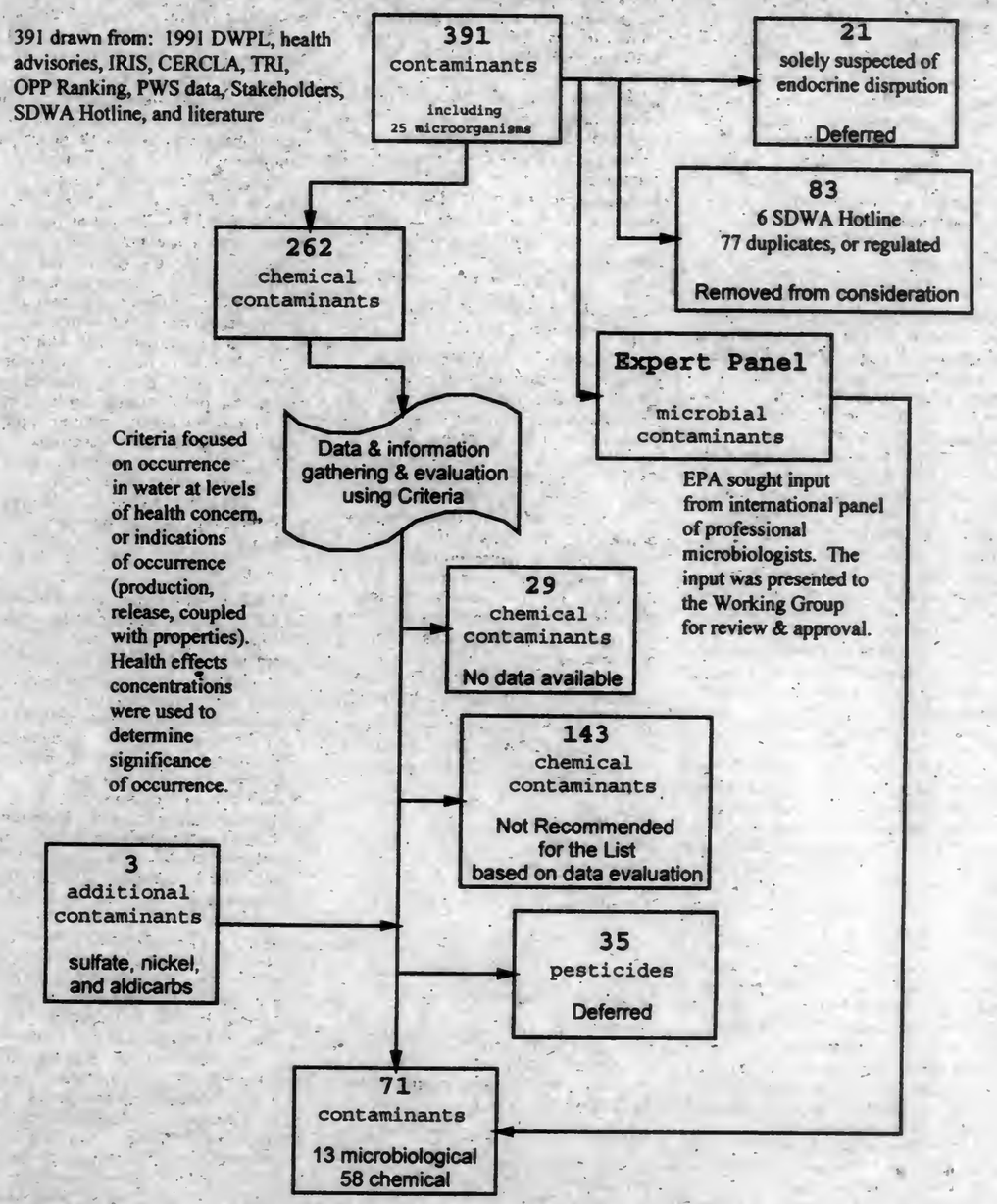
*Included on the CCL as special cases, not subject to the criteria used to identify other contaminants.

III. Identification of Contaminants for the Draft Drinking Water Contaminant Candidate List

Drinking water contamination generally occurs from: (1) Contaminants that find their way into drinking water sources from industrial waste releases, agricultural runoff, atmospheric deposition, and other pollution sources; (2) contaminants formed during the treatment of water supplies (e.g., disinfection by-products); and (3) materials used for treatment, storage, and distribution of water. EPA has considered all of these sources in identifying microbiological and chemical contaminants for this draft CCL. Figure 1 provides a graphical representation of how today's draft CCL was developed.

BILLING CODE 6560–50–P

Figure 1. Illustration of Decision Tool Used to Develop the Draft Contaminant Candidate List



BILLING CODE 6560–50–C

The National Drinking Water Advisory Council's (NDWAC) Working Group on Occurrence & Contaminant Selection played an integral part in the development of the CCL by providing recommendations for the criteria, and the contaminants for initial consideration. Also, during the development of the CCL, the Agency sought the expertise of microbiologists for input on microorganisms to include on the CCL. The following sections describe the role of the NDWAC Working Group and describe the approach used to develop the CCL for microorganisms and chemical contaminants.

A. Role of NDWAC Working Group

After enactment of the recent SDWA amendments, and in keeping with the redirection strategy, EPA held its first stakeholder meeting on approaches to developing CCLs on December 2 and 3, 1996 in Washington, D.C. Participants, including public water system professionals, state regulatory officials, public health officials, environmental groups and other stakeholders, with a range of interests, explored issues concerning the identification of potential drinking water contaminants for consideration for the first CCL as well as the factors to consider for future CCL development. One result of the meeting was the recommendation that the February 1998 CCL be the first topic addressed by the NDWAC Working Group on Occurrence & Contaminant Selection.

In 1975, pursuant to the SDWA [Section 1446(a)], NDWAC was established under the Federal Advisory Committee Act to provide practical and independent advice, consultation, and recommendations to EPA on the activities, functions and policies related to the SDWA. At its meeting held on November 13 and 14, 1996, NDWAC decided that working groups should be formed on the following subjects: Small Systems Capacity Building; Operator Certification; Source Water Protection; Consumer Confidence Reports; Drinking Water State Revolving Fund; and Occurrence & Contaminant Selection. The NDWAC Occurrence & Contaminant Selection Working Group has been integral to developing the criteria and identifying contaminants for the draft CCL published today.

At the recommendation of the Working Group, the Agency sought expertise on microbiological contaminants and convened a workshop of microbiologists. The input from the workshop was adopted by the Working Group for use in developing the draft CCL. The approach used to identify microorganisms for the CCL is explained in more detail in section III.B.

In addition to microorganisms, the Working Group developed recommendations on chemical contaminants. The recommendations addressed which contaminants to include for initial consideration, and the criteria for use in determining which contaminants should be included on the draft CCL. The recommendations were developed over a series of meetings with the Working Group followed by the endorsement by the full NDWAC. The details concerning the contaminants included for initial consideration, and development and use the identification criteria are contained in section III.C.

B. Microbiological Contaminants Identified for the Draft CCL

On May 20–21, 1997, EPA utilized a workshop on microbiology and public health to develop a list of pathogens for possible inclusion on the first CCL. Taking part in this workshop were invited experts representing academia, EPA and other federal agencies, and the water industry. In preparation, EPA scientists prepared and distributed a list of microorganisms for initial consideration by workshop members (see Table 2.). Inclusion of organisms on this initial list was based on disease outbreak data, published literature documenting the occurrence of known or suspected pathogens in water, and other information. A summary of the workshop proceedings is in the docket.

Table 2. Initial List of Microorganisms Developed by EPA for Consideration by the Workshop on Microbiology and Public Health

Protozoa

Microsporidia
Toxoplasma
Cyclospora
Acanthamoeba
Naegleria
Isospora

Viruses

Hepatitis E
Astroviruses
Coxsackie/Echo viruses
Adenovirus 40/41
Norwalk virus and other caliciviruses
Rotavirus

Bacteria

Helicobacter pylori
Mycobacterium (MAC)
E. coli O157:H7
Aeromonas hydrophila
Pseudomonas aeruginosa
Acrobacter
Campylobacter

Algal Toxins

Anaebaena flos-aquae
Aphanizomenon flos-aque
Microcystis aeruginosa
Schizothrix calcicola

Workshop participants established a set of baseline criteria for deciding whether an organism should appear on the CCL. These criteria were (1) public health significance, (2) known waterborne transmission, (3) occurrence in source water, (4) effectiveness of current water treatment, and (5) adequacy of analytical methods. Organisms on the EPA list mentioned above, as well as other organisms that arose during the discussions, were evaluated against these criteria.

The CCL published today includes the list of pathogens identified by the workshop and subsequently adopted by the NDWAC as recommendations for the CCL. Algal toxins were considered to be of minimal public health significance, and therefore were not included on the draft CCL. The following sections identify the organisms selected, the rationale for why a pathogen was included on the CCL, and the rationale why certain pathogens were not included.

1. Protozoa

The following protozoa are included on the CCL: *Cyclospora cayetanensis, Toxoplasma gondii,* the two microsporida—*Enterocytozoon* and *Septata,* and *Acanthamoeba.* It is recommended that EPA develop guidance for controlling *Acanthamoeba,* for individuals who wear contact lenses. The rationale for their selection follows.

C. cayetanensis has caused waterborne outbreaks in other countries and one documented outbreak in the U.S. Thus, it may be a significant public health risk. Disease symptoms include watery diarrhea, abdominal cramping, decreased appetite, and low-grade fever (Huang et al., 1995). In HIV-infected persons, the disease may be chronic and constant (Soave and Johnson, 1995). The occurrence of this organism in natural waters and its animal host range are unknown. However, *C. cayetanensis* is transmitted by the fecal-oral route, and so its presence in water is likely. The morphology of *C. cayetanensis* suggests that the organism is relatively resistant to disinfectants, but due to its large size (7–10μm in diameter) it may be removed satisfactorily by filtration. *Cyclospora* is included on the CCL because it has caused waterborne disease outbreaks in the U.S. and other countries.

Toxoplasma gondii causes a common infection of mammals and birds, but the complete life cycle only occurs in wild and domestic cats. The organism infects a high percentage of the human population (50 percent in some areas of the U.S.) but, while subclinical infections are prevalent, illness is rare (Fishback, 1992). However, illness may be severe in fetuses and AIDS patients. Symptoms include fever, swelling of lymph glands in the neck, blindness and mental retardation in fetuses, and encephalitis in AIDS patients (Fishback, 1992). There have been two documented outbreaks of toxoplasmosis—in Panama and British Columbia—both linked epidemiologically to drinking water. Chlorination of unfiltered surface waters is not effective against *Toxoplasma* (Benenson et al., 1982). However, due to their large size (11x12μm), filtration may be effective in controlling this organism. *Toxoplasma* is included on the CCL because it poses a significant public health risk, can be transmitted via the waterborne route, and because a reasonable potential exists for completing the needed research in the next few years for controlling this organism.

Microsporidia are a large group of protozoan parasites that are common in the environment and multiply only inside cells (Cali, 1991). Five species of microsporidia have been reported to cause disease in humans, but only two are significant in water: *Enterocytozoon bieneusi* and *Septata intestinalis.* Both are common in people with AIDS (Goodgame, 1996) and occur chiefly in AIDS patients (Bryan, 1995), although infections have been reported in otherwise healthy persons (Weber et al., 1994). Symptoms may include diarrhea (sometimes severe and chronic), and illness involving the respiratory tract, urogenital tract, eyes, kidney, liver or muscles (Bryan, 1995; Goodgame, 1996; Cali, 1991).

Microsporidia that infect humans produce small (1–5μm), very resistant spores (Waller, 1979; Cali, 1991). They are shed in bodily fluids, including urine and feces, and thus have a strong potential to enter water sources. However, no waterborne outbreak has yet been reported and there is no published evidence of waterborne transmission. Chlorine is probably not effective against microsporidia, given that other protozoan spores (cysts, oocysts) are resistant to chlorine. Thus, effective filtration and watershed control may be needed to control this organism in drinking water. *E. bieneusi* and *S. intestinalis* are included on the CCL because they pose a significant risk to immuno-compromised individuals and may not be removed effectively by filtration because of their small size (the spores are somewhat smaller than *Cryptosporidium oocysts*).

Acanthamoeba are a group of free-living amoeba that are common in soil and water, including drinking water (Sawyer, 1989; Gonzalez de la Cuesta et al., 1987). Some *Acanthamoeba* species are pathogenic and can cause inflammation of the eye's cornea (especially in individuals who wear soft or disposable contact lenses (Seal et al., 1992)), and chronic encephalitis in the immuno-compromised population (Kilvington, 1990). To date, no case of waterborne disease has been reported. However, *Acanthamoeba* cysts are relatively resistant to chlorine (De Jonkheere and Van der Voorde, 1976). Because drinking water is not a suspected route of transmission, workshop members did not include *Acanthamoeba* on their list. However, as stated above, the Workshop participants and the NDWAC recommend that EPA issue guidance to educate the public about the potential problem with contact lenses.

Two protozoa that were on the initial list for consideration developed by EPA (*Naegleria fowleri, Isospara belli*), and two that were not (*Entamoeba histolytica, Blastocystis hominis*) were also considered by the workshop, but were not included on the CCL. The reasons for excluding them follow.

N. fowleri is a free-living amoeba, about 8–15μm in size, found in soil, water, and decaying vegetation. Although it is common in many surface waters, it rarely causes disease. All disease incidents have been associated with swimming in natural or manmade, warm fresh waters; drinking water is not a suspected route of transmission. The route of infection is via inhalation rather than by ingestion. For this reason, it was not included on the CCL.

I. belli causes gastrointestinal illness, primarily in AIDS patients and children. There have been no documented cases of waterborne transmission. However, the organism is transmitted by the fecal-oral route, so its presence in water is possible. Filtration is probably effective in removing *I. belli* oocysts, given their large size (30x12μm). This organism was not included on the CCL because of the lack of documentation on waterborne transmission and the belief that not enough is known about the organism for developing potential regulations within a three-year time-frame.

E. histolytica is not considered to be a significant health problem in the U.S. In contrast to the situation for *Giardia* and *Cryptosporidium*, animals are not host reservoirs for *E. histolytica.* Thus, the potential for source water contamination is relatively low, especially if sewage treatment practices are adequate. Moreover, the organism has not caused a significant waterborne disease outbreak since the early 1950s. Thirdly, the cyst is large (10–15μm), slightly larger than a *Giardia* cyst; thus, filtration should be effective for removing this organism. For these reasons, this organism was not included on the CCL.

B. hominis was not included on the CCL because its clinical significance has not been determined and very little is known about its potential for waterborne transmission or its occurrence in water.

2. Viruses

The following viruses are included on the CCL: caliciviruses, adenoviruses, coxsackieviruses, echoviruses, and the hepatitis A virus. The rationale for their inclusion follows.

The caliciviruses are a common cause of acute, but mild, gastrointestinal illness in the U.S. Between 1980 and 1994, 14 waterborne disease outbreaks with more than 9,000 associated cases caused by the Norwalk virus and other caliciviruses were reported. Thus, their public health significance is high. However, because adequate recovery and assay methods for the caliciviruses are not yet available, information about the occurrence of these viruses in water or the effectiveness of water treatment is lacking. It is believed that current research programs might fill the research gap in the near-term to allow development of regulations, if necessary, to control this group of organisms.

Most of the adenoviruses are respiratory pathogens. However, serotypes 40 and 41 are important causes of gastrointestinal illness, especially in children. However, all types may be shed in the feces, and may be spread by the fecal-oral route. Although adenoviruses have been detected in water, data on their occurrence in water are meager. No drinking water outbreaks implicating these viruses have been reported. Both the respiratory and gastrointestinal adenoviruses are recommended for the CCL because of their high public health significance and data which suggest that adenoviruses are relatively resistant to disinfectants.

The coxsackieviruses are readily found in wastewater and surface water, and sometimes in drinking water (Hurst, 1991). Although they have not caused a documented outbreak of waterborne disease, coxsackieviruses produce a variety of illnesses in humans, including the common cold, heart

disease, fever, aseptic meningitis, gastrointestinal problems, and many more, some of which can be serious (Melnick, 1992). Coxsackieviruses are included on the CCL because they are found more frequently in water than other viruses and are associated with a number of illnesses.

The echoviruses, like the coxsackieviruses, are readily detected in water, including treated drinking water. They are associated with milder illnesses than the coxsackieviruses, and have not caused a documented outbreak. Echoviruses are included on the CCL because, like the coxsackieviruses, they are found more frequently in water than other viruses and are associated with a number of illnesses.

The hepatitis A virus has caused at least 11 waterborne disease outbreaks of infectious hepatitis since 1980. Therefore, it has a high public health significance. The virus has been found in contaminated drinking water, and is somewhat resistant to chlorination (Peterson et al., 1983). For these reasons, it is also included on the CCL.

Three viruses that were on the initial list for consideration developed by EPA (rotaviruses, hepatitis E virus, and astroviruses) and two that were not (picobivirna and picotrivirna) were also considered by the workshop participants, but were not included on the CCL. The reasons for not including them follow.

Rotaviruses cause acute gastroenteritis, primarily in children. Almost all children have been infected at least once by the age of five years (Parsonnet, 1992), and in developing countries, rotavirus infections are a major cause of infant mortality. Rotaviruses are spread by fecal-oral transmission and have been found in ambient water, ground water, and tap water (Gerba et al., 1985; Gerba, 1996). However, only a single waterborne disease outbreak has been reported in the U.S. and only several have been documented outside the U.S. (Gerba et al., 1985). Rotaviruses are readily inactivated by chlorine, chlorine dioxide, and ozone, but apparently not by monochloramine (Berman and Hoff, 1984; Chen and Vaughn, 1990, Vaughn et al., 1986; 1987). Rotaviruses were not included on the CCL because they are not regarded as an important public health problem in the U.S., and because of their vulnerability to disinfectants.

Hepatitis E virus is an important agent of hepatitis in underdeveloped countries, but apparently not in the U.S. The virus is transmitted by the fecal-oral route (Dreesman and Reyes, 1992) and probably a majority of cases are waterborne. Even though the disease is apparently not a health concern in the U.S., one investigation found that 21.3% of blood donors in Baltimore were seropositive (Thomas et al., 1997), suggesting previous exposure to the organism. Infections are mild and self-limiting except for pregnant women, who have a fatality rate of up to 39%. No data from disinfection studies have been published. Hepatitis E virus was not included on the CCL because it is not regarded as a significant public health threat in the U.S., and because current sewage treatment practices are judged sufficient to eliminate risk of waterborne transmission.

Astroviruses are found throughout the world and cause illness in 1–3 year old children and in AIDS patients, but rarely in healthy adults (Kurtz and Lee, 1987; Grohmann et al., 1993). Symptoms are mild and typical of gastrointestinal illness, but the disease is more severe and persistent in the severely immuno-compromised. Astroviruses are transmitted by the fecal-oral route and have been detected in water and have been associated anecdotally with waterborne disease outbreaks (Cubitt, 1991; Pinto et al., 1996). The astroviruses were not included on the CCL because of the mildness of the illness and the lack of adequate documentation about the occurrence in water and potential as a waterborne disease agent.

The picobivirna and picotrivirna viruses are of public health significance outside the U.S., and are not regarded as being a waterborne problem in the U.S. and are adequately removed from effluent water by current sewage treatment practices. Picobivirna and picotrivirna viruses were not included on the CCL for these reasons.

3. Bacteria

The following bacteria are included on the CCL: *Helicobacter pylori*, *Legionella*, *Mycobacterium avium* complex, and *Aeromonas hydrophila*. The rationale for their identification follows.

H. pylori has been closely associated with peptic ulcers, gastric carcinoma, and gastritis (Peterson, 1991; Nomura et al., 1991; Parsonnet et al., 1991, Cover and Blaser, 1995). Data about its distribution in the environment are scarce, but the organism has been found in sewage (Sutton et al., 1995) and has been linked to ambient water and drinking water by epidemiological tests and other means (Klein et al., 1991; Shahamat et al., 1992; Shahamat et al., 1993; Hulten et al., 1996). The number of people in the U.S. that have antibodies against *H. pylori*, and thus have been exposed to the organism, is high. *Helicobacter* is thought to be vulnerable to disinfectants. *H. pylori* is included on the CCL because of its public health significance in the U.S. and the possibility of waterborne transmission.

Legionella pneumophila and other *Legionella* species cause Legionnaires Disease (a type of pneumonia) and Pontiac Fever (a mild, nonpneumonic illness). Legionnaires Disease, which has a 15% mortality rate, typically results from the inhalation of aerosols of water containing the organism. *Legionella* are abundant and naturally occurring in surface water; thus they are not necessarily associated with fecal contamination. They have also been detected in ground water. Small numbers can occur in the finished waters of systems employing full treatment (U.S. EPA, 1989b) and can colonize plumbing systems, especially warm ones. Aerosols from fixtures, such as showerheads, may cause the disease via inhalation. Aerosols from cooling towers, hot tubs, and pools have also caused a number of outbreaks. Direct person-to-person spread has not been documented (Yu et al., 1983). Ozone, chlorine dioxide, and ultraviolet light are effective in controlling *Legionella*, but data for chlorine are inconsistent (States et al., 1990). *Legionella* in surface water are already regulated under EPA's Surface Water Treatment Regulations (40 CFR part 141, subpart H). *Legionella* in ground water is included on the CCL because of their public health significance in the U.S. and the possibility of waterborne transmission via ground water.

Mycobacterium avium complex (MAC; also known as the *Mycobacterium avium intracellulare* complex) is common in the environment and can colonize water systems and plumbing systems (du Moulin and Stottmeier, 1986; du Moulin et al., 1988). It is known to cause pulmonary disease and other diseases, especially in individuals with a weakened immune system (e.g., AIDS patients). Drinking water has been epidemiologically linked to infections in hospital patients (du Moulin and Stottmeier, 1986). MAC is relatively resistant to chlorine disinfection (Pelletier et al., 1988). MAC is included on the CCL because of its high public health significance, its ability to colonize on pipes, and its relative resistance to chlorine.

Aeromonas hydrophila can cause wound infections and septicemia in people with a weakened immune system, and some evidence suggests that it causes gastrointestinal disease in healthy people. The organism is common in water and is not necessarily associated with fecal contamination. It is vulnerable to disinfectants. *A. hydrophila* is included on the CCL primarily because it is common in source water.

Pseudomonas aeruginosa is a free-living bacterium that is common in water. People at risk include patients with profound neutropenia, cystic fibrosis, severe burns, and those with foreign devices installed (Hardalo and Edberg, 1997). The organism has also caused numerous outbreaks of dermatitis in recreational waters, e.g., pools, whirlpools, and hot tubs (Kramer et al., 1996). Because of differing opinions among the microbiologists who participated in the workshop about its public health significance and its potential health risk via the waterborne route, a decision could not reach on whether to include *P. aeruginosa* on their list. Rather, it was recommended that EPA conduct a complete literature search on the topic before the Agency decides whether to include this organism on the final list. The literature search will be conducted prior to publishing the final CCL.

Four bacteria that were on the initial list for consideration developed by EPA (*Escherichia coli* O157:H7, *Campylobacter*, *Arcobacter*, and the cyanobacteria) and four that were not (*Salmonella*, *Shigella*, *Vibrio cholerae* and other *Vibrio* species, and *Yersinia enterocolitica*) were also considered by the workshop, but were not included on the CCL. The reasons for excluding them follow.

E. coli O157:H7, *Campylobacter*, *Salmonella*, *Shigella*, *V. cholerae*, and *Y. enterocolitica* have all caused waterborne disease in the U.S. and are regarded as significant health risks. They were not included on the CCL because current treatment practices were deemed to be adequate in controlling these organisms. *Arcobacter* was not included on the CCL because its health significance and the possibility of waterborne transmission are unknown, and because current treatment practices were judged likely in controlling this organism.

Cyanobacteria (also known as blue-green algae) are generally not considered an important health risk. However, certain species may produce neurotoxins (which affects the nervous system), hepatotoxins (which affects the liver), and other types of toxins which, if ingested at high enough concentrations, may be harmful. High concentrations of toxins associated with a bloom of *Schizothrix calcicola* may have been responsible for an outbreak of gastroenteritis in 1975 (Lippy and Erb, 1976). However, little evidence exists that ambient levels found in most water supplies pose a health risk to the normal population. The cyanobacteria was not included on the CCL because the problem is thought to be best handled through good watershed management practices to prevent algal growth in source waters.

4. Microbiological Indicators

Indicators of fecal contamination or of pathogens were not addressed at the workshop. EPA is involved, however, in a project with the International Life Sciences Institute to begin an evaluation of which microbiological indicators are most appropriate for various types of environmental waters. Currently, the Agency uses total coliform bacteria as the sole indicator of microbiological drinking water quality.

5. Future Activities Planned for Microbiological Contaminants and the CCL

EPA is attempting to develop a more formal framework for identifying, selecting and prioritizing pathogens (and their indicators) for research and possible regulation, and for future CCLs. To date, the identification of pathogens for the CCL has been relatively informal. In contrast, a more objective approach for contaminant identification and selection in the future may be based on a numerical scoring procedure such that contaminants with higher scores would have greater priority for regulation, research and guidance development than those that have lower scores.

6. Possible Impacts From Other Regulatory Activity

Pathogens that are included on the final CCL, will be candidates for regulatory control, guidance development, and additional research over the next five years. These organisms may be controlled, however, by regulations currently under development such as the Enhanced Surface Water Treatment Rule, the Ground Water Disinfection Rule. If pathogens on the CCL are determined to be controlled by these regulations, they will be withdrawn from the CCL.

C. Chemical Contaminants Identified for the Draft CCL

As stated earlier, the NDWAC Working Group on Occurrence & Contaminant Selection played an integral part in developing the draft CCL presented in today's notice. At the initial Working Group meeting held on April 3–4, 1997, the Agency proposed a number of lists of contaminants as a logical starting point for developing the draft CCL. Some lists originate from other Agency programs, while others were developed in anticipation of future DWPLs. The Agency also proposed that the initial list would need to be reduced to a smaller list of priority contaminants that would become the CCL.

In April, the Working Group identified 32 contaminants thought to be those most important for inclusion on the first CCL, other contaminants for initial consideration, and criteria to be used to evaluate and screen all contaminants initially considered. During this April meeting, and two subsequent meetings, held on June 23 and July 17, 1997, the Working Group developed these recommendations which were approved by the full NDWAC, and subsequently adopted by the Agency, to use in screening the initial list to the contaminants to today's draft CCL. Summaries of the meetings are provided in the docket. The following sections provide the rationale for the initial list of contaminants considered and a summary of the development and application of the criteria used to evaluate the contaminants on the initial list to develop the draft CCL.

1. The Initial List of Chemical Contaminants Considered

Ten lists of chemical contaminants were considered to be logical starting points for developing the first CCL. Of the ten, eight lists were ultimately combined to serve as the initial list of contaminants to be considered for the CCL. Some contaminants appear on more than one of the eight lists. The initial list of contaminants considered, as well as those eliminated or deferred from consideration, are in Table 3. The following sections provide a description of each of the lists and the rationale behind including it with, or excluding it from, the initial list of contaminants considered.

TABLE 3.—INITIAL LIST OF CHEMICAL CONTAMINANTS CONSIDERED DURING DEVELOPMENT OF THE DRAFT CCL

Contaminant	CAS No.	Contaminant lists considered							
		1991 DWPL (1)	Health advisories (2)	IRIS (3)	PWS (4)	CERCLA (5)	Stakeholder summary list (6)	TRI list (7)	OPP ranking (8)
Contaminants identified as Initial Candidates for the CCL during April 3–4, 1997 Working Group Meeting									
Inorganics:									
Aluminum	7429–90–5	✔	✔				✔	✔	
Zinc	7440–66–6	✔	✔					✔	
Pesticides:									
Acetochlor	34256–82–1		✔				✔		✔
Alachlor ESA							✔		✔
Butylate	2008–41–5		✔	✔					✔
Chlorpyrifos	2921–88–2		✔	✔			✔		
DCPA (Dacthal)	1861–32–1	✔	✔				✔		
DCPA di-acid degradate	2136–79–0	✔							✔
DCPA mono-acid degradate	887–54–7	✔							
DDE	72–55–9			✔		✔			
Diazinon	333–41–5		✔						✔
Diuron	330–54–1		✔				✔		✔
Endosulfan	115–29–7			✔			✔		✔
EPTC (s-ethyl-dipropylthio-carbamate)	759–94–4			✔					✔
Malathion	121–75–5		✔	✔D					
Methyl parathion	298–00–0		✔	✔					
Metolachlor	51218–45–2	✔	✔	✔			✔		✔
Metribuzin	21087–64–9	✔	✔	✔			✔		✔
Prometon	1610–18–0	✔	✔						✔
Propanil	709–98–8			✔					
Tebuthiuron	34014–18–1		✔						
Terbacil	5902–51–2		✔						✔
Triazines (total) (9)							✔		
Triazine degradation products (9), atrazine-desethyl	6190–65–4						✔		✔
Triazines (unregulated) (9)							✔		✔
Trifluralin	1582–09–8	✔	✔	✔					✔
Organics:									
2-methyl-Phenol (o-cresol)	95–48–7			✔					
Acetone	67–64–1			✔					
Ethylene glycol	107–21–1		✔	✔				✔	
Methyl ethyl ketone (MEK)	78–93–3	✔	✔				✔	✔	
Methyl-t-butyl ether (MTBE)	1634–04–4	✔	✔				✔	✔	
Nitrobenzene	98–95–3	✔		✔					
Phenol	108–95–2		✔	✔				✔	
Additional Contaminants Considered for the CCL									
Inorganics:									
Ammonia	7664–41–7		✔				✔	✔	
Ammonium nitrate	6484–52–2							✔	
Ammonium sulfamate	7773–06–0		✔						
Ammonium sulfate	7783–20–2		✔					✔	
Boron	7440–42–8	✔	✔						
Carbon disulfide	75–15–0							✔	
Carbonyl sulfide	463–58–1							✔	
Cobalt	7440–48–4							✔	
Hydrochloric acid	7647–01–0							✔	
Hydrogen fluoride	7664–39–3							✔	
Manganese	7439–96–5	✔				✔	✔	✔	
Metam-sodium	137–42–8			✔					
Molybdenum	7439–98–7	✔	✔						
Phosphoric acid	7664–38–2							✔	
Phosphorous	7723–14–0		✔			✔		✔	
Sodium	7440–23–5		✔						
Strontium	7440–24–6	✔	✔						
Vanadium	7440–62–2	✔	✔						
Pesticides:									
1,3-Dichloropropene (telone or 1,3-D)	542–75–6	✔	✔	✔			✔		✔
2,4,5-T	93–76–5	✔	✔						
2,4-DB	94–82–6								✔
2,4-DP	120–36–5						✔		

TABLE 3.—INITIAL LIST OF CHEMICAL CONTAMINANTS CONSIDERED DURING DEVELOPMENT OF THE DRAFT CCL—Continued

Contaminant	CAS No.	Contaminant lists considered							
		1991 DWPL (1)	Health advisories (2)	IRIS (3)	PWS (4)	CERCLA (5)	Stakeholder summary list (6)	TRI list (7)	OPP ranking (8)
4-Nitrophenol (p-Nitrophenol)	100–02–7	✔	✔						
Acephate	30560–19–1		✔				✔		
Acifluofen	50594–66–6	✔	✔				✔		✔
Aldrin	309–00–2		✔			✔			
Ametryn	834–12–8		✔				✔		✔
Amitraz	33089–61–1						✔		
Asulam	3337–71–1	✔							✔
Bensulfuron methyl									✔
Bentazon	25057–89–0	✔	✔						✔
Benzidine	92–87–5					✔			
Bromacil	314–40–9	✔	✔				✔		✔
Bromoxynil	1689–84–5			✔					✔
Cadre									✔
Caprolactum	105–60–2			✔					
Captan	133–06–2			✔					
Carbaryl	63–25–2		✔	✔					
Carboxin	5234–68–4		✔						
Chloramben	133–90–4		✔				✔		
Chlorimuron ethyl	90982–32–4								✔
Chlorothalonil	1897–45–6		✔	✔					
Chlorsulfuron	64902–72–3								✔
Clopyralid	1702–17–6						✔		
Cyanazine	21725–46–2	✔	✔	✔			✔		✔
Cyromazine	66215–27–8	✔					✔		
DDD	72–54–8					✔			
DDT	50–29–3			✔		✔			
Diazinon—oxypyrimidine									✔
Dicamba	1918–00–9	✔	✔				✔		✔
Dichlobenil	1194–65–6						✔		
Dieldrin	60–57–1		✔			✔	✔		
Dimethoate	60–51–5			✔			✔		
Dimethrin	70–38–2		✔						
Diphenamid	957–51–7		✔						
Disulfoton	298–04–4		✔						
Endosulfan sulfate	1031–07–8					✔			
Ethalfluralin	55283–68–6								✔
Ethofumesate	26225–79–6						✔		
Ethoprop	13194–48–4						✔		
Ethylenethiourea (ETU)	96–45–7	✔	✔						✔
Fenamiphos	22224–92–6		✔				✔		✔
Fluazifop-p-butyl									✔
Fluometuron	2164–17–2		✔						✔
Fomesafen	72178–02–0	✔							
Fonofos	944–22–9		✔	✔			✔		
Halofenozide									✔
Halosulfuron									✔
Hexazinone	51235–04–2						✔		✔
Imazamethabenz	81405–85–8								✔
Imazapyr									✔
Imazaquin	81335–37–7								✔
Imazethapyr	81335–77–5						✔		✔
Imidacloprid							✔		
Lactofen	77501–63–4	✔							
Linuron	330–55–2			✔					
Maneb (ETU precursor)	12427–38–2			✔					
MCPA	94–74–6		✔				✔		
MCPP	93–65–2						✔		
Metalaxyl	57837–19–1	✔							
Methazole	20354–26–1								✔
Methomyl	16752–77–5	✔		✔			✔		
Metsulfuron methyl	74223–64–6						✔		✔
Molinate	2212–67–1			✔					
MSMA	2163–80–6								✔
Napropamide	15299–99–7						✔		
Nicosulfuron									✔
Norflurazon	27314–13–2						✔		✔

TABLE 3.—INITIAL LIST OF CHEMICAL CONTAMINANTS CONSIDERED DURING DEVELOPMENT OF THE DRAFT CCL—Continued

Contaminant	CAS No.	Contaminant lists considered							
		1991 DWPL (1)	Health advisories (2)	IRIS (3)	PWS (4)	CERCLA (5)	Stakeholder summary list (6)	TRI list (7)	OPP ranking (8)
Paraquat	4685–14–7		✔	✔					✔
Pendimethalin	40487–42–1			✔					✔
Primisulfuron methyl									✔
Prometryn	7287–19–6								✔
Pronamide	23950–58–5		✔						
Propachlor	1918–16–7		✔				✔		✔
Propargite	2312–35–8			✔					
Propazine	139–40–2		✔	✔					✔
Propham	122–42–9		✔						
Propiconazole	60207–90–1						✔		
Propoxur (Baygon)	114–26–1		✔						
Prosulfuron									✔
Pyrazon	1698–60–8						✔		
Pyrithiobac-Na									✔
Rimsulfuron									✔
Sethoxydim	74051–80–2								✔
Sulfentrazone									✔
Sulfometuron methyl	74222–97–2								✔
Tebufenozide									✔
Terbufos	13071–79–9		✔	✔			✔		
Terbufos sulfone									✔
Thiazopyr									✔
Thifensulfuron methyl	79277–27–3								✔
Thiodicarb	59669–26–0	✔							
Triallate	2303–17–5			✔					
Triasulfuron	82097–50–5						✔		
Triberuron methyl									✔
Vernolate	1929–77–7								✔
Organics:									
1,1,1,2-tetra-chloroethane	630–20–6	✔	✔						
1,1,1-trichloropropane			✔						
1,1,2,2-tetra-chloroethane	79–34–5	✔	✔						
1,1-dichloro-ethane	75–34–3	✔							
1,1-dichloro-propene	563–58–6	✔	✔						
1,2,3-trichloro-propane	96–18–4	✔	✔						
1,2,4-trimethylbenzene	95–63–6							✔	
1,2-diphenyl-hydrazine	122–66–7	✔							
1,3,5-trichlorobenzene	108–70–3		✔						
1,3-butadiene	106–99–0							✔	
1,3-dichloro-benzene	541–73–1	✔							
1,3-dichloropropane	142–28–9	✔	✔						
1,3-dichloropetan-3-OL					✔				
1,3-dinitrobenzene	99–65–0		✔						
1,4-dioxane	123–91–1		✔	✔			✔	✔	
1,4-dithiane	505–29–3		✔						
1-methyl -2-Pyrrolidinone	872–50–4				✔				
2,2-dichloro-propane	594–20–7	✔	✔						
2,4,6-trichlorophenol	88–06–2		✔						
2,4-dichlorophenol	120–83–2		✔						
2,4-dinitrophenol	51–28–5	✔							
2,4-dinitrotoluene	121–14–2	✔	✔						
2,6-dinitrotoluene	606–20–2	✔	✔						
2,6-di-tert-butyl-p-benzoquinone (DTBB), (2,6-bis(1,1-dimethylethyl)2,5-cyclohexadiene-1,4-dione)	719–22–2				✔				
2-methanoxy ethanol	109–86–4							✔	
3-chloro-1-propene	107–05–1				✔				
4,4'-isopropylidenediphenol (bisphenol A)	80–05–7							✔	
4-methyl-Phenol (p-cresol)	106–44–5				✔				
Acetaldehyde	75–07–0							✔	
Acetamide	60–35–5				✔				
Acetonitrile	75–05–8							✔	
Acrylic acid	79–10–7							✔	
Acrylonitrile	107–13–1	✔	✔					✔	

TABLE 3.—INITIAL LIST OF CHEMICAL CONTAMINANTS CONSIDERED DURING DEVELOPMENT OF THE DRAFT CCL—Continued

Contaminant	CAS No.	Contaminant lists considered							
		1991 DWPL (1)	Health advisories (2)	IRIS (3)	PWS (4)	CERCLA (5)	Stakeholder summary list (6)	TRI list (7)	OPP ranking (8)
Aniline	62–53–3			✔					
Azulene	275–51–4				✔				
Benzaldehyde	100–52–7				✔				
Benzaldehyde, 3-hydroxy-	100–83–4				✔				
Benzamide, N-acetyl-	1575–95–7				✔				
Benzamide,N-ethyl-	614–17–5				✔				
Benzeneacetamide, N,N-dimethyl-a-phenyl-					✔				
Benzeneacetonitrile	140–29–4				✔				
Benzofluoranthene	56832–73–6					✔			
Bis-2-chloroisopropyl ether	39638–32–9		✔						
Bornyl acetate	76–49–3				✔				
Bromobenzene	108–86–1	✔	✔						
Catechol	120–80–9							✔	
Chlorodifluoromethane HCFC–22	75–45–6							✔	
Chlorophenol 2-	95–57–8		✔						
Creosote	8001–58–9					✔			
Cresol mixed isomers	1319–77–3							✔	
Cymene p-(p-isopropyltolunene)	99–87–6		✔						
Decabromodiphenyl oxide	1163–19–5							✔	
Dibenzo(a,h)anthracene	53–70–3					✔			
Dichloro CFC-114	76–14–2							✔	
Dichloro-difluoromethane	75–71–8	✔	✔				✔	✔	
DichloroHCFC141-b	171–00–6							✔	
Diethanolamine	111–42–2							✔	
Diisoamylene					✔				
Diisopropyl methylphosphonate	1445–75–6		✔						
Dimethyl methylphosphonate	756–79–6		✔						
Diphenylamine	122–39–4		✔						
Ethanone, 1-[4-(hydroxy-1-methylethyl) phenyl]-									
Ethyl ether	60–29–7			✔					
Ethylene	74–85–1							✔	
Fog oil			✔						
Formaldehyde	50–00–0		✔	✔				✔	
Formic acid	64–18–6							✔	
Freon 113	76–13–1							✔	
Glufosinate ammonium	77182–82–2						✔		
Glycol ethers	111–46–6							✔	
HCFC-11142-b								✔	
Hexachloro-butadiene	87–68–3	✔	✔			✔			
Hexachloroethane	67–72–1	✔	✔						
Hexanoic acid	142–62–1				✔				
Hexazinone	51235–04–2		✔						
HMX (cyclotetramethylene tetranitramine)	2691–41–0		✔						
Hydroperoxide, 1,1-dimethylethy	175–91–2				✔				
Iron,tricarbonyl-[n-(phenyl-2-pyridinylmethylene)-benzenamide-N,N					✔				
Isophorone	78–59–1	✔	✔						
Isopropylbenzene (cumene)	98–82–8		✔	✔				✔	
Isopropyl methyl-phosphonic acid	1832–54–8		✔						
Maleic hydrazide	123–33–1		✔						
Merphos oxide	78–48–8		✔						
Methane, tert-butoxyisopropoxy-					✔				
Methanol	67–56–1			✔				✔	
Methyl bromide	74–83–9							✔	
Methyl isobutyl ketone (MIBK)	108–10–1	✔					✔	✔	
Methyl methacrylate	80–62–6							✔	
Methylene bis phenylisocyanate	101–68–8							✔	

TABLE 3.—INITIAL LIST OF CHEMICAL CONTAMINANTS CONSIDERED DURING DEVELOPMENT OF THE DRAFT CCL—Continued

Contaminant	CAS No.	Contaminant lists considered							
		1991 DWPL (1)	Health advisories (2)	IRIS (3)	PWS (4)	CERCLA (5)	Stakeholder summary list (6)	TRI list (7)	OPP ranking (8)
Other fuel oxygenates (TAME, DIPE, ETBE)	na						✔		
n-Butanol	71–36–3			✔				✔	
n-Hexane	110–54–3		✔						
Naphthalene	91–20–3	✔	✔				✔	✔	
nitro-Cyclopentane					✔				
Nitrocellulose	9004–70–0		✔						
Nitroglycerine	55–63–0							✔	
Nitroquanidine			✔						
o-Chlorotoluene	95–49–8	✔	✔						
Octatriene, 3,7-dimethyl-1,3,6-	13877–91–3				✔				
Organotins (tributyl, methyl tin, etc.)							✔		
P-Chlorotoluene	106–43–4	✔	✔						
Pentachloroethane	76–01–7		✔						
Propylbenzene n-	103–65–1		✔						
Propylene glycol	57–55–6						✔		
Propylene oxide	75–56–9							✔	
Rhodamine WT							✔		
RDX (cyclo trimethylene trinitramine)	121–82–4		✔						
Terbuthylazine	5915–41–3				✔				
Tetrahydrofuran	109–99–9	✔					✔		
Tetranitromethane (TNM)	509–14–8		✔						
Trichlorofluoromethane	75–69–4		✔						
Triethylbenzene	25340–18–5		✔						
Trinitrotoluene (TNT)	118–96–7		✔						
Vinyl acetate	108–05–4							✔	

1. 1991 Drinking water Priority List, but does not include disinfection by-products or crytosporidium for which regulations are being under the M/DBP rules.
2. Health Advisories developed under EPA's Health Advisory Program. Does not include contaminants regulated under the SDWA.
3. Contaminants from IRIS based on a risked-based screen developed by EPA.
4. Contaminants identified in public water systems samples as non-targets.
5. First 50 contaminants of the 1995 ATSDR Ranked CERCLA priority chemicals list.
6. Stakeholder Summary List consists of specific contaminants proposed as candidates by participants of EPA's December 2–3, 1997 Stakeholder Meeting on the Contaminant Identification Method.
7. The TRI List was derived from chemicals with significant health effects as found in IRIS.
8. The OPP Ranking is a ranking of pesticides from highest to lowest potential to leach to ground water.
9. Stakeholders requested that the Agency address tirazines as a class of contaminants including their degradates, as opposed to addressing them as individual contaminants.

a. 1991 Drinking Water Priority List. The SDWA, as amended in 1986, required EPA to publish a triennial list of priority contaminants, the DWPL, which may require regulation. The first list containing 53 contaminants/contaminant group was published on January 2, 1988 (53 FR 1892). Since none of the contaminants had been selected for regulation, EPA revised and updated the 1988 list three years later. The revised and updated list, published on January 14, 1991 (56 FR 1470), contained 50 substances carried over from the 1988 list and 27 new substances, bringing the total number of contaminants/contaminant groups to 77, including one microorganism.

In consideration of the statutory requirements and the time frame for rulemaking in the SDWA at the time, EPA used the following criteria to select contaminants for the DWPL: (1) occurrence or the potential occurrence of the substance in public water systems; (2) documented or suspected adverse health effects; and (3) the availability of sufficient information on the substance so that a regulation could be developed within the statutory time frame. The contaminants were selected from the following groups: disinfectants and their byproducts, the first group of 100 contaminants on the 1987 CERCLA priority list of hazardous substances (52 FR 12866), design analytes of the EPA National Pesticide Survey conducted between 1987–1990, pesticides with high potential for leaching in groundwater, substances recommended by the States and EPA regions, unregulated contaminants monitored under Section 1445 of the SDWA, and certain substances reported frequently and at high concentrations in drinking water. The selection of contaminants was made with the assistance of the DWPL workgroup which consisted of representatives from various programs within the Agency, the National Toxicology Program, the U.S. Geological Survey, and the Agency for Toxic Substances and Disease Registry.

For development of the draft CCL, the Agency selected contaminants from the 1991 DWPL that were not specifically addressed by other regulations under development. Thus, all contaminants specifically addressed by the disinfectants and disinfection byproducts regulation were eliminated from consideration.

b. Health advisories. The Health Advisories (HAs) are prepared for contaminants that have the potential to cause adverse human health effects and

which are known or anticipated to occur in drinking water, but for which no national regulations currently exist. Each HA contains information on the nature of the adverse health effects of the contaminant and the concentrations that would not be anticipated to cause an adverse effect following various periods of exposure. HAs also summarize available data on occurrence, pharmacokinetics, environmental fate, health effects, available analytical methods, and treatment techniques for the contaminant. HA concentration levels include a margin of safety to protect sensitive members of the population (e.g., children, the elderly, pregnant women).

The Office of Water Health Advisory Program was initiated to provide information and guidance to individuals and agencies concerned with potential risk from drinking water contaminants. HAs are used only for guidance and are not legally enforceable, and are subject to change as new information becomes available. For purposes of developing the draft CCL, all contaminants with HAs, or HAs under development, were considered.

c. Integrated Risk Information System. The Integrated Risk Information System (IRIS) is an EPA on-line database containing health risk and EPA regulatory information. IRIS lists chemicals of interest or concern for which the Agency has reached consensus regarding adverse health effects. When available, a reference dose (RfD) for non-cancer health effect resulting from oral exposure is reported with information about how the RfD was derived and any uncertainty regarding the source studies. An RfD is an estimate of a daily exposure to the human population that is likely to be without appreciable risk of adverse effect over a lifetime of exposure. For carcinogens, a carcinogenic assessment, or cancer potency factor, is reported for both oral and inhalation exposure. The cancer potency factor is the estimated risk to the human population of cancer effects over a lifetime of exposure.

In 1992, in anticipation of the next DWPL, the Agency developed a list of chemicals based on a risk-based screen of chemicals in IRIS. There were approximately 600 chemicals in the IRIS database in 1992, and 312 were selected for further screening. The 312 were chosen because they had defined toxicity via the oral route of exposure and did not have NPDWRs. The 312 chemicals were screened using the following categories: (1) using Storage and Retrieval (STORET) data, chemicals were identified with concentration in water that exceeded the drinking water equivalent level (DWEL) which was derived from the reference dose or cancer potency; (2) chemicals were identified that were produced in quantities exceeding one billion pounds per year; (3) pesticides were identified with use exceeding 1000 tons per year; and (4) chemicals were identified that were reported in the Toxic Release Inventory (TRI) database as discharged to surface water in excess of 100 tons per year. Sixteen chemicals met the STORET criteria; nine, the production criteria; 31, the pesticides criteria; and 6, the TRI criteria. A total of 48 individual chemicals were identified, and some were identified by more than one screen. All 48 contaminants were included on the initial list for consideration.

d. Non-Target Analytes in Public Water Supply Samples. In anticipation of the 1994 DWPL, the Agency consulted with analytical laboratories that routinely analyze samples for public water systems to determine what contaminants were occurring that were not currently regulated. A list of contaminants tentatively identified in 1991 from drinking water samples collected for compliance monitoring was developed. These contaminants, also referred to as non-targets analytes, are compounds identified by the spikes found on the chromatograph. The concentrations for these compounds were not measured. These non-target analytes represent the monitoring experience of several water systems with operations in various states. The contaminants included on the initial list for consideration are a subset of 23 contaminants chosen from the larger list of non-targets analytes. The 23 contaminants were chosen because they were considered to be related to possible anthropogenic sources.

e. CERCLA Priority List. In developing the CCL, the SDWA requires EPA to consider substances referred to in section 101(14) of the CERCLA. CERCLA requires the Agency for Toxic Substances and Disease Registry (ATSDR) to prepare a list in the order of priority of hazardous substances which are most commonly found at facilities on the CERCLA National Priority List (NPL).

In 1995, ATSDR developed a list of 275 hazardous substances ranked by the order of priority. (ATSDR, 1996) To develop this list, ATSDR considered 750 of 2800 substances present at NPL sites and ranked them based on the following three criteria, which were combined to result in a total score. These criteria were: (1) Frequency of occurrence at NPL sites, (2) toxicity, and (3) potential for human exposure. The number of NPL sites at which a substance was identified in any medium was used to indicate the frequency of occurrence. EPA's Reportable Quantity (RQ) was used to assess the toxicity of candidate substance. If a RQ was not available, the RQ methodology was applied to candidate substances to establish a Toxicity/Environmental Score. The human exposure component was based on two parts: the concentration of the substance in the environmental media and the exposure status of population. EPA included the top 50 substances from the 1995 CERCLA prioritized list of 275 substances for consideration for the draft CCL.

f. Stakeholder responses. In December 1996, the EPA convened its first stakeholder meeting on the contaminant identification process. At that meeting, EPA requested input on what contaminants to include on its first CCL. At the December meeting, and following, participants have provided input to the Agency on contaminants for inclusion on, or exclusion from, the CCL. Some stakeholders provided information on health effects or occurrence, or both, while others listed contaminants. All contaminants suggested by stakeholders were included for initial consideration except those which already had NPDWRs, or which were included under other regulatory activity mentioned in section VIII of this notice.

g. Toxic Release Inventory. Another source of available information which could serve as a predictor of anticipated occurrence in drinking water, is the TRI. This data base, established under the Emergency Planning and Community Right-to-Know Act of 1986, contains information from manufacturing facilities in the United States regarding transfers and releases of toxic and hazardous materials to air, ground and water. The most recent report analyzed data gathered for calendar year 1994 from 22 chemical categories and included 343 separate chemicals from 23,000 facilities which met certain thresholds requiring submission of data. (U.S. EPA, 1997c).

In order to assess the potential for a chemical to be a contaminant in public water systems, EPA conducted an analysis of the release and emissions data. Each of the four categories of emissions or discharges were assigned a threshold value above which the contaminant was deemed to fit within the criteria of the SDWA, as a contaminant anticipated to occur in public water systems. The threshold did not attempt to attribute differences in reactivity, solubility, mobility or

toxicity of the pollutants at this stage of the contaminant evaluation process, but involved simply determining a gross anticipation factor. If a contaminant was released via an on-site discharge to the environment, EPA judged that it was reasonable to anticipate it as a contaminant in public water systems to varying degrees, depending upon the media receiving the discharge.

The overall analysis of the above TRI criteria resulted in 58 chemicals from the various discharges meeting the criteria. Where a release was close to the threshold, it was included in the tally. Several chemicals met the criteria but were excluded because there is an existing standard (e.g., hydrofluoric acid—fluoride is regulated) or a standard under consideration (sulfuric acid—there is regulatory activity currently underway regarding sulfate). Other contaminants such as ammonia, hydrochloric acid, or methanol were not believed to represent a significant threat to drinking water due to limited persistence, leaving 51 contaminants. Of the 51 contaminants, 49 met the criteria for air release, 21 from stack emissions, 38 for fugitive emissions, 11 via underground injection, 13 from land release, and 30 for surface water releases. All 51 were included for initial consideration in Table 3.

h. Pesticides identified by Office of Pesticide Programs. In developing the CCL, the SDWA requires EPA the consider substances referred to in the FIFRA. During the development of the draft CCL, the Agency's Office of Ground Water and Drinking Water sought assistance from the Office of Pesticide Programs (OPP) in determining what pesticides should be priorities for the drinking water program. In response to the request, OPP provided recommendations for a number of pesticides. (U.S. EPA, 1997b) The list of pesticides, based on physical-chemical properties, occurrence and extent of use, was ranked using the Ground Water (GW) Risk score, a calculated potential to leach to ground water. Pesticides with a GW Risk of 2.0 or greater were included for initial consideration in developing the CCL (see Table 3).

However, later during the data evaluation and screening phase of the draft CCL development, the decision was made to defer some of the pesticides identified by the OPP GW Risk of 2.0 or greater. The pesticides in Table 4 include those where the GW Risk value of 2.0 or greater was the only factor for inclusion on the CCL. The decision was made, that for these cases, inclusion on the CCL would be deferred pending further evaluation of the potential of these pesticides to occur at levels of health concern. Many new pesticides for which no other data exists are included in Table 4.

Table 4. Pesticides Deferred

Asulam
bensulfuron methyl
bentazon
bromacil
Cadre
chlorimuron ethyl
chlorsulfuron
Diazinon—oxypyrimidine
Dicamba
Ethylenethiourea (ETU)
Fenamiphos
Fluometuron
Halofenozide
Halosulfuron
Hexazinone
Imazamethabenz
Imazapyr
Imazaquin
Imazethapyr
MCPA (Methoxone)
Methsulfuron methyl
Nicosulfuron
Norflurazon
Primisulfuron methyl
Prometryn
Propazine
Prosulfuron
Pyrithiobac-Na
Rimsulfuron
Sulfentrazone
Sulfometuron methyl
Tebufenozide
Terbufos sulfone
Thiazopyr
Triasulfuron

The Agency is working to develop a tool to estimate concentrations in ground and surface waters based on physical-chemical properties and pesticide use volumes, and then compare the estimated concentrations with health advisory levels or calculated health levels based on reference doses or cancer potency. The model is expected to be completed and available for use at the end of 1997, and at that time the Agency will reevaluate the inclusion for the additional pesticides on Table 4 on the CCL.

On August 4, 1997, EPA announced its schedule for reassessing tolerances for pesticide residues on raw and processed foods (62 FR 42020). Publication of this schedule was pursuant to the requirements, as established by the Food Quality Protection Act of 1996 (FQPA). Under this new law, EPA is required to reassess all existing tolerances and exemptions from tolerances for both active and inert ingredients. EPA is directed to give priority review to pesticides that appear to present risk concerns based on current data. Many of the pesticides included in today's notice are included among the first group of reassessments.

In reassessing tolerances, EPA must consider the aggregate exposure to the pesticide, including drinking water; cumulative effects from other pesticides with a common mode of toxicity; whether there is an increased susceptibility from exposure to the pesticide to infants and children; and whether the pesticide produces an effect in humans similar to an effect produced by a naturally occurring estrogen or other endocrine effects.

i. Safe Drinking Water Hotline. The Hotline provides information about EPA's drinking water regulations and other related drinking water and ground water topics to the public, the regulated community, and State and local officials. The Hotline assists callers with questions on the regulations and programs developed in response to the Safe Drinking Water Act, and inquiries about the levels and health effects of specific contaminants found in or suspected to be in drinking water from public water systems and private wells, and handles requests for drinking water publications (fact sheets, pamphlets, health advisories, etc.). The Safe Drinking Water Hotline receives hundreds of calls each week, and a large percentage of the calls come from private citizens, consultants, educators, researchers, and health care professionals from across the country. The Hotline provided a list of contaminants that were not currently regulated or proposed for regulation for which callers had expressed concern or interest (see Table 5).

Table 5. Contaminants Identified by the Safe Drinking Water Hotline

Calcium
Phosphates
1,1,1-dichloroethane
Gasoline
Perchlorate
Total Petroleum Hydrocarbons

The Hotline did not ascertain if the calls were due to a general question or inquiry, or if they were related to a contamination incident. At the April 3–4, 1997 Working Group meeting, the decision was made not to include the Hotline list for initial consideration, and that a list from the Hotline would only be useful if it captured concerns or reports of contamination.

The Agency will attempt to capture Hotline inquiries concerning contamination incidents for future CCL development. Perchlorate, a contaminant discussed later in this notice, probably should have been included for initial consideration. The fact that perchlorate was on the Hotline list, and no other, may indicate that such a list from the Hotline could be useful if the nature of the inquiry can be recorded.

j. Endocrine disruptors. A list of contaminants was developed which included those suspected of having adverse effects on endocrine function (see Table 6). For several years, the Agency has been concerned that chemicals may be disrupting the endocrine (i.e., hormonal) systems of humans and wildlife. It has also been hypothesized that endocrine disruption might result in cancer, harm to male and female reproductive systems, thyroid damage, or other adverse consequences. In February 1997, EPA issued an assessment and analysis of this concern (U.S. EPA, 1997a). The report represents an interim assessment pending a more extensive review expected to be issued by the National Academy of Sciences (NAS) later this year.

Table 6. Contaminants Identified as Suspected of Endocrine Disruption

Amitrole
Benomyl
Dicofol (Kelthane)
Esfenvalerate
Ethylparathion
Fenvalerate
Kepone
Mancozeb
Metiram
Mirex
Nitrofen
Oxychlordane
Parathion
Permethrin
Synthetic pyrethroids
Transnonachlor
Tributyltin oxide
Vinclozolin
Zineb
Ziram
Octachlorostyrene
PBBs
Penta- to nonyl-phenols

In brief, the report found that while effects have been found in laboratory animal studies, a causal relationship between exposure to a specific environmental agent and an adverse health-effect in humans operating via endocrine disruption has not been established, with a few exceptions. The exceptions include incidents of chemical exposure in the workplace and exposure to the drug DES. Further research is needed before such effects can be demonstrated.

Under the SDWA, as amended, the Agency is also required to establish a program to screen endocrine disrupting contaminants. Additional authority to assess endocrine disruptors is also provided through the recently enacted FQPA. EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS) has the Agency lead on endocrine disruptor screening and testing issues. OPPTS is actively engaged in research and regulatory initiatives to respond to the growing scientific and public concern over endocrine disruptors.

The Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC) has been established to provide advice and counsel to the agency in implementing a screening and testing strategy required under the FQPA and SDWA. EDSTAC is composed of a balanced representation from industry, government, environmental and public health groups, labor, academia, and other interested stakeholders. During its deliberations, the Committee will consider human health, ecological, estrogenic, androgenic, anti-estrogenic, anti-androgenic, and thyroid effects of pesticides, industrial chemicals, and important mixtures. EDSTAC will complete its recommendations for a screening and testing strategy by March, 1998. The recommendations will be peer reviewed jointly by the SAB and the FIFRA Scientific Advisory Panel.

EPA is also involved in concurrent effort to coordinate activities with the European Union, the Organization of Economic and Community Development, and the United Nations Environmental Program concerning global research programs, and international harmonization of endocrine disruptor screening and testing methods for chemicals and pesticides.

As a result, pending completion of the EDSTAC's recommendations and the additional review of endocrine disruptors by the NAS, EPA has not included contaminants for initial consideration for the draft CCL based solely on the possibility of endocrine disruption (although several contaminants implicated as endocrine disruptors were considered for other reasons). The Agency will continue to follow this issue closely and reconsider this category of potential contaminants in the development of future CCLs.

2. Development and Application of the Criteria

Criteria were developed by the NDWAC Working Group for use in screening and evaluating chemical contaminants for the draft CCL, with the exception of aldicarbs, nickel, and sulfate which are discussed in section III.C.3. The general premises of the criteria were: (1) The contaminants included for initial consideration be those on EPA's initial list, without NPDWRs, and (2) that occurrence, or anticipated occurrence, of the contaminant be evaluated first, before evaluating its health effects information. The criteria, presented below, were used to screen and evaluate chemical contaminants for the purpose of developing today's draft CCL. Data used to evaluate and screen contaminants were obtained from STORET, the Hazardous Substances Database (HSDB), IRIS, published literature, and various EPA reports and documents. The data used in the evaluation and screening are included in the docket for today's notice.

These criteria, as well as the conceptual approach to the Contaminant Identification Method (CIM) presented in the December 2–3, 1996 Stakeholders meeting, will serve as the basis for developing a more robust contaminant identification method for future CCL development. The search results on each element of the criteria for contaminants considered during the development of the CCL can be found by using the Occurrence Table, the Health Table, and the Comments Table included in the docket for today's notice.

a. Criteria for occurrence. For the occurrence portion of the criteria, an affirmative response to any of the following elements would result in moving to the health portion of the criteria for further consideration. If all of the occurrence elements had a negative response, the contaminant was eliminated from further consideration. The two main elements to the occurrence portion of the criteria were as follows: (1) Was the contaminant looked for and found in drinking water, or in a major drinking water source, or in ambient water at levels that would trigger concern about human health? (2) if the contaminant was not looked for, is it likely to be found in water based on surrogates for occurrence?

To judge whether a contaminant was looked for and found in drinking water, according to the criteria, it would need to be included in a major survey which was defined as one which included a population of 100,000 or more, 2 or more states, or 10 or more small public water systems, or a data set such as EPA's Unregulated Contaminants Database. To judge whether a contaminant was looked for and found in a major drinking water source, or in ambient water, any source of occurrence data could be used. A source of drinking water was considered to be major if it supplied a population of 100,000 or

more, or 2 or more states. Levels that would trigger concern about human health were defined as concentrations in samples within an order of magnitude of the level that is likely to cause health effects, or at least ½ of samples at 50% of level that is likely to cause health effects. Contaminants were considered to have met the criteria if the data available indicated occurrence at a population of 100,000 or more; or in 2 or more states; or in 10 or more small public water systems at levels that would trigger concern about human health.

If the contaminant was not looked for using the data available, it was evaluated to determine if it was likely to be found in water based on surrogates for occurrence. The elements considered as surrogates for occurrence included: TRI releases, or production volumes, coupled with physical-chemical properties, or the OPP GW Risk value. In order for a contaminant to meet this criterion as likely to be found in water using TRI, the release to surface water was in excess of 400,000 pounds per year, and the physical-chemical properties indicated persistence & mobility of the contaminant. The quantity of 400,000 pound per year was based on the top 15 TRI chemicals with the largest discharges to surface water as reported in 1995. In order for a contaminant to meet this criterion as likely to be found in water using production, the volume was in excess of 10 billion pounds per year, and physical-chemical properties indicated persistence and mobility.

For a contaminant to meet this criteria as likely to be found in water using OPP GW Risk, the value was 2.0 or greater. However, late during the data evaluation and screening phase of the CCL development, the decision was made to defer contaminants identified under this element until a more in-depth analysis could be performed that would include risk to both surface and ground water, and a component to address health.

b. Criteria for health. For the health portion of the criteria, an affirmative response to any of the following elements resulted in including the contaminant on the first CCL, if it also met the occurrence criteria. A negative response to every question resulted in the contaminant being eliminated from consideration for the CCL. The health portion of the criteria had one major component; was there evidence, or suspicion, that the contaminant causes adverse human health effects? This portion of the criteria was met if a contaminant had one or more of the following elements: (1) Listed by California Proposition 65, (2) an EPA Health Advisory, (3) a likely (based on animal data) or known (based on human data) carcinogen by EPA or International Agency for Research on Cancer (IARC), (4) more than one human epidemiological study (indicating adverse effects), (5) an oral value in IRIS, (6) regulated in drinking water by another industrial country, (7) a member of a chemical family of known toxicity, or (8) structural activity relationship indicating toxicity.

As the contaminants were being screened and evaluated, the factors for health which proved to be the most useful were those that provided a health level of concern as a concentration that could be compared to the levels of occurrence found in water, such as an EPA Health Advisory, an oral value in IRIS, or a regulatory level from another industrial country. Being listed by California Proposition 65, or a member of a chemical family of known toxicity had limited utility in determining which contaminants to include on the CCL.

3. Additional Specific Contaminants Included

Aldicarbs, nickel, and sulfate are also on the draft CCL. The SDWA, as amended, did not specifically mention aldicarbs and nickel, but since the Agency has existing obligations for completing regulatory action on these contaminants pursuant to the SDWA, as amended 1986, it was thought to be prudent to include them on the CCL to make clear the intention to address these responsibilities. Sulfate is included on the CCL, since the Agency must make a determination to regulate or not by August 2001, along with at least four more contaminants. The following sections provide the rationale for the inclusion of aldicarbs, nickel, and sulfate on the draft CCL.

a. Aldicarb, aldicarb sulfoxide, and aldicarb sulfone. EPA promulgated a final NPDWR for aldicarb, aldicarb sulfoxide and aldicarb sulfone on July 1, 1991 (56 FR 30266). EPA set the maximum contaminant level goal (MCLG) at 0.001 mg/l and maximum contaminant levels (MCLs) of 0.003 mg/l for aldicarb, 0.004 mg/l for aldicarb sulfoxide, and 0.002 mg/l for aldicarb sulfone. In response to an administrative petition from the manufacturer Rhone-Poulenc, the Agency issued an administrative stay of the effective date of the MCLs, i.e., the MCLs never became effective, but monitoring is required. Rhone-Poulenc also filed a petition for judicial review, and the court stayed its proceedings while EPA proceeded administratively, but required quarterly reports. On agreement of the parties, the judicial proceedings have been dismissed. An updated health advisory was issued in 1995 incorporating data from a human study conducted in 1992 by Rhone Poulenc. The aldicarbs were not subject to the criteria used to identify other chemical contaminants and are being included on the CCL to signify the Agency's intention to complete the regulatory activity for these contaminants. At this point, however, the time frame of completing action relative to aldicarbs has not been determined.

b. Nickel. NPDWRs for nickel including an MCLG and an MCL of 0.1 mg/l were proposed on July 25, 1990 (55 FR 30370) and finalized on July 17, 1992 (57 FR 31776). In September, 1992, the Nickel Development Institute and other industry parties filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging the MCLG and MCL for nickel. The petitioners raised objections over EPA's methodology for determining the MCLG for nickel. Specifically, they raised questions concerning the derivation of the relative source contribution factor and the need for a 3-fold uncertainty factor that EPA applied due to the lack of adequate data on the effects of nickel ingestion on reproductive systems. Because the MCL for nickel was based directly on the MCLG, the petitioners also challenged the nickel MCL.

EPA and the petitioners entered into discussions in an attempt to settle this litigation but could not agree on the merits of the petitioners' challenges. Nevertheless, EPA agreed that it did not fully address in the public record the petitioner's comments on the proposed methodology for deriving the MCLG for nickel, and agreed to take a remand of the MCLG and MCL for nickel. Accordingly, on February 9, 1995, EPA and the nickel industry petitioners filed a joint motion for a voluntary remand of the nickel MCL and MCLG. By orders of February 23, 1995 and March 6, 1995, the court granted this motion and vacated and remanded the nickel MCLG and MCL (and dismissed the lawsuit). No other aspects of the NPDWRs for nickel were vacated, including monitoring requirements and identification of best available technologies for nickel. A notice of this action was published in June 1995 (60 FR 33929).

To provide guidance for the period prior to new regulations for nickel, the EPA updated and issued a health advisory for nickel. Nickel was not subject to the criteria used to identify other chemical contaminants and is being included on the CCL to signify the Agency's intention to complete regulatory action for this contaminant. The time frame of completing action on nickel has not yet been determined.

c. Sulfate. As noted above, by August, 2001 the Agency must decide whether or not to regulate sulfate. The date for making a determination about sulfate coincides with the date by when determinations must be made for 5 or more contaminants from the first CCL. Sulfate was not subject to the criteria used to identify other contaminants; however, it has been included, given these special circumstances.

IV. Contaminants on the CCL Which Are of Specific Interest

A number of contaminants included on the draft CCL may be of particular interest. The following sections attempt to provide additional information for a few of the contaminants that seem to be of most interest. Data obtained and evaluated for developing the draft CCL and referred to in the following discussion can be found in the docket for this notice.

A. Aluminum

There is intense interest from some for development of drinking water regulations for aluminum. Aluminum currently has a secondary MCL of 50 to 200 "µg/l based on organoleptic properties. There have been a few epidemiological studies in Canada that emphasize the need to determine if regulations for this contaminant should be developed based on health effects. At present, based on the work in Canada, it appears that the most sensitive population is the elderly. To determine if aluminum is of health concern to the elderly and to other possible sensitive groups like children, the EPA collaborated with Health Canada on a workshop on aluminum held September 3 and 4, 1997. This workshop was planned to help define the need for chronic animal studies and the use of appropriate animal models to better characterize the risk of this contaminant in drinking water. The Agency will continue to work to determine if aluminum is of health concern, and the appropriate action to address this concern.

B. MTBE

MTBE (methyl-t-butyl ether) is a fuel additive used in many locations throughout the United States to reduce carbon monoxide and ozone forming precursors associated with the combustion of fossil fuels. There is evidence of contamination of drinking water; however the extent of contamination of drinking water supplies on a national scale is unclear at this time (IAOF, 1997). The Agency is in the process of revising the HA for MTBE that will incorporate updated health effects information, and has completed a research strategy to guide efforts at improving the understanding of the occurrence and health effects of MTBE (U.S. EPA, 1997e). As more PWSs across the country voluntarily monitor for MTBE, and if it is found at levels of concern nationally, the Agency does have the capacity to make a determination to develop regulations to monitor and/or control MTBE prior to the 2001, SDWA deadline for selecting at least 5 contaminants for determination.

C. Organotins

Organotins represent a class of contaminants which include, methyl tin, tributyltin, and others. The organotins of concern are those that result from use in heat stabilizing PVC piping for the in-home distribution of water. There are a few cases of tributyltin contamination of drinking water in the U.S. (Sadiki, 1996). It has been reported that the Canadian government is concerned about organotin contamination and has planned a national survey of drinking water in Canada to assess the danger to human health.

The concentrations of concern for human health are not known at this time, however tributly tin and other organotins are known to be toxic to aquatic life. On August 7, 1997, the Agency published a notice of ambient water quality criteria document for tributyltin (TBT) and a request for comments (62 FR 42554). Ambient water quality criteria are for the protection of aquatic organisms and guidance to States and others, and may form the basis for enforceable State water quality standards developed pursuant to Section 304(a)(1) of the Clean Water Act.

D. Rhodamine WT

Rhodamine WT is a fluorescent dye widely used as a tracer to measure ground water flow. Rhodamine WT has been certified by the National Sanitation Foundation for use in tracing water under the conditions that it not exceed concentrations in drinking water of 0.1 µg/l and that exposure be infrequent. Rhodamine WT was detected in ground water above the 0.1 µg/l value; however the conditions under which the detections occurred are unclear. Rhodamine WT appears to be a contaminant that the Agency may need to observe more closely in terms of its health effects, and possible occurrence in drinking water.

E. Sodium

At present, the Agency has no NPDWR or HA value for sodium. All that is currently available is a guidance DWEL of 20 mg/l. DWELs are unenforceable guidance levels describing a lifetime exposure concentration of a contaminant that is considered protective of adverse non-cancer health effects, and it also assumes that all of the exposure to a contaminant is from a drinking water source. In addition, EPA has a non-enforceable criterion for dissolved solids and salinity for ambient waters of 250 mg/l.

The DWEL is based on a 1965 American Heart Association recommendation of a 20 mg/l sodium level to protect genetically susceptible people on low sodium diets, assuming a total dietary intake of 500 mg/day. Naturally occurring sodium in food with no salt added averages about 440 mg/day. The additional 60 mg that would increase the intake to the typical level for a restricted diet of 500 mg/day must take into account all other non-food sources, such as drugs, water, etc. A concentration in drinking water of up to 20 mg/l of sodium is compatible with this diet.

Since a significant percentage of the U.S. population is attempting to reduce their sodium intake, the Agency believes that sodium levels in drinking water could be an important issue. This is particularly true for locations where many of the residents using the water may be susceptible to adverse health effects from exposure to this contaminant. The Agency believes that all consumers are able to use water for drinking if the sodium concentration is maintained at or below 20 mg/l, but nearly half of the nation's water supplies have natural or added sodium above these levels.

The inclusion of sodium on the CCL is controversial, but it is expected that guidance will be developed for those who need it, and that including it on the CCL will be a mechanism to develop an Agency position on the issue of sodium in drinking water.

F. Zinc

Zinc is used as a dietary supplement, main ingredient in lozenges, and corrosion inhibitor. There is intense interest over including zinc on the CCL, but there are also indications of health effects associated with increased levels of zinc consumption.

The Agency is aware that zinc is an essential element for which the Food

and Nutrition Board of the National Research Council has established a Recommended Dietary Allowance (RDA). Zinc can also cause adverse health effects at high doses and the zinc RfD (0.3 mg/kg/day) is higher than the RDA for adult men and women. While deriving RfDs, EPA must also keep in mind the fact that excess exposure to an essential trace element, such as zinc, can also cause adverse health effects. The present RfD for zinc represents a balance between the essential requirement for zinc and the toxic effects of too much zinc; however, the Agency is currently working on revising the risk assessment procedures for essential elements. The World Health Organization (WHO) is also in the process of developing a document on the risk assessment of essential trace elements, and EPA will consider the WHO document when it is available.

G. 2,6-di-tert-butyl-p-benzoquinone (DTBB)

DTBB is a contaminant that appears to be associated with sewage contamination of ground water. A ground water study concluded that DTBB was a good indicator of such contamination because, among other reasons, it does not biodegrade readily (Barber, 1988). DTBB was determined not to meet the criteria for the draft CCL per se, but was included nevertheless, because of the recalcitrant nature of the contaminant, its association with sewage contamination, its potential health impacts, and its potential to serve as an indicator of other contamination.

H. Contaminants to be Considered as Groups

Stakeholders, through the regulatory reassessment process and the development of this draft CCL, have requested that the Agency, address triazine pesticides as a group which includes all parent and degradates compounds as opposed to each triazine as an individual contaminant. The triazine pesticides include; cyanazine, propazine, etc., and atrazine and simazine (which are both currently regulated), and are often substituted for one another for similar agricultural use.

The USEPA regulated atrazine in 1991 and simazine in 1992. Cyanazine and atrazine-desethyl, a degradation product of triazines, were identified for the draft CCL using the criteria discussed earlier, and because of the common effect of triazine pesticides and degradates, Office of Ground Water and Drinking Water (OGWDW) and OPP are coordinating to have atrazine and simazine, and possibly other triazines, if warranted, addressed as a group. A triazine special review was initiated by OPP which will culminate in a proposed decision on the labeling and agricultural use triazine. The proposal is expected during the summer of 1998. The triazines are also included in the Priority Group 1 of pesticide tolerances that will be examined first under the FQPA tolerance reassessment (62 FR 42020).

The Agency is concerned about triazines in water and the exposure of sensitive populations, including children, and OGWDW will work closely with OPP to characterize the risk of triazines in food and water. EPA has been studying the mechanism of carcinogenicity of this group of analogues along with their degradation products, and will continue to study these chemicals as a group to characterize their risk in drinking water. The Agency may ultimately develop regulations for the mixtures of triazines either through the revision of existing regulations or the development of new ones. The same may occur for other families of pesticides, such as the acetanilide pesticides, which include acetochlor, metolachor, alachlor (which is currently regulated), given their common effects and agricultural uses.

I. Contaminants for Which Unregulated Contaminant Data Are or Will Be Available

Unregulated contaminant monitoring data which have been collected a number of contaminants during 1988–1991, and additional monitoring data collected during 1993–1995 (see Table 7). These monitoring data can serve in evaluating whether these contaminants should be included on the CCL. The data collected during 1988–1991 have been preliminarily evaluated by the Agency; however, further analysis is necessary to determine if a contaminant in fact meets the criteria used to develop the draft CCL. The data collected during 1993–1995, are not yet available; however, during the comment period, and prior to publishing the CCL by February 1998, the Agency will attempt to obtain and evaluate this data to determine if the contaminant should remain on the CCL. Contaminants that do not meet the criteria as presented in today's notice, or as modified subsequent to the comment period of the notice, will not be included on the final CCL to be published by February 1998.

Table 7. Contaminants with Unregulated Contaminant Monitoring Data

1,3-dichloro-benzene
1,2,4-trimethyl-benzene
1,3-dichloropropene
1,3-dichloro-propane
1,1,2,2-tetrachloro-ethane
1,1-di-chloro-ethane
1,1-dichloro-propene
1,2,3-trichloro-propane
2,2-dichloro-propane
bromobenzene
bromomethane
carbaryl
o-chorotoluene
p-chlorotoluene
cumene
cymene
dichloro-difluoromethane
hexachlorobutadiene
metolachlor
metribuzan
naphthalene
n-propylbenzene
trichlorofluoro-methane

V. Request for Comment

The purpose of today's notice is to present the draft CCL and seek comment on various aspects of its development. The Agency requests comment on the approach used to develop the CCL, and on the contaminants included. The Agency also requests comment on the data and research needs categories the contaminants have been divided into, in Table 8. Any data supporting comments or that can be used by the Agency in developing the final CCL are also requested. In addition to comments on contaminants considered for the draft CCL, the Agency seeks comment on the inclusion of perchlorate on the final CCL. The following sections provide more detail on the data and research needs and the issue of perchlorate.

A. Data and Research Needs

The microbiological contaminants included on the CCL all have research needs of one sort or another in the area of analytical methods. The meeting summary of the Workshop on Microbiology and Public Health, held May 20–21, 1997, provided more detail of the research needed for microorganisms.

For the chemical contaminants on the draft CCL, Table 8 divides them into categories to represent the data needs for each contaminant. Sufficient data are needed to conduct analyses on extent of exposure and risk to populations via drinking water in order to determine appropriate Agency action (development of health advisories, or regulations, or no action) for a given contaminant. If sufficient data are not available, they must be obtained before such an assessment can be made. The data and information required will be gathered by research or monitoring programs, and are not likely to be available for analyses to be completed prior to 2001. Thus, the contaminants for which sufficient data exists at the time of publishing the CCL, are likely to the those from which the determinations will be made by 2001.

TABLE 8.—DATA NEEDS FOR CHEMICAL CONTAMINANTS INCLUDED ON THE DRAFT CCL

Sufficient health effects and occurrence data exist	Need additional health effects data, but not occurrence data	Need additional occurrence data, but not health effects data	Need both health effects and occurrence data
1,1,2,2-tetrachloroethane; 79–34–5	Aluminum; 7429–90–5	1,2-diphenylhydrazine; 122–66–7.	2,6-di-tert-butyl-p-benzoquinone (DTBB); 719–22–2
1,2,4-trimethylbenzene; 95–63–6	Vanadium; 7440–62–2	2,4,6-trichlorophenol; 88–06–2	
1,1-dichloro-ethane; 75–34–3		2,2-dichloro-propane; 594–20–7	DCPA mono-acid degradate; 887–54–7
1,1-dichloro-propene; 563–58–6		2,4-dichlorophenol; 120–83–2	DCPA di-acid degradate; 2136–79–0
1,3-dichloropropane; 142–28–9		2,4-dinitrophenol; 51–28–5	Organotins
1,3-Dichloropropene; 542–75–6		2,4-dinitrotoluene; 121–14–2	
Boron; 7440–42–8		2,6-dinitrotoluene; 606–20–2	
Bromobenzene; 108–86–1		2-methyl-phenol; 95–48–7	
Cyanazine; 21725–46–2		Acetochlor; 34256–82–1	
atrazine-desethyl (a triazine degradation product); 6190–65–4.		Acetone 67–64–1	
p-Cymene; 99–87–6		Alachlor ESA (an alachlor degradation product).	
Hexachloro-butadiene; 87–68–3		Aldrin; 309–00–2	
cumene; 98–82–8		DDE; 72–55–9	
Manganese; 7439–96–5		Diazinon; 333–41–5	
Methyl bromide; 74–83–9		Dieldrin; 60–57–1	
Metolachlor; 51218–45–2		Dimethoate; 60–51–5	
Metribuzin; 21087–64–9		Disulfoton, 298–04–4	
Naphthalene; 91–20–3		Diuron; 330–54–1	
Sodium; 7440–23–5		Fonofos; 944–22–9	
Zinc; 7440–66–6		Linuron; 330–55–2	
		MTBE; 1634–04–4.	
		Molinate; 2212–67–1.	
		Nitrobenzene; 98–95–3.	
		Prometon; 1610–18–0.	
		RDX; 121–82–4.	
		Rhodamine WT.	
		Terbacil; 5902–51–2.	
		Terbufos; 13071–79–9.	
		EPTC; 759–94–4.	

B. Perchlorate

Additional information and comment is sought on the inclusion of perchlorate on the final CCL. Perchlorate is being mentioned in this notice because EPA received information that it had been detected in water in the Colorado River and in wells in California, but the information came too late in the process of developing the draft CCL to evaluate it as had been done for the other contaminants. The information the Agency has received regarding perchlorate's occurrence, health effects, source of contamination and treatment that has been included in the docket. This information, and any other submitted in response to comments, as well as additional data that the Agency may obtain, will be considered to determine whether perchlorate should be included on the final CCL.

VI. Development of the Final Drinking Water Contaminant Candidate List, the Contaminant Identification Method, and the Contaminant Selection Process

Between now and the publication of the final CCL, the Agency will evaluate comments received during the comment period for this notice and re-evaluate the criteria used to develop the draft CCL and revise the CCL, as appropriate. The final CCL will be published by February 1998.

In addition to publishing the final CCL, the Agency will also resume work on the CIM and the contaminant selection process. The development of the CIM and the selection process will be completed in consultation with the NDWAC Working Group on Occurrence & Contaminant Selection. The next meeting of the Working Group will likely be later this fall. The CCL, CIM and the selection process will serve as the cornerstones of the Agency's regulatory development process. In addition to developing the CCL, CIM and the selection process with the Adminstration policy in mind, the Agency intends to obtain resources to improve the screening process in order to acquire better information, improve analytical capability, and seek additional stakeholder involvement. The CCL is a critical input to shaping the future direction of the drinking water program, and improvements will be made with each successive cycle of publishing the list.

VII. Summary of Other Related Activity Required by the SDWA

After the CCL is developed and in accordance with the SDWA, as amended, the Agency will determine whether or not regulation is needed for at least five contaminants. This step of *contaminant selection* is then followed by proposal and ultimate promulgation of regulations for those contaminants for which a determination has been made to regulate. Two tools provided for in the SDWA, as amended, that relate to development of the CCL, are the

occurrence database and unregulated contaminant monitoring. In *identifying* contaminants for inclusion on the CCL, and *selecting* contaminants for determination, the National Drinking Water Contaminant Occurrence Database must be considered. The primary mechanism for obtaining the occurrence data for the database is the Unregulated Contaminant Monitoring Requirements provision. Figure 2 provides a representation of the relationship among these various elements. The SDWA requirements for contaminant selection, the occurrence database and unregulated contaminant monitoring are presented below to give the reader a sense of what these requirements entail and how they relate to the CCL and to each other.

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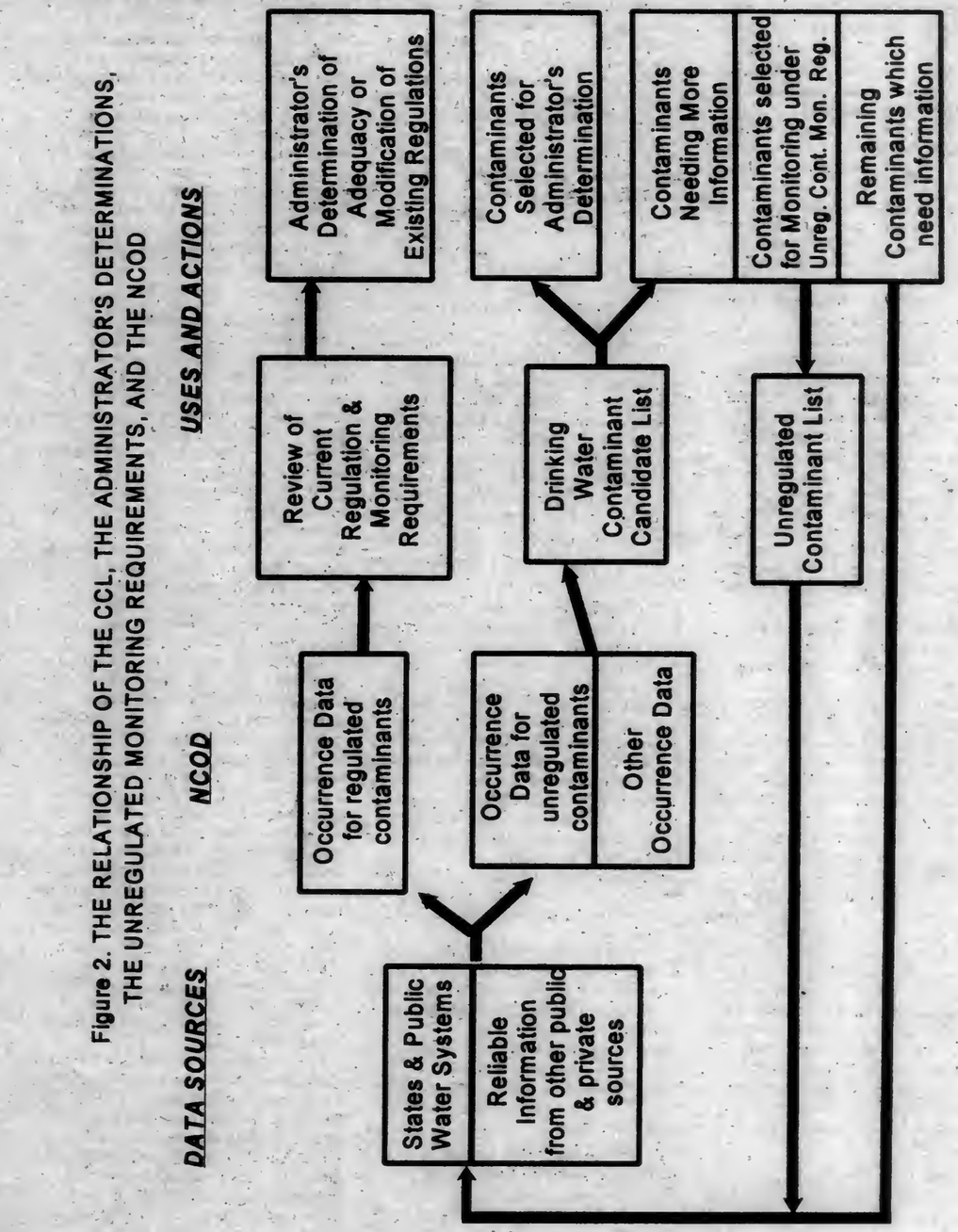


Figure 2. THE RELATIONSHIP OF THE CCL, THE ADMINISTRATOR'S DETERMINATIONS, THE UNREGULATED MONITORING REQUIREMENTS, AND THE NCOD

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A. Contaminant Selection and Regulatory Determination

The SDWA, as amended in 1996, requires EPA to make determinations of whether or not to regulate no fewer than five contaminants from the CCL five years after enactment (i.e., by August 2001), and every five years thereafter (section 1412(b)(1)); which is also three and a half years following each CCL. Any of the contaminants from the CCL that the Agency decides to regulate are subject to proposed NPDWRs within 24 months of this decision to regulate, and final NPDWRs within 18 months of the proposal. The SDWA also requires that EPA give priority to selecting contaminants for regulation that present the greatest public health concern, including vulnerable populations such as infants, the elderly, and those with serious illness. Three criteria must be considered when deciding whether or not to regulate a contaminant: (1) Could the contaminant adversely affect public health, (2) is it known or substantially likely to occur in public water systems with a frequency and at levels posing a threat to public health, and (3) will regulation of the contaminant present a meaningful opportunity for health risk reduction.

The Agency will be developing a contaminant selection process that will address the criteria mentioned above in concert with the contaminant identification method. The contaminant selection process will be used to select contaminants from the CCL for which determinations will be made, while the CIM will be used to develop the CCL. A conceptual approach for the CIM was presented on December 2–3, 1996, at an EPA sponsored stakeholders meeting (U.S. EPA, 1996b) However, in order to meet the February 1998 deadline for finalizing the CCL, further work on the CIM was delayed in favor of developing the draft CCL presented in today's notice. The Agency, in collaboration with the NDWAC Working Group on Occurrence & Contaminant Selection, will resume work on the CIM and the contaminant selection process during the fall of 1997. Knowledge gained during the development of this draft CCL, as well as the feedback received since the December 1996 stakeholders meeting, will be factored into the development.

B. The National Contaminant Occurrence Database

The SDWA, as amended in 1996, requires EPA to establish a national drinking water contaminant occurrence database (NCOD) to be assembled by August 1999 [section 1445(g)]. The database is to include the occurrence of both regulated and unregulated contaminants, and, once established, is to be used to support the Administrator's determinations for future regulations. The requirements for developing the CCL also include consulting the occurrence database. Since the database is currently under development, and will not be available for the development of this first CCL, the Agency consulted other sources of occurrence data. Once available, however, the NCOD will be used not only to develop future CCLs and support future determinations of the need for regulations, but to develop future regulations.

A Stakeholder meeting was held on May 21–22, 1997, in Washington, D.C., on the NCOD to discuss and obtain input from the public, states, and the scientific community on database design and structure, input parameters and requirements, and the uses and interpretation of the data. This meeting was the first of several expected to take place in the near future regarding the NCOD development.

C. Unregulated Contaminant Monitoring Regulation

The SDWA, as amended, requires EPA to list and develop regulations for monitoring of certain unregulated contaminants by August 1999, and every 5 years thereafter (section 1445(a)(2)). This provision was first introduced with the 1986 amendments to the SDWA and has been substantially modified by the 1996 amendments. The SDWA requires that the list of unregulated contaminants not exceed 30, and that the monitoring data be collected and maintained in the NCOD. Criteria for determining which contaminants on the CCL will be chosen for the unregulated contaminant monitoring list will be developed as part of this regulation.

Contaminants on the CCL that need additional occurrence data will be used as the principal source of contaminants for the list of unregulated contaminants. The unregulated contaminant monitoring provision of the SDWA will be used as a tool to gather the contaminant occurrence data necessary for determining the need for drinking water regulations.

VIII. Summary of Concurrent Regulatory Activity Required by the SDWA

In addition to the requirements for the CCL and contaminant selection, the SDWA, as amended 1996, also contain specific provisions with regard to radon, arsenic, sulfate, and disinfectants and disinfection byproducts. The SDWA, as amended, did not specify a new time frame for finalizing rulemaking for other radionuclides, however, EPA and the Bull Run Coalition have entered into a consent decree with the court establishing timetables to finalize this rulemaking. Regulatory activity for radon, other radionuclides, arsenic, sulfate, and disinfectants and disinfection byproducts are not affected by today's notice, but are summarized below to provide the reader with an update on the status these specific activities.

A. Radon

The SDWA, as amended in 1996, contains specific provisions for regulating radon in drinking water (section 1412(b) (13)). First, EPA is required to withdraw the proposed rule for radon which was published in 1991 and to re-propose a drinking water regulation for radon by August 6, 1999, and issue final regulations by August 6, 2000. The SDWA, as amended, also requires EPA to: (1) Arrange for the NAS to prepare a peer reviewed risk assessment for radon that evaluates the health effects of radon in drinking water under conditions likely to be experienced through residential exposure and to assess the risk reduction benefits from various mitigation measures to reduce radon levels in indoor air; (2) make available for public comment a health risk reduction and cost analysis comparing costs and benefits of various possible MCL in advance of proposing a radon regulation; and (3) establish an alternative-MCL, if the MCL is set at a level that is more stringent than necessary to reduce the contribution of radon in indoor air originating from drinking water to a level equal to the national average concentration of radon in outdoor air. States will have the option to comply with the less stringent alternative-MCL if they implement a multi-media radon risk reduction program that accomplishes greater health protection than would be achieved by complying with the more stringent MCL alone.

A notice was published in the **Federal Register** on August 6, 1997, to withdraw the radon proposed rule. (62 FR 42221) The NAS risk assessment is scheduled to be complete by July 1998, and the HRRCA is due by February 1998. In addition, EPA held stakeholder meetings on June 26, 1997, in Washington, D.C., and on September 2, 1997, in San Francisco, and has scheduled an additional stakeholder meeting in Boston later this fall to obtain input from the public.

B. Other Radionuclides

On July 18, 1991, EPA proposed NPDWRs for radionuclides in public water supplies (56 FR 33050). EPA proposed MCLs for Radium-228 at 20 pCi/l, Radium-226 at 20 pCi/l, Uranium at 30 pCi/l (20 µg/l), adjusted gross alpha at 15 pCi/l (excluding Ra-226, U, and Rn-222), and beta and photon emitters (excluding Ra-228) at 4 mrem ede/yr; MCLGs were proposed at zero.

Comments on the proposed rule were received from approximately 600 individuals and organizations. Due to concerns by commenters and Congress over the most effective way to regulate radon and other radionuclides together, the proposed rule was put on hold, pending passage of amendments to the SDWA, so that EPA could gain further clarification of Congress' intent.

The SDWA, as amended in 1996, did not specify a new time frame for finalizing rulemaking for radionuclides, as it did for radon. However, an existing consent decree providing deadlines for regulating radionuclides was amended in 1996 to provide that EPA would, by November 2000, finalize a rule for Uranium; and finalize a rule for Ra-226, Ra-228, alpha and beta/photon emitters, or publish its reasons for not taking final action as to these contaminants. An Agency Workgroup has been formed and is process of evaluating all current data and information, which will lead to finalizing elements of the proposed rule or to re-proposing NPDWRs for radionuclides.

C. Arsenic

In 1975, EPA established National Interim Primary Drinking Water Regulations (NIPDWR), setting an MCL for Arsenic at 50 µg/l. In 1985, EPA proposed an MCLG of 50 µg/l, requesting comment on alternate MCLGs of 100 µg/l and 0 µg/l. However, the SDWA, as amended in 1986, converted the interim standard into a NPDWR, subject to revision by 1989. When the Agency failed to meet the statutory deadline for promulgating an arsenic regulation, a citizen's group filed suit to compel EPA to do so. EPA entered into a consent decree to, in part, issue the arsenic regulation. The consent decree was amended several times to extend the deadlines and with passage of the 1996 Amendments was dismissed as to arsenic.

The SDWA, as amended, requires EPA to conduct additional research on arsenic in order to reduce the uncertainty in assessing the health effects of low exposure levels; to propose a NPDWR for arsenic by January 1, 2000; and to issue a final regulation by January 1, 2001. (Sec. 1412(b)(12)) EPA developed a research plan, made it available for public comment, and had it peer reviewed in January 1997. The revised research plan will be available this fall. In addition, EPA issued a joint request for research proposals with the American Water Works Association Research Foundation (AWWARF) and the Association of California Water Agencies (ACWA). EPA, AWWARF and ACWA awarded almost $3 million in grants and contracts this summer, for up to three years. This spring, EPA also funded an Interagency Agreement, with the National Research Council (NRC) of the NAS to review EPA's risk assessment, determine the adequacy of EPA's current MCL for protecting human health and surface water quality criteria, and identify priorities for research to fill data gaps. The NRC report will be submitted to EPA in mid-to-late 1998. In May, 1997, EPA convened an expert panel to evaluate the scientific literature on the genetic and carcinogenic effects of arsenic in order to comment on arsenic's mode of action and the data supporting models extrapolating to low dose arsenic exposures. The final report is now being considered by EPA's IRIS Update Group.

D. Sulfate

A December 20, 1994 proposed sulfate regulation contained both MCLG and MCL levels for sulfate of 500 mg/l and included 4 alternative compliance options designed to allow flexible implementation. Thereafter, the Agency's drinking water redirection effort concluded that sulfate was a relatively low risk contaminant, and further regulatory activity was suspended. The SDWA, as amended, requires completion of a study to resolve risk questions and requires the Agency to make a determination within 5 years of enactment of the Amendments, by August 6, 2001, of whether or not to regulate sulfate. Any of the contaminants from the CCL that the Agency decides to regulate are subject to proposed NPDWRs within 24 months of this decision to regulate, and final NPDWRs within 18 months of the proposal. In 1997 the Agency entered into an Interagency Agreement with the Center for Disease Control and Prevention (CDC). EPA and CDC are currently waiting for completion of the peer review of the jointly planned health risk study for sulfate. The study results, due in February 1999, will serve as input for EPA's contaminant identification and selection protocol to decide whether or not to regulate sulfate, and will be publicly available. In addition, prior to deciding on the need to regulate sulfate, the Agency would need to make a determination on the adequacy of existing occurrence data for sulfate and, if inadequate, consider approaches for filling data gaps.

E. Disinfectants and Disinfection Byproducts

Microorganisms identified for the CCL are not specifically targeted by the following regulations, however they may be indirectly controlled. Any microorganism identified for the CCL which is determined later to be adequately, although indirectly, controlled by the following regulations, will be subsequently withdrawn from the CCL.

Under the Surface Water Treatment Rule (SWTR) promulgated on June 29, 1989, (54 FR 27486), EPA set MCLGs of zero for *Giardia lamblia*, viruses and *Legionella;* and promulgated NPDWRs for all public water systems (PWSs) using surface water sources or groundwater sources under the direct influence of surface water. The SWTR includes treatment technique requirements for filtered and unfiltered systems that are intended to protect against the adverse health effects of exposure to *Giardia lamblia*, viruses, and *Legionella*, as well as many other pathogenic organisms.

In 1992, EPA initiated a negotiated rulemaking to develop disinfectant and disinfection byproducts regulations. The Regulatory Negotiating Committee met from November 1992 through June 1993 and included representatives of State and local health and regulatory agencies, public water systems, elected officials, consumer groups and environmental groups. One of the major goals addressed by the Committee was to develop an approach that would reduce the level of exposure from disinfectants and disinfection byproducts without undermining the control of microbiological pathogens. To accomplish this, the Committee agreed to the development of three sets of regulations: a two-staged Disinfectant/Disinfection Byproducts Rule (D/DBP), an Enhanced Surface Water Treatment Rule (ESWTR), and an Information Collection Rule (ICR). The purpose of the ICR is to collect occurrence and treatment information to evaluate the need for possible changes to the current SWTR, existing microbial treatment practices, and also evaluate the need for future regulation for disinfectants and disinfection byproducts.

EPA would first develop an *Interim*-ESWTR (IESWTR) that would only apply to systems serving 10,000 people or more, the committee agreed that a

Long-Term-ESWTR (LTESWTR) may be needed for systems serving fewer than 10,000 people when the results of more research and water quality monitoring became available. The LTESWTR could include additional refinements for larger systems.

The ICR was proposed on February 10, 1994 (59 FR 6332) and promulgated on May 14, 1996 (61 FR 24354). The D/DBP regulations and the IESWTR were proposed on July 29, 1994 (59 FR 38668, 59 FR 38832). The SDWA, as amended, requires EPA to promulgate an IESWTR and a Stage I D/DBP Rule by November 1998. In addition, the SDWA requires EPA to promulgate a final ESWTR and a Stage II D/DBP rule by November 2000 and May 2002, respectively [section 1412(b)(2)(C)].

In light of new information that has become available in several key areas related to issues put forth in the D/DBP Stage 1 proposal, the Agency initiated a series of public meetings in May 1996. These meetings were designed to exchange information on issues related to the development of the IESWTR and the Stage 1 D/DBP rule and the impact of the ICR data not being available. In order to facilitate moving in an expedited fashion to meet the deadlines in the 1996 Amendments, and to maximize stakeholder participation, the Agency subsequently established an advisory committee to collect, share, and analyze new information and data as well as to build consensus on the regulatory implications of this new information. After evaluation of the new data and information, the committee made recommendations on a number of major issues. These recommendations and a discussion of the pertinent issues will be published in a **Federal Register** Notice planned for later this fall.

IX. Other Requirements

The CCL is a notice and not a regulatory action; therefore, the following statutes and executive orders are not applicable at this time: the Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, Paperwork Reduction Act, Unfunded Mandates Reform Act; and Executive Order 12866. As contaminants are selected for rulemaking, all necessary analysis will be conducted in accordance with the rulemaking process.

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires that Federal Agencies identify and assess health risks and safety risks that disproportionately affect children, and ensure that its policies, programs, activities, and standards address disproportionate health and safety risks to children. The SDWA also requires the Agency to select priorities for regulation while considering risk to sensitive subpopulations, such as infants and children.

The impact on sensitive populations will be addressed in the contaminant selection process, and will be a component of the Agency's determination of whether or not to regulate a given contaminant. In preparation for addressing the issues of sensitive subpopulations, the Agency is sponsoring several activities to determine water intake by age group, by demographic distribution, and by innate or developed sensitivity to potential drinking water contaminants. The Agency is also collaborating with CDC on a study of six major cities to determine the most sensitive populations for drinking water manifested during major outbreaks of illness from incidents of water contamination. Other research also is underway to determine the extent of vulnerable populations including children and the immunologically impaired.

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Robert Perciasepe,

Assistant Administrator, Office Water, Environmental Protection Agency.

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The President

Proclamation 7031—National Disability Employment Awareness Month, 1997

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The President

Proclamation 7031 of October 2, 1997

National Disability Employment Awareness Month, 1997

By the President of the United States of America

A Proclamation

America has always been blessed with abundant natural resources; but we sometimes fail to recognize that we have been blessed with rich human resources as well. Millions of people in thousands of professions have built this great country with their labor and made a reality of the American Dream for themselves and their families. But for 20 percent of our population, that dream has too often been deferred or denied. Americans with disabilities have had to overcome barriers in communication, transportation, architecture, and attitude to take their rightful place in our Nation's work force.

If America is to continue to grow and prosper, if we are to lead the challenging global economy of the 21st century, we cannot afford to ignore the talents, energy, and creativity of the 54 million Americans with disabilities. Thanks to the Americans with Disabilities Act, we are making significant progress in eliminating workplace discrimination and ensuring equal job opportunities for people with disabilities. This landmark civil rights legislation, enacted 7 years ago with bipartisan support, has opened doors and brought down barriers across our country for people with disabilities. It has empowered them with the opportunity to become employees, taxpayers, and active participants in the life of their communities.

To build on this progress, government at every level must work in partnership with business, labor, and community organizations to ensure that all Americans, regardless of disability, can live and learn and work alongside their fellow citizens. Only when we guarantee the inclusion, empowerment, and independence of all our people will America fulfill its great promise of freedom and opportunity.

To recognize the full potential of individuals with disabilities and to encourage all Americans to work toward their full integration into the work force, the Congress, by joint resolution approved August 11, 1945, as amended (36 U.S.C. 155), has designated October of each year as "National Disability Employment Awareness Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 1997 as National Disability Employment Awareness Month. I call upon government officials, educators, labor leaders, employers, and the people of the United States to observe this month with appropriate programs and activities that reaffirm our determination to achieve the full integration into the work force of people with disabilities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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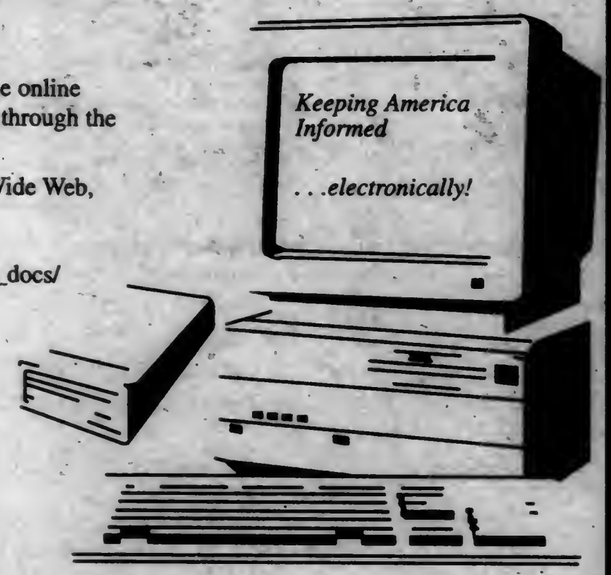
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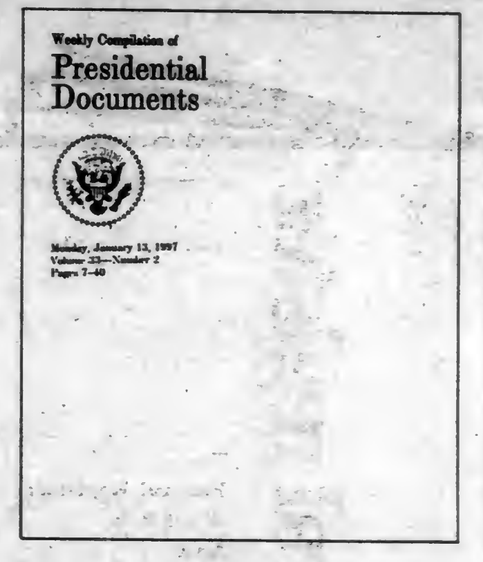
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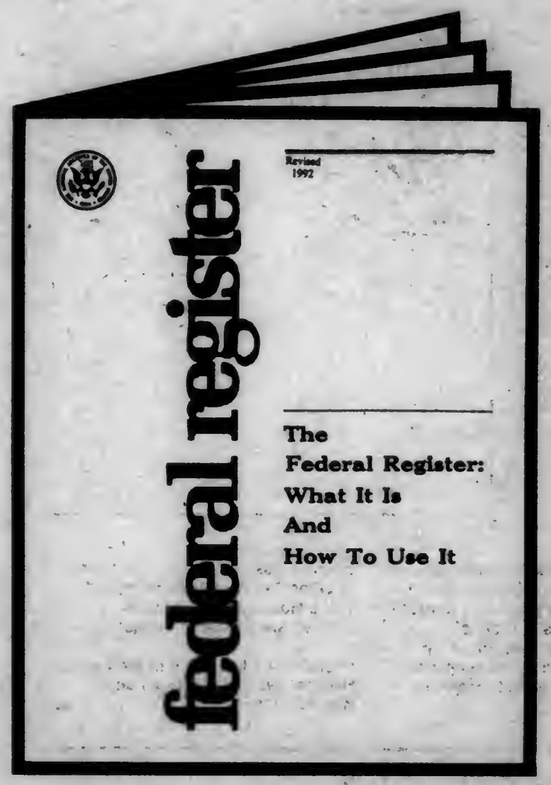
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Vol. 62, No. 194
Tuesday, October 7, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–36–AD; Amendment 39–10154, AD 97–21–01]

RIN 2120–AA64

Airworthiness Directives; MT-Propeller Entwicklung GMBH Model MTV–3–B–C Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to MT-Propeller Entwicklung GMBH Model MTV–3–B–C propellers. This action requires initial and repetitive dye penetrant or eddy current inspections for cracks in the propeller hub, and rework of the propeller hub or replacement with a new model propeller hub. This amendment is prompted by reports of cracks in the propeller flange area of the hub detected during overhaul. The actions specified in this AD are intended to prevent propeller hub cracks, which could result in propeller blade separation and possible loss of control of the aircraft.

DATES: Effective October 22, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 22, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–36–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet: "propeller@aol.com". This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7155, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on MT-Propeller Entwicklung GMBH Model MTV–3–B–C/L250–21 propellers. The LBA advises that they have received reports of cracks in the propeller flange area of the hub detected during overhaul. The investigation revealed that the cracks were created due to high loads, such as those associated with aerobatic maneuvers. This condition, if not corrected, could result in propeller hub cracks, which could result in propeller blade separation and possible loss of control of the aircraft.

MT-Propeller Entwicklung GMBH has issued (SB) No. 12A, dated July 17, 1997, that specifies procedures for dye penetrant or eddy current inspections for cracks in the propeller hub, and, if necessary, rework or replacement with serviceable parts. The LBA classified this SB as mandatory and issued AD 97–006/2 in order to assure the airworthiness of these propellers in Germany.

This propeller model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design registered in the United States, the AD will require initial and repetitive dye penetrant or eddy current inspections for cracks in the propeller hub, and, if necessary, rework or replacement with serviceable parts. The actions would be required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–36–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–01 MT-Propeller Entwicklung GMBH: Amendment 39–10154. Docket 97–ANE–36–AD.

Applicability: MT-Propeller Entwicklung GMBH Model MTV–3–B–C/L250–21. These propellers are installed on but not limited to Sukhoi 29 aircraft.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller hub cracks, which could result in propeller blade separation and possible loss of control of the aircraft, accomplish the following:

(a) Perform initial and repetitive dye penetrant or eddy current inspections for cracks in the propeller hub, and rework propeller hub, Part Number (P/N) B–050, or replace with a propeller hub, P/N A–909–A, all in accordance with MT-Propeller Entwicklung GMBH Service Bulletin (SB) No. 12A, dated July 17, 1997, as follows:

(1) Within 50 hours time in service (TIS) after the effective date of this AD, perform the initial inspection.

(2) Thereafter, inspect as follows:

(i) For propellers with hubs, P/N B–050, inspect at intervals not to exceed 50 hours TIS, or 6 months since last inspection, whichever occurs first.

(ii) For propellers with hubs, P/N A–909–A, inspect at intervals not to exceed 200 hours TIS, or 12 months since last inspection, whichever occurs first.

(3) Following inspection, if no cracks are found, and within 50 hours TIS after the effective date of this AD, rework the existing propeller hub, P/N B–050, or install propeller hub, P/N A–909–A.

(4) Following inspection, if cracks are found, prior to further flight remove the existing propeller hub, and replace with a serviceable propeller hub.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(d) The actions required by this AD shall be performed in accordance with the following MT-Propeller Entwicklung GMBH SB:

Document No.	Pages	Date
12A	1–3	July 17, 1997.

Total pages: 3.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet: "propeller@aol.com". Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 22, 1997.

Issued in Burlington, Massachusetts, on September 26, 1997.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–26373 Filed 10–6–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 94–ASO–18]

RIN 2120–AA66

Establishment of Restricted Areas; Camp Lejeune, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes restricted areas at Camp Lejeune, NC, to augment an expansion of the existing Camp Lejeune training range facilities. The U.S. Marine Corps (USMC) requested this action in order to accommodate the increased training activities required by operational units.

EFFECTIVE DATE: 0901 UTC, November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The USMC requested that the FAA establish restricted areas at Camp Lejeune, NC, because the existing facilities do not contain sufficient firing ranges, maneuver areas, or impact areas to accommodate the expanded, more complex Marine Corps training requirements which have evolved in recent years. Two USMC studies documented shortfalls in the existing range capabilities. These limitations have precluded Camp Lejeune from fulfilling a number of basic Fleet Marine Force training requirements. As a result, the USMC has been required to conduct periodic, multi-million dollar deployments of personnel and equipment to other locations in the United States in order to complete essential training events.

On June 15, 1995, the FAA published a notice of proposed rulemaking (NPRM) which proposed to amend 14 CFR part 73 to establish Restricted Areas R–5303A, B, and C, and R–5304A, B, and C, at Camp Lejeune, NC (60 FR 31426).

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Two comments were received by the FAA in response to the proposal. The Aircraft Owners and Pilots Association objected to the proposal, stating that the restricted areas would interfere with general aviation aircraft transiting the area and would prevent pilots from using Federal Airway V–139 between Wilmington, NC, and New Bern, NC.

The restricted areas will be managed on a real-time basis to minimize impact on nonparticipating aircraft. Cherry Point Approach Control will be the designated controlling agency for the restricted areas. The approach control has dedicated direct landlines to the Camp Lejeune Range Control and has the authority to call an immediate cease fire in the event of an aircraft emergency, unauthorized aircraft intrusion, or operational necessity. The lowest subareas, R–5303A and R–5304A, will be the most frequently used areas. Normally, V–139, above 7,000 feet mean sea level (MSL), will remain available for transit by nonparticipating aircraft. When nonparticipating aircraft on V–139 are unable to transit above the restricted area altitudes in use, the range activity will either be capped, or a cease fire imposed, to accommodate the aircraft on the airway. On occasion, air traffic control (ATC) may vector nonparticipating aircraft off the airway to the east of the range through Restricted Areas R–5306D and R–5306E, which will be deactivated for that purpose.

The FAA believes that the real-time procedures for the activation and deactivation of the airspace should minimize the impact on nonparticipating aircraft.

The North Carolina Department of Transportation (NCDOT) commented that the mitigation procedures satisfy its concerns about the impact on general aviation and, provided that the range and airspace operations are conducted as proposed, the proposal may be the best compromise for all airspace users. However, NCDOT expressed concerns about the proposal considering the amount of existing special use airspace (SUA) in the State, and the impact on V–139. NCDOT suggested that this action should be reviewed after the airspace has been operational for some time and that, if the real-time procedures do not prove satisfactory, a new airway segment should be considered between Wilmington and New Bern with an intersection over the Albert J. Ellis Airport, Jacksonville, NC. NCDOT further commented that the 6-hour Notices to Airmen (NOTAM) time proposed in the time of designation of the restricted areas is too short.

In response to NCDOT's comment, the time requirement for NOTAM activation of the restricted areas will be increased from the proposed 6 hours in advance, to 24 hours in advance. Regarding the impact on V–139, the FAA believes that the real-time use procedures should minimize the impact to aircraft transiting the area or utilizing V–139. As part of its annual review of SUA, the FAA will monitor the implementation of this rule and the effectiveness of the real-time procedures described above. Airspace and/or procedural modifications may be considered in the future, if warranted.

The Rule

This rule amends 14 CFR part 73 by establishing Restricted Areas R–5303A, B, and C, and R–5304A, B, and C, at Camp Lejeune, NC. The restricted areas will overlie a Government-purchased tract of land contiguous to Camp Lejeune, known as the Greater Sandy Run Area, and will extend from the surface up to but not including Flight Level (FL) 180. The airspace will be subdivided vertically. The subdivisions will be configured as follows: R–5303A and R–5304A extending from the surface to but not including 7,000 feet Mean Sea Level (MSL); R–5303B and R–5304B extending from 7,000 feet MSL to but not including 10,000 feet MSL; and R–5303C and R–5304C extending from 10,000 feet MSL to but not including FL 180.

The activities to be conducted in the restricted areas include the firing of various surface weapons and air-delivered ordnance (helicopters only). No fixed-wing participating aircraft operations will be conducted in the restricted areas. Most training activities will be conducted in the lowest portion of the restricted areas (i.e., R–5303A and R–5304A, below 7,000 feet MSL).

The time of designation for R–5303A and R–5304A will be 0600 to 1800 local time, Monday through Friday, with a provision for activation at other times by NOTAM at least 24 hours in advance. Restricted Areas R–5303B/C and R–5304B/C will be activated by NOTAM at least 24 hours in advance when required for training.

It is estimated that the highest altitude strata of the restricted areas will be required approximately 10% of the time. An estimated 75% of the total training activities will take place during daylight hours. On a yearly basis, it is projected that the restricted areas will be used on 30 to 40 weeknights. Training will also be conducted on 30 to 40 weekend days, which may include additional night-time operations. Peak firing periods are expected to occur between the hours of 0800–1600, Tuesday, Wednesday, and Thursday, with March through October projected as the peak firing months.

The new restricted areas will be configured to maximize training flexibility and to facilitate the activation of only those portions of the restricted areas actually needed for training operations. When activated, the restricted areas may impact the segment of V–139 between Wilmington, NC, and New Bern, NC. In order to minimize the impact on air traffic utilizing V–139, the restricted areas will be subject to real-time activation procedures. The lowest subareas, R–5303A and R–5304A, will be the most frequently used areas. Normally, V–139, above 7,000 feet MSL, will remain available for transit by nonparticipating aircraft. When nonparticipating aircraft on V–139 are unable to transit above the restricted area altitudes in use, the range activity will either be capped, or a cease fire imposed, to accommodate the aircraft on the airway. On occasion, ATC may vector nonparticipating aircraft off the airway to the east of the range through Restricted Areas R–5306D and R–5306E,

which will be deactivated for that purpose. These procedures will be specified in a joint-use letter of procedure between the using agency and the controlling agency. The letter of procedure will include provisions to give ATC priority for use of the airspace when necessary during periods of severe weather, or emergency situations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Section 73.53 of 14 CFR part 73 was republished in FAA Order 7400.8D dated July 11, 1996.

Environmental Review

The USMC issued a final environmental impact statement (EIS) in May 1991 for the Proposed Expansion and Realignment of the Marine Corps Base Camp Lejeune Onslow County, NC. Based upon proximity to the ground site for military training and other geographic factors, the USMC considered 13 alternatives as potential solutions to accommodate training needs at Camp Lejeune. These alternatives included a variety of options ranging from maintaining the status quo (no action) to relocating of Marine Corps Base Camp Lejeune, as well as increasing off-base training. Two airspace alternatives were brought forward for further consideration; Alternative One, which is the designation of new restricted areas at Camp Lejeune, as described in this rule and the No Action Alternative. Alternative One was identified as the environmentally preferable alternative in the EIS.

The No Action Alternative would consist of the continued utilization of existing training facilities, with no additional special use airspace to contain the increased training activities needed by operational units. The No Action Alternative failed to address the training deficiencies as identified at Camp Lejeune. Without the additional special use airspace, implementation of Marine Battle Skills Training would increase training pressures on existing firing ranges outside the area of Camp Lejeune. Modern long-range weapons would not be accommodated at Camp Lejeune and would continue to be deployed elsewhere. The USMC issued a Record of Decision in October 1991 that adopted all practicable means to avoid or minimize harm.

In June 1997, the USMC submitted to the FAA an Addendum to the EIS. In August 1997, the FAA completed a written reevaluation of the EIS and adopted and recirculated the Addendum and the EIS as final, pursuant to 40 CFR 1506–3(a) and (b) 62 FR 43730 and 62 FR 44685. After careful and thorough consideration of the facts contained herein and following consideration of the views of those Federal agencies having jurisidiction by law and special expertise with respect to the environmental impacts described, the undersigned finds that the proposed Federal action is consistent with existing national policies and objectives as set forth in section 101 (a) of the National Environmental Policy Act of 1969, as amended.

This final rule constitutes final agency action under 49 USC 46110. Any person disclosing a substantial interest in this order may appeal the order to the courts of appeal of the United States or the United States or the United States Court of Appeals of the District of Columbia upon petition, filed within 60 days after the order is issued.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.53 [Amended]

2. Section 73.53 is amended as follows:

* * * * *

R–5303A Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°41'40"N., long. 77°33'09"W.; to lat. 34°39'16"N., long. 77°28'31"W.; to lat. 34°36'51"N., long. 77°29'01"W.; to lat. 34°36'13"N., long. 77°31'51"W.; to lat. 34°37'03"N., long. 77°35'25"W.; to lat. 34°38'49"N., long. 77°37'31"W.; to the point of beginning.

Designated altitudes. Surface to but not including 7,000 feet MSL, excluding the airspace 1,500 feet AGL and below within a 3NM radius of Sky Manor airport.

Time of designation. 0600–1800 Monday-Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency. USMC, Cherry Point Approach Control.

Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

R–5303B Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°41'40"N., long. 77°33'09"W.; to lat. 34°39'16"N., long. 77°28'31"W.; to lat. 34°36'51"N., long. 77°29'01"W.; to lat. 34°36'13"N., long. 77°31'51"W.; to lat. 34°37'03"N., long. 77°35'25"W.; to lat. 34°38'49"N., long. 77°37'31"W.; to the point of beginning.

Designated altitudes. 7,000 feet MSL to but not including 10,000 feet MSL.

Time of designation. By NOTAM at least 24 hours in advance.

Controlling agency. USMC, Cherry Point Approach Control.

Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

R–5303C Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°41'40"N., long. 77°33'09"W.; to lat. 34°39'16"N., long. 77°28'31"W.; to lat. 34°36'51"N., long. 77°29'01"W.; to lat. 34°36'13"N., long. 77°31'51"W.; to lat. 34°37'03"N., long. 77°35'25"W.; to lat. 34°38'49"N., long. 77°37'31"W.; to the point of beginning.

Designated altitudes. 10,000 feet MSL to but not including FL 180.

Time of designation. By NOTAM at least 24 hours in advance.

Controlling agency. FAA, Washington ARTCC.

Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

R–5304A Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°37'03"N., long. 77°35'25"W.; to lat. 34°36'13"N., long. 77°31'51"W.; to lat. 34°36'51"N., long. 77°29'01"W.; to lat. 34°32'16"N., long. 77°30'13"W.; to lat. 34°29'43"N., long. 77°35'15"W.; to lat. 34°32'42"N., long. 77°34'54"W.; to the point of beginning.

Designated altitudes. Surface to but not including 7,000 feet MSL, excluding the airspace 1,500 feet AGL and below within a 3NM radius of Holly Ridge airport.

Time of designation. 0600–1800, Monday-Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency. USMC, Cherry Point Approach Control.

Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

R–5304B Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°37'03"N., long. 77°35'25"W.; to lat. 34°36'13"N., long. 77°31'51"W.; to lat. 34°36'51"N., long. 77°29'01"W.; to lat. 34°32'16"N., long. 77°30'13"W.; to lat. 34°29'43"N., long. 77°35'15"W.; to lat. 34°32'42"N., long. 77°34'54"W.; to the point of beginning.

Designated altitudes. 7,000 feet MSL to but not including 10,000 feet MSL.

Time of designation. By NOTAM at least 24 hours in advance.

Controlling agency. USMC, Cherry Point Approach Control.

Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

R–5304C Camp Lejeune, NC [New]

Boundaries. Beginning at lat. 34°37'03"N., long. 77°35'25"W.; to lat. 34°36'13"N., long. 77°31'51"W.; to lat. 34°36'51"N., long. 77°29'01"W.; to lat. 34°32'16"N., long. 77°30'13"W.; to lat. 34°29'43"N., long. 77°35'15"W.; to lat. 34°32'42"N., long. 77°34'54"W.; to the point of beginning.

Designated altitudes. 10,000 feet MSL to but not including FL 180.

Time of designation. By NOTAM at least 24 hours in advance.

Controlling agency. FAA, Washington ARTCC.

Using agency. USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC.

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Issued in Washington, DC, on October 1, 1997.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 97–26671 Filed 10–6–97; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–39176; File No. S7–21–96]

RIN 3235–AG99

Lost Securityholders

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting Rule 17Ad–17 and Rule 17a–24 under the Securities Exchange Act of 1934. Rule 17Ad–17, which is designed to address the problem of "lost securityholders," requires transfer agents to conduct searches in an effort to locate lost securityholders. Rule 17a–24, which is designed to assist the Commission in monitoring the effects of Rule 17Ad–17, requires transfer agents to file information on lost securityholders with the Commission. The rules are designed to reduce the number of lost securityholders.

EFFECTIVE DATE: §§ 240.17Ad–17 and 240.17Ad–7(i) will be effective December 8, 1997, and §§ 240.17a–24 and 249b.102, the amendments to Form TA–2 will be effective February 4, 1998.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director; Christine Sibille, Senior Counsel; Jeffrey Mooney, Attorney; or Theodore Lazo, Attorney at 202/942–4187, Office of Risk Management and Control, Mail Stop 5–1, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Transfer agents serve as the custodians of securityholder records, including records of securityholders' addresses, for issuers. In this capacity, transfer agents frequently are responsible for disseminating shareholder communications and dividend and interest payments. For various reasons, transfer agents occasionally have outdated or incorrect addresses for some securityholders ("lost securityholders").[1] As a result, these shareholders do not receive dividend and interest payments to which they are entitled. Generally, issuers retain custody of such dividend and interest payments, and if contact is not reestablished with a securityholder prior to the expiration of the appropriate state's escheat period, the issuer must turn the securityholder's assets over to the state unclaimed property administrator While various transfer agents attempt to locate lost securityholders, the extent and type of efforts used very considerably from one transfer agent to another.[2] The Securities and Exchange Commission ("Commission") believes that establishing minimum search requirements in this area will facilitate locating lost securityholders.

On August 22, 1996, the Commission issued for comment a release ("Proposing Release")[3] proposing Rule 17Ad–17[4] and Rule 17a–24[5] under the Securities Exchange Act of 1934 ("Exchange Act") and proposing amendments to Rule 17Ad–7,[6] which were designed to address the problem of lost securityholders. Proposed Rule 17Ad–17 would require that transfer agents exercise reasonable care, including conducting data base searches, in an effort to locate lost securityholders.[7] The proposed amendment to Rule 17Ad–7 set forth the retention time periods for the records relating to compliance with proposed Rule 17Ad–17. Proposed Rule 17Ad–24 would have required certain entities that hold assets for others (e.g., transfer agents and broker-dealers) to file annually with the Commission a list of the social security numbers of all lost securityholders contained in their records. The Proposing Release also requested comment on whether either the Commission or a private entity should create and operate a lost securityholder data base.

The Commission received 57 comment letters from 52 commenters in response to the Proposing Release.[8] The commenters in general expressed support for proposed Rule 17Ad–17 although several commenters expressed concerns about specific provisions of the proposed rule. The commenters in general expressed concern about proposed Rule 17a–24. The Commission is adopting Rule 17Ad–17 substantially as proposed but with some modifications to reflect commenters' views and is amending Rule 17Ad–7 as proposed. The Commission is adopting proposed Rule 17a–24 with substantial revisions and is making related changes to Form TA–2.[9] In addition, the Commission has directed its staff to review the operations of the adopted rules after three years and to report back to the Commission on its findings.

[1] For example, some securityholders do not provide a new address when they move.

[2] *See* Securities Exchange Act Release No. 37595 (August 22, 1996), 61 FR 44249 (release proposing Rule 17Ad–17 and Rule 17a–24), note 13 (discussing the methods transfer agents currently use to locate lost securityholders).

[3] *Id.* The Commission later extended the comment period contained in the Proposing Release. Securities Exchange Act Release No. 37949 (November 15, 1996), 61 FR 59048 (extending comment period).

[4] 17 CFR 240.17Ad–17.

[5] 17 CFR 240.17Ad–24.

[6] 17 CFR 240.17Ad–7.

[7] The Proposing Release also discussed transfer agents' obligations under Rule 17Ad–10 to maintain and keep current accurate master securityholder files (defined below in note 10), which include information such as securityholders' names and addresses. The Proposing Release concluded that maintaining accurate securityholder files is one of the most basic steps in addressing the lost securityholder problem. The Commission believes that conducting data base search for lost securityholders pursuant to Rule 17Ad–17 will enhance a transfer agent's fulfillment of its responsibilities under Rule 17Ad–10.

[8] The Commission received comment letters from eighteen transfer agents, five trade associations representing transfer agents, five individuals, three corporations, one broker-dealer, two professional search firms, and eighteen government entities. A summary of comments has beem prepared by the staff of the Division of Market Regulation. The summary is included along with the comment letters in Public File No. S7–21–96, which is available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[9] Form TA–2 is referenced in 17 CFR 249b.102.

II. Discussion

A. Rule 17Ad–17: Obligation to Search

As adopted, Rule 17Ad–17 requires that transfer agents exercise reasonable care to ascertain the correct addresses of all lost securityholders in their records. At a minimum, transfer agents must conduct two searches using an information data base. In addition, transfer agents may not use any service designed to locate their lost securityholders that results in a charge to a securityholder until after the two data base searches have been conducted.

1. Definition of Lost Securityholders

Rule 17Ad–17 generally defines a "lost securityholder" as a securityholder to whom an item of correspondence that was sent to the securityholder at the address in the transfer agent's master securityholder file has been returned as undeliverable.[10] However, if a transfer agent re-sends the returned item to the securityholder within one month, the transfer agent has the option to delay classifying the securityholder as lost for purposes of Rule 17Ad–17 until the item is again returned to the transfer agent as undeliverable. If and when a transfer agent receives a new address for a lost securityholder, either directly from the securityholder or through the transfer agent's own efforts, the securityholder will no longer be classified as lost.

Under the definition as proposed, a securityholder would have been classified as lost only after two separate items of correspondence mailed at least three months apart had each been returned as undeliverable. Commenters in general were opposed to a requirement that three months elapse between the mailing of two undeliverable items of correspondence, stating that this approach would increase costs by requiring transfer agents to initiate new coding mechanisms.[11] In addition, some commenters stated that continuing to mail distributions to an incorrect address increases risk of loss. Commenters also noted that the proposed definition of lost securityholder could result in long delays before some shareholders are defined as lost.[12]

The Commission believes that the revised definition produces a more consistent result as to when shareholders are classified as lost.[13] In addition, the Commission understands that some transfer agents have internal procedures whereby they promptly remail returned correspondence because they have found such remailing procedures to be beneficial in reducing the number of lost securityholders.[14] Therefore, the revised definition gives transfer agents flexibility to delay coding a securityholder as lost until after the remailed item is returned as undeliverable.

In addition, the Commission is making minor technical amendments to the proposed definition of lost securityholder. For example, to take into account future developments in the methods used to disseminate shareholder communications, the rule no longer refers to returned correspondence that were "sent by first class mail."

2. Transfer Agents' Search Requirements

a. Type of Search

Rule 17Ad–17 requires every recordkeeping transfer agent whose master securityholder file includes accounts of lost securityholders to search for such securityholders' current address using at least one information data base. The transfer agent's search for a lost securityholder must be based on the taxpayer identification number ("TIN") or on the name of the lost securityholder if a search based on TIN is not reasonably likely to locate the lost securityholder.

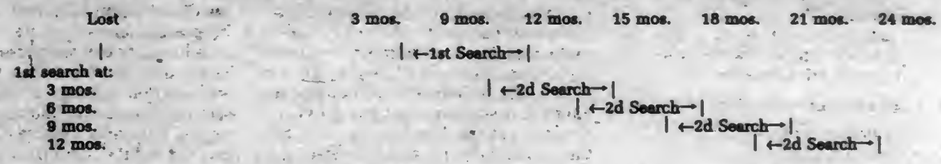
As originally proposed, the search could be based on a securityholder's name if such a search was reasonably likely to locate the lost securityholder. Commenters were divided as to the advisability of such provision. While most commenters agreed that TIN searches are more effective, some commenters argued that transfer agents should have the flexibility to search by name when advisable (*e.g.*, when the TIN is missing or incomplete). By revising the requirement to permit name searches only when a TIN search is not reasonably likely to locate the lost securityholder (*e.g.*, when the TIN is missing or incomplete), the Commission believes transfer agents are afforded sufficient flexibility to conduct the most effective search.

b. Time Frames for Search

The rule as adopted also differs from the proposal with respect to the time frames in which the searches must be conducted. As proposed, a transfer agent would have had to conduct a search within three months of a securityholder being classified as lost. If after the first search the securityholder had continued to be classified as lost, the proposal would have required another search between 12 and 18 months after the initial search. Many commenters suggested that conducting an initial search three months after a securityholder was classified as lost was too soon for the data bases to be updated, and that conducting a second search between 12 and 18 months after the first search was too long a period from loss of contact.

As adopted, a transfer agent must conduct the initial search between three and 12 months of a securityholder being classified as lost.[15–16] If the lost securityholder is not found, the transfer agent must conduct a second search between six and 12 months after the initial search.

Demonstrated below are time frames in which the second search would need to be conducted depending upon when the first search occurred.



The second search is intended to take advantage of address changes that may have been added to the data base after the initial search. The transfer agent must conduct these searches without charge to a lost securityholder.

Under the proposed rule, the time in which transfer agents would have been required to conduct the first search would have depended on the frequency of mailings associated with an issue. (The first search would have had to be conducted between three and 15 months after the return of the first correspondence based on whether the issue had quarterly or annual mailings.)[17]

Because the timing of the search requirements would have been dependent upon the frequency of issuers' mailings, commenters noted that transfer agents would not have had much flexibility in determining when to search for lost securityholders.

Under the adopted rule, the first search must be conducted between three to 12 months after the first correspondence is returned. However, unlike the proposed rule, transfer agents may search at any time during this period. As a result, transfer agents' search requirements are triggered within basically the same timeframes whether there are quarterly or annual mailings, but transfer agents will be better able to use their discretion as to the most appropriate time to conduct the searches. Additionally, this revision may permit transfer agents to conduct more cost-effective searches by allowing transfer agents to bundle together many lost securityholders for submission to a data base service which should lower internal costs and increase the likelihood that transfer agents will qualify for volume discounts from data base services.

c. Exceptions to the Search Requirement

In the Proposing Release, the Commission requested comment on whether the requirement to search for lost securityholders should apply only when a lost securityholder's account contained assets over some de minimis amount.[18] Many commenters agreed that transfer agents should not be required to expend funds to search for a lost securityholder when the cost of a search could exceed the amount in the securityholder's account. Although varying de minimis amounts were suggested, most commenters favored a de minimis threshold of $100 per account.

The Commission believes that there should be a de minimis exception from the search requirements that will allow transfer agents to forgo searches that would not be cost-effective. Based on what the Commission understands to be the low cost of data base searches,[19] the Commission is amending the proposed rule to permit transfer agents to exclude from the search requirements any lost securityholder when the value of all dividend, interest, and other payments due to the securityholder plus the value of all assets listed in the lost securityholder's account is less than $25. The Commission believes that this exemption will reduce the economic impact of the rule on transfer agents while still affording sufficient protection to securityholders.[20]

In the Proposing Release, the Commission noted that data base searches generally are considered a cost-effective way to locate lost securityholders. The Commission requested comment on the potential effectiveness of the rule in addressing the lost securityholder issue. The request was intended to elicit comment on situations where data base searches would not be an appropriate method of locating lost securityholders. One commenter requested that exemptions from the search requirement be created for certain categories of securityholders that will not be reached through an electronic data base search, specifically any lost securityholder (1) whose last known address is outside of the United States; (2) whose account has a missing or incomplete TIN; (3) which is not a natural person (*e.g.*, a corporation); or (4) who is known to be deceased.

Based on this request and on additional research into the capabilities of existing commercial data bases, the Commission has decided to create an exemption from the search requirements for securityholders for whom the transfer agent has received documentation of their death[21] and an exemption for securityholders which are not natural persons. The Commission understands that the data bases relied upon by most transfer agents do not contain information on estates or heirs and that there is no automated method by which such information can be obtained.[22] Securityholders which are not natural persons likewise cannot be located easily through the use of information data bases and comprise a minuscule percentage of the total amount of lost securityholders.

The Commission is not adopting the other suggested exemptions because data base searches for those categories of lost securityholders could in many cases be effective. For example, although the Commission understands that most data bases currently do not contain the names of individuals living outside of the United States, it is possible that a securityholder with a foreign last known address was only temporarily living out of the country and that a data base search will provide an updated domestic address.

With respect to the commenter's request for an exemption for securityholders with missing or incomplete TINs, the adopted rule permits transfer agents to conduct a search based on a lost securityholder's name when a search based on a TIN is not reasonably likely to locate a lost

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[10] "Master securityholder file" is defined in Rule 17Ad–6(b) as the official list of individual securityholder accounts.

[11] The Proposing Release noted that the three month period was intended to give transfer agents time to receive any delayed change of address notifications prior to having to conduct searches.

[12] For example, if an issue does not pay dividends or interest, the only securityholder correspondence may be the annual report. In such an instance, a securityholder would not have been classified as lost until a year after the first correspondence had been returned as undeliverable.

[13] The revised definition avoids situations where securityholders of issues with quarterly mailings would have been defined as lost three months after a correspondence was first returned as undeliverable while securityholders of issues with only annual mailings would not have been defined as lost until a year after a correspondence was first returned as undeliverable.

[14] Transfer agents have found that some items are returned as a result of the deliverer's error rather than an incorrect address and that remailing will result in the securityholder receiving the item.

[15–16] As discussed in the Proposing Release, the Commission encourages transfer agents to take immediate steps upon learning a shareholder's address may not be correct. Proposing Release, note 16. The Proposing Release discusses several techniques that, while not required by the rule, may be beneficial in reducing the number of lost securityholders for which the transfer agent must search. Proposing Release, note 13.

[17] Between three to 12 months would have elapsed between the first and second returned items of correspondence, and the first search would have had to be conducted within three months after the return of the second item of correspondence.

[18] In calculating this amount, all assets in that account for which the transfer agent maintains records are included regardless of whether the transfer agent is actually in possession of the property. Therefore, the value of the assets in the securityholder's account includes dividends, interest, and other payments due to the securityholder and the value of any underlying assets (e.g., the value of securities owned by the shareholder as shown on the transfer agent's records).

[19] Refer to Section IV below for a discussion of the cost of data base searches.

[20] Some commenters stated that for efficiency reasons some transfer agents will search for all lost securityholders.

[21] Such documentation may consist of a report received from an information data base.

[22] The Commission has been informed that in the future some information data bases may be updated to include beneficiary data. If a low cost method of determining a deceased's beneficiary becomes available, the Commission may reexamine the application of search requirements to this category of securityholder.

securityholder. Therefore, the Commission also believes that no exemption should be created for accounts with missing TINs.

d. Assessment of Procedures

In the Proposing Release, the Commission requested comment on whether the rule should include (1) a requirement that transfer agents periodically assess the effectiveness and appropriateness of the search procedures and technology they employ, and/or (2) a requirement that transfer agents' search procedures meet a performance standard based on success in locating lost securityholders. Most commenters that addressed the issue generally did not support adopting a strict application of this requirement. For example, some commenters believe that transfer agents should not have an absolute requirement to locate a certain percentage of their shareholders because the results of the searches frequently were outside of their control. While the adopted rule does not specifically contain such requirements, the Commission believes that transfer agents should bear these concepts in mind in determining whether they have met their obligation to exercise reasonable care under Rule 17Ad–17(a). For example, if a transfer agent is using a data base service that routinely fails to locate any or that locates only a very small percentage of lost securityholders, the transfer agent should evaluate whether the use of such service constitutes the exercise of reasonable care.

3. Definition of Information Data Base

As proposed, Rule 17Ad–17 would have defined an information data base as any automated data base service that (1) contains addresses of U.S. residents, including addresses in the geographic area in which the lost securityholder's last known address is located, (2) covers a reasonably broad geographic area, (3) is indexed by TIN or by name, and (4) is updated at least four times a year. The Commission has revised the definition based on commenters' suggestions. The first requirement has been revised to require that the data base contain addresses from the entire United States. The second requirement has been revised to require that the data base contain names of at least 50% of the U.S. adult population. The third requirement also has been revised to clarify that an information data base must be indexed by TINs if a TIN search is used or by name if a name search is used. The fourth requirement is adopted as proposed. The revisions are intended to preclude the use of a data base that contains a small number of names but covers a broad geographic area or one that contains a large number of names but covers only a small geographic area.

The Commission also is adopting an alternative standard that will provide flexibility to transfer agents in fulfilling their obligations to search for lost securityholders. The alternative will permit transfer agents to use any service to locate lost securityholders if that service produces comparable results to the information data base described above. As part of their obligation to maintain records discussed below, a transfer agent relying on this alternative would be required to develop written procedures documenting and describing the alternative service used.

4. Use of Professional Search Firms

The Proposing Release discussed the current practice of some transfer agents to use professional search firms that charge a lost securityholder a fee for locating the lost securityholder's assets. As proposed and as adopted, Rule 17Ad–17 will prohibit a transfer agent from using any service to locate a securityholder that results in a charge to the securityholder until after the two data base searches required by the rule have been conducted. While a few commenters argued against the proposed prohibition, many commenters supported the provision with some arguing for additional restrictions.

Although the more extensive search techniques employed by professional search firms may locate some securityholders that the data base searches will not locate, the charges of such firms can cost a securityholder a significant portion of his or her assets. The Commission believes that transfer agents should make efforts (*i.e.*, the search provisions of Rule 17Ad–17(a)(1)) to locate lost securityholders before permitting services to charge them for reuniting them with their assets. Therefore, the Commission is adopting Rule 17Ad–17(a)(2) as proposed to delay transfer agents' use of professional search firms where the charge is assessed to the securityholder until after a transfer agent has completed two searches under Rule 17Ad–17.[23]

5. Verification of Securityholder

In order to guard against delivery of distributions to an incorrect recipient, the Commission recommended in the Proposing Release that transfer agents should verify that the person at the newly obtained address is in fact its account holder before disbursing securities or funds. One commenter expressed concern that requiring a transfer agent to confirm a securityholder's identity may restrict the transfer agent's ability to correct its master securityholder file because some shareholders may fail to return verification forms. The language in the Proposing Release was not intended to mandate a particular procedure. Instead, it was intended to highlight the need for transfer agents to use care prior to disbursement of securityholder funds. Prior to disbursing funds or to updating their master securityholder files, transfer agents should determine whether such action is appropriate based on all relevant factors.

B. Rules 17Ad–7 and 17Ad–17: Recordkeeping Requirements

Rule 17Ad–17 requires that all recordkeeping transfer agents maintain records to demonstrate their compliance with the requirements under the rule. Paragraph (i) is being added to Exchange Act Rule 17Ad–7 to require that transfer agents maintain the records required by Rule 17Ad–17 for a period of not less than three years and that transfer agents maintain these records in an easily accessible place during the first year.[24]

In the Proposing Release, the Commission suggested that transfer agents document the date each securityholder is classified as lost and the date the data base searches are conducted. One commenter interpreted this discussion to be a requirement that such dates be recorded on each lost securityholder's individual account record. This commenter stated that this requirement could require costly systems upgrades and that transfer agents instead should be allowed to demonstrate that data base searches have been conducted by referencing procedures that are in place and that reasonably assure that the searches are conducted on a timely basis. The language in the Proposing Release was not intended to specify the recordkeeping method to be used by transfer agents. Rather it was intended to provide flexibility to transfer agents to create systems that adequately demonstrate compliance with Rule 17Ad–17. However, the Commission does not believe that referencing

[23] Because a professional search firm that charges a fee to the transfer agent rather than to lost securityholders could qualify as an information data base search under the rule, professional search firms could be used to satisfy the transfer agent's search obligation under Rule 17Ad–17.

[24] Rule 17Ad–7 sets forth the lengths of time and the methods by which transfer agents must maintain the records which they are required to keep pursuant to Exchange Act Rules 17Ad–6, 17f–2, and 17Ad–17.

procedures without any specific documentation demonstrating that searches have been appropriately conducted is adequate.

The Commission also is adding language to Rule 17Ad–17 to clarify that transfer agents must maintain written procedures on how they will comply with the rule. The amendment to the rule is intended to give transfer agents more guidance on what the minimum recordkeeping requirements are while still providing flexibility to determine the most efficient method of demonstrating compliance with the requirements of the rule.

C. Rule 17a–24: Lost Securityholder Data

In the Proposing Release, the Commission also discussed the creation of a data base that would contain information (*e.g.*, TINs) on all lost securityholders. Proposed Rule 17a–24 would have required certain entities that hold assets for others (*e.g.*, transfer agents and broker-dealers) to file annually with the Commission a list of the TINs of all lost securityholders contained in their records. The Commission also requested comment on whether the Commission or its delegee should create and operate a lost securityholder data base or whether the Commission should release the information it received under Rule 17a–24 to the public to permit private entities to create data bases.

Most commenters were opposed to the creation of a lost securityholder data base. Many commenters believed that the data base would result in a loss of privacy for securityholders. Other commenters suggested that the data base could result in fraudulent claims. Finally, some commenters opined that the data base would be of limited utility because it would require that securityholders take the initiative to discover whether they had any unclaimed assets.

In response to concerns expressed by commenters, the Commission has determined to adopt proposed Rule 17a–24 with revisions that will only require the reporting of certain aggregate data. As noted in the Proposing Release, the Commission believes that there is a need to gather data on lost securityholders in order to obtain better information as to the extent to which lost securityholders are not receiving assets to which they are entitled and to assess the effectiveness of search techniques employed by transfer agents.[25] Similar to the proposed rule, the final rule will require each recordkeeping transfer agent to file annually with the Commission information on lost securityholders contained in the transfer agent's records.[26] However, the Commission has determined to require transfer agents to submit only aggregate data regarding the accounts of lost securityholders instead of the individual data that would have been required by proposed Rule 17a–24. This aggregate information would have been available by totaling the information that would have been required by proposed Rule 17a–24 or currently is readily accessible by transfer agents.

Specially, the Commission is revising proposed Rule 17a–24 to require registered transfer agents to disclose the aggregate number of lost securityholder accounts as of June 30 of each year and the percentage of total accounts represented by such lost securityholder accounts. These figures would be reported for specified periods of time: one year or less, three years or less, five years or less, or greater than five years.[27] The Commission also is requiring information on lost securityholder accounts that escheat to state unclaimed property administrators on an annual basis. To facilitate the reporting of this information, the Commission is amending Exchange Act Form TA–2,[28] the annual report of registered transfer agents. The Commission believes that this will be the least burdensome and most efficient way for transfer agents to comply with the revised rule.

The Commission believes that revised Rule 17a–24 is preferable to the rule as proposed at this time. The aggregate information required by the adopted rule should, as a result of Rule 17Ad–17, be readily available to transfer agents. Moreover, the collection of aggregate data, rather than taxpayer identification numbers or other personal data, ameliorates privacy concerns raised by some commenters. In addition to not requiring individual data, the revised rule will enable the Commission to better monitor the effectiveness of Rule 17Ad–17 over time and determine whether additional measures are necessary to find lost securityholders. Finally, the Commission has narrowed the scope of the rule. Unlike the proposed rule which would have applied to any recordkeeping broker-dealer or transfer agent, as adopted Rule 17a–24 applies only to recordkeeping transfer agents. The Commission believes that a narrower focus is preferable at this time.

III. Regulatory Flexibility Analysis

The following discussion summarizes the Commission's Final Regulatory Flexibility Analysis ("FRFA") in accordance with the Regulatory Flexibility Act ("RFA")[29] in connection with Rule 17Ad–17, Rule 17a–24, and the related amendments to Rule 17Ad–7 adopted today. A complete copy of the FRFA may be obtained by contacting Theodore Lazo, Attorney, Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 at 202/942–4187.

The FRFA explains both the need for and the objectives of the rules adopted by the Commission. As set forth in greater detail in the FRFA, the adopted rules with establish minimum standards for all transfer agents with respect to lost securityholders and may help the Commission to monitor the effectiveness of these standards. The FRFA further explains that the Commission believes that imposing an affirmative obligation on transfer agents to search for lost securityholders is in the public interest and will enhance investor protection.

The FRFA also (i) summarizes the significant issues raised by public comments in response to the Commission's Initial Regulatory Flexibility Analysis ("IRFA"), (ii) summarizes the Commission's assessment of such issues, and (iii) states any changes made in the proposed rules as a result of such comments. As noted in the FRFA, none of the comment letters received related directly to the IRFA, but seven commenters supplied data on the costs of proposed Rule 17Ad–17.[30] As discussed in the FRFA, the Commission believes that most of this cost data is overstated because it includes costs not created by the rule. The Commission also believes that the revisions to proposed Rule 17Ad–17 (*e.g.*, the extended time frames for conducting searches and the exceptions to the search requirements) will eliminate any excess costs of compliance with the rule that commenters contended would arise. The FRFA also notes that Rule

[25] 61 FR at 44252–44253.

[26] 61 FR at 44253.

[27] The Commission requested comment in the Proposing Release on whether the filing requirement should include information concerning the length of time securityholders have been lost. 61 FR at 44253.

[28] Pursuant to Exchange Act Rule 17Ac2–2, registered transfer agents are required to file an annual report on Form TA–2 by August 31 of each calendar year. 17 CFR 240.17Ac2–2.

[29] 5 U.S.C. 601–612.

[30] The cost data that the Commission received is discussed more fully in Section IV below.

17a–24 has been revised to minimize the costs to all transfer agents.

The FRFA also provides a description of and an estimate of the number of small entities to which the rule will apply. The FRFA states that the Commission estimates that 413 registered transfer agents qualify as "small entities" and will be subject to the requirements of the rule.

As required by the RFA, the FRFA describes the projected reporting, recordkeeping, and other compliance requirements of the rule and includes as estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the reports or records. As discussed above, Rule 17Ad–17 does not require any specific type of recordkeeping other than that which is necessary to demonstrate compliance with the rule, including establishing written procedures with respect to compliance with the rule. The FRFA states that the Commission believes that Rule 17Ad–17 as adopted provides sufficient flexibility for all transfer agents, including transfer agents which are small entities, to maintain records in the most cost-effective manner. The FRFA also states that the Rule 17a–24 as adopted will require transfer agents to report aggregate data regarding their lost securityholder accounts and that the Commission believes that such records will be readily available to transfer agents.

The FRFA also describes the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes (*e.g.*, alternative standards for small entities). As discussed further in the FRFA, the Commission has amended proposed Rule 17Ad–17 to provide additional flexibility to all transfer agents, including smaller transfer agents. In addition, the Commission has attempted to devise the most reasonable and simplest approach that would afford transfer agents as affective means to reduce the number of lost securityholders. The FRFA further explains that the Commission requested comment on the adoption of a requirement that transfer agents use search techniques based on their periodic assessment or a requirement that transfer agents' search procedures meet a performance based standard. In light of the comments received on the issue, the Commission is not adopting a periodic assessment requirement or a performance based standard. However, the Commission has revised the proposed rule to permit transfer agents to use any combination of services to local lost securityholders that provides a comparable result to an information data base.

As detailed in the FRFA, the Commission has decided not to create an exception to Rule 17Ad–17 for small entities. The FRFA explains that the Commission believes that any increased costs incurred by small entities because of the rule will be reasonable and are justified by the necessity to ensure that all securityholders receive the same level of investor protection. While the Commission has decided not to create an exception to the rule for small entities, the adopted rule does provide a de minimis exception for lost securityholders whose accounts hold assets of less than $25. The Commission believes that small transfer agents will likely rely on the de minimis exception more than large transfer agents.[31]

With respect to Rule 17a–24, the FRFA notes that the Commission has amended the proposed rule to reduce the reporting burden on all transfer agents and to minimize the compexity and operational burden of the requirements. Finally, the Commission states that any increased costs are justified by the need to monitor the effectiveness of Rule 17Ad–17.

Based on the analysis contained in the FRFA, the Commission believes that the adopted rules will not adversely affect small entities and include sufficient regulatory flexibility for compliance to minimize the impact on small entities. The FRFA is available for public inspection in File No. S7–21–96, and a copy may be obtained by contacting Theodore Lazo, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 5–1, Washington, DC 20549.

IV. Costs and Benefits of the Rules and Their Effects on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act[32] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules and to make a determination whether any burden on competition is necessary or appropriate in furthering the purposes of the Exchange Act. Furthermore, section 3 of the Exchange Act[33] as amended by the recently enacted National Securities Markets Improvement Act of 1996 ("Markets Improvement Act")[34] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The Commission has considered Rule 17Ad–17 and Rule 17a–24 in light of the standards cited in sections 3 and 23(a)(2) of the Exchange Act and believes that for the reasons stated herein, the adoption of the rules will (i) promote efficiency for securityholder recordkeeping by subjecting all transfer agents to the same flexible rules governing searches for lost securityholders and reporting information to the Commission related to such searches, (ii) not adversely affect capital formation because it relates solely to post-issuance activity, and (iii) not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

In the Proposing Release, the Commission stated its view that the proposed Rule 17Ad–17 would not have a significant impact on transfer agent competition. All transfer agents will be subject to the same specified minimum standard for reasonable care in attempting to locate securityholders with whom contact has been lost. As discussed below, the cost of compliance with the proposed rule is minimal, and for many transfer agents that currently conduct securityholder searches using an information data base, the proposed rule will impose no additional cost. Because a transfer agent's cost of compliance generally is based upon the number of securityholders it must attempt to locate, transfer agents, regardless of their size, should incur comparable relative costs in exercising comparable care. On average, compliance costs should be roughly proportional to the number of securityholder records maintained by the transfer agent.

One commenter stated that the rule as proposed could have an anticompetitive effect because the costs could cause additional transfer agents to abandon an

[31] The Commission understands that small transfer agents tend to provide services to issuers with smaller prices per share. On occasion, when shareholders sell their positions, they fail to completely close out their account. As a result, they may leave an account holding only a few shares or the most recent dividend payment. Because a few shares of a smaller issuer is more likely to be under the de minimis amount than a few shares of a larger issuer, the Commission believes that the de minimis exception may be more beneficial to small transfer agents. Some large transfer agents also have stated that because it is more cost efficient to search for all of their lost securityholders then to segregate out the small accounts, they probably will not use the exemption.

[32] 15 U.S.C. 78w(a)(2).

[33] 15 U.S.C. 78c.

[34] Pub. L. 104–290, section 106, 110 Stat. 3416 (1996).

already contracting market. However, this commenter did not provide any detail as to the burden created by the rule or why such burden should disproportionately affect certain transfer agents. The Commission believes that the rule as adopted has been drafted so as to provide the maximum flexibility to transfer agents to meet their obligations in the most cost-effective manner possible. After careful consideration of the commenter's views, the Commission has determined that Rule 17Ad–17 will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

In the Proposing Release, the Commission estimated compliance costs to the industry of approximately $750,000, based on an estimated cost of $3.00 per account and a total estimated 250,000 lost securityholder accounts. Based on more recent data obtained from several large transfer agents, the Commission has revised its cost estimate per account to $3.38 the first year and $1.79 per account in the following years. Significantly, based on its most recent information, the Commission now believes that there may be as many as 3 million lost securityholder accounts. Due primarily to this change in estimated lost securityholder accounts, the Commission's revised estimate of the aggregate costs to the industry are one time compliance costs of $4.6 million and annual compliance costs of $5.2 million.

The Commission received seven comment letters that provided specific cost estimates. One commenter estimates (assuming one search and match) that the cost of locating an account will be approximately $6.00, which includes out-of-pocket postage, staff, and computer time. A second commenter states that vendor prices for data base searches may vary widely and that the actual cost per account will range from $5.00 to $12.00.[35] A third commenter estimates an aggregate cost of as much as $4.75 for each lost securityholder and total initial programming costs of $150,000.[36] Two commenters estimate that charges from firms for data base searches range from $2.00 per account to approximately $1.00 per account for tape files. Another commenter anticipates that the costs of complying with the rule will exceed $100,000 in additional labor costs together with software and hardware costs each year. Another commenter estimates that the cost per account for using an information data base ranges from less than $.10 when using a CD ROM to as much as $1.70 to use a third party vendor data base.

The Commission believes that the estimates higher than the Commission's estimate of $3.38 per lost account overstate the costs involved because the figures include expenses not related to the rule or which are required already as a part of the transfer agent's duties (*e.g.*, the cost of shareholder mailings). Furthermore, the Commission believes that compliance with the rule as it is being adopted will not require transfer agents to incur any substantial costs with respect to additional labor, hardware, or software because the rule's requirements regarding coding securityholders as lost are consistent with current state escheatment laws. Such state laws also require transfer agents to be able to produce information on lost securityholders for annual filings with the state, and therefore transfer agents' computer systems currently should be capable of producing lists of lost securityholders to provide to the data bases. Thus, the Commission believes that transfer agents' current computer systems should not require significant changes in order to comply with the rule.

Further, the Commission has amended the proposal so as to lower the cost of compliance with the rule. For example, the Commission has created a de minimis exception to the rule because searches for accounts with lesser values would not produce as great a benefit (*i.e.*, the cost of locating such securityholders would be a much larger percentage of the assets to be returned). In addition, the Commission has amended the rule to be more consistent with current state law requirements by eliminating the requirement that three months elapse between two mailings prior to coding a securityholder as lost. Accordingly, the Commission is retaining its estimate of $3.38 per account in the first year and $1.79 per account in the following years.

The Commission believes that the cost of the rule will be outweighed by its benefits. The rule will create a uniform standard applicable to all transfer agents thus ensuring that all investors have the opportunity to the reunited with their assets.[37] In addition, the rule will guarantee that transfer agents make at least two attempts to locate lost securityholders before forwarding names to a search firm that may result in substantial charges to the securityholder. Thus, the rule should help investors recover a greater percentage of their assets.

Based on comments received, the Commission believes that the number of lost securityholders compared to total accounts held by transfer agents is small, approximately 1.34%. However, the actual dollar amount of those assets can be significant. The Commission believes that the total value of assets held in accounts coded as "lost" may in fact exceed $450 million.[38]

The Commission believes that Rule 17Ad–17 mandates a cost-effective means for locating lost securityholders. Because of the de minimis exception, transfer agents are not required to search for lost securityholders unless their accounts are worth $25 or more. The Commission believes that the rate of success for data base searches is at least 60%.[39] Thus, even if every account of lost securityholders was worth only $25, the rule would provide an average benefit of $15 per lost securityholder account (*i.e.*, 60% of $25). This estimated benefit is larger than any commenter's estimate of the per account cost of data base searches.[40] Futhermore, because the value of many accounts will exceed $25, the Commission expects that the actual benefit will be higher.

The Commission has considered the substantial likely benefits that investors

[35] The commenter's estimates include the cost of the data base search itself plus such items as system processing expenses to generate the search and to receive the matched file from the data base vendor; printing and mailing expenses; handling and other related charges for returned items; and expenses for replacement of uncashed checks and lost securities.

[36] The estimate of $4.75 is based on postage, data base charges, and an increase in processing staff by two full time positions. Currently, this commenter conducts periodic searches for its lost securityholders.

[37] Some transfer agents currently attempt to locate lost securityholders, but the extent and type of efforts used vary greatly among transfer agents. In some cases, transfer agents forward the names of lost securityholders directly to professional search firms, in which case the securityholder must pay a fee to regain its assets. In other cases, the transfer agent searches for lost securityholders only if the search are authorized and paid for by the issuer.

[38] The data cited in this paragraph is based on a limited informal survey of several large transfer agents.

[39] The Commission staff contacted several transfer agents to obtain an estimated success rate. Only one of the transfer agents contacted currently uses data base searches to find lost securityholders. That transfer agent, which has been conducting searches on a monthly basis for over a year, stated that its success rate using data base searches is never less than 75% and sometimes is as high as 94%. For purposes of the cost-benefit analysis, the Commission is assuming a 60% success rate in order to be conservative.

[40] One commenter stated that the per account cost could be as high as $12.00. However, as discussed above, the Commission believes that this estimate includes many costs not created by the rule. Also, as noted above, the Division of Market Regulation estimates the average cost of data base searches required by the rule will total only $3.38 per account in the first year and $1.79 per account in the following years.

will receive from adoption of the rule and the additional cost the rule will impose on transfer agents. The Commission has decided to adopt the rule given the lack of consistent standards currently in effect with respect to lost securityholders and the relatively minor cost per account imposed by the rule. In consideration of cost, the Commission has designed the final rule to give transfer agents maximum flexibility to comply with the rule's requirements and to minimize their search and recordkeeping expenses.

Rule 17a–24 as adopted differs from the proposed rule. Because the adopted rule requires that information be reported on a form that all transfer agents subject to the rule are required to file, the rule should not create an additional filing burden. In addition, the information that the reporting transfer agents must file should be currently available to such transfer agents.[41] Thus, because the rule should not create any significant costs to transfer agents, the Commission has determined that Rule 17a–24 will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

In addition, the Commission believes that the benefits of the rule justify the costs. The benefits of the rule are to provide the Commission with information to determine whether transfer agents are more successful in locating lost securityholders and, therefore, whether Rule 17Ad–17 is effective. The costs of compliance with Rule 17a–24 should be limited to the costs involved in compiling the information required to be reported once a year.

V. Paperwork Reduction Act

As set forth in the Proposing Release, Rule 17Ad–17 and Rule 17a–24 contain collections of information within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[42] Accordingly, the collection of information requirements contained in the rules and related amendments were submitted to the Office of Management and Budget ("OMB") for review and were approved by OMB which assigned the following control numbers: Rule 17Ad–17, control number 3235–0469; and Rule 17a–24, control number 3235–0470.[43] The collection of information requirements are in accordance with Section 3507 of the PRA.[44] An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless the agency displays a valid OMB control number.

The collections of information under Rule 17Ad–17, Rule 17a–24, and Rule 17Ad–7 are mandatory. As described in more detail above and in the Proposing Release, the collections of information are necessary to enable recordkeeping transfer agents, as the usual custodians of the records that determine the ownership of securities and the entitlement to corporate distributions, to reduce significantly the number of lost securityholders and for the Commission to monitor compliance with the rule. The Commission may review this information during periodic examinations or with respect to investigations. The records required to be filed with the Commission and any records required to be kept pursuant to these rules that are requested by and submitted to the Commission will be kept confidential to the extent permitted by the Freedom of Information Act[45] and the Privacy Act of 1974.[46]

Based upon further review of the disclosure and recordkeeping changes required by Rule 17Ad–7, the Commission is retaining its burden estimates for the collection of information under that rule. Thus, the description and estimated burden of the collection of information requirement under Rule 17Ad–7 have not changed and are set forth in the Proposing Release.

Originally, the Commission estimated compliance costs of Rule 17Ad–17 to the industry of approximately $750,000, based on an estimated cost of $3.00 per account and a total estimated 250,000 lost securityholder accounts. Based on comments received questioning the Commission's original burden estimate, the Commission obtained more recent data from several large transfer agents. As a result, the Commission has revised its cost estimate per account to $3.38 the first year and $1.79 per account in the following years. Significantly, based on its most recent information, the Commission now believes that there may be as many as 3 million lost securityholder accounts. Due primarily to this change in estimated lost securityholder accounts, the Commission's revised estimate of the aggregate costs to the industry are one time compliance costs of $4.6 million and annual compliance costs of $5.2 million.

Due to the changes in Rule 17a–24 as adopted and the corresponding changes on Form TA–2, the Commission will be resubmitting its collection of information requirement to OMB for review and approval.

VI. Statutory Basis

Pursuant to section 17A(d)(1) of the Exchange Act, 15 U.S.C. 78a–1(d)(1), the Commission amends Rule 17Ad–7 and Form TA–2 and adopts Rule 17Ad–17 and Rule 17a–24 in Chapter II of Title 17 of the Code of Federal Regulations.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements; Securities; Transfer agents.

Text of the Amendments

For the reasons set out in the preamble, the Commission amends Title 17, Chapter II of the Code of Federal Regulations to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By adding § 240.17a–24 to read as follows:

§ 240.17a–24 Reports of lost securityholders.

(a) Each recordkeeping transfer agent shall file with the Commission on Form TA–2 (17 CFR 249b.102) the following aggregate information with respect to lost securityholder accounts contained on such transfer agent's master securityholder files:

(1) The total number of lost securityholder accounts and the percentage of lost securityholder accounts compared to total number of accounts contained on the transfer agent's master securityholder files.

(2) The information required by paragraph (a)(1) of this section shall be provided separately for securityholders lost one year or less, three years or less, five years or less, and more than five years and for securityholders whose assets which have escheated to unclaimed property administrators within the last calendar year.

(b) For purpose of this section, *lost securityholder* means a securityholder:

(1) To whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent may deem the securityholder to be a lost securityholder as of the day the re-sent item is returned as undeliverable and

(2) For whom the transfer agent has not received information regarding the securityholder's new address.

3. Section 240.17Ad–7 is amended by adding paragraph (i) to read as follows:

§ 240.17Ad–7 Record retention.

* * * * *

(i) The records required by § 240.17Ad–17(c) shall be maintained for a period of not less than three years, the first year in an easily accessible place.

4. Section 240.17Ad–17 is added to read as follows:

§ 240.17Ad–17 Transfer agents' obligation to search for lost securityholders.

(a)(1) Every recordkeeping transfer agent whose master securityholder file includes accounts of lost securityholders shall exercise reasonable care to ascertain the correct addresses of such securityholders. In exercising reasonable care to ascertain for its master securityholder file such lost securityholders' current addresses, each recordkeeping transfer agent shall conduct two data base searches using at least one information data base service. The transfer agent shall search by taxpayer identification number or by name if a search based on taxpayer identification number is not reasonably likely to locate the securityholder. Such data base searches must be conducted without charge to a lost securityholder and with the following frequency:

(i) Between three and twelve months of such securityholder becoming a lost securityholder and

(ii) Between six and twelve months after the transfer agent's first search for such lost securityholder.

(2) A transfer agent may not use a search method or service to establish contact with lost securityholders that results in a charge to a lost securityholder prior to completing the searches set forth in paragraph (a)(1) of this section.

(3) A transfer agent need not conduct the searches set forth in paragraph (a)(1) of this section for a lost securityholder if:

(i) It has received documentation that such securityholder is decreased or

(ii) The aggregate value of assets listed in the lost securityholder and all securities owned by the lost securityholder as recorded in the transfer agent's master securityholder files, is less than $25; or

(iii) The securityholder is not a natural person.

(b) For purposes of this section:

(1) *Information data base service* means either:

(i) Any automated data base service that contains addresses from the entire United States geographic area, contains the names of at least 50% of the United States geographic area, contains the names of at least 50% of the United States adult population, is indexed by taxpayer identification number or name, and is updated at least four times a year; or

(ii) Any service or combination of services which produces results comparable to those of the service described in paragraph (b)(1)(i) of this section in locating lost securityholders.

(2) *Lost securityholder* means a securityholder:

(i) To whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent may deem the securityholder to be a lost securityholder as of the day the resent item is returned as undeliverable; and

(ii) For whom the transfer agent has not received information regarding the securityholder's new address.

(c) Every recordkeeping transfer agent shall maintain records to demonstrate compliance with the requirements set forth in this section which shall include written procedures which describe the transfer agent's methodology for complying with this section.

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249b continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

Note: Form TA–2 does not and the amendments will not appear in the Code of Federal Regulations.

§ 249b.102 [Form TA–2 Amended]

6. Form TA–2 (referenced in § 249b.102) is amended by adding paragraph 8 to Instruction I.A. to read as follows:

Form TA–2

* * * * *

I. General Instruction for Filing and Amending Form TA–2.

A. * * *

8. "Lost securityholder" is defined in Rule 17a–24(b)(1) (17 CFR 240.17a–24(b)(1)).

* * * * *

§ 249b.102 [Form TA–2 Amended]

7. Form TA–2 (referenced in § 249b.102) is amended by adding paragraph c to Question 4 to read as follows:

Form TA–2

* * * * *

4. * * *

c. (i) Number of lost securityholder accounts and (ii) percentage of total accounts represented by lost securityholder accounts as of June 30 for:

Accounts of securityholders lost one year or less: _____

Accounts of securityholders lost three years or less: _____

Accounts of securityholders lost five years or less: _____

Accounts of securityholders lost more than five years: _____

Accounts of securityholders which have escheated to states within the year ended June 30: _____

* * * * *

Dated: October 1, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26519 Filed 10–6–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20, 310, 312, 314, and 600

[Docket No. 93N–0161]

RIN 0910–AA97

Expedited Safety Reporting Requirements for Human Drug and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its expedited safety reporting regulations for human drug and biological products to provide consistency with the elements of FDA Form 3500A for use in pre- and postmarketing safety reporting;

[41] Transfer agents must record which of their securityholders are lost and the date that such securityholders become lost in order to comply with state escheatment laws.

[42] 44 U.S.C. 3501 *et seq.*

[43] Rule 17Ad–7 was previously submitted to OMB, which approved the rule and assigned the following control number 3235–0136.

[44] 44 U.S.C. 3507.

[45] U.S.C. 552.

[46] 5 U.S.C. 552a.

implement definitions, reporting periods, formats, and standards as recommended by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) and by the World Health Organization's Council for International Organizations of Medical Sciences (CIOMS); require applicants, manufacturers, packers, and distributors, as well as licensed manufacturers and other manufacturers of biological products, to develop written procedures for postmarketing safety monitoring and reporting; state that FDA Form 3500A reports that FDA forwards to any person subject to the postmarketing safety reporting requirements are not required to be resubmitted to the agency; and make other revisions to the regulations to provide uniformity with definitions and procedures used in expedited pre- and postmarketing safety reporting for human drug and biological products. These changes simplify and facilitate expedited safety reporting and enhance agencywide consistency in the collection of postmarketing safety data.

DATES: This regulation is effective April 6, 1998. Submit written comments on the information collection provisions of this final rule by December 8, 1997.

ADDRESSES: Submit written comments on the information collection provisions of this final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

For information concerning human drug products: Audrey A. Thomas, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5625.

For information concerning human biological products: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of October 27, 1994 (59 FR 54046), FDA published a proposed rule to amend the regulations for expedited and periodic pre- and postmarketing safety reporting for human drug and biological products (hereinafter referred to as the October 1994 proposal). FDA also proposed to amend the requirements for clinical study design and conduct and annual sponsor reporting in the investigational new drug application (IND) regulations.

As explained in the October 1994 proposal, the amendments to the safety reporting regulations are intended to provide consistency with certain standardized definitions, procedures, and formats developed by ICH and CIOMS (59 FR 54046 at 54047). In the **Federal Register** of July 9, 1993 (58 FR 37408), FDA published an ICH draft guideline entitled "Clinical Safety Data Management: Definitions and Standards for Expedited Reporting" (hereinafter referred to as the draft ICH E2A guideline). The public was given an opportunity to comment on the draft ICH E2A guideline. After consideration of the comments received and revisions to the draft guideline, ICH finalized the guideline. In the **Federal Register** of March 1, 1995 (60 FR 11284), FDA published the ICH final guideline (hereinafter referred to as the final ICH E2A guideline). Although the final ICH E2A guideline pertains to expedited safety reporting during the preapproval phase of drug development, for consistency and simplicity many of the definitions, reporting periods, formats, and standards also could apply to FDA's expedited postmarketing safety reporting requirements.

In this final rule, FDA is amending its regulations for expedited safety reporting to implement certain definitions, reporting periods, and formats recommended in the final ICH E2A guideline. FDA is considering other recommendations in the final ICH E2A guideline that were not included in the October 1994 proposal and plans to propose additional amendments to its expedited safety reporting regulations shortly (e.g., pre- and postmarketing reporting of adverse drug reactions rather than adverse drug experiences, submission of expedited safety reports to FDA from clinical investigations based on the opinion of either the sponsor or investigator).

FDA is delaying finalization of the proposed amendments to the periodic postmarketing safety reporting regulations (59 FR 54046). The proposed amendments were based, for the most part, on recommendations developed by the CIOMS Working Group II (Ref. 1). ICH also developed recommendations, based on the CIOMS Working Group II proposals, for periodic postmarketing safety reporting. In the **Federal Register** of May 19, 1997 (62 FR 27470), FDA published an ICH final guideline entitled "Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs" (hereinafter referred to as the ICH E2C guideline). FDA will finalize the proposed amendments to the periodic postmarketing safety reporting regulations after consideration of the provisions of the ICH E2C guideline.

In light of the comments the agency received, FDA has reconsidered the proposed amendments to the requirements for clinical study design and conduct and annual sponsor reporting under the IND (59 FR 54046). In general, the comments opposed the proposed amendments because the current IND regulations protect the safety of the public in all but the most unusual cases. Based on these general comments and others specific to each of the proposed amendments, the agency has decided to withdraw the proposed amendments to the IND requirements for clinical study design and conduct and annual sponsor reporting. The agency will, instead, develop a guidance document providing recommendations on study design and monitoring of investigational drugs used to treat serious and potentially fatal illnesses, with particular attention to detection of adverse events that are similar to those caused by the underlying disease. In developing the draft guidance document, FDA will consider comments submitted in response to the proposed amendments and will provide opportunity for public input on the document prior to its implementation. Thus, in this final rule, FDA is withdrawing the proposed amendments to the IND regulations (part 312 (21 CFR part 312)) at §§ 312.23; the second sentence of 312.32(c)(1)(i), 312.33, 312.37, 312.42, 312.44, 312.56, and 312.64 (59 FR 54048 at 54057 to 54059).

In the **Federal Register** of June 25, 1997 (62 FR 34166), FDA published a final rule to amend its regulations on expedited reporting of postmarketing adverse experiences to revoke the requirement for increased frequency reports as expedited reports for human drug and licensed biological products. Thus, in this final rule, FDA is withdrawing the proposed amendments to the increased frequency reporting requirements published in the October 1994 proposal.

II. Background

In the **Federal Register** of June 3, 1993 (58 FR 31596), FDA announced the availability of a new form for reporting single cases of adverse events and product problems with medications, devices, and other FDA-regulated medical products (hereinafter referred to as the June 1993 notice). This form is available in two versions: FDA Form 3500 is for use by health care professionals and consumers for voluntary reporting; FDA Form 3500A is for use by any person subject to FDA's mandatory safety reporting regulations. Adverse events associated with vaccines continue to be reported to FDA and the Centers for Disease Control and Prevention using the Vaccine Adverse Event Reporting System (VAERS) form.

Under the existing regulations, manufacturers, packers, and distributors; applicants of approved new and abbreviated marketing applications for drugs and antibiotics; and licensed manufacturers and other manufacturers of biological products must submit expedited reports of postmarketing adverse drug experiences under 21 CFR 310.305, 314.80, 314.98, and 600.80. Sponsors of IND's must also submit expedited reports, under § 312.32, for adverse experiences associated with the use of an investigational human drug or biological product. Currently, there is no standard form for these IND expedited safety reports.

FDA Forms 3500 and 3500A are part of FDA's Medical Products Reporting Program (MedWatch) and are designed to facilitate safety reporting for most FDA-regulated human medical products by the entire health care community, including manufacturers, distributors, user facilities, and health care professionals. FDA issued the new forms to simplify and consolidate safety reporting for human drug products, biologics, and medical devices, as well as other FDA-regulated medical products. The new forms eliminate redundant or nonessential elements from past reporting forms and clarify those areas that have caused confusion.

In developing FDA Forms 3500 and 3500A, and in developing the revisions to the expedited safety reporting regulations that are the subject of this final rule, the agency considered several ICH and CIOMS recommendations. These organizations were formed to facilitate international consideration of issues, particularly safety issues, concerning the use of both foreign and domestic data in the development and use of drugs and biological products. ICH has worked to promote the harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. In addition, several CIOMS working groups have served to coordinate and standardize the international reporting of suspected postmarketing adverse drug reactions by pharmaceutical manufacturers to regulatory authorities. FDA believes the changes recommended by CIOMS and ICH will result in more effective and efficient safety reporting to regulatory authorities worldwide.

III. Description of the Final Rule

This final rule amends parts 20, 310, 312, 314, and 600 (21 CFR parts 20, 310, 312, 314, and 600) to revise definitions, requirements, and procedures for expedited pre- and postmarketing safety reporting. This rulemaking finalizes many of the expedited safety reporting provisions as proposed in the October 1994 proposal. In addition, this final rule reflects amendments to the October 1994 proposal that were made in response to comments (discussed in section IV of this document), including comments recommending greater consistency with the ICH E2A guideline and uniformity between pre- and postmarketing safety reporting definitions. This final rule also incorporates minor revisions for clarity and further consistency. The major provisions of the final rule are summarized as follows:

1. *FDA Forms 3500/3500A.* As proposed, the final rule permits sponsors to submit IND safety reports, under § 312.32(c)(1)(i), on FDA Form 3500A rather than in a narrative format, and replaces, at §§ 310.305 and 314.80, Form FDA–1639 with FDA Form 3500A for use in postmarketing safety reporting for human drug products. The final rule also replaces, at § 20.112, Form FDA–1639 with FDA Form 3500 for voluntary drug experience reporting by physicians and hospitals. The final rule, like the proposed rule, instructs applicants, manufacturers, packers, and distributors to obtain approval from FDA's MedWatch office before using an alternative reporting format for postmarketing safety reporting under §§ 310.305(d)(3)(ii) and 314.80(f)(3)(ii). Pre- and postmarketing safety reporting of foreign events may continue to be reported to FDA on the CIOMS I form (Ref. 2). After consideration of the comments, the final rule, unlike the proposed rule, permits use of the CIOMS I form for this purpose without prior FDA approval.

2. *Definitions.* In response to comments, the proposed definition of "serious" at §§ 310.305(b), 312.32(a), 314.80(a), and 600.80(a) has been revised to make it consistent with the definition of "serious" in the final ICH E2A guideline and with the definition of "serious" used in FDA Form 3500A. To provide uniformity between the pre- and postmarketing definitions of "serious," the following information has been removed from the current definition of "serious adverse experience" at § 312.32(a) and added as a reporting requirement to the IND safety reporting regulations at § 312.32(c)(1)(i):

With respect to results obtained from tests in laboratory animals, a serious adverse drug experience includes any experience suggesting a significant risk for human subjects, including any finding of mutagenicity, teratogenicity, or carcinogenicity.

This revision represents an organizational change that does not impose a new burden because sponsors are already required to report such information to FDA.

In response to comments, the final rule also amends the proposed definitions of "disability" and "life-threatening" at §§ 310.305(b), 314.80(a), and 600.80(a) for consistency with the final ICH E2A guideline and for clarity. In addition, the definition of "disability" has been added to the "definitions" section of the premarketing safety reporting regulations at § 312.32(a), and the definition of "life-threatening" has been removed from the "telephone safety report" section of the premarketing safety reporting regulations at § 312.32(c)(2) and added to the "definitions" section of these regulations at § 312.32(a). For further clarity and consistency in reporting adverse drug experiences that are life-threatening, FDA has decided to replace, at §§ 310.305(b), 312.32(a), 314.80(a), and 600.80(a), the word "serious" with "severe" so that the first sentence of the definition of "life-threatening" includes the following: "* * *, i.e., [Life-threatening] does not include a reaction that, had it occurred in a more severe form, might have caused death." As explained in the final ICH E2A guideline, "severe" refers to the intensity (severity) of a specific event (e.g., mild, moderate, or severe myocardial infarction); the event itself may be of relatively minor medical significance such as a severe headache. The term "serious," however, is based on patient/event outcome or action criteria usually associated with events that pose a threat to a patient's life or functioning (e.g., an event that results in death or that is life-threatening or requires inpatient hospitalization) (60 FR 11284 at 11285). FDA has also decided to remove the following sentence from this definition: "For example, drug-induced hepatitis that resolved without evidence of hepatic failure would not be considered life-threatening even though drug-induced hepatitis can be fatal." Use of hepatitis as an example for life-threatening may be confusing because viral transmission of certain types of hepatitis through blood products could be life-

threatening. To harmonize pre- and postmarketing safety reporting definitions, FDA has decided to withdraw the examples listed in the proposed postmarketing definition of "life-threatening" at §§ 310.305(b), 314.80(a), and 600.80(a). The agency has decided, instead, to revise the guidances associated with this final rule to include examples of life-threatening adverse drug experiences (CDER's "Guideline for Postmarketing Reporting of Adverse Drug Experiences," March 1992 and CBER's "Guideline for Adverse Experience Reporting for Licensed Biological Products," October 1993).

In this final rule, FDA is incorporating minor changes to the definition of "unexpected" adverse drug experience at §§ 310.305(b), 312.32(a), 314.80(a), and 600.80(a) to provide uniformity between pre- and postmarketing safety reporting definitions and consistency with the ICH E2A guideline.

The definition of "unexpected" adverse drug experience at §§ 310.305(b), 314.80(a), and 600.80(a) currently states:

> * * * an adverse drug experience that is not listed in the current labeling for the drug product and includes an event that may be symptomatically and pathophysiologically related to an event listed in the labeling, but differs from the event because of greater severity or specificity. For example, under this definition, hepatic necrosis would be unexpected (by virtue of greater severity) if the labeling only referred to elevated hepatic enzymes or hepatitis. Similarly, cerebral thromboembolism and cerebral vasculitis would be unexpected (by virtue of greater specificity) if the labeling only listed cerebral vascular accidents.

To clarify what must be reported to the agency as an "unexpected adverse drug experience," FDA is amending this definition by adding the following sentence:

> "Unexpected," as used in this definition, refers to an adverse drug experience that has not been previously observed (i.e., included in the labeling) rather than from the perspective of such experience not being anticipated from the pharmacological properties of the pharmaceutical product.

This amendment is consistent with the discussion of "expectedness of an adverse drug reaction" in the final ICH E2A guideline:

> The purpose of expedited reporting is to make regulators, investigators, and other appropriate people aware of new, important information on serious reactions. Therefore, such reporting will generally involve events previously unobserved or undocumented, and a guideline is needed on how to define an event as "unexpected" or "expected" (expected/ unexpected from the perspective of previously observed, not on the basis of what might be anticipated from the pharmacological properties of a medicinal product).

The definition of "unexpected adverse experience" at § 312.32(a) currently states:

> * * * any adverse experience that is not identified in nature, severity, or frequency in the current investigator brochure; or, if an investigator brochure is not required, that is not identified in nature, severity, or frequency [sic] in the risk information described in the general investigational plan or elsewhere in the current application, as amended.

For clarity and consistency, FDA is amending this definition to conform with the definition of "unexpected" at §§ 310.305(b), 314.80(a), and 600.80(a) by removing the references to frequency, replacing the word "nature" with the word "specificity," adding examples of unexpected adverse drug experiences, and making other minor revisions. The revised definition at § 312.32(a) states:

> *Unexpected adverse drug experience*: Any adverse drug experience, the specificity or severity of which is not consistent with the current investigator brochure; or if an investigator brochure is not required or available, the specificity or severity of which is not consistent with the risk information described in the general investigational plan or elsewhere in the current application, as amended. For example, under this definition, hepatic necrosis would be unexpected (by virtue of greater severity) if the investigator brochure only referred to elevated hepatic enzymes or hepatitis. Similarly, cerebral thromboembolism and cerebral vasculitis would be unexpected (by virtue of greater specificity) if the investigator brochure only listed cerebral vascular accidents. "Unexpected," as used in this definition, refers to an adverse drug experience that has not been previously observed (e.g., included in the investigator brochure) rather than from the perspective of such experience not being anticipated from the pharmacological properties of the pharmaceutical product.

3. *IND Sofety Reports.* As proposed, the final rule revises the time period for submitting written IND safety reports, under § 312.32(c)(1) and (d)(3), from 10 working days to 15 calendar days, and revises the time period for submitting telephone IND safety reports, under § 312.32(c)(2), from 3 working days to 7 calendar days. The final rule also permits telephone safety reports to be made by facsimile transmission under § 312.32(c)(2). The final rule, as proposed with minor revisions for clarity, also states, at § 312.32(c)(1)(i), that FDA may require sponsors to submit additional data.

In response to comments, FDA is making minor revisions to its IND safety reporting regulations to provide greater consistency with the final ICH E2A guideline. Currently, the requirement at § 312.32(b) states:

> The sponsor shall promptly review all information relevant to the safety of the drug obtained or otherwise received by the sponsor from any source, foreign or domestic, including information derived from clinical investigations, animal investigations, commercial marketing experience, reports in the scientific literature, and unpublished scientific papers.

To clarify the phrase "any source," FDA is adding "epidemiological investigations" and "foreign regulatory authorities that have not already been previously reported to the agency by the sponsor" to the list of examples in § 312.32(b). This revision does not impose a new burden because sponsors are already required to review all information relevant to the safety of the drug obtained or otherwise received by the sponsor from any source, foreign or domestic. The amendment clarifies for sponsors the type of safety information that must be examined for determination of whether information should be submitted to the agency in IND safety reports. This revision is consistent with the final ICH E2A guideline (60 FR 11284 at 11285 and 11286):

> [Expedited reporting] applies to reports from spontaneous sources and from any type of clinical or epidemiological investigation, independent of design or purpose.

The agency does not expect sponsors to search adverse drug experience data bases generated by regulatory authorities for safety information or to submit to FDA adverse drug experience reports submitted to them by FDA.

FDA is also amending its IND safety reporting regulations at § 312.32(c)(1)(i), as noted above, by adding, with minor revisions, language that is being moved from the current definition of "serious adverse experience" at § 312.32(a):

> any finding from tests in laboratory animals that suggests a significant risk for human subjects including reports of mutagenicity, teratogenicity, or carcinogenicity.

This revision represents an organizational change that does not impose any new burden because sponsors are currently required to report such information to FDA. For clarity and consistency, FDA is amending § 312.32(c)(1)(i) to state that reports from animal studies and epidemiological studies must be submitted in a narrative format rather than on FDA Form 3500A because FDA Form 3500A has been designed for reporting of adverse experience information from an individual patient.

4. *Postmarketing 15-day Alert and Followup Reports.* As proposed, the final rule revises, at §§ 310.305(c), 314.80(c), and 600.80(c), the time period for submitting postmarketing Alert reports from 15 working days to 15 calendar days. For clarity, the final rule is being amended, at § 310.305(c)(1)(i), to state that the 15 calendar day timeframe for reporting adverse drug experiences on marketed prescription drugs for human use without approved new drug applications (NDA's) begins upon initial receipt of the information by the person whose name appears on the label. In addition, the final rule at §§ 310.305(c)(2), 314.80(c)(1)(ii), and 600.80(c)(1)(ii), as proposed, advises any person subject to the reporting requirements under §§ 310.305(c), 314.80(c), and 600.80(c), who has been unable to obtain additional information for adverse drug experiences that are the subject of postmarketing 15-day Alert reports, to maintain records of their unsuccessful attempts to seek additional information. For clarity, the final rule is being amended, at § 310.305(c)(2), to state that 15-day Alert reports and followups to them must be submitted under separate cover.

The final rule specifies, like the proposed rule, at §§ 310.305(c)(6), 314.80(b), and 600.80(b), that no one subject to this rule is required to resubmit to the agency reports of adverse drug experiences that the agency has forwarded to them. For clarity, the final rule is being amended, at §§ 310.305(c)(6), 314.80(b), and 600.80(b), to emphasize that followup reports must be submitted for reports received from the agency. The final rule also requires, at §§ 310.305(a), 314.80(b), and 600.80(b), any person subject to the reporting requirements under §§ 310.305(c), 314.80(c), and 600.80(c) to develop written procedures for the postmarketing surveillance, receipt, evaluation, and reporting of adverse drug experiences to FDA. In response to comments, the final rule permits persons subject to the reporting requirements under §§ 310.305(c), 314.80(c), and 600.80(c) to submit reports of serious adverse drug experiences to a manufacturer, applicant, or licensed manufacturer of a final biological product instead of FDA in 5 calendar days, instead of 3 calendar days as proposed.

In this final rule, FDA is also amending the postmarketing expedited reporting regulations, at §§ 314.80(c)(1)(i) and 600.80(c)(1)(i), by replacing, in the first sentence, the phrase "regardless of source" with the phrase "whether foreign or domestic." This amendment is consistent with §§ 314.80(b) and 600.80(b) which describe adverse drug experience information that must be reviewed by applicants and licensed manufacturers:

> Each applicant (Any person having a product license) * * * shall promptly review all adverse drug experience information (pertaining to its product) obtained or otherwise received by the applicant (licensed manufacturer) from any source, foreign or domestic, including * * *.

FDA is making this revision to clarify that 15-day Alert reports are to be submitted for appropriate foreign as well as domestic adverse drug experiences.

5. *Implementation Schedule.* The effective date for this final rule has been extended to 180 days after its publication in the **Federal Register** to allow sufficient time for the agency to comply with the provisions of the Paperwork Reduction Act of 1995. Any person subject to FDA's mandatory safety reporting requirements may comply with the provisions of this final rule prior to its effective date.

6. *Guidances.* In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice of a guidance document entitled "Good Guidance Practices (GGP's)," in which FDA announced that notices of draft and final guidances will be provided both in the **Federal Register** and on the FDA World Wide Web (WWW) home page (http://www.fda.gov) (62 FR 8961 at 8965). In this final rule, FDA is amending its postmarketing safety reporting regulations at §§ 314.80(j) and 600.80(j) to remove reference to guidelines prepared by the agency for submission of reports of adverse drug experiences and suggested followup investigation of these reports. FDA is also withdrawing its proposed amendments of October 27, 1994, regarding the availability of adverse experience reporting guidelines under §§ 310.305(g), 314.80(j), and 600.80(j). FDA is making these amendments because the guidance document of February 27, 1997, describes processes for timely notification of availability of draft and final guidance documents and it is no longer necessary for the agency to include reference to these documents in its postmarketing safety reporting regulations.

At the present time, FDA is in the process of revising guidances pertaining to this final rule (CDER's "Guideline for Postmarketing Reporting of Adverse Drug Experiences," March 1992 and CBER's "Guideline for Adverse Experience Reporting for Licensed Biological Products," October 1993) to provide persons with the agency's current thinking on reporting of postmarketing adverse drug experiences. The agency will provide notice of availability of any draft or final guidance document pertaining to these regulations in the **Federal Register** and on the FDA WWW home page.

IV. Comments on the Proposed Rule

FDA received 57 comments on the proposed rule from representatives of pharmaceutical companies, health care professional and pharmaceutical associations, academic and government institutions, and individuals. The comments addressed all aspects of the October 1994 proposal, including those areas that are not being finalized in this final rule. In general, the comments endorsed FDA's efforts in the proposal to support global harmonization through the adoption of certain ICH and CIOMS recommendations. However, many comments described areas where the proposed regulations did not conform to the international guidelines, and recommended that the proposal be revised to be more consistent. The agency also received comments recommending uniformity between its pre- and postmarketing safety reporting definitions. In response to these comments, FDA, as described in section III of this document, is amending its regulations to implement additional provisions recommended in the final ICH E2A guideline and to provide uniformity in its safety reporting definitions.

A discussion of the comments pertaining to this final rule and the agency's responses follows.

A. Definition of Disability

FDA proposed to define "disability," in §§ 310.305(b), 314.80(a), and 600.80(a), as "a substantial disruption of a person's ability to carry out normal life functions."

1. Eight comments requested clarification of this definition. One comment asked whether it included missing work because of an adverse experience, quitting a job, an inability to get out of bed, or a decrease in earning capacity. Another comment asked if it included nausea, vomiting, and diarrhea that would keep a person home from work. One questioned whether the proposed definition included events such as migraine headaches, severe influenza, or accidental trauma (e.g., sprained ankle). Another comment contended that if the proposed definition is intended to mean the substantial disruption of normal life functions, then such a condition would require hospitalization or the in-house use of life-support equipment.

FDA proposed to include the definition of "disability" in the regulations to enable reporters to determine when a "serious" adverse drug experience occurs. The extent of a disability required for a serious adverse drug experience is described in the

definition of "serious" by the phrase "* * * results in *persistent* or *significant* disability/*incapacity* * * *." Thus, only a persistent or significant or incapacitating disability is intended. The type of disability that would constitute a serious adverse drug experience is also described in the final ICH E2A guideline, which states that a serious adverse drug experience is based on events that pose a threat to a patient's life or functioning and not on events of relatively minor medical significance (60 FR 11284 at 11285). Thus, disability is not intended to include experiences of relatively minor medical significance such as headache, nausea, vomiting, diarrhea, influenza, and accidental trauma (e.g., sprained ankle).

For clarity, FDA has revised the proposed definition of "disability" by substituting the words "to conduct" for the words "to carry out."

To assure a consistent interpretation of serious adverse drug experience in premarketing and postmarketing safety reporting, FDA has decided to revise the "definitions" section of the IND safety reports regulation, at § 312.32(a), by adding the definition of "disability" that is used in the postmarketing safety reporting regulations at §§ 310.305(b), 314.80(a), and 600.80(a).

B. Definition of Life-Threatening

FDA proposed to define "life-threatening," in §§ 310.305(b), 314.80(a), and 600.80(a), as follows:

[T]hat the patient was, in the view of the initial reporter, at immediate risk of death from the adverse experience as it occurred. It does not include an adverse experience that, had it occurred in a more serious form, might have caused death. For example, product-induced hepatitis that resolved without evidence of hepatic failure would not be considered life-threatening even though hepatitis of a more severe nature can be fatal. Similarly, an allergic reaction resulting in angioedema of the face would not be life-threatening, even though angioedema of the larynx, allergic bronchospasm, or anaphylaxis can be fatal.

2. Five comments opposed the use of the phrase "in the view of the initial reporter." The comments stated that the initial reporter could be a lay person whose judgment of what constitutes an "immediate risk of death" may be contrary to an evaluation by a medically knowledgeable source. Several comments suggested alternative language for the definition to minimize inaccurate reporting of events. One comment requested deletion of the word "initial." Another suggested changing the phrase "initial reporter" to "a health care professional directly associated with the care of the patient," while a third recommended changing the word "reporter" to "health care provider who reports the adverse experience."

FDA declines to amend the proposed definition of "life-threatening" by deleting or revising the phrase "in the view of the initial reporter." As explained in the June 1993 notice (58 FR 31596 and 31604), FDA encourages health care professionals and consumers to report adverse drug experiences to manufacturers. FDA Form 3500A includes a section for identifying the "initial reporter" and for indicating the reporter's occupation and whether the person is a health care professional. Thus, the manufacturer and FDA will know whether the adverse drug experience report came from a lay person or a health care professional and can take that information into account when evaluating the report.

Current IND safety reporting regulations for telephone reports define a "life-threatening" experience at § 312.32(c)(2), as:

* * * that the patient was, in the view of the investigator, at *immediate* (emphasis added) risk of death from the reaction as it occurred, i.e., it does not include a reaction that, had it occurred in a more serious form, might have caused death. For example, drug-induced hepatitis that resolved without evidence of hepatic failure would not be considered life-threatening even though drug-induced hepatitis can be fatal.

FDA has decided, on its own initiative, to remove the definition of "life-threatening" from the telephone safety reports section, at § 312.32(c)(2), and add it to the general "definitions" section of § 312.32, at § 312.32(a). This action will clarify that reporting of life-threatening events apply to both written and telephone IND safety reports. FDA has also replaced "serious" with "severe" in the definition of "life-threatening" to make it consistent with the final ICH E2A guideline. FDA has also decided, on its own initiative, to add the words "or subject" after "patient" in this definition to clarify that IND safety reports apply to healthy subjects as well as patients. FDA has also removed the last sentence in the definition of "life-threatening" under § 312.32 (and the last two sentences in the proposed postmarketing definition of "life-threatening" under §§ 310.305(b), 314.80(a), and 600.80(a)), as noted in section III of this document, to minimize confusion. The revised definition of "life-threatening adverse drug experience" in the IND safety reporting regulations at § 312.32(a) reads as follows:

Any adverse drug experience that places the patient or subject, in the view of the investigator, at *immediate* risk of death from the reaction as it occurred, i.e., it does not include a reaction that, had it occurred in a more severe form, might have caused death.

C. Definition of Serious

FDA proposed to revise the definition of "serious," in §§ 310.305(b), 312.32(a), 314.80(a), and 600.80(a), to read as follows:

Serious means an adverse drug experience occurring at any dose that is fatal or life-threatening, results in persistent or significant disability/incapacity, requires or prolongs inpatient hospitalization, necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure, or is a congenital anomaly.

3. Twenty-five comments opposed all or parts of the phrase "necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure." Nine comments stated that this phrase makes the U.S. definition of "serious" inconsistent with harmonized safety reporting standards such as the ICH E2A and E6 guidelines and with the CIOMS II report. One comment said that although the phrase was included to provide a consistent definition of what constitutes a serious adverse event for all FDA-regulated products, it causes inconsistency between United States and international reporting requirements. Another comment said that the difference in definitions between the United States and the international community will cause confusion and additional expense for manufacturers who are complying with the reporting requirements of several countries. One comment stated that if the definition is finalized as proposed, preparation and submission of a single postmarketing periodic report worldwide will not be possible. Another comment said that a definition as important as "serious" should be internationally consistent in order to be easy to learn, quote, and recognize in global clinical development and medical safety. One comment noted that it would be especially difficult to implement the proposed criterion of "medical/surgical intervention" during the course of an ongoing clinical study.

Ten comments recommended deletion of the phrase. Eleven comments requested clarification of the phrase because it is too vague and misinterpretation would result in overreporting or underreporting of adverse events. Another comment suggested that the phrase be reworded as an "unusual and potentially serious experience that necessitates any medical or surgical intervention." One comment recommended adopting the approach in the final ICH E2A guideline of including "medical and surgical intervention" within the area of "other important medical events." The comment indicated that the guideline leaves the determination of whether or not such an event is serious to medical and scientific judgment.

As explained in the June 1993 notice (58 FR 31596), FDA Forms 3500 and 3500A are designed to encourage and facilitate the reporting of adverse events and product problems for most FDA-regulated human medical products by the entire health care community, including manufacturers, distributors, user facilities, and health care professionals. This includes reporting of adverse events and product problems with human drug products, biologics, and medical devices, as well as other FDA-regulated medical products.

FDA adopted several recommendations from ICH and CIOMS in developing the definitions used in the forms and in the proposed amendments to the safety reporting regulations for human drug and biological products. The agency believes that certain standardized definitions, procedures, and formats proposed by ICH and CIOMS will result in more effective and efficient safety reporting to regulatory authorities worldwide. The agency proposed to amend the definition of "serious" to have a consistent definition of what constitutes a serious adverse drug experience for all FDA-regulated products and to avoid confusion about what events should be reported to regulatory authorities worldwide.

FDA agrees with the comments that the differences between the definition of serious, as proposed, and the definition recommended in the final ICH E2A guideline and in the CIOMS II report may create confusion about what events to report as serious. Therefore, the agency has revised the definition of "serious" to be consistent with the final ICH E2A guideline (60 FR 11284 at 11285) and FDA Forms 3500 and 3500A. The revised definition states:

Any adverse drug experience occurring at any dose that results in any of the following outcomes: Death, a life-threatening adverse drug experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization may be considered a serious adverse drug experience when, based upon appropriate medical judgment, they may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition. Examples of such medical events include allergic bronchospasm requiring intensive treatment in an emergency room or at home, blood dyscrasias or convulsions that do not result in inpatient hospitalization, or the development of drug dependency or drug abuse.

The term "serious" is defined similarly in the final ICH E2A guideline (60 FR 11284 at 11285) as:

A serious adverse event (experience) or reaction is any untoward medical occurrence that at any dose:

- Results in death,
- Is life-threatening,
- * * *
- Requires inpatient hospitalization or prolongation of existing hospitalization,
- Results in persistent or significant disability/incapacity, or
- Is a congenital anomaly/birth defect.

Medical and scientific judgment should be exercised in deciding whether expedited reporting is appropriate in other situations, such as important medical events that may not be immediately life-threatening or result in death or hospitalization but may jeopardize the patient or may require intervention to prevent one of the other outcomes listed in the definition above. These should also usually be considered serious.

Examples of such events are intensive treatment in an emergency room or at home for allergic bronchospasm; blood dyscrasias or convulsions that do not result in hospitalization; or development of drug dependency or drug abuse.

The revised definition of "serious" is also consistent with section B.2 of FDA Forms 3500 and 3500A, which directs persons completing the forms to indicate which of the following outcomes is attributed to the adverse event: "death, life-threatening, hospitalization—initial or prolonged, disability, congenital anomaly, required intervention to prevent permanent impairment/damage, or other."

In order to make the definition of "serious" in the premarketing safety reporting regulations at § 312.32(a) uniform with the revised definition of "serious" in the postmarketing safety reporting regulations at §§ 310.305(b), 314.80(a), and 600.80(a), FDA is removing the following sentence from the current definition of "serious" at § 312.32(a), and adding it, with minor revisions, to the IND written safety reporting requirements under § 312.32(c)(1)(i):

With respect to results obtained from tests in laboratory animals, a serious adverse drug experience includes any experience suggesting a significant risk for human subjects, including any finding of mutagenicity, teratogenicity, or carcinogenicity.

4. One comment requested adding the phrase "including overdose and underdose" after the phrase "occurring at any dose" in the definition of "serious" in order to eliminate confusion. Otherwise, the comment claimed, adverse outcomes associated with underdoses may be interpreted as a lack of therapeutic effect rather than an adverse drug experience.

FDA declines to amend the definition of "serious" to include the phrase "including overdose or underdose." Use of the phrase "occurring at any dose" in the revised definition of "serious" will ensure that serious adverse drug experiences occurring at any dose, including an overdose or an underdose, must be reported.

5. Five comments asked for examples of what is considered serious. One comment asked whether intravenous (IV) treatment for dehydration without hospital admission or the use of IV antibiotics, blood products, or dialysis would be considered serious.

FDA advises that use of IV fluids, antibiotics, or blood products, or dialysis may or may not be serious, depending on why they are being used. A decision using medical judgment should be made based on the circumstances surrounding each case. As stated in the revised definition of "serious", other examples include allergic bronchospasm requiring intensive treatment in an emergency room or at home, blood dyscrasias or convulsions that do not result in inpatient hospitalization, and the development of drug dependency or drug abuse.

6. Five comments requested clarification of the following sentence in the preamble to the proposed rule under the discussion of the definition of "serious": "FDA notes that a serious adverse experience would not include the discontinuation of therapy, changes in dosage, or routine treatment with a prescription medication" (59 FR 54046 at 54048). One comment stated that the sentence should also be included in the codified definition of "serious" because the qualifiers are extremely important in limiting the range of events not considered serious. Three comments asked for clarification of the phrase "routine treatment with a prescription medication." One of these comments noted that treatment with any new medication could potentially be considered a medical intervention and therefore could be classified as serious. Another comment requested clarification of the phrase "would not include discontinuation of therapy" because it implies that discontinuation of therapy in response to a clinically significant rise in serum aminotransferases or serum creatinine would not be considered intervention and therefore would not be serious.

FDA declines to revise the definition of "serious" to include examples of events not considered serious. FDA

clarifies that discontinuation of therapy, changes in dosage, and routine treatment with a prescription medication are not in themselves serious events but may occur as the result of a serious event.

7. Several comments discussed the use of the words "persistent" and "permanent" in the definition of "serious". One comment requested rewording the phrase "persistent or significant disability" to read "permanent or persistent disability." Another comment suggested that the term "permanent disability" in the current definition of "serious" should be retained because replacing "permanent" with "persistent" does not further define disability. The comment noted that a condition like influenza might be significantly incapacitating but may not qualify as a serious event. Three comments recommended changing the word "permanent" to "persistent" in the phrase "preclude permanent impairment of a body function or permanent damage to a body system." One comment requested that the phrase "persistent or significant disability" be used instead of "permanent or significant disability" in the definition of "serious" in proposed § 312.32(a) in order to be consistent with proposed §§ 310.305(b), 314.80(a), and 600.80(a).

As explained in the preamble to the October 1994 proposal (59 FR 54046 at 54047), FDA is revising the phrase "is permanently disabling" to "results in a persistent or significant disability/incapacity" in order to clarify that a disability need not be permanent to be considered a serious adverse drug experience. Thus, FDA declines to substitute the phrase "permanent or persistent disability" for "persistent or significant disability" or retain "permanent disability." In addition, FDA has corrected the typographical error in proposed § 312.32(a) by revising "permanent or significant disability" to read "persistent or significant disability."

8. One comment requested the addition of the word "immediately" before "life-threatening" in the definition of "serious". The comment stated that although "immediate" is stated in the definition of "life-threatening", it is not indicated on FDA Form 3500 or 3500A. As a result, reporters may interpret "life-threatening" to mean "potentially" life-threatening rather than "immediately" life-threatening.

FDA declines to revise the definition of "serious" to add the word "immediately" before "life-threatening" because the phrase "at *immediate* risk of death" is part of the definition of "life-threatening adverse drug experience." Although the word "immediately" does not appear before the word "life-threatening" on FDA Forms 3500 and 3500A, the MedWatch "FDA Desk Guide for Adverse Event and Product Problem Reporting" explains that a life-threatening adverse event would be immediate.

D. IND Safety Reports—Written

FDA proposed to revise the requirements for submitting written IND safety reports, under § 312.32(c)(1) and (d)(3), by altering the time period for submitting such reports from 10 working days to 15 calendar days. In addition, FDA proposed to permit sponsors to submit written IND safety reports to the agency by using FDA Form 3500A or in a narrative format. If a sponsor chose to use FDA Form 3500A, additional narrative data might be required if the agency determined that insufficient data were submitted on the form.

9. Three comments expressed support for the 15 calendar days timeframe. One comment commended FDA for requiring the same timeframe for both pre- and postmarketing expedited reporting. Two other comments requested that the timeframe be increased to 20 calendar days, while another comment recommended any period longer than 15 calendar days. The comments stated that 15 calendar days would not provide enough time for the submission of reports or for contacting non-U.S. physicians. One comment noted that a longer timeframe would permit better review and reporting of serious adverse experiences.

As explained in the October 1994 proposal (59 FR 54046 at 54051), FDA believes that the extended timeframe is sufficient for sponsors to gather appropriate data to help initially interpret the reports before submitting them to FDA. This timeframe is also consistent with the 15 calendar day period in the final ICH E2A guideline (60 FR 11284 at 11286).

10. Although one comment expressed support for use of FDA Form 3500A for written IND safety reports because it would provide consistency with the form for postmarketing reports, another comment requested that the form not be required for these reports because of limited space for describing narrative information.

FDA notes that it is not "requiring" use of FDA Form 3500A for written IND safety reports. Reporters may use the form or, alternatively, may submit these reports in a narrative format. In addition, as explained in the June 1993 notice announcing the availability of the form, reporters may use additional blank sheets of paper, referenced to the section of the form being described, to complete any narrative sections of the form.

In the June 1993 notice (58 FR 31596 at 31598), FDA also stated that companies may use the CIOMS I form for reporting foreign events after obtaining FDA approval. FDA has decided, based on comments to its postmarketing safety reporting regulations (see section IV.F of this document), to amend § 312.32(c)(1) to permit use of the CIOMS I form for reporting foreign events without prior approval. FDA has decided to take this action to expedite reporting of foreign events and harmonize its pre- and postmarketing safety reporting regulations.

11. One comment requested clarification about what sponsors must include in a written IND safety report. The comment also requested guidance on how often a report should be submitted and whether one is required every time a new case is reported.

Under § 312.32(b), as amended in this final rule, FDA requires that the sponsor must promptly review all information relevant to the safety of the drug obtained or otherwise received by the sponsor from any source, foreign or domestic, including information derived from any clinical or epidemiological investigations, animal investigations, commercial marketing experience, reports in the scientific literature, and unpublished scientific papers, as well as reports from foreign regulatory authorities that have not already been previously reported to the agency by the sponsor. This requirement qualifies for sponsors the type of safety information that must be examined for determination of whether the information should be included in IND safety reports.

As noted earlier, FDA is amending its IND safety reports regulations, at § 312.32, by moving, for organizational purposes, certain information from the current definition of "serious adverse experience," at § 312.32(a), to the written IND safety reports section, at § 312.32(c)(1)(i). Under § 312.32(c)(1)(i), as revised in this final rule, sponsors must submit written IND safety reports to FDA and all participating investigators within 15 calendar days after the sponsor's receipt of information on any adverse experience associated with the use of the drug that is both serious and unexpected; or any finding from tests in laboratory animals that suggests a significant risk for human subjects including reports of mutagenicity, teratogenicity, or carcinogenicity.

FDA advises sponsors, as described in greater detail in the final ICH E2A guideline (60 FR 11284 at 11285 and 11286), to submit in written IND safety reports as much information as possible on a case. In some instances, information for final description and evaluation of a case report may not be available within 15 calendar days. Nevertheless, initial reports should be submitted within this timeframe when the following minimum criteria are met: An identifiable patient; a suspected medicinal product; an identifiable reporter; and an adverse event or outcome that can be identified as serious and unexpected, and for which, in clinical investigation cases, there is a reasonable suspected causal relationship between the investigational product and the adverse event (i.e., the causal relationship cannot be ruled out). For reportable events that occur during a "blinded" clinical investigation, sponsors should only break the blind for the subject in question. Sponsors should consult with the FDA review division responsible for their IND in situations in which the sponsor believes that breaking the blind would compromise their study (e.g., when a fatal or other serious outcome is the primary efficacy endpoint in a clinical investigation). Reportable events attributed to a specific dosage form, formulation, or route of administration should be cross-referenced to other IND's for the drug. Reportable events associated with a particular population or for a specific indication should also be cross-referenced to other IND's for the drug.

FDA expects sponsors to submit written IND safety reports every time the sponsor receives or otherwise obtains information about a serious and unexpected adverse experience associated with the use of the drug until the current investigator brochure or, if the investigator brochure is not required, until the risk information described in the general investigational plan or elsewhere in the current application is amended. This is consistent with the final ICH E2A guideline (60 FR 11284 at 11285): "Until source documents are amended, expedited reporting is required for additional occurrences of the reaction."

12. One comment asked when a written safety report would be due if the 15th day occurs on a weekend or holiday.

FDA advises that if the 15th calendar day occurs on a weekend or U.S. Federal holiday, the written safety report would be due the 1st working day after the weekend or U.S. Federal holiday.

E. IND Safety Reports—Telephone

FDA proposed to revise the requirements for submitting IND safety reports by telephone, under § 312.32(c)(2), by altering the time period for submitting such reports from 3 working days to 7 calendar days. FDA also proposed to allow telephone safety reports to be made by facsimile transmission.

13. Two comments expressed support for the 7 calendar day timeframe. Other comments requested longer timeframes because 7 days does not provide a significant difference from the current time period, and because additional time is needed for contacting non-U.S. physicians. One comment asked for a timeframe of 10 calendar days, and another requested any period longer than 7 calendar days.

FDA declines to lengthen the timeframe for IND safety reports by telephone or facsimile transmission. FDA believes it is important that unexpected fatal or life-threatening experiences associated with the use of the drug be reported to the agency as expeditiously as possible. A 7 calendar day timeframe is reasonable for these types of reports. This timeframe is also consistent with recommendations in the final ICH E2A guideline (60 FR 11284 at 11286).

14. Three comments supported FDA's proposal to accept telephone safety reports by "facsimile transmission." The comments also requested that FDA permit transmission of these reports by other electronic mechanisms such as Internet or electronic mail systems.

In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA published a final rule that permits the agency to accept electronic records, electronic signatures, and handwritten signatures executed to electronic records as generally equivalent to paper records and handwritten signatures executed on paper. FDA stated in this final rule that it will announce in the **Federal Register** when it is prepared to accept certain submissions in electronic format only. At the present time, FDA is not prepared to accept electronic submission of IND safety reports, but is developing a system to accept such submissions in the future.

15. One comment requested that FDA restore the phrase "in the clinical studies conducted under the IND" to the language in § 312.32(c)(2) for telephone safety reports of any unexpected fatal or life-threatening experience associated with the use of the drug. The phrase did not appear in the October 27, 1994, proposed revisions to this section.

It is FDA's intention not to restrict telephone safety reports of any unexpected fatal or life-threatening experience associated with the use of the drug to clinical studies conducted under the IND. As stated under § 312.32(b), as revised in this final rule, the sponsor shall promptly review all information relevant to the safety of the drug obtained or otherwise received by the sponsor from any source, foreign or domestic, including information derived from any clinical or epidemiological investigations, animal investigations, commercial marketing experience, reports in the scientific literature, and unpublished scientific papers, as well as reports from foreign regulatory authorities that have not already been previously reported to the agency by the sponsor. Thus, the sponsor is responsible for notifying FDA by telephone or facsimile transmission, as soon as possible, but in no event later than 7 calendar days, of any unexpected fatal or life-threatening experience associated with the use of the drug from any source. This requirement is consistent with the final ICH E2A guideline (60 FR 11284 at 11286):

> Information obtained by a sponsor or manufacturer on serious, unexpected reports from any source should be submitted on an expedited basis to appropriate regulatory authorities if the minimum criteria for expedited reporting can be met.

F. Postmarketing Alert and Followup Reports

FDA proposed to amend §§ 310.305(c), 314.80(c), and 600.80(c) by reorganizing, renumbering, and retitling the paragraphs in these sections to distinguish between postmarketing 15-day Alert reports and followups to these reports. FDA also proposed to distinguish between the reporting intervals for postmarketing 15-day Alert reports and the intervals proposed for postmarketing periodic reports. In addition, FDA proposed to amend §§ 310.305(c)(1) through (c)(4), 314.80(c)(1)(i) through (c)(1)(iv), and 600.80(c)(1)(i) through (c)(1)(iv), to alter the time period for submitting postmarketing 15-day Alert reports and followup reports from 15 working days to 15 calendar days.

16. Twelve comments stated that the 15 calendar day timeframe is overly burdensome. One comment noted that the change from 15 working days to 15 calendar days would result in approximately one-third (6 days) less time for preparation of reports for submission to FDA. Another comment indicated that, although the proposed

timeframe is in accord with the final ICH E2A guideline, it would cause significant disruption in reporting schedules and would probably result in incomplete reports. Another comment stated that the revised timeframe would not provide international companies with sufficient time to receive and translate foreign reports. One comment said that the proposed timeframe incorrectly assumes that reporters are universally accessible anywhere in the world. Six comments offered suggestions for alternative timeframes. Three comments recommended 20 calendar days, one recommended 21 calendar days, and another recommended 22 calendar days. Two of the comments encouraged retention of the 15 working day timeframe currently required by FDA.

FDA declines to revise its proposed 15 calendar day timeframe for postmarketing Alert reports. The agency proposed to revise the reporting period from 15 working days to 15 calendar days to provide consistency in pre- and postmarketing safety reporting timeframes for products and to decrease misunderstandings with reporting requirements by stating all timeframes in terms of calendar days. This timeframe is consistent with the 15 calendar day reporting timeframe in the final ICH E2A guideline (60 FR 11284 at 11286) and consistent with the change in timeframe set forth in this final rule at § 312.32(c)(1) and (d)(3) for IND safety reporting of serious and unexpected experiences. This timeframe is sufficient for persons subject to the postmarketing safety reporting requirements to gather appropriate data and initially interpret reports before submitting them to the agency.

In this final rule, FDA is amending its postmarketing expedited safety reporting regulations, at § 310.305(c)(1)(i), by adding the following phrase to the end of the first sentence: "by the person whose name appears on the label." FDA is making this revision to clarify when the 15 calendar day timeframe begins for marketed prescription drugs for human use without approved new drug applications. This change is consistent with current language under §§ 314.80(c)(1)(i) and 600.80(c)(1)(i) for marketed prescription drugs for human use with approved NDA's and for licensed biological products. Under § 314.80(c)(1)(i), 15-day Alert reports must be submitted no later than 15 calendar days of initial receipt of information by the applicant. Under § 600.80(c)(1)(i), such reports must be submitted within the same timeframe based on initial receipt of information by the licensed manufacturer.

17. Two comments requested that they be permitted to use the CIOMS I form for reporting foreign events as an alternative to FDA Form 3500A without obtaining prior FDA approval. In addition, the comments preferred using the CIOMS I form instead of FDA Form 3500A for all adverse drug experience reporting worldwide.

In the June 1993 notice, the agency stated that reporters may use the CIOMS I form for reporting foreign events with prior FDA approval. FDA has considered the comments and has decided to revise §§ 310.305, 314.80, and 600.80 to permit the use of the CIOMS I form for reports of foreign events without first obtaining prior FDA approval. FDA is taking this action to expedite the reporting of foreign events.

FDA will continue to require use of FDA Form 3500A for reports of domestic events. FDA Form 3500A is more comprehensive than the CIOMS I form and includes elements recommended by the final ICH E2A guideline that are not part of the CIOMS I form (60 FR 11284 at 11287). For example, the following items are included in FDA Form 3500A and requested in the ICH E2A guideline but are not included in the CIOMS I form: Body weight, the terms "congenital anomaly" and "other" (identifiers of adverse event outcomes), the lot number and dosage strength of suspected medicinal product(s), details on the event reporter, and the regulatory code number (e.g., IND/NDA number).

18. One comment requested that FDA accept postmarketing 15-day Alert and followup reports through electronic transmission.

As explained above, FDA has published a final rule to permit the agency to accept electronic records, electronic signatures, and handwritten signatures executed to electronic records as generally equivalent to paper records and handwritten signatures executed on paper (62 FR 13430). At the present time, FDA is not prepared to accept electronic submission of 15-day Alert reports, but is developing a system to accept such submissions in the future.

G. Written Procedures for Monitoring Adverse Drug Experiences

FDA proposed to amend §§ 310.305(a), 314.80(b), and 600.80(b) to require that any person subject to the reporting requirements under §§ 310.305(c), 314.80(c), and 600.80(c) develop written procedures for the surveillance, receipt, evaluation, and reporting of adverse drug experiences to FDA.

19. One comment opposed this amendment. The comment stated that these written procedures are customary and usual in the industry and, if made part of a regulation, could be potentially burdensome to manufacturers and would permit FDA to dictate internal procedures.

FDA declines to withdraw this proposed amendment. As explained in the preamble to the October 1994 proposal (59 FR 54046 at 54053), this requirement would improve postmarketing surveillance by applicants and manufacturers and would enhance an applicant's and a manufacturer's ability to evaluate and report adverse drug experiences to the agency. In addition, because such written procedures are usual and customary, FDA believes that this provision would not impose a new burden on applicants and manufacturers.

20. One comment stated that it is inappropriate to require packers and distributors to develop written procedures for the surveillance, receipt, evaluation, and reporting of adverse drug experiences to FDA if they elect to submit these reports to the manufacturer.

Under §§ 310.305(c)(1)(i), 314.80(c)(1)(iv), and 600.80(c)(1)(iv), packers and distributors are subject to the reporting requirements if their name appears on the label of a marketed prescription drug product or licensed biological product. A packer or distributor who elects to submit adverse drug experience reports to an applicant, manufacturer, or licensed manufacturer of a final biological product under §§ 310.305(c)(4), 314.80(c)(1)(iv), and 600.80(c)(1)(iv) must include information about making such an election in their written procedures, as well as procedures for recordkeeping required to be maintained under these regulations. For the reasons explained in the October 1994 proposal (59 FR 54046 at 54053), it is appropriate to require that these packers and distributors develop written procedures to ensure that they comply with these regulations.

21. One comment requested that FDA specify the minimum requirements for a company's written procedures for reporting adverse drug experiences.

FDA declines to specify minimum requirements for written reporting procedures. As explained in the October 1994 proposal (59 FR 54046 at 54053), written procedures for handling adverse drug experiences are customary and usual in the pharmaceutical industry. In addition, such procedures have been required for many years by FDA's current good manufacturing practice (CGMP) regulations for finished pharmaceuticals (21 CFR 211.198).

H. Submission of Postmarketing 15-day Alert Reports by Persons Other Than Applicants, Manufacturers, and Licensed Manufacturers of a Final Biological Product

Current postmarketing safety reporting regulations, at § 310.305(c)(5), permit packers and distributors to submit reports of serious adverse drug experiences to the manufacturer instead of FDA. Under § 314.80(c)(1)(iii), manufacturers, packers, and distributors may submit these reports to the applicant. Under § 600.80(c)(1)(iii), packers, distributors, and manufacturers other than licensed manufacturers of the final biological product may submit these reports to the licensed manufacturer of the final product. Currently, these reports must be submitted within 3 working days of their receipt. FDA proposed to revise this timeframe to 3 calendar days. The manufacturer, applicant, and licensed manufacturer of the final biological product would then comply with the requirements described in this section by submitting the report to FDA as soon as possible, but in no case later than 15 calendar days of initial receipt of the information.

22. Five comments opposed changing 3 working days to 3 calendar days because the new timeframe is overly burdensome, especially if the period includes holidays or weekends. One comment said that manufacturers, packers, distributors, and shared and joint manufacturers would probably submit these reports directly to FDA in order to utilize the longer timeframe. This would result in duplicative reporting to the agency. The comments suggested alternative timeframes. Three comments recommended 5 calendar days, one recommended 7 calendar days, and another recommended that the current requirement of 3 working days be maintained.

FDA agrees with the comments and has revised the final rule at §§ 310.305(c)(4), 314.80(c)(1)(iv), and 600.80(c)(1)(iv) to permit manufacturers, packers, and distributors, as well as manufacturers, packers, distributors, shared manufacturers, joint manufacturers, and any other participant involved in divided manufacturing of a biological product, to submit reports of serious adverse drug experiences to the manufacturer, applicant, or licensed manufacturer of the final biological product in 5 calendar days.

23. One comment requested that the regulations state that manufacturers should not submit to FDA reports it receives from a reporter, if the reporter has submitted the report to FDA.

FDA declines to revise its regulations to exempt manufacturers from submitting safety reports to FDA that it receives from a voluntary reporter who has submitted the report to FDA, regardless of whether the reporter is a physician, pharmacist, or other health care professional, or a consumer. The agency requires manufacturers to submit such reports to FDA to ensure that the agency receives all safety reports. However, as now stated at §§ 310.305(c)(6), 314.80(b), and 600.80(b), no one subject to the postmarketing safety reporting regulations at §§ 310.305(c), 314.80(c), and 600.80(c) is required to resubmit to the agency FDA Form 3500A reports that the agency has forwarded to them.

I. General Comments

24. One comment asked whether the **Federal Register** notices announcing the availability of FDA Forms 3500 and 3500A had been withdrawn, revised, or replaced by the October 1994 proposal. The comment indicated that the effective date for FDA Form 3500A was put on hold pending revision of the regulations for safety reporting.

The June 1993 notice (58 FR 31596), announced the availability of FDA Forms 3500 and 3500A. The use of FDA Form 3500 was effective immediately, while the use of FDA Form 3500A was scheduled to be effective on November 30, 1993. Manufacturers, medical device distributors, and user facilities were encouraged to begin using the form immediately. In the **Federal Register** of December 3, 1993 (58 FR 64001), FDA extended the effective date for use of FDA Form 3500A until FDA issues a final rule amending the regulations to require the use of the form. This final rule makes the requirement for use of FDA Form 3500A effective on April 6, 1998.

25. Four comments requested that FDA publish guidelines to explain the proposed regulations. Two of the comments asked whether a draft guideline could be published with an opportunity for public comment before publication of the final rule.

In the **Federal Register** of March 1, 1995 (60 FR 11284), FDA published the final ICH E2A guideline "Clinical Safety Data Management: Definitions and Standards for Expedited Reporting." Concerning the opportunity for comment on guidances, on July 9, 1993 (58 FR 37408), FDA published the draft ICH E2A guideline for public comment.

As described under section III of this document, FDA is in the process of revising guidances pertaining to this final rule and will provide opportunity for public comment and notice of availability of any draft or final guidance documents in the **Federal Register** and on FDA's WWW home page, under the GGP's (62 FR 8961).

26. One comment asked whether information on the United Kingdom Medicines Control Agency's Medical Dictionary for Drug Regulatory Affairs would be incorporated into the final rule.

This terminology was not discussed in the proposed rule and will not be incorporated into this final rule. At the September 1994 CIOMS meeting, it was agreed that this terminology would be the basis for the development of a new international medical terminology to support classification of terms relating to all aspects of drug regulation. In July 1997, ICH developed a final consensus guideline on this topic (ICH M1). At this time, FDA is considering the ICH M1 document.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

The agency has considered the potential economic impact of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by Subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–721), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. According to the Small Business Administration, manufacturers of medicinals and botanicals or pharmaceutical preparations with 750 or less employees, and manufacturers of diagnostic substances or biological products with 500 or less employees are considered a small business. As discussed in section VII of this document, modifications and additions to the recordkeeping requirements will not result in a change in industry's current recordkeeping burden hours. Therefore, under the Regulatory Flexibility Act, no further analysis is needed.

The final rule will also not impose annual expenditures of $100 million or more on either State, local, and tribal governments in aggregate, or on the private sector. Therefore, a written statement and economic analysis is not required as prescribed under section 202(a) of the Unfunded Mandates Reform Act of 1995.

VII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below.

Title: Expedited Safety Reporting Requirements for Human Drug and Biological Products; Final Rule.

Description: FDA is amending its current expedited safety reporting requirements to replace current Form FDA–1639 with new FDA Form 3500A; to revise certain definitions, reporting periods and formats; to require applicants, manufacturers, packers, and distributors, as well as licensed manufacturers and other manufacturers of biological products to develop written procedures for postmarketing safety monitoring and reporting of adverse drug experiences to FDA; and to make other revisions to provide uniformity to the expedited pre- and postmarketing safety reporting regulations. These changes will simplify and facilitate expedited safety reporting and enhance agencywide consistency in the collection of postmarketing safety data.

Respondent Description: Businesses and other for-profit organizations, State or local governments, Federal agencies, and nonprofit institutions.

FDA believes that this final rule will not result in any increase in paperwork burden as compared to current expedited safety reporting requirements. The new requirement under §§ 310.305(a), 314.80(b), and 600.80(b), that persons subject to the postmarketing safety reporting requirements develop written procedures for the surveillance, receipt, evaluation, and reporting to FDA of adverse drug experiences, does not impose a new burden because it codifies a practice that is already customary and usual in the pharmaceutical industry for handling adverse drug experiences.

The new recordkeeping requirements under §§ 310.305(c)(2), 314.80(c)(1)(ii), and 600.80(c)(1)(ii), that persons subject to the postmarketing safety reporting requirements maintain records of unsuccessful attempts to obtain additional followup information on 15-day Alert reports, do not result in a change in the burden. Current regulations provide for submission of a followup report describing steps taken to seek additional information and the reasons why it could not be obtained; FDA estimates that the effort needed to file this existing information will be, at worst, no more than the effort that would have been required to submit it to FDA.

The new language in § 312.32(b) explicitly requiring that sponsors review: (1) Information derived from any epidemiological investigations, or (2) reports from foreign regulatory authorities that have not already been previously reported to the agency by the sponsor does not impose a new burden because this amendment is only a clarification. Sponsors are already required to review all information relevant to the safety of the drug obtained or otherwise received by the sponsor from any source, foreign or domestic.

Although the October 1994 proposal provided a 90-day comment period under the Paperwork Reduction Act of 1980, FDA is providing an additional opportunity for public comment under the Paperwork Reduction Act of 1995, which was enacted after the expiration of the comment period and applies to this final rule. Therefore, FDA now invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Individuals and organizations may submit comments on the information collection provisions of this final rule by December 8, 1997. Comments should be directed to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review and approval. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VIII. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. International Reporting of Periodic Drug-Safety Update Summaries, Final Report of CIOMS Working Group II, 1992.

2. International Reporting of Adverse Drug Reactions, Final Report of CIOMS Working Group I, 1990.

List of Subjects

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 20, 310, 312, 314, and 600 are amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 1401–1403.

§ 20.112 [Amended]

2. Section 20.112 *Voluntary drug experience reports submitted by physicians and hospitals* is amended in paragraph (a) by removing the words "Form FDA–1639" and adding in their place "FDA Form 3500".

PART 310—NEW DRUGS

3. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

4. Section 310.305 is amended by adding a new sentence at the end of paragraph (a); by revising paragraphs (b), (c), (d)(1), (d)(3)(ii), and (d)(4); by removing in paragraph (d)(2), the introductory text of paragraph (d)(3), and paragraph (d)(3)(i) the words "Form FDA–1639" or "FDA–1639" and adding in their place "FDA Form 3500A" to read as follows:

§ 310.305 Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications.

(a) * * * Any person subject to the reporting requirements of paragraph (c) of this section shall also develop written procedures for the surveillance, receipt, evaluation, and reporting of postmarketing adverse drug experiences to FDA.

(b) *Definitions.* The following definitions of terms apply to this section:

Adverse drug experience. Any adverse event associated with the use of a drug in humans, whether or not considered drug related, including the following: An adverse event occurring in the course of the use of a drug product in professional practice; an adverse event occurring from drug overdose whether accidental or intentional; an adverse event occurring from drug abuse; an adverse event occurring from drug withdrawal; and any failure of expected pharmacological action.

Disability. A substantial disruption of a person's ability to conduct normal life functions.

Life-threatening adverse drug experience. Any adverse drug experience that places the patient, in the view of the initial reporter, at *immediate* risk of death from the adverse drug experience as it occurred, i.e., it does not include an adverse drug experience that, had it occurred in a more severe form, might have caused death.

Serious adverse drug experience. Any adverse drug experience occurring at any dose that results in any of the following outcomes: Death, a life-threatening adverse drug experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization may be considered a serious adverse drug experience when, based upon appropriate medical judgment, they may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition. Examples of such medical events include allergic bronchospasm requiring intensive treatment in an emergency room or at home, blood dyscrasias or convulsions that do not result in inpatient hospitalization, or the development of drug dependency or drug abuse.

Unexpected adverse drug experience. Any adverse drug experience that is not listed in the current labeling for the drug product. This includes events that may be symptomatically and pathophysiologically related to an event listed in the labeling, but differ from the event because of greater severity or specificity. For example, under this definition, hepatic necrosis would be unexpected (by virtue of greater severity) if the labeling only referred to elevated hepatic enzymes or hepatitis. Similarly, cerebral thromboembolism and cerebral vasculitis would be unexpected (by virtue of greater specificity) if the labeling only listed cerebral vascular accidents. "Unexpected," as used in this definition, refers to an adverse drug experience that has not been previously observed (i.e., included in the labeling) rather than from the perspective of such experience not being anticipated from the pharmacological properties of the pharmaceutical product.

(c) *Reporting requirements.* Each person identified in paragraph (c)(1)(i) of this section shall report to FDA adverse drug experience information as described in this section and shall submit one copy of each report to the Division of Pharmacovigilance and Epidemiology (HFD–730), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(1) *Postmarketing 15-day "Alert reports".* (i) Any person whose name appears on the label of a marketed prescription drug product as its manufacturer, packer, or distributor shall report to FDA each adverse drug experience received or otherwise obtained that is both serious and unexpected as soon as possible, but in no case later than 15 calendar days of initial receipt of the information by the person whose name appears on the label. Each report shall be accompanied by a copy of the current labeling for the drug product.

(ii) A person identified in paragraph (c)(1)(i) of this section is not required to submit a 15-day "Alert report" for an adverse drug experience obtained from a postmarketing study (whether or not conducted under an investigational new drug application) unless the applicant concludes that there is a reasonable possibility that the drug caused the adverse experience.

(2) *Postmarketing 15-day "Alert reports"—followup.* Each person identified in paragraph (c)(1)(i) of this section shall promptly investigate all serious, unexpected adverse drug experiences that are the subject of these postmarketing 15-day Alert reports and shall submit followup reports within 15 calendar days of receipt of new information or as requested by FDA. If additional information is not obtainable, records should be maintained of the unsuccessful steps taken to seek additional information. Postmarketing 15-day Alert reports and followups to them shall be submitted under separate cover.

(3) *Submission of reports.* To avoid unnecessary duplication in the submission of, and followup to, reports required in this section, a packer's or distributor's obligations may be met by submission of all reports of serious adverse drug experiences to the manufacturer of the drug product. If a packer or distributor elects to submit these adverse drug experience reports to the manufacturer rather than to FDA, it shall submit each report to the manufacturer within 5 calendar days of its receipt by the packer or distributor, and the manufacturer shall then comply with the requirements of this section even if its name does not appear on the label of the drug product. Under this circumstance, the packer or distributor shall maintain a record of this action which shall include:

(i) A copy of each adverse drug experience report;

(ii) The date the report was received by the packer or distributor;

(iii) The date the report was submitted to the manufacturer; and

(iv) The name and address of the manufacturer.

(4) Each report submitted to FDA under this section shall bear prominent identification as to its contents, i.e., "15-day Alert report," or "15-day Alert report-followup."

(5) A person identified in paragraph (c)(1)(i) of this section is not required to resubmit to FDA adverse drug experience reports forwarded to that person by FDA; however, the person must submit all *followup* information on such reports to FDA.

(d) * * * (1) Except as provided in paragraph (d)(3) of this section, each person identified in paragraph (c)(1)(i) of this section shall submit each report of a serious and unexpected adverse drug experience on an FDA Form 3500A (foreign events may be submitted either on an FDA Form 3500A or, if preferred, on a CIOMS I form).

* * * * *

(3) * * *

(ii) The format is agreed to in advance by MedWatch: The FDA Medical Products Reporting Program.

(4) Ten copies or fewer of FDA Form 3500A and/or a copy of the instructions for completing the form may be obtained from the Division of Pharmacovigilance and Epidemiology (HFD–730), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. More than 10 copies of the form may be obtained by writing to the Consolidated Forms and Publications Distribution Center, Washington Commerce Center, 3222 Hubbard Rd., Landover, MD 20785.

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PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

5. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

6. Section 312.32 is amended by revising paragraphs (a), (b), (c)(1)(i), (c)(2), and (d)(3); by adding in the second sentence of paragraph (c)(3) the words "new drug review" before the phrase "division in the Center for Drug Evaluation and Research" and the words "the director of the product review division in" before the phrase "the Center for Biologics Evaluation and Research"; and by removing in paragraph (e) the word "section" and replacing it with the word "part", to read as follows:

§ 312.32 IND safety reports.

(a) *Definitions.* The following definitions of terms apply to this section:

Associated with the use of the drug. There is a reasonable possibility that the experience may have been caused by the drug.

Disability. A substantial disruption of a person's ability to conduct normal life functions.

Life-threatening adverse drug experience. Any adverse drug experience that places the patient or subject, in the view of the investigator, at immediate risk of death from the reaction as it occurred, i.e., it does not include a reaction that, had it occurred in a more severe form, might have caused death.

Serious adverse drug experience. Any adverse drug experience occurring at any dose that results in any of the following outcomes: Death, a life-threatening adverse drug experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization may be considered a serious adverse drug experience when, based upon appropriate medical judgment, they may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition. Examples of such medical events include allergic bronchospasm requiring intensive treatment in an emergency room or at home, blood dyscrasias or convulsions that do not result in inpatient hospitalization, or the development of drug dependency or drug abuse.

Unexpected adverse drug experience. Any adverse drug experience, the specificity or severity of which is not consistent with the current investigator brochure; or, if an investigator brochure is not required or available, the specificity or severity of which is not consistent with the risk information described in the general investigational plan or elsewhere in the current application, as amended. For example, under this definition, hepatic necrosis would be unexpected (by virtue of greater severity) if the investigator brochure only referred to elevated hepatic enzymes or hepatitis. Similarly, cerebral thromboembolism and cerebral vasculitis would be unexpected (by virtue of greater specificity) if the investigator brochure only listed cerebral vascular accidents. "Unexpected," as used in this definition, refers to an adverse drug experience that has not been previously observed (e.g., included in the investigator brochure) rather than from the perspective of such experience not being anticipated from the pharmacological properties of the pharmaceutical product.

(b) *Review of safety information.* The sponsor shall promptly review all information relevant to the safety of the drug obtained or otherwise received by the sponsor from any source, foreign or domestic, including information derived from any clinical or epidemiological investigations, animal investigations, commercial marketing experience, reports in the scientific literature, and unpublished scientific papers, as well as reports from foreign regulatory authorities that have not already been previously reported to the agency by the sponsor.

(c) *IND safety reports.* (1) *Written reports*—(i) The sponsor shall notify FDA and all participating investigators in a written IND safety report of:

(A) Any adverse experience associated with the use of the drug that is both serious and unexpected; or

(B) Any finding from tests in laboratory animals that suggests a significant risk for human subjects including reports of mutagenicity, teratogenicity, or carcinogenicity. Each notification shall be made as soon as possible and in no event later than 15 calendar days after the sponsor's initial receipt of the information. Each written notification may be submitted on FDA Form 3500A or in a narrative format (foreign events may be submitted either on an FDA Form 3500A or, if preferred, on a CIOMS I form; reports from animal or epidemiological studies shall be submitted in a narrative format) and shall bear prominent identification of its contents, i.e., "IND Safety Report." Each written notification to FDA shall be transmitted to the FDA new drug review division in the Center for Drug Evaluation and Research or the product review division in the Center for Biologics Evaluation and Research that has responsibility for review of the IND. If FDA determines that additional data are needed, the agency may require further data to be submitted.

* * * * *

(2) *Telephone and facsimile transmission safety reports.* The sponsor shall also notify FDA by telephone or by facsimile transmission of any unexpected fatal or life-threatening experience associated with the use of the drug as soon as possible but in no event later than 7 calendar days after the sponsor's initial receipt of the information. Each telephone call or facsimile transmission to FDA shall be transmitted to the FDA new drug review division in the Center for Drug Evaluation and Research or the product review division in the Center for Biologics Evaluation and Research that has responsibility for review of the IND.

* * * * *

(d) * * *

(3) If the results of a sponsor's investigation show that an adverse drug experience not initially determined to be reportable under paragraph (c) of this section is so reportable, the sponsor shall report such experience in a written safety report as soon as possible, but in no event later than 15 calendar days after the determination is made.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

7. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

8. Section 314.80 is amended by revising paragraphs (a); (c)(1), (f)(1), (f)(3)(ii), and (f)(4) and the introductory text of paragraph (c); by adding two new sentences at the end of paragraph (b); by removing in paragraph (d)(2) the words "Epidemiology and Surveillance" and adding in their place the words "Pharmacovigilance and Epidemiology"; by removing in paragraphs (c)(2)(ii)(b), (d)(2), (f)(2), and (f)(3) and in the heading for paragraph (f) the words "Form FDA–1639" or "FDA–1639" and adding in their place the words "FDA Form 3500A"; and by removing paragraph (j) and redesignating paragraphs (k) and (l) as paragraphs (j) and (k), respectively, to read as follows:

§ 314.80 Postmarketing reporting of adverse drug experiences.

(a) *Definitions.* The following definitions of terms apply to this section:

Adverse drug experience. Any adverse event associated with the use of a drug in humans, whether or not considered drug related, including the following: An adverse event occurring in the course of the use of a drug product in professional practice; an adverse event occurring from drug overdose whether accidental or intentional; an adverse event occurring from drug abuse; an adverse event occurring from drug withdrawal; and any failure of expected pharmacological action.

Disability. A substantial disruption of a person's ability to conduct normal life functions.

Life-threatening adverse drug experience. Any adverse drug experience that places the patient, in the view of the initial reporter, at *immediate* risk of death from the adverse drug experience as it occurred, i.e., it does not include an adverse drug experience that, had it occurred in a more severe form, might have caused death.

Serious adverse drug experience. Any adverse drug experience occurring at any dose that results in any of the following outcomes: Death, a life-threatening adverse drug experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization may be considered a serious adverse drug experience when, based upon appropriate medical judgment, they may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition. Examples of such medical events include allergic bronchospasm requiring intensive treatment in an emergency room or at home, blood dyscrasias or convulsions that do not result in inpatient hospitalization, or the development of drug dependency or drug abuse.

Unexpected adverse drug experience. Any adverse drug experience that is not listed in the current labeling for the drug product. This includes events that may be symptomatically and pathophysiologically related to an event listed in the labeling, but differ from the event because of greater severity or specificity. For example, under this definition, hepatic necrosis would be unexpected (by virtue of greater severity) if the labeling only referred to elevated hepatic enzymes or hepatitis. Similarly, cerebral thromboembolism and cerebral vasculitis would be unexpected (by virtue of greater specificity) if the labeling only listed cerebral vascular accidents. "Unexpected," as used in this definition, refers to an adverse drug experience that has not been previously observed (i.e., included in the labeling) rather than from the perspective of such experience not being anticipated from the pharmacological properties of the pharmaceutical product.

(b) * * * Applicants are not required to resubmit to FDA adverse drug experience reports forwarded to the applicant by FDA; however, applicants must submit all followup information on such reports to FDA. Any person subject to the reporting requirements under paragraph (c) of this section shall also develop written procedures for the surveillance, receipt, evaluation, and reporting of postmarketing adverse drug experiences to FDA.

(c) *Reporting requirements.* The applicant shall report to FDA adverse drug experience information, as described in this section. The applicant shall submit two copies of each report described in this section to the Central Document Room, 12229 Wilkins Ave., Rockville, MD 20852. FDA may waive the requirement for the second copy in appropriate instances.

(1)(i) *Postmarketing 15-day "Alert reports".* The applicant shall report each adverse drug experience that is both serious and unexpected, whether foreign or domestic, as soon as possible but in no case later than 15 calendar days of initial receipt of the information by the applicant.

(ii) *Postmarketing 15-day "Alert reports"—followup.* The applicant shall promptly investigate all adverse drug experiences that are the subject of these postmarketing 15-day Alert reports and shall submit followup reports within 15 calendar days of receipt of new information or as requested by FDA. If additional information is not obtainable, records should be maintained of the unsuccessful steps taken to seek additional information. Postmarketing 15-day Alert reports and followups to

them shall be submitted under separate cover.

(iii) *Submission of reports.* The requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this section, concerning the submission of postmarketing 15-day Alert reports, shall also apply to any person other than the applicant (nonapplicant) whose name appears on the label of an approved drug product as a manufacturer, packer, or distributor. To avoid unnecessary duplication in the submission to FDA of reports required by paragraphs (c)(1)(i) and (c)(1)(ii) of this section, obligations of a nonapplicant may be met by submission of all reports of serious adverse drug experiences to the applicant. If a nonapplicant elects to submit adverse drug experience reports to the applicant rather than to FDA, the nonapplicant shall submit each report to the applicant within 5 calendar days of receipt of the report by the nonapplicant, and the applicant shall then comply with the requirements of this section. Under this circumstance, the nonapplicant shall maintain a record of this action which shall include:

(A) A copy of each adverse drug experience report;

(B) The date the report was received by the nonapplicant;

(C) The date the report was submitted to the applicant; and

(D) The name and address of the applicant.

(iv) *Report identification.* Each report submitted under this paragraph shall bear prominent identification as to its contents, i.e., "15-day Alert report," or "15-day Alert report-followup."

* * * * *

(f) * * * (1) Except as provided in paragraph (f)(3) of this section, the applicant shall complete FDA Form 3500A for each report of an adverse drug experience (foreign events may be submitted either on an FDA Form 3500A or, if preferred, on a CIOMS I form).

* * * * *

(3) * * * (ii) the format is agreed to in advance by MedWatch: The FDA Medical Products Reporting Program.

(4) Ten copies or fewer of FDA Form 3500A and/or a copy of the instructions for completing the form may be obtained from the Division of Pharmacovigilance and Epidemiology (HFD–730), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. More than 10 copies of the form may be obtained by writing to the Consolidated Forms and Publications Distribution Center, Washington Commerce Center, 3222 Hubbard Rd., Landover, MD 20785.

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PART 600—BIOLOGICAL PRODUCTS: GENERAL

9. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374); secs. 215, 351, 352, 353, 361, 2125 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25).

10. Section 600.80 is amended by revising paragraphs (a), (c)(1), (f)(1), and the first sentence of paragraph (g); by adding two new sentences at the end of paragraph (b); and by removing paragraph (j) and redesignating paragraphs (k), (l), and (m) as paragraphs (j), (k), and (l), respectively, to read as follows:

§ 600.80 Postmarketing reporting of adverse experiences.

(a) *Definitions.* The following definitions of terms apply to this section:

Adverse experience. Any adverse event associated with the use of a biological product in humans, whether or not considered product related, including the following: An adverse event occurring in the course of the use of a biological product in professional practice; an adverse event occurring from overdose of the product whether accidental or intentional; an adverse event occurring from abuse of the product; an adverse event occurring from withdrawal of the product; and any failure of expected pharmacological action.

Blood Component. As defined in § 606.3(c) of this chapter.

Disability. A substantial disruption of a person's ability to conduct normal life functions.

Life-threatening adverse experience. Any adverse experience that places the patient, in the view of the initial reporter, at immediate risk of death from the adverse experience as it occurred, i.e., it does not include an adverse experience that, had it occurred in a more severe form, might have caused death.

Serious adverse experience. Any adverse experience occurring at any dose that results in any of the following outcomes: Death, a life-threatening adverse experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization may be considered a serious adverse experience when, based upon appropriate medical judgment, they may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition. Examples of such medical events include allergic bronchospasm requiring intensive treatment in an emergency room or at home, blood dyscrasias or convulsions that do not result in inpatient hospitalization, or the development of drug dependency or drug abuse.

Unexpected adverse experience: Any adverse experience that is not listed in the current labeling for the biological product. This includes events that may be symptomatically and pathophysiologically related to an event listed in the labeling, but differ from the event because of greater severity or specificity. For example, under this definition, hepatic necrosis would be unexpected (by virtue of greater severity) if the labeling only referred to elevated hepatic enzymes or hepatitis. Similarly, cerebral thromboembolism and cerebral vasculitis would be unexpected (by virtue of greater specificity) if the labeling only listed cerebral vascular accidents. "Unexpected," as used in this definition, refers to an adverse experience that has not been previously observed (i.e., included in the labeling) rather than from the perspective of such experience not being anticipated from the pharmacological properties of the pharmaceutical product.

(b) * * * Licensed manufacturers are not required to resubmit to FDA adverse product experience reports forwarded to the licensed manufacturer by FDA; licensed manufacturers, however, must submit all followup information on such reports to FDA. Any person subject to the reporting requirements under paragraph (c) of this section shall also develop written procedures for the surveillance, receipt, evaluation, and reporting of postmarketing adverse experiences to FDA.

(c) * * *

(1)(i) *Postmarketing 15-day "Alert reports".* The licensed manufacturer shall report each adverse experience that is both serious and unexpected, whether foreign or domestic, as soon as possible but in no case later than 15 calendar days of initial receipt of the information by the licensed manufacturer.

(ii) *Postmarketing 15-day "Alert reports"—followup.* The licensed manufacturer shall promptly investigate all adverse experiences that are the subject of these postmarketing 15-day Alert reports and shall submit followup reports within 15 calendar days of receipt of new information or as requested by FDA. If additional information is not obtainable, records should be maintained of the unsuccessful steps taken to seek additional information. Postmarketing 15-day Alert reports and followups to them shall be submitted under separate cover.

(iii) *Submission of reports.* The requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this section, concerning the submission of postmarketing 15-day Alert reports, shall also apply to any person whose name appears on the label of a licensed biological product as a manufacturer, packer, distributor, shared manufacturer, joint manufacturer, or any other participant involved in divided manufacturing. To avoid unnecessary duplication in the submission to FDA of reports required by paragraphs (c)(1)(i) and (c)(1)(ii) of this section, obligations of persons other than the licensed manufacturer of the final biological product may be met by submission of all reports of serious adverse experiences to the licensed manufacturer of the final product. If a person elects to submit adverse experience reports to the licensed manufacturer of the final product rather than to FDA, the person shall submit each report to the licensed manufacturer of the final product within 5 calendar days of receipt of the report by the person, and the licensed manufacturer of the final product shall then comply with the requirements of this section. Under this circumstance, a person who elects to submit reports to the licensed manufacturer of the final product shall maintain a record of this action which shall include:

(A) A copy of all adverse biological product experience reports submitted to the licensed manufacturer of the final product;

(B) The date the report was received by the person;

(C) The date the report was submitted to the licensed manufacturer of the final product; and

(D) The name and address of the licensed manufacturer of the final product.

(iv) *Report identification.* Each report submitted under this paragraph shall bear prominent identification as to its contents, i.e., "15-day Alert report," or "15-day Alert report-followup."

* * * * *

(f) *Reporting forms.* (1) Except as provided in paragraph (f)(3) of this section, the licensed manufacturer shall complete the reporting form designated by FDA for each report of an adverse experience (FDA Form 3500A, or, for vaccines, a VAERS form; foreign events including those associated with the use of vaccines, may be submitted either on an FDA Form 3500A or, if preferred, on a CIOMS I form).

* * * * *

(g) *Multiple reports.* A licensed manufacturer should not include in reports under this section any adverse experience that occurred in clinical trials if they were previously submitted as part of the license application. * * *

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Dated: September 25, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–26255 Filed 10–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1309, 1310 and 1313

[DEA Number 154F]

RIN 1117–AA42

Implementation of the Comprehensive Methamphetamine Control Act of 1996; Possession of List I Chemicals Definitions, Record Retention, and Temporary Exemption From Chemical Registration for Distributors of Combination Ephedrine Products

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: DEA is finalizing the Interim Rule, which included a request for comment, published in the Federal Register on February 10, 1997, (62 FR 5914). The Interim Rule amended the regulations to incorporate certain amendments to the Controlled Substances Act (CSA) made by the Comprehensive Methamphetamine Control Act of 1996 (MCA) and to provide temporary exemption from registration for persons who distribute combination ephedrine products. Comments were received regarding industry interpretation of certain requirements of both the CSA and the MCA. This notice responds to those comments and clarifies the requirements of the CSA and MCA with respect to the distribution of combination ephedrine products.

EFFECTIVE DATE: October 7, 1997.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: On February 10, 1997, DEA published an interim rule, with request for comment, in the **Federal Register** (62 FR 5914) to implement certain regulatory changes mandated by the MCA and to provide temporary exemption from registration pending promulgation of final regulations to implement the MCA.

Five comments were received regarding the interim rule. Three separate issues were raised in the comments:

(1) Two comments expressed support for the temporary exemptions and urged that the exemption from registration for retail distributors as described in the MCA be made permanent. DEA agrees and will make the exemption permanent.

(2) Three comments asserted that DEA's interpretation of the MCA is incorrect and that the registration requirement does not apply to wholesale distributors that engage in only sub-threshold transactions of combination ephedrine products.

Specifically, the commentors assert that while Section 302(a)(1) of the CSA (21 U.S.C. 822(a)(1)) requires that any person who distributes a List I chemical must register, that requirement is tempered by Section 303(h) of the CSA (21 U.S.C. 823(h)), which provides, in part, that registration shall not be required for the distribution of a drug product that is exempted under section 102(39)(A)(iv). Section 102(39) of the CSA (21 U.S.C. 802(39)) defines the term "regulated transaction". The definition provides in paragraph (A)(iv) that a transaction in a listed chemical contained in a drug product that may be marketed or distributed under the Food, Drug, and Cosmetic Act (FDC Act) is not a regulated transaction, unless the drug contains ephedrine, pseudoephedrine, or phenylpropanolamine, and the quantity of ephedrine, pseudoephedrine, or phenylpropanolamine equals or exceeds the threshold established for the chemical. These provisions are echoed in DEA's regulations; Title 21, Code of Federal Regulations (CFR), Section 1309.21(a) requires registration for the distribution of a List I chemical, other than a List I chemical contained in a drug product that is exempted under 21 CFR section 1310.01(f)(1)(iv). The commentors assert the definition of regulated transaction provides that a

drug product remains exempt if the amount of List I chemical involved in the transaction is less than the threshold established for that chemical. Under the circumstances, the commentors argue that persons who engage only in sub-threshold distributions of List I chemicals contained in drug products are exempt from the registration requirement.

The commentors analysis of the referenced portions of the law fails to acknowledge certain points of law that must be considered in determining who must register.

First, the MCA amends existing language to remove the exemption for combination ephedrine products. The specific language that is subject to the commentors analysis (21 U.S.C. 802(39)(A)(iv) (I) and (II) and 21 U.S.C. 823(h)) was added to the CSA by the Domestic Chemical Diversion Control Act of 1993 (DCDCA).

A review of the legislative history of the DCDCA reveals that, as described in a letter of support for the DCDCA from the then Acting Administrator of DEA to the Chairman of the House Committee on Energy and Commerce, the registration system established under that act was "* * * precisely patterned after the system which we have successfully employed for handlers of controlled substances since 1971." (U.S. Congressional and Administrative News, 103rd Congress, Vol. 4, Page 2986) The registration system for handlers of controlled substances, while providing for the exemption of certain products that contain controlled substances, does not consider the quantity involved in a distribution when determining whether registration is required; either the product is exempt or non-exempt. Thus, 21 U.S.C. 823(h) provides that the exemption from registration applies to exempted products, and not, as the commentor apparently reads it, to selective exempted distributions. In addition, the House Report No. 103–379, relating to the bill (H.R. 3216) which subsequently was enacted as the DCDCA, states "This provision removes the exemption from record-keeping and reporting requirements of the Controlled Substances Act (CSA) for drugs containing ephedrine as the only active medicinal ingredient * * * It also removes the exemption for ephedrine products containing therapeutically insignificant quantities of other active ingredients." [emphasis added] At the time the DCDCA was enacted, the established threshold for ephedrine in any form was one kilogram. As Congress did not mention thresholds in its discussion of the exemption from registration created by the 1993 amendments, it follows that in enacting 21 U.S.C. 823(h), it meant the exemption from registration to apply to drug products themselves, rather than to transactions in drug products. Exempt products are not subject to the CSA's system of thresholds; therefore, thresholds had no relevance to the discussion.

Therefore, a distributor who distributes any amount of a List I chemical, including a drug product that is not exempt, is subject to the registration requirement.

Two additional points were raised in this matter by the commentors. The first dealt with the claimed inconsistency in DEA's determination to exempt retail distributors from the registration requirement and not exempt wholesale distributors if they engage solely in sub-threshold sales. These commentors stated that since retail distributors, by definition, limit sales to sub-threshold levels, wholesale distributors who limit sales to the substantially higher thresholds for wholesalers should also be exempt from registration.

There is no inconsistency in DEA's decision. The United States Congress, with the substantial participation of the affected industries, developed the MCA with the intent of providing controls to prevent the diversion of products to the illicit manufacture of methamphetamine, while not unnecessarily interfering with legitimate public access to the products at the retail level.

The MCA does not make any pretense of amending the existing chemical registration and recordkeeping requirements under the CSA, as amended by the CDTA and DCDCA. The principal effect of the MCA is the removal of the exemption for pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products, making these products subject to the controls under the CSA that apply to all List I chemicals. Thus, as with any other List I chemical, any person who distributes, imports, or exports any amount of these products will be subject to the chemical registration requirement and, to the extent that the transaction(s) meet the threshold criteria, the chemical recordkeeping and reporting requirements.

Within this framework, the MCA specifically establishes in the CSA the unique category of 'retail distributor' which is distinct from all other distributors of List I chemicals. A retail distributor is defined as a "* * * person whose activities as a distributor relating to pseudoephedrine or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales." The MCA further provides that the "* * * sale of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction * * *" [emphasis added]. These provisions clearly establish Congress' intent that public access to the products at the retail level be protected and that the protection applies only to one specific type of activity carried out by one specific type of distributor. It is equally clear, given the absence of any corresponding provisions in the MCA for other distributors, that the existing chemical controls, including registration, apply to the activities of all other distributors.

DEA recognized that the threat of diversion from the retail level would be minimized by adherence to the 24 gram per transaction threshold and that this reduced threat does not now justify the potential impact that the chemical controls might have on legitimate public access to the products at the retail level. Thus, DEA determined that an exemption from the registration requirement for retail distributors of combination ephedrine products who engage exclusively in sub-threshold transactions was consistent with the intent of the MCA that legitimate public access to drug products at the retail level be protected.

The absence of any exceptions in the MCA for non-retail distributors, coupled with the much larger thresholds (1 kilogram for combination ephedrine products and pseudoephedrine and 2.5 kilograms for phenylpropanolamine); the need to balance the lack of controls over transactions at the retail level with controls at the wholesale level; and the fact that it has been DEA's experience that the most efficient and effective means to identify and control diversion from the retail and wholesale levels is through application of the controls at the wholesale level, all pointed to the need to maintain the registration requirement envisioned by the MCA at the wholesale level.

The second concern dealt with the lack of a comprehensive listing identifying all of the products that contain ephedrine, and the difficulties that distributors could encounter in terms of identifying regulated products and complying with the chemical control requirements. DEA recognizes that in the absence of a 'closed system' of distribution as exists for controlled substances, the identification of products that may be subject to regulation is more difficult. DEA will, where possible, work with the industry to assist in identification of such products. Further, the MCA makes all products containing ephedrine subject to regulation. Manufacturers of such products will have to obtain their distributor customers DEA registration numbers prior to distributing the products, which should assist in identifying products that are subject to regulation.

(3) Two comments asserted that the MCA exemption for sales of ordinary over-the-counter pseudoephedrine and phenylpropanolamine products by retail distributors and EAS's general exemption for retail distributors (21 CFR 1309.29) should also apply to distributions to the retail distributors by warehouses that are owned or operated by the owner of a retail chain. The commentors argue that the definition of retail distributors should encompass the entire retail distribution system, which includes both the retail outlets and the warehouses or storage facilities which are owned or operated by the same corporate entity that owns the retail outlets. They state that the distributions from the warehouses or storage facilities are not sales but transfers or intracompany sales within the retail distributor operation that are related to the retail sales of the products. One commentor last noted that within their industry warehouses and storage facilities are classified within the same Standard Industrial Classification (SIC) code that the MCA references in the definition for the retail outlets.

The MCA provides that the "* * * sale of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction * * *". MCA, Section 401(b)(1); 21 U.S.C. 802(39)(A)(iv)(I)(aa). The MCA defines 'retail distributor' as "* * * a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to pseudoephedrine or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales." (emphasis added] MCA Section 401(b)(4); 21 U.S.C. 802(46). 'Sales for personal use' is defined as "* * * the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use." MCA 401(b)(4); 21 U.S.C. 802(46)(B).

The definitions printed above describe the activities that a retail distributor may engage in with sufficient detail to establish the type of transactions that are to be exempted from regulation. The MCA provides that the exemption shall apply to sales by persons whose activities are limited almost exclusively to sales to individuals for legitimate medical use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. This language clearly does not contemplate an exception for a major class of wholesale distributions.

Further, the assertion that retail distributor should be defined as the corporate entity that is engaged in the process of retail distribution fails to acknowledge the requirements of the CSA with respect to separate registration for separate locations. The chemical registration requirements parallel the registration requirements established for controlled substances handlers; under such requirements, each location at which List I chemicals are distributed, imported, or exported must be viewed individually, as a separate person, for purposes of application of the chemical controls under the CSA.

Under the circumstances, the MCA cannot be read as providing an exemption for warehouses or storage facilities that operate within a retail distribution system. The MCA recognizes, quite logically, that if one portion of the distribution chain is to be granted exemption from regulation, then the other portion of the chain must be subject to control to insure that the distribution chain does not become a source of supply for the methamphetamine traffickers.

DEA does wish to note that in addition to receiving comments regarding registration for distributors of sub-threshold amounts of product and registration for distributors within retail distribution chains, the agency was also approached directly by the commentors for clarification of the requirements in each case. At the same time that this notice was drafted, individual responses were also provided directly to the commentors in response to their requests for clarification. While it may appear unusual for DEA to respond directly to persons regarding issues that have been raised in formal comments submitted in response to a rulemaking notice, it should be noted that neither concern has a direct bearing on the substance of the interim rule. The question of registration of distributors of sub-threshold amounts of product involves interpretation of the registration requirements established under the DCDCA in 1993; the MCA is only peripherally involved through its removal of the exemption from regulation for pseudoephedrine, phenylpropanolamine, and combination ephedrine products, subjecting them to the existing registration requirements. The question of registration for distributors within the retail distribution system involves clarification of a specific provision of the law which does not require any additional regulatory provisions to implement beyond technical amendments to make the language of the regulations consistent with the language of the law. Further, it was necessary that the requestors be given clarification of these points as quickly as possible to insure that the affected distributors could be advised as to the need to submit applications for registration prior to the deadline.

Following the close of the comment period of April 11, 1997, DEA received a written request, dated April 17, 1997, for an extension of the filing deadline for the temporary exemption in 21 CFR 1310.09. The requestor, a representative of a segment of industry heretofore not subject to DEA's chemical controls, cited industry misunderstandings regarding the registration requirements of the CSA and DEA's administration of the chemical control program in justifying the need for an extension of the deadline. DEA recognized that there had been confusion in the industry regarding the application of certain requirements under the MCA; therefore, the application deadline for temporary exemption was extended to July 12, 1997.

Accordingly, DEA's interim rule, published on February 10, 1997 (62 FR 5914), and amended on May 21, 1997 (62 FR 27693), is being adopted as a final rule.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that this rulemaking will not have a significant economic impact upon a substantial number of entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rulemaking is an administrative action to make the regulations consistent with the law and to avoid interruption of legitimate commerce by granting temporary exemptions from registration pending promulgation, through notice and comment, of the regulations necessary to implement the provisions of the MCA pertaining to combination ephedrine products. Further, since this is a temporary action which provides affected persons with a means to

comply with the law pending promulgation of regulations implementing the MCA, this action is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866. Consideration of the significant and impact of the new requirements of the MCA will be addressed as part of a future notice by DEA proposing regulations to implement the MCA.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

This rule will not resulting the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Accordingly, the interim rule amending 21 CFR parts 1309, 1310, and 1313, which was published at 62 FR 5914 on February 10, 1997, and amended at 62 FR 27693 on May 21, 1997, is adopted as a final rule.

Dated: September 29, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 97–26177 Filed 10–6–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[TD 8736]

RIN 1545–AU66

Time for Filing Form 4720 Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains a regulation that specifies the filing date by which Form 4720 returns must be filed by disqualified persons and organization managers liable for Internal Revenue Code section 4958 excise taxes. These excise taxes are imposed on excess benefit transactions between disqualified persons and section 501(c)(3) organizations (except for private foundations) or section 501(c)(4) organizations.

DATES: This regulation is effective October 7, 1997.

For dates of applicability, see § 53.6071–1(f).

FOR FURTHER INFORMATION CONTACT: Phyllis Haney, (202) 622–4290 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Foundation and Similar Excise Taxes regulations (26 CFR part 53) under Internal Revenue Code (Code) section 6071. Those amendments provide guidance on the time for filing the return that is required to accompany payment of section 4958 excise taxes. This rule was first published in Notice 96–46 (1996–39 I.R.B. 7) (September 23, 1996). A notice of proposed rulemaking (NPRM) of that rule was published at 62 FR 84, by cross reference to a temporary regulation, (TD 8705, 62 FR 25), on January 2, 1997. The deadline for comments on the NPRM was April 2, 1997; no comments were received.

Taxpayer Bill of Rights 2, Public Law 104–168, 110 Stat. 1452 (TBOR2), enacted July 30, 1996, added section 4958 to the Code, which imposes excise taxes on excess benefit transactions. Section 4958 taxes apply retroactively to excess benefit transactions occurring on or after September 14, 1995. The taxes do not, however, apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.

An "excess benefit transaction" subject to tax under section 4958 is any transaction in which an economic benefit is provided by an organization described in Code section 501(c)(3) (except for a private foundation) or 501(c)(4) directly or indirectly to, or for the use of, any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing the benefit. A "disqualified person" is any person who was, at any time during the 5-year period ending on the date of the excess benefit transaction, in a position to exercise substantial influence over the affairs of the organization. Disqualified persons also include family members and certain entities in which at least 35 percent of the control or beneficial interest are held by persons described in the preceding sentence.

Code section 4958 imposes three taxes. The first tax is equal to 25 percent of the excess benefit amount, and is to be paid by any disqualified person who engages in an excess benefit transaction. The second tax is equal to 200 percent of the excess benefit amount, and is to be paid by any disqualified person if the excess benefit transaction is not corrected within the taxable period. The third tax is equal to 10 percent of the excess benefit amount, and is to be paid generally by any organization manager who knowingly participates in an excess benefit transaction. The maximum amount of this third tax with respect to any one excess benefit transaction may not exceed $10,000. An "organization manager" is any officer, director, trustee, or any individual having powers or responsibilities similar to those of any officer, director, or trustee. Final regulations under Code section 6011 were published on January 2, 1997, at TD 8705 (62 FR 25), prescribing Form 4720 for calculating and paying the first and third taxes described above.

TBOR2 also amended Code section 6033(b) to require section 501(c)(3) organizations to report the amounts of the taxes paid under section 4958 with respect to excess benefit transactions involving the organization, as well as any other information the Secretary may require concerning those transactions. Section 6033(f) also was amended to impose the same reporting requirements on section 501(c)(4) organizations. Those amendments to section 6033 only apply to organizations' returns for taxable years beginning after July 30, 1996. These and other TBOR2 amendments to the reporting requirements for section 501(c)(3) and section 501(c)(4) organizations are reflected on IRS Forms 990 and 990–EZ beginning with the 1996 versions.

Explanation of Provisions

This regulation provides the general rule that Form 4720 returns will be due on or before the 15th day of the fifth month following the close of the taxable year of any disqualified person or organization manager who is liable for section 4958 excise taxes on excess benefit transactions. The regulations also provide that returns on Form 4720 for taxable years ending after September 13, 1995, and on or before July 30, 1996, will be due on or before December 15, 1996. See also Notice 96–46 (1996–39 I.R.B. 7) (September 23, 1996), and 62 FR 25, 84 (January 2, 1997).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Phyllis Haney, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 53.6071–1T and § 53.6071–1 [Amended]

Par 2. In § 53.6071–1T, paragraph (f) is redesignated as paragraph (f) of § 53.6071–1.

§ 53.6071–1T [Removed]

Par 3. § 53.6071–1T is removed.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 27, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–26558 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 97–2110]

List of Office of Management and Budget Approved Information Collections Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action revises the Commission's list of Office of Management and Budget (OMB) approved public information collection requirements with expiration dates. This list will provide the public with a current list of public information collection requirements approved by OMB and their associated control numbers and expiration dates.

EFFECTIVE DATE: October 7, 1997.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Office of the Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

Order

By the Managing Director:

Adopted: September 30, 1997.

Released: October 2, 1997.

1. Section 3507(a)(3) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(3), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's public information collection requirements that have been reviewed and approved by OMB.

3. Authority for this action is contained in Section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and Section 0.231(b) of the Commission's Rules. Since this amendment is a matter of agency organization procedure or practice, the notice and comment and effective date provisions of the Administrative Procedure Act do not apply. See 5 U.S.C. Section 553(b)(A)(d).

4. Accordingly, *it is ordered, that* Section 0.408 of the Rules is *revised* as set forth in the revised text, effective on the date of publication in the **Federal Register**.

5. Persons having questions on this matter should contact Judy Boley at (202) 418–0214.

List of Subjects in 47 CFR Part 0

Reporting and recordkeeping requirements.

Andrew S. Fishel,

Managing Director.

1. Part 0—The authority citation for Part 0 continues to read:

Authority: Secs: 4, 303, 48 Stat. 1066, 1082, as revised; 47 U.S.C. 154, 303 unless otherwise noted.

2. Section 0.408 is revised to read as follows:

§ 0.408 OMB control numbers and expiration dates assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers and expiration dates for the Commission information collection requirements assigned by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission intends that this section comply with the requirement that agencies display current control numbers and expiration dates assigned by the Director of OMB for each approved information collection requirement. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to the Associate Managing Director—Performance Evaluation and Records Management, Federal Communications Commission, Washington, DC 20554.

(b) *Display.*

OMB control No.	FCC form No. or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0003	FCC 610	10/31/99
3060–0004	Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation, ET Doc. 96–62.	03/31/00
3060–0009	FCC 316	05/31/99
3060–0010	FCC 323	07/31/98
3060–0012	Parts 21, 23, 25 and FCC 701	05/31/00
3060–0016	FCC 346	07/31/00
3060–0017	FCC 347	07/31/00
3060–0019	FCC 403	10/31/97
3060–0020	FCC 406	05/31/99
3060–0021	FCC 480	12/31/97
3060–0022	FCC 610A	08/31/98
3060–0024	Sec. 76.29	08/31/98
3060–0025	FCC 755	07/31/00
3060–0027	FCC 301	08/31/98
3060–0028	FCC 313	02/28/99
3060–0029	FCC 302–TV	07/31/00
3060–0031	FCC 314	08/31/98
3060–0032	FCC 315	08/31/98
3060–0034	FCC 340	11/30/97
3060–0035	FCC 313–R	04/30/00
3060–0040	FCC 404/404–R	08/31/00
3060–0041	FCC 301–A	02/28/00
3060–0048	FCC 704	05/31/00
3060–0049	FCC 753	06/30/00
3060–0050	FCC 801	01/31/98
3060–0051	FCC 405–B	08/31/00
3060–0053	FCC 703	11/30/99
3060–0054	FCC 820	02/28/99
3060–0055	FCC 327	04/30/00
3060–0056	FCC 730	03/31/00
3060–0057	FCC 731	09/30/99
3060–0061	FCC 325	10/31/97
3060–0062	FCC 330	08/31/98
3060–0064	FCC 402	06/30/98
3060–0065	FCC 422	09/30/98
3060–0066	FCC 330–R	07/31/00
3060–0068	FCC 702	08/31/00
3060–0069	FCC 756	09/30/99
3060–0072	FCC 409	08/31/98
3060–0075	FCC 345	12/31/96
3060–0076	FCC 395	12/31/99
3060–0079	FCC 610–B	08/31/99
3060–0084	FCC 323–E	04/30/99
3060–0089	FCC 503	06/30/98
3060–0093	FCC 405	05/31/00
3060–0095	FCC 395–A, 395–AS	06/30/99
3060–0096	FCC 506, 506–A	08/31/99
3060–0099	FCC M	08/31/99
3060–0104	FCC 572	05/31/00
3060–0105	FCC 430	09/30/00
3060–0106	Sec. 43.61, FCC 43.61	12/31/97
3060–0107	FCC 405–A	01/31/00
3060–0108	FCC 201	11/30/97
3060–0110	FCC 303–S	08/31/99
3060–0113	FCC 396	01/31/00
3060–0119	Sec. 90.145	12/31/99
3060–0120	FCC 396–A	10/31/99
3060–0126	Sec. 73.1820	08/31/99
3060–0127	FCC 1046	03/31/00
3060–0128	FCC 574	06/30/98
3060–0132	FCC 1068A	12/31/97
3060–0134	FCC 574–R	05/31/99
3060–0136	FCC 574–T	03/31/98
3060–0139	FCC 854/854–R	06/30/98
3060–0141	FCC 402–R	06/30/00
3060–0147	Sec. 64.804	01/31/00
3060–0149	Part 63, Sec. 214, 63.01–63.601	06/30/98
3060–0157	Sec. 73.99	02/28/00
3060–0160	Sec. 73.158	02/28/99
3060–0161	Sec. 73.61	12/31/99
3060–0165	Part 41 Sec. 41.31	01/31/00
3060–0166	Part 42	08/31/98

OMB control No.	FCC form No. or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0168	Sec. 43.43	12/31/99
3060–0169	Sec. 43.51, 43.53	08/31/98
3060–0170	Sec. 73.1030	01/31/99
3060–0171	Sec. 73.1125	02/28/99
3060–0173	Sec. 73.1207	12/31/97
3060–0174	Sec. 73.1212	03/31/99
3060–0175	Sec. 73.1250	10/31/99
3060–0176	Sec. 73.1510	12/31/99
3060–0178	Sec. 73.1560	12/31/99
3060–0179	Sec. 73.1590	03/31/98
3060–0180	Sec. 73.1610	01/31/99
3060–0181	Sec. 73.1615	01/31/99
3060–0182	Sec. 73.1620	12/31/97
3060–0184	Sec. 73.1740	01/31/99
3060–0185	Sec. 73.3613	05/31/98
3060–0187	Sec. 73.3594	12/31/97
3060–0188	Sec. 73.3550	07/31/00
3060–0190	Sec. 73.3544	12/31/97
3060–0192	Sec. 87.103	11/30/97
3060–0194	Sec. 74.21	01/31/99
3060–0202	Sec. 87.37	12/31/97
3060–0204	Sec. 90.38(B)	04/30/99
3060–0206	Part 21	10/31/97
3060–0208	Sec. 73.1870	01/31/00
3060–0209	Sec. 73.1920	10/31/99
3060–0210	Sec. 73.1930	03/31/98
3060–0211	Sec. 73.1943	05/31/98
3060–0212	Sec. 73.2080	12/31/99
3060–0213	Sec. 73.3525	10/31/97
3060–0214	Sec. 73.3526	12/31/99
3060–0215	Sec. 73.3527	12/31/99
3060–0216	Sec. 73.3538	11/30/98
3060–0218	Sec. 90.41(b)	12/31/97
3060–0219	Sec. 90.49(b)	10/31/99
3060–0221	Time in which stations must be placed in operation (exceptions)	12/31/97
3060–0222	Sec. 97.213	12/31/97
3060–0223	Sec. 90.129(B)	05/31/99
3060–0224	Sec. 90.151	02/28/98
3060–0225	Sec. 90.131(B)	09/30/99
3060–0226	Sec. 90.135 (d)&(e)	02/28/98
3060–0228	Sec. 80.59	08/31/98
3060–0233	Part 36	07/31/99
3060–0236	Sec. 74.703	07/31/99
3060–0240	Sec. 74.651	02/28/00
3060–0241	Sec. 74.633	02/28/00
3060–0242	Sec. 74.604	02/28/00
3060–0243	Sec. 74.551	05/31/99
3060–0245	Sec. 74.537	05/31/99
3060–0246	Sec. 74.452	07/31/00
3060–0248	Sec. 74.751	07/31/99
3060–0249	Sec. 74.781	01/31/00
3060–0250	Sec. 74.784	01/31/00
3060–0251	Sec. 74.833	10/31/99
3060–0253	Part 68 Sec. 68.106, 68.108, 68.110	02/28/98
3060–0254	Sec. 74.433	07/31/00
3060–0258	Sec. 90.176	10/31/99
3060–0259	Sec. 90.263	12/31/97
3060–0261	Sec. 90.215	12/31/97
3060–0262	Sec. 90.179	11/30/98
3060–0263	Sec. 90.177	09/30/99
3060–0264	Sec. 80.413	12/31/97
3060–0265	Sec. 80.868	08/31/98
3060–0270	Sec. 90.443	01/31/00
3060–0272	Sec. 94.31	03/31/98
3060–0280	Sec. 90.633(F)&(G)	05/31/99
3060–0281	Sec. 90.651	02/28/98
3060–0284	Sec. 94.25(F)(G)&(I)	02/28/98
3060–0286	Sec. 80.302	05/31/98
3060–0287	Sec. 78.69	08/31/98
3060–0288	Sec. 78.33	12/31/99
3060–0289	Sec. 76.601	02/28/99
3060–0290	Sec. 90.517	05/31/99
3060–0291	Sec. 90.477	02/28/98

OMB control No.	FCC form No. or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0292	Part 69	09/30/97
3060–0295	Sec. 90.607(b)(1) & (c)(1)	12/31/97
3060–0297	Sec. 80.503	12/31/97
3060–0298	Part 61	10/31/97
3060–0300	Sec. 94.107	02/28/98
3060–0307	Sec. 90.629(A)	04/30/99
3060–0308	Sec. 90.505	02/28/98
3060–0309	Sec. 74.1281	09/30/99
3060–0310	Sec. 76.12	12/31/99
3060–0311	Sec. 76.54	09/30/99
3060–0313	Sec. 76.207	05/31/98
3060–0314	Sec. 76.209	12/31/97
3060–0315	Sec. 76.221	09/30/99
3060–0316	Sec. 76.305	05/31/98
3060–0318	FCC 489	10/31/97
3060–0319	FCC 490	09/30/00
3060–0320	Sec. 73.1350	02/28/98
3060–0321	Sec. 73.68	02/28/99
3060–0325	Sec. 80.605	06/30/99
3060–0326	Sec. 73.69	09/30/99
3060–0329	Sec. 2.955	04/30/99
3060–0330	Part 62	02/28/98
3060–0331	Sec. 76.615	05/31/98
3060–0332	Sec. 76.614	06/30/98
3060–0340	Sec. 73.51	08/31/00
3060–0341	Sec. 73.1680	08/31/00
3060–0342	Sec. 74.1284	07/31/00
3060–0344	Sec. 1.1705	08/31/00
3060–0345	Sec. 1.1709	08/31/00
3060–0346	Sec. 78.27	12/31/97
3060–0347	Sec. 97.311	11/30/97
3060–0348	Sec. 76.79	12/31/97
3060–0349	Sec. 76.73 and 76.75	11/30/97
3060–0355	FCC 492 and FCC 492A	05/31/98
3060–0357	Sec. 63.701	05/31/98
3060–0360	Sec. 80.409(c)	07/31/98
3060–0361	Sec. 80.29	05/31/98
3060–0362	Sec. 80.401	08/31/99
3060–0364	Sec. 80.409(d) and (e)	07/31/98
3060–0368	Sec. 97.523	08/31/00
3060–0370	Part 32	09/30/98
3060–0374	Sec. 73.1690	11/30/98
3060–0384	Sec. 64.904	02/28/99
3060–0386	Sec. 73.1635	05/31/99
3060–0387	Sec 15.201(d)	05/31/99
3060–0390	FCC 395B	12/31/99
3060–0391	Monitoring Program for Impact of Federal State Joint Board Decisions	08/31/98
3060–0392	Sec. 1.1401—1.1416	01/31/00
3060–0393	Sec. 73.45	10/31/99
3060–0394	Sec. 1.420	10/31/99
3060–0395	Sec. 43.21 and 43.22 FCC 43–02, FCC 43–05 and FCC 43–07	02/28/00
3060–0397	Sec. 15.7(A)	04/30/00
3060–0398	Sec. 2.948, 15.117(G)(2), 80.1053	10/31/99
3060–0400	Tariff Review Plan	09/30/96
3060–0404	FCC 350	02/28/00
3060–0405	FCC 349	09/30/98
3060–0407	FCC 307	06/30/00
3060–0410	FCC 495A and FCC 495B	03/31/00
3060–0411	Sec. 1.720–1.735	02/28/00
3060–0414	Terrain Shielding Policy	09/30/00
3060–0419	Sec. 76.94, 76.95, 76.155, 76.156, 76.157, 76.159	09/30/98
3060–0421	New Service Reporting Requirements under Price Cap Regulation	02/28/99
3060–0422	Sec. 68.5	05/31/98
3060–0423	Sec. 73.3588	10/31/99
3060–0425	Sec. 74.913	08/31/98
3060–0427	Sec. 73.3523	09/30/00
3060–0430	Sec. 1.1206	05/31/98
3060–0433	FCC 320	01/31/99
3060–0434	Sec. 90.19(F)(7)	05/31/99
3060–0435	Sec. 80.361	10/31/99
3060–0436	Sec: 15.214 and 68.200	05/31/99
3060–0438	FCC 464	11/30/97
3060–0439	Regulations Concerning Indecent Communications by Telephone	02/28/98

OMB control No.	FCC form No. or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0441	Sec. 90.621(B)(4)	08/31/99
3060–0443	FCC 572C	05/31/99
3060–0444	FCC 800A	05/31/99
3060–0446	Sec. 1.402	09/30/98
3060–0447	Sec. 25.134	12/31/97
3060–0448	Sec. 63.07	08/31/00
3060–0449	Sec. 1.65(c)	01/31/99
3050–0450	Detariffing and Installation of Inside Wiring Services Reports on State Regulatory Activities.	02/28/98
3060–0452	Sec. 73.3589	10/31/99
3060–0454	Regulation of International Accounting Rates	02/28/98
3060–0461	Sec. 90.173	12/31/99
3060–0463	Telecommunications Services for Individuals with Hearing and Speech Disabilities	07/31/00
3060–0465	Sec. 74.985	12/31/99
3060–0466	Sec. 74.1283	01/31/00
3060–0470	Computer III Remand Proceeding: BOC Safeguards and Tier 1 LEC Safeguards and Implementation of Further Costs, CC Docket 90–623.	08/31/98
3060–0473	Sec. 74.1251	02/28/99
3060–0474	Sec. 74.1263	02/28/00
3060–0475	Sec. 90.713	12/31/98
3060–0478	Informational Tariffs	04/30/00
3060–0480	FCC 493	12/31/97
3060–0481	FCC 452R	08/31/00
3060–0483	Sec. 73.687	07/31/00
3060–0484	Sec. 63.100	02/28/99
3060–0486	Document Index Terms	12/31/97
3060–0488	Sec. 73.30	12/31/97
3060–0489	Sec. 73.37	12/31/97
3060–0490	Sec. 74.902	12/31/97
3060–0491	Sec. 74.991	12/31/97
3060–0492	Sec. 74.992	12/31/97
3060–0493	Sec. 74.986	12/31/97
3060–0494	Sec. 74.990	12/31/97
3060–0496	FCC Report 43–08	11/30/97
3060–0497	FCC 91 FCC 92	08/31/98
3060–0498	FCC 90	08/31/98
3060–0500	Sec. 76.607	05/31/98
3060–0501	Sec. 76.206	05/31/98
3060–0502	Sec. 73.1942	05/31/98
3060–0504	Sec. 90.658	08/31/98
3060–0506	FCC 302–FM	04/30/00
3060–0508	Rewrite and Update of Part 22, of the Public Mobile Service Rules, CC Docket 92–115.	10/31/97
3060–0509	FCC Reports FCC 21–01, FCC 22–01, FCC 25–01 and FCC 25–02	08/31/98
3060–0511	FCC Report 43–04	02/28/00
3060–0512	ARMIS Annual Summary Report	09/30/00
3060–0513	FCC Report 43–03	02/28/00
3060–0514	Sec. 43.21(c)	02/28/97
3060–0515	Sec. 43.21(d)	08/31/98
3060–0516	Revision of Radio Rules and Policies, Time Brokerage Ruling	11/30/98
3060–0519	Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.	09/30/98
3060–0520	Sec. 90.127(E)	02/28/99
3060–0526	Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Facilities (CC Docket 91–141).	01/31/99
3060–0531	Local Multipoint Distribution Service (LMDS)	06/30/00
3060–0532	Sec. 2.975(A)(8) and 2.1033(B)(12)	05/31/99
3060–0536	FCC 431	09/30/00
3060–0537	Sec. 13.217	05/31/99
3060–0540	Tariff Filing Requirement for Nondominant Common Carriers	02/28/99
3060–0541	FCC 464–A	02/28/99
3060–0542	Frequency Coordinator Evaluation	05/31/98
3060–0543	Signal Booster Stations, Sec 21.913	07/31/99
3060–0544	Sec. 76.701	06/30/99
3060–0546	Sec. 76.59	06/30/99
3060–0547	Sec. 76.61 and 76.7	09/30/98
3060–0548	Sec. 76.302 and 76.56	09/30/98
3060–0549	FCC 329	09/30/97
3060–0550	FCC 328	08/31/99
3060–0551	Sec. 76.1002 and 76.1004	05/31/00
3060–0552	Sec. 76.1003 and 76.1004	05/31/00
3050–0554	Section 87.199	06/30/99
3060–0556	Sec. 80.1061	06/30/99

OMB control No.	FCC form No. or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0560	Sec. 76.911	12/31/97
3060–0561	Sec. 76.913	08/31/00
3060–0562	Sec. 76.916	12/31/97
3060–0563	Sec. 76.915	06/30/00
3060–0564	Sec. 76.924	08/31/99
3060–0565	Sec. 76.944	08/31/00
3060–0567	Sec. 76.962	05/31/98
3060–0568	Commercial Leased Access Rates, Terms, & Conditions, Sec. 76.970	04/30/00
3060–0569	Sec. 76.975	06/30/00
3060–0570	Sec. 76.982	12/31/97
3060–0572	Filing Manual for Annual International Circuit Status Reports, Sec. 43.82	09/30/99
3060–0573	FCC 394	09/30/99
3060–0574	FCC 395–M	06/30/99
3060–0576	FCC 610R	08/31/99
3060–0577	Expanded Interconnection with Local Telephone Company Facilities	09/30/00
3060–0579	Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Service.	09/30/00
3060–0580	Sec. 76.504	06/30/00
3060–0581	Sec. 76.503	01/31/00
3060–0582	Sec. 76.1302	03/31/00
3060–0584	FCC 45 FCC 44	07/31/99
3060–0589	FCC 159, and 159C	09/30/98
3060–0594	FCC 1220	10/31/97
3060–0595	FCC 1210	02/28/98
3060–0599	Implementation of Sections 3(n) and 322 of the Communications Act, GN 93–253	06/30/00
3060–0600	FCC 175 and 175–S	09/30/98
3060–0601	FCC 1200	10/31/97
3060–0602	Sec. 76.917	04/30/00
3060–0604	FCC 401, 489, 490, 405, 430, and 854	11/30/97
3060–0607	Sec. 76.922	08/31/00
3060–0609	Sec. 76.934(D)	11/30/97
3060–0610	Sec. 76.958	11/30/97
3060–0611	Sec. 74.783	07/31/00
3060–0613	Expanded Interconnection with Local Telephone Company Facilities, CC Docket 91–141.	09/30/98
3060–0621	FCC 401, 405, 430, 489, 490 and 854	10/31/97
3060–0623	FCC 600	02/28/99
3060–0624	Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, ET Docket 92–100 and GN Docket 90–314.	12/31/97
3060–0625	Amendment of the Commission's Rules to Establish New Personal Communications Services, GN Docket 90–314.	11/30/97
3060–0626	Implementation of Sections 3(N) and 332 of the Communications Act, GN Docket 93–252.	11/30/97
3060–0627	FCC 302–AM	01/31/98
3060–0629	Sec. 76.987(G)	02/28/98
3060–0630	Sec. 73.62	02/28/98
3060–0631	Sec. 73.1300	02/28/98
3060–0632	Sec. 73.1570	02/28/98
3060–0633	Sec. 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.965 and 74.1265.	02/28/98
3060–0634	Sec. 73.691	02/28/98
3060–0635	FCC 610–V	04/30/98
3060–0636	Part 2 and 18	06/30/98
3060–0638	Sec. 76.934(F)(1)	05/31/98
3060–0639	Implementation of Section 309(J) of the Communications Act Competitive Bidding, PP 93–253.	04/30/98
3060–0640	FCC 800I	07/31/98
3060–0641	FCC 218–I	09/30/99
3060–0643	Part 65 and 69	08/31/98
3060–0644	FCC 1230	08/31/98
3060–0645	Antenna Registration, Part 17	02/28/99
3060–0646	Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers: CC Docket 94–129.	09/30/98
3060–0647	FCC Annual Survey of Cable Industry Prices (1997 Price Survey)	11/30/97
3060–0648	Sec. 21.902	09/30/98
3060–0649	Sec. 76.58	09/30/98
3060–0650	Sec. 76.502	09/30/98
3060–0651	Sec. 76.9	09/30/98
3060–0652	Sec. 76.309 and 76.964	09/30/98
3060–0653	Sec. 64.703(b)	09/30/98
3060–0654	FCC 304	09/30/98
3060–0655	Request for Waivers of Regulatory Fees Predicated on Allegations of Financial Hardship, MM Docket 94–19.	09/30/98

OMB control No.	FCC form No. or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0656	FCC 175–M	09/30/98
3060–0657	Sec. 21.956	09/30/98
3060–0658	Sec. 21.960	09/30/98
3060–0660	Sec. 21.937	09/30/98
3060–0661	Sec. 21.931	09/30/98
3060–0662	Sec. 21.930	09/30/98
3060–0663	Sec. 21.934	09/30/98
3060–0664	FCC 304A	09/30/98
3060–0665	Sec. 64.707	09/30/98
3060–0666	Sec. 64.703(a)	09/30/98
3060–0667	Sec. 76.630	09/30/98
3060–0668	Sec. 76.936	09/30/98
3060–0669	Sec. 76.946	09/30/98
3060–0673	Sec. 76.956	09/30/98
3060–0674	Sec. 76.931 and 76.932	09/30/98
3060–0676	Sec. 64.1100	09/30/98
3060–0678	FCC 312	04/30/00
3060–0679	Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures.	09/30/98
3060–0681	Toll-Free Access Codes	09/30/00
3060–0682	Sec. 63.16	01/31/99
3060–0683	Direct Broadcast Satellite Service	01/31/99
3060–0684	Cost Sharing Plan for Microwave Relocation	08/31/99
3060–0685	FCC 1240	11/30/97
3060–0686	Streamlining the International Section 214 Authorization Process and Tariff Requirements.	06/30/99
3060–0687	Access to Telecommunications Equipment and Services by Persons with Disabilities.	02/28/99
3060–0688	FCC 1235	02/28/99
3060–0690	ET Docket 95–183, FCC 402, FCC 494	04/30/99
3060–0691	Amendment to Part 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHZ Bands Allotted to Specialized Mobile	06/30/99
3060–0692	Sec. 76.802	04/30/99
3060–0695	WT Docket No. 96–1	04/30/99
3060–0697	Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems.	04/30/99
3060–0698	Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico.	05/31/99
3060–0699	Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules—MM Doc. 96–18.	05/31/99
3060–0700	FCC 1275	07/31/00
3060–0701	CC Docket 96–23	05/31/99
3060–0702	Amendment to Part 20 and 24 of the Commission's Rules Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap.	05/31/99
3060–0703	FCC 1205	06/30/99
3060–0704	Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended—CC Doc. 96–61.	02/28/98
3060–0706	Order and NPRM on Cable Reform: Implementation of the Telecommunications Act of 1996.	10/31/97
3060–0707	Restriction on Over-the-Air Reception Devices (NPRM)	10/31/99
3060–0708	NPRM in MM Docket 96–58	07/31/99
3060–0709	Revision to Part 22 and Part 90 to Facilitate Future Development of the Paging System and Implementation of Section 309(j) of the Communications Act.	01/31/00
3060–0710	Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—CC Doc. 96–98.	02/28/97
3060–0711	Implementation of Section 34(a)(1) of the Public Utility Holding Act of 1935, as amended by the Telecommunications Act of 1996—GC Doc. 96–101.	07/31/99
3060–0712	Petition for Declaratory Ruling by Inmate Calling Services Providers Task Force	07/31/99
3060–0713	Alternative Broadcast Inspection Program	07/31/99
3060–0714	Antenna Registration Number Required as Supplement to Application Forms	09/30/99
3060–0715	Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information—CC Doc. 96–115.	08/31/99
3060–0716	Section 73.1630	08/31/99
3060–0717	CC Docket No. 92–77d	05/31/98
3060–0718	Part 101 Governing the Terrestrial Microwave Fixed Radio Service	09/30/99
3060–0719	Proposed Quarterly Report of IntraLATA Carriers Listing Pay Phone Automatic Numbering Identification.	12/31/99
3060–0720	Proposed Report of Bell Operating Companies of Modified Comparably Efficient Interconnection Plans.	09/30/99

OMB control No.	FCC form No. or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0721	One-Time Report of Local Exchange Companies of Cost Accounting Studies	12/31/99
3060–0722	Proposed Initial Report of Bell Operating Companies of Comparably Efficient Interconnect Plans.	08/31/99
3060–0723	Proposed Public Disclosure of Network Information by Bell Operating Companies	12/31/99
3060–0724	Annual Report of Interexchange Carriers Listing the Compensation Amount Paid to Pay Phone Providers and the Number of Payees.	12/31/99
3060–0725	Proposed Annual Filing of Nondiscrimination Reports (On Quality of Service, Installation, and Maintenance) by BOC's.	08/31/99
3060–0726	Proposed Quarterly Report of Interexchange Carriers Listing the Number of Dial-Around Calls for which Compensation is Being Paid to Pay Phone Owners.	12/31/99
3060–0727	Sec. 73.213	09/30/99
3060–0728	Supplemental Information Requesting Taxpayer Identifying Numbers for Debt Collection.	05/31/00
3060–0729	Bell Operating Provision of Out-of-Region Interexchange Services (Affiliated Company Recordkeeping Requirements).	12/31/99
3060–0730	Toll-Free Service Access Codes, 800/888 Number Release Procedures	02/28/00
3060–0731	Telecommunications Relay Services (TRS)	09/30/99
3060–0732	Consumer Education Concerning Wireless 911	10/31/98
3060–0734	Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996.	03/31/00
3060–0735	Partitioning and Disaggregation	09/30/99
3060–0736	Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended—CC Doc. 96–149.	03/31/00
3060–0737	Disclosure Requirements for Information Services Provided under a Presubscription or Comparable Arrangement.	09/30/99
3060–0738	Implementation of the Telecommunications Act of 1996: Electronic Publishing and Alarm Monitoring Services.	04/30/00
3060–0739	Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provisions of Commercial Mobile Radio Service.	10/31/99
3060–0740	Sec. 95.1015	10/31/99
3060–0741	Implementation of the Local Competition Provisions on the Telecommunications Act of 1996—CC Docket No. 96–96, Second Report and Order and Memorandum Opinion and Order.	10/31/99
3060–0742	Part 52, Subpart C, Sec. 52.21—52.31	12/31/99
3060–0743	Implementation of the Local Competition Provisions on the Telecommunications Act of 1996—CC Docket No. 96–128.	12/31/99
3060–0745	Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996–CC Docket No. 96–187.	11/30/97
3060–0746	FCC 900	06/30/00
3060–0747	FCC 415	12/31/99
3060–0748	Sec. 64.1504, CC Docket No. 96–146	12/31/99
3060–0749	Sec. 64.1509	01/31/00
3060–0750	Sec. 73.673	12/31/99
3060–0751	Regulation of International Accounting Rates: CC Docket No. 90–337	01/31/00
3060–0752	Billing Disclosure Requirements for Pay-Per-Call and Other Information Services, 47 CFR 64.1510.	01/31/00
3060–0753	Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket 9661 (Integrated Rate Plans).	01/31/00
3060–0754	FCC 398	12/31/99
3060–0755	Infrastructure Sharing—CC Docket 96–237	05/31/00
3060–0756	Procedural Requirements and Policies for Commission Processing of Bell Operating Company Applications for the Provision of In-Region, InterLATA Services under Section 271 of the Communications Act.	06/30/00
3060–0757	FCC Auctions Customer Survey	09/30/00
3060–0758	Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations—ET Docket No. 96–256 (Proposed Rule).	03/31/00
3060–0759	Implementation of Section 273 of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996.	04/30/00
3060–0760	Access Charge Reform—CC Docket No. 96–272 (First Report and Order)	12/31/97
3060–0761	Closed Captioning of Video Programming	04/30/00
3060–0762	Sec. 274(b)(3)(B), CC Docket No. 96–152 (FNPRM)	04/30/00
3060–0763	ARMIS Customer Satisfaction Report, FCC 43–06	11/30/97
3060–0764	Regulation of International Accounting Rates—CC Docket No. 90–337	12/31/97
3060–0765	Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (Further Notice of Proposed Rulemaking).	05/31/00
3060–0766	Digital Television Licenses	12/30/97
3060–0767	Auction Forms and License Transfer Disclosures; Supplement Fifth Notice of Proposed Rulemaking in CC Docket No. 92–297.	10/31/97
3060–0768	28 GHz Band Segmentation Plan Amending the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.03 GHz Frequency Band, and to Establish.	06/30/00
3060–0769	Aeronautical Services Transition Plan	06/30/00

OMB control No.	FCC form No. or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0770	Price Cap Performance Review for Local Exchange Carriers—CC Docket No. 94–1	06/30/00
3060–0771	Sec. 5.56	11/30/97
3060–0772	Non-U.S. Satellite Procedures Pursuant to the WTO Basic Telecommunications Agreement.	01/31/98
3060–0773	Sec. 2.803	07/31/00
3060–0774	Federal-State Joint Board on Universal Service—CC Docket No. 96–45, 47 CFR 36.611—36.612 and 47 CFR Part 54.	09/30/00
3060–0775	47 CFR 64.1901—64.1903	07/31/00
3060–0776	Price Cap Performance Review for Local Exchange Carriers, Fourth Report and Order.	11/30/97
3060–0777	Access Charge Reform—CC Docket No. 92–262 (Further Notice of Proposed Rulemaking.	08/31/00
3060–0779	Amendment to Part 90 of the Commission's Rules to Provide for Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Doc. 89–552.	08/31/00
3060–0780	Uniform Rate-Setting Methodology	09/30/00
3060–0781	Universal Service Data Request	01/31/98
3060–0782	Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations.	01/31/98
3060–0783	Coordination Notification Requirements on Frequencies Below 512 MHz—Sec. 90.176.	09/30/00
3060–0785	FCC 457	01/31/98
3060–0786	Petitions for LATA Association Changes by Independent Telephone Companies	01/31/98
3060–0788	DTV Showings/Interference Agreements	02/28/98
3060–0789	Modified Alternative Plan, CC Doc. 90–571, Order ("1997 Suspension Order")	03/31/98
3060–0793	Procedures for State Regarding Lifeline Consent, Adoption of Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers.	03/31/98
3060–0795	ULS TIN Registration and FCC 606	12/31/97

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–26417 Filed 10–6–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Parts 1401, 1425 and 1452

RIN 1090–AA65

Department of the Interior Acquisition Regulation; Regulatory Streamlining

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: In the interests of streamlining processes and improving relationships with contractors, the Department of the Interior (DOI) is issuing this final rule which amends 48 CFR Chapter 14 by revising and updating the Department of the interior Acquisition Regulation (DIAR).

EFFECTIVE DATES: November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Mary L. McGarvey at (202) 208–3158, Department of the Interior, Office of Acquisition and Property Management, 1849 C Street, N.W. (MS5522 MIB), Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:

A. Background

Under the auspices of the National Performance Review, a thorough review of the DIAR was conducted. The review revealed unnecessary and outdated regulations, and some excessively burdensome procedures.

In the interests of streamlining processes and improving relationships with contractors, essential portions of the DIAR are being removed, revised and/or retained in 48 CFR, when appropriate. This review identified Sections to be removed from 48 CFR Chapter 14. Specifically, Section 1425.203, which requires the use of a 6% differential to evaluate U.S. versus foreign construction materials, is being removed. Sections 1425.205 and 1452.225–70 are the prescription and the clause associated with this Department of the Interior policy. This language is being removed from 48 CFR because the same information is now located in the Federal Acquisition Regulation and it is redundant to maintain the information in the Department of the Interior Acquisition Regulation. This removes Part 1425 in its entirety from 48 CFR Chapter 14.

Section 1401.106, OMB approval under the Paperwork Reduction Act DIAR Segment 1452.225–70—OMB Control Number 0018, is being removed from 48 CFR Chapter 14 because the new OMB control Number 9000–0141 approved through February 28, 1999 is now part of the Federal Acquisition Regulation.

This final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.; an Initial Regulatory Flexibility Analysis has, therefore, not been performed.

Paperwork Reduction Act

The final rule does not impose recordkeeping requirements or information collection requirements or collection of information from offerors, contractors or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

Required Determinations: The Department believes that public comment is unnecessary because removal of the information is due to redundancy with the Federal Acquisition Regulation and public comment was sought in that rulemaking process. Therefore, in accordance with 5 U.S.C. 553(b)(B), the Department finds good cause to publish this document as a final rule. This rule was not subject to Office of Management and Budget review under Executive Order 12866. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department has determined that this rule will not have a significant economic impact on a substantial

number of small entities because no requirements are being added for small businesses and no protections are being withdrawn. The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969. The Department has certified that this rule meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 48 CFR Parts 1401, 1425 and 1452

Government procurement, Reporting and recordkeeping requirements.

Dated: September 22, 1997.

Brooks B. Yeager,

Acting Assistant Secretary—Policy, Management and Budget.

Chapter 14 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 48 CFR parts 1401, 1425 and 1452 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

2. In 48 CFR Part 1401, section 1401.106, remove from the table therein the reference to DIAR Segment 1452.225–70 and OMB Control Number 1084–0018.

3. 48 CFR part 1425 is removed in its entirety.

4. In 48 CFR part 1452, remove 1452.225–70, Use of Foreign Construction Materials.

[FR Doc. 97–26555 Filed 10–6–97; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. 97–067; Notice 1]

RIN 2127–AG98

List of Nonconforming Vehicles Decided to be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards that NHTSA has decided to be eligible for importation. This list is contained in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The revised list includes all vehicles that NHTSA has decided to be eligible for importation since October 1, 1996. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles (Appendix A to Part 593) is effective on October 7, 1997.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made "on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under (49 U.S.C. 30141(c))." The Secretary's authority to make these decisions has been delegated to the Administrator of NHTSA under 49 CFR 1.50(a). The Administrator initially redelegated to the Associate Administrator for Enforcement (now Safety Assurance) the authority to grant or deny petitions for import eligibility decisions submitted by motor vehicle manufacturers and registered importers, and subsequently transferred this authority to the Director, Office of Vehicle Safety Compliance (49 CFR 501.8(l)). Thus far, a number of import eligibility decisions have been made on the Administrator's own initiative, and the Associate Administrator and Office Director have granted many petitions for such decisions submitted by registered importers.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. NHTSA previously published notices containing this list on four occasions, at 57 FR 29553 (July 2, 1992), 59 FR 8671 (February 23, 1994), 60 FR 8268 (February 13, 1995), and 61 FR 8097 (March 1, 1996). On October 1, 1996, NHTSA published a final rule at 61 FR 51242 that added the list as an appendix to the agency's regulations at 49 CFR part 593 that establish procedures for import eligibility decisions. As described in the final rule, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. See 61 FR 51242–43. In that document, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. See 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). *Ibid.*

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking action and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the revisions resulting from this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Because this rulemaking does not impose any regulatory requirements, but merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have been made, it has no economic impact.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

5. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, P.L. 96–511, the agency notes that there are no information collection requirements associated with this rulemaking action.

6. Civil Justice Reform

This rule does not have any retroactive effect. It does not repeal or modify any existing Federal regulations. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it will preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

7. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements, but merely revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards that NHTSA has decided to be eligible for importation into the United States to include all vehicles for which such decisions have been made since October 1, 1996.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR parts 400 to 999, which is due for revision on October 1, 1997, good cause exists to dispense with the requirement in 5 U.S.C. 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, part 593 of Title 49 of the Code of Federal Regulations, *Determinations that a vehicle not originally manufactured to conform to the Federal Motor Vehicle Safety Standards is eligible for importation*, is amended as follows:

PART 593—[AMENDED]

1. The authority citation for Part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50.

2. Appendix A to part 593 is revised to read as follows:

Appendix A to part 593—List of Vehicles Determined to be Eligible for Importation

Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying entry to indicate that the vehicle is eligible for importation.

"VSA" eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under § 593.8.

"VSP" eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

"VCP" eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(2), which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Vehicles for which eligibility decisions have been made are listed alphabetically by make, with the exception of Mercedes-Benz vehicles, which appear at the end of the list. Eligible models within each make are listed numerically by "VSA," "VSP," or "VCP" number.

All hyphens used in the Model Year column mean "through" (for example, "1973–1989" means "1973 through 1989").

The initials "MC" used in the Manufacturer column mean "motorcycle."

The initials "SWB" used in the Model Type column mean "Short Wheel Base."

The initials "LWB" used in the Model Type column mean "Long Wheel Base."

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

Number	Vehicles
VSA–80	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989; (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208; (c) All passenger cars manufactured on or after September 1, 1995 and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS Nos. 208, and that comply with FMVSS No. 214.
VSA–81	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4536 kg. (10,000 lbs.) or less that are less than 25 years old and that were manufactured before September 1, 1991; (b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4536 kg. (10,000 lbs.) or less that were manufactured on and after September 1, 1991, and before September 1, 1993, and that, as originally manufactured, comply with FMVSS Nos. 202 and 208; (c) All multipurpose passenger vehicles, trucks and buses with a GVWR of 4536 kg. (10,000 lbs.) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; (d) All multipurpose passenger vehicles, trucks and buses with a GVWR of 4536 kg. (10,000 lbs.) or less, that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with the requirements of FMVSS Nos. 202, 208, 214, and 216.

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS—Continued

Number	Vehicles
VSA–82	All multipurpose passenger vehicles, trucks and buses with a GVWR greater than 4536 kg. (10,000 lbs.) that are less than 25 years old.
VSA–83	All trailers, and all motorcycles that are less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

Manufacturer	VSP	VSA	VCP	Model type	Model year
Acura	51			Legend	1988
	77			Legend	1989
Alfa Romeo	70			Spider	1987
	76			164	1991
	124			GTV	1985
	156			164	1994
	196			164	1989
Aston Martin	123			Volante	1990–1991
Audi	93			100	1989
	160			200 Quattro	1987
BMW		3		2002	1973–1976
		7		2002A	1973–1976
		10		2002Tii	1973–1974
		12		3.0CSi & 3.0CSiA	1973–1974
		13		3.0S & 3.0SA	1974
		14		3.0Si & 3.0SiA	1975
		15		530i & 530iA	1975–1978
		16		320, 320i, & 320iA	1976–1985
		17		630CSi 630CSiA	1977
		18		633CSi & 633CSiA	1977–1984
		19		733i & 733iA	1977–1984
		20		528i & 528iA	1979–1984
		21		528e & 528eA	1982–1988
		22		533i & 533iA	1983–1984
		23		318i & 318iA	1981–1989
		24		325e & 325eA	1984–1987
		25		535i & 535iA	1985–1989
		26		524tdA	1985–1986
		27		635, 635CSi, & 635CSiA	1979–1989
		28		735, 735i, & 735iA	1980–1989
		29		L7	1986–1987
		30		325, 325i, 325iA & 325E	1985–1989
		31		325 is & 325isA	1987–1989
		32		M6	1987–1988
		33		325iX & 325iXA	1988–1989
		34		M5	1988
		35		M3	1988–1989
		66		316	1978–1982
		67		323i	1978–1985
		68		520 & 520i	1978–1983
		69		525 & 525i	1979–1982
		70		728 & 728i	1977–1985
		71		730, 730i, & 730iA	1978–1980
		72		732i	1980–1984
		73		745i	1980–1986
		78		All other models except those in the M1 and Z1 series.	1973–1989
	4			518i	1986
	5			525i	1989
	6			730iA	1988
	9			520iA	1989
	10			850i	1991
	14			728i	1986
	15			625CSi	1981
	24			730i	1991
	25			316	1986
	32			628CSi	1980
	41			750iL	1993
	46			518i	1991
	55			850i	1993
	57			730i	1993
	79			525i	1991–1992

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Model year
	81			750iL	1991
	91			750iL	1990
	96			325i	1991
	99			840Ci	1993
	110			520i	1992
	119			520i	1994
	131			730i	1994–1995
	133			525i	1993
	146			735iL	1991
	183			520 Series	1995
	194			5 Series	1990–1995
	197			325i	1992–1996
	205			325iX	1990
BMW MC	30			R75/6	1974
	58			R100S	1977
	177			R1100RS	1994
Bristol Bus			2	VRT Bus-Double Decker	1978–1981
			4	VRT Bus-Double Decker	1977
			10	VRT Bus-Double Decker	1973–1976
Chevrolet	150			400SS	1995
Chrysler	216			Shadow	1989
Citroen			1	XM	1990–1992
Ducati MC	201			900SS	1990–1996
Dodge	112			Colt	1973
	135			Ram	1994–1995
Ferrari		36		308 (all models)	1974–1985
		37		328 GTS	1985–1989
		37		328 (all other models)	1985 and 1988–1989
Ferrari		38		GTO	1985
		39		Testarossa	1987–1989
		74		Mondial (all models)	1980–1989
		76		208, 208 Turbo (all models)	1974–1988
	86			348TB	1992
	100			365 GTB/4 Daytona	1973
	107			Dino	1973
	161			348TS	1992
	173			512TR	1993
Ford		9		Escort RS	1994–1995
Freightliner	178			FTLD 112064SD	1991–1996
	179			FLD12064ST	1991–1996
GMC	134			Suburban	1992–1994
Harley-Davidson MC	202			FX, FL, XL Series	1973–1997
Hobson			8	Horse Trailer	1985
Honda	128			Civic DX	1989
	191			Prelude	1989
Honda MC	34			VFR750	1990
	106			CB1000F	1988
	174			CP450SC	1986
Jaguar		40		XJS	1980–1987
		41		XJ6	1973–1986
	47			XJ6	1987
	78			Sovereign	1993
	129			XJS	1992
	175			XJS	1991
	195			XJS	1994–1996
	215			XJ6 Sovereign	1988
Jaguar Daimler	12			Limousine	1985
Jeep	164			Cherokee	1992
	180			Cherokee	1995
	211			Cherokee	1991
	217			Wrangler	1993
Kawasaki MC	182			ZX1000–B1	1988
	190			KZ550B	1982
Ken-Mex	187			T800	1990–1996
Kenworth	115			T800	1992
Lancia	7			Fulvia	1973
Land Rover	212			Defender 110	1993
Laverda MC	37			1000	1975
Lincoln	144			Mark VII	1992
Maserati	155			Bi-Turbo	1985
Mazda	42			RX7	1978–1981
	184			MX–5 Miata	1990–1993

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Model year
	199			RX–7	1986
MG	206			MGB Roadster	1974
Mitsubishi	8			Galant VX	1988
	13			Galant SUP	1989
	170			Pajero	1984
Moto Guzzi MC	118			Daytona	1993
Nissan		75		Z and 280Z	1973–1981
		75		Fairlady and Fairlady Z	1975–1979
	138			Maxima	1989
	139			Stanza	1987
	162			240SX	1988
	198			300ZX	1984
Peugeot		65		405	1989
Pontiac	189			Transport MPV	1993
Porsche		56		911 Coupe	1973–1989
		56		911 Targa	1973–1989
		56		911 Turbo	1976–1989
		56		911 Cabriolet	1984–1989
		56		911 Carrera	1973–1989
		58		914	1973–1976
		59		924 Coupe	1976–1989
		59		924 Turbo Coupe	1979–1989
		59		924 S	1987–1989
		60		928 Coupe	1976–1989
		60		928 S Coupe	1983–1989
		60		928 S4	1979–1989
		60		928 GT	1979–1989
		61		944 Coupe	1982–1989
		61		944 Turbo Coupe	1985–1989
		61		944 S Coupe	1987–1989
		79		All other models except Model 959	1973–1989
	29			911 C4	1990
	52			911 Carrera	1992
	97			944	1990
	103			911 Carrera	1994
	116			946	1994
	125			911 Turbo	1992
	152			944 S2 2dr Hatchback	1990
Porsche	165			911 Carrera	1993, 1995, 1996
	210			928 S4	1990
Rolls Royce		62		Silver Shadow	1973–1979
	16			Bentley	1989
	53			Bentley Turbo	1986
	122			Camargue	1984–1985
	186			Bentley Brooklands	1993
	188			Silver Spur	1984
Saab	59			9000	1988
	158			900	1983
	213			900 SE	1995
	219			900 SE	1990–1994, 1996, 1997
Sprite			12	Musketeer Trailer	1980
Suzuki MC	111			GS850	1985
	208			GSX750	1983
Toyota		63		Camry	1987–1988
		64		Celica	1987–1988
		65		Corolla	1987–1988
	39			Camry	1989
	101			Landcruiser	1989
	102			Landcruiser	1991
	181			Landcruiser	1994
	200			Van	1987, 1988
	218			Landcruiser	1990–1996
Triumph	108			Spitfire	1973
Volkswagen		42		Scirocco	1986
	733			Golf Rally	1988
	80			Golf	1988
	92			Golf	1993
	148			Passat 4 door Sedan	1992
	149			GTI (Canadian)	1991
	159			Golf	1987
Volvo	43			262C	1981
	87			740 Sedan	1988

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type	Model year
	95			940GL	1993
	132			945GL	1994
	176			960 Sedan and Wagon	1994
Yamaha MC	113			FJ1200	1991
Yamaha MC	171			RD–350	1983

Manufacturer	VSP	VSA	VCP	Model type	Model ID	Model year
Mercedes Benz		43		600	100.012	1973–1981
		43		600 Long 4dr	100.014	1973–1981
		43		600 Landaulet	100.015	1973–1981
		43		600 Long 6dr	100.016	1973–1981
		44		280 S.C	107.022	1975–1981
		44		350 S.C	107.023	1973–1979
		44		450 S.C	107.024	1973–1989
		44		380 S.C	107.025	1981–1989
		44		500 S.C	107.026	1978–1981
		44		300 SL	107.041	1986–1988
		44		280 SL	107.042	1973–1985
		44		350 SL	107.043	1973–1978
		44		450 SL	107.044	1973–1989
		44		380 SL	107.045	1980–1989
		44		500 SL	107.046	1980–1989
		44		420 SL	107.047	1986
		44		560 SL	107.048	1986–1989
		45		280 SE (3.5)	108.057	1973
		45		280 SEL (3.5)	108.058	1973
		49		230.6	114.015	1973–1976
		49		250	114.010	1973–1976
		49		250	114.011	1973–1976
		49		250 CE	114.022	1973–1976
		49		250 C	114.023	1973–1976
		49		280	114.060	1973–1976
		49		280 E	114.062	1973–1976
		49		280 CE	114.072	1973–1976
		49		280 C	114.073	1973–1976
		50		200	115.015	1973–1976
		50		230.4	115.017	1974–1976
		50		220 D	115.110	1973–1976
		50		240 D (3.0)	115.114	1974–1976
		50		240 D	115.117	1974–1976
		51		280 S	116.020	1973–1980
		51		280 SE	116.024	1973–1980
		51		280 SEL	116.025	1973–1980
		51		350 SE	116.028	1973–1980
		51		350 SEL	116.029	1973–1980
		51		450 SE	116.032	1973–1980
		51		450 SEL	116.033	1973–1980
		51		450 SEL (6.9)	116.036	1973–1980
		52		200	123.020	1976–1980
		52		230	123.023	1976–1985
		52		250	123.026	1976–1985
		52		280	123.030	1976–1985
		52		280 E	123.033	1976–1985
		52		230 C	123.043	1978–1980
		52		280 C	123.050	1977–1980
		52		280 CE	123.053	1977–1985
		52		230 T	123.083	1977–1985
		52		280 TE	123.093	1977–1985
		52		200 D	123.120	1980–1982
		52		240 D	123.123	1977–1985
		52		300 D	123.130	1976–1985
		52		300 D	123.133	1977–1985
		52		300 CD	123.150	1978–1985
		52		240 TD	123.183	1977–1985
		52		300 TD	123.193	1977–1985
		52		200	123.220	1979–1985
		52		230 E	123.223	1977–1985
		52		230 CE	123.243	1980–1984
		52		230 TE	123.283	1977–1985
		53		280 S	126.021	1980–1983

Manufacturer	VSP	VSA	VCP	Model type	Model ID	Model year
		53		280 SE	126.022	1980–1985
		53		280 SEL	126.023	1980–1985
		53		300 SE	126.024	1985–1989
		53		300 SEL	126.025	1986–1989
		53		380 SE	126.032	1979–1989
		53		380 SEL	126.033	1980–1989
		53		420 SE	126.034	1985–1989
		53		420 SEL	126.035	1986–1989
		53		500 SE	126.036	1980–1986
		53		500 SEL	126.037	1980–1989
		53		560 SEL	126.039	1986–1989
		53		380 SE	126.043	1982–1989
		53		500 SEC	126.044	1981–1989
		53		560 SEC	126.045	1986–1989
		53		300 SD	126.120	1981–1989
		54		190	201.022	1984
		54		190 E (2.3)	201.024	1983–1989
		54		190 E	201.028	1986–1989
		54		190 E (2.6)	201.029	1986–1989
		54		190 E 2.3 16	201.034	1984–1989
		54		190 D (2.2)	201.122	1984–1989
		54		190 D	201.126	1984–1989
		55		200	124.020	1985
		55		230 E	124.023	1985–1987
		55		260 E	124.026	1985–1989
		55		300 E	124.030	1985–1989
		55		300 CE	124.050	1988–1989
		55		230 TE	124.083	1985
		55		300 TE	124.090	1986–1989
		55		300 D	124.130	1985 and 1986
		55		300 D Turbo	124.133	1985–1989
		55		300 TD Turbo	124.193	1986–1989
		77		All other models except Model ID 114 and 115 with sales designations "long," "station wagon," or "ambulance".		1973–1989
	1			230 E	124.023	1988
	2			230 TE	124.083	1989
	3			200 TE	124.081	1989
	7			300SL	107.041	1989
	11			200E	124.021	1989
	17			200D	124.120	1986
	18			260SE	126.020	1986
	19			230E	124.023	1990
	20			230E	124.023	1989
	21			300SEL	126.025	1990
	22			190E	201.024	1990
	23			500SEL	129.066	1989
	26			500SE	140.050	1991
	27			600SEL	140.057	1992
	28			260SE	126.020	1989
	33			500SL	129.066	1991
	35			500SE	126.036	1988
	40			300TE	124.090	1990
	45			190E	201.024	1991
	48			420SEL	126.035	1990
	50			500SE	140.050	1992
	54			300SL	129.061	1992
	56			500E	124.036	1991
	60			500SL	129.006	1992
	63			500SEL	126.037	1991
	64			300CE	124.051	1990
	66			500SEC	126.044	1990
	67			300SE	140.032	1993
	68			300SE	126.024	1990
	69			300SE	140.032	1992
	71			190E	201.028	1992
	74			230E	124.023	1991
	75			200E	124.019	1993
	83			300CE	124.051	1991
	84			230CE	124.043	1991
	85			S280	140.028	1994
	89			560SEL	126.039	1990
	105			260E	124.026	1992
	109			200E	124.012	1991

Manufacturer	VSP	VSA	VCP	Model type	Model ID	Model year
	114			300E	124.031	1992
	117			300CE	124.050	1992
	120			S320	140.033	1994
	121			600SL	129.076	1992
	126			190E	201.018	1992
	127			230E	124.023	1993
	130			600SL	129.076	1992, 1993
	140			500SL	129.067	1993–1995
	141			560SEC	126.045	1990
	142			320SL		1992, 1993
	147			500SEL		1992–1993
	153			500SEL		1990
	154			500SE		1990
	157			C220		1995
	163			E500		1994
	166			280E		1993
	166			E280		1994–1996
	167			220TE Station Wagon		1993–1996
	168			220E		1993
	168			E220		1994–1996
	169			420E		1993
	169			E420		1994–1996
	172			250D		1992
	185			600SEC Coupe		1993
	185			S600 Coupe		1994–1996
	192			300E 4-Matic		1990–1993
	203			300TE		1992
	204			C280		1994
	207			E200		1994
	209			420SEC		1990
	214			S600L		1994
			3	300GE	463.228	1993
			5	300GE	463.228	1990–1992, 1994
			6	G320		1995
			11	463		1996
			13	463 LWB V–8		1992–1996
			14	463 SWB		1990–1996
			15	463		1997

Issued on: October 1, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–26470 Filed 10–6–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket Nos. 970214031–7031–01, I.D. 011697C and 970324084–7064–01, I.D. 021997B]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 16; Framework Adjustment 23; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final rules.

SUMMARY: On March 3, 1997, NMFS published a final rule to implement measures contained in Framework Adjustment 16 to the Northeast Multispecies Fishery Management Plan (FMP) and on April 1, 1997, NMFS published a final rule to implement measures contained in Framework Adjustment 23 to the Northeast Multispecies FMP. Because of the effective dates of the implementing regulations for both of these frameworks, Framework Adjustment 16 regulatory text inadvertently superseded Framework Adjustment 23 regulatory text. This action corrects those sections of the regulatory text inadvertently superseded by Framework Adjustment 16.

DATES: Effective April 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Tokarcik, (978) 281–9300.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1997 (62 FR 9377), NMFS published a final rule implementing measures contained in Framework Adjustment 16 to the Northeast Multispecies FMP. This rule prohibited the use of all gillnets capable of catching Northeast multispecies during the periods to which the harbor porpoise time/area closures are in effect, unless the gillnet meets certain specifications. The intent of this action was to restrict the use of small-mesh pelagic gillnets, which were exempt from the multispecies regulations, to avoid increasing the risk of harbor porpoise entanglements, but still allow a traditional bait fishery to continue by specifying the size and method of deployment of the gear. That final rule became effective on April 2, 1997.

On April 1, 1997 (62 FR 15425), NMFS published a final rule that closed Federal waters during specified periods to vessels fishing with sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets in parts of the specified right whale critical habitats areas. The intent of the action was to restrict multispecies fishing activities which have been determined to jeopardize the continued existence of the northern right whale. That final rule became effective upon filing on March 27, 1997.

Need for the Correction

The final rules published in the **Federal Register** on March 3 and April 1, 1997, both amended §§ 648.14(a)(89) and 648.87 (a) and (b). NMFS' intent was to have the rule published on April 1 for Framework Adjustment 23 supersede portions of the measures contained in the rule published on March 3 for Framework Adjustment 16. However, due to an administrative oversight, the rule implementing the management measures contained in Framework Adjustment 23 became effective on March 27, 1997, prior to the effective date (April 2, 1997) of the final rule implementing the management measures contained in Framework Adjustment 16. Therefore, portions of the regulations implementing Framework Adjustment 16 unintentionally superseded the regulations implementing Framework Adjustment 23.

Effective April 2, 1997, this document corrects the regulatory text contained in portions of the March 3 rule (Framework Adjustment 16) to reflect the appropriate regulatory language from the April 1 rule (Framework Adjustment 23). Therefore, this document corrects §§ 648.14(a)(89) and 648.87 section heading and paragraphs (a) and (b) heading and introductory text to restore that text to that intended by NMFS.

Correction

Accordingly, publication on March 3, 1997, of the final regulations (I.D. 011697C), which was the subject of FR Doc. 97–4907, is corrected as follows:

On page 9379, in the first column, under amendatory instruction 3, in § 648.14, paragraph (a)(89) is corrected to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(89) Fail to remove, use, set, haul back, fish with, or possess on board a vessel, unless stowed in accordance with § 648.81(e)(4), sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), in the areas and for the times specified in § 648.87 (a) and (b), except as provided in §§ 648.81(f)(2)(ii) and 648.87 (a) and (b), or unless otherwise authorized in writing by the Regional Administrator.

* * * * *

On page 9379, in the second column, amendatory instruction 5 and the regulatory text are corrected to read as follows:

5. Section 648.87 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 648.87 Gillnet requirements to reduce or prevent marine mammal takes.

(a) *Areas closed to gillnet gear capable of catching multispecies to reduce harbor porpoise takes.* Sections 648.81(f) through (h) set forth closed area restrictions to reduce the take of harbor porpoise consistent with the harbor porpoise mortality reduction goals. Further, all persons owning or operating vessels in the EEZ portion of the areas and times specified in paragraphs (a) (1) and (2) of this section must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(f)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (a) (1) and (2) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), from the areas and for the times specified in paragraphs (a) (1) and (2) of this section, and, may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnets or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)) in the areas and for the times specified in paragraphs (a) (1) and (2) of this section.

(1) *Mid-coast Closure Area.* (i) From March 25 through April 25 and from September 15 through December 31 of each fishing year, the restrictions and requirements specified in paragraph (e) of this section apply to the Mid-coast Closure Area, as defined under § 648.81(g)(1), except as provided in paragraph (a)(1)(ii) of this section.

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Mid-coast Closure Area, as defined under § 648.81(g)(1), from November 1 through December 31 of each fishing year, provided that an acoustic deterrent device ("pinger") is attached at the end of each string of nets and at the bridle of every net within a string of nets, and is maintained as operational and functioning. Each pinger, when immersed in water, must broadcast a 10kHz +/− 2kHz sound at 132 dB +/ −4dB re 1 micropascal at 1 m. This sound must last 300 milliseconds and repeat every 4 seconds.

(2) *Cape Cod South Closure Area.* From March 1 through March 30 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Cape Cod South Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), which is the area bounded by straight lines connecting the following points in the order stated.

CAPE COD SOUTH CLOSURE AREA

Point	N. latitude	W. longitude
CCS1	(1)	71°45′ W
CCS2	40°40′ N	71°45′ W
CCS3	40°40′ N	70°30′ W
CCS4	(2)	70°30′ W

[1] RI Shoreline.
[2] MA Shoreline.

(b) *Areas closed to gillnet gear capable of catching multispecies to prevent right whale takes.* All persons owning or operating vessels must remove all of their sink gillnet gear and gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), from the EEZ portion of the areas and for the times specified in (b)(1) and (2) of this section, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(f)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section.

(1) *Cape Cod Bay Critical Habitat Closure Area.* From March 27, 1997 through May 15, 1997 and from January 1 through May 15 of each subsequent year, the restrictions and requirements specified in paragraph (b) of this section apply to the Cape Cod Bay Critical Habitat Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), which is the area bounded by straight lines connecting the following points in the order stated.

CAPE COD BAY CRITICAL HABITAT CLOSURE AREA

Point	N. latitude	W. longitude
CCB1	42°12′ N	70°30′ W
CCB2	42°12′ N	70°15′ W
CCB3	42°08′ N	70°12.4′ W
Then westerly along the 3 NM state boundary to		
CCB4	42°08′ N	70°30′ W
Then due north to CCB1		

(2) *Great South Channel Critical Habitat Closure Area.* From April 1 through June 30 of each year, the restrictions and requirements specified in paragraph (b) of this section apply to the Great South Channel Critical Habitat Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), which is the area bounded by straight lines connecting the following points in the order stated.

GREAT SOUTH CHANNEL CRITICAL HABITAT CLOSURE AREA

Point	N. latitude	W. longitude
GSC1	41°02.2′ N	69°02′ W
GSC2	41°43.5′ N	69°36.3′ W
GSC3	42°10′ N	68°31′ W
GSC4	41°38′ N	68°13′ W

* * * * *

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26469 Filed 10–6–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346–7035–02; I.D. 100197A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Available for New Jersey

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota availability.

SUMMARY: NMFS announces that summer flounder commercial quota is available to the State of New Jersey to allow a reopening of the State to landings of summer flounder. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may resume landings of summer flounder in New Jersey for the remainder of calendar year 1997, or until the remaining quota allocation is harvested.

DATES: Effective October 3, 1997 through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (978) 281-9221.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100. The initial total commercial quota for summer flounder for the 1997 calendar year was set equal to 11,111,298 lb (5,040,000 kg) (62 FR 10473, March 7, 1997). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, or 1,858,363 lb (842,939 kg) in 1997. After deducting a 510,771 lb (231,682 kg) overage landed in 1996, as specified in section 648.100(d)(2), New Jersey was left with an adjusted 1997 commercial quota of 1,347,592 lb (611,257 kg) (62 FR 37741, July 15, 1997). Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. Based on dealer reports and other available information, the Regional Administrator determined that the commercial quota available to New Jersey had been harvested, and no quota was available for that State for the remainder of 1997. Thus, effective September 24, 1997 (62 FR 50525, September 26, 1997), summer flounder landings in the State of New Jersey by federally permitted vessels, and purchases by federally permitted dealers, were prohibited for the remainder of 1997. The closure of the State to landings was based on projections of landings from dealer reports. However, due to State action to control landings through trip limits, actual landings have fallen short of projections. Specifically, prior to the NMFS closure, New Jersey closed its directed fishery and landings dropped off significantly. The State now has a bycatch trip limit in place for the remainder of the year (10 percent of total fish on board, up to a maximum of 100 lb/trip (45 kg/trip) until November 1st; 200 lb/trip (91 kg/trip) after that date). Thus, available data indicate that approximately 50,000 lb (22,680 kg) remain in New Jersey's annual commercial quota of 1,347,592 lb (611,257 kg). Since summer flounder commercial quota is available to New Jersey to be harvested, and in order to allow the State to receive the full benefit of its annual allocation of quota, the closure, published on September 26, 1997, is rescinded.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12286.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26577 Filed 10–3–97; 10:48 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 100197D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Offshore Component in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment closing the season for pollock by vessels catching pollock for processing by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI) at midnight rather than noon. This adjustment is necessary to prevent the underharvest of pollock by vessels catching pollock for processing by the offshore component in the BS of the BSAI.

DATES: Effective 2400 hrs, Alaska local time (A.l.t.), October 2, 1997, until 2400 hrs, A.l.t., December 31, 1997. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 22, 1997.

ADDRESSES: Comments may be sent to Chief, Fisheries Management Division,

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 Attn. Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the allocation of the pollock total allowable catch for vessels catching pollock for processing by the offshore component in the BS was established as 679,413 metric tons (mt) by the Final 1997 Harvest Specifications for Groundfish of the BSAI (62 FR 7168, February 18, 1997).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allocation of the pollock total allowable catch for vessels catching pollock for processing by the offshore component in the BS will soon be reached. The Regional Administrator is establishing a directed fishing allowance of 664,413 mt, and is setting aside the remaining 15,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been taken. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the BS on October 2, 1997.

Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. Current information shows the catching capacity of vessels catching pollock for processing by the offshore component is in excess of 11,400 mt per day. The Regional Administrator has determined that the directed fishing allowance for the offshore component would be underharvested if the fishery is closed at 1200 hrs, A.l.t.

In accordance with § 679.25(a)(1)(i), NMFS is adjusting the season for pollock by vessels catching pollock for processing by the offshore component in the BS subarea of the BSAI by prohibiting directed fishing at 2400 hrs, A.l.t., October 2, 1997. NMFS is taking this action to prevent the underharvest of the pollock allocation to vessels catching pollock for processing by the offshore component in the BS of the BSAI as authorized by § 679.25(a)(2)(i)(C). In accordance with § 679.25(a)(2)(iii), NMFS has determined that closing the season at 2400 hrs on October 2, 1997, is the least restrictive management adjustment to harvest the pollock allocated to vessels catching pollock for processing by the offshore component in the BS of the BSAI and will allow other fisheries to continue in noncritical areas and time periods.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Failure to close the season for pollock by vessels catching pollock for processing by the offshore component in the BS on October 2, 1997, would likely result in the overharvest of the pollock allocation. Without this inseason adjustment extending the closure time from noon to midnight, the pollock allocation for vessels catching pollock for processing by the offshore component in the BS of the BSAI would be underharvested, resulting in an economic loss of more than $1,500,000. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 22, 1997.

This action is required by § 679.25 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26618 Filed 10–3–97; 10:33 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 194
Tuesday, October 7, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0575–AC17

Community Programs Guaranteed Loan Program

AGENCIES: Rural Housing Service and Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agencies are proposing to issue a new Community Programs (CP) guaranteed loan regulation (part 1980, subpart I) to replace the current regulation for the program. This action is needed to streamline and update the program. The intended effect is to simplify and clarify the regulation; shift some responsibility for loan documentation and analysis from the Government to the lenders; make the program more responsive to the needs of lenders, local community public bodies, and nonprofit corporations; and provide for smoother processing of applications.

DATES: Written comments must be received on or before December 8, 1997. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through December 8, 1997.

ADDRESSES: Submit written comments to the Chief, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, U.S. Department of Agriculture, STOP 0743, 1400 Independence Ave. SW., Washington, D.C. 20250–0743. Also, comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain Community Programs Guaranteed Loans in the subject line. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mel Padgett, Community Programs Senior Loan Specialist, Rural Housing Service, U.S. Department of Agriculture, STOP 3222, 1400 Independence Ave. SW., Washington, D.C. 20250–3222, telephone: (202) 720–1495.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Programs Affected

The Catalog of Federal Domestic Assistance Programs impacted by this action are 10.766, Community Facilities loans, and 10.760, Water and Waste Disposal Systems for Rural Communities.

Intergovernmental Review

These loans are subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in the manner delineated in FmHA Instruction 1940–J.

Civil Justice Reform

The proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

Environmental Impact Statement

The action has been received in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The Agencies have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Discussion of the Proposed Rule

This action replaces the CP guaranteed loan program administered under 7 CFR part 1980. Under the proposed rule, this guaranteed loan program will be more flexible and place more reliance on lenders. There are fewer specific requirements for lenders. The lender has added responsibility for analyzing credit quality; for making, securing, and servicing the loan; and for

monitoring construction. Application processing procedures will be more efficient; less burdensome for borrowers, lenders, and Rural Development staff; and will provide for more rapid decisions.

The CP loan program was authorized by the Rural Development Act of 1972. The Agencies were authorized to guarantee CP loans under Pub. L. 101–161 enacted November 21, 1989. The loans are made by private lenders to public bodies and nonprofit corporations for the purpose of improving rural living standards and for other purposes that create essential community facilities located in cities, towns, or unincorporated areas of up to 50,000 population required by the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) and water and waste disposal facilities located in cities or towns of up to 10,000 population. The previous statutory population limit for loans for essential community facilities had been 20,000.

Since 1990, more than 240 community programs projects, totaling slightly more than $210 million, have received loans which were guaranteed through the CP program.

These loans can be made for a variety of purposes including health care; public buildings and improvements; fire and rescue; easements; purchase of equipment, machinery, and supplies; repair and modernization; pollution control; transportation studies; and water and waste disposal facilities. The rate and terms of the loan are negotiated between the borrower and the lender.

The Agencies propose to replace the regulation for the CP guaranteed loan programs with a completely new regulation. This is a high-priority effort to streamline the administration and operation of the program, respond to the requests of users of the program, and assist the field staff administering the program. The revised regulation is shorter, simpler, clearer, and more logically organized. The volume of regulatory material which a lender must review to request, make, or service a CP guaranteed loan under the new regulation is significantly less than the current regulation. Clarifications of various items are also included, such as what is meant by the term "essential community facility."

Except for the increase in the population limit, the revisions are not required by statute. However, the President, as well as the Secretary of Agriculture, are committed to streamlining all Federal regulations. This CP regulation streamlines our application procedures, reduces loan application processing time by placing greater emphasis on State resources, allows more management flexibility and decision-making capacity at the State Office level, and expands eligible loan purposes to include recreation.

Recognizing the need to streamline the regulation, the Agencies established two task forces. One was comprised of CP Program Chiefs, CP Loan Specialists, and other field office personnel. The second was comprised of lenders, secondary market representatives, and National Office management. They examined changes that needed to be made in the program to attract additional lenders and to make the program more user friendly and customer oriented. Task force recommendations have been incorporated into this regulation.

Based on the recommendations of the task forces, the Agencies have proposed these revisions to make the program more usable by lenders and borrowers. Also, the Agencies recognize that changes are necessary to make the program more effective in creating jobs and stimulating economic activity (particularly in chronically low-income rural areas). Under the proposed new CP regulation, the material that must be submitted to, and reviewed by, the Agencies before approval of the guarantee has been streamlined. Responsibilities for credit and analysis and application processing tasks will be shifted from the Agencies' National Offices to field offices and from the Agencies to the lender, where feasible. Following is a discussion of some of the most significant policy revisions included in the proposed new regulation.

To streamline the regulation, the Agencies have combined applicable portions of the Direct Community Loan Programs (7 CFR part 1942, subpart A), Fire and Rescue (7 CFR part 1942, subpart C), General Guaranteed Regulation (7 CFR part 1980, subpart A), previously drafted Guaranteed Community Programs Regulation, and parts of forms which were not in regulations into the Guaranteed Community Programs Regulation (7 CFR part 1980, subpart I). The Agencies also divided the regulation into general, processing, and servicing sections. These actions should significantly reduce the amount of regulatory material that a lender and a borrower must peruse to determine eligibility and complete the application. This will also simplify making and servicing a CP loan.

Additionally, the necessary information contained in the preapplication package can be submitted simultaneously with the application. The threshold for requiring audited financial statements has been increased from $100,000 to $500,000 to reduce the reporting burden on small organizations. Also, we have included recreation as well as clarified telecommunications as eligible loan purposes.

Under the revised regulations, the lender is responsible for legal sufficiency. The lender will not only be able to negotiate interest rates but will also be able to negotiate interest rate incremental increases and caps for each loan. This will give the lender more flexibility to fit the CP guaranteed loan program to its lending policies and procedures. The lender does not have to be a local lender provided it can demonstrate the ability to adequately service the loan. This will permit an expansion of eligible lenders to include such organizations as State bond banks, the Rural Utilities Cooperative Finance Corporation, and Sallie Mae. All of these organizations have expressed an interest in the CP guaranteed lending program in the past.

Conclusion

The Agencies believe the streamlining of the regulation for this program will enhance the use of the program in improving the future prosperity of rural residents through targeted investments that enhance rural competitiveness, improve and diversify community services, and enable rural residents to have a better quality of life. The proposed revisions are consistent with Administration efforts to streamline Government functions, improve efficiency and the effectiveness of Government activities, and be more customer friendly. The changes proposed will enable the Agencies to deliver a larger program with fewer staff resources, simultaneously meet the objectives of the National Performance Review regarding customer service, reduce regulation, and streamline Agencies operations.

The proposed changes will provide more flexibility for both lenders and Agencies staff. Many errors will be reduced because the guidelines and requirements are much clearer and items are more easily found in a reduced and better-organized regulation. Lenders will be more interested in using the program because the procedures are simpler and more direct with significantly fewer cross references to other regulations. The ultimate benefits to be realized are increased lending activity resulting in a better-living standard for rural communities with the infrastructure to attract new businesses and the creation of more jobs in rural areas, particularly in those areas that have experienced historical economic distress.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agencies will seek Office of Management and Budget (OMB) approval of the reporting and recordkeeping requirements contained in this regulation. These reporting and recordkeeping requirements have been previously approved under control numbers 0575–0024 and 0575–0137. We have made the appropriate adjustments based upon the programs' 6-year history.

The loans are made by private lenders to public bodies and nonprofit corporations for the purpose of improving rural living standards and for other purposes that create employment opportunities in rural areas. Eligibility for this program includes community facilities located in cities, towns, or unincorporated areas of up to 50,000 population and water and waste disposal facilities located in cities of up to 10,000 population.

The information collected is used by the Agencies to manage, plan, evaluate, and account for Government resources. The reports are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 13.97 hours per response.

Respondents: Nonprofit corporations and public bodies.

Estimated Number of Respondents: 125.

Estimated Number of Responses per Respondent: 10.12.

Estimated Total Annual Burden on Respondents: 17,677.

Copies of this information collection can be obtained from Barbara Williams, Information Collection Coordinator, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, telephone (202) 720–9734.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Barbara Williams, Information Collection Coordinator, Regulations and Paperwork Management Branch, Support Services Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0743, 1400 Independence Avenue SW., Washington, D.C. 20250–0743. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this rule.

List of Subjects in 7 CFR Part 1980

Loan programs—Agriculture, Loan programs—Business and industry—Rural development assistance, Loan programs—Community facilities—Rural development assistance, Loan programs—Housing and community development.

Accordingly, part 1980, chapter XVIII, title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C 1480.

Subpart A—General

§ 1980.47 [Amended]

2. Section 1980.47(d) is removed.

§ 1980.60 [Amended]

3. Section 1980.60(a)(12) is amended by removing the words "or Form FmHA or its successor agency under Public Law 103–354 1980–10, 'Application for Loan and Guarantee' (Community Programs)," in the first sentence.

Subpart I—Community Programs Guaranteed Loans

4. Subpart I is revised to read as follows:

Sec.
1980.801 General.
1980.802 Definitions.
1980.803 Full faith and credit.
1980.804 Conditions of Guarantee.
1980.805—1980.807 [Reserved]
1980.808 Access to lender's records.
1980.809 Environmental requirements.
1980.810—1980.811 [Reserved]
1980.812 Inspections.
1980.813 Appeals.
1980.814—1980.816 [Reserved]
1980.817 Exception authority.
1980.818—1980.819 [Reserved]
1980.820 Eligibility.
1980.821 Priorities.
1980.822—1980.823 [Reserved]
1980.824 Eligible loan purposes.
1980.825 Ineligible loan purposes.
1980.826 [Reserved]
1980.827 Eligible Lenders.
1980.828 Transfer of lender or borrower prior to issuance of loan note guarantee.
1980.829 Fees and charges by lender.
1980.830 Loan guarantee limitations.
1980.831—1980.832 [Reserved]
1980.833 Interest rates.
1980.834 Terms of loan repayment.
1980.835—1980.836 [Reserved]
1980.837 Insurance and fidelity bonds.
1980.838—1980.839 [Reserved]
1980.840 Equal opportunity and Fair Housing Act requirements.
1980.841 [Reserved]
1980.842 Design and construction requirements.
1980.843 Other Federal, State, and local requirements.
1980.844—1980.846 [Reserved]
1980.847 Economic feasibility requirements.
1980.848 Security.
1980.849—1980.851 [Reserved]
1980.852 Processing.
1980.853 Evaluation of application.
1980.854—1980.858 [Reserved]
1980.859 Review of requirements.
1980.860—1980.862 [Reserved]
1980.863 Conditions precedent to issuance of the Loan Note Guarantee.
1980.864 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.
1980.865 Lender's sale or assignment of the guaranteed portion of loan.
1980.866—1980.868 [Reserved]
1980.869 Loan servicing.
1980.870—1980.872 [Reserved]
1980.873 Replacement of loss, theft, destruction, mutilation, or defacement of Loan Note Guarantee or Assignment Guarantee Agreement.
1980.874 [Reserved]
1980.875 Defaults by borrower.
1980.876—1980.877 [Reserved]
1980.878 Repurchase of loan.
1980.879 Transfer of lender after issuance of Loan Note Guarantee.
1980.880 Interest rate changes after loan closing.
1980.881 Liquidation.
1980.882 [Reserved]
1980.883 Protective advances.
1980.884 Additional loans or advances.
1980.885 Bankruptcy.
1980.886—1980.887 [Reserved]
1980.888 Transfers and assumptions.
1980.889 Mergers.
1980.890 Disposition of acquired property.
1980.891—1980.893 [Reserved]
1980.894 Determination and payment of loss.

1980.895 Future recovery.
1980.896 Termination of Loan Note Guarantee.
1980.897—1980.900 [Reserved]

PART 1980—GENERAL

Subpart I—Community Programs Guaranteed Loans

§ 1980.801 General.

(a) This subpart contains the regulations for Community Programs loans guaranteed by the Agency and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) The purpose of the Community Programs guaranteed loan program is to improve, develop, or finance essential community and water and waste disposal facilities in rural areas. This purpose is achieved through bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits.

§ 1980.802 Definitions.

The following general definitions are applicable to the terms used in this subpart:

Agency. The Rural Housing Service and the Rural Utility Service which are within the Rural Development mission area of the United States Department of Agriculture (USDA) or their successor agencies with authority delegated by the Secretary of Agriculture to administer the Community Facilities and Water and Waste Disposal programs. This also includes the Rural Development mission area.

Application. An Agency prescribed form to request an Agency guarantee. (Available in any Agency office.)

Arm's length transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able third party who is not affiliated with, or related to, and has no security, monetary, or stockholder interest in the borrower or transferor at the time of the transaction.

Assignment Guarantee Agreement. The signed agreement among the Agency, the lender, and the holder setting forth the terms and conditions of an assignment of the guaranteed portion of a loan or any part thereof. (This is an Agency prescribed form available in any Agency office.)

Borrower. The entity that borrows money from the lender.

Collateral. Property pledged to secure the guaranteed loan.

Community facility (essential). The term "facility" as used in this subpart refers to both the physical structure financed and the resulting service provided to rural residents. An essential community facility must:

(1) Be a function customarily provided by a local unit of government;

(2) Be a public improvement needed for the orderly development of a rural community;

(3) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks);

(4) Be the area of jurisdiction or operation for the public bodies eligible to receive assistance or a similar local rural service area of a not-for-profit corporation; and

(5) Be located in a rural area.

Conditional Commitment for Guarantee. The Agency's written statement to the lender that the material submitted is approved subject to the completion of all conditions and requirements set forth in the agreement. (This is an Agency prescribed form available in any Agency office.)

Guaranteed loan. A loan made and serviced by a lender for which the Agency and lender have entered into a Lender's Agreement and for which the Agency has issued a Loan Note Guarantee.

Holder. The person or entity (other than the lender) who holds all or a part of the guaranteed portion of the loan with no servicing responsibilities. When the lender assigns parts of the guaranteed portion of the loan to an assignee, the assignee becomes a holder when the Assignment Guarantee Agreement is signed by all parties.

Immediate Family. Individuals who are closely related by blood or by marriage, such as a spouse, significant other, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

Insurance. Fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, worker's compensation, fidelity bond, malpractice, or any similar insurance that is available and needed to protect the security, or that is required by law.

Joint financing. The situation occurring when two or more lenders (or any combination of lenders and other financial sources) make separate loans to supply the funds required by one borrower. For example, such joint financing may consist of the Agency's financial assistance with the Economic Development Administration, Department of Housing and Urban Development (HUD), or other Federal and State agencies, and private and quasi-public financial institutions.

Lender. The person or organization making and responsible for servicing the loan. The lender is also referred to in this subpart as the applicant who is requesting a guarantee during the preapplication and application stage of processing.

Lender's Agreement. The signed agreement between the Agency and the lender setting forth the lender's responsibilities when the Loan Note Guarantee is issued. (This is an Agency prescribed form available in any Agency office.)

Loan classification system. The process by which loans are examined and categorized by degree of potential for loss in the event of default.

Loan Note Guarantee. The signed commitment issued by the Agency setting forth the terms and conditions of the guarantee of an identified loan. (This is an Agency prescribed form available in any Agency office.)

Market value. The amount for which property would sell for its highest and best use at a voluntary sale in an arm's length transaction.

Note. An evidence of debt. In those instances where the Agency guarantees a bond issue, "note" shall also be construed to include a bond or other evidence of indebtedness, as appropriate.

Participation. Sale of an interest in a loan in which the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Principals of borrowers. The owners, officers, directors, entities, and others directly involved in the operation and management of the borrower.

Problem loan. A loan which is not performing according to its terms and conditions.

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to and will not, or cannot, meet obligations to protect or preserve collateral.

Public body. A municipality, county, or other political subdivision of a State, special purpose district, an Indian Tribe on a Federal or State reservation, or another federally recognized Indian Tribe.

Report of loss. An Agency prescribed form used by lenders when reporting a loss under an Agency guarantee. (Available in any Agency office.)

Rural and rural area. Any area defined by the latest Decennial Census of the United States except:

(1) For water and waste disposal facilities—any city or town with a population in excess of 10,000 inhabitants.

(2) For essential community facilities—any city, town, or unincorporated area with a population in excess of 50,000 inhabitants, and any urbanized area immediately adjacent to a city, town, or unincorporated area that has a population of more than 50,000 inhabitants.

Service area. The area reasonably expected to be served by the facility being financed by the guaranteed loan.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of the Marshall Islands, Republic of Palau, and the Federated States of Micronesia.

State Director. The Rural Development State Director or the staff member who has been delegated authority to perform action on behalf of the State Director.

Substantive Change. Any change in the purpose of the loan or any change in the financial condition of the borrower or the collateral which would jeopardize the performance of the loan.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the outstanding debt.

Water or waste disposal facility. A facility designed to provide, enlarge, extend, or otherwise improve water, wastewater or sanitary sewer, solid waste disposal, or storm wastewater services to rural residents.

§ 1980.803 Full faith and credit.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is not contestable except for fraud or misrepresentation (including negligent misrepresentation) of which the lender or holder has actual knowledge, participates in, or condones. A note which provides for the payment of interest on interest shall not be guaranteed and any Loan Note Guarantee or Assignment Guarantee Agreement attached to, or relating to, a note which provides for payment of interest on interest is void. The guarantee and right to require purchase will be directly enforceable by the holder notwithstanding any fraud, misrepresentation, or any unenforceability of the Loan Note Guarantee. The Loan Note Guarantee will not be enforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing. Any losses occasioned will not be enforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner, acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity, or until a final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or Agency has requested the holder to surrender the evidence of debt for repurchase.

§ 1980.804 Conditions of Guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will also execute a Lender's Agreement. The provisions of this subpart in effect at the issuance of the Loan Note Guarantee and execution of the Lender's Agreement will control the Loan Note Guarantee or Lender's Agreement.

(a) The entire loan will be secured by the same security with equal lien priority for the guaranteed and non-guaranteed portions of the loan. The non-guaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee or secured party of record notwithstanding the fact that another party may hold a portion of the loan.

(c) When a guaranteed portion of a loan is sold to a holder, the holder shall have all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound by all the obligations under the Loan Note Guarantee, Lender's Agreement, and Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time. If the Agency makes a payment to a holder, then the lender must reimburse the Agency.

(d) A lender will receive all payments of principal and interest on the account of the entire loan and will promptly remit to each holder a pro rata share, less any lender servicing fee.

(e) The lender may retain all of the unguaranteed portion of the loan or may sell part of the unguaranteed portion of the loan through participation. However, the lender is required to retain 5 percent of the loan amount from the unguaranteed portion in their portfolio.

§§ 1980.805—1980.807 [Reserved]

§ 1980.808 Access to lender's records.

Upon request by the Agency, the lender will permit representatives of the Agency (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of the records of the lender pertaining to the guaranteed loans. Such inspection and copying may be made during regular office hours of the lender or at any other time the lender and the Agency agree upon.

§ 1980.809 Environmental requirements.

Requirements for an environmental review or mitigation actions are contained in part 1940, subpart G, of this chapter. The lender must assist the Agency to ensure that the borrower complies with any mitigation measures required by the Agency's environmental review for the purpose of avoiding or reducing the adverse environmental impact of construction or operations of the facility financed with the guaranteed loan.

§§ 1980.810—1980.811 [Reserved]

§ 1980.812 Inspections.

The lender will notify the Agency of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee. The Agency may attend such field inspections. Any inspections or review conducted by the Agency, including those with the lender, are for the benefit of the Agency only and not for other parties of interest. Agency inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections.

§ 1980.813 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse

decision may be appealed only by the lender. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with the regulations of the National Appeals Division, U.S. Department of Agriculture, published at 7 CFR part 11.

§§ 1980.814—1980.816 [Reserved]

§ 1980.817 Exception authority.

The appropriate Agency Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart provided the Administrator determines that application of the requirement, or provision, or failure to take action in the case of an omission would adversely affect the Government's financial interest. Requests for exceptions must be in writing by the State Director.

§§ 1980.818—1980.819 [Reserved]

§ 1980.820 Eligibility.

(a) The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and period of time. This determination shall become a part of the Agency casefile. The Agency should also determine if an outstanding judgment obtained by the United States in a Federal Court (other than the U.S. Tax Court) has been entered against the borrower or if the borrower has an outstanding debt with any Federal agency that is in a delinquent status. Such judgment or delinquency shall cause the potential borrower to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied or the delinquency is cured.

(b) Legal authority and responsibility. (1) Each borrower must have, or will obtain, the legal authority necessary to construct, operate, and maintain the proposed facility and services. They must also must have legal authority for obtaining security and repaying the proposed loan.

(2) The borrower shall be responsible for operating, maintaining, managing the facility and services, and providing for the continued availability and use of the facility and services at reasonable rates and terms.

(i) These responsibilities must be exercised by the borrower even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease.

(ii) Leases may only be used when this is the only feasible way to provide the service, is the customary practice to provide such service in the State, and must provide for the borrower's management control of the facility.

(iii) Contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(3) The lender is responsible for reviewing any contracts, management agreements, or leases to determine that they will not adversely impact the borrower's repayment ability or the security value of the guaranteed loan.

(c) Borrower. (1) A public body such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area.

(2) An organization operated on a not-for-profit basis such as an association, cooperative, or private corporation. Borrowers organized under the general profit corporation laws may be eligible if they actually will be operated on a not-for-profit basis under their charter. Single member corporations or corporations owned or substantially controlled by other corporations or associations are not eligible organizations. Before a loan is made to a borrower other than a public body, the articles of incorporation or the loan agreement will include a condition similar to the following:

If the corporation dissolves or ceases to perform the community facility objectives and functions, the board of directors shall distribute all business property and assets to one or more nonprofit corporations or public bodies. This distribution must be approved by 75 percent of the users or members and must serve the public welfare of the community. The assets may not be distributed to any members, directors, stockholders, or others having financial or managerial interest in the corporation. Nothing herein shall prohibit the corporation from paying its debts.

(3) A non-public body essential community facility borrower (other than utility-type) must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies or broadly based ownership and controlled by members of the community.

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources, or substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

(4) Indian tribes on Federal and State reservations and other federally recognized Indian tribes.

(d) Facilities must be located in rural areas, except:

(1) For utility-type services such as water, sewer, natural gas, or hydroelectric serving both rural and non-rural areas. In such cases, Agency funds may be used to finance only that portion serving rural areas, regardless of facility location.

(2) Telecommunication projects. The part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas.

(e) All facilities financed under the provisions of this subpart shall be for public use.

(1) Facilities will be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, handicap, or national origin. This does not preclude:

(i) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time, and

(ii) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system or facilities and not by considering the cost of separate extensions to, or parts thereof. Additionally, the borrower must publicly announce a plan for extending service to areas not initially receiving service. Also, the borrower must provide written notice to potential users located in the areas not to be initially served.

(3) The lender will determine that, when feasible and legally possible, inequities within the proposed project's service area for the same type service proposed (*i.e.*, water or waste disposal) will be remedied by the owner on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing rates, terms, or conditions do not necessarily constitute inequities.

§ 1980.821 Priorities.

The Agency will publish a project selection guide for administrative use. This guide will include items and conditions which must be considered in selecting preapplications for further development. Copies of this project selection guide will be available in any Agency office. When ranking eligible preapplications for consideration for limited funds, Agency officials must consider the priority items met by each preapplication and the degree to which those priorities are met. The project selection guide may change from time to time but preapplication and application will be evaluated in accordance with the project selection guide in existence at the time the preapplication is submitted.

(a) The preapplication (and supporting information submitted with it) will be used to determine the proposed project's priority for available funds.

(b) Those lenders with eligible lower-scoring preapplications which cannot be funded within the foreseeable future should be notified that funds are not available and asked if they wish to have their preapplication maintained in an active file for future consideration. Lenders whose preapplications are found to be ineligible will be advised.

(c) After completing the review, the Agency will normally select the preapplications with the highest scores for further processing. The Agency may select a lower-scoring preapplication for processing when an eligible, high-scoring preapplication:

(1) Requires more than 25 percent of the State allocation, or

(2) Exceeds the remaining State allocation for the fiscal year, or

(3) Is incomplete in that the lender has not met the administrative requirements to develop the loan. However the higher-scoring preapplication must be notified and given an opportunity to revise and resubmit their proposal. A written justification must be prepared and placed in the project file when an eligible higher-rating preapplication is not selected for further processing.

(d) The Agency will notify the lender if an application should be developed. Applications should be developed expeditiously following good management practices. Applications that are not developed in a reasonable period of time may be removed from the State's active file. Lenders will be advised when such action is taken.

(e) A cost overrun will receive consideration for funding before others.

§§ 1980.822—1980.823 [Reserved]

§ 1980.824 Eligible loan purposes.

(a) Funds may be used to construct, enlarge, extend, or otherwise improve water or waste disposal and other essential community facilities providing essential service primarily to rural residents and rural businesses.

(1) Water or waste disposal facilities include water, sanitary sewerage, solid waste disposal, and storm wastewater facilities.

(2) Essential community facilities include but are not limited to:

(i) Fire, rescue, and public safety,

(ii) Health services,

(iii) Community, social, or cultural services,

(iv) Transportation facilities such as streets, roads, and bridges,

(v) Telecommunication equipment,

(vi) Hydroelectric generating facilities and related connecting systems and appurtenances only when not eligible for financing under the authorities of the Rural Utilities Service. Funds may not be used to finance other types of electrical generating or transmitting facilities,

(vii) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) only when not eligible for financing under the authorities of the Rural Utilities Service,

(viii) Natural gas distribution systems,

(ix) Industrial park sites (but only to the extent of land acquisition and necessary site preparation) including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems or business and industrial buildings, and

(x) Recreational facilities.

(3) Otherwise improve includes, but is not limited to, the following:

(i) The purchase of major equipment (such as solid waste collection trucks, telecommunication equipment, and X-ray machines) which will in themselves provide an essential service to rural residents;

(ii) The purchase of existing facilities, when necessary, either to improve or to prevent a loss of service; and

(iii) Payment of tap fees and other utility connection charges as provided in utility purchase contracts.

(b) Funds also may be used:

(1) To construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraphs (a)(1) and (a)(2) of this section.

(2) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(3) To pay the following expenses (but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraphs (a), (b)(1), and (b)(2) of this section):

(i) Reasonable fees and costs such as origination fee, loan guarantee fee, legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys, possible salvage or other mitigation measures, planning and establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting, but not for more than 2 years unless a longer period is approved by the Agency; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than 2 years unless a longer period is approved by the National Office; and interest on interim financing.

(iii) Costs of acquiring interest in land; rights such as water rights, leases, permits, rights-of-way; and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding 1 year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are less than 50 percent of the total loan,

(B) The debts were incurred for the facility or service being financed or any part thereof (such as interim financing, construction expenses, etc.), and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(4) To pay obligations for construction incurred prior to filing a preapplication and application with the Agency. Construction work should not be started (and obligations for such work or materials should not be incurred) before the Conditional Commitment for Guarantee is issued. However, if there are compelling reasons for proceeding with construction before the Conditional Commitment for Guarantee is issued, lenders may request Agency

approval to pay such obligations. Such request must comply with the following:

(i) Provide conclusive evidence that the contract was entered into without intent to circumvent the requirements of Agency regulations.

(ii) Modify the outstanding contract to conform with the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When construction is complete and it is impracticable to modify the contracts, the borrower and lender must provide the certification required by paragraph (b)(5)(iii) of this section.

(iii) Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications.

(iv) The borrower and the contractor must have complied with all statutory and executive order requirements related to Agency financing for construction already performed even though the requirements may not have been included in the contract documents.

§ 1980.825 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) Properties to be used for commercial rental when the borrower has no control over tenants and services offered except for industrial-site development,

(b) Facilities primarily for the purpose of housing Federal or State agencies,

(c) Community antenna television services or facilities,

(d) Telephone systems,

(e) Facilities which are not modest in size, design, and cost,

(f) Finder's and packager's fees,

(g) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, Pub. L. 97–348 (available in any Agency office),

(h) New combined sanitary and storm water sewer facilities,

(i) Projects located in a special flood or mudslide hazard area (as designated by the Federal Insurance Administration (FIA) of the Department of Housing and Urban Development) when it is not part of an approved floodplain area management plan or flood insurance is not available.

§ 1980.826 [Reserved]

§ 1980.827 Eligible lenders.

(a) Eligible lenders (as defined in this section) may participate in the loan guarantee program. These lenders must be subject to credit examination and supervision by either an agency of the United States or a State. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders are:

(1) Any Federal or State chartered:

(i) Bank, or

(ii) Savings and loan association.

(2) Any mortgage company that is a part of a bank holding company,

(3) Bank for Cooperatives, National Rural Utilities Cooperative Finance Corporation, Farm Credit Bank of the Federal Land Bank, or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this subpart,

(4) An insurance company regulated by a State or National insurance regulatory agency,

(5) State Bond Banks and State Bond Pools, and

(6) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development-type projects. These lenders must also be subject to credit examination and supervision by either an agency of the United States or a State and provide documentation acceptable to the Agency that they have the ability to service the loan. Lenders under this category must be approved by the National Office prior to the issuance of the loan guarantee.

(b) When the lender's officers, stockholders, directors, or partners (including their immediate families) or the borrower, its officers, stockholders, directors, or partners (including their immediate families) own, or have management responsibilities in each other, the lender must disclose such business or ownership relationships. The Agency shall determine if such relationships are likely to result in a conflict of interest. This does not preclude lender officials from being on the borrower's board of directors.

§ 1980.828 Transfer of lenders or borrowers (prior to issuance of Loan Note Guarantee)

(a) Prior to issuance of the loan guarantee, the Agency may approve the transfer of an outstanding Conditional Commitment for Guarantee from the present lender to a new eligible lender, provided there are:

(1) A letter from the former lender stating why they do not wish to continue to be the lender for this project,

(2) No substantive changes in ownership or control of the borrower,

(3) No substantive changes in the borrower's written plan, scope of work, or changes in the purpose or intent of the project,

(4) No substantive changes in the loan agreement or Conditional Commitment for Guarantee,

(b) The substitute lender must execute a new application for loan and guarantee (available in any Agency office).

(c) If approved, the Agency will issue a letter of amendment to the original Conditional Commitment for Guarantee reflecting the new lender who will acknowledge acceptance of the offer in writing.

(d) Once the Conditional Commitment for Guarantee is issued, the Agency will not approve any substitution of borrowers including changes in the form of the legal entity. Exceptions to a change in the legal entity may be requested by Agency staff from the Agency's National Office when the original borrower is replaced with substantially the same individuals or officers with the same interest as originally approved.

§ 1980.829 Fees and charges by lender.

(a) The lender may establish the charges and fees for the loan, provided they do not exceed those charged other borrowers for similar types of transactions. "Similar types of transactions" mean those transactions involving the same type of loan which a non-guaranteed loan borrower would be assessed charges and fees.

(b) Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) They are routinely made by the lender in all types of loan transactions.

(2) Payment has not been received within the customary timeframe allowed by the lender.

(3) The lender agrees with the borrower, in writing, that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Note Guarantee is in effect.

(c) The guaranteed loan fee will be the applicable guarantee fee rate multiplied by the principal loan amount multiplied by the percent of guarantee. The one-time guarantee fee is paid when the Loan Note Guarantee is issued:

(1) The fee will be paid to the Agency by the lender and is nonreturnable. The lender may pass the fee to the borrower.

(2) The guarantee fee rates are available in any Agency office.

§ 1980.830 Loan guarantee limitations.

The percentage of guarantee, up to the maximum allowed by this section, is a matter for negotiation between the lender and the Agency.

(a) The maximum allowable guarantee will be 90 percent.

(b) The lender will retain a minimum of 5 percent of the total guaranteed loan amount. The retained amount must be from the unguaranteed portion of the loan and cannot be participated to another lender.

§§ 1980.831–1980.832 [Reserved]

§ 1980.833 Interest rates.

(a) Rates will be negotiated between the lender and the borrower. They may be either fixed or variable rates. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval.

(b) A variable interest rate must be tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. Such an agreement must be documented in the borrower or lender loan agreement.

(1) Interest rate caps and incremental adjustment limitations will also be negotiated between the lender and the borrower. Notice of any interest rate change proposed by the lender should allow a sufficient time period for the borrower to obtain any required State or other regulatory approval and to implement any user rate adjustments necessary as a result of the interest rate change. The intervals between interest rate adjustments will be specified in the loan agreement (but not more often than quarterly).

(2) The lender must incorporate within the variable rate note, the provision for adjustment of payments coincident with an interest rate adjustment. This will ensure the outstanding principal balance is properly amortized within the prescribed loan maturity and eliminate the possibility of a balloon payment at the end of the loan.

(c) Any change in the interest rate between the date of issuance of the Conditional Commitment for Guarantee and before the issuance of the Loan Note Guarantee must be approved by the Agency. Approval of such change will be shown on an amendment to the Conditional Commitment for Guarantee.

(d) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree, and:

(1) The rate on the unguaranteed portion does not exceed that currently being charged on loans for similar purposes to borrowers under similar circumstances; and,

(2) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(e) When multi-rates are used, the lender will provide the Agency with the overall effective interest rate for the entire loan. Multi-rate loans may be either fixed, variable, or a combination of fixed and variable. When a combination of fixed and variable interest rates are used, the interest rate for the unguaranteed portion will not be lower than the guaranteed portion of the loan.

§ 1980.834 Terms of loan repayment.

(a) Principal and interest on the loan will be due and payable as provided in the note except, any interest accrued as the result of the borrower's default on the guaranteed loan over and above that which would have accrued at the note rate on the guaranteed loan will not be guaranteed by the Agency. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably ensure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income. Such installment must be due and payable within 3 years from the date of the note and at least annually thereafter. Interest will be due at least annually from the date of the note. Monthly payments will be required except for borrowers with income limited to less frequent intervals.

(b) The maximum time allowable for final maturity for a guaranteed CP loan will be limited to the useful life of the facility, not to exceed 40 years.

(c) The principal balance should be properly amortized within the prescribed loan maturity. Balloon payments at the end of the loan are prohibited.

§§ 1980.835–1980.836 [Reserved]

§ 1980.837 Insurance and fidelity bonds.

The lender must provide evidence that the borrower has adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage must be maintained for the life of the loan and is subject to Agency review and approval.

§§ 1980.838–1980.839 [Reserved]

§ 1980.840 Equal opportunity and Fair Housing Act requirements.

(a) The lender will comply with the requirements of title V of the Equal Credit Opportunity Act (Pub. L. 93–495). See the Federal Reserve Board Regulation, 12 CFR part 202.

(b) Certain housing-related projects such as nursing homes, group homes, or assisted-living facilities must comply with the requirements of the Fair Housing Amendment Act of 1988 (Pub. L. 100–430). This includes completion of an Affirmative Fair Housing Marketing Plan and compliance with the Housing and Urban Development accessibility guidelines except for areas open to the public which are covered by the Americans with Disabilities Act (Pub. L. 101–336). The lender will determine that the borrower has a valid plan in effect at all times.

§ 1980.841 [Reserved]

§ 1980.842 Design and construction requirements.

The lender will provide the Agency with a written certification at the end of construction that all funds were utilized for authorized purposes. The borrower and the lender will authorize designs and plans based upon the preliminary architectural and engineering reports approved by the lender and concurred in by the Agency. The borrower will take into consideration any lender or Agency comments when the facility is being designed.

(a) All project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, State, and local codes and requirements. The lender must ensure that the planned project will be completed within the available funds and, once completed, will be suitable for the borrower's needs.

(b) The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction proceeds in accordance with the approved plans, specifications, and contract documents and that funds are used for eligible project costs. The lender must expeditiously report any problems in project development to the Agency.

(c) For all construction contracts in excess of $10,000, the contractor must comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented by

applicable Department of Labor regulations (41 CFR part 60). The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

(d) Community Facilities loans which involve the construction of, or addition to, facilities that accommodate the public and commercial facilities as defined by the Americans with Disabilities Act (Pub. L. 101–336) must comply with this Act. The lender and borrower are responsible for compliance.

§ 1980.843 Other Federal, State, and local requirements.

In addition to the specific requirements of this subpart and beginning on the date of issuance of the Loan Note Guarantee, proposals for facilities financed in whole or in part with a loan guaranteed by the Agency will be coordinated with all appropriate Federal; State, and local agencies. Borrowers and lenders will be required to comply with any Federal, State, or local laws or regulatory commission rules which are in existence and which affect the project including, but not limited to:

(a) Organization and authority to design, construct, develop, operate, and maintain the proposed facilities;

(b) Borrowing money, giving security, and raising revenues for repayment;

(c) Land use zoning;

(d) Health, safety, and sanitation standards; and

(e) Protection of the environment and consumer affairs.

§§ 1980.844–1980.846 [Reserved]

§ 1980.847 Economic feasibility requirements.

All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees, or other sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. Other sources of revenue or guarantors are particularly important in considering the feasibility of recreation-type loans. The lender is responsible for determining the credit quality and economic feasibility of the proposed loan and must address all elements of the credit quality in a written financial feasibility analysis which includes adequacy of equity, cash flow, security, history, and management capabilities. Financial feasibility reports must take into consideration any interest rate adjustment which may be instituted under the terms of the note.

(a) The borrower may prepare the financial feasibility analysis (suggested financial feasibility guidelines are available in any Agency office) in the following instances:

(1) Facilities primarily used for fire and rescue services;

(2) Facilities that are not dependent on facility revenues for debt payment;

(3) Loans of less than $500,000; or

(4) Projects in which the borrower has operated similar facilities on a financially successful basis.

(b) The borrower's consulting engineer may complete the financial feasibility analysis for utility systems.

(c) Financial feasibility reports for all other facilities must be prepared by a qualified entity not having a direct interest in the management of the facility. The lender may prepare the feasibility study if qualified staff is available.

(d) The Agency loan approval official may exempt the lender from the requirement for an independent financial feasibility report (when requested by the borrower and the lender) provided the approval official determines that the financial feasibility analysis prepared by the borrower fairly represents the financial feasibility of the facility and the financial feasibility analysis contains an accurate projection of the usage, revenues, and expenses of the facility.

(e) When the lender or Agency has insufficient information to determine the borrower's repayment ability, an independent feasibility analysis will be required.

§ 1980.848 Security.

(a) The lender is responsible for obtaining and maintaining proper and adequate security to protect the interest of the lender, the holder, and the Government.

(b) Security must be of such a nature that repayment of the loan is reasonably ensured when considered with the integrity and ability of project management, soundness of the project, and the borrower's prospective earnings. The security may include, but is not limited to, the following: General obligation bonds, revenue bonds, pledge of taxes or assessments, assignment of facility revenue, land, easements, rights-of-way, water rights, buildings, machinery, equipment, accounts receivable, contracts, cash, or other accounts or assignments of leases or leasehold interest.

(c) All security must secure the entire loan. The lender will not take separate security to secure only the unguaranteed portion of the loan. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan.

(d) For projects utilizing joint financing with the same security to be shared, the Agency guaranteed loan will be secured by at least a parity (equal) lien position.

§§ 1980.849—1980.851 [Reserved]

§ 1980.852 Processing.

(a) *Preapplications.* (1) The preapplication package may be submitted alone or simultaneously with the application. The preapplication package will contain:

(i) An application for Federal assistance (available in any Agency office).

(ii) State intergovernmental or other type review comments and recommendations for the borrower's project (clearinghouse comments, if applicable).

(iii) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, copies of organizational documents, existing debt instruments, etc. The Agency will advise lenders and borrowers on what documents are necessary. Borrowers should not expend significant amounts of money or time developing supporting documentation at the preapplication stage.

(iv) Documentation of lender eligibility in accordance with § 1980.828.

(2) The Agency will review each application for Federal assistance along with other information that is deemed necessary to determine eligibility and whether financing from commercial sources at reasonable rates and terms is available without a guarantee.

(3) If the project appears to be eligible, has sufficient priority, is economically feasible, and loan guarantee authority is expected to be available, the Agency will inform the lender and borrower, in writing, and request a complete application. An environmental review will be necessary, and no major commitment should be made by the lender or borrower that could affect the consideration of alternatives.

(b) *Applications.* Contents of application package.

(1) Application for loan and guarantee (available in any Agency office),

(2) Proposed loan agreement,

(3) Request for environmental information (available in any Agency office),

(4) Preliminary architectural or engineering report,

(5) Cost estimates,

(6) Appraisal reports (as appropriate),

(7) Credit reports,

(8) Financial feasibility analysis and report, and

(9) Any additional information required.

§ 1980.853 3Evaluation of application.

The Agency will evaluate the application and determine whether the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, sufficient collateral and equity exists, the proposed loan complies with all applicable statutes and regulations, and adequate funds are available. If approved, the Agency will provide the lender and the borrower with the Conditional Commitment for Guarantee, listing all conditions for the guarantee. Applicable requirements will include the following:

(a) Approved use of guaranteed loan funds (source and use of funds),

(b) Rates and terms of the loan,

(c) Scheduling of payments,

(d) Number of customers,

(e) Security and lien priority requirements,

(f) Appraisal requirements,

(g) Insurance and bonding requirements,

(h) Financial reporting requirements,

(i) Equal opportunity and nondiscrimination requirements,

(j) Environment or mitigation requirements,

(k) Americans with Disabilities Act requirements,

(l) By-laws and articles of incorporation change requirements, and

(m) Other requirements necessary to protect the Government.

§§ 1980.854—1980.858 [Reserved]

§ 1980.859 Review of requirements.

(a) Immediately after reviewing the Agency's conditions and requirements in the Conditional Commitment for Guarantee, the lender and borrower must complete and sign the Acceptance of Conditions and return a copy to the Agency. Notwithstanding the preceding sentence, if certain conditions cannot be met, the lender and borrower may propose alternate conditions for Agency consideration.

(b) If the lender indicates in the Acceptance of Conditions that it desires to obtain a Loan Note Guarantee and subsequently decides at any time after receiving a Conditional Commitment for Guarantee that it no longer wants a guarantee, the lender must immediately advise the Agency.

§§ 1980.860—1980.862 [Reserved]

§ 1980.863 Conditions precedent to issuance of the Loan Note Guarantee.

The Loan Note Guarantee will not be issued until:

(a) The lender certifies that:

(1) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee except those approved in the interim by the Agency in writing.

(2) All planned property acquisition has been completed and all development has been substantially completed in accordance with plans and specifications. All costs have not exceeded the amounts approved by the lender and the Agency.

(3) Required insurance is in effect.

(4) Truth in lending requirements have been met.

(5) All equal employment opportunity and Fair Housing Plan requirements have been met.

(6) The loan has been properly closed and the required security instruments have been obtained on any after-acquired property that cannot be covered initially under State statutory provisions.

(7) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and subject to any other exceptions approved, in writing, by the Agency.

(8) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended time.

(9) All other requirements of the Conditional Commitment for Guarantee have been met.

(10) Lien priorities are consistent with requirements of the Conditional Commitment for Guarantee.

(11) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Guarantee and as specified on the application for the guaranteed loan. A copy of a detailed statement by the lender detailing the use of loan funds will be attached to support this certification.

(12) There has been no substantive adverse change in the borrower's financial condition nor any other adverse change in the borrower during the period of time from the Agency's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The lender's certification must address all adverse changes of the borrower and the guarantors. For purposes of this paragraph, the term borrower includes any parent, affiliate, or subsidiary of the borrower.

(13) All Federal, State, and local design and construction requirements have been met.

(14) The lender understands and will meet the requirements of chapter 37 of title 31 of the United States Code.

(15) The lender would not make the loan without an Agency guarantee.

(b) The lender has executed and delivered the Lender's Agreement and closing report for the guaranteed loan along with the appropriate guarantee fee.

(c) The lender has advised the Agency of plans to sell or assign any part of the loan as provided in the Lender's Agreement.

(d) The lender agrees that once the Conditional Commitment for Guarantee is issued and accepted by the lender and borrower, it shall not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds, or terms and conditions. Only minor changes will be considered unless otherwise provided for in this subpart.

(e) Where applicable, the lender must certify that the borrower has obtained:

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a facility.

(2) A title report showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to ensure that the borrower has obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and to provide the required security. For example, when a site is for major structures for utility-type facilities (such as a reservoir or pumping station) and the lender and borrower are able to obtain only a right-of-way or easement on such a site rather than a fee simple title, such a title report should be requested.

(f) For loans exceeding $150,000, the lender has certified its compliance with Public Law 101–121 (Anti-lobbying Act). Also, if any funds have been, or will be, paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or

employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the lender shall completely disclose such lobbying activities in accordance with 31 U.S.C. 1352.

(g) If the Loan Note Guarantee cannot be issued before the Conditional Commitment expires, the lender must submit a written request for an extension of the expiration date. The lender must document and certify to paragraph (a)(1), (a)(12), and (e) of this section specifically identifying any modifications.

(h) Coincident with, or immediately after, loan closing, the lender will contact the Agency and provide those documents and certifications required in this section. For loans to public bodies, lenders may require an opinion from recognized bond counsel regarding the adequacy of the preparation and issuance of the debt instruments. Only when the Agency is satisfied that all conditions for the guarantee have been met will the Loan Note Guarantee be executed.

§ 1980.864 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

(a) If the Agency finds that all requirements have been met, the lender and the Agency will execute the Lender's Agreement. The original will be retained by the Agency and a signed duplicate original will be retained by the lender. A Lender's Agreement must be executed for all loans to be guaranteed by the Agency.

(b) *Loan Note Guarantee.* (1) Upon receipt of the executed Lender's Agreement and after all requirements have been met, the Agency will execute the Loan Note Guarantee. All originals of the Loan Note Guarantee will be provided to the lender and attached to the note.

(2) If the lender has selected the multi-note system, a Loan Note Guarantee will be prepared and attached to each note the borrower issues. All the notes will be listed on the Loan Note Guarantee. Not more than ten notes will be issued for the guaranteed portion (unless the Agency and borrower agree otherwise) and one note issued for the unguaranteed portion.

(c) In the event the lender assigns the guaranteed portion of the loan to a holder, the lender, holder, and Agency will execute an Agency prescribed Assignment Guarantee Agreement. The original of the agreement will be provided to the holder with conformed copies to the lender and the Agency. If the lender desires to assign a part of the guaranteed loan to a holder, an Agency prescribed Assignment Guarantee Agreement will be executed for each assigned portion.

(d) If requested by the lender, the Agency will provide a Certificate of Incumbency and signature and title of the Agency official who executes the Agency prescribed Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement.

(e) If the Agency determines that it cannot execute the Loan Note Guarantee because all requirements have not been met, the lender will have a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

(f) The lender will prepare and deliver a guaranteed loan closing report for each loan to be guaranteed and guarantee fee to the Agency which concurrently will deliver the Loan Note Guarantee.

§ 1980.865 Lender's sale or assignment of guaranteed portion of loan.

The lender may retain all of the guaranteed loan. The lender must not sell or participate any amount of the guaranteed or non-guaranteed portion of the loan to the borrower or to members of the borrower's immediate families, the borrower's officers, directors, stockholders, other owners, or a subsidiary or affiliate. Disposition of the guaranteed portion of a loan may not be made prior to full disbursement, completion of construction, and acquisition without the prior written approval of the Agency. If the lender desires to market all or part of the guaranteed portion of the loan at, or subsequent to, loan closing, such loan must not be in default.

(a) *Assignment.* Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the Lender's Agreement. Should the lender know at the time the loan application is prepared that it plans to sell or assign any part of the guaranteed portion, the lender will provide this information with the application.

(b) *Participation.* The lender may obtain participation in the loan under its normal operating procedures.

(c) *Minimum retention.* The lender is required to hold in its own portfolio or retain a minimum of 5 percent of the total guaranteed loan amount. This amount must be of the non-guaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the non-guaranteed portion of the loan only through participation.

§§ 1980.866—1980.868 [Reserved]

§ 1980.869 Loan servicing.

(a) The lender is responsible for servicing the entire loan in accordance with the lender's loan agreement. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The lender is responsible for taking all servicing actions that a prudent lender would perform in servicing their portfolio of loans that are not guaranteed. This responsibility includes, but is not limited to, the collection of payments; obtaining compliance with the covenants and provisions in the note, loan agreement, security instrument, or any supplemental agreements; obtaining and analyzing financial statements; verifying the payment of taxes and insurance premiums; and maintaining liens on collateral. The lender will notify the Agency of any violations of the loan agreement with the borrower.

(b) The lender will require, at a minimum, annual audited financial statements which will be reviewed by the lender and a copy forwarded to the Agency with a summary evaluation by the lender. The lender will service delinquent loans in accordance with the lender's agreement The Agency may waive the audit requirement for financial statements for borrowers with gross annual income of less than $500,000.

(c) The lender must report the outstanding principal and interest balance on each guaranteed loan semi-annually.

(d) The lender will inspect the collateral as often as necessary to properly service the loan.

§§ 1980.870–1980.872 [Reserved]

§ 1980.873 Replacement of loss, theft, destruction, mutilation, or defacement of Loan Note Guarantee or Assignment Guarantee Agreement.

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which may have been lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the Agency for processing. The

requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of either the lender or the holder who is requesting the replacement forms,

(ii) Legal name and address of the lender of record,

(iii) Capacity of person certifying,

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee agreement including the name of the borrower, Agency case number, date of the Loan Note Guarantee, Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentages of guarantee and, if Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate,

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement, and

(vi) The holder shall present evidence demonstrating current ownership of the Loan Note Guarantee and Note or Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included. If copies of the endorsement cannot be obtained, best available records of transfer must be presented to the Agency (*e.g.*, order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a State or Territory, or the District of Columbia.

(3) All indemnity bonds must be issued and payable to the United States of America. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall hold the Government harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 1980.874 [Reserved]

§ 1980.875 Defaults by borrower.

(a) The lender must notify the Agency when a borrower is 30 days past due on a payment, has not met its responsibilities of providing the required financial statements, or is otherwise in default. The lender will continue to keep the Agency informed on a bimonthly basis until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender will arrange a meeting with the borrower to resolve the default. The lender must advise the Agency of the meeting in the event an Agency representative wishes to attend. The lender will provide a summary of the meeting and any decisions or actions agreed upon.

(b) In considering servicing options, the prospects for providing a permanent cure without adversely affecting the risks to the Agency and the lender must be the paramount objective. Temporary curative actions (such as payment deferments or collateral subordination) must strengthen the loan and be in the best financial interest of the lender and the Agency. Some of these actions may require concurrence of the holder.

(c) If the loan was closed with the multi-note option, the lender may need to possess all notes to take some servicing actions. In those situations when the Agency is holder of some of the notes, the Agency may endorse the notes back to the lender, provided a proper receipt is received from the lender which defines the reason for the transfer. Under no circumstances will the Agency endorse the original Loan Note Guarantee to the lender.

§§ 1980.876–1980.877 [Reserved]

§ 1980.878 Repurchase of loan.

(a) The lender has the option to repurchase the loan from a holder within 30 days of written demand from the holder when the borrower is in default not less than 60 days on principal or interest. The repurchase will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The guarantee does not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender. The holder will concurrently send a copy of the demand to the Agency. The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and permit the borrower to cure the default, where reasonable. The lender will notify the holder and the Agency of their decision within 30 days of receipt of demand from the holder.

(b) *Agency repurchase.* (1) If the lender does not repurchase as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase (less the lender's servicing fee) within 30 days after written demand to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter. The lender shall not charge the Agency any servicing fees nor are any such fees collectible from the Agency.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder or duly authorized agent must also include evidence of the right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The Agency will be subrogated to all rights of the holder. The holder must include in the demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from the date of demand to the proposed payment date. Unless otherwise agreed to by the Agency, such proposed payment will not be later than 30 days from the date of demand.

(3) The lender must promptly provide the Agency with the information necessary for the Agency's determination of the appropriate amount due the holder upon the Agency's notification to the lender of the holder's demand for payment. This information must be certified by an authorized officer of the lender. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved before payment will be approved. The Agency will notify both parties and such conflict will suspend the running of the 30-day payment requirement.

(4) Any purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. The Agency may set off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the Loan Note Guarantee.

(c) When the lender determines that repurchase of the guaranteed portion of the loan is necessary to service the loan, the holder must sell the guaranteed portion to the lender for the unpaid principal and interest balance (less the lender's servicing fee). The guarantee does not cover interest accruing after 90 days from the date the lender's or Agency's letter requesting the holder to tender its guaranteed portion. The lender must not repurchase from the holder for arbitrage purposes to further its own financial gain. Any repurchase must be made only after the lender obtains the Agency written approval. If the lender does not repurchase the portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§ 1980.879 Transfer of lender after issuance of Loan Note Guarantee.

Subsequent to issuance of the Loan Note Guarantee, the Agency may, under extraordinary circumstances, approve the transfer of an outstanding Loan Note Guarantee from the present lender to another eligible lender, provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities, and acquiring legal title to the unguaranteed portion of the loan.

§1980.880 Interest rate changes after loan closing.

(a) The borrower, lender, and holder (if any) may collectively effect a permanent reduction in the interest rate on the guaranteed loan at any time during the life of the loan on written agreement by these parties. After such a permanent reduction, the Loan Note Guarantee will only cover losses in interest at the reduced interest rate. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. When the Agency is a holder, it will concur only when it is demonstrated that the change is more viable than liquidation and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination are the Government's cost of borrowing money and the project's enhancement of rural development. The monetary recovery must be greater than the liquidation recovery, and a financial feasibility analysis must show the project's continued viability.

(1) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(2) Variable rates can be changed to a lower fixed rate. In a final loss settlement when qualifying rate changes are made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect. The lender must maintain records which adequately document the accrued interest claimed.

(3) The lender is responsible for the legal documentation of interest rate changes. However, the lender may not issue a new note.

(b) No increases in interest rates will be permitted under the loan guarantee except the normal fluctuations in approved variable interest rate loans.

§1980.881 Liquidation.

Liquidation will occur when the lender concludes that liquidation of the guaranteed loan is necessary because of one or more defaults or third party actions that the borrower cannot, or will not, cure or eliminate within a reasonable period of time and the Agency concurs with the lender; or the Agency, at any time, independently concludes that liquidation is necessary. The lender, or the Agency (if it liquidates) will proceed as expeditiously as possible, including giving any notices or taking any legal actions required by the security instruments.

(a) If a lender has made a loan guaranteed by the Agency under regulations in this subpart in effect prior to [the effective date of the final rule][1], the lender has the option to liquidate the loan under the provisions of this subpart in effect on [the effective date of the final rule] or under the provisions in effect previous to that date. The lender will notify the Agency in writing within 10 days after its decision to liquidate, which regulatory provisions they choose to use. The lender may not choose some provisions in effect on one date and other provisions in effect on another date.

(b) If a lender acquires title to property, the Agency may elect to permit the lender the option of calculating the final loss settlement using the net proceeds received at the time of the ultimate disposition of such property. The lender must submit a written request within 15 days of acquiring title for this option to the Agency, and the Agency must agree, in writing, prior to the lender submitting any request for estimated loss payment.

[1] See 7 CFR part 180, subpart I, contained in the 7 CFR, parts 1950 to 1999, edition revised as of January 1, 1997 and amended at [Federal Register cites and dates to be inserted in final rule].

(c) The lender will (within 30 days after a decision to liquidate) submit to the Agency, in writing, a proposed, detailed liquidation plan. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. The lender's liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan notes and related security instruments, a copy of the payment ledger or other documentation which reflects the outstanding loan balance and accrued interest to date, and the method of computing the interest;

(2) A complete list of all collateral;

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including the recommended action for acquiring and disposing of all collateral;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the borrower's latest available financial statements;

(6) An itemized list of estimated liquidation expenses expected to be incurred and justification for each expense;

(7) A schedule to periodically report to the Agency on the progress of the liquidation;

(8) Estimated protective advance amounts with justification;

(9) Proposed protective bid amounts on collateral to be sold at auction and a breakdown on how the amounts were determined;

(10) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(11) Legal opinions, as needed; and

(12) If the outstanding balance of principal and interest is less than $200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and interest is $200,000 or more, the lender will obtain an independent appraisal report on all collateral securing the loan which will reflect the fair market value and potential liquidation value. The independent appraiser's fee will be shared equally by the Agency and the lender.

(d) If actions are necessary to immediately preserve and protect the collateral, a partial liquidation plan may be submitted and when approved, must be followed by a complete liquidation plan prepared by the lender.

(e) Disposition of collateral acquired by the lender must be approved by the Agency.

(1) There may be instances when the lender acquires the collateral of a borrower where the cost of liquidation exceeds the potential recovery value of the security. Whenever this occurs, the lender, with the concurrence of the National Office, may abandon the collateral in lieu of liquidation.

(2) Sale of acquired collateral to the borrower, borrower's stockholders or officers, or the lender or lender's stockholders or officers requires the written concurrence of the Agency.

(f) The Agency will exercise the option to liquidate only when there is reason to believe the lender is not likely to initiate liquidation efforts that will result in maximum recovery. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral.

(g) Final loss payments will be made within the 60 days required but only after all collateral has been properly accounted for and liquidation expenses are determined to be reasonable and within approved limits. Any estimated loss payments made to the lender will be credited against the final loss on the guaranteed loan. The amount of an estimated loss payment must be credited as a deduction from the principal balance of the loan.

§1980.882 [Reserved]

§1980.883 Protective advances.

Protective advances constitute an indebtedness of the borrower to the lender and must be secured by collateral to the same extent as principal and interest. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent hazard, or flood insurance premiums affecting the collateral (including any other expenses necessary to protect the collateral). Attorney fees are not a protective advance.

(a) The Agency must approve, in writing, all protective advances on loans within their loan approval authority which exceed a total cumulative advance amount of $500 to the same borrower. Protective advances must be reasonable when associated with the value of the collateral being preserved.

(b) When considering protective advances, sound judgment must be exercised in determining that the additional funds advanced will actually preserve collateral interests and recovery is actually enhanced by making the advance.

§1980.884 Additional loans or advances.

The lender will not make additional expenditures or new loans to the borrower without first obtaining the written approval of the Agency even though such expenditures or loans will not be guaranteed.

§1980.885 Bankruptcy.

(a) An Agency Report of Loss form will be used for calculating estimated and final loss determinations.

(b) Lender's are responsible to protect the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include, but are not limited to, the following:

(1) Filing a proof of claim, where necessary, and all necessary papers and pleadings,

(2) Attending and, where necessary, participating in meetings of the creditors and all court proceedings,

(3) Immediately seeking adequate protection of the collateral if its collateral is subject to being used by the trustee in bankruptcy or the debtor in possession.

(4) Where appropriate, seeking involuntary conversion of a pending Chapter 11 case to a liquidation proceeding or seeking dismissal of the proceedings, and

(5) Keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings.

(c) In a Chapter 9 or Chapter 11 reorganization, obtaining an independent appraisal of the collateral if the Agency believes an independent appraisal is necessary, the Agency and the lender will share the appraisal fee equally.

(d) Only expenses of Chapter 11 reorganizations, or Chapter 11 or Chapter 7 liquidations (unless the liquidation is by the lender) authorized by the court may be deducted from the collateral proceeds.

(e) The Agency or the lender, with the approval of the Agency, may initiate the repurchase of the unpaid guaranteed portion of the loan from the holder. If the lender is the holder, an estimated loss payment may be filed at the initiation of a Chapter 7 proceeding or after a Chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be approved by the Agency.

(f) The Agency must approve, in advance and in writing, the lender's estimated liquidation expenses of collateral in liquidation bankruptcy. These expenses must be reasonable and customary and not include in-house expenses of the lender.

§§ 1980.886–1980.887 [Reserved]

§ 1980.888 Transfers and assumptions.

(a) The Agency will approve in writing transfers and assumptions of loans to transferees who will continue the original purpose of the guaranteed loan.

(1) When the transaction is to a member of the borrower's organization, it will be at a price which will not result in a loss to the lender.

(2) Transfers to eligible borrowers will receive preference over transfers to ineligible borrowers if recovery to the lender from the sale price is not less than it would be if the transfer was to an ineligible borrower.

(3) The present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan, and the transfer will be to the lender's and Agency's advantage.

(4) The transferee will assume an amount at least equal to either the present market value or the debt, whichever is less. The percentage of the Agency's guarantee will be based on the amount assumed.

(5) The lender concurs in the plans for disposition of funds in the transferor's debt service, reserve, and operation and maintenance account.

(b) Transfers to eligible borrower.

(1) The total indebtedness may be transferred to an eligible borrower on the same terms.

(2) The total indebtedness may be transferred to another eligible borrower on different terms not to exceed those terms for which an initial guaranteed loan can be made.

(3) Less than the total indebtedness may be transferred to another eligible borrower on the same or different terms.

(4) A guaranteed loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the kind of loan being made.

(5) If the transferor is to receive a payment for the equity, the total debt must be assumed.

(c) Transfers to ineligible borrowers are considered only when needed as a method for servicing problem cases when an eligible transferee is not available. Transfers should not be considered as a means by which members can obtain equity or as a method of providing a source of easy credit for purchasers. Transfers are as follows:

(1) All transfers to ineligible borrowers will include a one-time nonrefundable transfer fee. Transfer fees will be collected, and payments applied, in accordance with paragraph (d) of this section.

(2) For all loans covered by this subpart, the Agency may approve a transfer of indebtedness to, and assumption of, a loan by a transferee who does not meet the eligibility requirements for the kind of loan being assumed when the ineligible borrower will:

(i) Make a significant downpayment, and

(ii) Agree to pay the remaining balance within not more than 15 years. Installments will be at least equal to the amount amortized over a period not greater than the remaining life of the debt being transferred, and the balance will be due the fifteenth year.

(3) Interest rates to ineligible transferees will be the rate specified in the note of the transferor or the rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval. The rates may be either fixed or variable.

(i) Transferees must have the ability to repay the debt according to the Assumption Agreement and must have the legal authority to enter into the contract. The transferee will submit a current balance sheet. The lender will obtain and analyze the credit history of the transferee. In all transfers, consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(ii) The transferor may receive equity payments when the full amount of the debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the debt will be paid.

(d) Transfer fees are a one-time nonrefundable cost to be collected by the lender at the time of application or proposal.

(1) The transfer fees will be a standard fee plus the cost of the appraisal.

(2) The lender will collect and submit the fee to the Agency.

(3) The Agency's National Office may waive the transfer fee if it determines that such waiver is in the best interest of the Agency.

(e) *Processing transfers and assumptions.* (1) In any transfer and assumption case, the transferor (including any guarantors) may be released from liability by the lender only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan, or part of the loan, being assumed. If the transfer is for less than the entire debt:

(i) The Agency must determine that the transferor and any guarantors have no reasonable debt-paying ability considering their assets and income at the time of transfer, and

(ii) The lender must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of the borrower's ability.

(2) The lender will make, in all cases, a complete credit analysis to determine viability of the project (subject to the Agency review and approval) including any requirement for deposits in an escrow account as security to meet the determined equity requirements for the project.

(3) The lender will issue a statement that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(4) The assumption will be made on the lender's form of Assumption Agreement and will contain the Agency case number of the transferor and transferee.

(5) Loan terms cannot be changed by the Assumption Agreement unless previously approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(i) An explanation of the reasons for the proposed change in the loan terms.

(ii) Certification that the lien position securing the guaranteed loan will be maintained or improved, proper hazard insurance will be continued in effect, and all applicable Truth in Lending requirements will be met.

(6) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee. The lender will provide the Agency a copy of the Transfer and Assumption Agreement.

(7) If a loss should occur upon a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability (as provided in paragraph (e) of this section), the lender (if holding the guaranteed portion) may file an estimated Report of Loss to recover their pro rata share of the actual loss at that time. Approved protective advances and accrued interest made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on the estimated Report of Loss.

§ 1980.889 Mergers.

(a) The Agency may approve mergers or consolidations (referred to in this section as "mergers") when the resulting organization will be eligible for an Agency guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower.

(2) The resulting borrower can meet all required conditions as set forth in specific loan note agreements.

(3) All property can be legally transferred to the resulting borrower.

(b) Distinguishing mergers from transfers and assumptions. Mergers occur when one corporation combines with another corporation in such a way that the first corporation ceases to exist as a separate entity while the other continues. In a consolidation, two or more corporations combine to form a new, consolidated corporation with the original corporations ceasing to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets, nor assume all the transferor's liabilities.

§ 1980.890 Disposition of acquired property.

(a) When the lender acquires title to the collateral and the final loss claim is not paid until final disposition, the lender must proceed as quickly as possible to develop a plan to fully protect the collateral and the lender must dispose of the collateral without delay.

(b) Any collateral accepted by the lender must not be titled in the Agency's name in whole or in part. The Agency's position is that of a guarantor, relating to losses.

(c) After acquiring the collateral the lender must protect the collateral from deterioration (weather, vandalism, etc.). Hazard insurance in an amount necessary to cover the fair market value of the collateral must be maintained.

(d) The lender will prepare and submit to the Agency a plan on the best method of sale, keeping in mind any prospective purchasers. Concurrence or non-concurrence of the plan will be made in writing to the lender. If an existing liquidation plan addressed the disposition of acquired property, no further review is required unless modification of the plan is needed.

(e) Methods of liquidation.

(1) Direct sale by lender.

(2) Use of commercial broker.

(3) Public auction.

(f) *Abandonment of the collateral.* (1) The primary purpose of collateral is to afford a net return on the loan balance. However, there will be times when converting the collateral to cash would result in a loss.

(2) Anytime there is a case when the conversion of collateral to cash can reasonably be expected to result in a negative net recovery amount, abandonment of the collateral should be considered.

§§ 1980.891–1980.893 [Reserved]

§ 1980.894 Determination and payment of loss.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated. The Agency will have the right to recover losses paid under the guarantee from any party liable.

(a) If the lender takes title to collateral any loss will be based on the collateral value at the time the lender obtains title.

(b) The Report of Loss form will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved after the lender has submitted a liquidation plan approved by the Agency.

(c) When the lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request an estimated loss payment by submitting an estimate of loss that will occur in connection with liquidation of the loan. An estimated loss payment may be approved after the Agency has approved the liquidation plan.

(1) The estimate will be prepared and submitted by the lender on the Report of Loss form using the basic formula as provided on the report except that appraisal value will be used in lieu of amount received from sale of collateral.

(2) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability. At the time of final loss settlement, the lender may notify the borrower that the loss payment has been so applied.

(3) After liquidation has been completed, a final Report of Loss will be submitted by the lender to the Agency.

(d) In all cases, a final Report of Loss must be submitted to the Agency. Before Agency approval of any final loss report, the lender must account for all funds obtained, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and Report of Loss, the Agency may audit, and will determine the final loss. The lender will make its records available to, and otherwise assist, the Agency in making any audit it requires of the Report of Loss. The documentation accompanying the Report of Loss must support the loss claimed.

(1) The lender must document and show that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly on the loan. The Agency must be satisfied that the lender has accomplished this in the manner set out in this subpart and that the lender has maximized the collections in conducting the liquidation.

(2) The lender must show a breakdown on any protective advance amount as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(3) The lender must show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(4) Accrued interest should be supported by attachments showing how the amount was accrued by the lender. A copy of the promissory note and ledger will be attached. If the interest rate was a variable rate, the lender must include documentation of changes in the selected base rate and when the changes in the loan rate became effective.

(e) Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds received from the disposition of collateral unless the costs have been previously determined by the lender (with Agency concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

(g) In those instances where the lender made authorized protective advances, the lender may claim recovery for the guaranteed portion of any loss of monies advanced as well as interest resulting from such protective advances. These claims shall be included in the final Report of Loss.

(h) After the final Report of Loss has been tentatively approved:

(1) If the actual loss is greater than any estimated loss payment, such loss will be paid by the Agency.

(2) If the Agency conducted the liquidation, it will provide an accounting to the lender and will pay the lender in accordance with the Loan Note Guarantee.

(i) The amount payable by the Agency to the lender cannot exceed the limits contained in the Loan Note Guarantee. If the Agency conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date the Agency accepts this responsibility. When the liquidation is conducted by the lender, loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement provided the lender proceeds expeditiously with the liquidation plan approved by the Agency.

§ 1980.895 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender will be pro-rated between the Agency and the lender in accordance with the guaranteed percentage even if the Loan Note Guarantee has been terminated.

§ 1980.896 Termination of Loan Note Guarantee.

The Loan Note Guarantee under this subpart will terminate automatically:

(a) Upon full payment of the guaranteed loan; or

(b) Upon full payment of any loss obligation or negotiated loss settlement except for future recovery provisions; or

(c) Upon written request from the lender to the Agency, provided that the lender holds all of the guaranteed portion and the original Loan Note Guarantee is returned to the Agency.

§§ 1980.897–1980.900 [Reserved]

Dated: September 24, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–26363 Filed 10–6–97; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–61–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA–23, PA–30, PA–31, PA–34, and PA–42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document makes a correction to a proposed Airworthiness Directive (AD); notice of proposed rulemaking (NPRM); Docket No. 97–CE–61–AD, which was published in the **Federal Register** on September 16, 1997 (62 FR 48546), and is applicable to The New Piper Aircraft, Inc. (Piper) PA–23, PA–30, PA–31, PA–34, and PA–42 series airplanes. This NPRM incorrectly shows the proposed applicability in Section 39.13 of the proposed AD as Raytheon Aircraft Company (Raytheon) Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA airplanes and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 series airplanes. The NPRM currently proposes airplane flight manual (AFM) limitations for recognizing and exiting severe icing conditions. This action corrects the applicability in Section 39.13 of Docket No. 97–CE–61–AD.

DATES: Comments must be received on or before October 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, *Attention:* Rules Docket No. 97–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

On September 9, 1997, the FAA issued NPRM, Docket 97–CE–61–AD, (62 FR 48546, September 16, 1997), which applies to Piper Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, and PA–42–1000 airplanes. This NPRM incorrectly references the applicability in Section 39.13 of the proposed AD as Raytheon Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA airplanes and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 series airplanes.

Need for the Correction

This NPRM Docket No. 97–CE–61–AD, currently has the wrong applicability in Section 39.13 of the proposed AD. If the applicability is not changed, owners/operators of Piper and Raytheon model airplanes will not know which airplanes are effected by the NPRM.

Correction of Publication

Accordingly, the publication of September 16, 1997 (62 FR 48546), which was the subject of FR Doc. 97–24493, is corrected as follows: On page 48548, in the third column, starting on the 30th line in Section 39.13, correct:

"**Raytheon Aircraft Company:** Docket No. 97–CE–61–AD.

Applicability: Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA Airplanes and 60, 65–B80, 65–B90, 90, F90, 100, 300, and B300 Series Airplanes, certificated in any category." to read:

"**The New Piper Aircraft, Inc.:** Docket No. 97–CE–61–AD.

Applicability: Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, and PA–42–1000 airplanes, certificated in any category.

Issued in Kansas City, Missouri on October 1, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–26526 Filed 10–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1309, 1310

[DEA Number 163P]

RIN 1117–AA44

Implementation of the Comprehensive Methamphetamine Control Act of 1996; Regulation of Pseudoephedrine, Phenylpropanolamine, and Combination Ephedrine Drug Products and Reports of Certain Transactions to Nonregulated Persons

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: DEA is proposing amending its regulations to implement the requirements of the Comprehensive Methamphetamine Control Act of 1996 (MCA) with respect to the regulation of pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products as List I chemicals and the reporting of certain transactions involving pseudoephedrine, phenylpropanolamine, and ephedrine.

The MCA removed the previous exemption from regulation as List I chemicals which had applied to pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products.

This action makes persons who distribute the products subject to the registration requirement. Also, distributions, importations, and exportations of the products became subject to the existing chemical controls relating to regulated transactions, except in certain circumstances specified in the MCA. The MCA also requires that reports be submitted for certain distributions involving ephedrine, pseudoephedrine, and phenylpropanolamine (including drug products containing those chemicals) by Postal Service or private or commercial carrier to nonregulated persons. This proposed rule amends the regulations to make them consistent with the language of the MCA and to establish the specific procedures to be followed to satisfy the new reporting requirement.

DATES: Written comments or objections should be submitted by no later than December 8, 1997.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Introduction

The Chemical Diversion and Trafficking Act of 1988 (CDTA) provided the framework for DEA's programs to control the diversion of the chemicals that are used in the illegal manufacture of controlled substances. The chemical control activities under the CDTA focused primarily on two areas: (1) the export of certain chemicals, mainly solvents, that are used in the illegal manufacture of cocaine and heroin, and (2) the domestic distribution of certain chemicals, principally precursors, that are used in the illegal manufacture of other dangerous drugs, such as methamphetamine, LSD, PCP, etc.

While the controls under the CDTA were successful in denying the cocaine traffickers access to U.S. sources of chemicals, a loophole was exploited by the methamphetamine traffickers. The CDTA contained a provision that ". . .any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act. . ." was not subject to the controls of the CDTA. Thus, while the traffickers found their access to supplies of bulk ephedrine, pseudoephedrine, and other chemicals restricted by the new chemical controls, they were able to circumvent the controls and obtain the necessary source material for manufacturing methamphetamine through the purchase of ephedrine in drug product form, which remained exempt from the chemical controls.

Since passage of the CDTA, the principal focus of Federal and State legislative/regulatory activities with respect to domestic chemical control has been on closing the "drug product" loophole that clandestine methamphetamine manufacturers and traffickers have exploited.

As noted earlier, with the establishment of controls over transactions involving bulk pseudoephedrine, ephedrine, and other chemicals, the methamphetamine traffickers turned to single-entity ephedrine drug products for their source material. In the years following the implementation of the CDTA, ephedrine, in drug product form, became the principal source of methamphetamine precursor material. By 1993, domestic clandestine laboratory seizure data showed that 79 percent of the laboratories seized were using ephedrine. During the same period, the use of phenyl-2-propanone (P2P), also a popular source material in early laboratories, declined from a high of 31 percent in 1990 to 16 percent in 1993, and the use of pseudoephedrine as a precursor was virtually non-existent.

The primary source of supply of ephedrine for the traffickers was from mail order and wholesale distributions of single-entity ephedrine tablets. One manufacturer of a popular brand of single-entity ephedrine drug products indicated in interviews with DEA personnel that from January 1991 through September 1992, the company purchased 35 metric tons of ephedrine for the manufacture of its drug products. The company reported that it was producing 40 million 25mg ephedrine tablets per ton of ephedrine. Based on that figure, the company could manufacture 1.4 billion 25mg ephedrine tablets from the 35 tons of ephedrine purchased between the beginning of 1991 and September 1992. During the same period, a rival company purchased 27.5 metric tons of ephedrine, also for the manufacture of ephedrine tablets. The enormous volume of product and the lack of controls over its distribution provided the traffickers with a convenient source of supply.

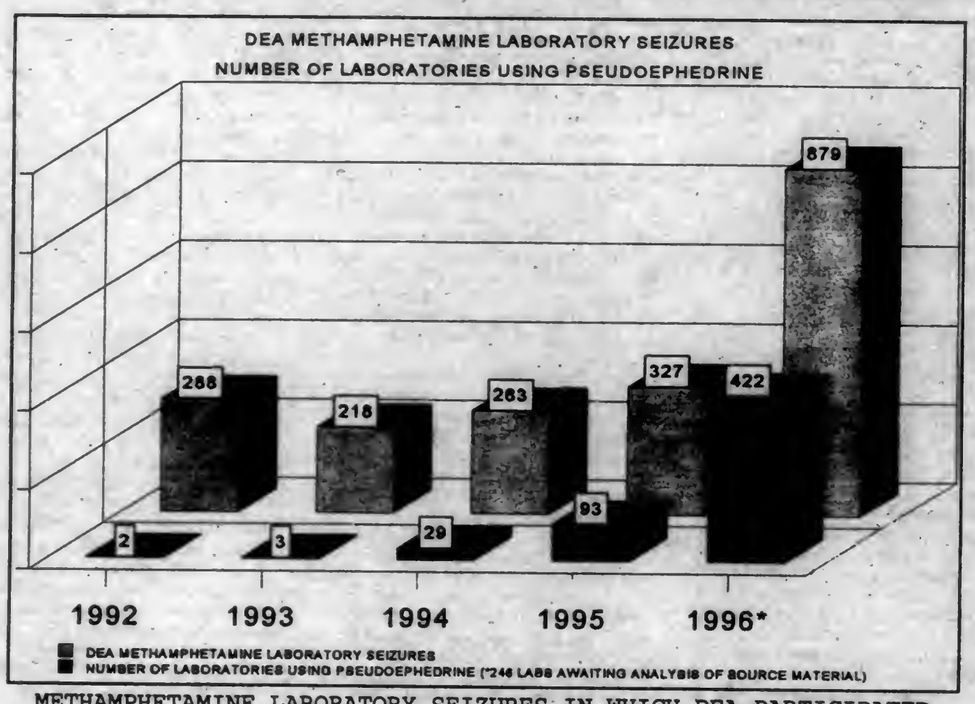
DEA's initial domestic chemical control efforts focused on stemming the flow of material from the wholesale/mail order industry to the traffickers. While some investigations ultimately resulted in conviction of some of the more eregious violators of the law, DEA and State efforts were hampered by the exemption from regulation granted to the drug products, the lack of other controls under the CDTA, such as registration, and the increasing knowledge of the traffickers and their suppliers in how to shelter themselves from the criminal sanctions of the CDTA.

The Domestic Chemical Diversion Control Act of 1993 (DCDCA) was enacted, in part, to address these shortcomings in the CDTA. Two major elements in the DCDCA were the removal of the exemption from List I controls for single-entity ephedrine drug products and establishment of the registration requirement for distributors, importers, and exporters of List I chemicals. The DCDCA did establish control of the diversion of single-entity ephedrine drug products to clandestine laboratories (combination ephedrine products remained exempt); however, the traffickers switched to pseudoephedrine drug products, which remained exempt from chemical controls and are directly interchangeable with ephedrine drug products in the manufacture of methamphetamine. Companies that had previously been identified as distributors of large volumes of single-entity ephedrine drug products became distributors of large volumes of pseudoephedrine drug products, which has become the primary source material of choice in clandestine laboratories.

In 1993, the year the DCDCA was passed, ephedrine was identified as the source material in 79 percent of the methamphetamine laboratories seized and pseudoephedrine was identified as the source material in less than 2 percent of the seized laboratories. As is shown in the following chart, both the number of clandestine laboratories seized and number of laboratories using pseudoephedrine increased significantly between 1993 and 1996. In 1996, DEA seized 879 methamphetamine laboratories, of which 422 were positively identified as using pseudoephedrine. Of the remainder, there are 246 laboratories for which analysis of the source material has not yet been received, however it is anticipated that most, if not all, were using pseudoephedrine. In all of the identified cases, pseudoephedrine drug products were the source material.

For 1997, 392 clandestine methamphetamine laboratories have been seized as of April 30th, as compared to the 327 laboratories that were seized in all of 1995. At that rate, the total seizures for 1997 could exceed 1300 methamphetamine laboratories. The dramatic increase in seizures is due, in part, to the expansion of the methamphetamine laboratories into the Midwest.

BILLING CODE 4410–09–M



METHAMPHETAMINE LABORATORY SEIZURES IN WHICH DEA PARTICIPATED
(DOES NOT INCLUDE STATE/LOCAL SEIZURES IN WHICH DEA DID NOT PARTICIPATE)

BILLING CODE 4410-09-C

Pseudoephedrine Regulations

By 1995, it had become clear that action would have to be taken to stem the flow of pseudoephedrine drug products to the clandestine laboratories. DEA proposed regulations to control certain types of pseudoephedrine drug products on October 31, 1995 (60 FR 55348), including reduction of the threshold for pseudoephedrine from 1 kilogram to 24 grams and removal of the exemption from the chemical controls for certain drug products containing pseudoephedrine. DEA's proposal limited the controls to those products which could be readily used for the clandestine manufacture of methamphetamine. The exemption remained in place for gel capsules, liquids, and solid dosage form products containing pseudoephedrine in combination with acetaminophen, aspirin, or ibuprofen in therapeutically significant quantities. Further, DEA proposed to exempt retail distributors from the registration requirement if their activities were restricted to sub-threshold (24 grams) sales of pseudoephedrine drug products. Following comment, DEA published a Final Rule in the **Federal Register** on August 7, 1996 (61 FR 40981). In response to comments, the threshold for pseudoephedrine was raised from the proposed 24 grams to 48 grams and, for retail distributors, application of the cumulative transaction provision was lifted.

The Final Rule was scheduled to become effective on October 7, 1996, however, as discussed below, the rule did not go into effect and was superseded by the provisions of the MCA.

Comprehensive Methamphetamine Control Act of 1996

Paralleling DEA's rulemaking process, the United States Congress, also concerned with the illicit traffic in methamphetamine, introduced legislation to control the diversion of chemicals to clandestine laboratories. The result was the Comprehensive Methamphetamine Control Act of 1996 (Pub. L. 104–237) (MCA), which was enacted on October 3, 1996. The MCA superseded DEA's Final Rule, discussed above, declaring that the regulations were "* * * null and void, and of no force and effect." (MCA, Section 210.)

The MCA legislatively replaced DEA's proposed rulemaking action with a more comprehensive system of controls relating to the distribution, importation, and exportation of pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products, along with other strong tools to attack the illicit traffic. The MCA retained the existing Controlled Substances Act (CSA) requirements for distributors of List I chemicals and added the following changes to the CSA with respect to regulation of drug products containing these three chemicals:

Removal of Certain Drug Product Exemptions

The definition of "regulated transaction" (21 U.S.C. 802(39)) is amended in paragraph (A)(iv)(I)(aa) to provide that the exemption for drug products that contain ephedrine, pseudoephedrine, or phenylporpanolamine is removed. The new definition also provides that the sale of "ordinary over-the-counter pseudoephedrine or phenylproanolamine" products by "retail distributors" shall not be a regulated transaction. The definition is also amended in paragraph (A)(iv)(II) to provide that the threshold for the sale of pseudoephedrine or phenylpropanolamine products by a retail distributor or a distributor required to submit reports by section 310(b)(3) of the CSA (21 U.S.C. 830(b)(3)) shall be 24 grams of pseudoephedrine base or 24 grams of phenylporpanolamine base in a single transaction. This threshold does not affect the reports required to be filed under 21 U.S.C. 830(b)(3) and 21 CFR 1310.03(c), 1310.05(e), and 1310.06(i), as amended herein.

Creation of a New Category of Distributor and Category of Product To Which Certain Exceptions Apply

Two new definitions are added under section 102 of the CSA (21 U.S.C. 802), as follows:

The term *ordinary over-the-counter pseudoephedrine* or *phenylpropanolamine product* is defined in section 102(45) of the Act (21 U.S.C. 802(45)) as a product containing pseudoephedrine or phenylpropanolamine that is regulated pursuant to the CSA and, except for liquids, packaged with not more than 3 grams of pseudoephedirne or phenylpropanolamine base per package, contained in blister packs, with not more than two dosage units per blister, or where the use of blister packs is not technically feasible, packaged in unit dose packets or pouches. For liquids, the product is sold in package sizes of not more than 3 grams of pseudoephedrine or phenylpropanolamine base. In the context of sales by retail distributors, this has been referred to as the "safe harbor" provision, because of the exemption from the definition of "regulated transaction" in section 102(39) of the Act (21 U.S.C. 802(39)).

The term *retail distributor* is defined in section 102(46) of the Act (21 U.S.C. 802(46)) as a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to pseudoephefrine or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. *Sale for personal use* is defined by the MCA as the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use. Further, certain entities are defined by reference to the following Standard Industrial Classification (SIC) codes: a grocery store is an entity within SIC code 5411, a general merchandise store is an entity within SIC codes 5300 through 5399 and 5499, and a drug store is an entity within SIC code 5912.

It is worth noting at this point that while the definition of "retail distributor" specifically references general merchandise stores, grocery stores, and drug stores and their respective SIC codes, it also refers to "* * * or other entity or person * * *" who engages in the described activities. As a result, a retail distributor is any person (not just a general merchandise store, grocery store, or drug store) whose activities as a distributor relating to pseudoephedrine or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

Expands the Opportunities for Product Specific Exemptions

The MCA amends the CSA to provide that the exemption with respect to a particular ephedrine, pseudoephedrine or phenylpropanolamine drug product shall be reinstated if it is determined that the drug product is manufactured and distributed in a manner that prevents diversion.

Defines Specific Controls for "Combination Ephedrine Products"

The MCA defines *combination ephedrine product* as a drug product containing ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically significant quantities of another active medicinal ingredient; and establishes a 24-gram single transaction limit, notwithstanding the form in which the product is packaged, for sales by retail distributors and by distributors required to submit a report under section 310(b)(3) of the CSA (21 U.S.C. 830(b)(3)), and a 1-kilogram threshold for transactions by other distributors, importers and exporters.

Requires Reporting of Certain Distributions by Mail or Carrier

The MCA amends section 310 of the CSA (21 U.S.C. 830) to add a new paragraph (b)(3), which requires that each regulated person who engages in a transaction with a nonregulated person (that is, someone who does not further distribute the product) which involves ephedrine, pseudoephedrine or phenylpropanolamine, including drug products, and uses or attempts to use the Postal Service or any private or commercial carrier shall submit a report of all such transactions each month. The reports shall reflect the name of the purchaser, the quantity and form of the ephedrine, pseudoephedrine or phenylpropanolamine purchased, the address to which the chemicals were shipped, and such other information as is established by regulation.

Effective Dates

The MCA provides that the requirements with respect to the regulation of combination ephedrine products and the reporting requirement became effective on October 3, 1996. The requirements with respect to pseudoephedrine and phenylpropanolamine products become effective on October 3, 1997.

Regulatory Changes To Implement the MCA

Many of the legislative details of the MCA are provided in sufficient detail to be self-implementing without additional regulation. Thus, many of the regulatory amendments to implement the MCA are conforming amendments by which the definitions of "regulated transaction" and "retail distributor" are updated to parallel the new language in the MCA and the definitions of 1 "ordinary over-the-counter pseudoephedrine or phenylpropanolamine product" and "combination ephedrine product" are inserted in the regulations; 21 CFR 1310.04 is updated to reflect the new record retention period of two years for List I chemical transactions and the thresholds for transactions involving regulated drug products; and 21 CFR 1310.04–06 are updated to reflect the new reporting requirement. Finally, 21 CFR 1309.71 is being amended to reflect that in retail settings open to the public only ephedrine drug products, in both single-entity and combination form, just be stored behind a counter where only employees will have access; pseudoephedrine and phenylpropanolamine products are not required to be kept behind the counter.

In addition to the above amendments, DEA is proposing to amend 21 CFR Part 1309 to consolidate the various exemptions from the registration requirement into one section, expand the current exemption for retail distributors of combination ephedrine products to include retail distributors of pseudoephedrine and phenylpropanolamine products, and to add a temporary exemption from the registration requirement for persons who distribute, import, or export pseudoephedrine or phenylpropanolamine drug products, provided that they submit an

application for registration on or before December 3, 1997. Any person who engages in such activities and is not subject to an existing or proposed exemption from the registration requirement should submit an application for registration at the earliest possible time, to ensure that they may continue to distribute these products pending issuance of their registration.

Effect of the MCA

While the regulatory changes necessary to implement the MCA are primarily conforming regulations, the scope of the effect of the MCA's requirements is quite broad. The removal of the exemption for pseudoephedrine, phenylpropanolamine, and combination ephedrine drug products makes any person who distributes, imports, or exports them subject to the established chemical registration, recordkeeping, and reporting requirements already in effect for List I chemical handlers, as set out in 21 CFR parts 1309, 1310, and 1313. The MCA, however, created an exemption from the existing chemical controls for sales of ordinary over-the-counter pseudoephedrine and phenylpropanolamine products by retail distributors. Additionally, following the MCA's creation within the law of the category of "retail distributor", DEA has provided an exemption from registration for retail distributors whose activities are limited to the activities provided for by the MCA.

With respect to no-retail distributors, various segments of the affected distribution industry have offered varying interpretations of the law, proposing that distributors that only engage in sub-threshold transactions, or distributors that only supply corporately owned retail outlets are not subject to registration and concomitant controls. The CSA requires a registration for activities as a distributor. These two issues are addressed in the final rulemaking entitled "Comprehensive Methamphetamine Control Act of 1996; Possession of List I Chemicals, Definitions, Record Retention, and Temporary Exemption From Chemical Registration for Distributors of Combination Ephedrine Products", which will by published in the **Federal Register** on or about October 3, 1997. Interest persons are encouraged to obtain a copy of the final rule, which contains a detailed discussion of the issues.

Within this framework, importers, exporters, and distributors (other than retail distributors) of pseudoephedrine and phenylpropanolamine drug products (including ordinary over-the-counter pseudoephedrine and phenylpropanolamine products) become subject to the registration requirement of the MCA on October 3, 1997, and also the recordkeeping requirements for those transactions that either singly or cumulatively meet the threshold requirements in a calendar month. However, the allow for implementation of these regulations and issuance of the registrations, DEA is providing a temporary exemption from the registration requirement for persons who submit their applications on or before December 3, 1997. For combination ephedrine products, the requirements became effective on October 3, 1996.

Retail distributors of ordinary over-the-counter products are not subject to the registration, recordkeeping and reporting requirements.

For retail distributors whose sales of other pseudoephedrine and phenylpropanolamine products, or combination ephedrine products remain exclusively below the single transaction limit, DEA has established an exemption from the registration requirement in 21 CFR 1309.29. However, retail distributors are subject to the registration, recordkeeping, and reporting requirements to the extent that their transactions equal or exceed the single transaction limit of 24 grams. Additionally, the existing provision that any person who is registered with DEA to distribute or dispense controlled substances is not required to obtain a separate chemical registration applies to distributions of pseudoephedrine, phenylpropanolamine, or combination ephedrine products, as set forth in 21 CFR 1309.25.

They are, however, still subject to the recordkeeping requirements.

Reports of 'Mail Order' Transactions

The MCA requires that a regulated person must report, on a monthly basis, all transactions with non-regulated persons (those persons who do not redistribute the product) that involve ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products that contain these chemicals), and who use or attempt to use the Postal Service or any private or commercial carrier. Each report must contain the name of the purchaser, the quantity and form of the material purchased, and the address to which the material was sent, as well as such other data as may be established by regulation. MCA, Section 401, 21 U.S.C. 830(b)(3). The language of the requirement clearly establishes that all persons engaging in any such transactions must report them. There is no statutory provision for exclusion of any class of person or transaction from the requirement.

DEA is proposing to amend 21 CFR 1310.03, 1310.05, and 1310.06 to incorporate the new reporting requirement. Section 1310.03 reflects who must file, Section 1310.05 reflects when and where the reports shall be filed, and Section 1310.06 reflects the information the report must contain.

The MCA requires monthly reports. DEA is proposing that the reports shall be submitted on or before the 15th day of the month following the month in which the reportable transaction took place; shall be submitted to the Drug Enforcement Administration, Office of Diversion Control, Chemical Operations Section, Washington, D.C. 20537; and shall contain the following information.

1. Supplier's Name and Registration Number
2. Purchaser's Name and Address
3. Name/Address Shipped To (if different from purchaser's name/address)
4. Name of the Chemical Shipped
5. Product Name
6. Dosage Form (if any)
7. Dosage Strength (if any)
8. Number of Dosage Units (if applicable)
9. Package Type
10. Package Quantity
11. Lot Number (for drug products)
12. Date of Shipment

As noted earlier, the MCA requires the name of the purchaser (item 2), the quantity and form of the material (items 4–10), and the address to which the material was shipped (item 3). In addition to the required information, DEA is proposing to include the supplier name and registration number (item 1), to identify the person making the report and their authority to distribute the material; the address of the purchaser (item 2), to assist in identifying the party; the name of the person to which the material is shipped (item 3), if different from the purchaser, to identify the actual recipient of the material in instances where drop-shipment is requested; the lot number of the product (item 11), if a drug product, to assist DEA in tracking products that are diverted; and, the date of the shipment (item 12) to identify when the specific transaction occurred.

While submission of a hard copy report will be adequate to satisfy the requirement, DEA is proposing that electronic reporting, initially via computer disk, also be allowed. Electronic reporting would minimize the burden by eliminating the time and expense necessary to print, package, and mail hard copy reports and would allow for more efficient processing of the data reported. DEA is proposing that persons interested in submitting reports by electronic means contact the Chemical Operations Section, Office of Diversion Control, DEA at (202) 307–7204 to arrange for submission of electronic reports.

It is important to keep in mind that the reporting requirement applies only to distributions of ephedrine, pseudoephedrine, and phenylpropanolamine via the postal service or private or commercial carrier to nonregulated persons. A distributor does not have to report distributions to regulated persons. In this regard, it is critical that distributors take the appropriate steps to ascertain whether their customers are regulated or nonregulated persons. The failure of a distributor to report a transaction based on a customer's mere representation that they are a regulated person, without further inquiry to confirm that status, may be grounds for administrative, civil, or criminal action. Therefore, the distributor should take appropriate steps to confirm the customer's status as a regulated person. Steps may include verification of the customer's DEA registration status or, if they are not a registrant, inquiry as to whether the products are being obtained solely for use by the customer or whether they will be distributed to others.

Clarification of MCA and CSA Chemical Control Requirements

The MCA's removal of the exemption for pseudoephedrine, phenylpropanolamine, and combination ephedrine products makes a new segment of industry, which is not familiar with DEA's programs and requirements, subject to the chemical controls under the CSA. DEA has received numerous contacts from, and engaged in substantial discussions with, both individual companies and associations regarding the requirements of the MCA and of the chemical controls under the CSA with respect to combination ephedrine products. The upcoming control of pseudoephedrine and phenylpropanolamine products on October 3, 1997, will probably result in further questions and need for clarification of the requirements. DEA remains, as always, available to affected persons to clarify the requirements of the MCA and of the existing chemical controls. Inquiries should be addressed to DEA in writing to the attention of: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537.

Small Business Impact and Regulatory Flexibility Concerns

The MCA mandates a system of controls (including registration, recordkeeping, and reporting) over the distribution, importation, and exportation of pseudoephedrine, phenylpropanolamine, and combination ephedrine products. Within this system of controls, the MCA does provide an exemption for retail sales of ordinary over-the-counter pseudoephedrine and phenylpropanolamine products; however, wholesale distributions, importations, and exportations of these products are subject to the controls.

The specific mandates of the MCA, if applied as written, would have a far-reaching and significant impact. Pseudoephedrine and phenylpropanolamine over-the-counter products are a common part of every-day life, available in most supermarkets, drug stores, convenience stores, and other retail outlets. Combination ephedrine products are somewhat less common, due to their limited use as a bronchodilator for the treatment of asthma.

DEA consulted with industry organizations associated with over-the-counter drug manufacture and marketing in an effort to determine the potential size of the impacted industry. According to industry sources there are approximately 750,000 retail distributors of pseudoephedrine, phenylpropanolamine, and combination ephedrine products. Accurate identification of the number of wholesale distributors has been somewhat more difficult; however, following consultations with representatives of the food marketing, drug wholesale, and retail supplier industries, DEA estimates that there are approximately 3,000 to 3,500 wholesale locations distributing the products.

In considering the implementation of the MCA, DEA considered the impact of applying various levels of controls, from no application through full application of the requirements of the law, from the perspective of their impact on the industry, on the public health and safety,and on the ability of both industry and the government to administer the controls.

Of the available options, it is readily apparent that imposition of either no controls or the full level of controls would be unrealistic. With respect to no controls, the simple fact that the legislation was deemed necessary is recognition enough of the threat to the public health and safety that the diversion of pseudoephedrine, phenylpropanolamine, and combination ephedrine products to the illicit manufacture of methamphetamine represents and the intent to impose restrictions and monitoring controls on the distribution. At the same time, full application of the controls of the MCA would result in monetary and administrative burdens on the industry and DEA that would be out of proportion with the benefits to be derived and may unnecessarily interfere with legitimate public access to the products. Therefore, alternatives that avoided unnecessary burdens while still accomplishing the mandate of the MCA were explored.

Exploring the alternatives and exceptions required consideration of the scope of commerce, business practices, and capabilities of the different segments of the industry; the scope of diversion from each segment of industry; the activities of the traffickers; and the relative impact of different controls, both on the industry and DEA.

The MCA recognizes two distinct segments within industry: retail distributors, who, by definition, sell small amounts of product in face-to-face transactions to individuals for their personal use; and manufacturers/wholesalers (including importers/exporters), who introduce generally larger quantities of the products into commerce and distribute to other commercial concerns for further distribution, and some of whom also distribute larger quantities to non-commercial concerns without regard or consideration of the intended use.

Collectively, retail distributors are responsible for as great a scope of distribution as manufacturers/wholesalers, serving as they do as the principal source of supply for the individual consumers of the products. Individually, however, their scope of commerce, by definition, is very small, due to the fact that their activities are restricted to sales to individuals of small, personal use quantities of the products. Despite the collective volume of commerce at the retail level, the new controls of the MCA should, as a practical matter, significantly reduce the potential for major diversion from this level (provided retailers comply with the law and are alert to attempts to circumvent the controls). Because to the limited amount of product permitted to be distributed in an individual transaction, attempts to divert the products by the retail distributors should be noticeable, given that the volume of material required is out of proportion with any reasonable amount that might be purchased for personal use. However, traffickers have, on occasion, succeeded in obtaining tens of

thousands of dosage units of products by preying upon unsophisticated or negligent owners or employees of retail establishments who are not aware of, or are unconcerned with, the illicit use to which the products can be put. In addition, there are those unscrupulous individuals who will always be eager to profit from a transaction, capitalizing on the fact that, even with a 24 gram threshold for retail distributors, many of the smaller clandestine laboratories which DEA and state and local authorities are encountering could adequately satisfy their needs for precursor material be obtaining legal drug products at the retail level. This is a situation in which voluntary industry programs to prevent diversion at the retail level will be an important factor in achieving the goals of the MCA.

While far fewer in number (est. 3,000–3,500) and engaging in a lesser number of transactions, manufacturer/wholesalers account for as great a part of the distributions as retail distributors through the volume of products moved in each transaction. The significantly larger transaction sizes, which would be cause for concern at the retail level but are commonplace at the wholesale level, coupled with the relative anonymity of the transaction, have resulted in this segment of industry becoming the source of choice for the traffickers. Through conspiracy and deception, as well as carelessness on the part of some wholesalers, traffickers have been able to obtain large volumes of product without having their transactions stand out against the normal commerce.

Against this backdrop, and in recognition of the effectiveness of the new controls provided by the MCA, chemical controls for the consumer drug products should be focused on the wholesale level, and the retail level should be granted additional exemption as long as they operate within the new limits of the MCA. However, given the opportunistic nature of the traffickers and their preference for an unregulated source of supply, there exists the potential that, with the control of the wholesale distributors, traffickers may intensely focus on the retail level as a source of supply. Therefore, the exemption from the registration requirement applies to retail distributors that limit their activities exclusively to sales below the 24 gram threshold established by the MCA for those products. Retail distributors that engage in the distribution of ordinary over-the-counter pseudoephedrine and phenylpropanolamine products are also exempt from the registration requirement. Thus, it is likely that most, if not all, of the estimated 750,000 retail distributor will qualify and be exempt from registration.

The final element to be addressed was the impact that the controls would have on the industry and DEA. The determining factor in this assessment proved to be the types of transactions conducted and the business practices in the different segments of the industry.

The principal controls required under the MCA are recordkeeping and registration. The recordkeeping requirement applies to any person who engages in a regulated transaction involving a pseudoephedrine, phenylpropanolamine, or combination ephedrine product, other than a retail distribution of an ordinary over-the-counter pseudoephedrine or phenylpropanolamine product. The registration requirement applies to any person who distributes imports, or exports a pseudophedrine, phenylpropanolamine, or combination ephedrine product, except for the exemptions previously discussed.

The recordkeeping requirement would represent a minimal burden for both segments of industry. While retail distributors do not keep records of their sales to individuals as a matter of business practice, their sales are almost exclusively sub-threshold; therefore, the recordkeeping requirement would not apply for their distributions. Wholesale distributors, on the other hand, often engage in transactions that would be subject to the recordkeeping requirement. However, such distributors generally do keep detailed records of their transactions as a matter of good business practice. Such records can be made readily retrievable through the marking of the transactions involving regulated products with an asterisk or other unique code. Further, under the MCA, the record retention period for List I records has been reduced from four years to two years, thus reducing the regulatory burden of List I chemical controls. Additionally, recordkeeping at the wholesale level is further mitigated by a threshold of one kilogram for ephedrine combination and pseudoephedrine products, and 2.5 kilograms for phenylpropanolamine products. Transactions below these thresholds do not require records.

The registration requirement, on the other hand, would have a significant financial impact if applied across the board. The cost of initial registration (at $255.00 each) for 750,000 retail distributors would be over $190 million; annual reregistration (at $116.00 each) would cost approximately $87 million. For the estimated 3,500 manufacturers/wholesalers the cost for initial registration (at $595.00 each) would be slightly more than $2 million; annual reregistration (at $477.00 each) would cost approximately $1.7 million. The respective annual paperwork burdens associated with filing the applications for registration would be 150,000 hours for all retail distributors and 700 hours for all manufacturers/wholesalers. Further, the administrative burden for DEA of having to receive and process over 750,000 applications per year would be enormous.

The cost and administrative burden of requiring registration at the retail level, which is predominantly small business, would be significant, while the potential of large scale diversion at the retail level following implementation of the MCA is greatly reduced given the limited amounts of products being distributed in face-to-face sales to individuals.

Therefore, to best achieve the intended results of the MCA, while minimizing the burden on industry, DEA has determined to propose that: (a) the registration and recordkeeping provisions will apply at the manufacturer/wholesale level, and (b) the exemptions will apply to retail distributors who operate exclusively within the retail quantity limits established by the MCA, irrespective of whether the form of packaging meets the definition of "ordinary over-the-counter pseudoephedrine or phenylpropanolamine product" under Section 102(45) of the Act (21 U.S.C. 802(45)). The large volumes of products per transaction at wholesale, the opportunity for relatively anonymous transactions, and the existing history of diversion point to the need for adequate registration and recordkeeping at this level of industry. As noted earlier, the cost of imposing the full controls of the MCA on this segment of the industry will consist of slightly more than $2 million for initial registration, approximately $1.7 million for annual reregistration, and an estimated 700 burden hours per year. The recordkeeping requirement will not result in substantial additional burden due to the fact that the information required can be found in the normal business records (provided they are marked in such a way as to make them readily retrievable) that would be maintained as part of good business practice.

With respect to retail distributors, the determination was made to provide a waiver from the registration, and, thus, recordkeeping, requirement due to the small size and face-to-face nature of the transactions and the limited future potential of diversion from this segment of the industry. The waiver of the registration applies, regardless of the form of packaging of the drug product, only to those retail distributors whose activities are restricted to below threshold transactions, to ensure that this segment of industry does not become the source of supply for the traffickers. If a retail distributor intends to engage in above-threshold transactions in the course of business, then a registration should be obtained. However, it is understood that unintentional sales which exceed the threshold are possible. In that regard, DEA wishes to note that the chemical control program is focused on preventing the diversion of chemicals to clandestine laboratories and not on identification of an action against the rare, inadvertent, non-egregious above-threshold sale of drug products by a checkout clerk or similar employee of an unregistered retail distributor in the normal course of legitimate business. Firms should, however, to protect their registration exemption, maintain programs to guard against such inadvertent sales.

In total, the proposed regulations, coupled with the existing exemption from chemical registration for controlled substances registrants and the exception from the regulations provided for distributors of prescription drug products that contain List I chemicals, provide a system of controls that minimize the financial and administrative burden on the industry while still allowing effective enforcement of the requirements of the MCA.

The Acting Deputy Administrator hereby certifies that this proposed rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). As discussed in the preceding section regarding Small Business Impact And Regulatory Flexibility Concerns, consideration was given to the potential impact of varying levels of regulation, the population that would be impacted, and the nature of the problem to be addressed by the regulations. These proposed regulations will provide a system of controls to prevent the diversion of the drug products to clandestine laboratories that is consistent with the intent of the MCA, while providing regulatory relief for the approximately 750,000 retail distributors, most of whom are small businesses. For the remaining 3,000 to 4,000 wholesale distributors, importers, and exporters that will be subject to regulation, the primary impact will be the requirement that they obtain an annual registration from DEA and make occasional reports. A copy of this proposed rulemaking has been provided to the Chief Counsel for Advocacy at the Small Business Administration.

This proposed rulemaking has been drafted and reviewed in accordance with Executive Order 12866. This proposed rulemaking has been determined to be a significant action because the requirements of the MCA affect a broad spectrum of businesses distributing widely used products to the public. This proposed rule would establish specific exemptions to significantly reduce that impact. Therefore, this proposed rulemaking has been reviewed and approved by the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

21 CFR Part 1300

Definitions, Drug traffic control.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I and II chemicals, Security measures. 21 CFR Part 1310

Drug traffic control, List I and II chemicals, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR Parts 1300, 1309, and 1310 are proposed to be amended as follows:

PART 1300—[AMENDED]

1. The authority citation for Part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f).

2. Section 1300.02 is proposed to be amended by revising paragraphs 1300.2(b)(28)(i)(D)(*1*) and (*2*) and by adding new paragraphs 1300.02(b) (31) and (32) to read as follows:

§ 1300.02 Definitions relating to listed chemicals.

* * * * *

(b) * * *

(28) * * *

(i) * * *

(D) * * *

(1)(i) The drug contains ephedrine or its salts, optical isomers, or salts of optical isomers, pseudoephedrine or its salts, optical isomers, or salts of optical isomers, or phenylpropanolamine or its salts, optical isomers, or salts of optical isomers unless otherwise exempted under § 1310.11 of this chapter, except that any sale of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction; or

(ii) The Administrator has determined pursuant to the criteria in § 1310.10 of this chapter that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(2) The quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical, except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamine by retail distributors or by distributors required to submit reports by § 1310.03(c) shall be 24 grams of pseudoephedrine or 24 grams of phenylpropanolamine in a single transaction.

* * * * *

(31) The term *ordinary over-the-counter pseudoephedrine or phenylpropanolamine product* means any product containing pseudoephedrine or phenylpropanolamine that is—

(i) Regulated pursuant to the Act; and

(ii)(A) Except for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base, and that is packaged in blister packs, each blister containing no more than two dosage units, or where the use of blister packs is technically infeasible, that is packaged in unit dose packets or pouches, and

(B) For liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base.

(32) The term *combinaiton ephedrine product* means a drug product containing ephedrine or its salts, optical isomers, or salts of optical isomers, and therapeutically significant quantities of another active medicinal ingredient.

PART 1309—[AMENDED]

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.22 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1309.22 Separate registration for independent activities.

* * * * *

(b) Every person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities, unless otherwise exempted by the Act or §§ 1309.24 through 1309.26, except that a person registered to import any List I chemical shall be authorized to distribute that List I chemical after importation, but no other chemical that the person is not registered to import.

3. Section 1309.24 is proposed to be revised to read as follows:

§ 1309.24 Waiver of registration requirement for certain activities.

(a) The requirement of registration is waived for any agent or employee of a person who is registered to engage in any group of independent activities, if such agent or employee is acting in the usual course of his or her business or employment.

(b) The requirement of registration is waived for any person who distributes a product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D), if that person is registered with the Administration to manufacture, distribute or dispense a controlled substance.

(c) The requirement of registration is waived for any person who imports or exports a product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D), if that person is registered with the Administration to engage in the same activity with a controlled substance.

(d) The requirement of registration is waived for any person who distributes a prescription drug product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter.

(e) The requirement of registration is waived for any retail distributor whose activities with respect to List I chemicals are limited to the distribution of below-threshold quantities of a pseudoephedrine, phenylpropanolamine, or combination ephedrine product that is regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter, in a single transaction to an individual for legitimate medical use, irrespective of whether the form of packaging of the product meets the definition of "ordinary over-the-counter pseudoephedrine or phenylpropanolamine product" under § 1300.02(b)(31) of this chapter. The threshold for a distribution of a product in a single transaction to an individual for legitimate medical use is 24 grams of pseudoephedrine, phenylpropanolamine, or ephedrine base.

(f) The requirement of registration is waived for any manufacturer of a List I chemical, if that chemical is produced solely for internal consumption by the manufacturer and there is no subsequent distribution or exportation of the List I chemical.

(g) If any person exempted under paragraph (b), (c), (d), or (e) of this section also engages in the distribution, importation or exportation of a List I chemical, other than as described in such paragraph, the person shall obtain a registration for such activities, as required by § 1309.21.

(h) The Administrator may, upon finding that continuation of the waiver would not be in the public interest, suspend or revoke a waiver granted under paragraph (b), (c), (d), or (e) of this section pursuant to the procedures set forth in §§ 1309.43 through 1309.46 and 1309.51 through 1309.57. In considering the revocation or suspension of a person's waiver granted pursuant to paragraph (b) or (c) of this section, the Administrator shall also consider whether action to revoke or suspend the person's controlled substance registration pursuant to 21 U.S.C. 824 is warranted.

(i) Any person exempted from the registration requirement under this section shall comply with the security requirements set forth in §§ 1309.71 through 1309.73 and the recordkeeping and reporting requirements set forth under parts 1310 and 1313 of this chapter.

4. Section 1309.25 is proposed to be revised to read as follows:

§ 1309. Temporary exemption from registration for chemical registration applicants.

(a) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export a combination ephedrine product is temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before July 12, 1997. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in parts 1309, 1310, and 1313 of this chapter remain in full force and effect.

(b) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export a pseudoephedrine or phenylpropanolamine drug product is temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before December 3, 1997. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in parts 1309, 1310, and 1313 of this chapter remain in full force and effect.

5. Sections 1309.27, 1309.28 and 1309.29 are proposed to be removed.

6. Section 1309.71 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§ 1309.71 General security requirements.

(a)* * *

(2) In retail settings open to the public where drug products containing ephedrine or its salts, optical isomers, or salts of optical isomers are distributed, such drugs will be stocked behind the counter where only employees have access.

* * * * *

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.03 is proposed to be amended by adding a new paragraph (c) to read as follows:

§ 1310.03 Persons required to keep records and file reports.

* * * * *

(c) Each regulated person who engages in a transaction with a nonregulated person which involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals), and uses or attempts to use the Postal Service or any private or commercial carrier shall file monthly reports of each such transaction as specified in § 1310.05.

3. Section 1310.04 is proposed to be amended by removing paragraph (g) and revising paragraph (f)(1) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(1) List I chemicals:

(i) Except as provided in paragraph (f)(1)(ii) of this section, the following thresholds have been established for List I chemicals:

Chemical	Threshold by base weight
(A) Anthranilic acid, its esters, and its salts	30 kilograms.
(B) Benzyl cyanide	1 kilogram.
(C) Ephedrine, its salts, optical insomers, and salts of optical isomers	No threshold-All transactions Regulated.
(D) Ergonovine and its salts	10 grams.
(E) Ergotamine and its salts	20 grams.
(F) N-Acetylanthranilic acid, its esters, and its salts	40 kilograms.
(G) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers	2.5 kilograms.
(H) Phenylacetic acid, its esters, and its salts	1 kilogram.
(I) Phenlpropanolamine, its salts, optical isomers, and salts of optical isomers	2.5 kilograms.
(J) Piperidine and its salts	500 grams.
(K) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram.
(L) 3, 4-Methylenedioxyphenyl-2-propanone	4 kilograms.
(M) Methylamine and its salts	1 kilogram.
(N) Ethylamine and its salts	1 kilogram.
(O) Propionic anhydride	1 gram.
(P) Isosafrole	4 kilograms.
(Q) Safrole	4 kilograms.
(R) Piperonal	4 kilograms.
(S) N-Methylephedrine, its salts, optical isomers, and salts of optical isomers (N-Methylephedrine	1 kilogram.
(T) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram.
(U) Hydriodic Acid	1.7 kilogrmas (or 1 liter by volume.
(V) Benzaldehyde	4 kilograms.
(W) Nitroethane	2.5 kilograms.

(ii) Notwithstanding the thresholds established in paragraph (f)(1)(i), the following thresholds will apply for the following List I chemicals that are contained in drug products that are regulated pursuant to § 1300.02(b)(28)(i)(D) (Retail distribution thresholds are for a single transaction; the cumulative threshold provision does not apply. All other distributions are subject to the cumulative threshold provision.):

Chemical	Threshold by base weight
(A) Ephedrine, its salts, optical isomers, and salts of optical isomers as the sole therapeutically significant medicinal ingredient.	No threshold-All transactions Regulated.
(B) Ephedrine, its salts, optical isomers, and salts of optical isomers in combination with therapeutically significant amounts of another medicinal ingredient:	
(1) Distributions by retail distributors	24 grams.
(2) Distributions by person required to report under § 1310.03(c)	24 grams.
(3) All other domestic distributions (other than (B) (1) and (2))	1 kilogram.
(4) Imports and Exports	1 kilogram.
(C) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers (other than ordinary over-the-counter products):	
(1) Distributions by retail distributors	24 grams.
(2) Distributions by person required to report under § 1310.03(c)	24 grams.
(3) All other domestic distributions (other than (C) (1) and (2))	1 kilogram.
(4) Imports and Exports	1 kilogram.
(D) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers (Ordinary over-the-counter products):	
(1) Distributions by retail distributors	Exempt.
(2) Distributions by person required to report under § 1310.03(c)	24 grams.
(3) All other domestic distributions (other than (D) (1) and (2))	1 kilogram.
(4) Imports and Exports	1 kilogram.
(E) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers (other than ordinary over-the-counter products):	
(1) Distributions by retail distributors	24 grams.
(2) Distributions by person required to report under § 1310.03(c)	24 grams.
(3) All other domestic distributions (other than (E) (1) and (2))	2.5 kilograms.
(4) Imports and Exports	2.5 kilograms.
(F) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers (Ordinary over-the-counter products):	
(1) Distributions by retail distributors	Exempt.

Chemical	Threshold by base weight
(2) Distributions by person required to report under § 1310.03(c)	24 grams.
(3) All other domestic distributions (other than (F) (1) and (2))	2.5 kilograms.
(4) Imports and Exports	2.5 kilograms.

4. Section 1310.05 is proposed to be amended by adding a new paragraph (e) to read as follows:

§ 1310.05 Reports.

* * * * *

(e) Each regulated person required to report pursuant to § 1310.03(c) shall either:

(1) Submit a written report, containing the information set forth in § 1310.06(i), on or before the 15th day of each month following the month in which the distributions took place. The report shall be submitted under company letterhead, signed by the person authorized to sign the registration application forms on behalf of the registrant, to the Chemical Operations Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537; or

(2) Upon request to and approval by the Administration, submit the report in electronic form, either via computer disk or direct electronic data transmission, in such form as the Administration shall direct. Requests to submit reports in electronic form should be submitted to the Chemical Operations Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, ATTN: Electronic Reporting.

5. Section 1310.06 is proposed to be amended by adding a new paragraph (i) to read as follows:

§ 13.10.06 Content of records and reports.

* * * * *

(i) Each monthly report required by § 1310.05(e) shall provide the following information for each distribution:

(1) Supplier's name and registration number;

(2) Purchaser's name and address;

(3) Name/address shipped to (if different from purchaser's name/address);

(4) Name of the Chemical and total amount shipped;

(5) Date of shipment;

(6) Product name (if drug product);

(7) Dosage form (if drug product);

(8) Dosage strength (if drug product);

(9) Number of dosage units (if drug product);

(10) Package type (if drug product);

(11) Package quantity (if drug product);

(12) Lot number (if drug product).

6. Section 1310.10 is proposed to be amended by revising paragraph (d) introductory text to read as follows:

§ 1310.10 Removal of the exemption of drugs distributed under the Food, Drug, and Cosmetic Act.

* * * * *

(d) Any manufacturer seeking reinstatement of a particular drug product that has been removed from an exemption may apply to the Administrator for reinstatement of the exemption for that particular drug product on the grounds that the particular drug product is manufactured and distributed in a manner that prevents diversion. In determining whether the exemption should be reinstated the Administrator shall consider:

* * * * *

Dated: September 26, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–26150 Filed 10–6–97; 8:45 am]

BILLING CODE 4410–09–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC73

National Flood Insurance Program (NFIP); Standard Flood Insurance Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the amount of the deductible under the Standard Flood Insurance Policy—from $750 to $1,000—for structures with subsidized coverage.

DATES: All comments received on or before November 7, 1997 will be considered before final action is taken on the proposed rule.

ADDRESSES: Please submit any written comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, S.W., room 840, Washington, DC 20472, (facsimile) 202–646–4536.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, (202) 646–3422, (facsimile) (202) 646–4327.

SUPPLEMENTARY INFORMATION: This proposal is the result of an ongoing review and reappraisal of the National Flood Insurance Program (NFIP) to achieve greater administrative and fiscal effectiveness in the NFIP's operations. The proposed amendment is also intended to help the NFIP increase its capability to build reserves for catastrophic loss years. This can be handled either by rate increases, or by other means such as imposing coverage limitations or increasing deductibles, or by both.

Section 1308(b)(2) of the National Flood Insurance Act of 1968, as amended, charges the Director of FEMA with the responsibility of establishing "chargeable premium rates" which are "* * * adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or if less than such amount, consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance * * *".

Since there have been three premium increases in the last three years—two in the subsidized premium rates and a premium surcharge mandated by § 555 of the National Flood Insurance Reform Act of 1994, for the addition of increased cost of compliance coverage, FEMA believes that the better approach to enhancing fiscal soundness would be by adjustment to the deductible provisions for policies which are issued using subsidized rates. Therefore, this proposed rule would increase the standard deductible for structures covered by insurance at subsidized premium rates from $750 to $1,000. Concurrent with this proposed change, insureds would be provided the option to pay a higher premium at full-risk rates to "buy back" a reduced deductible under their Standard Flood Insurance Policy (SFIP).

New or renewed flood insurance policies issued on and after May 1, 1998, for buildings and contents in Emergency Program communities as well as those policies issued for buildings and/or contents in Regular Program communities in Zones A, AO, AH, A1–A30, AE, VO, V1–V30, VE, or V, which are rated using subsidized rates, would be subject to the higher deductible of $1,000. These are buildings which, because they were built before the degree of flood risk had been ascertained and depicted on a Flood Insurance Rate Map (FIRM), are subject to a greater exposure to flood loss.

This proposed change to the deductibles would provide a greater flexibility to the Program and to the goal of designing the Program with an eye toward "* * * minimizing costs and distributing burdens equitably among those who will be protected by flood insurance and the general public" (Section 1302(d) of the 1968 Act).

In summary, this proposal is intended to balance the need for providing reasonable rates to the public for flood insurance as an incentive to purchase insurance against the requirement that the NFIP be flexible, minimize costs, and distribute burdens among those who will be protected by flood insurance and the general public. Loss cost savings, in a year equivalent to the historical average, are projected to be $6.3 million as a result of implementing this proposed rule.

National Environmental Policy Act

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, FEMA is conducting an environmental assessment of this proposed rule. If the assessment concludes that there will be a significant impact on the human environment as a result of the issuance of the proposed rule, then an Environmental Impact Statement will be prepared. Copies of the environmental assessment, when developed, will be available for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C St. SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The final rule has been reviewed by the Office of Management and Budget under E.O. 1266.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, 44 CFR Part 61 is proposed to be amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: —42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367,3 CFR 1979 Comp., p. 376.

2. Paragraph C. of Article 7 of Appendix A (1) is proposed to be revised follows:

* * * * *

C. For any flood insurance policy issued or renewed for property located in an Emergency Program community or for any property located in a Regular Program community in Zones A, AO, AH, A1–A30, AE, VO, V1–V30, VE, or V where the rates available for buildings built before the effective date of the initial Flood insurance Rate Map or December 31, 1994, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: We shall be liable only when such loss exceeds $1,000, or the amount of any other deductible which you selected when you applied for this policy or subsequently by endorsement.

* * * * *

2. Paragraph C. of Article 7 of Appendix A(2) is proposed to be revised as follows:

* * * * *

C. For any flood insurance policy issued or renewed for a property located in an Emergency Program community or for any property located in a Regular Program community in Zones A, AO, AH, A1–A30, AE, VO, V1–V30, VE, or V where the rates available for buildings built before the effective date of the initial Flood Insurance Rate Map or December 31, 1994, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $1,000, or the amount of any other deductible which the Insured selected when it applied for this policy or subsequently by endorsement.

* * * * *

2. Paragraph C. of Article 7 of Appendix A (2) is proposed to be revised as follows:

* * * * *

C. For any flood insurance policy issued or renewed for any property located in Zones A, AO, AH, A1–A30, AE, VO, V1–V30, VE, or V where the rates available for buildings built before the effective date of the initial Flood Insurance Rate Map or December 31, 1994, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: We shall be liable only when such loss exceeds $1,000, or the amount of any other deductible which you selected when you applied for this policy or subsequently by endorsement.

* * * * *

2. Paragraph C. of Article 7 of Appendix A (3) is proposed to be revised as follows:

* * * * *

C. For any flood insurance policy issued or renewed for any property located in Zones A, AO, AH, A1–A30, AE, VO, V1–V30, VE, or V where the rates available for buildings built before the effective date of the initial Flood Insurance Rate Map or December 31, 1994, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $1,000, or the amount of any other deductible which the Insured selected when it applied for this policy or subsequently by endorsement.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance"; No. 83.516, "Disaster Assistance")

Dated: September 26, 1997.

Edward T. Pasterick,

Acting Executive Administrator, Federal Insurance Administration.

[FR Doc. 97–26527 Filed 10–6–97; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement

45 CFR Part 303

RIN 0970–AB67

Child Support Enforcement Program Quarterly Wage and Unemployment Compensations Claims Reporting to the National Directory of New Hires

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would implement section 453A(g)(2)(B) of the Social Security Act (the Act), as added by section 313(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by section 5533 of Public Law 105–33, section 303(h) of the Act, in part, as amended by section 316(g) of PRWORA, and section 3304(a)(16) of the Internal Revenue Code of 1986, as amended by section 316(g) of PRWORA. These provisions require certain State entities to furnish quarterly wage and unemployment compensation data to the National Directory of New Hires or to the Secretary of Health and Human Services.

DATES: Consideration will be given to comments received by December 8, 1997.

ADDRESSES: Send comments to Director, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, S.W., 4th floor, Washington, D.C. 20447. Attention: Director, Policy and Planning Division, Mail Stop: OCSE/DPP. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. on the 4th floor of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Benson, Policy Branch, OCSE (202) 401–1467, e-mail: abenson@acf.dhhs.gov. Deaf and hearing-impaired individuals may call the federal Dual Party Relay Service at 1–800–877–8339 between 8:00 a.m. and 7:00 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This proposed regulation is published under the authority of section 453A(g)(2)(B) of the Social Security Act (the Act), 42 U.S.C. 653A(g)(2)(B), as added by section 313(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193 and amended by section 5533 of Public Law 105–33, section 303(h) of the Act, in part, 42 U.S.C. 503(h), as amended by section 316(g) of PRWORA, and section 3304(a)(16) of the Internal Revenue Code of 1986, 26 U.S.C. 3304(a)(16), as amended by section 316(g) of PRWORA.

This regulation is also proposed under the authority granted to the Secretary of Health and Human Services (Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

Section 453A(g)(2)(B) of the Act requires the State Directory of New Hires to furnish, on a quarterly basis, data concerning the wages and unemployment compensation paid to individuals to the National Directory of New Hires. Pursuant to section 453A(g)(2)(B) of the Act, the Secretary of the Department of Health and Human Services is required to publish regulations to identify the dates, format, and data elements necessary for the State Directory of New Hires to furnish the quarterly wage and unemployment compensation data to the National Directory of New Hires.

Section 3304(a)(16) of the Internal Revenue Code of 1986 contains requirements that must be included in State Unemployment Compensation laws for employers in the State to receive Federal Unemployment Tax credits. Section 316(g) of Public Law 104–193 amended section 3304(a)(16) of the Internal Revenue Code of 1986 to provide that the wage and unemployment compensation information contained in the records of the State agency administering that program shall be furnished to the Secretary of Health and Human Services, in accordance with regulations promulgated by the Secretary, as may be necessary for the purposes of the National Directory of New Hires under section 453(i)(1) of the Act. The Secretary intends to maintain the quarterly wage and unemployment compensation data reported pursuant to section 3304(a)(16) in the National Directory of New Hires (NDNH), which is being established pursuant to section 453 of the Act.

Section 303(h)(1)(A) of the Act, as amended by section 316(g) of Public Law 104–193, requires the State agency charged with the administration of the unemployment compensation program, on a reimbursable basis, to disclose quarterly, to the Secretary of Health and Human Services, wage and claim information, as required pursuant to section 453(i)(1) of the Act, that is contained in the records of such agency. As is the case with information reported pursuant to section 3304(a)(16) of the Internal Revenue Code of 1986, the Secretary intends to maintain any quarterly wage and unemployment compensation data reported pursuant to section 303(h) of the Act in the NDNH. Section 303(h)(3)(A) of the Act defines "wage information" as "information regarding wages paid to an individual, the social security account number of such individual, and the name, address, State, and the Federal employer identification number of the employer paying such wages to such individual." Section 303(h)(3)(B) defines "claim information" as "information regarding whether an individual is receiving, has received, or has made application for, unemployment compensation, the amount of any such compensation being received (or to be received by such individual), and the individual's current (or most recent) home address." Title III of the Act, Grants to States for Unemployment Compensation Administration, is directly administered by the Department of Labor. We are referencing section 303(h)(1)(A) of the Act because this provision references information required pursuant to section 453(i)(1) of the Act. Section 453(i)(1) is administered by the Department of Health and Human Services, and the information that is required pursuant to that section (which in turn references information supplied pursuant to section 453A(g)(2)) is being established in this proposed rule. The Secretary also adopted the definitions included in section 303(h) in the proposed rule in order to enable the implementation of the provisions in an integrated and complementary manner.

Background

The Federal Parent Locator Service (FPLS) is a computerized network established pursuant to section 453 of the Act, 42 U.S.C. 653, through which States may request information from Federal and State agencies to find noncustodial parents and/or their employers for purposes of establishing paternity and securing support. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires the Secretary to develop an expanded FPLS to improve States' ability to locate child support obligors and to establish and enforce child support orders, as well as for other specified purposes in Title IV-D of the Act. The Office of Child Support Enforcement (OCSE), within the Administration for Children and Families (ACF), is charged with the task of developing, implementing, and maintaining the expanded FPLS. The Secretary will house the expanded FPLS in the Social Security Administration's National Computer Center, because locating the expanded FPLS there will provide the most efficient and cost-effective mechanism for developing the expanded FPLS, as well as ensuring state-of-the-art standards for system security and confidentiality of the data.

The expanded FPLS will include the National Directory of New Hires (operational no later than October 1, 1997) and a Federal Case Registry (operational no later than October 1, 1998), and will maintain the capability to seek information from existing FPLS data sources, including, but not limited to, the Internal Revenue Service, Social Security Administration, Department of Defense, and Department of Veterans Affairs. The expanded FPLS will perform regular cross matches between the National Directory of New Hires and the Federal Case Registry. With these new FPLS resources, the interstate matching of child support obligors and employment, earnings, and benefits data will flow more efficiently and quickly between States.

The NDNH will contain three types of information. First, the NDNH will maintain employment data on newly-hired employees (new hire reporting) submitted by State Directories of New Hires pursuant to section 453A(g)(2)(A) of the Act, and by federal agencies pursuant to section 453A(b)(1)(C) of the Act. Second, the NDNH will maintain quarterly wage information on individual employees received pursuant to sections 453A(g)(2)(B) and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code of 1986, as well as quarterly wage information on federal employees received pursuant to 453(n) of the Act. Third, the NDNH will maintain unemployment compensation claims data received pursuant to sections 453A(g)(2)(B) and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code of 1986. States will be required to transmit new hire, quarterly wage and unemployment compensation claims data electronically to the NDNH. This proposed rule addresses specifically quarterly wage and unemployment compensation claims reporting to the National Directory of New Hires. Policy guidance and program instructions on new hire reporting will be forthcoming (see also OCSE Action Transmittal 97–04, March 12, 1997).

The purpose of the NDNH is to develop a repository of information on newly-hired employees, and on the earnings and unemployment compensation claims data of employees. The purpose of including quarterly wage and unemployment compensation claims data in the NDNH is to provide States with the ability to quickly locate information on the address of, employment of, and unemployment compensation being paid to, parents with child support obligations who are residing or working in other States. States will be seeking to locate these parents and their employers to either establish or enforce a child support order. Quarterly wage and unemployment compensation claims data will provide information on continuously employed and unemployed individuals who would not be located solely by new hire reporting.

Most States have been matching their quarterly wage and unemployment compensation claims data against their respective State child support caseloads since the 1980's. In addition, since 1990 the Federal Parent Locator Service has conducted cross-matches between State child support locate requests and State Employment Security Agencies, although such matches are currently limited to 250,000 cases per State per bi-weekly cross-match. The information generated from cross-matches between quarterly wage, claims and child support data, both at the State level and in the more limited FPLS context, has proven extremely beneficial for the location of child support obligors and their wages. The inclusion of quarterly wage and unemployment compensations claims data in the NDNH will allow for a substantially higher volume of interstate cross-matching than is currently possible.

The Federal Case Registry will be a national registry of individuals involved in child support cases, constructed from abstracts of child support case and order information that State Case Registries will transmit to the Federal Case Registry. The expanded FPLS, through a matching process between NDNH and the Federal Case Registry, will be able to automatically provide States with information on address, employment, and unemployment compensation claims data on parents owing child support. The expanded FPLS will also alert States to other States that have registered the same individual.

In an effort to be responsive to the President's Memorandum of March 4, 1995 to heads of Departments and Agencies which announced a government-wide Regulatory Reinvention Initiative to reduce or eliminate burdens on States, other governmental agencies or the private sector, OCSE formed an FPLS workgroup which held three meetings between September, 1996 and March, 1997. The purpose of the FPLS workgroup is to provide consultation regarding the design, development, and regulatory requirements for the expanded FPLS. This group is comprised of representatives from State Child Support Agencies, State Employment Security Agencies, the Federal Office of Child Support Enforcement, the U.S. Department of Labor, the Social Security Administration, the Interstate Conference of State Employment Security Agencies, employer groups, payroll associations, and other interested individuals. The workgroup members provided information regarding quarterly wage and unemployment compensation claims reporting which was considered in developing these proposed regulations.

Description of Regulatory Provisions

We are proposing to implement the three new statutory reporting requirements by adding a new section, 45 CFR 303.108, "Quarterly Wage and Unemployment Compensations Claims Reporting to the National Directory of New Hires," to existing rules governing the child support enforcement program under Title IV–D of the Act. Although there are three separate reporting provisions, the information required to be reported is substantially the same for all three. Therefore, OCSE proposes to address the Secretary's responsibilities under all three provisions by a single regulation which will permit the data required to be furnished under the three provisions to be supplied in a single, quarterly submission. Further, OCSE will consider the reporting requirements to have been satisfied if any one of the required reporting entities submits the information in accordance with the provisions of the regulation. OCSE intends to leave the decision as to which entity will report up to the individual States. Accordingly, the regulation refers to the "State" as the entity that must transmit data to the NDNH. However, if data is not reported as required under the proposed regulation, OCSE intends to hold the State Title IV–D agency accountable for the failure of the State Directory of New Hires to report as required under section 453A(g)(2)(B). Section 454(28) of the Act, as added by section 313(a) of PRWORA, added a new State plan requirement for Title IV–D agencies to operate a State Directory of New Hires in accordance with section 453A of the

Act. The failure to report as required pursuant to section 303(h) of the Act or section 3304(a)(16) of the Internal Revenue Code of 1986 may also result in actions being taken by the Secretary of Labor.

The proposed 45 CFR 303.108(a) contains definitions designed to clarify quarterly wage and unemployment compensation claims reporting. Paragraph (a)(1) defines "Reporting period" as the time elapsed during a calendar quarter, e.g. January–March, April–June, July–September, October–December. "Wage information" is defined in paragraph (a)(2) as: (1) the name of the employee; (2) the employee's social security number; (3) aggregate wages of the employee during the reporting period; and (4) the name and address (and optionally, any second address for wage withholding purposes) and Federal employer identification number of the employer reporting wages. In the event that an individual is working more than one job, the State must transmit separate quarterly records containing the "wage information" for each job an individual has held. The information being included as wage information is the minimal amount of data needed to meet the purposes of the NDNH. OCSE is requesting data on the names of employees in order to meet the requirements of section 453(j)(1) of the Act, 42 U.S.C. 653(j)(1). Section 453(j)(1) requires the Secretary of Health and Human Services to transmit the information in the NDNH to the Social Security Administration to verify the accuracy of the name, social security number, and birth date of each individual. "Unemployment compensation or claim information" is defined in paragraph (a)(3) as: (1) Whether an individual is receiving, has received or has applied for unemployment compensation; (2) the individual's name and current (or most recent) home address; (3) the individual's social security number; and 4) the aggregate gross amount of compensation the claimant received during the reporting quarter.

The proposed paragraph (b) of 45 CFR 303.108 contains the requirements for quarterly wage and unemployment compensation claims reporting. Under proposed paragraph (b), the State would be required to disclose quarterly, to the National Directory of New Hires, wage and claim information, as defined in paragraph (a), that is collected pursuant to a State's unemployment compensation program referenced in Title III of the Act or pursuant to section 1137 of the Act. OCSE does not propose to require the collection or reporting of any additional wage information for purposes of the NDNH beyond that which is currently being collected. Wage and unemployment claim information is currently reported to agencies administering unemployment compensation laws under title III of the Act or to other agencies pursuant to section 1137(a) of the Act as part of the income and eligibility verification program, so proposed paragraph (b) will not impose an additional information requirement. OCSE is also aware that some States' compensation records either do not include employee names or record only a partial set of the letters in the employee's name. Similarly, OCSE is aware that State unemployment compensation laws do not require all employers to report information. In the proposed regulation, the State is only required to supply wage information which is already contained in the records of the State. Therefore, in the case of employee names or wages, a State is required to send us as much information on employee names or wages as exists in the unemployment compensation records, or in the records maintained for purposes of section 1137 of the Act if the information is maintained by another agency. The reference to section 1137 has been included to cover those situations where States have alternate data collection systems to make it clear that the data in such alternate systems would be covered by the regulation.

Similarly, the State is only required to supply claim information which is already contained in the records of the State agency administering the unemployment compensation program or the records maintained for purposes of section 1137 of the Act. There is no requirement being imposed to collect additional claim information for purposes of the NDNH. In addition, the State is only being required to furnish the NDNH with claim information that is processed electronically. OCSE believes that it is neither feasible nor cost effective to require that States transmit claims data for those relatively few benefit programs which are processed manually. State Employment Security Agencies and the Department of Labor have indicated that manually processed claims comprise a very small portion of total claims. We understand that the unemployment compensation programs being administered by States cover any compensation payable under State unemployment compensation law (including amounts payable in accordance with agreements under any Federal unemployment compensation law) and extended benefits, unemployment compensation for Federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, and disaster unemployment assistance. We invite comment regarding the regulatory language and whether it appropriately covers these benefits.

The proposed 45 CFR 303.108(c) sets the time frames for quarterly wage and claims reporting. The State would be required to report wage information for the reporting period no later than the end of the fourth month following the reporting period. For the reporting period of July-September, 1997, the first period for which wage reporting would be required, the State would be required to furnish wage information to the Secretary no later than January 31, 1998. Currently, State laws generally allow employers one month following the reporting period to report quarterly wages to the State agency administering the unemployment compensation program. We believe that the time frame for States to report wage information to the Secretary for the purposes of the NDNH will ensure that States have adequate time to enter, edit, and transmit wage information to the Secretary. Given the necessity and importance of maintaining accurate wage data in the NDNH, the proposed schedule for reporting allows States ample time to work with employers to correct inaccurate wage reports and to submit complete and comprehensive wage information on employees within a State.

The State would be required to report claim information for the reporting period no later than the end of the first month following the end of the reporting period. The State would be required to begin the reporting of claim information for the reporting period of October-December, 1997. We believe that a shorter time frame for submitting claim information, as opposed to wage information, is appropriate because the State agency charged with administering the unemployment compensation program maintains this data on an ongoing basis. Also, as noted above, the collection of wage information lags behind the collection of claim information because of the time required to ensure that wage information submitted is accurate.

In order to ensure the effective implementation of the NDNH, the Secretary is planning a staggered schedule for initial data submissions to the NDNH. The reporting of new hire data will begin on October 1, 1997, followed by initial quarterly wage and claims information submissions on January 31, 1998. For this reason, the Secretary will require that claims information be submitted for the period beginning October–December, 1997, rather than July–September, 1997.

The proposed 45 CFR 303.108(d) provides that the Secretary will establish standardized formats for reporting quarterly wage and claim information and that the States will be required to adhere to such formats for reporting purposes. The formats identify the data elements, descriptions and tape specifications for reporting quarterly wage and claim information. These formats were published in the **Federal Register** for comment on July 25, 1997 (62 FR 40092).

Paperwork Reduction Act of 1995

Sections 453A(g)(2)(B) and 303(h) of the Act and section 3304(a)(16) of the Internal Revenue Code of 1986 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

As discussed earlier, sections 453A(g)(2)(B) and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code of 1986, require various State entities to furnish to the Secretary of Health and Human Services or the National Directory of New Hires, on a quarterly basis, data concerning the wages and unemployment compensation paid to individuals. The Secretary of the Department of Health and Human Services is required to publish regulations to identify the dates, format, and data elements necessary for States to furnish this data. The purpose of these requirements is to develop a repository of information on the earnings and unemployment compensation claims data on all employees to provide the necessary information to locate individuals for child support purposes, as well as for other specified purposes in Title IV–D of the Act. This data will be combined with new hire data to be reported to the NDNH pursuant to section 453A of the Act. Quarterly wage and unemployment compensation claims data will provide for the location of continuously employed and unemployed individuals who would not be located by new hire reporting.

All 50 States, as well as the District of Columbia, the Virgin Islands, and Puerto Rico, will be required to report quarterly wage and unemployment compensation claims data to the NDNH. The proposed regulation requires the State to disclose quarterly, to the NDNH, wage and claim information that is currently being collected pursuant to a State's unemployment compensation program referenced in Title III of the Act or pursuant to section 1137 of the Act. Wage information is defined to include: (1) the name of the employee; (2) the employee's social security number; (3) aggregate wages of the employee during the reported period; and, (4) the name, address (and optionally, any second address for wage withholding purposes), and Federal employer identification number of the employer reporting wages under a State unemployment compensation law. Claim information is defined as: (1) The status of an individual's claim for unemployment compensation (i.e., is receiving, has received, or has made application for benefits); (2) The individual's name and current (or most recent) home address; (3) the individual's social security number; and, (4) the aggregate gross amount of compensation the claimant received during the reporting quarter. To ensure that public comments have maximum effect in developing the final regulations, ACF urges that each commenter clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Because all quarterly wage and unemployment compensation claims data will be reported from the State to the NDNH electronically and will be limited to data already being collected, the burden on the States will be minimal. The average burden per response is estimated to be 2 minutes (.03 hours). States may also have a one-time initial start-up burden of two weeks (80 hours) for reprogramming their systems to comply with Federal reporting requirements. The total annual reporting and recordkeeping burden that will result from the collection of information is estimated to be 7.13 hours.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting non-electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington D.C. 20503, Attn: Ms. Wendy Taylor.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals. State governments are not considered small entities under the Act.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. The proposed rule implements the statutory provisions by specifying the wage and unemployment compensation claims information that must be reported to the Secretary of Health and Human Services.

Unfunded Mandates Act

The Department has determined that this proposed rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4).

List of Subjects in 45 CFR Part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: July 8, 1997.

Olivia A. Golden,

Principal Deputy Assistant, Secretary for Children and Families.

Approved: August 14, 1997.

Donna E. Shalala,

Secretary, Department of Health Human Services.

For the reasons discussed above, we propose to amend title 45 CFR Chapter III of the Code of Federal Regulations as follows:

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation of Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. A new 303.108 is added to read as follows:

§ 303.108 Quarterly wage and unemployment compensation claims reporting to the national directory of new hires.

(a) *What definitions apply to quarterly wage and unemployment compensation claims reporting?* When used in this section:

(1) *Reporting period* means time elapsed during a calendar quarter, e.g. January–March, April–June, July–September, October–December.

(2) *Wage information* means:

(i) The name of the employee;

(ii) The social security number of the employee;

(iii) The aggregate wages of the employee during the reporting period; and

(iv) The name, address (and optionally, any second address for wage withholding purposes), and Federal employer identification number of an employer reporting wages.

(3) *Unemployment compensation or claim information* means:

(i) Whether an individual is receiving, has received or has applied for unemployment compensation;

(ii) The individual's name and current (or most recent) home address;

(iii) The individual's social security number; and

(iv) The aggregate gross amount of compensation the claimant received during the reporting quarter.

(b) *What data must be transmitted to the National Directory of New Hires?* The State shall disclose quarterly, to the National Directory of New Hires, wage and claim information as defined in paragraph (a) that is collected pursuant to a State's unemployment compensation program referenced in Title III of the Act or pursuant to section 1137 of the Act.

(c) *What time frames apply for reporting quarterly wage and unemployment compensation claims data?* The State shall report wage information for the reporting period no later than the end of the fourth month following the reporting period. The State shall report claim information for the reporting period no later than the end of the first month following the reporting period.

(d) *What reporting formats will be used for reporting data?* The State must use standardized formats established by the Secretary of Health and Human Services for reporting wage and claim information.

[FR Doc. 97–26538 Filed 10–6–97; 8:45 am]
BILLING CODE 4184–01–U

Notices

Federal Register
Vol. 62, No. 194
Tuesday, October 7, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–072–2]

Supplemental Environmental Impact Statement for the Importation of Logs, Lumber, and Other Unmanufactured Wood Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our notice announcing that we intend to prepare a supplement to the environmental impact statement, issued in July 1994, for the rulemaking proceeding entitled "Importation of Logs, Lumber, and Other Unmanufactured Wood Articles." This reopening and extension will provide interested groups and individuals with additional time to prepare comments on the request for information.

DATES: Consideration will be given only to comments on Docket No. 97–072–1 that are received on or before October 24, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–072–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–072–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Orr, Entomologist, Risk Analysis Systems, PPD, APHIS, 4700 River Road Unit 117, Riverdale, MD 20737–1238, (301) 734–8939, or Jack Edmundson, Project Leader, Environmental Analysis and Documentation, PPD, APHIS, 4700 River Road, Unit 149, Riverdale, MD 20737–1238, (301) 734–8565.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1997, we published in the **Federal Register** (62 FR 45217, Docket No. 97–072–1) a notice advising the public that the Animal and Plant Health Inspection Service would prepare a supplement to the environmental impact statement, issued in July 1994, for the rulemaking proceeding entitled "Importation of Logs, Lumber, and Other Unmanufactured Wood Articles." Comments on that notice were invited and a comment due date of September 25, 1997, was established. We are now advising the public that an extension of the comment due date, to October 24, 1997, has been granted in response to several requests for such an extension. This action will allow interested groups and individuals additional time to prepare and submit comments.

Done in Washington, DC, this 1st day of October 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–26511 Filed 10–6–97; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection in support of the USDA's Export Sales Reporting Program.

DATES: Comments on this notice must be received by December 8, 1997 assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Thomas B McDonald, Jr., Chief, Export Sales Reporting, International Trade Policy, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250–1025, (202) 720–3273, FAX (202) 690–3275.

SUPPLEMENTARY INFORMATION:

Title: Export Sales of U.S. Agricultural Commodities.

OMB Number: 0551–0007.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: The Agricultural Trade Act of 1978 requires mandatory reporting by all export sellers of selected U.S. produced agricultural commodities. The published data is an "early warning" of sales activity and provides basis for more informed decisions by producers, exporters, futures markets participants, consumers, and government. The respondents include any person or company who sells a reportable commodity to a foreign buyer.

USDA's export sales reporting system has its roots in the unexpected purchase of large amounts of U.S. wheat and corn by the Soviet Union in 1972. To make sure that all parties involved in the production and export of U.S. grain have access to up-to-date export information, the U.S. Congress mandated an export sales reporting requirement in 1973. Prior to the establishment of the export reporting system, it was impossible for the public to obtain information on export sales activity until the actual shipments had taken place. This frequently resulted in considerable delay in the availability of information.

Under the export sales reporting system, U.S. exporters are required to report all large sales of certain designated commodities by 3 p.m. (Eastern time) on the next business day after the sale is made. The designated commodities for these daily reports are wheat (by class), barley, corn, grain sorghum, oats, soybeans, soybean cake and meal, and soybean oil. Large sales

for all reportable commodities except soybean oil are defined as 100,000 metric tons or more of one commodity in one day to a single destination or 200,000 tons or more of one commodity during the weekly reporting period. Large sales for soybean oil are 20,000 tons and 40,000 tons, respectively.

Weekly reports are also required, regardless of the size of the sales transaction, for all of these commodities, as well as wheat products, rye, flaxseed, linseed oil, sunflowerseed oil, cotton (by staple length), cottonseed, cottonseed cake and meal, cottonseed oil, rice (by class), and cattle hides and skins (cattle, calf, and kip). The reporting week for the export sales reporting system is Friday–Thursday. The Secretary of Agriculture has the authority to add other commodities to this list.

Sunflowerseed oil was added to the program in April, 1997. Nine exporters have reported sales totaling 271 thousand metric tons resulting in exports of 244 thousand tons through the period ending September 11, 1997.

U.S. exporters provide information on the quantity of their sales transactions, the type and class of commodity, the marketing year of shipment, and the destination. They also report any changes in previously reported information, such as cancellations and changes in destinations.

Estimate of Burden: Public reporting burden for collecting information under this proposed rule is estimated to average 32.4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Business and other for-profit.

Estimated Number of Respondents: 299.

Estimated number of annual Responses per Respondent: 140.

Estimated total annual burden on Respondents: 22,604 hours.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

Request for Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas B. McDonald, Jr., Chief, Export Sales Reporting, International Trade Policy, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Stop 1025, Washington DC 20250–1025, or FAX (202) 690–3275.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, October 1, 1997.

Christopher E. Goldthwait,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 97–26524 Filed 10–6–97; 8:45 am]

BILLING CODE 3410–10–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, and Additional Releases

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on September 17, 1997, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: Kevin G. Tiernan, Assassination Records Review Board, Second Floor, Washington, DC 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On September 17, 1997, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations

For each document, the number of postponements sustained immediately follows the record identification number, followed, where appropriate, by the date the document is scheduled to be released or re-reviewed.

FBI Documents: Postponed in Part

124–10196–10472; 4; 10/2017
124–10200–10264; 22; 10/2017
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CIA Documents: Postponed in Part

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Notice of Additional Releases

After consultation with appropriate Federal agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full:

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After consultation with appropriate Federal agencies, the Review Board announces that the following Central Intelligence Agency records are now being opened in full:

10051–10277; 104–10051–10279; 104–10051–10280; 104–10051–10281; 104–10051–10284; 104–10051–10288; 104–10051–10290; 104–10051–10294; 104–10052–10000; 104–10052–10001; 104–10052–10002; 104–10052–10005; 104–10052–10016; 104–10052–10017; 104–10052–10020; 104–10052–10022; 104–10052–10023; 104–10052–10024; 104–10052–10025; 104–10052–10027; 104–10052–10029; 104–10052–10031; 104–10052–10033; 104–10052–10035; 104–10052–10038; 104–10052–10041; 104–10052–10042; 104–10052–10049; 104–10052–10050; 104–10052–10051; 104–10052–10053; 104–10052–10055; 104–10052–10060; 104–10052–10062; 104–10052–10065; 104–10052–10067; 104–10052–10068; 104–10052–10071; 104–10052–10073; 104–10052–10074; 104–10052–10076; 104–10052–10080; 104–10052–10086; 104–10052–10088; 104–10052–10110; 104–10052–10117; 104–10052–10120; 104–10052–10123; 104–10052–10127; 104–10052–10131; 104–10052–10133; 104–10052–10134; 104–10052–10138; 104–10052–10139; 104–10052–10140; 104–10052–10143; 104–10052–10156; 104–10052–10168; 104–10052–10171; 104–10052–10173; 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After consultation with appropriate Federal agencies, the Review Board announces that the following House Select Committee on Assassinations records are now being opened in full:

180–10001–10378; 180–10001–10445; 180–10001–10446; 180–10001–10447; 180–10001–10448; 180–10001–10449; 180–10001–10450; 180–10001–10451; 180–10001–10482; 180–10068–10425; 180–10068–10429; 180–10068–10478; 180–10068–10479; 180–10068–10480; 180–10072–10034; 180–10077–10213; 180–10077–10422; 180–10080–10085; 180–10080–10420; 180–10082–10002; 180–10083–10346; 180–10083–10390; 180–10086–10056; 180–10087–10064; 180–10089–10497; 180–10095–10244; 180–10095–10355; 180–10095–10370; 180–10095–10421; 180–10102–10390; 180–10105–10263; 180–10107–10129; 180–10108–10319; 180–10108–10410; 180–10112–10424; 180–10114–10102; 180–10115–10093; 180–10115–10098; 180–10120–10013; 180–10130–10014.

Dated: October 1, 1997.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 97–26462 Filed 10–6–97; 8:45 am]

BILLING CODE 6118–01–P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: October 14, 1997.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 97–26571 Filed 10–2–97; 3:33 pm]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Benchmark Survey of Foreign Direct Investment in the United States—1997.

Form: BE–12(LF), BE–12(SF), BE–12 Bank, BE–12(X).

Agency Approval Number: 0608–0042.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 245,000 hours.

Number of respondents: 11,000.

Avg Hours Per Response: 22 hours.

Needs and Uses: The purpose of the benchmark survey is to obtain enterprise-level data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States. The data from the survey will be used to measure the economic significance of such investment and to analyze its effects on the U.S. economy. They will also be used in formulating, and assessing the impact of, U.S. policy on foreign direct investment.

The data from the survey will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies. Data from the benchmark survey are used by BEA to compute U.S. affiliates' gross product or value added, which is used to measure U.S. affiliates' share of U.S. gross domestic product and to evaluate affiliates' profitability and productivity. Data on employment by affiliates are used to link enterprise-level data on foreign-owned companies collected in the benchmark survey to establishment-level data for the same companies collected by the Census Bureau.

The benchmark survey data also serve as general purpose statistics and, as such, are used to answer a wide variety of research and policy questions. International organizations—including the United Nations, International Monetary Fund, and Organization for Economic Cooperation and Development—use the data to help assess the impact of direct investment on the U.S. and foreign economies. Numerous private researchers—including researchers affiliated with the National Bureau of Economic Research—also use the data.

Affected Public: Businesses or other for-profit institutions.

Frequency: Quinquennial.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 2, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–26560 Filed 10–6–97; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–802]

Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Request for Comments.

SUMMARY: The Department of Commerce is hereby providing interested parties an opportunity to comment on proposed procedures to administer and enforce the uranium transfer provisions of Section 3112 of the USEC Privatization Act. All comments are due to the Department of Commerce within 30 days of publication of this notice.

EFFECTIVE DATE: October 7, 1997.

FOR FURTHER INFORMATION CONTACT: James Doyle or Karla Whalen, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–0159 or (202) 482–0408, respectively.

Background: On April 26, 1996, the USEC Privatization Act was signed into law (Pub. L. 104–134, 42 USC 2297(h) *et seq.*). In part, the USEC Privatization Act provides for the measured delivery into the United States market of the natural uranium component of highly enriched uranium (HEU) imported pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993. Pursuant to Section 3112(b)(9) of the USEC Privatization Act, the Department of Commerce (the Department) is responsible for the administration and enforcement of the limitations set forth in Section 3112 of the USEC Privatization Act.

Opportunity to Submit Comments: The Department is preparing procedures to administer and enforce the limitations on the delivery of the natural uranium associated with imports of low enriched uranium (LEU) derived from HEU according to the restrictions in the USEC Privatization Act and the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Suspension Agreement). The specific elements of the proposal are included in the attached Annex.

Prior to reaching a final decision on this issue, the Department is providing an opportunity for full participation on the record to parties wishing to comment. Accordingly, not later than 30 days from the date of publication of this notice, parties may submit comments with respect to the attached procedures which will govern the administration and enforcement of the limitations set worth in Section 3112 of the USEC Privatization Act. Six copies of the comments should be submitted to: Secretary of Commerce, Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. All comments provided to the Department in response to this notice will be subject to release under Administrative Protective Order (APO) in accordance with 19 CFR 353.32. Therefore, all comments must properly identify information the submitter would like treated as business proprietary, and be accompanied by a properly bracketed public version. The Department will meet with interested parties upon request to explain the proposed procedures contained in the Annex to this notice. Any party uncertain of the proper procedures for filing under APO may contact the Department for further information and assistance.

Dated: October 1, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary for Group III.

Annex

Proposed Procedures For The Sale And Delivery Of The Notural Uranium Feed Component Of Highly Enriched Uronium Entries

These following proposed procedures have been developed pursuant to the Department's authority to administer and enforce the limitations set forth in Section 3112(b)(9) of the USEC Privatization Act. To avoid confusion, the Department intends to follow procedures established under the Suspension Agreement, as closely as possible.

Submission of Contracts

- Matched sales utilizing natural uranium associated with LEU imports derived from HEU (the natural uranium component), pursuant to Section 3112(b)(6) of the Act, will be reviewed and approved according to current existing matched sales procedures. The matched sales procedures and appropriate definitions are contained in the Amendment to the Suspension Agreement (59 FR 15373 (April 1, 1994)) and related Statements of Administrative Intent which are available by contacting the Department personnel listed above.
- All contracts for the sale of the natural uranium component between any parties must be submitted to the Department.

Allocation of Natural Uranium Component According to Available Direct Delivery Quota

The Department believes that allocating the delivery quota available under section 3112(b) of the USEC Privatization Act will contribute to the efficient and equitable administration of the delivery schedule set forth in subsection 3112(b)(5) of the USEC Privatization Act. The Department intends to use the following approach to allocate the delivery quotas.

- The Department will allocate a portion of the quota to a party only upon receipt of submitted contracts and confirmation by the Department on a first-come first-served basis.
- The Department will determine the amount of quota used by a given contract by applying the maximum annual deliveries (including allowed flexibilities) under the contract to the remaining quota available for each of the appropriate delivery years.
- Consistent with Section 3112(b)(5) of the USEC Privatization Act, all requests submitted to the Department for confirmation must contain, in addition to the contract, a statement from the end-user certifying that the material will be delivered solely for consumption in the United States.

Monitoring and Enforcement

- The Department will strictly monitor and verify the movement of the natural uranium component between accounts.
- The Department will require that account balances be documented to the Department on a quarterly basis.
- The Department reserves the right to conduct on-site verifications of documentation reflecting natural uranium component transactions.
- Procedures customarily applied to imports of CIS-origin uranium will also apply to all physical imports into the United States of the natural uranium component.

Please also comment on the following:

- Should the Ministry of Atomic Energy of the Russian Federation license the material authorizing delivery for its intended use, in accordance with section 3112(b)(5) of the USEC Privatization Act?
- Should the Department directly monitor or approve every transfer of natural uranium component-related material between companies' accounts?

[FR Doc. 97–26549 Filed 10–6–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals: General Incidental Take Permits, Small Take Exemptions, and Certificates of Inclusion

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 8, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Wanda L. Cain, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–2055).

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is used to issue Certificates of Inclusion under the General Permit issued to the American Tunaboat Association (ATA) and to process requests for dolphin mortality limits from those vessels intending to fish for tuna in the eastern tropical Pacific Ocean (ETP) with purse seine nets. This is the only General Permit authorized under the Marine Mammal Protection Act, and it governs the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. Individual vessels must obtain certificates of inclusion under this permit.

II. Method of Collection

Currently, no take of marine mammals is authorized under the General Permit issued to the ATA under the Marine Mammal Protection Act since the established quota is zero. However, NMFS requires vessels fishing for tuna in the eastern tropical Pacific Ocean to maintain valid Vessel and Operator Certificates of Inclusion to maintain adequate observer coverage.

Each year, NMFS notifies current certificated vessels and operators of their obligation to renew their certificates if they intend to fish in the eastern tropical Pacific Ocean. Vessel Certificates of Inclusion are valid for one year, non-transferable, and cost $200. Operator Certificates of Inclusion are valid for one year, non-transferable, and no fee is required. However, to qualify for an Operator Certificate of Inclusion, the operator must have a current or previous calendar year Certificate of Inclusion or attend a new operator's workshop session.

III. Data

OMB Number: 0648–0083.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Individuals & Businesses.

Estimated Number of Respondents: 27.

Estimated Time Per Response: 0.25 hr.

Estimated Total Annual Burden Hours: 6.75 hrs.

Estimated Total Annual Cost to Public: $0.00 (no capital expenditures are required of respondents).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 1, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–26562 Filed 10–6–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093097G]

Draft Strategic Plan for Fisheries Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of and seeks public comment on the draft Strategic Plan for Fisheries Research.

Section 404 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce to develop, trianually, a strategic plan for fisheries research for the subsequent years. Any written comments on the draft plan will be considered by NMFS in the development of the final Strategic Plan for Fisheries Research.

DATES: Comments on the plan will be accepted on or before November 6, 1997.

ADDRESSES: Requests for copies of the draft plan and comments on the draft plan should be directed to John T. Everett, Chief, Research, Analysis, and Coordination Division, Office of Science and Technology, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. PHONE: (301) 713–2363. FAX: (301) 713–1875.

FOR FURTHER INFORMATION CONTACT: John Everett or Carolyn Brown at 301–713–2363.

SUPPLEMENTARY INFORMATION: Section 404 of the Magnuson-Stevens Act requires the Secretary of Commerce to publish in the **Federal Register** a strategic plan for fisheries research for the five years immediately following the plan's publication. The Magnuson-Stevens Act requires that the plan address four major areas of research: (1) Research to support fishery conservation and management; (2) conservation engineering research; (3) research on the fisheries; and (4) information management research. The Magnuson-Stevens Act specifies that the plan shall contain a limited number of priority objectives for each of these research areas; indicate goals and timetables; provide a role for commercial fishermen in such research; provide for collection and dissemination of complete and accurate information concerning fishing

activities; and be developed in cooperation with the Councils and affected states.

In 1997, NMFS published a Strategic Plan for NOAA Fisheries. The NMFS Strategic Plan was developed in a comprehensive manner, with extraordinary public involvement, including 16 public meetings. The present Strategic Plan for Fisheries Research is based upon and entirely consistent with the NMFS Strategic Plan. It is a subset of the all-encompassing NMFS Strategic Plan, focusing on science research activities. The objectives found under the *Major Fishery Research Objectives and Goals* section of the subject document can be matched with those in the NMFS Strategic Plan. In addition, the strategies, goals and objectives of the draft Strategic Plan for Fisheries Research are wholly consistent with the 1993 NOAA Strategic Plan: A Vision for 2005.

The scope of the present document is solely fisheries research to support the Act. It does not include the regulatory and enforcement components of the NMFS mission. NMFS currently conducts a comprehensive program of fisheries research and involves industry and others interested in fisheries in planning and implementing its objectives.

NMFS intends that the final version of the Strategic Plan for Fisheries Research will take advantage of information and recommendations from all interested parties. Therefore, comments and suggestions on this draft NMFS Strategic Plan for Fisheries Research are hereby solicited from the public, other concerned government agencies, the scientific community, industry, and any other person.

Dated: October 1, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26554 Filed 10–6–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093097D]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's Scientific and Statistical Committee Salmon Subcommittee will hold a public meeting.

DATES: The meeting will begin at 1 p.m. on October 22 and recess in the evening. On October 23 and 24, the meeting will convene at 8:30 a.m. and recess upon completion of each day's agenda.

ADDRESSES: The meeting will be held at the Northwest Fisheries Science Center, National Marine Fisheries Service, 2725 Montlake Boulevard East, Room 370–West, Seattle, WA 98112–2097; telephone (206) 860–3200.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Seger, Economic Analysis Coordinator, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review methodologies used by the Council to manage salmon.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: October 1, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26551 Filed 10–6–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration (NTIA)

Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; Notice of Open Meeting

DATE: October 7, 1997.

ACTION: Notice is hereby given of a meeting of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, created pursuant to Executive Order 13038.

SUMMARY: The President established the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (PIAC) to advise the Vice President on the public interest obligations of digital broadcasters. The Committee will study and recommend which public interest obligations should accompany broadcasters' receipt of digital television licenses. The President designated the National Telecommunications and Information Administration to provide secretariat services for the Committee.

AUTHORITY: Executive Order 13038, signed by President Clinton on March 11, 1997.

DATES: The meeting will be held on Wednesday, October 22, 1997 from 8:30 a.m. until 5:30 p.m., and on Thursday, October 23, 1997 from 8:30 a.m. until 1:00 p.m.

ADDRESSES: The meeting is scheduled to take place in the Auditorium at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. This location is subject to change. If the location changes, another **Federal Register** notice will be issued. Updates about the location of the meeting will also be available on the Advisory Committee's homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm or you may call Karen Edwards at 202–482–8056.

FOR FURTHER INFORMATION CONTACT: Karen Edwards, Designated Federal Officer and Telecommunications Policy Specialist, at the National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4716; 14th Street and Constitution Avenue, N.W.; Washington, DC 20230. Telephone: 202–482–8056; Fax: 202–482–8058; E-mail: piac@ntia.doc.gov.

Media Inquiries: Please contact Paige Darden at the Office of Public Affairs, at 202–482–7002.

Agenda

Wednesday, October 22

Opening remarks
Announcement and introduction of members
Committee discussion of organization and structure
Briefings
Public comment period

Thursday, October 23

Remarks
Briefings

This agenda is subject to change. For an updated, more detailed agenda, please check the Advisory Committee homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm.

Public Participation: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. This meeting is physically accessible to people with disabilities. Any member of the public requiring special services, such as sign language interpretation or other ancillary aids, should contact Karen Edwards at least five (5) working days prior to the meeting at 202–482–8056 or at piac@ntia.doc.gov. Please bring a form of picture identification such as a driver's license or passport for clearance into the building on the day of the meeting.

Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting. Comments should be submitted through electronic mail to piac@ntia.doc.gov (please use "Public Comment" as the subject line) or by letter addressed to the Committee at the address listed below (please place "Public Comment" on the bottom left of the envelope).

Guidelines For Public Comment: The Advisory Committee on Public Interest Obligations of Digital Television Broadcasters welcomes public comments. In general, opportunities for oral comment will usually be limited to no more than five (5) minutes per speaker and no more than thirty (30) minutes total at meetings. Written comments received from the public may be mailed (if at least thirty-five (35) paper copies are submitted) or forwarded by e-mail to the committee members prior to the meeting date. However, comments received too close to the meeting date will normally be provided to committee members at the meeting. Written comments received shortly after a meeting will be compiled and sent as briefing material prior to the next meeting.

Obtaining Meeting Minutes: Within thirty (30) days following the meeting, copies of the minutes of the meeting may be obtained over the Internet at www.ntia.doc.gov/pubintadvcom/pubint.htm, by phone request at 202–501–6195, or by written request to Karen Edwards; Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4716; 14th Street and Constitution Avenue N.W.; Washington, DC 20230.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 97–26548 Filed 10–6–97; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Technology Administration

National Medal of Technology

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 8, 1997.

ADDRESSES: Direct written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Katie Wolf, National Medal of Technology, Technology Administration, Room 4226 Department of Commerce, Washington, DC 20230, 202/482–3953 phone, and 202/501–8153 fax.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a renewal of a currently approved submission by the U.S. Department of Commerce's Technology Administration. The nominating forms associated with this annual Presidential Medal contain information that is necessary in order to select the Nation's outstanding contributors to the development and commercialization of technology for the improvement of this country's competitiveness.

II. Method of Collection

Nomination forms are made available for wide public distribution. Individuals, teams and/or companies voluntarily complete the forms and submit them to the Department of Commerce, Technology Administration by mail.

III. Data

OMB Number: 0692–0001.
Form Number: None.
Type of Review: Regular submission for a renewal.
Affected Public: Individuals, businesses, non-profit institutions, Federal agencies or employees and small businesses or organizations.
Estimated Number of Respondents: 125.
Estimated Time Per Response: 3 hours.
Estimated Total Annual Burden: 375 hours.
Estimated Total Annual Cost: $15,000—no capital expenditures are required from members of the public.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: October 1, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–26561 Filed 10–6–97; 8:45 am]

BILLING CODE 3510–18–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, October 23, 1997.

PLACE: 1155 21st St. N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Program objectives.

CONTACT PERSON FOR MORE INFORMATION: Catherine Dixon, 202–418–5100.

Catherine Dixon,

Assistant Secretary of the Commission.

[FR Doc. 97–26650 Filed 10–3–97; 11:40 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:30 a.m., Wednesday, October 22, 1997.
PLACE: 1155 21st St. N.W., Washington, D.C., 9th Floor Conference Room.
STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Catherine Dixon, 202–418–5100.

Catherine Dixon,
Assistant Secretary of the Commission.
[FR Doc. 97–26651 Filed 10–3–97; 11:40 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 1:00 p.m., Wednesday, October 15, 1997.
PLACE: 1155 21st St., N.W., Washington, D.C. Lobby Level Hearing Room located at Room 1000.
STATUS: Open.

MATTERS TO BE CONSIDERED:

Hearing on the proposed order to Chicago Board of Trade to change and to supplement CBT's proposal on delivery specifications.

CONTACT PERSON FOR MORE INFORMATION: Catherine Dixon, 202–418–5100.

Catherine Dixon,
Assistant Secretary of the Commission.
[FR Doc. 97–26652 Filed 10–3–97; 11:40 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 62 F.R. 49499.
PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., Friday, October 14, 1997.
CHANGES IN THE DATE: The Commodity Futures Trading Commission is correcting the date. The closed meeting to discuss Adjudicatory Matters is scheduled for 2:00 p.m., Tuesday, October 14, 1997.
CONTACT PERSON FOR MORE INFORMATION: Catherine Dixon, 418–5100.

Catherine D. Dixon,
Assistant Secretary of the Commission.
[FR Doc. 97–26653 Filed 10–3–97; 11:40 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Friday, October 17, 1997.
PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.
STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Catherine Dixon, 202–418–5100.

Catherine Dixon,
Assistant Secretary of the Commission.
[FR Doc. 97–26654 Filed 10–3–97; 11:40 am]
BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Collection: Comment Request; Submission for OMB Review of National Senior Service Corps Grant Application

The Corporation for National and Community Service's National Senior Service Corps (Senior Corps) is submitting a public information collection request (ICR) on the revised Senior Corps Grant Application to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of the revised Grant Application may be obtained by calling the Corporation for National Service, Janice Forney Fisher, (202) 606–5000, extension 275. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 20503, (202) 395-7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility end clarity of the information to be collected; and
- Minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Type of Review: Request for 3-Year Renewal of OMB Approval through December 31, 2000.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps Grant Application.

OMB Number: 3045–0035.

Agency Number: 424–NSSC.

Affected Public: Prospective Sponsors for National Senior Service Corps Grants.

Total Respondents: Estimated at 1,463 Annually.

Frequency: Ranges from Every Three Years to Annually Based on Specific Program Requirements.

Estimated Time Per Respondent: Averages 13.3 hours. Estimated at 16.5 hours for first-time respondents, 15 hours for continuation sponsors, and 5 hours for revisions.

Estimated Annual Reporting or Disclosure Burden: 19,450 hours

Total Annualized Capital/Startup Costs: None.

Total Annualized Burden Costs: $2,867.

Description: The National Senior Service Corps Grant Application is submitted by prospective grantees to apply for sponsorship of projects under the Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), and Senior Companion Program (SCP), collectively known as the Senior Corps. Completion of the Grant Application is required to obtain sponsorship.

In March 1997, the National Senior Service Corps (Senior Corps) announced a 60-day review and comment period, ending May 30, 1997, during which project sponsors and the public were encouraged to submit comments on the revised draft Grant Application (424–NSSC). Existing sponsors were provided copies of the draft concurrent with **Federal Register** publication.

Approximately 30 comments were received from over 1,200 existing Senior Corps projects and the public. As many of the comments as feasible were incorporated into the revised Grant Application. Key changes were the following:

- Reorganization and streamlining of the Grant Application, particularly Part III, for improved clarity and burden reduction.
- Minor modifications to Part I to reduce burden by providing additional information used by applicants in completing the form.
- Deletion of the requirement to submit *with the Grant Application,* 5-Element Planning Worksheets for priority community needs. Applicants are now only required to submit their timeline and plan for developing 5-Element Planning Worksheets at the time of their application is submitted.
- Streamlining and standardization of Attachments (Part IV).
- Addition of a table of contents and clarifying instructions.

Once approved by OMB, the revised Grant Application will be completed by all public and private, non-profit organizations applying for National Senior Service Corps funds. The anticipated implementation schedule calls for the revised Grant Application to be used with grants having a start date of July 1, 1998, or thereafter.

For Further Information Please Contact: Janice Forney Fisher (202) 606–5000, extension 275.

Dated: September 30, 1997.
Thomas E. Endres,
Director, National Senior Service Corps.
[FR Doc. 97–26460 Filed 10–6–97; 8:45 am]
BILLING CODE 6050–28–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–719–000]

ANR Pipeline Company; Notice of Application

October 1, 1997.

Take notice that on September 26, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97–719–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas transportation service for Fina Oil and Chemical Company, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR states that the transportation service was originally authorized in Docket No. CP84–651–000, *et al.* ANR further states that the service is designated as Rate Schedule X–150 in ANR's FERC Gas Tariff, Original Volume No. 2. ANR asserts that the agreement was entered into by ANR, Fina, Louisiana Resources Company (LRC), and Faustina Pipeline Company (Feustina). ANR further asserts that under the agreement, ANR received natural gas tendered by Fina at High Island Area, Block 546, South Addition, offshore Texas. ANR indicates that it then delivered the gas to LRC at Cameron Parish, Louisiana. It is further indicated that LRC then delivered the gas to Faustina at Vermillion Parish, Louisiana, for ultimate redelivery to a petrochemical plant in Iberville Parish, Louisiana. ANR asserts that by mutual agreement ANR and Fina have agreed to terminate the service. ANR states that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make protest with reference to said application should on or before October 22, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.
[FR Doc. 97–26473 Filed 10–6–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–538–000]

ANR Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

October 1, 1997.

Take notice that, on September 26, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective October 27, 1997:

Third Revised Sheet No. 1
Fifth Revised Sheet No. 2
Third Revised Sheet No. 49
Eighth Revised Sheet No. 120
Sixth Revised Sheet No. 121
First Revised Sheet No. 122A
Third Revised Sheet No. 132
Original Revised Sheet No. 137A
Second Revised Sheet No. 187A
Fifth Revised Sheet No. 191

ANR states that the purpose of this filing is to make a revision to a provision of ANR's tariff in light of a recent clarification granted by the Commission related to a Gas Industry Standards Board (GISB) standard regarding the delivery point-allocation methodology, as well as to make a number of ministerial corrections, of errors that ANR has discovered in its tariff.

ANR states that copies of the filing have been mailed to all its Second Revised Volume No. 1 customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commissions Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not served to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Chasell,

Secretary.

[FR Doc. 97–26487 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–770–000]

ANR Pipeline Company and Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

October 1, 1997.

Take notice that on September 25, 1997,[1] ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, and Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, jointly referred to as Applicants, filed in Docket No. CP97–770–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for authorization to modify and operate an existing meter station between the Applicants and the Dayton Power and Light Company (DP&L), for delivery of natural gas to DP&L in Montgomery County, Ohio. ANR makes such request under its blanket certificate issued in Docket No. CP82–480–000, while Texas Eastern makes its request under its blanket certificate issued in Docket No. CP82–535–000 both pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

The Applicants state that in response to DP&L's request, they propose to modify an existing meter station, the Farmersville Meter. It is stated that the Farmersville Meter is jointly owned, fifty percent each by ANR and Texas Eastern. The Applicants further state that DP&L has requested that the metering capability of the Farmersville facility be expanded from 100,000 Dt Per day to 200,000 Dt daily, at an estimated project cost of $105,440.

Specifically, the Applicants propose to construct an additional 8-inch turbine meter, an 8-inch valve, approximately 30-feet of 8-inch piping, and appurtenant facilities such as flanges on the existing meter site. In addition, the Applicants also propose to modify two existing 8-inch turbine meters. It is averred that DP&L has informed the Applicants, that the enhanced facility will allow DP&L to serve existing gas-fired electrical generation facilities in the area, which will be used for peaking and off-system power sales.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26472 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

[1] By supplement filed September 29, 1997, the Applicants clarified the Section of the Commission's Regulations under the NGA, under which they are seeking authorization.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–69–000]

Boundary Gas, Inc.; Notice of Refund Report

October 1, 1997.

Take notice that on September 26, 1997, Boundary Gas, Inc. (Boundary) tendered for filing a refund report reflecting the flowthrough of the Gas Research Institute (GRI) refund received by Boundary on May 30, 1997.

Boundary states that it has credited such refund, together with interest accrued to date, proportionally to its firm customers of non-discounted service based on the GRI surcharges those customers paid during the calendar year 1996. Boundary states that each customer's credit will be reflected on its invoice for September 1997 services to be issued on or about October 15, 1997.

Boundary states that a copy of this filing is being mailed to each of Boundary's affected customers and the state commissions of New York, Connecticut, New Jersey, Massachusetts, New Hampshire and Rhode Island.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed on or before October 8, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26477 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–740–000]

Iroquois Gas Transmission System, L.P.; Notice of Request Under Blanket Authorization

October 1, 1997.

Take notice that on September 9, 1997, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 600, Shelton, Connecticut 06484, filed in Docket No. CP7–740–000 a request pursuant to Sections 157:205 and 157.212 of the Commission's Regulations (18 CFR 157.205, 157,212) under the Natural Gas Act (NGA) for authorization to add a new delivery point and to construct and operate appurtenant facilities on behalf of New York State Electric & Gas Company (NYSEG), an existing shipper, in Lewis County, New York, for Part 284 transportation services by Iroquois, under Iroquois' blanket certificate issued in Docket No. GP89–634–000, *et al.*, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Iroquois proposes to add the new delivery point for service to NYSEG, as local distribution company, and states that NYSEG will construct and operate the associated metering and regulating facilities under New York State jurisdiction. It is stated that the Iroquois is not presently delivering any volumes at the proposed new delivery point. Iroquois and NYSEG estimate that Iroquois would deliver up to 5,000 Mcf per day of NYSEG's current contract quantity at the proposed delivery point. It is asserted that the deliveries would have no effect on Iroquois' peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26471 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–104–005]

Kentucky West Virginia Gas Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

October 1, 1997.

Take notice that on September 26, 1997, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective November 1, 1997:

Second Revised Sheet No. 119
Second Revised Sheet No. 120
First Revised Sheet No. 120A
First Revised Sheet No. 120B
First Revised Sheet No. 134
First Revised Sheet No. 135
First Revised Sheet No. 136
Second Revised Sheet No. 137
Second Revised Sheet No. 171
Third Revised Sheet No. 172

Kentucky West states that the purpose of this filing is to comply with the Commission's June 25, 1997 in the captioned docket, and to implement the business practices standards which were adopted in Order No. 587–C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26481 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–779–000]

K N Interstate Gas Transmission Co.; Notice of Request Under Blanket Authorization

October 1, 1997.

Take notice that on September 26, 1997, K N Interstate Gas Transmission Co. (Applicant), P.O. Box 291304, Lakewood, Colorado 80228, filed in Docket No. CP97–779–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate two new delivery taps, under blanket certificate issued in Docket No. CP83–140–000, *et al.*,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Applicant proposes to construct two new delivery taps located in Dawson and Buffalo Counties, Nebraska, which will be added as delivery points under an existing transportation agreement between Applicant and K N Energy Inc. (KNE). These proposed delivery points will be used by KNE to facilitate the delivery of natural gas to direct retail sales customers.

Applicant further states that these two taps were mistakenly installed and gas service has commenced through one of the delivery taps. At the request of the domestic retail customer of KNE, who is receiving gas service, Applicant requests that such service continue while this prior notice is under consideration, since economic and physical hardship to the customer would result if service were discontinued.

The Buffalo County, Nebraska delivery point will serve a commercial customer approximately 6 Mcf on a peak day and 360 Mcf annually; and, the cost of the valve and tap was estimated at $1,500. The Dawson County, Nebraska delivery point will serve a domestic customer approximately 4 Mcf on a peak day and 216 Mcf annually; and, the cost of the valve and tap was estimated at $1,500. Applicant states that construction of the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the service proposed herein without determent or disadvantage to Applicant's other customers. Applicant holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP89–1043–000.[2]

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26474 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

[1] *See*, 22 FERC ¶ 62,330 (1983).

[2] *See*, 48 FERC ¶ 61,159 (1989).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–005]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

October 1, 1997.

Take notice that on September 26, 1997, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets:

Tariff sheet:	Effective date
First Rev. Second Revised Sheet No. 4–G.	September 29, 1997.
Fourth Revised Sheet No. 4–G.	October 1, 1997.
Fifth Revised Sheet No. 4–G.	November 1, 1997.

KNI states that the tariff sheets are being filed pursuant to Third Revised Volume No. 1–B, Section 36 of KNI's FERC Gas Tariff, and the procedures proscribed by the Commission in its December 31, 1997 "Order Accepting Tariff Filing Subject to Conditions", in Docket Nos. RP97–81) (77 FERC ¶61,350) and the Commission's Letter Order dated March 28, 1997 in Docket No. RP–97–81–001.

KNI states that copies of the filing have been served upon KNI's mainline jurisdictional customers, interested public bodies, and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26480 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–537–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

October 1, 1997.

Take notice that on September 29, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective November 1, 1997.

Natural states that the purpose of the filing is to modify Natural's tariff so that Natural can offer firm transportation service which is subject to cancellation or suspension upon prior notice.

Natural requested any waivers which may be required to permit the tendered tariff sheets to become effective on November 1, 1997.

Natural states that copies of the filing have been mailed to Natural's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26486 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–105–005]

Nora Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 1, 1997.

Take notice that on September 26, 1997, Nora Transmission Company (Nora) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective November 1, 1997:

Second Revised Sheet No. 119
Second Revised Sheet No. 120
First Revised Sheet No. 120A
First Revised Sheet No. 120B
First Revised Sheet No. 134
Second Revised Sheet No. 135
First Revised Sheet No. 136
Second Revised Sheet No. 171
First Revised Sheet No. 173
Sheets No. 174–219

Nora states that the purpose of this filing is to comply with the Commission's June 25, 1997 in the captioned docket, and to implement the business practices standards which were adopted in Order No. 587–C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26482 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–31–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 1, 1997.

Take notice that on September 26, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 1997:

Ninth Revised Sheet No. 5
Ninth Revised Sheet No. 6

NGT states that the revised tariff sheets are being filed to adjust NGT's fuel percentages pursuant to Section 21 of its General Terms and Conditions.

Any person desiring to be heard or protect the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 or 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26489 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–539–000]

Northern Border Pipeline Company; Notice of Proposed Changes

October 1, 1997.

Take notice that on September 26, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective November 1, 1997:

Second Revised Sheet Number 283

Northern Border states that it proposes to revise Method A of the Bid evaluation methods and to clarify certain factors in the Method A formula. Northern Border further states that the proposed change to Bid evaluation Method A provides a wider range of Bid evaluation alternatives.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with § 385.214 and § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26488 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–447–001]

Northern Natural Gas Company; Notice of Compliance Filing

October 1, 1997.

Take notice that on September 26, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, with an effective date of September 15, 1997:

Substitute Third Revised Sheet No. 106

Northern states that the instant filing is made in compliance with the Commission's Order issued September 11, 1997 in Docket No. RP97–447–000, addressing the shipper notification requirements associated with reduction rights under Rate Schedule TF.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26484 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES97–44–002]

Orange and Rockland Utilities, Inc.; Notice Of Filing

October 1, 1997.

Take notice that on September 26, 1997, Orange and Rockland Utilities, Inc. (O&R), filed an amendment to its application for authorization to issue securities in the above-captioned docket. The only change to the previously-approved application is a request by O&R that the authorization level be increased from $150.0 million to $200.0 million.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed on or before October 10, 1997. Protests will be considered by the Commission in determining he appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26476 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–780–000]

Paiute Pipeline Company; Notice of Request Under Blanket Authorization

October 1, 1997.

Take notice that on September 26, 1997, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP97–780–000 a request pursuant to Sections 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.212) for approval to construct and operate a delivery tap for the transportation and delivery of natural gas to Winnemucca Farms, Inc. (Winnemucca), under Paiute's blanket certificate issued in Docket Nos. CP84–739–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Paiute proposes to construct and operate a new delivery tap at a point on Paiute's Elko Lateral facilities in Humboldt County, Nevada. Paiute states that it has been informed by Winnemucca that it intends to construct a small diameter pipeline to extend from its plant to the proposed new delivery tap on Paiute's Elko Lateral. Paiute asserts that it will provide

interruptible transportation service directly to Winnemucca at the proposed delivery point. Paiute further asserts that the estimated annual peak day volumes to be delivered to Winnemucca at the proposed delivery point will be 438,000 Mcf and 2,000 Mcf, respectively. Paiute indicates that it will be reimbursed by Winnemucca for the total cost of constructing the delivery point facilities.

Any person or the Commission's Staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26475 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–536–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

October 1, 1997.

Take notice that on September 25, 1997, Panhandle Eastern Pipe Line Company (Panhandle), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective November 1, 1997.

Panhandle states that the purpose of the filing is to reinstate the Stranded Transportation Cost Reservation Surcharge (ST Reservation Surcharge) and the Stranded Transportation Cost Volumetric Surcharge (ST Volumetric Surcharge) pursuant to Section 18.13(g) of the General Terms and Conditions of Panhandle's tariff. A Reconciliation Recovery Period is to be established if Panhandle has not fully recovered the total Stranded Transportation Costs at the conclusion of the initial recovery period. Panhandle has not completed the recovery of the Stranded Transportation Costs as of June 30, 1997 and accordingly is proposing to implement a ST Reservation Surcharge of $0.01 per Dt. applicable to Rate per Dt. applicable to Rate Schedule SCT and a ST Volumetric Surcharge of 0.03¢ per Dt. applicable to Rate Schedules IT and EIT to be in effect during the twelve month Section 18.13 Reconciliation Recovery Period which commences November 1, 1997.

Panhandle states that copies of its filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26485 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–142–001]

Pennsylvania Power & Light Company; Notice of Filing

October 1, 1997.

Take notice that on August 15, 1997, Pennsylvania Power & Light Company (PP&L) tendered for filing proposed changes to, and clarifications regarding, its Open Access Transmission Tariff, to comply with the Commission's order in *Allegheny Power System, Inc.*, 80 FERC ¶61,143 (1997).

PP&L served a copy of this filing upon all persons listed on the official service list compiled by the Secretary in Docket No. OA96–142–000, and upon the current customers under the open access tariff.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 10, 1997. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26478 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–109–007]

Sabine Pipe Line Company; Notice of Compliance Filing

October 1, 1997.

Take notice that on September 29, 1997, Sabine Pipe Line Company (Sabine) tendered for filing the tariff sheets listed on Attachment A to the filing, with an effective date of November 1, 1997.

Sabine states that the instant filing is being made to comply with the provisions of Order No. 587–C issued March 4, 1997, in Docket No. RM96–1–004, and the Commission's order issued June 18, 1997 in Docket No. RP97–109–004.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26483 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–186–001]

UtiliCorp United Inc.; Notice of Filing

October 1, 1997.

Take notice that on August 15, 1997, in compliance with the Commission's July 31, 1997, Order in this docket, UtiliCorp United Inc., filed with the Commission revised open access transmission tariff sheets on behalf of its Missouri Public Service Company, WestPlains Energy-Colorado, and WestPlains Energy-Kansas operating divisions. The revised tariff sheets separately state rates for Scheduling, System Control and Dispatch Service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 10, 1997. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26479 Filed 10–6–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5906–4]

Agency Information Collection Activities: Proposed Collection, Comment Request; Application for Reference or Equivalent Method Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Application for Reference and Equivalent Method Determination, EPA ICR Number: 0559.06, OMB No: 2080–0005, expiration date: 01/31/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 8, 1997.

ADDRESSES: U.S. Environmental Protection Agency, Human Exposure and Atmospheric Sciences Division/ Atmospheric Methods and Monitoring Branch, Mail Drop 46, Research Triangle Park, NC 27711. Interested persons may obtain a copy of the ICR without charge by contacting the hereinafter named person.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, 919–541–2622; facsimile number: 919–541–7953; E-Mail: MCELROY.FRANK@EPAMAIL.EPA.GOV

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are manufacturers or vendors of air monitoring instruments suitable for use by state and local air monitoring agencies in their federally required air surveillance monitoring networks, and agents acting for instrument manufacturers or vendors. Other applicants include state or local air monitoring agencies.

Title: Application for Reference and Equivalent Method Determination (OMB Control No. 2080–0005; EPA ICR No. 0559.06; expiring January 31, 1998).

Abstract: State air monitoring agencies are required to use EPA-designated reference or equivalent methods in their air monitoring networks to determine compliance with the national ambient air quality standards (NAAQS). A manufacturer or seller of an air monitoring method (e.g. an air monitoring sampler or analyzer) which seeks EPA designation of their products must carry out prescribed tests of the method. The test results and other information must then be submitted to the EPA in the form of an application for a reference or equivalent method determination in accordance with 40 CFR part 53. The EPA uses this information to determine whether the particular method should be designated as either a reference or equivalent method. After designation of a method, the applicant must also maintain records of the names and mailing addresses of all ultimate purchasers of all analyzers or samplers sold as designated methods under the method designation. Following designation of a method for $PM_{2.5}$, the applicant must also submit a checklist signed by an ISO-certified auditor to indicate that the samplers or analyzers sold as part of a designated method are manufactured in an ISO 9001-register facility. Responses to the collection of information are voluntary but are required to obtain a benefit (40 CFR part 53). Submission of information that is claimed by the applicant to be confidential business information may be necessary to make a reference or equivalent method determination. The confidentiality of any submitted information identified as such will be protected in full accordance with 40 CFR part 53.15 and all applicable provisions of 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond.

Burden Statement: The EPA estimates that the total annual respondent burden for all activities covered in this ICR is approximately 6926 hours at a cost of $405,378. EPA estimates an average burden of 1118 hours and an estimated cost of $65,816 per major application, based on an estimated 6 applications per year. However, it should be noted that such applications range widely in content and extent. Accordingly, the individual respondent burden for a particular application response may differ substantially from the average burden. EPA estimates the average

burden of 12 hours and $432 per response for minor related responses, based on an estimated 18 such responses per year. The expected frequency of all responses is on occasion. These average burden estimates include the following costs: The cost of capital equipment and supplies, annualized over expected useful life, is estimated to be $14,000. An annual recordkeeping burden of 150 hours is estimated at an annual cost of $2,700. ISO facility registration and document upgrade is estimated to require 2128 hours per year at a cost of $200,944.

The Agency's total annual burden to process these responses is estimated to be 1015 hours at an estimated cost of $44,460. Annual contractual services are estimated to require $300,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 30, 1997

Gary J. Foley,

Director, National Exposure Research Laboratory.

[FR Doc. 97–26530 Filed 10–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5906–5]

Acid Rain Program: Notice of Annual Adjustment Factors for Excess Emission Penalty

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of annual adjustment factors for excess emissions penalty.

SUMMARY: Under the Acid Rain Program, affected units must hold enough allowances to cover their sulfur dioxide emissions and meet an emission limit for nitrogen oxides. Under 40 CFR 77.6, units that do not meet these requirements must pay a penalty without demand to the Administrator based on the number of excess tons emitted times $2000 as adjusted by an annual adjustment factor that must be published in the **Federal Register**.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 1997 is 1.2624. This value is derived from the Consumer Price Index for 1990 and 1997, as defined in 40 CFR part 72, and corresponds to a penalty of $2525 per excess ton of sulfur dioxide or nitrogen oxides emitted.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 1998 is 1.2905. This value is derived from the Consumer Price Index for 1990 and 1998, as defined in 40 CFR part 72, and corresponds to a penalty of $2581 per excess ton of sulfur dioxide or nitrogen oxides emitted.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 at (202) 233–9089.

Dated: September 29, 1997.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–26531 Filed 10–6–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5906–6]

Project XL Final Project Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Project Agreement with HADCO Corporation and Response to Public Comment.

SUMMARY: The United States Environmental Protection Agency (EPA) is announcing the signing of its Final Project Agreement (FPA) with HADCO Corporation, New York and New Hampshire, under EPA's Project XL program. Through this notice, EPA is also responding to public comments received on the draft FPA. As the comments below indicate, many suggested changes were incorporated into the FPA.

FOR FURTHER INFORMATION CONTACT: Kenneth Rota, EPA Region I, (617) 565–3349; Jim Sullivan, EPA Region 2, (212) 637–4138; or Lisa Hunter, EPA Headquarters, (202) 260–4744.

SUPPLEMENTARY INFORMATION:

Background:

HADCO, EPA, the New Hampshire Department of Environmental Services (NH DES), the New York State Department of Environmental Conservation (NYS DEC) signed an agreement applicable to HADCO's facilities in New Hampshire and New York under EPA's "Project XL" initiative.

HADCO is one of the first companies accepted into EPA's Project XL program. EPA created Project XL in 1995 as an initiative providing regulatory flexibility for industry to achieve environmental performance that is superior to what would be achieved through compliance with existing and reasonably anticipated future regulations. The HADCO FPA was developed by EPA staff in Regions I, II and its Headquarters, the NH DES, the NYS DEC, and HADCO Corporation ("the parties"). The FPA is the document that memorializes the parties intentions concerning Project XL for the HADCO facilities in Owego, NY, Hudson, NH, Derry, NH and Salem, NH.

This XL project concerns the classification under RCRA Subtitle C of wastewater treatment (WWT) sludge generated from printed wire board manufacturing facilities (SIC 3672). Presently this WWT sludge is classified as a listed hazardous waste, having the waste code F006, pursuant to regulations promulgated under the Resource Conservation and Recovery Act (40 CFR 261.31(a)). Because of this hazardous waste designation, HADCO, and others in the PWB industry, must currently ship this waste to a separate facility licensed to handle hazardous wastes before it can be reclaimed. The project seeks to test whether (a) classifying the WWT sludge generated by HADCO as an F006 waste pursuant to Subtitle C is not necessary to protect human health and the environment, (b) the WWT sludge can be safely reclaimed without all of the strict regulatory controls imposed by RCRA Subtitle C; and (c) a conditional delisting or solid waste variance will yield substantial economic and environmental benefits.

The HADCO FPA details a procedure through which HADCO will extensively test its sludge generated from the treatment of wastewater associated with circuit board manufacture. This data will be reviewed by EPA, NH DES and NYS DEC, in order to determine if such data supports removal of the sludge from regulation as a hazardous waste, as defined in RCRA. If this determination can be made, off-site treatment would no longer be required prior to reclamation. Such a determination by EPA, NH DES, and NYS DEC is wholly contingent upon HADCO shipping the sludge off-site for reclamation of copper contained in the sludge. The four (4) HADCO facilities that are involved in this project collectively generate approximately 600 tons per year of this sludge.

HADCO has agreed to direct all of its cost savings realized towards the reclamation of non-hazardous copper containing dusts that are land filled currently (or other pollution prevention activities). If HADCO does not substantially reduce the amount of copper dusts currently land filled, the project may be terminated. HADCO must also consider the installation of sludge driers to reduce sludge volume at its New Hampshire facilities, if feasible.

This draft FPA provides an overview of the parties' intentions under the XL agreement. The parties to the agreement have considered public comments received during a 30-day public comment period that began January 23, 1997 (as noticed at 62 FR 3508, January 23, 1997) and at an informal public hearing held at the HADCO facility located in Owego, New York on February 12, 1997. After considering these comments, the parties modified the agreement as necessary. The FPA is not legally binding, but states the plans and intentions of the parties regarding the project. It is not a rule or other final agency action; public notice and opportunity for comment were provided as a matter of EPA policy.

In addition to the EPA contacts listed in the section entitled **FOR FURTHER INFORMATION CONTACT**, above, questions concerning Project XL and the HADCO project may also be directed to: Ken Marschner, NH DES, (603) 271–2943, Mark Moroukian, NYS DEC, (518) 457–2553, or Lee Wilmot, HADCO Corporation, (603) 896–2424. General information about Project XL may be obtained by accessing EPA's internet site for Project XL, at http://www.epa.gov/Project XL. A copy of the HADCO FPA is posted at this location.

Agency Response to Comments

The Agency received written public comments from five interested parties. Additionally, on February 12, 1997, oral comments were received and discussed during an informal public hearing held at the HADCO facility located in Owego, New York. The notable comments are listed below, along with the Agency's response. The comments received are as follows:

1. Use of Atlantic States Legal Foundation ("ASLF") Offices as a Depository for the Project Records

ASLF suggested that either the NY DEC regional office in Syracuse or its own offices in Syracuse be used a repository for the records generated by this project, including all raw data. ASLF notes that at present, the closest depository to its office is 75 miles away in Owego. ASLF notes that it cannot actively participate unless the information is made available at a more convenient location.

Response: The ASLF Syracuse office will be used as an additional depository. Records kept at this office will be available to the public on terms similar to those of other repositories.

2. Use HADCO's Cost Savings to Enable Stakeholders to Participate More Actively

One commenter suggested that HADCO should have to use some of its cost savings to enhance the stakeholders' ability to participate.

Response: According to HADCO's current projections, its initial cost savings will not be very substantial. For this project to provide tangible environmental benefits, those savings must be channeled into copper dust reclamation at a minimum. EPA believes that since all data and any portions of the record will be made available to any stakeholder upon request, there is no imminent need to require HADCO to channel its cost savings to enhance stakeholder participation.

EPA believes that substantial stakeholder participation is ensured because all parties are available to discuss the project via telephone or through correspondence. In addition, any stakeholder can participate in meetings through telephone hookups provided by HADCO, if he cannot afford the time and expense to attend a meeting in person.

Thus far, three stakeholder meetings have been held at HADCO's Derry, New Hampshire facility. Two stakeholder meetings and one public hearing have been held at HADCO's Owego, New York facility. The public hearing was advertised in the local newspapers and through radio announcements. Throughout the FPA development process, drafts of the FPA and other supporting information were made readily available. The parties have always stressed that any specific information or data can be made available upon request. In addition, the FPA, as revised includes five local repositories for this project's relevant records; a requirement to mail the FPA, executive summaries of the annual reports ("executive summaries") to the interested stakeholders; posting of the final FPA (as signed) and executive summaries on the HADCO's world wide web page; a requirement to hold additional on-site stakeholder meetings with those stakeholders who request meetings to review project progress; and the filing of press releases at critical junctures. EPA believes that the FPA provides ample opportunity and resources to ensure adequate stakeholder support. In addition, most of the participating stakeholders agree with this assessment.

3. Dust Reclamation

One commenter noted that Section VI.C. of the FPA does not require HADCO to carry out dust reclamation in the most environmentally beneficial manner. The commenter suggests that there is no reason why HADCO should not be required to do something better with these dusts regardless of what happens to the sludge. The commenter suggests the removal of the second sentence in paragraph 29 to address this issue.

Response: The inclusion of this suggestion would provide no incentive for HADCO to participate in this project. According to cost documentation submitted by HADCO, the copper dust reclamation proposed is an expensive undertaking. From HADCO's perspective, the implementation of copper dust reclamation would require it to make a substantial investment.

The potential grant of regulatory relief provides HADCO with an incentive to make such an investment. Current State and Federal laws and regulations do not require that copper drilling and edging dusts be recycled. These dusts are currently land filled. As such, no legal mechanism currently exists that requires HADCO to handle this waste in a more environmentally beneficial manner. However, through proper implementation, this agreement, and any resulting grant of regulatory flexibility, can ensure better management of this waste stream. Therefore, if regulatory relief is granted, EPA believes that the project is environmentally superior to what would occur if the project did not proceed. If the Agencies determine that HADCO's WWT sludge is eligible for a conditional delisting or a solid waste variance, the Agencies will only grant such relief if HADCO uses its cost savings to recycle those copper dusts (or implements an acceptable pollution prevention activity in the alternative). For these reasons, the

second sentence of paragraph 29 in the draft version of the FPA will remain.

4. HADCO Should Complete an Enhanced Pollution Prevention Survey

One commenter suggested that the parties add another section to the FPA that requires HADCO to complete an enhanced pollution prevention ("P2") analysis. The commenter also notes that HADCO has had some success implementing P2 under EPA's 33/50 program; however, HADCO should be required to expand its P2 efforts and examine the entire waste stream and explore P2 options.

Response: HADCO has already achieved significant success implementing P2. While further P2 is always desirable, and EPA understands that HADCO will continue exploring further waste reduction methods, EPA believes that the project already provides superior performance for the reasons discussed above, and that adding further conditions to the project would no longer make it attractive enough for the company to participate.

5. Uses of Pollution Prevention Methods Should be Encouraged

The same commenter later specifies that he has no objection to recycling drilling and edging dusts and reclaiming the copper contained in such dusts; however, the commenter notes that pollution prevention is the preferable solution. The commenter believes that HADCO should have to demonstrate that there is no P2 alternative before it uses reclamation.

Response: EPA agrees that P2 solutions are always the preferred to reclamation solutions. However, as discussed above, EPA believes that the project results will be environmentally superior to what would have occurred otherwise, and that the additional P2 requirements would make it too unattractive for HADCO to continue. In addition, HADCO has already invested a substantial amount of time and effort in developing a feasible reclamation solution. Nevertheless, the parties have agreed to adjust paragraph 29 of the FPA by using language that encourages HADCO to identify and implement P2 activities, in addition to or in lieu of the reclamation solution. If a P2 activity is not pursued, HADCO must implement the dust reclamation program.

6. Reservation of Rights

One commenter objected to the inclusion of Section X. of the FPA, which is entitled "Reservation of Rights." The commenter noted that by singling out criminal enforcement authority, the language improperly implies that civil enforcement authority is somewhat undermined. The commenter was also concerned that this section's language could somehow undermine citizen suit viability.

Response: EPA agrees, and the parties have agreed to strike this section. Since the FPA is not an enforceable document, there is no need to include a specific reservation of rights. EPA agrees the language of this section could be read to improperly imply that entry of the FPA affects civil enforcement authority for EPA, the State Agencies and concerned citizens, which was not the parties' intent. Similarly, the deletion of this section from the FPA should in no way be understood to infer or imply that the Agency is relinquishing its authority to respond in any of the situations referred to in the now-deleted section reserving the Agency's rights. Further, any rules promulgated as a result of this project will be fully enforceable by EPA, State Agencies, or the public.

7. Specifically Identify Each Party's Obligations Under the FPA

One commenter noted that much of the wording of the FPA is confusing. The commenter noted that Section VI, in particular, addresses a number of unrelated subjects and is difficult to follow. The commenter suggested that the FPA use a structure where the different parties' obligations were "spelled out."

Response: EPA agrees that some portions of the FPA require clarification, and the parties have agreed to make some limited changes. In response to this comment, a few portions of the FPA have been reworded to further clarify each party's obligations. Each party is acutely aware of its obligations under the FPA. For the most part, the parties' obligations are listed in a chronological order. For example, the sampling program and analyses precede the section regarding federal and state rulemaking implementation. Approval of Reclamation Facilities logically follows the rulemaking provisions.

With regard to Section VI of the FPA, which is entitled "Verification of Environmental Benefits," the parties believe that each subject included under that section deals with a different facet of demonstrating the environmental benefits that result from this project. Additional language was added to each subsection to emphasize this connection.

8. The FPA Creates a Preference for Reclamation at Primary Copper Smelters

Response: One commenter noted that any relief from classification of HADCO's F006 as hazardous waste should be available regardless of whether the waste is shipped to a primary smelter, or to an intermediate processor. Specifically, this commenter objected to the sentence in paragraph 24 of the proposed FPA that stated:

> * * * The primary recipients of HADCO's sludges will be primary copper smelters, where the sludge will comprise a feedstock substitute for natural ore or other recycled product streams. Alternative reclamation processes will require prior approval by the EPA and relevant State Parties.

In response, EPA wishes to make clear that no final decision as to the precise conditions of any variance or delisting has been made at this time (nor, since the FPA has no legal or regulatory effect, could such a decision be made until final action is taken on a variance or delisting). Accordingly, the sentence referred to by this commenter has been replaced with the statement that:

> HADCO will request approval by the EPA and relevant State Parties, prior to the shipment of its sludge to such facility. If EPA and the relevant State Parties reject HADCO's request for approval because the shipment of the WWT sludge to such reclamation facility would not foster the goals of this project, this project will be terminated in accordance with the provisions of Sections I.E. and V. of this FPA.

This sentence makes clear that EPA and the relevant states will require, as a condition for participating in Project XL, that HADCO must request and obtain approval from EPA and the relevant states for any facility to which it wishes to ship waste for which a variance or delisting has been granted. EPA and the states have reserved this right in order to ensure that the goals of the project are furthered—specifically, that the proposed arrangement is environmentally superior and represents an approach that warrants investigation as a potentially transferable regulatory option. To date, HADCO's proposal has been to authorize shipment to a direct recycler, and having studied this proposal in depth, EPA and the States both believe that such shipment would further the above goals. EPA and the states have not, however, evaluated other specific options at this time.

9. The Sampling and Analyses Plan Should Include Additional Organic Analyses

One commenter stated that the organic constituent sampling is not adequate and that more complete data on the organic content are required to ascertain whether HADCO's F006 sludge should be regulated for factors other than those related to the original listing and to also render a "toxics along for the ride" assessment of the proposed recycling activity. The commenter suggested that additional organic constituents may originate from materials used by HADCO in the course of its manufacturing process. This commenter suggested that EPA conduct a rigorous review of all materials used by HADCO at its facilities or require a broader sampling of organic chemicals.

Response: EPA does not believe that HADCO's sludge poses any significant risks from volatile organic compounds based upon prior inspections conducted by EPA at HADCO and EPA's prior evaluations of waste analyses conducted by the company on its sludge and other waste streams. HADCO has also conducted a corporate phase out of solvents such as methylene chloride from its manufacturing process since the time of EPA's inspection of the facility. However, volatile organic compound testing conducted by HADCO for its wastewater effluent has detected trace amounts of some volatile organic solvents in the parts per billion range. Therefore, EPA believes this commenter does raise valid concerns about the potential for volatile organic compounds that could be present in the waste which is a reasonable assumption.

EPA has reassessed its sampling protocol and agrees to require additional organics testing on the F006 sludge. Based on a review of the types of compounds previously identified by EPA, the following analytical procedures will be included in the testing protocol: Method 8240B (volatile organics), Method 8250A (semi-volatile organics) and Method 8315 (carbonyl compounds).

10. Call for Additional Notice and Comment

A commenter identified the lack of a formal public notice and comment period in the FPA if a solid waste variance is selected as the most appropriate relief mechanism. The commenter felt that EPA should expressly provide for the same level of participation under either a conditional delisting or solid waste variance process to maintain the transparency of the XL process.

Response: EPA agrees with this comment and EPA will post notice in the **Federal Register** for all interested parties and stakeholders if a solid waste variance is selected. Such **Federal Register** notice would have no legal effect, per se, since the variances would be effectuated under state law. The notice would simply provide another means to alert stakeholders to a significant milestone in this project's development.

If a variance is pursued in New York, the applicable rules provide ample opportunity for notice and comment With reason, a commenter may request that NYSDEC hold a legislative public hearing to listen to oral comments. After evaluating public comment NYSDEC would render a final determination.

11. Time Frames for the Agencies' Data Review Are Limited

A commenter also identified the time frames listed in the FPA as extremely short and expressed concern that EPA would not be able to conduct an adequate review of this project.

Response: EPA does not consider the time frames set out in the FPA to be binding for any review or decisions that the Agency must make in the course of this project. EPA and HADCO have agreed to use the dates identified in the FPA as target dates. Should EPA fail to meet one of these target dates, HADCO would not obtain a conditional delisting or solid waste variance by default. Conversely, should HADCO fail to submit information by a targeted date, this project would not terminate by default.

12. Reclamation Options

During the public hearing, one participant asked whether there were procedures other than smelting that can be used to extract the copper from HADCO's sludge.

Response: Copper can be extracted from different media by a variety of physical separation processes, but that extricated copper would generally be sent to a high temperature furnace, such as a smelter, to remove entrained or bound impurities. The copper could then be purified and formed into a commercial grade ingot, which would maximize the reclaimed copper's future uses.

13. Chemicals Used at the HADCO Facilities

During the public hearing, one participant asked if chemicals used in the process could be identified and screened to improve sludge quality.

Response: EPA has reviewed HADCO's Material Safety Data Sheets ('MSDSs') which identify all chemicals used in their process and believes that the substitution of ammonium chloride for chrome sulfuric acid as an etchant had significantly "greened" or reduced the toxicity of the WWT sludge. Also, as a member of EPA's 33/50 Program, HADCO has substituted other less or non-toxic raw materials for previously employed toxic materials.

14. If Data Exhibit Hazardous Characteristics

During the public hearing, one participant asked whether the Agency would terminate the project if HADCO's sludge exhibited a characteristic of a hazardous waste (e.g., the toxicity characteristic for lead).

Response: EPA believes that the project could continue, but that it could impact the type of relief sought by HADCO. This may not be a significant issue if a variance from classification as a solid waste is pursued because the variance primarily investigates the degree to which the reclaimed material is like an analogous raw material. However, such circumstances would preclude a traditional delisting since delisting is based on inherent risk associated with the material. Nevertheless, the conditional delisting sought by HADCO remains an option, depending on degree of sludge toxicity.

15. Potential for Transferability of the Project

During the public hearing, one participant inquired about the transferability of the project.

Response: As indicated in Appendix A of the draft Final Project Agreement, the Agency believes the proposal may be transferable to other PWB manufacturers not using chrome-based etchants. However, the specific relief that may be provided when this project is implemented is not being made more generally available at this time. Other manufacturers may continue to use usual processes for delisting their sludge or seeking a variance from classification of a sludge as solid waste.

16. Eligible Smelters

During the public hearing, one participant asked whether a domestic smelter could receive HADCO's sludge.

Response: EPA notes that the sludge could be received by any domestic primary smelter which had successfully demonstrated, in accordance with 40 CFR 266.112, that the properties of its residues (e.g., slag or slag tailings) were not adversely impacted by the co-processing of hazardous waste. If the regulatory relief sought in this project is granted, then HADCO's sludge could be accepted by any primary smelter.

Dated: September 30, 1997.

Christopher Knopes,

Acting Director, Project XL.

[FR Doc. 97–26532 Filed 10–6–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 97-2142]

North American Numbering Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 2, 1997, the Commission released a public notice announcing the October 21, 1997, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes, Paralegal Specialist, assisting the NANC at (202) 418–2313 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20054. The fax number is: (202) 418–2345. The TTY number is: (202)418–0484.

SUPPLEMENTARY INFORMATION: The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, October 21, 1997, from 8:30 a.m until 4:30 p.m., EST at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, DC 20054.

Proposed Agenda

The planned agenda for the October 21, 1997, meeting is as follows:

1. Number Pooling Management Group (NPMG) Report.
2. Industry Numbering Committee (INC) Report on Number Pooling.
3. Local Number Portability Administration (LNPA) Working Group Report: LNPA Dispute Resolution process and procedures for Limited Liability Corporation (LLC) members, non-LLC members and end-users.
4. LNPA Working Group and Wireline/Wireless Task Force Report.
5. North American Numbering Plan Administration (NANPA) Working Group Status Report.
6. Discussion of Central Office Code (NXX) Assignment Guidelines Policy Issue: NXX Code Protection
7. Network Interconnection Interoperability Form (NIIF) Committee Report: Work Plan for Central Office (CO) Code and NPA Activation Issue.
8. Other Business.
9. Review of Decisions Reached and Action Items.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau

[FR Doc. 97–26638 Filed 10–6–97; 8:45 am]

BILLING CODE 6712–01–D

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

Open Commission Meeting Thursday, October 9, 1997

October 2, 1997.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 9, 1997, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	WIRELESS TELECOMMUNICATIONS.	TITLE: Service Rules for the 746–806 MHz Band, and Revisions to Part 27 of the Commission's Rules and The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010—Establishment of Rules and Requirements for Priority Access Service (WT Docket No. 96–86). SUMMARY: The Commission will consider action concerning service rules for the 746–806 MHz band and on rules to permit the provision of priority access service.
2	COMMON CARRIER	TITLE: Administration of the North American Numbering Plan (CC Docket No. 92–237) and Toll Free Service Access Codes (CC Docket No. 95–155). SUMMARY: The Commission will consider action concerning the administrator of the North American Numbering Plan, the Billing and Collection Agent for telecommunications numbering administration, and administration of the database containing toll free numbers.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460, or TTY (202) 418–1398; fax numbers (202) 418–2809 or (202) 418–7286.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–26637 Filed 10–3–97; 11:10 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-25936) published on page 51110 of the issue for Tuesday, September 30, 1997.

Under the Federal Reserve Bank of Boston heading, the entry for Charles Michael Hazard, Boston, Massachusetts, is revised to read as follows:

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Charles Michael Hazard, Boston, Massachusetts; to acquire voting shares of Boston Private Bancorp, Inc., Boston, Massachusetts, and thereby indirectly acquire Boston Private Bank & Trust Company, Boston, Massachusetts.

Comments on this application must be received by October 15, 1997.

Board of Governors of the Federal Reserve System, October 2, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26544 Filed 10–6–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 22, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Clark S. Frame and David C. Frame, Doylestown, Pennsylvania; to acquire voting shares of Premier Bancorp, Inc., Doylestown, Pennsylvania, and thereby indirectly acquire Premier Bank, Doylestown, Pennsylvania.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Michael P. Landen, Dallas, Texas; to acquire voting shares of Security National Corporation, Omaha, Nebraska, and thereby indirectly acquire Security National Bank of Omaha, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, October 2, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26545 Filed 10–6–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Premier Bancshares, Inc., Atlanta, Georgia; to acquire 100 percent of the voting shares of Citizens Gwinnett Bankshares, Inc., Duluth, Georgia, and thereby indirectly acquire Citizens Bank of Gwinnett, Duluth, Georgia

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Capitol Bancorp, Ltd., Lansing, Michigan; to acquire a majority of the voting shares of Muskegon Commerce Bank, Muskegon, Michigan, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. TCA Financial Corporation, Englewood, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Trust Company of America, Boulder, Colorado, a *de novo* bank.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Amador Merger Corporation, Las Cruces, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Las Cruces, Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, October 2, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26546 Filed 10–6–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1997.

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Sanwa Bank Limited, Osaka, Japan; to acquire Morcroft Capital Corporation, Fairfield, New Jersey, and thereby engage in leasing and financing

activities, pursuant to §§ 225.28(b)(3) and (b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 2, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26547 Filed 10–6–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Tuesday, October 14, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26721 Filed 10–3–97; 3:49 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[Docket No. 9261]

Weight Watchers International, Inc., Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint issued earlier and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 8, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Kelly, Federal Trade Commission, H–200, 6th & Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3304. Ronald Waldman, Federal Trade Commission, New York Regional Office, 150 William Street, Suite 1300, New York, NY 10038. (212) 264–1207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 3.25 of the Commission's Rules of Practice (16 CFR 3.25), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for September 30, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth and Pennsylvania Avenue, N.W., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Weight Watchers International, Inc. (hereinafter "Weight Watchers" or "respondent"), marketers of the Weight Watchers Weight Loss Program. The Weight Watchers Weight Loss Program is offered to the public nationwide through company-owned and franchised weight loss centers.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint alleged that the respondent made numerous unsubstantiated representations through consumer testimonials and other advertisements that:

(1) Its customers are typically successful in reaching their weight loss goals and maintaining their weight loss under respondent's diet program;

(2) Overweight or obese customers typically are successful in reaching their weight loss goals and maintaining their weight loss either long-term or permanently; and

(3) Its weight loss programs are superior to other weight loss programs in enabling participants to achieve and maintain weight loss.

The complaint further charges that Weight Watchers made false and unsubstantiated claims that consumers using its "Quick Success" program would lose weight at a faster rate when compared to its earlier programs.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the proposed order, in Part I.A., requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence when appropriate substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the proposed order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) All participants who have entered the programs where the representation relates to such persons; or (b) all participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondents' program, including any

periods of participation in respondent's maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, Part I.B. of the proposed order requires the respondent, when making any claim that participants of any diet program have successfully maintained weight loss, to disclose the fact that "For many dieters, weight loss is temporary." In addition, Part I.C. requires respondent to disclose the following information relating to that claim:

(1) The average percentage of weight loss maintained by those participants (e.g., "60% of achieved weight loss was maintained"),

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in respondent's maintenance program(s) that follows active weight loss, if that is the case (e.g., "Participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on a maintenance program)),'' and

(3) The proportion of the total participant population that those participants represent, if the participant population referred to is not representative of the general participant population for that program (e.g., "Participants on maintenance—30% of our clients—kept off an average of 66% of the weight for one year (includes time on maintenance program)).'' (In lieu of that factual disclosure, respondent may state: "Weight Watchers makes no claim that this result is representative of all participants in the Weight Watchers program).''

However, if Weight Watchers makes a representation about weight loss maintenance that does not use a number or percentage, or descriptive terms that convey a quantitative measure such as "We have a successful weight management program," then in lieu of the above disclosures it may make in connection with such representation the statement "Check at our centers for details about our maintenance record" Weight Watchers would then be required to make the required maintenance information disclosures, in a printed document that is distributed to consumers at weight loss centers in accordance with the procedures set forth in Appendix A of the proposed order. The proposed order specifies that consumers must acknowledge receipt of this document and that it must be signed by the client and retained in the customers record of service for three years.

Third, Part I.D. of the proposed order addresses advertisements containing an endorsement or testimonial about weight loss success or weight loss maintenance when those claims are not representative or "typical" of what Weight Watchers participants generally achieve. Part I.D. requires Weight Watchers, when employing such "atypical" weight loss success or weight loss maintenance testimonials, to disclose either (1) what the generally expected success would be for Weight Watchers customers; or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve.

Part I.D. of the proposed order addresses advertisements containing an endorsement or testimonial about weight loss success or weight loss maintenance when those claims are not representative or "typical" of what Weight Watchers participants generally achieve. In accordance with the principles set out in the Endorsement Guides, Part I.D. would require Weight Watchers, when employing such "atypical" weight loss success or weight loss maintenance testimonials, to disclose either (1) what the generally expected success would be for Weight Watchers customers (Part I.D.(1)); or (2) the limited applicability of the endorser's experience to what consumers may generally expected to achieve (Part I.D.(2)). For weight loss testimonials Part I.D. of the proposed order permits Weight Watchers to accurately make the "generally expected success" disclosure in one of two ways. First, the company may state, in the relevant advertisement, "Weight loss averages (number) lbs. over ___ weeks." Alternatively, Part I.D. of the proposed order permits Weight Watchers to disclose in the relevant advertisement "Average weight loss (number) lbs. More details at centers."

Required disclosures that are made at centers—which are described in Appendix B of the proposed order—may be made either in the introductory brochure or in a separate document entitled "Weight Loss Information."

The proposed order makes clear that the alternative disclosures requirement contained in Parts I.C. and D. do not relieve Weight Watchers of the obligation to substantiate any maintenance success claim in accordance with Part I.A. of the proposed order.

Other Proposed Order Relief

Part I.E. of the proposed order prohibits unsubstantiated comparative efficacy claims. It would require Weight Watchers not make comparisons between the efficacy or success of one or more of its weight loss programs and the efficacy or success of any other weight loss program(s) unless it possesses and reliefs upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part I.F. of the proposed order covers rate of weight loss claims. It requires Weight Watchers to cease and desist from making any representation, directly or by implication, about the rate or speed at which any participant in any weight loss program has experienced or will experience weight loss, unless true.

Part I.G. of the proposed order would require Weight Watchers to cease and desist from making any representation, directly or by implication, about the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey, unless true.

Part I.H. of the proposed order is fencing-in relief which would require Weight Watchers to cease and desist from making any representation, directly or by implication, about the performance or efficacy of any weight loss program, unless true.

Part II. of the proposed order would require Weight Watchers to notify the Commission of certain changes in the corporate respondent.

Part III. of the proposed order would require Weight Watchers, for a period of three years after date of last dissemination of any representation covered by the order, to maintain and make available to the FTC materials relied upon in disseminating such representation and any evidence that contradicts or qualifies such representation.

Part IV. of the proposed order covers the distribution of the order to designated current and future persons. The order must be distributed to regional managers and those having point-of-sale responsibilities under the order as well as key individuals involved in the placement of advertisements.

Part V. of the proposed order covers the efforts Weight Watchers shall use to obtain its weight loss program franchisees' and licensees' ("franchisees") compliance with the order.

Weight Watchers is required under Part V., among other things, to:

(1) distribute a copy of this order to each of its weight loss program franchisees or licensees within forty-five days after service of the order;

(2) review advertising and promotional materials submitted to it from its franchisees or licensees prior to dissemination and publication to determine compliance with the requirements of the order;

(3) notify any franchisee or licensee in writing if any advertising or promotional material does not comply with the requirements of the order and that it should not be disseminated or published;

(4) monitor franchisee and licensee advertising and where it finds advertising that has not been submitted to it and which it believes is not in compliance with the requirements of the order, to notify such franchisee or licensee in writing of its findings and that such advertising should be withdrawn;

(5) maintain separate files for each franchisee or licensee containing copy of the signed receipt and copies of any correspondence relating to any advertising and promotional materials with respect to the issues raised by the order for a period of three (3) years;

(6) make these files available to the Commission staff for inspection and copying; and

(7) where the order provides for the distribution of documents containing certain information to participants, to include such information in "Program" materials which its franchisees or licensees are required to supply to each participant.

In addition, subparagraph B. of Part V. requires Weight Watchers to include in all future weight loss program agreements with new franchisees or licensees a requirement that the franchisee or licensee operate its business in full compliance with the prohibitions and affirmative requirements imposed on respondent pursuant to Part I. of the Commission's order. This part of the order defines "new franchisees or licensees" to mean those who are not franchised or licensed to conduct any weight loss program, or those who do not own or control such franchisees or licensees, at the time the order becomes final.

Part VI. of the proposed order would require Weight Watchers to file a compliance report with the Commission within sixty days after the date of service of this order.

Part VII. of the proposed order is a sunset provision that indicates, in part, that this order will terminate twenty years from the date of its issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–26525 Filed 10–6–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Xiaomin Shang, Ph.D., University of Texas Southwestern Medical Center: Based upon a report from the University of Texas Southwestern Medical Center, information obtained by the Office of Research Integrity (ORI) during its oversight review, and Dr. Shang's own admission, ORI found that Dr. Shang, a former postdoctoral fellow student in the Department of Obstetrics and Gynecology, University of Texas Southwestern Medical Center, engaged in scientific misconduct arising out of certain biomedical research supported by a training grant from the National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH).

Specifically, Dr. Shang fabricated a chemiluminescent film of a Western blot by using a physical mask to alter the prior results showing lack of antibody specificity to a human steroid metabolizing isozyme, rather than replicating an experiment as requested by his mentor. The fabricated data were not published.

Dr. Shang has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning September 29, 1997:

(1) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which Dr. Shang's participation is proposed or which uses him in any capacity on PHS supported research or that submits a report of PHS-funded research in which he is involved must concurrently submit a plan for supervision of his duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Dr. Shang's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–26499 Filed 10–6–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Public Meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP), in association with the meeting of the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee (HHES): Cancellation of meeting.

This notice announces the cancellation of a previously announced meeting.

Federal Notice Citation of Previous Announcement: 62 FR 6973, February 14, 1997.

Previously Announced Time and Date: 9 a.m.–5 p.m., December 10, 1997.

Change in the Meeting: This meeting has been cancelled.

Contact Person for More Information: James K. Carpenter, Executive Secretary, Citizens Advisory Committee on PHS Activities and Research at DOE Sites: HHES, ATSDR, 1600 Clifton Road, NE, M/S E–32, Atlanta, Georgia 30333, telephone 404/639–6027.

Dated: October 1, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–26496 Filed 10–6–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee (HHES); Meeting Cancellation

This notice announces the cancellation of a previously announced meeting.

Federal Notice Citation of Previous Announcement: 62 FR 6539, February 12, 1997.

Previously Announced Times and Dates: 9 a.m.–5 p.m., and 6:30 p.m.–8:30 p.m., December 11, 1997; 9:30 a.m.–3:30 p.m., December 12, 1997.

Change in the Meeting: This meeting has been cancelled.

Contact Person for More Information: James K. Carpenter, Executive Secretary, Citizens Advisory Committee on PHS Activities and Research at DOE Sites: HHES, ATSDR, 1600 Clifton Road, NE, M/S E–32, Atlanta, Georgia 30333, telephone 404/639–6027.

Dated: October 1, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–26497 Filed 10–6–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Occupational Exposure to Inorganic Lead: Request for Comments and Information

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Request for Comments and Information Relevant to Occupational Exposure to Inorganic Lead.

SUMMARY: NIOSH is reviewing its recommendations contained in the document Criteria for a Recommended Standard....Occupational Exposure to Inorganic Lead, Revised Criteria—1978 [NIOSH 1978]. The evaluation of recent literature indicates that the NIOSH recommended exposure limit (REL) of 100 g/m³ as an 8-hour time-weighted average (TWA) in that document does not sufficiently protect workers from the adverse effects of exposure to inorganic lead. NIOSH is requesting comments and information relevant to the evaluation of the potential health risks associated with occupational exposure to inorganic lead, as well as case reports or other data that demonstrate adverse health effects in workers exposed to inorganic lead at or below the OSHA permissible exposure limit (PEL) of 50 g/m³ as an 8-hour TWA and any information pertinent to evaluating the technical feasibility of establishing a more protective REL for inorganic lead. NIOSH is also soliciting information on worker blood lead levels (BLLs) including data on methodologies used in measuring BLLs in the workplace and information that can be used for comparing airborne inorganic lead concentrations to observed BLLs.

NIOSH intends to analyze the feasibility of developing preventive measures including an REL that would provide better protection for workers. In the interim, NIOSH plans to adopt the more protective current OSHA PEL as its REL.

DATES: Written comments to this notice should be submitted to Diane Manning, NIOSH Docket Office, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226, on or before December 8, 1997. Comments may also be faxed to Diane Manning at (513) 533–8285 or submitted by email to dmm2@cdc.gov as WordPerfect 6.0/6.1 files.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Dr. Henryka Nagy, NIOSH, CDC, 4676 Columbia Parkway, M/S C–32, Cincinnati, Ohio 45226, telephone (513) 533–8369.

SUPPLEMENTARY INFORMATION: NIOSH has conducted a literature review of the health effects data on inorganic lead exposure and finds evidence that some adverse effects on the adult reproductive, cardiovascular, and hematologic systems, and on the development of children of exposed workers can occur at BLLs as low as 10 g/dl with no apparent threshold. At BLLs below 40 g/dl, many of the health effects associated with lead exposure would not necessarily be evident by routine physical examinations, but represent early stages in a continuum of disease development. The risk of developing adverse health effects appears to increase as BLLs rise above 40 g/dl.

In the NIOSH 1978 criteria document entitled Occupational Exposure to Inorganic Lead [NIOSH 1978], NIOSH recommended that exposure to inorganic lead be limited to 100 g/m³ as an 8-hour TWA. This exposure limit was expected to maintain BLLs below 60 g/dl and to prevent clinical health effects to the hematologic system, the central and peripheral nervous systems, the reproductive system, and the kidneys. NIOSH also expressed concern about possible health effects that may occur below 60 g/dl:"In adhering to the 60 g/dl figure, NIOSH has not relinquished its concerns for possible effects that may occur below 60 g/dl. Adherence to this 60 g/dl figure should not be interpreted as a firm NIOSH opposition to establishing a lower blood lead standard. In fact, NIOSH endorses a lower blood lead standard as a future goal to provide greater assurance of safety.

In 1978, the Occupational Safety and Health Administration (OSHA) promulgated an occupational inorganic lead standard for general industry that incorporates a PEL of 50 g/m³ which is intended to maintain worker BLLs below 40 g/dl. OSHA also included provisions for reducing the PEL for work shifts that exceed 8 hours, medical monitoring of workers exposed to airborne inorganic lead concentrations at or above the action level of 30 g/m³, and medical removal of workers with BLLs greater than 50 g/dl. Workers are permitted to return to jobs involving inorganic lead exposure only after their BLLs have declined to 40 g/dl.

OSHA concluded in 1978 that a PEL of 50 g/m³ represented the lowest level for which there was evidence of feasibility in most industries. OSHA also acknowledged that, based on the scientific data, the PEL of 50 g/m³ did not provide protection from all adverse health effects of inorganic lead toxicity because the hematologic system, the nervous system, the kidneys, and the fetus can be adversely affected by exposures to inorganic lead resulting in BLLs below 40 g/dl (43 FR 52952, November 14, 1978). In May 1993, OSHA published the Interim Final Lead in Construction Standard (58 FR 26590, May 4, 1993). This standard extended the general industry standard for inorganic lead to include workers in the construction industry. No additional analysis of the health data was performed by OSHA in adopting this standard for the construction industry.

NIOSH seeks to obtain materials, including reports and research findings, to evaluate the health risks of occupational exposure to inorganic lead. Examples of requested information include, but are not be limited to, the following:

1. Occupational (environmental) exposure data.
2. Data on the effectiveness of engineering controls, work practices, training, personal protective equipment and other activities used to limit workers' exposure.
3. Identification of industries or occupations where intermittent or low concentrations of inorganic lead may occur.
4. Descriptions of work practices and engineering controls used to reduce workplace exposure.
5. Case reports or other health data that demonstrate adverse health effects in workers exposed to inorganic lead at or below the OSHA PEL and any information pertinent to evaluating the feasibility of establishing a more protective exposure limit. Case reports and health data should be submitted without personal identifiers.
6. Information regarding methods for BLL determination that could be used routinely in the workplace (e.g., determination of BLLs using portable equipment). NIOSH is evaluating whether the routine biological monitoring of inorganic lead exposed workers (through BLLs) may be a more appropriate measure than airborne concentrations for estimating the potential for developing adverse health effects.

This information will be used by NIOSH to determine the need for developing new recommendations for lowering the occupational exposure to inorganic lead and improving strategies for monitoring inorganic lead exposure.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

References

43 FR 52952, November 14, 1978. Chapter XVII—Occupational Safety and Health Administration, Department of Labor; Part 1910—Occupational safety and health standards: occupational exposure to lead.

58 FR 26590, May 4, 1993. Occupational Safety and Health Administration: lead exposure in construction; interim final rule. (To be codified at 29 CFR 1926.)

NIOSH [1978]. Criteria for a recommended standard . . . occupational exposure to inorganic lead, revised criteria. Rockville, MD: U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, DHEW (NIOSH) Publication No. 78–158.

Dated: September 29, 1997.

Linda Rosenstock, MD., MPH.,

Director, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–26516 Filed 10–6–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Oak Ridge Workshop; Energy-Related Health Research Needs; Notice of a Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC), in collaboration with the Department of Energy (DOE), the National Institute for Occupational Safety and Health, CDC, and the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

Name: Oak Ridge Workshop on Energy-Related Health Research Needs.

Times And Dates: 2 p.m.–9 p.m., October 30, 1997. 8:30 a.m.–12 noon, October 31, 1997.

Place: Ramada Inn and Suites, 420 South Illinois Avenue, Oak Ridge, Tennessee 37830, telephone 423/483–4371, FAX 423/483–5972.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: To solicit individual input from scientists, representatives of State and local health departments, DOE facility managers, workers, and the public regarding health research needs in and around the Oak Ridge DOE facility. The results of this workshop and similar workshops at other locations will be used to set the short- and long-range research plan for health studies at DOE facilities.

Matters To Be Discussed: The workshop will be divided into three breakout sessions which will include the following topics: (1) worker health studies, (2) environmental health studies, and (3) communications and community involvement.

Agenda items are subject to change as priorities dictate.

Due to circumstances beyond our control, it was necessary to reschedule the original meeting dates of September 22–23, 1997, to October 30–31, 1997.

Contact Person for More Information: Michael J. Sage, Deputy Chief, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: October 1, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–26495 Filed 10–6–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0416]

Johnson and Johnson Professional, Inc.; Premarket Approval of the S–ROM Poly-Dial Constrained Liner

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Johnson and Johnson Professional, Inc., Raynham, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the S–ROM Poly-Dial Constrained Liner. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 20, 1997, of the approval of the application.

DATES: Petitions for administrative review by November 6, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration,12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hany W. Demian, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

SUPPLEMENTARY INFORMATION: On December 26, 1996, Johnson and Johnson Professional, Inc., Raynham, MA, 02767–0350, submitted to CDRH an application for premarket approval of the S–ROM Poly-Dial Constrained Liner. The device is a constrained acetabular liner and is indicated for use as a component of a total hip dislocation due to a history of prior dislocation, bone loss, joint or soft tissue laxity, neuromuscular disease, or intraoperative instability.

On June 10, 1997, the Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On June 20, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 6, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 11, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–26563 Filed 10–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0411]

Bovine Spongiform Encephalopathy (BSE) in Products for Human Use; Guidance for Industry on the Sourcing and Processing of Gelatin to Reduce Potential Risk; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "The Sourcing and Processing of Gelatin to Reduce the Potential Risk Posed by Bovine Spongiform Encephalopathy (BSE) in FDA-Regulated Products for Human Use." This guidance is intended to provide information to industry on reducing the risk of transmission of BSE in gelatin for human use.

DATES: Submit written comments on this guidance by December 22, 1997.

ADDRESSES: Submit written requests for single copies of the guidance document to the Executive Secretariat (HF–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Linda H. Gangloff, Executive Secretariat (HF–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4450.

SUPPLEMENTARY INFORMATION: In 1994, representatives of the gelatin industry presented preliminary data to FDA concerning an experimental study of the infectivity of tissue infected with a transmissible spongiform encephalopathy (TSE). TSE's are rare, fatal, neurological diseases that occur in a number of animals (e.g., scrapie in sheep) and in humans (e.g., Creutzfeldt-Jakob disease). Based on the data presented, FDA decided that recommendations concerning bovine ingredients from countries that have reported BSE in FDA-regulated products would not include gelatin. A notice in the **Federal Register** of August 29, 1994 (59 FR 44584), summarized FDA's recommendations to reduce any potential BSE risk to humans from FDA-regulated products and clarified that FDA did not object at that time to gelatin for human use produced from bovine materials from countries reporting BSE.

FDA is committed to amending previous guidance to industry as new information becomes available. On April 23 and 24, 1997, FDA's TSE Advisory Committee discussed information on gelatin manufacturing practices and final results of the research study. At the end of the meeting, a majority of the advisory committee members agreed that current scientific evidence did not justify continued exemption of gelatin from restrictions recommended by FDA for other bovine-derived materials from BSE countries. They also stated that the potential risk of BSE transmission from bovine-derived gelatin varies depending on the country of origin of the raw materials, type of tissue used, the gelatin processes used, and the route of administration or exposure.

FDA has adopted "Good Guidance Practices" (GGP's) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). The guidance announced in this document is issued as a Level 1 guidance consistent with GGP's. The agency is accepting public comments, but it is implementing this guidance immediately because of public health concerns related to the use of gelatin. This guidance represents the agency's current thinking on reducing the potential risk of transmission of BSE related to the use of gelatin in FDA-regulated products for human use. It does not create or confer any rights for or on any person and does not operate to bind the FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before December 22, 1997, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this

document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Persons with access to the Internet may obtain the guidance document using the World Wide Web (WWW). For WWW access, go to "http://www.fda.gov/opacom/morechoices/industry/guidance/gelguide.htm".

Dated: October 1, 1997.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

[FR Doc. 97–26501 Filed 10–2–97; 12:02 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Resource Related Research Project—R24.

Date: October 21, 1997.

Time: 9:30 a.m.—Until Adjournment.

Place: Woodfin Suites Hotel, Virginia Room, 1380 Piccard Drive, Rockville, MD 20850 (301) 590–9880.

Contact Person: Dr. Jill Carrington, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965 (301) 435–0811.

Purpose/Agenda: To evaluate and review grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.306, Laboratory Animal Science and Primate Research.)

Dated: October 1, 1997.

Laverne Y. Stringfield,

Committee Management Office, NIH.

[FR Doc. 97–26505 Filed 10–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Center for Research Resources Initial Review Group—General Clinical Research Centers Review Committee, October 15–16, 1997, Bethesda Ramada Hotel, Ambassador 2 Room, 8400 Wisconsin Avenue, Bethesda, Maryland, which was published in the **Federal Register** on September 23 (62 FR 49697).

This committee was scheduled to meet on October 15–16, 1997, from 8:00 a.m. to 9:30 a.m. in open session, and from 9:30 a.m. until adjournment in closed session. The meeting has been changed to add an additional open session on October 16, 1997.

The session on October 16 will be open to the public from 10:30 a.m. to 11:30 a.m., and will be closed from 11:30 a.m. until adjournment for the review, discussion, and evaluation of individual grant applications.

Dated: October 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26506 Filed 10–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Purusant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: General Clinical Research Centers

Date: October 30, 1997

Time: 8:00 a.m.–Until Adjournment

Place: City of Hope National Medical Center, 1500 East Duarte Road, Duarte, CA 90027, (626) 301–6434

Contact Person: Dr. Charles Hollingsworth, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0806

Purpose/Agenda: To evaluate and review grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.306, Laboratory Animal Science and Primate Research.)

Dated: September 30, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26507 Filed 10–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Perinatal Studies of Disorders of Fetal Metabolism.

Date: October 6–7, 1997.

Time: October 6–7:30 p.m.–10:00 p.m.; October 7—8:30 a.m.–adjournment.

Place: The Glidden House Inn, 1901 Ford Drive, Cleveland, Ohio 44106.

Contact Person: Gopal Bhatnagar, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building–Room 5E01, Rockville, Maryland 20852; Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review a grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. the discussions of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research Mothers and Children], National Institutes of Health.)

Dated: October 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26503 Filed 10–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual applications.

Name of SEP: Clinical Sciences.

Date: October 23–24, 1997.

Time: 8:00 a.m.

Place: Quality Hotel & Conference Center, Metairie, LA.

Contact Person: Dr. Jo Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Multidisciplinary Sciences.

Date: November 6, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5116, Telephone Conference.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Multidisciplinary Sciences.

Date: November 13–15, 1997.

Time: 7:00 p.m.

Place: The Inn at Children's Hospital, Boston, MA.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Multidisciplinary Sciences.

Date: November 3, 1997.

Time: 8:30 a.m.

Place: Holiday Inn-Central, Washington, DC.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Biological and Physiological Sciences.

Date: November 14, 1997.

Time: 8:30 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5512, Bethesda, Maryland 20892, (301) 435–1169.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 39.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: October 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26504 Filed 10–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4049–N–04]

Lead-Based Paint Hazard Control in Privately-Owned Housing: Announcement of Funding Awards—FY 1996

AGENCY: Office of the Secretary—Office of Lead Hazard Control, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a) (4) (C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Lead-Based Paint Hazard Control in Privately-Owned Housing. This announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–1785, ext. 112. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Lead-based Paint Poisoning Prevention program is authorized by Pub. L. 91–695, 84 Stat. 2078, as amended by Pub. L. 93–151 and Pub. L. 94–317 (42 U.S.C. 4821–4846).

The purpose of the competition was to award grant funding for approximately $55,000,000 for the grant program for lead-based paint hazard control in privately-owned housing. Approximately $4,000,000 of this total has been awarded for controlling lead-based paint hazards at or near Superfund sites or "brownfield" sites where Superfund or brownfield dollars will be spent to address lead-contaminated soil (Category B grantees). The 1996 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on May 14, 1996 (61 FR 24408). Applications were scored and selected for funding on the basis of the selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987; 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as follows:

Jefferson County, Office of Planning and Community Development, 805 N. 22nd St., Birmingham, AL 35203–2385, $1,014,778.00

City of Dubuque, Dubuque Housing Services, 1805 Central Ave., Dubuque, IA 52001–3656, $3,690,619.00

City of Shreveport, Dept of Community Development, P.O. Box 31109, Shreveport, LA 71130, $1,142,300.00

City of Cambridge, Lead-Safe Cambridge, Community Development Dept, 57 Inman St., 2nd Floor, Cambridge, MA 02139, $2,177,327.00

County of Wayne, Wayne County Dept of Public Health, 5454 Venoy, Wayne, MI 48184, $4,994,424.00

City of Minneapolis, Environmental Health Services Division, 250 S 4th St., Room 401, Minneapolis, MN 55415, $4,994,424.00

State of Minnesota, Division of Environmental Health, 717 Delaware St. Southeast, P.O. Box 9441, Minneapolis, MN 55440–9441, $1,475,389.00

City of Kansas City, Health Dept., 2400 Troost Ave, Suite 1400, Kansas City, MO 64108, $4,994,424.00

City of Charlotte, Neighborhood Development Key Business, 600 East Trade Street, Charlotte, NC 28202–2859, $4,986,800.00

County of Chautauqua, Health Dept, Hall Clothier Bldg., 7 N. Erie Street, Mayville, NY 14757, $2,725,334.00

City of New York, Dept of Housing Preservation and Development, 100 Gold Street, New York, NY 10038, $1,596,274.00

County of Mahoning, Mahoning County Courthouse, 120 Market St., Youngstown, OH 44503, $4,295,668.00

City of Springfield, Clark County, 76 E. High Street, Springfield, OH 45502, $2,966,805.00

City of Philadelphia, Office of Housing & Community Development, 1234 Market St., 17 Floor, Philadelphia, PA 19107, $1,573,200.00

State of Vermont, Vermont Housing & Conservation Board, 149 State Street, Montpelier, VT 05602, $1,804,610.00

City of Milwaukee, 841 N. Broadway, Milwaukee, WI 53202, $4,994,424.00
State of Wisconsin, Department of Administration, Division of Housing, 101 E. Wilson, 4th Floor, Madison, WI 53708–8944, $1,573,200.00
City of Richmond (Cat. B), Richmond City Health Dept., East District Center, Suite 105, 701 N. 25th St., Richmond, VA 23223, $1,368,818.00
State of Missouri (Cat. B), Bureau of Environmental Epidemiology, P.O. Box 570, 210 El Mercado Plaza, Jefferson City, MO 65102, $1,997,894.00
Palmerton Borough (Cat. B), Borough Hall, P.O. Box 235, Palmerton, PA 18071, $633,288.00

Dated: September 29, 1997.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 97–26464 Filed 10–6–97; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4167–N–03]

Announcement of Funding Awards for the Traditional Indian Housing Development Program—Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Traditional Indian Housing Development Program. This announcement contains the names and addresses of the awardees and the amount of the awards made available by HUD to provide assistance to the Indian Housing Development Program.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Housing and Community Development Division, Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202–3607; telephone (303) 675–1600 (this is not a toll-free number). Hearing-or speech impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Indian Housing Development program is authorized by sections 5 and 6, U. S. Housing Act of 1937 (42 U.S.C. 1437c, 1437d), as amended; Section 23 U. S. Housing Act of 1937, as amended by section 554, Cranston-Gonzalez National Affordable Housing Act; section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

This notice announces FY 1997 funding of approximately $200,000,000 to be used to assist in job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns. The FY 1997 grantees announced in this Notice were selected for funding consistent with the provisions in the NOFA published in the **Federal Register** on April 24, 1997 (62 FR 20068).

The Catalog of Federal Domestic Assistance number for this program is 14.850.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A.

Dated: September 30, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FUNDING AWARDS TRADITIONAL INDIAN HOUSING DEVELOPMENT PROGRAM

[Fiscal Year 1997]

Grantee name & address	Amount	Units
Alabama-Quassarte Tribal Town of Oklahoma, 111 North 6th Street, P.O. Box 537, Henryetta, Oklahoma 74437	1,343,258	15
Aleutian Housing Authority, 4000 Old Seward Highway, STE #202, Anchorage, Alaska 99503	3,564,426	20
AVCP Regional Housing Authority, P.O. Box 767, Bethel, Alaska 99559	3,702,787	20
Bay Mills Housing Authority, Route 1 Box 3345, Brimley, Michigan 49715	5,342,780	50
Bering Straits Regional Housing Authority, P.O. Box 995, Nome, Alaska 99762	3,907,142	20
Bristol Bay Housing Authority, P.O. Box 50, Dillingham, Alaska 99576	4,278,815	20
C.L.U.S.H.A., 338 Wallace Avenue, Coos Bay, Oregon 97420	2,014,984	15
Catawba Indian Housing Authority, P.O. Box 11106, Rock Hill, South Carolina 29730	1,833,516	20
Chehalis Indian Housing Authority, P.O. Box 314, Oakville, Washington 98568	1,388,548	10
Cheyenne River Housing Authority, P.O. Box 480, Eagle Butte, South Dakota 57625	3,327,410	30
Citizen Band Potawotomi, Nation Housing Authority, 1901 South Gordon Cooper Drive, Shawnee, Oklahoma 74801	1,841,370	15
Coeur d'Alene Housing Authority, P.O. Box 267, Plummer, Idaho 83851	514,920	5
Cook Inlet Housing Authority, 2600 Cordova Street, STE 201, Anchorage, Alaska 99503	2,283,567	20
Copper River Basin, Regional Housing Authority, Post Ofice Box 199, Copper Center, Alaska 99573	2,503,780	18
Delaware Tribe of Western Oklahoma, P.O. Box 825, Anadarko, Oklahoma, 73005	1,315,169	15
Eastern Shawnee Tribe of Oklahoma, P.O. Box 350, Seneca, Missouri 64865	1,459,596	15
Eastern Shoshone Housing Authority, P.O. Box 538, Fort Washakie, Wyoming 82514	1,988,726	15
Enterprise Rancheria Indian Housing Authority, 2950 Feather River Boulevard, Suite C, Oroville, CA 95965	2,287,653	15
Fort Belknap Housing Authority, Route 1, P.O. Box 61, Harlem, Montana 59526	3,281,696	25
Fort Hall Indian Housing Authority, P.O. Box 306, Fort Hall, Idaho 83203	564,185	5
Fort Peck Housing Authority, P.O. Box 667, Poplar, Montana 59255	2,477,362	20
Goshute Housing Authority, P.O. Box 6104, Ibapah, Utah 84034	2,258,490	15
Grand Ronde Housing Authority, P.O. Box 38, Grand Ronde, Oregon 97347	598,265	5
Hoopa Valley Indian Housing Authority, P.O. Box 1285, Hoopa, California 95546	7,156,733	41
Houlton Maliseet Housing Authority, 13 Clover Circle, P.O. box 13, Houlton, Maine 04730	1,699,207	15
Housing Authority of the Cherokee Nation, P.O. Box 1007, Tahlequah, Oklahoma 74465	4,489,242	50
Housing Authority of the Cheyenne-Arapaho Tribe, 1000 Canyon Ridge Road, Clinton, Oklahoma 73601	2,852,880	30
Housing Authority of the Iowa Tribe of Kansas and Nebraska, P.O. Box 68, White Cloud, Kansas 66094	960,260	10

APPENDIX A.—FUNDING AWARDS TRADITIONAL INDIAN HOUSING DEVELOPMENT PROGRAM—Continued

[Fiscal Year 1997]

Grantee name & address	Amount	Units
Housing Authority of the Iowa Tribe of Oklahoma, Rural Route 1, Box 721, Perkins, Oklahoma 74059	1,415,325	15
Housing Authority of the Kaw Tribe of Indians, P.O. Box 371, Newkirk, Oklahoma 74647	868,046	10
Housing Authority of the Kickapoo Tribe of Oklahoma, P.O. Box 120, McLoud, Oklahoma 74851	957,477	10
Housing Authority of the Osage Tribe, P.O. Box 517, Hominy, Oklahoma 74035	869,020	10
Housing Authority of the Peoria Tribe, P.O. Box 1304, Miami, Oklahoma 74355	1,776,999	20
Housing Authority of the Seminole Nation, P.O. Box 1493, Wewoka, Oklahoma 74884	280,531	3
Huron Potawatomi Indian Housing Authority, 2221 1½ Mile Road, Fulton, Michigan 49052	1,518,889	15
Indian Housing Authority of Central California, 5108 E. Clinton Way, #108, Fresno, California 93727	8,954,932	55
Interior Regional Housing Authority, 828 27th Avenue, Fairbanks, Alaska 99701–6918	3,847,797	20
Kalispel Tribe, P.O. Box 38, Usk, Washington 99180	1,073,688	8
Karuk Tribe Housing Authority, P.O. Box 1159, Happy Camp, California 96039	7,535,144	44
Kasigluk Tribal Council, Yup'ik Housing Authority, P.O. Box 119, Kasigluk, Alaska 99609	2,320,663	8
Klamath Tribal Housing Authority, 905 Main Street, Suite 813, Klamath Falls, Oregon 97601	1,157,120	10
Little River Band of Ottawa Indians, P.O. Box 314, Manistee, Michigan 49660	1,897,740	15
Little Traverse Bay Band of Odawa, P.O. Box 246, 1345 U.S. 31 North, Petoskey, Michigan 49770	1,897,740	15
Lower Brule Housing Authority, P.O. Box 183, Lower Brule, South Dakota 57548	3,168,725	27
Lower Elwha Indian Housing Authority, 22 Kwitsen Drive, Port Angeles, Washington 98362	1,382,483	10
Lummi Nation Indian Housing Authority, 2616 Kwina Road, Bellingham, Washington 98226–8698	655,325	5
Miami Tribe of Oklahoma, P.O. Box 1326, Miami, Oklahoma 74355	1,389,680	15
Mississippi Band of Choctaw Housing Authority, P.O. Box 6088, Choctaw Branch, Philadelphia, Mississippi 39350	4,898,121	59
Modoc Tribe of Oklahoma Housing Authority, 515 G, SE Street, Miami, Oklahoma 74354–8224	1,389,680	15
North Fork Rancheria, Indian Housing Authority, P.O. Box 929, North Fork, California 93643	2,396,590	15
North Pacific Rim Housing Authority, 560 E. 34th Avenue, Ste #302, Anchorage, AK 99503	2,822,233	16
Northern Circle Indian Housing Authority, 694 Pinoleville Drive, Ukiah, California 95482	4,087,950	30
Northwest Inupiat Housing Authority, P.O. Box 331, Kotzebue, Alaska 99752	2,945,193	15
Omaha Indian Housing Authority, P.O. Box 150, Macy, Nebraska 68039	4,392,131	38
Owens Valley Housing Authority, P.O. Box 490, Big Pine, California 93513	5,856,681	36
Pueblo of Acoma Housing Authority, P.O. Box 620, Acoma, New Mexico 87034	5,098,135	40
Pueblo of Laguna Housing Authority, P.O. Box 178, Laguna, New Mexico 87026	3,035,400	30
Quapah Tribal Housing Authority, P.O. Box 765, Quapah Oklahoma 74363	1,337,990	15
Quileute Indian Housing Authority, P.O. Box 159, La Push, Washington 98350	655,325	5
Quinault Indian Housing Authority, P.O. Box 160, Taholah, Washington 98587	1,414,514	10
Sac and Fox of Missouri Housing Authority, Rt 1, Box 97, Unit 12, Reserve, Kansas 66434	1,940,172	20
Santa Clara Pueblo Housing Authority, P.O. Box 580, Espanola, New Mexico 87532	2,252,908	20
Seminole Housing Authority, 6300 Stirling Road, 3rd Floor, Hollywood, Florida 33024	3,534,624	35
Seneca Indian Housing Authority, 50 Iroquois Drive, Irving, New York 14081	3,538,648	25
Shoalwater Bay Tribe, P.O. Box 130, Tokeland, Washington 98590	1,310,650	10
Siletz Indian Housing Authority, P.O. Box 549, Siletz, Oregon 97380	1,854,841	15
Spokane Indian Housing Authority, P.O. Box 195, Wellpinit, Washington 99040	1,342,110	10
Squaxin Island Tribe, Route 1, Box 257, Shelton, Washington 98584	860,005	7
Swinomish Indian Housing Authority, P.O. Box 677, La Conner, Washington 98257	655,325	5
Tagiugmiullu Nunamiullu Housing Authority, P.O. Box 409, Barrow, Alaska 99723	3,392,144	20
Tlingit-Haida Regional Housing Authority, P.O. Box 32237, Juneau, Alaska 99803	3,521,273	20
United Keetoowah Band of Cherokee Housing Authority, P.O. Box 746, Tahlequah, Oklahoma 74465–0746	1,409,511	15
Upper Sioux Indian Community, P.O. Box 147, Granit Falls, Minnesota 56241	1,948,135	15
Utah Paiute Housing Authority, 665 North, 100 East, Cedar City, Utah 84720	2,097,260	20
Walker River Reservation Housing Authority, P.O. Box 238, Schurz, Nevada 89427	2,867,490	20
Warm Springs Indian Housing Authority, P.O. Box 1167, Warm Springs, Oregon 97761	705,712	5
Wyandotte Tribe of Oklahoma, P.O. Box 250, Wyandotte, Oklahoma 74370	1,607,194	15
Yurok Indian Housing Authority, P.O. Box 98, Klamath, California 95548	10,628,004	64

[FR Doc. 97–26463 Filed 10–6–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 832946

Applicant: James E. Pike, Huntington Beach, California.

The applicant requests a permit to take (harass by survey, locate and monitor nests) the least Bell's vireo (Vireo bellii pusillus), southwestern willow flycatcher (Empidonax traillii extimus), and coastal California gnatcatcher (Polioptila californica californica) in conjunction with population monitoring and removal of brown-headed cowbird (Molothrus ater) eggs and chicks from parasitized nests of these species throughout their range in California for the purpose of enhancing their survival.

Permit No. 832945

Applicant: Lisa Kegarice, San Bernardino, California.

The applicant requests a permit to take (harass by survey) the least Bell's vireo (Vireo bellii pusillus) in conjunction with presence or absence surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. 796286

Applicant: Larry Serpa, The Nature Conservancy, Tiburon, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect voucher specimens) the San Diego fairy shrimp (Branchinecta sandiegonensis) throughout its range in California and take (harass by survey, capture, mark, and release) the California freshwater shrimp (Syncaris pacifica) in Marin, Napa, and Sonoma Counties, California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival. The activities for the California freshwater shrimp have been previously authorized under subpermit TNCBAP.

Permit No. 833230

Applicant: Robert Aramayo, Tiburon, California.

The applicant requests a permit to take (harass by survey; capture and release; collect and sacrifice voucher specimens) the Conservancy fairy shrimp (Branchinecta conservatio), longhorn fairy shrimp (Branchinecta longiantenna), vernal pool tadpole shrimp (Lepidurus packardi), San Diego fairy shrimp (Brachinecta sandiegonensis), and Riverside fairy shrimp (Streptocephalus woottoni) in conjunction with presence or absence surveys in vernal pools throughout the species range in California for the purpose of enhancing their survival.

Permit No. 799074

Applicant: Ted Case, University of California, San Diego, California.

The applicant requests an amendment to his permit to take (attach radio transmitters) southwestern arroyo toads (Bufo microscaphus californicus) in conjunction with ecological research in San Diego, Orange, and Riverside Counties, California for the purpose of enhancing its survival.

Permit No. 780566

Applicant: Ruben Ramirez, Diamond Bar, California.

The applicant requests an amendment to his permit to take (capture and release) the southwestern arroyo toad (Bufo microscaphus californicus) in conjunction with life history studies throughout the species range in California for the purpose of enhancing its survival.

Permit No. 793640

Applicant: Jerry Smith, San Jose State University, San Jose, California.

The applicant requests an amendment to his permit to take (attach radio transmitters and passive-integrated transponders) the California red-legged frog (Rana aurora draytonii) in conjunction with ecological research in San Mateo and Santa Cruz Counties, California for the purpose of enhancing its survival.

Permit No. 778195

Applicant: Helix Environmental, La Mesa, California (previously issued under Sweetwater Environmental Biologists, Inc., San Diego, California).

The applicant requests an amendment to his permit to take (harass by survey) the southwestern willow flycatcher (Empidonax traillii extimus) in conjunction with presence or absence surveys in Southern California and extend the area authorized to take (harass by survey; locate and monitor nests; remove cowbird (Molothrus ater) chicks and eggs from parasitized nests) the least Bell's vireo (Vireo bellii pusillus) to include Riverside County, California for the purpose of enhancing their survival.

Permit No. 802904

Applicant: Carl J. Page, Cotati, California.

The applicant requests an amendment to his permit to take (harass by survey, capture and release) the California red-legged frog (Rana aurora draytonii) in conjunction with aquatic surveys, which may require electroshocking, throughout the species range in California for the purpose of enhancing its survival.

Permit No.831909

Applicant: James Frazier, Oneonta, New York.

The applicant requests a permit to purchase in interstate commerce one pair of captive bred Hawaiian (=nene) geese (Nesochen [=Branta) sandvicensis) from Maurice Field of Martin, Tennessee for the purpose of enhancing its propagation and survival.

Permit No. 822631

Applicant: Wildlife Research Associates, Petaluma, California.

The applicant requests a permit to take (harass by survey; capture and release; collect and sacrifice voucher specimens) the Conservancy fairy shrimp (Branchinecta conservatio), longhorn fairy shrimp (Branchinecta longiantenna), and the vernal pool tadpole shrimp (Lepidurus packardi) in conjunction with presence or absence surveys in vernal pools throughout the species range in California for the purpose of enhancing their survival.

Permit No. 834490

Applicant: Eric D. Tatersall, Occidental, California.

The applicant requests a permit to take (harass by survey; capture and release; collect and sacrifice voucher specimens) the Conservancy fairy shrimp (Branchinecta conservatio), longhorn fairy shrimp (Branchinecta longiantenna), vernal pool tadpole shrimp (Lepidurus packardi), San Diego fairy shrimp (Brachinecta sandiegonensis), and the Riverside fairy shrimp (Streptocephalus woottoni) in conjunction with presence or absence surveys in vernal pools throughout the species range in California for the purpose of enhancing their survival.

Permit No. 834491

Applicant: Michelle Casey, Occidental, California.

The applicant requests a permit to take (harass by survey; capture and release; collect and sacrifice voucher specimens) the Conservancy fairy shrimp (Branchinecta conservatio), longhorn fairy shrimp (Branchinecta longiantenna), vernal pool tadpole shrimp (Lepidurus packardi), San Diego fairy shrimp (Brachinecta sandiegonensis), and the Riverside fairy shrimp (Streptocephalus woottoni) in conjunction with presence or absence surveys in vernal pools throughout the species range in California for the purpose of enhancing their survival.

Permit No. 834492

Applicant: Julie Thomas, Morro Bay, California.

The applicant requests a permit to take (harass by survey; capture and release; collect and sacrifice voucher specimens) the Conservancy fairy shrimp (Branchinecta conservatio), longhorn fairy shrimp (Branchinecta longiantenna), vernal pool tadpole shrimp (Lepidurus packardi), San Diego fairy shrimp (Brachinecta sandiegonensis), and the Riverside fairy shrimp (Streptocephalus woottoni) in conjunction with presence or absence surveys in vernal pools throughout the species range in California for the purpose of enhancing their survival.

Permit No. 827494

Applicant: Rick Riefner, Tustin, California.

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (Euphydryas editha quino) in conjunction with presence or absence surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. 834488

Applicant: Gregg B. Miller, Tustin, California.

The applicant requests a permit to take (capture and release) the Pacific pocket mouse (Perognathus longimembris pacificus) in conjunction with presence or absence surveys in Los Angeles, Orange, and San Diego Counties, California for the purpose of enhancing its survival.

Permit No. 797259

Applicant: Chris Wilcox, Santa Cruz, California.

The applicant requests an amendment to his permit to take (harass by survey; capture and release; collect and sacrifice voucher specimens) the San Diego fairy shrimp (Brachinecta sandiegonensis) in conjunction with presence or absence surveys in vernal pools throughout the species range in California for the purpose of enhancing its survival.

Permit No. 702631

Applicant: Assistant Regional director-Ecological Services, Region 1, Fish and Wildlife Service, Portland, Oregon.

The applicant requests an amendment to his permit to remove and reduce to possession specimens of the following plant species: Cercocarpus traskiae (Catalina Island mountain-mahogany), Lithophragma maximum (San Clemente Island woodland-star), and Sibara filifolia (Santa Cruz Island rockcress) throughout their range in conjunction with recovery efforts for the purpose of enhancing their survival.

Permit No. 802086

Applicant: Lisa Webber, Sacramento, California.

The applicant requests an amendment to her permit to take (harass by survey; capture and release; collect and sacrifice voucher specimens) the San Diego fairy shrimp (Brachinecta sandiegonensis), and the Riverside fairy shrimp (Streptocephalus woottoni) in conjunction with presence or absence surveys in vernal pools throughout the species range in California for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or before November 6, 1997.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; FAX: 503–231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: 503–231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: September 29, 1997.

Don Weathers,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–26494 Filed 10–6–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–07–1320–00; NM–6802, NM–3835, NM–3752, NM–3753, NM–3754, NM–3755, NM–3837, NM–7235, NM–3918, NM–3919, NM–8745]

Notice of Coal Action; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, cost estimate document (CED) for the Ark Land Company's preference right lease applications (PRLAs) San Juan County, New Mexico.

SUMMARY: The PRLA process requires that a CED be prepared and made available to the public. The CED estimates the costs of compliance with all laws, regulations, lease terms, and special stipulations intended to protect the environmental impacts of mining. This action establishes the availability of the CED for Ark Land Company's PRLAs.

DATES: On or before December 8, 1997, interested parties may submit comments regarding the CED to the Bureau of Land Management at the following address. All comments will be reviewed by the Bureau of Land Management, Farmington District Manager, 1235 La Plata Highway, Suite A., Farmington, New Mexico, 87401.

FOR FURTHER INFORMATION CONTACT: Charlie Beecham, Farmington District, BLM, (505) 599–6370.

Dated: October 1, 1997.

John Phillips,

Acting District Manager.

[FR Doc. 97–26493 Filed 10–6–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(UT–020–07–2811–00)

Salt Lake District Fire Management Plan Preparation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a fire management plan and associated environmental analysis and plan amendment.

SUMMARY: The Bureau of Land Management, Salt Lake District, will be preparing a Fire Management Plan (FMP) to address the management of wildland fire within the Salt Lake District. The purpose of the FMP is to provide the framework for the reintroduction of fire into the ecosystem while maintaining first priority on protection of human life, and secondary priority on protection of property and natural and cultural resources. An Environmental Assessment (EA), will be prepared for the FMP and amendment of existing land use plans, Box Elder and Pony Express Resource Management Plans and the Randolph and Park City Management Framework Plans.

DATES: Written comments will be accepted throughout the process of modifying plans and preparation of the EA. However, comments received after December 1, 1997 may not be reflected in the EA.

FOR FURTHER INFORMATION CONTACT: Jeff Scott, Fire Management Officer, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, UT 84119, telephone (801) 977–4344. Existing planning documents and information are available at the above address or telephone number. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The Salt Lake District is proposing to develop a FMP which sets objectives for integrating wildland fire into resource management. These objectives include wildfire suppression, prescribed fire use, and fuels management targets.

Some goals of the FMP are to identify fire management strategies to achieve desired resource conditions, and reduce the potential for catastrophic wildfires through the management of fuels, while reducing overall wildland fire management costs.

The public is invited to participate in the identification of issues related to the management of fire in the Salt Lake District. Anticipated issues for the plan amendment are:

- Protection of human life.
- Protection of property.
- Protection of natural/cultural resources.
- Safe re-introduction of fire into natural ecosystems.
- Reducing the cost of fire suppression.
- Integration of fire and resource management strategies.
- Air Quality.
- Recreation.
- Watershed management.
- Livestock grazing.
- Visual resources.
- Wildlife habitat.

An EA will be prepared to analyze the impacts of this proposal and alternatives. Public participation is being sought at this initial stage in the planning process to ensure the amendment addresses all issues, problems and concerns from those interested in the management of lands within the Salt Lake District.

Dated: September 30, 1997.

Douglas M. Koza,

Acting State Director, Utah.

[FR Doc. 97–26498 Filed 10–6–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1320–00;]

Notice of Intent to Amend Farmington District Resources Management Plan; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Farmington District, is preparing a Resource Management Plan Amendment and an Environmental Assessment (EA) for BLM-managed minerals in San Juan County, New Mexico. The Code of Federal Regulations, Title 43, Subpart 1600 (43 CFR 1600) will be followed in the preparation of this plan amendment. The public is invited to participate in this land use plan amendment effort. Written comments or suggested additional issues will be accepted through November 14, 1997. The BLM will hold a public scoping meeting at which time oral comments and suggestions will be accepted. This notice is to solicit coal resource information and indications of other interest and needs pursuant to 43 CFR 3420.1–2 and 3500, for inclusion in the Farmington Resources Management Plan (RMP). The public and all local, and state governments are encouraged to participate.

DATES: Comments relating to the identification of additional issues, and responses to this call for coal resource information will be accepted through November 14, 1997.

ADDRESSES: Comments and requests to be included on the mailing list should be sent to Bureau of Land Management, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401. Proprietary data should be identified as such to ensure confidentiality.

FOR FURTHER INFORMATION CONTACT: Charlie Beecham, Farmington District BLM, (505) 599–6370.

SUPPLEMENTARY INFORMATION: The proposed Farmington RMP amendment is to allow coal leasing and development for the Federal coal lease application located in:

New Mexico Principal Meridian

T. 30 N., R. 14 W.
Secs. 17–20, inclusive;
Secs. 29–30, inclusive;
Sec. 31, lots 1, 2, 3, and 4, N½, N½S½.

The proposed lease contains 4,483.88 acres, more or less, in San Juan County, New Mexico.

The proposed mining method for the applied for lands is an underground longwall operation.

This planning issue is presented for public hearing and is subject to change based upon such public hearing. Comments should be received by CLOSE OF BUSINESS November 14, 1997. The planning team will seek public involvement throughout the planning amendment process. A formal public hearing/open house will be held to provide the public an opportunity to participate in this Amendment effort.

Notice is hereby given that the public hearing will start at 6:00 p.m. and is scheduled for October 21, 1997, at the Farmington City Council Chambers at 800 Municipal Drive, Farmington, New Mexico.

Complete records of all phases of the planning process will be available for public review and comment at the Bureau of Land Management, Farmington District Office, 1235 La Plata Highway, Suite A, Farmington, New Mexico.

The final RMP amendment documents will be available upon request.

Dated: October 1, 1997.

John Phillips,

Acting District Manager.

[FR Doc. 97–26492 Filed 10–6–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF INTERIOR

National Park Service

Notice of Intent to Issue a Concession Contract at Grand Teton National Park

AGENCY: National Park Service, Department of Interior.

ACTION: Public notice.

SUMMARY: Public Notice is hereby given that the National Park Serice proposes to award a concession contract authorizing the continued operation of a rustic dude ranch located within the Triangle X area of Grand Teton National Park, Wyoming for a period of ten (10) years from January 1, 1998 through December 31, 2007.

EFFECTIVE DATE: On or before October 17, 1997, a notice will be published in the Commerce Business Daily. The official release date of the Prospectus shall be the date of publication in the Commerce Business Daily. Anyone interested in making an offer for the new contract must do so within 90 days of the date of publication of the Commerce Business Daily announcement.

ADDRESS: Interested parties should contact the Concessions Division, Grand Teton National Park, P.O. Box 170, Moose, Wyoming 83012, to obtain a copy of the Prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: The contract will be for a period of ten (10) years from January 1, 1998 through December 31, 2007. This ten (10) year term is conditioned upon the Concessioner's completion of a Building and Improvement Program which requires the construction of guest cabins and employee housing. In the event the Concessioner fails to complete this program to the satisfaction of the Secretary of Interior within four (4) years following the execution of the contract, the contract term shall be for the term of five (5) years from January 1, 1998 to December 31, 2002.

Compliance

Prior to any construction, compliance with Section 106 of the National Historic Preservation Act must be completed by the National Park Service.

The current concessioner has performed its obligations to the satisfaction of the Secretary of Interior under the existing contract which expires on December 31, 1998. Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (16 U.S.C. 20d), the current concessioner is entitled to a right of preference in the award of a new contract provided the concessioner submits a responsive offer (an offer received within the response period which meets the terms and conditions of the prospectus). If the best offer is submitted by a party other than the current concessioner, the current concessioner will be afforded the opportunity to match the best offer. If the current concessioner agrees to match the best offer, the contract must be awarded to the current concessioner. If the current concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will be awarded to the party which has submitted the best responsive offer. The Secretary of Interior will consider and evaluate only those offers received within the ninety (90) day response period. Any offer, including that of the current concessioner, must be received by the Superintendent, Grand Teton National Park, P.O. Box 170, Moose, Wyoming 83012 no later than ninety (90) days from the day this notice is published.

Dated: September 25, 1997.

Ronald E. Everhart,

Deputy Regional Director.

[FR Doc. 97–26518 Filed 10–6–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 27, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by October 22, 1997.

Carol D. Shull,

Keeper of the National Register.

Arizona

Coconino County

Lee's Ferry and Lonely Dell Ranch, Confluence of Colorado and Paria Rs., near Utah and Arizona border, Marble Canyon vicinity, 97001234.

California

Los Angeles County

Sovereign Hotel, 205 Washington Ave., Santa Monica, 97001236.

Colorado

Denver County

Mosque of the El Jebel Shrine, 1770 Sherman St., Denver, 97001235.

Kentucky

Adair County

Giles, Janice Holt and Henry, Log House, 302 Spout Springs Rd., Knifley vicinity, 97001237.

Caldwell County

Knott House, 302 Nichols St., Princeton, 97001238.

Massachusetts

Suffolk County

Dorchester Temple Baptist Church, 670 Washington St., Boston, 97001239.

Ohio

Franklin County

Glen Echo Historic District, Roughly bounded by Glen Echo Ravine, Big Four RR tracks, Indianola Ave., and Hudson St., Columbus, 97001241.

Lucas County

Commodore Perry Hotel, 505 Jefferson Ave., Toledo, 97001240.

Pennsylvania

Chester County

Paoli Battlefield Site and Parade Grounds, Roughly bounded by Warren, and Monument Aves., and Sugartown Rd., Malvern, 97001248.

Clearfield County

Dubois Historic District, Roughly along N. and S. Brady Sts., and E. and W. Long Aves., Du Bois, 97001254.

Fayette County

Dawson Historic District, Roughly bounded by Howell St., Middle Alley, Youghiogheny R, River Rd., and Spring, and Locust Alleys, Dawson, 97001252.

Karolcik Building, 115–117 S. Liberty St., Perryopolis, 97001246.

Providence Quaker Cemetery and Chapel, Jct. of PA 4038 and PA 4036 W, Perry, 97001243.

St. Nicholas Byzantine Catholic Church, 504 S. Liberty St., Perryopolis, 97001247.

Star Junction Historic District (Bituminous Coal and Coke Resources of Pennsylvania MPS), Roughly the jct. of PA 51 and PA 4036, including Post Office Rd., Church St., PA 532, and Old Ridge Rd., Perry, 97001244.

Youghiogheny Bank of Pennsylvania, S. Libety St., S of Washington Diamond, Perryopolis, 97001245.

Lackawanna County

Cassese, Joseph, House (Anthracite-Related Resources of Northeastern Pennsylvania MPS), 1000 Clay Ave., Scranton, 97001258.

Lackawanna County Courthouse and John Mitchell Monument (Anthracite-Related Resources of Northeastern Pennsylvania MPS), Bounded by Washington Ave., Linden St., Adams Ave., and Spruce St., Scranton, 97001257.

Masonic Temple and Scottish Rite Cathedral, 416–420 N. Washington Ave., Scranton, 97001259

Montgomery County

Hanging Rock, 1144 S. Gulph Rd., Upper Marion Township, 97001251.

Venango County

Emlenton Historic District (Oil Industry Resources in Western Pennsylvania MPS), Roughly bounded by Allegheny R., the borough limits, Kerr Ave., Hickory, and Center Sts., Emlenton, 97001256.

Oil City Downtown Commercial Historic District (Oil Industry of Western Pennsylvania MPS), Generally along Seneca, Center, Elm, Sycamore, Duncomb, and Main Sts., Oil City, 97001250.

Oil City South Side Historic District (Oil Industry in Western Pennsylvania MPS), Roughly bounded by Allegheny R., Wilson Ave., Lee's Ln., W. Third, and W. Fifth Sts., and Reservoir St., Oil City, 97001249.

York County

Fissel's School, Jct. of Fissel's Church Rd, and Country Club Rd., Shrewsbury Township, 97001253.

Quay, Rev. Anderson B., House, 22 N. Baltimore St., Dillsburg, 97001255.

[FR Doc. 97–26517 Filed 10–6–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Review of Existing Coordinated Long-Range Operating Criteria for Colorado River Reservoirs (Operating Criteria)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Reissue of Notice of Proposed Decision Regarding the Operating Criteria

SUMMARY: The purpose of this action is to provide public notice that the Secretary of the Interior (Secretary) proposes no change to the existing Operating Criteria as a result of the current review process. The current review has been conducted as an open public process, including formal consultation with the seven Colorado River Basin States (Basin States). The results of the review indicate that modification of the Operating Criteria is not justified at the present time.

The original **Federal Register** notice was published on August 27, 1997 (62 FR 45440). Due to requests from interested parties and agencies, the comment period has been extended by the Bureau of Reclamation.

DATES: All written comments relevant to this proposed decision must be received by close of business, October 17, 1997.

ADDRESSES: Interested parties should send comments or questions to Bruce Moore, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–3702, or Jayne Harkins, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89005, telephone (702) 293–8190.

SUPPLEMENTARY INFORMATION: The public review process began with a **Federal Register** notice published on August 20, 1996 (61 FR 43073), announcing the review of the Operating Criteria and inviting comments during the 60 days following the notice. On October 31, 1996, another **Federal Register** notice (61 FR 56246) was published announcing two public consultation meetings and extending the comment period an additional 30 days. On November 4, 1996, a Fact Sheet containing information about the Operating Criteria review and an invitation to the public consultation meetings was sent to known and anticipated interested parties and agencies, and governor-designated representatives of the Basin States, inviting their participation.

Comments from the two **Federal Register** notices were received from 18 respondents. The comments were reviewed by the Bureau of Reclamation for identification and analysis of the issues. Public consultation meetings were held on November 18, 1996, and December 2, 1996, to discuss the identified issues and answer questions from all interested parties. A set of all comment letters received was provided to any interested party requesting a copy. After the public consultation meetings, the analyses of the issues were revised to reflect any information resulting from the two meetings. That information was then sent to all interested parties and participants in a March 1997 newsletter entitled the River Review.

In response to requests, another public consultation meeting and an additional 45-day comment period were announced in the **Federal Register** on March 28, 1997 (62 FR 14942). On April 4, 1997, a letter from the Reclamation Team Leader containing the preliminary results of Reclamation's analysis on each major issue area and an invitation to attend the next public consultation meeting was sent to all 18 respondents, governor-designated representatives of the Basin States, and any others who had attended meetings or expressed an interest in the review of the Operating Criteria. On April 22, 1997, a final public consultation meeting was conducted to discuss the preliminary analyses.

As required by Pub. L. 90–537, formal consultation with the representatives of the seven Basin States, and other parties and agencies as the Secretary may deem appropriate, was conducted in the context of public consultation meetings on three separate occasions: November 18, 1996; December 2, 1996; and April 22, 1997.

Following analysis of comments received as a result of this notice, any proposed federal action will be evaluated by Reclamation to determine the appropriate National Environmental Policy Act (NEPA) compliance. After that process has been completed, the final Secretarial decision will be published in the **Federal Register**.

Background

The Operating Criteria, promulgated pursuant to Section 602 of Public Law 90–537 (43 U.S.C. 1552), were published in the **Federal Register** on June 10, 1970. The Operating Criteria provide for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty.

Previous reviews of the Operating Criteria were initiated in 1975, 1980, 1985, and 1990. They resulted in no changes to the Operating Criteria. Prior to 1990, reviews were conducted primarily through meetings with and correspondence among representatives of the seven Basin States and Reclamation. Because the long-range operation of the Colorado River reservoirs is important to many agencies and individuals, in 1990, through an active public involvement process, Reclamation expanded the review of the Operating Criteria to include all interested stakeholders. A team consisting of Reclamation staff from Denver, Colorado; Salt Lake City, Utah; and Boulder City, Nevada, was organized to conduct the 1990 review. For the 1995 review, Reclamation staff from Salt Lake City, Utah, and Boulder City, Nevada, followed the same public process.

The scope of the review has been consistent with the statutory purposes of the Operating Criteria which are "to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty." Long-range operations generally refer to the planning of reservoir operations over several decades, as opposed to the Annual Operating Plan (AOP) which details specific reservoir operations for the next operating year.

Synopsis of Review Results

Many of the issues raised during the review are more properly dealt with during the development of the AOP. These include annual surplus determinations in the Lower Basin; the probability of spills from Lake Powell, including the release of beach/habitat building flows from Glen Canyon Dam; storage equalization between Lakes Powell and Mead; and factors for determining 602(a) storage.

The Operating Criteria were purposely designed to be flexible so that during the development of the AOP, variations in hydrologic conditions and changing demands for water use, including environmental demands and possible mitigation measures, could be accommodated. The process for developing the AOP is open to the public and all interested parties.

Reclamation regularly applies the NEPA process to activities constituting a major federal action significantly affecting the quality of the human environment. The appropriate level of NEPA compliance for the review of the Operating Criteria will be determined by Reclamation. At this time, Reclamation recommends preparation of a NEPA categorical exclusion document for this review.

With respect to other environmental issues, Reclamation is in various stages of consultation with the Fish and Wildlife Service under Section 7 of the Endangered Species Act on most Colorado River mainstem facilities. When a Section 7 consultation results in the Service providing Reclamation with specific recommendations such as specific flow recommendations to remove or prevent jeopardy to listed species or their critical habitat, they are incorporated into Reclamation's operations, and if appropriate, included in the AOP.

Reclamation has programmed and expended funds for fish and wildlife mitigation and enhancement for impacts associated with previous activities where appropriate. Reclamation will continue to use this approach. Any changes associated with the long-range Operating Criteria will also be evaluated to determine if there are any mitigation requirements or enhancement opportunities.

Regarding the issue of water marketing and banking, Reclamation has initiated a rule making process focused on water banking in groundwater aquifers or off-mainstem storage reservoirs in the Lower Basin. This administrative rule is considered a responsibility of the Secretary of the Interior and focuses only on the three Lower Basin states. Reclamation believes that water marketing and banking would not require a change to the current Operating Criteria, as this issue lends itself to the AOP process.

Throughout the course of the review of the Operating Criteria, Reclamation has encouraged public participation and developed a thorough administrative record. Based on the results of the review and the analysis of public comments, it is proposed that the Operating Criteria not be modified at this time.

Analysis of Issues

Issue #1: Application of the Administrative Procedure Act (APA)

Background

The APA was signed into law in 1946 by President Truman. The purposes of the Act are: (1) to require agencies to keep the public informed on organization, procedures and rules, (2) to provide for public participation in the rule making process, (3) to prescribe uniform standards of conduct for rule making and adjudicatory proceedings, and (4) to restate the law of judicial review. The law primarily deals with rule making. The definition in the law of a rule in part is as follows: "* * * the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency. * * *" Rule making has two parts, formal and informal.

Analysis and Response

The Coordinated Long-Range Operating Criteria is a document generated from a requirement in the 1968 Colorado River Basin Project Act. It describes how the Secretary of the Interior will meet some of the commitments under the Act. The review of the Coordinated Long-Range Operating Criteria is not a rulemaking exercise and is therefore not subject to the rulemaking provisions of the APA.

Nevertheless, the Bureau of Reclamation is encouraging full public participation in this process and has developed a thorough administrative record of this review.

Issue #2

Surplus declarations are referenced in the 1964 Supreme Court decree (Arizona v. California) and are a part of the 1970 Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs. The decree apportions surpluses (50 percent to California, 46 percent to Arizona, and 4 percent to Nevada), while the Operating Criteria define surpluses as existing when there is sufficient storage in Lake Mead to supply greater than 7.5 million acre-feet (MAF) for Lower Basin consumptive uses. Guidelines for determining when surplus conditions exist have never been formally adopted.

Background

In the past, Reclamation has performed computer modeling studies of alternative surplus guidelines to determine the effects of various levels of surplus use. Because the shortage risks of surplus use (Arizona) fall on other than the benefactor (California), impacts and differences in risks of future shortages and reservoir drawdown have been keenly debated. All modeling strategies have as their foundation the principle of reducing system spills by allowing greater use in the Lower Basin, thus drawing down the reservoirs and thereby avoiding flood control releases. This greater drawdown then allows the high flows of flood years to be captured by the reservoir system. While the amount of system spills is thus reduced, the degree of drawdown affects the risk of shortages to users during possible future drought conditions. Resolving the balance between risk of shortages and spills is the heart of the surplus issue.

Until 1996, Lower Basin consumptive uses were less than their allocation of 7.5 MAF, and California uses were met through unused apportionments of Arizona and Nevada rather than surplus declarations. However, with the implementation of the Arizona groundwater banking program, total Lower Basin use now exceeds 7.5 MAF and water above this amount can only be delivered through surplus declarations.

The 1996 Annual Operating Plan (AOP) committed to meet all reasonable beneficial consumptive uses, and later in the year when the annual Lower Basin use was greater than 7.5 MAF, a surplus was declared. The 1997 AOP contains an explicit determination of surplus, based on the current hydrologic situation and a lack of impacts from this single decision. As a result of 1997 system flood control operations and hydrologic conditions, the 1998 AOP will almost certainly contain an explicit surplus determination.

However, these determinations have relied solely on an annual examination of reservoir conditions in the Coloredo River Basin rather than specific, long-term strategies which examine the potential for problems in the future. Drought periods in the basin can extend for many years and with the large volume of reservoir storage, many years could be required before negative impacts of surplus determinations are observed. Much of the current debate is focused on the risk of certain things happening in the future.

Analysis and Response

The comments received addressed three key topics relating to surplus determinations: (1) the establishment of guidelines, (2) the forum for establishing these guidelines, and (3) how surpluses will affect the probability of spills from Lake Powell.

Establishment of Guidelines.—The comments all agreed that surplus and shortage guidelines should be established, but varied in how firm or detailed these guidelines should be. The most flexible approach would be the annual determination of surplus/normal/shortage conditions through the AOP process, deciding on the condition of the reservoir system on a year-by-year basis. The most rigid approach would be the revision of the Operating Criteria to include specific guidelines which then

would be applied each year to produce a determination.

Flexible guidelines have the advantage of being easily modified as consumptive use demands and hydrologic conditions change throughout the basin. For some parties, near-term surpluses could be more liberal than when Upper Basin uses increase and the likelihood of surplus deliveries are reduced. Flexible guidelines could be adopted without the more formal process of incorporating guidelines into the Operating Criteria.

Modifying the Operating Criteria to include surplus guidelines offers the advantage of clearly specifying under what conditions surpluses would be declared. All interests would then understand exactly what impacts could be expected under ranges of hydrologic conditions. Contingency plans could be implemented to mitigate adverse impacts and agreements could be formed to help meet consumptive use demands during non-surplus periods.

Forum for Establishing Guidelines.—Most commentors felt that the AOP would be the most appropriate mechanism for preparing surplus/shortage guidelines. The less formal nature of the AOP meetings was viewed as positive for attempting to resolve this difficult issue. However, the issue has been addressed for the last five years in the AOP meetings, and no definite guidelines have been produced.

Probability of Spills from Lake Powell.—The release of beach/habitat building flows from Glen Canyon Dam was a contentious topic during the completion of the Glen Canyon Dam Environmental Impact Statement. The 1968 Colorado River Basin Project Act directed the Secretary of the Interior to avoid anticipated spills while the 1992 Grand Canyon Protection Act directed the Secretary to operate the dam to improve the environmental conditions in the Grand Canyon. In 1995, an agreement was reached between interested parties which attempts to meet the intents of both the 1968 and 1992 Acts by providing these high flows during high reservoir storage conditions when required for dam safety purposes.

Surplus determinations which explicitly drop the level of Lake Mead and through equalization drop the level of Lake Powell would likely reduce the probability of these powerplant bypasses. Commentors responded with concern for this possibility recommending that if surpluses were declared, measures should be taken to keep the probability of bypasses the same as at the present. The impacts of high spring flows are currently believed to be very important and this potential effect should be addressed as surplus guidelines are developed.

The Bureau of Reclamation believes that surplus/shortage criteria should (1) be specific guidelines that can be used to predict measurable effects in the future, (2) be developed through the AOP process, and (3) include a discussion of the potential effects on Lake Powell spills along with possible mitigation measures.

Issue #3

Section 602(a)(3) of the 1968 Colorado River Basin Project Act discusses the quantification of a reservoir storage volume in the Upper Basin. This storage is intended to supplement the unregulated flow of the Colorado River at Lees Ferry during drought periods as part of the 1922 Colorado River Compact deliveries to the Lower Basin. The intent of this provision is to avoid impairment of Upper Basin consumptive uses.

Background

The 1968 Act contains several provisions which can be viewed as accomplishing the intent of the Article III (e) provision of the Colorado River Compact, that of the Upper Basin not withholding water that the Lower Basin requires for consumptive use demands. Through a combination of avoiding spills, equalizing storage between Lakes Powell and Mead, and the 602(a) storage volume, Upper Basin water was to be transferred to Lake Mead for use in the Lower Basin. When Upper Basin storage falls below this 602(a) storage level, storage equalization provisions of the 1968 Act are disregarded.

By statute, the 602(a) storage volume was to be quantified taking into account historic stream flows, the most critical period of record, and probabilities of water supply. Since the purpose of this storage is to help provide Lower Basin deliveries, it is quantified as the difference between depleted flow at Lees Ferry and the Lower Basin delivery requirements over some period of drought. Upper Basin depletion levels significantly affect the storage calculation. Using the most critical period of natural flow, the 602(a) volume is currently estimated to be about 10 million acre-feet, which includes preservation of the 5.2 million acre-feet minimum power pool in Lake Powell. In the future, when Upper Basin consumptive uses increase, it has been assumed that Lake Powell could be completely drained to provide Lower Basin deliveries.

Controversy exists regarding the probability attached to the depleted flow assumptions with respect to both the rarity of the critical flow period and the projected depletion increases in the Upper Basin. These are the principle reasons that 602(a) storage has never been formally determined and agreed to by the Basin States. However, in the computer modeling of long-range operations of the reservoir system, some estimate or procedure must be used to model this portion of the applicable statutes. Currently, the Bureau of Reclamation uses the observed critical 12-year period (1953–1964) as the basis for the storage calculation. Reflecting the lack of a formal determination, each year's Annual Operating Plan has contained language stating that current reservoir storage in Upper Basin reservoirs exceeds the storage required under Section 602 under any reasonable range of assumptions which may be applied. The current Upper Basin depletion level is the prime reason that this statement is true.

Analysis and Response

The relationship between the 602(a) volume and surplus/shortage criteria has been raised in previous Annual Operating Plan discussions. Some parties have argued that both less or more severe drought periods should be used in the modeling, thus changing the Upper Basin risk of shortages.

Formally specifying or changing the risks associated with the 602(a) storage level will likely require a legal opinion on the issue of avoiding impairment of Upper Basin consumptive uses. Since these uses presently do not significantly restrict Lower Basin surpluses and require much less than full Lake Powell storage to meet Lower Basin deliveries, this issue perhaps is not ripe for resolution. Reclamation recommends delaying implementing guidelines or changing the current 602(a) modeling assumptions until current assumptions or practices create unacceptable impacts.

Issue #4a

The Bureau of Reclamation should conduct an environmental analysis under the National Environmental Policy Act (NEPA) of any changes to the Operating Criteria.

Background

Letters of comment to the Operating Criteria review expressed concern over the long-term effects of the Operating Criteria on downstream resources as it relates to cumulative effects and spill frequency. Several letters indicated that the current Operating Criteria do not give equal consideration to environmental and recreational resources, and instead focus only on traditional water and power uses. To incorporate consideration of all resources and impacts of the Operating Criteria, the commentors recommended that the Operating Criteria be evaluated through application of NEPA.

Analysis and Response

Reclamation regularly applies the NEPA process to activities constituting a federal action, and agrees that compliance with NEPA would be required for any proposed changes to the long-range Operating Criteria that are discretionary Federal Actions (Chapter 3.1 of the NEPA Handbook). The appropriate level of NEPA compliance will be determined by Reclamation for this review of the Operating Criteria.

NEPA regulations require that each agency promulgate agency-specific guidelines to supplement the Council on Environmental Quality's general regulations (40 CFR Parts 1500–1508). These classifications list those actions that: (1) have a significant impact on the environment (requiring preparation of an environmental impact statement); (2) those which are categorically excluded from the EIS process (for which a categorical exclusion (CE) is prepared); and (3) those which fall in between (1) and (2) and will usually require the preparation of an environmental assessment (EA). As a result of the analysis contained in an EA, either an EIS or a Finding of No Significant Impact (FONSI) is prepared by the agency.

The key issue in whether NEPA documentation is needed regarding this 5-year review is whether there is a Federal action or Federal discretion associated with this review. If no Federal action is being proposed or taken by Reclamation, no NEPA documentation would be required. While no changes are being proposed as the result of this review, Reclamation is making a decision in proposing no change. Because of this, Reclamation concludes that preparation of a NEPA compliance document is appropriate. Reclamation recommends that a Categorical Exclusion be prepared pursuant to Departmental Instructions 516 DM 2, appendix 1.7, which provides that a CE may be prepared for routine and continuing government business, including such things as supervision, administration, operations, maintenance and replacement activities having limited context and intensity; e.g. limited size and magnitude or short-term effects.

Issue #4b

The Operating Criteria should recognize the need to preserve and recover endangered species dependent upon the quantity, quality, and pattern of release.

Background

Construction and operation of water storage and delivery facilities on the Colorado River and its tributaries are recognized as factors contributing to the decline of certain fish and wildlife species which have been listed as threatened or endangered by the Fish and Wildlife Service (Service). Storing water during the spring runoff decreases the natural spring flow, and releasing water later in the year for consumptive use raises the base flow. These types of changes in the hydrograph have removed spawning cues, effected water temperature, clarity, the food base, and fluvial geomorphology. Physical alteration from riverine to extensive reservoir environments has occurred causing further change to habitat for these species and resulted in the establishment of exotic species of fish, wildlife, and plants that directly compete with listed species and their habitat. The control of natural flood cycles and development of the floodplain for agriculture and other purposes has significantly changed or eliminated original habitats in and along extensive parts of the lower Colorado River. The success of efforts to recover endangered species are often thought to be dependant on restoring the natural hydrograph to the degree possible. Commentors are concerned that if provisions for releases designed to recover endangered species are not incorporated into the Operating Criteria, changes to operations will not be implemented.

Analysis and Response

Reclamation is in various stages of consultation with the Service under Section 7 of the Endangered Species Act on most mainstem facilities. Conservation plans and recovery programs are also a large part of Reclamation activities in operation of the Colorado River. Operation of these facilities for endangered species would remain consistent with the original intended purpose of the project in accordance with the implementing regulations of the Endangered Species Act. When a Section 7 consultation results in the Service providing Reclamation with specific flow recommendations or other alternatives to remove or prevent jeopardy to listed species or their critical habitat, they are incorporated into Reclamation's operations, and if appropriate, are included in the Annual Operating Plan of the particular facility which was the subject of the consultation. Operations remain consistent with the "Law of the River," water service contracts, and other legal obligations. Examples of facilities where consultation has been completed are Flaming Gorge Dam on the Green River in Utah, Glen Canyon Dam on the Colorado River in Arizona, and several features of the Colorado River Front Work and Levee System Program on the last 270 miles of the Colorado River in the United States.

Reclamation and the Service recently completed formal Section 7 consultation on lower Colorado River operations and maintenance (Lake Mead to the Southerly International Boundary with Mexico), and are engaged in ongoing consultation for Navajo Reservoir operations on the San Juan River in Colorado, and Aspinall Unit operations on the Gunnison River in Colorado. The Department of the Interior signed a Memorandum of Agreement in August 1995 that was further described in a Memorandum of Clarification and most recently a joint Participation Agreement to develop a long-term (50 year) Lower Colorado River Multi-Species Conservation Program (MSCP) from Lees Ferry to the Southerly International Boundary with Mexico. The overall objective of the MSCP is to develop a plan which would conserve and protect more than 100 listed and sensitive species within the Colorado River and its one hundred-year flood plain, and to the greatest extent consistent with law, accommodate current and future water and power operations.

Reclamation continues to undertake and pursue efforts for conservation and recovery of fish and wildlife and associated critical habitat under specific project authorities such as Section 8 of the Colorado River Storage Project Act and the Grand Canyon Protection Act. In addition, Reclamation has significant ongoing conservation and recovery efforts under the authority of Section 7(a)(1) of the Endangered Species Act. For example, the Lake Mohave Native Fish Rearing Program in the Lower Colorado River Basin continues to collect and rear wild larval razorback and bonytail chubs for release back into Lake Mohave to maintain the primary adult population and genetic pool for these species. Voluntary refinements to river operations have also been implemented when possible to benefit endangered species (i.e., management of reservoir levels in Mohave for endangered fish). The Upper Colorado River Recovery Implementation

Program, with an annual budget exceeding $7 million, and the San Juan River Basin Recovery Implementation Program are other examples.

Reclamation will continue to plan and implement initiatives for protection of endangered species and associated critical habitat on a project-specific basis as described, with the goal of integrating these actions to the greatest degree possible to address ecosystem level needs. Where appropriate, initiatives such as the Glen Canyon Adaptive Management Program and the MSCP will be considered and incorporated into future Annual Operating Plans and Section 7 consultations, as appropriate.

Issue #4c

Funding for mitigation of negative impacts to fish and wildlife resources should be provided.

Background

Modification of river flows due to the operation of projects authorized by the Colorado River Storage Project Act has impacted fish, wildlife, and their habitats through reduction or elimination of overbank flooding, channelization, water depletions, and changes in water quality. These projects produce revenue primarily through power production. Commentors are concerned that sufficient funds be made available for mitigation activities.

Analysis and Response

Reclamation, like all federal agencies, must have both authorization and appropriations to undertake actions and incur debt. In the Upper Colorado River Basin, Section 8 of the Colorado River Storage Project Act authorizes and directs the Secretary of the Interior to investigate, plan, construct, operate, and maintain facilities to improve conditions for and mitigate losses of fish and wildlife. Funds authorized by this section of the Act are nonreimbursable and nonreturnable, and therefore must be appropriated by Congress. Section 5(a) specifies that the Basin Fund will not be applied to Section 8 (fish and wildlife mitigation). The Grand Canyon Protection Act states that power revenues may be used for activities designed to conserve the environment downstream from Glen Canyon Dam, but does not exclude the use of other funding mechanisms.

Mitigation and enhancement activities are typically identified and proposed on a project-by-project basis through project planning and environmental compliance. Reclamation has programmed and expended funds for fish and wildlife mitigation and enhancement for impacts associated with previous activities where appropriate. Most often these activities are identified in Fish and Wildlife Coordination Act Reports and National Environmental Policy Act documents. Reclamation will continue to use this approach. Since no changes are being proposed, there is no specific mitigation or enhancement necessary for this action. Reclamation will continue to comply with NEPA and other appropriate environmental laws in identifying, planning, and carrying out mitigation and enhancement activities.

Issue #5

Is there a need to change the Operating Criteria.

Background

The Operating Criteria are to accomplish the objectives of Section 602(a) of the Colorado River Basin Project Act. Modification of the Operating Criteria can be done by the Secretary of the Interior " * * * as a result of actual operating experiences or unforeseen circumstances * * * to better achieve the purposes specified in [Section 602(a) of the Colorado River Basin Project Act]."

Commentors stated that they believe "* * * there are no conditions resulting from actual operating experiences or unforeseen circumstances, since the last review, that justify the need to modify the existing Criteria," and that the reservoirs have been operating satisfactorily under the present Operating Criteria. These comments support not changing the criteria at this time.

Others stated that we are entering a new era and that the Operating Criteria should be changed to reflect different circumstances and concerns. The Lower Basin States have reached their annual apportionment of 7.5 million acre-feet for consumptive use. Environmental and recreational issues have increased in value in the eyes of the public. There were also those who stated that the Operating Criteria need to be changed to include specific guidelines that allow the Secretary of the Interior to make surplus, shortage, and normal determinations. These comments all support a need for change.

Analysis and Response

The Operating Criteria provide guidelines for the operation of Upper Basin Reservoirs and Lake Mead. Specific operational needs are not detailed in the Operating Criteria. The specific needs have, in the past, been addressed in the Annual Operating Plan development process.

The Operating Criteria may be modified from time to time as a result of actual operating experiences or unforeseen circumstances. With the issues of surplus and flood control in our current operations and possibly emerging over the next several years, the operational experiences needed to determine if changes to the Operating Criteria are necessary will be acquired. Under the present Operating Criteria, surpluses have been declared for use in the United States as well as in Mexico.

With the above in mind, the evaluation of operational experiences over the next several years will determine whether or not to change the Operating Criteria. But in the interim, the recommendation is not to change the Operating Criteria.

Issue #6

Water marketing and banking.

Background

Several years ago the Bureau of Reclamation advanced draft regulations for administering Colorado River water entitlements in the Lower Basin States of Arizona, California, and Nevada. The draft regulations contained provisions for water banking and water marketing in the Lower Basin. Because there was not consensus with the states regarding the draft regulations, they have been held in abeyance while the three states attempt to reach some agreement on numerous issues, including water marketing and banking. This negotiation process among the states is continuing. Many people believe that some form of water banking and marketing will be essential to meeting future water needs in the Lower Colorado River Basin.

Analysis and Response

Reclamation has initiated a rule making process focused on water banking in groundwater aquifers or off-mainstem storage reservoirs in the Lower Basin. This administrative rule is considered a responsibility of the Secretary of the Interior under the Boulder Canyon Project Act, and focuses only on the three Lower Basin States. Reclamation continues to work with the states and to encourage them to cooperatively develop a proposal for water marketing and banking in the Lower Basin.

Reclamation believes that the limited water marketing and banking currently under consideration would not require a change to the current Operating Criteria.

Proposed Decision

The Department has considered issues arising from the review of the Operating Criteria. After a careful review of the issues, solicitation of involved party's responses to Reclamation's analysis, and consultation with the Governor's representatives of the seven Basin States, the Department proposes no modifications to the Operating Criteria at this time.

Dated: October 1, 1997.

Stephen V. Magnuseen,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 97–26500 Filed 10–6–97; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–383]

Commission Decision Not To Review a Final Initial Determination, and Schedule For Filing of Written Submissions on the Issues of Remedy, the Public Interest, and Bonding, and Appeals of ALJ Order No. 96

Certain Hardware Logic Emulation Systems and Components Thereof;

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the final initial determination issued by the presiding administrative law judge on August 1, 1997, finding a violation of section 337, 19 U.S.C. § 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jay H. Reizisa, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3116.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 FR 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta") (collectively "respondents"). After an 11-day evidentiary hearing, in April and May of 1996, the presiding administrative law judge ("ALJ") issued an initial determination ("TEO ID") granting Quickturn's motion for temporary relief.

On August 5, 1996, the Commission determined not to modify or vacate the TEO ID and issued a temporary limited exclusion order and a temporary cease and desist order against domestic respondent Mentor. The Commission imposed a bond of 43 percent of entered value on respondents' importations and sales of emulation systems and components thereof during the remaining pendency of the investigation. The Commission set complainant's bond at $200,000.

Beginning on April 7, 1997, the ALJ held a pre-hearing conference and a 14-day evidentiary hearing concerning permanent relief issues and several sanctions-related motions. Closing arguments were held on June 25 and 26, 1997. On August 1, 1997, the ALJ issued an initial determination ("Final ID"), finding that respondents violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) by infringing claims of all five of Quickturn's asserted patents. The ALJ found: (1) There has been importation and sale of the accused products; (2) Quickturn practices the patents in controversy and satisfies the domestic industry requirements of section 337; (3) the claims in issue are valid; (4) the accused products directly infringe the claims in issue; (5) components of the accused products contributorily infringe the claims in issue; and (6) respondents have induced infringement of the claims in issue. Based on these findings, the ALJ concluded there was a violation of section 337. The ALJ recommended issuance of a permanent exclusion order and a cease and desist order.

Having examined the record in this investigation, including the Final ID, the petition for review, and the responses thereto, the Commission has determined not to review the Final ID; thus, the Commission has found a violation of section 337.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see the Commission Opinion, In the Matter of Certain Devices for Connecting Computers via Telephones Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December, 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, and (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

On August 1, 1997, the ALJ also issued Order No. 96 in the investigation finding that respondents have engaged in discovery abuses and abuse of process justifying the imposition of evidentiary and monetary sanctions. Pursuant to rule 210.25(d) of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.25(d), the Commission has specified below the schedule for the filing of petitions appealing Order No. 96 and responses thereto.

Written Submissions

The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the August 1, 1997, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on October 16, 1997. Reply submissions must be filed no later than the close of business on October 23, 1997. No further submissions on these issues will be

permitted unless otherwise ordered by the Commission.

Parties to the investigation also may file written submissions concerning Order No. 96. Any written submissions appealing Order No. 96 must be filed no later than close of business on November 6, 1997. Reply submissions must be filed no later than the close of business on November 13, 1997.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and sections 210.25 and 210.45–210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.25, 210.45–210.51).

Copies of the public versions of the Final ID, Order No. 96, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: October 2, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretory.

[FR Doc. 97–26649 Filed 10–6–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 21–97]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Tuesday, October 14, 1997, 9:30 a.m. to 5:00 p.m.

SUBJECT MATTER:

(1) Oral Hearings and Hearings on the Record on Objections to Individual Proposed Decisions on Claims of Holocaust Survivors Against Germany;

(2) Issuance of Individual Final Decisions on Claims of Holocaust Survivors Against Germany.

STATUS: Closed.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, October 3, 1997.

Judith H. Lock,

Administrative Officer.

[FR Doc. 97–26717 Filed 10–3–97; 3:44pm]

BILLING CODE 4410–01–U

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics

Agency Information Collection Activities; Proposed collection; comment request

ACTION: Extension of a currently approved collection. Capital punishment report of inmates under sentence of death.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 8, 1997. This process is in accordance with the Paperwork Reduction Act of 1995.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Dr. Jan M. Chaiken, Director, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531. If you need a copy of the collection instrument with instructions, or have additional information, please contact Tracy L. Snell at (202) 616–3288, or via facsimile at 202–307–0128.

Overview of this information collection:

(1) Type of information collection. Extension of a currently approved collection.

(2) The title of the Form/Collection: Capital Punishment Report of Inmates under Sentence of Death.

(3) The agency form number and the applicable component of the Department sponsoring the collection. Form: NPS–8 Report of Inmates Under Sentence of Death; NPS–8A Update Report of Inmates Under Sentence of Death; NPS–8B Status of Death Penalty—No Statute in Force; and NPS–8C Status of Death Penalty—Statute in Force. Corrections Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State Departments of Corrections and Attorneys General. Others: The Federal Bureau of Prisons. Approximately 104 respondents (two from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates under sentence of death in their jurisdiction and in their custody will be asked to provide information for the following categories: condemned inmates' demographic characteristics, legal status at the time of capital offense, capital offense for which imprisoned, number of death sentences imposed, criminal history information, reason for removal and current status if no longer under sentence of death, method of execution, and cause of death by other than by execution. The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, State officials, international organizations, researchers, students, the media, and others interested in criminal justice statistics.

(5) An estimate of the total number of responses and the amount of time estimated for an average response: 310 responses at 1 hour each for the NPS–8; 3,054 responses at ½ hour each of the NPS–8A; and 52 responses at ½ hour each for the NPS–8B or NPS–8C.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,863 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: October 2, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–26552 Filed 10–6–97; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL SCIENCE FOUNDATION

NSB Public Service Award Committee; Notice of Sunshine Act Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

DATE AND TIME: Tuesday, October 28, 1997; 8:30 a.m.–1:00 p.m. (PST).

PLACE: Stanford University, Stanford, California.

TYPE OF MEETING: Closed.

CONTACT PERSON: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703/306–1096.

PURPOSE OF MEETING: To provide advice and recommendations in the selection of the NSB Public Service Award recipient.

AGENDA: To review and evaluate nominations as part of the selection process for awards.

REASON FOR CLOSING: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 3, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26681 Filed 10–3–97; 2:25 pm]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Sunshine Act Meeting

NAME AND COMMITTEE CODE: Special Emphasis Panel in Materials Research #1203.

DATE AND TIME: October 27, 1997, 8 am–5 pm.

PLACE: Room 380, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

TYPE OF MEETING: Closed.

TYPE OF PROPOSAL: Career Proposals in Polymers.

CONTACT PERSON: Dr. Andrew J. Lovinger, Senior Staff Associate, Division of Materials Research, Room 1065, 703–306–1839.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: To review and evaluate proposals submitted to the Directorate as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26679 Filed 10–3–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

NAME: Special Emphasis Panel in Physics (1208).

DATE: October 28–30, 1997.

PLACE: Room 112/114 East Bridge, California Institute of Technology 1201 E. California Boulevard, Pasadena, California.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. David Berley, Program Manager, Laser Interferometer Gravitational Observatory, Physics Division, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.

PURPOSE OF MEETING: To review the technical aspects and management of the Laser Interferometer Gravitational-Wave Observatory (LIGO) project.

AGENDA: An overview of the project. Detailed examination of the technical aspects of the project and the management of the technical systems.

REASON FOR CLOSING: The Project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26683 Filed 10–3–97; 2:52 pm]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Sunshine Act Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

NAME: Special Emphasis Panel in Bioengineering and Environmental Systems (#1189).

DATE AND TIME: October 29–30, 1997; 8:30 am–5:00 pm.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 580, Arlington, VA 22230.

TYPE OF MEETING: Closed.

CONTACT PERSON: Fred G. Heineken, Program Director, Biotechnology Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: To review and evaluate CAREER proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26684 Filed 10–3–97; 2:49 pm]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

NAME AND COMMITTEE CODE: Special Emphasis Panel in Polar Programs (#1209).

DATE AND TIME: October 30th and 31st, 1997: 8:00 am to 5:00 pm.

PLACE: Room 730, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Odile de La Beaujardiere, Program Director, Arctic Natural Sciences, Office of Polar Programs, Room 740, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1029.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: to review and evaluate Arctic Natural Sciences multidisciplinary proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of the proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26685 Filed 10–3–97; 2:45 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23 issued to the Carolina Power & Light Company (CP&L or the licensee) for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2 (HBR) located in Darlington County, South Carolina.

By letter dated August 27, 1996, as supplemented by letters dated December 18, 1996, January 17, February 18, March 27, April 6, April 25, April 29, May 30, June 2, June 13, June 16, August 4, August 8, September 10, October 2 (RNP RA/97–0216), and October 2, 1997 (RNP RA/97–0207), the licensee applied for full conversion from the current HBR Technical Specifications (CTS) to a set of improved Technical Specifications (ITS) based on NUREG–1431, "Standard Technical Specifications Westinghouse Plants," Revision 0, dated September 1992 (including approved travellers used in the issuance of Revision 1, dated April 1995). A "Notice of Consideration of Issuance and Opportunity for Hearing" regarding conversion to the ITS was published in the **Federal Register** on October 29, 1996 (61 FR 55830). An "Environmental Assessment and Finding of No Significant Impact" regarding the conversion to ITS was published in the **Federal Register** on September 25, 1997 (62 FR 50409).

One of the ITS conversion changes proposed by the licensee in its August 27, 1996, application, and addressed in the April 29, and October 2, 1997, supplements, requires, as a part of ITS Limiting Condition for Operation (LCO) 3.6.4, that the pressure in containment be maintained greater than or equal to −0.8 psig. CTS require that containment pressure be maintained greater than or equal −1.0 psig; therefore, the ITS LCO is more restrictive than the CTS with regard to this paramater. This change in minimum allowable containment pressure is needed to make the ITS LCO consistent with a new licensee analysis of an inadvertent containment spray event.

In its letter dated October 2, 1997, the licensee provided justification for Commission issuance of the proposed change in minimum allowable containment pressure on an exigent basis. As defined in 10 CFR 50.91(a)(6), exigent circumstances exist when the licensee and the Commission must act quickly and time does not exist for the Commission to publish a **Federal Register** notice allowing 30 days for prior public comment and the Commission also determines that the proposed amendment involves no significant hazards considerations. The NRC staff has reviewed the licensee's October 2, 1997, letter and determined that exigent circumstances exist in that—

(1) Earlier issuance of this more restrictive change would be consistent with the most recent analysis and would enhance safety.

(2) As described below, there appear to be no significant hazards considerations associated with this change.

The licensee's ITS conversion application was prepared in accordance with appropriate industry guidance as provided in Nuclear Energy Institute Guidance document 96–06, "Improved Technical Specifications Conversion Guidance," dated August 1996. That guidance did not address the need for specific no significant hazards discussions other than for less restrictive changes. Therefore, the exigent circumstances could not reasonably have been avoided in that the licensee was not aware of the need for a specific no significant hazards discussion regarding the change in minimum allowable containment pressure.

Before issuance of the ITS conversion amendment, including the proposed change to ITS 3.6.4, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides a requirement of −0.8 psig for the minimum allowable internal containment atmospheric pressure. This requirement is determined to be more restrictive than the current Technical Specifications requirement of −1.0 psig with respect to plant operation. The minimum allowable containment internal atmospheric pressure is not assumed to be an initiator of an analyzed event and the new requirement is consistent with a current analysis relative to mitigation of the inadvertent actuation of a containment spray event. This change has no effect on any other accident or transient previously evaluated. The new requirement being proposed is an assumption in an analysis which enhances assurance that process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis of the unit. Therefore, this change does not involve any increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures, or components or changes in parameters governing normal plant operation other than the minimum allowable containment atmospheric pressure. This change is consistent with assumptions made in the inadvertent containment spray event and has no other effect on other safety analyses or the licensing basis. The new requirement is a more restrictive Limiting Condition for Operations resulting from an analysis that enhances safe operation. Therefore, this [change] does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve e significant reduction in e margin of safety?

The imposition of the new requirement for the minimum allowable containment atmospheric pressure maintains the margin of plant safety by restricting operations to be consistent with an analysis of an inadvertent actuation of the containment spray system that utilizes analytical methods currently acceptable to the NRC. Therefore, this change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 6, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be

litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards determination. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 27, 1996, as supplemented by letters dated December 18, 1996, January 17, February 18, March 27, April 6, April 25, April 29, May 30, June 2, June 13, June 18, August 4, August 8, September 10, October 2 (RNP RA/97–0216), and October 2, 1997 (RNP RA/97–0207), which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 3rd day of October, 1997.

For the Nuclear Regulatory Commission.

David C. Trimble,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–26642 Filed 10–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22–ISFSI ASLBP No. 97–732–02–ISFSI]

Private Fuel Storage, LLC; Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR § 2.721, the Atomic Safety and Licensing Board in the Private Fuel Storage proceeding, with the above-identified Docket Number, is hereby reconstituted by appointing Administrative Judge Peter S. Lam in place of Administrative Judge Thomas D. Murphy.

As reconstituted, the Board is comprised of the following Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Jerry R. Kline, Dr. Peter S. Lam.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR § 2.701 (1980). The address of the new member is: Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Rockville, Maryland, this 1st day of October 1997.

B. Paul Cotter, Jr.

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 97–26508 Filed 10–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of October 6, 13, 20, and 27, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 6

Wednesday, October 8

3:30 p.m. Affirmation Session (Public Meeting)

a. Changes to Paragraph (h) of 10 CFR Part 50.55a, "Codes and Standards"

b. Sequoyah Fuels Corp. & General Atomics: Docket No. 40–8027—EA; LBP–95–18 and LBP–96–24, Memoranda and Orders (Approving Settlement) (Tentative)

Week of October 13—Tentative

Tuesday, October 14

10:00 a.m. Briefing on EEO Program (Public Meeting) (Contact: Ed Tucker, 301–415–7382)

1:00 p.m. Briefing on Severe Accident Master Integration Plan (Public Meeting) (Contact: Charles Ader, 301–415–5622)

Wednesday, October 15

10:00 a.m. Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

Week of October 20—Tentative

Tuesday, October 21

10:30 a.m. Affirmation Session (Public Meeting) (if needed)

Week of October 27—Tentative

Wednesday, October 29

10:00 a.m. Briefing on Proposed Steam Generator Generic Letter and Regulatory Guide (Public Meeting)

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

1:00 p.m. Briefing on Site Decommissioning Plan (SDMP) (Public Meeting)

Note: The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: October 3, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–26691 Filed 10–3–97; 2:37 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

Time and Date: 2:00 p.m., October 8, 1997.

Place: Carrier Ballroom, 2nd Floor, Statler Hotel, 11 East Avenue, Ithaca, New York. The Statler Hotel is located on the Cornell University campus, directly adjacent to the School of Industrial and Labor Relations.

Status: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

Matters To Be Considered: During a half-day skills-building session, the National Partnership Council members and faculty from Cornell's renowned School of Industrial and Labor Relations will present an overview of the life cycle of partnerships. Participants will hear about and discuss lessons learned and best practices in sustaining partnerships.

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–2930.

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–26458 Filed 10–6–97; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39159; File No. SR–CBOE–97–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Fractional Changes to Bids and Offers in Stocks

September 30, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 11, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 30.33, which governs the permissible fractional variation for bids or offers in stocks. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to expand the number of CBOE securities traded in sixteenths, *i.e.*, 1/16 of $1.00, to include all securities trading above $.25 per share.[3] Exchange Rule 30.33, *Fractional Changes for Bids and Offers*, currently requires bids and offers in stocks (and other instruments that may be traded on the Exchange and to which Chapter 30 of the CBOE rules applies)[4] with a price of $10.00 or less to be made at a variation of at least 1/16 of $1.00.[5]

The change will, therefore, affect the bidding and offering in covered securities selling over $10.00 per share.

The Exchange believes that by increasing the number of stocks and other instruments eligible to be traded in sixteenths, the Exchange will be better able to compete for listings in instruments, such as warrants. In fact, the Exchange's proposal is identical to a proposal of the American Stock

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Bids and offers in stocks with prices of less than $.25 per share may be varied by as little as 1/32 of $1.00 per share.

[4] The Commission notes that the CBOE does not currently trade stocks. However, the Commission notes that the CBOE does trade equity derivative products that will be affected by the rule change; those products include equity (and equity index) linked notes and index warrants.

[5] In 1995, the Commission approved an expansion of sixteenths trading to permit all CBOE securities selling under $10.00 to trade in sixteenths. (Securities selling under $.25 could be traded in variations of 1/32 of $1.00.) *See* Securities Exchange Act Release No. 35538 (Mar. 27, 1995), 60 FR 16895 (April 3, 1995) (order approving SR–CBOE–95–18). Prior to the approval of that filing, sixteenths trading was permitted for securities selling under $5.00 and above $.25.

Exchange ("Amex") and similar to a proposal of the Nasdaq Stock Market ("Nasdaq") and the New York Stock Exchange ("NYSE") which were recently approved by the Commission.[6] The Exchange believes that trading in sixteenths will improve the market for covered securities trading above $10 by promoting greater liquidity and providing for superior executions of retail and professional orders. Also, the proposal is responsive to the recommendations of the Division of Market Regulation in its Market 2000 study that the exchanges and Nasdaq convert to a minimum variation of one-sixteenth as soon as possible.[7]

On March 18, 1997, a representative of the CBOE discussed the proposed expansion of trading in sixteenths with the Intermarket Trading System ("ITS") participants and with the Securities Industry Automation Corporation ("SIACS"). The ITS Operating Committee voted unanimously to instruct SIAC to make necessary enhancements to the ITS host system to accommodate the proposed expanded sixteenths trading. SIAC also agreed to coordinate with the ITS participants regarding any required testing and changes to the participants' internal systems.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[8] that an exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation with persons engaged in facilitation and clearing transactions in securities, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comment were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–46 and should be submitted by October 28, 1997 21 days from date of publication.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6[9] and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation with persons engaged in facilitation and clearing transactions in securities and to protect investors and the public interest.[11]

Recently, there has been a movement within the industry to reduce the minimum trading and quotation increments imposed by the various self-regulatory organizations ("SROs"). The Amex Nasdaq and NYSE have recently reduced their minimum increments.[12] In addition, several third market makers have begun quoting securities in increments smaller than the primary markets. The proposed rule change will allow the CBOE the flexibility it needs to address this development and remain competitive with these markets. Nevertheless, the Commission notes that any further change in the minimum increments constitutes (1) a change in a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the CBOE, or (2) a change in an existing order-entry of trading system of an SRO, or (3) both.

Therefore, the Exchange is still obligated to file such proposed changes with the Commission.[13]

The Commission also believes the proposed rule change will likely enhance the quality of the market for the affected CBOE-listed activities. Allowing the CBOE to quote affected securities in finer increments will facilitate quote competition.[14] This should help produce more accurate pricing of such securities and can result in tighter quotations.[15] In addition, if the quoted markets are improved by reducing the minimum increment, the change could result in added benefits to the market such as reduced transaction costs.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.[16] The proposal provides the CBOE with the ability to quickly modify its trading increment to meet changing market conditions. This will enable the CBOE to quote competitively with other markets. Waiting the full statutory review period for the proposed rule change could place the CBOE at a significant competitive disadvantage to other markets. Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.[17]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–97–46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26523 Filed 10–6–97; 8:45 am]

BILLING CODE 8010–01–M

[6] Securities Exchange Act Release No. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an Amex proposal to reduce the minimum trading increment to 1/16 for certain Amex-listed equity securities); Securities Exchange Act Release No. 38678 (May 27, 1997), 62 FR 30363 (June 6, 1997) (approving a Nasdaq rule change to reduce the minimum quotation increment to 1/16 for certain Nasdaq-listed securities) and Securities Exchange Act Release No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997) (approving a NYSE rule change to reduce the minimum quotation increment to 1/16 for certain NYSE-listed securities).

[7] Division of Market Regulation, SEC, *Market 2000: An Examination of Current Equity Market Developments* at 18 (Jan. 1994) ("Market 2000 Study").

[8] 15 U.S.C. § 78f(b)(5).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[12] *See supra* note 5.

[13] These changes, however, may become effective upon filing if they meet certain statutory requirements. *See* 15 U.S.C. 78s(b)(3)(A)(i) and 17 CFR 240.19b–4(e).

[14] The rule change is consistent with the recommendation of the Division of Market Regulation ("Division") in its Market 2000 Study, in which the Division noted that the 1/8 minimum variation can cause artificially wide spreads and hinder quote competition by preventing offers to buy or sell at prices inside the prevailing quote. *See* SEC, Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* 18–19 (Jan. 1994).

[15] A study that analyzed the reduction in the minimum tick size from 1/8 to 1/16 for securities listed on the Amex priced between $1.00 and $5.00 found that, in general, the spreads for those securities decreased significantly while trading activity and market depth were relatively unaffected. *See* Hee-Joon Ahn, Charles Q. Chao, and Hyuk Choe, *Tick Size, Spread, and Volume*, 5 J. Fin Intermediation 2 (1996).

[16] A prior proposal by another exchange to reduce its minimum fractional change was published for the full statutory comment period without any comments being received by the Commission. Securities Exchange Act Release No. 38571 (May 5, 1997) (approving a proposed rule change by the Amex to reduce the minimum trading differential from 1/8 to 1/16 for equity securities priced at or above $10.00).

[17] 15 U.S.C. §§ 78f(b)(5) and 78s(b)(2).

[18] 15 U.S.C. § 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39162; File No. SR–CHX–97–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Inc., Relating to the Execution of Stopped Orders Under the Enhanced SuperMAX Program

September 30, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 16, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rule 37(e) of Article XX relating to the execution of stopped orders under the CHX's Enhanced SuperMAX program. The text of the proposed rule change is available at the Office of the Secretary, the CHX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 22, 1995, the Commission approved a proposed rule change that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[3] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under the rule.[4] The CHX now proposes to amend the Enhanced SuperMAX program, a program first adopted under CHX Rule 37 of Article XX in July 1995.[5]

Currently under the Enhanced SuperMAX program, certain orders are "stopped" at the ITS BBO[6] and are executed with reference to the next primary market sale. The Enhanced SuperMAX program also includes a time-out feature whereby if there are no executions in the primary market after the order has been stopped for a designated time period, the order is executed at the stopped price at the end of such period. Such period, known as a time out period, is pre-selected by a specialist on a stock-by-stock basis based on the size of the order, may be changed by a specialist no more frequently than once a month and may be no less than 30 seconds.

The Exchange believes the proposed rule change will simplify the pricing algorithm used by Enhanced SuperMAX. Under the new algorithm, an agency market order eligible for Enhanced SuperMAX will continue to be "stopped" if executing the order at the ITS BBO would create a double uptick (for a buy order) or a double downtick (for a sell order) and the spread between the ITS Bid and ITS Offer is ¼ point or more. Under the proposal, once stopped, a buy order will be executed as follows:

If the next primary market sale is equal to or greater than the primary market offer, the order will be executed at the stopped price.

If there is no primary market sale within the time out period or the next primary market sale is less than the primary market offer, the order will be executed at one minimum variation better than the stopped price.

Sell orders will receive price improvement in a similar manner. Specifically, sell orders will be executed at the stopped price if the next primary market sale is equal to or less than the primary market bid. Sell orders will be executed at one minimum variation better than the stopped price if the next primary market sale is greater than the primary market bid or if there is no primary market sale before the expiration of the time-out period.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (order approving File No. SR–CHX–95–08).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 36027 (July 27, 1995), 60 FR 39465 (August 2, 1995) (order approving File No. SR–CHX–95–15).

[6] CHX defines "ITS BBO" as the best offer or best bid available among the following exchanges: American, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES"). *See* CHX Rule 37(a), Article XX.

[7] 15 U.S.C. 78(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from September 16, 1997, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and rule 19b–4(e)(6)[9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–97–23 and should be submitted by October 28, 1997.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(e)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26521 Filed 10–6–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39174; File No. SR–DCC–97–11]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Order Granting Accelerated, Temporary Approval of a Proposed Rule Change Relating to Margin Requirements for Repurchase Agreements

September 30, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 16, 1997, Delta Clearing Corp. ("DCC") filed with the Securities and Exchange Commission ("Commission") and on September 24, 1997, amended the proposed rule change (File No. SR–DCC–97–11) as described in Items I and II below, which items have been primarily prepared by DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change through March 31, 1998.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend the temporary approval for DCC's rules regarding the collection of margin for overnight repurchase and reverse repurchase agreements ("overnight repos").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and basis for the proposed rule change and any comments received by DCC on the proposed rule change.

The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DCC seeks an extension of the temporary approval of its rules relating to the collection of margin for overnight repos. On April 2, 1997, the Commission granted approval of DCC's overnight repo margining rules through September 30, 1997.[3]

Prior to the proposed rule change, DCC calculated each participant's margin requirement for all repos, including overnight repos, at the end of each business day and required margin to be deposited by 11:00 a.m. the next business day. DCC does not believe that this procedure is appropriate for overnight repos because overnight repos terminate on the following day. As a result, DCC amended its procedures for calculating and collecting margin for overnight repos.[4]

These procedures require each participant which engages in overnight repos to deposit with DCC as core margin either $1 million or a greater amount as determined by DCC at the end of each week based upon the participant's daily overnight repo exposures during the eight prior weeks.[5] If DCC determines as a result of any weekly calculation that a participant is required to maintain a higher core margin amount on deposit with DCC, DCC will notify the participant of such higher core margin requirement by 3:00 p.m. on the date of the calculation, and the participant is required to deposit by 11:00 a.m. on the following business day margin whose value equals or exceeds the participant's additional margin requirement. Such deposit must be in cash or U.S. Treasury securities.

In addition to the weekly calculation described above, DCC calculates on each business day each participant's mark-to-market exposure from overnight repos. If a participant's exposure from overnight repos exceeds 65 percent of the participant's core margin requirement, DCC requires the participant to deposit additional margin equal to the amount of such excess. Such additional margin must be deposited with DCC no later than 5:00 p.m. on the applicable business day. If additional margin is required, DCC may apply towards a participant's exposures on overnight repos excess margin maintained by the participant with DCC which is not then being used to collateralize other margin obligations to DCC. However, DCC may not apply a participant's core margin amount maintained with DCC towards other margin obligations to DCC arising from options transactions or term repros.

In connection with the proposed rule change, DCC agreed that during the temporary approval period it will submit to the Commission on a monthly basis reports detailing the operation of the new margining system for overnight repos. DCC instituted the new margining system on July 1, 1997, and has been providing reports to the Commission since that time. In response to a request from the Commission, DCC has amended the format of the report to provide additional information to the Commission. The first report incorporating the revised format was filed by DCC with the Commission in September 1997.

DCC believes the proposed extension of the temporary approval of the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations promulgated thereunder because the proposed rule change will better enable DCC to safeguard the funds and securities under its possession and control by amending DCC's procedures to assure that it has adequate collateral to address a participant's default or insolvency.

B. Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that DCC's proposed rule change is consistent with DCC's obligations under the Act because the proposal establishes: (1) a minimum core margin requirement to reflect DCC's exposure to each participant's overnight repo activity and (2) an intraday margin requirement that is triggered if a participant's mark-to-market exposure is valued at more than 65 percent of the core requirement. Therefore, the Commission believes that the proposal should provide to DCC margin in an amount that will assist DCC in meeting its obligation to safeguard securities and funds.

Currently, DCC has operated its new margining system for only three months. Therefore, the Commission believes that it is appropriate to extend temporary approval of the proposal in order that the Commission and DCC will have opportunity to further monitor the effectiveness of the new system in practice. Accordingly, the Commission is temporarily approving the proposed rule change through March 31, 1998. During this temporary approval period, DCC should continue to submit on a monthly basis reports detailing its analysis of its overnight repo margining system.

DCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow DCC to continue to use its overnight repo margining procedures without interruption when the current temporary approval period expires on September 30, 1997.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DCC. All submissions should refer to the File No. SR–DCC–97–11 and should be submitted by October 28, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DCC–97–11) be, and hereby is, approved through March 31, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26520 Filed 10–6–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

State of Michigan

[Amendment #3]

Declaration of Disaster #2965

In accordance with information received from the Federal Emergency Management Agency dated September 19, 1997, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to October 7, 1997.

All other information remains the same, i.e., the deadline for filing applications for economic injury is April 13, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 26, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–26512 Filed 10–6–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #2982; State of New Jersey

As a result of the President's major disaster declaration on September 23, 1997, I find that Atlantic County in the State of New Jersey constitutes a disaster area due to damages caused by severe storms and flooding which occurred August 20–21, 1997. Applications for loans for physical

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DCC.

[3] Securities Exchange Act Release No. 38471 (April 2, 1997), 62 FR 17257.

[4] *See id.* for a detailed description of the proposal.

[5] Overnight repos are defined as repo agreements whose off-date is the immediately succeeding business day following the on-date for such transactions. Term repos are defined as repos agreements whose off-date is two or more business days following the on-date for such transactions.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

damages may be filed until the close of business on November 22, 1997, and for loans for economic injury until the close of business on June 23, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Burlington, Camden, Cape May, Cumberland, Gloucester, and Ocean in the State of New Jersey may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 298206 for physical damage and 961100 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 26, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–26513 Filed 10–6–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region III—National Advisory Council; Public Meeting

The Small Business Administration—Region III—Washington National Advisory Council, located in the geographical area of Washington, DC, will hold a public meeting from 8:00 am to 5:00 pm, on Thursday, October 23, 1997, and from 8:00 am until 11:00 am, on Friday, October 24, at the Scottsdale Plaza Resort, 7200 North Scottsdale Road, Scottsdale, AZ, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending. For further information, write or call Toi Tolson, at the U.S. Small Business Administration, 409 3rd Street, S.W., Washington, DC 20416, telephone (202) 205–7648.

Dated: October 1, 1997.

Eugene Carlson,

Associate Administrator, Office of Communications & Public Liaisons.

[FR Doc. 97–26514 Filed 10–6–97; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

North Florida District Office; Name

AGENCY: U.S. Small Business Administration.

ACTION: Notice of name change for two District Offices.

SUMMARY: The U.S. Small Business Administration (SBA) has changed the names of its two District Offices in Florida.

Old name	New name
Jacksonville District Office, 7825 Baymeadows Way, Suite 100–B, Jacksonville, FL 32256–7504.	North Florida District Office, 7825 Baymeadows Way, Suite 100–B, Jacksonville, FL 32256–7504
Miami District Office, 1320 South Dixie Highway, Coral Gables, FL 33146–2911.	South Florida District Office, 1320 South Dixie Highway, Coral Gables, FL 33146–2911

EFFECTIVE DATE: August 19, 1997.

FOR FURTHER INFORMATION CONTACT: Bradley Douglas, 202–205–6808.

Dated: September 10, 1997.

Bradley Douglas,

Associate Administrator for The Office of Field Operations.

[FR Doc. 97–26515 Filed 10–6–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Petitions for Waivers of Compliance and Notice of Technical Conference

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received requests for waivers of compliance with certain requirements of its safety standards. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioners' arguments in favor of relief.

The American Short Line Railroad Association (Waiver Petition Docket Number PB–97–12)

The American Short Line Railroad Association (ASLRA) seeks a permanent waiver of compliance from certain provisions of the *Railroad Power Brake and Drawbars* regulations, 49 CFR Section 232.23, concerning operations requiring the use of two-way EOT devices.

On January 2, 1997, FRA published the Final Rule for Two-Way End-of-Train Devices with an effective date of July 1, 1997. On March 4, 1997, ASLRA filed a petition for reconsideration seeking a delay until December 1, 1997, as the date for the rule to become effective on Class II and Class III railroads, and seeking elimination of the tonnage limitation contained in the rule's definition of local and work trains. On May 29, 1997, FRA granted relief on the effective date for railroads that reported two million or fewer man-hours in 1995, which includes most, if not all, Class II and Class III railroads. FRA declined to eliminate the tonnage limitation from the rule's definition of local and work trains.

ASLRA feels there is still a serious problem in the rulemaking that is a hardship for small railroads in particular and has no significant safety value in the context of what two-way EOT's are designed to accomplish which is improving the safe movement of heavy trains over heavy grades.

The Final Rule requires that a train be equipped with an operable two-way EOT if: (1) The train is operating with greater than 4,000 trailing tons over a section of track with an average grade of one percent or greater over a distance of three continuous miles; or (2) the train is operating with 4,000 trailing tons or less over a section of track with an average grade of two percent or greater over a distance of two continuous miles. The Final Rule defines a train as "one or more locomotives coupled with one or more railcars, except during switching operations or where the operation is that of classifying cars within a railroad yard for the purpose of making or breaking up trains." The literal result of the Final Rule is that a train consist of a single locomotive hauling as little as one car must be equipped with an operable two-way EOT, if such train operates over a two percent grade for two continuous miles.

ASLRA does not believe that FRA intended to impose such unnecessary, impractical and costly requirements when crafting the rule, or that mandating the use of two-way EOT's in these low tonnage trains is not supported either by Congressional intent or by meaningful safety data.

ASLRA believes this requirement will significantly burden a number of small railroads with added expense and requests that FRA issue a general waiver with the following conditions: (1) The general waiver would apply to railroads which had two million or fewer man hours in 1995; (2) It would exempt train operations involving not more than 15 loaded cars or not more than 30 empty cars from the two-way EOT requirement; (3) Advance written notification to FRA by any small railroad wishing to claim the coverage of this general waiver would be required.

ASLRA concludes that the 15 loaded/30 empty car general waiver request will not compromise safety and is within the specific language of the statute and consistent with the requirements of the Small Business Regulatory Enforcement Act of 1996.

McCloud Railway Company (Waiver Petition Docket Number PB–97–3)

The McCloud Railway Company seeks a permanent waiver of compliance from certain provisions of the Railroad Power Brakes and Drawbars regulations, 49 CFR Part 232, section 23, concerning the requirements of two-way EOT devices.

Title 49 CFR 232.23(e)(6) states: "Local trains as defined in paragraph (a)(3) of this section that do not operate over heavy grades" are excepted from the requirements for the use of a two-way EOT device. The McCloud Railway Company operates short trains that meet the requirements of a "local train" as defined in Section 232(a)(3), but they operate over "heavy grades" as defined in Section 232.23(a)(1). Because they operate over "heavy grades", they are required to equip all of their trains with a two-way EOT device.

Since the McCloud Railway Company operates with short train lengths, their operating personnel cannot think of any instances where a two-way EOT device will provide a safer or more effective operation. Therefore, they seek relief from having to equip their trains with a two-way EOT device with the following restrictions: (1) Trains would be limited to 10 loaded cars per locomotive with a maximum of 20 loaded cars per train; except when trains operate with more than 50 percent of the cars empty, the train would be limited to 28 cars. (2) All locomotives must be equipped with properly functioning dynamic braking.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–97–3 or PB–97–12) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Technical Conference

In order to further explore the issues attendant to the ASLRA and McCloud Railroad petitions, FRA will hold a technical conference in which all interested parties are invited to participate. The technical conference, which will be an informal meeting in which a free exchange of ideas will be encouraged, is hearby set for 10:00 a.m. on November 4, 1997, in Room 6200, at the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. An opportunity for the presentation of oral comments will also be afforded to any interested party at that time.

Parties desiring to participate in the technical conference or to provide oral comment on the petitions should notify the Docket Clerk at the mailing address listed above. The Docket Clerk may also be reached at 202–632–3198 or by fax at 202–632–3709.

Issued in Washington, D.C. on October 1, 1997.

James T. Schultz,

Associate Administrator for Safety.

[FR Doc. 97–26550 Filed 10–6–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3436

Applicant: South Orient Railroad Company, LTD., Mr. Roy D. Williams, Chief Operating Officer, 210 South Main Street, Brownwood, Texas 76801.

The South Orient Railroad Company, LTD. seeks approval of the proposed temporary discontinuance of the traffic control system, on the single main track, between Birds Siding, milepost 0.0 and Rickers, milepost 134.5, Texas, on the Dublin Subdivision, for a period of six months.

The reason given for the proposed changes is that the railroad is for sale.

BS–AP–No. 3437

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S Assets, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410.

The Consolidated Rail Corporation seeks approval of the proposed modification of "IU" Interlocking, milepost 283.7, on the Indianapolis Line and milepost 0.0, on the St. Louis Line, at Indianapolis, Indiana, on the Indianapolis Division, involving Main Tracks No. 1 and No. 2, the Amtrak Depot Track, and the Louisville Secondary Track. The proposed changes are associated with relocation of the control of "IU" Interlocking to the Indianapolis, Indiana dispatchers' office and includes the discontinuance and removal of switch No. 61 and signal L68 on the depot track, and the discontinuance and removal of the following signals: R48, L48, L34, R58, R74, L74, RA108, L108, R46, L32, L54, R60, L50, R62, LA76, RA110, R126, R78, R86, L78, L122, RB116, R114, RB110, RD116, and LB76.

The reason given for the proposed changes is to retire facilities no longer needed for present operation and to improve safety of train operation through "IU" Interlocking.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 45 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be

furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on October 1, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 97–26543 Filed 10–6–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–43; Notice 2]

American Honda Motor Company, Inc., Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 122

American Honda Motor Co., Inc., of Torrance, California ("Honda"), applied for a temporary exemption from the fade and water recovery requirements of Federal Motor Vehicle Safety Standard No. 122 *Motorcycle Brake Systems*. The basis of the application was that an exemption would facilitate the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard.

Notice of receipt of the application was published on July 31, 1997, and an opportunity afforded for comment (62 FR 41127). This notice grants the application.

Honda seeks an exemption of one year for its 1998 CBR1100XX motorcycle "from the requirement of the minimum hand-lever force of five pounds in the base line check for the fade and water recovery tests." It wishes to evaluate the marketability of an "improved" motorcycle brake system setting which is currently applied to the model sold in Europe. The difference in setting is limited to a softer master cylinder return spring in the European version. Using the softer spring results in a "more predictable (linear) feeling during initial brake lever application." Although "the change allows a more predictable rise in brake gain, the on-set of braking occurs at lever forces slightly below the five pound minimum" specified in Standard No. 122. Honda considers that motorcycle brake systems have continued to evolve and improve since Standard No. 122 was adopted in 1972, and that one area of improvement is brake lever force which has gradually been reduced. However, according to Honda, the five-pound minimum specification "is preventing further development and improvement" of brake system characteristics. This limit, when applied to the CBR1100XX, "results in an imprecise feeling when the rider applies low-level front brake lever inputs."

The machine is equipped with Honda's Linked Brake System (LBS) which is designed to engage both front and rear brakes when either the brake lever or the brake pedal is used. The LBS differs from other integrated systems in that it allows the rider to choose which wheel gets the majority of braking force, depending on which brake control the rider uses.

According to Honda, the overall braking performance remains unchanged from a conforming motorcycle. If the CBR1100XX is exempted, it will meet "the stopping distance requirement but at lever forces slightly below the minimum."

Specifically, Honda asked for relief from the first sentence of S6.10 *Brake application forces*, which reads:

> Except for the requirements of the fifth recovery stop in S5.4.3 and S5.7.2 (S7.6.3 and S7.10.2) the hand lever force is not less than five and not more than 55 pounds and the foot pedal force is not less than 10 and not more than 90 pounds.

Upon review of this paragraph, NHTSA determined that granting Honda's petition would require relief from different provisions of Standard No. 122, although S6.10 relates to them. Paragraph S6 only sets forth the test conditions under which a motorcycle must meet the performance requirements of S5. A motorcycle manufacturer certifies compliance with the performance requirements of S5 on the basis of tests conducted according to the conditions of S6 and in the manner specified by S7. In short, NHTSA believed that granting Honda's application would require relief from the performance requirements of S5 that are based upon the lever actuation force test conditions of S6.10 as used in the test procedures of S7.

These relate to the baseline checks under which performance is judged for the service brake system fade and fade recovery tests (S5.4), and for the water recovery tests (S5.7). According to the test procedures of S7, the baseline check stops for fade (S7.6.1) and water recovery (S7.10.1) are to be made at 10 to 11 feet per second per second (fpsps) for each stop. The fade recovery test (S7.6.3) also specifies stops at 10 to 11 fpsps. Test data submitted by Honda with its application show that, using a hand lever force of 2.3 kg (5.1 pounds), the deceleration for these stops is 3.05 to 3.35 meters per second per second, or 10.0 to 11.0 fpsps. This does not mean that Honda cannot comply under the strict parameters of the standard, but the system is designed for responsive performance when a hand lever force of less than five pounds is used. For these reasons, NHTSA interprets Honda's application as requesting relief from S5.4.2, S5.4.3, and S5.7.2.

Honda argued that granting an exemption would be in the public interest and consistent with objectives of traffic safety because it:

> * * * Should improve a rider's ability to precisely modulate the brake force at low-level brake lever input forces. Improving the predictability, even at very low-level brake lever input, increases the rider's confidence in the motorcycle's brake system.

No comments were received on the notice regarding the petition.

The distinctive motorcycle brake system setting which Honda seeks to evaluate in the United States is a "new motor vehicle safety feature" that can be evaluated in the field, as contemplated under the temporary exemption authority. Further, the level of safety provided should be at least equal to the level provided by Standard No. 122. NHTSA notes that Honda does not seek an exemption from the stopping distances specified in Column I of Table I (S7.3.1). Instead, Honda wishes approval to allow modulating the hand brake lever at a force of less than the five pound minimum specified in Standard No. 122. It asserts that the lower force to modulate the brake lever would improve the rider's control over the brake force. This improved control, and thus predictability over the brake's function, would also improve the rider's confidence in the brakes and motorcycle.

NHTSA concurs with Honda that new technology that may lead to greater rider control over the brake force thus resulting in reduced stopping distances and better crash avoidance is in the public interest, and consistent with efforts to improve traffic safety.

In consideration of the foregoing, it is hereby found that an exemption would facilitate the field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of Motor Vehicle Safety Standard No. 122, and that an exemption will be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301 *Motor Vehicle Safety*. Accordingly, American Honda Motor Company, Inc. is hereby granted NHTSA Temporary Exemption 97–1, expiring September 1, 1998, from the following requirements incorporated in 49 CFR 571.122 Motor Vehicle Safety Standard No. 122 *Motorcycle Brake Systems:* S5.4.1 *Baseline check—minimum and maximum pedal forces*, S5.4.2 *Fade*, S5.4.3 *Fade recovery*, S5.7.2 *Water recovery test*, and S6.10 *Brake actuation forces*. As provided in 49 CFR § 555.6, under this grant of temporary exemption no more than 2,500 motorcycles exempted from Standard No. 122 may be sold in the United States in the period for which the exemption is granted.

(Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: October 1, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–26491 Filed 10–2–97; 9:33 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 33388 (Sub–Nos. 1–7)]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail, Inc. and Consolidated Rail Corporation

AGENCY: Surface Transportation Board.

ACTION: Notice of Availability of the Environmental Assessments for Three Norfolk Southern Railway Company (NS) Rail Line Constructions and Four CSX Transportation, Inc. (CSX) Rail Line Constructions Prior to the Surface Transportation Board's Decision on the Acquisition and Division of the Consolidated Rail Corporation (Conrail).

SUMMARY: The Surface Transportation Board (Board) gives notice of the availability of the environmental assessments (EA) and public comment period for three NS rail line constructions and four CSX rail line constructions. Although the EAs recommend several mitigation measures to off-set specific environmental effects, the EAs generally conclude that there will be no significant environmental impacts associated with the construction of these rail lines.

DATES: Written comments on the environmental impacts of Finance Docket No. 33388 (Sub-Nos. 1–7) are due October 27, 1997.

ADDRESSES: If you wish to file comments on the EAs, send an original and 10 copies to: Vernon A. Williams, Secretary, Surface Transportation Board, 1925 K Street, NW, Suite 700, Washington, DC 20423–0001. Mark the lower left corner of the envelope: Attention: Dana White, Environmental Comments, Finance Docket No. 33388 (Sub-Nos. 1–7).

FOR FURTHER INFORMATION CONTACT: Dana White, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001; (202) 565–1552. TDD for the hearing impaired: (202) 565–1695. Copies of the EAs may also be obtained by contacting Ms. White.

SUPPLEMENTARY INFORMATION: On April 10, 1997, CSX, NS and Conrail filed their notice of intent to file an application seeking the Board's authorization for: (1) The acquisition by CSX and NS of control of Conrail, and (2) the division of Conrail's assets. Shortly afterwards, NS and CSX requested and received approval from the Board to seek the Board's authority to construct and operate seven rail line connections prior to the Board's decision on the acquisition and division of Conrail.

The seven rail line constructions are each relatively short (a total length of under 4 miles), would provide connections between two rail carriers, and would take place within existing rights-of-way. Early authorization to construct these connections, CSX and NS contended, would allow them to provide efficient service in competition with each other. However, no construction can occur until the Board completes its environmental review of each of the construction projects. Further, the Board advised CSX and NS that they were proceeding at their own risk in expending resources prior to the Board's decision on the acquisition transaction.

In seven separate EAs, the Board considered the environmental aspects of these proposed constructions and the railroads' proposed operations over these lines. The operational implications of the acquisition as a whole, including operations over the roughly 4 miles of line embraced by the seven connection projects, will be examined in the environmental impact statement being prepared to assess the impacts of the entire acquisition transaction.

On October 7, 1997, the Board served the EAs on Federal, state and local agencies and members of the affected communities. Although the EAs recommend several mitigation measures to off-set specific environmental effects, the EAs generally conclude that there will be no significant environmental impacts. There is a 20-day public comment period ending October 27, 1997. The Board will consider the findings of the EAs as well as any comments on the EAs in its decision to approve or deny the construction of each of these lines.

The following is a list of the EAs, the locations of the proposed rail line constructions, the railroads, and their sub-docket numbers within the primary Finance Docket Number 33388 for the proposed acquisition:

ENVIRONMENTAL ASSESSMENTS FOR SEVEN RAIL LINE CONSTRUCTIONS

Location	Railroad	Finance docket 33388
Crestline, OH	CSX	(Sub No. 1)
Willow Creek, IN	CSX	(Sub No. 2)
Greenwich, OH	CSX	(Sub No. 3)
Sidney Junction, OH.	CSX	(Sub No. 4)
Sidney, IL	NS	(Sub No. 5)
Alexandria, IN	NS	(Sub No. 6)
Bucyrus, OH	NS	(Sub No. 7)

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26542 Filed 10–6–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 573]

Rail Service in the Western United States

AGENCY: Surface Transportation Board.

ACTION: Notice of proceeding and public hearing.

SUMMARY: The Surface Transportation Board (Board) is instituting a proceeding and will hold a public hearing on October 27, 1997, at its offices in Washington, DC, to provide interested persons the opportunity to report on the status of rail service in the western United States and to review proposals for solving the service problems that exist.

DATES: Persons wishing to appear at the hearing and make a statement must submit their request to speak at the hearing, and their requested time allotment, by October 9, 1997. The Board will issue a schedule for the hearing, along with a list of speakers

and their allotted times, by October 16, 1997. Speakers' written statements must be filed with the Board by October 23, 1997.

ADDRESSES: Send requests to speak and requested time allotments (an original and 10 copies) referring to STB Ex Parte No. 573 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) is instituting a proceeding on its own motion and will hold a public hearing beginning at 10:00 a.m., on October 27, 1997, at its offices at 1925 K Street, N.W., Washington, DC, to provide an opportunity for interested persons, including carriers, shippers, and employees, to report on the status of rail service in the western United States and to review proposals for solving service problems. The Board has been made aware of railroad service problems in this area of the country [recently involving the Union Pacific Railroad Company/Southern Pacific Transportation Company (UP/SP)] through formal filings and public accounts, and, more recently, through informal communications between affected persons and the Board's Office of Compliance and Enforcement (OCE) about specific UP/SP service problems, which OCE has worked with UP/SP to resolve. Based on this information, we believe it is appropriate to hold a public hearing on the issue of rail service in the western part of the country, problems in the delivery of that service, and solutions, both governmental and non-governmental, that have been offered or might be offered to remedy these service problems. The focus of this proceeding is on the immediate resolution of existing problems.

This proceeding and this public hearing are being conducted separate and apart from the ongoing oversight proceeding in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, STB Finance Docket No. 32760 (Sub-No. 21). There, the focus is on whether the conditions we imposed in approving the application in Finance Docket No. 32760 have been successful in resolving the competitive problems that we found would exist as a result of our approval of the UP/SP control transaction in the absence of those conditions. Parties to the oversight proceeding have, however, commented on service problems on the UP/SP system, and both UP/SP and The Burlington Northern and Santa Fe Railway Company, in their most recent quarterly reports, filed October 1, 1997, in the oversight proceeding, have separately put forth proposals that, in their view, would lead to a resolution of the existing service problems. Given the immediacy of these service problems and the national, as well as regional, interest in their resolution, we are instituting this proceeding to focus specifically on the rail service problems that have arisen in the western part of the country.[1]

We encourage interested persons to coordinate the presentation of their points of view by selecting of a single individual to appear at the hearing on behalf of their common interests so that the opportunity for input at the hearing can be maximized. Persons wishing to appear and make a statement at the hearing should submit a request for time to speak on or before October 9, 1997. The Board notes that, in the interest of a focused hearing, it must necessarily limit the number of persons allowed to speak. At this hearing, we intend to concentrate more on operational, resource, and customer service matters than on legal issues, and it would be helpful if speakers are individuals who are able to address such matters. The Board will issue a schedule for the October 27, 1997 hearing, along with a list of speakers and their allotted times, by October 16, 1997. Speakers' written statements of their presentations must be filed with the Board by October 23, 1997.

Notice of the October 27, 1997 hearing will be published in the **Federal Register**.

Decided: October 2, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26579 Filed 10–6–97; 8:45 am]

BILLING CODE 4915–00–U

[1] To ensure that all parties to the oversight proceeding are aware of the proceeding we are instituting by this notice, we will serve a copy of this notice on all parties on the service list in the oversight proceeding.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33469]

Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a)—Union Pacific Railroad Company and Southern Pacific Transportation Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Order and request for comments.

SUMMARY: The Board is seeking comments from interested persons on the application of the National Railroad Passenger Corporation (Amtrak) under 49 U.S.C. 24308(a), formerly section 402(a) of the Rail Passenger Service Act (the Act), for an order determining under the law the nature and extent of the duty of the Union Pacific Railroad Company (UP) and its affiliate, Southern Pacific Transportation Company (SP) (collectively, UP/SP), to allow Amtrak to use UP/SP's tracks and facilities for the carriage of express. The Board is also ordering UP/SP to continue to make its tracks and facilities available to Amtrak, as directed herein, while this proceeding is pending.

DATES: Written notices of intent to participate are due by October 14, 1997. Shortly thereafter, we will serve a preliminary service list and request for written corrections. By October 31, 1997, we will serve any necessary corrections to the service list. Opening comments are due by November 10, 1997. Reply comments are due by November 25, 1997.

ADDRESSES: Send an original and 10 copies of notices of intent to participate and comments, referring to "STB Finance Docket No. 33469," to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. Opening and reply comments must be served on the persons identified as "parties of record" on the service list.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: This proceeding raises questions about the definition of "express" traffic and the extent to which freight railroads are required to allow Amtrak to use their facilities to carry express. Freight railroads must permit Amtrak to operate over their lines. The provisions of 49 U.S.C. 24305(a)(1) and 24305(c)(2) authorize Amtrak to operate intercity and commuter rail passenger transportation and to transport mail and express. In addition, the provisions of 49 U.S.C. 24306(a) and 24101(c)(1)(B) direct Amtrak to seek to increase its revenues from the transportation of mail and express. The statute, however, does not define "express."

Historically, in addition to its passenger service, Amtrak has carried what it and UP/SP appear to agree is express traffic. In recent months, however, Amtrak has taken steps that it indicates are necessary to improve its financial condition by carrying additional volumes of freight that it describes as express. Amtrak's financial condition is well known.

UP/SP has resisted Amtrak's efforts to expand its freight operations. UP/SP's position is that the type of traffic that Amtrak contemplates now handling falls into the category of general freight rather than express as intended under the law. UP/SP also argues that the expanded freight operations that Amtrak contemplates would create operational and logistical problems for the railroads over whose tracks Amtrak operates, as well as the towns and cities through which Amtrak operates. The recent operational difficulties that have been experienced by UP/SP are well known, as are the concerns of many towns and cities about train traffic in general.

Because Amtrak and UP/SP could not resolve the issue privately, by application filed September 16, 1997, under 49 U.S.C. 24308(a), formerly section 402(a) of the Act,[1] Amtrak seeks an order that: (1) requires UP/SP to continue to make available to Amtrak the facilities necessary for it to continue to transport express on its trains while this proceeding is pending; and (2) establishes a procedural schedule "leading ultimately to entry of a final order determining that Amtrak's transport of express traffic is necessary to carry out the purposes of the Act, and requiring UP/SP to make available to Amtrak the facilities and services needed to allow Amtrak trains to transport express."

In its application, Amtrak states that its existing general agreement governing its relationship with UP/SP, which was scheduled to expire on September 30, 1997, has been extended through October 31, 1997. However, Amtrak asserts, UP/SP is unwilling to extend beyond September 30, 1997, a "provision in Amtrak's agreements with UP/SP that gives Amtrak the right to carry express on Amtrak's trains to the extent authorized by the Act."

UP/SP filed a reply on September 23, 1997. In its reply, UP/SP takes issue with Amtrak's contentions that the freight operations that Amtrak contemplates are operationally feasible, and that they are consistent with the express service provisions of the Act. UP/SP states in that reply that it does not object to entry of an order preserving the status quo while Amtrak's application is being reviewed, as long as the order does not allow Amtrak to effect a "blanket authorization for unlimited expansion of its commodity-hauling operation."

On September 26, 1997, Amtrak sought leave to file a tendered response to UP/SP's reply, which UP/SP has opposed. Amtrak asserts that it should be permitted to file the response because it could not have reasonably anticipated the arguments that UP/SP would be advancing in its reply. We do not find that assertion credible; indeed, given the extensive relief that Amtrak has sought, UP/SP's reply raises the types of arguments we would have expected it to present. Nevertheless, we will accept and consider Amtrak's response, and UP/SP's opposition to it, in the interest of developing a complete record.

Discussion and Conclusions

Under 49 U.S.C. 24308(a)(2), we have authority to prescribe the terms and compensation for Amtrak's use of facilities owned by, or receipt of services to be provided by, freight railroads in connection with Amtrak's operation over their track, if (1) the parties cannot agree and (2) such prescription is necessary to carry out the purposes of the Act. Here, it is apparent that the parties cannot agree, as Amtrak has asked us to declare the nature and extent of UP/SP's duty to make its facilities available to Amtrak for the carriage of express, which is an important issue that bears on the fundamental purposes of the Act.

Accordingly, we are commencing a proceeding to resolve this dispute.[2] Because of the potentially broad impact of any ruling that we might issue in this matter, we are publishing this notice in the **Federal Register** soliciting comments from persons that may be affected: other railroads and railroad employees, potential users, and, particularly insofar as operational matters are concerned, cities and towns and the Secretary of Transportation.

As noted, this dispute revolves around the meaning of the statutory term "express" in the Act, and whether there are limits on the type and quantity of freight traffic that Amtrak may carry consistent with the statutory authorization to carry express. Amtrak argues that there are no "defined limits" to its authority to transport express (Response at 2),[3] and that UP/SP is improperly taking the position that: (1) The Act does not give Amtrak the right to transport carload or truckload shipments of express; (2) certain commodities transported by Amtrak do not constitute express;[4] and (3) Amtrak may be subjected to overall footage limits on individual trains carrying express cars.

UP/SP argues that Amtrak's efforts to solicit carload traffic (such as carloads of beer), and to expand considerably the length of its trains, are inconsistent with the statutory intent that transportation of mail and express traffic be ancillary to Amtrak's provision of passenger service. UP/SP also argues that expansion of Amtrak's non-passenger services would produce serious operational and logistical problems at the various cities and towns through which UP/SP operates.[5]

Commenters should address these issues. In addition to the operational concerns and the commodity/train length issues raised by UP/SP, commenters should address the legislative intent in enacting the Act, and, in particular, the extent to which Congress intended that Amtrak's express services be ancillary to its passenger services. We must note that we expect all commenters to express their fully developed positions in their opening comments, and not to back-load their filings by reserving their major points to their reply comments.

Amtrak has asked us that, while this proceeding is pending, we issue an interim order that will require UP/SP to

[1] Section 402(a) was originally codified at 45 U.S.C. 562(a). In Pub. L. No. 103–272, 108 Stat. 745, enacted on July 5, 1994, section 402(a) was recodified in its present form as 49 U.S.C. 24308(e). In section 205 of the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, enacted December 29, 1995, references to the "Interstate Commerce Commission" in this and other statutory provisions were replaced with references to the Surface Transportation Board.

[2] After we resolve this matter, we may also be called upon to address other issues relating to the facilities that UP/SP must provide to Amtrak, such as the incremental cost of access and the terms of payment. At this point, however, we are focusing only on the narrow issue raised. We expect that any final compensation methodology that we may prescribe would be made retroactive to October 1, 1997.

[3] Amtrak asserts that passenger trains historically operated "with 30 to 40 mail and express cars," and that, "As recently as 1959, intercity passenger trains derived as much as 46% of their revenue from mail and express. * * *"

[4] Amtrak asserts that Board precedent does not limit the commodities that can qualify as express.

[5] In its response, Amtrak asserts that its anticipated expansion of operations will not produce operational problems.

continue to make its facilities available to Amtrak for handling express traffic so that Amtrak will be able "to continue to serve shippers for whom it currently transports both carload and other shipments, and for whom it has commitments to do so after October 1." Amtrak's objective is to expand its freight business so that it can obtain increased revenues during the pendency of the proceeding. In its application, Amtrak indicates that it wants us to facilitate this objective by preserving the status quo, which, in Amtrak's view, means accepting its position that there are not and have never been any limits on its authority to carry what it determines to be express. Response at 5–6.[6] In its response, Amtrak indicates that it will accept an interim 18-car train limit on the number of cars in its trains, on the ground that UP/SP has already agreed that 18-car trains are operationally feasible and have been typically operated in the past. In its most recent filing, UP/SP disputes Amtrak's statements about the feasibility of 18-car trains at certain locations, such as Reno, Nevada, and Oakland, California.

We cannot, in an interim order, direct UP/SP to allow Amtrak access for whatever traffic Amtrak declares is express. The limits on Amtrak's freight traffic authority are precisely what we are being asked to resolve in the case, and that is the issue on which we are now seeking public comment. Typically in these proceedings,[7] we require that the parties maintain the status quo pending our resolution of the matter. However, because of the variety of potential combinations in the Amtrak operations that have been or might have been conducted in the past at each of the numerous stations that Amtrak serves (regarding, for example, train consist issues), an order simply directing the parties to maintain the "factual" status quo would likely produce uncertainty and continued litigation. Therefore, we will establish a numerical equipment limitation for the interim that appears to be consistent with the representations of both parties. Except where it is operationally infeasible, UP/SP generally may not limit Amtrak's access to less than 18 cars. Consistent with Amtrak's representation that it does not need to operate more than 600 feet of express cars during the interim period, however, UP/SP may limit Amtrak to 9 express cars per train. Thus, the trains that UP/SP must permit Amtrak to operate over UP/SP's lines may be as long as 18 cars, and may contain as many as 9 express cars. This interim order, we stress, is not intended to prejudge, in any way, the matters on which we have sought comment, but is simply designed as a practical solution while the case is pending.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. On or after September 30, 1997, UP/SP will preserve on an interim basis the current provisions in the parties' agreement governing express and the practices thereunder as provided in this decision and will provide services, tracks, and facilities to Amtrak in accordance with those provisions and practices.

2. A proceeding is instituted to investigate the extent of UP/SP's obligation under the Act to allow Amtrak to use UP/SP's lines and facilities for the carriage of express.

3. Commenters shall comply with the procedural schedule set out earlier.

4. Amtrak's request for leave to file its response is granted.

5. This decision is effective on its date of service.

Decided: September 29, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26541 Filed 10–6–97; 8:45 am]

BILLING CODE 4915–00–P

[6] In support of its argument that the Board must order UP/SP to open its facilities, on an interim basis, to whatever Amtrak decides to characterize as express, Amtrak states that it has already purchased or committed to obtain additional equipment, and has entered into agreements with customers to carry additional freight. The Board notes in this regard that any party that takes action assuming in advance that a difficult legal issue will be resolved in its favor assumes whatever risks are associated with such action.

[7] *See Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(a)—Order to Require Service and Set Compensation Terms,* STB Finance Docket No. 32911 (STB served Apr. 30, 1996).

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

September 29, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0052.
Form Number: IRS Forms 990–PF and 4720.
Type of Review: Extension.
Title: Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation (990–PF); and Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code (4720).
Description: Internal Revenue Code (IRC) section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Form 990-PF is used for this purpose. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Form 4720 is used by foundations and/or persons to report prohibited activities in detail and pay the tax on them.
Respondents: Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 52,214.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
990–PF	140 hr., 52 min	27 hr., 35 min	32 hr., 2 min	16 min.
4720	39 hr., 42 min	16 hr., 1 min	22 hr., 57 min	1 hr., 37 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 10,533,927 hours.
OMB Number: 1545–0393.
Form Number: IRS Letter 109C.
Type of Review: Extension.
Title: Return Requesting Refund Unlocatable or Not Filed; Send Copy.
Description: The code requires tax returns to be filed. It also authorizes IRS to refund any overpayment of tax. If a taxpayer inquiries about their non-receipt of refund and no return is found, this letter is sent requesting the taxpayer file another return.
Respondents: Business of other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents: 18,223.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,513.
OMB Number: 1545–1282.
Form Number: Revision.
Type of Review: Extension.
Title: Enhanced Oil Recover Credit.
Description: The enhanced oil recovery (EOR) credit is 15% of qualified costs paid or incurred during the year. The purpose is to get more oil from the wells. The IRS uses the information on the form to ensure that the credit is correctly computed.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 10,000.
Estimated Burden Hours Per Respondent/Recordkeeping:
Recordkeeping—5 hr., 59 min.
Learning about the law or the form—1 hr., 0 min.
Preparing and sending the form to the IRS—1 hr., 8 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 81,100 hours.
OMB Number: 1545–1444.
Form Number: IRS Form 8844.
Type of Review: Revision.
Title: Empowerment Zone Employment Credit.
Description: Employers who hire employees who live and work in one of the 9 designated empowerment zones can receive a tax credit for the first $15,000 of wages paid to each employee. The credit is applicable from the date of designation through the year 2004.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.
Estimated Number of Respondents/Recordkeepers: 30,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—8 hr., 37 min.
Learning about the law or the form—1 hr., 35 min.
Preparing and sending the form to the IRS—1 hr., 48 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 360,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–26465 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 29, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0086.
Form Number: Customs Forms 214, 214A, 214B, 214C, and 216.
Type of Review: Extension.
Title: Application for Foreign Trade Zone Admission and Status Designation (CFs 214, 214A, 214B, 214C); and Application of Foreign-Trade Zone Activity Permit (CF 216)
Description: Customs Forms 214, 214A, 214B, and 214C, Application for Foreign-Trade Zone Admission and/or Status Designation, are used by business firms which bring merchandise into a foreign trade zone, to register the admission of such merchandise to zones and to apply for the appropriate zone status. This information is collected pursuant to 19 CFR 146.32. Customs Form 216, Application for Foreign-Trade Zone Activity Permit, is used by business firms to request approval to manipulate, manufacture, exhibit or destroy merchandise in a foreign trade zone in accordance with 19 CFR 146.52.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Recordkeepers: 8,675.
Estimated Burden Hours Per Recordkeeper: 17 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 62,675 hours.
Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–26466 Filed 10–6–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

September 30, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information

collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 154–0096.

Form Number: IRS Forms 1042 and 1042–S.

Type of Review: Revision.

Title: Annual Withholding Tax Return for U.S. Source of Income of Foreign Persons (1042); and Foreign Person's U.S. Source of Income Subject to Withholding.

Description: Form 1042 is used by withholding agents to report tax withheld at source on certain income paid to nonresident alien individuals, foreign partnerships, and foreign corporations to the IRS. Form 1042–S is used by withholding agents to report income and tax withheld to payees. A copy of each Form 1040–S is filed magnetically or with Form 1042 for information reporting purposes. The IRS uses this information to verify that the correct amount of tax has been withheld and paid to the United States.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 22,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1042	10 hr., 31 min	2 hr., 8 min	4 hr., 15 min	32 min.
4720	5 hr., 1 min	3 hr., 33 min	4 hr., 43 min	16 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 22,063,680 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–26467 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Office; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. § 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C., on October 28 and 29, 1997, of the following debt management advisory committee: The Bond Market Trade Association, Treasury Borrowing Advisory Committee.

The agenda for the meeting provides for a technical background briefing by Treasury staff on October 28, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. On October 29, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 11:30 a.m. Eastern time on October 28 and will be open to the public. The remaining sessions on October 28 and the committee's reporting session on October 29, will be closed to the public pursuant to 5 U.S.C. App. § 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. § 10(d) and vested in me by the Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. § 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. § 552b(c)(9)(A).

The Office of the Assistant Secretary for Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. § 552b.

Dated: October 1, 1997.

Gary Gensler,

Assistant Secretary (Financial Markets).

[FR Doc. 97–26490 Filed 10–6–97; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: American Mercury Insurance Company

AGENCY: Financial Management Service, Fiscal Service Department of the Treasury.

ACTION: Surety companies acceptable on federal bonds CHANGE OF NAME American Fidelity Insurance Company.

SUMMARY: Dept. Circ. 570, 1997—Rev., Supp. No. 1)

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch (101) 874–7102.Q02

SUPPLEMENTARY INFORMATION: American Fidelity Insurance Company, an Oklahoma corporation, has formally changed its name to American Mercury Insurance Company, effective August 1, 1997. The Company was last listed as an acceptable surety on Federal bonds at 62 FR 35550, July 1, 1997.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to American Mercury Insurance Company, Oklahoma City, Oklahoma. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $3,850,000 established for the Company as of July 1, 1997, remains unchanged until June 30, 1998.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1997 Revision, at page 35551 to reflect this change.

The Circular may be viewed and downloaded through the Internet (http://www/fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 847–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00499–7.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A14, Hyattsville, MD 20782.

Dated: September 18, 1997.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 97–26459 Filed 10–6–97; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–44

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–44, LIFO Conformity Requirement.

DATES: Written comments should be received on or before December 8, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: LIFO Conformity Requirement.

OMB Number: 1545–1559.

Revenue Procedure Number: Revenue Procedure 97–44.

Abstract: Revenue Procedure 97–44 permits automobile dealers that comply with the terms of the revenue procedure to continue using the LIFO inventory method despite previous violations of the LIFO conformity requirements of Internal Revenue Code section 472(c) or (e)(2).

Current Actions: There are no changes being made to the revenue procedure this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 100,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 29, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer

[FR Doc. 97–26559 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TREASURY

Internal Revenue Service

Notice of Open Meeting of the Information Reporting Program Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: In 1991 the IRS established the Information Reporting Program Advisory Committee (IRPAC) in response to a recommendation made by the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program (IRP).

There will be a meeting of IRPAC on Tuesday and Wednesday, October 28–29, 1997. The meeting will be held in Room 3313 of the Internal Revenue Service Main Building, which is located at 1111 Constitution Avenue, NW., Washington, DC. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting on October 28–29, 1997

Tuesday, October 28, 1997

9:30 Public Meeting Opens
11:30 Break for Lunch
1:00 Public Meeting Continues
4:30 Adjourn for the Day

Wednesday, October 29, 1997

9:30 Public Meeting Reconvenes

12:00 Adjourn

The topics that will be covered are as follows:

(1) Information Reporting for Small Estates.

(2) State Reporting on Form 1099–MISC.

(3) Issues Relating to Forms 5498, 1099–R and 1099–MSA.

(4) Usage of Individual Taxpayer Identification Numbers (ITIN's).

(5) Publication 515 Regarding Individual Retirement Account (IRA) Distributions.

(6) Introduced Business and Form W–9 Sharing.

(7) Foreign Withholding Final Regulations.

(8) Taxpayer Relief Act of 1997.

(9) Elimination of the Centralized IRP Call-Site at the Martinsburg Computing Center.

(10) Information Reporting for Disregarded Entities.

(11) Martinsburg Computing Center Update.

(12) Electronic Financial Tax Payment System (EFTPS).

(13) Tip Reporting.

(14) TIN Matching for the Private Sector.

(15) Electronic Filing of Information Returns.

(16) Century Date Change.

(17) Form W–2c Requirement for Address Corrections.

(18) Procurement Card Reporting.

(19) December/January Mutual Fund Dividends for Foreign Shareholders.

(20) Direct Deposit Message on Form 1099.

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: IRPAC reports to the National Director, Office of Specialty Taxes, who is the executive responsible for information reporting payer compliance. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service. IRPAC is currently comprised of 19 representatives from various segments of the information reporting payer community. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend two public meetings each year.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 80 people, including members of IRPAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. In order to get your name on the building access list, *notification of intent to attend this meeting must be made with Ms. Thomasine Matthews no later than Thursday, October 23, 1997. Ms. Matthews can be reached at 202–622–4214 (not a toll-free number).* Notification of intent to attend should include your name, organization and phone number. If you leave this information for Ms. Matthews in a voice-mail message, please spell out all names. A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Matthews on or after Monday, October 20, 1997 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until Monday, October 20, 1997.

ADDRESSES: If you would like to have IRPAC consider a written statement at a future IRPAC meeting (not the October 1997 meeting), please write to Kate LaBuda at IRS, Office of Specialty Taxes, CP:EX:ST:PC, Room 2013, 1111 Constitution Avenue, NW., Washington, DC, 20224.

FOR FURTHER INFORMATION CONTACT: To give notification of intent to attend this meeting, call Ms. Thomasine Matthews at 202–622–4214 (not a toll-free number). For general information about IRPAC call Kate LaBuda at 202–622–3404 (not a toll-free number).

Dated: September 24, 1997.

Kate LaBuda,

(Acting) Director Office of Payer Compliance Office of Specialty Taxes.

[FR Doc. 97–26018 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 62, No. 194

Tuesday, October 7, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39129; File No. SR-NYSE-97-16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to NYSE Rule 79A

Correction

In notice document 97–25991 beginning on page 51497 in the issue of Wednesday, October 1, 1997, make the following correction:

On page 51498, in the third column, under the title "Solicitation of Comments", the third paragraph "[insert date 21 days from date of publication]." should read "October 22, 1997".

BILLING CODE 1505-01-D

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 101 and 102

Procedures and Rules Governing Summary Judgment Motions and Advisory Opinions

Correction

In rule document 96–31457 beginning on page 65180, in the issue of Wednesday, December 11, 1996, make the following correction:

§ 101.30 [Corrected]

On page 65182, in the second column, in the first paragraph, in the first line, "The question" should read "(a) The question".

BILLING CODE 1505-01-D

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federal register

Tuesday
October 7, 1997

Part II

Environmental Protection Agency

40 CFR Parts 9, 60, and 63
National Emission Standards for Hazardous Air Pollutants for Source Categories; National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 60, and 63

[IL–64–2–5807; FRL–5898–5]

RIN 2060–AE76

National Emission Standards for Hazardous Air Pollutants for Source Categories; National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for each new or existing potline, paste production plant, and anode bake furnace associated with a primary aluminum reduction plant, and for each new pitch storage tank associated with a primary aluminum production plant. In addition, the new source performance standard for primary aluminum plants is amended and most of the requirements are incorporated in the final national emission standards. This action also adds Method 315 for the measurement of extractable organic matter to appendix A of part 63 and Method 14A for the measurement of total fluoride (TF) to appendix A of part 60.

The major hazardous air pollutants (HAPs) emitted by the facilities covered by this rule include hydrogen fluoride (HF) and polycyclic organic matter (POM). Polycyclic aromatic hydrocarbons (PAHs) are included in the chemical group POM. Polycyclic aromatic hydrocarbons have been reported to produce carcinogenic, reproductive, and developmental effects as well as toxic effects on blood, the liver, eyes, and the immune system. The final rule will result in a 50 percent reduction in fluoride and POM emissions from the current level of 11,000 tons per year (tpy); a substantial reduction in emissions of nonHAP pollutants, such as particulate matter, also will be achieved.

These standards implement section 112(d) of the Clean Air Act as amended (the Act) and are based on the Administrator's determination that primary aluminum plants may reasonably be anticipated to emit several of the HAPs listed in section 112(b) of the Act from the various process operations found within the industry.

EFFECTIVE DATE: October 7, 1997. See the **SUPPLEMENTARY INFORMATION** section concerning judicial review.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 7, 1997.

ADDRESSES: *Docket.* The docket for this rulemaking containing the information considered by the EPA in development of the final rule is Docket No. A–92–60. This docket is available for public inspection between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW., Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

Background Information Document. A background information document, titled "National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Aluminum Reduction Plants—Background Information for Promulgated Standards, Summary of Public Comments and Responses," has been prepared summarizing the significant public comments made on the proposed rule and the Administrator's response to those comments. This document is available in the docket for this rulemaking and also is available for downloading from the Technology Transfer Network under the Clean Air Act Amendments, Recently Signed Rules.

FOR FURTHER INFORMATION CONTACT: Steve Fruh, Policy, Planning, and Standards Group, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2837, electronic mail address, "fruh.steve@epamail.epa.gov".

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that emit or have the potential to emit HAPs listed in section 112(b) of the Act. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Primary aluminum reduction plants.
Federal government: Not affected	
State/local/tribal government: Not affected.	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.840 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

This NESHAP for primary aluminum reduction plants was proposed on September 26, 1996 (61 FR 50586). This notice promulgating a NESHAP for primary aluminum reduction plants constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the Clean Air Act, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 8, 1997. Under section 307(d)(7)(B) of the Act, only an objection to this rule which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce these requirements.

Technology Transfer Network

The Technology Transfer Network is one of the EPA's electronic bulletin boards. The Technology Transfer Network provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541–5472 for up to a 14,400 bps modem. The Technology Transfer Network is also accessible through the Internet at "http://ttnwww.rtpnc.epa.gov." If more information on the Technology Transfer Network is needed, call the HELP line at (919) 541–5384.

Outline

The following outline is provided to aid in reading this preamble to the final rule.

I. Statutory Authority
II. Purpose
III. Background
A. Primary Aluminum Source Category
B. NESHAP for Source Categories
C. Health Effects of Pollutants
IV. Summary of Final Rule and Changes Since Proposal
A. Applicability
B. Emission Limits and Standards
C. Incorporation of the NSPS
D. Emission Averaging
E. Compliance Provisions
F. Emission Monitoring
G. Test Methods
H. Time Limit for Approval or Disapproval of Submissions
I. Notification, Reporting, and Recordkeeping Requirements
J. Display of OMB Control Numbers
V. Summary of Impacts
VI. Summary of Responses to Major Comments
A. Subcategories
B. Format of the Standard
C. Achievability of Emission Limits
D. Incorporation of the NSPS
E. Time Limit for Approval by the Regulatory Authority
F. Relationship to Other Rules
G. Reduced Sampling Frequency
H. Approval of Alcan Cassette Method (Method 14A)
I. Estimates of Costs for Control and Monitoring
J. Exceeding an Operating Parameter Limit
K. Pitch Storage Tanks
VII. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Enhancing the Intergovernmental Partnership Under Executive Order 12875
D. Unfunded Mandates Reform Act
E. Regulatory Flexibility
F. Submission to Congress and the General Accounting Office
G. Paperwork Reduction Act
H. Clean Air Act

I. Statutory Authority

The statutory authority for this rule is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

II. Purpose

The Clean Air Act was created in part "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." [See section 101(b)(1).] Section 112 of the Act establishes a technology-based program to reduce stationary source emissions of HAPs from new and existing sources.

Section 112(d) of the Act requires the regulations to reflect the maximum degree of reduction in emissions of HAPs that is achievable taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as the maximum achievable control technology (MACT). The goal of the section 112(d) MACT standards is to apply such control technology to reduce emissions and thereby reduce the hazard of HAPs emitted from stationary sources.

This final rule is technology based, i.e., based on MACT. In essence, these MACT standards ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions. At the same time, this approach provides a level economic playing field, ensuring that facilities that use cleaner processes and good emission controls are not disadvantaged relative to competitors with poorer controls.

III. Background

A. Primary Aluminum Source Category

Section 112(c) of the Act requires the EPA to list each category of major and area sources, as appropriate, emitting one or more of the HAPs listed in section 112(b) of the Act. The term "major source" is defined by the Act to mean:

> * * *Any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs.

On July 16, 1992 (57 FR 31576), the EPA published a list of major and area sources for which NESHAP are to be promulgated, and primary aluminum production was one of the 174 categories of sources listed. The listing was based on the Administrator's determination that primary aluminum plants may reasonably be anticipated to emit several of the listed HAPs in sufficient quantity to be designated as major sources. The EPA schedule for promulgation of the MACT standards was published on December 3, 1993 (58 FR 63941), and requires that rules for the primary aluminum source category be promulgated by November 15, 1997.

The primary aluminum source category includes facilities engaged in producing primary aluminum by electrolytically reducing alumina. The NESHAP for primary aluminum production applies to all primary aluminum production plants because all of these sites are major sources.

B. NESHAP for Source Categories

The control of HAPs is achieved through the promulgation of technology-based emission standards under section 112(d) and design, equipment, work practice, or operational standards under section 112(h) for categories of sources that emit HAPs. Emission reductions may be accomplished through the application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h); or (5) a combination of the above. (See section 112(d)(2).)

A statutory minimum or baseline level of HAP emission control that the EPA can select to be MACT for a particular source category is defined under section 112(d)(3) of the Act and is referred to as the "MACT floor." For new sources, the MACT floor is the level of HAP emission control that is achieved in practice by the best controlled similar source. The statute allows standards under a NESHAP for existing sources to be less stringent than standards for new sources. The determination of MACT floor for existing sources depends on the nationwide number of existing sources within the source category. The floor is based on the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the best-performing 5 sources for categories or subcategories with fewer than 30 sources.

Once the MACT floors are determined for new and existing sources in a source category, the EPA must establish standards under a NESHAP that are no less stringent than the applicable MACT floors. The Administrator may promulgate standards that are more stringent than the MACT floor when such standards are determined by the EPA to be achievable taking into consideration the cost of implementing the standards as well as any non-air quality health and environmental impacts and energy requirements.

Section 112(d) of the Act requires EPA to establish emission standards for

each category or subcategory of major and area sources. Section 112(d)(1) of the Act provides that the Administrator may distinguish among classes, types, and sizes of sources within a category in establishing such standards. In establishing subcategories, EPA considers factors such as air pollution control engineering differences, process operations (including differences between batch and continuous operations), emission characteristics, control device applicability, and opportunities for pollution prevention.

C. Health Effects of Pollutants

Available emission data, collected in conjunction with development of the standard, show that the pollutants that are listed in section 112(b)(1) and are emitted by primary aluminum plants include HF, a gaseous inorganic compound, and POM. Following is a summary of the potential health effects caused by emission of pollutants that will be reduced by the standard.

Short-term inhalation exposure to gaseous HF and related fluoride compounds can cause severe respiratory damage in humans, including severe irritation and pulmonary edema. Long-term inhalation exposure to low levels of HF by humans has been reported to result in irritation and congestion of the nose, throat, and bronchi while damage to liver, kidney, and lungs has been observed in animals. Occupational studies have not specifically implicated inhaled fluoride as a cause of cancer, and the Agency has not classified HF with respect to potential carcinogenicity.

There is generally a lack of information on human health effects associated with exposures to HF at current ambient air concentrations near primary aluminum plants. In their comments on the proposed rule, the aluminum industry asserted that there was no evidence of adverse effects on human health or the environment from HF emissions from aluminum production at the industry's current level of emission control.

Emission test results reveal that primary aluminum reduction plants emit POM, which includes a combination of PAHs such as anthracene, benzo(a)pyrene, and naphthalene, among others. Several of the PAH compounds, including benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene, are probable human carcinogens. Cancer is the major concern from exposure to these PAHs. Specifically, long-term exposure to benzo(a)pyrene has been reported to result in toxic effects on skin, irritation to eyes, cataracts in humans, and toxic effects on the liver, blood, and the immune system in animal studies. Reproductive and developmental effects from benzo(a)pyrene have also been reported in animal studies.

In addition to HAPs, this final standard also would reduce emissions of particulate matter smaller than 10 microns in diameter (PM_{10}), which are controlled under the National Ambient Air Quality Standards (NAAQS). The health effects of PM_{10} are described in EPA's criteria documents that support the NAAQS. For example, particles addressed by the PM_{10} standard have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death.

The EPA does recognize that the degree of adverse effects to health can range from mild to severe. The extent and degree to which the health effects may be experienced depends upon: (1) The ambient concentrations observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain), (2) the frequency of and duration of exposures, (3) characteristics of exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle), which vary significantly with the population, and (4) pollutant-specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence).

IV. Summary of Final Rule and Changes Since Proposal

Changes have been incorporated into the final NESHAP for primary aluminum reduction plants in response to comments on the proposed rule. The principal changes made since proposal are summarized below.

A. Applicability

As proposed, the final standard applies to emissions of HF, measured using TF as a surrogate, and POM (as measured by methylene chloride extractables) from each affected source associated with primary aluminum reduction and located at a major source.

Under the proposed standard, affected sources included each new and existing potline of reduction cells, anode bake furnace, and paste production plant, except for one off-site anode bake furnace that is subject to the State MACT determination established by the applicable regulatory authority. No changes were made to the final standard affecting the applicability of the rule to these affected sources.

In response to public comments, the applicability of the proposed rule was revised to include new pitch storage tanks. The control technology and standards applicable to this affected source are summarized in section IV.B of this document.

Following proposal, the EPA's Office of Solid Waste (OSW) received information that one primary aluminum plant has recently installed a new process designed to recycle spent potliner from aluminum reduction cells. Spent potliner is listed as a hazardous waste under the Resource Conservation and Recovery Act. This process vitrifies the waste into a glass material and recovers sodium fluoride and calcium fluoride for use in the aluminum production process. Although the process is not defined as an affected source under the final MACT rule, the Office of Air Quality Planning and Standards (OAQPS) and OSW are working in cooperation with the State agency and the plant to evaluate potential air emissions (e.g., emission testing will be performed in the near future) and to determine whether additional emission control requirements beyond those currently required by the State are needed.

B. Emission Limits and Standards

No changes were made to the control options serving as the basis of the proposed standards. The emission control technology selected as the basis of the standards is discussed in section III.C of the proposal preamble document (61 FR 50588, September 26, 1996).

Three changes were made to the emission limits and standards in §§ 63.843 and 63.844 of the proposed rule. The POM emission limit for the VSS2 subcategory was reduced from 3.7 lbs/ton to 3.6 lbs/ton based on data received for the MACT floor potline from that subcategory. Section 63.843(b)(3) of the proposed rule concerning use of an alternative control device for paste production plants was revised to encourage pollution prevention options. Section 63.844 of the proposed rule also was revised to include new paragraph (d) containing provisions for new pitch storage tanks. No other changes were made to the proposed limits and standards for potlines or anode bake furnaces. These limits are summarized in Tables 1 and 2 of the proposal preamble document (61 FR 50588–50589, September 26, 1996).

No changes were made to the proposed equipment standard developed under section 112(h) of the Act that required a dry coke scrubber for the paste production plant. The EPA concluded that it was not feasible or practicable to develop a defensible quantitative emission limit because there were too few POM data available. However, the available information and engineering judgement indicated that the best POM control technology in use for paste plants was the dry coke scrubber, which was determined to represent MACT.

The proposed provisions in § 63.843(b)(3) that qualify alternatives to the dry coke scrubber for paste production plants were revised in response to public comments to encourage pollution prevention measures, such as reducing the quantity of POMs used in paste production. The control efficiency standard that was proposed was replaced with POM emission limits for batch and continuous mixers in terms of pounds of POM per ton of paste. With this approach, an affected plant would not be penalized for using pollution prevention measures that reduce uncontrolled emissions. This change will encourage innovative or pollution prevention measures, such as reducing the quantity of POMs used in the paste operation. The alternative limit in lb/ton does not preclude plants from petitioning for other alternative means of emission limitation under section 112(h)(3) of the Act based on demonstrating an equivalent or greater emission reduction. A detailed discussion is provided in section VI.B of this document.

Section 63.844 of the proposed rule was revised to include new paragraph (d) establishing standards for new pitch storage tanks. New paragraph (d) requires that each new pitch storage tank be equipped with an emission control system designed and operated to reduce inlet emissions of POM by 95 percent or greater. Compliance and monitoring provisions are summarized in sections IV.E and IV.F of this document.

C. Incorporation of the NSPS

In response to comments on this issue, the EPA incorporated the provisions of the new source performance standard (NSPS) in subpart S of part 60 into a new section (§ 63.845) of the final rule and added appropriate definitions from the NSPS. Also, the NSPS was amended to allow the owner or operator to comply with either the NSPS or with the special provisions that were incorporated into § 63.845. With this change, any modified, reconstructed, or new potroom group that would have triggered the NSPS may now use the special provisions in the NESHAP to demonstrate compliance. Sampling and monitoring were streamlined by using the MACT requirements and by developing a single emission limit for a potline rather than overlapping limits for both the potline and the affected potroom group. The NSPS opacity limit was also incorporated.

D. Emission Averaging

Only one change was made to the emission limits in § 63.845 of the proposed NESHAP pertaining to emission averaging for potlines and anode bake furnaces. The POM limits for the VSS2 subcategory were reduced based on data collected for the MACT floor potline from that subcategory. The proposed limits are summarized in Tables 3 and 4 of the proposal preamble document (61 FR 50591, September 26, 1996). This section is renumbered as § 63.846 in the final rule.

The final standard contains provisions allowing the owner or operator to demonstrate compliance through averaging emissions of TF from all existing potlines, POM from existing Soderberg potlines, and TF and POM from existing anode bake furnaces (i.e., averaging is not allowed for new sources). Averaging between pollutants (TF and POM) is not allowed. The final standard also limits averaging to like sources (i.e., TF emissions from a potline can be averaged only with TF emissions from another potline at the same plant site). Emission averaging would not be allowed in any State that selects to exclude this option from its approved permitting program.

Monthly TF and quarterly POM limits for each group of potlines (two or more lines) are included in the rule. Under this approach, the owner or operator samples TF and/or POM emissions from at least three runs each month/quarter for each potline in the group to determine the average emissions from each potline. A minor revision was made to the wording in § 63.845(d)(2) of the proposed NESHAP (§ 63.846(d)(2) of the final rule) to clarify that monthly average potline emissions are determined from *each* potline from at least three runs *per potline* each month for TF secondary emissions and/or the quarterly average emissions from at least one run each month for POM emissions using the procedures and methods in §§ 63.847 and 63.849 of the final rule (emphasis added). As proposed, the sum of emissions from each potline is divided by total aluminum production from all of the potlines for the month (or for the quarter for POM) to determine the emissions in lb/ton for comparison to the applicable emission limit.

Section 63.846(d) of the NESHAP describes the requirements for an emission averaging implementation plan. The proposed standard required that unless an operating permit application has been submitted, the owner or operator must develop and submit an implementation plan for emission averaging to the applicable regulatory authority for review and approval. This language was revised to remove the misleading phase, "unless an operating permit application has been submitted" to clarify that each owner or operator desiring to participate in emission averaging must develop and submit an implementation plan. Paragraph (d)(2) of this section clearly states that the owner or operator must include the specified information in an implementation plan or in the application for an operating permit.

The language in § 63.845(d)(1) of the proposed NESHAP pertaining to the deadline for submission of the plan also was revised. Section 63.846(d)(1) of the final rule clarifies that the plan is to be submitted 6 months before the facility intends to comply with the emission averaging limits rather than 6 months before the applicable compliance date.

The content of the implementation plan is described in § 63.846(d)(2) of the final rule. The proposed rule required that this information include the emission sources to be averaged, the applicable limit assigned to each averaging group, the specific control technology or measure to be used for each source in the group, the results of an initial performance test, the operating parameters to be monitored (with additional information if an alternative parameter is monitored), and a demonstration that compliance with each of the applicable limits will be achieved under representative operating conditions. A clarifying change was made in the final rule to delete the requirement for submission of the results of an initial performance test to determine the TF or POM emissions and emission reduction from each source in the averaging group. This provision was replaced with a requirement for a test plan to measure TF or POM emissions in accordance with the performance test requirements in § 63.847. Section 63.847 requires a performance test to be conducted during the first month following the applicable compliance date.

As proposed, the owner or operator may submit a request to revise the plan, or if emission averaging is not selected initially, the owner or operator may submit a request to implement emission averaging after the compliance date.

This standard is not the first NESHAP to include provisions permitting emission averaging. However, the mechanism by which EPA has previously permitted owners and operators to average emissions has been to define the affected source governed by the standard broadly enough such that it includes all emission points to be averaged. Under this model, which was first employed in the Hazardous Organics NESHAP ("HON"), 59 FR 19402, 19425–34, April 22, 1994, compliance by particular units within a broadly defined source is only an element in determining the overall compliance with the standard by the aggregate source. For this type of standard, conformity of the quantitative standard to the MACT floor provision in section 112(d)(3) is determined for the source as a whole, and averaging or trading between discrete emission points within the source presents no potential conflict with the MACT floor provision.

The HON approach to averaging affords substantial flexibility, by permitting averaging of dissimilar emission points and differing pollutants. However, there are also potential disadvantages to this approach to averaging. Heterogeneous emission points are deemed to be part of one affected source, rather than discrete sources that can be subcategorized and regulated in relatively homogeneous groups. New sources often must be defined more narrowly than existing sources in order to ensure that state-of-the-art controls are required for technically discrete new units.

The final primary aluminum NESHAP takes a different approach to averaging from the HON approach. In this standard, owners or operators are permitted to average across sources in determining overall compliance with the standard. In the HON rulemaking, EPA expressed concern that averaging across sources could be incompatible with the MACT floor provisions. However, upon further analysis, EPA has decided that averaging across affected sources is neither expressly permitted nor expressly precluded by the Clean Air Act. Thus, in construing the statute, EPA has focused instead on identifying those circumstances in which averaging across sources would be fully consistent with the overall statutory intent.

In general, EPA has concluded that it is permissible to establish within a NESHAP a unified compliance regimen that permits averaging or trading across affected sources subject to the standard under certain conditions. Averaging across affected sources is permitted only if it can be demonstrated that the total quantity of any particular HAP that may be emitted by that portion of a contiguous major source that is subject to the NESHAP will not be greater under the averaging mechanism than it would be if each individual affected source complied separately with the applicable standard. Under this rigorous test, the practical outcome of averaging is equivalent in every respect to compliance by the discrete sources, and the statutory policy embodied in the MACT floor provisions is therefore fully effectuated. A construction of the Act which permits EPA to establish a unified compliance regimen in these limited circumstances promotes economic efficiency and has no adverse environmental consequences. In a NESHAP incorporating such a unified compliance regimen, EPA would construe compliance with the overall regimen to constitute compliance for each of the affected sources.

Strict limits on the scope and nature of averaging across sources are necessary to ensure that no HAP is emitted by that portion of a major source subject to a NESHAP in quantities that are greater than those that would result from compliance by each discrete affected source within the facility. These limits include: (1) No averaging can be permitted between differing pollutants, (2) no averaging can be permitted between sources that are not part of the same major source, (3) no averaging can be permitted between sources within the same major source that are not subject to the same NESHAP, (4) statistical discounts must be derived and applied to account for the variability in emissions by the sources to be averaged, and (5) no averaging can be permitted between existing sources and new sources.

This NESHAP fully satisfies each of these criteria. Accordingly, EPA has concluded that the averaging of emissions across affected sources permitted by this NESHAP is consistent with the Clean Air Act. In addition, EPA notes that the provision in this NESHAP that requires each facility that intends to utilize emission averaging to submit an implementation plan provides additional assurance that the necessary criteria will be adhered to.

E. Compliance Provisions

Compliance with the standard must be demonstrated at startup for new sources and in 2 to 4 years from the effective date of the final rule for existing sources. All existing plants would be allowed at least 2 years. An extension for a fourth year may be granted by the regulatory authority under section 112(i)(3)(B) of the Act.

Few changes were made to § 63.846 of the proposed rule concerning requirements for performance tests. Following approval of a site-specific test plan, § 63.847 of the final rule requires the owner or operator to conduct an initial performance test during the first month following the compliance date. A clarification was made to § 63.846(d) of the proposed rule (§ 63.847(c) of the final rule) that not all of the primary emission control devices have to be sampled during the first month of compliance. If valid emission test results are available for the control device from tests during the preceding 12 months, those results can be used to determine the contribution of the primary control system to the total emissions for the initial performance test.

Section 63.847(d), which contains instructions for determining compliance, also includes clarifying revisions. Sections 63.847(d)(1) of the final standard clarifies that to determine compliance for TF emissions from potlines, the owner or operator must compute and record the average of at least three runs each month for secondary emissions and at least three runs each year for the primary control device. Section 63.847(d)(2) clarifies that to determine compliance for POM emissions from Soderberg potlines, the average of at least three runs each quarter (one run per month) for secondary emissions and at least three runs each year for the primary control system is required. Compliance with the applicable emission limits for anode bake plants is determined by the average of at least three runs each year. Section 63.847(d)(3) clarifies that the provisions for previous control device tests include anode bake furnaces as well as potlines.

Section 63.847(e) of the final rule also includes minor changes to clarify the equations used to determine compliance. Editorial changes were made to correct misnumbering of Equations 1 and 2. In Equation 1, the definition of Q_{sd} was clarified to read as the volumetric flow rate of effluent gas "corresponding to the appropriate subscript location" with units of dry standard cubic meters per hour (dscm/hr) or dry standard cubic feet per hour (dscf/hr). The instructions for determining the aluminum rate (P) in §§ 63.846(e)(6) and (e)(7) also were revised. Sections 63.847(e)(6) and (e)(7) of the final rule require the owner or operator to determine the aluminum production rate by dividing the number of hours in the calendar month into the weight of aluminum tapped from the potline during the calendar month that includes the three runs of a performance test. The rate of green anode material introduced into the furnace is determined by dividing the number of operating hours in the calendar month into the weight of green anode material used during the calendar month in which the performance test was conducted.

No changes were made to the proposed performance test provisions for paste production in § 63.847(f) of the final rule. Initial compliance with the equipment standards for new and existing plants is demonstrated through site inspections(s) and review of site records by the applicable regulatory authority.

A new paragraph, § 63.847(g), was added to describe compliance provisions for new pitch storage tanks. The owner or operator may elect one of two methods of demonstrating compliance: (1) Submit a design evaluation documenting that the control device being used achieves the required control efficiency for POM (95 percent or more) during a reasonably expected maximum filling rate; or (2) submit the results of a performance test. Specific information to be included under either method of compliance is described in the rule. The owner or operator also would include a description of the parameters to be monitored to ensure the control device is being properly operated and maintained, an explanation of the criteria used to select that parameter, and the frequency with which monitoring will be performed.

Section 63.846(g) of the proposed rule was renumbered as § 63.847(h) in the final rule to accommodate the addition of the preceding paragraph. Minor changes were made to clarify the wording in paragraph (h), which requires that the owner or operator determine the parametric operating limits and monitoring frequency for each control device. Section 63.847(h)(1) of the final rule clarifies that for potlines and anode bake furnaces, the owner or operator must determine upper and/or lower operating limits, as appropriate, for each monitoring device "for the emission control system" from the values recorded during each of the runs performed during the initial performance test and from historical data from previous performance tests. The wording of § 63.847(h)(2) also was clarified to require the owner or operator of a paste production plant to specify parameters to be monitored and operating limits for the emission control device (rather than the emission capture and control devices). References to the part 70 operating permit were deleted.

F. Emission Monitoring

Few changes were made since the proposal in the emission monitoring requirements of § 63.848. The final standard requires the owner or operator to perform monthly sampling of TF secondary emissions from each potline using Methods 13 and 14 (40 CFR part 60, appendix A) or an approved alternative method. Emissions of POM from Soderberg potlines are monitored by performing quarterly sampling of POM using Method 315 or an approved alternative method. The monthly average for TF and the quarterly average for POM are computed using the results of at least three runs per month for secondary emissions of TF and at least one run per month (three runs per quarter) for POM from Soderberg potlines, the aluminum production rate, and the most recent compliance test for the primary control system. Sections 63.848(a) and (b) clarify that the duration of each run for secondary emissions must cover a complete operating cycle. Under § 63.848(b), the primary control system for POM emissions must be sampled over an 8-hour period, unless site-specific factors dictate an alternative sampling time, subject to the approval of the regulatory authority. Annual sampling of TF using Method 13 and POM (for Soderberg potlines) using Method 315 is required for the primary emission control system for potlines. Annual sampling of TF using Method 13 and POM using Method 315 is required for the anode bake furnace stack.

Section 63.848(d) of the rule provides an alternative to monthly monitoring of TF or POM secondary emissions from each potline by allowing the owner or operator to conduct a monthly performance test for one potline using reference test methods and to monitor similar potline(s) using approved alternative methods. In response to public comment, the criteria for similar potlines were revised to require that their structure, operability, type of emissions, and volume and concentration of emissions be substantially equivalent.

Section 63.848(d) provides that a similar potline is to be monitored using an alternative method meeting the requirements in the rule. An approved alternative may include an HF continuous emission monitor (CEM). Because the Alcan cassette method is included in the final rule as Method 14A, references to this method as an approved alternative for monitoring similar potlines were unnecessary and were deleted from the rule.

To show that another method is an acceptable alternative, the owner or operator must develop a correlation with results from the applicable methods in the rule (such as Methods 13, 14, and 315) to the satisfaction of the regulatory authority. For fluoride measurements, the alternative method must account for or include gaseous fluoride and cannot be based on measurement of particulate matter or particulate fluoride alone because HF, the HAP of interest, is in gaseous form. The final rule also requires the owner or operator to derive an alternative limit for the HF CEM or other alternative monitoring method. The owner or operator must demonstrate that the alternative method and limit will result in a level of emission control that is the same as or better than the level that would have otherwise been achieved. After demonstrating that the potlines are similar, EPA methods must be used to monitor one potline, and the other similar potlines must be monitored using an approved alternative procedure.

Under § 63.848(e) of the final standard, the owner or operator of a plant that demonstrates consistent compliance with an applicable emission limit and low variability may apply for a reduced sampling frequency, such as quarterly sampling instead of monthly sampling. This section of the proposed rule was changed after proposal to provide a simplified procedure to obtain reduced sampling frequency, including removal of the requirement to publish the approval of reduced sampling in the **Federal Register**. This reduced sampling provision was clarified to apply only to the monthly sampling requirement for TF from potroom roofs. If a facility achieves a long-term average over 24 months of sampling that is no more than 60 percent of the applicable limit and no monthly average exceeds 75 percent of the limit, then monthly sampling for TF can be reduced to quarterly sampling.

Proposed provisions governing excess emissions also were revised. Under the final rule, if emissions in excess of the applicable TF limit occur while performing quarterly sampling (under an approved alternative), the owner or operator must return to monthly sampling for at least 12 months and may reduce to quarterly sampling when: (1) The average of all tests performed over the most recent 24-month period does not exceed 60 percent of the applicable limit and (2) no more than one monthly performance test in the most recent 24-month period exceeds 75 percent of the

applicable limit. If emissions in excess of the applicable TF limit occur while performing quarterly sampling (under an approved alternative), the owner or operator must return to the monthly sampling schedule until another request for an alternative sampling frequency is approved.

The final standard requires the monitoring of control device parameters. For example, plants with dry alumina scrubbers must perform a daily visual inspection of the stack and install devices to monitor the flow of alumina and air. The control device parameters are evaluated from data collected during the initial performance test and from historical performance tests to determine upper and/or lower limit(s), as appropriate, for each process parameter. The owner or operator may redetermine the upper and/or lower operating limits, as appropriate, based on historical data and other information and submit an application to the regulatory authority to change the applicable limit(s). A corrective action program is triggered if the control device is operating outside of the acceptable range for the specified parameters. Failure to initiate corrective actions within 1 hour after exceeding the limit is a violation. A violation also occurs if the operating limit for a parameter is exceeded more than six times in any 6-month reporting period. For the purpose of determining the number of exceedances, no more than one exceedance will be attributed in any given 24-hour period.

A clarification was made to § 63.848(f) with respect to the selection of monitoring parameters and frequency. Whenever practicable, the EPA expects the owner or operator to install a continuous parameter monitoring system as defined in the general provisions and this subpart. At a minimum, the owner or operator must submit a description of the parameters and a rationale for selecting the operating limits and monitoring frequency. A discussion of how the selected parameters would relate to emission controls must be included.

The owner or operator also must install devices to measure the daily weight of aluminum produced and the weight of anodes placed in the furnace for an operating cycle. The total weight of all anodes placed in the furnace may be measured, or the number of anodes placed in the furnace and a representative weight may be measured to determine the total weight.

G. Test Methods

Section 63.849 of the final rule adds Method 14A to appendix A of 40 CFR part 60 as an approved alternative method for measuring TF from potroom roofs. Minor changes were made to Method 315 (added to appendix A of 40 CFR part 63) as a result of public comment. For example, section 6.1 of Method 315 was revised to acknowledge that the use of grease for sampling train components is not recommended because many greases are soluble in methylene chloride. Section 6.2 of Method 315 was revised to include the use of Teflon® bristle brushes and tetrafluoroethylene (TFE) wash bottles. A Buchner fritted funnel was substituted for Allihin tubes in section 6.3.8 and other sections.

Section 63.849(e) of the final rule was clarified in terms of procedures and criteria to qualify an alternative test method. The alternative method must be evaluated from simultaneous sampling using a reference test method. Approval is granted only if the owner or operator demonstrates that the level of emission control from an alternative method and alternative emission limit is the same as or better than the level that would have otherwise been achieved.

H. Time Limit for Approval or Disapproval of Submissions

The proposed rule was revised to add a new section (§ 63.851) that places a 60-day limit on the amount of time for the regulatory authority to indicate the need for additional time to review the applications and requests for changes allowed under this rule or to approve or disapprove applications and requests for changes allowed under the rule. The 60-day period begins after the owner or operator has been notified that the submission is complete. This provision applies to the compliance test plan, an application to change control device parameter operating limits, requests for alternative monitoring for similar potlines, requests for approval of alternative methods for sampling and analysis, and requests for reduced sampling frequency.

I. Notification, Reporting, and Recordkeeping Requirements

Notification, reporting, and recordkeeping requirements for MACT standards are included in the NESHAP general provisions (40 CFR part 63, subpart A). Section 63.850 of the final standard incorporates all of these provisions, except that the existing performance specifications for CEM are not applicable to an HF CEM because such specifications have not yet been developed for that device.

The notification requirements include one-time notifications of applicability, intent to construct or reconstruct, anticipated startup date, actual startup date, date of performance test, compliance status, compliance approach (if applicable), and the intent to use an HF CEM (if applicable) for each affected source. The notification of special compliance obligations was deleted because it does not apply to this source category. The proposed rule also was revised to indicate that the notification of the intent to use an HF CEM was a one-time event per affected source.

The owner or operator is required to submit a report of performance test results (which can be sent as part of the compliance status notification), an annual summary of all subsequent tests, and semiannual reports of excess emissions, if any excess emissions occurred. If excess emissions are reported, quarterly reports are required until compliance has been demonstrated for 1 year. A startup, shutdown, and malfunction plan also would be required with semiannual reports of events that are not managed according to the plan. The plan must also include the corrective actions to be taken if the limit for a control device's operating parameter is exceeded.

Recordkeeping requirements for all MACT standards are established in § 63.10(b) of the general provisions. In addition to these requirements, the standard requires plants to maintain records of information needed to determine compliance. Section 63.850(e)(4)(ii) of the final rule clarifies that the owner or operator must maintain the daily production rate of green anode material placed in the anode bake furnace (rather than the production rate for each operating cycle). A new recordkeeping requirement was also added in response to public comment. Section 63.850(e)(4)(xv) requires records documenting the portion of TF that is captured and measured as particulate matter and the portion that is captured and measured as gaseous. This requirement provides potentially useful information to EPA and the States at no additional cost.

All records must be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The records for the most recent 2 years must be retained onsite; records for the remaining 3 years may be retained offsite but still must be readily available for review. The files may be retained on microfilm, on microfiche, on a computer, or on computer or magnetic disks.

J. Display of OMB Control Numbers

In a separate rulemaking action taken in conjunction with the final rule adopting a NESHAP for primary aluminum reduction plants, EPA is amending the table of currently approved information collection request (ICR) control numbers issued by the Office of Management and Budget (OMB) for various regulations. This separate amendment updates the table to accurately display those information requirements contained in the NESHAP. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds there is "good cause" under section 553(b)(B) of the Administrative Procedure Act [5 U.S.C. 553(b)(B)] to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

V. Summary of Impacts

Nationwide emissions from primary aluminum potlines are estimated at 6,400 tpy of TF. After implementation of the final standards, these emissions will decrease by almost 50 percent to 3,400 tpy. Polycyclic organic matter emissions will be reduced by about 45 percent, from 3,200 tpy to 1,800 tpy. TF emissions from the anode bake furnaces are estimated at 700 tpy; POM emissions are estimated at 555 tpy. After control of all bake furnaces, TF emissions will be reduced by 97 percent, and POM emissions will be reduced by 84 percent. Polycyclic organic matter emissions from paste production plants, estimated at 147 tpy at baseline, will be reduced by about 130 tpy, to about 16 tpy—an 89 percent reduction from current levels. Emissions of other HAPs included in the TF and POM emissions will also be reduced, as will non-HAP pollutants such as PM. For example, PM emissions will be reduced by 16,000 tpy.

The generation of solid waste and wastewater will be reduced when at least one plant replaces its wet scrubber system with a dry alumina scrubber. The dry alumina scrubber captures fluorides and other pollutants and returns them to the reduction cell. The proposed rule is estimated to have no significant effect on energy consumption.

The total capital cost of the proposed rule is estimated as about $160 million, with a total annualized cost of $40 million per year. As discussed in section VI.I of this document, cost estimates supplied by the industry's trade association were much higher than the EPA estimates. The major cost impacts for potlines are expected to come from the installation of dry alumina scrubbers for the primary control system at one plant and from work practices, operating procedures, maintenance and repair, and equipment modifications at most plants. A few plants may incur capital costs to replace or upgrade hoods or doors and to install automated equipment for improved emission control.

The cost estimates for paste production assume that the 18 plants without dry coke scrubbers for controlling POM emissions will each install one. However, some plants may be able to meet the performance standard with dry alumina scrubbers or other control devices, or they may be able to utilize many of the components of their existing system. The estimated cost for control of anode bake furnaces assumes that the 5 of 17 plants without a dry alumina scrubber must each install one.

Currently, about one-third of existing potlines are sampled for TF regularly. Because of the flexibility provided in the rule, many plants are expected to take advantage of the use of HF CEMs and Alcan cassettes for similar potlines, both of which are much less expensive than manual sampling using Methods 13 and 14. The nationwide capital cost estimate of $7 million for monitoring equipment includes new Method 14 manifolds, HF CEMs, and Alcan cassettes. The total annualized cost of monitoring (including capital recovery) is estimated as about $4 million per year after all plants are subject to the rule. These costs may be reduced significantly as plants qualify for reduced sampling frequency (e.g., quarterly instead of monthly). The CEM will have value as a process monitoring tool in addition to its use for monitoring to determine compliance.

The market price increase calculation indicated that implementing the controls will result in a primary aluminum market price increase of less than 1 percent. As a result of the low market price increase and relatively inelastic demand, the corresponding changes in output, employment, and total revenue were also low (all less than 1 percent). Therefore, the economic impact analysis estimates that the rule will not result in significant economic impacts for the primary aluminum industry.

VI. Summary of Responses to Major Comments

The EPA proposed the NESHAP for primary aluminum reduction plants on September 26, 1996 (61 FR 50586). The proposed regulatory text of the rule, the Basis and Purpose Document, and the Technical Support Document that presented information used in developing the proposed rule were made available to the public for review and comment. A 60-day comment period from September 26, 1996, to November 25, 1996, was provided to accept written comments from the public on the proposed rule. The opportunity for a public hearing was provided to allow interested people to present oral comments to the EPA on the rulemaking. However, the EPA did not receive a request for a public hearing, so a public hearing was not held.

The EPA received a total of 15 comment letters regarding the proposed NESHAP for primary aluminum reduction plants. A copy of each comment letter is available for public inspection in the docket for the rulemaking (Docket No. A–92–60; see the **ADDRESSES** section of this document for information on inspecting the docket). The EPA has had follow-up discussions with various commenters regarding specific issues initially raised in their written comments that were submitted to the Agency during the comment period. Copies of correspondence and other information exchanged between the EPA and the commenters during the post-comment period are available for public inspection in the docket for the rulemaking.

All of the comments received by the EPA were reviewed and carefully considered by the Agency. Changes to the rule were made when the EPA determined it to be appropriate. A summary of responses to selected major comments received on the proposed rule is presented below. Additional discussion of the EPA's responses to public comments is presented in the Background Information Document (see the **ADDRESSES** section of this preamble).

A. Subcategories

Comment: Several commenters supported the subcategories that were developed for potlines, and two commenters questioned the number of and basis for the subcategories. Specific questions were raised about the subcategories for the older vintage

prebake potlines (CWPB2), for potlines producing high-purity aluminum (CWPB3), and for the vertical stud Soderberg potlines (VSS2).

Response: The development of subcategories is discussed in detail in the Basis and Support Document. In general, the subcategories are based primarily on differences in the process operation, process equipment, emissions, and the applicability of control devices.

A distinction was made between the larger and more modern prebake potlines in CWPB1 and the smaller and older potlines in CWPB2. The CWPB2 potlines have somewhat higher emissions than the CWPB1 potlines because they are more difficult to control and there are more opportunities for fugitive emissions to escape. A major factor is that these smaller potlines require more frequent anode changes and more frequent opening of the reduction cells, both of which result in more fugitive emissions' escaping from the cells.

The potlines in the CWPB3 subcategory that produce high-purity aluminum can do so only because they use wet scrubbers as the primary control device and do not return the contaminants removed with the pollution control residue back to the process. In contrast, the potlines in the CWPB1 subcategory use dry alumina scrubbers as the primary control device and return pollution control residue, including contaminants and fluorides, back to the process. If the CWPB3 potlines were forced to install dry alumina scrubbers, an adequate quantity of high-purity aluminum could not be produced and their market would be lost.

A distinction was made between two types of vertical stud Soderberg potlines (VSS1 and VSS2) because of differences in the applicability of control devices. The VSS1 group of potlines uses wet roof scrubbers to control fugitive emissions from the cells, and the VSS2 group of potlines uses work practices and equipment maintenance to control the escape of fugitive emissions from the cells (i.e., they focus on pollution prevention for emission control). A major concern in requiring the installation of wet roof scrubbers on the VSS2 potlines was that other plants with wet roof scrubbers had reported operational problems in cold weather (i.e., freezing conditions), and the VSS2 potlines operate in the cold climate of northern Montana. Consequently, the technology was judged not to be adequately demonstrated for the VSS2 potlines. Another concern was that roof scrubbers could provide a disincentive for the VSS2 potlines to continue their efforts to prevent the escape of emissions because the emissions would be subsequently controlled by the scrubbers. Currently, the VSS2 potlines have much lower levels of fugitive emissions in terms of the quantity that actually escapes from the reduction cells compared to the VSS1 potlines, which rely in large part on the roof scrubbers for additional fugitive emission control.

B. Format of the Standard

Comment: Two State commenters asked that EPA consider developing work practice standards for potlines, and some commenters also suggested that an emission limit be developed for paste plants instead of an equipment standard.

Other commenters supported the development of an equipment standard for paste plants. Commenters also asked that EPA consider alternatives for the paste plant that would allow and encourage pollution prevention, as well as other control alternatives that might be equivalent to or better than the equipment standard that was proposed (dry coke scrubber).

Response: Section 112(h) of the Act only allows development of a design, equipment, work practice, or operational standard when it is not feasible or practicable to establish an emission standard. Consequently, a work practice standard was not developed for potlines because there was an extensive database on TF emissions on which to base an emission standard. An emission standard allows the owner or operator to meet the emission limit using any combination of control techniques, including work practices, upgrading equipment, process modifications, pollution prevention, etc. It also provides flexibility for developing innovative controls or pollution prevention measures in the future that may be more cost effective by not mandating work practice techniques. The owner or operator will find it necessary to have adequate work practices in place to meet the emission limits in the rule; consequently, it is not necessary to develop a work practice standard.

The first choice was also the development of an emission standard for paste production plants; however, there were too few POM data (only two data points) to develop defensible and achievable limits. One reason for this is that the control technology is relatively new, and there were no data collected by EPA test methods prior to this rulemaking. Therefore, the development of a quantitative standard was not feasible or practicable. The problem was also complicated by the numerous variations in the design and operation of paste plants. However, the available information and engineering judgement indicated that the best POM control technology in use for paste plants was the dry coke scrubber, which was determined to represent MACT. For these reasons, an equipment standard requiring the use of a dry coke scrubber or equivalent alternative control for paste production was developed under section 112(h) of the Act.

Comments were received from both the industry and States asking for consideration of control techniques, including pollution prevention, that might provide a level of control equivalent to or better than a dry coke scrubber. After consideration, EPA decided that a streamlined approach could be used to implement more efficiently section 112(h)(3) of the Act, which allows the development of an alternative means of emission limitation if it achieves an emission reduction at least equivalent to that achieved by the design, equipment, work practice, or operational standard. An emission limit for POM in lb/ton of paste was developed from the limited data associated with two of the best controlled plants in the industry. Although the limit may represent a level of emission control more stringent than the equipment standard that was determined to be MACT, an alternative standard in lb/ton of paste will provide opportunity for pollution prevention measures (such as reducing the quantity of POM used in paste production). The alternative standard also provides the opportunity to qualify other types of emission controls that might be developed in the future that are more efficient than the dry coke scrubber.

The alternative limit in lb/ton does not preclude plants from petitioning for other alternative means of emission limitation under section 112(h)(3) of the Act based on demonstrating an equivalent or greater emission reduction. However, it provides one method to implement the provisions for alternative standards more efficiently. As required in section 112(h)(4) of the Act, when EPA has sufficient data to replace both parts of the current standard for paste production plants with a quantitative emission limit, EPA will revise that standard accordingly.

C. Achievability of Emission Limits

Comment: Several commenters expressed concern that the emission limits for anode bake furnaces might not be achievable and requested that the rule acknowledge that these limits may need to be increased as more data are collected. One commenter questioned the achievability of the POM limit for HSS potlines, and another commenter supported the HSS limits and submitted additional data for the MACT floor potlines to show that it had been achieved. One commenter questioned the POM limits for VSS2 potlines because the limits were based on data from VSS1 potlines.

Response: The data for anode bake furnaces support that the proposed emission limits for both new and existing sources are achievable. Opportunities for improved control other than the installation of dry alumina scrubbers are available, and each owner or operator should investigate these opportunities thoroughly. For example, careful cleaning of recycled anodes to remove fluorides has been demonstrated to reduce fluoride emissions from anode bake furnaces. Careful control and optimization of combustion conditions improve destruction of POM compounds and reduce POM emissions.

The EPA believes that the data show that the POM limit is achievable for the HSS subcategory by plants using the MACT floor technology. Note that the control technology used for the primary system for the MACT floor plant is a dry alumina scrubber, whereas the plant concerned about the achievability uses an electrostatic precipitator. Improvements may be needed in the electrostatic precipitator primary control system and in the potline's capture system to reduce fugitive emissions to achieve the same level of control achieved by the MACT floor plant.

The proposed POM limit for the VSS2 subcategory was based on data from VSS1 potlines because there were no valid data available for POM emissions from VSS2 potlines. Following proposal, POM data were collected for the MACT floor VSS2 potline, and a commenter for the company asked that EPA consider their data in establishing the POM limit. The EPA analyzed the new POM data and concluded that the POM limit for the VSS2 subcategory should be reduced from 3.7 lbs/ton to 3.6 lbs/ton. The emission test reports and EPA's analysis are documented in the rulemaking docket. [See Docket Item IV-B–1.] The EPA appreciates the effort of the company to perform emission testing and to provide data that improve the technical basis of the POM limit for VSS2 potlines.

D. Incorporation of the NSPS

Comment: Several commenters recommended that the NSPS for primary aluminum plants (40 CFR part 60, subpart S) be removed and any necessary provisions be incorporated into the NESHAP. These commenters believed that the higher TF limits in the amended NSPS should be incorporated instead of the lower limits in the original NSPS because the amendment concluded that the original emission limits were not achievable 100 percent of the time. In addition, the NESHAP general provisions (40 CFR part 63, subpart A) require that control equipment be operated and maintained in a manner consistent with good air pollution control practices for minimizing emissions at least to the level required by all relevant standards. Therefore, these commenters concluded that this requirement overlaps the "exemplary operation" requirement of the NSPS, and by complying with the general provisions, a source qualifies for the higher limits in the NSPS. State agency commenters thought that the more stringent limits in the original NSPS should be used for incorporation into the NESHAP.

Some commenters stated that the opacity requirements of the NSPS were a monitoring provision and not an emission limit. They pointed out that the proposed NESHAP contained more provisions than the NSPS to ensure the control equipment was operating properly, such as monitoring the air and alumina flow to the dry alumina scrubbers and a daily visual inspection of the control equipment rather than only a monthly observation of opacity, which the NSPS requires. Consequently, they believed the opacity standard in the NSPS could be removed without any loss of stringency. Another commenter stated that the NSPS opacity limit was not applicable for wet emission control systems because of interferences and observer error and recommended that facilities with wet emission control systems be allowed to develop an alternative opacity limit if they could demonstrate that the mass emission limit for TF was being met. State agency commenters stated that the opacity standard should be retained when the NSPS is incorporated into the NESHAP.

In general, State agency commenters agreed that the NSPS could be incorporated into the NESHAP, but only if all of the NSPS provisions are retained. These include the lower emission limits in the original NSPS, retention of the modification and reconstruction provisions of part 60, and maintenance of the opacity limits.

Response: The EPA had stated in the original proposal when requesting comments on this issue that incorporating the NSPS into the NESHAP should result in a standard that would be no less stringent than if both standards remained in place. Following the receipt of comments and no indication that anyone was opposed to incorporation of the NSPS, EPA conducted additional discussions with all stakeholders. Representatives from each of the 14 States that have primary aluminum reduction plants were contacted and were provided the opportunity to discuss the issues and provide comments. Similar discussions were held with the Aluminum Association and industry representatives, who also provided comments.

Based on these discussions, a general consensus was reached on how the NSPS could be incorporated into the NESHAP. First, the NSPS was amended to allow an affected facility to comply either with the NSPS or with the special provisions incorporated into the NESHAP. Second, the NSPS requirements were included in a separate section of the NESHAP, and these provisions apply only to emissions of TF. They apply only to Soderberg potlines and prebake potlines in the CWPB2 and CWPB3 subcategories because other types of existing potlines are subject to TF emission limits under the NESHAP that are more stringent than the NSPS limits. Anode bake furnaces are not included because the NESHAP limits for existing bake furnaces are equivalent to those in the NSPS, and the NESHAP limits for new bake furnaces are much more stringent than those in the NSPS.

The result of these discussions was general agreement that the definitions of "modification" and "reconstruction" should be incorporated so that any new, modified, or reconstructed potroom group would trigger the NSPS provisions that have been included in the NESHAP. In other words, any potroom group that would have become subject to the NSPS because of the part 60 provisions would become subject to the special provisions incorporated into subpart LL of part 63. This was accomplished by adding definitions for "potroom group modification" and "potroom group reconstruction" that matched the requirements in part 60. The modification would occur if there was an increase in the total or overall TF emissions from the potroom group (i.e., changes that result in a decrease in emissions in one part of the potroom group and an increase in another part of the group are not modifications if total emissions from the group do not increase).

The EPA decided not to incorporate only the lower NSPS limits as suggested

by some commenters or only the higher limits recommended by other commenters. Instead, both sets of limits were incorporated into the NESHAP with the same language as that used in the amended NSPS. In other words, the lower limits apply unless the owner or operator can meet the exemplary operation requirements as stated in the NSPS, in which case the upper limits would apply. This requires that the owner or operator demonstrate that exemplary operation and maintenance procedures were used with respect to the emission control system and that control equipment was operating properly at the potline during the performance test.

Additional insight into proper operation and maintenance is given in the proposal preamble for the amended NSPS (45 FR 44203), which lists these items as basic to good control of emissions from prebake plants:

(1) Hood covers should fit properly and be in good repair;

(2) The hood exhaust rate should be increased for individual pots when hood covers are removed (if there is an adjustable air damper system);

(3) Hood covers should be replaced as soon as possible after each potroom operation;

(4) Dust entrainment should be minimized during materials handling operations and sweeping of the working aisles;

(5) Only tapping crucibles with functional air return systems should be used; and

(6) The primary control system should be regularly inspected and properly maintained.

For horizontal stud Soderberg potlines, Items (4) through (6) apply, but Items (1) through (3) are replaced by the following because of differences in pot design:

(1) Side and end doors should fit properly and be in good repair;

(2) The exhaust rate should be increased for individual pots when a side or end door is open (if there is an adjustable air damper system); and

(3) Side and end doors should be closed as soon as possible after each potroom operation.

The following variations apply to vertical stud Soderberg potlines:

(1) An ore cover should be maintained on the pot;

(2) The collector skirt and burner should be in good repair; and

(3) Tap holes should not be opened too far in advance of the tap.

Another issue was related to the fact that the NSPS limits apply to a potroom group, whereas the NESHAP limits apply to a potline. Because of many variations in the configuration of potrooms and potlines in the industry, limits for both would result in a somewhat confusing situation of duplicative emission limits and other requirements for certain reduction cells and unnecessary requirements associated with monitoring, reporting, and recordkeeping for both potroom groups and the potline. To resolve this issue, a method was devised in the NESHAP to combine the limit for the NSPS potroom group with that for the NESHAP potline based on the production capacity of the reduction cells that would be subject to each set of limits. The result is a single TF emission limit for the entire potline that maintains equivalent stringency, and it has the additional advantage of allowing the use of the NESHAP potline requirements for monitoring, reporting, and recordkeeping to avoid unnecessary duplication.

The opacity issue was resolved by incorporating the 10 percent limit for potroom groups from the NSPS into the NESHAP. However, the provisions in part 60 that allow the development of an alternative opacity limit when the facility demonstrates that the mass emission limits are being met were also included in the NESHAP. The alternative opacity limit cannot exceed 20 percent. Historically, opacity has been measured routinely for the discharge stacks of primary control systems. However, the EPA has no indication that the opacity of a potroom group roof monitor has been measured using Method 9.

The EPA decided that additional provisions for anode bake furnaces were not necessary because the NESHAP requires that existing furnaces be controlled at levels equivalent to what the NSPS would have required for new, modified, or reconstructed furnaces. This ensures that the MACT floor control technology (dry alumina scrubbers) or the equivalent will be installed on all bake furnaces to control emissions. There was no need to incorporate the NSPS opacity limit of 20 percent for bake furnaces because the MACT floor technology will achieve lower opacity levels, the NESHAP monitoring requirements for the control device are more comprehensive, there is no loss in stringency, and most States already have general opacity limits of 20 percent for stationary point sources.

In consolidating the two rules, the EPA decided to use the sampling frequency and monitoring provisions of the NESHAP. They offer several advantages over the NSPS provisions alone, there is no effect on the relative stringency or the emission reductions achieved, and they will reduce unnecessary monitoring, reporting, and recordkeeping. In addition, the NESHAP requires that any new, modified, or reconstructed potroom group be sampled for TF emissions, which is what the NSPS would have required. Sampling can be performed effectively for the potroom group with the addition of new monitoring equipment or the expansion or adaptation of existing monitoring equipment in the same potline if the sampling system is determined to be representative of the entire potline and if the relevant regulatory authority determines that the sampling system meets the requirements of the reference test methods. In addition, the sampling of that potroom group may be used to determine emissions from the total potline if they are representative of the entire potline. To be representative of the entire potline, the sampling system must not cover only or primarily new reduction cells, which would be expected to have better hooding and emission control than older cells.

E. Time Limit for Approval by the Regulatory Authority

Comment: Several industry commenters recommended that the final rule include a time limit for regulatory authority review, approval, and/or action on submissions. Examples include the compliance test plan, the implementation plan for emission averaging, an application to change control device parameter operating limits, requests for alternative monitoring for similar potlines, requests for approval of alternative methods for sampling and analysis, requests for reduced sampling frequency, and requests to modify the startup, shutdown, and malfunction plan. According to the commenters, each submission should be given automatic approval if no action or response is taken by the applicable regulatory authority within some time period (generally within 30 days of receipt).

Response: The proposed rule contained provisions for a time limit of 120 days for regulatory approval or disapproval of the implementation plan for emission averaging, and this provision was kept in the final rule. In addition, the general provisions in subpart A of 40 CFR part 63 allow the owner or operator to revise the startup, shutdown, and malfunction plan without submitting it for approval. The owner or operator must keep the previous (superseded) version and make it available upon request for a period of 5 years after the revision. With respect to other submissions, the rule was revised to give the regulatory authority 60 days after the submission is deemed to be complete to approve or disapprove the submission. The 60-day period applies to the facility's test plan used to determine compliance, requests for changes in operating parameter limits, applications for similar potline monitoring, requests for reduced sampling frequency, and requests for alternative test methods.

F. Relationship to Other Rules

Comment: Several commenters asked about the relationship of the NESHAP to other rules. One commenter asked for discussion of how existing new source review (NSR) and prevention of significant deterioration (PSD) rules affect the NESHAP, and another asked for clarification of what TF emission limit would apply in the event of a modification under the NSPS. Another commenter believes that conversion and installation of equipment in order to comply with this rule should not trigger the NSPS. The commenter requested that the language of the preamble and the rule be changed to reflect that modifications made to affected sources to come into compliance with the primary aluminum NESHAP are exempted from NSPS applicability. Several industry commenters recommended that the final rule include a provision acknowledging that the monitoring provisions in the rule, including the approved methods and alternatives, satisfy the monitoring provisions under section 114 of the Act and the title I monitoring requirements for PM emissions. Other commenters asked that certain alternatives allowed by the rule, such as requests to change monitoring parameters or to implement emission averaging, be identified within the rule as "administrative changes" to the operating permit issued under the part 70 permit program.

Response: The NSR and PSD requirements are not changed or directly affected by the provisions in the NESHAP. However, the NESHAP incorporates the NSPS provisions for primary aluminum reduction plants, which will reduce duplicative monitoring, reporting, and recordkeeping requirements while maintaining equivalent stringency in the applicable emission limits. In addition, the incorporation of the NSPS includes language from part 60 that excludes from the definition of "modification" the addition of an emission control system that results in the reduction of air pollutants, as the commenter suggested. As several commenters suggested, the compliance assurance monitoring (CAM) rule would not apply to the sources and pollutants regulated under the NESHAP. Standards promulgated after 1990 are not subject to the CAM under the assumption that the prescribed monitoring in such rules would meet the requirements equivalent to those required for CAM. The EPA determined that it is not appropriate to specify within the NESHAP whether changes to permits should be considered administrative or as permit modifications. This is accomplished more directly through the permit writer, who can incorporate the alternatives allowed by the NESHAP into the permit. By adding the NESHAP provisions to the permit, the flexibility allowed by the NESHAP is maintained with respect to implementation of emission averaging and other provisions. In addition, the source may suggest to the permit writer that certain flexible provisions are important to the source based on the compliance approach that the source anticipates implementing.

G. Reduced Sampling Frequency

Comment: One commenter did not think there is any need for **Federal Register** publication to provide public notification of approval of reduced sampling frequency. Another commenter asked that criteria for qualifying for reduced sampling frequency be included in the rule and suggested using the approaches that had been used in other rules, with reductions in the frequency after demonstrating compliance over some period of time.

Several commenters recommended that monitoring provisions in the final rule be expanded to allow less frequent monitoring for POM upon demonstration of good emission control performance, as is allowed for TF.

State agency commenters supported the concept of reduced sampling if a facility consistently achieves compliance with an emission limit and has low variability. However, the commenters asked that EPA specify a minimum measure of acceptable variability for reduced sampling frequency to ensure consistent evaluations of these requests and to ease the burden on the regulatory authority.

Response: The EPA agrees that the provisions for qualifying for reduced sampling can be improved by making them easier to implement and that there is no need for publication in the **Federal Register**. In addition, if they are structured properly, provisions for reduced sampling frequency can be used to obtain control performance well below the emission limit, which will result in additional emission reductions.

The EPA reviewed the performance of plants that had qualified for reduced sampling under the NSPS and also examined the average performance, variability, and emission limits achieved by the MACT floor plants. Based on this review, a procedure was developed that was designed to ensure that plants that qualified for reduced sampling had low variability, consistently met the limit, and achieved an average long-term performance that was well below the limit. The proposed rule was revised to allow the monthly sampling of a potline's secondary emissions of TF to be reduced to quarterly if: (1) The overall average after 24 consecutive months of sampling was no more than 60 percent of the applicable limit and (2) no monthly average during the 24 consecutive months exceeded 75 percent of the applicable emission limit.

If an exceedance occurs while under the reduced sampling frequency, the plant must return to monthly sampling for at least 12 months. The plant can qualify for a reduction to quarterly sampling again when: (1) The average of all results over the most recent 24-month period is no more than 60 percent of the limit and (2) no more than one monthly average during the 24-month period exceeds 75 percent of the limit.

As an alternative, the facility can petition for reduced sampling based on the statistical approach given in the EPA guidance document, "Primary Aluminum: Statistical Analysis of Potline Fluoride Emissions and Alternative Sampling Frequency" (EPA–450/3–86–012, October 1986). A copy of this document is included in the docket (docket item II–A–10). This document also is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

Reduced sampling was not considered for POM because the sampling is already reduced relative to sampling for TF. The rule contains provisions for reducing TF sampling of secondary emissions from monthly to quarterly, and it only requires quarterly sampling for POM secondary emissions (and only annual sampling for POM from the primary control system). The quarterly sampling is necessary to ensure compliance and is particularly important for POM because of the potential risk associated with the POM compounds.

H. Approval of Alcan Cassette Method (Method 14A)

Comment: Several commenters stated that the Alcan cassette monitoring

method should be included as an approved method to determine compliance for emissions monitoring, as it is approved for demonstrating similar potlines. The final rule should also allow the method to be used in developing correlations of emissions for alternative monitoring devices, such as the HF CEM. Another commenter asked for the results of the investigation of the use of Alcan cassettes as an alternative to Methods 13 and 14, including information on accuracy, precision, and any biases.

Response: The EPA's intent to evaluate and approve the Alcan cassette method as an acceptable alternative to Method 14 was discussed in the proposal preamble. Numerous comments were received supporting the method, and no comments were received that were opposed to the method as an alternative to Methods 13 and 14. The method had been previously approved for sampling and analysis of TF for the NSPS, and additional data from comparison testing (available in the docket) confirmed it to be an acceptable alternative. Consequently, the EPA has approved the Alcan cassette method as an alternative to Method 14 and has included it as Method 14A in appendix A to 40 CFR part 60.

I. Estimates of Costs for Control and Monitoring

Comment: The industry commenters contended the capital costs of the proposed rule are higher than the EPA's estimates and asked that the estimates presented at promulgation be revised to incorporate their higher estimates of cost. The cost estimates submitted by the Aluminum Association included a capital cost estimate of $555 million and a total annual cost of $126 million compared to the EPA cost estimate of $160 million in capital and a total annual cost of $40 million. Another commenter believes the monitoring costs estimates are low and asked for information on the monitoring scenario that was used for costing.

Response: The limited information supplied with the industry's cost estimates suggests that these costs may be overstated; relevant points are discussed below. The industry's report states that the largest component of their capital cost estimate of $555 million is for removing existing primary control systems and installing dry alumina scrubbers, which they say is 60 percent of the total capital cost. The EPA worked closely with the industry to develop the MACT floor, and based on numerous discussions with the industry, only one plant was identified as likely to install new dry alumina scrubbers. This plant estimated a cost of $120 million; however, this total capital investment includes costs for controls that are not directly attributable to the MACT standard (e.g., it includes the cost of sulfur dioxide scrubbers that are required by the State but are not required by the MACT standard). In addition, there is an indication that the company's decision to install dry alumina scrubbers may not have been made only because of the impending MACT standard but also in consideration of State and local agency concerns. Another company that included the capital cost of new dry scrubbers in its estimate submitted by the Aluminum Association has subsequently confirmed that new dry scrubbers will not be installed to meet MACT. Instead, they will upgrade their existing control equipment at a much lower cost.

Included in the industry's estimate are costs for several potlines that have been idled, and it has not been determined when these potlines will operate at capacity. If they are not restarted, it is obvious that large investments to improve emission control will not be made.

Significant cost estimates are included in the industry's estimates for MACT floor potlines, which are lines that by definition are already achieving the MACT level of control (because the proposed emission limits for MACT are based on the floor). Apparently these companies included the routine capital and operating costs currently being incurred or planned for the near future, probably to meet existing State limits, and attributed this cost to MACT. The cost due to MACT is the incremental cost above what would be spent in the absence of MACT and should not include what is being spent to meet existing regulations.

The few details that are available in the industry's report indicate that some of the estimated capital investment is for improvements or modernization of the process that is not necessarily being done only to improve emission control. In addition, companies will save operating expenses through improved efficiency and operation from these improvements, and no credit (cost savings) is identified for these improvements.

The information available for the cost of dry coke scrubbers indicates that the industry's estimate is overstated by a factor of at least two. The EPA estimate is based on the actual installation cost reported by one company and was verified by another company that obtained an actual construction cost estimate prior to installing a new coke scrubber. The source of the industry's estimate is undocumented. In addition, more recent information from a few plants indicates that they may be able to improve the control efficiency of existing control equipment without installing dry coke scrubbers. The EPA cost estimate assumes that all plants without dry coke scrubbers will install one.

J. Exceeding an Operating Parameter Limit

Comment: Several industry commenters stated that an exceedance of an enforceable operating parameter limit for which the owner or operator has submitted a request for redetermination should not count toward the six allowable exceedances or automatically constitute a violation. Another commenter felt that exceedances should be a matter of enforcement discretion and any mention of what would constitute a violation should be deleted from the rule. One commenter asked for EPA's basis in deciding that a violation has occurred only after there have been six exceedances of a monitoring parameter (in any 6-month reporting period).

Response: The proposal preamble discussed at length why any single exceedance of the parametric monitoring limits should not be considered an exceedance of the emission limit and a violation of the standard. However, a limit was placed on the number of exceedances (six) allowed in a 6-month period to provide incentive to correct any problems with control devices promptly and to avoid recurring difficulties with control devices. Consequently, any exceedance of an enforceable operating parameter limit will count toward the six allowable exceedances, or will constitute a violation if a source has already had six exceedances. The fact that a facility has submitted a request for a redetermination of its operating parameter limits is no shield against enforcement of the existing permit limits. This is because the owner or operator could submit requests for redetermination to avoid a violation whenever control device monitoring indicates a problem. While the commenter is correct in pointing out that EPA may exercise prosecutorial discretion, such discretion is independent from the identification of a violation.

K. Pitch Storage Tanks

Comment: Several commenters requested that the proposed rule be clarified to indicate that pitch storage tanks are not included as part of the paste production plant.

Response: Based on comments that pitch storage tanks are not a part of the paste production operation, the EPA reexamined this issue and determined that pitch storage tanks not located within the paste production plant should be defined as a separate affected source. Pitch storage tanks located within the boundaries of the paste production plant, such as day tanks or feed tanks that manage heated pitch, are included in the definition of paste production plant and must be controlled as required for the paste plant. An examination of the available data for pitch storage tanks that are not a part of the paste production plant indicated that the MACT floor and MACT for existing sources was no control. However, one plant was found to have installed controls on a recently constructed pitch storage tank. In addition, the EPA found that a new pitch storage tank planned for installation in Canada would be installing a catalytic oxidizer to control pitch fumes with a control efficiency of at least 95 percent. Consequently, EPA determined that new source MACT for pitch storage tanks would require at least 95 percent control of POM, and these provisions were added to the final rule.

There are several types of emission control techniques that can achieve 95 percent control or better, including combustion devices, dry scrubbers, and carbon adsorption. A question arose about the acceptability of vapor balancing, in which emissions displaced from the pitch storage tank during loading are returned to the tank truck or rail car as it is emptied. This technique would be an acceptable alternative if the owner or operator demonstrates (to the satisfaction of the applicable regulatory authority) that emissions from the transport vessel are controlled when it is refilled and that POM emissions from the pitch storage tank are ultimately controlled at 95 percent or better.

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of information considered by the EPA in the development of a rulemaking. The docket is a dynamic file because information is added throughout the rulemaking development process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in case of judicial review. [See section 307(d)(7)(A) of the Act.] The official rulemaking record, including all public comments received on the proposed rule, is located at the address in the **ADDRESSES** section at the beginning of this document.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Although this is a significant regulatory action OMB has waived Executive Order 12866 review because there was no significant negative comment on the proposed rule.

C. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, the EPA involved State regulatory experts in the development of the rule. The EPA also coordinated with tribal governments having an interest in the rulemaking. State and local governments and tribal governments are not directly affected by the rule, i.e., they are not required to purchase control systems to meet the requirements of the rule. However, State and local governments will be required to implement the rule; i.e., incorporate the rule into permits and enforce the rule. They will collect permit fees that will be used to offset the resource burden of implementing the rule. Comments were solicited from States and tribal governments and have been considered in the development of the final rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments; enabling officials of affected small governments to have meaningful and timely input in developing EPA regulatory proposals with significant Federal intergovernmental mandates; and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The total annualized cost of the final standard is estimated at $40 million per year—well under the $100 million per year threshold. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. None of the 23 facilities in this industry is classified as a small entity. The EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

G. Paperwork Reduction Act

The information collection requirements for this NESHAP have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1767.02), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, S.W., Washington, DC 20460, or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

The information collection requirements include mandatory notifications, records, and reports required by the NESHAP general provisions (40 CFR part 63, subpart A). These information collection requirements are needed to confirm the compliance status of major sources, to identify any nonmajor sources not subject to the standards and any new or reconstructed sources subject to the standards, to confirm that emission control devices are being properly operated and maintained, and to ensure that the standards are being achieved. Based on the recorded and reported information, EPA can decide which plants, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized by section 114 of the Act (42 U.S.C. 7414). All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B. (See 41 FR 36902, September 1, 1976; 43 FR 39999, September 28, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979.)

The annual public reporting and recordkeeping burden for collecting this information (averaged over the first 3 years after the effective date of the rule) is estimated to total 52,544 hours for the 23 respondents and to average 2,300 hours per respondent (i.e., per plant). Each respondent is required to report semiannually. The annualized cost of monitoring equipment is estimated as $390,000 per year, with an operation and maintenance cost of $39,000 per year (excluding labor hours included in the previous total).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

H. Clean Air Act

The NESHAP for primary aluminum reduction plants will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as residual health risks, any duplication with other air programs, the existence of alternative methods, enforceability, improvements in air emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference.

40 CFR Part 63

Air pollution control, Hazardous substances, Incorporation by reference, Primary aluminum reduction plants, Reporting and recordkeeping requirements.

Dated: September 19, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 9, 60, and 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et. seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding new entries under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories[3]	
* * * * *	
63.846(d)	2060–0360
63.847(b), (g)	2060–0360
63.848(d)(5), (e), (f)(5)(ii), (g), (k), (m)	2060–0360
63.850	2060–0360
* * * * *	

[3] The ICRs referenced in this section of the Table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

3. The authority for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7429, 7601 and 7602.

§ 60.17 [Amended]

4. Section 60.17(a)(22) of subpart A is amended by adding the phrase "; Method 14A, par. 7.1" to the end of the paragraph.

5. Section 60.190 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 60.190 Applicability and designation of affected facility.

* * * * *

(b) Except as provided in paragraph (c) of this section, any affected facility under paragraph (a) of this section that commences construction or modification after October 23, 1974, is subject to the requirements of this subpart.

(c) An owner or operator of an affected facility under paragraph (a) of this section may elect to comply with the requirements of this subpart or the requirements of subpart LL of part 63 of this chapter.

6. Appendix A to part 60 is amended by revising the appendix heading and adding, in numerical order, Method 14A to read as follows:

Appendix A To part 60—Test Methods

* * * * *

Method 14A—Determination of Total Fluoride Emissions from Selected Sources at Primary Aluminum Production Facilities

Note: This method does not include all the specifications (e.g., equipment and supplies) and procedures (e.g., sampling) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 5, Methods 13A and 13B, and Method 14 of this appendix.

1.0 Scope and Application.

1.1 Analytes.

Analyte	CAS No.	Sensitivity
Total fluorides Includes hydrogen fluoride.	None assigned. 007664–39–3	Not determined. Not determined.

1.2 Applicability. This method is applicable for the determination of total fluorides (TF) emissions from sources specified in the applicable regulation. This method was developed by consensus with the Aluminum Association and the U.S. Environmental Protection Agency (EPA).

2.0 Summary of Method.

2.1 Total fluorides, in the form of solid and gaseous fluorides, are withdrawn from the ascending air stream inside of an aluminum reduction potroom and, prior to exiting the potroom roof monitor, into a specific cassette arrangement. The cassettes are connected by tubing to flowmeters and a manifold system that allows for the equal distribution of volume pulled through each cassette, and finally to a dry gas meter. The cassettes have a specific internal arrangement of one unaltered cellulose filter and support pad in the first section of the cassette for solid fluoride retention and two cellulose filters with support pads that are impregnated with sodium formate for the chemical absorption of gaseous fluorides in the following two sections of the cassette. A minimum of eight cassettes shall be used for a potline and shall be strategically located at equal intervals across the potroom roof so as to encompass a minimum of 8 percent of the total length of the potroom. A greater number of cassettes may be used should the regulated facility choose to do so. The mass flow rate of pollutants is determined with anemometers and temperature sensing devices located immediately below the opening of the roof monitor and spaced evenly within the cassette group.

3.0 Definitions.

3.1 Cassette. A segmented, styrene acrylonitrile cassette configuration with three separate segments and a base, for the purpose of this method, to capture and retain fluoride from potroom gases.

3.2 Cassette arrangement. The cassettes, tubing, manifold system, flowmeters, dry gas meter, and any other related equipment associated with the actual extraction of the sample gas stream.

3.3 Cassette group. That section of the potroom roof monitor where a distinct group of cassettes is located.

3.4 Potline. A single, discrete group of electrolytic reduction cells electrically connected in series, in which alumina is reduced to form aluminum.

3.5 Potroom. A building unit that houses a group of electrolytic reduction cells in which aluminum is produced.

3.6 Potroom group. An uncontrolled potroom, a potroom that is controlled individually, or a group of potrooms or potroom segments ducted to a common primary control system.

3.7 Primary control system. The equipment used to capture the gases and particulate matter generated during the reduction process and the emission control device(s) used to remove pollutants prior to discharge of the cleaned gas to the atmosphere.

3.8 Roof monitor. That portion of the roof of a potroom building where gases, not captured at the cell, exit from the potroom.

3.9 Total fluorides (TF). Elemental fluorine and all fluoride compounds as measured by Methods 13A or 13B of this appendix or by an approved alternative method.

4.0 Interferences and Known Limitations.

4.1 There are two principal categories of limitations that must be addressed when using this method. The first category is sampling bias and the second is analytical bias. Biases in sampling can occur when there is an insufficient number of cassettes located along the roof monitor of a potroom or if the distribution of those cassettes is spatially unequal. Known sampling biases also can occur when there are leaks within the cassette arrangement and if anemometers and temperature devices are not providing accurate data. Applicable instruments must be properly calibrated to avoid sampling bias. Analytical biases can occur when instrumentation is not calibrated or fails calibration and the instrument is used out of proper calibration. Additionally, biases can occur in the laboratory if fusion crucibles retain residual fluorides over lengthy periods of use. This condition could result in falsely elevated fluoride values. Maintaining a clean work environment in the laboratory is crucial to producing accurate values.

4.2 Biases during sampling can be avoided by properly spacing the appropriate number of cassettes along the roof monitor, conducting leak checks of the cassette arrangement, calibrating the dry gas meter every 30 days, verifying the accuracy of individual flowmeters (so that there is no more than 5 percent difference in the volume pulled between any two flowmeters), and calibrating or replacing anemometers and temperature sensing devices as necessary to maintain true data generation.

4.3 Analytical biases can be avoided by calibrating instruments according to the manufacturer's specifications prior to conducting any analyses, by performing internal and external audits of up to 10 percent of all samples analyzed, and by rotating individual crucibles as the "blank" crucible to detect any potential residual fluoride carry-over to samples. Should any contamination be discovered in the blank crucible, the crucible shall be thoroughly cleaned to remove any detected residual fluorides and a "blank" analysis conducted again to evaluate the effectiveness of the cleaning. The crucible shall remain in service as long as no detectable residual fluorides are present.

5.0 Safety.

5.1 This method may involve the handling of hazardous materials in the analytical phase. This method does not purport to address all of the potential safety hazards associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and

decontaminate. Treat residual chemical burn as thermal burn.

5.3 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.4 Perchloric Acid ($HClO_4$). Corrosive to eyes, skin, nose, and throat. Provide ventilation to limit exposure. Very strong oxidizer. Keep separate from water and oxidizable materials to prevent vigorous evolution of heat, spontaneous combustion, or explosion. Heat solutions containing HClO4 only in hoods specifically designed for $HClO_4$.

216.0 Equipment and Supplies.

6.1 Sampling.

6.1.1 Cassette arrangement. The cassette itself is a three-piece, styrene acrylonitrile cassette unit (a Gelman Sciences product), 37 millimeter (mm), with plastic connectors. In the first section (the intake section), an untreated Gelman Sciences 37 mm, 0.8 micrometer (μm) DM–800 metricel membrane filter and cellulose support pad, or equivalent, is situated. In the second and third segments of the cassette there is placed one each of Gelman Sciences 37 mm, 5 μm GLA–5000 low-ash PVC filter with a cellulose support pad or equivalent product. Each of these two filters and support pads shall have been immersed in a solution of 10 percent sodium formate (volume/volume in an ethyl alcohol solution). The impregnated pads shall be placed in the cassette segments while still wet and heated at 50°C (122°F) until the pad is completely dry. It is important to check for a proper fit of the filter and support pad to the cassette segment to ensure that there are no areas where gases could bypass the filter. Once all of the cassette segments have been prepared, the cassette shall be assembled and a plastic plug shall be inserted into the exhaust hole of the cassette. Prior to placing the cassette into service, the space between each segment shall be taped with an appropriately durable tape to prevent the infiltration of gases through the points of connection, and an aluminum nozzle shall be inserted into the intake hole of the cassette. The aluminum nozzle shall have a short section of tubing placed over the opening of the nozzle, with the tubing plugged to prevent dust from entering the nozzle and to prepare the nozzle for the cassette arrangement leak check. An alternate nozzle type can be used if historical results or scientific demonstration of applicability can be shown.

6.1.2 Anemometers and temperature sensing devices. To calculate the mass flow rate of TF from the roof monitor under standard conditions, anemometers that meet the specifications in section 2.1.1 in Method 14 of this appendix or an equivalent device yielding equivalent information shall be used. A recording mechanism capable of accurately recording the exit gas temperature at least every 2 hours shall be used.

6.1.3 Barometer. To correct the volumetric flow from the potline roof monitor to standard conditions, a mercury (Hg), aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm [0.1 inch (in)] Hg shall be used.

Note: The barometric reading may be obtained from a nearby National Weather Service Station. In this case, the station value (which is absolute barometric pressure) shall be requested and an adjustment for elevation differences between the weather station and the sampling point shall be made at a rate of minus 2.5 mm (0.1 in) Hg per 30 meters (m) [100 feet (ft)] elevation increase or plus 2.5 mm (0.1 in) Hg per 30 m (100 ft) elevation decrease.

6.2 Sample recovery.

6.2.1 Hot plate.

6.2.2 Muffle furnace.

6.2.3 Nickel crucible.

6.2.4 Stirring rod. Teflon'.

6.2.5 Volumetric flask. 50-milliliter (ml).

6.2.6 Plastic vial. 50-ml.

6.3 Analysis.

6.3.1 Primary analytical method. An automated analyzer having the following components or equivalent: a multichannel proportioning pump, multiposition sampler, voltage stabilizer, colorimeter, instrument recording device, microdistillation apparatus, flexible Teflon® heating bath, vacuum pump, pulse suppressers and an air flow system.

6.3.2 Secondary analytical method. Specific Ion Electrode (SIE).

7.0 Reagents and Standards.

7.1 Water. Deionized distilled to conform to ASTM Specification D 1193–77, Type 3 (incorporated by reference in § 60.17(a)(22) of this part). The $KMnO_4$ test for oxidizable organic matter may be omitted when high concentrations of organic matter are not expected to be present.

7.2 Calcium oxide.

7.3 Sodium hydroxide (NaOH). Pellets.

7.4 Perchloric acid ($HClO_4$). Mix 1:1 with water. Sulfuric acid (H_2SO_4) may be used in place of $HClO_4$.

7.5 Audit samples. The audit samples discussed in section 9.1 shall be prepared from reagent grade, water soluble stock reagents, or purchased as an aqueous solution from a commercial supplier. If the audit stock solution is purchased from a commercial supplier, the standard solution must be accompanied by a certificate of analysis or an equivalent proof of fluoride concentration.

8.0 Sample Collection and Analysis.

8.1 Preparing cassette arrangement for sampling. The cassettes are initially connected to flexible tubing. The tubing is connected to flowmeters and a manifold system. The manifold system is connected to a dry gas meter (Research Appliance Company model 201009 or equivalent). The length of tubing is managed by pneumatically or electrically operated hoists located in the roof monitor, and the travel of the tubing is controlled by encasing the tubing in aluminum conduit. The tubing is lowered for cassette insertion by operating a control box at floor level. Once the cassette has been securely inserted into the tubing and the leak check performed, the tubing and cassette are raised to the roof monitor level using the floor level control box. Arrangements similar to the one described are acceptable if the scientific sample collection principles are followed.

8.2 Test run sampling period. A test run shall comprise a minimum of a 24-hour sampling event encompassing at least eight cassettes per potline (or four cassettes per potroom group). Monthly compliance shall be based on three test runs during the month. Test runs of greater than 24 hours are allowed; however, three such runs shall be conducted during the month.

8.3 Leak-check procedures.

8.3.1 Pretest leak check. A pretest leak-check is recommended; however, it is not required. To perform a pretest leak-check after the cassettes have been inserted into the tubing, isolate the cassette to be leak-checked by turning the valves on the manifold to stop all flows to the other sampling points connected to the manifold and meter. The cassette, with the plugged tubing section securing the intake of the nozzle, is subjected to the highest vacuum expected during the run. If no leaks are detected, the tubing plug can be briefly removed as the dry gas meter is rapidly turned off.

8.3.2 Post-test leak check. A leak check is required at the conclusion of each test run for each cassette. The leak check shall be performed in accordance with the procedure outlined in section 8.3.1 of this method except that it shall be performed at a vacuum greater than the maximum vacuum reached during the test run. If the leakage rate is found to be no greater than 4 percent of the average sampling rate, the results are acceptable. If the leakage rate is greater than 4 percent of the average sampling rate, either record the leakage rate and correct the sampling volume as discussed in section 12.4 of this method or void the test run if the minimum number of cassettes were used. If the number of cassettes used was greater than the minimum required, discard the leaking cassette and use the remaining cassettes for the emission determination.

8.3.3 Anemometers and temperature sensing device placement. Install the recording mechanism to record the exit gas temperature. Anemometers shall be installed as required in section 6.1.2 of Method 14 of this appendix, except replace the word "manifold" with "cassette group" in section 6.1.2.3. These two different instruments shall be located near each other along the roof monitor. See conceptual configurations in Figures 14A–1, 14A–2, and 14A–3 of this method. Fewer temperature devices than anemometers may be used if at least one temperature device is located within the span of the cassette group. Other anemometer location siting scenarios may be acceptable as long as the exit velocity of the roof monitor gases is representative of the entire section of the potline being sampled.

8.4 Sampling. The actual sample run shall begin with the removal of the tubing and plug from the cassette nozzle. Each cassette is then raised to the roof monitor area, the dry gas meter is turned on, and the flowmeters are set to the calibration point, which allows an equal volume of sampled gas to enter each cassette. The dry gas meter shall be set to a range suitable for the specific potroom type being sampled that will yield valid data known from previous experience or a range determined by the use of the calculation in section 12 of this method.

Parameters related to the test run that shall be recorded, either during the test run or after the test run if recording devices are used, include: anemometer data, roof monitor exit gas temperature, dry gas meter temperature, dry gas meter volume, and barometric pressure. At the conclusion of the test run, the cassettes shall be lowered, the dry gas meter turned off, and the volume registered on the dry gas meter recorded. The post-test leak check procedures described in section 8.3.2 of this method shall be performed. All data relevant to the test shall be recorded on a field data sheet and maintained on file.

8.5 Sample recovery.

8.5.1 The cassettes shall be brought to the laboratory with the intake nozzle contents protected with the section of plugged tubing previously described. The exterior of cassettes shall carefully be wiped free of any dust or debris, making sure that any falling dust or debris does not present a potential laboratory contamination problem.

8.5.2 Carefully remove all tape from the cassettes and remove the initial filter, support pad, and all loose solids from the first (intake) section of the cassette. Fold the filter and support pad several times and, along with all loose solids removed from the interior of the first section of the cassette, place them into a nickel crucible. Using water, wash the interior of the nozzle into the same nickel crucible. Add 0.1 gram (g) [±0.1 milligram (mg)] of calcium oxide and a sufficient amount of water to make a loose slurry. Mix the contents of the crucible thoroughly with a Teflon" stirring rod. After rinsing any adhering residue from the stirring rod back into the crucible, place the crucible on a hot plate or in a muffle furnace until all liquid is evaporated and allow the mixture to gradually char for 1 hour.

8.5.3 Transfer the crucible to a cold muffle furnace and ash at 600°C (1,112°F). Remove the crucible after the ashing phase and, after the crucible cools, add 3.0 g (±0.1 g) of NaOH pellets. Place this mixture in a muffle furnace at 600°C (1,112°F) for 3 minutes. Remove the crucible and roll the melt so as to reach all of the ash with the molten NaOH. Let the melt cool to room temperature. Add 10 to 15 ml of water to the crucible and place it on a hot plate at a low temperature setting until the melt is soft or suspended. Transfer the contents of the crucible to a 50-ml volumetric flask. Rinse the crucible with 20 ml of 1:1 perchloric acid or 20 ml of 1:1 sulfuric acid in two (2) 10 ml portions. Pour the acid rinse slowly into the volumetric flask and swirl the flask after each addition. Cool to room temperature. The product of this procedure is particulate fluorides.

8.5.4 Gaseous fluorides can be isolated for analysis by folding the gaseous fluoride filters and support pads to approximately ¼ of their original size and placing them in a 50-ml plastic vial. To the vial add exactly 10 ml of water and leach the sample for a minimum of 1 hour. The leachate from this process yields the gaseous fluorides for analysis.

9.0 Quality Control.

9.1 Laboratory auditing. Laboratory audits of specific and known concentrations of fluoride shall be submitted to the laboratory with each group of samples submitted for analysis. An auditor shall prepare and present the audit samples as a "blind" evaluation of laboratory performance with each group of samples submitted to the laboratory. The audits shall be prepared to represent concentrations of fluoride that could be expected to be in the low, medium and high range of actual results. Average recoveries of all three audits must equal 90 to 110 percent for acceptable results; otherwise, the laboratory must investigate procedures and instruments for potential problems.

Note: The analytical procedure allows for the analysis of individual or combined filters and pads from the cassettes provided that equal volumes (±10 percent) are sampled through each cassette.

10.0 Calibrations.

10.1 Equipment evaluations. To ensure the integrity of this method, periodic calibrations and equipment replacements are necessary.

10.1.1 Metering system. At 30-day intervals the metering system shall be calibrated. Connect the metering system inlet to the outlet of a wet test meter that is accurate to 1 percent. Refer to Figure 5–4 of Method 5 of this appendix. The wet-test meter shall have a capacity of 30 liters/revolution [1 cubic foot (ft^3)/revolution]. A spirometer of 400 liters (14 ft^3) or more capacity, or equivalent, may be used for calibration; however, a wet-test meter is usually more practical. The wet-test meter shall be periodically tested with a spirometer or a liquid displacement meter to ensure the accuracy. Spirometers or wet-test meters of other sizes may be used, provided that the specified accuracies of the procedure are maintained. Run the metering system pump for about 15 min. with the orifice manometer indicating a median reading as expected in field use to allow the pump to warm up and to thoroughly wet the interior of the wet-test meter. Then, at each of a minimum of three orifice manometer settings, pass an exact quantity of gas through the wet-test meter and record the volume indicated by the dry gas meter. Also record the barometric pressure, the temperatures of the wet test meter, the inlet temperatures of the dry gas meter, and the temperatures of the outlet of the dry gas meter. Record all calibration data on a form similar to the one shown in Figure 5–5 of Method 5 of this appendix and calculate Y, the dry gas meter calibration factor, and $\Delta H_@$, the orifice calibration factor at each orifice setting. Allowable tolerances for Y and $\Delta H_@$ are given in Figure 5–6 of Method 5 of this appendix.

10.1.2 Estimating volumes for initial test runs. For a facility's initial test runs, the regulated facility must have a target or desired volume of gases to be sampled and a target range of volumes to use during the calibration of the dry gas meter. Use Equations 14A–1 and 14A–2 in section 12 of this method to derive the target dry gas meter volume (V_r) for these purposes.

10.1.3 Calibration of anemometers and temperature sensing devices. If the standard anemometers in Method 14 of this appendix are used, the calibration and integrity evaluations in sections 10.3.1.1 through 10.3.1.3 of Method 14 of this appendix shall be used as well as the recording device described in section 2.1.3 of Method 14. The calibrations or complete change-outs of anemometers shall take place at a minimum of once per year. The temperature sensing and recording devices shall be calibrated according to the manufacturer's specifications.

10.1.4 Calibration of flowmeters. The calibration of flowmeters is necessary to ensure that an equal volume of sampled gas is entering each of the individual cassettes and that no large differences, which could possibly bias the sample, exist between the cassettes.

10.1.4.1 Variable area, 65 mm flowmeters or equivalent shall be used. These flowmeters can be mounted on a common base for convenience. These flowmeters shall be calibrated by attaching a prepared cassette, complete with filters and pads, to the flowmeter and then to the system manifold. This manifold is an aluminum cylinder with valved inlets for connections to the flowmeters/cassettes and one outlet to a dry gas meter. The connection is then made to the wet-test meter and finally to a dry gas meter. All connections are made with tubing.

10.1.4.2 Turn the dry gas meter on for 15 min. in preparation for the calibration. Turn the dry gas meter off and plug the intake hole of the cassette. Turn the dry gas meter back on to evaluate the entire system for leaks. If the dry gas meter shows a leakage rate of less than 0.02 ft^3/min at 10 in. of Hg vacuum as noted on the dry gas meter, the system is acceptable to further calibration.

10.1.4.3 With the dry gas meter turned on and the flow indicator ball at a selected flow rate, record the exact amount of gas pulled through the flowmeter by taking measurements from the wet test meter after exactly 10 min. Record the room temperature and barometric pressure. Conduct this test for all flowmeters in the system with all flowmeters set at the same indicator ball reading. When all flowmeters have gone through the procedure above, correct the volume pulled through each flowmeter to standard conditions. The acceptable difference between the highest and lowest flowmeter rate is 5 percent. Should one or more flowmeters be outside of the acceptable limit of 5 percent, repeat the calibration procedure at a lower or higher indicator ball reading until all flowmeters show no more than 5 percent difference among them.

10.1.4.4 This flowmeter calibration shall be conducted at least once per year.

10.1.5 Miscellaneous equipment calibrations. Miscellaneous equipment used such as an automatic recorder/ printer used to measure dry gas meter temperatures shall be calibrated according to the manufacturer's specifications in order to maintain the accuracy of the equipment.

11.0 Analytical Procedure.

11.1 The preferred primary analytical determination of the individual isolated samples or the combined particulate and gaseous samples shall be performed by an automated methodology. The analytical

method for this technology shall be based on the manufacturer's instructions for equipment operation and shall also include the analysis of five standards with concentrations in the expected range of the actual samples. The results of the analysis of the five standards shall have a coefficient of correlation of at least 0.99. A check standard shall be analyzed as the last sample of the group to determine if instrument drift has occurred. The acceptable result for the check standard is 95 to 105 percent of the standard's true value.

11.2 The secondary analytical method shall be by specific ion electrode if the samples are distilled or if a TISAB IV buffer is used to eliminate aluminum interferences. Five standards with concentrations in the expected range of the actual samples shall be analyzed, and a coefficient of correlation of at least 0.99 is the minimum acceptable limit for linearity. An exception for this limit for linearity is a condition when low-level standards in the range of 0.01 to 0.48 µg fluoride/ml are analyzed. In this situation, a minimum coefficient of correlation of 0.97 is required. TISAB II shall be used for low-level analyses.

12.0 Data Analysis and Calculations.

12.1 Carry out calculations, retaining at least one extra decimal point beyond that of the acquired data. Round off values after the final calculation. Other forms of calculations may be used as long as they give equivalent results.

12.2 Estimating volumes for initial test runs.

$$F_v = \frac{(F_d)(X)}{F_c} \qquad \text{Eq. 14A-1}$$

Where

F_v = Desired volume of dry gas to be sampled, ft³.

F_d = Desired or analytically optimum mass of TF per cassette, micrograms of TF per cassette (µg/cassette).

X = Number of cassettes used.

F_c = Typical concentration of TF in emissions to be sampled, µg/ft³, calculated from Equation 14A–2.

$$F_c = \frac{(R_e)(R_p)(4.536\times10^8\ \mu g/lb)}{(A_r)(V_r)} \qquad \text{Eq. 14A-2}$$

Where

R_e = Typical emission rate from the facility, pounds of TF per ton (lb/ton) of aluminum.

R_p = Typical production rate of the facility, tons of aluminum per minute (ton/min).

V_r = Typical exit velocity of the roof monitor gases, feet per minute (ft/min).

A_r=Open area of the roof monitor, square feet (ft²).

12.2.1 Example calculation. Assume that the typical emission rate (R_e) is 1.0 lb TF/ton of aluminum, the typical roof vent gas exit velocity (V_r) is 250 ft/min, the typical production rate (R_p) is 0.10 ton/min, the known open area for the roof monitor (A_r) is 8,700 ft², and the desired (analytically optimum) mass of TF per cassette is 1,500 µg. First calculate the concentration of TF per cassette (F_c) in µg/ft³ using Equation 14A–2. Then calculate the desired volume of gas to be sampled (F_v) using Equation 14A–1.

$$F_c = 20.855 = \frac{(1.0\ lb/ton)(0.1\ tons/min)(4.536\times10^8\ \mu g/lb)}{(8{,}700\ ft^2)(250\ ft/min)} \qquad \text{Eq. 14A-3}$$

$$F_v = 575.40\ ft^3 = \frac{(1{,}500\ \mu g)(8\ cassettes)}{(20.855\ \mu g/ft^3)} \qquad \text{Eq. 14A-4}$$

This is a total of 575.40 ft³ for eight cassettes or 71.925 ft³/cassette.

12.3 Calculations of TF emissions from field and laboratory data that would yield a production related emission rate can be calculated as follows:

12.3.1 Obtain a standard cubic feet (scf) value for the volume pulled through the dry gas meter for all cassettes by using the field and calibration data and Equation 5–1 of Method 5 of this appendix.

12.3.2 Derive the average quantity of TF per cassette (in µg TF/cassette) by adding all laboratory data for all cassettes and dividing this value by the total number of cassettes used. Divide this average TF value by the corrected dry gas meter volume for each cassette; this value then becomes TF_{std} (µg/ft³).

12.3.3 Calculate the production-based emission rate (R_e) in lb/ton using Equation 14A–5.

$$R_e = \frac{(TF_{std})(V_r)(A_r)(2.2\times10^{-9}\ lb/\mu g)}{(R_p)} \qquad \text{Eq. 14A-5}$$

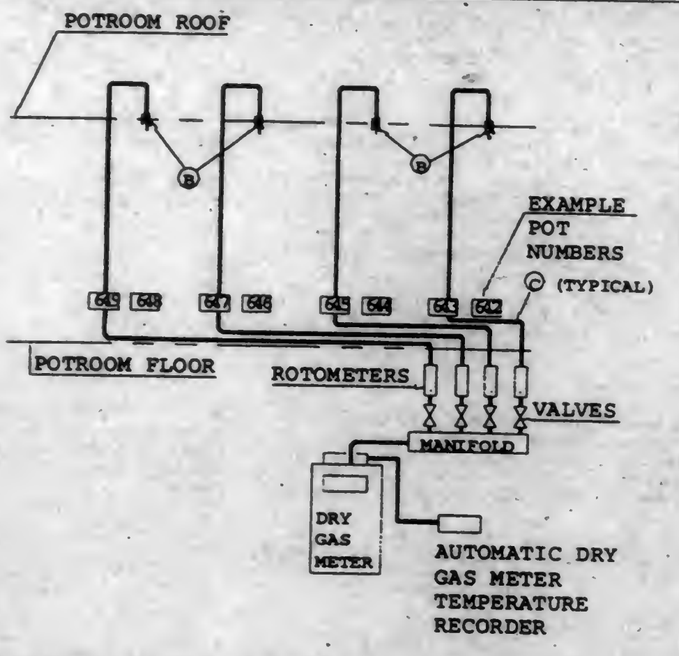
12.3.4 As an example calculation, assume eight cassettes located in a potline were used to sample for 72 hours during the run. The analysis of all eight cassettes yielded a total of 3,000 µg of TF. The dry gas meter volume was corrected to yield a total of 75 scf per cassette, which yields a value for TF_{std} of 3,000/75=5 µg/ft³. The open area of the roof monitor for the potline (A_r) is 17,400 ft². The exit velocity of the roof monitor gases (V_r) is 250 ft/min. The production rate of aluminum over the previous 720 hours was 5,000 tons, which is 6.94 tons/hr or 0.116 ton/min (R_p). Substituting these values into Equation 14A–5 yields:

$$R_e = \frac{(5\ \mu g/ft^3)(250\ ft/min)(17{,}400\ ft^2)(2.2\times10^{-9}\ lb/\mu g)}{(0.116\ ton/min)} \qquad \text{Eq. 14A-6}$$

$$R_e = 0.41\ lb/ton\ of\ aluminum\ produced. \qquad \text{Eq. 14A-7}$$

12.4 Corrections to volumes due to leakage. Should the post-test leak check leakage rate exceed 4 percent as described in section 8.3.2 of this method, correct the volume as detailed in Case I in section 6.3 of Method 5 of this appendix.

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(B) ALCAN CASSETTE EXAMPLE METHOD SAMPLING POINTS
(C) POLYETHYLENE TUBING ENCLOSED IN CONDUIT

Figure 14A-1. Conceptual side view of arrangement of 4 cassettes for one-half of a potroom.

Note: This drawing does not reflect an equally acceptable arrangement of 8 cassettes in a cassette group located along at least 8 percent of the potroom roof.

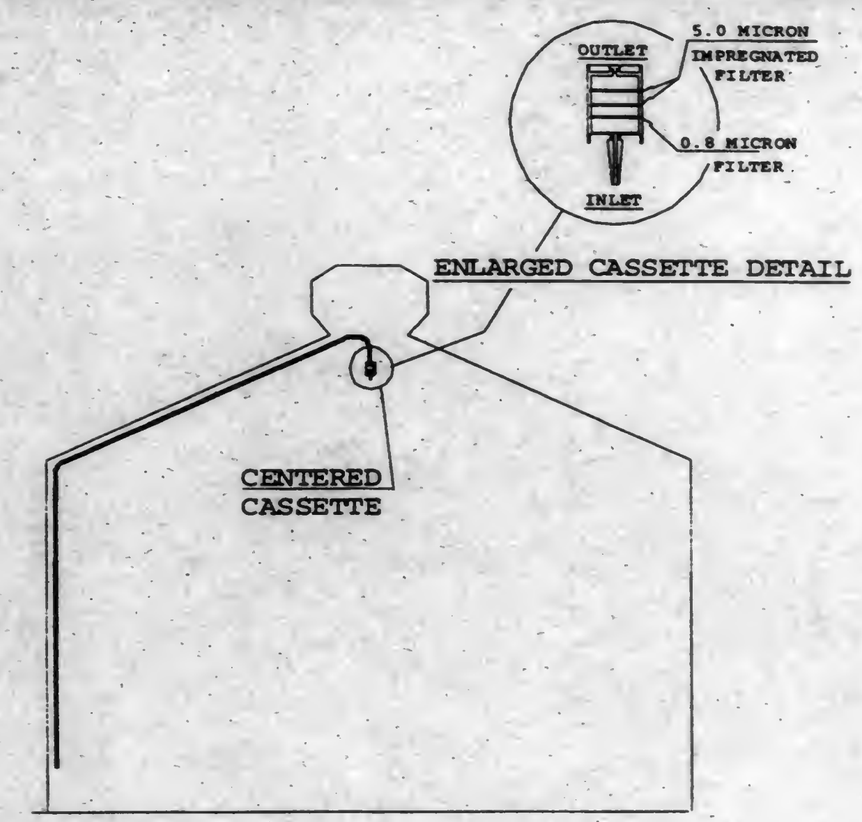


Figure 14A-2. Conceptual end view of cassette placement in a potroom roof.

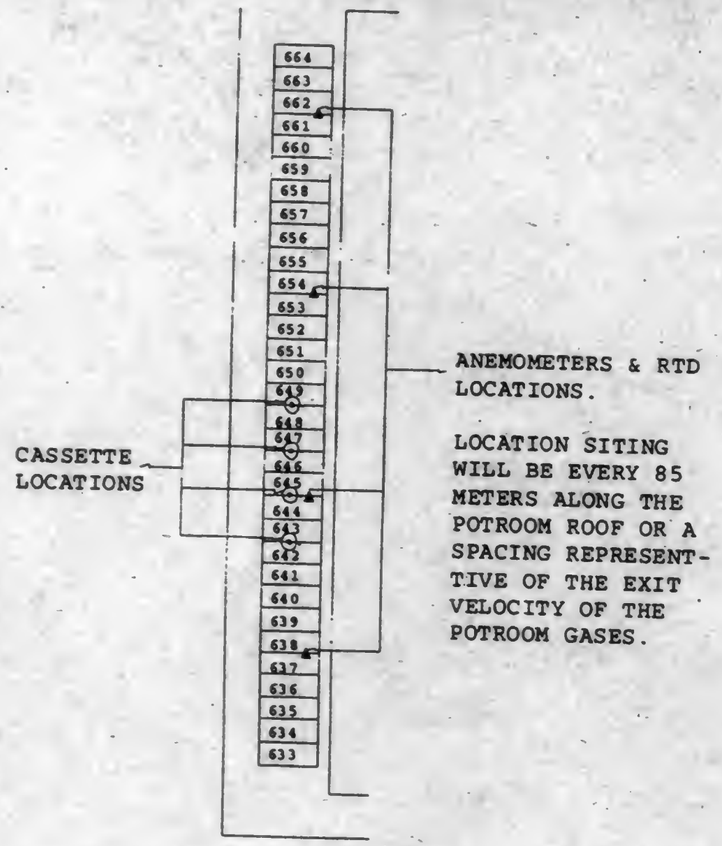


Figure 14A-3. Conceptual side view of positions of cassettes, anemometers, and RTDs in a typical half of a potroom.

Note: This drawing does not reflect other potentially acceptable arrangements.

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PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

7. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

8. Part 63 is amended by adding subpart LL to read as follows:

Subpart LL—National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

Sec.
63.840 Applicability.
63.841 Incorporation by reference.
63.842 Definitions.
63.843 Emission limits for existing sources.
63.844 Emission limits for new or reconstructed sources.
63.845 Incorporation of new source performance standards for potroom groups.
63.846 Emission averaging.
63.847 Compliance provisions.
63.848 Emission monitoring requirements.
63.849 Test methods and procedures.
63.850 Notification, reporting, and recordkeeping requirements.
63.851 Regulatory authority review procedures.
63.852 Applicability of general provisions.
63.853 Delegation of authority.
63.854–63.859 [Reserved]
Table 1 to Subpart LL—Potline TF Limits for Emission Averaging
Table 2 to Subpart LL—Potline POM Limits for Emission Averaging
Table 3 to Subpart LL—Anode Bake Furnace Limits for Emission Averaging

Appendix A to Subpart LL—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart LL

Subpart LL—National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

§ 63.840 Applicability.

(a) Except as provided in paragraph (b) of this section, the requirements of this subpart apply to the owner or operator of each new pitch storage tank and new or existing potline, paste production plant, or anode bake furnace associated with primary aluminum production and located at a major source as defined in § 63.2.

(b) The requirements of this subpart do not apply to any existing anode bake furnace that is not located on the same site as a primary aluminum reduction plant. The owner or operator shall comply with the State MACT determination established by the applicable regulatory authority.

(c) An owner or operator of an affected facility (potroom group or anode bake furnace) under § 60.190 of this chapter may elect to comply with either the requirements of § 63.845 of this subpart or the requirements of subpart S of part 60 of this chapter.

§ 63.841 Incorporation by reference.

(a) The following material is incorporated by reference in the corresponding sections noted. This incorporation by reference was approved by the Director of the Federal Register on October 7, 1997, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval, and notice of any change in the materials will be published in the **Federal Register**. Revisions to "Industrial Ventilation: A Manual of Recommended Practice" (22nd ed.) are applicable only after publication of a document in the **Federal Register** to amend subpart LL to require use of the new information.

(1) Chapter 3, "Local Exhaust Hoods" and Chapter 5, "Exhaust System Design Procedure" of "Industrial Ventilation: A Manual of Recommended Practice," American Conference of Governmental Industrial Hygienists, 22nd edition, 1995, IBR approved for §§ 63.843(b) and 63.844(b); and

(2) ASTM D 2986–95A, Standard Practice for Evaluation of Air Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved for section 7.1.1 of Method 315 in appendix A to this part.

(b) The materials incorporated by reference are available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, 7th Floor, Washington, DC, and at the Air and Radiation Docket Center, U.S. EPA, 401 M Street, SW., Washington, DC. The materials also are available for purchase from one of the following addresses:

(1) Customer Service Department, American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, Ohio 45240, telephone number (513) 742–2020; or

(2) American Society for Testing and Materials, 100 Bar Harbour Drive, West Conshohocken, Pennsylvania 19428, telephone number (610) 832–9500.

§ 63.842 Definitions.

Terms used in this subpart are defined in the Clean Air Act as amended (the Act), in § 63.2, or in this section as follows:

Anode bake furnace means an oven in which the formed green anodes are baked for use in a prebake process. This definition includes multiple anode bake furnaces controlled by a common control device (bake furnaces controlled by a common control device are considered to be one source).

Center-worked prebake (CWPB) process means a method of primary aluminum reduction using the prebake process in which the alumina feed is added down the center of the reduction cell.

Center-worked prebake one (CWPB1) means all existing center-worked prebake potlines not defined as center-worked prebake two (CWPB2) or center-worked prebake three (CWPB3) potlines.

Center-worked prebake two (CWPB2) means all existing center-worked prebake potlines located at Alcoa in Rockdale, Texas; Kaiser Aluminum in Mead, Washington; Ormet Corporation in Hannibal, Ohio; Ravenswood Aluminum in Ravenswood, West Virginia; Reynolds Metals in Troutdale, Oregon; and Vanalco Aluminum in Vancouver, Washington.

Center-worked prebake three (CWPB3) means all existing center-worked prebake potlines that produce very high purity aluminum, have a wet scrubber for the primary control system, and are located at the NSA primary aluminum plant in Hawesville, Kentucky.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Horizontal stud Soderberg (HSS) process means a method of primary aluminum reduction using the Soderberg process in which the electrical current is introduced to the anode by steel rods (studs) inserted into the side of a monolithic anode.

Modified potroom group means an existing potroom group to which any physical change in, or change in the method of operation of, results in an increase in the amount of total fluoride emitted into the atmosphere by that potroom group.

Paste production plant means the processes whereby calcined petroleum coke, coal tar pitch (hard or liquid), and/or other materials are mixed, transferred, and formed into briquettes or paste for vertical stud Soderberg (VSS) and HSS processes or into green anodes for a prebake process. This definition includes all operations from initial mixing to final forming (i.e., briquettes, paste, green anodes) within the paste plant, including conveyors and units managing heated liquid pitch.

Pitch storage tank means any fixed roof tank that is used to store liquid

pitch that is not part of the paste production plant.

Polycyclic organic matter (POM) means organic matter extractable by methylene chloride as determined by Method 315 in appendix A to this part or by an approved alternative method.

Potline means a single, discrete group of electrolytic reduction cells electrically connected in series, in which alumina is reduced to form aluminum.

Potroom means a building unit that houses a group of electrolytic cells in which aluminum is produced.

Potroom group means an uncontrolled potroom, a potroom that is controlled individually, or a group of potrooms or potroom segments ducted to a common control system.

Prebake process means a method of primary aluminum reduction that uses an anode that was baked in an anode bake furnace, which is introduced into the top of the reduction cell and consumed as part of the reduction process.

Primary aluminum reduction plant means any facility manufacturing aluminum by electrolytic reduction.

Primary control system means the equipment used to capture the gases and particulate matter evacuated directly from the reduction cell and the emission control device(s) used to remove pollutants prior to discharge of the cleaned gas to the atmosphere. A roof scrubber is not part of the primary control system.

Primary emissions means the emissions discharged from the primary control system.

Reconstructed potroom group means an existing potroom group for which the components are replaced to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new potroom group, and for which it is technologically and economically feasible to meet the applicable emission limits for total fluoride set forth in this subpart.

Reconstruction means the replacement of components of a source to such an extent that:

(1) All of the major components of the source are replaced (for example, the major components of a potline include the raw material handling system, reduction cells, superstructure, hooding, ductwork, etc.); and

(2) It is technologically and economically feasible for the reconstructed source to meet the standards for new sources established in this subpart.

Roof monitor means that portion of the roof of a potroom building where gases not captured at the cell exit from the potroom.

Secondary emissions means the fugitive emissions that are not captured and controlled by the primary control system and that escape through the roof monitor or through roof scrubbers.

Side-worked prebake (SWPB) process means a method of primary aluminum reduction using the prebake process, in which the alumina is added along the sides of the reduction cell.

Soderberg process means a method of primary aluminum reduction in which the anode paste mixture is baked in the reduction pot by the heat resulting from the electrolytic process.

Total fluorides (TF) means elemental fluorine and all fluoride compounds as measured by Methods 13A or 13B in appendix A to part 60 of this chapter or by an approved alternative method.

Vertical stud Soderberg (VSS) process means a method of primary aluminum reduction using the Soderberg process, in which the electrical current is introduced to the anode by steel rods (studs) inserted into the top of a monolithic anode.

Vertical stud Soderberg one (VSS1) means all existing vertical stud Soderberg potlines located either at Northwest Aluminum in The Dalles, Oregon, or at Goldendale Aluminum in Goldendale, Washington.

Vertical stud Soderberg two (VSS2) means all existing vertical stud Soderberg potlines located at Columbia Falls Aluminum in Columbia Falls, Montana.

§ 63.843 Emission limits for existing sources.

(a) *Potlines.* The owner or operator shall not discharge or cause to be discharged into the atmosphere any emissions of TF or POM in excess of the applicable limits in paragraphs (a)(1) and (a)(2) of this section.

(1) *TF limits.* Emissions of TF shall not exceed:

(i) 0.95 kg/Mg (1.9 lb/ton) of aluminum produced for each CWPB1 potline;

(ii) 1.5 kg/Mg (3.0 lb/ton) of aluminum produced for each CWPB2 potline;

(iii) 1.25 kg/Mg (2.5 lb/ton) of aluminum produced for each CWPB3 potline;

(iv) 0.8 kg/Mg (1.6 lb/ton) of aluminum produced for each SWPB potline;

(v) 1.1 kg/Mg (2.2 lb/ton) of aluminum produced for each VSS1 potline;

(vi) 1.35 kg/Mg (2.7 lb/ton) of aluminum produced for each VSS2 potline; and

(vii) 1.35 kg/Mg (2.7 lb/ton) of aluminum produced for each HSS potline.

(2) *POM limits.* Emissions of POM shall not exceed:

(i) 2.35 kg/Mg (4.7 lb/ton) of aluminum produced for each HSS potline;

(ii) 1.2 kg/Mg (2.4 lb/ton) of aluminum produced for each VSS1 potline; and

(iii) 1.8 kg/Mg (3.6 lb/ton) of aluminum produced for each VSS2 potline.

(3) *Change in subcategory.* Any potline, other than a reconstructed potline, that is changed such that its applicable subcategory also changes shall meet the applicable emission limit in this subpart for the original subcategory or the new subcategory, whichever is more stringent.

(b) *Paste production plants.* The owner or operator shall install, operate, and maintain equipment to capture and control POM emissions from each paste production plant.

(1) The emission capture system shall be installed and operated to meet the generally accepted engineering standards for minimum exhaust rates as published by the American Conference of Governmental Industrial Hygienists in Chapters 3 and 5 of "Industrial Ventilation: A Handbook of Recommended Practice" (incorporated by reference in § 63.841 of this part); and

(2) Captured emissions shall be routed through a closed system to a dry coke scrubber; or

(3) The owner or operator may submit a written request for use of an alternative control device to the applicable regulatory authority for review and approval. The request shall contain information and data demonstrating that the alternative control device achieves POM emissions less than 0.011 lb/ton of paste for plants with continuous mixers or POM emissions less than 0.024 lb/ton of paste for plants with batch mixers. The POM emission rate shall be determined by sampling using Method 315 in appendix A to this part.

(c) *Anode bake furnaces.* The owner or operator shall not discharge or cause to be discharged into the atmosphere any emissions of TF or POM in excess of the limits in paragraphs (c)(1) and (c)(2) of this section.

(1) *TF limit.* Emissions of TF shall not exceed 0.10 kg/Mg (0.20 lb/ton) of green anode; and

(2) *POM limit.* Emissions of POM shall not exceed 0.09 kg/Mg (0.18 lb/ton) of green anode.

§ 63.844 Emission limits for new or reconstructed sources.

(a) *Potlines.* The owner or operator shall not discharge or cause to be discharged into the atmosphere any emissions of TF or POM in excess of the limits in paragraphs (a)(1) and (a)(2) of this section.

(1) *TF limit.* Emissions of TF shall not exceed 0.6 kg/Mg (1.2 lb/ton) of aluminum produced; and

(2) *POM limit.* Emissions of POM from Soderberg potlines shall not exceed 0.32 kg/Mg (0.63 lb/ton) of aluminum produced.

(b) *Paste production plants.* The owner or operator shall meet the requirements in § 63.843(b) for existing paste production plants.

(c) *Anode bake furnaces.* The owner or operator shall not discharge or cause to be discharged into the atmosphere any emissions of TF or POM in excess of the limits in paragraphs (c)(1) and (c)(2) of this section.

(1) *TF limit.* Emissions of TF shall not exceed 0.01 kg/Mg (0.02 lb/ton) of green anode; and

(2) *POM limit.* Emissions of POM shall not exceed 0.025 kg/Mg (0.05 lb/ton) of green anode.

(d) *Pitch storage tanks.* Each pitch storage tank shall be equipped with an emission control system designed and operated to reduce inlet emissions of POM by 95 percent or greater.

§ 63.845 Incorporation of new source performance standards for potroom groups.

(a) *Applicability.* The provisions in paragraphs (a) through (i) of this section shall apply to any Soderberg, CWPB2, and CWPB3 potline that adds a new potroom group to an existing potline or that is associated with a potroom group that meets the definition of "modified potroom group" or "reconstructed potroom group."

(1) The following shall not, by themselves, be considered to result in a potroom group modification:

(i) Maintenance, repair, and replacement that the applicable regulatory authority determines to be routine for the potroom group;

(ii) An increase in production rate of an existing potroom group, if that increase can be accomplished without a capital expenditure on that potroom group;

(iii) An increase in the hours of operation;

(iv) Use of an alternative fuel or raw material if, prior to the effective date of this subpart, the existing potroom group was designed to accommodate that alternative use;

(v) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system that the applicable regulatory authority determines to be less environmentally beneficial; and

(vi) The relocation or change in ownership of an existing potroom group.

(2) The provisions in paragraphs (a)(2)(i) through (a)(2)(iv) of this section apply when the applicable regulatory authority must determine if a potroom group meets the definition of reconstructed potroom group.

(i) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(ii) If an owner or operator of an existing potroom group proposes to replace components, and the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new potroom group, he/she shall notify the applicable regulatory authority of the proposed replacements. The notice must be postmarked 60 days (or as soon as practicable) before construction of the replacements is commenced and must include the following information:

(A) Name and address of the owner or operator;

(B) The location of the existing potroom group;

(C) A brief description of the existing potroom group and the components that are to be replaced;

(D) A description of the existing air pollution control equipment and the proposed air pollution control equipment;

(E) An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new potroom group;

(F) The estimated life of the existing potroom group after the replacements; and

(G) A discussion of any economic or technical limitations the potroom group may have in complying with the applicable standards of performance after the proposed replacements.

(iii) The applicable regulatory authority will determine, within 30 days of the receipt of the notice required by paragraph (a)(2)(ii) of this section and any additional information he/she may reasonably require, whether the proposed replacement constitutes a reconstructed potroom group.

(iv) The applicable regulatory authority's determination under paragraph (a)(2)(iii) of this section shall be based on:

(A) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new potroom group;

(B) The estimated life of the potroom group after the replacements compared to the life of a comparable entirely new potroom group;

(C) The extent to which the components being replaced cause or contribute to the emissions from the potroom group; and

(D) Any economic or technical limitations on compliance with applicable standards of performance that are inherent in the proposed replacements.

(b) *Lower TF emission limit.* The owner or operator shall calculate a lower TF emission limit for any potline associated with the modified potroom group, reconstructed potroom group, or new potroom group using the following equation:

$$L_1 = f_1 \times L_{PG1} + (1 - f_1) \times L_{PL}$$

Where

L_1=the lower TF emission limit in kg/Mg (lb/ton);

f_1=the fraction of the potline's total aluminum production capacity that is contained within all modified potroom groups, reconstructed potroom groups, and new potroom groups;

L_{PG1}=0.95 kg/Mg (1.9 lb/ton) for prebake potlines and 1.0 kg/Mg (2.0 lb/ton) for Soderberg potlines; and

L_{PL}=the TF emission limit from § 63.843(a)(1) for the appropriate potline subcategory that would have otherwise applied to the potline.

(c) *Upper TF emission limit.* The owner or operator shall calculate an upper TF emission limit for any potline associated with the modified potroom group, reconstructed potroom group, or new potroom group using the following equation:

$$L_2 = f_1 \times L_{PG2} + (1 - f_1) \times L_{PL}$$

Where

L_2=the upper TF emission limit in kg/Mg (lb/ton); and

L_{PG2}=1.25 kg/Mg (2.5 lb/ton) for prebake potlines and 1.3 kg/Mg (2.6 lb/ton) for Soderberg potlines.

(d) *Recalculation.* The TF emission limits in paragraphs (b) and (c) of this section shall be recalculated each time a new potroom group is added to the potline and each time an additional potroom group meets the definition of "modified potroom group" or "reconstructed potroom group."

(e) *Emission limitation.* The owner or operator shall not discharge or cause to be discharged into the atmosphere emissions of TF from any potline

associated with the modified potroom group, reconstructed potroom group, or new potroom group that exceed the lower emission limit calculated in paragraph (b) of this section, except that emissions less than the upper limit calculated in paragraph (c) of this section will be considered in compliance if the owner or operator demonstrates that exemplary operation and maintenance procedures were used with respect to the emission control system and that proper control equipment was operating at the potline during the performance test.

(f) *Report.* Within 30 days of any performance test that reveals emissions that fall between the lower limit calculated in paragraph (b) of this section and the upper limit calculated in paragraph (c) of this section, the owner or operator shall submit to the applicable regulatory authority a report indicating whether all necessary control devices were online and operating properly during the performance test, describing the operating and maintenance procedures followed, and setting forth any explanation for the excess emissions.

(g) *Procedures to determine TF emissions.* The owner or operator shall determine TF emissions for the potline using the following procedures:

(1) Determine the emission rate of TF in kg/Mg (lb/ton) from sampling secondary emissions and the primary control system for all new potroom groups, modified potroom groups, and reconstructed potroom groups using the procedures, equations, and test methods in §§ 63.847, 63.848, and 63.849.

(2) Determine the emission rate of TF in kg/Mg (lb/ton) from sampling secondary emissions and the primary control system for potroom groups or sections of potroom groups within the potline that are not new potroom groups, modified potroom groups, or reconstructed potroom groups according to paragraphs (g)(2)(i) or (g)(2)(ii) of this section.

(i) Determine the mass emission rate of TF in kg/Mg (lb/ton) from at least one potroom group within the potline that is not a new potroom group, modified potroom group, or reconstructed potroom group using the procedures, equations, and test methods in §§ 63.847, 63.848, and 63.849, or

(ii) Use the results of the testing required by paragraph (g)(1) of this section to represent the entire potline based on a demonstration that the results are representative of the entire potline. Representativeness shall be based on showing that all of the potroom groups associated with the potline are substantially equivalent in terms of their structure, operability, type of emissions, volume of emissions, and concentration of emissions.

(3) Calculate the TF emissions for the potline in kg/Mg (lb/ton) based on the production-weighted average of the TF emission rates from paragraphs (g)(1) and (g)(2) of this section using the following equation:

$$E = f_1 \times E_{PG1} + (1\text{-}f_1) \times E_{PL}$$

where

E=the TF emission rate for the entire potline, kg/Mg (lb/ton);

f_1=the fraction of the potline's total aluminum production rate that is contained within all modified potroom groups, reconstructed potroom groups, and new potroom groups;

E_{PG1}=the TF emission rate from paragraph (g)(1) of this section for all modified potroom groups, reconstructed potroom groups, and new potroom groups, kg/Mg (lb/ton); and

E_{PL}=the TF emission rate for the balance of the potline from paragraph (g)(2) of this section, kg/Mg (lb/ton).

Compliance is demonstrated when TF emissions for the potline meet the requirements in paragraph (e) of this section.

(4) As an alternative to sampling as required in paragraphs (g)(1) and (g)(2) of this section, the owner or operator may perform representative sampling of the entire potline subject to the approval of the applicable regulatory authority. Such sampling shall provide coverage by the sampling equipment of both the new, modified, or reconstructed potroom group and the balance of the potline. The coverage for the new, modified, or reconstructed potroom group must meet the criteria specified in the reference methods in § 63.849. TF emissions shall be determined for the potline using the procedures, equations, and test methods in §§ 63.847, 63.848, and 63.849. Compliance is demonstrated when TF emissions for the potline meet the requirements in paragraph (e) of this section.

(h) *Opacity.* Except as provided in paragraph (i) of this section, the owner or operator shall not discharge or cause to be discharged into the atmosphere from the modified potroom group, reconstructed potroom group, or new potroom group any emissions of gases that exhibit 10 percent opacity or greater.

(i) *Alternative opacity limit.* An alternative opacity limit may be established in place of the opacity limit in paragraph (h) of this section using the following procedures:

(1) If the regulatory authority finds that a potline is in compliance with the applicable TF standard for which performance tests are conducted in accordance with the methods and procedures in § 63.849 but during the time such performance tests are being conducted fails to meet any applicable opacity standard, the regulatory authority shall notify and advise the owner or operator that he/she may petition the regulatory authority within 10 days of receipt of notification to make appropriate adjustment to the opacity standard.

(2) The regulatory authority will grant such a petition upon a demonstration by the owner or operator that the potroom group and associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests; that the performance tests were performed under the conditions established by the regulatory authority; and that the potroom group and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.

(3) As indicated by the performance and opacity tests, the regulatory authority will establish an opacity standard for any potroom group meeting the requirements in paragraphs (i)(1) and (i)(2) of this section such that the opacity standard could be met by the potroom group at all times during which the potline is meeting the TF emission limit.

(4) The alternative opacity limit established in paragraph (i)(3) of this section shall not be greater than 20 percent opacity.

§ 63.846 Emission averaging.

(a) *General.* The owner or operator of an existing potline or anode bake furnace in a State that does not choose to exclude emission averaging in the approved operating permit program may demonstrate compliance by emission averaging according to the procedures in this section.

(b) *Potlines.* The owner or operator may average TF emissions from potlines and demonstrate compliance with the limits in Table 1 of this subpart using the procedures in paragraphs (b)(1) and (b)(2) of this section. The owner or operator also may average POM emissions from potlines and demonstrate compliance with the limits in Table 2 of this subpart using the procedures in paragraphs (b)(1) and (b)(3) of this section.

(1) Monthly average emissions of TF and/or quarterly average emissions of POM shall not exceed the applicable emission limit in Table 1 of this subpart (for TF emissions) and/or Table 2 of this subpart (for POM emissions). The emission rate shall be calculated based on the total emissions from all potlines over the period divided by the quantity of aluminum produced during the period, from all potlines comprising the averaging group.

(2) To determine compliance with the applicable emission limit in Table 1 of this subpart for TF emissions, the owner or operator shall determine the monthly average emissions (in lb/ton) from each potline from at least three runs per potline each month for TF secondary emissions using the procedures and methods in §§ 63.847 and 63.849. The owner or operator shall combine the results of secondary TF monthly average emissions with the TF results for the primary control system and divide total emissions by total aluminum production.

(3) To determine compliance with the applicable emission limit in Table 2 of this subpart for POM emissions, the owner or operator shall determine the quarterly average emissions (in lb/ton) from each potline from at least one run each month for POM emissions using the procedures and methods in §§ 63.847 and 63.849. The owner or operator shall combine the results of secondary POM quarterly average emissions with the POM results for the primary control system and divide total emissions by total aluminum production.

(c) *Anode bake furnaces.* The owner or operator may average TF emissions from anode bake furnaces and demonstrate compliance with the limits in Table 3 of this subpart using the procedures in paragraphs (c)(1) and (c)(2) of this section. The owner or operator also may average POM emissions from anode bake furnaces and demonstrate compliance with the limits in Table 3 of this subpart using the procedures in paragraphs (c)(1) and (c)(2) of this section.

(1) Annual emissions of TF and/or POM from a given number of anode bake furnaces making up each averaging group shall not exceed the applicable emission limit in Table 3 of this subpart in any one year; and

(2) To determine compliance with the applicable emission limit in Table 3 of this subpart for anode bake furnaces, the owner or operator shall determine TF and/or POM emissions from the control device for each furnace at least once a year using the procedures and methods in §§ 63.847 and 63.849.

(d) *Implementation plan.* The owner or operator shall develop and submit an implementation plan for emission averaging to the applicable regulatory authority for review and approval according to the following procedures and requirements:

(1) *Deadlines.* The owner or operator must submit the implementation plan no later than 6 months before the date that the facility intends to comply with the emission averaging limits.

(2) *Contents.* The owner or operator shall include the following information in the implementation plan or in the application for an operating permit for all emission sources to be included in an emissions average:

(i) The identification of all emission sources (potlines or anode bake furnaces) in the average;

(ii) The assigned TF or POM emission limit for each averaging group of potlines or anode bake furnaces;

(iii) The specific control technology or pollution prevention measure to be used for each emission source in the averaging group and the date of its installation or application. If the pollution prevention measure reduces or eliminates emissions from multiple sources, the owner or operator must identify each source;

(iv) The test plan for the measurement of TF or POM emissions in accordance with the requirements in § 63.847(b);

(v) The operating parameters to be monitored for each control system or device and a description of how the operating limits will be determined;

(vi) If the owner or operator requests to monitor an alternative operating parameter pursuant to § 63.848(l):

(A) A description of the parameter(s) to be monitored and an explanation of the criteria used to select the parameter(s); and

(B) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device; the frequency and content of monitoring, reporting, and recordkeeping requirements; and a demonstration, to the satisfaction of the applicable regulatory authority, that the proposed monitoring frequency is sufficient to represent control device operating conditions; and

(vii) A demonstration that compliance with each of the applicable emission limit(s) will be achieved under representative operating conditions.

(3) *Approval criteria.* Upon receipt, the regulatory authority shall review and approve or disapprove the plan or permit application according to the following criteria:

(i) Whether the content of the plan includes all of the information specified in paragraph (d)(2) of this section; and

(ii) Whether the plan or permit application presents sufficient information to determine that compliance will be achieved and maintained.

(4) *Prohibitions.* The applicable regulatory authority shall not approve an implementation plan or permit application containing any of the following provisions:

(i) Any averaging between emissions of differing pollutants or between differing sources. Emission averaging shall not be allowed between TF and POM, and emission averaging shall not be allowed between potlines and bake furnaces;

(ii) The inclusion of any emission source other than an existing potline or existing anode bake furnace or the inclusion of any potline or anode bake plant not subject to the same operating permit;

(iii) The inclusion of any potline or anode bake furnace while it is shut down; or

(iv) The inclusion of any periods of startup, shutdown, or malfunction, as described in the startup, shutdown, and malfunction plan required by § 63.850(c), in the emission calculations.

(5) *Term.* Following review, the applicable regulatory authority shall approve the plan or permit application, request changes, or request additional information. Once the applicable regulatory authority receives any additional information requested, the applicable regulatory authority shall approve or disapprove the plan or permit application within 120 days.

(i) The applicable regulatory authority shall approve the plan for the term of the operating permit;

(ii) To revise the plan prior to the end of the permit term, the owner or operator shall submit a request to the applicable regulatory authority; and

(iii) The owner or operator may submit a request to the applicable regulatory authority to implement emission averaging after the applicable compliance date.

(6) *Operation.* While operating under an approved implementation plan, the owner or operator shall monitor the operating parameters of each control system, keep records, and submit periodic reports as required for each source subject to this subpart.

§ 63.847 Compliance provisions.

(a) *Compliance dates.* The owner or operator of a primary aluminum plant shall demonstrate initial compliance with the requirements of this subpart by:

(1) October 7, 1999, for an owner or operator of an existing plant or source;

(2) October 9, 2000, for an existing source, provided the owner or operator demonstrates to the satisfaction of the applicable regulatory authority that additional time is needed to install or modify the emission control equipment;

(3) October 8, 2001, for an existing source that is granted an extension by the regulatory authority under section 112(i)(3)(B) of the Act; or

(4) Upon startup, for an owner or operator of a new or reconstructed source.

(b) *Test plan.* The owner or operator shall prepare a site-specific test plan prior to the initial performance test according to the requirements of § 63.7(c) of this part. The test plan must include procedures for conducting the initial performance test and for subsequent performance tests required in § 63.848 for emission monitoring. In addition to the information required by § 63.7, the test plan shall include:

(1) Procedures to ensure a minimum of three runs are performed annually for the primary control system for each source;

(2) For a source with a single control device exhausted through multiple stacks, procedures to ensure that at least three runs are performed annually by a representative sample of the stacks satisfactory to the applicable regulatory authority;

(3) For multiple control devices on a single source, procedures to ensure that at least one run is performed annually for each control device by a representative sample of the stacks satisfactory to the applicable regulatory authority;

(4) Procedures for sampling single stacks associated with multiple anode bake furnaces;

(5) For plants with roof scrubbers, procedures for rotating sampling among the scrubbers or other procedures to obtain representative samples as approved by the applicable regulatory authority;

(6) For a VSS1 potline, procedures to ensure that one fan (or one scrubber) per potline is sampled for each run;

(7) For a SWPB potline, procedures to ensure that the average of the sampling results for two fans (or two scrubbers) per potline is used for each run; and

(8) Procedures for establishing the frequency of testing to ensure that at least one run is performed before the 15th of the month, at least one run is performed after the 15th of the month, and that there are at least 6 days between two of the runs during the month, or that secondary emissions are measured according to an alternate schedule satisfactory to the applicable regulatory authority.

(c) *Initial performance test.* Following approval of the site-specific test plan, the owner or operator shall conduct an initial performance test during the first month following the compliance date in accordance with the procedures in paragraph (d) of this section. If a performance test has been conducted on the primary control system for potlines or for the anode bake furnace within the 12 months prior to the compliance date, the results of that performance test may be used to determine initial compliance.

(d) *Performance test requirements.* The initial performance test and all subsequent performance tests shall be conducted in accordance with the requirements of the general provisions in subpart A of this part, the approved test plan, and the procedures in this section.

(1) *TF emissions from potlines.* For each potline, the owner or operator shall measure and record the emission rate of TF exiting the outlet of the primary control system for each potline and the rate of secondary emissions exiting through each roof monitor, or for a plant with roof scrubbers, exiting through the scrubbers. Using the equation in paragraph (e)(1) of this section, the owner or operator shall compute and record the average of at least three runs each month for secondary emissions and at least three runs each year for the primary control system to determine compliance with the applicable emission limit. Compliance is demonstrated when the emission rate of TF is equal to or less than the applicable emission limit in §§ 63.843, 63.844, or 63.846.

(2) *POM emissions from Soderberg potlines.* For each Soderberg (HSS, VSS1, and VSS2) potline, the owner or operator shall measure and record the emission rate of POM exiting the primary emission control system and the rate of secondary emissions exiting through each roof monitor, or for a plant with roof scrubbers, exiting through the scrubbers. Using the equation in paragraph (e)(2) of this section, the owner or operator shall compute and record the average of at least three runs each quarter (one run per month) for secondary emissions and at least three runs each year for the primary control system to determine compliance with the applicable emission limit. Compliance is demonstrated when the emission rate of POM is equal to or less than the applicable emission limit in §§ 63.843, 63.844, or 63.846.

(3) *Previous control device tests.* If the owner or operator has performed more than one test of primary emission control device(s) for a potline or for a bake furnace during the previous consecutive 12 months, the average of all runs performed in the previous 12-month period shall be used to determine the contribution from the primary emission control system.

(4) *TF and POM emissions from anode bake furnaces.* For each anode bake furnace, the owner or operator shall measure and record the emission rate of TF and POM exiting the exhaust stacks(s) of the primary emission control system for each anode bake furnace. Using the equations in paragraphs (e)(3) and (e)(4) of this section, the owner or operator shall compute and record the average of at least three runs each year to determine compliance with the applicable emission limits for TF and POM. Compliance is demonstrated when the emission rates of TF and POM are equal to or less than the applicable TF and POM emission limits in §§ 63.843, 63.844, or 63.846.

(e) *Equations.* The owner or operator shall determine compliance with the applicable TF and POM emission limits using the following equations and procedures:

(1) Compute the emission rate (E_p) of TF from each potline using Equation 1:

$$E_p = \frac{\left[\left(C_{s1} \times Q_{sd}\right)_1 + \left(C_{s2} \times Q_{sd}\right)_2\right]}{(P \times K)} \qquad \text{(Equation 1)}$$

Where

E_p=emission rate of TF from a potline, kg/Mg (lb/ton);

C_{s1}=concentration of TF from the primary control system, mg/dscm (mg/dscf);

Q_{sd}=volumetric flow rate of effluent gas corresponding to the appropriate subscript location, dscm/hr (dscf/hr);

C_{s2}=concentration of TF as measured for roof monitor emissions, mg/dscm (mg/dscf);

P=aluminum production rate, Mg/hr (ton/hr);

K=conversion factor, 10^6 mg/kg (453,600 mg/lb);

1 = subscript for primary control system effluent gas; and

2 = subscript for secondary control system or roof monitor effluent gas.

(2) Compute the emission rate of POM from each potline using Equation 1,

Where:

E_p = emission rate of POM from the potline, kg/mg (lb/ton); and

C_s = concentration of POM, mg/dscm (mg/dscf). POM emission data collected during the installation and startup of a cathode shall not be included in C_s.

(3) Compute the emission rate (E_b) of TF from each anode bake furnace using Equation 2,

$$E_b = \frac{(C_s \times Q_{sd})}{(P_b \times K)} \qquad \text{(Equation 2)}$$

Where:

E_b = emission rate of TF, kg/mg (lb/ton) of green anodes produced;

C_s = concentration of TF, mg/dscm (mg/dscf);

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr);

P_b = quantity of green anode material placed in the furnace, mg/hr (ton/hr); and

K = conversion factor, 10^6 mg/kg (453,600 mg/lb).

(4) Compute the emission rate of POM from each anode bake furnace using Equation 2,

Where:

C_s = concentration of POM, mg/dscm (mg/dscf).

(5) Determine the weight of the aluminum tapped from the potline and the weight of the green anode material placed in the anode bake furnace using the monitoring devices required in § 63.848(j).

(6) Determine the aluminum production rate (P) by dividing the number of hours in the calendar month into the weight of aluminum tapped from the potline during the calendar month that includes the three runs of a performance test.

(7) Determine the rate of green anode material introduced into the furnace by dividing the number of operating hours in the calendar month into the weight of green anode material used during the calendar month in which the performance test was conducted.

(f) *Paste production plants.* Initial compliance with the standards for existing and new paste production plants in §§ 63.843(b) and 63.844(b) will be demonstrated through site inspection(s) and review of site records by the applicable regulatory authority.

(g) *Pitch storage tanks.* The owner or operator shall demonstrate initial compliance with the standard for pitch storage tanks in § 63.844(d) by preparing a design evaluation or by conducting a performance test. The owner or operator shall submit for approval by the regulatory authority the information specified in paragraph (g)(1) of this section, along with the information specified in paragraph (g)(2) of this section where a design evaluation is performed or the information specified in paragraph (g)(3) of this section where a performance test is conducted.

(1) A description of the parameters to be monitored to ensure that the control device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed; and

(2) Where a design evaluation is performed, documentation demonstrating that the control device used achieves the required control efficiency during reasonably expected maximum filling rate. The documentation shall include a description of the gas stream that enters the control device, including flow and POM content under varying liquid level conditions, and the information specified in paragraphs (g)(2)(i) through (g)(2)(vi) of this section, as applicable.

(i) If the control device receives vapors, gases, or liquids, other than fuels, from emission points other than pitch storage tanks, the efficiency demonstration is to include consideration of all vapors, gases, and liquids, other than fuels, received by the control device;

(ii) If an enclosed combustion device with a minimum residence time of 0.5 seconds and a minimum temperature of 760°C (1,400°F) is used to meet the emission reduction requirement specified in § 83.844(d), documentation that those conditions exist is sufficient to meet the requirements of § 83.844(d);

(iii) Except as provided in paragraph (g)(2)(ii) of this section, for thermal incinerators, the design evaluation shall include the autoignition temperature of the organic HAP, the flow rate of the organic HAP emission stream, the combustion temperature, and the residence time at the combustion temperature;

(iv) If the pitch storage tank is vented to the emission control system installed for control of emissions from the paste production plant pursuant to § 63.843(b), documentation of compliance with the requirements of § 63.843(b) is sufficient to meet the requirements of § 63.844(d);

(v) For carbon adsorbers, the design evaluation shall include the affinity of the organic vapors for carbon, the amount of carbon in each bed, the number of beds, the humidity of the feed gases, the temperature of the feed gases, the flow rate of the organic HAP emission stream, and if applicable, the desorption schedule, the regeneration stream pressure or temperature, and the flow rate of the regeneration stream. For vacuum desorption, the pressure drop shall be included; and

(vi) For condensers, the design evaluation shall include the final temperature of the organic HAP vapors, the type of condenser, and the design flow rate of the organic HAP emission stream.

(3) If a performance test is conducted, the owner or operator shall determine the control efficiency for POM during tank loading using Method 315 in appendix A to this part. The owner or operator shall include the following information:

(i) Identification of the pitch storage tank and control device for which the performance test will be submitted; and

(ii) Identification of the emission point(s) that share the control device with the pitch storage tank and for which the performance test will be conducted.

(h) *Selection of monitoring parameters.* The owner or operator shall determine the operating limits and monitoring frequency for each control device that is to be monitored as required in § 63.848(f).

(1) For potlines and anode bake furnaces, the owner or operator shall determine upper and/or lower operating limits, as appropriate, for each monitoring device for the emission control system from the values recorded during each of the runs performed during the initial performance test and from historical data from previous performance tests conducted by the methods specified in this subpart.

(2) For a paste production plant, the owner or operator shall specify and provide the basis or rationale for selecting parameters to be monitored and the associated operating limits for the emission control device.

(3) The owner or operator may redetermine the upper and/or lower operating limits, as appropriate, based on historical data or other information and submit an application to the applicable regulatory authority to change the applicable limit(s). The redetermined limits shall become

effective upon approval by the applicable regulatory authority.

§ 63.848 Emission monitoring requirements.

(a) *TF emissions from potlines.* Using the procedures in § 63.847 and in the approved test plan, the owner or operator shall monitor emissions of TF from each potline by conducting monthly performance tests. The owner or operator shall compute and record the monthly average from at least three runs for secondary emissions and the previous 12-month average of all runs for the primary control system to determine compliance with the applicable emission limit. The owner or operator must include all valid runs in the monthly average. The duration of each run for secondary emissions must represent a complete operating cycle.

(b) *POM emissions from Soderberg potlines.* Using the procedures in § 63.847 and in the approved test plan, the owner or operator shall monitor emissions of POM from each Soderberg (HSS, VSS1, and VSS2) potline every three months. The owner or operator shall compute and record the quarterly (3-month) average from at least one run per month for secondary emissions and the previous 12-month average of all runs for the primary control systems to determine compliance with the applicable emission limit. The owner or operator must include all valid runs in the quarterly (3-month) average. The duration of each run for secondary emissions must represent a complete operating cycle. The primary control system must be sampled over an 8-hour period, unless site-specific factors dictate an alternative sampling time subject to the approval of the regulatory authority.

(c) *TF and POM emissions from anode bake furnaces.* Using the procedures in § 63.847 and in the approved test plan, the owner or operator shall monitor TF and POM emissions from each anode bake furnace on an annual basis. The owner or operator shall compute and record the annual average of TF and POM emissions from at least three runs to determine compliance with the applicable emission limits. The owner or operator must include all valid runs in the annual average.

(d) *Similar potlines.* As an alternative to monthly monitoring of TF or POM secondary emissions from each potline using the test methods in § 63.849, the owner or operator may perform monthly monitoring of TF or POM secondary emissions from one potline using the test methods in §§ 63.849 (a) or (b) to represent the performance of similar potline(s). The similar potline(s) shall be monitored using an alternative method that meets the requirements of paragraphs (d)(1) through (d)(7) of this section. Two or more potlines are similar if the owner or operator demonstrates that their structure, operability, type of emissions, volume of emissions, and concentration of emissions are substantially equivalent.

(1) To demonstrate (to the satisfaction of the regulatory authority) that the level of emission control performance is the same or better, the owner or operator shall perform an emission test using an alternative monitoring procedure for the similar potline simultaneously with an emission test using the applicable test methods. The results of the emission test using the applicable test methods must be in compliance with the applicable emission limit for existing or new potlines in §§ 63.843 or 63.844. An alternative method:

(i) For TF emissions, must account for or include gaseous fluoride and cannot be based on measurement of particulate matter or particulate fluoride alone; and

(ii) For TF and POM emissions, must meet or exceed Method 14 criteria.

(2) An HF continuous emission monitoring system is an approved alternative for the monitoring of TF secondary emissions.

(3) An owner or operator electing to use an alternative monitoring procedure shall establish an alternative emission limit based on at least nine simultaneous runs using the applicable test methods and the alternative monitoring method. All runs must represent a full process cycle.

(4) The owner or operator shall derive an alternative emission limit for the HF continuous emission monitor or an alternative method using either of the following procedures:

(i) Use the highest value from the alternative method associated with a simultaneous run by the applicable test method that does not exceed the applicable emission limit; or

(ii) Correlate the results of the two methods (the applicable test method results and the alternative monitoring method results) and establish an emission limit for the alternative monitoring system that corresponds to the applicable emission limit.

(5) The owner or operator shall submit the results required in paragraph (d)(4) of this section and all supporting documentation to the applicable regulatory authority for review and approval.

(6) The regulatory authority shall review and approve or disapprove the request for an alternative method and alternative emission limit. The criterion for approval shall be a demonstration (to the satisfaction of the regulatory authority) that the alternative method and alternative emission limit achieve a level of emission control that is the same as or better than the level that would have otherwise been achieved by the applicable method and emission limit.

(7) If the alternative method is approved by the applicable regulatory authority, the owner or operator shall perform monthly emission monitoring using the approved alternative monitoring procedure to demonstrate compliance with the alternative emission limit for each similar potline.

(e) *Reduced sampling frequency.* The owner or operator may submit a written request to the applicable regulatory authority to establish an alternative testing requirement to reduce the sampling of secondary TF emissions from potlines from monthly to quarterly.

(1) In the request, the owner or operator shall provide information and data demonstrating, to the satisfaction of the applicable regulatory authority, that secondary emissions of TF from potlines have low variability during normal operations using the procedures in paragraphs (e)(1)(i) or (e)(1)(ii) of this section.

(i) Submit data from 24 consecutive months of sampling that show the average TF emissions are less than 60 percent of the applicable limit and that no monthly performance test in the 24 months of sampling exceeds 75 percent of the applicable limit; or

(ii) Submit data and a statistical analysis that the regulatory authority may evaluate based on the approach used in "Primary Aluminum: Statistical Analysis of Potline Fluoride Emissions and Alternative Sampling Frequency" (EPA–450–86–012, October 1986), which is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

(2) An approved alternative requirement must include a test schedule and the method to be used to measure emissions for performance tests.

(3) The owner or operator of a plant that has received approval of an alternative sampling frequency under § 60.194 of this chapter is deemed to have approval of the alternative sampling frequency under this subpart.

(4) If emissions in excess of the applicable TF limit occur while performing quarterly sampling approved under paragraph (e)(1)(i) of this section, the owner or operator shall return to monthly sampling for at least 12 months and may reduce to quarterly sampling when:

(i) The average of all tests performed over the most recent 24-month period does not exceed 60 percent of the applicable limit, and

(ii) No more than one monthly performance test in the most recent 24-month period exceeds 75 percent of the applicable limit.

(5) If emissions in excess of the applicable TF limit occur while performing quarterly sampling approved under paragraph (e)(1)(ii) of this section, the owner or operator shall immediately return to the monthly sampling schedule required by paragraph (a) of this section until another request for an alternative sampling frequency is approved by the applicable regulatory authority.

(f) *Monitoring parameters for emission control devices.* The owner or operator shall install, operate, calibrate, and maintain a continuous parameter monitoring system for each emission control device. The owner or operator shall submit for approval by the regulatory authority a description of the parameter(s) to be monitored, the operating limits, and the monitoring frequency to ensure that the control device is being properly operated and maintained. An explanation of the criteria used for selection of the parameter(s), the operating limits, and the monitoring frequency, including how these relate to emission control also shall be submitted to the regulatory authority. Except as provided in paragraph (l) of this section, the following monitoring devices shall be installed:

(1) For dry alumina scrubbers, devices for the measurement of alumina flow and air flow;

(2) For dry coke scrubbers, devices for the measurement of coke flow and air flow;

(3) For wet scrubbers as the primary control system, devices for the measurement of water flow and air flow;

(4) For electrostatic precipitators, devices for the measurement of voltage and secondary current; and

(5) For wet roof scrubbers for secondary emission control:

(i) A device for the measurement of total water flow; and

(ii) The owner or operator shall inspect each control device at least once each operating day to ensure the control device is operating properly and record the results of each inspection.

(g) *Visible emissions.* The owner or operator shall visually inspect the exhaust stack(s) of each control device on a daily basis for evidence of any visible emissions indicating abnormal operation.

(h) *Corrective action.* If a monitoring device for a primary control device measures an operating parameter outside the limit(s) established pursuant to § 63.847(h), if visible emissions indicating abnormal operation are observed from the exhaust stack of a control device during a daily inspection, or if a problem is detected during the daily inspection of a wet roof scrubber for potline secondary emission control, the owner or operator shall initiate the corrective action procedures identified in the startup, shutdown, and malfunction plan within 1 hour. Failure to initiate the corrective action procedures within 1 hour or to take the necessary corrective actions to remedy the problem is a violation.

(i) *Exceedances.* If the limit for a given operating parameter associated with monitoring a specific control device is exceeded six times in any semiannual reporting period, then any subsequent exceedance in that reporting period is a violation. For the purpose of determining the number of exceedances, no more than one exceedance shall be attributed in any given 24-hour period.

(j) *Weight of aluminum and green anodes.* The owner or operator of a new or existing potline or anode bake furnace shall install, operate, and maintain a monitoring device to determine the daily weight of aluminum produced and the weight of green anode material placed in the anode bake furnace. The weight of green anode material may be determined by monitoring the weight of all anodes or by monitoring the number of anodes placed in the furnace and determining an average weight from measurements of a representative sample of anodes.

(k) *Accuracy and calibration.* The owner or operator shall submit recommended accuracy requirements to the regulatory authority for review and approval. All monitoring devices required by this section must be certified by the owner or operator to meet the accuracy requirements and must be calibrated in accordance with the manufacturer's instructions.

(l) *Alternative operating parameters.* The owner or operator may monitor alternative control device operating parameters subject to prior written approval by the applicable regulatory authority.

(m) *Other control systems.* An owner or operator using a control system not identified in this section shall request that the applicable regulatory authority include the recommended parameters for monitoring in the facility's part 70 permit.

§ 63.849 Test methods and procedures.

(a) The owner or operator shall use the following reference methods to determine compliance with the applicable emission limits for TF and POM emissions:

(1) Method 1 in appendix A to part 60 of this chapter for sample and velocity traverses;

(2) Method 2 in appendix A to part 60 of this chapter for velocity and volumetric flow rate;

(3) Method 3 in appendix A to part 60 of this chapter for gas analysis;

(4) Method 13A or Method 13B in appendix A to part 60 of this chapter, or an approved alternative, for the concentration of TF where stack or duct emissions are sampled;

(5) Method 13A or Method 13B and Method 14 or Method 14A in appendix A to part 60 of this chapter or an approved alternative method for the concentration of TF where emissions are sampled from roof monitors not employing wet roof scrubbers;

(6) Method 315 in appendix A to this part or an approved alternative method for the concentration of POM where stack or duct emissions are sampled; and

(7) Method 315 in appendix A to this part and Method 14 in appendix A to part 60 of this chapter or an approved alternative method for the concentration of POM where emissions are sampled from roof monitors not employing wet roof scrubbers.

(b) The owner or operator of a VSS potline or a SWPB potline equipped with wet roof scrubbers for the control of secondary emissions shall use methods that meet the intent of the sampling requirements of Method 14 in appendix A to part 60 of this chapter and that are approved by the State. Sample analysis shall be performed using Method 13A or Method 13B in appendix A to part 60 of this chapter for TF, Method 315 in appendix A to this part for POM, or an approved alternative method.

(c) Except as provided in § 63.845(g)(1), references to "potroom" or "potroom group" in Method 14 in appendix A to part 60 of this chapter shall be interpreted as "potline" for the purposes of this subpart.

(d) For sampling using Method 14 in appendix A to part 60 of this chapter, the owner or operator shall install one Method 14 manifold per potline in a potroom that is representative of the entire potline, and this manifold shall meet the installation requirements specified in section 2.2.1 of Method 14 in appendix A to part 60 of this chapter.

(e) The owner or operator may use an alternative test method for TF or POM emissions providing:

(1) The owner or operator has already demonstrated the equivalency of the alternative method for a specific plant and has received previous approval from the Administrator or the applicable regulatory authority for TF or POM measurements using the alternative method; or

(2) The owner or operator demonstrates to the satisfaction of the applicable regulatory authority that the results from the alternative method meet the criteria specified in §§ 63.848(d)(1) and (d)(3) through (d)(6). The results from the alternative method shall be based on simultaneous sampling using the alternative method and the following reference methods:

(i) For TF, Methods 13 and 14 or Method 14A in appendix A to part 60 of this chapter; or

(ii) For POM, Method 315 in appendix A to this part and Method 14 in appendix A to part 60 of this chapter.

§ 63.850 Notification, reporting, and recordkeeping requirements.

(a) *Notifications.* The owner or operator shall submit the following written notifications:

(1) Notification for an area source that subsequently increases its emissions such that the source is a major source subject to the standard;

(2) Notification that a source is subject to the standard, where the initial startup is before the effective date of the standard;

(3) Notification that a source is subject to the standard, where the source is new or has been reconstructed, the initial startup is after the effective date of the standard, and for which an application for approval of construction or reconstruction is not required;

(4) Notification of intention to construct a new major source or reconstruct a major source; of the date construction or reconstruction commenced; of the anticipated date of startup; of the actual date of startup, where the initial startup of a new or reconstructed source occurs after the effective date of the standard, and for which an application for approval of construction or reconstruction is required [see §§ 63.9(b)(4) and (b)(5)];

(5) Notification of initial performance test;

(6) Notification of initial compliance status;

(7) One-time notification for each affected source of the intent to use an HF continuous emission monitor; and

(8) Notification of compliance approach. The owner or operator shall develop and submit to the applicable regulatory authority, if requested, an engineering plan that describes the techniques that will be used to address the capture efficiency of the reduction cells for gaseous hazardous air pollutants in compliance with the emission limits in §§ 63.843, 63.844, and 63.846.

(b) *Performance test reports.* The owner or operator shall report the results of the initial performance test as part of the notification of compliance status required in paragraph (a)(6) of this section. Except as provided in paragraph (d) of this section, the owner or operator shall submit a summary of all subsequent performance tests to the applicable regulatory authority on an annual basis.

(c) *Startup, shutdown, and malfunction plan and reports.* The owner or operator shall develop and implement a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and control systems used to comply with the standard. The plan does not have to be submitted with the permit appplication or included in the operating permit. The permitting authority may review the plan upon request. In addition to the information required in § 63.6(e)(3), the plan shall include:

(1) Procedures, including corrective actions, to be followed if a monitoring device measures an operating parameter outside the limit(s) established under § 63.847(h), if visible emissions from an exhaust stack indicating abnormal operation of a control device are observed by the owner or operator during the daily inspection required in § 63.848(g), or if a problem is detected during the daily inspection of a wet roof scrubber for potline secondary emission control required in § 63.848(f)(5)(ii); and

(2) The owner or operator shall also keep records of each event as required by § 63.10(b) and record and report if an action taken during a startup, shutdown, or malfunction is not consistent with the prpcedures in the plan as described in § 63.6(e)(3)(iv).

(d) *Excess emissions report.* As required by § 63.10(e)(3), the owner or operator shall submit a report (or a summary report) if measured emissions are in excess of the applicable standard. The report shall contain the information specified in § 63.10(e)(3)(v) and be submitted semiannually unless quarterly reports are required as a result of excess emissions.

(e) *Recordkeeping.* The owner or operator shall maintain files of all information (including all reports and notifications) required by § 63.10(b) and by this subpart.

(1) The owner or operator must retain each record for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The most recent 2 years of records must be retained at the facility. The remaining 3 years of records may be retained offsite;

(2) The owner or operator may retain records on microfilm, on a computer, on computer disks, on magnetic tape, or on microfiche;

(3) The owner or operator may report required information on paper or on a labeled computer disc using commonly available and compatible computer software; and

(4) In addition to the general records required by § 63.10(b), the owner or operator shall maintain records of the following information:

(i) Daily production rate of aluminum;

(ii) Daily production rate of green anode material placed in the anode bake furnace;

(iii) A copy of the startup, shutdown, and malfunction plan;

(iv) Records of design information for paste production plant capture systems;

(v) Records of design information for an alternative emission control device for a paste production plant;

(vi) Records supporting the monitoring of similar potlines demonstrating that the performance of similar potlines is the same as or better than that of potlines sampled by manual methods;

(vii) Records supporting a request for reduced sampling of potlines;

(viii) Records supporting the correlation of emissions measured by a continuous emission monitoring system to emissions measured by manual methods and the derivation of the alternative emission limit derived from the measurements;

(ix) The current implementation plan for emission averaging and any subsequent amendments;

(x) Records, such as a checklist or the equivalent, demonstrating that the daily inspection of a potline with wet roof scrubbers for secondary emission control has been performed as required in § 63.848(f)(5)(ii), including the results of each inspection;

(xi) Records, such as a checklist or the equivalent, demonstrating that the daily visual inspection of the exhaust stack for each control device has been performed as required in § 63.848(g), including the results of each inspection;

(xii) For a potline equipped with an HF continuous emission monitor, records of information and data required by § 63.10(c);

(xiii) Records documenting the corrective actions taken when the limit(s) for an operating parameter established under § 63.847(h) were exceeded, when visible emissions indicating abnormal operation were observed from a control device stack during a daily inspection required under § 63.848(g), or when a problem was detected during the daily inspection of a wet roof scrubber for potline secondary control required in § 63.848(f)(5)(ii);

(xiv) Records documenting any POM data that are invalidated due to the installation and startup of a cathode; and

(xv) Records documenting the portion of TF that is measured as particulate matter and the portion that is measured as gaseous when the particulate and gaseous fractions are quantified separately using an approved test method.

§ 63.851 Regulatory authority review procedures.

(a) The applicable regulatory authority shall notify the owner or operator in writing of the need for additional time to review the submissions in paragraphs (a)(1) through (a)(5) of this section or of approval or intent to deny approval of the submissions in paragraphs (a)(1) through (a)(5) of this section within 60 calendar days after receipt of sufficient information to evaluate the submission. The 60-day period begins after the owner or operator has been notified that the submission is complete.

(1) The test plan in § 63.847(b);

(2) Request to change limits for operating parameters in § 63.847(h)(3);

(3) Request for similar potline monitoring in § 63.848(d)(5);

(4) Request for reduced sampling frequency in § 63.848(e); and

(5) Request for an alternative method in § 63.849(e)(2).

(b) The applicable regulatory authority shall notify the owner or operator in writing whether the submission is complete within 30 calendar days of receipt of the original submission or within 30 days of receipt of any supplementary information that is submitted. When a submission is incomplete, the applicable regulatory authority shall specify the information needed to complete the submission and shall give the owner or operator 30 calendar days after receipt of the notification to provide the information.

§ 63.852 Applicability of general provisions.

The requirements of the general provisions in subpart A of this part that are not applicable to the owner or operator subject to the requirements of this subpart are shown in appendix A of this subpart.

§ 63.853 Delegation of authority.

In delegating implementation and enforcement authority to a State under section 112(d) of the Act, all authorities are transferred to the State.

§§ 63.854–63.859 [Reserved]

TABLE 1 TO SUBPART LL—POTLINE TF LIMITS FOR EMISSION AVERAGING

Type	Monthly TF limit (lb/ton) [for given number of potlines]						
	2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
CWPB1	1.7	1.6	1.5	1.5	1.4	1.4	1.4
CWPB2	2.9	2.8	2.7	2.7	2.6	2.6	2.6
CWPB3	2.3	2.2	2.2	2.1	2.1	2.1	2.1
VSS1	2	1.9	1.8	1.7	1.7	1.7	1.7
VSS2	2.6	2.5	2.5	2.4	2.4	2.4	2.4
HSS	2.5	2.4	2.4	2.3	2.3	2.3	2.3
SWPB	1.4	1.3	1.3	1.2	1.2	1.2	1.2

TABLE 2 TO SUBPART LL—POTLINE POM LIMITS FOR EMISSION AVERAGING

Type	Quarterly POM limit (lb/ton) [for given number of potlines]						
	2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
HSS	4.1	3.8	3.7	3.5	3.5	3.4	3.3
VSS1	2.1	2.0	1.9	1.9	1.8	1.8	1.8
VSS2	3.2	3.0	2.9	2.9	2.8	2.8	2.7

TABLE 3 TO SUBPART LL—ANODE BAKE FURNACE LIMITS FOR EMISSION AVERAGING

Number of furnaces	Emission limit (lb/ton of anode)	
	TF	POM
2	0.11	0.17
3	0.090	0.17
4	0.077	0.17
5	0.070	0.17

APPENDIX A TO SUBPART LL—APPLICABILITY OF GENERAL PROVISIONS

[40 CFR part 63, subpart A to Subpart LL]

General provisions citation	Requirement	Applies to subpart LL	Comment
63.1(c)(2)		No	All are major sources.
63.2 Definition of "reconstruction"		No	Subpart LL defines "reconstruction."
63.6(c)(1)	Compliance date for existing sources.	No	Subpart LL specifies compliance date for existing sources.
63.6(h)	Opacity/VE standards	Only in § 63.845	Opacity standards applicable only when incorporating the NSPS requirements under § 63.845.
63.8(c)(4)–(c)(8)	CMS operation and maintenance	No	Subpart LL does not require COMS/CMS or CMS performance specifications.
63.8(d)	Quality control	No	Subpart LL does not require CMS or CMS performance evaluation.
63.8(e)	Performance evaluation for CMS	No	
63.9(e)	Notification of performance test	No	Subpart LL specifies notification of performance tests.
63.9(f)	Notification of VE or opacity test	Only in § 63.845	Notification is required only when incorporating the NSPS requirements under § 63.845.
63.9(g)	Additional CMS notification	No	
63.10(d)(2)	Performance test reports	No	Subpart LL specifies performance test reporting.
63.10(d)(3)	Reporting VE/opacity observations	Only in § 63.845	Reporting is required only when incorporating the NSPS requirements under § 63.845.
63.10(e)(2)	Reporting performance evaluations	No	Subpart LL does not require performance evaluation for CMS.
63.11(a)–(b)	Control device requirements	No	Flares not applicable.

9. Appendix A to part 63 is amended by adding, in numerical order, Method 315 to read as follows:

Appendix A to Part 63—Test Methods

* * * * *

Method 315—Determination of Particulate and Methylene Chloride Extractable Matter (MCEM) From Selected Sources at Primary Aluminum Production Facilities

Note: This method does not include all of the specifications (e.g., equipment and supplies) and procedures (e.g., sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, and Method 5 of 40 CFR part 60, appendix A.

1.0 Scope and Application.

1.1 Analytes. Particulate matter (PM). No CAS number assigned. Methylene chloride extractable matter (MCEM). No CAS number assigned.

1.2 Applicability. This method is applicable for the simultaneous determination of PM and MCEM when specified in an applicable regulation. This method was developed by consensus with the Aluminum Association and the U.S. Environmental Protection Agency (EPA) and has limited precision estimates for MCEM; it should have similar precision to Method 5 for PM in 40 CFR part 60, appendix A since the procedures are similar for PM.

1.3 Data quality objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

2.0 Summary of Method.

Particulate matter and MCEM are withdrawn isokinetically from the source. PM is collected on a glass fiber filter maintained at a temperature in the range of 120 ± 14 °C (248 ± 25 °F) or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application. The PM mass, which includes any material that condenses on the probe and is subsequently removed in an acetone rinse or on the filter at or above the filtration temperature, is determined gravimetrically after removal of uncombined water. MCEM is then determined by adding a methylene chloride rinse of the probe and filter holder, extracting the condensable hydrocarbons collected in the impinger water, adding an acetone rinse followed by a methylene chloride rinse of the sampling train components after the filter and before the silica gel impinger, and determining residue gravimetrically after evaporating the solvents.

3.0 Definitions. [Reserved]

4.0 Interferences. [Reserved]

5.0 Safety.

This method may involve hazardous materials, operations, and equipment. This method does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

6.0 Equipment and Supplies.

Note: Mention of trade names or specific products does not constitute endorsement by the EPA.

6.1 Sample collection. The following items are required for sample collection:

6.1.1 Sampling train. A schematic of the sampling train used in this method is shown in Figure 5–1, Method 5, 40 CFR part 60, appendix A. Complete construction details are given in APTD–0581 (Reference 2 in section 17.0 of this method); commercial models of this train are also available. For changes from APTD–0581 and for allowable modifications of the train shown in Figure 5–1, Method 5, 40 CFR part 60, appendix A, see the following subsections.

Note: The operating and maintenance procedures for the sampling train are described in APTD–0576 (Reference 3 in section 17.0 of this method). Since correct usage is important in obtaining valid results, all users should read APTD–0576 and adopt the operating and maintenance procedures outlined in it, unless otherwise specified herein. The use of grease for sealing sampling train components is not recommended because many greases are soluble in methylene chloride. The sampling train consists of the following components:

6.1.1.1 Probe nozzle. Glass or glass lined with sharp, tapered leading edge. The angle of taper shall be ≤30°, and the taper shall be on the outside to preserve a constant internal diameter. The probe nozzle shall be of the button-hook or elbow design, unless otherwise specified by the Administrator. Other materials of construction may be used, subject to the approval of the Administrator. A range of nozzle sizes suitable for isokinetic sampling should be available. Typical nozzle sizes range from 0.32 to 1.27 cm (⅛ to ½ in.) inside diameter (ID) in increments of 0.16 cm (1/16 in.). Larger nozzle sizes are also available if higher volume sampling trains are used. Each nozzle shall be calibrated according to the procedures outlined in section 10.0 of this method.

6.1.1.2 Probe liner. Borosilicate or quartz glass tubing with a heating system capable of maintaining a probe gas temperature at the exit end during sampling of 120±14°C (248±25°F), or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application. Because the actual temperature at the outlet of the probe is not usually monitored during sampling, probes constructed according to APTD–0581 and using the calibration curves of APTD–0576 (or calibrated according to the procedure outlined in APTD–0576) will be considered acceptable. Either borosilicate or quartz glass probe liners may be used for stack temperatures up to about 480°C (900°F); quartz liners shall be used for temperatures between 480 and 900°C (900 and 1,650°F). Both types of liners may be used at higher temperatures than specified for short periods of time, subject to the approval of the Administrator. The softening temperature for borosilicate glass is 820°C (1,500°F) and for quartz glass it is 1,500°C (2,700°F).

6.1.1.3 Pitot tube. Type S, as described in section 6.1 of Method 2, 40 CFR part 60, appendix A, or other device approved by the Administrator. The pitot tube shall be attached to the probe (as shown in Figure 5–1 of Method 5, 40 CFR part 60, appendix A) to allow constant monitoring of the stack gas velocity. The impact (high pressure) opening plane of the pitot tube shall be even with or above the nozzle entry plane (see Method 2, Figure 2–6b, 40 CFR part 60, appendix A) during sampling. The Type S pitot tube assembly shall have a known coefficient, determined as outlined in section 10.0 of Method 2, 40 CFR part 60, appendix A.

6.1.1.4 Differential pressure gauge. Inclined manometer or equivalent device (two), as described in section 6.2 of Method 2, 40 CFR part 60, appendix A. One manometer shall be used for velocity head (Dp) readings, and the other, for orifice differential pressure readings.

6.1.1.5 Filter holder. Borosilicate glass, with a glass frit filter support and a silicone rubber gasket. The holder design shall provide a positive seal against leakage from the outside or around the filter. The holder shall be attached immediately at the outlet of the probe (or cyclone, if used).

6.1.1.6 Filter heating system. Any heating system capable of maintaining a temperature around the filter holder of 120±14°C (248±25°F) during sampling, or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application. Alternatively, the tester may opt to operate the equipment at a temperature lower than that specified. A temperature gauge capable of measuring temperature to within 3°C (5.4°F) shall be installed so that the temperature around the filter holder can be regulated and monitored during sampling. Heating systems other than the one shown in APTD–0581 may be used.

6.1.1.7 Temperature sensor. A temperature sensor capable of measuring temperature to within ±3°C (5.4°F) shall be installed so that the sensing tip of the temperature sensor is in direct contact with the sample gas, and the temperature around the filter holder can be regulated and monitored during sampling.

6.1.1.8 Condenser. The following system shall be used to determine the stack gas moisture content: four glass impingers connected in series with leak-free ground glass fittings. The first, third, and fourth impingers shall be of the Greenburg-Smith design, modified by replacing the tip with a 1.3 cm (1/2 in.) ID glass tube extending to about 1.3 cm (1/2 in.) from the bottom of the flask. The second impinger shall be of the Greenburg-Smith design with the standard tip. The first and second impingers shall contain known quantities of water (section 6.3.1 of this method), the third shall be empty, and the fourth shall contain a known weight of silica gel or equivalent desiccant. A temperature sensor capable of measuring temperature to within 1°C (2°F) shall be placed at the outlet of the fourth impinger for monitoring.

6.1.1.9 Metering system. Vacuum gauge, leak-free pump, temperature sensors capable of measuring temperature to within 3°C (5.4°F), dry gas meter (DGM) capable of measuring volume to within 2 percent, and related equipment, as shown in Figure 5–1 of Method 5, 40 CFR part 60, appendix A. Other metering systems capable of maintaining sampling rates within 10 percent of isokinetic and of determining sample volumes to within 2 percent may be used, subject to the approval of the Administrator. When the metering system is used in conjunction with a pitot tube, the system shall allow periodic checks of isokinetic rates.

6.1.1.10 Sampling trains using metering systems designed for higher flow rates than that described in APTD–0581 or APTD–0576 may be used provided that the specifications of this method are met.

6.1.2 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm (0.1 in.) Hg.

Note: The barometric reading may be obtained from a nearby National Weather Service station. In this case, the station value (which is the absolute barometric pressure) shall be requested and an adjustment for elevation differences between the weather station and sampling point shall be made at a rate of minus 2.5 mm (0.1 in) Hg per 30 m (100 ft) elevation increase or plus 2.5 mm (0.1 in) Hg per 30 m (100 ft) elevation decrease.

6.1.3 Gas density determination equipment. Temperature sensor and pressure gauge, as described in sections 6.3 and 6.4 of Method 2, 40 CFR part 60, appendix A, and gas analyzer, if necessary, as described in Method 3, 40 CFR part 60, appendix A. The temperature sensor shall, preferably, be permanently attached to the pitot tube or sampling probe in a fixed configuration, such that the tip of the sensor extends beyond the leading edge of the probe sheath and does not touch any metal. Alternatively, the sensor may be attached just prior to use in the field. Note, however, that if the temperature sensor is attached in the field, the sensor must be placed in an interference-free arrangement with respect to the Type S pitot tube openings (see Method 2, Figure 2–4, 40 CFR part 60, appendix A). As a second alternative, if a difference of not more than 1 percent in the average velocity measurement is to be introduced, the temperature sensor need not be attached to the probe or pitot tube. (This alternative is subject to the approval of the Administrator.)

6.2 Sample recovery. The following items are required for sample recovery:

6.2.1 Probe-liner and probe-nozzle brushes. Nylon or Teflon® bristle brushes with stainless steel wire handles. The probe brush shall have extensions (at least as long as the probe) constructed of stainless steel, nylon, Teflon®, or similarly inert material. The brushes shall be properly sized and shaped to brush out the probe liner and nozzle.

6.2.2 Wash bottles. Glass wash bottles are recommended. Polyethylene or tetrafluoroethylene (TFE) wash bottles may be used, but they may introduce a positive bias due to contamination from the bottle. It is recommended that acetone not be stored in polyethylene or TFE bottles for longer than a month.

6.2.3 Glass sample storage containers. Chemically resistant, borosilicate glass bottles, for acetone and methylene chloride washes and impinger water, 500 ml or 1,000 ml. Screw-cap liners shall either be rubber-backed Teflon® or shall be constructed so as to be leak-free and resistant to chemical attack by acetone or methylene chloride. (Narrow-mouth glass bottles have been found to be less prone to leakage.) Alternatively, polyethylene bottles may be used.

6.2.4 Petri dishes. For filter samples, glass, unless otherwise specified by the Administrator.

6.2.5 Graduated cylinder and/or balance. To measure condensed water, acetone wash and methylene chloride wash used during field recovery of the samples, to within 1 ml or 1 g. Graduated cylinders shall have subdivisions no greater than 2 ml. Most laboratory balances are capable of weighing to the nearest 0.5 g or less. Any such balance is suitable for use here and in section 6.3.4 of this method.

6.2.6 Plastic storage containers. Air-tight containers to store silica gel.

6.2.7 Funnel and rubber policeman. To aid in transfer of silica gel to container; not necessary if silica gel is weighed in the field.

6.2.8 Funnel. Glass or polyethylene, to aid in sample recovery.

6.3 Sample analysis. The following equipment is required for sample analysis:

6.3.1 Glass or Teflon® weighing dishes.

6.3.2 Desiccator. It is recommended that fresh desiccant be used to minimize the chance for positive bias due to absorption of organic material during drying.

6.3.3 Analytical balance. To measure to within 0.1 mg.

6.3.4 Balance. To measure to within 0.5 g.

6.3.5 Beakers. 250 ml.

6.3.6 Hygrometer. To measure the relative humidity of the laboratory environment.

6.3.7 Temperature sensor. To measure the temperature of the laboratory environment.

6.3.8 Buchner fritted funnel. 30 ml size, fine (<50 micron)-porosity fritted glass.

6.3.9 Pressure filtration apparatus.

6.3.10 Aluminum dish. Flat bottom, smooth sides, and flanged top, 18 mm deep and with an inside diameter of approximately 60 mm.

7.0 Reagents and Standards.

7.1 Sample collection. The following reagents are required for sample collection:

7.1.1 Filters. Glass fiber filters, without organic binder, exhibiting at least 99.95 percent efficiency (<0.05 percent penetration) on 0.3 micron dioctyl phthalate smoke particles. The filter efficiency test shall be conducted in accordance with ASTM Method D 2986–95A (incorporated by reference in § 63.841 of this part). Test data from the supplier's quality control program are sufficient for this purpose. In sources containing SO_2 or SO_3, the filter material must be of a type that is unreactive to SO_2 or SO_3. Reference 10 in section 17.0 of this method may be used to select the appropriate filter.

7.1.2 Silica gel. Indicating type, 6 to 16 mesh. If previously used, dry at 175°C (350°F) for 2 hours. New silica gel may be used as received. Alternatively, other types of desiccants (equivalent or better) may be used, subject to the approval of the Administrator.

7.1.3 Water. When analysis of the material caught in the impingers is required, deionized distilled water shall be used. Run blanks prior to field use to eliminate a high blank on test samples.

7.1.4 Crushed ice.

7.1.5 Stopcock grease. Acetone-insoluble, heat-stable silicone grease. This is not necessary if screw-on connectors with Teflon" sleeves, or similar, are used. Alternatively, other types of stopcock grease may be used, subject to the approval of the Administrator. [Caution: Many stopcock greases are methylene chloride-soluble. Use sparingly and carefully remove prior to recovery to prevent contamination of the MCEM analysis.]

7.2 Sample recovery. The following reagents are required for sample recovery:

7.2.1 Acetone. Acetone with blank values < 1 ppm, by weight residue, is required. Acetone blanks may be run prior to field use, and only acetone with low blank values may be used. In no case shall a blank value of greater than 1E–06 of the weight of acetone used be subtracted from the sample weight.

Note: This is more restrictive than Method 5, 40 CFR part 60, appendix A. At least one vendor (Supelco Incorporated located in Bellefonte, Pennsylvania) lists <1 mg/l as residue for its Environmental Analysis Solvents.

7.2.2 Methylene chloride. Methylene chloride with a blank value <1.5 ppm, by weight, residue. Methylene chloride blanks may be run prior to field use, and only methylene chloride with low blank values may be used. In no case shall a blank value of greater than 1.6E–06 of the weight of methylene chloride used be subtracted from the sample weight.

Note: A least one vendor quotes <1 mg/l for Environmental Analysis Solvents-grade methylene chloride.

7.3 Sample analysis. The following reagents are required for sample analysis:

7.3.1 Acetone. Same as in section 7.2.1 of this method.

7.3.2 Desiccant. Anhydrous calcium sulfate, indicating type. Alternatively, other types of desiccants may be used, subject to the approval of the Administrator.

7.3.3 Methylene chloride. Same as in section 7.2.2 of this method.

8.0 Sample Collection, Preservation, Storage, and Transport.

Note: The complexity of this method is such that, in order to obtain reliable results, testers should be trained and experienced with the test procedures.

8.1 Pretest preparation. It is suggested that sampling equipment be maintained according to the procedures described in APTD–0576.

8.1.1 Weigh several 200 g to 300 g portions of silica gel in airtight containers to the nearest 0.5 g. Record on each container the total weight of the silica gel plus container. As an alternative, the silica gel need not be preweighed but may be weighed directly in its impinger or sampling holder just prior to train assembly.

8.1.2 A batch of glass fiber filters, no more than 50 at a time, should placed in a soxhlet extraction apparatus and extracted using methylene chloride for at least 16 hours. After extraction, check filters visually against light for irregularities, flaws, or pinhole leaks. Label the shipping containers (glass or plastic petri dishes), and keep the filters in these containers at all times except during sampling and weighing.

8.1.3 Desiccate the filters at 20 ± 5.6°C (68 ±10°F) and ambient pressure for at least 24 hours and weigh at intervals of at least 6 hours to a constant weight, i.e., <0.5 mg change from previous weighing; record results to the nearest 0.1 mg. During each weighing the filter must not be exposed to the laboratory atmosphere for longer than 2 minutes and a relative humidity above 50 percent. Alternatively (unless otherwise specified by the Administrator), the filters may be oven-dried at 104°C (220°F) for 2 to 3 hours, desiccated for 2 hours, and weighed. Procedures other than those described, which account for relative humidity effects, may be used, subject to the approval of the Administrator.

8.2 Preliminary determinations.

8.2.1 Select the sampling site and the minimum number of sampling points according to Method 1, 40 CFR part 60, appendix A or as specified by the Administrator. Determine the stack pressure, temperature, and the range of velocity heads using Method 2, 40 CFR part 60, appendix A; it is recommended that a leak check of the pitot lines (see section 8.1 of Method 2, 40 CFR part 60, appendix A) be performed. Determine the moisture content using Approximation Method 4 (section 1.2 of Method 4, 40 CFR part 60, appendix A) or its alternatives to make isokinetic sampling rate settings. Determine the stack gas dry molecular weight, as described in section 8.6 of Method 2, 40 CFR part 60, appendix A; if integrated Method 3 sampling is used for molecular weight determination, the integrated bag sample shall be taken simultaneously with, and for the same total length of time as, the particulate sample run.

8.2.2 Select a nozzle size based on the range of velocity heads such that it is not necessary to change the nozzle size in order to maintain isokinetic sampling rates. During the run, do not change the nozzle size. Ensure that the proper differential pressure gauge is chosen for the range of velocity heads encountered (see section 8.2 of Method 2, 40 CFR part 60, appendix A).

8.2.3 Select a suitable probe liner and probe length such that all traverse points can be sampled. For large stacks, consider sampling from opposite sides of the stack to reduce the required probe length.

8.2.4 Select a total sampling time greater than or equal to the minimum total sampling time specified in the test procedures for the specific industry such that: (1) The sampling time per point is not less than 2 minutes (or some greater time interval as specified by the Administrator); and (2) the sample volume taken (corrected to standard conditions) will exceed the required minimum total gas sample volume. The latter is based on an approximate average sampling rate.

8.2.5 The sampling time at each point shall be the same. It is recommended that the number of minutes sampled at each point be an integer or an integer plus one-half minute, in order to eliminate timekeeping errors.

8.2.6 In some circumstances (e.g., batch cycles), it may be necessary to sample for shorter times at the traverse points and to obtain smaller gas sample volumes. In these cases, the Administrator's approval must first be obtained.

8.3 Preparation of sampling train.

8.3.1 During preparation and assembly of the sampling train, keep all openings where contamination can occur covered until just prior to assembly or until sampling is about to begin. Place 100 ml of water in each of the first two impingers, leave the third impinger empty, and transfer approximately 200 to 300 g of preweighed silica gel from its container to the fourth impinger. More silica gel may be used, but care should be taken to ensure that it is not entrained and carried out from the impinger during sampling. Place the container in a clean place for later use in the sample recovery. Alternatively, the weight of the silica gel plus impinger may be determined to the nearest 0.5 g and recorded.

8.3.2 Using a tweezer or clean disposable surgical gloves, place a labeled (identified) and weighed filter in the filter holder. Be sure that the filter is properly centered and the gasket properly placed so as to prevent the sample gas stream from circumventing the filter. Check the filter for tears after assembly is completed.

8.3.3 When glass liners are used, install the selected nozzle using a Viton A O-ring when stack temperatures are less than 260°C (500°F) and an asbestos string gasket when temperatures are higher. See APTD–0576 for details. Mark the probe with heat-resistant tape or by some other method to denote the proper distance into the stack or duct for each sampling point.

8.3.4 Set up the train as in Figure 5-1 of Method 5, 40 CFR part 60, appendix A, using (if necessary) a very light coat of silicone grease on all ground glass joints, greasing only the outer portion (see APTD–0576) to avoid possibility of contamination by the silicone grease. Subject to the approval of the Administrator, a glass cyclone may be used between the probe and filter holder when the total particulate catch is expected to exceed 100 mg or when water droplets are present in the stack gas.

8.3.5 Place crushed ice around the impingers.

8.4 Leak-check procedures.

8.4.1 Leak check of metering system shown in Figure 5-1 of Method 5, 40 CFR part 60, appendix A. That portion of the sampling train from the pump to the orifice meter should be leak-checked prior to initial use and after each shipment. Leakage after the pump will result in less volume being recorded than is actually sampled. The following procedure is suggested (see Figure 5–2 of Method 5, 40 CFR part 60, appendix A): Close the main valve on the meter box. Insert a one-hole rubber stopper with rubber tubing attached into the orifice exhaust pipe. Disconnect and vent the low side of the orifice manometer. Close off the low side orifice tap. Pressurize the system to 13 to 18 cm (5 to 7 in.) water column by blowing into the rubber tubing. Pinch off the tubing, and observe the manometer for 1 minute. A loss of pressure on the manometer indicates a leak in the meter box; leaks, if present, must be corrected.

8.4.2 Pretest leak check. A pretest leak-check is recommended but not required. If the pretest leak-check is conducted, the following procedure should be used.

8.4.2.1 After the sampling train has been assembled, turn on and set the filter and probe heating systems to the desired operating temperatures. Allow time for the temperatures to stabilize. If a Viton A O-ring or other leak-free connection is used in assembling the probe nozzle to the probe liner, leak-check the train at the sampling site by plugging the nozzle and pulling a 380 mm (15 in.) Hg vacuum.

Note: A lower vacuum may be used, provided that it is not exceeded during the test.

8.4.2.2 If an asbestos string is used, do not connect the probe to the train during the leak check. Instead, leak-check the train by first plugging the inlet to the filter holder (cyclone, if applicable) and pulling a 380 mm (15 in.) Hg vacuum. (See NOTE in section 8.4.2.1 of this method). Then connect the probe to the train and perform the leak check at approximately 25 mm (1 in.) Hg vacuum; alternatively, the probe may be leak-checked with the rest of the sampling train, in one step, at 380 mm (15 in.) Hg vacuum. Leakage rates in excess of 4 percent of the average sampling rate or 0.00057 m^3/min (0.02 cfm), whichever is less, are unacceptable.

8.4.2.3 The following leak check instructions for the sampling train described in APTD–0575 and APTD–0581 may be helpful. Start the pump with the bypass valve fully open and the coarse adjust valve completely closed. Partially open the coarse adjust valve and slowly close the bypass valve until the desired vacuum is reached. *Do not* reverse the direction of the bypass valve, as this will cause water to back up into the filter holder. If the desired vacuum is exceeded, either leak-check at this higher vacuum or end the leak check as shown below and start over.

8.4.2.4 When the leak check is completed, first slowly remove the plug from the inlet to the probe, filter holder, or cyclone (if applicable) and immediately turn off the vacuum pump. This prevents the water in the impingers from being forced backward into the filter holder and the silica gel from being entrained backward into the third impinger.

8.4.3 Leak checks during sample run. If, during the sampling run, a component (e.g., filter assembly or impinger) change becomes necessary, a leak check shall be conducted immediately before the change is made. The leak check shall be done according to the procedure outlined in section 8.4.2 of this method, except that it shall be done at a vacuum equal to or greater than the maximum value recorded up to that point in the test. If the leakage rate is found to be no greater than 0.00057 m^3/min (0.02 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable, and no correction will need to be applied to the total volume of dry gas metered; if, however, a higher leakage rate is obtained, either record the leakage rate and plan to correct the sample volume as shown in section 12.3 of this method or void the sample run.

Note: Immediately after component changes, leak checks are optional; if such leak checks are done, the procedure outlined in section 8.4.2 of this method should be used.

8.4.4 Post-test leak check. A leak check is mandatory at the conclusion of each sampling run. The leak check shall be performed in accordance with the procedures outlined in section 8.4.2 of this method, except that it shall be conducted at a vacuum equal to or greater than the maximum value reached during the sampling run. If the leakage rate is found to be no greater than 0.00057 m^3/min (0.02 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable, and no correction need be applied to the total volume of dry gas metered. If, however, a higher leakage rate is obtained, either record the leakage rate and correct the sample volume, as shown in section 12.4 of this method, or void the sampling run.

8.5 Sampling train operation. During the sampling run, maintain an isokinetic sampling rate (within 10 percent of true isokinetic unless otherwise specified by the Administrator) and a temperature around the filter of 120 14°C (248 25°F), or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator.

8.5.1 For each run, record the data required on a data sheet such as the one shown in Figure 5–2 of Method 5, 40 CFR part 60, appendix A. Be sure to record the initial reading. Record the DGM readings at the beginning and end of each sampling time increment, when changes in flow rates are made, before and after each leak-check, and when sampling is halted. Take other readings indicated by Figure 5–2 of Method 5, 40 CFR part 60, appendix A at least once at each sample point during each time increment and additional readings when significant changes (20 percent variation in velocity head readings) necessitate additional adjustments in flow rate. Level and zero the manometer. Because the manometer level and zero may drift due to vibrations and temperature changes, make periodic checks during the traverse.

8.5.2 Clean the portholes prior to the test run to minimize the chance of sampling deposited material. To begin sampling, remove the nozzle cap and verify that the filter and probe heating systems are up to temperature and that the pitot tube and probe are properly positioned. Position the nozzle at the first traverse point with the tip pointing directly into the gas stream. Immediately start the pump and adjust the flow to isokinetic conditions. Nomographs are available, which aid in the rapid adjustment of the isokinetic sampling rate without excessive computations. These nomographs are designed for use when the Type S pitot tube coefficient (C_p) is 0.85 # 0.02 and the stack gas equivalent density (dry molecular weight) is 29 ± 4. APTD–0576 details the procedure for using the nomographs. If C_p and M_d are outside the above-stated ranges, do not use the nomographs unless appropriate steps (see Reference 7 in section 17.0 of this method) are taken to compensate for the deviations.

8.5.3 When the stack is under significant negative pressure (height of impinger stem), close the coarse adjust valve before inserting the probe into the stack to prevent water from backing into the filter holder. If necessary, the pump may be turned on with the coarse adjust valve closed.

8.5.4 When the probe is in position, block off the openings around the probe and porthole to prevent unrepresentative dilution of the gas stream.

8.5.5 Traverse the stack cross-section, as required by Method 1, 40 CFR part 60, appendix A or as specified by the Administrator, being careful not to bump the probe nozzle into the stack walls when sampling near the walls or when removing or inserting the probe through the portholes; this minimizes the chance of extracting deposited material.

8.5.6 During the test run, make periodic adjustments to keep the temperature around the filter holder at the proper level; add more ice and, if necessary, salt to maintain a temperature of less than 20°C (68°F) at the condenser/silica gel outlet. Also, periodically check the level and zero of the manometer.

8.5.7 If the pressure drop across the filter becomes too high, making isokinetic sampling difficult to maintain, the filter may be replaced in the midst of the sample run. It is recommended that another complete filter assembly be used rather than attempting to change the filter itself. Before a new filter assembly is installed, conduct a leak check (see section 8.4.3 of this method). The total PM weight shall include the summation of the filter assembly catches.

8.5.8 A single train shall be used for the entire sample run, except in cases where simultaneous sampling is required in two or more separate ducts or at two or more different locations within the same duct, or in cases where equipment failure necessitates

a change of trains. In all other situations, the use of two or more trains will be subject to the approval of the Administrator.

Note: When two or more trains are used, separate analyses of the front-half and (if applicable) impinger catches from each train shall be performed, unless identical nozzle sizes were used in all trains, in which case the front-half catches from the individual trains may be combined (as may the impinger catches) and one analysis of the front-half catch and one analysis of the impinger catch may be performed.

8.5.9 At the end of the sample run, turn off the coarse adjust valve, remove the probe and nozzle from the stack, turn off the pump, record the final DGM reading, and then conduct a post-test leak check, as outlined in section 8.4.4 of this method. Also leak-check the pitot lines as described in section 8.1 of Method 2, 40 CFR part 60, appendix A. The lines must pass this leak check in order to validate the velocity head data.

8.6 Calculation of percent isokinetic. Calculate percent isokinetic (see Calculations, section 12.12 of this method) to determine whether a run was valid or another test run should be made. If there was difficulty in maintaining isokinetic rates because of source conditions, consult the Administrator for possible variance on the isokinetic rates.

8.7 Sample recovery.

8.7.1 Proper cleanup procedure begins as soon as the probe is removed from the stack at the end of the sampling period. Allow the probe to cool.

8.7.2 When the probe can be safely handled, wipe off all external PM near the tip of the probe nozzle and place a cap over it to prevent losing or gaining PM. Do not cap off the probe tip tightly while the sampling train is cooling down. This would create a vacuum in the filter holder, thus drawing water from the impingers into the filter holder.

8.7.3 Before moving the sample train to the cleanup site, remove the probe from the sample train, wipe off the silicone grease, and cap the open outlet of the probe. Be careful not to lose any condensate that might be present. Wipe off the silicone grease from the filter inlet where the probe was fastened and cap it. Remove the umbilical cord from the last impinger and cap the impinger. If a flexible line is used between the first impinger or condenser and the filter holder, disconnect the line at the filter holder and let any condensed water or liquid drain into the impingers or condenser. After wiping off the silicone grease, cap off the filter holder outlet and impinger inlet. Ground-glass stoppers, plastic caps, or serum caps may be used to close these openings.

8.7.4 Transfer the probe and filter-impinger assembly to the cleanup area. This area should be clean and protected from the wind so that the chances of contaminating or losing the sample will be minimized.

8.7.5 Save a portion of the acetone and methylene chloride used for cleanup as blanks. Take 200 ml of each solvent directly from the wash bottle being used and place it in glass sample containers labeled "acetone blank" and "methylene chloride blank," respectively.

8.7.6 Inspect the train prior to and during disassembly and note any abnormal conditions. Treat the samples as follows:

8.7.6.1 Container No. 1. Carefully remove the filter from the filter holder, and place it in its identified petri dish container. Use a pair of tweezers and/or clean disposable surgical gloves to handle the filter. If it is necessary to fold the filter, do so such that the PM cake is inside the fold. Using a dry nylon bristle brush and/or a sharp-edged blade, carefully transfer to the petri dish any PM and/or filter fibers that adhere to the filter holder gasket. Seal the container.

8.7.6.2 Container No. 2. Taking care to see that dust on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover PM or any condensate from the probe nozzle, probe fitting, probe liner, and front half of the filter holder by washing these components with acetone and placing the wash in a glass container. Perform the acetone rinse as follows:

8.7.6.2.1 Carefully remove the probe nozzle and clean the inside surface by rinsing with acetone from a wash bottle and brushing with a nylon bristle brush. Brush until the acetone rinse shows no visible particles, after which make a final rinse of the inside surface with acetone.

8.7.6.2.2 Brush and rinse the inside parts of the Swagelok fitting with acetone in a similar way until no visible particles remain.

8.7.6.2.3 Rinse the probe liner with acetone by tilting and rotating the probe while squirting acetone into its upper end so that all inside surfaces are wetted with acetone. Let the acetone drain from the lower end into the sample container. A funnel (glass or polyethylene) may be used to aid in transferring liquid washes to the container. Follow the acetone rinse with a probe brush. Hold the probe in an inclined position, squirt acetone into the upper end as the probe brush is being pushed with a twisting action through the probe, hold a sample container under the lower end of the probe, and catch any acetone and PM that is brushed from the probe. Run the brush through the probe three times or more until no visible PM is carried out with the acetone or until none remains in the probe liner on visual inspection. With stainless steel or other metal probes, run the brush through in the above-described manner at least six times, since metal probes have small crevices in which PM can be entrapped. Rinse the brush with acetone and quantitatively collect these washings in the sample container. After the brushing, make a final acetone rinse of the probe as described above.

8.7.6.2.4 It is recommended that two people clean the probe to minimize sample losses. Between sampling runs, keep brushes clean and protected from contamination.

8.7.6.2.5 After ensuring that all joints have been wiped clean of silicone grease, clean the inside of the front half of the filter holder by rubbing the surfaces with a nylon bristle brush and rinsing with acetone. Rinse each surface three times or more if needed to remove visible particulate. Make a final rinse of the brush and filter holder. Carefully rinse out the glass cyclone also (if applicable).

8.7.6.2.6 After rinsing the nozzle, probe, and front half of the filter holder with acetone, repeat the entire procedure with methylene chloride and save in a separate No. 2M container.

8.7.6.2.7 After acetone and methylene chloride washings and PM have been collected in the proper sample containers, tighten the lid on the sample containers so that acetone and methylene chloride will not leak out when it is shipped to the laboratory. Mark the height of the fluid level to determine whether leakage occurs during transport. Label each container to identify clearly its contents.

8.7.6.3 Container No. 3. Note the color of the indicating silica gel to determine whether it has been completely spent, and make a notation of its condition. Transfer the silica gel from the fourth impinger to its original container and seal the container. A funnel may make it easier to pour the silica gel without spilling. A rubber policeman may be used as an aid in removing the silica gel from the impinger. It is not necessary to remove the small amount of dust particles that may adhere to the impinger wall and are difficult to remove. Since the gain in weight is to be used for moisture calculations, do not use any water or other liquids to transfer the silica gel. If a balance is available in the field, follow the procedure for Container No. 3 in section 11.2.3 of this method.

8.7.6.4 Impinger water. Treat the impingers as follows:

8.7.6.4.1 Make a notation of any color or film in the liquid catch. Measure the liquid that is in the first three impingers to within 1 ml by using a graduated cylinder or by weighing it to within 0.5 g by using a balance (if one is available). Record the volume or weight of liquid present. This information is required to calculate the moisture content of the effluent gas.

8.7.6.4.2 Following the determination of the volume of liquid present, rinse the back half of the train with water, add it to the impinger catch, and store it in a container labeled 3W (water).

8.7.6.4.3 Following the water rinse, rinse the back half of the train with acetone to remove the excess water to enhance subsequent organic recovery with methylene chloride and quantitatively recover to a container labeled 3S (solvent) followed by at least three sequential rinsings with aliquots of methylene chloride. Quantitatively recover to the same container labeled 3S. Record separately the amount of both acetone and methylene chloride used to the nearest 1 ml or 0.5g.

Note: Because the subsequent analytical finish is gravimetric, it is okay to recover both solvents to the same container. This would not be recommended if other analytical finishes were required.

8.8 Sample transport. Whenever possible, containers should be shipped in such a way that they remain upright at all times.

9.0 Quality Control.

9.1 Miscellaneous quality control measures.

Section	Quality control measure	Effect
8.4, 10.1–10.6.	Sampling and equipment leak check and calibration.	Ensure accurate measurement of stack gas flow rate, sample volume.

9.2 Volume metering system checks. The following quality control procedures are suggested to check the volume metering system calibration values at the field test site prior to sample collection. These procedures are optional.

9.2.1 Meter orifice check. Using the calibration data obtained during the calibration procedure described in section 10.3 of this method, determine the ΔH_a for the metering system orifice. The ΔH_a is the orifice pressure differential in units of in. H_2O that correlates to 0.75 cfm of air at 528°R and 29.92 in. Hg. The ΔH_a is calculated as follows:

$$\Delta H_a = 0..0319\,\Delta H\frac{T_m\Theta^2}{P_{bar}Y^2V_m^2}$$

Where

0.0319 = (0.0567 in. Hg/°R)(0.75 cfm)²;
ΔH = Average pressure differential across the orifice meter, in. H_2O;
T_m = Absolute average DGM temperature, °R;
Θ = Total sampling time, min;
P_{bar} = Barometric pressure, in. Hg;
Y = DGM calibration factor, dimensionless;
V_m = Volume of gas sample as measured by DGM, dcf.

9.2.1.1 Before beginning the field test (a set of three runs usually constitutes a field test), operate the metering system (i.e., pump, volume meter, and orifice) at the ΔH_a pressure differential for 10 minutes. Record the volume collected, the DGM temperature, and the barometric pressure. Calculate a DGM calibration check value, Y_c, as follows:

$$Y_c = \frac{10}{V_m}\left[\frac{0.0319\,T_m}{P_{bar}}\right]^{\frac{1}{2}}$$

Where

Y_c = DGM calibration check value, dimensionless;
10 = Run time, min.

9.2.1.2 Compare the Y_c value with the dry gas meter calibration factor Y to determine that: $0.97\,Y < Y_c < 1.03Y$. If the Y_c value is not within this range, the volume metering system should be investigated before beginning the test.

9.2.2 Calibrated critical orifice. A calibrated critical orifice, calibrated against a wet test meter or spirometer and designed to be inserted at the inlet of the sampling meter box, may be used as a quality control check by following the procedure of section 16.2 of this method.

10.0 Calibration and Standardization.

Note: Maintain a laboratory log of all calibrations.

10.1 Probe nozzle. Probe nozzles shall be calibrated before their initial use in the field. Using a micrometer, measure the ID of the nozzle to the nearest 0.025 mm (0.001 in.). Make three separate measurements using different diameters each time, and obtain the average of the measurements. The difference between the high and low numbers shall not exceed 0.1 mm (0.004 in.). When nozzles become nicked, dented, or corroded, they shall be reshaped, sharpened, and recalibrated before use. Each nozzle shall be permanently and uniquely identified.

10.2 Pitot tube assembly. The Type S pitot tube assembly shall be calibrated according to the procedure outlined in section 10.1 of Method 2, 40 CFR part 60, appendix A.

10.3 Metering system.

10.3.1 Calibration prior to use. Before its initial use in the field, the metering system shall be calibrated as follows: Connect the metering system inlet to the outlet of a wet test meter that is accurate to within 1 percent. Refer to Figure 5–5 of Method 5, 40 CFR part 60, appendix A. The wet test meter should have a capacity of 30 liters/revolution (1 ft³/rev). A spirometer of 400 liters (14 ft³) or more capacity, or equivalent, may be used for this calibration, although a wet test meter is usually more practical. The wet test meter should be periodically calibrated with a spirometer or a liquid displacement meter to ensure the accuracy of the wet test meter. Spirometers or wet test meters of other sizes may be used, provided that the specified accuracies of the procedure are maintained. Run the metering system pump for about 15 minutes with the orifice manometer indicating a median reading, as expected in field use, to allow the pump to warm up and to permit the interior surface of the wet test meter to be thoroughly wetted. Then, at each of a minimum of three orifice manometer settings, pass an exact quantity of gas through the wet test meter and note the gas volume indicated by the DGM. Also note the barometric pressure and the temperatures of the wet test meter, the inlet of the DGM, and the outlet of the DGM. Select the highest and lowest orifice settings to bracket the expected field operating range of the orifice. Use a minimum volume of 0.15 m³ (5 cf) at all orifice settings. Record all the data on a form similar to Figure 5–6 of Method 5, 40 CFR part 60, appendix A, and calculate Y (the DGM calibration factor) and ΔH_a (the orifice calibration factor) at each orifice setting, as shown on Figure 5–6 of Method 5, 40 CFR part 60, appendix A. Allowable tolerances for individual Y and ΔH_a values are given in Figure 5–6 of Method 5, 40 CFR part 60, appendix A. Use the average of the Y values in the calculations in section 12 of this method.

10.3.1.1. Before calibrating the metering system, it is suggested that a leak check be conducted. For metering systems having diaphragm pumps, the normal leak check procedure will not detect leakages within the pump. For these cases the following leak check procedure is suggested: make a 10-minute calibration run at 0.00057 m³/min (0.02 cfm); at the end of the run, take the difference of the measured wet test meter and DGM volumes; divide the difference by 10 to get the leak rate. The leak rate should not exceed 0.00057 m³/min (0.02 cfm).

10.3.2 Calibration after use. After each field use, the calibration of the metering system shall be checked by performing three calibration runs at a single, intermediate orifice setting (based on the previous field test) with the vacuum set at the maximum value reached during the test series. To adjust the vacuum, insert a valve between the wet test meter and the inlet of the metering system. Calculate the average value of the DGM calibration factor. If the value has changed by more than 5 percent, recalibrate the meter over the full range of orifice settings, as previously detailed.

Note: Alternative procedures, e.g., rechecking the orifice meter coefficient, may be used, subject to the approval of the Administrator.

10.3.3 Acceptable variation in calibration. If the DGM coefficient values obtained before and after a test series differ by more than 5 percent, either the test series shall be voided or calculations for the test series shall be performed using whichever meter coefficient value (i.e., before or after) gives the lower value of total sample volume.

10.4 Probe heater calibration. Use a heat source to generate air heated to selected temperatures that approximate those expected to occur in the sources to be sampled. Pass this air through the probe at a typical sample flow rate while measuring the probe inlet and outlet temperatures at various probe heater settings. For each air temperature generated, construct a graph of probe heating system setting versus probe outlet temperature. The procedure outlined in APTD–0576 can also be used. Probes constructed according to APTD–0581 need not be calibrated if the calibration curves in APTD–0576 are used. Also, probes with outlet temperature monitoring capabilities do not require calibration.

Note: The probe heating system shall be calibrated before its initial use in the field.

10.5 Temperature sensors. Use the procedure in section 10.3 of Method 2, 40 CFR part 60, appendix A to calibrate in-stack temperature sensors. Dial thermometers, such as are used for the DGM and condenser outlet, shall be calibrated against mercury-in-glass thermometers.

10.6 Barometer. Calibrate against a mercury barometer.

11.0 Analytical Procedure.

11.1 Record the data required on a sheet such as the one shown in Figure 315–1 of this method.

11.2 Handle each sample container as follows:

11.2.1 Container No. 1.

11.2.1.1 PM analysis. Leave the contents in the shipping container or transfer the filter and any loose PM from the sample container to a tared glass weighing dish. Desiccate for 24 hours in a desiccator containing anhydrous calcium sulfate. Weigh to a constant weight and report the results to the nearest 0.1 mg. For purposes of this section, the term "constant weight" means a difference of no more than 0.5 mg or 1 percent of total weight less tare weight, whichever is greater, between two consecutive weighings, with no less than 6 hours of desiccation time between weighings

(overnight desiccation is a common practice). If a third weighing is required and it agrees within ±0.5 mg, then the results of the second weighing should be used. For quality assurance purposes, record and report each individual weighing; if more than three weighings are required, note this in the results for the subsequent MCEM results.

11.2.1.2 MCEM analysis. Transfer the filter and contents quantitatively into a beaker. Add 100 ml of methylene chloride and cover with aluminum foil. Sonicate for 3 minutes then allow to stand for 20 minutes. Set up the filtration apparatus. Decant the solution into a clean Buchner fritted funnel. Immediately pressure filter the solution through the tube into another clean, dry beaker. Continue decanting and pressure filtration until all the solvent is transferred. Rinse the beaker and filter with 10 to 20 ml methylene chloride, decant into the Buchner fritted funnel and pressure filter. Place the beaker on a low-temperature hot plate (maximum 40°C) and slowly evaporate almost to dryness. Transfer the remaining last few milliliters of solution quantitatively from the beaker (using at least three aliquots of methylene chloride rinse) to a tared clean dry aluminum dish and evaporate to complete dryness. Remove from heat once solvent is evaporated. Reweigh the dish after a 30-minute equilibrium in the balance room and determine the weight to the nearest 0.1 mg. Conduct a methylene chloride blank run in an identical fashion.

11.2.2 Container No. 2.

11.2.2.1 PM analysis. Note the level of liquid in the container, and confirm on the analysis sheet whether leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Measure the liquid in this container either volumetrically to ±1 ml or gravimetrically to 1±0.5 g. Transfer the contents to a tared 250 ml beaker and evaporate to dryness at ambient temperature and pressure. Desiccate for 24 hours, and weigh to a constant weight. Report the results to the nearest 0.1 mg.

11.2.2.2 MCEM analysis. Add 25 ml methylene chloride to the beaker and cover with aluminum foil. Sonicate for 3 minutes then allow to stand for 20 minutes; combine with contents of Container No. 2M and pressure filter and evaporate as described for Container 1 in section 11.2.1.2 of this method.

Notes for MCEM Analysis

1. Light finger pressure only is necessary on 24/40 adaptor. A Chemplast adapter #15055–240 has been found satisfactory.
2. Avoid aluminum dishes made with fluted sides, as these may promote solvent "creep," resulting in possible sample loss.
3. If multiple samples are being run, rinse the Buchner fritted funnel twice between samples with 5 ml solvent using pressure filtration. After the second rinse, continue the flow of air until the glass frit is completely dry. Clean the Buchner fritted funnels thoroughly after filtering five or six samples.

11.2.3 Container No. 3. Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g using a balance. This step may be conducted in the field.

11.2.4 Container 3W (impinger water).

11.2.4.1 MCEM analysis. Transfer the solution into a 1,000 ml separatory funnel quantitatively with methylene chloride washes. Add enough solvent to total approximately 50 ml, if necessary. Shake the funnel for 1 minute, allow the phases to separate, and drain the solvent layer into a 250 ml beaker. Repeat the extraction twice. Evaporate with low heat (less than 40°C) until near dryness. Transfer the remaining few milliliters of solvent quantitatively with small solvent washes into a clean, dry, tared aluminum dish and evaporate to dryness. Remove from heat once solvent is evaporated. Reweigh the dish after a 30-minute equilibration in the balance room and determine the weight to the nearest 0.1 mg.

11.2.5 Container 3S (solvent).

11.2.5.1 MCEM analysis. Transfer the mixed solvent to 250 ml beaker(s). Evaporate and weigh following the procedures detailed for container 3W in section 11.2.4 of this method.

11.2.6 Blank containers. Measure the distilled water, acetone, or methylene chloride in each container either volumetrically or gravimetrically. Transfer the "solvent" to a tared 250 ml beaker, and evaporate to dryness at ambient temperature and pressure. (Conduct a solvent blank on the distilled deionized water blank in an identical fashion to that described in section 11.2.4.1 of this method.) Desiccate for 24 hours, and weigh to a constant weight. Report the results to the nearest 0.1 mg.

Note: The contents of Containers No. 2, 3W, and 3M as well as the blank containers may be evaporated at temperatures higher than ambient. If evaporation is done at an elevated temperature, the temperature must be below the boiling point of the solvent; also, to prevent "bumping," the evaporation process must be closely supervised, and the contents of the beaker must be swirled occasionally to maintain an even temperature. Use extreme care, as acetone and methylene chloride are highly flammable and have a low flash point.

12.0 Data Analysis and Calculations.

12.1 Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

12.2 Nomenclature.

A_n = Cross-sectional area of nozzle, m^3 (ft^3).
B_{ws} = Water vapor in the gas stream, proportion by volume.
C_a = Acetone blank residue concentration, mg/g.
C_s = Concentration of particulate matter in stack gas, dry basis, corrected to standard conditions, g/dscm (g/dscf).
I = Percent of isokinetic sampling.
L_a = Maximum acceptable leakage rate for either a pretest leak check or for a leak check following a component change; equal to 0.00057 m^3/min (0.02 cfm) or 4 percent of the average sampling rate, whichever is less.
L_i = Individual leakage rate observed during the leak check conducted prior to the "i^{th}" component change (i = 1, 2, 3...n), m^3/min (cfm).
L_p = Leakage rate observed during the post-test leak check, m^3/min (cfm).
m_a = Mass of residue of acetone after evaporation, mg.
m_n = Total amount of particulate matter collected, mg.
M_w = Molecular weight of water, 18.0 g/g-mole (18.0 lb/lb-mole).
P_{bar} = Barometric pressure at the sampling site, mm Hg (in Hg).
P_s = Absolute stack gas pressure, mm Hg (in. Hg).
P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).
R = Ideal gas constant, 0.06236 [(mm Hg)(m^3)]/[(°K) (g-mole)] {21.85 [(in. Hg)(ft^3)]/[(°R)(lb-mole)]}.
T_m = Absolute average dry gas meter (DGM) temperature (see Figure 5–2 of Method 5, 40 CFR part 60, appendix A), °K (°R).
T_s = Absolute average stack gas temperature (see Figure 5–2 of Method 5, 40 CFR part 60, appendix A), °K(°R).
T_{std} = Standard absolute temperature, 293°K (528°R).
V_a = Volume of acetone blank, ml.
V_{aw} = Volume of acetone used in wash, ml.
V_t = Volume of methylene chloride blank, ml.
V_{tw} = Volume of methylene chloride used in wash, ml.
V_{lc} = Total volume liquid collected in impingers and silica gel (see Figure 5–3 of Method 5, 40 CFR part 60, appendix A), ml.
V_m = Volume of gas sample as measured by dry gas meter, dcm (dcf).
$V_{m(std)}$ = Volume of gas sample measured by the dry gas meter, corrected to standard conditions, dscm (dscf).
$V_{w(std)}$ = Volume of water vapor in the gas sample, corrected to standard conditions, scm (scf).
V_s = Stack gas velocity, calculated by Equation 2–9 in Method 2, 40 CFR part 60, appendix A, using data obtained from Method 5, 40 CFR part 60, appendix A, m/sec (ft/sec).
W_a = Weight of residue in acetone wash, mg.
Y = Dry gas meter calibration factor.
ΔH = Average pressure differential across the orifice meter (see Figure 5–2 of Method 5, 40 CFR part 60, appendix A), mm H_2O (in H_2O).
ρ_a = Density of acetone, 785.1 mg/ml (or see label on bottle).
ρ_w = Density of water, 0.9982 g/ml (0.00220 lb/ml).
ρ_t = Density of methylene chloride, 1316.8 mg/ml (or see label on bottle).
Θ = Total sampling time, min.
Θ_1 = Sampling time interval, from the beginning of a run until the first component change, min.
Θ_i = Sampling time interval, between two successive component changes, beginning with the interval between the first and second changes, min.
Θ_p = Sampling time interval, from the final (n^{th}) component change until the end of the sampling run, min.
13.6 = Specific gravity of mercury.

60 = Sec/min.
100 = Conversion to percent.

12.3 Average dry gas meter temperature and average orifice pressure drop. See data sheet (Figure 5–2 of Method 5, 40 CFR part 60, appendix A).

12.4 Dry gas volume. Correct the sample volume measured by the dry gas meter to standard conditions (20°C, 760 mm Hg or 68°F, 29.92 in Hg) by using Equation 315–1.

$$V = V_m Y \frac{T_{std}\left(P_{bar} + \frac{\Delta H}{13.6}\right)}{T_m P_{std}} = V = K_1 V_m Y \frac{P_{bar} + \left(\frac{\Delta H}{13.6}\right)}{T_m} \qquad \text{Eq. 315-1}$$

Where
K_1 = 0.3858 °K/mm Hg for metric units,
= 17.64 °R/in Hg for English units.

Note: Equation 315–1 can be used as written unless the leakage rate observed during any of the mandatory leak checks (i.e., the post-test leak check or leak checks conducted prior to component changes) exceeds L_a. If L_p or L_i exceeds L_a, Equation 315–1 must be modified as follows:

(a) Case I. No component changes made during sampling run. In this case, replace V_m in Equation 315–1 with the expression:

$[V_m - (L_p - L_a)\Theta]$

(b) Case II. One or more component changes made during the sampling run. In this case, replace V_m in Equation 315–1 by the expression:

$$\left[V_m - (L_1 - L_a)\Theta_1 - \sum_{i=2}^{n}(L_i - L_a)\Theta_i - (L_p - L_a)\Theta_p\right]$$

and substitute only for those leakage rates (L_i or L_p) which exceed L_a.

12.5 Volume of water vapor condensed.

$$V_{w(std)} = V_{lc}\frac{\rho_w R T_{std}}{M_w P_{std}} = K_2 V_{lc} \qquad \text{Eq. 315-2}$$

Where
K_2 = 0.001333 m^3/ml for metric units;
= 0.04706 ft^3/ml for English units.

12.6 Moisture content.

$$B_{ws} = \frac{V_{w(std)}}{V_{m(std)} + V_{w(std)}} \qquad \text{Eq. 315-3}$$

Note: In saturated or water droplet-laden gas streams, two calculations of the moisture content of the stack gas shall be made, one from the impinger analysis (Equation 315-3), and a second from the assumption of saturated conditions. The lower of the two values of B_{ws} shall be considered correct. The procedure for determining the moisture content based upon assumption of saturated conditions is given in section 4.0 of Method 4, 40 CFR part 60, appendix A. For the purposes of this method, the average stack gas temperature from Figure 5–2 of Method 5, 40 CFR part 60, appendix A may be used to make this determination, provided that the accuracy of the in-stack temperature sensor is ±1°C (2°F).

12.7 Acetone blank concentration.

$$C_a = \frac{M_a}{V_a \rho_a} \qquad \text{Eq. 315-4}$$

12.8 Acetone wash blank.

$W_a = C_a V_{aw} \rho a$ *Eq. 315–5*

12.9 Total particulate weight. Determine the total PM catch from the sum of the weights obtained from Containers 1 and 2 less the acetone blank associated with these two containers (see Figure 315–1).

Note: Refer to section 8.5.8 of this method to assist in calculation of results involving two or more filter assemblies or two or more sampling trains.

12.10 Particulate concentration.

$c_s = K_3 m_n / V_{m(std)}$ Eq. 315–6

where
K = 0.001 g/mg for metric units;
= 0.0154 gr/mg for English units.

12.11 Conversion factors.

From	To	Multiply by
ft^3	m^3	0.02832
gr	mg	64.80004
gr/ft^3	mg/m^3	2288.4
mg	g	0.001
gr	lb	1.429×10^{-4}

12.12 Isokinetic variation.
12.12.1 Calculation from raw data.

$$I = \frac{100\,T_s\left|K_4 V_{lc} + \left(\frac{V_m Y}{T_m}\right)\left(P_{bar} + \frac{\Delta H}{13.6}\right)\right|}{60\,\Theta\,V_s P_s A_n} \qquad \text{Eq. 315-7}$$

where

$K_4 = 0.003454$ [(mm Hg)(m^3)]/[(m1)(°K)] for metric units;
= 0.002669 [(in Hg)(ft^3)]/[(m1)(°R)] for English units.

12.12.2 Calculation from intermediate values.

$$I = \frac{T_s V_{m(std)} P_{std}\,100}{T_{std} V_s \Theta A_n P_s\,60\left(1 - B_{ws}\right)} = K_5 \frac{T_s V_{m(std)}}{P_s V_s A_n \Theta\left(1 - B_{ws}\right)} \qquad \text{Eq. 315-8}$$

where

$K_5 = 4.320$ for metric units;
= 0.09450 for English units.

12.12.3 Acceptable results. If 90 percent ≤ I ≤ 110 percent, the results are acceptable. If the PM or MCEM results are low in comparison to the standard, and "I" is over 110 percent or less than 90 percent, the Administrator may opt to accept the results. Reference 4 in the Bibliography may be used to make acceptability judgments. If "I" is judged to be unacceptable, reject the results, and repeat the test.

12.13 Stack gas velocity and volumetric flow rate. Calculate the average stack gas velocity and volumetric flow rate, if needed, using data obtained in this method and the equations in sections 5.2 and 5.3 of Method 2, 40 CFR part 60, appendix A.

12.14 MCEM results. Determine the MCEM concentration from the results from Containers 1, 2, 2M, 3W, and 3S less the acetone, methylene chloride, and filter blanks value as determined in the following equation:

$m_{mcem} = D^{a}_{total} - w_a - w_t - f_b$

13.0 Method Performance. [Reserved]

14.0 Pollution Prevention. [Reserved]

15.0 Wastes Management. [Reserved]

16.0 Alternative Procedures.

16.1 Dry gas meter as a calibration standard. A DGM may be used as a calibration standard for volume measurements in place of the wet test meter specified in section 16.1 of this method, provided that it is calibrated initially and recalibrated periodically as follows:

16.1.1 Standard dry gas meter calibration.

16.1.1.1 The DGM to be calibrated and used as a secondary reference meter should be of high quality and have an appropriately sized capacity, e.g., 3 liters/rev (0.1 ft^3/rev). A spirometer (400 liters or more capacity), or equivalent, may be used for this calibration, although a wet test meter is usually more practical. The wet test meter should have a capacity of 30 liters/rev (1 ft^3/rev) and be capable of measuring volume to within 1.0 percent; wet test meters should be checked against a spirometer or a liquid displacement meter to ensure the accuracy of the wet test meter. Spirometers or wet test meters of other sizes may be used, provided that the specified accuracies of the procedure are maintained.

16.1.1.2 Set up the components as shown in Figure 5–7 of Method 5, 40 CFR part 60, appendix A. A spirometer, or equivalent, may be used in place of the wet test meter in the system. Run the pump for at least 5 minutes at a flow rate of about 10 liters/min (0.35 cfm) to condition the interior surface of the wet test meter. The pressure drop indicated by the manometer at the inlet side of the DGM should be minimized (no greater than 100 mm H_2O [4 in. H_2O] at a flow rate of 30 liters/min [1 cfm]). This can be accomplished by using large-diameter tubing connections and straight pipe fittings.

16.1.1.3 Collect the data as shown in the example data sheet (see Figure 5–8 of Method 5, 40 CFR part 60, appendix A). Make triplicate runs at each of the flow rates and at no less than five different flow rates. The range of flow rates should be between 10 and 34 liters/min (0.35 and 1.2 cfm) or over the expected operating range.

16.1.1.4 Calculate flow rate, Q, for each run using the wet test meter volume, V_w, and the run time, q. Calculate the DGM coefficient, Y_{ds}, for each run. These calculations are as follows:

$$Q = K_1 \frac{P_{bar} V_w}{\left(t_w + t_{std}\right)\Theta} \qquad \text{Eq. 315-9}$$

$$Y_{ds} = \frac{V_w\left(T_{ds} + T_{std}\right)P_{bar}}{V_{ds}\left(T_w + T_{std}\right)\left(P_{bar} + \frac{\Delta p}{13.6}\right)} \qquad \text{Eq. 315-10}$$

Where

$K_1 = 0.3858$ for international system of units (SI); 17.64 for English units;
P_{bar} = Barometric pressure, mm Hg (in Hg);
V_w = Wet test meter volume, liter (ft^3);
t_w = Average wet test meter temperature, °C (°F);
t_{std} = 273°C for SI units; 460°F for English units;
Θ = Run time, min;
t_{ds} = Average dry gas meter temperature, °C (°F);
V_{ds} = Dry gas meter volume, liter (ft^3);
Δp = Dry gas meter inlet differential pressure, mm H_2O (in H_2O).

16.1.1.5 Compare the three Y_{ds} values at each of the flow rates and determine the maximum and minimum values. The difference between the maximum and minimum values at each flow rate should be no greater than 0.030. Extra sets of triplicate runs may be made in order to complete this requirement. In addition, the meter coefficients should be between 0.95 and 1.05. If these specifications cannot be met in three sets of successive triplicate runs, the meter is not suitable as a calibration standard and should not be used as such. If these specifications are met, average the three Y_{ds} values at each flow rate resulting in five average meter coefficients, Y_{ds}.

16.1.1.6 Prepare a curve of meter coefficient, Y_{ds}, versus flow rate, Q, for the DGM. This curve shall be used as a reference when the meter is used to calibrate other DGMs and to determine whether recalibration is required.

16.1.2 Standard dry gas meter recalibration.

16.1.2.1 Recalibrate the standard DGM against a wet test meter or spirometer annually or after every 200 hours of operation, whichever comes first. This requirement is valid provided the standard DGM is kept in a laboratory and, if transported, cared for as any other laboratory instrument. Abuse to the standard meter may cause a change in the calibration and will require more frequent recalibrations.

16.1.2.2 As an alternative to full recalibration, a two-point calibration check may be made. Follow the same procedure and equipment arrangement as for a full recalibration, but run the meter at only two flow rates (suggested rates are 14 and 28 liters/min [0.5 and 1.0 cfm]). Calculate the meter coefficients for these two points, and compare the values with the meter calibration curve. If the two coefficients are within 1.5 percent of the calibration curve values at the same flow rates, the meter need not be recalibrated until the next date for a recalibration check.

6.2 Critical orifices as calibration standards. Critical orifices may be used as calibration standards in place of the wet test meter specified in section 10.3 of this method, provided that they are selected, calibrated, and used as follows:

16.2.1 Selection of critical orifices.

16.2.1.1 The procedure that follows describes the use of hypodermic needles or stainless steel needle tubing that has been found suitable for use as critical orifices. Other materials and critical orifice designs may be used provided the orifices act as true critical orifices; i.e., a critical vacuum can be obtained, as described in section 7.2.2.2.3 of Method 5, 40 CFR part 60, appendix A. Select five critical orifices that are appropriately sized to cover the range of flow rates between 10 and 34 liters/min or the expected operating range. Two of the critical orifices should bracket the expected operating range. A minimum of three critical orifices will be needed to calibrate a Method 5 DGM; the other two critical orifices can serve as spares and provide better selection for bracketing the range of operating flow rates. The needle sizes and tubing lengths shown in Table 315–1 give the approximate flow rates indicated in the table.

16.2.1.2 These needles can be adapted to a Method 5 type sampling train as follows: Insert a serum bottle stopper, 13 x 20 mm sleeve type, into a 0.5 in Swagelok quick connect. Insert the needle into the stopper as shown in Figure 5–9 of Method 5, 40 CFR part 60, appendix A.

16.2.2 Critical orifice calibration. The procedure described in this section uses the Method 5 meter box configuration with a DGM as described in section 6.1.1.9 of this method to calibrate the critical orifices. Other schemes may be used, subject to the approval of the Administrator.

16.2.2.1 Calibration of meter box. The critical orifices must be calibrated in the same configuration as they will be used; i.e., there should be no connections to the inlet of the orifice.

16.2.2.1.1 Before calibrating the meter box, leak-check the system as follows: Fully open the coarse adjust valve and completely close the bypass valve. Plug the inlet. Then turn on the pump and determine whether there is any leakage. The leakage rate shall be zero; i.e., no detectable movement of the DGM dial shall be seen for 1 minute.

16.2.2.1.2 Check also for leakages in that portion of the sampling train between the pump and the orifice meter. See section 5.6 of Method 5, 40 CFR part 60, appendix A for the procedure; make any corrections, if necessary. If leakage is detected, check for cracked gaskets, loose fittings, worn O-rings, etc. and make the necessary repairs.

16.2.2.1.3 After determining that the meter box is leakless, calibrate the meter box according to the procedure given in section 5.3 of Method 5, 40 CFR part 60, appendix A. Make sure that the wet test meter meets the requirements stated in section 7.1.1.1 of Method 5, 40 CFR part 60, appendix A. Check the water level in the wet test meter. Record the DGM calibration factor, Y.

16.2.2.2 Calibration of critical orifices. Set up the apparatus as shown in Figure 5–10 of Method 5, 40 CFR part 60, appendix A.

$$K' = \frac{K_1 V_m Y\left(P_{bar} + \frac{\Delta H}{13.6}\right)T_{amb}^{\frac{1}{2}}}{P_{bar} T_m \Theta} \qquad \text{Eq. 315-11}$$

where

K' = Critical orifice coefficient, [m^3)(°K)$^{1/2}$]/[(mm Hg)(min)] {[(ft^3)(°R)$^{1/2}$])/[(in. Hg)(min)]};
T_{amb} = Absolute ambient temperature, °K (°R).

16.2.2.2.7 Average the K' values. The individual K' values should not differ by more than ±0.5 percent from the average.

16.2.3 Using the critical orifices as calibration standards.

16.2.3.1 Record the barometric pressure.

16.2.3.2 Calibrate the metering system according to the procedure outlined in sections 7.2.2.2.1 to 7.2.2.2.5 of Method 5, 40 CFR part 60, appendix A. Record the information listed in Figure 5–12 of Method 5, 40 CFR part 60, appendix A.

16.2.3.3 Calculate the standard volumes of air passed through the DGM and the critical orifices, and calculate the DGM calibration factor, Y, using the equations below:

$V_{m(std)} = K_1 V_m [P_{bar} + (\Delta H/13.6)]/T_m$ *Eq. 315–12*

$V_{cr(std)} = K' (P_{bar} \Theta)/T_{amb}^{1/2}$ *Eq. 315–13*

$Y = V_{cr(std)}/V_{m(std)}$ *Eq. 315–14*

where

$V_{cr(std)}$ = Volume of gas sample passed through the critical orifice, corrected to standard conditions, dscm (dscf).

K' = 0.3858 °K/mm Hg for metric units
= 17.64 °R/in Hg for English units.

16.2.3.4 Average the DGM calibration values for each of the flow rates. The calibration factor, Y, at each of the flow rates should not differ by more than ±2 percent from the average.

16.2.3.5 To determine the need for recalibrating the critical orifices, compare the DGM Y factors obtained from two adjacent orifices each time a DGM is calibrated; for example, when checking orifice 13/2.5, use orifices 12/10.2 and 13/5.1. If any critical orifice yields a DGM Y factor differing by more than 2 percent from the others, recalibrate the critical orifice according to section 7.2.2.2 of Method 5, 40 CFR part 60, appendix A.

17.0 References.

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18.0 Tables, Diagrams, Flowcharts, and Validation Data

TABLE 315–1. FLOW RATES FOR VARIOUS NEEDLE SIZES AND TUBE LENGTHS.

Gauge/length (cm)	Flow rate (liters/min)	Gauge/length (cm)	Flow rate (liters/min)
12/7.6	32.56	14/2.5	19.54
12/10.2	30.02	14/5.1	17.27
13/2.5	25.77	14/7.6	16.14
13/5.1	23.50	15/3.2	14.16
13/7.6	22.37	15/7.6	11.61
13/10.2	20.67	115/10.2	10.48

Figure 315–1. Particulate and MCEM Analyses

Particulate Analysis

Plant	
Date	
Run No.	
Filter No.	
Amount liquid lost during transport	
Acetone blank volume (ml)	
Acetone blank concentration (Eq. 315–4) (mg/mg)	
Acetone wash blank (Eq. 315–5) (mg)	

	Final weight (mg)	Tare weight (mg)	Weight gain (mg)
Container No. 1			
Container No. 2			
Total			
Less Acetone blank			
Weight of particulate matter			

	Final volume (mg)	Initial volume (mg)	Liquid collected (mg)
Moisture Analysis			
Impingers	Note 1	Note 1	
Silica gel			
Total			

Note 1: Convert volume of water to weight by multiplying by the density of water (1 g/ml).

Container No.	Final weight (mg)	Tare of aluminum dish (mg)	Weight gain	Acetone wash volume (ml)	Methylene chloride wash volume (ml)
MCEM Analysis					
1					
2+2M					
3W					
3S					
Total			$\sum m_{total}$	$\sum V_{aw}$	$\sum V_{cw}$

Less acetone wash blank (mg) (not to exceed 1 mg/l of acetone used)	$w_a = C_a \rho_a \sum V_{aw}$
Less methylene chloride wash blank (mg) (not to exceed 1.5 mg/l of methylene chloride used)	$w_c = C_c \rho_c \sum V_{cw}$
Less filter blank (mg) (not to exceed . . . (mg/filter)	f_b
MCEM weight (mg)	$m_{MCEM} = \sum m_{total} - w_a - w_c - f_b$

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Part III

Department of Education

Direct Grant and Fellowship Programs for Fiscal Year 1998; Notice

DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

AGENCY: Department of Education.

ACTION: Notice announcing direct grant programs and fellowship programs under which the Secretary has invited or expects to invite applications for new awards for fiscal year (FY) 1998.

SUMMARY: This notice identifies programs and competitions under which the Secretary has invited or plans to invite applications for new awards for FY 1998 and announces actual or estimated deadline dates for the transmittal of applications under these programs. The notice lists programs and competitions previously announced, as well as those to be announced at a later date. The notice is intended to help potential applicants in planning for FY 1998 grant competitions.

DATES: *Dates of Application Notices.* The actual or estimated date for publication of the application notice for a given program or competition is listed in column two of the charts. Application notices that have already been published in the **Federal Register** can be identified by the **Federal Register** page number, also shown in column two. If a program has yet to publish an application notice, an estimated date is listed.

Applications Available. The actual or estimated date for the availability of an application package for a given program or competition is listed in column three of the charts.

Deadline Dates for Transmitting Applications. The actual or estimated deadline for transmitting applications under a given program or competition is listed in column four of the charts. If a program has yet to publish an application notice, the estimated deadline date is listed. The actual deadline will appear in the application notice to be published in the **Federal Register.**

Deadline Dates for Transmitting Intergovernmental Reviews. Certain programs in this notice are subject to Executive Order 12372 and the regulations in 34 CFR part 79. The actual or estimated deadline date for the transmittal of State Process Recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties is listed in column five of the chart. If a program has yet to publish an application notice, the estimated deadline date is listed. The actual deadline will appear in the application notice to be published in the **Federal Register.**

ADDRESSES: *For Applications or Further Information.* The address and telephone number for obtaining applications for, or further information about, an individual program are in the actual application notice for that program.

For Users of TDD or FIRS. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Art Stewart, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3652, ROB–3, Washington, DC 20202–4248. Telephone: (202) 708–8515. Internet: Arthur_Stewart@ed.gov

For Intergovernmental Review. The address for transmitting recommendations and comments under Executive Order 12372 is in the appendix to this notice. The appendix also contains the addresses of individual SPOCs.

SUPPLEMENTARY INFORMATION:

Available Funds

The Congress has not yet enacted a FY 1998 appropriation for the Department of Education. The Secretary is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimates of amounts of funds that will be available for these programs are based on the President's FY 1998 budget request.

Potential applicants should note, however, that the Congress may increase, eliminate, or reduce funding in FY 1998 for some direct grant or fellowship programs administered by the Department. Final action on the FY 1998 appropriation may require the Department to cancel some of the competitions listed in this notice including some of those the notice indicates will be announced at a later date.

Estimated Range and Average Size of Awards

Except for programs and competitions administered by the Office of Special Education and Rehabilitative Services (OSERS), columns six and seven list estimated ranges and average size of awards. The amounts referenced in these columns are advisory and represent the Secretary's best estimates at this time. The average size of an award is the estimate for a single-year project or for the first budget period of a multi-year project. In the application package for an individual program or competition, applicants will receive information about the amount the Secretary intends to make available for each year of a multi-year project.

In the case of programs and competitions administered by the principal components of OSERS, the charts differ with regard to the amount of awards. For programs and competitions of the National Institute on Disability and Rehabilitation Research and the Office of Special Education Programs, column six of the charts lists the actual or estimated maximum amount the Secretary will award per year. For programs and competitions of the Rehabilitative Services Administration, column seven lists either the estimated average size or maximum amount of the award.

Note: The Department is not bound by any of the estimates in this notice. For those programs or competitions for which the Department has not yet published application notices, the dates, fiscal information, and number of new awards listed in this combined notice are estimates only and, thus, subject to change. Readers are advised to read the actual individual application notices for these programs or competitions when the notices are published in the **Federal Register.**

National Education Goals

In developing this combined application notice the Department has sought to ensure that programs awarding grants during FY 1998 will further achievement of the National Education Goals, as found in Pub. L. 103–227 (the Goals 2000: Educate America Act, enacted March 31, 1994). The Secretary encourages applicants under these programs to consider the National Education Goals in developing their applications.

The National Education Goals for the year 2000 are as follows:

- All children in America will start school ready to learn.
- The high school graduation rate will increase to at least 90 percent.
- All students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation's modern economy.
- United States students will be first in the world in mathematics and science achievement.
- Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
- Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.
- The Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.
- Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

Applicability of Section 421 of the Controlled Substance Act

A number of programs listed in the charts provide that a grant, fellowship, traineeship, or other monetary benefit may be awarded to an individual. This award may be made to the individual either directly by the Department or by a grantee that receives Federal funds for the purpose of providing, for example, fellowships, traineeships, or other awards to individuals.

Section 421 of the Controlled Substance Act (21 U.S.C. 862) provides that a sentencing court may deny eligibility for certain Federal benefits to an individual convicted of drug trafficking or possession. Thus, an individual who applies for a grant, fellowship, or other monetary benefit under a program covered by this notice should understand that, if convicted of drug trafficking or possession, he or she is subject to denial of eligibility for that benefit if the sentencing court imposes such a sanction. This denial applies whether the Federal benefit is provided to the individual directly by the Department or is provided through a grant, fellowship, traineeship, or other award made available with Federal funds by a grantee.

Any persons determined to be ineligible for Federal benefits under the provisions of section 421 are listed in the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs."

Applicability of the Federal Debt Collection Procedures Act of 1990

The programs listed in the chart make discretionary awards subject to the eligibility requirements of the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101–647; 28 U.S.C. 3201). The Act provides that if there is a judgment lien against a debtor's property for a debt to the United States, the debtor is not eligible to receive a Federal grant or loan, except direct payments to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

Intergovernmental Review of Federal Programs

Certain programs in this notice are subject to the requirements of EO 12372 and the regulations in 34 CFR part 79. These programs are identified in Charts 1 through 6 with a date in the column headed "Deadline for Intergovernmental Review." For further information, an applicant under a program subject to the Executive order—and other parties interested in that program—are directed to the appendix to this notice.

Explanation of Charts

This notice provides charts by principal office of virtually all the Department's direct grant and fellowship competitions for new awards the Secretary has announced or expects to announce for FY 1998. Each principal office is assigned a separate chart as follows:

Chart 1—Office of Bilingual Education and Minority Languages.
Chart 2—Office of Educational Research and Improvement.
Chart 3—Office of Elementary and Secondary Education.
Chart 4—Office of Postsecondary Education.
Chart 5—Office of Special Education and Rehabilitative Services.
Chart 6—Office of Vocational and Adult Education.

BILLING CODE 4000–01–P

Chart 1 - OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Harry Logel, Office of Bilingual Education and Minority Affairs, U.S. Department of Education, 600 Independence Avenue, SW., room 5605, Switzer Building, Washington, DC 20202-6510. Telephone: (202) 205-5530. Internet: Harry_Logel@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.194Q Bilingual Education - State Grant Programs	11/14/97	11/14/97	01/09/98	03/10/98	N/A	N/A	55
84.195A Bilingual Education - Teachers and Personnel Grant Program	01/21/98	01/21/98	02/23/98	04/24/98	$150,000-$250,000	$200,000	25
84.195C Bilingual Education - Graduate Fellowship Program	10/17/97	10/24/97	12/05/97	02/03/98	$30,000-$300,000	$150,000	35
84.195E Bilingual Education - Career Ladder Program	01/21/98	01/21/98	02/23/98	04/24/98	$150,000-$250,000	$200,000	36
84.288S Bilingual Education - Program Development and Implementation Program	11/14/97	11/14/97	01/20/98	03/23/98	$100,000-$175,000	$150,000	40
84.290U Bilingual Education - Comprehensive School Grants Program	11/17/97	11/17/97	01/26/98	03/27/98	$150,000-$350,000	$250,000	48

Chart 2 - OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Almita Reed, Office of Educational Research and Improvement, U.S. Department of Education, room 604, 555 New Jersey Avenue NW., Washington, DC 20208-5570. Telephone: (202) 219-1385. Internet: Almita_Reed@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.168M Dwight D. Eisenhower - Mathematics and Professional Development Program	12/26/97	01/09/98	02/20/98	04/24/98	$500,000-$1,000,000	$775,000	5
84.206A Jacob K. Javits Gifted and Talented Students Education Program	11/05/97	11/19/97	01/09/98	03/09/98	$100,000-$275,000	$250,000	4
84.215V Partnerships in Character Education Program	01/19/98	01/19/98	03/16/98	05/16/98	$250,000-$1,000,000	$500,000	8
84.287A 21st Century Community Learning Centers	11/05/97	11/19/97	01/12/98	03/13/98	$35,000-$300,000	$200,000	250
84.303D National Challenge Grants for Technology in Education	11/07/97	11/14/97	02/13/98	05/18/98	$500,000-$1,500,000	$1,000,000	20
84.305F - 84.309F Field-Initiated Studies Educational Research Grant Program	11/14/97	12/05/97	03/20/98	05/20/98	$100,000-$225,000	$150,000	25

Chart 3 - OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Alda Giusti, Program Analyst, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue SW., suite 4000, Portals Building, Washington, DC 20202-6110. Telephone: (202) 260-1925. Internet: Alda_Giusti@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.083A Women's Educational Equity Act Program-Implementation	10/10/97	10/15/97	11/21/97	01/30/98	$90,000-$200,000	$150,000	9
84.083B Women's Educational Equity Act Program-Research and Development	10/10/97	10/15/97	11/21/97	01/30/98	$80,000-$200,000	$150,000	2
84.165A Magnet Schools Assistance Program	12/05/97	12/12/97	02/13/98	04/13/98	$200,000-$3,000,000	$1,500,000	60
84.214A Migrant Education - Even Start Program	04/01/98	04/01/98	06/01/98	08/03/98	$110,000-$220,000	$165,000	3
84.282A Public Charter Schools Program	12/01/97	12/01/97	01/30/98	N/A	SEAs $250,000-$4,000,000 Others $25,000-$250,000	$1,750,000 $100,000	20 10
84.314A Even Start Statewide Family Literacy Initiative Grants	12/[illegible]/97	01/13/98	03/24/98	N/A	$185,000-$215,000	$200,000	5
84.317A Goals 2000: Comprehensive Local Reform Assistance - State of Oklahoma	02/16/98	02/16/98	04/30/98	06/30/98	$20,000-$200,000	$90,000	65

Chart 4 - OFFICE OF POSTSECONDARY EDUCATION
Higher Education Programs (HEP)

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Alan Schiff, Education Program Specialist, Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., suite 600, Portals Building, Washington, DC 20024-2142. Telephone: (202) 708-9040. Internet: Alan_Schiff@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.016A Undergraduate International Studies and Foreign Language Program	08/05/97 (62 FR 42108)	08/29/97	11/03/97	01/02/98	Single Inst. $40,000-$90,000 Consortia $75,000-$100,000	$64,000 $90,000	22 4
84.017A International Research and Studies Program	08/05/97 (62 FR 42108)	08/29/97	10/31/97	N/A	$40,000-$150,000	$83,000	10
84.019A Fulbright-Hays Faculty Research Abroad Program	08/05/97 (62 FR 42108)	08/29/97	10/27/97	N/A	$18,000-$70,000	$41,000	31
84.021A Fulbright-Hays Group Projects Abroad Program	08/05/97 (62 FR 42108)	08/22/97	10/20/97	N/A	$35,000-$65,000	$58,000	24
84.022A Fulbright-Hays Doctoral Dissertation Research Abroad Program	08/05/97 (62 FR 42108)	08/29/97	10/27/97	N/A	$12,000-$60,000	$24,000	75
84.031A Strengthening Institutions Program	10/30/97	11/28/97	01/23/98	03/23/98	Development $300,000-$350,000 Planning $20,000-$25,000	$325,000 $22,500	48 14
84.031H Institutional Aid - Eligibility	10/29/97	11/15/97	12/15/97; 01/26/98*	N/A	N/A	N/A	N/A

Chart 4 - Office of Postsecondary Education - HEP - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.044 Talent Search Program	07/14/97 (63 FR 37572)	08/01/97	10/31/97	12/31/97	$190,000-$400,000	$273,000	347
84.066 Educational Opportunity Centers Program	07/14/97 (63 FR 37572)	08/01/97	09/30/97	11/30/97	$190,000-$450,000	$357,000	81
84.103A TRIO Training Grant Program	12/05/97	12/12/97	02/20/98	N/A	$170,000-$280,000	$250,000	16
84.120A Minority Science Improvement Program	08/05/97 (62 FR 42108)	10/15/97	12/22/97	02/28/98	Institutional $100,000-$200,000 Design $15,000-$20,000 Special $20,000-$150,000 Cooperative $20,000-$500,000	$120,000 $18,000 $25,000 $280,000	15 2 12 3
84.153A Business and International Education Program	08/05/97 (62 FR 42108)	08/29/97	11/07/97	01/06/98	$50,000-$90,000	$75,000	27
84.200A Graduate Assistance in Areas of National Need	10/22/97	11/07/97	01/05/98	03/05/98	$125,000-$250,000	$138,000	75
84.220A Centers for International Business Education Program	08/05/97 (62 FR 42108)	08/29/97	11/10/97	01/09/98	$200,000-$310,000	$276,000	13
84.262A Encouraging Minority Students to Become Teachers Program	12/19/97	01/09/98	03/16/98	05/15/98	$80,000-$300,000	$170,000	9

Chart 4 - Office of Postsecondary Education - FIPSE - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.316A Native Hawaiian Higher Education Program	08/05/97 (62 FR 42108)	10/31/97	01/30/98	04/01/98	$500,000-$1,000,000	$500,000	2

*The program plans to have two deadline dates for eligibility applications.

Fund for the Improvement of Postsecondary Education (FIPSE)

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Frank Frankfort, Education Program Specialist, Fund for the Improvement of Postsecondary Education, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., room 3600 ROB-3, Washington, DC 20202-5175. Telephone: (202) 260-3704. Internet: Frank_Frankfort@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
84.116A&B Comprehensive Program	08/22/97 (62FR 44855)	08/25/97	10/24/97 (preapplication) 03/20/98 (Final application)	05/19/98	$15,000-$150,000	$70,000	72
84.116J Joint Consortia for Cooperation in Higher Education and Vocational Education	12/19/97	12/19/97	03/20/98	05/19/98	$100,000-$130,000	$130,000	8
84.116N Program for North American Mobility in Higher Education	11/07/97	11/07/97	02/06/98	04/07/98	$80,000-$100,000	$90,000	10
84.116P Disseminating Proven Reforms	01/09/98	01/09/98	03/13/98	05/12/98	$160,000	$160,000	8
84.116R Institutional Restructuring in Higher Education	01/09/98	01/09/98	03/13/98	05/12/98	$100,000-$130,000	$120,000	10

Chart 5 - OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

National Institute on Disability and Rehabilitation Research (NIDRR)

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: Donna Nangle, National Institute on Disability and Rehabilitation Research, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 600 Independence Avenue, SW., room 3418, Switzer Building, Washington, DC 20202-2645. Telephone: (202) 205-5880. Internet: Donna_Nangle@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
84.133A-5 Pediatric Trauma	02/02/98	02/02/98	04/03/98	N/A	$250,000	1
84.133B-5 Community Integration for Individuals with Mental Retardation	04/01/98	04/01/98	06/01/98	N/A	$700,000	1
84.133B-5 Policies Affecting Families with Children with Disabilities	04/01/98	04/01/98	06/01/98	N/A	$650,000	1
84.133B-5 Aging with Mental Retardation	04/01/98	04/01/98	06/01/98	N/A	$700,000	1
84.133B-7 Public Policy Research to Improve Employment Outcomes for People with Disabilities	02/02/98	02/02/98	04/03/98	N/A	$900,000	1
84.133B-7 Community Based Employment to Improve Employment Outcomes for People with Disabilities	02/02/98	02/02/98	04/03/98	N/A	$700,000	1
84.133B-7 State Service Systems to Improve Employment Outcomes for People with Disabilities	02/02/98	02/02/98	04/03/98	N/A	$700,000	1

Chart 5 - Office of Special Education and Rehabilitative Services - NIDRR - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
84.133B-7 Workplace Supports to Improve Employment Outcomes	02/02/98	02/02/98	04/03/98	N/A	$700,000	1
84.133B-7 School-To-Work and Transition Strategies to Improve Employment Outcomes for Youth with Disabilities	02/02/98	02/02/98	04/03/98	N/A	$600,000	1
84.133B-9 Disability Statistics	03/02/98	03/02/98	05/01/98	N/A	$700,000	1
84.133B-9 Disability and Rehabilitation Issues of Underserved Minorities	03/02/98	03/02/98	05/01/98	N/A	$600,000	1
84.133B-9 Employment and Independent Living for American Indians	03/02/98	03/02/98	05/01/98	N/A	$600,000	1
84.133B-10 Stroke Rehabilitation	01/13/98	01/13/98	03/17/98	N/A	$800,000	1
84.133B-10 Arthritis Rehabilitation	01/13/98	01/13/98	03/17/98	N/A	$800,000	1
84.133B-10 Secondary Conditions of Spinal Cord Injury	01/13/98	01/13/98	03/17/98	N/A	$800,000	1
84.133B-10 Multiple Sclerosis Rehabilitation	01/13/98	01/13/98	03/17/98	N/A	$700,000	1
84.133B-10 Aging with Disability	01/13/98	01/13/98	03/17/98	N/A	$700,000	1
84.133B-10 Neuromuscular Disorders Rehabilitation	01/13/98	01/13/98	03/17/98	N/A	$650,000	1
84.133B-10 Community Integration for Individuals with Traumatic Brain Injury	01/13/98	01/13/98	03/17/98	N/A	$800,000	1

Chart 5 - Office of Special Education and Rehabilitative Services - NIDRR - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
84.133D-2 Information Dissemination on Community Integration for Persons with Mental Retardation	02/02/98	02/02/98	04/03/98	N/A	$400,000	1
84.133D-2 Independent Living Information Dissemination	02/02/98	02/02/98	04/03/98	N/A	$400,000	1
84.133E-1 Communication Enhancement	12/22/97	12/22/97	02/26/98	N/A	$900,000	1
84.133E-1 Information Technology Access	12/22/97	12/22/97	02/26/98	N/A	$1,350,000	1
84.133E-1 Ergonomic Solutions for Employment	12/22/97	12/22/97	02/26/98	N/A	$800,000	1
84.133E-1 Hearing Enhancement	12/22/97	12/22/97	02/26/98	N/A	$900,000	1
84.133E-3 Prosthetics and Orthotics	03/02/98	03/02/98	05/01/98	N/A	$900,000	1
84.133E-3 Wheeled Mobility	03/02/98	03/02/98	05/01/98	N/A	$900,000	1
84.133E-3 Technology Transfer	03/02/98	03/02/98	05/01/98	N/A	$900,000	1
84.133E-3 Telerehabilitation	03/02/98	03/02/98	05/01/98	N/A	$900,000	1
84.133F Research Fellowships	06/19/97 (62 FR 33514)	06/19/97	08/29/97	N/A	Merit: $45,000 Distinguished: $55,000	10
84.133G Field Initiated Research	06/19/97 (62 FR 33517)	06/19/97	08/29/97	N/A	$125,000	30
84.133P Advanced Rehabilitation Research Training Projects	06/19/97 (62 FR 33518)	06/19/97	08/29/97	N/A	$150,000	5

Chart 5 - Office of Special Education and Rehabilitative Services - OSEP - Continued

Office of Special Education Programs (OSEP)

For any application notice not already published, the dates in this chart are estimates and the CFDA numbers have not been assigned. For further information regarding any of the following competitions, please contact: The Grants and Contracts Services Team, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 600 Independence Avenue, SW., room 3080, Switzer Building, Washington, DC 20202-2641. The preferred method for requesting information is to FAX your request to: (202) 205-8717. Telephone: (202) 205-9182.

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
Research and Technology Institutes for Children and Youth with Disabilities	03/17/98	04/17/98	06/05/98	N/A	$700,000	4
84.023B Student Initiated Research Projects	08/04/97 (62 FR 41998)	08/08/97	02/06/98	N/A	$20,000	14
84.023C Field Initiated Research Projects	08/04/97 (62 FR 41998)	08/08/97	10/01/97	N/A	$180,000	12
Directed Research and Technology Projects	03/27/98	04/17/98	06/05/98	N/A	$250,000	9
Demonstration Projects for Children and Youth with Disabilities	11/28/97	12/14/97	02/03/98	N/A	$150,000	28
Outreach Projects for Children and Youth with Disabilities	11/28/97	12/14/97	02/03/98	N/A	$140,000	21
84.023N Initial Career Awards	08/04/97 (62 FR 41998)	08/08/97	10/01/97	N/A	$75,000	4
Video Description Projects	11/28/97	12/14/97	02/03/98	04/03/98	$350,000	2
84.026K Recorded Audio Cassettes for Visually and Print Disabled Students	08/04/97 (62 FR 41998)	08/08/97	09/12/97	11/10/97	$4,500,000	1

Chart 5 - Office of Special Education and Rehabilitative Services - OSEP - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
Captioned Films and Video Distribution System	11/28/97	12/14/97	02/03/98	04/03/98	$1,300,000	1
Closed Captioned Daytime Television Programs	11/28/97	12/14/97	02/03/98	04/03/98	$350,000	4
Cultural Experiences for Deaf or Hard of Hearing Individuals	11/28/97	12/14/97	02/03/98	04/03/98	$100,000	5
84.029A Preparation of Personnel to Serve Children and Youth with Low-Incidence Disabilities	08/04/97 (62 FR 41998)	08/08/97	10/01/97	12/01/97	$300,000	16
84.029D Preparation of Leadership Personnel	08/04/97 (62 FR 41998)	08/08/97	09/26/97	11/25/97	$225,000	6
84.029E Minority Institutions Personnel	08/04/97 (62 FR 41998)	08/08/97	09/26/97	11/26/97	$200,000	16
Personnel Preparation Projects of National Significance	11/28/97	12/14/97	02/03/98	04/03/98	$200,000	24
84.029M Parent Training and Information Centers	08/04/97 (62 FR 41998)	08/08/97	10/17/97	12/14/97	$400,000	13
Community Parent Resource Centers	11/28/97	12/14/97	02/03/98	04/03/98	$100,000	10
Preparation of Personnel to Serve Children with High Incidence Disabilities	01/19/98	02/02/98	04/12/98	06/12/98	$200,000	40
National Information Center for Children and Youth with Disabilities	11/28/97	12/14/97	02/03/98	04/03/98	$950,000	1

Chart 5 - Office of Special Education and Rehabilitative Services - RSA - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum or Estimated Maximum Award (per year)	Estimated Number of Awards
Technical Assistance to Improve Higher Education Opportunities for Individuals with Disabilities	11/28/97	12/14/97	02/03/98	04/03/98	$500,000	1
Regional Resource Centers	11/28/97	12/14/97	02/03/98	04/03/98	$1,000,000	6
National Clearinghouse on Professions in Special Education	01/19/98	02/02/98	04/12/98	06/12/98	$500,000	1
Technical Assistance on Positive Behavioral Interventions	03/27/98	04/17/98	06/05/98	08/05/98	$500,000	1
Technical Assistance on Dispute Resolution	03/27/98	04/17/98	06/05/98	08/05/98	$1,000,000	1

Rehabilitation Services Administration (RSA)

For any application notice not already published, the dates in this chart are estimates. For further information regarding any of the following competitions, please contact: The Grants and Contracts Services Team, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 600 Independence Avenue, SW., room 3317, Switzer Building, Washington, DC 20202-2641. The preferred method for requesting information is to FAX your request to: (202) 205-8717. Telephone: (202) 205-8351.

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of or Maximum Awards	Estimated or Maximum Number of Awards
84.128G Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Disabilities	06/12/97 (62 FR 32099)	07/01/97	09/02/97	11/01/97	$150,000-$175,000	$160,000 (avg.)	3 (est.)

Chart 5 - Office of Special Education and Rehabilitative Services - RSA - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of or Maximum Awards	Estimated or Maximum Number of Awards
84.128J Projects for Initiating Recreation Programs for Individuals with Disabilities	06/12/97 (62 FR 32100)	07/01/97	09/30/97	11/29/97	$110,000-$140,000	$114,000 (avg.)	9 (est.)
84.129A through R Rehabilitation Training: Long-Term Training	07/14/97 (62 FR 37571)	07/15/97	09/12/97	11/11/97	$75,000-$150,000	$150,000 (Avg.)	46
84.129A3 Rehabilitation Nursing	----	----	----	----	----	$100,000 (max.)	1 (max.)
84.129A8 Rehabilitation Medicine	----	----	----	----	----	$100,000 (max.)	5 (max.)
84.129A9 Prosthetics and Orthotics	----	----	----	----	----	$150,000 (max.)	3 (max.)
84.129C3 Rehabilitation Administration	----	----	----	----	----	$100,000 (max.)	2 (max.)
84.129D4 Physical Theraphy	----	----	----	----	----	$100,000 (max.)	2 (max.)
84.129E4 Rehabilitation Technology	----	----	----	----	----	$100,000 (max.)	5 (max.)
84.129F4 Vocational Evaluation and Work Adjustment	----	----	----	----	----	$100,000 (max.)	5 (max.)
84.129H3 Rehabilitation for Individuals Who Are Mentally Ill	----	----	----	----	----	$100,000 (max.)	4 (max.)
84.129L4 Undergraduate Education in the Rehabilitation Services	----	----	----	----	----	$75,000 (max.)	6 (max.)
84.129N2 Speech Pathology and Audiology	----	----	----	----	----	$75,000 (max.)	2 (max.)
84.129P4 Specialized Personnel for Rehabilitation of Individuals Who Are Blind or Have Vision Impairment	----	----	----	----	----	$100,000 (max.)	7 (max.)
84.129Q4 Rehabilitation for Individuals Who are Deaf or Hard of Hearing	----	----	----	----	----	$100,000 (max.)	8 (max.)
84.129R4 Job Development and Job Placement Services to Individuals With Disabilities	----	----	----	----	----	$100,000 (max.)	3 (max.)

Chart 5 - Office of Special Education and Rehabilitative Services - RSA - Continued

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of or Maximum Awards	Estimated or Maximum Number of Awards
84.129B Vocational Rehabilitation Counseling	09/11/97 (62 FR 47798)	09/11/97	10/31/97	12/30/97	$90,000-$100,000	$100,000 (avg.)	17 (est.)
84.132A-1 Centers for Independent Living	12/01/97	12/05/97	03/06/98	05/06/98	$50,000-$80,000	$60,000 (avg.)	3 (est.)
84.234N Projects with Industry	10/01/97	10/08/97	01/13/98	04/13/98	$158,000-$238,000	$198,000 (avg.)	4 (est.)
84.235A-1 Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities	09/18/97 (62 FR 48996)	09/29/97	12/18/97	02/18/98	$220,000-$245,000	$230,000 (avg.)	28-30 (est.)
84.246A Rehabilitation Short-Term Training/Braille Training	10/20/97	10/20/97	12/19/97	02/18/98	$100,000 $150,000	$150,000 (avg.)	2 (est.)
84.250G-1 Vocational Rehabilitation Services Projects for American Indians with Disabilities	12/14/97	12/15/97	05/12/98	N/A	$250,000-$300,000	$275,000 (avg.)	11 (est.)
84.264A Rehabilitation Continuing Education	09/22/97 (62 FR 49502)	09/22/97	11/14/97	01/13/98	$318,000-$525,000	N/A	7 (est.)

Chart 6 - OFFICE OF VOCATIONAL AND ADULT EDUCATION

For further information please contact: Richard L. Smith, Office of Vocational and Adult Education, U.S. Department of Education, 600 Independence Avenue, SW., room 4529, Switzer Building, Washington, DC 20202-7110. Telephone: (202) 205-5621. Internet: Richard_Smith@ed.gov

CFDA No. and Name	Application Notice	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
The Secretary does not expect to make new awards in FY 1998 for programs administered by the Office of Vocational and Adult Education.							

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information regarding a competition listed in this notice, please contact the person whose name appears at the top of the particular chart in which that competition is listed.

Dated: October 2, 1997.

Donald Rappaport,

Chief Financial and Chief Information Officer.

Appendix

Intergovernmental Review of Federal Programs

This appendix applies to each program that is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each of those States under the Executive order. A listing containing the Single Point of Contact for each State is included in this appendix.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in the actual application notice to the following address: The Secretary, EO 12372—CFDA# [commenter must insert number—including suffix letter, if any], U.S. Department of Education, room 6213, 600 Independence Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in the actual application notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

BILLING CODE 4000-01-P

STATE SINGLE POINTS OF CONTACT

Note: In accordance with Executive Order #12372, this listing represents the designated State Single Points of Contact. Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

The jurisdictions not listed no longer participate in the process. However, an applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact.

ARIZONA
Joni Saad
Arizona State Clearinghouse
3800 N. Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone: (602) 280-1315
FAX: (602) 280-8144

ARKANSAS
Mr. Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
1515 W. 7th Street, Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682-1074
FAX: (501) 682-5206

CALIFORNIA
Grants Coordinator
Office of Planning & Research
1600 Ninth Street, Room 250
Sacramento, California 95814
Telephone: (916) 327-9281
FAX: (916) 322-1025

DELAWARE
Francine Booth
State Single Point of Contact
Executive Department
Office of the Budget
Thomas Collins Building
P.O. Box 1401
Dover, Delaware 19903
Telephone: (302) 739-3326
FAX: (302) 739-5661

DISTRICT OF COLUMBIA
Charles Nichols
State Single Point of Contact
Office of Grants Mgmt. & Development.
717 14th Street, N.W. - Suite 400
Washington, D.C. 20005
Telephone: (202) 727-6554
FAX: (202) 727-1617

FLORIDA
Florida State Clearinghouse
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399-2100
Telephone: (904) 922-5438
FAX: (904) 487-2899

GEORGIA
Tom L. Reid, III
Coordinator
Georgia State Clearinghouse
270 Washington Street, S.W. - 8th Floor
Atlanta, GA 30334
Telephone: (404) 656-3855
FAX: (404) 656-3828

ILLINOIS
Ms. Virginia Bova, Single Point of Contact
Illinois Department of Commerce and Community Affairs
James R. Thompson Center
100 West Randolph, Suite 3-400
Chicago, IL 60601
Telephone: (312) 814-6028
FAX: (312) 814-1800

INDIANA
Frances Williams
State Budget Agency
212 State House
Indianapolis, Indiana 46204-2796
Telephone: (317) 232-5619
FAX: (317) 233-3323

IOWA
Steven R. McCann
Division for Community Assistance
Iowa Department of Economic Development
200 East Grand Avenue
Des Monies, Iowa 50309
Telephone: (515) 242-4719
FAX: (515) 242-4809

KENTUCKY
Ronald W. Cook
Office of the Governor
Department of Local Government
1024 Capitol Center Drive - Suite 340
Frankfort, Kentucky 40601-8204
Telephone: (502) 573-2382
FAX: (502) 573-2512

MAINE
Joyce Benson
State Planning Office
184 State Street
38 State House Station
Augusta, Maine 04333
Telephone: (207) 287-3261
FAX: (207) 287-6489

MARYLAND
William G. Carroll
Manager, Plan & Project Review
Maryland Office of Planning
301 W. Preston Street - Room 1104
Baltimore, Maryland 21201-2365
Staff Contact: Linda Janey
Telephone: (410) 767-4490
FAX: (410) 767-4480

MICHIGAN
Richard Pfaff
Southeast Michigan Council of Governments
660 Plaza Drive - Suite 1900
Detroit, Michigan 48226
Telephone: (313) 961-4266
FAX: (313) 961-4869

MISSISSIPPI
Cathy Mallette
Clearinghouse Officer
Department of Finance and Administration
550 High Street
Jackson, Mississippi 39302-3087
Telephone: (601) 359-6762
FAX: (601) 359-6764

MISSOURI
Lois Pohl
Federal Assistance Clearinghouse
Office of Administration
P.O. Box 809
Room 760, Truman Building
Jefferson City, Missouri 65102
Telephone: (314) 751-4834
FAX: (314) 751-7819

NEVADA
Department of Administration
State Clearinghouse
Capitol Complex
Carson City, Nevada 89710
Telephone: (702) 687-4065
FAX: (702) 687-3983

NEW HAMPSHIRE
Jeffrey H. Taylor
Director, New Hampshire Office of State Planning
Attn: Intergovernmental Review Process
Mike Blake
2 ½ Beacon Street
Concord, New Hampshire 03301
Telephone: (603) 271-2155
FAX: (603) 271-1728

NEW MEXICO
Robert Peters
State Budget Division
Room 190 Bataan Memorial Building
Santa Fe, New Mexico 87503
Telephone: (505) 827-3640

NEW YORK
New York State Clearinghouse
Division of the Budget
State Capitol
Albany, New York 12224
Telephone: (518) 474-1605
FAX: (518) 486-5617

NORTH CAROLINA
Chrys Baggett, Director
N.C. State Clearinghouse
Office of the Secretary of Admin.
116 West Jones Street - Suite 5106
Raleigh, North Carolina 27603-8003
Telephone: (919) 733-7232
FAX: (919) 733-9571

NORTH DAKOTA
North Dakota Single Point of Contact
Office of Intergovernmental Assistance
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0170
Telephone: (701) 224-2094
FAX: (701) 224-2308

RHODE ISLAND
Kevin Nelson
Review Coordinator
Department of Administration
Division of Planning
One Capitol Hill, 4th Floor
Providence, Rhode Island 02908-5870
Telephone: (401) 277-2656
FAX: (401) 277-2083

SOUTH CAROLINA
Rodney Grizzle
State Single Point of Contact
Grant Services
Office of the Governor
1205 Pendleton Street - Room 331
Columbia, South Carolina 29201
Telephone: (803) 734-0494
FAX: (803) 734-0356

TEXAS
Tom Adams
Governors Office
Director, Intergovernmental Coordination
P.O. Box 12428
Austin, Texas 78711
Telephone: (512) 463-1771
FAX: (512) 463-1880

UTAH
Carolyn Wright
Utah State Clearinghouse
Office of Planning and Budget
Room 116, State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1535
FAX: (801) 538-1547

WEST VIRGINIA
Fred Cutlip, Director
Community Development Division
W. Virginia Development Office
Building #6, Room 553
Charleston, West Virginia 25305
Telephone: (304) 558-4010
FAX: (304) 558-3248

WISCONSIN
Jeff Smith
Section Chief, State/Federal Relations
Wisconsin Department of Administration
101 East Wilson Street - 6th Floor , P.O. Box 7868
Madison, Wisconsin 53707
Telephone: (608) 266-0267
FAX: (608) 267-6931

WYOMING
Matthew Jones
State Single Point of Contact
Office of the Governor
200 West 24th Street
State Capitol, Room 124
Cheyenne, WY 82002
Telephone: (307) 777-7446
FAX: (307) 632-3909

TERRITORIES
GUAM
Mr. Giovanni T. Sgambelluri
Director
Bureau of Budget and Management Research
Office of the Governor
P.O. Box 2950
Agana, Guam 96910
Telephone: 011-671-472-2285
FAX: 011-671-472-2825

PUERTO RICO
Norma Burgos/Jose E. Caro
Chairwoman/Director
Puerto Rico Planning Board
Federal Proposals Review Office
Minillas Government Center
P.O. Box 4119
San Juan, Puerto Rico 00940-1119
Telephone: (809) 727-4444
(809) 723-6190
FAX: (809) 724-3270
(809) 724-3103

NORTH MARIANA ISLANDS
Mr. Alvaro A. Santos, Executive Officer
Office of Management and Budget
Office of the Governor
Saipan, MP 96950
Telephone: (670) 664-2256
FAX: (670) 664-2272
Contact person: Ms. Jacoba T. Seman
Federal Programs Coordinator
Telephone: (670) 664-2289
FAX: (670) 664-2272

Note: This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to Donna Rivelli (Telephone (202) 395-5858) at the Office of Management and Budget and to the State in question. Changes to the list will only be made upon formal notification by the State. The list is also published biannually in the Catalogue of Federal Domestic Assistance.

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federal register

Tuesday
October 7, 1997

Part IV

Office of Management and Budget

Cancellation Pursuant to Line Item Veto Act; Military Construction Appropriations Act, 1998; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cancellation Pursuant to Line Item Veto Act; Military Construction Appropriations Act, 1998

October 6, 1997.

One Special Message from the President under the Line Item Veto Act is published below. The President signed this message on October 6, 1997. Under the Act, the message is required to be printed in the Federal Register (2 U.S.C. 691a(c)(2)).

Clarence C. Crawford,

Associate Director for Administration.

To the Congress of the United States:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the "Military Construction Appropriations Act, 1998" (Public Law 105–45; H.R. 2016). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

William J. Clinton.

THE WHITE HOUSE,
October 6, 1997.

Cancellation No. 97–4

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $2,650 thousand for Military Construction, Army project "Live Fire Command and Control Facility, Fort Irwin, California" on page 17 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct a command and control facility to execute the tactical, administrative, and safety functions in brigade-level live fire operations. The project includes a helicopter landing pad, radio relay rooms, and supporting infrastructure. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Fort Irwin will be able to continue to operate and train using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal years:	
1998	−0
1999	−1
2000	−1
2001	−0
2002	−0
Total	−3

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$2,650 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Live Fire Command and Control Facility, Fort Irwin (Military Construction, Army).

2(B). States and Congressional Districts Affected: California, 40th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: California: one; 40th District: one.

Cancellation No. 97–5

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $8,500 thousand for Military Construction, Army project "Rotational Wash Point, Fort Irwin, California" on page 17 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would provide a central, 24 bay wash facility for wheeled and tracked vehicles to supplement existing wash facilities. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Fort Irwin will be able to continue to operate using existing wash facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−3
2000	−2
2001	−1
2002	−1
Total	−9

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$8,500 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Fort Irwin Rotational Wash Point (Military Construction, Army).

2(B). States and Congressional Districts Affected: California, 40th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: California: two; 40th District: two.

Cancellation No. 97–6

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1 (A). Dollar Amount of Discretionary Budget Authority: $10,100 thousand for Military Construction, Navy project, "Waterfront Operations Building, Coronado Naval Amphibious Base, California" on page 17 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct facilities for Explosive Ordnance Disposal Mobile Unit Three (EODMU THREE), including two buildings and a harbor area to provide protection for the Marine Mammal Program. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, EODMU THREE will be able to continue to operate and train using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−4
2000	−3
2001	−2
2002	−1
Total	−10

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$10,100 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Coronado Naval Amphibious Base Waterfront Operations Building (Military Construction, Navy).

2(B). States and Congressional Districts Affected: California, 49th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: California: three; 49th District: one.

Cancellation No. 97–7

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $6,690 thousand for Military Construction, Naval Reserve project "Marine Corps Reserve Center, Pasadena, California" on page 17 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct a new Marine Corps Reserve Center for the 4th Light Anti-Air Defense (LAAD) Battalion and demolish existing facilities. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, the 4th LAAD Battalion will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−2
2000	−2
2001	−1
2002	−0
Total	−7

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$6,690 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Pasadena Marine Corps Reserve Center (Military Construction, Navy).

2(B). States and Congressional Districts Affected: California, 27th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: California: four; 27th District: one.

Cancellation No. 97–8

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $16,000 thousand for Military Construction, Army project "Railyard Expansion (Phase I) Fort Carson, Colorado" on page 17 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would remove existing rail, turnouts and crossings and construct 26,400 feet of new track, including turnouts and crossings. The project would also construct a new remote loading facility, rail engine maintenance facility, warehouse and associated facilities. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Fort Carson will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−3
1999	−5
2000	−4
2001	−3
2002	−1
Total	−16

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$16,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Fort Carson Railyard Expansion (Phase I) (Military Construction, Army).

2(B). States and Congressional Districts Affected: Colorado, 5th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Colorado: one; 5th District: one.

Cancellation No. 97–9

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $17,940 thousand for Military Construction, Navy project "Pier Improvements, Mayport Naval Station, Florida" on page 18 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would provide dredging and pier improvements to increase the number of larger berths for homeported and visiting ships. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Mayport Naval Station will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−8
2000	−5
2001	−3
2002	−1
2003	−1
Total	−18

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$17,940 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Mayport Naval Station, Pier Improvements (Military Construction, Navy).

2(B). States and Congressional Districts Affected: Florida, 4th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Florida: one; 4th District: one.

Cancellation No. 97–10

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $1,300 thousand for Military Construction, Navy project "Runway Upgrades, Whiting Field, Florida" on page 18 of House Report 105–247, dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would extend one runway and acquire a clear zone for another. A longer runway and clear zone are required for the new Beech MKII training aircraft, scheduled to arrive in FY 2002. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Whiting Field will be able to continue to operate using existing runways.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal Year:	
1998	−0
1999	−1
2000	−0
2001	−0
2002	−0
Total	−1

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$1,300 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Runway Upgrades, Whiting Field (Military Construction, Navy).

2(B). States and Congressional Districts Affected: Florida, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Florida: two; 1st District: one.

Cancellation No. 97–11

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $6,800 thousand for Military Construction, Air Force project "HH–60 Rescue Operations Facility, Moody Air Force Base (AFB), Georgia" on page 18 of House Report 105–247, dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would provide a facility to support combat search and rescue training and pararescue training operations when this mission relocates from Patrick AFB. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Since this new mission has not yet relocated from Patrick AFB, cancellation of this project will not affect ongoing operations at Moody AFB.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−2
2000	−2
2001	−1
2002	−0
Total	−7

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$6,800 thousand in FY1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): HH–60 Rescue Operations Facility, Moody AFB (Military Construction, Air Force).

2(B). States and Congressional Districts Affected: Georgia, 2nd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Georgia: one; 2nd District: one.

Cancellation No. 97–12

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $9,500 thousand for Military Construction, Navy project "Asian Pacific Center, Fort Derussey, Hawaii" on page 19 of House Report 105–247, dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would provide new space for the Asian-Pacific Center for Security Studies. The

Center provides facilities and programs for national officials and military officers to explore pressing issues regarding the security environment of the Asian-Pacific region. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, the Navy will continue to be able to operate the Center in existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−4
2000	−3
2001	−1
2002	−0
Total	−10

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$9,500 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Fort Derussey Asian-Pacific Center (Military Construction, Navy).

2(B). States and Congressional Districts Affected: Hawaii, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Hawaii: one; 1st District: one.

Cancellation No. 97–13

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $9,200 thousand for Military Construction, Air Force project "B–1B Avionics Building (Bldg), Mountain Home Air Force Base (AFB), Idaho" on page 19 of House Report 105–247, dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would provide a new facility for Air Expeditionary Wing's avionics repair. The facility would be used for an electronic countermeasure pod shop, low altitude navigation and targeting infrared for night (LANTIRN) shop, and other avionics repair and test functions. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, avionics functions at Mountain Home AFB will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−3
2000	−3
2001	−1
2002	−0
Total	−9

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$9,200 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): B–1B Avionics Building Mountain Home AFB (Military Construction, Air Force).

2(B). States and Congressional Districts Affected: Idaho, 2nd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Idaho: one; 2nd District: one.

Cancellation No. 97–14

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $3,750 thousand for Military Construction, Air Force project "F–15C Squadron Operations Facility, Mountain Home Air Force Base (AFB), Idaho" on page 19 of House Report 105–247, dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would provide a facility to plan, brief and critique combat crews and to direct flight operations. The project also would demolish the existing operations facility, built in 1970. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, F–15C squadrons at Mountain Home AFB will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−1
2000	−1
2001	−1
2002	−0
Total	−4

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$3,750 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): F–15C Squadron Operations Facility Mountain Home AFB (Military Construction, Air Force).

2(B). States and Congressional Districts Affected: Idaho, 2nd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Idaho: two; 2nd District: two.

Cancellation No. 97–15

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $4,120 thousand for Military Construction, Navy project "Chemical-Biological Warfare Detection Center, Crane Naval Surface Warfare Center, Indiana" on page 20 of House Report 105–247, dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would provide a new maintenance, overhaul and engineering support facility for shipboard chemical/biological warfare detection devices, to replace a smaller, existing facility. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Crane Naval Surface Warfare Center will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−2
2000	−1
2001	−1
2002	−0
Total	−4

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$4,120 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Chemical-Biological Warfare Detection Center, Crane Naval Surface Warfare Center (Military Construction, Navy).

2(B). States and Congressional Districts Affected: Indiana, 8th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Indiana: one; 8th District: one.

Cancellation No. 97–16

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $8,913 thousand for Military Construction, Air Force Reserve project "Base Civil Engineer Complex, Grissom Air Reserve Base, Indiana" on page 20 of House Report 105–247, dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would provide a new base civil engineer complex to include maintenance shops, warehouse storage, and a roads and grounds facility. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Grissom Air Reserve Base will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−3
2000	−3
2001	−1
2002	−1
Total	−9

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$8,913 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Grissom Air Reserve Base Civil Engineer Complex (Military Construction, Air Force Reserve).

2(B). States and Congressional Districts Affected: Indiana, 5th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Indiana: two; 5th District: one.

Cancellation No. 97–17

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $2,850 thousand for Military Construction, Air Force project "Transportation Complex, McConnell Air Force Base (AFB), Kansas" on page 20 of House Report 105–247, dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would provide a new transportation complex, including a vehicle operations administration facility and vehicle parking facility. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, McConnell AFB will be able to continue to perform transportation functions using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−1
2000	−1
2001	−0
2002	−0
Total	−3

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$2,850 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): McConnell AFB Transportation Complex (Military Construction, Air Force).

2(B). States and Congressional Districts Affected: Kansas, 4th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Kansas: one; 4th District: one.

Cancellation No. 97–18

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $9,900 thousand for Military Construction, Army project "Tactical Equipment Shop (Phase II), Fort Campbell, Kentucky" on page 20 of House Report 105–247, dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would provide a vehicle maintenance shop and storage for a forward support battalion and combat support hospital. The project also would demolish facilities currently used for vehicle maintenance. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Fort Campbell will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−2
1999	−3
2000	−2
2001	−2
2002	−1
Total	−10

1(F). Adjustments to Defense Discretionary Spending Limits Budget Authority: −$9,900 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Fort Campbell Tactical Equipment Shop (Phase II) (Military Construction, Army).

2(B). States and Congressional Districts Affected: Kentucky, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Kentucky: one; 1st District: one.

Cancellation No. 97–19

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $7,200 thousand for Military Construction, Army project "Qualification Training Range (QTR), Fort Knox, Kentucky" on page 20 of House Report 105–247, dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would modernize Heins Rifle Range to a new standard Qualification Training Range with a total of 28 firing lanes. The project would construct three control towers, a headquarters building, two general instruction buildings, and other supporting facilities. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Fort Knox will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−2
2000	−2
2001	−1
2002	−0
Total	−7

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$7,200 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Fort Knox Qualification Training Range (Military Construction, Army).

2(B). States and Congressional Districts Affected: Kentucky, 2nd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Kentucky: two; 2nd District: one.

Cancellation No. 97–20

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $2,610 thousand for Military Construction, Navy project "Maintenance Hangar, St. Inigoes Naval Electronic Systems Engineering Activity, Maryland" on page 21 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would provide additional hangar space to support maintenance operations on unmanned air vehicles. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, the St. Inigoes Naval Electronic Systems Engineering Activity will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−1
2000	−1
2001	−0
2002	−0
Total	−3

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$2,610 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Maintenance Hangar, St. Inigoes Naval Electronic Systems Engineering Activity, Maryland (Military Construction, Navy).

2(B). States and Congressional Districts Affected: Maryland, 5th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Maryland: Maryland one; 5th District: one.

Cancellation No. 97–21

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $4,500 thousand for Military Construction, Air Force project, "Add/Alter Airmen Dining Facility, Malmstrom Air Force Base (AFB), Montana," on page 22 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any

essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would add dry and cold storage and alter the equipment and food preparation areas of the current facility. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Malmstrom AFB will be able to continue to operate using existing dining facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−2
2000	−1
2001	−1
2002	−0
Total	−5

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$4,500 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Addition/Alterations to the Airmen Dining Facility, Malmstrom AFB (Military Construction, Air Force).

2(B). States and Congressional Districts Affected: Montana, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Montana: one; 1st District: one.

Cancellation No. 97–22

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $1,950 thousand for Military Construction, Air Force project "Munitions Maintenance Facility, Nellis Air Force Base (AFB), Nevada" on page 22 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct a larger, replacement facility to support the inspection, assembly and testing of explosive munitions used by training aircraft. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Nellis AFB will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−1
2000	−1
2001	−0
2002	−0
Total	−2

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$1,950 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Nellis AFB Munitions Maintenance Facility (Military Construction, Air Force).

2(B). States and Congressional Districts Affected: Nevada, 2nd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Nevada: one; 2nd District: one.

Cancellation No. 97–23

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $6,900 thousand for Military Construction, Army project "Launch Complex Revitalization, White Sands Missile Range, New Mexico" on page 23 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would repair launch facilities for the Patriot, Stinger, Chaparral and HAWK missiles, as well as for the Multiple Launch Rocket System (MLRS) and Army Tactical Missile Systems (ATACMS). The project would also construct a new personnel support area and test support facility. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, White Sands will be able to continue to operate in existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−2
2000	−2
2001	−1
2002	−0
Total	−7

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$6,900 thousand in fiscal year: 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): White Sands Missile Range Launch Complex Revitalization (Military Construction, Army).

2(B). States and Congressional Districts Affected: New Mexico, 2nd District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: New Mexico: one; 2nd District: one.

Cancellation No. 97–24

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $14,000 thousand for Military Construction, Air Force project "Flight Simulation Training Facility, Kirtland Air Force Base (AFB), New Mexico" on page 23 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct a new theater air simulation facility to support command and control; weapons system research, development, testing and evaluation; and training. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Kirtland AFB will be able to continue to operate and train using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−2
1999	−5
2000	−4
2001	−2
2002	−1
Total	−14

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$14,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Kirtland AFB Flight Simulation Training Facility (Military Construction, Air Force).

2(B). States and Congressional Districts Affected: New Mexico, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: New Mexico: two; 1st District: one.

Cancellation No. 97–25

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $9,000 thousand for Military Construction, Army project "Aerial Gunnery Range (Phase I), Fort Drum, New York" on page 23 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would provide a target range for joint rotary and fixed wing operations, replacing the two existing ranges at Fort Drum. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, units at Fort Drum will be able to continue to operate using the existing ranges.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−3
2000	−2
2001	−2
2002	−1
Total	−9

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$9,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Fort Drum Aerial Gunnery Range. (Phase I) (Military Construction, Army).

2(B). States and Congressional Districts Affected: New York, 24th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: New York: two; 24th District: two.

Cancellation No. 97–26

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $2,100 thousand for Military Construction, Air Force Reserve project "Consolidated Training Facility, Niagara Falls IAP, New York" on page 23 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct one building to house the readiness office and combat arms training space. The facility would replace two older buildings. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Niagara Falls units will be able to continue to operate and train using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−1
2000	−1
2001	−0
2002	−0
Total	−2

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$2,100 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Niagara Falls IAP Consolidated Training Facility (Military Construction, Air Force Reserve).

2(B). States and Congressional Districts Affected: New York, 27th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: New York: three; 27th District: two.

Cancellation No. 97–27

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $7,900 thousand for Military Construction, Army project "Military Operations on Urbanized Terrain (MOUT) Training Complex (Phase I) Fort Bragg, North Carolina," on page 23 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct part of an MOUT training complex, consisting of 32 buildings with streets, parking, a bridge, and associated support facilities. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, forces at Fort Bragg will be able to continue to train using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−2
2000	−2
2001	−1
2002	−1
Total	−8

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$7,900 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Fort Bragg, MOUT Training Complex (Phase I) (Military Construction, Army).

2(B). States and Congressional Districts Affected: North Carolina, 7th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: North Carolina: one; 7th District: one.

Cancellation No. 97–28

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $6,000 thousand for Military Construction, Army Reserve project "U.S. Army Reserve Center/ Organizational Maintenance Shop (OMS)/Area Maintenance Support Activity (AMSA) (Phase I) Oakdale, Pennsylvania" on page 24 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct a new Army Reserve training facility to house multiple training missions, including communications security and deployable medical systems. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Oakdale Army Reserve units will be able to continue to operate and train using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−3
2000	−1
2001	−1
2002	−1
Total	−6

1(F). Adjustments to Defense Discretionary Spending Limits Budget Authority: −$6,000 thousand in FY 1998 .

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Oakdale, Army Reserve Center/ OMS/AMSA (Phase I) (Military Construction, Army Reserve).

2(B). States and Congressional Districts Affected: Pennsylvania, 20th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Pennsylvania: one; 20th District: one.

Cancellation No. 97–29

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $13,980 thousand for Military Construction, Naval Reserve project "Reserve Hangar and Training Center, Johnstown, Pennsylvania" on page 24 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct a Marine Corps Reserve Training Center and an aircraft maintenance hangar to upgrade the current facilities. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, units at the Johnstown Joint Reserve Facility will be able to continue to operate and train using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−5
2000	−4
2001	−3
2002	−1
Total	−14

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$13,980 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Marine Corps Reserve Center and Aircraft Maintenance Hangar, Johnstown (Military Construction, Navy).

2(B). States and Congressional Districts Affected: Pennsylvania, 12th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Pennsylvania: two; 12th District: one.

Cancellation No. 97–30

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $3,823 thousand for Military Construction, Army National Guard project "Regional Simulation Center, Leesburg Training Site (Eastover), South Carolina" on page 25 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any

essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct a 48,000 sq. ft. battle simulation center to replace a 4,200 sq. ft. facility. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, area Army National Guard units will be able to continue to train using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−1
2000	−1
2001	−1
2002	−0
Total	−4

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$3,823 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments Upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Leesburg Regional Simulation Center (Military Construction, Army National Guard).

2(B). States and Congressional Districts Affected: South Carolina, 2nd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: South Carolina: one; 2nd District: one.

Cancellation No. 97–31

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016)

1(A). Dollar Amount of Discretionary Budget Authority: $5,200 thousand for Military Construction, Army National Guard project, "Aviation Support Facility, Rapid City, South Dakota," on page 25 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would provide new hangar, administrative, maintenance, classroom, and other space to support UH–1 and C–12 aircraft used by the 1085th Medical Air Ambulance Company. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, the Rapid City Army National Guard will be able to continue to operate and train using existing maintenance facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−1
2000	−2
2001	−1
2002	−0
Total	−5

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$5,200 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Military Aviation Support Facility, Rapid City (Military Construction, Army National Guard).

2(B). States and Congressional Districts Affected: South Dakota, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: South Dakota: one; 1st District: one.

Cancellation No. 97–32

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $9,900 thousand for Military Construction, Air Force project "Atmospheric Air Dryer Facility, Arnold Air Force Base (AFB), Tennessee," on page 25 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct an air dryer facility to replace the existing facility. The new facility would support the mission of the Propulsion Wind Tunnel (PWT) facility for the F–22 and Joint Strike Fighter (JSF) next generation aircraft. The PWT performs aerodynamic testing which requires dry air for simulating flight conditions. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Arnold AFB will be able to continue to operate and test using existing dryer facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−3
2000	−3
2001	−1
2002	−0
Total	−10

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$9,900 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Atmospheric Air Dryer Facility, Arnold AFB (Military Construction, Air Force).

2(B). States and Congressional Districts Affected: Tennessee, 4th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Tennessee: one; 4th District: one.

Cancellation No. 97–33

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $7,700 thousand for Military Construction, Army project, "Ammunition Supply Point Expansion (Phase II), Fort Bliss, Texas," on page 25 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would provide 11 ammunition magazines, a surveillance workshop, inert storage facilities, an equipment storage and maintenance facility, and an above ground petroleum, oils and lubricants (POL) dispensing facility. This is phase two of a relocation of this function from the main post to McGregor Range. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Fort Bliss will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−2
2000	−2
2001	−1
2002	−1
Total	−8

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$7,700 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Ammunition Supply Point Expansion (Phase II), Fort Bliss (Military Construction, Army).

2(B). States and Congressional Districts Affected: Texas, 16th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Texas: one; 16th District: one.

Cancellation No. 97–34

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $10,000 thousand for Military Construction, Air Force project, "B–1 Squadron Operations(Ops)/ Aircraft Maintenance Unit, Dyess Air Force Base (AFB), Texas," on page 25 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would provide a consolidated B–1B squadron operations facility, including space for flight operations, maintenance, storage and training functions. The 13th Bombardment Squadron(BS) is standing up at Dyess and will operate out of temporary facilities until a new facility is constructed. The 9th BS currently operates out of six buildings. The consolidated facility would house both squadrons. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, squadrons at Dyess AFB will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−4

Outlay changes—Continued

[In millions of dollars]

2000	−3
2001	−2
2002	−1
Total	−10

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$10,000 thousand in FY 1998.

Outlays: The estimated outlay effect each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Consolidated B–1B Squadron Operations and Aircraft Maintenance Facility, Dyess AFB (Military Construction, Air Force).

2(B). States and Congressional Districts Affected: Texas, 17th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Texas: two; 17th District: one.

Cancellation No. 97–35

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $4,800 thousand for Military Construction, Air Force project, "Corrosion Control Facility, Laughlin Air Force Base (AFB), Texas," on page 25 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would provide a new facility for painting T–1A, T–37 and T–38 aircraft. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Laughlin AFB will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−2
2000	−1
2001	−1
2002	−0
Total	−5

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$4,800 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Corrosion Control Facility, Laughlin AFB (Military Construction, Air Force).

2(B). States and Congressional Districts Affected: Texas, 23rd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Texas: three; 23rd District: one.

Cancellation No. 97–36

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $12,714 thousand for Military Construction, Army Reserve project "U.S. Army Reserve Center (USARC), Organizational Maintenance Shop (OMS), Camp Williams, Utah," on page 26 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct a new Reserve Center, Organizational Maintenance Shop (OMS), and a warehouse to replace facilities that would be lost if a proposed 11 acre transfer of property to the University of Utah occurred. A new site for relocation has not yet been identified. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Fort Douglas (Camp Williams) Army Reserve Units will be able to continue to operate and train using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−5
2000	−3
2001	−2
2002	−2
Total	−13

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$12,714 thousand in FY 1998.

Outlays: The estimated outlay effect for each is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Fort Douglas, U.S. Army Reserve Center and OMS Relocation (Military Construction, Army Reserve).

2(B). States and Congressional Districts Affected: Utah, 2nd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Utah: one; 2nd District: one.

Cancellation No. 97–37

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $4,000 thousand for Military Construction, Navy project "Air Operations Building, Norfolk Naval Air Station, Virginia" on page 26 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would provide a new air operations facility, including an air traffic control facility, radar tower and supporting infrastructure. The existing facility would be demolished. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Norfolk Naval Air Station will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−2
2000	−1
2001	−1
2002	−0
Total	−4

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$4,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Norfolk Naval Air Station, Air Operations Facility (Military Construction, Navy).

2(B). States and Congressional Districts Affected: Virginia, 2nd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Virginia: one; 2nd District: one.

Cancellation No. 97–38

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $19,910 thousand for Military Construction, Navy project "Waterfront Improvements, Norfolk Naval Shipyard, Virginia" on page 26 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would provide a new wharf for ship repair and demolish two abandoned shipbuilding ways and two buildings. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, the Norfolk Naval Shipyard will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−1
1999	−8
2000	−6
2001	−3
2002	−1
2003	−1
Total	−20

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$19,910 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Waterfront Improvements, Norfolk Naval Shipyard, Virginia (Military Construction, Navy).

2(B). States and Congressional Districts Affected: Virginia, 2nd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Virginia: two; 2nd District: two.

Cancellation No. 97–39

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $3,290 thousand for Military Construction, Navy project, "Tomahawk Magazine, Yorktown Naval Weapons Station, Virginia," on page 26

of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs. This project would provide an earth covered magazine for storage of Tomahawk missiles. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Yorktown Naval Weapons Station will be able to continue to operate using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−1
2000	−1
2001	−0
2002	−0
Total	−3

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$3,290 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Tomahawk Magazine, Yorktown Naval Weapons Station (Military Construction, Navy).

2(B). States and Congressional Districts Affected: Virginia, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Virginia: three; 1st District: one.

Cancellation No. 97–40

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount of Discretionary Budget Authority: $6,828 thousand for Military Construction, Army National Guard project "Armed Forces Reserve Center, Camp Dawson, West Virginia" on page 27 of House Report 105–247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would provide an expanded facility for several Army National Guard units. The new, enlarged facility would provide administrative, training, exercise and storage space. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Army National Guard units at Camp Dawson will be able to continue to operate and train using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−2
2000	−2
2001	−2
2002	−0
Total	−7

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$6,828 thousand in FY1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Armed Forces Reserve Center, Camp Dawson, West Virginia (Military Construction, Army National Guard).

2(B). States and Congressional Districts Affected: West Virginia, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: West Virginia: one; 1st District: one.

Cancellation No. 97–41

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Military Construction Appropriations Act, 1998" (H.R. 2016).

1(A). Dollar Amount Item of Discretionary Budget Authority: $4,200 thousand for Military Construction, Air Force Reserve, project "Aerial Port Training Facility, Mitchell Air Reserve Station (ARS)(Milwaukee), Wisconsin" on page 27 of House Report 105-247 dated September 9, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project would construct an aerial port training facility to replace existing, smaller facilities. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it would not substantially improve the quality of life of military service members and their families; and (3) architectural and engineering design of this project has not started, making it unlikely that these funds can be used for construction during FY 1998. Without this project, Mitchell ARS will be able to continue to provide training using existing facilities.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In millions of dollars]

Fiscal year:	
1998	−0
1999	−2
2000	−1
2001	−1
2002	−0
Total	−4

1(F). Adjustments to Defense Discretionary Spending Limits

Budget Authority: −$4,200 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Defense.

2(A). Bureau: Military Construction.

2(A). Governmental Function/Project (Account): Aerial Port Training Facility, Mitchell Air Reserve Station (Military Construction, Air Force Reserve).

2(B). States and Congressional Districts Affected: Wisconsin, 4th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Wisconsin: one; 4th District: one.

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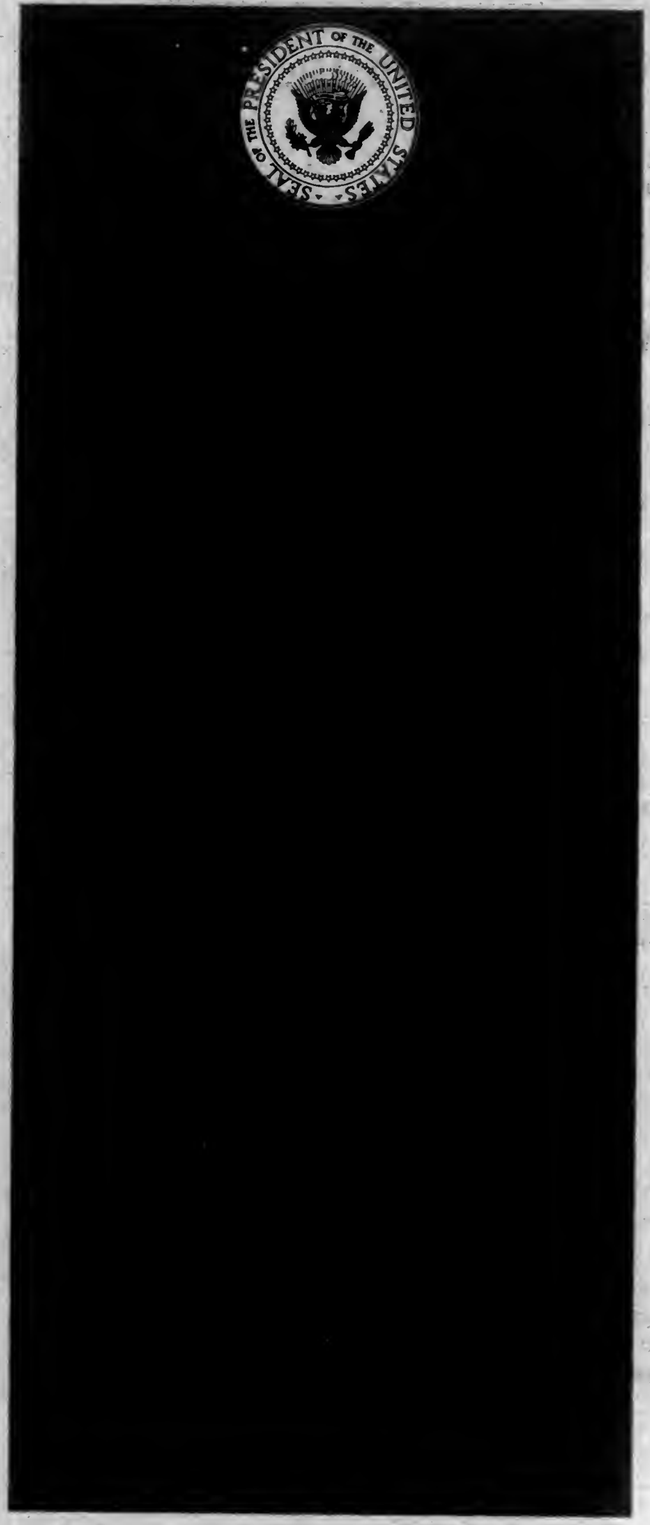
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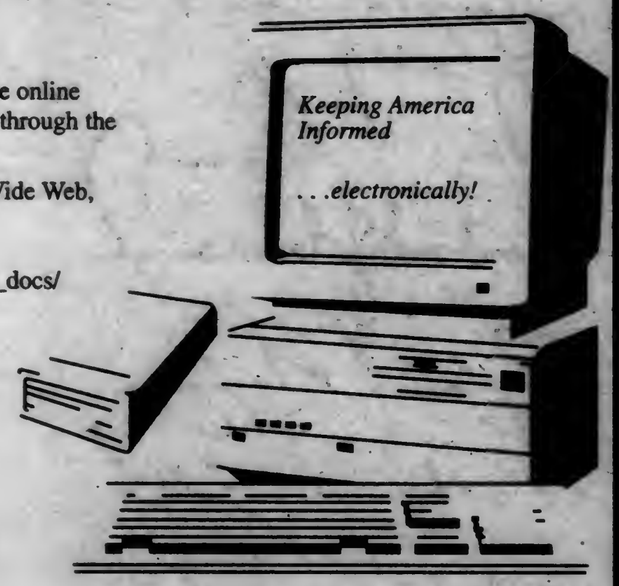
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Presidential Documents

Title 3—

The President

Proclamation 7032 of October 3, 1997

Fire Prevention Week, 1997

By the President of the United States of America

A Proclamation

Of all the disasters that confront Americans every year, few cause more loss of life and property than fire. Across the country each day, fire threatens our communities, our livelihoods, and our lives. Last year alone, almost 5,000 men, women, and children perished in fires, and nearly 80 percent of these deaths occurred in homes. This tragic statistic is a call to action for all of us, not only to remain vigilant in our efforts to prevent fires, but also to learn how to react quickly and sensibly when fires occur.

Many people do not understand the speed at which fire can spread, the intensity of its heat, or the toxic power of its smoke. Because a quick, decisive response often means the difference between life and death, it is important to learn about fire, to recognize how deadly a threat it is, and to react to it immediately. The National Fire Protection Association, in partnership with the Federal Emergency Management Agency and our Nation's fire services, has selected "Know When to Go! React Fast To Fire!" as the theme of this year's Fire Prevention Week. This theme reinforces a simple but essential element of fire safety: escape planning.

Because approximately 80 percent of last year's fatal fires occurred in the home, every family should develop a home escape plan. If a smoke or fire alarm sounds, everyone must react quickly. When away from home, we need to make it a habit to locate the nearest exit in any building we occupy. Most important, we must never reenter a burning building.

By following these basic safety rules, we can save lives and reduce the risks to our Nation's firefighters. Every 16 seconds, a fire department responds to a fire somewhere in the United States. Last year, thousands of firefighters were injured, and 92 made the ultimate sacrifice in the line of duty. Our Nation will acknowledge the extraordinary dedication of these valiant men and women by paying tribute to America's career and volunteer firefighters on Sunday, October 5, 1997, at the National Fallen Firefighters Memorial Service in Emmitsburg, Maryland.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 5 through October 11, 1997, as Fire Prevention Week. I encourage the people of the United States to take an active role in fire prevention not only during this week, but throughout the year. I also call upon all Americans to honor the courageous members of our Nation's fire and emergency services by learning about the dangers posed by fire and by preparing their friends and family members to react immediately and safely to fires when they occur.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J Clinton

[FR Doc. 97-26823
Filed 10-7-97; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7033 of October 6, 1997

Child Health Day, 1997

By the President of the United States of America

A Proclamation

For children, childhood seems to last forever; but for adults—particularly for those of us who are parents—it passes in the blink of an eye. The little girl smiling at us from her tricycle and the little boy running to catch the school bus will soon be driving away to their first jobs. One of the greatest gifts we can offer our children while they are still in our care is a healthy start in life.

We are making tremendous progress as a nation in helping more children get that healthy start. This year I signed into law historic legislation to extend health care coverage to millions of uninsured children. This $24 billion initiative over 5 years is the largest investment in children's health since the creation of Medicaid in 1965. On October 1, the Federal Government and the States began a partnership to help provide meaningful health insurance to children whose families earn too much for Medicaid but too little to afford private coverage.

This new initiative will take an enormous step toward improving the health of our Nation's children. In 1995, approximately 10 million of them were not covered by health insurance, and they were either ineligible for or not enrolled in publicly financed medical assistance programs. Last year, another 800,000 uninsured children joined their ranks. These children are less likely to receive the primary care services they need to maintain good health, and they are at risk of receiving lower quality care. Too often they become trapped in a tragic downward spiral—poor health keeps them out of school, keeps them from pursuing their studies with energy and enthusiasm, and often keeps them from acquiring the knowledge and self-esteem they need to reach their full potential. With this new children's health initiative, we can provide millions of children the coverage they need to grow up healthy and strong.

We are making progress in other areas, as well. Thanks to advances in medical research and our increasing knowledge about prevention and the importance of good nutrition, many childhood diseases and illnesses can now be averted. Funding for childhood immunization has doubled since 1993, and immunization rates are at an all-time high. In addition, we recently announced an important Food and Drug Administration regulation requiring manufacturers to do studies on pediatric populations for new prescription drugs—and those currently on the market—to ensure that our prescription drugs have been adequately tested for the unique needs of children. We have dramatically increased participation in the Women, Infants and Children Supplemental Nutrition Program, providing nutrition packages and information and health referrals to more than 7 million infants, children, and pregnant women. With the enactment of the Kassebaum-Kennedy bill last year, we have helped millions of children keep their healthcare coverage when their parents change or lose jobs.

We are also taking strong actions to prevent our children from smoking. Each day 3,000 children become regular smokers and 1,000 of them will die from a tobacco-related illness. Last year, my Administration issued guide-

lines to eliminate easy access to tobacco products and to prohibit companies from directing advertising towards children.

To acknowledge our profound responsibility to nurture the health and development of America's children, the Congress, by joint resolution approved May 18, 1928, as amended (36 U.S.C. 143), has called for the designation of the first Monday in October as "Child Health Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Monday, October 6, 1997, as Child Health Day. I call upon my fellow Americans to join me on that day, and every day throughout the year, in strengthening our national commitment to the well-being of our children.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–26823
Filed 10–7–97; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Presidential Determination No. 97–36 of September 30, 1997

Presidential Determination on Ex-Im Loan to China for Shanghai Metro

Memorandum for the Secretary of State

Pursuant to section 2(b)(2)(D)(ii) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the approximate amount of $60 million to the People's Republic of China to finance the export of U.S. goods and services for the construction of Shanghai Metro Phase II, Line I, located in the city of Shanghai, China.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1997.

[FR Doc. 97–26880
Filed 10–7–97; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 97–39 of September 30, 1997

Delegation of Authority Under Section 1322(c) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106)

Memorandum for the Secretary of Defense

By the authority vested in me by the Constitution and laws of the United States of America, I hereby delegate to the Secretary of Defense the duties and responsibilities vested in the President by section 1322(c) of the National Defense Authorization Act for Fiscal Year 1996 ("the Act") (Public Law 104–106, 110 Stat. 478–479 (1996)).

The reporting requirement delegated by this memorandum may be redelegated not lower than the Under Secretary level. The Department of Defense shall obtain concurrence on the report from the following agencies: the Department of Commerce, the Department of State, the Department of the Treasury, and the Director of Central Intelligence on behalf of the intelligence community prior to submission to the Congress.

Any reference in this memorandum to the provisions of any Act shall be deemed to be a reference to such Act or its provisions as may be amended from time to time.

The Secretary of Defense is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1997.

[FR Doc. 97–26867
Filed 10–7–97; 8:45 am]
Billing code 5000–04–M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Part 820

Procedural Rules for DOE Nuclear Activities; General Statement of Enforcement Policy

AGENCY: Department of Energy.

ACTION: Interim rule; amendment of enforcement policy statement.

SUMMARY: The Department of Energy (DOE) is amending its General Statement of Enforcement Policy (Policy), which is contained in an Appendix to the Procedural Rules for DOE Nuclear Activities. DOE has reevaluated this Policy in consideration of the changing mission of DOE and experience gained from applying the Policy since its publication. Under the amended Policy, DOE no longer intends to base civil penalty amounts on the type of nuclear facility involved. The amended Policy also adds new sections on (1) DOE's use of enforcement letters to close out investigations, (2) self-identification and tracking systems, and (3) self-disclosing events.

DATES: This amended Policy takes effect on November 7, 1997. Although the amended Policy will be effective November 7, 1997, DOE invites and will consider public comment. Written comments must be received by November 7, 1997.

ADDRESSES: Written comment (5 copies) should be addressed to: R. Keith Christopher, U.S. Department of Energy, Office of Enforcement and Investigation, EH–10–GTN, 1000 Independence Avenue SW., Washington, DC 20585, (301) 903–0106. Written comments may be examined between 9 a.m. and 4 p.m., Monday through Friday, in: U.S. Department of Energy, Reading Room, room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020.

FOR FURTHER INFORMATION CONTACT: Howard Wilchins, U.S. Department of Energy, Office of Enforcement and Investigation, EH–10–GTN, 1000 Independence Avenue SW., Washington, DC 20585, (202) 903–0100.

SUPPLEMENTARY INFORMATION:

I. Background
II. Amendments to Policy
A. Base Civil Penalty Structure
B. Enforcement Letters
C. Self-Identification and Tracking Systems
D. Self-Disclosing Events
E. Summary of Changes
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under the Paperwork Reduction Act
C. Review Under the National Environmental Policy Act
D. Review Under Executive Order 12612
E. Review Under Executive Order 12988
F. Congressional Notification

I. Background

DOE's Nuclear Safety Requirements [1] set forth the requirements for DOE's contractors, subcontractors and suppliers to ensure that DOE's nuclear facilities and activities are operated in a manner that protects worker and public safety and the environment. In promulgating Procedural Rules for DOE Nuclear Activities, DOE published a General Statement of Enforcement Policy (Policy) as Appendix A to 10 CFR Part 820, 58 FR 43680 (Aug. 17, 1993). The Policy provides the bases and processes DOE uses to take enforcement actions for violations of the DOE Nuclear Safety Requirements. The enforcement provisions embodied in Part 820 and reflected in the Policy are based on a philosophy of encouraging contractors to provide adequate protection of safety, health, and the environment in compliance with the DOE Nuclear Safety Requirements. The Policy provides for discretion in pursuing enforcement actions where contractors demonstrate initiative in safety management performance, self-identification of deficiencies, self-reporting of noncompliances to DOE, and prompt and comprehensive corrective actions for the deficiencies identified. Where a contractor's actions are not adequate, DOE may issue a Preliminary Notice of Violation and propose the assessment of civil penalties under the authority of the Price-Anderson Amendments Act of 1988 (PAAA).

Since the Policy was published in August 1993, DOE has accumulated experience in applying the Policy. The complexion of DOE's operating facilities and activities has changed over the past several years. In particular, its array of weapons production facilities and activities has been significantly reduced so that DOE now manages a broad mix of operating facilities, research and development activities, decontamination and decommissioning operations, and environmental management and restoration activities. DOE has reevaluated the structure of its Policy considering the changing mission of DOE and its experience with the Policy. This reevaluation found that the Policy emphasized hazards based on the type of nuclear facilities and activities, such as the risk to the public of an accident involving a reactor or a release of large quantities of radiological material. The Policy placed inadequate emphasis on violations that caused or potentially caused a significant hazard to a worker or the environment, regardless of the type of facility or activity involved, in determining the applicable base civil penalty. That result sent a message to contractors inconsistent with DOE's intent to focus attention on assuring the safe conduct of work at its facilities and during nuclear activities conducted for DOE.

DOE in recent years has placed greater responsibility on management and operating and other contractors to assure the safety of the public, workers, and the environment for the activities that they perform. This has included use of incentive or award fees to recognize proper performance by contractors, integration of safety management

[1] 10 CFR § 820.2 defines "DOE Nuclear Safety Requirements" as "the set of enforceable rules, regulations, or orders relating to nuclear safety adopted by DOE (or by another Agency if DOE specifically identifies the rule, regulation, or order) to govern the conduct of persons in connection with any DOE nuclear activity and includes any programs, plans, or other provisions intended to implement these rules, regulations, orders, a Nuclear Statute or the [Atomic Energy] Act, including technical specifications and operational safety requirements for DOE nuclear facilities. For purposes of the assessment of civil penalties, the definition of DOE Nuclear Safety Requirements is limited to those identified in 10 CFR § 820.20(b)." Section 820.20(b) states that civil penalties may be assessed on the basis of a violation of any DOE Nuclear Safety Requirements, a Compliance Order, or any program, plan, or other provision required to implement such Requirement or Compliance Order.

systems, and application of enforcement sanctions for significant cases where DOE Nuclear Safety Requirements have not been met. DOE's amendment to the Policy is consistent with the philosophy of emphasizing the importance of protecting workers, the public and the environment. The amendment also clarifies DOE's enforcement processes and policies so that DOE's expectations and protocols are better understood. Comments received will be considered and additional amendments made if necessary. This amended Policy will take effect 30 days from the date of publication.

II. Amendments to Policy

A. Base Civil Penalty Structure

The PAAA, as modified by the Federal Civil Penalties Inflation Adjustment Act of 1990, establishes a statutory limit of $110,000[2] on the amount of civil penalties DOE can assess for each violation. DOE is eliminating the civil penalty structure that is based on the categorization of the type of nuclear facility, but it is retaining and modifying that portion of the structure based on the three Severity Levels of violations. DOE is simplifying the determination of civil penalties by moving from two tables to one table. DOE is removing Table 1A in newly-designated Section IX which is based on categorization of five types of nuclear facilities.

Eliminating the sliding scale of civil penalties based on the categorization of type of nuclear facility will better reflect DOE's current mission and practices. The categorization of facility approach, although similar to that in NRC's enforcement policy,[3] is not appropriate for DOE's current programs where both large, complex facilities and activities, and smaller, but not necessarily less hazardous, facilities and activities are often operated and managed by the same contractors. A violation affecting the environment or the health and safety of a worker or the public can occur both at high hazard facilities and activities, and at relatively low hazard facilities and activities at the same site. Accordingly, DOE is removing the facility categories table from the Policy as a means of establishing the base civil penalty.

DOE is redesignating Table 1B as Table 1 and revising it to set civil penalty percentages for violations of Severity Levels I, II, and III as a percentage of the maximum statutory limit for civil penalties per violation per day. Severity Level I violations are assessed at the highest level of civil penalty of 100% of the statutory limit per violation per day. Severity Level II is set at 50% of the statutory limit. Severity Level III is set at 10% of the statutory limit.

For Severity Level III violations, DOE is reducing the percentage of the statutory limit from 20% to 10%. DOE believes that a 10% penalty for Category Level III will more accurately reflect its intent to lower civil penalties for noncompliances of small or indirect safety consequences and to encourage contractor responsibility for correcting noncompliances. Except in unusual circumstances, DOE would not assess a civil penalty for violations of Severity Level III. There is no change to the percentages for Severity Levels I and II.

In the revised table, the dollar amount of the civil penalty to which the percentages apply has been deleted so that the percentages now apply to the statutory limit of the maximum civil penalty that can be assessed, whatever that may be at the time. DOE is required to adjust the statutory limit for inflation at least every four years. *See* footnote 2. This approach is intended to establish a direct relationship between the magnitude of the base civil penalty and the significance of the violation.

B. Enforcement Letters

In its experience with enforcement over the past several years, DOE has developed the Enforcement Letter to close out investigations. An Enforcement Letter is an administrative action which has been incorporated into the enforcement process to streamline the process and to better communicate to contractors the status of DOE closure of enforcement investigations and DOE expectations for corrective action of a noncompliance.

Enforcement letters serve to communicate to the contractor DOE's decision not to issue a Preliminary Notice of Violation for a noncompliance that has been reported to DOE, DOE's basis for not pursuing enforcement in that case, and notice to the contractor of DOE's expectations for implementation of the contractor's commitments to take actions to correct the noncompliance. While the Enforcement Letter is not addressed in the current Policy and would not be used in all cases where DOE decides not to pursue a Preliminary Notice of Violation, it has served an effective role in several investigations that DOE has undertaken involving more complex matters or those of some safety significance. The amended Policy adds Section VIII to describe DOE's use of Enforcement Letters.

C. Self-Identification and Tracking Systems

The amended Policy adds a new paragraph 5 in newly-designated Section IX on self-identification and tracking systems. This paragraph emphasizes that contractors should be proactive in identifying and reporting noncompliances before they result in an event with potential safety consequences and should take prompt and effective corrective actions to correct noncompliances to preclude recurrence. Contractors have tended to rely on self-reporting to expect significant reduction or full remission of civil penalties for simply reporting noncompliances that occur. The amended Policy encourages contractors to use the full spectrum of appropriate safety management responses such as prompt self-identification, reporting, and timely and effective corrective action to improve nuclear safety.

The present Policy notes that DOE would consider partial reduction of a civil penalty if a contractor self-identifies the noncompliance and reports it to DOE. With the impracticality of formally reporting all noncompliances with DOE Nuclear Safety Requirements, including, for example, minor or trivial noncompliances with procedures, DOE will allow contractors an option of self-tracking those noncompliances that fall below certain threshold levels. In DOE's enforcement guide, *Guidance for Identifying, Reporting and Tracking Nuclear Safety Noncompliances*,[4] DOE recommends threshold levels. For noncompliances below the threshold, DOE will accept a contractor's self-tracking as acceptable self-reporting if DOE has access to the contractor's self-tracking system and the contractor has tagged the items as noncompliances

[2] The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), requires Federal agencies to regularly adjust each civil monetary penalty provided by law within the jurisdiction of the agency. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable civil penalties, and to make further adjustments at least once every four years. DOE has promulgated a new Subpart G in 10 CFR Part 820, 62 FR 46618 (Sept. 2, 1997) (final rule), to establish by regulation that $110,000 is the new maximum civil penalty per violation per day authorized by 42 U.S.C. 2282a and 28 U.S.C. 2461 note."

[3] Nuclear Regulatory Commission, General Statement of Policy and Procedure for Enforcement Actions, 61 FR 65561 (Oct. 18, 1996) (revision of policy).

[4] *Guidance for Identifying, Reporting and Tracking Nuclear Safety Noncompliances*, and Addendum, *Noncompliance Tracking System Users Manual*, DOE–HDBK–1089–95, July 1995. This guide is available through the DOE Technical Standards Program on the Internet at http://apollo.osti.gov/html/techstds/techstds.html.

with DOE Nuclear Safety Requirements. For reporting items of noncompliance of potentially greater safety significance above the thresholds, contractors may elect to report through the voluntary DOE Noncompliance Tracking System (NTS), which is also described in the guide.

D. Self-Disclosing Events

A new paragraph 6 is added in newly-designated Section IX on self-disclosing events. Reduction of civil penalties may not be appropriate when a violation is disclosed by an event or discovered through the subsequent investigation of the root cause of an event (*i.e.*, a self-disclosing event) because the disclosure is not the result of contractor initiative. The new paragraph clarifies how DOE would consider reducing penalties for self-disclosing events. In general, a self-disclosing event does not constitute self-identification of the noncomplying event, even if the contractor reported it promptly after the event. A determination to reduce civil penalties for identification of an event after the fact will depend on various factors, including the duration of the noncompliance, and ease and opportunities for identification.

E. Summary of Changes

The Department is making formatting changes throughout Appendix A to conform to **Federal Register** codification requirements. As a result, paragraph designations such as a., b., c., etc. have been added to sections currently containing multiple undesignated paragraphs. The Department is also making substantive changes by adding new Section VIII, Enforcement Letter, and redesignating the remaining sections accordingly. Newly-redesignated Section IX has been reprinted in its entirety to: add paragraph designations throughout; add paragraph 5, Self-Identification and Tracking Systems, and paragraph 6, Self-Disclosing Events; remove Table 1A and revise and redesignate Table 1B as Table 1 in paragraph 2 Civil Penalty; correct cross-references to the Tables throughout the section; change references to Section VIII to read "this section" to reflect the redesignation; remove the phrase "and a categorization of DOE facilities operated", and revise "facilities" to read "Severity Levels" in paragraph 2c.; remove the phrase "and different categories of facilities," revise the phrase "$100,000 per day" to read "the statutory limit" in paragraph 2e. In paragraph 8, the reference to 10 CFR 820.60 is corrected to read "820.50." In newly-designated Section XII, the phrase "$100,000" has been changed to read "the statutory limit" in paragraph a.

III. Procedural Requirements

A. Review Under Executive Order 12866

This amended Policy is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), and, thus, has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget for this purpose.

B. Review Under the Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by this amended Policy.

C. Review Under the National Environmental Policy Act

The Department has determined that this amended Policy is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and does not require preparation of an environmental impact statement or an environmental assessment. Today's action is covered under Categorical Exclusion A.5 in DOE guidelines implementing NEPA (Appendix A to Subpart D, 10 CFR part 1021), which applies to the interpretation or amendment of an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.

D. Review Under Executive Order 12612

Executive Order 12612, "Federalism," 52 FR 41685 (Oct. 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government, the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This action will not have a substantial direct effect on the institutional interest or traditional functions of the States or various levels of government.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section (3) of Executive Order 12988 requires Executive agencies to review regulations to determine whether the applicable standards in section 3 are met. DOE has completed the required review and determined that, to the extent permitted by law, this amended Policy meets the relevant standards of Executive Order 12988.

F. Congressional Notification

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, DOE will submit to Congress a report regarding the issuance of this amended Policy prior to the effective date set forth at the beginning of this notice. The report will note that the Office of Management and Budget has determined that this amended Policy does not constitute a "major rule" under that Act. 5 U.S.C. 801, 804.

List of Subjects in 10 CFR Part 820

Government contracts, DOE contracts, Nuclear safety, Civil penalty, Criminal penalty.

Issued in Washington, D.C., on September 19, 1997.

Tara O'Toole,

Assistant Secretary for Environment, Safety and Health.

For the reason set forth in the preamble, 10 CFR part 820 is amended as set forth below:

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

1. The authority citation for Part 820 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282(a), 7191.

Appendix A to Part 820—[Amended]

2. Appendix A to Part 820—General Statement of Enforcement Policy is amended by adding paragraph designations in the following sections:

In Section I., Introduction, add the paragraph designations a. b. c. d. and e. to the five paragraphs.

In Section V., Procedural Framework, add the paragraph designations a. b. and c. to the three paragraphs.

In Section VI., Severity of Violations, add the paragraph designations a. b. c. d. e. and f. to the six paragraphs.

In Section VII, Enforcement Conferences, add the paragraph designations a. and b. to the two paragraphs.

3. Appendix A to Part 820 is amended by redesignating Sections VIII through XI as Sections IX through XII and adding a new Section VIII to read as follows:

Appendix A to Part 820—General Statement of Enforcement Policy

* * * * *

VIII. Enforcement Letter

a. In cases where DOE has decided not to issue a Preliminary Notice of Violation, DOE may send an Enforcement Letter to the contractor signed by the Director. The Enforcement Letter is intended to communicate the basis of the decision not to pursue further enforcement action for a noncompliance. The Enforcement Letter is intended to direct contractors to the desired level of nuclear safety performance. It may be used when DOE concludes the specific noncompliance at issue is not of the level of significance warranted for issuance of a Preliminary Notice of Violation (PNOV). Even where a noncompliance may be significant, the Enforcement Letter recognizes that the contractor's actions may have attenuated the need for further enforcement action. The Letter will typically recognize how the contractor handled the circumstances surrounding the noncompliance and address additional areas requiring the contractor's attention and DOE's expectations for corrective action. The Enforcement Letter notifies the contractor that, when verification is received that corrective actions have been implemented, DOE will close the enforcement action.

b. In many investigations, an Enforcement Letter may not be required. When DOE decides that a contractor has appropriately corrected a noncompliance or that the significance of the noncompliance is sufficiently low, it may close out an investigation simply through an annotation in the DOE Noncompliance Tracking System (NTS). *See Guidance for Identifying, Reporting and Tracking Nuclear Safety Noncompliances*, and Addendum, *Noncompliance Tracking System Users Manual*, DOE–HDBK–1089–95, July 1995. A closeout of a noncompliance with or without an Enforcement Letter may only take place after DOE has confirmed that corrective actions have been completed.

4. Newly-designated Section IX, Enforcement Action, is revised to read as follows:

IX. Enforcement Actions

a. This section describes the enforcement sanctions available to DOE and specifies the conditions under which each may be used. The basic sanctions are Notices of Violation and civil penalties. In determining whether to impose enforcement sanctions, DOE will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, e.g., instances which involve NRC licensed entities which are also DOE contractors, and in which the NRC exercises its own enforcement authority.

b. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations for which DOE assigns severity levels as described previously, a Notice of Violation will be issued, requiring a formal response from the recipient describing the nature of and schedule for corrective actions it intends to take regarding the violation. Administrative actions, such as determination of award fees where DOE contracts provide for such determinations, will be considered separately from any civil penalties that may be imposed under this Enforcement Policy. Likewise, imposition of a civil penalty will be based on the circumstances of each case, unaffected by any award fee determination.

1. Notice of Violation

a. A Notice of Violation (either a Preliminary or Final Notice) is a document setting forth the conclusion of the DOE Office of Nuclear Safety that one or more violations of DOE Nuclear Safety Requirements has occurred. Such a notice normally requires the recipient to provide a written response which may take one of several positions described in Section V of this policy statement. In the event that the recipient concedes the occurrence of the violation, it is required to describe corrective steps which have been taken and the results achieved; remedial actions which will be taken to prevent recurrence; and the date by which full compliance will be achieved.

b. DOE will use the Notice of Violation as the standard method for formalizing the existence of a violation and, in appropriate cases as described in this section, the notice of violation will be issued in conjunction with the proposed imposition of a civil penalty. In certain limited instances, as described in this section, DOE may refrain from the issuance of an otherwise appropriate Notice of Violation. However, a Notice of Violation will virtually always be issued for willful violations, if past corrective actions for similar violations have not been sufficient to prevent recurrence and there are no other mitigating circumstances, or if the circumstances otherwise warrant increasing Severity Level III violations to a higher severity level.

c. DOE contractors are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable quality assurance measures, proper maintenance, or management controls. With regard to the issue of funding, however, DOE does not consider an asserted lack of funding to be a justification for noncompliance with DOE Nuclear Safety Requirements. Should a contractor believe that a shortage of funding precludes it from achieving compliance with one or more DOE Nuclear Safety Requirements, it must pursue one of two alternative courses of action. First, it may request, in writing, an exemption from the requirement(s) in question from the appropriate Secretarial Officer (SO), explicitly addressing the criteria for exemptions set forth in 10 CFR 820.62. A justification for continued operation for the period during which the exemption request is being considered should also be submitted. In such a case, the SO must grant or deny the request in writing, explaining the rationale for the decision. Second, if the criteria for approval of an exemption cannot be demonstrated, the contractor, in conjunction with the SO, must take appropriate steps to modify, curtail, suspend or cease the activities which cannot be conducted in compliance with the DOE Nuclear Safety Requirement(s) in question.

d. DOE expects the contractors which operate its facilities to have the proper management and supervisory systems in place to assure that all activities at DOE facilities, regardless of who performs them, are carried out in compliance with all DOE Nuclear Safety Requirements. Therefore, contractors are normally held responsible for the acts of their employees and subcontractor employees in the conduct of activities at DOE facilities. Accordingly, this policy should not be construed to excuse personnel errors.

e. Finally, certain contractors are explicitly exempted from the imposition of civil penalties pursuant to the provisions of the PAAA, 42 U.S.C. 2282a(d), for activities conducted at specified facilities. See 10 CFR 820.20(c). In addition, in fairness to non-profit educational institutions, the Department has determined that they should be likewise exempted. See 10 CFR 820.20(d). However, compliance with DOE Nuclear Safety Requirements is no less important for these facilities than for other facilities in the DOE complex which work with, store or dispose of radioactive materials. Indeed, the exempted contractors conduct some of the most important nuclear-related research and development activities performed for the Department. Therefore, in order to serve the purposes of this enforcement policy and to emphasize the importance the Department places on compliance with all of its nuclear safety requirements, DOE intends to issue Notices of Violation to the exempted contractors and non-profit educational institutions when appropriate under this policy statement, notwithstanding the statutory and regulatory exemptions from the imposition of civil penalties.

2. Civil Penalty

a. A civil penalty is a monetary penalty that may be imposed for violations of applicable DOE Nuclear Safety Requirements, including Compliance Orders. See 10 CFR 820.20(b). Civil penalties are designed to emphasize the need for lasting remedial action, deter future violations, and underscore the importance of DOE contractor self-identification, reporting and correction of violations of DOE Nuclear Safety Requirements.

b. Absent mitigating circumstances as described below, or circumstances otherwise warranting the exercise of enforcement discretion by DOE as described in this section, civil penalties will be proposed for Severity Level I and II violations. Civil penalties will be proposed for Severity Level III violations which are similar to previous violations for which the contractor did not take effective corrective action. "Similar" violations are those which could reasonably have been expected to have been prevented by corrective action for the previous violation. DOE normally considers civil penalties only for similar Severity Level III violations that occur over a reasonable period of time to be determined at the discretion of DOE.

c. DOE will impose different base level civil penalties considering the severity level of the violation(s) by Price-Anderson indemnified contractors. Table 1 shows the daily base civil penalties for the various categories of severity levels. However, as described above in Section IV, the imposition of civil penalties will also take into account the gravity, circumstances, and extent of the violation or violations and, with respect to the violator, any history of prior similar violations and the degree of culpability and knowledge.

d. Regarding the factor of ability of DOE contractors to pay the civil penalties, it is not DOE's intention that the economic impact of a civil penalty be such that it puts a DOE contractor out of business. Contract termination, rather than civil penalties, is used when the intent is to terminate these activities. The deterrent effect of civil penalties is best served when the amount of such penalties takes this factor into account. However, DOE will evaluate the relationship of affiliated entities to the contractor (such as parent corporations) when it asserts that it cannot pay the proposed penalty.

e. DOE will review each case involving a proposed civil penalty on its own merits and adjust the base civil penalty values upward or downward appropriately. As indicated above, Table 1 identifies the daily base civil penalty values for different severity levels. After considering all relevant circumstances, civil penalties may be escalated or mitigated based upon the adjustment factors described below in this section. In no instance will a civil penalty for any one violation exceed the statutory limit. However, it should be emphasized that if the DOE contractor is or should have been aware of a violation and has not reported it to DOE and taken corrective action despite an opportunity to do so, each day the condition existed may be considered as a separate violation and, as such, subject to a separate civil penalty. Further, as described in this section, the duration of a violation will be taken into account in determining the appropriate severity level of the base civil penalty.

TABLE 1.—SEVERITY LEVEL BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (percentage of maximum civil penalty per violation per day)
I	100
II	50
III	10

3. Adjustment Factors

a. DOE's enforcement program is not an end in itself, but a means to achieve compliance with DOE Nuclear Safety Requirements, and civil penalties are not collected to swell the coffers of the United States Treasury, but to emphasize the importance of compliance and to deter future violations. The single most important goal of the DOE enforcement program is to encourage early identification and reporting of nuclear safety deficiencies and violations of DOE Nuclear Safety Requirements by the DOE contractors themselves rather than by DOE, and the prompt correction of any deficiencies and violations so identified. DOE believes that DOE contractors are in the best position to identify and promptly correct noncompliance with DOE Nuclear Safety Requirements. DOE expects that these contractors should have in place internal compliance programs which will ensure the detection, reporting and prompt correction of nuclear safety-related problems that may constitute, or lead to, violations of DOE Nuclear Safety Requirements before, rather than after, DOE has identified such violations. Thus, DOE contractors will almost always be aware of nuclear safety problems before they are discovered by DOE. Obviously, public and worker health and safety is enhanced if deficiencies are discovered (and promptly corrected) by the DOE contractor, rather than by DOE, which may not otherwise become aware of a deficiency until later on, during the course of an inspection, performance assessment, or following an incident at the facility. Early identification of nuclear safety-related problems by DOE contractors has the added benefit of allowing information which could prevent such problems at other facilities in the DOE complex to be shared with all appropriate DOE contractors.

b. Pursuant to this enforcement philosophy, DOE will provide substantial incentive for the early self-identification, reporting and prompt correction of problems which constitute, or could lead to, violations of DOE Nuclear Safety Requirements. Thus, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations that are identified, reported, and promptly and effectively corrected by the DOE contractor.

c. On the other hand, ineffective programs for problem identification and correction are unacceptable. Thus, for example, where a contractor fails to disclose and promptly correct violations

of which it was aware or should have been aware, substantial civil penalties are warranted and may be sought, including the assessment of civil penalties for continuing violations on a per day basis.

d. Further, in cases involving willfulness, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, DOE intends to apply its full statutory enforcement authority where such action is warranted.

4. Identification and Reporting

Reduction of up to 50% of the base civil penalty shown in Table 1 may be given when a DOE contractor identifies the violation and promptly reports the violation to the DOE. In weighing this factor, consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the DOE contractor does not take prompt action to report the problem to DOE upon discovery, or if the immediate actions necessary to restore compliance with DOE Nuclear Safety Requirements or place the facility or operation in a safe configuration are not taken.

5. Self-Identification and Tracking Systems

a. DOE strongly encourages contractors to self-identify noncompliances with DOE Nuclear Safety Requirements before the noncompliances lead to a string of similar and potentially more significant events or consequences. When a contractor identifies a noncompliance through its own self-monitoring activity, DOE will normally allow a reduction in the amount of civil penalties, regardless of whether prior opportunities existed for contractors to identify the noncompliance. DOE will normally not allow a reduction in civil penalties for self-identification if significant DOE intervention was required to induce the contractor to report a noncompliance.

b. Self-identification of a noncompliance is possibly the single most important factor in considering a reduction in the civil penalty amount. Consideration of self-identification is linked to, among other things, whether prior opportunities existed to discover the violation, and if so, the age and number of such opportunities; the extent to which proper contractor controls should have identified or prevented the violation; whether discovery of the violation resulted from a contractor's self-monitoring activity; the extent of DOE involvement in discovering the violation or in prompting the contractor to identify the violation; and the promptness and completeness of any required report. Self-identification is also considered by DOE in deciding whether to pursue an investigation.

c. DOE has established a voluntary Noncompliance Tracking System (NTS) which allows contractors to elect to report noncompliances. In the guidance document supporting the NTS (DOE–HDBK–1089–95), DOE has established reporting thresholds for reporting items of noncompliance of potentially greater safety significance into the NTS. Contractors may, however, use their own self-tracking systems to track noncompliances below the reporting threshold. This self-tracking is considered to be acceptable self-reporting as long as DOE has access to the contractor's system and the contractor's system notes the item as a noncompliance with a DOE Nuclear Safety Requirement. For noncompliances that are below the reportability thresholds, DOE will credit contractor self-tracking as representing self-reporting. If an item is not reported in NTS but only tracked in the contractor's system and DOE subsequently finds the facts and their safety significance have been significantly mischaracterized, DOE will not credit the internal tracking as representing appropriate self-reporting.

8. Self-Disclosing Events

a. DOE expects contractors to demonstrate acceptance of responsibility for safety of the public, workers, and the environment and to proactively identify noncompliance conditions in their programs and processes. In deciding whether to reduce any civil penalty proposed for violations revealed by the occurrence of a self-disclosing event, DOE will consider the ease with which a contractor could have discovered the noncompliance and the prior opportunities that existed to discover the noncompliance. When the occurrence of an event discloses noncompliances that the contractor could have or should have identified before the event, DOE will not generally allow a reduction in civil penalties for self-identification, even if the underlying noncompliances were reported to DOE. If a contractor simply reacts to events that disclose potentially significant consequences or downplays noncompliances which did not result in significant consequences to workers, the public, and the environment, such contractor actions do not lead to the improvement in nuclear safety contemplated by the Act.

b. The key test is whether the contractor reasonably could have detected any of the underlying noncompliances that contributed to the event. Examples of events that provide opportunities to identify noncompliances include, but are not limited to:

(1) prior notifications of potential problems such as those from DOE operational experience publications or vendor equipment deficiency reports;

(2) normal surveillance, quality assurance assessments, and post-maintenance testing;

(3) readily observable parameter trends; and

(4) contractor employee or DOE observations of potential safety problems. Failure to utilize these types of events and activities to address noncompliances may result in higher civil penalty assessments or a DOE decision not to reduce civil penalty amounts.

c. For example, a critique of the event might find that one of the root causes was a lack of clarity in a Radiation Work Permit (RWP) which led to improper use of anti-contamination clothing and resulting uptake of contamination by the individual. DOE could subsequently conclude that no reduction in civil penalties for self-identification should be allowed since the event itself disclosed the inadequate RWP and the contractor could have, through proper independent assessment or by fostering a questioning attitude by its workers and supervisors, identified the inadequate RWP before the event.

d. Alternatively, if, following a self-disclosing event, DOE found that the contractor's processes and procedures were adequate and the contractor's personnel generally behaved in a manner consistent with the contractor's processes and procedures, DOE could conclude that the contractor could not have been reasonably expected to find the single procedural noncompliance that led to the event and thus, might allow a reduction in civil penalties.

7. Corrective Action To Prevent Recurrence

The promptness (or lack thereof) and extent to which the DOE contractor takes corrective action, including actions to identify root cause and prevent recurrence, may result in up to a 50% increase or decrease in the base civil penalty shown in Table 1. For example, very extensive corrective action may result in reducing the proposed civil penalty as much as 50% of the base value shown in Table 1. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation or corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the appropriateness, timeliness and degree of initiative associated with the corrective action. The comprehensiveness of the corrective action will also be considered, taking into account factors such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

8. DOE's Contribution to a Violation

There may be circumstances in which a violation of a DOE Nuclear Safety Requirement results, in part or entirely, from a direction given by DOE personnel to a DOE contractor to either take, or forbear from taking an action at a DOE facility. In such cases, DOE may refrain from issuing an NOV, and may mitigate, either partially or entirely, any proposed civil penalty, provided that the direction upon which the DOE contractor relied is documented in writing, contemporaneously with the direction. It should be emphasized, however, that pursuant to 10 CFR 820.50, no interpretation of a DOE Nuclear Safety Requirement is binding upon DOE unless issued in writing by the General Counsel. Further, as discussed in this section of this policy statement, lack of funding by itself will not be considered as a mitigating factor in enforcement actions.

9. Exercise of Discretion

Because DOE wants to encourage and support DOE contractor initiative for prompt self-identification, reporting and correction of problems, DOE may exercise discretion as follows:

a. In accordance with the previous discussion, DOE may refrain from issuing a civil penalty for a violation which meets all of the following criteria:

(1) The violation is promptly identified and reported to DOE before DOE learns of it.

(2) The violation is not willful or a violation that could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

(3) The DOE contractor, upon discovery of the violation, has taken or begun to take prompt and appropriate action to correct the violation.

(4) The DOE contractor has taken, or has agreed to take, remedial action satisfactory to DOE to preclude recurrence of the violation and the underlying conditions which caused it.

b. DOE may refrain from proposing a civil penalty for a violation involving a past problem, such as in engineering design or installation, that meets all of the following criteria:

(1) It was identified by a DOE contractor as a result of a formal effort such as a Safety System Functional Inspection, Design Reconstitution program, or other program that has a defined scope and timetable which is being aggressively implemented and reported;

(2) Comprehensive corrective action has been taken or is well underway within a reasonable time following identification; and

(3) it was not likely to be identified by routine contractor efforts such as normal surveillance or quality assurance activities.

c. DOE will not issue a Notice of Violation for cases in which the violation discovered by the DOE contractor cannot reasonably be linked to the conduct of that contractor in the design, construction or operation of the DOE facility involved, provided that prompt and appropriate action is taken by the DOE contractor upon identification of the past violation to report to DOE and remedy the problem.

d. DOE may refrain from issuing a Notice of Violation for an item of noncompliance that meets all of the following criteria:

(1) It was promptly identified by the DOE nuclear entity;

(2) It is normally classified at a Severity Level III;

(3) It was promptly reported to DOE;

(4) Prompt and appropriate corrective action will be taken, including measures to prevent recurrence; and

(5) It was not a willful violation or a violation that could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

e. DOE may refrain from issuing a Notice of Violation for an item of noncompliance that meets all of the following criteria:

(1) It was an isolated Severity Level III violation identified during a Tiger Team inspection conducted by the Office of Environment, Safety and Health, during an inspection or integrated performance assessment conducted by the Office of Nuclear Safety, or during some other DOE assessment activity.

(2) The identified noncompliance was properly reported by the contractor upon discovery.

(3) The contractor initiated or completed appropriate assessment and corrective actions within a reasonable period, usually before the termination of the onsite inspection or integrated performance assessment.

(4) The violation is not willful or one which could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

f. In situations where corrective actions have been completed before termination of an inspection or assessment, a formal response from the contractor is not required and the inspection or integrated performance assessment report serves to document the violation and the corrective action. However, in all instances, the contractor is required to report the noncompliance through established reporting mechanisms so the noncompliance issue and any corrective actions can be properly tracked and monitored.

g. If DOE initiates an enforcement action for a violation at a Severity Level II or III and, as part of the corrective action for that violation, the DOE contractor identifies other examples of the violation with the same root cause, DOE may refrain from initiating an additional enforcement action. In determining whether to exercise this discretion, DOE will consider whether the DOE contractor acted reasonably and in a timely manner appropriate to the safety significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the safety significance or character of the concern arising out of the initial violation.

h. It should be emphasized that the preceding paragraphs are solely intended to be examples indicating when enforcement discretion may be exercised to forego the issuance of a civil penalty or, in some cases, the initiation of any enforcement action at all. However, notwithstanding these examples, a civil penalty may be proposed or Notice of Violation issued when, in DOE's judgment, such action is warranted on the basis of the circumstances of an individual case.

5. Newly designated Section X., Procurement of Products or Services and the Reporting of Defects, is amended by adding the paragraph designations a. b. and c. to the first three paragraphs.

6. Newly designated Section XI., Inaccurate and Incomplete Information, is amended by adding the paragraph designations a. and b. to the first two paragraphs, redesignating paragraphs (a) through (g) as (b)(1) through (b)(7), and adding the paragraph designations c., d., e. and f. to the remaining paragraphs.

7. Newly-designated Section XII, Secretarial Notification and Consultation, is amended by revising "$100,000" to read "the statutory limit" in paragraph a.

[FR Doc. 97–26277 Filed 10–7–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–149–AD; Amendment 39–10116; AD 97–18–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737 series airplanes, that requires revising the FAA-approved maintenance program to prohibit the use of pressure washing within the wheel well or on the landing gear and to prohibit the use of pumps and/or nozzles for washing wheel wells or the landing gear; or incorporation of a certain Temporary Revision to the Boeing Airplane Maintenance Manual into the FAA-approved maintenance program. This amendment is prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by this AD are intended to prevent corrosion of certain equipment due to the use of inappropriate pressure washing techniques. Corrosion of bearings, cables, electrical connectors, or other equipment in the main wheel well, if not detected and corrected in a timely manner, could result in reduced controllability of the airplane.

DATES: Effective November 12, 1997.

The incorporation of reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Herron, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2672; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737 series airplanes was published in the **Federal Register** on August 28, 1996 (61 FR 44239). That action proposed to require revising the FAA-approved maintenance program to prohibit the use of pressure washing within the wheel well or on the landing gear and to prohibit the use of pumps and/or nozzles for washing wheel wells or the landing gear.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposal.

Request To Revise Statement of Findings of Critical Design Review Team

One commenter requests the second paragraph of the Discussion section that appeared in the preamble to the proposed rule be revised to accurately reflect the findings of the Critical Design Review (CDR) team. The commenter asks that the FAA delete the one sentence in that paragraph, which read: "The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as correction of certain design deficiencies." The commenter suggests that the following sentences should be added: "The team did not find any design issues that could lead to a definite cause of the accidents that gave rise to this effort. The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as incorporation of certain design improvements in order to enhance its already acceptable level of safety."

The FAA does not find that a revision to this final rule in the manner suggested by the commenter is necessary, since the Discussion section of a proposed rule does not reappear in a final rule. The FAA acknowledges that the CDR team did not find any design issue that could lead to a definite cause of the accidents that gave rise to this effort. However, as a result of having conducted the CDR of the flight control systems on Boeing Model 737 series airplanes, the team indicated that there are a number of recommendations that should be addressed by the FAA for each of the various models of the Model 737. In reviewing these recommendations, the FAA has concluded that they address unsafe conditions that must be corrected through the issuance of AD's. Therefore, the FAA does not concur that these design changes merely "enhance [the Model 737's] already acceptable level of safety."

Request To Withdraw the Proposal: Existing Procedures Are Adequate

Several commenters request that the proposed rule be withdrawn since pressure washing procedures exist that adequately clean the wheel wells and landing gear, yet provide protective shielding for various components.

The FAA does not concur that this final rule should be withdrawn for the reason requested by the commenters. Since the issuance of the proposal, the FAA has reviewed and approved a new Temporary Revision to the Airplane Maintenance Manual (AMM), Chapter 12–40–0, that lists specific components that require protection from exposure to moisture. The Temporary Revision describes procedures to shield and protect these specific components from moisture during pressure washing. Therefore, the FAA has revised paragraph (a) of this final rule to provide an alternative method of compliance for the requirements of this AD by incorporating the Temporary Revision into the AMM.

Request To Withdraw the Proposal: No Supporting Data

Several commenters contend that there are no data or records of in-service findings that support the conclusion that corrosion of the wheel wells or the landing gear is induced by proper pressure washing. One commenter considers that the improper use of pressure equipment, lack of protection of critical areas, and improper lubrication techniques are the more significant and likely causes of any corrosion occurring in the wheel well. The commenter suggests that the appropriate action to minimize the possibility of corrosion is: proper training of cleaning personnel, use of proper equipment, protection of critical areas, and proper lubrication techniques.

The FAA does not concur that the rule should be withdrawn for the reasons presented by the commenters. The FAA acknowledges that pressure washing done correctly may not induce corrosion of the wheel wells or the landing gear. However, incorrect pressure washing techniques of the bearings, cables, electrical connectors, and other equipment in the main wheel well can result in fluids (or additives in the fluids) being forced into these areas. Such retention of fluid in these areas can result in the development of corrosion. Therefore, the FAA finds that one method of preventing fluids from being forced into certain areas is to prohibit the use of pressure washing within the wheel well or landing gear.

Request To Withdraw the Proposal: Alternative Methods of Washing Are Unsatisfactory

Several commenters state that methods other than pressure washing do not clean the area as well. The commenters point out that surfaces of the wheel wells or the landing gear that are not adequately cleaned could adversely affect the ability to perform accurate structural inspections for cracking. The commenters also contend that hand washing of the wheel wells or the landing gear would take significantly more work hours to accomplish than pressure washing and, consequently, would be much more costly to perform. The commenters request that the proposal be withdrawn since use of alternative methods of washing are unsatisfactory.

The FAA does not concur that the rule should be withdrawn for the reasons presented by the commenters. The FAA acknowledges that proper pressure washing techniques provide adequate cleaning of wheel wells and landing gears, which enables structural inspections for cracking to be performed under optimum conditions. As stated previously, the FAA has revised paragraph (a) of this final rule, which provides for pressure washing by incorporation of the previously described Temporary Revision into the AMM as an alternative method of compliance with the requirements of this AD.

Request to Clarify the Prohibition of Pressure Washing

Several commenters request that the FAA clarify whether the proposed prohibition of pressure washing would include the use of de-icing fluids since de-icing fluids are also applied with pressure equipment. One commenter, an operator, requests that de-icing be specifically excluded from the requirements of the proposed AD. The commenter notes that it applies indirect pressure spray to remove rime ice buildup and other frozen accumulations from the airplane. The commenter states that there is a high potential for anomalous operation if ice and grime are not removed from the airplane. Another operator requests that pressure de-icing fluid be permitted when used with a fan spray pattern, which the operator asserts will reduce the impact of the fluid on the airplane structure.

The FAA acknowledges that clarification is appropriate. This AD addresses procedures and limitations of pressure washing as applicable only to the cleaning of the airplane prior to repair and inspection. Since de-icing fluids are generally applied with a lower pressure than pressure washing, and de-icing normally impacts the ice directly, rather than the sensitive components, the FAA does not consider de-icing to be encompassed within this rule. However, if additional information warrants further consideration of the aspects of de-icing as related to pressure application, the FAA may consider additional rulemaking to address that issue.

Request to Revise the Limit of 80 Pounds Per Square Inch, Gauge (PSIG)

Several commenters suggest that the FAA has not given proper consideration to the effects of impact pressure (force) or momentum in determining the need for a prohibition of use of pressure equipment. One commenter points out that impact pressure is a function of flow rate and the square root of pressure. This commenter states that pressure psig is merely one component of the force function. Another commenter added that the temperature of the spraying fluid should also be considered since hot water or steam has a much higher capability of dissolving grease than cold water when applied at the same pressure. Two other commenters suggested the following procedures to establish an appropriate pressure limit: One procedure is to use an equation that would establish an impact pressure, and the other procedure is to base the pressure limit upon the pain threshold of impact on the human hand.

The FAA does not concur that the proposed pressure limit (80) psig should be revised. The FAA established a conservative figure based on water tap pressure with an upper limit of 80 psig, as provided by some municipalities. The FAA has determined that with a limitation of 80 psig during washing, water and other contaminates such as dirt are not likely to be driven into close tolerance areas such as sealed bearings. Therefore, if an operator elects to eliminate pressure washing in order to comply with the requirements of this AD, 80 psig is an appropriate pressure limit, since fluid would still be needed to clean the wheel wells or landing gear.

Additionally, the FAA does not concur with the commenters' suggested means of establishing a pressure limit. The methods suggested by the commenters provide no documentation as to whether or not a pressure limit established by either method proposed would provide protection against water and other contaminates such as dirt from being driven into close tolerance areas.

Request to Clarify Design Consideration

One commenter requests clarification of the statement in the preamble of the proposal indicating that "the FAA concludes that these aircraft were designed to operate with contaminate buildup in the wheel wells and landing gears." The FAA concurs that clarification of the impact of design considerations is necessary. The manufacturer has advised the FAA that certain elements of the airplane design are not readily changed. For example, the feel and centering mechanism of the aileron system has bearings that must be oriented horizontally. That orientation results in a pool of water/solvent and debris accumulating on the top of certain component equipment within the wheel well.

Another commenter states that pressure washing is comparable to the airplane design to withstand the momentum of rain droplets hitting gears at 200 knots (which may be expected with a Boeing Model 737 series airplane during final approach). This commenter further states that, while intense gear and wheel well washing of the type done during a C-check normally occurs only once a year, airplanes could be expected to fly through precipitation with gear extended fifty or more times a year.

The FAA does not concur that the impact of rain is analogous to pressure washing. While the design of the airplane provides for the landing gear to withstand the impact of rain, the wheel well is located outside the streamline flow. Consequently, rain pellets entering the wheel well would be well below the streamline velocity of the flow field around the airplane. Therefore, the FAA considers a certain amount of contaminate buildup in the wheel wells

and landing gears to be an inherent consideration of the design.

Request to Revise Estimated Cost

Several commenters (operators) state that the estimated cost impact information presented in the proposal is clearly understated. These operators all state, that instead of the estimated 5 work hours specified in the proposal to perform the wheel well washings, it would be more accurate and realistic to estimate 40 or 50 work hours per airplane for methods other than pressure washing. The commenters state that the expense of implementing this type of corrective action is inappropriate since pressure cleaning done properly is, in itself, not a cause of corrosion.

The FAA concurs that the cost impact information, below, should be revised based on information received from the commenters. The FAA has revised this information to specify 40 work hours to perform the wheel well washings by means other than pressure washing. Additionally, the FAA has included cost impact information of one work hour for incorporating the Temporary Revision into the AMM for those operators who elect to accomplish this method of complying with the requirements of this AD.

Request to Clarify How Restricting Pressure Washing Impacts Controllability of the Airplane

One commenter requests clarification on how pressure washing affects the controllability of the airplane. The operator points out that, in its experience, no incidents have occurred where the controllability of the airplane has been compromised due to washing of the landing gear.

The FAA acknowledges that clarification is necessary. Corroded or contaminated joints of the landing gear could cause an increase in forces that could adversely affect the actuation/retraction of the landing gear or movement of flight control surfaces during flight. Additionally, damage such as weakened seals due to erosion or abrasion to hydraulic hoses or other elements located on the landing gear could further contribute to an adverse effect on the controllability of the airplane during flight and/or landing. Therefore, the FAA finds that the failure of bearings, cables, electrical connectors, or other equipment in the main wheel well, if not detected and corrected in a timely manner, could result in reduced controllability of the airplane.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,463 Model 737 series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 1,040 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per airplane to accomplish washing of the wheel wells and landing gear by means other than pressure washing, and that the average labor rate is $60 per work hour. If operators choose to comply with this AD by prohibiting pressure washing, the cost impact of the AD on U.S. operators is estimated to be $2,400 per airplane, per washing.

If operators choose to comply with this AD by incorporating a certain Temporary Revision into the AMM, it will take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-18-06 Boeing: Amendment 39-10116. Docket 96-NM-149-AD.

Applicability: All Model 737 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion in the bearings, cables, electrical connectors, or other equipment in the main wheel well, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform the requirements of either paragraph (a)(1) or (a)(2) of this AD.

(1) Incorporate a revision into the FAA-approved maintenance program that prohibits the use of pressure washing within the wheel well or on the landing gear, and that prohibits the use of pumps and/or nozzles for washing wheel wells or the landing gear. Pressure washing is defined as the use of any fluid under pressure greater than 80 pounds per square inch, gauge (psig); or

(2) Incorporate the following Temporary Revision(s) to Chapter 12 of the Boeing Model 737 Airplane Maintenance Manual (AMM), all dated February 7, 1997; as applicable; into the FAA-approved maintenance program.

Airplane model	Temporary revision No.
737-100/200	12-368 12-369 12-370 12-371 12-372 12-373
737-300/-400/-500	12-85

Note 2: Once an operator has incorporated the above procedures into its maintenance program, this AD does *not* require that the operator subsequently record accomplishment each time the wheel well is cleaned. Future changes to the above maintenance program require prior approval of an appropriate FAA Principal Maintenance Inspector (PMI).

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) Except as specified in paragraph (a)(1) of this AD, the actions shall be done in accordance with the following Temporary Revisions to Chapter 12 of the Boeing Model 737 Airplane Maintenance Manual.

Airplane model	Temporary revision No.	Dated
737-100/200	12-368	Feb. 7, 1997.
	12-369	Feb. 7, 1997.
	12-370	Feb. 7, 1997.
	12-371	Feb. 7, 1997.
	12-372	Feb. 7, 1997.
	12-373	Feb. 7, 1997.
737-300/-400/-500.	12-85	Feb. 7, 1997.

The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington.

(e) This amendment becomes effective on November 12, 1997.

Issued in Renton, Washington, on August 25, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-24334 Filed 10-7-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-SW-32-AD; Amendment 39-10151; AD 97-20-15]

RIN 2120-AA64

Airworthiness Directives; Hiller Aircraft Corporation Model UH-12A, UH-12B, UH-12C, UH-12D, and UH-12E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Hiller Aircraft Corporation Model UH-12A, UH-12B, UH-12C, UH-12D, and UH-12E helicopters, that currently requires a dye penetrant inspection of the head of the main rotor outboard tension-torsion (T-T) bar pin for cracks; a visual inspection of the outboard T-T bar pin for proper alignment and an adjustment, if necessary; and, installation of shims at the inboard end of the drag strut. This amendment requires the same actions required by the existing AD, but allows a magnetic particle inspection of the T-T bar pin as an alternative to the currently required dye penetrant inspection, and requires reporting the results of the inspections only if cracks are found, rather than reporting all results of inspections as required by the existing AD. This amendment is prompted by an FAA analysis of a comment to the existing AD, and the fact that no cracks have been reported since the issuance of the existing AD. The actions specified by this AD are intended to prevent cracks in the head area of the outboard T-T bar pin, which could result in loss of in-plane stability of the main rotor blade and subsequent loss of control of the helicopter.

DATES: Effective November 12, 1997.

The incorporations by reference of certain publications listed in the regulations were approved by the Director of the Federal Register as of June 23, 1995 (60 FR 30184, June 8, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Hiller Aircraft Corporation, 3200 Imjin Road, Marina, California 93933-5101, telephone (408) 384-4500, fax (408) 883-3648. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Matheis, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712-4137, telephone (562) 627-5235, fax (562) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95-12-02, Amendment 39-9252 (60 FR 30184), which is applicable to Hiller Model UH-12A, UH-12B, UH-12C, UH-12D, and UH-12E helicopters, was published in the **Federal Register** on January 7, 1997 (62 FR 951). That action proposed to require (1) an inspection of the alignment of the outboard T-T bar pin and an adjustment, if necessary; and (2) an inspection for cracks in the head of the outboard T-T bar pin using a dye penetrant method or a magnetic particle method. Additionally, that action proposed to require, within 25 hours TIS or at the next 100 hour inspection, whichever occurs first, the installation of shims between the inboard end of the drag strut and the outboard T-T bar pin.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The one commenter states that AD 95-12-02 should be eliminated, and that the requirement to report results of each 100 hour TIS inspection to the FAA should be discontinued, unless a crack is found. The commenter states that they have not experienced a T-T bar pin failure in 30 years of service history, and that if the procedures in the manufacturer's service information is followed, the AD is not needed. The FAA concurs that the reporting of the inspection should be accomplished only if the inspection reveals a crack. However, the FAA does not concur that the AD should be eliminated. The

National Transportation Safety Board recommended that the FAA issue an AD to make the requirements of the applicable service information mandatory. The FAA concurred, and issued AD 95–12–02. Based on an FAA analysis, the FAA has determined that the amendment will not be removed, but the reporting requirement will be changed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 700 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $700 per pin. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $574,000, assuming one pin must be replaced on every helicopter in the fleet.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9252 (60 FR 30184), and by adding a new airworthiness directive (AD), Amendment 39–10151, to read as follows:

97–20–15 Hiller Aircraft Corporation: Amendment 39–10151. Docket No. 96–SW–32–AD. Supersedes AD 95–12–02, Amendment 39–9252.

Applicability: Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the head area of the outboard tension-torsion (T–T) bar pin, which could result in loss of in-plane stability of the main rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) after the effective date of this AD, or at the next 100 hour inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS, inspect the alignment of the outboard T–T bar pin, part number (P/N) 51452, and adjust the alignment, if necessary, in accordance with Hiller Aviation Service Letter (SL) 51–2, dated March 31, 1978.

(b) Within 25 hours TIS after the effective date of this AD, or at the next 100 hour inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS, inspect the head of the outboard T–T bar pin for cracks using a dye penetrant or magnetic particle inspection method.

(c) If a crack is found as a result of the inspection required by paragraph (b) of this AD, report the results within 7 working days following the inspection to the Manager, Los Angeles Aircraft Certification Office, Attention Charles Matheis, ANM–120L, 3960 Paramount Blvd., Lakewood, California 90712–4137. Include the helicopter model number, serial number, and total TIS of the outboard T–T bar pin in the report. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(d) Within 25 hours TIS after the effective date of this AD, or at the next 100 hour inspection, whichever occurs first, install shims between the inboard end of the drag strut and the outboard T–T bar pin in accordance with the Accomplishment Instructions of Hiller Aviation Service Bulletin No. 51–9, dated April 8, 1983.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The adjustment of the alignment of the T–T bar pin shall be done in accordance with Hiller Aviation SL 51–2, dated March 31, 1978, and the installation of the shims shall be done in accordance with Hiller Aviation Service Bulletin No. 51–9, dated April 8, 1983. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 23, 1995 (60 FR 30184, June 8, 1995). Copies may be obtained from Hiller Aircraft Corporation, 3200 Imjin Road, Marina, California 93933–5101, telephone (408) 384–4500, fax (408) 883–3648. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 12, 1997.

Issued in Fort Worth, Texas, on September 26, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–26621 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 29030; Amendment No. 71–29]

Airspace Designations; Incorporation By Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends 14 CFR part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9E, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points incorporated by reference.

EFFECTIVE DATE: These regulations are effective September 16, 1997, through September 15, 1998. The incorporation by reference of FAA Order 7400.9E is approved by the Director of the Federal Register as of September 16, 1997, through September 15, 1998.

FOR FURTHER INFORMATION CONTACT: Brenda Brown or Janet Glivings, Airspace and Rules Division (ATA–400), Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, listed Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations section 71.1 (14 CFR 71.1). The Director of the Federal Register approved the incorporation by reference of FAA Order 7400.9D in section 71.1, effective September 16, 1996, through September 15, 1997. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9D in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Airspace Designations and Reporting Points, Order 7400.9E. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9E in section 71.1, as of September 16, 1997, through September 15, 1998. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Section 71.5, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, 71.79, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9E.

The Rule

This action amends part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9E, effective September 16, 1997, through September 15, 1998. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9E in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in section 71.1.

The FAA has determined that this action: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1997); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action will continue to update the changes to the airspace designations, which are depicted on aeronautical charts, and to avoid any unnecessary pilot confusion, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all Class A, Class B, Class C, Class D, and Class E airspace areas and for all reporting points can be found in FAA Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9E is effective September 16, 1997, through September 15, 1998. During the incorporation by reference period, proposed changes to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9E may be obtained from the Airspace and Rules Division, ATA–400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8783. Copies of FAA Order 7400.9E may be inspected in Docket No. 29030 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 915G, 800 Independence Avenue, SW., Washington, D.C., weekdays between 8:30 a.m. and 5:00 p.m., or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This section is effective September 16, 1997, through September 15, 1998.

§ 71.5 [Amended]

3. Section 71.5 is amended by removing the words "FAA Order 7400.9D" and adding, in their place, the words "FAA Order 7400.9E."

§ 71.31 [Amended]

4. Section 71.31 is amended by removing the words "FAA Order 7400.9D" and adding, in their place, the words "FAA Order 7400.9E."

§ 71.33 [Amended]

5. Paragraph (c) of Section 71.33 is amended by removing the words "FAA Order 7400.9D" and adding, in their place, the words "FAA Order 7400.9E."

§ 71.41 [Amended]

6. Section 71.41 is amended by removing the words "FAA Order 7400.9D" and adding, in their place, the words "FAA Order 7400.9E."

§ 71.51 [Amended]

7. Section 71.51 is amended by removing the words "FAA Order 7400.9D" and adding, in their place, the words "FAA Order 7400.9E."

§ 71.61 [Amended]

8. Section 71.61 is amended by removing the words "FAA Order 7400.9D" and adding, in their place, the words "FAA Order 7400.9E."

§ 71.71 [Amended]

9. Paragraphs (b), (c) (d), (e), and (f) of Section 71.71 are amended by removing the words "FAA Order 7400.9D" and adding, in their place, the words "FAA Order 7400.9E."

§ 71.79 [Amended]

10. Section 71.79 is amended by removing the words "FAA Order 7400.9D" and adding, in their place, the words "FAA Order 7400.9E."

§ 71.901 [Amended]

11. Paragraph (a) of Section 71.901 is amended by removing the words "FAA Order 7400.9D" and adding, in their place, the words "FAA Order 7400.9E."

Issued in Washington, DC, September 30, 1997.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 97–26610 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

28 CFR Part 0

Deputization of State and Local Law Enforcement Officers as Task Force Officers, and Cross-Designation of Federal Law Enforcement Officers; Redelegation of Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule authorizes the Drug Enforcement Administration (DEA) Chief, State and Local Section, Office of Domestic Operations, Operations Division, to deputize state and local law enforcement officers as Task Force Officers, and authorizes the Chief, Domestic Liaison Section, Office of Domestic Operations, Operations Division, to cross-designate Federal law enforcement officers to undertake title 21 drug investigations under the supervision of DEA.

EFFECTIVE DATE: September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Calvin F. McFarland, Chief, Domestic Liaison Section, Office of Domestic Operations, Operations Division, Drug Enforcement Administration, (202) 307–8932, or Jayme S. Walker, Associate Chief Counsel, Office of Chief Counsel, Drug Enforcement Administration, (202) 307–8030.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act, 21 U.S.C. 801 et seq., as amended (CSA), specifically, 21 U.S.C. 878(a), provides that Federal, state or local law enforcement officers designated by the Attorney General may exercise certain powers of Federal law enforcement personnel. Under title 21 sections 873 and 965, the Attorney General may request other Federal law enforcement agencies to provide law enforcement assistance to DEA. Designated law enforcement officers may undertake title 21 drug investigations under the supervision of DEA.

The Attorney General delegated the functions vested in the Attorney General by the CSA to the Administrator of DEA, at 28 CFR 0.100(b), with leave for the DEA Administrator to further redelegate those functions to any of his subordinates, at 28 CFR 0.104.

The Administrator had previously delegated the authority to deputize state and local law enforcement officers as DEA Task Force Officers, and to cross-designate Federal law enforcement officers to undertake title 21 drug investigations under the supervision of DEA, to the Deputy Assistant Administrator for Investigative Support, at 28 CFR, Part 0, Appendix to Subpart R—Redelegation of Functions, sections 10 and 11. That position was, however, eliminated in 1995 during an internal DEA reorganization. This final rule amends sections 10 and 11 by transferring those duties previously assigned to the Deputy Assistant Administrator for Investigative Support, to the Chief, State and Local Section, Office of Domestic Operations, Operations Division, and to the Chief, Domestic Liaison Section, Office of Domestic Operations, Operations Division, respectively.

The Administrator certifies that this action will have no impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601). Pursuant to sections 1(a)(3) and 1(b) of Executive Order 12291, this rule is not a major rule and relates only to the organization of functions within DEA. Accordingly, it has not been reviewed by the Office of Management and Budget. This action has been analyzed in accordance with Executive Order 12612 and it has been determined that this matter has no federalism implications which would warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Organizations and functions (Government agencies).

For the reasons set forth above, and pursuant to the authority vested in the Administrator of the Drug Enforcement Administration by 28 CFR 0.100 and 0.104, and 21 U.S.C. 871, title 28 of the Code of Federal Regulations, part 0, Appendix to Subpart R, Redelegation of Functions, sections 10 and 11, are amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. The appendix to subpart R, sections 10 and 11, are revised to read as follows:

Appendix to Subpart R—Redelegation of Functions

* * * * *

Sec. 10. *Deputization of State and Local Law Enforcement Officers.* The Chief, State and Local Section, Office of Domestic Operations, Operations Division is authorized to exercise all necessary functions with respect to the deputization of state and local law enforcement officers as Task Force Officers of DEA pursuant to 21 U.S.C. 878(a).

Sec. 11. *Cross-Designation of Federal Law Enforcement Officers.* The Chief, Domestic Liaison Section, Office of Domestic Operations, Operations Division is authorized to exercise all necessary functions with respect to the cross-designation of Federal law enforcement officers to undertake title 21 drug investigations under the supervision of DEA pursuant to 21 U.S.C. 873(a).

* * * * *

Dated: September 25, 1997.

Thomas A. Constantine,

Administrator.

[FR Doc. 97–26660 Filed 10–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

28 CFR Part 0

Authorization of DEA Laboratory Directors to Release DEA Laboratory Information to Federal and State Prosecutors; Redelegation of Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule authorizes Drug Enforcement Administration (DEA) Laboratory Directors to release DEA laboratory information, and to authorize testimony by DEA laboratory personnel, in response to Federal and State prosecutors' requests for same.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: Jayme S. Walker, Associate Chief Counsel, Office of Chief Counsel, Drug Enforcement Administration, (202) 307–8030.

SUPPLEMENTARY INFORMATION: The Administrator of the DEA is authorized at 28 CFR 0.103(a) to release DEA information, and to authorize DEA personnel to testify, in response to requests from Federal and State prosecutors who are engaged in the enforcement of laws which are related to controlled substances. The Administration is authorized by § 0.104 to redelegate to any of his subordinates any of the powers and functions assigned to him by subpart R.

DEA Special Agents in Charge were previously delegated the authority to grant § 0.103(a) requests as they related to DEA Special Agents, Diversion Investigators, and other personnel under this supervision, at 28 CFR, Appendix to Subpart R, section 2. This redelegation will amend section 2 to give DEA Laboratory Directors corresponding authority over DEA laboratory information and testimony, specifically, the authority to release DEA laboratory information, and to authorize the testimony of DEA laboratory personnel, under the circumstances described at 28 CFR 0.103(a).

The Administrator certifies that this action will have no impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601). Pursuant to sections 1 (a)(3) and 1(b) of Executive Order 12291, this rule is not a major rule and relates only to the organization of functions with DEA. Accordingly, it has not been reviewed by the Office of Management and Budget. This action has been analyzed in accordance with Executive Order 12612 and it has been determined that this matter has no federalism implications which would warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Part 0

Authority Delegations (Government Agencies), Organizations and functions (Government Agencies).

For the reasons set forth above, and pursuant to the authority vested in the Administrator of the Drug Enforcement Administration by 28 CFR 0.100 and 0.104, and 21 U.S.C. 871, title 28 of the Code of Federal Regulations, part 0, Appendix to Subpart R, Redelegation of Functions, section 2, is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. The Appendix to subpart R, section 2, is revised to read as follows:

Appendix to Subpart R—Redelegation of Functions

* * * * *

Sec. 2. *Supervisors.* All Special Agents-in-Charge of the DEA, and the FBI are authorized to conduct enforcement hearings under 21 U.S.C. 883, and to take custody of seized property under 21 U.S.C. 881. All Special Agents-in-Charge of the DEA and the FBI are authorized to release information pursuant to 28 CFR 0.103(a) (1) and (2) which is obtained by the DEA and the FBI, and to authorize the testimony of DEA and FBI officials in response to prosecution subpoenas under 28 CFR 0.103(a)(3). All DEA Laboratory Directors are authorized to release information pursuant to 28 CFR 0.103(a) (1) and (2) which is obtained by a DEA laboratory, and to authorize the testimony of DEA laboratory personnel in response to prosecution subpoenas under 28 CFR 0.103(a)(3). All DEA Special Agents-in-Charge are authorized to take custody of, and make disposition of, controlled substances seized pursuant to 21 U.S.C. 824(g).

* * * * *

Dated: September 25, 1997.

Thomas A. Constantine,

Administrator.

[FR Doc. 97–26732 Filed 10–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501 and 597

Reporting and Procedures Regulations; Foreign Terrorist Organizations Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is issuing the Foreign Terrorist Organizations Sanctions Regulations to implement sections 302 and 303 of the Antiterrorism and Effective Death Penalty Act as they relate to the Treasury Department. Conforming and technical amendments are made to the Reporting and Procedures Regulations.

EFFECTIVE DATE: October 6, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220; tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

On April 24, 1996, President Clinton signed into law the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132, 110 Stat. 1214–1319 (the "Act"). Section 302 of the Act (new 8 U.S.C. 1189) authorizes the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate organizations meeting stated requirements as foreign terrorist organizations, with prior notification to Congress of the intent to designate. Upon that notification to Congress, the Secretary of the Treasury may require U.S. financial institutions to block financial transactions involving assets in their possession or control of the foreign organizations proposed for designation.

Section 303 of the Act (new 18 U.S.C. 2339B) prohibits persons within the United States or subject to U.S. jurisdiction from knowingly providing material support or resources to a designated foreign terrorist organization, and makes violations punishable by criminal penalties under title 18, United States Code. Additionally, except as authorized by the Treasury Department, financial institutions in possession or control of funds in which a foreign terrorist organization or its agent has an interest are required to block such funds and file reports in accordance with Treasury Department regulations. Financial institutions in violation of 18 U.S.C. 2339B(a)(2) are subject to civil penalties administered by the Treasury Department. In implementation of sections 302 and 303 and the statutory purpose stated in section 301, the Treasury Department is issuing the Foreign Terrorist Organizations Sanctions Regulations (the "Regulations").

Transactions otherwise prohibited under this part but found to be consistent with U.S. policy may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in subpart D of part 501 of this chapter. Penalties for violations of the Regulations are described in subpart G.

Conforming and technical amendments are also made to the Reporting and Procedures Regulations, 31 CFR Part 501. Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The Regulations are being issued without prior notice and public comment procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). The collections of information related to the Regulations are contained in part 501 of this chapter (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget ("OMB") under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 501

Administrative practice and procedure, Banks, banking, Blocking of assets, Foreign trade, Reporting and recordkeeping requirements

31 CFR Part 597

Administrative practice and procedure, Banks, banking, Blocking of assets, Foreign terrorist organizations, Penalties, Reporting and recordkeeping requirements, Terrorism, Transfer of assets.

For the reasons set forth in the preamble, 31 CFR chapter V is amended as follows:

PART 501—REPORTING AND PROCEDURES REGULATIONS

1. The authority citation for part 501 continues to read as follows:

Authority: 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

2. Section 501.101 is revised to read as follows:

§ 501.101 Relation of this part to other parts in this chapter.

This part sets forth standard reporting and recordkeeping requirements and license application and other procedures governing transactions regulated pursuant to other parts codified in this chapter, as well as to economic sanctions programs for which implementation and administration are delegated to the Office of Foreign Assets Control. Substantive prohibitions and policies particular to each economic sanctions program are not contained in this part but are set forth in the particular part of this chapter dedicated to that program, or, in the case of economic sanctions programs not yet implemented in regulations, in the applicable executive order or other authority. License application procedures and reporting requirements set forth in this part govern transactions undertaken pursuant to general or specific licenses. The criteria for general and specific licenses pertaining to a particular economic sanctions program are set forth in subpart E of the individual parts in this chapter. Statements of licensing policy contained in subpart E of the individual parts in this chapter, however, may contain additional information collection provisions that require production of specified documentation unique to a given general license or statement of licensing policy.

3. The following note is added to the end of § 501.601 to read as follows:

Note: See subpart F of part 597 for the relationship between this section and part 597.

4. Section 501.602 is amended by revising the last sentence to read as follows, and by adding the following note to the end of the section:

§ 501.602 Reports to be furnished on demand.

* * * Except as provided in parts 596 and 597, the Director may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

Note: See subpart F of part 597 for the relationship between this section and part 597.

5. The following note is added to the end of § 501.603 to read as follows:

Note: See subpart F of part 597 for the relationship between this section and part 597.

6. Section 501.806 is amended by revising paragraph (b) to read as follows:

§ 501.806 Procedures for unblocking funds believed to have been blocked due to mistaken identity.

* * * * *

(b) Requests to release funds which a party believes to have been blocked due to mistaken identity must be made in writing and addressed to the Office of Foreign Assets Control, Compliance Programs Division, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, or sent by facsimile transmission to the Compliance Programs Division at 202/622–1657.

* * * * *

7. Section 501.807 is amended by revising paragraph (a) to read as follows:

§ 501.807 Procedures governing removal of names from appendices A, B, and C to this chapter.

* * * * *

(a) A specially designated national ("SDN"), specially designated terrorist ("SDT"), specially designated narcotics trafficker ("SDNT"), or an agent of a foreign terrorist organization ("AFTO") (collectively, a "designated person"), or a person owning a majority interest in a blocked vessel, may request disclosure of the factual basis for designation and, subject to the limitations contained in paragraph (c) of this section, review factual materials relied upon by the Office of Foreign Assets Control in designating the person or vessel.

8. Part 597 is added to read as follows:

PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
597.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

597.201 Prohibited transactions involving blocked assets or funds of foreign terrorist organizations or their agents.
597.202 Effect of transfers violating the provisions of this part.
597.203 Holding of funds in interest–bearing accounts; investment and reinvestment.
597.204 Evasions; attempts; conspiracies.

Subpart C—General Definitions

597.301 Agent.
597.302 Assets.
597.303 Blocked account; blocked funds.
597.304 Designation.
597.305 Effective date.
597.306 Entity.
597.307 Financial institution.
597.308 Financial transaction.
597.309 Foreign terrorist organization.
597.310 Funds.
597.311 General license.
597.312 Interest.
597.313 License.
597.314 Person.
597.315 Specific license.
597.316 Transaction.
597.317 Transfer.
597.318 United States.
597.319 U.S. financial institution.

Subpart D—Interpretations

597.401 Reference to amended sections.
597.402 Effect of amendment.
597.403 Termination and acquisition of an interest in blocked funds.
597.404 Setoffs prohibited.
597.405 Transactions incidental to a licensed transaction.
597.406 Offshore transactions.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

597.501 Effect of license or authorization.
597.502 Exclusion from licenses and authorizations.
597.503 Payments and transfers to blocked accounts in U.S. financial institutions.
597.504 Entries in certain accounts for normal service charges authorized.
597.505 Payment for certain legal services.

Subpart F—Reports

597.601 Records and reports.

Subpart G—Penalties

597.701 Penalties.
597.702 Prepenalty notice.
597.703 Response to prepenalty notice.
597.704 Penalty notice.
597.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

597.801 Procedures.
597.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

597.901 Paperwork Reduction Act notice.

Authority: 31 U.S.C. 321(b); Pub. L. 104–132, 110 Stat. 1214, 1248–53 (8 U.S.C. 1189, 18 U.S.C. 2339B).

Subpart A—Relation of This Part to Other Laws andRegulations

§ 597.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Differing statutory authority and foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations. This part does not implement, construe, or limit the scope of any other part of this chapter, including (but not limited to) the Terrorism Sanctions Regulations, part 595 of this chapter, and does not excuse any person from complying with any other part of this chapter, including (but not limited to) part 595 of this chapter.

(c) This part does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

Subpart B—Prohibitions

§ 597.201 Prohibited transactions involving blocked assets or funds of foreign terrorist organizations or their agents.

(a) Upon notification to Congress of the Secretary of State's intent to designate an organization as a foreign terrorist organization pursuant to 8 U.S.C. 1189(a), until the publication in the **Federal Register** as described in paragraph (c) of this section, any U.S. financial institution receiving notice from the Secretary of the Treasury by means of order, directive, instruction, regulation, ruling, license, or otherwise shall, except as otherwise provided in such notice, block all financial transactions involving any assets of such organization within the possession or control of such U.S. financial institution until further directive from the Secretary of the Treasury, Act of Congress, or order of court.

(b) Except as otherwise authorized by order, directive, instruction, regulation, ruling, license, or otherwise, from and after the designation of an organization as a foreign terrorist organization pursuant to 8 U.S.C. 1189(a), any U.S. financial institution that becomes aware that it has possession of or control over any funds in which the designated foreign terrorist organization or its agent has an interest shall:

(1) Retain possession of or maintain control over such funds; and

(2) Report to the Secretary of the Treasury the existence of such funds in accordance with § 501.603 of this chapter.

(c) Publication in the **Federal Register** of the designation of an organization as a foreign terrorist organization pursuant to 8 U.S.C. 1189(a) shall be deemed to constitute a further directive from the Secretary of the Treasury for purposes of paragraph (a) of this section, and shall require the actions contained in paragraph (b) of this section.

(d) The requirements of paragraph (b) of this section shall remain in effect until the effective date of an administrative, judicial, or legislative revocation of the designation of an organization as a foreign terrorist organization, or until the designation lapses, pursuant to 8 U.S.C. 1189.

(e) When a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter. Requests for the unblocking of funds pursuant to § 501.806 must be submitted to the attention of the Compliance Programs Division.

§ 597.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date which is in violation of § 597.201 or any other provision of this part or of any regulation, order, directive, ruling, instruction, license, or other authorization hereunder and involves any funds or assets held in the name of a foreign terrorist organization or its agent or in which a foreign terrorist organization or its agent has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such funds or assets.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any funds or assets held in the name of a foreign terrorist organization or its agent or in which a foreign terrorist organization or its agent has an interest, or has had an interest since such date, unless the financial institution with whom such funds or assets are held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part, and any regulation, order, directive, ruling, instruction, or license issued hereunder.

(d) Transfers of funds or assets which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any financial institution with whom such funds or assets were held or maintained (and as to such financial institution only) in cases in which such financial institution is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the financial institution with whom such funds or assets were held or maintained;

(2) The financial institution with which such funds or assets were held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such institution, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) The financial institution with which such funds or assets were held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization hereunder; or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d): The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Except for exercises of judicial authority pursuant to 8 U.S.C. 1189(b), unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any funds or assets which, on or since the effective date, were in the possession or control of a U.S. financial institution and were held in the name of a foreign terrorist organization or its agent or in which there existed an interest of a foreign terrorist organization or its agent.

§ 597.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. financial institution holding funds subject to § 597.201(b) shall hold or place such funds in a blocked interest-bearing account which is in the name of the foreign terrorist organization or its agent and which is located in the United States.

(b)(1) For purposes of this section, the term *interest-bearing account* means a blocked account:

(i) in a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates which are commercially reasonable for the amount of funds in the account or certificate of deposit; or

(ii) with a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury Bills.

(2) Funds held or placed in a blocked interest-bearing account pursuant to this paragraph may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or sub-account, the name of the account party on each account must be the same and must clearly indicate the foreign terrorist organization or agent having an interest in the accounts.

(c) Blocked funds held as of the effective date in the form of stocks, bonds, debentures, letters of credit, or instruments which cannot be negotiated for the purpose of placing the funds in a blocked interest-bearing account pursuant to paragraph (a) may continue to be held in the form of the existing security or instrument until liquidation or maturity, provided that any dividends, interest income, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with the requirements of this section.

(d) Funds subject to this section may not be held, invested, or reinvested in

a manner in which an immediate financial or economic benefit or access accrues to the foreign terrorist organization or its agent.

§ 597.204 Evasions; attempts; conspiracies.

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this part, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is hereby prohibited.

Subpart C—General Definitions

§ 597.301 Agent.

(a) The term *agent* means:

(1) Any person owned or controlled by a foreign terrorist organization; or

(2) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of a foreign terrorist organization.

(b) The term *agent* includes, but is not limited to, any person determined by the Director of the Office of Foreign Assets Control to be an agent as defined in paragraph (a) of this section.

Note to § 597.301: Please refer to the appendices at the end of this chapter for listings of persons designated as foreign terrorist organizations or their agents. Section 501.807 of this chapter sets forth the procedures to be followed by a person seeking administrative reconsideration of a designation as an agent, or who wishes to assert that the circumstances resulting in the designation as an agent are no longer applicable.

§ 597.302 Assets.

The term *assets* includes, but is not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 597.303 Blocked account; blocked funds.

The terms *blocked account* and *blocked funds* shall mean any account or funds subject to the prohibitions in § 597.201 held in the name of a foreign terrorist organization or its agent or in which a foreign terrorist organization or its agent has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

§ 597.304 Designation.

The term *designation* includes both the designation and redesignation of a foreign terrorist organization pursuant to 8 U.S.C. 1189.

§ 597.305 Effective date.

Except as that term is used in § 597.201(d), the term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is October 6, 1997, or, in the case of foreign terrorist organizations designated after that date and their agents, the earlier of the date on which a financial institution receives actual or constructive notice of such designation or of the Secretary of Treasury's exercise of his authority to block financial transactions pursuant to 8 U.S.C. 1189(a)(2)(C) and § 597.201(a).

§ 597.306 Entity.

The term *entity* includes a partnership, association, corporation, or other organization, group, or subgroup.

§ 597.307 Financial institution.

The term *financial institution* shall have the definition given that term in 31 U.S.C. 5312(a)(2) as from time to time amended, notwithstanding the definition of that term in 31 CFR part 103.

Note: The breadth of the statutory definition of *financial institution* precludes its reproduction in this section. Among the types of businesses covered are insured banks (as defined in 12 U.S.C. 1813(h)), commercial banks or trust companies, private bankers, agencies or branches of a foreign bank in the United States, insured institutions (as defined in 12 U.S.C. 1724(a)), thrift institutions, brokers or dealers registered with the Securities and Exchange Commission under 15 U.S.C. 78a *et seq.*, securities or commodities brokers and dealers, investment bankers or investment companies, currency exchanges, issuers, redeemers, or cashiers of traveler's checks, checks, money orders, or similar instruments, credit card system operators, insurance companies, dealers in precious metals, stones or jewels, pawnbrokers, loan or finance companies, travel agencies, licensed senders of money, telegraph companies, businesses engaged in vehicle sales, including automobile, airplane or boat sales, persons involved in real estate closings and settlements, the United States Postal Service, a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 as further described in 31 U.S.C. 5312(a)(2), or agencies of the United States Government or of a State or local government carrying out a duty or power of any of the businesses described in 31 U.S.C. 5312(a)(2).

§ 597.308 Financial transaction.

The term *financial transaction* means a transactioninvolving the transfer or movement of funds, whether by wire or other means.

§ 597.309 Foreign terrorist organization.

The term *foreign terrorist organization* means an organization designated or redesignated as a foreign terrorist organization, or with respect to which the Secretary of State has notified Congress of the intention to designate as a foreign terrorist organization, under 8 U.S.C. 1189(a).

§ 597.310 Funds.

The term *funds* includes coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing. An electronic representation of any of the foregoing includes any form of digital or electronic cash, coin, or currency in use currently or placed in use in the future.

§ 597.311 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 597.312 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to funds or assets (*e.g.*, "an interest in funds") means an interest of any nature whatsoever, direct or indirect.

§ 597.313 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 597.314 Person.

The term *person* means an individual or entity.

§ 597.315 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part.

§ 597.316 Transaction.

The term *transaction* shall have the meaning set forth in 18 U.S.C. 1956(c)(3), as from time to time amended. As of the effective date, this term includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition of any asset, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

§ 597.317 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 597.318 United States.

The term *United States* means the United States, its territories, states, commonwealths, districts, and possessions, and all areas under the jurisdiction or authority thereof.

§ 597.319 U.S. financial institution.

The term *U.S. financial institution* means:

(a) Any financial institution organized under the laws of the United States, including such financial institution's foreign branches;

(b) Any financial institution operating or doing business in the United States; or

(c) Those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such foreign financial institutions' other foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 597.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 597.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 597.403 Termination and acquisition of an interest in blocked funds.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of funds (including any interest in funds) away from a foreign terrorist organization or its agent, such funds shall no longer be deemed to be funds in which the foreign terrorist organization or its agent has or has had an interest, or which are held in the name of a foreign terrorist organization or its agent, unless there exists in the funds another interest of a foreign terrorist organization or its agent, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if funds (including any interest in funds) are or at any time since the effective date have been held by a foreign terrorist organization or its agent, or at any time thereafter are transferred or attempted to be transferred to a foreign terrorist organization or its agent, including by the making of any contribution to or for the benefit of a foreign terrorist organization or its agent, such funds shall be deemed to be funds in which there exists an interest of the foreign terrorist organization or its agent.

§ 597.404 Setoffs prohibited.

A setoff against blocked funds (including a blocked account) by a U.S. financial institution is a prohibited transaction under § 597.201 if effected after the effective date.

§ 597.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except a transaction by an unlicensed, foreign terrorist organization or its agent or involving a debit to a blocked account or a transfer of blocked funds not explicitly authorized within the terms of the license.

§ 597.406 Offshore transactions.

The prohibitions contained in § 597.201 apply to transactions by U.S. financial institutions in locations outside the United States with respect to funds or assets which the U.S. financial institution knows, or becomes aware, are held in the name of a foreign terrorist organization or its agent, or in which the U.S. financial institution knows, or becomes aware that, a foreign terrorist organization or its agent has or has had an interest since the effective date.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 597.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 597.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 597.503 Payments and transfers to blocked accounts in U.S. financial institutions.

(a) Any payment of funds or transfer of credit or other financial or economic resources or assets by a financial institution into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account pursuant to this authorization may only be made to another blocked account held in the same name on the books of the same U.S. financial institution.

(b) This section does not authorize any transfer from a blocked account within the United States to an account held outside the United States.

Note to § 597.503: Please refer to §§ 501.603 and 597.601 of this chapter for mandatory reporting requirements regarding financial transfers.

§ 597.504 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are hereby authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term normal service charge shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photostats, credit reports, transcripts of statements, registered mail insurance, stationery and supplies, check books, and other similar items.

§ 597.505 Payment for certain legal services.

Specific licenses may be issued, on a case-by-case basis, authorizing receipt of payment of professional fees and reimbursement of incurred expenses through a U.S. financial institution for the following legal services by U.S. persons:

(a) Provision of legal advice and counseling to a foreign terrorist organization or an agent thereof on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling is not provided to facilitate transactions in violation of any of the prohibitions of this part;

(b) Representation of a foreign terrorist organization or an agent thereof when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(c) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings on behalf of a foreign terrorist organization or an agent thereof;

(d) Representation of a foreign terrorist organization or an agent thereof before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against a foreign terrorist organization or an agent thereof;

(e) Provision of legal services to a foreign terrorist organization or an agent thereof in any other context in which prevailing U.S. law requires access to legal counsel at public expense; and

(f) Representation of a foreign terrorist organization seeking judicial review of a designation before the United States Court of Appeals for the District of Columbia Circuit pursuant to 8 U.S.C. 1189(b)(1).

Subpart F—Reports

§ 597.601 Records and reports.

For provisions relating to records and reports, see subpart C of part 501 of this chapter; provided, however, that all of the powers afforded the Director pursuant to the first 3 sentences of § 501.602 of this chapter may also be exercised by the Attorney General in conducting administrative investigations pursuant to 18 U.S.C. 2339B(e); provided further, that the investigative authority of the Director pursuant to § 501.602 of this chapter shall be exercised in accordance with 18 U.S.C. 2339B(e); and provided further, that for purposes of this part no person other than a U.S. financial institution and its directors, officers, employees, and agents shall be required to maintain records or to file any reports or furnish any information under §§ 501.601, 501.602, or 501.603 of this chapter.

Subpart G—Penalties

§ 597.701 Penalties.

(a) Attention is directed to 18 U.S.C. 2339B(a)(1), as added by Public Law 104–132, 110 Stat. 1250–1253, section 303, which provides that whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under title 18, United States Code, or imprisoned for not more than 10 years, or both.

(b) Attention is directed to 18 U.S.C. 2339B(b), as added by Public Law 104–132, 110 Stat. 1250–1253, section 303, which provides that, except as authorized by the Secretary of the Treasury, any financial institution that knowingly fails to retain possession of or maintain control over funds in which a foreign terrorist organization or its agent has an interest, or to report the existence of such funds in accordance with these regulations, shall be subject to a civil penalty in an amount that is the greater of $50,000 per violation, or twice the amount of which the financial institution was required to retain possession or control.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or

makes any materially false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(d) Conduct covered by this part may also be subject to relevant provisions of other applicable laws.

§ 597.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part, and the Director, acting in coordination with the Attorney General, determines that civil penalty proceedings are warranted, the Director shall issue to the person concerned a notice of intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents.*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to respond within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 597.703 Response to prepenalty notice.

(a) *Time within which to respond.* The respondent shall have 30 days from the date of mailing of the prepenalty notice to respond in writing to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of written response.* The written response need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should respond to the allegations in the prepenalty notice and set forth the reasons why the respondent believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

(c) *Informal settlement.* In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30–day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

§ 597.704 Penalty notice.

(a) *No violation.* If, after considering any written response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent, the Director promptly shall notify the respondent in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent, the Director promptly shall issue a written notice of the imposition of the monetary penalty on the respondent. The issuance of a written notice of the imposition of a monetary penalty shall constitute final agency action.

(2) The penalty notice shall inform the respondent that payment of the assessed penalty must be made within 30 days of the mailing of the penalty notice.

(3) The penalty notice shall inform the respondent of the requirement to furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Department intends to use such number for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 597.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 597.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see subpart D of part 501 of this chapter.

§ 597.802 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to 8 U.S.C. 1189 or 18 U.S.C. 2339B, as added by Public Law 104–132, 110 Stat. 1248–1253, sections 302 and 303, may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Part I—Paperwork Reduction Act

§ 597.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: September 26, 1997.
Loren L. Dehm,
Acting Director, Office of Foreign Assets Control.
Approved: September 30, 1997.
James E. Johnson,
Assistant Secretary (Enforcement).
[FR Doc. 97–26787 Filed 10–6–97; 2:22 pm]
BILLING CODE 4810–25–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–97–074]

RIN 2115–AE46

Special Local Regulations for Marine Events; Thunder on the Lake Powerboat Races, Sunset Lake, Wildwood Crest, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Thunder on the Lake Powerboat Races to be held in Sunset Lake, Wildwood Crest, New Jersey. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of the event participants and transiting vessels.

EFFECTIVE DATE: This regulation is effective from 9:30 a.m. to 6:30 p.m. on October 11 and 12, 1997.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Tom Peck, Marine Events Coordinator, Commander, Coast Guard Group Cape May, Cape May, NJ 08204–5082. Telephone number (609) 898–6981.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The request to hold the event was not received until September 5, 1997. Publishing a notice of proposed rulemaking and delaying its effective date would be contrary to safety interests, since immediate action is needed to minimize potential danger to the public posed by the large number of racing vessels participating in this event.

Discussion of Regulations

On October 11 and 12, 1997, the New Jersey Hot Rod Association will sponsor the Thunder on the Lake Powerboat Races on Sunset Lake, Wildwood Crest, New Jersey. The event will consist of Hydroplanes, Jersey Speed Skiffs and Pro-Stock boats racing at high speeds along a one mile oval course. These regulations are necessary to provide for the safety of life and property on navigable waters during the event.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory procedures of DOT is unnecessary. Entry into the regulated area will only be prohibited while the race boats are actually competing. Since vessels will be allowed to transit the event area between races, the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard expects the economic impact of this temporary rule to be minimal, and certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities, because the regulations will only be in effect for a short duration in a limited area.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.b.2.e(34)(h) of Commandant Instruction M16475.1b (as amended, 61 FR 13564; March 27, 1996), this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35T–05–074 is added to read as follows:

§ 100.35T–05–074 Sunset Lake, Wildwood Crest, NJ.

(a) *Definitions:*

(1) *Regulated area:* The waters of Sunset Lake, including the waters of the Intracoastal Waterway between NJICW Daybeacon 469 (LLNR 36690) located at latitude 38°59'07" North, longitude 074°50'41" West, and NJICW Light 471 (LLNR 36700) located at latitude 38°58'41" North, longitude 074°51'01" West. All coordinates reference Datum: NAD 1983.

(2) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Cape May.

(b) *Special Local Regulations:*

(1) The regulated area will be intermittently closed to all vessel traffic during the effective period. No person or vessel shall enter or remain in the regulated area while it is closed unless authorized by the Coast Guard Patrol Commander.

(2) The Patrol Commander will allow vessel traffic to transit the event area between races. Transiting vessels shall proceed at no-wake speeds and remain

clear of the race course area as marked by the sponsor provided buoys.

(3) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective dates:* This regulation is effective from 9:30 a.m. to 6:30 p.m. on October 11 and 12, 1997.

Dated: September 23, 1997.

J. Carmichael,

Acting Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 97–26696 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8–97–037]

RIN 2115–AE47

Drawbridge Operation Regulation; Red River, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule removes the regulation for the S 8 bridge across the Red River, mile 105.0 at Boyce, Rapides Parish, Louisiana. The swing span was removed and the regulation governing its operation is no longer necessary.

DATES: This regulation becomes effective on October 8, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Frank, Bridge Administration Branch. (504) 589–2965.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice for proposed rulemaking for this regulation has not been published, and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would be unnecessary. The draw to which this rule applies was removed in 1985 and replaced by a fixed span bridge.

The S 8 bridge across the Red River, mile 105.0, at Boyce, Louisiana, was removed and replaced in 1985 by a fixed span bridge. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation that pertained to this draw. This rule removes the regulation for this bridge in § 117.491.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) FR 11040; February 26, 1979).

The Coast Guard expects no economic impact from this rule and a full Regulatory Evaluation is unnecessary. This rule will have no economic impact because it removes a regulation that applies to a bridge that no longer exists.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule, if adopted, will have a significant economic impact on a substantial number of small entities. Small entities may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This rule will have no impact on either vehicular or navigational traffic because the regulation being removed applies to a bridge that has been removed. Because it will have no impact, the Coast Guard certifies under 5 U.S.C. 605(b) that it will not have any economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to issue permits for the construction, reconstruction, or alteration of bridges across navigable waters of the United States belongs to the Coast Guard by Federal statutes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.(g)(5) of Commandant Instruction M16475 1B, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.491 [Amended]

2. In section 117.491, paragraph (a)(3) is removed.

Dated: September 18, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 97–26698 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 19

RIN 2900–AI50

Appeals Regulations: Remand for Further Development

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule amendments to the appeals regulations of the Board of Veterans' Appeals (Board) of the Department of Veterans Affairs (VA). The amendments change the circumstances in which the Board must remand a case to the VA field facility with original jurisdiction in the case. The changes help avoid unnecessary remands.

EFFECTIVE DATE: October 8, 1997.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202–565–5978).

SUPPLEMENTARY INFORMATION: On July 3, 1997, VA published in the **Federal Register** (62 FR 36038) a proposed rule which would require the Board to remand a case to the agency of original jurisdiction ("AOJ") (usually one of VA's 58 regional offices) when additional evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, but would specify that the Board need not remand a case to clarify procedural matters before the Board, such as the choice of representative, the issues on appeal, or requests for hearings before the Board. The proposed rule would not apply to requests for medical or legal opinions under 38 CFR 20.901, nor to matters in which the Board has original jurisdiction under 38 CFR 20.609 (relating to representatives' fees) and § 20.610 (relating to representatives' expenses), since those cases, by their terms, do not involve adjudications by AOJs.

The public was given 30 days to submit comments. VA received no comments.

Accordingly, based on the rationale set forth in the proposed rule document, we are adopting without change the provisions of the proposed rule as a final rule.

Good cause is found for making this final rule effective on publication. This final rule will help avoid unnecessary remands without causing adverse effects to claimants.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: September 26, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 19 is amended as set forth below:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In subpart A, § 19.9 is revised to read as follows:

§ 19.9 Remand for further development.

(a) *General.* If further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, a Member or panel of Members of the Board shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken. A remand is not required to clarify procedural matters before the Board, including appellant's choice of representative before the Board, the issues on appeal, and requests for hearings before the Board.

(b) *Scope.* This section does not apply to:

(1) The Board's requests for opinions under Rule 901 (§ 20.901 of this chapter);

(2) The Board's supplementation of the record with recognized medical treatises; and

(3) Matters over which the Board has original jurisdiction described in Rules 609 and 610 (sections 20.609 and 20.610 of this chapter).

(Authority: 38 U.S.C. 7102, 7103(c), 7104(a))

[FR Doc. 97–26613 Filed 10–7–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AI92

Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) loan guaranty regulations concerning the requirements for Interest Rate Reduction Refinancing Loans (IRRRLs) by generally limiting these loans to instances where the veteran's monthly mortgage payment will decrease, and by generally requiring that the loans being refinanced be current in their payments. This action is necessary to ensure that these loans are made only when they provide a real benefit to the veteran, and to protect the financial interest of the Government.

DATES: Effective Date: This rule is effective October 8, 1997. Comments must be received on or before December 8, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI92." All written comments received will be available for public inspection at the above address, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: Under the authority of 38 U.S.C. Chapter 37, VA guarantees loans made by lenders to eligible veterans to purchase, construct, improve, or refinance their homes (the term veteran as used in this document includes any individual defined as a veteran under 38 U.S.C. 101 and 3701 for the purpose of housing loans). This document amends VA's loan guaranty regulations by revising the requirements for VA-guaranteed Interest Rate Reduction Refinancing Loans (IRRRLs).

IRRRLs are designed to assist veterans by allowing them to refinance an outstanding VA-guaranteed loan with a new loan at a lower rate. The provisions of 38 U.S.C. 3703(c)(3) and 3710(e)(1)(C) allow the veteran to do so without having to pay any out-of-pocket expenses. The veteran may include in the new loan the outstanding balance of the old loan plus reasonable closing costs, including up to two discount points. Over the years, IRRRLs have provided nearly one million veterans an opportunity to reduce the interest rates and, thus, the monthly payments on their home mortgages.

We have recently learned that a small number of lenders have been urging veterans to apply for loans under conditions that increase the risk of loss to both the veteran and the Government, and do not provide the benefit that IRRRLs were enacted to give. In some cases, these loans involve exorbitant costs in relation to the small reduction in the interest rate. Thus, veterans actually experience an increase in their monthly payment notwithstanding the lower rate. In other cases, lenders are urging veterans to default on their current loan, then refinance the delinquent loan with a new loan including the past due interest and late charges.

In one case, a veteran obtained a 30-year loan for a new home in Florida in October 1991. The fixed-rate mortgage was for $95,800 (including funding fee) at the State bond program interest rate of 7.99 percent with a principal and interest payment of $702.28. In March 1995 he obtained an adjustable rate mortgage (ARM) IRRRL with an initial interest rate of 7.5 percent. This loan was for $103,950 and had an initial payment amount of $726.83. It included $8,912.54 in closing costs, including 5.5 discount points. In January 1997, the ARM interest rate had been adjusted to 8.25 percent, and he obtained another IRRRL for $111,090 at a fixed interest rate of 8.00 percent and a monthly payment of $815.14. Thus, in a little

over 5 years he increased his mortgage by $15,190 and his payment by $112.84 " both increased by approximately 16 percent " and he still has 30 years to pay.

In order to assist veterans who were delinquent on their original loan to refinance to a lower rate, VA permitted them to include their past due payments in the new loan. Because loan instruments normally provide that any past due interest and late charges are capitalized and added to the loan balance, VA considered such past-due charges to be part of "the balance of the loan being refinanced", and, therefore, eligible to be refinanced under the provisions of 38 U.S.C. 3710(e)(1). Some lenders have abused this interpretation by actually encouraging veterans to skip a few payments on the old loan and use the cash saved by not making a timely payment for other purposes. One lender went so far as to suggest to prospective borrowers that they skip a few payments and use the money for a summer vacation.

These types of abusive loan practices do not serve the best interests of the veterans involved. They also have an adverse effect on the financial interests of the Government. Since IRRRLs can already result in loans in excess of the value of the property, additional unwarranted increases in the amount by which the loan balance exceeds the market value of the property could further increase VA's loss in the event of default and payment of a claim under the guaranty. Also, an excessive increase in the loan amount could cause a veteran to be unable to sell the home for an amount sufficient to pay off the loan balance.

In order to insure that IRRRLs continue to provide a true benefit to the veteran, and to protect the financial interest of the Government, we are making the following changes to the IRRRL program by revising the provisions of 38 CFR 36.4306a and 36.4337(a).

Monthly Payment Reduction

We generally will require that the monthly payment (principal and interest) on the new loan must be lower than the monthly payment on the loan being refinanced. This will prevent cases in which the veteran's monthly payment actually increases, even though the interest rate is lowered slightly, because extensive closing costs are included in the loan. This requirement does not apply to four situations where VA believes that other factors offset the risk of loss from an increase in monthly payment. These four situations are cases in which an ARM is being refinanced with a fixed-rate loan; cases in which the term of the new loan is shorter than the term of the loan being refinanced; cases in which the increase in monthly payment is attributable to the inclusion of energy efficient improvements, as provided in § 36.4336(a)(4); and cases in which the Secretary approves the new loan, on a case-by-case basis, in order to prevent an imminent foreclosure. With regard to ARMs, there is already a possibility that the monthly payment will increase in future years. The certainty that the payment on the new loan will not increase in future years offsets the increased risk associated with the immediate increase over the veteran's current payment. VA may establish limits on the amount of such increase in future rule making. Although the monthly payments on shorter term loans are higher, they amortize faster, thus reducing the risk of loss to both the veteran and the Government. In future rule making, VA may address minimum term reduction. Current law allows veterans to include additional costs of energy efficient improvements in IRRRLs; thus, this exception merely continues current law. Finally, with regard to imminent foreclosure, the risk of loss to the Government and veteran from such foreclosure could be greater than permitting a new loan at a higher monthly payment. VA would have to approve each such loan on a case-by-case basis under existing credit underwriting standards set forth at 38 CFR 36.4337 to ensure that it is in the best interest of the Government and that the veteran is able to afford the new payment.

The Loan Must Be Current

To prevent the lender from encouraging borrowers to "skip" mortgage payments and include them in the new loan, we are requiring that in any case where the loan being refinanced is delinquent, the new loan must be submitted to VA for prior approval. VA must determine that the veteran qualifies for the new loan under existing credit standards contained in 38 CFR 36.4337. Under these standards, a veteran must, among other things, demonstrate a proper regard for obligations. If it is found that the veteran purposely failed to make timely payment on the loan in order to use the cash for a vacation or similar discretionary spending, the new loan is unlikely to be approved.

We are clarifying existing VA interpretation that delinquent interest and late charges are considered part of the balance of the loan being refinanced.

Credit Underwriting Standards

We are also making a conforming amendment to 38 CFR 36.4337. That section contains the current credit underwriting standards. Currently, paragraph (a) of that section provides that the standards do not apply to IRRRLs. We are amending this to state the standards do not apply to IRRRLs unless under 38 CFR 36.4306a the loan must be submitted to VA for prior approval. As discussed above, loans to prevent imminent foreclosure where the monthly payment on the new loan exceeds the payments on the loan being refinanced, and cases where the loan being refinanced is delinquent, will now be required to be approved in advance.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, we have found good cause to dispense with notice and comment on this interim final rule and to dispense with a 30-day delay of its effective date. These findings are based on the critical need to help ensure that veterans are treated fairly by lenders and to protect the financial interests of the Government as guarantor of these loans. Comments are being solicited for 60 days after publication of this document. VA may modify this rule in response to comments if appropriate.

Executive Order 12866

This proposed rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

Because no notice of proposed rule making was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

(The Catalog of Federal Domestic Assistance Program number is 64.114)

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs-Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: August 25, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4306a, paragraphs (a)(3) through (a)(5) are revised and paragraphs (a)(6) and (a)(7) are added, to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) * * *

(3) The monthly principal and interest payment on the new loan must be lower than the payment on the loan being refinanced, except when the term of the new loan is shorter than the term of the loan being refinanced; or the new loan is a fixed-rate loan that refinances a VA-guaranteed adjustable rate mortgage; or the increase in the monthly payments on the loan results from the inclusion of energy efficient improvements, as provided by § 36.4336(a)(4); or the loan is approved by the Secretary in advance after determining that the new loan is necessary to prevent imminent foreclosure and the veteran qualifies for the new loan under the credit standards contained in § 36.4337.

(4) The amount of the refinancing loan may not exceed:

(i) An amount equal to the balance of the loan being refinanced, which must be current, except in cases described in paragraph (a)(5) of this section, and such closing costs as authorized by § 36.4312(d) and a discount not to exceed 2 percent of the loan amount; or

(ii) In the case of a loan to refinance an existing VA-guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, the amount referred to with respect to the loan under paragraph (a)(4)(i) of this section, plus the amount authorized by § 36.4336(a)(4).

(Authority: 38 U.S.C. 3703, 3710)

(5) In any case where the loan being refinanced is delinquent, the new loan will be guaranteed only if it is approved by the Secretary in advance after determining that the veteran qualifies for the loan under the credit standards contained in § 36.4337. In such cases, the term "balance of the loan being refinanced" shall include any past due installments, plus allowable late charges.

(6) The dollar amount of guaranty on the 38 U.S.C. 3710(a)(8) or (a)(9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(7) The term of the refinancing loan (38 U.S.C. 3710(a)(8)) may not exceed the original term of the loan being refinanced plus ten years, or the maximum loan term allowed under 38 U.S.C. 3703(d)(1), whichever is less. For manufactured home loans that were previously guaranteed under 38 U.S.C. 3712, the loan term, if being refinanced under 38 U.S.C. 3710(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 3703(d)(1).

(Authority: 38 U.S.C. 3703(c)(1), 3710(e)(1))

* * * * *

3. In § 36.4337, paragraph (a) is revised to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility and lender certification.

(a) *Use of standards.* The standards contained in paragraphs (c) through (j) of this section will be used to determine that the veteran's present and anticipated income and expenses, and credit history are satisfactory. These standards do not apply to loans guaranteed pursuant to 38 U.S.C. 3710(a)(8) except for cases where the Secretary is required to approve the loan in advance under § 36.4306a.

(Authority: 38 U.S.C. 3703, 3710)

* * * * *

[FR Doc. 97–26614 Filed 10–7–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300552; FRL–5745–2]

RIN 2070–AB78

Glyphosate Oxidoreductase and the Genetic Material Necessary for its Production in All Plants; Exemption From Tolerance Requirement On All Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the plant-pesticide inert ingredients glyphosate oxidoreductase (GOX) and the genetic material necessary for its production in all plants when used as plant-pesticides in or on all raw agricultural commodities (RACs). Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (FQPA) requesting the exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of this plant-pesticides in or on all RACS.

DATES: This regulation is effective on October 8, 1997. Written objections and requests for hearings must be received by EPA on or before December 8, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number OPP–300552, may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number OPP–300552 and submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300552. No Confidential Business Information (CBI) should be submitted through e-mail. Additional information on CBI can be found in VII. of this document. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VIII. of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and

e-mail address: 5th Floor Crystal Station, 2800 Crystal Drive, Arlington, VA , (703) 308–8715); e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 24, 1997 (62 FR 3682) (FRL–5380–2), EPA issued a notice pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d) announcing the filing of a pesticide petition for an exemption from the requirement for a tolerance by Monsanto Company, 700 Chesterfield Parkway, North St. Louis, MO 63198. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the FQPA (Pub. L. 104–170). The petition requested that an exemption from the requirement of a tolerance be established for the plant-pesticides GOX and the genetic material necessary for its production in plants in or on all RACS. There were no comments or requests for referral to an advisory committee received in response to the notice of filing. The data submitted in the petition and other relevant material have been evaluated. The toxicology and other data listed below were considered in support of this exemption from the requirement of a tolerance.

I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(I) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(c)(2)(B) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue..." EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliablitiy and the relationship of this information to human risk. EPA has sufficient data to assess the hazards of glyphosate oxidoreductase (GOX), and to make a determination on aggregate exposure, consistent with section 408(c)(2) of FFDCA, for an exemption from the requirement of a tolerance for residues GOX in or on all RACS. EPA's assessment of the dietary exposures and risks associated with establishing the exemption follows.

A. Toxicological Profile

Glyphosate oxidoreductase (GOX) catalyzes the conversion of glyphosate to aminomethylphosphonic acid (AMPA) and glyoxylate in a 1:1 stoichiometry while consuming ½ mole of oxygen as a cosubstrate. GOX requires flavin adenine dinucleotide (FAD) and magnesium for activity; therefore, it is more appropriately designated an apoenzyme.

The gene for Gox was originally isolated from Achromobacter sp. Strain LBAA. The GOX protein was then sequenced and the gene was synthesized with an added signal sequence and the codons modified in the guanine and cytosine nucleic acid (GC) content to yield higher plant expression. Two modified GOX proteins are specified in this rule. They are designated GOX and GOXv247. Both versions have an identifier of "(M4–C1)" in the data submissions which indicates that the protein was expressed in *E. coli* for testing purposes. The GOX protein retains the same amino acid sequence as the native protein and has additional four amino acid sequence *N*-terminus (reminanats of an added signal sequence). In GOXv247, the gene sequence of the native protein was altered resulting in changes to three amino acids in the sequence of the resulting protein along with the remains of the added signal sequence mentioned previously. These changes did not negatively affect the enzymatic activity of either protein.

The GOX variants GOX and GOXv247, expressed in *E. coli* and originating from the synthetic GOX gene optimized for protein expression in plants, showed similarity to the native GOX protein when expressed in *E. coli*. These similarities are seen as comparable molecular weights, immunoreactivity, amino acid sequence and enzymatic activity.

The data submitted regarding potential health effects of GOX and GOXv247 includes information on the characterization of the expression of GOX in corn, the acute oral toxicity of GOX and GOXv247, and *in vitro* digestibility studies of the proteins. The applicability of the results of these studies to evaluate human risk and the validity, completeness, and reliability of the available data from the studies were considered.

Both variants of the GOX protein (GOX and GOXv247) are rapidly degraded in simulated gastric fluid (GF) and simulated intestinal fluid (IF). After a fifteen-second incubation in GF, both variants have less than 90% of their initial protein epitopes by western blot analysis. Enzyme activity loss is also greater than 90% in both GOX variants when assayed after a 1-minute incubation in GF. Similar results are seen in simulated IF. Western blot assays show that both variants are greater than 90% degraded by 30-second incubation in IF. However, the enzyme activity assays show that the GOX activity lasts longer in IF than variant GOXv247. After a 10-minute IF incubation, the activity decreased to about 48% of initial for GOX whereas GOXv247 was already greater than 90% inactive.

Two findings, found in the *in vitro* digestibility studies, that are remarkable are: GOXv247 displays a more rapid degradation in the IF compared to unaltered GOX, apparently due to the single amino acid substitutions; and antibody recognition is lost prior to a significant loss of enzyme activity indicating that western blots may not always accurately track functional protein degradation.

None of the amino acid sequences of known allergens or proteins involved in coeliac disease were shown to have similarity to the GOX protein as defined by eight identical and contiguous amino acids in a sequence. However, the assertion that a lack of allergenicity can be established by comparison of sequences to known allergens is questionable. While this is the best approximation at present, there is no scientific basis to assume that the presence of eight contiguous and homologous amino acids in a protein will predict its allergenicity. The assumption is based on the finding that the presence of an eight amino acid sequence in one allergen was associated with the epitope responsible for IgE recognition. Alteration of this sequence reduced IgE binding and hence allergenicity. The converse experiment, to introduce the sequence into a non-allergenic protein and create an allergen, has not been attempted experimentally.

The acute oral toxicity test of bacterially-derived GOX and GOXv247 proteins showed no test substance related deaths at doses of 91.3 milligrams per kilogram (mg/kg) and 104 µg/kg respectively. Expression data on the GOX protein expressed in corn grains ranges from undetectable levels to a high of 11.70 micro grams per gram (mg/g) freshweight. This indicates that it would require 8,547 kg corn grain per kg bodyweight to receive the 100 mg/kg dose that was administered to the mice.

However, residue chemistry data were not required for a human health effects assessment of the subject plant-pesticide inert ingredients because of the lack of mammalian toxicity. Both available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children) and safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives, are generally recognized as appropriate for the use of animal experimentation data were not evaluated because the lack of mammalian toxicity at high levels of exposure demonstrate the safety of the product at levels above possible maximum exposure levels. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial Bacillus thuringiensis. [See 40 CFR 158.740(b).] For microbial products, further toxicity testing to verify the observed effects and clarify the source of the effects (Tiers II and III) and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study.

The acute oral toxicity data submitted support the prediction that the GOX proteins would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels [Sjoblad, Roy D., *et al.* "Toxicological Considerations for Protein Components of Biological Pesticide Products," Regulatory Toxicology and Pharmacology 15, 3-9 (1992)]. Therefore, since no effects were shown to be caused by the plant-pesticides, even at relatively high dose levels, the GOX protein is not considered toxic.

Adequate information was submitted to show that the GOX test materials derived from microbial cultures was biochemically and, functionally similar to the proteins produced by the plant-pesticide inert ingredient in corn. Production of microbially produced protein was chosen in order to obtain sufficient material for testing. In addition, the in *vitro* digestibility studies indicate the proteins would be rapidly degraded following ingestion.

The genetic material necessary for the production of the plant-pesticides active and inert ingredients are the nucleic acids (DNA) which comprise genetic material encoding these proteins and) their regulatory regions. "Regulatory regions" are the genetic material that control the expression of the genetic material encoding the proteins, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids as they appear in the subject plant-pesticide inert ingredient have been adequately characterized by the applicant. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the subject active and inert plant pesticidal ingredients.

B. Sensitivity of Subgroups

The Agency has considered available information on the variability of the sensitivities of major identifiable subgroups of consumers including infants and children and the physiological differences between infants and children and adults and effects of in utero exposure to the plant-pesticides. Since GOX is a protein, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, are glycosylated and are present at high concentrations in the food. Data has been submitted which demonstrate that the GOX proteins are rapidly degraded by gastric fluid *in vitro* and are non-glycosylated. Thus, the potential for the GOX proteins to be a food allergens is minimal.

C. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mode toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to these plant-pesticides, there are no cumulative effects.

D. Aggregate Exposures

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-pesticides chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-pesticides are contained within plant cells which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Oral exposure, at very low levels, may occur from ingestion of processed food products and drinking water. However a lack of mammalian toxicity and the digestibility of the plant-pesticides has been demonstrated. Regarding exposure via residential or lawn use to infants and children, the Agency concludes that such exposure would present no risk due to the lack of toxicity.

Section 408 of FFDCA provides that EPA shall apply an additional 10-fold margin of exposure (MOE) (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different MOE (safety) will be safe for infants and children. In this instance EPA believes there is reliable data to support the conclusion that the plant-pesticides are not toxic to mammals, including infants and children, and thus there are no threshold effects of concern. As a result, the provision requiring an additional MOE does not apply.

III. Endocrine Effects

EPA does not have any information regarding endocrine effects for these kinds of pesticides at this time. The Agency is not requiring information on the endocrine effects of these plant-pesticides at this time; and Congress allowed 3 years after August 3, 1996, for the Agency to implement a screening and testing program with respect to endocrine effects.

IV. Analytical Method

The Agency is establishing an exemption from the requirement of a tolerance without numerical limitation; therefore, it has concluded that an analytical method is not required for enforcement purposes for GOX and the genetic material necessary for their production.

V. Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the GOX protein and the genetic material necessary for that production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for the plant-pesticides. As a result, EPA establishes an exemption from tolerance requirements pursuant to section 408(j)(3) of FFDCA for GOX and the genetic material necessary for their production in all plants.

Glyphosate Oxidoreductase [GOX or GOXv247] and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as plant-pesticide inert ingredients in all plant RACs. "Genetic material necessary for its production" means the genetic material which comprise genetic material encoding the GOX proteins and their regulatory regions. "Regulatory regions" are the genetic material that control the expression of the genetic material encoding the GOX proteins, such as promoters, terminators, and enhancers.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA as was provided in the old section 408 and in section 409 of FFDCA. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by December 8, 1997 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Confidential Business Information

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number OPP–300552 (including any comments and data submitted electronically). A public version of this record, including printed, paperversions of electronic comments, which does not in include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (P.L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 25, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1190 is added to subpart D to read as follows:

§ 180.1190 Glyphosate Oxidoreductase [GOX or GOXv247] and the genetic material necessary for its production in all plants; exemption from the requirement of a tolerance.

Glyphosate Oxidoreductase [GOX or GOXv247] and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as plant-pesticide inert ingredients in all plant RACs. *Genetic material necessary for its production* means the genetic material which comprise genetic material encoding the GOX proteins and their regulatory regions. *Regulatory regions* are the genetic material that control the expression of the genetic material encoding the GOX proteins, such as promoters, terminators, and enhancers.

[FR Doc. 97–26190 Filed 10–7–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 36

RIN 1093–AA07

Transportation and Utility Systems In and Across, and Access Into, Conservation System Units in Alaska

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior is implementing this final rule to revise and simplify the regulatory definition of the term "economically feasible and prudent alternative route" as used in the review of proposed transportation and utility systems in Alaska under Title XI of the Alaska National Interest Lands Conservation Act (ANILCA).

DATES: *Effective date:* This rule becomes effective November 7, 1997.

Compliance date: This rule will apply to agency decisionmaking under ANILCA Title XI beginning November 7, 1997.

FOR FURTHER INFORMATION CONTACT: David A. Funk, Alaska Field Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, AK 99503–2892. Phone: (907) 257–2589.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1980, the Alaska National Interest Lands Conservation Act (ANILCA) was signed into law as Public Law 96–487 (94 Stat. 2371, 16 U.S.C. 3101, *et seq.*). Title XI of ANILCA, which is entitled "Transportation and Utility Systems In and Across, and Access Into, Conservation System Units," established guidelines and procedures for submitting and processing applications for transportation and utility systems (TUS) in Alaska when any portion of the route or the system will be within any conservation system unit, national recreation area, or national conservation area. In addition, Title XI authorizes special access, temporary access, and access to inholdings.

On July 15, 1983, the Department of the Interior (Department) proposed comprehensive regulations to implement ANILCA Title XI on lands in Alaska under the jurisdiction of the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM) (48 FR 32506). On September 4, 1986, the Department published final Title XI regulations (51 FR 31619).

In early 1987, the Trustees for Alaska and other groups (Trustees) sued the Department to challenge the Title XI regulations as exceeding the authority granted to the Department by ANILCA. Parties intervening in the case included Arctic Slope Regional Corporation, the Alaska Miners Association, the Alaska Forest Association, and the Resource Development Council for Alaska, Inc. In orders dated April 29, 1991, and March 16, 1993, the U.S. District Court for the District of Alaska granted summary judgment to the Department. The Trustees appealed the lower court's decision to the U.S. Court of Appeals for the Ninth Circuit, which assigned the case to a mediator to explore whether review and possible revision of the Title XI regulations might provide a basis for settlement.

On September 17, 1996, the Department proposed (61 FR 48873) one revision to the 1986 regulations in order to improve the regulations' workability and reduce the opportunities for delays in decisionmaking. The proposal followed substantial review and consultation with interested parties both within and outside the Department. The proposal provided an additional advantage of offering a focus for the consensus necessary to settle the longstanding litigation. The litigation was dismissed on August 30, 1996, subject to reinstatement if the final regulations differed from the proposal.

The Department did not propose any other revisions of the Title XI regulations. Thus, for example, the 1986 regulations implementing the Title XI provisions concerning access to inholdings, special access, and temporary access will remain intact. Also, the Department did not propose any changes to the regulatory provisions governing access to subsistence resources under Title VIII of ANILCA (*see* 36 CFR 13.46 (NPS) and 50 CFR 36.12 (FWS)). Finally, neither the proposed nor this final rule concerns recognition or management of R.S. 2477 rights-of-way.

Summary of Public Comments

Six comments were received in response to publication of the proposed rule. None of the responses objected to the proposed revision of 43 CFR 36.2(h).

The Alaska Department of Law stated that the revision would be consistent with the August 30, 1996, Order issued by the United States Court of Appeals for the Ninth Circuit in *Trustees for Alaska* v. *United States Department of the Interior*, No. 93–35493 (Trustees). The Department of Law added, however, that the State does not necessarily concur with the facts and

interpretations presented in the proposed rule.

The Pacific Legal Foundation, commenting on behalf of several intervenors in Trustees, stated that the revision is neither necessary nor useful. However, the Foundation supports the change in order to settle the litigation.

The comments submitted by the Trustees for Alaska (on behalf of the appellants in the litigation), the Wilderness Society, and the Sierra Club, all support the revision. The Wilderness Society and the Sierra Club also provided comments on other provisions of 43 CFR Part 36 that they believe should be revised. The Department considered these issues while preparing the proposed rule and concluded that no other provisions of part 36 require modification at this time.

Finally, the United States Small Business Administration commented on the lack of support in the proposed rule for the Department's certification that the proposed revision will not have a significant economic effect on a substantial number of small entities. The factual basis for this conclusion is in the nature of the proposed revision. As stated in the background to the proposed rule, the purpose of the revision is to "improve the regulations' workability and reduce the opportunities for delays in decision-making." In essence, the revision will replace an elaborate formula with a simpler and more straightforward definition. Because the revision is for purposes of clarification and its effect is primarily procedural and beneficial, the rule would have no significant economic effect or change on a substantial number of small entities. It follows that the final rule does not require preparation of a regulatory analysis.

Section-by-Section Analysis

Section 36.2 Definitions

As a general matter, ANILCA Title XI established the following criteria for approval of a transportation or utility system across a conservation system unit, national conservation area, or national recreation area in Alaska: (1) The proposed transportation or utility system must be "compatible with the purposes for which the unit was established," and (2) there must be no "economically feasible and prudent alternative route for the system." This rulemaking revises the regulatory definition of the term "economically feasible and prudent alternative route" in the second criterion by replacing the complex definition promulgated in 1986 with the simpler definition originally proposed in the 1983 rulemaking.

The revised definition which the Department is adopting is the same as the definition originally proposed in 1983 (48 FR 32506) as follows:

"Economically feasible and prudent alternative route" means a route either within or outside an area that is based on sound engineering practices and is economically practicable but does not necessarily mean the least costly alternative route.

This definition in the opinion of the Department is simpler and more straightforward than the elaborate formula which was added in the final 1986 regulations. The revised definition includes the economic considerations mentioned in the legislative history, but avoids the complex and potentially misleading quantitative analysis required by the 1986 definition. The revised definition also avoids the opportunities for delay and controversy inherent in the 1986 definition. Finally, the revised definition will facilitate decisions consistent with the statutory preference for routing a TUS outside a conservation system unit, national recreation area, or national conservation area expressed in ANILCA section 1104(g)(2)(B). A technical correction to this definition replaces the term "alternate route" with the analogous, statutorily used term, "alternative route."

Drafting Information

The primary authors of this rule are David A. Watts of the Solicitor's Office, Department of the Interior, David A. Funk of the Alaska Regional Office, National Park Service, and Molly N. Ross, Office of the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, DC.

Paperwork Reduction Act

This rule does not contain collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Department has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*), that this rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

The Department has determined that this rule meets the applicable standards provided in section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 8–4(2)).

The Department has determined this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act pursuant to 516 DM 2, Appendix 1.5. The action was previously covered by an Environmental Assessment and a Finding of No Significant Impact. None of the exceptions to the categorical exclusions in 516 DM 2, Appendix 2, applies.

List of Subjects in 43 CFR Part 36

Access, Alaska, Conservation system units, National parks, Rights-of-way, Traffic regulation, Transportation, Utilities, Wildlife refuges.

In consideration of the foregoing, 43 CFR Part 36 is amended as follows:

PART 36—TRANSPORTATION AND UTILITY SYSTEMS IN AND ACROSS, AND ACCESS INTO, CONSERVATION SYSTEM UNITS IN ALASKA

1. The authority citation for part 36 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 668dd *et seq.*, and 3101 *et seq.*; 43 U.S.C. 1201.

2. Section 36.2 is amended by revising paragraph (h) to read as follows:

§ 36.2 Definitions.

* * * * *

(h) *Economically feasible and prudent alternative route* means a route either within or outside an area that is based on sound engineering practices and is economically practicable, but does not necessarily mean the least costly alternative route.

* * * * *

Dated: September 22, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Dated: September 23, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary for Land and Minerals Management.

[FR Doc. 97–26625 Filed 10–7–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–117; Amdt. 195–57A]

RIN 2137–AC87

Low-Stress Hazardous Liquid Pipelines Serving Plants and Terminals

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Withdrawal of direct final rule.

SUMMARY: This action withdraws the direct final rule that excluded from RSPA's safety standards for hazardous liquid pipelines low-stress pipelines regulated by the U.S. Coast Guard and low-stress pipelines less than 1 mile long that serve certain plants and transportation terminals without crossing an offshore area or a waterway currently used for commercial navigation. (62 FR 31364, June 9, 1997.) Applicable procedural rules require withdrawal because an interested person submitted an adverse comment on the direct final rule. RSPA's stay of enforcement of the safety standards against these pipelines will remain in effect until the matter is resolved through further rulemaking.

DATES: The direct final rule published at 62 FR 31364 is withdrawn on October 7, 1997.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202)366–4559, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION: In response to increased environmental awareness, critical accidents involving low-stress pipelines, and Congressional direction, RSPA extended its hazardous liquid pipeline safety standards (49 CFR Part 195) to cover certain low-stress pipelines of higher risk (Docket No. PS–117; 59 FR 35465; July 12, 1994). The term "low-stress pipeline" means a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe (§ 195.2). Except for onshore rural gathering lines and gravity-powered lines, the following categories of low-stress pipelines were brought under the regulations: pipelines that transport highly volatile liquids, pipelines located onshore and outside rural areas, pipelines located offshore, and pipelines located in waterways that are currently used for commercial navigation (§ 195.1(b)(3)). Because the rulemaking record showed that many low-stress pipelines probably were not operated and maintained consistent with Part 195 requirements, operators were allowed to delay compliance of their existing lines until July 12, 1996, (§ 195.1(c)).

The largest proportion of low-stress pipelines brought under Part 195 consisted of interfacility transfer lines (about two-thirds of the pipelines and one-third of the overall mileage). The remainder included trunk lines and certain urban gathering lines. Interfacility transfer lines move hazardous liquids locally between facilities such as truck, rail, and vessel transportation terminals, manufacturing plants, petrochemical plants, and oil refineries, or between these facilities and associated storage or long-distance pipeline transportation. The lines usually are short, averaging about a mile in length.

Interfacility transfer lines are also impacted by the Process Safety Management regulations of the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.119). These regulations, which involve hazard analysis and control, operating and maintenance procedures, and personnel training, are intended to reduce the risk of fires and explosions caused by the escape of hazardous chemicals from facility processes. In addition, transfer lines between vessels and marine transportation-related facilities are subject to safety regulations of the U.S. Coast Guard (33 CFR Parts 154 and 156).

We considered the costs and potential confusion of this regulatory overlap with Part 195 as well as information that showed that bringing interfacility transfer lines into full compliance with Part 195 would be difficult for many operators. Weighing these problems against the need for risk reduction, we decided that the potential benefits of complying with Part 195 do not justify the effort if the line is short and does not cross an offshore area or a commercially navigable waterway, or if the line is regulated by the Coast Guard.

Consequently, we announced a stay of enforcement of Part 195 against certain interfacility transfer lines (61 FR 24245; May 14, 1996). The stay applies to low-stress pipelines that are regulated by the Coast Guard or that extend less than 1 mile outside plant or terminal grounds without crossing an offshore area or any waterway currently used for commercial navigation. We intend to keep the stay in effect until modified or until we finally revise the Part 195 regulations to eliminate the need for the stay.

Following publication of the stay of enforcement, we issued a direct final rule to amend Part 195 to comport with the stay (62 FR 31364; June 9, 1997). This direct final rule revised § 195.1(b)(3) to exclude from Part 195 those low-stress interfacility transfer lines that were covered by the stay, while continuing to exclude other low-stress pipelines that were previously excluded.

The procedures governing issuance of direct final rules are in 49 CFR 190.339. These procedures provide for public notice and opportunity for comment subsequent to publication of a direct final rule. They also provide that if an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and withdraw the direct final rule in whole or in part. Under the procedures, RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

Four persons submitted comments on the direct final rule: American Petroleum Institute (API), California Department of Fish and Game (CDF&G), California Independent Petroleum Association (CIPA), and Western States Petroleum Association (WSPA). API made an editorial comment, while CIPA and WSPA argued that the direct final rule should be expanded to also exclude from Part 195 short low-stress pipelines serving production/shipping facilities in urban areas.

However, CDF&G opposed the direct final rule. It argued, first, that the Coast Guard's regulations are not an adequate substitute for RSPA's because of weak pressure testing requirements and the absence of cathodic protection requirements to guard against corrosion. Secondly, it said the exclusion of short plant and terminal transfer lines should apply only if a discharge would not impact marine waters of the United States. In contrast, the direct final rule excluded these lines if they did not cross offshore or a commercially navigable waterway.

Because of the adverse comment from CDF&G, we are withdrawing the direct final rule. We intend to follow up this action with a notice of proposed rulemaking that will propose to amend the application of Part 195 in a way similar to the direct final rule, but by taking into account the comments we received on it.

Issued in Washington, DC, on October 3, 1997.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97–26694 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register

Vol. 62, No. 195

Wednesday, October 8, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Medical Use of Byproduct Material; Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The Nuclear Regulatory Commission has initiated a rulemaking for a comprehensive revision to its regulations governing the medical use of byproduct material in 10 CFR part 35. As part of this rulemaking, the Commission intends to solicit the active input of the various interests that may be affected by the rulemaking early in the rulemaking process. One of the mechanisms that will be used to obtain the comments and recommendations from affected interests will be the convening of workshops to discuss the fundamental approaches and issues that must be addressed in the revision of 10 CFR part 35. A workshop on NRC's medical rulemaking initiative will be held during the Organization of Agreement States' All Agreement States Meeting in Los Angeles, California.

DATE: The workshop will be held on October 18, 1997, from 8:30 a.m. to 2:15 p.m.

ADDRESS: The Westin LAX Hotel, 5400 W. Century Blvd., Los Angeles, CA 90045.

FOR FURTHER INFORMATION CONTACT: Cathy Haney, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, telephone (301) 415–6825, e-mail cxh@nrc.gov.

SUPPLEMENTARY INFORMATION: The NRC has examined the issues surrounding its medical use program in great detail during the last four years. This process started with NRC's 1993 internal senior management review report; continued with the 1996 independent external review report by the National Academy of Sciences, Institute of Medicine; and culminated in NRC's Strategic Assessment and Rebaselining Project (SA). In particular, medical oversight was addressed in the SA Direction-Setting Issue Paper Number 7 (DSI 7) (released September 16, 1996). In its "Staff Requirements Memorandum (SRM)—COMSECY–96–057, Materials/Medical Oversight (DSI 7)," dated March 20, 1997, the Commission directed the NRC staff to revise Part 35, associated guidance documents, and, if necessary, the Commission's 1979 "Medical Policy Statement." The Commission SRM specifically directed the restructuring of part 35 into a risk-informed, more performance-based regulation.

A June 30, 1997, SRM informed the NRC staff of the Commission's approval, with comments, of the NRC staff's proposed program in SECY–97–131, Supplemental Information on SECY–97–115, Program for Revision of 10 CFR part 35, "Medical Uses of Byproduct Material," and Associated **Federal Register** Notice," dated June 20, 1997.

After Commission approval of the NRC staff's program to revise 10 CFR part 35 and associated guidance documents, the NRC staff initiated the rulemaking process, as announced in 62 FR 42219 (August 6, 1997). The rulemaking is being conducted using a group approach. A Working Group and Steering Group consisting of representatives of NRC, Organization of Agreement States(OAS), and Conference of Radiation Control Program Directors have been established to develop rule text alternatives, rule language, and associated guidance documents. State participation in the process is intended to enhance development of corresponding rules in State regulations, to provide an opportunity for early State input, and to allow State staff to assess potential impacts of NRC draft language on the regulation of non-Atomic Energy Act materials used in medical diagnosis, treatment, or research, in the States.

As directed by the Commission, the NRC staff has developed alternatives, with draft regulatory text, for the more significant issues associated with the regulation of the medical use of byproduct material. These alternatives to regulation in specific areas are intended to help focus the discussion during workshops and meetings during the Fall of 1997 and to assist the NRC staff in developing the text of the proposed rule. Alternative regulatory text has been developed for: (a) The quality management program; (b) training and experience for authorized users, radiation safety officers, and medical physicists; (c) radiation safety committee; (d) patient notification of reportable events; and (e) the threshold for reportable events. The alternatives represent a broad range of possibilities and are being provided to stimulate input from members of the public in an effort to encourage all interested parties to provide input into the development of the revised regulation. The staff has not selected any alternatives at this time and is open to additional alternatives that might be proposed, which are consistent with the guidance provided by the Commission.

The OAS workshop will be open to the public, on a space available basis. The agenda for the workshop will focus on discussion of the above regulatory issues, but will also provide enough flexibility for the public to have an opportunity to comment on related rulemaking issues. Members of the public who are unable to attend the workshop can obtain copies of the papers developed by the staff through NRC's Public Document Room (U.S. Nuclear Regulatory Commission, Attention: NRC Public Document Room, Washington, DC 20555–0001) or on the Internet via NRC's Technical Conference Forum (http://techconf.llnl.gov/noframe.html).

Dated at Rockville, Maryland this 2nd day of October, 1997.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–26641 Filed 10–7–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 970925233–7233–01]

Request for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BXA is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), foreign policy controls expire one year after imposition unless they are extended. The EAA requires a report to Congress whenever foreign policy-based export controls are extended. Although the EAA expired on August 20, 1994, the President, invoking the International Emergency Powers Act (IEEPA), continued in effect the export control system in place under the provisions of the Act and the Export Administration Regulations, to the extent permitted by law (Executive Order 12924 of August 19, 1994 and Notices of August 15, 1995, August 14, 1996 and August 13, 1997). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls and requesting comments on such controls. Foreign Policy controls need to be extended in January 1998.

DATES: Comments must be received by November 7, 1997, to assure full consideration in the formulation of export control policies as they relate to foreign policy-based controls.

ADDRESSES: Written comments (three copies) should be sent to Sharron Cook, Regulatory Policy Division (Room 2096), Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044. If sending comments by courier, send to: Department of Commerce, Bureau of Export Administration, Attn: Sharron Cook, 14th Street and Pennsyvania Avenue, Room 2705, N.W., Washington, D.C. 20230

FOR FURTHER INFORMATION CONTACT: Anita McNamee, Foreign Policy Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4252. Copies of the current Annual Foreign Policy Report to the Congress can also be requested.

SUPPLEMENTARY INFORMATION: The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR), parts 742(CCL Based Controls), 744 (End-user and End-use Based Controls), and 746 (Embargoes and Special Country Controls). These controls apply to: High performance computers (§ 742.12); significant items (SI): Commercial communications satellites and Hot section technology for the development, production or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (EI) (§ 742.15); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of missiles (§ 742.5 and § 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 742.2 and § 744.4); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 744.6); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 746.2, 746.3, 746.5, and 746.7); and, Libya (§§ 744.8, and 746.4). Attention is also given in this context to the controls on nuclear-related commodities, software, and technology (§ 742.3 and § 744.2) which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Effective January 21, 1997, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria the Departments of Commerce and State consider in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;
2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;
3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;
4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;
5. The effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and
6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." BXA will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by BXA as confidential will be protected from public disclosure to the extent permitted by law. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Margaret Cornejo, BXA Freedom of Information Officer, at the above address or by calling (202) 482–2593.

Dated: October 3, 1997.

William V. Skidmore,

Acting Assistant Secretary for Export Administration.

[FR Doc. 97–26695 Filed 10–7–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 970918231–7231–01]

RIN 0691–AA06

Direct Investment Surveys: BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed rules to revise 15 CFR 806.17 to present the reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997 and to delete the rules now in 15 CFR 806.17, which were for the last benchmark survey covering 1992.

The BE–12 benchmark survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under Section 3103(b) of the International Investment and Trade in Services Survey Act, which requires that a benchmark survey of foreign direct investment in the United States be conducted every five years. The last benchmark survey was conducted for 1992, and the proposed survey will be conducted for 1997. The benchmark survey will obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. affiliates and their foreign parents. The data from the quinquennial survey will provide benchmarks for deriving current universe estimates of foreign direct investment from sample data collected in other BEA surveys in nonbenchmark years. The data are needed to measure the economic significance of foreign direct investment in the United States, measure changes in such investment, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States. They are also required for compiling the balance of payments, international investment position, and national income and product accounts of the United States.

Key changes proposed by BEA from the previous benchmark survey include reducing respondent burden, particularly for small companies, by: Increasing the exemption level for reporting on the survey to $3 million (measured by the company's total assets, sales, or net income) from $1 million in the 1992 survey; increasing the exemption level at which reporting on the long form version of the survey is required from $50 million to $100 million; and requiring reporting companies with assets, sales, or net income between $3 million and $30 million to report only selected data items on the short form version. In addition, BEA proposes to base industry coding of reporting companies on the new North American Industry Classification System (NAICS) in place of the current system which is based on the U.S. Standard Industrial Classification system; to collect new information on affiliated services transactions by type of service; and to modify the detail collected on the composition of external financing of the reporting enterprise, on exports and imports of goods by product, and on the operations of foreign-owned businesses in individual States.

DATES: Comments on the proposed rules will receive consideration if submitted in writing on or before November 24, 1997.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room M–100, 1441 L Street NW, Washington, DC 20005. Comments received will be available for public inspection in Room 7005, 1441 L Street NW, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: These proposed rules set forth the reporting requirements for the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997. This survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended by Pub. L. 98–573 and Pub. L. 101–533), hereinafter, "the Act." Section 3103(b) of the Act, as amended, requires that "With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter . . . In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) Identify the location, nature, and magnitude of, and changes in the total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) Obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) Obtain information on tax payments by parents and affiliates by country; and

(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons."

The responsibility for conducting benchmark surveys of foreign direct investment in the United States has been delegated to the Secretary of Commerce, who as redelegated it to BEA.

The benchmark surveys are BEA's censuses, intended to cover the universe of foreign direct investment in the United States in value terms. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States.

The data from the survey will be used to measure the economic significance of such investment and to analyze its effects on the U.S. economy. They will also be used in formulating, and assessing the impact of, U.S. policy on foreign direct investment.

They will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States at book value and of the operations of the U.S. affiliates of foreign companies.

The benchmark surveys are also the most comprehensive of BEA's surveys in terms of subject matter in order that they obtain the detailed information on foreign direct investment needed for policy purposes. As specified in the Act, policy areas of particular interest include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology.

As proposed, the survey will consist of an instruction booklet, an industry coding booklet, a claim for not filing the BE–12, and the following report forms:

1. Form BE–12(LF) (Long Form) for reporting by nonbank U.S. affiliates with assets, sales, or net income of more than $100 million;

2. Form BE–12(SF) (Short Form) for reporting by nonbank U.S. affiliates with assets, sales, or net income of more than $3 million, but not more than $100 million;

3. Form BE–12 Bank for reporting by U.S. affiliates that are banks with assets, sales, or net income of more than $3 million.

Although the proposed survey is intended to cover the universe of foreign direct investment in the United States, in order to minimize the reporting burden, U.S. affiliates with assets, sales, and net income each equal to or less than $3 million are exempt from reporting on Forms BE–12(LF), BE–12(SF), and BE–12 Bank, but are required to file, on Form BE–12(X), a claim for exemption from filing in the benchmark survey.

In designing this survey, BEA solicited comments from an extensive number of representatives of both data users and survey respondents. BEA held a meeting with interagency data users on May 2, 1997 to solicit views on the proposed benchmark survey. It solicited and received input from several nongovernment data users. BEA also solicited comments from respondents by sending a packet with forms and proposed changes to 13 large companies that are current respondents to BEA surveys. The proposed draft incorporates BEA's responses to comments received from users and respondents. In reaching decisions on what questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (e.g., whether the data are readily available on the respondents' books), and its experience in previous benchmark surveys.

Key changes proposed by BEA from the previous benchmark survey include reducing respondent burden, particularly for small companies, by: (1) increasing the exemption level for reporting on the survey to $3 million (measured by the company's total assets, sales, or net income) from $1 million in the 1992 survey; (2) increasing the exemption level at which reporting on Form BE–12(LF) (Long Form) is required from $50 million to $100 million; and (3) requiring reporting companies with assets, sales, or net income between $3 million and $30 million to report only selected data items on Form BE–12(SF) (Short Form). In addition, BEA proposes to base industry coding of reporting companies on the new North American Industry Classification System (NAICS) in place of the current system which is based on the U.S. Standard Industrial Classification system; to collect new information on affiliated services transactions by type of service; and to modify the detail collected on the composition of external financing of the reporting enterprise, on exports and imports of goods by product, and on the operations of foreign-owned businesses in individual States.

A copy of the proposed survey forms may be obtained from the Direct Investment in the United States Branch, International Investment Division, BE–49(A), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–5577.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number, such a Control Number (0608–0042) has been displayed.

Public reporting burden for this collection of information is estimated to vary from 1 to 715 hours per response, with an average of 22 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0042, Washington, DC 20503.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and many that are will not be required to report in the benchmark survey because their assets, sales, and net income are each equal to or less than the $3 million exemption level below which reporting is not required. Also, under these proposed rules, companies with assets, sales, or net income above $3 million, but not above $100 million, would report on the abbreviated BE–12 short form, rather than on the BE–12 long form. In addition companies with assets, sales, or net income between $3 million and $30 million will report only selected data items on the BE–12 short form. These provisions are intended to significantly reduce the reporting burden on smaller companies.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investments in the United States, Reporting and recordkeeping requirements.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.17 is revised to read as follows:

§ 806.17 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1997. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15 (a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given in the this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by completing and returning either Form BE–12(X) within 30 days of its receipt if Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank do not apply, or by completing and returning Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank, whichever is applicable, by may 31, 1998.

(b) *Who must report.* A BE–12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 1997 fiscal year. A report is required even though the foreign person's ownership interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (2) Form BE–12(LF).—Benchmark Survey of Foreign Direct Investment in the United States—1997 (Long Form) must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year, if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investment, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded $100 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(2) Form BE–12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—1997 (Short Form) must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year, if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investments, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded $3 million, but no one item exceeded $100 million (positive or negative) at the end of, or for, its 1997 fiscal year.

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(3) Form BE–12 Bank—Benchmark Survey of Foreign Direct Investment in the United States—1997 BANK must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year, if:

(i) The U.S. affiliate is in "banking", which, for purposes of the BE–12 survey, covers businesses enterprises engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, U.S. branches and agencies of foreign banks whether or not they accept domestic deposits, savings and loans, savings banks, and bank holding companies, i.e., holding companies for which over 50 percent of their total income is from banks which they hold, and

(ii) On a fully consolidated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $3 million

(positive or negative) at the end of, or for, its 1997 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(4) Form BE–12(X)—Benchmark Survey of Foreign Direct Investment in the United States—1997, Claim for Exemption from Filing BE–12(LF), BE–12(SF), and BE–12 Bank must be completed and filed within 30 days of the date it was received, or by May 31, 1998, whichever is sooner, by:

(i) Each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year (whether or not the U.S. affiliate, or its agent, is contacted by BEA concerning its being subject to reporting in the 1997 benchmark survey), but is exempt from filing Form BE–12(LF), Form BE–12 (SF), and Form BE–12 Bank; and

(ii) Each U.S. business enterprise, or its agent, that is contacted, in writing, by BEA concerning its being subject to reporting in the 1997 benchmark survey but that is not otherwise required to file the Form BE–12(LF), Form BE–12(SF), or Form BE–12 Bank.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a Form BE–12(LF), BE–12(SF), or Form BE–12 Bank if each of the following three items for the U.S. affiliate (not just the foreign parent's share) did not exceed $3 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; and

(iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise was a U.S. affiliate at the end of its 1997 fiscal year but is exempt from filing a completed Form BE–12(LF), BE–12(SF), or Form BE–12 Bank, it must nevertheless file a completed and certified Form BE–12(X).

(f) *Due date.* A fully completed and certified Form BE–12(LF), Form BE–12(SF), or BE–12 Bank is due to be filed with BEA not later than May 31, 1998. A fully completed and certified Form BE–12(X) is due to be filed with BEA within 30 days of the date it was received, or by May 31, 1998, whichever is sooner.

[FR Doc. 97–26658 Filed 10–07–97; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Workshops on Proposed Rule—Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of workshops.

SUMMARY: The Minerals Management Service (MMS) has reopened the public comment period under a proposed rule published in the **Federal Register** on January 24, 1997 (62 FR 3742), amending the royalty valuation regulations for crude oil produced from Federal leases. In the July 3, 1997, **Federal Register** (62 FR 36030), we published a supplementary notice of proposed rulemaking. We received a variety of comments on the proposed and supplementary proposed rules. In the September 22, 1997, **Federal Register** (62 FR 49460) we published a summary of these comments, outlined alternatives for proceeding with further rulemaking, and requested public comment on those or other suggested alternatives. In the September 26, 1997, **Federal Register** (62 FR 50544) we announced three workshops to discuss alternatives for proceeding with the rulemaking.

MMS will now hold three additional workshops to discuss alternatives for proceeding with the rulemaking. The main purpose of these workshops is to provide small producers an opportunity to learn more about the proposed rule and to obtain their comments on the alternatives described in the September 22, 1997, **Federal Register** notice (62 FR 49460), or any new alternatives or modifications to the proposed alternatives for MMS's consideration. We are not requesting comments on the original proposed rule or the supplemental proposed rule, nor on the summary of comments outlined in the September 22, 1997, **Federal Register** notice (62 FR 49460). Interested parties are invited to attend and participate in these workshops.

DATES: Comments on the notice reopening the comment period must be submitted to MMS by October 22, 1997.

The workshops will be held as follows:

Workshop 1: Bakersfield, CA, October 16, 1997, from 1 p.m. to 4:30 p.m., Pacific time.

Workshop 2: Casper, WY, October 16, 1997, from 1 p.m. to 4:30 p.m., Mountain time.

Workshop 3: Roswell, NM, October 21, 1997, from 1:30 p.m. to 5:00 p.m., Mountain time.

ADDRESSES: Workshop 1 will be held in the Bakersfield District Office, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308–6837, telephone (805) 391–6000.

Workshop 2 will be held in the Casper District Office, Bureau of Land Management, 1701 East "E" Street, Casper, WY 82601, telephone (307) 261–7600.

Workshop 3 will be held in the Roswell District Office, Bureau of Land Management, 2909 West 2nd Street, Roswell, NM 88201, telephone (505) 627–0272.

FOR FURTHER INFORMATION CONTACT: Peter Christnecht or Sheila Dean, Royalty Valuation Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3151, Denver, CO 80225–0165, telephone numbers (303) 275–7252 and (303) 275–7201, respectively; or David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, CO 80225–0165; telephone (303) 231–3432; fax number (303) 231–3385; e-Mail David_Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: These three workshops will be open to the public in order to discuss the alternatives described in the September 22, 1997, Notice (62 FR 49460).

While MMS is hosting other workshops involving industry organizations and States, the intent of the Bakersfield, Casper, and Roswell workshops is to provide information to, and receive comments from, small oil producers at locations near their operations to minimize their travel. However, other interested parties are welcome. We encourage a workshop atmosphere where members of the public participate in a discussion of the alternatives. Space is limited. However, attendees should reserve slots with Peter Christnecht or Sheila Dean at the telephone numbers in the **FOR FUTURE INFORMATION CONTACT** section of this notice no later than October 15, 1997. For building security measures, each person will be required to sign in and may be required to present a picture identification to gain entry to the workshops.

Dated: October 2, 1997.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 97–26570 Filed 10–7–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 47

RIN 2900–AI78

Reporting Health Care Professionals to State Licensing Boards

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: It continues to be the policy of the Department of Veterans Affairs (VA) to report to State Licensing Boards any separated physician, dentist, or other licensed health care professional (one who no longer is on VA rolls) whose clinical practice so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. This document proposes that, in addition, VA would report to State Licensing Boards any currently employed physician, dentist, or other licensed health care professional (one who is on VA rolls) whose clinical practice so significantly failed to meet generally accepted standards of clinical practice during VA employment as to raise reasonable concern for the safety of patients. Some health care professionals who are VA employees also provide health care outside VA's jurisdiction. Accordingly, the reporting of currently employed licensed health care professionals who meet the standard for reporting appears to be necessary so that State Licensing Boards can take action as appropriate to protect the public. Examples of actions that meet the criteria for reporting are set forth in the text portion of this rulemaking. Also, this document proposes to clarify that to be "on VA rolls" means on VA rolls regardless of the status of the health care professional, including full-time, part-time, contract service, fee-basis, or without compensation. This would identify more clearly those health care professionals who would be subject to the reporting policy. Further, nonsubstantive changes are made for purposes of clarity.

DATES: Comments must be received on or before December 8, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI16." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ruth-Ann Phelps, Ph.D., Veterans Health Administration, Patient Care Services (11B), 810 Vermont Ave., NW., Washington, DC 20420, at (202) 273–8473 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are no applicable Catalog of Federal Domestic Assistance program numbers.

List of Subjects in 38 CFR Part 47

Health professions.

Approved: September 5, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 47 is proposed to be amended as follows:

PART 47—POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS TO STATE LICENSING BOARDS

1. The authority citation for part 47 continues to read as follows:

Authority: Pub. L. 99–166, 99 Stat. 941; 38 U.S.C. 501.

2. The part heading for part 47 is revised to read as shown above.

3. In part 47, subpart A and subpart B headings are removed.

4. In § 47.1, paragraph (a) is removed; paragraphs (b) through (h) are redesignated as paragraphs (a) through (g), respectively; new paragraphs (h) and (i) are added, and the authority citation is revised, to read as follows:

§ 47.1 Definitions.

* * * * *

(h) *Currently employed licensed health care professional* means a licensed health care professional who is on VA rolls.

(i) *On VA rolls* means on VA rolls, regardless of the status of the professional, such as full-time, part-time, contract service, fee-basis, or without compensation.

(Authority: 38 U.S.C. 501, 7401–7405; Section 204(b) of Pub. L. 99–166, 99 Stat. 952–953; Pub. L. 99–660, 100 Stat. 3743)

§ 47.2 [Removed]

5. Section 47.2 is removed.

§ 47.3 [Redesignated as § 47.2]

6. Section 47.3 is redesignated as § 47.2.

7. The newly redesignated § 47.2 is revised to read as follows:

§ 47.2 Reporting to State licensing boards.

It is the policy of VA to report to State Licensing Boards any currently employed licensed health care professional or separated licensed health care professional whose clinical practice during VA employment so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. The following are examples of actions that meet the criteria for reporting:

(a) Significant deficiencies in clinical practice such as lack of diagnostic or treatment capability; errors in transcribing, administering or documenting medication; inability to perform clinical procedures considered basic to the performance of one's occupation; performing procedures not included in one's clinical privileges in other than emergency situations;

(b) Patient neglect or abandonment;

(c) Mental health impairment sufficient to cause the individual to behave inappropriately in the patient care environment;

(d) Physical health impairment sufficient to cause the individual to provide unsafe patient care;

(e) Substance abuse when it affects the individual's ability to perform appropriately as a health care provider or in the patient care environment;

(f) Falsification of credentials;

(g) Falsification of medical records or prescriptions;

(h) Theft of drugs;
(i) Inappropriate dispensing of drugs;
(j) Unethical behavior or moral turpitude;
(k) Mental, physical, sexual, or verbal abuse of a patient (examples of patient abuse include intentional omission of care, willful violation of a patient's privacy, willful physical injury, intimidation, harassment, or ridicule); and
(l) Violation of research ethics.

(Authority: 38 U.S.C. 501, 7401–7405; Section 204(b) of Pub. L. 99–166, 99 Stat. 952–953; Pub. L. 99–660, 100 Stat. 3743)

[FR Doc. 97–26612 Filed 10–7–97; 8:45 am]
BILLING CODE 8320–01–P

Notices

Federal Register
Vol. 62, No. 195
Wednesday, October 8, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Pinkham Timber Sales and Associated Activities; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of timber harvest, prescribed fire, road closures, road rehabilitation, and construction of temporary and specified roads in the Pinkham Creek drainage. The Pinkham Creek drainage is located approximately 5 air miles southwest of Eureka, Montana.

The proposed actions to harvest and reforest timber stands, construct, reconstruct and rehabilitate roads, prescribe burning, and restrict roads are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purposes of the project are to restore ecological processes in order to achieve sustainable conditions, reduce the risk of large-scale, severe wildlife in an urban/wildland interface area, and provide for human needs and desires.

The EIS will tier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September, 1987, which provides overall guidance for forest management of the area. All activities associated with the proposal will be designed to maintain high quality wildlife, fisheries, and watershed objectives.

DATES: Written comments and suggestions should be received by December 8, 1997.

ADDRESSES: The Responsible Official is Robert Schrenk, Forest Supervisor, Kootenai National Forest. Written comments and suggestions concerning the scope of the analysis may be sent to: Robert Thompson, District Ranger, Rexford Ranger District, 1299 Highway 93 North, Eureka, Montana 59917.

FOR FURTHER INFORMATION: Terry Chute, Planning Coordinator, Rexford Ranger District, Phone: (406) 296–2536.

SUPPLEMENTARY INFORMATION: The decision area contains approximately 65,100 acres within the Kootenai National Forest in Lincoln County, Montana. All of the proposed projects would occur on National Forest lands in the Pinkham Creek drainage near Eureka, Montana. The legal location of the decision area is as follows: all or portions of Township 36 North, Range 28 West; Township 36 North, Range 27 West; Township 35 North, Range 28 West; Township 35 North, Range 27 West; Township 34 North, Range 28 West; Township 34 North, Range 27 West; Township 33 North, Range 28 West; Township 33 North, Range 27 West; Principal Montana Meridian.

All proposed activities are outside the boundaries of any inventoried roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals.

The Forest Service proposes to commercially thin and prescribed burn about 5,050 acres; regeneration harvest and prescribe burn about 1,425 acres; salvage harvest about 290 acres; and slash and prescribe burn (with no associated harvest) about 1,750 acres over the next 10 years. An estimated harvest volume of approximately 59,530 hundred cubic feet of commercial timber products would be produced. An estimated 1.1 mile of specified road construction would be needed to access timber harvest areas. An estimated 38 miles of road reconstruction would also be needed to improve drainage and safety on roads needed to access timber harvest areas. An unspecified amount of road no longer in use would be rehabilitated by various methods which include recontouring, ripping and seeding, rehabilitated by various methods which include recontouring, ripping and seeding, rehabilitation of stream crossings, and installment of barriers resulting in abandonment.

Three management strategies have been developed in response to the following conditions:

1. Reduce the risk of catastrophic fire by treating areas of high or accumulating fuel concentrations. The treatments proposed under this strategy include commercial timber harvest, slashing and prescribed burning. Timber harvest would include salvage, commercial thinning and regeneration methods. Methods used would depend on the composition of stands proposed for treatment and available options for achieving desired conditions and trends.

2. Minimize the risk of epidemic bark beetle attack by developing desirable tree species composition and reducing stand density. This strategy is related to Strategy 1, as epidemic bark beetle activity causes tree mortality that can greatly increase fuel accumulations. The treatments proposed under this strategy include commercial thinning, slashing and prescribed burning.

3. Minimize the effect of high levels of root rot by regenerating areas of high root rot activity to less susceptible tree species. This strategy is related to Strategies 1 and 2 as root rot weakens and predisposes trees to bark beetle attack. The subsequent increase in tree mortality can greatly increase fuel accumulations. The treatment proposed with this strategy would use regeneration harvest methods to reestablish stands of tree species less susceptible to root rot. In the Decision Area, Douglas-fir is the tree species that is most susceptible to root rot. Western larch and western white pine are less susceptible, and are well suited to the portions of the Decision Area affected by root rot.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The proposed projects encompass five predominant MA's; 6, 10, 11, 12 and 15. Briefly described, MA 6 is managed to provide for opportunities for developed recreation activities. MA 10 is managed to maintain or enhance the winter range habitat effectiveness for big game species. MA 11 is managed to maintain or enhance the winter range habitat effectiveness for big game species and produce a programmed yield of timber. MA 12 is managed to maintain or

enhance non-winter big game habitat and produce a programmed yield of timber. MA 15 focuses upon timber production using various silvicultural practices while providing for other resource values such as soils, air, water, wildlife, recreation, and forage for domestic livestock. Timber harvest and prescribed burning is proposed in all MA's. This proposal includes replicating historic disturbance patterns. Fourteen forest openings greater than 40 acres in size would be created, ranging in size from 44 to 373 acres. A 60 day public review and approval of the Regional Forester for exceeding the 40 acre limitation for regeneration harvest would be required prior to the signing of the Record of Decision. The 60-day scoping period initiated with this Notice of Intent will serve as the public review period for openings over 40 acres.

The Proposed Action would include two amendments to the Kootenai Forest Plan. A programmatic amendment to the Forest Plan for managing open road density at a level above the MA 12 standard may be necessary. A project-specific amendment for harvesting in big game movement corridors in MA 12 may also be necessary.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Concerns: Several areas of concern were identified by the public as well as Forest Service personnel during preliminary assessment. These concerns are briefly described below:

- The Pinkham area is home to many people who care deeply about, and have multi-generational ties to the area. Public land in the valley is seen as an asset for recreation and people's quality of life.
- Clear-cutting: Many people said there has been too much clear-cutting in the area in the past, and they are ugly. Future harvest should be done selectively, leaving the large trees. On the other hand, some said that clear-cuts provide important habitat for deer, elk and grouse, and that clear-cutting should continue.
- Prescribed burning: People do not like the appearance. Many believe that trees that are burned up or killed could have provided firewood or wood products. A few said they understood the need for burning in some cases, but had reservations. Smoke in the valley from prescribed burning was also mentioned.
- Roads and road access: Comments varied. Many thought there were too many road closures, while others felt that more roads should be closed. Many people felt that there were enough or too many roads in the area, and that no new roads were needed. Several people identified the need to increase control of knapweed, which occurs along some roads in the area.
- Public use and recreation: There is a common sentiment that public recreational use has increased over the past several years. Hunting and snowmobiling were specifically mentioned as uses that have increased. Many people said that additional developed recreation sites were not desired or needed. Some desire increased maintenance of trails, especially historic pack trails. Others mentioned the decreasing availability of firewood. Off-road vehicle use was said to be increasing, which was not desired due to noise and ground disturbance. A majority of people said that maintaining traditional recreational opportunities was important.
- Wildlife: A variety of opinions and observations about wildlife were expressed. Some felt that populations of deer, elk and moose were increasing, while others said they were declining. Some said that management of the area should focus on recovery of threatened, endangered and sensitive wildlife species, while others believe that "multiple-use" management should continue. One mentioned that designated winter range is used almost totally in summer and fall months.
- Livestock grazing: Many comments were received expressing displeasure and frustration with livestock grazing in the area. Open-range cattle on private land, in streams, and in roadways were mentioned numerous times. Other comments expressed the desire to maintain or increase livestock grazing in the area.
- Timber management: Many people said that timber harvest is appropriate, and expressed a preference for selective harvests that retain both large and small trees, are adequately cleaned up following harvest, and provide opportunities for small operators. The appearance of recently logged areas is important to many people. Several stated that dead and dying trees should be harvested before they lose their value for timber products. Some people expressed their belief that the area has been over cut in the past and further timber harvest is inappropriate. Others said that timber should be managed as it has been in the past, and that the emphasis for the area should be for maximum timber production.
- Water quality, riparian areas: The need for water quality protection was mentioned by several people. Some thought the area near Pinkham Creek should not be harvested, but should be maintained for fishing and camping. One person mentioned that the Forest Service needed to pay more attention to wet areas within harvest units. Concern about effects to water quality from cattle in streams was voiced.
- What people would like the Pinkham Area to be like in the future: Many people expressed a desire that the area continue to provide the quality of experiences and benefits to people that it has over the past 90+ years. Many people mentioned maintaining the lower valley floor as a quality residential area, while providing opportunities for recreation, grazing and timber harvest. A common sentiment seemed to be that the area remain "unchanged"—as remote as possible, a good place to raise a family and make a living. Others believe that the area should be managed for reforestation, wildlife habitat improvement, sensitive and endangered species recovery, water quality and fishery improvement. Still others feel that recreation should be the primary human use.
- Public involvement and scoping: In October, 1993 a "Pinkham Project Area Planning Report" was mailed to over 200 local landowners and residents, and people that had expressed interest in Forest Service activities in the area. Advertisements were also placed in the *Daily Interlake*, Kalispell, Montana and the *Tobacco Valley News*, Eureka, Montana, requesting public comment and information concerning the Pinkham Project Area. In addition, in June, 1997 a letter was mailed to approximately 230 individuals, groups and other agencies comprising the mailing list for the Pinkham Project Area requesting written comments. Taking into account the comments received and information gathered during preliminary analysis, it was decided to prepare an EIS for the Pinkham Timber Sales and Associated Activities. Comments received prior to this notice will be included in developing issues and identifying alternatives for the EIS.

This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

—Identifying preliminary issues.
—Identifying significant issues to be analyzed in depth.
—Identifying alternatives to the proposed action.
—Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing: While public participation in this analysis is welcome at any time, comments received within 60 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The 60-day comment period will fulfill the public review requirement for creating openings over 40 acres in size. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March, 1998. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be a minimum of 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Final EIS is scheduled to be completed by June, 1998. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewers Obligations: The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* versus *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* versus *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Robert Schrenk, Forest Supervisor, Kootenai National Forest, is the Responsible Official. Authority for preparation of the EIS has been delegated to Robert Thompson, District Ranger, Rexford Ranger District, 1299 Highway 93 North, Eureka, Montana. The Responsible Official will decide which, if any, of the proposed projects will be implemented. The decision and reasons for the decision will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: October 2, 1997.

Robert J. Thompson,

Acting Forest Supervisor.

[FR Doc. 97–26624 Filed 10–7–97; 8:45 am]

BILLING CODE 3410–11–M

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension

AGENCY: Barry Goldwater Scholarship and Excellence in Education Foundation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice annouces that the Goldwater Scholarship Foundation is planning to submit, for extension, the following Information Collection Request (ICR) to the Office of Management and Budget (OMB): Goldwater Scholarship Payment Request Form, OMB No. 3019–0001. Before submitting the ICR to OMB for review and approval for extension, The Goldwater Foundation is soliciting comments on the proposed ICR as described below.

DATES: Comments must be submitted on or before December 8, 1997.

ADDRESSES: Mail comments to Gerald J. Smith, President, Barry Goldwater Scholarship and Excellence in Education Foundation, 6225 Brandon Avenue, Suite 315, Springfield, VA 22150–2519.

FOR FURTHER INFORMATION CONTACT: Gerald J. Smith, (703) 756–6012; FAX: (703) 756–6015; E-mail: goldh2o@erols.com.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities affected by this action include approximately 400 Goldwater Scholars and their respective Academic and Financial Aid Officers.

Title: Goldwater Foundation payment Request Form.

Abstract: Public Law 99–166 authorizes The Goldwater Foundation to conduct an annual nationwide undergraduate scholarship competition for students pursuing careers in mathematics, the natural sciences and engineering. This Information Collection Form is used by the Foundation to verify a Goldwater Scholarship recipient's academic standing and to authorize the disbursement of funds to the Scholar each term.

The Foundation uses this form to ensure that only authorized expenses are requested and to avoid the duplication of other scholarship funding which is prohibited. Less frequent collection of this information would not allow the Foundation to verify a Scholar's academic and financial status as required each term. Further, less frequent collection would cause the Foundation to expend funds sooner than would be fiscally responsible, since all funds are interest bearing until expended. Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3© and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. (c)(2)(A) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, The Goldwater Foundation is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, The Goldwater Foundation invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the Foundation's functions, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Data Collected Include: Current School and Home addresses; Current cost of tuition, fees, books, room and board and additional expenses: list of other scholarships and verification signatures of the Scholar, academic and financial aid officers.

Burden Statement: The estimated public reporting burden for this collection of information is 45 minutes per respondent semiannually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining and reviewing the collection of information.

Respondents: Goldwater Scholarship recipients.

Estimated Number of Respondents: 400.

Responses: 2 per school year.

Total Burden Hours: 600 per year.

Recordkeepers: 2.

Total Burden Hours: 133.

Dated: September 26, 1997.

Gerald J. Smith,

President.

[FR Doc. 97–26622 Filed 10–7–97; 8:45 am]

BILLING CODE 6820–AK–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Announcing Public Availability of the Report on Closed Meetings of Advisory Committees

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially closed meetings of advisory committees as required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the report have been filed and are available for public inspection at two locations:

Library of Congress, Newspaper and Current Periodicals Reading Room, Room LM133, Madison Building, 1st and Independence Avenues, S.E., Washington, D.C. 20540

Department of Commerce, Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230 Telephone (202) 482–4115.

SUPPLEMENTARY INFORMATION: The report covers meetings held in FY 96. Thirty-one committees and one subcommittee report having held closed or partially closed meetings. The names of these committees are listed below:

—Industry Sector Advisory Committee (ISAC) on Aerospace Equipment for Trade Policy Matters (TPM)
—ISAC on Building Products and Other Materials for TPM
—ISAC on Capital Goods for TPM
—ISAC on Chemicals and Allied Products for TPM
—ISAC on Consumer Goods for TPM
—ISAC on Electronics and Instrumentation for TPM
—ISAC on Energy for TPM
—ISAC on Ferrous Ores and Metals for TPM
—ISAC on Footwear, Leather, and Leather Products for TPM
—ISAC on Lumber and Wood Products for TPM
—ISAC on Nonferrous Ores and Metals for TPM
—ISAC on Paper and Paper Products for TPM
—ISAC on Services for TPM
—ISAC on Small and Minority Business for TPM
—ISAC on Textiles and Apparel for TPM
—ISAC on Wholesaling and Retailing for TPM
—Industry Functional Advisory Committee on Customs Matters for TPM
—Industry Functional Advisory Committee on Intellectual Property Rights for TPM
—Industry Functional Advisory Committee on Standards for TPM
—Industry Policy Advisory Committee for Trade Policy Matters
—Information Systems Technical Advisory Committee
—Judges Panel of the Malcolm Baldrige National Quality Award
—Materials Processing Equipment Technical Advisory Committee
—Materials Technical Advisory Committee
—National Medal of Technology Nomination Evaluation Committee
—National Technical Information Service Advisory Board
—President's Export Council
—Regulations and Procedures Technical Advisory Committee
—Sensors Technical Advisory Committee
—Subcommittee on Export Administration, President's Export Council
—Transportation and Related Equipment Technical Advisory Committee
—U.S. Automotive Parts Advisory Committee
—Visiting Committee on Advanced Technology

Twenty-one committees report not having held any closed or partially closed meetings.

FOR FURTHER INFORMATION CONTACT: Victoria A. Kruk, Committee Management Officer, Office of the Secretary, Department of Commerce, Washington, D.C. 20230, Telephone (202) 482–4115.

Dated: October 1, 1997.

Victoria A. Kruk,

Office of Executive Assistance Management.

[FR Doc. 97–26657 Filed 10–7–97; 8:45 am]

BILLING CODE 3510–FA–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

Pursuant to the Federal Advisory Committee Act (P.L. 92–463 as amended by P.L. 94–409), we are giving notice of a meeting of the Census Advisory Committee of Professional Associations. The meeting will convene on October 23–24, 1997 at the Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.

The committee is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The committee advises the Director, Bureau of the Census, on the full range of Census Bureau programs and activities in relation to their areas of expertise.

The agenda for the meeting on October 23 that will begin at 9:00 a.m. and end at 5:15 p.m. is as follows:

- Introductory Remarks by the Director, Bureau of the Census.
- Census Bureau Responses to Committee Recommendations.
- What are the Implications of Implementing the new North American Industry Classification System (NAICS) in our Current Economic Surveys?
- The Search for a Corporate Look and Feel: Next Steps.
- What Is the Role of the International Program Center in the Next Decade?
- Congressional Update.
- Current Issues in Construction Statistics.
- Is the Census Bureau's Approach to Marketing the American Community Survey and its Products on Track?
- How Should the Census Bureau Estimate Variances for Imputed Data?
- Discussion of Federal Agency Data Sharing.
- Census 2000 Sampling and Estimation Plans: Any Fatal Flaws?
- Report of the Chief Economist Including Activities of the Center for Economic Studies.
- What Standard Products Should the Census Bureau Develop from Census 2000?
- How Should the Census Bureau Recruit Demographers, Math Stats, and Economists?

The agenda for the meeting on October 24 that will begin at 9:00 a.m. and end at 12:15 p.m. is as follows:

- Discussion of New Initiatives of the Office of the Chief Economist: Expanding the Longitudinal Research Database (LRD) Beyond Manufacturing.
- What Future Enhancements are Needed to Make "FedStat" More Useable?
- Develop Recommendations and Special Interest Activities.
- Closing Session.

The meeting is open to the public, and a brief period is set aside, during the closing session, on October 24 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer, Ms. Maxine Anderson-Brown, Room 3039, Federal Building 3, Washington, DC 20233, at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation, or other auxiliary aids should also be directed to the Census Bureau Committee Liaison Officer.

Persons wishing additional information or minutes for this meeting, or who wish to submit written statements may contact the Committee Liaison Officer on 301–457–2308, TDD 301–457–2540.

Dated: October 2, 1997.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 97–26647 Filed 10–7–97; 8:45 am]

BILLING CODE 3510–07–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber and Wool Textile Products Produced or Manufactured in Egypt

October 2, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 8, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Category 448 is being increased for swing, carryover and carryforward. The limit for the Fabric Group and the sublimit for Category 227 are being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 66242, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 2, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 8, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month level [1]
Fabric Group 218–220, 224–227, 313–317 and 326, as a group.	97,288,791 square meters.
Sublevel within Fabric Group 227	22,158,700 square meters.
Level not in a group 448	21,840 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–26580 Filed 10–7–97; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, October 15, 1997; 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Fluoride

The staff will brief the Commission on a staff recommendation that the Commission propose a rule requiring child-resistant packaging under the Poison Prevention Packaging Act for household products containing the equivalent of more than 50 mg of elemental fluoride and more than the equivalent of 0.5 percent elemental fluoride. The staff also recommends that the Commission modify the current exemption for oral prescription drugs with sodium fluoride so that the exemption level would be consistent with the recommended level for household products.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 6, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–26879 Filed 10–6–97; 3:16 p.m.]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for the Relocation of the Department of Defense Polygraph Institute (DoDPI) to Fort Jackson, South Carolina

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Pub. L. 101–510, the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of Fort McClellan, Alabama, and associated relocation of DoDPI to Fort Jackson, South Carolina. The relocation will increase the permanent party population of Fort Jackson by 67 and average daily student load by approximately 25. To accomplish the increased mission at Fort Jackson, construction of a DoDPI administrative and instructional facility is required.

The EA identifies, evaluates, and documents the relevant incremental and cumulative effects upon existing resources of receiving and stationing the DoDPI at Fort Jackson. It considers seven realignment alternatives: use of existing facilities with renovation, leasing of off-post facilities, construction at four alternative sites (Sites A–D), and the no-action alternative. The preferred alternative is construction at Site B. It was selected because it best meets all the selection criteria. The site is distinguished in that it has the lowest habitat value. It is covered with deteriorating asphalt, while the other three construction sites have surface soils supporting varying degrees of vegetation.

The Chief of Staff of the U.S. Army Training and Doctrine Command has concluded the relocation of DoDPI to Fort Jackson will not significantly impact human health or the environment. Proper mitigation measures are in place to minimize potential temporary impacts. The realignment action will not significantly increase the current intensity of training at Fort Jackson. Because there are no significant impacts resulting from the implementation of the proposed action, and Environmental Impact Statement is not required and will not be prepared. The Army will not proceed with any action until after the 30-day comment period has been completed.

DATES: Public comments will be accepted until November 7, 1997.

ADDRESSES: A copy of the EA/FNSI may be obtained by writing to, and any inquiries or comments concerning the same should be directed to, Commander, U.S. Army Corps of Engineers, Norfolk District, ATTN: CENAO–PL–R (Richard Muller), Norfolk, VA 23510–1096, or phone (757) 441–7767; fax (757) 441–7646. Copies of the EA will also be available for review at the Fort Jackson Library and Richland County Public Library, Columbia, South Carolina.

Dated: October 3, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 97–26667 Filed 10–7–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 8, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 2, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: State Plan for Independent Living, Rehabilitation Act of 1973, as Amended (Act), Title VII, Chapter 1.

Frequency: Every three years.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 4,480.

Abstract: The purpose of Chapter 1 of Title VII of the Act (Ch. 1) is to promote a philosophy of independent living which includes control, peer support, self-help, self-determination, equal access and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society. To implement this purpose, Ch. 1 authorizes financial assistance to States for providing, expanding and improving the provisions of State independent living services (SILS), to develop and support statewide networks of centers for independent living (CILs), to improve working relationships among State IL services programs (SILS), CILs, Statewide Independent Living Councils (SILCs), programs funded under other titles of the Act, and other programs that address issues relevant to individuals with disabilities funded by Federal and non-Federal authorities.

Section 704 of the Act requires the designated State unit(s) (DSU), jointly with the SILC to develop and sign an approvable SPIL in each State to receive financial assistance under Ch. 1.

Office of Intergovernmental and Interagency Affairs

Type of Review: Reinstatement.

Title: Applications for the U.S. Presidential Scholars Program.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden:

Responses: 2,600.

Burden Hours: 41,600.

Abstract: The United States Scholars Program is a national recognition program to honor and recognize outstanding graduating high school seniors. Candidates are invited to apply to the program based on academic achievements on the SAT or ACT. This program was established under Executive Order of the President 11155.

[FR Doc. 97–26607 Filed 10–7–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE Implementation Plan for Recommendation 97–1 of the Defense Nuclear Facilities Safety Board, Safe Storage of Uranium-233

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 97–1, concerning the safe storage of uranium-233, on March 11, 1997 (62 FR 11160). Under section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e), the Department of Energy must transmit an implementation plan on Recommendation 97–1 to the Defense Nuclear Facilities Safety Board after acceptance of the Recommendation by the Secretary. The Department's implementation plan was sent to the Safety Board on September 29, 1997, and is available for review in the Department of Energy Public Reading Rooms.

ADDRESSES: Send comments, data, views, or arguments concerning the implementation plan to: Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Mr. John Tseng, Director of the Nuclear Materials Stabilization Task Group in the Office of Environmental Management, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Issued in Washington, D.C., on October 2, 1997.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

September 29, 1997.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, D.C. 20004

Dear Mr. Chairman: We are pleased to forward the Department's implementation plan for addressing the issues raised in the Defense Nuclear Facilities Safety Board's Recommendation 97–1 concerning the safe storage of uranium-233 material. The Department assessed the safety issues associated with the recommendation in terms of the history of uranium-233. The primary safety issue being addressed with the implementation plan is the lack of material characterization and uncertainty of storage conditions for uranium-233.

As noted in my April 25, 1997, letter to you, the Department is using a systems engineering approach to manage the implementation of this recommendation. Recognizing that it will take time to perform the systems engineering efforts, we are concurrently taking near-term actions as described in the implementation plan to further assess material characterization and storage conditions and make necessary changes to mitigate interim identified risks.

The implementation plan was prepared by a Task Team reporting to the Assistant Secretaries for Defense Programs and Environmental Management, in coordination with other affected Headquarters and Field offices. Mr. John Tseng, Director of the Nuclear Materials Stabilization Task Group in the Office of Environmental Management, is the responsible manager for implementation of the plan. He can be reached at (202) 586–0383.

Sincerely,

Federico Peña

[FR Doc. 97–26633 Filed 10–7–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–156 and EA–157]

Applications to Export Electric Energy; Inland Pacific Resources and Consolidated Edison

AGENCY: Office of Fossil Energy, DOE

AGENCY: Notice of applications.

SUMMARY: Inland Pacific Resources, Inc., a power marketer, and Consolidated Edison Company of New York, a public utility, have submitted applications to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 7, 1997.

ADDRESS: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–5883 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

The Office of Fossil Energy (FE) of the Department of Energy (DOE) has received applications from the following companies for authorization to export electric energy to Canada, pursuant to section 202(e) of the FPA:

Applicant	Application date	Docket No.
Inland Pacific Resources Inc. (IPRI).	9/16/97	EA–156
Consolidated Edison Company of New York, Inc. (Con Edison).	9/23/97	EA–157

IPRI, a power marketing company, does not own or control any facilities for the generation or transmission of electricity, nor does it have a franchised service area. IPRI proposes to transmit to Canada electric energy purchased from electric utilities and other suppliers within the U.S. Con Edison is a regulated public utility serving customers in the New York City metropolitan area. Con Edison proposes to transmit to Canada electric energy that is excess to its system or purchased from electric utilities or other suppliers within the U.S.

The applicants would arrange for the exported energy to be transmitted to Canada over the international facilities owned by Basin Electric, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. Each of the transmission facilities, as more fully described in these applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Comments on IPRI's request to export to Canada should be clearly marked with Docket EA–156. Additional copies are to be filed directly with Edward A. Finklea, Ball Janik LLP, 101 S.W. Main Street, Suite 1100, Portland, Oregon 97204 AND Inland Pacific Resources Inc., c/o Jan Marston, President, Inland Pacific Energy Services Ltd., 1600—1095 West Pender Street, Vancouver, B.C. V6E2M6, Canada. Comments on Con Edison's request to export to Canada should be clearly marked with Docket EA–157. Additional copies are to be filed directly with John F. Gallagher III, Esq., 4 Irving Pace—Rm. 1815 South, Manhattan, NY 10003.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on October 1, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–26634 Filed 10–7–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. ETEC–012]

Certification of the Radiological Condition of Building T012 at the Energy Technology Engineering Center Near Chatsworth, California

AGENCY: U.S. Department of Energy, Office of Environmental Restoration.

ACTION: Notice of Certification.

SUMMARY: The Department of Energy (DOE) has completed radiological surveys and taken remedial action to decontaminate Building T012 located at the Energy Technology Engineering Center (ETEC) near Chatsworth, California. This property previously was found to contain radioactive materials from activities carried out for the Atomic Energy Commission and the Energy Research and Development Administration (AEC/ERDA), predecessor agencies to DOE. Although DOE owns the majority of the buildings and equipment, a subsidiary of Rockwell International, Rocketdyne, owned the land. Rocketdyne has recently been sold to Boeing North American Incorporated.

FOR FURTHER INFORMATION CONTACT: Mike Lopez, Program Manager, Environmental Restoration Division, Oakland Operations Office, U.S. Department of Energy, Oakland, CA 94612–5208.

SUPPLEMENTARY INFORMATION: DOE has implemented environmental restoration projects at ETEC (Ventura County, Map Book 3, Page 7, Miscellaneous Records) as part of DOE's Environmental Restoration Program. One objective of the program is to identify and clean up or otherwise control facilities where residual radioactive contamination remains from activities carried out under contract to AEC/ERDA during the early years of the Nation's atomic energy program.

ETEC is comprised of several facilities and structures located within Administrative Area IV of the Santa Susana Field Laboratory. The work performed for DOE at ETEC consisted primarily of testing equipment, materials, and components for nuclear and energy-related programs. These nuclear energy research and development programs, conducted by Atomics International under contract to AEC/ERDA, began in 1946. Several buildings and land areas became radiologically contaminated as a result of facility operations and site activities. Building T012 is one ETEC area that has been designated for cleanup under the DOE Environmental Restoration Program. Other areas undergoing decontamination will be released as they are completed and are verified to meet established cleanup criteria and standards for release without radiological restrictions as established in DOE Order 5400.5.

Building T012 is located in the north-central section of Area IV. It originally consisted of two sections connected with an enclosed passageway.

Building T012 consisted of a critical cell that was a sealed room with 4-ft. thick concrete walls, lined with a ¼-in. steel liner, used to test Systems for Nuclear Auxiliary Power (SNAP) critical assemblies. The cell floor is a mat-type concrete foundation. Sealed during operation, this room was designed to withstand the pressure release and to contain radioactive materials in the event of a burst condition from the assemblies.

The equipment room adjacent to the critical cell has 9-in. thick concrete walls and ceiling and a spread concrete foundation. A fuel storage area was located in the west section of the room consisting of a concrete shield wall containing 1 percent boron by weight. Embedded in the wall were 110 cadmium-plated tubes, 3½ in. inside diameter by 20 in. long. The tubes were located on 1-ft. centers, 5 tubes high, and 22 tubes wide.

Operations in Building T012 began with systems for SNAP critical assemblies in 1962. These experiments used three different critical assembly machines: SCA–4A, –4B, and SCA–5. Most tests were directed at determining criticality of various configurations and conditions, such as water immersion, and were performed well below the allowed high power limit of about 100 watts. No significant amounts of induced activity were produced by these operations.

Clad reactor fuel elements (U–ZrH) were stored as shipped in containers and in the fuel storage tubes located in room 109. The SNAP critical experiments continued intermittently through 1968, when the fuel was shipped to the SSN Storage Vault (Building T064), and the facility was placed in a standby mode.

To allow the release of building T012 for use without radiological restriction, all detectable radioactive material/contamination was removed from the facility. This decontamination and decommissioning was performed in two phases: (1) starting in 1986 with the removal of the operations control room and (2) the enclosed passageway connecting those structures to the equipment room and the critical cell.

The second and final stage of decontamination of Building T012 began in February 1995 and required slightly less than five months to complete.

Briefly, the decontamination steps involved in the second stage were to decontaminate and decommission the remaining concrete vault structure of Building T012 sufficiently to permit its use without radiological or chemical contamination restrictions.

The accomplishment of this objective included removal of asbestos containing floor tiles and pipe insulation; removal of eight contaminated fuel storage tubes; removal of light fixtures, conduit, and ventilation systems; paint sampling and removal, and scabbing of the floor, wall, ceiling surfaces; and completion of the "Final Radiological and Chemical Contamination Assessment Survey."

Rockwell/Rocketdyne performed a final radiological survey in 1996. The Environmental Survey and Site Assessment Program of the Oak Ridge Institute for Science and Education performed independent verification of the decontamination work performed by Rockwell/Rocketdyne in 1996. Post-decontamination surveys have demonstrated that Building T012 is in compliance with DOE decontamination criteria and standards for release without radiological restrictions. The State of California Department of Health Services has concurred that the proposed release guidelines provide adequate assurance for release without further radiological restrictions. In the event of property transfer, DOE intends to comply with applicable Federal, State, and local requirements.

None of the engineering or radiation and nuclear safety personnel assigned to the Building T012 decommissioning project received any measurable exposure to ionizing radiation.

Final costs for the decontamination of Building T012 were $389,632.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the U.S. DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. Copies of the certification docket will also be available at the following locations: DOE Public Document Room, U.S. Department of Energy, Oakland Operations Office, the Federal Building, 1301 Clay Street, Oakland, California; California State University, Northridge, Urban Archives Center, Oviatt Library, Room 4, 18111 Nordhoff, Northridge, California; Simi Valley Library, 2629 Tapo Canyon Road, Simi Valley, California; and the Platt Branch, Los Angeles Public Library, 23600 Victory Boulevard, Woodland Hills, California.

DOE has issued the following statement of certification:

Statement of Certification—Energy Technology Engineering Center, Building T012

The U.S. Department of Energy (DOE), Oakland Operations Office, Environmental Restoration Division, has reviewed and analyzed the radiological data obtained following decontamination of Building T012 at the Energy Technology Engineering Center. Based on analysis of all data collected and the results of the independent verification, DOE certifies that the following property is in compliance with DOE radiological decontamination criteria and standards as established in DOE Order 5400.5. This certification of compliance provides assurance that future use of the property will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants. Accordingly, the property specified below is released from DOE's Environmental Restoration Program.

Property owned by Boeing North American Incorporated:

Building T012, at the Energy Technology Center (situated within Area IV of the Santa Susana Field Laboratory), located in a portion of Tract "A" of Rancho Simi, in the County of Ventura, State of California, as per map recorded in Book 3, Page 7 of Miscellaneous Records of Ventura County.

Issued in Washington, D.C., on September 26, 1997.

James J. Fiore,

Acting Deputy Assistant Secretary for Environmental Restoration.

Statement of Certification: Energy Technology Engineering Center, Building 012

The U.S. Department of Energy, Oakland Operations Office, Environmental Restoration Division, has reviewed and analyzed the radiological data obtained following decontamination of the Energy Technology Engineering Center Building 012. Based on this analysis of all data collected, the Department of Energy (DOE) certifies that the following property is in compliance with DOE decontamination criteria and standards. This certification of compliance provides assurance that future use of the property will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants. Accordingly, the property specified below is released from DOE's Environmental Restoration Program.

Property owned by Rockwell International Corporation:

Building 012, at the Energy Technology Engineering Center, located in a portion of Tract "A" of Rancho Simi, in the County of Ventura, State of California, as per map recorded in Book

3, Page 7 of Miscellaneous Records of Ventura County.

Certification:

Dated: August 29, 1997

Hannibal Joma,

BTEC Site Manager.

[FR Doc. 97–26635 Filed 10–7–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–5–000]

Algonquin Gas Transmission Company; Notice of Request for Extension of Waiver

October 2, 1997.

Take notice that on September 15, 1997, Algonquin Gas Transmission Company, (Algonquin) in compliance with the March 13, 1997 [1] and May 21, 1997 [2] orders of the Commission in the captioned docket tendered for filing a request for an extension of the six month waiver previously granted by the Commission with respect to compliance with the data elements and formatting as adopted by the Commission in Order No. 587.

Algonquin states that under the waiver, it was required to submit its requests for changes to the data elements to the Gas Industry Standards Board (GISB). Algonquin states that it has implemented the changes already approved by GISB, but requests an extension of the waiver until the Commission adopts the next version of the GISB standards. With respect to those requests still pending at GISB, Algonquin requests an additional six month extension of time.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should comply with principles set forth in the Commission's May 21, 1997 order and must be filed by October 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26592 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Algonquin Gas Transmission Company, 78 FERC ¶ 61,281 (1997).

[2] Texas Eastern Transmission Corporation 79 FERC ¶ 61,223 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–171–010]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 2, 1997.

Take notice that, on September 30, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheets in compliance with the Commission's June 26, 1997 order accepting subject to certain modifications to ANR's May 1, 1997 filing to comply with the GISB standards adopted in Order No. 587–C.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commissions Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26598 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–2–48–000]

ANR Pipeline Company; Notice of Informal Technical Conference

October 2, 1997.

On February 28, 1997, ANR Pipeline Company (ANR) tendered revised tariff sheets reflecting its annual redetermination of the levels of its Transporter's Fuel Use (%) as required by ANR's currently effective tariff. By order issued March 26, 1997, [1] the Commission accepted and suspended the tariff sheets subject to refund, to be effective April 1, 1997, and requested that the parties file additional comments within 20 days of the order, with reply comments to follow 10 days later. By letter dated August 19, 1997, Staff requested additional data from ANR.

Upon review of the filing herein, the additional comments and data responses, staff has determined that it will hold an informal technical conference on this matter.

Take notice that the technical conference will therefore be held at 10:00 a.m., on Tuesday, October 14, 1997, and continuing the following day, Wednesday, October 15, if necessary, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426.

All interested parties and Staff are permitted to attend. The parties should be prepared to support their conclusions with specific references to the work papers and information that has been provided to the Commission. Questions about this conference should be directed to Bob Keegan, (202) 208–0158, or Louis Lieb, (202) 208–0012.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26604 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

[1] 78 FERC ¶ 61,328 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1417 and 1835]

Central Nebraska Public Power and Irrigation District Nebraska Public Power District; Notice of Informal Settlement Conference, October 2, 1997

An informal settlement conference will be convened on Wednesday, November 5, 1997 at 8 a.m. at the Denver Federal Center, Third Floor Conference Room, located at 134 Union Blvd., Lakewood, Colorado. The purpose of this off-the-record meeting is to explore the possible settlement of any contested issue. Any person appearing at the conference in a representative capacity must be authorized to negotiate and, to the extent authorized by law, settle matters addressed at the conference.

Any party, as defined by 18 CFR 385.102(c), is invited to send a representative to the conference. Any party wishing to make a presentation or needing additional information should contact Merrill F. Hathaway at (202) 208–0825, or John A. Schnagl at (202) 219–2661.

Lois D. Cashell

Secretary.

[FR Doc. 97–26589 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–167–006]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

October 2, 1997.

Take notice that on September 29, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing the revised tariff sheets listed on Appendix A to its FERC Gas Tariff, Second Revised Volume No. 1, in compliance with the Commission's directive in its Letter Order dated June 11, 1997 and the Letter Order dated July 24, 1997 at RP97–167–005. These tariff sheets implement the Gas Industry Standards Board's standards adopted by the Commission in Order No. 587–C. Columbia proposes an effective date of November 1, 1997 for the tariff sheets.

Columbia states that tariff sheets 456 reflects the change directed by the Commission in its July 24, 1997 Letter Order regarding GISB Standard 4.3.6. Columbia had incorrectly sought to adopt version 1.1. The remaining tariff sheets were accepted by the Commission in its June 11, 1997 Letter Order.

Columbia states that copies of its filings have been mailed to all of its customers, affected State Regulatory commissions, and all parties to this proceeding.

Any person desiring to protest this filing, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such projects must be made as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but such protests will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26597 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–166–006]

Columbia Gulf Transmission Company; Notice of Compliance Filing

October 2, 1997.

Take notice that on September 29, 1997, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the revised tariff sheets listed on Appendix A to the filing in compliance with the Commission's directive in its Letter Order dated June 11, 1997 at RP97–166–003 and Order dated May 14, 1997 at RP97–166–001, 002. These tariff sheets implement the Gas Industry Standards Board's standards adopted by the Commission in Order No. 587–C. Columbia Gulf proposes an effective date of November 1, 1997 for the tariff sheets.

Columbia Gulf states that copies of its filings have been mailed to all of its customers, affected State Regulatory commissions, and all parties to this proceeding.

Any person desiring to protest this filing, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be made as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but such protests will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26596 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–70–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 2, 1997.

Take notice that on September 30, 1997, Equitrans, L.P. (Equitrans), tendered for filing the as part of its FERC Gas Tariff, First Division Volume No. 1, the following tariff sheets to become effective October 1, 1997.

Fifth Revised Sheet No. 400
Seventh Revised Sheet No. 401

Equitrans states that this filing is made to update Equitrans' index of customers. In Order No. 581 the Commission established a revised format for the Index of Customers to be included in the tariffs of interstate pipelines and required the pipelines to update the index on a quarterly basis to reflect changes in contract activity. Equitrans requests a waiver of the Commission's notice requirements to permit the tariff sheet to take effect on July 1, 1997, the second calendar quarter, in accordance with Order No. 158.

Equitrans states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26587 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–784–000]

K N Interstate Gas Transmission Company; Notice of Request Under Blanket Authorization

October 2, 1997.

Take notice that on September 30, 1997, K N Interstate Gas Transmission Company (KNI), Post Office Box 281304, Lakewood, Colorado 80228–8304, filed a prior notice request with the Commission in Docket No. CP97–784–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install and operate two new delivery taps and appurtenant facilities in Holt and Sheridan Counties, Nebraska, under KNI's blanket certificates issued in Docket Nos. CP83–140–000, CP83–140–001, and CP89–1043–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

KNI proposes to install and operate both delivery taps under a transportation agreement with K N Energy, Inc. (K N Energy). KNI states that it would install one tap on its main transmission system in Holt County at a cost of $20,000 to deliver approximately 530 Mcf of natural gas on a peak day and 193,000 Mcf annually for a retail customer. KNI also states that it would install the other tap on its main transmission system in Sheridan County at a cost of $1,500 to deliver approximately 4 Mcf of natural gas on a peak day and 250 Mcf annually for a domestic customer. KNI further states that the addition of the proposed taps is not prohibited by its FERC Gas Tariff and that addition of the taps would not have any adverse impact on a daily or annual basis upon KNI's existing customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26583 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–497–001]

Koch Gateway Pipeline Company; Notice of Compliance Filing

October 2, 1997.

Take notice that on September 29, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective October 1, 1997:

Sub 2nd Rev 19th Revised Sheet No. 24

Koch is submitting the above-referenced tariff sheet pursuant to a Letter Order dated September 24, 1997, regarding Docket No. RP97–497–000. As directed, Koch has revised the tariff sheet to correct two errors made in its August 20, 1997, filing to remove the Sea Robin Pipeline Company Account No. 858 surcharges from its currently effective tariff sheets.

Koch also states that it has served copies of this filing upon person on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE.; Washington, DC 20426, in accordance with § 385.211 of the Commission's Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26601 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3867–000]

Long Island Lighting Company; Notice of Filing

October 2, 1997.

Take notice that on August 18, 1997, Long Island Lighting Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 10, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26586 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–54–000]

Louisiana-Nevada Transit Company; Notice of Tariff Filing

October 2, 1997.

Take notice that on September 29, 1997, Louisiana-Nevada Transit Company (LNT), tendered for filing as part of its Third Revised FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheet listed below, to be effective October 1, 1997:

Third Revised Sheet No. 56

Pursuant to Order No. 472, the Commission has authorized pipeline companies to track and pass through to their customers their annual charges under an Annual Charge Adjustment (ACA) clause. The 1997 ACA unit surcharge approved by the Commission is $.0022 per Dth.

Pursuant to Section 154.207 of the Commission's Regulations, LNT requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective October 1, 1997.

LNT states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26605 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–841–002]

NESI Power Marketing, Inc.; Notice of Filing

October 2, 1997.

Take notice that on July 29, 1997, NESI Power Marketing, Inc., tendered for filing their Transaction Reports for short-term transactions for the second quarter of 1997 pursuant to the Commission's order in *Northern Indiana Public Service Company* and *NIPSCO Energy Services, Inc.*, 75 FERC ¶ 61,213 (1996) and the Commission's March 13, 1997, letter order in *NESI Power Marketing, Inc.*, Docket No. ER97–841–000..

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 10, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26584 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–61–009]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC GAS Tariff

October 2, 1997.

Take notice that on September 29, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 1997:

Second Revised Sheet No. 168
Third Revised Sheet No. 192
Third Revised Sheet No. 204
Third Revised Sheet No. 217

NGT states that the purpose of this filing is to comply with the letter order issued in this docket on June 30, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26594 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–138–000]

Norteno Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 2, 1997.

Take notice that on September 29, 1997, Norteno Pipeline Company (Norteno), tendered for filing proposed changes in its FERC Gas Tariff, First Volume No. 1. Norteno submitted First Revised Sheet No. 10 with a proposed effective date of October 1, 1997.

Norteno submitted the tariff sheet to comply with Order No. 472 in Docket No. RM87–3–000, establishing that cost responsibility for the Commission's budgetary expenses would be assessed against gas pipelines and others through annual charges. Order No. 472 permitted pipelines to pass through these annual charges by means of an Annual Charge Adjustment Provision. In accordance with Order No. 472 and Section 28 of the General Terms and Conditions of Norteno's FERC Gas Tariff, Norteno submits for filing First Revised Sheet No. 10 to track the Commission's approved ACA unit rate of $0.0022 per MMBtu on Norteno's system effective October 1, 1997.

Norteno requests waiver of Section 154.402(b)(3) of the Commission's rules in order to permit the proposed tariff sheet to become effective on October 1, 1997.

Norteno states that copies of the filing were served upon Norteno's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26606 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-4-000]

Panhandle Eastern Pipe Line Company; Notice of Request for Extension of Waiver

Ocotber 2, 1997.

Take notice that on September 15, 1997, Panhandle Eastern Pipe Line Company, (Panhandle) in compliance with the March 13, 1997 [1] and May 21, 1997 [2] orders of the Commission in the captioned docket tendered for filing a request for an extension of the six month waiver previously granted by the Commission with respect to compliance with the data elements and formatting as adopted by the Commission in Order No. 587.

Panhandle states that under the waiver, it was required to submit its requests for changes to the data elements to the Gas Industry Standards Board (GISB). Panhandle states that it has implemented the changes already approved by GISB, but requests an extension of the waiver until the Commission adopts the next version of the GISB standards. With respect to those requests still pending at GISB, Panhandle requests an additional six months extension of time.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should comply with principles set forth in the Commission's May 21, 1997 order and must be filed by October 14, 1997. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 97-26591 Filed 10-7-97; 8:45 am]

BILLING CODE 6717-01-M

[1] Panhandle Eastern Pipe Line Company, 78 FERC ¶61,283 (1997).

[2] Texas Eastern Transmission Corporation, 79 FERC ¶61,223 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97-3803-000]

San Diego Gas & Electric Company; Notice of Filing

October 2, 1997.

Take notice that on August 11, 1997, San Diego Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 9, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-26585 Filed 10-7-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-771-000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

October 2, 1997.

Take notice that on September 25, 1997, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP97-771-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205, 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities in Delaware County, Pennsylvania, for Part 284 transportation services by Texas Eastern, under Texas Eastern's blanket certificate issued in Docket No. CP82-535-000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and operate an 8-inch tap value and an 8-inch check valve to serve Mobil Oil Corporation (Mobil). It is stated that Texas Eastern will also install or cause to be installed, interconnecting pipeline and electronic gas measurement equipment. It is further stated that Texas Eastern will be fully reimbursed for the $1,135,000 cost of installing the tap and appurtenant facilities by Mobil. It is asserted that Texas Eastern will use the facilities to deliver up to 27 Mmcf on a peak day. It is further asserted that the volume of gas delivered to Mobil will come from existing capacity and will not affect Texas Eastern's peak day or annual requirements. It is explained that the proposal is not prohibited by Texas Eastern's existing tariff and that Texas Eastern has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97-26582 Filed 10-7-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-3-000]

Texas Eastern Transmission Corporation; Notice of Request for Extension of Waiver

October 2, 1997.

Take notice that on September 15, 1997, Texas Eastern Transmission Corporation, (Texas Eastern) in compliance with the March 13, 1997 [1] and May 21, 1997 [2] orders of the Commission in the captioned docket tendered for filing a request for an extension of the six month waiver previously granted by the Commission with respect to compliance with the data elements and formatting as adopted by the Commission in Order No. 587.

Texas Eastern states that under the waiver, it was required to submit its requests for changes for the data elements to the Gas Industry Standards Board (GISB). Texas Eastern states that it has implemented the changes already approved by GISB, but requests an extension of the waiver until the Commission adopts the next version of the GISB standards. With respect to those requests still pending at GISB, Texas Eastern requests an additional six month extension of time.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should comply with principles set forth in the Commission's May 21, 1997 Order and must be filed by October 14, 1997. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-26590 Filed 10-7-97; 8:45 am]

BILLING CODE 6717-01-M

[1] Texas Eastern Transmission Corporation, 78 FERC ¶61,282 (1997).

[2] Texas Eastern Transmission Corporation, 79 FERC ¶61,223 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97-1-142-001]

Texas-Ohio Pipeline, Inc.; Notice of Filing of Refund Report

October 2, 1997.

Take notice that on September 29, 1997, Texas-Ohio Pipeline, Inc. (TOP) tendered for filing a refund report in Docket No. TM97-1-142-000 related to the correction of its Annual charge Adjustment (ACA) surcharge for the period since October 1, 1996.

TOP states that it is filing this report and has made a refund in compliance with the Letter Order issued August 19, 1997 in the above referenced docket, by Kevin P. Madden, Director, Office of Pipeline Regulation.

TOP states that copies of TOP's filing have been served on each of its jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before October 9, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-26603 Filed 10-7-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RO97-6-000]

Trunkline Gas Company; Notice of Request for Extension of Waiver

October 2, 1997.

Take notice that on September 15, 1997, Trunkline Gas Company, (Trunkline) in compliance with the March 13, 1997 [1] and May 21, 1997 [2] orders of the Commission in the captioned docket tendered for filing a request for an extension of the six month waiver previously granted by the Commission with respect to compliance with the data elements and formatting as adopted by the Commission in Order No. 587.

Trunkline states that under the waiver, it was required to submit its requests for changes to the data elements to the Gas Industry Standards Board (GISB). Trunkline states that it has implemented the changes already approved by GISB, but requests an extension of the waiver until the Commission adopts the next version of the GISB standards. With respect to those request still pending at GISB, Trunkline requests an additional six month extension of time.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should comply with principles set forth in the Commission's May 21, 1997 order and must be filed by October 14, 1997. Protests will be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-26593 Filed 10-7-97; 8:45 am]

BILLING CODE 6717-01-M

[1] Trunkline Gas Company, 78 FERC ¶61,284 (1997).

[2] Texas Eastern Transmission Corporation, 79 FERC ¶61,223 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-768-000]

Williams Natural Gas Company; Notice of Application To Abandon Facilities

October 2, 1997.

Take notice that on September 23, 1997, Williams Natural Gas Company (WNG) filed an application pursuant to Section 7(b) of the Natural Gas Act, requesting permission and approval to abandon by reclaim a 1,000 horsepower rental compressor unit and appurtenant facilities, all as more fully set forth in this request which is on file with the Commission and open to public inspection.

Specifically, WNG seeks authority to abandon by reclaim the 1,000 horsepower skid-mounted Waukesha rental compressor unit and appurtenances originally installed in the Elk City storage field in Montgomery County, Kansas, to recapture migrating storage gas produced by gas wells outside the storage field. WNG estimates the cost to reclaim the facilities to be $45,575.

Any person desiring to be heard or to make any protest with reference to said request should on or before October 23, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties

to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the request should be granted. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26581 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–258–004]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 2, 1997.

Take notice that on September 29, 1997, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Substitute Fourth Revised Sheet No. 233, to be effective August 1, 1997.

WNG states that this filing is being made to comply with Commission Order issued September 19, 1997, in Docket No. RP97–454–000 and RP97–258–003. WNG was directed to refile Substitute Fourth Revised Sheet No. 233 to correct the pagination

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26599 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–427–001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 2, 1997.

Take notice that on September 29, 1997, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 256. The proposed effective date of this tariff sheet is October 29, 1997.

WNG states that it made a filing on July 23, 1997 to request a waiver of the reporting requirements in Article 14.2 (g) of its tariff. By order issued September 16, 1997, the Commission granted the waiver, but directed WNG to file a revised tariff sheet within 15 days of the issuance of the order to eliminate the inconsistency in the filing dates caused by its existing tariff. The instant filing is being made in compliance with the order.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26600 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–72–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 2, 1997.

Take notice that on September 30, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on the filing, to become effective September 11, 1997.

Williston Basin states that on September 11, 1997, the Commission issued its "Order Granting Restatement of Maximum Capacity," in Docket No. CP97–639–000 which granted permission for an approval of the restatement of the maximum daily delivery and receipt point capacities as more fully described in Williston Basin's application filed on July 15, 1997 and as supplemented on August 7, 1997. Williston Basin therefore states it is including all of the proposed revisions to its Master Receipt/Delivery Point List as approved by the Commission's September 11, 1997 Order in the above noted tariff sheets.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26588 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–148–006]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

October 2, 1997.

Take notice that on September 30, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 371, to become effective November 1, 1997.

Williston Basin states that the revised tariff sheet reflects modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's Letter Order issued July 24, 1997 in Docket No. RP97–148–004. The tariff sheet reflects the Gas Industry Standards Board (GISB) Standards adopted by the Commission in Order No. 587–C to become effective November 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26595 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–540–000]

Williston Basin Interstate Pipeline Company; Notice of Annual Report

October 2, 1997.

Take notice that on September 30, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 358A pursuant to Section 39 of that Tariff. The proposed effective date of the above-referenced tariff sheet is September 30, 1997.

Williston Basin states that as of July 31, 1997 it had a zero balance in FERC Account No. 191. As a result, Williston Basin will neither refund nor bill its customers for any amounts under the conditions of Section No. 39.3.1 of its FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, D.C. 20426, in accordance with Rules 211 and 215 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 an 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26602 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–85–000, et al.]

Entergy Power Generation Corp., et al.; Electric Rate and Corporate Regulation Filings

October 1, 1997.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Generation Corporation

[Docket No. EG97–85–000]

On September 26, 1997, Entergy Power Generation Corporation, Jamboree Center, 4 Park Plaza, Suite 2000, Irvine, California 92614, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992. The applicant is a corporation that is engaged directly or indirectly and exclusively in developing and ultimately owning and/or operating eligible facilities in the United States and selling electric energy at wholesale.

Comment date: October 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Company

[Docket No. ER96–2900–000]

Take notice that on September 22, 1997, Northeast Utilities Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Electric Company

[Docket No. ER97–687–000]

Take notice that on September 26, 1997, Commonwealth Electric Company tendered for filing a letter withdrawing the power sales and exchange tariff service agreement with Southern Energy Marketing, Inc.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of New Mexico

[Docket No. ER97–2585–000]

Take notice that on September 9, 1997, Public Service Company of New Mexico tendered for filing an amendment in the above-referenced docket.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Appalachian Power Company

[Docket No. ER97–3202–000]

Take notice that on September 24, 1997, Appalachian Power Company tendered for filing with the Commission additional information concerning its proposed modifications to its Rate Schedule FPC No. 23. The modifications are designed to provide off-peak excess

demand, surplus power and back-up service to Kingsport Power Company (KgPCo).

APCO proposes an effective date of August 1, 1997, and states that copies of its filing were served on KGPCo and the Tennessee Regulatory Authority.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER97–3422–000]

Take notice that on September 5, 1997, Virginia Electric and Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER97–3770–000]

Take notice that on September 4, 1997, Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas & Electric Company

[Docket No. ER97–3906–000]

Take notice that on September 18, 1997, Louisville Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER97–4198–000]

Take notice that on September 22, 1997, Wisconsin Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER97–4206–000]

Take notice that on September 25, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed amended Service Agreements, in the above referenced docket, to provide Non-Firm Point-to-Point Transmission Service for Dayton Power & Light Company, VTEC Energy, Incorporated, and Valero Power Services Company, the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreements are July 16, 1997.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. PG&E Power Services Company

[Docket No. ER97–4492–000]

Take notice that on September 2, 1997, PG&E Power Services Company (PG&E) filed a Notice of Succession with the Federal Energy Regulatory Commission indicating that the name of Valero Power Services Company, an indirect wholly-owned subsidiary of PG&E Corporation, has been changed to PG&E Power Services Company effective September 1, 1997. In accordance with 35.16 and 131.51 of the Commission's Regulations, 18 CFR 35.16, 131.51, PG&E adopted and ratified all applicable rate schedules filed with the FERC by Valero Power Services Company.

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Tampa Electric Company

[Docket No. ER97–4570–000]

Take notice that on September 10, 1997, Tampa Electric Company (Tampa Electric), tendered for filing a Contract for the Purchase and Sale of Power and Energy (Contract) between Tampa Electric and LG&E Energy Marketing Inc. (LG&E Energy). The Contract provides for the negotiation of individual transactions in which Tampa Electric will sell power and energy to LG&E Energy.

Tampa Electric proposes an effective date of September 15, 1997, for the Contract, or, if the Commission's notice requirement cannot be waived, the earlier of November 9, 1997, or the date the Contract is accepted for filing.

Copies of the filing have been served on LG&E Energy and the Florida Public Service Commission.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

Docket No. ER97–4571–000

Take notice that on September 10, 1997, Tampa Electric Company (Tampa Electric), tendered for filing a Contract for the Purchase and Sale of Power and Energy (Contract) between Tampa Electric and PECO Energy Company—Power Team (PECO). The Contract provides for the negotiation of individual transactions in which Tampa Electric will sell power and energy to PECO.

Tampa Electric proposes an effective date of September 15, 1997, for the Contract, or, if the Commission's notice requirement cannot be waived, the earlier of November 9, 1997 or the date the Contract is accepted for filing.

Copies of the filing have been served on PECO and the Florida Public Service Commission.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Co.

[Docket No. ER97–4572–000]

Take notice that on September 10, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) submitted for filing service agreements under which the CSW Operating Companies will provide transmission service to Aquila Power Corporation (Aquila), CPL, Delhi Energy Services (Delhi), Electric Clearinghouse, Inc. (ECI), Entergy Power Marketing Corp., (Entergy), and Southwestern Public Service Company (SPS) in accordance with the CSW Operating Companies' open access transmission service tariff. The CSW Operating Companies also filed notices of cancellation of those service agreements.

The CSW Operating Companies state that a copy of this filing has been served on Aquila, CPL, Delhi, ECI, Entergy, and SPS.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Arizona Public Service Company

[Docket No. ER97–4574–000]

Take notice that on September 11, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3 with Snohomish County PUD #1, Valero Power Services Company, Western Resources, Inc., and MP Energy.

A copy of this filing has been served on the Arizona Corporation Commission, Snohomish County PUD #1, Valero Power Services Company, Western Resources, Inc., and MP Energy.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Arizona Public Service Company

[Docket No. ER97–4575–000]

Take notice that on September 11, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with MP Energy, Inc.

A copy of this filing has been served on MP Energy, Inc., and the Arizona Corporation Commission.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER97–4576–000]

Take notice that on September 11, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide umbrella short-term Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Arizona Public Service Company—Merchant.

A copy of this filing has been served on Arizona Public Service Company—Merchant and the Arizona Corporation Commission.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power Corporation

[Docket No. ER97–4577–000]

Take notice that on September 11, 1997, Florida Power Corporation tendered for filing a service agreement providing for short-term service to Entergy Services, Inc., pursuant to Florida Power's Market-Based Wholesale Power Sales Tariff (MR–1) FERC Electric Tariff, Original Volume No. 8. Florida Power requests that the Commission waive its notice of filing requirements and allow the Service Agreement to become effective on September 12, 1997.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power Corporation

[Docket No. ER97–4578–000]

Take notice that on September 11, 1997, Florida Power Corporation, tendered for filing a service agreement providing for service to Municipal Electric Authority of Georgia pursuant to Florida Power's power sales tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the Service Agreement to become effective on September 12, 1997.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. South Carolina Electric & Gas Company

[Docket No. ER97–4579–000]

Take notice that on September 11, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Stand Energy Corporation (STAND) and Entergy Power Marketing Corporation (EPMC) as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon STAND, EPMC and the South Carolina Public Service Commission.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Electric Power Company

[Docket No. ER97–4580–000]

Take notice that on September 11, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing two Transmission Service Agreements between itself and Williams Energy Services Company (WESCO). The Transmission Service Agreement provides for non-firm and short term firm service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of this filing have been served on WESCO, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. South Carolina Electric & Gas Company

[Docket No. ER97–4581–000]

Take notice that on September 11, 1997, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Municipal Electric Authority of Georgia (MEAG) as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon MEAG and the South Carolina Public Service Commission.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Georgia Power Company

[Docket No. ER97–4582–000]

Take notice that on September 11, 1997, Georgia Power Company (Georgia Power) filed with the Commission six copies of a Revised and Restated Coordination Services Agreement (Revised CSA) dated September 8, 1997, between and among Georgia Power, Oglethorpe Power Corporation and Georgia System Operations Corporation (collectively, the Parties). Upon its effectiveness, the Revised CSA will supersede and replace in its entirety the existing Coordination Services Agreement between Georgia Power and Oglethorpe Power Corporation.

Georgia Power states that the Revised CSA reflects the outcome of more than a year of negotiations among Georgia Power, Oglethorpe Power Corporation and Georgia System Operations Corporation aimed at promoting the latters' independence and flexibility in the bulk power market while the same time preserving control area reliability and ensuring that the costs associated therewith are properly allocated among the Parties, all consistent with the principles of Order No. 888.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Idaho Power Company

[Docket No. ER97–4583–000]

Take notice that on September 11, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between Cook Inlet Energy Supply and Idaho Power Company.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Commonwealth Electric Company, Cambridge Electric Light Company

[Docket No. ER97–4584–000]

Take notice that on September 11, 1997, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers):

Boston Edison Company
Delmarva Power & Light Company
Equitable Power Services Company
Sonat Power Marketing L.P.

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies, Boston Edison Company and Sonat Power Marketing L.P., have also filed Notices of Cancellation for service under the Companies' Power Sales and Exchange Tariffs (FERC Electric Tariff Original Volume Nos. 5 and 3), Boston Edison Company's and Sonat Power Marketing's respective FERC Rate Schedules.

The Companies request an effective date as specified on each Service Agreement and Notice of Cancellation.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Central Power and Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Co.

[Docket No. ER97–4585–000]

Take notice that on September 11, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) submitted for filing notices of cancellation of various short-term firm transmission service agreements under the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of the filing has been served on all affected customers.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Williams Generation Company-Hazelton

[Docket No. ER97–4587–000]

Take notice that on September 12, 1997, Williams Generation Company-Hazelton (WGCH), which will own a natural gas-fired electric generating facility located in Hazelton, Pennsylvania, submitted for filing pursuant to § 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Electric Rate Schedule FERC No. 1.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Central Power and Light Company; Public Service Company of Oklahoma; Southwestern Electric Power Company; West Texas Utilities Company

[Docket No. ER97–4588–000]

Take notice that on September 12, 1997, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU) (collectively, the Companies) tendered for filing one hundred ten Service Agreements establishing forty-six new customers under one or more of the four Companies' respective CSRT–1 Tariff.

The Companies request an effective date of September 1, 1997, for each of the service agreements and, accordingly, seek waiver of the Commission's notice requirements. Copies of this filing were served on the forty-six customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Kansas City Power & Light Company

[Docket No. ER97–4589–000]

Take notice that on September 12, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated August 14, 1997, between KCPL and AIG Trading Corporation. KCPL proposes an effective date of September 2, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER97–4590–000]

Take notice that on September 12, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Southern Energy Marketing, the Transmission Customer. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreement is August 1, 1997.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ES97–51–000]

Take notice that on September 18, 1997, UtiliCorp United Inc., filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act seeking authorization to issue unsecured notes and other evidences of indebtedness, including financial guarantees of subsidiaries' or affiliates' securities, aggregating up to and including $350,000,000 principal amount outstanding at any one time, during the period from January 1, 1998 through December 31, 1999, with final maturities not later than December 31, 2000.

Comment date: October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. James S. Potts

[Docket ID–3067–000]

Take notice that on September 2, 1997, James S. Potts (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Officer—Potomac Electric Power Company
Director—Environmental Elements Company

Comment date: October 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26666 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4541–000, et al.]

Southern Indiana Gas and Electric Company, et al. Electric Rate and Corporate Regulation Filings

September 30, 1997.

Take notice that the following filings have been made with the Commission:

1. Southern Indiana Gas and Electric Company

[Docket No. ER97–4541–000]

Take notice that on September 8, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing four (4) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. Western Resources
2. Public Service Electric and Gas Company
3. Virginia Electric and Power Company
4. Pennsylvania Power & Light Company

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. MidAmerican Energy Company

[Docket No. ER97–4542–000]

Take notice that on September 8, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, submitted for filing a Non-Firm Transmission Service Agreement with Constellation Power Source, Inc. (Constellation), entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of August 28, 1997, for the Agreement, and accordingly, seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Constellation, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER97–4543–000]

Take notice that on September 8, 1997, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Union Electric Company

[Docket No. ER97–4544–000]

Take notice that on September 8, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and The Energy Authority, Entergy Services, Inc., and Southern Company Services, Inc. UE asserts that the purpose of the Agreements is to permit UE to make sales of capacity and energy at market based rates to the parties pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. New Century Services, Inc.

[Docket No. ER97–4545–000]

Take notice that on September 8, 1997, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Southern Energy Trading & Marketing, Inc.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. New Century Services, Inc.

[Docket No. ER97–4546–000]

Take notice that on September 8, 1997, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Southern Energy Trading & Marketing, Inc.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Light Company

[Docket No. ER97–4548–000]

Take notice that on September 9, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and service agreement for one new customer.

CILCO requested an effective date of September 2, 1997.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc.

[Docket No. ER97–4549–000]

Take notice that on September 9, 1997, Western Resources, Inc., tendered for filing two firm transmission agreements between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements proposed to become effective September 20, 1997 and October 1, 1997.

Copies of the filing were served upon Western Resources Generation Services and the Kansas Corporation Commission.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER97–4550–000]

Take notice that on September 8, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Service Agreement with the City of Hurricane, Utah under PacifiCorp's FERC Electric Tariff, Original Volume No. 12.

Copies of this filing were supplied to the City of Hurricane, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER97–4551–000]

Take notice that on September 4, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, an amendment to its filing of an amended Service Agreement with Blanding City under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 6.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER97–4553–000]

Take notice that on September 9, 1997, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Southern Company Services under Rate GSS.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER97–4554–000]

Take notice that on September 9, 1997, the PJM Interconnection, L.L.C., membership application of New York State Electric & Gas Corporation and Niagara Mohawk Power Corporation. PJM requests an effective date of September 9, 1997.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Western Resources, Inc.

[Docket No. ER97–4556–000]

Take notice that on September 9, 1997, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and Williams Energy Services Company. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective August 29, 1997.

Copies of the filing were served upon Williams Energy Services Company and the Kansas Corporation Commission.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. The United Illuminating Company

[Docket No. ER97–4557–000]

Take notice that on September 9, 1997, The United Illuminating Company (UI) tendered for filing a Notice of Cancellation of the System Energy Exchange Agreement (Agreement) among UI, The Connecticut Light & Power Company (CL&P), and Western Massachusetts Electric Company (WMECO). The Agreement is designated as CL&P Rate Schedule FERC No. 300 and Supplement No. 1, WMECO Rate Schedule FERC No. 238, and UI Rate Schedule FERC No. 40. UI has also filed a certificate of concurrence demonstrating that CL&P and WMECO assent to the cancellation of the Agreement.

UI requests an effective date for the cancellation of September 26, 1997. UI has served a copy of the filing upon Northeast Utilities Service Company, as authorized agent for CL&P and WMECO, and upon the Connecticut Department of Public Utility Control.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER97–4558–000]

Take notice that on September 10, 1997, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by AllEnergy Marketing Company, L.L.C. (AllEnergy). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit AllEnergy to join the over 110 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make AllEnergy a Participant in the Pool. NEPOOL requests an effective date on or before October 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by AllEnergy.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER97–4559–000]

Take notice that on September 10, 1997, Southern California Edison Company (Edison), tendered for filing executed umbrella Service Agreements (Service Agreements) with Southern California Edison Company—Energy Supply & Marketing, and Federal Energy Sales, Inc., for Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff).

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission Regulations. Edison also submitted revised Sheet Nos. 165 and 166 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of September 11, 1997, for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Duquesne Light Company

[Docket No. ER97–4560–000]

Take notice that on September 10, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated August 29, 1997, with Pennsylvania Power & Light Company under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Pennsylvania Power & Light Company as a customer under the Tariff. DLC requests an effective date of January 1, 1997 for the Service Agreement.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Houston Lighting & Power Company

[Docket No. ER97–4561–000]

Take notice that on September 10, 1997, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Tenaska Power Services Company (Tenaska) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Second Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of September 10, 1997.

Copies of the filing were served on Tenaska and the Public Utility Commission of Texas.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Oklahoma Gas and Electric Company

[Docket No. ER97–4563–000]

Take notice that on September 10, 1997, Oklahoma Gas and Electric Company (OG&E), tendered for filing service agreements for parties to take service under its open access tariff. OG&E requests an effective date of September 1, 1997 for Constellation Power Source, Inc., Oklahoma Municipal Power Authority, Tenaska Power Services Company, Western Farmers Electric Cooperative and Williams Energy Services Company and a July 9, 1996, effective date for OG&E.

Copies of this filing have been served on the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Baltimore Gas and Electric Company

[Docket No. ER97–4564–000]

Take notice that on September 10, 1997, Baltimore Gas and Electric Company (BGE) filed a Service Agreement with Potomac Electric Power Company, September 1, 1997, and under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreement, BGE agrees to provide services to Potomac Electric Power Company under the provisions of the Tariff. BGE requests an effective date of September 1, 1997 for the Service Agreement. BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Illinois Power Company

[Docket No. ER97–4565–000]

Take notice that on September 10, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Prime, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 1, 1997.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Illinois Power Company

[Docket No. ER97–4566–000]

Take notice that on September 10, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Amoco Energy Trading Corporation will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 1, 1997.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Illinois Power Company

[Docket No. ER97–4567–000]

Take notice that on September 10, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Avista Energy Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 1, 1997.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Tampa Electric Company

[Docket No. ER97–4569–000]

Take notice that on September 10, 1997, Tampa Electric Company (Tampa Electric), tendered for filing service agreements with Southern Energy Trading and Marketing, Inc., and Reedy Creek Improvement District for non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of August 21, 1997, for the service agreements, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on the other parties to the service agreements and the Florida Public Service Commission.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Panther Creek Partners

[Docket No. QF87–59–010]

On September 19, 1997, Panther Creek Partners (Applicant) of 1001 Industrial Road, Nesquehoning, Pennsylvania 18240 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the facility is an 86 MW, anthracite waste-fired small power production facility located in Nesquehoning, Pennsylvania. The Commission most recently recertified the facility as a small power production facility in Panther Creek Partners, 64 FERC ¶ 62,206 (1993). The instant application for recertification is requested to assure that the facility will remain a qualifying facility following a change in upstream ownership and to certify additional sources of anthracite waste coal.

Comment date: 15 days after the date of publication of this notice in the **Federal Register**, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before

the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26665 Filed 10–7–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–766; FRL 5746–9]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–766, must be received on or before November 7, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION" of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Cynthia Giles-Parker, (PM 22).	Rm. 247, CM #2, 703–305–7740; e-mail: giles-parker cynthia@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Joanne Miller (PM 23) ...	Rm. 237, CM #2, 703–305–6224; e-mail: miller joanne@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–766] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (PF-766) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 29, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. AgrEvo USA Company (AgrEvo)

PP 7F4910 and 7E4911

EPA has received pesticide petitions (PP 7F4910 and 7E4911) from AgrEvo USA Company (AgrEvo), Wilmington, DE 19808 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.473(c) and part 186 by establishing tolerances for residues of glufosinate-ammonium in or on raw agricultural commodities derived from transgenic sugar beets and canola that are tolerant to the herbicide, glufosinate-ammonium: sugar beet roots at 0.7 ppm, sugar beet tops (leaves) at 1.3 ppm, canola seed at 0.4 ppm and the processed feeds: canola meal at 2.0 ppm and sugar beet molasses at 5.0 ppm. AgrEvo has also proposed to amend 40 CFR 180.473(a)(1) and part 185 by establishing a tolerance for residues of the herbicide, glufosinate-ammonium: butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt and its metabolite, 3-methylphosphinico-propionic acid expressed as glufosinate free acid

equivalents in or on the following raw agricultural commodity: potatoes at 0.4 ppm and the processed foods: potato flakes at 1.3 ppm and processed potatoes (including potato chips) at 1.0 ppm. The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by gas chromatography. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of glufosinate-ammonium in plants is adequately understood for the purposes of these tolerances. The crop residue profile following selective use of glufosinate-ammonium on transgenic crops is different than that found in conventional crops. The only crop residue found after non-selective use is the metabolite, 3-methylphosphinico-propionic acid, which is found in only trace amounts. The principal residue identified in the metabolism studies after selective use of glufosinate-ammonium on transgenic crops is the acetylated derivative of the parent material, 2-acetamido-4-methylphosphinico-butanoic acid, with lesser amounts of glufosinate and 3-methylphosphinico-propionic acid.

2. *Analytical method.* There is a practical analytical method utilizing gas chromatography for detecting and measuring levels of glufosinate-ammonium and its metabolites in or on food with a general limit of quantification of 0.05 ppm. This method allows monitoring of food with residues at or above the levels proposed in these tolerances. This method has been validated by an independent laboratory and the petitioner has been advised that the EPA concluded its own successful method try out.

3. *Magnitude of residues.* Field residue trials with glufosinate-ammonium tolerant sugar beets and canola have been conducted in 1995 and 1996 and 1993 and 1994 respectively at several different use rates and timing intervals to represent the use patterns which would most likely result in the highest residue. In these trials, the primary residue in all samples was the combination of glufosinate and 2-acetamido-4-methylphosphinico-butanoic acid which was typically found at higher levels than 3-methylphosphinico-propionic acid. In sugar beets, the mean glufosinate-ammonium derived residues in treated roots did not exceed 0.70 ppm in trials conducted at 13 different sites representing the 6 major sugar beet producing regions in the U.S. The mean glufosinate-ammonium derived residues in treated tops (leaves) in these trials did not exceed 1.29 ppm when sampled at 60 days or more after treatment.

In canola, 11 out of 40 samples produced detectable residue levels above the limit of detection in harvested seed following treatment with glufosinate-ammonium at 14 trial locations. The highest level of residue found in these trials was 0.295 ppm and the total mean glufosinate derived residues in all samples containing detectable residues was 0.136 ppm.

For both sugar beet and canola, the tolerances levels have been proposed assuming the following: (1) a seasonal maximum rate of 1.1 pounds of active ingredient per acre for sugar beets and 0.9 pound of active ingredient per acre for canola and (2) a pre-harvest interval of 60 days for sugar beets and 65 days for canola.

Total residues of glufosinate-ammonium and its metabolite in potatoes desiccated with glufosinate-ammonium were determined in more than 40 trials conducted over approximately 13 locations during the period from 1987 to 1994. Within the pre-harvest interval of 7 to 56 days, all residue values (with one exception) did not exceed 0.4 ppm. A pre-harvest interval of 9 days is specified on the product label for potato desiccation and the seasonal maximum use rate is 0.4 pound of active ingredient per acre.

4. *Residue in processed commodities.* Studies have been conducted to determine the level of glufosinate derived residues found in or on the processed commodities from glufosinate tolerant sugar beet roots, canola seed and potatoes. The studies utilized treatments at significantly exaggerated rates to provide the necessary test sensitivity. In the sugar beet processing study, a concentration factor of 6.3x was determined for sugar beet molasses whereas there was no concentration of residues in either refined sugar or dried pulp.

In the canola processing study, a concentration factor of approximately 4 times was observed for the meal when the levels of terminal residues were compared between the seed and the toasted meal. There was no concentration of residues in the canola oil.

In the potato processing study, glufosinate residues appear to concentrate 2.3 fold in chips and 3.1 fold in flakes. Glufosinate residues do not appear to concentrate in the peel.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral LD_{50} values for glufosinate-ammonium technical ranged from 1,510 to 2,000 mg/kg in rats and from 200 to 464 mg/kg in mice and dogs. The acute dermal LD_{50} was 2,000 mg/kg in rabbits and ≥ 4,000 mg/kg in rats. The 4–hour rat inhalation LC_{50} was 1.26 mg/L in males and 2.6 mg/L in females. Glufosinate-ammonium was not irritating to rabbit skin but was slightly irritating to the eyes. Glufosinate-ammonium did not cause skin sensitization in guinea pigs. Glufosinate-ammonium should be classified as Tox Category II for oral toxicity, Tox Category III for inhalation and dermal toxicity and Tox Category IV for skin irritation and eye irritation.

2. *Genotoxicty.* No evidence of genotoxicity was noted in an extensive battery of *in vitro* and *in vivo* studies. The petitioner has been advised by the EPA that negative studies determined acceptable included *Salmonella, E. Coli* and mouse lymphoma gene mutation assays, a mouse micronucleus assay, and an *in vitro* UDS assay.

3. *Reproductive and developmental toxicity.* Three developmental toxicity studies were conducted with rats, at dose levels ranging from 0.5 to 250 mg/kg/day. The No Observed Effect Levels (NOEL's) for maternal and developmental effects were determined to be 10 mg/kg/day for maternal toxicity and 50 mg/kg/day for developmental toxicity, based on the findings of hyperactivity and vaginal bleeding in dams at 50 mg/kg/day and increased incidence of arrested renal and ureter development in fetuses at 250 mg/kg/day.

A developmental toxicity study was conducted in rabbits at dose levels of 0, 2, 6.3 and 20 mg/kg/day. The maternal NOEL for this study was determined to be 6.3 mg/kg/day, based on increases in abortion and premature delivery, and decreases in food consumption and weight gain at 20 mg/kg/day. No evidence of developmental toxicity was noted at any dose level; thus the developmental NOEL was determined to be 20 mg/kg/day.

A 2-generation rat reproduction study was conducted at dietary concentrations of 0, 40, 120 and 360 ppm. The parental NOEL was determined to be 40 ppm (4 mg/kg/day) based on increased kidney weights at 120 ppm. The NOEL for reproductive effects was determined to be 120 ppm (12 mg/kg/day) based on reduced numbers of pups at 360 ppm.

4. *Subchronic toxicity.* A 90–day feeding study was conducted in Fisher

344 rats at dietary concentrations of 0, 8, 64, 500 and 4,000 ppm. Although slight evidence of toxicity was observed, there were no treatment-related histopathological findings at any dose level. The NOEL for this study was determined to be 8 ppm, based on increased kidney weights at 64 ppm.

A 90–day feeding study was conducted in NMRI mice at dietary concentrations of 0, 80, 320 and 1,280 ppm. There were no treatment-related pathological findings at any dose level but increases in absolute and relative liver weights, serum AST, and serum potassium levels were noted at 320 and/or 1,280 ppm. Based on these findings, the NOEL for this study was determined to be 80 ppm (16.6 mg/kg/day).

A 90–day feeding study was conducted in beagle dogs at dietary concentrations of 0, 4, 8, 16, 64 and 256 ppm. There were no treatment-related histopathological findings at any dose level. However, because of reduced weight gain and decreased thyroid weights at 64 and/or 256 ppm, the NOEL was determined to be 16 ppm (0.53 mg/kg/day).

5. *Chronic toxicity.* A 12–month feeding study was conducted in beagle dogs at dose levels of 0, 2, 5 and 8.5 mg/kg/day. The NOEL was 5 mg/kg/day based on clinical signs of toxicity, reduced weight gain and mortality at 8.5 mg/kg/day.

A 2–year mouse oncogenicity study was conducted in NMRI mice at dietary concentrations of 0, 20, 80 and 160 (males) or 320 (females) ppm. The NOEL was determined to be 80 ppm (10.8 and 16.2 mg/kg/day for males and females, respectively) based on increased blood glucose, decreased glutathione levels and increased mortality in the high-dose males and/or females. No evidence of oncogenicity was noted at any dose level.

A combined chronic toxicity/oncogenicity study was conducted in Wistar rats for up to 130 weeks at dietary concentrations of 0, 40, 140 and 500 ppm. A dose-related increase in mortality was noted in females at 140 and 500 ppm, while increased absolute and relative kidney weights were noted in 140 and 500 ppm males. Thus, the NOEL for this study was determined to be 40 ppm (2.1 mg/kg/day). No treatment-related oncogenic response was noted. However, the high-dose level in this study did not satisfy the EPA criteria for a Maximum Tolerated Dose and thus a data gap currently exists for a rat carcinogenicity study. All glufosinate-ammonium tolerances previously established by the EPA are time-limited because of this gap. A new rat oncogenicity study is currently being conducted and is due to the EPA by July 1, 1998.

6. *Animal metabolism.* Numerous studies have been conducted to evaluate the absorption, distribution, metabolism and/or excretion of glufosinate-ammonium in rats. These studies indicate that glufosinate-ammonium is poorly absorbed (5–10%) after oral administration and is rapidly eliminated, primarily as parent compound. Small amounts of the metabolites 3-methylphosphinico-propionic acid and 2-acetamido-4-methylphosphinico-butanoic acid were found in the excreta, although the latter is believed to be a result of a revisable acetylation and decetylation process by intestinal bacteria.

7. *Metabolite toxicology.* The primary residue resulting from the use of glufosinate-ammonium in genetically transformed sugar beets and canola that are tolerant to the herbicide, glufosinate-ammonium, consists of the metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid. Only the latter metabolite is formed in conventional crops. A considerable number of toxicity studies have been conducted with these metabolites, including developmental toxicity studies in rats and rabbits with both metabolites and a 2-generation rat reproduction study with 2-acetamido-4-methylphosphinico-butanoic acid. Neither metabolite presents an acute toxicity hazard and both were determined to be non-genotoxic in an extensive battery of *in vitro* and *in vivo* genotoxicity studies. Neither metabolite demonstrated significant developmental toxicity to either rats or rabbits. Subchronic studies in rats, mice and dogs were conducted with both metabolites with no clear evidence for any specific target organ toxicity and with NOEL's or No Observed Adverse Effects Levels (NOAEL's) substantially higher than those seen with glufosinate-ammonium. Thus, these studies indicate that both metabolites are less toxic than the parent compound and do not pose any reproductive or developmental concerns.

C. Endocrine Effects

No special studies investigating potential estrogenic or endocrine effects of glufosinate-ammonium have been conducted. However, the standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects but no such effects were noted in any of the studies with either glufosinate-ammonium or its metabolites.

D. Aggregate Exposure

Glufosinate-ammonium is a non-selective, post-emergent herbicide with both food and non-food uses. As such, aggregate non-occupational exposure would include exposures resulting from consumption of potential residues in food and water, as well as from residue exposure resulting from non-crop use around trees, shrubs, lawns, walks, driveways, etc. Thus, the possible human exposure from food, drinking water and residential uses has been assessed below.

1. *Food.* For purposes of assessing the potential dietary exposure from food under the proposed tolerances, the petitioner has been advised that the EPA has estimated exposure based on the Theoretical Maximum Residue Contribution (TMRC) derived from the initially established tolerances for glufosinate-ammonium on apples, grapes, tree nuts, bananas, milk and the fat, meat and meat-by-products of cattle, goats, hogs, horses and sheep as well as the subsequently established tolerances for glufosinate-ammonium on field corn, soybeans, aspirated grain fractions, and the eggs, fat, meat and meat-by-products of poultry. The TMRC is obtained by using a model which multiplies the tolerance level residue for each commodity by consumption data which estimate the amount of each commodity and products derived from the commodity that are eaten by the U.S. population and various population subgroups. In conducting this exposure assessment, the EPA has made very conservative assumptions—100% of all commodities will contain glufosinate-ammonium residues and those residues would be at the level of the tolerance—which result in a large overestimate of human exposure. Thus, in making a safety determination for these tolerances, the Agency took into account this very conservative exposure assessment. In 62 FR 5333 (February 5, 1997), the Agency concluded that the original tolerances for apples, nuts, grapes and the secondary tolerances in animal commodities utilize 2.07% of the Reference Dose (RfD) and that the subsequent tolerances for the corn and soybean commodities will utilize 3.7% of the RfD.

2. *Drinking water.* There is presently no EPA Lifetime Health Advisory level or Maximum Contaminant Level established for residues of glufosinate-ammonium in water. The petitioner has been advised by the EPA that all environmental fate data requirements for glufosinate-ammonium have been satisfied. The potential for glufosinate-ammonium to leach into groundwater has been assessed in a total of nine terrestrial field dissipation studies conducted in several states and in varying soil types. The degradation of glufosinate-ammonium in these studies was rapid, with half-lives ranging from a low of 6 to a high of 23 days. Despite the relatively high water solubility of glufosinate-ammonium, this compound did not appear to leach under typical test conditions. This is a result of the combination of its rapid degradation and its tendency to bind to certain soil elements such as clay or organic matter. Based on these studies and the expected conditions of use, the potential for finding significant glufosinate-ammonium residues in water is minimal and the contribution of any such residues to the total dietary intake of glufosinate-ammonium will be negligible.

3. *Non-dietary exposure.* As a non-selective, post-emergent herbicide, homeowner use of glufosinate-ammonium will consist primarily of spot spraying of weeds around trees, shrubs, walks, driveways, flower beds, etc. There will be minimal opportunity for post-application exposure since contact with the treated weeds will rarely occur. Thus, any exposures to glufosinate-ammonium resulting from homeowner use will result from dermal exposure during the application and will be limited to adults, not to infants or children. These exposures are not expected to pose any acute toxicity concerns. Furthermore, based on the US EPA National Home and Garden Pesticide Use Survey (RTI/5100/17-01F, March 1992), the average homeowner is expected to use non-selective herbicides only about 4 times a year. Thus, these exposures would not normally be factored into a chronic exposure assessment.

E. Cumulative Effects

The potential for cumulative effects of glufosinate-ammonium and other substances that have a common mechanism of toxicity must also be considered. The precise mechanism of action for the toxic effects of glufosinate-ammonium in animals is not known but is believed to result, at least in part, from interference with the neurotransmitter function of glutamate, to which it is a close structural analog. No other registered active ingredients are known to have a similar mechanism of action. Thus, no cumulative effects with other substances are anticipated. Furthermore, the residues in or on transgenic crops will consist primarily of the metabolites of glufosinate-ammonium, not glufosinate-ammonium itself. These metabolites are less toxic than glufosinate-ammonium and, because they are not structural analogs of glutamate, they should not cause the same effects. Thus, consideration of a common mechanism of toxicity is not appropriate at this time and only the potential risks of glufosinate-ammonium need to be considered in its aggregate exposure assessment.

F. Safety Determinations

1. *U.S. population.* Based on a complete and reliable toxicity database, the EPA has adopted an RfD value of 0.02 mg/kg/day using the NOEL of 2.1 mg/kg/day from the chronic rat toxicity study and a 100-fold safety factor. Using the Dietary Risk Evaluation System (DRES) with raw agricultural commodity residue values set at the established and proposed tolerance levels and with reasonable maximum market share estimates applied ("realistic" case assessment), AgrEvo has calculated that aggregate dietary exposure to glufosinate-ammonium from the previously established tolerances and the proposed tolerances on sugar beets, canola and potatoes will utilize 2.1% of the RfD for the U.S. population (48 states). There is generally no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, there is a reasonable certainty that no harm will result from aggregate exposure to glufosinate-ammonium residues to the U.S. population in general.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of glufosinate-ammonium, one should consider data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during pre-natal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposure to the pesticide.

Three developmental toxicity studies in rats (including pre- and post-natal phases), a developmental toxicity study in rabbits, and a 2-generation rat reproduction study have been conducted with glufosinate-ammonium. No evidence of developmental toxicity was noted in rabbits, even at the maternally toxic dose level of 20 mg/kg/day. No developmental or reproductive effects were noted in rats except at parentally toxic dose levels. The NOEL's for maternal and developmental toxicity in the rat developmental toxicity studies were determined to be 10 mg/kg/day and 50 mg/kg/day, respectively, based on findings of hyperactivity and vaginal bleeding in dams at 50 mg/kg/day and increased incidence of arrested renal and ureter development in fetuses at 250 mg/kg/day. The parental and reproductive NOEL's in the 2-generation rat reproduction study were determined to be 40 ppm (4 mg/kg/day) and 120 ppm (12 mg/kg/day), respectively, based on increased parental kidney weights at 120 ppm and decreased numbers of pups at 360 ppm. In all cases, the reproductive and developmental NOEL's were greater than or equal to the parental NOEL's, thus indicating that glufosinate-ammonium does not pose any increased risk to infants or children.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete. Further, the NOEL at 2.1 mg/kg/day from the chronic rat study with glufosinate-ammonium, which was used to calculate the RfD (discussed above), is already lower than the NOEL's from the reproductive and developmental studies with glufosinate-ammonium by a factor of at least 6-fold. Therefore, an additional safety factor is not warranted and an RfD of 0.02 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

Using the DRES analysis with raw agricultural commodity residue values set at the established and proposed tolerance levels and with reasonable maximum market share estimates applied ("realistic" case assessment), AgrEvo has calculated that aggregate dietary exposure to glufosinate-ammonium from the previously established tolerances and the proposed tolerances on sugar beets, canola and potatoes will utilize 5.5% of the RfD for non-nursing infants (1– year old), the most sensitive population sub-group and 5.3% of the RfD for children (1–6 year old), the second most sensitive population sub-group. Therefore, based on the completeness and reliability of the toxicity data and a comprehensive exposure assessment, it may be concluded that there is a reasonable certainty that no harm will result to

infants and children from aggregate exposure to glufosinate-ammonium residues.

G. International Tolerances

An analysis of the Codex Alimentarius Commission (Codex) tolerances has been conducted. While no international Codex tolerances for selective uses of tolerances for glufosinate-ammonium in the desiccation use pattern have been established for conventional canola (rapeseed) at 5 ppm, crude rapeseed oil at 0.05 ppm and potatoes at 0.5 ppm. These tolerances are established for the sum of glufosinate-ammonium and 3-methylphosphinico-propionic acid, calculated as glufosinate (free acid). The U.S. proposal for a 0.4 ppm tolerance for residues of glufosinate-ammonium in potatoes will be harmonized with the Canadian tolerance which has already been established at this level.

The Codex tolerances for glufosinate-ammonium in or on sugar beets have been established at 0.05 ppm in the beet and 0.1 ppm in the tops (leaves). AgrEvo intends to propose higher tolerances to the Codex commission for glufosinate-ammonium use on transgenic sugar beets in order to harmonize these tolerances with those proposed in the U.S. and elsewhere. (Joanne Miller)

2. K-I Chemical U.S.A., Inc.

PP 7F4821

EPA has received an amendment to pesticide petition (PP 7F4821) from K-I Chemical U.S.A., Inc. , White Plains, New York 10606, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of herbicide, fluthiacet-methyl in or on the raw agricultural commodity popcorn grain at 0.02 ppm.

On April 14, l997, EPA announces receipt of a pesticide petition (PP 7F4821) from K-I Chemical U.S.A., Inc., 11 Martine Avenue, 9th Floor, White Plains, NY 10606, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide fluthiacet-methyl: Acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H*,3*H*-[1,3,4]thiadiazolo[3,4-*a*] pyridazin-1-ylidene)amino]phenyl]thio]-methylester in or on the raw agricultural commodities field corn grain and sweet corn grain (K + CWHR) at 0.02 ppm and corn forage and fodder at 0.05 ppm.

On September 4, 1997 K-I Chemical, U.S.A., Inc., amended PP 7F4821 to include a proposed tolerance for popcorn grain at 0.02 ppm. EPA has determined that the amended petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residues in corn is adequately understood following application of fluthiacet-methyl. Residue levels and the metabolic pathway are consistent with those in soybeans. Parent fluthiacet-methyl was the primary component of the residue seen in corn grain, forage, fodder and silage. Results of these studies have been submitted to the EPA.

2. *Analytical method.* K-I Chemical has submitted practical analytical methods (AG–603B and AG–624) for detecting and measuring the level of fluthiacet-methyl in or on corn and corn commodities and in animal tissues with a limit of detection that allows monitoring residues at or above the levels set for the proposed tolerance. The limit of quantitation of the crop method is 0.01 ppm in corn and corn commodities, 0.05 ppm in animal tissues and 0.01 ppm in milk. The crop method involves extraction, filtration, and solid phase clean up. Residue levels of fluthiacet-methyl are determined by gas chromatographic analysis utilizing a nitrogen phosphorus detector and a fused-silica column. The animal tissue method involves extraction, filtration, and partition. Determination of residue levels in animal tissues is by HPLC with UV detection via column switching using C1 and C18 columns. The analyte of interest in animal tissues and milk is the major animal metabolite CGA–300403. Residues of fluthiacet-methyl in corn are determined by gas chromatography.

3. *Magnitude of residues.* The residue of concern in corn is fluthiacet-methyl per se. Twenty-one field residue studies were conducted with corn grown in nineteen states. Fifteen of the studies were on field corn and six on sweet corn. No studies were conducted with popcorn, however K-I believes that the data on field and sweet corn support a tolerance in popcorn as well. Because the proposed use rate and pattern is the same for popcorn, it is reasonable to conclude that residues in popcorn grain will not exceed the proposed tolerance of 0.02 ppm. Residues in field and sweet corn forage after the day of application were less than the proposed tolerance of 0.05 ppm. Popcorn forage is not a fed commodity. Nonetheless, residues in popcorn forage or fodder are not expected to exceed the proposed tolerance of 0.05 ppm. The proposed tolerances of 0.02 ppm in field corn, sweet corn, and popcorn grain and 0.05 ppm in field corn and sweet corn forage and fodder are adequate to cover residues likely to occur when Action herbicide is applied to corn as directed.

This position is based on section 180.34(d) of the CFR which states that "If the pesticide chemical is not absorbed into the living plant or animal when applied (is not systemic), it may be possible to make a reliable estimate of the residues to be expected on each commodity in a group of related commodities on the basis of less data than would be required for each commodity in the group, considered separately." And, section 180.34(e) states that "Each of the following groups of crops lists raw agricultural commodities that are considered to be related for the purpose of paragraph (d) of this section; field corn, popcorn, sweet corn (each in grain form)."

Residues of fluthiacet-methyl in treated field and sweet corn grain and sweet corn ears were less than the method LOQ (<0.01 ppm). Because the proposed use rate and pattern is the same for popcorn, it is reasonable to conclude that residues in popcorn grain will not exceed the proposed tolerance of 0.02 ppm. Residues in field and sweet corn forage after the day of application were less than the proposed tolerance of 0.05 ppm. Popcorn forage is not a feed commodity. Nonetheless, residues in popcorn forage or fodder are not expected to exceed the proposed tolerance of 0.05 ppm. The proposed tolerances of 0.02 ppm in field corn, sweet corn, and popcorn grain and 0.05 ppm in field corn and sweet corn forage and fodder are adequate to cover residues likely to occur when Action herbicide is applied to corn as directed.

B. Toxicological Profile

1. *Acute toxicity.*

•A rat acute oral study with an LD_{50} > 5,000 mg/kg.

•A rabbit acute dermal study with an LD_{50} > 2,000 mg/kg.

•A rat inhalation study with an LC_{50} > 5.05 mg/liter.

•A primary eye irritation study in the rabbit showing moderate eye irritation.

•A primary dermal irritation study in the rabbit showing no skin irritation.

•A primary dermal sensitization study in the Guinea pig showing no sensitization.

•Acute neurotoxicity study in rats. Neurotoxic effects were not observed. The NOEL was 2,000 mg/kg.

2. *Genotoxicity.* In vitro gene mutation tests: Ames test - negative; Chinese hamster V79 test - negative; rat hepatocyte DNA repair test - negative; E. Coli letal DNA damage test - negative. In vitro chromosomal aberration tests: Chinese hamster ovary - positive at cytotoxic doses; Chinese hamster lung - positive at cytotoxic doses; human lymphocyes - positive at cytotoxic doses. In vivo chromosome aberration tests: Micronucleus assays in rat liver - negative; mouse bone marrow test - negative.

3. *Reproductive and developmental toxicity.* Reproductive and developmental toxicity. Teratology study in rats with a maternal and developmental NOEL equal to or greater than 1,000 mg/kg/day.

Teratology study in rabbits with a maternal NOEL greater than or equal to 1,000 mg/kg/day and a fetal NOEL of 300 mg/kg based on a slight delay in fetal maturation. 2-generation reproduction study in rats with a NOEL of 36 mg/kg/day, based on liver lesions in parental animals and slightly reduced body weight development in parental animals and pups. [The treatment had no effect on reproduction or fertility.]

4. *Subchronic toxicity.* 90–day subchronic neurotoxicity study in rats. The NOEL was 0.5 mg/kg/day based on reduced body weight gain. No clinical or morphological signs of neurotoxicity were detected at any dose level. 28–day dermal toxicity study in rats with a NOEL equal to or higher than the limit dose of 1,000 mg/kg.

6–week dietary toxicity study in dogs with a NOEL of 162 mg/kg/day in males and 50 mg/kg/day in females based on decreased body weight gain and modest hematological changes.

90–day subchronic dietary toxicity study in rats with a NOEL of 6.2 mg/kg/day based on liver changes and hematological effects.

5. *Chronic toxicity.* 24–month combined chronic toxicity/ carcinogenicity study in rats with a NOEL of 2.1 mg/kg/day. Based on reduced body weight development and changes in bone marrow, liver, pancreas and uterus the MTD was exceeded at 130 mg/kg/day. A positive trend of adenomas of the pancreas in male rats treated at 130 mg/kg/day and above may be attributable to the increased survival of the rats treated at high doses. 18–month oncogenicity study in mice with a NOEL of 0.14 mg/kg/day. Based on liver changes, the MTD was reached at 1.2 mg/kg/day. The incidence of hepatocellular tumors was increased in males treated at 12 and 37 mg/kg/day.

C. Endocrine effects

Based on the results of short-term, chronic, and reproductive toxicity studies there is no indication that fluthiacet-methyl might interfere with the endocrine system. Considering further the low environmental concentrations and the lack of bioaccumulation, there is no risk of endocrine disruption in humans or wildlife.

Animal metabolism. The results from hen and goat metabolism studies, wherein fluthiacet-methyl was fed at exaggerated rates, showed that the transfer of fluthiacet-methyl residues from feed to tissues, milk and eggs is extremely low. No detectable residues of fluthiacet-methyl (or metabolite CGA–300403) would be expected in meat, milk, poultry, or eggs after feeding the maximum allowable amount of treated corn and soybeans. This conclusion is based on residue data from the corn and soybean metabolism and field residue chemistry studies coupled with the residue transfer from feed to tissues, milk and eggs obtained in the goat and hen metabolism studies.

D. Aggregate Exposure

Aggregate exposure includes exposure from dietary exposure from food and drinking water; and non-dietary exposure from non-dietary uses of pesticides products containing the active ingredient, fluthiacet-methyl.

1. *Dietary exposure.* Dietary exposure consists of exposures from food and drinking water.

2. *Food.* In this assessment, K-I Chemical has conservatively assumed that 100% of all soybeans and corn used for human consumption would contain residues of fluthiacet-methyl and all residues would be at the level of the proposed tolerances. The potential dietary exposure to fluthiacet-methyl was calculated on the basis of the proposed tolerance which is based on an LOQ of 0.01 ppm in soybeans and 0.02 ppm in corn (2 x LOQ). The anticipated residues in milk, meat and eggs resulting from feeding the maximum allowable amount of soybean and corn commodities to cattle and poultry were calculated, and the resulting quantities were well below the analytical method LOQ. Therefore, tolerances for milk, meat and eggs are not required. Assuming 100% crop treated values, the chronic dietary exposure of the general U.S. population to fluthiacet-methyl would correspond to 2.3% of the RfD.

3. *Drinking water.* Although fluthiacet-methyl has a slight to medium leaching potential; the risk of the parent compound to leach to deeper soil layers is negligible under practical conditions in view of the fast degradation of the product. For example, the soil metabolism half-life was extremely short, ranging from 1.1 days under aerobic conditions to 1.6 days under an aerobic conditions. Even in the event of very heavy rainfalls immediately after application, which could lead to a certain downward movement of the parent compound, parent fluthiacet-methyl continues to be degraded during the transport into deeper soil zones. Considering the low application rate of fluthiacet-methyl, the strong soil binding characteristics of fluthiacet-methyl and its degradates, and the rapid degradation of fluthiacet-methyl in the soil, there is no risk of ground water contamination with fluthiacet-methyl or its metabolites. Thus, aggregate risk of exposure to fluthiacet-methyl does not include drinking water

4. *Non-dietary exposure.* Fluthiacet-methyl is not registered for any other use and is only proposed for use on agricultural crops. Thus, there is no potential for non-occupational exposure other than consumption of treated commodities containing fluthiacet-methyl residue.

E. Cumulative Effects

A cumulative exposure assessment is not appropriate at this time because there is no information availeble to indicate that effects of fluthiacet-methyl in mammals would be cumulative with those of another chemical compound.

F. Safety Determination

1. *U.S. population.* Using the very conservative exposure assumptions described above coupled with toxicity data for fluthiacet-methyl, K-I Chemical calculated that aggregate, chronic exposure to fluthiacet-methyl will utilize no more than 2.3% of the RfD for the U.S. population. Because the actual anticipated residues are well below tolerance levels and the percent crop treated with fluthiacet-methyl is expected to be less than 25% of planted corn or soybeans, a more realistic estimate is that dietary exposure will likely be at least 20 times less than the conservative estimate previously noted (the margins of exposure will be accordingly higher). Exposures below 100% of the RfD are generally not of concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

Also the acute dietary risk to consumers will be far below any significant level; the lowest NOEL from a short term exposure scenario comes from the teratology study in rabbits with a NOEL of 300 mg/kg. This NOEL is 2,000-fold higher than the chronic NOEL which provides the basis for the RfD (see above). Acute dietary exposure estimates which are based on a combined food survey from 1989 to 1992 predict margins of exposure of at least one million for 99.9% of the general population and for women of child bearing age. Margins of exposure of 100 or more are generally considered satisfactory. Therefore, K-I Chemical concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fluthiacet-methyl residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of fluthiacet-methyl, K-I Chemical considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. A slight delay in fetal maturation was observed in a teratology study in rabbits at a daily dose of 1,000 mg/kg. In a 2-generation reproduction study fluthiacet-methyl did not affect the reproductive performance of the parental animals or the physiological development of the pups. The NOEL was 500 ppm for maternal animals and their offspring, which is 50,000 fold higher than the RfD.

3. *Reference dose.* Using the same conservative exposure assumptions as was used for the general population, the percent of the RfD that will be utilized by aggregate exposure to residues of fluthiacet-methyl is as follows: 1.5% for nursing infants less than 1 year old, 5.9% for non-nursing infants, and 5.2% for children 1–6 years old. K-I Chemical concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues of fluthiacet-methyl.

G. International Tolerances

No international tolerances have been established under CODEX for fluthiacet-methyl. (Joanne Miller)

3. Zeneca Ag Products

PP 7F4864

EPA has received a pesticide petition (PP 7F4864) from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458] proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.507 by establishing a tolerance for residues of azoxystrobin (methyl(E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3- methoxyacrylate) and the Z-isomer of azoxystrobin (methyl(Z)-2-(2-(6-(2-cyanophenoxy) pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate)] in or on the raw agricultural commodities almond hulls at 4.0 ppm, cucurbits (chayotes, Chinese waxgourds, citron melons, cucumbers, gherkins, edible gourds, Mordica spp., cantaloupes, casabas, crenshaw melons, golden pershaw melons, honeydew melons, honey balls, mango melons, Persian melons, summer squashes, winter squashes, and watermelons) at 0.3 ppm, peanut hay at 1.5 ppm, pistachios at 0.01 ppm, rice grain at 4.0 ppm, rice hulls at 20 ppm, rice straw at 11 ppm, tree nuts (almonds, beech nuts, Brazil nuts, butternuts, cashews, chestnuts, chinquapins, filberts, hickory nuts, macadamia nuts, pecans, and walnuts) at 0.01 ppm, wheat bran at 0.12 ppm, wheat grain at 0.04 ppm, wheat hay at 13.0 ppm, and wheat straw at 4.0 ppm. It is also proposed that 40 CFR 180.507 be amended by establishment of a tolerance for the residues of azoxystrobin (methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) in or on the following animal products: eggs at 0.4 ppm, cattle kidney at 0.06 ppm, liver of cattle, goat, horse, and sheep at 0.3 ppm, hog liver at 0.2 ppm, poultry liver at 0.4 ppm, meat and fat of cattle, goat, horse, sheep, poultry and swine at 0.01 ppm, and milk at 0.006 ppm. The proposed analytical methods use gas chromatography with nitrogen-phosphorous detection (GC-NPD) or, in mobile phase, high performance liquid chromatography with ultraviolet detection (HPLC-UV). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of azoxystrobin as well as the nature of the residues is adequately understood for purposes of the tolerances. Plant metabolism has been evaluated in three diverse crops, grapes, wheat, and peanuts, which should serve to define the similar metabolism of azoxystrobin in a wide range of crops. Parent azoxystrobin is the major component found in crops. Azoxystrobin does not accumulate in crop seeds or fruits. Metabolism of azoxystrobin in plants is complex, with more than 15 metabolites identified. These metabolites are present at low levels, typically much less than 5% of the TRR.

2. *Analytical method.* An adequate analytical method, gas chromatography with nitrogen-phosphorous detection (GC-NDP) or, in mobile phase, by high performance liquid chromatography with ultraviolet detection (HPLC-UV), is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The Analytical Chemistry Section of the EPA concluded that the method(s) are adequate for enforcement. Analytical methods are also available for analyzing meat, milk, poultry, and eggs and also underwent successful independent laboratory validations.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral toxicity study in rats of technical azoxystrobin resulted in an LD_{50} of >5,000 milligrams/kilogram (limit test) for both males and females. The acute dermal toxicity study in rats of technical azoxystrobin resulted in an LD_{50} of >2,000 milligrams/kilogram (limit dose). The acute inhalation study of technical azoxystrobin in rats resulted in an LC_{50} of 0.962 milligrams/liter in males and 0.698 milligrams/liter in females. In an acute oral neurotoxicity study in rats dosed once by gavage with 0, 200, 600, or 2,000 milligrams/ kilogram azoxystrobin, the systemic toxicity no observed effect level (NOEL) was 200 milligrams/kilogram and the systemic toxicity lowest observed effect level (LOEL) was 200 milligrams/kilogram, based on the occurrence of transient diarrhea in both sexes. There was no indication of neurotoxicity at the doses tested. This acute neurotoxicity study is considered supplementary (upgradable) but the data required are considered only to be confirmatory. Zeneca has submitted the required confirmatory data; these data have been scheduled for review by the Agency.

2. *Genotoxicty (mutagenicity).* Azoxystrobin was negative for mutagenicity in the salmonella/ mammalian activation gene mutation assay, the mouse micronucleus test, and the unscheduled DNA synthesis in rat hepatocytes/mammalian cells (in vivo/ in vitro procedure study). In the forward mutation study using L5178 mouse lymphoma cells in culture, azoxystrobin tested positive for forward gene mutation at the TK locus. In the *in vitro* human lymphocytes cytogenetics assay of azoxystrobin, there was evidence of a concentration related induction of chromosomal aberrations over background in the presence of moderate to severe cytotoxicity.

3. *Reproductive and developmental toxicity.* In a prenatal development study in rats gavaged with azoxystrobin at dose levels of 0, 25, 100, or 300 mg/ kg/day during days 7 through 16 of gestation, lethality at the highest dose caused the discontinuation of dosing at that level. The developmental NOEL was greater than or equal to 100 mg/kg/ day and the developmental lowest observed effect level (LOEL) was >100 mg/kg/day because no significant adverse developmental effects were observed. In this same study, the maternal NOEL was not established; the maternal LOEL was 25 mg/kg/day, based on increased salivation.

In a prenatal developmental study in rabbits gavaged with 0, 50, 150, or 500 mg/kg/day during days 8 through 20 of gestation, the developmental NOEL was 500 mg/kg/day and the developmental LOEL was >500 mg/kg/day because no treatment-related adverse effects on development were seen. The maternal NOEL was 150 mg/kg/day and the maternal LOEL was 500 mg/kg/day, based on decreased body weight gain.

In a 2-generation study, rats were fed 0, 60, 300, or 1,500 ppm of azoxystrobin. The reproductive NOEL was 32.2 mg/kg/day. The reproductive LOEL was 165.4 mg/kg/day. Reproductive toxicity was demonstrated as treatment-related reductions in adjusted pup body weights as observed in the F1B and F2. pups dosed at 1500 ppm (165.4 mg/kg/day).

4. *Subchronic toxicity.* In a 90-day rat feeding study the NOEL was 20.4 mg/ kg/day for males and females. The LOEL was 211.0 mg/kg/day based on decreased weight gain in both sexes, clinical observations of distended abdomens and reduced body size, and clinical pathology findings attributable to reduced nutritional status.

In a subchronic toxicity study in which azoxystrobin was administered to dogs by capsule for 92 or 93 days, the NOEL for both males and females was 50 mg/kg/day. The LOEL was 250 mg/ kg/day, based on treatment-related clinical observations and clinical chemistry alterations at this dose.

In a 21-day repeated-dose dermal rat study using azoxystrobin, the NOEL for both males and females was greater than or equal to 1,000 mg/kg/day (the highest dosing regimen); a LOEL was therefore not determined.

5. *Chronic toxicity and carcinogenicity.* In a 2–year feeding study in rats fed diets containing 0, 60, 300, and 750/1,500 ppm (males/ females), the systemic toxicity NOEL was 18.2 mg/kg/day for males and 22.3 mg/kg/day for females. The systemic toxicity LOEL for males was 34 mg/kg/ day, based on reduced body weights, food consumption, and food efficiency; and bile duct lesions. The systemic toxicity LOEL for females was 117.1 mg/ kg/day, based on reduced body weights. There was no evidence of carcinogenic activity in this study.

In a 1–year feeding study in dogs to which azoxystrobin was fed by capsule at doses of 0, 3, 25, or 200 mg/kg/day, the NOEL for both males and females was 25 mg/kg/day and the LOEL was 200 mg/kg/day for both sexes, based on clinical observations, clinical chemistry changes, and liver weight increases that were observed in both sexes.

In a 2–year carcinogenicity feeding study in mice using dosing concentrations of 0, 50, 300, or 2,000 ppm, the systemic toxicity NOEL was 37.5 mg/kg/day for both males and females. The systemic toxicity LOEL was 272.4 mg/kg/day for both sexes, based on reduced body weights in both at this dose. There was no evidence of carcinogenicity at the dose levels tested.

According to the new proposed guidelines for Carcinogen Risk Assessment (April, 1996), the appropriate descriptor for human carcinogenic potential of azoxystrobin is "Not Likely". The appropriate subdescriptor is "has been evaluated in at least two well conducted studies in two appropriate species without demonstrating carcinogenic effects".

6. *Animal metabolism.* In the study of metabolism in the rat, azoxystrobin--unlabeled or with a pyrimidinyl, phenylacrylate, or cyanophenyl label--was administered to rats by gavage as a single or 14-day repeated doses. Less than 0.5% of the administered dose was detected in the tissues and carcass up to 7 days post-dosing and most of it was in excretion- related organs. There was no evidence of potential for bioaccumulation. The primary route of excretion was via the feces, though 9 to 18% was detected in the urine of the various dose groups. Absorbed azoxystrobin appeared to be extensively metabolized. A metabolic pathway was proposed showing hydrolysis and subsequent glucuronide conjugation as the major biotransformation process. This study was classified as supplementary but upgradable; the company has submitted data intended to upgrade the study and these data have been reviewed.

C. Dietary Exposure

1. *Food.* The primary route of human exposure to azoxystrobin is expected to be dietary ingestion of both raw and processed agricultural commodities from bananas, grapes, peaches, peanuts, tomatoes, tree nuts, pistachios, rice, cucurbits, and wheat. A chronic dietary exposure analysis (combined years 1989 - 1992 U.S. Department of Agriculture's Nationwide Food Consumption Survey using the Technical Assessment Systems, Inc. "EXPOSURE 1" software) was conducted using tolerance level residues and 100% crop treated information to estimate the TMRC for the general population and 22 subgroups.

2. *Drinking water.* There is no established Maximum Concentration Level for residues of azoxystrobin in drinking water. The potential exposures associated with azoxystrobin in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the proposed uses were granted.

3. *Non-dietary exposure.* The Agency evaluated the existing toxicological database for azoxystrobin and assessed appropriate toxicological endpoints and dose levels of concern that should be assessed for risk assessment purposes. Dermal absorption data indicate that absorption is less than or equal to 4%. No appropriate endpoints were identified for acute dietary or short term, intermediate term, and chronic term (noncancer) dermal and inhalation occupational or residential exposure. Therefore, risk assessments are not required for these exposure scenarios and there are no residential risk assessments to aggregate with the chronic dietary risk assessment.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA does not have, at this time, available data to determine whether azoxystrobin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, azoxystrobin does not appear to be structurally similar to any other pesticide chemical at this time. No metabolites of azoxystrobin that are of toxicological concern are known to the Agency. Azoxystrobin appears to the only pesticide member of its class of

chemistry and there are no reliable data to indicate that this chemical is structurally or toxicologically similar to existing chemical substances at this time. Therefore, it appears unlikely that azoxystrobin bears a common mechanism of activity with other substances. For the purposes of this tolerance action, it is not appropriate to assume that azoxystrobin has a common mechanism of toxicity with other substances.

E. Safety Determination

The chronic toxicity Reference Dose (RfD) for azoxystrobin is 0.18 mg/kg/day, based on the NOEL of 18.2 mg/kg/day from the rat chronic toxicity/carcinogenicity feeding study in which decreased body weight and bile duct lesions were observed in male rats at the LOEL of 34 mg/kg/day. This NOEL was divided by an Uncertainty Factor of 100, to allow for interspecies sensitivity and intraspecies variability.

1.As part of the hazard assessment process, the available toxicological database was reviewed to determine if there are toxicological endpoints of concern. For azoxystrobin, the Agency does not have a concern for acute dietary exposure since the available data do not indicate any evidence of significant toxicity from a 1–day or single event exposure by the oral route. Therefore, an acute dietary risk assessment is not required for azoxystrobin at this time.

2. *U.S. population.* The chronic dietary exposure analysis showed that exposure from the proposed new tolerances in or on tree nuts, pistachios, cucurbits, rice, and wheat for the general U.S. population would be 1.1% of the RfD. This analysis used a value of 0.05 ppm for banana pulp rather than the value of 0.5 that has been established for banana (whole fruit including peel) because adequate data were submitted to support use of the lower value in the dietary risk analyses.

3. *Infants and children.* The chronic dietary exposure analysis, using the same tolerances and commodities that were used for the same analysis for the general U.S. population showed that the exposure of Non-nursing Infants (the subgroup with the highest exposure) would be 4.1% of the RfD.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100th of the no observed effect level in the animal study appropriate to the particular risk assessment. This hundredfold uncertainty (safety) factor/margin of exposure (safety) is designed to account for combined inter- and intraspecies variability. EPA believes that reliable data support using the standard hundredfold margin/factor not the additional tenfold margin/factor when EPA has a complete database under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor. The database for azoxystrobin is complete except that the acute and subchronic neurotoxicity studies require upgrading. The upgrade data are confirmatory only, have been submitted by the company, and await review by the Agency.

There was no evidence of increased susceptibility of infants or children to azoxystrobin. Therefore, no additional uncertainty factors are considered necessary at this time.

F. Endocrine Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...". The Agency is currently working with interested shareholders, including other government agencies, public interest groups, industry, and research scientists, to develop a screening and testing program and a priority setting scheme to implement this program. Congress has allowed three (3) years from the passage pf FQPA (August 3, 1999) to implement this program. When this program is implemented, EPA may require further testing of azoxystrobin and end-use product formulations for endocrine disrupter effects. There are currently no data or information suggesting that azoxystrobin has any endocrine effects.

G. International Tolerances

There are no Codex Maximum Residue Levels established for azoxystrobin. (Cynthia Giles-Parker)

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ENVIRONMENTAL PROTECTION AGENCY

[PF–765; FRL–5745–9]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–765, must be received on or before November 7, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Joe Tavano	Rm. 214, CM #2, 703–305–6411, e-mail: tavano.joe@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Bipin Gandhi,	Rm. 4W53, CS #1, 703–308–8380, e-mail: gandhi.bipin@epamail.epa.gov.	2800 Crystal Drive, Arlington, VA
Eugene Wilson	Rm. 245, CM #2, 703–305–6103, e-mail: wilson.eugene@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–765] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number PF–765 and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 25, 1997.

James Jones,

Actinig Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. B2E Corporation

PP 7E4907

EPA has received a pesticide petition (PP 7E4907) from B2E Corporation, 16 School Street, Rye, NY 10580 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act,(FFDCA) 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 2-Hydroxyacetophenone (2-HAP) in or on the raw agricultural commodity. The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography using UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

1. *Acute toxicity.* A rat acute oral study with an $LD_{50} > 500$ milligrams/kilogram (mg)/(kg), a rabbit acute dermal toxicity study with an $LD_{50} > 2{,}000$ mg/kg, a primary eye irritation study in the rabbit showing no irritation, a rabbit primary dermal irritation study showing 2-HAP is not an irritant, a skin sensitization study in guinea pigs showing 2-HAP is a slight skin sensitizer, and a 28 day rat inhalation study with a no observed-effect-level (NOEL) of 160 milligrams/cubic meter (mg)/(m^3).

2. *Genotoxicty.* 2-HAP was tested in the Ames Salmonella/microsome plate incorporation assay both in the presence and the absence of a metabolic activation system. Under the conditions of the assay, 2-HAP did not exhibit genetic activity according to the assay criteria. It can therefore be considered non-mutagenic.

3. *Ecotoxicity.* A study of acute toxicity to Bluegill Sunfish was conducted at five nominal concentrations, selected on the basis of preliminary toxicity screening, as well as a control and the solvent (acetone). The fish (10 in each replicate) were observed at 24, 48, 72 and 96 hour intervals for signs of toxic effects and mortality. 2-HAP was determined to have an LC_{50} (96 hours) of 115 milligrams/liter (mg)/(L) and a no observed effect-concentration (NOEC) of 31.3 mg/L.

A study of acute toxicity to Daphnids was conducted at five nominal concentrations as well as a control and solvent (acetone) over 48 hours (hrs). They were observed at 24 and 48 hours for signs of toxic effects and mortality. 2-HAP was calculated to have an EC_{50} (48 hr) of 57 mg/L under these conditions. The NOEC was found to be 25 mg/L.

B. Environmental Fate

Aerobic soil metabolism was evaluated by a Ready Biodegradation by CO_2 Production study. The test liquid was added to test medium at 10 and 20 mg/L. Unacclimated diluted inoculum (20 ml, 1.3 million CFU. ml) was added to 2 liters of diluted test material, positive control material (glucose at 20 milligrams/milliter (mg)/(ml) or control medium. Carbon dioxide free air was bubbled through the stirred 22.6–23.2 ° C. incubation mixtures and carbon dioxide collected for 28 days. Carbon dioxide was measured by titration of barium hydroxide traps at regular intervals of the study. Percent biodegradation was estimated by percent of theoretical carbon dioxide

(TCO_2) production achieved based on the empirical formula, assuming that all organic carbon in the test material is converted to carbon dioxide, and by measurement of total organic carbon (TOC) remaining after the 28 day incubation.

After a lag of about 1 day, test material carbon dioxide production achieved 93.2% (at 10 mg/L) and 86.7% (at 20 mg/l) TCO_2 28 days after study start. The soluble organic carbon content at study termination was < 0.5 mg/L and 0.7 mg/l initial concentrations of test material respectively. This corresponds to 100% (at 10 mg/L) and 98.6% (at 20 mg/L) removal of test material also indication effective mineralization.

The 2-HAP produced greater than 60% of the TCO_2 within 28 days of incubation and can be considered readily biodegradable.

Anaerobic degradation is not expected to be a factor given the application of the product.

C. Aggregate Exposure

1. *Dietary exposure.* Dietary exposure for 2-HAP is expected to be negligible for the application of 2-HAP in non-food use pesticides. If 2-HAP were to be incorporated in pesticides used for food crops, the level of 2-HAP would be at most, a small fraction of the acceptable tolerances of the pesticides. The use level within the pesticide is only a maximum of 0.1% by weight. The rapid biodegradability make significant uptake into plant tissue unlikely. Human exposure may be expected to be within acceptable (note: FDA classifies this as a GRAS material for use in meat products, poultry, condiments, soups and seasonings) limits.

2. *Drinking water.* Although 2-HAP is not considered to be hydrolyzable, it is readily biodegradable. Use levels at a maximum of 0.1% within pesticides also make it unlikely that there will be a presence in groundwater. Based on this data, exposure to residues in drinking water in not anticipated. The EPA has not established a Maximum Concentration Level for residues of 2-HAP in drinking water.

3. *Non-dietary exposure.* Evaluations by B2E Corporation of the estimated non-occupational exposure to 2-HAP have concluded that the potential exposure for the general population may be from residues in food crops discussed above. Another possible exposure is from the use on turf of pesticides containing 2-HAP as an inert. The route of exposure would be dermal (assuming that people would be walking barefoot on treated areas) and the material has been shown to have a low order of acute dermal toxicity (rabbit - LD_{50} 10,300 mg/kg).

D. Cumulative Effects

B2E Corporation considered the potential for cumulative effects of 2-HAP and similar substances that may have a common mechanism of toxicity. there is no information to indicate that toxic effects that might be found at high levels of exposure to 2-HAP would be cumulative with other chemical compounds. The potential risks of 2-HAP are judged solely in its aggregate exposure.

E. Safety Determination

1. *U.S. population.* Based on the exposure assumptions and the toxicity data described above, there is no appreciable risk to human health. It can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to 2-HAP residues.

2. *Infants and children.* Based on the use patterns of the material and the levels of exposure, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to 2-HAP residue.

F. International Tolerances

No international tolerances have been established.

2. Novartis Crop Protection, Inc.

PP 6F4616, 6F4617, 6F4618, & 6F4633

EPA has received a pesticide petition (PP 6F4616, 6F4617, 6F4618, & 6F4633) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Fenoxycarb, ethyl[2-(4-phenoxyphenoxy)ethyl]carbamate in or on the raw agricultural commodities: pome fruit at 0.02 parts per million (ppm); nutmeat at 0.05 ppm; almond hulls at 4.0 ppm; citrus fruit at 0.05 ppm; grass Forage (except Bluegrass) at 0.6 ppm; grass hay (except Bluegrass) at 0.5 ppm; milk, meat and meat byproducts of cattle, goats, hogs, horses and sheep at 0.01 ppm; and fat of cattle, goats, hogs, horses and sheep at 0.05 ppm. The proposed analytical method involves Column switching high performance liquid chromatography and UV detection. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of fenoxycarb in plants (apples, citrus and grass) is well understood. Identified metabolic pathways are similar in plants and animals. It has been determined that fenoxycarb, per se, is the residue of concern for tolerance setting purposes.The metabolism of fenoxycarb in plants (apples, citrus and grass) is well understood. Identified metabolic pathways are similar in plants and animals. It has been determined that fenoxycarb, per se, is the residue of concern for tolerance setting purposes.

2. *Analytical method.* Novartis Crop Protection Inc. has submitted practical analytical methodology for detecting and measuring levels of fenoxycarb in or on food. The limits of detection (2.5 ng) and quantitation (0.01 ppm) allow monitoring of food with residues at or above the levels in the proposed tolerances. All methods are based on crop specific cleanup procedures and determination nce liquid chromatography with column-switching and UV detection.

3. *Magnitude of residues.* Residue trials: 15 residue trials in 8 states on apples and pears; 16 field trials in 13 states on grasses; 13 residue trials in 4 states on citrus; 8 residue trials in 6 states on tree nuts. No residues of fenoxycarb (0.01 ppm) were found in apples or pears treated at the maximum labeled rate. The maximum residues found in grasses were 0.056 ppm in forage and 0.041 in hay. Only one detectable residue at 0.02 ppm was found on citrus. This grapefruit sample was aerially treated with the maximum labeled rate. The maximum residue found in nutmeats treated at the maximum labeled rate was 0.02 ppm.

B. Toxicological Profile

1. *Acute toxicity.* The following acute toxicity studies have been conducted to support the proposed tolerance for fenoxycarb. The studies indicate that fenoxycarb has a low order of acute toxicity with effects in catgegory III and IV.

- Rat acute oral study with an LD_{50} >10,000 mg/kg.
- Rabbit acute dermal study with an LD_{50} > 2,000 mg/kg.
- Rat inhalation study with an LC_{50} > 4.4 mg/L.
- Primary eye irritation study in the rabbit showing slight eye irritation.
- Primary dermal irritation study in the rabbit showing fenoxycarb is not a skin irritant.

- Skin sensitization study showing fenoxycarb is not a skin sensitizer in the Guinea pig.
- Dermal absorption study showing a maximum of 30.2% of fenoxycarb is absorbed by the rat following a 24 hour dermal exposure.

2. *Genotoxicty.* Results from the following assays indicate that fenoxycarb is not genotoxic: Ames Assay - Negative; Mouse Micronucleus Test - Negative; *Saccharomyces cerevisiae* D7 test - Negative.

3. *Reproductive and developmental toxicity.* Novartis conducted a teratogenicity study in the rat at doses of 0, 50, 150, or 500 mg/kg/day by gavage with maternal and developmental NOELs of ≥ 500 mg/kg/day.

Novartis also conducted a teratogenicity study in the rabbit at doses of 0, 30, 100, 200 or 300 mg/kg/day. The maternal NOEL based on reduced body weight gains was 100 mg/kg/day. The developmental NOEL was ≥ 300 mg/kg/day.

In a 2-generation reproduction study, rats were dosed of 0, 200, 600 or 1,800 ppm. The systemic NOEL was 200 ppm based on decreased body weight gains and food consumption, increased gonad weights (without effects on reproductive performance or a morphological correlate), liver hypertrophy and focal necrosis and increased liver weights. There were no effects on fertility or reproductive performance. Based on decreased pup weights and slight delays in pinna unfolding and eye opening, there was no clear developmental NOEL. A derived NOEL (DNOEL), determined using analysis of variance and regression, was 40 ppm.

4. *Subchronic toxicity.* Novartis conducted a 21–day dermal study in which fenoxycarb was applied to the shaved skin of 5 male and 5 female New Zealand White rabbits at dose levels of 0, 20, 200, or 2,000 mg/kg for 21 consecutive days. The only effect observed was a slight increase in liver weights at the high dose. However, there was no histopathological correlate to this finding and the change was interpreted as representing an adaptive response. The NOEL was 200 mg/kg.

In a 6–month oral (capsule) study of dogs dosed at 0, 50, 150 or 500 mg/kg/day, the NOEL was 150 mg/kg/day based on reduced weight gain in females.

In a 90–day feeding study, Sprague Dawley rats were fed fenoxycarb at dietary concentrations to result in doses of 0, 80, 250 or 800 mg/kg/day. Based on slight liver weight increases at 80 mg/kg/day, the NOEL was < 80 mg/kg/day.

Novartis conducted a 90–day feeding study in mice in which mice were fed dietary concentrations of fenoxycarb to result in doses of 0, 100, 300 or 900 mg/kg/day. Based on increased liver weight accompanied by fatty changes, glycogen depletion and increased multinucleated hepatocytes, the NOEL was 100 mg/kg/day.

Rats in a 21–day inhalation study were exposed to 0, 0.01, 0.10 or 1.13 mg/L for 6 hrs/day/5 days/week. Based on decreased body weight gain in males and increased liver weight in females the NOEL was 0.10 mg/L.

5. *Chronic toxicity.* In a 52 week oral (capsule) study, dogs were dosed at levels of 0, 25, 80 or 260 mg/kg/day. Based on decreased body weight gain and food consumption and decreases in adrenal weights and inorganic phosphorous the NOEL was 25 mg/kg/day.

In a 24–month chronic feeding and oncogenicity study, rats were dosed at levels of 0, 200, 600 or 1,800 ppm. Based on liver toxicity (non-neoplastic histopathology and increased liver enzymes) the NOEL was 200 ppm. There was no evidence of carcinogenic potential.

In an 80–week chronic feeding and oncogenicity study, mice were dosed at 0, 30, 110 or 420 ppm for males and 0, 20, 80 or 320 ppm for females. Systemic toxicity was not observed at any level. The NOEL for chronic toxicity was ≥ 420 ppm and 320 ppm for males and females, respectively. There was evidence of carcinogenic potential. Lung adenomas and combined adenoma/carcinoma in addition to Harderian gland tumor incidences were increased in males at 420 ppm.

In an 18–month oncogenicity study, mice were dosed at 0, 10, 50, 500 or 2,000 ppm with a NOEL of 50 ppm (5 – 6 mg/kg/day). A carcinogenic response was noted in the lung in males and females at 500 and 2,000 ppm and in the liver of male mice at 500 and 2,000 ppm.

In a study investigating biochemical parameters in livers, mice were treated at doses of 0, 50, 500 or 2,000 ppm showing that fenoxycarb is a strong inducer of hepatic xenobiotic metabolizing enzymes in the mouse and can be classified as a peroxisome proliferator..

6. *Animal metabolism.* The metabolism of fenoxycarb in animals (goat and rat) is well understood. It has been determined that fenoxycarb, per se, is the residue of concern in animal commodities for tolerance setting purposes.

C. Aggregate Exposure

1. *Food.* For purposes of assessing the potential dietary exposure under the proposed tolerances, Novartis has estimated aggregate exposure based on exposure from anticipated residues on pome fruit, tree nuts, citrus, cattle meat and milk. Since there were no detections of fenoxycarb in pome fruit, tree nuts or citrus treated according to label directions, the anticipated residue of 0.005 ppm, one-half the limit of quantitation, was used. Exposure via meat and milk comes from the possible consumption by cattle of almond hulls, grass, citrus pulp and apple pomace. Theoretical residues in milk make up greater than 50% of the possible exposure to fenoxycarb. Almost all of the theoretical residue in milk comes from almond hulls in the theoretical diet for cattle. The anticipated residue in milk is greatly exaggerated since almond hulls, in general, are not a significant portion of cattle diet. Percent crop treated figures for food crops and cattle feed were also used in the analysis.

2. *Drinking water.* The product chemistry data for fenoxycarb indicate that movement of fenoxycarb into drinking water would be unlikely and that fenoxycarb would be expected to have a strong affinity for binding to the soil. Soil metabolism data further demonstrate that fenoxycarb and its residues have an affinity for binding to soil, and thus a low propensity to move from the soil surface. Field studies in Washington, Georgia and in California showed that fenoxycarb did not move below the top 6 inches of the soil. Based on the available data, Novartis does not anticipate exposure to residues of fenoxycarb in drinking water. There is no established Maximum Contaminant Level for residues of fenoxycarb in drinking water The product chemistry data for fenoxycarb indicate that movement of fenoxycarb into drinking water would be unlikely and that fenoxycarb would be expected to have a strong affinity for binding to the soil. Soil metabolism data further demonstrate that fenoxycarb and its residues have an affinity for binding to soil, and thus a low propensity to move from the soil surface. Field studies in Washington, Georgia and in California showed that fenoxycarb did not move below the top 6 inches of the soil. Based on the available data, Novartis does not anticipate exposure to residues of fenoxycarb in drinking water. There is no established Maximum Contaminant Level for residues of fenoxycarb in drinking water.

3. *Non-dietary exposure.* Other potential sources of exposure of the general population to residues of pesticides are exposure from non-occupational sources. Novartis has estimated non-occupational exposure to fenoxycarb and concludes that the potential for exposure is insignificant. The potential for non-occupational exposure to fenoxycarb resulting from use of pet sprays or carpet sprays containing fenoxycarb is not included in safety determinations for the U.S. population and infants (shown below) since the registrations for these uses have been canceled. Exposure through turf uses of fenoxycarb as a fire ant bait is also considered not significant. Used as a fire ant bait, fenoxycarb is only applied to turf with active fire ant infestations and has no efficacy as a preventive treatment. Turf infested with fire ants is not commonly used for recreational activities because of the danger presented by fire ants. In addition, studies demonstrate that > 95% of the bait applied to fire ant infestations is removed by the ants within 24 hours. Therefore opportunity for exposure to fenoxycarb as a fire ant bait through treated turf is extremely small.

D. Cumulative Effects

Novartis also considered the potential for cumulative effects of fenoxycarb and other substances that have a common mechanism of toxicity. Novartis concluded that consideration of a common mechanism of toxicity is not appropriate at this time. Novartis does not have reliable information to indicate that toxic effects produced by fenoxycarb would be cumulative with those of any other chemical compounds; thus Novartis is considering only the potential risks from dietary exposure of fenoxycarb in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the exposure assumptions described above and based on the completeness and reliability of the toxicity data base for fenoxycarb, Novartis has calculated that aggregate exposure to fenoxycarb will utilize 0.016% of the Reference Dose (RfD) for the U.S. population - 48 states - all seasons, based on chronic toxicity endpoints. Lifetime carcinogenic risk for dietary exposure based on quantitative risk assessment and a Q_1^* of 5.8×10^{-2} $(mg/kg/day)^{-1}$, is 7.31×10^{-7}. EPA generally has no concern for exposures below 100% of the RfD or lifetime carcinogenic risks less than 1×10^{-6}. Since anticipated residues of fenoxycarb in food are extremely low and all short term NOELs are at least an order of magnitude higher than the chronic NOEL, no acute risk from exposure to residues of fenoxycarb is anticipated. Therefore, Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenoxycarb residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of fenoxycarb, Novartis considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. No evidence of developmental toxicity was observed in rats or rabbits. Fenoxycarb did not impair any reproductive or postnatal development parameters and was neither embryotoxic nor teratogenic. The NOELs for maternal and developmental toxicity in the rat were determined to be ≥ 500 mg/kg/day. The NOEL for maternal toxicity in the rabbit, based on reduced body weight gains, was 100 mg/kg/day and the NOEL for developmental toxicity was ≥ 300 mg/kg/day. In a 2-generation reproduction study in rats, the systemic NOEL for parental animals was 200 ppm based on decreased body weight gains and food consumption, increased gonad weights (without effects on reproductive performance or a morphological correlate), liver hypertrophy and focal necrosis and increased liver weights. There were no effects on fertility or reproductive performance. Based on decreased pup weights and slight delays in pinna unfolding and eye opening, there was no clear developmental NOEL. A NOEL of 40 ppm was derived using analysis of variance and regression. The mild nature of the effects of fenoxycarb on rat pups and the lack of effects in the developmental toxicity studies suggest that there is no particular sensitivity to fenoxycarb for infants and children.

Using the same exposure assumptions used for the determination in the general population, Novartis has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of fenoxycarb is 0.038% for nursing infants less than 1 year old, 0.098% for non-nursing infants, 0.048% for children 1–6 years old and 0.028% for children 7–12 years old. Therefore, based on the completeness and reliability of the toxicity data base, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fenoxycarb residues.

F. International Tolerances

No Codex MRLs have been established for residues of fenoxycarb.

3. Novartis Crop Protection, Inc.

PP 7F4897

EPA has received a pesticide petition (PP 7F4897) from Novartis Crop Protection, Inc., Greensboro, NC 27419, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.368 by establishing a tolerance for residues of metolachlor in or on the raw agricultural commodities sunflower seed at 0.3 ppm and sunflower meal at 0.6 ppm. The proposed analytical method involves extraction by acid reflux, filtration, partition and cleanup with analysis by gas chromatography using Nitrogen/Phosphorous (N/P) detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2)of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the metabolism of metolachlor in plants is well understood. Metabolism in plants involves conjugation of the chloroacetyl side chain with glutathione, with subsequent conversion to the cysteine and thiolactic acid conjugates. Oxidation to the corresponding sulfoxide derivatives occurs and cleavage of the side chain ether group, followed by conjugation with glucose.

2. *Analytical method.* Novartis Crop Protection has submitted a practical analytical method involving extraction by acid reflux, filtration, partition and cleanup with analysis by gas chromatography using Nitrogen/Phosphorous (N/P) detection. The methodology converts residues of metolachlor into a mixture of CGA–37913 and CGA–49751. The limit of quantitation (LOQ) for the method is 0.03 ppm for CGA–37913 and 0.05 ppm for CGA–49751.

3. *Magnitude of residues.* Eight residue trials were conducted in major sunflower growing areas of the United States (CA, KS, TX (2), MN(2), ND, IL). Five tests were conducted with metolachlor alone and three were conducted as a tank mix of metolachlor and another product. Metolachlor residues were analyzed for in all trials. Applications were made at the maximum labeled rate of 3.0 lbs. active ingredient/Acre (ai/A) and at 2 times the maximum labeled rate (6.0 lbs. ai/A). A processing study was also conducted with seeds processed into meal, hulls, crude oil, refined oil and soapstock. According to the Revised Table II of Subdivision O, only meal and refined oil are now required. Based on these studies and an earlier EPA review of these data, tolerances are proposed in sunflower seeds at 0.3 ppm and in sunflower meal at 0.6 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Metolachlor has a low order of acute toxicity. The combined rat oral LD_{50} is 2,877 mg/kg. The acute rabbit dermal LD_{50} is > 2,000 mg/kg and the rat inhalation LC_{50} is > 4.33 mg/L. Metolachlor is not irritating to the skin and eye. It has been shown to be positive in guinea pigs for skin sensitization. End use formulations of metolachlor also have a low order of acute toxicity and cause slight skin and eye irritation.

2. *Genotoxicty.* Assays for genotoxicity were comprised of tests evaluating metolachlor's potential to induce point mutations (Salmonella assay and an L5178/TK+/- mouse lymphoma assay), chromosome aberrations (mouse micronucleus and a dominant lethal assay) and the ability to induce either unscheduled or scheduled DNA synthesis in rat hepatocytes or DNA damage or repair in human fibroblasts. The results indicate that metolachlor is not mutagenic or clastogenic and does not provoke unscheduled DNA synthesis.

3. *Reproductive and developmental toxicity.* The developmental and teratogenic potential of metolachlor was investigated in rats and rabbits. The results indicate that metolachlor is not embyrotoxic or teratogenic in either species at maternally toxic doses. The NOEL for developmental toxicity for metolachlor was 360 mg/kg/day for both the rat and rabbit while the NOEL for maternal toxicity was established at 120 mg/kg/day in the rabbit and 360 mg/kg/day in the rat. A 2-generation reproduction study was conducted with metolachlor in rats at feeding levels of 0, 30, 300 and 1,000 ppm. The reproductive NOEL of 300 ppm (equivalent to 23.5 to 26 mg/kg/day) was based upon reduced pup weights in the F1a and F2a litters at the 1,000 ppm dose level (equivalent to 75.8 to 85.7 mg/kg/day). The NOEL for parental toxicity was equal to or greater than the 1,000 ppm dose level.

4. *Subchronic toxicity.* Metolachlor was evaluated in a 21–day dermal toxicity study in the rabbit and a 6–month dietary study in dogs; NOELs of 100 mg/kg/day and 7.5 mg/kg/day were established in the rabbit and dog, respectively. The liver was identified as the main target organ.

5. *Chronic toxicity.* A 1–year dog study was conducted at dose levels of 0, 3.3, 9.7, or 32.7 mg/kg/day. The Agency-determined RfD for metolachlor is based on the 1–year dog study with a NOEL of 9.7 mg/kg/day. The RfD for metolachlor is established at 0.1 mg/kg/day using a 100-fold uncertainty factor. A combined chronic toxicity/oncogenicity study was also conducted in rats at dose levels of 0. 1.5, 15 or 150 mg/kg/day. The NOEL for systemic toxicity was 15 mg/kg/day. An evaluation of the carcinogenic potential of metolachlor was made from two sets of oncogenicity studies conducted with metolachlor in rats and mice. Using the Guidelines for Carcinogenic Risk Assessment published September 24, 1986 (51 FR 33992) and the results of the November, 1994 Carcinogenic Peer Review, EPA has classified metolachlor as a Group C carcinogen and recommended using a Margin of Exposure (MOE) approach to quantify risk. This classification is based upon the marginal tumor response observed in livers of female rats treated with a high (cytotoxic) dose of metolachlor (3,000 ppm). The two studies conducted in mice were negative for oncogenicity.

6. *Animal metabolism.* The qualitative nature of the metabolism of metolachlor in animals is well understood. Metolachlor is rapidly metabolized and almost totally eliminated in the excreta of rats, goats, and poultry. Metabolism in plants and animals proceeds through common Phase 1 intermediates and glutathione conjugation.

7. *Metabolite toxicology.* The metabolism of metolachlor has been well characterized in standard FIFRA rat metabolism studies. The metabolites found are considered to be toxicologically similar to parent. Metolachlor does not readily undergo dealkylation to form an aniline or quinone amine as has been reported for other members of the chloroacetanilide class of chemicals. Therefore, it is not appropriate to include metolachlor with the group of chloroacetanilides that readily undergo dealkylation, producing a common toxic metabolite (quinone imine).

C. Aggregate Exposure

1. *Dietary exposure.* Dietary exposure consists of exposures from food and drinking water.

2. *Food.* For purposes of assessing the potential dietary exposure to metolachlor, aggregate exposure has been estimated based on the TMRC from the use of metolachlor in or on raw agricultural commodities for which tolerances have been previously established (40 CFR 180.368). The incremental effect on dietary risk resulting from the addition of sunflowers to the label was assessed by conservatively assuming that exposure would occur at the proposed tolerance level of 0.3 ppm with 100% of the crop treated.

The TMRC is obtained by multiplying the tolerance level residue for all these raw agricultural commodities by the consumption data which estimates the amount of these products consumed by various population subgroups. Some of these raw agricultural commodities (e.g. corn forage and fodder, peanut hay, sunflower meal) are fed to animals; thus exposure of humans to residues in these fed commodities might result if such residues are transferred to meat, milk, poultry, or eggs. Therefore, tolerances of 0.02 ppm for milk, meat and eggs and 0.2 ppm for kidney and 0.05 ppm for liver have been established for metolachlor. In an EPA review of sunflower residue data previously submitted by Novartis, the EPA has indicated that any secondary residues in meat, milk, poultry and eggs will be covered by existing metolachlor tolerances.

In conducting this exposure assessment, it has been conservatively assumed that 100% of all raw agricultural commodities for which tolerances have been established for metolachlor will contain metolachlor residues and those residues would be at the level of the tolerance--which results in an overestimation of human exposure.

3. *Drinking water.* Another potential source of exposure of the general population to residues of pesticides are residues in drinking water. Based on the available studies used by EPA to assess environmental exposure, it is not anticipated that exposure to residues of metolachlor in drinking water will exceed 20% of the RfD (0.02 mg/kg/day), a value upon which the Health Advisory Level of 70 ppb for metolachlor is based. In fact, based on experience with metolachlor, it is believed that metolachlor will be infrequently found in groundwater (less than 5% of the samples analyzed), and when found, it will be in the low ppb range.

4. *Non-dietary exposure.* Although metolachlor may be used on turf and ornamentals in a residential setting, that use represents less than 0.1% of the total herbicide market for residential turf and landscape uses. Currently, there

are no acceptable, reliable exposure data available to assess any potential risks. However, given the small amount of material that is used, it is concluded that the potential for non-occupational exposure to the general population is unlikely.

D. Cumulative Effects

The potential for cumulative effects of metolachlor and other substances that have a common mechanism of toxicity has also been considered. It is concluded that consideration of a common mechanism of toxicity with other registered pesticides in this chemical class (chloroacetamides) is not appropriate. Since EPA has concluded that the carcinogenic potential of metolachlor is not the same as other registered chloroacetamide herbicides, based on differences in rodent metabolism (EPA Peer Review of metolachlor, 1994), it is believed that only metolachlor should be considered in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above, based on the completeness and reliability of the toxicity data, it is concluded that aggregate exposure to metolachlor will utilize 1.3% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, it is concluded that there is a reasonable certainty that no harm will result from aggregate exposure to metolachlor or metolachlor residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of metolachlor, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat have been considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from chemical exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to a chemical on the reproductive capability of mating animals and data on systemic toxicity.

Developmental toxicity (reduced mean fetal body weight, reduced number of implantations/dam with resulting decreased litter size, and a slight increase in resorptions/dam with a resulting increase in post-implantation loss) was observed in studies conducted with metolachlor in rats and rabbits. The NOEL's for developmental effects in both rats and rabbits were established at 360 mg/kg/day. The developmental effect observed in the metolachlor rat study is believed to be a secondary effect resulting from maternal stress (lacrimation, salivation, decreased body weight gain and food consumption and death) observed at the limit dose of 1,000 mg/kg/day.

A 2-generation reproduction study was conducted with metolachlor at feeding levels of 0, 30, 300 and 1,000 ppm. The reproductive NOEL of 300 ppm (equivalent to 23.5 to 26 mg/kg/day) was based upon reduced pup weights in the F1a and F2a litters at the 1,000 ppm dose level (equivalent to 75.8 to 85.7 mg/kg/day). The NOEL for parental toxicity was equal to or greater than the 1,000 ppm dose level.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete. Further, for the chemical metolachlor, the NOEL of 9.7 mg/kg/day from the metolachlor chronic dog study, which was used to calculate the RfD (discussed above), is already lower than the developmental NOEL's of 360 mg/kg/day from the metolachlor teratogenicity studies in rats and rabbits. In the metolachlor reproduction study, the lack of severity of the pup effects observed (decreased body weight) at the systemic lowest observed-effect-level (equivalent to 75.8 to 85.7 mg/kg/day) and the fact that the effects were observed at a dose that is nearly 10 times greater than the NOEL in the chronic dog study (9.7 mg/kg/day) suggest there is no additional sensitivity for infants and children. Therefore, it is concluded that an additional uncertainty factor is not warranted to protect the health of infants and children and that the RfD at 0.1 mg/kg/day based on the chronic dog study is appropriate for assessing aggregate risk to infants and children from use of metolachlor.

Using the conservative exposure assumptions described above, the percent of the RfD that will be utilized by aggregate exposure to residues of metolachlor including the proposed use on sunflowers is 1.1% for nursing infants less than 1 year old, 3.3% for non-nursing infants, 2.7% for children 1 to 6 years old and 2.0% for children 7 to 12 years old. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to metolachlor residues.

F. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRL's) established for residues of metolachlor in or on raw agricultural commodities.

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ENVIRONMENTAL PROTECTION AGENCY

[PF–769; FRL 5748–6]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–769, must be received on or before November 7, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION" of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Adam Heyward (PM 13)	Rm. 227, CM #2, 703–305–5418, e-mail: heyward.adam@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Beth Edwards (PM 13) ..	Rm. 206, CM #2, 703–305–5400, e-mail: edwards.beth@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–769] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number PF–769 and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 25, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. DowElanco

PP 7F4871

EPA has received a pesticide petition (PP 7F4871) from DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268-1054, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of spinosad in or on the raw agricultural commoditiies almonds, nutmeat at 0.02 ppm; almonds, hulls at 2 ppm; citrus, whole fruit at 0.3 ppm; citrus, oil at 3 ppm; citrus, dried pulp at 0.5 ppm; and leafy vegetables at 8 ppm. Because of the amount of spinosad residue found in almonds, hulls and citrus, dried pulp as well as wet apple pomace (pending tolerance under PP 6F4761) and the amount of almond hulls, citrus dried pulp, and apple pomace potentially included in livestock rations, a livestock, fat residue tolerance of 0.7 ppm is also being proposed. The following meat and milk tolerances for residues of spinosad are presently pending under PP 6F4761: meat at 0.04 ppm, kidney and liver at 0.2 ppm, fat at 0.4 ppm, milk at 0.04 ppm, and milk fat at 0.5 ppm. An adequate analytical method is available for enforcement purposes. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of spinosad in plants (apples, cabbage, cotton, tomato, and turnip) and animals (goats and poultry) is adequately understood for the purposes of these tolerances. A rotational crop study showed no carryover of measurable spinosad related residues in representative test crops.

2. *Magnitude of residues.* Magnitude of residue studies were conducted for almonds (6 sites), citrus (13 sites on oranges, 6 sites on grapefruit, and 5 sites on lemons), and leafy vegetables (6 sites each on head lettuce, leaf lettuce, spinach, and celery). Residues found in these studies ranged from ND to 0.008 ppm on almonds, nutmeat; 0.22 to 1.45 ppm on almonds, hulls; 0.01 to 0.21 ppm on citrus, whole fruit; and ND to 6 ppm on leafy vegetables. A processed products study in citrus at a 5x application rate showed that residues of spinosad did not concentrate in citrus juice; however, there was aconcentration of spinosad residues in citrus oil (14x concentration factor) and citrus dried pulp (2x concentration factor).

B. Toxicological Profile

1. *Acute toxicity.* Acute Toxicity Spinosad has low acute toxicity. The rat oral LD_{50} is 3,738 mg/kg for males and >5,000 mg/kg for females, whereas the mouse oral LD_{50} is >5,000 mg/kg. The rabbit dermal LD_{50} is >2,000 mg/kg and the rat inhalation LC_{50} is >5.18 mg/l air. In addition, spinosad is not a skin sensitizer in guinea pigs and does not produce significant dermal or ocular irritation in rabbits. End use formulations of spinosad that are water based suspension concentrates have similar low acute toxicity profiles.

2. *Genotoxicty.* Short term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an

in vitro assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* mammalian gene mutation assay using mouse lymphoma cells, an *in vitro* assay for DNA damage and repair in rat hepatocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with spinosad. These studies show a lack of genotoxicity.

3. *Reproductive and developmental toxicity*. Spinosad caused decreased body weights in maternal rats given 200 mg/kg/day by gavage (highest dose tested). This was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The no-observed-effect levels (NOELs) for maternal and fetal effects in rats were 50 and 200 mg/kg/day, respectively. A teratology study in rabbits showed that spinosad caused decreased body weight gain and a few abortions in maternal rabbits given 50 mg/kg/day (highest dose tested). Maternal toxicity was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The NOELs for maternal and fetal effects in rabbits were 10 and 50 mg/kg/day, respectively. The NOEL found for maternal and pup effects in a rat reproduction study was 10 mg/kg/day. Neonatal effects at 100 mg/kg/day (highest dose tested in the rat reproduction study) were attributed to maternal toxicity.

4. *Subchronic toxicity*. Spinosad was evaluated in 13-week dietary studies and showed NOELs of 4.9 mg/kg/day in dogs, 6 mg/kg/day in mice, and 8.6 mg/kg/day in rats. No dermal irritation or systemic toxicity occurred in a 21–day repeated dose dermal toxicity study in rabbits given 1,000 mg/kg/day.

5. *Chronic toxicity*. Based on chronic testing with spinosad in the dog and the rat, the EPA has set a reference dose (RfD) of 0.0268 mg/kg/day for spinosad. The RfD has incorporated a 100-fold safety factor to the NOELs found in the chronic dog study. The NOELs shown in the dog chronic study were 2.68 and 2.72 mg/kg/day, respectively for male and female dogs. The NOELs shown in the rat chronic study were 2.4 and 3.0 mg/kg/day, respectively for male and female rats. Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that spinosad be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18-month mouse feeding study and a 24-month rat feeding study at all dosages tested. The NOELs shown in the mouse oncogenicity study were 11.4 and 13.8 mg/kg/day, respectively for male and female mice. The NOELs shown in the rat chronic/oncogenicity study were 2.4 and 3.0 mg/kg/day, respectively for male and female rats. A maximum tolerated dose was achieved at the top dosage level tested in both of these studies based on excessive mortality. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, a cancer risk assessment is not needed.

6. *Animal metabolism*. There were no major differences in the bioavailability, routes or rates of excretion, or metabolism of spinosyn A and spinosyn D following oral administration in rats. Urine and fecal excretions were almost completed in 48-hours post-dosing. In addition, the routes and rates of excretion were not affected by repeated administration.

7. *Metabolite toxicology*. The residue of concern for tolerance setting purposes is the parent material (spinosyn A and spinosyn D). Thus, there is no need to address metabolite toxicity.

8. *Neurotoxicity*. Spinosad did not cause neurotoxicity in rats in acute, subchronic, or chronic toxicity studies.

9. *Endocrine effects*. There is no evidence to suggest that spinosad has an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure from use of spinosad on almonds, citrus, and leafy vegetables as well as from other existing and pending uses, a conservative estimate of aggregate exposure is determined by basing the TMRC on the proposed tolerance levels for spinosad and assuming that 100% of the almonds, citrus, leafy vegetables, and other existing and pending crop uses grown in the U.S. were treated with spinosad. The TMRC is obtained by multiplying the tolerance residue levels by the consumption data which estimates the amount of crops and related foodstuffs consumed by various population subgroups. The use of a tolerance level and 100% of crop treated clearly results in an overestimate of human exposure and a safety determination for the use of spinosad on crops cited in this summary that is based on a conservative exposure assessment.

2. *Drinking water*. Another potential source of dietary exposure are residues in drinking water. Based on the available environmental studies conducted with spinosad wherein it's properties show little or no mobility in soil, there is no anticipated exposure to residues of spinosad in drinking water. In addition, there is no established Maximum Concentration Level for residues of spinosad in drinking water.

3. *Non-dietary exposure*. Spinosad is currently registered for use on cotton with several crop registrations pending all of which involve applications of spinosad in the agriculture environment. Spinosad is also currently registered for use on turf and ornamentals at low rates of application (0.04 to 0.54 lb a.i. per acre). Thus, the potential for non-dietary exposure to the general population is not expected to be significant.

D. Cumulative Effects

The potential for cumulative effects of spinosad and other substances that have a common mechanism of toxicity is also considered. In terms of insect control, spinosad causes excitation of the insect nervous system, leading to involuntary muscle contractions, prostration with tremors, and finally paralysis. These effects are consistent with the activation of nicotinic acetylcholine receptors by a mechanism that is clearly novel and unique among known insecticidal compounds. Spinosad also has effects on the GABA receptor function that may contribute further to its insecticidal activity. Based on results found in tests with various mammalian species, spinosad appears to have a mechanism of toxicity like that of many amphiphilic cationic compounds. There is no reliable information to indicate that toxic effects produced by spinosad would be cumulative with those of any other pesticide chemical. Thus it is appropriate to consider only the potential risks of spinosad in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions and the proposed RfD described above, the aggregate exposure to spinosad use on almonds, citrus, leafy vegetables, and other existing and pending crop uses will utilize 20.0% of the RfD for the U.S. population. A more realistic estimate of dietary exposure and risk relative to a chronic toxicity endpoint is obtained if average (anticipated) residue values from field trials are used. Inserting the average residue values in place of tolerance residue levels produces a more realistic, but still conservative risk assessment. Based on average or anticipated residues in a dietary risk analysis, the use of spinosad on almonds, citrus, leafy vegetables, and other existing and pending crop uses will utilize 3.2% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Thus, it is clear that there is reasonable certainty that no harm will result from aggregate exposure to spinosad residues on almonds, citrus, leafy vegetables, and other existing and pending crop uses.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of spinosad, data from developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of pups.

FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database for spinosad relative to pre- and post-natal effects for children is complete. Further, for spinosad, the NOELs in the dog chronic feeding study which was used to calculate the RfD (0.0268 mg/kg/day) are already lower than the NOELs from the developmental studies in rats and rabbits by a factor of more than 10-fold.

Concerning the reproduction study in rats, the pup effects shown at the highest dose tested were attributed to maternal toxicity. Therefore, it is concluded that an additional uncertainty factor is not needed and that the RfD at 0.0268 mg/kg/day is appropriate for assessing risk to infants and children.

Using the conservative exposure assumptions previously described (tolerance level residues), the percent (RfD) utilized by the aggregate exposure to residues of spinosad on almonds, citrus, leafy vegetables, and other existing and pending crop uses is 36.1% for children 1 to 6 years old, the most sensitive population subgroup. If average or anticipated residues are used in the dietary risk analysis, the use of spinosad on these crops will utilize 7.0% of the RfD for children 1 to 6 years old. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to spinosad residues on almonds, citrus, leafy vegetables, and other existing and pending crop uses.

F. International Tolerances

There are no Codex maximum residue levels established for residues of spinosad on almonds, citrus, and leafy vegetables or any other food or feed crop. (Adam Heyward)

2. Zeneca Ag Products

PP 7F4875

EPA has received a pesticide petition (PP 7F4875) from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850–5458. The petition proposes pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish tolerances for residues of the insecticide lambda-cyhalothrin and its epimer in or on the raw agricultural commodities avocados (imported) at 0.2 parts per million (ppm); cereal grain crop group (except rice and wild rice): grain, 0.2 ppm, forage (except sorghum) 6.0 ppm, hay 2.0 ppm, straw 2.0 ppm, aspirated grain dust 2.0 ppm, bran 0.8 ppm and flour 0.6 ppm; fruiting vegetable crop group (except cucurbits) 0.2 ppm; peas and beans - edible podded crop subgroup 0.2 ppm; peas and beans - succulent shelled crop subgroup 0.01 ppm; peas and beans - dried shelled subgroup (except soybean) 0.1 ppm; peanut hay 3.0 ppm; sorghum forage 0.3 ppm; sorghum fodder 0.5 ppm; and sugarcane 0.05 ppm. The names for lambda-cyhalothrin and its epimer are as follows: lambda-cyhalothrin, a 1:1 mixture of (*S*)-alpha-cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-alpha-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate. Epimer of lambda-cyhalothrin, a 1:1 mixture of (*S*)-alpha-cyano-3-phenoxybenzyl- (*Z*)(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-alpha-cyano-3-phenoxybenzyl- (*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of lambda-cyhalothrin has been studied in cotton, soybean, cabbage, and wheat plants. The studies show that the metabolism generally follows that of other pyrethroid insecticides. The ester linkage is cleaved to form cyclopropanecarboxylic acids and the corresponding phenoxybenzyl alcohol. Overall the studies show that unchanged lambda-cyhalothrin is the principal constituent of the residue on edible portions of these crops.

2. *Analytical method*. An adequate analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement purposes.

3. *Magnitude of residues*. Avocados - six trials were conducted at 3 sites within Mexico. In these trials the maximum observed residue was 0.11 ppm. Peppers (nonbell) - three trials were conducted with a maximum observed residue of 0.13 ppm. Peppers (bell) - eight trials were conducted with a maximum observed residue of 0.16 ppm. Edible podded peas - three trials were conducted with a maximum observed residue of 0.14 ppm. Edible podded beans - six trials were conducted with a maximum observed residue of 0.035 ppm. Succulent shelled peas - six trials were conducted with a maximum observed residue of 0.01 ppm. Succulent shelled beans - six trials were conducted with a maximum observed residue of 0.01 ppm. Dried shelled peas - five trials were conducted with a maximum observed residue of 0.06 ppm. Dried shelled peas - eight trials were conducted with a maximum observed residue of 0.015 ppm. Peanut hay - eleven trials were conducted with a maximum observed residue of 2.61 ppm. Sorghum forage and fodder - thirteen trials were conducted with a maximum observed residue of 0.3 and 0.42 ppm, respectively, in forage and fodder. Sugarcane - nine trials were conducted with a maximum observed residue of 0.035 ppm. A sugarcane processing study was conducted to determine if residues concentrated in molasses or refined sugar. No concentration of residues was observed in either processed commodity.

B. Toxicological Profile

The following toxicity studies have been conducted to support the request for a regulation for residues of lambda-cyhalothrin in or on rice.

1. *Acute toxicity*. Acute toxicity studies with the technical grade of the active ingredient lambda-cyhalothrin: oral LD_{50} in the rat of 79 milligram/

kilogram (mg/kg) (males) and 56 mg/kg (females), dermal LD_{50} in the rat of 632 mg/kg (males) and 696 mg/kg females, primary eye irritation study showed mild irritation, and primary dermal irritation study showed no irritation.

2. *Genotoxicity.* The following genotoxicity tests were all negative: a gene mutation assay (Ames), a mouse micronucleus assay, an in vitro cytogenetics assay, and a gene mutation study in mouse lymphoma cells.

3. *Reproductive and developmental toxicity*—i. A three-generation reproduction study in rats fed diets containing 0, 10, 30, and 100 ppm with no developmental toxicity observed at 100 ppm, the highest dose tested. The maternal no-observed-effect-level (NOEL) and lowest-observed-effect-level (LOEL) for the study are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based upon decreased parental body weight gain. The reproductive NOEL and LOEL are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based on decreased pup weight gain during weaning.

ii. A developmental toxicity study in rats given gavage doses of 0, 5, 10, and 15 mg/kg/day with no developmental toxicity observed under the conditions of the study. The developmental NOEL is greater than 15 mg/kg/day, the highest dose tested. The maternal NOEL and LOEL are established at 10 and 15 mg/kg/day, respectively, based on reduced body weight gain.

iii. A developmental toxicity study in rabbits given gavage doses of 0, 3, 10, and 30 mg/kg/day with no developmental toxicity observed under the conditions of the study. The maternal NOEL and LOEL are established at 10 and 30 mg/kg/day, respectively, based on decreased body weight gain. The developmental NOEL is greater than 30 mg/kg/day, the highest dose tested.

4. *Subchronic toxicity*—i. A 90–day feeding study in rats fed doses of 0, 10, 50, and 250 ppm with a NOEL of 50 ppm and a LOEL of 250 ppm based on body weight gain reduction.

ii. A 21–day study in rabbits exposed dermally to doses of 0, 10, 100, and 1,000 mg/kg/day, 6 hours/day, 5 days/week with a systemic NOEL > 1,000 mg/kg/kg. There were no clinical signs of systemic toxicity at any dose level tested.

5. *Chronic toxicity*—i. A 12–month feeding study in dogs fed dose (by capsule) levels of 0, 0.1, 0.5, and 3.5 mg/kg/day with a NOEL of 0.1 mg/kg/day. The LOEL for this study is established at 0.5 mg/kg/day based upon clinical signs of neurotoxicity.

ii. A 24–month chronic feeding/carcinogenicity study with rats fed diets containing 0, 10, 50, and 250 ppm. The NOEL was established at 50 ppm and LOEL at 250 ppm based on reduced body weight gain. There were no carcinogenic effects observed under the conditions of the study.

iii. A carcinogenicity study in mice fed dose levels of 0, 20, 100, or 500 ppm (0, 3, 15, or 75 mg/kg/day) in the diet for 2 years. A systemic NOEL was established at 100 ppm and systemic LOEL at 500 ppm based on decreased body weight gain in males throughout the study at 500 ppm. The Agency has classified lambda-cyhalothrin as a Group D carcinogen (not classifiable due to an equivocal finding in this study). Zeneca concludes that no treatment-related carcinogenic effects were observed under the conditions of the study.

6. *Animal metabolism.* Metabolism studies in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. There is an accumulation of unchanged compound in fat upon chronic administration with slow elimination. Otherwise, lambda-cyhalothrin was rapidly metabolized and excreted. The metabolism of lambda-cyhalothrin in livestock has been studied in the goat, chicken, and cow. Unchanged lambda-cyhalothrin is the major residue component of toxicological concern in meat and milk.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of lambda-cyhalothrin are not of toxicological concern and need not be included in the tolerance expression. Given this determination, Zeneca concludes that there is no need to discuss metabolite toxicity.

8. *Endocrine effects.* No evidence of such effects were reported in the toxicology studies described above. There is no evidence at this time that lambda-cyhalothrin causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* For the purposes of assessing the potential dietary exposure for all existing and pending tolerances for lambda-cyhalothrin, Zeneca has utilized available information on anticipated residues and percent crop treated. For all existing and pending tolerances the anticipated residue contribution (ARC) is estimated at 0.000212 mg/kg/body weight (bwt)/day.

ii. *Drinking water.* Laboratory and field data have demonstrated that lambda-cyhalothrin and its degradates are immobile in soil and will not leach into groundwater. Other data show that lambda-cyhalothrin is virtually insoluble in water and extremely lipophilic. As a result, Zeneca concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Zeneca concludes that together these data indicate that residues are not expected in drinking water.

2. *Non-dietary exposure.* Other potential sources of exposure are from non-occupational sources such as structural pest control and ornamental plant and lawn use of lambda-cyhalothrin. Zeneca has no data upon which to estimate exposure from these uses. However, given the extremely low vapor pressure of lambda-cyhalothrin (1.5×10^{-9} millimeters (mm) of mercury (Hg)) and the low use rates, Zeneca concludes that inhalation and dermal exposure from these uses will be insignificant.

D. Cumulative Effects

At this time, Zeneca cannot make a determination based on available and reliable information that lambda-cyhalothrin and other substances that may have a common mechanism of toxicity would have cumulative effects. Thus, Zeneca concludes that for purposes of this tolerance it is appropriate only to consider the potential risks of lambda-cyhalothrin in an aggregate exposure assessment.

E. Safety Determination

The acceptable Reference Dose (RfD) based on a NOEL of 0.1 mg/kg/bwt/day from the chronic dog study and a safety factor of 100 is 0.001 mg/kg/bwt/day. A chronic dietary exposure/risk assessment has been performed for lambda-cyhalothrin using the above RfD. Available information on anticipated residues and percent crop treated was incorporated into the analysis to estimate the ARC. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues.

1. *U.S. population.* The ARC from established tolerances and the current and pending actions are estimated to be 0.000212 mg/kg/bwt/day and utilize 24.9% of the RfD for the U.S. population.

2. *Infants and children.* The ARC for children, aged 1 to 6 years old, and non-nursing infants (subgroups most highly exposed) utilizes 77% and 48% of the RfD, respectively. Generally speaking, the Agency has no cause for concern if ARC for all published and proposed tolerances is less than the RfD.

F. International Tolerances

There are no Codex maximum residue levels (MRL) established for residues of lambda-cyhalothrin in or on avocados; cereal grain crop group: grain, forage, hay, straw, aspirated grain dust, bran, flour; fruiting vegetable crop group; peas and beans - edible podded crop subgroup; peas and beans - succulent shelled crop subgroup; peas and or beans - dried shelled subgroup. (Beth Edwards)

[FR Doc. 97–26536 Filed 10–7–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PP 5E4597; FRL–5746–7]

Milliken & Company; Correction of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of correction.

SUMMARY: This notice corrects and extends the comment period of pesticide petition (PP) 5E4597, submitted by Milliken & Company proposing to establish an exemption from the requirement of a tolerance for Poly(ethylene glycol) modified FD&C Blue No. 1, Methyl Poly(ethylene glycol) modified FD&C Blue No. 1, and Poly(ethylene glycol) modified Methyl Violet 2B. Pesticide petition 5E4597, was published in the **Federal Register** on August 29, 1997 (62 FR 45804). EPA is extending the comment period to allow additional time for comment.

DATES: The comment period is extended to October 29, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Amelie Acierto, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 4th Floor, CS #1, 2800 Crystal Drive, Arlington, VA (703)–308–8377; e-mail: ascierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a Notice of Filing in the **Federal Register** of August 29, 1997 (62 FR 45804) (PF–758; FRL–5738–2) for pesticide petitions (PP) 3E4246, 7F4845, and 5E4597. This notice corrects PP 5E4597.

In FR Doc. 97-23097, in the issue for August 29, 1997, on page 45808, in the third column, in the first paragraph under PP 5E4597, the phrase "not to exceed 0.6 parts per billion (ppb)," should be corrected to read "not to exceed 1 to 5% of the final formulation."

List of subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136a.

Dated: September 25, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–26534; Filed 10–7–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Publication of Recommendations Relating to HIPA A Health Data Standards

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Section 1172 (f), Subtitle F of Pub. L. 104–191, the Health Insurance Portability and Accountability Act of 1996, requires the Secretary of Health and Human Services to publish in the Federal Register any recommendation of the National Committee on Vital and Health Statistics (NCVHS) regarding the adoption of a data standard under that law. On September 9, the NCVHS submitted recommendations to the Secretary relating to the unique identifier for payers, the unique identifier for individuals, and security standards. Accordingly, the full text of the NCVHS recommendations relating to HIPAA data standards is reproduced below. The text of the recommendations is also available on the NCVHS website: http//aspe.os.dhhs.gov/ncvhs/.

SUPPLEMENTARY INFORMATION: Under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 HIPAA), the Secretary of Health and Human Services is required to adopt standards for specified administrative health care transactions to enable information to be exchanged electronically. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses and health care providers who choose to conduct these transactions electronically must comply with these standads. Further, the law requires the Secretary to submit to Congress detailed recommendations on standards with respect to the privacy of individually identifiable health information. In preparing these reports and recommendations, the Secretary is required to consult with the NCHVHS, the statutory public advisory body to HHS on health data, privacy and health information policy. On September 9, the Committee submitted recommendations to the Secretary relating to the unique identifier for payers, the unique identifier for individuals, and security standards.

Accordingly, the full text of the NCVHS recommendations relating to HIPAA data standards is reproduced below.

Recommendations Relating to the National PAYERID

September 9, 1997.

The Honorable Donna E. Shalala,
Secretary, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201

Dear Secretary Shalala: On behalf of the National Committee on Vital and Health Statistics (NCVHS), I am pleased to forward to you our recommendations relating to another of the health data standards being proposed for adoption in accordance with the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The NCVHS is very pleased to provide support, advice and consultation to you in this effort.

The NCVHS has been briefed on the proposal for the national standard for identifiers for health plans or PAYERID, and we offer our strong support. The proposal includes a nine digit numeric identifier that would be assigned to all health plans. The identifier includes a check digit and contains no embedded intelligence. We recommend that HHS proceed to publish the proposal for public comment without delay. In the interests of operational efficiency and simplification, we suggest that the Department also leave open the option of moving to an alphanumeric identifier in the future. While public comments are likely to on the technical details of the number and the optimal approach to enumeration, we have found broad support for the proposal in general and urge you to proceed.

The Committee did identify one concern that we bring to your attention. The PAYERID, as proposed, replaces the plan ID and sub ID used in current transactions. The sub ID is currently used for electronic routing, and concern has been expressed that this function will be lost. We recommend that this functionality be addressed before the final rule is issued.

We appreciate you national leadership in health data standards, electronic data interchange and privacy, and we are privileged to work with you on these issues.

Sincerely,

Don E. Detmer, M.D.,

Chair.

Recommendations Relating to the Unique Health Identifier for Individuals

September 9, 1997.

The Honorable Donna E. Shalala,

Secretary of Health and Human Services, Washington, D.C. 20201

Dear Secretary Shalala: The National Committee on Vital and Health Statistics (NCVHS) is responding to the requirement of Congress to set a standard for a unique health identifier for each individual for use in the health care system. While the NCVHS continues to support the concept of a unique health identifier for individuals, we believe it would be unwise and premature to proceed to select and implement such an identifier in the absence of legislation to assure the confidentiality of individually identifiable health information and to preserve an individual's right to privacy.

The selection of a unique health identifier for individuals will become the focus of tremendous public attention and interest, far beyond that afforded to other health privacy decisions. No choice should be made without considerably more public notice, hearings, and comment.

Until a new federal law adequately protects the privacy of identifiable health information, it is not possible to make a sufficiently informed choice about an identification number or procedure. The degree of formal legal protection for personal health information will have a major influence on both the decision and public acceptance of that decision. Passage of a comprehensive health privacy law may make the choice of an identifier easier and less threatening to privacy.

A unique health identifier for individuals cannot be properly protected from misuse under current law. The Committee reaches this conclusion notwithstanding the enactment of criminal penalties for wrongful disclosure as part of the Health Insurance Portability and Accountability Act of 1996. Additional legislation may be required to authorize the use of some alternatives or to provide adequate restrictions for other alternatives.

We recommend alternative methods of identifying individuals and linking health information of individuals for health purposes be evaluated on the basis of the American Society for Testing and Materials (ASTM) criteria coupled with a cost-benefit evaluation and public comment. The committee intends to continue to receive public comment on this issue and will revisit this issue at our November meeting.

We appreciate you national leadership in health data standards, electronic data interchange and privacy, and we are privileged to work with you on these issues.

Sincerely,

Don E. Detmer, M.D.,

Chair.

Recommendations for Security Standards

September 9, 1997.

The Honorable Donna Shalala,

Secretary, Department of Health and Human Services, 200 Independence Avenue, SW, Washington, DC 20201.

Dear Madam Secretary: The National Committee on Vital and Health Statistics is pleased to provide recommendations on the adoption of security standards as mandated by the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

The Subcommittee on Health Data Needs, Standards and Security held a hearing on August 5 and 6 to receive testimony from a wide range of industry representatives on issues regarding security. Twenty-five individuals representing professional associations, providers, managed care organizations, vendors, consultants and standards development organizations provide input. A copy of the witnesses is attached to this letter.

Where there was consensus among the witnesses regarding the need for security standards, testimony highlighted the evolutionary development of information security in the health care industry. Currently, there are poor practices in the handling of paper-based health information and the move towards electronic storage and transmission heightens concerns. Health care organizations have been slow to adopt strong security practices due largely to lack of strong management and organizational incentives. Additionally, the lack of national privacy legislation or regulation to ensure confidentiality of health information creates additional tensions.

Based on the testimony received and discussion at the Committee meeting on September 8 and 9, the NCVHS has developed a series of principles and recommendations for your consideration. Since the standards in this area are not fully mature and have not been extensively implemented by the health care industry, we are not recommending adoption of specific standards.

The Committee believes that any standard that is adopted must be technology neutral and should promote interoperability among information system. There are a number of factors that must be considered in this area; the cost of implementing specific solutions and the need for scalability on the size of the health care entity.

In order for health information systems to be secure, there must be:

• Individual authentication of users

Every individual in an organization should have a unique identifier for use in logging onto the organization's information systems and each organization should have policies and procedures in place to enforce the appropriate use and maintenance of access methods.

• access controls

Procedures should be in place that restricts users' access to only that information for which they have a legitimate need. Individual organizations will have to determine the appropriate approach that will work within their organization and balance the interests between access and privacy.

• monitoring of access

Organizations should develop audit trails and mechanisms to review access to information systems to identify authorized users who misuse their privileges and perform unauthorized actions and detect attempts by intruders to access systems.

• physical security and disaster recovery

Organizations should immediately take steps to limit unauthorized physical access to computer systems, displays, networks and medical records. Disaster recovery plans should include procedures for providing basic system functions and ensuring access to health information in the event of a natural disaster or computer failure.

• protection of remote access points

Organizations must protect their information systems from intruders who try to access their systems through external communication points such as the Internet or dial-in telephone lines.

• protection of external electronic communications

Organizations need to protect sensitive communication that is transmitted electronically over open networks so that it cannot be easily intercepted and interpreted by parties other than the intended recipient.

• software discipline

Organizational procedures and educational programs should be implemented to protect against viruses, Trojan horses and other forms of malicious software and to raise users' awareness of the problem.

• system assessment

Organizations should formally assess the security and vulnerabilities of their information systems on an ongoing basis.

• monitoring of integrity of data

The integrity of health information is critical to providing quality care to patients. Organizations must implement a process to ensure that information systems do not compromise data integrity.

There are a series of organizational practice that the Committee believes are imperative:

• scalable confidentiality and security policies and procedures
• security/confidentiality committees
• designation of an information security officer in health care organizations
• education and training programs for all employees, medical staff, agents and contractors
• organizational sanctions for violation of policies and procedures
• improved patient authorization forms for disclosure of health information
• patient access to audit logs

Many of these recommendations and practices are based on the National Research Council's report *For the Record: Protecting Electronic Health Information*. In the short-term, it is recommended that health care organizations institute a risk assessment of their current state of compliance with these organizational and technical practices. As industry experience evolves, the Committee suggests that criteria be developed to evaluate and monitor compliance with these recommendations. Organizations that license or accredit health care organizations should consider incorporating these requirements into their standards.

The Committee plans to continue to monitor industry compliance and the development and maturation of technology and standards. As standards that are fully mature and tested become available, we will review and recommend for adoption.

Thank you for the opportunity to provide assistance.

Sincerely,

Don E. Detmer, M.D.,

Chair.

CONTACT PERSON FOR MORE INFORMATION: Information about the Committee as well as the text of all HIPAA recommendations is available on the NCVHS website or from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: October 1, 1997.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 97–26659 Filed 10–7–97; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KD, The Regional Offices of the Administration for Children and Families (62 FR 49243), as last amended, September 19, 1997. This notice reflects the reorganization of Region 8. This Chapter is amended as follows:

After the end of KD7.20 Functions (61 FR 3937, 02/02/96), Paragraph D and before KD9.10 Organization (62 FR 31610, 06/10/97) insert the following:

KD8.10 Organization. The Administration for Children and Families, Region 8, is organized as follows:

Office of the Regional Administrator (KD8A)
Office of Community and Work Programs (KD8B)
Office of State and Youth Programs (KD8C)

KD8.20 Functions. A. The Office of the Regional Administrator is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. The Office is responsible for the Administration for Children and Families' key national goals and priorities and provides executive leadership and direction to state, county, city, territorial and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs.

The Office takes action to approve state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval, where applicable. The Office contributes to the development of national policy based on perspectives on all ACF programs. It oversees ACF operations and the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. The Office provides executive representation for ACF in regional external communications, and serves as ACF liaison with the HHS Regional Director, other HHS operating divisions, other federal agencies and public or private local organizations representing children and families.

The Executive Officer and Administrative and Program Support staff provide day-to-day support for regional administrative functions, including internal ACF regional budget and financial management, performance management, procurement, property management, internal systems, employee relations, training, media inquires and public affairs activities. This team oversees the management and coordination of internal automated systems in the region, and provides systems management support to all Regional Office components.

The Grants Officer, functioning independently of all program offices, provides program staff with expertise in the technical and other non-programmatic areas of grants administration, and provides appropriate internal control and checks and balances to ensure financial integrity in all phases of the grants process. The Grants Officer and financial staff provide expert grants management technical support to the Office of Community and Work Programs and the Office of State and Youth Programs to resolve complex problems in such areas as cost allocation, accounting principles, audit, deferrals and disallowances. The Grants Officer approves and signs all discretionary grants.

B. The Office of Community and Work Programs is headed by an Assistant Regional Administrator who reports to the Regional Administrator. This office is comprised of two geographic state teams, each headed by a Program Manager. Each geographic team is responsible for both program and fiscal operations for Head Start, Child Care and Temporary Assistance for Needy Families (TANF) within their respective states.

The Office is responsible for providing centralized management, financial management services, and technical administration of ACF discretionary and formula grant programs such as Head Start, Child Care and TANF. The Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements governing ACF grants. The Office provides technical assistance to entities responsible for administering these programs to ensure that appropriate procedures and practices are adopted, and monitors the programs to ensure their efficiency and effectiveness.

The Office performs systematic fiscal reviews, makes recommendations to the Regional Administrator to approve or disallow costs under ACF discretionary grant programs; and makes recommendations to the Regional Administrator concerning state plan approval or disapproval. The Office issues discretionary grant awards based on a review of project objectives, budget

projections, and proposed funding levels. As applicable, the Office makes recommendations regarding the clearance and closure of audits of grantee programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies. The Office oversees the management and coordination of office automation systems in the region such as PC Cost and HS Cost systems for budget analysis of Head Start Applications and monitors grantee systems projects such as the Head Start Program Information Report, Head Start Management Tracking System and the Head Start Bulletin Board.

The Office represents the Regional Administrator in dealing with entities receiving ACF funding on all matters under its jurisdiction and in providing early warnings on problems or issues that may have significant implications for ACF programs.

C. The Office of State and Youth Programs is headed by an Assistant Regional Administrator who reports to the Regional Administrator. This unit is comprised of two programmatic teams, the Child Support Team and the Child Welfare, Youth and Developmental Disabilities Team. Each team is responsible for both program and fiscal operations in their program areas.

The Office is responsible for providing centralized, management, financial management services, and technical administration of ACF formula, block and entitlement programs such as Child Support Enforcement, Foster Care and Adoption Assistance, Child Welfare, Family Preservation and Support Services, Child Abuse and Neglect, Developmental Disabilities and the discretionary Runaway and Homeless Youth Program.

The Office provides policy guidance to state, county, city, or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements governing ACF grants. State plans are reviewed and recommendations concerning state plan approval or disapproval are made to the Regional Administrator. The Office provides technical assistance to entities responsible for administering ACF grants, resolving identified problems and ensuring adoption of appropriate procedures and practices that promote policy compliance and program efficiency and effectiveness.

The Office provides financial management oversight for ACF grants under its jurisdiction, reviews cost allocation plans, program objectives, budget projections, cost estimates and reports. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve, defer, or disallow claims for financial participation in ACF grants. As applicable, the Office makes recommendations regarding the clearance and closure of audits, paying particular attention to financial management deficiencies of ACF programs and closely monitors the resolution of such deficiencies.

The Office oversees the management and coordination of external automated systems. The external systems responsibilities include monitoring state systems projects and providing technical assistance to states on the development enhancement of automated systems. The Office represents the Regional Administrator on State systems matters with ACF central office, states, contractors and grantees.

The Office represents the Regional Administrator in dealing with entities receiving ACF funding on all matters under its jurisdiction, and in providing early warnings on problems or issues that may have significant implications for ACF programs.

Dated: October 2, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary for Children and Families.

[FR Doc. 97–26677 Filed 10–7–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–437]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Psychiatric Unit Criteria Work Sheet, Rehabilitation Unit Criteria Work Sheet, Rehabilitation Hospital Criteria Work sheet and Supporting Regulations 42 CFR 412.20–412.32; *Form No.:* HCFA–437, OMB # 0938–0358; *Use:* Rehabilitation hospitals and Psychiatric hospital units that are excluded from the Medicare Prospective Payment System (PPS) must complete the criteria work sheets to verify and reverify that they comply and remain in compliance with the exclusion criteria for the Medicare prospective payment system. These forms capture information that will allow Medicare to reimburse these facilities on the basis of a nationally-determined average standardized amounts, i.e., a prospective payment type system. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government; *Number of Respondents:* 2,555; Total Annual Responses: 2,555; *Total Annual Hours:* 639.

2. Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Referenced in 42 CFR 411.404(c)(2)+(3), 411.406(c)+(d): Procedures for Determining Whether Providers, Practitioners, or other suppliers of services are liable for certain noncovered services; *Form No.:* HCFA-R–77, OMB # 0938–0465; *Use:* BERC–273–F requires Peer Review Organizations (PROs) to provide written notification of noncovered services to beneficiaries and/or providers, practitioners and suppliers. The notification provides provider, practitioner or supplier with knowledge that Medicare will not pay for items or services mentioned in the notification. After this notification, any future claim for the same or similar services will not be paid. *Frequency:* Monthly; *Affected Public:* Business or other for-profit, Individuals or Households; *Number of Respondents:* 724,271; *Total Annual Responses:* 2,897,085; *Total Annual Hours:* 241,424.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed by November 7, 1997 directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, *Attention:* Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 30, 1997.

John P. Burke III,

HCFA Reports Clearance Officer HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–26564 Filed 10–7–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Document Identifier: HCFA–R–64

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Indirect Medical Education (IME) and Supporting Regulations 42 CFR 412.105; *Form No.:* HCFA–R–64 OMB # 0938–0456; *Use:* The collection of information on Interns and Residents (IR) is needed to properly calculate Medicare program payments to hospitals that incur indirect costs for medical education. The reports provide contractors with information to ensure that hospitals are properly reimbursed for IME, and eliminate IME duplicate reporting. *Frequency:* Annually; *Affected Public:* Not-for profit institutions, Business or other for-profit; *Number of Respondents:* 1300; *Total Annual Responses:* 1300; *Total Annual Hours:* 3,250.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed by November 7, 1997 directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 23, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–26566 Filed 10–7–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1997.

Name: Maternal and Child Health Research Grants Review Committee

Date and Time: November 12–14, 1997, 9:00 a.m.–5:00 p.m.

Place: Conference Room "O", Parklawn Building, 3rd Floor, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on Wednesday, November 12, 1997, 9:00 a.m.–10:00 a.m. Closed for remainder of meeting.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Science, Education and Analysis, who will report on program issues, congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on November 12 at 10:00 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Acting Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Contran Lamberty, Dr.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Agenda Items are subject to change as priorities dictate.

Dated: September 30, 1997.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination, HRSA.

[FR Doc. 97–26646 Filed 10–7–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Proposed Collection: Comment Request (The Cardiovascular Health Study)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* The Cardiovascular Health Study. *Type of Information Request:* NEW. *Need and Use of Information Collection:* This study will quantify associations between conventional and hypothetical risk factors and coronary heart disease and stroke in people age 65 years and older. The primary objectives include quantifying associations of risk factors with subclinical disease, characterize the natural history of CHD, stroke and identify factors associated with clinical course. The findings will provide important information on cardiovascular disease in an older U.S. population and lead to early treatment of risk factors associated with disease

and identification of factors which may be important in disease prevention. *Frequency of response:* 5.36 (annual number of responses/annual number of respondents) *Affected public:* Individuals or households. *Types of Respondents:* Individuals recruited for CHS and their selected proxies and physicians. The annual reporting burden is as follows: *Estimated Number of Respondents:* 5,790; *Estimated Number of Responses per respondent:* 5.4; *and Estimated Total Annual Burden Hours Requested:* 8,098. There are no costs for respondents. Estimated annualized cost for information collection for information collection for a 13-year period is $6,820 thousand per year. This is based on CHS Field, Center and Reading Centers costs in thousands per year. Personnel, $3,627; Equipment, $47; Subcontracts, $257; Other, $1,437; Overhead, $1,452. The annualized cost of monitoring the project by the NHLBI is $207 thousand.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information will have practical utility; (2) The accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of data collection plans and instruments, contact Dr. Robin Boineau, Epidemiology and Biometry Program, Division of Clinical Applications, NHLBI, NIH, II Rockledge Centre, 6701 Rockledge Drive, MSC #7934, Bετηεσδα, ΜΔ, 20892–7934, ορ ψαλλ νον-τολλ φρεε νθμβερ (301) 435–0707, ορ Ε-μαιλ υοθρ ρεφθεστ, ινψλθδινγ υοθρ αδδρεσσ το≤ βοινεαθ@νη.γοω.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: October 1, 1997.

Sheila E. Merritt,

Executive Officer, NHLBI.

[FR Doc. 97–26631 Filed 10–7–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

Proposed Data Collection: Public Comment; Leukemia and Other Cancers Among Chernobyl Clean-up Workers in Lithuania

SUMMARY: In compliance with the requirement of Section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* Leukemia and Other Cancers Among Chernobyl Clean-up Workers in Lithuania. *Type of Information Collection Request:* renewal. *Need and Use of Information Collections:* A cohort study will be conducted to investigate the risk of radiation-induced leukemia and other cancers, and of occupationally related cancers, among 7,000 workers from Lithuania who were sent to Chernobyl to clean-up after the accident there in 1986. The workers will be asked to respond to a mail questionnaire or an interview that collects information about specific duties performed during the Chernobyl clean-up, occupational exposures, other cancer risk factors, and incident cancers. The information will be combined with similar information from Estonia and Latvia and used by the National Cancer Institute to determine site-specific risk estimates for cancer based on various exposure patterns. *Frequency of Response:* One time; *Affected Public:* Individuals or households; *Type of Respondents:* Chernobyl Workers. The annual reporting burden is as follows: *Estimated Number of Respondents: 7,000; Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 0.5; and *Estimated Total Annual Burden Hours Requested:* 3,500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the plans and instruments, contact Gilbert W. BeeBe, Ph.D., National Cancer Institute, EPN 400, 6130 Executive Boulevard, Rockville, MD 20892–7364, or call the non-toll-free number (301) 496–5067.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before December 8, 1997.

Dated: September 30, 1997.

Nancie L. Bliss,

OMB Project Clearance Liaison.

[FR Doc. 97–26632 Filed 10–7–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health is seeking licensees for the further development, evaluation, and commercialization of novel progesterone antagonists and pharmaceutical compositions thereof. The invention claimed in U.S. Patent Application 60/016,628 entitled "21-Substituted Progesterone Derivatives As New Antiprogestational Agents" (HK Kim, RP Blye, PN Rao, JW Cessac, and CK Acosta), filed May 1, 1996, and a related case filed April 30, 1997, are available for either exclusive or non-exclusive licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404).

ADDRESSES: Licensing proposals and questions about this opportunity should be addressed to Ms. Carol Lavrich, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7735 ext. 287; fax: 301/402–0220; e-mail: CL21R@NIH.GOV.

Information about the patent applications and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions.

SUPPLEMENTARY INFORMATION: As part of its continuing steroid synthesis program and its expanded mission, the Contraception and Reproductive Health Branch, Center for Population, National Institute of Child Health and Human Development, has developed several 21-substituted derivatives of progesterone for therapeutic applications as antiprogestational agents.

Preclinical evaluation of these steroids indicates greater antiprogestational activity and reduced antiglucocorticoid activity compared with mifepristone. These data and those derived from a number of endocrinological, reproductive and receptor binding studies are available for the process of due diligence. None of these data has been published. Radioimmunoassays for these steroids are being developed. No toxicological studies have been undertaken, but extensive safety studies have been performed on a similar antiprogestational agent.

Antiprogestational agents have a broad spectrum of potential therapeutic uses in gynecic medicine including cervical ripening, endometriosis, uterine fibroids, breast and endometrial cancer and postmenopausal hormone replacement therapy.

Applicants for licensing are encouraged to submit a research plan which encompasses the most extensive development for therapeutic use.

Dated: September 26, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–26630 Filed 10–7–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: NIAMS SEP Program Project Review.

Date: November 19, 1997.

Time: 8:00 a.m.–5:00 p.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Rm 5AS25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: October 1, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26627 Filed 10–7–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Prusant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice of hereby given of the following National Institute of Child Health and Human Development Initial Review Group meetings:

Name of Subcommittee: Population Research Subcommittee.

Date: October 9–10, 1997.

Time: October 9–8:00 a.m.-5:00 p.m.; October 10–8:00 a.m.-adjournment.

Place: Bethesda Ramada Hotel, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: A.T. Gregoire, Ph.D., Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Name of Subcommittee: Population Research Subcommittee.

Date: October 16, 1997.

Time: 8:00 a.m.-adjournment.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: A.T. Gregoire, Ph.D., Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Subcommittee: Mental Retardation Subcommittee.

Date: October 20, 1997.

Time: 8:00 a.m.-adjournment.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Norman Chang, Ph.D., Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Name of Subcommittee: Maternal and Child Health Research Subcommittee.

Date: October 21–22, 1997.

Time: October 21–8:00 a.m.–5:00 p.m.; October 22–8:00 a.m.-adjournment.

Place: Holiday Inn-Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.

Contact Person: Gopal M. Bhatnagar, Ph.D., Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Name of Subcommittee: Medical Rehabilitation Research Subcommittee.

Date: October 22–23, 1997.

Time: October 22–8:30 a.m.–5:00 p.m.; October 23–8:30 a.m.-adjournment.

Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland.

Contact Person: Ms. Anne Krey, Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review research grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: October 1, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97–26629 Filed 10–7–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting of the Biomedical Library Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on November 5–6, 1997, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on November 5 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Milton Corn at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting on November 5 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on November 6 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Milton Corn, Acting Associate Director, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4621, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: October 1, 1997.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 97–26628 Filed 10–7–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary.
ACTION: Notice of meeting.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum to be held at 10 a.m. on October 15, 1997. The meeting will take place at the Pioneer School House, 437 East Third Avenue (third floor), Anchorage, Alaska. This meeting will be held to receive and discuss work group reports on recreation and tourism. The agenda will also include several briefing items.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 485–4084.

Deborah L. Williams,
Special Assistant to the Secretary for Alaska.
[FR Doc. 97–26620 Filed 10–7–97; 8:45 am]
BILLING CODE 4310–RP–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–01]

Resource Advisory Councils meeting Upper Snake River Districts

AGENCY: Bureau of Land Management, Interior.
ACTION: Resource Advisory Council meeting location and time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The agenda includes a field tour of grazing allotments and implementation of the healthy rangeland standard and guidelines. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kovar at the Shoshone Resource Area Office, P. O. Box 2–B, Shoshone, ID, 83352, (208) 886–7201.

DATE AND TIME: Date is October 28, 1997, starts at 8:30 a.m. at the Snake River Resource Area Office at 15 East 200 South, Burley, Idaho. Public comments received from 8:30 to 9:00 a.m prior to the field trip.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION CONTACT: Contact Debra Kovar, Shoshone Resource Area Office, P.O. Box 2–B, Shoshone, ID 83352, (208) 886–7201.

Dated: September 29, 1997.
Tom Dyer,
District Manager.
[FR Doc. 97–26661 Filed 10–7–97; 8:45 am]
BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV 910 0777 30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.
ACTION: Resource Advisory Council's Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for this meeting includes: approval of minutes of the previous meetings, review of the RAC charter and regulations, update on land sales-exchanges-trades, Standards and Guidelines, wild horses and range condition in the Diamond Mountain Complex, Columbia River Basin Draft Environmental Impact Statement, Fire Management Planning, Collaborative Management Reports, Bureau of Land Management water rights and policy in Nevada, Off Highway Vehicle use, identification of additional issues for future consideration by the RAC.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language, interpretation or other reasonable accommodations, should contact the District Manager at the Ely District Office, 702 North Industrial Way, HC33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1800.

DATES, TIMES, PLACE: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, Holiday Inn, (conference room), 1501 Avenue F, Ely, Nevada, 89301; November 3, 1997, starting at 9:00 a.m.; public comments will be at 11:00 a.m. and 3:00 p.m.; tentative adjournment for the day at 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Curtis G. Tucker, Team Leader for the Northeastern Resource Advisory Council, Ely District Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Dated: September 29, 1997.
Gene Drais,
Acting District Manager, Ely.
[FR Doc. 97–26662 Filed 10–7–97; 8:45 am]
BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Proposed Western Gulf Sales 171, 174, 177, and 180

AGENCY: Minerals Management Service, Interior.
ACTION: Notice of availability of the draft multisale Environmental Impact Statement (EIS) and public hearings on proposed Western Gulf of Mexico (GOM) Sales 171, 174, 177, and 180.

The Minerals Management Service (MMS) has prepared a draft multisale EIS on five proposed Outer Continental Shelf (OCS) oil and gas lease sales in the Western GOM. We will conduct a planning process for one sale each year from 1998 through 2001. Although this EIS addresses four proposed lease sales, it is a decision document only for proposed Sale 171. We will consult with other Federal agencies and the affected States for each of the yearly proposed sales. We will perform a National Environmental Policy Act review, and give the public an opportunity to participate in each sale.

You may obtain single copies of the draft multisale EIS from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS–5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

You may look at copies of the draft EIS in the following libraries:

Texas

Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene;
Alma M. Carpenter Public Library, 330 South Ann, Sourlake;
Arkansas Pass Public Library, 110 North Lamont Street, Aransas Pass;
Austin Public Library, 402 West Ninth Street, Austin;
Bay City Public Library, 1900 Fifth Street, Bay City;
Baylor University, 13125 Third Street, Waco;
Brazoria County Library, 410 Brazoport Boulevard, Freeport;
Calhoun County Library, 301 South Ann, Port Lavaca;
Chambers County Library System, 202 Cummings Street, Anahuac;
Comfort Public Library, Seventh & High Streets, Comfort;
Corpus Christi Central Library, 805 Comanche Street, Corpus Christi;
Dallas Public Library, 1513 Young Street, Dallas;
East Texas State University Library, 2600 Neal Street, Commerce;
Houston Public Library, 500 McKinney Street, Houston;
Jackson County Library, 411 North Wells Street, Edna;
Lamar University, Gray Library, Virginia Avenue, Beaumont;
LaRatama Library, 505 Mesquite Street, Corpus Christi;
Liberty Municipal Library, 1710 Sam Houston Avenue, Liberty;
Orange Public Library, 200 North Fifth Street, Orange;
Port Arthur Public Library, 3601 Cultural Center Drive, Port Arthur;
Port Isabel Public Library, 213 Yturria Street, Port Isabel;
R.J. Kleberg Public Library, Fourth and Henrietta, Kingsville;
Reber Memorial Library, 193 North Fourth, Raymondville;
Refugio County Public Library, 815 South Commerce Street, Refugio;
Rice University, Fondren Library, 6100 South Main Street, Houston;
Rockwall County Library, 105 South First Street, Rockwall;
Rosenberg Library, 2310 Sealy Street, Galveston;
Sam Houston Regional Library & Research Center, FM 1011 Governors Road, Liberty;
Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches;
Texas A & M University, Corpus Christi Library, 6300 Ocean Drive, Corpus Christi;
Texas A & M University, Evans Library, Spence and Lubbock Streets, College Station;
Texas Southmost College Library, 1825 May Street, Brownsville;
Texas State Library, 1200 Brazos Street, Austin;
Texas Tech University Library, 18th and Boston Avenue, Lubbock;
University of Houston Library, 4800 Calhoun Boulevard, Houston;
University of Texas at Arlington, Library, 701 South Cooper Street, Arlington;
University of Texas at Austin, Library, 21st and Speedway Streets, Austin;
University of Texas at Brownsville, Oliveria Memorial Library, 80 Fort Brown, Brownsville;
University of Texas at Dallas, McDermott Library, 2601 North Floyd Road, Richardson;
University of Texas at El Paso, Library, Wiggins Road and University Avenue, El Paso;
University of Texas at San Antonio, Library, 6900 North Loop 1604 West, San Antonio;
University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin;
University of Texas, LBJ School of Public Affairs Library, 2313 Red River Street, Austin;
Victoria Public Library, 320 North Main, Victoria;

Louisiana

Calcasieu Parish Library, 327 Broad Street, Lake Charles;
Cameron Parish Library, Marshall Street, Cameron;
Grand Isle Branch Library, Highway 1, Grand Isle;

Government Documents Library, Loyola University, 6363 St. Charles Avenue, New Orleans;
Iberville Parish Library, 24605 J. Gerald Berret Boulevard, Plaquemine;
Jefferson Parish Regional Branch Library, 4747 West Napoleon Avenue, Metairie;
Jefferson Parish West Bank Outreach Branch Library, 2751 Manhattan Boulevard, Harvey;
Lafayette Public Library, 301 W. Congress Street, Lafayette;
Lafitte Branch Library, Route 1, Box 2, Lafitte;
Lafourche Parish Library, 303 West 5th Street, Thibodaux;
Louisiana State University Library, 760 Riverside Road, Baton Rouge;
Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston;
LUMCON, Library, Star Route 541, Chauvin;
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles;
New Orleans Public Library, 219 Loyola Avenue, New Orleans;
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux;
Plaquemines Parish Library, 203 Highway 11, South, Buras;
St. Bernard Parish Library, 1125 East St. Bernard Highway, Chalmette;
St. Charles Parish Library, 105 Lakewood Drive, Luling;
St. John The Baptist Parish Library, 1334 West Airline Highway, LaPlace;
St. Mary Parish Library, 206 Iberia Street, Franklin;
St. Tammany Parish Library, Covington Branch, 310 West 21st Street, Covington;
St. Tammany Parish Library, Slidell Branch, 555 Robert Boulevard, Slidell;
Terrebonne Parish Library, 424 Roussell Street, Houma;
Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans;
University of New Orleans Library, Lakeshore Drive, New Orleans;
University of Southwestern LA, Dupre Library, 302 East St. Mary Boulevard, Lafayette;
Vermilion Parish Library, Abbeville Branch, 200 North Street, Abbeville;

There will be three public hearings held to receive comments on the draft multisale EIS. The hearings will provide us with information that will help in the evaluation of the potential effects of the proposed lease sales. Hearings will be held in: New Orleans, Louisiana, on October 29, 1997; 1:00–3:00 p.m., Minerals Management Service, 1201 Elmwood Park Boulevard, Conference Room 111, Jefferson, Louisiana; Austin, Texas, on October 28, 1997; 1:00–3:00 p.m., Doubletree Hotel, 303 West 15th; Corpus Christi, Texas, on October 29, 1997; 7:00–9:00 p.m., Texas A&M University, Natural Resources Center, Room 1003, 6300 Ocean Drive; and Houston, Texas, on October 30, 1997; 1:00–3:00 p.m., Adam's Mark Hotel, 2900 Briarpark Drive.

If you wish to testify at a hearing, you may register beginning 1 hour prior to the meeting. Speakers will be limited to 10 minutes. Each hearing will recess when all speakers have had an opportunity to testify. If there are no additional speakers, we will adjourn the hearing immediately after the recess. Written statements submitted at a hearing will be considered part of the hearing record. If you are unable to attend the hearing, you may submit written statements until December 2, 1997. Send written statements to the Regional Director (MS–5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Dated: September 25, 1997.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 97–26636 Filed 10–7–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Transfer of Lands—Colorado River Storage Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

SUMMARY: By virtue of the authority vested in the Secretary of the Interior by Section 8 of the Colorado River Storage Project (CRSP) Act of April 11, 1956 (70 Stat. 110), and his delegation of authority to the Commissioner of the Bureau of Reclamation (Reclamation), jurisdiction over the following described land, which lies within the exterior boundary of the Bureau of Land Management's (BLM) Montrose Resource Area, Colorado, and which was acquired by Reclamation for fish and wildlife mitigation purposes for the development of the Wayne P. Aspinall Unit, a unit of the CRSP, is hereby transferred to BLM for fish and wildlife purposes.

ADDRESSES: Copies of the Memorandum of agreement between Reclamation and BLM are on file in the Office of the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Salt Lake City, Utah; and the State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Welch, Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Salt Lake City, Utah 84138 or telephone (801) 524–3765.

SUPPLEMENTARY INFORMATION: Pursuant to the National Intragency Agreement between Reclamation and BLM dated March 25, 1983, agreements may be executed between both agencies for recreation, and fish and wildlife management activities on Federal land. Statutory authority for such agreements includes: Section 307, Federal Land Policy and Management Act (43 U.S.C. 1937); Economy Act (31 U.S.C. 686); and Reclamation Act of 1902 (43 U.S.C. Chapter 12) as amended or supplemented thereto.

Parcel No. WAU-(mit.)-1 describes the 225 acres of Reclamation acquired land to be transferred to BLM. The parcel consists of that portion of the McCluskey property as referenced by Memorandum of Agreement, Contract No. 0–LM–40–00340, dated July 30, 1992, between Reclamation and BLM.

Pursuant to Section 8 of the CRSP, the above land shall become BLM land with the provision that the land is administered and managed for angler access and other fish and wildlife purposes.

Dated: October 2, 1997.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 97–26693 Filed 10–7–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: follow-up from items from the previous meeting; receive advice on tradeoffs associated with the CALFED alternatives; update BDAC on ongoing CALFED activities. BDAC members are also invited to attend an informal educational session to discuss legislation that may be introduced in the California State Legislature pertaining to the CALFED Bay-Delta Program. Both the informal educational session and the meeting is open to the public. For the meeting, interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATE: The Bay-Delta Advisory Council informal educational session will be held from 7:30 p.m. to 9 p.m. on Tuesday, November 4, 1997. The BDAC meeting will be held from 9:30 am to 5:00 pm on Tuesday, November 4, 1997 and from 8:30 a.m. to 5:00 p.m. on Wednesday, November 5, 1997.

ADDRESSES: The Bay-Delta Advisory Council educational session will be held at the Hyatt Regency Hotel, 1209 L Street, Sacramento, California 95814. The Bay-Delta Advisory Council meeting will meet at the Sacramento Convention Center, 1030 15th Street, Sacramento, California 95814, (916) 264–5291.

CONTACT PERSON FOR MORE INFORMATION: Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisers representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BEDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: October 1, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–26626 Filed 10–7–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–383]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences; Imports of Raw Cane Sugar From Brazil

AGENCY: United States International Trade Commission.

ACTION: Amendment of scope of the investigation.

SUMMARY: Following receipt on October 2, 1997, of a request from the United States Trade Representative (USTR), the Commission amended the scope of its investigation No. 332–383, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, to include advice concerning whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the Trade Act of 1974 with respect to imports of raw cane sugar from Brazil, provided for under subheading 1701.11.10 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: October 3, 1997.

FOR FURTHER INFORMATION CONTACT:

(1) Project Manager, Cynthia B. Foreso (202–205–3348)
(2) Agricultural and forest products, Douglas Newman (202–205–3328)
(3) Energy, chemicals, and textiles, Eric Land (202–205–3349)
(4) Minerals, metals, machinery, and miscellaneous manufactures, Vincent DeSapio (202–205–3435)
(5) Services, electronics, and transportation, Laura Polly (202–205–3408)

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091.

Background

The Commission's notice of institution of the investigation and the scheduling of a public hearing was published in the **Federal Register** of September 18, 1997 (62 F.R. 49028). The public hearing will be held on October 21, 1997, as announced in the notice published on September 18. Persons wishing to appear at the public hearing and offer testimony concerning the effect of waiver of competitive need limitation on raw cane sugar from Brazil should file a letter asking to testify with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on October 14, 1997. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by close of business on October 14, 1997. All other dates announced in the notice of September 18, 1997 will remain the same.

In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 29, 1997. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: October 6, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–26801 Filed 10–7–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Justice Management Division; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Reinstatement, without change, of a previously approved collection for which approval has expired; Certification of Identity.

This information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until (insert date of 60 days from date of publication in the **Federal Register**). This process is conducted in accordance with the Paperwork Reduction Act of 1995.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Ms. Patricia D. Harris, 301–436–1018, FOIA/PA Coordinator, Mail Management Services, Facilities and Administrative Services Staff, Justice Management Division, United States Department of Justice, Washington, DC 20530.

Overview of this information collection:

(1) *Type of Informotion Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Certification of Identity.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: DOJ–361. Facilities and Administrative Services Staff, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* individuals. The information collection will be used by the Department to identify individuals requesting certain records under the Privacy Act. Without this form an individual cannot obtain the information requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 34,390 respondents at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 34,390 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 2, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–26619 Filed 10–7–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 29, 1997, a proposed Consent Decree in *United States* v. *Case Corporation*, et al., Civil Action No. 97–4101, was lodged with the United States District Court for the Central District of Illinois.

The Consent Decree settles an action brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, ("CERCLA") for the recovery of past costs incurred by the United States in responding to releases or threatened releases of hazardous substances at the A.A. Waste Oil Site, located in Rock Island, Illinois. The proposed settlement set forth in the Consent Decree addresses the liability of twenty-eight defendants in this action, each of which has been named as a generator of hazardous substances sent to the Site. Under the terms of the proposed decree, the settling defendants will pay the United States a total of $395,000 in settlement of the United States' past costs claims against them.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Case Corporation, et al.*, D.J. Ref. 90–11–2–1261.

The Consent Decree may be examined at the office of the United States Attorney, Central District of Illinois, 100 N.E. Monroe Street, Room 216, Peoria, IL 61620, at United States Environmental Protection Agency Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting copies of these three proposed settlements, please enclose a check in the amount of $12.75 (25 cents per page reproduction cost) payable to the Consent Decree Library, and should refer to *United States* v. *Case Corporation, et al.*, D.J. Ref. 90–11–2–1261.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–26655 Filed 10–7–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Stone Container Corp.*, Civ. No. CIV–97–1971–PHX–EHC, was lodged with the United States District Court for the District of Arizona, on September 23, 1997. That action was brought against defendant pursuant to the Clean Water Act ("the Act") for penalties and injunctive relief as a result of unauthorized discharges from Stone Container Corp's (Stone) pulp and paper mill, located in Snowflake, AZ, into Dry Lake and Twin Lakes, two playa lakes on its property. The proposed consent decree requires Stone, *inter alia*, to cease all discharge to Dry Lake by January 1, 1997, which it did, to remediate Dry Lake allowing it to return to its natural state, and to pay a civil penalty of $375,000. In addition, Stone will use its mill effluent to fertilize and irrigate a "biomass plantation" it has created on its property to grow trees and other crops. Stone must operate this biomass plantation in accordance with best management practices set forth in the decree, which among other things, allow the discharge of mill effluent into Twin Lakes under certain limited conditions.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *Stone Container Corp.*, D.J. Ref. 90–5–1–1–3208.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Arizona, 4000 United States Courthouse, 230 N. First Ave., Phoenix, AZ 85025, at the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street, N.W., 4th floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $14.75 for the decree (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Stone Container Corp.*, D.J. Ref. 90–5–1–1–3208.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–26656 Filed 10–7–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation, Criminal Justice Information Services, Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: *Notice of Information Collection Under Review: Law Enforcement Officers Killed and Assaulted (LEOKA).*

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 8, 1997.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be direct to SSA Paul J. Gans (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact SSA Paul J. Gans, 304–625–4830, FBI, CJIS, Statistical Unit, PO Box 4142, Clarksburg WV 26302–9921. Overview of this information collection:

(1) *Type of information collection:* Extension of Current Collection

(2) *The title of the form/collection:* Law Enforcement Officers Killed and Assaulted (LEOKA).

(3) *The agency form number, if any, and applicable component of the Department sponsoring the collection. Form:* I–705. Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract. Primary:* State and Local Law Enforcement Agencies. This collection is needed to provide data regarding Law Enforcement Officers Killed and Assaulted throughout the United States. Data is tabulated and published in the comprehensive annual "Law Enforcement Officers Killed and Assaulted".

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 17,145 agencies; 205,740 responses (includes Zero Reports); and with an average completion time of 5 minutes a month or 1 hour annually per responding agency.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 17,145 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 2, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–26611 Filed 10–7–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade; Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

DATE; TIME AND PLACE: October 16, 1997, 10:00 am, U.S. Department of Labor, Room S–1011, 200 Constitution Ave., NW, Washington, D.C. 20210.

PURPOSE: The meeting will include a review and discussions of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or

bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION, CONTACT: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219–7597.

Signed at Washington, D.C. this 1st day of October 1997.

Andrew J. Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 97–26688 Filed 10–7–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754)

Date & time: October 30, 1997 at 8:30 am to 5:00 pm, October 31, 1997 at 8:30 am to 3:00 pm

Location: Room 375, National Science Foundation 4201 Wilson Boulevard, Room 615, Arlington, Virginia 22230

Type of meeting: Closed

Contact person: Dr. James T. Callahan, Program Director, National Science Foundation 4201 Wilson Boulevard Arlington, Virginia 22230 (703) 306–1469

Purpose of meeting: To provide advice and recommendations concerning research proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate research, proposals, submitted to and being considered by the Equipment and Facilities for Research at Biological Research Collection as part of the selection process for awards.

Reasons for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c)(4) and (6) of Government in the Sunshine Act.

Dated: October 3, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26686 Filed 10–7–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel in for Cognitive, Psychological & Language Sciences; Notice of Meetings

This notice is being published in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period October and November 1997, the Advisory Panel will be holding panel meetings to review and evaluate research proposals. The dates, contact person, and types of proposals. The dates, contact person, and types of proposals are as follows:

Advisory Panel in for Cognitive, Psychological & Language Sciences (1757)

1. *Date:* October 30–31, 1997.

Contact: Dr. Paul Chapin, Program Director for Linguistics, Division of Social, Behavioral and Economic Science Research, Room 995, 703–306–1731.

Type of Proposal: Linguistics.

2. *Date:* November 5–7, 1997.

Contact: Dr. Michael McCluskey, Program Director Human Cognitive and Perception, Division of Social, Behavioral and Economic Science Research, Room 995, 703–306–1732.

Type of Proposal: Human Cognitive and Perception.

3. *Date: November 5–7, 1997.*

Contact: Dr. Steven J. Breckler, Program Director for Social Psychology, Division of Social, Behavioral, and Economic Research, Room 995, 703–306–1728.

Type of Proposal: Social Psychology.

Times: 8:30 to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Purpose of meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26687 Filed 10–7–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (#173).

Date/Time: October 27–28 1997, 8:00 a.m.–5:30 p.m.

Place: National Science Foundation, Room 360, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Janet Rutledge, Program Director, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Research Experiences for Undergraduates Program as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26680 Filed 10–7–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Infrastructure, Methods & Science Studies; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period October 1, 1997 through December 31, 1998, the Advisory Panel will be holding panel meetings to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Advisory Panel for Infrastructure, Methods & Science Studies (#1760)

1. *Date:* October 26–27, 1997.

Place: Holiday Inn City Center, 181 West Broadway, The Broadhurst Room, Tucson, AZ 85701.

Contact: Dr. Rachelle Hollander, Program Director for Societal Dimensions of Engineering Science & Technology, Division of Social, Behavioral & Economic Research, Room 995, 703–306–1743.

Type of proposal: Societal Dimensions of Engineering, Science & Technology Studies.

2. *Date:* November 21–22, 1997.

Contact: Dr. Edward J. Hackett, Program Director for Science & Technology Studies, Division of Social, Behavioral & Economic Research, Room 995, 703–306–1742.

Type of proposal: Science & Technology Studies.

3. *Date:* December 8–9, 1997.

Contact: Dr. Cheryl L. Eavey, Program Director of Methods, Measurement & Statistics, Division of Social, Behavioral, and Economic Research, Room 995, 703–306–1729.

Type of Proposal: Methods, Measurement & Statistics.

Times: 8:30 to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Directorate as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26678 Filed 10–7–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Social, Behavioral, and Economic Sciences (1766).

Date and Time: October 28, 1997; 9:00 a.m. to 5:00 p.m.

Place: Room 375, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: M. Marge Machen, Project Officer, Division of Science Resources Studies, Research and Development Statistics Program, 4201 Wilson Blvd., Suite 965, Arlington, VA 22230, Telephone: (703) 306–1772, ext. 6934, Fax: (703) 306–0508, Internet: mmachen@nsf.gov

Minutes may be obtained from the contact person at the above address.

Purpose of Meeting: To review and comment on issues affecting the annual Survey of Science and Engineering Research and Development Expenditures at Universities and Colleges.

Agenda: Discussion on multidisciplinary research; Federal funds for R&D expenditures by agency and by field; and non-science and engineering R&D expenditures.

Dated: October 3, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26682 Filed 10–7–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

Policy and Procedure for Enforcement Actions; Enforcement Conference Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its "General Statement of Policy and Procedure for NRC Enforcement Actions" to clarify procedures associated with enforcement conferences based on reports of the NRC Office of Investigations associated with discrimination.

EFFECTIVE DATE: This action is effective on October 8, 1997.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–2741.

SUPPLEMENTARY INFORMATION:

The Commission's "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy or Policy) was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions. On June 30, 1995 (60 FR 34381), the Enforcement Policy was revised in its entirety and was also published as NUREG–1600. The Policy primarily addresses violations by licensees and certain non-licensed persons.

On March 24, 1997 (62 FR 13906), the NRC published changes to the Enforcement Policy concerning predecisional enforcement conferences based on findings of discrimination. The changes permitted limited participation in those conferences by the complainant. The Statement of Consideration for those changes provided that "normally" Office of Investigations (OI) reports involving discrimination will be made public. However, the actual Policy change in the eighth paragraph of Section V. Predecisional Enforcement Conferences, stated that they "will be made" public. In this revision, the word "may" has now been substituted to more accurately reflect those cases in which it is not appropriate to make the OI report public. Also, additional language in this paragraph is being added to clarify that the purpose of the complainant's participation in a conference is to provide information to the NRC to assist it in its enforcement deliberations.

Paperwork Reduction Act

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, the eighth paragraph of Section V of the NRC Enforcement Policy is amended to read as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

V. Predecisional Enforcement Conferences

* * * * *

For a case in which an NRC Office of Investigations (OI) report finds that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report may be made public, subject to withholding certain information (i.e., after appropriate redaction), in which case the associated predecisional enforcement conference will normally be open to public observation. In a conference where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as "complainant") will normally be provided an opportunity to participate in the predecisional enforcement conference with the licensee/employer. This participation will normally be in the form of a complainant statement and comment on

the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written response to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response. For cases involving potential discrimination by a contractor or vendor to the licensee, any associated predecisional enforcement conference with the contractor or vendor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. The purpose of the complainant's participation is to provide information to the NRC to assist it in its enforcement deliberations.

* * * * *

Dated at Rockville, Maryland, this 3rd day of October 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–26690 Filed 10–7–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 95th meeting on October 21, 1997, at the William F. Bolger Center For Leadership Development, 9600 Newbridge Drive, Potomac, Maryland, and October 22–23, 1997, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance. The schedule for this meeting is as follows:

Tuesday, October 21, 1997–8:30 a.m. until 6:00 p.m.
Wednesday, October 22, 1997–8:30 a.m. until 6:00 p.m.
Thursday, October 23, 1997–8:30 a.m. until 4:00 p.m.

A. *ACNW Retreat*—The Committee members will discuss their mission, planned accomplishments, priorities, and work processes for FY 1998–99. The retreat will be held on October 21, 1997, at the William F. Bolger Center For Leadership Development.

B. *Meeting with NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards*—The Committee will meet with the Director to discuss technical assistance, developments at the Yucca Mountain project, resources, and other items of mutual interest.

C. *Review of NRC Research and Technical Assistance*—The Committee will review activities of NRC's Office of Nuclear Materials Safety and Safeguards and Nuclear Regulatory Research in the area of nuclear waste disposal. The ACNW will provide input to the Advisory Committee on Reactor Safeguards' February 1998 report to Congress on NRC research.

D. *Prepare for Next Meeting with the Commission*—The Committee will prepare for its next formal meeting with the Commission. The Committee is scheduled to discuss items of mutual interest with the Commission on December 17, 1997.

E. *Preparation of ACNW Reports*—The Committee will discuss planned reports, including a recommended approach to implement the defense-in-depth concept in the revised 10 CFR Part 60, the Application of Probabilistic Risk Assessment Methods to Performance Assessment in the NRC High-Level Waste Program, ACNW priority issues for 1998, and other topics discussed during the meeting as the need arises.

F. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

G. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 2, 1997 (62 FR 46382). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: October 2, 1997.

John C. Hoyle,

Acting Advisory Committee Management Officer.

[FR Doc. 97–26692 Filed 10–7–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the

Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 15, 1997, through September 26, 1997. The last biweekly notice was published on September 24, 1997 (62 FR 50000).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 7, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: March 18, 1997, as supplemented by letters dated July 28, 1997 and September 9, 1997

Description of amendments request: The amendments would revise the operating licenses for Palo Verde Units 1, 2 and 3 to reflect approval of Amendment 42 to the Palo Verde Nuclear Generating Station (PVNGS) Physical Security Plan. Amendment 42 would revise the methods used to search materials, packages and personnel prior to their entry into the protected area, as described within the security plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated. The "accident" as it relates to the Security Plan would have to be an impact to the Design Basis Threat (DBT) postulated for PVNGS. This change does not decrease the overall security systems (as described in paragraph's (b) through (h) of 10 CFR 73.55) ability to protect PVNGS with the objective of high assurance against the DBT of radiological sabotage as stated in 73.1(a). This change does not delete or contradict any regulatory requirements.

The applicable design basis threat is described in 10 CFR 73.1. Based on that threat, the probability of an external determined violent assault by stealth, or deceptive actions, of several persons is unaffected by the requested changes to the search requirements. Similarly, an internal threat of an insider, including an employee (in any position) is no more likely to occur as a result of the search techniques. The probability of an attack with a four-wheel drive land vehicle bomb is unaffected. Theft or diversion of formula quantities of strategic special nuclear material is a threat of removal from the inside of the protected area, which is not within the scope of this change that only affects searches of material entering the protected area.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility of an accident of a new or different kind has not been created because the DBT (as described in the Security Plan and 10 CFR 73.1) would not be changed as a result of these changes. The changes supplement regulatory requirements and commitments already described in the PVNGS Physical Security Plan.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety. These changes to the personnel, material and package search criteria are not specifically considered in the basis for any margin of safety. The DBT considers inside assistance by a knowledgeable individual, however, these changes would not assist this individual in either sabotage or theft of nuclear material.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Duke Energy Corporation, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 15, 1997

Description of amendment request: The proposed license amendments would revise the Technical Specifications (TS) to:

1. Revise the reactor coolant system heatup limitation curves in Figure 3.4-2, which are applicable only to the first 10 effective full-power years (EFPYs). The revised curves would be (a) applicable to the first 15 EFPYs; (b) include the latest radiation surveillance capsule results; (c) remove instrument margins by relocating them to a licensee-controlled document, "Pressure Temperature Limit Report;" and (d) administratively delete certain unneeded footnotes that exist in the current figure.

2. Modify the actual surveillance capsule identification listed in Table 4.4-5, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule" (for Unit 2 only) and update each unit—s lead factors and withdrawal time.

3. Revise the power-operated relief valve (PORV) setpoints in Section 3.4.9.3.a to less than or equal to 400 pounds per square inch gauge (psig) (as left calibrated), allowable value less than or equal to 425 psig (as found).

4. Make editorial changes to improve consistency among various TS sections to conform with the Westinghouse Improved Standard Technical Specifications, and update applicable Code references.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Will the changes involve a significant increase in the probability or consequences of an accident previously evaluated?No. No previously evaluated accident was considered to originate from use of the heatup curves (change 1. above), the testing and use of surveillance capsules (change 2. above), the setpoint of PORVs (change 3. above), and editorial changes to the TS. Also, these items did not have any role in previously analyzed accident scenarios and thus no impact on accident consequences. Therefore, these proposed changes will have no impact on the consequences or probabilities of any type of previously evaluated accidents.

2. Will the changes create the possibility of a new or different kind of accident from any accident previously evaluated?

No. No actual plant equipment or operating procedure will be affected by the proposed changes. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the changes involve a significant reduction in a margin of safety?

No. The margin of safety is associated with confidence in the design and operation of the plant. The changes to the TS do not involve any change to plant design or operation. Thus, the margin of safety previously analyzed and evaluated is maintained.

On the basis of this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Power Company, 422 South Church Street, Charlotte, North Carolina

NRC Project Director: Herbert N. Berkow

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: June 14, 1997

Description of amendment request: The proposed amendment would revise the technical specifications (TS) for the Crystal River Nuclear Electric Generating Plant Unit 3 (CR-3). The proposed TS changes reflect the operational limitations in mitigating certain Small break loss-of-coolant-accident (SBLOCA) events. The licensee also proposed changes to the associated licensing and design bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The proposed changes are addressed in three major parts: (1) SBLOCA Mitigation, (2) Emergency Diesel generator (EDG) upgrade and (3) EDG Load Rejection Test and Steady State Loads.

SBLOCA Mitigation

The licensee's revised SBLOCA analyses show that for certain sized breaks, a combination of emergency core cooling system (ECCS) flow to the reactor vessel and emergency feedwater (EFW) flow to the once through steam generators (OTSG) is needed to provide for adequate core decay heat removal. Due to load capacity limits on the —A— EDG, the length of time that the motor-driven emergency feed pump-1 (EFP-1) would be available is limited. To ensure adequate EFW system flow and core decay heat removal, several actions would have to be initiated. They include —A— EDG load management, and EFW flow through the turbine-driven emergency feedwater pump-2 (EFP-2) by opening the cross tie valve, flow through both the high pressure injection (HPI) pumps and EFP-1. The proposed TS changes reflect the operational limitations and other associated required actions to ensure adequate ECCS and EFW cooling capability remains. These changes for system cross train dependencies and EDG load management are required for the remainder of current Cycle 11 only.

1. The proposed Technical Specification changes, modifications, and operator actions involving SBLOCA mitigation will not result in a significant increase in the probability of an accident previously evaluated. In addition, the portions of the change involving cross-train dependencies and load management are being requested for the remainder of Cycle 11 only, which limits the impact on any previously established probabilities. The initiators of any design basis accident is not affected by the proposed Technical Specification changes, modifications, and operator actions involving SBLOCA mitigation. Consequently, there is no significant impact on any previously evaluated accident probabilities.

The proposed Technical Specification changes, modifications and operator actions involving SBLOCA mitigation do not result in a significant increase in the consequences of SBLOCA mitigation-related accidents previously evaluated. In this regard, the proposed Technical Specification changes, modifications and operator actions will not adversely affect the integrated ability of the EDGs and the EFW, SW [service water], RW [raw water], Control Complex Cooling, ECCS, DC [Decay Heat Closed Cycle Cooling Water System], Decay Heat Seawater, and Electrical Distribution Systems to perform their intended safety functions. Therefore, the combined ability of these components and systems and actions to mitigate the consequences of a SBLOCA will continue to be maintained. In fact, the collective impact of these Technical Specification changes, modifications and operator actions represents a restoration of the ability to mitigate the consequences of a SBLOCA; which are consistent with the consequences assumed in licensing and design basis for CR-3. For example, the installation of EFW cavitating venturis and the improved operational range of the turbine driven feedwater pump increase the ability of the EFW system to mitigate the consequences of a SBLOCA. In addition, the Technical Specification changes, modifications and operator actions do not significantly affect the onsite or offsite doses which remain a small fraction of 10 CFR Part 100 limits.

2. The proposed Technical Specification changes, modifications and operator actions do not create the possibility of a new or different kind of accident from any accident previously evaluated. The Technical Specification changes, modifications, and operator actions do not involve a different initiator for any design basis accident and do not create new design basis scenarios. SBLOCA mitigation, utilizing a combination of automatic and manual actions, is already part of the CR-3 licensing basis. Manual operator actions necessary for the mitigation of SBLOCAs are currently addressed or are being addressed in EOPs [emergency operating procedures]. Also, these Technical Specification changes, modifications and operator actions restore the ability to mitigate the impact of a SBLOCA, which is consistent with the CR-3 licensing and design basis. Based on the above, a new or different kind of accident does not result from this submittal.

3. The proposed Technical Specification changes, modifications and operator actions do not involve a significant reduction in the margin of safety for SBLOCA mitigation. The Technical Specification changes, modifications and operator actions for the EDGs and the EFW, SW, RW, Control Complex Cooling Systems represent a restoration of the overall margin of safety to a degree that it will be consistent with the existing plant design and licensing bases for SBLOCA mitigation.

EDG upgrade

This aspect of the proposed license amendment involves increases in the service ratings of the EDGs. The required amount of fuel oil in the EDG fuel day tank and fuel storage tank, and lube oil storage is being increased to ensure that adequate volume is available to support the new service ratings. The EDG refueling interval load test parameters are being revised to reflect the increased service ratings and to ensure that the minimum test load is equal to or greater than the expected maximum steady state accident load. Additionally, associated EDG Surveillance Requirements (SR) Bases are being revised.

1. The proposed Technical Specification changes, modifications and operator actions do not involve a significant increase in the probability of an accident previously evaluated because neither the EDGs nor the EDG—s fuel oil and lube oil systems serve as the initiator for any design basis accident and, therefore, do not significantly impact any previously evaluated accident probabilities.

The proposed Technical Specification changes, modifications and operator actions do not involve a significant increase in the consequences of an accident previously evaluated because the ability of the EDGs and the EDG fuel oil and lube oil to perform their intended safety function has not been adversely affected. The EDGs and the EDG fuel oil and lube oil systems remain fully capable of performing their safety function for all design basis accidents. The increase in loading permitted under these changes will reflect the manufacturer—s certified capabilities of the EDGs. Also, the increase in the required fuel remains within the capabilities of the fuel tanks. The same potential design basis failures that existed prior to the EDG upgrades will continue to

exist subsequent to the modifications. It follows that the consequences of such failures will remain a small fraction of 10 CFR Part 100 limits.

2. The proposed Technical Specification changes, modifications and operator actions do not create the possibility of a new or different kind of accident from any accident previously evaluated. Also, the proposed Technical Specification changes, modifications and operator actions do not involve any new accident initiators, or a new or different kind of accident from any previously evaluated. In addition, the configuration and basic function of the EDGs and EDG's fuel and lube oil systems are unaffected by the changes. In fact, the EDG upgrades ensure that the previously evaluated accidents are consistent with system and component capabilities and the current design and licensing bases.

3. The proposed Technical Specification changes, modifications and operator actions do not involve a significant reduction in the margin of safety. The EDGs and EDG—s fuel and lube oil systems will continue to able to be perform their safety function for all design basis accidents. There is an increase in the net margin of safety for fuel and lube oil storage since required volumes have been recalculated and increased, additional margin has been added to the calculated results, and the required volumes are based on useble tank volumes instead of tank capacity. These volumes continue to bound the postulated worse-case accident scenario. The increase in fuel storage required by the changes remains within the capacity of the storage tanks. The Technical Specification changes, modifications and operator actions further ensure that margins provided in current design and licensing bases are satisfied.

EDG Load Rejection Test and Steady State Loads

The proposed changes for this part affects the TS Bases. The basis of the EDG load rejection test is being revised to bound the largest single load. A description of "steady state" is being provided with examples of short duration loads and loads imposed by the starting of motors. Also, addressed is the licensee's conclusion that the refueling interval EDG load test is not invalidated by loads imposed by the starting of motors.

1. The proposed Technical Specification changes, modifications and operator actions do not involve a significant increase in the probability of an accident previously evaluated because the EDG load tests and load rejection test do not serve as the initiator for any design basis accident and, therefore, do not significantly impact any previously evaluated probabilities.

The proposed Technical Specification changes, modifications and operator actions do not involve a significant increase in the consequences of an accident previously evaluated because the changes do not affect the ability of the EDGs to perform their intended safety function. Rather, the Technical Specification changes, modifications and operator actions provide further assurance that the EDGs are capable of performing their safety function. Failure of an EDG has the same consequences as it would if the changes were not made. It follows that the 10 CFR Part 100 consequences of such failures has not changed.

2. The proposed Technical Specification changes, modifications and operator actions do not create the possibility of a new or different kind of accident from any accident previously evaluated because the changes do not affect the ability of the EDGs to perform their intended safety function. The configuration and basic function of the EDGs, including accurately describing the manufacturer certified EDGs service ratings and steady state loads, do no create a possibility for a new or different kind of accident. Although the load rejection test is for an increased EDG largest single load, the kind of accident addressed by both the load rejection test and the refueling load test remain the same.

3. The proposed Technical Specification changes, modifications and operator actions do not involve a significant reduction in the margin of safety. The calculated loads imposed by the starting of motors are short duration, have a low probability of occurrence, and are expected to be within the manufacturer limits. In fact, the margin confirmed by EDG refueling load testing and load rejection testing will demonstrate a restoration of design and licensing margin and confirm that the EDGs remain fully capable of performing their safety function for all design basis accidents.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428

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NRC Project Director: Frederick J. Hebdon

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 16, 1997

Description of amendment request: The proposed changes to the Technical Specifications (TSs) would modify TS 3.7.1.1, "Plant Systems Turbine Cycle Safety Valves." During its effort to verify the current design and licensing bases for Millstone, Unit 2, NNECO has determined that the maximum allowable power level high trip setpoints with inoperable steam line code safety valves specified in Table 3.7-1 of TS 3.7.1.1 are incorrect. The trip setpoints were not changed to be consistent with a previously approved reduction in the maximum power level high trip setpoint. In addition, NNECO is also in the process of reanalyzing the inadvertent closure of the main steam isolation valve (MSIV) and the loss of electrical load events. The results of the reanalysis indicate that the MSIV event results in the highest peak pressure in the secondary system and that the formula currently contained in the TS Bases for TS 3.7.1.1 may not result in the correct trip setpoints.

Specifically, NNECO proposes to: (1) delete TS Table 3.7.1 by not allowing operation in Mode 1 or 2 with inoperable steam line code safety valves, (2) modify the associated action statement in TS 3.7.1.1, and (3) update the TS Bases to reflect the proposed changes and update the amendment history numbers to reflect previously approved amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change will remove the ability to operate in Modes 1 or 2 with inoperable main steam line code safety valves. Operation in Mode 3 will be retained, provided no more than three main steam line code safety valves per steam generator are inoperable.

The primary function of the main steam line code safety valves is to prevent secondary system overpressurization. These valves will also provide reactor core heat removal and design basis accident mitigation. This proposed change does not affect the length of time the plant can operate with inoperable main steam line code safety valves before compensatory actions must be taken. (Four hours is still allowed to restore the valve(s) to operable status.) This proposed change does not affect the probability of occurrence of any design basis accident and does not affect how the main steam line code safety valves function to mitigate design basis accidents. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the way any structure, system, or component functions. The proposed change will conservatively change plant operation in Modes 1 and 2 by removing the ability to operate at power with inoperable main steam line code safety valves as currently specified in Technical Specification 3.7.1.1. It does not introduce any new failure modes and does not alter any assumption made in the safety analysis.

Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

This proposed change to Technical Specification 3.7.1.1 will remove the ability to operate in Modes 1 or 2 with inoperable main steam line code safety valves. Operation in Mode 3 will be retained, provided no more than three main steam line code safety valves per steam generator are inoperable. The operability of the main steam line code safety valves ensures that the secondary system pressure will be limited to within 110% (1100 psig) of the design pressure of 1000 psig during the most severe anticipated system operational transient. This change will not affect the operability requirements for the main steam line code safety valves and will not affect the length of time the plant can operate with inoperable main steam line code safety valves before compensatory actions must be taken. This will ensure the plant equipment required for design basis accident mitigation will be available. Therefore, there is no significant reduction in a margin of safety as defined in the Bases of Technical Specification 3.7.1.1.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

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NRC Deputy Director: Phillip F. McKee

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: August 29, 1997

Description of amendment request: Based on a review and subsequent calculations of the cold overpressurization protection (COPS) enabling temperature and the emergency core cooling system (ECCS)/ charging system Mode 3 requirements, NNECO proposes to reduce the COPS enabling temperature. As a result, NNECO proposed the following Technical Specifications (TS) changes: new heatup and cooldown pressure/ temperature limit curves and their associated requirements; new power operated relief valve (PORV) setpoint curves and their associated requirements; revisions to the reactor coolant loops and coolant circulation, ECCS, boration systems, and COPS to incorporate the lower enabling temperature and new restrictions for cold overpressure protection system (COPPS), PORV undershoot, and residual heat removal (RHR) relief valve bellows; addition of a footnote to allow a reactor coolant pump (RCP) to substitute for an RHR pump during heatup from Mode 5 to Mode 4, which is consistent with the improved standard technical specification (STS); reword TS 3/4.4.9.3 and its Bases section to be consistent with the improved STS; and revision of the affected Bases sections to be consistent with the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

Probability of Occurrence of Previously Evaluated Accidents

Since the PORV setpoints and the COPS enabling temperature have been calculated in accordance with 10CFR50, Appendix G and ASME [American Society of Mechanical Engineers] Section XI, the change will not alter the probability that an overpressurization event will result in a loss of RV [reactor vessel] integrity. The new PORV setpoint curves are lower than the current curves in certain temperature ranges (below approximately 130—F and above approximately 220°F), and therefore the operating window is slightly decreased. However, the reduced operating window is still sufficient for normal anticipated pressure fluctuations. Below 160°F, operation of Reactor Coolant Pumps are prohibited if the PORVs are armed for COPPS; therefore, PORV actuation will not occur below 160—F when the RCPs are running. In a water solid condition, RCS [reactor coolant system] pressure is maintained via the letdown low pressure control valve, which, when in automatic mode, maintains the RCS pressure in a relatively narrow range. When the RCPs are not running, the PORV COPPS system can be actuated. However, for this condition, the allowable pressure range is 0 to 418 psia [pounds per square inch atmospheric]. This pressure range is sufficient to accommodate normal anticipated pressure fluctuations.

Above 220°F, the minimum pressure range is from 300 psia to 595 psia; this range is sufficient to accommodate normal anticipated pressure fluctuations. In this temperature range, a pressurizer bubble is normally present, which will minimize any pressure fluctuations, thereby limiting the possibility of a PORV actuation. Based on this, it is concluded that the proposed change will not impact the probability of occurrence that a PORV will be challenged.

When the RHR relief valves are used for COPS there is no credible scenario which would result in excessive relief valve undershoot. This is because these valves are spring loaded relief valves which are designed to close whenever the RCS pressure decreases below the nominal setpoint of 440 psig [pounds per square inch gauge]. This provides assurance that there will be no damage to the seal of a running RCP.

The proposed changes to the heatup/ cooldown curves and the reduction in the enabling temperature for COPS only affect operational limits and can not be initiators of an event. The restrictions on RC [reactor coolant], RHR and ECCS pump operation can not result in an event initiator. Two separate operator actions are required to start an ECCS or RC pump. These two necessary actions as well as procedural controls are sufficient to prevent an inadvertent ECCS or RC pump start. De-energizing the RCPs when returning a loop to service can not initiate an event.

The proposed change will provide an operable charging pump to ensure RCP seal flow and reactivity control will be available. When the RCP is in operation, the charging pump provides the preferred method for seal flow. The proposed change minimizes the time that this preferred method is interrupted. A loss of charging pump seal flow will not cause a malfunction of an RCP because the pump is designed to use RCS flow as an alternate method at these conditions. Not allowing two charging pumps to run simultaneously and requiring at least one pump to be in pull-to-lock, assures a second pump will not start on an inadvertent SI [safety injection] and exceed the assumptions in the Appendix G analysis or initiate a Boron Dilution or CVCS [chemical and volume control system] Malfunction event. If an operator were to inadvertently start the second pump, a failure of the charging throttle valve, FCV-121, and one relief valve credited for COPS would be necessary to exceed the assumptions in the Appendix G analysis. In addition, the actual time allowed for swapping the charging pumps is short. The remainder of the hour allows for documented verification of the disabling of the required pump. The proposed change will not change any control systems for these pumps or alter the system configuration that would affect the probability of an uncontrolled increase in charging flow. The procedure requirements to swap pumps and the likelihood of these

multiple failures occurring during the short duration allowed in this footnote provide adequate assurance that an overpressurization event will not occur. Maintaining at least one pump always operable makes the system more reliable for reactivity control than the current method which disables both pumps simultaneously.

The proposed change to maintain one charging pump operable in Mode 4 [cannot] initiate an event because of the stable reactivity condition of the reactor, the emergency power supply requirement for the operable charging pump, and the fact that the plant is procedurally required to be borated to the highest required boron concentration for Modes 3, 4, or 5 prior to entering Mode 4. These changes do not effectively change the availability of plant equipment or the way that the plant is operated.

The proposed change to substitute an RCS loop for an RHR loop during a planned heatup, can not initiate an event. The RCP will be verified as operating properly prior to stopping the RHR pump and as such will not initiate a loss of decay heat removal (by heating up to steam the SGs [steam generators])/loss of flow. While the RCP is in operation, it performs the RHR boron mixing function and the decay heat removal function is not required for heatup. Using the RCP to perform this function will not affect the probability that the RCP could fail because it will be operated within its normal operating design conditions. Aligning RHR in the ECCS lineup will not affect the probability of a RHR pump to start. The pump will be operable in this lineup. Currently in Mode 5, RHR is lost on a LOP [loss of offsite power] and is manually restarted once the diesel is running. With the proposed change, the RCP will be lost on a LOP and the RHR pump will have to be manually started. Thus, the proposed change does not affect the probability that the RHR pump could fail. Since the current response to a LOP is to manually restart the RHR pump, operator action is needed independent of this change. The proposed change allows normally open valves to be closed in Mode 5 to align RHR for ECCS injection. This introduces additional manual actions which could extend the time required to establish flow. In addition, if one diesel generator were to fail, manual operation of a valve in the ESF [engineered safety features] building would be necessary. The mechanistic 'failure to open' of valves that is introduced by the change as well as the need for manual operator action to realign these valves increases the time to establish heat removal. However, there is sufficient time to re-establish RHR because this note applies only for a heatup in which the plant will have been shutdown for at least several hours which causes decay heat to be low (as compared to high decay heat immediately following a plant trip). Thus, it is concluded that there is no impact on the probability of failure of RHR to perform its required function.

The proposed change to the ECCS wording does not result in any new failure modes that could initiate an event since manual realignment from the control room is currently allowed. Nor can the manual alignment of RHR valves initiate an event because this alignment is only for accident mitigation.

Therefore, the proposed changes do not increase the probability of occurrence of previously evaluated accidents.

Consequences of Previously Evaluated Accidents

The revised Pressure/Temperature curves were calculated in accordance with 10CFR50, Appendix G, ASME Section XI, and Regulatory Guide 1.99, Revision 2. This provides assurance that an inadvertent overpressurization event will not result in a loss of RV integrity. The restrictions on RCP operation and the requirement to de-energize the RCPs in Modes 5 and 6 when returning a loop to service are consistent with the assumptions made in this Appendix G analysis and the RCPs are not required for accident mitigation for any previously evaluated accidents and therefore do not affect the consequences.

The COPS relieving capability is greater than the maximum RCS pressurization rate resulting from any allowed pump combinations, and the PORV setpoints have been adjusted to take into account instrumentation effects. This will provide assurance that COPS will continue to perform its safety function. Since the COPS enabling temperature has been demonstrated to be conservative at 275—F, allowing SI pump operability above 275—F will have no impact on vessel non-ductile failure.

The restriction between 275—F and 350—F on the SI and charging pumps, has been appropriately moved to the reactor coolant loop section to provide protection for the RHR system (RCS protective boundary) and to the cold overpressure protection section to provide protection for the RHR relief valves and the RCP seals. By incorporating this requirement previously located in the ECCS TS, RCS integrity is ensured.

With the RCS less than 160—F, the consequences of the PORV undershoot from the proposed PORV setpoints are that the RCS pressures may drop below the minimum requirement for RCP seal integrity. However, no seal damage will occur since a requirement has been added prohibiting the operation of RCPs below 160°F with the PORVs not isolated while in the low setpoint mode. With cold overpressure relief valves in service above the COPS enable temperature (275°F), restrictions are placed on the startup of an RCP and the number of ECCS pumps capable of injecting into the RCS to prevent unacceptable mass or energy addition transients. This provides assurance that the RHR relief valve capacity will not be exceeded and that PORV undershoot will not challenge the RCP t1 seal. The restriction on the maximum number of ECCS pumps ensures that the integrity of the RHR relief valve bellows and the RCP seals during mass injection transients (i.e., inadvertent SI).

The restrictions on RCS/SG secondary side temperature mismatch ensure that an unanalyzed energy addition event does not occur when an RCS loop is placed in operation.

The consequences of a small break LOCA [loss of coolant accident] in COPS Mode 4 are not affected because the plant will continue to maintain one charging pump operable in Mode 4. In addition, additional options are provided in the bases of TS 3/4.4.9.3 for disabling the required charging and SI pumps that will allow faster restoration if required to mitigate a LOCA or loss of RHR in Modes 4, 5 and 6.

An RHR pump will remain available in Mode 4 with manual realignment from the control room as required to perform its ECCS safety function. The changes have no impact on the capability of RHR to function in the ECCS mode. RHR is credited during a safety grade cold shutdown. The proposed change assures that the RHR system will be available to perform its heat removal function during a safety grade cold shutdown and thus, there is no change in the analysis assumptions or consequences.

The changes also eliminate an inconsistency between the charging system operability requirements for boration and the charging system operability requirements for cold overpressure protection. The requirement to maintain two charging pumps operable in Mode 4 will be reduced to one charging pump. As stated in the proposed basis section, a second method of boration is not required to be OPERABLE in Mode 4 for single failure considerations based on the stable reactivity condition of the reactor, the emergency power supply requirement for the operable charging pump, and the fact that the plant is procedurally required to be borated to the highest required boron concentration for Modes 3, 4, or 5 prior to entering Mode 4. This provides assurance that reactivity control will be maintained and stable while only one charging pump is operable for cold overpressure concerns. These changes do not effectively change the availability of plant equipment or the way that the plant is operated. The changes will not adversely impact the assumption for the limiting dilution flow path and flow rate and therefore, the consequences of a boron dilution event are not affected.

The proposed changes will maintain a charging pump operable for reactivity control while ensuring that the flow limits in the Appendix G analyses are not exceeded. Remaining within the bounds of the Appendix G limits ensures reactor vessel integrity in Mode 4. Since the change maintains the reactor vessel integrity, it does not introduce any means of releasing radionuclides post-accident. The consequences of a small break LOCA in Mode 4 are not affected because the plant will continue to maintain one charging pump operable in Mode 4. These changes are reflected in TS 3.1.2.1, 3.1.2.2, 3.1.2.3 and 3.1.2.4. Adequate protection is provided for reactor vessel integrity while maintaining reactivity control operability.

In Mode 5, RHR requirements are specified for decay heat removal in the case of a loss of offsite power but none are specified for ECCS accident mitigation. The first RHR train will be aligned for injection prior to taking the second train out of service. This provides assurance that this train will be available if needed in Mode 5. Currently in Mode 5, following a LOP the RHR system can be re-established by restarting the RHR pump once the diesel is running. No valve manipulations are necessary. With the proposed change, when the operating RCP trips following a LOP, some of the RHR valves must be realigned from the ECCS to heat removal mode. If one diesel generator were to fail, manual operation of a valve in the ESF building would be necessary. Since this footnote is only applicable during a heatup, decay heat will be low. There is sufficient time to re-establish RHR even if action outside the control room is necessary. Since there are four operable RCS loops, a bubble drawn in the pressurizer and the RCS pressurized, the plant will heat up to Mode 4 and natural circulation will provide core cooling if the RHR system cannot be re-established. Thus, decay heat removal is assured and there is no affect on the consequences of a LOP.

Since the structural integrity of the RCS is maintained and adequate core cooling and reactivity control will be available for design basis events, the proposed changes will have no adverse impact on the consequences of previously evaluated accidents.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The temperature/pressure limits will continue to meet the requirements of 10CFR50, Appendix G. Since the new limits continue to provide assurance of reactor vessel integrity, the proposed change does not create the possibility of an accident of a different type than previously evaluated. Adequate RCS pressure-relieving capabilities will continue to be maintained throughout the shutdown modes. No new malfunctions will be introduced which could result in a new accident postulated in Modes 3-5.

The restrictions on RCP operation do not create the potential for unanalyzed heat injection transient as a result of an inadvertent RCP start because two operator actions are required to start a pump. The requirement to have all RCPs de-energized, prior to unisolating a loop adds additional assurance that an energy addition transient will not occur.

The proposed change to allow 2 charging pumps to be operable does not create an accident of a different type because there will be adequate controls to ensure that the second pump does not inadvertently start and initiate an increase in RCS inventory or a boron dilution. Procedural controls will minimize the amount of time that both charging pumps are operable and at no time will two pumps be out of pull-to-lock.

The proposed footnote to TS 3.4.1.4.1 to remove RHR heat removal from operation allows normally open valves to be closed in Mode 5 to align RHR for ECCS injection. This introduces 'failure to open' as a potential mechanistic failure malfunction in the RHR system. This is a malfunction of a different type since previously stroking of these valves was not needed to establish RHR. The current response to a LOP is to manually restart the RHR pump only, with no valve manipulations required. The proposed change adds the manual action of realigning the valves. Since operator action to re-establish RHR following a LOP is required independent of the proposed changes, crediting operator action does not create the potential for a malfunction of a different type. Allowing both trains of RHR to be out of service does not create a different accident because additional requirements have been specified for RCS loop operability and at least one RHR pump is operable for ECCS when the core cooling requirement is being met by crediting RCS loop operability. Meeting the Mode 4 TS conditions prior to heatup, ensures two diesels are operable. As such, a single failure would only require one valve to be manually realigned in the ESF building. Adequate time is available to accomplish these actions since this note only applies during heatup, when decay heat is very low. Further, with four RCS loops operable and a bubble drawn in the pressurizer and the RCS pressurized, the steam generators can be used for core cooling via natural circulation once the plant heats up to Mode 4, in the event the RHR cannot be re-established. Since core cooling will be assured if a LOP occurred during heatup in Mode 5, the change in plant response to this event does not constitute an accident of a different type.

The proposed changes to TS 3.5.3.f to manually realign the ECCS valves is no different from what is currently evaluated. During a Mode 4 LOCA adequate procedural guidance is provided to ensure that RHR will be realigned for injection. The proposed change allows RHR to be aligned to perform its safety grade cold shutdown heat removal function.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The new proposed curves raises the lower bound on RCS temperature, resulting in increased RCS ductility and therefore increased structural margin against non-ductile failure. The new curves take into account the dynamic pressure effects identified in NRC Information Notice 93-58 and are calculated in accordance with 10CFR50 Appendix G, ASME Section XI and Regulatory Guide 1.99, Revision 2. These changes to the P/T [pressure/temperature] limits are reflected in TS 3.4.9.1. Additional restrictions have been placed on RCP operation to ensure that assumptions used in developing the curves remain bounding. These are also reflected in TS 3.4.1.3, 3.4.1.4.1, 3.4.1.4.2 and 3.4.1.6. As such, the curves will continue to provide the required assurance for reactor vessel integrity.

The COPS enable temperature is proposed to be lowered from the current 350°F to 275°F which provides a margin of 31—F above that required by NRC Branch Technical Position RSB 5-2. The reduction of the COPS enabling temperature eliminates the need for COPS to be operable in Mode 3. This will simplify the transition between Mode 3 and Mode 4.

Additional changes have been made to the Overpressure Protection TS to ensure that the assumptions made in the Appendix G calculations remain bounding. These include additional restrictions on charging pump and SI pump operability and the modification of the PORV setpoints. The pump requirements have been transferred from the ECCS specification and expanded to cover Modes 4, 5 and 6. In addition, these same pump restrictions have been included in TS 3.4.1.3 whenever RHR is in service. This provides added assurance that the RHR piping will not be overpressurized by an inadvertent actuation of an SI or charging pump. Additional actions and surveillances have been provided to assure that assumptions on charging pump and SI pump operability will be met. The additional options for assuring the inoperability of the SI and charging pumps require two distinct operator actions to restore injection capability from these pumps. Thus, these options are equivalent in providing assurance that an inadvertent injection will not occur while at the same time allowing faster restoration if needed to mitigate a loss of RHR.

A requirement to have all RCPs de-energized, prior to unisolating a loop is added to TS 3.4.1.6.c, to ensure that loop flow will not be initiated which results in an energy addition transient from the secondary side of the SG being unisolated. This change will preclude RCS overpressurization when an idled loop is returned to service and SG secondary side temperature is greater than the RCS temperature.

The PORV setpoints were established to ensure that the P/T limit curves are not exceeded as a result of a single operator action or as a result of a single equipment malfunction, as required by the current system design basis criteria (i.e., SRP [standard review plan] Branch Technical Position RSB 5-2).

A clarification of the hydrostatic and leak test requirements ensures a uniform reactor vessel temperature for the test. A 72 hour time limit is placed on the performance of engineering evaluations of out of specification condition. This provides added assurance for RPV [reactor pressure vessel] integrity.

The changes also eliminate an inconsistency between the charging system operability requirements for boration and the charging system operability requirements for cold overpressure protection. These are reflected in TS 3.1.2.1, 3.1.2.2, 3.1.2.3 and 3.1.2.4. The Bases requirement to maintain two charging pumps operable in Mode 4 will be reduced to one charging pump. As stated in the proposed basis section, a second method of boration is not required to be OPERABLE in Mode 4 for single failure considerations based on the stable reactivity condition of the reactor, the emergency power supply requirement for the operable charging pump, and the fact that the plant is procedurally required to be borated to the highest required boron concentration for Modes 3, 4, or 5 prior to entering Mode 4. This provides assurance that reactivity control will be maintained and stable while only one charging pump is available. The additional options for disabling the charging pump (provided in the bases for TS 4.4.9.3.5) will allow for faster restoration when needed while maintaining two distinct operator

actions to prevent a second pump from being started. This provides added assurance that reactor vessel integrity will be maintained.

Procedures will minimize the amount of time that both charging pumps are operable and having at least one pump in pull-to-lock will ensure that the second pump does not inadvertently start and exceed the Appendix G analysis limits and thus, ensure reactor vessel integrity.

The TS bases for requiring RHR in Mode 5 is to remove decay heat and provide RCS circulation. Since the RCP can perform the RHR circulation function and the decay heat removal function is not required during heatup, the proposed change is consistent with the bases. Since this option is only allowed during heatup where decay heat is low, sufficient time will be available to re-establish RHR heat removal as required to mitigate a LOP in Mode 5. Further, with the RCS pressurized, four RCS loops operable and the SG filled, core cooling can be accomplished by the steam generators via natural circulation once the plant heats up to Mode 4, in the event that RHR cannot be re-established. Therefore, the design basis analyses remain limiting and the margin of safety is not reduced.

The original plant design allows the RHR pumps to be available for both heat removal while shutdown and ECCS. As such, an allowance, TS 3.5.3.f, was provided to allow manual realignment from heat removal to ECCS mode. The specific wording of TS 3.5.3.f implies that this realignment only involves the suction valves. Since discharge valves must also be realigned, the TS is being reworded to apply for the discharge as well as suction valves. Therefore, this change is a clarification of the existing TS.

The proposed changes do not impact the protective boundaries (reactor vessel integrity) nor any of the design basis accidents.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Deputy Director: Phillip F. McKee

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 25, 1997

Description of amendment request: The proposed amendment request would implement 10 CFR Part 50 Appendix J, Option B by revising the Technical Specifications (TS) to allow the frequency of conducting integrated leak rate testing (ILRT) and local leak rate testing (Type B and C) to be based on component performance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change implements Option B of 10 CFR Part 50 Appendix J on performance-based containment leakage testing. The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any parameters or conditions that contribute to the initiation of any accidents previously evaluated. The proposed change potentially affects the leak-tight integrity of the containment structure designed to mitigate the consequences of a Loss-of-Coolant Accident (LOCA). The function of the containment is to maintain functional integrity during and following the peak transient pressures and temperatures and limit fission product leakage following the design basis LOCA. Because the proposed change does not alter the plant design, only the frequency of measuring Type A, B, and C leakage, the proposed change does not directly result in an increase in containment leakage.

Test intervals will be established based on the performance history of components being tested. The frequency of monitoring the relatively few containment isolation valves and/or containment penetrations subject to above normal leakage will not decrease by implementing Option B of Appendix J. A performance based program will identify those valves and penetrations which must continue to be tested each refueling outage.

The risk resulting from the proposed changes is characterized as follows, based primarily on the results contained in NUREG-1493 "Performance-Based Containment Leakage Test Program," the principal Technical Support Document used by the NRC as the basis for the Appendix J Final Rule:

Type A Testing

NUREG-1493 found that the effect of containment leakage on overall accident risk is minimal since risk is dominated by accident sequences that result in failure or bypass of the containment. Industry wide, Integrated Leak Rate Tests (ILRTs) have only found a small fraction of the leaks that exceed current acceptance criteria. Only three percent of all leaks are detectable only by ILRTs, and therefore, by extending the Type A testing intervals, only three percent of all leaks have a potential for remaining undetected for longer periods of time. In addition, when leakage has been detected by ILRTs, the leakage rate has been only marginally above existing requirements. The Fort Calhoun Station Unit No. 1 Type A testing confirms the industry-wide experience that a majority of the leakage experienced during Type A testing is through components tested by Type B and C tests.

NUREG-1493 found that these observations, together with the insensitivity of reactor accident risk to the containment leakage rate, show that increasing the Type A leakage test intervals would have a minimal impact on public risk.

Type B and C Testing

NUREG-1493 found that while Type B and C tests can identify the vast majority (greater than 95 percent) of all potential leakage paths, performance-based alternatives to current local leakage-testing requirements are feasible without significant risk impacts. The risk model used in NUREG-1493 suggests that the number of components tested would be reduced by about 60 percent with less than a three-fold increase in the incremental risk due to containment leakage. Since, under existing requirements, leakage contributes less than 0.1 percent of overall accident risk, the overall impact is very small. In addition, the NRC's Final Regulatory Impact Analysis concluded that while the extended testing intervals for Type B and C tests led to minor increases in potential offsite dose consequences, the beneficial expected decrease in onsite worker dose received during ILRT and local leak rate testing exceeds (by at least an order of magnitude) the potential off-site dose consequences.

Therefore, the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of this proposed change. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to initiation of any accidents.

This change involves the reduction of Type A, B, and C test frequency. Except for the method of defining the test frequency, the methods for performing the actual tests are not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. Extending the test frequency has no influence on, nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change only affects the frequency of Type A, B, and C testing. Except for the method of defining the test frequency, the methods for performing the actual tests are not changed.

The frequency of monitoring the relatively few containment isolation valves and/or containment penetrations subject to above normal leakage will not decrease by implementing Option B of Appendix J. A performance based program will identify those valves and penetrations which must continue to be tested each refueling outage. NUREG-1493 has determined that, under several different accident scenarios, the increased risk of radioactivity

release from containment is negligible with the implementation of these proposed changes.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to containment leakage rate. The containment isolation system is designed to limit leakage to La, which is stated in the Fort Calhoun Station Unit No. 1 Technical Specifications to be 0.1 percent by weight of the containment air per 24 hours at 60 psig.

The limitation on containment leakage rate is designed to ensure that total leakage volume will not exceed the value assumed in the accident analyses at the peak accident pressure. The margin to safety for the offsite dose consequences of postulated accidents directly related to the containment leakage rate is maintained by meeting the 1.0 La acceptance criteria. The La value is not being modified by this proposed change.

Except for the method of defining the test frequency, no change in the method of testing is being proposed. The Type B and C tests will continue to be done at 60 psig or greater. Other programs are in place to ensure that proper maintenance and repairs are performed during the service life of the primary containment and systems and components penetrating the primary containment.

Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William H. Bateman

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 26, 1997

Description of amendment request: The proposed amendment would change Technical Specification (TS) 4.6.5.3.1b, for the Filtration, Recirculation and Ventilation System (FRVS), Ventilation Subsystem, and TS 4.6.5.3.2b for the FRVS Recirculation Subsystem. The revised TSs would state that the heaters should be "operating (automatic heater modulation to maintain relative humidity)" instead of "on" when performing the 10-hour, monthly test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS revisions involve no hardware changes and no changes to existing structures, systems or components. Conducting TS Surveillance Requirements 4.6.5.3.1.b and 4.6.5.3.2.b with the FRVS recirculation unit and ventilation unit heaters in automatic modulation to maintain the relative humidity within the design requirements, meets the intent of the USNRC Regulatory Guide 1.52, position C.4.d, in reducing adsorber and HEPA filter moisture levels. In the unlikely event that the adsorber and HEPA filters, that are enclosed and isolated in a confined space should reach an equilibrium at the maximum design operating humidity level, the 10 hour run with heaters energized would reduce the humidity to acceptable levels. Therefore, the proposed changes do not change the post-accident performance characteristics of the FRVS adsorber or HEPA filters below the design requirements and does not increase the consequences of accidents previously identified. Since there are no changes to the operation of FRVS in normal or post-accident operating conditions, there is no increase in the probability of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes contained in this submittal will not adversely impact the operation of any safety related component or equipment. PSE&G has concluded that [the] method of performing the monthly FRVS recirculation unit and ventilation unit surveillances with the heaters modulating adequately maintains and demonstrates operability of FRVS. Since the proposed changes involve: 1) no hardware changes; 2) no changes to FRVS operation in normal operating or post-accident conditions; and 3) no changes to existing structures, systems or components, there can be no impact on the potential occurrence of any accident. Furthermore, there is no change in plant testing proposed in this change request which could initiate an event. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The revisions to TS Surveillance Requirements 4.6.5.3.1.b and 4.6.5.3.2.b provide a more accurately defined basis for performing this surveillance test. The proposed changes reflect PSE&G's position on satisfying USNRC Regulatory Guide 1.52, position C.4.d. Since PSE&G has concluded that performing TS Surveillance Requirements 4.6.5.3.1.b and 4.6.5.3.2.b with the FRVS recirculation unit and ventilation unit heaters in automatic moduation [sic] [modulation] to maintain the relative humidity within the design requirements, adequately reduces adsorber and HEPA filter moisture levels, the proposed changes do not significantly reduce a margin of safety in FRVS. Since the FRVS recirculation units and ventilation units will continue to be tested with the heaters: 1) operable; and 2) set at the demand necessary to "reduce the buildup of moisture," PSE&G believes that the proposed changes to clarify the TS are justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit - N21, P.O. Box 236, Hancocks Bridge, NJ 08038

NRC Project Director: John F. Stolz

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: August 19, 1997

Description of amendment request: The proposed amendment would revise the Ginna Station Improved Technical Specifications (ITS) by revising the Emergency Core Cooling System Accumulators Surveillance Requirement 3.5.1.2 to correct the specified accumulator borated water volume values in order to match the associated accumulator percent level values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change is only to correct a conversion error with respect to accumulator borated water volume. This does not increase the probability of any accident previously evaluated since the accumulator water volume provides mitigation capability only (i.e., does not initiate any accident). The affected accident analyses with respect to the accumulator (e.g., small and large [loss-of-coolant] LOCA and steam line break) have been re-evaluated using the correct accumulator water volume values with acceptable results. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. Ginna Station operators verify accumulator water volume via percent level (versus cubic feet) which remains unchanged. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes only correct a conversion error. The error has been re-evaluated with acceptable results. As such, no question of safety is involved, and the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: Alexander W. Dromerick, Acting Director

Southern Nuclear Operating Company, Inc, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: February 14, 1997, as supplemented by letters dated June 20, August 5, and September 22, 1997

Description of amendments request: The proposed amendments would change the maximum reactor core power level for facility operation from 2652 megawatts thermal (MWt) to 2775 MWt in the Farley, Units 1 and 2, Facility Operating Licenses. In addition, the proposed amendments would involve the following Technical Specification (TS) changes.

The defined rated thermal power for Farley; departure from nucleate boiling (DNB) parameters for reactor coolant system (RCS) average temperature (T_{avg}); pressurizer pressure; and RCS flow would be changed.

The reactor trip system interlock setpoint for power range neutron flux (P-8) and engineered safety features (ESF) actuation trip setpoint for steam generator water high-high level for turbine trip and feedwater isolation (P-14), and ESF actuation system interlock for low-low T_{avg} (P-12) would be modified to reflect analytical results.

An evaluation of additional reactor trip system and ESF actuation system safety analysis limits and trip setpoints would result in changes to the allowable values for several functions.

On the basis of the results of new containment analyses, the maximum peak calculated containment internal pressure for a loss-of-coolant accident (LOCA) event would be revised. The main steamline isolation valve closure time requirement would be revised. Surveillance requirements for emergency core cooling systems (ECCS) would be modified to reflect reduced ECCS flows. The number of secondary system hydrostatic pressure tests (Table 5.7-1) would be increased. For Farley Unit 2 only, the steam generator F* distance would be revised.

Changes to the plant design features and administrative controls are also proposed. These changes would revise the RCS fluid volume contained in Section 5.4 and the addition of the NRC-approved references for best estimate LOCA listed in Section 6.9.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

DEFINITION, DESIGN FEATURE AND ADMINISTRATIVE CONTROL CHANGES

* * * *

1. The proposed changes to the rated thermal power definition, RCS fluid volume, and COLR [Core Operating Limit Report] references do not increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. The comprehensive analytical efforts performed to support the proposed uprating included a review and evaluation of all components and systems (including interface systems and control systems) that could be affected by this change. The revised power uprate value and RCS fluid volume were inputs to applicable safety analyses. All systems will function as designed, and all performance requirements for these systems have been evaluated and found acceptable. None of these proposed changes directly initiate any accident; therefore, the probability of an accident has not increased. All dose consequences have been analyzed or evaluated with respect to these parameters, and all acceptance criteria continue to be met. Therefore, the consequences of an accident previously evaluated in the FSAR have not increased.

2. The proposed changes do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The proposed technical specification changes have no adverse effects on any safety-related system and do not challenge the performance or integrity of any safety-related system. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed operating license and technical specification changes do not involve a significant reduction in a margin of safety. All analyses supporting the proposed power uprate reflect the RCS fluid volume and rated thermal power values. The use of NRC approved BELOCA [best estimate LOCA] methodology must be referenced since BELOCA will now be the LBLOCA [large break LOCA] analysis licensing basis for FNP [Farley Nuclear Plant]. All acceptance criteria (including LOCA peak clad temperature, DNB criteria, containment temperature and pressure, and dose limits) continue to be met. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

DNB PARAMETERS CHANGES

* * * *

1. The proposed technical specification changes for DNB parameters do not involve a significant increase in the probability or consequences of an accident previously evaluated in the FNP FSAR. The mechanical design features associated with VANTAGE 5 fuel and the improved methodologies (such as Revised Thermal Design Procedure) provide capability for relaxation of analytical input parameters such that increased DNBR [DNB ratio] margin can be generated without violation of any acceptance criteria. The indicated DNB parameters bound the analytical values used to support the proposed uprating. In each case, the appropriate design and acceptance criteria are met. All performance requirements for any system or component have been evaluated and support the revised analysis assumptions. Overall plant integrity is not reduced. Furthermore, the parameter changes are associated with features used as limits or mitigators to assumed accident scenarios and are not accident initiators. Therefore, the probability of an accident has not significantly increased.

The radiological consequences of accidents previously evaluated in the FSAR have been assessed due to the proposed technical specification changes. Evaluations have confirmed that the doses remain within previously approved acceptable limits as well as those defined by 10 CFR [Part] 100. Therefore, the radiological consequences to the public resulting from any accident previously evaluated in the FSAR has not significantly increased.

2. The proposed technical specification changes do not create the possibility of a new or different kind of accident from any previously evaluated in the FSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the revised DNB parameters. The revised analytical assumptions have no adverse effect and do not challenge the performance of any other safety-related system. This has been verified in WCAP 12771, Rev. 1. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed technical specification changes do not involve a significant reduction in the margin of safety. The margin of safety for fuel-related parameters (such as DNB and Kw/ft) are defined in the Bases to the Technical Specifications. The uncertainties associated with the proposed DNB parameter changes are included in the core safety limits. Performance of analyses and evaluations with the reactor core safety limits defined by RTDP [Revised Thermal Design Procedure] have confirmed that the operating envelope defined by the Technical Specifications continues to be bounded by the revised analytical basis, which in no case exceeds the acceptance limits. Therefore, the margin of safety provided by the analyses in accordance with these acceptance limits is not reduced.

MISCELLANEOUS OPERATION AND MARGIN ENHANCEMENT CHANGES

* * * *

1. The proposed changes do not increase the probability or consequences of an accident previously evaluated in the FSAR. Explicit modeling of these parameters is included in the uprate analyses and evaluations. The comprehensive analytical effort performed to support the proposed uprating has included a review and evaluation of all components and systems (including interface systems and control systems) that could be affected by this change. In addition LOCA and non-LOCA analyses and evaluations have verified that all acceptance criteria continue to be met. All systems will function as designed. None of these proposed changes can directly initiate any accidents; therefore, the probability of an accident has not been increased. All dose consequences have been analyzed or evaluated with respect to these parameters, and all acceptance criteria continue to be met. Therefore, the consequences of an accident previously evaluated in the FSAR have not increased.

2. The proposed changes do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The proposed technical specification changes have no adverse effects on any safety-related system and do not challenge the performance or integrity of any safety-related system. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed technical specification changes do not involve a significant reduction in a margin of safety. All analyses supporting the proposed power uprate reflect these proposed values. All acceptance criteria (including LOCA peak clad temperature, DNB criteria, containment temperature and pressure, and dose limits) continue to be met. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

ALLOWABLE VALUES AND TRIP SETPOINTS FOR REACTOR TRIP SYSTEM AND ESFAS [ENGINEERED SAFETY FEATURE ACTUATION SYSTEM]

* * * *

1. The proposed changes do not increase the probability or consequences of an accident previously evaluated in the FSAR. The comprehensive engineering effort performed to support the proposed uprating has included evaluations or reanalysis of all accident analyses including all dose related events. Setpoint calculations have verified acceptability of the proposed setpoints and allowable value changes. All systems will function as designed, and all performance requirements on these systems have been verified to be acceptable. Neither allowable values nor the setpoints initiate any accident; therefore, the probability of an accident has not been increased. All dose consequences have been analyzed or evaluated with respect to these parameters, and all acceptance criteria continue to be met. Therefore the consequences of an accident previously evaluated in the FSAR have not increased.

2. The proposed setpoints and allowable value changes do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The proposed technical specification changes have no adverse effects on any safety-related system and do not challenge the performance of integrity of any safety-related system. The specified trip setpoints associated with the respective RTS [Reactor Trip System] and ESFAS functions ensure all accident analyses criteria continue to be met. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed technical specification changes do not involve a significant reduction in a margin of safety. All analyses supporting the proposed power uprate reflect these proposed values. Setpoint calculations demonstrate that margin exists between the setpoint and the corresponding safety analysis limits. The calculations are based on FNP instrumentation and calibration/functional test methods and include allowances for uprated power conditions. All acceptance criteria (including LOCA peak clad temperature, DNB criteria, containment temperature and pressure, and dose limits) continue to be met. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: September 17, 1997 (TS 97-02)

Description of amendment request: The proposed changes would revise Section 4.6.2.1 of the Sequoyah Technical Specifications (TS) to change the parameters to be monitored during the inservice inspection surveillance testing of the containment spray system pumps. The changes would also adopt provisions in the Westinghouse Improved Standard TS (NUREG-1431) that affect that section of the Sequoyah TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions to the containment spray system surveillances for the pumps, valves, and nozzles do not change the intent of the current TS requirements. These revisions only affect the TS operability testing requirements without changing the system functions. These functions are not considered to be accident initiators. The proposed surveillance wording is not based on changes to the plant although a modification to flow orifices for the containment spray pumps created the need to revise the surveillance that verifies pump developed head. The revisions primarily provide flexibility for required methods to verify system operability as well as utilizing less prescriptive operability limits and conditions for testing. The testing flexibility and less prescriptive requirements do not

relax the intent to properly verify operability of the containment spray system but do allow for changes in testing that continue to ensure the appropriate operability requirements. Since these revisions are not directly related to modifications of the plant or result in different methods for operating the plant, there is no change that could increase the probability of an accident. In addition, the consequences of an accident are not increased because there has not been a change that would impact the safety functions of the containment spray system. These revisions will continue to properly verify the operability of the containment spray system.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The containment spray system functions are not changed as discussed above and the operating practices for the plant remain the same. The testing methods can be modified as a result of the proposed revisions but will continue to maintain appropriate verifications of system operability. These testing methods as well as the containment spray system are not considered to be a potential initiator of accidents. Therefore, these revisions will not impact the operation of systems that could initiate an accident and the possibility of a new or different kind of accident is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed revisions do not directly change the limits for containment spray system operability although they do provide the flexibility to properly revise limits resulting from system modifications. This type of limit revision would be necessary to adequately verify system operability. The appropriate limits continue to be required by the proposed TS surveillance requirements. Therefore, the proposed revisions do not allow inappropriate changes to setpoints or operating requirements that maintain the margin of safety and no reduction in this margin is involved in this request.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: August 26, 1997

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3/4.2, "Power Distribution Limits." The DNB Parameters Limiting Condition for Operation would be modified consistent with an industry notification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, assumptions or probabilities are affected by the proposed change. The proposed change corrects a nonconservative Technical Specification Action statement by removing provisions which allow continued Mode 1 plant operation in the event the Reactor Coolant System flow rate is less than the required value. Under the proposed change, a power reduction to less than 5 percent of rated thermal power (Mode 2) will be required if the Reactor Coolant System flow rate is less than the required Technical Specification value.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed change does not affect any equipment, accident conditions, or assumptions which could lead to a significant increase in radiological consequences of an accident. The proposed change will ensure accident analyses remain valid if the Reactor Coolant System flow rate becomes less than the required value.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators will be introduced by the proposed change. No equipment or operations will be affected.

3. Not involve a significant reduction in a margin of safety because under the proposed Technical Specification Action statement a power reduction to less than 5 percent of rated thermal power (Mode 2) will be required if degraded Reactor Coolant System flow develops. The proposed Action statement ensures accident analyses' assumptions are maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: August 22, 1997, as supplemented by letter dated September 18, 1997

Description of amendment request: The proposed amendment would revise the Vermont Yankee Technical Specifications (TSs) to address the new low pressure CO_2 suppression system for the East and West Switchgear Rooms and more clearly describe the separation of the rooms.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed changes support the use of a newly installed low pressure CO_2 suppression system for the East and West Switchgear Rooms, to meet the CO_2 concentration requirements of NFPA 12 (1993) following detection of a fire condition in one of the associated rooms. The new low pressure CO_2 system consists of a 6 ton storage tank, piping, valves, associated instrumentation and controls.

The FSAR [Final Safety Analysis Report] was reviewed for impact as a result of this proposed amendment with none being found. The initiators of the four design basis accidents, as defined in section 14.6 of the FSAR, were reviewed with respect to the new low pressure CO_2 system. The low pressure CO_2 system is not an initiator of any of the Chapter 14.6 accidents. The low pressure CO^{T22} suppression system is classified as a Non Nuclear Safety (NNS) related system. However, the CO_2 dispersion headers have been seismically mounted to preclude the possibility of their failure affecting safety related equipment during a seismic event. Although the Switchgear Room (East and West) low pressure CO_2 system is not used as a mitigator of any accident listed in section 14.6 of the FSAR, the switchgear contained in the aforementioned rooms is used to mitigate the consequences of the section 14.6 accidents.

The new low pressure CO_2 system, which meets NFPA 12 (1993), provides fire suppression for the affected room by raising the CO_2 concentration to a 50% level and maintains this concentration for a 20 minute duration upon initiation. As a result, this CO_2 system prevents a fire in the affected room from spreading to adjacent rooms and adversely impacting the adjacent room's safety related equipment. Consequently, the unaffected rooms and associated trains of equipment remain functional to perform their intended safety functions if required. The proposed amendment also reflects the separation of the switchgear room into two fire areas with equivalent detection and suppression.

Based on the above, use of the low pressure CO_2 system for East or West Switchgear Room fire suppression does not create new initiators, nor degrade the effectiveness of equipment relied upon to perform mitigative functions assumed for the previously evaluated design basis accidents. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated:

The NNS low pressure CO_2 system, which meets NFPA 12 (1993), provides fire suppression for the East and West Switchgear Rooms by raising the CO_2 concentration to a 50% level and maintains this concentration for a 20 minute duration upon initiation. As a result, this CO_2 system prevents a fire in the affected switchgear rooms from spreading to adjacent rooms and adversely impacting the adjacent rooms associated equipment. The switchgear room is more clearly depicted as two separate fire areas in the proposed amendment with equivalent protection. The CO_2 suppression header piping located in the switchgear rooms is seismically supported, which precludes the possibility of this piping failing during a seismic event and affecting safety related equipment located nearby.

The new low pressure CO_2 system does not introduce new accident initiators. The low pressure CO_2 system is fulfilling the fire suppression function previously performed by the existing high pressure CO_2 system. The previous separation of the switchgear room into two separate fire areas, provides separation of redundant equipment and equivalent fire detection and suppression for that equipment. The low pressure CO_2 system consists of a 6 ton storage tank, piping, valves, and associated instrumentation and controls. There are no failure mechanisms, associated with the new low pressure CO_2 equipment, which cannot be categorized under at least one of the three failure mechanisms identified in section 14.4.3 of the FSAR. Consequently, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

Technical Specifications 3.13.D/4.13.D were reviewed with respect to the proposed amendment to determine if the changes would result in a reduction in a margin of safety. The proposed amendment, to allow use of a low pressure CO_2 suppression system for the East or West Switchgear Rooms, does not degrade the existing fire protection program. The level of protection provided by the switchgear room CO_2 fire protection system is enhanced by the introduction of the new low pressure system which meets NFPA 12 (1993) and provides fire suppression for the East or West Switchgear Rooms by raising the CO_2 concentration to a 50% level and maintains this concentration for a 20 minute duration upon initiation. Consequently, the pre-established levels of system operability in the event of a fire and the assurance of a safe reactor shutdown, as provided by the fire protection systems, have not been degraded. An analysis has been performed to ensure that either a failure of the low pressure CO_2 storage tank outside the switchgear rooms, or a continuous discharge of the entire tank contents within the switchgear room, will not adversely affect either control room habitability or emergency diesel operation. The designation of separate fire areas for the switchgear room with equivalent protection does not decrease safety for this equipment. As a result, the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Attorney for licensee: R. K. Gad, III, Ropes and Gray, One International Place, Boston, MA 02110-2624

NRC Project Director: Ronald B. Eaton, Acting Project Director

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: July 16, 1997

Description of amendment request: The proposed amendment would add new minimum reactor vessel pressure versus reactor vessel metal temperature (P/T) curves, applicable to 12 EFPY (effective full power years). These changes are necessary to support leak and hydrostatic testing in accordance with the American Society for Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Section XI.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed 12 EFPY curve was developed using the same methodology as that used in the current 32 EFPY curve and the 8 EFPY curve. This methodology is consistent with the guidance provided in Regulatory Guide 1.99, Revision 2.

Assumptions and parameters were the same as those used in the 8 EFPY curve calculation. However, fluence values used in the calculation were those for 12 EFPY.

Use of the 12 EFPY curves on or before attainment of 12 EFPY of operation is equivalent to the previously approved use of the 32 EFPY curves on or before attainment of 32 EFPY of operation.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change introduces no credible mechanism for unacceptable radiation release.

The proposed change does not require physical modification to the plant.

The 12 EFPY curves are consistent with the previously approved 32 and 8 EFPY curves.

Inservice hydrostatic or leak testing is not assumed to be an initiator of analyzed events. Since approval of the proposed amendment will ensure adequate protection of the reactor pressure vessel, it will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The accident analyses for the plant as described in the FSAR are not affected by this proposed change.

The 12 EFPY curves were developed using the same methodology as the 32 and 8 EFPY curves and thus involve no reduction in the margin of safety as previously evaluated.

The margin of safety, relative to the available heat sink in the Reactor Coolant System, is actually increased by the use of the proposed curves due to the lower allowed test temperature.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Perry D. Robinson, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William H. Bateman

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: August 6, 1997, as supplemented August 26, 1997

Brief description of amendments: The proposed amendments would address an unreviewed safety question associated with handling of the spent fuel shipping cask at the Brunswick Steam Electric Plant, Units 1 and 2.Date of publication of individual notice in **Federal Register:** September 17, 1997 (62 FR 48897)

Expiration date of individual notice: October 17, 1997

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendment: August 26, 1997

Brief description of amendment request: The proposed amendments would approve a modification to the Diablo Canyon Power Plant, Unit Nos. 1 and 2 auxiliary saltwater (ASW) system to bypass approximately 800 feet of Unit 1 and 200 feet of Unit 2 Class 1 ASW pipe, a portion of which is buried below sea level in the tidal zone outside the intake structure. This modification was completed on Unit 1 during the refueling outage completed this year.Date of individual notice in **Federal Register:** September 16, 1997 (62 FR 48677)

Expiration date of individual notice: October 16, 1997

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Southern Nuclear Operating Company, Inc., et al., Docket No. 50-348, Joseph M. Farley Nuclear Plant, Unit No. 1, Houston County, Alabama

Date of amendment request: September 3, 1997

Description of amendment request: The proposed amendment would allow a reduction in the number of required available movable detector thimbles (flux map paths) for Cycle 15 operation.Date of publication of individual notice in Federal Register: September 10, 1997 (62 FR 47695)

Expiration date of individual notice: October 10, 1997

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: September 17, 1997

Description of amendment request: The proposed amendments would modify Technical Specification 3/4.4.9, "Specific Activity," and associated Bases to reduce the limit associated with dose equivalent iodine-131.Date of publication of individual notice in Federal Register: September 24, 1997 (62 FR 49998)

Expiration date of individual notice: October 24, 1997

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440 Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: August 14, 1997

Brief description of amendment: The proposed amendment would change the Perry Nuclear Power Plant design basis as described in the Updated Safety Analysis Report. The change will add a description of the methodology utilized for determining the systems and components that are considered to require protection from tornado missiles.Date of individual notice in **Federal Register:** September 16, 1997 (62 FR 48674).

Expiration date of individual notice: October 16, 1997

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: December 27, 1996, as supplemented by letter dated August 22, 1997

Brief description of amendment: The amendments change Technical Specification 3/4.6.1.3.b and its associated Bases sections to reflect an increase in the peak containment internal pressure for the design basis loss-of-coolant accident (LOCA) from 49.5 psig to 52 psig.

Date of issuance: September 11, 1997

Effective date: September 11, 1997, to be implemented within 30 days from its date of issuance.

Amendment No.: Unit 1 - 113; Unit 2 - 106; Unit 3 - 85

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1997 (62 FR 27794) The August 22, 1997, supplemental letter provided additional clarifying information and did not change the staff's original no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 8, 1997, as supplemented August 22, 1997

Brief description of amendments: These amendments remove the suppression chamber water volume band from Technical Specification 3.6.2.1.a.1 while retaining the equivalent water level band. The amendments additionally revised the volume band to account for the displacement of water due to the installation of larger emergency core cooling system suction strainers.

Date of issuance: September 17, 1997

Effective date: September 17, 1997

Amendment Nos.: 188 and 219

Facility Operating License Nos. DPR-71 and DPR-62: Amendments change the Technical Specifications

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43366) The August 22, 1997, submittal provided a correction to the Bases to reflect a change authorized by a previous amendment and did not alter the initial no significant hazards determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: July 1, 1997

Brief description of amendments: The amendments revise Technical Specification definition 1.4, Channel Calibration, to allow an alternative method of calibrating thermocouples and resistance temperature detector sensors. The amendments also make editorial and administrative corrections to TS Table 3.3.2-1, Table 3.3.6-1, and Bases Section 3/4.3.1.

Date of issuance: September 15, 1997

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 102 and 104

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1997 (62 FR 40848) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: October 30, 1996, as supplemented by letters dated April 22, July 2, September 3, and September 4, 1997

Brief description of amendments: The amendments revise the Reactor Building Structural Integrity Technical Specifications regarding the tendon surveillance program.

Date of Issuance: September 15, 1997

Effective date: The license amendments are effective as of the date of issuance and the change to the facilities shall be implemented prior to the Unit 1 end-of-cycle 17 outage. Implementation of the amendments shall include the provisions that the licensee provide in the facility Updated Final Safety Analysis Report (specifically the Selected Licensee Commitment Manual) the prescribed lower limit and the minimum required value of Reactor Building Post-Tensioning System tendon forces for each group of tendons prior to performing the seventh tendon surveillance for Unit 1. In addition, the portion of the Selected Licensee Commitment Manual related to the establishment of these limits will be submitted as soon as available.

Amendment Nos.: 225, 225, 222

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications, License Conditions, and Appendix C.

Date of initial notice in **Federal Register:** December 4, 1996 (61 FR 64383) The April 22, July 2, September 3, and September 4, 1997, letters provided clarifying information that did not change the scope of the October 30, 1996, application and the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: June 12, 1997

Brief description of amendments: The amendments change the name "Duke Power Company" to "Duke Energy Corporation" in the Oconee facility operating licenses and Technical Specifications.

Date of Issuance: September 16, 1997

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 226, 226, 223

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications and Operating Licenses including Appendix C.

Date of initial notice in **Federal Register:** July 2, 1997 (62 FR 35849) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 16, 1997, and Environmental Assessment dated August 21, 1997 (62 FR 44495).No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: September 6, 1996, as supplemented May 23, 1997 and August 13, 1997.

Brief description of amendments: These amendments revise Item 7.c of Beaver Valley Power Station, Unit No. 1 (BVPS-1) Technical Specification (TS) Table 3.3-3 and Item 7.d of Beaver Valley Power Station, Unit No. 2 (BVPS-2) TS Table 3.3-3 to reflect that a safety injection (SI) signal starts all auxiliary feedwater (AFW) pumps. The notation on BVPS-1 TS Table 3.3-5 is revised to state that the response time is for all AFW pumps on all SI signal starts. Items 7.d of BVPS-2 TS Tables 3.3-4 and 4.3-2 is revised to reflect that an SI signal starts all AFW pumps.

The amendments also revise and reformat TSs 3/4.7.1.2 to more closely resemble the wording contained in the NRC's "Standard Technical Specifications Westinghouse Plant," (NUREG-1431, Revision 1). These changes require three AFW trains to be operable and describe what constitutes an operable train. The mode applicability for these TSs is expanded to include Mode 4 when the steam generator(s) is relied upon for heat removal.

Date of issuance: September 18, 1997

Effective date: Both units, as of the date of issuance, to be implemented within 60 days

Amendment Nos.: 206 and 85

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1996 (61 FR 58902) The May 23, 1997, and August 13, 1997, letters provided minor editorial changes that did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the November 19, 1996, Federal Register notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendment: May 29, 1997

Brief description of amendment: The amendments consist of changes to the Technical Specifications (TS) which correct typographical errors, remove outdated material, incorporate minor changes in text, make editorial corrections, and resolve other inconsistencies in the Unit 1 and 2 TS.

Date of Issuance: September 22, 1997

Effective Date: September 22, 1997

Amendment Nos.: 152 and 89

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1997 (62 FR 40849) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981-5596

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 8, 1996

Brief description of amendments: The amendments allowed that the component cooling water system surge tank level instrumentation can be demonstrated operable, by performing a channel calibration test, during any plant mode of operation.Date of issuance: September 23, 1997

Effective date: September 23, 1997, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 91; Unit 2 - Amendment No. 78

Facility Operating License Nos. NPF-76 and NPF-80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 28, 1996 (61 FR 44358) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 19, 1997

Brief description of amendment: Technical Specification 3/4.7.1.3 requires sufficient water to be available for the auxiliary feedwater system to maintain the reactor coolant system at hot standby for 10 hours before cooling down to hot shutdown in the next 6 hours. The amendment increases the required volume of water when the demineralizer water storage tank and condensate storage tank are being credited, makes editorial changes, and expands the descriptions in Bases Sections 3/4.7.1.2 and 3/4.7.1.3.

Date of issuance: September 11, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 150

Facility Operating License No. NPF-49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1997 (62 FR 40853) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: May 7, 1997, as supplemented May 30, July 29, and September 12, 1997

Brief description of amendments: The amendments revise Technical Specification (TS) 3.8, including TS 3.8.D.1 and TS 3.8.D.3, to change TS limitations on crane operations in the spent fuel pool enclosure relating to spent fuel pool special ventilation system operability. These changes are necessary to allow movement of loads over spent fuel stored in the spent fuel pool enclosure with the spent fuel pool special ventilation system inoperable. The staff denied the proposed change to TS 3.8.D.2. A separate notice of denial has been sent to the **Federal Register** for publication.

Date of issuance: September 15, 1997

Effective date: September 15, 1997, with full implementation within 30 days. License Condition 4 of Appendix B is effective immediately upon issuance of the amendments.

Amendment Nos.: 130 and 122

Facility Operating License Nos. DPR-42 and DPR-60: Amendments revised the Licenses and Technical Specifications.

Date of initial notice in **Federal Register:** July 2, 1997 (62 FR 35850) The July 29 and September 12, 1997, letters provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 15, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: July 3, 1997

Brief description of amendment: This amendment makes changes to Technical Specification Table 3.6.3-1, "Primary Containment Isolation Valves" to add valves to the list, therein.

Date of issuance: September 15, 1997

Effective date: Effective as of the date of issuance, to be implemented within 60 days.

Amendment No.: 102

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43375) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: July 7, 1997

Brief description of amendment: The amendment changes Technical Specification (TS) 3/4.8.4.2, "Motor Operated Valves - Thermal Overload Protection (BYPASSED)," to relocate the list of applicable valves (TS Table 3.8.4.2-1) to the Hope Creek Generating Station Updated Final Safety Analysis Report.

Date of issuance: September 16, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 103

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications and the License.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43375) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 1, 1997, as supplemented by letter dated May 30, 1997

Brief description of amendment: The amendment changed Technical Specifications (TSs) 4.6.1.1, "Primary Containment Integrity;" 3/4.6.1.2, "Primary Containment Leakage;" 3/4.6.1.3, "Primary Containment Air Locks;" 4.6.1.5.1, "Primary Containment Structural Integrity;" and 4.6.1.8.2, "Drywell and Suppression Chamber Purge System." This amendment also changed the Bases for 3/4.6.1.2, "Primary Containment Leakage;" 3/4.6.1.3, "Primary Containment Air Locks;" 3.4.6.1.5, "Primary Containment Structural Integrity;" Section 6, "Administrative Controls;" and License Condition 2.D of Facility Operating License NPF-57. A new TS, 6.8.4.f, "Primary Containment Leakage Rate Testing Program," was added. These changes modify the TSs and the Facility Operating License to adopt the performance based containment leak rate testing requirements (Option B) of 10 CFR Part 50, Appendix J.Date of issuance: September 18, 1997

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 104

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications and the License.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43375) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: March 26, 1997

Brief description of amendment: The amendment changes the definition of "Core Alteration."

Date of issuance: September 17, 1997

Effective date: September 17, 1997

Amendment No.: 138

Facility Operating License No. NPF-12: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1997 (62 FR 27800) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 17, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 26, 1996, as supplemented on August 12, 1997 (TS 96-04)

Brief description of amendments: The amendments change the Technical

Specifications (TS) by relocating the fire protection program details to the Updated Final Safety Analysis Report and Fire Protection Plan in accordance with Generic Letters 86-10 and 88-12.

Date of issuance: September 23, 1997

Effective date: September 23, 1997

Amendment Nos.: 228 and 219

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the TS.

Date of initial notice in **Federal Register:** July 2, 1997 (62 FR 35843)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402

Tennessee Valley Authority, Docket No. 50-390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: April 30, 1997, as supplemented June 18, July 21 (3 letters), August 7 and 21, 1997

Brief description of amendment: The proposed amendment would change the design features section of the Technical Specifications (TS) to provide for insertion of Lead Test Assemblies containing Tritium Producing Burnable Absorber Rods in the Watts Bar Nuclear Plant reactor core during Cycle 2.

Date of issuance: September 15, 1997

Effective date: September 15, 1997

Amendment No.: 8

Facility Operating License No. NPF-90: Amendment revises the TS.

Date of initial notice in **Federal Register:** June 4, 1997 (62 FR 30644) The TVA letters dated June 18, July 21, August 7 and 21, 1997 provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated September 8, 1997, and in a Safety Evaluation dated September 15, 1997.No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440 Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: January 16, 1996, supplemented December 6, 1996, and August 15, 1997

Brief description of amendment: The amendment extended the test interval for the drywell bypass leakage rate test from 18 months to 10 years. Also, some surveillances for the drywell air locks were increased from 18 months to 24 months.

Date of issuance: September 22, 1997

Effective date: September 22, 1997

Amendment No.: 86

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1996 (61 FR 3951) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440 Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: May 2, 1997

Brief description of amendment: The amendment revises an existing exception to Limiting Condition for Operation (LCO) 3.0.4 as it applies to LCO 3.6.1.9 for the main steam isolation valve (MSIV) leakage control system (LCS) by making the exception permanent and clarifying that it only applies for the inboard MSIV LCS subsystem.

Date of issuance: September 24, 1997

Effective date: September 24, 1997

Amendment No.: 89

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1997 (62 FR 33135) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2b, Benton County, Washington

Date of application for amendment: August 14, 1997

Brief description of amendment: The amendment revises Technical Specification (TS) 5.5.6 by adding a note that would extend the surveillance interval to perform the inservice testing (IST) full stroke exercise of primary containment isolation check valve TIP-V-6 until the 1998 refueling outage, scheduled to begin no later than May 15, 1998, or until a plant shutdown of sufficient duration occurs to allow TIP-V-6 testing, whichever occurs first.

Date of Issuance: September 18, 1997

Effective date: September 18, 1997, to be implemented within 30 days of issuance.

Amendment No.: 152

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: Yes (62 FR 45280 dated August 26, 1997). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by September 25, 1997, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation and final no significant hazards consideration determination are contained in a Safety Evaluation dated September 18, 1997.

Attorney for licensee: Perry D. Robinson, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 16, 1997 (TSCR-191), as supplemented on April 17, August 7, and August 27, 1997

Brief description of amendments: These amendments increase the minimum volume and boron concentration for the refueling water storage tanks and the boric acid storage tanks. Additionally, these amendments increase the minimum concentration of boric acid in the safety injection accumulator, the reactor coolant system during refueling operations, and the reactor coolant system during positive reactivity changes made when containment integrity is not maintained.

Date of issuance: September 23, 1997

Effective date: September 23, 1997, with full implementation within 45 days

Amendment Nos.: 180 and 184

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1997 (62 FR 19836) The April 17, August 7, and August 27, 1997, submittals provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 3, 1997

Brief description of amendment: The amendment changes the definition for an alteration of the reactor core to one that is consistent with the intent of the Improved Standard Technical Specifications.

Date of issuance: September 18, 1997

Effective date: September 18, 1997

Amendment No.: 109

Facility Operating License No. NPF-42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1997 (62 FR 40861) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1997.No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 3, 1997

Brief description of amendment: The amendment modifies Technical Specifications 5.3.1, "Fuel Assemblies" and 6.1.9.6, "CORE OPERATING LIMITS REPORT (COLR)" to add ZIRLO as fuel material and the use of limited zirconium alloy filler rods in place of fuel rods.

Date of issuance: September 22, 1997

Effective date: September 22, 1997, to be implemented within 30 days of issuance.

Amendment No.: 110

Facility Operating License No. NPF-42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1997 (62 FR 40860) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1997.No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Notice Of Issuance Of Amendments To Facility Operating LicensesAnd Final Determination Of No Significant Hazards ConsiderationAnd Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental

assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By November 7, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: September 15, 1997, as supplemented by letter dated September 16, 1997

Brief description of amendment: The amendment revised the applicability requirement in Technical Specifications (TSs) Sections 3.4.2, "Safety/Relief Valves" (Action c), 4.4.2, and 3.3.7.5, "Accident Monitoring Instrumentation" (TS Table 3.3.7.5-1, Action 80). The change to the referenced TSs adds the following applicability footnote: Compliance with these requirements for the "S" SRV acoustic monitor is not required for the period beginning September 12, 1997, until the next unit shutdown of sufficient duration to allow for containment entry, not to exceed the 10th refueling and inspection outage.

Date of issuance: September 23, 1997

Effective date: September 23, 1997

Amendment No.: 169

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No. On September 17, 1997, the staff issued a Notice of Enforcement Discretion, which was immediately effective and remained in effect until this amendment was issued.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of Pennsylvania, and final no significant hazards consideration determination are contained in a Safety Evaluation dated September 23, 1997.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

NRC Project Director: John F. Stolz

Dated at Rockville, Maryland, this 1st day of October 1997.

For the Nuclear Regulatory Commission

John N. Hannon,

Acting Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation

[Doc. 97-26502 Filed 10-7-97; 8:45 am]

BILLING CODE 7590-01-F

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 1 to Regulatory Guide 3.54, and it is temporarily identified as DG-3010, "Spent Fuel Heat Generation in an Independent Spent Fuel Storage Installation." The guide is in Division 3, "Fuels and Materials Facilities." This regulatory guide is being revised to present a method that is acceptable to the NRC staff for calculating heat generation rates for use as design input for an independent spent fuel storage installation. The procedures proposed in this guide, for both boiling water reactors and pressurized water reactors, are simpler and therefore are expected to be more useful to applicants and reviewers.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by January 2, 1998.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905; e-mail CAG@nrc.gov. The draft guide may also be viewed and downloaded at this interactive site.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Printing, Graphics and Distribution Branch; or by fax at (301) 415-5272. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 12th day of September 1997.

For the Nuclear Regulatory Commission.

Joseph A. Murphy,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 97-26639 Filed 10-7-97; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Anicom, Inc., Common Stock, $.001 Par Value) File No. 1-13642

October 1, 1997.

Anicom, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Chicago Stock Exchange, Inc. ("CHX" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Board of Directors of the Company believes that maintenance of the dual listing on both the Chicago Stock Exchange and the Nasdaq National Market is not in the best interests of the Company's stockholders. No trading of the Company's Security has taken place on the CHX since May 1995. All of the trading activity in the Security has taken place on the Nasdaq National Market. Accordingly, the Board of Directors believes that the costs of maintaining a listing on the CHX do not justify the Company's continued listing on the CHX given the lack of trading on the Exchange.

By letter dated September 10, 1997, the CHX states that the Company has complied with the Exchange's rules relating to the delisting of the Company's Security.

Any interested person may, on or before October 23, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97-26572 Filed 10-7-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Apollo Eye Group, Common Stock, $0.001 Par Value and Redeemable Warrants) File No. 1-12812

October 1, 1997.

Apollo Eye Group ("Company") has filed an application with Securities and Exchange Commission ("Commission"),

pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities) from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the Company's Common Stock is listed on the Nasdaq Bulletin Board and is held of record by less than one hundred (100) holders. The Company's Warrants are held by record by twenty-six (26) holders, and are quoted on Nasdaq.

The Company cannot justify the expense of being listed in more than one market and thereby, wishes to withdraw from the BSE.

By letter dated April 1, 1997, the BSE informed the Company that it had no objection to the withdrawal of the Company's Securities for listing on the Exchange.

Any interested person may, on or before October 23, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application for the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–26575 Filed 10–7–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Mid-Atlantic Realty Trust, Common Shares of Beneficial Interest Par Value $0.01; 7.625% Convertible Subordinated Debentures due 2003) File No. 1–12286

October 1, 1997.

Mid-Atlantic Realty Trust ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Company has complied with Rule 18 of the Amex by filing with such Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the Amex and by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

In making the decision to withdraw its Securities from listing on the Amex, the Company considered the following:

The Company has been advised by its underwriters and financial advisers to list its Shares and Debentures on the New York Stock Exchange ("NYSE"); that such listing will help facilitate a distribution in an offering; that listing on the NYSE is beneficial to the Company in connection with a distribution of the Company's Securities overseas and on foreign exchanges; that such listing would help facilitate a distribution of the Company's Securities to institutional investors; and the underwriters have required that such listing be accomplished prior to any proposed public offering by the Company. The Company's Securities began trading on the NYSE at the opening of business on September 18, 1997.

By letter dated September 17, 1997, the Amex informed the Company that the Exchange would not object to the Company's filing of an application to withdraw its Securities from listing on the Amex.

Any interested person may, on or before October 23, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–26573 Filed 10–7–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Scudder Spain and Portugal Fund, Inc., Common Stock, $0.01 Par Value) File No. 1–9719

October 1, 1997.

Scudder Spain and Portugal Fund, Inc. ("Company") has filed an application with Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

Pursuant to the rules of the Amex regarding de-listing, and in particular Rule 18 of the Amex, the Company has transmitted to the Amex a certified copy of resolutions adopted by its Board of Directors ("Board") authorizing the withdrawal of the Security from listing on the Amex.

The Board and management of the Company have determined that listing the Security on the New York Stock Exchange ("NYSE") may provide potential benefits to the Company and the Company's stockholders, including increased market visibility and increased exposure of the Company among the financial community, and a potential for increased trading volume for the Security, which, if realized, could provide increased liquidity and a decrease in the discount in the market price of the Security as compared to the Company's net asset value per share of Security. The Company's Security began trading on the NYSE on July 30, 1997.

By letter dated July 18, 1997, the Amex informed the Company that the Exchange would not object to the Company's filing of the application to be removed from listing and registration on the Exchange.

Any interested person may, on or before October 23, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–26574 Filed 10–7–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39187; File No. SR–BSE–97–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc., Relating to Stop Orders and Stop Limit Orders in Solely Listed Issues

October 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 4, 1997, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On September 15, 1997, the Exchange submitted to the Commission an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to adopt a new Supplementary Material to Section 3 of Chapter 1 of the Exchange Rules to govern the activation criteria for stop orders and stop limit orders in sole listed issues where reported executions occur away from the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to guide Exchange specialists and customers in the appropriate activation of stop orders and stop limit orders in sole listed issues. Due to the frequency with which the Exchange's sole listed issues trade in the Nasdaq market,[4] it is likely that transactions will occur in that market at prices which would activate Exchange resident stop orders and stop limit orders, were such transactions to occur in the Exchange's market. At such times customers may look for an execution report based on trading that occurs in Nasdaq market. In these circumstances, Exchange specialists may be placed at significant market risk if a customer is permitted to determine after the fact that a stop order or stop limit order in a solely listed issue was, or was not, due based on a sale reported in the Nasdaq market. The proposed interpretation will remove any ambiguity regarding the appropriate activation of stop orders and stop limit orders in solely listed issues by necessitating the inclusion of reported regular way round-lot sales in the Nasdaq market in determining the activation of Exchange resident stop orders and stop limit orders in solely listed issues.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section with Section (6)(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove implements to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The amendment revised the text of the proposed supplementary material to Section 3 of Chapter 1 of the Exchange Rules to clarify that it only applies to the trading of issues listed solely on the Exchange and that the proposal also applies to stop limit orders. *See* letter from Karen A. Aluise, Assistant Vice President, BSE, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission (Sept. 15, 1997) ("Amendment No. 1").

[4] Generally, the Exchange's solely listed issues trade on the Nasdaq SmallCap Market. Here, however, the exchange uses the term "Nasdaq market" to include both Nasdaq SmallCap and OTC Bulletin Board. Telephone Conversation between Karen Aluise, Assistant Vice President, BSE, and Christine Richardson, Law Clerk, Division of Market Regulation, Commission, on September 23, 1997.

[5] 15 U.S.C. § 78f(b).

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–97–04 and should be submitted by October 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26648 Filed 10–7–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39179; File No. SR–CBOE–97–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Option Trading Permit Bid Fee

October 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on September 18, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to amend the manner in which it assesses the Exchange fee that is charged when a person submits a bid to receive an Option Trading Permit ("OTP") from the OTP lease pool.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE Rule 3.27(a)(3) provides for the creation of an OTP lease pool to be administered by the Exchange. The procedures for the administration of this lease pool were previously filed with and approved by the Commission.[2] Under these procedures, the Exchange conducts an auction every six months during which members and non-members who have qualified for membership may submit bids equal to the monthly rent that the bidder is willing to pay for a month-to-month OTP lease. Upon the close of the bidding period, OTPs in the pool are awarded to the highest bidders in a number equal to the total number of OTPs in the lease pool at that time. The monthly rent to be paid by a lessee is the dollar value of the bid submitted by that lessee. Following each auction, the Exchange continues to accept bids for OTP leases. Should any OTP lessee desire to give up that lessee's OTP prior to the next auction, the OTP is transferred to the highest bidder at a monthly lease price equal to the new lessee's bid for the remainder of the six month auction cycle.

The procedures for the administration of the OTP lease pool also provide that a non-refundable $500 fee will be assessed by the Exchange any time an OTP bid is submitted. This fee is intended to cover Exchange costs in connection with its administration of the OTP lease pool.

The Exchange proposes to amend the manner in which it assesses the $500 OTP bid fee. Specifically, the Exchange proposes not to charge the fee to any current OTP lease pool lessee who submits a bid in connection with one of the Exchange's bi-annual OTP lease pool auctions. The $500 OTP bid fee would continue to be assessed to anyone who submits a bid in connection with one of the Exchange's bi-annual OTP lease pool auctions and is not currently an OTP lease pool lessee. In addition, the $500 OTP bid fee would continue to be assessed to anyone who is not currently an OTP lease pool lessee and submits an OTP bid during a six month OTP lease cycle and not in connection with one of the Exchange's bi-annual OTP lease pool auctions.

The Exchange has determined that it is not necessary to assess a $500 OTP bid fee to a current OTP lease pool lessee in connection with a bi-annual OPT lease auction because that person will have already paid a $500 OTP bid fee to the Exchange.[3]

The Exchange also proposes to amend the procedures for the administration of the OTP lease pool to clarify that the $500 OTP bid fee is not assessed when a bid is canceled or replaced with another bid. The Exchange is not waiving the $500 OTP bid fee for an OTP lease pool lessee who terminates his or her OTP lease and later submits another bid for an OTP in the lease pool because there is administrative work involved in processing a change in OTP lessees.

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] The procedures for the administration of the OTP lease pool were filed with the Commission in SR–CBOE–97–14. SR–CBOE–97–14 provided for the issuance of OTPs in connection with the transfer of the options business of the New York Stock Exchange, Inc. to CBOE and defined the rights and obligations associated with OTPs. SR–CBOE–97–14 was approved by the Commission in Securities Exchange Act Release No. 38541 (April 23, 1997), 62 FR 23516 (April 30, 1997).

[3] It should be noted that a current OTP lease pool lessee may not submit an OTP bid during the six month OTP lease cycle (except for a bid that is in connection with the next bi-annual OTP lease pool auction). This is the case because in order for a person to submit an OTP bid, that person must be immediately eligible to become an OTP lease pool lessee. A current OTP lease pool lessee is not immediately eligible to become an OTP lease pool lessee for another OTP because that person is already leasing an OTP from the lease pool, and a person can only lease one OTP from the lease pool at a time.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)[4] of the Act and Rule 19b-4(e)(2)[5] thereunder. At any time within 60 days of the filing of a rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–47 and should be submitted by October 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26576 Filed 10–7–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. § 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(e)(2).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0576]

Early Stage Enterprises, L.P.; Notice of Issuance of a Small Business Investment Company License

On July 19, 1996, an application was filed by Early Stage Enterprises, L.P., at 221 Nassau Street, 3rd Floor, Princeton, New Jersey 08542 with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0576 on September 26, 1997, to Early Stage Enterprises, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 2, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–26689 Filed 10–7–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2613]

Determination on Export-Import Bank Support for the Sale to the Commonwealth of the Bahamas of Defense Articles or Services to be Used Primarily for Counter-Narcotics Purposes

Pursuant to section 2(b)(6) of the Export-Import Bank Act of 1945, as amended, and Executive Order 11958 of January 18, 1977, as amended by Executive Order 12680 of July 5, 1989, I hereby determine that:

(1) The defense articles and services for which the Government of the Commonwealth of The Bahamas has requested Export-Import Bank financial guarantees, two (2) 60 meter patrol craft, are being sold primarily for anti-narcotics purposes;

(2) The sale of such defense articles and services would be in the national interest of the United States;

(3) The requirement for a determination that the Commonwealth of The Bahamas has complied with all restrictions imposed by the United States on the end use of defense articles or services for which the Export-Import Bank has provided guarantees or insurance under section 2(b)(6) of the Export-Import Bank Act is inapplicable because the pending financing will be the first Ex-Im Bank transaction with The Bahamas made under section 2(b((6) of the Act.

(4) The requirement for a determination that the Commonwealth of The Bahamas has not used defense articles or services for which the Export-Import Bank has provided guarantees or insurance under section 2(b)(6) of the Export-Import Bank Act to engage in a consistent pattern of gross violations of international recognized human rights is inapplicable because the pending financing will be the first Ex-Im Bank transaction with The Bahamas made under section 2(b)(6) of the Act.

The determination shall be reported to the Congress and shall be published in the **Federal Register**.

Dated: September 24, 1997.

Strobe Talbott,

Acting Secretary of State.

Justification for Determination

Pursuant to Section 2(b)(6) of the Export-Import Bank Act of 1945, as amended, and E.O. 12680 of July 5, 1989, I have made the determination required to authorize financing by the Export-Import Bank of the United States of defense articles or services to be used by the Government of the Commonwealth of The Bahamas primarily for counter-narcotics purposes.

The defense articles to be financed are two (2) 60 meter patrol boats built by Halter Marine, Gulfport, Mississippi. The new boats, by giving The Bahamas a better means for patrolling its large territorial waters, will further the joint U.S.-Bahamas effort ("Operation Bahamas and Turks (OPBAT)") to curtail the northward flow of cocaine, marijuana and other illegal substances from their production centers to the south.

Based on assurances from the Government of the Commonwealth of The Bahamas and the assessment of our Embassy in The Bahamas, I have determined that the vessels to be financed by the Export-Import Bank will be used primarily for counter-narcotics purposes. I have also determined that the sale will enhance U.S. Bahamas counter-narcotics cooperation and is therefore in the national interest. The Bahamas is a major drug transit country that the President has certified has cooperated fully with the United States

or taken adequate steps on its own to achieve fully compliance with the goals and objectives established by United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substance. The Bahamas is a stale parliamentary democracy,

Since this is the first financing by the Export-Import Bank of defense items or services to the Commonwealth of The Bahamas under section 2(b)(6) of the Export-Import Bank Act, the other determinations required by the Act are inapplicble.

[FR Doc. 97–26569 Filed 10–7–97; 8:45 am]
BILLING CODE 4710–10–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Report on Trade Expansion Priorities Pursuant to Executive Order 12901 ("Super 301")

AGENCY: Office of United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice if hereby given that the United States Trade Representative (USTR) has submitted the report on United States trade expansion priorities published herein to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives pursuant to the provisions (commonly referred to as "Super 301") set forth in Executive Order 12901 of March 3, 1994, as extended by Executive Order No. 12973 of September 27, 1995.

DATE: The report was submitted on October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Irving Williamson, Chairman, Section 301 Committee, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508, (202) 395–3432.

SUPPLEMENTARY INFORMATION: The text of the USTR report is as follows.

Identification of Trade Expansion Priorities Pursuant to Executive Order 12901

October 1, 1997.

This report is submitted pursuant to Executive Order No. 12901 of March 3, 1994, as extended by Executive Order No. 12973 of September 27, 1995, regarding the "Super 301" annual review. Under the Executive Order the United States Trade Representative (USTR) is required, by September 30, 1997, to "review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent."

Keeping America growing and creating good high-wage jobs by tearing down foreign barriers to American goods and services continues to be President Clinton's top trade expansion priority. For this reason the President has asked Congress to renew fast track procedures to negotiate tough new trade agreements that break down trade barriers and unfair trade restrictions in key areas, such as in agriculture, information technology, telecommunications, automobiles, medical equipment, environmental technology and services, and the creative power of our entertainment and software industries. Fast track would enable the United States to complete the built-in agenda of the World Trade Organization (WTO) by concluding major trade negotiations that were deferred at the end of the Uruguay Round and by participating in negotiations mandated by the Uruguay Round agreements in areas ranging from rules to origin to services. Fast track would enable the United States to pursue market-opening initiatives in sectors where the United States either leads the world or is a powerful competitor, and where extraordinary potential for growth exists. Fast track is also essential if the United States is to negotiate more comprehensive market access agreements with individual countries, as well as on a regional basis.

The Clinton Administration intends to concentrate on the fastest growing markets in the world in Latin America and Asia. These markets are growing three times faster than our own. Without fast track, our competitors will continue to negotiate trade agreements that benefit their products at the expense of our own. Fast track is necessary, not only to promote our own economic well-being, but to enable us to continue to play a leadership role in advancing the cause of freedom and prosperity in the world.

The Administration is addressing the most significant foreign trade barriers through an ongoing strategy of vigorous monitoring and enforcement of trade agreements, strategic application of U.S. trade laws, active use of the dispute settlement provisions of our trade agreements, and continued engagement in multilateral, sectoral, regional and bilateral negotiations. Through this strategy the Administration has used the trade law tools and dispute settlement mechanisms at its disposal on more than 70 occasions so far to enforce U.S. rights. As a result of the 1997 review of priorities, the Administration has identified one priority foreign country practice and will proceed under WTO dispute settlement procedures in four cases.

Priority Foreign Country Practice

• *Korea—barriers to auto imports.* Specific Korean practices of concern include an array of cumulative tariff and tax disincentives that disproportionately affect imports; onerous and costly auto standards and certification procedures; auto financing restrictions; and a climate of bias against imported vehicles that Korean officials have not effectively addressed. While some of these barriers were addressed in the 1995 bilateral agreement, implementation of that agreement has been disappointing, especially as new practices have been introduced that undermine the 1995 agreement. Meanwhile, Korean auto manufacturers are expanding domestic capacity, which is forecast to rise from 2.8 to over 5 million units by the year 2000.

Although some progress was made during recent bilateral negotiations to improve market access in Korea for foreign automobiles, Korea was not prepared to undertake the reforms which are necessary for real opening of its autos market. In light of the foregoing, the USTR has decided to identify Korea's barriers to imported automobiles as a priority foreign country practice under the Executive Order and will initiate a section 301 investigation of Korea's practices. The United States continues to hope that it can reach an agreement with Korea that will effectively address U.S. concerns.

Strategic Enforcement

Enforcing our trade agreements and our trade laws is among the Administration's top trade expansion priorities. A critical part of our job is what happens after an agreement is signed. The Administration's trade policy recognizes that the best way to build confidence in trade agreements is to enforce them. Vigorous enforcement is critical to ensuring good agreements.

The Administration has assigned top priority to monitoring implementation of its trade agreements, especially the WTO agreements and NAFTA to ensure that signatories live up to their commitments and comply with the rules. In the course of these monitoring efforts, the Office of the United States Trade Representative, in cooperation with the Departments of Commerce and Agriculture, has focused in particular on foreign practices that could pose serious problems to the international trading system if they proliferate in many markets. Therefore, the Administration has adopted a strategic enforcement plan—aimed not only at challenging existing barriers but also at preventing the future adoption of similar barriers around the world.

The Administration will continue to make vigorous use of the dispute settlement provisions in trade agreements to ensure compliance with the terms of those agreements. Since the inception of the WTO the United States has invoked the WTO dispute settlement procedures far more than any other member. The new WTO dispute settlement procedures have already yielded positive results—both in terms of reduced barriers and increased export opportunities.

Efforts to enforce the WTO agreements include not only dispute settlement, but also making use of the various oversight committees of the WTO that ensure implementation of WTO agreements, especially those agreements that address the mechanics of getting goods to the marketplace; rules on technical barriers to trade (standards, certification, testing requirements); sanitary and phytosanitary measures; import licensing requirements; customs valuation procedures; rules of origin; and preshipment inspection procedures.

New Cases to be Launched

As a result of this year's review of its trade expansion priorities, and its monitoring of compliance with U.S. trade agreements, the Administration will take the following actions to enforce U.S. rights under those agreements, with heavy emphasis on challenging foreign government actions that appear to circumvent the WTO rules on export subsidies.

• *Japan—Market Access Barriers to Fruit.* USTR will initiate a section 301 investigation and in that context, request the establishment of a WTO panel to challenge the Japanese government requirement of separate efficacy testing of certain quarantine treatments for each variety of imported fruit, even where the same treatment has been accepted by Japan as effective for another variety. Although the fruit of immediate export concern is apples, Japan's requirement operates as a significant import barrier to nectarines, cherries, and other fruits that are of export interest to the United States. The United States and Japan have already completed consultations on this matter pursuant to WTO dispute settlement procedures, so the United States will proceed directly to request a panel.

• *Canada—Export Subsidies and Import quotas on Dairy Products.* USTR will invoke WTO dispute settlement procedures in the context of a section 301 investigation to challenge practices that subsidize exports of dairy products from Canada, and Canadian implementation of its import quotas on milk. The U.S. dairy industry has petitioned USTR to initiate this investigation on the grounds that both of these practices are inconsistent with Canada's WTO obligations and adversely affect U.S. exports.

• *EU—Circumvention of Export Subsidy Commitments on Dairy Products.* USTR also will invoke WTO dispute settlement procedures in the context of a section 301 investigation to challenge practices by the European Union (EU) that circumvent the EU's commitments under the WTO to limit subsidized exports of processed cheese and adversely affect U.S. exports to third markets. The EU is counting these exports against its limits on powdered milk and butterfat to avoid the limits on subsidies of cheese. USTR will also closely monitor EU compliance with its WTO agricultural subsidy commitments on all other agricultural products.

• *Australia—Export Subsides on Automotive Leather.* Following bilateral and multilateral consultations, Australia agreed to eliminate export subsidies for leather used in automobiles. However, Australia's subsequent package of assistance for its industry (comprised of a sizable loan and grant), has raised similar concerns regarding consistency with WTO subsidies rules. While some progress has been made in recent months, these concerns have not yet been adequately addressed. Thus USTR will invoke WTO dispute settlement procedures, but remains hopeful that a solution satisfactory to both countries can be reached during consultations.

Recent Enforcement Actions

During the past year, USTR has invoked WTO dispute settlement procedures to challenge a wide variety of foreign government practices, covered by the broad range of agreements administered by the WTO, seeking to enforce the rules on tariffs, agriculture, services, intellectual property rights, antidumping measures, and sanitary and phytosanitary measures. Those complaints include challenges of:

• *Argentina's* import duties on footwear, textiles, and apparel that exceed the maximum to which Argentina is committed under WTO tariff rules;

• licensing requirements in *Belgium* that discriminate against U.S. suppliers of commercial telephone directory services;

• *Brazilian* government measures that give certain benefits to manufacturers of motor vehicles and parts, conditioned on compliance with average domestic content requirements, trade-balancing and local content requirements with regard to inputs;

• the failure of *Denmark* to provide adequate measures to enforce intellectual property rights;

• reclassification by the *European Union, the United Kingdom, and Ireland* of certain computers and computer-related equipment to different tariff categories with higher tariff rates;

• import restrictions on more than 2700 agricultural, textile and industrial products imposed by *India* for which India can no longer claim a justification for balance-of-payments reasons;

• *Indonesia's* programs granting preferential tax and tariff benefits to producers of automobiles based on the percentage of local (Indonesian) content of the finished automobile;

• *Ireland's* failure to expeditiously bring its copyright laws into compliance with the WTO agreement on intellectual property rights;

• *Japan's* barriers to market access for photographic film and paper, and barriers to distribution and retail services in Japan;

• *Korea's* taxes on Western-style distilled spirits that are higher than those assessed on the traditional Korean-style spirit soju;

• an antidumping action by *Mexico* of high-fructose corn syrup imports from the United States that does not conform to WTO procedures;

• a licensing system in *the Philippines* that discriminates against U.S. exports of pork and poultry; and

• the failure of *Sweden* to provide adequate measures to enforce intellectual property rights.

In addition to using dispute settlement procedures strategically, the Administration has continued to use the leverage of U.S. trade laws to obtain market access for U.S. goods and services and to encourage other countries to ensure adequate protection of intellectual property rights:

• *Japan—port practices.* Restrictive practices in Japanese ports have caused serious difficulties for U.S. shipping companies for many years. After initial consultations with Japan failed to resolve these problems, on September 4, 1997, the Federal Maritime Commission imposed sanctions of $100,000 per voyage on container vessels owned or operated by Japanese companies entering the United States. Consultations to remove the restrictive practices which impede open and

efficient business operations of our carriers continue.

• *Argentina—patent protection.* On January 15, 1997, the Administration decided to withdraw 50 percent of Argentina's tariff benefits under the Generalized System of Preferences as a result of its continued delay in providing adequate patent legislation, particularly for pharmaceutical products.

• *Bulgaria—intellectual property protection.* The "Special 301" provisions of U.S. trade law have been used to obtain progress in improving the legislative framework for protecting intellectual property rights and enforcing those rights in Bulgaria. Just prior to the April 1997 Special 301 announcement, Bulgaria adopted amendments to expand the scope of protection for computer software.

• *Korea—telecommunications.* In 1996, Korea was identified as a Priority Foreign Country under the Telecommunications Trade Act of 1988. Year-long negotiations bore fruit in July 1997, with commitments by Korea to ensure that U.S. telecommunications equipment suppliers would be treated fairly in areas including procurement, certification, type approval, protection of intellectual property and technology transfer.

• *Mexico—telecommunications.* In the 1996 review under the Telecommunications Trade Act of 1988, USTR cited Mexico for not fulfilling its NAFTA obligation to accept other parties' laboratory or test facility test data relating to product safety in certifying telecommunications equipment for safe use. An agreement reached in April 1997 established procedures to resolve this issue, which will further facilitate the export of U.S. telecommunications products to Mexico.

• *Honduras—piracy.* In response to the failure of Honduras to address effectively the unauthorized broadcasting of pirated U.S. videos and the rebroadcasting of U.S. satellite-carried programming, the Administration is taking steps to withdraw some of the tariff benefits accorded Honduras under the Generalized System of Preference and Caribbean Basin Initiative programs.

Bilateral Market Access Issues

Through bilateral negotiations as well as through enforcement actions, the Administration continues to monitor progress made toward increasing market access for U.S. exports of goods and services to key markets.

Japan

A top priority of the Administration has been to increase access to the Japanese market. The Administration has negotiated 31 market-opening agreements with Japan since 1993. The most recent of these was concluded on September 30, 1997, when agreement was reached to extend and improve the bilateral agreement on procurement by Nippon Telegraph and Telephone Company, commonly referred to as the NTT agreement. This agreement will provide U.S. telecommunications suppliers with improved access to NTT's $13 billion market.

Bilateral agreements, combined with enforcement of U.S. trade laws, use of the WTO dispute settlement process, and regional and multilateral initiatives, have helped to increase significantly U.S. exports to Japan. U.S. exports to Japan increased 41 percent from 1993 to 1996.

Nevertheless, the Administration is increasingly concerned that Japan's progress in opening its market has slowed. Market access problems persist and U.S. companies in a wide range of sectors continue to face serious impediments that hinder their ability to compete in the Japanese market. These barriers include a closed distribution system, nontransparent regulations, discriminatory procurement policies, and restrictive business practices.

Meanwhile, the Japanese economy is weaker than expected and Japan's current account surplus is increasing, reaching 2.6 percent of GDP in the second quarter of this year. Prime Minister Hashimoto has publicly articulated the objective of "promoting strong, domestic demand-led growth in Japan and avoiding a significant increase in the external surplus." It is essential that Japan take seriously its responsibilities to generate domestic demand-led growth and open its markets to competitive goods and services from the United States and other countries.

Our objectives correspond closely with key elements of the Japanese Government's economic agenda. Resolution of such issues as reform of Japan's port practices, significant opening of Japan's civil aviation market, and improved market access for U.S. autos and auto parts are early tests of the Japanese Government's commitment to deregulation and market opening. The deregulatory measures implemented by the Government of Japan in the sectors included in the Enhanced Deregulation Initiative agreed to by President Clinton and Prime Minister Hashimoto at the G–8 Summit last June—including telecommunications, housing, pharmaceuticals/medical technology, and financial services—will also serve as early indications of the seriousness of Japan's commitment to deregulation.

• Japan—Market Access for Autos and Auto Parts. The United States and Japan concluded an agreement in 1995 on the full range of market access barriers facing sales of autos and auto parts in Japan and to Japanese companies outside Japan. Noteworthy progress was made during the first year of the agreement, with sales of North American-made big Three vehicles up 34 percent last year and sales of U.S.—made auto parts up 20 percent in 1996. However, during the first six months of 1997, sales of North American-made Big Three vehicles have declined 17 percent over 1996 levels. Moreover, although U.S. auto parts exports increased 14 percent during the first six months of 1997, foreign access to this market remains limited. In light of these trends, increased focus on implementation is necessary. Of particular importance is improved access of U.S. and other competitive foreign firms to Japan's automotive distribution system, including to new and existing dealerships. With respect to auto parts, continued progress will depend on further meaningful deregulation of the replacement market. The United States and Japan will meet in early October 1997 to access progress based on the quantitative and qualitative indicators in the agreement and to discuss concrete actions for improving market access in this important sector.

• Japan—Market Access for Flat Glass. Implementation of the 1995 U.S.-Japan Flat Glass Agreement proceeded well in the first year, but early progress has not been sustained. While a major objective of the agreement was to provide foreign companies access to distributors controlled by the three major Japanese glass companies, the increase in volume of foreign glass within the Japanese glass distribution system continues to be very limited, and major Japanese distributors are not carrying foreign glass in any meaningful quantities. There also has been virtually no increase in the overall use of insulated glass and a decline in the use of safety glass, even though the Agreement provided that Japan was to promote actively the use of both types of glass. Among the promotion measures Japan agreed to undertake was the issuance of new standards to promote the use of insulated glass in residential and commerical construction. The United States and Japan will hold consultations in late October to discuss our market access concerns. The United States will continue to press Japan to take actions to ensure that genuine market access is achieved under the agreement.

• Japan—Market Access for Paper and Paper Products. Despite continued U.S. efforts in the part year, structural barriers continue to impede U.S. industry's access to Japan's paper market. In the first six months of 1997, Japan's paper and paperboard imports fell by more than 20 percent and import penetration declined further to 4.3 percent. The United States seeks agreement with Japan on a joint work program designed to provide substantially increased market access for foreign paper and paperboard products. Such a program would lead to a reduction in structural barriers and exclusionary business practices and will result in meaningful access to distribution channels and end users.

China

The Administration is actively pursuing a broad range of market opening initiatives with China. Through active leadership in multilateral WTO accession talks and pursuit of a full bilateral agenda, we are seeking the elimination of China's multiple and overlapping barriers to U.S. exports of industrial goods, agricultural products and U.S. services. Despite China's actions to liberalize its economy, many aspects of its economic and legal regime are inconsistent with international norms. While our large and growing trade deficit with China is the result of many factors, China's trade and economic policies are a significant contributor to that deficit. Opening China's market and brining China's policies into conformity with international norms are the Administration's key objectives in the trade area and the best means to address the trade deficit.

Given the size and potential of China's market and the nature of China's trade regime, negotiating the terms of China's membership in the WTO will continue to be a major focus of U.S. efforts to open China's markets. The WTO accession negotiations represent an important opportunity to work with our trading partners and with the Chinese government to develop an accession package that opens markets and commits China to create an environment conducive to international trade, requiring compliance with WTO rules and internationally accepted trade norms of transparency, predictability and the rule of law.

The United States supports China's accession to the WTO on the basis of commercially meaningful commitments that provide market access for U.S. goods, agriculture and services. China has, in the context of the Asia Pacific Economic Cooperation Forum (APEC), taken some recent steps towards liberalizing its trade regime. Effective October 1, 1997, China will cut its average tariffs to 17 percent as a step towards meeting its APEC commitment of a 15 percent average tariff by the year 2000. This is a welcome step, but more is needed in the context of WTO accession. The Administration is, for example, committed to eliminating quotas, licensing requirements and other barriers affecting U.S. exports and investment in the WTO Accession.

The united States is pursuing a program of vigorously monitoring compliance with existing agreements and addressing new market access barriers. During the Clinton Administration, we have reached important agreements on intellectual property rights (IPR) protection, textiles and market access. Concluding these agreements, however, was only a first step. We have continually worked with China to ensure that implementation problems are addressed.

• *China—IPR Enforcement.* We have seen progress through closure of 58 pirate compact disc production lines and the establishment of an infrastructure for enforcement of IPRs. Continuing problems exist regarding computer software piracy and trademark counterfeiting, however, since Chinese authorities often fail to impose penalties sufficient to deter illegal activities. U.S. negotiators are continuing to work with Chinese authorities to improve compliance with our IPR agreements.

• *China—Sanitary and Phytosanitary Measures.* Progress has been achieved in opening China's market to U.S. agriculture for products such as live cattle, bovine embryos, cherries and applies from Washington, and most recently grapes from California. Serious problems still remain. We have, for example, serious objections to China's unjustified sanitary and phytosanitary (SPS) restrictions. China bans imports of U.S. oranges, lemons, grapefruit, plums and Pacific Northwest (PNW) wheat based on SPS concerns. The United States believes that China's concerns lack a scientific basis and are unjustified. The United States exports these products globally. U.S. negotiators are now working to reach agreement with China's experts on the conditions for importation of U.S. citrus, PNW wheat and plums.

• *China—Meat Imports.* While China has begun a one-year experiment to allow U.S. meat imports for general consumption, China has only certified a handful of U.S. beef, pork and poultry processing plants. Given the continued application of high tariffs, however, certification of plants has yet to result in increased market access for our meat exports. These are products in which the United States is highly competitive and enjoys a large global trade.

• *China—Financial Information Providers.* We are nearing an interim solution of a longstanding problem concerning registration of foreign financial information providers like Dow Jones and Reuters. China's plan to authorize China's main financial data provider and competitor to U.S. companies, Xinhua, to regulate foreign economic information providers was challenged by the United States from its inception. This interim solution will permit U.S. firms to continue their operations in China while the United States seek more comprehensive commitments from China on market access and national treatment for financial service providers and online data processing in the negotiations on China's accession to the WTO.

• *China—Insurance Providers.* Foreign insurers' access to the Chinese market is severely restricted. U.S. insurers must first establish a representative office for two years before applying for a license. If China grants the company a license, numerous non-prudential restrictions apply on doing business, including restrictions on the form of investment, scope of business lines, and geographic location. We are seeking elimination of these non-prudential restrictions.

Korea

The Administration is focused on eliminating barriers to entry and distribution of U.S. products in Korea—The United States' fifth largest export market overall, and fourth largest market of agricultural and food products. This year, the Administration made solid progress toward opening the Korean market through the use of U.S. trade laws and WTO dispute settlement procedures, negotiation and enforcement of bilateral trade agreements, and close coordination with other countries on U.S. trade initiatives regarding Korea, particularly in the OECD and the WTO. Specifically, the United States negotiated a bilateral settlement addressing restrictive Korean telecommunications practices; reached agreement on an IPR action plan; and used WTO procedures to improve Korean market access for U.S. food and agricultural products.

The Administration is committed to continuing its varied and

comprehensive efforts to tackle commercial barriers in what U.S. industry still describes as one of the toughest markets in the world for doing business. Korea must begin to take actions and accept the responsibilities commensurate with its new international position as a developed nation. Our priority will be on achieving systemic changes to trade-restricting procedures and rules in Korea, including those affecting market access for automotive products, cosmetics, and food and agricultural goods.

• *Korea—Impediments to Entry and Distribution of Cosmetics.* The Korean government uses measures that restrict the entry and distribution of cosmetics including: restrictions on sales promotions (premiums), including changes to the valuation methodology; delegation of authority to a Korean industry association to screen advertising and information brochures prior to use; mandatory provision of proprietary information on imports to Korean competitors; redundant testing; unreasonable prior-approval requirements on cosmetic tester labels; and burdensome import authorization and tracking requirements. After bilateral talks with U.S. officials, Korea stated its intention to change some of these measures, but the Korean government still has not fully addressed U.S. concerns, including those relating to implementation of relevant provisions in international agreements. The Administration will continue to pursue unimpeded trade in cosmetics with Korea over the coming year and will review the situation again in January 1998.

• *Korea—Import Clearance Procedures.* After WTO dispute settlement consultations with Korea on its long, burdensome, and non-science-based import clearance procedures, the Korean government made changes, including expediting clearance for fresh fruits and vegetables; instituting a new sampling, testing, and inspection regime; eliminating some phytosanitary requirements; and starting the process of updating Korean Food Additives Code standards.

However, Korean port inspectors have failed to implement changes to which the Korean government has committed, including the elimination of requirements for proprietary information (on manufacturing process and ingredient listing by percentage) and for sorting of produce. Also, some of the changes Korean officials are implementing do not adequately address U.S. concerns. The United States will raise this issue at the October meeting of the WTO SPS Committee and has proposed consultations on the Korean Food Additives Code. The United States will take further action under WTO dispute settlement procedures if its concerns are not addressed fully.

• *Korea—Steel Subsidies.* The United States is concerned that the Korean government may have provided large subsidies for the establishment and expansion of Hanbo Iron and Steel, and directed the banking industry to continue to extend credits beyond what is financially prudent. U.S. industry is concerned that such measures may be subsidies that are creating unfair competition through price undercutting and displaced U.S. exports to Korea and to third country markets. We have sought further information from the Korea government, both bilaterally and in the WTO Subsidies Committee, and will examine Korea's practices in light of its WTO obligations.

Problems Requiring Special Attention

As traditional barriers to market access have been reduced at the border, the increase in the application of government measures under the guise of technical requirements has increased. These are problems that are being given special attention by the Administration, and that may warrant enforcement action in the future if they are not resolved satisfactorily.

Sanitary and Phytosanitary Measures

Numerous U.S. agricultural exports have been denied import approval or have faced costly import quarantine requirements due to sanitary and phytosanitary (SPS) barriers to trade that lack a scientific basis and appear to discriminate arbitrarily or unjustifiably against U.S. agricultural exports. The Administration has implemented an aggressive agenda to address unjustified SPS barriers, including high-level technical talks with our trading partners, raising these issues in the WTO SPS Committee to apply multilateral pressure, and resorting to WTO dispute settlement procedures where necessary.

As a result of intense efforts in the past year, the Administration has resolved technical issues bilaterally to permit exports of tomatoes to Japan, table grapes to China, lemons, table grapes, kiwis, oranges and grapefruit to Chile, sweet cherries to Mexico, rough rice to Honduras, live swine to Argentina and Peru, and live cattle to Peru.

The Administration will continue to press our trading partners to remove unjustified SPS barriers facing U.S. agricultural exports, including:

• *EU–Specified Risk Material (SRM) Ban and Cosmetics Directive.* Two recent directives approved by the European Commission prohibiting the sale in the EU of cosmetic products containing tallow and its derivatives, and governing the production of certain materials, due to concerns regarding the transmission of Bovine Spongiform Encephalopathy (BSE), raise concerns with respect to the EU's WTO obligations. The directives fail to recognize that BSE is not known to occur in the United States and that the United States maintains an aggressive surveillance program for BSE that exceeds international standards. The EU has failed to provide a scientific basis for these requirements, and both directives are expected to have severe negative effects on U.S. exports of pharmaceutical, cosmetic and tallow products; and the potential impact on the international availability of essential pharmaceutical products also raises serious public health concerns.

• *France—Pet Food Imports.* In September 1996, France adopted new requirements for pet food production, restricting the use of certain animal products or proteins and prohibiting the use of certain material. The regulation requires that manufacturers exclude materials from the rendering process that are commonly considered safe by renderers and this has effectively stopped all U.S. pet food exports to France. France has not demonstrated the scientific principle underlying the restriction of non-mammalian material as a protective measure against any risk factor. This issue was raised by the United States at the July 1997 meeting of the WTO SPS Committee.

• *Australia—Pest Risk Analyses.* For a number of years, and in a variety of fora, the United States has requested entry into Australia's market for stone fruit, shelled almonds, Florida citrus fruit and California grapes. The United States has submitted several pest lists to enable Australia to complete its WTO-required risk assessments. To date, Australia has provided no scientific basis for its prohibitions on U.S. exports of these products, nor has it provided pest risk analyses.

The delays experienced on these issues have seriously hampered the approval process for U.S. exports of these commodities.

Technical Barriers to Trade

Technical barriers to trade are of particular concern in our important relationship with the EU. In successive meetings of the WTO Committee on Standards, and other WTO bodies, the United States and other nations have

flagged concerns that standards, certification, and testing requirements in the EU can sometimes pose serious technical barriers to trade. The U.S.–EU trade and investment relationship is the largest and most complex in the world. Sophisticated business interactions across the Atlantic are affected to a significant degree by standards, technical regulations and conformity assessment procedures. While the recent U.S.–EU mutual recognition agreement on conformity assessment, covering six industrial sectors, should help reduce standards-related barriers, U.S. companies continue to be concerned about certain aspects of EU standards-related practices that could inhibit U.S. exports.

• *EU –Design Restrictive Standards.* U.S. firms continue to encounter difficulty in obtaining market access for certain products in Europe due to design-restrictive standards that may have no bearing on the safety and performance of the product. While U.S. companies with U.S. Government assistance may achieve some success in addressing problems in individual national markets, market access becomes even more difficult if a European regional standards body decides to develop a European-wide standard. The initiation of work on a regional standard results in a standstill on related work in individual member States and thus can delay or, if unnecessarily restrictive standards are finally adopted, prevent improved access to EU markets. The United States continues to raise its concerns, both bilaterally and in the WTO, with the standards making process in the EU and design-restrictive standards and has in particular sought to address the problems encountered by a U.S. manufacturer of gas connectors.

• *EU Ecolabeling Directive.* The EU Ecolabeling Directive sets forth a scheme whereby EU Member States will grant voluntary environmental labels based on criteria approved by the European Commission for products in specific sectors. The United States affirms its support for the concept of ecolabeling and has previously expressed appreciation for the EU's attempts to address problems raised by the United States regarding its ecolabeling program. However, while improvements in the transparency of procedures and opportunity for foreign participation in the EU's ecolabeling program have been reported, concern remains that the EU ecolabeling program favors European industry, thus leading to trade concerns.

• *EU Units of Measurement Directive.* The EU plans to implement a directive requiring that after December 31, 1999, the only indications of measurement that can be used on product labels will be metric units. Currently, labels may include other units (e.g., inches, pounds) in addition to metric units. Such a step is unnecessary and burdensome, and will affect many U.S. companies, particularly in those industries where packaging and labeling are key aspects of placing a product on the market (e.g., food products, consumer goods and cosmetics).

Other Bilateral Issues

• *Argentina—Footwear Import Restrictions.* After the United States initiated WTO panel proceedings to determine whether Argentine import duties on textiles, apparel and footwear are within Argentina's maximum permissible rate, Argentina revoked its challenged duties on footwear and replaced them with similar duties in the guise of an emergency import relief measure. On September 1, 1997, Argentina notified the WTO that this so-called safeguard measure would be extended for three years. The United States is reviewing this action in light of Argentina's obligations under the WTO agreement on safeguard measures.

• *Brazil—Import Financing Measures.* On March 25, 1997, Brazil imposed new import financing rules that are adversely affecting a wide range of U.S. exports to Brazil. The measure, which requires importers to purchase foreign exchange to pay for imports upon importation or 180 days in advance rather than when payment is due under their contract, effectively increases the cost of many imports by eliminating or reducing supplier credits of less than one year. The United States is consulting with Brazil bilaterally and is reviewing the matter in light of Brazil's WTO obligations.

• *Taiwan—Market Access for Pharmaceuticals.* U.S. pharmaceutical companies are increasingly concerned about discriminatory aspects of Taiwan's reference pricing system for pharmaceuticals. This system, as applied by Taiwan's Bureau of National Health Insurance, appears to be inconsistent with national treatment principles. Taiwan authorities have agreed to consultations on this problem in the near future.

Multilateral Priorities

Within the next three years the United States will participate in a number of major WTO negotiations in areas where we are a top global competitor. As a result of the Uruguay Round, the United States has a broad agenda in the WTO to pursue further negotiations and strengthen existing agreements. Among others, WTO negotiations are scheduled to open further the $600 billion global agriculture market beginning in 1999; to further open the $1.2 trillion global services market; and to review the Agreement on Trade-Related Intellectual Property Rights (TRIPs) which protects a variety of U.S. intellectual property right holders, including U.S. copyright holders whose foreign sales and exports exceed $53 billion a year. Also included is the two-pronged agenda to negotiate improvements to the current reciprocal Agreement on Government Procurement and to conclude an agreement obligating all WTO members to maintain transparent procurement practices, thereby enabling U.S. companies to compete in the trillion-dollar global government procurement market. We will also review the WTO Dispute Settlement Understanding that has already enabled us to open many new markets in the last two years. As illustrated by most of the comments received from the public by USTR in preparing this report, high tariffs—especially in the agricultural sector—continue to block U.S. exports to a number of markets. Fast track procedures are essential if we are going to capitalize on the additional market opportunities presented by the WTO negotiations.

Our most immediate goal is to obtain significantly improved commitments from our trading partners that will allow us to conclude successfully the WTO financial services negotiations by the end of this year. These negotiations represent an important opportunity to reach a successful agreement that opens new opportunities for U.S. financial services providers in the key emerging markets around the world and furthers the integration of national financial systems needed for a more interconnected global economy in the 21st century.

Adding New Markets to the Rules-based Trading System. The United States continues to place high priority on ensuring that its trading partners accept the rule of law as it applies to trade—ensuring that their trade and economic policies are consistent with international trade practices and norms, such as those of the WTO. A principal means of ensuring that new entrants into the international trading system accept the rule of law is through the negotiation of the terms and conditions of an applicant's WTO membership. New members must be prepared to implement WTO obligations and to grant commercially meaningful market access commitments and concessions, on both goods and services, as well as

make specific commitments to limit agricultural subsidies. There are presently 29 applicants negotiating to become members of the WTO, including China, Russia, Taiwan, Ukraine, and Saudi Arabia.

Sectoral Priorities

The Administration will continue to ensure that U.S. industries that are competitive global leaders enjoy export success commensurate with their competitive position. In the last year we have taken major steps forward in advancing this goal with the Information Technology Agreement (ITA) and the Agreement on Basic Telecommunications. The ITA will reduce tariffs to zero in a $500 million global market in which the United States is the world's largest single exporter. The Agreement on Basic Telecommunications ensures that U.S. companies can compete against and invest in all existing carriers around the world. U.S. companies will now have access to markets accounting for over 95 percent of global telecommunications revenue and will be in the best position to take advantage of a $600 billion industry that is expected to double or even triple in the next 10 years. The agreement provides U.S. companies market access for local, long-distance and international service and the ability to establish or hold a significant stake in telecommunications companies around the world. Sixty-five countries adopted procompetitive regulatory principles based on landmark U.S. legislation, the 1996 Telecommunications Act.

We are seeking to build on our success to pursue market-opening sectoral agreements in areas where the United States can capitalize further on its global competitive advantage if market access barriers are reduced, including in areas such as trade in chemicals, environmental technology and services, medical equipment and services, oilseeds and oilseed products, and wood and paper products. Fast track procedures are essential to ensure that the United States can continue to play the critical role in negotiations that reduce such barriers.

Regional Priorities

The *Asia Pacific region* contains the fastest growing economies in the world. Reaching the goal of open markets with the members of the Asia Pacific Economic Cooperation Forum (APEC) would increase U.S. global exports of goods alone by 13 percent or $80 billion a year. As a step toward that goal, market opening agreements in key sectors would provide important new opportunities for U.S. exporters.

Latin America and the Caribbean are the fastest growing markets for U.S. merchandise exports. During the first six months of 1997, our exports to the region grew more than twice as fast as our exports to the rest of the world. At the recent meeting of the Trade Ministers of the nations participating in the Free Trade Area of the Americas (FTAA) in Belo Horizante, Brazil, the Ministers agreed that FTAA negotiations should be launched at the Second Summit of the Americas in April 1998. The negotiations will address the full range of issues from tariff reductions to agriculture to structural issues such as intellectual property rights protection and government procurement. We remain fully committed to negotiating a comprehensive free trade agreement with Chile.

In addition, we are continuing intensive discussion with our partners in Western Europe to complete commercially significant sectoral market-enhancing commitments in the context of the Transatlantic agenda. The United States and the EU are participating in a joint study of high priority sectors where we can progressively eliminate or reduce barriers. In June 1997 the United States and the EU concluded negotiations on a mutual recognition agreement that facilities U.S. exports to the EU in sectors such as telecommunications equipment, pharmaceuticals, and medical devices, by allowing U.S. manufacturers to have conformity assessment procedures, such as testing and inspection, conducted in the United States. This agreement will reduce costs for both manufacturers and regulators alike, and will help harmonize standards in certain sectors.

Finally, through President Clinton's "Partnership for Economic Growth and Opportunity in Africa" initiative, we seek to strengthen the process of economic and political reform and encourage the further opening of *African markets* and the maintenance of open markets through the assumption of increased WTO obligations. Increased African participation in the international trading system should benefit American and African exporters alike and lay the foundation for eventual free trade agreements between African countries and the United States.

Appendix—Successfully Enforcing WTO Agreements

Early victories. The United States has won the first five cases that it has taken through the WTO dispute settlement panel process.

• *Japan-liquor taxes.* The United States—joined by the EU and Canada—successfully challenged a discriminatory Japanese tax scheme that placed high taxes on whisky, vodka, and other Western-style spirits, while applying low taxes to a traditional Japanese spirit (shochu). This was an important victory for the U.S. distilled spirits industry, whose exports to Japan have reached $100 million per year even in spite of the heavy Japanese taxes. Japan has already enacted legislation that is a major step toward eliminating the problem. The excise taxes on whisky and other brown spirits are being dramatically reduced, starting in October 1997, and the excise tax on shochu will be increased. The result will be a drastic tax cut for our brown spirits exports.

• *Canada-restrictions on magazines.* The United States successfully challenged a recently enacted Canadian law that placed a high tax on American magazines containing advertisements directed at a Canadian audience. This tax, which was the latest in a series of Canadian government measures designed to protect the Canadian magazine industry from U.S. competition, was specifically calculated to put the Canadian edition of Sports Illustrated, published by the Canadian subsidiary of Time Warner, Inc., out of business. By ruling in favor of the United States, this case makes clear that WTO rules prevent governments from using "culture" as a pretense for discriminating against imports.

• *EU—banana imports.* The United States joined Ecuador, Guatemala, Honduras, and Mexico in challenging an EU import program that gave French and British companies a big share of the banana distribution services business in Europe that U.S. companies had built up over the years. Ruling against the EU, the WTO panel and Appellate Body found that the EU banana import rules violated both the General Agreement on Trade in Services and the General Agreement on Trade in Goods by depriving U.S. banana distribution services companies and Latin American banana producers of a fair share of the EU market.

• *EU—hormone ban.* Both the United States and Canada challenged Europe's ban on the use of six hormones to promote the growth of cattle, and a WTO panel agreed that the EU has no scientific basis for blocking the sale of American beef in Europe. This is a sign that the WTO dispute settlement system can handle complex and difficult disputes where a WTO member attempts to justify trade barriers by thinly disguising them as health measures. The panel affirmed the need for food safety measures to be based on science, as they are in the United States. In addition to potentially affecting over $100 million in U.S. beef exports annually, this ruling sets an important precedent that will act to protect other U.S. exporters from unscientific and unjustified trade barriers in the future.

• *India—patent law.* The United States recently obtained a panel ruling against India for failing to provide procedures for filing patent applications for pharmaceuticals and agricultural chemicals, as required by the WTO agreement on intellectual property protection. Besides serving notice that the United States expects all WTO members, including developing countries, to carry out their WTO obligations concerning intellectual property rights, this case also demonstrates that the WTO dispute settlement mechanism can play an important role in protecting American rights and interests in this field.

Significant settlements. The WTO agreements and the new dispute settlement rules are already paying dividends by helping us increase jobs and exports. The new dispute settlement rules often make it possible for us to enforce WTO agreements without ever having to reach a panel decision. The fact that the WTO can and will authorize us to retaliate pays off in earlier settlements opening markets for more of our exports. We have already used the WTO procedures to obtain favorable settlements in some important cases:

• *Korea—shelf-life requirements.* Consultations under WTO procedures resulted in a commitment by Korea to phase out its shelf-life restrictions on food products—which removed a major barrier to US exports of beef, pork, poultry and frozen products.

• *EU—grains imports.* By demonstrating our resolve to refer the matter to a panel, we succeeded in pushing the EU to implement a settlement agreement on grains that benefits U.S. exports of rice and malting barley.

• *Japan—sound recordings.* In only a matter of months after we held WTO consultations, the Government of Japan amended its law to provide U.S. sound recordings with retroactive protection, as required by the WTO agreement on intellectual property rights.

• *Portugal—patent law.* After the United States requested WTO consultations, Portugal agreed to revise its patent law to provide a 20-year term to old, as well as new, patents, as required by the WTO agreement on intellectual property rights.

• *Pakistan—patent law.* After the United States requested the establishment of a WTO panel to enforce the WTO intellectual property rights agreement, Pakistan implemented the requirements of that agreement to provide procedures for filing patent applications and preserving exclusive marketing rights to protect pharmaceuticals and agricultural chemicals.

• *Turkey—film tax.* The United States has used the WTO dispute settlement process to convince the Government of Turkey to eliminate discriminatory tax treatment currently given to box office receipts from exhibition of foreign films. Turkey has agreed to change its practice.

• *Hungary—agricultural export subsidies.* The United States, joined by Argentina, Australia, Canada, New Zealand, Thailand, and Japan, used the WTO dispute settlement procedures to address Hungary's lack of compliance with its commitments on agricultural export subsidies. The result was a settlement agreement in which Hungary will have to cut its current export subsidy levels by more than 65%.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–26565 Filed 10–7–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aircraft Accident Liability Insurance; Notice of Request for Extension of a Previously Approved Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Department of Transportation's (DOT) intention to request the extension of a previously approved collection.

DATES: Comments on this notice must be received by December 8, 1997.

ADDRESSES: Comments should be directed to the Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Title: Aircraft Accident Liability Insurance.

OMB Control Number: 2106–0030.

Expiration Date: February 28, 1998.

Type of Request: Extension of a previously approved collection.

Abstract: 14 CFR Part 205 contains the minimum requirements for air carrier accident liability insurance to protect the public from losses, and directs that certificates evidencing appropriate coverage must be filed with the Department.

Respondents: U.S. and foreign air carriers.

Estimated Number of Respondents: 4,250 (avg. 1.3 responses per respondent per year).

Average Annual Burden per Respondent: .67 hour (.5 hours per response).

Estimated Total Burden on Respondents: 2,762.5 hours.

This information collection is available for inspection at the Air Carrier Fitness Division (X–56), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR Part 205 can be obtained from Ms. Carol Woods at the address and telephone number shown above.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on October 1, 1997.

John V. Coleman,

Director, Office of Aviation Analysis.

[FR Doc. 97–26617 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection was published on February 19, 1997 [62 FR 7638–7648].

DATES: Comments on this notice must be received on or before November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Delmer Billings, Information Collection Clearance Officer, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–4482.

SUPPLEMENTARY INFORMATION:

Research and Special Programs Administration (RSPA)

Title: Cargo Tank Motor Vehicles in Liquified Compressed Gas Service.

OMB Control Number: 2137–0595.

Affected Public: Each motor carrier using a cargo tank motor vehicle which does not conform to 49 CFR 178.337–11(a)(1)(I) to carry liquefied compressed gas products.

Abstract: The reason for this information collection activity and burden is to ensure the safe operation of certain cargo tank motor vehicles used in the transportation of liquefied compressed gases. Based on information that emergency discharge shut-off features on these types of cargo tanks do not operate properly in emergency situations, RSPA requires that motor carrier and cargo tank operators develop emergency operating procedures for manually shutting off the flow of product in the event of an emergency and that a copy of the procedure be displayed in or on each cargo tank motor vehicle. The information collection and recordkeeping burdens are imposed on motor carriers and operators of these cargo tank motor vehicles.

Estimated Annual Burden Hours: 18,573.

Number of Respondents: 6,800.

Total Annual Responses: 25,000.

Frequency of Collection: Procedures are developed on a one-time basis and are maintained on a vehicle on a continuing basis while the vehicle is in use.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on October 1, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–26615 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection(ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 29, 1997, [62 FR 29181].

DATES: Comments must be submitted on or before November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Office of the Associate Administrator for Comercial Space Transportation: Request for Evaluation of Customer Service Standards (Survey).

OMB Control Number: 2120–0611.

Type Of Request: Extension of currently approved collection.

Affected Public: Approximated 50 representatives of the U.S. commercial launch industry and other industry representatives from related industries such as U.S. satellite manufacturers and users, as well as representatives from businesses and associations which have an interest in our business-related concerns with the U.S. commercial launch industry.

Abstract: In accordance with the Government Performance and Results Act of 1993 (GPRA) and Executive Order No. 12862, which mandate surveying customer satisfaction, the Associate Administrator for Commercial Space Transportation (AST) is proposing to disseminate the "AST Customer Service Survey" to obtain industry input on the Customer Service Standards published and disseminated by AST.

Annual Estimated Burden Hours: 25.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on October 1, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–26616 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–49]

Petitions For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 27, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 30, 1997.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28976.

Petitioner: Cessna Aircraft Co.

Sections of the FAR Affected: 14 CFR 25.677(b).

Description of Relief Sought: Petitioner requests exemption from the requirements of § 25.677(b) for a visual trim device position indicator, by electing not to install a horizontal stabilizer (actuation system dependent) position indicator on the Cessna Citation model 560XL. The Cessna 560XL will incorporate a two position horizontal stabilizes with its position governed by the selected trailing edge flap deflection; the Cessna 560XL meets all Part 25 handling characteristics and pilot control force limits with any combination of trailing edge flap deflection and horizontal stablizer position.

Dispositions of Petitions

Docket No.: 27001.

Petitioner: British Aerospace Regional Aircraft.

Sections of the FAR Affected: 14 CFR 25.562(c)(5) and 25.785(a).

Description of Relief Sought/Disposition: Grants relief from compliance with the Head Injury Criteria of FAR part 25 for the front row passengers of the Jetstream Model 4101 airplane. *Grant, 9/15/97, Exemption No. 5587E.*

Docket No.: 27372.

Petitioner: Fly BVI.

Sections of the FAR Affected: 14 CFR 61.89(a)(5).

Description of Relief Sought/Disposition: To permit Fly BVI's student pilots to fly between Tortola, British Virgin Islands, and the airports of the U.S. Virgin Islands and Puerto Rico while fulfilling the cross-country requirements for a private pilot certificate. *Grant, 9/15/97, Exemption No. 4796B.*

Docket No.: 25120.

Petitioner: Singapore Airlines Limited.

Sections of the FAR Affected: 14 CFR 21.197(c).

Description of Relief Sought/Disposition: To allow the issuance of a special flight permit with a continuing authorization for three U.S.-registered Boeing B–747–312 aircraft (Serial No. 23033, Registration No. N122KH; Serial No. 23243, Registration No. N123KJ; and Serial No. 23244, Registration No. N124KK) on lease to SIA. *Grant, 9/15/97, Exemption No. 6680.*

Docket No.: 28998.

Petitioner: Trans Continental Airlines, Inc.

Sections of the FAR Affected: 14 CFR 21.93(b)(2)(iii).

Description of Relief Sought/Disposition: To permit TCA to operate its DC–8 airplane (Registration Number N183SK, Serial Number 45904) until November 18, without the State 3 Forward Bifurcated Fan Air Ducts (Bi-Duct R.H. S/N 3529). *Grant, 9/15/97, Exemption No. 6676.*

Docket No.: 28940.

Petitioner: Polar Air Cargo, Inc.

Sections of the FAR Affected: 14 CFR 121.470 and 121.471(a)(3).

Description of Relief Sought/Disposition: To permit Polar Air To schedule pilots to fly up to 34 hours in 7 days in connection with flight segments of international operations conducted within the continental United States. *Denial, 9/15/97, Exemption No. 6681.*

Docket No.: 28718.

Petitioner: Goodyear Tire & Rubber Company.

Sections of the FAR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/Disposition: To permit the issuance of U.S. export airworthiness approvals for Class II and Class III products manufactured and located at its Bangkok, Thailand, facility, which is operated by the petitioner in connection with its U.S. Technical Standard Order (TSO) authorization. *Grant, 9/24/97, Exemption No. 6682.*

Docket No.: 23685.

Petitioner: Department of the Navy.

Sections of the FAR Affected: 14 CFR 101.23(b) and (c).

Description of Relief Sought/Disposition: To permit the Navy, specifically, the United States Marine Corps (USMC) at Marine Corps Air Station (MCAS) Beaufort, South Carolina, to use Missile Plume Simulator GTR–18 Class B Fireworks within controlled firing area (CFA) at MCAS Beaufort, South Carolina and at Beaufort County Airport, South Carolina. *Grant, 9/18/97, Exemption No. 3938D.*

Docket No.: 25245.

Petitioner: Department of the Air Force.

Sections of the FAR Affected: 14 CFR 91.215(b) and (c).

Description of Relief Sought/Disposition: To permit permits the Air Force to conduct certain military training flight operations in designated airspace above 10,000 feet mean sea level without being required to operate the aircraft transponders, subject to certain conditions and limitations. *Grant, 9/18/97, Exemption No. 4633G*

Docket No.: 28261.

Petitioner: Ameriflight, Inc.

Sections of the FAR Affected: 14 CFR 91.205(d)(6).

Description of Relief Sought/Disposition: To permit Ameriflight to conduct instrument flight rule (IFR) operations with inoperative aircraft clocks installed in its aircraft. *Senial, 9/23/97, Exemption No. 6686.*

Docket No.: 27306.

Petitioner: NockAir Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 133.43 (a) and (b).

Description of Relief Sought/ Disposition: To permit NockAir to use its helicopters to perform aerial trapeze acts without using an approved external-load attachment or quick-release device for carrying a person on a trapeze bar. *Grant, 9/23/97, Exemption No. 6885.*

Docket No.: 23455.

Petitioner: Reeve Aleutain Airways.

Sections of the FAR Affected: 14 CFR 121.574(a) (1), (3), and (4).

Description of Relief Sought/ Disposition: To permit RAA to carry and operate onboard its aircraft certain oxygen storage, generating, and dispensing equipment for medical use by patients requiring medical attention when the oxygen and equipment is furnished and maintained by hospitals, clinics, or municipal medical services within the State of Alaska. *Grant, 9/23/97, Exemption No. 6684.*

Docket No.: 28260.

Petitioner: Emery Worldwide Airlines.

Sections of the FAR Affected: 14 CFR 121.503, 121,505, and 121.511.

Description of Relief Sought/ Disposition: To permit Emery to conduct all of its part 121 all-cargo operations in the 48 contiguous states in accordance with all of the provisions of § 121.471. *Grant, 9/23/97, Exemption 6184A.*

Docket No.: 28361.

Petitioner: Valujet Airline, Inc.

Sections of the FAR Affected: 14 CFR 91.203 (a) and (b).

Description of Relief Sought/ Disposition: To permit ValuJet to temporarily operate its aircraft following incidental loss or mutilation of the airworthiness or registration certificate, or both. *Grant, 9/23/97, Exemption No. 6395A.*

Docket No.: 28053.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.401(c), 121.433(c)(1)(iii), 121.441 (a)(1) and (b)(1), and appendix F.

Description of Relief Sought/ Disposition: To permit FedEx to combine recurrent flight and ground training and proficiency checks for FedEx's pilots in command, seconds in command, and flight engineers in a single annual training and proficiency evaluation program. *Grant, 9/23/97, Exemption No. 6152B.*

[FR Doc. 97–26609 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Central Illinois Regional Airport, Bloomington, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Central Illinois Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 7, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 E. Devon Ave., Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Bloomington-Normal Airport Authority at the following address: Mr. Michael La Pier, Executive Director, Central Illinois Regional Airport, 2901 East Empire, Suite 200, Bloomington, Illinois 61704.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Bloomington-Normal Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Denis Rewerts, Civil Engineer, Chicago Airports District Office, Room 201, 2300 E. Devon Ave., Des Plaines, IL 60018, (847) 294–7195. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Central Illinois Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 19, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Bloomington-Normal Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 5, 1997.

The following is a brief overview of the application.

PFC application number: 97–02–C–00–BMI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 2010.

Proposed charge expiration date: November 1, 2021.

Total estimated PFC revenue: $5,752,503.

Brief description of proposed project(s):

Impose and Use Projects

PFC program development, Runway 20 FAR Part 150 land acquisition, terminal building addition, terminal jetway facility, purchase mobile air stairs, extend Runway 2/20 to 7000'×100', purchase new airfield deicing truck, purchase two communal walks, expand auto parking facilities, baggage claim improvements, purchase passenger lift device.

Impose Only Project

Construct New Terminal Area

Class or classes of air carrier which the public agency has requested not be required to collect PFCs: Air taxi/ commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central Illinois Regional Airport, 2901 East Empire, Suite 200, Bloomington, Illinois 61704.

Issued in Des Plaines, Illinois on September 26, 1997.

Benito De Leon,

Manager, Planning and Programming Branch Airports Division, Great Lakes Region.

[FR Doc. 97–26608 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (,97–04–C–00–EGE) to Impose a Passenger Facility Charge (PFC) and Use the Revenue From a PFC at Eagle County Regional Airport, Submitted by Eagle County, Eagle, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Eagle County Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before November 7, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jim Elwood, A.A.E., Airport Manager, at the following address: Eagle County Regional Airport, P.O. Box 850, Eagle, Colorado 81631.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Eagle County Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 2608 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#97–04–C–00–EGE) to impose and use PFC revenue at Eagle County Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158). On October 1, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by Eagle County, Eagle County Regional Airport, Eagle, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 31, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1998.

Proposed charge expiration date: July 1, 2012.

Total requested for use approval: $300,000.00.

Brief description of proposed project: Snow removal equipment.

Class or classes of air carriers which the public agency has requested not to be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Eagle County Regional Airport.

Issued in Renton, Washington on October 1, 1997.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–26669 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Use a Passenger Facility Charge (PFC) at Portland International Airport, Portland, Oregon; Correction

SUMMARY: This correction incorporates information from the public agency's application which further defines the "Class or classes or air carriers which the public agency has requested not be required to collect PFC's". The public agency's definition has been added to the previously published excluded class.

In notice document 97–24256 beginning on page 48128 in the issue of Friday, September 12, 1997, make the following correction:

In the first column: Class or classes of air carriers which the public agency has requested not be required to collect PFC's: On demand, non scheduled Air Taxi/Commercial Operators. Further defined by Ordinance 359 of the Port of Portland as: The carriage in air commerce of persons for compensation or hire as a commercial operator, but not an air carriers, of aircraft having a maximum seating capacity of less than twenty passengers or a maximum payload capacity of less than 6,000 pounds. "Air Taxi/Commercial Operator" shall also include, without regard to number of passengers or payload capacity, revenue passengers transported for student instruction, nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 mile statute radius of the Airport, ferry or training flights, aerial photography or survey charters, and fire fighting charters.

Issued in Renton, Washington on September 30, 1997.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–26670 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (97–02–U–00–AVP) to Use the Revenue From a Passenger Facility Charge (PFC) at the Wilkes-Barre Scranton International Airport, Wilkes-Barre, Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at the Wilkes-Barre Scranton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 7, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. John Carter, Acting Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Barri Centini, Airport Director of the Luzerne

& Lackawana Counties Bi-County Board of Commissioners at the following address: Wilkes-Barre Scranton International Airport, 100 Terminal Road, Avaco, Pennsylvania 18641.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Luzerme & Lackawana Counties Bi-County Board of Commissioners under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: John Carter, Acting Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011. 717–782–4548. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at the Wilkes-Barre Scranton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 1, 1997, the FAA determined that the application to use the revenue from a PFC submitted by the Luzerme & Lackawana Counties Bi-County Board of Commissioners was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in Part, no later than January 2, 1998.

The following is a brief overview of the application.

Application number: 97–02–U–00–AVP.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1993.

Proposed charge expiration date: December 1, 1998.

Total estimated PFC revenue: $3,312,694.

Brief description of proposed project:

—Design Passenger Terminal Building
—Design Passenger Terminal Apron
—Design ARFF Building
—Construct Parallel Taxiway—Runway 10/28
—Construct Phase I—Cargo and General Apron
—Construct ARFF Building

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 on-demand Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Luzerme & Lackawana Counties Bi-County Board of Commissioners.

Issued in Jamaica, New York on October 1, 1997.

Thomas Felix,

Grant-In-Aids Program Manager.

[FR Doc. 97–26668 Filed 10–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33406]

Gateway Western Railway Company—Lease Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 11323–25 the lease by Gateway Western Railway Company of The Burlington Northern and Santa Fe Railway Company's Coburg Line, extending a distance of 5.45 miles between milepost 0.0 at the Sheffield interlocking and milepost 5.45 near BV Junction, in Kansas City, Jackson County, MO, subject to standard labor protective conditions.

DATES: The exemption will be effective November 7, 1997. Petitions to stay must be filed by October 23, 1997. Petitions to reopen must be filed by November 3, 1997.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33408 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; in addition, a copy of all pleadings must be served on petitioner's representative: William C. Sippel, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: DC NEWS & DATA INC., 1925 K Street, N.W., Suite 210, Washington DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Decided: September 29, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26672 Filed 10–7–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33460]

4 States Railway Service, Inc., d/b/a West Chester Railroad Co.; Lease and Operation Exemption; Borough of West Chester

4 States Railway Service, Inc., d/b/a West Chester Railroad Co., a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to sublease and operate 6.405 miles of rail line from the Borough of West Chester (Borough) [1] between milepost 27.4 +/−, at Station 1386+06, in West Chester, Chester County, PA, and milepost 20.995+/, at Glen Mills Station, Glen Mills, Delaware County, PA.

The transaction was scheduled to be consummated on or after September 22, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33460, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John K. Fiorilla, Esq., Watson, Stevens, Fiorilla & Rutter, 390 George Street, P.O. Box 1185, New Brunswick, NJ 08903.

Decided: September 30, 1997.

[1] The owner of the property is Southeastern Pennsylvania Transportation Authority (SEPTA). On December 31, 1996, SEPTA leased the line to the Borough for tourist railroad operations.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26675 Filed 10–7–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–487 (Sub–No. 2X)]

Pittsburg & Shawmut Railroad, Inc.—Abandonment Exemption—In Jefferson County, PA

On September 18, 1997, Pittsburg & Shawmut Railroad, Inc. (PSRR), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Conifer Branch, extending from milepost 0.00 (milepost 24.29 on the main line of the Shawmut Subdivision), located south of Norman, PA, to milepost 5.08, located at or near Conifer, PA, which traverses U.S. Postal Service ZIP Code 15825, a distance of 5.08 miles, in Jefferson County, PA. The line includes the stations of Stanton, located at milepost 0.04; McGareys, located at milepost 0.06; Conifer, located at milepost 0.08; and End Conifer, located at milepost 0.10.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 6, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 28, 1997. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–487 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Sebastian Ferrer, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: October 1, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26673 Filed 10–7–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–487 (Sub–No. 4X)]

Pittsburg & Shawmut Railroad, Inc.—Abandonment Exemption—In Armstrong County, PA

On September 18, 1997, Pittsburg & Shawmut Railroad, Inc., filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Widnoon Branch, extending from railroad milepost 0.00 (milepost 60.42 on the mainline of the Shawmut Subdivision), located at or near Dee, PA, to milepost 3.14, located at or near Widnoon, PA, which traverses U.S. Postal Service ZIP Codes 16261 and 16259, a distance of 3.14 miles, in Armstrong County, PA. The line includes the station of Widnoon at milepost 0.03.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 6, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 28, 1997. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–487 (Sub-No. 4X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Sebastian Ferrer, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS).

EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: September 30, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26674 Filed 10–7–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–487 (Sub–No. 1X)]

Pittsburg & Shawmut Railroad, Inc.; Abandonment Exemption; in Jefferson County, PA

On September 18, 1997, Pittsburg & Shawmut Railroad, Inc. (PSRR), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its line of railroad known as the Brockway to Brookville Branch, extending from railroad milepost 2.0 located at or near Brockway to milepost 19.0 located at or near Brookville, a distance of 17.0 miles, in Jefferson County, PA. The line traverses U.S. Postal Service Zip Codes 15824, 15825 and 15851, and includes the stations of Beechton, milepost 6; Sugar Hill, milepost 7; Reitz, milepost 9; and Allens Mills, milepost 10.

The line does not contain federally granted rights-of-way. Any documentation in PSRR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 6, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $900 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 28, 1997. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–487 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Eric M. Hocky and Sebastian Ferrer, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P. O. Box 796, West Chester, PA 19381–0796.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: September 29, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26676 Filed 10–7–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Performance Review Board; Appointment of Members

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: General Notice.

SUMMARY: This Notice announces the appointment of the members of the United States Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executives' performance appraisals and make recommendations regarding performance appraisals and performance awards.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robert M. Smith, Personnel Director, Office of Human Resources Management, United States Customs Service, 1301 Constitution Avenue, N.W., (Gelman Building, Room 6100), Washington, D.C. 20229; Telephone (202) 634–5270.

Background

There are two (2) PRB's in the U.S. Customs Service.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals of senior executives rated by the Acting Commissioner of Customs. The members are:

W. Ralph Basham, Assistant Director, Office of Administration, U.S. Secret Service
Elisabeth A. Bresee, Deputy Assistant Secretary (Enforcement), Department of the Treasury
John C. Dooher, Director, Washington Center, Federal Law Enforcement Training Center General Office
Mitchell A. Levine, Assistant Commissioner, Management and Chief Financial Officer, Financial Management Service
Jane L. Sullivan, Director, Information Resources Management, Department of the Treasury

Performance Review Board 2

The purpose of this Board is to review the performance appraisals of all senior executives *except* those rated by the Acting Commissioner of Customs. All are Assistant Commissioners of the U.S. Customs Service. The members are:

Assistant Commissioners

Douglas M. Browning, Office of International Affairs
Vincette L. Goerl, Office of Finance
Edward F. Kwas, Office of Information & Technology
Stuart P. Seidel, Office of Regulations and Rulings
Deborah J. Spero, Office of Human Resources Management
Bonni G. Tischler, Office of Investigations
Robert S. Trotter, Office of Field Operations
Homer J. Williams, Office of Internal Affairs
Charles W. Winwood, Office of Strategic Trade

Dated: September 24, 1997.

Samuel H. Banks,

Acting Commissioner of Customs.

[FR Doc. 97–26663 Filed 10–7–97; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 62, No. 195
Wednesday, October 8, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–828]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors From the Republic of Korea

Correction

In notice document 97–25942, beginning on page 51437, in the issue of Wednesday, October 1, 1997, make the following correction:

On page 51438, in the second column, in the fifth paragraph, in the seventh line, "125" should read "135".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274a

[INS No. 1818-96]

RIN 1115-AE94

Interim Designation of Acceptable Documents for Employment Verification.

Correction

In rule document 97–25920 beginning on page 51001 in the issue of Tuesday, September 30, 1997, make the following corrections:

1. On page 51001, in the first column, under the heading "SUMMARY", in the sixth line from the bottom, "notice" should read "action".

2. On page 51001, in the third column, in the first paragraph, in the seventeenth line, "this" should read "that".

3. On page 51002, in the first column, under the heading "**Background on Document Reduction**", in the eleventh line, "and" should read "or".

4. On page 51002, in the same column, under the same heading, in the thirteenth line, "9 CFR" should read " 8 CFR".

5. On page 51002, in the same column, under the same heading, in the fourteenth line, "and" should read "the".

6. On page 51002, in the second column, in the second paragraph, in the second line, "and" should read "or".

7. On page 51002, in the third column, in paragraph (A)(4), in the fourth line, "766)" should read "766".

8. On page 51003, in the first column, in the second paragraph, in the third line from the bottom, "to" should read "not".

9 On page 51003, in the second column, in the first complete paragraph, in the third line, "conditions on"specific document" should read "conditions on" a specific document".

10. On page 51004, in the first column, in the second line, "numbered" should read "number".

11. On page 51004, in the second column, under the heading "Interim Rule", in the fifteenth line, "that" should read "the".

12. On page 51004, in the second column, in the paragraph 2(1)(a), in the ninth line, "its" should read "is".

13. On page 51005, in the second column, under the heading "Executive Order 12866", in the third line, "service," should read "Service,".

14. On page 51005, in the third column, under the heading "**PART 274a–CONTROL OF EMPLOYMENT OF ALIENS**", in paragraph 2(c), in line one, "(b)(11)((vi)" should read "(b)(1)(vi),".

BILLING CODE 1505-01-D

federal register

Wednesday
October 8, 1997

Part II

Environmental Protection Agency

40 CFR Parts 52, 60, 264, and 265
Project XL Site-Specific Rulemaking for Merck & Co., Inc. Stonewall Plant; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 60, 264 and 265

[FRL–5905–3]

Project XL Site-specific Rulemaking for Merck & Co., Inc. Stonewall Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is implementing a project under the Project XL program for the Merck & Co., Inc. (Merck) Stonewall Plant, in Elkton, Virginia. The terms of the project are defined in a Final Project Agreement (FPA) which is available in the docket for this action. In addition, EPA is promulgating today a site-specific rule, applicable only to the Merck Stonewall Plant, to facilitate implementation of the project.

This site-specific rule provides regulatory changes under the Clean Air Act and the Resource Conservation and Recovery Act (RCRA) to implement Merck's XL project, which will result in superior environmental performance and, at the same time, provide Merck with greater operational flexibility. The site-specific rule changes the requirements under the Clean Air Act which apply to the Merck Stonewall Plant for the prevention of significant deterioration of air quality and certain new source performance standards. EPA also is promulgating a site-specific rulemaking under RCRA to provide regulatory changes pertaining to air emissions standards.

DATES: This rule is effective on October 8, 1997.

ADDRESSES: *Docket.* A docket containing supporting information used in developing this rulemaking is available for public inspection and copying at U.S. EPA, Region III, 841 Chestnut Street, Philadelphia, PA, 19107–4431, (215) 566–2064, during normal business hours, and at EPA's Water docket (Docket name "XL-Merck"); 401 M Street, SW, Washington, DC 20460. For access to the Water docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. (Eastern time) for an appointment. A reasonable fee may be charged for copying. A docket is also available for public inspection at the Virginia Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 1129, Harrisonburg, Virginia 22801–1129, (540) 574–7800.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Moran, U.S. Environmental Protection Agency, Region III, Air, Radiation & Toxics Division, 841 Chestnut Street (3AT23), Philadelphia, PA, 19107–4431, (215) 566–2064.

SUPPLEMENTARY INFORMATION:

Outline of This Document

I. Authority
II. Background
  A. Overview of Project XL
  B. Overview of the Merck XL Project
  1. Introduction
  2. Merck XL Project Description
  3. Environmental Benefits
III. Summary of Regulatory Requirements for the Merck XL Project
  A. Clean Air Act
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  3. State Implementation Plan Requirements
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IV. Summary of Response to Key Public Comments
  A. General Support of Project
  B. Superior Environmental Performance
  1. General
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  3. Volatile Organic Compound (VOC) Emissions
  4. PM–10 Emissions
  C. National Ambient Air Quality Standards (NAAQS)
  1. Future Nonattainment Situation
  2. Ozone NAAQS—General
  3. New Ozone and Particulate Matter NAAQS
  D. Public Participation Issues
  1. Summary
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  3. Stakeholder and Public Involvement
  a. General
  b. Project Signatory Consent to Permit Changes During Five-Year Reviews
V. Administrative Requirements
  A. Effective Date
  B. Executive Order 12866
  C. Regulatory Flexibility
  D. Paperwork Reduction Act
  E. Unfunded Mandates Reform Act

I. Authority

This regulation is being promulgated under the authority of sections 101(b)(1), 110, 111, 161–169, 169A, and 301(a)(1) of the Clean Air Act, and sections 1006, 2002, 3001–3007, and 3010 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912, 6921–6927, and 6930). EPA has determined that this rulemaking is subject to the provisions of section 307(d) of the Clean Air Act.

II. Background

A. Overview of Project XL

This site-specific rule is designed to implement a project developed under Project XL, an important EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—for "excellence and leadership"—was announced on March 16, 1995, as a central part of the National Performance Review's and EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project, if any, should be more broadly applied to other regulated entities to the benefit of both the economy and the environment.

In Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria—superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden.[1] They must have full support of affected Federal, state and tribal agencies to be selected.

The XL program is intended to allow EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be required to undertake changes on a nationwide basis. As part of this experimentation, EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. EPA may also modify rules that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first finding out whether or not they are viable in practice and successful in the particular projects that embody them.

Furthermore, as EPA indicated in announcing the XL program, the Agency expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions, such as sections 101(b) and 103 of the Clean Air Act. In some cases, as in this XL project, such experimentation requires an alternative regulatory approach that, while permissible under the statute, was not the one adopted by EPA historically or for general purposes.

B. Overview of the Merck XL Project

1. Introduction

This site-specific rule supports a proposed permit and Project XL Final Project Agreement (FPA) that have been developed by the Merck XL stakeholder group, namely Merck, EPA, Virginia Department of Environmental Quality (VADEQ), U.S. Department of the Interior (DOI)/National Park Service (NPS), and community representatives. On March 31, 1997, EPA published a notice of proposed rulemaking to seek public comment on the proposed site-specific rule. See 62 FR 15304–15322. In this notice, EPA also sought public comment on the proposed FPA and the project generally. At the request of the Southern Environmental Law Center, a public hearing was held on April 14, 1997, in Harrisonburg, Virginia. The comment period closed on May 15, 1997. EPA received 60 comment letters during the public comment period, and 8 comment letters after the close of the comment period. EPA's response to the key issues raised by commenters is contained in Section IV of this preamble. A separate Response to Comments Document, which fully addresses the comments, is contained in the docket for this action and is available on the world wide web at http://www.epa.gov/ProjectXL.

The FPA and proposed permit are contained in the docket for today's action and also are available on the world wide web at http://www.epa.gov/ProjectXL. The FPA outlines how the project addresses the Project XL criteria, in particular how the project will produce, measure, monitor, report, and demonstrate superior environmental benefits.

The Commonwealth of Virginia conducted the official comment period for the proposed PSD permit. The Commonwealth's public comment period for the proposed PSD permit and a proposed variance began on January 28, 1997, and closed on May 30, 1997. The VADEQ held a public hearing to solicit comment on the proposed permit and variance on February 27, 1997. The VADEQ plans to request the State Air Pollution Control Board (Board) to adopt the variance in the near future.

In the near future, EPA plans to delegate, with EPA oversight, the authority to implement and enforce the PSD site-specific rule (40 CFR 52.2454) to the Commonwealth of Virginia. This delegation would authorize the VADEQ to issue the PSD permit to Merck. The VADEQ expects to issue the PSD permit after the Board approves the variance, and after EPA's delegation of authority is effective.

2. Merck XL Project Description

The Merck XL project was described in detail in the preamble to the proposed site-specific rulemaking. See 62 FR 15305–15306 (March 31, 1997). The goal of the Merck XL project is to develop a regulatory structure for the Merck Stonewall Plant that both facilitates flexible manufacturing operations and achieves superior environmental performance. Merck's XL project seeks to replace the current air permitting system with a simpler system of compliance with criteria air pollutant regulations. Through a site-specific rulemaking and enforceable permit conditions, the facility's total emissions of criteria pollutants (except lead)[2] would be capped below the level at which the plant operated over recent years (at approximately 1500 tons per year (TPY)). Within the site-wide total emissions cap, the facility will also be subject to individual pollutant caps (subcaps), established near or below recent actual emission levels, for sulfur dioxide (SO_2), nitrogen oxides (NO_X), and particulate matter with an aerodynamic diameter less than 10 microns (PM_{10}). In addition to accepting these site-wide emissions caps, Merck will modify its existing coal-burning powerhouse to burn natural gas, a cleaner burning fuel that generates substantially fewer emissions than coal. Either propane or number 2 fuel oil would be used as a backup fuel. This multi-million dollar project is not otherwise required by regulations and the boilers do not need to be replaced for other reasons (e.g., operation, age or capacity). The powerhouse conversion would result in an up-front estimated reduction of over 900 TPY of actual criteria air pollutants, primarily SO_2 and NO_X emissions. After this powerhouse conversion, Merck would reduce its total emissions cap by 20 percent, thereby permanently retiring at least 300 TPY of criteria pollutant emissions. Further, Merck also will reduce the pollutant-specific subcaps for SO_2 and NO_X by 25 percent and 10 percent, respectively.

Merck's XL project will be implemented through issuance of a site-wide PSD permit, authorized by this site-specific rulemaking. Under the site-specific rule and permit, the Merck Stonewall Plant will be required to maintain its emissions below the total emissions cap, as well as the subcaps for SO_2, NO_X and PM_{10}. Under the site-

[1] For more information about the XL criteria, readers should refer to the May 23, 1995 Federal Register notice (60 FR 27282) and the December 1, 1995 "Principles for Development of Project XL Final Project Agreements" document, both contained in the docket for this action.

[2] The criteria pollutants included in the total emissions cap are sulfur dioxide, nitrogen oxides, carbon monoxide, ozone (using volatile organic compounds as a surrogate), and particulate matter with aerodynamic diameter less than 10 microns (PM_{10}). Thus, the total emissions cap includes all existing criteria pollutants except lead. Merck will comply directly with any applicable requirements for the control of lead emissions. Merck currently emits a very low amount of lead emissions (0.3 tons per year), which will be virtually eliminated when the facility converts the coal-burning powerhouse to natural gas. Merck also will comply directly with any applicable requirements for $PM_{2.5}$ or new criteria pollutants which are not included in the total emissions cap.

wide emissions caps, changes or additions to facility operations would no longer need prior approval under PSD or NSR. The subcaps will keep SO_2 and NO_X emissions below recent actual emission levels and PM_{10} emissions will not significantly increase above the recent actual emissions level. The statutory PSD requirements for the VOC and CO emission increases that are possible under the total emissions cap will be satisfied pursuant to this site-specific rule and the PSD permit. So long as the facility complies with the total emissions cap, subcaps, and other permit requirements, it would have the flexibility to make modifications and to operate in a manner that supports Merck's objective to deliver high quality products quickly and efficiently to improve human and animal health without undergoing permit review for each modification.

As an alternative to the current PSD permitting system, the total emissions cap and subcaps will provide an incentive for Merck to identify and promptly implement ongoing emission reductions at the facility to provide operating room under the cap for future modifications and expansions. The XL project also provides an additional incentive for Merck to minimize emissions—a system of "tiered" monitoring, recordkeeping and reporting requirements. The permit provides that the monitoring, recordkeeping and reporting requirements become more stringent as the facility's actual emissions approach the total emissions cap. This tiered monitoring system provides Merck another built-in incentive to minimize emissions and to find opportunities to implement emission reductions.

3. Environmental Benefits

The Merck XL Project is designed to deliver superior environmental performance while allowing flexible operations at the facility. The site-specific rule and simplified air permit would provide significant benefits to the environment by substantially reducing pollutant emissions near the Shenandoah National Park and the surrounding community.

The Merck Stonewall Plant is located within 2 kilometers of Shenandoah National Park, a Federal Class I area. The facility's proximity to this nationally significant resource highlights the need for serious consideration of opportunities for better protection of the environment. Certain criteria pollutants have been demonstrated to have a significant adverse effect on the environmental quality of the Shenandoah National Park. In particular, SO_2 emissions contribute to visibility problems in the region, and NO_X emissions combine with other chemicals in the atmosphere to form ground-level ozone, which has been determined to cause vegetation damage. Emissions of SO_2 and NO_X also contribute to the formation of acid rain and associated adverse impacts. Merck's powerhouse conversion will achieve an up-front reduction of these pollutants—SO_2 emissions are expected to decrease by 679 TPY (94 percent) and NO_X emissions are expected to decrease by 254 TPY (87 percent), from baseline actual emission levels. After the powerhouse conversion, the total emissions cap and subcaps will ensure a continuing, permanent reduction of these pollutants, as well as provide an ongoing incentive to minimize actual emissions to preserve the operating margin under the caps. Besides the significant reduction in criteria pollutants resulting from the project, the conversion to natural gas also will result in a reduction of about 47 TPY (65 percent) of hazardous air pollutants (HAPs), specifically hydrogen chloride and hydrogen fluoride. These two HAPs are generated by burning coal and are also associated with the formation of acid rain. Reducing emissions of these chemicals also will contribute to efforts to improve air quality in the Shenandoah National Park and the surrounding community.

Although the facility's VOC and CO emissions would be allowed to increase above recent actual emission levels (but within the total emissions cap), there are no identified adverse effects from the maximum allowable levels of these pollutants under the total emissions cap. Moreover, the statutory PSD requirements for VOC and CO will be satisfied pursuant to this site-specific rulemaking and issuance of the PSD permit. See the preamble to the proposed site-specific rule (62 FR 15309–15312, March 31, 1997).

III. Summary of Regulatory Requirements for the Merck XL Project

A. Clean Air Act

The alternate regulatory system that is established under this site-specific rule and the permit addresses the existing criteria pollutants (and does not include lead). Merck will fully comply with all requirements for the control of HAPs, including the forthcoming Maximum Achievable Control Technology (MACT) standard for the pharmaceutical industry. Merck also will comply with all existing and future environmental requirements not specifically amended pursuant to EPA's site-specific rulemaking for this project or pursuant to the variance expected to be approved by the Commonwealth of Virginia.

EPA emphasizes that the alternative approaches to compliance with Clean Air Act requirements adopted in this rule are being adopted only for this facility, on a pilot project basis. The approach is not available to other facilities, and the decision to make it available at this facility is linked to the full set of the facility's obligations in this project. Based on the experience in this project, EPA could propose to adopt such an approach more widely at some future time, but today's rule is limited to the Merck Stonewall Plant and should not be interpreted as a more general revision of regulations, or even as initiating a process toward such a general revision.

1. Prevention of Significant Deterioration

In today's action, EPA is promulgating a site-specific PSD rule for the Merck Stonewall Plant in order to implement the XL project for the site. See 40 CFR 52.2454. This site-specific rule replaces (in most circumstances) the existing PSD rules at 40 CFR 52.21 for the Merck Stonewall Plant only, and establishes the legal authority to issue the PSD permit to the Merck Stonewall Plant. The site-specific PSD requirements were described in detail in the preamble to the proposed rulemaking. See 62 FR 15309–15312 (March 31, 1997).

The Merck Stonewall Plant is located in an area that currently meets the NAAQS for all criteria air pollutants (attainment area) and, thus, the PSD program under part C of title I of the Act applies. The site-specific rule would authorize a permit to be issued to Merck based, in part, on the establishment of a site-wide emissions cap for criteria air pollutants (total emissions cap). The criteria pollutants included in the total emissions cap are SO_2, NO_X, PM_{10}, CO and ozone (using VOC as a surrogate). Thus, all existing criteria pollutants except lead are included in the total emissions cap. Merck would comply directly with any applicable requirements, including the existing PSD regulations at 40 CFR 52.21,[3] for the control of lead emissions, $PM_{2.5}$,[4] and any new criteria pollutants promulgated by EPA. If in the future EPA were to promulgate standards for other forms of fine particulates (e.g., $PM_{1.0}$), Merck also would be required to comply directly with any associated applicable requirements. Further, Merck will comply with any applicable requirements, including the existing PSD regulations at 40 CFR 52.21 for emissions of non-criteria air pollutants (e.g., hydrogen sulfide, total reduced sulfur).[5]

Merck will be allowed to vary its emission levels under the total emissions cap, constrained by the individual pollutant subcaps. Changes at the facility that might otherwise be considered to result in emission increases would no longer need prior approval by the permitting authority under PSD or minor NSR, based on the facility's site-wide, federally-enforceable emission limitations. The emission limitations would keep SO_2 and NO_X emissions well below recent actual emissions. The emission limitations for PM_{10} will not significantly increase above the recent actual emissions level. Emissions of VOC and CO will not have subcaps, however, the statutory PSD requirements for increases of VOC and CO are satisfied pursuant to this site-specific rulemaking.

The site-specific PSD rule (40 CFR 52.2454) is being promulgated as proposed, with the exception of a clarification that the site-specific rule does not apply in lieu of the PSD regulations at 40 CFR 52.21 for $PM_{2.5}$. See 40 CFR 52.2454(a)(2). This revision to the final rule is described further in Section IV.C.3 of this preamble. In response to public comments, the proposed PSD permit has been changed to address issues regarding requirements for the control of $PM_{2.5}$, RCRA hazardous waste accumulation and/or storage vessels, and monitoring device data availability. These issues and associated permit changes are described in sections V.C, VI, and VIII.D, respectively, of the Response to Comments Document (contained in the docket and on the world wide web at http://www.epa.gov/ProjectXL).

2. New Source Performance Standards

EPA also is promulgating a site-specific rule which establishes an alternative means of compliance for the Merck Stonewall Plant for two New Source Performance Standards (NSPS)—Subpart Db (Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units) and Subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels). See 40 CFR 60.1(d); 40 CFR 60.49b(u); and 40 CFR 60.112b(c). For NSPS other than Subpart Kb that may become applicable to the site in the future, EPA is promulgating an alternative compliance provision that would allow the facility the option of complying with the NSPS by reducing its site-wide emissions caps. However, under this latter approach, EPA has an opportunity to require Merck to comply directly with the applicable NSPS. These alternate compliance provisions are necessary to implement a simpler compliance approach for the facility that is more consistent with the principles of the site-wide emissions caps. The NSPS alternative means of compliance is described in detail in the preamble to the proposed site-specific rulemaking. See 62 FR 15314–15315 (March 31, 1997).

The NSPS site-specific rule is being promulgated as proposed, with the exception of a correction to a citation. In 40 CFR 60.49b(u)(1) (pertaining to alternate compliance for the new natural gas-fired boilers), EPA has corrected an error in the citation contained in the proposed rule such that the second sentence now reads, "The requirements of this paragraph shall apply, and the requirements of 40 CFR 60.40b through 60.49b(t) shall not apply, to the natural gas-fired boilers installed pursuant to 40 CFR 52.2454(g)." The proposed rule cited 40 CFR 60.49b, rather than 40 CFR 60.49b(t), which would have mistakenly included as not applicable the new paragraph 40 CFR 60.49(u).

3. State Implementation Plan Requirements

On January 28, 1997, VADEQ requested public comment on a proposed variance for the Merck Stonewall Plant, pursuant to section 10.1–1307 of the Virginia Air Pollution Control Law.[6] The VADEQ plans to request that the State Air Pollution Control Board approve the variance for Merck in the near future. Among other things, the variance would provide Merck an alternate means of compliance with newly-applicable criteria pollutant regulations promulgated by the VADEQ. This alternate compliance option would allow Merck in most situations either to comply with new criteria pollutant regulations as written, or to reduce the total emissions cap (or subcaps, depending on the pollutant) by an equivalent amount of emission reductions. VADEQ also plans in the future to promulgate a source-specific regulation for the Merck XL project that would serve as an alternate to the regulations cited in the permit. EPA understands that VADEQ plans to submit this regulation to the EPA for approval as a source-specific SIP revision. EPA would then take action on the expected source-specific SIP revision in a future rulemaking action. For a further description of Merck's compliance with SIP requirements under this XL project, see the preamble to the proposed site-specific rule (62 FR 15313, March 31, 1997).

B. Resource Conservation and Recovery Act

In addition to Clean Air Act requirements, today EPA also is establishing alternate regulatory requirements for the RCRA air emission standards for the Merck Stonewall Plant. The RCRA subpart AA, BB, and CC air emission standards under 40 CFR parts 264 and 265 are applicable to certain existing hazardous waste units at the Merck Stonewall Plant. These standards also may be applicable to equipment brought into hazardous waste service in the future. The RCRA air standards contain both substantive emission control requirements and administrative requirements (e.g., reporting and recordkeeping) applicable to certain hazardous waste management units. Under this XL project, the Merck Stonewall Plant will be subject to a site-specific exemption from the RCRA air emission standards under 40 CFR parts 264 and 265. Under this XL Project, the hazardous waste management units at the Merck Stonewall Plant that would otherwise be subject to those 40 CFR parts 264 and 265 standards will be regulated through an enforceable PSD permit and a preventive maintenance program. See 62 FR 15315 (March 31, 1997).

For hazardous waste tanks and containers located at the Merck Stonewall Plant, the proposed PSD permit includes air emission control requirements that are identical to the substantive requirements under the RCRA air standards. For process vents that would otherwise be subject to the subpart AA process vent regulations, and for equipment that would otherwise be subject to the subpart BB equipment leak regulations, the Merck Stonewall Plant will implement air emission control requirements that are similar, though not identical, to those that are included in the nationwide standards.

[3] The Commonwealth of Virginia currently implements 40 CFR 52.21 under a delegation of authority from EPA. See 40 CFR 52.2451.

[4] Particulates with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

[5] If Merck were to emit significant quantities of non-criteria air pollutants regulated under 40 CFR 52.21, Merck would be required to comply directly with any applicable requirements for these pollutants. For the Merck Stonewall Plant only, EPA extends the policy set forth in the October 16, 1995 policy memorandum entitled "Definition of Regulated Pollutant for Particulate Matter for Purposes of Title V," which is contained in the docket for this rulemaking, to consider PM_{10} as the regulated form of particulate matter for purposes of PSD applicability; however, this rulemaking does not extend the policy to $PM_{2.5}$.

[6] This variance provision previously has been approved into the Virginia SIP at 40 CFR 52.2420(c)(15) and (69).

For all affected hazardous waste equipment, today's site-specific regulation will exempt the Merck Stonewall Plant from the administrative requirements of the RCRA air standards; the proposed PSD permit and a future the Clean Air Act (CAA) Title V permit, will subject the plant to alternative administrative requirements. The nationwide RCRA air standards contain an allowance that a unit operated with air emission controls, in compliance with a CAA standard in 40 CFR parts 60, 61, or 63, is exempt from the RCRA standards. Among other requirements, this nationwide allowance exempts a unit from the administrative requirements of the RCRA air standards, provided that the air emission controls on that unit are operated in compliance with the requirements of the CAA part 60, 61, or 63 standard, including administrative requirements. See 40 CFR 265.1080(b)(7); 61 FR 59971 (November 25, 1996). In such cases, the administrative requirements would ultimately be enforceable through a CAA permit. Under this XL project, the Agency is allowing the Merck Stonewall Plant to comply with the administrative requirements that will be contained in the facility's CAA PSD and Title V permits, which is analogous to the existing nationwide RCRA air standards provision that allows facilities the alternative to operate air emission controls in compliance with standards under 40 CFR parts 60, 61 or 63. Thus, the Agency considers the administrative requirements under this XL project for affected hazardous waste management units at the Merck Stonewall Plant to be equivalent to the administrative requirements of the nationwide RCRA air standards.

The Agency continues to consider the requirements contained in the proposed PSD permit to be a viable approach to addressing organic air emission from hazardous waste units at the Merck Stonewall Plant. Therefore, the site-specific exemption from requirements of 40 CFR parts 264 and 265 is being finalized today exactly as it was proposed. See 62 FR 15303 (March 31, 1997). The Response to Comments Document describes a change to the proposed PSD permit that was made to address a commenter's question about the permit requirements for RCRA hazardous waste accumulation and/or storage vessels. This comment and the associated change to the proposed PSD permit are described in Section VI of the Response to Comments Document (contained in the docket).

IV. Summary of Response to Key Public Comments

EPA received 60 comment letters on the proposed Merck XL project during the public comment period. An additional eight comment letters were received after the close of the comment period. These letters primarily reflected comments similar to those received during the comment period; therefore, EPA's response to comments generally addresses issues raised in the late comments as well. In the following section, the Agency responds to several of the key issues raised by commenters. A comprehensive response to comments is contained in a separate document, "Merck XL Site-Specific Rulemaking—Response to Comments Document" which is contained in the docket and available on the world wide web at http://www.epa.gov/ProjectXL.

A. General Support of Project

General support for the Merck XL project was expressed by several citizens, government officials, industry associations, state environmental agencies, businesses, and the Merck workers union. Several citizens commented that Merck is a good environmental steward and a good corporate neighbor. Some commenters expressed that, besides the project's immediate benefits to environmental quality in the area, the project will further benefit the community by making the Stonewall Plant more attractive as a site for product expansion and new product introduction, resulting in increased employment opportunities for people living in the Shenandoah Valley. Many comments also supported the simplified regulatory process and increased operational flexibility afforded to Merck. Two state environmental agencies commented that the project is an excellent example of innovative permitting, and commended EPA for its efforts. These states believe that the project is a great example of EPA's reinventing environmental regulation initiative, and will provide significant environmental performance while allowing Merck the flexibility warranted by such a permit. One state added that it supports the permit's strong incentives to minimize air emissions of criteria pollutants on an ongoing basis. Industry associations and companies commented that the project will benefit future permitting strategies that seek better ways to protect the environment. A Virginia industry association urged EPA to advance the project to the implementation stage where the value of the increased operational flexibility can be clearly demonstrated.

B. Superior Environmental Performance

1. General

Numerous commenters, including citizens, environmental groups, state environmental agencies, industry groups, and political officials, expressed support for the emission reductions that will be achieved by Merck converting its coal-fired boilers to burn natural gas. Many of the citizen and environmental group commenters supported the permanent reduction of criteria air pollutants by 300 TPY, as well as the upfront reduction of criteria pollutants by 900 TPY, and of hazardous air pollutants by 47 TPY. These comments specifically addressed the importance of this project's environmental benefits to Shenandoah National Park. A citizen commenter added support for the other positive elements of the project, including the provision that the project does not allow the sale or acquisition of emission credits, and that annual or semi-annual reports must be submitted to the project signatories.

2. Level of Emissions Caps

There were some comments from environmental groups and a citizen regarding the level of reduction of certain emission caps from the baseline levels. One environmental group questioned why the site-wide total emissions cap was set at a level of 20% less than recent actual emissions when there will be a 60% emissions reductions of criteria pollutants from the replacement of coal-fired boilers.

The baseline for the site-wide emissions cap is the average of annual actual emissions during the years 1992–93 (approximately 1500 TPY), the recent years most representative of normal facility operations. See 62 FR 15309 (March 31, 1997). Detailed information about the establishment of the emissions caps is contained in the rulemaking docket. The site-wide emissions cap will be reduced by 20% from the baseline level (i.e., the reduced cap level will be 1200 TPY, thereby permanently retiring 300 TPY of emissions) after the powerhouse conversion. Thus, Merck's new "allowable" emissions (the cap) will be 20% lower than recent actual emissions. In fact, Merck's allowable emissions in the baseline period were approximately 2700 TPY, so its new allowable emissions (i.e., the total emissions cap) will be less than half of the old allowable limit. The only reason that Merck is able to reduce its baseline cap by 20% is because of the significant actual emission reductions that will be achieved from the powerhouse conversion (switching from burning coal to natural gas, a much cleaner burning fuel). The powerhouse conversion will reduce criteria pollutant emissions by approximately 900 TPY, bringing post-conversion site-wide actual criteria pollutant emissions to approximately 600 TPY (i.e., 1500 TPY minus 900 TPY). With the 20% cap reduction, Merck's "margin for growth" under the cap will be approximately 600 TPY (i.e., 1200 TPY minus 600 TPY). If the cap were set at the facility's post-powerhouse conversion level, as suggested by the commenter, Merck would have no operating margin for growth, and, thus, no incentive to enter into this project or implement the powerhouse conversion. In order to provide the regulatory and operational flexibility of this XL project, it is necessary to have an adequate margin for growth under the cap. EPA anticipates that Merck's emissions will remain far below the total emissions cap for a long period of time after the powerhouse conversion, in part because the tiered monitoring system provides an incentive to minimize emissions.

As long as Merck operates under this PSD permit, Merck will no longer be able to obtain permits to increase emissions above the cap, since an exceedance of the total emissions cap is a basis for termination of the permit. Under the current permitting system, Merck would not be constrained by a site-wide emissions cap, and could continue to increase emissions as long as the proper permits were obtained.

Another environmental group commenter supported the overall permanent emission reductions that will be achieved (300 TPY), but expressed concern about the volatile organic compound (VOC) emission increases allowed under the cap. The commenter expressed concern that while NO_X emissions will initially decrease, the permanent reduction assured is only 29 TPY (i.e., a 10% reduction of the NO_X subcap from baseline emissions); meanwhile, VOC emissions can increase substantially above current levels. The commenter believes that, given that both NO_X and VOC emissions contribute to ozone formation, Merck's contribution to ozone formation could increase rather than decrease over time. The commenter suggests that a lower NO_X cap could correct this problem. Alternatively, Merck commented that the setting of the individual emission caps was the subject of extensive debate during the stakeholder meetings, and that the levels prescribed in the proposed permit are the result of full agreement from the stakeholder group. Merck stated that it is not aware of any new and compelling information to substantiate any need for changes to the emission caps.

EPA does not believe there is a need to set a lower NO_X cap. The impact of the potential VOC emission increases under the cap on ozone formation is described elsewhere in this document and in the preamble to the proposed site-specific rulemaking. See 62 FR 15310 (March 31, 1997). Merck's NO_X emissions cap guarantees that its future actual NO_X emissions will always be at least 10% less than recent actual emissions. Further, Merck's current permitted NO_X emissions are 569 TPY; thus, by taking a NO_X cap at a level that is 10% less than current actual emissions (i.e., 262 TPY), Merck also is relinquishing the ability to emit NOx at the currently permitted levels. In the preamble to the proposed site-specific rulemaking, EPA described an analysis (contained in the docket) that had been conducted to demonstrate that Merck's worst-case VOC emissions would continue to provide protection of the ozone NAAQS. See 62 FR 15310 (March 31, 1997). Because this analysis demonstrates that Merck's worst-case VOC emissions will continue to provide protection of the ozone NAAQS, and because Merck's worst-case NO_X emissions will be less than recent emissions, EPA does not believe that Merck's contribution to ozone formation under this project would increase rather than decrease over time, compared to Merck's current emissions levels and its ability to increase emissions under the current permitting system. Therefore, EPA does not agree that it is necessary to establish a lower NO_X subcap.

3. Volatile Organic Compound (VOC) Emissions

Several citizens and environmental groups expressed concern about the potential increase in VOC emissions from recent levels, as Merck operates under the site-wide emissions cap. Some commented that since there is no specific cap on VOC emissions, Merck would be able to increase VOCs by about 650 TPY from recent emission levels. One citizen commented on the tradeoff of VOCs and CO for reductions in other pollutants, and questioned the value of that tradeoff and whether there is a way to measure it. Some commenters believed that since VOCs are a major source of ozone, the potential VOC increases would have a detrimental effect on respiratory health, the health of the forests in Shenandoah National Park and elsewhere, tourism, and crop yields.

As Merck operates under the total emissions cap, it is permissible over time for VOC emissions to increase above the baseline VOC levels. The baseline VOC emission level is 408 TPY. If all other pollutants remain at their expected post-powerhouse conversion levels, the maximum VOC emissions increase (above baseline VOC emissions level) under the cap would be approximately 650 TPY. It should be noted that if Merck were to increase VOC emissions by this amount it would no longer have a margin for growth under the site-wide emissions cap and would have to implement the most stringent tier of monitoring, recordkeeping and reporting. Thus, Merck has an incentive not to reach this level of emissions. Nevertheless, an analysis was conducted to determine the impact on the ozone NAAQS if Merck were to increase VOC emissions to the maximum amount under the cap. In the preamble to the proposed site-specific rulemaking, EPA described an analysis (contained in the docket) that had been conducted to demonstrate that Merck's worst-case VOC emissions would continue to provide protection of the ozone NAAQS. See 62 FR 15310 (March 31, 1997).

The Merck Stonewall Plant is located in an area that is NO_X-limited for ground-level ozone formation. The term "NO_X-limited" means that the amount of NO_X available is generally the controlling factor in determining how much ozone will be formed. In a NO_X-limited area, reduced NO_X emissions will result in reduced ozone formation, and increased NO_X emissions will result in increased ozone formation. Further, increased VOC emissions generally will not result in additional ozone formation unless accompanied by additional NO_X emissions.

A report contained in the docket analyzed the worst case potential impact of increased VOC emissions on ozone formation in the area, based on an evaluation of urban airshed modeling developed for State Implementation Planning purposes in two urban areas. See 62 FR 15310 (March 31, 1997) and the docket. In summary, this report analyzed a worst case scenario which showed that the expected ozone increase from Merck's potential VOC emissions would be less than 0.5 parts per billion (ppb), which is less than 0.5% of the 120 ppb ozone standard, and 0.625% of the 80 ppb ozone standard. EPA believes that the analysis portrayed a highly conservative worst case scenario and that the potential ozone formation would be negligible under actual conditions. Moreover, the NO_X emission reductions achieved as a result of Merck's powerhouse conversion and the establishment of

permanent NOx subcaps will help to reduce local ozone formation. Therefore, EPA believes that the maximum potential VOC emission increases allowed under Merck's site-wide cap will continue to provide protection of the ozone NAAQS.

Other commenters stated that the permit's review structure would put severe limitations on incorporating any future knowledge about VOCs into the permit's conditions. One citizen commenter suggested that Merck should be required to contribute to an EPA-approved study of the contribution of VOCs to air pollution. This commenter expressed the need to study the effects of the various chemicals that will be emitted on the natural, historic and human resources of the Shenandoah area.

The proposed PSD permit has numerous provisions that were designed specifically to address the effects of Merck's VOC emissions. Any future knowledge about the environmental or public health effects of VOCs will be implemented in the Merck permit in the following ways. First, Merck will be required to comply with any generally applicable future regulation designed to control VOCs, and generally would have the option to reduce the cap in lieu of directly implementing the regulation (Section 1.2.2 of the permit). Second, Merck will conduct an assessment of VOC emissions for impacts on air quality related values (AQRVs) in Shenandoah National Park if VOC emissions reach specified levels. See Section 6.2.1 of the permit. Third, Merck is required to comply directly with any requirements for the control of hazardous air pollutants (HAPs), including the forthcoming maximum achievable control technology (MACT) standard for the pharmaceutical industry. Compliance with the pharmaceutical MACT and other HAP requirements also will control VOC emissions, because some of the HAPs used or emitted by Merck are also VOCs. Finally, Merck will conduct property line modeling of non-HAP VOCs to determine whether the emission levels are protective of public health. This modeling will be conducted when VOC emissions reach 125% of the VOC baseline (i.e., 510 TPY) and whenever VOC emissions increase by additional 100 TPY increments (i.e., 610 TPY, 710 TPY, and 810 TPY). If this modeling assessment predicts an exceedance of the Significant Ambient Air Concentrations (SAAC), which are based on a fraction of the Threshold Limit Values[7], Merck must either demonstrate that the site's emissions produce no endangerment to human health, or implement changes at the site resulting in ambient concentrations that are below the SAAC or that are otherwise acceptable to VADEQ. This permit provision (Section 6.2.2) was developed to address the community stakeholders' concerns about the potential public health effects of Merck's VOC emissions. Because the AQRV assessment and the non-HAP VOC public health assessment are actions that will happen at some future point in time, if Merck reaches the respective VOC trigger levels, the permit provides for any new information about VOCs to be considered at the time the assessments are conducted. Similarly, any future regulations promulgated to control VOC emissions will take into account the latest information about the effects of VOCs.

While the Merck project does not require that the permit be reopened to factor in new information about VOCs, the project offers an important opportunity for stakeholders to raise issues of concern to be considered at the five-year permit reviews. It is important to note that the generally applicable PSD regulations do not require that permits be reopened to incorporate future knowledge about emissions information. So long as a permittee complies with the emission limitations and other permit terms, and does not make changes at the facility that require further permitting review, the permit would not be required to be reopened to incorporate future information about the permitted emissions levels.

EPA does not agree that it is necessary under Project XL for Merck to contribute to an EPA-approved study of the contribution of VOCs to air pollution. There are already a number of efforts under way to assess the various public health and environmental effects of VOC emissions. For years, the Ozone Transport Assessment Group (OTAG) has undertaken region-wide studies of the effects of VOCs on ozone formation. Under Section 112(b)(2) of the Clean Air Act, EPA is required to periodically review the list of HAPs to add pollutants which may present a threat of adverse human health effects. As for all HAPs, if any new VOCs are added to the list of HAPs, Merck will be required to control them in accordance with the applicable HAP requirements.

[7] Threshold Limit Values, established for many chemicals, are workplace limits based on chronic and acute health effects, and are listed in the American Conference of Governmental Industrial Hygienists handbook.

4. PM–10 Emissions

A citizen commented that there is no PM_{10} environmental benefit in this project, and that even a little benefit would be appreciated. Merck commented that the powerhouse conversion from coal to natural gas is estimated to result in a PM_{10} emissions decrease of 74,000 pounds per year (37 TPY), which is a 98% reduction from baseline actual PM_{10} emissions. Merck stated that the PM_{10} cap was set at a level that reflects the lack of accurate PM_{10} emission factors and already very low PM_{10} emission rates at the plant. Merck commented that no new and compelling information has been presented to indicate a change to the PM_{10} cap is warranted.

The permit establishes a PM_{10} subcap at the baseline emissions level of 42 TPY. The PM_{10} subcap will not be reduced after the powerhouse conversion. However, as Merck's comment indicates, the project will result in an upfront reduction of a substantial amount of PM_{10}, from the burning of natural gas instead of coal. During the stakeholder discussions in developing this project, Merck had repeatedly expressed concern about setting a PM_{10} subcap at a level that would unnecessarily restrict future growth of operations, when there might be plenty of room for expansion of total emissions under the site-wide cap. In other words, because the baseline PM_{10} emissions were already relatively low (42 TPY), a "reduced" PM_{10} cap, similar to that for SO_2 and NO_X, could be the limiting factor in whether Merck would be able to expand operations in the future. That scenario would be counter to this XL's project's goal of providing increased operational flexibility. The ambient air quality modeling for PM_{10} conducted in support of the proposed permit demonstrated that the site's current worst-case emission rates do not cause or contribute to a violation of the NAAQS. See 61 FR 15310 (March 31, 1997). The permit further provides for Merck's ambient impact, which will include impacts of the PM_{10} emissions, to be reevaluated at each five-year review period. Thus, EPA believes that the level of the PM_{10} emissions cap established in the permit is appropriate.

C. National Ambient Air Quality Standards (NAAQS)

1. Future Nonattainment Situation

Two companies located in the Rockingham County, Virginia, area submitted comments regarding the potential for the area to become nonattainment for ozone or other pollutants in the future, and expressed concern for the impact of possible additional nonattainment control strategies on other sources in the area. Under the new PSD permit, Merck would be required to comply with any new criteria pollutant regulations, including those that might be promulgated if the area becomes a nonattainment area in the future; however, Merck generally would have the option to comply with the new regulations via a cap reduction. See Section 1.2.2 of the proposed PSD permit. In the preamble to the proposed rulemaking, EPA explained that the Commonwealth of Virginia could not take emissions reduction credit in an attainment plan if Merck chooses the option of reducing its emissions caps, rather than complying directly with a criteria pollutant regulation. See 62 FR 15313 (March 31, 1997). These companies are concerned that they would be required to implement stricter controls, at greater cost, because Merck's cap reduction would not be credited for attainment planning purposes. The commenters do not believe that sources should have to make up for the actual emission reductions because of the insulation provided to Merck. One company suggested that EPA should allow it to have the same insulation since its actual emissions are considerably lower than its permitted emissions.

Merck commented that it believes there is confusion about the possibility of more stringent future control requirements for other nearby facilities under a regional RACT plan as a result of this project. Merck described its view of the events which would have to occur before other nearby facilities would be impacted by more stringent controls, which it believes is an unlikely situation. Merck also submitted additional technical information prepared by a consultant relating to Merck's impact on local air quality and the implications of the new proposed ozone NAAQS.

The area in which the Merck facility is located has been well documented to be NO_X limited for ozone formation. Therefore, it is most likely that, if the area became nonattainment for the ozone NAAQS in the future, a control strategy would predominantly target reductions in NO_X emissions, rather than VOC emissions. In the preamble to the proposed rule, EPA described an analysis which documented that the worst-case potential VOC emissions under Merck's cap would continue to provide protection of the ozone NAAQS. See 62 FR 15310 (March 31, 1997).

The planning involved in designing a control strategy to bring an area into attainment is based on an inventory of actual emissions. Since Merck will achieve significant actual emission reductions of NO_X from the powerhouse conversion, these low actual NO_X emissions will help to reduce ozone formation and will benefit any future control strategy efforts. In a sense, it could be viewed that Merck is complying "early" with any future actual NO_X emission reductions that might be required for nonattainment planning. Similarly, other sources in the area which have very low actual emissions (e.g., as a result of BACT or comparable technology) likely would not be targeted for additional controls for those well-controlled and low-emitting units. Rather, nonattainment control strategies typically target those sources (both stationary and mobile sources) which are capable of achieving substantial decreases in actual emissions.

2. Ozone NAAQS—General

An environmental group commented that the forests of Virginia are already suffering as a result of both ozone and acid ion deposition, and suggested that this information should be documented. The commenter provided information about the rate of decline of oak forests in the northern mountains of Virginia.

EPA agrees with the commenter that ozone is a cause of degradation to forests and other vegetation in the Shenandoah area. The proposed Final Project Agreement describes the adverse effects of ozone and other pollutants on resources in the Park. The rulemaking docket includes a copy of the U.S. Department of Interior's Preliminary Notice of Adverse Impact on Shenandoah National Park (55 FR 38403, September 18, 1990) and the accompanying Technical Support Document. These documents explain the potential impacts of ozone, NO_X, and SO_2 on forests and vegetation, as well as potential impacts of pollutants on aquatic streams and visibility.

A commenter from a company in Rockingham County commented that there is no scientific evidence presented in the preamble to the site-specific rulemaking or background documents that Rockingham County is a NO_X-limited area for ozone. The commenter also suggested that EPA require baseline air quality monitoring in Rockingham County to specifically address the importance of VOCs in relation to ozone transport.

It has been well documented that the area in which the Merck Stonewall Plant is located is NO_X-limited for ozone formation.[8] The Permit Support Document (contained in the docket) includes additional information and references that the area is NO_X-limited. The OTAG modeling effort of ozone in the eastern U.S. is one of the largest public-private air quality projects ever conducted. As part of its key modeling findings related to future attainment strategies, OTAG found that NO_X emission reductions are more effective than VOC emission reductions in lowering regional ozone concentrations; NO_X reductions decrease ozone domain wide, while VOC reductions decrease ozone only in urban areas. A copy of this modeling report is contained in the docket. In its public comments, Merck submitted additional technical papers for the docket that document that the area is NO_X-limited for ozone formation.

The PSD requirement for pre-construction ambient air quality monitoring has been satisfied. The docket contains the ambient ozone monitoring data that satisfies this requirement. EPA disagrees that additional monitoring should be required within the context of the Merck XL project to address the importance of VOCs in ozone transport. These efforts are being undertaken in a much broader context by the OTAG modeling studies. Further, ozone transport is a regional issue and it is currently not feasible to study the effects of VOC from a single source on ozone transport.

3. New Ozone and Particulate Matter NAAQS

Several environmental groups and citizens requested EPA to address how Merck would comply with the new proposed NAAQS for ozone and fine particulates. Some commenters expressed concern that they believe the permit does not account for EPA's proposed new air quality standards, and allows a long term escape from higher standards, especially particulates. Some commenters also believe the permit should be reconsidered to account for $PM_{2.5}$.

On July 18, 1997, EPA promulgated final rules which revise the NAAQS for ozone (62 FR 38855–38896) and particulate matter (62 FR 38651–38752). Under EPA's final rule, the NAAQS for particulate matter is revised in several respects, including the addition of two new standards for $PM_{2.5}$ (particulates with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers). Because $PM_{2.5}$ (fine particulates) is a

[8] Ozone Transport Assessment Group, Modeling Report (Draft), Regional and Urban Scale Modeling Workgroup, Version 1.1., February 12, 1997 (contained in docket).

new indicator for particulate matter, $PM_{2.5}$ is not one of the pollutants specifically included in Merck's site-wide emissions cap.[9] Rather, Merck would be required to comply directly with any future requirements for the control of $PM_{2.5}$. At the present time, EPA believes this is the more environmentally protective and scientifically sound approach, since no baseline data are available about Merck's $PM_{2.5}$ emissions, methods to measure and monitor $PM_{2.5}$ are not yet widely available, and it would be speculative to attempt to regulate $PM_{2.5}$ as part of the site-wide emissions cap. Moreover, it will likely be several years before states have enough monitoring information available to know whether areas are not attaining the $PM_{2.5}$ standard, and, consequently, whether and what type of $PM_{2.5}$ control strategies are needed in a given area to bring an area into attainment. It should be noted that sulfates and nitrates are major components of secondary fine particles, formed in the atmosphere through chemical reactions. Therefore, the SO_2 and NO_X reductions from Merck's powerhouse conversion will help to reduce fine particulates.

The proposed site-specific rule (40 CFR 52.2454(a)(2)), stated that the rule applies in lieu of 40 CFR 52.21 for the pollutants included in the site-wide emissions cap, as well as particulate matter. In the final site-specific rule, EPA is adding language to ensure that it is clear that the rule does not apply in lieu of 40 CFR 52.21 for particulate matter specifically regulated as $PM_{2.5}$.

This change makes clear that the site-specific rule replaces 40 CFR 52.21 for particulate matter and PM_{10}, but not for particulate matter that is specifically regulated as $PM_{2.5}$. Similar changes also will be made in the final PSD permit to ensure that it is clear that the project does not provide alternate compliance for particulate matter specifically regulated as $PM_{2.5}$. If in the future EPA were to promulgate standards for other forms of fine particulates (e.g., $PM_{1.0}$), Merck also would be required to comply directly with any associated applicable requirements.

Under EPA's revision of the ozone NAAQS, ozone is not considered a new criteria pollutant. Rather, EPA revised the existing NAAQS for ozone to a lower and more protective standard. The regulated precursors for ozone formation, VOC and NO_X, are included in Merck's site-wide emissions cap. Therefore, Merck must comply with any new regulations for the control of VOC or NO_X (ozone precursors) as prescribed by Section 1.2.2 of the permit. Under these provisions, Merck generally will have the option to reduce the site-wide total emissions cap (for VOC regulations) or NO_X subcap (for NO_X regulations), in lieu of implementing the regulation as written. This approach was described in detail in the preamble to the proposed rulemaking for the Merck XL project (61 FR 15313, March 31, 1997).

D. Public Participation Issues

1. Summary

Some commenters expressed concern about continuing community involvement in the permit. Related concerns include the unlimited term of the PSD permit, the composition of the decision-making group, and community input into decisions involving potential increases to the emissions levels of the permit. These issues are addressed substantively and thoroughly in this preamble and the Response to Comments Document.

EPA strongly supports ongoing community involvement in permit issues associated with this XL project. Many commenters remarked on the unprecedented level of participation this project has afforded the community thus far. The participation of Rockingham County as a signatory will assist in maintaining the level of community involvement during implementation. EPA also pledges to seek out and strongly weigh community and public interest group input and involvement where permit modifications or reviews are being considered. Stakeholders will be expressly included in the five-year reviews scheduled as a result of this project, affording public input opportunities on issues outside the scope of existing permit programs.

PSD permits are analogous to building permits, which are not normally revocable or subject to end dates. Thus, while this project offers Merck flexibility in the scope of the PSD permit, it does not offer Merck flexibility in terms of duration that it would not otherwise receive. EPA believes that the level of accountability contained in the proposed permit and the five-year reviews offer adequate oversight opportunity to both regulators and the community. These five-year reviews themselves are an additional step to ensure the protection of public health and the environment, and offer the stakeholders a role in the implementation of the permit. EPA commits to making any necessary technical assistance or facilitation available to the stakeholders during the five-year review to ensure their informed participation.

The signatories to the Final Project Agreement (EPA, U.S. Department of the Interior/Federal Land Manager, Virginia Department of Environmental Quality, the Rockingham County Board of Supervisors, and Merck) generally must agree to any permit modifications that might be considered. During negotiations, the County was put forward as a signatory as a way of incorporating a representative vote for the community. The County, State, U.S. Department of the Interior, and EPA, as governmental entities, will ensure public support for any changes that go forward. If increases in the emissions caps are contemplated, EPA generally must amend the site-specific rule to propose changes to the permit. Although EPA fully expects that such increases in the emissions caps will not be necessary and therefore will not be proposed, EPA commits that, in any such instance, it will seek out and strongly consider the input of the community.

EPA would also like to note that, as described in Sections III.A.2, III.A.3, and IV.C above, this rule and the PSD permit require Merck to comply with future relevant regulatory changes or new standards that would otherwise apply to the facility.

Community involvement is and will continue to be critical to the success of Project XL. The Merck project was, in many ways, shaped by the input of the stakeholder group associated with the project. For example, Merck's original project proposal was greatly improved during the stakeholder process by addressing many stakeholder concerns, including a 20% decrease of the total emissions cap after the powerhouse conversions, emissions subcaps for PM–10, SO_2 and NO_X, strict compliance with all hazardous air pollutant (HAP) requirements, modeling of non-HAP VOC emissions to ensure protection of public health, assessment of VOC impacts in Shenandoah National Park, and several other provisions. EPA believes that the project as it is now reflected in the proposed PSD permit, the Final Project Agreement and the site-specific rule will enhance the community's opportunity for meaningful involvement in the implementation of the Merck XL project.

2. Permit Term

EPA received numerous comments from citizens and environmental groups supporting a limit on the term of the PSD permit. Some commenters suggested that a limited permit term be established, after which the permit could be "affirmatively renewed" or renegotiated within some set of preestablished guidelines. Most of these commenters supported an initial permit term of 10–15 years, and one environmental group suggested a five year term. Another environmental group suggested an initial permit term reasonably sufficient to allow Merck to recover its investment in the boiler conversion, after which the permit could be affirmatively renewed on a five-year basis. One environmental group maintained that the unlimited permit term is unwise because the permit allows substantial VOC increases and there is currently inadequate information regarding the impacts of the VOC emission increases on human health and the Shenandoah National Park. One commenter believes that no other XL project has a permit with unlimited duration and a provision for veto of any changes by the applicant, and believes that this permit would establish an inappropriate precedent for these conditions.

Merck commented that the decision to craft the permit under PSD and include extensive review and termination procedures (Sections 6 and 8) was the compromise worked out among the stakeholders. Merck expressed that, absent new, compelling information from commenters on this issue they believe that EPA must act in good faith and decline any changes with regard to permit expiration.

In response, EPA notes that the "unlimited term" of the permit is consistent with the normal practice for PSD permits. They are permits to construct or modify a source, and are analogous to building permits which would not normally be revocable or have an end date. Once a source is permitted to construct the emission units authorized by the permit, so long as it complies with the permit's emission limitations and operational conditions, a source generally is not required to renew the PSD permit for those units. Under the particular circumstances presented in the Merck project, including the innovative emissions cap-based permit and Merck's substantial voluntary investments to achieve significant emission reductions, EPA believes it is appropriate to treat the entire set of changes authorized at the facility by this rule and the PSD permit as a single major modification. Because Merck's permit will be issued as a PSD permit, under a new site-specific PSD rule which applies only to the Stonewall Plant, EPA believes it is consistent with the PSD program not to establish a term limit for Merck's permit. As a related issue, there currently are no specific Federal regulations for modifying PSD permits. If EPA in the future should promulgate permit modification rules that generally apply to PSD permits, Merck's permit would be subject to those permit modification procedures as well (Section 6 of the permit). In addition, the Merck permit goes beyond typical PSD permits by requiring a five-year periodic review and setting forth provisions for revising the permit. (See Section IV.D.3.b of this preamble for a more detailed discussion of the five-year review process). Therefore, EPA believes an unlimited term is warranted to allow the permitted modifications to occur as intended, subject to the safeguards in the permit.

In comparison to the opportunities for public involvement in the typical PSD permitting process, the Merck XL project offers the public an opportunity to be more fully informed about the environmental activities and changes at the facility. Absent Project XL, if Merck were to make a change at the facility that triggered a PSD permit review, the public would only have opportunity to comment on the specific project being permitted at that time. Further, it is difficult to speculate if and when the Merck Stonewall Plant would trigger a future PSD review, since it has never done so in its history. All of Merck's existing air permits are minor NSR permits. It is possible that Merck would have been required to undergo PSD review in the future (e.g., for a new pharmaceutical product line); however, the existing regulations would allow Merck to avoid PSD review if the emissions increase was less than the significance level, if it "netted out" of PSD review, or if it took a synthetic minor emissions limit. In any of these cases, the Commonwealth of Virginia would issue a minor NSR permit. Under the Commonwealth's minor NSR program, many types of permit changes can be made with little or no public participation. Even in cases where public participation is available under the minor NSR permitting process, public comment would be open only to the particular process being permitted. As explained above, for PSD permits as well as minor NSR permits, there is no term limit on the permit, and the public would not have an opportunity to comment on the facility's performance under the permit after the permit was issued.

Without this XL project, there would be no opportunity for stakeholders to participate in a regular five-year review of the facility's operations, no opportunity for stakeholders to request permit changes to be considered, and no opportunity for the community to give consent to permit changes. By participating in the five-year permit review, the community will be much more fully informed about, and involved with, the facility's operations than they would under the traditional permitting system. During development of the initial XL project, all stakeholders learned a great deal of information about Merck's air emissions, emission units, monitoring methods, and facility operations. This level of information will continue to be shared during the stakeholder discussions for the five-year permit reviews. Under the traditional permitting process, the public would not have access to this level of facility-wide information, because the emissions information would be limited to the particular process undergoing permit review. Therefore, considering the full set of public participation opportunities under this XL project as compared to the traditional permitting system, EPA believes that Merck's XL project offers the public more comprehensive involvement in overseeing and reviewing facility operations.

In response to the comment regarding the term of permits in other XL projects, there is at least one other XL project in which a PSD permit is expected to be issued. In the Weyerhauser XL project, the State of Georgia plans to issue Weyerhauser a PSD permit as the mechanism to make enforceable the emissions caps described in the XL agreement. At this time, EPA understands that Weyerhauser's PSD permit will not have a limited duration. With regard to a commenter's concern about the permit term in the Merck XL project establishing precedent, EPA does not view any XL project as setting a precedent for future projects. Each project must be evaluated by the Agency and by stakeholders on an independent basis, considering the unique nature of the project and the company's full set of obligations under the proposed XL agreement.

3. Stakeholder and Public Involvement

a. *General.* Several citizens and environmental groups commented about the public participation involved in developing this proposed project. Merck commented that the stakeholders have made significant efforts to notify and educate the public about the project. A community meeting was held in December 1996, two public hearings were held in February 1997 and April 1997 (one by VADEQ and one by EPA),

[9] However, Merck will be required to include emissions of $PM_{2.5}$ (as a subset of PM_{10}) in its calculation of PM_{10} emissions.

a Merck retiree dinner was held, the Stonewall site's employees and Community Advisory Panel were briefed several times, several newspaper articles were published, and numerous newsletters and other documents were prepared and distributed to neighbors, retirees, employees, the media, and local state and federal government officials. In addition, Merck believes that the permit reviews represent a process that is unprecedented in air permitting in this country, and that the community will be provided with significant oversight of Merck's permit.

From Project XL's inception, EPA has stressed that stakeholder involvement and opportunities for public participation are critical to a project's success. During development of the Merck XL project, the public was given numerous opportunities for participation—far more than under the normal permitting process. Merck initiated a number of efforts to inform the local community about the project. EPA believes that Merck's comment provides a good summary of the communications outreach efforts undertaken during the development of this XL project. At the outset of the project, Merck developed and shared with the stakeholders a public involvement plan that included many of the activities described in Merck's comment above. This set of public involvement activities is fully consistent with the XL guidelines in place at the time of Merck's project development.

An environmental group commented that the stakeholder process for five-year permit review should follow EPA's April 23, 1997 XL guidelines in identifying and selecting direct participants and commenters. The commenter believes that "direct stakeholders" are those who sign off on the project and have a vote in the five-year review and potential permit changes. The commenter believes that the direct stakeholder group is not broad enough, because the commenter believes that EPA's XL guidance provides that additional stakeholders should be involved in the XL project development stage. Given that the Merck XL proposal has unlimited duration and a number of key issues were left to the five-year review process, the commenter recommends that the stakeholder process for periodic review should be equally as broad as the stakeholder process recommended by EPA for project development. The commenter requests EPA to ensure that the five-year review process meets the following [excerpt from 62 FR 19878–19879, April 23, 1997]: "The project sponsor should make special efforts to recruit potential direct participants and commentors from among economically disadvantaged stakeholders and among stakeholders most directly affected by the environmental and health impacts of the project; * * * who have specific interest or expertise in the issues addressed in the project from among the national environmental justice communities and the industry segment of which the facility is a part; and * * * from among participating facilities' non-managerial employees." The commenter believes that the proposed make-up of the stakeholder group for permit review does not adequately reflect interest from these groups. In addition, a company located in Rockingham County, Virginia commented that it and other industries in the area should be considered significant stakeholders to the outcome and implementation of the project.

Merck commented that it sought to involve parties with a direct and specific stake in the project from the beginning. Merck maintained that a wide variety of interests was represented and all contributed to the innovative proposed permit. Based on the success of this process, Merck asserts that the proposed permit provides for these stakeholders to have a continuing opportunity for direct and valued input during operation under the permit as well. Merck believes that, particularly for the local community and regional public interest groups, these opportunities far exceed anything which they would be afforded under the current regulatory system. With regard to the April 23, 1997 XL notice's guidelines of three classes of stakeholders (general public, commentors, direct participants), Merck stated that it has considered its community representatives as "direct participants" since the project's inception, although it states that under this guidance they could have been considered "general public" with limited input. Merck points out that the XL guidance also states that the FPA should identify how to make information about the project, including performance data, available to stakeholders in an easily understandable form. Merck stated that it has committed to share with stakeholders and other interested parties an annual report. Merck further stated that it has committed to including all direct participant stakeholders in periodic evaluations, even though the guidelines indicate this would not be required. Merck believes that the permit's stakeholder process for five-year permit reviews is far beyond the level of stakeholder involvement suggested in EPA guidance, and certainly beyond what is currently provided to the public in any other environmental permitting forum.

EPA agrees that the stakeholder group as defined in the Merck project meets the Agency's guidance regarding direct participant stakeholders. EPA believes that the stakeholder group, comprised of Merck, EPA, VADEQ, U.S. Department of the Interior, community representatives and a public interest group, represents a fair balance of interests. The excerpt from the April 23, 1997 XL notice submitted by one commenter pertains to the types of interests that should be represented by both direct participant stakeholders and "commenters". In the April 23, 1997 notice, "commenters" are described as those individuals or groups that have an interest in the project, but not the desire to participate as intensively in its development. EPA believes that the Merck project is consistent with the guidance by including direct participants in the makeup of the stakeholder group for five-year permit reviews. However, EPA does not agree that it is required that the stakeholder group must include "commenters" as described in the April 23, 1997 notice. EPA encourages the stakeholder group to establish a mechanism for communicating information about issues being discussed in the five-year reviews at appropriate points during the process, and to consider the input from "commenters", such as area industries or other environmental organizations.

A number of citizens and environmental groups commented that there should be more public involvement in the permit review process. A few citizens believe the propbsed permit minimizes public participation in the permit review process, and that full public participation is supposed to be a major component of the XL program. Other citizens commented favorably about the opportunity for direct involvement of the local community in the oversight of the project.

A commenter maintained that the community representatives selected by the Rockingham County Board of Supervisors will not really have an effective voice in reviews and other decisions because their concerns can be vetoed by Merck or other signatories. A citizen commented that permit revisions should be decided by the majority, but not all of the project signatories, which might ensure that corrective adjustments to the permit are made. The commenter also suggested that a public hearing be held by VADEQ midway through each five-year review.

EPA disagrees that this project minimizes public participation in the permitting process. On the contrary, the permit provides for much greater public involvement than other permits of its type. This permit provides unique opportunities for public involvement through the stakeholder process and periodic permit reviews. In the PSD program, once a PSD permit is issued, normally there is no opportunity for future public involvement in the permit's implementation. The Merck PSD permit will provide a unique opportunity for strong public involvement in reviewing the facility's operations under the permit. Further, since there currently are no specific Federal regulations governing PSD permit revisions, typically EPA does not initiate PSD permit changes without consent of the permittee. PSD permit revisions usually are made at the request of the source, with consent of the source and the permitting authority. Accordingly, the EPA believes that providing an explicit veto for Merck, in conjunction with the extraordinary level of stakeholder involvement in the project, provides an appropriate level of assurance to Merck that the agreements on which this rule and permit are based upon will generally continue in their current form, subject to specific terms of the rule and permit, and to consensus-based permit changes.

Under Merck's PSD permit, Rockingham County and every other signatory will have an effective voice in the permit review process because changes to the permit generally must be made upon full consent of all the signatories. This means that there may be issues that Rockingham County, or any other one signatory, does not support and can thus "block" a change to the permit by not giving consent to the change. Rather than being viewed as a "veto", this process should be viewed as ensuring that a permit change is proposed only when there has been full discussion and consideration of the impacts of the change. Allowing permit changes to be decided by a majority of the signatories not only would erode Merck's ability to prevent changes that may be unworkable for its facility, but also would compromise the ability of any other signatory to prevent permit changes that it does not support. All stakeholders have an opportunity to be fully involved in these discussions and to raise issues, bring forth technical information, and offer proposed resolutions for consideration. This process is more likely to result in proposed permit changes that are the outcome of consensus among the signatories. It is also important to note that Merck has no ability to "veto" any future enforcement actions or regulations which may impose additional requirements on the facility outside of the PSD permit.

The permit modification procedures in Merck's site-specific PSD rule (40 CFR 52.2454(n)) require the permitting authority to provide an opportunity for a public hearing for all permit modifications except those that meet the criteria for an administrative permit amendment (40 CFR 52.2454(n)(2)). Thus, if the signatories agree to any permit changes, the VADEQ must provide for public participation, including an opportunity for a public hearing, for those permit changes that do not qualify as administrative modifications. Any permit modification could also be appealed by residents or others with legal standing. EPA does not agree that it is necessary to provide for a public hearing during the five-year review process itself, since an opportunity for a public hearing will be provided if non-administrative permit modifications are proposed. EPA believes that public views can be effectively represented by the designated stakeholders during the process of developing any permit modifications. EPA encourages the stakeholder group to consider holding public meetings, similar to the one held during the initial project development, to inform the broader public of anticipated changes under consideration by signatories during the five-year review process. Other forms of communication (e.g., newsletters) to the public may be useful in communicating the issues under discussion and anticipated permit changes. EPA intends to continue to suggest effective forms of communication with the public during each five-year review and to participate in these activities along with the stakeholder group.

A citizen commented that the list of permit changes which the stakeholders can consider in the five-year reviews should be broadened to include, for example, permit termination, modification of caps, change in signatories, change in permit modification procedures, changes in significance levels, and others.

Section 6.1.1. lists the most fundamental types of permit changes anticipated by the stakeholders during the development of the project. In addition, these periodic review criteria will be reviewed by the stakeholders at each five-year review. EPA does not agree that it is necessary to add additional review criteria at this time, since it will be more effective to consider new criteria, if necessary, at the time of each five-year review. The permit also provides that any stakeholder may raise issues about the PSD permit at any time, as needed.

b. *Project signatory consent to permit changes during five-year reviews.* In the notice of proposed rulemaking, EPA solicited comment on the approach to stakeholder involvement during the implementation of the Merck XL project. See 62 FR 15307 (March 31, 1997). EPA received a number of comments regarding the stakeholder process for reviewing the permit every five-years. Particularly, numerous comments were received on the issue of whether the consent of all stakeholders, or only the project signatories, should be required to make proposed permit changes (i.e., to recommend that the permitting authority process a permit modification). The permit generally requires consent of all project signatories prior to making a proposed permit change. Project signatories are defined as EPA, VADEQ, Merck, U.S. Department of the Interior Federal Land Manager, and the County of Rockingham. The permit also provides that additional stakeholders have an opportunity to directly participate in the permit review process, but their individual consent is not required for permit changes. These additional stakeholders include up to three community representatives and a regional public interest group. If the project signatories agree to permit changes, then the permitting authority may process a permit modification according to the requisite procedures (40 CFR 52.2454 (m) and (n)). These permit modification procedures require public participation, including a 30-day public comment period and opportunity for a public hearing, for any permit change not defined as an administrative modification.

EPA received a number of comments from citizens and environmental groups that the consent of the three community representatives, in addition to Rockingham County's consent, and the public interest group should also be required prior to making a permit change. Alternatively, Merck, citizens, industry representatives, and a state environmental agency supported the process established in the proposed permit, and that the County's consent is the appropriate representation of concerns of the community as a whole. The comments on this issue are summarized below.

One of the community representatives on the Merck XL stakeholder group supported that the three community representatives who are appointed to

the five-year periodic review should be allowed to come to consensus and then cast one single vote along with the signatories regarding proposed changes to the PSD permit. This commenter believes that the community at large should be directly involved in any permit changes, and that the interests of the County government and the local community at large are not necessarily the same and could differ vastly on proposed changes to the PSD permit. The commenter maintains that disallowing the three community representatives one single vote in this process reduces their input to a mere advisory role. This commenter believes that the local community at large looks to their community representatives and EPA for representation and protection. This community representative submitted a petition signed by about 240 people, which read "We the following residents of Rockingham County and Harrisonburg, do request with regard to the Merck XL Air Quality Project, Elkton, VA, that the three community representatives appointed to the project's five-year reviews be allowed to cast one vote along with the voting signatories to the project on proposed changes to the Prevention of Significant Deterioration (PSD) permit which replaces all other air quality permits."

An environmental group commented that the permit should provide for "stakeholder" consensus on permit changes, not just "signatory" consensus, because of the concern that the state, federal agencies, and Rockingham County could agree with Merck to raise the emissions cap, and the community representatives or public interest group would have no real say in that decision. The community and public interest group want to be assured that they are getting permanent reductions in emissions, and are concerned that the emissions caps could be increased in the future. This commenter believes that most of the permit was negotiated with the understanding that the community representatives, including, potentially, a regional public interest group, would have to agree to any permit changes. The commenter objects to the permit language being changed to provide community representatives and public interest group as "stakeholders" only. The commenter fully supports Rockingham County as a signatory, but believes the community representatives living downwind of the plant and the public interest group provide a perspective different from, and independent of, County concerns such as jobs and tax base.

A community representative on the Merck XL stakeholder group commented that there should be ground rules set up for the five-year reviews, and perhaps a neutral facilitator. This commenter and an environmental group also recommended that there should be funds set aside to provide technical assistance for the community at the five-year reviews, so that the community has a fuller understanding of the impacts of any permit changes under consideration.

A number of citizens and environmental groups commented that Merck should not have a "veto" over suggested permit changes. Some commenters expressed concern that, because full consent of the project signatories is needed for proposed permit changes, Merck can "veto" changes and ignore evidence of air quality and resource degradation in Shenandoah National Park. One commenter suggested that the stakeholder agencies should be responsible for determining the need for, and extent of, permit revisions. Absent that, the commenter believes that a funded, organized, strong public interest presence be included among the signatories.

EPA also received a number of comments supporting the roles of signatories and stakeholders in the five-year review process as proposed in the permit. Two citizens commented that they support having an elected member from the Rockingham County Board of Supervisors designated to represent the community. One of these commenters believes it is wrong for an individual citizen of the community to have a vote for approval of permit changes. The commenter states, "I could ask why I do not get the vote?" The commenter believes the elected officials will adequately represent him, and if not he has a recourse at the polls. With a community representative on the stakeholder group, he does not.

Several commenters, including a state environmental agency, industry association, a company that participated in another XL project, and Merck, commented that the local community interests, in particular, are afforded an unprecedented opportunity to participate in and influence the project. Many of these commenters expressed that the Merck XL project goes well beyond the role provided for community interests in the current regulatory system. These commenters strongly endorse having the community's voice on the stakeholder team through the local government, because it ensures representation of the interests of the whole community.

Merck commented that the permit's approach establishes an extremely important balance in community representation: it ensures that vocal and interested community members have a voice, and that the interests of the entire community are considered. Merck believes that it is appropriate that individuals who may be particularly concerned with the facility's operations, or who have specific expertise or input on a relevant issue, be provided with a full opportunity to voice their opinion. However, Merck maintains that meaningful community involvement must provide some assurance that the interests of the community as a whole are represented.

Two commenters maintained that it is an unusual suggestion that the Rockingham County Board of Supervisors does not represent the interests and well-being of County residents. These commenters assert that the local government is directly accountable to the residents that they represent; if the County officials fail to represent the community, the voters have a responsibility to remove those individuals and elect representatives that do. The commenters believe that a County appointee, in consultation with the three other community stakeholders, will be well equipped to voice the authentic views of the community. Merck believes that granting two community "votes" on the stakeholder group would not be providing a more open process, but rather, a more closed process that could allow the opinion of a few vocal individuals to prevail over the vital interests of the community at large.

Several commenters raised the concern that individuals representing only their own interests may adopt extreme positions which are not truly representative of community sentiment. Commenters stated that having a team of community representatives led by a local government official provides an appropriate measure of accountability and stability in the process.

Commenters believe that this approach will help assure that individuals who do not truly reflect the interests of the community as a whole are not granted a veto over a permit change that all other stakeholders otherwise find to be beneficial. Several commenters maintain that this system embodies the basic principles of our governmental system—accountable, elected representatives are charged with representing the peoples views on matters of public policy. A company that participated in Project XL contends that the function of community advisory groups must not be misinterpreted to duplicate those of government. This commenter believes that stakeholder panels are an excellent means of getting early and meaningful input into environmental decisions, but, as both a practical and legal matter, they cannot assume the decisional role of government.

Merck and another company commented that the stakeholder process infuses a certain amount of risk for Merck, and that this additional risk is an important factor to consider when evaluating the adequacy of community involvement in future permit discussions. Merck stated that it could not accept a permit that would threaten the future viability of the plant. Merck believes that the permit was carefully crafted to ensure that it would provide enhanced community oversight, but not subject the plant to unacceptable control by outside parties. Merck commented that the proposed permit is crafted to reflect the process that was used in the formation of the project—each represented group is granted one "vote" in future permit reviews. Merck stated that none of the parties objected to this approach; all agreed that it was sensible that each party would reach a single position and bring that position to the stakeholder group. Merck believes it is unclear why this approach is now not acceptable.

Merck commented that the petition (referenced in a previous comment above) submitted to EPA does not provide any insights to what those who signed would be willing to accept as an alternative to two community votes, nor does it elucidate why they question their representation by Rockingham County and their ability to influence the County's views in future permit discussions. Merck believes that the County has already demonstrated the seriousness with which it accepts this charge to represent the community in the project negotiations. Merck stated that, despite an accelerated schedule to finish its review, in December 1996 the County insisted that it needed additional time for its independent technical consultant to analyze the draft permit and agreement before providing its consent. Merck believes that EPA should have every expectation that the County will continue to take its duty to represent community interests seriously.

Merck commented that a public interest group representative should not be added as a signatory. The permit specifies that a representative from a regional public interest group be included as a stakeholder, although not with the ability to vote on permit changes. Merck believes that this is a unique opportunity for such groups which far exceeds that available to them under existing environmental regulations. Merck claimed that granting this representative with the same oversight as other signatories would be inappropriate and a serious compromise to the future viability of the Stonewall plant. Merck believes that a public interest group representative is not held accountable in any meaningful way to the public for his/her views. Merck maintains that the permit as crafted provides very significant input for public interest groups while assuring that only parties that have public accountability are granted oversight for permit changes.

Finally, Merck urged EPA to maintain the stakeholder provisions of the permit as proposed, because to include a second "vote" for the three community representatives would:

1. Endorse the accusation that the Rockingham County Board of Supervisors, despite being elected by the community, does not represent the community's interests.
2. Question the ability of EPA, DEQ, and NPS to act on legitimate environmental concerns for the protection of the public interest at large.
3. Indicate that the stakeholder process for the formation of the project is inadequate for project implementation.
4. Shatter the important balance that the County would bring as the lead representative of the entire community.
5. Contradict the XL guidance (April 23, 1997 **Federal Register** notice) by setting a standard for public involvement far above what could be required for future XL projects.
6. Agree that it is reasonable to have a process that would allow the opinion of a few vocal individuals to prevail over the interests of the community at large.
7. Narrow rather than broaden the representation of community interests on the project.
8. Suggest that the project stakeholders would not continue acting in good faith for future permit reviews.
9. Imply that Rockingham County's efforts to obtain independent review and advice on the agreement fell short of what is necessary to properly protect the community's interests; and
10. Threaten the future of a project that would otherwise provide the community with unprecedented oversight of Merck's air permit, that would significantly reduce actual emissions of pollutants of particular concern to the region, that would provide an ongoing incentive for the facility to minimize emissions, and that, as EPA, VADEQ, National Park Service and the community have acknowledged, would provide superior environmental benefit.

In response, EPA believes that the permit represents a fair balance of interests. The permit significantly enhances the involvement of the community and other stakeholders in overseeing the environmental impacts of the Merck Stonewall Plant. Stakeholders will have an unprecedented opportunity to participate in the ongoing evaluation of the project and to recommend any necessary changes to the project. The permit provides that the stakeholders review and evaluate the project at least every five years. If the project signatories (i.e., signatories to the Final Project Agreement, namely EPA, VADEQ, Merck, U.S. Department of the Interior Federal Land Manager, and Rockingham County Board of Supervisors) give full consent to any necessary permit changes, the permitting authority may process a permit modification according to the requisite permit modification procedures (see 40 CFR 52.2454(n)). The permit identifies numerous issues that may be considered by the project stakeholders during each five-year review. Stakeholders also have the opportunity to raise issues of concern at any time for discussion by the stakeholder group.

The permit defines "project stakeholders" as the project signatories to the FPA plus other parties as follows: (1) Up to three other community representatives shall be included as nominated by the Rockingham County Board of Supervisors, and agreed to by full consent of the project signatories to the FPA. Community representatives are defined as local government and/or community residents with an ongoing stake in the project; and (2) Up to one representative from a regional public interest group shall be included as nominated by any project signatory and agreed to by full consent of the project signatories. This group of stakeholders will convene every five years to review whether changes to the permit are necessary. As discussed above, the permit establishes that full consent from the project signatories, and not each member of the stakeholder group, is necessary before permit changes can be made. This stakeholder process for five-year reviews is consistent with the process used in the development of the proposed FPA and draft permit. The County of Rockingham is the signatory to the FPA (i.e., a project signatory) representing community interests. The three additional members of the community team (two neighbors of the

Merck Stonewall Plant and the Town Manager of Elkton) also actively participated in the stakeholder group. The County was designated as a project signatory at the request of the community team in order to insure long-term representation and continuity of community interests.[10] This model of stakeholder involvement provided all stakeholders with full information and ability to shape the development of the project.

EPA supports the provisions set forth in the proposed permit that require the consent of signatories only, and not the full stakeholder group, for proposed permit changes during the five-year review process. EPA agrees with several commenters that it is most appropriate that the representative of the Rockingham County Board of Supervisors will represent the views of the whole community, taking into account the interests and well-being of the County constituents. The role of the three community representative stakeholders also is important for identifying specific concerns, questions, and information that can influence the stakeholder discussions. EPA expects that Rockingham County's decisions about permit changes will substantially reflect the input and views of the three community representatives, as well as the interests of the community at large. Further, EPA believes that the five-year review process offers a role for a public interest group that is greatly enhanced as compared to the normal permitting process. The permit is designed such that all non-signatory stakeholders will be fully involved in the deliberation of all permit issues, as in the development of the Merck XL project. During the development of the Merck XL project, all stakeholders, as well as several environmental groups that were not part of the stakeholder group, provided valuable comments on the draft permit. These comments were fully considered by the project signatories and helped to shape the project. EPA expects that the same interaction among stakeholders will occur during the five-year permit reviews, and that the project signatories will fully consider concerns and issues raised by all the stakeholders before reaching decisions on permit changes.

EPA does not believe that the permit's process for stakeholder involvement in any way diminishes the role of the non-governmental representatives. Throughout Project XL, EPA has made clear that it places a high degree of importance on public support and will give the views of the public significant weight in deciding whether to proceed with a project. EPA will take the same approach on making decisions during project implementation. EPA will make every effort to ensure that the concerns of the community and the public interest group representatives are fully explored and addressed by the signatories. Prior to making a decision about whether to give consent to proposed permit changes, EPA intends to fully consider any outstanding concerns raised by the community representatives or the public interest group, and encourage other signatories to do the same.

This XL project is composed of an experimental, innovative emissions cap-based PSD rule and permit, which fully authorize modifications at the facility to occur without changes to the permit, so long as the emissions caps and other permit terms are met. Most future "modifications" thus will not require any permit changes and, therefore, will not need any agreement among the signatories; in these instances, any right of the stakeholders to vote on or veto changes will not be relevant. The signatory consensus process is relevant only for other types of changes at the facility necessitating changes to the permit. Regarding these latter kinds of permit changes (i.e., those not associated with a "modification") the EPA notes that the permit will continue to be governed by the site-specific rule (e.g., the caps must be consistent, or lower than, recent actual emissions, as discussed elsewhere in this document), and any resulting permit modification will occur only after stakeholder input during the five-year review process and will be judicially reviewable. As explained above, the EPA believes the level of stakeholder involvement in the Merck project is unprecedented in its scope and detail.

It is important to realize that any permit changes agreed to by the signatories must be processed by the permitting authority according to the required permit modification procedures. For the vast majority of changes (i.e., except those changes defined as administrative), the permitting authority is required to provide 30 days of public comment and an opportunity for public hearing. See 40 CFR 52.2454 (m) and (n). Thus, any member of the public will have a full opportunity to comment on any non-administrative changes agreed to by the signatories. It is the permitting authority's responsibility to fully evaluate and respond to any public comments received on proposed permit changes. If the permitting authority determines that there is an inadequate basis for a proposed permit change, based on additional information received through public comments, the permitting authority may decide not to go forward with a particular permit change. This would be the permitting authority's decision to make, independent of the signatories. In this circumstance, the signatories could decide to reevaluate the proposed permit change and attempt to address the public comments and could request the permitting authority to re-propose the permit change. In addition, nothing in this rulemaking or the permit would limit a citizen's rights to judicial review of any final action taken by the permitting authority.

EPA believes that stakeholders, and other members of the public, are assured substantial rights in the event a permit modification is considered. Any significant modification would have to undergo public notice and comment, and would be subject to judicial review. Moreover, any decision to approve a modification would have to be supported by an administrative record, and stakeholders will have the opportunity, even prior to the formal notice and comment process, to submit information that might indicate that a modification was unwarranted. EPA has consistently made clear that in Project XL it is highly unlikely to take an action that does not have broad stakeholder support. In light of these protections, EPA does not believe it is necessary for the non-signatory stakeholders to have a formal veto. EPA believes that what is more important than vetoing changes proposed by others is the ability of the stakeholders and the public to propose changes when they believe the existing permit is not satisfactory. EPA believes the five-year review process will provide such an opportunity. Outside Project XL, no such opportunity would typically exist under a PSD permit.

Based on the public comments, EPA understands that one of the significant concerns of environmental groups and citizens is the possibility that the emissions caps will be raised in the future. The site-specific rule requires emissions caps to be established based on the site's actual emissions during a time period, within five years of permit issuance, which represents normal source operation, or a different time period if it is more representative of normal source operation. Reductions to the initial caps are required after the powerhouse conversion. Thus, the emissions caps generally could not be raised above these levels under this rule. The site-specific rule would need to be revised in the future to authorize any increase in the emissions caps that is not already provided for in the rule or permit. For example, the permit provides that the emission caps may be increased in the following circumstances, which are primarily technical corrections: (1) The emissions caps may be adjusted to account for changes in emission factors which require a recalculation of the emissions baseline (i.e., to ensure an "apples to apples" comparison of current actual emissions to the emissions cap); and (2) the PM_{10} emissions cap may be increased to account for the quantity of condensable PM_{10} from the new powerhouse. These changes in emissions caps would not require a revision to the site-specific rule, since they are already authorized by the rule and proposed permit. However, if the signatories contemplate increases to the emissions caps for other reasons in the future, the site-specific rule would first have to be revised to authorize the cap increase. As part of the docket for such a rulemaking change, EPA would intend to ensure that an appropriate technical demonstration is conducted which justifies both the need for and the environmental impacts of the proposed emissions increases. EPA notes that any further decreases to the emissions caps (other than those already provided for in the permit) would require a revision of the permit, but not a revision of the site-specific rule.

EPA recognizes its responsibility to ensure meaningful participation in the stakeholder process, and will make every effort to accommodate the needs of stakeholders during the five-year permit reviews. EPA will make available its own technical expertise to respond to questions and concerns raised by the stakeholders. EPA also expects Merck to continue to provide assistance in understanding and evaluating technical issues. During the development of the Merck XL project, Merck made several technical presentations to the stakeholder group about various aspects of the project, including emissions calculation methodologies and how certain regulatory requirements affect the facility. Merck also hired a technical consultant to answer the stakeholders' questions about the impacts of potential VOC emissions on ozone formation. EPA expects that, as needed, Merck will continue to provide pertinent technical information to the stakeholders during the five-year review periods. Further, EPA hopes that Rockingham County will continue to seek technical advice and assistance during the five-year reviews, as it did during the initial project development. Rockingham County employed a consultant from James Madison University to review the proposed XL project and make recommendations to the County. A County official commented that the consultant had a very good understanding of the process and the documentation provided. The County stated that the consultant recommended that the County support the project. The County's consultation with technical advisors can be a very effective way of addressing the technical assistance needs identified by the community.

EPA offered guidance on its ability to support technical assistance in a **Federal Register** Notice on Modifications to Project XL. See 62 FR 19872 (April 23, 1997). EPA recognizes that, in some cases, there will be a need for the Agency to offer some additional support for technical assistance to the "direct participant" stakeholder group.[11] The Agency has committed to provide up to $25,000 per project over the next few years in order to assure that necessary technical assistance is available to support meaningful stakeholder involvement. As EPA explained in the April 23, 1997 **Federal Register** notice, EPA plans to make these funds available on a task-specific basis and funds will not be in the form of grants to stakeholder groups. EPA has issued a solicitation for proposals from not-for-profit and academic institutions to manage and operate a technical assistance program for Project XL stakeholders. The April 23, 1997 **Federal Register** notice explains additional qualifications on the use of this technical assistance. For example, technical assistance funds are not available to address strictly individual needs, but rather, needs for technical assistance must be identified and requested by the direct participant stakeholder group as a whole. For the Merck XL project, EPA fully intends to pursue making available similar resources at the time of the five-year periodic reviews to provide the technical assistance necessary to ensure a meaningful stakeholder process.

EPA agrees that the stakeholder process for five-year permit reviews could be enhanced by the use of a neutral facilitator and establishment of ground rules. However, EPA believes that these process decisions should be made by the entire stakeholder group at the outset of each five-year review. At the outset of the permit review process, EPA encourages the Merck XL stakeholder group to discuss the need for a neutral facilitator, and to establish a set of ground rules designed to guide the process and help ensure common expectations.

V. Administrative Requirements

A. Effective Date

Pursuant to 5 U.S.C. 553(d)(3) and 42 U.S.C. 6930(b)(3), EPA finds that good cause exists to make this rule effective immediately. The Merck & Co., Inc. Stonewall Plant is the only regulated entity affected by this rule. Merck has full notice of this site-specific rule, and is prepared to comply immediately with the permit to be issued expeditiously under the rule. Although EPA expects that the permit will not be issued for at least 30 days, an immediate effective date will allow the permitting process to proceed without delay.

B. Executive Order 12866

Because this rule only affects one facility, it is not a rule of general applicability and therefore not subject to OMB review under Executive Order 12866. In addition, OMB has agreed that reviews of site-specific rules under Project XL are not necessary.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because it only affects one source, the Merck Stonewall Plant, which is not a small entity. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

[10] See July 1, 1996 letter from the Merck XL community representatives to the County Administrator and Members of the Rockingham County Board of Supervisors (contained in the docket).

[11] In the April 23, 1997 **Federal Register** notice, "direct participants" are described as those stakeholder participants who work intensively with project sponsors during project development to build a project from the ground up.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

As noted above, this rule is limited to Merck's facility in Elkton, Virginia. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental Relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 60

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 264

Environmental protection, Air pollution control, Container, Control device, Hazardous waste, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Tank, Treatment storage and disposal facility, Waste determination.

40 CFR Part 265

Environmental protection, Air pollution control, Container, Control device, Hazardous waste, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Tank, Treatment storage and disposal facility, Waste determination.

Dated: September 30, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble of this rule, parts 52, 60, 264 and 265 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Subpart VV is amended by adding a new § 52.2454 to read as follows:

§ 52.2454 Prevention of significant deterioration of air quality for Merck & Co., Inc.'s Stonewall Plant in Elkton, VA.

(a) *Applicability.* (1) This section applies only to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, in Elkton, Virginia ("site").

(2) This section sets forth the prevention of significant deterioration of air quality preconstruction review requirements for the following pollutants only: carbon monoxide, nitrogen oxides, ozone (using volatile organic compounds as surrogate), particulate matter with an aerodynamic diameter less than 10 microns (PM_{10}), and sulfur dioxide. This section applies in lieu of § 52.21 for the pollutants identified in this paragraph as well as particulate matter, but not for particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 microns ($PM_{2.5}$) regulated as $PM_{2.5}$; however, the preconstruction review requirements of § 52.21, or other preconstruction review requirements that the Administrator approves as part of the plan, shall remain in effect for any pollutant which is not specifically identified in this paragraph and is subject to regulation under the Act.

(b) *Definitions.* For the purposes of this section:

12-month rolling total for an individual pollutant or the total criteria pollutants, as specified in paragraph (d) of this section, is calculated on a monthly basis as the sum of all actual emissions of the respective pollutant(s) from the previous 12 months.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

Completion of the powerhouse conversion means the date upon which the new boilers, installed pursuant to paragraph (g) of this section, are operational. This determination shall be made by the site based on the boiler manufacturer's installation, startup and shakedown specifications.

Permitting authority means either of the following:

(1) The Administrator, in the case of an EPA-implemented program; or

(2) The State air pollution control agency, or other agency delegated by the Administrator, pursuant to paragraph (o) of this section, to carry out this permit program.

Process unit means:

(1) Manufacturing equipment assembled to produce a single intermediate or final product; and

(2) Any combustion device.

Responsible official means:

(1) The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the business entity; or

(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity.

Site means the contiguous property at Route 340 South, Elkton, Virginia, under common control by Merck & Co., Inc., and its successors in ownership, known as the Stonewall site.

(c) *Authority to issue permit.* The permitting authority may issue to the site a permit which complies with the requirements of paragraphs (d) through (n) of this section. The Administrator may delegate, in whole or in part, pursuant to paragraph (o) of this section, the authority to administer the requirements of this section to a State air pollution control agency, or other agency authorized by the Administrator.

(d) *Site-wide emissions caps.* The permit shall establish site-wide emissions caps as provided in this paragraph.

(1) *Initial site-wide emissions caps.* The initial site-wide emissions caps shall be based on the site's actual emissions during a time period, within five years of the date of permit issuance, which represents normal site operation. The permitting authority may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual site-wide emissions shall be calculated using the actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(i) *Total criteria pollutant emissions cap.* The permit shall establish a total criteria pollutant emissions cap (total emissions cap). The criteria pollutants included in the total emissions cap are the following: carbon monoxide, nitrogen oxides, ozone (using volatile organic compounds as surrogate), particulate matter with an aerodynamic diameter less than 10 microns, and sulfur dioxide.

(ii) *Individual pollutant caps.* The permit shall establish individual pollutant caps for sulfur dioxide, nitrogen oxides and PM_{10}.

(2) *Adjustments to the site-wide emissions caps.* (i) The permit shall require that upon completion of the powerhouse conversion, the site shall reduce the site-wide emissions caps as follows:

(A) The total emissions cap shall be reduced by 20 percent from the initial site-wide emissions cap established pursuant to paragraph (d)(1)(i) of this section.

(B) The sulfur dioxide cap shall be reduced by 25 percent from the initial site-wide emissions cap established pursuant to paragraph (d)(1)(ii) of this section.

(C) The nitrogen oxide cap shall be reduced by 10 percent from the initial site-wide emissions cap established pursuant to paragraph (d)(1)(ii) of this section.

(ii) The permit may specify other reasons for adjustment of the site-wide emissions caps.

(e) *Operating under the site-wide emissions caps.* (1) The permit shall require that the site's actual emissions of criteria pollutants shall not exceed the total emissions cap established pursuant to paragraph (d) of this section.

(2) The permit shall require that the site's actual emissions of sulfur dioxide, nitrogen oxides and PM_{10} shall not exceed the respective individual pollutant cap established pursuant to paragraph (d) of this section.

(3) Compliance with the total emissions cap and individual pollutant caps shall be determined by comparing the respective cap to the 12-month rolling total for that cap. Compliance with the total emissions cap and individual pollutant caps shall be determined within one month of the end of each month based on the prior 12 months. The permit shall set forth the emission calculation techniques which the site shall use to calculate site-wide actual criteria pollutant emissions.

(4) *Installation of controls for significant modifications and significant new installations.* (i) This paragraph applies to significant modifications and significant new installations. Significant modifications for the purposes of this section are defined as changes to an existing process unit that result in an increase of the potential emissions of the process unit, after consideration of existing controls, of more than the significance levels listed in paragraph (e)(4)(ii) of this section. Significant new installations for the purposes of this section are defined as new process units with potential emissions before controls that exceed the significance levels listed in paragraph (e)(4)(ii) of this section. For purposes of this section, potential emissions means process unit point source emissions that would be generated by the process unit operating at its maximum capacity.

(ii) The significance levels for determining significant modifications and significant new installations are: 100 tons per year of carbon monoxide; 40 tons per year of nitrogen oxides; 40 tons per year of sulfur dioxide; 40 tons per year of volatile organic compounds; and 15 tons per year of PM_{10}.

(iii) For any significant modification or significant new installation, the permit shall require that the site install, at the process unit, emission controls, pollution prevention or other technology that represents good environmental engineering practice in the pharmaceutical or batch processing industry, based on the emission characteristics (such as flow, variability, pollutant properties) of the process unit.

(f) *Operation of control equipment.* The permit shall require that the site shall continue to operate the emissions control equipment that was previously subject to permit requirements at the time of issuance of a permit pursuant to this section. This equipment shall be operated in a manner which minimizes emissions, considering the technical and physical operational aspects of the equipment and associated processes. This operation shall include an operation and maintenance program based on manufacturers' specifications and good engineering practice.

(g) *Powerhouse conversion.* The permit shall require that the site convert the steam-generating powerhouse from burning coal as the primary fuel to burning natural gas as the primary fuel and either No. 2 fuel oil or propane as backup fuel.

(1) The new boilers shall be equipped with low nitrogen oxides technology.

(2) The site shall complete the powerhouse conversion (completion of the powerhouse conversion) no later than 30 months after the effective date of the permit.

(h) *Monitoring, recordkeeping and reporting.* (1) The permit shall set forth monitoring, recordkeeping, and reporting requirements sufficient to demonstrate compliance with the site-wide emissions caps. The monitoring, recordkeeping and reporting requirements shall be structured in a tiered system, such that the requirements become more stringent as the site's emissions approach the total emissions cap.

(2) At a minimum, the permit shall require that the site submit to the permitting authority semi-annual reports of the site-wide criteria pollutant emissions (expressed as a 12-month rolling total) for each month covered by the report. These reports shall include a calculation of the total emissions cap, as well as, the emissions of sulfur dioxide, nitrogen oxides, carbon monoxide, volatile organic compounds and PM_{10}.

(3) Any reports required by the permit to be submitted on an annual or semi-annual basis shall contain a certification by the site's responsible official that to his belief, based on reasonable inquiry, the information submitted in the report is true, accurate, and complete.

(4) Any records required by the permit shall be retained on site for at least five years.

(i) *Air quality analysis.* The permittee shall demonstrate, prior to permit issuance and on a periodic basis which shall be specified in the permit, that emissions from construction or operation of the site will not cause or contribute to air pollution in excess of any:

(1) maximum allowable increase or maximum allowable concentration for any pollutant, pursuant to section 165 of the Act;

(2) National ambient air quality standard or;

(3) Other applicable emission standard or standard of performance under the Act.

(j) *Termination.* (1) The permit may be terminated as provided in this paragraph for reasons which shall include the following, as well as any other termination provisions specified in the permit:

(i) If the Administrator or the permitting authority determines that continuation of the permit is an

imminent and substantial endangerment to public health or welfare, or the environment;

(ii) If the permittee knowingly falsifies emissions data;

(iii) If the permittee fails to implement the powerhouse conversion pursuant to paragraph (g) of this section;

(iv) If the permittee receives four consent orders or two judgments adverse to the site arising from non-compliance with this permit in a five year period that are deemed material by the Administrator or the permitting authority; or

(v) If the total emissions cap is exceeded.

(2) In the event of termination, the Administrator or the permitting authority shall provide the permittee with written notice of its intent to terminate the permit. Within 30 calendar days of the site's receipt of this notice, the site may take corrective action to remedy the cause of the termination. If this remedy, which may include a corrective action plan and schedule, is deemed acceptable by the Administrator or the permitting authority (whichever agency provided written notice of its intent to terminate the permit), the action to terminate the permit shall be withdrawn. Otherwise, the permit shall be terminated in accordance with procedures specified in the permit.

(3) Termination of the permit does not waive the site's obligation to complete any corrective actions relating to non-compliance under the permit.

(k) *Inspection and entry.* (1) Upon presentation of credentials and other documents as may be required by law, the site shall allow authorized representatives of the Administrator and the permitting authority to perform the following:

(i) Enter upon the site;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Have access at reasonable times to batch and other plant records needed to verify emissions.

(iv) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations required under the permit;

(v) Sample or monitor any substances or parameters at any location, during operating hours, for the purpose of assuring permit compliance or as otherwise authorized by the Act.

(2) No person shall obstruct, hamper, or interfere with any such authorized representative while in the process of carrying out his official duties. Refusal of entry or access may constitute grounds for permit violation and assessment of civil penalties.

(3) Such site, facility and equipment access, and sampling and monitoring shall be subject to the site's safety and industrial hygiene procedures, and Food and Drug Administration Good Manufacturing Practice requirements (21 CFR parts 210 and 211) in force at the site.

(l) *Transfer of ownership.* The terms of the permit are transferable to a new owner upon sale of the site, in accordance with provisions specified by the permit.

(m) *Permit issuance.* The permitting authority shall provide for public participation prior to issuing a permit pursuant to this section. At a minimum, the permitting authority shall:

(1) Make available for public inspection, in at least one location in the area of the site, the information submitted by the permittee, the permitting authority's analysis of the effect on air quality including the preliminary determination, and a copy or summary of any other materials considered in making the preliminary determination;

(2) Notify the public, by advertisement in a newspaper of general circulation in the area of the site, of the application, the preliminary determination, and of the opportunity for comment at a public hearing as well as written public comment;

(3) Provide a 30-day period for submittal of public comment;

(4) Send a copy of the notice of public comment to the following: the Administrator, through the appropriate Regional Office; any other State or local air pollution control agencies, the chief executives of the city and county where the site is located; any State, Federal Land Manager, or other governing body whose lands may be affected by emissions from the site.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the site, the control technology required, and other appropriate considerations.

(n) *Permit modifications.* The permit shall specify the conditions under which the permit may be modified by the permitting authority. The permitting authority shall modify the permit in accordance with the procedures set forth in this paragraph.

(1) *Permit modifications that require public participation.* For any change that does not meet the criteria for an administrative permit modification established in paragraph (n)(2)(i) of this section, the permitting authority shall provide an opportunity for public participation, consistent with the provisions of paragraph (m) of this section, prior to processing the permit modification.

(2) *Administrative permit modification.* (i) An administrative permit modification is a permit revision that:

(A) Corrects typographical errors;

(B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the site;

(C) Requires more frequent monitoring, recordkeeping, or reporting by the permittee;

(D) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority.

(E) Updates the emission calculation methods specified in the permit, provided that the change does not also involve a change to any site-wide emissions cap.

(F) Changes the monitoring, recordkeeping or reporting requirements for equipment that has been shutdown or is no longer in service.

(G) Any other change that is stipulated in the permit as qualifying as an administrative permit modification, provided that the permit condition which includes such stipulation has already undergone public participation in accordance with paragraph (m) of this section.

(ii) An administrative permit modification may be made by the permitting authority consistent with the following procedures:

(A) The permitting authority shall take final action on any request for an administrative permit modification within 60 days from receipt of the request, and may incorporate such changes without providing notice to the public, provided that the permitting authority designates any such permit revisions as having been made pursuant to this paragraph.

(B) The permitting authority shall submit a copy of the revised permit to the Administrator.

(C) The site may implement the changes addressed in the request for an administrative permit modification immediately upon submittal of the request to the permitting authority.

(o) *Delegation of authority.* (1) The Administrator shall have the authority

to delegate the responsibility to implement this section in accordance with the provisions of this paragraph.

(2) Where the Administrator delegates the responsibility for implementing this section to any agency other than a Regional Office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the delegate agency is not an air pollution control agency, it shall consult with the appropriate State and local air pollution control agency prior to making any determination under this section. Similarly, where the delegate agency does not have continuing responsibility for managing land use, it shall consult with the appropriate State and local agency primarily responsible for managing land use prior to making any determination under this section.

(ii) The delegate agency shall send a copy of any public comment notice required under paragraph (n) of this section to the Administrator through the appropriate Regional Office.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 60.1 is amended by adding paragraph (d) to read as follows:

§ 60.1 Applicability.

* * * * *

(d) *Site-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia.* (1) This paragraph applies only to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, in Elkton, Virginia ("site").

(2) Except for compliance with 40 CFR 60.49b(u), the site shall have the option of either complying directly with the requirements of this part, or reducing the site-wide emissions caps in accordance with the procedures set forth in a permit issued pursuant to 40 CFR 52.2454. If the site chooses the option of reducing the site-wide emissions caps in accordance with the procedures set forth in such permit, the requirements of such permit shall apply in lieu of the otherwise applicable requirements of this part.

(3) Notwithstanding the provisions of paragraph (d)(2) of this section, for any provisions of this part except for Subpart Kb, the owner/operator of the site shall comply with the applicable provisions of this part if the Administrator determines that compliance with the provisions of this part is necessary for achieving the objectives of the regulation and the Administrator notifies the site in accordance with the provisions of the permit issued pursuant to 40 CFR 52.2454.

3. Section 60.49b is amended by adding paragraph (u) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(u) *Site-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia.*

(1) This paragraph applies only to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, in Elkton, Virginia ("site") and only to the natural gas-fired boilers installed as part of the powerhouse conversion required pursuant to 40 CFR 52.2454(g). The requirements of this paragraph shall apply, and the requirements of §§ 60.40b through 60.49b(t) shall not apply, to the natural gas-fired boilers installed pursuant to 40 CFR 52.2454(g).

(i) The site shall equip the natural gas-fired boilers with low nitrogen oxide (NO_x) technology.

(ii) The site shall install, calibrate, maintain, and operate a continuous monitoring and recording system for measuring NO_x emissions discharged to the atmosphere and opacity using a continuous emissions monitoring system or a predictive emissions monitoring system.

(iii) Within 180 days of the completion of the powerhouse conversion, as required by 40 CFR 52.2454, the site shall perform a stack test to quantify criteria pollutant emissions.

(2) [Reserved].

4. Section 60.112b is amended by adding paragraph (c), to read as follows:

§ 60.112b Standard for volatile organic compounds (VOC).

* * * * *

(c) *Site-specific standard for Merck & Co., Inc.'s Stonewall Plant in Elkton, Virginia.* This paragraph applies only to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, in Elkton, Virginia ("site").

(1) For any storage vessel that otherwise would be subject to the control technology requirements of paragraphs (a) or (b) of this section, the site shall have the option of either complying directly with the requirements of this subpart, or reducing the site-wide total criteria pollutant emissions cap (total emissions cap) in accordance with the procedures set forth in a permit issued pursuant to 40 CFR 52.2454. If the site chooses the option of reducing the total emissions cap in accordance with the procedures set forth in such permit, the requirements of such permit shall apply in lieu of the otherwise applicable requirements of this subpart for such storage vessel.

(2) For any storage vessel at the site not subject to the requirements of 40 CFR 60.112b (a) or (b), the requirements of 40 CFR 60.116b (b) and (c) and the General Provisions (Subpart A of this part) shall not apply.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart AA—[Amended]

2. Section 264.1030 is amended by adding paragraph (d) to read as follows:

§ 264.1030 Applicability.

* * * * *

(d) The requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

Subpart BB—[Amended]

3. Section 264.1050 is amended by adding paragraph (g) to read as follows:

§ 264.1050 Applicability.

* * * * *

(g) The requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

Subpart CC—[Amended]

4. Section 264.1080 is amended by adding paragraph (e) to read as follows:

§ 264.1080 Applicability.

* * * * *

(e)(1) Except as provided in paragraph (e)(2) of this section, the requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

(2) Notwithstanding paragraph (e)(1) of this section, any hazardous waste surface impoundment operated at the Stonewall Plant is subject to:

(i) The standards in § 264.1085 and all requirements related to hazardous waste surface impoundments that are referenced in or by § 264.1085, including the closed-vent system and control device requirements of § 264.1087 and the recordkeeping requirements of § 264.1089(c); and

(ii) The reporting requirements of § 264.1090 that are applicable to surface impoundments and/or to closed-vent systems and control devices associated with a surface impoundment.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

Subpart AA—[Amended]

2. Section 265.1030 is amended by adding paragraph (c) to read as follows:

§ 265.1030 Applicability.

* * * * *

(c) The requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

Subpart BB—[Amended]

3. Section 265.1050 is amended by adding paragraph (f) to read as follows:

§ 265.1050 Applicability.

* * * * *

(f) The requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

Subpart CC—[Amended]

4. Section 265.1080 is amended by adding paragraph (e) to read as follows:

§ 265.1080 Applicability.

* * * * *

(e)(1) Except as provided in paragraph (e)(2) of this section, the requirements of this subpart do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued pursuant to 40 CFR 52.2454. The requirements of this subpart shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

(2) Notwithstanding paragraph (e)(1) of this section, any hazardous waste surface impoundment operated at the Stonewall Plant is subject to the standards in § 265.1086 and all requirements related to hazardous waste surface impoundments that are referenced in or by § 265.1086, including the closed-vent system and control device requirements of § 265.1088 and the recordkeeping requirements of § 265.1090(c).

[FR Doc. 97–26442 Filed 10–7–97; 8:45 am]
BILLING CODE 6560–50–P

federal register

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October 8, 1997

Part III

The President

Proclamation 7034—German-American Day, 1997
Presidential Determination 97–35 of September 26, 1997—Presidential Determination on Classsified Information Concerning the Air Force's Operating Location Near Groom Lake, NV

Federal Register
Vol. 62, No. 195
Wednesday, October 8, 1997

Presidential Documents

Title 3—

The President

Proclamation 7034 of October 6, 1997

German-American Day, 1997

By the President of the United States of America

A Proclamation

America has always drawn its strength from the millions of people who have come here in search of freedom and the opportunity to live out their dreams. Men and women of different nationalities, different races, and different religions have made their own rich and unique contributions to our national life.

From their arrival at Jamestown in 1607 until the present day, Germans have been among the largest ethnic groups to make their home in our country. Like so many others, the earliest German settlements in America were founded by men and women in search of religious liberty. William Penn invited a group of German Mennonites to Pennsylvania, which was to remain a center of German settlement during the Colonial period. Other German communities were founded in New Jersey and New York, as well as in Virginia's Shenandoah Valley, the Carolinas, and Georgia. In the 19th century, German pioneers began to settle in the Midwest and West, and today a quarter of our Nation's population can trace its ancestry to German origins.

Germans and German Americans have profoundly influenced every facet of American life. Great soldiers, such as General Baron von Steuben in our Revolutionary War and General Norman Schwarzkopf in the Gulf War, have fought to preserve our freedom and defend America's interests. Scientists such as Albert Einstein and Wernher von Braun have immeasurably broadened our horizons, as have artists like Albert Bierstadt, Josef Albers, Ernestine Schumann-Heink, Lillian Blauvelt, and Paul Hindemith. And generations of German Americans, with their energy, creativity, and strong work ethic, have enriched the economic and commercial life of the United States. All Americans have benefited greatly from the labor, leadership, talents, and vision of Germans and German Americans, and it is fitting that we set aside this special day to acknowledge their many contributions to our liberty, culture, and democracy.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, October 6, 1997, as German-American Day. I encourage all Americans to recognize and celebrate the many gifts that millions of people of German ancestry have brought to our national life.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–26989
Filed 10–7–97; 10:47 am]
Billing code 3195–01–P

Presidential Documents

Presidential Determination No. 97–35 of September 26, 1997

Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada (the subject of litigation in *Kasza* v. *Browner* (D. Nev. CV–S–94–795–PMP) and *Frost* v. *Perry* (D. Nev. CV–S–94–714–PMP)), from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 26, 1997.

[FR Doc. 97–26966
Filed 10–7–97; 10:31 am]
Billing code 3910–01–M

federal register

Wednesday
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Part IV

Department of State

Designation of Foreign Terrorist Organizations; Notice

DEPARTMENT OF STATE

Office of the Coordinator for Counterterrorism

[Public Notice 2612]

Designation of Foreign Terrorist Organizations

AGENCY: Department of State.

ACTION: Designation of Foreign Terrorist Organizations.

Pursuant to Section 219 of the Immigration and Nationality Act ("INA"), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, 110 Stat. 3009 (1996), I hereby designate, effective October 8, 1997, the following organizations as foreign terrorist organizations:

Abu Nidal Organization

also known as the ANO, also known as Black September, also known as Fatah Revolutionary Council, also known as the Arab Revolutionary Council, also known as the Arab Revolutionary Brigades, also known as the Revolutionary Organization of Socialist Muslims

Abu Sayyaf Group

also known as Al Harakat Al Islamiyya

Armed Islamic Group

also known as GIA, also known as Groupement Islamique Arme, also known as AIG, also known as Al-Jama'ah al-Islamiyah al-Musallah

Aum Shinrikyo

also known as Aum Supreme Truth, also known as A.I.C. Sogo Kenkyusho, also known as A.I.C. Comprehensive Research Institute

Democratic Front for the Liberation of Palestine-Hawatmeh Faction

also known as the Democratic Front for the Liberation of Palestine, also known as the DFLP, also known as the Red Star Forces, also known as the Red Star Battalions

Euzkadi Ta Askatasuna

also known as Basque Fatherland and Liberty, also known as ETA

Gama'a al-Islamiyya

also known as the Islamic Group, also known as IG, also known as al-Gama'at, also known as Islamic Gama'at, also known as Egyptian al-Gama'at al-Islamiyya

HAMAS

also known as the Islamic Resistance Movement, also known as Harakat al-Muqawama al-Islamiya, also known as Students of Ayyash, also known as Students of the Engineer, also known as Yahya Ayyash Units, also known as Izz Al-Din Al-Qassim Brigades, also known as Izz Al-Din Al-Qassim Forces, also known as Izz Al-Din Al-Qassim Battalions, also known as Izz al-Din Al Qassam Brigades, also known as Izz al-Din Al Qassam Forces, also known as Izz al-Din Al Qassam Battalions

Harakat ul-Ansar

also known as HUA, also known as al-Hadid, also known as al-Hadith, also known as al-Faran

Hizballah

also known as Party of God, also known as Islamic Jihad; also known as Islamic Jihad Organization; also known as Revolutionary Justice Organization, also known as Organization of the Oppressed on Earth, also known as Islamic Jihad for the Liberation of Palestine, also known as Organization of Right Against Wrong, also known as Ansar Allah, also known as Followers of the Prophet Muhammad

Japanese Red Army

also known as Nippon Sekigun, also known as Nihon Sekigun, also known as the Anti-Imperialist International Brigade, also known as the Holy War Brigade, also known as the Anti-War Democratic Front, also known as the JRA, also known as the AIIB

al-Jihad

also known as Egyptian al-Jihad, also known as Vanguards of Conquest, also known as Vanguards of Victory, also known as Talai'i al-Fath, also known as Tala'ah al-Fatah, also known as Tala'al al-Fateh, also known as Tala' al-Fateh, also known as Talaah al-Fatah, also known as Tala'al-Fateh, also known as New Jihad, also known as Egyptian Islamic Jihad, also known as Jihad Group

Kach

also known as the Repression of Traitors, also known as Dikuy Bogdim, also known as DOV, also known as the State of Judea, also known as the Committee for the Safety of the Roads, also known as the Sword of David, also known as Judea Police

Kahane Chai

also known as Kahane Lives, also known as the Kfar Tapuah Fund, also known as The Judean Voice

Khmer Rouge

also known as the Party of Democratic Kampuchea, also known as the National Army of Democratic Kampuchea

Kurdistan Workers' Party

also known as the PKK, also known as the Partiya Karkeran Kurdistan

Liberation Tigers of Tamil Eelam

also known as LTTE, also known as Tamil Tigers, also known as Ellalan Force

Manuel Rodriguez Patriotic Front Dissidents

also known as the FPMR/D, also known as the Frente Patriotico Manuel Rodriguez—Autonomos, also known as the FPMR/A, also known as the Manuel Rodriguez Patriotic Front; also known as the Frente Patriotico Manuel Rodriguez, also known as the FPMR

Mujahedin-e Khalq Organization

also known as MEK, also known as MKO, also known as Mujahedin-e Khalq, also known as People's Mujahedin Organization of Iran, also known as PMOI, also known as Organization of the People's Holy Warriors of Iran, also known as Sazeman-e Mujahedin-e Khalq-e Iran

National Liberation Army

also known as the ELN, also known as the Ejercito de Liberacion Nacional

Palestine Islamic Jihad-Shaqaqi Faction

also known as PIJ-Shaqaqi Faction, also known as PIJ, also known as Islamic Jihad in Palestine, also known as Islamic Jihad of Palestine, also known as Abu Ghunaym Squad of the Hizballah Bayt Al-Maqdis

Palestine Liberation Front—Abu Abbas Faction

also known as the Palestine Liberation Front, also known as the PLF, also known as the PLF-Abu Abbas

Popular Front for the Liberation of Palestine

also known as the PFLP, also known as the Red Eagles, also known as the Red Eagle Group, also known as the Red Eagle Gang, also known as the Halhul Gang, also known as the Halhul Squad

Popular Front for the Liberation of Palestine—General Command

also known as PFLP-GC

Revolutionary Armed Forces of Colombia

also known as FARC, also known as Fuerzas Armadas Revolucionarias de Colombia

Revolutionary Organization 17 November

also known as 17 November, also known as Epanastatiki Organosi 17 Noemvri

Revolutionary People's Liberation Party/Front

also known as Devrimci Halk Kurtulus Partisi-Cephesi, also known as the DHKP/C, also known as Devrimci Sol, also known as Revolutionary Left, also known as Dev Sol, also known as Dev Sol Silahli Devrimci Birlikleri, also known as Dev Sol SDB, also known as Dev Sol Armed Revolutionary Units

Revolutionary People's Struggle

also known as Epanastatikos Laikos Agonas, also known as ELA, also known as Revolutionary Popular Struggle, also known as Popular Revolutionary Struggle

Shining Path

also known in Spanish as Sendero Luminoso, also known as SL, also known as the Partido Comunista del Peru en el Sendero Luminoso de Jose Carlos Mariategui (Communist Party of Peru on the Shining Path of Jose Carlos Mariategui), also known as Partido Comunista del Peru (Communist Party of Peru), also known as PCP, also known as Socorro Popular del Peru (People's Aid of Peru), also known as SPP, also known as Ejercito Guerrillero Popular (People's Guerrilla Army), also known as EGP, also known as Ejercito Popular de Liberacion (People's Liberation Army), also known as the EPL

Tupac Amaru Revolutionary Movement

also known as the Movimiento Revolucionario Tupac Amaru, also known as the MRTA

I further direct that these designations be published in the **Federal Register** on October 8, 1997, as required by section 219(a)(2)(A)(ii) of the INA.

Dated: October 2, 1997.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 97–27030 Filed 10–7–97; 5:00 pm]

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H.R. 111/P.L. 105–49
To provide for the conveyance of a parcel of unused agricultural land in Dos Palos, California, to the Dos Palos Ag Boosters for use as a farm school. (Oct. 6, 1997; 111 Stat. 1166)

H.R. 680/P.L. 105–50
To amend the Federal Property and Administrative Services Act of 1949 to authorize the transfer of surplus personal property to States for donation to nonprofit providers of necessaries to impoverished families and individuals, and to authorize the transfer of surplus real property to States, political subdivisions and instrumentalities of States, and nonprofit organizations for providing housing or housing assistance for low-income individuals or families. (Oct. 6, 1997; 111 Stat. 1167)

H.R. 2248/P.L. 105–51
To authorize the President to award a gold medal on behalf of the Congress to Ecumenical Patriarch Bartholomew in recognition of his outstanding and enduring contributions toward religious understanding and peace, and for other purposes. (Oct. 6, 1997; 111 Stat. 1170)

H.R. 2443/P.L. 105–52
To designate the Federal building located at 601 Fourth Street, NW., in the District of Columbia, as the "Federal Bureau of Investigation, Washington Field Office Memorial Building", in honor of William H. Christian, Jr., Martha Dixon Martinez, Michael J. Miller, Anthony Palmisano, and Edwin R. Woodriffe. (Oct. 6, 1997; 111 Stat. 1172)

S. 996/P.L. 105–53
To provide for the authorization of appropriations in each fiscal year for arbitration in United States district courts, and for other purposes. (Oct. 6, 1997; 111 Stat. 1173)

S. 1198/P.L. 105–54
To amend the Immigration and Nationality Act to extend the special immigrant religious worker program, to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to extend the deadline for designation of an effective date for paperwork changes in the employer sanctions program, and to require the Secretary of State to waive or reduce the fee for application and issuance of a nonimmigrant visa for aliens coming to the United States for certain charitable purposes. (Oct. 6, 1997; 111 Stat. 1175)

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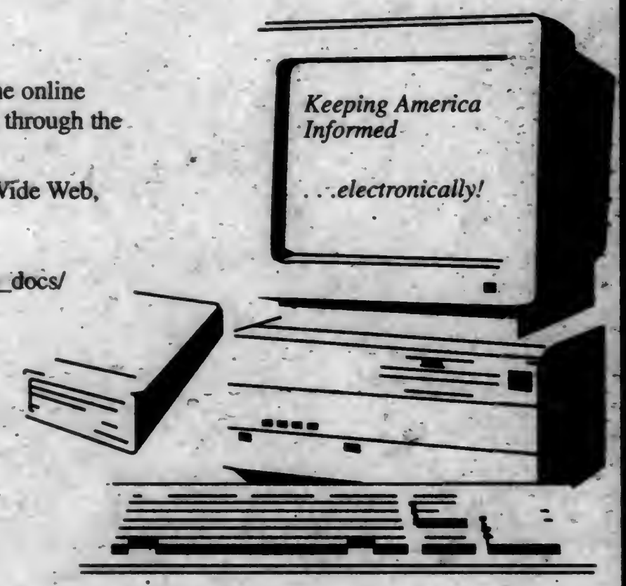
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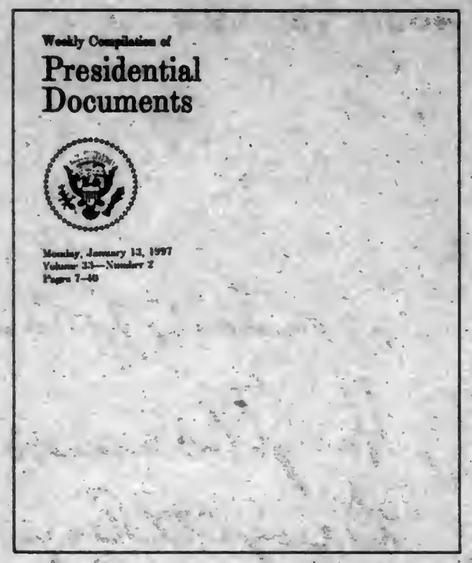
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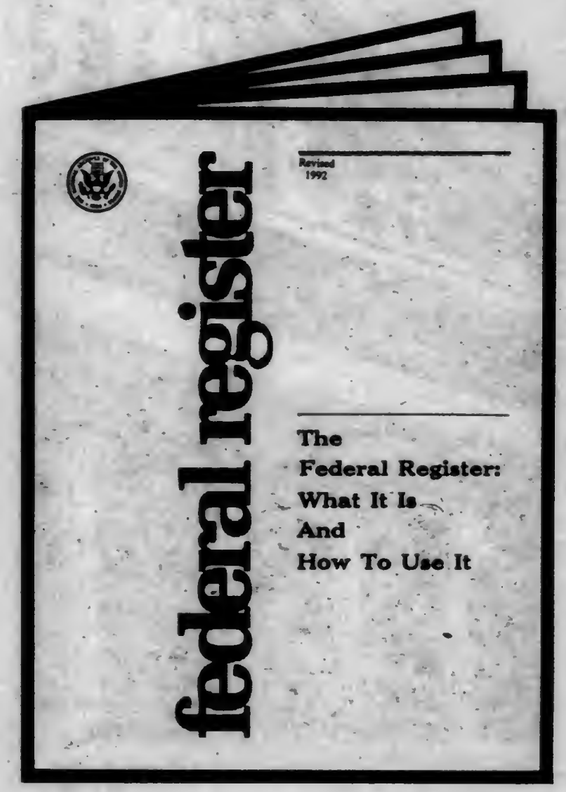
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Federal Register
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Thursday, October 9, 1997

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–24–AD; Amendment 39–10152; AD 97–15–16]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 97–15–16, which was sent previously to all known U.S. owners and operators of BHTC Model 430 helicopters by individual letters. This AD requires inspections of all 4 main rotor adapter assemblies for evidence of flapping contact between the adapter liners and the upper stop assembly plugs, and for evidence of lead-lag contact between the adapter pads and the yoke assembly; installing a never-exceed-velocity (VNE) placard; marking the airspeed indicator to reflect the airspeed restriction; installing a slippage mark on the airspeed indicator glass and instrument case; and inserting revisions to the rotorcraft flight manual to reflect the airspeed revision. This amendment is prompted by a report of a main rotor tip path plane separation, which occurred during a ferry flight at an airspeed of more than 140 knots indicated airspeed (KIAS). The actions specified by this AD are intended to prevent tip path plane separation, increased vibrations, possible damage to the main rotor system, and subsequent loss of control of the helicopter.

DATES: Effective October 24, 1997, to all persons except those persons to whom it was made immediately effective by priority letter AD 97–15–16, issued on July 18, 1997, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 24, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–SW–24–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Edmiston, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5158, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On July 18, 1997, the FAA issued priority letter AD 97–15–16, applicable to BHTC Model 430 helicopters, which requires inspections of all 4 main rotor adapter assemblies for evidence of flapping contact between the adapter liners and the upper stop assembly plugs, and for evidence of lead-lag contact between the adapter pads and the yoke assembly; installing a VNE placard; marking the airspeed indicator to reflect the airspeed restriction; installing a slippage mark on the airspeed indicator glass and instrument case; and inserting revisions to the rotorcraft flight manual to reflect the airspeed revision. That action was prompted by one report of a main rotor tip path plane separation, which occurred during a ferry flight at an airspeed of more than 140 KIAS. The separation was observed from the cockpit and caused a vibration at a frequency near one per revolution. BHTC was able to reproduce a similar event on other Model 430 helicopters, and determined that the separation may occur at airspeeds above 120 KIAS. Therefore, flight at airspeeds above 120 KIAS is considered unsafe. This condition, if not corrected, could result in tip path plane separation, increased vibrations, possible damage to the main rotor system, and subsequent loss of control of the helicopter.

The FAA has reviewed Bell Helicopter Textron Alert Service Bulletin (ASB) No. 430–97–2, dated July 11, 1997, which describes inspections of all 4 main rotor adapter assemblies for evidence of flapping contact between the adapter liners and the upper stop assembly plugs; and, for evidence of lead-lag contact between the adapter pads and the yoke assembly. The ASB also describes further inspections if evidence of contact is found during either of those inspections. For helicopters equipped with skid landing gear, removing the existing VNE placard and installing a VNE placard, part number (P/N) 430–075–208–107, is required; and for helicopters equipped with retractable landing gear, removing the existing VNE placard and installing a VNE placard, P/N 430–075–208–109, is required. Finally, the ASB describes marking the airspeed indicators to reflect the airspeed restriction by adding to the instrument glass a red arc to indicate that airspeeds above 120 KIAS are prohibited; and inserting revisions to the rotorcraft flight manual that reflect this airspeed restriction.

Since the unsafe condition described is likely to exist or develop on other BHTC Model 430 helicopters of the same type design, the FAA issued priority letter AD 97–15–16 to prevent tip path plane separation, increased vibrations, possible damage to the main rotor system, and subsequent loss of control of the helicopter. The AD requires, before further flight, inspections of all 4 main rotor adapter assemblies for evidence of flapping contact between the adapter liners and the upper stop assembly plugs, and for evidence of lead-lag contact between the adapter pads and the yoke assembly. Flapping contact is indicated by scrubbing (or smudging) of the adapter liner surface, characteristic of relative motion between the surfaces of the adapter liners and upper stop assembly plugs. Lead-lag contact is indicated by

a permanent indentation or split in the surface of the adapter pads. Further inspections are required if evidence of contact is found during either of those inspections. For helicopters equipped with skid landing gear, this AD requires the removing the existing VNE placard and installing a VNE placard, P/N 430–075–208–107; and for helicopters equipped with retractable landing gear, removing the existing VNE placard and installing a VNE placard, P/N 430–075–208–109, is required. Finally, this AD requires marking each airspeed indicator to reflect the airspeed restriction by adding to the instrument glass a red arc to indicate that airspeeds above 120 KIAS are prohibited; installing a slippage mark on each airspeed indicator glass and instrument case; and inserting revisions to the rotorcraft flight manual that reflect the airspeed restriction. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 18, 1997 to all known U.S. owners and operators of BHTC Model 430 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report that summarizes each FAA-public contact concernedwith the substance of this AD will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–24–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the rules docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

97–15–16 Bell Helicopter Textron Canada: Amendment 39–10152. Docket No. 97–SW–24–AD.

Applicability: Model 430 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

To prevent tip path plane separation, increased vibrations, possible damage to the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect all 4 main rotor adapter assemblies for evidence of flapping contact between the adapter liners and the upper stop assembly plugs. Refer to Figures 1, 2, and 3 of the Accomplishment Instructions of Bell Helicopter

Textron Canada (BHTC) Alert Service Bulletin (ASB) No. 430–97–2, dated July 11, 1997. Flapping contact is indicated by scrubbing (or smudging) of the adapter liner surface, characteristic of relative motion between the surfaces of the adapter lines and upper stop assembly plugs.

(b) Inspect all 4 main rotor adapter assemblies for evidence of lead-lag contact between the adapter pads and the yoke assembly. Refer to Figures 1 and 2 of the Accomplishment Instructions of BHTC ASB No. 430–97–2, dated July 11, 1997. Lead-lag contact is indicated by a permanent indentation or split in the surface of the adapter pads.

(c) If the inspections in paragraphs (a) or (b) of this AD reveal that there has been contact, inspect and replace the main rotor yoke and stop assemblies in accordance with Part I, No. 3 of the Accomplishment Instructions of BHTC ASB No. 430–97–2, dated July 11, 1997.

(d) For helicopters equipped with skid landing gear or retractable landing gear, remove the existing never-exceed-velocity (VNE) placard from the overhead console and install VNE placard, P/N 430–075–208–107, or P/N 430–075–208–109, as applicable, in accordance with Part II, of the Accomplishment Instructions of BHTC ASB No. 430–97–2, dated July 11, 1997.

(e) Install on each airspeed indicator a red arc between 120 knots and 150 knots to indicate that airspeeds above 120 knots indicated airspeed are prohibited. Install a slippage mark on each airspeed indicator glass and instrument case.

(f) Insert the temporary revisions, BHT–430–FM–1 and BHT–430–FMS–1, as appropriate, both dated July 7, 1997, into the rotorcraft flight manual.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(h) Special flight permits will not be issued.

(i) The inspections and installations shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin (ASB) No. 430–97–2, dated July 11, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on October 24, 1997, to all persons except those persons to whom it was made immediately effective by priority letter AD 97–15–16, issued July 18, 1997, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on September 28, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–26623 Filed 10–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–15–AD; Amendment 39–10153; AD 97–20–16]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) (Eurocopter) Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Eurocopter Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, that currently requires initial and repetitive inspections of both surfaces of the tail boom vertical fin (vertical fin) spar, the skin, and the left-hand and right-hand frame sheets for cracks or loose rivets. This amendment requires the same initial and repetitive inspections of the vertical fin spar that are required by the existing AD, and also requires repairing certain cracks, if found, and repairing and reporting loose rivets and certain other cracks, if found. This amendment is prompted by an accident which occurred on April 15, 1997, resulting in one fatality. A subsequent investigation revealed that the vertical fin had failed as a result of a fatigue crack that initiated on the left side of the vertical fin spar cap. The actions specified by this AD are intended to prevent failure of the vertical fin and subsequent loss of control of the helicopter.

DATES: Effective October 24, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 24, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–15–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On April 25, 1997, the FAA issued priority letter AD 97–09–16, to require inspecting both surfaces of the vertical fin spar, part number (P/N) 105–304061.03, P/N 1120–30406.03, or P/N 117–30423–03, paying particular attention to the area extending from the top edge of the second lightening hole from the top of the vertical fin spar to the bottom edge of the fourth lightening hole, the outer skin (skin), and the left-hand and right-hand frame plates for cracks, loose rivets, or other anomalies. This inspection must be performed before further flight, then repeated at intervals not to exceed 100 hours time-in-service. That action was prompted by an accident involving a Eurocopter Model MBB–BK117 series helicopter, which occurred on April 15, 1997, resulting in one fatality. A subsequent investigation revealed that the vertical fin had failed as a result of a fatigue crack that initiated on the left side of the vertical fin spar cap. The crack propagated across the spar cap and spar web until only the skin was carrying the flight load. The skin then started cracking, with the crack propagating horizontally toward the vertical fin leading edge until catastrophic overstress occurred. Inspections of other helicopters of the same type design revealed cracks in the vertical fin spars of three additional helicopters. That condition, if not corrected, could result in failure of the vertical fin and subsequent loss of control of the helicopter.

Since the issuance of that AD, the manufacturer has developed repair procedures for the cracks, which were unavailable at the time of the release of the priority letter AD, and has issued Eurocopter Alert Service Bulletin MBB–BK117 No. ASB–MBB–BK117–30–106, Revision 3, dated May 5, 1997, which specifies repair procedures for the spar cap, as well as subsequent inspection requirements.

This helicopter model is manufactured in The Federal Republic of Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral

airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Luftahrt-Bundesamt (LBA) has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Model MBB–BK117 series helicopters of the same type design, this AD supersedes AD 97–09–16 to require inspecting both surfaces of the vertical fin spar, part number (P/N) 105–304061.03, P/N 1120–30406.03, or P/N 117–30423–03, paying particular attention to the area extending from the top edge of the third lightening hole from the top of the vertical fin spar to halfway between the fourth and fifth lightening hole (see Figure 1 for description of area to be inspected), the skin, and the left-hand and right-hand frame sheets for cracks or loose rivets. This inspection must be repeated at intervals not to exceed 100 hours time-in-service until the repair is accomplished. If a crack is found in the area of the fourth lightening hole of the vertical fin spar, including a crack in the cap or "c" channel area of the spar, or in the left-hand frame sheet, P/N 105–304161 or P/N 1120–30416, or in the right-hand frame sheet, P/N 105–304211 or P/N 1120–30421, before further flight, the crack must be repaired in accordance with the repair instructions that are an Appendix titled "Repair of BK117 Vertical Fin" to Eurocopter Alert Service Bulletin MBB–BK117 No. ASB–MBB–BK117–30–106, Revision 3, dated May 5, 1997. Thereafter, this AD requires that a visual inspection for cracks be performed at intervals not to exceed 300 hours TIS. If a crack or loose rivet is found in the area other than that described in paragraph (a) of this AD, including any crack that is found to extend into the skin, P/N 105–304011.18 or P/N 1120–30402.0, contact the Rotorcraft Standards Staff before further flight. Further evaluation is required before further flight. If no crack is found, the repetitive visual inspection for cracks is required at intervals not to exceed 100 hours TIS until the repair specified in the repair instruction is accomplished. The repair must be accomplished within 600 hours TIS after the accomplishment of the initial inspection. Thereafter, the repetitive visual inspections for cracks at intervals not to exceed 300 hours TIS are required. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–15–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–10153, to read as follows:

97–20–16 Eurocopter Deutschland GmbH (ECD): Amendment 39–10153. Docket No. 97–SW–15–AD. Supersedes priority letter AD 97–09–16.

Applicability: Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tail boom vertical fin (vertical fin) and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, remove the tail rotor drive shaft between the intermediate and tail rotor gearboxes and the yaw servo (if installed). Thoroughly clean the vertical fin spar and adjacent areas and visually inspect the following for cracks or loose rivets:

(1) Both surfaces of the vertical fin spar, part number (P/N) 105–304061.03, P/N 1120–30406.03, or P/N 117–30423–03, paying particular attention to the area extending from the top edge of the third lightening hole from the top of the vertical fin spar to halfway between the fourth and fifth lightening hole (see Figure 1).

(2) The skin and left-hand and right-hand frame sheets.

(b) If a crack or loose rivet is found in the area described in paragraph (a) of this AD (see Figure 1), before further flight, repair in accordance with the Appendix, "Repair of BK117 Vertical Fin", to Eurocopter Alert Service Bulletin MBB–BK117 No. ASB–MBB–BK117–30–106, Revision 3, dated May 5, 1997. Thereafter, perform the inspection described in paragraph (a) of this AD at intervals not to exceed 300 hours TIS.

(c) If a crack or lose rivet is found in the area other than that described in paragraph (a) of this AD, including any crack that is found to extend into the skin, P/N 105–304011.18 or P/N 1120–30402.08, before further flight, contact the Rotorcraft Standards Staff. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(d) If no crack or loose rivet is found as a result of the inspection required by paragraph (a) of this AD, thereafter, until the repair is made in accordance with the Appendix, "Repair of BK117 Vertical Fin", to Eurocopter Alert Service Bulletin MBB–BK117 No. ASB–MBB–BK117–30–106, Revision 3, dated May 5, 1997, conduct the visual inspection required by paragraph (a) of this AD at intervals not to exceed 100 hours TIS.

(e) Within 600 hours TIS after the effective date of this AD, accomplish the repair to the vertical fin in accordance with the Appendix, "Repair of BK117 Vertical Fin", to Eurocopter Alert Service Bulletin MBB–BK117 No. ASB–MBB–BK117–30–106, Revision 3, dated May 5, 1997. Thereafter, perform the visual inspection required by paragraph (a) of this AD at intervals not to exceed 300 hours TIS.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

BILLING CODE 4910–13–U

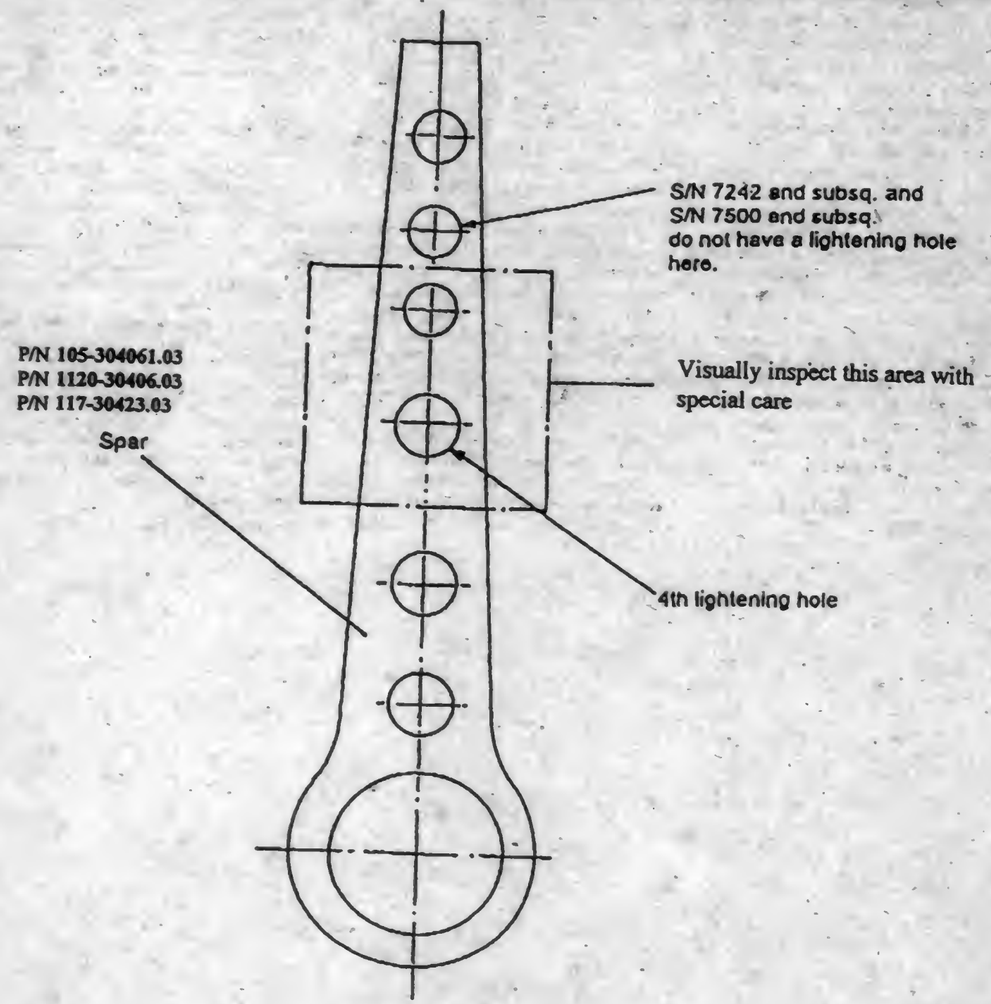


Figure 1

BILLING CODE 4910-13-C

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(g) Special flight permits will not be issued.

(h) The inspections and repair shall be done in accordance with Eurocopter Deutschland GmbH (ECD) Alert Service Bulletin ASB–MBB–BK117–30–106, Revision 3, dated May 5, 1997, including Appendix. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt (Germany) AD 97–144/2, dated June 5, 1997.

(i) This amendment becomes effective on October 24, 1997.

Issued in Fort Worth, Texas, on September 26, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–26792 Filed 10–8–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 331

RIN 0905–AA06

Antacid Drug Products for Over-the-Counter Human Use; Amendment of Antacid Monograph

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 300 to 499, revised as of April 1, 1997, on page 227, in § 331.10, the revision of paragraph (a) and the source note were inadvertently omitted. The correct text of paragraph (a) and the source note read as follows:

§ 331.10 Antacid active ingredients.

(a) The active antacid ingredients of the product consist of one or more of the ingredients permitted in § 331.11 within any maximum daily dosage limit established, each ingredient is included at a level that contributes at least 25 percent of the total acid neutralizing capacity of the product, and the finished product contains at least 5 meq of acid neutralizing capacity as measured by the procedure provided in the United States Pharmacopeia 23/National Formulary 18. The method established in § 331.20 shall be used to determine the percent contribution of each antacid active ingredient.

* * * * *

[39 FR 19874, June 4, 1974, as amended at 61 FR 4822, Feb. 8, 1996]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 436

Antibiotic Drugs; Loracarbef, Loracarbef Capsules, and Loracarbef for Oral Suspension and Rifabutin and Rifabutin Capsules

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 300 to 499, revised as of April 1, 1997, on page 399, in § 436.215(c)(16)(iv), make the following changes:

1. Immediately following the equation, insert the word "where:" as a separate line.

2. In the second column, delete the hyphen between the words "milligrams" and "per" in line 2.

3. In paragraph (c)(18)(iv) of § 436.215, immediately following the equation, insert the word "where:" as a separate line.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 500 to 599, revised as of April 1, 1997, on page 48, in § 510.515, paragraph (c), entry 5 is amended by adding "Arsanilic acid" below "Chlortetracyline" in the first column.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 027–1027; FRL–5891–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final conditional rule.

SUMMARY: The EPA is taking final action to conditionally approve the State Implementation Plan (SIP) revision concerning Missouri Rule 10 CSR 10–2.330, Control of Gasoline Reid Vapor Pressure, submitted by the Missouri Department of Natural Resources (MDNR). This revision sets a summertime gasoline Reid vapor pressure (RVP) limit of 7.2 pounds per square inch (psi), and 8.2 psi for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol, for gasoline distributed in Clay, Platte, and Jackson Counties in Missouri. This revision is necessary to ensure that the area continues to maintain the National Ambient Air Quality Standard (NAAQS) for ozone.

DATES: This rule is effective on November 10, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stan Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION: On March 24, 1997 (62 FR 13846) the EPA proposed approval of the SIP revision concerning Missouri Rule 10 CSR 10–2.330, Control of Gasoline Reid Vapor Pressure, submitted by MDNR. This revision, which limits the RVP of gasoline sold in the Missouri portion of the Kansas City metropolitan area, is necessary to help the Kansas City area maintain the NAAQS for ozone. In accord with section 211(c)(4)(C), the EPA is able to approve this fuel control measure because the state of Missouri demonstrated that the measure is necessary to achieve the national primary and secondary ambient air quality standard. The EPA also approves the state fuel requirement as necessary because no other measures would bring about timely attainment, or if other measures exist, they are unreasonable or impracticable.

The state emergency rule was adopted and approved by the Missouri Air Conservation Commission (MACC) after proper public notice and hearing procedures. The emergency rule became effective on May 1, 1997, and expires on October 27, 1997. The state's permanent rule has undergone proper public notice and hearing and was adopted at the June 26, 1997, public hearing by the MACC, and will become effective in October 1997.

The EPA proposed approval of the state's permanent rule using parallel processing procedures. Under this procedure, the EPA proposed to approve the Missouri rule based on adoption of a final rule. The EPA received no comments on its proposed approval. The state has completed its rule adoption procedures for the permanent rule; however, the emergency rule will remain in effect until October 27, 1997. Full approval is contingent upon Missouri submitting the permanent rule by November 30, 1997.

For additional background on this action and the EPA's detailed rationale for approval, please refer to the technical support document of the aforementioned notice of proposed rulemaking (62 FR 13846).

I. Final Action

The EPA is taking final action to conditionally approve the SIP revision concerning Missouri Rule 10 CSR 10–2.330, Control of Gasoline Reid Vapor Pressure, submitted by MDNR.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Full approval is contingent upon Missouri completing its rule adoption procedures prior to expiration of the emergency rule, and submitting the permanent rule by November 30, 1997.

If the conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. The EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities, because it does not substitute a new Federal requirement.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing.

This Federal action authorizes and approves into the Missouri SIP requirement previously adopted by the state, and imposes no new requirements. Therefore, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more in any one year. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action authorizes and approves into the Missouri SIP requirements previously adopted by the state, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 25, 1997.

William Rice,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(98) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(98) Revision to the Missouri SIP submitted by the Missouri Department of Natural Resources on July 14, 1997.

(i) Incorporation by reference.

(A) Missouri Emergency Rule, 10 CSR 10–2.330, Control of Gasoline Reid Vapor Pressure, effective May 1, 1997, and expires October 27, 1997.

* * * * *

3. Section 52.1323 is amended by adding paragraph (l) to read as follows:

§ 52.1323 Approval status.

* * * * *

(l) The Administrator conditionally approves Missouri emergency rule 10 CSR 10–2.330 under § 52.1320(c)(98). Full approval is contingent on the state submitting the permanent rule, to the EPA, by November 30, 1997.

[FR Doc. 97–26529 Filed 10–8–97; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 053–3020; FRL–5905–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 15% Rate of Progress Plan for the Baltimore Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting conditional approval of the State Implementation Plan (SIP) revision submitted by the State of Maryland, for the Baltimore severe ozone nonattainment area, to meet the 15 percent reasonable further progress (RFP, or 15% plan) requirements of the Clean Air Act (the Act). EPA is granting conditional approval of the 15% plan, submitted by the State of Maryland, because, on its face, the plan achieves the required 15% emission reduction, but additional documentation to verify the emission calculations is necessary for full approval. Additionally, the plan relies upon Maryland's inspection and maintenance (I/M) program that received final conditional approval on July 31, 1997. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on November 10, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Donahue, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at (215) 566–2095 or via e-mail, at the following address: donahue.carolyn@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act requires ozone nonattainment areas classified as moderate or above to develop plans to reduce volatile organic compounds (VOC) emissions by 15% from 1990 baseline levels. The Baltimore area is classified as a severe ozone nonattainment area and is subject to the 15% plan requirement. The Baltimore ozone nonattainment area consists of the City of Baltimore, and Anne Arundel, Baltimore, Carroll, Howard, and Harford Counties.

The State of Maryland submitted the 15% plan SIP revision for the Baltimore nonattainment area on July 12, 1995. On August 5, 1997, EPA published a notice of proposed rulemaking (NPR) in the **Federal Register** proposing conditional approval of the 15% plan (62 FR 42079). EPA's rationale for granting conditional approval to the Maryland 15% plan for the Baltimore area and the details of the July 12, 1995 submittal are contained in the August 5, 1997 NPR and the accompanying technical support document and will not be restated here.

II. Public Comments and EPA Responses

EPA received a letter in response to the August 5, 1997 NPR from the Earthjustice Legal Defense Fund (ELDF). The following discussion summarizes and responds to the comments received.

Comment 1: ELDF commented that the Baltimore 15% plan must be disapproved because it failed to produce the 15% emission reduction of 73.3 tons/day identified in the plan as prescribed by section 182(b)(1)(A)(I) of the Act.

Response 1: Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the state to adopt specific enforceable measures within one year from the date of approval. EPA believes that the 15% required reduction in the Baltimore nonattainment area will be 63.9 tons/day based on new information supplied by the State. Although this information has not been established through an official SIP submittal, this information is contained in Maryland's rate-of-progress SIP revision for the 1996–1999 time period (known at the Post-1996 plan). Maryland has held a public hearing on this SIP revision, which EPA provided comments on for the public record, and expects to submit it to EPA shortly. Under these circumstances—including the fact that the amount of emissions at issue is a relatively small percentage of the 15% requirement—EPA has the authority to conditionally approve Maryland's 15% SIP, on the condition that Maryland submit the requisite documentation. The State of Maryland has agreed to document the amount of reductions needed to meet the 15% requirement, and submitted such commitment in writing on September 4, 1997.

Comment 2: EPA concluded that "EPA cannot credit this claim" of 6.3 tons/day from enhanced rule compliance for the Baltimore area. EPA nevertheless included this measure in the list of creditable measures, acting unlawfully and inconsistently.

Response 2: The commenter is correct. This inconsistency is the result of a typographical error. The credit claim of 6.3 tons/day (TPD) from enhanced rule compliance is not creditable toward the 15% rate-of-progress requirement for the Baltimore nonattainment area. Therefore, the total credits achieved by Maryland toward the 15% requirement in the plan is 64.2 TPD.

Comment 3: ELDF commented that the Maryland 15% plan, which takes credit for federal control measures such as architectural and industrial maintenance coating, consumer/commercial products and autobody refinishing, should not be approved because those federal control measures have not yet been promulgated. ELDF states that allowing such credit violates section 182(b)(1)(C) of the Act. ELDF further commented that EPA cannot lawfully base SIP decisions on unpromulgated rules because it does not know what these final rules will say. ELDF contends that allowing credit on as yet unpromulgated rules, even with the caveat that the states must revisit the rule later if the federal rules turn out differently than predicted, amounts to an unlawful extension of a SIP submission deadline. ELDF stated that EPA must base its decision on the record before it at the time of its decision; not on some record that the agency hopes will exist in the future.

Response 3: Section 182(b)(1)(A) of the Act requires states to submit their 15% SIP revisions by November, 1993. Section 182(b)(1)(C) of the Act provides the following general rule for

creditability of emissions reductions towards the 15% requirement: "Emissions reductions are creditable toward the 15 percent required * * * to the extent they have actually occurred, as of [November, 1996], from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under Title V."

This provision further indicates that certain emissions reductions are not creditable, including reductions from certain control measures required prior to the 1990 Amendments. This creditability provision is ambiguous. Read literally, it provides that although the 15% SIPs are required to be submitted by November 1993, emissions reductions are creditable as part of those SIPs only if "they have actually occurred, as of [November 1996]". This literal reading renders the provision internally inconsistent. Accordingly, EPA believes that the provision should be interpreted to provide, in effect, that emissions reductions are creditable "to the extent they will have actually occurred, as of [November, 1996], from the implementation of [the specified measures]" (the term "will" is added). This interpretation renders the provision internally consistent.

Section 182(b)(1)(C) of the Act explicitly includes as creditable reductions those resulting from "rules promulgated by the Administrator". This provision does not state the date by which those measures must be promulgated, i.e., does not indicate whether the measures must be promulgated by the time the 15% SIPs were due (November, 1993), or whether the measures may be promulgated after this due date.

Because the statute is silent on this point, EPA has discretion to develop a reasonable interpretation, under *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). EPA believes it reasonable to interpret section 182(b)(1)(C) of the Act to credit reductions from federal measures as long as those reductions are expected to occur by November 1996, even if the Federal measures are not promulgated by the November 1993 due date for the 15% SIPs.

EPA's interpretation is consistent with the congressionally mandated schedule for promulgating regulations for consumer and commercial products, under section 182(e) of the Act. This provision requires EPA to promulgate regulations controlling emissions from consumer and commercial products that generate emissions in nonattainment areas. Under the schedule, by November 1993—the same date that the States were required to submit the 15% SIPs—EPA was to issue a report and establish a rulemaking schedule for consumer and commercial products. Further, EPA was to promulgate regulations for the first set of consumer and commercial products by November, 1995. It is reasonable to conclude that Congress anticipated that reductions from these measures would be creditable as part of the 15% SIPs, as long as those reductions were to occur by November, 1996.

Crediting reductions from federal measures promulgated after the due date for the 15% SIPs is also sensible from an administrative standpoint. Crediting the reductions allows the states to plan accurately to meet the 15% reduction target from the appropriate level of state and federal measures. Not crediting such reductions would mean that the states would have to implement additional control requirements to reach the 15% mark; and that SIPs would result in more than a 15% level of reductions once the federal measures in question were promulgated and implemented. At that point in time, the state may seek to eliminate those additional SIP measures on grounds that they would no longer be necessary to reach the 15% level. Such constant revisions to the SIP to demonstrate 15% is a paper exercise that exhausts both the states' and EPA's time and resources.

The fact that EPA cannot determine precisely the amount of credit available for the federal measures not yet promulgated does not preclude granting the credit. The credit can be granted as long as EPA is able to develop reasonable estimates of the amount of VOC reductions from the measures EPA expects to promulgate. EPA believes that it is able to develop reasonable estimates, particularly because is has already proposed and taken comment on the measures at issue, and expects to promulgate final rules by the spring of 1998. Many other parts of the SIP, including state measures, typically include estimates and assumptions concerning VOC amounts, rather than actual measurements. For example, EPA's document to estimate emissions, "Compilation of Air Pollutant Emission Factors", January 1995, AP–42), provide emission factors used to estimate emissions from various sources and source processes. AP–42 emission factors have been used, and continue to be used, by states and EPA to determine base year emission inventory figures for sources and to estimate emissions from sources where such information is needed. Estimates in the expected amount of VOC reductions are commonly made in air quality plans, even for those control measures that are already promulgated.

Moreover, the fact that EPA is occasionally delayed in its rulemaking is not an argument against granting credits from these measures. The measures are statutorily required, and states and citizens could bring suit to enforce the requirements that EPA promulgate them. If the amount of credit that EPA allows the state to claim turns out to be greater than the amount EPA determines to be appropriate when EPA promulgates the federal measures, EPA intends to take appropriate action to require correction of any shortfall in necessary emissions reductions that may occur.

The above analysis focuses on the statutory provisions that include specific dates for 15% SIP submittals (November, 1993), and implementation (November 15, 1996). These dates have expired, and EPA has developed new dates for submittal and implementation. EPA does not believe that the expiration of the statutory dates, and the development of new ones, has implications for the issue of whether reductions from federal measures promulgated after the date of 15% SIP approval may be counted toward those 15% SIPs. Although the statutory dates have passed, EPA believes that the analysis described above continues to be valid.

Further, since the publication of the proposed conditional approval for the Baltimore nonattainment area, EPA has promulgated Maryland's state regulation for autobody refinishing (62 FR 41853, August 4, 1997). Maryland claimed 5.0 tons/day of creditable emissions reductions in the 15% plan under their state regulation, not under the federal rule.

Comment 4: EPA has improperly suggested that SIPs can be approved if the state has failed to demonstrate approvability. In this regard, EPA has not been able to verify Maryland's emission reduction credit claims for reformulated gasoline, Tier I or Stage II vapor recovery, but has nonetheless stated that it has no reason to dispute the credit claimed by Maryland and is therefore approving the 15% plan. An absence of statutorily required documentation requires disapproval.

Response 4: EPA believes Maryland has demonstrated that it has appropriately modeled its mobile source program benefits, through proper use of EPA's MOBILE emissions factor estimation model, combined with state vehicle miles of travel estimates. It is not practical to submit the hundreds or

even thousands of modeling input and output runs needed to evaluate the mobile source-related portions of the 15% rate-of-progress SIP. Maryland instead submitted to EPA a list of the variables and assumptions utilized in its MOBILE modeling analysis, along with sample model input and output scenarios.

While the SIP does not contain sufficient data to reconstruct the analysis and, therefore, to independently verify the State's claims, EPA believes the State's methodology is sound. However, EPA has deferred the specific results of that methodology, in part, to the State.

Comment 5: ELDF commented that EPA allowed credit for lithographic printing and surface cleaning operations based on the assertion that these regulations would be approved by EPA in other proceedings. However, EPA does not state that these approvals have occurred and may not lawfully grant credit to measures that do not comply with section 110(a).

Response 5: The rule for lithographic printing was approved and published in the **Federal Register** on September 2, 1997 (62 FR 42199). The surface cleaning operations regulation was approved on August 4, 1997 (62 FR 41853).

Comment 6: ELDF commented that it is unlawful for EPA to allow substantial credit from an I/M program that is not before the agency. The 15% plan before EPA was submitted on July 12, 1995, and thus does not incorporate Maryland's current I/M plan which was submitted in March 1996. Also, it is unlawful to allow postponements under the National Highway System Designation Act (NHSDA) for an area that did not submit an NHSDA-type program.

Response 6: Maryland's March 1996 I/M submittal was an amendment to the I/M program submitted to EPA on July 11, 1995. The March I/M submittal does not supercede the July 1995 program; thus Maryland's current I/M program is before EPA. EPA granted conditional approval of Maryland's I/M program on July 31, 1997. If the rules submitted from Maryland to EPA are valid, they do not have to be submitted in a particular order.

EPA believes that test-only I/M programs like the one in Maryland should be treated in the same manner as NHSDA state programs (test and repair programs) with regard to 15% plan requirements. In a letter from Mary Nichols to MDE Secretary Jane Nishida dated January 30, 1996, EPA stated this position is justified in light of administrative and statutory changes in the I/M requirements and the extent to which states relied on I/M programs in their 15% submittals. EPA's approach would have the effect of keeping a level playing field by assuring that Maryland would not be penalized for adopting a test-only program.

Comment 7: ELDF commented that EPA cannot postpone the deadline for achieving the required 15% reduction any further than the current deadline of November 15, 1999. It contends that, without conceding the legality of a 3-year postponement of the statutory deadline of November 15, 1996 allowed by EPA, any longer postponement would be unlawful. Once a compliance date has expired, compliance must occur in the shortest time possible. The commenter cited various court decisions in an effort to demonstrate that a postponement longer than three years would not adhere to the strict standard of compliance. Also, ELDF claimed that postponing a requirement for reasonable further progress until after the deadline for attainment would be unlawful.

Response 7: The case law cited by the commenter considers various circumstances, such as failure by EPA to promulgate rules on the statutorily mandated deadline or to take action on state failures to make SIP submissions on the statutorily mandated deadline. See, e.g., *Natural Resources Defense Council* v. *EPA*, 22 F.3d 1125 (D.C. Cir. 1994), *Natural Resources Defense Council* v. *Train*, 510 F.2d 692 (D.C. Cir. 1975). These cases articulate various formulations of the standards by which the courts establish new deadlines. EPA believes that its formulation of the standard by which States must achieve the 15% reductions—"as soon as practicable"—is generally consistent with the case law.

Further, EPA believes that Maryland has demonstrated that it has met this standard. The notice of proposed rulemaking and the TSD accompanying that proposal establish that implementation of the I/M program is as soon as practicable. The main reason for the delays in the development and implementation of Maryland's 15% SIP relate to its enhanced I/M plan. Most recently, these enhanced I/M delays were closely associated with the enactment, in November 1995, of the NHSDA. The NHSDA afforded states the opportunity to revise their I/M plans in a manner that would be treated as meeting certain EPA requirements on an interim basis. The NHSDA provided additional time for the State and EPA to develop and process the revised I/M plans. In the January 1996 letter to Secretary Nishida from Mary Nichols, EPA states it will credit Maryland's test-only enhanced I/M program for purposes of the 15% requirement. This approach enables states with test-only programs to enhance those programs starting in 1997 while applying credit for those programs to satisfy the 1996 15% VOC reduction plan requirements. Maryland acted expeditiously in developing and implementing a revised enhanced I/M program. However, the amount of time necessary to develop and implement the I/M program rendered impossible achieving the 15% reduction target by the end of 1996. The addendum to the TSD showing the chronology of Maryland's I/M program development demonstrates the necessity of the extension.

Moreover, EPA has reviewed other VOC SIP measures that are at least theoretically available to Maryland, and has concluded that implementation of any such measures that might be appropriate would not accelerate the date of achieving the 15% reductions. For reasons indicated elsewhere in the record, EPA considers the biennial I/M program selected by Maryland to be as soon as practicable, notwithstanding the fact that other states may choose to implement an annual program.

Comment 8: ELDF commented that any further delays in achieving the mandate 15% reduction from VOC control measures, including most prominently, enhanced I/M, must not be tolerated. Furthermore, missing the November 15, 1996 deadline unlawfully rewards states for failure to meet the deadline by giving them increased credits under national programs such as the Tier I Federal Motor Vehicle Control Program. ELDF argues that such an approach unlawfully delays the achievement of clean air by allowing the states to reduce their own emission control efforts by the amount of the post-November 1996 fleet turnover benefits. Consequently, EPA must deny the post-November 1996 Tier I credit and require states to adopt emission reductions to compensate for post-1996 growth in vehicle miles traveled (VMT).

ELDF further argues that EPA cannot delay the section 182(b)(1) requirement for states to account for growth in the 15% plans to the Post-1996 rate-of-progress plans, particularly because the Post-1996 plans involve potential NO_x substitution that is not permitted in the VOC-only 15% plans.

Response 8: EPA disagrees with this comment. The NHSDA was enacted by Congress in November of 1995. Section 348 of this statute provided states' renewed opportunity to satisfy the Clean Air Act requirements related to the network design for I/M programs. States were not only granted the

flexibility to enact test-and-repair programs, but were provided additional time to develop those programs and to submit proposed regulations for interim SIP approval. Maryland moved rapidly to propose I/M regulations and to submit to EPA on March 27, 1996 an amendment to the I/M SIP containing those regulations. EPA granted conditional approval of the Maryland I/M program on July 31, 1997 (62 FR 40938).

Under the terms of the 15% requirement in section 182(b)(1)(A)(I) of the Act, the SIP must—"provide for [VOC] emission reductions, within 6 years after the date of enactment of the Clean Air Act Amendments of 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after [1990]."

EPA interprets this provision to require that a specific amount of VOC reductions occur, and has issued guidance for computing this amount. Maryland, complying with this guidance, has determined the amount of the required VOC reductions needed to meet the 15% goal. It is no longer possible for Maryland to implement measures to achieve this level of reduction as the November 15, 1996 date provided under the 15% provisions has passed. Accordingly, EPA believes that Maryland will comply with the statutory mandate as long as it achieves the requisite level of reductions on an as-soon-as-practicable basis after 1996. In computing the reductions, EPA believes it acceptable for states to count reductions from federal measures, such as vehicle turnover, that occur after November 15, 1996, as long as they are measures that would be creditable had they occurred prior to that date. These measures result in VOC emission reductions as directed by Congress in the Act; therefore, these measures should count towards the achievement—however delayed—of the 15% VOC reduction goal.

EPA does not believe states are obligated as part of the 15% SIP to implement further VOC reductions to offset increases in VOC emissions due to post-1996 growth. As noted above, the 15% requirement mandates a specific level of reductions. By counting the reductions that occur through measures implemented pre- and post-1996, SIPs may achieve this level of reductions. Although section 182(b)(1)(A)(I), quoted above, mandates that the SIPs account for growth after 1990, the provision does not, by its terms, establish a mechanism for how to account for growth, or indicate whether, under the present circumstances, post-1996 growth must be accounted for. EPA believes that its current requirements for the 15% SIPs meet section 182(b)(1)(A)(I). In addition, although post-1996 VOC growth is not offset under the 15% SIPs, such growth must be offset in the Post-1996 plans required for serious and higher classified areas to achieve 9% in VOC reductions every three years after 1996 (until the attainment date). Maryland's Post-1996 plan for the Baltimore area, which is nearing completion, does appear to achieve the 9% emissions reductions required between 1996 and 1999, taking into account growth in VOCs during that time. The fact that these Post-1996 SIPs may substitute NO_X reductions for VOC reductions in the 1996 to 1999 period does not undermine the integrity of the 15% SIPs. Allowing NO_X substitution is fully consistent with the health goals of the Clean Air Act.

Under EPA's approach, post-1996 growth will be accounted for in the plans that Congress intended to take account of such growth—the Post-1996 "rate of progress" SIPs. To shift the burden of accounting for such growth to the 15% plans, as commenters would have EPA do, would impose burdens on states above and beyond what Congress contemplated would be imposed by the 15% requirement (which was intended to have been achieved by November 15, 1996). In the current situation, where it is clearly impossible to achieve the target level of VOC reductions (a 15% reduction taking into account growth through November 1996) by November 1996, EPA believes that its approach is a reasonable and appropriate one. It will still mean that post-1996 growth is taken into account in the SIP revisions Congress intended to take into account such growth and it means that the target level of VOC reductions will be achieved as soon as practicable. Once the Post-1996 rate of progress plans are approved and implemented, areas will have achieved the same level of progress that they were required to have achieved through the combination of the 15% and rate of progress requirements as originally intended by Congress.

Comment 9: ELDF commented that EPA proposed disapproval of the Philadelphia 15% plan in 1996 because the plan assumed credit from control strategies either not fully adopted, not creditable under the Clean Air Act, or which had not been adequately quantified. Furthermore, EPA proposed disapproval of the plan because Pennsylvania switched I/M programs yet did not revise the 15% plan to reflect the differences in the I/M program description and projected emission reductions. EPA set precedence with this rulemaking and to propose approval of the Baltimore 15% plan when the same deficiencies exist is acting in an arbitrary and capricious manner of treating similar situations in such a diametrically opposed fashion.

Response 9: EPA's proposed approval of the Baltimore 15% plan is not inconsistent with the proposed disapproval of the Philadelphia 15% plan. On July 10, 1996, EPA proposed to disapprove Pennsylvania's 15% plan for the Philadelphia area because it would not have achieved sufficient reductions to meet the requirements of section 182(b)(1) of the Act (61 FR 36320). EPA did not credit any reductions from Pennsylvania's enhanced I/M program because at the time of the July 10, 1996 rulemaking EPA had disapproved Pennsylvania's I/M submittal. In a letter dated April 13, 1995, EPA converted the August 31, 1994 conditional approval of Pennsylvania's I/M submittal to a disapproval. As discussed above, on July 31, 1997, EPA granted conditional approval of Maryland's I/M program in the Maryland SIP (62 FR 40938). Therefore, the factual basis for EPA's conditional approval of Baltimore's 15% plan is not similar to that of the Philadelphia 15% plan. In the July 10, 1996 proposed disapproval, EPA credited the measures in Pennsylvania's 15% plan towards meeting the rate of progress requirements of the Act even though they were insufficiently documented to qualify for full approval. See, 61 FR 36322. That action is wholly consistent with EPA's conditional approval of the Baltimore 15% plan.

III. Conditional Approval

EPA has evaluated Maryland's July 12, 1995 submittal for consistency with the Act, applicable EPA regulations, and EPA policy and has determined, as documented in the August 5, 1997 NPR, that, on its face, the 15% plan for the Baltimore area achieves the required 15% VOC emission reduction to satisfy the requirements of section 182(b)(1) of the Act. However, there are measures included in the Maryland 15% plan, which may be creditable towards the Act requirement, but which are insufficiently documented for EPA to take action on at this time. While the amount of creditable reductions for certain control measures has not been adequately documented to qualify for Clean Air Act approval, EPA has determined that the submittal for the Baltimore area contains enough of the required structure to warrant conditional approval. EPA cannot grant full approval of the Baltimore 15% rate-of-progress plan under section 110(k)(3) and part D of the Clean Air Act. Instead, EPA is granting conditional approval of this SIP revision under section 110(k)(4) of the Act, because the State must meet the specified conditions and supplement its submittal to satisfy the requirements of section 182(b)(1) of the Act regarding the 15% rate-of-progress plan, and because the State must supplement its submittal and demonstrate it has achieved the required emission reductions.

The August 5, 1997 NPR listed the conditions that Maryland must meet in order to convert the conditional approval to full approval. In a September 4, 1997 letter to EPA, the State committed to meet all the conditions listed in the NPR within 12 months of final conditional approval. The conditions from the NPR are restated here. The State of Maryland must fulfill the following conditions by no later than October 9, 1998:

1. Maryland's 15% plan calculations must reflect the EPA approved 1990 base year emissions inventory (61 FR 50715, September 27, 1996).

2. Maryland must meet the conditions listed in the October 31, 1996 conditional I/M rulemaking notice, including its commitment to remodel the I/M reductions using the following two EPA guidance memos: "Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation," note from John Seitz and Margo Oge dated August 13, 1996, and "Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance," from Gay MacGregor and Sally Shaver dated December 23, 1996.

3. Maryland must remodel to determine affirmatively the creditable reductions from RFG and Tier I in accordance with EPA guidance.

4. Maryland must submit a SIP revision amending the 15% plan with a determination using appropriate documentation methodologies and credit calculations that the 64.2 TPD reduction, supported through creditable emission measures in the submittal, satisfies Maryland's 15% ROP requirement for the Baltimore area.

After making all the necessary corrections to establish the creditability of chosen control measures, Maryland must demonstrate that 15% emission reduction is obtained in the Baltimore nonattainment area as required by section 182(b)(1) of the Act and in accordance with EPA's policies and guidance issued pursuant to section 182(b)(1).

IV. Final Action

EPA is today granting conditional approval of the Baltimore 15% plan as a revision to the Maryland SIP. This rulemaking action will not convert to full approval until Maryland has met conditions 1 through 4 of this rulemaking. If the conditions are not met within 12 months of today's rulemaking, this rulemaking will convert to a disapproval. Once Maryland satisfies the conditions of the I/M rulemaking and receives final approval of I/M, EPA will grant final approval of the 15% plan (assuming that the other conditions have been met). Conversely, if EPA disapproves the Maryland I/M program, EPA's conditional approval of Baltimore's 15% plan would also convert to a disapproval. EPA would notify Maryland by letter that the conditions have not been met and that the conditional approval of the 15% plan has converted to a disapproval. Each of the conditions must be fulfilled by Maryland and submitted to EPA as an amendment to the SIP. If Maryland corrects the deficiencies within one year of conditional approval, and submits a revised 15% plan as a SIP revision, EPA will conduct rulemaking on that revision.

Further, EPA makes this conditional approval of the 15% plan contingent upon Maryland maintaining a mandatory I/M program. EPA will not credit any reductions toward the 15% ROP requirement from a voluntary enhanced I/M program. Any changes to I/M which would render the program voluntary or discontinued would cause a shortfall of credits in the 15% reduction goal. Therefore, this action will convert automatically to a disapproval should the State make the enhanced I/M program a voluntary measure.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the

aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the final conditional interim approval of the 15% plan for the Baltimore severe ozone nonattainment area, must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone.

Dated: September 19, 1997.

A.R. Morris,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1072 is amended by adding paragraph (c) to read as follows:

§ 52.1072 Conditional approval.

* * * * *

(c) The State of Maryland's July 12, 1995 submittal for the 15 Percent Rate of Progress Plan (15% plan) for the Baltimore ozone nonattainment area, is conditionally approved based on certain contingencies. The conditions for approvability are as follows:

(1) Maryland's 15% plan calculations must reflect the EPA approved 1990 base year emissions inventory in § 52.1075.

(2) Maryland must meet the conditions listed in the October 31, 1996 conditional I/M rulemaking notice, including its commitment to remodel the I/M reductions using the following two EPA guidance memos: "Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation," note from John Seitz and Margo Oge dated August 13, 1996, and "Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance," from Gay MacGregor and Sally Shaver dated December 23, 1996.

(3) Maryland must remodel to determine affirmatively the creditable reductions from RFG and Tier I in accordance with EPA guidance.

(4) Maryland must submit a SIP revision amending the 15% plan with a determination using appropriate documentation methodologies and credit calculations that the 64.2 TPD reduction, supported through creditable emission measures in the submittal, satisfies Maryland's 15% ROP requirement for the Baltimore area.

[FR Doc. 97–26533 Filed 10–8–97; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 100297A]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna General Category

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS has determined that the 1997 Atlantic bluefin tuna (ABT) October–December period General category subquota will be attained by October 5, 1997. Therefore, the General category fishery for October–December will be closed effective at 11:30 p.m. on October 5, 1997. This action is being taken to prevent overharvest of the adjusted 141 metric tons (mt) subquota for the October–December period.

DATES: Effective 11:30 p.m. local time on October 5, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 301–713–2347, or Pat Scida, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

General Category Closure

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a **Federal Register** announcement to close the applicable fishery.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a subquota of 72 mt of large medium and giant ABT to be harvested from the regulatory area by vessels permitted in the General category during the period beginning October 1 and ending December 31. Due to an overharvest of 1 mt in the September period subquota, and the transfer of 70 mt from other categories (13 mt from the Reserve, 3 mt from the Incidental Longline North quota, and 54 mt from the Incidental Longline South quota) (62 FR 51608, October 2, 1997), the October-December period subquota was adjusted to 141 mt. The October–December subquota is divided into a coastwide subquota of 131 mt and a 10 mt set-aside for the traditional fall New York Bight fishery area, defined as the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27′ W. long. (Shinnecock Inlet) and running SSE

150° true, and north of 38° 47′ N. lat. (Delaware Bay).

Based on reported catch and effort, NMFS projects that the revised coastwide subquota of 131 mt will be reached by October 5, 1997. Therefore, fishing for, retaining, possessing, or landing large medium of giant ABT by vessels in the General category must cease at 11:30 p.m. local time October 5, 1997. If, after tallying the landings following the closure, NMFS determines that a substantial amount of the coastwide quota remains, NMFS may reopen the coastwide General category fishery as necessary to allow full harvest of the coastwide subquota. Then, once it is determined that the General category catch has reached approximately 10 mt less than the overall October-December subquota (i.e. the coastwide catch totals approximately 131 mt), NMFS will announce (through notice in the **Federal Register** and over the Highly Migratory Species Fax Network and Information Lines) the opening date of the New York Bight fishery. After the opening date of the New York Bight fishery, fishing for, retaining, possessing, or landing large medium or giant ABT by vessels in the General category may occur in the New York Bight are only.

The intent of this closure is to prevent overharvest of the October-December period subquota established for the General category.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: October 3, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26709 Filed 10–3–97; 3:39 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 62, No. 196
Thursday, October 9, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1303

RIN 0348–AB42

Freedom of Information Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed rule.

SUMMARY: The Office of Management and Budget (OMB) seeks public comment on a proposed rule that would revise OMB's regulations implementing 5 U.S.C. 552, the Freedom of Information Act (FOIA). These revisions are being proposed to simplify and streamline OMB's FOIA regulations, as well as to implement the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231).

DATES: Comments must be received no later than December 8, 1997.

ADDRESSES: Comments on the proposed rule should be addressed to: Darrell A. Johnson, Deputy Assistant Director for Administration, Office of Management and Budget, Room 9026, New Executive Office Building, Washington, D.C. 20503. Comments up to three pages in length may be submitted via facsimile to (202) 395–3504. Electronic mail comments may be submitted via Internet to FOIAREG@A1.EOP.GOV. Please include the full body of electronic mail comments in the text and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Darrell A. Johnson, Deputy Assistant Director for Administration, Office of Management and Budget, at (202) 395–5715.

SUPPLEMENTARY INFORMATION: OMB is seeking public comment on proposed revisions to OMB's regulations at Part 1303 implementing the Freedom of Information Act (FOIA). Currently, OMB's FOIA regulations consist of the regulations as issued in 1982 (47 FR 33483; August 3, 1982), and as amended in 1987 (52 FR 4512; December 30, 1987). The proposed revisions are intended to: implement the Electronic Freedom of Information Act Amendments of 1996, P.L. 104–231 (E–FOIA); update OMB's regulations to reflect current practice; and streamline OMB's regulations to eliminate redundant or otherwise unnecessary materials. The following is a summary of the proposed changes.

Section 1303.2 ("Authority and functions"), which summarizes OMB's authority and functions, has been streamlined.

Section 1303.3 ("Organization") has been revised to reflect changes over time in OMB's organizational structure.

Section 1303.10 ("Methods of operation") has been revised to update information and to reflect the provisions of E–FOIA. Among the revisions to Section 1303.10 are provisions revising the initial response period from 10 days to 20 days (see Section 8(b) of E–FOIA, amending 5 U.S.C. 552(a)(6)(A)(i)); establishing an expedited-response process (see Section 8(a) of E–FOIA, adding 5 U.S.C. 552(a)(6)(E)); establishing a requirement that administrative appeals of OMB denials be made within 30 days of receipt of the denial (the current regulations do not set a deadline); and providing for OMB consultations with a requester to determine if a FOIA request may be modified in order to allow for a timely response, or to arrange an alternative time frame for a response (see Section 7(b) of E–FOIA, amending 5 U.S.C. 552(a)(6)(B)). Finally, Section 1303.10 explains that OMB materials may be obtained electronically from OMB's home page; these materials include documents described in 5 U.S.C. 552(a)(2).

Section 1303.20 ("Inspection, copying, and exceptions") has been streamlined by deleting subsections (b) and (c). The deletion of subsection (b) is consistent with the courts' decisions in *Ryan* v. *Department of Justice*, 617 F.2d 781, 786–89 (D.C. Cir. 1980), and *Meyer* v. *Bush*, 981 F.2d 1288, 1292 n.2, 1294 (D.C. Cir. 1993), and it also reflects OMB's practice (in response to FOIA requests, the files of the OMB units described in subsection (b) are searched for responsive documents, and such documents are reviewed for applicable exemptions, in the same manner as the files of other OMB units). Subsection (c) has been deleted because its recitation of the exemptions in 5 U.S.C. 552(b) is unnecessary (i.e., OMB may directly rely upon the statutory exemptions).

Section 1303.30 ("Definitions") has been revised to reflect E–FOIA by more clearly defining the terms "search" and "duplication." See Section 5 of E–FOIA, amending 5 U.S.C. 552(a)(3).

Finally, Section 1303.60 ("Miscellaneous fee provisions") has been revised to conform to the aggregation provision in Section 1303.10(g), and to the new time limit under the FOIA for initial responses.

In implementing E–FOIA, OMB considered adopting a multi-track processing system that would distinguish simple and complex FOIA requests and place them on separate processing tracks. See Section 7(a) of E–FOIA, adding 5 U.S.C. 552(a)(6)(D). However, after considering this option, OMB decided to retain its current system. Unlike other agencies, OMB does not have a central office dedicated to searching for documents in response to FOIA requests; instead, OMB has a decentralized system, with the primary responsibility for responding to individual FOIA requests generally assigned to the program office with responsibility for the subject matter of the particular request. Accordingly, pending FOIA requests are generally processed concurrently, rather than on a consecutive, request-by-request basis. For this reason, the time needed to respond to complex requests generally does not delay OMB's ability to respond to simple requests. Thus, the adoption of multitrack processing would not be likely to accelerate OMB's ability to respond to requests.

OMB requests comments on the proposed revisions to OMB's FOIA regulations.

Regulatory Flexibility Act, Unfunded Mandates Reform Act, and Executive Orders 12866 and 12875

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the proposed rule will not, if promulgated, have a significant economic effect on a substantial number of small entities; the proposed rule addresses the procedures to be followed when responding to requests for information under the Freedom of Information Act. For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Orders No. 12866 and 12875, the proposed rule would not significantly or uniquely affect small governments, and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more.

Franklin D. Raines,

Director.

For the reasons set forth in the preamble, OMB proposes to amend 5 CFR Part 1303 as follows:

PART 1303—[AMENDED]

1. The authority citation for part 1303 is revised to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1303.2 is revised to read as follows:

§ 1303.2 Authority and functions.

The general functions of the Office of Management and Budget, as provided by statute and executive order, are to develop and execute the budget, oversee implementation of Administration policies and programs, advise and assist the President, and develop and implement management policies for the government.

3. Section 1303.3 is revised to read as follows:

§ 1303.3 Organization.

(a) The brief description of the central organization of the Office of Management and Budget follows:

(1) The Director's Office includes the Director, the Deputy Director, the Deputy Director for Management, and the Executive Associate Director.

(2) Staff Offices include General Counsel, Legislative Affairs, Communications, Administration, and Economic Policy.

(3) Offices that provide OMB-wide support include the Legislative Reference and Budget Review Divisions.

(4) *Resource Management Offices.* These offices develop and support the President's management and budget agenda in the areas of Natural Resources, Energy and Science, National Security and International Affairs, Health and Personnel, Human Resources, and General Government and Finance.

(5) Statutory offices include the Office of Federal Financial Management, Office of Federal Procurement Policy, and the Office of Information and Regulatory Affairs.

(b) The Office of Management and Budget is located in Washington, DC, and has no field offices. Staff are housed in either the Old Executive Office Building, 17th Street and Pennsylvania Ave, NW, or the New Executive Office Building, 725 17th Street NW, Washington, D.C. 20503. Persons desiring to visit offices or employees of the Office of Management and Budget, in either building, must write or telephone ahead to make an appointment. Security in both buildings prevents visitors from entering the building without an appointment.

5. Section 1303.10 is revised to read as follows:

§ 1303.10 Access to information.

(a) The Office of Management and Budget makes available information pertaining to matters issued, adopted, or promulgated by OMB, that are within the scope of 5 U.S.C. 552(a)(2). A public reading area is located in the Executive Office of the President Library, Room G–102, New Executive Office Building, 725 17th Street NW, Washington, D.C. 20503, phone (202) 395–5715. Some of these materials are also available from the Executive Office of the President's Publications Office, Room 2200 New Executive Office Building, 725 17th Street NW, Washington, D.C. 20503, phone (202) 395–7332. OMB issuances are also available via fax-on-demand at (202) 395–9068, and are available electronically from the OMB homepage at http:/www.whitehouse.gov/WH/EOP/omb. In addition, OMB maintains the Office of Information and Regulatory Affairs (OIRA) Docket Library, Room 10102, New Executive Office Building, 725 17th Street NW, Washington, D.C. 20503, phone (202) 395–6880. The Docket Library contains records related to information collections sponsored by the Federal government and reviewed by OIRA under the Paperwork Reduction Act of 1995. The Docket Library also maintains records related to proposed Federal agency regulatory actions reviewed by OIRA under Executive Order 12866 "Regulatory Planning and Review". Telephone logs and materials from meetings with the public attended by the OIRA Administrator are also available in the Docket Library.

(b) The Deputy Assistant Director for Administration is responsible for acting on all initial requests. Individuals wishing to file a request under the Freedom of Information Act (FOIA) should address their request in writing to the Deputy Assistant Director for Administration, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Phone 395–5715. Requests for information shall be as specific as possible.

(c) Upon receipt of any request for information or records, the Deputy Assistant Director for Administration will determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such request whether it is appropriate to grant the request and will immediately provide written notification to the person making the request. If the request is denied, the written notification to the person making the request shall include the names of the individuals who participated in the determination, the reasons for the denial, and a notice that an appeal may be lodged within the Office of Management and Budget. (Receipt of a request as used herein means the date the request is received in the office of the Deputy Assistant Director for Administration.)

(d) Expedited processing. (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which effect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten days of its receipt of a request for expedited processing, OMB

will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(e) Appeals shall be set forth in writing within 30 days of receipt of a denial and addressed to the Deputy Assistant Director for Administration at the address specified in paragraph (b) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Deputy Director, or his designee, within 20 days (excepting Saturdays, Sundays, and legal public holidays). If, on appeal, the denial is in whole or in part upheld, the written determination will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(f) In unusual circumstances, the time limits prescribed in paragraphs (c) and (e) of this section may be extended for not more than 10 days (excepting Saturdays, Sundays, or legal public holidays). Extensions may be granted by the Deputy Assistant Director for Administration. The extension period may be split between the initial request and the appeal but in no instance may the total period exceed 10 working days. Extensions will be by written notice to the persons making the request and will set forth the reasons for the extension and the date the determination is expected.

(g) With respect to a request for which a written notice under paragraph (f) of this section extends the time limits prescribed under paragraph (c) of this section, the agency shall notify the person making the request if the request cannot be processed within the time limit specified in paragraph (f) of this section and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of 5 U.S.C. 552 (a)(6)(C). When OMB reasonably believes that a requester, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, OMB may aggregate those requests for purposes of this paragraph. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(h) As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term *unusual circumstances* means:

(1) The need to search for and collect the requested records from establishments that are separated from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency which have a substantial subject matter interest therein.

6. Section 1303.20 is revised to read as follows:

§ 1303.20 Inspection and copying.

When a request for information has been approved pursuant to § 1303.10, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the Deputy Assistant Director for Administration at the address or telephone number listed in § 1303.10(b). Such materials may be copied and reasonable facilities will be made available for that purpose. Copies of individual pages of such materials will be made available at the price per page specified in § 1303.40(d); however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner when copies also are offered for sale by the Superintendent of Documents.

7. Section 1303.30 (d) and (e) are revised to read as follows:

§ 1303.30 Definitions.

* * * * *

(d) The term search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. OMB employees should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, employees should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. Search should be distinguished, moreover, from review of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section).

(e) The term duplication means the making of a copy of a document, or of the information contained in it, necessary to respond to a FOIA request. Such copies can take the form of paper, microform, audio-visual materials, or electronic records (e.g., magnetic tape or disk), among others. The requesters specified preference of form or format of disclosure will be honored if the record is readily reproducible in that format.

* * * * *

8. In § 1303.60, paragraph (c) and the concluding text of paragraph (d) are revised to read as follows:

§ 1303.60 Miscellaneous fee provisions.

* * * * *

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When OMB reasonably believes that a requester, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, OMB may aggregate those requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) Advance payments. * * *

(1) * * *

(2) * * *

When OMB acts under paragraph (d)(1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after OMB has received fee payments described above.

* * * * *

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1917, and 1918

[Docket No. S–025A]

RIN 1218–AA56

Longshoring and Marine Terminals

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Limited opening of the record; Notice of informal public meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) published a final rule on July 25, 1997, revising all of 29 CFR part 1918 (the Longshoring Standard) and related sections of 29 CFR part 1917 (the Marine Terminals Standard) (62 FR 40152). In the preamble of the final rule, OSHA discussed the practice of lifting two empty intermodal containers together, one on top of the other, connected by semi-automatic twist locks (hereafter referred to as "piggybacking" of two containers using twist locks). To secure them for shipping, containers have twist locks placed between the corner fittings of one container and the bottom fittings of the container that rests on top of the first. In a piggyback lift, the bottom container's weight is borne by the top container and twist locks. The force of lifting the bottom container is also transferred through the twist locks to the bottom fittings of the top container. Although OSHA expressed safety concerns regarding piggybacking, the rulemaking record did not contain enough information to enable OSHA to determine how to regulate this practice. Therefore, OSHA is reopening the record to conduct a second phase of the rulemaking to determine whether to allow "piggybacking," and if so, under what conditions. Based on the information gathered during this extension of the rulemaking's proceedings, OSHA will issue a proposal to address this practice.

This notice requests written comment and schedules an informal public meeting on safety issues and risks and on the technological and economic feasibility associated with piggybacking of two containers using twist locks.

DATES: Written comments on the proposed standard and notices of intention to appear at the informal public meeting on the proposed standard must be postmarked by December 8, 1997. Parties who request more than 10 minutes for their presentations at the informal public meeting and parties who will submit documentary evidence at the meeting must submit the full text of their testimony and all documentary evidence postmarked no later than January 13, 1998. The informal public meeting will take place in Washington, DC and is scheduled to begin on January 27, 1998.

ADDRESSES: Submit written comments to the Docket Office, Docket S–025A, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7894. Comments on the proposal are to be submitted in quadruplicate or 1 original (hard copy) and 1 disk (5¼ or 3½ inch) in WP 5.0, 5.1, 6.0 or ASCII. Comments of 10 pages or less may be faxed to the Docket Office, fax number (202) 219–5046, if followed by a hard copy.

Send notices of intention to appear, testimony, and documentary evidence which will be introduced into the meeting record to Mrs. Theda Kenney, OSHA Office of Safety Standards, Docket No. S–025A, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–8061.

The informal public meeting will be held in Washington, D.C., beginning January 27, 1998 at 10 a.m. in the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Director of the Office of Maritime Safety Standards, or Paul Rossi, Project Officer, Office of Maritime Safety Standards, Occupational Safety and Health Administration, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7234.

SUPPLEMENTARY INFORMATION: In 1993, OSHA received a letter from Sea-Land Service, Inc. requesting that OSHA interpret its existing longshoring standards to allow the lifting of two empty 40-foot International Standards Organization (ISO) freight containers that are vertically coupled using semi-automatic twist locks (Ex. 1, Docket S–025A). OSHA's existing standards did not expressly prohibit this practice, which utilizes the top container and twist locks as a "lifting appliance" to lift the bottom container. In its response, OSHA allowed Sea-Land to continue this practice, provided that certain requirements were met (Ex. 2, Docket S–025A). OSHA's response from its Compliance Office identified applicable OSHA standards and related industry practices associated with container cargo handling operations. These requirements addressed: Inspecting containers for visible defects, verifying that both containers are empty, assuring that containers are properly marked, assuring that twist locks operate in the same manner, assuring that the load does not exceed the capacity of the crane, assuring that the top container is vertically lifted, having available for inspection manufacturers' documents that verify the capacities of the twist locks and corner castings, and directing employees to stay clear of the lifting area.

OSHA's existing longshoring standards, which referenced ILO Convention 32, did not require the certification of "lifting appliances." This term was not a part of the existing Convention 32 which was adopted in 1932 before the advent of containers and twist locks that were developed by the marine cargo handling industry in the 1960s.

In the preamble to the proposed rule (59 FR 28602), OSHA discussed differences between ILO Convention 32 and ILO Convention 152, including the requirement in the latter convention to certify lifting appliances. Convention 152, Article 22, adopted June 25, 1979, requires that proof load testing be conducted every 5 years, and applies to all ships' lifting appliances. Within Article 3 of ILO 152, paragraph (e), defines the term "lifting appliance" as follows:

> "lifting appliance" covers all stationary or mobile cargo handling appliances, including shore-based power-operated ramps, used on shore or on board ship for suspending, raising or lowering loads or moving them from one position to another while suspended or supported (Ex. 3, Docket S–025A). (emphasis added)

Thus, the term "lifting appliance" was intended to cover all appliances used to lift or move loads, with no exceptions. OSHA carried this intention forward in its proposal and did not propose to except any lifting equipment from certification.

OSHA stated in the proposed rule that, under Convention 152, when a container was used to lift another container, the top container would fall within the definition of "lifting appliance":

> In those situations where one container is used to lift another container, using twist locks, then the upper container and twist locks become, in effect, a lifting appliance and must be certified as such. (59 FR 28602)

In response to this proposed interpretation of Article 3, paragraph (e) of ILO Convention 152, OSHA received comments only from the International

Longshoremen's and Warehousemen's Union (ILWU) (Exs. 4, 5, and 6, Docket S–025A). Although these comments favored the proposed interpretation and requested the Agency to include it as a requirement in the regulatory text, these commenters included no specific information regarding the piggybacking of two containers using twist locks. Sea-Land Services Inc. submitted a detailed six page comment (Ex. 7, Docket S–025A) addressing a number of the proposed changes to the Marine Terminals and Longshoring Standards, but did not address this issue. OSHA received a late, post-hearing submission from the International Longshoremen's Association (ILA), however, that alerted the Agency to what might be a serious problem with this type of lift, citing several incidents at U.S. ports where failures had occurred (Ex. 8, Docket S–025A). OSHA was not able to rely on this letter to support regulatory action in the final rule because it was not a timely submission to the record. However, the letter made OSHA aware of safety concerns that might need to be addressed through supplementary rulemaking. As a result of the dearth of information about safety considerations associated with the practice of piggybacking two containers using twist locks, as well as insufficient information or elements relating to feasibility (such as the capability of top containers and twist locks to withstand such loading and the cost impacts and productivity effects of piggybacking), OSHA reserved judgment on the appropriate regulatory approach to this practice, pending further study.

This notice reopens the record and requests written comment on this narrow issue, and schedules an informal public meeting to consider whether OSHA should allow the practice of lifting vertically coupled containers, and if so, under what circumstances. OSHA solicits all relevant information, including data on the following issues:

Have intermodal containers been designed and tested for the purposes of piggyback lifting?

Have the twist locks been designed and tested for lifting containers?

What information do container and twist lock manufacturers have regarding the use of their products as lifting appliances?

Do any international bodies currently certify containers and twist locks as "lifting appliances?"

Is there any scientific or engineering data that addresses maintenance testing and "life" of the components used for lifting purposes?

Has the impact of adverse weather conditions been evaluated in both design and operational concerns with regard to double container lifts?

What precautions can be taken to assure that the containers being lifted are empty?

What precautions can be taken to assure that the twist locks are all locked properly when the lifting occurs?

What precautions can be taken to assure that employees are not exposed to the hazard of a falling container?

What precautions can be taken to assure that defective or damaged containers are not used to hoist other containers?

To what extent are vertically coupled containers currently being lifted and by whom?

If the standard were to require the employer to certificate the upper container and twist locks for use as a lifting appliance, how many containers and twist locks would need to be certificated? Would vessel sharing agreements have any effect on the ability of employers to do such certification?

What would it cost to certify the upper containers and twist locks for use as lifting appliances?

What are the potential productivity gains, if any, associated with lifting vertically coupled containers?

As noted above, OSHA currently allows Sea-Land to perform piggybacking in accordance with a series of precautions set forth in Exhibit 2. Are these precautions sufficiently protective?

What are the costs and cost-savings (productivity gains) of piggybacking under the current requirements of Exhibit 2? How would they be affected by certification or other requirements?

What information (both statistical and anecdotal) is available on incidents involving vertically coupled containers that have fallen and hurt or killed employees or caused "near-misses?"

Public Participation

Interested persons are requested to submit written data, views and arguments concerning the issues raised by this notice. These comments must be postmarked by December 8, 1997. Comments are to be submitted in quadruplicate or 1 original (hard copy) and 1 disk (5¼ or 3½) in WP 5.0, 5.1, 6.0 or ASCII. Note: Any information not contained on disk, e.g., studies, articles, etc., must be submitted in quadruplicate to: Docket Office, Docket No. S–025A, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone No. (202) 219–7894.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Notice of Intention To Appear at the Informal Meeting

An informal public meeting will be held in the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 on January 27, 1998, beginning at 10 a.m. The exact location of the meeting will be posted in the lobby.

Persons who wish to participate at this meeting must file a notice of intention to appear by December 8, 1997. The notice of intention to appear must contain the following information:

1. The name, address, and telephone number of each person to appear;

2. The capacity in which the person will appear;

3. The approximate amount of time required for the presentation;

4. The issues that will be addressed;

5. A brief statement of the position that will be taken with respect to each issue; and

6. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.

The notice of intention to appear must be mailed to Mrs. Theda Kenney, OSHA Office of Safety Standards, Docket No. S–025A, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–8061.

A notice of intention to appear also may be transmitted by facsimile to (202) 219–7477, by the same date, provided that the original and 3 copies are sent to the same address and postmarked no later than 3 days later.

Filing of Testimony and Evidence Before the Meeting

Any party requesting more than ten (10) minutes for presentation at the informal public meeting, or who intends to submit documentary evidence, must provide in quadruplicate the testimony and evidence to be presented at the informal public meeting. One copy must not be stapled or bound and be suitable for copying. These materials must be provided to Mrs. Theda Kenney, OSHA Office of Safety Standards at the address above and be postmarked no later than 15 days prior to the date of the meeting. Any party who has not substantially complied with the above requirement may be limited to a ten-minute presentation and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Facilitator.

Notice of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office at the address above.

Informal Public Meeting

The informal public meeting will commence at 10 a.m. OSHA has scheduled this meeting to enable interested persons to address the Agency on the issues discussed in this notice. The meeting will be presided over by a Facilitator designated by OSHA.

Authority and Signature

This document has been prepared under the direction of Greg R. Watchman, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), and 29 CFR part 1911.

Signed at Washington, DC this 3rd day of October, 1997.

Greg Watchman,

Acting Assistant Secretary of Labor.

[FR Doc. 97–26819 Filed 10–8–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 183

[CGD 97–060]

Standards for Navigation Lights Used on Recreational Boats

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: This document solicits comments concerning the desirability of requiring manufacturers and importers of navigation lights used on recreational boats to construct and label their lights in accordance with a recognized industry standard. A request for public input was the recommendation of the National Boating Safety Advisory Council.

DATES: Comments must be received by April 7, 1998.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 97–060), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this notice. Comments will become a part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Doubt, Project Manager, Recreational Boating Product Assurance Division, (202) 267–0984.

You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org/.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to submit comments about this document. Please include your name and address, identify this notice (CGD 97–060) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, to assist us with copying and electronic filing. If you want us to acknowledge receiving your comments, please enclose a stamped, self-addressed postcard or envelope.

Background Information

Prior to April 1997, manufacturers of navigation lights for recreational vessels could voluntarily apply for a Coast Guard "letter of acceptance" for each light fixture placed on the market, and if granted, the manufacturer could state that the light was "USCG Accepted" on the package. The letter of acceptance was an indication that the Coast Guard had reviewed a laboratory report submitted by the light manufacturer and that based on a comparison of the report with the navigation rules, the Coast Guard did not object to the item being offered for sale to the boating public. Since letters of acceptance were never a requirement, were not equivalent to "USCG Approval" and were therefore a source of confusion, as of April 1997, letters of acceptance are no longer issued. Currently there is no way for boat manufacturers and the boating public to determine whether navigation light fixtures they purchase comply with applicable requirements in the Navigation Rules, except for light manufacturers' statements in that regard.

In contrast to Coast Guard practice with regard to recreational vessels, existing regulations applicable to commercial vessels in 46 CFR 111.75–17 require each navigation light to meet the technical details of the applicable navigation rules and to be certified by an independent laboratory to the requirements of Underwriters Laboratories Standard UL 1104 or an equivalent standard. The commercial vessel regulations further require that navigation lights be labeled to indicate: (1) The name or number of the standard to which the light was type-tested; (2) the name or registered certification mark of the independent laboratory that tested the fixture; (3) the fixture manufacturer's name; (4) the model number of the fixture; (5) the visibility of the light in nautical miles; (6) the date on which the fixture was type-tested; and (7) the identification of the bulb used in the compliance test. The independent laboratory must be accepted by the Commandant for the testing and listing or certification of electrical equipment.

The National Boating Safety Advisory Council (NBSAC) is a Federal advisory committee which provides advice and makes recommendations to the Coast Guard regarding regulations and other boating safety matters. At its April 1997 meeting several National Boating Safety Advisory Council members noted that while Annex I to the Navigation Rules in 33 CFR Part 84 specifies technical details for proper cutoff angles, color specifications, and the intensity of navigation lights and Coast Guard regulations require certification of navigation lights installed on commercial vessels, there are no similar regulations for lights offered for sale to recreational boat manufacturers and the boating public.

The NBSAC therefore recommend that the Coast Guard solicit comments on the benefits of, and objections to, requiring navigation light manufacturers and importers to demonstrate that lights offered for sale to boat manufacturers and the boating public comply with applicable requirements in the Navigation Rules. Under 46 USC 4302, 4303, and 33 USC 2071, the Coast Guard has the authority to establish requirements for the installation, carrying, or use of associated equipment on recreational vessels. All comments received during the comment period will be placed in the public docket for review by NBSAC and the Coast Guard in considering the formulation of any

regulatory and nonregulatory measures that may follow from this notice.

Pertinent Questions

In view of the discussion above, please respond to the following questions:

(1) Should the Coast Guard require third party certification, similar to that required for commercial vessel navigation lights, so that boat builders, boat owners, marine surveyors and officials conducting law enforcement boarding would have a means for determining whether navigation lights sold for use or installed on recreational boats complied with applicable requirements in the Navigation Rules?

(2) What are the expected costs and benefits of regulations requiring manufacturers and importers of navigation lights used on recreational boats to construct and label their lights in accordance with a recognized industry standard?

(3) Is it appropriate for the Coast Guard to impose a third party certification requirement for navigation lights sold for installation on recreational boats?

Dated: October 1, 1997.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 97–26697 Filed 10–8–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–003–BU; FRL–5907–8]

Clean Air Act Reclassification; California-Santa Barbara Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the public comment period.

SUMMARY: On September 2, 1997, EPA published a proposed rule (62 FR 46234) proposing to determine that the Santa Barbara moderate ozone nonattainment area has not attained the 1-hour ozone national ambient air quality standard (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas, November 15, 1996. If EPA takes final action on the determination as proposed, the Santa Barbara ozone nonattainment area will be reclassified by operation of law as a serious nonattainment area. On September 24, 1997, the Santa Barbara County Air Pollution Control District requested a 30-day extension of the comment period in order to allow a better opportunity for local stakeholders to provide input to EPA. In response to that request, EPA is announcing a 30-day extension of the public comment period on the September 2, 1997, proposed rule.

DATES: Written comments on the September 2, 1997, proposed rule must be received in writing by November 3, 1997.

ADDRESSES: Comments must be submitted to: U.S. Environmental Protection Agency, Region 9, Office of Air Planning, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105.

Copies of EPA's draft technical support document for this rulemaking and EPA's policies governing attainment findings and extension requests are contained in the docket for this rulemaking. A copy of EPA's proposal (62 FR 46234) and the TSD are also available in the air programs section of EPA Region 9's website, http://www.epa.gov/region09. The docket is available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 9, Office of Air Planning, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1248.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1288.

Dated: October 2, 1997.

John Wise,

Acting Regional Administrator.

[FR Doc. 97–26865 Filed 10–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5902–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Cleve Reber Superfund Site from the National Priorities List and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Cleve Reber Superfund Site (the "Site") from the National Priorities List (NPL) and requests public comment on this proposed action. All public comments regarding this proposed action which are submitted within 30 days of the date of this notice, to the address indicated below, will be considered by EPA. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, is codified at appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA in consultation with the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), has determined that no further response is appropriate, and that, consequently, the Site should be deleted from the NPL.

DATES: EPA will consider comments submitted by November 10, 1997.

ADDRESSES: Comments may be mailed to: Ms. Janetta Coats, Community Relations Coordinator (6SF–PO), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6617.

INFORMATION REPOSITORIES: Comprehensive information on the Site has been compiled in a public deletion docket which may be reviewed and copied during normal business hours at the following Cleve Reber Superfund Site information repositories:

U.S. EPA Region 6 Library (12th Floor), 1445 Ross Avenue, Dallas, Texas 75202–2733, 1–800–533–3508.

Ascension Parish Public Library, 500 Mississippi Street, Donaldsonville, Louisiana 70346, (504) 473–8052.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline A. Ziegler, Remedial Project Manager (6SF–LP), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–2178.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

This is the EPA Region 6 Notice of Intent to Delete (NOID) the Site from the NPL. The NPL is the list, compiled by EPA pursuant to CERCLA Section 105, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response. As described in 40 CFR 300.425(e)(3) of the NCP, sites

deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will consider comments concerning this NOID which are submitted within thirty days of the date of this NOID. EPA has also published a notice of the availability of this NOID in a major local newspaper of general circulation at or near the Site.

Section II of this NOID explains the NCP criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Cleve Reber Superfund Site and explains that the Site meets the NCP deletion criteria.

II. NPL Deletion Criteria

The NCP, at 40 CFR 300.425(e), provides that releases may be deleted from the NPL if no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria has been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed [1] response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

If, at the site of a release, EPA selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, CERCLA Subsection 121(c), 42 U.S.C. 121(c), requires that EPA review such remedial action no less often than each 5 years to assure that human health and the environment are being protected by the remedial action. Since hazardous substances will remain at the Site, [2] EPA shall conduct such reviews. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System. [3]

[1] The "Fund" referred to here is the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

[2] Hazardous substances remain on the Site under a multi-layer soil cap which covers approximately seven acres of the Site. EPA considers the cap to be protective; nonetheless, since hazardous substances will remain on the Site, EPA must conduct the CERCLA-required five-year reviews.

[3] The Hazardous Ranking System is the method used by EPA to evaluate the relative potential of hazardous substance releases to cause health or safety problems, or ecological or environmental damage.

III. Deletion Procedures

EPA followed these procedures regarding the proposed deletion:

(1) EPA Region 6 made a determination that no further response action is appropriate and that the Site may be deleted from the NPL;

(2) EPA has consulted with LDEQ, and by letter dated September 12, 1997, LDEQ concurred in EPA's deletion decision;

(3) EPA has published, in a major local newspaper of general circulation at or near the Site, a notice of availability of the NOID, which includes an announcement of a 30-day public comment period regarding the NOID, and EPA distributed the NOID to appropriate State, local and Federal officials, and to other interested parties; and

(4) EPA placed copies of information supporting the proposed deletion (*i.e.*, the public deletion docket) in the Site information repositories (the locations of these repositories are identified above).

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management. As mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility of the site for future response actions.

EPA Region 6 will accept and evaluate public comments on this NOID before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received.

Deletion of the Site from the NPL will occur when the EPA Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the NOID. Public notices and copies of the Responsiveness Summary will be made available to local residents upon request to the EPA Remedial Project Manager, Caroline Ziegler at the address listed above. These will also be placed in both repository locations listed above, where they can be obtained by request.

IV. Basis for Intended Site Deletion

The following information provides the EPA's rationale for the proposal to delete the Site from the NPL:

A. Site Location

The Site is located two miles southwest of Sorrento in Ascension Parish, Louisiana. The Site is an abandoned 25-acre landfill. Prior to the completion of the remedial action on the Site, the Site contained one large pond (about 10 acres) and three small ponds (approximately one acre total). The Site is bordered on the north by residential properties, on the east and south by swampland, and on the west by Louisiana Highway 70.

The Site lies in the Mississippi alluvial plain section of the East Coastal Plain Physiographic Province. The Site is on the Prairie Formation of Pleistocene Age, which consists generally of undifferentiated sediments. The sediments are made up of tan and gray clays and clayey and sandy silts. The major fresh water aquifers beneath the Site are composed of older deltaic deposits. These aquifers used for water supplies include the Gonzales aquifer which is at a depth of about 500 feet and an overlaying Norco aquifer which is at a depth of about 260 feet below the ground surface. The shallow groundwater is generally within a few feet of the surface and is not a documented source of potable water in the area.

B. Site History

Pits located on the site were originally used as the source of borrow material during the construction of embankments for the Sunshine Bridge and portions of Interstate Highway 10. In 1970 the land was leased for use as a landfill by the Environmental Controls Company (ECCO) of Louisiana, with Mr. Cleve Reber as the president. In August 1970, Ascension Parish entered into a sanitary landfill operation agreement with ECCO. Between 1970 and 1974, both municipal and industrial wastes were disposed in the borrow pits. Trenches were also dug on the Site, and were filled with wastes. One large pit and three smaller pits filled with rain water and became ponds. In July 1974, the landfill operators were found to be in violation of the State sanitation code, and they were ordered to stop receiving waste. Thereafter, the Site was abandoned by ECCO.

In 1981 the State of Louisiana, in response to citizen complaints, funded a study to collect data to develop a plan to close the Site. Tests showed the presence of significant levels of hazardous substances including hexachlorobenzene and hexachlorobutadiene. The Site was promulgated to the National Priorities

List (NPL) in September 1983, (see 48 FR 40658, September 8, 1983).

The State fenced the Site in early 1983 due to citizen concerns. In July 1983, EPA conducted an emergency removal. As part of the removal, over 1,100 drums were removed from the Site. Piles of waste located on the surface of the Site were also removed. As a temporary protective measure, a thin clay cap was placed over areas thought to contain buried drums and wastes. These areas of buried waste were later permanently addressed as part of a remedial action.

A Remedial Investigation (RI) and Feasibility Study (FS) was completed by EPA in May 1985. In order to include an expanded analysis of innovative remedial technologies, and to quantify the groundwater contaminants at much lower detection levels, a supplemental RI/FS was initiated in August 1985 and completed in April 1986.

The major volume of waste disposed at the Site was municipal waste. The analytical results of field samples collected during the original and supplemental RI indicated that all significant contamination was restricted to the Site. On-site media including the surface water, sediments, surface soils, waste pits, and shallow groundwater were contaminated with organic pollutants. The primary organic pollutants of concern included hexachlorobenzene, hexachlorobutadiene, hexachloroethane and tetrachloroethene. Inorganic analyses indicated a wide range of inorganic pollutant concentration levels in the on-site media and in background samples. No consistently high concentrations were observed. This made qualitative evaluations of any inorganic concentrations found very difficult and impractical.

The EPA issued a Record of Decision (ROD)[4] on March 31, 1987. The selected remedy called for excavation and on-site incineration of buried drums and sludges, draining and backfilling on-site ponds, placing a clay cap over the landfill areas, and groundwater monitoring. The estimated cost of the cleanup was $25 million.

On September 30, 1988, EPA issued a Unilateral Administrative Order, amended on February 5, 1991 (hereinafter the 1988 order and its 1991 amendment are referred to collectively as the Order), addressed to a total of five responsible parties. The Order required the implementation of the remedial design and the remedial action for the Site and the performance of operation and maintenance subsequent to completion of implementation of the remedy. Some of these responsible parties completed the remedial design and remedial action at a cost of over $53 million. The remedial action began in August 1993, and ended in May 1996 with the completion of the cap.

Dewatering and backfilling of the three Site ponds identified in the ROD was completed in July 1995. Ponds were dewatered to a level of approximately one foot above the pond bottom. Ponds were then backfilled with sand until a firm working surface was achieved. The sand was then covered with a geotextile material. Approximately 5 feet of clay was placed over the geotextile in order to achieve grades that would be resistant to erosion, and to complete the backfill operation. The clay fill was installed and compacted in 8-inch lifts,[5] and density tests were performed on every lift. If any lift failed the testing it was reworked and retested. A 6-inch layer of topsoil was placed on top of the clay fill prior to landscaping. These multi-layers serve to form an impermeable cap.

Prior to excavating the waste and under EPA oversight, the responsible parties constructed buildings capable of controlling air emissions over the areas to be excavated. These "Excavation and Feed Preparation" buildings were large aircraft hanger-like structures designed to prevent escape of volatile organic compounds (VOCs). The responsible parties kept a negative air pressure vacuum in the buildings in order to maintain VOC concentrations at less than 50 parts per million (ppm), and to prevent an explosive concentration of gases from accumulating. The exhausted air from the buildings was treated with fume incineration and activated carbon prior to atmospheric emission in order to insure that VOC action levels were not exceeded at the fence line, or at residential ambient air monitoring stations.

The horizontal limits of excavation at the Site were based on RI findings. Sheet pilings were installed around the perimeter of the three excavation areas to mark the horizontal limits, support the sidewalls and to control the flow of water into the excavations. Vertical limits of excavation were based upon visual determination of the limits of industrial waste present at the areas in question. The responsible parties, subject to EPA review and approval, visually inspected the material to be excavated and separated it into industrial waste, municipal waste, and natural soils based on physical form, color, and texture. Excavation continued until visual observation confirmed that all visible industrial waste had been removed. Materials classified as industrial waste were incinerated. The resulting incinerator ash and the materials classified as municipal wastes and native soil were used as a backfill material into the excavated areas. Backfill material was compacted until it was level with the base of the landfill cap. The completion of the landfill cap is described below.

Thermal treatment of industrial waste, drums, wastewater treatment plant sludges, oils and grease was conducted on-site in a Shirco-infrared type incinerator operated in compliance with the approved operating conditions. A trial burn had been conducted at the Site between July 1 and July 3, 1994. The trial burn results showed that the concentrations of the constituents of concern were all in compliance with the regulatory limits. An average destruction and removal efficiency (DRE) of >99.99939% for hexachlorobenzene and >99.9940% for hexachlorobutadiene were achieved. About 25,000 tons of waste material was incinerated. Waste incineration was completed in September 1995.

The incinerator ash/scrubber filter cake that did not meet the backfill material criteria due to its high metals content was stabilized. Approximately 500 tons of incinerator ash/scrubber filter cake was stabilized prior to placement into the excavated areas as backfill.

The sources of wastewater produced on the Site included groundwater from waste excavation areas, surface water from the on-site ponds, decontamination water, and wastewater from the incineration operations. The wastewater was treated on-site to meet the National Pollutant Discharge Elimination System (NPDES) discharge criteria set by EPA and Louisiana Department of Environmental Quality (LDEQ), and, subsequently, the wastewater was discharged to the Mississippi River via a dedicated pipeline. The wastewater treatment plant included air stripping for VOCs removal, pH adjustment for metals precipitation, coagulation and flocculation, filtration (filter presses), and carbon adsorption units. The wastewater treatment plant operated from November 1993 to December 1995. About 64 million gallons of wastewater were treated and discharged.

A final multi-layer cap was placed over all waste material (and backfill) which remained in the excavation areas. This cap covers approximately seven acres of the Site. The cap was installed between November 1995 and May 1996. In preparation for the final cap profile, clean backfill material was applied on top of the waste, and the backfill was graded to the appropriate elevations per the design specifications. A synthetic drainage net, a half foot sand layer and an eighty millimeter High Density Polyethylene (HDPE) were placed on top of the backfill. This allowed for installation of gas vents into the constructed sand layer. The vents extend up through the cap and are used to monitor for gas breakthrough using carbon canister detection units. This system was devised in order to determine if any residual treated waste beneath the cap is breaking down and causing formation of gas. The purpose of the system is to enable contingency plans to be implemented if gas is detected.

A two foot clay layer was installed and compacted in 8-inch lifts on top of the gas vent layer. On top of this clay layer a geotextile and HDPE were installed prior to covering the whole area with one foot of topsoil. The topsoil, which is the exposed portion of the cap, was seeded with vegetation that is intended to anchor the topsoil during rainfall events. To complete the cap, the carbon canisters were attached to the gas vents.

As part of the landfill construction, perforated stainless steel pipes wrapped with a filter fabric were laid in along the bottom, beneath the waste layers. There are various PVC pipe stands which stick up through the cap that are attached to the piping beneath the landfill. These pipe stands are checked on a regular basis (once every three months) for their integrity, as well as to see if any liquids have collected into the pipe system. This system is known as a leachate collection system. The leachate (leachate is any water that percolates through the landfill) can be collected and analyzed.

The responsible parties constructed the remedy at the Site to meet performance standards specified in the ROD. The remedy implemented to address the contamination at the Site has achieved the remedial action objectives and the remediation goals described in the ROD. EPA and the LDEQ have determined that the remedy which includes long-term groundwater monitoring as well as an inspection and maintenance program for the Site is performing as designed, and is operational and functional. No additional treatment or other measures to restore ground-or surface-water quality have been identified as being required.

C. Characterization of Risk

Continued monitoring of groundwater demonstrates that no significant risk to public health or the environment is posed by the hazardous materials remaining at the Site. Based on the successful remedial actions addressing the hazardous materials on-site, the monitoring results of operation and maintenance (O & M) activities to date, and the public health consultation by the Agency for Toxic Substances and Disease Registry (ATSDR), EPA verifies the implemented Site remedy is protective of human health and the environment.

D. Community Involvement

Public participation activities have been satisfied as required in CERCLA Subsection 113(k), 42 U.S.C. 9613(k), and in CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket on which EPA relied for recommendation of the Site deletion from the NPL have been made available to the public in the two information repositories the location of which is identified above.

E. Proposed Action

In consultation with the LDEQ, EPA has concluded that responsible parties have implemented all appropriate response actions required at the Site (neither the CERCLA-required five-year reviews, nor operation and maintenance of the constructed remedy is considered further response action for these purposes), that all appropriate Fund-financed response actions under CERCLA have been implemented, and that no further response action by responsible parties is appropriate. Moreover, EPA, in consultation with LDEQ, has determined that Site investigations show that the Site now poses no significant threat to public health or the environment; consequently, EPA proposes to delete the Site from the NPL.

Dated: September 25, 1997.

Jerry Clifford,

Acting Regional Administrator, U.S. EPA Region 6.

[FR Doc. 97–26528 Filed 10–8–97; 8:45 am]

BILLING CODE 6560–60–P

[4] EPA's Record of Decision documents the selection of the remedial alternative which will be used to cleanup the site in question.

[5] A lift is a layer of excavated material or fill material.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15, 73, 74, and 76

[ET Docket No. 97–206; FCC 97–340]

Technical Requirements To Enable Blocking of Video Programming Based on Program Ratings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this *Notice of Proposed Rule Making* ("NPRM"), the Commission proposes to amend its rules to require that most television receivers be equipped with features that enable viewers to block the display of video programming with a common rating. Furthermore, the Commission proposes to amend its rules to ensure the ratings information that is associated with a particular video program is not deleted from transmission by broadcast television stations, low power television stations, television translator and booster stations, and cable television systems. The Commission also proposes that similar requirements should be placed on other services that can be used to distribute video programming to the home, such as Multipoint Distribution Services (MDS) and Direct Broadcast Satellite Service (DBS). This action is taken in response to the Parental Choice in Television Programming requirements contained in section 551 (c), (d), and (e) of the Telecommunications Act of 1996 (Pub. L. No. 104–104, 111 Stat. 56), which amended sections 303 and 330 of the Communications Act of 1934 (47 U.S.C. 303 and 330). The proposals contained in this *NPRM* are intended to give parents the ability to block video programming that they do not want their children to watch.

DATES: Comments must be filed on or before November 24, 1997, and reply comments must be filed on or before December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, ET Docket 97–206, FCC 97–340, adopted September 25, 1997 and released September 26, 1997. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC. The complete text of this document also may be purchased from the Commission's

duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of Notice of Proposed Rule Making

1. In the Telecommunications Act of 1996 (the Telecommunication Act), Congress determined that parents should be provided "with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children * * *." Accordingly, Congress (1) mandated the inclusion in most new television receivers of the so-called "V-chip" technology, which will enable viewers to block the display of all programs with a common rating, and (2) authorized the Commission to "Prescribe * * * guidelines and recommended procedures for the identification and rating of (such) video programming, * * *" if distributors of video programming do not establish acceptable voluntary procedures within one year.

2. With respect to V-chip technology, section 551(c) of the Telecommunications Act directs the Commission to adopt rules requiring that any "apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally) * * * be equipped with a feature designed to enable viewers to block display of all programs with a common rating * * *." Section 551(d) states that the Commission must "require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval * * *." That provision also instructs the Commission to oversee "the adoption of standards by industry for blocking technology," and to ensure that blocking capability continues to be available to consumers as technology advances.

3. With respect to the ratings, the Telecommunications Act directs the Commission to establish a program ratings system, but only if the Commission determines that distributors of video programming have not: (1) Established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are "acceptable to the Commission;" and (2) agreed voluntarily to broadcast signals that contain ratings of such programming. Distributors of video programming were given 1 year from the date of enactment of the Telecommunications Act, until February 8, 1997, to meet these requirements.

4. The Commission Is adopting this *Notice of Proposed Rulemaking* to begin the process of requiring television manufacturers to include blocking technology in their television receivers and to ensure that any ratings information that is provided with video programming is transmitted to the television receiver intact and without disruption by any broadcast, cable television, or other video programming distribution service.

Initial Regulatory Flexibility Analysis

5. As required by section 603 of the Regulatory Flexibility Act,[1] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (Notice)*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided above. The Secretary shall send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

A. Need for and Objectives of the Proposed Rules

6. The proposed rules are intended to address the Parental Choice in Television Programming requirements contained in section 551(c) and 551(d) of the Telecommunications Act of 1996.[2] Congress has determined that parents should be provided "with timely information about the nature of upcoming video programming and with the technological tools that allow them to block violent, sexual, or other programming that they believe harmful to children. Accordingly, Congress (1) mandated the inclusion in most new television receivers of the so-called "V-chip" technology, which will be capable of reading program ratings and blocking programming, if requested, and (2) authorized the Commission to establish a rating system and rules requiring the transmission of program ratings if distributors of video programming do not establish acceptable voluntary procedures within one year.

B. Legal Basis

7. The proposed action is taken pursuant to sections 4(i), 303(f), 303(r), 303(v), 303(x), and 330(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 303(v), 303(x), and 330(c).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

8. For the purposes of this Notice, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[3] Under the Small Business Act, a small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[4]

9. The Commission has not developed a definition of small entities applicable to V-chip technology. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA's regulations, television equipment manufacturers must have 750 or fewer employees in order to qualify as a small business concern.[5] Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[6] The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are manufacturers of television equipment. However, we believe that many of the companies that manufacture television equipment will be affected by this rulemaking may qualify as small entities. We seek comments to this IRFA regarding the number of small entities to which the proposed rule pertains.

10. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 1716 firms that manufacture electronic computers. Of those, 659 have fewer than 500 employees and qualify as small entities. The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition.

11. This proposal will begin the process of requiring television manufacturers to include blocking technology in their television receivers and to ensure that any ratings information that is provided with video programming is transmitted to the television receiver intact and without disruption by any broadcast, cable television, or other television program distribution services.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. The Commission's rules require television receivers to be verified for compliance with applicable FCC technical requirements. See 47 CFR 15.101, 15.117, and 2.951, *et seq.* Documentation concerning the verification must be kept by the manufacturer or importer. The rules ultimately adopted in this proceeding will require that television receivers comply with industry-developed standards for blocking display of video programming based on program ratings. However, verification testing regarding program blocking is not necessary because compliance with the industry-developed standards, and the associated Commission rules, can be determined easily during the television receiver design process. The Commission may, of course, ask manufacturers and importers to document upon occasion how a particular television receiver complies with the program blocking requirements.

E. Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

13. Section 330(c)(4) of the Act directs the Commission to consider the existence of appropriate alternative blocking technologies and to amend its rules to permit, as an alternative to the ratings-based approach, use of a technology that: (1) "Enables parents to block programming based on identifying programs without ratings"; (2) "is available to consumers at a cost which is comparable" to the cost of ratings-based technology; and (3) "will allow parents to block a broad range of programs on a multichannel system as effectively and as easily" as ratings-based technology. At this time, we are not aware of any such alternative blocking technologies. Accordingly, we invite comment regarding the existence of such alternate blocking technologies and whether it would be appropriate to permit them at this time in lieu of ratings-based blocking technology. In order to evaluate possible alternative blocking technologies, we solicit information regarding the cost of any alternative blocking technology as well as the cost of implementing ratings-based technology pursuant to EIA–608.

14. Section 303(x) of the Act makes it clear that the program blocking requirements were intended to apply to any "apparatus designed to receive television signals" that has a picture screen of 13 inches or larger. We believe that the program blocking requirements we are proposing should apply to any television receiver (including personal computers) meeting the screen size requirements, regardless of whether it is designed to receive video programming that is distributed only through cable television systems, MDS, DBS, or by some other distribution system.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

15. None.

List of Subjects

47 CFR Part 15

Communications equipment, Computer technology.

47 CFR Part 73

Communications equipment, Television.

47 CFR Part 74

Communications equipment, Television.

47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–26700 Filed 10–8–97; 8:45 am]

BILLING CODE 6712–01–M

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[1] 5 U.S.C. 603.

[2] Pub. L. 104–104, 111 Stat. 56 (1996).

[3] *See* 5 U.S.C. 601(3).

[4] 15 U.S.C. 632.

[5] 13 CFR 121.201, (SIC) Code 3663.

[6] U.S. Department of Commerce, *1992 Census of Transportation, Communications, and Utilities*, SIC Code 3663 (issued may 1995).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE31

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for the Illinois Cave Amphipod

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period is reopened on the proposal to list the Illinois cave amphipod (*Gammarus acherondytes*) as endangered, pursuant to Endangered Species Act of 1973, as amended. The Service is reopening the comment period to allow members of the public additional time to submit comments on this proposal.

DATES: The reopened comment period on the proposal will close on December 8, 1997. Comments must be received by the Service on or before that date in order to be assured of consideration.

ADDRESSES: Comments and materials concerning the proposal should be sent to the U.S. Fish and Wildlife Service, Ecological Services Field Office, 4469 48th Avenue Court, Rock Island, Illinois. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard C. Nelson, Field Supervisor, Illinois Field Office (see **ADDRESSES** section) (telephone 309/793–5800; facsimile 309/793–5804).

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1997, the Service proposed to add the Illinois cave amphipod (amphipod) to the list of endangered and threatened animals (62 CFR 40319). The amphipod is historically known from six underground cave streams in St. Clair and Monroe Counties in southwestern Illinois. Recent searches for the amphipod indicate that it may exist in only three cave streams in Monroe County, all within a 10-mile radius of Waterloo, Illinois. The cause of the amphipod's decline in geographic range and in the number of populations is believed to be deteriorating water quality in the cave streams which it

inhabits. Surface pollutants can readily enter the cave stream systems by way of sinkholes that directly connect the land surface to the underground cave systems. Agricultural chemicals and effluent from improperly installed or maintained residential septic and sewage systems likely are the primary pollutants affecting subsurface water quality and the health of the amphipod.

The comment period for the proposal ended on September 26, 1997. During that comment period the Service received requests for an extension of the comment period from the Illinois Farm Bureau Federation, the St. Clair County Farm Bureau Federation, the Growmark Corporation, and Congressman Jerry F. Costello. The Service recognizes that seasonal agricultural activities may have made it difficult for some interested and potentially affected parties to prepare and submit timely comments on the proposal. Therefore, the Service is reopening the comment period for another 60 days to provide all interested parties a reasonable opportunity to submit comments.

Author: The primary author of this notice is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (612/725–3536 ext. 241 or fax 612/725–3526).

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: October 1, 1997.

John A. Blankenship,

Assistant Regional Director, Region 3, Ft. Snelling, Minnesota.

[FR Doc. 97–26791 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 196

Thursday, October 9, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Evaluation of the State Nutrition Education Network Cooperative Agreements

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's intention to request Office of Management and Budget approval of the Evaluation of the State Nutrition Education Network Cooperative Agreements.

DATES: Written comments on this notice must be received by December 8, 1997.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michael E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection forms should be directed to Michael E. Fishman, (703) 305–2117.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of the State Nutrition Education Network Cooperative Agreements.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: The evaluation of the State Nutrition Education Network Cooperative Agreement projects is intended to help the Food and Consumer Service identify the most effective strategies for establishing and sustaining state-level nutrition education networks. It is not designed to measure the performance of any particular individual or State. Information gathered from States will be aggregated so that important trends relating to network development can be identified. Overarching questions guiding this evaluation process include: (1) How effective were the processes employed by cooperators in reaching the goals of the project? (2) What lessons can be learned about effective development of nutrition education networks? and; (3) What can FCS do to foster the development of statewide nutrition education networks?

Twenty-two State nutrition support networks are participating in the evaluation. Interviews will be conducted with the project director(s), network coordinators, the food stamp agency representative and up to five other key network members one to three times over the course of two years. Template protocols have been developed and will be tailored to the unique background and environment of each State. For several of the States, interviews will be held in person as part of a site visit to the State; for the remainder, interviews will be conducted by telephone.

Estimate of Burden: Public reporting burden is estimated to range between 3 and 5 hours for the Project Director and the Network Coordinator, and 1 to 2 hours for other network members. One to three interviews will be conducted over two years.

Respondents: Interviews will be conducted with the project director(s), network coordinators, the food stamp agency representative and up to five other key network members.

Estimated Number of Respondents: An average of eight respondents for the 22 networks or a total of 176.

Estimated Number of Responses per Respondent: Two.

Estimated Total Annual Burden on Respondents: 748 hours.

Dated: September 19, 1997.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 97–26784 Filed 10–8–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Public Briefing on Development of a U.S. Action Plan on Food Security

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a public meeting regarding development of a U.S. Action Plan on Food Security will take place on November 5, to brief the public on a discussion paper that is being developed on international topics to be addressed in the U.S. Action Plan and to respond to questions and receive reactions. A similar meeting will be held in December on domestic topics. The purpose of these meetings is to facilitate public participation in the process of developing the U.S. Action Plan on Food Security.

DATES: The meeting will be held November 5, 9 a.m. to 4 p.m. in Room 107A. Administration Building, U.S. Department of Agriculture in Washington, D.C.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The discussion paper will be released to the public on World Food Day, October 16 and will be available on the U.S. Government Food Security home page (http://www.fas.ussda.gov/icd/summit/summit.html). Additional information will also be posted on the home page.

Requests for copies of the paper and inquiries may be directed to the Office of the National Food Security Coordinator, Foreign Agricultural

Service, Room 3008 South Building, U.S. Department of Agriculture, 14th and Independence Ave. SW, Washington, D.C. 20250, telephone (202) 690–0776 or fax (202) 720–6103.

The topics to be addressed at the November 5 meeting are as follows:

Combined International/Domestic Topic

1. Human Rights as a Framework for Food Security

Priority International Topics

2. Appropriate Research, Education, and Extension for Food Production and Food Systems
   Economically, Environmentally and Socially Sustainable Agriculture
3. Measuring Hunger and Mapping Risk
4. Economic Policy, Trade, and Food Distribution
5. Prioritize the Allocation of Foreign Assistance to Promote Food Security
   Health, Nutrition, and Population Stabilization
   The Role of Women
6. Effective Use of Food Aid to Promote Food Security
7. Maximizing and Targeting Resources.

Signed in Washington, DC, September 30, 1997.

Chistopher E. Goldthwait,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 97–26708 Filed 10–8–97; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on October 30 and 31, 1997 at the Trinity County Library, 211 N. Main Street, Weaverville, California. On October 30, the meeting will begin at 9 a.m. and adjourn at 5 p.m. The meeting on October 31 will resume at 8 a.m. and adjourn at 3 p.m. Agenda items to be covered include: (1) Socio-economic considerations associated with the Northwest Forest Plan; (2) a presentation concerning the January 1997 storm damage; (3) subcommittee reports; and (4) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1309.

Dated: October 2, 1997.

Barbara Holder,

Forest Supervisor and Designated Federal Official.

[FR Doc. 97–26794 Filed 10–8–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of meeting.

SUMMARY: The Task Force on Agricultural Air Quality will meet to discuss the relationship between agricultural production and air quality. The meeting is open to the public.

DATES: The meeting will convene Wednesday, October 29, 1997 at 9 a.m. and continue until 4 p.m. The meeting will resume Thursday, October 30, 1997 from 9 a.m. to 3 p.m. Written material and requests to make oral presentations should reach the Natural Resources Conservation Service on or before October 27, 1997.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle NW, Washington, DC, telephone (202) 842–1300. Written material and requests to make oral presentations should be sent to George Bluhm, University of California, Land, Air, Water Resources, 151 Hoagland Hall, Davis, CA 95616–6827.

FOR FURTHER INFORMATION CONTACT: George Bluhm, Designated Federal Official, telephone (916) 752–1018, fax (916) 752–1552.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the October 29–30, 1997 meeting that may appear after this **Federal Register** Notice is published, may be found on the World Wide Web at http://www.nhq.nrcs.usda.gov/BCS/air/farmbill.html.

Draft Agenda of the October 29–30, 1997, Meeting

A. Opening Remarks
   1. Welcome to Washington—P. Wakelyn
   2. Comments and introductions from the Chair—P. Johnson
B. Past Actions
   1. Report on the letter of advice on air research needs to the Secretary—J. Trotter
   2. Senate Agriculture Committee hearing on agricultural air quality—P. Wakelyn, S. Shaver
   3. House Agriculture Committee hearing on agricultural air quality—C. Parnell, Jr.
   4. EPA regional haze rules—S. Shaver
C. Status Reports on Efforts in Progress
   1. MOU between USDA and EPA—S. Shaver, G. Bluhm
   2. Agricultural burning—B. Odum
   3. Oversight issues—W. Hambleton
   4. PM research issues—M. Cunha, R. Flocchini
   5. Ozone issues—J. Miller
   6. Health effects—T. Ferguson, V. Chavez
   7. Monitoring issues—C. Parnell Jr.
   8. Odorants—J. Sweeten
D. New Issues and Parking Lot
   1. Nitrous oxide—J. Smith
   2. Carbon sequestration CRP—T. Elliot
   3. As time allows, other issues brought up by the public or Task Force members
E. Set date and location for next meeting

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may present oral presentations during the October 29–30 meeting. Persons wishing to make oral presentations should notify George Bluhm no later than October 27, 1997. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to George Bluhm no later than October 27, 1997.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact George Bluhm as soon as possible.

Lee P. Herndon,

Director, Institutes Division.

[FR Doc. 97–26789 Filed 10–8–97; 8:45 am]

BILLING CODE 3014–16–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: October 14, 1997; 9:30 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c) (2) and (6)) There will also be a separate closed meeting of the board of directors of RFE/RL, Inc., a nonprofit private corporation funded by grants from the Broadcasting Board of Governors.

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Thomas at (202) 401–3736.

Dated: October 7, 1997.

David W. Burke,

Chairman.

[FR Doc. 97–27023 Filed 10–7–97; 2:09 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. A(32b1)–3–97]

Foreign-Trade Zone No. 143—Sacramento, CA Area Request for Manufacturing Authority, Zytec Services and Logistics (Computers and Related Electronic Products), Lincoln, CA; Correction

The **Federal Register** notice (62 FR 45394, 8/27/97) describing the application submitted to the Foreign-Trade Zones Board (the Board) by Zytec Services and Logistics (ZSL), an operator of FTZ 143, requesting authority on behalf of ZSL to manufacture and assemble computers and related electronic products and subassemblies within FTZ 143, is corrected as follows: in paragraph 3, sentence 1, the list of components purchased from abroad should exclude optical fiber and bearings.

Dated: October 2, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–26701 Filed 10–8–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 73–97]

Foreign-Trade Zone 138—Columbus, Ohio, Application for Foreign-Trade Subzone Status, Lucent Technologies Inc. (Telecommunications Equipment), Columbus, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Rickenbacker Port Authority, grantee of FTZ 138, requesting special-purpose subzone status for the manufacturing and distribution facility (telecommunications equipment) of Lucent Technologies Inc., located in Columbus, Ohio. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 29, 1997.

The Lucent facility (3 buildings/2 million square feet on 252 acres) are located at 6200 E. Broad Street in Columbus (Franklin County), Ohio. The facilities (5,000 employees) are used for the manufacture of telecommunications equipment, including wireless infrastructure products, and switching and networking equipment. A number of components are purchased from abroad (ranging, on average, from 10–30% of total material value) including amplifiers, printed circuit boards, semiconductors, integrated circuits, resistors, connectors, cable, housings for outlets, junctions and switches, wiring devices, and parts for telecommunications assemblies (1997 duty range: free-8.5%, most becoming duty-free by 2000). Some 35 percent of production is currently exported (expected to increase to 50 percent by 2000).

Zone procedures would exempt Lucent from Customs duty payments on foreign components used in export production. On its domestic sales, Lucent would be able to choose the lower duty rate that applies to the finished products (4.8%–8.5%, most becoming duty-free by 2000) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 8, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 23, 1997. A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

U.S. Department of Commerce Export Assistance Center, 37 North High St., 4th Fl, Columbus, Ohio 43215.

Dated: October 1, 1997.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 97–26702 Filed 10–8–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Extension of Time Limit for New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for new shipper antidumping duty administrative review of certain forged stainless steel flanges from India.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the new shipper antidumping duty administrative review of the antidumping order on certain forged stainless steel flanges from India. This review covers one manufacturer and exporter of the subject merchandise, Panchmahal Steels, Ltd., for the period February 1, 1996 through January 31, 1997. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act"), and the Department's

regulations as published in the **Federal Register** on May 11, 1995 (60 FR 25130).

EFFECTIVE DATE: October 9, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam, Alain Letort or John R. Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone (202) 482–2704, 482–4243 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION: The Department initiated this new shipper review on May 2, 1997 (62 FR 24088). The current deadline for the preliminary results is October 27, 1997. Pursuant to 19 CFR § 353.22(h)(7), the Department has determined that this case is extraordinarily complicated and, therefore, is extending the deadline for issuing the preliminary results. This extension is necessary to provide the Department additional time to consider certain issues of complex nature, including whether certain transactions were home-market, third-country, or U.S. sales, and the nature of home-market customers (*e.g.*, producers, end-users, or resellers to the United States).

In accordance with 19 CFR § 353.22(h)(7), the Department will extend the time limit for completion of the preliminary results of this new shipper review to no later than January 27, 1998. We plan to issue the final results within 90 days after the date the preliminary results are issued.

This extension of time limit is in accordance with section 751(a)(2)(B)(iv) of the Act.

Dated: September 29, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary AD/CVD Enforcement Group III.

[FR Doc. 97–26715 Filed 10–8–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On January 30, 1997, Zunyi Chemical Factory, a producer of potassium permanganate in the People's Republic of China, requested that the Department of Commerce conduct an administrative review of their merchandise for the period January 1, 1996, through December 31, 1996. On March 3, 1997, we published a notice of initiation of this antidumping duty administrative review. This review has now been rescinded as a results because there have been on entries into the United States of subject merchandise during the period of review.

EFFECTIVE DATE: October 9, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Thomas Futtner, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474 and (202) 482–3814 respectively.

SUPPLEMENTARY INFORMATION: On January 31, 1984, the Department of Commerce (the Department) published in the **Federal Register** (49 FR 3898) the antidumping duty order on potassium permanganate from the People's Republic of China (PRC). On January 30, 1997, Zunyi Chemical Factory (Zunyi), a producer of the subject merchandise, requested that the Department conduct an administrative review for the period January 1, 1996, through December 31, 1996, in accordance with 19 CFR 353.22(a). On March 3, 1997, we published a notice of initiation (62 FR 9413) of this antidumping duty administrative review. Subsequently, Zunyi reported that it had made no shipments of the subject merchandise during the period of review (POR). We verified this information with the U.S. Customs Service.

Because the only firm for which a review was requested made no entries into the Customs territory of the United States during the POR, the Department is rescinding this review. Moreover, since Zunyi has never demonstrated that it is an exporter entitled to a separate rate, the cash deposit rate for sales of the subject merchandise will continue to be the rate established for exporters of such merchandise or, if Zunyi is the exporter, the PRC-wide rate from the most recently completed administrative review.

This notice is published in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. Sec. 1675(a)(1)) and 19 CFR 353.22 (1996).

Dated: October 3, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 97–26850 Filed 10–8–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Harvard Medical School; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–072. *Applicant:* Harvard Medical School, Southborough, MA 01772–9102. *Instrument:* Electron Microscope, Model JEM–1010. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 62 FR 45397, August 27, 1997. *Order Date:* June 17, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–26713 Filed 10–8–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–077. *Applicant:* University of Washington, School of Oceanography, Box 357940, Seattle, WA 98195–7940. *Instrument:* Isotope Ratio Mass Spectrometer, Model DELTA^{plus}. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used in a diverse group of geochemical studies of oceanic, atmospheric and terrestrial problems. Isotope and gas ratio measurements will be used to help determine the following: (1) Rates of anthropogenic CO_2 uptake by the ocean, (2) rates of oceanic productivity, (3) organic matter cycling in the Amazon basin, (4) the source of increase of atmospheric methane and carbon monoxide, (5) denitrification rates in the water column and shelf sediments, (6) terrestrial versus marine sources of organic matter in shelf sediments, (7) the diet of juvenile polychaetes and (8) the impact of food web structure on carbon export in the equatorial Pacific. *Application accepted by Commissioner of Customs:* August 28, 1997.

Docket Number: 97–078. *Applicant:* University of Missouri at Kansas City, School of Biological Sciences, Room 417 BSB, 5007 Rockhill Road, Kansas City, MO 64110. *Instrument:* Free-Flow Electrophoresis Device. *Manufacturer:* Dr. Weber GmbH, Germany. *Intended Use:* The instrument will be used in several research projects for: (1) The separation of cells, for example, B lymphocytes from whole blood, to be used for immortalization by Epstein-Barr virus, (2) the separation of intracellular organelles and vesicles from cells to study protein expression and secretion and (3) the separation and purification of protein subunits in denaturing solvents for further studies of protein function. In addition, the instrument will be used for training undergraduate, graduate and professional students and postdoctoral fellows in the technique of free-flow electrophoresis. *Application accepted by Commissioner of Customs:* September 5, 1997.

Docket Number: 97–079. *Applicant:* Pennsylvania State University at Erie, The Behrend College, 5091 Station Road, Erie, PA 16563–1702. *Instrument:* Thermodynamic Measurement Equipment, Model pvT 100. *Manufacturer:* SWO Polymertechnik GmbH, Germany. *Intended Use:* The instrument will be used to assist students in researching pressure, volume and temperature phenomena to better identify polymer material behavior. The objectives of the experimentation will be to provide students in the Plastics Engineering Technology program with basic fundamental material characterization properties to further enhance their understanding of material flow. *Application accepted by Commissioner of Customs:* September 5, 1997.

Docket Number: 97–080. *Applicant:* Cornell University, 335 Savage Hall, Ithaca, NY 14853. *Instrument:* Rapid Mixing Accessory, Model SFA–20/Spex. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used to obtain quantitative information regarding the rates by which Vitamin A derivatives interact with binding proteins and with biological membranes. The aim of this study is to clarify the mechanisms by which retinoids move between cells and sub-cellular compartments *in vivo* and the factors that regulate the distribution of these compounds. *Application accepted by Commissioner of Customs:* September 8, 1997.

Docket Number: 97–081. *Applicant:* University of North Carolina at Chapel Hill, Department of Physics and Astronomy, 141 Phillips Hall CB# 3255, Chapel Hill, NC 27599–3255. *Instrument:* X-Ray Diffractometer with Accessory, Model DIP–2020 V. *Manufacturer:* Nonius-Enraf, The Netherlands. *Intended Use:* The instrument will be used to perform in-situ and ex-situ x-ray diffraction experiments in conjunction with property measurement. The materials to be studied will include C_{60} derivative compounds, carbon nonotubes, new semiconducting materials based on Si/Ge clathrates, noncrystals, high temperature superconductor films and novel magnetic multilayers. In addition, the instrument will be used to teach x-ray diffraction techniques and its applications in materials science. *Application accepted by Commissioner of Customs:* September 9, 1997.

Docket Number: 97–082. *Applicant:* University of Minnesota, Department of Biochemistry, Medical School, 4–225 Millard Hall, 435 Delaware Street, S.E., Minneapolis, MN 55455. *Instrument:* Stopped-Flow Reaction Analyzer, Model SX.18MV. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the reaction rates of enzymes and proteins with their substrates of other small molecules that they bind. The instrument can measure the optical and fluorescence changes that occur during the binding and shape change processes and assign rates to these changes. In addition, the instrument will be used for educational purposes in the course Biochemistry 5–528 "Kinetics of Biological Systems." *Application accepted by Commissioner of Customs:* September 10, 1997.

Docket Number: 97–083. *Applicant:* Indiana University-Purdue University at Indianapolis, 402 North Blackford Street, Indianapolis, IN 46202. *Instrument:* Stopped-Flow Spectrometer, Model SX–61DX2. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for educational purposes in the following courses: (1) C363 Experimental Physical Chemistry—experimental work to illustrate the principles of physical chemistry, (2) C411 Principles of Chemistry Instrumentation Laboratory—laboratory instruction in instrument analysis techniques, (3) C435 Inorganic Chemistry Laboratory—synthesis, characterization and study of chemical and physical properties of inorganic and organometallic compounds and (4) C486 Biological Chemistry Laboratory—introduction to the important techniques currently employed by practicing biological chemists. *Application accepted by Commissioner of Customs:* September 10, 1997.

Docket Number: 97–084. *Applicant:* Barnard College, 3009 Broadway, New York, NY 10027–6598. *Instrument:* Electron Microscope, Model EM208S. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used to visualize cellular detail and relate it to some aspects of cellular or organismal structure or function in research projects on plant, animal, microbial and viral subjects. In addition, the instrument will be used for educational purposes in laboratory courses in cells and tissues, microbiology, plant physiology and neurobiology providing higher magnification and permitting finer cellular detail to be seen. *Application accepted by Commissioner of Customs:* September 10, 1997.

Docket Number: 97–085. *Applicant:* University of Minnesota, Department of Biochemistry, Medical School, 4–225 Millard Hall, 435 Delaware Street, SE, Minneapolis, MN 55455. *Instrument:* Electron Paramagnetic Resonance Spectrometer, Model E500. *Manufacturer:* Bruker, Germany. *Intended Use:* The instrument will be

used for the study of materials with electronic spins which are due to unpaired electrons associated with atoms in the material under study. These materials are biological materials and analogs with unpaired spins, either organic free radicals, metals bound to proteins or enzymes or materials in small chelate complexes used as models for biological systems. In addition, the instrument will be used for teaching the principles underlying EPR purposes in the biophysics courses MdBc5–526 and MdBc5–527.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–26712 Filed 10–8–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Oklahoma; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–007R. *Applicant:* University of Oklahoma, Norman, OK 73019. *Instrument:* CO_2/Far-Infrared Laser System. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 44949, August 25, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a structurally integrated far-infrared laser directly coupled to a CO_2 pumping laser for superior stability. This capability is pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–26714 Filed 10–8–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Transition Orders; Schedule and Grouping of Five-year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of proposed schedule and grouping of five-year reviews of transition orders.

SUMMARY: The Department of Commerce ("the Department") hereby publishes its proposed schedule for the conduct of the initial five-year reviews of transition orders and the International Trade Commission's ("the ITC") proposal for grouping reviews. Parties are invited to submit comments on the proposed schedule and the proposed groupings.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Background

Section 751(c)(6) of the Tariff Act of 1930, as amended ("the Act") provides special rules for five-year reviews of "transition orders" which are defined as (1) a countervailing duty order under this title or under section 303, (2) an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or (3) a suspension of an investigation under section 704 or 734, which is in effect on the date the WTO Agreement enters into force with respect to the United States (January 1, 1995). Section 751(c)(6)(B) gives the Department, in consultation with the ITC, discretion to determine the appropriate sequence of five-year reviews of transition orders. The Statement of Administrative Action notes that, to the maximum extent practicable, the agencies will review older orders first and, to accommodate special problems that may arise where reviews of transition orders are grouped, the Department may initiate reviews out of chronological sequence. *See* Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 316, at 882 (1994)) ("SAA").

The SAA provides that, at some time reasonably in advance of the commencement of the initial five-year reviews of transition orders, the Department will publish a proposed schedule including the ITC's proposal for grouping reviews. SAA at 882–883.

Proposed Schedule and Grouping

The Department and the ITC have developed, in consultation, the proposed schedule and grouping provided in the Appendix to this notice.

Methodology

Qualifying antidumping and countervailing duty orders, findings, and suspended investigations were identified by product, country, ITC case number, Department case number, and effective date. Antidumping and countervailing duty orders, findings, and suspended investigations involving the same domestic like product or involving related like products were then grouped. An average date for each group was then determined based on the effective date (month and year) of each order within a group. Groups of transition orders were then placed in chronological sequence based on the average date of the group. The list was divided to provide for monthly initiations beginning in July 1998. Although not indicated in the attached schedule, all reviews are to be completed by both the Department and the ITC 18 months from the date of initiation.

Request for Comment

Interested parties are invited to comment on the proposed schedule and grouping. Each person submitting a comment should include his or her name and address, and give reasons for any recommendations. Written comments should be submitted to both the Department and the ITC. Six copies of all comments should be submitted to the Department and a signed original and fourteen copies should be submitted to the ITC at the addresses specified below.

DATES: Written comments will be due on December 8, 1997.

ADDRESSES: At the Department, address written comments to Robert S. LaRussa, Assistant Secretary for Import Administration, Central Records Unit, Room B–1780, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. Attention: Sunset. At the ITC, address written comments to Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436.

After considering the comments received, and in consultation with each other, the ITC will determine which transition orders will be grouped, and the Department will determine the review schedule. The Department intends to publish a notice of final schedule and grouping no later than May 1, 1998.

Dated: October 2, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

PROPOSED SCHEDULE AND GROUPING

Initiation month/yr	Group avg date month/yr	Effective date (mm.dd.yy)	DOC case No.	ITC case No.[1]	Country	Product
July 98	9.66	09.13.66	A–122–006	AA–49	Canada	Steel Jacks.
	6.72	06.09.72	A–588–029	AA–85	Japan	Fish Netting of Manmade Fiber.
	6.72	06.14.72	A–427–030	AA–85	France	Large Power Transformers.
	6.72	06.14.72	A–475–031	AA–87	Italy	Large Power Transformers.
	6.72	06.14.72	A–588–032	AA–88	Japan	Large Power Transformers.
	9.72	08.28.68	A–843–803	AA–51	Kazakstan	Titanium Sponge.
	9.72	08.28.68	A–821–803	AA–51	Russia	Titanium Sponge.
	9.72	08.28.68	A–823–803	AA–51	Ukraine	Titanium Sponge.
	9.72	11.30.84	A–588–020	A–161	Japan	Titanium Sponge.
	11.72	11.22.72	A–588–038	AA–98	Japan	Bicycle Speedometers.
	3.73	03.23.73	A–602–039	AA–110	Australia	Canned Bartlett Pears.
	4.73	04.12.73	A–588–028	AA–111	Japan	Roller Chain.
Aug. 98	6.73	06.08.73	A–401–040	AA–114	Sweden	Stainless Steel Plate.
	7.73	07.10.73	A–588–041	AA–115	Japan	Synthetic Methionine.
	12.73	12.06.73	A–588–046	AA–129	Japan	Polychloroprene Rubber.
	12.73	12.17.73	A–122–047	AA–127	Canada	Elemental Sulphur.
	2.74	02.27.74	A–122–050	AA–137	Canada	Racing Plates.
	8.76	08.30.76	A–588–055	AA–154	Japan	Acrylic Sheet.
	2.77	02.02.77	A–588–056	AA–162	Japan	Melamine.
Sep. 98	3.77	03.15.77	C–351–037	C4–21	Brazil	Cotton Yarn.
	10.77	10.21.77	A–475–059	AA–167	Italy	Pressure Sensitive Tape.
	12.77	12.22.77	A–428–062	AA–172	Germany	Animal Glue.
	2.78	02.17.78	A–433–064	AA–173	Austria	Railway Track Equipment.
	5.78	05.25.78	A–588–066	AA–176	Japan	Impression Fabric.
	12.78	12.08.78	A–588–068	AA–188	Japan	Steel Wire Strand.
	4.79	03.21.79	A–405–071	AA–191	Finland	Rayon Staple Fiber.
	4.79	05.15.79	C–401–056	C4–13	Sweden	Rayon Staple Fiber.
Oct. 98	6.79	07.31.78	C–408–046	C4–7	EC	Sugar.
	6.79	06.13.79	A–423–077	AA–198	Belgium	Sugar.
	6.79	06.13.79	A–427–078	AA–199	France	Sugar.
	6.79	06.13.79	A–428–082	AA–200	Germany	Sugar.
	6.79	04.09.80	A–122–085	A–3	Canada	Sugar and Syrups.
	12.79	03.10.71	A–588–015	AA–66	Japan	Television Receivers.
	12.79	04.30.84	A–580–008	A–134	Korea	Color Television Receivers.
	12.79	04.30.84	A–583–009	A–135	Taiwan	Color Television Receivers.
	11.80	11.06.80	A–588–090	A–7	Japan	Small Electric Motors (SA).
	1.81	01.07.81	A–427–098	A–25	France	Anhydrous Sodium Metasilicate.
	4.82	04.09.82	A–427–001	A–44	France	Sorbitol.
	7.82	07.20.82	A–588–005	A–48	Japan	High Power Microwave Amplifiers.
	2.83	06.25.81	A–428–061	A–31	Germany	Barium Carbonate.
	2.83	10.17.84	A–570–007	A–149	China, PR	Barium Chloride.
Nov. 98	9.83	09.16.83	A–570–101	A–101	China, PR	Griege Polyester Cotton Print Cloth.
	10.83	09.27.82	C–357–004	C-None	Argentina	Carbon Steel Wire Rod (SA).
	10.83	11.23.84	A–357–007	A–157	Argentina	Carbon Steel Wire Rods.
	11.83	11.07.83	C–559–001	C-None	Singapore	Refrigeration Compressors (SA).
	1.84	01.19.84	A–469–007	A–126	Spain	Potassium Permanganate.
	1.84	01.31.84	A–570–001	A–125	China, PR	Potassium Permanganate.
	3.84	03.22.84	A–570–002	A–130	China, PR	Chloropicrin.
	3.85	10.16.80	C–533–063	C3–13	India	Iron Metal Castings.
	3.85	03.05.86	A–122–503	A–263	Canada	Iron Construction Castings.
	3.85	05.09.86	A–351–503	A–262	Brazil	Iron Construction Castings.
	3.85	05.09.86	A–570–502	A–265	China, PR	Iron Construction Castings.
	3.85	05.15.86	C–351–504	C–249	Brazil	Heavy Iron Construction Castings.
	3.85	03.01.85	A–475–401	A–165	Italy	Brass Fire Protection Equipment.
Dec. 98	3.85	03.12.85	C–301–401	C-None	Colombia	Textiles & Textile Products (SA).
	3.85	03.12.85	C–549–401	C-None	Thailand	Certain Textile Mill Products (SA).
	4.85	03.02.83	C–351–005	C–184	Brazil	Frozen Concentrated Orange Juice (SA).
	4.85	05.05.87	A–351–605	A–326	Brazil	Frozen Concentrated Orange Juice.
	4.85	04.18.85	A–588–401	A–189	Japan	Calcium Hypochlorite.
	5.85	03.16.76	C–351–029	C4–20	Brazil	Castor Oil.
	5.85	07.14.94	A–570–825	A–653	China, PR	Sebacic Acid.
	6.85	06.24.85	A–122–401	A–196	Canada	Red Raspberries.
	8.85	08.15.85	C–122–404	C–224	Canada	Live Swine.
	10.85	10.22.85	C–351–406	C–223	Brazil	Tillage Tools.
	11.85	11.13.85	A–357–405	A–208	Argentina	Barbed Wire.

PROPOSED SCHEDULE AND GROUPING—Continued

Initiation month/yr	Group avg date month/yr	Effective date (mm.dd.yy)	DOC case No.	ITC case No.[1]	Country	Product
Jan. 99	12.85	12.04.85	A–614–502	A–246	New Zealand	Brazing Copper Wire & Rod.
	12.85	01.29.86	A–791–502	A–247	South Africa	Brazing Copper Wire & Rod.
	12.85	12.19.85	A–588–405	A–207	Japan	Cellular Mobile Phones.
	2.86	02.14.86	A–570–501	A–244	China, PR	Paint Brushes.
	3.86	10.04.83	A–570–003	A–103	China, PR	Shop Towels.
	3.86	03.09.84	C–535–001	C–202	Pakistan	Shop Towels.
	3.86	09.12.84	C–333–401	C-None	Peru	Cotton Shop Towels (SA).
	3.86	03.20.92	A–538–802	A–514	Bangladesh	Shop Towels.
	7.86	07.17.86	A–507–502	A–287	Iran	Pistachio Nuts.
	8.86	06.28.86	A–570–504	A–282	China, PR	Candles.
	9.86	10.15.73	A–588–045	AA–124	Japan	Steel Wire Rope.
	9.86	03.25.93	A–201–806	A–547	Mexico	Steel Wire Rope.
	9.86	03.26.93	A–580–811	A–546	Korea (South)	Steel Wire Rope.
	11.86	05.21.86	A–351–505	A–278	Brazil	Malleable Cast Iron Pipe Fittings.
	11.86	05.23.86	A–580–507	A–279	Korea (South)	Malleable Cast Iron Pipe Fittings.
	11.86	05.23.86	A–583–507	A–280	Taiwan	Malleable Cast Iron Pipe Fittings.
	11.86	07.06.87	A–588–605	A–347	Japan	Malleable Cast Iron Pipe Fittings.
	11.86	08.20.87	A–549–601	A–348	Thailand	Malleable Cast Iron Pipe Fittings.
Feb. 99	1.87	12.02.86	A–570–506	A–298	China, PR	Porcelain-on-Steel Cooking Ware.
	1.87	12.02.86	A–201–504	A–297	Mexico	Porcelain-on-Steel Cooking Ware.
	1.87	12.02.86	A–583–508	A–299	Taiwan	Porcelain-on-Steel Cooking Ware.
	1.87	12.12.86	C–201–505	C–265	Mexico	Porcelain-on-Steel Cooking Ware.
	1.87	01.20.87	A–580–601	A–304	Korea (South)	Top-of-the-Stove Stainless Steel Cooking Ware.
	1.87	01.20.87	C–580–602	C–267	Korea (South)	Top-of-the-Stove Stainless Steel Cooking Ware.
	1.87	01.20.87	C–583–604	C–268	Taiwan	Top-of-the-Stove Stainless Steel Cooking Ware.
	1.87	01.20.87	A–583–603	A–305	Taiwan	Top-of-the-Stove Stainless Steel Cooking Ware.
	3.87	03.12.87	C–421–601	C–278	Netherlands	Standard Chrysanthemums.
	3.87	03.18.87	A–301–602	A–329	Colombia	Fresh Cut Flowers.
	3.87	03.18.87	A–331–602	A–331	Ecuador	Fresh Cut Flowers.
	3.87	03.19.87	C–337–601	C–276	Chile	Standard Carnations.
	3.87	03.20.87	A–337–602	A–328	Chile	Standard Carnations.
	3.87	04.23.87	A–779–602	A–332	Kenya	Standard Carnations.
	3.87	04.23.87	A–201–601	A–333	Mexico	Fresh Cut Flowers.
	3.87	04.23.87	C–333–601	C3–18	Peru	Pompon Chrysanthemums.
	5.87	01.08.87	C–351–604	C–269	Brazil	Brass Sheet & Strip.
	5.87	01.12.87	A–351–603	A–311	Brazil	Brass Sheet & Strip.
	5.87	01.12.87	A–122–601	A–312	Canada	Brass Sheet & Strip.
	5.87	01.12.87	A–580–603	A–315	Korea (South)	Brass Sheet & Strip.
	5.87	03.06.87	C–427–603	C–270	France	Brass Sheet & Strip.
	5.87	03.06.87	A–427–602	A–313	France	Brass Sheet & Strip.
	5.87	03.06.87	A–428–602	A–317	Germany	Brass Sheet & Strip.
	5.87	03.06.87	A–475–601	A–314	Italy	Brass Sheet & Strip.
	5.87	03.06.87	A–401–601	A–316	Sweden	Brass Sheet & Strip.
	5.87	08.12.88	A–588–704	A–379	Japan	Brass Sheet & Strip.
	5.87	08.12.88	A–421–701	A–380	Netherlands	Brass Sheet & Strip.
Mar. 99	7.87	07.14.87	A–831–801	A–340	Armenia	Solid Urea.
	7.87	07.14.87	A–832–801	A–340	Azerbaijan	Solid Urea.
	7.87	07.14.87	A–822–801	A–340	Belarus	Solid Urea.
	7.87	07.14.87	A–447–801	A–340	Estonia	Solid Urea.
	7.87	07.14.87	A–833–801	A–340	Georgia	Solid Urea.
	7.87	07.14.87	A–428–605	A–338	Germany	Solid Urea.
	7.87	07.14.87	A–843–801	A–340	Kazakstan	Solid Urea.
	7.87	07.14.87	A–835–801	A–340	Kyrgyzstan	Solid Urea.
	7.87	07.14.87	A–449–801	A–340	Latvia	Solid Urea.
	7.87	07.14.87	A–451–801	A–340	Lithuania	Solid Urea.
	7.87	07.14.87	A–841–801	A–340	Moldova	Solid Urea.
	7.87	07.14.87	A–485–601	A–339	Romania	Solid Urea.
	7.87	07.14.87	A–821–801	A–340	Russia	Solid Urea.
	7.87	07.14.87	A–842–801	A–340	Tajikistan	Solid Urea.
	7.87	07.14.87	A–843–801	A–340	Turkmenistan	Solid Urea.
	7.87	07.14.87	A–823–801	A–340	Ukraine	Solid Urea.
	7.87	07.14.87	A–844–801	A–340	Uzbekistan	Solid Urea.
	7.87	01.19.88	A–122–701	A–374	Canada	Potassium Chloride (Potash) (SA).
	8.87	08.19.87	C–508–605	C–286	Israel	Industrial Phosphoric Acid.
	8.87	08.19.87	A–508–604	A–366	Israel	Industrial Phosphoric Acid.
	8.87	08.20.87	A–423–602	A–365	Belgium	Industrial Phosphoric Acid.
	8.87	08.25.87	A–489–602	A–364	Turkey	Aspirin.
Apr. 99	1.88	01.07.88	A–122–605	A–367	Canada	Color Picture Tubes.
	1.88	01.07.88	A–588–609	A–368	Japan	Color Picture Tubes.
	1.88	01.07.88	A–580–605	A–369	Korea (South)	Color Picture Tubes.

PROPOSED SCHEDULE AND GROUPING—Continued

Initiation month/yr	Group avg date month/yr	Effective date (mm.dd.yy)	DOC case No.	ITC case No.[1]	Country	Product
	1.88	01.07.88	A–559–601	A–370	Singapore	Color Picture Tubes.
	6.88	08.06.76	A–588–054	AA–143	Japan	Tapered Roller Bearings, 4 Inches and Under.
	6.88	06.15.87	A–570–601	A–344	China, PR	Tapered Roller Bearings.
	6.88	06.19.87	A–437–601	A–341	Hungary	Tapered Roller Bearings.
	6.88	06.19.87	A–485–602	A–345	Romania	Tapered Roller Bearings.
	6.88	10.06.87	A–588–604	A–343	Japan	Tapered Roller Bearings, Over 4 Inches.
	6.88	05.15.89	A–427–801	A–392	France	Cylindrical Roller Bearings.
	6.88	05.15.89	A–427–801	A–392	France	Ball Bearings.
	6.88	05.15.89	A–427–801	A–392	France	Spherical Plain Bearings.
	6.88	05.15.89	A–428–801	A–391	Germany	Spherical Plain Bearings.
	6.88	05.15.89	A–428–801	A–391	Germany	Cylindrical Roller Bearings.
	6.88	05.15.89	A–428–801	A–391	Germany	Ball Bearings.
	6.88	05.15.89	A–475–801	A–393	Italy	Ball Bearings.
	6.88	05.15.89	A–475–801	A–393	Italy	Cylindrical Roller Bearings.
	6.88	05.15.89	A–588–804	A–394	Japan	Cylindrical Roller Bearings.
	6.88	05.15.89	A–588–804	A–394	Japan	Spherical Plain Bearings.
	6.88	05.15.89	A–588–804	A–394	Japan	Ball Bearings.
	6.88	05.15.89	A–485–801	A–395	Romania	Ball Bearings.
	6.88	05.15.89	A–559–801	A–396	Singapore	Ball Bearings.
	6.88	05.15.89	A–401–801	A–397	Sweden	Ball Bearings.
	6.88	05.15.89	A–401–801	A–397	Sweden	Cylindrical Roller.
	6.88	05.15.89	A–412–801	A–399	United Kingdom	Cylindrical Roller Bearings.
	6.88	05.15.89	A–412–801	A–399	United Kingdom	Ball Bearings.
	6.88	06.07.88	A–588–703	A–377	Japan	Forklift Trucks.
	6.88	06.16.88	A–588–706	A–384	Japan	Nitrile Rubber.
May 99	8.88	05.07.84	A–583–008	A–132	Taiwan	Small Diameter Carbon Steel Pipe and Tube.
	8.88	03.07.86	C–489–502	C–253	Turkey	Welded Carbon Steel Pipes and Tubes.
	8.88	03.07.86	C–489–502	C–253	Turkey	Welded Carbon Steel Line Pipe.
	8.88	03.11.86	A–549–502	A–252	Thailand	Welded Carbon Steel Pipes and Tubes.
	8.88	05.12.86	A–533–502	A–271	India	Welded Carbon Steel Pipes and Tubes.
	8.88	05.15.86	A–489–501	A–273	Turkey	Welded Carbon Steel Pipes and Tubes.
	8.88	06.16.86	A–122–506	A–276	Canada	Oil Country Tubular Goods.
	8.88	06.18.86	A–583–505	A–277	Taiwan	Oil Country Tubular Goods.
	8.88	11.13.86	A–559–502	A–296	Singapore	Small Diameter Standard & Rectangular Pipe & Tube.
	8.88	03.06.87	A–508–602	A–318	Israel	Oil Country Tubular Goods.
	8.88	03.06.87	C–508–601	C–271	Israel	Oil Country Tubular Goods
	8.88	03.27.89	A–583–803	A–410	Taiwan	Light Walled Rectangular Tubing.
	8.88	05.26.89	A–357–802	A–409	Argentina	Light Walled Rectangular Tubing.
	8.88	11.02.92	A–351–809	A–532	Brazil	Circular-Welded Non-Alloy Steel Pipe.
	8.88	11.02.92	A–580–809	A–533	Korea (South)	Circular-Welded Non-Alloy Steel Pipe.
	8.88	11.02.92	A–201–805	A–534	Mexico	Circular-Welded Non-Alloy Steel Pipe.
	8.88	11.02.92	A–583–814	A–536	Taiwan	Circular-Welded Non-Alloy Steel Pipe.
	8.88	11.02.92	A–307–805	A–537	Venezuela	Circular-Welded Non-Alloy Steel Pipe.
	8.88	08.24.88	A–588–707	A–386	Japan	Granular Polytetrafluoroetheylene Resin.
	8.88	08.30.88	A–475–703	A–385	Italy	Granular Polytetraflouroetheylene Resin.
	3.89	12.17.86	A–351–602	A–308	Brazil	Carbon Steel Butt-Weld Pipe Fittings.
	3.89	12.17.86	A–583–605	A–310	Taiwan	Carbon Steel Butt-Weld Pipe Fittings.
	3.89	02.10.87	A–588–602	A–309	Japan	Carbon Steel Butt-Weld Pipe Fittings.
	3.89	07.06.92	A–570–814	A–520	China, PR	Carbon Steel Butt-Weld Pipe Fittings.
	3.89	07.06.92	A–549–807	A–521	Thailand	Carbon Steel Butt-Weld Pipe Fittings.
	4.89	04.03.89	A–588–802	A–389	Japan	Micro Disks.
	4.89	04.17.89	A–484–801	A–406	Greece	Electrolytic Manganese Dioxide.
	4.89	04.17.89	A–588–806	A–408	Japan	Electrolytic Manganese Bioxide.
Jun. 99	6.89	06.14.89	A–428–802	A–419	Germany	Industrial Belts Except Synchronous & V Belts.
	6.89	06.14.89	A–475–802	A–413	Italy	Synchronous and V-Belts.
	6.89	06.14.89	A–588–807	A–414	Japan	Industrial Belts.
	6.89	06.14.89	A–559–802	A–415	Singapore	V-Belts.
	9.89	06.10.83	A–427–009	A–96	France	Industrial Nitrocellulose.
	9.89	07.10.90	A–351–804	A–439	Brazil	Industrial Nitrocellulose.
	9.89	07.10.90	A–570–802	A–441	China, PR	Industrial Nitrocellulose.
	9.89	07.10.90	A–428–803	A–444	Germany	Industrial Nitrocellulose.
	9.89	07.10.90	A–588–812	A–440	Japan	Industrial Nitrocellulose.
	9.89	07.10.90	A–580–805	A–442	Korea (South)	Industrial Nitrocellulose.
	9.89	07.10.90	A–412–803	A–443	United Kingdom	Industrial Nitrocellulose.
	9.89	10.18.90	A–479–801	A–445	Yugoslavia	Industrial Nitrocellulose.
	9.89	09.15.89	A–122–804	A–422	Canada	Steel Rail.
	9.89	09.22.89	C–122–805	C–297	Canada	Steel Rail.
	12.89	12.29.89	A–588–811	A–432	Japan	Drafting Machines.
	1.90	12.11.89	A–588–809	A–426	Japan	Small Business Telephone Systems.
	1.90	12.11.89	A–583–806	A–428	Taiwan	Small Business Telephone Systems.

PROPOSED SCHEDULE AND GROUPING—Continued

Initiation month/yr	Group avg date month/yr	Effective date (mm.dd.yy)	DOC case No.	ITC case No.[1]	Country	Product
	1.90	02.07.90	A–580–803	A–427	Korea (South) ...	Small Business Telephone Systems.
	2.90	02.16.90	A–588–810	A–429	Japan	Mechanical Transfer Presses.
	11.90	11.19.90	A–588–813	A–455	Japan	Multiangle Laser Light Scattering Instruments.
	2.91	02.13.91	A–588–816	A–462	Japan	Benzyl Paraben.
July 99	2.91	02.19.91	A–570–803	A–457	China, PR	Bars, Wedges.
	2.91	02.19.91	A–570–803	A–457	China, PR	Axes, Adzes.
	2.91	02.19.91	A–570–803	A–457	China, PR	Picks, Mattocks.
	2.91	02.19.91	A–570–803	A–457	China, PR	Hammers, Sledges.
	2.91	02.19.91	A–570–805	A–466	China, PR	Sulfur Chemicals (Sodium Thiosulfate).
	2.91	02.19.91	A–428–807	A–465	Germany	Sulfur Chemicals (Sodium Thiosulfate).
	2.91	02.19.91	A–412–805	A–468	United Kingdom	Sulfur Chemicals (Sodium Thiosulfate).
	4.91	01.03.83	C–469–004	C–178	Spain	Stainless Steel Wire Rods.
	4.91	12.01.93	A–533–808	A–638	India	Stainless Steel Wire Rods.
	4.91	01.28.94	A–351–819	A–636	Brazil	Stainless Steel Wire Rods.
	4.91	01.28.94	A–427–811	A–637	France	Stainless Steel Wire Rods.
	4.91	12.03.87	A–401–603	A–354	Sweden	Seamless Stainless Steel Hollow Products.
	4.91	12.30.92	A–580–810	A–540	Korea (South) ...	Welded Stainless Steel Pipes.
	4.91	12.30.92	A–583–815	A–541	Taiwan	Welded Stainless Steel Pipes.
	4.91	04.12.91	A–403–801	A–454	Norway	Fresh & Chilled Atlantic Salmon.
	4.91	04.12.91	C–403–802	C–302	Norway	Fresh & Chilled Atlantic Salmon.
	6.91	06.05.91	A–580–807	A–459	Korea (South) ...	Polyethylene Terephthalate Film.
	6.91	06.18.91	A–570–804	A–464	China, PR	Sparklers.
	8.91	03.25.88	A–588–702	A–376	Japan	Stainless Steel Butt-Weld Pipe Fittings.
	8.91	02.23.93	A–580–813	A–563	Korea (South) ...	Stainless Steel Butt-Weld Pipe Fittings.
	8.91	06.16.93	A–583–816	A–564	Taiwan	Stainless Steel Butt-Weld Pipe Fittings.
Aug. 99	9.91	09.04.91	A–588–817	A–469	Japan	Flat Panel Displays (Electroluminescent).
	9.91	09.20.91	A–570–808	A–474	China, PR	Chrome-Plated Lug Nuts.
	9.91	09.20.91	A–583–810	A–475	Taiwan	Chrome-Plated Lug Nuts.
	11.91	11.21.91	A–570–811	A–497	China, PR	Tungsten Ore Concentrates.
	2.92	08.30.90	A–201–802	A–451	Mexico	Grey Portland Cement and Cement Clinker.
	2.92	05.10.91	A–588–815	A–461	Japan	Grey Portland Cement and Cement Clinker.
	2.92	02.27.92	A–307–803	A–519	Venezuela	Grey Portland Cement and Cement Clinker (SA).
	2.92	03.17.92	C–307–804	C3–21	Venezuela	Grey Portland Cement and Cement Clinker (SA).
	2.92	06.13.94	A–427–812	A–645	France	Calcium Aluminate Flux.
	6.92	06.02.92	A–614–801	A–516	New Zealand	Kiwifruit.
	8.92	08.31.92	C–122–815	C–309	Canada	Pure Magnesium.
	8.92	08.31.92	C–122–815	C–309	Canada	Alloy Magnesium.
	8.92	08.31.92	A–122–814	A–528	Canada	Pure Magnesium.
	10.92	10.07.92	A–557–805	A–527	Malaysia	Extruded Rubber Thread.
	12.92	10.16.92	A–843–802	A–539	Kazakhstan	Uranium (SA).
	12.92	10.16.92	A–835–802	A–539	Kyrgyzstan	Uranium (SA).
	12.92	10.16.92	A–821–802	A–539	Russia	Uranium (SA).
	12.92	10.16.92	A–844–802	A–539	Uzbekistan	Uranium (SA).
	12.92	08.30.93	A–823–802	A–539	Ukraine	Uranium.
Sep. 99	1.93	06.13.79	A–583–080	AA–197	Taiwan	Carbon Steel Plate.
	1.93	10.11.85	C–401–401	C–231	Sweden	Carbon Steel Products.
	1.93	08.17.93	C–423–806	C–319	Belgium	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C–351–818	C–320	Brazil	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C–427–810	C–348	France	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.17.93	C–428–817	C–322	Germany	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C–428–817	C–349	Germany	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.17.93	C–428–817	C–340	Germany	Cold-Rolled Carbon Steel Flat Products.
	1.93	08.17.93	C–580–818	C–342	Korea (South) ...	Cold-Rolled Carbon Steel Flat Products.
	1.93	08.17.93	C–580–818	C–350	Korea (South) ...	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.17.93	C–201–810	C–325	Mexico	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C–469–804	C–326	Spain	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C–401–804	C–327	Sweden	Cut-to-Length Carbon Steel Plate.
	1.93	08.17.93	C–412–815	C–328	United Kingdom	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A–602–803	A–612	Australia	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.19.93	A–423–805	A–573	Belgium	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A–351–817	A–574	Brazil	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A–122–822	A–614	Canada	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.19.93	A–122–823	A–575	Canada	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A–405–802	A–576	Finland	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A–427–808	A–615	France	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.19.93	A–428–815	A–616	Germany	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.19.93	A–428–814	A–604	Germany	Cold-Rolled Carbon Steel Flat Products.
	1.93	08.19.93	A–428–816	A–578	Germany	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A–588–826	A–617	Japan	Corrosion-Resistant Carbon Steel Flat Products.
	1.93	08.19.93	A–580–818	A–618	Korea (South) ...	Corrosion-Resistant Carbon Steel Flat Products.

PROPOSED SCHEDULE AND GROUPING—Continued

Initiation month/yr	Group avg date month/yr	Effective date (mm.dd.yy)	DOC case No.	ITC case No.[1]	Country	Product
	1.93	08.19.93	A–580–815	A–607	Korea (South) ...	Cold-Rolled Carbon Steel Flat Products.
	1.93	08.19.93	A–201–809	A–582	Mexico	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A–421–804	A–608	Netherlands	Cold-Rolled Carbon Steel Flat Products.
	1.93	08.19.93	A–455–802	A–583	Poland	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A–485–803	A–584	Romania	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A–469–803	A–585	Spain	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A–401–805	A–586	Sweden	Cut-to-Length Carbon Steel Plate.
	1.93	08.19.93	A–412–814	A–587	United Kingdom	Cut-to-Length Carbon Steel Plate.
Oct. 99	1.93	08.19.92	A–570–815	A–538	China, PR	Sulfanilic Acid.
	1.93	03.02.93	C–533–807	C–318	India	Sulfanilic Acid.
	1.93	03.02.93	A–533–806	A–561	India	Sulfanilic Acid.
	3.93	03.22.93	C–351–812	C–314	Brazil	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	A–351–811	A–552	Brazil	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	A–427–804	A–553	France	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	C–427–805	C–315	France	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	C–428–812	C–316	Germany	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	A–428–811	A–554	Germany	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	C–412–811	C–317	United Kingdom	Hot-Rolled Lead & Bismuth Carbon Steel Products.
	3.93	03.22.93	A–412–810	A–555	United Kingdom	Hot-Rolled Lead & Bismuth Carbon Steel Products.
Nov. 99	5.93	06.10.91	A–570–806	A–472	China, PR	Silicon Metal.
	5.93	07.31.91	A–351–806	A–471	Brazil	Silicon Metal.
	5.93	09.26.91	A–357–804	A–470	Argentina	Silicon Metal.
	5.93	03.11.93	A–570–819	A–567	China, PR	Ferrosilicon.
	5.93	04.07.93	A–843–804	A–566	Kazakstan	Ferrosilicon.
	5.93	04.07.93	A–823–804	A–569	Ukraine	Ferrosilicon.
	5.93	05.10.93	C–307–808	C3–23	Venezuela	Ferrosilicon.
	5.93	06.24.93	A–821–804	A–568	Russia	Ferrosilicon.
	5.93	06.24.93	A–307–807	A–570	Venezuela	Ferrosilicon.
	5.93	03.14.94	A–351–820	A–641	Brazil	Ferrosilicon.
	5.93	10.31.94	A–823–805	A–673	Ukraine	Silicomanganese (SA).
	5.93	12.22.94	A–351–824	A–671	Brazil	Silicomanganese.
	5.93	12.22.94	A–570–828	A–672	China, PR	Silicomanganese.
	5.93	05.10.93	A–580–812	A–556	Korea (South) ...	DRAMS of 1 Megabit and Above.
	7.93	07.12.93	A–588–823	A–571	Japan	Electric Cutting Tools.
	8.93	06.28.93	A–583–820	A–625	Taiwan	Helical Spring Lock Washers.
	8.93	10.19.93	A–570–822	A–624	China, PR	Helical Spring Lock Washers.
	9.93	09.07.93	A–570–820	A–621	China, PR	Compact Ductile Iron Waterworks Fittings and Glands.
Dec. 99	2.94	02.09.94	A–533–809	A–639	India	Forged Stainless Steel Flanges.
	2.94	02.09.94	A–583–821	A–640	Taiwan	Forged Stainless Steel Flanges.
	3.94	03.02.94	A–588–829	A–643	Japan	Defrost Timers.
	6.94	06.24.94	A–421–805	A–652	Netherlands	Aramid Fiber.
	7.94	06.07.94	C–475–812	C–355	Italy	Grain-Oriented Electrical Steel.
	7.94	06.10.94	A–588–831	A–660	Japan	Grain-Oriented Electrical Steel.
	7.94	08.12.94	A–475–811	A–659	Italy	Grain-Oriented Electrical Steel.
	8.94	08.12.94	A–588–832	A–661	Japan	Color Negative Photo Paper & Chemical Components (SA).
	8.94	08.12.94	A–421–806	A–662	Netherlands	Color Negative Photo Paper & Chemical Components (SA).
	11.94	11.16.94	A–570–831	A–683	China, PR	Garlic.
	11.94	11.25.94	A–570–826	A–663	China, PR	Paper Clips.
	12.94	12.28.94	A–570–827	A–669	China, PR	Cased Pencils.

[1] Key to ITC case number:
A = Antidumping:
AA = Antidumping Act of 1921.
A = Section 731 of the Tariff Act of 1930.

C = Countervailing Duty:
C = Section 701 of the Tariff Act of 1930.
C3 = Section 303 of the Tariff Act of 1930.
C4 = Section 104 of the Trade Agreements Act of 1979.
C-None = No Commission investigation; order suspended (i.e., not "black-hole").

[FR Doc. 97–26699 Filed 10–8–97; 8:45 am]
BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Tag Recapture Card

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 8, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David Rosenthal, NOAA, F/SEC4, 75 Virginia Beach Drive, Room 224, Miami, FL 33145–1003 (305–361–4214, ext. 214).

SUPPLEMENTARY INFORMATION:

I. Abstract

The primary objectives of a fish tagging program are to obtain scientific information on fish growth and movement, information that assists in stock assessments and management. This program in the southeast U.S. asks persons randomly capturing tagged fish to voluntarily supply data on the fish—size, weight, location of capture, and similar information.

II. Method of Collection

A form is distributed to various fishing boat captains.

III. Data

OMB Number: 0648–0259.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Individuals.
Estimated Number of Respondents: 240.
Estimated Time Per Response: 2 minutes.
Estimated Total Annual Burden Hours: 8.
Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 2, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–26849 Filed 10–8–97; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093097F]

Highly Migratory Species Advisory Panel; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Atlantic Highly Migratory Species Advisory Panel (HMS AP) will hold its first meeting to discuss issues in and future management options for the fisheries for Atlantic HMS. The HMS AP will meet from 1:00 p.m. to 5:00 p.m. on October 16 and 8:00 a.m. to 5:00 p.m. October 17, 1997.

DATES: The meetings will be held from 1:00 p.m. to 5:00 p.m. on October 16 and 8:00 a.m. to 5:00 p.m. October 17, 1997.

ADDRESSES: The AP meeting will be held in room 1W611, 1325 East-West Highway, Silver Spring, MD.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Liz Lauck, telephone: (301) 713–2347, fax: (301) 713–1917.

SUPPLEMENTARY INFORMATION: The HMS AP is established under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* The HMS AP will assist the Secretary of Commerce in collecting and evaluating information relevant to development of a fishery management plan (FMP) for Atlantic tunas, swordfish and sharks. All AP meetings are open to the public and will be attended by members of the AP, including appointed members, representatives of the five Fishery Management Councils that work with HMS, and the Chair, or his representative, of the U.S. Advisory Committee to the International Commission for the Conservation of Atlantic Tunas. Agenda items for the HMS AP include:

(1) Discussion of a draft issues and options (scoping) document for HMS management.

(2) Review of the requirements and schedule for developing FMPs.

(3) Discussion of scoping meetings and scoping schedule.

(4) Discussion of operating practices and procedures for the AP.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jill Stevenson or Liz Lauck, 1315 East-West Highway, Silver Spring, MD 20910, phone (301) 713–2347 at least 7 days prior to the meeting date.

Dated: October 3, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–26731 Filed 10–3–97; 4:30 pm]
BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Commission of Fine Arts; Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 16 October 1997 at 10:00 am in the Commission's offices at the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2000. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 1 October 1997.

Charles H. Atherton,

Secretary.

[FR Doc. 97–26832 Filed 10–8–97; 8:45 am]
BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

October 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing certain guaranteed access levels.

EFFECTIVE DATE: October 9, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

Upon a request from the Government of the Dominican Republic, the U.S. Government has agreed to increase the current Guaranteed Access Levels (GALs) for certain textile products.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66263, published on December 17, 1996). Also see 61 FR 65375, published on December 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 6, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 9, 1997, you are directed to increase the Guaranteed Access Levels (GALs) for the following categories:

Category	Guaranteed Access Level
338/638	5,150,000 dozen.
347/348/647/648	9,550,000 dozen.
442	85,000 dozen.
448	70,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–26851 Filed 10–8–97; 8:45 am]
BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Charges for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Korea

October 3, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 9, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, carryover, carryforward, carryforward used, special shift and special swing.

In accordance with the special swing provision contained in the exchange of notes dated April 2 and April 8, 1997 between the Governments of the United States and Korea, 2,837,439 square meters equivalent shall be charged to the current Group II limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 59087, published on November 20, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 3, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 9, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group I	
200–223, 224–V [2], 224–O [3], 225–229, 300–326, 360–363, 369–O [4], 400–414, 464–469, 600–629, 665–669 and 670–O [5], as a group.	440,195,625 square meters equivalent.
Sublevels in Group I	
200	507,280 kilograms.
201	1,985,720 kilograms.
611	4,040,926 square meters.
619/620	100,521,750 square meters.
624	8,691,687 square meters.
625/626/627/628/629	16,779,463 square meters.
Group II	
237, 239, 330–359, 431–459 and 630–659, as a group	569,921,785 square meters equivalent.
Sublevels in Group II	
239	1,079,351 kilograms.
333/334/335	286,834 dozen of which not more than 146,604 dozen shall be in Category 335.
336	65,306 dozen.
338/339	1,389,068 dozen.
340	784,855 dozen of which not more than 407,521 dozen shall be in Category 340–D [6].
341	216,395 dozen.
342/642	253,382 dozen.
345	127,351 dozen.
347/348	565,127 dozen.
350	19,376 dozen.
351/651	261,813 dozen.
352	193,802 dozen.
433	14,665 dozen.
434	7,451 dozen.
435	38,720 dozen.
436	15,730 dozen.
438	61,885 dozen.
442	53,654 dozen.
444	59,277 numbers.
445/446	56,831 dozen.
448	38,967 dozen.
831	321,228 dozen pairs.
633/634/635	1,413,840 dozen of which not more than 159,534 dozen shall be in Category 633 and not more than 597,400 dozen shall be in Category 635.
636	290,957 dozen.
638/639	5,424,682 dozen.
640–D [7]	3,051,475 dozen.
641	1,028,174 dozen of which not more than 39,851 dozen shall be in Category 641–Y [8].
647/648	1,233,118 dozen.
650	26,043 dozen.
659–H [9]	1,325,005 kilograms.
Sublevel in Group III	
835	30,878 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L), and 5601.21.0090.

[5] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[6] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[7] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[8] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[9] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

Also, for goods exported in 1997, you are directed to charge 2,837,439 square meters equivalent to the limit established for Group II for the period January 1, 1997 through December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–26761 Filed 10–8–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: DoD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on October 7 and 8, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public from 0830–1700, October 7 and 8, 1997 in order for the Panel to discuss classified material.

DATES: October 7 and 8, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington, VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Pub. L. 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 0900–1700 on October 7 and from 0900–1700 on October 8, 1997. During the closed session on October 7 from 0900–1000 during the closed session, the National Defense Panel staff will meet with Donald Latham, Vice President Space Program Strategies & Integration, Lockheed Martin at the Crystal Mall 3 office. On October 8 from 1300–1500 during the closed session the Panel will meet with General Max Baratz, US Army Reserves at the Crystal Mall 3 office. The remainder of the Panel's time will be used to discuss the NDP staff presentations on various future strategies, desired capabilities, and developing force elements.

The determinaiton to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

This Notification also is written verification that the Panel was unable to provide 15 day notification prior to the meeting date due to a newly scheduled meeting.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: October 3, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–26703 Filed 10–8–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: DoD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on October 20 and 21, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public from 0830–1700, October 20 and 21, 1997 in order for the Panel to discuss classified material.

DATES: October 20 and 21, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington, VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 0900–1700 on October 20 and 21 to discuss the NDP staff presentations on various future strategies, desired capability, and developing force elements at the Crystal Mall 3 office.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: October 3, 1997.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–26704 Filed 10–8–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Record system notice amendment.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on November 10, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 697–8674 or DSN 227–8674.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: October 3, 1997.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

F031 AF SP M

SYSTEM NAME:

Personnel Security Access Records *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'System includes documentation pertaining to requesting, granting, and terminating access to classified information, including various special access programs; dates of briefings, debriefings; restricted area badge numbers; access to specific restricted areas; personnel security information and security clearance.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 164, Commanders of Combatant Commands; and E.O. 9397 (SSN).'

PURPOSE(S):

Add to end of entry 'Records are also used to verify authorization for access to specific restricted areas.'

* * * * *

STORAGE:

Add to end of entry 'Also maintained in computers, computer output products or a combination of all.'

* * * * *

SAFEGUARDS:

Add to end of entry 'Those in computer storage devices are protected by computer system software.'

SYSTEM MANAGER(S) AND ADDRESS:

Add to end of entry 'and Combatant Command Security Manager where individual is assigned.'

* * * * *

RECORD SOURCE CATEGORIES:

Add to end of entry 'and from the individual or individual's supervisor.'

F031 AF SP M

SYSTEM NAME:

Personnel Security Access Records.

SYSTEM LOCATION:

Offices of installation Chiefs of Security Police where individual is assigned or employed or at headquarters of Combatant Commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. Also at the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO, 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO, 63118–2001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military and civilian personnel, Air Force Reserve and Air National Guard personnel, Air Force Academy cadets, American Red Cross Personnel, Exchange Officers, and Foreign Nationals. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of Combatant Commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

System includes documentation pertaining to requesting, granting, and terminating access to classified information, including various special access programs; dates of briefings, debriefings; restricted area badge numbers; access to specific restricted areas; personnel security information and security clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 164, Commanders of Combatant Commands; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used to record level of security clearance and level of access to classified information that has been authorized. Information is used by commanders, supervisors, and security managers to insure that individuals who receive classified information have been properly investigated, cleared, have a definite need-to-know, and have been properly debriefed. Records are also used to verify authorization for access to specific restricted areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, visible file binders/cabinets or card files. Also maintained in computers, computer output products or a combination of all.

RETRIEVABILITY:

Retrieved by Name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets, safes or vaults, or in locked cabinets or rooms. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. (Exception: Records on non-immigrant aliens are retained for two years after termination of access or employment, then destroyed, as above). Security Termination Statements are retired one year after termination of service or employment to the Director, National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO, 63118–2001. Records indicating that access to classified information has been withdrawn for cause are forwarded to installation Chief of Security Police for disposition.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Security Police, Headquarters United States Air Force. Commanders of organization units and the Director, National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118–2001, and Combatant Command Security Manager where individual is assigned.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to or visit the Chief of Security Police, Headquarters United States Air Force; Commanders of organization units; Director, National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118–2001, and Combatant Command Security Manager where individual is assigned.

Personal visits require positive identification. Provide full name, Social Security Number, and military rank or civilian rating.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief of Security Police, Headquarters United States Air Force; Commanders of organization units; Director, National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118–2001, and Combatant Command Security Manager where individual is assigned.

Personal visits require positive identification. Provide full name, Social Security Number, and military rank or civilian rating.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions, from police and investigating officers, or from source documents such as reports and from the individual or individual's supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–26705 Filed 10–8–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Draft Supplemental Environmental Impact Statement (DSEIS) for Final Site Selection and Authorization for Implementation of the Proposed G.V. (Sonny) Montgomery Range, Camp Shelby Training Site, Camp Shelby, Mississippi

AGENCIES: National Guard Bureau, Department of the Army, DoD; Department of Agriculture, Forest Service.

ACTION: Notice of Availability.

SUMMARY: In the July 1994 Military Use of Forest Service Lands Final Environmental Impact Statement (FEIS), the G.V. (Sonny) Montgomery Range is referred to as the Multiple Purpose Range Complex-Heavy (MPRC–H). Any reference to the MPRC–H in this or other documents refers to the G.V. (Sonny) Montgomery Range. The July 1994 FEIS and Record of Decision provided an environmental analysis in support of the issuance of a special use permit for continued military use of Forest Service lands in De Soto National Forest. The FEIS recognized that military use of Forest Service lands included construction of an MPRC–H within the Camp Shelby complex, although it did not specify the location. This draft document contains the site-specific environmental analysis concerning the proposed location and alternatives on Camp Shelby for MPRC–H construction.

The G.V. (Sonny) Montgomery Range is a standard Army gunnery range which has three maneuver avenues with two course roads per avenue. Only non-dud producing (or "nonexplosive") ammunition will be fired within the target array. The range has a maximum of 270 targets which can be engaged with either live fire or the Multiple Integrated Laser Engagement System (MILES). The proposed range facility would allow armor and mechanized infantry units to fulfill all their gunnery requirements on an annual basis. The proposed project would consist of the range operation and control area, the downrange area, and the vehicle holding and maintenance area. The range operation and control area is the center of responsibility for overall control and coordination of movement and training exercises within the complex and is also the administrative center for the range complex. Range support facilities in this area may include the control tower, general instruction buildings, personnel and storage buildings, target maintenance building, latrines, covered mess, covered bleachers, and lysterbag holder. Also, an ammunition loading/unloading dock for armor munitions and an ammunition breakdown shelter or infantry should be provided (Huntsville Multiple Purpose Range Complex-Heavy Design Information Guide).

The downrange area consists of three 4,500-meter by 300-meter lanes, each separated by a 50-meter buffer zone, and contains the following target and simulation devices: 4 moving armor targets, 20 stationary armor targets, 51 stationary infantry targets, 15 moving infantry targets, and 30 defilade positions. Access to target mechanisms would be provided by means of service roads to facilitate the installation and maintenance of the target mechanisms. The maneuver trails themselves would be used as much as possible. The vehicle holding and maintenance area requires approximately 5,000 square meters (1 to 2 acres), sufficient area for a maneuvering and parking area for at least 17 tracked vehicles. In addition, this area would contain a 100-square-meter hardstand for maintenance purposes.

The proposed G.V. (Sonny) Montgomery Range supports collective training at the small unit level (platoon level). The "floor" level training requirement for maneuver units has been established at the platoon level while progressing to company and battalion task force level training. Units using the proposed range complex will include tanks, infantry/cavalry fighting vehicles and attack helicopters. These armor and mechanized infantry units are required to conduct annual crew qualification. This is accomplished by firing Range Table VIII. Armor units must also maintain a "floor," minimum range facility that accommodates platoon level collective training as well as individual and crew qualification training. The proposed range complex provides the facilities for conducting advanced combat gunnery training and qualification. This advanced training develops collective skills at the small unit level. It requires sections and platoons to employ moving and stationary target engagement techniques with all weapon systems during daylight and periods of limited visibility.

The lack of a MPRC–H at Camp Shelby was noted in the Department of Defense response to a Government Accounting Office report, "Peacetime Training Did Not Adequately Prepare Combat Brigades for Gulf War," dated September 1991. The Mississippi Army National Guard considers construction of this range complex vital to the training and combat readiness of the armor and mechanized infantry units that train at Camp Shelby. The proposed range complex will enhance the training capabilities and efficiencies at Camp Shelby by providing for simultaneous utilization of tank gunnery ranges and tank maneuver areas. It will permit more tanks to complete fire requirements simultaneously, leading to more efficient and effective utilization of training facilities at Camp Shelby.

COMMENT PERIOD: The comment period for this DSEIS ends 45 days after the date of publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**. Two public meetings have been conducted in Hattiesburg, Mississippi, concerning the proposed action. An additional public hearing will be held during the 45-day comment period. All comments will be addressed and incorporated into the final document. Comments should be forwarded to the address listed below.

FOR FURTHER INFORMATION CONTACT:

Colonel Parker Hills, Public Affairs Office, Mississippi Army National Guard, P.O. Box 5027, Jackson, Mississippi 39296–5027; telephone (601 973–6349, facsimile extension 6176.

Dated: October 2, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health, OASA (I, L&E).

[FR Doc. 97–26868 Filed 10–8–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: U.S. Military Academy, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy (USMA).

Date of Meeting: October 31, 1997.

Place of Meeting: Superintendent's Conference Room, Taylor Hall, United States Military Academy, West Point, New York.

Start Time of Meeting: Approximately 8 a.m.

Proposed Agenda: Preparation of the Annual Report to the President, Annual Reviews of the Athletic and Admissions programs at USMA and a program review of the United States Military Academy Preparatory School. All proceedings are open.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Joseph A. Dubyel, United States Military Academy, West Point, NY 10996–5000, (914) 938–4200.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–26799 Filed 10–8–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Public Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Limited Reevaluation Study for Deepening of the Arthur Kill-Howland Hook Marine Terminal Navigation Channels

AGENCY: Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: A Draft Supplemental Environmental Impact Statement (DSEIS) for the Arthur Kill-Howland Hook Marine Terminal Navigation Channel Deepening Project was prepared and the project was authorized for construction in section 202(b) of the WRDA 1986, Pub. L. 99–662. The limited reevaluation effort recommends deepening and realigning the previously authorized 35 ft below mlw project in the Arthur Kill Channel, to the 41/40-ft plan. This plan entails the realignment and deepening to a depth of 41 ft below mlw from its confluence with the Newark Bay and Kill Van Kull Channels to the Howland Hook Marine Terminal; realigning and deepening to a depth of 40 ft mlw from the Howland Hook Marine Terminal to the Tosco Oil and GATX facilities.

The 41/40-ft plan would meet the current navigational needs of the project area by improving navigational efficiency and safety. Proposed improvements would allow deep draft vessels (current vessel designs) to safely navigate the channel, while remaining fully loaded, thus avoiding the need for lightering or steaming under partial loads.

The proposed project plans were analyzed in the 1986 Feasibility Report, which included the Final Environmental Impact Statement (FEIS) (USACE 1986 a,b). These documents are available in the District office for review. This document is a Draft Supplemental Environmental Impact Statement (DSEIS) for the deepening and realignment of the Arthur Kill Channel—Howland Hook Marine Terminal, and part of the Limited Reevaluation Report (LRR). The DSEIS examines improvements to navigation and the shipment of cargo to petroleum refineries/storage facilities and marine container terminals located along the project navigation channel, and addresses the economic, social, and environmental issues related to the proposed project. The purpose of this DSEIS is to update the 1986 FEIS and evaluate the changes in conditions in the project area to determine if there are significant new issues or information relevant to environmental concerns and bearing on the proposed action or its impacts.

Potential impacts, including indirect and cumulative impacts, were evaluated for the proposed action and the other action alternatives. The analysis indicates that short-term adverse environmental impacts, such as benthic habitat disruption, would be balanced by beneficial impacts, such as revitalization of the maritime industry and permanent removal of contaminated material from the aquatic ecosystem.

The DSEIS has been prepared under the direction of the USACE, as Lead Agency in accordance with the National Environmental Policy Act (NEPA) of 1969 and is submitted in compliance with NEPA and USACE regulations. The USACE is lead Federal agency responsible for preparation of the DSEIS because the project involves improvements and/or modifications to Federal navigation channels. Comments will be accepted for forty-five (45) days after publishing of this notice.

FOR FURTHER INFORMATION CONTACT: ATTN: Ms. Jenine Gallo-EIS Coordinator, CENAN–PL–EA, Corps of Engineers, New York District, 26 Federal Plaza, NY, NY 10278–0090, Tel. 212–264–4549.

SUPPLEMENTARY INFORMATION:

Project Site Description

The Arthur Kill is an estuarine tidal strait that connects Raritan Bay to the south with Newark Bay to the north. The Arthur Kill separates Richmond County, Staten Island, New York from Union County and Middlesex County, New Jersey. The Arthur Kill is approximately 13 miles long and varies in width from approximately 800 to 2800 ft. The total surface water area is approximately 4.4 square miles.

The system receives freshwater flow from the Hackensack and Passaic rivers, which discharge into Newark Bay, and the Elizabeth and Rahway rivers and numerous smaller streams and tributaries, which drain adjacent upland areas. Tributaries located within the study area include Old Place Creek and Bridge Creek in Staten Island, and Morses Creek and the Elizabeth River in New Jersey.

The project area extends from the confluence of the Kill Van Kull, Arthur Kill, and Lower Newark Bay, west and south toward Piles Creek. This includes the Elizabethport Reach, Gulfport Reach, and the North of Shooters Island Reach.

The project area shoreline (and vicinity) has undergone extensive industrial and residential development. The New Jersey shoreline has been almost completely developed with riprap and ship-berthing areas. The Staten Island shoreline has also been developed, although to a much lesser extent. Industrial development is heaviest along the North of Shooters Island and Elizabethport reaches.

The waterways are intensively used navigation channels, and with the recent dredging and reoccupation of the Howland Hook Marine Terminal (located within the project area), previously one of New York Harbor's most active marine terminals, activity will increase above present levels. Although much of the project area shoreline has been developed and the Arthur Kill is heavily used for commercial navigation, the project area still contains a variety of biological and natural resources. These resources include migratory and resident fish and shellfish populations as well as the heron rookeries. While fish and wildlife resources use the area year round, recreational opportunities are generally limited.

A deepened and realigned channel in the Arthur Kill will permit existing facilities to efficiently accommodate the larger ocean-going vessels calling on the Port.

Simeon Hook,

Acting Chief, Planning Division.

[FR Doc. 97–26800 Filed 10–8–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Public Notice of Availability for the Final Supplemental Environmental Impact Statement and General Reevaluation Report of the Green Brook Flood Control Project in the Green Brook Sub-Basin of the Raritan River Basin, Middlesex, Union and Somerset Counties in the State of New Jersey

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The Army Corps of Engineers, New York District (NYDCOE), in coordination with the project sponsor, the New Jersey Department of Environmental Protection (NJDEP), has conducted a General Reevaluation Study and prepared a Supplemental Impact Statement for an authorized flood protection project in the Green Brook Sub-Basin of the Raritan River in New Jersey. A Final Environmental Impact Statement and a Record of Decision were prepared for the project in 1980. This report has been prepared in association with the Reevaluation Study and is a supplement to the 1980 Final Environmental Impact Statement.

The project proposes to provide flood protection to residents in Somerset, Middlesex and Union Counties through the use of levees, flood-proofing, flood walls, detention basins and stream channelization. The plan also provides for a mitigation plan for environmental impacts. The project is divided into three separate portions of the Sub-basin: the upper portion, the lower portion and the Stony Brook portion. The proposed flood protection measures which were described in the DSEIS for the upper portion of the Sub-basin have been deferred at the request of the local sponsor, pending further study.

The Draft Supplement Environmental Impact Statement (DSEIS) was filed on January 6, 1997. The DSEIS was released for public review from January 6, 1997 through March 7, 1997. This review period included four formal public meetings and numerous informal information sessions with various groups. The public coordination process confirmed the need for the project. However, the coordination process identified concerns with the proposed construction of the detentions basins in the upper portion of the basin in the Boroughs of Berkeley Heights, Watchung, and Scotch Plains. The local sponsor, NJDEP, has asked the NYDCOE to defer construction of the upper portion of the project at this time but to continue work on the lower and Stony Brook portions of the project. Accordingly, this final document is considered a decision document for construction implementation of the lower and Stony Brook portions of the basin only.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Richardson, ATTN: CENAN–PL–ES, Army Corps of Engineers, New York District, 26 Federal Plaza, New York, NY 10278–0090, Tel. (212) 264–2199.

SUPPLEMENTARY INFORMATION:

Background

The Green Brook Sub-basin is a component of the Raritan River drainage basin in north central New Jersey. The Green Brook Sub-Basin has a 65 square mile watershed. The Sub-Basin is located between the Watchung Mountains and the Raritan River in Middlesex, Somerset, and Union Counties.

In response to resolutions of the United States Senate Public Works Committee adopted 15 September 1955 and 10 July 1972 to adopt recommendations for flood control, the U.S. Army Corps of Engineers, New York District prepared a feasibility report and a final environmental impact statement in August 1980. A project similar to "Plan A" as described in the 1980 feasibility study was authorized for construction under the Water Resources Development Act of 1986.

The flood problems of the Green Brook Sub-Basin result from a combination of natural hydrologic and hydraulic features coupled with dense development within the floodplains. The Green Brook flows southwest from the slopes of the Watchung Mountains. The path of the streams within the sub-basin flow from relatively undeveloped mountains through a broad flat floodplain which is largely suburban and industrialized. Streams included in the study are: Ambrose Brook, Bound Brook, Bonygutt Brook, Municipal Brook, Stony Brook, Blue Brook, Cedar Brook, and Middle Brook. Flood damages in the tri-county basin are quite severe due to the level of development within the sub-basin. Notable storms which have caused flood conditions in the sub-basin occurred in May 1968, August 1971, August 1973, July 1975, September 1979, July 1984, and October 1996.

The Final Supplemental Environmental Impact Statement (FSEIS) describes in the impacts of the proposed project on environmental and cultural resources in the study area. The FSEIS also applies guidelines issued by the Environmental Protection Agency, under the authority of the Clean Water Act of 1977 (Pub. L. 96–217). An evaluation for the purposed actions on the waters of the United States was performed pursuant to the guidelines of the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act. The results of the evaluation are presented in the SEIS.

This Notice of Availability is being sent to organizations and individuals known to have an interest in the project.

Please bring this notice to the attention of any other individuals with an interest in this matter. Copies of the FSEIS and General Reevaluation Report are available upon request for review at the following locations:

Berkeley Heights Public Library, 290 Plainfield Avenue, Berkley Heights, New Jersey.
Bound Brook Public Library, 402 Ease High Street, Bound Brook, New Jersey.
Bridgewater Public Library, Box 6700, Bridgewater, New Jersey.
Dunellen Public Library, New Market Road, Dunellen, New Jersey.
Fanwood Public Library, North Avenue and Tillotson Road, Fanwood, New Jersey.
Middlesex Public Library, 1300 Mountain Avenue, Middlesex, New Jersey.
North Plainfield Public Library, 6 Rockview Avenue, North Plainfield, New Jersey.
Piscataway Public Library, 500 Hoes Lane, Piscataway, New Jersey.
Plainfield Public Library, 8th and Park Avenue, Plainfield, New Jersey.
Scotch Plains Public Library, 1927 Bartle Avenue, Scotch Plains, New Jersey.
South Plainfield Public Library, 2840 Plainfield Avenue, South Plainfield, New Jersey.
Summit Public Library, 75 Maple Street, Summit, New Jersey.
Watchung Public Library, 12 Stirling Road, Watchung, New Jersey.

John Sassi, P.E.,

Chief, Planning Division.

[FR Doc. 97–26798 Filed 10–8–97; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Inland Waterways Users Board

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92–463, announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on November 20, 1997, in Charleston, West Virginia, at the Holiday Inn Charleston House, 600 Kanawha Boulevard East, Charleston, West Virginia, (Tel. 304–344–4092). Registration will begin at 12:30 PM and the meeting is scheduled to adjourn at 4:00 PM. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the Committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norma T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, Washington, DC 20314–1000.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–26796 Filed 10–8–97; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 8, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 3, 1997.

Linda Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 1998 Field Test for Schools and Staffing Survey (SASS): LEA, Administrator, School, Teacher and Finance.

Frequency: One Time.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping:

Responses: 2,800.

Burden Hours: 3,834.

Abstract: The National Center for Education Statistics (NCES) will use the field test to assess data collection procedures and new questions that are planned for the next full-scale SASS in 1999–2000. Policy makers, researchers, and practitioners at the national, state, and local levels use SASS data. Respondents include public and private school principals, teachers, and school and LEA staff persons.

[FR Doc. 97–26726 Filed 10–8–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant

DATES: Thursday, October 16, 1997: 6 p.m.–9 p.m.

ADDRESSES: Heath High School (cafeteria), 4330 Metropolis Lake Road, West Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Carlos Alvarado, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The meeting will include updates on the Environmental Management and Enrichment Facilities Project report and new members, and reviews of the Water Policy, the SSAB Draft Work Plan, and administrative plans for the board.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carlos Alvarado at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first topic on the agenda. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8 a.m. and 5 p.m. on Monday through Friday, or by writing to Carlos Alvarado, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on October 3, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–26839 Filed 10–8–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, October 9, 1997, 6 p.m.–9:30 p.m.

ADDRESSES: Arvada Center for the Arts and Humanities, 6901 Wadsworth Boulevard, Arvada, CO

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The Board will hear from an independent contractor it hired to review Rocky Flats environmental monitoring systems. The contractor, Parker-Hall, Inc., will present the results of its study, as well as recommendations for change.

2. The Board will discuss and approve its 1998 work plan and budget.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9 am and 4 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on October 3, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–26840 Filed 10–8–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

DATES: Wednesday, October 15, 1997: 6 p.m.–9 p.m. (Mountain Daylight Time).

ADDRESSES: John Marshall Community Center, 1500 Walter SE, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m.—Call to Order/Roll Call—Jamie Wells, Chair
6:02 p.m.—Public Comments
6:12 p.m.—Approval of Agenda; Approval of 8/20/97 Minutes
6:22 p.m.—Chair's Report—Jamie Wells
6:32 p.m.—Staff Report
6:37 p.m.—1. Basic Radiological Principles Presentation
6:52 p.m.—Questions on Basic Radiological Principles Presentation
7:00 p.m.—2. Site Wide Environmental Impact Statement Presentation
7:10 p.m.—Questions on Site Wide Environmental Impact Statement Presentation
7:15 p.m.—Northern New Mexico Citizens' Advisory Board Discussion
7:25 p.m.—4. Vote on Bylaw Amendments
7:40 p.m.—5. Regional National Dialogue Presentation
7:55 p.m.—Questions on National Dialogue Presentation
8:06 p.m.—Break
8:10 p.m.—7. Accelerating Cleanup: Focus on 2006 Recommendations
8:25 p.m.—8. Self Evaluation—Report
8:40 p.m.—9. Budget & Planning—Report
8:45 p.m.—New/Other Business
8:50 p.m.—Public Comment Period
8:55 p.m.—Agenda Items for Next Meeting on 11/19/97
8:58 p.m.—Announcement of Next Meeting

A final agenda will be available at the meeting Wednesday, October 15, 1997.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on October 3, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–26841 Filed 10–8–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–774–000]

CNG Transmission Corporation and Texas Eastern Transmission Corporation; Notice of Application

October 3, 1997.

Take notice that on September 26, 1997, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, and Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP97–774–000 an application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations.

The Applicants seek a Certificate of Public Convenience and Necessity granting authorization:

1. To construct, install, own, operate, and maintain certain additional compression facilities at the Oakford Compression Station, and certain new or replacement pipeline facilities to increase the storage capacity of the Oakford Storage Complex (Oakford), located in Westmoreland County, Pennsylvania, by 10 Bcf, at an estimated cost of $44,032,000 to be shared equally by the Applicants;

2. To convert to working capacity 2.75 Bcf of Murrysville storage reservoir's capacity that was held to support deliverability requirements gas in CNG's Order 636 restructuring;

3. To increase deliverability from CNG's Greenlick Storage Complex located in Potter County, Pennsylvania, by 150 MMcf/d, by modifying the existing dehydration system and other auxiliary installations, at an estimated cost of $875,000;

4. To convert 2.56 Bcf of existing base gas capacity at CNG's Fink-Kennedy/Lost Creek Complex to working gas capacity;

5. For CNG to utilize its share of the expansion capacity as part of its Market Area Storage Project;

6. For Texas Eastern to utilize its share of the expanded storage capacity and injection/withdrawal capability as system storage;

7. For Texas Eastern to recover its cost of service associated with these facilities through its storage cost credit/surcharge mechanism, including the true-up for actual gas costs; and

8. Of certain revised pro-forma Texas Eastern tariff sheets, all as more fully set forth in the application on file with the Commission and open to public inspection.

The Applicants state that they each own an undivided one-half interest in Oakford, and that CNG is the operator of that facility. CNG states that it has begun a well stimulation program designed to improve deliverability lost due to deterioration within the two storage reservoirs in Oakford. This program would maximize efficient use of existing and proposed compression, allow Applicants to maintain the current certificated deliverability, and minimize the need for future additional compression horsepower. CNG feels no certificate is necessary for these well stimulations, as the program will maximize efficient use of the existing and proposed compression, minimize the need for future additional compression, and allow maintenance of current certificated deliverability.

The Applicants further state that they will replace the existing dehydration system at the Oakford Compression Station which will increase its efficiency. They will also replace the existing 325 feet of suction line at the Lincoln Heights Compressor Station. The Applicants feel that both of these replacements are within the definition of an auxiliary installation pursuant to § 2.55 of the Commission's regulations, and therefore require no certificate authorization.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 24, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C., 20426, a motion to intervene or a protest in

accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its on review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26739 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TM98–2–22–000 and RP97–212–002]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on the filing.

CNG requests an effective date of December 31, 1996 for Sheet No. 388. For all other sheets, CNG requests an effective date of November 1, 1997.

CNG states that the purpose of this filing is to update CNG's effective Transportation Cost Rate Adjustment (TCRA), through the annual adjustment mechanism provided in Section 15 of the General Terms and Conditions of CNG's Tariff. The effect of the proposed TCRA on each element of CNG's rates is summarized in workpapers that are attached to the filing.

Also, CNG states that it is correcting an inadvertent error made in its Order No. 582 compliance filing on Sheet No. 388, regarding interest calculations.

CNG states that copies of its letter of transmittal and enclosures are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protects will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26751 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory commission

[Docket No. RP98–10–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1997:

Thirty-First Revised Sheet No. 32
Thirty-First Revised Sheet No. 33

CNG states that the purpose of this filing is to submit CNG's quarterly revision of the Section 18.2.B. Surcharge, effective for the three-month period commencing November 1, 1997. The charge for the quarter ending October 31, 1997 has been $0.0094 per Dt, as authorized by Commission order dated July 22, 1997, in Docket No. RP97–412. CNG's proposed Section 18.2.B. surcharge for the next quarterly period is $0.0269 per Dt. The revised surcharge is designed to recover $218,125 in Stranded Account No. 858 Costs, which CNG incurred for the period of June 1997, through August 1997.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26761 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–542–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on September 30, 1997 Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective October 1, 1997:

Twenty-first Revised Sheet No. 25
Twenty-first Revised Sheet No. 26
Twenty-first Revised Sheet No. 27
Twenty-second Revised Sheet No. 28
Twelfth Revised Sheet No. 29
Thirteenth Revised Sheet No. 30

Columbia states that this filing is being submitted pursuant to Article III, Section C, Collections under Section 46 of the General Terms and Conditions of Columbia's Tariff SFC Provision of the Stipulation and Agreement in Docket No. RP95–408, et al., approved by the Commission on April 17, 1997 (79 FERC ¶61,044 (1997)). In accordance with this provision, Columbia was permitted to collect $22.4 million via the SFC rate. As of September 30, 1997, Columbia has collected $22.9 million of SFC revenues. By this filing, Columbia states that it is proposing to terminate the SFC rate effective October 1, 1997. In addition, Columbia will refund to customers via a billing credit approximately $0.5 million of collections in the month of September 1997 over the $22.4 million cap. The total excess collections will be allocated to customers based on total collections during the month of September 1997.

Columbia requests a waiver of Section 154.207 of the Commission's regulations in order to permit Columbia to remove the SFC Rate effective October 1, 1997. Granting this waiver allows Columbia's customers to avoid any additional over-recoveries of SFC revenues.

Columbia states further that copies of this filing have been mailed to all of its customers, affected state regulatory commissions, and all parties on the official service in this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20428, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26759 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ98–1–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on September 30, 1997, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, with a proposed effective date of October 1, 1997.

ESNG states the revised tariff sheets are being filed pursuant to Section 21 of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional sales rates. The sales rates set forth on the revised tariff sheets reflect an increase of $0.9928 per dt in the Commodity Charge, as measured against ESNG's corresponding sales rates in Docket No. TQ97–6–23–000 as filed on June 27, 1997, to be effective August 1, 1997.

The commodity current purchased gas cost adjustment reflects ESNG's projected cost of gas for the month of October, 1997, and has been calculated using its best estimate of available gas supplies to meet ESNG's anticipated purchase requirements. The increased gas costs in this filing are a result of higher prices being paid to producers-marketers under ESNG's market-responsive gas supply contracts.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 and Section 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26750 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–16–001]

Idaho Power Company; Notice of Filing

October 3, 1997.

Take notice that on August 15, 1997, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission an Index of Purchasers listing all customers who have executed Service Agreements under Idaho Power Company FERC Electric Tariff No. 5.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All motions or protests should be filed on or before October 15, 1997. Protests will be considered by the Commission determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26743 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–110–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on September 30, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing Eighteenth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date of this revised tariff sheet is November 1, 1997.

Iroquois states that pursuant to Part 154 of the Commission's Regulations and Section 12.3 of the General Terms and Conditions of its tariff, Iroquois is filing the referenced tariff sheet and supporting workpapers as part of its annual update of its Deferred Asset Surcharge to reflect the annual revenue requirement associated with its Deferred Asset for the amortization period commencing November 1, 1997. The revised tariff sheet reflects a decrease of $.0001 per Dth in Iroquois effective Deferred Asset Surcharge for Zone 1 (from $.0008 to $.0007 per Dth) and an increase in the Zone 2 surcharge of $.0001 per Dth (from $.0006 to $.0007 per Dth). The Inter-Zone surcharge of $.0015 per Dth remains unchanged.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26749 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–122–004]

Maine Public Service Company; Notice of Filing

October 3, 1997.

Take notice that on August 15, 1997, Maine Public Service Company (MPS) tendered for filing pursuant to the Commission's July 31, 1997, Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures, Allegheny Power System, Inc., et al., 80 FERC ¶61,143; MPS's Open Access Transmission Tariff compliance filing. This filing contains the changes required by the Commission's July 31, Order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26742 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–152–004]

Michigan Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on September 29, 1997, Michigan Gas Storage Company (MGS) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, a number of revised tariff sheets (Sheet Nos. 1, 41, 41A, 54A, 67 and 67A) with effective dates of November 1, 1997. The sheets were filed in compliance with a letter order of June 18, 1997 in this docket. The sheets and order deal with Gas Industry Standards Board standards.

MGS states that copies of this filing are being served on all customers and applicable state regulatory agencies, as well as on all those who are either on the official service list in this docket or on the official service list in Docket RP96–290–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26758 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–71–000]

Midcoast Interstate Transmission, Inc.; Notice of Tariff Filing To Reflect Change in Corporate Name

October 3, 1997.

Take notice that on September 30, 1997, Midcoast Interstate Transmission, Inc. (MIT), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain tariff sheets, to be effective October 1, 1997 to reflect the change in its corporate name from Alabama-Tennessee Natural Gas Company to Midcoast Interstate Transmission, Inc.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26755 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-9-000]

Mississippi River Transmission Corporation; Notice of Termination of Gathering Services

October 3, 1997.

Take notice that on October 1, 1997, Mississippi River Transmission Corporation (MRT) filed to terminate the gathering services it performs over the following discrete gathering facilities: (1) The Corney Bayou System in Union Parish, Louisiana, (2) The Hico-Knowles System in Lincoln Parish, Louisiana, (3) The Leatherman Creek System in Claiborne Parish, Louisiana, (4) The Waskom System in Harrison County, Texas, and (5) the Holly Field System in DeSoto Parish, Louisiana. MRT performs services for shippers over these gathering systems pursuant to its FERC Gas Tariff, Third Revised Volume No. 1:

Twenty-Fourth Revised Sheet No. 5
Twenty-Fourth Revised Sheet No. 6
Twenty-First Revised Sheet No. 7
Second Revised Sheet No. 21
Second Revised Sheet No. 28
Second Revised Sheet No. 33
First Revised Sheet No. 61
Third Revised Sheet No. 72
Second Revised Sheet No. 111
Third revised Sheet No. 150

MRT filed to abandon these systems by sale to NorAm Field Services Corp. (NFS) in Docket No. CP96-268-000. The facilities are no longer integral to MRT's operations in the post-restructuring environment. On September 15, 1997 the Federal Energy Regulatory Commission granted the requested abandonment authorization and ordered MRT to make a Section 4 Natural Gas Act filing for authorization to terminate its gathering services.[1] MRT requests that its filing become effective November 1, 1997.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-26748 Filed 10-8-97; 8:45 am]

BILLING CODE 6717-01-M

[1] *See* Mississippi River Transmission Corp., 80 FERC ¶ 61,294 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-2-25-000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed below to be effective November 1, 1997.

Twenty-Fifth Revised Sheet No. 5
Twenty-Fifth Revised Sheet No. 6
Twenty-Second Revised Sheet No. 7
Eighth Revised Sheet No. 8

MRT states that the purpose of this filing is to adjust the Fuel Use and Loss Percentages under its Rate Schedules FTS, SCT, ITS, FSS and ISS pursuant to Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-26752 Filed 10-8-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-8-000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, Mississippi River Transmission Corporation (MRT), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1997:

Twenty-Sixth Revised Sheet No. 5
Twenty-Sixth Revised Sheet No. 6
Twenty-Third Revised Sheet No. 7

MRT states that the purpose of the instant filing is to adjust its rates to reflect additional Gas Supply Realignment Costs (GSRC) of $4,643,564, plus applicable interest, pursuant to Section 16.3 of the General Terms and Conditions of MRT's Tariff. MRT states that its filing includes litigation settlement costs, buyout costs, and A Price Differential GSRC.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions and protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-26780 Filed 10-8-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97-781-000]

National Fuel Gas Supply Corporation; Notice of Application For Abandonment

October 3, 1997.

Take notice that on September 29, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP97-781-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its Deerlick Storage Field and adjacent facilities located in Warren County, Pennsylvania, all as more fully set forth in the application on file with the Commission and open to public inspection.

National Fuel proposes to abandon by sale to Tenneco Gas Processing Company and Five Oaks, Inc., all of its facilities comprising its Deerlick Storage Field plus adjacent gathering lines and appurtenant facilities, all located in the Townships of Sheffield and Cherry Grove, Warren County, Pennsylvania. National states that its Deerlick Storage Field consists of 20 storage wells and 32,803 feet of various size well pipelines. National Fuel asserts that it has concluded that Deerlick Storage Field is no longer necessary to provide storage services, and has removed all top gas and base gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 24, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97-26741 Filed 10-8-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-2-16-000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

October 3, 1997.

Take notice that on September 30, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 9, with a proposed effective date of October 1, 1997.

National states that pursuant to Article I, Section 4, of the approved settlement at Docket Nos. RP94-367-000, et al., National is required to redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 12.47 cents per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.211 or 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-26782 Filed 10-8-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ97-10-000]

New York Power Authority; Notice of Filing

October 3, 1997.

Take notice that on March 26, 1997, New York Power Authority tendered for filing copies of its Standards of Conduct in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 15, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-26744 Filed 10-8-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-2-000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to become effective on November 1, 1997:

38 Revised Sheet No. 50

38 Revised Sheet No. 51
15 Revised Sheet No. 52
16 Revised Sheet No. 60
Fifth Revised Sheet No. 263
Fourth Revised Sheet No. 263A
First Revised Sheet No. 263B
First Revised Sheet No. 263C
Second Revised Sheet No. 263D
Second Revised Sheet No. 263E
First Revised Sheet No. 263H
Original Sheet No. 263H.1

Northern states that the above-referenced tariff sheets contain proposed changes to the Carlton Resolution tariff provision.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26774 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–4–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, Seventh Revised Sheet No. 68, with an effective date of November 1, 1997.

Northern states that the filing, pursuant to Northern's commitment in Docket Nos. RP94–3, RP94–415 and RP95–137, and RP96–130 reconciles over and underrecovery of Reverse Auction expenses solely attributable to changes in FERC interest rates and adjusts accordingly the direct bill amounts by shipper. Northern has filed Seventh Revised Sheet No. 68 to reflect these amounts in its Tariff and will commence billing such amounts effective November 1, 1997.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26776 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–28–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective November 1, 1997.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to the Fuel Reimbursement Percentages:

(1) A 0.15% increase in the Gathering Fuel Reimbursement Percentage;

(2) A 0.15% increase in the Field Zone Fuel Reimbursement Percentage;

(3) A 0.02% increase in the Market Zone Fuel Reimbursement Percentage;

(4) A 0.21% increase in the Injection and no change in the Withdrawal Field Area Storage Reimbursement Percentages; and

(5) A 0.21% increase in the Injection and a 0.21% increase in the Withdrawal Market Area Storage Reimbursement Percentages.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protect this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26753 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–7–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective November 1, 1997.

Panhandle states that this filing removes from its currently effective rates the TOP Settlement Cost Surcharge of 1.00¢ per Dt. established in a July 10, 1991 Stipulation and Agreement (July 10, 1991 Settlement) in Docket No. RP91–53–000. The current volumetric surcharge in Section 18.3 of the General Terms and Conditions (GT&C) was approved by the Commission order issued August 2, 1991, 56 FERC ¶61,210 (1991).

Panhandle further states that this filing removes from Panhandle's currently effective rates the Settlement Reservation Surcharge of $0.15 per Dt. and Settlement Volumetric Surcharge of 0.60¢ per Dt. established in a July 15, 1992 Stipulation and Agreement (July 15, 1992 Settlement) in Docket No. RP91–229–000, et al. The current Settlement Surcharges in Section 18.5 of the GT&C were approved by the Commission order issued August 28, 1992, 60 FERC ¶61,212 (1992).

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26779 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–773–000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

October 3, 1997.

Take notice that on September 26, 1997, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP97–773–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate new delivery point facilities in Rio Blanco County, Colorado, to deliver natural gas from Questar's Main Line No. 68 to Conoco, Inc. (Conoco), under Questar's blanket certificate issued in Docket No. CP82–491–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar states that natural gas volumes would be delivered by Questar to Conoco at the proposed new Conoco Dragon Trail Delivery Point. Conoco would process the natural gas and then redeliver thermally equivalent volumes of processed natural gas to Questar. Questar states that the processed natural gas would then flow downstream on Questar's interstate transmission system.

The Conoco Dragon Trail delivery point facilities proposed to be installed include: (1) One 33 MMcf per day separator, (2) one 6-inch diameter Daniel Senior meter run, (3) four 6-inch diameter Rockwell plug valves, (4) two 6-inch diameter Judco check valves, (5) approximately 150 feet of 6-inch diameter surface lateral and miscellaneous fittings, (6) one 14-inch diameter Plidco hot-tapping saddle, and (7) one 6-inch diameter Orbit ball valve. Questar states that the total estimated cost of the Conoco Dragon Trail Delivery Point is $120,000. Construction of the proposed delivery point will be performed entirely within the confines of Questar's existing M.L. No. 68 right of way. The ground disturbance associated with facility installations will be limited solely to the tap on Questar's existing M.L. No. 68. All other construction related to the proposed facilities will consist of above-ground installations.

Questar states that it proposed to deliver, via the Conoco Dragon Trail Delivery Point, natural gas volumes of up to 20,000 Dth per day. The maximum capacity of the delivery point facilities is 30,000 Dth per day. Questar states that this proposal is not prohibited by its existing tariff, that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers, that its peak day and annual deliveries will not be effected and that the total volumes delivered will not exceed the total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26738 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ96–1–002]

South Carolina Public Service Authority; Notice of Filing

October 3, 1997.

Take notice that on July 14, 1997, the South Carolina Public Service Authority (Authority) tendered for filing its compliance filing in the above reference docket. The Authority requests that the Commission issue an order finding that its revised open access transmission tariff continues to be an acceptable reciprocity tariff. The Authority states that it has revised its open access tariff primarily to address changes the Commission made in its pro forma open access tariff in Order No. 888–A.

The Authority also states that a paper copy of its filing is available for inspection at its principal place of business at One Riverwood Drive, Moncks Corner, SC, 29461.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26745 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–544–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

October 3, 1997.

Take notice that on September 30, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of October 1, 1997:

Tariff Sheets Applicable to Contesting Parties:
Thirty Third Revised Sheet No. 14
Fifty Fourth Revised Sheet No. 15
Thirty Third Revised Sheet No. 16
Fifty Fourth Revised Sheet No. 17
Thirtieth Revised Sheet No. 18
Thirty Sixth Revised Sheet No. 29
Tariff Sheets Applicable to Settling Parties:
Eighteenth Revised Sheet No. 14a
Twenty Fourth Revised Sheet No. 15a
Eighteenth Revised Sheet No. 16a
Twenty Fourth Revised Sheet No. 17a

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN GSR Surcharge, due to an increase in the FERC interest rate, and a decrease in the GSR billing units effective October 1, 1997.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26745 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–736–000]

Tennessee Gas Pipeline Company; Notice of Application

October 3, 1997.

Take notice that on September 8, 1997, as supplemented on September 10, 1997, and October 2, 1997, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97–736–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a 1500 feet of ruptured pipeline, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee seeks approval to abandon and remove a 1500 foot portion of its ruptured Burrwood Line located in Plaquemines Parish, Louisiana. Specifically Tennessee proposes to remove the ruptured segment of the line and cut and flange its north and south ends.

Any person desiring to be heard or to make protest with reference to said application should on or before October 24, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26737 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–543–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on September 30, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No.1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing. The proposed tariff sheets are proposed to be effective November 1, 1997.

Transco states that the instant filing is submitted pursuant to Section 44 of the General Terms and Conditions of Transco's Volume No. 1 Tariff which provides that Transco will reflect in its rates the costs incurred for the transportation and compression of gas by others (TBO). Section 44 provides that Transco will file to reflect net changes in its TBO rates at least 30 days prior to the November 1 effective date of each annual TBO filing.

Transco states that Appendix B attached to the filing sets forth Transco's estimated TBO demand costs for the period November 1, 1997 through October 31, 1998, and the derivation of the TBO unit rate reflected on the tariff sheets included in Appendix A.

Transco states that copies of the filing are being mailed to its customers and interested State Commissions.

Any Person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26771 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–1–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 5B.03, to become effective on November 1, 1997.

Section 25, Transition Cost Recovery Surcharge, of Transwestern's FERC Gas Tariff provides for the recovery of eligible transition costs under Order Nos. 528 et al., as defined in Section 25 (TCR II Costs). TCR II Costs are recoverable from Current Firm Shippers through a reservation surcharge (TCR II Reservation Surcharge) and are allocated annually based on the allocation factor underlying the TCR II recovery mechanism (TCR II Allocation Factor). Pursuant to Section 25 (D), for purposes of calculating the TCR II Reservation Surcharge, Transwestern is required to recalculate the TCR II Allocation Factor for each Current Firm Shipper to be effective on each subsequent November 1 during the TCR II amortization period.

Transwestern states that the purpose of this filing is to revise the new TCR II No. 1 and No. 2 Reservation Surcharges based on the updated TCR II Allocation Factors effective November 1, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26773 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–5–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 5B.02, with an effective of November 1, 1997.

Transwestern states that the purpose of this filing is to revise the Shared Cost Surcharge (SCS) rate for certain Current Customers to be effective November 1, 1997 (Year No. 2) in accordance with the settlement filed in the referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26777 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–30–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective November 1, 1997.

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets listed on Appendix A reflect: a 0.17% increase (Field Zone to Zone 2), a 0.10% increase (Zone 1A to Zone 2), a (0.04)% decrease (Zone 1B to Zone 2), a (0.15)% decrease (Zone 2 only), a 0.26% increase (Field Zone to Zone 1B), a 0.19% increase (Zone 1A to Zone 1B), a 0.05% increase (Zone 1B only), a 0.15% increase (Field Zone to Zone 1A), a 0.08% increase (Zone 1A only and) a 0.01% increase (Field Zone only) to the currently effective fuel reimbursement percentages.

Trunkline states that copies of this filing are being served on all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26754 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–6–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the Tariff sheets identified on Appendix A attached to the filing, proposed to be effective November 1, 1997.

Trunkline states that this filing removes from Trunkline's currently effective rates the Take-or-Pay Volumetric Surcharge applicable to Rate Schedules FT, SST, EFT, QNT, LFT, IT and QNIT provided under Section 25.6 of the General Terms and Conditions. The current TOP Volumetric Surcharge is 0.68 cents per Dt. for gas delivered in the Field Zone and 1.31 cents per Dt. for gas delivered in the market zone.

Trunkline states that copies of this filing are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26778 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–49–000]

Notice of Filing

October 3, 1997.

In the matter of: Vastar Resources, Inc.; Vastar Gas Marketing Inc.; Vastar Power Marketing, Inc.; Vastar Energy; SEI Holdings, Inc.; Southern Energy North America, Inc.; Southern Energy Trading and Marketing, Inc.; Ashwood Holdings, Inc.; Energy Ventures, Inc.; Southern Company Energy Marketing L.P.; Southern Company Energy Marketing G.P., L.L.C.

Take notice that on September 29, 1997, the above-captioned parties (Applicants) filed an amendment to their application under Section 203 of the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and, 18 CFR 385.214). All such motions or protests should be filed on or before October 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26746 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–279–001]

Warren Transportation, Inc.; Notice of Tariff Filing

October 3, 1997.

Take notice that on September 30, 1997, Warren Transportation, Inc. (WTI), 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed its FERC Gas Tariff, Original Volume No. 1, to be effective on November 1, 1997. WTI states that the filing is in compliance with the Commission's September 15, 1997, "Order Issuing Certificates" in Docket Nos. CP97–279–00, *et al.*, 80 FERC ¶ 61,292.

The September 15th Order required that WTI revise the proposed billing determinants in its rate calculation, resulting in a Maximum FTS rate of $0.9503 and Maximum ITS rate of $0.0312. WTI states it has revised Original Sheet No. 5 of its FERC Gas Tariff from the pro forma filing version to reflect these Commission approved rates. WTI also states it filed a revised version of Original Sheet No. 11 to reflect that WTI will comply with the Commission's policy providing shippers the opportunity to review negotiated rates by filing all negotiated rate agreements at the Commission. WTI also filed a revised version of Original Sheet Nos. 1 and 190 to reflect an update in the tariff contact and in its shared officers. Finally, the September 15th Order required that WTI update its tariff to conform to the existing GISB Standards that have been approved by the Commission in Order Nos. 587, *et al.* Accordingly, WTI states it has filed, to comply with the existing GISB Standards, a revised version of Original Sheet Nos. 34, 64, 109, 148, 165 and 166.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 14, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26747 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–782–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

October 3, 1997.

Take notice that on September 29, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP97–782–000 a request pursuant to §§ 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to upgrade four existing meter stations in Montana and South Dakota by abandoning certain existing facilities and constructing and operating upgraded facilities resulting from Electronic Custody Transfer (ECT) measurement conversion, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin states that the existing meter stations involved are the Wolf Point in Roosevelt county and the Glasgow in Valley county, Montana, and the Lead in Lawrence county and the Sturgis in Meade county, South Dakota. Williston Basin states that the existing orifice meters at these stations will not facilitate ECT measurement and must be replaced and will result in reducing operation and maintenance costs. Williston Basin will also replace a regulator at the Glasgow station since the existing regulator doesn't provide control over intermediate pressure and is inappropriately sized. The capacity of all four meter stations will decrease as a result of these replacements.

Williston Basin states that it provides natural gas transportation deliveries through these meter stations to Montana-Dakota Utilities Co., a local distribution company. The total project cost is approximately $45,000. Williston Basin states that the facilities to be upgraded are located entirely on existing right-of-way and that all of the proposed work will be done within an existing building at the meter station sites.

Williston Basin states that this proposal is not prohibited by its existing tariff, that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers, that its peak day and annual deliveries will not be effected and that the total volumes delivered will not exceed the total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26740 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–1–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1997.

Take notice that on October 1, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective October 1, 1997:

Seventh Revised Sheet No. 776
Ninth Revised Sheet No. 777
Ninth Revised Sheet No. 825
Fifteenth Revised Sheet No. 827
Sixteenth Revised Sheet No. 829
Seventeenth Revised Sheet No. 831
Nineteenth Revised Sheet No. 832
Nineteenth Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26756 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–3–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

October 3, 1997.

Take notice that on October 1, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, to become effective November 1, 1997:

Williston Basin states that the revised tariff sheets reflect modifications to its imbalance cash-out procedure to change the cash-out index price calculation and to eliminate the tiered Index Price Multiplier. Williston Basin also states that the revised tariff sheets reflect revisions to its monthly balancing procedures to no longer delineate between transactions that are electronically monitored by telemetering and those that are not. In addition, the revised tariff sheets reflect a change in the date by which shippers must arrange for an Imbalance Trade and/or Imbalance Transfer transaction, all as more fully detailed in the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26775 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1509–001, et al.]

Consumers Energy Company, et al., Electric Rate and Corporate Regulation Filings

October 3, 1997.

Take notice that the following filings have been made with the Commission:

1. Consumers Energy Company

[Docket No. ER97–1509–001]

Take notice that on September 8, 1997, Consumers Energy Company (Consumers) tendered for filing amendment to its prior July 1, 1997, filing involving for Non firm Point-To-Point Transmission Service and an amendment of its Coordinated Operating Agreement with the City of Holland.

A copy of the filing was served on the Michigan Public Service Commission and the City of Holland.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Moon Lake Electric Association, Inc.

[Docket No. ER97–4286–000]

Take notice that on September 30, 1997, Moon Lake Electric Association, Inc. (Moon Lake), submitted a Supplemental Filing to its Application for Disclaimer of Jurisdiction or, In the Alternative, Commission Acceptance of certain long-standing agreements under which it provides distribution-type delivery service to end-use customers of four purchasers. Moon Lake's Application was submitted in this docket on August 20, 1997.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Central Maine Power Company

[Docket No. ER97–4323–000]

Take notice that on September 23, 1997, Central Maine Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Central Maine Power Company

[Docket No. ER97–4324–000]

Take notice that on September 23, 1997, Central Maine Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Central Maine Power Company

[Docket No. ER97–4325–000]

Take notice that on September 23, 1997, Central Maine Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Central Maine Power Company

[Docket No. ER97–4326–000]

Take notice that on September 23, 1997, Central Maine Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Central Maine Power Company

[Docket No. ER97–4328–000]

Take notice that on September 23, 1997, Central Maine Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER97–4610–000]

Take notice that on September 15, 1997, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Western Resources Generation Services for service under its Firm point-to-point open access service tariff for its operating division WestPlains Energy—Kansas.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER97–4611–000]

Take notice that on September 15, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Service Agreement with Cinergy Services, Inc., and Cook Inlet Energy Supply L.P., under PacifiCorp's FERC Electric Tariff, Original Revised Volume No. 12.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER97–4612–000]

Take notice that on September 15, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Service Agreement with Public Utility District No. 1 of Okanogan County under PacifiCorp's FERC Electric Tariff, Original Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER97–4613–000]

Take notice that on September 15, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreements to provide Firm Point-to-Point Transmission Service for Vitol Gas & Electric and Enron Power Marketing, the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreement are July 26, 1997 and July 28, 1997 respectively.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Trading and Marketing, L.L.C., as successor-in interest) to Inland Pacific Energy Services Corporation, and Inland Pacific Resources Inc.

[Docket No. ER97–4614–000]

Take notice that on September 15, 1997, Duke Energy Trading and Marketing, L.L.C. (Duke), as successor-in-interest to Inland Pacific Energy Services Corporation (IPES), and Inland Pacific Resources Inc. (IPRI), tendered for filing a Notification of Change in Status of IPES and Submission of Revised Electric Rate Schedule No. 1 for IPRI.

In their filing, Duke and IPRI request approval of IPES' notice of change in status to transfer the authority under which IPES engages in wholesale electric power and energy transactions as a marketer pursuant to the Letter Order of the Commission, dated September 16, 1996 in Docket No. ER96–2144–000, to IPES' former parent company, IPRI. Duke and IPRI request approval of a revised Electric Service Rate Schedule No. 1, for IPES to reflect the transfer of authority from IPES to IPRI, and that the Commission grant such other approvals and waivers as are necessary for IPRI's Electric Service Rate Schedule No. 1, to become effective 60 days after the date of this filing.

In support of this filing, IPRI states that other than a transfer of authority to IPRI from IPES, there are no other changes or departures from any of the characteristics the Commission relied upon in approving IPES' market-based pricing in the Letter Order issued in Docket No. ER96–2144. IPRI also states that this transfer does not create any market power concerns and that it does not own any electric transmission facilities or have any franchised retail service areas.

In the alternative to approving the transfer of IPES authority as a marketer to IPRI as requested under the Letter Order issued in Docket No. ER96–2144, Duke and IPRI otherwise request that the Commission cancel IPES' Electric Rate Schedule No. 1 and IPES' authority under the Letter Order issued in Docket No. ER96–2144, simultaneous with the issuance of a new letter order authorizing IPRI to engage in wholesale electric power and energy transactions as a marketer and approving IPRI's Electric Service Rate Schedule No. 1.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Central Louisiana Electric Co, Inc.

[Docket No. ER97–4615–000]

Take notice that on September 15, 1997, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing a service agreement under which CLECO will provide short term firm point-to-point transmission service to Southern Energy Trading and Marketing, Inc., under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Southern Energy Trading and Marketing, Inc.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER97–4616–000]

Take notice that on September 15, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, service agreements under which NYSEG may provide capacity and/or energy to The Toledo Edison Company (TE) and Cleveland Electric Illuminating Company (CEI) (collectively Centerior Energy Corporation), MidCon Power Services Corp. (Midcon), and New Energy Ventures, Inc. (New Energy), (collectively, the Purchasers) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the service agreements with TE, CEI, Midcon, and New Energy become effective as of September 16, 1997.

The Service Agreements are subject to NYSEG's Application for Approval of Corporate Reorganization which was filed with the Commission on September 1, 1997 and was assigned Docket

No. EC97–52–000.

NYSEG has served copies of the filing upon the New York State Public Service Commission, Centerior Energy Corporation, Midcon and New Energy.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER97–4617–000]

Take notice that on September 15, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the Ohio Edison Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Ohio Edison Company.

NUSCO requests that the Service Agreement become effective September 9, 1997.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Northeast Utilities Service Company

[Docket No. ER97–4618–000]

Take notice that on September 15, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a First Amendment to Transmission Service Agreement between the Northeast Utilities (NU) System Companies and the Westfield Gas and Electric Light Department (Westfield).

NUSCO states that the First Amendment modifies a long-term comprehensive transmission service agreement between the NU System Companies and Westfield to reflect the effectiveness of the Restated New England Power Pool (NEPOOL) Agreement and the NEPOOL Transmission Tariff.

NUSCO requests that the First Amendment become effective on the effective date of the NEPOOL Tariff—March 1, 1997.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Pacific Gas and Electric Company

[Docket No. ER97–4619–000]

Take notice that on September 15, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing two service agreements by and between PG&E and; (1) Southern California Edison Company (SCE); and (2) Kansas City Power & Light Company (Kansas); each entitled, "Service Agreement for Non-Firm Point-to-Point Transmission Service" (Service Agreements).

PG&E proposes that the Service Agreements become effective on August 15, 1997, for SCE and August 21, 1997, for Kansas. PG&E is requesting any necessary waivers.

Copies of this filing have been served upon the California Public Utilities Commission, SCE and Kansas.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Central Hudson Gas & Electric Corporation

[Docket No. ER97–4620–000]

Take notice that on September 15, 1997, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's

(Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Sonat Power Marketing LP. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ES97–52–000]

Take notice that on September 30, 1997, PECO Energy Company (PECO) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue and reissue from time to time through September 30, 1999 up to $1.0 billion of promissory notes and other evidences of secured and unsecured indebtedness maturing in less than one year from the date of issuance.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Lyon Rural Electric Cooperative

[Docket No. ES97–53–000]

Take notice that on September 30, 1997, Lyon Rural Electric Cooperative (Lyon) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue securities in the amount of $1,325,000 in the form of a loan from National Rural Utilities Finance Corporation (CFC) under an existing revolving line of credit agreement. Lyon also requested an exemption from the Commission's competitive bidding or negotiated placement requirements.

Comment date: October 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26833 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2434–000, et al.]

Idaho Power Company, et al.; Electric Rate and Corporate Regulation Filings

October 2, 1997.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER97–2434–000]

Take notice that on September 10, 1997, Idaho Power Company tendered for filing a Notice of Withdrawal of its April 7, 1997, filing in the above-referenced docket.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Detroit Edison Company

[Docket No. ER97–4215–000]

Take notice that on September 8, 1997, Detroit Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. MidAmerican Energy Company

[Docket No. ER97–4466–000]

Take notice that on September 19, 1997, MidAmerican Energy Company tendered for filing an amendment in the above-referenced docket.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Maine Electric Power Company, Inc.

[Docket No. ER97–4517–000]

Take notice that on September 17, 1997, Maine Electric Power Company, Inc. (MEPCO), submitted for filing an executed First Amendment to Supplemental Participation Agreement among MEPCO, Bangor Hydro-Electric Company and Central Maine Power Company.

Copies of this filing have been served upon each of the parties to the agreements.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. New York State Electric & Gas Corporation

[Docket No. ER97–4562–000]

Take notice that on September 10, 1997, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Minnesota Power & Light Company, Strategic Energy Limited, Constellation Power Source, Inc., and Sonat Power Marketing L.P. (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of September 6, 1997, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: October 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER97–4591–000]

Take notice that on September 12, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreement to provide Firm Point-to-Point Transmission Service for Southern Energy Marketing, the Transmission Customer. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreement is August 1, 1997.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Electric & Gas Company

[Docket No. ER97–4592–000]

Take notice that on September 12, 1997, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Duke Power (DP) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon DP and the South Carolina Public Service Commission.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Rochester Gas and Electric Corporation

[Docket No. ER97–4593–000]

Take notice that on September 12, 1997, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the Sonat Power Marketing L.P. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of September 5, 1997, for the Sonat Power Marketing L.P., Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER97–4594–000]

Take notice that on September 12, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Amendment No. 1 the Transmission Service and Operating Agreement between PacifiCorp and Utah Municipal Power Agency (PacifiCorp's Rate Schedule FERC Nos. 279, 288, 290 and 292).

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

PacifiCorp requests, that a waiver of prior notice be granted and that the Commission accept for filing the Amendment No. 1 and assign an effective date of April 1, 1997.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket No. ER97–4595–000]

Take notice that on September 12, 1997, Public Service Company of New Mexico (PNM) submitted for filing executed service agreements for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff with the following transmission service customers: Cook Inlet Energy Supply (dated September 2, 1997 for Non-Firm Service) and NP Energy Inc. (dated September 2, 1997 for Non-Firm Service).

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER97–4596–000]

Take notice that on September 12, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, an unexecuted Service Agreement with Southern Energy Trading and Marketing, Inc. (SETM), under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to SETM.

NUSCO requests that the Service Agreement become effective September 15, 1997.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER97–4597–000]

Take notice that on September 12, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Union Electric Company (Union).

Cinergy and Union are requesting an effective date of August 13, 1997.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Orange and Rockland Utilities, Inc.

[Docket No. ER97–4598–000]

Take notice that on September 12, 1997, Orange and Rockland Utilities, Inc. (O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement under which O&R will provide capacity and/or energy to Central Maine Power Company (Central Maine).

O&R requests waiver of the notice requirement so that the service agreement with Central Maine becomes effective as of September 15, 1997.

O&R has served copies of the filing on The New York State Public Service Commission and Central Maine.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Potomac Electric Power Company

[Docket No. ER97–4599–000]

Take notice that on September 12, 1997, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and: Illinois Power Company, NP Energy, Inc., and Entergy Power Marketing Corporation. An effective date of September 11, 1997, for these service agreements, with waiver of notice, is requested.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Delmarva Power & Light Company

[Docket No. ER97–4600–000]

Take notice that on September 12, 1997, Delmarva Power & Light Company, doing business as Conectiv Energy, filed a Transaction Agreement between itself and Jersey Central Power & Light Company, doing business as GPU Energy, under which Conectiv Energy and GPU Energy will supply energy to each other pursuant to tariff service agreements.

Delmarva requests that the Transaction Agreement be allowed to become effective on September 15, 1997 as agreed by the parties.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER97–4601–000]

Take notice that on September 15, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated September 11, 1997 with Vitol Gas & Electric, LLC under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Vitol Gas & Electric, LLC as a customer under the Tariff. DLC requests an effective date of September 11, 1997, for the Service Agreement.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company

[Docket No. ER97–4602–000]

Take notice that on September 15, 1997, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Hamilton Dept. of Public Utilities under Rate GSS.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Boston Edison Company

[Docket No. ER97–4603–000]

Take notice that on September 15,, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Williams Energy Services Company (Williams). Boston Edison requests that the Service Agreement become effective as of September 1, 1997.

Edison states that it has served a copy of this filing on Williams and the Massachusetts Department of Public Utilities.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Illinois Power Company

[Docket No. ER97–4604–000]

Take notice that on September 15, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Archer Daniels Midland Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 10, 1997.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company

[Docket No. ER97–4605–000]

Take notice that on September 15, 1997, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and AES Power, Inc., under Rate GSS.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Boston Edison Company

[Docket No. ER97–4606–000]

Take notice that on September 15, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for New Energy Ventures (New Energy). Boston Edison requests that the Service Agreement become effective as of September 1, 1997.

Edison states that it has served a copy of this filing on New Energy and the Massachusetts Department of Public Utilities.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Central Louisiana Electric Company, Inc.

[Docket No. ER97–4607–000]

Take notice that on September 15, 1997, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to Avista Energy, Inc., under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Avista Energy, Inc.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Niagara Mohawk Power Corporation

[Docket No. ER97–4608–000]

Take notice that on September 15, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and City of Watertown. This Transmission Service Agreement specifies that City of Watertown has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and City of Watertown to enter into separately scheduled transactions under which NMPC will provide transmission service for City of Watertown as the parties may mutually agree.

NMPC requests an effective date of September 1, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and City of Watertown.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corporation

[Docket No. ER97–4609–000]

Take notice that on September 15, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Constellation Power Source, Inc. This Transmission Service Agreement specifies that Constellation Power Source, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Constellation Power Source, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for Constellation Power Source, Inc., as the parties may mutually agree.

NMPC requests an effective date of September 8, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Constellation Power Source, Inc.

Comment date: October 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Public Service Company of New Mexico

[Docket No. ER97–4663–000]

Take notice that on September 18, 1997, Public Service Company of New Mexico (PNM) submitted for filing pursuant to Section 35.15 of the Regulations to the Federal Energy Regulatory Commission, 18 CFR 35.15, its Notice of Cancellation of Service Schedule E (Reserve Sharing) to the Interconnection Agreement between PNM and Tucson Electric Power Company (TEP) dated January 25, 1979.

Pursuant to PNM's filing, Service Schedule E to the Interconnection Agreement between PNM and TEP dated January 25, 1979, is to be canceled 60 days from PNM's filing. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Tucson Electric Power Company

[Docket No. OA96–140–000]

Take notice that on September 29, 1997, Tucson Electric Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: October 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26834 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of License

October 3, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of License.

b. *Project No.:* 1473–013.

c. *Date Filed:* August 28, 1997.

d. *Applicant:* Granite County.

e. *Name of Project:* Flint Creek.

f. *Location:* On Flint Creek, in Deer Lodge and Granite Counties, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)–825(r).

h. *Applicant Contact:* Allen A. Morrison, Chairman, Board of County Commissioners, Granite County, P.O. Box B, Philipsburg, MT 59858, (406) 859–3771.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* November 17, 1997.

k. *Description of Application:* The licensee seeks to surrender its license because rehabilitation of the project is uneconomical.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–26757 Filed 10–8–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5907–1]

Federal Register Notice of Stakeholders Meeting on Drinking Water Regulation Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of stakeholders meeting on October 29, 1997 to advise EPA on the scope of the revision to the public notification rule under the 1996 Safe Drinking Water Act (SDWA) Amendments.

SUMMARY: The Environmental Protection Agency (EPA) will hold a public meeting on October 29, 1997 in Seattle, Washington. EPA, in collaboration with the State Division of Drinking Water in the Washington Department of Health, is sponsoring this meeting. The purpose of the meeting will be to gather information and collect opinions from parties who will be affected by provisions of the Public Notification Rule of the new Safe Drinking Water Act (SDWA), amended in 1996. Comments and views expressed will be used to help develop the new Federal and State program requirements. EPA is seeking input from State drinking water programs, the regulated community (public water systems), public health and safety organizations, environmental and public interest groups, and other stakeholders on a number of issues related to developing the drinking water regulation. EPA encourages the full participation of all stakeholders throughout this process.

DATES: The stakeholder meeting on the drinking water regulation for public notification will be held on October 29, 1997, from 1 p.m. to 5 p.m. Pacific Daylight Savings Time. Registration will start at 12:30 p.m.

ADDRESSES: The meeting is to be held at the Physics/Astronomy Building, University of Washington Campus, Room PABA102, Corner of 15th Ave. NE and NE Pacific Street, Seattle, Washington. For information on meeting logistics or if you want to register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791, or Diana Horan of the Washington State Division of Drinking Water at (360) 664–4345. Participants registering in advance will be mailed a packet of materials before the meeting.

FOR FURTHER INFORMATION CONTACT: Carl Reeverts, U.S. EPA, at (202) 260–7273.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency is developing revised public notification regulations (under existing 40 CFR 141.32) to incorporate the new provisions enacted under the 1996 Safe Drinking Water Amendments (SDWA), specifically the amended sections 1414 (c)(1) and (c)(2) of the SDWA. The 1996 SDWA amendments completely replaced the language in the statute under 1414(c). There is no statutory deadline for implementing the amended sections 1414 (c)(1) and (c)(2).

The Administrator is required by statute to prescribe by regulation the

manner, frequency, form, and content that public water systems must follow for giving public notice. The 1996 SDWA amendments amended this EPA obligation, to require consultation with the States prior to rulemaking. Public water systems are currently required to notify their customers whenever: (1) A violation of any drinking water regulation occurs (including MCL, treatment technique, and monitoring/reporting requirements); (2) a variance or exemption (V&E) to those regulations is in place or the conditions of the V&E are violated; or (3) results from unregulated contaminant monitoring required under section 1445 of the SDWA are received. This coverage was not changed by the 1996 SDWA Amendments.

The current rule sets different requirements based on the type of violation and type of system. The 1996 SDWA amendments substantially alter what is currently in place: (1) SDWA section 1414(c)(2)(C) requires notice within 24 hours and sets other new, more prescriptive notice requirements for violations with "potential to have serious adverse health risks to human health as a result of short-term exposure"; (2) SDWA section 1414(c)(2)(D) gives EPA more discretion to set less prescriptive notice requirements for all other violations, such as requiring the notice in an annual report; and (3) SDWA section 1414(c)(2)(B)) allows the states to prescribe alternative notification requirements by rule to the form and content of the notice, consistent with the current primacy requirements.

To meet the letter and spirit of the new statutory provisions, EPA is holding three or more public stakeholder meetings prior to drafting a new regulation. This is the third of the scheduled stakeholder meetings to be held since August, to exchange information on our mutual experience with the current regulation and the elements needed in the new regulation to meet the intent of Congress. The legislative changes provide an excellent opportunity to streamline the existing regulations by focusing the notices on situations that have potential to have serious adverse effects on human health. EPA will also solicit from the stakeholders existing public notification programs that work, and seek to share these experiences through our rulemaking communication. The reports from these meetings will be presented to the public notification workgroup to define the issues and to develop options for their resolution.

Dated: October 3, 1997.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–26860 Filed 10–8–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5907–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; Announcement of Proposal Deadline for the Competition for the 1998 National Brownfields Assessment Demonstration Pilots

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal deadlines, revised guidelines.

SUMMARY: The United States Environmental Protection Agency (EPA) will begin to accept proposals for the National Brownfields Assessment Pilots on October 9, 1997. The brownfields assessment pilots (each funded up to $200,000 over two years) test cleanup and redevelopment planning models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated environmental cleanup and redevelopment efforts at the federal, state, and local levels. EPA expects to select approximately 100 additional National brownfields assessment pilots by May 1998. Applications will be accepted on a "rolling submissions" schedule. The deadlines for new applications for the 1998 assessment pilots are *December 15, 1997, and March 23, 1998.* Applications postmarked after December 15, 1997, will be considered in the second round of competition. Previously unsuccessful applicants are advised that they must revise and resubmit their applications.

The National brownfields assessment pilots are administered on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the newly revised application booklet The Brownfields Economic Redevelopment Initiative: Proposal Guidelines for Brownfields Assessment Demonstration Pilots (October 1997).

DATES: This action is effective as of October 9, 1997, and expires on March 23, 1998. All proposals must be postmarked or sent to EPA via registered or tracked mail by the expiration dates cited above. Applications postmarked after December 15, 1997, will be considered in the second round of competition.

ADDRESSES: Application booklets can be obtained by calling the Superfund Hotline at the following numbers: Washington, DC Metro Area at 703–412–9810, Outside Washington, DC Metro at 1–800–424–9346, TDD for the Hearing Impaired at 1–800–553–7672.

Copies of the Booklet are available via the Internet: http://www.epa.gov/brownfields/

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, 800–424–9346.

SUPPLEMENTARY INFORMATION: As a part of the Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative, the Brownfields Assessment Demonstration Pilots are designed to empower States, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up and sustainably reuse brownfields. EPA has awarded cooperative agreements to States, cities, towns, counties and Tribes for demonstration pilots that test brownfields assessment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated public and private efforts at the Federal, State and local levels. To date, the Agency has funded 121 Brownfields Assessment Pilots. Of those pilots, 64 are National Pilots selected under criteria developed by EPA Headquarters and 57 are Regional Pilots selected by EPA Regions under criteria developed by their offices.

EPA's goal is to select a broad array of assessment pilots that will serve as models for other communities across the nation. EPA seeks to identify applications that demonstrate the integration or linking of brownfields assessment pilots with other federal, state, tribal, and local sustainable development, community revitalization, and pollution prevention programs. Special consideration will be given to Empowerment Zones and Enterprise Communities (EZ/ECs) and communities with populations of under 100,000. (EPA will conduct a special outreach effort to address the unique needs of Indian Tribes.) These pilots focus on EPA's primary mission—protecting human health and the environment. However, it is an essential piece of the nation's overall community revitalization efforts. EPA works closely with other federal agencies through the Interagency Working Group on Brownfields, and builds relationships with other stakeholders on the national and local levels to develop coordinated approaches for community revitalization.

Funding for the brownfields assessment pilots is authorized under Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA or Superfund), 42 U.S.C. 9604(d)(1). States, cities, towns, counties, U.S. Territories, and Indian Tribes are eligible to apply. EPA welcomes and encourages applications from coalitions of such entities, but a single eligible entity must be identified as the legal recipient. Cooperative agreement funds will be awarded only to a state, to an officially recognized political subdivision of a state, or to a Federally recognized tribe. For non-state applicants, please include a statement verifying that your entity has been authorized by the state to exercise governmental powers.

Through a brownfields cooperative agreement, EPA authorizes an eligible state, political subdivision, Territory, or Indian Tribe to undertake activities that EPA itself has the authority to pursue under CERCLA sections 104(a) or 104(b). All restrictions on EPA's use of funding cited in CERCLA section 104 also apply to brownfields assessment pilot cooperative agreement recipients.

The proposal evaluation panels will review the proposals carefully and assess each response based on how well it addresses the selection criteria, briefly outlined below:

1. Problem Statement and Needs Assessment (4 Points Out of 20)

—Effect of Brownfields on your Community or Communities
—Value Added by Federal Support

2. Community-Based Planning and Involvement (6 Points Out of 20)

—Existing Local Commitment
—Community Involvement Plan
—Environmental Justice Plan

3. Implementation Planning (6 Points Out of 20)

—Appropriate Authority and Government Support
—Environmental Site Assessment Plan
—Proposed Cleanup Funding Mechanisms
—Flow of Ownership Plan

4. Long-Term Benefits and Sustainability (4 Points Out of 20)

—National Replicability
—Measures of Success

Dated: October 2, 1997.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 97–26863 Filed 10–8–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2231]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 6, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed October 24, 1997. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: International Settlement Rates (IB Docket No. 96–261).

Number of Petitions Filed: 3.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–26785 Filed 10–8–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 23, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. James Bennett, Billings, Montana; First PREMIER Bank as Custodian/FBO Emil Erhardt IRA, Stevensville, Montana; Donald Bennett, Columbia Falls, Montana; Steven Tostenrud, Billings, Montana; Alex Zier, Lewistown, Montana; William Thorndal, Laurel, Montana; Robert Sizemore, Chinook, Montana; William Curley, Poynette, Wisconsin; Jon Sustarich, Cambridge, Wisconsin; Kenneth Baker, Osceola, Iowa; Gregory Bormann, Stickney, South Dakota; Duncan Flann, Iroquois, South Dakota; Ronald Hornischer, Merrill, Wisconsin; Reid Erickson, Osseo, Wisconsin; and Eide & Eide CPA's Keogh Plan, Karen Eide trustee, Billings, Montana; to acquire voting shares of Citizens Development Co., Billings, Montana, and thereby indirectly acquire First Security Bank of Laurel, Laurel, Montana; First Citizens Bank of Billings, Billings, Montana; Citizens State Bank, Hamilton, Montana; First Citizens Bank, N.A., Columbia Falls, Montana; First National Bank of Lewistown, Lewistown, Montana; and Western Bank of Chinook, N.A., Chinook, Montana.

In connection with this application, Notificants along with D.A. Davidson & Co., as Custodian/FBO William Thorndal IRA, Laurel, Montana, have applied to acquire voting shares of United Bancorporation, Billings, Montana, and thereby indirectly acquire Bank of Poynette, Poynette, Wisconsin; Cambridge State Bank, Cambridge, Wisconsin; Clarke County State Bank, Osceola, Iowa; Farmers State Bank, Stickney, South Dakota; Farmers & Merchants State Bank, Iroquois, South Dakota; Lincoln County Bank, Merrill, Wisconsin; and United Bank, Osseo, Wisconsin.

In addition, the holding companies have two classes of voting common stock. Notificants propose to acquire control of the Class A common stock.

Board of Governors of the Federal Reserve System, October 6, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–26853 Filed 10–8–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. MBNA Corporation, Wilmington, Delaware; to acquire 100 percent of the voting shares of MBNA Amercia Bank (Delaware), Wilmington, Delaware.

Board of Governors of the Federal Reserve System, October 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-26736 Filed 10-8-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Trust No. 3 Under Will of Charles Henderson, Troy, Alabama; to acquire at least 79 percent of the voting shares of Pea River Capital Corporation, Elba, Alabama, and thereby indirectly acquire The Peoples Bank of Coffee County, Elba, Alabama.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1: Sparta Union Bancshares, Inc., Sparta, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Union National Bnk & Trust Company, Sparta, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First National Bancorp, Inc., Green Forest, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Green Forest, Green Forest, Arkansas.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Midland First Financial Corporation, Lee's Summit, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Midland Bank, Lee's Summit, Missouri.

Board of Governors of the Federal Reserve System, October 6, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-26854 Filed 10-8-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Citizens Development Co., Billings, Montana; to engage *de novo* through its subsidiary, Citizens Development Co., Billings, Montana, and thereby engage in making and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-26735 Filed 10-8-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meetings

Notice of two meetings of the National Bioethics Advisory Commission (NBAC), one each of its genetics and human subjects subcommittees, and a brief joint session of the full Commission.

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of two meetings of the National Bioethics Advisory Commission and a brief joint session of the full Commission. Commission members will discuss the protection of the rights and welfare of human subjects in research including decisionally and/or cognitively impaired populations and will address the use of genetic information involved in tissue storage. The meetings are open to the public and opportunities for statements by the public will be provided.

Dates/times	Locations
Human Subjects Subcommittee, October 19, 1997, 7:30 am–4:30 pm.	National Institutes of Health, 9000 Rockville Pike, Building 31, 6th Floor, Conference Room 10, Bethesda, Maryland 20892.
11:30 am–1:30 pm	Full Commission Meeting, Conference Room 10.
Genetics Subcommittee, October 19, 1997, 7:30 am–4:30 pm.	National Institutes of Health, 9000 Rockville Pike, Building 31, 6th Floor, Conference Room 9, Bethesda, Maryland 20892.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995 for an initial two years. An amendment to Executive Order 12975, dated May 16, 1997, extended the term of the Commission for an additional two years. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical applications.

Public Participation

All meetings are open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below prior to the meeting as soon as possible. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC staff office for distribution to the subcommittee or Commission members and inclusion in the public record. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, MSC-7508, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892-7508, telephone 301-402-4242, fax number 301-480-6900.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, Acting, National Bioethics Advisory Commission.

[FR Doc. 97-26866 Filed 10-8-97; 8:45 am]

BILLING CODE 4160-17-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Minimizing Medical Product Errors—A Systems Approach; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled "Minimizing Medical Product Errors—A Systems Approach." The purpose of this workshop is to provide a forum for an open exchange with industry, health professionals, consumers, and others on issues relating to minimizing the potential for medical product errors due to similarities in drug names, similar labeling, design and packaging of human drugs, biologics, blood/blood products, vaccines, and medical devices.

DATES: The public workshop will be held on Thursday, January 8, 1998, 7:30 a.m. to 6 p.m. An open public hearing to present comments, 4:15 p.m. to 5:45 p.m. Submit written abstracts by November 7, 1997. Submit written notices of participation by December 5, 1997. There is no registration fee for this workshop, however, because seating is limited interested persons are encouraged to register by December 15, 1997.

ADDRESSES: The public workshop will be held at Natcher Auditorium, National Institutes of Health, 45 Center Dr., Bethesda, MD. Submit written abstracts and notices of participation to Mary C. Gross (address below).

FOR FURTHER INFORMATION CONTACT:

For general information: Mary C. Gross, Office of External Affairs (HF-60), Food and Drug Administration, 5600 Fishers Lane, rm. 14C-03, Rockville, MD 20857, 301-827-3440, FAX 301-594-0113, e-mail MGROSS@BANGATE.FDA.GOV.

For information regarding the scientific paper selection process: Jerry Phillips, Center for Drug Evaluation and Research, 7500 Standish Pl., rm. N271, Rockville, MD 20852, 301-827-5840, FAX 301-594-0183, e-mail PHILLIPSJ@A1@FDACD.

SUPPLEMENTARY INFORMATION:

I. Background

FDA will explore the extent of user error occurring with FDA-regulated products; collect data to help FDA determine what methods, if any, already exist to assess the potential for medical product errors; hear discussion from outside groups about the appropriate role for FDA in minimizing medical product errors; and discuss how the agency can effectively collaborate in minimizing user errors.

II. Submission of the Abstracts

For purposes of discussion at the workshop, FDA is requesting abstracts that discuss how best to minimize the incidence of user error with FDA-regulated products. FDA will select a limited number of abstracts that contain information on what methods, if any, already exist to assess the potential for user error in relation to labeling, packaging, and design of FDA-regulated products for formal presentation at the workshop.

The abstracts should be printed (typewritten or computer) within the confines of an 8 1/2 x 11-inch page of white paper. All lines should be single spaced with a three-letter indent for each paragraph. The title should be brief and capitalized. The authors name(s) should then be listed, underlining each, then list agency, institution, or facility involved.

The body of the abstract must be organized in the following manner:

(1) A brief statement of purpose,

(2) A statement of methods used,

(3) A statement of results obtained, and

(4) A statement of conclusions reached.

Each presenter should submit a current curriculum vitae with the abstract.

Interested persons who wish to speak should submit a written notice of participation including a name, affiliation, address, phone number, and summary of remarks. FDA will allocate the time available for the hearing among the persons who properly file notices of their intent to make a presentation at the meeting. If time permits, FDA may allow additional presentations from interested persons attending the meeting who did not submit a written notice of participation to make a presentation.

Dated: October 2, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–26707 Filed 10–8–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Excise Tax Revision and Coverage of New Vaccines

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: On August 5, 1997, the President signed Pub. L. 105–32, the "Taxpayer Relief Act of 1997," containing amendments to revise the excise tax structure to a flat rate of 75 cents per dose for each vaccine covered under the National Vaccine Injury Compensation Program (VICP). The amendments also make effective the coverage of three new vaccines under the VICP.

The VICP, established by Subtitle 2 of Title XXI of the Public Health Service Act (the Act), provides a system of no-fault compensation for certain individuals who have been injured by specific childhood vaccines. The Vaccine Injury Table (the Table), included in the Act, establishes presumptions about causation of certain illnesses and conditions which are used by the U.S. Court of Federal Claims to adjudicate petitions. The Act provides that a revision to the Table, based on the addition of new vaccines under section 2114(e) of the Act, shall take effect upon the effective date of a tax enacted to provide funds for compensation for injuries from vaccines that are added to the Table. *See* section 13632(a)(3) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 enacted August 10, 1993.

EFFECTIVE DATE: August 6, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas E. Balbier, Jr., Director, Division of Vaccine Injury Compensation, Bureau of Health Professions, (301) 443–6593.

SUPPLEMENTARY INFORMATION: Section 904(a) of the Taxpayer Relief Act of 1997 provides that the excise tax on all covered vaccines is 75 cents per dose and that combinations of vaccines are subject to an excise tax which is the sum of the amounts for each vaccine included in the combination.

On February 20, 1997, a Final rule was published in the **Federal Register** (62 FR 7685) announcing the addition of hepatitis B, Hib, and varicella vaccines to the Table. The Final rule states in § 100.3(c)(2) that the inclusion of hepatitis B, Hib, and varicella vaccines and other new vaccines (Items VIII, IX, X, XI and XII of the Table) will be effective on the effective date of a tax enacted to provide funds for compensation paid with respect to such vaccines.

Section 904(b) of the Taxpayer Relief Act of 1997 provides for an excise tax for these three new vaccines, effective August 6, 1997, and this notice serves as an announcement of such a tax. Accordingly, petitions for compensation for injuries or deaths related to hepatitis B, Hib, and varicella vaccines may now be filed under the VICP. In accordance with section 2116(b) of the Act, for injuries or deaths that occurred before August 6, 1997, for these three vaccines, petitions may be filed no later than August 6, 1999, provided that the injury or death occurred no earlier than August 6, 1989.

A document will be published in the **Federal Register** to amend the CFR to include a date certain (August 6, 1997) in § 100.3(c), so that there will be no uncertainty as to the coverage of these three vaccines.

Dated: October 2, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–26706 Filed 10–8–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Alternate Method of Acquisition for Health Care Services; Authorized by the Federal Acquisition Regulations

AGENCY: Indian Health Service, HHS.

ACTION: General notice.

SUMMARY: The Indian Health Service (IHS) issues this General Notice to inform the public that IHS has adopted the Rate Quotation as an alternate acquisition method to establish reimbursement rates for health care services purchased by its Contract Health Services Program.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ronald Freeman, Acting Director, Division of Managed Care, Room 6A–55, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3024 or Carol Silverman, Acting Director, Division of Acquisition and Grants Management, Suite 450A, 12300 Twinbrook Parkway, Rockville, MD 20857, (301) 443–5774. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The IHS Contract Health Services program is administered under regulations at 42 CFR 36.21 et seq. and services purchased are governed by the Federal Acquisition Regulations (FAR). Under this program IHS purchases health care services from hospitals, physicians, and other health care facilities and providers to supplement the IHS direct care delivery system. The IHS last issued a payment policy in 51 FR 23540 on June 30, 1986. This policy requires the IHS Area Offices to enter into formal agreements with providers that they expect to use for health care services. With certain specified exceptions in the IHS Payment Policy, the formal agreement must provide for reimbursement of services at rates which do not exceed prevailing Medicare reimbursement rates (including deductibles and co-insurance), and the IHS service units will make patient referrals and procure all its routine health care services from providers with formal agreements.

The IHS issued a general notice in 56 FR 10566 on March 13, 1991 to inform the public that the IHS was conducting a pilot project in the IHS Portland Area. The project was designed to determine whether an alternative method of acquisition for contract health services would result in greater participation by health care providers and lower costs to IHS. The project was originally scheduled to end on March 31, 1992,

however, the provider response to the project was far greater than the expectation of the IHS. As a result of the response, preferred provider lists needed to be developed as well as the need to develop complex analyses of reimbursement methodologies for facilities, outpatient and professional providers. Therefore, the pilot termination date was extended to March 31, 1993 (57 FR 10671 on March 27, 1992).

The IHS published notification on June 18, 1992 (57 FR 27262) that additional IHS Areas (Alaska, Nashville and Billings) were added to the pilot project to provide more information from a wide geographic area.

The IHS extended the termination dates for this project on March 1, 1993, 58 FR 11864, and again on October 1, 1996, 61 FR 51298, because additional time was required to complete an evaluation of the pilot and provide IHS the necessary time to assess the results. The last termination date was September 30, 1997.

The IHS review and analyses of the pilot project utilizing the rate quotation methodology has been completed. The overall result show that the rate quotation is a streamlined approach for communicating and establishing favorable rates with providers. Therefore, the IHS has adopted the rate quotation as an alternate approach to contracting for health care services to increase the number of formal agreements IHS has with health care providers.

This policy will apply only to contract health services programs administered by the IHS, and will not apply to services rendered by traditional Indian medicine men and women under Pub. L. 95–341, Joint Resolution on American Indian Religious Freedom.

Dated: October 1, 1997.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 97–26711 Filed 10–8–97; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-day; Proposed Collection: Application for Participation in the IHS Scholarship Program

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on proposed data collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection project to be submitted to the Office of Management and Budget (OMB) for review.

PROPOSED COLLECTION: *Title*: 09–17–0006, "Application for Participation in the IHS Scholarship Program". *Type of Information Collection Request*: 3-year reinstatement, with change, of previously approved information collection, 09–17–0006, "Application for Participation in the IHS Scholarship Program" which expires 12/31/97. *Form Numbers(s)*: IHS–856, 856–2, through 856–8, IHS–815, IHS–816, IHS–818, D–02, F–02, F–04, G–02, G–04, H–07, H–08, J–06, J–07, K–03, K–04, and L–03. *Need and Use of Information Collection:* The IHS Scholarship Branch needs this information for program administration and uses the information to solicit, process and award IHS Pregraduate, Preparatory and/or Health Professions Scholarship grantees and monitor the academic performance of awardees, to place awardees at payback sites, and for awardees to request additional program. *Affected Public*: Individuals, not-for-profit institutions and State, local or Tribal Government. *Type of Respondents*: Students pursuing health care professions.

Table 1 below provides: Type(s) of Data Collection Instruments, Estimated Number of Respondents, Number of Responses per Respondent, Average Burden Hour per Response, and Total Annual Burden Hour.

TABLE 1

Data collection instrument	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden Hour per response *	Total annual burden hours
Scholarship Application	875	1	875	1.50	1,312
Checklist	875	1	875	0.13	114
Course Verification	875	1	875	0.70	613
Faculty/Employer Application	1,750	1	1,1750	0.83	1,453
Justification	875	1	875	0.75	656
Federal Debt	875	1	875	0.13	114
MPH only	50	1	50	0.83	42
Accept/Decline	875	1	875	0.13	114
Stipend Checks	100	1	100	0.13	13
Enrollment	1,400	1	1,400	0.13	182
Academic Problem/Change	100	1	100	0.13	13
Request Assistance	217	1	217	0.13	28
Summer School	193	1	193	0.10	19
Contract	1,400	1	1,400	0.27	378
Placement	250	1	250	0.18	45
Graduation	250	1	250	0.17	43
Site Preference	150	1	150	0.13	20
Travel Reimb	150	1	150	0.10	15
Status Report	250	1	250	0.25	63
Preferred Assignment	200	1	200	0.75	150
Deferment	20	1	20	0.13	3
Total	11,730	.....	.....	.....	5,395

* For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests For Further Information: Send your written comments, requests for more information on the proposed project, or requests to obtain a copy of the data collection instrument and instructions to: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, or call non-toll free (301) 443–0461, fax (301) 443–1522, or send your E-mail requests, comments, and return address to: 1hodahkw@smtp.ihs.gov.

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received on or before December 8, 1997.

Dated: October 19, 1997.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 97–26710 Filed 10–8–97; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), November 19–21, 1997, National Institutes of Health, Building 5, Room 127, Bethesda, Maryland 20892.

In accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on November 19 from 6:30 p.m. to adjournment on November 21 for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and roster of members will be provided, upon request by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Natcher Building, Room 6AS–37J, Bethesda, Maryland 20892, (301) 594–8892. For any further information, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128, at least two weeks prior to the meeting date.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: October 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26729 Filed 10–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, in November 6–7, 1997 at the Crowne Plaza Hotel, 14th and K Streets, NW, Washington, D.C.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on November 6 to discuss administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities, which will include a discussion of budgetary matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on November 6, and from 8:30 a.m. until adjournment on November 7. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contract Ms. Goad in advance of the meeting.

Dr. Paula Strickland, Scientific Review Administrator, Acquired Immunnodieficency Syndrome Research Review Committee, NIAID, NIH, Solar Building, Room 4C02, Rockville, Maryland 20892, telephone 301–402–0643, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergy and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: October 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26730 Filed 10–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R44 grant (98–07).

Dates: October 29, 1997.

Time: 1:00 p.m.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (Teleconference).

Contact Person: Dr. Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R44 & R42 grants (98–09).

Dates: November 14, 1997.

Time: 10:00 a.m.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: October 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–26733 Filed 10–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (DEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: November 10, 1997.

Time: 2:30 p.m.

Place: NIH, Rockledge 2, Room 6170, Telephone Conference.

Contact Person: Dr. Dennis Leszczynski, Scientific Review Administrator, 6701 Rockledge Drive, Room 6170, Bethesda, Maryland 20892, (301) 435–1044.

Name of SEP: Multidisciplinary Sciences.

Date: November 10–11, 1997.

Time: 8:00 a.m.

Place: Woodfine Suites, Rockville, MD.

Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Clinical Sciences.

Date: November 24, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4196, Telephone Conference.

Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4196, Bethesda, Maryland 20892, (301) 435–1214.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.

Date: October 20, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4132, Telephone Conference.

Contact Person: Dr. Syed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (303) 435–1211.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Multidisciplinary Sciences.

Date: October 27–28, 1997.

Time: 8:00 a.m.

Place: Woodfin Suites, Rockville, MD.

Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 13, 1997.

Time: 8:30 a.m.

Place: Ramada Inn, Rockville, MD.

Contact Person: Dr. Garrett Keefer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4190, Bethesda, Maryland 20892, (301) 435–1152.

Name of SEP: Multidisciplinary Sciences.

Date: November 17–18, 1997.

Time: 8:00 a.m.

Place: Woodfin Suites, Rockville, MD.

Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28734 Filed 10–8–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Listing of Members of the Substance Abuse and Mental Health Services Administration's Senior Executive Service Performance Review Board (PRB)

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the persons who will serve on the Substance Abuse and Mental Health Services Administration's Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the SAMHSA Performance Review Board, which oversees the evaluation of performance appraisals of SAMHSA's Senior Executive Service (SES) members:

Paul M. Schwab, Chairperson

Bernard S. Arons, M.D.

William A. Robinson, M.D.

Ruth D. Sanchez-Way, Ph.D.

For further information about the SAMSHA Performance Review Board, contact the Division of Human Resources Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 14 C–24, Rockville, Maryland 20857, telephone (301) 443–5030 (not a toll-free number).

Dated: September 29, 1997.

Nelba Chavez,

Administrator, SAMHSA.

[FR Doc. 97–26813 Filed 10–8–97; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–35]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 8, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Performance Funding System: Data Collection, Calculation of Formula and Delta, Range Test, Direct Disbursement Payment Schedule Data, Calculation of Allowable Utilities Expense Level (Elimination of Heating Degree Day Adjustment.

OMB Control Number: 2577–0029.

Description of the need for the information and proposed use: Housing Agencies (HAs) submit information to HUD according to standards and policies established under the Performance Funding System (PFS). The PFS for calculation of operating subsidy is designed to provide the amount of operating subsidy which would be needed for well-managed projects. That amount is determined by the difference between the projected expenses and projected operating income of the HA. HUD determines the operating subsidy eligibility in accordance with Section 9(a) of the U.S. Housing Act of 1937, 42 U.S.C. 1437g. to make annual contributions for the operation of HA-owned rental housing. Agency form numbers, if applicable, HUD–52720A, HUD–52720B, HUD–52720C, HUD–52721, HUD–52722A, HUD–52722B, HUD–52733.

Members of affected public: State, Local, or Tribal Government Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 3400 respondents (12,442 responses), annual, .50 hour average per response (seven forms prepared), 20,218 total reporting burden hours.

Status of the proposed information collection: Extension, no change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 2, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Data Collection PFS Formula

PHA/IHA-Owned Rental Housing
Performance Funding System

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0029 (exp. 9/30/97)

1. Name and Address of Public Housing Agency / Indian Housing Authority

2. AC Contract No.

Page of

3. Submission ☐ Original ☐ Revision No.( )

Part I. Bedroom Composition and Unit Months Available

1. Ending Dates of PHA/IHA's Fiscal Year	Number of Dwelling Units by Bedroom Size 2. O BR	3. 1 BR	4. 2 BR	5. 3 BR	6. 4 BR	7. 5 BR	8. 6+ BR	9. Total Dwelling Units	10. Total Unit Months Available

Part II. Calculation of PHA/IHA characteristics for formula

A1	Number of two or more bedroom units (Total of columns 4 - 8, Part I)	
A2	Lesser of A1 or 15,000	
B1	Number of three or more bedroom units (Total of columns 5 - 8, Part I)	
B2	Total dwelling units (Column 9, Part I)	
B3	Ratio of three or more bedroom units to total dwelling units (line B1 divided by line B2)	

Part III. To be completed only if PHA/IHA has a high-rise family project

1. ACC Project Number List only High-Rise Family Projects (Col. 5 ≥ 35; Col. 7 ≥ 1.5; and Col. 8 ≥ 5)	2. Number of Two or More Bedroom Units in Project	3. Total Number of Dwelling Units in Project	4. Number of Buildings in the Project	5. Average Number of Units in a Building (Must be ≥ 35 to be included in this Table) (Col. 3 ÷ Col. 4)	6. Total Number of Bedrooms in Project	7. Average Bedroom Size (Must be ≥ 1.5 to be included in this Table) (Col. 6 ÷ Col. 3)	8. Height in Stories of Tallest Building (Must be ≥ 5 to be included in this Table)

Public Reporting Burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. This information is required by Section 9(a) of the U.S. Housing Act of 1937, as amended, and by 24 CFR Part 990 HUD regulations. HUD makes payments for operation of low-income housing projects to PHAs. The Performance Funding System (PFS) determines the amount of operating subsidy to be paid to PHAs. PHAs provide information on the Allowable Utilities Expense (AEL), Allowable Utilities Expense Level and Other Costs for the major PFS components. HUD reviews the information (Operating Budget) to determine each PHA's share of the total operating subsidy funds appropriated by Congress each fiscal year. HUD also uses the information as a means of estimating the annual aggregage operating subsidy eligibility of PHAs which serves as the basis for requesting annual appropriations from Congress. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

Instructions for Form HUD-52720-A

This form is only applicable to PHA/IHA-owned rental housing projects, under an Annual Contributions Contract (ACC) that will be available for occupancy within the requested budget year. This form is not applicable to the Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, the Mutual-Help Program, or the Turnkey III or Turnkey IV Homeownership Opportunity Programs. PFS is not applicable to the Housing Agencies of Alaska, Puerto Rico, the Virgin Islands or Guam. This form does not need to be completed if the PHA/IHA has not experienced a change in the number of its units in excess of 5 percent or 1000 units, whichever is less, since the last adjustment to the Allowable Expense Level using form HUD-52720-B. This form is also not applicable for the first budget year under PFS for a new project of an existing PHA/IHA that the PHA/IHA decides to place under a separate ACC, unless the new project has been in management for at least one full fiscal year before the Requested Budget Year.

Prepare a separate copy of this form for each ACC. Send this form with form HUD-52564, Operating Budget, for each ACC for the Requested budget year, to the HUD Field Office. Carry numbers on this form to five decimal places.

Part I. Bedroom Composition and Unit Months Available

Column 1. Ending Dates of PHA/IHA's Fiscal Year. Enter the applicable date for the fiscal year to which the numbers on this form apply. If using this form for the one-time AEL adjustment in accordance with the revision to the PFS regulation published on February 4, 1992, complete for the PHA/IHA fiscal year ending in calendar year 1992. In the first year that you use this version of the form for the long calculation of the delta, you must prepare two copies of this form - one using the PHA/IHA characteristics for the requested budget year and one for the last year in which an adjustment was made based on the long calculation. After the first year that you use this version of the form for the long calculation of the delta, you will only need to prepare one copy using the PHA/IHA characteristics for the requested budget year.

Columns 2-8. Enter the total number of dwelling units available for occupancy at the end of the fiscal year by bedroom size for all projects. The classification of the bedroom size of a dwelling unit shall be the same as it was classified in the Development Program or subsequently reclassified as approved by HUD. A unit is considered available for occupancy from the date on which the End of the Initial Operating Period (EIOP) for the project is established until the time it is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. On or after July 1, 1991, a unit is not considered available for occupancy in any PHA/IHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined is nonviable. List efficiency apartments with no separate bedroom under "0" Bedroom Size. If there are no units of a certain size, insert 0 (zero) in the block(s) for the designated bedroom size category.

Column 9. Total Dwelling Units. Enter the total of columns 2-8.

Column 10. Total Unit Months Available. Calculate the total Unit Months Available. For those projects that have been or are expected to be available for occupancy during the fiscal year for which the data is given, multiply the total number of these dwelling units, as defined above, by 12. For those projects that will be or are expected to be in occupancy for less than 12 months during the fiscal year for which the data is given, multiply the total number of dwelling units as defined above by the actual number of months the projects will be in occupancy. (i.e., 3, 6, or 9 months.) Enter the sum of the products in column 10.

Part III. To be completed only if a PHA/IHA has a high-rise family project. For the purposes of this form, a high-rise family project is defined as one that has a building that is at least 5 stories tall, has an average bedroom size of at least 1.5, and has an average number of units per building of at least 35. If you have no projects with these characteristics, skip to C2. of this section and enter a 0 (zero).

Column 1. ACC Project Number. Use one line for each project. If you have too many high-rise family projects to fit on this page, list the other projects on separate lines on additional copies of this form, leaving Parts I and II blank.

Column 3. Total number of Dwelling Units. For each project listed, indicate the number of dwelling units expected to be available for occupancy at the end of the fiscal year.

Column 4. Number of buildings in the Project. Include only buildings that contain dwelling units.

Column 8. Height in stories of tallest building. For each project enter the number of stories of the tallest occupied building. Include only stories containing dwelling units or any space used by the PHA/IHA for project use that are not in a basement.

Calculation of PFS Formula and Delta

PHA / IHA -Owned Rental Housing
Performance Funding System

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0029 (exp. 9/30/97)

Public Reporting Burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. This information is required by Section 9(a) of the U.S. Housing Act of 1937, as amended, and by 24 CFR Part 990 HUD regulations. HUD makes payments for operation of low-income housing projects to PHAs. The Performance Funding System (PFS) determines the amount of operating subsidy to be paid to PHAs. PHAs provide information on the Allowable Utilities Expense (AEL), Allowable Utilities Expense Level and Other Costs for the major PFS components. HUD reviews the information (Operating Budget) to determine each PHA's share of the total operating subsidy funds appropriated by Congress each fiscal year. HUD also uses the information as a means of estimating the annual aggregage operating subsidy eligibility of PHAs which serves as the basis for requesting annual appropriations from Congress. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

Public Housing Agency / Indian Housing Authority	AC Contract No.	Submission ☐ Original ☐ Revision No. (
Requested Fiscal Year Ending Date:		

Part I. Number of pre-1940 rental units occupied by poor households as a percentage of the population of the community.

1	2 Percentage	3 Multiplier	4 Current Year	5 Requested Year
Current and Requested		X		

Part II. Local Government Wage Rate Index.

	Wage Rate Index	Multiplier	Current Year	Requested Year
Current and Requested		X		

Part III. Number of two or more bedroom units or 15,000 whichever is less. (Transfer from form HUD-52720-A, Part II, A2)

	2 or more bedroom units	Multiplier	Current Year	Requested Year
Current		X		
Requested		X		

Part IV. Ratio of three or more bedroom units to total dwelling units. (Transfer from form HUD-52720-A, Part II, B3)

	Ratio	Multiplier	Current Year	Requested Year
Current		X		
Requested		X		

Part V. Ratio of two or more bedroom units in high rise family projects to total dwelling units. Enter 0 if there are no high rise family projects. (Transfer from form HUD-52720-A, Part III, C2)

		Multiplier	Current Year	Requested Year
Current		X		
Requested		X		

Part VI. Calculation of Formula Expense Level and Delta.

		Current Year	Requested Year
1	Sum of the five products in columns 4 and 5		
2	Enter Equation Calibration Constant		
3	Combine line 1 and line 2		
4	Formula Expense Level (use FEL Increase Worksheet)		
5	Delta (Subtract line 4, column 4, from line 4, column 5)		

Instructions for Form HUD-52720-B

This form constitutes the second part of the calculations which begin on form HUD-52720-A. See the instructions to the HUD-52720-A for applicability.

Carry numbers on this form to five decimal places to correspond with the number of decimal places given for the weights and constant of the PFS equation.

Calculate and insert data separately for the current and requested years, except for Parts I and II where the data for both years are identical. Depending on why you are completing the form, you may not have to complete all elements on this form:

(1) One-time AEL adjustment in accordance with the revision to the PFS regulation published on February 4, 1992, complete current year columns and rows.

(2) In the first year that you use this version of the form for the long calculation of the delta, you must complete all columns and rows. Use the PHA/IHA characteristics for the last year in which an adjustment was made based on the long calculation in the current year rows.

(3) After the first year that you use this version of the form for the long calculation of the delta, you will follow these special instructions for column 2 of the current year rows. Take form HUD-52720-B last used in calculating the AEL and transfer requested year values from Parts III, IV and V to the current year rows on this form (boxes are highlighted).

(4) If the PHA/IHA has been in management for 12 months and is first requesting subsidy. All columns and rows are completed by PHAs/IHAs first requesting subsidy for an ACC that has projects that were in management for the 12 months of the current year.

Column 2

Part I. Number of pre-1940 rental units occupied by poor households as a percentage of the population of the community. Enter the applicable value from the "Number of pre-1940 rental units occupied by poor households as a percentage of the population of the community" table. This table is available from the Financial Analyst in the HUD Field Office. If the city the PHA/IHA serves is listed and at least 80% of the PHA/IHA units are in that city, use the value for the city. If the PHA/IHA has at least 80% of its units in two or more listed cities, it can choose to use the value of the city in which it has the most units or choose to calculate the value of the weighted average based on the number of units in each city listed. If fewer than 80% of a PHA/IHA's units are in a listed city, use the value for the county. If the PHA/IHA has units in more than one county, the PHA/IHA may either choose to use the value for the county in which it has the most units or choose to calculate a weighted average factor based on the number of units in each county.

Part II. Local Government Wage Rate Index. Enter the applicable value from the "Local Government Wage Rate Index" table. This table is available from the Financial Analyst in the HUD Field Office. If the area served by the PHA/IHA covers more than one county, the PHA/IHA may either choose to use the value for the county in which it has the most units or choose to calculate a weighted average factor based on the number of units in each county.

Column 3 Multipliers. Enter the appropriate multiplier from the "PFS Equation for Requested Budget Year" table which will be provided annually in a HUD Notice of updated PFS equation and inflation factors.

Columns 4 and 5 for Parts I through V. Multiply column 2 by column 3 and enter in column 4 or 5, as appropriate.

Part VI. Calculation of Formula Expense Level and Delta.

Line 1. Enter the sum of the amounts shown in column 4 and 5.

Line 2. Enter the Equation Calibration Constant from "PFS Equation for Requested Budget Year" table in column 4 and 5. This table will be provided in the annual PFS Update Notice. The constant is the same for both the current year and the requested year.

Line 3. Combine the amounts on line 1 and line 2 and enter on line 3. If line 2 is a negative figure, subtract line 2 from line 1 and enter the result.

Line 4. Use the FEL Increase Worksheet to calculate the Formula Expense Level. This worksheet will be provided in the annual PFS Update Notice.

Line 5. This amount is the adjustment for the change in characteristics since the last long calculation of the Delta.

Range Test and Determination of Base Year Expense Level

PHA / IHA-Owned Rental Housing
Performance Funding System

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0029 (exp. 9/30/97)

Public reporting burden for this collection of information is estimated to average 12 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. This information is required by Section 9(a) of the U.S. Housing Act of 1937, as amended, and by 24 CFR Part 990 HUD regulations. HUD makes payments for operation of low-income housing projects to PHAs. The Performance Funding System (PFS) determines the amount of operating subsidy to be paid to PHAs. PHAs provide information on the Allowable Utilities Expense (AEL), Allowable Utilities Expense Level and Other Costs for the major PFS components. HUD reviews the information (Operating Budget) to determine each PHA's share of the total operating subsidy funds appropriated by Congress each fiscal year. HUD also uses the information as a means of estimating the annual aggregage operating subsidy eligibility of PHAs which serves as the basis for requesting annual appropriations from Congress. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

Note: This form is used by a PHA / IHA to perform the Range Test and determine its Base Year Expense Level the first time operating subsidy is requested for an Annual Contributions Contract (ACC) when one or more projects under the ACC have been in management for at least one full fiscal year prior to the Requested Budget Year.

Public Housing Agency / Indian Housing Authority	ACC Number	Requested Budget Year Ending	Submission ☐ Original ☐ Revision No.

Line No.	Description	Requested by PHA/IHA (PUM)	Approved by HUD (PUM)
01	Formula Expense Level calculated on form HUD-52720-B, Calculation of PFS Formula and Delta, part VI, line 4, column 4 for the current year		
02	Formula Expense Level Range Factor. (Multiply Line 01 by .15)		
03	Upper limit of the Formula Expense Level Range: (line 01 plus line 02)		
04	Base year Total Operating Expenditures, (line 890 of form HUD-52564 approved for PHA/IHA's fiscal year immediately preceding the Requested Budget Year.		
05	Adjustments to Base Year Total Operating Expenditures (see PFS Handbook 7475.13 REV, 2-7e) (explain adjustments)		
06	Base Year Expense Level (line 04 plus/minus line 05)		
07	☐ If line 06 is greater than line 03, enter the amount of line 03 on line 01 of form HUD-52723 ☐ If line 06 is less than line 03, complete lines 08 and 09 and enter the amount of line 09 on line 01 of form HUD-52723		
08	Increase of Base Year (see PFS Handbook 7475.13 REV, 2-7e)		
09	Base Year Expense Level plus Approved Increase (line 06 plus line 08)		

Direct Disbursement Payment Schedule Data–Operating Subsidies Public Housing Program (See Instructions for Public Reporting Statement)

U.S. Department of Housing and Urban Development
Office o f Housing
Federal Housing Commissioner

OMB Approval No. 2577-0029 (Exp. 9/30/97)

Line			
01	Project No.	Public Housing Agency (PHA)/Indian Housing Authority (IHA)	☐ Original
02	Fiscal Year End (FYE) (MM/DD/YY)	PHA/IHA Address	☐ Revision No.

Part I–Eligibility Values

		(a) PHA/IHA Request	(b) HUD Modifications
03	Subject Year Eligibility		
04	Other Eligibility		
05	Prior Year Adjustment		
06	Total Elibibility		

		(a) PGM Code	(b) Obligated Amount	(c) Retained Amount	(d) Scheduled Amount	(e)
07a	PHA/IHA Req.					
07b	HUD Modif.					
08a	PHA/IHA Req.					
08b	HUD Modif.					
09a	PHA/IHA Req.					
09b	HUD Modif.					
10a	PHA/IHA Req.	Totals				
10b	HUD Modif.	Totals				

Previous edition is obsolete — Page 1 of 8 — form HUD-52721 (6/91)

Project No. — Fiscal Year End (FYE)

Part II–Payment Entry Selection

Line		PHA/IHA Request	HUD Modif.	
11	Program (PGM) Code			
12	Type of Payment Entry (Check one):	☐	☐	Manual Entry (Go to Part VI)
		☐	☐	System Calculation with Equal Monthly Payments
		☐	☐	System Calculation with Unequal Monthly Payments

Part III–System Calculation of Payment Schedule

Payments Within Month

			Y	N
13	Payments Equal Within Month? (Check Y or N)	PHA/IHA Req.	☐	☐
		HUD Modif.	☐	☐

			1	2	3	4
14	Pay Dates Within Month:	PHA/IHA Req.				
		HUD Modif.				
15	Payment Percentages Within Month:	PHA/IHA Req.	%	%	%	%
		HUD Modif.	%	%	%	%

Monthly Payment Allocation

16 Percentage Payment for Each Month:

		1	2	3	4	5	6	7	8	9	10	11	12
16a	Month												
16b	PHA/IHA Req.												
	HUD Modif.												

Previous edition is obsolete — Page 2 of 8 — form HUD-52721 (6/91)

Project No. [ ] Fiscal Year End (FYE) [ ]

Line	Part IV–Selection of Payment Schedule Revision Method
17	**Check One:**
	☐ Manual Revision (Use Part VI)
	☐ System Assisted Revision (Use Part V)
	☐ Percent Distribution of Remaining Balance (Use Parts II and III)

Part V–System Assisted Payment Schedule Revision

18 Type of Payment Revision (Check one): ☐ Add/Change (Use lines 19-20c) ☐ Delete (Use lines 21-22)

Add/Change Revisions:

19 ☐ Source of Funds: Existing Payments PGM Code [ ]

19a Transfer [ ] from (choose one): Payment # [ ] to Payment # [ ]

19b Pay Date [ ] to Pay Date [ ]

20 ☐ Source of Funds: Unscheduled Funds PGM Code [ ]

20a Transfer [ ] to (choose one): Payment # [ ]

20b Pay Date [ ]

20c Payment #'s [ ] thru (Equal Spread) [ ]

Delete Revisions:

21 Delete (choose one): Payment # [ ] PGM Codes [ ] [ ] [ ]

22 Pay Date [ ] PGM Codes [ ] [ ] [ ]

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Project No. [ ] Fiscal Year End (FYE) [ ]

Part VI–Manual Payment Entry

	(a) PMT No.	(b) Scheduled Pay Date	(c) Total Scheduled Payment	(d) Scheduled Payment PGM Code [ ]	(e) Scheduled Payment PGM Code [ ]	(f) Scheduled Payment PGM Code [ ]
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.						
HUD Modif.						
PHA/IHA Req.		Total/Subtotal				
HUD Modif.		Total/Subtotal				

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Project No.	Fiscal Year End (FYE)

Part VII–Certification of Public Housing Agency/Indian Housing Authority

I certify that all applicable provisions of the Annual Contributions Contract covering the above numbered project(s) have been complied with by this PHA/IHA and that this form HUD-52721 and all supporting forms and documentation have been examined by me and to the best of my knowledge and belief are true, correct and complete and in accordance with all applicable HUD regulations and requirements including those relating to cash management.

False Claims statement: Warning: U.S. Code, Title 31, Section 3729, False Claims, provides a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages for any person who knowingly presents, or causes to be presented, a false or fraudulent claim; or who knowingly makes, uses or causes to be used, a false record or statement; or conspires to defraud the Government by getting a false or fraudulent claim allowed or paid.

Name of PHA/IHA

Signature and Title of Official Authorized to Certify	Date

PHA/IHA Comments

HUD Use Only

Field Office Approval

Field Office Name	Signature and Title of Field Office Official	Date

Field Office Comments

Entered into LOCCS	By	Date	Time

Previous edition is obsolete

form HUD-52721 (6/91)

Instructions

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gatherin and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. This information is required by Section 9(a) of the U.S. Housing Act of 1937, as amended, and by 24 CFR Part 990 HUD regulations. HUD makes payments for operation of low-income housing projects to PHAs. The Performance Funding System (PFS) determines the amount of operating subsidy to be paid to PHAs. PHAs provide information on the Allowable Utilities Expense (AEL), Allowable Utilities Expense Level and Other Costs for the major PFS componerits. HUD reviews the information (Operating Budget) to determine each PHA's share of the total operating subsidy funds appropriated by Congress each fiscal year. HUD also uses the information as a means of estimating the annual aggregage operating subsidy eligibility of PHAs which serves as the basis for requesting annual appropriations from Congress. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

1. General

a. Purpose. Form HUD-52721, Direct Disbursement Payment Schedule Data, is used as follows:

(1) By a public housing agency (PHA) or indian housing authority (IHA) to indicate to HUD how operating subsidies requested or obligated in an Operating Budget, form HUD-52564, for a fiscal year are to be scheduled for payment during the fiscal year pursuant to HUD cash management requirements.

(2) By a PHA/IHA to request revisions of a current Payment Schedule based upon changes in cash requirements or changes in the amount of operating subsidy requested or obligated for a fiscal year;

(3) By HUD Field Offices to review, modify and/or approve a PHA/IHA request;

(4) By the HUD Regional Accounting Division (RAD) as the source document for entry of the approved Payment Schedule data into LOCCS, which is the HUD automated system that controls program payments made through Direct Disbursement and Letters of Credit.

b. Applicability. Form HUD-52721 is used for all PHA/IHA-owned public housing rental and homeownership projects when operating subsidy is approved by HUD for a project under Section 9 of the United States Housing Act of 1937, as amended. It is not used for Section 23 or 10(c) leased projects or for the Section 8 Housing Assistant Payments (HAP) program.

c. Submission.

(1) Form HUD-52721 is prepared and submitted with form HUD-52564, Operating Budget, when operating subsidy is requested on Line 960 of the form HUD-52564. It also may be submitted separately to request a revision of a current Payment Schedule and to schedule payment of approved funds which were not scheduled for payment previously.

(2) A separate form HUD-52721 must be submitted for each project or group of projects covered under a separate form HUD-52564, Operating Budget.

(3) Payments must be transmitted by HUD to the Treasury Department five working days in advance of the payment due date. Accordingly, allow sufficient time between submission of form HUD-52721 and the first Pay Date for HUD to review the data and enter it into LOCCS.

d. Completion.

(1) In completing form HUD-52721, PHAs/IHAs must adhere to the applicable HUD cash management requirements and procedures covering the payment of public housing operating subsidies. The PHA/IHA Executive Director or other designated official must certify to this effect on Page 5 of the form.

(2) The form HUD-52721 is designed to both resemble as closely as possible the processing screens used by the RAD to enter the Payment Schedule data into LOCCS (HUD's automated payment system) and facilitate selection by PHAs/IHAs of various options for calculating Payment Schedules.

(3) Certain blocks and areas of the form HUD-52721 are shaded. This identifies for RAD data entry personnel those items which are not entered on the LOCCS processing screens either because the information is calculated by LOCCS (e.g., column totals) or picked up by LOCCS from other HUD automated systems (e.g., information on obligations is picked up from the Program Accounting System). Completion of these items by PHAs/IHAs is optional, but they should normally be filled in to facilitate preparation of the form and subsequent review by the HUD Field Office.

(4) Enter only one character per space provided. Where numbers or amounts are shorter than the number of spaces allocated, justify them to the right. Do not enter commas, dollar signs or other punctuation, but do enter decimal points and minus signs, if needed, in a separate block. Do not enter leading zeroes except where instructed specifically to do so. A maximum of twelve digits plus a decimal point may be entered for any dollar item (For example, $1,000,000.00 may be entered as:

|1|0|0|0|0|0|0|.|0|0| or |1|0|0|0|0|0|0|.|0|0|

(5) Enter all dates numerically as follows, using leading zeroes where necessary: MM/DD/YY

For example, for March 31, enter: |0|3|3|1|9|6|

(6) All percentages must be whole numbers (no decimal points).

(7) Payments cannot be scheduled for a date which is prior to the beginning of a PHA/IHA fiscal year or the effective date of the Payment Schedule, whichever is later. Lump-sum payments should be scheduled to make up any payments missed when a Payment Schedule becomes effective after the beginning of a PHA/IHA's fiscal year.

e. Distribution of Payment Schedule

(1) After the RAD enters the data from the form HUD-52721 into LOCCS and verifies it, a computer printed Payment Schedule will be produced which will represent the official basis upon which payments will be made to the PHA/IHA until such time as the Payment Schedule is revised or expires.

(2) Two copies of the Payment Schedule will print out on a high speed printer located at each Field Office. The Chief, Assisted Housing Management Branch, or Director, Indian Housing Management Division, will sign and date one copy and forward it to the PHA/IHA and retain the other copy for the Field Office files.

2. Heading

Line 01.

Project No.: Enter the number which identifies the project(s) covered by the form according to the following format:

XX 999 999 YYM, where:

XX = Standard alphabetic abbreviation for the State in which the PHA/IHA is located.

999 = Number of the specific project covered by the form or the first (lowest numbered) project if more than one project is covered by the form. (Precede numbers of less than three digits with zeroes.)

YY = Last two digits of the calendar year in which the subject PHA/IHA fiscal year ends.

M = First letter of the last month of the PHA/IHA fiscal year

For example, for PHA/IHA number NY50 with projects numbered 1, 2, 3, 4, 7, and 8 under one Operating Budget and fiscal year ending March 31, 1998, enter:

|N|Y|5|0|0|1|1|8|M|

PHA/IHA Name: Self-explanatory

Original: Check this box if the data being submitted is for a new Payment Schedule for a PHA/IHA fiscal year.

Line 02.

Fiscal Year End (FYE): Enter the month, day and year on which the subject PHA/IHA fiscal year will end.

PHA/IHA Address: Self-explanatory

Revision No.: Check this box if the data being submitted is for a revision of a current Payment Schedule and enter the number of the revision for the fiscal year. Number all revisions sequentially.

3. Part I. Eligibility Values

(Note: Lines 03,04, 05, and 06 are not edited by LOCCS and will not affect the calculation of the Payment Schedule. If operating subsidy eligibility has not been determined for the subject PHA/IHA fiscal year, do not make entries on these lines.

Line 03. Enter the amount of regular operating subsidy eligibility (e.g., as determined under the Performance Funding System) for the subject project(s) for the subject PHA/IHA fiscal year.

Line 04. Enter the amount of any additional operating subsidy eligibility (e.g., additional funds for DIAP planning costs) for the subject project(s) for the subject PHA/IHA fiscal year.

Line 05. Enter the net amount of adjustments of prior years' operating subsidy eligibility which will be included in the amount of funds requested/obligated for the subject PHA/IHA fiscal year. Precede the amount by a minus sign ("-") if it negative (For example, for a net adjustment due HUD of $10,000, enter:

|-|1|0|0|0|0|

Line 06. Enter sum of lines 03, 04, and 05.

Lines 07, 08 and 09. Entries are made for each type of operating subsidy requested/obligated for the subject fiscal year on the applicable Operating Budget, form HUD-52564. (Note: Lines 08 and 09 are used only in cases where more than one type of operating subsidy is requested/obligated in an Operating Budget.) Types of funds and the corresponding Program Codes are as follows:

Performance Funding System (PFS)	PFS
Non-PFS (rental projects only)	NPF
Turnkey III Homeownership Projects	HTK
Mutual Help Homeownership Projects	MHP

(PHA/IHAs will be notified of other Program Codes to be used for special distributions of funds, as required.)

Column (a) PGM Code: Enter the Program Code corresponding to each type of operating subsidy requested/obligated.

Column (b) Obligated Amount: Enter the amount of operating subsidy requested/obligated. A corresponding amount, identified by the Program Code, must be shown on the applicable Operating Budget, form HUD-52564. (Note: LOCCS will automatically pick up this amount from PAS.)

Column (c) Retained Amount: Enter the amount of the operating subsidy requested/obligated that is to be retained and applied by the RAD to an amount owed HUD.

Column (d) Scheduled Amount: Enter the amount of operating subsidy requested/obligated to be scheduled for payment at this time.

Column (e) Funds Available But Not Scheduled: Normally, column (e) will equal column (b) minus the sum of columns (c) and (d), but it will also include any unpaid funds (i.e., Funds Available But Not Scheduled) carried over from the previous fiscal year's Payment Schedule. Such funds will not show up on the computer printed Payment Schedule produced by LOCCS for the new (subject) PHA/IHA fiscal year, and cannot be scheduled for payment during the new fiscal year, until after the end of the previous fiscal year. (It will automatically show up on any Payment Schedule printed after the beginning of the new fiscal year.)

Line 10. Enter the sums of lines 07, 08, and 09, columns (b), (c), (d) and (e), respectively.

4. Part II. Payment Entry Selection

This Part is used by the PHA/IHA to indicate how a Payment Schedule is to be established for each Scheduled Amount shown under column (d) of lines 07, 08 and 09. A seperate Page 2 of the form must be used for each Program Code shown under column (a), lines 07, 08 and 09.

Line 11. Enter the Program Code corresponding to the Scheduled Amount for which a Payment Schedule is to be established.

Line 12.

a. Check the box corresponding to "Manual Entry" if each Pay Date and payment amount is to be entered manually, then go directly to Part VI and enter the dates and amounts.

b. Check the box corresponding to "System Calculation with Equal Monthly Payments" if you want LOCCS to calculate the Payment Schedule for you and the total amount to be paid during each month of the subject fiscal year will be the same.

c. Check the box corresponding to "System Calculation with Unequal Monthly Payments" if you want LOCCS to calculate the Payment Schedule for you and the total payments to be made during each month of the subject fiscal year will not be the same.

5. Part III. System Calculation of Payment Schedule

This Part is used, when "System Calculation' has been selected in Part II, to indicate how payments are to be made within each month of the subject fiscal year and how the Scheduled Amount shown under column (d), lines 07, 08, and 09, is to be distributed among the months of the subject fiscal year.

Payments Within Month.

Line 13. If all payments within any given month are to be equal, check "Y." Otherwise, check "N."

Line 14. Enter the dates, up to a maximum of four, on which payments are to be made during each month. (Note: Pay dates will be the same for all months of the subject fiscal year.) For example, if the following entry is made:

|1|5| |2|3| |2|9|

payments will be made on the 15th, 23rd, and 29th of each month.

Line 15. If "N" was checked on line 13, enter a percentage for each date entered on line 14. The percentages indicate how much of the total amount to be paid during each month is to be allocated among the specified Pay Dates. In determining these percentages, please make note of the following:

a. The percentages must total 100%.

b. If a Pay Date(s) for a month has already passed when the Payment Schedule becomes effective, the amount of the payment will be spread evenly over the remaining payments, if any, during that month.

Monthly Payment Allocation.

a. If "System Calculation with Equal Monthly Payments' was selected on line 12, LOCCS will allocate the Scheduled Amount equally among the months (or remaining months) of the subject fiscal year. Do not use lines 16-16b.

b. If "System Calculation with Unequal Monthly Payments' was selected on line 12, use lines 16-16b to indicate how you want LOCCS to allocate the Scheduled Amount among the months of the subject fiscal year.

Line 16. Use lines 16a-16b to specify the percentage of the Scheduled Amount to be paid during each individual month.

Line 16a. Enter abbreviations for all twelve months of the year beginning with the first month of the PHA/IHA's fiscal year. Abbreviations to be used are as follows:

January	JAN
February	FEB
March	MAR
April	APR
May	MAY
June	JUN
July	JUL
August	AUG
September	SEP
October	OCT
November	NOV
December	DEC

Line 16b. Enter the percentage of the Scheduled Amount you want to be paid during each month of the subject fiscal year. In determining these percentages, please make note of the following:

a. If a percentage is entered for every month, the percentages must total 100%.

b. If a percentage is not specified for every month and the percentages entered do not total 100%, the remainder of the Scheduled Amount will be distributed equally among the months for which no percentage has been specified. In this case, if you do not want operating subsidy to be paid in a particular month, a zero ("0") must be entered for that month.

For example, if you want 42% of the amount of operating subsidy requested to be allocated equally during the months of December, January, and February, when utility bills are highest, and the balance to be allocated equally over the remaining months of the fiscal year, enter 14% under DEC, JAN and FEB and leave the remaining months blank.

c. If the first Pay Date of a month has already passed when the Payment Schedule becomes effective, a percentage cannot be entered for this month; however, if the percentages entered for the remaining months total less than 100%, the month will be included in the allocation of the remainder of the Scheduled Amount.

6. Revision of Payment Schedules

Page 3, Parts IV and V, of form HUD-52721 are used only when submitting data for revision of a current or pending Payment Schedule. When revising Payment Schedules, only payments not yet transmitted to the Treasury Department (generally five working days before the Pay Date) may be changed. Also, sufficient time must be allowed for HUD review and entry of the changes into LOCCS. Revisions involving only minor changes (e.g., revising the Pay Dates or payment amounts for only a few payments) may be made by telephoning the appropriate HUD Field Office and providing the Financial Analyst or other designated staff person with the information.

7. Part IV. Selection of Payment Schedule Revision Method

Part IV is used to select the method to be used to revise a Payment Schedule.

Line 17.

a. Check the box corresponding to "Manual Revision" if you wish to manually indicate new or revised Pay Dates and/or amounts. If you select this option, go to Part VI and indicate the revisions to be made.

b. Check the box corresponding to "System Assisted Revision" if you want LOCCS to transfer amounts between Payment Numbers, Pay Dates and/or Funds Available But Not Scheduled, or to delete Pay Dates or Payment Numbers. If you select this option, go to Part V.

c. Check the box corresponding to "Percent Distribution of Remaining Balance" if you want to redistribute that part of the Scheduled Amount that has not yet been paid (i.e., you want to change the allocation of the remaining funds among the remaining months and/or the distribution of payment amounts or Pay Dates within months). If you select this option, use Parts II and III to indicate the revised distribution of payments.

8. Part V. System Assisted Payment Schedule Revision

This Part is used, when "System Assisted Revision" was checked on line 17, to indicate the amount and type of revision to be made. If more than one revision is to be made, use a separate page 3, Part V, for each one.

Line 18.

a. Check the box corresponding to "Add/Change" if you want to add new payments and/or change the amount of an existing payment.

b. Check the box corresponding to "Delete" if you want to delete an existing payment.

Add/Change Revisions. Use Lines 19-20c only if "Add/Change" was check on line 18.

Line 19. If you want to transfer funds from an existing payment to either another existing payment or a new payment, check this box and enter the Program Code to which the change will apply, then use lines 19a and 19b.

Line 19a.

Transfer: Enter the amount of funds to be transferred between payments.

From Payment # to Payment #: If you want to transfer funds according to payment numbers, enter the existing payment number from which the funds are to be taken and the new or existing payment number to which they are to be added.

Line 19b.

From Pay Date to Pay Date: If you want to transfer funds according to Pay Dates, enter the existing Pay Date from which the funds are to be taken and the new or existing Pay Date to which they are to be added.

Line 20. If you want to transfer funds from Funds Available But Not Scheduled to either an existing payment or a new payment, check this box and enter the Program Code to which the change will apply, then use lines 20a-20c. (Note: In order to make this change, the change must first be reflected in the appropriate columns of lines 07-09 of Part I.

Line 20a.

Transfer: Enter the amount of funds to be transferred from Funds Available But Not Scheduled to a new or existing payment.

Line 20b.

Pay Date: If you want to transfer the funds to a particular Pay Date, enter that Pay Date.

Line 20c.

Payment #s (____ Thru ____): If you want to spread the funds equally over a series of payments, enter the numbers of the first and last payments in the series.

Delete Revisions: Use lines 21-22 only if "Delete" was checked on line 21. (Note: In order to make this change, the change must first be reflected in the appropriate columns of lines 07-09 of Part I.

Line 21. If you want to delete a payment number, enter that number and the Program Code(s) corresponding to the funds for which a payment is to be deleted.

Line 22. If you want to delete a Pay Date, enter the date and the Program Code(s) corresponding to the funds for which a payment is to be deleted.

9. Part VI. Manual Payment Entry

This Part is used to individually enter Pay Dates and payment amounts when LOCCS calculation of the Payment Schedule has not been selected and to manually revise a current or pending Payment Schedule. If more than twelve payments are to be scheduled, use additional copies of Page 4, as required. When revising Pay Dates or payment amounts of a current or pending Payment Schedule, you only need to enter the Payment Numbers to be revised and the new Pay Date and payment amount.

Column (a): Enter sequentially the number of each payment.

Column (b): Enter the date on which each payment is to be made.

Column (c): Enter the total of columns (d), (e) and (f).

Columns (d), (e) and (f): (Note: Use columns (e) and (f) only if the Payment Schedule will include more than one Program Code.) At the top of the column enter the Program Code corresponding to the funds to be scheduled and then enter the amount of each payment.

Total/Subtotal: Self-explanatory.

Calculation of Allowable Utilities Expense Level

PHA/IHA-Owned Rental Housing
Performance Funding System

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0029 (exp. 9/30/97)

Public Housing Agency / Indian Housing Authority:	Old Project Numbers: (data listed on lines 1,2,3)	New Project Numbers: (data listed on line 8)	Fiscal Year Ending: / AC Contract Number:	Submission: ☐ Original ☐ Revision No. ( )

Line No.	Description	Unit Months Available	Sewerage and Water Consumption	Electricity Consumption	Gas Consumption	Fuel (Specify type e.g., oil, coal, wood)		
	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
01	UMA and actual consumption for old projects for 12 month period which ended 12 months before the Requested Budget Year.							
02	UMA and actual consumption for old projects for 12 month period which ended 24 months before the Requested Budget Year.							
03	UMA and actual consumption for old projects for 12 month period which ended 36 months before the Requested Budget Year.							
04	Accumulated UMA and actual consumption of old projects (sum of lines 01, 02, 03).							
05	Estimated Unit Months available for old projects for Requested Budget Year.							
06	Ratio of Unit months available for old projects (line 04 divided by line 05 of column 3)	3						
07	Estimated UMA and consumption for old projects for Requested Budget Year (Each figure on line 04 divided by line 06).							
08	Estimated UMA and consumption for new projects.							
09	Total estimated UMA and consumption for old and new projects for Requested Budget Year (line 07 + line 08).							
10	Estimated cost of consumption on line 09 for Requested Budget Year (see instructions).	Costs						
11	Total estimated cost for Requested Budget Year (sum of all columns of line 10).							
12	Est. PUM cost of consumption for Requested Budget Year (Allowable Utilities Expense Level) (Line 11 divided by line 09, col. 3)							
12a	Rate							
12b	Unit of Consumption							

Previous editions are obsolete

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form HUD-52722-A (4/88)
ref. Handbook 7475.13

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. This information is required by Section 9(a) of the U.S. Housing Act of 1937, as amended, and by 24 CFR Part 990 HUD regulations. HUD makes payments for operation of low-income housing projects to PHAs. The Performance Funding System (PFS) determines the amount of operating subsidy to be paid to PHAs. PHAs provide information on the Allowable Utilities Expense (AEL), Allowable Utilities Expense Level and Other Costs for the major PFS components. HUD reviews the information (Operating Budget) to determine each PHA's share of the total operating subsidy funds appropriated by Congress each fiscal year. HUD also uses the information as a means of estimating the annual aggregate operating subsidy eligibility of PHAs which serves as the basis for requesting annual appropriations from Congress. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

Instructions

1. General. This form shall be used solely for PHA/IHA-owned rental housing projects. A separate form shall be submitted for each Annual Contributions Contract (ACC) which includes one or more projects which have reached the End of Initial Operating Period (EIOP) and will be in management for all or any part of the PHA/IHA fiscal year for which the PHA/IHA is eligible for Performance Funding System (PFS) Operating Subsidy. This form shall not be used with respect to the Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, the Mutual-Help Program, or the Turnkey III or Turnkey IV Homeownership Opportunity Programs. In addition, this form is not applicable to the PHAs/IHAs of Alaska, Puerto Rico, the Virgin Islands or Guam, which are not subject to the PFS. The PFS regulation covering the purpose for the calculation required by this form is Section 990.107 of 24 CFR Part 990.

2. Preparation and Submission of Form.

Heading. In the spaces provided, enter; name of the Public Housing Agency or Indian Housing Authority; the fiscal year ending date for the year for which this form is being prepared; the Annual Contributions Contract Number; a check (") indicating an original submission or a revision and revision number; and the project identification number of those projects classified as "Old Projects" where the required data is listed on lines 01, 02, and 03, and "New Projects" where the required data is listed on line 08.

Columns 7, 8, and 9. Specify the type(s) of fuel being consumed by inserting the type(s) in one or more of the columnar headings (e.g., oil, coal or wood).

Special Instructions Regarding Lines 01, 02 and 03:

Rolling Base Period. The Rolling Base Period allowable average utility consumption is computed by using data recorded on lines 01, 02 and 03. The Rolling Base Period is applicable for PHA/IHA fiscal years beginning January 1, 1983, and thereafter.

Rolling Base Period of Less Than 36 Months. Section 990.107(c)(2) of the PFS regulations states that if a PHA/IHA has not maintained or cannot recapture consumption data nor develop comparable consumption data regarding a particular utility or utilities from its records or from the records of a comparable project, for the full Rolling Base Period, it may request HUD Field Office approval to utilize data for a period of at least 12 months. If HUD approves the use of data for a period of at least 12 months but less than 36 months, it shall be expanded to the full Rolling Base Period by use of the actual experience, plus estimated consumption for the period for which no record of experience is available. The estimated consumption may be based upon the actual experience. Take into account the relationship of the heating degree days of the periods of actual experience and the missing experience when considering utilities used for space heating. If consumption of a comparable project is utilized, that consumption must have taken place during the same periods of the PHA/IHA's Rolling Base.

Adjustment of the Consumption of the Rolling Base Period. To avoid a distortion of the average consumption for the three 12 month periods of the Rolling Base Period, the actual consumption or equivalent listed on each of these lines must be for the same number of units. Also, the consumption mix, by purposes for which each type of utility is consumed, must be the same in each year, for example, there must not be a switch in use of gas to oil or vice-versa. The unit months available (UMAs) will be the same for all three lines. Needed adjustments to achieve this result are provided below in section 3.

Line 01. By type of utility, enter the actual or adjusted consumption, in the appropriate units of measurement, for the 12-month period which ended twelve months before the requested budget year. In column 3, enter the number of UMAs during this same 12-month period. For example, a PHA with a fiscal year beginning 1/1/83 would report for the period from 1/1/81 through 12/31/81. Include only dwelling units and their consumption which were in management for the *entire* Base Period or are not specifically excluded from line 01 by the instructions of section 3 below. The unit months would include those units where all utilities are tenant-purchased.

Line 02. Refer to instructions for line 01 above, except the consumption to be recorded on line 02 for a fiscal year beginning 1/1/83 would be for the 12-month period from 1/1/80 through 12/31/80, which is the period ended twenty four months before the requested budget year.

Line 03. Refer to instructions for line 01 above, except the consumption to be recorded on line 03 for a fiscal year beginning 1/1/83 would be for the 12-month period from 1/1/79 through 12/31/79, which is the period ended thirty six months before the requested budget year.

Line 04. Enter the sum of lines 01, 02, and 03 in each column.

Line 05. Enter the number of UMAs during the requested budget year for Old Projects. This number must be the same as the UMAs shown on lines 01, 02 and 03, column (3) of this form. If the UMAs in the requested budget year are not the same as each period of the Rolling Base Period, see instructions contained in the second paragraph of section 3, below.

Line 06. Divide UMAs in column (3) of line 04 by UMAs in column (3) of line 05 to determine the ratio of UMAs available in the accumulated years to the UMAs available in the requested budget year. If the ratio is different than 3, there has been an error in stating UMAs on lines 01, 02, 03, 04, and/or 05.

Line 07. Divide each consumption amount and the UMAs on line 04 by the ratio in column (3) of line 06 (3) and enter each answer in the appropriate column of line 07.

Previous editions are obsolete

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form HUD-52722-A (4/88)
ref. Handbook 7475.13

Line 08. A "New Project" for the purpose of establishing the Rolling Base Period and the Allowable Utilities Expense Level is defined as either:

- A project which has not been in operation during at least 12 months of the Rolling Base Period, or a project which enters management after the Rolling Base Period and before the end of the Requested Budget Year.
- A project which during or after the Rolling Base Period has experienced: a conversion from one energy source to another; interruptible service sufficient to cause discernible variance from normal consumption pattern; a period in which the project is unoccupied; a switch from tenant-supplied to PHA/IHA-supplied utilities; or a switch from PHA/IHA-supplied to tenant-supplied utilities.

Specific instructions for establishing or adjusting utility consumption for each of the above mentioned possibilities are outlined in section 3 below.

Line 09. Enter the sum of line 07 and line 08 for UMAs and all consumption columns. Even if the utilities for one or more units are all tenant-purchased, the UMAs for such units must be included in column 3 of this line. The UMAs also will be included in the category of Old Projects (line 01, 02 and 03) or new projects (line 08), as appropriate. **In all cases, the total UMAs shown in column (3) of line 09 must be the same as the UMAs shown on form HUD-52723, "Calculation of Performance Funding System Operating Subsidy."**

Line 10. Compute the estimated costs attributable to the estimated consumption for each utility based on monthly rate schedules for each meter or unit price, and enter in the appropriate column. *The current applicable rates in effect at the time the Operating Budget is submitted to HUD will be used as the utilities rates for the Requested Budget Year,* except where prior to the date of submission of the budget to HUD, the appropriate utility commission has approved rate increases for future implementation. In these instances, the new rates may be used as the utility rates for the entire Requested Budget Year.

Line 11. Enter in column (3) the sum of all columns of line 10.

Line 12. Divide the amount in column (3) of line 11 by UMAs shown in column (3) of line 09. Enter the resulting PUM amount in this line and on the line titled "Allowable Utilities Expense Level" of form HUD-52723.

Line 12a. Enter for each type of utility or fuel the rate or unit price used to compute the estimated costs shown for each utility or fuel on line 10.

Line 12b. Indicate for each type of utility or fuel the unit of measurement (e.g. therms, kilowatt hour, gallons, cubic feet, 100 cubic feet, tons) which relates to the consumption shown for each utility or fuel on lines 01 thru 04.

3. Situations Requiring Special Adjustments to Lines 01 Through 08. Actual consumption of projects having the situations described in section 2, "Line 08", above, shall be established or adjusted in accordance with the instructions contained in this paragraph. The overriding consideration of all of the adjustments which are discussed here is that the consumption data shall not be distorted by including in lines 01, 02, 03, 05 or 07 of this form any UMAs or consumption for projects for only part of the Rolling Base Period or Requested Budget Year, and that the consumption mix, by purposes for which given utilities are used, will be the same for each such line. Where there is usage or a specific type of delivery or usage mix for only a part of the Rolling Base Period, either it will be eliminated from lines 01, 02, 03, 05 and 07 and, after appropriate adjustment, incorporated into line 08, or the total Rolling Base Period (lines 01, 02 and 03) will be adjusted to show a comparable situation as to usage mix for each unit in each twelve month period. Information supporting the special adjustments shall accompany this form.

New Project Not in Management During at Least 12 Months of the Rolling Base Period. The allowable consumption and UMAs for a project specified in section 2, the first subpart of "Line 08", above, shall not be included in lines 01, 02 or 03, but the allowable consumption levels and UMAs shall be entered in line 08 of this form. For the project in management for less than 12 months of the Rolling Base Period or one entering management after the Rolling Base Period but before the end of the Requested Budget Year, annual allowable consumption data shall be determined by using the consumption experience of a project (same PHA/IHA or other PHA/IHA) with comparable types of utilities and which is likely to have comparable per unit levels of consumption based on the physical characteristics of the buildings. Such experience must have occurred during the Rolling Base Period and must be for 12 months or more. If more than 12 months are used, the experience must be annualized. The annual consumption and UMAs shall then be adjusted to reflect the number of months the project is expected to be in management during the Requested Budget Year. The resulting allowable consumption levels and UMAs shall be entered on line 08. The HUD Field Office will provide these figures on request. Once this project has acquired 12 months experience, its allowable utilities consumption level for the next Requested Budget Year will be entered on this form in accordance with the instructions of "Rolling Base Period of Less Than 36 Months" in section 2.

Switch of Utilities - Energy Conversions: If the PHA/IHA has converted the units of a project from one energy source to another (e.g., from oil to coal) during or after the Rolling Base Period, or will convert before the end of the Requested Budget Year, the following adjustments are required for the Rolling Base Period and/or line 08.

- **For Discontinued Utility.** Exclude actual consumption of these units in the column on lines 01, 02 and 03.
- **For New Utility:**
  - **Between One and Three Years of Experience.** If there has been more than one, but less than three years of consumption experience during the Rolling Base Period, use such actual experience, plus estimated consumption for the time which had no experience, in the appropriate column on lines 01, 02 or 03. Line 08 is not to be used. Avoid overlapping estimated and actual consumption experience. As a means of estimating the missing consumption of the new space heating utility, the PHA/IHA's calculation could be based upon the old utility consumption for the missing period, using the relative BTU equivalent. If the PHA/IHA requires assistance to compute BTU equivalents, it should request it from the Field Office.
  - **Less Than One Year of Experience.** If there is less than one year of consumption experience as to the new utility during the Rolling Base Period, estimate the annual consumption and include it in the appropriate column on each of lines 01, 02 and 03. Line 08 is not to be used. In estimating, use actual consumption experience available. Consider the consumption patterns of comparable projects if such information is available. Avoid overlapping estimated consumption and actual experience. The BTU equivalent system mentioned in the preceding paragraph could be utilized to compute the missing experience.
  - **Switch After Rolling Base Period.** If the switch is between the Rolling Base Period and the start of the Requested Budget Year, estimate consumption for a full year for the new utility, as if for a "New Project," (see the second paragraph of part 3, above) and enter estimated consumption on line 08.

If the date of the switch to the new utility will result in its use for a part of the Requested Budget Year, estimate the consumption of the discontinued utility for the number of months of the Requested Budget Year it will be used, and estimate the consumption of the new utility for the number of months it will be used, and include these estimates on line 08, in the appropriate columns. The estimate for the discontinued utility shall be based on historical data of the Rolling Base Period, and the

estimate for the new utility shall be made as if for "New Project" (see the second paragraph of part 3, above). Once the PHA/IHA has experienced actual consumption of the new utility for some part of the Rolling Base Period, the new utility shall be considered in accordance with the instructions in the preceding paragraph, "Less Than One Year of experience.

Unit Months Available. When a switch of utilities occurs, no adjustment of UMAs is required for lines 01, 02, or 03. Also do not enter UMAs on line 08, as this will duplicate the UMAs already shown on lines 01, 02 and 03.

Interruptible Service. If the PHA/IHA has a utilities combination which provides for interruptible service from one energy source to another, the HUD Field Office shall be contacted to determine a reasonable estimate of consumption to be used in calculating the allowable utility expense for the Requested Budget Year if the interruption is sufficient to cause discernible variance from normal consumption pattern. This adjustment would, of course, not be considered until after the interruption had occurred and, if possible, not until after the heating season has ended.

Unoccupied Projects. For a project that will be unoccupied for the entire Requested Budget Year, and no utility service is being provided, exclude the previous actual consumption of these units from the appropriate columns on lines 01, 02, and 03. For a project that will be unoccupied for a significant continuous period during the Requested Budget Year, for such reasons as extensive modernization or if the PHA is awaiting a decision on demolition, but some utility service is to be provided, the previous consumption shall be excluded from the appropriate columns on lines 01, 02, and 03, and the estimated consumption of utilities that may be furnished for the Requested Budget Year shall be included in line 08. The number of UMAs shown under column (3) will not be affected. When the reason for this adjustment has passed, then the Rolling Base Period consumption shall once again be entered on lines 01, 02 and 03 for this project in accordance with the instructions "For New Utility" in the third paragraph of this section. The PHA/IHA must submit documentation in support of any consumption entered on line 08 pursuant to this paragraph.

Switch of Utilities from Tenant-Purchased to PHA/IHA-Supplied. If the PHA/IHA has switched from tenant-purchased to PHA/IHA-supplied utilities during the Rolling Base Period or if it has or will do so after the Rolling Base Period but prior to the end of the Requested Budget Year, consumption data applicable to PHA/IHA-supplied utilities must be included on the form HUD-52722-A. The instructions contained in the third paragraph of this section, ("For New Utility") are appropriate for the adjustment necessary to reflect this switch. Keep in mind that where the instructions state "new utility" it will mean, for the purposes of this paragraph, the new PHA/IHA-supplied utility. In addition, where consumption experience is requested, it relates to experience under a PHA/IHA-supplied system and not to previous consumption charged directly to tenants.

Switch of Utilities from PHA/IHA-Supplied to Tenant-Purchased. If the PHA/IHA has changed from PHA/IHA-supplied to tenant-purchased utilities prior to the beginning of the Requested Budget Year, no data regarding PHA/IHA-supplied utilities shall be included in the Rolling Base Period (lines 01, 02 and 03) consumption data.

If the switch is to be made in the Requested Budget Year, the amount of PHA/IHA-supplied consumption for the period from the beginning of the Requested Budget Year to the date of the switch shall be shown on line 08; do not show UMAs for such units on line 08 since they are already included in lines 01, 02 and 03. The estimate shall be based upon consumption experience of the Rolling Base Period. In the next fiscal year, the partial consumption should be deleted from line 08.

Submission of Form HUD-52722-A. Submit form HUD-52722-A to the Field Office for approval together with form HUD-52723, "Calculation of PFS Operating Subsidy", and the Operating Budget, form HUD-52564, for the Requested Budget Year.

Supporting Documentation. The PHA/IHA shall retain supporting documentation substantiating the data reported on this form until audited.

Preparation of form HUD-52722-A for consideration of an Adjustment Due to Rate Increases During a Current Year. Prior to the submission of an adjustment for rate increases for a current year, refer to the provisions of Section 990.110(c) of the PFS regulations to determine if the PHA/IHA qualifies for early adjustment.

Lines 01 through 09. Enter the same amounts as shown on lines 01 through 09 of the last previously approved form HUD-52722-A, submitted for the Current Fiscal Year. These data usually will not be changed since it relates to consumption and UMAs, and adjustments for consumption are not allowed until after the close of the fiscal year. However, if the PHA/IHA has a valid basis for changing the UMAs shown on line 09 of the previously approved form HUD-52722-A, it may do so, but *all* documents relative to the Performance Funding System must be recalculated and resubmitted.

Line 10. Compute the revised estimated costs attributable to each consumption amount, based on monthly rate schedules or unit prices, and enter in the appropriate column. When a revised form HUD-52722-A is submitted to reflect rate increases implemented in the current fiscal year, the new rate shall only be applied to the consumption of the remaining portion of the current fiscal year. This can be accomplished by using a rate that is a weighted average. For those costs which do not change, enter previously approved amounts.

Line 11. Enter the sum of all columns of line 10.

Line 12. Divide the amount in column (3) of line 11 by UMAs shown in column (3) of line 09. Enter resulting PUM amount here and on the line titled "Allowable Utilities Expense Level" of revised form HUD-52723.

Submission. Submit the revised form HUD-52722-A to the Field Office for approval together with a revised form HUD-52723 and a revised Operating Budget, form HUD-52564.

Supporting Documentation. The PHA/IHA shall retain the documentation evidencing the change(s) in utility rate schedules or unit prices until audited.

Adjustment for Utility Consumption and Rates

PHA/IHA-Owned Rental Housing
Performance Funding System

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0029 (exp. 9/30/97)

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. This information is required by Section 9(a) of the U.S. Housing Act of 1937, as amended, and by 24 CFR Part 990 HUD regulations. HUD makes payments for operation of low-income housing projects to PHAs. The Performance Funding System (PFS) determines the amount of operating subsidy to be paid to PHAs. PHAs provide information on the Allowable Utilities Expense (AEL), Allowable Utilities Expense Level and Other Costs for the major PFS components. HUD reviews the information (Operating Budget) to determine each PHA's share of the total operating subsidy funds appropriated by Congress each fiscal year. HUD also uses the information as a means of estimating the annual aggregate operating subsidy eligibility of PHAs which serves as the basis for requesting annual appropriations from Congress. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

Public Housing Agency / Indian Housing Authority:	Fiscal Year Ending:	ACC Contract Number:	Type of Submission: ☐ Original ☐ Revision No. ( )
			HDD Adjustment Factor Applied? ☐ Yes ☐ No

wood) No.	Description	Line Totals	Sewerage and Water Cost and Consumption	Electricity Costs and Consumption	Gas Costs and Consumption	Fuel Costs & Consumption (Specify type e.g., oil, coal,		
	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
13	Actual utility costs for the fiscal year for which adjustment is requested.							
14	Actual consumption for the fiscal year for which adjustment is requested.							
15	Actual average rate (line 13 divided by line 14).							
16	Estimated consumption for old and new projects for the fiscal year for which adjustment is required.							
17	Costs of estimated consumption at average rate (line 15 times line 16; enter total in column 3).							
18	Line 17, column (3) times 0.50; enter the amount in column 3.							
19	Line 13, column (3) times 0.50; enter the amount in column 3.							
20	Total utility costs includable in Operating Subsidy Calculation (line 18 plus line 19).							
21	Total estimated cost for the fiscal year for which adjustment is requested (line11, form HUD-52722-A).							
22	Utility adjustment (line 20 minus line 21)							

Previous editions are obsolete

form HUD-52722-B (4/96)
ref. handbook 7475.13

Instructions. Note: These instructions apply to PHA/IHA fiscal years ending December 31,1983 and thereafter.

1. General. This form is an extension of form HUD-52722-A, "Calculation of Allowable Utilities Expense Level", and is used to adjust the estimated PUM cost of consumption for actual rates, consumption and heating degree days (HDD) experienced for the fiscal year for which the form HUD-52722-A was prepared. A copy of this form must be prepared and submitted by each PHA/IHA, by ACC, for each PHA/IHA fiscal year for which the PHA/IHA received approval of an operating subsidy, except where the subsidy was solely for the cost of an independent audit. A variance of actual rates or consumption from estimates will increase or decrease subsidy eligibility. A revised form HUD-52723, "Calculation of Performance Funding Operating Subsidy", for the same fiscal year for which the form HUD-52722-A was prepared, is required in conjunction with this form.

2. Preparation and Submission of this Form.

Heading. In the space provided, enter: name of Public Housing Agency or Indian Housing Authority; the fiscal year ending date for which the requested adjustment is being submitted; the Annual Contributions Contract Number; a check (") indicating an original submission or a revision and a revision number; and a check (") in the appropriate box to indicate whether the estimated consumption on line 16 has been adjusted by the heating degree day (HDD) factor.

Columns 7, 8, 9. Insert in the columnar headings the same information included on the last HUD-approved form HUD-52722-A for the fiscal year for which the adjustment is requested.

Line 13. By type of utility, enter the actual total utility costs, in the appropriate columns, for the fiscal year for which the adjustment is requested. The source of the cost data is the form HUD-52599, "Statement of Operating Receipts and Expenditures", prepared for the fiscal year for which the adjustment is requested. The PHA/IHA shall consider the following points prior to entering the costs on this line.

When all projects have been in management for a full 12-month fiscal year, whether the PHA/IHA is on a cash or an accrual basis, the costs entered on line 13 must be for a 12-month period to correspond with the estimates originally made on the form HUD-52722-A. If any utility costs reported on the form HUD-52599 are not for a 12-month priod, adjustment of costs to a 12-month period must be made and documentation must be submitted supporting the adjustment.

When all or some of the projects have been in management for less than or more than 12 months, the costs entered on this line shall be those costs incurred for the projects for the number of unit months available (UMAs) reported on the form HUD-52599, which must be the same as the UMAs entered on line 09, column 3 of form HUD-52722-A. If the UMAs are different from what was used on the latest approved form HUD-52722-A, all documents relative to the PFS must be recalculated and resubmitted using the correct UMAs.

Line 14. Enter the actual consumption for the fiscal year for which the adjustment is requested. This will be the consumption relative to the actual total utility costs entered on line 13 above. Refer to the instructions for adjustments of utilities rates, consumption and costs which may be required pursuant to instructions for line 13 above.

Line 15. Enter the results of dividing each column of line 13 by the corresponding column of line 14.

Line 16. Enter the estimated consumption for old and new projects for the fiscal year for which the adjustment is requested. These amounts will be the same as those on line 09 of the corresponding form HUD-52722-A for the fiscal year for which the adjustment is requested, except the AUCL applicable to space heating must be adjusted by a HDD change factor as explained in the following paragraph.

The AUCL of the Rolling Base Period utility(ies) used for space heating (as defined below) shall be adjusted to reflect the ratio of the heating degree days (HDD) of the PHA/IHA fiscal year for which this form is prepared to the average annual HDD for its three-year Rolling Base Period. The first PHA/IHA fiscal year to which the adjustment (Change Factor) was applicable was the fiscal year ending December 31, 1983. (Reference: PFS Regulations cited at 24 CFR 990.107(d)). The consumption readings of meters of utilities, or gallons of oil, or tons of coal used to heat dwelling units and other PHA/IHA buildings shall be adjusted up or down by the Change Factor supplied by HUD. Change Factors are provided for each county of each State by PHA/IHA fiscal year beginning dates. The Change Factor shall be applied to the total consumption reading of a meter of a utility, or gallons of oil, or tons of coal, etc., even if the utility measured by the meter is used for other purposes in addition to space heating; e.g., gas used for space heating and cooking measured on the same meter or oil used for space heating and heating water. The appropriate consumption for each fiscal year of the Rolling Base Period (Old Projects) shall be adjusted by the Change Factor. A suggested format to accomplish the adjustment of the Rolling Base Period is included in the paragraph "Supporting Documentation" below. The remaining consumption allowed for the same utility(ies) not used for heating (not adjusted by the Change Factor) shall be included in the total adjusted consumption. After adding the adjusted and nonadjusted consumption for each year, sum these totals for the three years and compute an average adjusted AUCL by dividing the sum by three (3). The Change Factor shall then be applied to the space heating utility(ies) of New Projects in the same manner as described above for Old Projects. The New Project adjusted total shall be added to the average amount determined for the Old Projects and this sum shall be entered on line 16 in the appropriate column. The AUCL of other types of utilities shall be entered in the appropriate columns of this line. If a PHA/IHA manages units in more than one county, and these counties have different change factors, the adjustment of the Rolling Base Period consumption shall be computed using a weighted average Change Factor based upon the number of units in each county and each county's Change Factor. If a PHA/IHA manages units in an independent city not within the jurisdiction of a county, it shall, (1) if surrounded by one county, use that county's Change Factor, or (2) if surrounded by more than one county, use the average of the Change Factors of the contiguous counties.

Line 17. Multiply the columns of line 15 by the columns of line 16 and enter the results in the appropriate columns of line 17. Sum the amounts of columns 4 through 9 and enter the total in column 3.

Line 18. Multiply the amount on line 17, column 3 by 0.50.

Line 19. Multiply the amount on line 13, column 3 by 0.50.

Line 20. Line 18 plus line 19. This is the amount that will be allowed for utilities costs instead of the utilities costs previously computed on form HUD-52722-A for the fiscal year for which the adjustment is requested.

Line 21. Enter the total cost that was estimated for the fiscal year for which the adjustment is requested, as shown on line 11 of the latest HUD approved form HUD-52722-A.

Line 22. Line 20 minus line 21. If line 21 is greater than line 20, enter the difference in brackets. Enter the amount here and on the line titled "Utility Adjustment" of a revised form HUD-52723 for the fiscal year for which the adjustment is requested.

Submission. Submission of this form to the Field Office Manager normally shall be within 30 days after receipt of the needed HDD Change Factor from HUD.

Supporting Documentation. The PHA/IHA shall retain supporting documentation substantiating the data reported on this form and retain the detailed records of consumption until audited. Included in this documentation shall be the calculations supporting the application of the Change Factor pursuant to the instructions for line 16, above. For each type of heating utility, the documentation shall be in a format such as that listed below.

A separate sheet shall be prepared for each utility used for heating and for each 12-month period of the Rolling Base Period. Refer to the PFS regulations (24 CFR 990.107) for an explanation of the application of the Change Factor.

Utilities Consumption Adjustment Format

PHA/IHA Name _____

_____

Type of Utility (Gas, Oil, Electricity) _____

12-Month Period Ended _____

Project Number	Meter Number	Consumption	x	Change Factor	=	Adjusted Consumption

Total Adjusted Consumption _____

Previous editions are obsolete

form HUD-52722-B (4/96)
ref. handbook 7475.13

Calculation of Performance Funding System Operating Subsidy
PHA/IHA-Owned Rental Housing

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0029 (exp. 9/30/1997)

Name and Address of Public Housing Agency / Indian Housing Authority: (PHA/IHA)

☐ Budget submission to HUD required

Type of Submission:
☐ Original
☐ Revision No:

No. of HA Units	Unit Months Available: (UMAs)	Subject Fiscal Year:	ACC Number:	PAS/LOCCS Project No:	Submission Date:

Line No.	Description	Requested by PHA/IHA (PUM)	HUD Modifications (PUM)
Part A. Allowable Expenses and Additions			
01	Previous allowable expense level (line 07 of form HUD-52723 for previous fiscal year)		
02 a	Line 01 multiplied by .005		
02 b	Delta from form HUD-52720-B, if applicable (see instructions)		
03	"Requested" year units from latest form HUD-52720-A(see instructions)		
04	Add-ons to allowable expense level from previous fiscal year (see instructions)		
05	Total of lines 01, 02a, 02b, and 04		
06	Inflation factor		
07	Revised allowable expense level (AEL)(line 05 times line 06)		
07a	Transition Funding		
07b	Increase to AEL		
08	Allowable utilities expense level from form HUD-52722-A		
09	☐ Actual or ☐ Estimated PUM cost of Independent Audit (IA) during subject fiscal year		
10	Costs attributable to deprogrammed units		
11	Total Allowable Expenses and Additions (sum of lines 07 thru 10)		
Part B. Dwelling Rental Income			
12	Total rent roll (as of / /) $		
13	Number of occupied units as of rent roll date		
14	Average monthly dwelling rental charge per unit (line 12 divided by line 13)		
15	Change factor	1.	1.
16	Projected average monthly dwelling rental charge per unit (line 14 times line 15)		
17	Projected occupancy percentage (see instructions)	%	%
18	Projected average monthly dwelling rental income per unit (line 16 times line 17)		
Part C. Non-dwelling Income			
19	Estimated investment income (EII)		
20	Other income		
21	Total non-dwelling income (line 19 plus line 20)		
22	Total operating receipts (line 18 plus line 21)		
23	PUM deficit or (income) (line 11 minus line 22)		
		Requested by PHA/IHA (Whole dollars)	HUD Modifications (Whole dollars)
24	Deficit or (income) before add-ons (line 23 times UMAs shown in heading)		
Part D. Add-ons for changes in Federal law or regulation and other eligibility			
25	FICA contributions		
26	Unemployment compensation		
27	Flood insurance premiums		
28	Total Other (specify in Remarks section)		
28a	Add-on for Family Self Sufficiency Program		
28b	Other Add-ons for Federal law or regulations		
28c	Unit reconfiguration		
28d	Non-dwelling units		
28e	Long-term vacant units		
29	Total add-ons (sum of lines 25 thru 28)		

Line No.	Description	Requested by PHA/IHA (PUM)	HUD Modifications (PUM)
Part E. Calculation of Operating Subsidy Eligibility Before Year-End Adjustments			
30	Deficit or (income) before year-end adjustments (total of lines 24 and 29)		
31	☐ Actual or ☐ Estimated cost of Independent Audit (IA) during subject fiscal year		
32	PFS operating subsidy eligibility before year-end adjustments (greater of line 30 or line 31) (If less than zero, enter zero (0))		
Part F. Calculation of Operating Subsidy Approvable for Subject Fiscal Year (Note: Do not revise after the end of the subject FY)			
33	Prior years' net year-end adjustments (identify individual FYs and amounts under "Remarks")		
34	Additional subject fiscal year operating subsidy eligibility (specify)		
35	Overobligations from prior fiscal years to be recovered in subject fiscal year	( )	( )
36	Unfunded eligibility in prior fiscal years to be obligated in subject fiscal year		
37	Incentive Adjustment		
38	Other (specify)		
39	Other (specify)		
40	Unfunded portion due to proration		
41	Operating subsidy approvable for subject fiscal year (total of lines 32 thru 40)		
HUD Use Only (Note: Do not revise after the end of the subject FY)			
43	Amount of operating subsidy approvable for subject fiscal year not funded		( )
44	Amount of funds obligated in excess of operating subsidy approvable for subject fiscal year		
45	Funds obligated in subject fiscal year (total of lines 41 thru 44) (Must be the same as line 680 of the Operating Budget, form HUD-52564, for the subject fiscal year)		
Part G. Memorandum of Amounts Due HUD, Including Amounts on Repayment Schedules			
46	Total amount due in previous fiscal year (line 49 of form HUD-52723 for previous fiscal year)		
47	Total amount to be collected in subject fiscal year (identify individual amounts under "Remarks")	( )	( )
48	Total additional amount due HUD (include any amount entered on line 44) (Identify individual amounts under "Remarks")		
49	Total amount due HUD to be collected in future fiscal year(s) (Total of lines 46 thru 48) (Identify individual amounts under "Remarks")		
Part H. Calculation of Year-end Adjustment for Subject Fiscal Year This part is to be completed only after the subject fiscal year has ended			
50	Indicate the types of adjustments that have been reflected on this form: ☐ Utility Adjustment ☐ Target Investment Income (TII) Adjustment ☐ Adjustment of Independent Audit (IA) Cost ☐ Unit Months Available (UMAs) ☐ Dwelling Rental Income ☐ Add-ons ☐ Other (specify under "Remarks")		
51	Estimated investment income (EII)		
52	Target investment income (TII)		
53	TII adjustment (line 51 minus line 52)		
54	Utility adjustment (line 22, form HUD-52722-B)		
55	Combined utility and TII adjustment (total of lines 53 and 54)		
56	Deficit or (income) after year-end adjustments (total of lines 30 and 55)		
57	PFS operating subsidy eligibility after year-end adjustments (greater of line 31 or line 56)		
58	Line 32 of latest form HUD-52723 approved during subject FY (Do not use line 32 of this revision)		
61	Net year-end adjustment for subject fiscal year (line 57 minus line 58)		
62	Unfunded portion due to proration		
63	Prorated net year-end adjustment for subject fiscal year		

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Signature of Authorized HA Representative & Date:	Signature of Authorized Field Office Representative & Date:
X	X

Remarks

Public Reporting Burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. This information is required by Section 9(a) of the U.S. Housing Act of 1937, as amended, and by 24 CFR Part 990 HUD regulations. HUD makes payments for operation of low-income housing projects to PHAs. The Performance Funding System (PFS) determines the amount of operating subsidy to be paid to PHAs. PHAs provide information on the Allowable Utilities Expense (AEL), Allowable Utilities Expense Level and Other Costs for the major PFS components. HUD reviews the information (Operating Budget) to determine each PHA's share of the total operating subsidy funds appropriated by Congress each fiscal year. HUD also uses the information as a means of estimating the annual aggregage operating subsidy eligibility of PHAs which serves as the basis for requesting annual appropriations from Congress. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

Instructions

This form is used by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to calculate eligibility for operating subsidy under the Performance Funding System (PFS), 24 CFR Parts 990 and 905, as applicable.

It is used for PHA/IHA-owned rental public housing projects when operating subsidy is requested for such projects under the PFS.

It is not used for Turnkey III and Mutual Help Homeownership Opportunity projects, Sections 23 and 10(c) leased projects, or the Section 8 Housing Assistance Payments (HAP) program.

Send this form along with a PHA/IHA's Operating Budget (form HUD-52564), if required, when operating subsidy is requested on line 690 of the form HUD-52564. A separate copy of this form must be sent for each project or group of projects under a separate Annual Contributions Contract (ACC) and/or Operating Budget for each PHA/IHA fiscal year in which operating subsidy is requested.

When a PHA/IHA requests operating subsidy solely to cover the cost of an Independent Audit (IA), only the heading, lines 31 and 32 in Part E, and Parts F and G need be completed.

Headings:

Budget Submission to HUD Required. Check this box if Operating Budget, form HUD-52564, is required to be submitted to HUD.

Type of Submission. Indicate whether this form is (1) the original submission for the subject fiscal year or (2) a revision of the latest approval for the subject fiscal year. If applicable, enter the revision number.

Number of HA Units. Enter the total number of dwelling units in the project covered.

Unit Months Available (UMAs). Enter the product of Project Units multiplied by the number of months the units will be available for occupancy during the subject fiscal year. (Note: The number of UMAs shown on all forms used to calculate PFS Operating Subsidy, as well as the Operating Budget, form HUD-52564, must be the same.) A unit is considered available for occupancy from the date established as the End of Initial Operating Period (EIOP) for the project until the time the unit is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. In the case of an HA development involving the acquisition of scattered site housing, see also § 990.104(b). A unit will be considered a long-term vacancy and will not be considered available for occupancy in any given HA Requested Budget Year if the HA determines that:

(1) The unit has been vacant for more than 12 months at the time the HA determines its Actual Occupancy Percentage;

(2) The unit is not either: (i) a vacant unit undergoing modernization; or (ii) a unit vacant for circumstances and actions beyond the HA's control, as these terms are defined in the regulations; and

(3) The HA determines that it will have a vacancy percentage of more than 3 percent and will have more than five vacant units, for its Requested Budget Year, even after adjusting for vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the HA's control, as defined in the regulations.

Subject Fiscal Year. Enter the ending date of the subject fiscal year. The subject fiscal year is the PHA/IHA's fiscal year or requested budget year for which this form is submitted. (References to previous fiscal year mean, specifically, the PHA/IHA's fiscal year immediately preceding the subject fiscal year; references to prior fiscal years mean, in a more general sense, one or more fiscal years which ended prior to the subject fiscal year.)

ACC Number. Enter the number of the Annual Contributions Contract (ACC) covering the projects for which this form is submitted.

PAS/LOCCS Project No. Enter the PAS/LOCCS Project Number applicable to the corresponding Operating Budget, form HUD-52564. (See paragraph 2 of the Instructions for form 52721, Direct Disbursement Payment Schedule Data.)

Part A. Allowable Expenses and Additions

Note. Except where otherwise indicated, all entries in Part A must be Per Unit Per Month (PUM) amounts, rounded to the nearest two (2) decimal places. A PUM amount is derived by dividing the corresponding dollar amount by the UMAs shown in the heading.

Line 01. Enter the Allowable Expense Level (AEL) for the previous fiscal year (i.e., the PHA/IHA fiscal year immediately preceding the subject fiscal year) as shown on line 07 of the latest approval for the previous fiscal year.

Line 02 a. Always enter the product of line 01 multiplied by .005.

Line 02 b. Enter the Delta from form HUD-52720-B if a PHA/IHA has experienced a change in the number of its units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment was made to the Allowable Expense Level using form HUD-52720-B.

Line 03. Enter the number of Requested Year "Total Dwelling Units" from the latest form HUD-52720-A. This maintains a record of the number of units used the last time an adjustment was made to the Allowable Expense Level using form HUD-52720-A, for the purpose of determining, in future years, when these forms must be used again in computing the amount on line 02.

Line 04. Enter the amount by which the Allowable Expense Level is to be increased during the subject fiscal year to incorporate Add-ons for costs attributable to changes in Federal law or regulation that were approved for the first time in the previous fiscal year (see 24 CFR Part 990.108(c) and Chapter 6 of the PFS Handbook, 7475.13). This amount is determined by dividing line 29 of this form for the previous fiscal year by the UMAs for the subject fiscal year, which is shown in the heading. In cases where the amounts entered in Part D in the previous fiscal year did not accurately reflect the increased costs incurred by the PHA/IHA for that year, an appropriate adjustment must first be made. In addition, any costs which do not remain relatively stable from year to year (e.g., FICA and unemployment compensation premiums which are based on the experience of the PHA/IHA) will not be incorporated into the Allowable Expense Level, but must be entered annually in Part D (see Chapter 6 of the PFS Handbook, 7475.13).

Line 06. Enter the applicable inflation factor from the "PFS Inflation Factor" table. (Do not round.)

Line 07a. Transition Funding (See 24 CFR 990.106.)

Line 07b. Reserved. Inoperative without specific instructions.

Line 08. Enter the Allowable Utilities Expense Level for the subject fiscal year from form HUD-52722-A.

Line 09. Check the appropriate box and enter the actual or estimated cost chargeable to the management phase of the PHA/IHA's owned rental housing projects during the subject fiscal year for an Independent Audit (IA). If the amount entered is an estimate, this form must be revised to reflect the actual cost after it is known (see "Adjustments").

Line 10. Enter the estimated costs attributable to deprogrammed units (see 24 CFR Part 990.108 (b)) which have been excluded from the UMAs shown in the heading of this form. Complete documentation of the costs must be attached. The costs entered on line 10 must not be included in any other element of the calculation of PFS operating subsidy.

Part B. Dwelling Rental Income

Note: Except where otherwise indicated, round all entries in Part B to the nearest two (2) decimal places.

Line 12. Enter the total net dwelling rental charges (recurring monthly dwelling rent less the utility reimbursements) for units occupied by eligible lower-income families, rounded to the nearest dollar, from the Rent Roll for the first day of the month immediately preceding the month in which the corresponding operating budget or PFS forms are submitted to HUD; however, the date of the Rent Roll must not be earlier than the first day of the month which is six months prior to the subject fiscal year or later than the first day of the month immediately preceding the subject fiscal year. In the space provided, indicate the date of the Rent Roll used.

Line 13. Enter the number of units occupied by eligible lower-income families as of the date of the Rent Roll used in Line 12.

Line 14. Enter the quotient of dividing line 12 by line 13. (This amount may be adjusted to reflect revisions of utility allowances which were implemented subsequent to the date of the Rent Roll used in line 12; however, the adjustment must be fully documented. An adjustment may not be made for anticipated revisions of utility allowances or for any other reason.)

Line 15. After the preprinted "1." enter, as a decimal, the Change Factor percentage for the subject fiscal year. (See 24 CFR 990.109). For example, 3 percent would be entered as .03 and would result in a Change Factor of 1.03.

Line 16. Enter the product of line 14 multiplied by line 15. If the PHA/IHA will have a new project which was not available for occupancy during the fiscal year preceding the subject fiscal year, but will reach EIOP within the first nine months of the subject fiscal year, the amount determined by multiplying line 14 by line 15 must be adjusted further, on a weighted-average basis, to reflect a projected average monthly dwelling rental charge per unit for the new project. The projected average monthly dwelling rental charge per unit for a new project is computed as follows:

If the PHA/IHA has another project or projects under management which are comparable in terms of elderly and nonelderly tenant composition, use the projected average monthly dwelling rental charge per unit of the comparable project or projects.

If the PHA/IHA has no other project or projects which are comparable in terms of elderly and nonelderly tenant composition, the HUD field office will provide a projected average monthly dwelling rental charge per unit for the new project or projects based on comparable projects located in the area.

Line 17. Enter the Projected Occupancy Percentage determined in accordance with 24 CFR Part 990.109 (b) (3) and the instructions in Part IV of form HUD-52728-A, PHA/IHA Occupancy Percentage for a Requested Budget Year.

Part C. Non-dwelling Income.

Note: Except where otherwise indicated, all entries in Part C must be Per Unit Per Month (PUM) amounts, rounded to the nearest two (2) decimal places, derived by dividing the correspondence dollar amounts by the UMAs shown in the heading.

Line 19. Enter the Estimated Investment Income (EII) amount for the subject fiscal year . (See 24 CFR 990.109 (e)(1).)

Line 20. Enter an estimate of other income for the subject fiscal year determined in accordance with 24 CFR Part 990.109 (e) (2) and Chapter 4 of the PFS handbook, 7475.13.

Line 23. Subtract line 22 from line 11 and enter the difference. Enter a negative amount in brackets.

Note: All remaining entries (lines 24 thru 61) must be whole dollar amounts rounded to the nearest dollar.

Line 24. Enter the product of line 23 multiplied by the UMAs shown in the heading.

Part D. Add-ons for Costs Attributable to Changes in Federal Law or Regulation.

Lines 25 - 28. Enter the amounts, if any, of additional costs resulting from changes in Federal law or regulation, as provided in 24 CFR Part 990.108 (c) and Chapter 6 of the PFS Handbook, 7475.13. Do not duplicate amounts previously incorporated in the Allowable Expense Level or to be incorporated in the Allowable Expense Level in the subject fiscal year (i.e., amounts entered on line 04 of a form HUD-52723). Complete documentation must be submitted to support all amounts claimed on lines 25 thru 28. Line 28c, Unit Reconfiguration, see 24 CFR 990.108(e). Line 28d, Non-Dwelling Units, see 24 CFR 990.108(b)(2). Line 28e, Long-term Vacant Units, see 24 CFR 990.108(b)(3).

Part E. Calculation of PFS Operating Subsidy Eligibility Before Year-End Adjustments.

Line 30. Enter the total of lines 24 and 29. (Add amounts shown without brackets and subtract amounts shown with brackets.)

Line 31. Check the appropriate box and enter the actual or estimated cost chargeable during the subject fiscal year to the management phase of the PHA/IHA's owned rental housing projects for an audit performed or to be performed by an Independent Auditor. If the amount entered is an estimate, this form must be revised to reflect the actual cost after it is known (see "Adjustments").

Part F. Calculation of Operating Subsidy Approvable for Subject Fiscal Year.

This part is used to make various adjustments to the PFS operating subsidy eligibility determined in Part E, including adjustments to prior years' operating subsidy to be effected or funded during the subject fiscal year and additional operating subsidy eligibility (e.g., periodic set-asides for specific purposes) approvable during the subject fiscal year. Lines 43 thru 45 are used by the HUD Field Office to reconcile the total amount of operating subsidy approvable in the subject fiscal year (line 41) with the amount of operating subsidy that is obligated.

Note: Never revise the lines in Part F (lines 33 thru 45) after the end of the subject fiscal year.

Line 33. Enter the total of prior years' net year-end adjustments which will be included in the amount of operating subsidy approved during the subject fiscal year. The type, amount, and fiscal year of each individual adjustment must be shown under "Remarks". Enter a net amount owed HUD in brackets.

Line 34. Enter the amount of any additional operating subsidy eligibility (e.g., periodic set-asides for specific purposes or special funding distributions for the subject fiscal year. Identify all such amounts here or under "Remarks".

Line 35. Enter any amount of operating subsidy that was overobligated to a PHA/IHA in a prior fiscal year and will be recovered through a reduction in the amount of operating subsidy approved for the subject fiscal year. Identify under "Remarks" the fiscal year in which the overobligation occurred and the reason.

Line 36. Enter any amount of operating subsidy eligibility for a prior fiscal year that was not funded (obligated) by HUD and will be obligated in the subject fiscal year. Identify under "Remarks" the fiscal year not fully funded and the reason.

Lines 37 thru 39. Enter any other adjustments to operating subsidy eligibility, including prior year adjustments not reflected in line 33, that will be effected during the subject fiscal year. Enter an adjustment owed HUD (downward adjustment) in brackets.

Line 40. Enter the unfunded portion (100 percent minus the applicable percentage) of the subject year's eligibility (line 32) in brackets. If, however, line 32 is operating subsidy eligibility for IA costs only, do not make an entry on this line.

Line 41. Enter the total of lines 32 thru 40. (Add amounts shown without brackets and subtract amounts with brackets.)

Lines 43 thru 45 are to be used by the HUD Field Office only.

Line 43. Enter the amount, if any, of operating subsidy approvable for the subject fiscal year (line 41) which is not being funded (obligated) at this time (e.g., because sufficient funds have not been subassigned to the Field Office).

Line 44. Enter the amount, if any, of operating subsidy funds obligated in excess of the amount approvable for the subject fiscal year (line 41) which cannot or should not be deobligated at this time (e.g., because they have already been paid).

Line 45: Total of lines 43 and 44. (Add amounts shown without brackets and subtract amounts shown with brackets.) The amount entered on this line must be the same as the amount obligated in the corresponding Operating Budget, form HUD-52564, if required, (or a letter of intent, when authorized by HUD Headquarters).

Part G. Memorandum of Amounts Due HUD, Including Amounts on Repayment Schedules.

This part is used to maintain an ongoing record of all amounts owed to HUD by a PHA/IHA which are related to operating subsidy payments for the projects covered by this form. All amounts owed HUD must be identified under "Remarks". In most cases, a formal repayment (recovery) schedule should be established and maintained on file with this form.

Line 46. Enter the total amount owed HUD at the end of the previous fiscal year, as shown on line 49 of the latest approval for the previous fiscal year.

Line 47. Enter any part of the amount shown on line 46 that has been collected or is reflected as a reduction in the amount of operating subsidy approvable in Part F, as well as any adjustment of amounts previously identified as due HUD. Identify individual amounts under "Remarks".

Line 48. Enter the total of any additional amounts determined to be due HUD, including any amount entered on line 44. (Do not duplicate amounts already included in the amount shown on line 46.) Identify the individual amounts making up the total under "Remarks".

Line 49. Enter the total of lines 46 thru 48. (Add amounts shown without brackets and subtract amounts shown with brackets.) Identify the individual amounts making up the total under "Remarks".

Adjustments

Types of Adjustments. Certain adjustments to income, expenses and Unit Months Available (UMAs) for a PHA/IHA's fiscal year are required, or may be requested, based on actual experience during the fiscal year. The adjustable elements of the PFS are as follows:

(1) Utilities Expense Level
  (a) Rates
  (b) Consumption
(2) Investment Income
(3) Estimated Cost of an Independent Audit
(4) Dwelling Rental Income
(5) Unit Months Available (UMAs)
(6) Add-ons
(7) Other adjustments approved by HUD

Mandatory adjustments. Certain of the above adjustments are mandatory for any PHA/IHA fiscal year in which operating subsidy is approved.

(1) Adjustment of the estimated Utilities Expense Level (Utility Adjustment), except when the operating subsidy was approved solely for the cost of an audit.

(2) Adjustment of Estimated Investment Income (Target Investment Income Adjustment) for all PHA/IHAs having an average monthly cash balance of $20,000 or more.

(3) Adjustment of the estimated cost of an Independent Audit (Audit Adjustment) after the PHA/IHA knows the actual cost.

(4) Adjustment of UMAs (UMA Adjustment) if actual UMAs for a PHA/IHA's fiscal year differ from what was used in completing this form for the fiscal year.

Timing of Adjustments.

(1) The Utility Adjustment and the Target Investment Income (TII) adjustment must be submitted by a PHA/IHA within 45 calendar days after the end of the PHA/IHA's fiscal year.

(2) The Audit Adjustment is submitted with the Utility Adjustment unless the PHA/IHA received operating subsidy during the subject year solely for the cost of an audit, in which case the Audit Adjustment is submitted as soon as the actual cost is known.

(3) All other adjustments (e.g., dwelling rental income) should be submitted in conjunction with the Utility Adjustment in order to minimize the number of submissions of this form.

(4) Adjustments to PFS elements, except Utility Consumption and Investment Income, may be requested prior to the time of the mandatory Utility Adjustment if the PHA/IHA establishes to HUD's satisfaction that a severe financial crisis will result if an adjustment is not made earlier.

Adjustment Instructions

A copy of this form with revised information must be submitted for the fiscal year to which the adjustments apply (i.e., the subject fiscal year) in order to recalculate operating subsidy eligibility and determine a net year-end adjustment for the fiscal year.

Utility Rate Increases. (Reference: 24 CFR Part 990.110(c)) Early adjustment of the Allowable Utilities Expense Level (AUEL) may be requested for a change in utility rates, but not for utility consumption. Calculate this adjustment by revising the information originally submitted on form HUD-52722-A for the subject fiscal year. Do not use Part H of this form in the revision.

Mandatory Utility Adjustment. (Reference: 24 CFR Part 990.110(c)) The Mandatory Utility Adjustment for rates and consumption, based on actual experience for a fiscal year, is calculated on form HUD-52722-B, Adjustment for Utilities Consumption and Rates. The dollar amount shown on line 22 of the completed form HUD-52722-B is entered on line 54 of the revised copy of this form for the fiscal year to which the utility adjustment applies (i.e., the subject fiscal year).

Target Investment Income (TII) Adjustment. (Reference: 24 CFR Part 990.110 (b)) PHA/IHAs with an average cash balance of at least $20,000 must enter the Estimated Investment Income (EII) and Target Investment Income (TII) amounts, determined in accordance with 24 CFR Parts 990.109 (e)(1) and 990.110 (b), on lines 51 and 52, respectively, of the revised copy of this form for the fiscal year to which the adjustment applies (i.e., the subject fiscal year). The adjustment is the difference between EII and TII and is entered on line 53 of this form.

Audit Adjustment. (Reference: 24 CFR 990.108 (a)) Enter the actual cost of the Independent Audit on lines 09 (as a PUM) and 31 (as a dollar amount) of the revised copy of this form for the fiscal year to which the adjustment applies (i.e., the subject fiscal year). All other lines of the form must also be completed and the information revised, as applicable, to reflect the change in the cost of the audit.

Unit Months Available (UMAs). An adjustment of UMAs is required when the actual UMAs for a fiscal year differ from what was used in originally calculating a PHA/IHA's operating subsidy eligibility. To effect this adjustment, all forms used for calculating PFS operating subsidy eligibility must be revised to reflect the correct UMAs in all calculations.

Dwelling Rental Income. (Reference: 24 CFR 990.110(d)) A PHA/IHA may request an adjustment of the Projected Average Monthly Dwelling Rental Income for a fiscal year if the projected amount was not attained because of circumstances that were beyond the control of the PHA/IHA. Enter the revised amount for dwelling rental income on line 18 of the revised copy of this form for the fiscal year to which the adjustment applies (i.e., the subject fiscal year) and attach complete documentation for the adjustment. All other lines of the form must also be completed and the information revised, as applicable, to reflect the change in dwelling rental income.

An adjustment of line 14 (Average Monthly Dwelling Rental Charge per Unit) may be requested to reflect approved revisions of utility allowances which are implemented during the subject fiscal year. The methodology used to calculate the adjustment must be fully explained and documented. An adjustment may not be made for anticipated revisions of utility allowances.

Add-ons. Adjustments of amounts claimed as Add-ons are effected by revising the information on lines 25 thru 29. The information on all other lines of the form must be revised, as applicable, to reflect the adjustment.

Other Adjustments. (References: 24 CFR Part 990.110 (e)) All other adjustments are effected by revising the information on the appropriate lines of this form for the fiscal year to which an adjustment applies (i.e., the subject fiscal year).

PHA/IHAs must fully justify and document all requests for adjustments.

Part H. Calculation of Year-end Adjustment for Subject Fiscal Year.

Note: This part is completed only after the subject fiscal year has ended. It is used to recalculate the PFS operating subsidy eligibility for the subject fiscal year in order to reflect the mandatory and other year-end adjustments. It is important to note that all individual adjustments relating to a particular PHA/IHA fiscal year are reflected in Part H of the copy of this form covering the same fiscal year; not in Part H of the form submitted for a subsequent fiscal year. However, the Net Year-end Adjustment calculated on line 61 must be included in line 33 of the copy of this form prepared for the PHA/IHA fiscal year in which the adjustment is actually effected (i.e., reflected in the amount of operating subsidy approved in an operating budget or letter of intent).

Utility and TII Adjustments are entered using lines 51 thru 55 of this part. All other adjustments are reflected by revising the information on the appropriate lines of Parts A thru E before completing Part H of this form.

Parts F and G are not revised as part of a year-end adjustment.

Line 50. Indicate the types of year-end adjustments that are reflected on this form and will be included in the net year-end adjustment shown on line 61.

Note: Lines 51 thru 53 are to be completed only by PHA/IHAs having an average cash balance of $20,000 or more.

Line 51. Enter the Estimated Investment Income (EII) amount for the subject fiscal year determined in accordance with 24 CFR 990.109 (e)(1)).

Line 52. Enter the Target Investment Income (TII) amount for the subject fiscal year determined in accordance with 24 CFR 990.110 (b).

Line 53. Line 51 minus line 52. Enter a negative amount in brackets.

Line 54. Enter the amount shown on line 22 of the form HUD-52722-B, Adjustment for Utility Consumption and Rates, covering the subject fiscal year.

Line 55. Enter the total of lines 53 and 54. (Add amounts shown without brackets and subtract amounts shown with brackets.)

Line 56. Enter the total of lines 30 and 55. (Add amounts shown without brackets and subtract amounts shown with brackets.)

Line 57. Enter the greater of line 31 or line 56. If less than zero, enter zero (0).

Line 58. Enter the amount shown on line 32 of the latest submission of this form for the subject fiscal year that was approved during the subject fiscal year. Do not use the amount shown on line 32 of this revision.

Line 61. Subtract line 58 from line 57 and enter the difference. Enter a negative amount in brackets.

Line 62. Enter the unfunded portion (100 percent eligibility adjusted by the applicable proration percentage) of line 61 in brackets if line 61 is positive. If line 61 is in brackets, enter the unfunded portion as a positive number.

Line 63. Enter the prorated net year end adjustment (combine lines 61 and 62).

PHAs/IHAs must submit a copy of this form showing the revised information for the subject fiscal year, and a copy of this form prepared for the current fiscal year, along with forms HUD-52564 (Operating Budget), if required, and HUD-52721 (Direct Disbursement Payment Schedule Data) before the deadline established in "Timing of Adjustments". The above forms will reflect the increase or decrease in operating subsidy eligibility which will be included in the amount of operating subsidy approved during the current fiscal year.

[FR Doc. 97-26763 Filed 10-8-97; 8:45 am]
BILLING CODE 4210-33-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4263–N–34]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 8, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, telephone number (202) 708–1672 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Certification Regarding Adjustment for Damage or Neglect Pursuant to 203.379 (C).

OMB Control Number: 2502–0349.

Description of the need for the information and proposed use: This Notice requests to extend the use of Form HUD–92900 to be submitted by homeowners to mortgagees to determine their continued eligibility for assistance and to determine the amount of assistance a homeowner is to receive. The forms are also used by mortgagees to report statistical and general program data to HUD.

Agency forms, if applicable: HUD 92900.

Members of affected public: An estimation of the total number of hours needed to prepare the information collection is 140, the number of respondents is 280 and frequency of responses is annual.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, amended.

Dated: October 2, 1997.

Sarah Rosen,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 97–26768 Filed 10–8–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–36]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: November 10, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F.Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 1, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Notice of Funding Availability for the Homeownership Zone Program.

Office: Community Planning and Development.

OMB Approval Number: 2506–0164.

Description of the Need For the Information and Its Proposed Use: The Homeownership Zone Program is authorized under Section 205 of the Departments of Veterans Affairs and the Housing and Urban Development, and Independent Agencies Appropriation Act of 1997. The Homeownership Zone program is dedicated to large scale development projects designed to reclaim distressed neighborhoods by creating homeownership opportunities for low and moderate income families, and to serve as a catalyst for private investment, business creation, and neighborhood revitalization. The information collection will enable HUD to determine the eligibility, qualifications, and capability of applicants to administer Homeownership Zone activities.

Form Number: SF–424, SF–LLL, and HUD–40205.

Respondents: State, Local, or Tribal Governments.

Frequency of Submission: Annually and recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	70		1		100		7,000
Recordkeeping and Reporting	4		1		50		200

Total Estimated Burden Hours: 7,200.

Status: Extension, without changes.

Contact: Cliff Taffet, HUD, (202) 708–3226 x4589, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 1, 1997.

[FR Doc. 97–26764 Filed 10–8–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–38]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: November 10, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of information collection proposal: (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, an hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 1, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee Review Board.

Office: Housing.

OMB Approval Number: 2502–0450.

Description of the Need for the Information and Its Proposed Use: Section 202(c) of the HUD Reform Act of 1989 established a Mortgagee Review Board to impose administrative sanctions and civil money penalties against HUD approved mortgagees that violate the Department of Housing and Urban Development's requirements in the origination and servicing of HUD–FHA insured mortgages. As part of the administrative sanction process, the Board may issue a Letter of Reprimand, place a mortgagee on probation, or suspend or withdraw the HUD approval of a mortgagee to participate in the HUD–FHA mortgage insurance programs. Mortgagees may respond to and/or appeal Board actions.

Form Number: None.

Respondents: Business or other for-profit.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	35		1		92.5		3,236

Total Estimated Burden Hours: 3,236.

Status: Reinstatement, with changes.

Contact: Andrew Zirneklis, HUD, (202) 708–1515 x102, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 1, 1997.

[FR Doc. 97–26765 Filed 10–8–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No FR–4263–N–37]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

DATES: Comments due date: November 10, 1997.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 135, as amended.

Dated: October 1, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Utility Allowance Adjustments.

Office: Housing.

OMB Approval Number: 2502–0352.

Description of the Need for the Information and Its Proposed Use: The information will be used by the project owners to advise HUD and request approval of new utility allowances when the utility rate change results in a cumulative increase of 10 percent or more. If periodic adjustments to the utility allowance are not made, tenants would be required to pay a larger total tenant payment than is permissible.

Form Number: None.

Respondents: State, Local, or Tribal Government, Business or Other For-Profit, and Not-For-Profit Institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Periodic Requests	1,200		1		0.5		600

Total Estimated Burden Hours: 600.

Status: Reinstatement, without changes.

Contact: Michael E. Diggs, HUD, (202) 708–3944 x2514, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 1, 1997.

[FR Doc. 97–26766 Filed 10–8–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–36]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act, The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: November 10, 1997.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before November 10, 1997. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 1, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Issuer's Monthly Remittance Advice.

Office: Government National Mortgage Association.

OMB Approval Number: 2503–0015.

Description of the Need for the Information and Its Proposed Use: Government National Mortgage Associations (GNMA) issuers are required to provide summary information to the holder of each GNMA mortgage-backed security with respect to the current month's share of total cash distribution. The information collected is used to advise each security holder of the current's month account transactions and calculation of holder's fractional share of total cash distribution.

Form Number: HUD–11714 and HUD–1171SN.

Respondents: Business or Other For-Profit and the Federal Government.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Issuer's Monthly Remittance	19,264		12		1/60		3,853

Total Estimated Burden Hours: 3,853.

Status: Extension, with changes.

Contact: Sonya K. Suarez, HUD, (202) 708–2772 x4975, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 1, 1997.

[FR Doc. 97–26767 Filed 10–8–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–33]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: November 10, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before November 10, 1997. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 30, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Safe Neighborhood Grants Program.

Office: Housing.

OMB Approval Number: 2502–0520.

Description of the Need for the Information and Its Proposed Use: Owners and operators of low-income housing must apply for grants to use in eliminating security and crime problems in Federally assisted low-income housing. The application process includes establishing local partnership with City officials, law enforcement, residents, and other officials to develop a plan. This plan will certify compliance with HUD requirements and outline a comprehensive security and crime prevention and reduction program.

Form Number: SF–424, 424A, SF–LLL, HUD–50080 and 2880.

Respondents: State, Local, or Tribal Government.

Frequency of Submission: On Occasion and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Grantees	500		1		40		20,000

Total Estimated Burden Hours: 20,000.

Status: Extension, with changes.

Contact: Michael Diggs, HUD, (202) 708–3944, ext. 2514, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: September 30, 1997.

[FR Doc. 97–26769 Filed 10–8–97; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–32]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: November 10, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before November 10, 1997. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 30, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Block Grants: State's Program.

Office: Community Planning and Development.

OMB Approval Number: 2506–0085.

Description of the Need for the Information and Its Proposed Use: Section 104 (A) and (D) of the Housing Community Development Act of 1974, as amended, requires States and local governments to submit a final statement and performance and evaluation report to HUD. These reports are submitted annually. The reports are evaluated to determine the use of the funds made available under Section 106 of the Act and to determine if the States and local governments are complying with statutory regulations.

Respondents: State, Local, and Tribal Government.

Frequency Of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Report	49		1		216		10,584
Recordkeeping (States)	49		1		117		5,733
Recordkeeping (Localities)	3,500		1		26		91,000

Total Estimated Burden Hours: 107,317.

Status: Reinstatement, with changes.

Contact: Yvette Aidara, HUD, (202) 708–1322 x4378, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: September 30, 1997.

[FR Doc. 97–26770 Filed 10–8–97; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Reinstatement Approval

ACTION: Notice.

SUMMARY: The information collection requirements listed below have been submitted to OMB for reinstatement approval under the provisions of the Paperwork Reduction Act of 1995. Copes of specific information collection requirements, related forms, and explanatory material may be obtained by contacting the Fish and Wildlife Service (Service) Information Collection Clearance Officer at the address and/or phone numbers listed below.

DATES: Comments must be submitted on or before November 10, 1997.

ADDRESSES: Comments and suggestions on specific requirements should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Desk Officer for the Department of the Interior (1018–0022); Washington, D.C. 20503; and a copy of the comments should be sent to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ; 1849 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer at 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION: The Service has submitted the following information collection requirements to OMB for review and extension approval under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539), the Migratory Bird Treaty Act (15 U.S.C. 704), the Lacey Act (18 U.S.C. 42–44), the Bald Eagle Protection Act (16 U.S.C. 668), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), (27 UST 108), and the Marine Mammal Protection Act (16 U.S.C. 1361–1407), and the Wild Bird Conservation Act (16 U.S.C. 4901–4916), and are contained in Service regulations in Chapter I, Subchapter B of Title 50 of the Code of Federal Regulations (CFR). Common permit application and record keeping requirements have been consolidated in 50 CFR 13, and unique requirements of the various statutes in separate parts as identified below.

The Service has redesigned the standard license/permit application form number 3–200 to assist persons in applying for Service permits issued under Subchapter B. Under the present clearance, all permit requirements were contained in one submission and they were assigned OMB Approval 1018–0022, the Federal Fish and Wildlife License/Permit Application and Related Reports. In an attempt to make the application and the comment process more "user friendly," similar types of permits have been grouped together and numbered. The application to apply for Service permits issued under Subchapter B of Title 50 of the Code of Federal Regulations (CFR), will still require completion of the 3–200 form, which has been redesigned and renumbered and is now Service form 3–200–1. In addition to the permit application, attachments are often necessary to provide additional information required for specific types of permits, and have been assigned numbers, e.g., 3–200–2.

The information to be supplied on the application and the attachments will be used by the Service to review permit applications and allow the Service to make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation or denial of permits. The Service has reviewed all permit requirements in this submission to ensure that the number of respondents was as accurate as possible and the burden imposed on the public is the lowest possible. As a result, some estimates have been revised and are marked with an asterisk. The obligation to respond is, "required to obtain a benefit." An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number. The following requirements are in this submission:

1. Title: Import of Sport-hunted Trophies of Southern African Leopard and African Elephant.

Service form number: 3–200–19.

Description and use: To evaluate whether a Convention on International Trade in endangered Species (CITES) permit can be issued to allow the import of sport-hunted African leopard or African elephant for personal use, and addresses specific requirements contained in 50 CFR 17.40 (e) and (f), 23.11, 23.12, and 23.15.

Description of respondents: Individuals and households; or taxidermists (business) acting on behalf of an individual.

Number of respondents: 1,000.

Estimated completion time: 20 minutes (.333 hours).

Total annual burden: 333 hours.

2. Title: Import of Sport-hunted Trophies under the Endangered species Act (ESA) or ESA/Appendix I of CITES (excludes southern African leopard and African Elephant).

Service form number: 3–200–20.

Description and use: To evaluate whether an ESA import permit or an ESA/CITES import permit can be issued to allow the import of a sport-hunted trophy of an ESA or ESA/CITES protected species for personal use, and addresses specific requirements in 50 CFR 17.21, 17.22, 17.31, 17.32, 23.11 23.12 and 23.15.

Description of respondents: Individuals and households.

Number of respondents: *30 (correction re-estimate -20).

Estimated completion time: 1 hour.

Total annual burden: *30 hours (correction re-estimate -20 hours).

3. Title: Import of Sport-hunted Trophies of Argali.

Service form number: 3–200–21.

Description and use: To evaluate whether an ESA import permit can be issued to allow the import of a sport-hunted argali trophy from Mongolia, Kyrgyzstan, and Tajikistan for personal use, and addresses specific requirements in 50 CFR 17.21, 17.22, 17.31, 17.32, 23.12 and 23.15.

Description of respondents: Individuals or households.

Number of respondents: *50 (correction re-estimate +20).

Estimated completion time: .75 hours (45 minutes).

Total annual burden: *37.5 (correction re-estimate +15 hours).

4. Title: Import of Sport-hunted Trophies.

Service form number: 3–200–22.

Description and use: To evaluate whether an ESA import permit can be issued to allow the import of a sport-hunted bontebok trophy taken from registered ranches in South Africa for personal use, and addresses specific requirements in 50 CFR 17.21 and 17.22.

Description of respondents: Individuals or households.

Number of respondents: 60.

Estimated completion time: .333 hours (20 minutes).

Total annual burden: 20 hours.

5. Title: Export of Pre-Convention, Pre-Act of Antique Animal Products.

Service form number: 3–200–23.

Description and use: To evaluate whether specimens (animal products) qualify as an antique, as pre-convention under CITES, or as pre-act under the ESA or the Marine Mammal Protection Act (MMPA), and whether a pre-convention certificate can be issued to export animal products from the United States, and addresses specific requirements in 50 CFR 14.22, 17.4, 18.14, 23.11, 23.13(c) and 23.15.

Description of respondents: Individuals and households; business or other for-profit; not-for-profit institutions; State, local or Tribal government; Federal Government.

Number of respondents: *1,000 (correction re-estimate +600).

Estimated completion time: 40 minutes.

Total annual burden: *666 hours (correction re-estimate +399 hours).

6. Title: Export of Live Animals (except raptors) Captive Born in the United States under CITES.

Service form number: 3–200–24.

Description and use: To evaluate whether a CITES export permit or captive-bred certificate can be issued to export U.S. born or hatched specimens from the United States.

Description of respondents: Individual and households; business or other for-profit; not-for-profit institutions; state, local or tribal

government; federal government, and addresses specific requirements in 50 CFR 23.11, 23.12, and 23.15.

Number of respondents: *2,000 (correction re-estimate +1,200).

Estimated completion time: 40 minutes.

Total annual burden: *1,333 hours (correction re-estimate +800).

7. Title: Export of Raptors.

Service form number: 3–200–25.

Description and use: To evaluate whether a CITES and Migratory Bird Treaty Act export permit can be issued to export raptors from the United States, and addresses specific requirements in 50 CFR 21.21, 21.30, 23.11, 23.12 and 23.15.

Description of respondents: Individuals and households; not-for-profit institution.

Number of respondents: *100 (correction re-estimate +20).

Estimated completion time: 2 hours.

Total annual burden: *200 hours (correction re-estimate +40 hours).

8. Title: Export/Re-export/Pre-Convention Animals Under CITES.

Service form number: 3–200–27.

Description and use: To evaluate whether a CITES export permit or re-export certificate can be issued to export specimens of CITES listed species (except for raptors) from the United States. This form was developed for applicants exporting pets that require CITES permits or for those applicants who are not sure what type of CITES permit they should apply for.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; State, local or tribal government; federal government, and addresses specific requirements in 50 CFR 23.11, 23.12, and 23.15.

Number of Respondents: *1,500 (correction re-estimate +700).

Estimate completion time: .666 hours (40 minutes).

Total annual burden: *1,000 hours (correction re-estimate +467 hours).

9. Export/Re-export of Trophies by Taxidermists Under CITES.

Service form number: 3–200–28.

Description and use: To evaluate whether a CITES export permit or re-export certificate can be issued to allow the export or re-export of specimens of CITES listed species. CITES regulates trade in many species whether wild caught or captive born through a systems of permits and certificates. International shipments of CITES listed specimens must be accompanied by CITES documentation. Prior to the export of these specimens, the exporting country must determine that export will not be detrimental to the survival of the species, that live animals be shipped humanely, and whether the specimens were acquired lawfully. Since the last OMB approval, a new application form was created from the existing CITES export application specifically for use by taxidermists. The scope of the questions was narrowed and the application was reformatted. The implementing regulations authorizing this collection of information is found in 50 CFR 23.11, 23.12, and 23.15.

Description of respondents: Business or other for-profit; individuals with taxidermy as a hobby.

Number of respondents: *300 (correction re-estimate +150).

Estimated completion time: .5 hours (30 minutes).

Total annual burden: *150 hours (correction re-estimate +75 hours).

10. Title: Export/Re-export of Samples Collected from CITES and/or ESA-listed Wildlife.

Service form number: 3–200–29.

Description and use: To evaluate whether a CITES export permit or re-export certificate can be issued to export tissue samples from specimens of CITES listed species from the United States, and addresses specific requirements in 50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, 23.13, and 23.15.

Description of respondents: Business or other for-profit; not-for-profit institutions.

Number of respondents: *300 (correction re-estimate +220).

Estimated completion time: 1 hour.

Total annual burden: *300 hours (correction re-estimate +220 hours).

11. Title: Circuses and Traveling Animal Exhibitions.

Service form number: 3–200–30.

Description and use: To evaluate whether a CITES pre-Convention certificate, export permit or captive-bred certificate and/or and ESA export/re-import can be issued for a circus or live animal act to export CITES or ESA listed species as part of a traveling animal exhibition, and addresses specific requirements in 50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, and 23.15.

Description of respondents: Business or other for-profit.

Number of respondents: *120 (correction re-estimate +20).

Estimated completion time: 1 hour.

Total annual burden: *120 hours (correction re-estimate +20 hours).

12. Title: Import of Appendix-I Animals Under CITES.

Service form number: 3–200–31.

Description and use: To evaluate whether a CITES import permit can be issued to allow the import of a specimen of an Appendix I CITES listed species for noncommercial purposes, and addresses requirements found in regulations at 50 CFR 23.11, 23.12 and 23.15.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; State, local or Tribal government; federal government.

Number of respondents: 40.

Estimated completion time: 1 hour.

Total annual burden: 40 hours.

13. Title: Export/Re-export/Pre-Convention Plants under CITES.

Service form number: 3–200–32.

Description and use: To evaluate whether a CITES export permit or re-export certificate can be issued to allow the export of a specimen of a CITES listed plant species from the United States. This application form was developed for export of plants that do not qualify as artificially propagated or for use by applicants who are unsure of which type of CITES plant export permit they should apply for, and addresses specific requirements in 50 CFR 23.11, 23.12, 23.13, and 23.15.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government; federal government.

Number of respondents: 40.

Estimated completion time: 1 hour.

Total annual burden: 40 hours.

14. Title: Certificate for Artificially Propagated Plants and/or ESA Cultivated Plants.

Service form number: 3–200–33.

Description and use: To evaluate whether a CITES certificate of artificially propagation can be issued to allow the export, import, or interstate (non-native ESA plants only) commerce of specimens of CITES listed plant species from the United States whose trade is regulated by ESA and/or CITES, and addresses specific requirements in 50 CFR 17.61, 17.62, 17.71, 17.72, 23.11, 23.12, 23.13, and 23.15.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government; federal government.

Number of respondents: 48.

Estimated completion time: 2 hours.

Total annual burden: 96 hours.

15. Title: Export of American Ginseng under CITES.

Service form number: 3–200–34.

Description and use: To evaluate whether a CITES export permit can be issued to export either cultivated or wild ginseng from the United States, and addresses requirements found in

regulations in 50 CFR 23.11, 23.12, 23.13, and 23.15.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; farms; state, local, or tribal government; federal government.

Number of respondents: 80.

Estimated completion time: .333 hours (20 minutes).

Total annual burden: 26 hours.

16. Title: Import of Appendix–I Plants Under CITES.

Service form number: 3–200–35.

Description and use: To evaluate whether a CITES import permit can be issued to allow the import specimens of CITES Appendix I plant species for non-commercial purposes, and addresses specific requirements in 50 CFR 23.11, 23.12, 23.13 and 23.15.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local, or tribal government; federal government.

Number of respondents: 2.

Estimated completion time: 1 hour.

Total annual burden: 2 hours.

17. Title: Export, Import, Foreign Commerce of Plants under ESA or ESA/CITES or Interstate Commerce of Non-native ESA Plants.

Service form number: 3–200–36.

Description and use: To evaluate whether a permit can be issued to allow export, import, foreign commerce or interstate commerce (non-native ESA species only) of ESA/CITES-protected plant species, and addresses specific requirements in regulations in 50 CFR 17.61, 17.62, 17.71, 17.72, 23.11, 23.12, and 23.15.

Description of respondents: Individuals or households; farms; business or other for-profit; not-for-profit institutions; state, local or tribal government; federal government.

Number of respondents: 2.

Estimated completion time: 1 hour.

Total annual burden: 2 hours.

18. Title: Export, Import, or Foreign Commerce of Animals under ESA or ESA/CITES or Interstate Commerce of Non-native ESA Animals.

Service form number: 3–200–37.

Description and use: To evaluate whether a permit can be issued to import or export an ESA or ESA/CITES species for interstate commerce of a non-native ESA protected species. This application can be used for both live and dead specimens, and addresses specific requirements in 50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12 and 23.15.

Description of respondents: Individuals or households; farms; business or other for-profit; not-for-profit institutions; state, local, or tribal government; federal government.

Number of respondents: 60.

Estimated completion time: 2 hours.

Total annual burden: 120 hours.

19. Title: Import of Samples Collected from CITES Appendix-I and/or ESA-listed Wildlife.

Service form number: 3–200–38.

Description and use: To evaluate whether a permit can be issued to import tissue samples of ESA or ESA and CITES Appendix I species, and addresses requirements found in 50 CFR 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, and 23.15.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government; federal government.

Number of respondents: 30.

Estimated completion time: 1 hour.

Total annual burden: 30 hours.

20. Title: Certificates of Scientific Exchange under CITES.

Service form number: 3–200–39.

Description and use: To evaluate whether a CITES certificate of scientific exchange can be issued to an institution in order to exchange, on a non-commercial loan, CITES specimens that are accessioned/catalogued in scientific institutions that are registered with the CITES Secretariat. Issuance of this certificate includes registration with the CITES Secretariat, and addresses requirements found in 50 CFR 23.11, 23.13(g) and 23.15.

Description of respondents: Business or other for-profit; not-for-profit institution.

Number of respondents: 30.

Estimated completion time: 1 hour.

Total annual burden: 30 hours.

21. Title: Export and Re-import of museum Specimens under the ESA.

Service form number: 3–200–40.

Description and use: To evaluate whether an ESA permit can be issued to export and re-import nonliving museum specimens for the purpose of enhancing the survival of the species, and addresses requirements found in 50 CFR 17.21, 17.22, 17.31, 17.32, 17.61, 17.62, 17.71 and 17.72.

Description of respondents: Business or other for-profit; not-for-profit institutions.

Number of respondents: 10.

Estimated completion time: 1 hour.

Total annual burden: 10 hours.

22. Title: Captive-bred Wildlife Registration.

Service form number: 3–200–41.

Description and use: To evaluate whether a facility can become registered to engage in take, export, re-import and interstate commerce of non-native species protected by the ESA for the enhancement of the species through captive-breeding, and addresses requirements found in 50 CFR 17.21(g) and 17.31.

Note: There is an annual reporting requirement associated with this registration. The annual report is filed on Service form number: 3–200–41a.

Estimated completion time(s): 3 hours (3–200–41) 2 hours (3–200–41a).

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local, or tribal government; federal government.

Number of respondents: 70 (3–200–41); 70 (3–200–41a).

Estimated completion time: 3 hours (3–200–41) 2 hours (3–200–41a).

Total annual burden: 500 hours (including 200 hours record keeping requirements for the annual report).

23. Title: Import/Transport of Injurious Wildlife.

Service form number: 3–200–42.

Description and use: To evaluate whether a permit can be issued to import and/or transport an injurious wildlife species for zoological, educational, medical or scientific purposes as regulated by the Lacey Act, and addresses requirements found in 50 CFR 16.22.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local, or tribal government; federal government.

Number of respondents: 20.

Estimated completion time: 2 hours.

Total annual burden: 40 hours.

24. Title: Take/Import/Transport of Marine Mammals.

Service form number: 3–200–43.

Description and use: To evaluate whether a permit can be issued to take, import and/or transport a marine mammal species protected by the MMPA and under the jurisdiction of the Service, and addresses regulations in 50 CFR 18.11, 18.12, 18.31, 17.21, 17.22, 17.31, 17.32, 23.11, 23.12, 23.13, and 23.15.

Note: This permit requires the permittee to file an annual report. No specific form is required for the annual report, and the information that must be submitted is outlined on the permit itself.

Description of respondents: Individuals and households; business or other for-profit; not-for-profit institutions; state, local, or tribal government; federal government.

Number of respondents: *20 (correction re-estimate −10).

Estimated completion time: 2 hours (permit application only), 1 hour (reporting requirement)

Total annual burden: *80 hours (including 20 hours record keeping and reporting requirements).

25. Title: Registration of an Agent or Tannery.

Service form number: 3–200–44 and 3–200–44a.

Description and use: To evaluate whether a person or business can become registered as an agency or tannery under the MMPA to act as an agent to possess and process marine mammal products for Indians, Aleuts, or Eskimos, and addresses requirements found in 50 CFR 18.11, 18.12 and 18.23(d).

Note: There is an annual reporting requirement for this permit that requires an average of 1 hour to complete. The annual report is filed on Service form number 3–200–44a.

Description of respondents: Individuals and households; business or other for-profit.

Number of respondents: 10.

Estimated completion time: .5 hours (permit application only) 1 hour (reporting requirement).

Total annual burden: 150 hours (including 100 hours for an annual report).

26. Title: Import of Sport-hunted Trophies of Polar Bear.

Service form number(s): 3–200–45.

Description and use: To evaluate whether a person can be issued a permit to import a sport-hunted polar bear trophy taken in Canada for personal use, and addresses requirements in 50 CFR 18.11, 18.12 and 18.30.

Number of respondents: *150 (correction re-estimate +50).

Estimated completion time: .5 hours (30 minutes).

Total annual burden: *75 hours (correction re-estimate +25 hours).

27. Title: Import of Pet Birds.

Service form number: 3–200–46.

OMB Approval Number: 1018–0084.

Description and use: To evaluate whether an import permit can be issued to a person to import pet bird(s) under the Wild Bird Conservation Act (WBCA), and addresses requirements in 50 CFR 15.11, 15.12, 15.21 and 15.25.

Description of respondents: Individuals or households.

Number of respondents: 500.

Estimated completion time: 30 minutes.

Total annual burden: 250 hours.

28. Title: Import of Birds for Scientific Research or Zoological Breeding Display.

Service form number: 3–200–47.

OMB Approval Number: 1018–0084.

Description and use: To evaluate whether an import permit can be issued to allow the import of birds under the WBCA approved cooperative breeding programs. The applicant must first have a cooperative breeding program approved (using form 3–200–49 as described below) prior to applying for this permit, and addresses requirements found in 50 CFR 15.11, 15.12, 15.21 and 15.25.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local, or tribal government; federal government.

Number of respondents: 100.

Estimated completion time: 2 hours.

Total annual burden: 200 hours.

29. Title: Import of Birds under an Approved Cooperative Breeding Program.

Service form number: 3–200–48.

OMB Approval Number: 1018–0084.

Description and use: To evaluate whether an import permit can be issued to allow import of birds under a WBCA approved cooperative breeding program. The applicant must first have a cooperative breeding program approved (using form 3–200.49 as described below) prior to application, and addresses requirements found in 50 CFR 15.11, 15.12, 15.21 and 15.24.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions.

Number of respondents: 100.

Estimated completion time: 1 hour.

Total annual burden: 100 hours.

30. Title: Approval under a Cooperative Breeding Program.

Service form number: 3–200–49.

OMB Approval number: 1018–0084.

Description and use: To evaluate whether a cooperative breeding program can be approved for the import of birds as regulated by the WBCA, and addresses requirements found in 50 CFR 15.11, 15.12, 15.21 and 15.26.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local, or tribal government; federal government.

Number of respondents: 100.

Estimated completion time: 3 hours.

Total annual burden: 300 hours.

31. Title: Approval of Scientifically-based Sustainable Use Management Plans.

Service form number: 3–200–50.

OMB approval number: 1018–0084.

Description and use: The WBCA prohibits the importation of exotic birds that are listed pursuant to the CITES, unless these importations qualify for one of the permitted exemptions under the WBCA or, the species to be imported are on an approved list pursuant to the WBCA. The information collection requirements necessary for the public to apply for importations of exotic birds under the permitted exemptions of the WBCA are contained in the current approval. Since the issuance of the current approval, the Fish and Wildlife Service has issued additional regulations, required under the statute, that establish the criteria for the development an approved list of wild-caught exotic birds for which importation is not prohibited by the WBCA.

The approved list of wild-caught exotic bird species will be developed based on information received by the Service from countries that are instituting scientifically based sustainable use management plans for certain exotic bird species within their borders in accordance with the requirements contained in 50 CFR 1532. Only foreign governments can apply for this exemption. The data collected will establish whether or not the Service can include a given species of exotic birds from a particular country in the approved list of non-captive-bred exotic bird species.

Number of respondents: 630.

Estimated completion time: 2 hours.

Total annual burden: 1,300 (Includes 1,260 for all respondents plus 40 hours for the annual report requirements for foreign breeding facility applicants only, as further described below).

32. Title: Approval of Foreign Breeding Facilities.

Service form number: 3–200–51.

OMB approval Number: 1018–0084.

Description and use: To evaluate whether to allow importation of exotic birds that are otherwise prohibited by the WBCA, and addresses specific requirements in 50 CFR 15.11, 15.12, 15.21 and 15.41. The information collection requirements necessary for the public to apply for importations of exotic birds under the permitted exemptions of the WBCA are covered under the current OMB approval (1018–0084). However, the Service anticipates the issuance of additional regulations, required under the statute, to establish the criteria for the development of an approved list of foreign breeding facilities from which the importation of certain exotic birds species is not prohibited by the WBCA.

Upon publication in the **Federal Register** of the requirements contained in 50 CFR 15.41 and 15.42, the approved list of foreign breeding facilities for certain exotic bird species will be developed based on information received by the Service from foreign breeding facilities that are breeding certain exotic bird species in accordance with the requirements contained in 50 CFR 15.41 and 15.42. This collection of information will establish whether or not the Service can include certain exotic bird species from a particular foreign breeding facility in the approved list of such facilities for certain exotic bird species.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local, or tribal government; federal and foreign governments.

Number of respondents: 600.

Estimated completion time: 2 hours.

Total annual burden: 1,300 hours (includes 1,260 hours plus 40 hours for the annual reporting requirements for foreign breeding facility applicants).

33. Title: Reissuance of CITES Permit/Certificate of Renewal of Fish and Wildlife Permits or Registrations.

Service form number: 3–200–52.

Description and use: Necessary for applicants to apply for reissuance or renewal of previously issued permits, certificates or registrations.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local, or tribal government; federal government.

Number of respondents: 200.

Estimated completion time: .25 hours (15 minutes).

Total annual burden: 50 hours.

34. Title: Export or Re-export of Marine Mammals under CITES.

Service form number: 3–200–53.

Description and use: To evaluate whether a CITES export permit or re-export certificate can be issued to allow the export or re-export of marine mammals protected under the MMPA, and addresses the specific requirements in 50 CFR 13.21 and 13.22.

Description of respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government; federal government.

Number of respondents: 400.

Estimated completion time: .25 hours (15 minutes).

Total annual burden: 100 hours.

Total number of respondents—management authority: 9,832.

Total number of burden hours requested: 9,030.5.

Dated: September 30, 1997.

Marshall P. Jones, Jr.,

Assistant Director—International Affairs.

[FR Doc. 97–26816 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections Submitted to the Office of Management and Budget (OMB) for Reinstatement Approval

ACTION: Notice.

SUMMARY: The collection of information listed below is submitted to the OMB for reinstatement under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance officer at the address and/or phone number listed below.

DATES: Comments must be submitted on or before November 10, 1997.

ADDRESSES: Comments and suggestions on specific requirements should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Interior Department (1018–0022), Washington, D.C. 20503, and a copy to the Service Information Collection Clearance Officer, US Fish and Wildlife Service, MS 224–ARLSQ; 1849 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION: The Service submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35). Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of a burden, including whether the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The information collection requirements in this submission implement the following regulatory requirements: the Lacey Act (18 U.S.C. 42) Lacey Act Amendments of 1981 (16 U.S.C. 3371–3378), Migratory Bird Treaty Act (16 U.S.C. 703–712) Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the Tariff Classification Act of 1962 (19 U.S.C. 1202), Fish and Wildlife Act of 1972 (16 U.S.C. 742a–742j–l), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1384, 1401–1407).

Previously, all permit requirements were contained in one submission and they were assigned OMB Approval Number 1018–0022, the Federal Fish and Wildlife License/Permit Application and Related Reports, Service form number 3–200. In an attempt to make the comment and application process more "user friendly," the Service has redesigned the standard license/permit form 3–200, and similar types of permits have been grouped together and numbered. The application to apply for Service permits issued under subchapter B of Title 50 of the Code of Federal Regulations (CFR), will still require completion of the standard 3–200 form. In addition to the permit application, attachments are often necessary to provide additional information required for each specific type of permit and have been assigned numbers, e.g., 3–200–2.

The information on the application form will be used by the Service to review permit applications and allow the Service to make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation or denial of permits. The frequency of response for the following types of permit applications/licenses is on occasion, and all have been currently assigned OMB Approval Number 1018–0022, unless otherwise noted.

A notice was published in the **Federal Register** on June 3, 1997 (62 FR 30333) soliciting public comment on the information collection requirements prior to submission to OMB. One comment was received and that commenter recommended that the hourly burden estimated contained in the **Federal Register** notice cited above was too low, considering the time required for applicants to respond to requests for additional information from the Service. The Service has considered this comment and agrees with the commenter's assessment. The Service

has increased the hourly burden estimates accordingly.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB approval number and the agency informs the potential persons who are to respond to such collections that they are not required to respond to the collection of information unless it displays a currently valid OMB approval number. The following requirements are included in this submission:

1. Title: Federal Fish and Wildlife Permit Application.

Service form number: 3–200–1.

Description and use: The application will be used by any person intending to engage in an activity for which a permit is required by subchapter B of 50 CFR. Persons desiring permit privileges authorized by subchapter B must complete an application for such a permit as required by 50 CFR 13, as well as other regulations which may require additional information for the specific permit desired.

Description of respondents: Individuals and households; business or other for-profit; not-for-profit institutions; farms; state, local, tribal government; and federal government.

Number of respondents: 27,109.

Estimated completion time: 10 minutes (.166 hours).

Total annual burden: 4,337 hours.

2. Title: Designated Port Exception Permits (requirements in 50 CFR 14.31–14.33).

Service form number: 3–200–2.

Description and use: The Endangered Species Act of 1973 (ESA), as amended, requires that fish or wildlife be imported into or exported from the United States only at a designated port or at a nondesignated port under certain limited circumstances. To date, thirteen (13) customs ports of entry are designed for the import and export of wildlife and wildlife products. Exceptions to the designated port requirement are permitted by the Secretary of the Interior under specific terms and conditions. Permits are available to import or export wildlife at nondesignated ports for any one of the three reasons: (1) Scientific purposes; (2) to minimize deterioration or loss; and (3) to alleviate undue economic hardship.

Description of respondents: Individuals or households; business or other for-profit; and not-for-profit institutions.

Number of respondents: 524.

Estimated completion time: 1 hour.

Total annual burden: 524.

3. Title: Import/Export License (requirements in 50 CFR 14.91–14.93).

Service form number: 3–200–3.

Description and use: This license will allow any person to engage in business as an importer or exporter of fish or wildlife under the Endangered Species Act, unless that person imports or exports certain excepted wildlife or falls within one of the categories of persons accepted from the requirement by the rules in 50 CFR 14.91–14.93. Currently, licensees must (1) pay $50 for a license plus import/export inspection fees; (2) keep certain specified records and retain them for five years; (3) allow the Service to inspect these records and any inventories of imported wildlife; and, (4) file any requested reports.

Description of respondents: Business or other for-profit; not for-profit institutions; and individuals and households, or any other entities conducting "commercial" imports or exports of fish or wildlife.

Number of respondents: 7,000.

Estimated completion time: 1 hour.

Total annual burden: 7,000.

4. Title: Federal Fish and Wildlife Permit Application for Export or Re-export Permits (requirements in 50 CFR 23.12 and 23.15).

Service form number: 3–200–26.

Description and use: This permit will allow the re-export of specimens of Appendix II and II species regulated by the Convention on International Trade in Endangered species (CITES), and the export of specimens of American alligator (*Alligator mississippiensis*); Alaskan brown bear (*Ursus arctos*); Alaskan gray wolf (*Canis lupus,*); Bobcat (*Lynx rufus*); Lynx (*Lynx canadensis*); and River otter (*Lutra canadensis*) which are species also CITES regulated.

Description of respondents: Individuals or households; businesses or other for-profit; and not-for-profit institutions.

Number of respondents: 2,360.

Estimated completion time: 1 hour.

Total annual burden: 2,360 hours.

Dated: September 29, 1997.

Tom Striegler,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 97–26817 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Management Plan and Associated Environmental Document

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Management Plan (CMP) and an environmental document (environmental assessment or environmental impact statement) for Nisqually National Wildlife Refuge, Thurston and Pierce Counties, Washington. The Service is furnishing this notice in compliance with Service CMP policy and the National Environmental Policy Act (NEPA) and implementing regulations: (1) To advise other agencies and the public of our intentions, (2) to obtain suggestions and information on the scope of issues to include in the environmental document, and (3) to announce a public open house to occur near the end of October. Information about the time and location of the open house will be published in local media or is available by contacting the refuge.

DATES: Written comments should be received on or before November 10, 1997.

ADDRESSES: Address comments and requests for more information to: Refuge Manager, Nisqually National Wildlife Refuge, 100 Brown Farm Road, Olympia, Washington, 98516 (360/753–9467).

FOR FURTHER INFORMATION CONTACT: Bill Hesselbart at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Service started the comprehensive management planning process for Nisqually National Wildlife Refuge (Nisqually NWR) IN 1996. Several meetings were held with a variety of public and private interest groups, including a preliminary public scoping meeting in July 1996. Two planning updates soliciting additional comments were mailed on August 20, 1996, and November 10, 1996, to more than 200 addresses. Comments received are being used to develop goals, key issues, and habitat management strategies to be presented at a public scoping meeting in the fall of 1997. Additional opportunities for public participation will occur throughout the process, which is expected to be completed in late 1998, or early 1999. Data collection has been initiated to create computerized mapping, including vegetation, topography, habitat types and existing land uses. Data collection and mapping will continue through 1997.

It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CMP. The CMP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The CMP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The Nisqually NWR was established in 1974, "* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds" (16 U.S.C. 715d). A CMP is needed to update the 1978 Nisqually NWR Conceptual Plan and facilitate potential changes in habitat management and associated public uses, with full public participation. Until the CMP is completed, Refuge management will be guided by official Refuge purposes; Federal legislation regarding management of national wildlife refuges; the Nisqually NWR Conceptual Plan and other legal, regulatory and policy guidance. The major issues to be addressed in the CMP include habitat protection and enhancement, boundary expansion and completion of the Refuge, riparian and tidal restoration, control of invasive and exotic vegetation, future flooding, compatibility of secondary uses, jurisdiction over navigable waters within the Refuge, public access and accessibility, and hunting and fishing. The plan will include the following topics:

(a) Habitat management, including management of forest, freshwater, estuarine, tidal and riparian areas, water courses, wetlands, old farm fields, and meadows;

(b) Wildlife population management, including federally-listed endangered and threatened species, migratory birds, and native mammals and fish;

(c) Public use management, including hunting, fishing, wildlife observation and photography, environmental education and interpretation, hiking, biking;

(d) Cultural resource identification and protection; and

(e) Expansion of partnerships, community outreach and volunteers.

Alternatives (and their effects) that address the issues and management strategies associated with these topics will be included in the environmental document. With the publication of this notice, the public is encouraged to send written comments on these and other issues, courses of action that the Service should consider, and potential impacts that could result from CMP implementation on Nisqually NWR. Comments already received are on record and need not be resubmitted.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, and Service policies and procedures for compliance with those regulations. We estimate that the draft environmental document will be available by Fall 1998.

Dated: September 25, 1997.

Thomas J. Dwyer,

Acting, Regional Director, Region I, Portland Oregon.

[FR Doc. 97–26809 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Ruffe Control Committee Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force. The purposes of the upcoming meeting are to: (1) Review current information on ruffe populations; (2) review progress on implementation of the eight components of the Ruffe Control Program; and (3) review the status of the Ruffe Control Program and the Committee. Products of the meeting will be: (1) material for a report to the Aquatic Nuisance Species Task Force on 1997 activities; and (2) recommendations from the Committee to the Task Force regarding the future of the Ruffe Control Program and the Committee. An optional field trip is planned to trawl for ruffe in Duluth–Superior Harbor.

DATES: The Ruffe Control Committee will meet from 1:00 p.m. to 5:00 p.m. on Wednesday, October 29, 1997, and 8:00 a.m. to 12 Noon on Thursday, October 30, 1997. The optional field trip will begin at 9:00 a.m., Wednesday, October 29, 1997.

ADDRESSES: The meeting will be held at the Days Inn, 110 East Second Street, Superior, Wisconsin. The optional field trip will leave from the Days Inn.

FOR FURTHER INFORMATION CONTACT: Tom Busiahn, Chair, Ruffe Control Committee, at 715–682–6185, or Bob Peoples, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741). Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 840, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and the Chair, Ruffe Control Committee, U.S. Fish and Wildlife Service, Fishery Resources Office, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806, and will be available for public inspection during regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: October 3, 1997.

Gary Edwards,

Co-Chair, Aquatic Nuisance, Species Task Force Assistant Director—Fisheries.

[FR Doc. 97–26795 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1990–01]

Final Environmental Impact Statement, Florida Canyon Mine Proposed Expansion and Comprehensive Reclamation Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement addressing the Florida Canyon Mine Proposed Expansion and Comprehensive Reclamation Plan, and the initiation of a 30-day review period

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca Field Office of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Final Environmental Impact Statement on Florida Canyon Mining Incorporated's Florida Canyon Mine Expansion and Comprehensive Reclamation Plan. The mine is located on public and private lands in Pershing County, Nevada, approximately 35 miles northeast of Lovelock and 38 miles southwest of Winnemucca. This document will become available to the public for a 30-day review period before issuance of a Record of Decision.

DATES AND ADDRESSES: The Final Environmental Impact Statement (FEIS)

will be distributed and made available to the public on 10 October 1997. Comments on the FEIS must be received by the close of business 10 November 1997. On or after that date a Record of Decision will be issued regarding the Proposed Action

A copy of the FEIS can be obtained from: Bureau of Land Management, Winnemucca Field Office, ATTN: Ken Loda, Project NEPA Coordinator, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445. Those who did not receive the Draft Environmental Impact Statement (DEIS) should request that document as well.

The FEIS and DEIS are also available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada; Humboldt County Library, Winnemucca, Nevada; Pershing County Library, Lovelock, Nevada; Lander County Library, Battle Mountain, Nevada; and the University of Nevada Library in Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Ken Loda, Project NEPA Coordinator at the above Winnemucca Field Office address, by telephone at (702) 623–1500, or by email at kloda@nv.blm.gov.

SUPPLEMENTARY INFORMATION: The FEIS was prepared in abbreviated form, and with the DEIS (issued on 20 June 1997) they represent the complete Environmental Impact Statement. The FEIS responds to comments received on the DEIS. Together the documents analyze the potential direct, indirect and cumulative environmental impacts that could result from the expansion of the open pit and north and south waste rock storage areas; development of the new south heap leach pad; haul road; solution ponds; solution corridor/road; plant; monitoring wells/road; crusher site; diversion channels and sediment ponds; growth media stockpiles; exploration roads and drill sites; waste supply pipelines; realignment of the Johnson Canyon access road; and a revised comprehensive reclamation plan for the mine. Approximately 860 acres would be disturbed by the proposed mine expansion, of which 447 are public and 413 private. Approval of the proposed project would extend the life of the mine five years. Alternatives analyzed are the north extension of the heap leach pad alternative and the no action alternative.

Dated: September 26, 1997.

Ron Wenker,

District Manager.

[FR Doc. 97–26719 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–01; AA–8917]

Public Land Order No. 7286; Partial Revocation of Public Land Order No. 664; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order insofar as it affects approximately 148 acres of public land on Sitkinak Island, which was withdrawn in aid of contemplated legislation. The land is no longer needed for the purpose for which it was withdrawn. The land will continue to be withdrawn as part of the Alaska Maritime National Wildlife Refuge, as established and designated by the Alaska National Interest Lands Conservation Act.

EFFECTIVE DATE: October 9, 1997.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 664, which withdrew public land on Sitkinak Island in aid of contemplated legislation, is hereby revoked insofar as it affects the following described land:

Seward Meridian

T. 42 S., R. 30 W., Tract B.
T. 41 S., R. 31 W.,

Tract B, excluding the northernmost portion described as follows:

Beginning at the true point for corner No. 1, Tract B, which is a meander corner on the westerly shore of Sitkinak Strait, and the true point of beginning;

Thence S. 32°12′ W., 1.73 chs. to W.C.M.C. No. 1, a concrete-filled iron post with a brass cap established at latitude 56°35′20.69″ N., longitude 154°04′27.53″ W.;

Thence continuing S. 32°12′ W., 26.21 chs. to W.C.M.C. No. 2, a concrete-filled iron post with a brass cap established at latitude 56°35′06.27″ N., longitude 154°04′44.00″ W.;

Thence continuing S. 32°12′ W., 5.27 chs. to corner No. 2, Tract B, which is a meander corner on the northerly shore of Sitkinak Lagoon;

Thence northeasterly and southeasterly with the meanders of the mean-high tide line of the shore of Sitkinak Lagoon, approximately 12.94 chs. to a point;

Thence N. 56°24′57″ E., approximately 12.54 chs. to a point on the mean-high tide line of the westerly shore of Sitkinak Strait;

Thence northwesterly with the meanders of the line of mean-high tide of the westerly shore of Sitkinak Strait, approximately 20 chs. to the true point of beginning.

T. 42 S., R. 31 W., Tract C.

The area described, less the excluded portion, contains approximately 148 acres.

2. The land described above will remain withdrawn as part of the Alaska Maritime National Wildlife Refuge, pursuant to Sections 303(1)(iv) and 304(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 668(dd) (1994); and will be subject to the terms and conditions of any other withdrawal or segregation of record.

Dated: September 26, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–26818 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–01; CACA 8026, CAS 051740, and CAS 2816]

Public Land Order No. 7289; Revocation of Executive Order No. 6544 and Public Land Orders No. 2618 and 4845; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes Executive Order No. 6544 and Public Land Order No. 2618, and revokes Public Land Order No. 4845, in its entirety, insofar as they affect 240 acres of lands withdrawn for the Forest Service's Gazelle Mountain fire lookout and the Bureau of Land Management's Copco Lake Access Area. The lands are no longer needed for the purposes for which they were withdrawn, and the revocations are necessary to facilitate a pending land exchange. The lands are temporarily closed to surface entry and mining because of the pending land exchange. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: October 9, 1997.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825; 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Executive Order No. 6544 (CACA 8026), which withdrew public land for the Forest Service's Gazelle Mountain fire lookout site, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 41 N., R. 7 W.,
Sec. 8, NE¼SE¼.

The area described contains 40 acres in Siskiyou County.

2. Public Land Order No. 2618 (CAS 051740), and Public Land Order No. 4845 (CAS 2816), which withdrew public land for the Bureau of Land Management's Copco Lake Access Area, are hereby revoked insofar as they affect the following described land:

Mount Diablo Meridian

T. 48 N., R. 4 W.,
Sec. 34, SW¼NE¼, SE¼NW¼, SE¼SE¼, and W½SE¼.

The area described contains 200 acres in Siskiyou County.

3. The above described lands are hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1994).

Dated: September 26, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–26814 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–28248]

Public Land Order No. 7290; Revocation of Secretarial Order dated May 12, 1904; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order that withdrew 160 acres of public land for the Bureau of Reclamation's Kremmling Reservoir, Colorado River Storage Project. The land is no longer needed for reclamation purposes, and the revocation is needed to allow for disposal by exchange. The land is temporarily closed to surface entry and mining due to a pending exchange proposal. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated May 12, 1904, which withdrew public land for the Bureau of Reclamation's Kremmling Reservoir, Colorado River Storage Project, is hereby revoked in its entirety:

Sixth Principal Meridian

T. 1 S., R. 80 W.,
Sec. 5, SE¼SW¼;
Sec. 6, SW¼NE¼ and N½SE¼.

The area described contains 160 acres in Grand County.

2. At 9 a.m. on November 10, 1997, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on November 10, 1997, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on November 10, 1997, the land will be opened to location and entry under the United States mining laws subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: September 26, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–26811 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935–1430–01; COC–28607, COC–28644]

Public Land Order No. 7288; Partial Revocation of an Executive Order and a Secretarial Order; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive order and a Secretarial order insofar as they affect 3,815.40 acres of National Forest System lands withdrawn for waterpower purposes. These lands no longer have waterpower value. The withdrawals will be revoked and the lands opened to such forms of disposition as may by law be made of National Forest System lands to allow for an exchange. The lands have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and these provisions are no longer required. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated March 21, 1914, which established Power Site Reserve No. 427, and the Secretarial Order dated July 1, 1944, which established Power Site Classification No. 362, are hereby revoked insofar as they affect the following described National Forest System lands:

Sixth Principal Meridian

Arapaho National Forest

T. 2 N., R. 71 W.,
Sec. 4, lots 3 and 4, and S½NW¼;
Sec. 5, lots 1 to 4, inclusive, and S½N½.
T. 3 N., R. 71 W.,
Sec. 19, lots 9 to 13, inclusive;
Sec. 20, NW¼SW¼ and N½SE¼;
Sec. 21, SE¼NE¼, S½NW¼, and NW¼SW¼;
Sec. 28, S½SE¼;
Sec. 31, lots 11 and 12;
Sec. 32, lots 8, 9, and 12 to 15, inclusive;
Sec. 33, lots 3 to 6, inclusive, and 11 to 14, inclusive.
T. 2 N., R. 72 W.,
Sec. 2, SE¼, E½SW¼, and SW¼SW¼;
Sec. 5, SW¼NW¼;
Sec. 7, lots 11 and 14;
Sec. 10, lots 1, 4, 5, and 7 to 16, inclusive;

Sec. 11, N½ and N½SW¼;
Sec. 12, NW¼NW¼;
Sec. 15, N½NE¼, SW¼NE¼, NW¼NW¼, and E½W½.
T. 3 N., R. 72 W.,
Sec. 15, lots 13 and 14;
Sec. 21, lots 8 and 9;
Sec. 24, lots 2, 4, and 8.
T. 3 N., R. 73 W.,
Sec. 12, SW¼SE¼;
Sec. 13, W½NE¼, E½NW¼, and NE¼SW¼.

The areas described aggregate 3,815.40 acres in Boulder County.

2. At 9 a.m. on October 24, 1997, the lands described above shall be open to such forms of disposition as may by law be made of National Forest System lands subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

The lands have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994), and these provisions are no longer required.

Dated: September 26, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–26815 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; NEW 135267]

Public Land Order No. 7287; Withdrawal of Public Lands for Addition to the Crescent Lake National Wildlife Refuge; Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 145.87 acres of public lands from surface entry and mining for a period of 50 years for the Fish and Wildlife Service as an addition to the Crescent Lake National Wildlife Refuge. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: October 9, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, for the Fish and Wildlife Service to preserve the integrity of the wetlands and surrounding uplands and offer a sanctuary to wildlife at the Crescent Lake National Wildlife Refuge:

Sixth Principal Meridian, Nebraska

T. 22 N., R. 47 W.,
Sec. 1, lots 10 to 13, inclusive, and lot 16;
Sec. 12, lot 1.

The areas described aggregate 145.87 acres in Morrill County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: September 26, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–26827 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–942–5700–00]

Filing of Plats of Survey; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825–0451, (916) 978–4310.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 16 N., R. 10 E.—Supplemental plat of the SE ¼ of section 22, accepted September 18, 1997, to meet certain administrative needs of the US Forest Service, Tahoe National Forest.
T. 18 N., R. 10 E.—Supplemental plat of section 33 and the W ½ of section 34, accepted September 22, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: October 2, 1997.

Lance J. Bishop,

Chief, Branch of Cadastral Survey.

[FR Doc. 97–26805 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–97–1420–00]

Colorado: Filing of Plats of Survey

September 30, 1997.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., September 30, 1997. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat representing the dependent resurvey of portions of the south boundary (Second Stan. Par. South) and the east boundary, T. 10 S., R. 75 W., Sixth Principal Meridian, Group 1150, Colorado, was accepted September 16, 1997.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, T. 11 S., R. 75 W., Sixth Principal Meridian, Group 1150, Colorado, was accepted September 16, 1997.

These surveys were requested by the State of Colorado, Department of Natural Resources, Board of Land Commissioners, for administrative purposes.

The plat, which constitutes the entire record of this survey, representing the dependent resurvey and survey in SW 1/4 section 6, T. 6 S., R. 77 W, Sixth Principal Meridian, Group 1180, Colorado, was accepted September 22, 1997.

The plat, which constitutes the entire record of this survey, representing the dependent resurvey and survey in SW 1/4 section 34, T. 6 N., R. 71 W, Sixth Principal Meridian, Group 1189, Colorado, was accepted September 22, 1997.

The plat representing the corrective dependent resurvey of a portion of the subdivision of sections 2 and 12, the extension survey of a portion of the line between sections 2 and 3, and the metes-and-bounds survey of certain lots in sections 2 and 12, T. 5 S., R. 80 W., Sixth Principal Meridian, Group 1113, Colorado, was accepted August 11, 1997.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines and a metes-and-bounds survey of certain lots in sections 7 (extension survey) and 18, T. 5 S., R. 79 W., Sixth Principal Meridian, Group 1113, Colorado, was accepted July 24, 1997.

The plat (in two sheets) representing the dependent resurvey of portions of the subdivisional lines and subdivision of sections and a metes-and-bounds survey of certain lots in unsurveyed section 4, and sections 7 and 9, T. 5 S., R. 80 W., Sixth Principal Meridian, Group 1113, Colorado, was accepted August 11, 1997.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines and a metes-and-bounds survey of lots 22 and 23 in section 1, T. 5 S., R. 81 W., Sixth Principal Meridian, Group 1113, Colorado, was accepted July 24, 1997.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a metes-and-bounds survey in sections 3 and 4, T. 8 N., R. 74 W., Sixth Principal Meridian, Group 939, Colorado, was accepted August 20, 1997.

The plat (in three sheets) representing the dependent resurvey of a portion of the east boundary and portions of the subdivisional lines and a metes-and-bounds survey of certain parcels in section 36, T. 9 N., R. 74 W., Sixth Principal Meridian, Group 939, Colorado, was accepted August 25, 1997.

The supplemental plat, creating new lots 12, 13, 14, and 15 in the N½ of section 14, T. 5 S., R. 78 W., Sixth Principal Meridian, Colorado, was accepted August 20, 1997.

The supplemental plat, creating new lot 2 in the SE¼SE¼ of section 17, T. 5 S., R. 77 W., Sixth Principal Meridian, Colorado, was accepted August 20, 1997.

These surveys were requested by the USDA Forest Service for management purposes.

The plat representing the dependent resurvey of portions of the east boundary and the subdivisional lines with a subdivision of section 13 and metes-and-bounds survey of irregular boundaries in section 13, T. 49 N., R. 2 E., New Mexico Principal Meridian, Group 1159, Colorado, was accepted September 29, 1997.

The plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, the partial subdivision of section 3, and the metes-and-bounds survey of irregular boundaries in section 3, T. 15 S., R. 92 W., Sixth Principal Meridian, Group 1159, Colorado, was accepted September 19, 1997.

The plat, which constitutes the entire record of this survey, representing the dependent resurvey of a portion of the subdivisional lines, the partial subdivision of section 9, and a metes-and-bounds survey to segregate a body of land located east of the Highway 550 in the NW¼SE¼ section 9, T. 45 N., R. 8 W., New Mexico Principal Meridian, Group 1159, Colorado, was accepted September 23, 1997.

The plat (in four sheets) representing the dependent resurvey of portions of the north boundary and subdivisional lines, the subdivision of section 6, and the metes-and-bounds survey of irregular boundaries in sections 5, 6, 7, and 18, T. 46 N., R. 3 W., New Mexico Principal Meridian, Group 1177, Colorado, was accepted September 29, 1997.

The plat (in two sheets) representing the dependent resurvey of a portion of the First Standard Parallel South, T. 5 S., R 88 and 89 W., a portion of the Eleventh Guide Meridian West (east boundary), a portion of the south boundary, the west boundary, and a portion of the subdivisional lines, and the subdivision of certain sections in T. 6 S., R. 89 W., Sixth Principal Meridian, Group 1079, Colorado was accepted September 5, 1997.

The supplemental plat, creating new lots 8 and 9 from previous lot 5 in the NE¼NE¼ of section 16, Fractional T. 2 S., R. 1 E., Ute Meridian, Colorado, was accepted September 5, 1997.

The supplemental plat, creating lots 12 and 13 from the original lot 5 in section 2, T. 12 S., R 91 W., Sixth Principal Meridian, Colorado, was approved September 9, 1997.

These surveys were requested by the BLM for administrative purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 97–26807 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 48 N., R. 63 W., accepted September 29, 1997
T. 49 N., R. 73 W., accepted September 29, 1997
T. 35 N., R. 74 W., accepted September 29, 1997
T. 36 N., R. 74 W., accepted September 29, 1997
T. 37 N., R. 74 W., accepted September 29, 1997
T. 35 N., R. 75 W., accepted September 29, 1997
T. 36 N., R. 75 W., accepted September 29, 1997
T. 25 N., R. 111 W., accepted September 29, 1997

Sixth Principal Meridian, Nebraska

T. 35 N., R. 20 W., accepted July 31, 1997

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a

statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: October 1, 1997.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 97–26810 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30389]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 15 acres of National Forest System land to protect the Cagle Cabin Administrative Site. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may be made of National Forest System land.

DATES: Comments and requests for a meeting should be received on or before January 7, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona 85006.

FOR FURTHER INFORMATION CONTACT: Jim Young, Tonto National Forest, 602–225–5200, or Howard Okamoto, Pleasant Valley Ranger District, 520–462–4300.

SUPPLEMENTARY INFORMATION: On September 22, 1997, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Tonto National Forest

T. 7 N., R. 14 E.,
Sec. 30, W½SE¼NE¼SE¼, E½SW¼NE¼SE¼, NW¼NE¼SE¼SE¼, and NE¼NW¼SE¼SE¼, unsurveyed.

The area described contains 15 acres in Gila County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal must present their views in writing, by the date specified above, to the Forest Supervisor, Tonto National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Tonto National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days prior to the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: September 30, 1997.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 97–26803 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30390]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 1,620 acres of National Forest System land to protect the Upper Hassayampa River Corridor. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may be made of National Forest System land.

DATES: Comments and requests for a meeting should be received on or before January 7, 1998.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Prescott National Forest, 344 S. Cortez Street, Prescott, Arizona 86303.

FOR FURTHER INFORMATION CONTACT: Beverley Everson or Doug Franch, Prescott National Forest, 520–445–7253.

SUPPLEMENTARY INFORMATION: On September 18, 1997, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Prescott National Forest

T. 13 N., R. 2 W.,
Sec. 31, lot 20;
Sec. 32, lots 13 to 20, inclusive;
Sec. 33, lots 11 to 14, inclusive.
T. 12½ N., R. 2 W.,
Sec. 20, lots 1 to 4, inclusive;
Sec. 21, lots 1 to 4, inclusive, SW¼SE¼, SE¼SE¼, and SE¼SW¼;
Sec. 22, SW¼SW¼, and SE¼SW¼;
Sec. 26, SW¼, SW¼NW¼, and SW¼SE¼, excluding MS 3986;
Sec. 27, N½;
Sec. 35, NE¼NW¼, NW¼NE¼, N½SW¼NE¼, SE¼SW¼NE¼, and W½SE¼NE¼, excluding MS 1481, MS 3966, MS 1291, and MS 966.

The area described contains 1,620 acres in Yavapai County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Forest Supervisor, Prescott National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Prescott National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: September 30, 1997.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 97–26804 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–60906]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

September 30, 1997.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 129.8 acres of public lands for 20 years to protect three recreation sites. This notice closes these lands to operation of the public land laws including location and entry under the mining laws for up to two years. The lands have been and remain open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before January 7, 1998.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On September 26, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

Mud Springs

T. 13 S., R. 102 W.,
Sec. 24, S½NW¼SE¼ and N½SW¼SE¼.

Dominguez

T. 15 S., R. 100 W.,
Sec. 15, SW¼NE¼SE¼, SE¼NW¼SE¼, NE¼SW¼SE¼, and NW¼SE¼SE¼

Miracle Rock

T. 12 S., R. 103 W.,
Sec. 26, West 10 chains of Lot 3, and that portion of the SE¼SW¼ within acquired parcel C–832;
Sec. 35, West 10 chains of Lot 2, and that portion of the NE¼NW¼ within acquired parcel C–832.

The areas described aggregate approximately 129.8 acres in Mesa County.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed action, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2)).

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management will continue to manage this land.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 97–26718 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from November 1, 1997, through April 30, 1998. The List of Restricted Joint Bidders published March 27, 1997, in the **Federal Register** at 62 FR 14699 covered the period of May 1, 1997, through October 31, 1997.

Group I

Exxon Corporation; Exxon San Joaquin Production Co.

Group II

Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.; Shell Frontier Oil & Gas Inc.; Shell Consolidated Energy Resources Inc.; Shell Land & Energy Company; Shell Onshore Ventures Inc.; Shell Deepwater Development Inc.; Shell Deepwater Production Inc.; Shell Offshore Properties and Capital II Inc.

Group III

Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group IV

BP America Inc.; The Standard Oil Co.; BP Exploration & Oil Inc.; BP Exploration (Alaska) Inc.

Dated: October 3, 1997.

Cynthia L. Quarterman,

Director, Minerals Management Service.

[FR Doc. 97–26852 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Wednesday, October 15, 1997; 1:30–4:00 p.m.

Addresses: The Sun Inn, 564 Main Street, Bethlehem, PA 18018.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: October 3, 1997.

Gerald R. Bastoni,

Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 97–26793 Filed 10–8–97; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information under 30 CFR part 850 which provides authority for State regulatory authorities to develop a blaster certification program.

DATES: Comments on the proposed information collection must be received by December 8, 1997, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 850, Permanent regulatory program requirements—standards for certifications of blasters.

OSM revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB

The following information is provided for the information collection: (1) Title of the information collection; (2) ONB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Permanent regulatory program requirements—standards for certification of blasters, 30 CFR 850.

OMB Control Number: 1029–0080.

Summary: This part establishes the requirements and procedures applicable to the development of regulatory programs for the training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Dated: October 6, 1997.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 97–26802 Filed 10–8–97; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Notice of Public Information Collections Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20523. Copies of submission may be obtained by calling (202) 712–1765.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0012.

Form Number: Form AID 282.

Title: Supplier's Certificate Agreement with the U.S. Agency for International Development—Invoice and Contract Abstract.

Type of Submission: Renew.

Purpose: The U.S. Agency for International Development (USAID) finances goods and related services under its Commodity Import Program which are contracted for by public and private entities in the countries receiving the USAID Assistance. Since USAID is not a party to these contracts, USAID needs some means to collect information directly from the suppliers of the goods and related services and to enable USAID to take an appropriate action against them in the event they do not comply with the applicable regulations. USAID does this by securing from the suppliers, as a condition for the disbursement of funds a certificate and agreement with USAID which contains appropriate representations by the suppliers.

Annual Reporting Burden:

Respondents: 400,

Total Annual responses: 3,600,

Total annual hours requested: 1,800.

OMB Number: OMB 0412–0510.

Form Number: N/A.

Title: Administrative of Assistance Awards to U.S. Non-Governmental Organizations, 22 CFR 226, and USAID's Automated Directive System, Chapter 303.

Type of Submission: Renew.

Purpose: Section 635(b) of the Foreign Assistance Act (FAA) authorizes USAID to make grants and cooperative agreements with any organization and within limits of the FAA. Most of the information that USAID requests of its recipients is necessary to fulfill the requirement that USAID, as Federal Agency, ensure prudent management of public funds under all of its assistance instruments. The pre-award information is necessary to assure that funds are provided for programs that further the purposes of the FAA and that the recipients have the capability to manage the program administratively and financially. The administration (post-award) requirements are based on the need to assure that the program is functioning adequately, the funds are managed properly and that statutory and regulatory requirement are complied with.

Annual Reporting Burden:

Respondents: 400,

Total Annual responses: 37,400,

Total annual hours requested: 1,100.

OMB Number: OMB 0412–0551.

Form Number: N/A.

Title: U.S. Agency for International Development Acquisition Regulations (AIDAR) Clause 752.70.28 Reports.

Type of Submission: Revision of currently approved collection.

Purpose: Section 635(b) of the Foreign Assistance Act (FAA) authorizes USAID to make contract with any cooperative, international organization, or other body or persons in or out of the United States in furtherance of the purposes and within the limitations of the FAA. To determine how well contractors are performing to meet the requirements of the contract, USAID requires periodic performance reports from contractors. The performance report requirements are contained in the USAID clause new AIDAR reports (October 1996).

Annual Reporting Burden:

Respondents: 350,

Total Annual responses: 2,000,

Total annual hours requested: 8,000.

Dated: October 1, 1997.

Willette L. Smith,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 97–26808 Filed 10–8–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 1:97CV01515]

Public Comments and Response on Proposed Final Judgment United States v. Raytheon Company, et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Raytheon Company, et al.*, Civil Action No. 1: 97CV01515, filed in the United States District for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and responses are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530, telephone: (202) 514–2481, and at the office of the Clerk of the United States District of Columbia, United States Courthouse, Third Street and Constitution Avenue, N.W., Washington, D.C. 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations Antitrust Division.

U.S. Department of Justice

Antitrust Division, 1401 H Street, City Center Building, Washington, DC 20530.

September 26, 1997.

John Heston, Senior MMIC Designer,
David Heston, Technical Director Space Programs,
Texas Instruments, Inc., 13510 North Central Expressway, MS 209, Dallas, Texas 75265

Re: *United States, et al.* v. *Raytheon Company, et al.; Civil Action No.: 1:97CV01515 (District of Columbia, July 2, 1997)*

Dear Messrs. John Heston and David Heston: This letter responds to your letter of August 4, 1997, commenting on the proposed Final Judgment in the above-captioned civil antitrust case challenging the acquisition by Raytheon Company of Texas Instruments' Defense Systems and Electronics Unit. The Complaint alleges that the acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18, because it is likely substantially to lessen competition in the manufacture and sale of gallium arsenide monolithic microwave integrated circuits (MMICs) in the United States. Under the proposed Final Judgment, the defendants are required to divest Texas Instruments' Defense Systems and Electronics Unit MMICs business located in Dallas, Texas.

In your letter, you expressed concern that the proposed Final Judgment may degrade national security, cause prices of MMICs to increase substantially, eliminate efficiencies, slow technological development of MMICs as well as transmit and receive modules (TR modules), which house the MMICs, and harm synergies between the development of MMICs and TR modules. Your letter recommended approval of the proposed acquisition, or in the alternative, that Texas Instruments' Defense Systems and Electronics Unit TR module business be divested along with the MMICs business.

With regards to the national security issue, the U.S. Department of Justice and the Department of Defense (DoD) found no evidence that challenging this transaction would compromise national security. After a thorough investigation, the Antitrust Division and DoD concluded that the proposed transaction, if not blocked, might lead to higher prices for MMICs. In addition, access to these critical components of advanced radar systems might be foreclosed to Raytheon's radar competitors, thereby, increasing DoD's costs for new radar programs. These radars are an important part of our nation's defense.

The MMIC cost increases you project, should the acquisition not occur, are not supported by the evidence obtained in the Department's investigation. Indeed, the very MMIC and TR module synergies you hypothesize that would be obtained from the acquisition will likely also be obtained by an alternative purchaser. For example, if the alternative purchaser is a commercial MMIC and/or TR module supplier, the design and capacity utilization efficiencies you discuss should accrue to that purchaser as well. Under these circumstances, the costs of MMICs will not increase and, ultimately, may decline. Moreover, there is little incentive for the commercial alternative purchaser to spurn military business, as you claim, especially in view of the excess capacity in the industry.

This same rational applies to the likelihood of advancement of the MMIC and TR module technology. As you point out, DoD programs require state-of-the-art MMICs and TR modules. First, technological advancements should be enhanced by maintaining competition in the industry not by eliminating it. Second, "cost plus" contracts, which are common in military procurement, by themselves will not ensure low costs or more technological development without ample competition in the marketplace. Without competition, there is little incentive to keep costs down or innovate in MMICs or TR modules. Third, Raytheon, by acquiring the Texas Instruments' TR module business, likely will achieve efficiencies in the research and development and production of its TR modules and MMICs making the achievement of "cross functional technology breakthroughs" possible.

Finally, because our investigation found that competition in the TR module industry is robust and that the MMIC business could easily be segregated for purposes of divestiture, sale of the entire R/F Microwave Unit, as you propose, is not required.

The Antitrust Division appreciates you bringing your concerns to our attention and hopes that this response will alleviate them. While the Department understands your positions, we believe that the proposed Final Judgment will adequately address the competitive concerns created by the Raytheon's acquisition of Texas Instruments' Defense Systems and Electronics Unit. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the Federal Register and filed with the Court.

Thank you for your interest in the enforcement of the antitrust laws.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

To: J. Robert Kramer
From: John Heston, Senior MMIC designer
RTIS, David Heston, Technical Director
Space Programs RTIS

Claim: We claim that the July 2 order of the Department of Justice (97 1515) to break up the R/F Microwave business unit of Raytheon TI Systems (i.e. divestiture of the 'MMIC Business') will degrade the national security in both the short term and long term. It is our premise that the Department of Justice made a premature decision due to time pressures, political pressures, and lack of complete information. This paper presents additional information relevant to the Department of Justice decision and asks for reconsideration.

Our perspective of the July 2 consent decree: On January 6, 1997 Raytheon proposed to purchase the Defense Systems and Electronics Group of Texas Instruments for ~$3B. In clearing the anti-trust issues with the proposed acquisition the technology used to manufacture radar components (i.e. GaAs MMIC circuits and microwave modules) became an issue. Several months were spent in an investigation of this technology and both Raytheon and Texas Instruments provided information on microwave power amplifiers and modules to the Department of Justice. With direction from the Office of the Secretary of Defense the Department of Justice issued a consent decree to allow the acquisition of TI's defense group provided the 'MMIC Business' of Texas Instruments RF/Microwave Department be divested. The RF/Microwave Department employees ~800 people and had annual sales of ~$125M in 1996. The RF/Microwave department is comprised of: GaAs operations (MMIC fabrication), module manufacturing, MMIC and module design groups, and program management. The 'MMIC business' as decreed by the Department of Justice comprises ~300 of these people (all of GaAs operations, a portion of the MMIC design and program management capabilities, and the microwave GaAs research lab) and had equivalent revenues of ~$50M in 1996.

The goal of the Department of Justice decision was to keep Northrop Grumman and other military system suppliers competitive in the microwave module business by ensuring it a supply source of outstanding GaAs MMICs. It was the underlying assumption that this competition was necessary to drive down the cost of military-use MMICs.

However, there are four facts that need to be reviewed again before the consent decree is issued. The conclusions previously reached regarding the impact of this consent decree need to be reconsidered.

Fact 1

The 'MMIC Business' spin-off company will have to raise MMIC costs.

Reasons for FACT 1: The same fabrication overhead will now be spread over a much smaller revenue and people. Short term MMIC costs will soar. Initial estimates provided to the programs from the now 'fire-walled' MMIC Business group indicate a 50% to 100% price increase for MMIC devices. This price increase is effective August 1, 1997. The price increase does not include GNA or profit since they are still part of RTIS.

Also, the synergy existing and being developed between the module and MMIC business will be broken. This synergy includes sharing office space, test equipment, printer/copiers, secretarial support, financial support, prototype parts stock, design seminars, and profit. As a result of eliminating this synergy, the long term cost of the 'MMIC Business' spin-off will remain higher than they would have been regardless of the Buyer.

Revised Conclusion 1A

Northrop Grumman and other military system suppliers will not be able to compete against Raytheon at the microwave module level in cost since it will be purchasing higher priced MMICs from the 'MMIC Business' spin-off. Raytheon will still have access to their own MMICs which will not change in price. Raytheon will also be able to lower module costs due to synergy between the two module factories (i.e. its own module factory and the one acquired from Texas Instrument's RF/Microwave department.

Revised Conclusion 1B

Short term cost to F–22 and all other RTIS microwave military (cost plus) programs will increase.

Fact 2

The commercial market (not military competition) dominates the volume and cost of every GaAs fabrication plant and thus the cost of military radar MMICs.

Reasons for FACT 2: The bulk of the fab cost is fixed. Therefore, volume drives the cost/die down and allows profits to grow. Military programs have low volumes. Even a military phased array such as F–22 only requires an estimated 500 wafers/year of high yielding power amplifier MMICs (estimate based on 440 planes produced in a 10 year period). By contrast, cellular phones require millions of units per year (~7000 wafers/year for every 1 million phones.) And the potential commercial telecommunications phased array market (Teledesic, Motorola, Alcatel) is also much larger than the military market. To place this in perspective, in 1996 Texas Instrument's GaAs facility produced only 414 wafers of high power X-band MMICs for all of its microwave customers (military and commercial). The only way to achieve low cost military use MMICs without allowing commercial volume to set the price would be to operate a very tiny GaAs fab.

Revised Conclusion 2A

To provide a good supply of military MMICs, the 'MMIC Business' spin-off must be viably competitive in the commercial market. The increased overhead rate of the 'MMIC Business' spin-off may cause it to lose business to commercial competitors such as MA/COM, Triquent, and RFMD. Unless they are extremely successful in the commercial market the long term cost/availability of the military radar MMICs from this group is questionable. The 'MMIC Business' spin-off will also be focusing their resources on commercial MMICs instead of military MMICs since they know that their survival is dependent upon success in that market.

Fact 3

Military component costs (i.e. radar MMICs and modules) are driven by technology immaturity.

Reasons for FACT 3: Military programs require the latest MMIC technology (0.25um gates, pHEMT material, highest power levels) that has been developed. The program costs are typically driven more by development of this technology and solving unexpected travails of the technology development than by competitive pricing analysis. All the process development costs involved in solving technology development difficulties are passed onto the government through cost plus contracts.

The GaAs industry is still struggling to solve the two key problems that held Silicon growth down until the 1970's: reliability and FET pinchoff control. These two issues are not as thorny for lower requirement commercial MMICs.

Revised Conclusion 3

Military MMIC cost and availability will likely be improved more by allowing consolidation than by increasing competition. The use of cost plus contracts will prevent the consolidated companies from arbitrarily raising prices on military programs. Commercial competition will keep the MMIC costs low. Teaming agreements between military system suppliers (as is the case on F22 where RTIS and Northrop Grumman are teamed together) can be used to provide a continuous source of microwave components to competitors.

Fact 4

Divestiture of the 'MMIC Business' divides a team that is acknowledged as a leader in military microwave solutions and may impair technical breakthroughs on future military programs. Cost of future military programs will be higher without these breakthroughs.

Reasons for FACT 4

The RF/Microwave department at Texas Instruments has very good synergy between system requirements from government agencies and the technology needed to achieve these requirements. There is synergy between module and MMIC designers, between MMIC designers and the GaAs facility, and between programs and the research lab that has developed over the past 25 years. A number of cross functional engineering teams are in place to promote technology development and minimize re-invention. We have both worked on programs where a Government agency had a technology roadmap of desired system capability and the year they anticipated this capability becoming available. Through a combination of Government research programs and internal investments key technical areas in the research lab and GaAs facility were targeted for development to achieve specific module performance levels. Over a 3 to 4 year period, a number of technical breakthroughs occurred at both device (GaAs process and material) and design (MMIC and module) levels. These breakthroughs enabled system architectures up to 5 years sooner than previously anticipated. Hopefully this pull-up has benefited the National Security and also provided a lower cost solution. This type of technical breakthrough will be much more difficult with the 'MMIC Business' divestiture and a breakup of the cross functional engineering groups developed over many years within the RF/microwave department.

A secondary result of the 'MMIC Business' divestiture is an increased turnover of personnel. Since the decision, three MMIC designers and six process personnel in the 'MMIC Business' have already given notice of their intention to leave the company and many others are openly talking of leaving due to career uncertainty created by the Justice Department decree. Morale is extremely low and it possibly endangers the core team of MMIC design/process expertise that is being divested.

Revised Conclusion 4

The 'MMIC Business' divestiture will increase the cost of future military microwave components through increased difficulty in achieving cross functional technology breakthroughs.

Revised Conclusion 4B

The 'MMIC Business' spin-off could potentially lose critical mass of its key personnel due to morale problems associated with the Justice Department decree.

Proposed Solution

Keep the R/F Microwave Business unit intact. This will prevent an increase in MMIC costs, keep the company viable for commercial business, and allow the company to continue development of advanced technology.

Option 1: Keep the unit with Raytheon. This will provide the greatest opportunity for high performance, low cost military MMICs and modules. Since RTIS is teamed with Northrop Grumman on the F22 program they will be provided necessary MMICs for their module build as part of that agreement.

Option 2: Spin off the entire R/F Microwave unit from RTIS. This will make Northrop Grumman and other military system suppliers more competitive. The downside is a loss of possible maturity for advanced MMIC processes that would have occurred with the merger (i.e. combination of Raytheon and TI engineers sharing information.)

Regards

John Heston, (972) 995–6051, RTIS, 13510 North Central Expressway, MS 209, Dallas, TX 75265

David Heston, (972) 995–6048, RTIS, 13510 North Central Expressway, MS 262, Dallas, TX 75265

[FR Doc. 97–26828 Filed 10–8–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services (CJIS) Advisory Policy Board

The Criminal Justice Information Services (CJIS) Advisory Policy Board will meet on December 10–11, 1997, from 9 a.m. until 5 p.m., at the Sunburst Resort Hotel, 4925 Scottsdale Road, Scottsdale, Arizona, telephone 602–945–7666, to formulate recommendations to the Director, Federal Bureau of Investigation (FBI) on the security, policy, and operation of the National Crime Information Center (NCIC), NCIC 2000, the Integrated Automated Fingerprint Identification System (IAFIS), and the Uniform Crime Reporting and National Incident Based Reporting System programs.

The topics to be discussed will include the progress of the NCIC 2000 and IAFIS projects, and other topics related to the operation of the FBI's criminal justice information systems.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the FBI CJIS Division programs or related matters with the Board. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, facsimile, or a hand-delivered note. It should contain the requestor's name, corporate designation, consumer affiliation, or Government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specifically approved by the Chairman of the Board.

Inquiries may be addressed to the Designated Federal Employee, Mr. Demery R. Bishop, Section Chief, Programs Development Section, CJIS Division, FBI, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone 304–625–2740, facsimile 304–625–5090.

Dated: October 3, 1997.

Demery R. Bishop,

Section Chief, Programs Development Section, Federal Bureau of Investigation, Designated Federal Employee.

[FR Doc. 97–26812 Filed 10–8–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed new collection of the Center for Employment and Training (CET) 24-Month Follow-Up Survey. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 8, 1997. The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Tom NaSell, Office of Policy and Research; 200 Constitution Ave., NW, Room N–5629; Washington DC 20210; (202) 219–5782 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Center for Employment Training (CET) model of employment and training programs for out-of-school youth has gained national attention as a result of its strong employment impacts relative to comparable programs. Building on this success, the Department of Labor (DOL) began funding the CET Replication Project in December 1992, providing a grant for CET–San Jose, CA to assist other programs in implementing CET-like training. In 1994 DOL competitively

awarded grants to select six of these programs in order to evaluate the effects of the CET model on participating youth. Six additional sites have also been selected from among CET programs in California and Nevada. The purpose of this study, A Random Assignment Evaluation of the CET Replication Sites, is to evaluate the CET model in the selected sites to assess whether it can be replicated outside of San Jose, and whether the replication sites have similarly positive employment impacts on out-of-school youth.

In order to assess the success of CET outside of San Jose, DOL has contracted with the Manpower Demonstration Research Corporation (MDRC) to evaluate the CET Republican Project. As part of this evaluation, follow-up information will be collected on all youth undergoing random assignment at the CET replication sites. This information will be collected through a telephone survey conducted approximately 24 months after the random assignment of youth. The 24-Month Follow-Up Survey will be used to examine the effects of this employment and training program on participants' outcomes two years after beginning the CET training. It will also assess the subsequent outcomes of comparable youth randomly assigned to a control group.

II. Current Actions

This is a request for OMB approval of a new information collection for the CET Replication Project funded by the Department of Labor (DOL). Information in the form of a follow-up phone or in-person survey will be collected from randomly assigned participants at each of the CET Replication Project sites on a one-time basis, approximately 24 months following their initial assignment to the program or control groups. The survey data will be utilized to analyze the impact of the CET program on participants' outcomes including education and training, employment, earnings, public assistance participation, childbearing, and other behaviors and activities. The findings will be directly relevant for the future development of employment and training policy for youth.

Type of Review: New.

Agency: Employment and Training Administration.

Title: CET 24-Month Follow-Up Survey.

OMB Number: 1205–NEW.

Affected Public: Participants in the CET Replication Project.

Total Respondents: 1,500.

Frequency: One time.

Total Responses: 1,500.

Average Time per Response: 37 Minutes.

Estimated Total Burden Hours: 925 Hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $6,808.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 3, 1997.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 97–26831 Filed 10–8–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice of the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The annual list of labor surplus areas is effective October 1, 1997.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year 1998.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, USES, Employment and Training Administration, 200 Constitution Avenue, N.W., Room N–4470, Attention: TEESS, Washington, D.C. 20210. Telephone: 202–219–5185, ext. 129.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation Part 20 (48 CFR Part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation Part 25 (48 CFR Part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation Part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is hereby publishing the annual list of labor surplus areas.

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) effective October 1, 1997.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, D.C. on September 24, 1997.

Raymond Uhalde,

Acting Assistant Secretary.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998

Eligible labor surplus areas	Civil jurisdictions included
ALABAMA	
ANNISTON CITY	ANNISTON CITY IN CALHOUN COUNTY.
BARBOUR COUNTY	BARBOUR COUNTY.
BIBB COUNTY	BIBB COUNTY.
BULLOCK COUNTY	BULLOCK COUNTY.
BUTLER COUNTY	BUTLER COUNTY.
CHOCTAW COUNTY	CHOCTAW COUNTY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
CLARKE COUNTY	CLARKE COUNTY.
COLBERT COUNTY	COLBERT COUNTY.
CONECUH COUNTY	CONECUH COUNTY.
COVINGTON COUNTY.	COVINGTON COUNTY.
CRENSHAW COUNTY.	CRENSHAW COUNTY.
DALLAS COUNTY	DALLAS COUNTY.
ESCAMBIA COUNTY	ESCAMBIA COUNTY.
FLORENCE CITY	FLORENCE CITY IN LAUDERDALE COUNTY.
FRANKLIN COUNTY	FRANKLIN COUNTY.
GADSDEN CITY	GADSDEN CITY IN ETOWAH COUNTY.
GENEVA COUNTY	GENEVA COUNTY.
GREENE COUNTY	GREENE COUNTY.
HALE COUNTY	HALE COUNTY.
HENRY COUNTY	HENRY COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
LAWRENCE COUNTY.	LAWRENCE COUNTY.
LOWNDES COUNTY	LOWNDES COUNTY.
MACON COUNTY	MACON COUNTY.
MARENGO COUNTY	MARENGO COUNTY.
MARION COUNTY	MARION COUNTY.
MOBILE CITY	MOBILE CITY IN MOBILE COUNTY.
MONROE COUNTY	MONROE COUNTY.
PERRY COUNTY	PERRY COUNTY.
PICKENS COUNTY	PICKENS COUNTY.
PRICHARD CITY	PRICHARD CITY IN MOBILE COUNTY.
RANDOLPH COUNTY.	RANDOLPH COUNTY.
SUMTER COUNTY	SUMTER COUNTY.
TALLADEGA COUNTY.	TALLADEGA COUNTY.
WALKER COUNTY	WALKER COUNTY.
WASHINGTON COUNTY.	WASHINGTON COUNTY.
WILCOX COUNTY	WILCOX COUNTY.
ALASKA	
BETHEL CENSUS AREA.	BETHEL CENSUS AREA.
BRISTOL BAY BOROUGH DIV.	BRISTOL BAY BOROUGH DIV.
DENALI BOROUGH	DENALI BOROUGH.
DILLINGHAM CENSUS AREA.	DILLINGHAM CENSUS AREA.
FAIRBANKS CITY	FAIRBANKS CITY IN FAIRBANKS NORTH STAR BOROUGH.
BALANCE OF FAIRBANKS NORTH STAR BOROUGH.	FAIRBANKS NORTH STAR BOROUGH LESS FAIRBANKS CITY.
HAINES BOROUGH	HAINES BOROUGH.
KENAI PENINSULA BOROUGH.	KENAI PENINSULA BOROUGH.
KETCHIKAN GATEWAY BOROUGH.	KETCHIKAN GATEWAY BOROUGH.
KODIAK ISLAND BOROUGH.	KODIAK ISLAND BOROUGH.
LAKE AND PENINSULA BOROUGH.	LAKE AND PENINSULA BOROUGH.
MATANUSKA-SUSITNA BOROUGH.	MATANUSKA-SUSITNA BOROUGH.
NOME CENSUS AREA.	NOME CENSUS AREA.
NORTHWEST ARCTIC BOROUGH.	NORTHWEST ARCTIC BOROUGH.
PRINCE OF WALES OUTER KETCHIKAN.	PRINCE OF WALES OUTER KETCHIKAN.
SKAGWAY-HOONAH-ANGOON CEN AREA.	SKAGWAY-HOONAH-ANGOON CEN AREA.
SOUTHEAST FAIRBANKS CENSUS AREA.	SOUTHEAST FAIRBANKS CENSUS AREA.
VALDEZ CORDOVA CENSUS AREA.	VALDEZ CORDOVA CENSUS AREA.
WADE HAMPTON CENSUS AREA.	WADE HAMPTON CENSUS AREA.
WRANGELL-PETERSBURG CENSUS AREA.	WRANGELL-PETERSBURG CENSUS AREA.
YAKUTAT BOROUGH.	YAKUTAT BOROUGH.
YUKON-KOYUKUK CENSUS AREA.	YUKON-KOYUKUK CENSUS AREA.
ARIZONA	
APACHE COUNTY	APACHE COUNTY.
BULLHEAD CITY	BULLHEAD CITY IN MOHAVE COUNTY.
BALANCE OF COCHISE COUNTY.	COCHISE COUNTY LESS SIERRA VISTA CITY.
BALANCE OF COCONINO COUNTY.	COCONINO COUNTY LESS FLAGSTAFF CITY.
GILA COUNTY	GILA COUNTY.
GRAHAM COUNTY	GRAHAM COUNTY.
GREENLEE COUNTY	GREENLEE COUNTY.
LA PAZ COUNTY	LA PAZ COUNTY.
BALANCE OF MOHAVE COUNTY.	MOHAVE COUNTY LESS —— BULLHEAD CITY.
	LAKE HAVASU CITY.
NAVAJO COUNTY	NAVAJO COUNTY.
SANTA CRUZ COUNTY.	SANTA CRUZ COUNTY
SIERRA VISTA CITY	SIERRA VISTA CITY IN COCHISE COUNTY.
YUMA CITY	YUMA CITY IN YUMA COUNTY.
BALANCE OF YUMA COUNTY.	YUMA COUNTY LESS YUMA CITY.
ARKANSAS	
BRADLEY COUNTY	BRADLEY COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CHICOT COUNTY	CHICOT COUNTY.
CLAY COUNTY	CLAY COUNTY.
COLUMBIA COUNTY	COLUMBIA COUNTY.
DALLAS COUNTY	DALLAS COUNTY.
DESHA COUNTY	DESHA COUNTY.
DREW COUNTY	DREW COUNTY.
HEMPSTEAD COUNTY.	HEMPSTEAD COUNTY.
IZARD COUNTY	IZARD COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
LAFAYETTE COUNTY.	LAFAYETTE COUNTY.
LAWRENCE COUNTY.	LAWRENCE COUNTY.
LEE COUNTY	LEE COUNTY.
LITTLE RIVER COUNTY.	LITTLE RIVER COUNTY.
MISSISSIPPI COUNTY.	MISSISSIPPI COUNTY.
MONROE COUNTY	MONROE COUNTY
NEVADA COUNTY	NEVADA COUNTY.
OUACHITA COUNTY	OUACHITA COUNTY.
PHILLIPS COUNTY	PHILLIPS COUNTY.
PINE BLUFF CITY	PINE BLUFF CITY IN JEFFERSON COUNTY.
PRAIRIE COUNTY	PRAIRIE COUNTY.
RANDOLPH COUNTY.	RANDOLPH COUNTY.
ST. FRANCIS COUNTY.	ST. FRANCIS COUNTY.
UNION COUNTY	UNION COUNTY.
VAN BUREN COUNTY.	VAN BUREN COUNTY.
WOODRUFF COUNTY.	WOODRUFF COUNTY.
CALIFORNIA	
ALPINE COUNTY	ALPINE COUNTY.
AMADOR COUNTY	AMADOR COUNTY.
ANTIOCH CITY	ANTIOCH CITY IN CONTRA COSTA COUNTY.
APPLE VALLEY CITY	APPLE VALLEY CITY IN SAN BERNARDINO COUNTY.
AZUSA CITY	AZUSA CITY IN LOS ANGELES COUNTY.
BAKERSFIELD CITY	BAKERSFIELD CITY IN KERN COUNTY.
BALDWIN PARK CITY.	BALDWIN PARK CITY IN LOS ANGELES COUNTY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
BELL CITY	BELL CITY IN LOS ANGELES COUNTY.
BELL GARDENS CITY.	BELL GARDENS CITY IN LOS ANGELES COUNTY.
BALANCE OF BUTTE COUNTY.	BUTTE COUNTY LESS CHICO CITY.
	PARADISE CITY.
CALAVERAS COUNTY.	CALAVERAS COUNTY.
CARSON CITY	CARSON CITY IN LOS ANGELES COUNTY.
CATHEDRAL CITY	CATHEDRAL CITY IN RIVERSIDE COUNTY.
CERES CITY	CERES CITY IN STANISLAUS COUNTY.
CHICO CITY	CHICO CITY IN BUTTE COUNTY.
CLOVIS CITY	CLOVIS CITY IN FRESNO COUNTY.
COLTON CITY	COLTON CITY IN SAN BERNARDINO COUNTY.
COLUSA COUNTY	COLUSA COUNTY.
COMPTON CITY	COMPTON CITY IN LOS ANGELES COUNTY.
CORONA CITY	CORONA CITY IN RIVERERSIDE COUNTY.
DEL NORTE COUNTY.	DEL NORTE COUNTY.
DELANO CITY	DELANO CITY IN KERN COUNTY.
EAST PALO ALTO CITY.	EAST PALO ALTO CITY IN SAN MATEO COUNTY.
EL CAJON CITY	EL CAJON CITY IN —— SAN DIEGO COUNTY.
EL CENTRO CITY	EL CENTRO CITY IN —— IMPERIAL COUNTY.
EL MONTE CITY	EL MONTE CITY IN—— LOS ANGELES COUNTY.
EUREKA CITY	EUREKA CITY IN —— HUMBOLDT COUNTY.
FAIRFIELD CITY	FAIRFIELD CITY IN —— SOLANO COUNTY.
FONTANA CITY	FONTANA CITY IN —— SAN BERNARDINO COUNTY.
FRESNO CITY	FRESNO CITY IN —— FRESNO COUNTY
BALANCE OF FRESNO COUNTY.	FRESNO COUNTY LESS—— CLOVIS CITY FRESNO CITY.
GILROY CITY	GILROY CITY IN —— SANTA CLARA COUNTY.
GLENDALE CITY	GLENDALE CITY IN —— LOS ANGELES COUNTY.
GLENN COUNTY	GLENN COUNTY.
HANFORD CITY	HANFORD CITY IN —— KINGS COUNTY.
HAWTHORNE CITY	HAWTHORNE CITY IN —— LOS ANGELES COUNTY.
HEMET CITY	HEMET CITY IN —— RIVERSIDE COUNTY.
HESPERIA CITY	HESPERIA CITY IN —— SAN BERNARDINO COUNTY.
HIGHLAND CITY	HIGHLAND CITY IN —— SAN BERNARDINO COUNTY.
BALANCE OF HUMBOLDT COUNTY.	HUMBOLDT COUNTY LESS —— EUREKA CITY.
HUNTINGTON PARK CITY.	HUNTINGTON PARK CITY IN —— LOS ANGELES COUNTY.
IMPERIAL BEACH CITY.	IMPERIAL BEACH CITY IN —— SAN DIEGO COUNTY.
BALANCE OF IMPERIAL COUNTY.	IMPERIAL COUNTY LESS —— EL CENTRO CITY.
INDIO CITY	INDIO CITY IN —— RIVERSIDE COUNTY.
INGLEWOOD CITY	INGLEWOOD CITY IN —— LOS ANGELES COUNTY.
INYO COUNTY	INYO COUNTY.
BALANCE OF KERN COUNTY.	KERN COUNTY LESS —— BAKERSFIELD CITY. —— DELANO CITY RIDGECREST CITY.——
BALANCE OF KINGS COUNTY.	KINGS COUNTY LESS —— HANFORD CITY.
LA PUENTE CITY	LA PUENTE CITY IN —— LOS ANGELES COUNTY.
LAKE COUNTY	LAKE COUNTY.
LANCASTER CITY	LANCASTER CITY IN—— LOS ANGELES COUNTY.
LASSEN COUNTY	LASSEN COUNTY.
LAWNDALE CITY	LAWNDALE CITY IN —— LOS ANGELES COUNTY.
LEMON GROVE CITY.	LEMON GROVE CITY IN —— SAN DIEGO COUNTY.
LODI CITY	LODI CITY IN —— SAN JOAQUIN COUNTY.
LOMPOC CITY	LOMPOC CITY IN —— SANTA BARBARA COUNTY.
LONG BEACH CITY	LONG BEACH CITY IN —— LOS ANGELES COUNTY.
LOS ANGELES CITY	LOS ANGELES CITY IN —— LOS ANGELES COUNTY.
BALANCE OF LOS ANGELES COUNTY.	LOS ANGELES COUNTY LESS —— AGOURA HILLS CITY —— ALHAMBRA CITY —— ARCADIA CITY —— AZUSA CITY —— BALDWIN PARK CITY —— BELL CITY —— BELL GARDENS CITY—— BELLFLOWER CITY BEVERLY HILLS CITY. BURBANK CITY. CARSON CITY. CERRITOS CITY. CLAREMONT CITY. COMPTON CITY. COVINA CITY. CULVER CITY. DIAMOND BAR CITY. DOWNEY CITY. EL MONTE CITY. GARDENA CITY. GLENDALE CITY. GLENDORA CITY. HAWTHORNE CITY. HUNTINGTON PARK CITY. INGLEWOOD CITY. LA MIRADA CITY. LA PUENTE CITY. LA VERNE CITY. LAKEWOOD CITY. LANCASTER CITY. LAWNDALE CITY. LONG BEACH CITY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
	LOS ANGELES CITY.
	LYNWOOD CITY.
	MANHATTAN BEACH CITY.
	MAYWOOD CITY.
	MONROVIA CITY.
	MONTEBELLO CITY.
	MONTEREY PARK CITY.
	NORWALK CITY.
	PALMDALE CITY.
	PARAMOUNT CITY.
	PASADENA CITY.
	PICO RIVERA CITY.
	POMONA CITY.
	RANCHO PALOS VERDES CITY.
	REDONDO BEACH CITY.
	ROSEMEAD CITY.
	SAN DIMAS CITY.
	SAN GABRIEL CITY.
	SANTA CLARITA CITY.
	SANTA MONICA CITY.
	SOUTH GATE CITY.
	TEMPLE CITY.
	TORRANCE CITY.
	WALNUT CITY.
	WEST COVINA CITY.
	WEST HOLLYWOOD CITY.
	WHITTIER CITY.
LYNWOOD CITY	LYNWOOD CITY IN LOS ANGELES COUNTY.
MADERA CITY	MADERA CITY IN MADERA COUNTY.
BALANCE OF MADERA COUNTY.	MADERA COUNTY LESS MADERA CITY.
MANTECA CITY	MANTECA CITY IN SAN JOAQUIN COUNTY.
MARINA CITY	MARINA CITY IN MONTEREY COUNTY.
MARIPOSA COUNTY	MARIPOSA COUNTY.
MAYWOOD CITY	MAYWOOD CITY IN LOS ANGELES COUNTY.
MENDOCINO COUNTY.	MENDOCINO COUNTY .
MERCED CITY	MERCED CITY IN MERCED COUNTY.
BALANCE OF MERCED COUNTY.	MERCED COUNTY LESS MERCED CITY.
MODESTO CITY	MODESTO CITY IN STANISLAUS COUNTY.
MODOC COUNTY	MODOC COUNTY.
MONO COUNTY	MONO COUNTY.
MONROVIA CITY	MONROVIA CITY IN LOS ANGELES COUNTY.
MONTCLAIR CITY	MONTCLAIR CITY IN SAN BERNARDINO COUNTY.
MONTEBELLO CITY	MONTEBELLO CITY IN LOS ANGELES COUNTY.
BALANCE OF MONTEREY COUNTY.	MONTEREY COUNTY LESS MARINA CITY. MONTEREY CITY. SALINAS CITY. SEASIDE CITY.
MONTEREY PARK CITY.	MONTEREY PARK CITY IN LOS ANGELES COUNTY.
MORENO VALLEY CITY.	MORENO VALLEY CITY IN RIVERSIDE COUNTY.
NAPA CITY	NAPA CITY IN NAPA COUNTY.
NATIONAL CITY	NATIONAL CITY IN SAN DIEGO COUNTY.
NEVADA COUNTY	NEVADA COUNTY.
NORWALK CITY	NORWALK CITY IN LOS ANGELES COUNTY.
OAKLAND CITY	OAKLAND CITY IN ALAMEDA COUNTY.
OCEANSIDE CITY	OCEANSIDE CITY IN SAN DIEGO COUNTY.
ONTARIO CITY	ONTARIO CITY IN SAN BERNARDINO COUNTY.
OXNARD CITY	OXNARD CITY IN VENTURA COUNTY.
PALM SPRINGS CITY.	PALM SPRINGS CITY IN RIVERSIDE COUNTY.
PALMDALE CITY	PALMDALE CITY IN LOS ANGELES COUNTY.
PARADISE CITY	PARADISE CITY IN BUTTE COUNTY.
PARAMOUNT CITY	PARAMOUNT CITY IN LOS ANGELES COUNTY.
PASADENA CITY	PASADENA CITY IN LOS ANGELES COUNTY.
PERRIS CITY	PERRIS CITY IN RIVERSIDE COUNTY.
PICO RIVERA CITY	PICO RIVERA CITY IN LOS ANGELES COUNTY.
PITTSBURG CITY	PITTSBURG CITY IN CONTRA COSTA COUNTY.
PLUMAS COUNTY	PLUMAS COUNTY.
POMONA CITY	POMONA CITY IN LOS ANGELES COUNTY.
PORTERVILLE CITY	PORTERVILLE CITY IN TULARE COUNTY.
REDDING CITY	REDDING CITY IN SHASTA COUNTY.
RIALTO CITY	RIALTO CITY IN SAN BERNARDINO COUNTY.
RICHMOND CITY	RICHMOND CITY IN CONTRA COSTA COUNTY.
RIDGECREST CITY	RIDGECREST CITY IN KERN COUNTY.
RIVERSIDE CITY	RIVERSIDE CITY IN RIVERSIDE COUNTY.
BALANCE OF RIVERSIDE COUNTY.	RIVERSIDE COUNTY LESS CATHEDRAL CITY. CORONA CITY. HEMET CITY. INDIO CITY. MORENO VALLEY CITY. MURRIETA CITY. NORCO CITY. PALM DESERT CITY. PALM SPRINGS CITY. PERRIS CITY. RIVERSIDE CITY. TEMECULA CITY.
ROSEMEAD CITY	ROSEMEAD CITY IN LOS ANGELES COUNTY.
SACRAMENTO CITY	SACRAMENTO CITY IN SACRAMENTO COUNTY.
SALINAS CITY	SALINAS CITY IN MONTEREY COUNTY.
SAN BENITO COUNTY.	SAN BENITO COUNTY.
SAN BERNARDINO CITY.	SAN BERNARDINO CITY IN SAN BERNARDINO COUNTY.
BALANCE OF SAN BERNARDINO COUNTY.	SAN BERNARDINO COUNTY LESS APPLE VALLEY CITY. CHINO CITY. COLTON CITY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
	FONTANA CITY.
	HESPERIA CITY.
	HIGHLAND CITY.
	MONTCLAIR CITY.
	ONTARIO CITY.
	RANCHO CUCAMONGA CITY.
	REDLANDS CITY.
	RIALTO CITY.
	SAN BERNARDINO CITY.
	UPLAND CITY.
	VICTORVILLE CITY.
	YUCAIPA CITY.
SAN GABRIEL CITY	SAN GABRIEL CITY IN LOS ANGELES COUNTY.
BALANCE OF SAN JOAQUIN COUNTY.	SAN JOAQUIN COUNTY LESS LODI CITY.
	MANTECA CITY.
	STOCKTON CITY.
	TRACEY CITY.
SAN PABLO CITY	SAN PABLO CITY IN CONTRA COSTA COUNTY.
SANTA ANA CITY	SANTA ANA CITY IN ORANGE COUNTY.
SANTA CRUZ CITY	SANTA CRUZ CITY IN SANTA CRUZ COUNTY.
BALANCE OF SANTA CRUZ COUNTY.	SANTA CRUZ COUNTY LESS SANTA CRUZ CITY.
	WATSONVILLE CITY.
SANTA MARIA CITY	SANTA MARIA CITY IN SANTA BARBARA COUNTY.
SANTA PAULA CITY	SANTA PAULA CITY IN VENTURA COUNTY.
SEASIDE CITY	SEASIDE CITY IN MONTEREY COUNTY.
BALANCE OF SHASTA COUNTY.	SHASTA COUNTY LESS REDDING CITY.
SIERRA COUNTY	SIERRA COUNTY.
SISKIYOU COUNTY	SISKIYOU COUNTY.
BALANCE OF SOLANO COUNTY.	SOLANO COUNTY LESS BENICIA CITY.
	FAIRFIELD CITY.
	SUISON CITY.
	VACAVILLE CITY.
	VALLEJO CITY.
SOUTH GATE CITY	SOUTH GATE CITY IN LOS ANGELES COUNTY.
BALANCE OF STANISLAUS COUNTY.	STANISLAUS COUNTY LESS CERES CITY.
	MODESTO CITY.
	TURLOCK CITY.
STANTON CITY	STANTON CITY IN ORANGE COUNTY.
STOCKTON CITY	STOCKTON CITY IN SAN JOAQUIN COUNTY.
SUISON CITY	SUISON CITY IN SOLANO COUNTY.
BALANCE OF SUTTER COUNTY.	SUTTER COUNTY LESS YUBA CITY.
TEHAMA COUNTY	TEHAMA COUNTY.
TRACEY CITY	TRACEY CITY IN SAN JOAQUIN COUNTY.
TRINITY COUNTY	TRINITY COUNTY.
TULARE CITY	TULARE CITY IN TULARE COUNTY.
BALANCE OF TULARE COUNTY.	TULARE COUNTY LESS PORTERVILLE CITY.
	TULARE CITY.
	VISALIA CITY.
TUOLUMNE COUNTY.	TUOLUMNE COUNTY.
TURLOCK CITY	TURLOCK CITY IN STANISLAUS COUNTY.
VALLEJO CITY	VALLEJO CITY IN SOLANO COUNTY.
BALANCE OF VENTURA COUNTY.	VENTURA COUNTY LESS CAMARILLO CITY.
	MOORPARK CITY.
	OXNARD CITY.
	SANTA PAULA CITY.
	SIMI VALLEY CITY.
	THOUSAND OAKS CITY.
	VENTURA CITY.
VICTORVILLE CITY	VICTORVILLE CITY IN SAN BERNARDINO COUNTY.
VISALIA CITY	VISALIA CITY IN TULARE COUNTY.
WATSONVILLE CITY	WATSONVILLE CITY IN SANTA CRUZ COUNTY.
WEST HOLLYWOOD CITY.	WEST HOLLYWOOD CITY IN LOS ANGELES COUNTY.
WEST SACRAMENTO CITY.	WEST SACRAMENTO CITY IN YOLO COUNTY.
WOODLAND CITY	WOODLAND CITY IN YOLO COUNTY.
BALANCE OF YOLO COUNTY.	YOLO COUNTY LESS DAVIS CITY.
	WEST SACRAMENTO CITY.
	WOODLAND CITY.
YUBA CITY	YUBA CITY IN SUTTER COUNTY.
YUBA COUNTY	YUBA COUNTY.

COLORADO

CONEJOS COUNTY	CONEJOS COUNTY.
COSTILLA COUNTY	COSTILLA COUNTY.
DOLORES COUNTY	DOLORES COUNTY.
GRAND JUNCTION CITY.	GRAND JUNCTION CITY IN MESA COUNTY.
HUERFANO COUNTY.	HUERFANO COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
LAS ANIMAS COUNTY.	LAS ANIMAS COUNTY.
MINERAL COUNTY	MINERAL COUNTY.
MONTEZUMA COUNTY.	MONTEZUMA COUNTY.
RIO GRANDE COUNTY.	RIO GRANDE COUNTY.
SAGUACHE COUNTY.	SAGUACHE COUNTY.
SAN JUAN COUNTY	SAN JUAN COUNTY.

CONNECTICUT

ANSONIA TOWN	ANSONIA TOWN.
BRIDGEPORT CITY	BRIDGEPORT CITY.
DERBY TOWN	DERBY TOWN.
EAST HARTFORD CITY.	EAST HARTFORD CITY.
HARTFORD CITY	HARTFORD CITY.
KILLINGLY TOWN	KILLINGLY TOWN.
MERIDEN CITY	MERIDEN CITY.
MIDDLETOWN CITY	MIDDLETOWN CITY.
NEW BRITAIN CITY	NEW BRITAIN CITY.
NEW HAVEN CITY	NEW HAVEN CITY.
NEW LONDON CITY	NEW LONDON CITY.
NORWICH CITY	NORWICH CITY.
PLAINFIELD TOWN	PLAINFIELD TOWN.
PLYMOUTH TOWN	PLYMOUTH TOWN.
PUTNAM TOWN	PUTNAM TOWN.
SPRAGUE TOWN	SPRAGUE TOWN.
STERLING TOWN	STERLING TOWN.
VOLUNTOWN TOWN	VOLUNTOWN TOWN.
WATERBURY CITY	WATERBURY CITY.
WINCHESTER TOWN.	WINCHESTER TOWN.
WINDHAM TOWN	WINDHAM TOWN.

DISTRICT OF COLUMBIA

WASHINGTON DC CITY.	WASHINGTON DC CITY IN DISTRICT OF COLUMBIA.

FLORIDA

BOYNTON BEACH CITY.	BOYNTON BEACH CITY IN PALM BEACH COUNTY.
DE SOTO COUNTY	DE SOTO COUNTY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
DELRAY BEACH CITY.	DELRAY BEACH CITY IN PALM BEACH COUNTY.
DIXIE COUNTY	DIXIE COUNTY.
FORT PIERCE CITY	FORT PIERCE CITY IN ST. LUCIE COUNTY.
FT LAUDERDALE CITY.	FT LAUDERDALE CITY IN BROWARD COUNTY.
GLADES COUNTY	GLADES COUNTY.
HALLANDALE CITY	HALLANDALE CITY IN BROWARD COUNTY.
HAMILTON COUNTY	HAMILTON COUNTY.
HARDEE COUNTY	HARDEE COUNTY.
HENDRY COUNTY	HENDRY COUNTY.
HIALEAH CITY	HIALEAH CITY IN DADE COUNTY.
HIGHLANDS COUNTY.	HIGHLANDS COUNTY.
HOLMES COUNTY	HOLMES COUNTY.
HOMESTEAD CITY	HOMESTEAD CITY IN DADE COUNTY.
INDIAN RIVER COUNTY.	INDIAN RIVER COUNTY.
LAKE WORTH CITY	LAKE WORTH CITY IN PALM BEACH COUNTY.
LAUDERDALE LAKES CITY.	LAUDERDALE LAKES CITY IN BROWARD COUNTY.
MARTIN COUNTY	MARTIN COUNTY.
MELBOURNE CITY	MELBOURNE CITY IN BREVARD COUNTY.
MIAMI BEACH CITY	MIAMI BEACH CITY IN DADE COUNTY.
MIAMI CITY	MIAMI CITY IN DADE COUNTY.
NORTH MIAMI CITY	NORTH MIAMI CITY IN DADE COUNTY.
OKEECHOBEE COUNTY.	OKEECHOBEE COUNTY.
BALANCE OF PALM BEACH COUNTY.	PALM BEACH COUNTY LESS BOCA RATON CITY.
	BOYNTON BEACH CITY.
	DELRAY BEACH CITY.
	GREENACRES CITY.—
	JUPITER CITY.
	LAKE WORTH CITY.
	PALM BEACH GARDENS CITY.
	RIVIERA BEACH CITY.
PANAMA CITY	WEST PALM BEACH CITY.
BALANCE OF POLK COUNTY.	PANAMA CITY IN BAY COUNTY.
PORT ST. LUCIE CITY.	POLK COUNTY LESS LAKELAND CITY.
RIVIERA BEACH CITY.	PORT ST. LUCIE CITY IN ST. LUCIE COUNTY.
BALANCE OF ST. LUCIE COUNTY.	RIVIERA BEACH CITY IN PALM BEACH COUNTY.
	ST. LUCIE COUNTY LESS FORT PIERCE CITY.
	PORT ST. LUCIE CITY.
TAYLOR COUNTY	TAYLOR COUNTY.
WEST PALM BEACH CITY.	WEST PALM BEACH CITY IN PALM BEACH COUNTY.

GEORGIA

ALBANY CITY	ALBANY CITY IN DOUGHERTY COUNTY.
APPLING COUNTY	APPLING COUNTY.
ATKINSON COUNTY	ATKINSON COUNTY.
ATLANTA CITY	ATLANTA CITY IN DE KALB COUNTY.
	FULTON COUNTY.
AUGUSTA CITY	AUGUSTA CITY IN RICHMOND COUNTY.
BAKER COUNTY	BAKER COUNTY.
BRANTLEY COUNTY	BRANTLEY COUNTY.
BURKE COUNTY	BURKE COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CHATTAHOOCHEE COUNTY.	CHATTAHOOCHEE COUNTY.
CLAY COUNTY	CLAY COUNTY.
DODGE COUNTY	DODGE COUNTY.
DOOLY COUNTY	DOOLY COUNTY.
EARLY COUNTY	EARLY COUNTY.
ELBERT COUNTY	ELBERT COUNTY.
EMANUEL COUNTY	EMANUEL COUNTY.
GLASCOCK COUNTY.	GLASCOCK COUNTY.
GREENE COUNTY	GREENE COUNTY.
HANCOCK COUNTY	HANCOCK COUNTY.
HARALSON COUNTY.	HARALSON COUNTY.
HART COUNTY	HART COUNTY.
HEARD COUNTY	HEARD COUNTY.
HINESVILLE CITY	HINESVILLE CITY IN LIBERTY COUNTY.
JEFF DAVIS COUNTY.	JEFF DAVIS COUNTY.
JEFFERSON COUNTY.	JEFFERSON COUNTY.
JOHNSON COUNTY	JOHNSON COUNTY.
LA GRANGE CITY	LA GRANGE CITY IN TROUP COUNTY.
BALANCE OF LIBERTY COUNTY.	LIBERTY COUNTY LESS HINESVILLE CITY.
LINCOLN COUNTY	LINCOLN COUNTY.
MACON COUNTY	MACON COUNTY.
MC DUFFIE COUNTY.	MC DUFFIE COUNTY.
MONTGOMERY COUNTY.	MONTGOMERY COUNTY.
PEACH COUNTY	PEACH COUNTY.
POLK COUNTY	POLK COUNTY.
QUITMAN COUNTY	QUITMAN COUNTY.
RANDOLPH COUNTY.	RANDOLPH COUNTY.
ROME CITY	ROME CITY IN FLOYD COUNTY.
SCREVEN COUNTY	SCREVEN COUNTY.
TALBOT COUNTY	TALBOT COUNTY.
TALIAFERRO COUNTY.	TALIAFERRO COUNTY.
TAYLOR COUNTY	TAYLOR COUNTY.
TELFAIR COUNTY	TELFAIR COUNTY.
TERRELL COUNTY	TERRELL COUNTY.
TOOMBS COUNTY	TOOMBS COUNTY.
TREUTLEN COUNTY	TREUTLEN COUNTY.
TURNER COUNTY	TURNER COUNTY.
WARREN COUNTY	WARREN COUNTY.
WAYNE COUNTY	WAYNE COUNTY.
WHEELER COUNTY	WHEELER COUNTY.

HAWAII

HAWAII COUNTY	HAWAII COUNTY.
KAUAI COUNTY	KAUAI COUNTY.
MAUI COUNTY	MAUI COUNTY.

IDAHO

ADAMS COUNTY	ADAMS COUNTY.
BENEWAH COUNTY	BENEWAH COUNTY.
BONNER COUNTY	BONNER COUNTY.
BOUNDARY COUNTY.	BOUNDARY COUNTY.
CARIBOU COUNTY	CARIBOU COUNTY.
CLEARWATER COUNTY.	CLEARWATER COUNTY.
FREMONT COUNTY	FREMONT COUNTY.
GEM COUNTY	GEM COUNTY.
IDAHO COUNTY	IDAHO COUNTY.
BALANCE OF KOOTENAI COUNTY.	KOOTENAI COUNTY LESS COEUR D ALENE CITY.
LEMHI COUNTY	LEMHI COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
MINIDOKA COUNTY	MINIDOKA COUNTY.
PAYETTE COUNTY	PAYETTE COUNTY.
SHOSHONE COUNTY.	SHOSHONE COUNTY.
VALLEY COUNTY	VALLEY COUNTY.
WASHINGTON COUNTY.	WASHINGTON COUNTY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
ILLINOIS	
ALEXANDER COUNTY.	ALEXANDER COUNTY.
ALTON CITY	ALTON CITY IN MADISON COUNTY.
BELLEVILLE CITY	BELLEVILLE CITY IN ST. CLAIR COUNTY.
CARPENTERSVILLE CITY.	CARPENTERSVILLE CITY IN KANE COUNTY.
CHICAGO CITY	CHICAGO CITY IN COOK COUNTY.
CHRISTIAN COUNTY	CHRISTIAN COUNTY.
CICERO CITY	CICERO CITY IN COOK COUNTY.
CRAWFORD COUNTY.	CRAWFORD COUNTY.
DANVILLE CITY	DANVILLE CITY IN VERMILION COUNTY.
DECATUR CITY	DECATUR CITY IN MACON COUNTY.
DOLTON VILLAGE	DOLTON VILLAGE IN COOK COUNTY.
EAST ST. LOUIS CITY.	EAST ST. LOUIS CITY IN ST. CLAIR COUNTY.
FRANKLIN COUNTY	FRANKLIN COUNTY.
FULTON COUNTY	FULTON COUNTY.
GALLATIN COUNTY	GALLATIN COUNTY.
GRANITE CITY	GRANITE CITY IN MADISON COUNTY.
GRUNDY COUNTY	GRUNDY COUNTY.
HAMILTON COUNTY	HAMILTON COUNTY.
HARDIN COUNTY	HARDIN COUNTY.
HARVEY CITY	HARVEY CITY IN COOK COUNTY.
JEFFERSON COUNTY.	JEFFERSON COUNTY.
JOHNSON COUNTY	JOHNSON COUNTY.
JOLIET CITY	JOLIET CITY IN WILL COUNTY.
KANKAKEE CITY	KANKAKEE CITY IN KANKAKEE COUNTY.
LA SALLE COUNTY	LA SALLE COUNTY.
LAWRENCE COUNTY.	LAWRENCE COUNTY.
MARION COUNTY	MARION COUNTY.
MASON COUNTY	MASON COUNTY.
MAYWOOD VILLAGE	MAYWOOD VILLAGE IN COOK COUNTY.
MONTGOMERY COUNTY.	MONTGOMERY COUNTY.
NORTH CHICAGO CITY.	NORTH CHICAGO CITY IN LAKE COUNTY.
PEKIN CITY	PEKIN CITY IN TAZEWELL COUNTY.
PERRY COUNTY	PERRY COUNTY.
POPE COUNTY	POPE COUNTY.
PULASKI COUNTY	PULASKI COUNTY.
PUTNAM COUNTY	PUTNAM COUNTY.
RANDOLPH COUNTY.	RANDOLPH COUNTY.
SALINE COUNTY	SALINE COUNTY.
SCOTT COUNTY	SCOTT COUNTY.
STARK COUNTY	STARK COUNTY.
UNION COUNTY	UNION COUNTY.
WABASH COUNTY	WABASH COUNTY.
WAUKEGAN CITY	WAUKEGAN CITY IN LAKE COUNTY.
WHITE COUNTY	WHITE COUNTY.
WILLIAMSON COUNTY.	WILLIAMSON COUNTY.
INDIANA	
CRAWFORD COUNTY.	CRAWFORD COUNTY.
EAST CHICAGO CITY.	EAST CHICAGO CITY IN LAKE COUNTY.
FAYETTE COUNTY	FAYETTE COUNTY.
GARY CITY	GARY CITY IN LAKE COUNTY.
GREENE COUNTY	GREENE COUNTY.
LAWRENCE COUNTY.	LAWRENCE COUNTY.
MARION CITY	MARION CITY IN GRANT COUNTY.
MICHIGAN CITY	MICHIGAN CITY IN LA PORTE COUNTY.
ORANGE COUNTY	ORANGE COUNTY.
PERRY COUNTY	PERRY COUNTY.
RANDOLPH COUNTY.	RANDOLPH COUNTY.
SULLIVAN COUNTY	SULLIVAN COUNTY.
TERRE HAUTE CITY	TERRE HAUTE CITY IN VIGO COUNTY.
VERMILLION COUNTY.	VERMILLION COUNTY.
KANSAS	
ALLEN COUNTY	ALLEN COUNTY.
ATCHISON COUNTY	ATCHISON COUNTY.
CHEROKEE COUNTY.	CHEROKEE COUNTY.
DONIPHAN COUNTY	DONIPHAN COUNTY.
GEARY COUNTY	GEARY COUNTY.
KANSAS CITY KN	KANSAS CITY KN IN WYANDOTTE COUNTY.
LINN COUNTY	LINN COUNTY.
OSAGE COUNTY	OSAGE COUNTY.
WOODSON COUNTY	WOODSON COUNTY.
KENTUCKY	
ADAIR COUNTY	ADAIR COUNTY.
BALLARD COUNTY	BALLARD COUNTY.
BATH COUNTY	BATH COUNTY.
BELL COUNTY	BELL COUNTY.
BOYD COUNTY	BOYD COUNTY.
BREATHITT COUNTY.	BREATHITT COUNTY.
BUTLER COUNTY	BUTLER COUNTY.
CALDWELL COUNTY	CALDWELL COUNTY.
CARTER COUNTY	CARTER COUNTY.
CLAY COUNTY	CLAY COUNTY.
CLINTON COUNTY	CLINTON COUNTY.
CRITTENDEN COUNTY.	CRITTENDEN COUNTY.
CUMBERLAND COUNTY.	CUMBERLAND COUNTY.
EDMONSON COUNTY.	EDMONSON COUNTY.
ELLIOTT COUNTY	ELLIOTT COUNTY.
FLOYD COUNTY	FLOYD COUNTY.
FULTON COUNTY	FULTON COUNTY.
GRAVES COUNTY	GRAVES COUNTY.
GRAYSON COUNTY	GRAYSON COUNTY.
GREEN COUNTY	GREEN COUNTY.
GREENUP COUNTY	GREENUP COUNTY.
HANCOCK COUNTY	HANCOCK COUNTY.
HARLAN COUNTY	HARLAN COUNTY.
HENDERSON CITY	HENDERSON CITY IN HENDERSON COUNTY.
HICKMAN COUNTY	HICKMAN COUNTY.
HOPKINS COUNTY	HOPKINS COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
JOHNSON COUNTY	JOHNSON COUNTY.
KNOTT COUNTY	KNOTT COUNTY.
KNOX COUNTY	KNOX COUNTY.
LAWRENCE COUNTY.	LAWRENCE COUNTY.
LEE COUNTY	LEE COUNTY.
LESLIE COUNTY	LESLIE COUNTY.
LETCHER COUNTY	LETCHER COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LYON COUNTY	LYON COUNTY.
MAGOFFIN COUNTY	MAGOFFIN COUNTY.
MARION COUNTY	MARION COUNTY.
MARTIN COUNTY	MARTIN COUNTY.
MC CREARY COUNTY.	MC CREARY COUNTY.
MC LEAN COUNTY	MC LEAN COUNTY.
MENIFEE COUNTY	MENIFEE COUNTY.
MORGAN COUNTY	MORGAN COUNTY.
MUHLENBERG COUNTY.	MUHLENBERG COUNTY.
NELSON COUNTY	NELSON COUNTY.
NICHOLAS COUNTY	NICHOLAS COUNTY.
OHIO COUNTY	OHIO COUNTY.
PERRY COUNTY	PERRY COUNTY.
PIKE COUNTY	PIKE COUNTY.
POWELL COUNTY	POWELL COUNTY.
ROCKCASTLE COUNTY.	ROCKCASTLE COUNTY.
RUSSELL COUNTY	RUSSELL COUNTY.
UNION COUNTY	UNION COUNTY.
WARREN COUNTY LESS BOWLING GREEN CITY.	WARREN COUNTY LESS BOWLING GREEN CITY.
WAYNE COUNTY	WAYNE COUNTY.
WEBSTER COUNTY	WEBSTER COUNTY.
WHITLEY COUNTY	WHITLEY COUNTY.
WOLFE COUNTY	WOLFE COUNTY.
LOUISIANA	
ACADIA PARISH	ACADIA PARISH.
ALEXANDRIA CITY	ALEXANDRIA CITY IN RAPIDES PARISH.
ALLEN PARISH	ALLEN PARISH.
ASCENSION PARISH	ASCENSION PARISH.
ASSUMPTION PARISH.	ASSUMPTION PARISH.
AVOYELLES PARISH	AVOYELLES PARISH.
BEAUREGARD PARISH.	BEAUREGARD PARISH.
BIENVILLE PARISH	BIENVILLE PARISH.
BALANCE OF BOSSIER PARISH.	BOSSIER PARISH LESS BOSSIER CITY.
	SHREVEPORT CITY.
CALDWELL PARISH	CALDWELL PARISH.
CATAHOULA PARISH.	CATAHOULA PARISH.
CLAIBORNE PARISH	CLAIBORNE PARISH.
CONCORDIA PARISH.	CONCORDIA PARISH.
DE SOTO PARISH	DE SOTO PARISH.
EAST CARROLL PARISH.	EAST CARROLL PARISH.
EAST FELICIANA PARISH.	EAST FELICIANA PARISH.
EVANGELINE PARISH.	EVANGELINE PARISH.
FRANKLIN PARISH	FRANKLIN PARISH.
GRANT PARISH	GRANT PARISH.
IBERVILLE PARISH	IBERVILLE PARISH.
JEFFERSON DAVIS PARISH.	JEFFERSON DAVIS PARISH.
LAKE CHARLES CITY.	LAKE CHARLES CITY IN CALCASIEU PARISH.
LIVINGSTON PARISH.	LIVINGSTON PARISH.
MADISON PARISH	MADISON PARISH.
MONROE CITY	MONROE CITY IN OUACHITA PARISH.
MOREHOUSE PARISH.	MOREHOUSE PARISH.
NATCHITOCHES PARISH.	NATCHITOCHES PARISH.
NEW IBERIA CITY	NEW IBERIA CITY IN IBERIA PARISH.
NEW ORLEANS CITY.	NEW ORLEANS CITY IN ORLEANS PARISH.
POINTE COUPEE PARISH.	POINTE COUPEE PARISH.
RED RIVER PARISH	RED RIVER PARISH.
RICHLAND PARISH	RICHLAND PARISH.
SABINE PARISH	SABINE PARISH.
SHREVEPORT CITY	SHREVEPORT CITY IN BOSSIER PARISH.
	CADDO PARISH.
ST. BERNARD PARISH.	ST. BERNARD PARISH.
ST. HELENA PARISH	ST. HELENA PARISH.
ST. JAMES PARISH	ST. JAMES PARISH.
ST. JOHN BAPTIST PARISH.	ST. JOHN BAPTIST PARISH.
ST. LANDRY PARISH	ST. LANDRY PARISH.
ST. MARTIN PARISH	ST. MARTIN PARISH.
ST. MARY PARISH	ST. MARY PARISH.
TANGIPAHOA PARISH.	TANGIPAHOA PARISH.
TENSAS PARISH	TENSAS PARISH.
VERNON PARISH	VERNON PARISH.
WASHINGTON PARISH.	WASHINGTON PARISH.
WEBSTER PARISH	WEBSTER PARISH.
WEST BATON ROUGE PARISH.	WEST BATON ROUGE PARISH.
WEST CARROLL PARISH.	WEST CARROLL PARISH.
WEST FELICIANA PARISH.	WEST FELICIANA PARISH.
WINN PARISH	WINN PARISH.
MAINE	
AROOSTOOK COUNTY.	AROOSTOOK COUNTY.
OXFORD COUNTY	OXFORD COUNTY.
PISCATAQUIS COUNTY.	PISCATAQUIS COUNTY.
SOMERSET COUNTY.	SOMERSET COUNTY.
WALDO COUNTY	WALDO COUNTY.
WASHINGTON COUNTY.	WASHINGTON COUNTY.
MARYLAND	
ALLEGANY COUNTY	ALLEGANY COUNTY.
ANNAPOLIS CITY	ANNAPOLIS CITY IN ANNE ARUNDEL COUNTY.
BALTIMORE CITY—CECIL COUNTY	BALTIMORE CITY.
	CECIL COUNTY.
DORCHESTER COUNTY.	DORCHESTER COUNTY.
GARRETT COUNTY	GARRETT COUNTY.
KENT COUNTY	KENT COUNTY.
SOMERSET COUNTY.	SOMERSET COUNTY.
WORCESTER COUNTY.	WORCESTER COUNTY.
MASSACHUSETTS	
ACUSHNET TOWN	ACUSHNET TOWN IN—BRISTOL COUNTY.
ADAMS TOWN	ADAMS TOWN IN—BERKSHIRE COUNTY.
ATHOL TOWN	ATHOL TOWN IN—WORCESTER COUNTY.
BROCKTON CITY	BROCKTON CITY IN—PLYMOUTH COUNTY.
CHELSEA CITY	CHELSEA CITY IN—SUFFOLK COUNTY.
CHESTER TOWN	CHESTER TOWN IN—HAMPDEN COUNTY.
DARTMOUTH TOWN	DARTMOUTH TOWN IN—BRISTOL COUNTY.
DENNIS TOWN	DENNIS TOWN IN—BARNSTABLE COUNTY.
EDGARTOWN TOWN	EDGARTOWN TOWN IN—DUKES COUNTY.
FAIRHAVEN TOWN	FAIRHAVEN TOWN IN—BRISTOL COUNTY.
FALL RIVER CITY	FALL RIVER CITY IN—BRISTOL COUNTY.
FREETOWN TOWN	FREETOWN TOWN IN—BRISTOL COUNTY.
GAY HEAD TOWN	GAY HEAD TOWN IN—DUKES COUNTY.
GLOUCESTER CITY	GLOUCESTER CITY IN—ESSEX COUNTY.
HINSDALE TOWN	HINSDALE TOWN IN—BERKSHIRE COUNTY.
HOLYOKE CITY	HOLYOKE CITY IN—HAMPDEN COUNTY.
HUBBARDSTON TOWN.	HUBBARDSTON TOWN IN—WORCESTER COUNTY.
LAWRENCE CITY	LAWRENCE CITY IN—ESSEX COUNTY.
NEW BEDFORD CITY.	NEW BEDFORD CITY IN—BRISTOL COUNTY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
NORTH ADAMS TOWN.	NORTH ADAMS TOWN IN—BERKSHIRE COUNTY.
PHILLIPSTON TOWN	PHILLIPSTON TOWN IN WORCESTER COUNTY.
PROVINCETOWN TOWN.	PROVINCETOWN TOWN IN BARNSTABLE COUNTY.
SHELBURNE TOWN	SHELBURNE TOWN IN FRANKLIN COUNTY.
SOMERSET TOWN	SOMERSET TOWN IN BRISTOL COUNTY.
SPRINGFIELD CITY	SPRINGFIELD CITY IN HAMPDEN COUNTY.
SWANSEA TOWN	SWANSEA TOWN IN BRISTOL COUNTY.
TOLLAND TOWN	TOLLAND TOWN IN HAMPDEN COUNTY.
TRURO TOWN	TRURO TOWN IN BARNSTABLE COUNTY.
WAREHAM TOWN	WAREHAM TOWN IN PLYMOUTH COUNTY.
WELLFLEET TOWN	WELLFLEET TOWN IN BARNSTABLE COUNTY.
WESTPORT TOWN	WESTPORT TOWN IN BRISTOL COUNTY.
MICHIGAN	
ALCONA COUNTY	ALCONA COUNTY.
ALGER COUNTY	ALGER COUNTY.
ALPENA COUNTY	ALPENA COUNTY.
ANTRIM COUNTY	ANTRIM COUNTY.
ARENAC COUNTY	ARENAC COUNTY.
BARAGA COUNTY	BARAGA COUNTY.
BAY CITY	BAY CITY IN BAY COUNTY.
BENZIE COUNTY	BENZIE COUNTY
BURTON CITY	BURTON CITY IN GENESEE COUNTY.
CHARLEVOIX COUNTY.	CHARLEVOIX COUNTY.
CHEBOYGAN COUNTY.	CHEBOYGAN COUNTY.
CHIPPEWA COUNTY	CHIPPEWA COUNTY.
CLARE COUNTY	CLARE COUNTY.
CRAWFORD COUNTY.	CRAWFORD COUNTY.
DELTA COUNTY	DELTA COUNTY.
DETROIT CITY	DETROIT CITY IN WAYNE COUNTY.
EMMET COUNTY	EMMET COUNTY.
FLINT CITY	FLINT CITY IN GENESEE COUNTY.
GLADWIN COUNTY	GLADWIN COUNTY.
GOGEBIC COUNTY	GOGEBIC COUNTY.
GRATIOT COUNTY	GRATIOT COUNTY.
HIGHLAND PARK CITY.	HIGHLAND PARK CITY IN WAYNE COUNTY.
HOUGHTON COUNTY.	HOUGHTON COUNTY.
HURON COUNTY	HURON COUNTY.
IOSCO COUNTY	IOSCO COUNTY.
IRON COUNTY	IRON COUNTY.
JACKSON CITY	JACKSON CITY IN JACKSON COUNTY.
KALKASKA COUNTY	KALKASKA COUNTY.
KEWEENAW COUNTY.	KEWEENAW COUNTY.
LAKE COUNTY	LAKE COUNTY.
LUCE COUNTY	LUCE COUNTY.
MACKINAC COUNTY	MACKINAC COUNTY.
MANISTEE COUNTY	MANISTEE COUNTY.
MARQUETTE COUNTY.	MARQUETTE COUNTY.
MASON COUNTY	MASON COUNTY.
MISSAUKEE COUNTY.	MISSAUKEE COUNTY.
MONTCALM COUNTY.	MONTCALM COUNTY.
MONTMORENCY COUNTY.	MONTMORENCY COUNTY.
MOUNT MORRIS TOWNSHIP.	MOUNT MORRIS TOWNSHIP IN GENESEE COUNTY.
MUSKEGON CITY	MUSKEGON CITY IN MUSKEGON COUNTY.
NEWAYGO COUNTY	NEWAYGO COUNTY.
OCEANA COUNTY	OCEANA COUNTY.
OGEMAW COUNTY	OGEMAW COUNTY.
ONTONAGON COUNTY.	ONTONAGON COUNTY.
OSCEOLA COUNTY	OSCEOLA COUNTY.
OSCODA COUNTY	OSCODA COUNTY.
PONTIAC CITY	PONTIAC CITY IN OAKLAND COUNTY.
PORT HURON CITY	PORT HURON CITY IN ST. CLAIR COUNTY.
PRESQUE ISLE COUNTY.	PRESQUE ISLE COUNTY.
ROSCOMMON COUNTY.	ROSCOMMON COUNTY.
SAGINAW CITY	SAGINAW CITY IN SAGINAW COUNTY.
SANILAC COUNTY	SANILAC COUNTY.
SCHOOLCRAFT COUNTY.	SCHOOLCRAFT COUNTY.
SHIAWASSEE COUNTY.	SHIAWASSEE COUNTY.
TUSCOLA COUNTY	TUSCOLA COUNTY.
WEXFORD COUNTY	WEXFORD COUNTY.
MINNESOTA	
AITKIN COUNTY	AITKIN COUNTY.
BECKER COUNTY	BECKER COUNTY.
BELTRAMI COUNTY	BELTRAMI COUNTY.
CARLTON COUNTY	CARLTON COUNTY.
CASS COUNTY	CASS COUNTY.
CLEARWATER COUNTY.	CLEARWATER COUNTY.
COTTONWOOD COUNTY.	COTTONWOOD COUNTY.
HUBBARD COUNTY.	HUBBARD COUNTY.
ITASCA COUNTY	ITASCA COUNTY.
KANABEC COUNTY	KANABEC COUNTY.
KOOCHICHING COUNTY.	KOOCHICHING COUNTY.
MAHNOMEN COUNTY.	MAHNOMEN COUNTY.
MARSHALL COUNTY	MARSHALL COUNTY.
MILLE LACS COUNTY.	MILLE LACS COUNTY.
MORRISON COUNTY.	MORRISON COUNTY.
PINE COUNTY	PINE COUNTY.
RED LAKE COUNTY	RED LAKE COUNTY.
TODD COUNTY	TODD COUNTY.
MISSISSIPPI	
ADAMS COUNTY	ADAMS COUNTY.
ALCORN COUNTY	ALCORN COUNTY.
ATTALA COUNTY	ATTALA COUNTY.
BENTON COUNTY	BENTON COUNTY.
BILOXI CITY	BILOXI CITY IN HARRISON COUNTY.
BOLIVAR COUNTY	BOLIVAR COUNTY.
CHICKASAW COUNTY.	CHICKASAW COUNTY.
CHOCTAW COUNTY	CHOCTAW COUNTY.
CLAIBORNE COUNTY.	CLAIBORNE COUNTY.
CLAY COUNTY	CLAY COUNTY.
COAHOMA COUNTY	COAHOMA COUNTY.
COLUMBUS CITY	COLUMBUS CITY IN LOWNDES COUNTY.
COPIAH COUNTY	COPIAH COUNTY.
GEORGE COUNTY	GEORGE COUNTY.
GREENE COUNTY	GREENE COUNTY.
GREENVILLE CITY	GREENVILLE CITY IN WASHINGTON COUNTY.
GRENADA COUNTY	GRENADA COUNTY.
GULFPORT CITY	GULFPORT CITY IN HARRISON COUNTY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
HOLMES COUNTY	HOLMES COUNTY.
HUMPHREYS COUNTY.	HUMPHREYS COUNTY.
ISSAQUENA COUNTY.	ISSAQUENA COUNTY.
JEFFERSON COUNTY.	JEFFERSON COUNTY.
JEFFERSON DAVIS COUNTY.	JEFFERSON DAVIS COUNTY.
KEMPER COUNTY	KEMPER COUNTY.
LAWRENCE COUNTY.	LAWRENCE COUNTY.
LEFLORE COUNTY	LEFLORE COUNTY.
MARION COUNTY	MARION COUNTY.
MARSHALL COUNTY	MARSHALL COUNTY.
MONROE COUNTY	MONROE COUNTY.
MONTGOMERY COUNTY.	MONTGOMERY COUNTY.
NEWTON COUNTY	NEWTON COUNTY.
NOXUBEE COUNTY	NOXUBEE COUNTY.
PANOLA COUNTY	PANOLA COUNTY.
PERRY COUNTY	PERRY COUNTY.
PRENTISS COUNTY	PRENTISS COUNTY.
QUITMAN COUNTY	QUITMAN COUNTY.
SHARKEY COUNTY	SHARKEY COUNTY.
SUNFLOWER COUNTY.	SUNFLOWER COUNTY.
TALLAHATCHIE COUNTY.	TALLAHATCHIE COUNTY.
TISHOMINGO COUNTY.	TISHOMINGO COUNTY.
TUNICA COUNTY	TUNICA COUNTY.
BALANCE OF WASHINGTON COUNTY.	WASHINGTON COUNTY LESS GREENVILLE CITY.
WEBSTER COUNTY	WEBSTER COUNTY.
WILKINSON COUNTY.	WILKINSON COUNTY.
WINSTON COUNTY	WINSTON COUNTY.
YALOBUSHA COUNTY.	YALOBUSHA COUNTY.
YAZOO COUNTY	YAZOO COUNTY.
MISSOURI	
BENTON COUNTY	BENTON COUNTY.
BOLLINGER COUNTY.	BOLLINGER COUNTY.
CARTER COUNTY	CARTER COUNTY.
CRAWFORD COUNTY.	CRAWFORD COUNTY.
DALLAS COUNTY	DALLAS COUNTY.
DOUGLAS COUNTY	DOUGLAS COUNTY.
DUNKLIN COUNTY	DUNKLIN COUNTY.
HICKORY COUNTY	HICKORY COUNTY.
HOWELL COUNTY	HOWELL COUNTY.
IRON COUNTY	IRON COUNTY.
LACLEDE COUNTY	LACLEDE COUNTY.
LINN COUNTY	LINN COUNTY.
MADISON COUNTY	MADISON COUNTY.
MILLER COUNTY	MILLER COUNTY.
MISSISSIPPI COUNTY.	MISSISSIPPI COUNTY.
NEW MADRID COUNTY.	NEW MADRID COUNTY.
PEMISCOT COUNTY	PEMISCOT COUNTY.
PIKE COUNTY	PIKE COUNTY.
PULASKI COUNTY	PULASKI COUNTY.
RIPLEY COUNTY	RIPLEY COUNTY.
SHANNON COUNTY	SHANNON COUNTY.
ST JOSEPH CITY	ST JOSEPH CITY IN BUCHANAN COUNTY.
ST LOUIS CITY	ST LOUIS CITY.
ST. CLAIR COUNTY	ST. CLAIR COUNTY.
ST. FRANCOIS COUNTY.	ST. FRANCOIS COUNTY.
STODDARD COUNTY.	STODDARD COUNTY.
STONE COUNTY	STONE COUNTY.
TANEY COUNTY	TANEY COUNTY.
TEXAS COUNTY	TEXAS COUNTY.
WASHINGTON COUNTY.	WASHINGTON COUNTY.
WAYNE COUNTY	WAYNE COUNTY.
WRIGHT COUNTY	WRIGHT COUNTY.
MONTANA	
ANACONDA-DEER LODGE COUNTY.	ANACONDA-DEER LODGE COUNTY.
BIG HORN COUNTY	BIG HORN COUNTY.
BLAINE COUNTY	BLAINE COUNTY.
FLATHEAD COUNTY	FLATHEAD COUNTY.
GLACIER COUNTY	GLACIER COUNTY.
GOLDEN VALLEY COUNTY.	GOLDEN VALLEY COUNTY.
LAKE COUNTY	LAKE COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
MINERAL COUNTY	MINERAL COUNTY.
MUSSELSHELL COUNTY.	MUSSELSHELL COUNTY.
PHILLIPS COUNTY	PHILLIPS COUNTY.
POWELL COUNTY	POWELL COUNTY.
ROOSEVELT COUNTY.	ROOSEVELT COUNTY.
ROSEBUD COUNTY	ROSEBUD COUNTY.
SANDERS COUNTY	SANDERS COUNTY.
BALANCE OF SILVER BOW COUNTY.	SILVER BOW COUNTY LESS BUTTE-SILVER BOW CITY.
NEBRASKA	
THOMAS COUNTY	THOMAS COUNTY.
THURSTON COUNTY.	THURSTON COUNTY.
NEVADA	
CARSON CITY	CARSON CITY.
CHURCHILL COUNTY.	CHURCHILL COUNTY.
ESMERALDA COUNTY.	ESMERALDA COUNTY.
EUREKA COUNTY	EUREKA COUNTY.
LANDER COUNTY	LANDER COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
LYON COUNTY	LYON COUNTY.
MINERAL COUNTY	MINERAL COUNTY.
NORTH LAS VEGAS CITY.	NORTH LAS VEGAS CITY IN CLARK COUNTY.
WHITE PINE COUNTY.	WHITE PINE COUNTY.
NEW HAMPSHIRE	
COOS COUNTY	COOS COUNTY.
NEW JERSEY	
ATLANTIC CITY	ATLANTIC CITY IN ATLANTIC COUNTY.
BALANCE OF ATLANTIC COUNTY.	ATLANTIC COUNTY LESS ATLANTIC CITY.
	EGG HARBOR TOWNSHIP.
BERKELEY TOWNSHIP.	BERKELEY TOWNSHIP IN OCEAN COUNTY.
CAMDEN CITY	CAMDEN CITY IN CAMDEN COUNTY.
CAPE MAY COUNTY	CAPE MAY COUNTY.
CITY OF ORANGE TOWNSHIP.	CITY OF ORANGE TOWNSHIP IN ESSEX COUNTY.
BALANCE OF CUMBERLAND COUNTY.	CUMBERLAND COUNTY LESS MILLVILLE CITY.
	VINELAND CITY.
EAST ORANGE CITY	EAST ORANGE CITY IN ESSEX COUNTY.
EGG HARBOR TOWNSHIP.	EGG HARBOR TOWNSHIP IN ATLANTIC COUNTY.
ELIZABETH CITY	ELIZABETH CITY IN UNION COUNTY.
GARFIELD CITY	GARFIELD CITY IN BERGEN COUNTY.
BALANCE OF GLOUCESTER COUNTY.	GLOUCESTER COUNTY LESS MONROE TOWNSHIP.
	WASHINGTON TOWNSHIP.
HACKENSACK CITY	HACKENSACK CITY IN BERGEN COUNTY.
IRVINGTON TOWNSHIP.	IRVINGTON TOWNSHIP IN ESSEX COUNTY.
JERSEY CITY	JERSEY CITY IN HUDSON COUNTY.
LAKEWOOD TOWNSHIP.	LAKEWOOD TOWNSHIP IN OCEAN COUNTY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
LINDEN CITY	LINDEN CITY IN UNION COUNTY.
LONG BRANCH CITY	LONG BRANCH CITY IN MONMOUTH COUNTY.
MANCHESTER TOWNSHIP.	MANCHESTER TOWNSHIP IN OCEAN COUNTY.
MILLVILLE CITY	MILLVILLE CITY IN CUMBERLAND COUNTY.
NEW BRUNSWICK CITY.	NEW BRUNSWICK CITY IN MIDDLESEX COUNTY.
NEWARK CITY	NEWARK CITY IN ESSEX COUNTY.
NORTH BERGEN TOWNSHIP.	NORTH BERGEN TOWNSHIP IN HUDSON COUNTY.
PASSAIC CITY	PASSAIC CITY IN PASSAIC COUNTY.
PATERSON CITY	PATERSON CITY IN PASSAIC COUNTY.
PEMBERTON TOWNSHIP.	PEMBERTON TOWNSHIP IN BURLINGTON COUNTY.
PERTH AMBOY CITY	PERTH AMBOY CITY IN MIDDLESEX COUNTY.
PLAINFIELD CITY	PLAINFIELD CITY IN UNION COUNTY.
SALEM COUNTY	SALEM COUNTY.
TRENTON CITY	TRENTON CITY IN MERCER COUNTY.
UNION CITY	UNION CITY IN HUDSON COUNTY.
VINELAND CITY	VINELAND CITY IN CUMBERLAND COUNTY.
WEST NEW YORK TOWN.	WEST NEW YORK TOWN IN HUDSON COUNTY.
NEW MEXICO	
CARLSBAD CITY	CARLSBAD CITY IN EDDY COUNTY.
CATRON COUNTY	CATRON COUNTY.
BALANCE OF CHAVES COUNTY.	CHAVES COUNTY LESS ROSWELL CITY.
CIBOLA COUNTY	CIBOLA COUNTY.
COLFAX COUNTY	COLFAX COUNTY.
BALANCE OF DONA ANA COUNTY.	DONA ANA COUNTY LESS LAS CRUCES CITY.
BALANCE OF EDDY COUNTY.	EDDY COUNTY LESS CARLSBAD CITY.
FARMINGTON CITY	FARMINGTON CITY IN SAN JUAN COUNTY.
GRANT COUNTY	GRANT COUNTY.
GUADALUPE COUNTY.	GUADALUPE COUNTY.
LAS CRUCES CITY	LAS CRUCES CITY IN DONA ANA COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
LUNA COUNTY	LUNA COUNTY.
MC KINLEY COUNTY	MC KINLEY COUNTY.
MORA COUNTY	MORA COUNTY.
BALANCE OF OTERO COUNTY.	OTERO COUNTY LESS ALAMOGORDO CITY.
RIO ARRIBA COUNTY.	RIO ARRIBA COUNTY.
ROSWELL CITY	ROSWELL CITY IN CHAVES COUNTY.
BALANCE OF SAN JUAN COUNTY.	SAN JUAN COUNTY LESS FARMINGTON CITY.
SAN MIGUEL COUNTY.	SAN MIGUEL COUNTY.
SOCORRO COUNTY	SOCORRO COUNTY.
TAOS COUNTY	TAOS COUNTY.
TORRANCE COUNTY.	TORRANCE COUNTY.
NEW YORK	
ALLEGANY COUNTY	ALLEGANY COUNTY.
AUBURN CITY	AUBURN CITY IN CAYUGA COUNTY.
BINGHAMTON CITY	BINGHAMTON CITY IN BROOME COUNTY.
BRONX COUNTY	BRONX COUNTY.
BUFFALO CITY	BUFFALO CITY IN ERIE COUNTY.
CATTARAUGUS COUNTY.	CATTARAUGUS COUNTY.
CHENANGO COUNTY.	CHENANGO COUNTY.
CLINTON COUNTY	CLINTON COUNTY.
ELMIRA CITY	ELMIRA CITY IN CHEMUNG COUNTY.
ESSEX COUNTY	ESSEX COUNTY.
FRANKLIN COUNTY	FRANKLIN COUNTY.
FULTON COUNTY	FULTON COUNTY.
GREENE COUNTY	GREENE COUNTY.
HAMILTON COUNTY	HAMILTON COUNTY.
HEMPSTEAD VILLAGE.	HEMPSTEAD VILLAGE IN NASSAU COUNTY.
HERKIMER COUNTY	HERKIMER COUNTY.
BALANCE OF JEFFERSON COUNTY.	JEFFERSON COUNTY LESS WATERTOWN CITY.
KINGS COUNTY	KINGS COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
MONTGOMERY COUNTY.	MONTGOMERY COUNTY.
NEW YORK COUNTY.	NEW YORK COUNTY.
NEWBURGH CITY	NEWBURGH CITY IN ORANGE COUNTY.
NIAGARA FALLS CITY.	NIAGARA FALLS CITY IN NIAGARA COUNTY.
ORLEANS COUNTY	ORLEANS COUNTY.
OSWEGO COUNTY	OSWEGO COUNTY.
POUGHKEEPSIE CITY.	POUGHKEEPSIE CITY IN DUTCHESS COUNTY.
QUEENS COUNTY	QUEENS COUNTY.
RICHMOND COUNTY.	RICHMOND COUNTY.
SCHENECTADY CITY.	SCHENECTADY CITY IN SCHENECTADY COUNTY.
ST. LAWRENCE COUNTY.	ST. LAWRENCE COUNTY.
SYRACUSE CITY	SYRACUSE CITY IN ONONDAGA COUNTY.
TROY CITY	TROY CITY IN RENSSELAER COUNTY.
UTICA CITY	UTICA CITY IN ONEIDA COUNTY.
BALANCE OF WARREN COUNTY.	WARREN COUNTY LESS QUEENSBURY TOWN.
WATERTOWN CITY	WATERTOWN CITY IN JEFFERSON COUNTY.
WYOMING COUNTY	WYOMING COUNTY.
NORTH CAROLINA	
ALLEGHANY COUNTY	ALLEGHANY COUNTY.
ANSON COUNTY	ANSON COUNTY.
ASHE COUNTY	ASHE COUNTY.
BEAUFORT COUNTY	BEAUFORT COUNTY.
BERTIE COUNTY	BERTIE COUNTY.
BRUNSWICK COUNTY.	BRUNSWICK COUNTY.
COLUMBUS COUNTY.	COLUMBUS COUNTY.
BALANCE OF EDGECOMBE COUNTY.	EDGECOMBE COUNTY LESS ROCKY MOUNT CITY.
GRAHAM COUNTY	GRAHAM COUNTY.
HALIFAX COUNTY	HALIFAX COUNTY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
HYDE COUNTY	HYDE COUNTY.
KINSTON CITY	KINSTON CITY IN LENOIR COUNTY.
MARTIN COUNTY	MARTIN COUNTY.
MITCHELL COUNTY	MITCHELL COUNTY.
MONTGOMERY COUNTY.	MONTGOMERY COUNTY.
NORTHAMPTON COUNTY.	NORTHAMPTON COUNTY.
RICHMOND COUNTY.	RICHMOND COUNTY.
ROBESON COUNTY	ROBESON COUNTY.
ROCKY MOUNT CITY.	ROCKY MOUNT CITY IN EDGECOMBE COUNTY.
	NASH COUNTY.
SCOTLAND COUNTY	SCOTLAND COUNTY.
SWAIN COUNTY	SWAIN COUNTY.
TYRRELL COUNTY	TYRRELL COUNTY.
VANCE COUNTY	VANCE COUNTY.
WARREN COUNTY	WARREN COUNTY.
WASHINGTON COUNTY.	WASHINGTON COUNTY.
WILSON CITY	WILSON CITY IN WILSON COUNTY.
NORTH DAKOTA	
BENSON COUNTY	BENSON COUNTY.
MOUNTRAIL COUNTY.	MOUNTRAIL COUNTY.
ROLETTE COUNTY	ROLETTE COUNTY.
OHIO	
ADAMS COUNTY	ADAMS COUNTY.
ASHTABULA COUNTY.	ASHTABULA COUNTY.
CANTON CITY	CANTON CITY IN STARK COUNTY.
CLEVELAND CITY	CLEVELAND CITY IN CUYAHOGA COUNTY.
DAYTON CITY	DAYTON CITY IN MONTGOMERY COUNTY.
EAST CLEVELAND CITY.	EAST CLEVELAND CITY IN CUYAHOGA COUNTY.
ELYRIA CITY	ELYRIA CITY IN LORAIN COUNTY.
GALLIA COUNTY	GALLIA COUNTY.
GUERNSEY COUNTY.	GUERNSEY COUNTY.
HARRISON COUNTY	HARRISON COUNTY.
HOCKING COUNTY	HOCKING COUNTY.
HURON COUNTY	HURON COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
JEFFERSON COUNTY.	JEFFERSON COUNTY.
LIMA CITY	LIMA CITY IN ALLEN COUNTY.
LORAIN CITY	LORAIN CITY IN LORAIN COUNTY.
MANSFIELD CITY	MANSFIELD CITY IN RICHLAND COUNTY.
MARION CITY	MARION CITY IN MARION COUNTY.
MEIGS COUNTY	MEIGS COUNTY.
MERCER COUNTY	MERCER COUNTY.
MONROE COUNTY	MONROE COUNTY.
MORGAN COUNTY	MORGAN COUNTY.
NOBLE COUNTY	NOBLE COUNTY.
OTTAWA COUNTY	OTTAWA COUNTY.
PERRY COUNTY	PERRY COUNTY.
PIKE COUNTY	PIKE COUNTY.
SANDUSKY CITY	SANDUSKY CITY IN ERIE COUNTY.
SCIOTO COUNTY	SCIOTO COUNTY.
VINTON COUNTY	VINTON COUNTY.
WARREN CITY	WARREN CITY IN TRUMBULL COUNTY.
YOUNGSTOWN CITY	YOUNGSTOWN CITY IN MAHONING COUNTY.
ZANESVILLE CITY	ZANESVILLE CITY IN MUSKINGUM COUNTY.
OKLAHOMA	
CHOCTAW COUNTY	CHOCTAW COUNTY.
COAL COUNTY	COAL COUNTY.
HASKELL COUNTY	HASKELL COUNTY.
HUGHES COUNTY	HUGHES COUNTY.
BALANCE OF KAY COUNTY.	KAY COUNTY LESS PONCA CITY.
LATIMER COUNTY	LATIMER COUNTY.
LE FLORE COUNTY	LE FLORE COUNTY.
MC CURTAIN COUNTY.	MC CURTAIN COUNTY.
MC INTOSH COUNTY.	MC INTOSH COUNTY.
BALANCE OF MUSKOGEE COUNTY.	MUSKOGEE COUNTY LESS MUSKOGEE CITY.
NOWATA COUNTY	NOWATA COUNTY.
OKMULGEE COUNTY.	OKMULGEE COUNTY.
PAWNEE COUNTY	PAWNEE COUNTY.
PITTSBURG COUNTY.	PITTSBURG COUNTY.
PUSHMATAHA COUNTY.	PUSHMATAHA COUNTY.
SEMINOLE COUNTY	SEMINOLE COUNTY.
SEQUOYAH COUNTY.	SEQUOYAH COUNTY.
OREGON	
BAKER COUNTY	BAKER COUNTY.
COOS COUNTY	COOS COUNTY.
CROOK COUNTY	CROOK COUNTY.
CURRY COUNTY	CURRY COUNTY.
DESCHUTES COUNTY.	DESCHUTES COUNTY.
DOUGLAS COUNTY	DOUGLAS COUNTY.
GRANT COUNTY	GRANT COUNTY.
HARNEY COUNTY	HARNEY COUNTY.
HOOD RIVER COUNTY.	HOOD RIVER COUNTY.
BALANCE OF JACKSON COUNTY.	JACKSON COUNTY LESS MEDFORD CITY.
JEFFERSON COUNTY.	JEFFERSON COUNTY.
JOSEPHINE COUNTY.	JOSEPHINE COUNTY.
KLAMATH COUNTY	KLAMATH COUNTY.
LAKE COUNTY	LAKE COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
BALANCE OF LINN COUNTY.	LINN COUNTY LESS ALBANY CITY.
MALHEUR COUNTY	MALHEUR COUNTY.
MEDFORD CITY	MEDFORD CITY IN JACKSON COUNTY.
MORROW COUNTY	MORROW COUNTY.
SHERMAN COUNTY	SHERMAN COUNTY.
UMATILLA COUNTY	UMATILLA COUNTY.
UNION COUNTY	UNION COUNTY.
WALLOWA COUNTY	WALLOWA COUNTY.
WASCO COUNTY	WASCO COUNTY.
WHEELER COUNTY	WHEELER COUNTY.
PENNSYLVANIA	
ALLENTOWN CITY	ALLENTOWN CITY IN LEHIGH COUNTY.
ALTOONA CITY	ALTOONA CITY IN BLAIR COUNTY.
ARMSTRONG COUNTY.	ARMSTRONG COUNTY.
BEDFORD COUNTY	BEDFORD COUNTY.
BALANCE OF CAMBRIA COUNTY.	CAMBRIA COUNTY LESS JOHNSTOWN CITY.
CAMERON COUNTY	CAMERON COUNTY.
CARBON COUNTY	CARBON COUNTY.
CHESTER CITY	CHESTER CITY IN DELAWARE COUNTY.
CLARION COUNTY	CLARION COUNTY.
CLEARFIELD COUNTY.	CLEARFIELD COUNTY.
CLINTON COUNTY	CLINTON COUNTY.
COLUMBIA COUNTY	COLUMBIA COUNTY.
ERIE CITY	ERIE CITY IN ERIE COUNTY.
FAYETTE COUNTY	FAYETTE COUNTY.
FOREST COUNTY	FOREST COUNTY.
GREENE COUNTY	GREENE COUNTY.
HAZLETON CITY	HAZLETON CITY IN LUZERNE COUNTY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
HUNTINGDON COUNTY.	HUNTINGDON COUNTY.
INDIANA COUNTY	INDIANA COUNTY.
JEFFERSON COUNTY.	JEFFERSON COUNTY.
JOHNSTOWN CITY	JOHNSTOWN CITY IN CAMBRIA COUNTY.
JUNIATA COUNTY	JUNIATA COUNTY.
BALANCE OF LACKAWANNA COUNTY.	LACKAWANNA COUNTY LESS SCRANTON CITY.
BALANCE OF LUZERNE COUNTY.	LUZERNE COUNTY LESS HAZLETON CITY.
	WILKES-BARRE CITY.
BALANCE OF LYCOMING COUNTY.	LYCOMING COUNTY LESS WILLIAMSPORT CITY.
MCKEESPORT CITY	MCKEESPORT CITY IN ALLEGHENY COUNTY.
MIFFLIN COUNTY	MIFFLIN COUNTY.
MONROE COUNTY	MONROE COUNTY.
NEW CASTLE CITY.	NEW CASTLE CITY IN LAWRENCE COUNTY.
NORTHUMBERLAND COUNTY.	NORTHUMBERLAND COUNTY.
PHILADELPHIA CITY	PHILADELPHIA CITY IN PHILADELPHIA COUNTY.
POTTER COUNTY	POTTER COUNTY.
SCHUYLKILL COUNTY.	SCHUYLKILL COUNTY.
SCRANTON CITY	SCRANTON CITY IN LACKAWANNA COUNTY.
SOMERSET COUNTY.	SOMERSET COUNTY.
SUSQUEHANNA COUNTY.	SUSQUEHANNA COUNTY.
TIOGA COUNTY	TIOGA COUNTY.
VENANGO COUNTY	VENANGO COUNTY.
WAYNE COUNTY	WAYNE COUNTY.
WILKES-BARRE CITY.	WILKES-BARRE CITY IN LUZERNE COUNTY.
WILLIAMSPORT CITY.	WILLIAMSPORT CITY IN LYCOMING COUNTY.
WYOMING COUNTY	WYOMING COUNTY.
PUERTO RICO	
ADJUNTAS MUNICIPIO.	ADJUNTAS MUNICIPIO.
AGUADA MUNICIPIO	AGUADA MUNICIPIO.
AGUADILLA MUNICIPIO.	AGUADILLA MUNICIPIO.
AGUAS BUENAS MUNICIPIO.	AGUAS BUENAS MUNICIPIO.
AIBONITO MUNICIPIO.	AIBONITO MUNICIPIO.
ANASCO MUNICIPIO	ANASCO MUNICIPIO.
ARECIBO MUNICIPIO.	ARECIBO MUNICIPIO.
ARROYO MUNICIPIO	ARROYO MUNICIPIO.
BARCELONETA MUNICIPIO.	BARCELONETA MUNICIPIO.
BARRANQUITAS MUNICIPIO.	BARRANQUITAS MUNICIPIO.
BAYAMON MUNICIPIO.	BAYAMON MUNICIPIO.
CABO ROJO MUNICIPIO.	CABO ROJO MUNICIPIO.
CAGUAS MUNICIPIO	CAGUAS MUNICIPIO.
CAMUY MUNICIPIO	CAMUY MUNICIPIO.
CANOVANAS MUNICIPIO.	CANOVANAS MUNICIPIO.
CAROLINA MUNICIPIO.	CAROLINA MUNICIPIO.
CATANO MUNICIPIO	CATANO MUNICIPIO.
CAYEY MUNICIPIO	CAYEY MUNICIPIO.
CEIBA MUNICIPIO	CEIBA MUNICIPIO.
CIALES MUNICIPIO	CIALES MUNICIPIO.
CIDRA MUNICIPIO	CIDRA MUNICIPIO.
COAMO MUNICIPIO	COAMO MUNICIPIO.
COMERIO MUNICIPIO.	COMERIO MUNICIPIO.
COROZAL MUNICIPIO.	COROZAL MUNICIPIO.
DORADO MUNICIPIO	DORADO MUNICIPIO.
FAJARDO MUNICIPIO.	FAJARDO MUNICIPIO.
FLORIDA MUNICIPIO	FLORIDA MUNICIPIO.
GUANICA MUNICIPIO.	GUANICA MUNICIPIO.
GUAYAMA MUNICIPIO.	GUAYAMA MUNICIPIO.
GUAYANILLA MUNICIPIO.	GUAYANILLA MUNICIPIO.
GURABO MUNICIPIO.	GURABO MUNICIPIO.
HATILLO MUNICIPIO	HATILLO MUNICIPIO.
HORMIGUEROS MUNICIPIO.	HORMIGUEROS MUNICIPIO.
HUMACAO MUNICIPIO.	HUMACAO MUNICIPIO.
ISABELA MUNICIPIO	ISABELA MUNICIPIO.
JAYUYA MUNICIPIO	JAYUYA MUNICIPIO.
JUANA DIAZ MUNICIPIO.	JUANA DIAZ MUNICIPIO.
JUNCOS MUNICIPIO	JUNCOS MUNICIPIO.
LAJAS MUNICIPIO	LAJAS MUNICIPIO.
LARES MUNICIPIO	LARES MUNICIPIO.
LAS MARIAS MUNICIPIO.	LAS MARIAS MUNICIPIO.
LAS PIEDRAS MUNICIPIO.	LAS PIEDRAS MUNICIPIO.
LOIZA MUNICIPIO	LOIZA MUNICIPIO.
LUQUILLO MUNICIPIO.	LUQUILLO MUNICIPIO.
MANATI MUNICIPIO	MANATI MUNICIPIO.
MARICAO MUNICIPIO.	MARICAO MUNICIPIO.
MAUNABO MUNICIPIO.	MAUNABO MUNICIPIO.
MAYAGUEZ MUNICIPIO.	MAYAGUEZ MUNICIPIO.
MOCA MUNICIPIO	MOCA MUNICIPIO.
MOROVIS MUNICIPIO.	MOROVIS MUNICIPIO.
NAGUABO MUNICIPIO.	NAGUABO MUNICIPIO.
NARANJITO MUNICIPIO.	NARANJITO MUNICIPIO.
OROCOVIS MUNICIPIO.	OROCOVIS MUNICIPIO.
PATILLAS MUNICIPIO.	PATILLAS MUNICIPIO.
PENUELAS MUNICIPIO.	PENUELAS MUNICIPIO.
PONCE MUNICIPIO	PONCE MUNICIPIO.
QUEBRADILLAS MUNICIPIO.	QUEBRADILLAS MUNICIPIO.
RINCON MUNICIPIO	RINCON MUNICIPIO.
RIO GRANDE MUNICIPIO.	RIO GRANDE MUNICIPIO.
SABANA GRANDE MUNICIPIO.	SABANA GRANDE MUNICIPIO.
SALINAS MUNICIPIO	SALINAS MUNICIPIO.
SAN GERMAN MUNICIPIO.	SAN GERMAN MUNICIPIO.
SAN JUAN MUNICIPIO.	SAN JUAN MUNICIPIO.
SAN LORENZO MUNICIPIO.	SAN LORENZO MUNICIPIO.
SAN SEBASTIAN MUNICIPIO.	SAN SEBASTIAN MUNICIPIO.
SANTA ISABEL MUNICIPIO.	SANTA ISABEL MUNICIPIO.
TOA ALTA MUNICIPIO.	TOA ALTA MUNICIPIO.
TOA BAJA MUNICIPIO.	TOA BAJA MUNICIPIO.
TRUJILLO ALTO MUNICIPIO.	TRUJILLO ALTO MUNICIPIO.
UTUADO MUNICIPIO	UTUADO MUNICIPIO.
VEGA ALTA MUNICIPIO.	VEGA ALTA MUNICIPIO.
VEGA BAJA MUNICIPIO.	VEGA BAJA MUNICIPIO.
VIEQUES MUNICIPIO.	VIEQUES MUNICIPIO.
VILLALBA MUNICIPIO.	VILLALBA MUNICIPIO.
YABUCOA MUNICIPIO.	YABUCOA MUNICIPIO.
YAUCO MUNICIPIO	YAUCO MUNICIPIO.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
RHODE ISLAND	
CENTRAL FALLS CITY.	CENTRAL FALLS CITY.
CHARLESTOWN TOWN.	CHARLESTOWN TOWN.
JOHNSTON TOWN	JOHNSTON TOWN.
NEW SHOREHAM TOWN.	NEW SHOREHAM TOWN.
PAWTUCKET CITY	PAWTUCKET CITY.
PROVIDENCE CITY	PROVIDENCE CITY.
WEST WARWICK TOWN.	WEST WARWICK TOWN.
WOONSOCKET CITY	WOONSOCKET CITY.
SOUTH CAROLINA	
AIKEN COUNTY	AIKEN COUNTY.
ALLENDALE COUNTY.	ALLENDALE COUNTY.
BAMBERG COUNTY	BAMBERG COUNTY.
BARNWELL COUNTY.	BARNWELL COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CHESTER COUNTY	CHESTER COUNTY.
CHESTERFIELD COUNTY.	CHESTERFIELD COUNTY.
CLARENDON COUNTY.	CLARENDON COUNTY.
COLLETON COUNTY	COLLETON COUNTY.
DARLINGTON COUNTY.	DARLINGTON COUNTY.
DILLON COUNTY	DILLON COUNTY.
EDGEFIELD COUNTY.	EDGEFIELD COUNTY.
FAIRFIELD COUNTY	FAIRFIELD COUNTY.
FLORENCE CITY	FLORENCE CITY IN FLORENCE COUNTY.
BALANCE OF FLORENCE COUNTY.	FLORENCE COUNTY LESS FLORENCE CITY.
GEORGETOWN COUNTY.	GEORGETOWN COUNTY.
HAMPTON COUNTY	HAMPTON COUNTY.
LEE COUNTY	LEE COUNTY.
MARION COUNTY	MARION COUNTY.
MARLBORO COUNTY.	MARLBORO COUNTY.
MC CORMICK COUNTY.	MC CORMICK COUNTY.
NORTH CHARLESTON CITY.	NORTH CHARLESTON CITY IN CHARLESTON COUNTY.
ORANGEBURG COUNTY.	ORANGEBURG COUNTY.
UNION COUNTY	UNION COUNTY.
WILLIAMSBURG COUNTY.	WILLIAMSBURG COUNTY.
SOUTH DAKOTA	
BUFFALO COUNTY	BUFFALO COUNTY.
CORSON COUNTY	CORSON COUNTY.
DEWEY COUNTY	DEWEY COUNTY.
SHANNON COUNTY	SHANNON COUNTY.
TODD COUNTY	TODD COUNTY.
ZIEBACH COUNTY	ZIEBACH COUNTY.
TENNESSEE	
BENTON COUNTY	BENTON COUNTY.
CAMPBELL COUNTY	CAMPBELL COUNTY.
CARROLL COUNTY	CARROLL COUNTY.
CLAY COUNTY	CLAY COUNTY.
COCKE COUNTY	COCKE COUNTY.
CROCKETT COUNTY.	CROCKETT COUNTY.
CUMBERLAND COUNTY.	CUMBERLAND COUNTY.
DE KALB COUNTY	DE KALB COUNTY.
DECATUR COUNTY	DECATUR COUNTY.
FENTRESS COUNTY	FENTRESS COUNTY.
GIBSON COUNTY	GIBSON COUNTY.
GREENE COUNTY	GREENE COUNTY.
GRUNDY COUNTY	GRUNDY COUNTY.
HARDEMAN COUNTY.	HARDEMAN COUNTY.
HARDIN COUNTY	HARDIN COUNTY.
HAYWOOD COUNTY	HAYWOOD COUNTY.
HENDERSON COUNTY.	HENDERSON COUNTY.
HOUSTON COUNTY	HOUSTON COUNTY.
HUMPHREYS COUNTY.	HUMPHREYS COUNTY.
JOHNSON COUNTY	JOHNSON COUNTY.
LAKE COUNTY	LAKE COUNTY.
LAUDERDALE COUNTY.	LAUDERDALE COUNTY.
LAWRENCE COUNTY.	LAWRENCE COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
MACON COUNTY	MACON COUNTY.
Mc MINN COUNTY	Mc MINN COUNTY.
Mc NAIRY COUNTY	Mc NAIRY COUNTY.
MEIGS COUNTY	MEIGS COUNTY.
MONROE COUNTY	MONROE COUNTY.
MORGAN COUNTY	MORGAN COUNTY.
OBION COUNTY	OBION COUNTY.
OVERTON COUNTY	OVERTON COUNTY.
PICKETT COUNTY	PICKETT COUNTY.
POLK COUNTY	POLK COUNTY.
RHEA COUNTY	RHEA COUNTY.
SCOTT COUNTY	SCOTT COUNTY.
SEVIER COUNTY	SEVIER COUNTY.
STEWART COUNTY	STEWART COUNTY.
TROUSDALE COUNTY.	TROUSDALE COUNTY.
UNICOI COUNTY	UNICOI COUNTY.
VAN BUREN COUNTY.	VAN BUREN COUNTY.
WAYNE COUNTY	WAYNE COUNTY.
WHITE COUNTY	WHITE COUNTY.
TEXAS	
BEAUMONT CITY	BEAUMONT CITY IN JEFFERSON COUNTY.
BEE COUNTY	BEE COUNTY.
BALANCE OF BOWIE COUNTY.	BOWIE COUNTY LESS TEXARKANA CITY TEX.
BALANCE OF BRAZORIA COUNTY.	BRAZORIA COUNTY LESS LAKE JACKSON CITY.
BROOKS COUNTY	BROOKS COUNTY.
BROWNSVILLE CITY	BROWNSVILLE CITY IN CAMERON COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
BALANCE OF CAMERON COUNTY.	CAMERON COUNTY LESS BROWNSVILLE CITY.
	HARLINGEN CITY.
CAMP COUNTY	CAMP COUNTY.
CASS COUNTY	CASS COUNTY.
COLEMAN COUNTY	COLEMAN COUNTY.
CORPUS CHRISTI CITY.	CORPUS CHRISTI CITY IN NUECES COUNTY.
COTTLE COUNTY	COTTLE COUNTY.
CROSBY COUNTY	CROSBY COUNTY.
CULBERSON COUNTY.	CULBERSON COUNTY.
DAWSON COUNTY	DAWSON COUNTY.
DEAF SMITH COUNTY.	DEAF SMITH COUNTY.
DEL RIO CITY	DEL RIO CITY IN VAL VERDE COUNTY.
DICKENS COUNTY	DICKENS COUNTY.
DIMMIT COUNTY	DIMMIT COUNTY.
DUVAL COUNTY	DUVAL COUNTY.
BALANCE OF ECTOR COUNTY.	ECTOR COUNTY LESS ODESSA CITY.
EDINBURG CITY	EDINBURG CITY IN HIDALGO COUNTY.
EL PASO CITY	EL PASO CITY IN EL PASO COUNTY.
BALANCE OF EL PASO COUNTY.	EL PASO COUNTY LESS EL PASO CITY.
—	SOCORRO CITY.
FLOYD COUNTY	FLOYD COUNTY.
FRIO COUNTY	FRIO COUNTY.
GALVESTON CITY	GALVESTON CITY IN GALVESTON COUNTY.
BALANCE OF GALVESTON COUNTY.	GALVESTON COUNTY LESS FRIENDSWOOD CITY.
	GALVESTON CITY.
	LEAGUE CITY.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998—Continued

Eligible labor surplus areas	Civil jurisdictions included
BALANCE OF GREGG COUNTY.	TEXAS CITY.
	GREGG COUNTY LESS LONGVIEW CITY.
HALL COUNTY	HALL COUNTY.
HARDIN COUNTY	HARDIN COUNTY.
HARLINGEN CITY	HARLINGEN CITY IN CAMERON COUNTY.
BALANCE OF HARRISON COUNTY.	HARRISON COUNTY LESS LONGVIEW CITY.
BALANCE OF HIDALGO COUNTY.	HIDALGO COUNTY LESS EDINBURG CITY.
	MC ALLEN CITY.
	MISSION CITY.
	PHARR CITY.
HOUSTON CITY	HOUSTON CITY IN FORT BEND COUNTY.
	HARRIS COUNTY.
HUTCHINSON COUNTY.	HUTCHINSON COUNTY.
JASPER COUNTY	JASPER COUNTY.
JIM HOGG COUNTY	JIM HOGG COUNTY.
JIM WELLS COUNTY	JIM WELLS COUNTY.
KILLEEN CITY	KILLEEN CITY IN BELL COUNTY.
KINGSVILLE CITY	KINGSVILLE CITY IN KLEBERG COUNTY.
KINNEY COUNTY	KINNEY COUNTY.
BALANCE OF KLEBERG COUNTY.	KLEBERG COUNTY LESS KINGSVILLE CITY.
LA SALLE COUNTY	LA SALLE COUNTY.
LAMAR COUNTY	LAMAR COUNTY.
LAREDO CITY	LAREDO CITY IN WEBB COUNTY.
LEON COUNTY	LEON COUNTY.
LIBERTY COUNTY	LIBERTY COUNTY.
LONGVIEW CITY	LONGVIEW CITY IN GREGG COUNTY.
	HARRISON COUNTY.
LOVING COUNTY	LOVING COUNTY.
MARION COUNTY	MARION COUNTY.
MATAGORDA COUNTY.	MATAGORDA COUNTY.
MAVERICK COUNTY	MAVERICK COUNTY.
MC ALLEN CITY	MC ALLEN CITY IN HIDALGO COUNTY.
MISSION CITY	MISSION CITY IN HIDALGO COUNTY.
MORRIS COUNTY	MORRIS COUNTY.
NEWTON COUNTY	NEWTON COUNTY.
NOLAN COUNTY	NOLAN COUNTY.
BALANCE OF NUECES COUNTY.	NUECES COUNTY LESS CORPUS CHRISTI CITY.
ODESSA CITY	ODESSA CITY IN ECTOR COUNTY.
ORANGE COUNTY	ORANGE COUNTY.
PALO PINTO COUNTY.	PALO PINTO COUNTY.
PANOLA COUNTY	PANOLA COUNTY.
PHARR CITY	PHARR CITY IN HIDALGO COUNTY.
PORT ARTHUR CITY	PORT ARTHUR CITY IN JEFFERSON COUNTY.
PRESIDIO COUNTY	PRESIDIO COUNTY.
RED RIVER COUNTY.	RED RIVER COUNTY.
REEVES COUNTY	REEVES COUNTY.
RUSK COUNTY	RUSK COUNTY.
SABINE COUNTY	SABINE COUNTY.
SAN PATRICIO COUNTY.	SAN PATRICIO COUNTY.
SHELBY COUNTY.	SHELBY COUNTY.
SOCORRO CITY	SOCORRO CITY IN EL PASO COUNTY.
SOMERVELL COUNTY.	SOMERVELL COUNTY.
STARR COUNTY	STARR COUNTY.
TEXARKANA CITY TEX.	TEXARKANA CITY TEX IN BOWIE COUNTY.
TEXAS CITY	TEXAS CITY IN GALVESTON COUNTY.
TITUS COUNTY	TITUS COUNTY.
TYLER CITY	TYLER CITY IN SMITH COUNTY.
TYLER COUNTY	TYLER COUNTY.
UVALDE COUNTY	UVALDE COUNTY.
BALANCE OF VAL VERDE COUNTY.	VAL VERDE COUNTY LESS DEL RIO CITY.
BALANCE OF WEBB COUNTY.	WEBB COUNTY LESS LAREDO CITY.
WILLACY COUNTY	WILLACY COUNTY.
WINKLER COUNTY	WINKLER COUNTY.
YOUNG COUNTY	YOUNG COUNTY.
ZAPATA COUNTY	ZAPATA COUNTY.
ZAVALA COUNTY	ZAVALA COUNTY.
UTAH	
DUCHESNE COUNTY.	DUCHESNE COUNTY.
EMERY COUNTY	EMERY COUNTY.
GARFIELD COUNTY	GARFIELD COUNTY.
GRAND COUNTY	GRAND COUNTY.
KANE COUNTY	KANE COUNTY.
SAN JUAN COUNTY	SAN JUAN COUNTY.
UINTAH COUNTY	UINTAH COUNTY.
VERMONT	
ESSEX COUNTY	ESSEX COUNTY.
GRAND ISLE COUNTY.	GRAND ISLE COUNTY.
ORLEANS COUNTY	ORLEANS COUNTY.
VIRGINIA	
ACCOMACK COUNTY.	ACCOMACK COUNTY.
BATH COUNTY	BATH COUNTY.
BLAND COUNTY	BLAND COUNTY.
BRUNSWICK COUNTY.	BRUNSWICK COUNTY.
BUCHANAN COUNTY.	BUCHANAN COUNTY.
CAROLINE COUNTY	CAROLINE COUNTY.
CHARLOTTE COUNTY.	CHARLOTTE COUNTY.
CLIFTON FORGE CITY.	CLIFTON FORGE CITY.
COVINGTON CITY	COVINGTON CITY.
DANVILLE CITY	DANVILLE CITY.
DICKENSON COUNTY.	DICKENSON COUNTY.
EMPORIA CITY	EMPORIA CITY.
ESSEX COUNTY	ESSEX COUNTY.
GILES COUNTY	GILES COUNTY.
HALIFAX COUNTY	HALIFAX COUNTY.
HENRY COUNTY	HENRY COUNTY.
HIGHLAND COUNTY	HIGHLAND COUNTY.
LANCASTER COUNTY.	LANCASTER COUNTY.
LEE COUNTY	LEE COUNTY.
LOUISA COUNTY	LOUISA COUNTY.
LUNENBURG COUNTY.	LUNENBURG COUNTY.
MARTINSVILLE CITY	MARTINSVILLE CITY.
MECKLENBURG COUNTY.	MECKLENBURG COUNTY.
NORTHAMPTON COUNTY.	NORTHAMPTON COUNTY.
NORTHUMBERLAND COUNTY.	NORTHUMBERLAND COUNTY.
NORTON CITY	NORTON CITY.
PAGE COUNTY	PAGE COUNTY.
PETERSBURG CITY	PETERSBURG CITY.
PITTSYLVANIA COUNTY.	PITTSYLVANIA COUNTY.
PORTSMOUTH CITY	PORTSMOUTH CITY.
PULASKI COUNTY	PULASKI COUNTY.
RICHMOND COUNTY.	RICHMOND COUNTY.
RUSSELL COUNTY	RUSSELL COUNTY.
SCOTT COUNTY	SCOTT COUNTY.
SMYTH COUNTY	SMYTH COUNTY.
SURRY COUNTY	SURRY COUNTY.
SUSSEX COUNTY	SUSSEX COUNTY.
TAZEWELL COUNTY	TAZEWELL COUNTY.
WASHINGTON COUNTY.	WASHINGTON COUNTY.
WESTMORELAND COUNTY.	WESTMORELAND COUNTY.
WILLIAMSBURG CITY.	WILLIAMSBURG CITY.
WISE COUNTY	WISE COUNTY.
WYTHE COUNTY	WYTHE COUNTY.
WASHINGTON	
ADAMS COUNTY	ADAMS COUNTY.
BELLINGHAM CITY	BELLINGHAM CITY IN WHATCOM COUNTY.
BALANCE OF BENTON COUNTY.	BENTON COUNTY LESS KENNEWICK CITY.
	RICHLAND CITY.
BREMERTON CITY	BREMERTON CITY IN KITSAP COUNTY.
CHELAN COUNTY	CHELAN COUNTY.
CLALLAM COUNTY	CLALLAM COUNTY.
COLUMBIA COUNTY.	COLUMBIA COUNTY.
BALANCE OF COWLITZ COUNTY.	COWLITZ COUNTY LESS LONGVIEW CITY.
DOUGLAS COUNTY	DOUGLAS COUNTY.
EVERETT CITY	EVERETT CITY IN SNOHOMISH COUNTY.
FERRY COUNTY	FERRY COUNTY.
FRANKLIN COUNTY	FRANKLIN COUNTY.
GRANT COUNTY	GRANT COUNTY.
GRAYS HARBOR COUNTY.	GRAYS HARBOR COUNTY.
JEFFERSON COUNTY.	JEFFERSON COUNTY.
KENNEWICK CITY	KENNEWICK CITY IN BENTON COUNTY.
KITTITAS COUNTY	KITTITAS COUNTY.
KLICKITAT COUNTY	KLICKITAT COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LONGVIEW CITY	LONGVIEW CITY IN COWLITZ COUNTY.
MASON COUNTY	MASON COUNTY.
OKANOGAN COUNTY.	OKANOGAN COUNTY.
PACIFIC COUNTY	PACIFIC COUNTY.
PEND OREILLE COUNTY.	PEND OREILLE COUNTY.
SAN JUAN COUNTY	SAN JUAN COUNTY.
SKAGIT COUNTY	SKAGIT COUNTY.
SKAMANIA COUNTY	SKAMANIA COUNTY.
STEVENS COUNTY	STEVENS COUNTY.
TACOMA CITY	TACOMA CITY IN PIERCE COUNTY.
WAHKIAKUM COUNTY.	WAHKIAKUM COUNTY.
WALLA WALLA CITY	WALLA WALLA CITY IN WALLA WALLA COUNTY.
BALANCE OF WHATCOM COUNTY.	WHATCOM COUNTY LESS BELLINGHAM CITY.
YAKIMA CITY	YAKIMA CITY IN YAKIMA COUNTY.
BALANCE OF YAKIMA COUNTY.	YAKIMA COUNTY LESS YAKIMA CITY.
WEST VIRGINIA	
BARBOUR COUNTY	BARBOUR COUNTY.
BOONE COUNTY	BOONE COUNTY.
BRAXTON COUNTY	BRAXTON COUNTY.
CALHOUN COUNTY	CALHOUN COUNTY.
CLAY COUNTY	CLAY COUNTY.
DODDRIDGE COUNTY.	DODDRIDGE COUNTY.
FAYETTE COUNTY	FAYETTE COUNTY.
GILMER COUNTY	GILMER COUNTY.
GRANT COUNTY	GRANT COUNTY.
GREENBRIER COUNTY.	GREENBRIER COUNTY.
HARRISON COUNTY	HARRISON COUNTY.
HUNTINGTON CITY	HUNTINGTON CITY IN CABELL COUNTY.
	WAYNE COUNTY.
JACKSON COUNTY	JACKSON COUNTY.
LEWIS COUNTY	LEWIS COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
LOGAN COUNTY	LOGAN COUNTY.
MARION COUNTY	MARION COUNTY.
BALANCE OF MARSHALL COUNTY.	MARSHALL COUNTY LESS WHEELING CITY.
MASON COUNTY	MASON COUNTY.
Mc DOWELL COUNTY.	Mc DOWELL COUNTY.
MINGO COUNTY	MINGO COUNTY.
NICHOLAS COUNTY	NICHOLAS COUNTY.
PARKERSBURG CITY.	PARKERSBURG CITY IN WOOD COUNTY.
PLEASANTS COUNTY.	PLEASANTS COUNTY.
POCAHONTAS COUNTY.	POCAHONTAS COUNTY.
PRESTON COUNTY	PRESTON COUNTY.
RALEIGH COUNTY	RALEIGH COUNTY.
RANDOLPH COUNTY.	RANDOLPH COUNTY.
RITCHIE COUNTY	RITCHIE COUNTY.
ROANE COUNTY	ROANE COUNTY.
SUMMERS COUNTY	SUMMERS COUNTY.
TAYLOR COUNTY	TAYLOR COUNTY.
TUCKER COUNTY	TUCKER COUNTY.
TYLER COUNTY	TYLER COUNTY.
UPSHUR COUNTY	UPSHUR COUNTY.
BALANCE OF WAYNE COUNTY.	WAYNE COUNTY LESS HUNTINGTON CITY.
WEBSTER COUNTY	WEBSTER COUNTY.
WETZEL COUNTY	WETZEL COUNTY.
WIRT COUNTY	WIRT COUNTY.
WYOMING COUNTY	WYOMING COUNTY.
WISCONSIN	
ASHLAND COUNTY	ASHLAND COUNTY.
IRON COUNTY	IRON COUNTY.
MARQUETTE COUNTY.	MARQUETTE COUNTY.
MENOMINEE COUNTY.	MENOMINEE COUNTY.
RUSK COUNTY	RUSK COUNTY.
WYOMING	
FREMONT COUNTY	FREMONT COUNTY.
LINCOLN COUNTY	LINCOLN COUNTY.
BALANCE OF NATRONA COUNTY.	NATRONA COUNTY LESS CASPER CITY.
UINTA COUNTY	UINTA COUNTY.

[FR Doc. 97-26829 Filed 10-8-97; 8:45 am]

BILLING CODE 4510-30-U

LEGAL SERVICES CORPORATION

Notice of Availability of 1998 Competitive Grant Funds for Native Americans, Service Area NCT–1 in Connecticut

AGENCY: Legal Services Corporation.

ACTION: Solicitation of Proposals for the Provision of Civil Legal Services for Native Americans in the state of Connecticut.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is the national organization charged with administering federal funds provided for civil legal services to the poor.

The Corporation hereby announces a competition for 1998 grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient, and high quality civil legal services to the LSC-eligible Native American client population in the state of Connecticut. Two grant terms may be funded. The first grant term will begin January 1, 1998 and end December 31, 1998. The second term will be for calendar year 1999. The exact amount of congressionally appropriated funds and the date, terms and conditions of their availability for calendar years 1998 and 1999 have not been determined. It is anticipated that the funding for calendar year 1998 will be similar to calendar year 1997 which was $12,550.

DATES: Request for Proposals (RFP) are currently available. A Notice of Intent to Compete is due by October 27, 1997. Grant proposals must be received at LSC offices by 5:00 p.m. EDT, November 3, 1997.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street N.E., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of Program Operations—Service Desk, (202) 336–8865; FAX (202) 336–8854.

SUPPLEMENTARY INFORMATION: LSC is seeking proposals from recipients, other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, private attorneys, groups of private attorneys or law firms, State or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The solicitation package, containing the grant application, guidelines; proposal content requirements and specific selection criteria, is available by contacting the Corporation by letter, phone or FAX. LSC will not FAX the solicitation package to interested parties; however, solicitation packages may be requested by FAX.

Issue Date: October 3, 1997.

John Tull,

Director, Office of Program Operations.

[FR Doc. 97–26727 Filed 10–8–97; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Museums and Visual Arts Section (Planning & Stabilization category) to the National Council on the Arts will be held on October 28–29, 1997. The panel will meet from 9:00 a.m. to 7:00 p.m. on October 28 and from 9:00 a.m. to 5:00 p.m. on October 29, 1997, in Room 716 an the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506. A portion of this meeting, from 1:30 p.m. to 3:30 p.m. on October 29, will be open to the public for a policy discussion of guidelines, planning, Leadership Initiatives, and field needs and trends.

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on October 28, and from 9:00 a.m. to 1:30 p.m. and 3:30 p.m. to 5:00 p.m. on October 29, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: October 3, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–26760 Filed 10–8–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering & Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering & Environmental Systems (1189)

Date and Time: November 4, 1997; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 360, Arlington, VA

Contact Person: Dr. A. Fred Thompson, Program Director, Environmental Technology Program, Division of Bioengineering & Environmental Systems, Room 565, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Environmental Technology CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: October 6, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26843 Filed 10–8–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biomolecular Structure and Function—(1134) (Panel A)

Date and Time: Wednesday, Thursday, Friday, October 29–31, 1997, 8:30 A.M. to 6:00 P.M.

Place: National Science Foundation, 4201 Wilson Blvd., Room 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Drs. Marcia Steinberg and P.C. Huang, Program Directors for Molecular Biochemistry, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1443)

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 6, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26842 Filed 10–8–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (1193).

Date and Time: October 28, 1997; 8:30 am to 5:00 pm.

Place: Rooms 950, 970 NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person(s): Dr. Rita Rodriguez, Program Director, CISE/OCDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Telephone: (703) 306–1980.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Research Instrumentation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 6, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26846 Filed 10–8–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture & Industrial Innovation; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). The Special Emphasis Panel in Design Manufacturing and Industrial Innovation (1194) will be holding panel meetings to review and evaluate research proposals. The dates and types of proposals being reviewed are:

Dates of Meetings

10–30–97—10–31–97
10–30–97—10–31–97

Types of Proposal

PhaseII—GEO Review Panel
Phase II—Manufacturing Review Panel

Times: 8:30 to 5:00 p.m. each day.

Place: Rooms 1235, and 310, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Contact Person: Dr. Richie Coryell, Program Manager, Small Business Office, DMII, Room 545, National Science Foundation, 4201 Wilson Blvd., Arlington, Va. 22230, telephone (703) 306–1391.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small business Innovative Research (SBIR) Phase II Program as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 6, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26845 Filed 10–8–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Microelectronic Information Processing Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel In Microelectronic Information Processing Systems (1206).

Date and Time: November 5, 1997; 8:30 a.m. to 5:00 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael Foster, Program Director, Microelectronic Information Processing Systems Division, National Science Foundation, Rm. 1155, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1936.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSF CAREER program in the area of microelectronic information processing systems.

Reason for Closing: the meeting is closed to the public because the Committee is reviewing proposals that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: October 6, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–26844 Filed 10–8–97; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF MANAGEMENT AND BUDGET

Interpretation Number 3 Related to Statement of Federal Financial Accounting Standards Number 5

AGENCY: Office of Management and Budget.

ACTION: Notice of interpretation.

SUMMARY: This notice includes an interpretation of Statement of Federal Financial Accounting Standards (SFFAS), adopted by the Office of Management and Budget (OMB). This interpretation was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by OMB.

FOR FURTHER INFORMATION CONTACT: James Short (telephone: 202–395–3124), Office of Federal Financial Management, Office of Management and Budget.

SUPPLEMENTARY INFORMATION: This notice includes an interpretation of Statement of Federal Financial Accounting Standards (SFFAS) Number 5, adopted by the Office of Management and Budget (OMB). This interpretation was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by OMB.

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB (the Principals) decide upon standards and concepts after considering the recommendations of FASAB. After agreement to specific standards and concepts, they are published by OMB in the **Federal Register** and distributed throughout the Federal Government.

An Interpretation is a document, originally developed by FASAB, of narrow scope which provides clarification of the meaning of a standard, concept or other related guidance. Once approved by the designated representatives of the Principals, they are published by OMB in the Federal Register.

This notice, including the third interpretation of SFFAS, is available on the OMB home page on the Internet

which is currently located at http://www.whitehouse.gov/WH/EOP/omb, under the caption "Federal Register Submissions."

G. Edward DeSeve,
Controller.

Interpretation Number 3 of Statement of Federal Financial Accounting Standards Number 5

Measurement Date for Pension and Retirement Health Care Liabilities: An Interpretation of SFFAS No. 5

Introduction

1. The Federal Accounting Standards Advisory Board (FASAB) was asked to endorse use of an actuarial valuation as of the beginning of the fiscal year to measure the pension and retirement health care liabilities in general purpose financial reports prepared pursuant to Statement of Federal Financial Accounting Standards Number 5 (SFFAS 5).[1] This has been the practice in some of the special purpose financial reports on pension plans that are prepared pursuant to Pub. L. 95–595.[2] OMB and GAO issue instructions for preparing the reports required by P.L. 95–595.

2. The plan reports called for by P.L. 95–595 receive scrutiny from Congressional staff. Based on past experience, some actuaries were concerned that differences between actuarial measurements used in different reports would cause problems and confusion.

Some people who support using a beginning-of-year valuation also were concerned about the potential for disagreements between auditors and preparers if projections or estimates were used instead of a full actuarial valuation.

Other people, on the other hand, believed that measurements for recognizing liabilities in financial statements prepared pursuant to SFFAS 5 should be as of the end of the reporting period, and that a measurement based on a projection or "roll forward" of a full actuarial valuation would be appropriate if it were not feasible to perform a full actuarial valuation as of year end.

Interpretation

3. Pension and retirement health care liabilities in general purpose Federal financial reports prepared pursuant to SFFAS 5 shall be measured as of the end of the fiscal year (or other reporting period if applicable). This measurement shall be performed following the end of the period reported, but does not have to be based on a full actuarial valuation as of the end of the reporting period. The measurement shall, however, reflect the best available estimates of the major factors that would be reflected in a full actuarial valuation, such as the actual pay raise, the actual cost of living adjustment, and known material changes in the number of employees covered (enrollment) that cause a change in the liability.

4. This measurement may be based on an actuarial valuation performed as of an earlier date during the fiscal year, including a beginning-of-year actuarial valuation, with suitable adjustments for the effects of changes during the year in major factors, such as the pay raise, cost of living adjustment, etc. This is sometimes referred to as a measurement based on a "projection" or "roll-forward" of the most recent available actuarial valuation. In evaluating the effect on the liability caused by changes in enrollment for plans that cover employees of more than one reporting entity (e.g., CSRS, FERS), materiality shall be assessed at the plan level. In evaluating the effect on the liability caused by changes in enrollment for plans that cover employees of only one reporting entity (e.g., Coast Guard, Department of State), materiality shall be assessed at the reporting entity level.

Scope of Interpretation

5. This interpretation applies to pension and retirement health care liabilities recognized in accordance with SFFAS 5 in general purpose Federal financial reports, such as financial statements prepared pursuant to the Chief Financial Officers Act of 1990, as amended. It does not apply to reports on pension plans pursuant to the requirements of P.L. 95–595.

Effective Date

6. This interpretation shall be applied for reporting periods that end on or after September 30, 1997.

Appendix: Basis for Conclusions

7. SFFAS 5 defines standards for recognition and measurement of pension and retirement health care liabilities, which are reported as of the balance sheet date. Although SFFAS 5 does not explicitly discuss the measurement date, its provisions implicitly call for measurement at year end. "Measurement" implies estimation based on the best available information at the time, but does not necessarily require a full actuarial "valuation" as that term is used by actuaries.

8. To avoid potential confusion, ambiguity, or conflict with auditors, some people would prefer to use a beginning-of-year valuation (which is permitted by private sector standards for plan reporting pursuant to SFAS 35[3]), or at least would prefer to use beginning-of-year enrollment while updating the valuation for other changes during the year (e.g., interest rate assumptions, COLAs, salary increases), which generally are more significant.

9. Changes in enrollment during the year will rarely lead to a material change in the liability, and that such changes will, therefore, not be a factor in some years. Nevertheless, in those years when a material change in the liability does arise because of a change in enrollment during the year, that change should be reflected in the measurement. Conceptually there is no reason to treat enrollment differently from other factors used in the measurement. Precise enrollment data may not be readily available soon after year end, when the measurement is to be performed. However, this should not normally present a problem because absolute precision regarding enrollment should not be necessary, given a reasonable definition of materiality.

[FR Doc. 97–26869 Filed 10–8–97; 8:45 am]
BILLING CODE 3110–01–P

[1] Statement of Federal Financial Accounting Standard Number 5, "*Accounting for Liabilities of the Federal Government.*"

[2] Pub. L. 95–595, "*Federal Government Pension Plans.*"

[3] Statement of Financial Accounting Standard No. 35 (SFAS 35), "*Accounting and Reporting by Defined Benefit Pension Plans.*"

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Reclearance of an Information Collection: Form RI 30–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for reclearance of an information collection. RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is used by retirees who are not age 60 and who are receiving disability annuity. These retirees must provide information about their medical condition as OPM deems necessary to continue their benefit. RI 30–1 requests information about changes in the work disabling condition.

Approximately 8000 RI 30–1 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 8000 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before December 8, 1997.

ADDRESSES: Send or deliver comments to— Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,
Acting Director.

[FR Doc. 97–26820 Filed 10–8–97; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Reclearance of an Information Collection: Form OPM 1536

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for reclearance of an information collection. Form OPM 1536, Former Spouse's Application for Survivor Annuity Under the Civil Service Retirement System, is designed for use by former spouses of Federal employees and annuitants who are applying for a monthly Civil Service Retirement System benefit. This application collects information about whether the applicant is covered by the Federal Employees Health Benefits Program and about any court order which awards the applicant retirement benefits.

Approximately 500 OPM Forms 1536 will be completed annually. We estimate it takes approximately 30 minutes to complete the form. The annual burden is 250 hours.

Comments are particularly invited on:

—whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before December 8, 1997.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,
Acting Director.

[FR Doc. 97–26821 Filed 10–8–97; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Form RI 94–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 94–7, Death Benefit Payment Rollover Election for Federal Employees Retirement System (FERS), provides FERS surviving spouses and former spouses with the means to elect payment of the FERS rollover-eligible benefits directly or to an Individual Retirement Account.

Approximately 700 RI 94–7 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 700 hours.

Comments are particularly invited on:

—whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before December 8, 1997.

ADDRESS: Send or deliver comments to—John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,
Acting Director.

[FR Doc. 97–26822 Filed 10–8–97; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request For Reclearance of an Information Collection: Standard Form 2808

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for reclearance of an information collection. Standard Form 2808, Designation of Beneficiary (CSRS), is used by persons covered under the Civil Service Retirement System to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

Approximately 2,000 SF 2808 forms are completed annually. We estimate it takes approximately 15 minutes to complete the form. The annual burden is 500 hours.

Comments are particularly invited on:

—whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before December 8, 1997.

ADDRESS: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–26824 Filed 10–8–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Form RI 38–31

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 38–31, Request for Information About Your Missing Payment, is sent in response to a notification by an individual of the loss or non-receipt of a payment from the Civil Service Retirement and Disability Fund. The form requests the information needed to enable the OPM to trace and or reissue payment.

Approximately 998 RI 38–31 forms will be completed annually. We estimate it takes approximately 11 minutes to complete the form. The annual burden is 183 hours.

Comments are particularly invited on:

—whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief,Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349 Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–26825 Filed 10–8–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Form RI 98–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 98–7, Eligibility for Social Security Administration (SSA) Disability Benefits, is used to verify receipt of SSA disability benefits, make necessary adjustments to the Federal Employees Retirement System (FERS) disability benefit, and to notify the retiree of any overpayment amount payable to OPM. It also specifically notifies the retiree of his or her responsibility to notify OPM of his or her Social Security status and the consequences of non-notification.

Approximately 2000 RI 98–7 forms will be completed annually. We estimate it takes approximately 5 minutes to complete the form. The annual burden is 166 hours.

Comments are particularly invited on:

—whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–26826 Filed 10–8–97; 8:45 am]

BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title*: Statement of Claimant or Other Person.

(2) *Form(s) submitted*: G–93.

(3) *OMB Number*: 3220–0183.

(4) *Expiration date of current OMB clearance*: 12/31/97.

(5) *Type of request*: Revision of a currently approved collection.

(6) *Respondents*: Individuals or households, business or other for profit.

(7) *Estimated annual number of respondents*: 900.

(8) *Total annual responses*: 225.

(9) *Total annual reporting hours*: 225.

(10) *Collection description*: Under Section 2 of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, pertinent information and proofs must be submitted by an applicant so that the Railroad Retirement Board can determine his or her entitlement to benefits. The collection obtains information supplementing or changing information previously provided by an applicant.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–26806 Filed 10–8–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ad–2 (c), (d), and (h) SEC File No. 270–149 OMB Control No. 3235–0130

Rule 17Ad–10 SEC File No. 270–265 OMB Control No. 3235–0273

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

• Rule 17Ad–2(c), (d) and (h) Transfer Agent Turnaround, Processing and Forwarding Requirements

Rule 17Ad–2(c), (d), and (h), under the Securities Exchange Act of 1934, enumerate the requirements with which transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

While it is estimated there are 1,326 transfer agents, approximately ten notices pursuant to 17Ad–2(c), (d), and (h) are filed annually. In view of: (a) the readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); (b) the summary fashion that such information must be presented in the notice (most notices are one page or less in length); and (c) the experience of the staff regarding the notices, the Commission staff estimates that, on the average, most Notices require approximately one-half hour to prepare. The Commission staff estimates a cost of approximately $30.00 for each half hour spent preparing the notices per year, transfer agents spend an average of five hours per year complying with the rule at a cost of $300.

• Rule 17Ad–10 Prompt Posting of Certificate Detail to Master Securityholder Files; Maintenance of Accurate Securityholder Files and Control Book; and Retention of Certificate Detail

Rule 17Ad–10, under the Securities Exchange Act of 1934, requires approximately 1,326 registered transfer agents to create and maintain minimum information on securityholders' ownership of an issue of securities for which it performs transfer agent functions, including the purchase, transfer and redemptions of securities. In addition, the rule also requires transfer agents that maintain securityholder records to keep certificate detail that has been cancelled from those records for a minimum of six years and to maintain and keep current an accurate record of the number of shares or principal dollar amount of debt securities that the issuer has authorized to be outstanding (a "control book"). These recordkeeping requirements assist in the creation and maintenance of accurate securityholder records, the ability to research errors, and ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding overissuance.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 20 hours per year, totalling 26,520 hours industry-wide. The average cost is approximately $20 hour, with the industry-wide cost estimated at approximately $530,400. However, the information required by Rule 17Ad–10 generally already is maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–10 varies according to differences in business activity.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: September 30, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26725 Filed 10–8–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39189; File No. SR–CBOE–97–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Relating to Listing and Trading of IPRs

October 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 14, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to permit the listing and trading of index portfolio receipts ("IPRs")[2] of one of more series. IPRs of each series represent interests in a unit investment trust (each a "Trust" and collectively the "Trusts") operating on an open-end basis and holding a portfolio of securities that mirrors the securities in a published index of securities.[3] Amendments are proposed to Rules 1.1, 30.10, 30.20, 30.33, 30.36, 31.5 and 31.94. Also, the Exchange proposes to adopt two new rules—Rule 30.54 applicable only to IPRs, and Rule 30.55 applicable to all securities governed by the rules of CBOE's Chapter XXX.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rules[4] are substantially similar to existing rules of the American Stock Exchange ("AMEX") applicable to Portfolio Depositary Receipts ("PDRs"), which are substantively very similar to IPRs.[5] IPRs will be issued by one or more Trusts to be formed by an entity serving as the sponsor for the Trusts (the "Sponsor").[6] Upon receipts of securities and cash in payment for a creation order placed through the Distributor as described below, the Trustee will issue a specified number of IPRs referred to as a "Creation Unit."

Each series of IPRs will be based on a published index of securities. IPRs of each such series are intended to produce investment results that generally correspond to the price and yield performance of the component common stocks of the selected index. Each Trust will provide investors with an interest in a portfolio of securities that is intended to closely track the value of the index on which it is based. IPRs will trade like shares of common stock and will pay periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the prospectus for each series of IPRs. The Exchange expects that the Trusts will terminate 125 years from the initial date of deposit of the trust corpus into each respective Trust or on such earlier date as may be required in order to permit such Trust to comply with the rule against perpetuities, in the event that the Trust is governed by the law of a state in which the rule against perpetuities remains in effect.[7]

The Sponsor will enter into a trust agreement with a trustee in accordance with Section 26 of the ICA. CBOE will establish a relationship with an entity that will act as the underwriter of IPRs on an agency basis ("Distributor"). All orders to create IPRs in Creation Units will be required to be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee. The Distributor will be a registered broker-dealer and a member of the National Association of Securities Dealers, Inc. ("NASD").

Payment with respect to creation orders for a Trust placed through the Distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that contains substantially the same securities in substantially the same proportions or "weighting" as the component securities of the index on which the Trust is based and (2) a cash payment sufficient to enable the Trustee to make a distribution ("Division Equivalent Payment") to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution, subject to certain specified adjustments (see "Distributions" below) plus or minus a "Balancing Amount" to compensate for any differences between the market value of the securities paid and the net asset value of a Creation Unit of such Trust. The Dividend Equivalent Payment and the Balancing Amount are collectively referred to as the "Cash Component." The portfolio of securities and the Cash Component accepted by the Trustee are referred to as the "Portfolio Deposit."

Issuance of IPRs

Upon receipt of a Portfolio Deposit for a Trust in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of IPRs of that Trust equal to the Creation Unit. IPRs may be created only in a Creation Unit or multiples thereof. The Exchange anticipates that a Creation Unit for a series of IPRs will consist of 50,000 IPRs of such other number as the Exchange may designate taking into account the value of individual IPRs of that particular series and such other factors as the Exchange deems to be relevant. Individual IPRs can then be traded in the secondary market like any other equity security.[8] It is expected that Portfolio Deposits will be made by institutional investors and arbitragers as well as Market-Makers and Designated Primary Market-Makers as defined in the CBOE's rules.

To maintain the correlation between the portfolio of securities held in a Trust and that of the underlying index, the Trustee will adjust the composition of the Portfolio Deposits from time to time to conform to changes to the index made by the organization that compiles and maintains such index. The Trustee will aggregate certain of these adjustments and make periodic conforming changes to the Trust portfolio.

It is expected that the Trustee or Sponsor will make available (a) on a daily basis, a list of the names and required number of shares for each of the securities in the then current Portfolio Deposit for each of the Trusts; (b) on at least a minute-by-minute basis throughout the day, a number representing the value (on a per IPR basis) of the securities portion of each Portfolio Deposit; and (c) on a daily basis, the accumulated dividends, less expenses, per each outstanding IPR unit.

Transactions in IPRs may be effected on the Exchange until 3:15 p.m. Chicago time each business day.[9] IPRs will trade in round lots of 100.

Redemption

IPRs will be redeemable in kind by tendering them to the Trustee, but only in Creation Unit aggregations. While holders may sell any number of IPRs in the secondary market at any time, they must accumulate a minimum number of IPRs equal to a Creation Unit in order to redeem through a Trust. IPRs will remain outstanding until redeemed or until termination of the Trust by which they were issued. Creation Units of a Trust will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust substantially identical in weighting and composition to the securities portion of the Portfolio Deposit for such Trust in effect on the date request is made for redemption, together with the Cash Component. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in such a Portfolio Deposit on the day the redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees will be charged in connection with the creation and redemption of Creations Units. The Trustee will cancel all tendered Creation Units upon redemption.

Distributions

The Trust will pay dividends quarterly. It is expected that the regular quarterly ex-dividend dates for an underlying index of securities traded on the New York Stock Exchange, Inc. ("NYSE") will be the third Friday in March, June, September and December, unless such day is an NYSE holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of IPRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable will be distributed for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date through the business day preceding the current ex-dividend date.[10] The Trustee will compute on a daily basis the dividends accumulated for each Trust within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee. IPRs will be registered in book entry form only, which records will be kept by DTC.

Criteria for Initial and Continued Listing

CBOE's proposed standards for listing and delisting of IPRs allow some flexibility in listing each series of IPRs.

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[1] 15 U.S.C. 78s(b)(1).

[2] IPRs have special characteristics, as described in this rule filing, that distinguish them from unit investment trust interests that can be listed under Rule 31.5G. Accordingly, CBOE is proposing separate listing standards for IPRs.

[3] In connection with its plans to list and trade IPRs, the CBOE will request exemptive, interpretative or no-action relief from Rules 10a–1, 10b–7, 10b–10, 10b–13, 10b–17, 11d1–2, 15c1–5, 15c1–6 and Rules 101, 102 and 104 of Regulation M under the Act and Section 16 of the Act.

[4] The Commission notes that CBOE has not identified a particular trading product that it seeks to list pursuant to the proposed listing standards. Prior to trading a particular , CBOE may have to submit an additional Section 19(b) filing that more specifically addresses potential issues associated with items such as the composition, calculation and dissemination of the applicable index. A particular proposal may also involve issues relating to product disclosure, market impact, and applicable trading rules. The Commission also notes that approval of the proposed listing standards would likely provide CBOE with a basis for concluding that it has rules providing for transactions in products such as AMEX SPDRs and MidCap SPDRs, thereby satisfying rule 12f–5 of the Act and allowing CBOE's unlisted trading of such products.

[5] See File No. SR–AMEX–92–18 (adopting new rules related to the listing and trading of PDRs); SR–AMEX–95–16 (providing that the minimum tick applicable to the MidCap SPDR, a PDR product, will be 1/64 of $1.00); SR–AMEX–94–52 (listing and trading of MidCap 400 SPDRs under the rules originally adopted to trade PDRs); SR–AMEX–93–41 (limiting the AMEX's liability in connection with its administration of proprietary indices and products); and SR–AMEX–92–45 (providing that the minimum tick applicable to SPDRs will be 1/32 of $1.00).

[6] CBOE anticipates that all of the Trusts will be governed by a master trust agreement providing for the issuance, in series, of IPRs based on different underlying indices. The Sponsor will file (i) a registration statement under the Investment Company Act of 1940 (the "ICA") registering the trust (consisting of such series of Trusts) as an investment company under the ICA, and (ii) a separate registration statement under the Securities Act of 1933 (the "Securities Act") registering the offer and sale of each series of IPRs. The Sponsor will also file an application under Section 6(c) of the ICA requesting exemption of the Trusts and the Sponsor from certain provisions of the ICA and permitting the Trusts and the Sponsor to engage in certain affiliated transactions otherwise prohibited by Section 17(d) of the ICA and Rule 17d–1 thereunder.

[7] Each Trust, however, may be terminated earlier under the following circumstances: (1) delisting of the IPRs issued by such Trust by the primary market on which the IPRs are traded; (2) termination of the license agreement with the owner of the index on which the Trust is based; or (3) if either the Trustee, Sponsor, Distributor, Depository Trust Company ("DTC") or the National Securities Clearing Corporation ("NSCC") is unable to perform its functions or duties with respect to operation of a Trust and a suitable successor entity is unavailable. In addition, the Sponsor may also terminate a Trust if, after six months from inception, the Trust net asset value falls below $150 million or such other amount as may be specified in the prospectus, or if, after three years from inception, the Trust net asset value falls below $350 million or such other amount as may be specified in the prospectus. IPRs cannot be traded after the termination of a Trust. However, on termination the Trust will be liquidated, and IPR holders at that time will receive a distribution equal to their pro rata share of the assets of the Trust, net of certain fees and expenses.

[8] At such time as the Exchange seeks to list series of IPRs, the Sponsor and the Trusts will file with the Commission an application seeking, among other things, an order: (1) permitting secondary market transactions in IPRs at negotiated prices, rather than at a current public offering price described in the prospectus for the applicable series of IPRs as required by Section 22(d) of the ICA and Rule 22c–1 thereunder; and (2) permitting the sale of IPRs to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by Section 4(3) of the Securities Act but may be required according to Section 24(d) of the ICA for redeemable securities issued by a unit investment trust. These exemptions, if granted, will permit IPRs to be traded in secondary market transactions just as interests in a closed-end investment company are traded.

[9] See CBOE Rule 30.4(c) which provides that the "hours during which transactions in . . . UIT interest may be made on the Exchange shall be as provided in Rule 24.6 in respect of index options." Rule 24.6 provides a 3:15 p.m. closing time.

[10] Because the Trusts intend to qualify for and elect tax treatment as regulated investment companies under the Internal Revenue Code, the Trustee will also be required to make additional distributions to the minimum extent necessary (i) to distribute the entire annual taxable income of each Trust, including any net capital gains from sales of securities in connection with adjustments to the portfolio of securities held by such Trust, or to generate cash for distributions, and (ii) to avoid imposition of the excise tax imposed by section 4982 of the Internal Revenue Code.

With respect to initial listing, the Exchange proposes that, for each series, the Exchange will establish a minimum number of IPRs required to be outstanding at the time of commencement of Exchange trading. For IPRs having a Creation Unit size of 50,000 IPRs, a minimum of 150,000 IPRs of each such series (*i.e.*, three Creation Units) will be required to be outstanding when trading in such series of IPRs begins.

Because the Trusts operate on an open-end basis, and because the number of holders of IPRs of each Trust is subject to substantial fluctuation depending on market conditions, the Exchange believes it would be inappropriate and burdensome on IPR holders to consider suspending trading in or delisting a series of IPRs, with the consequent termination of the Trust by which they were issued, unless the number of holders remains severely depressed during an extended time period. Therefore, following twelve months from the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, IPRs of any series when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) the Trust by which IPRs of such series are issued has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of IPRs of such series for 30 or more consecutive trading days; or

(b) the index on which the Trust is based is no longer calculated or available; or

(c) such other event shall occur or condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing, and the series of IPRs representing interests in such Trust will be redeemed as described in the prospectus for such series. A Trust may also terminate under such other conditions as may be described in the prospectus for such series. For example, the Sponsor, following notice to IPR holders, will have discretion to direct that a Trust be terminated if the value of securities held by such Trust falls below a specified amount. A Trust based on an index licensed to the Exchange by a third party will also terminate if the required license terminates.[11]

[11] *See supra* note 7.

Trading Halts

Prior to commencement of trading in IPRs, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Exchange Rule 24.7 in exercising its discretion to halt or suspend trading. These factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the value of the applicable current index group or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Also, IPR trading would be halted (along with trading in other securities on the Exchange) if the circuit breaker parameters under Exchange Rule 6.3B are reached.

Terms and Characteristics

The Exchange proposes to require that members and member organizations provide to all purchasers of each series of IPRs a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to such purchaser. The Exchange also proposes to require that such description be included with any sales material on that series of IPRs that is provided to customers or the public. In addition, the Exchange proposes to require that any other written materials provided by a member or member organization to customers or the public making reference to a specific series of IPRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of IPRs] is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of IPRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of IPRs]." Finally, as noted above, the Exchange requires that members and member organizations provide the prospectus for a series of IPRs to customers upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase IPRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are applicable to members and member organizations.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[12] in general and furthers the objectives of Section 6(b)(5)[13] in particular in that the rules that are proposed to apply to the trading of IPRs are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which CBOE consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–38 and should be submitted by October 30, 1997.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26724 Filed 10–8–97; 8:45 am]

BILLING CODE 8010–01–M

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39190; File No. SR–NYSE–96–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by New York Stock Exchange, Inc. Relating to an Interpretation of Rule 409 ("Statements of Accounts to Customers")

October 2, 1997.

I. Introduction

On December 5, 1996,[1] the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change interpreting Exchange Rule 409. A notice of the proposed rule change appeared in the **Federal Register** on January 9, 1997.[4]

The Commission received five comment letters addressing the proposed rule change.[5] One commenter endorsed the proposed amendments,[6] while the remaining commenters opposed the proposal.[7] This order approves the proposed rule change.

The proposed rule change sets forth an interpretation of Exchange Rule 409 with respect to the establishment of standards regarding the distribution of "summary statements" and the use of "third party agents" to prepare or distribute customer account statements. The proposed interpretation also codifies existing Exchange policy as to certain information that must be disclosed on account statements. Other items addressed in the proposed interpretation include account statements that reflect assets not in the possession or control of a member organization and the use of logos and trademarks on account statements by an entity other than the carrying or introducing organization.

II. Description of the Proposal

Exchange Rule 409 addresses the responsibility of member organizations carrying customer accounts to send statements of these accounts to their customers. Currently, the rule requires member organizations to send their customers account statements showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. As amended, the rule will allow Exchange member organizations, jointly with other financial institutions (*e.g.*, banks and investment companies), to formulate and distribute to common customers a "summary statement" of the customers' accounts with the respective institutions. These consolidated statements will reflect information from entities that are part of a financial services "group" or "family," which could include an Exchange member organization that carries accounts for another broker-dealer.

Specifically, the Exchange will require that the summary statement: indicate that the statement is informational and includes assets held at different entities; identify each entity, their relationship to each other and their respective functions; distinguish clearly between assets held by each entity;[8] identify the customer's account numbers at each entity and provide a customer service telephone number at each;[9] disclose which entity holds each of the different assets on the summary; and identify each entity that is a member of the Securities Investor Protection Corporation ("SIPC").[10] Additionally, any aggregation of account values must be recognizable as having been derived from the separately stated totals; the beginning and end of each separate underlying statement must be clearly distinguishable; and there must be a written agreement between the parties jointly distributing the statements that each has developed procedures and controls for testing the accuracy of its own information on the summary statement. Furthermore, the member organization must indicate on the summary statement that it is not responsible for any information derived from the customer or other external source relating to externally-held assets.

The proposed interpretation also clarifies that certain information must be disclosed on the front of account statement, *i.e.*, the identity of the introducing and carrying organizations, where customer assets included on the statement are held, whether such customer assets are covered by SIPC, and the opening and closing account balances. Moreover, the interpretation requires that where the account statement includes assets not within the possession or control of the member

[1] In response to comment letters and membership concerns, the NYSE has submitted three amendments to this proposed rule change. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, Inc., to Ms. Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated April 24, 1997 (responding to comment letters)("Amendment No. 1"); Letter from James E. Buck, Senior Vice President and Secretary, NYSE, Inc., to Ms. Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated June 9, 1997 (amending the rule language to clarify the proposed interpretation and stipulating to a one year phase-in period for implementation of the Rule's requirements)("Amendment No. 2"); Letter from James E. Buck, Senior Vice President and Secretary, NYSE, Inc., to Ms. Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated September 18, 1997 (eliminating redundant provisions in the interpretation)("Amendment No. 3"). These amendments are technical in nature and do not need to be published for comment.

[2] 15 U.S.C. § 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 38106 (December 31, 1996), 62 FR 1353 (January 9, 1997).

[5] Letter from Sarah A. Miller, Senior Government Relations Counsel, Trust and Securities, American Bankers Association, to Jonathan G. Katz, Secretary, SEC, dated January 30, 1997 ("ABA Letter"); Letter from Deborah H. Kaye, Vice President and Assistant General Counsel, Retail Banking and Securities, The Chase Manhattan Bank, to Jonathan G. Katz, Secretary, SEC, dated January 28, 1997 ("Chase Letter"); Letter from Thomas W. Evans, Vice President, Citibank, to Secretary, SEC, dated January 29, 1997 ("Citibank Letter"); Letter from Steven J. Freiberg, Chairman and Chief Executive Officer, Citicorp Investment Services, to Secretary, SEC, dated January 29, 1997 ("CIS Letter"); Letter from Monica M. Barbour, Vice President and Legal Counsel, First Chicago NBD, to Margaret H. McFarland, Deputy Secretary, SEC, dated January 31, 1997 ("First Chicago Letter").

[6] *See* First Chicago Letter.

[7] *See* ABA Letter, Chase Letter, Citibank Letter, and CIS Letter.

[8] Columns, coloring or other distinct forms of demarcation may be used to clearly distinguish assets. The Interpretation requires only that a physical distinction of assets be made on the summary page. It was not intended to mandate the manner in which such identification is made. *see infra* note 13, at pg. 4.

[9] Where the customer account number and telephone number for customer service at each entity are included on each entity's respective customer account statement, such account and telephone numbers need not be included on the summary statement. *See also* note 26, *infra*.

[10] *See supra* note 1, Amendment No. 2.

organization, such assets must be clearly separated on the statement. In addition, the statement must clearly indicate that such externally held assets: are not within the possession or control of the member organization and are included on the statement solely as a service to the customer; and are not covered by SIPC.

Concerning the use of logos and trademarks, the proposed interpretation provides that where the logo, trademark or other identification of an entity (other than that of the carrying or introducing organization) appears on an account statement, the identity of such entity and the relationship to the introducing, carrying or other organization must be provided on the statement. With respect to the summary statement, the location of the name of the entity may not be misleading or cause customer confusion. The proposed interpretation codifies that carrying firms are responsible for sending statements to customers and for ensuring the accuracy of such statements. However, because in many cases "third party agents" (*e.g.*, service bureaus or other independent entities) prepare or transmit customer account statements, the proposed interpretation to Rule 409 would also establish Exchange policy regarding use of "third party agents" to prepare or transmit statements of accounts and to set forth certain representations which must be made in writing by the member organization to the Exchange when employing their party agents.

Specifically, the member organization must represent that the third party is acting as agent for the member organization, that the member organization retains responsibility for compliance with Rule 409(a), that the member organization has developed procedures and implemented controls for reviewing and testing the accuracy of statements, and that it will retain copies of all such statements. In addition, the interpretation states that an introducing organization that is a provider of services included in a member organization's statements of accounts may not function as a "third party agent" and may neither prepare nor transmit such statements itself.

III. Summary of Comments

The Commission received five comment letters in response to the proposed rule change.[11] The First Chicago Letter generally endorsed the proposed rule change as a "significant step in meeting customer needs by creating a more efficient and less costly delivery system of customer statements.[12] The remaining letters, however, raised several issues that the Commission believes should be addressed. The Exchange, at the Commission's request, has proffered a response.[13]

The remaining commenters argued that the Exchange lacked the authority to regulate how non-Exchange members communicate with their customers and the type of information disseminated to their customers.[14] One commenter, Chase, noted that if the NYSE member firm must develop procedures and controls for reviewing the accuracy of statements of accounts prepared by third party agents then this implies that the Exchange member must have access to bank records and statements.[15] Chase questioned whether the NYSE has the authority to require NYSE member firms to review bank statements.[16] Another commenter suggested that requiring banks (or other financial entities) to possibly establish and make accessible a customer service department was an indirect attempt by the Exchange to regulate banking activity and as such, was beyond the Exchange's purview.[17]

The NYSE states that its proposed Interpretation is directed only to those persons or entities that themselves are subject to the jurisdiction of the Exchange.[18] The Exchange believes that its interpretation will apply generically to the practice of formulating and disseminating summary statements together with combined statements of various entities, regardless of whether these entities are members.[19] The Exchange states that it is not seeking to directly impose regulation on third parties; however, to the extent that member organizations enter into contractual arrangements with third parties, these relationships will necessarily be affected by Exchange regulation.[20]

In its response, the NYSE has clarified its intent concerning specific jurisdictional issues raised by several commenters. First, the requirement that a member firm develop procedures and controls for reviewing the accuracy of statements of accounts prepared by third party agents only applies to the customer account statement of a member organization.[21] For example, "if a third party agent prepares account statements which include assets held at the member organization broker-dealer, there must be a system in place to ensure the accurate receipt by the third party agent of such information and the transmission of accurate information to customers."[22] The Interpretation does not seek to address the responsibility for the preparation of statements or accuracy of information related to assets not held at the broker-dealer.[23] Thus, concerning customer information provided by non-member entities, the responsibility of ensuring the accuracy and transmission of their information lies solely with them.

Another concern most commonly raised addressed the requirement that each entity provide a customer service number on its respective customer account statement. In its response, the NYSE stated that the summary page must also identify the relevant customers' account numbers at each entity and provide a customer service number for each such entity, "but *only* if such information is *not* included on each entity's underlying customer account statement."[24] According to the Exchange, indicating the customer service telephone numbers will allow customers to contact the appropriate entity for assistance in regard to the information presented on the summary page or any of the attached statements.[25]

The Commission believes the requirement that a customer service number be provided from each entity will ensure that inquiries concerning an asset or account are directed to the entity controlling the same. If a subsidiary does not have a customer service number, it may use the customer service number of its parent company or other affiliate.[26] With respect to the jurisdictional issues, the Commission recognizes that the development and distribution of these joint customer account statements would be a voluntary undertaking between the parties involved. If a broker-dealer affiliate chooses not to distribute joint account statements with the broker-dealer, then it would not be subject to the Interpretation.

Several comments took exception to the requirement that the summary statement identify and distinguish between those accounts and assets covered and not covered by SIPC.[27] According to these commenters, most financial entities have already addressed insurance disclosure and have established procedures to comply with the banking regulators' requirements.[28] Thus, requiring banks to specifically disclose to customers that deposit accounts, insured by the Federal Deposit Insurance Corporation ("FDIC"), are not insured by SIPC would create unnecessary customer confusion[29] and may create the illusion that the two types of coverage are comparable.[30] One commenter noted that this requirement imposes a disproportionate impact[31] on financial entities because they would be burdened with distinguishing between FDIC and SIPC coverage and educating the customer about the differences.[32]

In its response, the NYSE notes that it intended that member organizations be required to make the standard SIPC disclosures on their customer account statements and on summary statements where brokerage assets are included.[33] The NYSE understands that if read literally, the proposal could be construed as requiring summary statement participants to make "negative" disclosures (*i.e.*, specific identification of account assets or accounts *not* covered by SIPC); however, this was not its intent. Thus, with respect to SIPC disclosures on the summary statement, the Exchange has amended the proposed Interpretation to require that an entity disclose its membership status, not the status of the accounts or assets.[34]

Finally, most commenters expressed concern about the additional costs and burdens financial institutions will incur in attempting to comply with the summary statement aspect of this proposal.[35] These commenters contend that expanding the disclosure requirements to include, among other things, identifying each entity from which information is provided or where the assets are held and explaining the relationship between the various entities on the summary statement, would not only increase the cost of producing the statement,[36] but would defeat the purpose of a statement summary by increasing its length.[37] If the proposal is approved, the commenters suggest that those entities currently disseminating summary statements pursuant to NYSE rules either be grandfathered[38] or provided with a grace period to implement the changes.[39]

The NYSE has agreed that some flexibility in implementation is warranted. Thus, the Exchange has agreed to a one year phase-in period, commencing with Commission approval.[40]

IV. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with section 6(b)(5)[41] of the Act. Pursuant to Section 6(b)(5), the proposed rule change benefits the public[42] by codifying the information to be disclosed and delineating the criteria for the use of third party agents in formulating and disseminating statements of accounts to customers. Exchange Rule 409 also benefits the public by establishing requirements for related financial entities to consolidate account information and distribute this information in a "summary statement" to their common customers. These summary statements will provide customers not only with an overview of their accounts at the separate entities, but with concise, detailed information that is easily accessible.[43]

Codifying the information to be disclosed on statements of accounts assures customers of consistency in the type of information received on their statements. It also establishes uniform standards which will be applicable to all Exchange members. The rule language establishes adequate procedures for members to follow if they chose to use third party agents to disseminate statements of accounts to their customers. The rule safeguards against possible conflicts of interest and requires that members who exercise this option, monitor the activity of the third party agents, to ensure accuracy of the information transmitted. Having members develop the requisite procedures and controls to monitor their agents' compliance with this rule should prevent the misuse of customer information.

A summary statement consolidating a customer's accounts from various related financial entities will provide the customer with convenient access to the information in a single document. The Commission agrees that if these statements are currently being produced and disseminated, then uniform requirements need to be established for member and non-member participants to follow. The Commission applauds the Exchange's efforts in establishing requirements that attempt to provide the customer with as much information as possible. However, the Commission believes there is a fine line between a useful summary statement and one that could prove misleading and could cause customer confusion. Consequently, we urge the Exchange to be sensitive to any concerns that may arise after the proposal is implemented.

The Commission also believes that allowing a one year phase-in period for implementation of the Interpretation will provide entities adequate time to comply with the requirements of the rule. Once the Interpretation is fully implemented, the resulting summary statement should achieve the Exchange's objectives while benefiting the customer through increased disclosure.

V. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the

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[11] *See supra* note 5.

[12] First Chicago Letter at pg. 2.

[13] *See supra* note 1, Amendment No. 1.

[14] Chase Letter, pp. 2–3, Citibank Letter, p. 3, and CIS Letter p. 4.

[15] Chase Letter, p. 3.

[16] *Id. See also* Citibank Letter, (stating that the NYSE has no authority to access customer account numbers or information or to require customer service numbers at a bank or other financial entity). p. 3.

[17] CIS Letter, pp. 3–4.

[18] Amendment No. 1, p. 2.

[19] *Id.*

[20] *Id.*

[21] Amendment No. 1, p. 5.

[22] *Id.*

[23] *Id.*

[24] Amendment No. 1, p. 4.

[25] *Id.*

[26] If an alternate number is used, the customer must be able to receive assistance concerning his inquiries or be directed to the appropriate person or department for assistance.

[27] Chase Letter, p. 4, Citibank Letter, pp. 1–2, CIS Letter, p. 2, and ABA Letter, p. 4.

[28] *Id.* The banking regulators' requirements are outlined in the Interagency Statement on Retail Sales of Non-deposit Investment Products, dated February 15, 1997 ("Interagency Statement"). *See also* Joint Interpretations of the Interagency Statement, dated September 12, 1995, (indicating that the banking agencies may seek to apply the Interagency Statement more broadly outside the bank than they do within the bank).

[29] Chase Letter, p. 4, Citibank, p. 1, and ABA Letter, p. 4.

[30] Citibank Letter, pp. 1–2.

[31] CIS Letter, (requiring additional disclosures will have an anti-competitive effect because NYSE Rule 409 will disproportionately affect banks, thus disadvantaging a class of NYSE competitors) at p. 2.

[32] ABA Letter, pp. 3–4.

[33] Amendment No. 1, p. 4.

[34] Amendment No. 2, p. 2.

[35] Chase Letter, p. 1, Citibank Letter, p. 3, CIS Letter, p. 2, and ABA Letter, p. 3.

[36] Chase Letter, p. 3, Citibank Letter, p. 3, CIS Letter, p. 3 and ABA Letter, p. 3.

[37] Chase Letter, p. 5 and Citibank Letter, pp. 3–4.

[38] Citibank Letter, p. 4.

[39] Chase Letter, p. 6 and Citibank Letter, p. 4.

[40] Amendment No. 1, p. 3.

[41] Section 6(b)(5) requires the Commission to determine that a registered national securities exchange's rules are designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

[42] Pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[43] The Commission notes that this approval order addresses the procedures that members and associated persons must follow to disseminate this customer information. The Commission, however, is not addressing the various entities' legal status or rights concerning this information.

provisions of the Act, and in particular with Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–NYSE–96–27) be, and hereby is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26723 Filed 10–8–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39178; File No. SR–PHLX–97–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Regarding ITSFEA Supervisory Procedures

October 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 18, 1997, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHLX, pursuant to Rule 19b–4[2] of the Act, proposes to amend Exchange Rule 761, Supervisory Procedures Relating to the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"), and Floor Procedure Advice F–13, in order to broaden the scope of their applicability. The text of the proposed rule change may be examined at the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of, the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of, the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 16, 1992, the Exchange received approval to implement Exchange Rule 761[3] which imposed supervisory procedures on its floor units respecting ITSFEA. In 1993, the Exchange revised the rule in order to make minor changes for the sake of clarity.[4] The rule currently requires PHLX floor units to have every employee sign an attestation that he or she has read the most current version of the Exchange's "Notice of Insider Trading" and will ensure that the employer firm directly receives a duplicate account statement for all accounts in which the employee maintains a beneficial interest. Further, the rule requires all floor units to make and keep current an "ITSFEA Account List" and review all accounts listed with a view towards identifying possible misuse of material non-public information.

Currently, the rule only applies to PHLX floor units. Now, however, the PHLX has become the designated examining authority ("DEA") for approximately eighteen firms over the past few years which do not have a floor presence. These firms are not now subject to the rule, and because no other self regulatory organization ("SRO") is their DEA, they are exempt from these requirements entirely. In order to rectify this situation, the Exchange is proposing to change the phrase "PHLX floor unit" to "PHLX member organization" in the rule. That way, the rule will apply to all PHLX member organizations, with the caveat that any member organization which is required to have ITSFEA supervisory procedures pursuant to rules of another SRO which is its DEA, will not also be subject to PHLX Rule 761. Thus, all PHLX member firms for which the Exchange is the DEA will be subject to this rule, regardless of whether they conduct business on the floor of the Exchange or not.

The second purpose of this rule change is to add commentary .01, which will provide that for the purpose of the rule, an employee will include "every person who is compensated directly or indirectly by the member organization for the solicitation or handling of business in securities, including trading securities for the account of the member organization, whether such securities are those dealt in on the Exchange or those dealt over-the-counter." Thus, independent contractors as well as actual "employees" will be subject to the requirements of the rule. This language is similar to the language in Exchange Rule 604(d).

Finally, Floor Procedure Advice F–13, which mirrors the language of Rule 761, with the addition of a fine schedule under the Exchange's minor rule plan, also will be revised in the same manner as Rule 761.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general,[5] and particular, with Section 6(b)(5),[6] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by assuring that the requirements of the ITSFEA rule are equally applied to all broker dealers and all persons who conduct a securities business for such broker dealers whether they are considered employees or independent contractors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 30597 (April 16, 1992), 57 FR 14855.

[4] Securities Exchange Act Release No. 33008 (October 4, 1993), 58 FR 52518.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

Register or within such longer period (i) as the Commission may designate, up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the PHLX consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–97–39 and should be submitted by October 30, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26722 Filed 10–8–97; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request of the Government of Suriname to be Designated a Beneficiary of the Caribbean Basin Economic Recovery Act; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for public comment.

SUMMARY: Suriname has requested designation as a beneficiary country under the Caribbean Basin Economic Recovery Act. Interested parties are invited to submit comments relevant to the criteria to be examined in determining Suriname's eligibility for such designation.

DATES: Comments are due at USTR by October 30, 1997.

ADDRESSES: Comments should be addressed to: Susan Cronin, Director for Caribbean and Central American Affairs, Office of U.S. Trade Representative, 600 17th Street, N.W., Room 523, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Susan Cronin, Director for Caribbean and Central American Affairs, Office of United States Trade Representative, 600 17th Street, N.W., Room 523, Washington, D.C. 20506; (202) 395–5190.

SUPPLEMENTARY INFORMATION: The Caribbean Basin Economic Recovery Act (the "CBERA") (Title II, Pub. L. 98–67, as amended (19 U.S.C. 2701 et seq.)) authorizes the President to proclaim duty-free treatment for eligible articles from designated beneficiary countries in the Caribbean Basin. Suriname has requested designation as a beneficiary country under the CBERA.

Section 212(b) of the CBERA provides that the President shall not designate any country a CBERA beneficiary country—

(1) If such country is a Communist country;

(2) If such country

(A) Has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(B) Has taken steps to repudiate or nullify—

(i) Any existing contract or agreement with, or

(ii) Any patent, trademark, or other intellectual property of, a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of propriety so owned, or

(C) Has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) Prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association.

(ii) Good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) A dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnisbes a copy of such determination to the Senate and House of Representatives;

(3) If such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) If such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) If a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(6) Unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) If such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 502(a)(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any

[7] 17 CFR 200.30–3(a)(12).

country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

Section 212(c) of the CBERA provides that the President, in determining whether to designate any country a CBERA beneficiary country, shall take into account—

(1) An expression by such country of its desire to be so designated;

(2) The economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) The degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979;

(5) The degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) The degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) The degree to which such country is undertaking self-help measures to promote its own economic development;

(8) Whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(9) The extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) The extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) The extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this title.

Interested parties are invited to submit comments on the application to Suriname of some or all of these criteria for designation.

Public Comments

Interested parties must provide twelve copies of any comments, which must be in English and which must be received at USTR no later than 5 p.m., Thursday, October 30, 1997. If the comments contain business confidential information, ten copies of a non-confidential version must also be submitted. A justification as to why the information contained in the comments should be treated confidentially must be included in the comments. In addition, comments containing confidential information should be clearly marked "confidential" at the top of each page. The version that does not contain confidential information should be clearly marked "public version" or "non-confidential" at the top of each page.

Comments submitted in response to this notice, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline, by appointment with the staff of the USTR Public Reading Room (202 395–6186).

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–26783 Filed 10–8–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the October 21, 1997, meeting of the Trade and Environment Policy Advisory Committee will be held from 2:00 p.m. to 5:30 p.m. The meeting will be closed to the public from 2:00 p.m. to 5:00 p.m. The meeting will be open to the public from 5:00 p.m. to 5:30 p.m.

SUMMARY: The Trade and Environment Policy Advisory Committee will hold a meeting on October 21, 1996, from 2:00 p.m. to 5:30 p.m. The meeting will be closed to the public from 2:00 p.m. to 5:00 p.m. The meeting will include a review and discussion of current issues affecting U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of Trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. Those wishing to submit written comments on the meeting may submit them to Bill Daley, Jr., Office of the U.S. Trade Representative, 600 Seventeenth Street, N.W., Washington, D.C. 20508.

DATES: The meeting is scheduled for October 21, 1997, unless otherwise notified.

ADDRESSES: The meeting will be held at the Jefferson Hotel, 16th and M Streets, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Bill Daley, Jr., Office of Intergovernmental Affairs and Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 97–26847 Filed 10–8–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33470]

Central Kansas Railway, L.L.C.—Lease Exemption—Union Pacific Railroad Company

Central Kansas Railway, L.L.C. (CKR), a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP) and operate two rail lines totaling approximately 170.7 miles: (1) Between milepost 747.5, at Towner, CO, and milepost 491.20, at Bridgeport, KS; and

(2) Between milepost 530.6, at Lindsborg, KS, and milepost 545.0, at Sid, KS.

In conjunction with the lease of these lines, CKR will acquire incidental overhead trackage rights over UP's 6.30-mile rail line between milepost 545.0, at Sid, KS, and milepost 551.30, at Salina, KS.

The transaction is expected to be consummated on or after October 3, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33470, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Decided: October 1, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26837 Filed 10–8–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33465]

CSX Transportation, Inc.—Trackage Rights Exemption—East Tennessee Railway, L.P.

East Tennessee Railway, L.P. (ETRY), has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT), over main line trackage of ETRY between turnouts to be constructed at a point approximately 39 feet west of derail located on ETRY's #2 track and a point approximately 80 feet west of the west line of Buffalo Street in Johnson City, TN, a total distance of approximately 1,900 feet, exclusive of turnouts.[1] The transaction is expected to be consummated after completion of the construction of two connection tracks between CSXT and ETRY, but not earlier than October 2, 1997, the effective date of the exemption.

The purpose of the proposed trackage rights is to allow CSXT to rationalize approximately 1,900 feet of its trackage through Cherry Street in downtown Johnson City, TN, which is a high maintenance and high risk area in the City.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33465, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001 and served on: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

Decided: October 2, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26836 Filed 10–8–97; 8:45 am]

BILLING CODE 4915–00–P

[1] CSXT is acquiring overhead trackage rights only and will not be allowed to perform any local freight service of any kind to ETRY's patrons at any point located on the joint trackage.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub-No. 2)][1]

CSX Transportation, Inc.—Construction and Operation Exemption—Connection Track at Willow Creek, IN

AGENCY: Surface Transportation Board (Board).

ACTION: Notice of exemptions.

SUMMARY: The Board, under 49 U.S.C. 10502, conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by CSX Transportation, Inc., (CSX), Norfolk and Western Railway Company (NW), and Consolidated Rail Corporation (Conrail) of six connection track projects at Sidney, IL, Willow Creek and Alexandria, IN, and Greenwich, Sidney Junction, and Bucyrus, OH, subject to the results of the Board's environmental review and further decision.[2]

DATES: The exemptions cannot become effective until after the environmental process has been completed. At that time, the Board will issue a further decision or decisions addressing the environmental matters and establishing exemption effective dates, if appropriate. Petitions to reopen must be filed by October 29, 1997.

ADDRESSES: An original and 25 copies of all documents must be sent to the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001 ATTN: STB Finance Docket No. 33388 (Sub-Nos. 2–7). In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2538; FAX: (202) 219–3289) and to petitioners' representatives: Charles M. Rosenberger, 500 Water Street-J150, Jacksonville, FL 32202; James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191; and John J. Paylor, 2001 Market Street-16A, Philadelphia, PA 19101.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone (202) 289–4357.

Decided: October 1, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–26838 Filed 10–8–97; 8:45 am]

BILLING CODE 4915–00–P

[1] These proceedings are related to STB Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation (CSX/NS/CR)*. In *CSX/NS/CR*, Decision No. 9, served June 12, 1997, we granted petitions for waiver that would allow CSX, NW, and Conrail to seek approval for construction of seven connection projects, including the connections proposed here, following the completion of our environmental review of the construction projects, and our issuance of further decisions exempting or approving the proposals, but prior to our approval of the primary application.

[1] This proceeding also embraces the following: STB Finance Docket No. 33388 (Sub-No. 3), *CSX Transportation, Inc.—Construction and Operation Exemption—Connection Tracks at Greenwich, OH;* STB Finance Docket No. 33388 (Sub-No. 4), *CSX Transportation, Inc.—Construction and Operation Exemption—Connection Track at Sidney Junction, OH;* STB Finance Docket No. 33388 (Sub-No. 5), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track with Union Pacific Railroad Company at Sidney, IL;* STB Finance Docket No. 33388 (Sub-No. 6), *Norfolk and Western Railway Company—Construction and Operation Exemption—Connecting Track with Consolidated Rail Corporation at Alexandria, IN;* and STB Finance Docket No. 33388 (Sub-No. 7), *Norfolk and Western Railway Company— Construction and Operation Exemption—Connecting Track with Consolidated Rail Corporation at Bucyrus, OH.*

federal register

Thursday
October 9, 1997

Part II

Federal Deposit Insurance Corporation

12 CFR Parts 303, 337, et al.
Practice and Procedure: Golden Parachute and Indemnification Payments; Proposed Rule
Deposit Insurance Applications; Notice
Bank Merger Transactions; Notice
Domestic Branch Establishment Applications; Notice
Main Office or Branch Relocation Applications; Notice
Liability of Commonly Controlled Depository Institutions; Notice

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 337, 341, 346, 348, and 359

RIN 3064–AC02

Applications, Requests, Submittals, Delegations of Authority, and Notices Required To Be Filed by Statute or Regulation; Unsafe and Unsound Banking Practices; Registration of Transfer Agents; Foreign Banks; Management Official Interlocks; Golden Parachute and Indemnification Payments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its regulations governing application, notice and request procedures and delegations of authority by streamlining, modernizing and clarifying current policies and practices. Specifically, the FDIC proposes to offer qualifying well-capitalized and well-managed insured depository institutions and their holding companies expedited review procedures for several major types of filings, including deposit insurance, merger and branch applications. The agency also proposes to centralize substantially all filing procedures found throughout its rules within the regulation for ease of reference. Furthermore, the FDIC proposes to reorganize the requirements for each major application or notice type into a separate regulatory subpart that will contain all information necessary to submit a filing to the agency, as well as any relevant internal agency delegations of authority to approve or deny submissions. In addition, the agency is incorporating statutory changes to its application procedures made by the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Finally, the FDIC is proposing technical amendments to related regulations to conform these changes.

This action is being taken in accordance with section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 which requires the federal banking agencies to review and streamline their regulations and policies in order to improve efficiency, reduce unnecessary costs, eliminate unwarranted constraints on credit availability, and remove inconsistencies and outmoded and duplicative requirements.

The proposal seeks to reduce burden on insured depository institutions by imposing regulatory requirements only where needed to address safety and soundness concerns or accomplish other statutory responsibilities of the FDIC. The proposed rule also strives to more closely align the FDIC's application processing regulations with those of the other federal banking agencies.

DATES: Comments must be received by January 7, 1998.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: *Division of Supervision:* Cary H. Hiner, Associate Director, (202) 898–6814; Jesse G. Snyder, Assistant Director, (202) 898–6915; Mark S. Schmidt, Assistant Director, (202) 898–6918. *Division of Compliance and Consumer Affairs:* Steven D. Fritts, Associate Director, (202) 942–3454, and Louise N. Kotoshirodo, Review Examiner, (202) 942–3599. *Legal Division:* Susan van den Toorn, Counsel, Regulation and Legislation Section, (202) 898–8707, and Nancy Schucker Recchia, Counsel, Regulation and Legislation Section, (202) 898–8885. *For administrative enforcement issues:* Grovetta N. Gardineer, Counsel, Compliance and Enforcement Section, (202) 736–0665, and Philip P. Houle, Counsel, Compliance and Enforcement Section, (202) 736–0758. *For foreign bank activities (Subpart J):* Jamey G. Basham, Counsel, Regulation and Legislation Section, Legal Division (202) 898–7265, and Christie A. Sciacca, Assistant Director, Division of Supervision (202) 898–3671, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Part 303 of the FDIC's regulations (12 CFR part 303) generally describes the procedures to be followed by both the FDIC and applicants with respect to applications, notices, or requests required to be filed by statute or regulation. Additional information concerning processing is contained in related FDIC statements of policy. Part 303 also sets forth delegations of authority from the FDIC's Board of Directors to the Directors of the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA), the General Counsel of the Legal Division, the Executive Secretary, and, in some cases, their designees to act on certain applications, notices, requests, and enforcement matters.

The FDIC is proposing comprehensive revisions to part 303 as part of a systematic review of its regulations and policy statements undertaken in accordance with section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) (12 U.S.C. 4803(a)). Section 303(a) of CDRIA requires the FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision (federal banking agencies) to streamline and modify their regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The statute also requires each of the federal banking agencies to remove inconsistencies and outmoded and duplicative requirements from their regulations and written policies.

To initiate its CDRIA review, the FDIC published in the **Federal Register** a notice soliciting comment on its regulations and written policies. 60 FR 62345, December 6, 1995. In response to that request, the FDIC received four comments regarding part 303 and one comment concerning a related policy statement.

One commenter wrote that electronic filing of various reports and documents has the potential to reduce burden arising from compliance with filing requirements. In particular, the commenter noted that other governmental agencies already have recognized the benefits of electronic filing and that certain application procedures, such as applications to establish or relocate an office and applications relating to mergers are well-suited for electronic filing. The FDIC is working the other federal banking agencies in an attempt to adopt uniform filing forms for common applications and to have such forms filed electronically where possible.

Another commenter suggested that with regard to applications by insured state nonmember banks to establish a branch, move its main office, or relocate a branch pursuant to § 303.2(c), the regulations should reduce the regulatory burden of setting up shared automated teller machines (ATMs). Applications are no longer required for ATMs and

remote service units (RSUs) as a result of section 2205 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) (Pub. L. 104–208, 110 Stat. 3009), which excluded ATMs and RSUs from the definition of a "domestic branch" under section 3(o) of the FDI Act (12 U.S.C. 1831(o)). Therefore, the definition of "branch" in proposed § 303.41 excludes ATMs and RSUs.

With regard to section 32 notices (change in director or senior executive officer), a commenter suggested that exceptions be carved out for two of the three statutory triggering events. Section 32 of the Federal Deposit Insurance Act (FDI Act) required prior notice from a depository institution or holding company that (1) was chartered less than two years; (2) had undergone a change in control within the preceding two years; or (3) was not in compliance with minimum capital requirements or was otherwise in "troubled condition." Section 2209 of EGRPRA subsequently amended section 32 by eliminating the prior notice requirement for institutions and holding companies that are chartered for less than two years or that have undergone a change in control within the preceding two years. However, institutions and holding companies that are not in compliance with minimum capital requirements or are otherwise in "troubled condition" remain subject to the prior notice requirement. As a result, this comment has been rendered moot.

One commenter questioned why current § 303.2(a)(4) includes a requirement that an application by an insured state nonmember bank to establish a branch, move its main office or relocate a branch contain a statement as to whether or not the site is included in or is eligible for inclusion in the National Register of Historic Places, including evidence that clearance has been obtained from the State Historic Preservation Officer (SHPO). As a federal agency, the FDIC is subject to the National Historic Preservation Act (NHPA) (16 U.S.C. 470 *et seq.*) which creates a mandatory review and consultation process for Federal undertakings that may affect properties included in or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior. In order to comply with NHPA, the FDIC currently requests applicants to state whether the site is included in, or eligible for inclusion in the National Register and to provide evidence that clearance has been obtained from the SHPO. *See* 12 CFR § 303.2(a)(4). However, the proposed filing procedures at § 303.42(b)(5) modify the current requirements to provide that applicants submit a statement that clearance has been or will be obtained from the SHPO. In addition, the FDIC is undertaking a review of its statement of policy on the National Historic Preservation Act of 1966 as part of the CDRIA review process and is exploring the possibility of entering into a programmatic agreement with the Advisory Council on Historic Preservation which would greatly streamline the historic preservation review process, especially for those applications which do not involve a historic site. The FDIC expects to issue a revised statement of policy on NHPA in 1998.

Finally, the comment received on the FDIC's written policies concerned the statement of policy on Applications for Deposit Insurance. Discussion of the comment is contained in the revised statement of policy on Applications for Deposit Insurance published elsewhere in today's **Federal Register**.

The proposed revisions to part 303 seek to reduce regulatory burden on insured depository institutions, particularly upon state nonmember banks supervised by the FDIC. The proposed rule also strives to more closely align the FDIC's application processing regulations with those of the other federal banking agencies. Furthermore, the proposal reflects changes to the FDIC's application procedures made by EGRPRA.

II. Discussion

The proposed regulation meets the goals of section 303(a) of CDRIA in several important ways.

- New expedited processing procedures have been introduced for six application types which represent the majority of all filings (applications for deposit insurance, mergers, branches, consent to exercise trust powers, retirement of capital, and certain foreign banking activities).

During the first six months of 1997, the FDIC acted on 1615 applications, notices and requests. Approximately 1500 or 93 percent of these filings were of the type for which expedited processing or notice procedures would be available under this proposal. Under present regulations, only 130 of the filings acted upon during the first six months of 1997 actually took the form of notices with clear time frames for regulatory action. In addition to reducing processing time for filings submitted by well managed and well capitalized banks, the proposed expedited procedures will add more certainty to the timing of regulatory decision. This new approach will allow the FDIC to focus its resources on applications that do not fall within the new expedited review procedure and are therefore more likely to present safety and soundness risks or raise CRA or compliance concerns.

- The processing of some applications has been structured to act like notices. For example, applications to establish a branch or to relocate a main office or branch processed under expedited procedures will generally be deemed approved 21 days after receipt of a substantially complete application. Branch related applications represented more than 50 percent of all applications acted upon by the FDIC in the first six months of 1997.
- Regulations and guidelines issued by the federal banking agencies implementing common statutes have been made more uniform. This is particularly true for filings regarding mergers, changes in bank control, and changes in director or senior executive officer.
- Filing contents have been clarified and streamlined wherever practical. Examples include applications for a merger which qualifies as a corporate reorganization, a temporary office in an emergency or disaster situation, applications for deposit insurance for an interim institution in connection with a related merger transaction, and applications for continuation for deposit insurance by a state bank withdrawing from the Federal Reserve System.
- The procedural requirements for virtually all applications and notices have been centralized in part 303. Subpart A of the proposed regulation contains the general rules applicable to all filings. Each subpart that follows contains all of the procedural requirements for a particular application type. For example, subpart C on branching contains definitions applicable to that subpart, filing procedures, processing procedures, public notice provisions and delegations of authority. Subpart M contains miscellaneous filings that do not merit separate subparts. Subpart N contains all administrative enforcement action delegations.
- Delegations of authority from the FDIC's Board of Directors to the Directors of DOS, DCA, the General Counsel of the Legal Division, and the Executive Secretary to act on certain applications, notices, requests, and enforcement matters have been reviewed and updated.
- Duplicative and outdated material has been deleted from existing part 303. An example is eliminating application procedures for the establishment or relocation of a remote service facility,

which is no longer required pursuant to section 2205 of EGRPRA.

Concurrently with this proposal to amend part 303, the FDIC is publishing elsewhere in today's **Federal Register** two revised statements of policy on Applications for Deposit Insurance and Bank Merger Transactions for comment. The FDIC is also proposing elsewhere in today's **Federal Register** to rescind its statements of policy on Applications to Establish a Domestic Branch and Applications to Relocate Main Office or Branch, and to amend its statement of policy on Liability of Commonly Controlled Depository Institutions. The latter policy statement is being amended to move the application procedures to request a waiver of cross-guaranty liability from the policy statement to proposed part 303. It is recommended that interested parties read those policy statements in conjunction with the proposed regulatory text of part 303 and submit combined comments to the agency, if practicable.

In addition, the FDIC has already rescinded the following policy statements related to part 303 as unnecessary or duplicative:

- Changes in Control in Insured State Nonmember Banks (62 FR 24927, May 7, 1997)
- Applications, Legal Fees, and Other Expenses (62 FR 15479, April 1, 1997)
- Eligibility to Make Application to Become an Insured Bank Under Section 5 of the Federal Deposit Insurance Act (62 FR 15706, April 2, 1997)

The FDIC rescinded the first two statements of policy because any necessary substantive information contained in them has been moved to the proposed regulation or other policy statements. The third statement of policy was rescinded because the analysis was based on a provision of the FDI Act that was repealed by the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236).

III. Proposed Rule

The discussion below identifies and explains significant proposed changes to part 303. The FDIC requests general comments on all aspects of the proposed regulation as well as specific comments on certain issues as noted throughout the preamble. To aid the reader, a derivation table follows the preamble which relates the sections of proposed part 303 to current part 303, as well as other sections of the FDIC regulations which are being relocated to part 303.

A. Subpart A—Rules of General Applicability

Subpart A of part 303 clarifies and simplifies the rules generally applicable to processing of applications, notices and requests (filings) required by regulation or statute by reorganizing the definitions and general rules of procedure currently found in § 303.0 and § 303.6, respectively, into one subpart. Subpart A also explains the availability of expedited processing for an "eligible depository institution" (defined in proposed § 303.2(r)) and the criteria under which the FDIC may remove a filing from expedited processing. Further, subpart A contains general principles governing delegations of authority from the Board of Directors to certain FDIC officials, most of which are currently contained in § 303.10(a) and § 303.11 (a) and (b).

The availability of expedited procedures for several major types of filings (deposit insurance, branches, and mergers) as well as some other filings (for example, consent to exercise trust powers and reduce/retire capital stock or capital debt instruments) will reduce burden upon the banking industry by enabling banks and thrifts to undertake corporate activities more quickly. Expedited processing will also introduce more certainty into the application process for both applicants and interested parties by establishing fixed timeframes for decision and receipt of comment letters. Furthermore, centralizing in one subpart general information that was previously scattered throughout part 303 will make part 303 much easier to use for the public, bankers, attorneys and regulators.

In addition to reorganizing existing regulatory text into one subpart, subpart A also updates terminology, streamlines procedures, and reflects current FDIC policies and practices.

Definitions. Subpart A alphabetizes the definitions currently set forth in § 303.0 and adds several new definitions.

New definitions of "applicant" and "filing" were added for ease of drafting regulatory text and to add clarity and consistency. "Applicant" is intended to replace the terms "insured depository institution," "state nonmember bank" or "individual" where they appear throughout part 303. The scope section of each subpart will explain whether particular filing procedures are applicable to all insured depository institutions or only to state nonmember banks. The term "filing" is intended to provide a convenient way to collectively refer to applications, notices, or requests, where appropriate throughout part 303. New definitions were also added for "application" and "notice" to clarify the distinctions between those types of filings.

A definition of "insider" was added to avoid duplication in several subparts. The current definition of "protest" found in § 303.0(b)(30) has been replaced with three terms ("comment," "adverse comment," and "CRA protest") to distinguish among the types of comments that DOS and DCA may receive in connection with a pending filing. The term "deputy director" has been defined to include deputy directors of both DOS and DCA to reflect those positions. Also, a definition has been added for "General Counsel" of the FDIC. Further, the various types of Section 8 enforcement orders have been grouped under one category "Section 8 orders".

A new definition of "eligible depository institution" has been added to establish criteria that institutions must meet to qualify for expedited processing, as discussed below.

Definitions of "Associate General Counsel for Compliance and Enforcement," "regional manager," and "remote service facility" are being removed as obsolete or no longer necessary.

Expedited processing. Subpart A sets forth the general procedures for expedited processing, for which only an eligible depository institution qualifies. Proposed § 303.2(r) of subpart A defines the term "eligible depository institution" as a depository institution that meets the following five criteria: (1) Received an FDIC-assigned composite Uniform Financial Institutions Rating System (UFIRS) rating of 1 or 2 as a result of its most recent federal or state examination;[1] (2) received at least a satisfactory CRA rating from its primary federal regulator at its last examination; (3) received a compliance rating of 1 or 2 from its primary federal regulator at its last examination; (4) is well-capitalized; and (5) is not subject to any corrective or supervisory order or agreement. Although an institution must have a satisfactory or better CRA rating in order to qualify for expedited processing for any filing, the CRA performance of an institution will serve as a basis for decision only in connection with "applications for a deposit facility" as required by section 2903(2) of the Community Reinvestment Act (12 U.S.C. 2903(2)). Proposed § 303.5 sets forth those relevant filings for which an institution's CRA record will be taken into account (deposit insurance, mergers, and establishment or relocation of a branch or main office, including the relocation of an insured branch of a foreign bank). The FDIC believes that these five criteria for eligibility are appropriate to ensure that only well-capitalized, well-managed institutions that do not present any supervisory, compliance or CRA concerns receive expedited processing. The FDIC specifically requests comment on whether these standards for eligibility are appropriate.

[1] An FDIC-assigned composite UFIRS rating may be based on the FDIC's own examination, or based on the review of examination reports prepared by state banking authorities or the other federal banking agencies.

It should be noted that the FDIC recently issued two proposed rules for comment which would revise and consolidate its international banking regulations (12 CFR part 347) and regulations governing the activities and investments of insured state banks and savings associations (12 CFR part 362). 62 FR 37748, July 16, 1997; 62 FR 47969, Sept. 12, 1997. These proposals also contain expedited procedures and definitions of an "eligible" type of institution which generally parallel proposed § 303.2(r) of subpart A, but add two additional criteria: (1) That the institution has been chartered and operating for at least three years; and (2) that the institution received a rating of 1 or 2 under the "management" component rating of the UFIRS at its most recent examination. The additional criteria may be appropriate in connection with the part 347 and 362 proposals to the extent that the eligibility criteria govern substantive issues beyond the question of whether an application should receive expedited processing. The FDIC will evaluate the necessity of the additional criteria in the context of parts 347 and 362 as it goes forward with those rulemakings.

Under § 303.11(c) of the proposed rule, expedited processing will be automatically given to institutions meeting the definition of an "eligible depository institution" (with a few exceptions where other conditions apply) upon determination by the appropriate regional director (DOS). Therefore, an applicant need not request expedited processing or even identify itself as an eligible institution. A filing may be removed from expedited processing pursuant to proposed § 303.11(c)(2) if: (1) For filings subject to public notice, an adverse comment is received that warrants additional investigation or review; (2) for filings subject to evaluation of CRA performance, a CRA protest is received that warrants additional investigation or review, or the appropriate regional director (DCA) determines that the filing presents a significant CRA or compliance concern; (3) for any filing, the appropriate regional director (DOS) determines that the filing presents a significant supervisory concern, or raises a significant legal or policy issue; or (4) for any filing, the appropriate regional director (DOS) determines that other good cause exists for removal. If a filing is removed from expedited processing, the applicant will be promptly informed in writing of the reason. For filings which the appropriate regional director has not been delegated authority to approve, the filing will generally be removed from expedited processing.

Computation of time. Previously, part 303 simply contained a cross-reference to § 308.12, which governs computation of time for purposes of the FDIC's rules of administrative procedure. The proposed rule clarifies that the FDIC uses a calendar day rule and begins computing the relevant period on the day after an event occurs (for example, the day after receipt of a filing or newspaper publication).

Effect of CRA performance on filings. This new section clearly states that CRA performance will be considered in connection with applications to establish a domestic branch or relocate a domestic branch or main office, merger applications, and deposit insurance applications, and clarifies that CRA applies to applications to relocate an insured branch of a foreign bank. Although this information is currently contained in part 345 (Community Reinvestment Act), the FDIC believes that an explicit statement concerning the filings covered by CRA better serves the public and the banking industry than providing a cross-reference.

Public notice. Current § 303.6(f)(4) reproduces a notice that institutions are required to use when publishing notice of a filing in a local newspaper. Under § 303.7(c) of the proposed rule, applicants are offered the choice of a sample notice or a list of contents which may be used to draft a notice tailored to the needs of the institution. This choice is designed to reduce burden on the banking industry by providing more flexibility.

Proposed § 303.7(b) adds a new provision requiring confirmation of publication. Promptly after publication, the applicant must mail or otherwise deliver a copy of the newspaper notice to the appropriate regional director (DOS). This is designed to avoid possible delays in processing if a defective notice is discovered.

Proposed § 303.7(d) reduces burden by providing that an applicant may publish a single public notice for multiple transactions provided that the notice includes an explanation of how the transactions are related and states the closing date of the longest public comment period that will apply. Further, § 303.7(e) of the proposed rule states that the FDIC may accept the publication of a single joint notice containing information required by both the FDIC and another federal banking agency or state banking authority provided that the notice states that comments must be submitted to both agencies.

Public comments. Current § 303.6(f)(3) permits interested parties to comment upon a pending filing until the date of final disposition. Proposed § 303.9(a) provides that comments would be accepted only during a defined comment period in order to add certainty to the filing process for both the public and the applicant. Closing the comment period on a date certain eliminates the risk of final action being delayed due to a late comment or of final action being taken while a comment is in the process of being transmitted to the FDIC.

In order to provide the public with adequate time to submit meaningful comments, proposed § 303.9(b)(2) grants the appropriate regional director (DOS) three bases upon which to extend or reopen the public comment period: (1) If the applicant fails to file all required information on a timely basis to permit review by the public or makes a request for confidential treatment not granted by the FDIC that delays the public availability of that information; (2) if any person requesting an extension of time satisfactorily demonstrates to the FDIC that additional time is necessary to develop factual information that may materially affect the application; or (3) for good cause. Good cause is currently the only basis for extension of the comment period under § 303.6(f)(3).

Further, proposed § 303.9(b)(4) clarifies that the FDIC will provide copies of all comments to the applicant and that the applicant will be given an opportunity to respond.

Hearings and other meetings. Proposed § 303.10 simplifies the current rules concerning hearing procedures contained in § 303.6 (h), (i), and (j) and updates those provisions to reflect current FDIC practices.

Decisions on filings. Proposed § 303.11 sets forth new provisions concerning multiple transactions, abandonment of filings, and nullification of decisions. With regard to multiple transactions, if all related transactions have been granted expedited processing, then the longest

expedited processing time will govern for all transactions. The proposed rule also codifies current FDIC practice concerning abandonment of filings. If an applicant does not provide additional information requested by the FDIC within the time period specified, the FDIC may notify the applicant that the filing has been deemed abandoned and processing has been discontinued. The proposal also contains three nullification provisions. The FDIC may nullify a decision on a filing if: (1) The agency becomes aware of any material misrepresentation or omission after rendering a decision; (2) the agency is not informed by the applicant of a subsequent material change in circumstances prior to rendering a decision; or (3) the decision is contrary to law, regulation, or FDIC policy, or granted due to clerical or administrative error, or a material mistake of law or fact. The FDIC believes these provisions are useful additions to part 303.

Appeals and petitions for reconsideration. Current § 303.6(e) contains the FDIC's procedures governing petitions for reconsideration of a denied filing. Proposed § 303.11(f) would clarify that these procedures cover only requests for reconsideration of filings that do not otherwise have appeal procedures provided by other regulation or written guidance, and that decisions to deny a hearing request are nonappealable.

As proposed, § 303.11(f)(2) provides that within 15 days of receipt of notice from the FDIC that its filing has been denied, an applicant may file a petition with the appropriate regional director containing either a resolution of the board of directors of the applicant authorizing filing, if the applicant is a corporation or other entity, or a letter signed by the individual(s) filing the petition, if the applicant is not a corporation or other entity. As under the existing rule, the filing must contain substantive information that for good cause was not previously set forth in the filing and specific reasons why the FDIC should reconsider its prior decision.

A regional director or deputy regional director (DOS or DCA) may approve, but not deny, a petition for reconsideration. However, the Director or Deputy Director (DOS or DCA) may approve or deny a petition. If the petition is granted, the filing will be reconsidered by the Board of Directors if the filing was originally denied by the Board of Directors or denied by the Director, Deputy Director, or an associate director (DOS or DCA). The Director or Deputy Director (DOS or DCA) will reconsider the filing if the filing was originally denied by a regional director or deputy regional director. Proposed § 303.11(f) also clarifies that a decision on a petition for reconsideration by the Director or Deputy Director (DOS or DCA) is a final agency decision and is not appealable to the Board of Directors.

The FDIC specifically seeks comment on its new petition for reconsideration procedures, which are designed to provide a more objective review. It should be noted that the FDIC has separate appeal procedures regarding material supervisory determinations such as examination ratings, material disputed asset classifications, determinations regarding violations of laws and regulations, etc. which were published in the **Federal Register** on March 25, 1995. 60 FR 15923. In addition, procedures for requesting a review of assessment risk classification and for revision of computation of quarterly assessment payments are contained in part 327. Therefore, proposed § 303.11(f) applies only to filings as that term is defined in part 303.

General delegations of authority. Proposed § 303.12 contains the general principles governing delegations of authority from the Board of Directors to FDIC officials. Some, but not all, of these principles are currently contained in §§ 303.10(a) and 303.11 (a) and (b). This proposed section states that the Board does not delegate its authority regarding matters covered in the FDIC's regulations unless such a delegation is specifically made. However, in matters where the Board has neither specifically delegated nor retained authority, FDIC officials may take action with respect to matters which generally involve conditions or circumstances requiring prompt action to protect the interests of the FDIC and to achieve flexibility and expedition in the exercise of FDIC functions under part 303. Delegations are to be broadly construed in favor of the existence of authority in FDIC officials who act under delegated authority, and any exercise of delegated authority by an official is conclusive evidence of that official's authority. The purpose of this broad construction is to promote the efficient operation of the FDIC, to allow the public to rely on actions of FDIC officials, and to discourage frivolous challenges to the exercise of delegated authority.

Delegations of authority to DOS and DCA officials. Proposed § 303.13 contains delegations of authority to DOS and DCA officials to enable them to carry out the FDIC's applications function.

Where a CRA protest is filed and remains unresolved, proposed § 303.13(a) delegates authority to the regional director or deputy regional director (DCA) to concur that approval of any filing subject to CRA is consistent with the purposes of CRA. Previously, receipt of a CRA protest caused a filing to be forwarded to Washington for review. This change in policy is expected to improve and expedite decision making by placing it closer to the source.

For purposes of determining when to commence processing of a filing, proposed § 303.13(b) delegates authority to DOS officials to determine whether a filing is substantially complete. This provision also is intended to clarify that the standard to initiate the processing period is the receipt of a substantially complete filing.

Proposed § 303.13(c) contains a delegation of authority permitting DOS officials to enter into memoranda of agreement pursuant to regulations of the Advisory Council on Historic Preservation which implement the National Historic Preservation Act (NHPA). This provision is currently found in § 303.8(g) of the FDIC's regulations and facilitates the agency's ability to comply with NHPA.

B. Subpart B—Deposit Insurance

Since passage of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236), all proposed depository institutions or existing noninsured depository institutions that desire federal deposit insurance have been required to apply to the FDIC. This includes all nationally chartered banks, state or federally chartered savings associations, and state chartered banks, including state member banks.

Subpart B reorganizes and clarifies the filing and processing procedures for an applicant to follow in applying for deposit insurance for a proposed or existing noninsured depository institution, for an interim depository institution (when required), and for continuation of deposit insurance for a state bank upon withdrawing from membership in the Federal Reserve System. The proposal updates the regulation to reflect current statutory requirements and current FDIC policy for processing such applications. Subpart B also sets forth the delegations of authority and criteria under which DOS may approve such applications. The proposed rule should be read in conjunction with the FDIC's revised policy statement on Applications for Deposit Insurance found elsewhere in today's **Federal Register**. Substantive changes to the regulatory text are discussed below.

Expedited processing. Under expedited processing, an application for deposit insurance for a proposed depository institution which will be a subsidiary of an "eligible depository institution" or an "eligible holding company" will be processed within 60 days of receipt of a substantially complete application or 20 days after publication, whichever is later. Currently, deposit insurance applications are processed within 120 days. *See* FDIC Financial Institutions Letter 26–96 dated May 6, 1996. An eligible depository institution is defined in proposed § 303.2(r). An eligible holding company is defined in proposed § 303.22(a) as a bank or thrift holding company which has consolidated assets of $150 million or more; has an assigned composite rating of 2 or better; and has at least 75 percent of its consolidated depository institution assets in eligible depository institutions. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval. Public comment is invited on the definition of eligible holding company and the time frame for processing applications for deposit insurance under expedited review.

Public notice and comment period. Current regulations state that notice shall be published on the date the application is mailed or delivered to the regional director or not more than 30 days prior to that date. Under proposed § 303.23(a), notice would be published as close as practicable to the filing date but not more than five days before the filing date. This provides assurance that the public portion of the application file will be available for inspection during the comment period.

Currently, the notice informs the public that comments may be filed with the regional director at any time before processing of the application has been completed and that processing will not be completed earlier than the 15th day following either the date of publication or date of receipt of the application, whichever is later. Proposed § 303.23(a) would require that interested parties file comments with the regional director on or before the 15th day following the date of publication. Closing the comment period eliminates the risk of final action being delayed due to a late comment or of final action being taken while a comment is in the mail to the FDIC. The proposed 15-day comment period is considered adequate time for an interested party to provide comments. Also, the regional director may extend or reopen the comment period for good cause, such as when an interested party cannot provide comments within the 15 days for reasons beyond the party's control. Comment is invited on the adequacy of the 15 day comment period, especially in light of the ability of regional directors to extend or reopen the comment period under § 303.9(b)(2).

Application for deposit insurance for an interim depository institution. An interim depository institution is defined in proposed § 303.24(a) as an institution formed or organized solely to facilitate a merger transaction which will be reviewed by one of the four federal banking agencies and that the institution will not open for business. The filing will consist of a brief letter application and a copy of the related merger transaction. Also, newspaper publication requirements concerning the application for deposit insurance for an interim is being eliminated as unnecessary since public notice would be required for the merger transaction, which is considered to be the primary transaction. It is anticipated that the FDIC will consult with the federal banking agency reviewing the merger application and that final action on the deposit insurance application will be taken within 21 days after receipt of a substantially complete application. If additional review by the FDIC is warranted, the applicant will be so advised in writing.

Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System. Procedures are being simplified. Under § 303.25 of the proposal, the applicant would file a letter application containing the information specified in the regulation, including a new requirement that the application must contain a statement by the bank's management that there are no current outstanding or proposed corrective programs or supervisory agreements with the Federal Reserve System. If such programs or agreements exist, the application must contain a statement that the bank's board of directors is willing to enter into a similar agreement with the FDIC which would become effective upon the date of withdrawal from the Federal Reserve System. The regional director would notify the applicant in writing within 15 days of the date a substantially complete application is received that deposit insurance will continue upon termination of membership in the Federal Reserve System or that additional review will be necessary. If additional review is warranted, the regional director would inform the applicant in writing of the reasons and inform the applicant that it will be notified in writing of the FDIC's final decision regarding continuation of deposit insurance. Upon further review, the regional director may approve the continuation of deposit insurance or, if denial is deemed warranted, forward a recommendation for action by the FDIC Board of Directors.

Other changes. Current § 303.7(d)(1)(ii) lists a number of specific criteria that must be met before delegated authority can be exercised. The criteria relate to initial capitalization, legal fees and other expenses, projected profitability, investment in fixed assets and financial arrangements involving insiders, including stock financing arrangements. These criteria, which have been updated to reflect current policy, are discussed in the revised policy statement on Applications for Deposit Insurance which is simply cross-referenced in the proposed rule to avoid duplication.

Current § 303.7(d)(1)(iii)(A) states that authority to approve an application for deposit insurance may not be delegated to the regional director or deputy regional director where a protest under the Community Reinvestment Act (CRA) is filed. This provision is being revised to permit approval of a CRA-protested application by the regional director (DOS) or deputy regional director (DOS) where the protest has been reviewed by DCA, the regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA, and the applicant agrees in writing to any conditions imposed regarding the CRA.

Section 303.7(d)(1)(iii)(B) of the current regulation states that the authority to approve an application may not be delegated to a regional director or deputy regional director where: (1) There is direct or indirect financing by proposed directors, officers or 5 percent or more shareholders of more than 75 percent of the purchase price of the stock subscribed by any one shareholder; (2) there is aggregate financing of stock subscriptions in excess of 50 percent of the total capital offered; or (3) warehoused or trusteed stock exceeds 10 percent of initial capital funds. This provision is being eliminated because the revised policy statement contains a comprehensive discussion of financing that the FDIC believes provides adequate guidance. If proposed financing is not within the established guidelines, the regional director will forward a recommendation to the Director (DOS).

A new provision found at § 303.26(d)(2) would permit DOS to impose a condition which requires the maintenance of a leverage capital ratio of at least 8 percent throughout the first three years of operation of a depository institution while also providing an

adequate allowance for loan and lease losses. This clarifies the FDIC's long-standing position that the minimum ratio of 8 percent is to be maintained throughout the first three years of operation rather than only requiring that the ratio be at least 8 percent at the end of the third year of operation.

Under current § 303.7(d)(2)(i), authority to approve applications for deposit insurance by operating noninsured institutions is delegated to the regional director (DOS) or deputy regional director (DOS) only for those applicant institutions with total assets of less than $250 million. There is no such restriction on the authority of the Director or Deputy Director (DOS). Accordingly, this size limitation is being eliminated from the proposed regulation.

Other minor changes are made within the subpart to facilitate reorganization and clarification to produce a more concise and user-friendly regulation.

C. Subpart C—Establishment and Relocation of Domestic Branches and Offices

Subpart C reorganizes and clarifies the portion of part 303 that implements section 18(d) of the FDI Act which requires insured state nonmember banks to obtain the prior written consent of the FDIC in order to establish a domestic branch, relocate the main office, or relocate a branch. The most significant changes from the current regulation are provisions implementing expedited processing for eligible depository institutions, the addition of several new definitions, and the exclusion of remote service units, including automated teller machines and automated loan machines, from the definition of a branch. As proposed, applications filed by eligible depository institutions will be deemed approved 21 days after receipt of a substantially complete application, or 5 days after the expiration of the comment period, whichever is later. Additional technical requirements regarding the expedited procedure apply to interstate branch applications. The average processing time for branch applications during the first six months of 1997 was 30 days. In addition to expedited processing, the proposed subpart contains two special provisions which provide further regulatory relief. One of these provisions gives advance consent for the relocation of a branch or main office in the event of a disaster or emergency and the other provision allows the regional director to waive publication required in the case of a redesignation of a main office and existing branch.

A section has also been added to allow the regional director (DOS) to approve an application under this subpart that is the subject of an unresolved CRA protest, provided the regional director (DCA) finds that approval of the application would be consistent with the purposes of CRA and the applicant agrees in writing to any nonstandard conditions imposed regarding CRA. This provision is expected improve decision making by placing it closer to the actual decision maker and avoiding unnecessary delays. In addition, the subpart adds provisions which implement relevant portions of the FDI Act regarding the establishment of interstate branches and implements changes contained in section 2205 of EGRPRA.

Finally, as part of the systematic review of its written policies pursuant to CDRIA, the FDIC is proposing elsewhere in today's **Federal Register** to rescind its Statement of Policy of Applications to Relocate a Main Office or Branch and Statement of Policy on Applications to Establish a Domestic Branch. Both statements are considered obsolete and unnecessary in view of the comprehensive approach taken in subpart C.

Scope. Proposed § 303.40 limits the scope of this subpart to applications regarding the establishment of domestic branches, and the relocation of a main office or domestic branch, including provisions regarding interstate branching. Excluded from the scope of the subpart are filings for the approval of the acquisition and establishment of branches in connection with a bank merger transaction. Proposed regulations for such filings are found in subpart D. The scope of the subpart also does not include filings by insured branches of foreign banks to relocate a branch or filings by state nonmember banks to establish a foreign branch. Proposed regulations regarding foreign banks and branches are contained in subpart J.

Interstate branching. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) (Pub. L. 103–328, 108 Stat. 2338) became effective on September 29, 1994, and, among other things, amended the FDI Act to establish a federal framework for interstate branching effective June 1, 1997. Among the new interstate branching authorities added by the Interstate Act are a provision regarding the retention of branches after an interstate relocation of a main office and a provision regarding interstate branching through de novo branches.

Section 102(b)(3) of the Interstate Act adds a new paragraph (3) to section 18(d) of the FDI Act that permits a state nonmember bank, after the relocation of its main office to another state, to retain branches in its former home state. Home state means the state by which a state bank is chartered. This authority is, however, subject to certain limitations. A bank relocating its main office from one state to another may retain its branches in the original state only to the extent that the bank would be authorized, as a bank chartered in the new state, to establish or acquire those branches. As of June 1, 1997, an out-of-state bank may establish branches in another state only if it is authorized to establish such branches (i) as de novo branches under section 18(d)(4)(A) of the FDI Act, (ii) as a result of an interstate merger transaction under section 44 of the FDI Act, or (iii) as a result of an emergency assisted transaction under section 13(f) or 13(k) of the FDI Act. In effect, this provision means that a state nonmember bank can relocate its main office to another state and retain its existing branches in the original state if it could, as a bank chartered in the new state, establish those branches in the original state. Therefore, if the bank were considered to be chartered in such new state and could, with such other-state charter, establish those branches in the original state by means of an interstate de novo branch transaction, an interstate merger, or an emergency assisted transaction, then it can retain those branches. Accordingly, the proposed rule includes a requirement that an applicant seeking to relocate its main office interstate indicate whether the applicant intends to retain its existing home state branches.

Section 103(b) of the Interstate Act adds a new paragraph (4) to section 18(d) of the FDI Act that permits, subject to certain requirements and conditions, interstate branching through de novo branches. Under this authority the FDIC may approve an application by a state nonmember bank to establish and operate a de novo branch in a state that is not the bank's home state and in which the bank does not currently maintain a branch. In order to grant such approval, the FDIC must: (i) Determine that the host state (the state in which the bank seeks to establish a branch) has in effect a law that applies equally to all banks and expressly permits all out-of-state banks to establish de novo branches in such state, (ii) determine that the applicant has complied with the host state's filing requirements and has submitted to the host state a copy of the application it filed with the FDIC, (iii) determine that the applicant is adequately capitalized and will continue to be adequately capitalized and adequately managed upon consummation of the transaction, and (iv) take the applicant's CRA record into consideration. Except for item (ii) in the foregoing listing, the FDIC generally has the resources needed to make the determinations required. Accordingly, among the application procedures included in this proposed rule is the requirement that the applicant request that the host state confirm in writing to the FDIC that the applicant has complied with the host state's filing requirements and has submitted a copy of its application with the FDIC to the host state supervisor.

Definitions. In § 303.41 of the proposal, the FDIC has added definitions for "messenger service," "mobile," "temporary," and "seasonal branches" and, as noted above, "de novo" branches as well as definitions of "home state" and "host state". In an effort to promote uniformity and increase the use of common terms, the definitions used in this subpart are similar to those used by other federal banking agencies.

With regard to the definition of "branches," the proposed regulation at § 303.41(a) clarifies that remote service units, including automated loan machines, are not branches. The exclusion of automated teller machines and remote service units is a result of statutory changes contained in section 2205 of EGRPRA.

The definition of "messenger services" in § 303.41(a)(1) provides that branch applications will be required only for those messenger services operated by a bank or an affiliate that picks up and delivers items relating to transactions between the bank and its customer in which deposits are received, checks paid or money lent. A messenger service established and operated by a non-affiliated third party generally does not constitute a branch for purposes of this subpart. Banks contracting with third parties for such services should consult with the appropriate regional director (DOS) to determine if the messenger service constitutes a branch.

Section 303.41(a)(2) defines "mobile branch" as a branch service that does not have a permanent site and includes a vehicle that travels to various public locations and enables the applicant bank to conduct banking business with its customers. Because of the mobility inherent in such branches, they may serve regularly scheduled locations or may be open at irregular times and locations.

The definition of "temporary branch" contained in § 303.41(a)(3) clarifies that a bank may operate such a branch as a public service such as during an emergency or disaster to provide necessary banking services. A temporary branch can be approved for a period not to exceed one year. Such a time period should provide sufficient time for the applicant to restore appropriate services to the community.

The definition of "seasonal branch" in § 303.41(a)(4) provides that such a branch operate at periodically recurring intervals, such as during state fairs. This definition differs from the temporary branch in that once an application is approved for a seasonal branch, the applicant bank may return to that site on a recurring basis without the need to reapply.

"Branch relocation" is defined in § 303.41(b) as a move within the same immediate neighborhood of the existing branch that does not substantially affect the nature of the business of the branch or the customers of the branch. Moving a branch to another location outside its immediate neighborhood is considered the establishment of a new branch and the closing of an existing branch.

The proposed regulation at § 303.41(c) defines a "de novo branch" to mean a branch of a bank which is originally established by the bank and which does not become a branch of such bank as a result of the acquisition, conversion, merger, or consolidation of an insured depository institution or a branch of an insured depository institution.

Definitions are also proposed for "home state" and "host state" at § 303.41 (d) and (e). A home state means the state by which the bank is chartered and host state means a state, other than the home state of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

Filing procedures. The proposed regulation also changes various application requirements. Changes address the timing of filing, the submission of copies of the publication, the inclusion of the geographic area in which a messenger service will operate, the inclusion of the community or communities in which a mobile branch will operate, and whether the mobile branch will serve various regularly scheduled locations or be open at irregular times and locations.

As proposed in § 303.42, an applicant must submit a letter application on the date the notice required by proposed § 303.44 is published or within 5 days after the date of the last required publication. Previously, applicants could file up to 30 days subsequent to the first publication date. By filing applications 5 days after the date of the last newspaper publication, banks are able to submit all copies of the newspaper publications required by the proposed regulation and the public will have the assurance that the application will be on file during the comment period.

Proposed § 303.42(b)(7) has been added to require applicants to submit a copy of each newspaper publication in addition to providing the date of publication and the name and address of the newspaper. In the past, applicants have been required to immediately notify the FDIC after the publication. Submitting a copy of the newspaper notice allows FDIC to verify publication and the contents of the notice.

The proposed regulation at § 303.42(b)(2) clarifies the filing procedures for messenger services and mobile branches. Since messenger services by their very nature are not serving a fixed location, the designation of a specific site for operation is not practical. Rather these types of branches will operate in defined geographic areas, such as a neighborhood, city or county. By approving such applications on a geographic area, banks will be able to operate freely without reapplying for changes to schedules. Filings relative to mobile branches however must disclose the community or communities to be served and the intention to serve defined locations on a regular schedule or to be open at varing times and locations. Knowledge of the community or communities to be served assists the FDIC in determining compliance with the applicable statutory and regulatory provisions relating to branch filings. Applicants must, however, reapply when the geographic area to be served changes.

Processing. Pursuant to proposed § 303.43(a), the FDIC proposes to expedite processing for eligible depository institutions. It is the FDIC's intent to reduce regulatory burden for well-run, well-managed institutions by providing expeditious approvals of routine applications to establish a branch or to relocate the main office or branch.

Pursuant to expedited processing procedures contained in proposed § 303.11(c), an application submitted by an eligible depository institution as defined in proposed § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing unless the FDIC removes the application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Section 303.43(a) provides that the FDIC may remove an application from expedited processing at any time before

the approval date and will promptly notify the applicant in writing of the reason for such action. Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following: (1) The 21st day after receipt of a substantially complete application by the FDIC, (2) the 5th day after expiration of the comment period described in § 303.44 of this proposal, or (3) in the case of an application to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch, the 5th day after the FDIC receives from the host state confirmation that the applicant has both complied with the filing requirements of the host state and submitted a copy of the application with the FDIC to the host state bank supervisor.

The automatic approval date for an application under expedited procedures provides an applicant with a firm date by which its application will be approved. Under the existing regulation, the FDIC can approve applications immediately after expiration of the comment period, but applications can also be approved much later.

For applicants not eligible for expedited processing, the FDIC will provide the applicant with written notification of the final action taken with regard to the particular application as soon as a decision is rendered.

Public notice requirements. The proposed regulation at § 303.44 generally would amend and clarify the publication requirements relating to relocating a main office and establishing or relocating branch offices. It also provides for a specific time frame in which comments must be received.

The proposed section retains current newspaper publication requirements contained in § 303.6(f)(1)(ii) of the existing regulation, except for relocation of branches which will now require publication only in the community which the branch serves. A branch relocation can only occur in the same immediate neighborhood; hence, publication is needed in only one newspaper since it is likely that the one newspaper will cover all of the affected community. In such cases, the FDIC has deemed publication in the community in which the home office is located unnecessary. Furthermore, a single publication is consistent with the requirements of the other federal banking agencies. Section 303.44(a) continues the existing requirement that for applications to relocate a main office, publication must be made at least once each week on the same day for two consecutive weeks.

Currently in § 303.6, individuals may comment until processing of the application is completed. In order to eliminate the uncertainty regarding the close of the comment period, it is proposed that the comment period be limited as specified in § 303.44. Proposed § 303.44 provides that comments must be received by the appropriate regional director (DOS) within 15 days of the date of the last newspaper publication. Proposed § 303.9 provides for extension or reopening of the comment period in certain situations.

Special provisions. Section 303.45 of the proposed regulation adds several new provisions regarding procedures for opening temporary branches in emergency or disaster situations, re-designating a main office, and providing for the expiration of approved applications.

The proposed regulation at § 303.45(a) clarifies procedures relating to establishing temporary branches in emergency or disaster situations. The current regulation on branching contains no specific guidance on this issue. The FDIC recognizes the need in limited circumstances, such as emergency or disaster situations, where there exists a clear public need to continue banking services, that applicants may not be in a position to follow the normal application procedures for relocation of a main office or branch. As a result, the proposed regulation provides that in the case of an emergency or disaster at a main office or branch which requires that an office be immediately relocated to a temporary location, the applicant notify the appropriate regional director (DOS) within 3 days of such temporary location. In such limited cases, the FDIC will accept initial notification by whatever means appropriate. The FDIC is making this limited exception to allow for the public's need to have uninterrupted access to banking services. Such prior consent to relocate the office is appropriate because it may not always be possible for a bank to comply with the normal application procedures for relocating a main office or branch in such circumstances.

The proposal further provides that within 10 days of the temporary relocation resulting from the emergency or disaster, the bank shall submit a written filing to the appropriate regional director (DOS) that identifies the nature of the emergency or disaster, specifies the location of the temporary branch, and provides an estimate of the duration the bank plans to operate the temporary branch. Finally, depending on the particular circumstances, as part of the review process, the appropriate regional director (DOS) may waive public notice requirements.

Section 303.45(b) of the proposed regulation provides that in cases where an applicant desires to designate an existing branch as its main office and redesignate its main office as a branch, an application must be submitted to relocate the main office and to establish or relocate a branch, as appropriate. The appropriate regional director (DOS) may waive the public notice requirements in instances where an application presents no significant or novel policy, supervisory, CRA, compliance, or legal concern. Such waiver will be granted only within the applicant's home state.

With regard to the expiration of approvals, applications which have been approved by the FDIC to establish branches and to relocate main offices and branches currently have no expiration date. The FDIC believes that approvals should not remain in effect indefinitely because circumstances surrounding an application may change over time. Therefore, proposed § 303.45(c) provides that approval of an application expires if a branch has not commenced business or if a relocation has not been completed within 18 months of approval.

Delegation of authority. Section 303.46 of the proposed regulations adds a delegation for the appropriate regional director to approve interstate branches. Additionally, the proposed regulation provides for a delegation to permit approval of a CRA-protested application by the regional director (DOS) or deputy regional director (DOS) where the protest has been reviewed by DCA, and the regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA, and the applicant agrees in writing to any conditions imposed regarding CRA.

New § 303.46(c)(8) makes clear that the Board of Directors has not delegated authority to approve a branch application by a bank which the FDIC has determined is not reasonably helping to meet the credit needs of the community served by the bank in a host state pursuant to section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a).

The proposed regulation provides that appropriate regional directors may exercise delegated authority to act on applications for establishment of temporary branches or messenger services without a favorable resolution of the statutory factors in section 6 of the FDI Act. This delegation recognizes the limited nature of these types of branches.

The proposed regulation eliminates an obsolete delegation of authority relating to applications to establish and operate new teller's windows, drive-in facilities, or any like office, as an adjunct to the main office or branch (including offices not considered branches under state law). Applications to establish a new teller's window, drive-in facility, or any like offices are required when such a facility is a branch office. If such facilities are extensions of already approved main office and branches, no application to establish the facility is necessary.

Other changes. Several other changes are proposed that affect the new subpart C. These modifications involve changing the term "move a main office" to "relocate the main office," changing the term "courier service" to "messenger service," and deleting provisions relating to remote service facilities.

Public comment. In addition to seeking public comments on the above revisions to subpart C associated with the establishment of branches and relocation of branches and the main office, the FDIC also seeks specific public comments on the following issues.

Comment period: Since the FDIC is proposing in § 303.44(b) to change from a comment period that was essentially open-ended in current § 303.6 to a specific time frame (*i.e.*, 15 days), the FDIC seeks comment on whether a 30-day comment period is more appropriate than the proposed 15 days and if so, the reasons why 15 days would not be a feasible period of time within which to submit comments.

Mobile branch applications: The FDIC is proposing that the geographic location for a mobile branch be designated as to which community or communities are to be served. The FDIC seeks comment on whether such a designation is appropriate. The FDIC also seeks comment on whether a new application should be required if a change is made in the community or communities to be served.

D. Subpart D—Mergers

Subpart D covers transactions subject to FDIC approval under the Bank Merger Act (12 U.S.C. 1828(c)). This includes mergers, consolidations, and similar transactions involving insured depository institutions (collectively, "mergers"). This subpart gathers together from various sections of part 303 the existing provisions governing merger applications and reorganizes them to make the regulatory requirements easier to understand. Substantive changes have been made in processing procedures to reduce regulatory burden.

The principal changes proposed in subpart D include the addition of an expedited processing procedure (proposed § 303.64(a)); the modification and centralization of various definitions applicable to merger transactions, such as replacement of the term "phantom merger" used only by the FDIC with the more commonly-used "interim merger" (proposed § 303.61(c)); and the addition of references to other statutory or regulatory provisions often applicable to merger transactions. These references, included at § 303.62(b), are to the interstate merger provisions of section 44 of the FDI Act (12 U.S.C. 1831u), applications for deposit insurance, insurance fund conversion transactions, branch closings, prompt corrective action considerations, and certification of assumption of deposit liabilities.

The most significant change from the existing merger approval regulations is the proposed expedited processing procedure. This procedure would be available for transactions to which all parties are eligible depository institutions (as defined in proposed § 303.2(r)), and immediately following which the resulting institution would be well-capitalized. Under expedited processing, which is generally applicable only to merger applications that can be approved under delegated authority, the application would be acted upon by the latest of 45 days after the FDIC receives a substantially complete application; 10 days after the last newspaper publication of the notice of the proposed merger; 5 days after the FDIC receives the Attorney General's comments on the competitive impact of the merger; or, for an interstate merger, 5 days after the FDIC confirms that the applicant has satisfactorily complied with the filing requirements of the resulting institution's host state. An application that otherwise qualifies for expedited processing may be removed from such treatment for the reasons stated in subpart A, at proposed § 303.11(c)(2).

Among the new references mentioned above, the reference to deposit insurance applications at proposed § 303.62(b)(2) clarifies that the FDIC will not require a deposit insurance application to secure insurance coverage for an institution resulting from a statutory merger between a federally-chartered interim institution and an FDIC-insured institution, even if the resulting institution will operate under the interim federal charter. However, the FDIC will continue to require an application for deposit insurance if the entity merging with the interim federal institution is not insured and the parties wish the resulting institution to be insured.[2]

In addition to reorganizing and enhancing the merger application provisions to make them easier to use, the proposal reduces the procedural burden on applicants. For example, in addition to establishing an expedited processing procedure, the proposal would no longer call for copies of the charter or articles of incorporation of the resulting institution to be routinely submitted with a merger application. The proposal also simplifies the application requirements for mergers between institutions that are commonly-owned outside of a bank holding company structure by treating such transactions as "corporate reorganizations" (proposed § 303.61(b)).

Further, in order to add predictability to the procedure for receiving and reviewing public comment on proposed mergers, the proposal provides that the comment period for non-emergency transactions will end on the 35th day after the applicant's first newspaper publication of notice of the merger (proposed § 303.65(d)). This period provides additional time for interested parties to respond to the final publication which occurs approximately on the 30th day. No change is being made to the public notice requirements for transactions determined to be an emergency requiring expeditious action.

The proposal also relaxes the FDIC's current practice of requiring that the first newspaper notice of the merger not be published until after the merger application is filed with the FDIC. Under the proposal, the applicant may publish its first notice up to 5 days before filing with the FDIC (proposed § 303.65(a)(1)).

With regard to CRA considerations, the proposal would expand the existing delegation to permit approval of a CRA-protested application by the regional director (DOS) or deputy regional director (DOS) where the protest has been reviewed by DCA, the regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA, and the applicant agrees in writing to any conditions imposed regarding the CRA (proposed § 303.66(b)(5)). This would modify the existing merger regulations, which provide that mergers

[2] The Board does not believe that it is consistent with the language or intent of the FDI Act to insure without FDIC approval an institution resulting from a combination of institutions that themselves have never been granted deposit insurance by the FDIC.

that are the subject of an unresolved CRA protest may be approved under delegated authority by senior supervisory officials in Washington, but may not be acted upon at the regional level.

The proposed rule eliminates consideration and favorable resolution of compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) as a criteria for DOS officials to exercise delegated authority to approve a merger transaction. This provision is currently found in § 303.7(b)(7)(ii). The FDIC has found that the physical environment is unlikely to be affected by the FDIC's consideration of bank merger transactions and that, typically, the provisions of the NEPA would not be implicated. Since the FDIC is in the process of reviewing its policy statement on NEPA, the agency believes it is not advisable to include a reference to NEPA in the proposed regulatory text.

The FDIC invites comment on all aspects of the proposed revisions to the merger provisions of part 303. Comments are more specifically invited regarding the expansion of the term "corporate reorganization," elements of the expedited processing procedures as proposed for merger applications, and the inclusion of cross-references to related provisions. In addition, comment is sought on the proposal to require that comments regarding a particular merger application be filed with the FDIC no later than the 35th day after the first publication of notice of the merger.

E. Subpart E—Change in Bank Control

The FDIC proposes to reorganize, clarify, and simplify its regulation implementing the Change in Bank Control Act of 1978. The proposed changes, developed in consultation with the other federal banking agencies, attempt to harmonize the scope and procedural requirements of the FDIC's regulation with those of the other federal banking agencies and to reduce unnecessary burden.

The proposal defines the previously undefined term "acting in concert" to clarify the scope of the regulation. It also incorporates the current FDIC position that the acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank is presumed to be an acquisition of the underlying shares. Further, the proposal lengthens the period of time for notifying the FDIC from 30 to 90 days for shares acquired in satisfaction of a debt previously contracted in good faith or through testate or intestate succession or a bona fide gift. In the case of shares acquired in satisfaction of a debt previously contracted, the proposal adds language that reflects FDIC practice of requiring the acquiror of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities to file a notice before the loan is acquired.

The proposal also would reduce regulatory burden on persons whose ownership percentage increases as the result of a redemption of voting shares by the issuing bank or the action of a third party not within the acquiring person's control. In these situations, the proposal would permit the person affected by the bank or third party action to file a notice within 90 calendar days after receiving notice of the transaction. Currently, these persons must file notice under the Change in Bank Control Act prior to the action that increases the person's percentage ownership, and, because these persons cannot control the third party action that causes the increased percentage ownership, they are often put in violation of the Change in Bank Control Act and the FDIC's Rules and Regulations.

The FDIC also proposes to provide more flexible timing for newspaper announcements of filings under the Change in Bank Control Act by permitting notificants to publish the announcement as close as practicable to filing the notice of change in control. The proposed rule removes the requirement that the notificant have confirmation that the FDIC has accepted the notice before publishing the announcement.

The FDIC also proposes to delete the provision governing notices filed in contemplation of a public tender offer which permits an acquiror to delay publication of the newspaper announcement. None of the other federal banking agencies has such a provision.

The FDIC invites comment on all of its proposed revisions to the regulation implementing the Change in Bank Control Act. In particular, the FDIC requests comment on whether the definition of "acting in concert" is appropriate, and whether there is reason to retain the public tender offer provision.

F. Subpart F—Change of Director or Senior Executive Officer

Section 32 of the FDI Act (12 U.S.C. 1831i) requires certain insured depository institutions and their depository institution holding companies to provide at least 30 days' prior notice to the appropriate federal banking agency before adding any individual to the board of directors or employing any individual as a senior executive officer. The agency may issue a notice of disapproval prior to expiration of the 30-day period if it determines, based upon the proposed individual's competence, experience, character or integrity, that it would not be in the best interests of the depositors or the public to permit the individual to be employed by, or associated with, the institution. Section 32 permits the agency to waive the prior notice requirement, but the agency may still disapprove an individual's association with the institution within 30 days after granting such a waiver.

Until recently, section 32 required prior notice from a depository institution or holding company that was chartered less than two years; had undergone a change in control within the preceding two years; or was not in compliance with minimum capital requirements or was otherwise in "troubled condition." Section 2209 of EGRPRA amended section 32 by eliminating the prior notice requirement for institutions and holding companies that are chartered for less than two years or that have undergone a change in control within the preceding two years. However, institutions and holding companies that are not in compliance with minimum capital requirements or are otherwise in "troubled condition" remain subject to the prior notice requirement. In addition, EGRPRA provides that prior notice will be required if the agency determines, in connection with its review of a capital restoration plan required under section 38 of the FDI Act (governing prompt corrective action) or otherwise, that such prior notice is appropriate. Also, the EGRPRA amendments provide the agencies with more latitude to determine the prior notice period and allow the agencies up to 90 days to issue a notice of disapproval.

The FDIC published an interim rule implementing section 32 as applied to insured state nonmember banks on December 27, 1989 (54 FR 53040) and requested comments. The interim rule, which added a new § 303.14 to part 303 of the FDIC's regulations, remains in effect. Only seven commenters responded, and the principal issues raised concerned the definitions of "change in control" and "troubled condition." Objections to the definition of change in control have been rendered moot by the EGRPRA amendments since a change of control within the preceding two years is no longer a triggering event for a section 32 notice. Two commenters objected to the definition of "troubled condition." One objected to an insured state nonmember bank being considered in troubled condition if it is subject to a cease-and-desist order on the grounds that not all such orders result from safety and soundness concerns and/or financial difficulties. The other commenter objected to the fact that an insured state nonmember bank can be designated in troubled condition based upon a visitation, examination, or report of condition. The proposed rule clearly indicates that only a cease and desist order or written agreement that requires action to improve financial condition of the bank triggers the designation of troubled condition. However, such designation may also be made based upon an examination or report of condition. The FDIC believes that it is appropriate to use all information it deems reliable in making such a designation.

The proposed regulation reflects the EGRPRA amendments to section 32 and reorganizes, clarifies, and simplifies notice procedures. The proposal also strives to harmonize the procedural requirements of the FDIC's regulation with those of the other federal banking agencies and to reduce any unnecessary regulatory burden.

Although the EGRPRA amendments appear to provide the agencies with authority to increase the prior notice period to 90 days, the FDIC proposes to retain the 30-day prior notice currently required by § 303.14. This established 30-day regulatory period has proven sufficient to process the majority of filings, and reflects the FDIC's time line for processing section 32 notices adopted in FDIC Financial Institutions Letter 26–96 dated May 6, 1996. However, the agency proposes to amend the regulation to allow the agency to take an additional period of up to 60 days, if necessary, to issue a notice of disapproval. It is anticipated that this additional 60-day period would be used infrequently. In all such cases, the notificant will be advised in writing prior to expiration of the 30-day prior notice period of the reason the FDIC could not take action and of the projected additional time needed.

Other than the revisions prompted by the EGRPRA amendments, there is little substantive change to the FDIC's regulation. Current § 303.14(c)(2)(ii) provides that if a new member of a bank's board of directors is elected at a shareholder's meeting, prior notice is automatically waived. However, notice must be filed with the appropriate regional director (DOS) within 48 hours after the election. Proposed § 303.103(c)(2) modifies this provision slightly to clarify that the automatic waiver applies to new board members not proposed by management and to state that the notice must be submitted within two business days, rather than 48 hours. Section 308.12 of the FDIC's regulations, which governs computation of processing time for purposes of part 303, refers to time in increments of days and not hours. This modification results in a more liberal computation of processing time in that intervening Saturdays, Sundays and federal holidays are not counted.

The FDIC invites public comment on retention of the 30-day processing timeframe (subject to a possible 60-day extension) and the change in the automatic waiver filing period. The agency also welcomes suggestions for further reducing unnecessary burden on insured state nonmember banks when reviewing changes in officers and directors, consistent with the requirements of section 32.

G. Activities and Investments of Insured State Banks

Subpart G is reserved for filing procedures related to activities and equity investments of insured state banks which are currently contained in part 362 (12 CFR part 362). Part 362 implements section 24 of the FDI Act (12 U.S.C. 1831a), which was created by the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236), and governs the circumstances in which insured state banks may engage in activities which are not permissible for national banks.

The FDIC recently issued a notice of proposed rulemaking to make comprehensive revisions to part 362. 62 FR 47969, Sept. 12, 1997. In connection with these revisions, the FDIC proposes to eliminate certain application procedures which are outdated, and also to authorize certain activities to be approved by the FDIC on an expedited basis. The FDIC cannot determine at this time whether its 362 proposal or this notice of proposed rulemaking to revise part 303 will be finalized first, but it is the FDIC's intent to place the part 362 application procedures relating to state bank activities in subpart G of part 303 at such time as both rules are final. In order to deal with this problem, the application procedures which implement the proposed revisions to part 362 concerning state bank activities are contained in subpart E of the 362 proposal. If the 362 proposal is finalized before this 303 proposal, insured state banks operating under the revised part 362 will look to subpart E of part 362 for application procedures until such time as part 303 is finalized, at which point the FDIC will transfer the application procedures from subpart E of part 362 to subpart G of part 303. If the 303 proposal is finalized first, insured state banks operating under the current version of part 362 will continue to look to the current version of part 362 itself for application procedures until the revisions to part 362 are finalized, and the application procedures which are proposed as subpart E of part 362 will be finalized as subpart G of part 303. Members of the public taking an interest in the FDIC's application procedures for the activities of insured state banks under part 362 should review the part 362 proposal for the specifics of such application procedures.

H. Subpart H—Filings by Savings Associations

The FDIC is also reserving subpart H for filing procedures related to activities of insured state savings associations and subsidiaries of insured savings associations, which are currently contained in § 303.13 of part 303 (12 CFR 303.13). Section 303.13 implements sections 28 and 18(m) of the FDI Act (12 U.S.C. 1831(e) and 12 U.S.C. 1828(m)), which were both created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. 101–73, 103 Stat. 484). Section 303.13 governs the circumstances in which a state savings association may engage in activities which are not permissible for a federal savings association, and also requires all insured savings associations to notify the FDIC prior to establishing a subsidiary or engaging in new activities through a subsidiary.

As part of the FDIC's recently-issued notice of proposed rulemaking to revise part 362, discussed above, the FDIC has proposed to address the substantive issues covered by § 303.13 as subparts C and D of a revised part 362. The proposal harmonizes, to the extent possible given the underlying statutes, the treatment of activities of insured state banks and the activities of insured state savings associations. In connection with these revisions, the FDIC proposes to eliminate certain application procedures which are outdated, and also to authorize certain activities to be approved by the FDIC on an expedited basis. The FDIC cannot determine at this time whether its 362 proposal or this notice of proposed rulemaking to revise part 303 will be finalized first, but it is the FDIC's intent to place the part 362 application procedures relating to savings associations in subpart H of part 303 at such time as both rules are final. In order to deal with this problem, the application procedures which implement the proposed revisions to

part 362 concerning savings associations are contained in subpart F of the 362 proposal. If the 362 proposal is finalized before this 303 proposal, existing § 303.13 will be rescinded in connection with finalizing part 362. Savings associations operating under the revised part 362 will look to subpart F of part 362 for application procedures until such time as part 303 is finalized, at which point the FDIC will transfer the application procedures from subpart F of part 362 to subpart H of part 303. If the 303 proposal is finalized first, existing § 303.13 will be preserved without substantive change on an interim basis in connection with finalizing part 303. Savings associations operating under § 303.13 will continue to look to § 303.13 for application procedures until the revisions to part 362 are finalized. In connection with finalizing part 362, § 303.13 will be rescinded, and the application procedures which are proposed as subpart F of part 362 will be finalized as subpart H of part 303. Members of the public taking an interest in the FDIC's application procedures for the activities of insured savings associations and their subsidiaries should review the part 362 proposal for the specifics of such application procedures.

I. Subpart I—Mutual-to-Stock Conversions

The FDIC is proposing to move the notice requirements for mutually owned state-chartered savings banks that propose to convert to stock form from § 303.15 to a separate subpart I. These notice requirements were adopted in final form on January 1, 1995. The intended effect of the rules is to ensure that mutual-to-stock conversions of FDIC regulated institutions do not raise safety and soundness concerns, breaches of fiduciary duty, or other violations of law. The substantive regulation regarding mutual-to-stock conversions would remain in § 333.4 of this chapter.

The FDIC also is proposing to provide for delegated authority in its mutual-to-stock conversion regulations. Some members of the industry have commented that the FDIC takes longer than necessary to act on conversion transactions. At the present time, all conversion notices are reviewed by the FDIC Board of Directors. The FDIC has gained considerable experience in reviewing notices to convert and the Board believes it is now appropriate to delegate authority to the Director and the Deputy Director (DOS) to issue notices of intent not to object. Such a delegation would apply only when the proposed conversion is determined not to pose a risk to the converting institution's safety and soundness, violate any law or regulation, present a breach of fiduciary duty, or raise any unique legal or policy issues. The Board believes that this delegation will allow the FDIC to act more promptly on routine notices and ease regulatory burden.

No other changes in procedures are being proposed. The public is invited to comment on any changes the FDIC could make to ease regulatory burden while ensuring that conversions do not raise supervisory concerns.

J. Subpart J—Foreign Bank Activities

Proposed subpart J addresses application requirements relating to the foreign activities of insured state nonmember banks and the U.S. activities of insured branches of foreign banks. The FDIC is proposing to make these application requirements easier to use and more streamlined by centralizing them in subpart J. Under the FDIC's current rules, these application requirements are located in various subsections of three different regulations: 12 CFR part 303, 12 CFR part 346, and 12 CFR part 347. The FDIC also is proposing to further streamline processing for several of these application requirements.

On July 15, 1997, the FDIC published a Notice of Proposed Rulemaking (part 347 NPR) which requests public comment on an FDIC proposal to revise the FDIC's rules on the foreign activities of insured state nonmember banks and the U.S. activities of insured branches of foreign banks. 62 FR 37748. Subpart D of the part 347 NPR includes four proposed application procedures designed to work with the substantive revisions made to the FDIC's international banking regulations under the part 347 NPR.[3] The FDIC cannot determine at this time whether the part 347 NPR or this notice of proposed rulemaking to revise part 303 (part 303 NPR) will be finalized first. To deal with the possibility that the part 303 NPR may be finalized before the part 347 NPR is finalized, this part 303 NPR contains interim versions of the same application procedures contained in subpart D of the part 347 NPR. The interim versions proposed here are designed to work with the existing versions of the FDIC's international banking regulations, and are different in several respects from the application procedures contained in subpart D of the part 347 NPR. Therefore, members of the public taking an interest in the FDIC's application procedures for international banking issues should review the part 347 NPR as well as this part 303 NPR.

If this part 303 NPR is finalized first, the four interim application procedures will remain in effect only until the part 347 NPR is finalized. In connection with finalizing the part 347 NPR, the FDIC will transfer the application procedures in subpart D of the part 347 NPR to subpart J of part 303 and rescind the interim procedures. If the part 347 NPR is finalized first, the interim procedures in this part 303 NPR will never be finalized, and the FDIC will make necessary technical amendments to transfer the application procedures in subpart D of the part 347 NPR to subpart J of part 303.

This part 303 NPR also contains two application procedures which are not of an interim nature: the procedure for moving an insured branch of a foreign bank, and the procedure for mergers involving an insured branch of a foreign bank. These two procedures are not impacted by the part 347 NPR.

Interim Application Procedures

Establishing, moving, or closing a foreign branch of a state nonmember bank. Section 18(d)(2) of the FDI Act (12 U.S.C. 1828(d)(2)) and § 347.3 require an insured state nonmember bank to obtain the FDIC's prior written consent before establishing a branch located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands. Applications for these foreign branches are currently treated under the same process applicable for domestic branches under § 303.2. The FDIC proposes to treat foreign branches separately, since foreign branch applications are not legally required to be subjected to analysis under the CRA or factors under section 6 of the FDI Act, as is the case for domestic branches.

Under § 303.182 as proposed, the FDIC would give its general consent for an eligible depository institution (as defined by § 303.2(r)) to establish additional foreign branches in any jurisdiction in which the bank already operates a branch, or to move a branch within the jurisdiction.[4] Also, an eligible depository institution that operates branches in two or more foreign jurisdictions may establish additional branches conducting approved activities in additional foreign jurisdictions under expedited processing procedures permitting the eligible depository institution to establish the branch 45 days after submitting its application to the FDIC.

The FDIC is proposing these general consent and expedited processing procedures because an insured state nonmember bank meeting the requirements of the provisions ordinarily should have sufficient familiarity with the implications of foreign branching, and be of sufficiently sound overall condition, that extensive FDIC review is not required. The FDIC retains the option to suspend these procedures as to any institutions for which this is not the case. For applicants seeking to establish a branch in an additional jurisdiction, the FDIC may also remove an applicant from expedited processing for any of the grounds specified in § 303.11(c) follows: (1) If the FDIC determines the filing presents a significant supervisory concern; (2) raises a significant legal or policy issue; or (3) if the FDIC determines other good cause exists for removal. The FDIC will promptly provide the applicant with a written explanation if the FDIC decides to remove a filing from expedited processing.

General consent and expedited processing are also inapplicable in any case presenting either of two special circumstances. Since the FDIC must have access to information about a foreign branch's activities in order to effectively supervise the institution, general consent or expedited processing do not apply if the law or practice of the foreign jurisdiction would limit the FDIC's access to information for supervisory purposes. In such cases, the FDIC must have an opportunity to fully analyze the extent of the confidentiality conferred under foreign law and whether it would, in light of all the circumstances, impair the FDIC's ability to carry out its responsibilities as a bank supervisor. In addition, if the proposed foreign branch has a direct adverse impact on a site which is on the World Heritage List[5] or the foreign jurisdiction's equivalent of the National Register of Historic Places (National Register), the FDIC may need an opportunity to evaluate the proposal in light of section 402 of the National Historic Preservation Act Amendments of 1989 (NHPA Amendments Act) (16 U.S.C. 470a–2).

Proposed § 303.182 also requires an insured state nonmember bank which closes a foreign branch to notify the appropriate regional director (DOS) that it has done so. This notice stems from the current requirement for such notice under § 347.3. The FDIC has previously determined that Congress did not intend section 42 of the FDI Act on branch closings to apply to foreign branches. Finally, proposed § 303.182 sets out the procedures for applications which are not eligible for the general consent or expedited processing procedures.

Acquisition of stock of foreign banks or other financial entities by an insured state nonmember bank. Section 18(l) of the FDI Act (12 U.S.C. 1828(l)) and § 347.4 require an insured state nonmember bank to obtain the FDIC's prior written consent before acquiring an ownership interest in a foreign bank or other financial entity. The current application procedures are set out in § 303.5(d). Since the current substantive provisions governing foreign investment at § 347.4 provide only relatively general guidance about the conduct of such activities, it is not possible for the FDIC to implement general consent and expedited processing procedures on an interim basis, and proposed § 303.183 contains no substantive changes from the current procedures. However, in connection with the FDIC's revisions of the foreign investment rules in the part 347 NPR, the FDIC has proposed general consent and expedited processing procedures.

Exemptions from the insurance requirement for a state branch of a foreign bank. Section 346.6 requires an uninsured state branch of a foreign bank to obtain the FDIC's consent if the branch proposes to accept initial deposits of less than $100,000 and such deposits are not otherwise exempted from the definition of retail deposit taking activity under § 346.6(a). The current application procedures are set out in § 346.6(b). These procedures need no substantive revision at this time, because the procedures were recently reviewed and amended by the FDIC as a result of amendments to the International Banking Act of 1978, Pub. L. 95–369, 92 Stat. 607 (12 U.S.C. 3101 *et seq.*) made by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. 103–328, 108 Stat. 2338 (Interstate Act). 61 FR 5671 (Feb. 14, 1996).

Approval for an insured state branch of a foreign bank to conduct activities not permissible for a federal branch. Section 346.101 requires an insured state branch of a foreign bank to obtain the FDIC's permission to conduct any type of activity which is not permissible for a federal branch of a foreign bank. The current application procedures are set out in § 346.101 itself, which was recently adopted. 59 FR 60703 (Nov. 28, 1994). Thus, proposed § 303.187 does not make any substantive changes from the current procedures on an interim basis.

Noninterim Application Procedures

Moving an insured branch of a foreign bank. Section 18(d)(1) of the FDI Act requires any insured branch of a foreign bank which wishes to move from one location to another to obtain the FDIC's prior written consent. Applications for these insured branches currently are treated under the same process applicable to domestic branches of insured state nonmember banks under § 303.2. Since the FDIC's consent to these applications is legally subject to the same statutory considerations as applications to establish or relocate a domestic branch or to relocate the main office of an insured state nonmember bank, the FDIC is proposing an application process in § 303.184 which parallels proposed subpart C. This includes expedited processing for an eligible insured branch. Subpart J contains a proposed definition of "eligible insured branch" which parallels the general § 303.2(r) definition of "eligible depository institution," with appropriate changes to take into account the different supervisory rating system and capital requirements applicable to insured branches.

Mergers involving an insured branch of a foreign bank. An insured branch of a foreign bank meets the definition of an insured depository institution under section 3 of the FDI Act (12 U.S.C. 1813) and is therefore subject to the Bank Merger Act. The FDIC's current rules and regulations do not include a specific application process for approvals of merger transactions involving an insured branch. In order to give insured branches conducting merger transactions which are subject to FDIC approval the benefit of the same streamlined application processing proposed for domestic institutions in subpart D, proposed § 303.185 contains appropriate cross-references to subpart

[3] These are the procedures for: (1) Establishing, moving, or closing a foreign branch of a state nonmember bank; (2) investment by state nonmember banks in foreign organizations; (3) exemptions from the insurance requirement for a state branch of a foreign bank; and (4) approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches.

[4] An application to establish a foreign branch is not an "application for a deposit facility" covered by the CRA, and the FDIC will therefore only take the insured state nonmember bank's CRA rating into account for purposes of determining whether the application receives expedited processing under the general consent and expedited processing procedures.

[5] The World Heritage List was established under the terms of The Convention Concerning the Protection of World Culture and Natural Heritage adopted in November, 1972 at a General Conference of the United Nations Education, Scientific and Cultural Organization. Current versions of the list are on the Internet at http://www.unesco.org/whc/heritage.htm, or may be obtained from the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC 20429.

D. Section 303.185 clarifies that an eligible insured branch as defined in subpart J generally is eligible for the expedited processing available to an eligible depository institution in subpart D. Similarly, § 303.185 clarifies that a transaction in which an insured branch is merged with other branches, agencies, or subsidiaries in the United States of the same foreign bank parent is eligible for disposition under the enhanced delegations applicable to corporate reorganizations.[6]

Section 303.185 also incorporates a point explained in Advisory Opinion FDIC–96–12 (May 13, 1996) concerning the treatment of an insured branch under section 44 of the FDI Act (12 U.S.C. 1831u) as added by section 102 of the Interstate Act. Section 44 permits the responsible federal regulator to approve an interstate merger transaction involving the acquisition of a branch of an insured bank without the acquisition of the entire bank, but approval is possible only if the state in which the branch is located expressly permits out-of-state banks to acquire a branch of the bank without acquiring an entire bank. In contrast, section 44 permits the responsible federal regulator to approve an interstate merger transaction involving the acquisition of an entire bank if the state in which the bank is located has not adopted legislation to opt out of interstate mergers. Section 303.185 treats interstate mergers involving an insured branch under the latter approach. Express state authority permitting out-of-state banks to acquire a branch of the bank without acquiring the entire bank is required only if a foreign bank has more than one insured branch in the affected state and proposes to sell fewer than all of them to the same acquiror. If such state authority does not exist, the FDIC requires the foreign bank to sell all of its insured branches in that state to the same affiliated or unaffiliated acquiror. As is explained in Advisory Opinion FDIC–96–12, the statute and definitions used in section 44 do not provide a conclusive answer to this issue, but the FDIC's approach gives effect to all of the language and purposes of the Interstate Act.

[6] If the foreign bank parent itself is not primarily engaged in business in the United States, and is involved in some merger or other combination outside the United States which does not result in a corresponding merger transaction in the United States with respect to an insured branch, section 18(c)(11) provides that no approval is required, since no party to the transaction is primarily engaged in business in the United States.

K. Subpart K—Prompt Corrective Action

Section 38 of the FDI Act, which governs prompt corrective action, restricts or prohibits certain activities based on an institution's capital category, and requires an insured institution to submit a capital restoration plan when it becomes undercapitalized. On September 15, 1992, the FDIC approved a final interagency rule implementing the requirements of prompt corrective action. The final rule, which became effective December 19, 1992, amended part 325 of the agency's regulations by defining five capital categories for purposes of implementing the prompt corrective action requirements. 57 FR 44900 (Sept. 29, 1992).

In conjunction with interagency action, the FDIC on January 26, 1993, approved amendments to part 303 to implement certain application procedures relating to prompt corrective action. The application procedures outlined in § 303.5(e) relate solely to activities that are prohibited unless prior written consent is granted by the appropriate agency. In addition, a new § 303.7(f)(1)(ix) was added to part 303 which provides delegation of authority to act on applications seeking prior consent to engage in certain restricted activities which are filed pursuant to the prompt corrective action regulations. These revisions to part 303 became effective on February 12, 1993. 58 FR 8219 (Feb. 12, 1993).

Subpart K does not substantially amend current procedures. The only substantive change is that a new paragraph has been added as § 303.207. This new section is derived from section 38(i)(2)(G) of the FDI Act, and relates to paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market area. Current § 303.5(e) contains a reference to activities listed in sections 38(i)(2) (A) through (F) of section 38, and the addition of item G completes the list of the seven activities which are prohibited for critically undercapitalized institutions unless prior FDIC approval has been granted.

As part of the reorganization of part 303, delegations previously contained in § 303.7(f)(ix) have been consolidated into subpart K and delegations previously contained in § 303.9(h), regarding directives and capital plans pursuant to section 38 of the FDI Act, have been consolidated with enforcement related delegations in subpart N. As subpart K applies only to the application process, it does not affect the general prompt corrective action regulations adopted as a part of the interagency rulemaking process.

L. Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses)

Section 19 of the FDI Act prohibits any person convicted of any crime involving dishonesty, breach of trust, or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for any such offense, from (i) continuing as or becoming an institution-affiliated party, (ii) owning or controlling directly or indirectly an insured depository institution, or (iii) otherwise participating in the conduct of the affairs of FDIC-insured depository institutions, without the FDIC's prior written consent.

Proposed subpart L does not substantially amend current section 19 application procedures, but rather brings together in one place information on section 19 which was previously contained in various sections of part 303. However, proposed § 303.222 has been added to clarify the FDIC's position that the prior consent of the FDIC is required before a person approved under section 19 to participate in the affairs of a particular institution may participate in the affairs of another insured institution. Delegations of authority to act upon applications filed pursuant to section 19 remains unchanged.

On July 24, 1997, the FDIC Board of Directors published for comment a proposed Statement of Policy on Section 19 which contains interpretations of the statutory language (62 FR 39840). Issues addressed in the statement of policy include what constitutes participation, who is a "person" under the statute, the meaning of "own" or "control," procedures for filing a section 19 application, and the standards for granting consent to a section 19 application. The proposed rule should be read in conjunction with the proposed policy statement for a fuller understanding of the FDIC's position on section 19.

M. Subpart M—Other Filings

This subpart contains the procedural requirements and delegations of authority for miscellaneous filings which do not warrant treatment as separate subparts. In many instances, there were no regulations or guidelines established regarding procedures or content for submitting a filing to the FDIC. In addition, it was often unclear when the filing requirements were

applicable. Under proposed subpart M, all information relating to a particular filing has been brought together in a self-contained section under a standardized format. The FDIC believes that this will simplify the filing process for prospective applicants by setting forth this information in a single location.

Under the proposal, new expedited review procedures will be offered for applications to reduce or retire capital stock or capital debt instruments and applications to exercise trust powers. Expedited processing for brokered deposit waivers has been retained yet modified to parallel the requirements for an "eligible depository institution" in proposed § 303.2(r), with the exception of the well-capitalized criteria.

Application procedures currently found in part 359 (golden parachutes and indemnification payments) are being moved to subpart M. In addition, procedures for requesting a conditional waiver of cross-guaranty liability are being moved from the FDIC's Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions to proposed subpart M. Finally, specific procedures are being added to address requests for relief from reimbursement under the Truth in Lending Act and Regulation Z.

Reduce or retire capital stock or capital debt instruments. Section 303.241 reorganizes, clarifies and simplifies procedures for applications to reduce or retire capital stock, notes or debentures pursuant to section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)). Filing instructions are currently contained in the standard instructions for all applications for which no form of application has been prescribed (12 CFR 303.5(b)). Authority to approve or deny such applications is currently delegated at § 303.7(f)(1)(iii).

Under expedited processing, an application by an eligible depository institution (as defined in proposed § 303.2(r)) will be deemed approved 20 days after receipt by the appropriate FDIC regional director (DOS), unless the applicant is notified that the FDIC has removed the application from expedited processing. A recent increase in the number of applications to reduce or retire capital stock, notes or debt indicates to the FDIC that expedited processing will simplify and streamline the process for and be of benefit to state nonmember banks. The 20-day automatic approval period is based upon the processing time established in the FDIC's Application Processing Time Lines (FIL–26–96, May 6, 1996) and is supported by the average processing time for approval of these types of requests during 1996.

The information requested under the proposal is the basic information that is necessary to process a request pursuant to section 18(i)(1) of the FDI Act and is included to provide guidance to prospective applicants. The filing procedures and information requested do not impose additional requirements upon applicants but simply clarify existing practice.

Exercise of trust powers. Currently, §§ 303.5(b) and 303.7(a)(2) contain the general application procedures for the FDIC's prior approval to exercise trust powers. Sections 333.1, 333.2 and 333.101 provide the substantive basis for requesting such applications.

The FDIC proposes to amend part 303 to create a new section relating to trust applications that would bring together all the trust application procedures as well as the related delegations of authority into one centralized location. The proposal contains two exceptions to the application requirements. The first exception allows a state nonmember bank that received authority to exercise trust powers from its chartering authorities prior to December 1, 1950 to exercise trust powers without the FDIC's consent. The second exception permits an insured depository institution to continue to conduct trust activities pursuant to authority granted by its chartering authority following a charter conversion or withdrawal from membership in the Federal Reserve System.

The proposed procedures would require applicants to complete a trust application form obtained from any FDIC regional office and provides expedited processing for eligible depository institutions as defined in proposed § 303.2(r). Under expedited processing, an eligible institution's trust application will be deemed approved 30 days after receipt by the appropriate FDIC regional director, unless the applicant is advised in writing that its filing has been removed from expedited processing. For applications not processed pursuant to the expedited processing procedures, the FDIC will provide written notification of the final action taken with regard to the filing.

Brokered deposit waivers. The FDIC is proposing to reorganize its regulations regarding applications to accept brokered deposits by adequately capitalized insured depository institutions. The application procedures would be placed in this subpart M and the substantive rules regarding the acceptance of brokered deposits would remain in § 337.6. Procedures would not be substantially altered.

Applicants for a brokered deposit waiver cannot meet the strict definition of an "eligible depository institution" set forth in proposed § 303.2(r), regarding institutions eligible for expedited processing. The definition in § 303.2(r) requires eligible depository institutions to be "well capitalized." Well capitalized institutions are not required to apply for a waiver prior to accepting brokered deposits. Therefore, for the purpose of determining eligibility for expedited processing for this subsection only, an adequately capitalized institution which otherwise meets the standards of § 303.2(r) will be deemed to be an eligible depository institution. Under the current regulation, any institution with a composite rating of 1 or 2 is eligible for expedited processing. The definition contained in § 303.2(r) contains additional qualifications for eligibility. The FDIC does not believe that there is a compelling reason to use a substantially different definition of eligibility for this subsection than that used for all other types of applications for which expedited procedures are available.

In moving the application procedures to part 303, the proposal would amend paragraph (c) of § 337.6 by referring the applicant to § 303.243 for filing instructions. Paragraphs (d) and (e) of § 337.6 would be deleted because the information in those paragraphs (involving filing procedures, delegations of authority, and expedited processing procedures) would appear in § 303.243.

Golden parachutes and severance plan payments. The FDIC is proposing to revise its regulations regarding applications to make excess nondiscriminatory severance plan payments and golden parachute payments by insured depository institutions or depository institution holding companies. The FDIC's regulations with respect to such payments are codified at part 359. Generally, troubled depository institutions as defined in the regulations are prohibited under part 359 from making severance plan payments and golden parachute payments, unless the institution obtains the consent of its primary federal regulator and, in certain circumstances, the FDIC.

Under the proposal, the substantive rules with respect to making such payments would remain unchanged in part 359 of the FDIC's regulations. The only changes to part 359 would appear in § 359.6, which involves "Filing instructions." First, a reference to new § 303.244 of the FDIC's regulations would be added. Second, a sentence specifying the necessary elements of an

application would be deleted from § 359.6. These elements and the procedures for obtaining the consent of the FDIC would be set forth in the new § 303.244. The necessary elements would be expanded from two items to five items in § 303.244 in order to assist an applicant in preparing a complete filing. The filing procedures and information requested do not impose additional requirements upon applicants, but simply clarify existing requirements.

Waiver of liability for commonly controlled depository institutions. The application procedures for an insured depository institution to request a waiver of liability pursuant to section 5(e) of the FDI Act are new (12 U.S.C. 1815(e)). The FDIC Board of Directors recently approved revisions to the Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions (62 FR 15480, April 1, 1997), which provides guidance to the industry as to the manner in which the FDIC will administer the provisions of section 5(e) of the FDI Act. The statement of policy is being further revised elsewhere in today's **Federal Register** to move the procedures for requesting a conditional waiver of the cross-guaranty liability to proposed § 303.245 and to include a cross-reference to § 303.245.

Insurance fund conversions. The FDIC is proposing to revise its regulations regarding filings for insurance fund conversions at § 303.246. The proposed revisions would reformat the filing requirements and delete references to and procedures regarding insurance fund conversions qualifying as exceptions to the insurance fund conversion moratorium imposed in section 5(d) of the FDI Act (12 U.S.C. 1815(d)(2)(A)(ii)). Such references and procedures are no longer necessary because the insurance fund conversion moratorium expired in the last quarter of 1996 when the Savings Association Insurance Fund reached its designated reserve ratio.

Conversion with diminution of capital. Section 303.247 reorganizes and clarifies filing procedures pursuant to section 18(i)(2) of the FDI Act (12 U.S.C. 1828(i)(2)) to convert from an insured federal depository institution to a state nonmember bank where the capital stock or surplus of the resulting bank will be less than the capital stock or surplus, respectively, of the converting institution at the time of the shareholder's meeting approving such conversion. Filing instructions are currently contained in § 303.3(c) and § 303.5(b).

The information requested of the applicant under the proposal is the basic information that is necessary to process a request pursuant to section 18(i)(2) of the FDI Act. The filing procedures and information requested do not impose additional requirements upon applicants but simply clarify existing requirements.

A delegation of authority has been added to § 303.247 to allow the Director, Deputy Director, or where confirmed in writing, an associate director, regional director or deputy regional director (DOS) to approve conversions with diminution of capital. Authority to deny is delegated only to the Director and Deputy Director (DOS). At present, there is no delegated authority.

Continue or resume status as an insured institution following termination under section 8 of the FDI Act. Proposed § 303.248 covers applications by depository institutions for permission to continue or resume their insured status after termination of insurance under section 8 of the FDI Act (12 U.S.C. 1818). This section covers institutions whose deposit insurance continues in effect for any purpose or for any length of time under the terms of an FDIC order terminating deposit insurance. However, it does not cover any operating non-insured depository institution which was previously insured by the FDIC or any non-insured, non-operating depository institution whose charter has not been surrendered or revoked. Institutions not covered by this section would be required to file a *de novo* application for FDIC insurance. The contents of the filing under this section have been streamlined to require all relevant facts and reasons for the request and a certified copy of the resolution authorizing the request by the institution's board of directors.

Truth in Lending Act—Requests for relief from reimbursement and reconsiderations of denials. Proposed § 303.249 is intended to apply to requests for relief from reimbursement involving the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR 226) (Truth in Lending cases). Currently, no specific procedures or timeframes are provided for Truth in Lending cases in part 303. Requests for relief from reimbursement are addressed pursuant to the procedures in § 303.6 which apply generally to applications, and requests for reconsideration of a request for relief following denial must be filed within 15 days under § 303.6(e), which governs petitions for reconsideration. Proposed § 303.249 sets forth new procedures specifically for Truth in Lending cases and provides that applicants may file initial requests for relief within 60 days after receipt of the compliance report of examination containing the request to conduct a file search and make restitution to affected customers. Requests for reconsideration following denial will continue to be handled under the FDIC's general petition for reconsideration provision, located at proposed § 303.11(f), which requires filing within 15 days of receipt of denial.

Modifications of conditions. Section 303.250 reorganizes and clarifies the procedures for requests to modify a previously issued FDIC approval of a filing. The instructions for these requests are currently contained in § 303.5(b). The relevant delegation of authority to approve or to deny such filings is contained in existing § 303.7(f)(l)(iv).

The information requested of the applicant under the proposal is the basic information that is necessary to process a request of this nature. The filing procedures and information requested do not impose additional requirements upon applicants, but simply clarify existing requirements. However, a new criteria for exercise of delegated authority by DOS officials is being added requiring Legal Division consultation to modify conditions if Legal Division consultation was required in connection with the original filing.

During 1995, the FDIC approved 15 requests to modify a prior approval, with an average processing time of 11 days. During 1996, the FDIC approved 14 such requests, with an average processing time of 15 days. Given the low volume of activity and the prompt processing of those requests, the FDIC believes that the creation of special expedited procedures is not warranted.

Extensions of time. Section 303.251 reorganizes and clarifies the procedures for requests seeking an extension of time to fulfill a condition required in an approval issued by the FDIC, or to consummate a transaction which was the subject of an approval by the FDIC. The instructions for these requests are currently contained in § 303.5(b). The relevant delegation of authority to approve or to deny such filings is contained in existing § 303.8(a).

The information requested of the applicant under the proposal is the basic information that is necessary to process a request of this nature. The filing procedures and information requested do not impose additional requirements upon applicants, but simply clarify existing requirements.

During 1995, the FDIC approved 31 requests for an extension of time, with an average processing time of 10 days. During 1996, the FDIC approved 31 such requests, with an average processing time of 13 days. Given the low volume of activity and the prompt processing of those requests, the FDIC believes that the creation of special expedited procedures is not warranted.

N. Subpart N—Enforcement Delegations

Subpart N makes several significant changes to the FDIC's enforcement delegations of authority, as described below.

Section 8(a) notices of intention to terminate insured status. Under current § 303.9(a), authority has been delegated to the Director of DOS to issue notifications to primary regulator (NPRs) under section 8(a) of the FDI Act (12 U.S.C. 1818(a)), with Legal Division concurrence. If unsafe or unsound conditions or practices and violations of law cited in an NPR are not corrected, a notice of intention to terminate insured status (NIT) may be issued.

The Director of DOS, pursuant to an agreement with the Board of Directors, has not exercised delegated authority to issue NPRs, and has brought all such cases to the Board of Directors. Currently, when the Board issues an NPR, it also authorizes the Executive Secretary, with Legal Division concurrence, to issue an NIT, after being informed by DOS that an institution has not corrected the conditions, practices and/or violations of law cited in the NPR. Proposed § 303.262 would largely codify existing FDIC practice by delegating authority to issue NITs, but would modify existing FDIC practice by allowing the Director of DOS to issue NITs with Legal Division concurrence. This would speed matters since the Executive Secretary now relies on information received from DOS prior to issuing NITs.

Section 8(g) suspension and removal actions. Currently, authority is delegated to the Director and Deputy Director (DOS and DCA) and, when confirmed in writing by the Director, to an associate director, to issue orders of suspension or prohibition to any institution-affiliated party who is charged in any information, indictment or complaint, or who is convicted of or enters into a pretrial diversion or similar program, regarding any criminal offense cited in or covered by section 8(g) of the FDI Act, when such institution-affiliated party consents to the suspension or prohibition. Proposed § 303.266(b) contains a new delegation to issue orders of prohibition or suspension under section 8(g), regardless of whether or not the institution-affiliated party consents to the order, if the criminal offense is one for which section 8(g) mandates suspension or prohibition. The FDIC believes that such a delegation is appropriate since no discretion to issue this type of order is provided in the statute.

Consent section 8(q) orders terminating insured status. Section 8(q) of the FDI Act, 12 U.S.C. 1818(q), authorizes the issuance of consent orders terminating deposit insurance of an institution whose deposits have been assumed by another institution, whether by way of merger, consolidation, statutory assumption, or contract. Proposed § 303.268 codifies the current delegation of authority to the Executive Secretary of the FDIC to issue consent orders pursuant to section 8(q) of the Act. This authority was contained in a June 13, 1989 resolution of the Board of Directors and was not previously codified in part 303.

Civil money penalties. Proposed § 303.269 clarifies the FDIC's delegations of authority relating to the issuance of final orders to pay civil money penalties, whether or not a notice of charges has been issued in a case. Proposed § 303.269 also authorizes the Director (DOS) and Director (DCA) to take joint action where violations for which civil money penalties are authorized involved both safety and soundness and consumer compliance matters. The proposal further delegates the authority to levy and enforce civil money penalties for the late, inaccurate, false or misleading filing of Reports of Condition and Income, Home Mortgage Disclosure Act Reports, CRA loan data reports (*see* 12 CFR 345.42), and all other required reports.

Section 5(e) assessments of commonly-controlled institutions. Section 5(e) of the FDI Act, 12 U.S.C. 1815(e), permits the FDIC to recoup the amount of loss to the deposit insurance funds resulting from the failure of affiliated institutions or assistance provided to affiliated institutions. Proposed § 303.270 sets forth the authority to issue notices of assessment under section 5(e) of the Act, also known as cross-guaranty assessments.. This authority was not previously codified in 12 CFR part 303. The addition of this provision and the delegations of authority to the Director, Deputy Director and, where confirmed in writing, to an associate director of DOS to issue notices of assessment of liability, reflect the actual practice of the Board of Directors. Additionally, proposed § 303.278(j) provides that the Board expressly retains authority on whether or not to waive cross-guaranty assessments. This provision is new and was not previously codified in part 303.

Section 10(c) investigations. The legal authority of the General Counsel to issue orders of investigation pursuant to section 10(c) of the FDI Act contained in proposed § 303.272(b) is being expanded to include sections 8 through 13 of the FDI Act (12 U.S.C. 1818–1823) in order to cover post-conservatorship or post-receivership investigations conducted by the FDIC in connection with the possible liability of directors, officers, and other institution-affiliated parties. The requirement of the concurrent certification of the General Counsel for certain orders of investigation issued by the Director and Deputy Director of the Division of Resolutions and Receiverships is being added to be consistent with the current requirement for orders issued in certain specified situations by the Directors and Deputy Directors of DOS and DCA.

Acceptance of written agreements. Proposed § 303.274 continues in effect FDIC delegations of authority on acceptance of written agreements in lieu of orders to terminate deposit insurance and to issue cease-and-desist orders under sections 8 (a) and (b) of the Act (12 U.S.C. 1818 (a) and (b)). The Director (DOS) has delegated authority to enter into written agreements relating to section 8(a) of the Act and relating to safety and soundness matters under section 8(b) of the Act, while the Director (DCA) has authority to enter into written agreements under section 8(b) of the Act relating to consumer compliance matters. Proposed § 303.274(c) adds a new provision not previously codified in part 303, giving authority to the Director and Deputy Director (DOS) and (DCA) and, where confirmed in writing by the appropriate Director, to an associate director, or to the appropriate regional director or deputy regional director to enter into written agreements with insured institutions and institution-affiliated parties that contain conditions that must exist before the FDIC may issue a statement of non-objection to a filing under part 303.

Termination of pending actions—general. Proposed § 303.275 adds a new paragraph (h) which clarifies the time frames in which pending enforcement actions may be terminated or dismissed pursuant to delegated authority. The section provides that any pending enforcement action may be terminated or dismissed by the Director or Deputy Director of DOS or DCA, as appropriate, before the commencement of a hearing on the merits by an administrative law judge. Once a hearing on the merits has begun, the pending action may be dismissed or terminated by stipulation or consent of the affected parties no

later than 14 days after the administrative law judge has closed the record of the hearing. After this time, only the FDIC Board of Directors may terminate or dismiss an enforcement action. This provision was not previously codified in part 303.

Standards governing modification and termination of section 8(e) prohibition orders. The delegation of authority to the Director and Deputy Director (DOS) and (DCA), as appropriate and if confirmed in writing, to the associate director to modify and terminate orders of removal or prohibition under section 8(e) of the FDI Act (12 U.S.C. 1818(e)) may be found in proposed § 303.276(e). Proposed § 303.276(e) adds the standards articulated by the Board in FDIC enforcement decisions under which a removal or prohibition order may be modified or terminated. Those standards are as follows: (1) The respondent has demonstrated his/her fitness to participate in any manner in the conduct of the affairs of an insured depository institution, (2) the respondent has shown that his/her participation would not pose a risk to the institution's safety and soundness, and (3) the respondent has proven that his/her participation would not erode public confidence in the institution. Proposed § 303.276(e) also delegates authority to grant consent pursuant to section 8(e)(7)(B) of the Act for the modification of termination of outstanding section 8(e) orders issued by another federal financial regulator. These provisions are new and were not previously codified in part 303.

Enforcement authority vested in General Counsel. Proposed subpart N would vest authority in the General Counsel or, where confirmed in writing by the General Counsel, his or her designee, to provide Legal Division concurrence regarding all enforcement actions. This change reflects the General Counsel's position as the head of the Legal Division with ultimate prosecutorial authority over all enforcement actions.

IV. Other Regulatory Changes

A. Part 337 (Unsafe and Unsound Banking Practices)

The FDIC is proposing to amend § 337.6, which governs the acceptance of brokered deposits by insured depository institutions. A well capitalized insured depository institution may accept brokered deposits without restriction by § 337.6 while an undercapitalized institution may not accept brokered deposits under any circumstances. In the case of an adequately capitalized insured depository institution, a brokered deposit can be accepted but only if the institution has obtained a waiver from the FDIC. Under the proposal, the procedures for obtaining a waiver would be moved from § 337.6 to 12 CFR part 303. An institution seeking a waiver would be referred by § 337.6(c) to § 303.243. Paragraphs (d) and (e) of § 337.6 would be deleted because the information in those paragraphs (involving filing procedures, delegations of authority and expedited processing procedures) would appear in § 303.243. Paragraph (f) would be deleted because the 60-day transition rule prescribed by that paragraph (for the period beginning on June 16, 1992) is obsolete.

Additionally, § 337.6 would be amended to reflect certain changes in the statutory definition of "deposit broker." Prior to these changes, the term "deposit broker" included "any insured depository institution" that solicits deposits by offering interest rates that significantly exceed the prevailing rates offered by other insured depository institutions in the same market area "having the same type of charter." Through the Riegle Community Development and Regulatory Improvement Act of 1994 (*see* Pub. L. 103–325, 108 Stat. 2160, Sec. 337), Congress made two changes to this statutory definition. First, Congress changed "any insured depository institution" to "any insured depository institution that is not well capitalized." The effect of this change was to relieve well capitalized institutions of the burden of reporting deposits with high interest rates as brokered deposits. Second, Congress removed the phrase, "having the same type of charter." The effect of this change was to require a comparison between the interest rates of all insured depository institutions within a market area (as opposed to insured depository institutions with a particular type of charter). *See* 12 U.S.C. 1831f(g)(3). Under the proposal, the amended statutory language would be incorporated in the FDIC's regulatory definition of "deposit broker" at § 337.6(a)(5)(iii).

B. Part 346 (Foreign Banks)

The FDIC is proposing to move current § 303.8(f) from part 303 to part 346, without substantive change. Section 303.8(f) contains delegations for the Division of Supervision to accept the pledge agreements by which insured branches of foreign banks pledge assets for the benefit of the FDIC, to be used in the event the FDIC becomes obligated to pay the insured deposits of the insured branch. Section 303.8(f) also authorizes the General Counsel or designee to alter the model deposit agreement used. The FDIC is proposing to move the delegation to part 346 for ease of reference, in order to locate the delegation with the substantive pledge requirements to which the delegation applies. The delegation would be added as a new paragraph at the end of § 346.19 on pledge of assets.

C. Part 359 (Golden Parachute and Indemnification Payments)

The FDIC is proposing to amend 12 CFR part 359 by moving certain information from § 359.6 ("Filing instructions") to 12 CFR part 303. The substantive rules in part 359 would remain unchanged. These rules govern the making of excess nondiscriminatory severance plan payments and golden parachute payments by insured depository institutions or depository institution holding companies. Generally, troubled depository institutions are prohibited under part 359 from making such payments unless the institution obtains the consent of the FDIC and/or the institution's primary federal regulator. Under the proposal, an institution seeking the consent of the FDIC would be referred by § 359.6 to § 303.244. Also, a listing of the necessary elements of an application would be moved from § 359.6 to § 303.244. These elements would be expanded in order to assist an applicant in preparing a complete filing.

V. Regulatory Text Deleted From Proposed Part 303

Some matters currently addressed in part 303 are not being included in the proposed revisions to part 303 because these matters will be covered elsewhere or are no longer needed. Those items are summarized below:

Section 303.2(c)—Special procedures for remote service facilities. Notice procedures for remote service facilities, along with related delegations of authority and the definition of "remote service facility" have been deleted because EGRPRA excludes such facilities from the definition of a branch.

Section 303.11(c)—Request for review. This section merely states that an aggrieved party may request the Board of Directors to review any action taken under authority delegated under §§ 303.7, 303.8, and 303.9. Numerous avenues already exist for appeal, such as those found under proposed § 303.11(f) (Appeals and petitions for reconsideration) and part 308 (Uniform Rules of Practice and Procedure). Broad authority to challenge delegations of authority seems unnecessary and is not in keeping with the Board's recent

resolution on delegations of authority which has been codified in part in proposed § 303.12 (General rules governing delegations of authority).

Section 303.12—OMB control number assigned pursuant to the Paperwork Reduction Act. This section is being deleted in its entirety because this same material also appears in § 304.7, Display of control numbers, of this chapter.

Several delegations of authority are also being eliminated:

Sections 303.7(f)(1)(vii) and 303.7(f)(2)(i)—Delegations regarding the Depository Institutions Management Interlocks Act. These delegations are being moved to part 348 (Management Official Interlocks) of this chapter.

Section 303.8(b)—Disclosure laws and regulations. The delegations related to part 335 (Securities of nonmember insured banks) are now contained in part 335 of this chapter. The delegations to administer part 341 (Registration of Securities Transfer Agents) are being moved to part 341 of this chapter.

Section 303.8(c)—Security devices and procedures and bank service arrangements. This is a delegation to administer the provisions of part 326 (Minimum Security Devices and Procedures). There are no longer any application procedures related to part 326, so therefore no delegations of authority are required.

Section 303.8(d)—In emergencies. This is a delegation to staff to manage the FDIC's affairs in the event an enemy attack renders the Board of Directors unable to perform its normal management functions. This delegation is being transferred to an internal Board resolution.

Section 303.8(h)—Application or notices for membership or resumption of business. This delegation permits DOS officials to provide comments to other federal regulators on applications or notices for membership in the Federal Reserve System, or for conversion of a state bank to a national bank. This delegation is being deleted as unnecessary since it is done as a matter of practice.

Section 303.8(i)—Depository Institutions Disaster Relief Act of 1992 (DIDRA). The provisions of DIDRA that were the subject of these delegations have expired.

VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA) requires an agency to publish an initial regulatory flexibility analysis, except to the extent provided in 5 U.S.C. 605(b), whenever the agency is required to publish a general notice of proposed rulemaking for a proposed rule. Pursuant to subsections 603 (b) and (c) of the RFA, the FDIC provides the following initial regulatory flexibility analysis:

Reasons why agency action is being considered. The "Supplementary Information" section above contains this information.

Statement of objectives of and legal basis for proposed rule. The "Supplementary Information" section above contains this information.

Description and estimate of the number of small entities to which the proposed rule applies. The proposed rule applies generally to the approximately 6,300 state nonmember banks for which the FDIC is the primary federal regulator, regardless of size. As of June 26, 1997, there were 6,265 such institutions, 4,316 of which were small entities as defined by the RFA.[7] In addition, as indicated in the Scope paragraphs of the pertinent subparts, certain of the subparts apply to all depository institutions insured by the FDIC, regardless of size. As of June 26, 1997, there were 11,220 such institutions, 6,926 of which were small entities as defined by the RFA. Subpart B (Deposit Insurance) also applies to proposed depository institutions and operating noninsured institutions that seek to apply for FDIC deposit insurance, regardless of size. Based upon recent experience, the FDIC estimates that the proposed rule will affect a total of approximately 200 such entities per year, nearly all of which the FDIC would expect to be small entities as defined by the RFA. In limited circumstances, certain subparts apply more generally to other entities or persons, as defined by the respective subparts, making applications to the FDIC, regardless of size. Quantification of the number of such persons or small entities who will be affected by the proposed rule is not practicable. The FDIC believes that any economic impact on such small entities will be beneficial because the proposed rule serves to reduce regulatory burden. The FDIC invites the public to comment on this conclusion and will carefully review all comments received prior to issuing the final regulation.

Projected reporting, recordkeeping and other compliance requirements of the proposed rule. The proposed rule reorganizes, clarifies and simplifies the rules applicable to the processing of applications, notices and requests, and updates the regulation to reflect recent statutory changes. The FDIC expects that these proposed changes will reduce industry costs associated with regulatory filings and will decrease processing time associated with such filings. For example, branch applications for eligible institutions generally will be deemed approved 21 days after filing and expedited procedures have been introduced for certain merger and deposit insurance applications. Consistent with statutory amendments, the proposed rule eliminates the need for banks that have undergone a recent change in control or have been operating less than two years to file notices to add a director or senior executive officer, thus substantially reducing the number of required filings. Reorganization of part 303 so that all information relevant to the filing and processing of each particular application type in one concise subpart also serves to lessen burden. The proposed rule also more closely aligns the procedural requirements of the FDIC's regulations with those of the other federal banking agencies, thus reducing the burden which may be associated with interpreting the rules of more than one federal banking agency.

Identification of federal rules which may duplicate, overlap or conflict with the proposed rule. The "Supplementary Information" above contains this information.

Discussion of significant alternatives to proposed rule. The FDIC believes that the proposed rule is an alternative to the existing part 303 and provides economic benefits to small entities. The proposed rule reorganizes and consolidates the existing rule to make it easier for affected small entities to use. The reporting requirements have been clarified and simplified as a result of the FDIC's experience in administering the existing part 303. By streamlining application procedures and granting eligible depository institutions expedited processing of certain filings, the proposed rule enables small entities that qualify as eligible depository institutions to operate more efficiently. By reducing the regulatory burden associated with application procedures, the proposed rule reduces the resources small entities will have to devote to regulatory compliance. Because the majority of the filings required by the proposed rule are required by statute, elimination of the rule is not a viable alternative, The FDIC has carefully reviewed each of the existing filing and processing procedures and, where the applicable statutes provide some

[7] The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to definitions published by the Small Business Administration. The Small Business Administration has defined a "small entity" for banking purposes as a national or commercial bank, savings institution or credit union with less than $100 million in assets. *See* 13 CFR 121.201.

flexibility, the FDIC proposes to revise existing part 303 in a way it believes best serves to reduce regulatory burden and streamline processing without compromising the safety and soundness of the banking industry.

The FDIC invites the public to comment on whether the proposed rule reduces regulatory burden and to provide the FDIC with suggested alternatives to those set forth in the proposed rule. The FDIC will carefully review all comments received prior to issuing the final regulation.

VII. Paperwork Reduction Act

The collections of information contained in this proposed rule and identified below have been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.). Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer Alexander Hunt, New Executive Office Building, Room 3208, Washington, DC 20503, with copies of such comments to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–4080, 550 17th Street NW, Washington, DC 20429. All comments should refer to "Part 303." OMB is required to make a decision concerning the collections of information contained in the proposed regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. This does not affect the deadline for the public to comment to the FDIC on the proposed regulation.

Subpart C (Establishment and Relocation of Domestic Branches and Offices)

Section 18(d)(1) of the FDI Act (12 U.S.C. 1828(d)(1)) provides that no state nonmember insured bank shall establish and operate any new domestic branch or move its main office or any such branch from one location to another without the prior written consent of the FDIC after considering the factors enumerated in section 6 of the FDI Act (12 U.S.C. 1816). Subpart C of the proposed regulation sets forth the application requirements and procedures for insured state nonmember banks to establish a branch, relocate a main office, and relocate a branch subject to the approval by the FDIC. The information collected is used by the FDIC to evaluate the statutory factors and determine whether to grant consent. This collection of information has been approved by OMB under clearance number 3064–0070 through May 31, 1998. Public comment regarding this collection is being solicited because the proposed regulation would modify the OMB-approved collection by addressing the establishment and relocation of interstate branches and deleting remote service facilities from the section 18(d) application requirements.

Estimate of Annual Burden

Number of applications: 1,750.
Number of hours to prepare an application: 5.
Total annual burden hours: 8,750.

Subpart M (Other Filings); Section 303.242 (Exercise Trust Powers)

Section 333.2 of the FDIC's regulations (12 CFR 333.2) prohibits any insured state nonmember bank from changing the general character of its business without the prior written consent of the FDIC. The exercise of trust powers by a bank is usually considered to be a change in the general character of a bank's business if the bank did not exercise those powers previously because trust powers create a new fiduciary relationship. Therefore, unless a bank is currently exercising trust powers, it must file a formal application to obtain the FDIC's written consent to exercise trust powers. Section 303.242 of the proposed regulation sets forth the application procedures relating to the FDIC's prior approval to exercise trust powers. Each application submitted by a bank is evaluated by the FDIC to verify the qualifications of bank management to administer a trust department to ensure that the bank's financial condition will not be jeopardized as a result of trust operations. This collection of information has been approved by OMB under clearance number 3064–0025 through December 31, 1997. Public comment is being solicited because the collection is being modified to simplify and clarify the "Application for Consent to Exercise Trust Powers" form, and to eliminate a number of items of information required under the current form. In addition, the collection is being modified so that an "eligible depository institution" as defined in § 303.2(r) of the proposal will file an abbreviated application and will receive expedited processing by the FDIC.

Estimate of Annual Burden

Number of applications from "eligible depository institutions": 31.
Average number of hours to prepare an application: 8.
Annual burden hours: 248.
Number of applications from institutions that do not qualify as "eligible depository institutions": 5.
Average number of hours to prepare an application: 24.
Annual burden hours: 120.
Total number of applications: 36.
Total annual burden hours: 368.

Other Collections of Information

Proposed part 303 addresses collections of information in addition to subpart C and subpart M collections discussed above. Subpart B (Deposit Insurance) addresses a collection approved by OMB under clearance number 3064–0001 which expires on July 31, 2000. Subpart D (Mergers) addresses a collection approved by OMB under clearance number 3064–0015 which expires on September 30, 1998. The merger application collection will be the subject of an interagency solicitation of public comment concerning the PRA aspects of a single, interagency form for affiliated and nonaffiliated mergers. Subpart E (Change in Bank Control) addresses a collection approved by OMB under clearance number 3064–0019 which expires on January 31, 2000. Subpart F (Change of Director or Senior Executive Officer) addresses a collection approved by OMB under clearance number 3064–0097 which expires on January 31, 2000. Subpart G (Activities and Investments of Insured State Banks), addresses a collection approved by OMB under clearance number 3064–0111, and Subpart H (Filings by Savings Associations), addresses a collection approved under clearance number 3064–0104. Public comment about these two collections was sought in a notice of proposed rulemaking regarding 12 CFR part 362, "Activities of Insured State Banks and Insured Savings Associations." 62 FR 47969, Sept. 12, 1997.

Subpart I (Mutual-to-Stock Conversions) addresses a collection approved by OMB under clearance number 3064–0117 which expires on July 31, 2000. Subpart J (Foreign Bank Activities) addresses two collections approved by OMB under clearance numbers 3064–0114 and 3064–0125, both of which expire on July 31, 2000. Subpart K (Prompt Corrective Action) addresses a collection approved by OMB under clearance number 3064–0115 which expires on July 31, 1999. Subpart L (Section 19) addresses a collection approved by OMB under clearance number 3064–0018 which expires on July 31, 2000. Subpart M (Other Filings) § 303.241 (Reduce or retire capital stock or capital debt instruments) addresses a collection approved by OMB under clearance number 3064–0079 which expires on October 31, 1997. Public comment was sought about this collection on July 29, 1997 (62 FR 40525). A submission to renew 3064–0079 without change will be made to OMB in early October, 1997 at which time further comment will be solicited. Subpart M (Other Filings) § 303.243 (Brokered deposits) addresses a collection approved by OMB under clearance number 3064–0099 which expires on August 31, 1998.

The FDIC has reviewed these other collections of information and has concluded that either the proposed part 303 does not change the collection of information as approved by OMB in a way that requires that public comment be solicited or that the proposed changes have already been incorporated into recent OMB PRA submissions. Public comment and OMB review of these collections will occur as part of the regular cycle of review under the PRA. Nonetheless, the FDIC welcomes comment about the PRA aspects of this proposed regulation or any subpart of it. Comment specifically about PRA related issues should identify the Paperwork Reduction Act and any particular subpart and/or collection for which consideration is desired.

VIII. Derivation Table

This table directs readers to the provision(s) of the former regulation, if any, upon which the provision in the proposed rule is based.

Proposed Provision	Original Provision	Comments
303.1	303.0(a)	Revised.
303.2	303.0(b)	No change.
(a)	303.0(b)(13)	No change.
(b)	303.0(b)(29)	No change.
(c)	303.0(b)(30)	Revised.
(d)	303.0(b)(25)	No change.
(e)		Added.
(f)		Added.
(g)	303.0(b)(12)	Revised.
(h)	303.0(b)(6)	No change.
(i)	303.0(b)(26)	No change.
(j)		Added.
(k)	303.0(b)(1)	No change.
(l)	303.0(b)(30)	Revised.
(m)		Added.
(n)	303.0(b)(8)	Revised.
(o)	303.0(b)(3)	No change.
(p)	303.0(b)(2)	No change.
(q)	303.0(b) (4), (5)	No change.
(r)		Added.
(s)		Added.
(t)		Added.
(u)		Added.
(v)	303.0(b)(14)	No change.
(w)		Added.
303.2(x)		Added.
(y)		Added.
(z)	303.0(b)(24)	No change.
(aa)	303.0(b)(17)	No change.
(bb)	303.0(b)(15)	No change.
(cc)	303.0(b)(11)	No change.
(dd)	303.0(b)(7), (9)	Revised.
(ee)(1)	303.0(b)(16)	No change.
(2)	303.0(b)(18)	No change.
(3)	303.0(b)(19)	No change.
(4)	303.0(b)(20)	No change.
(5)	303.0 b(21)	No change.
(6)	303.0 b(22)	No change.
(ff)	303.0(b)(31)	No change.
(gg)	303.0(b)(27)	Amended.
(hh)	303.0(b)(28)	Amended.
303.3	303.0(a)	Revised.
303.4	303.6(l)	Added.
303.5		Added.
303.6	303.6(b)	Revised.
303.7(a)	303.6 (a), (c)	Revised.
(b)	303.6(l)	Revised.
(c)		Added.
(d)		Added.
303.8(a)	303.6(g)(1), (2)	Revised.
(b)	303.6(g)(3)	Revised.
303.9(a)	303.6(f)(3)	Revised.

Proposed Provision	Original Provision	Comments
303.9(b)(1)		Added.
(2)	303.6(f)(4)	Revised.
(3)	303.6(f)(5)	No change.
(4)		Added.
303.10(a)		Added.
(b), (c)	303.6(h)	Revised.
(d)		Added.
(e)	303.6(i)	Revised.
(f)	303.6(i)(2)	Revised.
(g)	303.6(j)(5)	Revised.
(h)	303.6(j)(1–4)	Revised.
(i)	303.6(j)(6)	Revised.
(j)	303.6(h)(3)	Revised.
(k)	303.6(k)	Revised.
(l)	303.6(l)	Revised.
(m)	303.6(m)	Revised.
303.11(a)	303.6(d)	Revised.
(b)		Added.
(c)		Added.
(d)		Added.
(e)		Added.
(f)	303.6(e)	Revised.
(g)		Added.
303.12(a)	303.11(a)	Added.
(b)		Revised.
(c), (d)	303.10(a)	Revised.
(e), (f)	303.11(a)(1)	Revised.
(g)		Added.
303.13	303.8(g)	No change.
303.20	303.1	Revised.
303.21	303.1	Revised.
303.22		Added.
303.23(a)	303.6(f)(1)	Revised.
(b)	303.6(f)(1)(ii)	No change.
303.24		Added.
303.25		Added.
303.26(a)(1)	303.7(d)(1)	Revised.
303.26(a)(2)	303.7(f)(1)(vi)	Revised.
303.26(b)	303.7(d)(2)	Revised.
(c)	303.7(d)(3)	Revised.
(d)	303.7(b)(4)	Revised.
303.27	303.10(b)(2)	Revised.
303.40(a)	303.2	Amended
(b),(c),(d)		Added.
303.41(a)	303.2(a) (footnote 2)	Revised.
(b)	303.2(a)	No change.
(c),(d),(e)		Added.
303.42(a), (b), (c), (d)	303.2(a)	Revised.
303.43(a), (b)		Added.
303.44(a)	303.6(f)(1)	Revised.
(b)	303.6(f)(3), (4)	Revised.
(c)	303.6(f)(2)	Revised.
303.45(a), (b), (c)		Added.
303.46(a), (b), (c), (d)	303.7(a)	Revised.
303.60		Added.
303.61(a)	303.3(a), (b)	Revised.
(b)	303.7(f)(1)(v)	Revised.
(c)	303.7(f)(1)(v)	Revised.
(d)	303.3(d)	Revised.
(e)		Added.
303.62(a)	303.3	Revised.
(b)		Added.
303.63(a)	303.3(a), (e)	Revised.
(b)	303.3(a)	Revised.
(c)		Added.
(d)	303.3(d)	Revised.
303.64(a), (b)		Added.
303.65(a), (b), (c), (d)	303.6(f)(1), (3)	Revised.
303.66(a)(1)	303.7(b), (f)	Revised.
(2), (3)		Added.
(b)	303.7(b)	Revised.
(c)	303.7(b)(2), (5)	Revised.
(d)	303.7(f)(v), (vi)	Revised.
(e)	303.10(b)(i), (iii), (iv)	Revised.

Proposed Provision	Original Provision	Comments
(f)	303.7(b)(3)	Revised.
(g)	303.8(e)	Revised.
303.67	303.10(b)(1)	Revised.
303.80		Added.
303.81(a)	303.4(a)	Revised.
(b)		Added.
(c)	303.4(a) footnote 3	No change.
(d)	303.4(a) footnote 4	No change.
303.82(a)		Added.
(b)	303.4(a)	Revised.
(c)		Added.
(e), (d)	303.4(a)	Revised.
303.83(a)(1) thru (b)(1)	303.4(c)	Revised.
(b)(2), (3)		Added.
303.84(a)	303.4(b)(1)	Revised.
(b)	303.4(b)(5)	No change.
303.85(a), (b), (c)		Added.
303.86(a)(1), (2)	303.4(b)(2)(i)	Revised.
(a)(3)		Added.
(a)(4), (5)	303.4(b)(3)(ii)	Revised.
(a)(6)	303.4(b)(6)	Revised.
303.87(a)	303.7(c)	Revised.
303.100		Added.
303.101(a)		Added.
(b)	303.14(a)(3)	Revised.
(c)	303.14(a)(4)	Revised.
303.102(a)	303.14(b)	Revised.
(b)	303.14(b)	No change.
(c)	303.14(c)(2)	No change.
303.103(a)	303.14(c)(1)	Revised.
(b)	303.14(c)(4)	Revised.
(c)	303.14(c)(2)	Revised.
(d)	303.14(d)	Revised.
303.104	303.14(e)	Revised.
303.160		Added.
303.161	303.15(a)	Revised.
303.162	303.15(a), (b)	Revised.
303.163(a)	303.15(c)(1)	No change.
(b)	303.15(c)(2)	No change.
(c), (d),(e),(f)	303.15(d)	No change.
303.164		Added.
303.180		Added.
303.181		Added.
303.182	303.2	Revised.
303.183	303.5(d), 303.7(f)(2)(ii)	Revised.
303.184	303.2, 303.6, 303.7	Revised.
303.185		Added.
303.186	346.6(b)	Revised.
303.187	346.101	Revised.
303.200		Added.
303.201	303.5(e)	No change.
303.202	303.5(e)	No change.
303.203	303.5(e)(1)	No change.
303.204	303.5(e)(2)	No change.
303.205	303.5(e)(3)	No change.
303.206	303.5(e)(4)	No change.
303.207	303.5(e)(5)	Amended.
303.208	303.7(f)(ix)	No change.
303.220		Added.
303.221		Added.
303.222		Added.
303.223		Added.
303.224(a),(b),(c),(d)	303.7(e)	Amended.
(e)	303.10(b)(3)	No change.
303.240		Added.
303.241(a)		Added.
(b),(c),(d)	303.5(b)	Revised.
(e),(f),(g)		Added.
(h)	303.7(f)(1)(iii)	No change
303.242(a)		Added.
(b),(c),(d)	303.5(b)	Revised.
(e)(f)		Added
(g)(h)	303.7(a)(2)	No change
303.243(a),(b),(c)	337.6(d),(e)	No change.

Proposed Provision	Original Provision	Comments
(d),(e),(f)		Added.
(g)	337.6 (c),(e)	No change.
(h)	337.6 (e), 303.7(f)(1)(viii)	Revised.
303.244(a), (b), (c), (d), (e)	359	Revised.
(f)	303.7(g)	No change.
303.245		Added.
303.246(a),(b),(c),(d)	303.5(a)	Revised.
(e)		Added.
(f)	303.7(f)(4)	Revised.
303.247	303.3(c)	Revised.
303.248	303.5(c)	Revised.
303.249		Added.
303.250(a),(b),(c),(d),(e)		Added.
(f)	303.7(f)(14)(iv)	Revised.
303.251(a),(b),(c),(d),(e)		Added.
(f)	303.8(a)	No change.
303.260		Added.
303.261	303.9(a)	Revised.
303.262		Added.
303.263	303.9(b)	Revised.
303.264	303.9(c)	Revised.
303.265	303.9(d)	Revised.
303.266	303.9(e)	Revised.
303.267	303.9(f)	Revised.
303.268		Added.
303.269	303.9(g)	Revised.
303.270		Added.
303.271	303.9(h)	Revised.
303.272	303.9(i)	Revised.
303.273	303.9(k)	Revised.
303.274	303.9(l)	Revised.
303.275	303.9(m)	Revised.
303.276	303.9(n)	Revised.
303.277	303.9(o)	Revised.
303.278	303.10(c)	Revised.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Bank merger, Branching, Foreign branches, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 341

Banks, banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part 346

Bank deposit insurance, Foreign banking, Reporting and recordkeeping requirements.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies.

12 CFR Part 359

Banks, banking, Golden parachute payments, Indemnity payments.

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 1819(a)(Tenth), the FDIC Board of Directors hereby proposes to amend 12 CFR chapter III as follows:

1. Part 303 is revised to read as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

Sec.

303.0 Scope.

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303.2 Definitions.
303.3 General filing procedures.
303.4 Computation of time.
303.5 Effect of Community Reinvestment Act performance on filings.
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303.263 Cease-and-desist actions under section 8(b) of the FDI Act (12 U.S.C. 1818(b)).
303.264 Temporary cease-and-desist orders under section 8(c) of the FDI Act (12 U.S.C. 1818(c)).
303.265 Removal and prohibition actions under section 8(e) of the FDI Act (12 U.S.C. 1818(e)).
303.266 Suspension and removal action under section 8(g) of the FDI Act (12 U.S.C. 1818(g)).
303.267 Termination of insured status under section 8(p) of the FDI Act (12 U.S.C. 1818(p)).
303.268 Termination of insured status under section 8(q) of the FDI Act (12 U.S.C. 1818(q)).
303.269 Civil money penalties.
303.270 Notices of assessment under section 5(e) of the FDI Act (12 U.S.C. 1815(e)).
303.271 Prompt corrective action directives and capital plans under section 38 of the FDI Act (12 U.S.C. 1831o) and part 325 of this chapter.
303.272 Investigations under section 10(c) of the FDI Act (12 U.S.C. 1820(c)).
303.273 Unilateral settlement offers.
303.274 Acceptance of written agreements.
303.275 Modifications and terminations of enforcement actions and orders.
303.276 Enforcement of outstanding enforcement orders.
303.277 Compliance plans under section 39 of the FDI Act (12 U.S.C. 1831p-1) (standards for safety and soundness) and part 308 of this chapter.
303.278 Enforcement matters where authority is not delegated.

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819, (Seventh and Tenth), 1820, 1828, 1831e, 1831p-l, 1835a, 3104, 3105, 3108; 15 U.S.C. 1601–1607.

§ 303.0 Scope.

(a) This part generally describes the procedures to be followed by both the FDIC and applicants with respect to applications, requests, or notices required to be filed by statute or regulation. Additional details concerning processing are explained in related FDIC statements of policy. This part also sets forth delegations of authority from the FDIC's Board of Directors to the Directors of the Division of Supervision (DOS), the Division of Compliance and Consumer Affairs (DCA), the General Counsel of the Legal Division, the Executive Secretary, and, in some cases, their designees to act on certain applications, notices, requests, and enforcement matters.

(b) Additional application procedures may be found in the following FDIC regulations:

(1) 12 CFR part 327—Assessments (Request for review of assessment risk classification);

(2) 12 CFR part 328—Advertisement of Membership (Application for temporary waiver of advertising requirements);

(3) 12 CFR part 345—Community Reinvestment (CRA strategic plans and requests for designation as a wholesale or limited purpose institution);

(4) 12 CFR part 348—Management Official Interlocks (Exemption request).

Subpart A—Rules of General Applicability

§ 303.1 Scope.

Subpart A prescribes the general procedures for submitting applications, notices, and requests (collectively, "filings") to the FDIC which are required by statute or regulation. This subpart also prescribes the procedures to be followed by the FDIC, applicants and interested parties during the process of considering a filing, including public notice and comment. This subpart further explains the availability of expedited processing for eligible depository institutions (defined in § 303.2(r)). Finally, this subpart sets forth general principles governing delegations of authority by the FDIC's Board of Directors.

§ 303.2 Definitions.

For purposes of this part:

(a) *Act* or *FDI Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).

(b) *Adjusted part 325 total assets* means adjusted 12 CFR part 325 total assets as calculated and reflected in the FDIC's Reports of Examination.

(c) *Adverse comment* means any objection, protest, or other adverse written statement submitted by an interested party relative to a filing. The term adverse comment shall not include any comment concerning the Community Reinvestment Act (CRA), fair lending, consumer protection, or civil rights that the appropriate regional director or deputy regional director (DCA) determines to be frivolous (for example, raising issues between the commenter and the applicant that have been resolved). The term adverse comment also shall not include any other comment that the appropriate regional director or deputy regional director (DOS) determines to be frivolous (for example, a non-substantive comment submitted primarily as a means of delaying action on the filing).

(d) *Amended order to pay* means an order to forfeit and pay civil money penalties, the amount of which has been changed from that assessed in the original notice of assessment of civil money penalties.

(e) *Applicant* means a person or entity that submits a filing to the FDIC.

(f) *Application* means a submission requesting FDIC approval to engage in various corporate activities and transactions.

(g) *Appropriate FDIC region, appropriate FDIC regional office, appropriate regional director, appropriate deputy regional director, appropriate regional counsel* mean, respectively, the FDIC region, and the FDIC regional office, regional director, deputy regional director, and regional counsel, which the FDIC designates as follows:

(1) When an institution or proposed institution that is the subject of a filing or administrative action is not and will not be part of a group of related institutions, the appropriate region for the institution and any individual associated with the institution is the FDIC region in which the institution or proposed institution is or will be located; or

(2) When an institution or proposed institution that is the subject of a filing or administrative action is or will be part of a group of related institutions, the appropriate region for the institution and any individual associated with the institution is the FDIC region in which the group's major policy and decision makers are located, or any other region the FDIC designates on a case-by-case basis.

(h) *Associate director* means any associate director of the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent authority within the respective divisions.

(i) *Book capital* means total equity capital which is comprised of perpetual preferred stock, common stock, surplus, undivided profits and capital reserves, as those items are defined in the instructions of the Federal Financial Institutions Examination Council (FFIEC) for the preparation of Consolidated Reports of Condition and Income for insured banks.

(j) *Comment* means any written statement of fact or opinion submitted by an interested party relative to a filing.

(k) *Corporation, FDIC* means the Federal Deposit Insurance Corporation.

(l) *CRA protest* means any adverse comment from the public related to a pending filing which raises a negative issue relative to the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*), whether or not it is labeled a protest and whether or not a hearing is requested.

(m) *Deputy Director* means the Deputy Director of the Division of Supervision (DOS) or the Deputy Director of the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent or higher authority within the respective divisions.

(n) *Deputy regional director* means any deputy regional director of the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent authority within the same FDIC region of DOS or DCA.

(o) *DCA* means the Division of Compliance and Consumer Affairs or, in the event the Division of Compliance and Consumer Affairs is reorganized, such successor division.

(p) *DOS* means the Division of Supervision or, in the event the Division of Supervision is reorganized, such successor division.

(q) *Director* means the Director of the Division of Supervision (DOS) or the Director of the Division of Compliance and Consumer Affairs (DCA) or, in the event such titles become obsolete, any official of equivalent or higher authority within the respective divisions.

(r) *Eligible depository institution* means a depository institution that meets the following criteria:

(1) Received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;

(2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination;

(3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(4) Is well capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and

(5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

(s) *Filing* means an application, notice or request submitted to the FDIC under this part.

(t) *General Counsel* means the head of the Legal Division of the FDIC or any official within the Legal Division exercising equivalent authority for purposes of this part.

(u) *Insider* means a person who is or is proposed to be a director, officer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 percent or more of any class of the applicant's outstanding voting stock; or the associates or interests of any such person.

(v) *Institution-affiliated party* shall have the same meaning as provided in section 3(u) of the Act (12 U.S.C. 1813(u)).

(w) *NEPA* means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

(x) *NHPA* means the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*)

(y) *Notice* means a submission notifying the FDIC that a depository institution intends to engage in or has commenced certain corporate activities or transactions.

(z) *Notice of assessment of civil money penalties* means a notice of assessment of civil money penalties, findings of fact and conclusions of law, and order to pay issued pursuant to sections 7(a)(1), 7(j)(15), 8(i) or 18(h) of the Act (12 U.S.C. 1817(a)(1), 1817(j)(15), 1818(i), or 1828(h)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972), section 910(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), or any other provision of law providing for the assessment of civil money penalties by the FDIC.

(aa) *Notice of charges* means a notice of charges and of hearing setting forth the allegations of unsafe or unsound practices or violations and fixing the time and place of the hearing issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(bb) *Notice to primary regulator* means the notice described in section 8(a)(2)(A) of the Act concerning termination of deposit insurance (12 U.S.C. 1818(a)(2)(A)).

(cc) *Regional counsel* means a regional counsel of the Legal Division or, in the event the title becomes obsolete, any official of equivalent authority within the Legal Division. The authority delegated to a regional counsel may be exercised, when confirmed in writing by the regional counsel, by a deputy regional counsel, or any official of equivalent or higher authority in the Supervision and Legislation Branch of the Legal Division.

(dd) *Regional director* means any regional director in the Division of Supervision (DOS) or the Division of Compliance and Consumer Affairs (DCA), or in the event such titles become obsolete, any official of equivalent authority within the respective divisions.

(ee) *Section 8 orders:*

(1) *Section 8(a) order* means an order terminating the insured status of a depository institution under section 8(a) of the Act (12 U.S.C. 1818(a)).

(2) *Section 8(b) order, cease-and-desist order* means a final order to cease and desist issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(3) *Section 8(c) order, temporary cease-and-desist order* means a temporary order to cease and desist issued under section 8(c) of the Act (12 U.S.C. 1818(c)).

(4) *Section 8(e) order* means a final order of removal or prohibition issued under section 8(e) of the Act (12 U.S.C. 1818(e)).

(5) *Section 8(e)(3) order, temporary order of suspension* means a temporary order of suspension or prohibition issued under section 8(e)(3) of the Act (12 U.S.C. 1818(e)(3)).

(6) *Section 8(g) order* means an order of suspension or order of prohibition issued under section 8(g) of the Act (12 U.S.C. 1818(g)).

(ff) *Standard conditions* means the conditions that any FDIC official acting under delegated authority may impose as a matter of routine when approving a filing, whether or not the applicant has agreed to their inclusion. The following conditions, or variations thereof, are standard conditions:

(1) That the applicant has obtained all necessary and final approvals from the appropriate federal or state authority or other applicable authority;

(2) That if the transaction does not take effect within a specified time period, or unless, in the meantime, a request for an extension of time has been approved, the consent granted shall expire at the end of the said time period;

(3) That until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend or withdraw its commitment should any interim development be deemed to warrant such action; and

(4) In the case of a merger transaction (as defined in § 303.61(a) of this part), including a corporate reorganization, that the proposed transaction not be consummated before the 30th calendar day (or shorter time period as may be prescribed by the FDIC with the concurrence of the Attorney General) after the date of the order approving the merger.

(gg) *Tier 1 capital* shall have the same meaning as provided in § 325.2(t) of this chapter (12 CFR 325.2(t)).

(hh) *Total assets* shall have the same meaning as provided in § 325.2(v) of this chapter (12 CFR 325.2(v)).

§ 303.3 General filing procedures.

Unless stated otherwise, filings should be submitted to the appropriate regional director (DOS). Forms and instructions for submitting filings may be obtained from any FDIC regional office (DOS). If no form is prescribed, the filing should be in writing; be signed by the applicant or a duly authorized agent; and contain a concise statement of the action requested. For specific filing and content requirements, consult the specific subparts of this part. The FDIC may require the applicant to submit additional information.

§ 303.4 Computation of time.

For purposes of this part, the FDIC begins computing the relevant period on the day after an event occurs (*e.g.*, the day after a substantially complete filing is received by the FDIC or the day after publication begins) through the last day of the relevant period. When the last day is a Saturday, Sunday or federal holiday, the period runs until the end of the next business day.

§ 303.5 Effect of Community Reinvestment Act performance on filings.

Among other factors, the FDIC takes into account the record of performance under the Community Reinvestment Act (CRA) of each applicant in considering a filing for approval of:

(a) The establishment of a domestic branch;

(b) The relocation of the bank's main office or a domestic branch;

(c) The relocation of an insured branch of a foreign bank;

(d) A transaction subject to the Bank Merger Act; and

(e) Deposit insurance.

§ 303.6 Investigations and examinations.

The Board of Directors, Directors of (DOS) or (DCA), their associate directors, or the appropriate regional director or appropriate deputy regional director (DOS) or (DCA) acting under delegated authority may examine or investigate and evaluate facts related to any filing under this chapter to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances.

§ 303.7 Public notice requirements.

(a) *General.* The public must be provided with prior notice of a filing to establish a domestic branch, relocate a domestic branch or the main office, relocate an insured branch of a foreign bank, engage in a merger or other business combination, initiate a change of control transaction, or request deposit insurance. The public has the right to comment on, or to protest, these types of proposed transactions during the relevant comment period. In order to fully apprise the public of this right, an applicant shall publish a public notice of its filing in a newspaper of general circulation. For specific publication requirements, consult subparts B (deposit insurance), C (branches and relocations), D (mergers), E (change in bank control), and J (foreign bank activities).

(b) *Confirmation of publication.* The applicant shall mail or otherwise deliver a copy of the newspaper notice to the appropriate regional director (DOS) promptly after publication.

(c) *Content of notice.* (1) The public notice referred to in paragraph (a) of this section shall consist of the following:

(i) Name and address of the applicant(s). In the case of an application for deposit insurance for a de novo bank, the names of all organizers or incorporators. In the case of an application to establish a branch, include the location of the proposed branch or, in the case of an application to relocate a branch, include the current and proposed address of the branch. In the case of a merger application, include the names of all parties to the transaction. In the case of a notice of acquisition of control, the name(s) of the acquiring parties. In the case of an application to relocate an insured branch of a foreign bank, include the

current and proposed address of the branch.

(ii) Type of filing being made;

(iii) Name of the depository institution(s) that is the subject matter of the filing;

(iv) That the public may submit comments to the appropriate FDIC regional director (DOS);

(v) The address of the appropriate FDIC regional office (DOS) where comments may be sent (the same location as that where the filing will be made);

(vi) The closing date of the public comment period as specified in the appropriate subpart; and

(vii) That the nonconfidential portions of the application are on file in the regional office and are available for public inspection during regular business hours.

(2) Alternatively, paragraphs (b)(1)(iv) through (vii) of this section may be satisfied through use of the following notice:

> Any person wishing to comment on this application may file his or her comments in writing with the regional director (DOS) of the Federal Deposit Insurance Corporation at its regional office [insert address of regional office]. If any person desires to protest the granting of this application, he or she has a right to do so if he or she files a written comment with the regional director by the [insert closing date of the public comment period specified in the appropriate subpart of part 303]. The non-confidential portions of the application are on file in the regional office and are available for public inspection during regular business hours.

(d) *Multiple transactions.* The FDIC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When publishing a single public notice for multiple transactions, the applicant shall explain in the public notice how the transactions are related and state the closing date of the longest public comment period that shall apply to all of the related transactions.

(e) *Joint public notices.* For a transaction subject to public notice requirements by the FDIC and another federal or state banking authority, the FDIC will accept publication of a single joint notice containing all the information required by both the FDIC and the other federal agency or state banking authority, provided that the notice states that comments must be submitted to both the FDIC and, if applicable, the other federal or state banking authority.

§ 303.8 Public access to filing.

(a) *General.* For filings subject to a public notice requirement, any person may inspect or request a copy of the non-confidential portions of a filing (the public file) until 180 days following final disposition of a filing. The public file generally consists of portions of the filing, supporting data, supplementary information, and comments submitted by interested persons (if any) to the extent that the documents have not been afforded confidential treatment. To view or request photocopies of the public file, an oral or written request should be submitted to the appropriate regional director. The public file will be produced for review not more than one business day after receipt by the regional office. The FDIC may impose a fee for photocopying in accordance with § 309.5(c) of this chapter and with the rates the FDIC publishes annually in the **Federal Register**.

(b) *Confidential treatment.* (1) The applicant may request that specific information be treated as confidential. The following information generally is considered confidential:

(i) Personal information, the release of which would constitute a clearly unwarranted invasion of privacy;

(ii) Commercial or financial information, the disclosure of which would result in substantial competitive harm to the submitter; and

(iii) Information the disclosure of which could seriously affect the financial condition of any depository institution.

(2) If an applicant requests confidential treatment for information that the FDIC does not consider to be confidential, the FDIC may include that information in the public file after notifying the applicant. On its own initiative, the FDIC may determine that certain information should be treated as confidential and withhold that information from the public file. A written request for information withheld from the public file, or copies of the public file following closure of the file 180 days after final disposition, should be submitted pursuant to the Freedom of Information Act (5 U.S.C. 552) to the FDIC, Office of the Executive Secretary, 550 17th Street, NW., Washington, DC 20429.

§ 303.9 Comments.

(a) *Submission of comments.* For filings subject to a public notice requirement, any person may submit comments to the appropriate FDIC regional director (DOS) during the comment period.

(b) *Comment period.* (1) *General.* Consult specific subparts of this part for the comment period applicable to a particular filing.

(2) *Extension.* The appropriate regional director or deputy regional director (DOS) may extend or reopen the comment period if:

(i) The applicant fails to file all required information on a timely basis to permit review by the public or makes a request for confidential treatment not granted by the FDIC that delays the public availability of that information;

(ii) Any person requesting an extension of time satisfactorily demonstrates to the FDIC that additional time is necessary to develop factual information that the FDIC determines may materially affect the application; or

(iii) The appropriate regional director or deputy regional director (DOS) determines that other good cause exists.

(3) *Solicitation of comments.* Whenever appropriate, the regional director (DOS) may solicit comments from any person or institution which might have an interest in or be affected by the pending filing.

(4) *Applicant response.* The FDIC will provide copies of all comments received to the applicant and may give the applicant an opportunity to respond.

§ 303.10 Hearings and other meetings.

(a) *Matters covered.* This section covers hearings and other proceedings in connection with filings for or by:

(1) Deposit insurance by a proposed new depository institution or operating non-insured institution;

(2) An insured state nonmember bank to establish a domestic branch or to relocate a main office or domestic branch;

(3) Relocation of an insured branch of a foreign bank;

(4) (i) Merger or consolidation which requires the FDIC's prior approval under the Bank Merger Act (12 U.S.C. 1828(c));

(ii) Except as otherwise expressly provided, the provisions of this § 303.10 shall not be applicable to any proposed merger transaction which the FDIC Board of Directors determines must be acted upon immediately to prevent the probable default of one of the institutions involved or must be handled with expeditious action due to an existing emergency condition, as permitted by the Bank Merger Act (12 U.S.C. 1828(c)(6)); and

(5) Any other purpose or matter which the FDIC Board of Directors in its sole discretion deems appropriate.

(b) *Hearing requests.* Before the end of the comment period, any person may submit to the appropriate regional director (DOS) a written request for a hearing on a filing. The request must describe the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation of those issues or facts to the FDIC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

(c) *Action on a hearing request.* The regional director (DOS) may grant or deny a request for a hearing and may limit the issues that he or she deems relevant or material. The FDIC generally grants a hearing request only if it determines that written submissions would be insufficient or that a hearing otherwise would be in the public interest.

(d) *Denial of a hearing request.* If the regional director (DOS) denies a hearing request, he or she shall notify the person requesting the hearing of the reason for the denial. A decision to deny a hearing request shall be a final agency determination that is not appealable to the Board of Directors.

(e) *FDIC procedures prior to the hearing.* (1) *Notice of hearing.* The FDIC shall issue a notice of hearing if it grants a request for a hearing or orders a hearing because it is in the public interest. The notice of hearing shall state the subject and date of the filing, the time and place of the hearing, and the issues to be addressed. The FDIC shall send a copy of the notice of hearing to the applicant, to the person requesting the hearing, and to anyone else requesting a copy.

(2) *Presiding officer.* The FDIC shall appoint a presiding officer to conduct the hearing, who will usually be the appropriate regional director (DOS). The presiding officer is responsible for all procedural questions not governed by this § 303.10.

(f) *Participation in the hearing.* Any person who wishes to appear (participant) shall notify the appropriate regional director (DOS) of his or her intent to participate in the hearing no later than 10 days from the date that the FDIC issues the Notice of Hearing. At least 5 days before the hearing, each participant shall submit to the appropriate regional director (DOS), as well as to the applicant and any other person as required by the FDIC, the names of witnesses, a statement describing the proposed testimony of each witness, and one copy of each exhibit the participant intends to present.

(g) *Transcripts.* The FDIC shall arrange for a hearing transcript. The person requesting the hearing and the applicant each shall bear the cost of one copy of the transcript for his or her use unless such cost is waived by the presiding officer and incurred by the FDIC.

(h) *Conduct of the hearing.* (1) *Presentations.* Subject to the rulings of the presiding officer, the applicant and participants may make opening and closing statements and present witnesses, material, and data.

(2) *Information submitted.* Any person presenting material shall furnish one copy to the FDIC, one copy to the applicant, and one copy to each participant.

(3) *Laws not applicable to hearings.* The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. Appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*), and the FDIC's Rules of Practice and Procedure (12 CFR part 308) do not govern hearings under this § 303.10.

(i) *Closing the hearing record.* At the applicant's or any participant's request, or at the FDIC's discretion, the FDIC may keep the hearing record open for up to 10 days following the FDIC's receipt of the transcript. The FDIC shall resume processing the filing after the record closes.

(j) *Informal proceedings.* The FDIC may arrange for an informal proceeding with an applicant and other interested parties in connection with a filing, either upon receipt of a written request for such a meeting made during the comment period, or upon the FDIC's own initiative. No later than 10 days prior to an informal proceeding, the appropriate regional director (DOS) shall notify the applicant and each person who requested a hearing or oral presentation of the date, time, and place of the proceeding. The proceeding may assume any form, including a meeting with FDIC representatives at which participants will be asked to present their views orally. The appropriate regional director (DOS) or (DCA) may hold separate meetings with each of the participants.

(k) *Disposition and notice thereof.* The FDIC shall notify the applicant and all participants of the final disposition of a filing and shall provide a statement of the reasons for the final disposition.

(l) *Computation of time.* In computing periods of time under this section, the provisions of § 308.12 of the FDIC's Rules of Practice and Procedure (12 CFR 308.12) shall apply.

(m) *Authority retained by FDIC Board of Directors to modify procedures.* The FDIC Board of Directors may delegate authority by resolution on a case-by-case basis to the presiding officer to adopt different procedures in individual matters and on such terms and conditions as the Board of Directors determines in its discretion. Such resolution shall be made available for public inspection and copying in the Office of the Executive Secretary under the Freedom of Information Act (5 U.S.C. 552(a)(2)).

§ 303.11 Decisions.

(a) *General procedures.* The FDIC may approve, conditionally approve, deny, or not object to a filing after appropriate review and consideration of the record. The FDIC will promptly notify the applicant and any person who makes a written request of the final disposition of a filing. If the FDIC denies a filing, the FDIC will immediately notify the applicant in writing of the reasons for the denial.

(b) *Authority retained by FDIC Board of Directors to modify procedures.* In acting on any filing under this part, the FDIC Board of Directors may by resolution adopt procedures which differ from those contained in this part when it deems it necessary or in the public interest to do so. Such resolution shall be made available for public inspection and copying in the Office of the Executive Secretary under the Freedom of Information Act (5 U.S.C. 552(a)(2)).

(c) *Expedited processing.* (1) A filing submitted by an eligible depository institution as defined in § 303.2(r) of this part will receive expedited processing as specified in the appropriate subparts of this part unless the appropriate regional director or deputy regional director (DOS) chooses to remove the filing from expedited processing for the reasons set forth in paragraph (c)(2) of this section. Except for filings made pursuant to subpart J (foreign bank activities), expedited processing will not be available for any filing that the appropriate regional director (DOS) does not have delegated authority to approve.

(2) *Removal of filing from expedited processing.* The appropriate regional director or deputy regional director (DOS) may remove a filing from expedited procedures at any time prior to final disposition if:

(i) For filings subject to public notice under § 303.7, an adverse comment is received that warrants additional investigation or review;

(ii) For filings subject to evaluation of CRA performance under § 303.5, a CRA protest is received that warrants additional investigation or review, or the appropriate regional director (DCA) determines that the filing presents a significant CRA or compliance concern;

(iii) For any filing, the appropriate regional director (DOS) determines that the filing presents a significant supervisory concern, or raises a significant legal or policy issue; or

(iv) For any filing, the appropriate regional director (DOS) determines that other good cause exists for removal.

(3) For purposes of this section, a significant CRA concern includes but is not limited to a determination by the appropriate regional director (DCA) that, although a depository institution may have an institution-wide rating of satisfactory, a depository institution's CRA rating is less than satisfactory in a state or multi-state metropolitan statistical area (MSA), or a depository institution's CRA performance is less than satisfactory in an MSA or in the non-MSA portion of a state in which it seeks to expand through approval of an application for a deposit facility as defined in 12 U.S.C. 2902(3).

(4) If the FDIC determines that it is necessary to remove a filing from expedited review procedures pursuant to paragraph (c)(2) of this section, the FDIC promptly will provide the applicant with a written explanation.

(d) *Multiple transactions.* If the FDIC is considering related transactions, some or all of which have been granted expedited processing, then the longest processing time for any of the related transactions shall govern for purposes of approval.

(e) *Abandonment of filing.* A filing must contain all information set forth in the applicable subpart of this part. To the extent necessary to evaluate a filing, the FDIC may require an applicant to provide additional information. If information requested by the FDIC is not provided within the time period specified by the agency, the FDIC may deem the filing abandoned and shall provide written notification to the applicant and any interested parties that submitted comments to the FDIC that the file has been closed.

(f) *Appeals and petitions for reconsideration*—(1) *General.* Appeal procedures for a denial of a change in bank control (subpart E), change in senior executive officer or board of directors (subpart F) or denial of an application pursuant to section 19 of the FDI Act (subpart L) are contained in 12 CFR part 308, subparts D, L, and M, respectively. For all other filings covered by this chapter for which appeal procedures are not provided by regulation or other written guidance, the procedures specified in paragraphs (f)(2) through (5) of this section shall apply. A decision to deny a request for a hearing is a final agency determination that is not appealable to the Board of Directors pursuant to § 303.10(d) of this part.

(2) *Filing procedures.* Within 15 days of receipt of notice from the FDIC that its filing has been denied, any applicant may file a petition for reconsideration with the appropriate regional director (DOS), if the filing initially was submitted to DOS, or the appropriate regional director (DCA), if the filing initially was submitted to DCA.

(3) *Content of filing.* A petition for reconsideration must contain the following information:

(i) A resolution of the board of directors of the applicant authorizing filing of the petition, if the applicant is a corporation or other entity, or a letter signed by the individual(s) filing the petition, if the applicant is not a corporation or other entity;

(ii) Relevant, substantive information that for good cause was not previously set forth in the filing; and

(iii) Specific reasons why the FDIC should reconsider its prior decision.

(4) *Delegation of authority.* (i) Authority is delegated to the Director and Deputy Director (DOS) and (DCA), as appropriate and, where confirmed in writing by the appropriate Director, to an associate director and the appropriate regional director and deputy regional director, to grant a petition for reconsideration, after consultation with the Legal Division.

(ii) Authority is delegated to the Director and Deputy Director (DOS) and (DCA), as appropriate, to deny a petition for reconsideration, after consultation with the Legal Division.

(iii) Notwithstanding paragraphs (F)(4) (i) and (ii) of § 303.11, no reconsideration of a filing that originally required Legal Division concurrence may be acted upon without Legal Division concurrence.

(5) *Procedures for reconsideration of filings.* If a petition for reconsideration is granted, the filing will be reconsidered by:

(i) The Board of Directors, if the filing was originally denied by the Board of Directors or denied by the Director or Deputy Director or an associate director (DOS) or (DCA); or

(ii) The Director or Deputy Director (DOS) or (DCA), if the filing was originally denied by a regional director or deputy regional director.

(6) *Final decision.* Decisions made on a petition for reconsideration by the Director or Deputy Director (DOS) or (DCA) are final agency decisions and are not appealable to the Board of Directors.

(g) *Nullification of decision*—(1) *Materiol misrepresentation or omission.* If the FDIC subsequently becomes aware of any material misrepresentation or omission after the agency has rendered a decision on a filing, the FDIC may nullify its decision by providing written notification to the applicant of the determination and the reason therefor. Any person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to an enforcement action and other penalties, including criminal penalties provided in Title 18 of the United States Code.

(2) *Material change in circumstances.* If the FDIC is not informed by the applicant of a subsequent material change in circumstances prior to rendering a decision on a filing (for example, a material change in a business plan, or the financial condition of the depository institution), the FDIC may nullify its decision in the manner described in paragraph (g)(1) of this section.

(3) *Other nullifications.* The FDIC may nullify any decision on a filing that is contrary to law, regulation or FDIC policy, or granted due to clerical or administrative error, or a material mistake of law or fact.

§ 303.12 General rules governing delegations of authority.

(a) *Scope.* This section contains general rules governing the FDIC Board of Director's delegations of authority under this chapter. These principles are procedural in nature only and are not substantive standards. All delegations of authority, confirmations, limitations, revisions, and rescissions under this chapter must be in writing and maintained with the Office of the Executive Secretary.

(b) *Authority not delegated.* Except as otherwise expressly provided, the FDIC Board of Directors does not delegate its authority.

(1) The FDIC Board of Directors retains and does not delegate the authority to act on agreements with foreign regulatory or supervisory authorities, matters that would establish or change existing Corporation policy, matters that might attract unusual attention or publicity, or involve an issue of first impression notwithstanding any existing delegation of authority.

(2) The FDIC Board of Directors retains the authority to act on any filing or enforcement matter upon which any member of the Board of Directors wishes to act, even if the authority to act on such filing or enforcement matter has been delegated.

(c) *Exercise of delegated authority not mandated.* Any FDIC official with delegated authority under this chapter may elect not to exercise that authority.

(d) *Action by FDIC officials.* In matters where the FDIC Board of Directors has neither specifically delegated nor retained authority, FDIC officials may take action with respect to matters which generally involve conditions or circumstances requiring prompt action to protect the interests of the FDIC and to achieve flexibility and expedition in its operations and the exercise of FDIC functions under this part.

(e) *Construction.* The delegations of authority contained in this chapter are to be broadly construed in favor of the existence of authority in FDIC officials who act under delegated authority. Any exercise of delegated authority by an FDIC official is conclusive evidence of that official's authority.

(f) *Written confirmations, limitations, revisions or rescissions.* Where the FDIC Board of Directors has delegated authority to the Director (DOS), Director (DCA) or the General Counsel, or their respective designees, each shall have the right to confirm, limit, revise, or rescind any delegation of authority issued or approved by them, respectively, to any subordinate official(s).

§ 303.13 Delegations of authority to officials in the Division of Supervision and the Division of Compliance and Consumer Affairs.

(a) *CRA protests.* Where a CRA protest is filed and remains unresolved, authority is delegated to the Director and Deputy Director (DCA) and, where confirmed in writing by the Director, to an associate director or the appropriate regional director or deputy regional director to concur that approval of any filing subject to CRA is consistent with the purposes of CRA.

(b) *Adequacy of filings.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to determine whether a filing is substantially complete for purposes of commencing processing.

(c) *National Historic Preservation Act.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to enter into memoranda of agreement pursuant to regulations of the Advisory Council on Historic Preservation which implement the National Historic Preservation Act of 1966 (16 U.S.C. 470).

Subpart B—Deposit Insurance

§ 303.20 Scope.

This subpart sets forth the procedures for applying for deposit insurance for a proposed depository institution or an operating noninsured depository institution under section 5 of the FDI Act (12 U.S.C. 1815). It also sets forth the procedures for requesting continuation of deposit insurance for a state bank withdrawing from membership in the Federal Reserve System and for interim institutions chartered to facilitate a merger transaction. Related delegations of authority are also set forth.

§ 303.21 Filing procedures.

(a) Applications for deposit insurance shall be filed with the appropriate regional director (DOS). The relevant application forms and instructions for applying for deposit insurance for an existing or proposed depository institution may be obtained from any FDIC regional office (DOS).

(b) Application for deposit insurance for an interim depository institution shall be filed and processed in accordance with the procedures set forth in § 303.24 of this subpart. An interim depository institution is defined as an institution formed or organized solely for the purpose of facilitating a merger transaction which will be reviewed by a responsible agency as defined in section 18(c)(2) of the FDI Act.

(c) A request for continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System shall be in letter form and shall provide the information prescribed in § 303.25 of this subpart.

§ 303.22 Processing.

(a) *Expedited processing for proposed institutions.* (1) An application for deposit insurance for a proposed institution which will be a subsidiary of an eligible depository institution as defined in § 303.2(r) of this part or an eligible holding company will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. An eligible holding company is defined as a bank or thrift holding company that has consolidated assets of $150 million or more, has an assigned composite rating of 2 or better, and has at least 75 percent of its consolidated depository institution assets comprised of eligible depository institutions. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part.

(2) Under expedited processing, the FDIC will take action on an application within 60 days of receipt of a substantially complete application, or 20 days after publication, whichever is later. Final action may be withheld until the FDIC has assurance that permission to organize the proposed institution will be granted by the chartering authority. Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(b) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

§ 303.23 Public notice requirements.

(a) *De novo institutions and operating noninsured institutions.* The applicant shall publish a notice, as prescribed in § 303.7 of this part, in a newspaper of general circulation in the community in which the main office of the depository institution is or will be located. Notice shall be published as close as practicable to, but no sooner than five days before, the date the application is mailed or delivered to the regional director (DOS). Comments by interested parties must be received by the appropriate regional director (DOS) within 15 days following the date of publication, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2) of this part.

(b) *Exceptions to public notice requirements.* No publication shall be required in connection with the granting of insurance to a new depository institution established pursuant to the resolution of a failed depository institution, or to an interim depository institution formed or organized solely to facilitate a merger transaction, or for a request for continuation of federal deposit insurance by a state bank withdrawing from membership in the Federal Reserve System.

§ 303.24 Application for deposit insurance for an interim institution.

(a) *Content of application.* A letter application for deposit insurance for an interim institution, accompanied by a copy of the related merger application, shall be filed with the appropriate regional director. The letter application should briefly describe the transaction and contain a statement that deposit insurance is being requested for an interim institution formed or organized solely for the purpose of facilitating a merger transaction which will be reviewed by a federal banking agency other than the FDIC and that the institution will not open for business.

(b) *Processing.* An application for deposit insurance for an interim depository institution will be

acknowledged in writing by the FDIC. Final action will be taken within 21 days after receipt of a substantially complete application, unless the applicant is notified in writing that additional review is warranted. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

§ 303.25 Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.

(a) *Content of application.* To continue its insured status upon withdrawal from membership in the Federal Reserve System, a state bank must submit a letter application to the appropriate regional director (DOS). A complete application shall consist of the following information:

(1) A copy of the letter, and any attachments thereto, sent to the Federal Reserve setting forth the bank's intention to terminate its membership;

(2) A copy of the letter from the Federal Reserve acknowledging the bank's notice to terminate membership;

(3) A statement regarding any anticipated changes in the bank's general business plan during the next 12-month period; and

(4)(i) A statement by the bank's management that there are no outstanding or proposed corrective programs or supervisory agreements with the Federal Reserve System.

(ii) If such programs or agreements exist, a statement by applicant that its Board of Directors is willing to enter into a similar supervisory agreement with the FDIC which would become effective upon withdrawal from the Federal Reserve System.

(b) *Processing.* An application for deposit insurance under this section will be acknowledged in writing by the FDIC. The appropriate regional director (DOS) shall notify the applicant, within 15 days of receipt of a substantially complete application, either that federal deposit insurance will continue upon termination of membership in the Federal Reserve System or that additional review is warranted and the applicant will be notified, in writing, of the FDIC's final decision regarding continuation of deposit insurance. If the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

§ 303.26 Delegation of authority.

(a) *Proposed depository institutions.* (1) Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for deposit insurance for proposed depository institutions. For the Director, Deputy Director or associate director (DOS) to exercise this authority, paragraphs (a)(1)(i) through (a)(1)(iv) of this section must be satisfied and the applicant shall have agreed in writing to comply with any conditions imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent. For the regional director or deputy regional director (DOS) to exercise this authority, paragraphs (a)(1)(i) through (a)(1)(v) of this section must be satisfied and the applicant shall have agreed in writing to comply with any conditions imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent.

(i) The factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) No unresolved management interlocks, as prohibited by the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*), part 348 of this chapter or any other applicable implementing regulation, exist;

(iii) The application is in conformity with the standards and guidelines for the granting of deposit insurance established in the FDIC statement of policy "Applications for Deposit Insurance" (2 FDIC Law, Regulations and Related Acts (FDIC) 5349); and

(iv) Compliance with the CRA, the NEPA, the NHPA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(v) No CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for deposit insurance filed by or on behalf of proposed interim depository institutions formed or organized solely for the purpose of facilitating a merger transaction which will be reviewed by a responsible agency as defined in section 18(c)(2) of the FDI Act.

(b) *Operating noninsured depository institutions.* Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for deposit insurance by operating noninsured depository institutions. For the delegate to exercise this authority, the following criteria must be satisfied and the applicant shall have agreed in writing to comply with any condition imposed by the delegate, other than those listed in paragraph (d) of this section which may be imposed without the applicant's consent:

(1) The applicant is determined to be eligible for federal deposit insurance for the class of institution to which the applicant belongs in the state (as defined in 12 U.S.C. 1813(a)) in which the applicant is located;

(2) The factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(3) No unresolved management interlocks, as prohibited by the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*), part 348 of this chapter or any other applicable implementing regulation, exist;

(4) The application is in conformity with the standards and guidelines for the granting of deposit insurance to operating noninsured depository institutions established in the FDIC policy statement "Applications for Deposit Insurance" (2 FDIC Law, Regulations and Related Acts (FDIC) 5349);

(5) Compliance with the CRA, the NEPA, the NHPA, and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(6) No CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA.

(c) *Continuation of deposit insurance upon withdrawing from membership in the Federal Reserve System.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve continuation of federal deposit insurance where the applicant has agreed in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part which may be imposed without the applicant's written consent.

(d) *Conditions that may be imposed under delegated authority.* Following are conditions which may be imposed by a delegate in approving applications for deposit insurance without affecting the authority granted under paragraphs (a) and (b) of this section:

(1) The applicant will provide a specific amount of initial paid-in capital;

(2) With respect to a proposed depository institution that has applied for deposit insurance pursuant to this subpart, the Tier 1 capital to assets leverage ratio (as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator) will be maintained at not less than eight percent throughout the first three years of operation and that an adequate allowance for loan and lease losses will be provided;

(3) Any changes in proposed management or proposed ownership to the extent of 10 or more percent of stock, including new acquisitions of or subscriptions to 10 or more percent of stock shall be approved by the FDIC prior to the opening of the depository institution;

(4) The applicant will adopt an accrual accounting system for maintaining the books of the depository institution;

(5) Where applicable, deposit insurance will not become effective until the applicant has been granted a charter as a depository institution, has authority to conduct a depository institution business, and its establishment and operation as a depository institution have been fully approved by the appropriate state and/or federal supervisory authority;

(6) Where deposit insurance is granted to an interim institution formed or organized solely to facilitate a related transaction, deposit insurance will only become effective in conjunction with consummation of the related transaction;

(7) Where applicable, a registered or proposed bank holding company, or a registered or proposed thrift holding company, has obtained approval of the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision to acquire voting stock control of the proposed depository institution prior to its opening;

(8) Where applicable, the applicant has submitted any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters to the appropriate regional director for review and comment;

(9) Where applicable, full disclosure has been made to all proposed directors and stockholders of the facts concerning the interest of any insider in any transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved. An insider is one who is or is proposed to be a director, officer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 or more percent of any class of the applicant's outstanding voting stock; or the associates or interests of any such person;

(10) The person(s) selected to serve as the principal operating officer(s) shall be acceptable to the regional director;

(11) The applicant will have adequate fidelity coverage;

(12) The depository institution will obtain an audit of its financial statements by an independent public accountant annually for at least the first three years after deposit insurance is effective, furnish a copy of any reports by the independent auditor (including any management letters) to the appropriate FDIC regional office within 15 days after their receipt by the depository institution and notify the appropriate FDIC regional office within 15 days when a change in its independent auditor occurs; and

(13) Any standard condition defined in § 303.2(ff) of this part.

§ 303.27 Authority retained by the FDIC Board of Directors.

Without limiting the Board of Director's authority, the Board of Directors retains authority to deny applications for deposit insurance and approve applications for deposit insurance where the applicant does not agree in writing to comply with any condition imposed by the FDIC, other than the standard conditions listed in §§ 303.2(ff) and 303.26(d) of this part, which may be imposed without the applicant's written consent.

Subpart C—Establishment and Relocation of Domestic Branches and Offices

§ 303.40 Scope.

(a) *General.* This subpart sets forth the application requirements and procedures and the delegation of authority for insured state nonmember banks to establish a branch, relocate a main office, and relocate a branch subject to the approval by the FDIC pursuant to sections 13(f), 13(k), 18(d) and 44 of the FDI Act.

(b) *Mergers.* Applications for approval of the acquisition and establishment of branches in connection with a merger transaction under section 18(c) of the FDI Act (12 U.S.C. 1828(c)), are processed in accordance with subpart D (Mergers) of this part.

(c) *Insured branches of foreign banks and foreign branches of domestic banks.* Applications regarding insured branches of foreign banks and foreign branches of domestic banks are processed in accordance with subpart J (Foreign Bank Activities) of this part.

(d) *Interstate acquisition of individual branch.* Applications requesting approval of the interstate acquisition of an individual branch or branches located in a state other than the applicant's home state without the acquisition of the whole bank are treated as interstate bank merger transactions under section 44 of the FDI Act (12 U.S.C. 1831a(u)), and are processed in accordance with subpart D (Mergers) of this part.

§ 303.41 Definitions.

For purposes of this subpart:

(a) *Branch* includes any branch bank, branch office, additional office, or any branch place of business located in any State of the United States or in any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands at which deposits are received or checks paid or money lent. A branch does not include an automated teller machine, an automated loan machine, or a remote service unit. The term branch also includes the following:

(1) A *messenger service* that is operated by a bank or its affiliate that picks up and delivers items relating to transactions in which deposits are received or checks paid or money lent. A messenger service established and operated by a non-affiliated third party generally does not constitute a branch for purposes of this subpart. Banks contracting with third parties to provide messenger services should consult with the appropriate regional director (DOS) to determine if the messenger service constitutes a branch.

(2) A *mobile branch*, other than a messenger service, that does not have a single, permanent site and uses a vehicle that travels to various locations to enable the public to conduct banking business. A mobile branch may serve defined locations on a regular schedule

or may serve a defined area at varying times and locations.

(3) A *temporary branch* that operates for a limited period of time not to exceed one year as a public service, such as during an emergency or disaster situation.

(4) A *seasonal branch* that operates at various periodically recurring intervals, such as during state and local fairs, college registration periods, and other similar occasions.

(b) *Branch relocation* means a move within the same immediate neighborhood of the existing branch that does not substantially affect the nature of the business of the branch or the customers of the branch. Moving a branch to a location outside its immediate neighborhood is considered the closing of an existing branch and the establishment of a new branch.

(c) *De novo branch* means a branch of a bank which is established by the bank as a branch and does not become a branch of such bank as a result of:

(1) The acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(2) The conversion, merger, or consolidation of any such institution or branch.

(d) *Home state* means the state by which the bank is chartered.

(e) *Host state* means a state, other than the home state of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

§ 303.42 Filing procedures.

(a) *General.* An applicant shall submit an application to the appropriate regional director (DOS) on the date the notice required by § 303.44 of this subpart is published, or within 5 days after the date of the last required publication.

(b) *Content of filing.* A complete letter application shall include the following information:

(1) A statement of intent to establish a branch, or to relocate the main office or a branch;

(2) The exact location of the proposed site including the street address. With regard to messenger services, specify the geographic area in which the services will be available. With regard to a mobile branch, specify the community or communities in which the vehicle will operate and the intention to:

(i) Serve defined locations on a regular schedule; or

(ii) Be open at varying times and locations; or

(iii) A combination of paragraphs (b)(2)(i) and (b)(2)(ii) of this section;

(3) Details concerning any involvement in the proposal by an insider of the bank as defined in § 303.2(u) of this part, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(4) A statement on the impact of the proposal on the human environment, including, information on compliance with local zoning laws and regulations and the effect on traffic patterns, for purposes of complying with the applicable provisions of the NEPA;

(5) A statement as to whether or not the site is included in or is eligible for inclusion in the National Register of Historic Places, including a statement that clearance has been or will be obtained from the State Historic Preservation Officer for purposes of complying with applicable provisions of the NHPA;

(6) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the CRA;

(7) A copy of each newspaper publication required by § 303.44 of this subpart, the name and address of the newspaper, and date of the publication;

(8) When an application is submitted to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch, a statement that the applicant has requested that the host state provide to the appropriate regional director (DOS) written confirmation:

(i) That the applicant has complied with that state's filing requirements; and

(ii) That the applicant has also submitted to the host state bank supervisor a copy of the filing with the FDIC to establish and operate a de novo branch.

(9) When an application is submitted to relocate the main office of the applicant from one state to another, a statement of the applicant's intent regarding retention of branches in the state where the main office exists prior to relocation.

(c) *Undercapitalized institutions.* Applications to establish a branch by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831o) also should provide the information required by § 303.204 of this part. Applications pursuant to sections 38 and 18(d) of the FDI Act (12 U.S.C. 1831o and 1828(d)) may be filed concurrently or as a single application.

(d) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

§ 303.43 Processing.

(a) *Expedited processing for eligible depository institutions.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) of this part will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(1) The 21st day after receipt by the FDIC of a substantially complete filing;

(2) The 5th day after expiration of the comment period described in § 303.44 of this part; or

(3) In the case of an application to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch, the 5th day after the FDIC receives confirmation from the host state that the applicant has both complied with the application requirements of the host state and submitted a copy of the application with the FDIC to the host state bank supervisor.

(b) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

§ 303.44 Public notice requirements.

(a) *Newspaper publications.* For applications to establish or relocate a branch, a notice as described in § 303.7(b) of this part shall be published once in a newspaper of general circulation. For applications to relocate a main office, notice shall be published at least once each week on the same day for two consecutive weeks. The required publication shall be made in the following communities:

(1) *To establish a branch.* In the community in which the main office is located and in the communities to be served by the branch (including messenger services and mobile branches).

(2) *To relocate a main office.* In the community in which the main office is currently located and in the community to which the main office proposes to relocate.

(3) *To relocate a branch.* In the community in which the branch is located.

(b) *Public comments.* Comments by interested parties must be received by the appropriate regional director (DOS) within 15 days after the date of the last newspaper publication required by paragraph (a) of this section, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2) of this part.

(c) *Lobby notices.* In the case of applications to relocate a main office or a branch, a copy of the required newspaper publication shall be posted in the public lobby of the office to be relocated for at least 15 days beginning with the date of the last published notice required by paragraph (a) of this section.

§ 303.45 Special provisions.

(a) *Emergency or disaster events.* (1) In the case of an emergency or disaster at a main office or a branch which requires that an office be immediately relocated to a temporary location, applicants shall notify the appropriate regional director (DOS) within 3 days of such temporary relocation.

(2) Within 10 days of the temporary relocation resulting from an emergency or disaster, the bank shall submit a written application to the appropriate regional director (DOS), that identifies the nature of the emergency or disaster, specifies the location of the temporary branch, and provides an estimate of the duration the bank plans to operate the temporary branch.

(3) As part of the review process, the appropriate regional director (DOS) will determine on a case by case basis whether additional information is necessary and may waive public notice requirements.

(b) *Redesignation of main office and existing branch.* In cases where an applicant desires to redesignate its main office as a branch and redesignate an existing branch as the main office, an application shall be submitted to relocate the main office and to relocate or establish a branch as appropriate. The appropriate regional director (DOS) may waive the public notice requirements in instances where an application presents no significant or novel policy, supervisory, CRA, compliance or legal concerns. Such waiver will be granted only to a redesignation within the applicant's home state.

(c) *Expiration of approval.* Approval of an application expires if a branch has not commenced business or if a relocation has not been completed within 18 months after date of approval.

§ 303.46 Delegation of authority.

(a) *Approval of applications.* (1) Where the applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part which may be imposed without the applicant's written consent, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve the applications listed in this paragraph (a)(1). For the Director, Deputy Director or associate director (DOS) to exercise this authority, paragraphs (c)(1) through (c)(4) and (c)(6) through (c)(7) of this section must be satisfied. For the regional director or deputy regional director (DOS) to exercise this authority, criteria in paragraphs (c) (1)–(7) of this section must be satisfied.

(i) Establish a branch;

(ii) Establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch;

(iii) Relocate a main office; and

(iv) Relocate a branch; or

(2) Where the applicant does not agree in writing to comply with any condition imposed by the delegate, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to approve the applications listed in paragraph (a)(1) of this section.

(b) *Denial of applications.* (1) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to deny an application to establish a temporary branch.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to deny applications for consent to:

(i) Establish a branch;

(ii) Establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch;

(iii) Relocate a main office; and

(iv) Relocate a branch.

(c) *Criteria for delegated authority.* The following criteria must be satisfied before the authority delegated in paragraph (a) of this section may be exercised:

(1) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved except that this criterion does not apply to applications to establish messenger services and temporary branches;

(2) The applicant meets the capital requirements set forth in 12 CFR part 325 and the FDIC's "Statement of Policy on Capital Adequacy" (12 CFR part 325, appendix B) or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the consummation of the transaction which is the subject of the filing, except that this criterion does not apply to applications to establish messenger services and temporary branches, or to relocate branches or main offices;

(3) Any financial arrangements which have been made in connection with the proposed branch or relocation and which involve the applicant's insiders are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;

(4) Compliance with the CRA, the NEPA, the NHPA, and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

(5) No CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director (DCA) or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA;

(6) An applicant with one or more existing branches in a state other than the applicant's home state has not failed the credit needs test in a host state under section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a).

(7) Additionally, for applications submitted to establish and operate a de novo branch in a state that is not the applicant's home state and in which the applicant does not maintain a branch:

(i) Receipt by the appropriate regional director (DOS) of the host state's written confirmation that the applicant has complied with that state's filing requirements and that the applicant also has submitted to the host state bank supervisor a copy of its FDIC filing to establish and operate a de novo branch;

(ii) Determination by the FDIC that the applicant is adequately capitalized as of the date of the filing and will continue to be adequately capitalized and adequately managed upon consummation of the transaction;

(iii) Confirmation that the host state has in effect a law that meets the requirements of section 18(d)(4)(A) of

the FDI Act (12 U.S.C. 1828(d)(4)(A)); and

(iv) Compliance with section 44(b)(3) of the FDI Act (12 U.S.C. 1831u(b)(3)); and

(8) Additionally, for applications submitted to relocate a main office from one state to another where the applicant seeks to retain branches in the state where the applicant's main office exists prior to an interstate relocation of the main office, confirmation that the filing meets the requirements of section 18(d)(3)(B) of the FDI Act (12 U.S.C. 1828(d)(3)(B)).

Subpart D—Mergers

§ 303.60 Scope.

This subpart sets forth the application requirements, procedures, and delegations of authority for transactions subject to FDIC approval under the Bank Merger Act, section 18(c) of the FDI Act (12 U.S.C. 1828(c)).

§ 303.61 Definitions.

For purposes of this subpart:

(a) *Merger* includes any transaction in which an insured depository institution:

(1) Merges or consolidates with any other insured depository institution or, either directly or indirectly, acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution; or

(2) Merges or consolidates with any noninsured bank or institution or assumes liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or transfers assets to any noninsured bank or institution in consideration of the assumption of liability for any portion of the deposits made in such insured depository institution.

(b) *Corporate reorganization* means a merger between commonly-owned institutions, between an insured depository institution and its subsidiary, or between an insured depository institution and its holding company, provided that the merger would have no effect on competition or otherwise have significance under the statutory standards set forth in section 18(c) of the FDI Act (12 U.S.C. 1828(c)). For purposes of this paragraph, institutions are commonly-owned if more than 50 percent of the voting stock of each of the institutions is owned by the same company, individual, or group of closely-related individuals acting in concert.

(c) *Interim merger* means a merger (other than a purchase and assumption transaction) between an operating depository institution and a newly-formed depository institution or corporation that will not open for business and that exists solely for the purpose of facilitating a corporate reorganization.

(d) *Optional conversion* (Oakar transaction) means a merger in which an insured depository institution assumes deposit liabilities insured by the deposit insurance fund (either the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF)) of which that assuming institution is not a member, and elects not to convert the insurance covering the assumed deposits. Such transactions are covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

(e) *Resulting institution* refers to the surviving institution upon consummation of a merger.

§ 303.62 Transactions requiring prior approval.

(a) *Mergers.* The following transactions require the prior written approval of the FDIC under this subpart:

(1) Any merger, including any corporate reorganization, interim merger, or optional conversion, in which the resulting institution is to be an insured state nonmember bank; and

(2) Any merger, including any corporate reorganization or interim merger, that involves an uninsured bank or institution.

(b) *Related provisions.* Transactions covered by this subpart also may be subject to other provisions or application requirements, including the following:

(1) *Interstate mergers.* Interstate mergers between insured banks are subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u). In the case of a merger that consists of the acquisition of a branch without acquisition of the bank, the branch is treated for section 44 purposes as a bank whose home state is the state in which the branch is located.

(2) *Deposit insurance.* An application for deposit insurance will be required in connection with a merger between a state-chartered interim institution and an insured depository institution if the related merger application is being acted upon by a federal banking agency other than the FDIC. If the FDIC is the federal banking agency responsible for acting on the related merger application, a separate application for deposit insurance is not necessary. Procedures for applying for deposit insurance are set forth in subpart B of this part. An application for deposit insurance will not be required in connection with a merger of a federally-chartered interim institution and an insured institution, even if the resulting institution is to operate under the charter of the federal interim institution.

(3) *Deposit insurance fund conversions.* Procedures for conversion transactions involving the transfer of deposits from BIF to SAIF or from SAIF to BIF are set forth in subpart M of this part at § 303.246.

(4) *Branch closings.* Branch closings in connection with a merger are subject to the notice requirements of section 42 of the FDI Act (12 U.S.C. 1831r–1), including requirements for notice to customers. These requirements are addressed in the Interagency Policy Statement Concerning Branch Closings Notices and Policies (2 FDIC Law, Regulations and Related Acts (FDIC) 5391).

(5) *Undercapitalized institutions.* Applications for a merger by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831o) should also provide the information required by § 303.204 of this part. Applications pursuant to sections 38 and 18(c) of the FDI Act (12 U.S.C. 1831o and 1828(c)) may be filed concurrently or as a single application.

(6) *Certification of assumption of deposit liability.* An insured depository institution assuming deposit liabilities of another insured institution must provide certification of assumption of deposit liability to the FDIC in accordance with 12 CFR part 307.

§ 303.63 Filing procedures.

(a) *General.* Applications required under this subpart shall be filed with the appropriate regional director (DOS). The appropriate forms and instructions, including instructions concerning notice to depositors where applicable, may be obtained upon request from any DOS regional office.

(b) *Mergers.* Applications for approval of mergers shall be accompanied by copies of all agreements or proposed agreements relating to the merger and any other information requested by the FDIC.

(c) *Interim mergers.* Applications for approval of interim mergers and any related deposit insurance applications shall be made by filing the forms and other documents required by paragraphs (a) and (b) of this section and such other information as may be required by the FDIC for consideration of the request for deposit insurance.

(d) *Optional conversions.* Applications for optional conversions shall include a statement that the proposed merger is a transaction covered by section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)).

§ 303.64 Processing.

(a) *Expedited processing for eligible depository institutions.* (1) *General.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) of this part and which meets the additional criteria in paragraph (a)(4) of this section will be acknowledged by the FDIC in writing and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part.

(2) Under expedited processing, the FDIC will take action on an application by the date that is the latest of:

(i) 45 days after the date of the FDIC's receipt of a substantially complete merger application; or

(ii) 10 days after the date of the last notice publication required under § 303.65 of this subpart; or

(iii) 5 days after receipt of the Attorney General's report on the competitive factors involved in the proposed transaction; or

(iv) For an interstate merger subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 days after the FDIC confirms that the applicant has satisfactorily complied with the filing requirements of the resulting institution's host state.

(3) Notwithstanding paragraph (a)(1) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(4) *Qualifications.*—(i) *Criteria.* The FDIC will process an application using expedited procedures if:

(A) All parties to the merger are eligible depository institutions as defined in § 303.2(r) of this part; and

(B) Immediately following the merger, the resulting institution will be "well capitalized" pursuant to subpart B of part 325 of this chapter (12 CFR part 325).

(b) *Standard processing.* For those applications not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action taken by the FDIC on the application as soon as the decision is rendered.

§ 303.65 Public notice requirements.

(a) *General.* Except as provided in paragraph (b) of this section, an applicant for approval of a merger must publish notice of the proposed transaction on at least three occasions at approximately two-week intervals in a newspaper of general circulation in the community or communities where the main offices of the merging institutions are located or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto.

(1) *First publication.* The first publication of the notice should be as close as practicable to the date on which the application is filed with the FDIC, but no more than 5 days prior to the filing date.

(2) *Last publication.* The last publication of the notice shall be on the 30th day after the first publication or, if the newspaper does not publish on the 30th day, on the newspaper's publication date that is closest to the 30th day.

(b) *Exceptions.*—(1) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, notice shall be published twice during a 10-day period. The first notice shall be published as soon as possible after the FDIC notifies the applicant of such determination. The second notice shall be published on the 10th day after the first publication or, if the newspaper does not publish on the 10th day, on the newspaper's publication date that is closest to the 10th day.

(2) *Probable failure.* If the FDIC determines that it must act immediately to prevent the probable failure of one of the institutions involved in a proposed merger, publication is not required.

(c) *Content of notice.*—(1) *General.* The notice shall conform to the public notice requirements set forth in § 303.7 of this part.

(2) *Branches.* If it is contemplated that the resulting institution will operate offices of the other institution(s) as branches, the following statement shall be included in the notice required in section § 303.7(b):

It is contemplated that all offices of the above-named institutions will continue to be operated (with the exception of [insert identity and location of each office that will not be operated]).

(3) *Emergency requiring expeditious action.* If the FDIC determines that an emergency exists requiring expeditious action, the notice shall specify as the closing date of the public comment period the date that is the 10th day after the date of the first publication.

(d) *Public comments.* Comments must be received by the regional director (DOS) within 35 days after the first publication of the notice, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2). If the FDIC has determined that an emergency exists requiring expeditious action, comments must be received by the regional director within 10 days after the first publication.

§ 303.66 Delegation of authority.

(a) *General.*—(1) *Bank Merger Act approval.* Subject to paragraphs (a)(3) and (e) of this section, authority is delegated in paragraphs (b), (c), and (d) of this section to the designated FDIC officials to approve under the Bank Merger Act any application filed under this subpart for approval of a merger for which the specified criteria are satisfied.

(2) *Interstate merger approval.* With respect to an interstate merger covered by section 44 of the FDI Act (12 U.S.C. 1831u), in addition to the authority delegated to any official in paragraph (b), (c), or (d) of this section to approve the merger under the Bank Merger Act, authority is also delegated to such official to approve the merger under section 44. This delegation is subject to paragraph (a)(3) of this section and to the condition that the merger is eligible for FDIC approval under section 44.

(3) *Combined approvals.* The delegations in paragraphs (a)(2), (b), (c), and (d) of this section do not apply to an interstate bank merger covered both by section 44 and by the Bank Merger Act, unless the merger is being approved pursuant to delegated authority under both section 44 and the Bank Merger Act.

(b) *Basic delegation.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, and the appropriate regional director and deputy regional director to approve applications under the Bank Merger Act. For the Director, Deputy Director or associate director (DOS) to exercise this authority, paragraphs (b)(1) through (4) and (b)(6) of this section must be satisfied. For the regional director or deputy regional director (DOS) to exercise this authority, paragraphs (b)(1) through (b)(6) of this section must be satisfied.

(1) The resulting institution would meet all applicable capital requirements upon consummation of the transaction (or, where the resulting entity is an insured branch of a foreign bank, would be in compliance with 12 CFR 346.20 upon consummation of the transaction); and

(2) The factors set forth in section 18(c)(5) of the Act (12 U.S.C. 1828(c)(5)) have been considered and favorably resolved; and

(3)(i) The merging institutions do not operate in the same relevant geographic market(s); or

(ii) In each relevant geographic market in which more than one of the merging

institutions operate, the resulting institution upon consummation of the merger would hold no more than 15 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in the market; or

(iii) In each relevant geographic market in which more than one of the merging institutions operate, the resulting institution upon consummation of the merger would hold no more than 25 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in the market, and the Attorney General has notified the FDIC in writing that the proposed merger would not have a significantly adverse effect on competition; and

(4) Compliance with the CRA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved; and

(5) No CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), associate director (DCA), the appropriate regional director (DCA), or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA, and the applicant agrees in writing to any conditions imposed regarding the CRA; and

(6) The applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part, which may be imposed without the applicant's written consent.

(c) *Additional delegations.* In addition to the delegations otherwise provided for in this section, and subject to the criteria set forth in paragraphs (b)(1), (2), (4) and (6) of this section, authority is delegated to the Director and to the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to approve an application for a merger upon the consummation of which the resulting institution would hold not more than 35 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in any relevant geographic market in which more than one of the merging institutions operate, and the Attorney General has notified the FDIC in writing that the merger would not have a significantly adverse effect on competition.

(d) *Corporate reorganizations; interim mergers.*—(1) *Basic delegation.* In addition to the delegations otherwise provided for in this section, authority is delegated to the Director and to the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve:

(i) An application for a corporate reorganization that satisfies the criteria set forth in paragraphs (b) (5) and (6) of this section; and

(ii) Any related application for deposit insurance.

(2) *Additional delegation.* Authority is further delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to approve:

(i) An application for corporate reorganization that satisfies the criteria set forth in paragraphs (b)(6) of this section and as to which a CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved; and

(ii) Any related application for deposit insurance.

(e) *Limitations.* The delegations in paragraphs (b) through (d) of this section do not apply if:

(1) The Attorney General of the United States has determined that the merger would have a significantly adverse effect on competition; or

(2) The FDIC has made a determination pursuant to section (c)(6) of the Bank Merger Act (12 U.S.C. 1828(c)(6)) that an emergency exists requiring expeditious action or that the transaction must be consummated immediately in order to avoid a probable failure.

(f) *Review of competitive factors reports.* In deciding whether to approve a merger under the authority delegated by this section, the delegate shall review any reports provided by the Attorney General of the United States, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Director of the Office of Thrift Supervision in response to a request by the FDIC for reports on the competitive factors involved in the proposed merger. If the Attorney General has not provided a competitive factors report and if the delegation criterion specified in either paragraph (b)(3) (i) or (ii) of this section is satisfied, the delegate may request from the FDIC's General Counsel or designee a written opinion as to whether the proposed merger may have a significantly adverse effect on competition.

(g) *Competitive factor reports provided by the FDIC.* Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to furnish requested reports to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Director of the Office of Thrift Supervision on the competitive factors involved in any merger subject to approval by one of those agencies, if the delegate is of the view that the proposed merger would not have a substantially adverse effect on competition.

§ 303.67 Authority retained by the FDIC Board of Directors

Without limiting the authority of the Board of Directors, the Board of Directors retains authority to act on applications covered by this subpart if the criteria or other conditions for delegation are not satisfied. This includes the retention of authority to deny applications for merger transactions. It further includes retention of authority to approve applications for merger transactions where:

(a) The limitations specified in § 303.66(e) preclude action under delegated authority;

(b) The applicant does not agree in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part, which may be imposed without the applicant's written consent; or

(c) The resulting institution, upon consummation of a merger other than a corporate reorganization, would have more than 35 percent of the total deposits held by banks and/or other depository institutions (as appropriate) in any relevant geographic market in which more than one of the merging institutions operate.

Subpart E—Change in Bank Control

§ 303.80 Scope.

This subpart sets forth the procedures for submitting a notice to acquire control of an insured state nonmember bank pursuant to the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)), and delegations of authority regarding such filings.

§ 303.81 Definitions.

For purposes of this subpart:

(a) *Acquisition* means a purchase, assignment, transfer, pledge or other disposition of voting shares, or an increase in percentage ownership of an insured state nonmember bank resulting from a redemption of voting shares.

(b) *Acting in concert* means knowing participation in a joint activity or parallel action towards a common goal

of acquiring control of an insured state nonmember bank, whether or not pursuant to an express agreement.

(c) *Control* means the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 percent or more of any class of voting shares of an insured bank.

(d) *Person* means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, and any other form of entity; and a voting trust, voting agreement, and any group of persons acting in concert.

§ 303.82 Transactions requiring prior notice.

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the FDIC 60 days prior written notice, as specified in § 303.84 of this subpart, before acquiring control of an insured state nonmember bank, unless the acquisition is exempt under § 303.83.

(b) *Acquisitions requiring prior notice.*—(1) *Acquisition of control.* The acquisition of control, unless exempted, requires prior notice to the FDIC.

(2) *Rebuttable presumption of control.* The FDIC presumes that an acquisition of voting shares of an insured state nonmember bank constitutes the acquisition of the power to direct the management or policies of an insured bank requiring prior notice to the FDIC, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting shares of the institution, and if:

(i) The institution has registered shares under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting shares immediately after the transaction. If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting shares of an insured state nonmember bank, each such person shall file prior notice with the FDIC.

(c) *Acquisitions of loans in default.* The FDIC presumes an acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank to be an acquisition of the underlying shares for purposes of this section.

(d) *Other transactions.* Transactions other than those set forth in paragraph (b)(2) of this section resulting in a person's control of less than 25 percent of a class of voting shares of an insured state nonmember bank are not deemed by the FDIC to constitute control for purposes of the Change in Bank Control Act.

(e) *Rebuttal of presumptions.* Prior notice to the FDIC is not required for any acquisition of voting shares under the presumption of control set forth in this section, if the FDIC finds that the acquisition will not result in control. The FDIC will afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal conference.

§ 303.83 Transactions not requiring prior notice.

(a) *Exempt transactions.* The following transactions do not require notice to the FDIC under this subpart:

(1) The acquisition of additional voting shares of an insured state nonmember bank by a person who:

(i) Held the power to vote 25 percent or more of any class of voting shares of that institution continuously since March 9, 1979, or since that institution commenced business, whichever is later; or

(ii) Is presumed, under § 303.82(b)(2) of this subpart, to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting shares held does not exceed 25 percent or more of any class of voting shares of the institution or, in other cases, where the FDIC determines that the person has controlled the bank continuously since March 9, 1979;

(2) The acquisition of additional shares of a class of voting shares of an insured state nonmember bank by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 303.82 of this subpart) after complying with the procedures of the Change in Bank Control Act to acquire voting shares of the institution under this subpart;

(3) Acquisitions of voting shares subject to approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842(a)), section 18(c) of the FDI Act (12 U.S.C. 1828(c)), or section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a);

(4) Transactions exempt under the Bank Holding Company Act: foreclosures by institutional lenders, fiduciary acquisitions by banks, and increases of majority holdings by bank holding companies described in sections 2(a)(5), 3(a)(A), or 3(a)(B) respectively of the Bank Holding Company Act (12 U.S.C. 1841(a)(5), 1842(a)(A), and 1842(a)(B));

(5) A customary one-time proxy solicitation;

(6) The receipt of voting shares of an insured state nonmember bank through a pro rata stock dividend; and

(7) The acquisition of voting shares in a foreign bank, which has an insured branch or branches in the United States. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j) (9), (10), and (12)).)

(b) *Prior notice exemption.* (1) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate regional director (DOS) within 90 calendar days after the acquisition and provides any relevant information requested by the regional director (DOS):

(i) The acquisition of voting shares through inheritance;

(ii) The acquisition of voting shares as a bona fide gift; or

(iii) The acquisition of voting shares in satisfaction of a debt previously contracted in good faith, except that the acquiror of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities shall file a notice before the loan is acquired.

(2) The following acquisitions of voting shares of an insured state nonmember bank, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate regional director (DOS) within 90 calendar days after receiving notice of the acquisition and provides any relevant information requested by the regional director (DOS):

(i) A percentage increase in ownership of voting shares resulting from a redemption of voting shares by the issuing bank; or

(ii) The sale of shares by any shareholder that is not within the control of a person resulting in that person becoming the largest shareholder.

(3) Nothing in paragraph (b)(1) of this section limits the authority of the FDIC to disapprove a notice pursuant to § 303.85(c) of this subpart.

§ 303.84 Filing procedures.

(a) *Filing notice.* (1) A notice required under this subpart shall be filed with the appropriate regional director (DOS)

and shall contain all the information required by paragraph 6 of the Change in Bank Control Act, section 7(j) of the FDI Act (12 U.S.C. 1817(j)(6)), or prescribed in the designated interagency form which may be obtained from any FDIC regional office.

(2) The FDIC may waive any of the informational requirements of the notice if the FDIC determines that it is in the public interest.

(3) A notificant shall notify the appropriate regional director (DOS) immediately of any material changes in a notice submitted to the regional director (DOS), including changes in financial or other conditions.

(4) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated interagency form, together with a statement of any material changes since the date of the statement or summary. The regional director (DOS), nevertheless, may request additional information if appropriate.

(b) *Other laws.* Nothing in this regulation shall affect any obligation which the acquiring person(s) may have to comply with the federal securities laws or other laws.

§ 303.85 Processing.

(a) *Acceptance of notice.* The 60-day notice period specified in § 303.82 of this subpart shall commence on the date of receipt of a substantially complete notice. The regional director (DOS) shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is accepted for processing. The FDIC may request additional relevant information at any time.

(b) *Time period for FDIC action.*—(1) *Consummation of acquisition.* (i) The notificant(s) may consummate the proposed acquisition 60 days after submission to the regional director (DOS) of a substantially complete notice under paragraph (a) of this section, unless within that period the FDIC disapproves the proposed acquisition or extends the 60-day period.

(ii) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period if the FDIC notifies the notificant(s) in writing of its intention not to disapprove the acquisition.

(c) *Disapproval of acquisition of control.* Subpart D of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

§ 303.86 Public notice requirements.

(a) *Publication.*—(1) *Newspaper announcement.* Any person(s) filing a notice under this subpart shall publish an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the home office of the state nonmember bank to be acquired is located. The announcement shall be published as close as is practicable to the date the notice is filed with the appropriate regional director (DOS), but in no event more than 10 calendar days before or after the filing date.

(2) *Contents of newspaper announcement.* The newspaper announcement shall conform to the public notice requirements set forth in § 303.7 of this part.

(3) *Delay of publication.* The FDIC may permit delay in the publication required by this section if the FDIC determines, for good cause shown, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate regional director (DOS).

(4) *Shortening or waiving notice.* The FDIC may shorten the public comment period to a period of not less than 10 days, or waive the public comment or newspaper publication requirements of this paragraph, or act on a notice before the expiration of a public comment period, if it determines in writing either that an emergency exists or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety or soundness of the bank to be acquired.

(5) *Consideration of public comments.* In acting upon a notice filed under this subpart, the FDIC shall consider all public comments received in writing within 20 days following the required newspaper publication or, if the FDIC has shortened the public comment period pursuant to paragraph (a)(4) of this section, within such shorter period.

(6) *Publication if filing is subsequent to acquisition of control.* (i) Whenever a notice of a proposed acquisition of control is not filed in accordance with the Change in Bank Control Act and these regulations, the acquiring person(s) shall, within 10 days of being so directed by the FDIC, publish an announcement of the acquisition of control in a newspaper of general circulation in the community in which the home office of the state nonmember bank to be acquired is located.

(ii) The newspaper announcement shall contain the name(s) of the acquiror(s), the name of the depository institution involved, and the date of the acquisition of the stock. The announcement shall also contain a statement indicating that the FDIC is currently reviewing the acquisition of control. The announcement also shall state that any person wishing to comment on the change in control may do so by submitting written comments to the appropriate regional director (DOS) of the FDIC (give address of regional office) within 20 days following the required newspaper publication.

§ 303.87 Delegation of authority.

(a) Authority is delegated to the Director and the Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to issue a written notice of the FDIC's intent not to disapprove an acquisition of control of an insured state nonmember bank.

(b) The authority delegated by paragraph (a) of this section shall include the power to:

(1) Act in situations where information is submitted on acquisitions arising out of events beyond the person's control, as set forth in § 303.83(b) of this subpart;

(2) Extend notice periods;

(3) Determine whether a notice should be filed under section 7(j) of the Act (12 U.S.C. 1817(j)) by a person acquiring less than 25 percent of any class of voting shares of an insured state nonmember bank; and

(4) Delay or waive publication, waive or shorten the public comment period, or act on a proposed acquisition of control prior to the expiration of the public comment period, as provided in §§ 303.86(a) (3) and (4) of this subpart.

(c) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to disapprove an acquisition of control of an insured state nonmember bank.

Subpart F—Change of Director or Senior Executive Officer

§ 303.100 Scope.

This subpart sets forth the circumstances under which an insured state nonmember bank must notify the FDIC of a change in any member of its board of directors or any senior executive officer and the procedures for filing such notice, as well as applicable delegations of authority. This regulation implements section 32 of the FDI Act (12 U.S.C. 1831i).

§ 303.101 Definitions.

For purposes of this subpart:

(a) *Director* means a person who serves on the board of directors or board of trustees of an insured state nonmember bank, except that this term does not include an advisory director who:

(1) Is not elected by the shareholders;

(2) Is not authorized to vote on any matters before the board of directors or board of trustees or any committee thereof;

(3) Solely provides general policy advice to the board of directors or board of trustees and any committee thereof; and

(4) Has not been identified by the FDIC as a person who performs the functions of a director for purposes of this subpart.

(b) *Senior executive officer* means a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured state branch of a foreign bank), chief financial officer, chief lending officer, or chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. *Senior executive officer* also includes any other person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the insured state nonmember bank.

(c) *Troubled condition* means any insured state nonmember bank that:

(1) Has a composite rating, as determined in its most recent report of examination of 4 or 5 under the Uniform Financial Institutions Rating System (UFIRS), or in the case of an insured state branch of a foreign bank, an equivalent rating;

(2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(3) Is subject to a cease-and-desist order or written agreement issued by either the FDIC or the appropriate state banking authority that requires action to improve the financial condition of the bank or is subject to a proceeding initiated by the FDIC or state authority which contemplates the issuance of an order that requires action to improve the financial condition of the bank, unless otherwise informed in writing by the FDIC; or

(4) Is informed in writing by the FDIC that it is in troubled condition for purposes of the requirements of this subpart on the basis of the bank's most recent report of condition or report of examination, or other information available to the FDIC.

§ 303.102 Filing procedures.

(a) *Insured state nonmember banks.* An insured state nonmember bank shall give the FDIC written notice, as specified in paragraph (c)(1) of this section, at least 30 days prior to adding or replacing any member of its board of directors, employing any person as a senior executive officer of the bank, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if:

(1) The bank is not in compliance with all minimum capital requirements applicable to the bank as determined on the basis of the bank's most recent report of condition or report of examination;

(2) The bank is in troubled condition; or

(3) The FDIC determines, in connection with its review of a capital restoration plan required under section 38(e)(2) of the FDI Act (12 U.S.C. 1831o(e)(2)) or otherwise, that such notice is appropriate.

(b) *Insured branches of foreign banks.* In the case of the addition of a member of the board of directors or a change in senior executive officer in a foreign bank having an insured state branch, the notice requirement shall not apply to such additions and changes in the foreign bank parent, but only to changes in senior executive officers in the state branch.

(c)(1) *Content of filing.* The notice required by paragraph (a) of this section shall be filed with the appropriate regional director (DOS) and shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, as prescribed in the designated interagency form which is available from any FDIC regional office. The regional director or his or her designee may require additional information.

(2) *Modification.* The FDIC may modify or accept other information in place of the requirements of paragraph (c)(1) of this section for a notice filed under this subpart.

§ 303.103 Processing and waiver of prior notice.

(a) *Processing.* The 30-day notice period specified in § 303.102(a) shall begin on the date substantially all information required to be submitted by the notificant pursuant to § 303.102(c)(1) is received by the appropriate regional director (DOS). The regional director shall notify the bank submitting the notice of the date on which the notice is accepted for processing and of the date on which the 30-day notice period will expire. If processing cannot be completed within 30 days, the notificant will be advised in writing, prior to expiration of the 30-day period, of the reason for the delay in processing and of the additional time period, not to exceed 60 days, in which processing will be completed.

(b) *Commencement of service.*—(1) *At expiration of period.* A proposed director or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (a) of this section, unless the FDIC disapproves the notice before the end of the period.

(2) *Prior to expiration of period.* A proposed director or senior executive officer may begin service before the end of the 30-day period or any additional time period as provided under paragraph (a) of this section, if the FDIC notifies the bank and the individual in writing of the FDIC's intention not to disapprove the notice.

(c) *Waiver of prior notice.* (1) *Waiver requests.* The FDIC may permit an individual, upon petition by the bank to the appropriate regional director (DOS), to serve as a senior executive officer or director before filing the notice required under this subpart if the FDIC finds that:

(i) Delay would threaten the safety or soundness of the bank;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) *Automatic waiver.* In the case of the election of a new director not proposed by management at a meeting of the shareholders of an insured state nonmember bank, the prior 30-day notice is automatically waived and the individual immediately may begin serving, provided that a complete notice is filed with the appropriate regional director (DOS) within two business days after the individual's election.

(3) *Effect on disapproval authority.* A waiver shall not affect the authority of the FDIC to disapprove a notice within 30 days after a waiver is granted under paragraph (c)(1) of this section or the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (c)(2) of this section.

(d) *Notice of disapproval.* The FDIC may disapprove a notice filed under § 303.102 if the FDIC finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of the depositors of the bank or in the best interests of the public to permit the individual to be employed

by, or associated with, the bank. Subpart L of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

§ 303.104 Delegation of authority.

The following authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director or deputy regional director to:

(a) Designate an insured state nonmember bank as being in troubled condition;

(b) Grant waivers of the prior notice requirement;

(c) Extend the 30-day processing period for an additional period of up to 60 days in the event of extenuating circumstances; and

(d) Issue notices of disapproval or notices of intent not to disapprove under this subpart.

Subpart G—Activities and Investments of Insured State Banks [Reserved]

Subpart H—Filings by Savings Associations [Reserved]

Subpart I—Mutual-to-Stock Conversions

§ 303.160 Scope.

This subpart sets forth the notice requirements which must be met by mutually owned state-chartered savings banks that propose to convert to stock form, and the related delegations of authority. The substantive requirements governing such conversions are contained in § 333.4 of this chapter.

§ 303.161 Filing procedures.

A notice shall be filed in letter form with the appropriate regional director (DOS) at the same time as the conversion application materials are filed with the institution's primary state regulator.

§ 303.162 Content of notice.

The notice shall provide a description of the proposed conversion and include all materials that have been filed with any state or federal banking regulator and any state or federal securities regulator. Copies of all agreements entered into as part of the mutual-to-stock conversion between the institution and its officers, directors or trustees, and any agreements entered into with any other institution and/or its successors must be provided. An insured mutual savings bank chartered by a state that does not require the filing of an application to convert from mutual to stock form that proposes to convert to stock form shall notify the FDIC of the proposed conversion and provide any materials requested by the FDIC.

§ 303.163 Processing.

(a) The FDIC shall review the materials submitted by the institution seeking to convert from mutual to stock form. The FDIC, in its discretion, may request any additional information it deems necessary to evaluate the proposed conversion and the institution promptly shall provide such information to the FDIC. Among the factors to be reviewed by the FDIC are:

(1) The use of the proceeds from the sale of stock, as set forth in the business plan;

(2) The adequacy of the disclosure materials;

(3) The participation of depositors in approving the transaction;

(4) The form of the proxy statement required for the vote of the depositors/members on the conversion;

(5) Any increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be granted to officers and directors/trustees of the bank in connection with the conversion;

(6) The adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold;

(7) The process by which the bank's trustees approved the appraisal, the pricing of the stock and the compensation arrangements for insiders;

(8) The nature and apportionment of stock subscription rights; and

(9) The bank's plans to fulfill its commitment to serving the convenience and needs of its community.

(b) *Additional considerations.* In reviewing the materials required to be submitted under this section, the FDIC will take into account the extent to which the proposed conversion conforms with the various provisions of the mutual-to-stock conversion regulations of the Office of Thrift Supervision (OTS) (12 CFR part 563b), as currently in effect at the time the FDIC reviews the required materials related to the proposed conversion. Any non-conformity with those provisions will be closely reviewed. Conformity with the OTS requirements will not be sufficient for FDIC regulatory purposes if the FDIC determines that the proposed conversion would pose a risk to the institution's safety or soundness, violate any law or regulation or present a breach of fiduciary duty.

(c) *Notification of completed filing of materials.* The FDIC shall notify the institution when all the required materials related to the proposed conversion have been filed with the FDIC and the notice is thereby complete for purposes of computing the time periods designated in paragraphs (d) and (f) of this section.

(d) *Notice of intent not to object.* If the FDIC determines, in its discretion, that the proposed conversion would not pose a risk to the institution's safety or soundness, violate any law or regulation or present a breach of fiduciary duty, then the FDIC shall issue to the bank seeking to convert, within 60 days of receipt of a substantially complete notice of proposed conversion or within 20 days after the last applicable state or other federal regulator has approved the proposed conversion, whichever is later, a notice of intent not to object to the proposed conversion. The FDIC may, in its discretion, extend by written notice to the institution the initial 60-day period by an additional 60 days.

(e) *Letter of objection.* If the FDIC determines, in its discretion, that the proposed conversion poses a risk to the institution's safety or soundness, violates any law or regulation or presents a breach of fiduciary duty, then the FDIC shall issue a letter to the institution stating its objection(s) to the proposed conversion and advising the institution that the conversion shall not be consummated until such letter is rescinded. A copy of the letter of objection shall be furnished to the institution's primary state regulator and any other state or federal banking regulator and state or federal securities regulator involved in the conversion. The letter of objection shall advise the institution of its right to petition the FDIC for reconsideration under § 303.11(f) of this part. Such action shall not, in any way, prohibit the FDIC from taking any other action(s) that it may deem necessary.

(f) *Consummation of the conversion.* An institution may consummate the proposed conversion upon either:

(1) The receipt of a notice of intent not to object; or

(2) The expiration of the 60-day period following receipt of a substantially complete notice by the FDIC or the 20-day period after the last applicable state or other federal regulator has approved the proposed conversion, whichever is later, unless the FDIC issues a notice of objection before the end of that period. If a notice of objection is issued, the conversion shall not be consummated until such letter is rescinded. The FDIC may, in its discretion, extend by written notice to the institution the initial 60-day period by an additional 60 days.

§ 303.164 Delegation of authority.

(a) Authority is delegated to the Director and Deputy Director (DOS) to issue a notice of intent not to object to a proposed conversion transaction that is determined not to pose a risk to the institution's safety or soundness, violate any law or regulation, present a breach of fiduciary duty, and not to raise any unique legal or policy issues. Such authority will be exercised in accordance with the time periods contained in § 303.163(d) of this subpart, unless the bank seeking to convert agrees to a longer time period.

(b) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to accept notices of intent to convert to stock form and to extend the initial 60-day period within which FDIC may object by an additional 60 days.

Subpart J—Foreign Bank Activities

§ 303.180 Scope.

This subpart sets forth procedures for complying with application requirements relating to the foreign activities of insured state nonmember banks and the U.S. activities of insured branches of foreign banks and delegations of authority.

§ 303.181 Definitions.

For the purposes of this subpart, the following additional definitions apply:

(a) *Board of Governors* means the Board of Governors of the Federal Reserve System.

(b) *Comptroller* means the Office of the Comptroller of the Currency.

(c) *Eligible insured branch.* An insured branch will be treated as an eligible depository institution within the meaning of § 303.2(r) of this part if the insured branch:

(1) Received an FDIC-assigned composite ROCA rating of 1 or 2 as a result of its most recent federal or state examination, and the FDIC, Comptroller, or Board of Governors have not expressed concern about the condition or operations of the foreign banking organization or the support it offers the branch;

(2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination;

(3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(4) Is well capitalized as defined in subpart B of part 325 of this chapter; and

(5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with any U.S. bank regulatory authority.

(d) *Federal branch* means a federal branch of a foreign bank as defined by § 346.1 of this chapter.

(e) *Foreign bank* means a foreign bank as defined by § 346.1 of this chapter.

(f) *Foreign branch* means a foreign branch of an insured state nonmember bank as defined by § 347.2 of this chapter.

(g) *Insured branch* means an insured branch of a foreign bank as defined by § 346.1 of this chapter.

(h) *State branch* means a state branch of a foreign bank as defined by § 346.1 of this chapter.

§ 303.182 Establishing, moving or closing a foreign branch of a state nonmember bank.

(a) *General consent to expand within a country.* (1) General consent of the FDIC is granted under § 347.3 of this chapter for an eligible depository institution to establish additional foreign branches conducting activities authorized by § 347.3 in any foreign country in which the bank already operates one or more foreign branches, or to move an existing foreign branch within a foreign country.

(2) *Notice procedures for general consent.* The eligible depository institution must provide the appropriate regional director (DOS) written notice within 30 days of taking such action, and include the location of the foreign branch, including a street address, and a statement that the foreign branch has not been located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places (National Register), in accordance with section 402 of the National Historic Preservation Act Amendments of 1980 (NHPA Amendments Act) (16 U.S.C. 470a–2). The appropriate regional director will provide written acknowledgment of receipt of the notice.

(b) *Filing procedures for other branch establishments.* (1) *Where to file.* An insured state nonmember bank seeking to establish a foreign branch other than under paragraph (a) of this section must submit an application to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter filing must contain the following information:

(i) The exact location of the foreign branch, including a street address, and a statement whether the foreign branch will be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register, in accordance with section 402 of the NHPA Amendments Act;

(ii) Details concerning any involvement in the proposal by an insider of the applicant, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A brief description of the applicant's business plan with respect to the foreign branch; and

(iv) A brief description of the activities of the branch, and to the extent any activities are not authorized by § 347.3 of this chapter, the applicant's reasons why they should be approved.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Processing.*—(1) *Expedited processing for eligible depository institutions.* An application filed by an eligible depository institution as defined in § 303.2(r) of this part that operates foreign branches in two or more territories or foreign countries to establish a foreign branch that conducts activities authorized by § 347.3 of this chapter in an additional foreign country will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing is deemed approved 45 days after the FDIC's receipt of a substantially complete application.

(2) *Standard processing.* For those applications which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action taken as soon as the decision is rendered.

(d) *Exceptions to general consent and expedited processing.* (1) Upon notice to an insured state nonmember bank, the FDIC may modify or suspend the availability of its general consent or expedited processing under this section.

(2) General consent or expedited processing under this section does not apply in any case in which:

(i) The foreign branch would be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register in accordance with section 402 of the NHPA Amendments Act; or

(ii) Any applicable law or practice in the relevant foreign country would limit the FDIC's access to information for supervisory purposes.

(e) *Closing.* Within 30 days after it closes a foreign branch, an insured state nonmember bank must advise the appropriate regional director (DOS) by letter of the name, location, and date of closing of the closed branch.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve an application under paragraph (c) of this section if the following criteria are satisfied:

(1) The requirements of section 402 the NHPA Amendments Act have been favorably resolved; and

(2) The applicant will only conduct activities authorized by § 347.3 of this chapter.

§ 303.183 Acquisition of stock of foreign banks or other financial entities by an insured state nonmember bank.

(a) *Definition.* For purposes of this section only, a foreign bank or other financial entity means a foreign bank or other financial entity as defined by § 347.2 of this chapter.

(b) *Filing procedures.*—(1) *Where to file.* An application by an insured state nonmember bank to acquire or hold an ownership interest in a foreign bank or other financial entity, as required by § 347.4 of this chapter, must be filed in writing with the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter filing must contain full information concerning the foreign bank or other financial entity, including the following information:

(i) The cost, number, class of shares to be acquired, and the proposed carrying value of such shares on the books of the insured state nonmember bank;

(ii) A recent balance sheet and income statement of the foreign bank or other financial entity;

(iii) A brief description of the foreign bank's or other financial entity's business (including full information concerning any direct or indirect business transacted in the United States);

(iv) Lists of directors and principal officers (with address and principal business affiliation of each) and of all shareholders known to hold 10 percent or more of any class of the foreign bank's or other financial entity's stock or other evidence of ownership, and the amount held by each; and

(v) Information concerning the rights and privileges of the various classes of shares outstanding.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Processing.* The FDIC will provide the applicant with written notification of the final action taken.

(d) *Delegations of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to approve or deny applications submitted under this section for the acquisition and holding of stock or other evidences of ownership of a foreign bank or other financial entity that result in the state nonmember bank having a less than 25 percent ownership interest in such bank or other financial entity.

§ 303.184 Moving an insured branch of a foreign bank.

(a) *Filing procedures.*—(1) *Where and when to file.* An application by an insured branch of a foreign bank seeking the FDIC's consent to move from one location to another, as required by section 18(d)(1) of the FDI Act (12 U.S.C. 1828(d)(1)), must be submitted in writing to the appropriate regional director (DOS) on the date the notice required by paragraph (c) of this section is published, or within 5 days after the date of the last required publication.

(2) *Content of filing.* A complete letter filing must include the following information:

(i) The exact location of the proposed site, including the street address;

(ii) Details concerning any involvement in the proposal by an insider of the insured branch, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A statement of the impact of the proposal on the human environment, including information on compliance with local zoning laws and regulations and the effect on traffic patterns, for purposes of complying with the applicable provisions of the NEPA;

(iv) A statement as to whether the site is included in or is eligible for inclusion in the National Register of Historic Places, including a statement that clearance has been or will be obtained from the State Historic Preservation Officer, for purposes of complying with the applicable provisions of the NHPA;

(v) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the CRA; and

(vi) A copy of the newspaper publication required by paragraph (c) of this section, as well as the name and address of the newspaper and the date of the publication.

(3) *Comptroller's application.* If the applicant is filing an application with the Comptroller which contains the information required by paragraph (a)(2) of this section, the applicant may submit a copy to the FDIC in lieu of a separate application.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Processing.*—(1) *Expedited processing for eligible insured branches.* An application filed by an eligible insured branch as defined in § 303.181(c) of this part will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing will be deemed approved on the latest of the following:

(i) The 21st day after the FDIC's receipt of a substantially complete application; or

(ii) The 5th day after expiration of the comment period described in paragraph (c) of this section.

(2) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(c) *Publication requirement and comment period.*—(1) *Newspaper publications.* The applicant must publish a notice of its proposal to move from one location to another, as described in § 303.7(b), in a newspaper of general circulation in the community in which the insured branch is located prior to its being moved and in the community to which it is to be moved. The notice must include the insured branch's current and proposed addresses.

(2) *Public comments.* All public comments must be received by the appropriate regional director (DOS) within 15 days after the date of the last newspaper publication required by paragraph (c)(1) of this section, unless the comment period has been extended or reopened in accordance with § 303.9(b)(2).

(3) *Lobby notices.* If the insured branch has a public lobby, a copy of the newspaper publication must be posted in the public lobby for at least 15 days beginning on the date of the publication required by paragraph (c)(1) of this section.

(d) *Delegation of authority.* (1) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director to approve an application under this section. For the Director, Deputy Director or associate director (DOS) to exercise this authority, paragraphs (d)(1)(i) through (d)(1)(iv) and (d)(1)(vi) of this section must be satisfied. For the regional director or deputy regional director (DOS) to exercise this authority, paragraphs (d)(1)(i) through (d)(1)(vi) of this section must be satisfied.

(i) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) The applicant is at least adequately capitalized as defined in subpart B of part 325 of this chapter;

(iii) Any financial arrangements which have been made in connection with the proposed relocation and which involve the applicant's directors, officers, major shareholders, or their interests are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties;

(iv) Compliance with the CRA, the NEPA, the NHPA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

(v) No CRA protest as defined in § 303.2(l) of this part has been filed which remains unresolved or, where such a protest has been filed and remains unresolved, the Director (DCA), Deputy Director (DCA), an associate director (DCA) or the appropriate regional director or deputy regional director (DCA) concurs that approval is consistent with the purposes of the CRA and the applicant agrees in writing to any conditions imposed regarding the CRA; and

(vi) The applicant agrees in writing to comply with any conditions imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part which may be imposed without the applicant's written consent.

(2) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to approve applications under this section which meet all criteria in paragraph (d)(1) of this section except that the applicant does not agree in writing to comply with any condition imposed by the delegate, other than the standard conditions defined in § 303.2(ff) which may be imposed without the applicant's written consent; or

(3) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to deny applications under this section.

§ 303.185 Mergers involving an insured branch of a foreign bank.

(a) *Applicability of subpart D.* Mergers requiring the FDIC's prior approval as set forth in § 303.62 of this part include any merger in which the resulting institution is an insured branch of a foreign bank which is not a federal branch, or any merger which involves any insured branch and any uninsured institution. In such cases:

(1) References to an eligible depository institution in subpart D of this part include an eligible insured branch as defined in § 303.181 of this subpart;

(2) The definition of a corporate reorganization in § 303.61(b) of this part includes a merger between an insured branch and other branches, agencies, or subsidiaries in the United States of the same foreign bank; and

(3) For the purposes of § 303.62(b)(1) of this part on interstate mergers, a merger transaction involving an insured branch is one involving the acquisition of a branch of an insured bank without the acquisition of the bank for purposes of section 44 of the FDI Act (12 U.S.C. 1831u) only when the merger transaction involves fewer than all the insured branches of the same foreign bank in the same state.

§ 303.186 Exemptions from insurance requirement for a state branch of a foreign bank.

(a) *Filing procedures.*—(1) *Where to file.* An application by a state branch for consent to operate as a noninsured state branch, as required by § 346.6(b) of this chapter, must be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter filing must include the following information:

(i) The kinds of deposit activities in which the state branch proposes to engage;

(ii) The expected source of deposits;

(iii) The manner in which deposits will be solicited;

(iv) How the activity will maintain or improve the availability of credit to all sectors of the United States economy, including the international trade finance sector;

(v) That the activity will not give the foreign bank an unfair competitive advantage over United States banking organizations; and

(vi) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application.

(2) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Processing.* The FDIC will provide the applicant with written notification of the final action taken.

§ 303.187 Approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches.

(a) *Filing procedures.*—(1) *Where to file.* An application by an insured state branch seeking approval to conduct activities not permissible for a federal branch, as required by § 346.101(a) of this chapter, must be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter filing must include the following information:

(i) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(ii) An analysis of the impact of the proposed activity on the condition of the United States operations of the foreign bank in general and of the branch in particular, including a copy of the feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) A resolution by the applicant's board of directors, or evidence of approval by senior management if a resolution is not required pursuant to the applicant's organizational documents, authorizing the filing of the application;

(iv) A statement by the applicant of whether it is in compliance with §§ 346.19 and 346.20 of this chapter, Pledge of assets and Asset maintenance, respectively;

(v) A statement by the applicant that it has complied with all requirements of the Board of Governors concerning applications to conduct the activity in question and the status of each such application, including a copy of the Board of Governors' disposition of such application, if applicable; and

(vi) A statement of why the activity will pose no significant risk to the Bank insurance Fund.

(3) *Board of Governors application.* If the application to the Board of Governors contains the information required by paragraph (a) of this section, the applicant may submit a copy to the FDIC in lieu of a separate letter application.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(b) *Divestiture or cessation.*—(1) *Where to file.* Divestiture plans necessitated by a change in law or other authority, as required by § 346.101(f) of this chapter, must be submitted in writing to the appropriate regional director (DOS).

(2) *Content of filing.* A complete letter filing must include the following information:

(i) A detailed description of the manner in which the applicant proposes to divest itself of or cease the activity in question; and

(ii) A projected timetable describing how long the divestiture or cessation is expected to take.

(3) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

(c) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve plans of divestiture and cessation submitted pursuant to paragraph (b) of this section.

Subpart K—Prompt Corrective Action

§ 303.200 Scope.

(a) *General.* (1) This subpart covers applications filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), which requires insured depository institutions that are not adequately capitalized to receive approval prior to engaging in certain activities. Section 38 restricts or prohibits certain activities and requires an insured depository institution to submit a capital restoration plan when it becomes undercapitalized. The restrictions and prohibitions become more severe as an institution's capital level declines.

(2) Definitions for the capital categories referenced in this Prompt Corrective Action subpart may be found in subpart B of part 325 of this chapter, § 325.103(b) for banks and § 325.103(c) for insured branches of foreign banks.

(b) *Institutions covered.* Restrictions and prohibitions contained in subpart B of part 325 of this chapter apply primarily to insured state nonmember banks and insured branches of foreign banks, as well as to directors and senior executive officers of those institutions. Portions of subpart B of part 325 of this chapter also apply to all insured depository institutions that are deemed to be critically undercapitalized.

§ 303.201 Filing procedures.

Applications shall be filed with the appropriate regional director (DOS). The application shall contain the information specified in each respective section of this subpart, and shall be in letter form as prescribed in § 303.3 of this part. Additional information may be requested by the FDIC. Such letter shall be signed by the president, senior officer or a duly authorized agent of the insured depository institution and be accompanied by a certified copy of a resolution adopted by the institution's board of directors or trustees authorizing the application.

§ 303.202 Processing.

The FDIC will provide the applicant with a subsequent written notification of the final action taken as soon as the decision is rendered.

§ 303.203 Applications for capital distribution.

(a) *Scope.* An insured state nonmember bank and any insured branch of a foreign bank shall submit an application for capital distribution if, after having made a capital distribution, the institution would be undercapitalized, significantly undercapitalized, or critically undercapitalized.

(b) *Content of filing.* An application to repurchase, redeem, retire or otherwise acquire shares or ownership interests of the insured depository institution shall describe the proposal, the shares or obligations which are the subject thereof, and the additional shares or obligations of the institution which will be issued in at least an amount equivalent to the distribution. The application also shall explain how the proposal will reduce the institution's financial obligations or otherwise improve its financial condition. If the proposed action also requires an application under section 18(i) of the FDI Act (12 U.S.C. 1828(i)) as implemented by § 303.241 of this part regarding prior consent to retire capital, such application should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o).

§ 303.204 Applications for acquisitions, branching, and new lines of business

(a) *Scope.* (1) Any insured state nonmember bank and any insured branch of a foreign bank which is undercapitalized or significantly undercapitalized, and any insured depository institution which is critically undercapitalized, shall submit an application to engage in acquisitions, branching or new lines of business.

(2) A new line of business will include any new activity exercised which, although it may be permissible, has not been exercised by the institution.

(b) *Content of filing.* Applications shall describe the proposal, state the date the institution's capital restoration plan was accepted by its primary federal regulator, describe the institution's status toward implementing the plan, and explain how the proposed action is consistent with and will further the achievement of the plan or otherwise further the purposes of section 38 of the FDI Act. If the FDIC is not the applicant's primary federal regulator, the application also should state whether approval has been requested from the applicant's primary federal regulator, the date of such request and the disposition of the request, if any. If the proposed action also requires applications pursuant to section 18 (c) or (d) of the FDI Act (mergers and branches) (12 U.S.C. 1828 (c) or (d)), such applications should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o).

§ 303.205 Applications for bonuses and increased compensation for senior executive officers.

(a) *Scope.* Any insured state nonmember bank or insured branch of a foreign bank that is significantly or critically undercapitalized, or any insured state nonmember bank or any insured branch of a foreign bank that is undercapitalized and which has failed to submit or implement in any material respect an acceptable capital restoration plan, shall submit an application to pay a bonus or increase compensation for any senior executive officer.

(b) *Content of filing.* Applications shall list each proposed bonus or increase in compensation, and for the latter shall identify compensation for each of the twelve calendar months preceding the calendar month in which the institution became undercapitalized. Applications also shall state the date the institution's capital restoration plan was accepted by the FDIC, and describe any progress made in implementing the plan.

§ 303.206 Application for payment of principal or interest on subordinated debt.

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to pay principal or interest on subordinated debt.

(b) *Content of filing.* Applications shall describe the proposed payment and provide an explanation of action taken under section 38(h)(3)(A)(ii) of the FDI Act (action instead of receivership or conservatorship). The application also shall explain how such payments would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831o). Existing approvals pursuant to requests filed under section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)) (capital stock reductions or retirements) shall not be deemed to be the permission needed pursuant to section 38.

§ 303.207 Restricted activities for critically undercapitalized institutions.

(a) *Scope.* Any critically undercapitalized insured depository institution shall submit an application to engage in certain restricted activities.

(b) *Content of filing.* Applications to engage in any of the following activities, as set forth in sections 38(i)(2)(A) through (G) of the FDI Act, shall describe the proposed activity and explain how the activity would further the purposes of section 38 of the FDI Act (12 U.S.C. 1831o):

(1) Enter into any material transaction other than in the usual course of business including any action with respect to which the institution is required to provide notice to the appropriate federal banking agency. Materiality will be determined on a case-by-case basis;

(2) Extend credit for any highly leveraged transaction (as defined in part 325 of this chapter);

(3) Amend the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(4) Make any material change in accounting methods;

(5) Engage in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act (12 U.S.C. 371c(b));

(6) Pay excessive compensation or bonuses. Part 359 of this chapter provides guidance for determining excessive compensation. The FDIC will consider the existing compensation levels of an institution's executive officers directors and principal shareholders (as defined in Regulation O, 12 CFR part 215) on a case-by-case basis, and will require prior written approval for any change in their compensation levels; or

(7) Pay interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market area. Section 337.6 of this chapter (Brokered deposits) provides guidance for defining the relevant terms of this provision; however this provision does not supersede the general prohibitions contained in § 337.6.

§ 303.208 Delegation of authority.

Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny the following applications, requests or petitions submitted pursuant to this subpart:

(a) Applications filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831o) (prompt corrective action), including applications to make a capital distribution;

(b) Applications for acquisitions, branching, and new lines of business (except that the delegation is limited to the authority as delegated to approve or deny any concurrent application filed pursuant to section 18(c) or (d) of the FDI Act (12 U.S.C. 1828(c) or (d));

(c) Applications to pay a bonus or increase compensation;

(d) Applications for an exception to pay principal or interest on subordinated debt; and

(e) Applications by critically undercapitalized insured depository institutions to engage in any restricted activity listed in this subpart.

Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of Certain Criminal Offenses)

§ 303.220 Scope.

This subpart covers applications under section 19 of the FDI Act (12 U.S.C. 1829).

Pursuant to section 19, any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not become, or continue as, an institution-affiliated party of an insured depository institution; own or control, directly or indirectly, any insured depository institution; or otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution without the prior written consent of the FDIC.

§ 303.221 Filing procedures.

(a) *Regional office.* An application under section 19 shall be filed with the appropriate FDIC regional director (DOS).

(b) *Contents of filing.* Application forms may be obtained from any FDIC regional office. The FDIC may require additional information beyond that sought in the form or questionnaire, as warranted, in individual cases.

§ 303.222 Service at another insured depository institution.

In the case of a person who has already been approved by the FDIC under this subpart or section 19 of the Act in connection with a particular insured depository institution, such person may not become an institution affiliated party, or own or control directly or indirectly another insured depository institution, or participate in the conduct of the affairs of another insured depository institution, without the prior written consent of the FDIC.

§ 303.223 Applicant's right to hearing following denial.

An applicant may request a hearing following a denial of an application in accordance with the provisions of part 308 of this chapter.

§ 303.224 Delegation of authority.

(a) *Approvals.* Authority is delegated to the Director and Deputy Director (DOS) or, where confirmed in writing by the Director, to an associate director or to the appropriate regional director or deputy regional director, to approve applications made by insured depository institutions pursuant to section 19 of the FDI Act, after consultation with the Legal Division; provided however, that authority may not be delegated to the regional director or deputy regional director where the applicant's primary supervisory authority interposes any objection to such application.

(b) *Denials.* Authority is delegated to the Director and Deputy Director (DOS) or, where confirmed in writing by the Director, to an associate director, to deny applications made by insured depository institutions pursuant to section 19 of the Act.

(c) *Concurrent legal certification.* The authority to deny applications delegated under this section shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, his or her designee, that the action taken is not inconsistent with section 19 of the FDI Act.

(d) *Conditions on application approvals.* Regional directors and deputy regional directors acting under delegated authority under this subpart may impose any of the following conditions on the approval of applications, as appropriate in individual cases:

(1) A participant or institution-affiliated party of an institution shall be bonded to the same extent as others in similar positions; and/or

(2) When deemed necessary, the prior consent of the appropriate regional director (DOS) shall be required for any proposed significant changes in duties and/or responsibilities of the person who is the subject of the application.

(e) *Authority not delegated by FDIC Board of Directors.* The FDIC Board of Directors has not delegated its authority to consider and act upon an application under section 19 of the FDI Act after a hearing held in accordance with the provisions of part 308 of this chapter.

Subpart M—Other Filings

§ 303.240 General.

This subpart sets forth the filing procedures to be followed when seeking the FDIC's consent to engage in certain activities or accomplish other matters as specified in the individual sections contained herein. For those matters covered by this subpart that also have substantive FDIC regulations or related statements of policy, references to the relevant regulations or statements of policy are contained in the specific sections.

§ 303.241 Reduce or retire capital stock or capital debt instruments.

(a) *Scope.* This section contains the procedures to be followed by an insured state nonmember bank to seek the prior approval of the FDIC to reduce the amount or retire any part of its common or preferred stock, or to retire any part of its capital notes or debentures pursuant to section 18(i)(1) of the Act (12 U.S.C. 1828(i)(1)).

(b) *Filing procedures.* Applicants shall submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application shall contain the following:

(1) The type and amount of the proposed change to the capital structure and the reason for the change;

(2) A schedule detailing the present and proposed capital structure;

(3) The time period that the proposal will encompass;

(4) If the proposal involves a series of transactions affecting Tier 1 capital components which will be consummated over a period of time which shall not exceed 12 months, the application shall certify that the insured depository institution will maintain itself as a well capitalized institution as defined in part 325 of this chapter, both before and after each of the proposed transactions;

(5) If the proposal involves the repurchase of capital instruments, the amount of the repurchase price and the basis for establishing the fair market value of the repurchase price;

(6) A statement that the proposal will be available to all holders of a particular class of outstanding capital instruments on an equal basis, and if not, the details of any restrictions; and

(7) The date that the applicant's board of directors approved the proposal.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the application.

(e) *Undercapitalized institutions.* Procedures regarding applications by an undercapitalized insured depository institution to retire capital stock or capital debt instruments pursuant to section 38 of the FDI Act (12 U.S.C. 1831o) are set forth in subpart K (Prompt Corrective Action), § 303.203 of this part. Applications pursuant to section 38 and 18(i) may be filed concurrently, or as a single application.

(f) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) of this part will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited processing will be deemed approved 20 days after the FDIC's receipt of a substantially complete application.

(g) *Standard processing.* For those applications that are not processed pursuant to expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(h) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny an application pursuant to section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)) to reduce the amount or retire any part of common or preferred capital stock, or to retire any part of capital notes or debentures.

§ 303.242 Exercise of trust powers.

(a) *Scope.* This section contains the procedures to be followed by a state nonmember bank to seek the FDIC's prior consent to exercise trust powers. The FDIC's prior consent to exercise trust powers is not required in the following circumstances:

(1) Where a state nonmember bank received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or

(2) Where an insured depository institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System.

(b) *Filing procedures.* Applicants should submit to the appropriate regional director (DOS) a completed form, "Application for Consent To Exercise Trust Powers." This form may be obtained from any FDIC regional office.

(c) *Content of filing.* The filing should consist of the completed trust application form.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) of this part will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited procedures will be deemed approved 30 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Delegation of authority.* (1) Where the criteria listed in paragraph (g)(2) of this section are satisfied and the applicant agrees in writing to comply with any conditions imposed by the approving FDIC official, other than the standard conditions defined in § 303.2(ff) of this part, which may be imposed without the applicant's written consent, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications for the FDIC's consent to exercise trust powers.

(2) The following criteria must be satisfied before the authority delegated in paragraph (g)(1) of this section may be exercised:

(i) The factors set forth in section 6 of the FDI Act (12 U.S.C. 1816) have been considered and favorably resolved;

(ii) The proposed management of the trust business is determined to be capable of satisfactorily handling the anticipated business; and

(iii) The applicant's board of directors formally has adopted the FDIC Statement of Principles of Trust Department Management available from any FDIC regional office.

(h) *Denials and certain conditional approvals.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to:

(1) Deny applications for trust powers; and

(2) Approve applications for trust powers where the criteria listed in paragraph (g)(2) of this section are satisfied but the applicant does not agree in writing to comply with any condition imposed by the delegate, other than the standard conditions defined in § 303.2(ff) of this part which may be imposed without the applicant's written consent.

§ 303.243 Brokered deposit waivers.

(a) *Scope.* Pursuant to section 29 of the FDI Act (12 U.S.C. 1831f) and § 337.6 of this chapter, an adequately capitalized insured depository institution may not accept, renew or roll over any brokered deposits unless it has obtained a waiver from the FDIC. A well capitalized insured depository institution may accept brokered deposits without a waiver, and an undercapitalized insured depository institution may not accept, renew or roll over any brokered deposits under any circumstances. This section contains the procedures to be followed to file with the FDIC for a brokered deposit waiver. The FDIC will provide notice to the depository institution's appropriate federal banking agency and any state regulatory agency, as appropriate, that a request for a waiver has been filed and will consult with such agency or agencies, prior to taking action on the institution's request for a waiver. Prior notice and/or consultation shall not be required in any particular case if the FDIC determines that the circumstances require it to take action without giving such notice and opportunity for consultation.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application should contain the following:

(1) The time period for which the waiver is requested;

(2) A statement of the policy governing the use of brokered deposits in the institution's overall funding and liquidity management program;

(3) The volume, rates and maturities of the brokered deposits held currently and anticipated during the waiver period sought, including any internal limits placed on the terms, solicitation and use of brokered deposits;

(4) How brokered deposits are costed and compared to other funding alternatives and how they are used in the institution's lending and investment activities, including a detailed discussion of asset growth plans;

(5) Procedures and practices used to solicit brokered deposits, including an identification of the principal sources of such deposits;

(6) Management systems overseeing the solicitation, acceptance and use of brokered deposits;

(7) A recent consolidated financial statement with balance sheet and income statements; and

(8) The reasons the institution believes its acceptance, renewal or rollover of brokered deposits would pose no undue risk.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the application.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in this § 303.243(e) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. For the purpose of this section, an applicant will be deemed an eligible depository institution if it satisfies all of the criteria contained in § 303.2(r) except that the applicant may be adequately capitalized rather than well capitalized. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2) of this part. Absent such removal, an application processed under expedited procedures will be deemed approved 21 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those filings which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Conditions for approval.* A waiver issued pursuant to this section shall:

(1) Be for a fixed period, generally no longer than two years, but may be extended upon refiling; and

(2) May be revoked by the FDIC at any time by written notice to the institution.

(h) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny brokered deposit waiver applications. Based upon a preliminary review, any delegate may grant a temporary waiver for a short period in order to facilitate the orderly processing of a filing for a waiver.

§ 303.244 Golden parachute and severance plan payments.

(a) *Scope.* Pursuant to section 18(k) of the FDI Act (12 U.S.C. 1828(k)) and part 359 of this chapter (12 CFR part 359), an insured depository institution or depository institution holding company may not make golden parachute payments or excess nondiscriminatory severance plan payments unless the depository institution or holding company obtains permission to make such payments in accordance with the rules contained in part 359 of this chapter. This section contains the procedures to file for the FDIC's consent when such consent is necessary under part 359 of this chapter, as described below:

(1) *Golden parachute payments.* A golden parachute payment is defined in § 359.1(f)(1) of this chapter as a payment by a troubled insured depository institution or troubled depository institution holding company. A troubled insured depository institution or a troubled depository institution holding company is prohibited from making golden parachute payments unless it obtains the consent of the appropriate federal banking agency and the written concurrence of the FDIC. Therefore, in the case of golden parachute payments, the procedures in this section apply to all troubled insured depository institutions and troubled depository institution holding companies.

(2) *Excess nondiscriminatory severance plan payments.* In the case of excess nondiscriminatory severance plan payments as provided by § 359.1(f)(2)(v) of this chapter, the

FDIC's consent is necessary for state nonmember banks that meet the criteria set forth in § 359.1(f)(1)(ii) of this chapter. In addition, the FDIC's consent is required for all insured depository institutions or depository institution holding companies that meet the same criteria and seek to make payments in excess of the 12-month amount specified in § 359.1(f)(2)(v).

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate FDIC regional director (DOS).

(c) *Content of filing.* The application should contain the following:

(1) The reasons why the applicant seeks to make the payment;

(2) An identification of the institution-affiliated party who will receive the payment;

(3) A copy of any contract or agreement regarding the subject matter of the filing;

(4) The cost of the proposed payment and its impact on the institution's capital and earnings; and

(5) The reasons why consent to the payment should be granted.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with a subsequent written notification of the final action taken as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or to deny filings to make:

(1) Excess nondiscriminatory severance plan payments as provided by 12 CFR 359.1(f)(2)(v); and

(2) Golden parachute payments permitted by 12 CFR 359.4.

§ 303.245 Waiver of liability for commonly controlled depository institutions.

(a) *Scope.* Section 5(e) of the FDI Act (12 U.S.C. 1815(e)) creates liability for commonly controlled insured depository institutions for losses incurred or anticipated to be incurred by the FDIC in connection with the default of a commonly controlled insured depository institution or any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. In addition to certain statutory exceptions and exclusions contained in sections 5(e)(6), (7) and (8), the FDI Act also permits the FDIC, in its discretion, to exempt any insured depository institution from this liability if it determines that such exemption is in the best interests of the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF). This section describes procedures to request a conditional waiver of liability pursuant to 12 U.S.C. 1815(e)(5)(A).

(b) *Definition. Conditional waiver of liability* means an exemption from liability pursuant to section 5(e) of the FDI Act (12 U.S.C. 1815(e)) subject to terms and conditions.

(c) *Filing procedures.* Applicants should submit a letter application to the appropriate regional director (DOS).

(d) *Content of filing.* The application should contain the following information:

(1) The basis for requesting a waiver;

(2) The existence of any significant events (e.g., change of control, capital injection, etc.) that may have an impact upon the applicant and/or any potentially liable institution;

(3) Current, and if applicable, pro forma financial information regarding the applicant and potentially liable institution(s); and

(4) The benefits to the appropriate FDIC insurance fund resulting from the waiver and any related events.

(e) *Additional information.* The FDIC may request additional information at any time during the processing of the filing.

(f) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(g) *Failure to comply with terms of conditional waiver.* In the event a conditional waiver of liability is issued, failure to comply with the terms specified therein may result in the termination of the conditional waiver of liability. The FDIC reserves the right to revoke the conditional waiver of liability after giving the applicant written notice of such revocation and a reasonable opportunity to be heard on the matter.

(h) *Authority retained by FDIC Board of Directors.* The FDIC Board of Directors retains the authority to act on any application for waiver of liability of commonly controlled depository institutions.

§ 303.246 Insurance fund conversions.

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the FDIC's prior approval to engage in an insurance fund conversion that involves the transfer of deposits between the SAIF and the BIF. Optional conversion transactions, commonly referred to as Oakar transactions, pursuant to section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)) which do not involve the transfer of deposits between the SAIF and the BIF are governed by the procedures set forth in subpart D (Merger Transactions) of this part.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate FDIC regional director (DOS). The filing should be signed by representatives of each institution participating in the transaction. Insurance fund conversions which are proposed in conjunction with a merger application filed pursuant to section 18(c) of the FDI Act (12 U.S.C. 1828(c)) should be included with that filing.

(c) *Content of filing.* The application should include the following information:

(1) A description of the transaction;

(2) The amount of deposits involved in the conversion transaction;

(3) A pro forma balance sheet and income statement for each institution upon consummation of the transaction; and

(4) Certification by each party to the transaction that applicable entrance and exit fees will be paid pursuant to part 312 of this chapter.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny filings for insurance fund conversions involving the transfers of deposits between the Savings Association Insurance Fund and the Bank Insurance Fund.

§ 303.247 Conversion with diminution of capital.

(a) *Scope.* This section contains the procedures to be followed by an insured federal depository institution seeking the prior written consent of the FDIC pursuant to section 18(i)(2) of the FDI Act (12 U.S.C. 1828(i)(2)) to convert from an insured federal depository institution to an insured state nonmember bank (except a District bank) where the capital stock or surplus of the resulting bank will be less than the capital stock or surplus, respectively, of the converting institution at the time of the shareholders' meeting approving such conversion.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application should contain the following information:

(1) A description of the proposed transaction;

(2) A schedule detailing the present and proposed capital structure; and

(3) A copy of any documents submitted to the state chartering authority with respect to the charter conversion.

(d) *Additional information.* The FDIC may request additional information at any time during the processing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority*—(1) *Approvals.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve applications to convert with diminution of capital.

(2) *Denials.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to deny applications to convert with diminution of capital.

§ 303.248 Continue or resume status as an insured institution following termination under section 8 of the FDI Act.

(a) *Scope.* This section relates to applications by depository institutions whose insured status has been terminated under section 8 of the FDI Act (12 U.S.C. 1818) for permission to continue or resume its status as an insured depository institution. This section covers institutions whose deposit insurance continues in effect for any purpose or for any length of time under the terms of an FDIC order terminating deposit insurance, but does not cover operating non-insured depository institutions which were previously insured by the FDIC, or any non-insured, non-operating depository institution whose charter has not been surrendered or revoked.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The filing should contain the following information:

(1) A complete statement of the action requested, all relevant facts, and the reason for such requested action; and

(2) A certified copy of the resolution of the depository institution's board of directors authorizing submission of the filing.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Authority retained by FDIC Board of Directors.* The FDIC Board of Directors retains the authority to act on any application to continue or resume status as an insured institution following termination under section 8 of the FDI Act.

§ 303.249 Truth in Lending Act—Relief from reimbursement.

(a) *Scope.* This process applies to requests for relief from reimbursement pursuant to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z (12 CFR part 226).

(b) *Procedures to be followed in filing initial requests for relief.* Requests for relief from reimbursement should be filed with the appropriate regional director (DCA) within 60 days after receipt of the compliance report of examination containing the request to conduct a file search and make restitution to affected customers. The filing should contain a complete and concise statement of the action requested, all relevant facts, the reasons and analysis relied upon as the basis for such requested action, and all supporting documentation.

(c) *Additional information.* The FDIC may request additional information at any time during processing of any such requests.

(d) *Processing.* The FDIC will acknowledge receipt of the request and provide the applicant with a subsequent written notification of its determination as soon as the decision is rendered.

(e) *Delegation of authority*—(1) *Denial of initial requests for relief.* Authority is delegated to the Director and Deputy Director (DCA), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to deny requests for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)); provided however, that a regional director or deputy regional director is not authorized to deny any request where the estimated amount of reimbursement is greater than $25,000.

(2) *Approval of initial requests for relief.* Authority is delegated to the Director and Deputy Director (DCA), and where confirmed in writing by the director, to a deputy director or an associate director to approve requests for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)).

(f) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director denies requests for relief, by the appropriate regional counsel, that the action taken is not inconsistent with the Truth in Lending Simplification and Reform Act.

(g) *Procedures to be followed in filing requests for reconsideration.* Within 15 days of receipt of written notice that its request for relief has been denied, the requestor may petition the appropriate regional director (DCA) for reconsideration of such request in accordance with the procedures set forth in § 303.11(f) of this part.

§ 303.250 Modification of conditions.

(a) *Scope.* This section contains the procedures to be followed by an insured depository institution to seek the prior consent of the FDIC to modify the requirements of a prior approval of a filing issued by the FDIC.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate FDIC regional director (DOS).

(c) *Content of filing.* The application should contain the following information:

(1) A description of the original approval;

(2) A description of the modification requested; and

(3) The reason for the request.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with a subsequent written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny requests to modify the requirements of a prior approval of a filing issued by the FDIC subject to the following criteria:

(1) The Legal Division is consulted to the same extent as was required for approval of the original filing; and

(2) The approving delegate had the authority to approve the original filing.

§ 303.251 Extension of time.

(a) *Scope.* This section contains the procedures to be followed by an insured

depository institution to seek the prior consent of the FDIC for additional time to fulfill a condition required in an approval of a filing issued by the FDIC or to consummate a transaction which was the subject of an approval by the FDIC.

(b) *Filing procedures.* Applicants should submit a letter application to the appropriate regional director (DOS).

(c) *Content of filing.* The application should contain the following information:

(1) A description of the original approval;

(2) Identification of the original time limitation;

(3) The additional time period requested; and

(4) The reason for the request.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Processing.* The FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(f) *Delegation of authority.* (1) Except as provided in paragraph (f)(2) of this section, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director, to approve or deny requests for extensions of time within which to perform acts or fulfill conditions required by a prior FDIC action on a filing of the insured depository institution.

(2) Limits on exercise of delegated authority. (i) Extensions of time approved may not exceed one year.

(ii) Notwithstanding the delegations in paragraph (f)(1) of this section, no delegate shall have the authority to deny an extension of time request unless that delegate has the authority under this part to deny the original filing upon which the extension of time is predicated.

Subpart N—Enforcement Delegations

§ 303.260 Scope.

This subpart contains delegations of authority relating to the initiation, prosecution, and settlement of administrative enforcement actions under the FDI Act and other laws and regulations enforced by the FDIC, including investigations and subpoenas.

§ 303.261 Issuance of notification to primary regulator under section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(a) *Book capital less than 2 percent.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director or to the appropriate regional director or deputy regional director, to issue notifications to primary regulator when the respondent depository institution's book capital is less than 2 percent of total assets; provided that authority may not be delegated to the regional director or deputy regional director whenever the respondent depository institution has issued any mandatory convertible debt or any form of Tier 2 capital (such as limited life preferred stock, subordinated notes and debentures).

(b) *Tier 1 capital less than 2 percent.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to issue notifications to primary regulator when the respondent depository institution's adjusted Tier 1 capital is less than 2 percent of adjusted part 325 total assets as defined in § 303.2(b) of this part.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues notifications to primary regulator, by the appropriate regional counsel, that the allegations contained in the findings of violations of law or regulation and/or unsafe or unsound practices and/or unsafe or unsound condition, if proven, constitute a basis for the issuance of a notification to primary regulator pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

§ 303.262 Issuance of notice of intention to terminate insured status under section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to issue notices of intent to terminate insured status when the respondent depository institution has failed to correct any violations of law or regulation and/or unsafe or unsound practices and/or unsafe or unsound condition as specified in the relevant notification to primary regulator.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the allegations contained in the findings in the notice of intention to terminate insured status of violations of law or regulation and/or unsafe or unsound practices and/or unsafe or unsound condition, if proven, constitute a basis for termination of the insured status of the respondent depository institution pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

§ 303.263 Cease-and-desist actions under section 8(b) of the FDI Act (12 U.S.C. 1818(b)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director or to the appropriate regional director or deputy regional director to issue:

(1) Notices of charges; and

(2) Cease-and-desist orders (with or without a prior notice of charges) where the respondent depository institution or individual respondent consents to the issuance of the cease-and-desist order prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and recommended decision with the Executive Secretary of the FDIC.

(b) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue a joint notice of charges or cease-and-desist order under this section, where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both Directors or their Deputy Directors or associate directors, regional directors or deputy regional directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues the notice of charges or the stipulated cease-and-desist order, by the appropriate regional counsel, that the allegations contained in the notice of charges, if proven, constitute a basis for the issuance of a section 8(b) order, or that the stipulated cease-and-desist order is authorized under section 8(b) of the FDI Act, and, upon its effective date, shall be a cease-and-desist order which has become final for purposes of enforcement pursuant to the FDI Act.

§ 303.264 Temporary cease-and-desist orders under section 8(c) of the FDI Act (12 U.S.C. 1818(c)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue temporary cease-and-desist orders.

(b) *Joint DOS-DCA action.* The Director (DOS) and the Director (DCA) may issue a joint temporary cease-and-desist order where such order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both Directors or their Deputy Directors or associate directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action is not inconsistent with section 8(c) of the FDI Act (12 U.S.C. 1818(c)) and the temporary cease-and-desist order is enforceable in a United States District Court.

§ 303.265 Removal and prohibition actions under section 8(e) of the FDI Act (12 U.S.C. 1818(e)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS) or the Director and Deputy Director (DCA) and, where confirmed in writing by the appropriate Director, to an associate director, to issue:

(1) Notices of intention to remove an institution-affiliated party from office or to prohibit an institution-affiliated party from further participation in the conduct of the affairs of an insured depository institution pursuant to sections 8(e)(1) and (2) of the FDI Act (12 U.S.C. 1818(e)(1) and (2)), and temporary orders of suspension pursuant to section 8(e)(3) of the FDI Act (12 U.S.C. 1818(e)(3)); and

(2) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution where the institution-affiliated party consents to the issuance of such orders prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the Executive Secretary of the FDIC.

(b) *Joint DOS-DCA action.* The Director (DOS) and the Director (DCA) may issue joint notices and orders pursuant to this section where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both directors or their deputy directors or associate directors.

(c) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a notice of intent pursuant to section 8(e) of the FDI Act, or that the stipulated section 8(e) order is not inconsistent with section 8(e) of the FDI Act, and, upon issuance, shall be an order which has become final for purposes of enforcement pursuant to the FDI Act.

§ 303.266 Suspension and removal action under section 8(g) of the FDI Act (12 U.S.C. 1818(g)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue orders of suspension or prohibition to an institution-affiliated party who is charged in any information, indictment, or complaint, or who is convicted of or enters a pretrial diversion or similar program, as to any criminal offense cited in or covered by section 8(g) of the FDI Act, when such institution-affiliated party consents to the suspension or prohibition.

(b) *Delegation of authority where suspension or prohibition mandated.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue orders of suspension and prohibition to any institution-affiliated party who is charged in any information, indictment, or complaint, or who is convicted or enters a pretrial diversion or similar program, as to any criminal offense involving mandatory suspension or prohibition under sections 8(g)(1)(A)(ii) and (C)(ii) of the FDI Act (12 U.S.C. 1818(g)(1)(A)(ii) and (C)(ii)), whether or not such institution-affiliated party consents to the suspension or prohibition.

(c) *Joint DOS-DCA action.* The Director (DOS) and the Director (DCA) may issue joint orders pursuant to this section where such order addresses both safety and soundness and consumer compliance matters. A joint order will require the signatures of both Directors or their Deputy Directors or associate directors.

(d) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(g) of the FDI Act (12 U.S.C. 1818(g)) and the order is enforceable in a United States District Court pursuant to sections 8(i) and 8(j) of the FDI Act (12 U.S.C. 1818(i) and (j)).

§ 303.267 Termination of insured status under section 8(p) of the FDI Act (12 U.S.C. 1818(p)).

(a) *General.* Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of insured depository institutions that have ceased to engage in the business of receiving deposits other than trust funds pursuant to section 8(p) of the FDI Act (12 U.S.C. 1818(p)).

(b) *DOS and legal concurrence.* The authority delegated under this section shall be exercised only upon the recommendation and concurrence of the Director or Deputy Director (DOS) or, when confirmed in writing by the Director, an associate director, and upon the certification of the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(p) of the FDI Act (12 U.S.C. 1818(p)).

§ 303.268 Termination of insured status under section 8(q) of the FDI Act (12 U.S.C. 1818(q)).

(a) *General.* Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of an insured depository institution where the liabilities of the insured institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract, pursuant to section 8(q) of the FDI Act (12 U.S.C. 1818(q)).

(b) *DOS and legal concurrence.* The authority delegated under this section shall be exercised only upon the recommendation and concurrence of the Director or Deputy Director (DOS) or, when confirmed in writing by the Director, an associate director, and upon the certification of the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 8(q) of the FDI Act (12 U.S.C. 1818(q)).

§ 303.269 Civil money penalties.

(a) *General.* Except as provided otherwise in this section, authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to issue:

(1) Notice of assessment of civil money penalties; and

(2) Final orders to pay (with or without a prior notice of assessment of civil money penalty) where the insured depository institution or institution-affiliated party consents to the issuance of the order to pay and waives, as applicable, receipt of a notice of assessment of civil money penalty and the right to an administrative hearing.

(b) *Legal concurrence.* The authority delegated under paragraph (a) of this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the allegations contained in the notice of assessment, if proven, constitute a basis for assessment of civil money penalties, or that the stipulated final order to pay is authorized under the FDI Act, and upon its effective date, shall be an order to pay which has become final for purposes of enforcement pursuant to the FDI Act.

(c) *Joint DOS–DCA action.* The Director (DOS) and the Director (DCA) may issue joint notices pursuant to paragraph (a) of this section where such notice addresses both safety and soundness and consumer compliance matters. A joint notice will require the signatures of both Directors or their Deputy Directors or associate directors.

(d) *Required reports.* (1) Authority is delegated to the General Counsel or his or her designee for the levying and enforcement of civil money penalties under:

(i) Section 7(a)(1) of the FDI Act (12 U.S.C. 1817(a)(1)) for the late, inaccurate, false or misleading filing of Reports of Condition and Reports of Income;

(ii) Section 8(i) of the FDI Act (12 U.S.C. 1818(i)) for the late, inaccurate, false or misleading filing of Home Mortgage Disclosure Act (HMDA) reports;

(iii) Section 8(i) of the FDI Act (12 U.S.C. 1818(i)) for the late, inaccurate, false or misleading filing of Community Reinvestment Act (CRA) loan data reports; and

(iv) Such other reports as the Board of Directors may require.

(2) In the exercise of this delegated authority, the General Counsel or his or her designee shall consult with the appropriate Director, Deputy Director, or associate director before imposing any penalty.

§ 303.270 Notices of assessment under section 5(e) of the FDI Act (12 U.S.C. 1815(e)).

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to issue notices of assessment of liability to commonly controlled insured depository institutions for the estimated amount of loss to the deposit insurance funds.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with section 5(e) of the FDI Act (12 U.S.C. 1815(e)).

§ 303.271 Prompt corrective action directives and capital plans under section 38 of the FDI Act (12 U.S.C. 1831o) and part 325 of this chapter.

(a) *General—Notices, directives and orders.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to accept, reject, require new or revised capital restoration plans, or make any other determinations with respect to the implementation of capital restoration plans and, in accordance with subpart Q of part 308 of this chapter, to issue:

(1) Notices of intent to issue capital directives;

(2) Directives to insured state nonmember banks that fail to maintain capital in accordance with the requirements contained in part 325 of this chapter;

(3) Notices of intent to issue prompt corrective action directives, except directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831(f)(2)(F)(ii));

(4) Directives to insured depository institutions pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), with or without the consent of the respondent bank to the issuance of the directive, except directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831o(f)(2)(F)(ii));

(5) Directives to insured depository institutions requiring immediate action or imposing proscriptions pursuant to section 38 of the FDI Act (12 U.S.C. 1831o) and part 325 of this chapter, and in accordance with the requirements contained in § 308.201(a)(2) of this chapter;

(6) Notices of intent to reclassify insured banks pursuant to §§ 325.103(d) and 308.202 of this chapter;

(7) Directives to reclassify insured banks pursuant to §§ 325.103(d) and 308.202 of this chapter with the consent of the respondent bank to the issuance of the directive; and

(8) Orders on request for informal hearings to reconsider reclassifications and designate the presiding officer at the hearing pursuant to § 308.202 of this chapter.

(b) *Notices—Dismissal of director and officer.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to:

(1) Issue notices of intent to issue a prompt corrective action directive ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831o(f)(2)(F)(ii)) and in accordance with the requirements contained in § 308.203 of this chapter;

(2) Issue directives ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831o(f)(2)(F)(ii)); and

(3) Issue orders of dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831o(f)(2)(F)(ii)) where the individual consents to the issuance of such order prior to the filing of a recommendation by the presiding officer with the FDIC.

(c) *Reclassification of institution other than on basis of capital.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to:

(1) Act on recommended decisions of presiding officers pursuant to a request for reconsideration of a reclassification in accordance with the requirements contained in § 308.202 of this chapter; and

(2) Act on requests for rescission of a reclassification.

(d) *Appeals of immediately effective PCA directives.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to act on appeals from immediately effective directives issued pursuant to section 38 of the FDI Act (12 U.S.C. 1831o) and § 308.201 of this chapter.

(e) *Informal hearings.* Authority is delegated to the Executive Secretary of the FDIC to issue orders for informal hearings and designate presiding officers on directives issued pursuant to section 38(f)(2)(F)(ii) of the FDI Act (12 U.S.C. 1831o(f)(2)(F)(ii)).

(f) *Legal concurrence.* The authority delegated under this section shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director issues a notice, directive, or order, by the appropriate regional counsel, that the action taken is not inconsistent with section 38 of the FDI Act (12 U.S.C. 1831o) and part 325 of this chapter.

§ 303.272 Investigations under section 10(c) of the FDI Act (12 U.S.C. 1820(c)).

(a) *Authority of division directors.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), to the Director and Deputy Director of the Division of Resolutions and Receiverships, and where confirmed in writing by the appropriate Director, to an associate director, or to the appropriate regional director and deputy regional director, to issue an order of investigation pursuant to section 10(c) of the FDI Act (12 U.S.C. 1820(c)) and subpart K of part 308 of this chapter (12 CFR 308.144 through 308.150).

(b) *Authority of General Counsel.* Authority is delegated to the General Counsel, and where confirmed in writing by the General Counsel, to his or her designee, to issue an order of investigation pursuant to sections 8 through 13 of the FDI Act (12 U.S.C. 1818–1823), as appropriate, and subpart K of part 308 of this chapter (12 CFR 308.144 through 308.150).

(c) *Concurrence in certain situations.* In issuing an order of investigation that pertains to an open insured depository institution or an institution making application to become an insured depository institution, or a post-conservatorship or post-receivership order of investigation, the authority delegated under this section shall be exercised only upon the concurrent execution of the order of investigation by the Director or Deputy Director (DOS), or the Director or Deputy Director (DCA), or the Director or Deputy Director of the Division of Resolutions and Receiverships, their respective associate directors, and the General Counsel or his or her designee. In the case of a joint order of investigation, such authority shall be exercised only upon the concurrent execution of the order of investigation by both Directors or Deputy Directors, or their associate directors, and upon the certification and execution of the order by the General Counsel or his or her designee.

§ 303.273 Unilateral settlement offers.

(a) *General.* Authority is delegated to the Director and Deputy Director (DOS), to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to accept, deny or enter into negotiations for or regarding settlement and settlement offers with insured depository institutions, or with an institution-affiliated party, pertaining to or arising in connection with a proceeding under part 308 of this chapter. In cases where a proceeding under part 308 of this chapter was issued jointly by DOS and DCA, both Directors or Deputy Directors, or their associate directors, must agree to accept, deny or enter into negotiations regarding settlement and settlement offers with insured depository institutions or with an institution-affiliated party.

(b) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with the FDI Act.

§ 303.274 Acceptance of written agreements.

(a) *Written agreements under section 8(a) of the FDI Act.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party pertaining to any matter which may be addressed by the FDIC pursuant to section 8(a) of the FDI Act (12 U.S.C. 1818(a)).

(b) *Written agreements in lieu of cease-and-desist orders.* Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), and where confirmed in writing by the appropriate Director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party pertaining to any safety and soundness or consumer compliance matter which may be addressed by the FDIC pursuant to section 8(b) of the FDI Act (12 U.S.C. 1818(b)) or any other provision of the FDI Act which addresses safety and soundness or consumer compliance matters. In cases which would address both safety and soundness and consumer compliance matters, the Directors, or their designees, may accept or enter into joint written agreements with insured depository institutions or any institution-affiliated party.

(c) *Written agreements as conditions attendant to FDIC filings contained in this part.* Authority is delegated to the Director and Deputy Director (DOS), and to the Director and Deputy Director (DCA) and, where confirmed in writing by the appropriate Director, to an associate director, or to the appropriate regional director or deputy regional director, to accept or enter into any written agreements with insured depository institutions, any institution-affiliated party or any other petitioner which contains conditions precedent to the FDIC's non-objection to a filing pursuant to this part.

(d) *Legal concurrence.* The authority delegated under this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, that the action taken is not inconsistent with the FDI Act.

§ 303.275 Modifications and terminations of enforcement actions and orders.

(a) *Termination of section 8(a) (12 U.S.C. 1818(a)) orders and agreements.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(a) orders and agreements and to terminate actions and agreements which are pending pursuant to section 8(a) of the FDI Act when the depository institution is closed by a federal or state authority or merges into another institution.

(b) *Termination of section 8(a) (12 U.S.C. 1818(a)) notification to primary regulator issued by Board of Directors.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate notifications to primary regulator issued by the Board of Directors pursuant to section 8(a) of the FDI Act where the respondent depository institution is in material compliance with such notification or for good cause shown.

(c) *Termination of section 8(a) (12 U.S.C. 1818(a)) notice of intent to terminate insured status.* In cases where the Board of Directors has issued a notice of intent to terminate insured status pursuant to section 8(a) of the FDI Act, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate the actions pending pursuant to such notice of intent to terminate insured status where the respondent depository institution is in material compliance with the applicable notification to primary regulator or for good cause shown.

(d) *Sections 8(b) and 8(c)(12 U.S.C. 1818(b) and (c)) actions and orders.* (1) Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), as appropriate and, where confirmed in writing by the appropriate Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(b) and section 8(c) orders and agreements and to terminate actions and agreements which are pending pursuant to sections 8(b) and 8(c) of the FDI Act when the depository institution is closed by a federal or state authority or merges into another institution. In cases where a joint order was issued by DOS and DCA, both Directors, or their Deputy Directors or associate directors, or the appropriate regional directors or deputy regional directors, must execute the order of termination.

(2) Authority is delegated to the Director and Deputy Director (DOS) and to the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(b) orders issued by the Board of Directors either where material compliance with the section 8(b) order has been achieved by the respondent depository institution or individual respondent or for good cause shown. In cases where an order issued by the Board of Directors addresses both safety and soundness and consumer compliance matters, both Directors or Deputy Director, or the designees of the Directors, must execute the order of termination.

(e) *Modification and termination of section 8(e) (12 U.S.C. 1818(e)) orders and actions.* Authority is delegated to the Director and Deputy Director (DOS) and the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, to modify or terminate outstanding section 8(e) orders and pending actions and to grant consent under section 8(e)(7)(B) of the Act (12 U.S.C. 1818(e)(7)(B)) for the modification or termination of an outstanding section 8(e) order issued by another Federal financial institution regulatory agency where:

(1) The respondent has demonstrated his or her fitness to participate in any manner in the conduct of the affairs of an insured depository institution;

(2) The respondent has shown that his or her participation would not pose a risk to the institution's safety and soundness; or

(3) The respondent has proven that his or her participation would not erode public confidence in the institution.

(f) *Modification and termination of section 8(g) (12 U.S.C. 1818(g)) orders and actions.* Pursuant to section 8(j) of the FDI Act (12 U.S.C. 1818(j)), authority is delegated to the Director and Deputy Director (DOS) and the Director and Deputy Director (DCA), as appropriate, and where confirmed in writing by the appropriate Director, to an associate director, to approve requests for modifications or terminations of section 8(g) orders issued by either the Board of Directors or under delegated authority.

(g) *Other matters not specifically addressed.* For all outstanding or pending notices, actions, orders, directives and agreements not specifically addressed in this subpart, the delegations of authority contained in this subpart shall include the authority to modify or terminate any outstanding or pending notice, order, directive or agreement issued pursuant to delegated authority, as may be appropriate.

(h) *Termination of pending actions—general.* Any pending enforcement action may be dismissed or terminated by the Director or Deputy Director of DOS or DCA, as appropriate, at any time prior to the commencement of a hearing on the merits by an administrative law judge. Once a hearing on the merits has been convened by an administrative law judge, a pending enforcement action may be dismissed or terminated by stipulation or consent of the affected parties no later than 14 days after the administrative law judge has closed the record of the hearing. Only the FDIC Board of Directors may terminate or dismiss an enforcement action more than 14 days after the record has been closed by an administrative law judge.

(i) *Legal concurrence.* Any dismissals, modifications or terminations pursuant to this section shall be exercised only upon concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director acts under delegated authority, by the appropriate regional counsel, that the action taken is not inconsistent with the FDI Act.

§ 303.276 Enforcement of outstanding enforcement orders.

After consultation with the Director (DOS) or the Director (DCA), or a Deputy Director or an associate director, or the appropriate regional director or deputy regional director, as may be appropriate, the General Counsel or designee is authorized to initiate and prosecute any action to enforce any effective and outstanding order or temporary order issued under 12 U.S.C. 1817, 1818, 1820, 1828, 1829, 1831*l*, 1831o, 1972, or 3909, or any provision thereof, in the appropriate United States District Court.

§ 303.277 Compliance plans under section 39 of the FDI Act (12 U.S.C. 1831p–1) (standards for safety and soundness) and part 308 of this chapter.

(a) *Compliance plans.* Authority is delegated to the Director and Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to accept, to reject, to require new or revised compliance plans, or to make any other determinations with respect to the implementation of compliance plans pursuant to subpart R of part 308 of this chapter.

(b) *Notices, orders, and other action.* Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director, to:

(1) Issue notices of intent to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act (12 U.S.C. 1831p-1) and in accordance with the requirements contained in § 308.304(a)(1) of this chapter;

(2) Issue an order requiring the bank immediately to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act (12 U.S.C. 1831p–1) and in accordance with the requirements contained in § 308.304(a)(2) of this chapter; and

(3) Act on requests for modification or rescission of an order.

(c) *Legal concurrence—compliance plans.* The authority delegated under this section as to compliance plans shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee, or, in cases where a regional director or deputy regional director accepts, rejects or requires new or revised compliance plans or makes any other determinations with respect to compliance plans, by the appropriate regional counsel, that the action taken is not inconsistent with the FDI Act.

(d) *Legal concurrence—notices and orders.* The authority delegated under this section as to notices and orders shall be exercised only upon the concurrent certification by the General Counsel or, where confirmed in writing by the General Counsel, by his or her designee that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final order pursuant to section 39 of the FDI Act or that the issuance of a final order is not inconsistent with section 39 of the FDI Act or that the stipulated section 39 order is not inconsistent with section 39 of the FDI Act and is an order which has become final for purposes of enforcement pursuant to the FDI Act.

§ 303.278 Enforcement matters where authority is not delegated.

Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following enforcement matters:

(a) Notifications to primary regulator under section 8(a) of the FDI Act (12 U.S.C. 1818(a)) when the respondent bank's book capital is at or above 2 percent of total assets and adjusted Tier 1 capital is at or above 2 percent of adjusted part 325 total assets as defined in § 303.2(b) of this part;

(b) Orders terminating insured status under section 8(a) of the FDI Act (12 U.S.C. 1818(a));

(c) Cease-and-desist orders under section 8(b) of the FDI Act (12 U.S.C. 1818(b)) when the respondent depository institution or individual does not consent to the issuance of such orders;

(d) Temporary orders of suspension and prohibition under section 8(e) of the FDI Act (12 U.S.C. 1818(e));

(e) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution under section 8(e) of the FDI Act (12 U.S.C. 1818(e)) when the individual does not consent to the issuance of such orders;

(f) Orders of suspension or prohibition to an indicted director, officer or person participating in the conduct of the affairs of an insured depository institution and orders of removal or prohibition to a convicted director, officer or person participating in the conduct of the affairs of an insured depository institution under section 8(g) of the FDI Act (12 U.S.C. 1818(g)) when such director, officer or person does not consent to the suspension or removal;

(g) Final orders to pay civil money penalties where respondents do not consent to the assessment of civil money penalties and hearings have been held;

(h) Denials of requests for modifications or terminations of orders issued pursuant to section 8(g) of the FDI Act;

(i) Grants or denials of requests for reinstatement to office, whether or not an informal hearing has been requested, pursuant to § 308.203 of this chapter; and

(j) Grants or denials of requests for waivers of liability of commonly controlled insured depository institutions as to assessments under section 5(e) of the FDI Act (12 U.S.C. 1815(e)).

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

2. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1818, 1818(a), 1818(b), 1819, 1820(d)(10), 1821f, 1828(j)(2), 1831, 1831f–1.

3. Section 337.6 is amended by revising paragraph (a)(5)(iii), adding a sentence at the end of paragraph (c), removing paragraphs (d) and (e), and redesignating paragraphs (g) and (h) as (d) and (e), respectively, to read as follows:

§ 337.6 Brokered deposits.

(a) * * *

(5) * * *

(iii) Notwithstanding paragraph (a)(5)(ii) of this section, the term *deposit broker* includes any insured depository institution that is not well capitalized, and any employee of any such insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.

* * * * *

(c) * * * For filing requirements, consult 12 CFR 303.243.

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PART 341—REGISTRATION OF TRANSFER AGENTS

4. The authority citation for part 341 continues to read as follows:

Authority: Secs. 2, 3, 17, 17A and 23(a), Securities Exchange Act of 1934, as amended (15 U.S.C. 78b, 78c, 78q, 78q–1 and 78w(a)).

5. Section 341.7 is added to read as follows:

§ 341.7 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and appropriate regional director and deputy regional director, to act on disclosure matters under and pursuant to sections 17 and 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78).

(b) Authority to act on disclosure matters is retained by the Board of Directors when such matters involve exemption from registration requirements pursuant to section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(1)).

PART 346—FOREIGN BANKS

6. The authority citation for part 346 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 3103, 3104, 3105, 3108.

7. Section 346.19 of subpart C is amended by adding a new paragraph (e)(14) to read as follows:

§ 346.19 Pledge of assets.

* * * * *

(e) * * *

(14) *Delegation of authority.* (i) Authority is delegated to the Director and Deputy Director of the Division of Supervision and, where confirmed in writing by the Director, to an associate director and the appropriate regional director and deputy regional director of the region in which the insured branch is located, to enter into pledge agreements with foreign banks and depositories under this section. This authority also shall extend to the power to revoke such approval and require the dismissal of the depository.

(ii) Authority is delegated to the General Counsel or designee to modify the terms of the model deposit agreement used under this section.

* * * * *

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

8. The authority citation for part 348 continues to read as follows:

Authority: 12 U.S.C. 3207, 12 U.S.C. 1823(k).

9. Section 348.9 is added to read as follows:

§ 348.9 Delegation of authority.

(a) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director and appropriate regional director and deputy regional director, to approve or deny requests to establish management official interlocks pursuant to § 348.6 or section 205(8) of the Depository Institutions Management Interlocks Act (except that a regional director or deputy regional director may deny such a request only if the request was made pursuant to 348.6(b)(4)); and

(b) Authority is delegated to the Director and Deputy Director (DOS) and, where confirmed in writing by the Director, to an associate director to deny a request to establish a management official interlock pursuant to any provision of either § 348.6 or section 205(8) of the Depository Institutions Management Interlocks Act.

PART 359—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

10. The authority citation for part 359 continues to read as follows:

Authority: 12 U.S.C. 1828(k).

11. Section 359.6 is revised to read as follows:

§ 359.6 Filing instructions.

Requests to make excess nondiscriminatory severance plan payments pursuant to § 359.1(f)(2)(v) and golden parachute payments permitted by § 359.4 shall be submitted in writing to the appropriate regional director (DOS). For filing requirements, consult 12 CFR 303.244. In the event that the consent of the institution's primary federal regulator is required in addition to that of the FDIC, the requesting party shall submit a copy of its letter to the FDIC to the institution's primary federal regulator. In the case of national banks, such written requests shall be submitted to the OCC. In the case of state member banks and bank holding companies, such written requests shall be submitted to the Federal Reserve district bank where the institution or holding company, respectively, is located. In the case of savings associations and savings association holding companies, such written requests shall be submitted to the OTS regional office where the institution or holding company, respectively, is located. In cases where only the prior consent of the institution's primary federal regulator is required and that agency is not the FDIC, a written request satisfying the requirements of this section shall be submitted to the primary federal regulator as described in this section.

By order of the Board of Directors.

Dated at Washington, DC., this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–26235 Filed 10–8–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Applications for Deposit Insurance

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed statement of policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, the FDIC is revising its Statement of Policy on "Applications for Deposit Insurance." These revisions include changes to FDIC's policies regarding initial capitalization when a de novo bank is organized by certain well managed and well capitalized holding companies. Policies regarding stock benefit plans are amended and regional directors are given more discretion to act under delegated authority. Changes are also made to eliminate outdated information and to reflect current polices and practices that have not previously been incorporated into the Statement of Policy.

DATES: Comments must be submitted on or before January 7, 1998.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, D.C. 20429. Comments may be hand delivered to the guard station located at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (FAX number (202) 898–3838; Internet address: comments@FDIC.gov). Comments may be inspected and photocopied at the FDIC Public Information Center, Room 100, 801 17th Street NW, Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Cary H. Hiner, Associate Director, Division of Bank Supervision, (202) 898–6814; Jesse G. Snyder, Assistant Director, Division of Supervision, (202) 898–6915; Mark S. Schmidt, Assistant Director, Division of Supervision, (202) 898–6915; or Susan van den Toorn, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–8707, FDIC, 550 17th Street, N.W., Washington, D. C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) (12 U.S.C. 4803(a)) requires the FDIC to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the FDIC to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies. Also as part of the CDRIA review, on December 6, 1995, the FDIC published in the **Federal Register** a Notice of opportunity to comment on specific FDIC regulations and written policies. See 60 FR 62345. In response to that request, the FDIC received one comment regarding the Statement of Policy on "Applications for Deposit Insurance" (Statement of Policy). The commenter urged the FDIC to re-evaluate its position with regard to stock benefit plans established to compensate organizers and investors who place funds at risk during the organizational phase. Specifically, the commenter stated that the FDIC has objected to stock options proposed to be awarded to organizers who have placed funds at risk and noted that the Office of the Comptroller of the Currency (OCC) and the Federal Reserve Board (FRB) do not object to such plans. The commenter urged the FDIC to take a position similar to the OCC and the FRB. The issues raised by the commenter are addressed below in the discussion of stock benefit plans and in the Statement of Policy.

Also as a part of the CDRIA review, the FDIC has determined that the Statement of Policy remains an important communication device with the banking industry. However, certain information has become outdated, while some issues of current importance either are not addressed or are not adequately addressed. As a consequence, the basic organizational structure of the Statement of Policy has been retained, while much of the content has been revised.

Four significant changes to the Statement of Policy are described below. In each of these instances, the change will provide the appropriate FDIC regional director, Division of Supervision (DOS), with the authority to approve deposit insurance applications which previously would have been forwarded to the FDIC's Washington Office for review and decision.

Wholly Owned Subsidiary of a Holding Company

The current Statement of Policy requires an initial capitalization in an amount that is sufficient to provide an 8 percent Tier 1 leverage capital ratio throughout the first three years of operation. The revised Statement of Policy provides that, in certain circumstances, the amount of the initial capital injection for a de novo institution may be reduced to a minimum of $2,000,000, or an amount that is sufficient to provide an 8.0 percent Tier 1 leverage capital ratio at the end of the first year of operation, whichever is greater. This option will be available when the proposed depository institution is to be formed as a wholly owned subsidiary of a holding company which meets the standards established for an "eligible holding company," as set forth in § 303.22 of the FDIC's regulations. However, the holding company would also be required to provide a written commitment to maintain the proposed depository institution's Tier 1 leverage capital ratio at no less than 8.0 percent throughout the first three years of operation. This revision will allow a well managed holding company to provide less initial capital than would have been required under the former standard. This change is considered appropriate in recognition of the ability of the FDIC to reasonably quantify the financial capacity of the parent organization, and to allow the holding company to more efficiently allocate the resources of the entire organization. This amendment will permit the appropriate FDIC regional director (DOS) to act on proposals that contain these provisions when the other factors necessary for delegated authority have been met.

Operating Insured Offices

In certain instances, the applicant may request that the benchmark for evaluating the adequacy of capital be established such that the resultant proposed depository institution would be classified as well capitalized, as defined by its primary federal regulator. This provision would become applicable when the proposal involves the formation of a depository institution through the acquisition of an existing insured operating office (or offices). Criteria established for this lower initial capital benchmark would be that the acquisition involves substantially all of the assets and liabilities of the operating insured office, that the applicant provide reasonable evidence that the de novo institution's operations will be stabilized at inception, and that the proponent for the applicant be either an eligible holding company or an established banking group. The Statement of Policy uses an identified chain banking group as an example of one type of "established banking group." However, the term is intended to cover a group of individuals that have served as directors or officers of an operating insured depository institution.

For either a chain banking group or a group of individuals to be considered an established group, the association must be in existence for at least three years. This provision has been added to the Statement of Policy in recognition that deposit insurance for a depository institution being established from operating offices does not present the same risks to the insurance funds as does the chartering of a start-up de novo institution. This provision also seeks to remove capital requirement inequities that may have existed under prior procedures with respect to certain corporate reorganization activities. This amendment will permit the appropriate FDIC regional director (DOS) to act on proposals that contain these provisions when the other factors necessary for delegated authority have been met.

Stock Financing by Insiders

Guidelines for borrowing arrangements by insiders have been revised. The reference to borrowing arrangements by an individual insider of more than 75 percent of the purchase price of the stock subscribed, or more than 50 percent of the purchase price of the aggregate stock subscribed by the insiders as a group, has been retained as a point of emphasis. However, the Statement of Policy has been amended by deleting the statement that borrowing arrangements in excess of the referenced percentage limits will ordinarily be presumed to be excessive. The burden of providing appropriate supporting information regarding borrowing arrangements will remain with the affected insiders. However, this amendment will permit the appropriate FDIC regional director (DOS) to evaluate all insider borrowing arrangements on their own merits, without having a set limit for those that will be considered excessive or otherwise inappropriate. This amendment will permit the appropriate FDIC regional director (DOS) to act on the proposal when insider borrowing arrangements are inconsequential to the total proposal, or are otherwise not detrimental, when the other factors necessary for delegated authority have also been met.

Similarly, borrowings by a holding company to capitalize a proposed depository institution will be evaluated in the context of the holding company's consolidated operations, rather than based on a 50 percent limit of the total initial capital of the proposed depository institution. However, the borrowing arrangement would need to meet any leverage guidelines established by the holding company's primary federal regulator and be reasonable. This amendment will permit the appropriate FDIC regional director (DOS) to act on a proposal that involves holding company debt financing of more than 50 percent, when the other factors necessary for delegated authority have been met.

Stock Benefit Plans

It is becoming increasingly common for organizers of de novo depository institutions to propose stock benefit plans. Such plans often include not only active officers, but also directors and, in some cases, organizers. Guidance in the current Statement of Policy on Applications for Deposit Insurance states that: "It is anticipated that options or bonuses will be tied to specific performance criteria and will be limited to active management of the institution."

This proposal provides for participation of both active officers and outside directors in stock benefit plans, although it is anticipated that such plans will focus primarily on active officers. It is also recognized that plans may be established to compensate organizers who placed funds at risk to finance the organization or who have provided professional or other services during the organizational phase. FDIC will separately review such plans designed to compensate organizers for services rendered.

The proposed directors and officers are a critical element in evaluating a proposed depository institution's application for deposit insurance, and the FDIC has found that management stability is generally an essential element for the ultimate success of a de novo depository institution. Therefore stock benefit plans which are being adopted in conjunction with the establishment of a depository institution should encourage the continued involvement in the depository institution by key management officials.

Guidelines are included in the Statement of Policy to provide standards to be used in evaluating the appropriateness of stock benefit plans. These guidelines are considered necessary to provide the applicant with basic guidance as well as to promote consistency within the FDIC itself. Some concepts are retained from the former Statement of Policy, such as a maximum 10 year limit on options. FDIC's current practice, although not explicitly stated in the current policy statement, of requiring that the strike price be established at no less than fair market value at the time of the grant, has now been explicitly stated. New concepts have been added which emphasize that the plan should encourage the continued involvement of the proposed management. It is believed that a vesting period covering the first three years of operation would be appropriate to assure continued involvement. A three year vesting was selected based on the FDIC's experience that a three year period provides reasonable assurance that the business plan will have been fully implemented and stabilized operations achieved. An additional concept adopted is a requirement that a stock benefit plan provide for an exercise or forfeiture clause which may be invoked by the depository institution's primary federal regulator in the event the capital falls below minimum requirements. This is believed necessary to ensure that the dilutive effects of outstanding stock options will not make it unduly difficult for an institution in need of additional capital to increase capitalization in a timely manner. The OCC also has an established policy of requiring exercise or forfeiture clauses in certain instances.

Stock benefit plans designed to compensate incorporators for personal funds placed at risk during the organization or for services rendered during the organization will be viewed somewhat differently than plans for active management and directors. Plans designed to compensate for past services need not be subject to vesting periods or restrictions on transferability, but FDIC will review the duration of the rights, strike price, and exercise or forfeiture clauses in the same manner as for plans designed to reward continuing management service. In addition, the FDIC will consider the incorporator's time, expertise, and financial commitment to the proposal and the amount and basis of any cash payments made or to be made to the incorporators for services rendered or funds placed at risk.

Stock appreciation rights and similar plans that involve a cash payment based directly on the market value of the depository institution's stock have been specifically identified as objectionable. These types of plans can result in an expense which would reduce the depository institution's capital. Such compensation plans cannot be quantified in relation to the capital adequacy factor and could be detrimental to the overall capital of a depository institution, particularly in its formative years.

If the proposed insured depository institution is to be a subsidiary of a de novo holding company, and a stock benefit plan is being proposed at the holding company level, that stock benefit plan will be reviewed by the FDIC in the same manner as a plan involving stock issued by the proposed depository institution.

The comments contained in this Statement of Policy relate solely to stock benefit plans which are being proposed in conjunction with the filing of a deposit insurance application and the establishment of an insured depository institution. The comments and guidelines are not intended to be applicable to established operating insured depository institutions. It is believed that this proposal would bring FDIC's policies into closer alignment with those of the other state and federal bank regulatory agencies.

Other Changes

In addition to these four major areas, other changes are being proposed to clarify issues that have arisen or to remove outdated or duplicative information. Noteworthy changes include the following:

- In conjunction with the FDIC's recent rescission of its Statement of Policy regarding Applications, Legal Fees, and Other Expenses (62 FR 15479, April 1, 1997), concise comments relative to fees incident to an application have been incorporated into the revised Statement of Policy.
- The Statement of Policy is amended to replace the statement that "no dividends are to be paid until all initial losses have been recaptured* * *", with "during the first three years of operation, cash dividends shall be paid only from net operating profits* * *" The Statement of Policy retains the requirement that no dividends be paid until an appropriate allowance for loan and lease losses has been established and overall capital is adequate. This amendment reflects the FDIC's current practice and provides reasonable accommodation to possible Subchapter S Corporation applicants.
- The Statement of Policy has been amended to authorize the appropriate FDIC regional director (DOS) to waive financial information for proposed officers and directors when the proposed depository institution is being formed as a wholly owned subsidiary of a holding company. This was adopted in recognition that, when the proposed depository institution is being formed as a wholly owned subsidiary of a holding company, personal financial information may not be not meaningful.
- Other amendments to the Statement of Policy relating to proposed management include deleting the statement that the chief executive officer is expected to be a qualified and experienced lending officer, and deleting a requirement that a majority of the proposed directors will reside within, or have significant business interests within 100 miles of the proposed depository institution. It is expected that a qualified lending officer will be provided for in the management structure. However, the chief executive officer need not be that person. Also, while the FDIC encourages local involvement in proposed depository institutions, a specific residency requirement is not considered necessary.
- The Statement of Policy has also been revised to require that the applicant commit the depository institution to obtain an audit by an independent public accountant annually for only a three year period, rather than the first five years. This will provide consistency with the other federal regulators regarding audit coverage requirements for de novo depository institutions.

This Statement of Policy is applicable only to applications for deposit insurance, and it is not intended to establish policy for other applications or actions undertaken by established operating insured depository institutions.

Public Comment

In addition to seeking public comments on the above revisions to the Statement of Policy, the FDIC also solicits specific comment on the issue of whether deposit insurance should be conferred upon certain applicants that are owned by public entities, specifically governmental units. The FDIC is concerned that due to their public ownership, such depository institutions present unique supervisory concerns which do not exist with privately-owned depository institutions. Leadership of a governmental unit is subject to change through elections and other means. The FDIC has concerns about the institution's ability to operate independently of the political process, a lack of continuity in the depository institution's policies, management and oversight which could result from changes in the public entity's leadership, and the institution's ability to raise capital through non-traditional sources. Moreover, such institutions may be formed to engage primarily in non-profit or charitable activities such as the promotion of local affordable housing. This raises the prospect of deposit insurance coverage being used for purposes other than those for which the system was created, namely, to promote the stability of the nation's financial system and to protect depositors' funds. See section 1 of the FDI Act (12 U.S.C. 1811), see also 77 Cong. Rec. 3837, 3840, 3923, 3924, 3925 (1933).

In light of these concerns, the FDIC will scrutinize an application for deposit insurance by a publicly-owned applicant very closely. The agency is unlikely to resolve satisfactorily all of the statutory factors which must be considered under section 6 of the FDI Act (12 U.S.C. 1816) in evaluating such an application. The FDIC is considering whether to add language to that effect to the Statement of Policy. The FDIC specifically solicits comment on this issue and whether language should be added to the Statement of Policy which addresses the question. The FDIC also requests comment on the advisability in general of conferring deposit insurance upon applicants which are owned by governmental units.

Banks that are owned by foreign governments and their subdivisions and banks that are owned or controlled by Native American tribes or bands will not be subject to the heightened scrutiny given to other types of publicly-owned depository institutions. Overarching legal and policy considerations, unique to these two categories of insurance applicants, outweigh any concerns that the FDIC may have regarding the ownership of such depository institutions by governmental entities. The respective legal and policy considerations for each category of depository institution are discussed in detail below.

With respect to banks that are owned by foreign governments and their subdivisions, the governing principle of the International Banking Act of 1978 (the IBA) (12 U.S.C. 3101 *et seq.*), the federal statute that governs the participation by foreign banks in domestic markets, is the concept of "national treatment." This concept holds that a foreign bank operating in a particular nation should be accorded operating privileges which provide such banks with the opportunity for competitive equality with their host country counterparts. S. Rep. No. 95–1073 at 18 (1978), reprinted in 1978 U.S.C.C.A.N. 1421, 1438.

Congress adhered to the principle of national treatment in devising the IBA to help ensure that U.S. depository institutions operating overseas received equal treatment with their host country competitors. The financial systems of different nations have varying concentrations of privately-and publicly-owned enterprises. When seeking to promote the overseas operations of U.S. depository institutions in foreign countries through the principle of national treatment, the United States cannot draw a distinction

between a nation that has a bank owned by the government and a nation that does not. National treatment by its very logic requires that all foreign depository institutions, whether publicly-or privately-owned, receive the same, consistent treatment when operating in the United States. This includes eligibility for deposit insurance which is often a condition of either a state or federal charter. For these reasons, an applicant for deposit insurance which is owned by a foreign government will not be subjected to heightened scrutiny by the FDIC simply because it is publicly owned.

Native American tribes or bands that own or control depository institutions can also be distinguished from a conventional governmental unit that seeks to open or acquire a depository institution. This is because under federal law, Native American tribes and bands function as both governmental and economic, for-profit entities. The Indian Reorganization Act of 1934 (the IRA) (25 U.S.C. 461 *et seq.*) authorizes not only the creation of tribal governments (see section 16 of the IRA, 12 U.S.C. 476), but also provides for the creation of tribal business corporations pursuant to section 17 of the IRA (25 U.S.C. 477). At the same time, however, a tribal government organized under section 16 of the IRA is not precluded from engaging in business activities. See *S. Unique Ltd.* v. *Gila River Pima-Maricopa Indian Community,* 138 Ariz. 384, 674 P.2d 1376 (Ct. App. 1984). Both tribal governments and corporations are restricted by the IRA with respect to their ability to sell, mortgage, or lease Native American trust or restricted land, but are otherwise free to engage directly in economic activity. This situation is in contrast to conventional governmental units which seldom engage in direct economic activity for profit. For this reason, the FDIC considers Native American tribes and bands that own or control a depository institution to be more analogous to private, for-profit entities than to governmental units in the context of their ownership or control. The FDIC therefore will not subject an applicant for deposit insurance which is owned or controlled by an Native American tribe or band to heightened scrutiny simply because of that ownership.

The Board of Directors of the FDIC hereby proposes the following revised Statement of Policy on Applications for Deposit Insurance.

Applications for Deposit Insurance

Introduction

The Board of Directors of the FDIC is charged by statute with the responsibility of acting upon applications for federal deposit insurance by all depository institutions[1] including any national bank, district bank, state bank, federal savings association, state savings association, savings bank, or trust company. In addition, the Board of the FDIC will also act upon applications for federal deposit insurance by an industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or any other depository institution which is engaged in the business of receiving deposits, other than trust funds.

An insured depository institution which wishes to continue its insured status after withdrawing from the Federal Reserve System, or when converting from a mutual to a stock form of ownership by the chartering of an interim savings association under the provisions of section 10(o) of the Home Owners Loan Act, also must file an application with the FDIC for deposit insurance.

Procedures

Forms and instructions for applying for deposit insurance may be obtained from any regional office of the FDIC Division of Supervision (DOS). Completed applications should be filed with the appropriate regional office as that term is defined in § 303.2(g) of the FDIC's rules and regulations. Incorporators of proposed new depository institutions should file their applications with the FDIC and the appropriate chartering authority at the same time. Information provided to the chartering authority that is also needed as part of the deposit insurance application may be provided to the FDIC by appending a copy of the information to the FDIC application. Although use of the FDIC application form is not required, the material submitted to the FDIC must contain all information requested in the FDIC application form, unless otherwise indicated by FDIC. All incorporators must sign the FDIC's deposit insurance application certification page (pages 1 and 2 of the application form). It is strongly recommended that a representative(s) of the organizing group meet with the chartering authority and FDIC prior to filing an application to reach an understanding of the information requirements of each agency. It is believed this practice would facilitate processing and eliminate unnecessary delays. Information requirements may not be as extensive for applications sponsored by existing holding companies or other well established banking groups. Final action may be taken by the FDIC prior to final action by other regulatory authorities in those cases in which the FDIC has determined that there is no material disagreement on the action to be taken.

The procedures governing the administrative processing of an application for deposit insurance are contained in part 303, subpart B, of the FDIC's rules and regulations (12 CFR part 303). Processing of an application will not commence until it is substantially complete. An incomplete application may be returned to the applicant. The applicant must satisfy all terms of a conditional approval prior to deposit insurance becoming effective.

The policies contained herein are applicable for all proposed de novo depository institutions and operating institutions applying for deposit insurance, with the exception of applications submitted for the sole purpose of acquiring assets and assuming liabilities of an insured institution in danger of default. Policies are modified in those situations to reflect the urgent nature of the transaction. Guidance for those situations is contained in a separate section of this policy statement.

Subpart B of part 303 contains special filing and processing procedures for a state member bank which seeks to continue its insured status upon termination of membership in the Federal Reserve System and for interim institutions chartered to facilitate mergers.

Proposed New Depository Institutions

In considering applications for deposit insurance for a proposed new depository institution, the FDIC must evaluate each application in relation to the factors prescribed in section 6 of the Federal Deposit Insurance Act (hereafter the Act) (12 U.S.C. 1816). Those factors are:

[1] In the case of any interim federal depository institution that is chartered by the appropriate federal banking agency, the depository institution shall be an insured depository institution upon the issuance of the institution's charter by the agency. An application for federal deposit insurance generally is not required even if the federal interim is the surviving charter of a merger with another insured depository institution. *See* 12 CFR 303.62(b)(2) and the FDIC's Statement of Policy on Bank Merger Transactions (section 4.2). Any depository institution whose insured status is continued pursuant to section 4 of the Federal Deposit Insurance Act is not required to apply to continue its insured status. 12 U.S.C. 1814.

- The financial history and condition of the depository institution;
- The adequacy of its capital structure;
- Its future earnings prospects;
- The general character and fitness of its management;
- The risk presented by such depository institution to the deposit insurance fund;
- The convenience and needs of the community to be served by the depository institution; and
- Whether its corporate powers are consistent with the purposes of the Act.

The applicant will receive deposit insurance if all of these statutory factors plus the considerations required by the National Historic Preservation Act and the National Environmental Policy Act of 1969 are resolved favorably. Additional guidance regarding the National Historic Preservation Act and the National Environmental Policy Act may be found in the respective FDIC Statements of Policy for each of these statutes.

If the proposal contemplates the simultaneous establishment of a holding company, the application should discuss and disclose the proposed activities of the parent holding company as well as those of the proposed bank.

In those instances where the proposal involves the ownership of the depository institution as a subsidiary of an existing bank or thrift holding company, the FDIC will consider the financial and managerial resources of the parent organization in assessing the overall proposal and in evaluating the statutory factors prescribed in section 6 of the Act. In such circumstances, the application for deposit insurance should contain a copy of any information submitted to the holding company's primary federal regulator. Subpart B of part 303 of the FDIC's regulations discusses certain expedited procedures that may be available to eligible depository institutions or eligible holding companies (as those terms are defined in the regulation).

The FDIC may conduct examinations and/or investigations to develop essential information with respect to deposit insurance applications. The need to conduct an investigation, and its scope, will be determined by the appropriate regional director (DOS). Every effort will be made to coordinate any FDIC investigation with those conducted by other regulators.

The FDIC has formulated guidelines for evaluating deposit insurance applications which are designed to ease administration, prevent arbitrary judgment, and assure uniform and fair treatment to all applicants. A discussion of these guidelines follows.

Statutory Factors

1. Financial History and Condition

Proposed and newly organized depository institutions have no financial history to serve as a basis for determining qualifications for deposit insurance. Thus, the primary areas of consideration under this statutory factor are the ability of proponents to provide financial support to the new institution, investment in fixed assets, including leasing arrangements, and insider transactions. Lease transactions shall be reported in accordance with Financial Accounting Standards Board Statement 13 (Accounting for Leases). Applicants are expected to provide procedures, security devices, and safeguards at least equivalent to the minimums specified in the Bank Protection Act of 1968 (12 U.S.C. 1881–1884).

(a) Investment in Fixed Assets and Leases—The applicant's aggregate direct and indirect fixed asset investment, including lease obligations, must be reasonable in relation to its projected earnings capacity, capital, and other pertinent matters of consideration. Applicants are cautioned against the purchase of any fixed assets or entering into any noncancelable construction contracts, lease agreements, or other binding arrangements related to the proposal unless and until the FDIC approves the application.

(b) Insider Transactions—Any financial arrangement or transaction involving the applicant and an insider should be documented by the applicant to demonstrate that: (1) The proposed transaction with insiders is made on substantially the same terms as those prevailing at the time for comparable transactions with non-insiders and does not involve more than normal risk or present other unfavorable features to the applicant depository institution; and (2) the transaction must be approved in advance by a majority of the depository institution's incorporators. In addition, full disclosure of any arrangements with an insider must be made to all proposed directors and prospective shareholders. An insider means a person who is proposed to be a director, officer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 percent or more of a class of the applicant's outstanding voting stock; or the associates or interests of any such person.

2. Adequacy of the Capital Structure

Normally, the initial start-up capital of a proposed depository institution should be sufficient to provide a Tier 1 capital to assets leverage ratio (as defined in the appropriate capital regulation of the institution's primary federal regulator) of not less than 8.0% throughout the first three years of operation. In addition, the depository institution must maintain an adequate allowance for loan and lease losses.

The adequacy of the capital structure of a newly organized depository institution is closely related to its deposit volume, fixed asset investment and the anticipated future growth in liabilities. Deposit projections made by the applicant must, therefore, be fully supported and documented. Projections should be based on established growth patterns in the specific market, and initial capitalization should be provided accordingly. Special purpose depository institutions (such as credit card banks) should provide projections based on the type of business to be conducted and the potential for growth of that business. Initial capital should normally be in excess of $2,000,000, net of any pre-opening expenses that will be charged to the institution's capital after it commences business.

(a) Initial offering of stock—All stock of a particular class in the initial offering should be sold at the same price, and have the same voting rights. Proposals which allow the insiders to acquire a separate class of stock with greater voting rights are generally unacceptable. Insiders should not be offered stock at a price more favorable than the price for other subscribers. A price disparity provides insiders with a means to gain control disproportionate to their investment.

When securities are sold to the public, the disclosure of all material facts is essential. The FDIC's Statement of Policy regarding Offering Circulars provides additional guidance. A copy of the offering circular prepared by the applicant, together with the stock solicitation material and subscription agreement, should be submitted to the FDIC when they become available.

(b) Wholly owned subsidiary of a holding company—If the applicant is being established as a wholly owned subsidiary of an eligible holding company (as defined in part 303, subpart B), the FDIC will consider the financial resources of the parent organization as a factor in assessing the adequacy of the proposed initial capital injection. In such cases, the appropriate regional director (DOS) may find favorably with respect to the adequacy of capital factor, when the initial capital injection is sufficient to provide for a Tier 1 leverage capital ratio of at least 8.0% at the end of the first year of

operation, based on a realistic business plan, or the initial capital injection meets the $2,000,000 minimum capital standard set forth in this Statement of Policy, or any minimum standards established by the chartering authority, whichever is greater. However, the holding company shall also provide a written commitment to maintain the proposed institution's Tier 1 leverage capital ratio at no less than 8.0 percent throughout the first three years of operation.

(c) Operating insured offices—If the proposal involves the acquisition of an insured operating office, or offices, the applicant may request that the benchmark for evaluating the adequacy of capital be an amount necessary for the resultant newly chartered institution to be classified as well capitalized, as defined by its primary federal regulator. In such cases, the appropriate regional director (DOS) may find favorably with respect to the capital factor based on a favorable finding with respect to the following:

- There is a realistic three year business plan which evidences stabilized operations at inception;
- The proposal involves substantially all assets and deposits attributable to the respective insured operating office(s); and
- The proponent is either an eligible holding company (as defined in part 303, subpart B) or is a banking group that the FDIC determines has demonstrated its ability to successfully manage an insured depository institution. (A qualified banking group should have an established association of at least three years. A chain banking group which is recognized as such by the FDIC is one type of banking group that is contemplated in this paragraph.)

(d) Stock financing by insiders—Financing arrangements by insiders of their investment in stock of the proposed new depository institution will also be carefully reviewed. Financing arrangements by an insider to purchase stock will be considered acceptable only if the party financing the stock can demonstrate the ability to service the debt without reliance on dividends or other forms of compensation from the applicant. When stock financing arrangements of insiders are anticipated, information should be submitted with the application demonstrating that adequate alternative independent sources of debt servicing are available. Direct or indirect financing arrangements by insiders of more than 75 percent of the purchase price of the stock subscribed to by any one individual, or more than 50 percent of the purchase price of the aggregate stock subscribed by the insiders as a group, will require supporting comments in the application regarding the reason that the financing arrangements should be considered acceptable. If the insider financing arrangements are not considered appropriate, the FDIC may find unfavorably on the adequacy of the capital structure.

When the proposed depository institution is being established as a subsidiary of an existing holding company, the funding source being utilized by the holding company for its capital contribution will be evaluated in the context of the holding company's consolidated operations.

In such cases, the FDIC will need to be provided with assurance that the holding company's proposed leverage is within the guidelines of its primary federal regulator.

No loans for stock purchases are to be refinanced by the newly established institution. Deposits or other funds of the proposed depository institution at correspondent banks are not to be used as compensating balances for loans to insiders. During the first three years of operations, cash dividends shall be paid only from net operating profits, and shall not be paid until an appropriate allowance for loan and lease losses has been established and overall capital is adequate.

3. Future Earnings Prospects

Before approving an application for deposit insurance, the FDIC must have reasonable assurance that the new institution can be operated profitably. Therefore, the incorporators will need to demonstrate through realistic and supportable estimates that, within a reasonable period (normally three years), the earnings of the applicant will be sufficient to provide an adequate profit.

The applicant must also maintain its books and records in accordance with the principles of accrual accounting.

4. General Character and Fitness of the Management

To satisfy the FDIC's criteria under this factor, the evidence must support a management rating which, in an operating institution, would be tantamount to a rating of 2 or better under the Uniform Financial Institution Rating System.[2] Since in most instances the management of a proposed depository institution will not have an operating record as a functioning unit, the individual directors and officers will be evaluated largely on the basis of the following:

- Financial institution and other business experience;
- Duties and responsibilities in the proposed depository institution;
- Personal and professional financial responsibility;
- Reputation for honesty and integrity; and
- Familiarity with the economy, financial needs, and general character of the community in which the depository institution will operate.

All proposed depository institutions shall provide at least a five-member board of directors. The identity and qualifications of the proposed full-time chief executive officer should be made known to the FDIC as soon as possible, preferably when the application is filed with the appropriate FDIC regional director (DOS). Proponents must advise the FDIC, in writing, of any change in the directorate, senior active management, or a change in the ownership of stock by any person of 10% or more of the total shares of either the depository institution or its holding company prior to opening.

(a) Fees and expenses—The commitment to or payment of unreasonable or excessive fees and other expenses incident to an application will reflect adversely upon the management of the applicant institution. Fees and other organizational expenses incurred or committed to should be fully supported.

Expenses for professional or other services rendered by insiders will receive special review for any indication of self-dealing to the detriment of the bank and its other shareholders. As a matter of practice, the FDIC expects full disclosure to all directors and shareholders of any arrangement with an insider.

In no case will an FDIC application be approved where the payment of a fee, in whole or in part, is contingent upon any act or forbearance by the FDIC or by any other federal or state agency or official.

(b) Stock benefit plans—Stock benefit plans, including stock options, stock warrants, and similar stock based compensation plans will be reviewed by FDIC and must be disclosed to all potential subscribers. A description of any such plans proposed should be included in the application submitted to the regional director. It is expected that stock benefit plans will be primarily focused on active management of the institution, although some participation by outside directors is not objectionable. The structure of stock benefit plans should encourage the continued

[2] A 2 rating under the Uniform Financial Institution System is generally indicative of a satisfactory record of performance in light of the institution's particular circumstances.

involvement of the participants, and serve as an incentive for the successful operation of the institution. It is recognized that plans may be proposed to compensate organizers for funds placed at risk during the organization phase or as remuneration for services provided.

Stock benefit plans should contain no feature that would encourage speculative or high risk activities, serve as an obstacle or otherwise impede the sale of additional stock to the general public, or be structured in such a manner as to serve as a conduit to convey control of a depository institution to the insiders. Listed below are factors that the FDIC will consider in reviewing stock benefit plans proposed for directors and active officers:

- The duration of rights granted should be limited, and in no event should the exercise period exceed ten years;
- Rights granted should encourage the recipient to remain involved in the proposed depository institution. For example, a vesting of approximately equal percentages each year over the initial three years of operations is a type of provision that would be appropriate to ensure such continued involvement. This requirement may be waived for participants awarded only a nominal number of shares.
- Rights granted should not be transferable by the participant;
- The exercise price of stock rights shall not be at less than the fair market value of the stock at the time that the rights are granted;
- Rights under the plan must be exercised or expire within a reasonable time after termination as an active officer, employee or director; and
- Stock benefit plans should contain a provision allowing the institution's primary federal regulator to direct the institution to require plan participants to exercise or forfeit their stock rights if the institution's capital falls below the minimum requirements, as determined by its primary state or federal regulator.

The FDIC will separately review stock benefit plans established to compensate incorporators who have placed personal funds at risk to finance the organization of the institution or who have provided professional or other services in conjunction with the organization. In reviewing the reasonableness of such plans, the FDIC will not require vesting or restrictions on transferability, but will review the duration of the rights, strike price and exercise or forfeiture clauses in the same manner as discussed above. In addition, the FDIC will consider:

- The incorporator's time and expertise, and financial commitment to the proposal; and
- The amount and basis of any cash payments which will be made to the incorporator for services rendered or as return on funds placed at risk.

It is recognized that the incorporators may wish to adopt different types of compensation plans which are structured to meet the unique circumstances of the proposed depository institution. In evaluating benefit and compensation plans for insiders, the FDIC will look to the substance of the proposal. Those proposals that are determined to be substantively stock based plans will be evaluated based on the foregoing stock benefit plan criteria. Stock appreciation rights and other similar plans that include a cash payment to the recipient based directly on the market value of the depository institution's stock are unacceptable.

If the proposal involves the formation of a de novo holding company and a stock benefit plan is being proposed at the holding company level, that stock benefit plan will be reviewed by the FDIC in the same manner as a plan involving stock issued by the proposed depository institution.

(c) Background and biographical information—Insiders must file financial and biographical information in connection with the deposit insurance application. The FDIC may request a report from the Federal Bureau of Investigation or other investigatory agencies on these individuals. Fingerprinting of individuals may be required. Background checks and fingerprinting may be waived by the appropriate FDIC regional director (DOS) for individuals who are currently associated with, or have had a recent past association with, an insured depository institution. When the proposed depository institution is being established as a wholly owned subsidiary of an eligible holding company, the appropriate FDIC regional director (DOS) may waive financial information for those persons who are being proposed as directors or officers of the applicant. Background checks conducted by other federal financial institution regulators in connection with charter applications are generally adequate for the FDIC if the other regulators agree to notify the FDIC of instances in which further investigation is warranted.

In the event any present or prospective director, officer, employee, controlling stockholder, or agent of the applicant has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution of such offense, the applicant must obtain the FDIC's written consent, under section 19 of the Act (12 U.S.C. 1829), before any such person may serve in one or more of those capacities. Guidelines regarding section 19 applications may be obtained from the appropriate FDIC regional office (DOS).

Proponents should be aware of the prohibitions against interlocking management officials which are applicable to depository institutions and depository institution holding companies and which are contained in the Depository Institution Management Interlocks Act (12 U.S.C. 3201).

(d) Fidelity insurance, policies, and audit coverage—An insured depository institution should maintain sufficient fidelity bond coverage on its active officers and employees to conform with generally accepted industry practices. Primary coverage of no less than $1 million is ordinarily expected. Approval of the application may be conditioned upon acquisition of adequate fidelity coverage prior to opening for business.

Applicants are expected to develop appropriate written investment, loan, funds management and liquidity policies. Establishment of an acceptable audit program is required for proposed depository institutions. Applicants for deposit insurance coverage are expected to commit the depository institution to obtain an audit by an independent public accountant annually for at least the first three years after deposit insurance coverage is granted. The FDIC may determine,[3] on a case-by-case basis, that a separate audit is unnecessary where the applicant is owned by another company and the proposed depository institution will undergo an audit performed by an independent public accountant as part of an audit of the consolidated financial statements of its parent company.

5. Risk Presented to the Bank Insurance Fund or Savings Association Insurance Fund

This factor is intended to be broadly interpreted. For example, this factor may be resolved unfavorably based on an unsound business plan. The FDIC expects that an applicant will submit a business plan commensurate with the capabilities of its management and the financial commitment of the

[3] In a situation in which the FDIC is not to be the primary federal regulator, these determinations will be made in consultation with the primary federal regulator.

incorporators.[4] Applicants must demonstrate the following:

- Adequate policies, procedures, and management expertise to operate the proposed depository institution in a safe and sound manner;
- Ability to achieve a reasonable market share;
- Reasonable earnings prospects;
- Ability to attract and maintain adequate capital; and
- Responsiveness to community needs.

Operating plans that rely on high risk lending, a special purpose market, or significant funding from sources other than core deposits or that otherwise diverge from conventional bank-related financial services will require specific documentation as to the suitability of the proposed activities for an insured institution. Similarly, additional documentation of plans is required where markets to be entered are intensely competitive or economic conditions are marginal.

6. Convenience and Needs of the Community To Be Served

The essential considerations in evaluating this factor are the deposit and credit needs of the community to be served, the nature and extent of the opportunity available to the applicant in that location, and the willingness and ability of the applicant to serve those financial needs.

The applicant must clearly define the community it intends to serve and provide information on that community, including economic and demographic data and a description of the competitive environment. The applicant should also define the services to be offered in relation to the needs of the community. The proposed depository institution's Community Reinvestment Act documentation, including any applicable public file information, prepared in accordance with the requirements of the institution's primary federal regulator, plays an integral part in the FDIC's evaluation of the convenience and needs of the community to be served.

7. Consistency of Corporate Powers

Pursuant to section 24 of the Act (12 U.S.C. 1831a), no insured state bank may engage as principal in any type of activity that is not permissible for a national bank unless the FDIC has determined that the activity would pose no significant risk to the appropriate deposit insurance fund and the state bank is, and continues to be, in compliance with applicable capital standards prescribed by its primary federal banking agency. Similarly, the Home Owners' Loan Act (12 U.S.C. 1464) provides that a state savings association may not engage in any type of activity that is not permissible for a federal savings association unless the FDIC has determined that the activity would pose no significant risk to the affected deposit insurance fund and the savings association is, and continues to be, in compliance with the capital standards for the association. Applicants shall agree in the application not to exercise prohibited powers, whether granted by charter or statute, after deposit insurance has been granted, unless prior approval has been obtained from its federal regulator.

State nonmember banks may not exercise trust powers without the prior written approval of the FDIC.

Operating Noninsured Institutions

This section discusses the evaluation of applications for federal deposit insurance submitted by operating noninsured institutions. The FDIC's criteria for evaluating applications submitted by operating institutions are generally the same as those for proposed depository institutions.

The FDIC must consider the seven factors found in section 6 of the Act, which are discussed above.

The condition of an applicant institution will be determined from all available information and will generally include an on-site examination as part of the investigation process. Results of the examination should reflect an institution that is fundamentally sound, although some modest weaknesses may exist. The nature and severity of deficiencies found should not be material, and the institution must be stable and able to withstand business fluctuations.

Capital ratios will be calculated using financial statements prepared in accordance with the "Instructions—Consolidated Reports of Condition and Income" or "Thrift Financial Reports" in use for FDIC-insured institutions at the time. An applicant's capital adequacy will be measured in relation to the capital ratios established in the capital regulations of the institution's primary federal regulator. Based on an analysis of the type and quality of the institution's assets, the kind of powers exercised, the institution's funding sources, or other factors, an initial capital level higher than the minimum levels prescribed may be required. The analysis will include consideration of such matters as whether the applicant is relatively new,[5] has embarked upon a substantive change in powers exercised, or has experienced erratic growth patterns in recent years.

As part of the application investigation process, the FDIC will discuss with the applicant its future operating intentions. If any change in its kind or level of activity is expected following, or as a result of, the approval of its FDIC membership, the applicant may be requested to submit a plan for maintaining adequate capital in the future.

Unless waived in writing by the FDIC, an applicant shall have a full scope audit conducted by an independent public accountant prior to submitting an application and shall submit a copy of the auditor's report as part of the application.

Section 24 of the Act (12 U.S.C. 1831a) limits the powers of insured state banks, and the Home Owners' Loan Act (12 U.S.C. 1464) limits the powers of state savings associations. If the institution is exercising any powers not authorized under the applicable statute, the application should contain an agreement and plan for eliminating the activity as soon as possible, or a separate application should be submitted seeking the FDIC's consent to continue the activity.

Proposed Depository Institutions Formed for the Sole Purpose of Acquiring Assets and Assuming Liabilities of an Insured Institution in Default

Because of the urgent nature of this type of transaction, the procedures described above for insuring proposed depository institutions are modified when the institution is being formed for the sole purpose of acquiring assets and assuming liabilities of an insured institution in danger of default. Such institutions are approved based on the statutory factors contained in section 6 of the Act; however, the procedures for resolving these factors are modified significantly.

The financial history and condition of the institution is determined to a great extent on the quality of assets purchased and the types of liabilities assumed in the transaction.

The minimum capital requirement for these transactions is such that the resultant depository institution would be "adequately capitalized," as defined in the capital regulations of its primary federal regulator, which should be augmented by an adequate allowance for loan and lease losses. It is emphasized that this is a minimum standard, and a higher capital level may be required. The initial capital requirements may be based on a realistic projection of the estimated retained deposits. However, the proposed depository institution will be required to provide a written commitment to achieve the minimum capital position shortly after consummation if the volume of deposits is underestimated.

Proponents should contact the appropriate FDIC regional office (DOS) as soon as possible if they intend to bid on a failing institution. Due to the time constraints involved with this type of transaction, information submissions and applications will be abbreviated. Generally, a letter request accompanied by copies of applications filed with other federal or state regulatory authorities will be sufficient. Other information will be requested only as needed by the appropriate FDIC official.

Relationships With Other Federal Regulators

Nothing in these guidelines is intended to relieve the applicant of any requirements imposed by a depository institution's primary federal regulator. Any differences in requirements between the FDIC and the institution's primary federal regulator will be resolved during the investigation process.

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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[4] Any significant deviation from the business plan within the first three years of operation must be reported by the insured depository institution to the appropriate federal regulator before consummation of the change.

[5] This statement of policy provides that the initial capital for a new or proposed depository institution should be sufficient to provide a leverage ratio of Tier I capital to total estimated assets of at least 8.0% throughout the first three years of operations. This standard shall also be applied to a recently organized institution applying for insurance.

FEDERAL DEPOSIT INSURANCE CORPORATION

Bank Merger Transactions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed statement of policy.

SUMMARY: The FDIC is proposing to revise its Statement of Policy on Bank Merger Transactions by updating it to reflect legislative and other developments that have occurred since the Statement of Policy was last revised in 1989. The proposed revision also gives additional guidance by including new provisions and clarifying some existing provisions. The proposal is a part of the FDIC's systematic review of its regulations and written policies under the Riegle Community and Regulatory Improvement Act of 1994 and is intended to be read in conjunction with the merger provisions of the FDIC's proposed amendments dealing with applications filed with the FDIC, which also appears in this issue of the **Federal Register**.

DATES: Comments must be received by January 7, 1998.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. Comments may be hand delivered to the guard station located at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (FAX number (202) 898–3838; Internet address: comments@FDIC.gov). Comments may be inspected and photocopied at the FDIC Public Information Center, Room 100, 801 17th Street NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Kevin W. Hodson, Review Examiner, Division of Supervision, (202) 898–6919; Martha Coulter, Counsel, Legal Division, (202) 898–7348, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4803(a), requires that each of the federal banking agencies (the FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision) conduct a review of its regulations and written policies, for two general purposes. These purposes are: (1) To streamline and modify the regulations and policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability; and (2) to remove inconsistencies and outmoded and duplicative requirements.

As part of this review, the FDIC has determined that its Statement of Policy on Bank Merger Transactions (Policy Statement or Statement) should be revised. The primary purpose of the revision is to update the Statement to reflect statutory changes and other developments that have taken place since its last revision in 1989. In addition, certain clarifications and refinements are being proposed, as well as new provisions intended to give guidance in areas not previously addressed by the 1989 Statement. The proposed revisions are discussed more fully below.

Recent Developments. Among the proposed revisions to the Statement are those resulting from statutory changes, including the CDRI Act, the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act), and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).[1] Section 321(b) of the CDRI Act reduced the post-approval, pre-consummation waiting period for certain merger transactions from 30 days to 15 days (see 12 U.S.C. 1828(c)(6)). Section 102 of the Interstate Act, codified at 12 U.S.C. 1831u, provided for interstate bank mergers. FIRREA broadened the coverage of the Bank Merger Act, 12 U.S.C. 1828(c), to include savings associations and eliminate the Federal Savings and Loan Insurance Corporation (FSLIC).[2]

Each of these changes caused related references in the 1989 Statement to become out-dated or incomplete, a situation the proposed new Statement corrects. For example, because the Bank Merger Act now applies to thrift institutions as well as banks, the proposed Statement replaces the term "bank" with "depository institution." It also deletes a reference to the FSLIC. In addition, the proposed Statement includes references to interstate mergers and to the CDRI Act's 15-day post-approval waiting period.

In addition to statutory changes, there have been other developments that warrant revision of the 1989 Statement. For example, the 1989 Statement refers to the use of "IPC" deposits (deposits of individuals, partnerships, and corporations) in FDIC merger analysis. However, IPC deposit data is no longer collected by the FDIC. Accordingly, the proposed revisions indicate that the FDIC now uses "total deposits" in evaluating the competitive effects of a proposed merger.

Another development was the 1995 amendment of the FDIC's regulations implementing the Community Reinvestment Act (CRA) (see 60 FR 22156 (May 4, 1995)). Changes the FDIC made to its CRA regulations include elimination of the requirement for CRA statements and revision of the CRA performance standards to be applied by the FDIC. These changes are reflected in the proposed new Statement.

[1] The citations for these statutes are, respectively, Pub. L. 103–325, 108 Stat. 2160; Pub. L. 103–328, 108 Stat. 2338; and Pub. L. 101–73, 103 Stat. 183.

[2] FIRREA sections 201 and 221.

Other developments affecting the Statement include the proposed amendment by the FDIC of its Bank Merger Act regulations in 12 CFR part 303, which appear elsewhere in this issue of the **Federal Register**. Among these proposed amendments (which would comprise new subpart D to part 303) is a new expedited processing procedure for applications meeting certain eligibility criteria. Another amendment to the merger regulations would be replacement of the term "phantom" merger with the term "interim" merger. These changes have been incorporated into the proposed new Statement. In addition, the Statement's citations to the FDIC's merger regulations would be revised consistent with the new section designations in the proposed new part 303.

Additions, Deletions and Clarifications. In addition to the updates discussed above, the Statement would be expanded to address several elements not previously covered. These include optional conversion transactions (commonly referred to as Oakar transactions) under 12 U.S.C. 1815(d)(3), branch closings in connection with merger transactions, and interstate and interim mergers. Also included is a new section addressing legal fees and other expenses, which has been transferred from the FDIC's recently-rescinded Statement of Policy on Applications, Legal Fees, and Other Expenses (see 62 FR 15479 (April 1, 1997)).

The proposed Statement includes a number of clarifications and refinements, as well. For example, a new sentence in the initial paragraph would incorporate the FDIC's existing view that transactions that do not involve a transfer of deposit liabilities typically do not require prior FDIC approval under the Bank Merger Act, unless the transaction involves the acquisition of all or substantially all of an institution's assets. Other such clarifications include pluralization of the term "relevant geographic market" (to read "relevant geographic market(s)") to make clear that a merger can involve more than one distinct market area.

The proposed Statement further includes a number of minor, non-substantive wording changes intended only to refine or clarify. None of these minor changes reflects any change in the FDIC's merger-analysis practices or policies.

The FDIC has found in its experience that few if any issues regarding the FDIC's obligations under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) or the National Historic Preservation Act (NHPA) (16 U.S.C. 470 *et seq.*) are presented in the context of bank merger transactions. Since the FDIC is in the process of reviewing its policies on NEPA and NHPA, the FDIC believes it is not advisable to include a reference to NEPA and NHPA in the Statement of Policy at this time.

The proposed Statement is set forth below. It is intended to be read in conjunction with the proposed new merger provisions of part 303 (Applications) of the FDIC's regulations, notice of which is published elsewhere in this issue of the **Federal Register**.

For the above reasons, the FDIC proposes the following Statement of Policy:

Proposed FDIC Statement of Policy on Bank Merger Transactions

I. Introduction

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), popularly known as the Bank Merger Act, requires the prior written approval of the FDIC before any insured depository institution may:

(1) Merge or consolidate with, purchase or otherwise acquire the assets of, or assume any deposit liabilities of, another insured depository institution if the resulting institution is to be a state nonmember bank, or

(2) Merge or consolidate with, assume liability to pay any deposits or similar liabilities of, or transfer assets and deposits to, a noninsured bank or institution.

Institutions undertaking one of the above described "mergers" or "merger transactions" must file an application with the FDIC. Transactions that do not involve a transfer of deposit liabilities typically do not require prior FDIC approval under the Bank Merger Act, unless the transaction involves the acquisition of all or substantially all of an institution's assets.

The Bank Merger Act prohibits the FDIC from approving any proposed merger that would result in a monopoly, or which would further a combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States. Similarly, the Bank Merger Act prohibits the FDIC from approving a proposed merger whose effect in any section of the country may be substantially to lessen competition, or which in any other manner would be in restraint of trade. An exception may be made in the case of a merger whose effect would be to substantially lessen competition, tend to create a monopoly, or otherwise restrain trade, if the FDIC finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest. For example, the FDIC may approve a merger to prevent the probable failure of one of the institutions involved.

In every proposed merger transaction, the FDIC must also consider the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

II. Application Procedures

1. Application filing. Application forms and instructions may be obtained from any FDIC Division of Supervision regional office. Completed applications and any other pertinent materials should be filed with the appropriate regional director as specified in § 303.2(g) of the FDIC rules and regulations (12 CFR 303.2(g)). The application and related materials will be reviewed by regional office staff for compliance with applicable laws and FDIC rules and regulations. When all necessary information has been received, the application will be processed and a decision rendered by the regional director pursuant to the delegations of authority set forth in § 303.66 of the FDIC rules and regulations (12 CFR 303.66) or the application will be forwarded to the FDIC's Washington office for processing and decision.

2. Expedited processing. Section 303.64 of the FDIC rules and regulations (12 CFR 303.64) provides for expedited processing, which the FDIC will grant to eligible applicants. In addition to the eligible institution criteria provided for in section 303.2 (12 CFR 303.2), § 303.64 provides expedited processing criteria specifically applicable to proposed merger transactions.

3. Publication of notice. The FDIC will not take final action on a merger application until notice of the proposed merger is published in a newspaper or newspapers of general circulation in accordance with the requirements of section 18(c)(3) of the Federal Deposit Insurance Act. See § 303.65 of the FDIC rules and regulations (12 CFR 303.65). The applicant must furnish evidence of publication of the notice to the regional director following compliance with the publication requirement. (See § 303.7(b) of the FDIC rules and regulations (12 CFR 303.7(b)).)

4. Reports on competitive factors. As required by law, the FDIC will request reports on the competitive factors involved in a proposed merger from the Attorney General, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision. These reports must ordinarily be furnished within 30 days, and the applicant will, if it so requested, be given an opportunity to submit comments to the FDIC on the contents of the competitive factors reports.

5. Notification of the Attorney General. After the FDIC approves any merger transaction, the FDIC will immediately notify the Attorney General. Generally, unless it involves a probable failure or an emergency exists requiring expeditious action, a merger may not be consummated until 30 calendar days after the date of the FDIC's approval. However, the FDIC may prescribe a 15-day period, provided the Attorney General concurs with the shorter period.

6. Merger decisions available. Applicants for consent to merge may find additional guidance in the reported bases for FDIC approval or denial in prior merger cases compiled in the FDIC's annual "Merger Decisions" report. Reports may be obtained from the FDIC Office of Corporate Communications, Room 100, 801 17th Street NW., Washington, DC 20434.

III. Evaluation of Merger Applications

The FDIC's intent and purpose is to foster and maintain a safe, efficient, and competitive banking system that meets the needs of the communities served. With these broad goals in mind, the FDIC will apply the specific standards outlined in this statement of policy when evaluating and deciding proposed merger transactions.

Competitive Factors

In deciding the competitive effects of a proposed merger transaction, the FDIC will consider the extent of existing competition between and among the merging institutions, other depository institutions, and other providers of similar or equivalent services in the product markets within the relevant geographic market(s).

1. Relevant Geographic Market

The relevant geographic market(s) includes the areas in which the offices to be acquired are located and the areas from which those offices derive the predominant portion of their loans, deposits, or other business. The relevant geographic market also includes the areas where existing and potential customers impacted by the proposed merger may practically turn for alternative sources of banking services. In delineating the relevant geographic market, the FDIC will also consider the location of the acquiring institution's offices in relation to the offices to be acquired.

2. Product Market

The relevant product market(s) includes the banking services currently offered by the merging institutions and to be offered by the resulting institution. In addition, the product market may also include the functional equivalent of such services offered by other types of competitors, including other depository institutions, securities firms, or finance companies. For example, share draft accounts offered by credit unions may be the functional equivalent of demand deposit accounts. Similarly, captive finance companies of automobile manufacturers may compete directly with depository institutions for automobile loans, and mortgage bankers may compete directly with depository institutions for real estate loans.

3. Analysis of Competitive Effects

In its analysis of the competitive effects of a proposed merger transaction, the FDIC will focus particularly on the type and extent of competition that exists and that will be eliminated, reduced, or enhanced by the proposed merger. The FDIC will also consider the competitive impact of providers located outside a relevant geographic market where it is shown that such providers individually or collectively influence materially the nature, pricing, or quality of services offered by the providers currently operating within the geographic market.

The FDIC's analysis will focus primarily on those services that constitute the largest part of the businesses of the merging institutions. In its analysis, the FDIC will use whatever analytical proxies are available that reasonably reflect the dynamics of the market, including deposit and loan totals, the number and volume of transactions, contributions to net income, or other measures. Initially, the FDIC will focus on the respective shares of total deposits[3] held by the merging institutions and the various other participants with offices in the relevant geographic market(s), unless the other participants' loan, deposit, or other business varies markedly from that of the merging institutions. Where it is clear, based on market share considerations alone, that the proposed merger would not significantly increase concentration in an unconcentrated market, a favorable finding will be made on the competitive factor.

Where the market shares of merger participants are not clearly insignificant, the FDIC will also consider the degree of concentration within the relevant geographic market(s) using the Herfindahl-Hirschman Index (HHI)[4] as a primary measure of market concentration. For purposes of this test, a reasonable approximation for the relevant geographic market(s) consisting of one or more predefined areas may be used. Examples of such predefined areas include counties, the Bureau of the Census Metropolitan-Statistical Areas (MSAs), or Rand-McNally Ranally Metro Areas (RMAs).

The FDIC normally will not deny a proposed merger transaction on antitrust grounds (absent objection from the Department of Justice) where the post-merger HHI in the relevant geographic market(s) is 1,800 points or less or, if more than 1,800, reflects an increase of less than 200 points from the pre-merger HHI. Where a proposed merger fails this initial concentration test, the FDIC will consider more closely the various competitive dynamics at work in the market, taking into account a variety of factors that may be especially relevant and important in a particular proposal, including:

- The number, size, financial strength, quality of management, and aggressiveness of the various participants in the market;
- The likelihood of new participants entering the market based on its attractiveness in terms of population, income levels, economic growth, and other features;
- Any legal impediments to entry or expansion; and
- Definite entry plans by specifically identified entities.

In addition, the FDIC will consider the likelihood that other prospective new entrants might enter the market by less direct means; for example, electronic banking with local advertisement of the availability of such services. This consideration will be particularly important where there is evidence that the mere possibility of such entry tends to encourage competitive pricing and to maintain the

[3] In many cases, total deposits will adequately serve as a proxy for overall share of the banking business in the relevant geographic market(s); however, the FDIC may also consider other analytical proxies.

[4] The HHI is a statistical measure of market concentration and is also used as the principal measure of market concentration in the Department of Justice's Merger Guidelines. The HHI for a given market is calculated by squaring each individual competitor's share of total deposits within the market and then summing the squared market share products. For example, the HHI for a market with a single competitor would be: $100^2 = 10{,}000$; for a market with five competitors with equal market shares, the HHI would be: $20^2+20^2+20^2+20^2+20^2 = 2{,}000$.

quality of services offered by the existing competitors in the market.

The FDIC will also consider the extent to which the proposed merger would likely create a stronger, more efficient institution able to compete more vigorously in the relevant geographic market.

4. Consideration of the Public Interest

The FDIC will deny any proposed merger whose overall effect would be likely to reduce existing competition substantially by limiting the service and price options available to the public in the relevant geographic market(s), unless the anticompetitive effects of the proposed merger are clearly outweighed in the public interest by the convenience and needs of the community to be served. For this purpose, the applicant must show by clear and convincing evidence that any claimed public benefits would be both substantial and incremental and generally available to seekers of banking services in the relevant geographic market. Moreover, the applicant must show that the expected benefits cannot reasonably be achieved through other, less anticompetitive means.

Where a proposed merger is the only reasonable alternative to the probable failure of an insured depository institution, the FDIC may approve an otherwise anticompetitive merger. The FDIC will usually not consider a less anticompetitive alternative that is substantially more costly to the FDIC to be a reasonable alternative unless the potential costs to the public of approving the anticompetitive merger are clearly greater than those likely to be saved by the FDIC.

Prudential Factors

The FDIC does not wish to create larger weak institutions or to debilitate existing institutions whose overall condition, including capital, management, and earnings, is generally satisfactory. Consequently, apart from competitive considerations, the FDIC normally will not approve a proposed merger where the resulting institution would fail to meet existing capital standards, continue with weak or unsatisfactory management, or whose earnings prospects, both in terms of quantity and quality, are weak, suspect, or doubtful. In assessing capital adequacy and earnings prospects, particular attention will be paid to the adequacy of the allowance for loan and lease losses. In evaluating management, the FDIC will rely to a great extent on the supervisory histories of the institutions involved and of the executive officers and directors that are proposed for the resultant institution. In addition, the FDIC may review the adequacy of management's disclosure to shareholders of the material aspects of the merger transaction to ensure that management has properly fulfilled their fiduciary duties.

Convenience and Needs Factor

The FDIC will consider the extent to which the proposed merger is likely to improve the service to the general public through such capabilities as higher lending limits, new or expanded services, reduced prices, increased convenience in utilizing the services and facilities of the resulting institution, or other means. In assessing the convenience and needs of the community served, the FDIC, as required by the Community Reinvestment Act, will also note and consider each institution's Community Reinvestment Act performance evaluation record. An unsatisfactory record may form the basis for denial or conditional approval of an application.

IV. Related Considerations

1. Interstate bank mergers. Where a proposed transaction is an interstate merger between insured banks, the FDIC will consider the additional factors provided for in section 44 of the Federal Deposit Insurance Act, 12 U.S.C. 1831u.

2. Interim merger transactions. An interim institution is a state- or federally-chartered institution that does not operate independently, but exists, normally for a very short period of time, solely as a vehicle to accomplish a merger transaction. In cases where the establishment of a new or interim institution is contemplated in connection with a proposed merger transaction, the applicant should contact the FDIC to discuss any relevant deposit insurance requirements. In general, a merger transaction (other than a purchase and assumption) involving an *insured* depository institution and a federal interim depository institution will not require an application for deposit insurance, even if the *federal* interim depository institution will be the surviving institution.

3. Optional conversion transactions. Section 5(d)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1815(d)(3), provides for "optional conversions" (commonly known as Oakar transactions) which, in general, are mergers that involve a member of the Bank Insurance Fund and a member of the Savings Association Insurance Fund. These transactions are subject to specific rules regarding deposit insurance coverage and premiums. Applicants may find additional guidance in § 327.31 of the FDIC rules and regulations (12 CFR 327.31).

4. Branch closings. Where banking offices are to be closed in connection with the proposed merger transaction, the FDIC will review the merging institutions' conformance to any applicable requirements of section 42 of the FDI Act concerning notice of branch closings as reflected in the Interagency Policy Statement Concerning Branch Closing Notices and Policies.

5. Legal fees and other expenses. The commitment to pay or payment of unreasonable or excessive fees and other expenses incident to an application reflects adversely upon the management of the applicant institution. The FDIC will closely review expenses for professional or other services rendered by present or prospective board members, major shareholders, or other insiders for any indication of self-dealing to the detriment of the institution. As a matter of practice, the FDIC expects full disclosure to all directors and shareholders of any arrangement with an insider. In no case will the FDIC approve an application where the payment of a fee, in whole or in part, is contingent upon any act or forbearance by the FDIC or by any other federal or state agency or official.

By order of the Board of Directors.

Dated at Washington, D.C., this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–26233 Filed 10–8–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Applications To Establish a Domestic Branch (Includes Remote Service Facilities); Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rescission of statement of policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC proposes to rescind its Statement of Policy "Applications to Establish a Domestic Branch (Includes Remote Service Facilities)" (Statement of Policy).

The Statement of Policy provides information and guidance to state nonmember banks planning to establish a domestic branch. However, the information and guidance contained in the Statement of Policy is out of date.

The FDIC proposes to rescind the Statement of Policy because the proposed revisions to its applications regulation, published elsewhere in today's **Federal Register** update requirements and sufficiently address all required application procedures.

DATES: Comments must be submitted on or before January 7, 1998.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, (202) 898–6915, Division of Supervision; Susan van den Toorn, Counsel, (202) 898–8707, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the FDIC to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the FDIC to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

The FDIC developed the Statement of Policy to provide general supervisory information and guidance to state nonmember banks relative to the application process and the evaluation of statutory factors in establishing domestic branches. The FDIC last amended the Statement of Policy September 8, 1980. 2 FDIC Law, Regulations, Related Acts (FDIC) 5105.

In the time since the Statement of Policy was last amended, the application process for establishing domestic branches has changed significantly. As a result, the supervisory information and guidance contained in the Policy Statement, which although general in nature, are now out-of-date.

As part of the FDIC's comprehensive review of its applications process, the FDIC is proposing to amend part 303 elsewhere in today's **Federal Register**. The proposed revisions to part 303 sufficiently address all required application procedures. Commenters are invited to review subpart C of part 303 in conjunction with the proposal to rescind the Statement of Policy.

For the above reasons, the FDIC proposes to rescind the following Statement of Policy:

Applications To Establish a Domestic Branch (Includes Remote Service Facilities)

A. Introduction

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d); hereafter the (Act) requires the prior written consent of the Corporation before any State nonmember insured bank may establish and operate any new domestic branch, as defined in section 3(o) of the Act (12 U.S.C. 1813(o)). In analyzing branch applications, the Corporation must evaluate each application in relation to the six statutory factors prescribed in section 6 of the Act (12 U.S.C. 1816) as well as the requirements of the National Historic Preservation Act, the National Environmental Policy Act of 1969, and the Community Reinvestment Act. The six statutory factors under section 6 of the Act are: the financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether its corporate powers are consistent with the purposes of the Act.

Generally, the Corporation believes that active competition between banks and other financial institutions, when conducted within applicable law and in a safe and sound manner, is in the public interest. Accordingly, applications to establish branches by well managed and adequately capitalized banks with a record of responsive service to their communities will generally be approved.

Federal appellate court decisions have determined that the term "branch" includes remote service facilities. In March 1979, the Corporation adopted regulations which reflect these decisions and recognize remote service facilities as branches if they are owned or leased by the applicant. An abbreviated application form has been designed and procedures implemented which lessen the administrative burden for both the banks and the FDIC. Banks which enter a sharing arrangement, not involving leasing or ownership of the facility, do not have to obtain FDIC approval; shared facilities or shared systems of terminals are not regarded as branches for the sharing bank.

B. Procedures

Application forms to establish branches, including remote service facilities, and instructions for their completion may be obtained from the regional office of the FDIC region in which the main office of the applicant is located. Upon receipt of an application which is found complete, the regional director will notify the bank, in writing, that the application has been accepted for filing and the date thereof. The procedures governing the administrative processing of branch and remote service facility applications are contained in part 303 of the Corporation's rules and regulations (12 CFR part 303), particularly §§ 303.2, 303.10, 303.11, 303.12, and 303.14. Section 303.14 sets forth, among other things, the procedures controlling establishment of a public file, publication requirements, and consideration of comments and protests received in connection with an application.

The Corporation will normally not render a decision on any application for a branch or remote service facility which is subject to state approval until the state authority has approved or expressed its intent to approve the proposal; however, applicants are urged to submit their applications to the Corporation at the same time an application is forwarded to the state authority in order to promote concurrent and more timely processing of the proposal.

Notification of the granting or denial of an application will be provided together with a statement supporting the decision. Under § 303.10(e), within 15 days of receipt of notice that its application has been denied, an applicant may petition the Board of Directors for reconsideration of the application. Opinions will be published when the Corporation determines that the decision represents a new or change in policy or presents issues of general importance to the public or the banking industry.

Under § 303.14(i) of the Corporation's rules and regulations, where the Board of Directors, based upon available information at the time, plans to deny an application and no hearing has been held under § 303.14(e), the Director of the Division of Bank Supervision may

be instructed to notify the applicant in writing of the tentative denial. The applicant has 15 days from receipt of the notice to file a written request to amend the application or to submit information in rebuttal of the deficiencies noted. Upon filing of such a request, the applicant has 30 days to amend its application or to provide rebuttal information.

An application to establish a remote service facility is required to be filed only for the applicant's initial facility and the procedures for traditional branch applications are followed. In order to establish any subsequent remote service facility, the applicant need only notify the regional director of its intention and comply with the appropriate publication requirements. Unless otherwise notified by the regional director, the remote service facility may be established 30 days after the last publication date. If the regional director determines that the notification warrants further consideration, he shall advise the applicant within the 30-day period that additional information is needed and that the remote service facility may not be established until the Corporation issues a formal order.

C. Statutory Factors—Application To Establish a Domestic Branch Other Than Remote Service Facility

1. Financial History and Condition

In connection with applications for branches the emphasis will be placed on the financial history and condition of the existing bank rather than the proposed branch. The establishment of branches, particularly where these involve the development of new markets, normally encompasses risks or a degree of management attention which banks that are experiencing financial difficulties are not generally prepared to undertake. Banks with excessive volumes of subquality assets, significant liquidity problems, or other problems threatening the soundness of the institution would fall in this category.

Under this factor, as well as under the general character of management factor, the current asset condition of the bank and its compliance with applicable laws and regulations are primary areas of consideration. Other primary areas of consideration here are investment in fixed assets, including leases, and insider transactions, all of which also impact importantly on the evaluation of the general character of management factor. Lease transactions shall be reported in accordance with Financial Accounting Standards Board Statement 13 as required by the Instructions for the Preparation of Consolidated Report of Income and Condition.

(a) Investment in Fixed Assets and Leases—The applicant's aggregate direct and indirect fixed asset investment, including lease obligations, must be reasonable in relation to its projected earnings capacity, capital and other pertinent bases for consideration. Except where state law obviates the need, lease agreements should contain a bankruptcy termination clause acceptable to the Corporation. An example of such clause may be obtained from the regional office.

It is recommended that applicants not purchase any fixed assets or enter into any noncancelable construction contracts, lease agreements, or other binding arrangements related to the proposed branch unless and until the Corporation approves the application. The Corporation expects applicants to follow closely the representations made in the application regarding fixed asset arrangements. If any substantive changes become necessary in fixed asset arrangements, including increases of 10% or more in the cost of any major category of fixed assets (such as land, building, or furniture fixtures and equipment), after submission of the application, applicant must promptly advise the regional director of these changes. Major changes could result in reconsideration.

(b) Insider Transactions—Any financial arrangement or transaction involving the applicant, its directors, officers, 5% shareholders, or their associates and interests (hereafter referred to as "insiders") should ordinarily be avoided. If there are arrangements or transactions of that type, the applicant must demonstrate clearly that any proposed transactions with insiders are made on substantially the same terms as those prevailing at the time for comparable transactions with non-insiders and do not involve more than normal risk or present other unfavorable features to the applicant bank. In addition, full disclosure of any arrangements with an insider must be made to all directors and shareholders and, in the event any new capital offering is to be made, included in any new capital offering material distributed in connection with the application.

Whenever any transaction between the applicant and an insider involves the purchase of real property or a construction contract, the purchase price must be supported by an independent appraisal or in the case of a construction contract by competitive bids. Further, with respect to any lease arrangement between the applicant and an insider, the applicant must submit reliable evidence showing that the lease arrangement is as beneficial to the applicant as the purchase of the property and direct ownership. Normally, this type of lease arrangement will also be required to include terms protecting the bank against unreasonable escalation of payments under the lease and granting the bank the option to purchase the property during the life of the lease on appropriate terms.

2. Adequacy of Capital Structure

The establishment of branches generally involves an expansion of deposits and/or an increase in expenses not immediately offset by additional income. This normally results in some dissipation of relative capital strength. Capital, earnings, and retention of earnings should be sufficient to support the current level of operations as well as the proposed expansion. In the case of capital deficiencies not considered overly extreme, the bank should set forth a plan which will improve capital to an extent which will more than offset any deterioration expected as a result of the branch proposed.

Generally, the applicant bank's adjusted capital and reserves, including written commitments for additional capital funds, should be adequate relative to its adjusted gross assets. In the case of a commercial bank, regional directors may approve an application to establish a branch where the applicant's adjusted capital and reserves, including written commitments for additional capital funds, is not less than 7.5% of its adjusted gross assets. For mutual or guaranty savings banks, regional directors may grant approval where the adjusted capital and reserves ratio is not less than 6%. Such factors as the quality of assets, earnings capacity, volume of risk assets, liquidity, capability of management, and other factors affecting the relative strength of a bank will exert either positive or negative influences on the level of capital protection needed. In all instances where the adjusted capital and reserves ratio of the applicant is less than the applicable level set forth above, the determination of the adequacy of that ratio will be made in the Washington Office.

3. Future Earnings Prospects

This factor will be measured in terms of the ability of overall bank earnings to absorb the anticipated expenses resulting from the proposal. In all cases, anticipated future earnings for the bank as a whole should be adequate, after expenses, to absorb normal losses, pay reasonable dividends, and provide some meaningful contribution to capital. In the case of newly organized banks which are seeking branches, the proposed branch should not unduly delay the original forecast for achieving profitability.

4. General Character of Management

To be acceptable under this factor a management must have demonstrated, or be expected to demonstrate, an ability to operate the bank in a manner which is free of excessive criticism or concern as to the overall soundness and viability of the institution. The management must also display, or be willing to acquire, the degree of depth necessary to permit the establishment of additional offices. The appraisal of management ability and depth will take into consideration the size and activities of the existing bank, the expected scope of activity of the proposed branch, and the extent of impact the branch is expected to have on the bank's overall operation. In summary, the Corporation views the quality of a bank's management as critical to its overall success and will seriously question the expansion of the bank via the branch route if the quality of management is not considered adequate prior to the proposed expansion.

The Board of Directors of the Corporation has adopted a Statement of Policy regarding legal fees and other expenses incident to applications for deposit insurance, consent to establish branches or relocate main or branch offices, and mergers. In brief, this policy states that, since prudent management will not commit a bank seeking a new branch to excessive expenses, the payment of unreasonable or excessive fees incident to applications is considered by the Corporation to reflect adversely upon management of the applicant bank, irrespective of whether payments have been ratified or otherwise approved by formal action by the incorporators or shareholders. The Corporation will not question fees for legal services or other organizational expenses solely because of an amount but will consider the reasonableness of fees in relation to the services performed. Applicants are required to furnish the amounts of fees for such services which have been incurred and estimates of additional fees to be incurred in connection with the proposed transaction. All fees for legal, organizational or similar services should be disclosed whether directly or indirectly related to the application pending before the Corporation. If legal or other organizational fees appear to be excessive in relation to fees for comparable services, or if the volume of services performed exceeds that usually incurred with respect to comparable applications, supportive documentation will be required. In the case of legal fees, such documentation may consist of materials such as itemized time sheets showing the time actually expended by counsel on the applications concerned, the hourly rate charged, and the specific circumstances, including unusual complexities, the necessity for agency or court appearances, and the like necessitating the time expended. In reviewing legal fees for reasonableness, the following factors will ordinarily serve as guides:

(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the services obtained;

(b) The fee customarily charged in the locality for similar legal services;

(c) The time limitations imposed by the client or by the circumstances; and

(d) The experience and ability of the lawyer or lawyers performing the services.

Even though a fee may be wholly or partially absorbed by another entity such as a holding company, that fee or organizational expense will nonetheless be reviewed by the Corporation under the terms of this policy statement in view of the fact that the commitment for the fee or organizational expense is a commitment of management of the proposed or existing institution. Expenses for legal or other services rendered by organizers, present or prospective board members or major shareholders will receive special scrutiny in this regard for any evidence of self-dealing to the detriment of the bank and its other shareholders. As a matter of practice, the FDIC requires full disclosure to all directors and shareholders of any fee in excess of $5,000 paid to insiders or their interests. In no case, states the policy, will an FDIC application be approved when the payment of a fee, in whole or in part, is contingent upon any act or forebearance by the Corporation or by any other federal or state agency or official.

The applicant bank should at all times maintain sufficient surety bond coverage on its active officers and employees to conform with generally accepted banking practices and should at all times maintain an excess employee dishonesty bond in the amount of $1 million or more if the primary blanket bond coverage is less than $1 million.

5. Convenience and Needs of the Community To Be Served

It should be noted that the provisions of the Community Reinvestment Act are especially relevant in evaluating this statutory factor. Guidelines on the Community Reinvestment Act may be obtained from the appropriate regional office.

The essential considerations in evaluating this factor are the legitimate deposit and credit needs of the community to be served and the nature and extent of the banking opportunity available to the applicant in that location and the willingness and ability of the applicant to serve those needs.

In keeping with the Corporation's policy of promoting competition among financial institutions, this factor will generally be considered favorably when there is a reasonable assurance of successful operation of the branch (as measured by future earning prospects). However, competitive considerations will also include an assessment of whether the applicant is already a dominant bank in a particular market and has applied for the purpose of saturating that market as well as whether the potential viability of a newly organized bank within a market would be threatened significantly by a proposed branch.

The applicant bank must clearly define the community it intends to serve and provide the type of information on that community discussed below. It is emphasized, however, that the degree of detail that must be provided may vary depending on the size, type of service and location of the facility proposed. For example, the same amount of detail would not be required for an extension of an existing facility, or for the establishment of a limited service facility in the same community as an existing office of the bank, as would be required for the establishment of a full service branch in a different community.

(a) Economic Data—The economic condition and growth potential of the area in which the branch proposes to operate, both presently and in the near term, are important in evaluating the business potential available to the branch, the amount of that business it can reasonably expect to secure, and the probable success of the operation. Indicators of the available business would include, but not be limited to, a description of the principal industrial, trade, or agricultural activity as well as the annual value of the primary products in the geographic area. In addition, trends in employment, residential and commercial construction, sales, company payrolls, and businesses established are also important indicators.

(b) Demographic Data—Population figures within the community or trade area as well as the surrounding areas are

important determinants in considering convenience and needs. These population figures should include not only the present population but also data on population trends for the future. Population characteristics such as income, age distribution, educational level, occupation, and stability should be considered.

(c) Competition—Some consideration will be given to the adequacy or inadequacy of existing bank facilities in the community and in nearby communities. The growth rate and size of banks and other financial institutions in the community or trade area may provide meaningful indications of the economic condition of the area and the potential business for a branch. Other financial institutions such as savings and loan associations, credit unions, finance companies, mortgage companies and insurance companies may be considered competing institutions to the extent their services parallel those of the branch.

(d) Other Supporting Data—The extent of new or proposed residential, commercial and industrial development and construction is a significant secondary consideration in resolving the convenience and needs factor. Evidence of plans for development of shopping centers, apartment complexes and other residential subdivisions, factories, or other major facilities near the proposed site of the branch are also relevant.

6. Consistency of Corporate Powers

This factor will rarely be applicable to branch proposals, except in those instances where a bank may contemplate some additional corporate power, not normally exercised by banks, in connection with its application.

D. Statutory Factors—Application or Notification To Establish Remote Service Facility

In view of the nature of the remote service facility, including that it offers limited service and is generally an unmanned electronic unit, the six statutory factors will not be applied to the same degree and extent as in the case of a traditional branch. For instance, with respect to the earnings factor, detailed projections of deposits, income and expenses are not necessary. A determination that operating expenses of the facility will not burden the bank's future earnings will generally suffice. Similarly, detailed or extensive economic information and demographic data are not required when considering the convenience and needs factor.

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–26232 Filed 10–8–97; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Liability of Commonly Controlled Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed statement of policy.

SUMMARY: The FDIC is revising the Statement of Policy on Liability of Commonly Controlled Depository Institutions (Statement of Policy) which sets forth the procedures and guidelines the FDIC uses in assessing or waiving liability against commonly controlled depository institutions under section 5(e) of the Federal Deposit Insurance Act. The revised Statement of Policy removes the application procedures for requesting a conditional waiver of the cross-guaranty liability and incorporates those same procedures into a proposed section of the FDIC's applications regulation published for comment elsewhere in today's **Federal Register**.

DATES: Comments must be received by January 7, 1998.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. Comments may be hand delivered to the guard station located at the rear of the 17th Street building (located on F Street), on business days between 7 a.m. and 5 p.m. (FAX number (202) 898–3838; Internet address: comments@FDIC.gov). Comments may be inspected and photocopied at the FDIC Public Information Center, Room 100, 801 17th Street NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Jesse Snyder, Assistant Director of Operations, Division of Supervision (202) 898–6915, or Grovetta N. Gardineer, Counsel, Legal Division, (202) 736–0665, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Effective April 1, 1997, the Board of Directors of the FDIC revised the Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions, 62 FR 15480. Such liability is a consequence of section 5(e) of the Federal Deposit Insurance Act (Act), 12 U.S.C. 1815(e), which was added by the passage of section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Section 5(e) created liability for commonly controlled insured depository institutions for losses incurred or anticipated by the FDIC in connection with (i) the default of a commonly controlled insured depository institution; or (ii) any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. The purpose of section 5(e) is to ensure that the assets of healthy depository institution subsidiaries within the same holding company structure, or of a healthy institution which controls a failing institution, will be available to the FDIC to help offset the cost of resolving the failed subsidiary. While the FDIC seeks to recover its losses associated with failing institutions, it also seeks to encourage the acquisition of troubled institutions by those capable of rehabilitating them and to avoid instances in which the assessment of liability against an otherwise healthy institution will cause its failure, thus exposing the FDIC and the insurance funds to greater loss.

The revised Statement of Policy contained information regarding the content of requests for conditional waiver of cross guaranty liability. The revised Statement of Policy also indicated that any changes in part 303 of the FDIC's rules may necessitate further revisions to the policy statement. The decision has been made by the FDIC that all information regarding applications be addressed in revised part 303 of the FDIC Rules and Regulations (Rules). Accordingly, the application procedures for requesting a conditional waiver of cross guaranty liability are being moved to part 303. The appropriate section of part 303 that discusses conditional waiver applications will be referenced in the revised Statement of Policy.

The Statement of Policy provides for the issuance of a Notice of Assessment of Liability, Findings of Fact and Conclusions of Law, an Order to Pay and a Notice of Hearing, a good faith estimate of the FDIC's loss, and the determination of the method and schedule of repayment. The liability under the statute attaches at the time of default of a commonly controlled depository institution. The FDIC, in its discretion, may assess liability for the losses incurred by the default or for any assistance provided by the FDIC to a commonly controlled institution in danger of default. Generally, liability

will be assessed against an institution except in instances of the acquisition of a distressed institution by an unaffiliated entity prior to the default of a commonly controlled institution. A conditional waiver of the liability will be considered when, as determined within the sole discretion of the Board of Directors of the FDIC, the exemption is in the best interests of either of the insurance funds administered by the FDIC or where a waiver facilitates an alternative that is in the best interests of the FDIC. Institutions that believe that an assessment of liability would be inappropriate are required to submit supporting documentation. The contents of an application for requesting a conditional waiver of liability will be located in proposed § 303.245 of the FDIC's Rules, 12 CFR 303.245. Commenters are invited to review the proposed Statement of Policy in conjunction with proposed § 303.245 published elsewhere in today's **Federal Register**.

For the above reasons, the FDIC proposes the following Statement of Policy:

Liability of Commonly Controlled Depository Institutions

Introduction

Section 5(e) of the Federal Deposit Insurance Act, as added by section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, creates liability for commonly controlled insured depository institutions for losses incurred or anticipated by the Federal Deposit Insurance Corporation (FDIC) in connection with: (i) The default of a commonly controlled insured depository institution; or (ii) any assistance provided by the FDIC to any commonly controlled insured depository institution in danger of default. In addition to certain statutory exceptions and exclusions contained in sections 5(e)(6), (7) and (8), the Act also permits the FDIC, in its discretion, to exempt any insured depository institution from this liability if it determines that such exemption is in the "best interests of the Bank Insurance Fund or the Savings Association Insurance Fund".

The liability of an insured depository institution attaches at the time of default of a commonly controlled institution. It is completely within the discretion of the FDIC whether or not to issue a notice of assessment to the liable institution for the estimated amount of the loss incurred by the FDIC.

Guidelines for Conditional Waiver of Liability

The FDIC may, in its discretion, choose not to assess liability based upon analysis of a particular situation, and it may entertain requests for waivers from affiliated or unaffiliated parties of an institution in default or in danger of default. The determination of whether an exemption is in the best interests of either insurance fund rests solely with the Board of Directors of the FDIC (Board). Should the Board make such a determination, a waiver will be issued setting forth terms and conditions that must be met in order to receive an exemption from liability (conditional waiver of liability). The following guidelines apply to conditional waivers of liability under the provisions of this section:

(1) A conditional waiver of liability will be considered in those cases where the waiver facilitates an alternative that would be in the best interests of the FDIC; for example, the conditional waiver may be granted when requisite additional capital and managerial resources are being provided which substantially lessen exposure to the affected insurance fund. When conditional waivers are granted to an otherwise unaffiliated acquire of a failing or failed institution they will be granted for a fixed period, generally not to exceed a period of time reasonably required for existing problems to be identified and resolved.

(2) If one or more institutions in a commonly controlled relationship is otherwise solvent, well-managed and viable, it may be in the best interest of the FDIC to waive or reduce claims against such entities. In determining whether a conditional waiver is appropriate, consideration will be given to actions of a holding company which contribute to or diminish the FDIC's losses, as well as proposals to strengthen other weakened institutions, if any.

(3) Procedures to request a conditional waiver of liability are contained in § 303.245 of the FDIC's Rules and Regulations, 12 CFR 303.245.

(4) In cases where an insured depository institution is sold to an acquire with no financial interest, directly or indirectly, in the institution prior to the acquisition, it is the general policy of the FDIC to forego the issuance of a notice of assessment to the acquire and its affiliated institutions in the event of a default of an insured depository institution formerly affiliated with the acquired institution. The FDIC will review all such transactions prior to making a final determination to forego the issuance of the notice of assessment.

Guidelines for Assessment of Liability

Whenever the FDIC determines that assessment of liability in connection with a commonly controlled insured depository institution(s) is appropriate, a Notice of Assessment of Liability, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing (Notice of Assessment) will be served upon the liable institution. In assessing the amount of the FDIC's loss and the liable institution(s) method of payment, the following guidelines shall apply:

(1) A good faith estimate of the amount of loss the FDIC will incur shall be based upon (a) the actual sale or calculation of loss from a review by the FDIC of the assets and liabilities of the institution prior to default or the granting of assistance; or (b) any other cost estimate bases as explained in the Notice of Assessment.

(2) If there is more than one commonly controlled depository institution to be assessed, each such institution is jointly and severally liable for all losses; however, the FDIC shall make a good faith estimate of the liability of each institution as determined by (a) first assessing an initial amount on a pro rata capital basis that brings about parity in the capital ratios of the liable institutions and (b) then apportioning any residual assessment on a pro-rata size basis utilizing the most recent Report of Condition. Any final assessment can be based on the estimated liability of each institution by the FDIC and/or negotiations with the liable institutions.

(3) In the event that any liable institution is closed prior to paying an assessment, the amount assessed or to have been assessed against that institution may be assessed against the remaining liable institution(s).

(4) The FDIC, after consulting with the appropriate Federal and State financial institutions regulatory agencies, shall establish in each case a schedule for payment which may include a lump sum reimbursement, as well as procedures for receipt of such payment.

(5) Once liability has attached, the FDIC will consider information similar to that provided with a request for a conditional waiver of liability in determining the amount of the estimated loss to be assessed. Such information may also include suggested payment plans.

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 97–26231 Filed 10–8–97; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Applications To Relocate Main Office or Branch Statement of Policy (Includes Remote Service Facilities; Rescission of Policy Statement)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rescission of statement of policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC proposes to rescind its Statement of Policy "Applications to Relocate a Main Office or Branch (Includes Remote Service Facilities)" (Statement of Policy).

The Statement of Policy provides information and guidance to state nonmember banks planning to relocate the bank's main office or a branch. The information and guidance is out-of-date. The FDIC proposes to rescind the Statement of Policy because proposed revisions to its applications regulation published elsewhere in today's **Federal Register** update the requirements and sufficiently address all required application procedures to relocate a main office or a branch.

DATES: Comments must be submitted on or before January 7, 1998.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7 a.m. and 5 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, (202/898–6915), Division of Supervision; Susan van den Toorn, Counsel, (202/898–8707), Legal Division, FDIC, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the FDIC to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the FDIC to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies. As part of this review, the FDIC has determined that the Statement of Policy is outmoded, and that the FDIC's written policies can be streamlined by its elimination.

The FDIC developed the Statement of Policy to provide general supervisory information and guidance to state nonmember banks relative to the application process and the evaluation of statutory factors in relocating main office or branches. The FDIC last amended the Statement of Policy September 8, 1980. 2 FDIC Law, Regulations, and Related Acts (FDIC) 5125.

In the time since the Statement of Policy was last amended, the application process for relocating branches and main offices has changed significantly. As a result, the supervisory information and guidance contained in the Policy Statement, which although general in nature, are now out-of-date.

As part of the FDIC's comprehensive review of its applications process, elsewhere in today's **Federal Register**, the FDIC is proposing to amend part 303. The proposed revisions to part 303 cover the relocation of main offices and branches in sufficient detail so as to address the required application procedures. Commenters are invited to review subpart C of proposed part 303 in conjunction with the proposal to rescind the Statement of Policy.

For the above reasons, the FDIC proposes to rescind the following Statement of Policy:

Applications To Relocate Main Office or Branch (Includes Remote Service Facilities)

A. Introduction

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d); hereafter the (Act) requires the prior written consent of the Corporation before any state nonmember insured bank may move its main office or any branch. In analyzing these applications, the Corporation must evaluate each application in relation to the six statutory factors prescribed in section 6 of the Act (12 U.S.C. 1816) as well as the requirements of the National Historic Preservation Act, the National Environmental Policy Act of 1969, and the Community Reinvestment Act. The six statutory factors under section 6 of the Act are: the financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of management, the convenience and needs of the community to be served by the bank, and whether its corporate powers are consistent with the purposes of the Act.

The degree and extent to which the six statutory factors are applied in reviewing relocation applications depend largely upon the nature and purpose of the relocation which, in the majority of instances, are of two basic types: (1) Relocations to a different primary market area; and (2) relocations within the same primary market area. It is noteworthy that the Corporation will analyze all relocation applications from the standpoint of the convenience and needs of the community the office is leaving as well as the community to which it is moving.

B. Procedures

Application forms to relocate and instructions for their completion may be obtained from the regional office of the FDIC region in which the main office of the applicant is located. Upon receipt of an application which is found complete, the regional director will notify the bank, in writing, that the application has been accepted for filing and the date thereof. The procedures governing the administrative processing of relocation applications are contained in part 303 of the Corporation's rules and regulations (12 CFR part 303), particularly §§ 303.3, 303.10, 303.11, 303.12, and 303.14. Section 303.14 sets forth, among other things, the procedures controlling establishment of a public file, publication requirements, and consideration of comments and protests received in connection with an application.

The Corporation will normally not render a decision on any relocation application until the State Authority has approved or expressed its intent to approve the proposal; however, applicants are encouraged to submit their applications to the Corporation at the same time an application is forwarded to the State Authority in order to promote concurrent and more timely processing of the proposal.

Notification of the granting or denial of an application will be provided together with a statement supporting the decision. Under § 303.10(e) within 15

days of receipt of notice that its application has been denied, the applicant may petition the Board of Directors for reconsideration of the application. Opinions will be published when the Corporation determines that the decision represents a new or change in policy or presents issues of general importance to the public or the banking industry.

Under § 303.14(i) of the Corporation's rules and regulations, where the Board of Directors, based upon available information at the time, plans to deny an application and no hearing has been held under § 303.14(e), the Director of the Division of Bank Supervision may be instructed to notify the applicant in writing of the tentative denial. The applicant has 15 days from receipt of the notice to file a written request to amend the application or to submit information in rebuttal of the deficiencies noted. Upon filing of such a request, the applicant has 30 days to amend its application or to provide rebuttal information.

There is no application form for the relocation of a remote service facility. The regulations issued by the Corporation in March 1979 provide that an applicant merely notify the regional director of its intention, comply with the appropriate publication requirements and, unless notified otherwise by the regional director, the remote service facility may be relocated 30 days after the last publication date.

C. Statutory Factors—Application To Relocate to Different Primary Market Area

1. Financial History and Condition

In connection with applications for relocation to a different primary market area the emphasis will, of course, be placed on the financial history and condition of the existing bank. The relocation of an office to a different primary market area normally encompasses risks or a degree of management attention which banks that are experiencing financial difficulties are not generally prepared to undertake. Banks with excessive volumes of subquality assets, significant liquidity problems, or other problems threatening the soundness of the institution would fall in this category.

Under this factor, as well as under the general character of management factor, the current asset condition of the bank and its compliance with applicable laws and regulations are primary areas of consideration. Other primary areas of consideration here are investment in fixed assets, including leases, and insider transactions, all of which also impact importantly on the evaluation of the general character of management factor. Lease transactions shall be reported in accordance with Financial Accounting Standards Board Statement 13 as required by the Instructions for the Preparation of Consolidated Report of Income and Condition.

(a) Investment in Fixed Assets and Leases—The applicant's aggregate direct and indirect fixed asset investment, including lease obligations, must be reasonable in relation to its projected earnings capacity, capital and other pertinent bases for consideration. Except where state law obviates the need, lease agreements should contain a bankruptcy termination clause acceptable to the Corporation. An example of such clause may be obtained from the regional office.

It is recommended that applicants should not purchase any fixed assets or enter into any noncancelable construction contracts, lease agreements, or other binding arrangements related to the proposed relocation unless and until the Corporation approves the application.

The Corporation expects applicants to follow closely the representations made in the application regarding fixed asset arrangements. If any substantive changes become necessary in fixed asset arrangements, including increases of 10% or more in the cost of any major category of fixed assets (such as land, building, or furniture fixtures and equipment), after submission of the application, applicant must promptly advise the regional director of these changes as well as its plans for the old quarters. Major changes may result in reconsideration.

(b) Insider Transactions—Any financial arrangement or transaction involving the applicant, its directors, officers, 5% shareholders, or their associates and interest (hereafter referred to as "insiders") should ordinarily be avoided. If there are arrangements or transactions of that type, the applicant must demonstrate clearly that any proposed transactions with insiders are made on substantially the same terms as those prevailing at the time for comparable transactions with noninsiders and do not involve more than normal risk or present other unfavorable features to the applicant bank. In addition, full disclosure of any arrangements with an insider must be made to all directors and shareholders and, in the event any new capital offering is to be made, included in any new capital offering material distributed in connection with the application.

Whenever any transaction between the applicant and an insider involves the purchase of real property or a construction contract, the purchase price must be supported by an independent appraisal or in the case of a construction contract by competitive bids. Further, with respect to any lease arrangement between the applicant and an insider, the applicant must submit reliable evidence showing that the lease arrangement is as beneficial to the applicant as the purchase of the property and direct ownership. Normally, this type of lease arrangement will also be required to include terms protecting the bank against unreasonable escalation of payments under the lease and granting the bank the option to purchase the property during the life of the lease on appropriate terms.

2. Adequacy of Capital Structure

The relocation of an office to a different primary market area generally involves an expansion of deposits and/or an increase in expenses not immediately offset by additional income. This normally results in some dissipation of relative capital strength. Consequently, banks contemplating a relocation must possess an adequate level of capital protection or, in the case of capital deficiencies not considered overly extreme, set forth a plan which will improve capital to more than offset any deterioration which may flow from the relocation.

The applicant's adjusted capital and reserves, including written commitments for additional capital funds, should be adequate relative to its adjusted gross assets. The adjusted capital and reserves is computed by deducting from total capital and reserves all assets and nonbook liabilities classified "loss" and 50% of those classified "doubtful" at the last examination of the applicant. Such facts as the quality of assets, prospective earnings capacity, volume of risk assets, liquidity, capability of management, and other factors affecting the relative strength of a bank will exert either positive or negative influences on the level of capital protection.

3. Future Earnings Prospects

This factor will be considered both in terms of the relocation and the applicant bank as a whole. This factor will be measured in terms of the ability of overall bank earnings to absorb the anticipated expenses resulting from the proposal. In addition, anticipated future earnings for the bank as a whole should be adequate, after expenses, to absorb normal losses, pay reasonable dividends, and provide some meaningful contribution to capital.

4. General Character of Management

To be acceptable under this factor a management must, except in exigent circumstances, have demonstrated, or be expected to demonstrate, an ability to operate the bank in a manner which is free of excessive criticism or concern as to the overall soundness and viability of the institution. In summary, the Corporation views the quality of a bank's management as critical to its overall success and will seriously question the relocation of an office to a different primary market area if the quality of management is not considered adequate prior to the proposed relocation.

The Corporation will not question fees for legal services or other organizational expenses solely because of an amount but will consider the reasonableness of fees in relation to the services performed. Applicants are required to furnish the amounts of fees for such services which have been incurred and estimates of additional fees to be incurred in connection with the proposed transaction. All fees for legal, organizational or similar services should be disclosed whether directly or indirectly related to the application pending before the Corporation. If legal or other organizational fees appear to be excessive in relation to fees for comparable services, or if the volume of services performed exceeds that usually incurred with respect to comparable applications, supportive documentation will be required. In the case of legal fees, such documentation may consist of materials such as itemized time sheets showing the time actually expended by counsel on the applications concerned, the hourly rate charged, and the specific circumstances, including unusual complexities, the necessity for agency or court appearances, and the like necessitating the time expended. In reviewing legal fees for reasonableness, the following factors will ordinarily serve as guides:

(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the services obtained;

(b) The fee customarily charged in the locality for similar legal services;

(c) The time limitations imposed by the client or by the circumstances; and

(d) The experience and ability of the lawyer or lawyers performing the services.

Even though a fee may be wholly or partially absorbed by another entity such as a holding company, that fee or organizational expense will nonetheless be reviewed by the Corporation under the terms of this policy statement in view of the fact that the commitment for the fee or organizational expense is a commitment of management of the proposed or existing institution. Expenses for legal or other services rendered by organizers, present or prospective board members or major shareholders will receive special scrutiny in this regard for any evidence of self-dealing to the detriment of the bank and its other shareholders. As a matter of practice, the FDIC requires full disclosure to all directors and shareholders of any fee in excess of $5,000 paid to insiders or their interests.

In no case, states the policy, will an FDIC application be approved when the payment of a fee, in whole or in part, is contingent upon any act or forebearance by the Corporation or by any other federal or state agency or official.

The applicant bank should at all times maintain sufficient surety bond coverage on its active officers and employees to conform with generally accepted banking practices and should at all times maintain an excess employee dishonesty bond in the amount of $1 million or more if primary blanket bond coverage is less than $1 million.

5. Convenience and Needs of the Community To Be Served

It should be noted that the provisions of the Community Reinvestment Act are especially relevant in evaluating this statutory factor. Guidelines on the Community Reinvestment Act may be obtained from the appropriate regional office.

The essential considerations in evaluating this factor are the legitimate deposit and credit needs of the community to be served and the nature and extent of the banking opportunity available to the applicant in that location and the willingness and ability of the applicant to serve those needs. Largely because of the requirements of the Community Reinvestment Act, the Corporation will also evaluate this factor in terms of the impact of the proposal on the community which the office is leaving to ascertain the adequacy of banking services there in light of the move. The ensuing discussion of this factor deals mainly with the community to which the office is moving.

In keeping with the Corporation's policy of promoting competition among financial institutions, this factor will generally be considered favorably when there is reasonable assurance of successful operation of the office to be relocated (as measured by future earning prospects). However, competitive considerations will also include whether the potential viability of a newly organized bank within a market would be threatened significantly by a proposed relocation.

The applicant bank must clearly define the community it intends to serve and provide the type of information on that community discussed below. It is emphasized, however, that the degree of detail that must be provided may vary depending on the size and type of service to be offered at the proposed relocation site.

(a) Economic Data—The economic condition and growth potential of the area to which the bank proposes to relocate, both presently and in the near term, are important in evaluating the business potential available, the amount of that business that it can reasonably expect to secure, and the probable success of the operation. Indicators of the available business would include, but not be limited to, a description of the principal industrial, trade, or agricultural activity as well as the annual value of the primary products in the geographic area. In addition, trends in employment, residential and commercial construction, sales, company payrolls, and businesses established are also important indicators.

(b) Demographic Data—Population figures within the new community or trade area as well as the surrounding areas are important determinants in considering convenience and needs. These population figures should include not only the present population but also data on population trends for the future. Population characteristics such as income, age distribution, educational level, occupation, and stability should be considered.

(c) Competition—Some consideration will be given to the adequacy or inadequacy of existing bank facilities in the community and in nearby communities. The growth rate and size of bank and other financial institutions in the community or trade area may provide meaningful indications of the economic condition of the area and the potential business for the office to be relocated. Other financial institutions such as savings and loan associations, credit unions, finance companies, mortgage companies and insurance companies may be considered competing institutions to the extent their services parallel those of the proposed newly located office.

(d) Other Supporting Data—The extent of new or proposed residential, commercial and industrial development and construction is a significant secondary consideration in resolving the convenience and needs factor. Evidence of plans for development of shopping centers, apartment complexes and other residential subdivisions, factories, or other major facilities near the proposed site of the proposed newly located office are also relevant.

6. Consistency of Corporate Powers

This factor will rarely be applicable to relocation proposals, except in those instances where a bank may contemplate some additional corporate power, not normally exercised by banks, in connection with its application.

D. Statutory Factors—Application To Relocate Within Same Market Area

Normally, office relocations within the same primary market area are of a short geographic distance and are intended to expand or improve services to the consumer. In addition, such relocations are, in most cases, regarded by the Corporation of less significance than moves to different primary market areas. Thus, relocations within the same primary market area generally entail some adjustment and less stringent application of the standards and the six statutory factors discussed in section C above. Accordingly, in assessing these types of applications the Corporation focuses largely on the following factors:

(a) Whether any real estate or other transactions involve any insiders of the applicant and, if so, whether any insider would realize a profit or other advantage which would not normally accrue to noninsiders in comparable transactions;

(b) The impact of fixed asset or other additional expenses associated with the proposal on the bank's capital adequacy and earnings capacity;

(c) Whether the bank has or agrees to obtain sufficient surety bond coverage of its officers and employees to conform with generally accepted banking practices and maintains or will maintain an excess employee dishonesty bond in the amount of $1 million or more, if the primary blanket bond coverage is less than $1 million; and

(d) Whether the application involves special factors, which, in the opinion of the Board of Directors, have substantial bearing on its final determination. For example, although the factors described in paragraphs (a), (b), and (c) above are favorable, the Corporation may nevertheless deny the application because of the overall serious financial condition of the applicant bank.

E. Statutory Factors—Relocate Remote Service Facility

In view of the nature of the remote service facility, the six statutory factors will not be applied to the same degree and extent as in the case of a traditional branch. For instance, with respect to the earnings factor, detailed projections of deposits, income and expenses, are not necessary. A determination that operating expenses will not burden the bank's future earnings will generally suffice. Similarly, detailed or extensive economic information and demographic data are not required when considering the convenience and needs factor.

By order of the Board of Directors.

Dated at Washington, D.C. this 23rd day of September, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–26230 Filed 10–8–97; 8:45 am]

BILLING CODE 6714–01–P

federal register

Thursday
October 9, 1997

Part III

Department of Health and Human Services

Health Resources and Services Administration

Availability of the HRSA Competitive Grants Preview; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of the HRSA Competitive Grants Preview

AGENCY: Health Resources and Services Administration.

ACTION: General Notice.

SUMMARY: HRSA announces the availability of the HRSA Competitive Grants Preview publication for Fall 1997. This edition of the Preview is a comprehensive review of HRSA's Fiscal Year 1998 programs.

The purpose of the Preview is to provide the general public with a single source of program and application information related to the Agency's annual grant planning review. The Preview is designed to replace multiple **Federal Register** notices which traditionally advertised the availability of HRSA's discretionary funds for its various programs. In this edition of the Preview, HRSA's programs which provide funding for loan repayments and scholarships to individuals have been included in the section "Additional HRSA Programs." It should be noted that other program initiatives responsive to new or emerging issues in the health care area and unanticipated at the time of publication of the Preview, may be advertised through the **Federal Register** mechanism from time-to-time. Deadlines or other requirements appearing in the **Federal Register** are not changed by this notice.

The Preview contains a description of competitive and additional programs scheduled for review in Fiscal Year 1998 and includes instructions on how to access the Agency for information and receive application kits for all programs announced. Specifically, the following information is included in the Preview: Program Title, Legislative Authority, Purpose, Eligibility, Estimated Amount of Competition, Estimated Number of Awards, Funding Priorities and/or Preferences, Projected Award Date, Application Deadline, Application Kit Availability, Catalog of Federal Domestic Assistance (CFDA) program identification number, and programmatic contact.

This Fall 1997 issue of the Preview relates to funding under HRSA discretionary authorities and programs as follows:

HIV/AIDS Programs

- Ryan White Title III Outpatient Early Intervention.
- Ryan White Title III HIV Planning Grants.
- Ryan White Title IV Coordinated HIV Services and Access to Research—Geographic Areas With Currently Funded Title IV Projects.
- Ryan White Title IV Coordinated HIV Services and Access to Research—New Geographic Areas.
- Ryan White Title IV Adolescent Services
- Ryan White HIV Service Delivery Models.

Health Professions Programs

- Nurse Anesthetists: (1) Program Grants; (2) Traineeships; and (3) Fellowships.
- Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds.
- Nurse Practitioner/Nurse Midwife.
- Professional Nurse Traineeships.
- Advanced Nurse Education.
- Nursing Special Projects.
- Predoctoral Training in Family Medicine.
- Departments of Family Medicine.
- Allied Health Project Grants.
- Residencies and Advanced Education in the Practice of General Medicine.
- Residency Training in Preventive Medicine.
- Physician Assistants Training.
- Geriatric Education Centers.
- Health Careers Opportunity Program.
- Centers of Excellence.
- State-Supported Model Area Health Education Centers.
- Basic Core Area Health Education Centers.
- Minority Faculty Fellowship Program.

Rural Health Programs

- Rural Outreach Grant Program.
- Rural Network Development Grant Program.

Maternal and Child Health Programs

- Maternal and Child Health Research Cycle..
- Genetic Services.
- Children with Special Health Care Needs (CSHCN) Medical Home/Family Professional Partnership Initiative.
- Managed Care for Children with Special Health Care Needs.
- Children with Special Health Care Needs—Adolescent Transition.
- Sudden Infant Death Syndrome (SIDS)/Other Infant Death (OID) Program.
- Long Term Training in Nursing.
- Long Term Training in Nutrition.
- Long Term Training in Leadership Education in Neurodevelopmental and Related Disabilities.
- Continuing Education and Development.
- Healthy Tomorrows Partnership for Children.
- State Mortality Morbidity Review Support Program.
- Community Integrated Service Systems to Support Children In/Out of Home Care.
- Emergency Medical Services for Children, Implementation Grants.
- Emergency Medical Services for Children, Partnership Grants.
- Emergency Medical Services for Children, Targeted Issue Grants.
- Traumatic Brain Injury State Implementation Grants.
- Traumatic Brain Injury State Planning Grants.

Primary Health Care Programs

- Community and Migrant Health Centers.
- Public Housing Primary Care.
- Grants to States for Loan Repayment Programs.
- Grants to States for Community Scholarship Programs.

Additional HRSA Programs

- Scholarships for Disadvantaged Students Program.
- Faculty Loan Repayment Program.
- Nurse Education Loan Repayment Program.

Certain other information including, how to obtain and use the Preview, and grant terminology also may be found in the Preview.

ADDRESSES: Individuals may obtain the HRSA Preview by calling toll free number, 1–888–333-HRSA. The HRSA Preview may also be accessed on the World Wide Web on the HRSA Home Page at: http://www.hrsa.dhhs.gov.

Dated: October 2, 1997.

Claude Earl Fox,

Acting Administrator.

Attachment A

Message from our Acting Administrator . . .

The symbols illustrated on the cover and throughout the Preview represent ACCESS. In this Preview, we are increasing ACCESS for you by including scholarship and loan repayment announcements and providing e-mail addresses for programmatic technical assistance.

HRSA means ACCESS. ACCESS to . . .

- Quality health care for underserved and vulnerable populations.
- Primary care education and practice.
- A comprehensive system of health care resources.
- The systems of care for mothers, children and their families.
- The trained provider.
- The expert consultant through telemedicine reaching rural areas.

HRSA has only one reason to be * * * somewhere there is a community, somewhere there is an individual who needs our services and we are here to help fill that need. For those in need of health care, the Health Resources and Services Administration provides support to programs that place health care services and health professionals where they are least available.

At HRSA, the individual and the community are our first priority. Please join with us as we strive to provide ACCESS to quality health services for all Americans.

Claude Earl Fox.

DHHS Service Standards for Partnership With Grantees

The Department of Health and Human Services (HHS) and its grantees (primarily States, local governments, academic institutions, non-profit community organizations, and Indian tribes and tribal organizations) are partners in delivering quality services and supporting research to improve the lives of the American people. The following initial standards express our commitment to making this partnership as cooperative and effective as possible. We look forward to your suggestions as we develop these standards and improve our partnership.

We will:

(1) Invite our partners to collaborate in the development of HHS program policies and procedures.

(2) Emphasize program outcomes rather than process.

(3) Create no new unfunded mandates through policy or process changes.

(4) Provide prompt, courteous service and accessible information.

(5) Process waiver requests from States as quickly as possible, generally within 120 days.

(6) Provide technical assistance to help our partners meet program goals.

(7) Work with our partners to assure integrity in the use of public funds.

(8) Assist our partners to develop their own standards of customer service.

PROGRAMS AT A GLANCE

Program	Deadline
HIV/AIDS Programs	
Ryan White Title III Outpatient Early Intervention	10/10/97
Ryan White Title III HIV Planning Grants	05/01/98
Ryan White Title IV Coordinated HIV Services and Access to Research—Geographic Areas With Currently Funded Title IV Projects.	04/01/98
Ryan White Title IV Coordinated HIV Services and Access to Research—New Geographic Areas	04/01/98
Ryan White Title IV Adolescent Services	04/01/98
Ryan White HIV Service Delivery Models 04/01/98.	
Health Professions Programs	
Nurse Anesthetist Program Grants	02/02/98
Traineeships, and Fellowships	12/01/97
Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds	11/24/97
Nurse Practitioner/Nurse Midwifery	12/19/97
Professional Nurse Traineeships	11/03/97
Advanced Nurse Education	02/02/98
Nursing Special Projects	01/16/98
Predoctoral Training in Family Medicine	11/07/97
Departments of Family Medicine	03/16/98
Allied Health Project Grants	02/17/98
Residencies and Advanced Education in the Practice of General Dentistry	12/01/97
Residency Training in Preventive Medicine	12/15/97
Physician Assistants Training	12/22/97
Geriatric Education Centers	12/19/97
Health Careers Opportunity Program	01/30/98
Centers of Excellence	03/27/98
State-Supported Model AHEC	01/09/98
Basic Core Area Health Education Centers	01/09/98
Minority Faculty Fellowship Program	01/30/98
Rural Health Programs	
Rural Outreach Grant Program	03/16/98
Rural Network Development Grant Program	03/16/98
Maternal and Child Health Programs	
Maternal and Child Health Research	03 and 08/01/98
Genetic Services	04/30/98
Children with Special Health Care Needs (CSHCN) Medical Home/Family Professional Partnership Initiative	04/01/98
Managed Care for CSHCN	03/10/98
CSHCN Adolescent Transition	04/01/98
Sudden Infant Death Syndrome (SIDS)/Other Infant Death (OID) Program	02/27/98
Long Term Training in Nursing	03/16/98
Long Term Training in Nutrition	03/16/98
Long Term Training in Leadership Education, In Neurodevelopmental and Related Disabilities	03/16/98

PROGRAMS AT A GLANCE—Continued

Program	Deadline
Continuing Education and Development	07/01/98
Healthy Tomorrows Partnership for Children	04/30/98
State Mortality Morbidity Review Support Program	03/31/98
Community Integrated Service Systems to Support Children In/Out of Home Care	04/30/98
Emergency Medical Services for Children, Implementation Grants	04/13/98
Emergency Medical Services for Children, Partnership Grants	04/13/98
Emergency Medical Services for Children, Targeted Issue Grants	04/13/98
Traumatic Brain Injury State Implementation Grants	03/30/98
Traumatic Brain Injury State Planning Grants	03/30/98
Primary Health Care Programs	
Community and Migrant Health Centers	Varies
Public Housing Primary Care	Varies
Grants To States For Loan Repayment Programs	04/01/98
Grants To States For Community Scholarship Programs	05/01/98
Additional HRSA Programs	
Scholarships for Disadvantaged Students Program	04/15/98
Faculty Loan Repayment Program	06/30/98
Nurse Education Loan Repayment Program	08/31/98

How to Obtain and Use the Preview

It is recommended that you read the introductory materials, terminology section, and individual program category descriptions before contacting the general number 1–888–333–HRSA. Likewise, we urge applicants to fully assess their eligibility for grants before requesting kits. This will greatly facilitate our ability to assist you in placing your name on the mailing list and identifying the appropriate application kit(s) or other information you may wish to obtain. As a general rule, no more than one kit per category will be mailed to applicants. However, applicants may reproduce kit materials to meet their needs.

To Obtain a Copy of the Preview

To have your name and address added to, or deleted from, the Preview mailing list, please call the toll free number 1–888–333–HRSA or e-mail us at hrsa.gac@ix.netcom.com

To Obtain an Application Kit

Upon review of the program descriptions, please determine which category or categories of application kit(s) you wish to receive and contact the 1–888–333–HRSA number to register on the specific mailing list. Application kits are generally available 60 days prior to application deadline. If kits are already available, they will be mailed to you right away.

World Wide Web Access

The Preview is available on the HRSA Home Page via World Wide Web at: http://www.hrsa.dhhs.gov Application materials are currently available for downloading in the current cycle for some HRSA programs. HRSA's goal is to post application forms and materials for all programs.

You can download this issue of the Preview in Adobe Acrobat format (.pdf) from HRSA's web site at: http://www.hrsa.dhhs.gov/preview.htm. Also, you can register on-line to be sent specific grant application materials by following the instructions on the web page. Your mailing information will be added to our database and material will be sent to you when it becomes available.

Grant Terminology

Application Deadlines

Applications will be considered "on time" if they are either received on or before the established deadline date or sent on or before the deadline date given in the program announcement or in the application kit materials.

Authorizations

These are provided immediately preceding groupings of program categories. They are the citations of provisions of the laws authorizing the various programs.

CFDA Number

The Catalog of Federal Domestic Assistance (CFDA) is a government-wide compendium of Federal programs, projects, services, and activities which provide assistance.

Cooperative Agreement

A financial assistance mechanism used when substantial Federal programmatic involvement with the recipient during performance is anticipated by the awarding office.

Eligibility

Authorizing legislation and programmatic regulations specify eligibility for individual grant programs. In general, assistance is provided to nonprofit organizations and institutions, State and local governments and their agencies, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

Estimated Amount of Competition

The amount listed is provided for planning purposes and is subject to the availability of funds.

Funding Priorities and/or Preferences

Special priorities or preferences are those which the individual programs have identified for the funding cycle. Some programs give preference to organizations which have specific capabilities such as telemedicine networking, or established relationships with managed care organizations. Preference may be given to achieve an equitable geographic distribution.

Matching Requirements

Several HRSA categories require a matching amount, or percentage of the total project support to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, matching requirements may be administratively required by the awarding office.

Review Criteria

The following are generic review criteria applicable to HRSA programs:

- That the estimated cost to the Government of the project is reasonable considering the anticipated results.
- That project personnel or prospective fellows are well qualified by training and/or experience for the support sought and the applicant organization or the organization to provide training to a fellow, has adequate facilities and manpower.
- That, insofar as practical, the proposed activities (scientific or other), if well executed, are capable of attaining project objectives.
- That the project objectives are identical with or are capable of achieving the specific program objectives defined in the program announcement.
- That the method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.
- That, in so far as practical, the proposed activities, when accomplished are replicable, national in scope and include plans for broad dissemination.

The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits. Applicants should pay strict attention to addressing these criteria as they are the formal basis upon which their applications will be judged.

Technical Assistance

All programs provide technical assistance. There are also programs which have scheduled workshops and conference calls as indicated by the "magnifying glass". A contact person is listed for each program and their e-mail address provided. If you have questions concerning individual programs, please contact the person listed.

HIV/AIDS Programs

The HRSA HIV/AIDS Bureau consolidates activities authorized under the Ryan White Comprehensive AIDS Resources (CARE) Act which were previously carried out within all of the agency's bureaus. The CARE Act programs now conducted through the HIV/AIDS Bureau are designed to improve the quality and ensure availability of access to health care and other support services for individuals and families affected by HIV disease, especially those who would otherwise be unable to receive care.

The programs of the HRSA HIV/AIDS Bureau include the following:

Funding to eligible metropolitan areas (EMAs) hardest hit by the HIV/AIDS epidemic (Title I). Last year, 49 eligible metropolitan areas received formula funding determined by the seriousness of the epidemic, and were eligible to compete for supplementary funding;

Formula funding to States and territories to improve the quality, availability, and organization of health care and support services for people living with HIV disease (Title II). Title II also includes the AIDS Drug Assistance Program (ADAP), which funds efforts to make available existing and new drug therapies for people living with HIV in every State and territory;

Competitive funding to public and private nonprofit entities for outpatient early intervention and primary care services (Title III). Grants were made to Community Health Centers/Migrant Health Centers, hospitals and city and county health departments, family planning clinics, and programs for the homeless;

Funding to public and private nonprofit entities for demonstration projects to coordinate services to, and provide enhanced access to research, for children, youth, women, and families (Title IV); and

Support for the Special Projects of National Significance (SPNS) program which includes the development and assessment of innovative service delivery models; the Dental Reimbursement Program which provides retrospective funding for dental schools providing services to people living with AIDS during the previous year, and AIDS Education and Training Centers which train health professionals to provide care to people living with HIV.

Technical Assistance

The HRSA HIV/AIDS Bureau provides several types of technical assistance to prospective applicants and ongoing technical assistance to grantees. This technical assistance includes contact with Project Officers, meetings carried out on local, regional, and national levels, telephone conference calls, and simplified information on grants applications and procedures.

Outpatient Early Intervention Services With Respect to HIV Disease (Ryan White Title III)

Authorization

Sections 2651–2667 of the Public Health Service Act, 42 U.S.C. 300ff–51–330ff–67.

Purpose

The purpose of Title III funding is to provide on an outpatient basis, high quality early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health service entities. These expanded services become a part of a continuum of HIV prevention and care for individuals who are at risk for HIV infection or are HIV infected. All Title III programs must provide HIV counseling and testing, counseling and education on living with HIV, appropriate medical evaluation and clinical care, and other essential services such as oral health care, outpatient mental health services and nutritional services, and appropriate referrals for specialty services.

Eligibility

Eligible applicants are Migrant Health Centers, Community Health Centers, Health Care for the Homeless Programs, Family Planning Organizations, Comprehensive Hemophilia Diagnostic and Treatment Centers, Federally Qualified Health Centers, and Public or non-profit private entities that currently provide comprehensive primary care services to people living with HIV/AIDS.

Limited Competition

Applicants are limited to currently funded Ryan White Title III programs whose project periods expire in FY 1998 and new organizations proposing to serve the same populations currently being served by these existing Title III programs. Applications are also requested from new organizations that propose to serve new areas. These will be considered for FY 1998, should new funding become available.

Review Criteria

The criteria are justification of need, organizational capabilities and expertise, adequacy of proposed program plan, coordination with other programs, program evaluation, appropriateness and justification of the budget, adherence to program guidance.

Estimated Amount of Competition

$35,000,000

Estimated Number of Awards

97

Projected Award Date: FY 1998
Contact: 1–888–333–HRSA
Application Availability: 7/10/97
Application Deadline: 10/10/97
CDFA Number: 93.918

Contact Person: Deborah Parham, dparham@hrsa.dhhs.gov

Existing Ryan White Title III Service Areas *

AZ:
Phoenix
Tucson
AR:
Pine Bluff
AL:
Mobile
Anniston
Montgomery
AK:
Anchorage
CA:
Santa Cruz
San Francisco
Los Angeles (2)
San Fernando
Santa Ana
San Bernardino
San Jose
Fremont
San Marcos
LaMont
CT:
Bridgeport (2)
New Haven
DC:
Washington
FL:
Key West
Miami (2)
Pompano Beach
Palm Beach
Immokalee
GA:
Atlanta (2)
Savannah
Waycross
Augusta
IA:
Des Moines
IL:
Chicago (4)
Rockford
IN:
Indianapolis
KS:
Wichita
MA:
Northampton
Provincetown
Dorchester
Worchester
New Bedford
Boston
MI:
Detroit (2)
MO:
Springfield
Kansas City
MT:
Billings
NC:
Asheville
Durham
NJ:
Newark
Paterson
New Brunswick
NM:
Alburquerque
NV:
Reno
Las Vegas
NY:
New York City (8)
Bronx (2)
Brooklyn (2)
Rochester
Buffalo
Queens
Peekskill
Syracuse
Albany
OH:
Cincinnati
OK:
Tulsa
PA:
Philadelphia (3)
Allentown
Pittsburgh
Chester
York
PR:
Humacao
San Juan
Mayaguez
Lares
Gurabo
RI:
Providence
TX:
Houston
Dallas
Fort Worth
Austin
San Antonio
UT:
Salt Lake City

* Applications are also requested from new organizations that propose to serve new areas. These will be considered for FY 1998 should new funding become available.

Ryan White Title III HIV Planning Grants

Authorization

Part C of Title XXVI of the Public Health Service as Amended by the Ryan White Care Act Amendments of 1996, Public Law 104–146, 42 U.S.C. 300ff–51—300ff–67.

Purpose

Ryan White Title III HIV Planning Grants are discretionary grants to support communities and health care service entities in their preparations to provide a high quality and comprehensive scope of primary health care services for people in underserved areas who are living with HIV or at risk of infection. Funds are to be used to mobilize and organize community resources, and to strengthen their organizational capacity so that HIV primary health care services can be established or strengthened. Grant recipients are expected to: engage and coordinate with suitable community organizations to plan for HIV primary care services; conduct an assessment for the proposed service area; develop a plan of action to address priority needs; and undertake the necessary preparations to become operational.

The Ryan White Title III HIV Planning Grants are intended to assist health care service entities to qualify for grant support under the Ryan White Title III Early Intervention Services Program.

Eligibility

Eligible applicants are public or private, nonprofit entities who are not currently grant recipients of the Ryan White Title III Early Intervention Services Program and are current primary care service providers to populations at risk for HIV disease; community health centers under Section 330 or the PHS Act; migrant health centers under Section 330 (g) of the PHS Act; health care for the homeless grantees under section 330(h) of the PHS Act; family planning grantees under Section 1001 of the PHS Act, other than States; comprehensive hemophilia diagnostic and treatment centers; or federally qualified health centers under Section 1905 (1)(2)(B) of the Social Security Act.

Funding Priorities and/or Preferences

In awarding the grants, preference will be given to entities that provide primary care services in rural or underserved communities and in communities where other Ryan White funds are not available.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$700,000

Estimated Number of Awards

15

Projected Award Date: 08/98
Contact: 1–888–333–HRSA
Application Availability: 03/02/98
Application Deadline: 05/01/98
CFDA Number: 93.918
Contact Person: Deborah Parham dparham@hrsa.dhhs.gov

Ryan White Title IV Grants for Coordinated HIV Services and Access to Research for Infants, Children, Youth, Women and Families—Geographic Areas With Currently Funded Title IV Projects

Authorization

Section 2671 of the Ryan White Care Act, as amended by Public Law 104–146, 42 U.S.C. 300ff–51–330ff–67.

Purpose

The purpose of the Title IV funding is to improve access to primary medical care, research, and support services for children, youth, women and families infected with HIV. Funded projects will link clinical research and other research with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are infected/affected by HIV. Funds will be used to support programs that (1) cross establish systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by underserved, at-risk and limited populations. Activities under these grants should address the goals of enrolling and maintaining clients in HIV primary care; increasing client access to research by linking HIV/AIDS clinical research trials and activities with comprehensive care; fostering the development and support of comprehensive, community-based and family centered care infrastructures, and emphasizing prevention within the care system including the prevention of perinatal HIV transmission.

Eligibility

Eligible organizations are public or private non-profit entities that provide or arrange for primary care.

Limited Competition

Applicants are limited to currently funded Title IV programs whose project periods expire in FY 1998 and new organizations in geographic areas currently served by Title IV that are proposing to serve the same areas currently being served by these existing projects. These areas are: Brooklyn(2), NY; Bronx, NY; Manhattan, NY; Washington, DC; Atlanta, GA; Tampa/St. Petersburg, FL; Dallas, TX; St. Louis, MO; Denver, CO; Los Angeles, CA; and Wisconsin.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$10,000,000

Estimated Number of Awards

12

Funding Priorities and/or Preferences

Funding in this category will be given to projects that support a comprehensive, coordinated system of HIV care serving either infants, children, youth, women or families and are linked with or have initiated activities to link with clinical trials or other research.

Projected Award Date: 08/01/98
Contact: 1–888–333–HRSA
Application Availability: 02/02/98
Application Deadline: 04/01/98
CFDA Number: 93.153A
Contact Person: Michael Kaiser, mkaiser@hrsa.dhhs.gov

Ryan White Title IV Grants for Coordinated Services and Access to Research for Infants, Children, Youth, Women and Families—New Geographic Areas

Authorization

Section 2671 of the Ryan White Care Act, as amended by Public Law 104–146, 42 U.S.C. 300ff–51–330ff–67.

Purpose

Organizations should be able to demonstrate expertise in the coordination or provision of comprehensive medical and social services to children, youth, women and families. The purpose of the Title IV funding is to improve access to primary medical care, research, and support services for children, youth, women and families infected with HIV. Funded projects will link clinical research and other research with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are infected/affected by HIV. Funds will be used to support programs that (1) cross establish systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by underserved, at-risk and limited populations. Activities under these grants should address the goals of: enrolling and maintaining clients in HIV primary care; increasing client access to research by linking HIV/AIDS clinical research trials and activities with comprehensive care; fostering the development and support of comprehensive, community-based and family centered care infrastructures; and emphasizing prevention within the care system including the prevention of perinatal HIV transmission.

Eligibility

Eligible organizations are public or private non-profit entities that provide or arrange for primary care.

Limited Competition

This initiative is targeted to applicants in geographic areas not currently served by Title IV. Geographic areas that are currently receiving Ryan White Title IV support are listed below. Title IV projects located in the underlined cities are approaching the end of their project period therefore, applicants may submit applications for these geographic areas in response to preceding announcement (CFDA 93.153A), for FY 1998 expiring Title IV projects.

State	City
AL	Birmingham/Montgomery.
CA	Los Angeles.
	La Jolla/San Diego.
	Oakland.
	San Francisco.
CO	Denver.
CT	Hartford/New London/New Haven/Bridgeport/Stamford.
DC	Washington.
FL	Tampa/St. Petersburg.
	Ft. Lauderdale.
	Miami.
	Orlando.
GA	Atlanta.
IL	Chicago.
LA	New Orleans.
MA	Statewide.
	Roxbury/Boston.
MD	Statewide.
MI	Detroit.
MO	St. Louis.
NC	Charlotte.
NH	Statewide.
NJ	Statewide.
NY	Bronx.
	Brooklyn(2).
	Manhattan.
	Elmhurst/Queens.
	Stony Brook.
OH	Columbus.
PA	Philadelphia.
PR	Statewide.
RI	Providence.
SC	Statewide.
TX	Dallas.
	Fort Worth.
	Houston.
	San Antonio.
WA	Seattle.

Funding Preference and/or Priorities

Preference for funding may be given to applicants which help to achieve an equitable geographical distribution of programs across all States and territories, especially programs that provide services in rural or underserved communities where the HIV/AIDS epidemic is increasing.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,200,000

Estimated Number of Awards

4

Projected Award Date: 08/98
Contact: 1–888–333–HRSA
Application Availability: 02/02/98
Application Deadline: 04/01/98
CFDA Number: 93.153B
Contact Person: Michael Kaiser, mkaiser@hrsa.dhhs.gov

Ryan White Title IV Grants for Adolescent Services

Authorization

Section 2671 of the Ryan White Care Act, as amended by Public Law 104–146, 42 U.S.C. 300ff–51—300ff–67.

Purpose

The purpose of this initiative is to foster and expand systems of health care and social support services for youth (age 13–24) at risk for or infected with HIV infection in order to identify infected youth and enroll them in HIV primary care. Grantees will identify additional HIV infected youth and develop, coordinate and provide support services to enroll and maintain them in primary medical care. Adolescent clients should be enrolled into care early in the spectrum of disease and managed throughout the infection. In partnership with other Ryan White funded programs or other agencies, applicants will integrate youth services into existing systems of care to provide access to comprehensive, coordinated primary care, research and social support services.

Eligibility

Eligible organizations are public or private, non-profit organizations that provide or arrange for primary care, with expertise in the care of youth.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,000,000

Estimated Number of Awards

3–5

Funding Priorities and/or Preferences

Priority will be given to applicants with a history of working with youth, especially youth infected with HIV. Priority will be given to projects proposed in geographic areas where epidemiologic data demonstrate high numbers of infected youth.

Projected Award Date: 08/01/98
Contact: 1–888–333–HRSA
Application Availability: 02/02/98
Application Deadline: 04/01/98
CFDA Number: 93.153C
Contact Person: Michael Kaiser, mkaiser@hrsa.dhhs.gov

Ryan White HIV Service Delivery Models

Authorization

Section 2691 of the Public Health Service Act, 42 U.S.C. 300ff–51–330ff–67.

Purpose

The goal of the Special Projects of National Significance Program is to advance knowledge about the care and treatment of people with HIV. Each project is responsible for the implementation and evaluation of its model of care. Results from individual projects and cross-site evaluations are used by AIDS service providers and others to improve and enhance the quality of care. The program will support innovative and potentially replicable HIV service delivery models. Projects must: (1) Assess the effectiveness of particular models of care; (2) support innovative program design; and (3) promote replication of effective models of care.

Eligibility

Eligible applicants are public and non profit entities including community-based organizations.

Evaluation Criteria

Final criteria are included in the application kit

Estimated Amount of This Competition

$4,212,000

Estimated Number of Awards

12

Project Award Date: 07/98
Contact: 1–888–333–HRSA
Application Availability: 01/05/98
Application Deadline: 04/01/98
CFDA Number: 93.928
Contact Person: Barney Singer, bsinger@hrsa.dhhs.gov

Health Professions Programs

Underlined areas provide additional information to the Summer 97 Preview.

Nurse Anesthetist Program; (1) Program Grants (2) Traineeships; and (3) Fellowships

Authorization

Section 831 of the Public Health Service Act, 42 U.S.C. 297–1.

Purpose

This program is to assist grantees to meet the costs of: (a) projects for the education of nurse anesthetists; (b) traineeships for licensed registered nurses to become nurse anesthetists; and (c) fellowships to enable Certified Registered Nurse Anesthetist (CRNA) faculty members to obtain advanced education relevant to their teaching functions.

Eligibility

Eligible applicants are public or private nonprofit institutions which provide registered nurses with full-time nurse anesthetist training and are accredited by an entity or entities designated by the Secretary of Education.

Funding Priorities and/or Preferences

Statutory Funding Preference

As provided in Section 860(e) of the Public Health Service Act, preference will be given to qualified applicants that: (A) Have a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) have achieved, during the 2-year period preceding the fiscal year for which such an award is sought, a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile of applications recommended for education program applications recommended for approval by the peer review group.

"High rate" is defined as a minimum of 30 percent of graduates in academic years 1994–95, 1995–96 or 1996–97 who spend at least 50 percent of their work time in clinical practice in the specified setting. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1995–96 and 1996–97, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Statutory Rural Preference for Traineeship Program

A preference is given to those applicants carrying out traineeships whose participants gain significant experience in providing health service in rural health facilities.

Established Funding Priority for Traineeship and Education Program Grants

A funding priority will be given to programs which demonstrate either substantial progress over the last three years or a significant experience of 10 or more years in enrolling and graduating students from those minority populations identified as at-risk of poor health outcomes.

Established Funding Preference for Faculty Fellowship Grants

A funding preference will be given first to faculty who will be completing degree requirements before or by the end of the funded budget year, second to faculty who are full-time students, and third to faculty who are part-time students.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,800,000
Traineeships—$1,220,000
Program—300,000
Fellowships—280,000

Estimated Number of Awards

79 (70 Traineeships, 2 Programs and 7 Fellowships)*

**Formula Program—all eligible entities will receive traineeship support.*

Projected Award Date: 03/98
Fellowships & Traineeship Program; 05/98 Program Grants
Contact: 1–888–333–HRSA
Application Availability: 07/15/97
Application Deadline: 12/01/97
Fellowships & Traineeships; 02/02/98 Program Grants
CFDA Number: 93.124, 93.907 & 93.916
Contact Person: Marcia Starbecker mstarbecker@hrsa.dhhs.gov

Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds

Authorization

Section 827 of the Public Health Service Act, 42 U.S.C. 296r.

Purpose

This program provides funds to meet the costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds by: (a) Identifying, recruiting and selecting such individuals; (b) facilitating the entry of such individuals into schools of nursing; (c) providing services designed to assist such individuals to complete their nursing education; (d) providing preliminary education, prior to entry into the regular course of nursing, designed to assist in completion of the regular course of nursing education; (e) paying such stipends as the Secretary may determine; (f) publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid; and (g) providing training, information, or advice to the faculty on encouraging such individuals to complete their nursing education.

Eligibility

Public and nonprofit private schools of nursing and other public or nonprofit private entities are eligible for grant support.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,400,000

Estimated Number of Awards

8

Projected Award Date: 05/98
Contact: 1–888–333–HRSA
Application Availability: 07/15/97
Application Deadline: 11/24/97
CFDA Number: 93.178
Contact Person: Ernell Spratley, espratley@hrsa.dhhs.gov

Nurse Practitioner/Nurse Midwifery

Authorization

Section 822 of the Public Health Service Act, 42 U.S.C. 296m.

Purpose

This program provides funds to meet the costs of projects to plan, develop and operate new programs, maintain, or significantly expand existing programs for the education of nurse practitioners and nurse-midwives to effectively provide primary health care in settings such as homes, ambulatory care and long term care facilities and other health care institutions. Programs must adhere to regulations and guidelines for nurse practitioner and nurse-midwifery education as prescribed by the Secretary of Health and Human Services which require at a minimum that each program extend for at least one academic year and consist of supervised clinical practice directed toward preparing nurses to deliver primary health care; and at least four months (in the aggregate) of classroom instruction that is so directed; and have an enrollment of not less than six full-time equivalent students.

Eligibility

Eligible applicants are public and nonprofit private schools of nursing or other public and nonprofit private entities. Eligible applicants must be located in a State.

Funding Priorities and/or Preferences

Statutory Program Specific Preference

Preference will be given to any qualified applicant that agrees to expend the award to plan, develop, and operate new programs or to significantly expand existing programs.

Statutory General Preference

As provided in Section 860(e)(1) of the PHS Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

"High rate" is defined as a minimum of 30 percent of graduates in academic years 1994–95, 1995–96 or academic year 1996–97, who spend at least 50 percent of their worktime in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1995–96 and 1996–97, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Statutory Special Considerations

Special consideration will be given to qualified applicants that agree to

expend the award to educate individuals as nurse practitioners and nurse-midwives who will practice in health professional shortage areas designated under Section 332 of the Public Health Service Act.

Established Funding Priority

Funding priority will be given to applicant institutions which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$3,000,000

Estimated Number of Awards

11

Projected Award Date: 04/98
Contact: 1–888–333–HRSA
Application Availability: 07/15/97
Application Deadline: 12/19/97
CFDA Number: 93.298
Contact Person: Audrey Koertvelyessy, akoertvelyessy@hrsa.dhhs.gov

Professional Nurse Traineeships

Authorization

Section 830 of the Public Health Service Act, 42 U.S.C. 297.

Purpose

Grants are awarded to meet the cost of traineeships for individuals in advanced degree nursing education programs. Traineeships are awarded to individuals by the participating educational institutions offering master's and doctoral degree programs to serve in and prepare for practice as nurse practitioners, nurse midwives, nurse educators, public health nurses, or in other clinical nursing specialties determined by the Secretary to require advanced education.

Eligibility

Eligible applicants are public or private nonprofit entities which provide: (1) Advanced-degree programs to educate individuals as nurse practitioners, nurse-midwives, nurse educators, public health nurses or as other clinical nursing specialists; or (2) nurse-midwifery certificate programs that conform to guidelines established by the Secretary under Section 822(b). Applicants must agree that: (a) In providing traineeships, the applicant will give preference to individuals who are residents of health professional shortage areas designated under Section 332 of the Act; (b) the applicant will not provide a traineeship to an individual enrolled in a master's of nursing program unless the individual has completed basic nursing preparation, as determined by the applicant; and (c) traineeships provided with the grant will pay all or part of the costs of the tuition, books, and fees of the program of nursing with respect to which the traineeship is provided and reasonable living expenses of the individual during the period for which the traineeship is provided.

Funding Priorities and/or Preferences

Statutory Preference

As provided in Section 860(e) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

"High rate" is defined as a minimum of 30 percent of graduates in academic year 1994–95, 1995–96 or academic year 1996–97, who spend at least 50 percent of their work time in clinical practice in the specified settings. Public health nurse graduates can be counted if they identify a primary work affiliation at one of the qualified work sites. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1995–96 and 1996–97 the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Statutory Special Consideration

Special consideration will be given to applications for traineeship programs for nurse practitioner and nurse midwife programs which conform to guidelines established by the Secretary under Section 822(b)(2) of the PHS Act.

Established Funding Priority

A funding priority will be given to programs which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating students from those minority populations identified as at-risk of poor health outcomes.

Review Criteria

Awards are determined by formula.

Estimated Amount of This Competition

$15,600,000

Estimated Number of Awards

270

(Formula Program—All eligible schools will receive awards)

Projected Award Date: 03/97
Contact: 1–888–333–HRSA
Application Availability: 07/15/97
Application Deadline: 11/03/97
CFDA Number: 93.358
Contact Person: Marcia Starbecker, mstarbecker@hrsa.dhhs.gov

Advanced Nurse Education

Authorization

Section 821 of the Public Health Service Act, 42 U.S.C. 296–1.

Purpose

This grant program assists eligible institutions to meet the costs of projects that plan, develop and operate new programs, or significantly expand existing programs leading to advanced degrees that prepare nurses to serve as nurse educators or public health nurses, or in other clinical nurse specialties determined by the Secretary to require advanced education.

Eligibility

Eligible applicants are public and non profit Collegiate Schools of Nursing.

Funding Priorities and/or Preferences

Statutory General Preference

As provided in Section 860(e)(1) of the Public Health Service Act, preference will be given to any qualified applicant that: (1) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

"High rate" is defined as a minimum of 30 percent of graduates in academic year 1994–95, 1995–96 or academic year 1996–97, who spend at least 50 percent of their work time in clinical practice in the specified settings. Public health nurse graduates can be counted if they identify a primary work affiliation at one of the qualified work sites. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1995–96 and 1996–97 the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Established Funding Priorities

A funding priority will be given to applications which develop, expand or implement courses concerning ambulatory, home health care and/or inpatient case management services for individuals with HIV disease.

In determining the order of funding of approved applications, a funding priority will be given to applicant institutions which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$4,500,000

Estimated Number of Awards

22

Projected Award Date: 05/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 02/02/98
CFDA Number: 93.299
Contact Person: Madeleine Hess, mhess@hrsa.dhhs.gov

Nursing Special Projects

Authorization

Section 820 of the Public Health Service Act, 42 U.S.C. 295K.

Purpose

The purpose of this program is to improve nursing practice through projects that increase the knowledge and skills of nursing personnel, enhance their effectiveness in primary health care delivery, and increase the number of qualified professional nurses.

Grant support may be sought under four separate individual purposes: (a) Expand Enrollment in Professional Nursing Programs; (b) Primary Health Care in Noninstitutional Settings; (c) Continuing Education for Nurses in Medically Underserved Communities; and (d) Long-Term Care Fellowships for Certain Paraprofessionals.

Eligibility

Eligible applicants for projects under Section 820(a) are public and nonprofit private schools of nursing with programs of education in professional nursing.

Eligible applicants for projects under Section 820(b) are public and nonprofit private schools of nursing. To receive support under 820(b) the program proposed must be operated and staffed by the faculty and students of the school and must be designed to provide at least 25 percent of the students of the school with a structured clinical experience in primary health care.

Eligible applicants for projects under Section 820(c) are public and nonprofit private entities.

Eligible applicants for projects under Section 820(d) are public and nonprofit private entities that operate accredited programs of education in professional nursing, or State-board approved programs of practical or vocational nursing. To receive support under 820(d), the applicant must agree that, in providing fellowships, preference will be given to eligible individuals who are economically disadvantaged individuals, particularly such individuals who are members of a minority group that is under represented among registered nurses; or are employed by a nursing facility that will assist in paying the costs or expenses. The applicant must also agree that the fellowships provided will pay all or part of the costs of the tuition, books, and fees of the program of nursing with respect to which the fellowship is provided; and reasonable living expenses of the individual during the period for which the fellowship is provided.

Funding Priorities and/or Preferences

Statutory Funding Preferences

In making awards of grants under Section 820(a), preference will be given to any qualified school that provides students of the school with clinical training in the provision of primary health care in publicly-funded: (A) urban or rural outpatient facilities, home health agencies, or public health agencies; or (B) rural hospitals.

In making awards of grants under Section 820(d), preference will be given to any qualified applicant operating an accredited program of education in professional nursing that provides for the rapid transition to status as a professional nurse from status as a nursing paraprofessional.

Established Funding Priorities

A priority will be given to schools that offer generic baccalaureate programs. A priority will also be given to schools that offer both generic baccalaureate nursing programs and RN completion programs. These priorities apply to applications for grants under Section 820(a).

A funding priority will be given to programs which demonstrate either substantial progress over the last three years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at-risk of poor health outcomes. This priority applies to applications for grants under Sections 820(a), 820(b), and 820(d).

Finally, a funding priority will be given to applications for continuing education programs for nurses from medically underserved communities to increase their knowledge and skills in care of persons who are HIV positive or who have AIDS. This priority applies to applications for grants under Section 820(c).

Matching Requirement

To receive support under 820(a) the school must agree to make available non-Federal contributions in an amount that is at least 10 percent of the project costs for the first fiscal year, at least 25 percent of the project costs for the second fiscal year, at least 50 percent of the project costs for the third fiscal year, and at least 75 percent of the project costs for the fourth or fifth fiscal years.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$3,790,000

Estimated Number of Awards

12

Projected Award Date: 05/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 01/16/98
CFDA Number: 93.359
Contact Person: Janet Clear jclear@hrsa.dhhs.gov

Predoctoral Training in Family Medicine

Authorization

Section 747(a) of the Public Health Service Act, 42 U.S.C. 293k

Purpose

This program provides funds to promote the predoctoral training of allopathic and osteopathic medical

students in the field of family medicine. Supported programs emphasize the provision of longitudinal, preventive, and comprehensive care to families. The program assists schools in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Support may be provided both for the program and for the trainees. Assistance may be requested for any of the following purposes: curriculum development, clerkships, preceptorships, and/or student assistantships. The programs should be part of an integrated institutional strategy to provide education and training in family medicine. The intent is to design programs which encourage graduates to seek residency training in family medicine and eventually to enter a career in family medicine.

Eligibility

Public, or private nonprofit, accredited schools of medicine or osteopathic medicine are eligible for grant support.

Funding Priorities and/or Preferences

As provided in Section 791(a) of the Public Health Service Act, statutory preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

In FY 1998, "high rate" means that a minimum of 20 percent of the medical school's (or osteopathic) graduates from academic year 1992–93 or 1993–94, whichever is greater, are spending at least 50 percent of their work time in clinical practice in the specified settings. Graduates who are providing care in an underserved area as part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1995 and 1996, the rate of placing the 1992–1993 graduates in the specified settings has increased by at least 50 percent and not less than 15 percent of graduates from the most recent year are working in such settings.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$4,450,000

Estimated Number of Awards

41

Projected Award Date: 03/98
Contact: 1–888–333-HRSA
Application Availability: 07/15/97
Application Deadline: 11/07/97
CFDA Number: 93.896
Contact Person: Betty M. Ball, bball@hrsa.dhhs.gov

Departments of Family Medicine

Authorization

Section 747(b) of the Public Health Service Act, 42 U.S.C. 293k

Purpose

This program provides funding for the following purposes: to establish, maintain, or improve family medicine academic administrative units to provide clinical instruction in family medicine; to plan and develop model educational predoctoral, faculty development, and graduate medical education programs in family medicine which will meet the requirements of Section 747(a) by the end of the project period of Section 747(b) support; to support academic and clinical activities relevant to the field of family medicine; and, to strengthen the administrative base and structure responsible for the planning, direction, organization, coordination, and evaluation of all undergraduate and graduate family medicine activities.

Eligibility

Public, or private non-profit accredited schools of medicine or osteopathic medicine are eligible for grant support.

Funding Priorities and/or Preferences

As provided in Section 791(a) of the Public Health Service Act, statutory preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Under Section 747(b), a funding preference is provided for qualified applicants that agree to expend the award for the purpose of: (1) Establishing an academic administrative unit defined as a department, division, or other unit, for programs in family medicine; or (2) substantially expanding the programs of such a unit.

In FY 1998, "high rate" means that a minimum of 20 percent of the medical school's (or osteopathic) graduates from academic year 1992–93 or 1993–94, whichever is greater, are spending at least 50 percent of their work time in clinical practice in the specified settings. Graduates who are providing care in an underserved area as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1995 and 1996, the rate of placing the 1992–1993 graduates in the specified settings has increased by at least 50 percent and not less than 15 percent from the most recent year are working in such settings.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$3,500,000
Estimated Number of Awards
19

Technical Assistance Group Conference Call: February 3, 1998
Contact Shelby Biedenkapp by January 6 to participate, 301–443–1467 or e-mail sbiedenkapp@hrsa.dhhs.gov.

Projected Award Date: 07/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 03/16/98
CFDA Number: 93.984
Contact Person: Shelby Biedenkapp sbiedenkapp@hrsa.dhhs.gov

Allied Health Project Grants

Authorization

Section 767 of the Public Health Service Act, 42 U.S.C. 294e.

Purpose

This grant program assists eligible entities in meeting the costs associated with expanding or establishing programs that will increase the number of individuals trained in the allied health professions and may include establishing community-based training programs that link academic centers to medically underserved or rural communities, develop curriculum relevant to the emerging health care system, provide interdisciplinary

training experiences, and expand or establish demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research.

Eligibility

"Eligible entity" for the purpose of this grant program means: (1) Public or private nonprofit schools, universities, or other educational entities that provide for education and training in the allied health professions; or (2) other public or nonprofit private entities capable, as determined by the Secretary, of carrying out the purpose of the Allied Health Project Grants Program as described in the application; and (3) be located in a State.

Funding Priorities and/or Preferences

Statutory Funding Preference

As provided for in Sections 767(b) (2) and 791 (a) of the Public Health Service Act are set forth below. Applicants who meet one or more of the following criteria will receive funding preference. Greater priority will be given to applicants who qualify in two or three of the following preference categories: (A) Expand and maintain first-year enrollment by not less than 10 percent over enrollments in base year 1992; or (B) demonstrate that not less than 20 percent of the graduates of such training programs during the preceding 2-year period are working at least 50 percent of work time in clinical settings having the principal focus of serving residents of medically underserved communities; or (C) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,400,000

Estimated Number of Awards

12

Technical Assistance Workshop: October 30–31, 1997
Contact Mita Hernandez by October 1 to participate, 301–443–6764, mhernandez@hrsa.dhhs.gov

Projected Award Date: 06/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 02/17/98
CFDA Number: 93.191
Contact Person: Norman L. Clark, nclark@hrsa.dhhs.gov

Residencies and Advanced Education in the Practice of General Dentistry

Authorization

Section 749 of the Public Health Service Act, 42 U.S.C. 293m.

Purpose

The intent of this grant program is to increase the number of training opportunities in postgraduate general dentistry, and to improve program quality, with emphasis on practice in underserved areas; provision of a broad range of clinical services; coordination and integration of care; and meeting the needs of special populations, such as the elderly and persons living with AIDS.

Eligibility

The applicant shall: Be a public or nonprofit private school of dentistry or an accredited postgraduate dental training institution (hospital, medical center, or other entity) and be accredited by the appropriate accrediting body.

Funding Priorities and/or Preferences

As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

"High rate" is defined as a minimum of 25 percent of combined graduates in academic years 1994–95, 1995–96, and 1996–97 who spend at least 50 percent of their work time in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1995–96 and 1996–97, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,800,000

Estimated Number of Awards

15

Technical Assistance Group Conference Call: October 23, 1997
Contact Kathy Hayes by October 10, fax 301–443–1164, khayes@hrsa.dhhs.gov

Projected Award Date: 03/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 12/01/97
CFDA Number: 93.897
Contact Person: Kathy Hayes, khayes@hrsa.dhhs.gov

Residency Training in Preventive Medicine

Authorization

Section 763 of the Public Health Service Act, 42 U.S.C. 294b.

Purpose

The grant program promotes post-graduate education of physicians in preventive medicine. Grants assist schools to: (1) maintain and improve existing residency training programs or plan and develop new programs, and (2) provide financial support to residents.

Eligibility

The applicant must be an accredited public or private nonprofit school of allopathic or osteopathic medicine or a school of public health. Also, an applicant must demonstrate that it has, or will have by the end of one year of grant support, full-time faculty with training and experience in the fields of preventive medicine and support from other faculty members trained in public health and other relevant specialties and disciplines.

Funding Priorities and/or Preferences

Statutory Funding Preference

As provided for in Section 791(a) of the Public Health Service Act, preference will be given to applicants that demonstrate a high rate of placing graduates in practice settings that serve residents of medically underserved communities, or that document a significant increase in the rate of placing graduates in such settings. "High rate" is defined as a minimum of 25 percent of combined graduates in academic year 1996–97 who spend at least 50 percent of their work time in clinical practice in the specified settings. "Significant increase in the rate" means that, between academic years 1994–95, 1995–96 and 1996–97, the rate of placing graduates in the specified settings increased by a minimum of 50 percent

and that not less than 15 percent of graduates from the most recent years are working in these settings. This preference will be applied to applications that rank above the 20th percentile of applications recommended for approval.

Funding priority will be given to projects that conduct residency training in the areas of general preventive medicine or public health.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$1,800,000

Estimated Number of Awards

13

Projected Award Date: 03/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 12/15/97
CFDA Number: 93.117
Contact Person: Ron Merrill, rmerrill@hrsa.dhhs.gov

Physician Assistants Training

Authorization

Section 750 of the Public Health Service Act, 42 U.S.C. 293n.

Purpose

Grants are awarded under Section 750 of the Public Health Service Act to eligible entities: (1) for the training of physician assistants; and (2) for the training of individuals who will teach in programs of such training. The projects supported must meet the definition of a training program for physician assistants as defined under Section 799 of the Public Health Service Act. By legislation, no more than 10 percent of the yearly appropriation can be used for faculty development activities. Programs assisted are primary care oriented and stress educational experiences and practice location in health professional shortage areas. The program assists schools to meet the costs of projects to plan, develop and operate or maintain programs for the training of physician assistants or for the training of individuals who teach in programs of such training. Programs must develop and use methods designed to encourage graduates of the program to work in health professional shortage areas and methods for placing graduates in positions for which they have been trained.

Eligibility

Accredited schools of medicine or osteopathic medicine, or other public or private nonprofit entities are eligible applicants. Eligible physician assistant programs are those which are either accredited by the American Medical Association's Committee on Allied Health Education and Accreditation (AMA-CAHEA) or its successor organization, the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

Funding Priorities and or Preferences

As provided in Section 791(a) of the Public Health Service Act, statutory preference will be given to any qualified applicant that: (A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

In FY 1998, "high rate" means that a minimum of 20 percent of all physician assistant training program graduates from academic years 1995–96 or 1996–97, whichever is greater, are spending at least 50 percent of their work time in clinical practice in the specified settings.

"Significant increase in the rate" means that, between academic years 1995–96 and 1996–97, the rate of placing physician assistant training program graduates in these settings has increased by at least 50 percent and not less than 15 percent of 1996–97 graduates are working in such settings

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$3,730,000

Estimated Number of Awards

28

Technical Assistance Group Conference Call: November 6, 1997. Contact Ed Spirer by October 22 to participate at 301–443–3456 or e-mail espirer@hrsa.dhhs.gov

Projected Award Date: 05/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 12/22/97
CFDA Number: 93.886
Contact Person: Edwin S. Spirer, espirer@hrsa.dhhs.gov

Geriatric Education Centers

Authorization

Section 777(a) of the Public Health Service Act, 42 U.S.C. 294(o).

Purpose

This program supports the development of collaborative arrangements involving several health professions schools and health care facilities. Geriatric Education Centers (GECs), facilitate training of health professional faculty, students, and practitioners in the diagnosis, treatment, and prevention of disease, disability, and other health problems of the aged. Health professionals include allopathic physicians, osteopathic physicians, dentists, optometrists, podiatrists, pharmacists, nurse practitioners, physician assistants, chiropractors, clinical psychologists, health administrators, and allied health professionals. Projects supported under these grants must offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine, and must address one or more of the following statutory purposes: (a) Improve the training of health professionals in geriatrics; (b) develop and disseminate curricula relating to the treatment of health problems of elderly individuals; (c) expand and strengthen instruction in methods of such treatment; (d) support the training and retraining of faculty to provide such instruction; (e) support continuing education of health professionals and allied health professionals who provide such treatment; and (f) establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Eligibility

Grants may be made to accredited health professions schools as defined by Section 799(1), or programs for the training of physician assistants as defined by Section 799(3), or schools of allied health as defined in Section 799(4), or schools of nursing as defined by Section 853(2) of the Public Health Service Act.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,978,000

Estimated Number of Awards

12

Technical Assistance Workshop Dates: October 30–31, 1997
Contact: Mita Hernandez by October 1 on 301–443–6764 or by e-mail mhernandez@hrsa.dhhs.gov
Projected Award Date: 04/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 12/19/97
CFDA Number: 93.969
Contact Person: Susan Klein, sklein@hrsa.dhhs.gov

Health Careers Opportunity Program (HCOP)

Authorization

Section 740 of the Public Health Service Act, 42 U.S.C. 293D.

Purpose

The goal of this grant program is to increase the number of individuals from disadvantaged backgrounds in the health and allied health professions in order to meet the expanding health care needs of underserved populations. The HCOP program works to build diversity in the health fields by providing students from disadvantaged backgrounds an opportunity to enhance their academic skills and needed support to successfully compete, enter, and graduate from health professions schools. The legislative purposes for which HCOP funds may be awarded are: recruitment, preliminary education, facilitating entry, retention, and financial aid information dissemination.

Applicants should pay particular attention to statutory and administrative funding priorities/preferences and evaluation criteria included in the application materials.

Eligibility

Eligible applicants include schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, podiatric medicine, allied health, chiropractic, public or non-profit private schools which offer graduate programs in clinical psychology, and other public or private non-profit health or educational entities.

Funding Priorities and/or Preferences

A statutory funding priority will be given to the following schools: (1) A school which previously received an HCOP grant and increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987 (for which the applicant must supply data) by the end of three years from the date of the award of the HCOP grant; and (2) a school which had not previously received an HCOP grant that increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987 (for which the applicant must supply data) over any period of time (three consecutive years).

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$5,000,000

Estimated Number of Awards

28

Projected Award Date: 07/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 01/30/98
CFDA Number: 93.822
Contact Person: Mario Manecci, mmanecci@hrsa.dhhs.gov

Centers of Excellence (COE)

Authorization

Section 739 of the Public Health Service Act, 42 U.S.C. 293c.

Purpose

The goal of this program is to assist health professions schools in supporting programs of excellence in health education for minority individuals in allopathic medicine, osteopathic medicine, dentistry, and pharmacy. Specifically, the program is to strengthen the national capacity to train minority students in these health professions. Applicants for a COE grant must address all of the following legislative purposes: Student Recruitment; Student Performance; Faculty Recruitment, Training and Retention; Information Resources, Curricula and Clinical Education; and Faculty and Student Research.

Eligibility

Eligible organizations are: allopathic medicine, osteopathic medicine, dentistry, and pharmacy.

Funding Priorities and/or Preferences

None.

Evaluation Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$4,000,000

Estimated Number of Awards

3

Projected Award Date: 8/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 03/27/98
CFDA Number: 93.157
Contact Person: Roland Garcia, rgarcia@hrsa.dhhs.gov

State-Supported Model Area Health Education Centers

Authorization

Section 746(a)(3) of the Public Health Service Act, 42 U.S.C. 201.

Purpose

Cooperative agreements are awarded for the Area Health Education Centers (AHEC) Program under Section 746(a)(3) of the Public Health Service Act. The program assists schools to improve the distribution, supply, and quality of health personnel in the health services delivery system, by encouraging the regionalization of educational responsibilities of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The AHEC program assists schools in the development, and operation of AHEC Centers to implement educational system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health science center with local planning, educational and clinical resources, the AHEC program establishes a network of health-related institutions to provide educational services to students, faculty and practitioners and ultimately, to improve the delivery of health care in the service area. These programs are collaborative partnerships which address current health workforce needs within a region of a State, or in an entire State.

Eligibility

Public, or private nonprofit, accredited schools of medicine or osteopathic medicine are eligible applicants.

Funding Priorities and/or Preferences

Funds shall be awarded to approved applicants in the following order: (1) Competing continuations; (2) new starts in States with no AHEC program; (3) other new starts; and (4) competing supplementals.

Matching Requirement

In Model State-Supported AHEC Programs, non-Federal contributions in cash shall consist of not less than 50 percent of the total costs of operating the program.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$3,028,000

Estimated Number of Awards

12

Projected Award Date: 05/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 01/09/98
CFDA Number: 93.107
Contact Person: Joseph West, jwest@hrsa.dhhs.gov

Basic Core Area Health Education Centers

Authorization

Section 746(a)(1) of the Public Health Service Act, 42 U.S.C. 293j.

Purpose

Cooperative agreements are awarded for the Area Health Education Centers (AHEC) Program under Section 746(a)(1) of the Public Health Service Act. The program assists schools to improve the distribution, supply and quality of health personnel in the health services delivery system, by encouraging the regionalization of educational responsibilities of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The AHEC program assists schools in the planning, development, and operation of AHEC Centers to initiate educational system incentives, to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health science center with local planning, educational and clinical resources, the AHEC program establishes a network of community-based training sites to provide educational services to students, faculty and practitioners in underserved areas and ultimately, to improve the delivery of health care in the service area. The program embraces the goal of increasing the number of health professions graduates who ultimately will practice in underserved areas.

Eligibility

Public, or private nonprofit, accredited schools of medicine or osteopathic medicine are eligible applicants.

Funding Priorities and/or Preferences

Funds shall be awarded to approved applicants in the following order: (1) Competing continuations; (2) new starts in States with no AHEC program; (3) other new starts; and (4) competing supplementals.

Matching Requirement

In the Basic/Core AHEC Programs, the awardee must provide matching funds from non-Federal sources at a minimum of 25 percent of the total program expenditures.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$4,728,000

Estimated Number of Awards

5

Projected Award Date: 05/98
Contact: 1–888–333–HRSA
Application Availability: 10/01/97
Application Deadline: 01/09/98
CFDA Number: 93.824
Contact Person: Louis D. Coccodrilli, lcoccodrilli@hrsa.dhhs.gov

Minority Faculty Fellowship Program (MFFP)

Authorization

Section 738(B) of the Public Health Service Act, 42 U.S.C. 293b.

Purpose

The purpose of the Minority Faculty Fellowship Program is to increase the number of under-represented minority faculty members in health professions schools.

Eligibility

Eligible applicants for this program are schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, health administration, clinical psychology, and other public or private non-profit health or educational entities.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$100,000

Estimated Number of Awards

3

Funding Priorities and/or Preferences

None.

Projected Award Date: 06/98
Contact: 1–888–333–HRSA
FAX: 1–301–309–0579
Application Availability: 10/01/97
Application Deadline: 03/27/98
CFDA Number: 93.923
Contact Person: Lafayette Gilchrist lgilchrist@hrsa.dhhs.gov

Rural Health Programs

Rural Outreach Grant Program

Authorization

Public Law 104–299, the Health Centers Consolidation Act of 1996, 42 U.S.C. 254(b).

Purpose

The purpose of this program is to expand access to, coordinate, restrain the cost of, and improve the quality of essential health care services, including preventive and emergency services, through the development of integrated health care delivery systems or networks in rural areas and regions. Funds are available for projects to support the direct delivery of health care and related services, to expand existing services, or to enhance health service delivery through education, promotion, and prevention programs. The emphasis is on the actual delivery of specific services rather than the development of organizational capabilities. Projects may be carried out by networks of the same providers (e.g. all hospitals) or more diversified networks. There must be a memorandum of agreement or other formal arrangement between members of a network.

Eligibility

Rural public or nonprofit entity that is or represents a network or potential network that includes three or more health care providers or other entities that provide or support the delivery of health care services. The administrative headquarters of the organization must be located in a rural county or in a rural census tract of an urban county, or an organization constituted exclusively to provide services to migrant and seasonal farmworkers in rural areas and supported under Section 330G of the Public Health Service Act. These organizations are eligible regardless of the urban or rural location of the administrative headquarters.

Funding Preferences and/or Priorities

Statutory Preference

Funding preference may be given to applicant networks that include: (1) A majority of the health care providers serving in the area or region to be served by the network; (2) any federally qualified health centers, rural health clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infant, and children program (WIC) to improve access to and coordination of health care services.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$2,500,000

Estimated Number of Awards

10–12

Group Conference Call Date: January 15, 1998
Contact: Lilly Smetana by January 5 on 301–443–0835 or by e-mail at lsmetana@hrsa.dhhs.gov
Projected Award Date: 09/30/98
Contact: 1–888–333–HRSA
Application Availability: 12/15/97
Application Deadline: 03/16/98
CFDA Number: Outreach 93.912A
Contact Person: Arlene Granderson, agranderson@hrsa.dhhs.gov

Rural Network Development Grant Program

Authorization

Public Law 104–299, the Health Centers Consolidation Act of 1996, 42 U.S.C. 254(b).

Purpose

The purpose of this program is to support the planning and development of vertically integrated health care networks in rural areas. Vertically integrated networks must be composed of three different types of providers. There must be a memorandum of agreement or other formal arrangement between members of a network. The emphasis of the program is on projects to develop the organizational capabilities of these networks. The network is a tool for overcoming the fragmentation of health care delivery services in rural areas. As such, the network provides a range of possibilities for structuring local delivery systems to meet health care needs of rural communities.

Eligibility

Rural public or nonprofit private entity that is or represents a network which includes three or more health care providers or other entities that provide or support the delivery of health care services. The administrative headquarters of the organization must be located in a rural county or in a rural census tract of an urban county, or an organization constituted exclusively to provide services to migrant and seasonal farmworkers in rural areas and supported under Section 330G of the Public Health Service Act. These organizations are eligible regardless of the urban or rural location of the administrative headquarters.

Funding Priorities and/or Preferences

Statutory Preference

Funding preference may be given to applicant networks that include: (1) A majority of the health care providers serving in the area or region to be served by the network; (2) any federally qualified health centers, rural health clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children program (WIC) to improve access to and coordination of health care services.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$3,000,000

Estimated Number of Awards

10–15

Group Conference Call Date: January 22, 1998
Contact: Lilly Smetana by January 9 on 301–443–0835 or by e-mail at lsmetana@hrsa.dhhs.gov
Projected Award Date: 09/30/98
Contact: 1–888–333–HRSA
Application Availability: 12/15/97
Application Deadline: 03/16/98
CFDA Number: Network 93.912B
Contact Person: Jake Culp, jculp@hrsa.dhhs.gov

Maternal and Child Health Programs

Eligibility

42 CFR Part 51a.3 *

(a) With the exception of training and research, as described in paragraph (b) of this section, any public or private entity, including Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for Federal funding under this Part.

(b) Only public or nonprofit private institutions of higher learning may apply for training grants. Only public or nonprofit institutions of higher learning and public or private non-profit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply for grants, contracts or cooperative agreements for research in maternal and child health services or in services for children with special health care needs.

Maternal and Child Health Research

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

This program encourages applied research in maternal and child health which has the potential for ready transfer of findings to health care delivery programs.

Eligibility

42 CFR Part 51a.3 *

Funding Priorities and/or Preferences

Special consideration for funding will be given in FY 1998 to projects which: (1) Seek to develop measures of racism and study its consequences for the health of mothers and children; (2) investigate the role that fathers play in caring for and nurturing the health, growth, and development of children; and (3) evaluate the impact of health care reform and managed care on access to, use of, and quality of maternal and child health services.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,900,000

Number of Expected Awards

10

Projected Award Date: September and January
Contact: 1–888–333–HRSA
Application Availability: Continuous
Application Deadline: March 1 and August 1
CFDA Number: 93.110RS
Contact Person: Gontran Lamberty, glamberty@hrsa.dhhs.gov

Genetic Services

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

This program supports genetic services demonstrations in managed care environments, with Sickle Cell children, patients and families affected by Thalassemia, genetic services networks of provider and consumers for purposes of regional coordination and dissemination, projects for people with cultural barriers to care, projects to

bring clinical genetics and new National Institutes of Health findings to primary care practitioners, and regional teratogen information services.

Eligibility

42 CFR Part 51a.3 *

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$3,572,000

Estimated Number of Awards

25

Projected Award Date: 09/98
Contact: 1–888–333–HRSA
Application Availability: 02/27/98
Application Deadline: 04/30/98
CFDA Number: 93.110A
Contact Person: Michele Lloyd-Puryear, mpuryear@hrsa.dhhs.gov

Children With Special Health Care Needs (CSHCN) Medical Home/Family Professional Partnership Initiative

Authorization

Title V of the State Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this competition is to expand the CSHCN Medical Home/ Family Professional Partnership Initiative in the areas of: (1) Development and demonstration of innovative medical home models for serving CSHCN, (2) development and dissemination of national models for CSHCN, and (3) demonstration of strategies for monitoring and measuring community service integration for CSHCN and their families.

Eligibility

42 CFR Part 51a.3 *

Funding Priorities and/or Preferences

Priority will be given to models included in managed care settings which demonstrate expertise and capacity in providing medical homes for CSHCN, and evidence of leadership in promoting family/professional partnerships.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition
$1,600,000

Estimated Number of Awards

8

Projected Award Date: 07/98
Contact: 1–888–333–HRSA
Application Availability: 01/02/98
Application Deadline: 04/01/98
CFDA Number: 93.110F
Contact Person: Diana Denboba, ddenboba@hrsa.dhhs.gov

Managed Care for Children With Special Health Care Needs (CSHCN)

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

This competition expands the existing CSHCN managed care initiative, which implements the National Agenda for CSHCN Needs: Achieving the Goals 2000. The purpose is to design and implement: (1) Financing options for extending coverage for comprehensive specialty services for CSHCN who have health insurance with limited coverage, (2) new approaches for identifying and tracking CSHCN in managed care organizations, (3) improved systems of quality assurance within managed care organizations (4) improved systems of specialty provider network organization, and (5) other managed care practice innovations to serve CSHCN more effectively.

Eligibility

42 CFR Part 51a.3 *

Funding Priorities and/or Preferences

Preference will be given to partnerships with clearly demonstrated expertise and capacity in providing care for CSHCN and their families.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$3,250,000

Estimated Number of Awards

10

Projected Award Date: 09/98
Contact: 1–888–333–HRSA
Application Availability: 01/02/98
Application Deadline: 03/10/98
CFDA Number: 93.110C
Contact Person: Diane Rodill, drodill@hrsa.dhhs.gov

Children With Special Health Care Needs (CSHCN) Adolescent Transition

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

This competition will fund a cooperative agreement to support the activities of the MCHB "Healthy and Ready to Work", Adolescent Transition Initiative. The purpose of this agreement is to (1) provide support efforts to grantees, agencies, and organizations regarding policy initiatives related to Supplemental Security Income (SSI) recipients and adolescents with special health care needs, (2) establish and implement a dissemination and education strategy to enhance timely interactive communication, including telecommunication efforts between community leaders and policy-makers concerned with transition, employment, and other issues related to adolescents with special health care needs, and (3) expand and enhance the capacity to collect, analyze and use quantitative and qualitative data to promote independence and employment of SSI recipients and adolescents with special health care needs.

Eligibility

42 CFR Part 51a.3 *

Funding Priorities and/or Preferences

Preference will be given to entities with clearly demonstrated expertise and capacity in addressing issues related to SSI, State Systems Development Initiative (SSDI), managed care/CSHCN, and integrated services for CSHCN.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$600,000

Estimated Number of Awards

1

Projected Award Date: 07/98
Contact: 1–888–333–HRSA
Application Availability: 01/02/98
Application Deadline: 04/01/98
CFDA Number: 93.110D
Contact Person: Bonnie Strickland, bstrickland@hrsa.dhhs.gov

Sudden Infant Death Syndrome (SIDS)/ Other Infant Death (OID) Program

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this program is to increase the capacity of Title V programs to design, implement and evaluate culturally competent service delivery systems for those at risk or impacted by Sudden Infant Death Syndrome and Other Infant Death.

Eligibility

42 CFR Part 51a.3 *

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$125,000

Estimated Number of Awards

1

Projected Award Date: 04/98
Contact: 1–888–333–HRSA
Application Availability: 12/31/97
Application Deadline: 02/27/98
CFDA Number: 93.110O
Contact Person: Paul S. Rusinko, prusinko@hrsa.dhhs.gov

Long Term Training in Nursing

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this program is to provide graduate training of nurses for leadership roles in the care of women, infants, children, and adolescents in: (a) Community/public health programs providing maternal and child health services, including those for children with special health care needs; or (b) academia.

Eligibility

42 CFR Part 51a.3 *

Funding Priorities and/or Preferences

Preference will be given to graduate programs in maternal and pediatric nursing in an accredited school of nursing.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,050,000

Estimated Number of Awards

7

Projected Award Date: 07/98
Contact: 1–888–333–HRSA
Application Availability: 01/15/98
Application Deadline: 03/16/98
CFDA Number: 93.110TE
Contact Person: Shelley Benjamin, sbenjamin@hrsa.dhhs.gov

Long Term Training in Nutrition

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

This program provides graduate training of nutrition professionals for leadership roles in public health nutrition with emphasis on maternal and child health including children with special health care needs.

Eligibility

42 CFR Part 51a.3 *

Funding Priorities and/or Preferences

Accredited institutions with an established public health nutrition graduate program will be given preference.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$927,000

Estimated Number of Awards

7

Projected Award Date: 07/98
Contact: 1–888–333–HRSA
Application Availability: 01/15/98
Application Deadline: 03/16/98
CFDA Number: 93.110TG
Contact Person: Shelley Benjamin, sbenjamin@hrsa.dhhs.gov

Long Term Training in Leadership Education in Neurodevelopmental and Related Disabilities (LEND)

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of the Maternal and Child Health Interdisciplinary Leadership Education in Neurodevelopmental and Related Disabilities (LEND) program is to improve the health status of infants, children, and adolescents with, or at risk for, neurodevelopmental and related disabilities, including mental retardation, neurodegenerative and acquired neurological disorders, and multiple handicaps. The educational curricula emphasize the integration of services supported by States, local agencies, organizations, private providers and communities. The LEND programs will prepare health professionals to assist children and their families to achieve their developmental potentials by forging a community-based partnership of health resources and community leadership.

Eligibility

42 CFR Part 51a.3 *

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$8,019,000

Estimated Number of Awards

17

Projected Award Date: 07/98
Contact: 1–888–333–HRSA
Application Availability: 01/15/98
Application Deadline: 03/16/98
CFDA Number: 93.110TM
Contact Person: Shelley Benjamin, sbenjamin@hrsa.dhhs.gov

Continuing Education and Development

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this program is to support and strengthen Maternal and Child Health programs through (1) short-term, non-degree related courses, workshops, conferences, symposia, institutes, and distance learning strategies and or; (2) curricula, guidelines, standards of practice, and educational/tools strategies designed to assure quality health care for the MCH population. The goal is to improve the health status of the MCH population through enhancing the leadership capabilities and practices of professionals in MCH and related services and through modifying the systems that deliver services.

Eligibility

42 CFR Part 51a.3 *

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,068,000

Estimated Number of Awards

20

Projected Award Date: 09/98
Contact: 1–888–333–HRSA
Application Availability: 02/27/98
Application Deadline: 07/01/98
CFDA Number: 93.110TO
Contact Person: Shelley Benjamin, sbenjamin@hrsa.dhhs.gov

Healthy Tomorrows Partnership for Children

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this program is to support projects for mothers and children that improve access to health services and utilize preventive strategies. The initiative encourages additional support from the private sector and from foundations to form community-based partnerships to coordinate health resources for pregnant women, infants and children.

Eligibility

42 CFR Part 51a.3 *

Funding Priorities and/or Preferences

In the interest of equitable geographic distribution, special consideration for funding will be given to projects from States without a currently funded project in this category. These States are: Arizona, Arkansas, Colorado, Delaware, Florida, Indiana, Iowa, Louisiana, Mississippi, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, West Virginia, and Wyoming.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$300,000

Estimated Number of Awards

6

Projected Award Date: 09/98
Contact: 1–888–333–HRSA
Application Availability: 01/31/98
Application Deadline: 04/30/98
CFDA Number: 93.110V
Contact Person: Latricia C. Robertson, lrobertson@hrsa.dhhs.gov

State Mortality Morbidity Review Support Program

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this program is to enable State Maternal and Child Health programs to stimulate, promote, coordinate, and sustain mortality and morbidity review programs at state and local levels in order to enhance needs assessment capacity, policy development, and quality improvement efforts. Examples of relevant processes include: child fatality review, fetal and infant mortality review, SIDS, and adverse pregnancy outcome reviews.

Eligibility

42 CFR Part a.3 *

Funding Priorities and/or Preferences

Preference will be given to State Title V programs or their designees.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$600,000

Estimated Number of Awards

4

Projected Award Date: 09/98
Contact: 1–888–333–HRSA
Application Availability: 12/01/97
Application Deadline: 03/31/98
CFDA Number: 93.110Y
Contact Person: Ellen Hutchins, ehutchins@hrsa.dhhs.gov

Community Integrated Service Systems To Support Health of Children in Out of Home Care

Authorization

Title V of the Social Security Act, 42 U.S.C. 701.

Purpose

The purpose of this program is to identify, analyze, and disseminate successful State and local approaches for implementing the Model Standards for Children in Foster Care as developed by the Child Welfare League of America and the American Academy of Pediatrics. The program will evaluate and determine the transferability of successful approaches in varied settings.

Eligibility

42 CFR Part 51A.3 *

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$400,000

Estimated Number of Awards

1–5

Projected Award Date: 08/98
Contact: 1–888–333–HRSA
Application Availability: 02/01/98
Application Deadline: 04/30/98
CFDA Number: 93.110Z
Contact Person: Audrey M. Yowell, ayowell@hrsa.dhhs.gov

Emergency Medical Services for Children (EMSC), Implementation Grants

Authorization

Section 1910, Public Health Service Act as Amended, 42 U.S.C. 300W–9.

Purpose

This program provides funding to improve the capacity of a State's Emergency Medical System program to address the particular needs of children. Implementation grants are used to assist States in integrating research-based knowledge and state-of-the-art systems development approaches into the existing State EMS, MCH, and CSHCN systems, using the experience and products of previous EMSC grantees.

Eligibility

Eligible applicants are States and Accredited Schools of Medicine.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$1,000,000

Estimated Number of Awards

4

Projected Award Date: 08/98
Contact: 1–888–333–HRSA
Application Availability: 01/17/98
Application Deadline: 04/13/98
CFDA Number: 93.127A
Contact Person: Jean Athey, jathey@hrsa.dhhs.gov

Emergency Medical Services for Children (EMSC), Partnership Grants

Authorization

Section 1910 of the Public Health Service Act as Amended, 42 U.S.C. 300W–9.

Purpose

This grant program supports activities that represent the next logical step or steps to take to institutionalize EMSC within EMS and to continue to improve and refine EMSC. Proposed activities should be consistent with documented needs in the State and should reflect a logical progression in enhancing pediatric capabilities; for example: to increase the involvement of families in EMSC; to improve linkages between local, regional, or State agencies; or to assure effective field triage of the child in physical or emotional crisis to appropriate facilities and/or other resources.

Eligibility

Eligible applicants are States and Accredited Schools of Medicine.

Funding Priorities and/or Preferences

None.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of this Competition

$480,000.

Estimated Number of Awards

8

Projected Award Date: 09/98
Contact: 1–888–333–HRSA
Application Availability: 01/17/98
Application Deadline: 04/13/98
CFDA Number: 93.127C
Contact Person: Jean Athey, jathey@hrsa.dhhs.gov

Emergency Medical Services for Children (EMSC), Targeted Issue Grants

Authorization

Section 1910 of the Public Health Service Act as Amended, 42 U.S.C. 300W–9.

Purpose

This program addresses specific, focused issues related to the development of Emergency Medical Services Children knowledge and capacity. Targeted issue priorities are based on the Emergency Medical Services Children Five Year Plan. Proposals may be submitted on emerging issues that are not included in the identified priorities, any such proposals must demonstrate relevance to the Plan.

Eligibility

Eligible applicants are States and Accredited Schools of Medicine.

Funding Priorities and/or Preferences

Targeted issues which will receive a priority include: cost-benefit analyses related to EMSC; implications of managed care for EMSC; evaluations of EMSC components; risk-taking behaviors of children and adolescent; models for improving the care of culturally distinct populations; and/or children's emergencies in disasters.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$520,000

Estimated Number of Awards

4

Projected Award Date: 09/98
Contact: 1–888–333–HRSA
Application Availability: 01/17/98
Application Deadline: 04/13/98
CFDA Number: 93.127D
Contact Person: Jean Athey, jathey@hrsa.dhhs.gov

Traumatic Brain Injury (TBI) State Implementation Grants

Authorization

Section 1242 of the Public Health Service Act, 42, U.S.C. 300D–52 et seq.

Purpose

The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). Implementation grants provide funding to assist States in moving toward Statewide systems that assure access to comprehensive and coordinated TBI services.

Eligibility

Only State governments are eligible for funding under the TBI program demonstration grant program.

Funding Priorities and/or Preferences

None.

Matching Requirement

The State is required to contribute, in cash, not less than $1 for each $2 of Federal funds provided under the grant.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$850,000

Estimated Number of Awards

4

Projected Award Date: 08/98
Contact: 1–888–333–HRSA
Application Availability: 01/30/98
Application Deadline: 03/30/98
CFDA Number: 93.234A
Contact Person: Stuart Swayze, sswayze@hrsa.dhhs.gov

Traumatic Brain Injury (TBI) State Planning Grants

Authorization

Section 1242 of the Public Health Service Act, 42, U.S.C. 300d–52 et seq.

Purpose

The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). The State planning grant program provides funds to assist States in establishing infrastructure as a prerequisite to implementation activities which will move States toward Statewide systems that assure access to comprehensive and coordinated TBI services.

Eligibility

Only State governments are eligible for funding under the TBI program demonstration grant program.

Funding Priorities and/or Preferences

None.

Matching Requirement

The State is required to contribute, in cash, not less than $1 for each $2 of Federal funds provided under the grant.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$375,000

Estimated Number of Awards

5

Projected Award Date: 08/98
Contact: 1–888–333-HRSA
Application Availability: 01/30/98
Application Deadline: 03/30/98
CFDA Number: 93.234B
Contact Person: Stuart Swayze, sswayze@hrsa.dhhs.gov

Primary Health Care Programs

Community and Migrant Health Centers

Authorization

Section 330 of the Public Health Service Act, 42 U.S.C 254b and 254b(g).

Purpose

The Community Health Center and Migrant Health Center (C/MHC) programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations. Assuming the availability of sufficient appropriated funds in FY 1998, it is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their provision of services to a medically underserved population. HRSA will open competition for awards under Section 330 of the PHS Act (U.S.C. 254b for CHCs and U.S.C. 254b (g) for MHCs) to support health services in the areas currently served by these grants. Eighty-two C/MHC grantees will reach the end of their project periods during FY 1998.

Estimated Amount of This Competition

$68,000,000

Estimated Number of Awards

82

CFDA Number: 93.224 Community Health Centers Program; 93.336 Migrant Health Centers Program

Deadline

Current grant expiration dates vary by area throughout FY 1998. Applications for competing continuation grants are normally due 120 days prior to the expiration of the current grant award.

Limited Competition

Applicants are limited to currently funded programs whose project periods expire in FY 1998 and new organizations proposing to serve the same populations currently being served by these existing programs.

Field Office

Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a C/MHC. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the appropriate HRSA Field Office listed.

State	City	Application deadline
HRSA Field Office I (617) 565–1482		
ME	Bethel	10/01/97
	Eastport	12/01/97
MA	Springfield	03/01/98
	Roxbury	10/01/97
NH	Berlin	03/01/98
RI	Pawtucket	09/01/97
HRSA Field Office II (212) 264–2664		
NY	Bronx	10/01/97
	Bronx	10/01/97
	Buffalo	09/01/97
PR	Rio Grande	03/01/98
HRSA Field Office III (215) 596–6122		
PA	Philadelphia	08/01/97
	Chester	10/01/97
	Hyndman	10/01/97
	Philadelphia	02/01/98
VA	Axton	10/01/97
	St. Charles	02/01/98
WV	Rainelle	08/01/97
	Grafton	02/01/98
HRSA Field Office IV (404) 331–0250		
AL	Tuscaloosa	08/01/97
	Tuscaloosa	10/01/97
	Huntsville	08/01/97
	Birmingham	10/01/97
FL	W. Palm Beach	09/01/97
	Pompano Beach	09/01/97
	Avon Park	10/01/97
	Wewahitchka	12/01/97
	St. Petersburg	02/01/98
	Jacksonville	03/01/98
GA	Morganton	08/01/97
	Decatur	09/01/97
	Columbus	03/01/98
KY	Prestonburg	10/01/97
MS	Mound Bayou	08/01/97
	Biloxi	09/01/97
	Clarksdale	02/01/98
	Lexington	03/01/98
NC	Snow Hill	08/01/97
	Yanceyville	02/01/98
SC	Greenville	10/01/97
	Eastover	10/01/97
	Rock Hill	10/01/97
	Winnsboro	10/01/97
	Fairfax	12/01/97
	McClellanville	12/01/97
TN	Wartburg	09/01/97
HRSA Field Office V (312) 353–1715		
IL	Chicago	10/01/97
	Chicago	03/01/98
MI	Sparta	09/01/97
	Detroit	10/01/97
	Detroit	02/01/98
	Pullman	12/01/97
	Detroit	03/01/98
OH	Akron	08/01/97
	Youngstown	09/01/97
WI	Milwaukee	09/01/97
	Milwaukee	10/01/97
HRSA Field Office VI (214) 767–3872		
AR	Corning	03/01/98
	Marshall	03/01/98
LA	Opelousas	03/01/98
	Greensburg	03/01/98
OK	Tulsa	12/01/97
TX	Houston	09/01/97
	Rio Grande Cy	10/01/97
	Newton	12/01/97
	Wichita Falls	03/01/98
HRSA Field Office VII (816) 426–5226		
KS	Kansas City	03/01/98
NE	Omaha	10/01/97
	Lincoln	12/01/97
HRSA Field Office VIII (303) 844–3203		
CO	Denver	09/01/97
ND	Fargo	03/01/98
SD	Rapid City	10/01/97
UT	East Carbon	03/01/98
HRSA Field Office IX (415) 437–8080		
AZ	Tucson	09/01/97
CA	Los Angeles	08/01/97
	Los Angeles	10/01/97
	Los Angeles	10/01/97
	Fresno	08/01/97
NV	Las Vegas	09/01/97
HRSA Field Office X (206) 615–2491		
OR	Klamath County	10/15/97
WA	Tacoma	02/01/98
	Pasco	02/01/98
	Bremerton	03/01/98

Public Housing Primary Care

Authorization

Section 330(i) of the Public Health Service Act, 42 U.S.C. 254d.

Purpose

This program is designed to increase access to health care and improve the health status of public housing residents by providing comprehensive primary health care services in or near public housing projects, directly or through collaborative arrangements with existing community based programs/providers. It is the intent of HRSA to continue to support health services to the public housing populations in the same areas/ locations.

Deadline

Current grant expiration dates vary by area throughout FY 1998. Application for competing continuation grants are normally due 120 days prior to the expiration of the current grant award. The 15 service areas are listed with application deadline dates.

Limited Competition

Applicants are limited to currently funded programs whose project period expire in FY 1998, and new organizations proposing to serve the same populations currently being served by these existing programs.

Estimated Amount of This Competition

$6,900,000

Estimated Amount of Awards

15

CFDA Number: 93.927

Contact Person: Charles Woodson, cwoodson@hrsa.dhhs.gov

Field Office

Communications with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding. Technical assistance and detailed information about each service area can be obtained by contacting the appropriate HRSA Field Office.

Existing Public Housing Service Areas

State	City	Application deadline
HRSA Field Office I (617) 565–1482		
MA	Roxbury	10/01/97
MA	Roxbury	10/01/97
MA	Worcester	02/01/98
HRSA Field Office II (212) 264–2664		
NY	Buffalo	09/01/97
NY	New York	07/01/97

State	City	Application deadline
HRSA Field Office III (215) 596–6122		
PA	Philadelphia	06/01/98
HRSA Field Office IV (404) 331–0250		
GA	Atlanta	02/01/98
GA	Marietta	06/01/98
GA	Savannah	08/01/98
TN	Rogersville	12/01/97
HRSA Field Office V (312) 353–1715		
IL	Chicago	06/01/98
OH	Cleveland	06/01/98
HRSA Field Office VI (214) 767–3872		
TX	San Antonio	10/01/97
HRSA Field Office VII (816) 426–5226		
MO	St. Louis	10/01/97
HRSA Field Office VIII (303) 844–3203		
CO	Denver	07/01/97

Grants to States for Loan Repayment Programs

Authorization

Section 338I of the Public Health Service Act, 42 U.S.C. 254Q–1.

Purpose

The purpose of these grant funds is to assist States in operating programs for the repayment of educational loans of health professionals in return for their practice in federally designated health professional shortage areas to increase the availability of primary health services in health professionals shortage areas.

Eligibility

Any State is eligible to apply for funding.

Funding Priorities and/or Preferences

None.

Matching Requirements

States seeking support must provide adequate assurance that, with respect to the costs of making loan repayments under contracts with health professionals, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to not less than $1 for $1 of Federal funds provided in the grant. In determining the amount of non-Federal contributions in cash that a State has to provide, no Federal funds may be used in the State's match.

Review Criteria

The following criteria will be used to evaluate applications: (a) extent of State's need; (b) special consideration given to health professional shortage areas with large minority populations; (c) number/type of providers to be placed; (d) appropriateness of proposed placements; (e) qualifications of staff; (f) suitability of approach and degree of coordination with Federal, State and other programs; (g) source and plans for use of State match; (h) adequacy and appropriateness of proposed budget.

Estimated Amount of This Competition

$1,000,000

Estimated Number of Awards

6

Projected Award Date: 09/98

Contact: 1–888–333–HRSA

Application Availability: 02/01/98

Application Deadline: 04/01/98

CFDA Number: 93.165

Contact Person: Susan Salter, ssalter@hrsa.dhhs.gov

Grants to States for Community Scholarship Programs

Authorization

Section 338L of the Public Health Service Act, 42 U.S.C. 254T.

Purpose

The purpose of these grant funds is to assist States to increase the availability of primary health care in urban and rural Federally designated health professional shortage areas by assisting public or private non-profit community organizations to provide scholarships for education of individuals to serve as health professionals in these communities.

Eligibility

Any State is eligible to apply for funding.

Funding Priorities and/or Preferences

None.

Matching Requirements

States seeking support must agree (directly or through donations from public or private non-profit entities) that 60 percent of the total costs of the scholarships will be paid from non-Federal contributions made in cash by the State and community organization. The State must make available through cash contributions not less than 15 percent nor more than 25 percent of the costs. The community organization must make available not less than 35 percent nor more than 45 percent of the costs.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$100,000

Estimated Number of Awards

3

Project Award Date: 9/98

Contact: 1–888–333–HRSA

Application Availability: 02/01/98

Application Deadline: 05/01/98

CFDA Number: 93.931

Contact Person: Kay Cook, kcook@hrsa.dhhs.gov

Additional HRSA Programs

Telephone Symbol: Program information and application materials may be obtained by calling or contacting the specific telephone number provided.

Scholarships for Disadvantaged Students (SDS) Program

Authorization

Section 737 of the Public Health Service Act, 42 U.S.C. 293a.

Purpose

The Scholarships for Disadvantaged Students program contributes to the diversity of the health professions student and practitioner populations. The program provides funding to eligible health professions and nursing schools for scholarships to students from disadvantaged backgrounds who are enrolled, or accepted for enrollment, as full-time students.

Eligibility

Schools of allopathic medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatry, veterinary medicine, clinical psychology, public health, nursing, and allied health are eligible for awards.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$18,300,000

Estimated Number of Awards

450

Funding Priorities and/or Preferences

Special consideration is given to eligible schools that have enrollments of under-represented minorities above the national average for the discipline. Also, among nursing schools, special consideration is given to baccalaureate nursing programs.

Projected Award Date: 05/98

Contact: 1–301–443–4776
FAX: 1–301–443–0846
Application Availability: 02/17/98
Application Deadline: 04/15/98
CFDA Number: 93.925
Contact Person: Bruce Baggett, bbaggett@hrsa.dhhs.gov

Faculty Loan Repayment Program (FLRP)

Authorization

Section 738M of the Public Health Service Act, 42 U.S.C. 293b.

Purpose

The Faculty Loan Repayment Program encourages disadvantaged representation in health professions faculty positions. The program provides loan repayment of up to 20 percent of the outstanding principal and interest on an individual's educational loans, not to exceed $20,000 for each year of service, for individuals from disadvantaged backgrounds who agree to serve as members of the faculties of eligible health professions and nursing schools. The school and the Secretary pay equal amounts, unless the Secretary determines that the repayment will impose an undue financial hardship on the school, in which case the Secretary may pay up to the entire 20 percent. Each recipient of loan repayment must agree to serve as a faculty member for at least two years.

An individual is eligible to compete for participation in the FLRP if the individual is from a disadvantaged background and: (1) Has a degree in allopathic medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, clinical psychology, or nursing; or (2) is enrolled in an approved graduate training program in one of the health professions listed above; or (3) is enrolled as a full-time student in the final year of health professions training, leading to a degree from an eligible school.

The individual must be from a disadvantaged background, and must not have served as a faculty member at any school at any time over the eighteen month period prior to June 30, 1997.

Review Criteria

Final criteria are included in the application kit.

Estimated Amount of This Competition

$800,000

Estimated Number of Awards

25

Funding Priorities and/or Preferences

None.

Projected Award Date: 09/98
Contact: 1–301–443–1700
FAX: 1–301–443–0846
Application Availability: 01/02/98
Application Deadline: 06/30/98
CFDA Number: 93.923
Contact Person: Shirley Zimmerman, szimmerman@hrsa.dhhs.gov

Loan Repayment Program

Authorization

Section 846(h) of the Public Health Service Act, 42 U.S.C. 297.

Purpose

Under the Nursing Education Loan Repayment Program (NELRP), registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary, under which the Public Health Service agrees to repay up to 85 percent of the nurse's indebtedness for nursing education loans. In exchange, the nurse agrees to serve for a specified period of time in certain types of health facilities identified in statute.

Eligibility

Applicants must have completed all of their training requirements for registered nursing and be licensed prior to beginning service. Individuals eligible to participate must: (a) Have received, prior to the start of service, a baccalaureate or associate degree in nursing, a diploma in nursing, or a graduate degree in nursing; (b) have unpaid educational loans obtained for nurse training; (c) be a citizen or national of the U.S.; (d) have a current unrestricted license in the State in which they intend to practice; and (e) agree to be employed for not less than two years in a full-time clinical capacity in an Indian Health Service health center; a Native Hawaiian health center, a public hospital (operated by a State, county, or local government); a health center funded under Section 330 of the Public Health Service Act (including migrant, homeless, and public housing health centers), a rural health clinic (Section 1861(aa)(2) of the Social Security Act); or a public or nonprofit private health facility determined by the Secretary to have a critical shortage of nurses.

Funding Priorities and/or Preferences

In making awards under this Section, preferences will be given to qualified applicants: (1) Who have the greatest financial need and (2) who agree to serve in the types of health facilities described above, that are located in geographic areas determined by the Secretary to have a shortage of and need for nurses.

Review Criteria

Awards are determined by formula.

Estimated Amount of Competition

$2,251,000

Estimated Number of Awards

200

Project Award Date: 09/30/98
Contact: (301) 594–4400; (301) 594–4981 (FAX) 1–800–435–6464
Application Availability: 11/01/97
Application Deadline: 08/31/98
CFDA Number: 93.908
Contact Person: Sharley Chen, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814, schen@hrsa.dhhs.gov

[FR Doc. 97–26645 Filed 10–8–97; 8:45 am]
BILLING CODE 4160–15–U

federal register

Thursday
October 9, 1997

Part IV

Department of Education

Women's Educational Equity Act Program (WEEA); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.083 A and B]

Women's Educational Equity Act Program (WEEA); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: To promote gender equity in education; to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex and race, ethnic origin, limited English proficiency, disability or age; and to provide financial assistance to enable educational agencies to meet the requirements of title IX of the Education Amendments of 1972.

Eligible Applicants: Public agencies, private nonprofit agencies, organizations, institutions, student groups, community groups, and individuals.

Deadline for Transmittal of Applications: November 24, 1997.

Deadline for Intergovernmental Review: January 30, 1998.

Applications Available: October 15, 1997.

Estimated Available Funds: The Congress has not yet appropriated fiscal year 1998 funds for this program. At the level requested by the President, $1,570,000 would be available for new awards.

Estimated Range of Awards: Implementation Grants: $90,000–$200,000; Research and Development Grants: $80,000–$200,000.

Estimated Average Size of Awards: Implementation Grants: $150,000; Research and Development Grants: $150,000.

Estimated Number of Awards: Implementation Grants: 9; Research and Development Grants: 2.

Note: The Department is not bound by any estimates in the notice.

Project Period: Up to 48 months. Funds available under this competition would be used for the first 12 months of a project.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Supplementary Information: The Department will award two types of grants: (a) grants for the *implementation* of gender equity programs in schools; and (b) *research and development* grants to develop model equity programs. Examples of authorized activities under the program include—

Implementation Grants

(a) Assisting educational agencies and institutions to implement policies and practices to comply with title IX of the Education Amendments of 1972;

(b) Training for teachers, counselors, administrators, and other school personnel, especially preschool and elementary school personnel, in gender-equitable teaching and learning practices;

(c) Leadership training for women and girls to develop professional and marketable skills to compete in the global marketplace, improve self-esteem, and benefit from exposure to positive role models;

(d) School-to-work transition programs, guidance and counseling activities, and other programs to increase opportunities for women and girls to enter a technologically demanding workplace and, in particular, to enter highly skilled, high-paying careers in which women and girls have been underrepresented;

(e) Enhancing educational and career opportunities for those women and girls who suffer multiple forms of discrimination, based on sex and on race, ethnic origin, limited-English proficiency, disability, socioeconomic status, or age;

(f) Assisting pregnant students and students rearing children to remain in or to return to secondary school, graduate, and prepare their preschool children to start school;

(g) Evaluating exemplary model programs to assess the ability of such programs to advance educational equity for women and girls;

(h) Introduction into the classroom of textbooks, curricula, and other materials designed to achieve equity for women and girls;

(i) Programs and policies to address sexual harassment and violence against women and girls and to ensure that educational institutions are free from threats to the safety of students and personnel;

(j) Nondiscriminatory tests of aptitude and achievement and of alternative assessments that eliminate biased assessment instruments from use;

(k) Programs to increase educational opportunities, including higher education, vocational training, and other educational programs for low-income women, including underemployed and unemployed women, and women receiving Aid to Families with Dependent Children benefits;

(l) Programs to improve representation of women in educational administration at all levels; and

(m) Planning, development, and initial implementation of—

(1) Comprehensive institution- or districtwide evaluation to assess the presence or absence of gender equity in educational settings;

(2) Comprehensive plans for implementation of equity programs in State and local educational agencies and institutions of higher education, including community colleges; and

(3) Innovative approaches to school-community partnerships for educational equity.

Research and Development Activities

(a) Research and development of innovative strategies and model training programs for teachers and other education personnel;

(b) The development of high-quality and challenging assessment instruments that are nondiscriminatory;

(c) The development and evaluation of model curricula, textbooks, software, and other educational materials to ensure the absence of gender stereotyping and bias;

(d) The development of instruments and procedures that employ new and innovative strategies to assess whether diverse educational settings are gender equitable;

(e) The development of instruments and strategies for evaluation, dissemination, and replication of promising or exemplary programs designed to assist local educational agencies in integrating gender equity in their educational policies and practices;

(f) Updating high-quality educational materials previously developed through Women's Educational Equity Act (WEEA) grants;

(g) The development of policies and programs to address and prevent sexual harassment and violence to ensure that educational institutions are free from threats to safety of students and personnel;

(h) The development and improvement of programs and activities to increase opportunity for women, including continuing educational activities, vocational education, and programs for low-income women, including underemployed and unemployed women, and women receiving Aid to Families with Dependent Children; and

(i) The development of guidance and counseling activities, including career education programs, designed to ensure gender equity.

Selection Criteria for Implementation Grants: The Secretary evaluates applications for implementation grants on the basis of the following criteria. The maximum possible score for each criterion is indicated in parentheses with the criterion. The Secretary awards up to 100 points for all of the criteria.

(a) *Effectively Achieving the Purposes of WEEA.* (20 points)

Under 34 CFR 75.209 and 20 U.S.C 7235(a), the Secretary reviews each application to determine how well the project will effectively achieve the purposes of the WEEA Program.

Note: Applicants should consider the following statutory provisions in responding to this criterion. Under 20 U.S.C. 7232, the purpose of the WEEA program is: (1) to promote gender equity in education in the United States; (2) to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Educational Amendments of 1972; and (3) to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited-English proficiency, disability, or age.

(b) *Project as a component of a comprehensive plan.* (5 points)

Under 34 CFR 75.209 and 20 U.S.C. 7235(a)(2)(C), the Secretary reviews each application to determine the extent to which the project is a significant component of a comprehensive plan for educational equity and compliance with title IX of the Educational Amendments of 1972 in the particular school district, institution of higher education, vocational-technical institution, or other educational agency or institution.

(c) *Implementing an institutional change strategy.* (5 points)

Under 34 CFR 75.209 and 20 U.S.C. 7235(a)(2)(D), the Secretary reviews each application to determine the extent to which the project implements an institutional change strategy with long-term impact that will continue as a central activity of the applicant after the WEEA grant has been terminated.

(d) *Need for project.* (10 points)

Under 34 CFR 75.210, the Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(2) The extent to which the proposed project will enhance educational and career opportunities for those women and girls who suffer forms of discrimination, based on sex and race, ethnic origin, limited English-proficiency, disability, socioeconomic status or age.

(e) *Significance.* (5 points)

Under 34 CFR 75.210, the Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(3) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(4) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment, independent living, or both, as appropriate.

(f) *Quality of the project design.* (15 points)

Under 34 CFR 75.210, the Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(3) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(g) *Quality of project services* (10 points)

Under 34 CFR 75.210, the Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(2) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or benenficiaries of those services.

(h) Quality of Project Personnel). (5 points)

Under 34 CFR 75.210, the Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator.

(2) The qualifications, including relevant training and experience, of key project personnel.

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(i) *Adequacy of resources.* (5 points)

Under 34 CFR 75.210, the Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(2) The extent to which the budget is adequate to support the proposed project.

(j) *Quality of the management plan.* (10 points)

Under 34 CFR 75.210, the Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(3) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a

variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(k) *Quality of the project evaluation.* (10 points)

Under 34 CFR 75.210, the Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(3) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(4) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(5) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note: Applicants should consider the following statutory provision in responding to this criterion. Under 20 U.S.C. 7234(1), applicants for WEEA funds are required to set forth policies and procedures that will ensure a comprehensive evaluation of the grant activities, including an evaluation of the practices, policies, and materials used by the applicant and an evaluation or estimate of the continued significance of the work of the project following completion of the award period.

Priority for Implementation Grants: Under 34 CFR 75.105 (b) and (c), the Secretary gives a competitive preference to applications that meet the following priority found in 20 U.S.C. 7235(b) by awarding bonus points depending on how well the applicant meets the priority:

Projects submitted by applicants that have not received assistance under the WEEA Program (5 points).

Selection Criteria for Research and Development Grants: The Secretary evaluates applications for research and development grants on the basis of the following criteria. The maximum possible score for each criterion is indicated in parentheses with the criterion. The Secretary awards up to 100 points for all of the criteria.

(a) *Effectively Achieving the Purposes of WEEA.* (20 points)

Under 34 CFR 75.209 and 20 U.S.C. 7235(a), the Secretary reviews each application to determine how well the project will effectively achieve the purposes of the WEEA Program.

Note: Applicants should consider the following statutory provisions in responding to this criterion. Under 20 U.S.C. 7232, the purpose of the WEEA program is: (1) to promote gender equity in education in the United States; (2) to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Educational Amendments of 1972; and (3) to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited-English proficiency,disability, or age.

(b) *Addressing multiple discrimination.* (5 points)

Under 34 CFR 75.209 and 20 U.S.C. 7235(a)(2)(A), the Secretary reviews each application to determine the quality of the applicant's plan for addressing the needs of women and girls of color and women and girls with disabilities.

(c) *Need for project.* (10 points)

Under 34 CFR 75.210, the Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(d) *Significance.* (10 points)

Under 34 CFR 75.210, the Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The national significance of the proposed project.

(2) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(3) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(4) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(e) *Quality of the project design.* (20 points)

Under 34 CFR 75.210, the Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(3) The quality of the proposed demonstration design and procedures for documenting project activities and results.

(4) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(5) The quality of methodology to be employed in the proposed project.

(f) *Quality of Project Personnel.* (10 points)

Under 34 CFR 75.210, the Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator.

(2) The qualifications, including relevant training and experience, of key project personnel.

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(g) *Adequacy of resources.* (5 points)

Under 34 CFR 75.210, the Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(2) The extent to which the budget is adequate to support the proposed project.

(h) *Quality of the management plan.* (10 points)

Under 34 CFR 75.210, the Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(3) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(i) *Quality of the project evaluation.* (10 points)

Under 34 CFR 75.210, the Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(3) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note: Applicants should consider the following statutory provision in responding to this criterion. Under 20 U.S.C. 7234(1), applicants for WEEA funds are required to set forth policies and procedures that will ensure a comprehensive evaluation of the grant activities, including an evaluation of the practices, policies, and materials used by the applicant and an evaluation or estimate of the continued significance of the work of the project following completion of the award period.

Priority for Research and Development Grants: Under 34 CFR 75.105 (b) and (c), the Secretary gives a competitive preference to applications that meet the following priority found in 20 U.S.C. 7235(b) by awarding bonus points depending on the extent to which the applicant meets the priority:

Projects submitted by applicants that have not received assistance under the WEEA Program (5 points).

For Applications or Information Contact: Beth Baggett, U.S. Department of Education, 600 Independence Avenue, SW, Portals Room 4500, Washington, D.C. 20202–6140. Telephone (202) 260–2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Note: The official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Electronic Access to this Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites: http://ocfo.ed.gov/fedreg.htm or http://ww.edgov/news.html. To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing office toll free at 1–888–293–6498.

Program Authority: 20 U.S.C. 7231–7238.

Dated: October 3, 1997.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 97–26716 Filed 10–8–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
October 9, 1997

Part V

Environmental Protection Agency

40 CFR Part 132
Revocation of the Polychlorinated Biphenyl Human Health Criteria in the Water Quality Guidance for the Great Lakes System; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–5907–4]

RIN 2040–AC08

Revocation of the Polychlorinated Biphenyl Human Health Criteria in the Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial revocation of final rule.

SUMMARY: As a result of the recent decision in *AISI* v. *EPA*, D.C. Cir. No. 95–1448 (decided June 6, 1997), EPA is today removing the human health criteria for polychlorinated biphenyls (PCBs) promulgated for the final Water Quality Guidance for the Great Lakes System (Guidance) in March 1997. EPA plans to propose replacement criteria in 1998. In the interim, EPA has calculated a Tier I value for PCBs for human health of 2.6 E–5 micrograms per liter (ug/L) for both drinking water and nondrinking water uses. EPA is recommending that States and Tribes either adopt a human health criterion for PCBs that is no less stringent than this value or use their Guidance based Tier I methodologies for human health, together with appropriate data, to derive an ambient value to be used in setting permit limits. EPA anticipates these Tier I values to be no less stringent than EPA's interim value of 2.6 E–5 ug/L (unless site-specific data are used). EPA is not removing the wildlife criterion for PCBs of 1.2 E–4 ug/L promulgated in March of 1997. EPA expects States and Tribes to adopt and submit PCB wildlife criteria consistent with this criterion.

EFFECTIVE DATE: October 9, 1997.

ADDRESSES: The public docket for this and earlier rulemakings concerning the Water Quality Guidance for the Great Lakes System, including the proposal, public comments in response to the proposal, other major supporting documents, and the index to the docket are available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 by appointment only. Appointments may be made by calling Mary Willis Jackson (telephone 312–886–3717).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460 (202–260–0312).

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Potentially Affected Entities

Entities potentially affected by today's action are those discharging pollutants to waters of the United States in the Great Lakes System. Potentially affected categories and entities include:

Category	Examples of potentially affected entities
Industry	Industries discharging PCBs to waters in the Great Lakes System as defined in 40 CFR 132.2
Municipalities	Publicly-owned treatment works discharging PCBs to waters of the Great Lakes System as defined in 40 CFR 132.2

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility may be affected by this final rule, you should examine the definition of "Great Lakes System" in 40 CFR 132.2 and examine 40 CFR 132.2 which describes the purpose of water quality standards such as those established in this rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Overview

As a result of the recent decision in *AISI* v. *EPA*, D.C. Cir. No. 95–1448 (decided June 6, 1997), EPA is today removing the human health criteria for polychlorinated biphenyls (PCBs) promulgated for the final Water Quality Guidance for the Great Lake System (Guidance) in March 1997. EPA plans to propose replacement criteria in 1998. In the interim, EPA has calculated Tier I values for PCBs for human health of 2.6 E–5 micrograms per liter (ug/L) for both drinking water and nondrinking water uses. EPA is recommending that States and Tribes either adopt a human health criterion for PCBs that is no less stringent than this value or use their Guidance based Tier I methodologies for human health, together with appropriate data, to derive an ambient value to be used in setting permit limits. EPA anticipates these Tier I values to be no less stringent than EPA's interim value of 2.6 E–5 ug/L (unless site-specific data are used). EPA is not removing the wildlife criterion for PCBs of 1.2 E–4 ug/L promulgated in March of 1997. EPA expects States and Tribes to adopt and submit PCB wildlife criteria consistent with this criterion.

C. Background

In March 1995 (60 FR 15366–15425, March 23, 1995), EPA promulgated the final Water Quality Guidance for the Great Lakes System (the Guidance) required under section 118(c)(2) of the Clean Water Act, 42 U.S.C. 1268(c)(2). The Guidance included ambient water quality criteria setting maximum ambient concentrations for pollutants to be met in all waters of the Great Lakes Basin (unless site-specific criteria are derived and approved). States and Tribes were required to adopt regulations consistent with EPA's Guidance criteria and implementation procedures by March 23, 1997. Once the criteria take effect, permits for discharges of the pollutants they cover must include limits needed to attain the criteria.

EPA promulgated human health and wildlife criteria for a class of closely related toxic chemicals known as PCBs. Various industries and trade associations challenged the human health and wildlife criteria for PCBs. They alleged that EPA had improperly computed a "composite" bioaccumulation factor (BAF) for the class of PCBs. The BAF played a role in the derivation of both the human health and wildlife criteria. They also alleged that EPA used an inappropriate cancer potency factor of 7.7 milligrams per kilogram per day ((mg/kg)/d) in deriving the human health criteria.

EPA decided in the summer of 1996 that it wished to revise its method for calculating composite BAFs for the two types of criteria. It requested the U.S. Court of Appeals for the District of Columbia Circuit to remand the human health and wildlife criteria for further rulemaking related to this issue. The Court granted the motion, and EPA proposed a new approach for calculating composite BAFs on October 22, 1996. (61 FR 54748). In March 1997, EPA promulgated its revised mathematical method for deriving composite BAFs for PCBs. (62 FR 11724, March 12, 1997). EPA also promulgated revised human health and wildlife criteria for Tables 3 and 4 of 40 CFR part 132 that were based on the new mathematical approach. See 62 FR 11731.

Also in 1996, EPA announced in a guidance document that it would approve PCB criteria for human health submitted by States or Tribes that used a revised, Agency-approved cancer potency factor of 2 (mg/kg)/d. It explained that it would consider such criteria to be "consistent with" the final Guidance. See Questions and Answers on Implementing the Great Lakes Guidance, March 20, 1996.

At oral argument in the *AISI* litigation EPA told the Court that it planned to propose new human health criteria for PCBs that would utilize the new cancer potency factor of 2 (mg/kg)/d. When the Court issued its opinion on June 6, 1997, it vacated the March 1995 criteria for human health and wildlife, citing the decisions to replace the mathematical method for composite BAFs and the cancer potency factor.

D. Decision To Remove Human Health Criteria

EPA believes that the Court's decision did not affect the March 1997 human health criteria incorporating the revised mathematical approach to deriving composite BAFs. No challenge to those criteria were before the Court, so it did not have jurisdiction to vacate or remand them. EPA, however, acknowledges that it did not use the revised cancer potency factor of 2 (mg/kg)/d in deriving the March 1997 human health criteria. Because the issue vacated by the Court clearly overlaps with the scope of the 1997 rule, EPA has decided to withdraw the March 1997 human health criteria for PCBs.

EPA still intends to propose revised human health criteria using both the new potency factor and the new mathematical approach. It currently anticipates signing this proposal in March of 1998.

E. Consequences of Today's Action

As a result of today's action, States and Tribes need not adopt or submit to EPA for review human health criteria for PCBs for waters of the Great Lakes Basin. EPA, however, recommends that States and Tribes adopt a human health criterion for PCBs based on the revised BAFs and the revised cancer potency factor of 2 (mg/kg)/d. EPA has calculated a revised value of 2.6 E–5 ug/L for both drinking and nondrinking water uses. States and Tribes that chose not to adopt criteria must, at a minimum, provide protection of human health from risk of exposure to PCBs on a permit-by-permit basis using their Guidance based Tier I methodologies for human health criteria and best available data. EPA anticipates these Tier I values to be no less stringent than 2.6 E–5 ug/L (unless site-specific factors are used).

EPA does not intend to withdraw the March 1997, PCB criterion for wildlife of 1.2 E–4 ug/L. That rule replaced the challenged mathematical approach to deriving composite BAFs. The cancer potency factor at issue in the *AISI* litigation is an estimate of human health impacts. It played no role in the development of either the 1995 or 1997 wildlife criteria. There is no need to conduct further rulemaking to incorporate that potency factor into the wildlife criterion. States and Tribes must submit wildlife criteria for PCBs that are consistent with the March 1997 criterion.

II. "Good Cause" Under the Administrative Procedure Act

EPA has determined that it has "good cause" under section 553(b)(3) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3), to promulgate this final rule without prior opportunity for notice and comment. EPA finds it "unnecessary" to provide an opportunity to comment on the strictly legal issue of the impact of the *AISI* decision on the March 1997 PCB criteria.

Moreover, all interested members of the public had an opportunity to comment on the revised method for computing composite BAFs when EPA proposed them in October of 1996. The public will have a new opportunity to comment on that method when EPA issues its new proposal for human health criteria for PCBs in the Great Lakes System. The public will also have an opportunity to comment on the cancer potency factor at that time.

EPA also believes the public interest is best served by reacting as quickly as possible to the Court's decision. For this reason, EPA has also determined that it has "good cause" under 5 U.S.C. 553(d) to make the rule effective upon publication.

III. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action" and is therefore not subject to OMB review.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et. seq.), whenever a Federal agency promulgates a final rule after being required to publish a general notice of proposed rulemaking under section 553 of the Administrative Procedures Act (APA), the agency generally must prepare a final regulatory flexibility analysis describing the economic impact of the regulatory action on small entities. EPA has not prepared a final regulatory flexibility analysis for this action because the Agency was not required to publish a general notice of proposed rulemaking for this rule.

As explained above, section 553 of the APA provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary and contrary to the public interest, an agency may first issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without notice and opportunity for comment for the reasons spelled out above. In these circumstances, the RFA does not require preparation of a final regulatory flexibility analysis. Today's final rule establishes no requirements applicable to small entities.

VI. Unfunded Mandates Reform Act

This action will not result in the annual expenditures of $100 million or more for State, local, and Tribal

governments, in the aggregate, or to the private sector, and is not a Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) (P.L. 104–4), nor does it uniquely affect small governments in any way. As such, the requirements of sections 202, 203, and 205 of Title II of the UMRA do not apply to this action.

VII. Paperwork Reduction Act

There are no information collection requirements in this final rule and therefore there is no need to obtain OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 132

Environmental protection, Administrative practice and procedure, Great Lakes, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 2, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is to be amended as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

1. The authority citation for part 132 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

PART 132—[AMENDED]

2. Table 3 to part 132 is amended by removing the entry for PCBs (class).

[FR Doc. 97–26864 Filed 10–8–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Thursday
October 9, 1997

Part VI

Environmental Protection Agency

40 CFR Part 131
Withdrawal From Federal Regulations of Arsenic Human Health Water Quality Criteria Applicable to Idaho; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–5903–4]

Withdrawal From Federal Regulations of Arsenic Human Health Water Quality Criteria Applicable to Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the federal regulations by withdrawing the federal human health water quality criteria for arsenic applicable to Idaho. Idaho adopted human health criteria for arsenic and EPA subsequently approved those criteria. On November 29, 1996, EPA published a proposed rule and provided an opportunity for public comment on the withdrawal of the federal criteria for arsenic. EPA received one comment, which supported the withdrawal action.

EFFECTIVE DATE: November 10, 1997.

ADDRESSES: The administrative record for this action is available for review and copying at the U.S. EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington 98101, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Fred Leutner at EPA Headquarters, Office of Water, 401 M Street, SW, Washington, D.C. 20460 (202–260–1542) or Lisa Macchio in EPA's Region 10 at 206–553–1834.

SUPPLEMENTARY INFORMATION:

A. Potentially Affected Entities.
B. Background.
C. Executive Order 12866.
D. Unfunded Mandates Reform Act.
E. Regulatory Flexibility Act.
F. Paperwork Reduction Act.
G. Submission to Congress and the General Accounting Office.

A. Potentially Affected Entities

Citizens concerned with water quality in Idaho may be interested in this rulemaking. Entities discharging pollutants to waters of the United States in Idaho could be affected by this rulemaking since human health criteria are used in determining national pollutant discharge elimination system (NPDES) permit limits. Categories and entities which may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Idaho.
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in Idaho.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also potentially be affected by this action. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in § 131.36 of Title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in **FOR FURTHER INFORMATION CONTACT** section.

B. Background

In 1992, EPA promulgated a final rule (known as the National Toxics Rule) to establish numeric water quality criteria for 12 States and 2 Territories (hereafter "States") that had failed to comply fully with section 303(c)(2)(C) of the Clean Water Act (57 FR 60848). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in those 14 jurisdictions for all purposes and programs under the Clean Water Act effective February 5, 1993.

When a State adopts criteria that meet the requirements of the Clean Water Act, EPA withdraws its criteria. If the State's criteria are no less stringent than the federal regulations, EPA will withdraw its criteria without notice and comment rulemaking since additional comment on the criteria is unnecessary. If a State's criteria are less stringent than the federal regulations, EPA will withdraw its criteria only after notice and opportunity for public comment on that decision (see 57 FR 60860).

On August 24, 1994, Idaho adopted revisions to its surface water quality standards (Title 1, Chapter 2, section 250 of the Idaho Administrative Code), regarding surface water quality criteria for toxic pollutants. For all pollutants except arsenic, Idaho adopted by reference EPA's criteria. EPA Region 10 approved Idaho's criteria and recommended to the Administrator that she withdraw the federal human health criteria applicable to Idaho. In a separate final action published in the **Federal Register** on November 29, 1996, EPA withdrew without public comment those human health criteria applicable to Idaho for which the State has adopted criteria identical to the federal criteria (see 61 FR 60616).

Idaho adopted human health criteria for arsenic (0.020 µg/l for the consumption of water and organisms and 6.2 µg/l for the consumption of organisms); these criteria are less stringent than the federal regulations (0.018 µg/l for the consumption of water and organisms and 0.14 µg/l for the consumption of organisms). Idaho's criteria for arsenic differ from the federal criteria because the State used a bioconcentration factor (BCF) to derive its criteria that is different from the BCF used by EPA. Idaho selected a BCF that the State believes more accurately reflects the species of fish present in State's surface waters. EPA had indicated in the preamble to the National Toxic Rule that states may select fish species in developing BCF values that would better reflect species found in State waters (see 57 FR 60888). Having reviewed Idaho's submission, EPA concluded that the State's choice of a BCF to calculate the arsenic criteria was appropriate and the State's arsenic criteria met the requirements of the Clean Water Act.

Because the State's arsenic criteria are less stringent than the federal criteria, EPA proposed to withdraw the human health criteria for arsenic applicable to Idaho and solicited public comment on that proposal (61 FR 60672; November 29, 1996). EPA received one comment on the proposed rule. The commenter agreed with the appropriateness of Idaho's ambient water quality criteria for arsenic for the protection of human health.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This withdrawal of the arsenic human health criteria imposes no additional regulatory requirements. Therefore, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is not subject to OMB review.

D. Unfunded Mandates Reform Act

This action will not result in the annual expenditure of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector, and is not a Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) (P.L. 104–4), nor does it uniquely affect small governments in any way. As such, the requirements of sections 202, 203, and 205 of Title II of the UMRA do not apply to this action.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 USC 601 *et seq.*), whenever a federal agency is required to publish a general notice of rulemaking or promulgates a final rule, the agency is generally required to prepare an analysis describing the economic impact of the regulatory action on small entities. However, under section 605(b) of the RFA, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, the agency is not required to prepare an RFA analysis. Today's final rule establishes no requirements applicable to small entities, and so is not susceptible to a regulatory flexibility analysis.

This rule amends the National Toxics Rule (NTR), codified at 40 CFR 131.36, which promulgated federal water quality criteria to bring several states into compliance with Clean Water Act requirements. The NTR did not itself establish any requirements that are applicable to small entities. The NTR criteria are implemented through various state water quality control programs, including the NPDES permit program that limits the discharge of contaminants into navigable waters. The NPDES permit process is implemented by an authorized State, or absent an approved state program, by EPA (the permit authority). Authorized states and EPA have considerable discretion in carrying out the permit program to meet water quality standards. Accordingly, while a permitting authority's implementation of federally-promulgated water quality criteria may ultimately affect small entities by changing their permit limits, the criteria themselves do not apply to any discharger, including small entities.

Since the NTR, as explained above, does not itself establish any requirements that are applicable to small entities, certainly withdrawing federal water quality criteria from the NTR would not establish any requirements applicable to small entities. Moreover, even if the State criteria that replace the federal criteria are more stringent than the federal criteria, the State criteria themselves would not affect small entities. As explained previously, the permit authority implements the criteria through its permitting program where it will have a number of discretionary choices in developing permit limits.

For these reasons, the Administrator is certifying that this rule will not have a significant impact on a substantial number of small entities. Therefore the Agency has not prepared a regulatory flexibility analysis.

F. Paperwork Reduction Act

This final rule does not impose any requirement subject to the Paperwork Reduction Act.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards.

Dated: October 2, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 131 of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

§ 131.36 [Amended]

2. Section 131.36(d)(13)(i) is amended by removing the following uses classifications: "16.01.2100.01.b. Domestic Water Supplies", "16.01.2100.03.a. Primary Contact Recreation", and "16.01.2100.03.b. Secondary Contact Recreation".

3. Section 131.36(d)(13)(ii) is amended by removing the following use classifications and corresponding applicable criteria: "01.b", "03.a", "03.b.".

4. Section 131.36(d)(13)(ii) is amended in "02.a", "02.b.", "02.cc" use classification, under the listing of applicable criteria, by removing "Column D2".

5. Section 131.36(d)(13)(iii) is removed in its entirety.

[FR Doc. 97–26862 Filed 10–8–97; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 9, 1997

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Refrigerators and refrigerator-freezers, externally vented; test procedures; published 9-9-97

ENVIRONMENTAL PROTECTION AGENCY
Water pollution control:
Great Lakes System; water quality guidance; published 10-9-97

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Kentucky; published 8-29-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Agricultural commodities; U.S. grade standards and other selected regulations removed; Federal regulatory reform; comments due by 10-14-97; published 8-13-97
Peanuts, domestically produced; comments due by 10-17-97; published 9-17-97
Tomatoes grown in Florida and imported; comments due by 10-16-97; published 10-6-97

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Hog cholera and swine vesicular disease; disease status change—
Dominican Republic; comments due by 10-17-97; pubfished 8-18-97
Mexican border regulations; CFR part removed; comments due by 10-14-97; published 8-14-97
Plant-related quarantine, foreign:
Bamboo; comments due by 10-14-97; published 9-11-97

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Administrative regulations:
Federal crop insurance program—
Nonstandard underwriting classification system; comments due by 10-17-97; published 9-17-97

COMMERCE DEPARTMENT
National Institute of Standards and Technology
Advanced technology program; policy and procedures; comments due by 10-17-97; published 9-17-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; comments due by 10-14-97; published 8-15-97
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; comments due by 10-14-97; published 9-11-97
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 10-14-97; published 9-12-97
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 10-15-97; published 10-1-97
Marine mammals:
Commercial fishing authorizations—
Atlantic large whale take reduction plan; implementation; comments due by 10-15-97; published 7-22-97
Incidental taking—
Gulf of Maine harbor porpoise; take reduction plan; comments due by 10-14-97; published 8-13-97

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 10-16-97; published 9-16-97
Georgia; comments due by 10-14-97; published 9-12-97
New Mexico; comments due by 10-16-97; published 9-16-97
Ohio; comments due by 10-14-97; published 9-12-97
South Carolina; comments due by 10-14-97; published 9-11-97
Texas; comments due by 10-14-97; published 9-12-97
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 10-14-97; published 9-11-97

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Illinois; comments due by 10-16-97; published 8-29-97
Kansas; comments due by 10-16-97; published 8-29-97
Mississippi; comments due by 10-16-97; published 8-29-97
Vermont et al.; comments due by 10-16-97; published 8-29-97

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Dental devices—
Temporomandibular joint prostheses; premarket approval requirements; effective date; comments due by 10-15-97; published 7-17-97

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Bull trout (Klamath and Columbia Rivers); comments due by 10-17-97; published 8-5-97

INTERIOR DEPARTMENT
National Park Service
National Park System:
Glacier Bay National Park, AK; commercial fishing activities; comments due by 10-15-97; published 4-16-97

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
North Dakota; comments due by 10-17-97; published 9-17-97

JUSTICE DEPARTMENT
Immigration and Naturalization Service
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Aliens—
Crewmembers inspection; 90-day modified inspection procedure; comments due by 10-14-97; published 8-15-97
Detention and release of criminal aliens and custody redeterminations; comments due by 10-15-97; published 9-15-97

NUCLEAR REGULATORY COMMISSION
Medical use of byproduct material:
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Nuclear power reactors—
Emergency preparedness programs, safeguards contingency plans, and security programs; frequency of licensees' independent reviews and audits; comments due by 10-14-97; published 7-31-97

POSTAL SERVICE
Domestic Mail Manual:
Periodicals mail; presort requirements; comments due by 10-15-97; published 9-15-97

RAILROAD RETIREMENT BOARD
General administration; information disclosure to consular official; comments

due by 10-14-97; published 8-13-97

SMALL BUSINESS ADMINISTRATION

Small business size standards:
8(a) business development/ small disadvantaged business status determinations; eligibility requirements and contractual assistance; Federal regulatory review; comments due by 10-14-97; published 8-14-97

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Coast Guard

Deepwater ports:
Regulations revision; comment request; comments due by 10-14-97; published 8-29-97

Drawbridge operations:
Florida; comments due by 10-14-97; published 8-12-97

Ports and waterways safety:
Mississippi River, LA; regulated navigation area; comments due by 10-14-97; published 8-29-97

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Federal Aviation Administration

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AeroSpace Technologies of Australia Pty Ltd.; comments due by 10-14-97; published 9-16-97
Aerospace Technologies of Australia Pty Ltd.; comments due by 10-17-97; published 8-18-97
Aerostar Aircraft Corp.; comments due by 10-14-97; published 9-16-97
Ayres Corp.; comments due by 10-17-97; published 8-18-97
Boeing; comments due by 10-14-97; published 9-2-97
British Aerospace; comments due by 10-17-97; published 9-22-97
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Mitsubishi; comments due by 10-14-97; published 9-16-97
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New Piper Aircraft, Inc.; correction; comments due by 10-14-97; published 10-7-97
Partenavia Costruzioni Aeronauticas, S.p.A.; comments due by 10-14-97; published 9-16-97
Pilatus Aircraft, Ltd.; comments due by 10-14-97; published 9-16-97
Pilatus Britten-Norman Limited; comments due by 10-14-97; published 9-16-97
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TRANSPORTATION DEPARTMENT

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TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

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Hazardous liquid transportation—
Liquified compressed gasses in cargo tank motor vehicles; safety standards for unloading; comments due by 10-17-97; published 8-18-97

TREASURY DEPARTMENT

Customs Service

Country of origin marking:
Frozen imported produce; comments due by 10-17-97; published 8-18-97

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 2209/P.L. 105–55

Legislative Branch Appropriations Act, 1998 (Oct. 7, 1997; 111 Stat. 1177)

Last List October 8, 1997

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